

	<p>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</p>	
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A	FILE NO. फ़ाइल संख्या	GEN/ADJ/ADC/1298/2023-Adjn-O/o Pr Commr-Cus-Mundra
B	OIO NO. आदेश संख्या	MCH/ADJ/AKM/274/2024-25
C	PASSED BY जारीकर्ता	Amit Kumar Mishra/ अमित कुमार मिश्रा, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा।
D	DATE OF ORDER आदेश की तारीख	31.01.2025
E	DATE OF ISSUE जारी करने की तिथि	31.01.2025
F	SCN No. & Date कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/1298/2022-Adjn. Dated 01.01.2024
G	NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	(i) M/s. Creative Enterprises (IEC - BKEPM4246B) (ii) Shri Mohamed Irfan Mohammed Iqbal Memon (iii) Shri Rajesh T. Nakhua (iv) Shri Rahul Bhanushali (v) Shri Kishor Bhanushali (vi) M/s. Pushpanjali Logistics, Customs Broker (vii) Shri Manzoor Ilahi Mohammed Hussain Munshi (IEC Holder)
H	DIN/दस्तावेज़ संख्या पहचान	20250171MO000000F9FF

- यह आदेश संबंधित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 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 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- 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 सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और 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

An intelligence was gathered that a syndicate was indulged in smuggling of the goods through Mundra Port by way of mis-declaration of the description of imported goods and using various dummy IEC firms. Intelligence also indicated that the syndicate had attempted to import various goods at Mundra Port by way of gross mis-declaration using the IEC of M/s. Creative Enterprises (IEC-BKEPM4246B), Brahmanand Nagar, G. Flr. No. 1470, Shyamdhvani Complex, Gala No. 01 & 02, Kamat Ghar, Bhiwandi, Thane, Maharashtra (herein after to referred as 'the Importer'). The details of consignments imported in the name of M/s. Creative Enterprises are as under: -

Sr. No.	Container No.	Details as per Bill of Lading	Name of the CFS	Bill of Entry No.
1	PCIU9230025	BL No. HUSG20992700 dated 31.08.2022 Goods declared: Ladies' footwear	Landmark CFS, Mundra	No B.E. filed
2	PCIU9440485	BL No. HUPG20564100 dated 22.08.2022 Goods declared: Garment accessories	Landmark CFS, Mundra	1000102 dtd 04.01.2023
3	PCIU9316140	BL No. HUSG21000500 dated 31.08.2022 Goods declared: ladies' footwear	Landmark CFS, Mundra	No B.E. filed
4	PCIU9334903	BL No. HUPG20554700 dated 12.08.2022 Goods declared: Garment Accessories	Landmark CFS, Mundra	1011896 dtd 01.09.2022 and 1000125 dtd 04.01.2023
5	BSIU8134554	BL No. HUPG20566300 dated 31.08.2022 Goods declared: Garment Accessories	Landmark CFS, Mundra	1000103 dtd 04.01.2023
6	PCIU8876730	BL No. HUPG20555700 dated 12.08.2022 Goods declared: Garment Accessories	Empezar Logistics Pvt. Ltd.	1011897 dtd 01.09.2022

2. Acting on the above intelligence, detailed examination of the containers was done by the officers of DRI, Ahmedabad under various panchnama proceedings. The preliminary inquiry revealed that all the 06 containers were imported during the months of August/September, 2022 and were lying at Mundra Port, without clearance. The inquiry also revealed that the notified party for all the 06 containers, was M/s. Empezar Logistics Pvt. Ltd., SEZ Warehouse, Mundra SEZ. Out of the 06 containers, containers mentioned at Sr. No. 1 to 5 above were lying at Landmark CFS, Mundra Port and one container mentioned at Sr. No. 6 was lying at the premises of M/s. Empezar Logistics Pvt. Ltd., Mundra.

Bill of Entry No. 1011896 and 1011897 both dated 01.09.2022, in respect of containers mentioned at Sr. No. 4 and 6 of the above table were filed by M/s. Creative Enterprises through their CHA M/s. Pushpanjali Logistics. Further, though the Bills of Entry were filed on 01.09.2022, only one container bearing No. PCIU8876730 was moved to M/s. Empezar Logistics Pvt. Ltd and all the other containers were lying at Landmark CFS. M/s. Creative Enterprises had filed Bills of Entry No. 1000102, 1000125 and 1000103 on 04.01.2023, after a lapse of 4 months for containers mentioned at Sr. No. 2, 4 and 5 of the above table. M/s. Creative Enterprises have not filed any Bill of Entry in respect of the other 2 containers.

Examination of goods:

3 All the containers imported in the name of M/s. Creative Enterprises were examined by the officers of DRI, Ahmedabad under panchnama proceedings. The detailed examination report of all the containers are as under:-

3.1 Examination of Container No. PCIU9230025:

The good imported under container No. PCIU9230025 (BL No. HUSG20992700 dated 31.08.2022) from Nansha, China to Mundra was said to contain total 346 cartons of ladies' footwear. However, upon examination, goods such as shoes, ladies' undergarments and Gents' undergarments were stuffed inside the container. The following goods were found in the container:

TABLE-I

Sr. No.	Description of goods found	No. of cartons	Quantity	Declared goods
1	Shoes with brands/logo of Nike, Adidas, AIR etc.	177	5692 Pair	Ladies' footwear
2	Ladies' undergarments (Panty)	49	74430 Pcs	
3	Gents' underwear	61	73200 Pcs	
4	Ladies' undergarments (Bra)	59	42600 Pcs	

These goods were bearing tags of reputed brands. To examine probable angle of IPR violations, the same were detained under the provisions of the Customs Act, 1962.

3.2 Examination of Container No. PCIU9440485:

The good imported under container No. PCIU9440485 (BL No. HUPG20564100 dated 22.08.2022) from Nansha, China to Mundra was said

to contain 630 cartons of Garments Accessories. However, upon examination, goods such as shoes, Mobile covers, Mobile batteries, Chargers, Mobile USB Cables, Back Covers, Battery-pack, 18" Speakers/Woofers, Integrated Circuits, Musical Prayer Mat, backpacks, Hand bags, Coats, T-Shirts, Wrist Watches of various reputed brands, Soft hanging show piece, Metal Buckles, laptop batteries etc. were stuffed inside the container. Details of goods which were found in the said container are as below:-

TABLE-II

Sr No	Description of goods found	No. of cart ons	Quan tity	Declared goods
1	Wrist watches (with brands/logo of Rolex, Piguat, versace, Bvlgari, Edifise Coson, Hublot, Armani, Fossil, Emporio Armani, Rado, Fgasun, Casio Patek Philipe)	58	1850 5	Garments Accessorie s
2	Mobile Battery (Huawei, Vivo, Oppo)	4	1624	
3	Computer Battery (Various brands)	80	2667	
4	Laptop Bag (Mont Blanc)	33	990	
5	Mobile Back Cover (Various Brands)	173	1343 24	
6	Charger	26	5550	
7	Integrated Circuit	12	1080 00	
8	Educational Prayer Mat (Musical)	22	505	
9	Coat	2	180	
10	T-Shirt	2	224	
11	Shoes	24	2304	
12	18" Speaker (RCF)	147	147	
13	Show Piece	10	1000 00	
14	Metal Buckle	18	5300 0	
15	USB Cable with charger head and PD Line Mobile Charger	18	6270	
16	Backpack + Hand Bag	1	16	

From the above, it may be seen that against the description of goods mentioned in the Bill of Lading i.e. Garments Accessories, the goods found on physical examination were, shoes, Mobile covers, Mobile batteries, Chargers, Mobile USB Cables, Back Covers, Battery-pack, 18"

Speakers/Woofers, Integrated Circuits, Musical Prayer Mat, backpacks, Hand bags, Coats, T-Shirts, Wrist Watches of various brands, Soft hanging show piece, Metal Buckles, laptop batteries etc. These goods were bearing tags of reputed brands. To examine probable angle of IPR violations, the same were detained under the provisions of the Customs Act, 1962.

3.3 Examination of Container No. PCIU9316140:

The good imported under container No. PCIU9316140 (Bill of Lading No. HUSG21000500 dated 31.08.2022) from Nansha, China to Mundra was said to contain 443 cartons of Ladies' Footwear. However, upon examination, goods such as shoes, ladies' undergarments, headsets, slippers, wireless video system, handbag/purse etc. were stuffed inside the container. Details of goods which were found in the said container are as below:-

TABLE-III

Sr. No.	Description of goods found	No. of cartons	Quantity	Declared goods
1	Ladies'/Gents' undergarments	59	56040	Ladies' Footwear
3	Hand bags of various sizes (Dior, Louis Vuitton)	91	5675	
4	Shoes (All Star, Nike)	159	5854	
5	Headset Airpod (Apple)	50	10000	
6	Slipper	72	3652	
7	Wireless Video System	9	36	
8	Shoes (Ballmain)	3	42	

From the above, it may be seen that against the description of goods mentioned in the Bill of Lading i.e. Ladies' Footwear, the goods found on physical examination were shoes, ladies' undergarments, headsets, slippers, wireless video system, handbag/purse etc. These goods were also bearing tags of reputed brands. To examine the probable angle of IPR violations, the goods imported were detained under the provisions of the Customs Act, 1962.

3.4 Examination of Container No. PCIU9334903:

The good imported under container No. PCIU9334903 (BL No. HUPG20554700 dated 12.08.2022) from Nansha, China to Mundra was said to contain 895 cartons of Garment Accessories. However, upon examination, goods such as Bag Buckle, Wrist Watches of various brands, Door Stopper, Coat, Hand Bags, Trolley Bag, Adaptor (Apple), Toughen Glass (Mobile Accessory), Mobile Cover, Data Cable, Power Adaptor, Belt, School Bag, Shoes etc. were stuffed inside the container. Details of goods which were found in the said container are as below:-

TABLE-IV

Sr. No.	Description of goods	No. of cartons	Qty per carton / Bag	Quantity	Declared Goods
1	Bag Buckle	234	30 Kgs	7020 Kgs	Garment Accessories
2	Wrist Watches of various brands	50	240	12000	
3	Door Stopper	55	100	5500	
4	Door Stopper	130	50	6500	
5	Coat	4	72	288	
6	Hand Bag	1	46	46	
7	Hand Bag	1	47	47	
8	Hand Bag	1	33	33	
9	Trolley Bag	10	3	30	
10	Adaptor (Apple)	22	500	11000	
11	Tamper Proof Glass (Mobile Accessory)	1	500	500	
12	Mobile Cover	2	400	800	
13	Mobile Cover	10	500	5000	
14	Data Cable	7	500	3500	
15	Data Cable	1	160	160	
16	Mobile Cover	116	100	11600	
17	Power Adaptor	11	170	1870	
18	Power Adaptor	41	360	14760	
19	Belt	62	100	6200	
20	Adaptor	14	180	2520	
21	Hand Bag	6	30	180	
22	School Bag	1	90	90	
23	School Bag	1	130	130	
24	School Bag	1	70	70	
25	Wrist Watches	8	250	2000	
26	Hand Bag	8	36	288	
27	Wrist Watches	23	250	5750	
28	Shoes	51	36	1836	
29	Mobile Cover	64	500	32000	
30	Belt	10	100	1000	
31	Mobile Cover	10	500	5000	
32	Hand Bag	7	36	252	
33	Buckle	2	1300	2600	
34	Data Cable	30	400	12000	

From the above, it may be seen that against the description of goods mentioned in BL i.e. Garment Accessories, the goods found on physical examination were Bag Buckle, Wrist Watches of various brands, Door Stopper, Coat, Hand Bags, Trolley Bag, Adaptor (Apple), Toughen Glass (Mobile Accessory), Mobile Cover, Data Cable, Power Adaptor, Belt, School Bag, Shoes etc. These goods were bearing tags of the reputed brands. These goods were also bearing tags of reputed brands. To examine the probable angle of IPR violations, the goods imported were detained under the provisions of the Customs Act, 1962.

3.5 Examination of Container No. BSIU8134554:

The good imported under container No. BSIU8134554 (BL No. HUPG20566300 dated 31.08.2022) from Nansha, China to Mundra was said to contain 842 cartons of Garment Accessories. However, upon examination, goods such as Jacket, Underwear, Mobile Cover (Apple), Mobile Cover, Mobile Body, Apple Battery, MI Battery, Wrist Watches, ZIP Parts, Shoes, Nail Polish Remover, Wallet, Trolley bag, Button for Jeans, LED Light, 18" Speaker, Beauty Parlour Cosmetic Items Assorted, Nail Polish Dryer Machine, Nail Polish Kit Assorted, Wooden Box for watch, Empty Watch Box, Mobile Toughen Glass, Automobile Parts, Plastic Cleaner Brush etc. were stuffed inside the container. Details of goods which were found in the said container are as below:-

TABLE-V

Sr. No.	Description of goods	No. of cartons	Qty per carton / Bag	Quantity	Declared Goods
1	Jacket	8	60	480	Garment Accessories
2	Underwear	6	1033	6198	
3	Mobile Cover (Apple)	1	560	560	
4	Mobile Cover	1	460	460	
5	Mobile Cover	3	500	1500	
6	Mobile Cover (Apple)	1	260	260	
7	Mobile Body	15	400	6000	
8	Battery iPhone	5	270	1350	
9	Mobile Cover	3	1125	3375	
10	Battery Iphone	1	168	168	
11	Battery Iphone	58	160	9280	
12	MI Battery	5	380	1900	
13	Battery Iphone	1	120	120	
14	Wrist Watches	2	300	600	
15	Battery Iphone	1	20	20	
16	ZIP Parts	3	36	108	
17	MI Battery	1	160	160	
18	Shoes	80	24	1920	

19	NB Shoes	4	40	160
20	Vans Shoes	50	24	1200
21	Nail Polish Remover	1	1 Set	1 Set
22	Wallet	6	350	2100
23	Wallet Levis	2	150	300
24	Wallet Gucci	6	250	1500
25	Wallet Gucci	1	200	200
26	Wallet LV	1	200	200
27	Wallet LV	2	230	460
28	Wallet LV	5	150	750
29	Wallet Dior	1	200	200
30	Wallet Gucci	3	250	750
31	Wallet Gucci	1	100	100
32	Wallet Gucci	2	150	300
33	Wallet COACH	1	250	250
34	Trolley bag	43	3	129
35	Button for Jeans	40	23 Kg	920 Kgs
36	LED Light	1	500	500
37	LED Light	2	400	800
38	18" Speaker	13	1	13
39	Beauty Parlour Cosmetic Items Assorted	14		0
40	Nail Polish Remover	2		0
41	Nail Polish Dryer Machine	2	30	60
42	Nail Polish Kit Assorted	1		
43	Mobile Back Cover	32	600	19200
44	Wooden Box for watch	1	24	24
45	Empty Watch Box	35	30	1050
46	Empty Watch Box	2	100	200
47	Empty Watch Box	1	50	50
48	Empty Watch Box	1	12	12
49	Empty Watch Box	1	50	50
50	Mobile Toughen Glass	16	1200	19200
51	Mobile Back Cover	68	720	48960
52	Watch Casio	2	500	1000
53	Automobile Parts (Mud Guard)	16	50	800
54	Leg Guard/Hand Guard	8	30	240
55	Motorcycle Lever Guard	8	25	200
56	Plastic Cleaner	6	350	2100

	Brush			
57	Automobile Accessory	20	50	1000
58	Zip Slide	181	30 Kgs	5430 Kgs
59	LED Lamp for automobile	22	50	1100
60	LED Lamp for automobile	11	50	550
61	Head Light Lamp	10	50	500
62	Motorcycle Head Light	2	100	200

From the above, it may be seen that against against the description of goods mentioned in BL i.e. Garment Accessories, however, upon physical examination of the containers, the goods found to be Jacket, Underwear, Mobile Cover (Apple), Mobile Cover, Mobile Body, Apple Battery, MI Battery, Wrist Watches, ZIP Parts, Shoes, Nail Polish Remover, Wallets of different brands, Trolley bag, Button for Jeans, LED Light, 18" Speaker, Beauty Parlour Cosmetic Items Assorted, Nail Polish Dryer Machine, Nail Polish Kit Assorted, Wooden Box for watch, Empty Watch Box, Mobile Toughen Glass, Automobile Parts, Plastic Cleaner Brush etc. These goods were also bearing tags of reputed brands. To examine the probable angle of IPR violations, the goods imported were detained under the provisions of the Customs Act, 1962.

3.6 Examination of Container No. PCIU8876730:

The good imported under container No. PCIU8876730 (BL No. HUPG20555700 dated 12.08.2022) was said to contain 1260 cartons of Garment Accessories. However, upon examination, goods such as **e-cigarettes**, Automobile Parts, Wrist Watches of various brands, Hand Bags, Airpods, Adaptor (Apple), Mobile Cover, Data Cable, Computer Hard Drive, Computer Battery etc. were stuffed inside the container. **Further, during the examination, there were a total of 4800 e-cigarettes in different flavors which were concealed in the said consignment and attempted to smuggled into India by way of concealment inside the declared goods and other smuggled goods.** In addition to e-cigarettes, the following goods were found in the container:

TABLE-VI

Sr. No.	Description of goods	No. of cartons	Quantity(in pieces)	Declared goods
1	Laptop Battery	28	1580	Garment
2	Mobile Battery	89	4366	

				Accessories
3	Brake Pad	531	53037	
4	Computer Hard Disk	216	5400	
5	Wrist Watches (Various Brand)	49	13530	
6	Mobile Adaptor	23	54000	
7	USB Cable	23	8000	
8	Bags	18	615	
9	Screen Panels for Laptop	11	560	
10	Mobile Charger (one +)	10	3000	
11	Mobile Shell	16	12671	
12	Mobile Back Cover	205	172724	
14	Airpod (Apple)	12	1200	
15	Plastic Bags	17	33000	
	TOTAL	1248		

From the above, it may be seen that against the description of goods mentioned in BL i.e. Garment Accessories, the importer had imported prohibited goods viz. e-cigarettes as well as other goods such as Automobile Parts, Wrist Watches of various brands, Hand Bags, Airpods, Adaptor (Apple), Mobile Cover, Data Cable, Computer Hard Drive, Computer Battery etc. The import and consumption of e-cigarettes in India is prohibited under Section 4 of the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019. Further, these were bearing tags of the reputed brands. To examine probable angle of IPR violations, the goods were required to be inspected further by actual Brand owners as prescribed under the provision of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Thus, the goods imported were detained under the provisions of the Customs Act, 1962.

3.7. Examination of the goods imported in above containers was conducted under panchnamas dated 06.01.2023, 07.01.2023, 08.01.2023 and 09.01.2023.

4. It appeared that the Importer had imported prohibited goods viz. e-cigarettes, as well as other goods, by mis-declaring the description of goods in Bills of Lading as 'Ladies' Footwear and 'Garment Accessories' in case of

all the 06 containers. It further appeared that the importer had filed Bills of Entry dated 01.09.2022 in case of 02 containers viz. PCIU9334903 and PCIU8876730, wherein, they had declared the goods as Belt Buckle, Zipper (Garment Accessories, Door Stopper, Bag fitting accessories and Brake pad (Auto-parts). It further appeared that when the importer found it difficult to clear the goods, they filed Bills of Entry (for third country export) dated 04.01.2023 in case of 03 containers viz. PCIU9440485, PCIU9334903 and BSIU8134554 and declared the goods as per packing list. The comparison of goods declared in BL, BEs filed on 01.09.2022 and BEs filed on 04.01.2023 is shown in the below table: -

Sr. No.	Container No.	BL No. and Date	Description of goods as per BL	BE No. and Date	Description of goods declared in BE
1	PCIU9230025	HUSG20992700 31.08.2022	Ladies' Footwear	No BE filed	NA
2	PCIU9440485	HUPG20564100 22.08.22	Garment Accessories	1000102 / 04.01.2023	Battery, Watches, laptop bag, back cover, charger, usb cable, backpack, coat, T-shirt, shoes, IC, music carpet, loudspeaker, bulbs, bag buckle
3	PCIU9316140	HUSG21000500 31.08.2022	Ladies' Footwear	No BE filed	NA
4	PCIU9334903	HUPG20554700 12.08.2022	Garment Accessories	1011896 / 01.09.2022 and 1000125 / 04.01.2023	BE No. 1011896 - Belt Buckle, Zipper (Garment Acc.), Door Stopper
					BE No. 1000125 (As per packing list)
5	BSIU8134554	HUPG20566300 31.08.2022	Garment Accessories	1000103 / 04.01.2023	Shoes, Battery, Pull Rod Box,

				3	Watch, Back Cover, Watch Box, Buttons, Wallets, Nail Art Machine, Loudspeaker, Coat, Shorts, Headlights, Motorcycle Accessories, Zipper Head
6	PCIU8876730	HUPG20555700 12.08.2022	Garment Accessories	1011897 dated 01.09.2022	Zipper (Garment Accessories), Bag fitting accessories, Brakepad (Autoparts)

On comparison of the goods declared by the importer in different documents viz. Bills of Lading and Bills of Entry, it appeared that the importer had tried to mis-declare the goods in order to hide the actual identity of the goods with intent to smuggle prohibited and counterfeit articles by way of mis-declaration before the Customs. Further, the goods were lying since September- 2022, the bills of entry were filed during the month of January, 2023. When the importer found it difficult to clear the subject goods, the importer filed Bills of Entry (for third country export).

5 VALUATION: The goods imported in all the said 06 containers were examined by M/s. Suvikaa Associates, Empaneled CE, Gandhidham, who inspected and valued the goods detained under panchnama dated 06.01.2023, 07.01.2023, 08.01.2023 and 09.01.2023 and submitted its report vide Reference DRI/199/22-23 dated 13.01.2023 and DRI/200/22-23 dated 13.01.2023. As per report submitted by M/s. Suvikaa Associates, the value of the goods imported by M/s. Creative Enterprises is **Rs. 80,47,87,743/-**.

Thus, from the examination of the goods imported by M/s. Creative Enterprises, it appeared that the importer had imported prohibited goods viz. e-cigarettes and other counterfeit articles by way of mis-declaration. It further appeared that the importer had also mis-declared the value of the goods imported by them. The importer had declared the value of the imported goods as **Rs.1,46,94,991/-** as against the actual value of the goods **Rs. 80,47,87,743/-** as certified by the Chartered Engineer.

6. It appeared that M/s. Creative Enterprises had imported prohibited goods as well as other goods by mis-declaring the same. It also appeared that the value declared by the importer was grossly undervalued. As prohibited goods viz. e-cigarettes as well as other goods were imported by mis-declaring the same and the goods were highly undervalued, the goods imported in the 06 containers as examined under various panchnama as tabulated below, were placed under seizure under the provisions of Section 110(1) of the Customs Act, 1962 vide Seizure Memo issued from F. No. DRI/AZU/GI-02/ENQ-05 (INT-03)/2023 dated 13.01.2023.

Sr. No.	Container No.	Details as per Bill of Lading	Panchnama dated	Valuation as per C.E. certificate (Rs.)
1	PCIU9230025	BL No. HUSG20992700 dated 31.08.2022 Goods declared: Ladies' footwear	Panchnama dated 06.01.2023	4,82,85,908
2	PCIU9440485	BL No. HUPG20564100 dated 22.08.2022 Goods declared: Garment accessories	Panchnama dated 07.01.2023	14,60,23,272
3	PCIU9316140	BL No. HUSG21000500 dated 31.08.2022 Goods declared: ladies' footwear	Panchnama dated 07.01.2023	14,67,02,429
4	PCIU9334903	BL No. HUPG20554700 dated 12.08.2022 Goods declared: Garment Accessories	Panchnama dated 08.01.2023	10,97,31,354
5	BSIU8134554	BL No. HUPG20566300 dated 31.08.2022 Goods declared: Garment Accessories	Panchnama dated 08.01.2023	10,42,85,801
6	PCIU8876730	BL No. HUPG20555700 dated 12.08.2022 Goods declared: Garment Accessories	Panchnama dated 09.01.2023	25,07,18,979 ((24,01,58,979 +1,05,60,000 (e-cigarettes))

7. A search was conducted at the registered premises of M/s. Creative Enterprises at Brahmanand Nagar, G.Flr No. 1470, Shyamdhvani Complex, Gala No. 01 & 02, Kamat Ghar, Bhiwandi, Thane, Maharashtra, on

10.01.2023. However, M/s. Creative Enterprises was found to be non-existent at the given address.

8. During the course of investigation, in order to collect the evidence/corroborative evidence statement of persons who were directly/indirectly involved or related to the subject container were recorded by the DRI under the provisions of Section 108 of Customs Act, 1962. The facts of statements of such persons have been mentioned in the Show Cause Notice and the records of statements thereof have been attached to Show Cause Notice as RUDs. For sake of brevity contents of statements of such persons are not produced hereunder. The details of the persons whose statements were recorded are as under: -

- i. Statement of Shri Rahul Bhanushali, Manager M/s. Pushpanjali Logistics recorded on 08.01.2023, 11.01.2023, 12.01.2023 and 13.01.2023.
- ii. Statement of Shri Rajesh T. Nakhua, Karta of M/s. Om Logistics recorded on 12.01.2023, 12.01.2023.
- iii. Statement of Shri Akash Desai, General Manager of M/s. Empezar Logistics Pvt. Ltd recorded on 13.01.2023, 19.01.2023.
- iv. Statement of Shri Manzoor Ilahi Mohammed Hussain Munshi, Proprietor of M/s. Creative Enterprises recorded on 25.01.2023 and 02.02.2023.
- v. Statements of Shri Mohamed Irfan Mohammed Iqbal Memon were recorded on 01.08.2023, 02.08.2023, and 03.08.2023.
- vi. Statement of Shri Kishor Bhanushali, Proprietor of M/s. OM Logistics Pvt. Ltd. was recorded on 07.12.2023,

9. The Deputy Commissioner of Customs, Customs House, Mundra vide letter F. No. GEN/ADJ/ADC/1298/2023-Adjn dated 05.07.2023 addressed to M/s. Creative Enterprises (IEC No. BKEPM4246B) informed that the Commissioner of Customs, Mundra had granted extension by further period of six months for issuance of show cause notice in the instant case in terms of first proviso to Section 110(2) of the Customs Act, 1962.

10. The said seized goods were appeared to be in violation of the provision of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Therefore, the IPR holders were requested to forward their verification/assessment reports in respect of consignment imported by M/s. Creative Enterprises. Accordingly, inspection/verification of goods under the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 was carried out by actual Brand owners through their authorized verification agencies and submitted their reports as the imported products were held to be counterfeit articles and thus, imported in violation

of the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

11 SUMMARY OF INVESTIGATION

11.1 The investigation conducted and the evidence gathered reveals that the said goods were imported in the name of M/s Creative Enterprises during the months of August- September 2022 and were lying at the Mundra Port without clearance. It also revealed that the notified party for all the above mentioned 06 containers, was M/s. Empezar Logistics Pvt. Ltd., SEZ Warehouse, Mundra SEZ. But out of the 06 containers, 5 were lying at Landmark CFS, Mundra Port and one container was lying at the premises of M/s. Empezar Logistics Pvt. Ltd., Mundra. Further, bill of entries were filed only for 2 containers i.e. PCIU9334903 and PCIU8876730 on 01.09.2022 but and after a lapse of 4 months, for containers PCIU9440485, PCIU9334903 and BSIU8134554 bill of entries for third country export were filed as the importer found it difficult to clear the subject goods. It is pertinent to mention here that for container PCIU9334903, 2nd bill of entry (for third country export) was filed without cancelling the first one. Further, on examination of the goods imported vide above mentioned 6 containers; it is found that the importer had imported prohibited goods viz. e-cigarettes, as well as other goods, by way of mis-declaration in the description of goods mentioned in the Bill of Lading and Bill of Entry.

11.2 From the statements of Shri Rahul Bhanushali, Shri Rajesh T. Nakhua, Shri Mohamed Irfan Mohammed Iqbal Memon, Shri Manzoor Ilahi Mohammed Hussain Munshi (IEC Holder) and Shri Kishor Bhanushali, it appeared that the goods were imported by Shri Mohamed Irfan Mohammed Iqbal Memon and he is the actual 'beneficial owner' of the goods. He had approached Shri Rajesh T. Nakhua for clearance of the goods imported by him.

11.3 Shri Rajesh T. Nakhua approached Shri Akash Desai of M/s. Empezar Logistics Pvt. Ltd. for warehousing of the subject containers. Further, the container arrived at CFS in September, the Bills of Entry were filed by M/s. Pushpanjali Logistics on 04.01.2023, i.e. after four months after the arrival of container.

11.4 They in their statements admitted that initially they did not file the Bills of Entry for clearing the said goods as the agencies like DRI were active at that time so they delayed the clearance of the same. When they felt that the same cannot be cleared, they filed Bill of Entry for export (third country export), without cancelling the previous Bill of Entry. Shri Rahul Bhanushali of M/s. Pushpanjali Logistics had also received the invoice and packing list

in respect of container containing the prohibited goods i.e. 4800 E-cigarettes and other goods from Shri Rajesh T. Nakhua via WhatsApp application.

11.5 Shri Mohamed Irfan Mohammed Iqbal Memon admitted that the order for delivery in respect of the said smuggled goods was placed by him for his personal enrichment and that he was the actual beneficial owner of the said goods.

11.6 Further, Shri Kishor Bhanushali had admitted that he had facilitated Shri Rajesh T. Nakhua in the past for setting up his business at Mundra by making payments for his clients. From the above, it appeared that Shri Mohamed Irfan Mohammed Iqbal Memon (the beneficial owner of the goods), Shri Rajesh Nakhua, Shri Rahul Bhanushali and Shri Kishor Bhanushali appeared to have connived in an attempt to smuggle into India, prohibited goods such as e-cigarettes and other counterfeit articles, with a view to smuggle the same without intimation to the Customs authorities and without declaration or payment of appropriate Customs duty.

ARREST OF SHRI RAJESH TULSIDAS NAKHUA, SHRI RAHUL BHANUSHALI AND SHRI MOHAMED IRFAN MOHAMMED IQBAL MEMON:

12. In view of the above, it appeared that Shri Rahul Bhanushali, Branch Manager of a CHA firm, M/s. Pushpanjali Logistics and Shri Rajesh T. Nakhua, Karta of M/s Om Logistics in connivance with Shri Mohamed Irfan Mohammed Iqbal Memon, beneficial owner of the subject goods had knowingly concerned themselves in an offence punishable under Section 135(1) of the Customs Act, 1962, as they had knowingly concerned themselves in dealing/carrying with prohibited goods as also the other mis-declared goods found during the course of panchnamas dated 06.01.2023, 07.01.2023, 08.01.2023 and 09.01.2023, having total market value of Rs. 80,47,87,743/- and concerned themselves in carrying, removing, depositing, harboring, keeping, concealing of smuggled goods which they knew and/or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Hence, Shri Rahul Bhanushali and Shri Rajesh Nakhua were arrested on 13.01.2023 and Shri Mohamed Irfan Mohammed Iqbal Memon was arrested on 03.08.2023 under the provisions of Section 104 of the Customs Act, 1962.

CONTRAVENTION OF STATUTORY / LEGAL PROVISIONS:

13.1 It appeared that the syndicate comprising of Shri Rajesh Nakhua, Shri Rahul Bhanushali, Shri Kishor Bhanushali and Shri Mohamed Irfan Mohammed Iqbal Memon, in connivance with each other

attempted to smuggle prohibited goods viz. e-cigarettes and also other counterfeit consumer goods, in the name of M/s. Creative Enterprises, which was found to be a non-existent firm, by mis-declaring the description and value of the goods. The import of e-cigarettes is prohibited. They attempted to smuggle e-cigarettes and thereby contravened the provisions of Section 4 of the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019.

From the foregoing paras, it appeared that the above syndicate had also attempted to smuggle various consumer goods like branded garments, mobile covers, chargers, adaptors of various brands etc. which were counterfeit goods, by mis-declaring the description and value of the goods. The Import of counterfeit goods is in violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and is prohibited within the meaning of Section 2(33) of the Customs Act, 1962.

Shri Rajesh Nakhua, Shri Rahul Bhanushali, Shri Mohamed Irfan Mohammed Iqbal Memon in their statements recorded under Section 108 of the Customs Act, 1962 have admitted to have imported e-cigarettes and other consumer goods by mis-declaring the same.

13.2. In view of the above, it appeared that the e-cigarettes and other consumer goods smuggled by the above syndicate, in the name of M/s. Creative Enterprises, is to be construed as 'smuggling' within the meaning of Section 2(39) of the Act and the said goods fall in the category of 'prohibited' within the meaning of Section 2(33) of the Act and hence become liable for confiscation under section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962. By this act of omission and commission, M/s. Creative Enterprises and the above persons namely Shri Mohamed Irfan Mohammed Iqbal Memon, Shri Rajesh T. Nakhua, Shri Rahul Bhanushali and Shri Kishor Bhanushali had rendered themselves liable for penal action under Section 112(a) and/or 112(b), 114, 114AA, 117 of the Customs Act, 1962.




14. ROLE PLAYED BY VARIOUS PERSONS INVOLVED:

14.1 ROLE PLAYED BY SHRI MOHAMED IRFAN IQBAL MEMON

Shri Mohamed Irfan Mohammed Iqbal Memon in connivance with Shri Rahul Bhanushali, CHA, in association with Shri Rajesh Tulsidas Nakhua, Karta of M/s. Om Logistics and Shri Kishor Bhanushali, owner of M/s. Om Logistics, had placed the order for import of consignment vide 4 containers viz., PCIU9440485, PCIU9334903, BSIU8134554, PCIU8876730 under BL

No. HUPG20566300, HUPG20554700, HUPG20564100, HUPG20555700 from China, wherein upon examination e-cigarettes and counterfeit goods were found to be concealed, which are improperly imported by him in the name of M/s. Creative Enterprises, for his personal enrichment. During the statement dated 02.08.2022 of Shri Mohamed Irfan Mohammed Iqbal Memon, he denied any know-how about Shri Kishor Bhanushali and Narendra Bhanushali of M/s. Om Logistics, Mumbai; that he had never heard these names; that he had not been in touch with any such persons.

However, in the latter statements recorded on 03.08.2023, *inter alia* accepted that he got in touch with Shri Rajesh T. Nakhua of M/s OM Logistics. From the same it appeared that he tried to mislead the investigation and was daringly mendacious. Furthermore, he destroyed the entire import documents viz. invoice, packing list provided by the overseas supplier and which were forwarded to Shri Kishor Bhanushali for clearance of the goods. From various statements recorded on dated 02.08.2023, 03.08.2023, he accepted that he mis-stated facts in his previous statements which show a guilty state of mind and *mensrea*, as it appeared that he tried to mislead the investigation as well. He was in regular touch with Shri Rajesh T. Nakhua via phone and on whatsapp. The forensic analysis of phone of Shri Rajesh T. Nakhua retrieved during the investigation reveal this aspect as below: -

#	Chats\Private\Irfan Memon (5)		
1	Time stamp	1/11/2023 4:20:26 PM (Calcutta UTC+5:30)	Direction  Outgoing message Chats Private
	Source file	/private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite	
	Source file size	26.4 MB	
	Source table	ZWAMESSAGE	
	Message ID	408209	
	Status	Seen	
	Remote party	918928554090	
	Remote party name	Irfan Memon	
	Type	Text	
	Source	Mobile: iPhone	
	Text	Seth call karo	
2	Time stamp	1/11/2023 4:20:26 PM (Calcutta UTC+5:30)	Direction  Incoming message Chats Private
	Source file	/private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite	
	Source file size	26.4 MB	
	Source table	ZWAMESSAGE	
	Message ID	408208	
	Status	Delivered	
	Remote party	918928554090	
	Remote party name	Irfan Memon	
	Type	Service	
	Source	Mobile: iPhone	
	Text	You are added to chat	
3	Time stamp	1/11/2023 1:15:47 PM (Calcutta UTC+5:30)	Direction  Incoming message Chats Private
	Source file	/private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite	
	Source file size	26.4 MB	
	Source table	ZWAMESSAGE	
	Message ID	408122	
	Status	Delivered	
	Remote party	917666988880	
	Remote party name	Irfan Memon	
	Type	Service	
	Source	Mobile: iPhone	
	Text	You are added to chat	




4	Time stamp 1/8/2023 5:55:52 PM (Calcutta UTC+5:30)	Direction  Incoming message	Chats Private
Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite Source file size 26.4 MB Source table ZWAMESSAGE Message ID 406762 Status Received Remote party 917666988880 Remote party name Irfan Memon Type Audio Source Mobile: iPhone File size 19.9 KB Duration 00:00:08			
			
b8cab568-dda2-48b2-9bd 1-9ed396a7ba28.opus			
5	Time stamp 1/7/2023 2:32:51 PM (Calcutta UTC+5:30)	Direction  Incoming message	Chats Private
Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite Source file size 26.4 MB Source table ZWAMESSAGE Message ID 406159 Status Delivered Remote party 917666988880 Remote party name Irfan Memon Type Service Source Mobile: iPhone			
Text You are added to chat			

Image 01: - Screenshots of the whatsapp communication between Shri Mohamed Irfan Mohammed Iqbal Memon and Shri Rajesh T. Nakhua; retrieved during the forensic analysis of mobile phone of Shri Rajesh T. Nakhua.



Further, he accepted that the said offence is committed by him in connivance with Shri Rajesh Nakhua, Kishor Bhanushali and Shri Rahul Bhanushali. The acts of commission and omission on the part of Shri Mohamed Irfan Mohammed Iqbal Memon rendered the goods liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 and rendered himself liable for penalty under section 112(a), 112(b), 114A, 114AA and 117 of the Customs Act, 1962.


14.2. ROLE PLAYED BY SHRI RAJESH TULSIDAS NAKHUA:


Shri Rajesh Tulsidas Nakhua in active association of Shri Mohamed Irfan Mohammed Iqbal Memon (beneficiary owner of the goods) managed to

obtain dummy IEC from the market on payment of cash and arranged import of goods from China for him and accordingly instructed Shri Rahul Bhanushali of CHA firm to file forged documents with the Customs authorities.

Further, though he was aware of the actual goods contained in all the 06 containers imported in the name of M/s. Creative Enterprises, which is a dummy IEC firm. He directed Shri Rahul Bhanushali to grossly mis-declared the imported goods in the statutory documents. Shri Rajesh Tulsidas Nakhua also facilitated Shri Mohamed Irfan Mohammed Iqbal Memon, the actual beneficial owner, for smooth clearance of the consignments from Customs. He took all the relevant documents for filing of Bills of Entry from Shri Mohamed Irfan Mohammed Iqbal Memon and forwarded to Shri Rahul Bhanushali and directed Shri Rahul Bhanushali of M/s. Pushpanjali Logistics to file the Bill of entry for warehousing. The snapshot of the whatsapp chat between Shri Rajesh T. Nakhua and Shri Rahul Bhanushali, M/s. Pushpanjali Logistics forwarding the invoice in respect of M/s. Creative Enterprises, retrieved during the forensic analysis of the mobile phone of Shri Rajesh T. Nakhua is as under: -

20	Time stamp 1/7/2023 9:40:28 PM (Calcutta UTC+5:30)	Direction  Outgoing message	Chats Private
<p>Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite</p> <p>Source file size 26.4 MB</p> <p>Source table ZWAMESSAGE</p> <p>Message ID 406369</p> <p>Status Seen</p> <p>Remote party 919892960581</p> <p>Remote party name Rahul Kandla</p> <p>Type Document</p> <p>Source Mobile: iPhone</p> <p>File size 593 KB</p> <p>Original file name CREATIVE 1260 INV.pdf</p>			
<p>Text \private\var\mobile\Applications\group.net.whatsapp.WhatsApp.shared\Message\Media\919892960581@s.whatsapp.net\7e72f8ae5-cc84-4810-a103-7d01b09c2ebd.pdf</p>			
			
<p>e72f8ae5-cc84-4810-a103-7d01b09c2ebd.pdf</p>			

6	Time stamp 1/9/2023 11:46:08 AM (Calcutta UTC+5:30)	Direction Outgoing message	Chats Private
	Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite Source file size 26.4 MB Source table ZWAMESSAGE Message ID 407135 Status Seen Remote party 919892960581 Remote party name Rahul Kandla Type Document Source Mobile: iPhone File size 410 KB Original file name 1260 PKL PDF (CREATIVE).pdf		
	Text \private\var\mobile\Applications\group.net.whatsapp.WhatsApp.shared\Message\Media\919892960581@s.whatsapp.net\clacab7c34e-4353-4589-b273-456194dd559e.pdf  cab7c34e-4353-4589-b273-456194dd559e.pdf		

7	Time stamp 1/9/2023 11:46:08 AM (Calcutta UTC+5:30)	Direction Outgoing message	Chats Private
	Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite Source file size 26.4 MB Source table ZWAMESSAGE Message ID 407136 Status Seen Remote party 919892960581 Remote party name Rahul Kandla Type Document Source Mobile: iPhone File size 411 KB Original file name 1260 CTNS INV PDF (CREATIVE).pdf		
	Text \private\var\mobile\Applications\group.net.whatsapp.WhatsApp.shared\Message\Media\919892960581@s.whatsapp.net\ddc111cb-52b6-4fc1-9c93-22863ba7208c.pdf  ddc111cb-52b6-4fc1-9c93-22863ba7208c.pdf		

8	Time stamp 1/9/2023 11:43:37 AM (Calcutta UTC+5:30)	Direction Outgoing message	Chats Private
	Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite Source file size 26.4 MB Source table ZWAMESSAGE Message ID 407131 Status Seen Remote party 919892960581 Remote party name Rahul Kandla Type Text Source Mobile: iPhone		
	Text Empizer		



9	Time stamp 1/9/2023 11:43:29 AM (Calcutta UTC+5:30)	Direction  Outgoing message	Chats Private
<p>Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite</p> <p>Source file size 26.4 MB</p> <p>Source table ZWAMESSAGE</p> <p>Message ID 407130</p> <p>Status Seen</p> <p>Remote party 919892960581</p> <p>Remote party name Rahul Kandla</p> <p>Type Document</p> <p>Source Mobile: iPhone</p> <p>File size 13.8 KB</p> <p>Original file name 1260 ctns loading list.xlsx</p>			
<p>Text \private\var\mobile\Applications\group.net.whatsapp.WhatsApp.shared\Message\Media\919892960581@s.whatsapp.net\119\19632555-9004-4f4e-9c99-cbdab9728c0e.xlsx</p>			
			
<p>19632555-9004-4f4e-9c99-cbdab9728c0e.xlsx</p>			

Image 02: - Screenshots of the whatsapp communication between Shri Rahul Bhanushali and Shri Rajesh T. Nakhua; retrieved during the forensic analysis of mobile phone of Shri Rajesh T. Nakhua – forwarding the Invoices, Packing List and Loading List in respect of 1260 Cartons to Shri Rahul Bhanushali of M/s. Pushpanjali Logistics.

From the above screenshots retrieved from the forensic analysis of Mobile Phones of Shri Rajesh T. Nakhua, revealed that Shri Rajesh T. Nakhua had sent the documents viz., Invoices, Packing List and Loading List in respect of 1260 Cartons, which were for container no. PCIU8876730 and was said to contain 1260 cartons of Garment Accessories. The said container was found to contain prohibited goods such as, **4800 E-cigarettes** along with other goods viz., Laptop Battery, Mobile Battery, Brake Pad, Computer Hard Disks, Wrist Watches, Mobile Adaptor, USB Cable, Bags, Mobile Back cover, Airpods (Apple) etc. during the examination.

He provided all the documents to Shri Rahul Bhanushali, M/s. Pushpanjali Logistics to file the Bill of Entry in respect of container PCIU8876730. He also directed Shri Rahul Bhanushali to file a fresh Bill of Entry for warehousing with remark “Third Country export purpose” in respect of same cargo without cancelling the earlier Bill of Entry, when the said container was put on hold for examination.

It further appeared that Shri Rajesh Tulsidas Nakhua played active role in ensuring clearing the imported goods, which is not only prohibited by virtue of the Prohibition Of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage And Advertisement) Act, 2019, but also the indulging in act of obtaining dummy IEC from market clearly demonstrates that the entire activity right from planning, creation, monitoring and managing of all the operations was with a mala fide intention of clearing e-cigarettes & other branded goods which are prohibited to be imported.

Thus, it appeared that Shri Rajesh Tulsidas Nakhua had knowingly and intentionally associated with manipulation of import documents, in an attempt to import prohibited and other said goods by mis-declaring it as ladies' footwear and garments, which he knew or had reason to believe were false and incorrect in material particulars. The aforementioned acts of commission and omission on the part of Shri Rajesh Tulsidas Nakhua rendered the goods liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 and rendered himself liable for penalty under section 112(a), 112(b), 114A, 114AA, 117 of the Customs Act, 1962.

14.3 ROLE PLAYED BY SHRI KISHOR BHANUSHALI, OWNER OF M/S. OM LOGISTICS

Summons dated 30.10.2023, 08.11.2023 and 24.11.2023 were issued to Shri Kishor Bhanushali to tender his statement. It appeared that he avoided joining the investigation as the summons dated 30.10.2023, 24.11.2023 issued to him were not honored by him, which indicates the fact that he acted in utter disregard to the legal obligations casted upon him; that Shri Kishor Bhanushali *inter alia* in his statement dated 07.12.2023 had accepted that he knows Shri Rajesh T. Nakhua since long and had helped him from time to time. It further appeared that he used to receive money in cash or in account of M/s. Om Logistics from Shri Rajesh T Nakhua and subsequently had made payments towards the container handling charges and warehousing charges in respect of various

consignments cleared by various clients of Shri Rajesh T Nakhua previously. Further, he had accepted being a facilitator of Shri Rajesh T. Nakhua in his statement. He also tried to mislead the investigation by denying being in touch with the actual beneficiary. However, on further investigation, as per the call detail records of Shri Mohamed Irfan Mohammed Iqbal Memon, it was revealed that he received a call from Mr. Mohamed Irfan Mohammed Iqbal Memon (beneficiary owner of goods) as per below mentioned details as mentioned below : -



Target / A PARTY NUMBER	CALL_ TYPE	B PARTY NUMBER	Translation of LRN	Call date	Call Initiati on Time	Call Durati on
+91 76*****80	Outgoi ng	+91 98***** *03	Vodafone - Mobile- Mumbai	17-09- 2022	00:22:0 1	56

From the above, it appeared that Shri Kishor Bhanushali tried to mislead the investigation by stating the incorrect facts that he did not know Shri Mohamed Irfan Mohammed Iqbal Memon. It further appeared that Shri Kishor Bhanushali in connivance with Shri Rajesh T. Nakhua appointed the CHA for the beneficiary owner namely, Shri Mohamed Irfan Mohammed Iqbal Memon, the beneficiary owner of the goods, arranged for import of goods from China. He concerned himself in gross mis-declaration of the imported goods in the statutory documents in connivance with Shri Rajesh Tulsidas Nakhua. Further, as per the statement of Shri Mohammed Iqbal Memon, Shri Kishor Bhanushali offered Shri Mohammed Iqbal Memon for clearance of goods for 11 lakhs INR (Commission + Customs duties) per container for smooth clearance of the consignments from Customs, which appeared more than the normal clearance charges. The acts of commission and omission on the part of Shri Kishor Bhanushali rendered the goods liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 and rendered himself liable for penalty under section 112(a), 112(b), 114A, 114AA, 117 of the Customs Act, 1962.


14.4 ROLE PLAYED BY SHRI RAHUL BHANUSHALI, BRANCH MANAGER, CHA M/S. PUSHPANJALI LOGISTICS

Shri Rahul Bhanushali, Branch Manager of M/s. Pushpanjali Logistics, CHA, in association with Shri Rajesh Tulsidas Nakhua had knowingly filed documents which were mis-declared in particulars and also submitted forged authorization letter to the Customs Authorities, for his personal enrichment. Shri Rahul Bhanushali had utilized the name of the CHA firm M/s. Pushpanjali Logistics for the purpose of filing of the Bill of Entry and clearance of the imported mis-declared goods. He was aware of the actual goods imported in the name of M/s. Creative Enterprises. He also received documents in respect of container PCIU8876730 through whatsapp from Shri Rajesh T. Nakhua.

The snapshot of the whatsapp chat between Shri Rajesh T. Nakhua and Shri Rahul Bhanushali, M/s. Pushpanjali Logistics w.r.t. forwarding the invoice, packing list in respect of 1260 cartons imported by M/s. Creative Enterprises, retrieved during the forensic analysis of the mobile phones is as under: -

20	Time stamp 1/7/2023 9:40:28 PM (Calcutta UTC+5:30)	Direction  Outgoing message	Chats Private
<p>Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite Source file size 26.4 MB Source table ZWAMESSAGE Message ID 406369 Status Seen Remote party 919892960581 Remote party name Rahul Kandla Type Document Source Mobile: iPhone File size 593 KB Original file name CREATIVE 1260 INV.pdf</p>			
<p>Text \private\var\mobile\Applications\group.net.whatsapp.WhatsApp.shared\Message\Media\919892960581@s.whatsapp.net\e72f8ae5-cc84-4810-a103-7d01b09c2ebd.pdf</p>			
			
<p>e72f8ae5-cc84-4810-a103-7d01b09c2ebd.pdf</p>			

6	Time stamp 1/9/2023 11:46:08 AM (Calcutta UTC+5:30)	Direction Outgoing message	Chats Private
	Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite Source file size 26.4 MB Source table ZWAMESSAGE Message ID 407135 Status Seen Remote party 919892960581 Remote party name Rahul Kandla Type Document Source Mobile: iPhone File size 410 KB Original file name 1260 PKL PDF (CREATIVE).pdf		
	Text \private\var\mobile\Applications\group.net.whatsapp.WhatsApp.shared\Message\Media\919892960581@s.whatsapp.net\clacab7c34e-4353-4589-b273-456194dd559e.pdf  cab7c34e-4353-4589-b273-456194dd559e.pdf		

7	Time stamp 1/9/2023 11:46:08 AM (Calcutta UTC+5:30)	Direction Outgoing message	Chats Private
	Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite Source file size 26.4 MB Source table ZWAMESSAGE Message ID 407136 Status Seen Remote party 919892960581 Remote party name Rahul Kandla Type Document Source Mobile: iPhone File size 411 KB Original file name 1260 CTNS INV PDF (CREATIVE).pdf		
	Text \private\var\mobile\Applications\group.net.whatsapp.WhatsApp.shared\Message\Media\919892960581@s.whatsapp.net\ddc111cb-52b6-4fc1-9c93-22863ba7208c.pdf  ddc111cb-52b6-4fc1-9c93-22863ba7208c.pdf		

8	Time stamp 1/9/2023 11:43:37 AM (Calcutta UTC+5:30)	Direction Outgoing message	Chats Private
	Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite Source file size 26.4 MB Source table ZWAMESSAGE Message ID 407131 Status Seen Remote party 919892960581 Remote party name Rahul Kandla Type Text Source Mobile: iPhone		
	Text Empizer		



9	Time stamp 1/9/2023 11:43:29 AM (Calcutta UTC+5:30)	Direction  Outgoing message	Chats Private
<p>Source file /private/var/mobile/Applications/group.net.whatsapp.WhatsApp.shared/ChatStorage.sqlite</p> <p>Source file size 26.4 MB</p> <p>Source table ZWAMESSAGE</p> <p>Message ID 407130</p> <p>Status Seen</p> <p>Remote party 919892960581</p> <p>Remote party name Rahul Kandla</p> <p>Type Document</p> <p>Source Mobile: iPhone</p> <p>File size 13.8 KB</p> <p>Original file name 1260 ctns loading list.xlsx</p>			
Text \private\var\mobile\Applications\group.net.whatsapp.WhatsApp.shared\Message\Media\919892960581@s.whatsapp.net\119\19632555-9004-4f4e-9c99-cbdab9728c0e.xlsx			
			
19632555-9004-4f4e-9c99-cbdab9728c0e.xlsx			

Image 01: - Screenshots of the whatsapp communication as retrieved during the forensic analysis of mobile phone of Shri Rajesh T. Nakhua – forwarding the Invoices, Packing List and Loading List in respect of 1260 Cartons to Shri Rahul Bhanushali of M/s. Pushpanjali Logistics.

Shri Rahul Bhanushali being a representative of the CHA firm who assists the Customs officers in the assessment and clearance procedures is well aware of the CBLR Rules and Procedures, had intentionally concealed these facts from the Customs Authorities and thereby connived in the entire smuggling racket by mis-declaring the imported goods. Notwithstanding the fact that the dormant IEC had been utilized for the import of the said goods, Shri Rahul Bhanushali on the instructions of Shri Rajesh Nakhua prepared the forged documents i.e. Authorization letter, to release Delivery Order from the Shipping line, M/s. Pacific India Logistics. Shri Rahul Bhanushali had filed 2 Bills of Entry for warehousing in respect of Container No. PCIU9334903 on 01.09.2022 and another on 04.01.2023. While the Bill of Entry filed on 01.09.2022 shows the description of mis-declared goods, the Bill of Entry filed on 04.01.2023 shows the description of actual goods imported. Therefore, as an employee of a Customs House Agent, M/s. Pushpanjali Logistics, he failed to fulfill his obligation as an employee of Customs Broker by not verifying the veracity of the IEC holder and by

suppressing this information from Customs Department had, therefore rendered himself for penalty under Section 112(a), 112(b), 114A, 117, 114AA. The acts of commission and omission on the part of Shri Rahul Bhanushali also rendered the goods liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962.

14.5 ROLE OF CHA FIRM M/S. PUSHPANJALI LOGISTICS

Customs Broker M/s. Pushpanjali Logistics, had failed to discharge their duties by not verifying the KYC of the importers and were careless in filing of Bills of Entry without the verification of antecedents and whereabouts of the importer and verifying the documents furnished to them. They miserably failed to exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business. Therefore, by such an act they had failed to fulfill their obligations and duties under Regulation 10 and 13 of the CBLR, 2018 and rendered themselves liable for penalty under Section 112(a) and 114AA of the Customs Act, 1962.

14.6. ROLE OF SHRI MANZOOR ILAHI MOHAMMED HUSSAIN MUNSHI

Shri Manzoor Ilahi Mohammed Hussain Munshi, Proprietor of M/s. Creative Enterprises, residing at Room No. 503, Shams Tower, Behind Tuba Hotel, Kausa, Thane Mumbra, Maharashtra – 400612 in his statement dated 25.01.2023 and 02.02.2023 had confirmed his Pan card BKEPM4246B and his Aadhaar Card bearing number 629689539720 but the signatures appearing in the documents were not his and appeared to be forged one; that his original signature is as per the PAN Card. He further stated that as he was jobless, he went to Bhiwandi and there he submitted his KYC documents for obtaining a sim card for job purpose and he was unaware that his documents were used for obtaining the IEC of M/s Creative Enterprises. Further, he never signed any documents related to M/s Creative Enterprises and had not known Shri Rajesh Tulsidas Nakhua, Rahul Bhanushali and Irfan Memon. Thereby, by such act he had allowed his KYC documents to be used by unscrupulous elements to import goods which are counterfeit and prohibited for import. Thus, he had concerned

himself in an attempt to import of the subject consignment thus rendering himself for penalty under Section 117 of the Customs Act, 1962.

15.1 Accordingly, **M/s. Creative Enterprises (IEC: BKEPM4246B)** were called upon to show cause as to why:-

- (i) The goods as mentioned in Annexure-A to the SCN, having total value of **Rs. 80,47,87,743/-** (Rupees Eighty Crores Forty-Seven Lakhs Eighty-Seven Thousand Seven Hundred Forty-Three Only) should not be confiscated under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962
- (ii) Penalties should not be imposed upon them under Section 112(a) & 112(b), 114A, 114AA and 117 of the Customs Act, 1962.

15.2 The following persons were also called upon to show cause as to why called upon to show cause as to why Penalty (as mentioned under column no.3 of below table) should not be imposed upon them separately under the various provisions/sections of the Customs Act, 1962:

Sr. No.	Name of Noticee	Section
1	Shri Mohamed Irfan Mohammed Iqbal Memon	112(a) & 112(b), 114A, 114AA and 117
2	Shri Rajesh T. Nakhua	112(a) & 112(b), 114A, 114AA and 117
3	Shri Rahul Bhanushali, Branch Manager, M/s. Pushpanjali Logistics	112(a) & 112(b), 114A, 114AA and 117
4	Shri Kishor Bhanushali, Proprietor of M/s. Om Logistics	112(a) & 112(b), 114A, 114AA and 117
5	M/s. Pushpanjali Logistics, Customs Broker	112(a) & 112(b), 114A, 114AA and 117
6	Shri Manzoor Ilahi Mohammed Hussain Munshi (IEC Holder)	112(a) and 117

16. DEFENCE SUBMISSIONS:

16.1 Mohammed Irfan Mohammed Iqbal Memon (Noticee-2) submitted reply through their authorised representative on dated 15.02.2024 & 18.12.2024 wherein he interalia stated that:

- i. the goods have never crossed the customs declaration area at the port. The containers were_ lying at M/s. Empezar Logistics Pvt. Ltd, SEZ Warehouse, Mundra SEZ. The importer of the said consignment is M/s. Creative Enterprises. My client has no role to play in the alleged import or declaration filed in respect of the said containers. M/s. Creative Enterprises had already filed a third country export prior to the goods being intercepted.
- ii. The department has built up its entire case of mis-declaration in the backdrop of the recovery of a miniscule amount of e-cigarettes value of which is far lesser than Rs. 1,00,00,000/- (One Crore). In a clear case of abuse of power, the value of the goods is ascertained at a fantastic amount of Rs. 80,00,00,000 to 90,00,00,000 (Eighty to Ninety Crores).
- iii. the goods imported are first-copies of branded goods and the department has valued them at Rs. 80,00,00,000/- (Eighty Crores) which aspect is now not denied as there is an averment in the show cause notice that the goods seized were first-copies. Throughout the case of the Department at the stage of remand was that the goods were original and therefore the value thereof was inflated in order to clearly prejudice the Courts. The department will not generate even a few lakh of rupees in the event of auction of the said goods.
- iv. My client in order to import goods worth Rs. 80,00,00,000/- (Eighty Crores) would have to be solvent in tune to at least 50% of the above-mentioned amount.
- v. The department has adduced no evidence to show, neither has it been their line of investigation as to how goods valued at Rs. 80,00,00,000/- (Eighty Crores) were brought into the country or any payments made by my client to the alleged senders from China. It is impossible to perceive that any sane person-businessmen would send goods worth 80 crores without any payment being made as an advance towards sale of the said goods.
- vi. M/s. Creative Enterprises had already filed for a third country export prior to the goods being intercepted. Hence, the same shall show that the goods were never meant to be imported into India.
- vii. That the instant matter is a clear case of excessive abuse of power by the respondent as the said the six containers were deliberately moved from the SEZ Warehouse to the customs declaration area wherein the goods were examined and only thereafter the respondent proceeded to seize the said goods.
- viii. It is vital to note that since the stage of Remand, the officers of the Respondent had filed a valuation report that valued the said goods at Rs.80-90 crores. However, upon bare perusal of the show-cause notice, it is the case of the very same department that the goods seized are first copies and that their valuation of the same is evidently

- frivolous. That even the said auction department will not even generate a few lakh rupees.
- ix. That the only evidence against the Applicant is the statement recorded under section 108 of the Customs Act, 1962, and that the evidentiary value of a statement cannot supersede the requirement of a statute in terms of an act done for it to come within the ambit of imposing a penalty under section 112 of the Customs Act, 1962.
- x. Also, during the initial enquiry, the Applicant had submitted an affidavit to the officers of the Respondent where it was clearly stated that the Applicant was not concerned with the import of the said consignments and that he had not committed any act within the ambit of an offence under the Customs Act, 1962.
- xi. That the Hon'ble Bombay High Court in the case of Renaissance Global Ltd. v. Union of India, 2022 SCC OnLine Bom 5118, has held that the Customs Authorities have no jurisdiction and respect of goods imported in a Special Economic Zone (SEZ) and that only the Development Commissioner of the concerned SEZ is competent to take action on it and cancel the SEZ license of the petitioner therein.
- xii. That the Hon'ble Supreme Court in the case of Titan Medical Systems (P) Ltd. V/s. Collector of Customs, New Delhi, (2003) 9 SCC 133, has observed that –
- a. “12. As regards the contention that the appellants were not entitled to the benefit of the exemption notification as they had misrepresented to the licensing authority, it was fairly admitted that there was no requirement, for issuance of a licence, that an applicant set out the quantity or value of the indigenous components which would be used in the manufacture. Undoubtedly, while applying for a licence, the appellants set out the components they would use and their value. However, the value was only an estimate. It is not the respondents' case that the components were not used. The only case is that the value which had been indicated in the application was very large whereas what was actually spent was a paltry amount. To be noted that the licensing Authority having taken no steps to cancel the licence. The licensing authority have not claimed that there was any misrepresentation. Once an advance licence was issued and not questioned by the licensing authority, the customs authorities cannot refuse exemption on an allegation that there was misrepresentation. If there was any misrepresentation, it was for the licensing authority to take steps in that behalf.”
- xiii. That the entire case of the respondent has no legal standing as the raid and the subsequent seizure made by the department is deemed illegal as the D.R.I. and the Customs Act, 1962 have no jurisdiction to

- conduct a raid in the SEZ Warehouse, Mundra SEZ and the same falls within the jurisdiction of the Development Commissioner.
- xiv. That the Applicant is neither the importer of the said consignment nor is the Applicant whatsoever connected in any which way to the Importer.
- xv. It is most respectfully submitted that this is a classic case of investigation wherein the department in order to justify the seizure herein effected in the SEZ area have recorded the statements of accused persons under section 108 of the Customs Act, 1962 to show an existence of a conspiracy solely on the basis of those statements. That the department has subsequently recorded the statement of the Applicant after him giving a sworn-affidavit before the department stating that the Applicant is not concerned in any which way with the said seizure and that the same cannot be used to impose a penalty upon the Applicant under the Customs Act, 1962.
- xvi. It is most respectfully submitted that on the basis of the evidence collected by the officers of the Respondent in respect of the Applicant, no offence under the Customs Act, 1962 is made out.

16.2 Shri Rajesh T. Nakhua through their advocate Shri Sujay Kantawala submitted written submissions on 04.12.2024, 19.12.2024, 11.01.2025 & 16.01.2025 wherein the advocate/Noticee interalia stated that:

- He has neither filed the Bill of Entry nor was the beneficial owner of the impugned goods. Hence, Section 112(a) of the Customs Act, 1962 is not imposable.
- Further, it is to be submitted that the essentials of Section 112(b) of the Customs Act, 1962 has not been met qua my client-, wherein, it is to be proved by the Department that my client had acquired the possession or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling, purchasing or in any other manner dealing with any goods. I-Hereto annexed and marked as Exhibit "A" is copy of reported judgment in the case of C.C. (Preventive), Mumbai Vs. Ramcsh Bachani reported in 2000 (93) ECR 375 (T)
- It is submitted that Section 114A of the Customs Act, 1962 can only be invoked against the beneficial owner, wherein, in case of my client, he is not at all concerned with the impugned goods neither has he filed the Bill of Entry. Hence, Section 114A of the Customs Act, 1962 is not applicable.
- It is further submitted that Mohammed Iqbal Mohammcd Memon, the Noticee No.1 in his statements dated 02.08.2023 (RUD-28) and statement dated 03.08.2023 has clearly admitted that the seized goods belong to him.

- It is stated that the only alleged role of my client in this case, in the SCN appears to be that he had referred the name of Mr. Bhanushali, Noticee No.4 to Mohammed Iqbal Mohammed Memon, Noticee No.1 for clearance purposes of the goods and by no actions of my client, he has connived in any manner the impugned actions of the beneficial owner. My client is not at all liable to be, therefore, imposed with any penalty.
- As far as Section 114AA is concerned, the same is also not attracted qua my client, as my client is not at all party to any such transaction and hence, Section 114AA is not at all attracted.
- As far as the residuary provision of Section 117 is concerned, enclosed herewith as Exhibit ``C" and ``D" are a copies of recent Bombay High Court judgments in case of Commissioner of customs, Nhava Sheva-1 Vs. Ganesh Benzoplast Ltd. reported in 2024 (10) TMI 990 -Bombay High Court and in the case of Commissioner of Customs, Nhava Sheva-1 Vs. Frigorifico Allana Pvt. Ltd. reported in 2024 (12) TMI 101 -Bombay High Court. The invocation of section 117, therefore, is a clear expose of non-application of mind and casual attitude.

- Enclosed herewith as Exhibit ``E" is reported judgment of the Hon'ble Gujarat High Court in the case of Malick Glazes Pvt. Ltd Vs Union of India reported in 2014 (300) E.L.T. 25 (Guj.) and before commencement of the proceedings on merits, it is prayed that the mandate of Section 1388 be kindly followed. Enclosed herewith as Exhibit "F" is a recent reported in the case of GK Enterprises Vs. Commissioner of Customs - Mundra Customs reported in 2024 (7) TMI 767 -CESTA'1` Ahmedabad.
- In para 10, it is clearly stated that Noticee No.2 appears to have admitted that the order for delivery in respect of the said smuggled goods was placed by him for his personal enrichment and that he was the actual beneficial owner of the seized goods. It is also is alleged that Kishor Bhanushali, Noticee No.5 appears to have admitted that he had facilitated my client in the past, On this basis, my client's name has been dragged into the present SCN and he was also unnecessarily arrested and thereafter, released on bail. My client is not at all concerned with and/or connected with the seized goods. Para 16.2 of the SCN deals with the alleged role played by my client and my client completely denies the same. **It is extremely important that Rahul Bhanushali, Noticee No.4 be examined personally by your Honour as per the mandate of Section 138B of the Act and thereafter, my client would be in a position to cross-examine him.** I am enclosing recent order dated 02.12.2024 passed by the Hon'ble Madhya Pradesh High Court at Jabalpur in Writ Petition No.17024/2020, which is annexed and marked as Exhibit "A" hereto. There is absolutely no evidence to prove that my client allegedly directed Noticee No.4 to grossly

mis-declare the imported goods in the Statutory documents, whether Rule 65B of the Indian Evidence Act has been followed while placing reliance on the alleged snapshot of the WhatsApp chat requires serious consideration. There is absolutely no mention whether the procedure established under the law has been followed and enclosed herewith are the following judgments:

- Anwar P, V. Vs. P. K, Basheer & Others reported in (2014) 10 Supreme Court Cases 473, (Exhibit “B”).
 - Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Others reported in (2020) 7 Supreme Court Cases 1.
 - Ravindra Singh @ Kaku Vs. State of Punjab reported in (2022) 7 Supreme Court Cases 581.
 - Order dated 31.07.2024 in the case of Commissioner of Customs Imports Vs. Bhambhani Shipping Limited in Customs Appeal No.3/2023 passed by Hon’ble Bombay High Court.
 - Reported judgment in the case of Additional Director General (Adjudication) Vs. Its My Name Pvt, (td. reported in 2021 (375) ELLA, 545 (Del.)
- In view of what is stated above, the alleged screenshot relied on at RUD No.34 is completely inadmissible in evidence and has to be discarded at the outset, Consequently, the entire SCN proposing penalty against my client under Para 17.3 fails and is liable to be dropped qua my client. This, coupled with the fact that the beneficial owner, Noticee No.2 has clearly in his statement dated 02.08.2025 clearly stated that he does not know my client and suddenly in the statement recorded on 03.08.2023 suddenly speaks of my client again and entails and mandates your Honour to follow the provisions of Section 138B of the Act and the judgments to this effect have already brought to the notice of your Honour in my earlier reply. No act of my client has been brought on record and / or credible evidence proved, in fact, the roles of the other Noticees require in-depth investigation and **cross-examination of Noticee No. 2 and 3 has to be granted, as the quest of every adjudication proceeding is to unearth the truth.** Noticee No.7 also does not know my client which has been stated in his statements dated 25.01.2023 and 02.02.2023. He merely states that his IEC has been used by unscrupulous elements and he allowed his KYC documents to be used.
- I refer to the above matter and I refer to the last personal hearing held on 23.12.2025. Thereafter, to assist your Honour in deciding the preliminary issues raised, and keeping in view the binding judgment in the case of Mahek Glazes Pvt. Lid. Vs. Union of India reported in 2014 (300) E.L.T. 25 (Guj.). In furtherance thereof, I am enclosing herewith the following reported judgments as under:-

- In the ease of Satyendra Singh Vs. State of Uttar Pradesh & Ant. reported in 2024 SCC OnLine SC 3325.
- In the case of Videocon International Ltd. Vs. Commr. Of Cus, (Import), Mumbai reported in 2010 (250) E.L.T. 553 (Tri.-Mumbai).
- In the case of M/s Swiber Offshore Construction Pvt. Lid. Vs. Commissioner of Customs, Kandla reported in 2014 (301) E.L.T. 119 (Tri.-Ahmd.)
- In the case of Chander Gauba Vs. Commissioner of Customs, New Dethi reported in 2015 (327) ELT. 506 (Tri.-Del.)
- In the case of Ocean Marketing Vs. Commissioner of C.EX. & 8.1, Jaipur reported in 2017 (348) E.L.T. 269 (Tri.-Del.)
- In the case of Sachin Kshirsapar Vs. Commissioner of Customs (Import-I). Mumbai).
- In the case of Jain & Sons Vs, Commissioner of Customs, Delhi reported in (2023) 8 Centax 77 (Tri.-Del).
- Bhambhani Shipping Ltd. Vs. Commissioner of Customs (Import) reported in 2022 SCC OnLine CESTAT 2150.
- Commissioner of Customs, NCH, New Delhi Vs, Pawan Kant reported in (2024) 20 Centax 365 (Del.)
- order dated 02.01.2025 passed by Hon'ble Sessions Court, Mumbai in the case of Geeta Jagdish Solanki Vs. State of Maharashtra in Criminal Bail Application No.2918/2024,
- order passed by Additional Sessions Judge-03, Karkardooma Courts, Delhi dated 08.01.2025 in the of State Vs. Sandeep Bhati in Sessions Case No.233/2021.

16.3 M/s. Pushpanjali Logistics (Noticee-6) through their advocate Abhinav Verma submitted written submissions on 23.12.2024 wherein the advocate/Noticee interalia stated that:

- The allegations against the Noticee are based on assumptions and conjectures rather than substantive evidence. The Noticee operates as a Customs House Agent (CHA), whose primary responsibilities under the Customs Act, 1962, include assisting importers and exporters in filing declarations and ensuring compliance with customs procedures based on the information provided by the importer and their representatives. The CHA is not obligated to independently verify the accuracy of the declarations or the nature of the goods unless specific red flags or instructions are identified during the process. It is not reasonable or practical for the Noticee to independently verify all details provided by importers.
- The Noticee was approached by Shri Rajesh Nakhua, a forwarding agent, acting on behalf of M/s Creative Enterprises, to process the clearance of

goods under Bill of Entry No. 1015029 dated 20.10.2022. The following points clarify the Noticee's role:

- **Verification of KYC Documents:** The Noticee obtained KYC documents for M/s Creative Enterprises, including GST Registration, Aadhar Card of the proprietor (Shri Manzoor Ilahi Mohammed Hussain Munshi), and IEC Code. These documents were verified online and found to be in order.
 - **Classification of Goods: The classification and description of goods were provided by Shri Rajesh Nakhua.** The Noticee had no reason to doubt the accuracy of the information provided at the time of filing the Bill of Entry.
 - **Lack of Knowledge or Intent:** The Noticee had no knowledge of any mis-declaration or mis-classification of the goods. The description and classification were based on information supplied by the importer and their agent.
- The Noticee acted in good faith and within the scope of its duties as a Customs House Agent (CHA). There was no intent to Mis-declare the goods or evade customs duties, including anti-dumping duties or violate any provisions of the Customs Act, 1962.
- The Noticee has complied with all requirements under the Customs Brokers Licensing Regulations (CBLR), 2018. The alleged lapses in verifying the antecedents of the importer were beyond the Noticee's control. The fraudulent actions of M/s Creative Enterprises and its representatives were not reasonably foreseeable.
- It is explicitly submitted that no documentary or testimonial evidence has been presented to substantiate this claim of collusion or intent to evade duties. Furthermore, the statement of Shri Rahul Bhanushali, an employee of the Noticee, indicating awareness of mis-declaration cannot be solely relied upon to implicate M/s Pushpanjali Logistics without corroborative evidence. It is submitted that:
- **Actions Were Delegated:** Shri Rahul Bhanushali, as an employee, acted within the scope of his assigned duties and based on instructions received from the importer's agent, Shri Rajesh Nakhua.
 - **Role of Employee and Disciplinary Action:** Shri Rahul Bhanushali's role was limited to acquiring clients, and he did not disclose any awareness of mis-declaration or undervaluation to the Noticee. Upon identification of discrepancies, Shri Rahul Bhanushali was removed from employment following disciplinary action for his misconduct, thereby demonstrating the Noticee's commitment to compliance and accountability.

- **Absence of Malafide Intent:** The Noticee had no reason to believe that the importer's declarations were fraudulent, as all documentation, including KYC, was in order and verified.
 - **No Direct Evidence:** There is no direct evidence to suggest that the Noticee, as an organization, was aware of or complicit in any fraudulent activity.
- As per **Section 147** of the Customs Act, 1962, the liability of the CHA is restricted to acts done in good faith during the performance of their duties. Shri Rahul Bhanushali's statement, even if considered, does not establish organizational intent or malafide action on the part of M/s Pushpanjali Logistics.
- The principle of "*The employer liable for the acts of its employees*", cannot apply here, as the organization acted in good faith and took remedial actions promptly upon discovering employee misconduct. This aligns with judicial precedents where liability is not fastened to CHAs without evidence of collusion or direct involvement in fraudulent activities.
- **Independent Acts of Employee:** Shri Rahul Bhanushali's alleged awareness of the misdeclaration was not disclosed to the Noticee and constitutes an independent act outside the scope of his assigned duties. The organization cannot be held liable for independent, undisclosed actions by an employee without evidence of direct instruction or approval from the management.
 - **Remedial Actions Highlight Due Diligence:** The Noticee promptly identified and addressed the misconduct by initiating disciplinary action and removing the employee.
 - **Lack of Organizational Intent:** The Noticee has stringent internal policies, including verification of KYC documents and supervisory checks, to ensure compliance with customs laws. Any lapses by an employee, in this case, cannot be attributed to a lack of oversight or intent by the organization.
 - **Judicial Support for Non-Imposition of Vicarious Liability:** Judicial precedents have consistently held that CHAs cannot be held vicariously liable for acts of their employees unless a direct link is established:
 - **CC vs. Hemanth V. Pai (2005 (184) ELT 346):** Liability cannot be imposed on CHAs for the independent acts of employees unless they were authorized or directly instructed by the CHA.
 - **Commissioner of Customs vs. KVS Cargo (2016 SCC Online CESTAT 2702):** A CHA acting in good faith cannot be penalized for actions taken by an employee that were not known to or approved by the management.

- Several judicial pronouncements have established that a Customs House Agent cannot be held liable for mis-declarations made by importers unless there is evidence of direct involvement or collusion. For instance :-
- a. In **Commissioner of Customs vs. KVS Cargo (2016 SCC Online CESTAT 2702)**, it was ruled that a Customs Broker is not penalized for errors in documentation if they acted in good faith.
 - b. Similarly, in **Sahara Customs Brokers vs. CC (2019-TIOL-2832-CESTAT-DEL)**, the Tribunal held that mere failure to detect mis-declaration does not amount to connivance. In **CC vs. Hemanth V. Pai (2005 (184) ELT 346)**, it was clarified that CHAs are not expected to independently verify the genuineness of importer's credentials beyond the documentation provided. These cases underscore the principle that liability arises only when there is direct evidence of intentional wrongdoing or collusion. Relevant cases include:
 - **Commissioner of Customs vs. KVS Cargo (2016 SCC Online CESTAT 2702)**: The Tribunal held that a Customs Broker cannot be penalized for errors in documentation provided by the importer if the Broker acted in good faith.
 - **Sahara Customs Brokers vs. CC (2019-TIOL-2832-CESTAT-DEL)**: It was held that mere failure to detect mis-declaration does not amount to connivance.
 - **CC vs. Hemanth V. Pai (2005 (184) ELT 346)**: The Tribunal ruled that CHAs are not expected to verify the genuineness of the importer's credentials beyond the documentary evidence submitted.

17. RECORDS OF PERSONAL HEARING.

- i. Following the principles of natural justice, opportunities of personal hearing was granted on dated 22.04.2024, 14.05.2024, 07.06.2024. Shri Manzoor Ilahi (Noticee-7) and Shri Mohamed Irfan Iqbal Memon (Noticee-2) appeared for personal hearing on 7.06.2024, however, no one appeared for hearing.
 - Shri Manzoor Ilahi (**Noticee-7**) attended PH on 07.06.2024 and stated that he don't know about the case anything. When the DRI Mumbai team went to his house, only then did he come to know about the case. He requested to absolve him from all charges levelled against him in the impugned SCN.
 - Shri Mohamed Irfan Iqbal Memon (**Noticee-2**) attended PH on 07.06.2024 and re-iterated the submission made vide reply dated 15.02.2024.

- ii. Since, the Adjudicating Authority had been changed, opportunity to be heard person was granted to Noticees No. 12.12.2024. The hearing was attended only by Adv. Anish Pereira (Taraw Sayed & Associates) of **Noticee-2** wherein he stated that the goods were never meant to import/clear into India as the goods were destined for third country export: that the goods are 1st copy of brands i.e. counterfeit goods. Hence, the value is not just and proper; that detailed written submissions will be submitted within 07 days.
- iii. Shri Sujay Kantwala and 02 other Noticees sought adjournment. Accordingly, next hearing was fixed on 23.12.2024. This hearing was attended By the following persons:
- Shri Sujay Kantawala Advocate appeared on behalf of Shri Shri Rajesh T. Nakhua (**Noticee-3**) and stated that Shri Rajesh T. Nakhua is not concerned with the goods and had not filed any Bill of Entry and also he is not the beneficial owner of the subject goods. For this claims he referred para 7.11.2 of SCN, para-10 of SCN and para 16.02 of SCN. He further re-iterated the content mentioned in their written submissions. Noticee 2 clearly admitted that the order was placed by him and he was the actual beneficial owner of the goods. Dr. Kantawala further stated that, as a preliminary submissions to be decided and as no evidence is available against the Noticee No. 3, and as required under Section 138B of the Customs Act, 1962, the process of examination-in-chief and thereafter, cross-examination has to be conducted in accordance with law. He referred several judgments. He further stated that value arrived at of Rs. 80 Crore approx., of the seized goods is beyond imagination and is fictitious value. If the goods are put up for auction, although, his client is not concerned with the same, they will not fetch more than 3-4 Crores. This needs to be taken up at the outset, as the entire basis for the SCN fails on this ground also.
 - Shri Kishore Bhanushali (**Noticee-5**) stated that his role was limited to dealing the goods for processing only for third-Country Export. He does not Know Mr. Iqbal Memon. He will submit detailed written submissions by 27.12.2024. However, not reply received till date.
 - Shri Abhinav Verma (Advocate) appeared on behalf of M/s. Pushpanjali Logistics (**Noticee-6**) and submitted written submission dated 23.12.2024. He re-iterated the charging paras of the SCN levelled against the Noticee. He stated that they have carefully done KYC. Further, responsibility of the acts done by Shri Rahul Bhanushali lies with Shri Rahul solely. They were not involved in the acts done by Shri Rahul.

- iii. Shri Sujay Kantawala Advocate of Shri Shri Rajesh T. Nakhua (**Noticee-3**) made request through mail dated 11.01.2025 & 16.01.2025 and stated that they sought personal hearing to defend their case as there are some facts which are crucial in defence of their client. Accordingly, a final hearing was granted on 22.01.2025 in order to comply the principles of natural justice. Shri Kantawala appeared for personal hearing and re-iterated their submissions made vide letter dated 11.01.2025 & 16.01.2025 with the request to consider the same at the time of deciding the case.

DISCUSSIONS AND FINDINGS

18. I have gone through the facts of the case, Show Cause Notice dated 01.01.2024 and the noticee's submissions both, in written and in person. I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- i. Whether the goods having total value of **Rs. 80,47,87,743/-** (Rupees Eighty Crores Forty-Seven Lakhs Eighty-Seven Thousand Seven Hundred Forty-Three Only) liable for confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 or otherwise.
- ii. Whether penalties under Section 112(a), 112(b), 114A, 114AA and 117 of the Customs Act, 1962 is liable to imposed on **M/s. Creative Enterprises (IEC: BKEPM4246B)** or otherwise.
- iii. Whether penalty is liable to be imposed upon co-noticees under Section 112(a) & 112(b), 114A, 114AA and 117 of the Customs Act, 1962 or otherwise.

19. I find that the present show cause notice is centered on the goods imported through 06 containers Container covered under 06 Bill of Ladings wherein good were declared as ladies footwear and Garments Accessories. However, upon examination, prohibited goods viz. e-cigarettes, counterfeit goods of reputed brands infringing IPR Rules as well as other offending goods were found which were imported by way of mis-declaration in the description of goods mentioned in the Bill of Lading.

20. I find that these 04 Containers were imported August-September 2022 and were lying at the Mundra Port without clearance. I noticed that Bill of entries were filed only for 2 containers i.e. PCIU9334903 and PCIU8876730

on 01.09.2022 and after a lapse of 4 months, for containers PCIU9440485, PCIU9334903 and BSIU8134554 bill of entries were filed for third country export. I also observed that for container PCIU9334903, 2nd bill of entry (for third country export) was filed without cancelling the first one. I also noticed that the importer had imported prohibited goods viz. e-cigarettes, were also found during examination of the container No. PCIU8876730 which was nowhere mentioned in the Import documents.

21. From the investigation and statements recorded during the investigation of Shri Rahul Bhanushali, Shri Rajesh T. Nakhua, Shri Mohamed Irfan Mohammed Iqbal Memon, Shri Manzoor Ilahi Mohammed Hussain Munshi (IEC Holder) and Shri Kishor Bhanushali; it is evident that the impugned goods were imported by Shri Mohamed Irfan Mohammed Iqbal Memon (Mohamed Irfan) and he is the actual 'beneficial owner' of the goods imported through under these containers. Further, Shri Mohamed Irfan admitted that the order for delivery in respect of the said smuggled goods was placed by him for his personal enrichment and that he is the actual beneficial owner of the said goods. Thus, I have no doubt that Shri Mohamed Irfan Mohammed Iqbal Memon is the actual beneficiary owner/Importer of the imported goods.

22. I find that Mohamed Irfan approached Shri Rajesh T. Nakhua for clearance of the imported goods. Thereafter, Shri Rajesh T. Nakhua approached Shri Akash Desai of M/s. Empezar Logistics Pvt. Ltd. for warehousing of the subject containers. After arrival of the containers at CFS in September, the Bills of Entry were filed by M/s. Pushpanjali Logistics on 04.01.2023, i.e. after four months after the arrival of container. I find that that the goods were originally intended for DTA clearance. However, due to DRI's involvement in other cases at that time, they were unable to file the Bill of Entry for DTA clearance. As a result, they decided to file the Bill of Entry for third-country re-export to avoid any investigation issues. I also observed that in the case of Container No. PCIU9334903, Bill of entry for export (third country export) was filed without cancelling the previous Bill of Entry. From the investigation, it has been revealed that Shri Rahul Bhanushali of M/s. Pushpanjali Logistics had received the invoice and packing list in respect of container containing the prohibited goods i.e. 4800 E-cigarettes and other goods from Shri Rajesh T. Nakhua via WhatsApp application. During the investigation, it had been admitted by Shri Kishor Bhanushali that he had facilitated Shri Rajesh T. Nakhua in the past for setting up his business at Mundra by making payments for his clients.

23. I state that details of the goods imported vide these 06 Containers have already been mentioned in Show Cause Notice and previous paras of this Order also. The same are not being repeated for the sake of brevity.

Confiscability of the goods imported through these 06 Containers will be discussed in the upcoming paras separately.

24. Valuation of the imported goods:

24.1 I find that although bills of entry for third country export in respect of 04 Containers, however, the goods were found totally different from the declared description in the import documents. Further, no Bills of Entry were filed in respect of 02 Containers Nos. PCIU9230025 & PCIU9316140. Further, prohibited goods i.e. 4800 pcs e-cigarettes and other offending goods in the contravention of IPR Rules were also found during the examination. Thus, I have no doubt that the value cannot be accepted as the true value of the goods imported under these 06 Containers. I find that prohibited goods viz. e-cigarettes as well as other goods were imported by mis-declaring the same and the goods were highly undervalued. I find that goods declared as “Ladies’ footwear” & “Garment accessories” by hiding their true identity. Hence, the value of the goods is required to be determined in accordance with provisions of Section 14 of Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter also referred to as “Rules 2007”). I find that Rule 3(1) of Rules 2007 provides that “*subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10*”. Rule 3(4) *ibid* states that “*if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9 of Custom Valuation Rules, 2007*”. The relevant Rules of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are reproduced hereunder:-

3. Determination of the method of valuation-

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

i. do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

4. Transaction value of identical goods. -

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rule 5 (Transaction value of similar goods).-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.

Rule 7 of the CVR, 2007, stipulates that:-

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

Rule 8 of the CVR, 2007, stipulates that:-

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

Rule 9 of the CVR, 2007, stipulates that:-

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of

–

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

24.2 I state that "Value" has been defined under Section 2(41) of the Customs Act, 1962 as "Value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14".

24.3 The Section 14 *ibid* provides, *inter alia*, that the value of the imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such their conditions as may be specified in the rules made in this behalf. Further, its proviso provides that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of

transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf. I find that as per the above provision value of any imported goods is the price actually paid or payable for the goods plus the components of other incidental charges to the extent mentioned in proviso to Section 14 ibid and in the manner specified in the Rules made under Section 14 ibid. In the instant as stated above, the whole consignments was found mis-declared with respect to description, qty, IPR and other material particulars. Further, prohibited goods were also found in the subject consignments. The price actually paid not provided by any Noticee. Therefore, to arrive at the correct value of the goods, services of Government approved Chartered Engineer were availed.

24.4 I find that Rule 4 (1) (a) of Rules 2007 stipulates determination of value of goods on the basis of value of identical goods. However, details of imports of identical goods were not available. Rule 5, providing for transaction value of similar goods, can also not be invoked as the goods have been found mis declared in terms of description, undeclared, prohibited, counterfeited etc. I also noticed that no exact sales values and data required for quantification of the deductions was available, hence, rule 7 cannot be invoked. Further, computed value, as provided under Rule 8, cannot be calculated in the absence of quantifiable data relating to cost of production, manufacture or processing of import goods. In such scenario, I find it appropriate to invoke the provisions of Rule 9 i.e. residual method for determining the value of the impugned import goods. Rule 9 provides for determination of value using reasonable means consistent with the principles and general provisions of these rules.

24.5 I find that in absence of credible data of import of similar goods and other constraints the value of these goods cannot be determined in terms of Rule 4, 5, 6, 7, 8 of Customs Valuation Rules 2007. Hence, the value is to be determined in terms of Rule 9 of said rules. In view of the above, I find that the market price as provided by the Chartered Engineer has to be considered as the basis for arriving at assessable value of these goods. Therefore, the declared assessable value of the goods pertaining to these 04 Containers imported under 06 Bills of Lading, is required to be re-determined under Section 14 of the Customs Act, 1962 read with Rule 9 of the CVR, 2007. Thus, I find it appropriate to consider the value suggested by the Chartered Engineer/valuer for these 04 container and the re-determined the same as Rs. **80,47,87,743/-**. The container wise value is as per the below table:

Sr. No.	Container No.	Details as per Bill of Lading	Re-determined value
1	PCIU9230025	BL No. HUSG20992700 dated 31.08.2022	4,82,85,908
2	PCIU9440485	BL No. HUPG20564100 dated	14,60,23,272

		22.08.2022	
3	PCIU9316140	BL No. HUSG21000500 dated 31.08.2022	14,67,02,429
4	PCIU9334903	BL No. HUPG20554700 dated 12.08.2022	10,97,31,354
5	BSIU8134554	BL No. HUPG20566300 dated 31.08.2022	10,42,85,801
6	PCIU8876730	BL No. HUPG20555700 dated 12.08.2022 Accessories	25,07,18,979 ((24,01,58,979 +1,05,60,000 (e- cigarettes))

25. CONFISCATION OF THE GOODS UNDER SECTION 111(d), 111(e), 111(f), 111(l) and 111(m) OF THE CUSTOMS ACT, 1962:

25.1 It is alleged in the SCN that the goods are liable for confiscation under Section 111(d), 111(e), 111(f), 111 (l) & 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111 of the Customs Act, 1962 are reproduced below: -

- (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;*
- (e) *any dutiable or prohibited goods found concealed in any manner in any conveyance;*
- (f) *any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;*
- (l) *any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*
- (m) *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;”*

25.2 I find that goods imported in the container Nos. PCIU9230025, PCIU9440485, PCIU9316140, PCIU9334903, BSIU8134554 & PCIU8876730 were found mis-declared in respect of quantity, value, brand and also found prohibited alongwith other material particulars. I find that goods were not declared in the import documents. Upon examination has been found that goods were found other than the declared under import documents and Manifest. The undeclared goods were found concealed alongwith the goods which were freely import as per policy and these goods i.e. garments accessories & ladies footwear were used for concealment of these offending goods. Thus, there is no doubt that the goods are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 as proposed under the show cause notice. I find that upon examination, these goods were found bearing tags of reputed brands, thus the goods were taken up for further inspection by actual Brand owners as prescribed under the provision of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Accordingly, inspection/verification of goods under the said Rules, 2007 was carried out by actual Brand owners through their authorized verification agencies and submitted their reports holding the imported goods as counterfeited articles. Thus, I find that the goods were imported in violation of the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

25.3 IMPORT OF E-CIGARETTES BY WAY OF MIS-DECLARATION AND CONCEALMENT:

(i) I find that from the Container No. PCIU8876730 (BL No. BL No. HUPG20555700 dated 12.08.2022) 4800 pieces of e-cigarettes were found. The Importer had declared the description of the goods as “Garment Accessories” and filed Bill of Entry No. 1011897 dtd 01.09.2022.

(ii) I find that Shri Rahul Bhanushali of M/s. Pushpanjali Logistics had also received the invoice and packing list in respect of container containing the prohibited goods i.e. 4800 E-cigarettes and other goods from Shri Rajesh T. Nakhua via WhatsApp application. The fact has already been established through wtsapp chat extracted during the investigation.

(iii) I observed that in India, the ban on e-cigarettes was implemented in September 2019 through an ordinance issued by the central government, effectively prohibiting the production, import, distribution, sale, and advertisement of e-cigarettes. The primary motivation behind this legal action was to address growing concerns about the health risks associated with vaping, particularly the potential for addiction, respiratory issues, and the impact on young people. E-cigarettes were seen as a gateway product, potentially leading youth and non-smokers to nicotine addiction. The government's decision was also driven by fears that the unregulated market

for e-cigarettes could exacerbate public health problems and undermine ongoing efforts to reduce smoking-related diseases.

(iv) The **Prohibition of E-Cigarettes Act, 2019**, which followed the ordinance, made it a punishable offense to manufacture, import, or sell e-cigarettes, with penalties including fines and imprisonment. This law reflects India's commitment to strengthening its tobacco control policies and aligning with international health guidelines, including the **World Health Organization Framework Convention on Tobacco Control (WHO FCTC)**, which calls for comprehensive measures to protect populations from the harmful effects of tobacco and nicotine products.

(v) I observed that the prohibition on the import of e-cigarettes is a regulatory measure aimed at safeguarding public health, particularly in light of the growing concerns about the potential risks associated with vaping. E-cigarettes, or electronic cigarettes, are devices designed to deliver nicotine through vapor, rather than smoke, and are often marketed as a safer alternative to traditional tobacco products. However, their long-term health effects are not fully understood, and emerging evidence suggests that they may contribute to respiratory issues, addiction, and serve as a gateway for young people to initiate nicotine use. Governments have taken action to curb the availability of e-cigarettes through import bans, citing concerns about the lack of adequate regulation and the potential for e-cigarettes to undermine tobacco control efforts. Such measures also address the possibility of unauthorized or counterfeit products entering the market, which could further jeopardize consumer safety. The prohibition serves to protect vulnerable populations, particularly youth, and is part of broader efforts to reduce nicotine addiction and tobacco-related harm.

(vi) I find that Electronic Cigarettes found in the above import consignment fall under HS code 85434000 and the import of E-Cigarettes is prohibited vide Notification 20/2015-2020 dated 26.09.2019. The relevant parts of the said Notification is reproduced below for better appreciation:

*“Import of electronic cigarettes (e-cigareetes) or any parts or components thereof such as refill pods, atomisers, cartridges etc, including all forms of Electronic Nicotine Delivery Systems, heat Not Burn Products, e-Hookah and the like devices by whatever name and shape, size or form it may have, but does not include any product licenced under the Drugs and Cosmetics Act, 1940, under HS Code: 8543 **is Prohibited** in accordance with the prohibition of Electronic Cigarettes (Production, Manufacture, Import, Exports, Transport, Sale, Distribution, Storage and Advertisement) Ordinance, 2019”*

Effect of the Notification: *Import of electronic cigarettes and parts or components thereof is prohibited.*

From the above, it may be seen that as per Notification No. 20/2015-2020 dated 26.09.2019, import of electronic cigarettes or any parts or components of e-cigarettes is completely banned or Prohibited under Import Policy. However, the goods were imported in guise of other freely importable goods.

Further, Section 2(39) of Customs Act, 1962 defines "smuggling" in relation to any goods, means any act or omission which will render such goods liable for absolute confiscation under Section 111 or Section 113 of the Customs Act, 1962. The impugned goods e-cigarettes are prohibited for import as per import policy and provisions discussed above and thus liable for absolute confiscation under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962.

25.4 PROHIBITION OR IMPORT OF GOODS INFRINGING INTELLECTUAL PROPERTY RIGHTS:

(i) From the careful perusal of the Annexure-A to the Show Cause Notice, upon examination of goods imported in the impugned 06 containers, it had been found that goods were found mis-declared/mis-classified/concealed. Further, a number of brands were found which were grossly mis-declared as per the bill of lading.

I observed that goods were packed in containers in a deceptive manner, which were found to be counterfeit during the examination. Shoes, ladies' undergarments, bras, panties, mobile batteries, wristwatches, computer batteries, mobile back covers, speakers, USB cables, handbags, headset airpods, shoes, wireless video systems, adaptors, wallets, laptop batteries, mobile chargers, etc., were found to be counterfeit., I find that in absence of original documents containing true identity of goods were not provided during the investigation, hence, goods were segregated during the examination to make inventories. I find that there are multiple items stuffed in the container The said mis-declared branded goods imported vide these 06 Containers were placed under detention as per the provisions of Customs Act, 1962 as the said items were being smuggled. On careful perusal of the Annexures to the Show Cause Notice, I noticed that counterfeit goods were found in all these 06 containers in the contravention of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

(ii) I also find that the rights holders of brands submitted their verification report confirming the goods bearing the brand names of various brands to be **counterfeit**. Thus, these goods are liable for confiscation under the provisions of the Section 111 of the Customs Act, 1962. I find that under the provisions of the Customs Act, the absolute confiscation of counterfeit goods is an essential mechanism to safeguard the integrity of markets, protect intellectual property rights, and ensure public safety.

Section 111 of the Customs Act, 1962, empowers customs authorities to confiscate goods that are imported unlawfully or are prohibited by law, including counterfeit goods. Such goods, which infringe upon trademark or patent laws, are subject to seizure and cannot be returned to the importer. This absolute confiscation is meant to prevent the circulation of substandard, fake, or unauthorized products that can harm consumers and disrupt legitimate trade. Counterfeit goods cannot be allowed to enter the market as they mislead consumers and erode the reputation of genuine brands.

(iii) I find that The Government, initially vide notification No. 49/2007-Customs dated 8-5- 2007 prohibited import of goods infringing intellectual property rights of the right holders under The Copyright Act, 1957, the Trade Marks Act, 1999, the Patents Act, 1970, the Designs Act, 2000 and the Geographical Indications of Goods (Registration and Protection) Act, 1999. Later, this notification No. 49/2007-Customs (NT), dated 8.5.2007 has been superseded by notification No. 51/2010-Customs (NT), dated 30.6.2010.

2. Under the notification No. 51/2010-Customs, dated 30.6.2010, the following goods have been prohibited: -

(i) goods having applied thereto a false trade mark as specified in section 102 of the Trade Marks Act, 1999 (47 of 1999);

(ii) goods having applied there to a false trade description within the meaning of clause (i) of sub-section (1) of section 2 of the Trade Marks Act, 1999(47 of 1999), otherwise than in relation to any of the matters specified in sub- clauses (ii) and (iii) of clause (za) of that sub-section;

*(iii) goods made or produced beyond the limits of India and having applied thereto a design in which copyright exists under the Designs Act, 2000(16 of 2000), in respect of the class to which the goods belong or any fraudulent or obvious imitation of such design **except when the application of such design has been made with the license or written consent of the registered proprietor of the design or where such importation or use is allowed under the Designs Act, 2000 (16 of 2000);***

(iv) the product made or produced beyond the limits of India for which a patent is in force under the Patents Act, 1970 (39 of 1970), except in cases where the consent from the patentee in India has been obtained provided that such prohibition is not applicable to the cases where such importation is allowed under the Patents Act, 1970(39 of 1970);

(v) the product obtained directly by the process made or produced beyond the limits of India where patent for such process is in force under the Patents Act, 1970 (39 of 1970), except in cases where the consent from the patentee in India has been obtained provided that such

prohibition is not applicable to the case where such importation is allowed under the Patents Act, 1970 (39 of 1970);

(vi) goods having applied thereto a false Geographical Indication within the meaning of section 38 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999); (vii) goods which are prohibited to be imported by issuance of an order issued by the Registrar of Copyrights under section 53 of the Copyright Act, 1957 (14 of 1957).

(iv) Further, Rule 6 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 is also applicable in the subject goods which is reproduced as under:

“Prohibition or import of goods infringing intellectual property rights.- *After the grant of the registration of the notice by the Principal Commissioner or Commissioner on due examination, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962.*

In view of the report from the authorized persons of the Brand owners of various brands, whose products were found during the course of examination of the imported goods, it was established that these products are counterfeit and are not the original products from these brands. Hence the report from the brand owners signifies that the importer had violated the provisions of Rule 6 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as they had imported counterfeit products and has infringed the intellectual property rights of the brand owners. Accordingly, I hold that these mis-declared counterfeit goods which were found in place of declared goods, imported in contravention of provisions as discussed above, thus, are liable for absolute confiscation under the provisions of Section 111 being prohibited within the meaning of Section 11 of the Customs Act, 1962.

25.5 There is no ambiguity regarding the fact that the goods were never intended for export to a third country or for transshipment. It is also admitted by the Noticees in their statements admitted that goods were imported for DTA clearance, however, due to DRI's involvement in other cases at that time, they were unable to file the Bill of Entry for DTA clearance. I find that the offenders waited for 3/4 months however never got chance to clear the goods through DTA due to admitted fact that investigation agency kept watch on the shipments. I also noticed that neither the supplier nor the dummy third country consignee came forward to claim the goods or the noticees failed to submit any documentary evidences explaining as to why the goods lying for long period. I have no doubt that the Importer alongwith other notices just made a fabricated

story, since the goods imported into India in the contravention of the provisions as discussed above. However, for greater clarity, it is important to address the confiscation of the imported goods from the transshipment perspective and further clarify that these goods were intended for import and clearance for DTA clearance, had they not been intercepted by the DRI.

(i) I find that Section 54 of Customs Act deals with transshipment of goods without payment of duty. Sub-section (1) contemplates presentation of Bill of Transshipment to the proper officer in the prescribed form whenever any goods are imported into a Customs Station. Proviso to sub-section (1) makes an exception that where the goods are transhipped under an international treaty or bilateral agreement between the Government of India and the Government of a foreign country, a declaration for transshipment is sufficient. Sub-section (2) deals with imports for the purpose of transshipment to any place outside India. Sub-section (2) is the relevant Section in the present case. In terms of Section 54(2) of the Customs Act, 1962, subject to the provisions of Section 11 of the Customs Act, 1962, the goods imported into a Customs station, are mentioned in the Arrival Manifest for the transshipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty. Thus, for clearance of goods for transshipment, without payment of duty, may be permitted in following conditions:

- (a) The goods do not fall under the provisions of Section 11 of the Customs Act, 1962
- (b) The goods are imported into a Customs station.
- (c) The goods are mentioned in the Arrival manifest for transshipment to any place outside India.

From the above, I noticed that the Noticees had not complied with the condition mandated for the transshipment as required under Section 54(2) of the Customs Act, 1962. I also noticed that the goods mentioned in the import documents were not found in the Container. Further, I find that imported goods are prohibited in nature and also founds violation of IPR Rules, 2007 as mentioned above in majority. An attempt was made to clear the goods (e-cigarettes and counterfeit goods) by way of smuggling into India with an intent to bypassing such regulations. Thus, the goods are fall under the category of prohibited goods under the provisions of Section 11 of the Customs Act, 1962. Therefore, the goods are rightly liable for confiscation under the provisions of Section 111 of the Customs Act, 1962

(ii) I want to state here that just for the sake of discussion and for clarity regarding confiscability of the goods, I would like to refer a judgment by the Hon'ble CESTAT, MUMBAI in the case of **COMMR. OF CUS., AIR CARGO COMPLEX, MUMBAI Versus WORLD WIDE TRAVELS- [2008 (230) E.L.T.**

573 (Tri. – Mumbai] wherein the Hon'ble Tribunal held that “*Since goods were mis declared in the manifest and the covering Airway Bill, same liable to confiscation - Section 111 ibid*”.

25.6.1 It is pertinent to mention here that the actual beneficiary owner of the imported goods i.e. Shri Mohamed Irfan Mohammed Iqbal Memon at para 11 of his written submission dated 15.02.2024 stated that:

“It is respectfully submitted that the importer of the said consignment is M/s. Creative Enterprises. My client is no role to play in the alleged import or declaration filed in respect of the said containers.”

25.6.2 Further, I also observed that he stated that Shri Mohamed Irfan Mohammed Iqbal Memon at para 12 of his written submission dated 18.12.2024 stated that:

“Also, during the initial enquiry, the Applicant had submitted an affidavit to the officers of the Respondent where it was clearly stated that the Applicant was not concerned with the import of the said consignments and that he had not committed any act within the ambit of an offence under the Customs Act, 1962.”

From the above, it may be seen that during the adjudication proceedings no one has claimed the goods although the fact is beyond the doubt the Shri Mohamed Irfan Mohammed Iqbal Memon is the actual beneficial owner of the goods. The IEC holder [Shri Manzoor Ilahi (**Noticee-7**)] also not claimed the goods and clearly stated during the personal hearing held on 07.06.2024 that he is neither aware about the goods imported in his name nor imported any goods.

26. REDEMPTION UNDER SECTION 125 OF CUSTOMS ACT 1962 OR OTHERWISE:

26.1 From the above, it is clear that the impugned goods had been improperly imported to the extent that they were mis-declared in respect of description, qty, brand and other material particulars. Further, prohibited goods i.e. e-cigarettes, branded goods etc. were also found concealed alongwith the other offending goods. The said act was done by hiding true nature of the goods by manipulating import documents. As the impugned goods are found to be liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 ibid reads as under:-

“Section 125. Option to pay fine in lieu of confiscation.—
(1) *Whenever confiscation of any goods is authorised by this Act, the officer*

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

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. In the instant case goods were found totally different from the declared description in all 06 Containers. I noticed that neither the IEC holder nor the owner of the goods asked for the goods to be re-exported, even though bills of entry for third country export in respect of four containers were filed. Also, no bill of entry was filed for two other containers. Apart from the said fact, as I have already discussed, I find that goods were found prohibited being counterfeit/fake and falls within the meaning of Section 11 of the Customs Act, 1962; are liable for absolute confiscation.

26.2 I find that importer declared description of the goods as “Ladies Footwear” & “Garment accessories”, however, upon examination goods counterfeit goods such as Shoes, ladies' undergarments, bras, panties, mobile batteries, wristwatches, computer batteries, mobile back covers, speakers, USB cables, handbags, headset airpods, shoes, wireless video systems, adaptors, wallets, laptop batteries, mobile chargers, etc., were found. I find that the goods stuffed in these containers found grossly mis-declared in violation of IPR, 2007. Further, prohibited goods i.e. 4800 pcs of e-cigarettes were found in the container No. PCIU8876730 (BL No. BL No. HUPG20555700 dated 12.08.2022 for which bill of entry no. 1011897 dtd 01.09.2022 was filed declaring description as “Garment Accessories”. A fundamental requirement in considering requests for re-export is whether the importer has made a truthful declaration at the time of import. It cannot be the case that an importer indulges in serious fraudulent mis-declaration and on being caught can seek re-export as a matter of right. I find that the goods in question were improperly imported and fall in the category of 'prohibited goods', the provisions contained in Chapter XIV of the Customs Act, 1962 come into operation and the subject goods are liable to confiscation apart from other consequences - A bare reading of the provision of Section 125(1) of the Customs Act, 1962 makes it evident that a clear distinction is made between 'prohibited goods' and 'other goods'. It has rightly been pointed out, the latter part of Section 125 obligates the release of confiscated goods (i.e., other than prohibited goods) against redemption fine but, the earlier part of this provision makes no such compulsion as regards the prohibited goods; and it is left to the discretion of the

Adjudicating Authority that it may give an option for payment of fine in lieu of confiscation. It is innate in this provision that if the Adjudicating Authority does not choose to give such an option, the result would be of absolute confiscation. As discussed above, the imported goods i.e. e-cigarettes, counterfeited goods and other offending goods would appropriately constitute to be “prohibited goods”, there remains no issue for permitting the release of goods for re-export purpose under the bills filed for re-export.

26.3 I had already discussed and clarified earlier that the goods are counterfeit and liable for absolute confiscation. However, it would be appropriate to mention here that during the adjudication proceedings, none of the noticees were able to prove that the goods are not counterfeit and should be allowed for re-export. The owner of the IEC is also unaware of how the goods were imported under his IEC. Shri Mohamed Irfan Mohammed Iqbal Memon now wants to distance himself from the goods by not claiming the same as he knows that the goods are not going to be cleared. However, Shri Mohamed Irfan Mohammed Iqbal Memon cannot distance himself from the responsibility of the improper import made by him being beneficial owner of the imported goods.

26.4 In the facts and circumstances of the present case, I don't find it appropriate allow these prohibited i.e. e-cigarettes & counterfeit goods and other offending goods imported under these 06 containers for third country export or re-export purpose. Apart from the above, it is pertinent mention here that the import of the prohibited goods have taken place after a well hatched conspiracy generating forged/fake import documents by wherein description and other particulars were manipulated. These documents were used in the declaration made during the filing bills of entry. If the consignment got cleared there would have been negative impact on who ultimately use the said prohibited goods. I cannot treat the present case like other cases. Hence, the imports made cannot be considered as bona fide and left no doubt to make decision for absolute confiscation of the prohibited goods imported through these 06 containers. In view of the blatant violation of the Customs Act and outright attempted smuggling of prohibited goods along with other offending goods, I find this case fit for absolute confiscation.

26.5 On careful perusal of the items mentioned under Table-I to IV above, I find that there are brands name mentioned against the items, however, brands name were not mentioned against some items mentioned in the said Tables. After careful perusal of the Relied Upon Documents and inspection report submitted by the IPR holders one to one, I find that majority of goods mentioned in the Table-I to IV above are counterfeit of reputed brands. For example in the case of Container No. PCIU9440485 against item 't-shirt' no brand name mentioned in table, however, on careful perusal of IPR report, I find that the t-shirt are of counterfeit of “PRADA” brand. Similarly, Slippers

imported under Container No. PCIU9316140 are of PUMA & UNDER ARMOUR brands and shoes are of BALLMIN & CONVERSE brands. Under Container No. PCIU9334903; Trolley bags are LV brand, Data cable are Apple, Mobile adaptor are Apple & Vivo, Belt are Mont Blanc & Chanel, Hand Bags are BURBERRY & PRADA, School Bags are CHRISTON DIOR, Belt are LV & TORY BURCH, wrist watches of reputed brands etc. Similarly, in the Container No. BSIU8134554; Shoes are of VANS, NB brandd etc. Similarly in the case of Container No. PCIU8876730; Mobile battery are of Apple, Xiomi, MI, Mobile adaptor are of Apple Vivo, USB cable of Apple. The exact quantity of the goods not mentioned in mentioned in the all IPR reports, thus, I am inclined to admit that wherein quantity not mentioned against the brands or container no. the goods are of reputed brands. The fact has admitted by the notices in their submissions that goods imported under these 06 containers are counterfeit.

26.6 I find that there are huge mis-declaration of quantity in respect of all these 06 Containers and no details or information have been provided by the importer. Keeping this factor into consideration that majority of goods were found prohibited in the subject containers, I have no doubt that other goods found alongwith prohibited goods are also liable for confiscation being used for concealment of these prohibited goods. Thus, I find it pointless to discuss or consider about the re-exporting of these goods or to allow for home consumption.

27. With regards to Cross Examination sought by Shri Rajesh T. Nakhua (Noticee-3):

27.1 I find that **Shri Rajesh T. Nakhua** during their defence submissions and personal hearing demanded cross examination of the officers involved in the investigation by their advocate. After careful examination of the request for cross examination made by Noticee, I notice that no specific reason or valid grounds for seeking the cross-examination of officers has been given. There is no merit in the Noticee's request for cross-examination of individuals whose statements were neither recorded nor relied upon in this case. I find it noting but a mere tactic to delay the adjudication proceedings. I also find that the allegations against the Noticee in the subject show cause notice are not based on the statement of officers who were merely performing their duties as government employees. I find that object of empowering officer of Customs Department to record evidence under impugned Section 108 ibid is to collect information of contravention of the provisions of Customs Act, 1962 so as to enable collection of evidence of proof of contravention of provisions of Act for initiating proceedings for further action of confiscation of contraband or imposition of penalty under Act etc. Impugned statements intended for setting law in motion for officers acting under Act to investigate and collect evidence for issuing show cause notice whether under Section 28 ibid or under Section 124 ibid or under

other provisions of Customs Act, 1962. With regard to cross-examination of the officers, I decline to accord permission for the same since the officers have discharged their statutory duties only and their statements are not relied upon in the case. In this connection, the following judicial and quasi-judicial rulings may be referred, *Visal Lubtech Corpn v. Additional Commissioner of Customs, Coimbatore* [[2016 \(342\) E.L.T. 201](#) (Mad)]; *N S Mahesh v. Commissioner of Customs Cochin* [[2016 \(331\) E.L.T. 402](#) (Ker)] and *Jagdish Shankar Trivedi v. Commissioner of Customs Kanpur* [[2006 \(194\) E.L.T. 290](#) (T-Del)].

27.2 I also noticed that Shri Rajesh T. Nakhua requested to cross examine Noticee-2 (Shri Mohammed Iqbal Mohammed Memon). However, no specific reason or valid grounds for seeking the cross-examination of the said person has been given by Shri Rajesh Nakua. It has already been found during the investigation that the Noticees have tried to destroy all relevant evidence that could have been used against them or could have been crucial evidence against them. It is beyond doubt that Shri Mohammed Iqbal Mohammed Memon he destroyed the entire import documents viz. invoice, packing list provided by the overseas supplier and which were forwarded to Shri Kishor Bhanushali for clearance of the goods. Shri Mohammed Iqbal Mohammed Memon tried to mislead the investigation as well. Shri Mohammed Iqbal Mohammed Memon was in regular touch with Shri Rajesh T. Nakhua via phone and on whatsapp. I find that no one from the notices have retracted their statements. Further, Shri Rajesh Nakhua himself admitted his active involvement in the present case. I noticed that Shri Rajesh Nakhua is a habitual offender who was also involved in similar type of smuggling cartel. Shri Rajesh Nakhua provided dummy IEC in other cases also with the motive to his personal enrichment. In his statement dated 13.01.2023, Shri Rajesh Nakhua admitted that he has used IECs for similar imports, in the case of (i) M/s. Authentic Enterprises (ii) M/s. V.D. Biztrade (iii) 24X7 Media. For his action, he also penalized in past also. Shri Rajesh Nakhua in his statements clearly admitted his involvement in this also and stated that Shri Mohammed Iqbal Mohammed Memon is the owner of the goods. All the work relating to providing documents like relevant In Bond bill of entry, Delivery Order, Invoice, Packing list was done by Shri Rajesh Nakhua and these documents were provided by Rajesh to Shri Bhanushali. Shri Rajesh in his statements admitted that he took relevant documents from Irfan Memon and forwarded to shri Rahul Bhanusalhi with direction to file bill of entry for clearance by preparing forged documents i.e. Authorisation letter to release Delivery Order from the Shipping Line, M/s. Pacific India Logistics. Thus, I have no doubt on the active involvement of Shri Rajesh Nakhua in the present case. The allegation made against the noticee were admitted by himself also.

27.3 Further, I also find that involvement of Shri Rajesh Nakhua is also proved by the statements of other concerned persons recorded during the investigation. Shri Shri Rajesh Nakhua played a vital role in smuggling of impugned goods prohibited goods with his associates. Further, the fact cannot be just overlooked that Shri Shri Rajesh Nakhua is a habitual offender and already made noticee in various cases (mentioned in previous paras) for duty evasion and mis-declaration. I also find that Shri Rajesh Nakhua had failed to produce grounds or any documentary evidences before me which can prove their bonafide intentions in the present case. I find it appropriate to pass a final order as I feel there is no ambiguity regarding the role played by Shri Rajesh T. Nakhua. A offender whose culpability or role in a case is beyond doubt, cannot compel an adjudicating authority to make decision as per their (offender) own will. I find that Noticees without appreciating the main facts of the case just taking shelter of the judgments which were passed rationally by the judiciary based on the fact or circumstances of those particular cases. I find that Noticee just referred the judgments, however, failed to prove as to how these judgments are applicable to the act done by Shri Rajesh T. Nakhua in the present case. The consignment in dispute is having grave nature of offense and related to importation of prohibited goods i.e. cigarettes and counterfeit goods violating IPR Right of brand owners.

27.4 Further, I also observed that the Noticee failed to provide the grounds as to how the cross examination of the said person whose statements recorded during investigation is concerned/crucial to prove his role in the present case. The Noticees failed to provide valid grounds on which cross examination of may be allowed. The Noticee stated that the department failed to put on records any corroboratory evidences to substantiate the averments of respective third parties. I already discussed in previous paras of this order that the allegation made against the noticee were admitted by Shri Rajesh Nakhua himself and also evidence are available on records in the form of watsapp communication which was retrieved from forensic examination of Shri Rajesh's mobile phone. I find that sought of cross examination is clearly a dilatory tactic. I observe that no purpose would be served to allow cross examination of such person as same would only unnecessarily protract the proceedings. This case leave no ambiguity to consider that Shri Rajesh Nakhua is actively involved in the present case and played a role like mastermind by taking responsibility to clear the shipments with the help of his associates Shri Rahul & Kishore. I find that Shri Rajesh Nakhua has placed reliance on various judgments, however, the judgments are not applicable in the present case considering the facts that goods were found to be smuggled and culpability of the noticee is beyond doubt which has also been admitted by Shri Rajesh himself. I find that denial of Cross-examination does not amount to violation of principles of

natural justice in every case. The bonafide of the noticee is also judged from the tremendous amount of mis-declaration and concealment of prohibited items in the import consignments.

27.5. I observe that when there is no *lis* regarding the facts but certain explanation of the circumstances there is no requirement of cross examination. Reliance is placed on Judgment of **Hon'ble Supreme Court in case of K.L. Tripathi vs. State Bank of India & Ors [Air 1984 SC 273]**, as follows:

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

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

27.6. I observe that the principles of proving beyond doubt and cross examination cannot be applied to a quasi-judicial proceeding where principle remains that as per the preponderance of probability the charges should be established. The cross examination of persons can be allowed during a quasi-judicial proceeding. It is true that as per section 138B(2) of the Customs Act, 1962, the provision regarding cross examination shall so far as may be apply in relation to any other proceedings under the Customs Act, 1962. The usage of phrase ‘so far as may be’ in section 138B (2) shows that cross examination is not mandatory in all cases but the same may be allowed as per circumstances of the case and the circumstance of the present consignment leaves no scope in my mind that Shri Rajesh Nakhua and other associates were actively involved persons who were with their full knowledge indulged in the act of importation of prohibited goods.

27.7 I find that in the instant case there remains no scope of ambiguity for a man of prudence. Therefore, I observe that no purpose would be served to allow cross examination of such person as same would only unnecessarily protract the proceedings. I find that denial of Cross-examination does not amount to violation of principles of natural justice in every case. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be

allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

- a. **KITTI STEELS LTD v. COMMISSIONER OF CUS. & C. EX., HYDERABAD-III- 2011 (266) E.L.T. 375 (Tri. - Bang.)**:- wherein it has been held that cross-examination is not a matter of right and should be claimed by stating valid reasons.
- b. **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'.
- c. **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.
- d. **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.
- e. 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)
- f. 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)".

In view of the above, I find no appropriate reason to allow the cross examination sought by the accused persons whose culpability is evident and beyond doubt from the fact of the case. Shri Rajesh Nakhua failed to put strong reasons or motive behind seeking the cross examination of the

persons who actively dealt with said persons for his personal enrichments. I observe that this case involves an offense committed by the offenders (Shri Mohamed Irfan Mohammed Iqbal Memon) with the help of his associates (Shri Rajesh, Shri Rahul, Shri Kishore etc.), who, upon being apprehended, did not cooperated with the investigation.

28. I already discussed and established facts that the goods were found prohibited and counterfeit and sufficient documentary evidences are available in the present cases. I noticed that the offender (Shri Rajesh) instead of acknowledging their obligation that he involved in importation of prohibited goods, participated in preparation of forged documents to take delivery order and accepted by himself also involvement in the present case; he sought clarification on the absence of documentary evidence. I find that sufficient documentary evidences are available in the present case in the form of watsapp chat and call details. Thus, noticees cannot claim that the documentary evidences are not available in the present case. There is no ambiguity regarding the fact that the Noticees played a crucial role in the importation of prohibited goods/counterfeit goods. In such a situation, confessional and corroborative statements recorded under Section 108 of the Customs Act, 1962, are the crucial tools in the hands of the department to establish the role of the offenders. These statements are in the nature of substantive evidence and culpability of the concerned persons can be based on the same. The scope of these provisions of law have been the subject matter of a large number of authoritative pronouncements of the Supreme Court and the High Courts, as under:

28.1 It has been held by the Hon'ble Supreme Court in the judgment in *Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar - 1997 (96) E.L.T. 211 (S.C.)* that:

“7. An attempt was made to contest the admissibility of the said statements in evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide *Ramesh Chandra v. State of West Bengal*, AIR 1970 SC 940, and *KI. Pavynny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin*, 1997 (90) E.L.T. 24] (S.C) = (1997) 3 SCC 721.”

28.2 The Hon'ble Supreme Court has observed in the case of *Naresh J. Sukhwaniv. Union of India - 1995 Supp. (4) SCC 663 = AIR 1996 SC 5 = 1996 (83) E.L.T. 258*:

“4. *It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in*

contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculcates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."

28.3 A Constitution Bench of Apex Court of India in the matter of *Romesh Chandra & Mehta v. State of W.B.* - (1969) 2 SCR 461 : AIR 1970 SC 940, held that the Customs Officers are entrusted with the powers specifically relating to the collection of customs duties and prevention of smuggling and for that purpose they are invested with the power to search any person on reasonable suspicion, to summon, X-ray the body of the person for detecting secreted goods, to arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Act, to obtain a search warrant from a Magistrate, to collect information by summoning persons to give evidence and produce documents and to adjudge confiscation. He may exercise these powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. For collecting evidence the Customs Officer is entitled to serve summons to produce a document or other thing or to give evidence and the person so summoned is bound to attend either in person or by an authorised agent, as such officer may direct, is bound to state the truth upon any subject respecting which he is examined or makes a statement and to produce such documents and other things as may be required. The power to arrest, the power to detain, the power to search or obtain a search warrant and the power to collect evidence are vested in the Customs Officer for enforcing compliance with the provisions of the Customs Act. He is invested with the power to enquire into infringements of the Act primarily for the purpose of adjudicating forfeiture and penalty.

28.4 In the present proceeding, the case is based on the seizure of goods which were totally found mis-declared and not mentioned in the import documents. Upon detailed examination, the prohibited goods i.e. e-cigarettes and counterfeit goods of reputed brands were found. The statements of the key persons involved in the smuggling activities recorded under Section 108 of the Customs Act, 1962. I find that it is settled law that statements made to an officer of Customs are admissible as evidence under Section 108 of the Customs Act, 1962. Apex Court of India in their judgment in case of ***Gulam Hussain Shaikh Chougule v. S. Reynolds, Supdt. of Customs, Marmgoa, reported in 2001 (134) ELT (SC)***, after quoting from several other judgments, has held that such statements are admissible in evidence. Further the admitted facts need not to be proved as held by Hon'ble High

Court of Madras in the case of **Govindasamy Raghupati reported in 1998 (98) ELT 50 (Mad.)**. Hon'ble Supreme Court in the case of **Surjeet Singh Chhabra Vs UOT reported in 1997 (89) ELT 646 (SC)** has also pronounced that confessional statement made before Customs officer under Section 108 of the Customs Act, 1962, though retracted, is an admission and binding since Customs Officers are not Police Officers. Further, in the case of *Gulam Hussain Shaikh Chougule Vs S. Reynolds, Supdt. Of Customs, Marmgoa reported in 2001 (134) ELT 3 (SC)*, relying on various judgments of Apex Court of reported at AIR 1972 SC 1224, 2000 (120) ELT 280 (S.C.); 1999 (110) ELT 324 (S.C.); 1992 (60) ELT 24 (S.C.); 1999 (110) ELT 309 (S.C.); 1983 (13) ELT 1443 (S.C.); 1983 (13) ELT 1590 (S.C), has further held that confessional statement recorded by Customs officer under Section 108 of Customs Act, 1962 are not required to follow safeguards provided under Section 164 of the Code of Criminal Procedure, 1973.

In view of the above, the statements under the present proceeding are material piece of evidence to establish the case for Revenue. Apex Court in the case of **K.1. Pavunny Vs AC Chochin reported at 1970 (90) ELT 241 (SC)** has held that when the material evidence establish fraud against the revenue, white collar crimes committed under absolute secrecy shall not be exonerated from penal consequence of law. Enactments like Customs Act, 1962, are not merely taxing statute but are also potent instruments in the hands of the Government to safeguard the interest of the economy, Preponderance of probability comes to rescue of Revenue and revenue is not required to prove its case by mathematical precision. The Supreme Court has observed in **Kanhaiyalal Vs Union of India - (2008) 4 SCC 668**, that specialized enactments, like Narcotic Drugs & Psychotropic Substances Act and Customs Act, are meant to deal with the special situations and circumstances.

29. I find that core issues of the case have been discussed in the foregoing paras in detail. Now, I proceed to examine the **roles** of the various noticees and **liability** in this elaborate scheme of mis-declaration and smuggling of the imported goods with intent to defraud the government exchequer. Accordingly, I proceed with the discussion on the remaining issues.

29.1 ROLE AND LIABILITY OF PENALTY OF MOHAMED IRFAN IQBAL MEMON UNDER SECTION 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:

- i. I find that Shri Mohamed Irfan Mohammed Iqbal Memon in connivance with Shri Rahul Bhanushali, CHA, in association with Shri Rajesh Tulsidas Nakhua, Karta of M/s. Om Logistics and Shri Kishor Bhanushali, owner of M/s. Om Logistics, had placed the order for import of consignment from China, wherein upon examination e-cigarettes and

counterfeit goods were found to be concealed, which are improperly imported by him in the name of M/s. Creative Enterprises, for his personal enrichment.

- ii. I find that during initial stage of investigation, Shri Mohamed Irfan denied any know-how about Rajesh Nakhua of M/s. Om Logistics, however, in his latter statement on 03.08.2023 he accepted that he got in touch with Shri Rajesh T. Nakhua. This act of Shri Mohamed Irfan indicate that he tried to mislead the investigation and was daringly mendacious. I have no doubt they are in contact well before the case made in the instant case.
- iii. Despite describing the legal provisions and law regarding statement tendered by him, he mis-stated facts in his previous statements which shown a guilty state of mind and *mensrea*. *As I have already discussed in foregoing paras that* confessional and corroborative statements recorded under Section 108 of the Customs Act, 1962, are the crucial tools in the hands of the department to establish the role of the offenders. Thus, by giving false information in previous statements has mis-led the investigation, thus, rendered himself liable for penal action under the provisions of the Customs Act, 1962.
- iv. It had also emerged from the investigation that he destroyed entire import documents viz. invoice, packing list provided by the overseas supplier and which were forwarded to Shri Kishor Bhanushali for clearance of the goods. He intentionally withheld important evidence for the investigation and deleted it, thinking that by doing so, he could wash his hands or shed the responsibility. Such type of acts cannot be considered as bonafide and should not be overlooked.
- v. Shri Mohamed Irfan in his statement dt. 03.08.2024 (at Q/Ans-4) admitted that name and Mobile No. mentioned in the blow mail pertains to him. He further confirmed that he had place the order for import of various goods from China. The mail particulars are as mentioned here for reference purpose: *E-mail dated 28.02.2023 received Sue Li Xiu Xin” to “Janice Tay Shi Ying, Nikunj Bhatt, Ganesh Iyer”, having subject “Urgent inquiry // Mis-declared cargos at Mundra – for BL # HUPG20566300, HUPG20554700, HUPG20564100, HUPG20555700”.*
- vi. Shri Mohamed Irfan admitted that 4 out of 6 Containers were imported by him in the name of M/s. Creative Enterprises. However, Shri Rajesh T. Nakhua stated that goods imported in all 06 Containers are pertains to Shri Mohamed Irfan. I find that since the consignments were seized by the DRI, he (Shri Mohamed Irfan) is trying to make distance from taking

responsibility of the shipments imported by him. I have no doubt on the fact that all the shipments imported under these 06 Containers were imported by Shri Mohamed Irfan.

- vii. I noticed that during the statement of Shri Rajesh Nakhua, details of Shri Mohamed Irfan have been provided correctly by him. Shri Rajesh further admitted that he guided Shri Mohamed Irfan for smooth clearance of these consignments from Customs and purchased IEC of M/s. Creative Enterprises from the market on payment of cash for purpose of dummy import. Shri Rajesh also admitted that he took all relevant documents from Shri Mohamed Irfan and forwarded to Shri Rahul Bhanushali with the direction to prepare forged documents i.e. Authorisation letter to release Delivery Order from the Shipping line, M/s. Pacific India Logistics. Thus, I have no doubt that Shri Mohamed Irfan imported these prohibited goods with the help of other associates by forging import documents.
- viii. I also noticed that Shri Mohamed Irfan agreed to pay Rs. 11 Lakhs INR (Commission = Customs Duties) per container to Kishore Bhanushali which would be paid by him after the delivery of the Container.
- ix. I find that he destroyed all the documents provided by Chinese supplier namely Chan and had forwarded all the documents to Shri Kishore Bhanushali for clearance of the goods through whatsapp.
- x. I find that Shri Mohamed Irfan with his associates planned to import the said cargo by mis-declaring the same to avoid duty and any other restrictions. I find that description and other particulars were declared on the direction of Shri Rajesh as the forged documents were produced by the Rahul Bhanushali on the direction of Shri Rajesh Nakhua.
- xi. I have no doubt admitting the fact that Shri Mohamed Irfan with the help of Shri Rajesh had imported the goods with clear intent for clearance of home consumption, however, they got information that a similar consignment of M/s. Creative Enterprises was already intercepted by DRI and many Agencies were active at Mundra Port therefore at that time bills of entry were not filed. Ultimately, they decided to file bill of entry for third country re-export to avoid involvement any investigation matter. I find that on realization that they are not able to clear the goods, they decided to file Bill of Entry for re-export.

- xii. I find that noticee in their defence submissions stated that bill of entry for re-export were filed and hence, not violated the provisions of the Customs Act, 1962.

I completely disagree with the noticee's claim because if someone uses the law for their own benefit according to their wishes, the law would lose its meaning. In such cases, if the culprits' claims are accepted, then anyone could illegally import goods and, if caught, simply say that the goods were never meant to be imported into India. Such types of imports cannot be considered as imports made with good intentions. This kind of import cannot be logically or lawfully allowed. Further, I would like to say that during the investigation, it became clearly established, and the noticees also admitted that the goods were indeed imported for DTA clearance. However, due to the fear of DRI seizing the consignments, the goods were not registered for DTA clearance.

- xiii. I find that Shri Mohamed Irfan has failed to provide any justification on the presence of prohibited goods/counterfeit goods of reputed brands in the containers he imported, which are banned from being imported into India. I also noticed that although many undeclared prohibited goods and counterfeit goods were imported, only one item was declared at the time of filing the bill of entry to avoid customs duty and to bypass the policy conditions.
- xiv. I find that Shri Mohamed Irfan with the help of Shri Rajesh Nakhua, Rahul Bhanushali and Kishore Bhanushali decided to import prohibited goods from Mundra Port and for this task they arranged IEC of M/s. Creative Enterprises with the help of Shri Rajesh. After obtaining dummy IEC of M/s. Creative Enterprises, Shri Mohamed Irfan with the association of other offenders had imported the consignment of e-cigarettes and counterfeit goods of various brands viz apple, G shock, Armani, Rolex, Casio, Fossil, Invicta, Gucci, Edifice, Nike, Puma, Adidas, etc. under these 06 Containers.
- xv. I find that Shri Mohamed Irfan had imported/placed orders for various branded counterfeit goods such as Undergarments, Mobile Accessories, Sleepers, shoes, mobile batteries, laptop bags, t-shirts, charger, USB Cable, hand bags, belt, adaptor, wallets etc.; they declared only declared description as "ladies footwear" & "Garment accessories". Thus, I have no doubt that the act was done by Shri Mohamed Irfan with the clear intention to avoid Customs Duty and other policy restrictions on these imported goods.

- xvi. I find that Shri Mohamed Irfan had imported prohibited goods i.e. e-cigarettes which are prohibited for import as per import policy. He also imported goods bearing logo of various reputed brands which upon examination found to be counterfeit. I find that bills of entry were filed against the 04 Containers for clearance of prohibited/ counterfeit goods and other mis-declared goods by way mis-declaration. Further, prohibited & counterfeit goods and other mis-declared goods were also found in remaining 02 Containers. It is evident from the investigation that the members involved in the said racket were known to each other and imported prohibited goods with the clear intention to clear it for DTA Clearance in contravention of IPR Rules, Prohibition in forced on import of e-cigarettes by virtue of Electronic Cigarettes Act, 2019 and duty applicable on the other offending goods. I find that Shri Mohamed Irfan with the active guidance and involvement of Shri Rajesh Nakhua mis-declared the goods in import documents so that the Customs duty and policy restrictions may be avoided. He give responsibility to clear the consignments of prohibited goods and other offending goods from Mundra Port and offered monetary benefit. Thus, I have no doubt that Shri Mohamed Irfan with the help of Shri Rajesh Nakhua and his associates decided to import prohibited goods from Mundra Port and for this task they arranged IEC of M/s. Creative Enterprises with the help of Shri Rajesh. From the above, I have no doubt that Shri Mohamed Irfan imported goods under these six containers with the intent for DTA clearance. However, fearing the shipment would be held by DRI, they withheld the clearance. When it became impossible to clear the goods for DTA, they filed bills of entry for re-export using forged documents and hiding true identity of the goods.
- xvii. From the above, it is evident that Shri Mohamed Irfan Mohammed Iqbal Memon had had willfully and deliberately imported prohibited goods i.e. e-cigarettes, counterfeit goods of various reputed brands violating their IPR Rights and other mis-declared offending goods in guise of freely importable goods by way of mis-declaration/concealment etc. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, they have made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Shri Mohamed Irfan Mohammed Iqbal Memon has rendered himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, I find that Shri Shri Mohamed Irfan Mohammed Iqbal Memon is liable to penalty under **Section 112(a)(i)** of Customs Act, 1962. 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 under Section

112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed. I find that the penalty under Section 114A of the Customs Act is considered "pari materia" (essentially the same in legal effect) to Section 28(4) of the Customs Act, as both sections deal with situations where duty is short-levied or not paid due to collusion, willful misstatement, or suppression of facts, and impose a penalty related to the amount of unpaid duty or interest involved; essentially meaning that if a person is found liable under Section 28(4), they could also be subject to a penalty under Section 114A for the same actions. In the instant case no demand under Section 28(4) has been made and even clearance of the goods in the form out of charge of the goods has not been effected in the present case. Therefore, demand under Section 28 is premature at this stage and based on the same reasoning the question of demand of duty under section 28 does not arise. Accordingly, I refrain from imposing penalty under section 114A of Customs Act, 1962.

- xviii. I find that Penalty under Section 114AA is leviable in case of any "material particular" being declared false or incorrect. I find that in the present case, Bills of Entry have been filed by manipulating documents which were false and incorrect. Shri Mohamed Irfan destroyed original import documents received from Chinese supplier. He had also used incorrect documents for filing of Bill of Entry for the present shipments with false declarations. He presented documents falsifying the true identity of the goods, before the Customs authorities for import of the goods with intent to escape from the stringent import conditions and from the payment of appropriate Customs duties. Thus, He had knowingly and intentionally made a declaration under the Bill of Entry filed under Section 46 of the Customs Act 1962, which is false and incorrect. Hence, He has committed offences of the nature as described under the Section 114AA of the Customs Act 1962. The said documents were used for import of impugned prohibited goods by way of mis-declaration/ concealment etc. Investigation has revealed that Shri Mohamed Irfan had knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and therefore, it is beyond doubt that Shri Mohamed Irfan is liable to penalty under Section **114AA** of the Customs Act, 1962.
- xix. As regards the penalty under Section 117 proposed on Shri Mohamed Irfan, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere,

the person liable can be charged for penalty under this section. In this regard, I find that penalty against Shri Mohamed Irfan already confirmed under the provisions of Section 112 and 114AA of the Customs Act, 1962, hence, penal action under section 117 does not appear to be warranted in the subject case against Shri Mohamed Irfan.

29.2 ROLE AND LIABILITY OF PENALTY OF SHRI RAJESH TULSIDAS NAKHUA UNDER SECTION 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:

- i. I find that Shri Rajesh Tulsidas Nakhua in active association of Shri Mohamed Irfan managed to obtain dummy IEC from the market on payment of cash and arranged import of goods from China for him and accordingly instructed Shri Rahul Bhanushali of CHA firm to file forged documents with the Customs authorities.
- ii. From the statement of Shri Rajesh himself, it is evident that he directed Shri Rahul Bhanushali to grossly mis-declare the imported goods in the statutory documents. I find that Shri Rajesh T. Nakhua and Shri Kishor Bhanushali were acquainted with each other, and both had helped each other at time to time. This fact also admitted by Shri Kishore in his statement also. From facts emerged from investigation, I have no doubt that Shri Rajesh Tulsidas Nakhua in connivance with Shri Kishore Bhanushali appointed Shri Rahul Bhanushali as CHA.
- iii. Shri Rahul Bhanushali in his statement admitted that Shri Rajesh contacted him for clearance work related to M/s. Creative Enterprises. Further, he admitted that he used to receive payment in cash from Rajesh Nakhua in lieu of work done for Shri Rajesh Nakhua. Shri Rahul in his statement admitted that he was aware about the fact that one more consignment of M/s. Creative Enterprises was also imported which had already been hold by DRI. Without prejudice, I state here that the case (which was earlier intercepted by DRI) was already adjudicated by the Addl. Commissioner of Customs, Customs House Mundra on 07.11.2024 wherein Rajesh Nakhua and Rahul Bhanushali had also been penalized. However, the actual beneficial owner of the goods was a different person namely Shri Yunus Dahodwala. Thus, it is evident that Shri Rahul Nakhua had also sold IEC of M/s. Creative Enterprises to other persons for his personal enrichment.
- iv. I find from the statement dated 11.01.2023 of Shri Rahul Bhanushali that Sh. Rajesh Nakhua sent BL No. HUPG20554700 DT. 12.08.2022 and HUPG20555700 dt. 12.08.2022 on the mail id omlogistic2020@gmail.com . Other documents like invoice, Packing List

were received from the e-mail id of Om Logistics on 01.09.2022. He admitted that on the request of Rajesh Nakhua, they filed Bill of Entry on 01.09.2022. Shri Rajesh Nakhua requested him to take Delivery order in the name of M/s. Pushpanjali Logistics from the Shipping Line. **He further admitted that Rajesh Nakhua told him to file DTA Bills of Entry** but told him to put the clearance on hold and not to file BoEs for DTA clearance.

- v. I find that terminal handling charges and all other charges were paid by M/s. Om Logistics of Sh. Rajesh Nakhua for the containers imported by M/s. Creative Enterprises. Further, Shri Akash Desai (General Manager, M/s. Empezar Logistics) confirmed that all the payments were made by M/s. Om Logistics.
- vi. I find that Shri Rajesh and Shri Kishore taken responsibility to clear the consignments of prohibited goods and other offending goods from Mundra Port. Shri Rajesh also guided Shri Rahul Bhanushali to mis-declare the goods in import documents so that the Customs duty and policy restrictions may be avoided. This fact already established from the various statements recorded during investigation. I have no doubt that Shri Mohamed Irfan imported these prohibited goods with the help of Rajesh Nakhua and others by forging import documents. This act of Shri Rajesh T. Nakhua directly involve him in the mis-declaration and import of prohibited goods which made him liable for penal action under the provisions of the Customs Act, 1962.
- vii. It is now undisputed fact that on the direction/assurance of Shri Rajesh, the consignments were imported at the Mundra port and bills of entry for re-export were filed with Shri Rajesh's help to prevent any investigation problems. I believe that if the consignment had not been intercepted by the DRI, the offenders would have succeeded to clear the goods for local use.
- viii. I find that Shri Rajesh was actively involved in helping clear the imported goods in exchange for money from Shri Mohamed Irfan. It is clear that Shri Rajesh played a key role in planning, monitoring, organizing and managing of all the aspects of operations with the mala fide intention of clearing e-cigarettes & other branded goods which were prohibited to be imported. Shri Rajesh was aware about the fact that prohibited goods i.e. E-Cigarettes, counterfeit goods infringing IPR right of brand owners were being imported under these 06 Container. Despite knowing the fact that goods are prohibited in nature, he dealt with the shipments and taken responsibility to clear it from Mundra Port. This

directly concerned himself dealing with the shipments of offending goods.

- ix. I find Shri Rajesh knew that item were mis-declared in the container imported under the IEC of M/s. Creative Enterprises and does not represent the true identity of the goods. Yet he connived with the offenders and forwarded forged documents which were used for filing Bills of entry with incorrect declaration under import documents. I find that Shri Rajesh Nakhua alongwith other offenders planned to declare only one commodity in the import documents and were going to clear the prohibited items without declaring in the Bills of Entry.
- x. It is clear that the goods were originally intended for DTA clearance, however, due to DRI's involvement in other cases at that time; they were unable to file the Bills of Entry for DTA clearance. As a result, they decided to file the Bills of Entry for third-country re-export to avoid any investigation issues. Thus, there is no scope left to admit that Shri Rajesh was part of a conspiracy hatched by other associates to import mis-declared/prohibited/undervalued goods.
- xi. I find that various persons in their respective statements recorded under Section 108 of the Act, have confessed that Shri Rajesh T Nakhua was well aware about mis-declaration in the import consignment pertaining to these impugned 06 containers imported by Shri Mohamed Irfan.
- xii. The fact is now not remains vague in the present case that Shri Rajesh Nakhua facilitated Shri Mohamed Irfan for smooth clearance of the consignments from Customs. He took all the relevant documents for filing of Bills of Entry from Shri Mohamed Irfan and forwarded to Shri Rahul Bhanushali and directed Shri Rahul Bhanushali of M/s. Pushpanjali Logistics to file the Bills of entry for warehousing.
- xiii. I also find that screenshots retrieved from the forensic analysis of Mobile Phones of Shri Rajesh T. Nakhua, revealed that Shri Rajesh T. Nakhua had sent the documents viz., Invoices, Packing List and Loading List in respect of 1260 Cartons, which were for container no. PCIU8876730 and was said to contain 1260 cartons of Garment Accessories. The said container was found to contain prohibited goods such as, **4800 E-cigarettes** along with other goods viz., Laptop Battery, Mobile Battery, Brake Pad, Computer Hard Disks, Wrist Watches, Mobile Adaptor, USB Cable, Bags, Mobile Back cover, Airpods (Apple) etc. during the examination.

- xiv. I find that He provided all the documents to Shri Rahul Bhanushali, M/s. Pushpanjali Logistics to file the Bills of Entry in respect of container PCIU8876730. He also directed Shri Rahul Bhanushali to file a fresh Bills of Entry for warehousing with remark "Third Country export purpose" in respect of same cargo without cancelling the earlier Bills of Entry, when the said container was put on hold for examination.
- xv. It is evident that Shri Mohammed Iqbal was in regular touch with Shri Rajesh T. Nakhua via phone and on whatsapp. I find that no one from the notices have retracted their statements. Further, Shri Rajesh Nakhua himself admitted his active involvement in the present case. I noticed that Shri Rajesh Nakhua is a habitual offender who was also involved in similar type of smuggling cartel. Shri Rajesh Nakhua provided dummy IEC in other cases also with the motive to his personal enrichment. In his statement dated 13.01.2023, Shri Rajesh Nakhua admitted that he has used IECs for similar imports, in the case of (i) M/s. Authentic Enterprises (ii) M/s. V.D. Biztrade (iii) 24X7 Media. For his action, he also penalized in past also. Shri Rajesh Nakhua in his statements clearly admitted his involvement in this case also and stated that Shri Mohammed Iqbal Mohammed Memon is the owner of the goods. All the work relating to providing documents like relevant In Bond bills of entry, Delivery Order, Invoice, Packing list was done by Shri Rajesh Nakhua and these documents were provided by Rajesh to Shri Bhanushali. Shri Rajesh in his statements admitted that he took relevant documents from Irfan Memon and forwarded to Shri Rahul Bhanusalhi with direction to file bills of entry for clearance by preparing forged documents i.e. Authorisation letter to release Delivery Order from the Shipping Line, M/s. Pacific India Logistics. Thus, I have no doubt on the active involvement of Shri Rajesh Nakhua in the present case. The allegation made against the noticee were admitted by himself also.
- xvi. Further, I also find that involvement of Shri Rajesh Nakhua is also proved by the statements of other concerned persons recorded during the investigation. Shri Shri Rajesh Nakhua played a vital role in smuggling of impugned goods prohibited goods with his associates. Further, the fact cannot be just overlooked that Shri Shri Rajesh Nakhua is a habitual offender and already made noticee in various cases (mentioned in previous paras) for duty evasion and mis-declaration. I also find that Shri Rajesh Nakhua had failed to produce grounds or any documentary evidences before me which can prove their bonafide intentions in the present case. This case leave no ambiguity to consider that Shri Rajesh Nakhua is actively involved in the present case and

played a role like mastermind by taking responsibility to clear the shipments with the help of his associates Shri Rahul & Kishore.

- xvii. I find that Shri Rajesh T. Nakhua had willfully and deliberately indulged into conspiracy of clearance prohibited goods i.e. e-cigarettes, counterfeit goods of various reputed brands violating their IPR Rights and other mis-declared offending goods in guise of freely importable goods by way of mis-declaration/concealment etc. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Shri Rajesh T Nakhua has rendered himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, I find that Shri Rajesh T Nakhua is liable to penalty under **Section 112(a)(i)** of Customs Act, 1962. 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 under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.
- xviii. I find that the penalty under Section 114A of the Customs Act is considered "pari materia" (essentially the same in legal effect) to Section 28(4) of the Customs Act, as both sections deal with situations where duty is short-levied or not paid due to collusion, willful misstatement, or suppression of facts, and impose a penalty related to the amount of unpaid duty or interest involved; essentially meaning that if a person is found liable under Section 28(4), they could also be subject to a penalty under Section 114A for the same actions. In the instant case no demand under Section 28(4) has been made and even clearance of the goods in the form out of charge of the goods has not been effected in the present case. Therefore, demand under Section 28 is premature at this stage and based on the same reasoning the question of demand of duty under section 28 does not arise. Accordingly, I refrain from imposing penalty under section 114A of Customs Act, 1962.
- xix. I find that Penalty under Section 114AA is leviable in case of any "material particular" being declared false or incorrect. I find that in the present case, Bills of Entry have been filed by manipulating documents which were false and incorrect. Despite knowing the fact that the documents pertaining to these container are forged/fake, yet he connived with the offenders and forwarded forged documents which were used for filing Bills of entry with incorrect declaration under import documents. He took relevant documents from Irfan Memon and forwarded to Shri Rahul Bhanusalhi with direction to file bills of entry for clearance by preparing forged documents i.e. Authorisation letter to

release Delivery Order from the Shipping Line, M/s. Pacific India Logistics. He presented documents falsifying the true identity of the goods, before the Customs authorities for import of the goods with intent to escape from the stringent import conditions and from the payment of appropriate Customs duties. Thus, there is no ambiguity that Shri Rajesh T. Nakhua has committed offences of the nature as described under the Section 114AA of the Customs Act 1962. Shri Rajesh T. Nakhua had knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and therefore, it is beyond doubt that Shri Rajesh T. Nakhua is liable to penalty under Section **114AA** of the Customs Act, 1962.

- xx. As regards the penalty under Section 117 proposed on Shri Rajesh T. Nakhua, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against Shri Rajesh T. Nakhua already confirmed under the provisions of Section 112 and 114AA of the Customs Act, 1962, hence, penal action under section 117 does not appear to be warranted in the subject case against Shri Rajesh T. Nakhua.

29.3 ROLE AND LIABILITY OF PENALTY OF SHRI KISHOR BHANUSHALI, OWNER OF M/S. OM LOGISTICS UNDER SECTION 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:

- i. I noticed that Shri Kishor Bhanushali did not turn up for statements in response of Summons dated 30.10.2023; 08.11.2023 and 24.11.2023 which were issued to him. I find that Summons were issued to him by the investigating agency, however, he had given no heed to the summons and opted for not responding to the same and deliberately avoided his appearance. This act of his is in the contravention of the provisions of Section 108(3) of the Customs Act, 1962. I noticed that Shri Kishor Bhanushali appeared for statement before the investigation agency at the last stage of investigation on 07.12.2023.
- ii. I find that Shri Rajesh T. Nakhua and Shri Kishor Bhanushali were acquainted with each other, and both had helped each other at time to time. This fact also admitted by Shri Kishore in his statement also. From facts emerged from investigation, I have no doubt that Shri

Rajesh Tulsidas Nakhua in connivance with Shri Kishore Bhanushali appointed Shri Rahul Bhanushali as CHA.

- iii. I find that Shri Kishore Bhanushali used to receive money in cash or in account of M/s. Om Logistics from Shri Rajesh T. Nakhua and subsequently had made payments towards the container handling charges and warehousing charges in respect of various consignments cleared by various clients of Shri Rajesh T Nakhua previously. It is admitted by Shri Kihosre Bhanushali that he was facilitator of Shri Rajesh T. Nakhua. I find that terminal handling charges and all other charges were paid by M/s. Om Logistics for the containers imported by M/s. Creative Enterprises. Further, Shri Akash Desai (General Manager, M/s. Empezar Logistics) confirmed that all the payments were made by M/s. Om Logistics.
- iv. I find that Shri Kishore Bhanushali and Rajesh T. Nakhua taken responsibility to clear the consignments of prohibited goods and other offending goods from Mundra Port. I have no doubt that Shri Kishore guided the importers to mis-declare the goods in import documents so that the Customs duty and policy restrictions may be avoided. It is now undisputed that with the assistance of Shri Kishore Bhanushali, the consignments were imported at the Mundra port and bills of entry for re-export were filed with the help of Shri Kishore Bhanushali to prevent any investigation problems. I believe that if the consignment had not been intercepted by the DRI, the offenders would have succeeded to clear the goods through DTA. This act of Shri Kishore Bhanushali directly involve him in the mis-declaration and import of prohibited goods which made him liable for penal action under the provisions of the Customs Act, 1962.
- v. Shri Kishore Bhanushali and Shri Rajesh Nakhua were well aware about the fact that prohibited goods i.e. E-Cigarettes were being imported in the subject consignments and branded goods in the contravention of the IPR Rules were also imported through these 06 containers. Despite knowing the fact that goods are prohibited in nature, Shri Kishore Bhanushali dealt with the shipments and taken responsibility to clear it from Mundra Port. This directly concerned himself dealing with the shipments of offending goods.
- vi. I also noticed that Shri Kishore tried to mislead the investigation by denying being in touch with the actual beneficiary. However, on further investigation, as per the call detail records of Shri Mohamed Irfan Mohammed Iqbal Memon, it was revealed that he received a call from Mr. Mohamed Irfan Mohammed Iqbal Memon (beneficiary owner of goods). Thus, it is evident that Shri Kishor Bhanushali tried to mislead

the investigation by stating the incorrect facts that he did not know Shri Mohamed Irfan Mohammed Iqbal Memon.

- vii. I find that Shri Kishore Bhanushali concerned himself in gross mis-declaration of the imported goods in the statutory documents in connivance with Shri Rajesh Tulsidas Nakhua.
- viii. I also noticed that Shri Mohamed Irfan agreed to pay Rs. 11 Lakhs INR (Commission = Customs Duties) per container for smooth clearance of the consignments from Customs to Kishore Bhanushali which would be paid by him after the delivery of the Container.
- ix. It is clear that the goods were originally intended for DTA clearance. However, due to DRI's involvement in other cases at that time, they were unable to file the Bills of Entry for DTA clearance. Thus, there is no scope left to admit that Shri Kishore Bhanushali was part of a conspiracy hatched by other associates to import mis-declared/prohibited/undervalued goods.
- x. Shri Mohamed Irfan in his statement date on being show the photo of Shri Kishore Bhanushali stated that he is Kishore Bhanushali. Hence, there is no doubt that Shri Kishore was in contact of Shri Shri Mohamed Irfan. It had also emerged from the investigation that Shri Mohamed Irfan destroyed entire import documents viz. invoice, packing list provided by the overseas supplier and which were admittedly were forwarded by him to Shri Kishor Bhanushali for clearance of the goods. However, no such documents have been provided by Shri Kishore. Shri Kishore intentionally withheld important evidence for the investigation and deleted it, thinking that by doing so, he could wash his hands or shed the responsibility. Such type of acts cannot be considered as bonafide and should not be overlooked.
- xi. I find that Shri Kishore Bhanushali had willfully and deliberately indulged into conspiracy of clearance prohibited goods i.e. e-cigarettes, counterfeit goods of various reputed brands violating their IPR Rights and other mis-declared offending goods in guise of freely importable goods by way of mis-declaration/concealment etc. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Shri Kishore Bhanushali has rendered himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, I find that Shri Kishore Bhanushali is liable to penalty under **Section 112(a)(i)** of Customs Act, 1962. 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 under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed. I find that the penalty under Section 114A of the Customs Act is considered "pari materia" (essentially the same in legal effect) to Section 28(4) of the Customs Act, as both sections deal with situations where duty is short-levied or not paid due to collusion, willful misstatement, or suppression of facts, and impose a penalty related to the amount of unpaid duty or interest involved; essentially meaning that if a person is found liable under Section 28(4), they could also be subject to a penalty under Section 114A for the same actions. In the instant case no demand under Section 28(4) has been made and even clearance of the goods in the form out of charge of the goods has not been effected in the present case. Therefore, demand under Section 28 is premature at this stage and based on the same reasoning the question of demand of duty under section 28 does not arise. Accordingly, I refrain from imposing penalty under section 114A of Customs Act, 1962.

- xii. I find that Penalty under Section 114AA is leviable in case of any "material particular" being declared false or incorrect. I find that in the present case, Bills of Entry have been filed by manipulating documents which were false and incorrect. Despite knowing the fact that the documents pertaining to these container are forged/fake, yet he connived with the offenders. He agreed to clear the goods for 11 lakhs, despite knowing the facts that goods were prohibited and cannot be cleared without policy compliances. Shri Kishore intentionally withheld important evidence (which were forwarded to Kishore by Shri Mohamed Irfan) by for the investigation. However, no such documents have been provided by Shri Kishore. These forged documents were used for preparing forged documents. Thus, there is no ambiguity that Shri Kishore Bhanushali has committed offences of the nature as described under the Section 114AA of the Customs Act 1962. Shri Kishore Bhanushali had knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and therefore, Shri Kishore Bhanushali is liable to penalty under Section **114AA** of the Customs Act, 1962.
- xiii. As regards the penalty under Section 117 proposed on Shri Kishore Bhanushali, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided

elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against Shri Kishore Bhanushali already confirmed under the provisions of Section 112 and 114AA of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against Shri Kishore Bhanushali.

29.4 ROLE AND LIABILITY OF PENALTY OF SHRI RAHUL BHANUSHALI, BRANCH MANAGER, CHA M/S. PUSHPANJALI LOGISTICS UNDER SECTION 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:

- i. I find that Shri Rahul Bhanushali, Branch Manager of M/s. Pushpanjali Logistics, CHA, in association with Shri Rajesh Tulsidas Nakhua had knowingly filed documents which were mis-declared in particulars and also submitted forged authorization letter to the Customs Authorities, for his personal enrichment.
- ii. From the statement of Shri Rajesh, it is evident that he directed Shri Rahul Bhanushali to grossly mis-declare the imported goods in the statutory documents. From facts emerged from investigation, I have no doubt that Shri Rajesh Tulsidas Nakhua in connivance with Shri Kishore Bhanushali appointed Shri Rahul Bhanushali as CHA.
- iii. Shri Rahul Bhanushali in his statement admitted that Shri Rajesh contacted him for clearance work related to M/s. Creative Enterprises. Further, he admitted that he used to receive payment in cash from Rajesh Nakhua in lieu of work done for Shri Rajesh Nakhua. Shri Rahul in his statement admitted that he was aware about the fact that one more consignment of M/s. Creative Enterprises was also imported which had already been hold by DRI. Without prejudice, I state here that the case (which was earlier intercepted by DRI) was already adjudicated by the Addl. Commissioner of Customs, Customs House Mundra on 07.11.2024 wherein Rajesh Nakhua and Rahul Bhanushali had also been penalized. However, the actual beneficial owner of the goods was a different person namely Shri Yunus Dahodwala. Thus, it is evident that Shri Rahul Nakhua had also sold IEC of M/s. Creative Enterprises to other persons for his personal enrichment.
- iv. I find from the statement dated 11.01.2023 of Shri Rahul Bhanushali that Sh. Rajesh Nakhua sent BL No. HUPG20554700 DT. 12.08.2022 and HUPG20555700 dt. 12.08.2022 on the mail id omlogistic2020@gmail.com . Other documents like invoice, Packing List

were received from the e-mail id of Om Logistics on 01.09.2022. He admitted that on the request of Rajesh Nakhua, they filed Bill of Entry on 01.09.2022. Shri Rajesh Nakhua requested him to take Delivery order in the name of M/s. Pushpanjali Logistics from the Shipping Line. He further admitted that Rajesh Nakhua told him to file DTA Bills of Entry but told him to put the clearance on hold and not to file BoEs for DTA clearance.

- v. I find that Shri Rahul Bhanushali with the association of Shri Rajesh and Shri Kishore taken responsibility to clear the consignments of prohibited goods and other offending goods from Mundra Port. Shri Rajesh also guided Shri Rahul Bhanushali to mis-declare the goods in import documents so that the Customs duty and policy restrictions may be avoided. This fact already established from the various statements recorded during investigation. Thus, I have no doubt that Rahul Bhanushali with his full connivance indulged in the smuggling racket.
- vi. Shri Rahul Bhanushali had utilized the name of the CHA firm M/s. Pushpanjali Logistics for the purpose of filing of the Bill of Entry and clearance of the imported mis-declared goods. He was aware of the actual goods imported in the name of M/s. Creative Enterprises. He also received documents in respect of container PCIU8876730 through whatsapp from Shri Rajesh T. Nakhua. He agreed with the fact that the goods were grossly mis-declared and the goods found during examination were different than the goods declared in the Bills of Entry and the intention behind mis-declaration was to evade the payment of duty. He did not inquire about the details of importer as he got the business from Shri Rajesh Nakhua and he relied on the documents forwarded by Shri Rajesh Nakhua. I find that Shri Rahul Bhanushali, Branch Manager, M/s. Pushpanjali Logistics on the directions of Shri Rajesh Nakhua filed the Bill of Entry for clearance of mis-declared goods. He admitted the fact that the goods imported were grossly mis-declared and the goods found during examination were different than the goods declared in the Bill of Entry. From the investigation, it is evident that that Shri Rajesh Nakhua (Karta of M/s. Om Logistics) and Shri Rahul Bhanushali (Branch Manager, M/s. Pushpanjali Logistics), in connivance with each other attempted to smuggle prohibited goods i.e. e-cigarettes, counterfeit goods and also other goods by mis-declared goods, with intent to escape from the stringent import conditions and from the payment of appropriate Customs Duties.
- vii. I find that Shri Rahul Bhanushali had willfully and deliberately indulged into conspiracy of clearance prohibited goods i.e. e-cigarettes, counterfeit goods of various reputed brands violating their IPR Rights and other mis-declared offending goods in guise of freely importable goods by way of mis-

declaration/concealment etc. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Shri Rahul Bhanushali has rendered himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, I find that Shri Rajesh T Nakhua is liable to penalty under **Section 112(a)(i)** of Customs Act, 1962. 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 under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

- viii. I find that the penalty under Section 114A of the Customs Act is considered "pari materia" (essentially the same in legal effect) to Section 28(4) of the Customs Act, as both sections deal with situations where duty is short-levied or not paid due to collusion, willful misstatement, or suppression of facts, and impose a penalty related to the amount of unpaid duty or interest involved; essentially meaning that if a person is found liable under Section 28(4), they could also be subject to a penalty under Section 114A for the same actions. In the instant case no demand under Section 28(4) has been made and even clearance of the goods in the form out of charge of the goods has not been effected in the present case. Therefore, demand under Section 28 is premature at this stage and based on the same reasoning the question of demand of duty under section 28 does not arise. Accordingly, I refrain from imposing penalty under section 114A of Customs Act, 1962.
- ix. I find that Penalty under Section 114AA is leviable in case of any "material particular" being declared false or incorrect. I find that in the present case, Bills of Entry have been filed by Shri Rahul Bhanushali by manipulating documents which were false and incorrect. Despite knowing the fact that the documents pertaining to these container are forged/fake, yet he connived with the offenders and filed bills of entry with incorrect declaration under import documents. Shri Rahul Bhanuhsali filed bills of entry for clearance by preparing forged documents i.e. Authorisation letter to release Delivery Order from the Shipping Line, M/s. Pacific India Logistics. He presented documents falsifying the true identity of the goods, before the Customs authorities for import of the goods with intent to escape from the stringent import conditions and from the payment of appropriate Customs duties. Thus, there is no ambiguity that Shri Rahul Bhanushali has committed offences of the nature as described under the Section 114AA of the Customs Act 1962. Shri Rahul Bhanushali had knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents

which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and therefore, it is beyond doubt that Shri Rahul Bhanushali is liable to penalty under Section **114AA** of the Customs Act, 1962.

- x. As regards the penalty under Section 117 proposed on Shri Rahul Bhanushali, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against Shri Rahul Bhanushali already confirmed under the provisions of Section 112 and 114AA of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against Shri Shri Rahul Bhanushali.

29.5 ROLE AND LIABILITY OF PENALTY ON M/S. PUSHPANJALI LOGISTICS UNDER SECTION 112(a) AND 114AA OF THE CUSTOMS ACT, 1962:

- i. The Show cause notice also propose penalty on the Customs Broker M/s. Pushpanjali Logistics stating that they had failed to discharge their duties by not verifying the KYC of the importers and were careless in filing of Bills of Entry without the verification of antecedents and whereabouts of the importer and verifying the documents furnished to them. Further, it has been alleged that noticee miserably failed to exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business.
- ii. I find that M/s. Pushpanjali Logistics offered Shri Rajesh T. Nakhua to take care of customs clearance work (through Shri Rahul Bhanushali) of mis-declared, prohibited, counterfeit, undervalued consignments. Shri Rajesh Bhanushali in his statements clearly admitted that he used to pay a fix amount to CHA firm from amount received from Shri Rajesh T. Nakhua. Thus, CHA firm cannot completely claim that they were unaware about the conduct of their employee. I find that the firm did not bothered to verify the documents related to a firm which is actually exist only on paper. The fact cannot be overlooked that their employee prepared forged documents on the direction of Shri Rajesh Nakhua and used these forged documents for filing Bills of Entry through their CHA firm. They failed to verify the genuineness of the importer and other concerned persons.
- iii. M/s. Pushpanjali Logistics had also not verified the genuineness of the importer and allowed their license to be used casually by their

employee. I find that M/s. Pushpanjali Logistics failed to verify the genuineness of the Importer and other concerned persons and they were also duty bound to verify antecedents and genuineness of importer exporter code, IEC number, and identity of its client and functioning of its client at declared address by using reliable, independent and authentic documents/data/information. Such negligence facilitated mischievous importer in attempting to import offending goods. I find that department treats documents filed by CHA with certain degree of trust which completely violated in instant case. Filing of bills of entry filed in name of a non-existent importer is a grave offence and it becomes graver when CHA did not make minimum efforts to verify genuineness of importer and its address. Such acts of omission and commission have serious financial/security consequences.

- iv. I find that M/s. Pushpanjali Logistics adopted a casual approach and assured to the importer to clear the import consignments which were lying unattended for several months. The said consignments were at the Terminal at Mundra Port for several months and the Customs Broker were very well aware with the said facts, they should have been extra cautious for attended the said consignments, however they did not even tries to talk to the genuine person of the company and proceeded further to clearance of the import consignments.
- v. From the above, it is evident that they have knowing dealt with the offending goods with intend to get the same cleared from Customs. Thus, I have no doubt that they had had willfully and deliberately indulged into conspiracy of importing and clearance of offending goods by way of mis-declaration/valuation and misclassification. Thus, such acts and omission on part of M/s. Pushpanjali Logistics had rendered impugned goods liable for confiscation under Section 111 of the Customs Act, 1962 and also rendered themselves liable for penalty under Section 112 (a)(i) of the Customs Act, 1962. 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 under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is to be imposed.
- vi. I find that the penalty under Section 114A of the Customs Act is considered "pari materia" (essentially the same in legal effect) to Section 28(4) of the Customs Act, as both sections deal with situations where duty is short-levied or not paid due to collusion, willful misstatement, or suppression of facts, and impose a penalty related to the amount of unpaid duty or interest involved; essentially meaning that if a person is found liable under Section 28(4), they could also be subject to a penalty

under Section 114A for the same actions. In the instant case no demand under Section 28(4) has been made and even clearance of the goods in the form out of charge of the goods has not been effected in the present case. Therefore, demand under Section 28 is premature at this stage and based on the same reasoning the question of demand of duty under section 28 does not arise. Accordingly, I refrain from imposing penalty under section 114A of Customs Act, 1962.

- vii. I find that Penalty under Section 114AA is leviable in case of any “material particular” being declared false or incorrect. I find that in the present case, Bills of Entry have been filed through the CHA firm by manipulating documents which were false and incorrect. Shri Rahul Bhanuhsali (Branch Manager of CHA firm) filed bills of entry for clearance by preparing forged documents i.e. Authorisation letter to release Delivery Order from the Shipping Line, M/s. Pacific India Logistics. He presented documents falsifying the true identity of the goods, before the Customs authorities for import of the goods with intent to escape from the stringent import conditions and from the payment of appropriate Customs duties. Thus, there is no ambiguity that CHA firm has committed offences of the nature as described under the Section 114AA of the Customs Act 1962. Thus, M/s. Pushpanjali Logistics is liable to penalty under Section **114AA** of the Customs Act, 1962.
- viii. As regards the penalty under Section 117 proposed on /s. Pushpanjali Logistics, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against M/s. Pushpanjali Logistics already confirmed under the provisions of Section 112 and 114AA of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against /s. Pushpanjali Logistics.

29.6 M/s Creative Enterprises and Shri Manzoor Ilahi Mohammed Hussain Munshi, Proprietor of M/s. Creative Enterprises under Section 112(a), 112(b), 114A, 114AA and 117 of the Customs Act, 1962.

- i. I find that M/s. Creative Enterprises is a proprietorship firm established in 2022 and Shri Manzoor Ilahi Mohammed Hussain Munshi is the Proprietor of the said firm. Shri Manzoor Ilahi had confirmed his PAN card BKEPM4246B and his Aadhaar Card bearing number 6296 8953

9720 but the signatures appearing in the documents were not his and appeared to be forged one; that his original signature is as per the PAN Card. He further stated that as he was jobless, he went to Bhiwandi and there he submitted his KYC documents for obtaining a sim card for job purpose and he was unaware that his documents were used for obtaining the IEC of M/s Creative Enterprises. Further, he stated that he never signed any documents related to M/s Creative Enterprises. During statement Shri Manzoor Ilahi stated that he had not known Shri Rajesh Tulsidas Nakhua, Rahul Bhanushali and Irfan Memon. He further stated that he is not aware about the existence of firm in his name. He neither claimed the goods nor made any request related to the shipments made under the IEC of M/s. Creative Enterprises. He denied for opening bank Account No. 300*****0083 with Union Bank of India. He denied for licence agreement entered into between him or Shamu Ramkishor Thakurdas. I find that he is not aware about the import/export business.

- ii. From the investigation and statement recorded during the investigation, I noticed that from the Noticees or from CFS side or shipping lines; no one mentioned the name of Shri Manzoor Ilahi Mohammed Hussain Munshi. Further, there is no documentary evidence for making any type of payment/transaction on behalf of the namesake firm. Shri Rahul Bhanushali clearly stated that all CFS charges and shipping line charges were ultimately borne by Shri Rajesh Nakhua through M/s. Om logistics. The beneficial owner of the imported goods nowhere mentioned the name of IEC holder i.e. Manzoor Ilahi Mohammed Hussain Munshi. However, the fact cannot be just overlooked that without the consent of a person it's not possible to create a new firm. Further, it estranged that IEC holder does not bother to know the activities running in his name. Thus, being an IEC holder, he cannot shed his responsibility completely.
- iii. I find that Show Cause Notice had been issued proposing penalty on M/s Creative Enterprises under Section 112(a), 112 (b), 114A, 114AA & 117 and Shri Manzoor Ilahi Mohammed Hussain Munshi, Proprietor of M/s. Creative Enterprises separately under Section 117 of the Customs Act, 1962 for act of omission and/or commission and for the reasons and allegations as discussed above. In this regard I find it pertinent to mention that the proprietorship firm doesn't have an identity distinct from its proprietor, therefore imposition of separate penalty on both would tantamount to imposition of double penalty for the same offence. Therefore, I hold that separate penalty as proposed under SCN under section 112(a), 112 (b), 114A, 114AA and 117 of the Customs Act, 1962 on both is not warranted.

- iv. From the factual matrix of the case, I find that the Shri Manzoor Ilahi was not aware of the mis-declaration of the imported goods at his name as there was no evidence to the claim of the department that Shri Manzoor Ilahi knew about mis-declaration and further all incriminating documents recovered during investigation indicate that Shri Mohamed Irfan Mohammed Iqbal Memon is the actual beneficial owner of imported goods. Shri Mohamed Irfan Mohammed Iqbal Memon during investigation period has also accepted that goods imported by him. Shir Rajesh T. Nakhua also admitted that goods under these containers were imported by Shri Shri Mohamed Irfan Mohammed Iqbal Memon. I find that the Shri Mohamed Irfan Mohammed Iqbal Memon is the actual '*beneficial owner*' and 'Importer' of the subject goods as per the definition of defined under Section 3 [3A] & 2(26) of the Customs Act, 1962. Thus, the penalty being an Importer will also be borne by Shri Mohamed Irfan Mohammed Iqbal Memon on behalf of the firm M/s. Creative Enterprises.
- v. I find that Shri Manzoor Ilahi knowingly let his documents to be used by unscrupulous elements and never bothered to get to know the business activities which were being conducted in the name of M/s. Creative Enterprises. Though he had claimed innocence, I find that he cannot shed the legal liability of taking responsibility of goods imported in his IEC. I also find that he had provided his documents to unscrupulous elements based on which the present consignments containing prohibited goods were imported. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Shri Manzoor Ilahi through his firm has concerned himself liable to penalty under Section 112(a) of Customs Act 1962. Therefore, I find that Shri Manzoor Ilahi is liable to penalty under **Section 112(a)(i)** of Customs Act, 1962. 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 under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed. Further, I already held that
- vi. I find that the penalty under Section 114A of the Customs Act is considered "pari materia" (essentially the same in legal effect) to Section 28(4) of the Customs Act, as both sections deal with situations where duty is short-levied or not paid due to collusion, willful misstatement, or suppression of facts, and impose a penalty related to the amount of unpaid duty or interest involved; essentially meaning that if a person is found liable under Section 28(4), they could also be subject to a penalty under Section 114A for the same actions. In the instant case no demand

under Section 28(4) has been made and even clearance of the goods in the form out of charge of the goods has not been effected in the present case. Therefore, demand under Section 28 is premature at this stage and based on the same reasoning the question of demand of duty under section 28 does not arise. Accordingly, I refrain from imposing penalty under section 114A of Customs Act, 1962.

- vii. As regards the penalty on M/s. Creative Enterprises under Section 114AA of the Customs Act, 1962 is concerned, Section 114AA mandates penal action for intentional usage of false and incorrect material against the offender. From the investigation and other material particulars, I find that bill of entry was never filed by the proprietor of the firm, documents were never signed by proprietor of the firm and further the investigation revealed that signatures appearing in the documents were not of the proprietor of the firm and appeared to be forged one. For the reasons stated above, I do not find any motives to impose penalty on M/s. Creative Enterprises as well as on its proprietor Shri Manzoor Ilahi under Section 114AA of the Customs Act, 1962.
- viii. As regards the penalty under Section 117 proposed on Shri Manzoor Ilahi, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that Shri Manzoor Ilahi let his documents to be used by unscrupulous elements and never bothered to get to know the business activities which were being conducted in the name of M/s. Creative Enterprises. If Manzoor Ilahi had not provided his documents, the prohibited goods would not have been imported under his IEC-holding firm. Despite providing the documents, he did not make efforts to find out what happened to his documents. Therefore, Shri Manzoor Ilahi cannot completely claim innocence. For these act done by Shri Manzoor Ilahi, I find that he is liable for penal action under the provisions of Section 117 of the Customs Act, 1962.
- ix. I notice that the purpose of penalties under the Customs Act, 1962 is to deter individuals and businesses from violating customs regulations by imposing financial punishments for actions like smuggling, under-declaring goods, or attempting to evade customs duties, thereby protecting the country's economy and ensuring fair trade practices. I find that the IEC holder has neither gained any monetary benefit nor claimed the goods stating that he is nowhere concerned with the goods imported. Thus, a lenient view may be taken while imposing penalty on the namesake IEC holder.

30. In view of discussion and findings supra, I pass the following order:

ORDER

30.1 In respect of goods wherein Bills of Entry No. 1000102 dtd 04.01.2023, 1011896 dtd 01.09.2022, 1000103 dtd 04.01.2023 & 1011897 dtd 01.09.2022 have been filed:

- I order to absolute confiscate goods imported under Containers No. PCIU9440485, PCIU9334903, BSIU8134554, PCIU8876730 having re-determined value of Rs. 14,60,23,272/-, 10,97,31,354/-, 10,42,85,801/- & 25,07,18,979/- respectively under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 for the contravention as discussed above.

30.2 In respect of 02 Container wherein No Bills of Entry have been filed:

- I order to absolute confiscate the goods imported under Containers No. PCIU9230025 (BL No. HUSG20992700 dated 31.08.2022) & PCIU9316140 (BL No. HUSG21000500 dated 31.08.2022) having value of Rs. 4,82,85,908/- & 14,67,02,429 respectively under Section 111(d), 111(e), 111(f), 111(l) and 111(m) of the Customs Act, 1962 for the contravention as discussed above and not claimed by any person/entity.

30.3 Penalty under Section 112(a)/112(b) OF the Customs Act, 1962:

- i. I impose a penalty of **Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only)** upon **M/s. Creative Enterprises (IEC: BKEPM4246B)** through its beneficiary owner/Importer **Shri Mohamed Irfan Mohammed Iqbal Memon** under Section 112(a)(i) of the Customs Act, 1962.
- ii. I impose a penalty of **Rs. 1,00,00,000/- (Rupees one Crore only)** upon **Shri Mohamed Irfan Mohammed Iqbal Memon** (beneficial owner of the goods) under Section 112(a)(i) of the Customs Act, 1962.
- iii. I impose a penalty of **Rs. 40,00,000/- (Rupees Forty Lakhs only)** upon **Shri Rajesh Tulsidas Nakhua**, under Section 112(a)(i) of the Customs Act, 1962.

- iv. I impose a penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)** upon **Shri Rahul Bhanushali** under Section 112(a)(i) of the Customs Act, 1962.
- v. I impose a penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)** upon **Shri Kishor Bhanushali**, Proprietor of M/s. Om Logistics under Section 112(a)(i) of the Customs Act, 1962.
- vi. I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** upon **M/s. Pushpanjali Logistics** under Section 112(a)(i) of the Customs Act, 1962.
- vii. I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** upon **Shri Shri Manzoor Ilahi Mohammed Hussain Munshi** under Section 112(a)(i) of the Customs Act, 1962.
- viii. I do not impose penalty on M/s. Creative Enterprises, Shri Mohamed Irfan Mohammed Iqbal Memon Shri Rajesh T. Nakhua, Shri Rahul Bhanushali, M/s. Pushpanjali Logistics and Shri Kishor Bhanushali under section 112(b) of the Customs Act, 1962.

30.4 Penalty under Section 114A OF the Customs Act, 1962: I do not impose penalty on M/s. Creative Enterprises, Shri Mohamed Irfan Mohammed Iqbal Memon, Shri Rajesh T. Nakhua, Shri Rahul Bhanushali, Shri Kishor Bhanushali and M/s. Pushpanjali Logistics under Section 114A of the Customs Act, 1962

30.5 Penalty under Section 114AA of the Customs Act, 1962:

- i. I impose a penalty of **Rs. 50,00,000/- (Rupees Fifty Lakhs only)** upon **Shri Mohamed Irfan Mohammed Iqbal Memon** (beneficial owner of the goods) under Section 114AA of the Customs Act, 1962.
- ii. I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)** upon **Shri Rajesh Tulsidas Nakhua**, under Section 114AA of the Customs Act, 1962.
- iii. I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs only)** upon **Shri Rahul Bhanushali** under Section 114AA of the Customs Act, 1962.
- iv. I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs only)** upon **Shri Kishor Bhanushali**, Proprietor of M/s. Om Logistics under Section 114AA of the Customs Act, 1962.

- v. I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousands only)** upon M/s. Pushpanjali Logistics under Section 114AA of the Customs Act, 1962.
- vi. I do not impose penalty on M/s. Creative Enterprises under Section 114AA of the Customs Act, 1962 for reasons discussed above.

30.6 Penalty under Section 117 OF the Customs Act, 1962

- (i) I impose a penalty of **Rs. 25,000/- (Rupees Twenty Thousands Only)** on **Shri Manzoor Ilahi Mohammed Hussain Munshi** under Section 117 of the Customs Act, 1962.
- (ii) I do not impose penalty on M/s. Creative Enterprises, Shri Mohamed Irfan Mohammed Iqbal Memon, Shri Rajesh T. Nakhua, Shri Rahul Bhanushali, Shri Kishor Bhanushali and M/s. Pushpanjali Logistics under section 117 of the Customs Act, 1962.

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

32. The Show Cause Notice bearing No. GEN/ADJ/ADC/1298/2024-Adjn dated 01.01.2024 stands disposed off in above terms.

अपर आयुक्त सीमा शुल्क,
(अधिनिर्णयन अनुभाग)
कस्टम हाउस, मुंद्रा।

फ़ाइल संख्या: File No: GEN/ADJ/ADC/1298/2023-Adjn
DIN/दस्तावेज़ पहचान संख्या: 20250171MO000000F9FF

To

1. **M/s. Creative Enterprises (IEC - BKEPM4246B)**,
Brahmanand Nagar, G Flr. No. 1470,
Shyamdhvani Complex, Gala No. 01 & 02,
Kamat Ghar, Bhiwandi, Thane, Maharashtra- 421308.

2. **Shri Mohamed Irfan Mohammed Iqbal Memon**,
A/604, Chouhan Classic, Captain Sawant Marg,
Near Agarwal Estate, Jogeshwari (West),
Mumbai, Maharashtra-400102.
3. **Shri Rajesh T. Nakhua**,
312, Flat No. 102, Pantnagar,
Ghatkopar East, Mumbai-400078.
4. **Shri Rahul Bhanushali**, Branch Manager, M/s. Pushpanjali Logistics,
Office No. 205, 2nd Floor, Golden Arcade,
Zero Point, Mundra, Kutch, 370421.
5. **Shri Kishor Bhanushali**, Proprietor of M/s. Om Logistics,
323, Platinum Technopark, Bhagwan Mahavir Road,
Opp. Karnataka Bhawan, Vashi, Navi Mumbai – 407701.
6. **M/s. Pushpanjali Logistics, Customs Broker**,
Office No. 205, 2nd Floor, Golden Arcade,
Zero Point, Mundra, Kutch, 370421.
7. **Shri Manzoor Ilahi Mohammed Hussain Munshi** (IEC Holder),
residing at Room No. 503, Shams Tower, Behind Tuba Hotel,
Kausa, Thane Mumbra, Maharashtra – 400612.

Copy to:

1. The Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad
(driazu@nic.in)
2. The Deputy/Assistant Commissioner (Legal/Prosecution), CH,
Mundra.
3. The Dy./Asstt. Commissioner (Review Cell), Customs House, Mundra
4. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
5. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with
the direction to upload on the official website immediately in terms of
Section 153 of the Customs Act, 1962)*
6. The Dy./Asstt. Commissioner, Disposal Section, CH, Mundra.
7. Guard File.