

	OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467	
DIN-20240671ML000032323F		
A	File No.	GEN/ADJ/COMM/477/2022-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-05-2024-25
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	14.06.2024
E	Date of Issue	14.06.2024
F	SCN No. & Date	GEN/ADJ/COMM/477/2022-Adjn-O/o Commr-Cus-Kandla dated 17.06.2023
G	Noticee / Party / Importer / Exporter	M/s. Brews Barron LLP and others

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

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,

2nd Floor, Bahumali Bhavan Asarwa,

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

BRIEF FACTS OF THE CASE:-

M/s. Brews Barron LLP, Phase-1, Plot no. 383, Sector-4, Kandla Special Economic Zone, Gandhidham (Kutch) (IEC No.ABMFM0547K) (hereinafter referred to as 'M/s BBLLP') is a Unit in Kandla Special Economic Zone (KASEZ), Gandhidham holding Letter of Approval No. 20/2020-21 dated 20.10.2020 issued from the office of Development Commissioner, KASEZ, Ministry of Commerce & Industry for undertaking authorized operations (trading activities) of Juice, Soft drinks, Wine, Beer, Whiskey, Brandy, Scotch, Assorted Liquors etc. (**RUD No. 1**). Vide the said Letter of Approval, various terms and conditions to be complied with by M/s BBLLP were specified for which M/s BBLLP furnished Bond -cum-Legal undertaking dated 27.10.2020 in terms of Rule 22 of Special Economic Zone Rules, 2006 (**RUD No. 2**). M/s BBLLP were allotted Plot no. 383, Sector-IV, alongwith building, Phase-I, KASEZ on lease for 15 years vide letter dated 26.10.2020 issued by the Appraising Officer (EM), KASEZ, Gandhidham (**RUD No. 3**). The said Unit was extended all the facilities and entitlements as admissible to a unit in a Special Economic Zone subject to the provisions of the Special Economic Zones Act, 2005 and the Rules as well as the orders & instructions made there-under.

2. Intelligence was developed by the officers of Directorate of Revenue Intelligence (DRI) indicated that M/s BBLLP had mis-declared and concealed a large quantity of foreign brand liquor in an import consignment of goods declared as 'Assorted Whiskey and Liquor and Beer Beverages alongwith pallets' covered under container no. WHLU2952855 which was scheduled to arrive at KASEZ through vessel SSL DELHI, Voyage No. 069 E, IMO Code 9217034 at Kandla port. Intelligence further suggested that M/s. BBLLP was planning to smuggle the large quantity of foreign brand liquor, concealed inside the said container, over and above the declared quantity of 917 cartons/packages. As per the documents submitted by M/s. BBLLP on systems with regard to the subject consignment, the particulars declared in the import documents are as under (**RUD No. 4Col'y**) :-

Table-I

IGM No. & Date	KASEZ Bill of Entry No. & Date	Invoice No. & Date	Bill of Lading No. & Date	Shipper	Notify Party	Declared quantity and description of goods
2314820 dated 21.06.2022	1008329 dated 09.06.2022	INV00656 dated 02.06.2022	JEAIXY00 0 06 dated 20.06.202 2	M/s Mufasa General Trading LLC, Office 5 Al Nabodah Building 4 Deira, Dubai, PO Box-2376	M/s Notify Logistics Cargo LLC, Blue Shed WH No. RA08WF06 I Gate No. 7, Jebel Ali Free Zone, Dubai, UAE	917 Cases/ Assorted Whisky and Liquor, Beer Beverages etc.

3. Acting upon the intelligence, the officers of Customs House, Kandla and DRI, Regional Unit, Gandhidham carried out search at the premises of M/s. BBLLP situated at Phase-1, Plot no. 383, Sector-4, Kandla Special Economic Zone, Gandhidham (Kutch) under Panchnama dated 23/24.06.2022 (**RUD No.5**). During the Panchnama proceedings, one Shri Chandan Mohandas Peshwani, who introduced himself as Documentation incharge of M/s. BBLLP was present. Shri Chandan Mohandas Peshwani informed the visiting officers that Smt. Suchita Bharatsinh Narawat and Shri Ramanna Pakirappa Shetty were Partners in the said firm but they were out of station at that time. Shri Chandan Mohandas Peshwani further informed that the keys of their warehouse/storeroom were with Smt. Suchita Bharatsinh Narawat. During the course of search at the office premises of M/s. BBLLP situated at the above mentioned address, two made up files containing misc. documents, printouts taken from computers installed there and one concerned CPU was resumed and taken over by the visiting officers on a reasonable belief that the same were relevant to the DRI investigation (**RUA No. 1**). Since the keys of the warehouse/storeroom of M/s. BBLLP situated at the above mentioned address were not available at the time of search, the warehouse /storeroom was sealed by the visiting officers and Shri Chandan Mohandas Peshwani was directed not to deal with, part with, remove/clear any goods stored in the warehouse/storeroom of the said premises without obtaining proper permission from the concerned authorities.

4. The officers of Customs House, Kandla and DRI, Regional Unit, Gandhidham again visited the premises of M/s. BBLLP to carry out search at the warehouse /storeroom premises of M/s. BBLLP on 24.06.2022 but it was found that neither Smt. Suchita Bharatsinh Narawat, nor the keys of the warehouse/storeroom of M/s. BBLLP were present there and hence, the warehouse/storeroom remained sealed and no search was carried out under Panchnama dated 24.06.2022 (**RUD No. 6**).

5. In order to carry out 100% examination of the goods stuffed in the container no. WHLU2952855, the said import consignment was put on hold and an email dated 27.06.2023 was sent to M/s. Boxpark Terminal Co., the agent/authorized representative of concerned container line M/s. Sparcon Lines Pvt. Ltd. requesting them to bring the said container to KASEZ, Gandhidham (**RUD No.7**). A Summons dated 27.06.2023 was issued to Smt. Suchita Bharatsinh Narawat directing her to remain present before investigating officers of DRI, Regional Unit, Gandhidham on 28.06.2022 alongwith related details and documents (**RUD No.8**). In response, Smt. Suchita Bharatsinh Narawat vide emails dated 28.06.2023 informed that she was sending the keys of warehouse and she authorized their employee ShriChandan Mohandas Peshwani to represent M/s. BBLLP during examination proceedings (**RUD No.9**).

6. Search of the warehouse/storeroom of M/s. BBLLP and 100% examination of the goods imported in container no. WHLU2952855 was carried out by officers of Customs House, Kandla and DRI Regional Unit, Gandhidham under Panchnama dated 28/29.06.2022 (**RUD No.10**). Outcome thereof is as under:-

(i) During examination of the import consignment, **1329 cases** of foreign brand liquor, beer etc. were found stacked on wooden pallets in the said container. The brand wise details thereof is as per **Annexure-A** to Panchnama dated 28/29.06.2022 which is annexed with this Show Cause Notice also as Annexure-A. Thus, there were 412 cases found in excess to the declared quantity of 917 cases for which the authorized representative of M/s. BBLLP viz. ShriChandan Mohandas Peshwani failed to explain the reason during the Panchnama proceedings.

(ii) During the search of the warehouse/storeroom of M/s. BBLLP, **2049 cases** of foreign brand liquor, beer etc. were found which included 729 cases of Beer which were expired in January, 2022. The brand wise details thereof is as per **Annexure-B** to the Panchnama dated 28/29.06.2022 which is annexed with this Show Cause Notice also as Annexure-B.

(iii) During the course of search carried out at the warehouse/storeroom of M/s. BBLLP, in the ceiling of the back side portion of the warehouse, a cavity was noticed by the visiting officers. On being broke opened the said specially created ceiling, **279 cases** of foreign brand liquor, beer, water bottles etc. were found. The brand wise details thereof is as per **Annexure-C** to the Panchnama dated 28/29.06.2022 which is annexed with this Show Cause Notice also as Annexure-C.

(iv) An Apple make laptop was resumed from the premises during Panchnama dated 28/29.06.2022.

7. Since the 412 cases of foreign brand liquor, beer etc. were not declared in the IGM, Bill of Entry and import documents and the same were concealed in declared 917 cases of the said goods and wooden pallets, the 412 cases of subject goods being liable for confiscation under Section 111 of Customs Act, 1962, were seized under Section 110(1) of Customs Act, 1962 vide Seizure Memo dated 29.06.2022 (**RUD No.11**). The 917 cases of foreign brand liquor, beer etc. and 11 wooden pallets which were used for concealment of said 412 cases of smuggled goods, were also seized under Section 119 of Customs Act, 1962 vide Seizure Memo dated 29.06.2022.

7.1. As regards the 2328 cases (2049+279) of foreign brand liquor, beer etc. found in the warehouse/storeroom and in the cavity made in the specially created ceiling, the authorized representative of M/s. BBLLP could not provide the stock position and any statutory records due to which the stock verification of the warehouse could not take place during the Panchnama dated 28/29.06.2022. Accordingly, these 2328 cases of foreign brand liquor, beer etc. were detained vide Detention Memo dated 29.06.2022 for further necessary action subject to verification thereof (**RUD No.12**). The seized and detained goods were handed over to Shri Chandan Mohandas Peshwani, Authorised Representative of M/s. BBLLP vide Supratnama dated 29.06.2022 for safe custody (**RUD No. 13**)

8. On scrutiny of the documents and printouts resumed during searches carried out at the office cum warehouse premises of M/s. BBLLP, incriminating documents/printouts including the following were found:-

(i) A computerized/typed sheet containing heading 'SHINAN BHAI PAYMENT DETAIL' was observed which appeared to be relevant to the live import consignment covered under KASEZ Bill of Entry no. 1008329 dated 09.06.2022. Image of the same is reproduced hereunder (**RUD No.14**):-

SHINAN BHAI PAYMENT DETAIL
 2252537 BY BANK 22/04/2022
 1000000 CASH 23/04/2022
 2650000 ANGDIYA 24/04/2022

5902537

I-
17-122

INVOICE	29638.65	70%	2252537.4		
BAL	12702.28	30%	965372.28		
INVOICE402	49782.68	100%	3783483.68		
EXPENCE	13144.41	27%	998975.16		
	TOTAL		8000368.52		
			2000000	SHINAN BHAI	
			2252537.4	BANK PAID	22.4.2022
			1000000	CASH PAID	23.04.2022
			2650000	PAID ANGDIYA	24.04.2022
			290000	PAID CASH	2/6/2022
	TOTAL PAID		8192537.4		
	BAL		-192168.88		

8.1. In the instant import consignment covered under KASEZ Bill of Entry bearing no. 1008329 dated 09.06.2022, as per Invoice bearing no. INV00656 dated 02.06.2022, the declared invoice value was USD 29638.65. In the said sheet recovered from the office cum warehouse premises of M/s. BBLLP, this Invoice amount of USD 29638.65 (INR 2252537.4) is shown as 70% and balance is as USD 12702.28 (INR 965372.28). It has been specified in the sheet itself that the Invoice amount INR 2252537 was paid on 22.04.2022 through Bank and an amount of INR 1000000 was paid in Cash on 23.04.2022. It indicates that the balance amount USD 12702.28 (INR 965372.28) pertained to the excess imported quantity of 412 cases in the instant import consignment covered under KASEZ Bill of Entry bearing no. 1008329 dated 09.06.2022 for which payment of INR 1000000 (round off figure of INR 965372.28) was made in cash. It thus became clear that for the instant import of 1329 cases, 412 cases which were found in excess to the declared quantity of 917 cases, was deliberately suppressed by

DIN: 20240671ML000032323F
OIO No.KND-CUSTM-000-COM-05-2024-25

M/s. BBLLP from declaring in the import documents in connivance with the overseas supplier and other related key persons.

(ii) A printout of computerized/typed sheet containing brand wise quantity and value of subject goods under headings 'WITHOUT BILL' in above portion and 'WITH BILL' in its below part, was found. Under the heading 'WITHOUT BILL', total 180 cases having value USD 20310 (INR 15,23,250/-) was mentioned which prima facie appeared to be details of sale/clearance of subject goods without issuance of proper bills/invoices.

Image of the same is reproduced hereunder (**RUD No.15**):-

DIN: 20240671ML000032323F
OIO No.KND-CUSTM-000-COM-05-2024-25

WITHOUT BILL

SR NO	PRODUCT	QTY	RATE IN USD	TOTAL AMT	IN /INR
1	GREY GOOSE LTR	10	119	1190	89250
2	RED LABEL	10	108	1080	81000
3	BLACK LABEL	5	212	1060	79500
4	GOLD LABEL	5	207	1035	77625
5	TEACHER	10	75	750	56250
6	GLENFIDITCH	10	275	2750	206250
7	BLACK & WHITE	15	83	1245	93375
8	BALLANTINE	20	109	2180	163500
9	J & B	20	112	2240	168000
10	VAT 69	10	62	620	46500
11	JAMESON	10	75	750	56250
12	BALLANTINE 750	30	102	3060	229500
13	RED LABEL 750	15	100	1500	112500
14	ABSOLUTE 750	10	85	850	63750
	TOTAL QTY	180	TOTAL USD	20310	1523250

WITH BILL

SR NO	PRODUCT	QTY	RATE IN USD	TOTAL AMT	IN /INR
1	BLACK LABEL	5	212	1060	79500
2	BLUE LABEL	5	1050	5250	393750
3	ROYAL SALUTE	5	790	3950	296250
4	ABSOLUTE	5	91	455	34125
5	GLFNIVET	5	375	1875	140625
6	GLENFIDITCH	5	275	1375	103125
7	MONKEY SHOLDER	5	269	1345	100875
8	GLEN MORRANGE	5	300	1500	112500
9	GREY GOOSE	5	119	595	44625
10	BELVENDER	5	167	835	62625
11	RED WINE	15	35	525	39375
12	WHITE WINE	5	35	175	13125
13	BALLANTINE	16	109	1744	130800
14	VAT 69	5	62	310	23250
15	TEACHER	5	75	375	28125
16	BLACK & WHITE	10	83	830	62250
17	REDLABEL	5	108	540	40500
18	GOLD LABEL	5	207	1035	77625
19	ORANGEBOOM	100	8	800	60000
20	SAN MAGUEL	100	13	1300	97500
21	BUDWISER	150	15.5	2325	174375
22	CARLSBERG	150	15	2250	168750
23	TIGER BEER	50	16	800	60000
24	HENIKEN	50	17	850	63750
25	HOGGARDEN	20	30	600	45000
26	CORONA	10	25	250	18750
	TOTAL QTY	746	TOTAL AMT	32949	2471175

2022-06-20

Scan
4-7-22

Sl. no 201301

24/6/22

Ward
24/6/22

(iii) A handwritten paper/sheet containing brand wise quantity of subject goods under heading 'W/BILL' and that of under heading 'BILL' at its back side was found. Under the heading 'W/ BILL', total 303 cases of subject goods was mentioned which prima facie appeared to be details of sale/clearance of subject goods without issuance of proper bills/invoices. Image of the same is reproduced hereunder (**RUD No.16**):-

222

M/T/W/T/F/S/SU	Date
<u>W/BILL</u>	
13 L - 30 20	
12ea 2a - 30	
13kmtc - 35 40	
13.8 L - 35	
3813 - 35	
(1) 2114 - 20	1340
(1) - 20 10	
Sanision - 15	1x12
13kne 2aer - 5	
11 11 750ml - 3	
Curves - 5 1840	
(1) 2114 - 5 11	
(1) 2114 - 5 11	
Grey grose - 10	
AB - 5	
AD. Fiver - 10	
Kamas 12ea wine - 10	
Sabreer - 10	
Gold 2114 - 10	
Cake - 2	
Gilangmonge - 10	
	seen
	5 lot
	21-7-22
	303
	21-7-22

(Note: As per re-totaling, the total no. of cases appears to be 300 instead of 303)

M/T/W/T/F/S/SU/		Date
	<u>BILL</u>	31/05/2022
MIX BEEF	- 700 kg	
		0.1500M - 250
13 L	- 20	calves - 100
61 fishes	- 0.10	71 kg - 100
61- Spirit	- 10	140000 - 50
13.8 W	- 20	sum total - 1800
Bullion	- 25	
1252 Lure	- 20	
→ 8 B	- 20	
Gold Lure	- 5	
PCP pool	- 10	
14- Gun	- 5	
Color marker	- 5	
Farms. Grouse	- 10	
W. crabs	- 10	
Grey Grouse	- 10	
Vivender	- 0.10	
Saras creek red wine	- 15	
Kansas	- 10	
Chivas 18yo	- 10	
		230
		230

24/6/22

8.2. From perusal of the content of these paper/sheets having heading 'WITHOUT BILL' and 'W/ BILL', it appears that like wise the present import consignment covered under KASEZ Bill of Entry bearing no. 1008329 dated

09.06.2022 wherein 412 cases of subject goods were imported in excess to the quantity declared, in the past also, M/s. BBLLP imported subject goods and declared less quantity thereof in the import documents with intend to sale/clear the subject goods without issuing invoice/bill or any other legitimate document.

9. In order to get explained the facts and evidences gathered during investigation and to get the details of other persons involved in this case, further Summons dated 30.06.2022 was issued to the Partner of M/s. BBLLP to record statement. Further, the data contained in the aforesaid CPU and Laptop resumed from the office cum warehouse premises of M/s. BBLLP, was transferred to external Hard Disc Drive of Toshiba make bearing Sr. No. Z1D6T16NTLTH, P/N-HDTCA10AR3AA under Panchnama dated 01.07.2022 (**RUD No.17**) for preparing working copy of the same. From such data, printouts of relevant pages were taken out to be get explained the same by the Partners of M/s. BBLLP.

10. Statement of **Smt. Suchita Bharatsingh Narawat Alias Sucheta Singh, Partner of M/s. BBLLP** was recorded under Section 108 of the Customs Act, 1962, on 04.07.2022 (**RUD No. 18**). In her statement, Smt. Suchita Bharatsingh Narawat, *inter alia* stated that she was Partner in M/s. BBLLP wherein Shri Ramana Shetty was another partner for 10% share; that her firm was a Unit of KASEZ, Gandhidham and engaged in the business of supply of liquor and beer beverages to various shipping/marine companies and also engaged in export of the same. She further stated that in the month of Oct., 2020, they started the said firm wherein she was looking after overall activities and Shri Ramana Shetty was merely as silent Partner; that looking to the scope and demand of supply of liquor and beer beverage on board the ships, she decided to form a firm for bond to bond supply of liquor to various shipping companies; that the documentation required for obtaining LOA was done by her with help of one Shri K.M. Mathew of M/s. Sonal Logistics, KASEZ, Gandhidham.

10.1. Smt. Suchita Bharatsingh Narawat explained the routine step by step procedure of import-export/sale-purchase in her firm and provided names of the main suppliers & buyers of Liquor, Beer etc. which included M/s. Direction

International LLC, M/s. ITC International Trading Consultants Ltd., M/s. Fidelis Foodstuff Trading LLC, M/s. Atlas Pacific General Trading LLC, M/s. Mufasa General Trading LLC etc. as suppliers and M/s. Manali International, M/s. R.A. Marine, M/s. Sunrise Shipping, M/s. Ruby Shipping, M/s. Gurudas Trading, etc. as buyers. She also provided details of employees in her firm alongwith their roles and responsibilities and stated that all of their employees were working under her supervision and instructions. She informed that Mr. Mathew of M/s. Sonal Logistics, Gandhidham was looking after preparation and filing Bills of Entry, Shipping Bills for clearance of consignments from Customs and his employee Shri Ramesh Goud was looking after stock related matters. She further stated that she herself used to discuss with the overseas supplier/buyer, negotiate rates and finalise the deal in her firm M/s. BBLLP.

10.2. As regards the subject import consignment covered under Bill of Lading No. JEAIXY00006 dated 20.06.2022, IGM No. 2314820 dated 21.06.2022 and KASEZ Bill of Entry No. 1008329 dated 09.06.2022, Smt. Suchita Bharatsingh Narawat deposed that in the beginning of April, 2022, she received an offer for supply of liquor and beer from one Mr. Ashraf of M/s. Mufasa General Trading LLC, Office 5, 1 Nabodah Building 4, Deira, Dubai, PO Box No. 2376, UAE, who was offering better rates in comparison to other suppliers; that she verified the genuineness of the supplier from market and finalized the deal. She added that she had placed the orders telephonically and also discussed with supplier through email; that no detailed contract was

signed between the supplier and her. She further stated that the payment was made in the end of April; that it was their first import from M/s. Mufasa General Trading LLC, UAE.

10.3. Smt. Suchita Bharatsingh Narawat stated that she had gone through the Panchnama dated 23/24.06.2022 and 24.06.2022, drawn at the premises of her firm and further stated that due to ill health of her old age mother, she went to Rajasthan on 13.06.2022 with keys of the storeroom/warehouse but the health of my mother deteriorated due to which she could not appear on 24.06.2022; that later on, on receipt of summons from DRI through email, she sent the keys of the warehouse of her firm and informed DRI through email. On being asked to explain the reasons and intention behind importation of excess quantity and mis-declaration thereof in the IGM No. 2314820 dated 21.06.2022 and KASEZ Bill of Entry No. 1008329 dated 09.06.2022, she stated that in the month of April, 2022, they had placed two orders for 917 cases and 1329 cases to the overseas supplier M/s. Mufasa General Trading LLC, UAE; that they had made payment of first order of the qty. as 917 cases but due to mistake at the supplier's end, they had sent the consignment of 1329 cases with documents showing qty. as 917 cases. On being asked when did the Bill of Entry showing qty. of goods as 917 cases was filed by her firm and why did she not confirm the qty. with the supplier before filing of the Bill of Entry, she stated that the Bill of Entry containing 917 cases was filed on 09.06.2022 but thereafter she went to Rajasthan on 13.06.2022; that she was engaged in taking care of her mother so, could not follow the status of the container with the supplier. She claimed that as soon as, they had come to notice that the consignment was actually for 1329 cases, they had applied for amendment in the Bill of Entry proposing change in the qty. from 917 cases to 1329 cases (**RUD No. 19**) .

10.4. On being asked when did she apply for the amendment in the Bill of Entry at KASEZ Customs and whether the amendment was considered by the KASEZ Customs authority with respect to the quantity of goods declared in the Bill of Entry, Smt. Suchita Bharatsingh Narawat stated that they had applied for amendment in the Bill of Entry on 29.06.2022 as there was limited staff in her firm and they could not file the amendment timely. She further stated that due to DRI hold on the said consignment, the amendment could not be made by the KASEZ Customs. On being further asked when the Bill of Entry was filed on 09.06.2022, why did she not apply for amendment until DRI hold the subject consignment on 23.06.2022, she stated that she could not follow the status of the consignment with the supplier as she was out of town and was engaged in taking

care of her mother. However, from the submission of Smt. SuchitaBharatsinhNarawat and facts and evidences gathered during investigation, it is apparent that since the DRI had already initiated the investigation in the matter and put the consignment on hold on 23.06.2023, the application made by M/s. BBLLP for amendment in the Bill of Entry with respect to the quantity of goods, is merely an afterthought to avoid action for mis-declaration in the IGM, Bill of Entry and related import documents.

10.5. On being asked why were 11 wooden pallets stuffed in the said import container alongwith liquor, beer etc. as found during Panchnama dated 28/29.06.2022 and why the weight of goods remained as 18510 KG in the documents for the qty. 917 cases as well as for 1329 cases, Smt. Suchita Bharatsinh Narawat stated that the liquor/beer cases were placed on the wooden pallets to avoid damage of the cargo as it contained breakable/glass bottles. She reiterated that the no. of cases were wrongly mentioned as 917 in the documents issued by the supplier though the consignment was of 1329 cases. On being asked to provide the names of buyers to whom M/s. BBLLP was to supply the goods imported under IGM No. 2314820 dated 21.06.2022 and KASEZ Bill of Entry No. 1008329 dated 09.06.2022, she stated that the buyers of goods were generally not decided before importation; that after import, as and when any buyer approaches them, they used to supply the goods as per their requirement from the warehoused goods. Hence, the routine buyers were the prospective buyers for the goods imported under IGM No. 2314820 dated 21.06.2022 and KASEZ Bill of Entry No. 1008329 dated 09.06.2022.

10.6. As regards the Panchnama dated 28/29.06.2022 drawn at their warehouse premises alongwith Detention Memo dated 29.06.2022 and Seizure Memo dated 29.06.2022, and non-production of the stock position and related records, she stated that they were having limited staff and hence sometimes could not update the stock registers timely. She assured to take care for this henceforth and to provide the stock position as on 23.06.2022 and on 28.06.2022 within 2-3 days. She deposed that they had noticed that there was short stock physically available and in comparison to the stock recorded in the Panchnama dated 28/29.06.2022; that they were in process to check their records and to find out the reasons for the same and also assured to pay up the applicable Customs Duties if required.

10.7. On being asked why did their firm had made cavity specially created in the ceiling of the warehouse from where 279 cases of liquor, beer, water etc. were recovered under Panchnama dated 28/29.06.2022 and why were the keys of the said area not provided

to the officers during Panchnama dated 28/29.06.2022, Smt. Suchita Bharatsingh Narawat stated that the particular place under the ceiling from where 279 cases of liquor, beer, water etc. were recovered under Panchnama dated 28/29.06.2022 was having access with keys and small door on the ceiling; that it was created to store expensive Liquors but later on they started storing all kind of liquors in it; that she herself used to maintain the keys of that particular area below the ceiling of the warehouse and she had sent the same with keys of storeroom /warehouse but thier staff Shri Chandan Mohandas Peshwani being newly joined employee could not identify the keys of that particular area from the bunch of many keys during the Panchnama dated 28/29.06.2022 and could not convince the officers.

10.8. On being asked why did they store 135 cartons/boxes of water bottles in the cavity in the ceiling of the warehouse and whether the water bottles were meant for covering the mis-declaration, and/or weight of clearance of unaccounted goods, and/or to export the same in guise of liquor/beer etc., and/or for any other reason, Smt. Suchita Bharatsingh Narawat deposed that the water bottle boxes were placed for regular use as drinking water and also claimed to be required to celebrate her birthday with trade friends. She further submitted that due to sudden news of illness of her mother, no celebration could be made and the boxes of water bottles remained unused.

10.9. As regards the 02 made up files resumed during the Panchnama dated 23/24.06.2022 drawn at the office premises of M/s. BBLLP, and on being asked to explain the content of the two sheets/pages, she stated that one of the sheets/pages which was typed, details of liquor/beer , qty., rate in USD, total amount in USD and INR was mentioned under headings 'WITHOUT BILL' and 'WITH BILL" that in another page i.e. handwritten, names/short forms of liquors/beer alongwith digits which appear as quantity were mentioned under heading 'W/BILL' at one side and under another heading 'BILL' at back side was written. She assured that since these sheets/pages were resumed from her firm's office premises, she would inquire with her staff about the content and facts of these sheets/pages and would revert back within 2-3 days.

10.10. On being asked who had prepared these two pages/sheets in M/s. BBLLP and under whose directions, Smt. Suchita Bharatsingh Narawat stated that she was not aware who had prepared these sheets/pages and under whose directions. She assured that she would inquire with her staff about the same and would revert back within 02 to 03 days. On being further asked, she replied that his employee Shri Ramesh Goud used to operate/use the computer

system pertaining to the Lenovo make CPU resumed from their office premises under Panchnama dated 23/24.06.2022.

10.11. On being specifically asked whether the goods mentioned in these pages under headings 'WITHOUT BILL' and 'W/BILL' were cleared from their warehouse without issuance of Bills and if so, who were the buyers of such goods cleared without issuance of bills, she denied to have cleared any goods without issuance of bill from their warehouse. However, she assured to inquire with their staff in this regard and to revert back within 2-3 days.

10.12. On being apprised that she being Partner/Director of 90% share in her firm, no activity should have been carry out in their firm without her permission, then how could any other person clear goods without issuance of bills as it also appeared from the shortage of stock noticed in their firm's stock, Smt. Suchita Bharatsingh Narawat stated that it was true that being Partner/owner of the firm, she was overall Incharge and responsible for entire business activities of the firm but being a human being, 100% control and supervision of entire operations including physical stock verification of the firm and all activities of the employees in depth, was not possible on day to day or hour to hour basis. Hence, she expressed and assured to first examine the reasons and person behind the shortage of stock as well as preparation of such sheets/pages containing heading 'WITHOUT BILL' and 'W/BILL', then to revert back and comment for the same.

10.13. During tendering statement, Smt. Suchita Bharatsingh Narawat explained content of various random pages of the two made up files resumed from their warehouse office premises under Panchnama dated 23/24.06.2022. She also explained content of some random printouts taken from the data transferred from the resumed CPU under Panchnama dated 01.07.2022. On being asked to provide price list for all the brands of liquor and beers imported by them in said container no. WHLU 2952855 as well as goods /liquor/beer found in their stock during Panchnama dated 28/29.06.2022, she stated that the price list for all the brands of liquor and beers imported by them in said container no. WHLU 2952855 and also available in their stock, was not readily available with her and she assured to provide the same within 2-3 days.

10.14. Smt. Suchita Bharatsingh Narawat further deposed that the mobile phone which she was using for official purpose and it contained data relating to her firm was voluntarily surrendered by her for the investigation purpose.

11. M/s. BBLLP vide letter dated 12.07.2022, had produced the details of stock summary and Stock related import-export documents etc. (**RUD No. 20Col'ly**). On verification of stock summary provided by M/s. BBLLP vis-à-vis the stock found physically available in their warehouse/storeroom during Panchnama dated 28/29.06.2022, a shortage of 511 cases of following brands of liquor, beer beverages was noticed:-

Table-II

Sr. No.	Brand/marking of liqour/beer	Size of bottle/can (in ML)	No. of Cases found during Panchnama dated 28/29.06.2022	Stock as per submission of M/s. BBLLP	Short/Excess
1	VAT 69	750	136	236	-100
2	Royal Horse Finest Scotch Whiskey	750	100	134	-34
3	Old Smuggler finesh Scotch Whiskey	700	112	162	-50
4	Teacher's Highland Cream Perfection of old Scotch Whiskey	750	99	116	-17
5	Denoff Vodka IV	700	99	120	-21
6	GIN Kingston 908 YVO	1000	151	201	-50
7	Goldmeister Premium Lager	500	1283	1515	-232
8	Grey Goose Vodka (Brown carton loose packing)	750	7	18	-7
9	Grey Goose Vodka (blue Colour original packing)	750	4		
		Total	1991	2502	-511

12. In this regard, M/s. BBLLP were asked vide letter dated 21.07.2022 to clarify the following points (**RUD No.21**):-

- (i) Reasons for shortage in stock and related compliance of statutory provisions under SEZ law/Customs Act

- (ii) Reasons/clarifications/comments on the sheets containing heading 'W/Bill' and 'Without Bill' resumed during search carried out under Panchnama dated 23/24.06.2022 drawn at your warehouse premises
- (iii) Reasons/clarifications/comments on a sheet showing transactions dated 22.04.2022, 23.04.2022, 24.04.2022 and 02.06.2022, resumed during search carried out under Panchnama dated 23/24.06.2022 drawn at your warehouse premises

13. In response, M/s. BBLLP vide letter dated 25.07.2022 (**RUD No.22**) replied that they could not find out the reasons for shortage in stock; that since they have compiled entire stock and provided the same to DRI, the shortage in some brands of liquor and beer cases may be considered taking lenient view. M/s. BBLLP further stated that the sheets containing heading 'W/Bill' and 'Without Bill' resumed during search carried out under Panchnama dated 23/24.06.2022 drawn at their premises were also not known to them as to who prepared the same and for what purpose. M/s. BBLLP further stated that they had already provided the entire details of goods which were made IN and OUT in their warehouse since inception of the Unit and claimed that as per the records provided by them, it could be seen that the entire records are maintained by them. As regards the transactions dated 22.04.2022, 23.04.2022, 24.04.2022 and 02.06.2022, M/s. BBLLP submitted that these were relating to loans with their known persons but no further detail /whereabouts of such persons and documentary evidence were provided in this regard.

14. Since M/s. BBLLP did not specify the reasons for shortage in the stock of goods at their warehouse and/or the sheets containing headings 'W/BILL', 'WITHOUT BILL' etc. nor intimated any compliance with respect to provisions of Customs/SEZ law in this regard, they were further requested vide letter dated 04.08.2022 to clarify the above aspects with documentary evidences and/or make compliance to the Customs/SEZ law (**RUD No.23**). In response, M/s. BBLLP vide letter dated 08.08.2022 (**RUD No.24**) replied that due to spilled/damage of Beer, whisky and on account of some unavoidable protocols the shortage was occurred. They further submitted that they were ready to make compliance of Customs/KASEZ laws by making payment of applicable duty on the shortage of stock.

15. As regards the sheets containing heading W/BILL, WITHOUT BILL etc., M/s. BBLLP submitted that they were unable to find out the reason for making such sheets and person behind this, but it appeared that these sheets may represent spilled/damage quantity and some unavoidable protocols etc. They further deposed that they were ready to pay duty on shortage quantity and claimed that there was no any malafide intention to

evade the Customs Duty on their part. They assured to pay the Customs Duty on shortage of goods after ascertaining the quantity without fail. M/s. BBLLP requested to grant NOC for making amendment of Bill of Entry with regard to quantity and value of import goods.

16. In order to get the version of the declared supplier of the present import consignment imported in container no. WHLU2952855 covered under Bill of Lading No. JEAIXY00006 dated 20.06.2022 viz. M/s. Mufasa General Trading LLC ,Dubai, Summons dated 08.08.2022, 02.12.2022 and 12.04.2023 were issued to them but no response was received from the said supplier (**RUD No. 25Col'ly**).

17. Further statement of Smt. Suchita Bharatsingh Narawat Alias Sucheta Singh, Partner of M/s. BBLLP was recorded under Section 108 of the Customs Act, 1962, on 29.08.2022 (**RUD No. 26**). In her statement, Smt. Suchita

Bharatsingh Narawat *interalia* stated that the facts stated by her in the previous statement were correct. On being asked to specify the purpose of importation of excess quantity of 412 cases than the declared quantity of 917 cases in the consignment covered under Bill of Entry No. 1008329 dated 09.06.2022, she stated that they had placed two orders for 917 cases and 1329 cases to the overseas supplier; that the supplier was not their regular supplier who had sent them the consignment of 1329 cases under the documents pertaining to the consignment of 917 cases by mistake which resulted into importation of excess quantity. On being asked to provide any documentary evidence in support of her claim, she deposed that they had received a certificate dated 23.06.2022 issued in this regard from the overseas supplier (**RUD No.27**). She added that they had accordingly applied with KASEZ Customs authorities for the amendment in the Bill of Entry. On being asked, she further stated that the said Bill of Entry was not amended by the KASEZ Customs authorities .

17.1. Smt. Suchita Bharatsingh Narawat was shown copy of printout/sheet having heading 'SHINAN BHAI PAYMENT DETAIL' resumed from their warehouse office premises under Panchnama dated 23/24.06.2022. On being asked to explain the content of this sheet/printout, she stated that she had already seen this sheet and she deposed that the transactions mentioned in this sheet were related to loan transactions with Mr. Shinan. On being further asked what was 'Invoice 402 'and related entries mentioned in this sheet, she submitted that she would check their record and will revert back within 02 days.

17.2. On being apprised that it appeared that these transactions mentioned in the printout/sheet having heading 'SHINAN BHAI PAYMENT DETAIL' were relating to import of 917 cases through

Banking channel (USD 29638.65) and for rest 412 cases through Cash/*Angadia*, Smt. Suchita Bharatsingh Narawat stated that the consignment of 1329 cases was shipped under documents of consignment of 917 cases by mistake on the part of supplier. She claimed that they had paid to the supplier's notify party only through banking channel.

17.3. As regards the shortage of stock found available in their warehouse as indicated by her also in her previous statement, Smt. Suchita Bharatsingh Narawat stated that they were in process to pay up Customs Duty towards their anticipated duty liability and she assured to send the Duty payment challan the same day.

17.4. On being asked how was it possible that she being owner of the Unit was unable to find out the reasons for shortage as she expressed in her letter , she stated that the shortage was on account of damage/spilling of some goods and due to some protocols. On being asked where were the damaged/spilled goods kept, she claimed that the spilled goods were making the entire warehouse smelling, so their employees might have thrown away the spilled/damaged goods and part of the same might be available. She assured to check and to revert back within 02 days but no proper response was received from her side.

17.5. On being asked how her employees had thrown away the damaged/spilled goods without her approval/direction and who was the employee who had done so, Smt. Suchita Bharatsingh Narawat stated that in the month of June, she was out of Gujarat most of the time due to ill health of her mother and thus she could not supervise the day to day work done by their employees. She added that she was not aware about the particular employee who has done so.

17.6. Smt. Suchita Bharatsingh Narawat was apprised that in her submissions, she had shown unawareness about the sheets containing heading 'W/BILL' and 'WITHOUT BILL' which were resumed from their office premises under Panchnama. These sheets/document were being shown to her once again and she was apprised that since 17.7. M/s. BBLLP was not in position to explain the reasons and purpose of prepared these sheets, it appears that they have imported goods in excess to declared goods in past imports too and cleared the goods covered under these sheets in DTA without payment of Duty. On being asked to offer comments in this regard, she stated that she had already seen these sheets/document during previous statement and that she was not aware who had prepared these sheet/document and why such sheets were prepared.

17.7. On being asked who was Shinan Bhai and to provide his complete whereabouts and why were transactions made with him by M/s. BBLLP, Smt. Suchita Bharatsingh Narawat stated that Mr. Shinan was also engaged in the business of supply of Bond items and they were having loan transactions with him. She assured to provide his whereabouts from their official records but she never reverted back in this regard.

17.8. On being asked what was role of M/s. Connect Logistics Cargo LLC in the import made by M/s. BBLLP vide Bill of Entry No. 1008329 dated 09.06.2022 and also in past imports, Smt. Suchita Bharatsingh Narawat stated that M/s. Connect Logistics Cargo LLC was a Dubai based notify/beneficiary party in the import made by M/s. BBLLP vide Bill of Entry No. 1008329 dated 09.06.2022; that this party was not concerned with their past imports. She added that this firm was pertaining to Mr. Ashraf of overseas supplier M/s. Mufasa General Trading LLC and M/s. BBLLP had made payment to this notify party M/s. Connect Logistics Cargo LLC as per instructions from this supplier. She added that they had made payment of around USD 29000 in the month of April against import covered under Bill of Entry No. 1008329 dated 09.06.2022.

17.9. Smt. Suchita Bharatsingh Narawat was asked to elaborate the transactions dated 22.04.2022, 23.04.2022, 24.04.2022, 02.06.2022 mentioned in the sheet resumed from your warehouse office premises under Panchnama dated 23/24.06.2022. She was apprised that from the quantum of amount and time/month of transaction, it appeared that these transactions were relating to import of 917 cases through Banking channel (USD 29638.65) and for rest 412 cases through Angadia. On being asked to comment in this regard, Smt. Suchita Bharatsingh Narawat stated that these transactions were related to loan between M/s. BBLLP and Mr. Shinan; that Mr. Shinan was not related to subject import consignment but she did not provide any documentary evidence in support of her claim.

17.10. As regards the excess quantity of 412 cases imported by them illegally, she stated that since these goods were not cleared from SEZ, the duty factor arose only when the goods were cleared from SEZ to domestic area. She showed her agreement with the facts of having stock of expired beer in their godown and stated that they were in process to re-export these cases of expired beer which could be used in manufacturing of shampoo and cosmetics.

17.11. In the Bank Statement of Smt. Suchita Bharatsingh Narawat, some cash transactions were noticed for the period 01.04.2020 onwards. On being asked to explain the reasons and

particulars of such transactions, she stated that these amounts were relating to cash withdrawn from gold loan and deposits were made to run their business activities. She assured that she would provide the loan documents and transactions made by them but she did not revert back in this regard.

18. M/s. BBLLP also submitted a letter dated 29.08.2022 wherein it was again claimed that they had placed two orders to M/s. Musafa General Trading LLC, Dubai for the supply of 1329 & 917 cases of assorted liquor, wine, etc. ; that the supplier by mistake sent the order of 1329 cases instead of 917 cases under documents of 917 cases instead of 1329 cases which were actually shipped. It was claimed in the letter that it could be seen that there was no mistake on the part of M/s. BBLLP and this mishap occurred at the supplier's end; that as soon as they came to know, they immediately informed the supplier to take corrective measures for the wrong quantity dispatched. M/s. BBLLP further claimed that the supplier vide their letter dated 23/06/2022 issued a certificate regarding their said mistake.

19. M/s. BBLLP vide separate letters dated 29.08.2022 and 30.08.2022 informed that they had paid the Customs Duty on account of shortage of stock vide following Challans:-

Table-III

S. No.	TR-6 Challan No. & Date	Customs Duty paid (Rs.)
1	003/22-23 dated 29.08.2022	12,48,596/-
2	004/22-23 dated 30.08.2022	9,386/-
Total		12,57,982/-

20. Statement of Shri Nilesh A. Jha, Director of M/s Sparcon Lines Pvt. Ltd., Office No. 41, Neco Chamber, Gr. Floor, Sector-11, Plot No. 48, CBD Belapur, Navi Mumbai-400614 was recorded under Section 108 of the Customs Act, 1962, on 30.08.2022 (**RUD No. 28**). In his statement, Shri Nilesh A. Jhainteralia stated that his company M/s Sparcon Lines Pvt. Ltd. was a Principal Container line engaged in the shipping (container line) business; that they were running their business operations at Gandhidham/Kandla through their associate M/s. Boxpar Terminal Company, Office No. 7, 1st Floor, Om Corner, Plot No. 336,337,343, Ward No. 12-B, Gandhidham-370201.

20.1. On being asked regarding import consignment covered under B/L No. JEAIXY00006 dated 20.06.2022, Shri Nilesh A. Jha stated that their Dubai agent Mr. Renni of M/s. Eco Wide Lines Shipping

Agency and they received container booking orders from shipper Mr. Mohammad Musafaa of M/s. Mufasa General Trading LLC, Dubai for one container from Dubai to Kandla in the first week of June, 2022 through email; that their said agent collected KYC documents from the said shipper M/s. Mufasa General Trading LLC, Dubai and the concerned forwarder M/s. Blue First, finalized the rates and booked the container no. WLHU2952855 which was hired on lease basis from M/s. Excel Sior.

20.2. On being asked, Shri Nilesh A. Jha stated that the first of all Shipping Instructions (S.I.) were received by their Dubai agent from the shipper on the basis of which draft Bill of Lading was prepared by the Dubai agent. The draft Bill of Lading was sent to the shipper who approved the same and accordingly, final Bill of Lading was released by their agent. In the final Bill of Lading so prepared duly approved by the shipper, the following main particulars were declared:

- Name of shipper:- Mufasa General Trading LLC, Dubai
- Name of consignee:-Brews Barron LLP, Gandhidham
- Port of Loading:-Jebel Ali
- Port of discharge:-Kandla
- Description of goods :- “Assorted Whisky and Liquor and Beer Beverages alongwith pallets”
- Quantity of goods : 917 cases
- Weight:- 18510 KG

Shri Nilesh A. Jha provided concerned printouts of email conversations including the conversations held between the shipper and their Dubai agent(**RUD No.29**).

20.3. On being asked, Shri Nilesh A. Jha stated that neither his company, nor the Dubai agent of their company were aware who had stuffed the container and how much quantity was stuffed in the container as it was not their task/responsibility to verify the quantity stuffed in the container; that he was not aware whether the shipper/consignee was aware about the quantity loaded in the container and the quantity declared in the Bill of Lading; that the sealed container was shipped on board the vessel SSL Delhi, Voyage-069 on 20.06.2022 which was berthed at Kandla port on 23.06.2022. He added that they had already filed IGM bearing no. 2314820 on 21.06.2022 on the basis Bill of Lading received from their Dubai agent before arrival of the vessel.

20.4. On being further asked, Shri Nilesh A. Jha stated that their company had received email dated 23.06.2022 at 18.05 hrs from their Dubai agent in which it was conveyed that the shipper had requested for amendment in the Bill of Lading; that since their company had already filed the IGM, they informed the Dubai agent about this fact and apprised that in case the IGM was to be amended, it would cost amendment charges. He added that since the shipper and the consignee M/s. Brews Barron LLP both requested for amending the Bill of Lading, their Dubai agent had amended the Bill of Lading by changing the quantity from 917 cases to 1329 cases. He provided a copy of both the Bills of Lading.

20.5. On being asked what supporting documents were supplied by the shipper to their Dubai agent for revising the Bill of Lading, Shri Nilesh A. Jha stated that no documents except the SI copy were required to be furnished by the shipper for getting prepared draft BL or amending the BL. The quantity of the Bill of Lading was revised by their Dubai Agent on the basis of request received from the shipper through email.

20.6. On being asked whether their company was approached by the consignee for making amendment in the IGM and if so who had approached, Shri Nilesh A. Jha stated that from the consignee side, Shri Chandan Mohandas Peshwani of M/s. Brews Barron LLP approached them to amend the quantity mentioned in the IGM. The consignee also requested them through email dated

23.06.2022, 09.47 PM and claimed that they had placed two orders to the shipper but they had entered the quantity for the first order only. He added that the consignee requested them to revise the Bill of Lading.

20.7. On being asked when was the B/L revised and why was the IGM not revised, Shri Nilesh A. Jha stated that the B/L was revised by their Dubai Agent on 23.06.2022 and the same was received by them through email from their Dubai agent on 24.06.2022 at 11.45 AM. As regards amendment in the IGM, he stated that when they had asked for amendment charges, the consignee denied to pay the same and they asked that they would do the same at their own.

21. Statement of Shri Ramesh Kumar Goud, S/o-Shri Khema Ram Goud, Employee of M/s. BBLLP, was recorded under Section 108 of the Customs Act, 1962, on 01.09.2022 (**RUD No.30**). In his statement, Shri Ramesh Kumar Goud interalia stated that he joined M/s. BBLLP in the month of September, 2020 and after serving for four months, he left job with this firm on account of his marriage; that later on, he again joined this firm in May,

2022; that during the period from January, 2021 to April, 2022, he remained in his native village in Rajasthan. He added that in M/s. BBLLP he used to report his day to day official activities to Smt. Suchita Singh, Partner of the firm; that Smt. Suchita Singh and Shri Ramana Shetty were Partners of M/s. BBLLP but the overall work relating to sale and purchase like placing of orders, collecting purchase orders, payments, etc. was done by Smt. Suchita Singh; that Shri Ramana Shetty was sleeping Partner and he (Shri Ramesh) had never seen him in office, nor he received any directions from him (Shri Ramana Shetty).

21.1. On being asked whether he was maintaining stock related documents in M/s. BBLLP, Shri Ramesh Kumar Goud replied in negative and stated ShriChandan Mohandas Peshwaniwas looking after work related to stock and documentation thereof. As regards the reason for shortage of stock available during Panchnama and stock reported by their Unit, Shri Ramesh Kumar Goud stated since he was not looking after the stock related work in their firm, he was not aware about the reason for shortage. He added that Smt. Suchita Singh, the Partner of my firm M/s. BBLLP could explain the reasons for such shortage.

21.2. On being asked whether any goods was spilled /damaged in their firm, he stated that the goods (mainly beer beverages) used to spill sometimes but the details of the same were not maintained by him and hence the same are not available. He assured that he would convey this question to Smt. Suchita Singh and would provide the details thereof within 03 days but he did not provide.

21.3. As regards the two sheets /pages having brand wise and quantity wise details of liquor under heading 'W/BILL' and 'WITHOUT BILL', Shri Ramesh Kumar Goud stated that he was not looking after stock related work, sale and purchase in their firm and hence, he was not aware who had written/prepared these pages/sheets shown to him and under whose directions the same were prepared. He deposed that he had not written/prepared these pages/sheet. He added that the computer system pertaining to the Lenono make CPU resumed from their office premises under Panchnama dated 23/24.06.2022 was operated/used commonly by him and Shri Chandan Peshwani.

21.4. On being asked whether the goods mentioned in these pages under headings 'WITHOUT BILL' and 'W/BILL' were cleared from their warehouse without issuance of Bills, and how much amount was collected from such buyers, Shri Ramesh Kumar Goud stated that Smt. Suchita Singh was looking after sale, purchase, payments and hence he was not aware in this regard.

21.5. As regards the printout/sheet having heading 'SHINAN BHAI PAYMENT DETAIL' resumed from their warehouse office premises under Panchnama dated 23/24.06.2022, Shri Ramesh Kumar Goud stated that there were some transactions shown in this sheet with one Shinanbhai but he was not knowing who was Shinan and what was the purpose the transactions made with Shinan. He assured that he would check their records about 'Invoice 402' and will revert back within 02 days but he did not revert back.

21.6. On being further asked whether he or any other employee of their firm had collected any payment from any person other than the declared buyers of subject goods, Shri Ramesh Kumar Goud stated that the work relating to payment collections was looked after by Smt. Suchita Singh; that he had not collected any payment from any person including their declared buyers. He also added that he was not aware whether their firm had placed two orders for 1329 cases and 917 cases of liquor, beer beverages etc. to be imported from M/s. Mufasa General Trading LLC, Dubai as placing of orders was looked after by Smt. Suchita Singh. He also did not comment on the question whether any excess quantity of goods than the declared quantity were received in any import consignment in the past also as received in the consignment covered under B/E dated 20.06.2022 replying that he was not looking after inward/outward /stock related work, and hence not aware in this regard.

21.7. During the investigation, the LCB/ Police Authorities informed DRI that in the year 2021, they had seized foreign brand liquor from Gandhidham (DTA area) which was cleared from M/s. BBLIP, KASEZ and Shri Ramesh Kumar Goud was arrested. From this, it appears that the version of Shri Ramesh Kumar Goud that he had lived in Rajasthan during the period January, 2021 to April, 2022 appears to be false and his other submissions also appear to be vague, misleading and not acceptable. DRI has requested the LCB/Police authorities to provide documents and complete details of such goods recovered by them but the same is awaited. Since the seizure was not made by DRI and investigation was also being done by LCB/Police Authorities with respect to seizure made by them and hence such goods are not made part of this DRI investigation, however, in respect of violation of the Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder, further action in the matter may be taken by the jurisdictional Customs Authorities i.e. Customs House, Kandla or by KASEZ Customs Authorities, if warranted.

21.8. As regards the printout/sheet having heading 'SHINAN BHAI PAYMENT DETAIL' resumed from their warehouse office premises under Panchnama dated 23/24.06.2022, neither Smt. Suchita Bharatsinh Narawat, nor Shri Ramesh Kumar Goud provided the whereabouts of Shri Shinan Bhai and hence Summons dated 02.12.2022 and 12.04.2023 were issued to the notify party of the subject import consignment covered under Bill of Lading no. JEAIXY00006 viz. M/s. Connect Logistics Cargo LLC, Dubai and a person known as Shri Shinan who was engaged in the import business and was found indulged in such mis-declaration/outright smuggling cases but no response was received (**RUD No.31Col'ly**). Summons dated 02.12.2022 and 12.04.2023 were also issued to another employee of M/s. BBLLP viz. Shri Chandan Mohandas Peshwani but he also did not respond (**RUD No.32Col'ly**). Summons were also issued to the Partner/Proprietor of M/s. Sonal Logistics, Gandhidham who were found assisting M/s. BBLLP for clearance of consignments from KASEZ Customs.

22. Statement of Shri K.M. Mathew, Partner of M/s. Sonal Logistics, 17, KASEZ 1A Building, Kandla Special Economic Zone, Gandhidham (Kutch), was recorded under Section 108 of the Customs Act, 1962, on 05.12.2022 (**RUD No. 33**) wherein he interalia stated that after his superannuation from Kandla Special Economic Zone as an Appraiser in Dec., 2007, he started the firm M/s. Sonal Logistics which was engaged in the business of assisting in clearance of import/export consignment at Kandla Special Economic Zone, Gandhidham; that his firm was not possessing Customs Broker License and they were filing Bill of Entry/Shipping Bill and import/export documents with Customs authorities on 'self' basis on behalf of the concerned importer/exporter using their own Login ID.

22.1. Shri K.M. Mathew further stated that he was looking after the work relating to filing of Bill of Entry including deciding Classification, Calculation of Duty, Payment of Duty etc. and also filing of Shipping Bills; that he used to declare the description, quantity of goods in the Bills of Entry/Shipping Bills on behalf of the clients as per the invoice and other related documents provided by these importers/exporters.

22.2. On being asked, he stated that his firm had been looking after the filing of Bills of Entry/Shipping Bills on behalf of M/s. BBLLP since its inception in the year 2020; that one employee of M/s. BBLLP viz. Shri Ramesh Goud used to come to provide documents from M/s. BBLLP and they used to charge Rs. 2500/- per consignment for clearance.

22.3. On being asked regarding rate of Customs Duty applicable on import of liquor and beer beverages, Shri K.M. Mathew stated that the rate of Customs Duty on import of liquor was 150% and on beer, it was 100%. On being asked to comment upon the Notification No. 11/2021 and 50/2017 (Sr. No. 104 A) mentioned in the Bills of Entry filed by them on behalf of M/s. BBLLP, he stated that he would check these Bills of Entry once again and would provide clarification on the rate of applicable Customs Duty, provisions regarding said Notifications alongwith calculation of Customs Duty for the last Bill of Entry filed by them on behalf of the said importer which he submitted later.

22.4. As regards the Bill of Entry No. 1008329 dated 09.06.2022 filed in the name of M/s. Brews Barron LLP, Shri K.M. Mathew stated that this Bill of Entry was filed by his firm as per the import documents provided to them by the said employee of M/s. BBLLP Shri Ramesh Goud on 09.06.2022 as per which there were 917 cases of liquor/whiskey/beer beverages in the said consignment and he accordingly filed the Bill of Entry the same day i.e. 09.06.2022. Shri K.M. Mathew added that after filing of Bill of Entry no. 1008329 dated 09.06.2022 and after getting Transshipment Permission from Customs, Kandla, after around two weeks, Shri Ramesh Goud again approached him with a different set of import documents including Bill of Lading showing quantity of import goods as 1329 cases and asked to file amendment for the previous Bill of Entry No. 1008329 dated 09.06.2022. Shri K.M. Mathew told that Shri Ramesh had given the reason for amendment that the supplier had sent them incorrect documents containing 917 cases in stead of 1329 cases. Shri K.M. Mathew deposed that since he was not aware about the intention of the importer and DRI hold on the said consignment, he online applied for amendment in the Bill of Entry No. 1008329 dated 09.06.2022 but the same was not accepted by the KASEZ Customs Authorities on account of DRI hold already effected on the said consignment.

22.5. On being asked, Shri K.M. Mathew stated that they do not maintain stock position of M/s. BBLLP and the same was maintained by the said Unit themselves. On being asked whether M/s. BBLLP or its Partner had ever intimated or discussed regarding spilling/damage/ expiry of Liquor/Beer Beverages, Shri K.M. Mathew stated that he had not been intimated or discussed by any person of M/s. BBLLP in this regard.

22.6. As regards the two sheets/pages recovered from the office cum warehouse premises of M/s. BBLLP under Panchnama dated 23/24.06.2022, Shri K.M. Mathew stated that it appeared that the goods mentioned in these sheets were cleared without Bill and without payment of Customs Duty, however, he was not aware about such clearance as the same was not informed by anyone to him; that he was not aware who had prepared these sheets and under whose directions and who were the buyers for such clearance. He also stated that as per Panchnama dated 23/24.06.2022 drawn at the office premises of M/s. BBLLP, there was excess quantity of goods (412 cases) found in the import consignment covered under Bill of Entry No. 1008329 dated 09.06.2022. On being asked as to whether he was informed by any person of M/s. Brews Barron LLP regarding import /schedule of two separate consignments of 917 cases and 1329 cases by said importer, Shri K.M. Mathew stated that he was not apprised by M/s. BBLLP or any other person regarding their import of two separate consignments of 917 cases and 1329 cases.

22.7. Shri K.M. Mathew also deposed that he was not informed by anyone from M/s. BBLLP or by any other person about shortage of stock and availability of expired beer in their warehouse. He added that if someone had sought advice on the same, he would have suggested them to pay up the applicable duties on shortage and expired beer beverages after knowing the actual reason for shortage.

22.8. On being shown printout/sheet having heading 'SHINAN BHAI PAYMENT DETAIL' resumed from warehouse office premises under Panchnama dated 23/24.06.2022, Shri K.M. Mathew stated that he did not know Shinan bhai and purpose of preparing this sheet; that he was also unaware about 'Invoice 402' mentioned in this sheet. It was pointed out to him that in this sheet, there was mention of Invoice for amount 29638.65 as 70% (2252537.4) and Balance 12702.28 as 30%; that there was also entry of 2252537 as By Bank on 22.04.2022 and 1000000 as cash on 23.04.2022; and that in the instant case, the invoice value for 917 cases was USD 29638.65 which indicates that the amount 12702.28 was balance amount for 412 cases imported duly undeclared in excess to the declared quantity i.e. 917 cases. In this regard, Shri K.M. Mathew stated that looking to the exact matching of invoice amount in USD as well as in INR and the dates mentioned in this sheet, it appeared that quantity and value was declared as 70% and rest 30% quantity was not declared in the import documents and value thereof was paid in cash.

22.9. On being asked regarding difference in the HS Code/CTH declared as 22083012 and 22030000 in the said Bill of Entry No. 1008329 dated 09.06.2022 and HS Code/CTH mentioned as 22083019, 22041000, 22060000 and 22030000 in the concerned Invoice/Packing List, Shri K.M. Mathew stated that the HS Codes mentioned in the invoice and packing list were not in corelation with each other, thus he had used only HS Code/CTH 22083012 and 22030000 in the said Bill of Entry.

23. The data of electronic devices resumed or surrendered during investigation was extracted forensically from the devices and the same was exported/copied to external Hard Disc Drives under following Panchnamas drawn at Cyber Forensic Laboratory, DRI Zonal Unit, Mumbai as detailed below:-

Table-IV

S.No.	Date of Panchnama (RUD No.34Col'ly)	Details of resumed/surrendered device	Details of external Hard Disc Drive
1	15.09.2022	Lenovo make CPU resumed from the office cum warehouse premises of M/s. BBLLP under Panchnama dated 23/24.06.2022	Toshiba make Hard Disc Drive (S/N 3214T0SGTLTH) (RUA No. 2)
2	15.09.2022	Vivo Y 01 make mobile phone voluntarily surrendered by Smt. Suchita Bharatsinh Narawat during statement dated 04.07.2022	
3	28.12.2022	Apple make Laptop resumed under Panchnama dated 28/29.06.2022	Hard Disc Drive (S/N DD202206075E0)

24. From the facts narrated in foregoing paras, it appears that neither Smt. Suchita Bharatsinh Narawat, nor her employees could explain the proper reason for shortage in the stock available in their warehouse. They did not explain the purpose of preparing sheets/pages having heading 'WITHOUT BILL' and 'W/BILL' thereby failed to provide proper documents and clarification with respect to the stock of imported goods detained under Detention Memo dated 29.06.2022. They also failed to comply with the provisions laid down under Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder with respect to the expired Beer available in their stock. Apart from above, from the sheet having heading 'SHINAN BHAI PAYMENT DETAIL' resumed from warehouse office premises under Panchnama dated 23/24.06.2022 and recovery of excess 412 cases found in the import

consignment covered under Bill of Entry No. 1008329 dated 09.06.2022 vis-à-vis the information received from the LCB/Police authorities regarding recovery of illicitly cleared subject goods in the past also, it appears that the 2328 cases of foreign brand liquor, Beer etc. were also offending in nature and liable for confiscation under Section 111(m) of Customs Act, 1962. Accordingly, such detained 2328 cases of subject goods as mentioned in the Annexure-B and Annexure-C of the Panchnama dated 28/29.06.2022 were placed under seizure in terms of Section 110(1) of Customs Act, 1962 vide Seizure Memo dated 13.12.2022 (**RUD No.35**). The goods which were already in the safe custody of M/s. BBLLP were formally handed over to Smt. Suchita Bharatsinh Narawat vide Supratnama dated 13.12.2022 (**RUD No.36**).

25. M/s. BBLLP vide letter dated 15.12.2022 (**RUD No.37**) approached the competent authority i.e. Commissioner of Customs, Customs House, Kandla for provisional release of subject goods seized vide Seizure Memos dated 29.06.2022 and 13.12.2022. On being received the application dated 15.12.2022 filed by M/s BBLLP through Customs House, Kandla, DRI proposed provisional release of the seized goods subject to compliance of following conditions:-

- (i) Bank Guarantee for sufficient amount may be obtained to safeguard the Govt. revenue.
- (ii) Bond for sufficient value in respect of seized goods may be obtained.
- (iii) Proper disposal of expired goods as per provisions of Customs Act, 1962, SEZ Act, 2005 and Rules framed there under shall be done
- (iv) The Unit shall cooperate in the investigation

26. To Sum Up:-

26.1. M/s. BBLLP is a Unit in KASEZ , Gandhidham and engaged in the import and trading of Wine, Beer, Whiskey, Brandy, Scotch, Assorted Liquors etc. in terms of Letter of Approval No. 20/2020-21 dated 20.10.2020 issued from the office of Development Commissioner, KASEZ, Gandhidham. M/s. BBLLP were importing goods from abroad without payment of Duty in terms of Section 26 of SEZ Act, 2005 and Rules framed thereunder. M/s. BBLLP were basically supplying the goods so imported, under bond without payment of Duty to their clients /ship chandlers who were engaged in supplying the subject goods subsequently to foreign going vessels. Acting upon an intelligence developed by DRI which indicated mis-declaration in an import consignment covered under container no. WHLU2952855 by way of showing less quantity in Bill of Entry and related documents, investigation was initiated by DRI.

26.2. Searches carried out at the office cum warehouse premises of M/s. BBLLP, resulted in recovery of incriminating documents and resumption of electronic devices. These incriminating documents and data of electronic devices included 02 sheets/pages having heading 'WITHOUT BILL' and 'W/BILL' indicating illicit and clandestine clearance of 483 cases (180+303) of subject goods without issuance of invoice/bill of any other legitimate documents and 01 sheet (heading-'SHINAN BHAI PAYMENT DETAIL') indicating deliberate import of excess quantity of undeclared 412 cases and bifurcation of payment made to the supplier.

26.3. During investigation, 100% examination of the said live import consignment carried out by officers of DRI and Customs resulted in recovery of 412 excess cases of foreign brand liquor, beer etc. concealed inside the said container. M/s. BBLLP attempted to camouflage the deliberate mis-declaration by filing application of amending the Bill of Entry by furnishing certificate dated 23.06.2022 said to be issued by the supplier and revised Bill of Lading showing no. of cases as 1329 in place of 917 cases declared in the IGM and Bill of Entry. However, since these efforts were made after putting the consignment on hold by DRI and there was evidence of apparent and intentional misdeclaration and payment of excess 412 cases in cash as per which it appears that the attempt made by M/s. BBLLP for getting amended the Bill of Entry was merely an afterthought. From the sheet containing heading-'SHINAN BHAI PAYMENT DETAIL', it appears that the supplier and/or the notify party was in connivance with M/s. BBLLP as the supplier issued invoice showing less quantity of the goods as 917 cases in place of 1329 cases and accepting payment of rest quantity in cash. On the basis of this crucial evidence and by not providing complete whereabouts of Mr. Shinan by Smt. Suchita Bharatsinh Narawat and no response received from the declared supplier M/s. Mufasa General Trading LLC, the Certificate dated 23.06.2022 said to be issued by M/s. Mufasa General Trading LLC appears to be fictitious and having false content..

26.4. During the search of the warehouse/storeroom of M/s. BBLLP, 729 cases of Beer which were expired in January, 2022 and also, on stock verification with the stock summary and related documents provided by M/s. BBLLP, a shortage of 511 cases of subject goods of different foreign brands was observed. On being inquired, Smt. Suchita Bharatsinh Narawat and her employee failed to justify the shortage of 511 cases and also to explain the purpose and content of incriminating documents /sheets having headings 'WITHOUT BILL', 'W/BILL' and 'SHINAN BHAI PAYMENT DETAIL'. M/s. BBLLP through its Partner Smt. Suchita Bharatsinh Narawat did not provide the whereabouts of said Mr. Shinan Bhai. However, as regards the shortage of goods noticed in the stock of M/s. BBLLP, they have voluntarily paid Customs Duty totaling to Rs. 12,57,982/- towards their anticipated Duty liability. The entire goods imported in container no. WHLU2952855

covered under KASEZ Bill of Entry bearing no. 1008329 dated 09.06.2022 and goods found available in the stock at warehouse of M/s. BBLLP being offending in nature and liable for confiscation under Section 111 and/or 119 of Customs Act, 1962, the same were placed under seizure under Section 110(1) of Customs Act, 1962 vide Seizure Memos dated 29.06.2022 and 13.12.2022.

26.5. During investigation, as per the information received from LCB/Police authorities and other facts and evidences gathered during investigation, it appears that M/s. BBLLP was adopting modus operandi of importing excess quantity of subject goods duly concealed and clearing such excess and undeclared imported goods without issuance of invoice/bill and without making any payment of Customs Duty on the same.

27. Mis-declaration, mis-classification and confiscation :-

27.1. M/s. BBLLP vide the LOA dated 20.10.2022 were allowed to carry out authorized operations in KASEZ subject to following relevant terms and conditions:-

“...(v) You may supply/ sell goods or services in the Domestic Tariff Area in terms of the provisions of the Special Economic Zones Act, 2005 and Rules and orders made there-under.....

(x) You shall abide by the provisions of Special Economic Zones Act, 2005 and the rules and orders made there-under.....

(xxii)Further, the items meant for trading is also subject to the condition that the same will be supplied to Customs bonded warehouses and foreign bound vessels calling at Indian Ports &Exports and no DTA sale of any traded goods even if damaged or otherwise will be allowed and if the traded goods are found to be sold in DTA penal action will be initiated against you and you will be liable for, cancellation of the said approval of trading activity.”

27.2. While furnishing Bond cum Legal Undertaking, M/s. BBLLP had undertaken as per below mentioned conditions relevant to the present case:-

“1. We, the obligors shall abide by all the provisions of the Special Economic Zone Act, 2005 and the rules and orders made thereunder in respect of the goods for authorized operations in the Kandla Special Economic Zone.

2. *We, the obligors shall pay on or before a date specified in a notice of demand, all duties chargeable on the goods not removed on termination of validity here-in-stated-above of the Letter of Approval.*

4. *We, the obligors shall be wholly and solely responsible for ensuring that there shall be no pilferage during transit of the said goods when dispatched from the place of import or the factory of manufacture or from the warehouse to the unit in the Special Economic Zone and vice versa and we, the obligors, shall pay the duty on pilfered goods, if any.*

5. *We, the obligors shall maintain accounts of all goods imported or procured from the Domestic Tariff Area or consumed and utilized, in proper form, including those remaining in stock and those sent temporarily out side the Special Economic Zone in the Domestic Tariff Area under our obligation and shall produce such accounts for inspection of the Specified Officer or Authorized Officer.*

9. *We, the obligors shall pay the duties on the goods and services sold in Domestic Tariff Area in terms of Special Economic Zones Act, 2005 and the rules and orders made there-under.*

10. *We, the obligors shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed on account of the goods and services in terms of provisions of rule 25 of Special Economic Zones Rules 2006.*

11. *We, the obligors shall not dispose of goods and services admitted into the Special Economic Zone or goods manufactured or services to the Domestic Tariff Area except as provided under Special Economic Zones Act, 2005 and the rules and orders made there-under.*

15. *The Government through the Specified Officer or any other authorized officer may recover the sums due from the obligors as provided for in condition 2 above.*

16. *Any other order issued by the Central Government in this regard shall be final and binding and we, the obligors hereby undertake to comply unconditionally with such an order.*

If each and every one of the above conditions is duly complied with by us, the obligors, the above written bond-cum-legal

undertaking shall be void and of no effect, otherwise the same shall remain in full force and effect and virtue."

27.3. Whereas, in the instant case, it appears from the facts and evidences discussed supra that M/s. BBLLP had imported 1329 cases of foreign brand liquor, beer etc. in container no. WHLU2952855 covered under Bill of Lading No. JEAIXY00006 dated 20.06.2022 and deliberately mis-declared the same as 917 cases in the IGM No. 2314820 dated 21.06.2022 and KASEZ Bill of Entry No. 1008329 dated 09.06.2022 with intent to clear the excess quantity of concealed 412 cases into DTA to avoid payment of Customs Duty and other duties/taxes.

27.4. M/s. BBLLP have contravened the provisions of SEZ Act, 2005 and Rules framed thereunder as well as provisions of the Customs Act, 1962, in as much as they did not disclose the actual quantity, value and description of goods while filing the said Bill of Entry, before the Customs authorities. The same was done with an intention to evade the Customs Duty and such an act cannot be considered as curative, instead it shows culpable mental state. Hence, import of such goods without due compliance with the respective law may have to be categorized as "Smuggling" within the meaning of Section 2(39) of the Customs Act, 1962, inasmuch as such goods were imported in violation of provisions of Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder.

27.5. The act of suppression of material facts by way of mis-declaration on the part of M/s. BBLLP have rendered the said import consignments of **1329 cases of** foreign brand liquor, beer etc. , having total declared assessable value of **Rs.69,03,683/-** liable for confiscation under Sections **111(m)** of the Customs Act, 1962.

27.6. The excess quantity of 412 cases of subject goods were not declared in the Bill of Entry and thereby, the entire quantity of 1329 cases of foreign brand liquor are liable to confiscation under Section **111(l)and 111 (m)** of the Customs Act, 1962.

27.7. The 11 wooden pallets which were used to conceal the smuggled goods of 412 cases, are also liable to confiscation under Section **119** of the Customs Act, 1962.

27.8. As per the documents and stock position available on record as provided by M/s. BBLLP, there was shortage of 511 cases as discussed supra. M/s. BBLLP failed to explain the reason for such shortage and the reason given by them i.e. spilling out of goods does not seem acceptable without having supporting documents/evidence

and availability of empty cans or any other substantial material on record. Further, from the two sheets having heading 'WITHOUT BILL' and 'W/BILL' recovered from their premises , it appears that M/s. BBLLP had also cleared the said 483 cases of subject goods covered under the said 02 sheets, to DTA without issuance of invoice/bill and without payment of Customs Duty. On being pointed out such shortage by DRI, M/s. BBLLP has paid **Rs. 12,57,982/-** as anticipated Duty liability against such shortage. Since it appears that the 511 + 483 cases of subject goods having total assessable value of **Rs.73,14,312/-**were cleared to DTA without bills, without payment of Duty and without permission of proper officer, the same are liable to confiscation (though not physically available) in terms of Section **111(m)** and Section **111(j)** of Customs Act, 1962.

27.9. As regards the seized 2328 cases of subject goods, it appears that neither Smt. Suchita Bharatsinh Narawat, nor her employees could explain the proper reason for shortage in the stock available in their warehouse. They did not explain the purpose of preparing sheets/pages having heading 'WITHOUT BILL' and 'W/BILL' thereby failed to provide proper documents and clarification with respect to the stock of imported goods detained under Detention Memo dated 29.06.2022. Further, they also failed to comply with the provisions laid down under Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder with respect to the expired Beer available in their stock. Looking to the track record and modus operandi of M/s. BBLLP to declare lesser quantity of subject goods in the import documents and to clear the goods without bills evading the Customs Duty in violation of the provisions of Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder, it appears that the 2328 cases of foreign brand liquor, Beer etc. having total assessable value of **Rs.52,73,873/-**were also offending in nature in as much as the material particulars and stock thereof was not explained properly by M/s. BBLLP with documentary evidences and hence these 2328 cases of subject goods were also liable for confiscation under Section **111(m)** of Customs Act, 1962.

27.10. As regards the issuance of Show Cause Notice under Section 124 of Customs Act, 1962 in relation to confiscation of goods seized vide Seizure Memos dated 29.06.2022 & 13.12.2022, looking to the substantial time required to complete the investigation of the case, the Commissioner of Customs, Customs House, Kandla granted extension for issuance of Show Cause Notice under Section 124 of Customs Act, 1962 for further six months in terms of proviso to Section 110(2) of the Customs Act, 1962. M/s. BBLLP were conveyed

this aspect vide letter F.No. GEN/ADJ/COMM/477/2022-AdjnO/o Commr-Cus-Kandla dated 19.12.2022 (**RUD No.38**)

27.11. During investigation, it was noticed that M/s. BBLLP had classified the following kind/brands of Liquor in the Bill of Entry No. 1008329 dated 09.06.2022 and the documents for past consignments under the given Tariff

Items, whereas, the appropriate classification thereof appear to be as under:- **Table-V**

S. No.	Name/type/brand of Liquor	CTH mentioned in the Bills of Entry filed by M/s. BBLLP	Appropriate CTH/Tariff Item
1	Vodka	22083012	22086000
2	GIN	22083019	22085091
3	Wine	22083012	22042990
4	Taqila	22083019	22089091
5	Champagne	22083019	22041000

Since the respective Tariff Items mentioned in column IV of above Table-V appears to be appropriate classification of the concerned type/brand of Liquor as per Customs Tariff, the classification adopted by M/s. BBLLP as per column III of said Table-V, is liable to be rejected and the same should be re-classified under the respective appropriate classification as mentioned supra.

28. Valuation:-

28.1. In terms of Rule 47(4) of SEZ Rules, 2006 readwith Rule 48 (2) of SEZ Rules, 2006, Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder.

28.2. In the instant case, M/s. BBLLP did not provide the details of DTA buyers to whom the 483+511 cases of imported goods were sold by them without Bill and without payment of Duty. Hence, the transaction value in this case is not available. Whereas, valuation of imported goods is to be done in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

28.3. Whereas, Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 applies where imported goods which are same in all respects, including physical characteristics, quality and reputation, as the goods being valued except for minor difference in appearance that do not affect the value of the goods. Further, Rule 5 of Customs Valuation

(Determination of Value of Imported Goods) Rules, 2007 applies where the imported goods with goods although not like in all respect but having characteristics and like component making them have the same functions and interchangeable commercially, both identical and similar goods should be produced in the country in which the goods being valued were produced and produced by the same person who produced the goods under examination, or where no such goods are available, goods purchased by different persons. Besides, while applying the said rules, the transaction rules of the identical/similar goods have to be viewed at the same commercial level and substantially in the same quantity the goods being valued.

28.4. In the instant case, during investigation, M/s. BBLLP had provided Price List for various Brands of Liquor , Beer etc. imported by them from time to time and sold to their clients (**RUD No.39**). Hence, for computation of Customs Duty payable on the goods cleared to DTA as appeared from the shortage of goods in stock of M/s. BBLLP and two sheets recovered from their premises, the assessable value of subject goods involved in this case have been considered as declared by M/s. BBLLP in the concerned documents/evidences, and/or, as per the price list furnished by M/s. BBLLP. As regards the 729 cases of expired Beer, the assessable value has been taken from the source Bill of Entry bearing no. 1006529 dated 17.05.2021.

29. Demand of Duty:-

29.1. Further as per the conditions laid down under the legal provisions of Special Economic Zone Act and Rules made thereunder in respect of removal of goods in the Domestic Tariff Area, it is provided that a unit may sell goods and services in the Domestic Tariff area on payment of Customs duties under Section 30 of the SEZ Act, 2005 read with Rule 47 of SEZ Rules, 2006, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy.

29.2. The DTA sale is subject to restrictions/prohibitions under ITC(HS) of any other law applicable in respect of import of like goods into India, unless exempted otherwise. The Section 30 of SEZ Act, 2005 provides for levy of Customs Duty equivalent to the import duty on the goods cleared from SEZ To DTA. Since the Customs Duty is leviable on import of goods under Section 12 of Customs Act, 1962, it implies that the duty in case of DTA sale of goods from SEZ to DTA is chargeable under Section 12 of the Customs Act, 1962. As apparent from the facts discussed in foregoing paras, M/s. BBLLP have cleared the subject goods imported without payment of duty to DTA i.e. **511 cases** found short in the stock and **483 cases** as per the two sheets/pages recovered during search , from KASEZ to DTA and failed in

making payment of appropriate Customs Duty. M/s. BBLLP have thus violated the provisions Customs Tariff Act, 1975, Section 12 and various other provisions of Customs Act, 1962 read with of Section 30 of the SEZ Act, 2005 and Rule 47 of SEZ Rules, 2006. Hence, the goods actually imported in to DTA in India were liable to Customs duty on imports. Also, with regard to the **729 cases** of Beer imported without payment of Duty and found expired during Panchnama dated 28/29.06.2022, M/s. BBLLP are liable to pay applicable Customs Duty on these 729 cases so imported without payment of Duty.

29.3. From all above narrated facts, it appears that M/s. BBLLP were liable to pay the Customs Duty applicable on the supply of goods (imported without payment of Duty) in DTA in terms of Section 30 of SEZ Act, 2005 read with Rule 47 of SEZ Rules, 2006, Section 12 of Customs Act, 1962 and Customs Tariff Act, 1975. A Chart detailing calculation of Customs Duty payable in this case is enclosed herewith as **Annexure-D** to this Show Cause Notice.

29.4. Had DRI not initiated investigation against the fraudsters / conspirators and M/s. BBLLP in the instant matter, the duty evasion by way of clandestine clearance of imported goods without payment of Duty would have continued indefinitely. Considering the deliberate act of fraud, collusion, willful misstatements, suppression of material facts and diversion of goods to DTA without permission of proper officer, the extended period of demand under Section 28 (4) of the Customs Act, 1962 is attracted in the instant case and the Customs Duty amounting to **Rs.1,22,30,869/-** is liable to be demanded and recovered alongwith interest from M/s. BBLLP under Section 28(4) of the Customs Act, 1962 read with Section 28AA of the said Act.

30. Roles and penalties:-

30.1. Role and culpability of Importer M/s. BBLLP and its Partner Smt. SuchitaBharatsinhNarawat:-

30.1.1. As per the facts and evidences discussed supra, it is evident that M/s. BBLLP under sole supervision and guidance of its active Partner Smt. Suchita Bharatsinh Narawat were indulging in evasion of Customs Duty by way of misdeclaring the imported goods with respect to quantity and other material particulars. From the specific intelligence gathered by DRI and outcome of execution thereof i.e. recovery of 412 excess cases as well as the sheet recovered from the office cum warehouse of M/s. BBLLP showing bifurcation of payment made through Banking Channel for invoice value and through cash for undeclared goods, it became apparent that M/s. BBLLP and their Partner Smt. Suchita Bharatsinh Narawat deliberately mis-

declared the import consignment. In the instant case, all the import documents such as invoice, packing list, Bill of Lading, etc. were also containing the mis-declared quantity of 917 cases in place of 1329 cases found during examination. This aspect and acceptance of payment for single import consignment in two different modes i.e. by banking channel and in cash through *Angadia* route by the overseas supplier strongly indicate that M/s. BBLLP and their Partner Smt. Suchita Bharatsinh Narawat colluded and connived with the overseas supplier and the notify party and all other associates/agents. It appears that despite having evidences against them, Smt. Suchita Bharatsinh Narawat, Partner of M/s. BBLLP in connivance with the supplier described a concocted story of placing two orders for 917 cases and 1329 cases. It is pertinent to mention here that no further import consignment of 917 cases arrived in India which solely indicate that the story of placing 02 orders and mis-sent of consignment having 1329 cases of subject goods, is fictitious.

30.1.2. From the shortage noticed in the stock, recovery of two sheets having heading 'W/BILL' and 'WITHOUT BILL', report of LCB/Police and vague and illusive submissions made by M/s. BBLLP through their Partner Smt. Suchita Bharatsinh Narawat, it is evident that in the instant case the impugned goods were initially imported duty free at KASEZ and part thereof was subsequently sold to DTA without discharging any Customs duty as required under Section 30 of SEZ Act, 2005 read with Rule 47 of SEZ Rules, 2006, Section 12 of Customs Act, 1962 and Customs Tariff Act, 1975. M/s. BBLLP and Smt. Suchita Bharatsinh Narawat has thus evaded the Customs Duty in violation of law.

30.1.3. It was the DRI enquiries which had unearthed the modus-operandi and revealed that the subject goods were diverted to DTA. The act of showing lesser quantity of subject goods in the Bill of Entry and other related documents clearly shows fraud, mis-declaration, and willful act of evasion of duty on the part of M/s. BBLLP, its active Partner, and other associates. They were fully aware of clandestine clearance of goods in DTA but conspired, suppressed and colluded through fraud and mis-declaration and evaded Customs Duty to the tune of **Rs.1,22,30,869/-** (as mentioned in **Annexure-D** to this Show Cause Notice).

30.1.4. Smt. Suchita Bharatsinh Narawat did not disclose the name of key persons working behind this conspiracy of smuggling and thereby Duty evasion. Also, she did not provide whereabouts of Shri Shinan and also failed to provide various details and documents assured by her to be provided. She did not disclose the reason of shortage in the stock and details of Buyers to whom the 483 +511 cases of subject goods covered under two sheets were cleared. By expressing her unawareness about such sheets and purpose of preparing the same, it appears that she tried to shift the

responsibility on her staff. On the contrary, she had given vague and illogical reasons thereof without supported with facts and evidences mis-leading the investigation whereas she should have cooperated in the investigation and tendered correct statement in compliance of Summons issued to her under Section 108 of Customs Act, 1962.

30.1.5. The importer/any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, is liable to penalty under **Section 112 (a)** of the Customs Act, 1962. In terms of Section 112(b) of Customs Act, 1962, acquiring possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, is liable to penalty under **Section 112 (b) of Customs Act, 1962**. Where the duty has not been levied or has not been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall, also be liable to pay a penalty under Section **114A** of the Customs Act, 1962. Further, if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of Customs Act, shall be liable to a penalty under Section **114AA** of Customs Act, 1962. Moreover, any person who contravenes any provision of Customs Act or abets any such contravention or who fails to comply with any provision of the Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty under Section **117** of Customs Act, 1962.

30.1.6. In the instant case, by evading applicable Customs Duties on the goods cleared to DTA without Bill and the goods found short in their stock as well as on expired Beer, M/s. BBLLP rendered themselves liable to Penalty under **Section 114A** of Customs Act, 1962.

30.1.7. Further, by way of evading applicable Customs Duties on goods illicitly cleared to DTA without preparing bills and without filing DTA Bill of Entry, by mis-declaring the quantity of goods in the import consignment covered under Bill of Entry No. 1008329 dated 09.06.2022, by not maintaining proper records of stock, by violating the conditions of LOA and Bond cum Undertaking furnished by them, M/s. BBLLP and Smt. Suchita Bharatsinh Narawat rendered the subject goods liable for confiscation

under Section 111 of Customs Act, 1962. It is an admitted fact that all import related activities in the firm M/s. BBLLP were looked after by Smt. Suchita Bharatsinh Narawat who herself used to place orders with overseas suppliers and finalized the deal for import of subject goods in connivance with the supplier, notify party and other associates. Thus, M/s. BBLLP and Smt. Suchita Bharatsinh Narawat were knowingly concerned in purchasing, selling and dealing with of subject goods which were liable to confiscation under Section 111 of Customs Act, 1962. Thus, M/s. BBLLP and Smt. Suchita Bharatsinh Narawat are separately liable to separate penalties under **Section 112 (a) and 112(b)** of the Customs Act, 1962.

30.1.8. Since M/s. BBLLP and Smt. Suchita Bharatsinh Narawat 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 Quantity, Value etc., with intent to clear the excess quantity in DTA without issuance of Bill and without payment of Duty/taxes, therefore M/s. BBLLP and Smt. Suchita Bharatsinh Narawat shall also be separately liable to penalty under **Section 114AA** of the Customs Act, 1962.

30.1.9. For their various acts of non-cooperation, non-production of details and documents and mis-leading in the investigation by Smt. Suchita Bharatsinh Narawat as discussed supra, M/s. BBLLP and Smt. Suchita Bharatsinh Narawat have made themselves separately liable to penalty under **Section 117** of Customs Act, 1962.

30.2. Role and culpability of employees of M/s. BBLLP viz. Shri Ramesh Kumar Goud and Shri Chandan Mohandas Peshwani:-

30.2.1. Shri Ramesh Kumar Goud and Shri Chandan Mohandas Peshwani were employees of M/s. BBLLP during the material period. When Smt. Suchita Bharatsinh Narawat deposed in her statement that she was unaware about the purpose of preparing two sheets having heading 'WIHOUT BILL' and 'W/BILL' and also did not specify the reasons of shortage in their stock, Summons were issued to Shri Ramesh Kumar Goud and Shri Chandan Mohandas Peshwani directing them to appear before investigating officers to tender statement and to explain the facts and evidences. In response to the Summons issued to them, Shri Ramesh Kumar Goud tendered his statement on 01.09.2022. As discussed supra, Shri Ramesh Kumar Goud had deposed in his statement that after his marriage held in December, 2021 (on 09.12.2021), during the period from January, 2021 to April, 2022, he remained in his native village in Rajasthan with family ; that he was sick for the period from April, 2021 to June, 2021. Whereas, it was reported by LCB /Police Authorities that Shri Ramesh

Kumar Goud was arrested in the year 2021 in the charge of possessing Liquor in DTA which was reportedly cleared from M/s. BBLLP. Further, as per version of Smt. Suchita Bharatsinh Narwat, Partner of M/s. BBLLP, Shri Ramesh Kumar Goud was looking after stock related affairs in M/s. BBLLP, whereas, in his statement Shri Ramesh Kumar Goud denied of doing so. In his statement, Shri K.M. Mathew who used to file Bill of Entry on behalf of M/s. BBLLP also stated that Shri Ramesh Kumar Goud used to come to provide documents from M/s. BBLLP and the Bill of Entry No. 1008329 dated 09.06.2022 was filed by his firm as per the import documents provided by the said employee. He added that after filing of Bill of Entry no. 1008329 dated 09.06.2022 and after getting Transshipment Permission from Customs, Kandla, after around two weeks, Shri Ramesh Kumar Goud again approached him with a different set of import documents including Bill of Lading showing quantity of import goods as 1329 cases to file amendment for the previous Bill of Entry No. 1008329 dated 09.06.2022; that he stated the reason for amendment that the supplier had sent them incorrect documents containing 917 cases instead of 1329 cases. From these facts, it appears that Shri Ramesh Kumar Goud was aware about the documentation and stock related matters of M/s. BBLLP but he deliberately refused to accept this fact even after submissions made by Smt. Suchita Bharatsinh Narawat about his role and responsibility. Thus, it appears that Shri Ramesh Kumar Goud mis-led the investigation by suppressing facts and deposing incorrect submissions during statement recorded under Section 108 of Customs Act, 1962. Also, he failed to provide the details of documents assured by him such as his Aadhar Card No., Bank Account details, details of spilled quantity of subject goods, particulars of Invoice 402 etc. Shri Ramesh Kumar Goud was arrested by police authorities in the past for possessing the Liquor in DTA which was reportedly cleared from M/s. BBLLP, KASEZ, it further appears that Shri Ramesh Kumar Goud was aware about the entire affairs of M/s. BBLLP including the shortage in the stock and modus operandi being adopted by them for evasion of Customs Duty by way of importing excess quantity and by clearing the goods from KASEZ to DTA without issuing Bills and without payment of Duty. From above, it appears that Shri Ramesh Kumar Goud has abetted the evasion of Customs Duty and violation of provisions of Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder and thereby rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He was having reason to believe that the subject goods were liable to confiscation under Section 111 of Customs Act, 1962 even then he had dealt with such goods. Shri Ramesh Kumar Goud also knowingly caused to be made/signed/used the import documents and other related documents relating to the subject goods pertaining to M/s. BBLLP. For these acts of omission and commission, Shri Ramesh Kumar Goud has rendered himself

liable to Penalty under Section **112(a), 112(b), 114AA** of the Customs Act, 1962.

30.2.2. By way of tendering mis-leading facts and by not providing the details and documents assured by him, Shri Ramesh Kumar Goud have not complied with the Summons issued to him under Section 108 of Customs Act, 1962. By doing so, Shri Ramesh Kumar Goud has rendered himself liable to penalty under **Section 117** of Customs Act, 1962.

30.2.3. Shri Chandan Mohandas Peshwani was issued Summons dated 02.12.2022 and 12.04.2023 directing him to appear before investigating officer, to tender statement, to produce /explain documents/evidences but they did not make compliance to the Summons and failed to make appearance for tendering statement. By the above act of him, his version could not be recorded with regard to the facts and evidences connected to him. Hence, by disobeying the Summons issued to him to which he should have made compliance, Shri Chandan Mohandas Peshwani has rendered himself liable to penalty under **Section 117** of Customs Act, 1962.

30.3. Role and culpability of ShriShinan:-

30.3.1. Shri Shinan is a person who was working in the field of import and he has been found involved in mis-declaration and concealment of offending goods in other consignments imported at Kandla port. On noticing his name in this case in the printout/sheet having heading 'SHINAN BHAI PAYMENT DETAIL', Summons were issued to him but he did not appear to tender statement on the given date. Inquiries were carried out with Smt. Sucheta Bharatsinh Narawat about Shri Shinan but she did not disclose whereabouts of Shri Shinan and stated that the transactions dated 22.04.2022, 23.04.2022, 24.04.2022 and 02.06.2022 mentioned in the said printout /sheet were relating to loans with their known persons; though she failed to provide any documentary evidence in this regard. The specific mention of the name of Shri Shinan in the said printout/sheet having payment particulars of import consignment of 1329 cases covered under Bill of Entry No. 1008329 dated 09.06.2022, nonappearance of Shri Shinan before investigating officers to tender his version and vague submissions made by Smt. Sucheta Bharatsinh Narawat indicate that Shri Shinan was concerned with the said import consignment and he was connected with regard to payment of the same. Since the payment of such consignment was bifurcated in banking mode for declared quantity of 917 cases and by cash for the undeclared 412 cases, it appears that Shri Shinan was well aware about deliberate mis-declaration in the said import consignment with ulterior motive of evasion of Customs Duty. It is pertinent to mention here that the payment for said consignment has taken place as per version of

Smt. Sucheta Bharatsinh Narawat, it thus appears that the omission and commission on the part of Shri Shinan has abetted the evasion of Customs Duty and violation of provisions of Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder. His acts have rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962 and in spite of having reason to believe that the subject goods were liable to confiscation under Section 111 of Customs Act, 1962, he had dealt with such goods. Shri Shinan also knowingly caused to be made/signed/used the import documents and other related documents relating to the subject goods pertaining to M/s. BBLLP. For these acts of omission and commission, Shri Shinan has rendered himself liable to Penalty under Section **112(a), 112(b), 114AA** of the Customs Act, 1962.

30.3.2. Shri Shinan was issued Summons dated 02.12.2022 and 12.04.2023 directing them to appear before investigating officer , to tender statement, to produce /explain documents/evidences but he did not make compliance to the Summons and failed to make appearance for tendering statement. By the above act of him, his version could not be recorded with regard to the facts and evidences connected to him. Hence, by disobeying the Summons issued to him to which he should have made compliance, Shri Shinan has rendered himself liable to penalty under **Section 117** of Customs Act, 1962.

30.4. Role and Culpability of declared overseas supplier M/s. Mufasa General Trading LLC, Dubai (UAE) and declared notify party M/s. Connect Logistics Cargo LLC, Dubai (UAE)

30.4.1. M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) were declared supplier and notify party respectively in respect of live consignment covered under Invoice No. INV00656 dated 02.06.2022 (Bill of Lading No. JEAIXY00006 dated 20.06.2022) imported by M/s. BBLLP. As discussed above that the quantity of goods was declared as 917 cases in all the documents issued by/arranged by the said declared supplier, whereas, on examination of the consignment based on the intelligence gathered by DRI, there were 1329 cases found in the said consignment. From this, it appears that the said supplier and notify party viz. M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) respectively had knowingly issued import documents showing lesser quantity in connivance with M/s. BBLLP as apparent from the bifurcation of payment (70% in banking channel and 30% in cash through *Angadia*) mentioned in the sheet having heading 'SHINAN BHAI PAYMENT DETAIL' resumed from warehouse cum office premises of M/s. BBLLP under Panchnama dated 23/24.06.2022. As apparent from the email conversations provided by the

shipping line, it appears that after putting the subject consignment on hold by DRI, M/s. BBLLP insisted M/s. Mufasa General Trading LLC, Dubai (UAE) who insisted the shipping line to amend the Bill of Lading with respect to quantity of goods and accordingly further Bill of Lading was got created by them showing quantity of goods as 1329 cases. Further, Smt. Suchita Bharatsinh Narawat had produced a Certificate dated 23.06.2022 said to have been issued by M/s. Mufasa General Trading LLC in which it was claimed that M/s. BBLLP placed two orders (one for 917 cases and another for 1329 cases) and they mistakenly sent the consignment of 1329 cases under documents pertaining to the consignment of 917 cases. It was also claimed in the Certificate that they would dispatch the other consignment of 917 cases soon (at that point of time), however, till date no such consignment arrived in India and /or reported by M/s. BBLLP or the said supplier. The story of placing 02 orders and mis-sent of consignment having 1329 cases of subject goods under documents of consignment having 917 cases, is concocted and fictitious. These facts and evidences clearly indicate that M/s. BBLLP connived with M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) and as per their mutual collusion, the invoice/packing list, Bill of Lading etc. were prepared by deliberately showing lesser quantity of the subject goods and the payment of differential quantity was made in Cash/*Angadia*. M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) were issued Summons dated 08.08.2022 (to M/s. Mufasa General Trading LLC only), 02.12.2022 and 12.04.2023 to get their version but they did not respond to the same in any manner.

30.4.2. From above facts and evidences, it appears that by way of abetting the mis-declaration of the quantity and value of goods in the import consignment covered under Bill of Entry No. 1008329 dated 09.06.2022 with intend to evasion of applicable Customs Duties, in violation of conditions of LOA and Bond cum Undertaking furnished by M/s. BBLLP, M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) rendered the subject goods liable for confiscation under Section 111 of Indian Customs Act, 1962. They were knowingly concerned in selling and dealing with of subject goods which were liable to confiscation under Section 111 of Indian Customs Act, 1962. Thus, M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) are separately liable to separate penalties under **Section 112 (a) and 112(b)** of the Indian Customs Act, 1962.

30.4.3. Since M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) knowingly and intentionally made/signed/used or caused to be made/signed/used the import

documents (Invoice, Packing List, Bill of Lading, Bill of Entry etc.) which was false or incorrect in material particular Quantity, Value etc., with intend to abet the clearance of the excess quantity in DTA without issuance of Bill and without payment of Duty/taxes, therefore M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) shall also be separately liable to penalty under **Section 114AA** of the Indian Customs Act, 1962.

30.4.4. For their various acts of non-cooperation, non-production of details and documents and mis-leading in the investigation by M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) as discussed supra, M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) have made themselves separately liable to penalty under **Section 117** of Indian Customs Act, 1962.

31. Now therefore, **M/s. Brews Barron LLP, Phase-1, Plot no. 383, Sector-4,**

Kandla Special Economic Zone, Gandhidham (Kutch) (IEC No. ABMFM0547K) were called upon to show cause as to why:-

- (i) the 1329 cases of subject goods, having declared assessable valued at **Rs. 69,03,683** (Rupees Sixty Nine Lakh Three Thousand Six Hundred Eighty Three only), as detailed in **Annexure-A** should not be confiscated under Section 111(l) and 111(m) of the Customs Act, 1962 and **11 wooden pallets**, should not be confiscated under Section 119 of the Customs Act, 1962.
- (ii) the 2328 cases of subject goods having assessable valued at **Rs. 52,73,873/-** (Rupees Fifty Two Lakh Seventy Three Thousand Eight Hundred Seventy Three only) as detailed in **Annexure-B and Annexure-C**, (including 729 cases mentioned in Annexure-D), should not be confiscated under Section 111(m) of the Customs Act, 1962.
- (iii) the 511+483 cases of subject goods, having assessable valued at **Rs. 73,14,312/-** (Rupees Seventy Three Lakh Fourteen Thousand Three Hundred Twelve only) (**though not physically available**), as detailed in **Annexure-D** should not be confiscated under Section 111(m) and 111(j) of the Customs Act, 1962.
- (iv) The classification of various kind/type of Liquor mentioned in Column II of Table-V (in Para -27.11) adopted by M/s. BBLLP under Tariff Item mentioned in Column III of Table-V respectively should not be rejected

and the same should not be re-classified under appropriate CTH as mentioned in the Column IV of the Table-V respectively.

- (v) the Customs duty amounting to **Rs. 1,22,30,869/-** (Rupees One Crore, Twenty Two Lakh, Thirty Thousand, Eight Hundred and Sixty Nine only) chargeable on the said offended goods cleared/sold in to DTA (as shown in enclosed **Annexure-D**) should not be demanded and recovered under Section 28 (4) of Customs Act, 1962 and the Customs Duty of **Rs. 12,57,982/-** voluntarily paid by M/s. BBLLP should not be appropriated against their total liability.
- (vi) interest at appropriate rate should not be demanded and recovered on the duty demanded at (vi) above under Section 28AA of the Customs Act, 1962.
- (vii) penalty should not be imposed upon them under Sections 112(a), 112(b), 114A, 114AA and 117 of the Customs Act, 1962.
- (viii) the Bond furnished by them against the consignments imported duty free under provisions of SEZ Act, 2005 and Rules framed thereunder but sold as such to the domestic market, should not be enforced and security, if any furnished with bond, should not be encashed and appropriated towards their duty liabilities, interest thereon, fine and penalties.

32. Further, **the following persons**/companies/firms/concerns as appearing in Column 2 of the following Table-VI, were individually and separately called upon to show cause as to why penalty should not be imposed on each of them individually under below mentioned penal provisions, as per the Customs Act, 1962 (as appearing at Column 3 to 6 of the Table-VI):-

Table-VI

S. No.	Name	Penal provisions under Customs Act, 1962				
		(3)	(4)	(5)	(6)	
1	Smt. Suchita Bharatsinh	112(a)	112(b)	114AA	117	
	Narawat					

2	Shri Ramesh Kumar Goud	112(a)	112(b)	114AA	117
3	Shri Chandan Mohandas Peshwani				117
4	Shri Shinan	112(a)	112(b)	114AA	117
5	M/s Mufasa General Trading LLC	112(a)	112(b)	114AA	117
6	M/s Connect Logistics Cargo LLC	112(a)	112(b)	114AA	117

DEFENCE SUBMISSION:-

33. M/s. BBLLP and partner Smt. Suchita Bharatsinh Narawat in her submission, interalia, stated that-

“3. At the outset, the allegations and averments leveled in the SCN are hereby denied.

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

4. For the ease of ready reference, -

4.1 Annexure-“A” to the notice contains details of goods found in container No. WHLU 2952855 that was examined on 28/29.06.2022.

4.2 Annexure-“B” to the notice contains details of goods found in store room/warehouse of M/s. Brews Barron.

4.3 Annexure-“C” to the notice contains details of goods found in cavity of store room/warehouse of M/s. Brew Barron.

4.4 Annexure-“D” to the notice contains calculation of duty payable on a total of 44

items.

5. Demand of Custom duty totally amounting to Rs. 1,22,30,869/- isbased on computed given in Annexure-“D” to the notice.

5.1 In the said annexure, items at Sl. No. 1 to 8 involving duty amounting to Rs. 17,34,642.05 appear to be relatable to Table-II of the notice. According to this, a variation of 511 cases of different brands of liquor and beer was noticed in the stock position.

5.2 It may be appreciated from record that owing to ill-health of her mother, Ms. SuchitaBharatsinghNarawat, the active partner of M/s. Brews Barron was unable to attend to day-to-day affairs and provide exact stock position. Consequently, M/s. Brews Barron have deposited an amount of Rs. 12,57,982/- towards duty payable on the said 511 cases, though no evidence is brought on record to suggest clearance of any item in a clandestine manner.

6. Balance duty is demanded on items at Sl. No. 09 to 44 of Annexure-“D” by relying on the following:

(i) one print-out of computerized/typed sheet containing brand-wise quantity and value of certain goods with remark “WITHOUT BILL” and “WITH BILL” in respect of 180 cases showing value of USD 20310 (Rs. 15,23,250/-) – found from office-cum-warehouse premises of M/s. Brews Barron.

(ii) one handwritten paper/sheet containing brand-wise quantity of certain gooods with remark “W/BILL” in respect of 303 cases.

6.1 For both (i) and (ii) above, it is alleged that:

“8.2 *From perusal of the content of these paper/sheets having heading 'WITHOUT BILL' and 'W/BILL', it appears that like wise the present import consignment covered under KASEZ Bill of Entry bearing no. 1008329 dated 09.06.2022 wherein 412 cases of subject goods were imported in excess to the quantity declared, in the past also, M/s. BBLLP imported subject goods and declared less quantity thereof in the import documents with intend to sale/clear the subject goods without issuing invoice/bill or any other legitimate document.”*

6.2 Thus, duty is demanded on items at Sl. No. 09 to 44 of Annexure-“D” on the basis of assumption and presumption that like excess goods allegedly found in container number WHLU 2952855 covered by Bill of Entry No. 1008329 dated 09.06.2022 filed with KASEZ, goods appearing in para 5.3 (i) and (ii) above were also imported in excess of declared quantity and were cleared in a clandestine manner without payment of duty.

6.3 It is a settled law that no duty can be demanded on the basis of surmises or conjectures or probabilities, particularly when all goods that are entered into KASEZ are under physical control of Custom officers.

6.4 Moreover, the notice does not identify any person who may have prepared or authored the above sheets (for cross-examination by M/s. Brews Barron).

6.5 Inasmuch as except for the above private computerized/typed/hand written sheets, there is no other evidence based on which it is alleged that certain goods had entered into KASEZ and were removed clandestinely. It was imperative for the investigating officers to identify the author of these papers and record

evidence from him. Without this, these pieces of papers have no evidential value and cannot be form the basis for demanding duty.

6.6 The proposition advanced in the notice tantamount to making repeated assumptions. It is first assumed that goods were brought inside KASEZ and then it is assumed that such goods were removed from KASEZ in a clandestine manner. As a matter of facts, no such goods existed. The very existence of such goods is hereby disputed by M/s. Brew Barron.

6.7 Reliance is placed on the following amongst a large number of decisions to support the contention that without identifying author, documents have no evidential value:

(i) Nidhi Auto Pvt. Ltd. v/s Commissioner of Central Excise, NOIDA-I
2019 (6) TMI 899 – CESTAT ALLAHABAD

(ii) K. G. Constructions v/s Commissioner of Central Excise, Lucknow
2018 (10) TMI 1207 – CESTAT, ALLAHABAD

(iii) Alladi Drilling Equipment Pvt. Ltd. v/s Commr. of C. Ex., Hyderabad
2010 (4) TMI 680 – CESTAT, BANGALORE

(iv) Commr. of C. Ex., Coimbatore v/s Rajaguru Spinning Mills (P) Ltd.,
2009 (5) TMI 226 – CESTAT, CHENNAI

(v) Commissioner of Central Excise, Raipur v/s Eureka Iron & Energy Pvt. Limited, 2017 (4) TMI 151 – CESTAT, NEW DELHI.

6.8 On the basis of above, it is submitted that demand of duty under Section 28(4) of

Customs Act,1962 on goods mentioned in Annexure-“D” is not tenable. Consequently, interest under Section 28AA and penalty under Section 114A is also not leviable on the said goods.

7. The proposal to confiscate 1329 cases (as per details given in Annexure-“A” to the notice) under Section 111 (l) and 111 (m) of Customs Act,1962 is not tenable in the eyes of law.
 - 7.1 Out of 1329 cases, 917 were duly declared in the Bill of Entry also. Hence, there is no way in which the same can be held as mis-declared so as to attract provisions of Section 111 (m) and 112 (a), (b) and 114AA of Customs Act,1962.
 - 7.2 As per the proposal at para 31 (i) of the notice, Section 119 is invoked in respect of 11 wooden pallets only.
 - 7.3 With regard to balance 412 cases, it is submitted that the impugned notice inter alia proposing confiscation of the said goods under Section 111 (f) and (m) of Customs Act,1962 is premature in light of the fact that the application made by M/s. Brews Barron for amendment of Bill of Entry No. 1008329 dated 09.06.2022 is pending decision by the competent Custom authority in KASEZ.
 - 7.4 The notice would rely upon a computerized/typed sheet containing heading ‘SHINAN BHAI PAYMENT DETAIL’ to allege that M/s. Brews Barron had remitted cash amount representing the price of 412 cases that were found in excess from container No. WHLU 2952855. However, no evidence is gathered from the author of the said document nor anyone representing the supplier.
 - 7.5 Without identifying the author of the sheet and gathering proper evidence, a hypothesis is made that Rs. 10.0 lakh mentioned therein represented cash amount

paid by M/s. Brews Barron to overseas supplier towards balance 30% for 412 cases found excess in the aforesaid container.

7.6 However, the hypothesis is completely baseless inasmuch the said sheet contains separate entries of Rs. 20,00,000/- + 10,00,000/- + 26,50,000/- + 2,90,000/- totally

Rs. 59,40,000/- as against Rs. 22,52,537.4 as “bank paid” making it evidently clear that amount remitted through bank was 37.92% only and not 70% as recorded in the sheet.

7.8 Owing to above, reliance placed on the sheet scanned and reproduced on page 5 of the impugned notice is completely erroneous.

8. The proposal to confiscate 2328 cases of goods (as per details given in Annexure-“B” and “C” to the notice) under Section 111 (m) of Customs Act,1962 is not tenable in the eyes of law.

8.1 The allegation qua 2328 cases is reproduced below for the ease of ready reference:

“27.9 As regard the seized 2328 cases of subject goods, it appears that neither Smt. SuchitaBharatsinhNarawat, nor her employees could explain the proper reason for shortage in the stock available in their warehouse. They did not explain the purpose of preparing sheets/pages having heading ‘WITHOUT BILL’ and ‘W/BILL’ thereby failed to provide proper documents and clarification with respect to the stock of imported goods detained under Detention Memo dated 29.06.2022. Further, they also failed to comply with the provisions laid down under Customs Act,1962, SEZ Act,2005 and Rules framed thereunder with respect to the expired Beer available in their stock. Looking to the track record

and modus operandi of M/s. BBLLP to declare lesser quantity of subject goods in the import documents and to clear the goods without bills evading the Customs duty in violation of the provisions of Customs Act,1962, SEZ Act,2005 and Rules framed thereunder, it appears that the 2328 cases of foreign brand liquor, Beer etc. having total assessable value of Rs. 52,73,873/- were also offending in nature in as much as the material particulars and stock thereof were not explained properly by M/s. BBLLP with documentary evidences and hence, these 2328 cases of subject goods were also liable for confiscation under Section 111 (m) of Customs Act,1962.”

- 8.2 Unlike Annexure-A, where a verification of goods physically found in the container was made with reference to the packing list to allege excess import of 412 items, there is no such allegation with regard to 2328 cases covered by Annexure-“B” (2049 cases) and “C” (279 cases) to the notice. These goods have been found from the premises of M/s. Brews Barron and there is no allegation that these were in excess of any declaration made in the bills of entry filed by them from time to time at the time of entry into KASEZ.
- 8.3 Hence, it is submitted that 2328 cases valued at Rs. 52,73,873/- is not liable for confiscation under Section 111 (m) of Customs Act,1962. Consequently, M/s. Brews Barron is not liable to penalty under Section 112 (a) and/or (b) and 114AA of Customs Act,1962 insofar as aforesaid goods concerned.
9. At para 31 (iii) of the notice, it is proposed to confiscate 511+483 cases valued at Rs. 73,14,312/- under Section 111 (m) and 111 (j) of Customs Act,1962.

- 9.1 As per the admitted position, the said goods are not physically available.
- 9.2 511 cases are covered by Table-II of the impugned notice indicating difference in stock.
- 9.3 483 cases have been worked out by totaling 180 cases appearing in computerized sheet scanned and reproduced on page 7 of the notice and 303 cases appearing in a hand written chit scanned and reproduced on page 8 of the notice.
- 9.4 At the cost of repetition, it is submitted that no author of above loose papers has been identified. Hence, these cannot constitute any valid evidence for any purpose including passing orders for confiscation under Section 111 of Customs Act,1962.
- 9.5 Without prejudice to above, it is an admitted position that goods are not physically available for confiscation. The same were neither seized nor released at any point in time. At the cost of repetition, M/s. Brews Barron is disputing the very existence of any such goods.
- 9.6 Larger Bench of Hon'ble Tribunal in the case of Shiv KripaIspat Pvt. Ltd., 2009 (235) ELT 623 has held that goods cannot be confiscated when not available and redemption fine is not imposable.
- 9.7 The above decision would squarely apply to 511 cases for which M/s. Brews Barron came forward and deposited duty, being unable to reconcile stock position at the material time. As for 483 cases, the very existence of such goods is disputed and hence, no fine and penalty under Section 112 (a) and/or (b), 114A, 114AA and 117 is imposable qua such non-existent goods.

10. The pre-requisite for invoking provisions of Section 114AA of Customs Act,1962 is “knowledge” or “intention”.

10.1 It may be appreciated from the above submissions that there is no evidence to show that M/s. Brews Barron as well as Smt. SuchitaBharatsinhNarawat, partner have made, signed or used, or caused to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of Customs Act,1962.

10.2 Hence, M/s. Brews Barron and Smt. SuchitaBharatsinhNarawat, partner is not liable to penalty under Section 114AA of Customs Act,1962.

11. In the case of Metro Marine Services Pvt. Ltd. v/s Commissioner of Customs, Kandla, 2008 (223) ELT 227 (T), Hon'ble Tribunal has held that firms cannot have mensrea and hence, penalty under Section 112 (b) of Customs Act,1962 cannot be imposed on firms.

11.1 Applying the above decision, no penalty under Section 112 (b) and 114AA is imposable on M/s. Brews Barron.

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

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

14. All in all, it is our humble submission that the allegations levelled qua goods and against M/s. Brews Barron and Smt. SuchitaBharatsinhNarawat, Partner and the penal proposals based thereon are not tenable in the eyes of law.

15. Simultaneous penalty on the firm and partner is not imposable, as duly held by Hon'ble Tribunal in the case of D. Jewel v/s Commr. of C. Ex. & Service Tax, Surat-I, 2019 (369) ELT 1244 (Tri. – Ahmd.).

15.1 Inasmuch as penalty is proposed on M/s. Brews Barron, it is prayed not to impose separate penalty on Smt. SuchitaBharatsinhNarawat, Partner.

33.2 Shri Ramesh Kumar Gour, in his submission, interalia, stated that-

The impugned notice is issued in violation of the principles of natural justice inasmuch as it does not specify any particular goods which were rendered liable to confiscation under Section 111 so as to attract penalty provisions of Section 112 (a) and (b) of Customs Act,1962.

3.1 The impugned notice also does not specify any particular document which I knowingly or intentionally made, signed or used, or caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular, in the transaction of any business for the purpose of Customs Act,1962, so as to invoke Section 114AA of Customs Act,1962 against me.

3.2 Hence, without specifying the goods or document, no penalty can be lawfully imposed upon me under Section 112 (a), (b) and 114 AA of Customs Act,1962.

4. I may say and submit that being an employee of M/s. Brews Barron LLP. I complied with the directions of management and handed over all the documents required for preparing/amending bill of entry to Shri K. M Mathew who was responsible for preparing and filing Bills of Entry on behalf of M/s. Brews Barron LLP. This by itself would not make any goods liable to

confiscation under Section 111 so as to render myself liable to penalty under Section 112 (a) and/or (b) of Customs Act,1962.

5. The impugned notice despite alleging that I was arrested by police

authorities in past for possessing liquor allegedly cleared from M/s. Brews Baron

does not rely upon any document to support this allegation regarding clearance of liquor by M/s. Brews Barron in an illicit manner. The notice would also admit that no investigation is being carried out under the provisions of Customs Act,1962 in this regard. Hence, no adverse inference can be drawn from such vague allegations.

6. Provisions of Section 112 (a) and (b) operate in different situations

and hence, both cannot be invoked simultaneously.

7. Provisions of Section 117 are residuary in nature and hence, cannot

be invoked once Section 112 (a) and/or (b) and 114AA have been invoked.

8. Being an employee of M/s. Brews Barron LLP and a salaried person, I had acted in a bona fide. There is no evidence that I had acted with an intention to abet alleged wrong doing by my employer or for making any undue gain on this account.

9. I rely on the following amongst a large number of decisions inter

alia holding that an employee is not liable to penalty under Section 112 (a) and/or (b) and Section 114AA of Customs Act,1962:

- (i) SavithriJewellers Pvt. Ltd. - 2020 (374) ELT 754 (Tri.-Mumbai)
- (ii) Manohar Singh Rana - 2017 (357) ELT 1163 (Tri.-Del.)

(iii)	Hazel Mercantile Ltd.	-	2014 (308) ELT 113 (Tri.-Mumbai)
(iv)	Saurashtra Cement Ltd.	-	2013 (298) ELT 680 (Tri.-
	Ahmd)		
(v)	O. P. Agarwal	-	2005 (185) ELT 387 (Tri.-Del.)
(vi)	Cyber Express Pvt. Ltd.	-	2004 (172) ELT 388 (Tri. – Del.)

33.3 Shri Shinan in his submission dated 30.08.2023, interalia, stated the following:-

- (i) My name is Muhammad Shinan Namath Kattil, partner of M/s. Ionian Impex LLP, Shop No. 7 & 10, Ground Floor, Business Arcade, Plot No.08, Ward DC-2, Gandhidham, Gujarat-370201 hold IEC No.AAHF119781P and running a business of Customs Bonded Store(Supply of Liquor and Ship Stores)from May.2020 till Feb.2022 and discontinued the business due to shortage of fund. After Feb.2022 we had not made any business transaction till date in the said firm.
- (ii) The above show cause notice was issued on the basis of assumption and presumption, also without verifying the facts and involvement of myself.
- (iii) As alleged in Para 8.(i) RUD-14 regarding payment details shown in excel format, ***I state that I have never entered any business with M/s Brew Barron LLP, Kandla SEZ, Gandhidham till date.*** Due to shortage of funds I was unable to import full container of liquor and therefore, ***in the month of April'2022 I contacted the partner of M/s Brew Barron LLP, and enquired about the price of liquor and terms and condition of payment.*** When they asked my requirement, I told them that my requirement is for about 20 lakhs. Thereafter, I requested to give credit for the purchase of consignment, but she refused and demanded in advance, as I was not in a position to give 20 lakhs advance, I said we will meet again and will decide latter. Thereafter, till date I never met her or made any payment in advance against purchase of Bonded liquor. I do not know how M/s Brew Barron LLP, had made such an entry in their computer

and who had made it. From the payment details shown above it appears that the accounts were not maintained in the accounting method.

(iv) M/s Brew Barron LLP, Kandla SEZ, Gandhidham might have prepared the estimated expenses for importing the consignment and for the source from where the amount will be received. Also it is seen that the payment details are in the month of April, 2022 and the container imported in the month of June, 2022 so no business man gives 2 months advance amount for the purchase. Hardly it takes one week for the import of consignment from UAE. Also all the purchase of Liquor from Bond to Bond the payment is required to be made through Bank and no cash is accepted. So who pays cash in advance for the purchase and the transaction is done through Customs Officer only. Further, during recording the statement of the partner of M/s Brew Barron LLP, Kandla SEZ, Gandhidham Smt. Suchita Bharatsingh Narawat on 04.07.2022 and 29.08.2022 wherein she stated that the transaction mentioned in the sheet related to loan transaction with Shinan, but she has not clarified that the amount has been received from me and on which date and also regarding the Invoice No.402 mentioned in the above said sheet. Also the investigating officer has not verified the fact properly and gathered proper document evidence from M/s Brew Barron LLP, Kandla SEZ, Gandhidham in this regard. Further, there is no corroborative evidence produced by the department justifying the payment made in cash by me. On the point that the private note maintained by a person containing unauthorized entries is not a dependable record for proving payment made by me unless it is corroborated by other evidence. As per section 34 of the Indian Evidence Act,1872 Entries in the books of account [including those maintained in an electronic form] regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. Therefore, on the basis of these types of documents i.e. payment details shown in excel format the department cannot issue show cause notice to the individual as there is no role of such individual for the importation of the consignment. Therefore, the beret and

purported show cause notice is liable to be quashed and set aside as it is issued without justifying the documents.

(v) Further, on receipt of the summons dated 02.12.2022 on email I reported the officers of DRI, Regional Unit, Gandhidham 09.12.2022 and I was told that the officers are in filed and busy with some other job, so another summons will be issued latter. Thereafter, I received another summons dated 12.04.2022 for remaining present on 01.05.2022, but I could not remain present on the given date as I had seen the email on 03.05.2022 and also I was at Cambodia in search of business. (The proof of Passport entry is enclosed herewith for record). Thereafter, no summon was received by me till date. Therefore, the allegation made by the department in the said show cause notice that my involvement and role in importing the above said consignment is not true and totally baseless. Further, it is to note that the summons dated 02.12.2022 and 12.04.2022 as mentioned above is not taken as Relied upon Documents in this case.

(vi) The use of the expression 'abet' in Section 112(a) of the Customs Act, makes it implicit that the person charged, who is alleged to have abetted the acts of omission or commission, has knowledge and is aware of the said acts. A plain meaning of the word 'abet' means instigation, aid, encouragement of an offence 2. It necessarily involves the knowledge that the act being abetted is wrong. In this case neither the goods under seizure belong to me nor I have any role for importing the said consignment. Therefore, proposing penalty under section 112(a) of the Customs Act,1962 on an abettor without any mens rea is unsustainable and liable to be set aside.

PERSONAL HEARING:-

34. Opportunities of personal hearing were provided to all the noticees vide this office letters dated 15.03.2024, 30.04.2024 and 10.05.2024. Shri Vikas Mehta, Consultant appeared for personal hearing on 16.05.2024 on behalf of M/s. Brews Barron LLP, Smt. Suchita Bharatsinh Narawat, Partner and Shri Ramesh Kumar Gaur.

During the course of personal hearing, he submitted in regard of confiscation of goods that only undeclared goods and unaccounted goods which they were accepted are subject to confiscation and not all goods i.e. declared goods are not covered under the purview of section 111 (m) of the

Customs Act, 1962. He further added that goods 511 in numbers, which are mentioned at para 3 of the charging para of SCN are not liable for confiscation as these goods are not physically available and for the 483 cases mentioned in the same para were actually handwritten and since the author of the hand written goods is not identified therefore, duty can't be demanded on such basis. He further submitted that penalty under section 117 of the Customs Act can not be demanded along with the penalty Under section 112, section 114A and section 114AA.

He also submitted that partner and partnership firms cannot be penalized simultaneously, hence Smt. Suchita Bharatsinh Narawat, Partner M/s Brews Barron LLP is not liable for any penalty. For Shri Ramesh Kumar Gaud he submitted that he has been proposed for penalty on the ground that he has prepared the documents is not the sufficient ground and he should not be penalized.

DISCUSSION AND FINDINGS:-

- 35.** I have carefully gone through the SCN, defence submission and all the evidences available on record.
- 36.** The issues to be decided before me are:-
 - (i) Whether 1329 cases and 11 wooden pallets are liable to be confiscated under Sections 111 and 119 of the Customs Act, 1962 respectively;
 - (ii) Whether 2328 cases are liable to be confiscated under Section 111(m) of the Customs Act, 1962;
 - (iii) whether 511+483 cases are liable to be confiscated under Section 111(m) and 111(j) of the Customs Act, 1962
 - (iv) whether classification of various kind/type of Liquor mentioned in Column II of Table-V (in Para - 27.11) adopted by M/s. BBLLP under Tariff Item mentioned in Column III of Table-V respectively should not be rejected and the same should not be re-classified under appropriate CTH as mentioned in the Column IV of the Table-V respectively;
 - (v) Whether the Customs duty amounting to Rs. 1,22,30,869/- is liable to be demanded and recovered under Section 28 (4) of Customs Act, 1962 alongwith interest and penalty and the Customs Duty of **Rs. 12,57,982/-** voluntarily paid by M/s. BBLLP is to be appropriated against their total liability.
 - (vi) Whether penalty is imposable under various sections as proposed.

A. FINDINGS IN RESPECT OF 1329 CASES (IMPORTED VIDE Bill of Entry dated 09.06.2022) AND 11 WOODEN PALLETS:-

37. I find that on the basis of Intelligence that M/s BBLLP had mis-declared and concealed a large quantity of foreign brand liquor in an import consignment of goods declared as 'Assorted Whiskey and Liquor and Beer Beverages alongwith pallets' covered under container no. WHLU2952855 which was scheduled to arrive at KASEZ through vessel SSL DELHI, Voyage No. 069 E, IMO Code 9217034 at Kandla port, search was carried out at the premises of M/s. BBLLP by the officers of Customs House Kandla and DRI, Regional unit, Gandhidham. Intelligence further suggested that M/s. BBLLP was planning to smuggle the large quantity of foreign brand liquor, concealed inside the said container, over and above the declared quantity of 917 cartons/packages. As per the documents submitted by M/s. BBLLP on systems with regard to the subject consignment, the particulars declared in the import documents were as under:-

Table-A

IGM No. & Date	KASEZ Bill of Entry No. & Date	Invoice No. & Date	Bill of Lading No. & Date	Shipper	Notify Party	Declared quantity and description of goods
2314820 dated 21.06.20 22	1008329 dated 09.06.2022	INV00656 dated 02.06.2022	JEAIXY00006 dated 20.06.2022	M/s Mufasa General Trading LLC, Office 5 Al Nabodah Building 4 Deira, Dubai, PO Box-2376	M/s Notify Logistics Cargo LLC, Blue Shed WH No. RA08WF06 I Gate No. 7, Jebel Ali Free Zone, Dubai, UAE	917 Cases/ Assorted Whisky and Liquor, Beer Beverages etc.

38. Search of the warehouse/storeroom of M/s. BBLLP and 100% examination of the goods imported in container no. WHLU2952855 was carried out by officers of Customs House, Kandla and DRI Regional Unit, Gandhidham under Panchnama dated 28/29.06.2022 (**RUD No. 10**). During the examination of the import consignment, 1329 cases of foreign brand liquor, beer etc. were found stacked on wooden pallets in the said container.

Thus, there were 412 cases found in excess to the declared quantity of 917 cases for which the authorized representative of M/s. BBLLP viz. Shri Chandan Mohandas Peshwani failed to explain the reason during the Panchnama proceedings.

39. Since the 412 cases of foreign brand liquor, beer etc. were not declared in the IGM, Bill of Entry and import documents, and the same were concealed in declared 917 cases of the said goods and wooden pallets, the 412 cases of subject goods being liable for confiscation under Section 111 of Customs Act, 1962, were seized under Section 110(1) of Customs Act, 1962 vide Seizure Memo dated 29.06.2022 (**RUD No.11**). The 917 cases of foreign brand liquor, beer etc. and 11 wooden pallets which were used for concealment of said 412 cases of smuggled goods, were also seized under Section 119 of Customs Act, 1962 vide Seizure Memo dated 29.06.2022.

40. On scrutiny of the documents and printouts resumed during searches carried out at the office cum warehouse premises of M/s. BBLLP, incriminating document/printout, as given below, was found. A computerized/typed sheet containing heading 'SHINAN Bhai PAYMENT DETAIL' was found relevant to the live import consignment covered under KASEZ Bill of Entry no. 1008329 dated 09.06.2022. Image of the same is reproduced hereunder (**RUD No.14**):-

SHINAN BHAI PAYMENT DETAIL

2252537 BY BANK	22/04/2022
1000000 CASH	23/04/2022
2650000 ANGDIYA	24/04/2022

5902537

4-1-22
J-1
F-1

INVOICE	29638.65	70%	2252537.4		
BAL	12702.28	30%	965372.28		
INVOICE402	49782.68	100%	3783483.68		
EXPENCE	13144.41	27%	998975.16		
		TOTAL	8000368.52		
			2000000 SHINAN BHAI		
			2252537.4 BANK PAID	22.4.2022	
			1000000 CASH PAID	23.04.2022	
			2650000 PAID ANGDIYA	24.04.2022	
			290000 PAID CASH	2/6/2022	
		TOTAL PAID	8192537.4		
		BAL	-192168.88		

2000000



In the instant import consignment covered under KASEZ Bill of Entry bearing no. 1008329 dated 09.06.2022, as per Invoice bearing no. INV00656 dated 02.06.2022, the declared invoice value was USD 29638.65. **In the said sheet recovered from the office cum warehouse premises of M/s. BBLLP, this Invoice amount of USD 29638.65 (INR 2252537.4) was shown as 70% and balance was as USD 12702.28 (INR 965372.28)**. It has been specified in the sheet itself that the Invoice amount INR 2252537 was paid on 22.04.2022 through Bank and an amount of INR 1000000 was paid in Cash on 23.04.2022. It indicated that the balance amount USD 12702.28 (INR 965372.28) pertained to the excess imported quantity of 412 cases in the instant import consignment covered under KASEZ Bill of Entry bearing no. 1008329 dated 09.06.2022 for which payment of INR 1000000 (round off figure of INR 965372.28) was made in cash. It is therefore clear that for the instant import of 1329 cases, 412 cases which were found in excess to the declared quantity

of 917 cases, was deliberately suppressed by M/s. BBLLP from declaring in the import documents in connivance with the overseas supplier and other related key persons.

41. Smt. Suchita Bharatsingh Narawat Alias Sucheta Singh, Partner of M/s. BBLLP, in her statement, recorded under Section 108 of the Customs Act, 1962, on 04.07.2022 (RUD No. 18), interalia, stated that all of their employees were working under her supervision and instructions. She informed that Mr. Mathew of M/s. Sonal Logistics, Gandhidham was looking after preparation and filing Bills of Entry, Shipping Bills for clearance of consignments from Customs and his employee Shri Ramesh Goud was looking after stock related matters. She further stated that she herself used to discuss with the overseas supplier/buyer, negotiate rates and finalise the deal in her firm M/s. BBLLP.

41.1 As regards the subject import consignment covered under Bill of Lading No. JEAIXY00006 dated 20.06.2022, IGM No. 2314820 dated 21.06.2022 and KASEZ Bill of Entry No. 1008329 dated 09.06.2022, Smt. Suchita Bharatsingh Narawat deposed that they had placed two orders for 917 cases and 1329 cases to the overseas supplier M/s. Mufasa General Trading LLC, UAE. She further deposed that they had made payment of first order of the qty. as 917 cases but due to mistake at the supplier's end, they (supplier) had sent the consignment of 1329 cases with documents showing qty. as 917 cases. She further deposed that they had applied for amendment in the Bill of Entry, on 29.06.2022, proposing change in the qty. from 917 cases to 1329 cases.

41.2 In this regard, it is clear that DRI had already initiated the investigation in the matter and the consignment was put on hold on 23.06.2023, the application made by M/s. BBLLP for amendment in the Bill of Entry with respect to the quantity of goods, was an afterthought to avoid action for misdeclaration in the IGM, Bill of Entry and related import documents.

41.3 I find that M/s. BBLLP had imported 1329 cases of foreign brand liquor, beer etc. in container no. WHLU2952855 covered under Bill of Lading No. JEAIXY00006 dated 20.06.2022 deliberately mis-declared the same as 917 cases in the IGM No. 2314820 dated 21.06.2022 and KASEZ Bill of Entry No. 1008329 dated 09.06.2022 with a malafide intent to clear the excess quantity of concealed 412 cases into DTA to avoid payment of Customs Duty and other duties/taxes.

41.4 I find that M/s. BBLLP have contravened the provisions of SEZ Act, 2005 and Rules framed thereunder as well as provisions of the

Customs Act, 1962, as they have failed to disclose the actual quantity, value and description of goods while filing the said Bill of Entry, before the Customs authorities. The same was done with an intention to evade the Customs Duty. Hence, import of such goods without due compliance with the respective law has to be categorized as "Smuggling" within the meaning of Section 2(39) of the Customs Act, 1962, inasmuch as such goods were imported in violation of provisions of Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder.

41.5 I find that the noticees, in their submission, have argued that out of 1329 cases, 917 were duly declared in the Bill of Entry also. Hence, there is no way in which the same can be held as mis-declared so as to attract provisions of Section 111 (m) and 112 (a), (b) and 114AA of Customs Act, 1962. Further, they have submitted that with regard to balance 412 cases, it is submitted that the impugned notice inter alia proposing confiscation of the said goods under Section 111 (f) and (m) of Customs Act, 1962 is premature in light of the fact that the application made by M/s. Brews Barron for amendment of Bill of Entry No. 1008329 dated 09.06.2022 is pending decision by the competent Custom authority in KASEZ.

41.6 In this regard, it is important to note that the amendment of Bill of Entry was made after the initiation of investigation by the officers of DRI proving the same to be an afterthought. Further the argument that 917 cases were duly declared is incorrect as the imported consignment had 1329 cases and not 917 cases and it was not an typographical error in the Bill of Entry, as above discussion indicates, rather it was a pre-meditated attempt to declare 917 cases instead of the total quantity of 1329 cases and to make use of semblance of declarations but to smuggle goods into SEZ by utilizing the exemptions provided to SEZ unit which in turn has rendered the imported goods of 1329 cases liable for confiscation.

41.7 Clearly, the act of suppression of material facts by way of mis-declaration on the part of M/s. BBLLP have rendered the said import consignments of 1329 cases of foreign brand liquor, beer etc. , having total declared assessable value of Rs. 69,03,683/- liable for confiscation under Sections 111(m) of the Customs Act, 1962. In this regard, I rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai) wherein the Hon'ble Tribunal held that when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not-. This judgement of Hon'ble Tribunal has been upheld in Apex court in 2003 (ELT A309 (SC)).

41.8 Further, I find that 11 wooden pallets which were used to conceal the smuggled goods of 412 cases, are also liable to confiscation under Section 119 of the Customs Act, 1962.

FINDINGS IN RESPECT OF 2328 CASES:-

42. During the search of the warehouse/storeroom of M/s. BBLLP, **2049 cases** of foreign brand liquor, beer etc. were found which included 729 cases of Beer which expired in January, 2022. Further, during the course of search carried out at the warehouse/storeroom of M/s. BBLLP, in the ceiling of the back side portion of the warehouse, a cavity was noticed by the visiting officers. On being broke opened the said specially created ceiling, **279 cases** of foreign brand liquor, beer, water bottles etc. were found.

42.1 As regards the 2328 cases (2049+279) of foreign brand liquor, beer etc. found in the warehouse/storeroom and in the cavity made in the specially created ceiling, the authorized representative of M/s. BBLLP could not provide the stock position and any statutory records due to which the stock verification of the warehouse could not take place during the Panchnama dated 28/29.06.2022. Accordingly, these 2328 cases of foreign brand liquor, beer etc. were detained vide Detention Memo dated 29.06.2022 for further necessary action subject to verification thereof (**RUD No.12**). The seized and detained goods were handed over to Shri Chandan Mohandas Peshwani, Authorised Representative of M/s. BBLLP vide Supratnama dated 29.06.2022 for safe custody (**RUD No. 13**)

42.2 On being asked why did their firm had made cavity specially created in the ceiling of the warehouse from where 279 cases of liquor, beer, water etc. were recovered under Panchnama dated 28/29.06.2022 and why were the keys of the said area not provided to the officers during Panchnama dated 28/29.06.2022, Smt. Suchita Bharatsingh Narawat stated that the particular place under the ceiling from where 279 cases of liquor, beer, water etc. were recovered under Panchnama dated 28/29.06.2022 was having access with keys and small door on the ceiling; that it was created to store expensive Liquors but later on they started storing all kind of liquors in it; that she herself used to maintain the keys of that particular area below the ceiling of the warehouse and she had sent the same with keys of storeroom /warehouse but thier staff Shri Chandan Mohandas Peshwani being newly joined employee could not identify the keys of that particular area from the bunch of many keys during the Panchnama dated 28/29.06.2022 and could not convince the officers.

42.3 As regards the seized 2328 cases of subject goods, neither Smt. Suchita Bharatsinh Narawat, nor her employees could explain the

proper reason for shortage in the stock available in their warehouse. They did not explain the purpose of preparing sheets/pages having heading 'WITHOUT BILL' and 'W/BILL' thereby failed to provide proper documents and clarification with respect to the stock of imported goods detained under Detention Memo dated 29.06.2022. Further, they also failed to comply with the provisions laid down under Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder with respect to the expired Beer available in their stock. Looking to the abovesaid modus operandi of M/s. BBLLP to declare lesser quantity of subject goods in the import documents and to clear the goods without bills evading the Customs Duty in violation of the provisions of Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder, it is evident that the 2328 cases of foreign brand liquor, Beer etc. having total assessable value of Rs. 52,73,873/-were also offending in nature **in as much as the material particulars and stock thereof was not explained properly by M/s. BBLLP with documentary evidences.** It is clear that the stock was not maintained by the SEZ unit and the noticee has failed to account for the stock of 2328 cases, which is in contravention of the LoA granted to them and provisions of SEZ Act, 2005 and rules made thereunder.

In view of the same, these 2328 cases of subject goods are also liable for confiscation under Section 111(m) of Customs Act, 1962.

FINDINGS IN RESPECT OF (511+483) CASES CLEARED WITHOUT BILL:-

43. On the basis of verification of stock summary provided by M/s. BBLLP vis-à-vis the stock found physically available in their warehouse/storeroom during Panchnama dated 28/29.06.2022, a shortage of 511 cases of following brands of liquor, beer beverages was noticed:-

Table-B

Sr. No.	Brand/marking of liquor/beer	Size of bottle/can (in ML)	No. of Cases found during Panchnama dated 28/29.06.2022	Stock as per submission of M/s. BBLLP	Short
1	VAT 69	750	136	236	-100
2	Royal Horse Finest Scotch Whiskey	750	100	134	-34
3	Old Smuggler finesh Scotch Whiskey	700	112	162	-50
4	Teacher's Highland Cream	750	99	116	-17

DIN: 20240671ML000032323F
OIO No.KND-CUSTM-000-COM-05-2024-25

	Perfection of old Scotch Whiskey				
5	Denoff Vodka IV	700	99	120	-21
6	GIN Kingston 908 YVO	1000	151	201	-50
7	Goldmeister Premium Lager	500	1283	1515	-232
8	Grey Goose Vodka (Brown carton loose packing)	750	7	18	-7
9	Grey Goose Vodka (blue Colour original packing)	750	4		
	Total		1991	2502	-511

43.1 In this regard, I find that a printout of computerized/typed sheet containing brand wise quantity and value of subject goods under headings 'WITHOUT BILL' in above portion and 'WITH BILL' in its below part, was found. Under the heading 'WITHOUT BILL', total 180 cases having value USD 20310 (INR 15,23,250/-) was mentioned which establishes sale/clearance of subject goods without issuance of proper bills/invoices. Image of the same is reproduced hereunder (**RUD No. 15**):-

DIN: 20240671ML000032323F
OIO No.KND-CUSTM-000-COM-05-2024-25

WITHOUT BILL

SR NO	PRODUCT	QTY	RATE IN USD	TOTAL AMT	IN /INR
1	GREY GOOSE LTR	10	119	1190	89250
2	RED LABEL	10	108	1080	81000
3	BLACK LABEL	5	212	1060	79500
4	GOLD LABEL	5	207	1035	77625
5	TEACHER	10	75	750	56250
6	GLENFIDITCH	10	275	2750	206250
7	BLACK & WHITE	15	83	1245	93375
8	BALLANTINE	20	109	2180	163500
9	J & B	20	112	2240	168000
10	VAT 69	10	62	620	46500
11	JAMESON	10	75	750	56250
12	BALLANTINE 750	30	102	3060	229500
13	RED LABEL 750	15	100	1500	112500
14	ABSOLUTE 750	10	85	850	63750
	TOTAL QTY	180	TOTAL USD	20310	1523250

WITH BILL

SR NO	PRODUCT	QTY	RATE IN USD	TOTAL AMT	IN /INR
1	BLACK LABEL	5	212	1060	79500
2	BLUE LABEL	5	1050	5250	393750
3	ROYAL SALUTE	5	790	3950	296250
4	ABSOLUTE	5	91	455	34125
5	GLFNIVET	5	375	1875	140625
6	GLENFIDITCH	5	275	1375	103125
7	MONKEY SHOLDER	5	269	1345	100875
8	GLEN MORRANGE	5	300	1500	112500
9	GREY GOOSE	5	119	595	44625
10	BELVENDER	5	167	835	62625
11	RED WINE	15	35	525	39375
12	WHITE WINE	5	35	175	13125
13	BALLANTINE	16	109	1744	130800
14	VAT 69	5	62	310	23250
15	TEACHER	5	75	375	28125
16	BLACK & WHITE	10	83	830	62250
17	REDLABEL	5	108	540	40500
18	GOLD LABEL	5	207	1035	77625
19	ORANGEBOOM	100	8	800	60000
20	SAN MAGUEL	100	13	1300	97500
21	BUDWISER	150	15.5	2325	174375
22	CARLSBERG	150	15	2250	168750
23	TIGER BEER	50	16	800	60000
24	HENIken	50	17	850	63750
25	HOGGARDEN	20	30	600	45000
26	CORONA	10	25	250	18750
	TOTAL QTY	746	TOTAL AMT	32949	2471175

20-06-2022

Scan
4-7-22Sl.no 201301
24/6/22Chand
24/6/22

43.2 Further, a handwritten paper/sheet containing brand wise quantity of subject goods under heading 'W/BILL' and that of under heading 'BILL' at its back side was found. Under the heading 'W/ BILL', total 303 cases of subject goods was mentioned which was in respect of sale/clearance of subject goods without issuance of proper bills/invoices. Image of the same is reproduced hereunder (**RUD No. 16**):-

22/7

M/T/W/T/F/S/SU/	Date
W/ 18/22	
13.2 - 30 20	
REO 2a - 30	
13.8 W - 35 40	
38/3 - 35	
G. 1/1/21 - 20	1240
G. - Fins - 20 15	
Somision - 15	1x12
13.2ne 2case - 5	
" " 11.750M2 - 3	
CURUS - 5 1840	
G. 1/1/21 - 5 "	
G. fins - 5 "	
Grey Grapes - 10	
A.B. - 5	
A.D. Fiver - 10	
Kamas Red wine - 10	
Salt Creek - 10	
Gold 2usd - 10	
Sake - 2	
G. Langmange - 10	
	seen
	5 left
	4-7-22
	303

M/T/W/T/F/S/SU/		Date
	<u>BILL</u>	31/07/2022
MIX BOTTLES	— 700 cases	
13 L	— 20	0.1500M — 350
61 fuses	— 10	calssony — 100
61- Spirit	— 10	714M — 100
13.8 W	— 20	14000M — 50
Bullente	— 25	sumamt (21800)
12c2 Lurel	— 20	
— 8 B	— 20	
Gold Label	— 5	
PCP 2002	— 10	smoke m 1
14- Gun	— 5	— 2.5 — 2
color maver	— 5	— 2.5 — 2
Fams. Grouse	— 10	3000M
W. Grass	— 10	2000M
Grey Grouse	— 10	500M
Vizvinder	— 0.10	1000M
Saras Creek Red wine	— 15	2000M
Kansas	— 10	1500M
Chivas 18yo	— 10	2000M
		230

On perusal of the content of these paper/sheets having heading 'WITHOUT BILL' and 'W/ BILL', it is apparent that M/s. BBLLP like the present import consignment covered under KASEZ Bill of Entry bearing no. 1008329 dated 09.06.2022 wherein 412 cases of subject goods were imported in excess to the quantity declared, in the past also, M/s. BBLLP imported subject goods and declared less quantity thereof in the import documents with intend to sale/clear the subject goods without issuing invoice/bill or any other legitimate document.

43.3 M/s. BBLLP vide letter dated 25.07.2022 (**RUD No. 22**) replied that they could not find out the reasons for shortage in stock; that since they have compiled entire stock and provided the same to DRI, the shortage in some brands of liquor and beer cases may be considered taking lenient view.

43.4 On being asked about the shortage of 511 cases, M/s. BBLLP vide letter dated 08.08.2022 (**RUD No. 24**) replied that due to spilled/damage of Beer, whisky and on account of some un-avoidable protocols the shortage occurred. They further submitted that they were ready to make compliance of Customs/KASEZ laws by making payment of applicable duty on the shortage of stock.

43.5 As regards the 02 made up files resumed during the Panchnama dated 23/24.06.2022 drawn at the office premises of M/s. BBLLP, and on being asked to explain the content of the two sheets/pages, she stated that one of the sheets/pages which was typed, details of liquor/beer , qty., rate in USD, total amount in USD and INR was mentioned under headings 'WITHOUT BILL' and 'WITH BILL" that in another page i.e. handwritten, names/short forms of liquors/beer alongwith digits which appear as quantity were mentioned under heading 'W/BILL' at one side and under another heading 'BILL' at back side was written. She assured that since these sheets/pages were resumed from her firm's office premises, she would inquire with her staff about the content and facts of these sheets/pages and would revert back within 2-3 days.

43.6 On being asked who had prepared these two pages/sheets in M/s. BBLLP and under whose directions, Smt. Suchita Bharatsingh Narawat stated that she was not aware who had prepared these sheets/pages and under whose directions. She assured that she would inquire with her staff about the same and would revert back within 02 to 03 days. On being further asked, she replied that his employee Shri Ramesh Goud used to operate/use the computer system pertaining to the Lenovo make CPU resumed from their office premises under Panchnama dated 23/24.06.2022.

43.7 On being specifically asked whether the goods mentioned in these pages under headings 'WITHOUT BILL' and 'W/BILL' were cleared from their warehouse without issuance of Bills and if so, who were the buyers of such goods cleared without issuance of bills, she denied to have cleared any goods without issuance of bill from their warehouse.

43.8 In this regard, I find that they have argued, in their submission, that the duty is demanded on the basis of assumption and presumption that like excess goods allegedly found in container number WHLU 2952855 covered by Bill of Entry No. 1008329 dated 09.06.2022 filed with KASEZ, such goods were also imported in excess of declared quantity and were cleared in a clandestine manner without payment of duty. It is a settled law that no duty can be demanded on the basis of surmises or conjectures or probabilities, particularly when all goods that are entered into KASEZ are under physical control of Custom officers. Moreover, the notice does not identify any person who may have prepared or authored the above sheets (for cross-examination by M/s. Brews Barron). They have further argued that as except for the above private computerized/typed/hand written sheets, there is no other evidence based on which it is alleged that certain goods had entered into KASEZ and were removed clandestinely. It was imperative for the investigating officers to identify the author of these papers and record evidence from him. Without this, these pieces of papers have no evidential value and cannot be form the basis for demanding duty. The proposition

advanced in the notice tantamount to making repeated assumptions. It is first assumed that goods were brought inside KASEZ and then it is assumed that such goods were removed from KASEZ in a clandestine manner. As a matter of facts, no such goods existed. The very existence of such goods is hereby disputed by M/s. Brew Barron. They have relied upon various judgements.

43.9 In this regard, it is pertinent to note that (i) M/s. BBLLP vide letter dated 08.08.2022 (RUD No. 24) has accepted the shortage of 511 cases since the same was corroborated by import/export documents provided by them. They have admitted such shortage by saying that **due to spilled/damage of Beer, whisky and on account of some un-avoidable protocols the shortage occurred.** In view of the same, it is clear that this fact of shortage of 511 cases was in their knowledge and they never came forward before the Customs authorities to prove their bona fide intentions. (ii) Further, as discussed in the show cause notice, during the investigation, the LCB/Police Authorities informed DRI that in the year 2021, they had seized foreign brand liquor from Gandhidham (DTA area) which was cleared from M/s. BBLLP, KASEZ and Shri Ramesh Kumar Goud was arrested. This proves that M/s. BBLLP had indulged in the past in clandestine removal of liquor in DTA. This aspect has never been refuted by them in their submission. (iii) The demand of duty in respect of 483 cases is on the basis of handwritten sheets which has been recovered from the premises of M/s. BBLLP and Smt. Suchita Singh in her statement dated 04.07.2022 has admitted that she was looking after overall activities and all of their employees were working under her supervision and instructions. Further there was no satisfactory explanation of such documents, more so, when facts of the case indicate that the shortage was on account of clandestine removal. Therefore, their argument that demand of duty in respect of 483 cases is without any evidence has no substance. It is crystal clear from the handwritten sheets that the SEZ unit got themselves engaged in importing 483 cases of liquor without bill and cleared the same in DTA without paying any duties of Customs.

43.10 I further find that M/s. BBLLP has failed to explain the reason for such shortage (511+483) and the reason given by them i.e. spilling out of goods is not acceptable without having supporting documents/evidence and availability of empty cans or any other substantial material on record. Further, from the two sheets having heading 'WITHOUT BILL' and 'W/BILL' recovered from their premises , it is evident that M/s. BBLLP had also cleared the said 483 cases of subject goods covered under the said 02 sheets, to DTA without issuance of invoice/bill and without payment of Customs Duty. On being pointed out such shortage by DRI, M/s. BBLLP has paid Rs. 12,57,982/- as anticipated Duty liability against such shortage. Since it is clear that the 511 + 483cases of subject goods having total

assessable value of Rs. 73,14,312/- were cleared to DTA without bills, without payment of Duty and without permission of proper officer, the same are liable to confiscation (though not physically available) in terms of Section 111 (m) and Section 111(j) of Customs Act, 1962.

43.11 The noticees have further relied upon the judgement of Larger Bench of Hon'ble Tribunal in the case of Shiv Kripa Ispat Pvt. Ltd., 2009 (235) ELT 623 to argue that goods cannot be confiscated when not available and redemption fine is not imposable. In this regard, it is important to note that the provisions of Section 125(1) as discussed below, don't necessitate the requirement of physical availability of goods for confiscation.

43.11.1 Section 125 of the Customs Act, 1962 provides for an option to pay fine in lieu of confiscation. Relevant paras of Section 125 are reproduced hereunder:-

"Section 125: Option to pay fine in lieu of confiscation:--

(1) **Whenever confiscation of any goods is authorized**

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

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of subsection (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed.

Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods."

43.11.2 It is apparent from the sub-section (1) of Section 125 that whenever confiscation of goods is authorized by this Act, the officer adjudging it shall

in the case of goods other than prohibited goods give an option to pay fine in lieu of confiscation. The pre-requisite for making an offer of fine under Section 125 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 125 of the Act rests is that the goods in question are liable to be confiscated under the Act. It is clear that the goods, amounting to assessable value of Rs. 73,14,312/- are liable to confiscation under the provision of Section 111 of the Customs Act, 1962 as discussed above, therefore the imposition of fine under Section 125 in lieu of confiscation is sustainable even though the goods are not available for confiscation.

43.11.3 In this regard, I rely on the Judgement of Hon'ble High Court of Madras in the case of M/s. Visteon Automotive Systems vs the Customs, 2017, wherein the Hon'ble Court in Para 23 categorically held that the physical availability of goods doesn't have any significance for imposition of redemption fine under Section 125, which is reproduced as under:-

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power

of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No.(iii)"

43.11.4 Further, the above judgement has been relied upon by the Hon'ble High Court of Gujarat in the matter of SYNERGY FERTICHEM PVT. LTD. Versus STATE OF GUJARAT {2020 (33) G.S.T.L. 513 (Guj.)}. The relevant Paras of the said judgement are reproduced hereinbelow:-

"174. The per-requisite for making an offer of fine under Section 130 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 130 of the Act rests is that the goods in question are liable to be confiscated under the Act. It, therefore, follows that what is sought to be offered to be redeemed, are the goods, but not the improper conduct of the owner to transport the goods in contravention of the provisions of the Act or the Rules. We must also bare in mind that the owner of the goods is liable to pay penalty under Section 122 of the Act. The fine contemplated is for redeeming the goods, whereas the owner of the goods is penalized under Section 122 for doing or omitting to do any act which rendered such goods liable to be confiscated under Section 130 of the Act. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise &

Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. ***The power to impose redemption fine***

springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

175. ***We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.***

176. We may also refer to and rely upon a Supreme Court decision in the case of M.G. Abrol v. M/s. Shantilal Chhotalal & Co, AIR 1965 SC 197, wherein the Supreme Court dealt with the very same issue and held as under;

"Another contention raised for the respondent is that the Additional Collector could not confiscate the goods after they had left the country and that therefore his order of confiscation of the scrap which according to him was not steel skull scrap was bad in law. The affidavit filed by the Additional Collector, appellant No. 1, mentions the circumstances in which the scrap exported by respondent was allowed to leave the country. It was allowed to leave the country after the Collector had formally seized it and after the agents of the shipping company had undertaken not to release the documents in respect of the cargo to its consignees. This undertaking meant that the cargo would remain under the control of the customs authorities as seized cargo till further orders from the Additional Collector releasing the cargo and making it available to the consignees by the delivery of the necessary documents to them. The documents were allowed to be delivered to them on the application of the respondents praying for the passing on of the necessary documents to the purchasers of the goods in Japan and on the respondents giving a bank guarantee that the full f.o.b. value to be released from the said parch would be paid to the customs authorities towards penalty or fine in lieu of confiscation that might be imposed upon the respondents by the adjudicating authority. The customs authorities had seized the goods when they were within their jurisdiction. It is immaterial where the seized goods be kept. In the circumstances of the case, the seized goods remained on the ship and were carried to Japan. The seizure was lifted by the Additional Collector only when the respondents requested and gave bank guarantee. "The effect of the guarantee was that in case the Additional Collector adjudicated that part of the goods exported was not in accordance with the licence and had to be confiscated, the respondents, would, in lieu of confiscation of the goods, pay the fine equivalent to the of the bank guarantee. Section 183 of the Act provides that whenever confiscation is authorised by the Act the Officer adjudging it would give the owner of the goods option to pay in lieu of confiscation such fine as the officer thinks fit. This option was extended to the respondent at the stage before the goods were released from seizure. The formal order of confiscation had to be passed after the necessary enquiry and therefore when passed in the present case after the goods had actually left this country cannot be said to be an order which

could not be passed by the Customs Authorities. I, therefore, do not agree with this contention."

In view of the above discussion, case laws and provisions of Section 125 of the Custom Act, 1962, I find it apt to impose fine in lieu of confiscation under section 125(1) of the Custom Act.

CLASSIFICATION OF GOODS:-

44. During investigation, it was noticed that M/s. BBLLP had classified the following kind/brands of Liquor in the Bill of Entry No. 1008329 dated 09.06.2022 and the documents for past consignments under the given Tariff Items, whereas, the appropriate classification thereof is as under:-

Table-C

S. No.	Name/type/brand of Liquor	CTH mentioned in the Bills of Entry filed by M/s. BBLLP	Appropriate CTH/Tariff Item
1	Vodka	22083012	22086000
2	GIN	22083019	22085091
3	Wine	22083012	22042990
4	Taqila	22083019	22089091
5	Champagne	22083019	22041000

Since the respective Tariff Items mentioned in column IV of above TableC is the appropriate classification of the concerned type/brand of Liquor as per Customs Tariff, the classification adopted by M/s. BBLLP as per column III of said Table-C, is liable to be rejected and the same is to be re-classified under the respective appropriate classification as mentioned supra. Further, the noticees have not contested the classification proposed in the show cause notice. In view of the same, I find that the classification proposed in the show cause notice is correct.

QUANTIFICATION OF DEMAND OF DUTY:-

45. I find that M/s. BBLLP have cleared the subject goods imported without payment of duty to DTA i.e. **511 cases** found short in the stock and **483 cases** as per the two sheets/pages recovered during search , from KASEZ to DTA and failed in making payment of appropriate Customs Duty.

M/s. BBLLP have thus violated the provisions Customs Tariff Act, 1975, Section 12 and various other provisions of Customs Act, 1962 read with of Section 30 of the SEZ Act, 2005 and Rule 47 of SEZ Rules, 2006. Hence, the goods actually imported in to DTA in India were liable to Customs duty on imports. Also, with regard to the **729 cases** of Beer imported without payment of Duty and found expired during Panchnama dated 28/29.06.2022, M/s. BBLLP are liable to pay applicable Customs Duty on these 729 cases so imported without payment of Duty.

46. It is evident that, had DRI not initiated investigation against the fraudsters / conspirators and M/s. BBLLP in the instant matter, the duty evasion by way of clandestine clearance of imported goods without payment of Duty would have continued indefinitely. Considering the deliberate act of fraud, collusion, wilfulmis-statement, suppression of material facts and diversion of goods to DTA without permission of proper officer, the extended period of demand under Section 28 (4) of the Customs Act, 1962 is attracted in the instant case and the Customs Duty amounting to Rs. 1,22,30,869/- (As per Annexure-D to the Show Cause Notice) is required to be demanded and recovered along with interest from M/s. BBLLP under Section 28(4) of the Customs Act, 1962 read with Section 28AA of the said Act.

PENALTIES UPON M/S. BREWS BARRON & PARTNER SMT. SUCHITA BHARATSINH NARAWAT, PARTNER:-

47. With regard to the penalty under Section 114A of the Customs Act, 1962, I find that as the goods imported by M/s. BBLLP, removed clandestinely in DTA, have already been held liable for confiscation. Further, they have not paid the Custom duties amounting to Rs.1,22,30,869/- by way of suppression of facts, therefore, I hold them liable for penalty under section 114A of the Finance Act, 1962 also. Further, while relying on the Board vide Circular no. 61/2002-Cus dated 20.09.2002, I hold that penalty under Section 114A is equal to the amount of duty and interest.

However, as per fifth proviso to Section 114A, when penalty under Section 114A is imposed, no penalty is leviable under Section 112 of the Customs Act, 1962.

47.1 With regard to penalties under Sections 112(a) and 112(b) of the Customs Act, 1962 upon Smt. Suchita Bharatsinh Narawat, I find that by way of evading applicable Customs Duties on goods illicitly cleared to DTA without preparing bills and without filing DTA Bill of Entry, by mis-declaring the quantity of goods in the import consignment covered under Bill of Entry No. 1008329 dated 09.06.2022, by not maintaining proper records of stock, by violating the conditions of LOA and Bond cum Undertaking furnished by them, Smt. Suchita Bharatsinh Narawathad rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. It is an admitted fact that all import related activities in the firm M/s. BBLLP were looked after by Smt. Suchita Bharatsinh Narawat who herself used to place orders with overseas suppliers and finalized the deal for import of subject goods in connivance with the supplier, notify party and other associates. Thus, Smt. Suchita Bharatsinh Narawat was knowingly concerned in purchasing, selling and dealing with of subject goods which were liable to confiscation under Section 111 of Customs Act, 1962. Thus, Smt. Suchita Bharatsinh Narawat is liable to separate penalties under Section 112 (a) and 112(b) of the Customs Act, 1962.

47.2 With regard to penalty under Section 114AA of the Customs Act, 1962, I find that M/s. BBLLP and Smt. Suchita Bharatsinh Narawat 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 Quantity, Value etc., with intend to clear the excess quantity in DTA without issuance of Bill and without payment of Duty/taxes, therefore M/s. BBLLP and Smt. Suchita Bharatsinh Narawat shall be

separately liable to penalty under Section 114AA of the Customs Act, 1962.

47.3 With regard to the penalties under Section 117 of the Customs Act, 1962, I find that for their various acts of non-cooperation, non-production of details and documents and mis-leading the investigation by Smt. Suchita Bharatsinh Narawat M/s. BBLLP and Smt. Suchita Bharatsinh Narawat have made themselves separately liable to penalty under Section 117 of Customs Act, 1962.

47.4 The noticees have argued that Simultaneous penalty on the firm and partner is not imposable, as duly held by Hon'ble Tribunal in the case of D. Jewel v/s Commr. of C. Ex. & Service Tax, Surat-I, 2019 (369) ELT 1244 (Tri. – Ahmd.). In this regard, I find that simultaneous penalties can be imposed both upon the firm and the partnership firms. Reliance is placed upon the judgement dated 29.01.2016 of Hon'ble high Court of Bombay in the matter of M/s. Amrit lakshmi Machine works vs the Commissioner of Customs (Import)- Customs Appeal Nos. 100-103 of 2012.

FINDINGS IN RESPECT OF EMPLOYEES OF M/S. BBLLP VIZ. SHRI RAMESH KUMAR GOUD AND SHRI CHANDAN MOHANDAS PESHWANI:-

48. I find that Shri Ramesh Kumar Goud and Shri Chandan Mohandas Peshwani were employees of M/s. BBLLP during the material period. When Smt. Suchita Bharatsinh Narawat deposed in her statement that she was unaware about the purpose of preparing two sheets having heading 'WIHOUT BILL' and 'W/BILL' and also did not specify the reasons of shortage in their stock, Summons were issued to Shri Ramesh Kumar Goud and Shri Chandan Mohandas Peshwani directing them to appear before investigating officers to tender statement and to explain the facts and evidences. In response to the Summons issued to them, Shri Ramesh Kumar Goud tendered his statement on 01.09.2022. Shri Ramesh Kumar Goud had deposed in his statement that after his marriage held in December, 2021 (on 09.12.2021), during the period from January, 2021 to

April, 2022, he remained in his native village in Rajasthan with family; that he was sick for the period from April, 2021 to June, 2021. However, it was reported by LCB/Police Authorities that Shri Ramesh Kumar Goud was arrested in the year 2021 in the charge of possessing Liquor in DTA which was reportedly cleared from M/s. BBLLP.

Further, as per version of Smt. Suchita Bharatsinh Narwat, Partner of M/s. BBLLP, *Shri Ramesh Kumar Goud was looking after stock related affairs in M/s. BBLLP*, whereas, in his statement Shri Ramesh Kumar Goud denied of doing so. In his statement, Shri K.M. Mathew who used to file Bill of Entry on behalf of M/s. BBLLP also stated that Shri Ramesh Kumar Goud used to come to provide documents from M/s. BBLLP and the Bill of Entry No. 1008329 dated 09.06.2022 was filed by his firm as per the import documents provided by the said employee. He added that after filing of Bill of Entry no. 1008329 dated 09.06.2022 and after getting Transshipment Permission from Customs, Kandla, after around two weeks, Shri Ramesh Kumar Goud again approached him with a different set of import documents including Bill of Lading showing quantity of import goods as 1329 cases to file amendment for the previous Bill of Entry No. 1008329 dated 09.06.2022; that he stated the reason for amendment that the supplier had sent them incorrect documents containing 917 cases instead of 1329 cases. From these facts, it is apparent that Shri Ramesh Kumar Goud was aware about the documentation and stock related matters of M/s. BBLLP but deliberately refused to accept this fact even after submissions made by Smt. Suchita Bharatsinh Narawat about his role and responsibility. Thus, it is clear that Shri Ramesh Kumar Goud mis-led the investigation by suppressing facts and deposing incorrect submissions during statement recorded under Section 108 of Customs Act, 1962. Also, he failed to provide the details of documents assured by him such as his Aadhar Card No., Bank Account details, details of spilled quantity of subject goods, particulars of Invoice 402 etc. Shri Ramesh Kumar Goud was arrested by police authorities in the past for possessing the Liquor in DTA which was reportedly cleared from M/s. BBLLP, KASEZ, it is evident that Shri Ramesh Kumar Goud was aware about the entire affairs of M/s. BBLLP including the

shortage in the stock and modus operandi being adopted by them for evasion of Customs Duty by way of importing excess quantity and by clearing the goods from KASEZ to DTA without issuing Bills and without payment of Duty.

48.1 Shri Ramesh Kumar Goud in his submission argued that being an employee of M/s. Brews Barron LLP, he had complied with the directions of management and handed over all the documents required for preparing/amending bill of entry to Shri K. M Mathew who was responsible for preparing and filing Bills of Entry on behalf of M/s. Brews Barron LLP. This by itself would not make any goods liable to confiscation under Section 111 so as to render myself liable to penalty under Section 112 (a) and/or (b) of Customs Act, 1962. He further argued that provisions of Section 112 (a) and (b) operate in different situations and hence, both cannot be invoked simultaneously.

48.2 In this regard, it is pertinent to note that Shri Ramesh Kumar Goud has indulged in contravention of both the sections 112(a) and 112(b) as his act or omission of act has rendered the goods liable for confiscation and he was directly involved in acquiring/possessing goods he knew was liable for confiscation.

48.3 From above, I find that Shri Ramesh Kumar Goud has willfully abetted the evasion of Customs Duty and violation of provisions of Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder and thereby rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He was in complete knowledge that the subject goods were liable to confiscation under Section 111 of Customs Act, 1962 even then he dealt with such goods. Shri Ramesh Kumar Goud also knowingly caused to be made/signed/used the import documents and other related documents relating to the subject

goods pertaining to M/s. BBLLP. For these acts of omission and commission, Shri Ramesh Kumar Goud has rendered himself liable to Penalty under Section 112(a), 112(b), 114AA of the Customs Act, 1962.

48.4 I further find that by way of tendering mis-leading facts and by not providing the details and documents assured by him, Shri Ramesh Kumar Goud have not complied with the Summons issued to him under Section 108 of Customs Act, 1962. By doing so, Shri Ramesh Kumar Goud has rendered himself liable to penalty under Section 117 of Customs Act, 1962.

48.5 Shri Chandan Mohandas Peshwani was issued Summons dated 02.12.2022 and 12.04.2023 directing him to appear before investigating officer, to tender statement, to produce /explain documents/evidences but he did not make compliance to the Summons and failed to make appearance for tendering statement. By the above act of him, his version could not be recorded with regard to the facts and evidences connected to him. Hence, by disobeying the Summons issued to him to which he should have made compliance, Shri Chandan Mohandas Peshwani has rendered himself liable to penalty under Section 117 of Customs Act, 1962.

FINDINGS IN RESPECT OF SHRI SHINAN:-

49. Shri Shinan is a person who was working in the field of import and he has been found involved in mis-declaration and concealment of offending goods in other consignments imported at Kandla port. On being noticed his name in this case in the printout/sheet having heading 'SHINAN BHAI PAYMENT DETAIL', Summons were issued to him but he did not appear to tender statement on the given date. Inquiries were carried out with Smt. Sucheta Bharatsinh Narawat about Shri Shinan but she did not disclose whereabouts of Shri Shinan and stated that the transactions dated 22.04.2022, 23.04.2022, 24.04.2022 and 02.06.2022 mentioned in the said printout /sheet were relating to loans with their known persons; though she

failed to provide any documentary evidence in this regard. The specific mention of the name of Shri Shinan in the said printout/sheet having payment particulars of import consignment of 1329 cases covered under Bill of Entry No. 1008329 dated 09.06.2022, non-appearance of Shri Shinan before investigating officers to tender his version and vague submissions made by Smt. Sucheta Bharatsinh Narawat indicate that Shri Shinan was concerned with the said import consignment and he was connected with regard to payment of the same. Since the payment of such consignment was bifurcated in banking mode for declared quantity of 917 cases and by cash for the undeclared 412 cases, it is clear that Shri Shinan was well aware about deliberate mis-declaration in the said import consignment with ulterior motive of evasion of Customs Duty. It is pertinent to mention here that the payment for said consignment has taken place as per version of Smt. Sucheta Bharatsinh Narawat, it is thus evident that the omission and commission on the part of Shri Shinan has abetted the evasion of Customs Duty and violation of provisions of Customs Act, 1962, SEZ Act, 2005 and Rules framed thereunder. His acts have rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962 and in spite of having reason to believe that the subject goods were liable to confiscation under Section 111 of Customs Act, 1962, he dealt with such goods. I find that Shri Shinan, in his submission, has agreed that he was in contact of M/s. Brews Barron for the purchase of liquor but due to disagreement on the advance payment, deal of purchase of liquor could not be finalized. However, the arguments of the noticee are not acceptable as Shri Shinan has been found involved in mis-declaration and concealment of offending goods in other consignments imported at Kandla port. Further his argument that purchase of liquor from bond to bond is done through bank transactions only and no cash is accepted, has no substance as the concealed goods smuggled by way of misdeclaration were to be supplied to DTA without declaring before the customs authorities.

49.1 Shri Shinan also knowingly caused to be made/signed/used the import documents and other related documents relating to the subject

goods pertaining to M/s. BBLLP. For these acts of omission and commission, Shri Shinan has rendered himself liable to Penalty under Section 112(a), 112(b), 114AA of the Customs Act, 1962.

49.2 Shri Shinan was issued Summons dated 02.12.2022 and 12.04.2023 directing them to appear before investigating officer, to tender statement, to produce /explain documents/evidences but he did not make compliance to the Summons and failed to make appearance for tendering statement. By the above act of him, his version could not be recorded with regard to the facts and evidences connected to him. Hence, by disobeying the Summons issued to him to which he should have made compliance, Shri Shinan has rendered himself liable to penalty under Section 117 of Customs Act, 1962.

FINDINGS IN RESPECT OF M/S. MUFASA GENERAL TRADING LLC, DUBAI (UAE) AND DECLARED NOTIFY PARTY M/S. CONNECT LOGISTICS CARGO LLC, DUBAI (UAE):-

50. M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) were declared supplier and notify party respectively in respect of live consignment covered under Invoice No. INV00656 dated 02.06.2022 (Bill of Lading No. JEAIXY00006 dated 20.06.2022) imported by M/s. BBLLP. As discussed earlier the quantity of goods was declared as 917 cases in all the documents issued by/arranged by the said declared supplier, whereas, on examination of the consignment based on the intelligence gathered by DRI, there were 1329 cases found in the said consignment. From this, it is clear that the said supplier and notify party viz. M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) respectively had knowingly issued import documents showing lesser quantity in connivance with M/s. BBLLP as apparent from the bifurcation of payment (70% in banking channel and 30% in cash through *Angadia*) mentioned in the sheet having heading 'SHINAN BHAI PAYMENT DETAIL' resumed from warehouse cum

office premises of M/s. BBLLP under Panchnama dated 23/24.06.2022. As apparent from the email conversations provided by the shipping line, it is evident that after putting the subject consignment on hold by DRI, M/s. BBLLP insisted M/s. Mufasa General Trading LLC, Dubai (UAE) who insisted the shipping line to amend the Bill of Lading with respect to quantity of goods and accordingly further Bill of Lading was got created by them showing quantity of goods as 1329 cases. Further, Smt. Suchita Bharatsinh Narawat had produced a Certificate dated 23.06.2022 said to have been issued by M/s. Mufasa General Trading LLC in which it was claimed that M/s. BBLLP placed two orders (one for 917 cases and another for 1329 cases) and they mistakenly sent the consignment of 1329 cases under documents pertaining to the consignment of 917 cases. It was also claimed in the Certificate that they would dispatch the other consignment of 917 cases soon (at that point of time), however, till date no such consignment arrived in India and /or reported by M/s. BBLLP or the said supplier. The story of placing 02 orders and mis-sent of consignment having 1329 cases of subject goods under documents of consignment having 917 cases, is concocted and fictitious. These facts and evidences clearly prove that M/s. BBLLP were in connivance with M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) and as per their mutual collusion, the invoice/packing list, Bill of Lading etc. were prepared by deliberately showing lesser quantity of the subject goods and the payment of differential quantity was made in Cash/ *Angadia*. M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) were issued Summons dated 08.08.2022 (to M/s. Mufasa General Trading LLC only), 02.12.2022 and 12.04.2023 to get their version but they did not respond to the same in any manner.

51. From above facts and evidences, it is clear that by way of abetting the misdeclaration of the quantity and value of goods in the import consignment covered under Bill of Entry No. 1008329 dated 09.06.2022 with intend to evasion of applicable Customs Duties, in violation of conditions of LOA and Bond cum Undertaking furnished by M/s. BBLLP, M/s. Mufasa General

Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) rendered the subject goods liable for confiscation under Section 111 and/or 119 of Indian Customs Act, 1962. They were knowingly concerned in selling and dealing with of subject goods which were liable to confiscation under Section 111 and/or 119 of Indian Customs Act, 1962. Thus, M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) are separately liable to separate penalties under **Section 112 (a) and 112(b)** of the Indian Customs Act, 1962.

52. Since M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) knowingly and intentionally made/signed/used or caused to be made/signed/used the import documents (Invoice, Packing List, Bill of Lading, Bill of Entry etc.) which was false or incorrect in material particular Quantity, Value etc., with intend to abet the clearance of the excess quantity in DTA without issuance of Bill and without payment of Duty/taxes, therefore M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) shall also be separately liable to penalty under Section 114AA of the Indian Customs Act, 1962.

53. For their various acts of non-cooperation, non-production of details and documents and mis-leading in the investigation by M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) as discussed supra, M/s. Mufasa General Trading LLC, Dubai (UAE) and M/s. Connect Logistics Cargo LLC, Dubai (UAE) have made themselves separately liable to penalty under **Section 117** of Indian Customs Act, 1962.

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

Order in respect of M/s. Brews Barron LLP, Phase-1, Plot no. 383, Sector-4, Kandla Special Economic Zone, Gandhidham (Kutch) (IEC No. ABMFM0547K):-

(i) I order to confiscate the 1329 cases of subject goods , having declared assessable value of Rs. 69,03,683 under Section 111(l) and111(m)of the Customs Act, 1962, and 11 wooden pallets under Section 119 of the Customs Act, 1962.

However, I give them an option to pay redemption fine of Rs.10,00,000/- (Rupees Ten Lakhs only) in lieu of confiscation under the provisions of Section 125 of the Customs Act, 1962.

(ii) I order to confiscate the 2328 cases of subject goods having assessable value of Rs. 52,73,873/- under Section 111(m) of the Customs Act, 1962.

However, I give them an option to pay redemption fine of Rs.8,00,000/- (Rupees Eight Lakhs only) in lieu of confiscation under the provisions of Section 125 of the Customs Act, 1962.

(iii) I order to confiscate (511+483) cases of subject goods, having assessable value of Rs. 73,14,312/- under Section 111(m) and111(j) of the Customs Act, 1962.

As regards the goods not available physically for confiscation, I impose redemption fine of Rs.12,00,000/- (Rupees Twelve Lakhs only) under the provisions of Section 125 of the Customs Act, 1962.

(iv) I reject the classification of various kind/type of Liquor mentioned in Column II of Table-C (in Para-44) adopted by M/s. BBLLP under Tariff Item mentioned in Column III of Table-C respectively and order to reclassify the same under appropriate CTH as mentioned in the Column IV of the Table-C respectively.

(v) I confirm the demand of the Customs duty amounting to Rs. 1,22,30,869/- (Rupees One Crore, Twenty Two Lakh, Thirty Thousand, Eight Hundred and Sixty Nine only) chargeable on the said offended goods cleared/sold in to DTA and order to recover the same under Section 28 (4) of Customs Act, 1962.

I order to appropriate the Customs Duty of Rs. 12,57,982/- voluntarily paid by M/s. BBLLP against their total liability.

(vi) I confirm and order to recover the interest at appropriate rate on the duty amount of Rs. 1,22,30,869/- confirmed at (v) above under Section 28AA of the Customs Act, 1962.

(vii) I impose penalty equal to the duty plus interest confirmed above upon M/s. Brews Barron LLP under Section 114A of the Customs Act, 1962.

(viii) I impose penalty of Rs.1,94,91,868/- (Rupees One crore ninety four lakhs ninety one thousands eight hundred and sixty eight only) upon M/s. Brews Barron LLP under Section 114AA of the Customs Act, 1962.

(ix) I impose penalty of Rs.4,00,000/- (Rupees Four lakhs only) upon M/s. Brews Barron LLP under Section 117 of the Customs Act, 1962.

(x) I order to enforce the Bond furnished by them against the consignments imported duty free under provisions of SEZ Act, 2005 and Rules framed thereunder but sold as such to the domestic market, and order to encash the security, if any furnished with bond, towards their duty liabilities, interest thereon, fine and penalties confirmed above.

ORDER IN RESPECT OF OTHER CO-NOTICEES:-

(i) I impose penalty upon the following persons as given below:-

S. No	Name	Penalty (Amount in Rs.)			
		112(a)	112(b)	114AA	117
1	Smt. SuchitaBharatsinh Narawat	10,00,000 (Ten Lakhs)	10,00,000 (Ten Lakhs)	100,00,000 (One crore)	4,00,000 (Four lakhs)
2	Shri Ramesh Kumar Goud	5,00,000 (Five Lakhs)	5,00,000 (Five Lakhs)	50,00,000 (Fifty Lakhs)	2,00,000 (Two lakhs)
3	Shri Chandan Mohandas Peshwani	Not proposed in SCN	Not proposed in SCN	Not proposed in SCN	1,00,000 (One lakh)

4	Shri Shinan	2,00,000 (Two lakhs)	2,00,000 (Two lakhs)	20,00,000 (Twenty lakhs)	1,00,000 (One lakh)
5	M/s Mufasa General Trading LLC	2,00,000 (Two lakhs)	2,00,000 (Two lakhs)	10,00,000 (Ten lakhs)	1,00,000 (One lakh)
6	M/s Connect Logistics Cargo LLC	2,00,000 (Two lakhs)	2,00,000 (Two lakhs)	10,00,000 (Ten lakhs)	1,00,000 (One lakh)

55. This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.

(M. Ram Mohan Rao)
Commissioner of Customs
Custom House, Kandla

F.No. GEN/ADJ/COMM/477/2022-Adjn-O/o Commr-Cus-Kandla
DIN-20240671ML000032323F

To,

1. M/s. Brews Barron LLP, Phase-1, Plot No. 383, Sector-4, Kandla SEZ, Gandhidham

(Email id: info.bbllp2020@gmail.com&bbllp2020@gmail.com)

2. Smt. SuchitaBharatsinhNarawat, Partner of M/s Brews Barron LLP, Phase-1, Plot No. 383, Sector-4, Kandla SEZ, Gandhidham

(Email id: suchpall@yahoo.co.in)

3. Shri Ramesh Kumar Goud
R/o-D-159, No. 4, Sapna Nagar,
Gandhidham (Kutch)

Permanent Address – 62,
PaanchaniyokiDhani,
KhariyaTala, Tehsil/ Distt.-Barmer

(Rajasthan)

(Email id: rameshGoud2003@gmail.com)

4. ShriChandan Mohandas Peshwani,
Employee/Document Incharge,
M/s Brews Barron LLP,
Phase-1, Plot No. 383, Sector-4,
Kandla SEZ, Gandhidham

(Email id: info.bbllp2020@gmail.com&bbllp2020@gmail.com)

5. ShriShinan, Gandhidham
(Email id: shinanshaan18@gmail.com)

6. M/s Mufasa General Trading LLC,
Office 5 AL NABODAH Building 4 Deira,
Dubai, PO BOX-2376 (UAE)
(Email id: mufasageneraltradingllc@gmail.com)

7. M/s Connect Logistics Cargo LLC,
Blue Shed WH No. RA08WF06, I Gate No. 7,
Jebel Ali Free Zone, Dubai,
UAE
(Email id: info@connectclc.com)

Copy forwarded to:-

- (i) The Deputy Director, DRI, AZU
- (ii) The Deputy Commissioner (Customs), KASEZ for information.
- (iii) The Chief Commissioner, Customs, Ahmedabad for review.
- (iv) The Superintendent (TRC/EDI/SIIB) for information.
- (v) Guard File