
	कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421 PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in	 आज़ादी का अमृत महोत्सव
A. File No.	: GEN/ADJ/COMM/533/2023-Adjn-O/o Pr Commr-Cus-Mundra	
B. Order-in-Original No.	: MUN-CUSTM-000-COM- 037 - 24-25	
C. Passed by	: K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue:	: 16.01.2025 16.01.2025	
E. SCN No. & Date	: SCN F.No. F.No. GEN/ADJ/COMM/533/2023-Adjn Pr Commr-Cus-Mundra, dated 30.01.2024.	
F. Noticee(s) / Party / Importer	: (i) M/s Divyanshi Metal (IEC No.: 2412013438), Plot No. 3555, H-Road, GIDC Phase-3, Dared, Jamnagar-361004; (ii) M/s. Hub & Links Logistics (I) Pvt. Ltd., Suite No. 101, Rishabh Arcade, Near GST Bhawan, Plot No. 83, Sector-8, Gandhidham - 370201.	
G. DIN	: DIN-20250171MO0000813088	

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

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

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

4. उक्त अपील के साथ -/ 1000 रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील जापन के साथ इयूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

BRIEF FACTS OF THE CASE:

M/s. Divyanshi Metal, situated at Plot No. 3555, H-Road, GIDC Phase-3, Dared, Jamnagar-361004 (hereinafter referred to as 'the importer') are engaged in the import of goods and are holding IEC No. 2412013438 for the same.

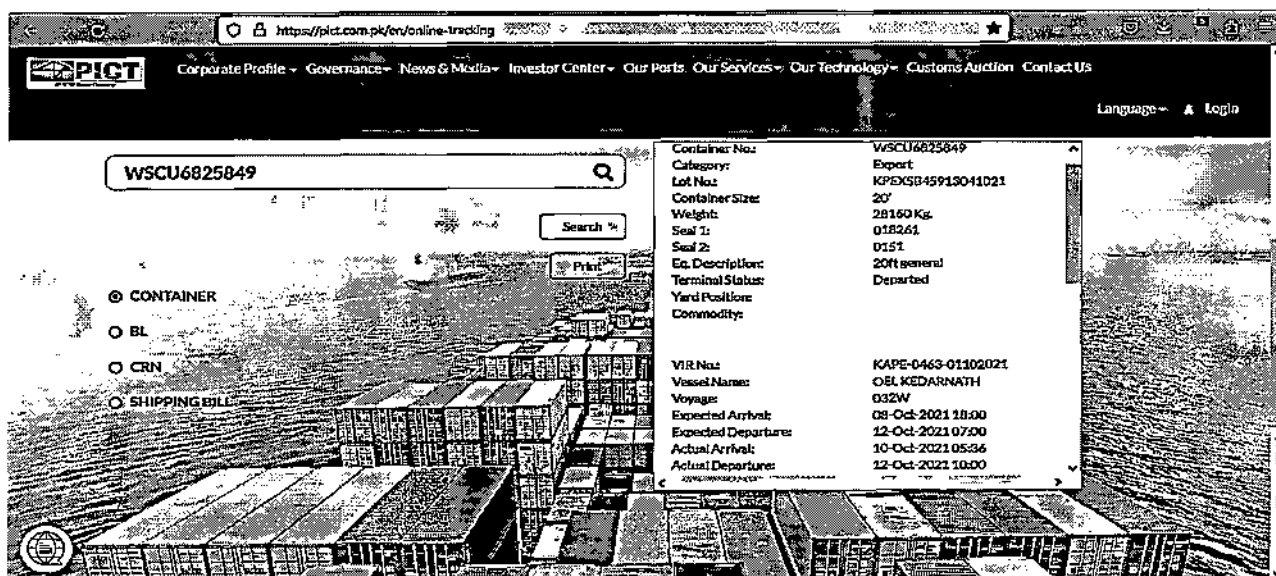
2. Whereas intelligence was gathered by the officers of SIIB Section, Custom House, Mundra as per which it appeared that the cargo under Container No. WSCU 6825849 was loaded from Port of Karachi, Pakistan and the importer had mis-declared the Country of origin of the goods as United Arab Emirates. M/s Unique Speditorer Private Limited, Customs Broker (CB/CHA) had filed Bill of Entry No. 5984684 dated 25.10.2021 (RUD-1) on behalf of M/s. Divyanshi Metal with respect to the cargo, said to be "Brass Scrap Honey/Ebony/Engel as per ISRI", contained in Container No. WSCU 6825849.

3. The relevant details pertaining to the aforesaid Bill of Entry are tabulated as under:

Bill of Entry No. 5984684 dated 25.10.2021, BL No. SASLMU21536 dated 21.10.2021, Invoice No. RT-440-2021 dated 23.10.2021, Container No.: WSCU 6825849:

Importer	CHA	Cargo Declared / CTH	Qty.	Declared Value (Rs.)	Assessed Value(Rs.)
M/s. Divyanshi Metal IEC- 2412013438	M/s. Unique Speditorer Private Limited CHA Code - AABCU3257BCH001	Brass Scrap Honey/Ebony/Engel as per ISRI 74040022	25790 Kgs	11338316	10360875
Declared Country of Origin		Declared rate of duty		Assessed duty {Rs.}	
United Arab Emirates		BCD-2.5% SWS-10% IGST-18%		22,01,168/-	

4. Tracking of the said Container no. was done from the **Pakistan International Container Terminal** (in short "PICT") website i.e. <https://pict.com.pk/en/online-tracking>, which revealed that the said Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to Jebel Ali, UAE. Image of PICT tracking (RUD-2) for the said container (WSCU 6825849) is as under:



WSCU6825849

Port of Loading: PKGHI
Port of Discharge: AEJEB
Destination: AEJEA
Empty Drop-off Location:

Examination Marks:
Grounding Date:
Examination Completed:
Holds:
Released: 05-Oct-2021 00:30
Release Code: AL

Activity	Performed Time
UNIT_WEIGHTMENT	05-Oct-2021 00:14
UNIT_IN_GATE	05-Oct-2021 00:14

4.2 The above said Tracking Report shows that the Container No. WSCU 6825849 bearing seal no. 018261 & 0151 has left from PKGHI (Port of Karachi) for AEJEA (Port of Jebel Ali) on 12.10.2021 on board the vessel "OEL Kedarnath". The Container number and seal number shown in PICT website matches with that declared in import documents filed at Mundra Port wherein Country of Origin is declared to be United Arab Emirates.

4.3 Thus it appeared that the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan to evade the appropriate payment of Customs Duty. Therefore, the goods imported under the Bills of Entry No. 5984684 dated 25.10.2021 appeared to be liable for confiscation under the provisions of the Customs Act, 1962.

5. Whereas further investigation in the matter was initiated and statement of Shri Sajish Sivaraj Puthenchira (RUD-3), General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd. (agent of M/s. Shah Aziz Shipping Lines LLC & delivery agent of the subject consignment at Mundra as per Master Bill of Lading No. SASLMU21536 dtd 21.10.2021) was recorded under Section 108 of the Customs Act, 1962, on 12.04.2023, wherein he interalia stated that:

- M/s. Hub & Links Logistics India Pvt Ltd, are the agent of M/s Shah Aziz Shipping Lines LLC, Dubai who are having their own containers used for export/import of cargo in various ports.
- Their scope of work is to coordinate with vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM on the basis of the documents received from the load port & collect the charges and documents from consignee before releasing the Delivery Order.
- The Container No. WSCU 6825849 was loaded from Jebel Ali and they were appointed delivery agent by their principal, M/s Shah Aziz Shipping Lines LLC. In this regard, they submit all the documents as under:
 1. Shipping Bill No. KPEX-SB-45913 dtd 04.10.2021 (RUD-4) filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, 154 Street 10 Akber Road, Block-A;

2. Bill of Lading No. SASLMU21536 (RUD-5) issued by CIM Shipping Inc for transport of "Brass Scrap" in Container no. WSCU 6825849 from Karachi Port to Jebel Ali;
3. Bill of Lading No. SASLMU21536 dtd 21.10.2021 (RUD-6) issued by Shah Aziz Shipping Lines LLC for transport of "Brass Scrap Honey/Ebony/Engel as per ISRI" in Container no. WSCU 6825849 from Jebel Ali to Mundra;
4. Container tracking (RUD-7) for Container no. WSCU 6825849;

On perusal of above documents, he understands that 25790 Kgs. of Brass Scrap were loaded in Container No. WSCU 6825849 having seal no. 018261 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal No. 018261 affixed at Karachi Port is found intact at Mundra Port.

- Bill of lading no. of Karachi Port and Jebel Ali port are same as SASLMU21536 but dates are different since it is a case of switch Bill of Lading wherein the number remains same but the date of issue is changed. It is used when the traders do not want to disclose actual supplier to the consignee/buyer. All the details except shipper, consignee and/or notify party shall remain same in the switch Bill of lading. This is a usual practice undertaken by the traders to conceal the details of actual supplier so as to secure their clientele/source/business operation details.
 - The allegation of Customs being deliberately mis-informed or mis-stated by M/s Hub & Links Logistics India Pvt Ltd. is baseless since M/s Hub & Links Logistics India Pvt Ltd. is not the actual transporter and they had no information regarding the previous load ports also. They came to know about the switch Bill of Lading only after the documents were arranged on enquiry by SIIB Section, Custom House Mundra. Before that, the switch Bill of Lading was the original bill of lading for them.
 - They cannot be held responsible for switching of bill of lading as it was not done by them, nor it was in their notice, nor they had any say or approval in the matter.
6. Further, statement of Sh. Arvind R Jagetiya (RUD-8), Proprietor, M/s. Divyanshi Metal was recorded under Section 108 of the Customs Act, 1962 on 17.04.2023, wherein he interalia stated that:
- The firm deals in trading of metal scrap.
 - They are regular importers of Brass & Zinc scrap which they sell in domestic market.
 - They are importing raw materials i.e. Metal Scrap for the past 08 years and are fully aware of the Customs procedures.
 - He peruses the webpage and sees that the subject container WSCU 6825849 has moved from Karachi Port, Pakistan under Export with seal no. 018261 & 0151 along with other relevant details displayed.
 - On perusal of the following documents:
 1. Shipping Bill No. KPEx-SB-45913 dtd 04.10.2021 filed with Custom

Office, MCC Export, Karachi by M/s Rafiq Traders, Pakistan;

2. Bill of Lading No. SASLMU21536 issued by CIM Shipping Inc for transport of "Brass Scrap" in Container no. WSCU 6825849 from Karachi Port to Jebel Ali;
3. Bill of Lading No. SASLMU21536 dtd 21.10.2021 issued by Shah Aziz Shipping Lines LLC for transport of "Brass Scrap Honey/Ebony/Engel as per ISRI" in Container no. WSCU 6825849 from Jebel Ali to Mundra;
4. Container tracking for Container no. WSCU 6825849;

it appears that 25790 Kgs. of Brass Scrap were loaded in Container No. WSCU 6825849 having seal no. 018261 & 0151 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal Nos. 018261 & 0151 affixed at Karachi Port is found intact at Mundra Port.

7. Further, statement of Shri Pankaj Prakash Tulsiyani (RUD-9), G Card Holder (CHM/G/232/16) & Authorised Employee of Custom Broker M/s. Unique Speditorer Private Limited was recorded under Section 108 of the Customs Act, 1962, on 24.05.2023, wherein he interalia stated that:

- M/s Unique Speditorer Private Limited is a Custom Broker firm having office at "Unique House", Plot No. 126, Sector-1/A, Gandhidham-370201. They are engaged in clearances of import & export goods at Mundra Port, Kandla & Pipavav Ports and primarily deal in import of Ferrous & Non-ferrous Metal Scrap.
- For ensuring genuineness of their client, they collect the KYC documents and do cross referencing from their clientele.
- Being appointed as CHA, they had filed BoE no. 5984684 dated 25.10.2021, digitally signed the checklist and other documents and uploaded the same in E-Sanchit.
- M/s Divyanshi Metal had been their client for past 03-04 years and they didn't undertook detailed scrutiny of the documents and carried out the business on trust.
- He peruses the webpage of PCIT and sees that the subject container WSCU 6825849 has moved from Karachi Port, Pakistan under Export with seal no. 018261 & 0151 along with other relevant details displayed.
- On perusal of the following documents:
 1. Shipping Bill No. KPEX-SB-45913 dtd 04.10.2021 filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, Pakistan;
 2. Bill of Lading No. SASLMU21536 issued by CIM Shipping Inc for transport of "Brass Scrap" in Container no. WSCU 6825849 (with seal bearing no. 018261 & 0151) from Karachi Port to Jebel Ali;
 3. Bill of Lading No. SASLMU21536 dtd 21.10.2021 issued by Shah Aziz Shipping Lines LLC for transport of "Brass Scrap Honey/Ebony/Engel as per ISRI" in Container no. WSCU 6825849 (with seal bearing no. 018261 & 0151) from Jebel Ali to Mundra;
 4. Container tracking for Container no. WSCU 6825849

it appears that 25790 Kgs. of "Brass Scrap Honey/Ebony/Engel as per ISRI" were loaded in Container No. WSCU 6825849 having seal no. 018261 & 0151 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal No. 018261 & 0151 affixed at Karachi Port is found intact at Mundra Port.

- He accepts that they have failed to fulfill their obligations laid down under Customs Brokers Licensing Regulations, 2018 while filing BoE No. 5984684 dated 25.10.2021 which had resulted in such mistake and ensure that the same will not be repeated in future.

8. While filing of BoE No. 5984684 dated 25.10.2021, the importer had uploaded Pre-shipment Inspection Certificate (PSIC) bearing no. WFZE/SHJO/8631/2021 dated 07.10.2021 (RUD-10) issued by M/s Wise Services FZE, Sharjah, UAE in terms of Para 2.54 of Handbook of Procedures 2015-20. An enquiry was made with the said agency regarding the genuineness of said certificate and e-mails dated 06.06.2023 & 09.06.2023 (RUD-11(1) & 11(2)) were sent to the e-mail id "wisefze@yahoo.com, text of the which is re-produced as under :

(E-mail dated 06.06.2023)

"Gentleman,

While investigating cases of evasion of Customs Duty, this office has come across three Pre-shipment Inspection Certificates (.....WFZE/SHJO/8631/2021 dtd 07.10.2021) issued by your company i.e. M/s Wise Services FZE, Sharjah. The said Certificates are attached herewith for ready reference please.

It is requested to go through the same and inform as to whether they were issued by your Agency or otherwise. Please certify their genuineness. Immediate reply by return e-mail is requested please.

Regards"

(E-mail dated 09.06.2023)

"Gentleman,

Please forward copies of the certificates issued by you vide PSICs WFZE/SHJO/8631/2021 dtd 07.10.2021 for further investigation in the matter.

Regards"

9. Whereas communication/reply was received from the said Pre-shipment Inspection Agency (PSIA) vide e-mails dated 08.06.2023 & 09.06.2023 (RUD-12(1) & 12(2)). The PSIA (vide above referred e-mail dated 08.06.2023) has informed that there is a mismatch in the details contained in the PSIC submitted by the importer (Certificate No. WFZE/SHJO/8631/2021 dated 07.10.2021) and the one issued by them (Certificate No. WFZE/SHJO/8631/2021 dated 29.11.2021) and as such the certificate submitted by the importer does not appear to be genuine. The PSIA also forwarded the genuine certificate (RUD 13) issued by them under PSIC no. WFZE/SHJO/8630/2021 dated 29.11.2021 (vide e-mail dated 09.06.2023).

10.1. Whereas it is evident from the above investigation and evidences available on record that Seals mentioned in the BoE remained as such after its loading at Karachi Port till the Container reached at Mundra. It, therefore, appears that the

imported goods "Brass Scrap Honey/Ebony/Engel as per ISRI" imported in Container WSCU 6825849 covered under BL No. SASLMU21536 dated 21.10.2021, Invoice No. RT-440-2021 dated 23.10.2021 & BoE No. 5984684 dated 25.10.2021 are of Pakistan origin/exported from the Islamic Republic of Pakistan and not of UAE origin as claimed by the importer in BoE No. 5984684 dated 25.10.2021. The Bills of lading clearly indicate that the Container WSCU 6825849 sealed with seal no. 018261 & 0151 was loaded from Karachi, Pakistan and the goods therefore appear to be of Pakistan origin/exported from the Islamic Republic of Pakistan. Moreover, the container tracking obtained from M/s. Hub & Links Logistics (I) Pvt. Ltd. clearly indicates that the container WSCU 6825849 was loaded with goods at Karachi, Pakistan, then transshipped to Jebel Ali, UAE and finally reached Mundra Port, India where it was de-stuffed. It, therefore, appears that importer has mis-declared the Country of Origin of the said import item in the said Bill of Entry and the goods are in fact exported from the Islamic Republic of Pakistan.

10.2. Moreover, presence of container tracking as well as the two Bills of Lading with M/s. Hub & Links Logistics (I) Pvt. Ltd. clearly suggested that the entire movement of the container was in the knowledge of M/s. Hub & Links Logistics (I) P. Ltd. The clarification with regard to the two Bills of lading (by M/s. Hub & Links Logistics (I) P. Ltd. in their statement dated 12.04.2023) being switch Bills of Lading also seemed misleading since two Bills of lading are issued separately (independent of each other) for movement of a single container (first from Karachi to Jebel Ali & then from Jebel Ali to Mundra) to conceal the actual origin of the consignment. The issuance of two Bills of Lading itself suggested that the intention was to conceal the origin of goods and as such the delivery agent M/s. Hub & Links Logistics (I) P. Ltd. appeared to have helped the importer in mis-declaring the Country of Origin.

10.3. Further, the PSIA's replies dated 08.06.2023 & 09.06.2023 suggested that the PSIC has been forged/fabricated with an intention to conceal the actual origin of goods and as such it appeared that fake/fraudulent PSIC has been submitted to the Customs authorities at Mundra port to give an impression that the subject goods (covered under Bill of Entry No. 5984684 dated 25.10.2021) are of UAE origin instead of Pakistan Origin/exported from Islamic republic of Pakistan. This indicated that the importer has deliberately fabricated the PSIC, issued by M/s. Wise Services FZE, Sharjah, UAE in the name of some other importer, and submitted to the Customs authorities to conceal the actual origin of goods.

11. After introduction of "Self-assessment" vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of Duty. In the instant case, the importer has mis-declared the Country of Origin as United Arab Emirates instead of actual Country of Origin i.e. Islamic Republic of Pakistan with intent to evade appropriate Customs Duty (relevant Notification No. 05/2019-Customs dated 16.02.2019) during self-assessment at the time of filing of Bill of Entry. As such, the declaration with respect to the Country of Origin by the importer is misleading and this act on the part of importer resulted in short levy of Duties, which led to undue monetary benefit to the importer. Thus, the act of mis-declaration of Country of Origin of the imported goods by the importer squarely falls under the purview of Section 28(4) of the Customs Act, 1962 as it is a mis-

- declaration aimed at suppression of the facts with the intent to evade appropriate Customs Duty resulting in to short payment of the applicable Customs Duty.

12. Whereas the aforesaid facts shows that the importer had resorted to willful mis-declaration of Country of Origin in the Bill of Entry of the said imported goods by suppressing/fabricating/ manipulating the said material facts, which showed a motive of the importer to evade payment of applicable Customs Duty (by classifying the goods under Chapter Tariff Heading No. 74040022) in respect of said imported goods cleared for home consumption. However, as per Notification No. 05/2019-Customs dated 16.02.2019, the Duty on the goods imported from the Islamic Republic of Pakistan and appropriately classifiable under Chapter Tariff Heading No. 98060000 is leviable @ 200% BCD. Also, as per Section 110(3) of the Finance Act, 2018, Social Welfare Charge (SWS) shall be calculated at the rate of 10% of the Customs Duty levied and collected under Section 12 of the Customs Act, 1962. Further, as per Schedule III of Notification No. 01/2017-I.T. (Rate) dated 28.06.2017 - Sr. No. 453, IGST @18% is chargeable on all the goods which are not specified in Schedules I, II, IV, V or VI and since CTH 98060000 is not specified in any of the Schedules in said Notification, therefore, the goods under said CTH are chargeable at 18% IGST. Therefore, the total Customs Duty amounting to **Rs.3,14,75,165/-** (200% BCD + 10% SWS + 18% IGST) was liable to be demanded under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

13. In view of the fact that the imported goods appear to be of Pakistan Origin/exported from Islamic republic of Pakistan but mis-declared as of UAE origin in Bill of Entry No. 5984684 dated 25.10.2021 and imported in India in violation and contrary to the provisions of the Customs Act, 1962, therefore the said imported goods seemed liable for confiscation under Section 111 (m) of the Customs Act, 1962.

14.1. It seemed evident from the above discussion and evidences available on record that the importer M/s. Divyanshi Metal has mis-declared Country of Origin and produced false/incorrect & fabricated import documents, (i.e. Commercial Invoice, Packing List, BL, PSIC etc.) to evade payment of applicable Customs Duty in respect of said imported goods.

14.2 Also, M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham (acting as agent of M/s. Shah Aziz Shipping Lines LLC) was having all the documents as well as information that the subject goods were loaded at Karachi Port and their act of omission and commission has led to the evasion of duty by the importer.

15. For the sake of brevity, the relevant provisions of the Customs Act, 1962 are reproduced as under:

Notification No. 05/2019 – Customs New Delhi, the 16th February, 2019

“ [TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
Notification No.05/2019-Customs

New Delhi, the 16th February, 2019

G.S.R.(E). – WHEREAS, the Central Government is satisfied that the import duty leviable on all goods originating in or exported from the Islamic Republic of Pakistan, falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)(hereinafter referred to as the Customs Tariff Act), should be increased and that circumstances exist which render it necessary to take immediate action.

NOW, therefore, in exercise of the powers conferred by sub-section (1) of section 8A of the Customs Tariff Act, the Central Government, hereby directs that the First Schedule to the Customs Tariff Act, shall be amended in the following manner, namely:-

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

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

....."

➤ DGFT Handbook of Procedures 2023

Provision 2.51 of Chapter 02 (General Provisions Regarding Imports and Exports) of the DGFT Handbook of Procedures 2023:

2.51 Import of Metallic Waste and Scrap

Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

(a) Import of following types of metallic waste and scrap will be free subject to conditions detailed below:

Sl. No.	Exim Code	Item description
10.	74040022	Brass scrap

(b) 'Freely' Importable metallic waste and scraps (shredded) as listed above shall be permitted through all ports of India subject to following conditions:

(i) At the time of the clearance of goods, importer shall furnish to the Customs pre-shipment inspection certificate as per the format to Appendix 2H from any of the Inspection & Certification agencies given in Appendix-2G, to the effect that the consignment was checked for radiation level and scrap does not contain radiation level (gamma and neutron) in excess of natural background. The certificate shall give the value of background radiation level at that place as also the maximum radiation level on the scrap; and.....

➤ **SECTION 17 Assessment of duty** — (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

➤ **SECTION 46 Entry of goods on importation**

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

SECTION 28 Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or
- (b) any willful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

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

- (a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;
- (c) in a case where duty or interest has been erroneously refunded, the date of refund ;
- (d) in any other case, the date of payment of duty or interest.

➤ **SECTION 28AA Interest on delayed payment of duty— (1)** Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to paid interest,

- if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty -six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

➤ **SECTION 111 Confiscation of improperly imported goods, etc. -** The following goods brought from a place outside India shall be liable for confiscation:

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

➤ **SECTION 112 Penalty for improper importation of goods, etc.-**

Any person, -

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

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

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 1 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

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

3 [(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 4 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 5 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 6 [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

➤ **SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases.** - Where the duty has not been levied or has 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 (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

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

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, not twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation. - For the removal of doubts, it is hereby declared that-

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date* on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

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

➤ **SECTION 117 Penalties for contravention, etc., not expressly mentioned.** - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding ten thousand rupees.

16. By the act of omission and commission on the part of importer, it appeared that the subject goods are liable to be confiscated under Section 111(m) of Customs Act, 1962. It further appeared that the importer has rendered themselves liable for imposition of penalty under Section 112(a)(ii) of the Customs Act, 1962 as the goods seemed liable for confiscation under Section 111(m) of the Customs Act, 1962; under Section 114A of the Customs Act, 1962 since the duty has been short-levied as a result of willful mis-statement/suppression of facts and under Section 114AA of the Customs Act, 1962 for mis-declaring the Country of Origin to evade duty by producing bogus/fake documents.

17. It appeared that M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham (acting as agent of M/s. Shah Aziz Shipping Lines LLC) was having all the documents as well as information that the subject goods were actually loaded at Karachi Port and then imported to India after transshipping the goods at Jebel Ali and as such has rendered themselves liable for imposition of penalty under Section 112(b)(ii) and Section 117 of Customs Act, 1962.

18. In view of above, a Show Cause Notice bearing no. GEN/ADJ/COMM/533/2023-Adjn dated 30.01.2024 was issued to **M/s. Divyanshi Metal (IEC No.: 2412013438)** having their address at Plot No. 3555, H-Road, GIDC Phase-3, Dared, Jamnagar-361004, wherein the importer was called upon to show cause to the Commissioner of Customs, Mundra having his office at 'Custom House', 1st Floor, Port User Building, Mundra, within 30 days of the receipt of the Notice as to why:

(i) Classification of 25790 kgs. of "Brass Scrap Honey/Ebony/Engel as per ISRI" imported in Container No. WSCU 6825849 covered under BL No. SASLMU21536 dated 21.10.2021, Invoice No. RT-440-2021 dated 23.10.2021 & Bill of Entry No. 5984684 dated 25.10.2021 under Chapter Tariff Heading No. 74040022 should not be rejected & the same should not be classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975.

(ii) 25790 kgs. of "Brass Scrap Honey/Ebony/Engel as per ISRI" imported in Container No. WSCU 6825849 covered under BL No. SASLMU21536 dated 21.10.2021, Invoice No. RT-440-2021 dated 23.10.2021 & Bill of Entry No. 5984684 dated 25.10.2021 valued at **Rs.1,13,38,316/- (Rupees One Crore Thirteen lakh Thirty Eight Thousand Three Hundred and Sixteen only)** should not be confiscated under Section 111 (m) of the Customs Act, 1962.

(iii) The Customs Duty of **Rs.3,14,75,165/- (Rupees Three Crore Fourteen Lakh Seventy Five Thousand One Hundred Sixty Five only)** (as detailed in **Annexure-A**) should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 and why the Customs Duty of Rs. 22,01,168/- (Twenty Two Lakh One Thousand One Hundred Sixty Eight only) already paid by them, should not be appropriated and adjusted against the said demand.

- (iv) Applicable interest should not be charged and recovered from them under the provisions of Section 28 AA of the Customs Act, 1962.
- (v) Penalty should not be imposed upon them under the provisions of Sections 112(a)(ii)/114A of the Customs Act, 1962.
- (vi) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

19. Vide the above show cause notice dated 30.01.2025, **M/s. Hub & Links Logistics (I) Pvt. Ltd.**, Gandhidham having their address at Suite No. 101, Rishabh Arcade, Near GST Bhawan, Plot No. 83, Sector-8, Gandhidham - 370201 were also called upon to show cause to the Commissioner of Customs, Mundra having his office at 5B, Port User Building, Mundra, within 30 days of the receipt of the Notice as to why penalty should not be imposed upon them under the provisions of Section 117 of the Customs Act, 1962.

WRITTEN SUBMISSION

20. The importer M/s. Divyanshi Metal, Jamnagar, vide letter dated 17.07.2024 filed written submission. The contents of their written submission are as under: -

20.1 1. We, M/s. Divyanshi Metal, Jamnagar ("M/s. Divyanshi Metal") have received a notice asking us to show cause to your Honour as to why:

- "(i)
- (ii);
- (iii);
- (iv)
- (v);
- (vi)"

2.1 The above proposals are based on following averments that are narrated in following paragraphs of the notice which are reproduced below for the ease of ready reference:

Reproduced Para 10.1 of SCN..

....

Reproduced Para 11 of SCN.

....

Reproduced Para 13 of SCN.

....

Reproduced Para 16 of SCN."

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.

4. The allegation of willful mis-declaration and mis-statement is not tenable in the eyes of law inasmuch as it is not supported by any positive evidence against the importer.

4.1 It is a matter of record that the importer had filed Bill of Entry No. 5984684 dated 25.10.2021 with Custom House, Mundra on the basis of following amongst other

documents received from the overseas supplier, i.e., Aden Scrap Trading (LLC), Sharjah, United Arab Emirates:

- a) Invoice No. RT-440-2021 dated 23.10.2021 issued by overseas supplier M/s. Aden Scrap Trading (LLC), Sharjah-United Arab Emirates showing port of shipment as Jebel Ali, U.A.E to Mundra.
- b) Packing list issued by the said overseas supplier for shipment from Jebel Ali-UAE to Mundra.
- c) Bill of lading No. SASLMU21536 dated 21.10.2021 showing port of loading as Jebel Ali and port of discharge as Mundra.
- d) Certificate of Origin issued by overseas supplier M/s. Aden Scrap Trading (LLC), Sharjah-United Arab Emirates certifying that goods are of UAE origin.
- e) Marine Cargo Insurance Policy No. 4/1/020/8278540 for voyage from United Arab Emirates.
- f) Sales Contract No. SC/188/2021 dated 29.09.2021 for loading of goods from Jebel Ali-UAE.

4.2 The goods were duly examined by Custom officers at the port of import (Mundra) and were permitted clearance for home consumption only after the same were found tallying with the declarations made in the bill of entry and documents presented by the importer that were received from the overseas supplier. As such, there was no mis-declaration, leave alone willful, at the time of import and clearance. Hence, provisions of Section 111 (m) of Customs Act, 1962 for confiscation of goods on the ground of mis-declaration and Section 112 (a) *ibid* for imposing penalty are not attracted.

4.2.1 (i) In the case of Callmate India Pvt. Ltd. v/s Commissioner of Customs, New Delhi, 2023 (383) ELT 121 (Tri-Del.), Hon'ble Tribunal has held that:

"12. Having considered rival contentions, I find that there is no case of deliberate misdeclaration made out on the part of the appellant-importer. The Bill of Entry had been filed as per the packing list and Bill of Lading. Further, the Shipper/Exporter have accepted their mistake, there being error at the time of packing the goods at their end. This cogent explanation has not been found to be untrue. I, further take note that the appellant had already been suffered financial loss at the end paid for the consignment to the Shipper.

13. In view of my findings, I set aside the penalty imposed under Section 112(a) of the Act. The appeal is allowed, the appellant shall be entitled to consequential benefit, in accordance with law."

(ii) In the case of Alstom Transport Ltd. v/s Commissioner of Customs, Chennai, 2007 (220) ELT 312 (Tri.-Chennai), Hon'ble Tribunal has set aside confiscation and penalty when description of goods was entered as in the purchased order placed on the supplier.

(iii) In the case of Kirti Sales Corpn. v/s Commr. of Cus., Faridabad, 2008 (232) ELT 151 (Tri.-Del.), Hon'ble Tribunal has set aside confiscation ordered under Section 111 (m) of Customs Act, 1962 and consequential penalty under Section 112 (a) when the declaration was made on the basis of documents supplied by the foreign supplier and there was no intentional or deliberate wrong declaration or misdeclaration on its part.

4.2.2 By relying on the above decisions, it is submitted that the allegation of mis-declaration rendering the goods liable to confiscation under Section 111 (m) and importer liable to penalty under Section 112 (a) of Customs Act, 1962 is not tenable in the eyes of law.

4.2.3 Inasmuch as goods have already been cleared and are not available for confiscation (and redemption), it is submitted that fine in lieu of confiscation is not imposable, as duly held by Larger Bench of Hon'ble Tribunal in the case of Shiv Kripa Ispat Pvt. Ltd. v/s Commissioner of C. Ex. & Cus., Nasik, 2009 (235) ELT 623 (Tri.-LB).

4.3 It may be appreciated that during the course of inquiry, officers of SIIB have recorded statement of following persons:

- (i) Shri Arvind R. Jagetiya, Proprietor of M/s. Divyanshi Metal, Jamnagar.
- (ii) Shri Sajish N. Puthenchira, General Manager Executive of M/s. Hub & Links Logistics (I) Pvt. Ltd.

4.4 In his statement dated 17.04.2023, Shri Arvind R. Jagetiya, Proprietor of M/s. Divyanshi have stated the following facts to the Custom officers:

"Q8. On going through the entries made in the subject Bill of Entry and the supporting documents as well as the documents shown to you (to establish that the goods are of Pakistani Origin), it appears that you have mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan to evade the appropriate payment of Customs Duty. Please comment.

Ans. With respect to the evidences signaling that the subject goods are in fact of Pakistani origin, I state that we had no knowledge of the same and the order was placed by us for procurement of Brass Scrap Honey as per ISRI Of UAE origin. *As such, it was not at all intentional and we had no intention to evade the appropriate payment of Customs Duty applicable on goods of Pakistan Origin.*

Q9. Do you want to state something else?

Ans. *It is to state that we had placed an order for purchase of Brass Scrap Honey as per ISRI of UAE origin from M/s. Aden Scrap Trading LLC, UAE as per Sales Contract bearing no. SC/188/2021 dated 29.09.2021. The goods supplied were stated to be of UAE origin by the said supplier. Since no other verification was done in this regard, we have not knowledge of the goods being of Pakistan origin/ exported from the Islamic Republic of Pakistan."*

4.5 The above facts stated by Shri Arvind R. Jagetiya, Proprietor of M/s. Divyanshi regarding absence of knowledge have not been rebutted by any cogent evidence in the Show Cause Notice.

4.6 The officers also recorded statement of Shri Sajish S. Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd. on 12.04.2023, wherein, he has stated that in reply to Q5 that "...it was not in our knowledge that the goods were of Pakistan origin..we had no information regarding the previous load ports also.." There is nothing in his statement to indicate that he had received any instructions from the importer regarding switch bill of lading and that the importer had any knowledge regarding previous load port, if any, in respect of the goods under consideration.

4.7. As a matter of fact, Shri Sajish Sivaraj Puthenchira, General Manager of the shipping line has stated in reply to Q4 that:

- "...it is a case of switch Bill of Lading wherein the number remains the same but the date of issue is changed. It is used when the traders does not want to disclose actual supplier to the consignee/buyer.."

(Emphasis Supplied)

4.8 Hence, it is established that there is no evidence to show that M/s. Divyanshi had any prior knowledge about the origin of goods.

4.9 On the basis of above, it is submitted that when there is no evidence to show knowledge on the part of importer regarding Pakistan origin of goods as alleged in the show cause notice, there is no question of "willful mis-declaration of country of origin" by M/s. Divyanshi in the bill of entry.

4.10 It may be kindly appreciated that the container tracking system of Pakistan International Container Terminal at Karachi is in public domain, as duly admitted in para 4 of the notice. As such, the details of container number and seal number gathered by department from the said website of PICT was available in public domain from the very date when container was loaded from PICT for UAE. Therefore, there is no basis for alleging "willful" suppression or mis-declaration of country of origin by M/s. Divyanshi.

4.11 Hence, it is submitted that the requirement of the provisions of Section 28 (4) of Customs Act, 1962 providing the invocation of larger period of limitation of five years for demanding duty on the ground of "willful mis-declaration of country of origin" is not satisfied.

4.12 Consequently, the impugned notice dated 30.01.2024 demanding differential duty in respect of imported goods covered by bill of entry No. 5984684 dated 25.10.2021 is clearly time barred, having exceeded the time limit of two years that is imposed in Section 28 (1) of Customs Act, 1962.

5. Inasmuch as extended period in terms of Section 28 (4) of Customs Act, 1962 is not invocable, demand of interest and levy of penalty equal to duty under the provisions of Section 28AA and 114A respectively is also not attracted.

5.1 Section 114AA of Customs Act, 1962 invoked in the impugned notice is reproduced below for the ease of ready reference:

"114AA. Penalty for use of false and incorrect material.

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

5.2 It is evident from the statements recorded during investigation that none of the persons have deposed that the importer, their partner or any other person representing the importer had any prior knowledge about the origin of goods from Pakistan as alleged in the impugned notice.

5.3 The undersigned, who is the proprietor is on record stating that the goods supplied to them were stated to be of UAE origin by the overseas supplier. A copy of contract and all other documents issued by the overseas supplier certifying that goods are of UAE origin have been duly produced along with bill of entry.

5.4 Therefore, the importer was under a bona fide belief that goods were of U.A.E. origin. This belief got conformed when customs authority at the port of import permitted clearance after due verification of all the documents received from the overseas supplier as well as examination of goods. Hence, the importer had no reason

○ to believe that the declaration, statement or document presented by them along with bill of entry with regard to country of origin was allegedly false or incorrect in any material particular, as alleged by way of impugned notice after over two years of clearance of goods.

5.5 On the above basis, it is submitted that provisions of Section 114AA of Customs Act, 1962 is not applicable to the facts and circumstances where there is no positive evidence to show prior knowledge on the part of importer regarding alleged country of origin of goods under consideration as Pakistan.

6. The impugned notice has been issued by repeatedly alleging mis-declaration of country of origin.

6.1 The allegation is based on documents like shipping bill supposedly filed with Customs, Karachi and bill of lading for container movement from Karachi to Jebel Ali and a separate bill of lading for container movement from Jebel Ali to Mundra, all obtained from the shipping line, namely, M/s. Hub & Links Logistics (I) Pvt. Ltd.

6.2 However, the above documents that are relied in the impugned notice does not extend beyond container number and seal number. It may be appreciated that loading of a container from a particular port/country is not the determining factor insofar as country of origin is concerned.

6.3 Merely because a particular container bearing a particular seal number was loaded from Karachi is not sufficient to establish that goods contained in such container also had its origin in Pakistan.

6.4 The impugned notice does not even rely upon certificate of origin that must have been filed by the concerned exporter, namely, M/s. Rafiq Traders, Karachi, appearing in the table contained therein. The impugned notice also does not rely upon any other evidence to support the allegation that goods covered by the bill of entry filed by the importer at Mundra had undoubtedly its origin in Pakistan and not any other country from which it may have been supplied to Pakistan.

6.5 It is a settled law that one who alleges should prove it. The impugned notice makes an assumption based on container movement and not actual movement of goods.

6.6 However, it is a settled law that no duty can be demanded and no penalty can be imposed based on mere assumptions and presumptions. The charge must be proved to the hilt. Inasmuch as no evidence in the form of certificate of origin, etc. claiming the goods to be of Pakistan origin is brought on record, demand of duty by treating such goods of Pakistan origin is not tenable in the eyes of law.

7. The impugned notice ignores the fact that goods have been exported to India from U.A.E. and not Pakistan.

8. The allegation leveled against the importer that he had resorted to willful mis-declaration of Country of Origin, therefore, is unsubstantiated, unproved and therefore baseless. Consequently, the proposals contained in the impugned notice are liable to be vacated, in toto.

Prayer:

9. In view of the above submissions, it is prayed to drop the proceedings against M/s Divyanshi Metal, Jamnagar and oblige.

21. M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham, vide letter dated 29.02.2024, through their advocates-M/s ALFSD Legal Associates, have filed their

○ written statement. The same is reproduced as under:

21.1 A. Brief facts of the case :

1. That M/s. Divyanshi Metal, (*hereinafter may referred to as 'Noticee No.1', or 'DM'*) had imported "Brass Scrap Honey/Ebony/Engel" vide Bill of Entry No.5984684 dated 25.10.2021 under Chapter Tariff Heading No. 74040022 at Mundra port, & evaded customs duty by mis-declaration of country of origin of the goods and produced false/incorrect & fabricated import documents (i.e. Commercial Invoice, Packing List, PSIC).
2. That the Noticee No.1 **DM** imported "Brass Scrap Honey/Ebony/Engel as per ISRI" by mis-declaration of goods country of origin in accordance with Notification no. 05/2019 dated 16.02.2019 as the goods declared as "Brass Scrap Honey/Ebony/Engel as per ISRI" been imported from United Arab Emirates ("**U.A.E.**") have been originated from country Islamic Republic of Pakistan.
3. On the basis of investigation, a show cause notice dated 30.01.2024 (*impugned 'Notice'*) was issued to the Noticee No. 2, imposing penalty under section 112(b)(ii) and section 117 of the Customs Act, 1962 for the alleged mis-declaration of goods country of origin as U.A.E. instead of Pakistan during import of "Brass Scrap Honey/Ebony/Engel as per ISRI" by the Noticee No.1 M/s. Divyanshi Metal.
4. The Noticee No.2, M/s. Hub & Links Logistics (I) Pvt. Ltd. is the provider of shipping lines services and in the current case the Noticee No.2 is an agent at port of discharge for foreign shipping line M/s. Shah Aziz Shipping lines LLC, Dubai.
5. That statements were recorded from Shri Sajish Sivaraj Puthenchira, General Manager of Noticee No.2, during this investigation. The statements were recorded on 12.04.2023 (**RUD 3**). In all the proceedings, our client has fully co-operated and provided all the available information and also derived information from principal for the necessary requirement of the proceedings. Shri Sajish Sivaraj Puthenchira has also submitted that they are the agent of M/s. Shah Aziz Shipping Lines LLC, Dubai who are having their own containers used for export/import of cargo in various ports. The Noticee No.2 scope of work is to co-ordinate with vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM basis of the documents received from the load port and collect the charges and documents from consignee before releasing the Delivery Order and as per the pre-alert received from their Dubai principal, the Noticee No.2 was informed that the container was loaded from Jebel Ali port to Mundra port. After receiving the summons from the department, our client insisted their Dubai principal to provide the Bill of Lading copy which stated POL as Karachi and POD as Jebel Ali. The same set of documents have been provided by our client to the department (**RUD 4, 5, 6 & 7**). He also submitted that the IGM was filed basis the BL copy received from their port of loading principal M/s. Shah Aziz Shipping lines LLC, Dubai, mentioning the port of loading as Jebel Ali. However, Shri Sajish Sivaraj Puthenchira has submitted that he was not aware initially about this fact that the goods are of origin of Pakistan and that it has been routed through Dubai to our client in India in order to avoid levy of increased basic customs duty on Pakistan origin goods. He also submitted that IGM was filed basis the BL copy received from their port of loading Principal in Dubai.

6. Therefore, it is alleged that M/s. Hub & Links Logistics (I) Private Limited has handled the freight of above import consignment wherein the origin of the goods are mis-declared. It is alleged that this has been orchestrated by Hub & Links Logistics (I) Pvt. Ltd., so as to conceal the true origin of goods in order to enable the Noticee No.1 to evade 200% BCD leviable as per notification no. 05/2019 dated 16.02.2019. Further, it is also alleged that our client has deliberately mis-informed / mis-stated the customs regarding the port of loading on Bill of Lading. Accordingly, for these acts of omission and commission, false declaration lead our client to penalties under section 112(b)(ii) and section 117 of the Customs Act, 1962.

Submissions:

1. We submit that the allegation in the subject case, that our client has orchestrated this transaction to conceal true origin of the goods so as enable **DM** to evade duty on the import is incorrect on facts. Further, the levy of penalty under section 112(b)(ii) and section 117 of the Customs Act, 1962 on our client is also legally incorrect.
2. We hereby submit our counter against each, and every allegation levelled against our client with respect to subject import transaction.
3. It is pertinent to note that from the routing of the vessel as mentioned in the PICT website, the container was loaded first from Karachi port and discharged at Jebel Ali port. Thereafter, the said container was loaded on another vessel from Jebel Ali port and discharged at Mundra port. The shipper and consignee are both different in both the 1st leg and second leg B/L's and so is the port of loading and port of discharge. Our client received all the pre-alert documents from Dubai mentioning details of shipper in Dubai and port of loading as Jebel Ali since the container has actually loaded from Jebel Ali port. The Noticee No.2 did not suspect the consignment's origin to be of Pakistan as all the supporting documents evidenced the goods origin to be U.A.E. and as such the IGM was manifested from Jebel Ali port to Mundra port.

Sr. No.	POL	POD	Vsl/Voy	Shipper	Consignee	B/L No.	B/L Date
1	Karachi	Jebel Ali	OEL Kedarnath-032W	Rafiq Traders	Lucky Recycling Ltd	SASLM U21536	12.10.2021
2.	Jebel Ali	Mundra	Montpellier - 21043	Aden Scrap Trading LLC	Divyanshi Metal	SASLM U21536	21.10.2021

4. We submit that Noticee No.2 is not privy to the trade transactions taken place between the Karachi supplier – **Rafiq Traders** and the Dubai buyer – **Lucky Recycling Ltd** and neither the Dubai supplier – **Aden Scrap Trading (LLC)** and Indian buyer – **Divyanshi Metal**. It is beyond the control of Noticee No.2 to inspect and enquire the authenticity and the origin of the goods purchased by the Dubai supplier - **Aden Scrap Trading (LLC)**, mentioned as the shipper in the said Bill of Lading issued from Jebel Ali dated 21.10.2021.
5. We further submit that it is the job of the Noticee No.2 to book containers for export, perform forwarding and logistics related work and file IGM of import containers loaded from various ports. In the instant case, the container was loaded from Jebel Ali port as per the receipt of B/L copy and manifest received from the Noticee No.2 Dubai principal i.e. M/s. Shah Aziz Shipping Line LLC. Following are the sequence of events in the current shipment.
 - a. Pre-alert received from foreign shipping line / load port Dubai principal M/s. Shah Aziz Shipping lines LLC about arrival of cargo.

- b. Our client inquired about expected date of arrival of the cargo from foreign shipping line.
- c. Our client received tentative timelines regarding expected time of arrival (ETA)
- d. Then vessel arrives and all procedure related to filling of import general manifest (IGM) were done basis Bill of Lading copy provided to our client by the foreign shipping line.
- e. Our client issued invoices for the charges related to port clearance activity.
- f. Upon receipt of import charges from the consignee, the Delivery Order was issued and Noticee No.2 liability in the said consignment ceased to exist.

That our client has provided their services to their foreign shipping line and that they don't have any role in the misdeclaration of current shipment. Our client has neither worked nor dealt with the importer and exporter of these imports directly.

- 6. Though the Noticee No.1 denied their involvement in duty evasion, the said connivance of duty evasion is deliberately committed by the Noticee No.1 as they could have only benefited from the duty evasion which is amounting to Rs.3,14,75,165/- (Rupees Three Crores Fourteen Lakhs Seventy Five Thousand One Hundred Sixty Five Only) duty comprising of Basic customs duty (BCD) @ 200%, SWS@10% & IGST @18%.
- 7. As stated in paragraph no. 9 of the SCN, the communication/reply was received from the Pre-shipment Inspection Agency (PSIA) vide emails dated 08.06.2023 & 09.06.2023 (RUD 12(1) & 12(2)). The PSIA (vide above referred e-mail dated 08.06.2023) has informed that there is a mismatch in the details contained in the PSIC submitted by the importer (Certificate No. WFZE/SHJO/8631/2021 dated 07.10.2021) and the one issued by them (Certificate No. WFZE/SHJO/8631/2021 dated 29.11.2021) and as such the certificate submitted by the importer does not appear to be genuine. The PSIA also forwarded the genuine certificate (RUD 13) issued by them under PSIC no. WFZE/SHJO/8630/2021 dated 29.11.2021 (vide e-mail dated 09.06.2023). Thus, it is evident from the above evidence that **DM** has deliberately forged/fabricated the PSIC and submitted the same to the customs authorities at Mundra port and thereby committed wrong as per the findings and so they are liable to pay the differential payments and penalties as per the law.
- 8. In this regard, we would like to submit that demand of penalty under section 112(b)(ii) and section 117 under Customs Act, 1962 should not be raised from Hub & Links Logistics (I) Pvt. Ltd., since all manipulation of documentation and submission for forged documents have been done by **DM** itself in collusion with their foreign supplier M/s. Aden Scrap Trading LLC, U.A.E. Therefore, any misdeclaration by the Noticee no.1 cannot be attributed to any fault and / or act and / or omission of Noticee No.2 as alleged or at all. Hence, Hub & Links Logistics (I) Pvt. Ltd., has no role to play in this alleged non-compliance of evasion of basic customs duty by the importer of the impugned goods.
- 9. Further, it is **DM** who has benefitted from this wrong. **DM** has done certain acts and abetted certain doings which has led to misdeclaration of origin of the goods.

This has benefitted **DM** from **BCD** duty savings. Hence, it is clear that **DM** has collaborated with the foreign supplier for the benefit of duty savings.

10. We would like to submit that Shri Sajish Sivaraj Puthenchira while recording his statement on 12.04.2023 had mentioned that their scope of work is to co-ordinate with vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM on the basis of the documents received from the load port and collect the charges and documents from consignee before releasing the Delivery Order. Bill of Lading no. of Karachi Port and Jebel Ali port are same as SASLMU21536 but dates are different since it is a case of switch Bill of Lading wherein the number remains same but the date of issue is changed. It is used when the traders do not want to disclose actual supplier to the consignee/buyer. All the details except shipper, consignee and /or notify party shall remain same in the switch Bill of Lading. This is a usual practice undertaken by the traders to conceal the details of actual supplier so as to secure their clientele/source/business operation details. It is pertinent to note that the request for issuance of switch bills of lading can be made either by the shipper or the consignee. The port of discharge agent has no role to play in issuance of switch bills of lading.

11. The Noticee No.2 was not aware that the cargo had originated from Karachi, Pakistan and came to know about this from the Customs officers after they had initiated the inquiry, and the Noticee No.2 was summoned by the customs officers. Thereafter, the Noticee No.2 contacted their principal to share the 1st leg Bill of Lading copy. It was then that the Noticee No.2 had information that the Bill of Lading provided to them by their principal Shah Aziz Shipping Lines LLC was a switched Bill of Lading issued from Dubai. Generally, the Switch Bills of Lading altering the port of loading as Jebel Ali is requested by the supplier of the importer to enable smooth functioning of forex transactions between the supplier and importer and it is a standard practice in the Maritime Industry to issue Switch Bills of Lading.

a) The Noticee No.2 further submits that concerning the allegations levelled against the Noticee No.2, pertaining to the Switch Bills of Lading issued in the aforementioned shipment, a Switch Bill of Lading is simply the second set of Bill of Lading issued by the carrier or it's agent to substitute the Original Bills of Lading issued at the time of the shipment, even though it technically deals with the same cargo. To emphasize in detail, Switch Bills of Lading are issued for replacement of certain details specified as below :

(i) the original bill names a discharge port which is subsequently changed (e.g. because the receiver has an option or the good are resold) and new bills are required naming the new discharge port:

(ii) a seller of the goods in a chain of contracts does not wish the name of the original shipper to appear on the bill of lading, and so a new set is issued, sometimes naming the seller as the shipper. A variation on this is where party does not wish the true port of loading to be named on the bill;

(iii) the first set of bills may be held up in the country of shipment, or the ship may arrive at the discharge port in advance of the first set of bills. A second set may therefore be issued in order to expedite payment, or to ensure that delivery can take place against an original bill;

(iv) shipment of goods may originally have been in small parcels, and the buyer of those goods may require one bill of lading covering all of the parcels

to facilitate his on sale. The converse may also happen i.e. one bill is issued for a bulk shipment which is then to be split.

Where switch bills are issued, the first set should be surrendered to the carrier in exchange for the new set. There is usually no objection to this practice. However, the switch bills may contain misrepresentations e.g., as to the **true port of loading**.

The above inference has been taken from the International Transport Intermediaries Club, Issuance of Switch Bill of Lading 2013,1.

Furthermore, International book Carriage of Goods by Sea Sixth Edition, Pg. No. 171 specifically states that :

5.7 Switch Bills

In concluding the survey of the functions of bills of lading, brief mention must be made of the modern practice of issuing switch bills. Under this procedure, the original set of bills of lading under which the goods have been shipped is surrendered to the carrier, or his agents, in exchange for a new set of bills in which some of the details, such as those relating to the name and address of the shipper, the date of issue of the bills or the port of shipment, have been altered.

Hereto annexed and marked as **Annexure - B** are the copies of the printed details of Switch Bills of Lading mentioned in the International book Carriage of Goods by Sea, Sixth Edition.

- b) We would like to place our reliance on the **Singapore High Court ruling in the case of BNP Paribas v Bandung Shipping Pte Ltd., 2003** wherein the switch 12 Bills of Lading **were issued altering the port of loading** for consignment loaded from **Batam, Indonesia and to be discharged at Kandla port, India**. The details mentioned under the Facts paragraph no.2 are as under :

12 bills of lading were switched bills issued by Bandung in exchange for the original set, pursuant to an arrangement provided for in the voyage charterparty. The switched bills were issued for the same cargo as the original set, with some alteration in the details like date and load port.

The above evidence the fact that, the issuance of switch Bills of Lading is a general practice in the maritime industry and in the Switch Bills of Lading, the port of loading and the port of discharge can be altered as per the requirement of the suppliers. Hereto annexed and marked as **Annexure - C** is the judgement copy of the Singapore High Court ruling in the case of BNP Paribas v Bandung Shipping Pte Ltd., 2003

12. It is pertinent to note that in the above mentioned import shipment, the first leg of Bill of Lading was issued in Karachi and second leg of Bill of Lading has been issued by the load port agent in Dubai. However, the Noticee No.2 initially received only the second leg bill of Lading and accordingly the Import General Manifest (IGM) was filed at destination port by the Noticee No.2 based on the information given in the second leg Bill of Lading. Also, the container loaded from Karachi was offloaded at Jebel Ali port and connected on another vessel for discharge at Mundra port. The Noticee No.2 is provided with only the final leg Bill of Lading to file IGM which enables the Noticee No.2 to issue the delivery order to the respective consignee at destination. For all import consignments, it is outside the jurisdiction and authority of the Noticee No.2 to inspect the contents of the goods stuffed inside the container and verify its origin. The

Noticee No.2 can only rely upon the load port documents and Bills of Lading to ascertain the contents of the container and it's port of loading details mentioned in the Bill of Lading to file the Import General Manifest (**IGM**) at the destination port. In the light of the above facts specifically set out hereinabove, there cannot be any act and / negligence / or omission on the part of our client to make them liable for the alleged penalty under Section 112(b)(ii) and Section 117 of the Customs Act, 1962.

13. Without prejudice to the above, we would like to submit that, even though **DM** has denied the mistake, their involvement in duty evasion has been strongly established and therefore, our client is not required to pay any penalty in this case. Thus, all penalties in connection with the subject case stands dropped and all proceeding stands concluded under provisions of section 28(5) & 28(6) of the Customs At, 1962 on Hub and Links Logistics (I) Pvt. Ltd.

There is no evidence against Hub & Links Logistics (I) Pvt. Ltd for orchestrating this transaction for enabling duty evasion at the end of the Noticee No.1.

14. We would like to submit that no evidence has been put on table related to conspiracy or orchestrating by Hub & Links Logistics (I) Pvt Ltd for this alleged crime. Hub & Links Logistics (I) Pvt. Ltd. is not a party to the alleged scheme of misrepresentation which has resulted in non-payment of **BCD** on imports by Noticee No.1.

15. We would like to provide facts that our client is an agent of the shipping line in the subject case.

- a. That, our client is a shipping and logistics company in the field of Container/NVOCC/Projects/Bulk/Special equipment's.
- b. That, our client acts as an agent for different foreign container lines and other shipping lines such as EM KAY LINE etc.
- c. That, as an agent, our client is responsible for handling containers of particular lines for clearance from port.
- d. That, in subject "**Brass Scrap Honey/Ebony/Engel as per ISRI**" import case, our client has acted as an agent at the port of discharge (**POD**) for **DM**.
- e. That, all communications related to "**Brass Scrap Honey/Ebony/Engel as per ISRI**" cargo import were received from the Dubai principal M/s. Shah Aziz Shipping Lines LLC, Dubai.
- f. Our client received all documents from their foreign shipping line, and that our client did not correspond with either the Consignee or with the Shipper directly.

16. We would like to submit that our client had no ill intention in this non-compliance.

As such, we submit that our client is not a party to this violation and hence our client, the Noticee No.2 should not be penalized under the provisions of customs law.

Responsibility of Importer for correct self assessment and declaration of details at the time of import

17. We would like to submit that the actual importer is responsible for declaration of true & correct information at the time of import. Further, they are required to do the self-assessment under section 17(1) of the Customs Act, 1962.

Section 17. Assessment of duty.—

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. --For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

SECTION 46. Entry of goods on importation. –

(1) *The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting 3[electronically] to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:*

(4) *The **importer** while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if*

any, relating to the imported goods.

18. There is mandated provision for verification of self-assessment under section 17 of the Customs Act, 1962 by proper officer. The change in declared valuation in Bill of Entries after due verification cannot be construed as undervaluation as verification of self-assessment is mandated under the Customs Act, 1962. In fact, section 17 (5) of the Customs Act, 1962 cast responsibility on proper officer to pass speaking order in case of change in valuation, which has not been done till date by the proper officer. Our Client cannot be laden with responsibility of undervaluation of imported goods in self-assessment regime, once such responsibility of verification of undervaluation is cast upon proper officer under Section 17 of the Customs Act, 1962.
19. As such, the importer was required to ascertain the correctness of import declaration and duty on the goods. The current importer i.e. Noticee No.1 **DM** was having full information related to the imports.
20. The shipping line agents are not required to look into the authenticity of Certificate of origin and Pre-Shipment Inspection Certificate "PSIC" and they need to only declare information as it is received from foreign shipping line issued Bill of Lading for IGM filing purpose. Further, it is also not required at shipping agent's end to verify each and every container no. from Pakistan Customs Terminal website (PCT) or any other website to track the origin. This is operationally not possible and legally also not required to be done. This is the responsibility of exporter /importer to ensure the correctness of documents and declarations. It is also the importer's responsibility to declare the origin of goods to customs before deciding to pay or not to pay basic customs duty. The importer **DM** has deliberately attempted to avoid payment of BCD by intentionally allowing incorrect documents for clearance from customs by mis-declaring the origin of goods.

Legal Provisions of section 112 (b)(ii) and under section 117 of the Customs Act, 1962.

21. The foremost legal provisions are reproduced here:

[Section 112. Penalty for improper importation of goods, etc.- Any person,-

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

(ii) in the case of dutiable other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;

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

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

22. In view of the above legal provisions, we would like to submit that section 112 (b)(ii) is not applicable to our client since they have not done anything which will cause the goods of **DM** to be confiscated. Our client acted in a bonafide manner in relation to port of discharge procedures for subject consignment. We have also provided detailed submission against the same in the above paragraphs.
23. Further section 117 is also not applicable as our client has not abetted any contravention under the Act and is neither responsible for short levy of Basic Customs duty (**BCD**) in the clearance of subject consignment. The importer is solely responsible for payment of all applicable customs levies by declaring correct details of the consignment in the Bill of Entry. Further, our client has not used any false and incorrect material for filling of IGM intentionally. Our client was under bonafide belief that documents provided by the importer are correct. Therefore, these penalties under section 112(b)(ii) and section 117 are not applicable to our client.
24. Our client is an agent of the foreign shipping line, thus, Article IV (2) of the Carriage of Goods by Sea Act, 1925 and more specifically Article IV (2) (g) and (i), discharges the carrier from any and / or all liabilities and / or losses, arising due to any act or omission of the Shipper or the owner of the goods, his agent, or representative. On this ground alone, it is submitted that our client is not liable for any misdeclaration on the part of the shipper / consignee and neither have they attributed their support in import of "**Brass Scrap Honey/Ebony/Engel**" and its duty evasion by mis-declaration of origin of the goods.

Judicial Pronunciations:

25. We intend to rely on the ruling of CESTAT Ahmedabad in the case of Shobha Plastics Pvt Limited vs Commissioner of Customs, Ahmedabad 2022 TAXSCAN (CESTAT) 379 wherein the tribunal has quashed show cause notice issued for mis-declaration of country of origin to evade Anti-Dumping Duty citing lack of evidence against the concerned person. The appellants admittedly had no role as regards the transaction that was entered by the importer with the supplier of the goods nor is there any evidence to show that present appellants were in any way aware of the fact that anti-dumping duty was sought to be evaded by the importer of the goods. Therefore, it cannot be said that appellants herein have committed any act or omission which rendered the goods liable to confiscation, accordingly penalty under section 112 (a) cannot be sustained.

That in the instant case the Noticee No.2 was also not aware that importer has intended to evade **BCD** in the subject transaction and therefore penalty under section 112(b)(ii) is not sustainable on Noticee No.2.

26. We submit that that during the IGM filing process of the subject consignment, the Noticee No.2 was not aware that this mis-declaration was done in order to evade **BCD** levy from customs. The department has also not provided any strong evidence suggesting connivance that Noticee No.2 actively and intentionally supported mis-declaration of the goods for the purpose of evasion of **BCD**. The Noticee No.2 is the agent in clearance of this consignment, and they have no active or passive role in this alleged violation of law. They also do not have any motive to do this transaction. Only **DM** has motive to do this mis-declaration intentionally. Hence, only **DM** should be penalized, and Noticee No.2 must be granted relief in the subject matter.

27. In the case of **V. Lakshmipathy vs. Commissioner of Customs -2003(153) E.L.T. 640T** (Tri-Delhi) in respect of invocation of penalty under Section 112 had held the existence of mens rea as an essential ingredient to invoke the same. This presupposition is non-existing in the present matter as show cause notice leads no evidence to indicate a guilty mind on part of the appellant.
28. In the case of **Codognotto Logistics India Pvt. Ltd. vs. Commissioner of Customs (2022) (SB) (Tri-Delhi)**, had held that in the absence of mens rea and no deliberate connivance in evading customs duty, penalty under Section 112 and Section 114AA is not leviable upon the appellants and the appeal was set aside.
29. In the case of **Vipul Joshi vs. C.C. Ahmedabad 2022 (Tri Ahmedabad)**, had held that direct participation and knowledge on the part of the person has to be established. In the absence of sufficient evidence, penalty u/s 112(b) of the Customs Act, 1962 cannot be levied.
30. It is a settled position in law that penalty is not imposable where the Noticee has not acted contumaciously or in deliberate defiance of law. In support of this contention, reliance is placed on the law declared by the **Hon'ble Supreme Court in the case of Hindustan Steel Ltd 1978 (2) ELT J159 (SC)** wherein it was held that penalty shall not be imposed unless the conduct of a defaulter is found to be dishonest or contumacious. Reliance in this regard is also placed on the following binding judicial pronouncements which echo the settled principle that a penalty is not imposable where there is no dishonest conduct:
31. We would like to place our reliance in the case of **Akbar Badruddin Jiwani vs Collector of Customs, 1990 (047) ELT 0161 (S.C.)**, where the **Hon'ble Supreme Court** has held that –
- “57. Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law.*
- 58. In the present case, the Tribunal has itself specifically stated that the appellant has acted on the basis of bona fide behalf that the goods were importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate Tribunal, the penalty and fine in lieu of confiscation require to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal.”*
32. The Hon'ble Tribunal in the case of **M/s. Trans Asian Shipping Services P Ltd reported as 2018 (363) E.L.T. 635 (Tri. - All.)** has held that allegation of aiding and abetting cannot be upheld where IGM is filed on the basis of Bill of Lading. Relevant part of the order reads as under:-
- 2. As per facts on records, the appellant is a shipping line and was carrying the container on behalf of M/s. Ankit Metals. On the basis of a letter addressed by M/s. Ankit Metals, they applied for amendment in IGM stating that Aluminium Scrap “Tread” Weight 22.096 may be allowed to be amended to Aluminium**

Scrap "Tread" Weight 7.552 MT & Copper Berry/ Clove Weight 14.544 MT. The said amendment was rejected by the Assistant Commissioner.

3. Subsequently, the importer, M/s. Ankit Metals also addressed a number of letters to the Revenue for change in IGM based upon the communication received from the exporter. All the facts are not being adhered to, inasmuch as the same relates to imports by M/s. Ankit Metals. The only reason for imposing penalty upon the present appellant as recorded by the Commissioner is as under :

"12.13 The shipping line had filed the IGM No. 2124032 dated 12-11-2015 on the basis of the bill of lading No. TALADS01912416 dated 10-11-2015. The bill of lading No. TALADS01912416 dated 10-11-2015 was produced before the Superintendent (SUB), ICD, Loni on 9-8-2016 wherein the description of the goods was mentioned as Aluminium scrap 'tread' 22.096 MT. The said B/L was issued on the strength of invoice no. Y15/141A dated 4-11-2015 of M/s. Ala International Metal Scrap TR LLC and NOC dated 4-11-2015 of M/s. Al Raha Trading Company and export declaration no. 201-02420065-15 dated 4-11-2015 all containing description of goods as Aluminium Scrap 'tread' 22.096 MT. As per statement dated 9-8-2016 of Shri Sandep Vishwanath A. of the shipping Line, the folio No. of the bill of lading was TAL1066058. The revised bill of lading having the same Sl. No. was issued from Dubai by Dubai Arobian Shipping Agency, LLC, the agent for the carrier. As per Shri Sandeep the revised bill of lading had reference no. TAL1157913 which was issued on 5-1-2016. It is pertinent to notice that request for amendment to the IGM was filed on 28-12-2015 by the shipping line. It thus shows that any B/L could be issued at free will at the behest of the importer/shipper. Having known that an application for amendment in the IGM was pending before the customs authorities since 28-12-2015, a final set of B/L was handed over to the shipper on 5-1-2016 without waiting for the outcome of their application for amendment. It has been contended by Shri Sandeep in his statement dated 9-8-2016 that B/L being a Line document, there was no need to seek approval from Customs for issue of the same. The argument is devoid of merit for the reason that statutory document viz. IGM is filed on the basis of bill of lading and therefore, it is imperative that sanctity of the documents i.e. bill of lading is maintained. Without checking the details of goods being carried and the supporting documents, the shipping line has issued the revised bill of lading without any check and balance and thus aided and abetted the importer in his nefarious design of importing the goods by misdeclaring the same with the intent to evade payment of Customs duty. The shipping line has knowingly made B/L which was false and incorrect in respect of material description of the goods with the view to use the same in the transaction of filing of IGM and clearance of goods for the purpose of Customs Act, 1962, and have thus rendered itself liable to penalty under Section 114AA of the Customs Act, 1962."

4. As is seen from the above, the penalty stands imposed upon the appellant on the ground that they have aided and abetted the importer in his nefarious design to import the goods by misdeclaration. However, I find that there is no evidence on record to show that the appellant was a party to such misdeclaration. They simplicitor filed IGM on the basis of bill of lading and on subsequently, after getting an communication from the importer, they applied for amendment of the same. In such a scenario, the allegation of the aiding

and abetting cannot be upheld. Accordingly, the same is set aside and the appeal is allowed by setting aside the penalty imposed upon the appellant."

In the present case, the Noticee No.2 relied upon the Bill of Lading issued at Jebel Ali for filing IGM and thus, the Noticee No.2 cannot be held guilty for mis-declaration with regard to the correctness of the content of the IGM filed by them as required under section 30(2) of the Customs Act, 1962 and hence no penalty should be imposed upon the Noticee No.2 under Section 117 of the Customs Act, 1962.

33. When there is no evidence to establish any overt act or *mens rea* to facilitate the commission of offence, the allegations that the Noticee No.2 has facilitated the attempt to enable **DM** to evade **BCD** in the subject transaction, is without any factual and legal basis and therefore penalty under section 112(b)(ii) and section 117 of the Customs Act, 1962 is not sustainable on the Noticee No.2.

34. In view of the above submission, there is no case of acting knowingly or intentionally on the part of the Noticee No.2. The Noticee No.2 was not aware that the importer **M/s. Divyanshi Metal** intended to evade the BCD to avail the benefits in custom duty in the subject transaction and neither is there any evidence to show the existence of *mens rea* in the mis-declaration of the origin of goods by Noticee No.2. Thus, the penalties imposed under section 112(b)(ii) and section 117 of the Customs Act, 1962 does not sustain in the eyes of law and accordingly the impugned show cause notice need to be set aside. Hence, the Noticee No.2 should be granted relief from penalties and prosecution.

Prayers:

- c) It is respectfully prayed that the Hon'ble Commissioner of Customs, Mundra may be pleased to set aside the Show Cause Notice issued against the Noticee No.2 (Hub & Links Logistics (I) Pvt. Ltd.)
- d) May be pleased to drop the proceedings initiated in the above Show cause Notice.

We intend to leave, alter, amend or modify our submission till the time matter is decided.

21.2 The Noticee no. 2, M/s Hub & Links Logistics (I) Pvt. Ltd., further submitted their additional submissions vide letter dated 26.11.2024, as under –

We represent **M/s. Hub & Links Logistics (I) Pvt. Ltd.** [hereinafter maybe referred to as 'the Noticee No.2', 'our client or 'The Shipping Line Agent'], having address at Suit No. 101, Rishabh Arcade, Near to GST Bhavan, Plot No. 83, Sector-8, Gandhidham - 370201, refer to captioned show cause notice dated 30-01-2024 (*impugned 'Notice'*) issued on our client, as Noticee No. 2, imposing penalty under section 112(b)(ii) and section 117 of the Customs Act, 1962 for the alleged mis-declaration of goods origin during import of "Brass Scrap Honey/Ebony/Engel as per ISRI" by M/s. Divyanshi Metal (IEC No. 2412013438). Hereto annexed and marked as **Annexure "A"** is the Vakalatnama issued by our client.

1. The Noticee No.2 has submitted their reply against the impugned notice on 29.02.2024.
2. In view of the allegation of mis-declaration and penalty charges on Noticee No.2, we would like to submit our additional submission based on judicial pronouncements against the same as below.

Judicial Pronouncements

3. We are relying upon the case of Wollongong Coal Limited vs. PCL (Shipping) Pte Ltd.,(2020) decided by the **New South Wales, Supreme Court**.

- a. In this case, the Plaintiff Wollongong Coal Ltd (WCL) is an Australian coal mining company and at that relevant time, it was a subsidiary of **Gujarat NRE Coke Limited ("Gujarat India")**, an Indian metallurgical coke producing company.
- b. The defendant PCL (Shipping) Pte. Ltd. is a Singaporean Shipping Company who sub- chartered the vessel Illawar Fortune.
- c. WCL sold coal to its parent company Gujarat India.
- d. Gujarat India contracted with PCL to carry the cargo from Port Kembla, Australia to Mundra port, India.
- e. Gujarat India as voyage charterer was liable to pay the ocean freight to PCL (Shipping) Pte. Ltd.
- f. The cargo was shipped in August 2013 and Charterparty Bills of Lading (**Original Bills**) were signed by Shipowners, naming WCL as the Shipper. Therefore, WCL was a party to the bill of lading contract with the Owners. PCL issued a freight invoice to Gujarat India for approximately US\$3.2 million under the Voyage Charter.
- g. On 24 September 2013, WCL asked for the Original Bills to be "switched" and Switch Bills to be issued, naming New Alloys Trading Pte Ltd (New Alloys) as Shipper in place of WCL.
- h. PCL agreed to facilitate the switch. On 2 October 2013, when a representative from New Alloys delivered the Original Bills to PCL's office, PCL marked each of the Original Bills 'Null and Void' on the Shipowner's instructions and sent these marked bills to the Shipowner.
- i. On 3 October 2013, PCL sought a letter of indemnity (**LOI**) from Gujarat India that indemnified PCL against any loss arising from the issue of the Switch Bills and on 4 October 2013 Gujarat India provided the requested LOI.
- j. On 4 October 2013, PCL provided a corresponding LOI to Owners who then released the new Switch Bills to New Alloys.
- k. As the above events unfolded, Sub-charterer Gujarat India failed to pay USD 3.2 Million freight to Disponent Owners PCL, time charterers of the Vessel Illawarra Fortune. After taking assignment of Owner's rights under the Bills of Lading, PCL tried to recover those sums from Shippers WCL. The Bills of Lading provided for "Freight payable as per Charter Party", i.e. the voyage charterer. However, following WCL's failure to pay part of freight costs, the Bills of Lading were marked "Null and Void" and substituted by switch bills identifying New Alloys as shippers. The effect of "Switching Bills of Lading" is that the original Bills of Lading contract is replaced by a new contract evidenced by the "switch bills of lading."
- l. The Court held that because of the novation WCL's liability under the Switch Bills of Lading was extinguished therefore neither the Owners nor PCL as their assignee could recover the freight and costs related to the voyage, given the prevalence of this practice in commercial shipping.

- m. The above judgement explicitly mentions the legitimacy of issuance of Switch Bills of Lading which is a common practice in the Shipping Industry and the same practice has also been adopted by Gujarat India to import coal from Australia to India which has been approved by the New South Wales Supreme Court to grant relief to Gujarat India and their subsidiary company WCL.

Hereto annexed and marked as **Annexure - "B"** is the judgement copy of the New South Wales Supreme Court.

Based on the above judgement, the Noticee No.2 has not committed any wrong by filing the IGM basis the Switch Bill of Lading as per the standard maritime practice. Therefore, any mis-declaration by the exporter / importer to customs department for duty evasion cannot be attributed to any fault and / or act and / or omission and / or willful suppression by the Noticee No.2.

4. In the case of Jeena and Company versus Commissioner of Customs, Bangalore {2021 (378) E.L.T. 528 (Tri. - Bang.)} Hon'ble CESTAT, South Zonal Bench, Bangalore in para 6 held that -

6. After considering the submission of both the parties and perusal of the material on record, I find that there is no material evidence with the Revenue to come to the conclusion that the Appellant had the knowledge of the wrong doing of the importer and has colluded with the importer to defraud the Revenue. I also find that the importer has also stated in his statement before the Original Authority in reply to Question No.10 that the CHA has filed the Bill of Entry based on the description on the invoice and there is no instruction by the importer to the CHA to do any wrong act. In the absence of any material evidence of knowledge and collusion between the Appellant and the importer, it is not appropriate to punish the CHA for filing the document in good faith and on the basis of documents supplied by the importer. Further, I find that all the decisions relied upon by the Appellant cited supra has consistently held that in order to impose penalty on the CHA under Section 112 of the Customs Act, there has to be a knowledge on the part of the CHA and there should be a collusion between the CHA and the importer in defrauding the Revenue. Further, I find that the Tribunal in the case of Ashok Jaiswar Vs Commissioner of Customs (cited supra), the Tribunal in Para 5 has held as under:

5. I have perused the records and considered the submissions made by both the sides. The finding against the Appellant is merely that he signed the shipping bill, upon the business being brought by Shri Md. Farooq. The finding is also that Shri Mohd. Farooq and other persons were the guilty parties in committing the drawback fraud. There is no mention of the Appellant being aware that the fraud was being committed. This Tribunal has held in the case of Syndicate Shipping Services Pvt. Ltd. v. CC, Chennai [2003 (154) E.L.T. 756 (Tribunal Chennai)] that, "a customs house agent is not liable to penalty merely for signing a shipping bill in relation to contraband goods. More positive evidence of participation is necessary".

7. In view of the various decisions cited supra and on the basis of material on record, I am of the considered opinion that the penalty imposed is not sustainable in the absence of any specific role performed by the Appellant in the wrongdoing done by the importer. Hence, I set aside the penalty by allowing the appeal of the Appellant.

5. The two member justice bench of **Kolkata** Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in the case of M/s. JKG Infralogistics Pvt. Ltd vs Commissioner of Customs, Kolkata (2023 TAXSCAN (CESTAT) 1652) observed that there is no infringement of Regulation 10(q) as well in the matter as it is on record that the appellant has always co-operated in the enquiry. Further held that "to implicate the appellant with the commissioning of the fraud, the charge has to be led by positive and reliable evidence and vague hypothesis and presumptions cannot be the basis for any unilateral action initiated against the Broker." Since the department has failed to make out any sustainable case of violation of the provisions of the CBLR, 2018 by the Customs Broker. The order passed by the Commissioner was not legal and correct. The CESTAT quashed the order.

In the current case as well, the Noticee No.2 has fully co-operated in the investigation and further there are no positive and reliable evidence against the Noticee No.2. It is pertinent to note that the Noticee No.2 relied upon the Bill of Lading issued in Jebel Ali for filing IGM and thus, the Noticee No.2 cannot be held guilty for mis-declaration with regard to the correctness of the content of the IGM filed by them as required under section 30(2) of the Customs Act, 1962 and hence no penalty should be imposed upon the Noticee No.2 under Section 112 (b) (ii) and Section 117 of the Customs Act, 1962.

PERSONAL HEARINGS

22. Opportunity of personal hearing in the case was given to the Noticees on 25.11.2024 and 29.11.2024 under the provisions laid down in Customs Act, 1962 and following the principles of natural justice.

22.1. 1st PH on 25.11.2024:

Ms. Deepti Upadhyay, Advocate and authorized representative of M/s. Hub & Links Logistics (I) Pvt. Ltd., appeared before adjudicating authority for scheduled Personal hearing on 25.11.2024 at 01.00 PM, through virtual mode in the matter of M/s Divyanshi Metal. Ms. Deepti Upadhyay, Advocate during the hearing relied upon and reiterated their defence submission received in this office on 29.02.2024 and also added following points –

She stated that they are delivery agent and their role is very limited. They just filed IGM, collected the document issued the delivery order. Penalty under Section 112(b)(ii) and 117 has been wrongly imposed on them. Their scope is very limited to check the details filed by the importer at the time of filing the Bill of Entry. They can neither check the authenticity of certificate of origin as they have no authority. When the container comes in India they file the IGM, collect the original bill of lading and maybe surrender, and they issue the delivery order to the buyer, CHA or representative of CHA. They relied on both the bill of Ladings which shows different shipper and different consignee specifically described in their written submission on page no.5&6.

They relied on certain case laws pertaining to Switch bills of lading. They have supported fully during the investigation. She referred to the submission at Annexure B & C related to switch Bills of Lading and the relevant case law. She relied on the Supreme Court of Australia, NSW which is not mentioned and she said she will provide in her additional submission which they will submit later on.

She relied on Shobha Plastic Private Limited versus Commissioner, Commissioner

○ of Custom and relied on the latest judgment of Ms. EXIM Services versus Commissioner of Custom. She also relied on V. Lakshmipathy vs. Commissioner of Customs and Codognotto Logistics India Pvt. Ltd. vs. Commissioner of Customs Delhi Tribunal. Delhi 2022. She relied on Vipul Joshi versus CC Tri. Ahmedabad.

Further she stated that Honourable Supreme Court in Hindustan Steel Limited held that penalties not to be imposed unless the conduct of defaulter is found to be dishonest or contumacious. She relied on Supreme Court judgement on Akbar Badruddin Jeevani versus Collector of Customs in 1990. In case of Trans Asia Shipping services Pvt ltd it was held that as per the facts on record the allegation of aiding and abetting cannot be upheld where IGM is filed on the basis of bill of lading after getting the communication from the importer.

They are the shipping company, their scope is very limited and as such they can't be held liable for any penalty.

She stated that they will be filling additional submission later on. They prayed that penalty under section 112 (b) (ii) and section 117 should not be imposed and they will submit further citation in this matter.

22.2 2nd PH on 29.11.2024

Shri Vikas Mehta, Consultant, representing M/s Divyanshi Metals (Noticee No. 01), appeared before me for scheduled Personal hearing on today, i.e. 29.11.2024 at 15.15 PM, through virtual mode in the matter of M.s Divyanshi Metal. Shri Vikas Mehta, Consultant during the hearing, relied upon and reiterated their defence submission dated 17.07.2024 and also added that "container tracking system of Pakistan International Container Terminal at Karachi is in public domain since more than two years and as such, invocation of extended period is unjustified". He also requested the adjudicating authority to take a lenient view in the matter.

DISCUSSION AND FINDINGS

23 After having carefully gone through the Show Cause Notice, relied upon documents, submissions made by the Noticees and the records available before me, I now proceed to decide the case. The main issues involved in the case which are required to be decided in the present adjudication are as below:

- (i) Whether Classification of 25790 kgs. of "Brass Scrap Honey/Ebony/Engel as per ISRI" imported in Container No. WSCU 6825849 covered under BL No. SASLMU21536 dated 21.10.2021, Invoice No. RT-440-2021 dated 23.10.2021 & Bill of Entry No. 5984684 dated 25.10.2021, under Chapter Tariff Heading No. 74040022 is liable to be rejected and the same is liable to be re-classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975;
- (ii) Whether the total quantity of 25790 kgs. of "Brass Scrap Honey/Ebony/Engel as per ISRI" imported in Container No. WSCU 6825849 covered under BL No. SASLMU21536 dated 21.10.2021, Invoice No. RT-440-2021 dated 23.10.2021 & Bill of Entry No. 5984684 dated 25.10.2021 valued at Rs.1,13,38,316/- (Rupees One Crore Thirteen lakh Thirty Eight Thousand Three Hundred and Sixteen only) is liable to confiscation under Section 111 (m) of the Customs Act, 1962;

(iii) Whether the Customs Duty of Rs.3,14,75,165/- (Rupees Three Crore Fourteen Lakh Seventy-Five Thousand One Hundred Sixty-Five only) (as detailed in Annexure-A to SCN), is liable to be recovered from the Importer under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 and the Customs Duty of Rs. 22,01,168/- (Twenty Two Lakh One Thousand One Hundred Sixty Eight only) already paid by them is liable to be appropriated and adjusted against the duty demanded above;

(iv) Whether the said Importer is liable to penalty under the provisions of Section 112 (a)(ii)/ 114A and 114AA of the Customs Act, 1962; and

(v) Whether **M/s. Hub & Links Logistics (I) Pvt. Ltd.**, Gandhidham, is liable to penalty under the provisions of Section 112(b)(ii) and Section 117 of the Customs Act, 1962.

24. After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. The foremost issue before me to decide in this case is as to whether the goods imported by **M/s. Divyanshi Metal (IEC No.: 2412013438)**, Jamnagar are mis-classified under customs Tariff Item 74040022 and the same is to be re-classified under Customs Tariff Item 98060000.

24.1. I find that in the present case the dispute of classification has arisen solely on the basis of origin of goods. The Government of India vide Notification No. 05/2019-Customs dated 16.02.2019 has inserted a specific entry "9806 00 00" in Customs Tariff Act, 1975 which stipulates that the all goods originating in or exported from the Islamic Republic of Pakistan shall be classifiable under Custom Tariff Item "9806 00 00" in Chapter 98 of Section XXI, in the First Schedule to the Customs Tariff Act, 1975. The show cause notice alleges that the goods were originated in Pakistan, therefore, it is correctly classifiable under Customs Tariff Item-98060000.

24.2. I find that acting on intelligence that cargo under Container No. WSCU 6825849 was loaded from Port of Karachi, Pakistan and the importer had mis-declared the Country of origin of the goods as United Arab Emirates, an enquiry was initiated by SIIB Section, Mundra, wherein Bill of Entry No. 5984684 dated 25.10.2021 was filed by Importer through Customs Broker, with respect to the cargo, said to be "Brass Scrap Honey/Ebony/Engel as per ISRI", as per below details :-

<u>Importer</u>	<u>CHA</u>	<u>Cargo Declared/CTH</u>	<u>Qty.</u>	<u>Declared Value (Rs.)</u>	<u>Assessed Value(Rs.)</u>
M/s. Divyanshi Metal	M/s. Unique Speditorer Private Limited	Brass Scrap Honey/Ebony/Engel as per ISRI	25790 Kgs	11338316	10360875
IEC-2412013438	CHA Code - AABCU3257BCH001	74040022			
<u>Declared Country of Origin</u>		<u>Declared rate of duty</u>		<u>Assessed duty {Rs.}</u>	
United Arab Emirates		BCD-2.5% SWS-10% IGST-18%		22,01,168/-	

24.2.1 As the intelligence was received that the goods were of Pakistan Origin, tracking of aforesaid Container No. HMCU3038988 was done on the website i.e. <https://pict.com.pk/en/online-tracking> of Pakistan International Container

Terminal Ltd., Karachi, Pakistan (In short "PICT"), which revealed that the Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to AEJEA (Jebel Ali, UAE). Image of PICT tracking (RUD-2) for the said container (WSCU 6825849) is as under:

IMAGE I

Container No:	WSCU6825849
Category:	Export
Lot No:	KPEKSB45913041021
Container Size:	20'
Weight:	28160 Kg.
Seal 1:	018261
Seal 2:	0151
Eq. Description:	20ft general
Terminal Status:	Departed
Yard Position:	
Commodity:	

VIR No:	KAPE-0463-01102021
Vessel Name:	OEL KEDARNATH
Voyage:	032W
Expected Arrival:	08-Oct-2021 18:00
Expected Departure:	12-Oct-2021 07:00
Actual Arrival:	10-Oct-2021 05:36
Actual Departure:	12-Oct-2021 10:00

IMAGE II

Port of Loading:	PKKHI
Port of Discharge:	AEJEB
Destination:	AEJEA
Empty Drop-off Location:	

Examination Marked:	
Grounding Date:	
Examination Completed:	
Holds:	
Released:	05-Oct-2021 00:30
Release Code:	AL

Activity	Performed Time
UNIT_WEIGHTMENT	05-Oct-2021 00:14
UNIT_IN_GATE	05-Oct-2021 00:14

From the above details, it becomes clear that the Container No. WSCU 6825849 bearing seal no. 018261 & 0151 has left from PKKHI (Port of Karachi) for AEJEA (Port of Jebel Ali) on 12.10.2021 on board the vessel "OEL Kedarnath". The Container number and seal number shown in PICT website matches with that declared in import documents filed at Mundra Port wherein Country of Origin is declared to be United Arab Emirates.

24.2.2 I find that Shri Arvind R Jagetiya, Proprietor of M/s Divyanshi Metal, Jamnagar, in his statement tendered before the SIIB on 17.04.2023 under Section

108 of the Customs Act, 1962 has confirmed that the details of container no. and seal no. mentioned in the BL No. SASLMU21536 dated 21.10.2021 and PICT (tracking website of PICT i.e. <https://pict.com.pk/en/online-tracking>) documents are same. Further, he confirmed that "25790 Kgs. of Brass Scrap were loaded in Container No. WSCU 6825849 having seal no. 018261 & 0151 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal Nos. 018261 & 0151 affixed at Karachi Port is found intact at Mundra Port." I find that on the same container, the same seal was found intact, when the container left Karachi Port and landed at Mundra Port, via Jebel Ali. This sufficiently makes it clear that the goods "Brass Scrap Honey/Ebony/Engel as per ISRI", was loaded on Karachi port, on the container WSCU 6825849 with seal nos. 018261 & 0151, and the same was unloaded directly at Mundra Port. The fact that documentation were so created to camouflage the origin Port again is confirmatory of the fact that goods were of Pakistan origin.

24.3 I find that, during the investigation, statement of Shri Sajish Sivaraj Puthenchira (RUD-3), General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd. (agent of M/s. Shah Aziz Shipping Lines LLC & delivery agent of the subject consignment at Mundra as per Master Bill of Lading No. SASLMU21536 dtd 21.10.2021) was recorded under Section 108 of the Customs Act, 1962, on 12.04.2023, wherein he interalia stated that:

- > M/s. Hub & Links Logistics India Pvt Ltd, are the agent of M/s Shah Aziz Shipping Lines LLC, Dubai who are having their own containers used for export/import of cargo in various ports.
- > The Container No. WSCU 6825849 was loaded from Jebel Ali and they were appointed delivery agent by their principal, M/s Shah Aziz Shipping Lines LLC. In this regard, they submit all the documents as under:
 1. Shipping Bill No. KPEX-SB-45913 dtd 04.10.2021 (RUD-4) filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, 154 Street 10 Akber Road, Block-A;
 2. Bill of Lading No. SASLMU21536 (RUD-5) issued by CIM Shipping Inc for transport of "Brass Scrap" in Container no. WSCU 6825849 from Karachi Port to Jebel Ali;
 3. Bill of Lading No. SASLMU21536 dtd 21.10.2021 (RUD-6) issued by Shah Aziz Shipping Lines LLC for transport of "Brass Scrap Honey/Ebony/Engel as per ISRI" in Container no. WSCU 6825849 from Jebel Ali to Mundra;
 4. Container tracking (RUD-7) for Container no. WSCU 6825849;

On perusal of above documents, he understands that 25790 Kgs. of Brass Scrap were loaded in Container No. WSCU 6825849 having seal no. 018261 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal No. 018261 affixed at Karachi Port is found intact at Mundra Port.

- > Bill of lading no. of Karachi Port and Jebel Ali port are same as SASLMU21536 but dates are different since it is a case of switch Bill of Lading wherein the number remains same but the date of issue is changed.

It is used when the traders do not want to disclose actual supplier to the consignee/buyer. All the details except shipper, consignee and/or notify party shall remain same in the switch Bill of lading.

- They cannot be held responsible for switching of bill of lading as it was not done by them, nor it was in their notice, nor they had any say or approval in the matter.

24.3.1 From the above documents submitted by M/s. Hub & Links, it is amply clear the impugned goods loaded in Container no. WSCU 6825849 having Seal nos. 018261 & 0151 was dispatched from Karachi to Jebel Ali and reached at Mundra Port with the same seal nos. 018261 & 0151. The chronology of dates also indicates clearly that the goods were loaded at Karachi for onward movement to Mundra via Jebel Ali.

24.3.2 Further, I find that during the recording of statement by SIIB on 23.02.2023, Shri Sajish Sivaraj Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd. (agent of M/s. Shah Aziz Shipping Lines LLC & delivery agent, on being shown the above documents provided by them, agreed that the goods Brass Scrap Honey/Ebony/Engel as per ISRI in Container no. WSCU 6825849 having Seal no. 018261 had been loaded from Karachi Port and it has reached Mundra via Jebel Ali.

24.4 I find that as Import of metallic waste and scrap is subject to pre-inspection certificate (PSIC) from the country of origin, to verify the genuineness of PSIC No. WFZE/SHJO/8631/2021 dated 07.10.2021, said to be issued by M/s Wise Services FZE, Sharjah, UAE, Emails were sent by SIIB, to the e-mail id "wisefze@yahoo.com for seeking genuineness of the said PSIC certificate. Vide reply emails dated 08.06.2023 & 09.06.2023 the Pre-shipment Inspection Agency (PSIA) informed that there is a mismatch in the details contained in the PSIC submitted by the importer (Certificate No. WFZE/SHJO/8631/2021 dated 07.10.2021) and the one issued by them (Certificate No. WFZE/SHJO/8631/2021 dated 29.11.2021) and as such the certificate submitted by the importer does not appear to be genuine. The PSIA also forwarded the genuine certificate issued by them under PSIC no. WFZE/SHJO/8630/2021 dated 29.11.2021 (vide e-mail dated 09.06.2023). Hence, from the above, as well as the fact that the container was never opened for inspection (the same seal nos. were found intact from Karachi till Mundra Port), I find that the PSIC submitted by the importer with Bill of Entry was forged/fabricated.

24.5 From the facts and evidences on the records as discussed above, I find that the container no. Container WSCU 6825849 sealed with seal no. 018261 & 0151 was not opened at Jebel Ali as the seal affixed at Karachi Port is found intact at Mundra Port and that all the documents viz. Pre-shipment Inspection Certificate, country of origin certificate etc. were forged. The Container No. WSCU 6825849 was actually loaded from Karachi Port and it has reached Mundra via Jebel Ali and the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan. Thus, it is beyond doubt that 25790 Kgs. of Brass Scrap loaded in the container no. Container WSCU 6825849 sealed with seal no. 018261 & 0151 was originated from Islamic Republic of Pakistan. I hold so.

REJECTION OF CLASSIFICATION AND RE-CLASSIFICATION OF GOODS

25. In the aforesaid paras, I have held based on available documents and evidences that the impugned goods imported under the Bills of Entry bearing no. BE No. 5984684 dated 25.10.2021 were of Pakistan origin, now I proceed to classify the said goods.

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

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

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

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

25.2 I find that the classification adopted by the importer of the impugned goods under Customs Tariff Item 74040022 is not correct and is correctly classifiable under Customs Tariff Item 98060000 of Customs Tariff Act, 1975 in terms of Notification No. 05/2019-Customs dated 16.02.2019 as the goods imported by the them has originated from Islamic Republic of Pakistan. Therefore, I find that importer is liable to pay Customs Duty of Rs.3,14,75,165/- (Rupees Three Crore Fourteen Lakh Seventy Five Thousand One Hundred Sixty Five only), as detailed in Annexure-A of the Show Cause Notice under Section 28(4) of Customs Act, 1962. I hold so.

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

26. The present Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts."

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not

been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

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

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

(a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

26.1 The importer has contended that Section 28(4) of Customs Act, 1962 cannot be invoked in the present case as there is no "wilful mis-declaration of Country of Origin". They submitted that container tracking on PICT (Pakistan International Container Terminal Limited) is in public domain. As such, the details of container number and seal number appearing in the import documents that were supplied to importer by the seller from UAE were available for verification on the PICT website from the very date when container was loaded from PICT for UAE.

26.1.1 I find that above contention of importer is not sustainable. After introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it is the obligatory on the part of the importer to declare the correct country of country of origin of impugned goods and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. It is unreasonable to expect that an officer assessing the Bill of Entry will presume that the Imported goods would have originated from any other country than declared and will start tracking of the containers on website of Ports of suspected country. The importer, therefore, by not disclosing the true and correct facts to the proper officer at the time of clearance of imported goods, have indulged in mis-declaration and mis-classification by way of suppression of facts and wilfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable Custom duties. Sub-section(4A) to Section 46 of the Customs Act, 1962, requires him to ensure completeness, correctness and authenticity of the information. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011, cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self assessment, is required to ensure that he declared the correct classification, country of origin, applicable rate of

duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. In EVERSHINE CUSTOMS (C & F) PVT LTD., New Delhi Vs. COMMISSIONER OF CUSTOMS, New Delhi, the CESTAT, Principal Bench observed as under -

"19. The responsibility therefore, rests entirely on the importer and without such a provision, the Customs law cannot function. Sub-section (1) of section 46 requires the importer to make an entry of the goods imported. Sub-section (4) requires him to make a declaration confirming the truth of the contents of the Bill of Entry."

26.2 The facts and evidences placed before me clearly states that the Importer has wilfully indulged in mis-stating and suppressing the fact that the goods were of Pakistan Origin. The importer had mis-declared the Country of Origin of such goods covered under the said Bills of Entry, as UAE. The importer had submitted all the documents viz. Pre-shipment Inspection Certificate, country of origin certificate etc. which were fake and created only with the intention to hide the fact about country of origin and to evade payment of appropriate duty. Their act of suppression of facts was unearthed only after intelligence was received and investigation conducted by SIIB. The importer knowingly and deliberately has suppressed the material facts of Country of Origin from the Department and mis-declared the same in the Bills of Entry with a clear intention to evade the differential Customs Duty. Had the SIIB not initiated investigation into the matter, the importer would have succeeded in his manipulations and the evasion of duty could not have been unearthed. The Importer cannot take a stand that he had no idea of the fraud perpetrated by his supplier and seek relief from the charges made in the notice, in the face of the evidence available in the instant case, including especially submission of false COO and PSIC certificate. If such leniency is extended in financial crimes, no case can be booked against erring Importers. The preponderance of probability in the instant case clearly points to culpability on the part of the Importer.

26.3 In view of above, I hold that there is no flaw in invoking Section 28(4) of Customs Act, 1962 to demand duty in the present case.

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

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

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

27.1 The importer in their submission have contended that the goods were examined by Custom officers at the port of import and permitted for clearance for home consumption only after the same were found tallying with the declarations made in the bill of entry and documents presented by the importer that were received from the overseas supplier. As such, there was no mis-declaration, leave

alone willful, at the time of import and clearance. Hence, provisions of Section 111 (m) of Customs Act, 1962 for confiscation of goods on the ground of mis-declaration are not applicable.

27.1.1 The above submission of importer is not tenable as section 111(m) of Customs Act, 1962 provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act are liable for confiscation. From the above provisions, it is clear that goods which are imported by way of any type of mis-declaration, will be liable to confiscation. The above provisions are not confined to Quantity of the Goods only. In the present case it has already been held in paras supra that the Importer had mis-declared origin of the goods as UAE and has classified the same under Customs Tariff Item 74040022 instead of correct classification under 98060000 of the Customs Tariff Act, 1975. Further, the case law of Callmate India Pvt. Ltd. v/s Commissioner of Customs, New Delhi, 2023 (383) ELT 121 (Tri-Del.) referred to by the noticee and other Case laws referred thereafter, are not squarely applicable in the present case, due to different facts and circumstances in those cases. Further, as per the ratio laid down in **Evershine Case**, referred above, I find that the importer has failed to impart due diligence, as both the COO and the PSIC certificate submitted by them are found to be fraudulent/forged. As per Section 46(4A) of the Customs Act, 1962, the Importer is duty bound to check the accuracy of the information given by them in the Bill of Entry and to ensure the authenticity and validity of any supporting documents, which the importer has failed to do so in this instant matter. Accordingly, I hold that the impugned goods are liable for confiscation under Section 111(m) of Custom Act, 1962.

27.2 As the impugned goods are found to be liable for confiscation under Section and 111(m) of the Customs Act, 1962, I find that it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the goods imported under Bill of Entry No. 5984684 dated 25.10.2021. The Section 125 ibid reads as under:-

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

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

In the case of **M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai)** it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the misdeclaration in respect of the parallel invoices issued prior to

the date of filing of the Bills of Entry. Hence, there is misdeclaration and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

Further in case of VISTEON AUTOMOTIVE SYSTEMS INDIA LIMITED Versus CESTAT, CHENNAI, 2018 (9) G.S.T.L. 142 (Mad.) Hon'ble High Court of Madras has passed the landmark judgement contrary to the judgement of tribunal passed earlier. In the said judgement it has been held that:

"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."

In view of above discussions, based on the judgement of M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai), M/s Asia Motor Works vs Commissioner of Customs 2020 (371) E.L.T. 729 (Tri. - Ahmd.) & Visteon Automotive Systems India Limited Versus CESTAT, CHENNAI, 2018 (9) G.S.T.L. 142 (Mad.), I find that goods in the current case are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and redemption fine is liable to be imposed on the said confiscated goods. I hold accordingly.

Imposition of Penalty on M/s. Divyanshi Metal, Jamnagar, under Section 114A, 112(a)(ii) and 114AA of the Customs Act, 1962

28. I find that section 114A stipulates that the person, who is liable to pay duty by reason of collusion or any willful mis-statement or suppression of facts as determined under section 28 ibid, is also be liable to pay penalty under section 114A.

28.1 In above paras, I have held that the Importer mislead the department at the time of filing of Bills of Entry of imported goods by mentioning wrong Customs Tariff Items thereby evading the Customs duty. They have deliberately misled the Department, by submitting Fake COO, forged PSIC and other documents fraudulently to evade payment of higher rate of duty imposed on Pakistan Origin goods. Had the investigating agency i.e. SIIB Section, Mundra Customs, not initiated investigation against the Importer, the evasion of Customs Duty would not have come to the knowledge of the department. In the present case, the importer have been found liable to pay duty determined under section 28(8) of the customs act, 1962, therefore, for these acts and omissions, the Importer is liable for penal action under Section 114A of the Customs Act, 1962. I hold so.

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

○ mandatory provision of penalty under section 114A of customs act, 1962 where duty is determined under Section 28 of customs act, 1962. Therefore, I refrain from imposing penalty under section 112(a)(ii) of Customs act, 1962.

28.3 As regards imposition of penalty under Section 114AA of Customs Act, 1962 on M/s. Divyanshi Metal, the Section 114AA envisages penalty on a person who knowingly or intentionally makes, signs or uses, or causes to be made signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. I observe that M/s. Divyanshi Metal has mis-declared the country of origin to evade the duty by way of producing bogus or fake documents (viz. PSIC, COO Certificate, Invoice etc.) and for their act of omission and commission they have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962. I hold so.

Imposition of Penalty on Hub & Links Logistics (I) Pvt. Ltd., Gandhidham under Section 112(b)(ii) and 117 under the Customs Act, 1962.

29. I have carefully examined the proposals for imposition of penalty on M/s. Hub & Links Logistics (I) Pvt. Ltd. (agent of M/s. Shah Aziz Shipping Lines LLC & delivery agent of the subject consignment at Mundra as per Master Bill of Lading No. SASLMU21536 dtd 21.10.2021) under Section 112(b)(ii) and 117 of Customs Act, 1962. M/s. Hub & Links is the Shipping Line/delivery Agent in the present case. I find that Section 112(b)(ii) provides for penalty on a person *"who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111"*.

29.1. Shri Sajish Sivaraj Puthenchira (RUD-3), General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd. in his statement tendered before SIIB on 12.04.2023 has stated that they are agent of M/s. Shah Aziz Shipping Lines LLC & delivery agent of the subject consignment at Mundra, are having their own containers which are used for export / import of cargo in various ports. Their scope of work is to coordinate with vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM on the basis of the documents received from the load port, collect the charges and documents from consignee before releasing the Delivery Order. The Container No. WSCU 6825849 was loaded from Jebel Ali and they were appointed delivery agent by their principal, M/s Shah Aziz Shipping Lines LLC. Shri Puthenchira submitted (1) Shipping Bill No. KPEX-SB-45913 dtd 04.10.2021, filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, 154 Street 10 Akber Road, Block-A; (2) Bill of Lading No. SASLMU21536 (RUD-5) issued by CIM Shipping Inc for transport of "Brass Scrap" in Container no. WSCU 6825849 from Karachi Port to Jebel Ali (first leg Bill of Lading); (3) Bill of Lading No. SASLMU21536 dtd 21.10.2021 issued by Shah Aziz Shipping Lines LLC for transport of "Brass Scrap Honey/Ebony/Engel as per ISRI" in Container no. WSCU 6825849 from Jebel Ali to Mundra (second leg Bill of Lading); (4) Container tracking for Container no. WSCU 6825849. He further stated that 25790 Kgs. of Brass Scrap were loaded in Container No. WSCU 6825849 having seal no. 018261 from Karachi

Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal No. 018261 affixed at Karachi Port is found intact at Mundra Port. Further, Bill of lading no. of Karachi Port and Jebel Ali port are same as SASLMU21536 but dates are different since it is a case of switch Bill of Lading wherein the number remains same but the date of issue is changed. He further stated that in the instant case, they come to know about the switch bill of lading only after the documents were arranged by them, before that, for them, it was original bill of lading. They cannot be held responsible for switch bill of lading, it was not done by them, nor it was in their notice, nor they had any say or approval in the matter.

29.2 I find that Section 112(b) of Customs Act, 1962 pertains to activities mentioned in the said Section pertaining to any manner dealing with any goods which the person knows or has reason to believe are liable to confiscation. In this case, no evidences have been placed before me which proves that M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham, had a role in such activities which makes them liable for penalty under Section 112(b) of Customs Act, 1962. Therefore, I do not find any reason to impose penalty on them under Section 112(b)(ii) of Customs Act, 1962.

29.3 As regards imposition of penalty on M/s Hub & Links under Section 117 of Customs Act, 1962, during the investigation, M/s. Hub & Links had submitted (1) Shipping Bill No. KPEX-SB-45913 dtd 04.10.2021, filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, 154 Street 10 Akber Road, Block-A; (2) Bill of Lading No. SASLMU21536 (RUD-5) issued by CIM Shipping Inc for transport of "Brass Scrap" in Container no. WSCU 6825849 from Karachi Port to Jebel Ali (first leg Bill of Lading); (3) Bill of Lading No. SASLMU21536 dtd 21.10.2021 issued by Shah Aziz Shipping Lines LLC for transport of "Brass Scrap Honey/Ebony/Engel as per ISRI" in Container no. WSCU 6825849 from Jebel Ali to Mundra (second leg Bill of Lading); (4) Container tracking for Container no. WSCU 6825849. On being shown the said documents to Shri Sajish Sivaraj Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd. during statement recorded on 12.04.2023, he stated that 25790 Kgs. of Brass Scrap were loaded in Container No. WSCU 6825849 having seal no. 018261 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal No. 018261 affixed at Karachi Port is found intact at Mundra Port. Further, Bill of lading no. of Karachi Port and Jebel Ali port are same as SASLMU21536 but dates are different since it is a case of switch Bill of Lading wherein the number remains same but the date of issue is changed. Further, in their written submission dated 29.02.2024 they informed that "after receiving the summons from the department, our client insisted their Dubai principal to provide the Bill of Lading copy which stated POL as Karachi and POD as Jebel Ali. The same set of documents have been provided by our client to the department. He also submitted that the IGM was filed basis the BL copy received from their port of loading principal M/s. Shah Aziz Shipping lines LLC, Dubai, mentioning the port of loading as Jebel Ali." I observe that as agents of their Principal, M/s. Hub & Links cannot fully wash away the deliberate actions undertaken by their Principal which have played an important role in perpetrating the fraud of sizeable evasion of duty. They remain culpable to a certain extent to face penal action for the omissions and commissions committed by their Principal. I find that M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham

had not scrutinized the papers/ documents available with them and have failed to exercise the due diligence required from them, hence they are liable to penalty under Section 117 of the Customs Act, 1962. I hold so.

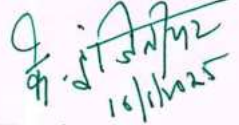
30. In view of above discussion and findings, I pass the following order: -

ORDER

- (i) I reject the Classification of 25790 kgs. of "Brass Scrap Honey/Ebony/Engel as per ISRI" imported in Container No. WSCU 6825849 covered under BL No. SASLMU21536 dated 21.10.2021, Invoice No. RT-440-2021 dated 23.10.2021 & Bill of Entry No. 5984684 dated 25.10.2021, under Chapter Tariff Heading No. 74040022 and order to re-classify the same under Chapter Tariff Heading No.98060000 of the Customs Tariff Act, 1975;
- (ii) I order to confiscate total quantity of 25790 kgs. of "Brass Scrap Honey/Ebony/Engel as per ISRI" imported in Container No. WSCU 6825849 covered under BL No. SASLMU21536 dated 21.10.2021, Invoice No. RT-440-2021 dated 23.10.2021 & Bill of Entry No. 5984684 dated 25.10.2021 valued at **Rs.1,13,38,316/- (Rupees One Crore Thirteen lakh Thirty Eight Thousand Three Hundred and Sixteen only)** under Section 111 (m) of the Customs Act, 1962; however, I give an option to the noticee to redeem the said goods on payment of redemption fine of **Rs. 15,00,000/- (Rupees Fifteen Lakh only)** in lieu of confiscation, for the reasons discussed above;
- (iii) I confirm the demand of Customs Duty of **Rs.3,14,75,165/- (Rupees Three Crore Fourteen Lakh Seventy Five Thousand One Hundred Sixty Five only)** (as detailed in Annexure-A to SCN) and order to recover the same from M/s. Divyanshi Metal under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962; Further, I order to appropriate the Customs Duty amount of Rs. 22,01,168/- (Rupees Twenty Two Lakh One Thousand One Hundred Sixty Eight only) already paid by the Importer from the said duty amount confirmed above.
- (iv) I impose a penalty of **Rs.3,14,75,165/- (Rupees Three Crore Fourteen Lakh Seventy Five Thousand One Hundred Sixty Five only)** payable on the Duty demanded and confirmed at (iii) above on M/s. Divyanshi Metal under the provisions of Section 114A of the Customs Act, 1962.
- (v) I refrain from imposing penalty on M/s. Divyanshi Metal under the provisions of Section 112 (a)(ii) of the Customs Act, 1962 for the reasons discussed above;
- (vi) I impose a penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** on M/s. Divyanshi Metal under the provisions of Section 114AA of the Customs Act, 1962.
- (vii) I refrain from imposing penalty on M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham, under the provisions of Section 112 (b)(ii) of the Customs Act, 1962, for the reasons discussed above.

(viii) I impose a penalty of **Rs 3,00,000/- (Rupees Three Lakh only)** on M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham under the provisions of Section 117 of the Customs Act, 1962.

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


(K. Engineer)

Pr. Commissioner of Customs
Custom House, Mundra.

F. No. GEN/ADJ/COMM/533/2023-Adjn-O/o Pr Commr-Cus-Mundra

To, (The Noticees),

- (i) **M/s. Divyanshi Metal** (IEC No.: 2412013438),
Plot No. 3555, H-Road, GIDC Phase-3, Dared, Jamnagar-361004
- (ii) **M/s. Hub & Links Logistics (I) Pvt. Ltd.**, Gandhidham,
Suite No. 101, Rishabh Arcade, Near GST Bhawan, Plot No. 83, Sector-8,
Gandhidham – 370201

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

- a. The Chief Commissioner of Customs, CCO, Ahmedabad.
- b. The Additional Commissioner (SIIB), C.H., Mundra
- c. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- d. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- e. Notice Board/Guard File.