

| | | |
|---|---|---|
|  | OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH- GUJARAT -370421 PHONE: 02838-271426/271428 FAX :02838-271425 E-mail: adj-mundra@gov.in |  |
|---|---|---|

| | | |
|----------|---|---|
| A | FILE NO./ फाइल संख्या | GEN/ADJ/ADC/1184/2024-Adjn |
| B | OIO NO./ आदेश संख्या | MCH/ADC/ZDC/447/2025-26 |
| C | PASSED BY/ जारीकर्ता | DEEPAK ZALA, ADDITIONAL COMMISSIONER, CUSTOM HOUSE, MUNDRA. |
| D | DATE ORDER/ आदेश की तारीख | 19.12.2025 |
| E | DATE OF ISSUE/ जारी करने की तिथि | 19.12.2025 |
| F | SCN No. & Date/ कारण बताओ नोटिस क्रमांक | SCN No.: GEN/ADJ/ADC/1184/2024-Adjn dated 30.12.2024 |
| G | NOTICEE/ IMPORTER नोटिसकर्ता/आयातक | <ol style="list-style-type: none"> 1. M/S. UMANG IMPEX INDIA PVT. LTD 2. Shri Prashant Kumar Nayak, Director of M/s. Umang Impex India Pvt. Ltd 3. Shri Umang Garg, key person and beneficial owner of M/s. Umang Impex India Pvt. Ltd 4. M/s Rishi kiran Logistics Pvt. Ltd., Customs Broker |
| H | DIN/ दस्तावेज संख्या | पहचान 20251271MO0000222FEC |

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
2. This Order - in - Original is granted to the concerned free of charge.
3. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकता है-
4. Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

‘सीमाशुल्कआयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN
ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

5. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
6. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/-रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –
 - i. उक्त अपील की एक प्रति और
A copy of the appeal, and
 - ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870-के मद सं° 6-में निर्धारित 5/-रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
7. अपील ज्ञापन के साथ ऊँटी/ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
8. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
9. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 %भुगतान करना होगा।
An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s. UMANG IMPEX INDIA PVT. LTD.(IEC No. AACCU8848F) (hereinafter referred to as "Importer/Noticee), Ground Floor, G-960, DSIIIDC industrial Area, Narela, Delhi, engaged in declared import goods PVC (Vinyl Acetate copolymer) having declared HS Code 39043090 under B/E No. 4468293 dated 02.02.2023 from Thailand. The said import consignment was imported at Mundra Port and to be cleared through M/s. Honeycomb Logistics Pvt. Ltd., Mundra Port & SEZ Road, Mundra, Gujarat-370421.

2. The Directorate of Revenue Intelligence, Gandhidham gathered intelligence that M/s. Umang Impex India Pvt. Ltd., was indulged in evasion of Customs duty by way of mis-declaration of description, classification etc. of the subject goods. The importer had submitted Country of Origin No. A/2023-0002075 dated 13.01.2023 at the time of filing Bill of Entry No. 4468293 dated 02.02.2023 and claimed benefit of Notification Nos. 46/2011-Cus dated 01.06.2011. Accordingly, the importer did not pay any Customs duty at the time of clearance of the subject import consignment. The Bill of Entry No. 4468293 dated 02.02.2023 of PVC (Vinyl Acetate Copolymer) consisted total 10 containers claimed to have been imported from Thailand and claimed benefit of Notification No. 46/2011-Cus dated 01.06.2011.

3. Acting upon the intelligence, above import consignments were put on hold and examination of the goods was conducted by the officers of DRI under panchnama dated 02.03.2023. The description of the goods as declared for the said import consignments in the B/E and Corresponding Bills of Lading are given as under;

Table-1

| Sr. N o . | Container No. | Bill o f Lad ing No. a nd d ate | B/E NO. and date | Declared D escription and classifi cation in B /E & BL | Qua ntit y of goo ds (Kgs) | Total Asses sable value (in Rs .) |
|-----------|--|--|-------------------------------------|--|-----------------------------|-----------------------------------|
| 1 | (1) DFSU2668796, (2) GLDU980655, (3) SEGU209866, (4) TCLU2278030, (5) TCLU9977750, (6) TGHU177359, (7) UESU243314, (8) ZIMU1168641, (9) ZIMU1344273, (10) ZIMU1443888, | GOS 293 UBK K80 d 02. 2616 95 | 4468 date 202. 02.2 023 | PVC Clathr ate (Vinyl Acetate Co polymer) C TH-390430 90 | 185 000 | 1113 7083 /- |

4. During examination of the goods representative samples were drawn to find out the actual nature, description and classification of the goods. The samples so drawn were sent to the laboratory for necessary testing. The Laboratory provided Test Reports Nos. 10533-DRI/10.03.2023 to 10542-DRI/10.03.2023. The brief details of Test results of the representative samples are as under:-

Table-2

| Sr. | Test | Container No. | Lab No. | Test Result |
|-----|------|---------------|---------|-------------|
|-----|------|---------------|---------|-------------|

| No. | Memo No. and date | | | |
|-----|--------------------------|-------------|------------------------------|--|
| 01 | 06/2023 dated 09.03.2023 | DFSU2668796 | 10533- DRI/10.03.2 023 | It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash =4.30% by wt. It does not answer the test for Vinyl Acetate |
| 02 | 07/2023 dated 09.03.2023 | GLDU980655 | 10534- DRI/10.03.2 023 | It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash =3.46% by wt. It does not answer the test for Vinyl Acetate. |
| 03 | 08/2023 dated 09.03.2023 | SEGU209866 | 10535- DRI/10.03.2 023 | It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash =4.01% by wt. It does not answer the test for Vinyl Acetate. |
| 04 | 09/2023 dated 09.03.2023 | TCLU2278030 | 10536- DRI/10.03.2 023 | It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash=3.60% by wt. It does not answer the test for Vinyl Acetate |
| 05 | 10/2023 dated 09.03.2023 | TCLU9977750 | 10537- DRI/10.03.2 023 | It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash=4.40% by wt. It does not answer the test for Vinyl Acetate. |
| 06 | 11/2023 dated 09.03.2023 | TGHU177359 | 10538- DRI/10.03.2 023 | It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash=3.53% by wt. It does not answer the test for Vinyl Acetate. |
| 07 | 12/2023 dated 09.03.2023 | UESU243314 | 10539- DRI/10.03.2 023 | It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash =4.11% by wt. It does not answer the test for Vinyl Acetate. |
| 08 | 13/2023 dated 09.03.2023 | ZIMU1168641 | 10540- DRI/10.03.2023 | It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash=3.64% by wt. It does not answer the test for Vinyl Acetate. |
| 09 | 14/2023 dated 09.03.2023 | ZIMU1344273 | 10541- DRI/10.03.2023 | It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash=4.03% by wt. |

| | | | | |
|----|--------------------------------|-------------|--------------------------|--|
| | | | | It does not answer the test for Vinyl Acetate. |
| 10 | 15/2023 dated 09.03.2023 | ZIMU1443888 | 10542- DRI/10.03.2023 | It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash=4.24% by wt. It does not answer the test for Vinyl Acetate. |

5. As mentioned above, from the Test Reports the import consignments were found containing PVC along-with other Inorganic Material and no traces of Vinyl Acetate were identified, whereas the importers have declared the description of goods as PVC Clathrate (Vinyl Acetate Copolymer) (HS Code 39043090) in B/E and as PVC Clathrate in Invoice & packing list. It seems that the description provided by the importer is inconsistent with the findings outlined in the test report. It appears that there is a mis-declaration, potentially with the intention of leveraging benefits from a specific notification No. 46/2011 dated 01.06.2011 or regulation. This discrepancy raises concerns about the accuracy and transparency of the information provided by the importer.

6.1. At the time of filing Bill of Entry for the subject import consignment, the importer had claimed the benefit of Notification no. 046/2011 dated 01.06.2011 (ASEAN country) declared the country of Origin as Thailand. For claiming the benefit of import from ASEAN, M/s. Umang Impex India Pvt. Ltd. have submitted ASEAN-India Free Trade Area certificate Form A1 No. A/2023-0002075 dated 13.01.2023. On perusal of the said document, it is noticed that the said document containing description of the goods as i.e. Vinyl Acetate Co-polymer and containing HS code for the same as 39043090. However, at the time of filing Bill of Entry number 4468293 dated 02.02.2023, the importer declared the description of the goods as "PVC Clathrate (Vinyl Acetate Copolymer) and as PVC Clathrate in Invoice & Packing list. However, the Test Reports of the subject goods indicated that there is 'no traces of Vinyl Acetate' were identified therein.

This description diverges from the information provided in the Country of Origin and other documents, creating a notable discrepancy. It appears that on the basis of imported goods from Thailand (ASEAN Country), the importer wrongly availed benefit of Notification no. 046/2011 dated 01.06.2011 by mis-declaration of the goods in country of Origin documents.

6.2. Further, the importer submitted Bill of Lading No. GOSUBKK80261695 dated 07.01.2023 for the subject import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023. On perusal of the said Bill of Lading, it is noticed that the said document containing different Classification of the goods from as declared by M/s. Umang Impex India Pvt. Ltd. The Bill of Lading No. GOSUBKK80261695 dated 07.01.2023 having classification of the goods as 'HS Code 390410' which is different from 39043090 as declared by the importer and having

description of the goods as 'PVC Clathrate Vinyl ACETATE COPOLYMER'. The said classification and description also declared at the time of filing of IGM for the subject import consignment.

6.3. From the above, it is clear that apart from the description mentioned by the importer in the Bill of Entry not only different from the actual description of the goods identified in the Test Reports but also the goods having different Classification mentioned in the BL and IGM. Therefore, it appears that the importer had knowingly and deliberately mis-declared and mis-classified the goods with clear intention of evasion of applicable Customs Duty.

7. Seizure:

Since the subject goods imported by M/s. Umang Impex India Pvt. Ltd. having total quantity 185 MTs having declared assessable value of **Rs. 1,11,37,083/-** of declared goods PVC Clathrate (Vinyle Acetate Copolymer) found to be mis-declared in terms of its description, classification and also found claiming undue benefit of Notification of 46/2011 dated 01.06.2011 vide Certificate No. A/2023-0002075 dated 13.01.2023 which appears not valid for the subject goods, the subject goods covered under Bill of Entry No. 4468293 dated 02.02.2023 placed under seizure under provisions of Section 110 of the Customs Act, 1962 Seizure Memo dated 26.04.2023.

8. During investigation, statements of following persons were recorded under Section 108 of the Customs Act, 1962, which are briefly discussed herein-below:

8.1 Statement of Shri Shantu Gupta, F-Card holder of M/s Rishi Kiran Logistics Pvt. Ltd., Plot No. 8, Sector No.-8, Opp. Post office, Gandhidham, Kutch, Gujarat, India-370201, recorded on 13.09.2023, wherein he inter-alia made the following submissions:

that he was CHA licence holder, F-Card holder since last 6 years of M/s Rishi Kiran Logistics Pvt. Ltd, Gandhidham and the main Directors in the company; that he used to handle day to day work of customs clearance as a CHA, apart from him there were around 40 persons as office and field staff. Further he stated that he supervised filing of Bills of Entry, clearance of import containers, loading unloading and marketing etc.

that he came into contact with M/s UMANG IMPEX INDIA PVT. Ltd. India Pvt. Ltd. through a partner of the company named Shri Umang Garg from Delhi in January 2023; that Shri Umang Garg contacted him for the clearance of the import cargo. He further stated that apart from Umang Garg, he also knew Ankur Jindal from UMANG IMPEX INDIA PVT. LTD. and he was in contact with Mr. Ankur Jindal since January 2023.

During statement he produced the copies of B/E, Invoice and packing list, COO, Bank Guarantee related to the imports by M/s UMANG

IMPEX INDIA PVT. LTD. pertaining to clearance of the import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023, and he put his dated signature on every page of the said documents.

that he handled normal PVC regularly but the subject consignment of M/s. UMANG IMPEX INDIA PVT. LTD. of declared goods 'PVC Clathrate' being handled by him for the first time. Shri Shanu Gupta further stated that Mr. Umang Garg from M/s UMANG IMPEX INDIA PVT. LTD, contacted in January 2023 and shared him the B/L; that he shared ETA with him and he informed him about arrival of these Import consignments and asked him for arranging for clearance from Mundra Port and he had received those import documents from his mail account.

On being asked to go through the details shown in the respective B/L and B/E thereof reproduced as below regarding the details of Consignments as shown and offer his comments.

| S.I. | B/L No.& I.date | B/E N.o. and Date | Co nta in r N.o. | items declared in BL /B/E | COO and No. | Declar ed item in COO | PANCH NAMA/ seizure DTD. |
|------|-----------------------------------|-------------------------|------------------|--|--|-------------------------|--------------------------|
| 1 | GOSUBKK 80261695 dated 07.01.2023 | 4468293 date 02.02.2023 | DF SU 266 879 6 | PVC Clathrate (Vinyl Acetate Copolymer) CTH 39043090 | Country of Origin- Thailand and No. AI2023-0002075 | Vinyl Acetate Copolymer | 02.03.2023 & 26.04.2023 |
| 2 | | | GL DU 980 655 4 | | | | |
| 3 | | | SE GU 209 866 2 | | | | |
| 4 | | | TCL U2 278 030 | | | | |
| 5 | | | TCL U9 977 750 | | | | |
| 6 | | | TG HU 177 359 5 | | | | |
| 7 | | | UE | | | | |

| | | | | | | | |
|---|--|--|-----|--|--|--|--|
| | | | SU | | | | |
| | | | 243 | | | | |
| | | | 314 | | | | |
| | | | 2 | | | | |
| 8 | | | ZIM | | | | |
| | | | U1 | | | | |
| | | | 168 | | | | |
| | | | 641 | | | | |
| 9 | | | ZIM | | | | |
| | | | U1 | | | | |
| | | | 344 | | | | |
| | | | 273 | | | | |
| 1 | | | ZIM | | | | |
| 0 | | | U1 | | | | |
| | | | 443 | | | | |
| | | | 88 | | | | |

After perusal of the said documents, he stated that he noticed that the description of the goods mentioned in the Bill of Entry/Bill of Lading was different from as mentioned in the Country of origin of the subject goods. Further he stated that the above COO bearing No. AI2023-0002075 dated 13.01.2023 was the same which he had produced before Customs Authorities at the time of filing of import documents for clearance of the same.

that he verified the invoice, packing list and COO, in which he found that *PVC Clathrate* was mentioned in the invoice and packing list whereas '*vinyl acetate copolymer*' was mentioned in the COO, however he checked the CTH and found that the CTH were all similar, then he made the description of PVC(Vinyl Acetate Copolymer) and send the same to the importer for approval; that the importer approved the same and asked him to mention the same in the B/E. Further he stated that he also found that there was no description like 'PVC Clathrate' in the Chapter heading of Customs Tariff.

that he stated that he found PVC Clathrate mentioned in the invoice and packing list as far as he knew there was also generic name mentioned in the invoice and packing list. Further he stated that he verified B/L and found that the description name PVC Clathrate (Vinyl Acetate Copolymer) was mentioned in corresponding B/L and he combined all description of the goods from COO, invoice, B/L and packing list and then mentioned the description name as PVC Clathrate (Vinyl Acetate Copolymer) in B/E.

He was shown the copy of Bill of Lading No. GOSUBKK80261695 dated 07.01.2023 wherein the classification of the subject goods was different from the classification as mentioned in the Bill of Entry. After perusal of the same Shri Shantu Gupta stated that he had perused the copy of Bill of Lading related to the subject goods and he put his dated signature on the same. Further he stated that the description of the Goods mentioned in the Bill of Lading was "PVC Clathrate Vinyl Acetate Copolymer and HS Code of the goods mentioned as 390410.

that he stated that the HS Code of the goods in the Bill of Lading (HS Code 390410) was different from as he had declared in the Bill of Entry. Further he stated that his company had not sought any clarification from the importer or any other person about the said difference in HSN code between B/L and COO.

He was shown the Test Reports dated 09.03.2023 received from the Laboratory related to the goods covered under Bill of Entry No. 4468293 dated 02.02.2023 and asked to offer his comments. After perusal of the same Shri Shanu Gupta stated that he found that the test report mentions the goods as "It was composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material content, Ash content and it did not answer the test for Vinyl Acetate". Further he stated that he found that the laboratory had not issued a clear report in respect of the Vinyl Acetate copolymer was present or not. Further he stated that as per the test report it seems that Vinyl Acetate Copolymer could be available or not available.

he stated that he had asked for the chemical analysis report, and he had submitted a copy of the Chemical Analysis report provided by the importer. However, from the Chemical Analysis Report, actual description and nature of the goods could not be identified.

he had sought approval on the Check list prior to filing of Bill of Entry for the subject import consignment through email. Further he stated that he was providing the copy of email communication for approval of Check list.

that he checked the notification 046/2011-Cus dated -01.06.2011 and found that there was benefit of duty free import on PVC and Vinyl Acetate Copolymer from Thailand.

According to the Certificate of Analysis dated Dec., 2022 submitted by him which was said to have been provided by the importer the description of the goods mentioned in the said certificate was 'PVC Clathrate', however from the analysis report it appeared that the result mentioned in the Certificate of analysis not showing the actual description of the goods i.e. same was not clear that the goods was PVC Clathrate or Vinyl Acetate Copolymers. On being asked to offer his comments on the above facts, he stated that he had received the analysis report from the importer and after checking the name of the supplier and the quantity, he had filed the Bill of Entry. Further he stated that, with the lack of product technical knowledge, he was unable to judge the actual description of the products as per certificate of analysis.

On-going through the details of Certificate of analysis dated Dec, 2022 produced by him on that day related to the subject import consignment, it was not clear that the said goods were pertaining to the import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023 and how, he had finalized as the same was related to the subject import consignment, he stated that he had only seen the name of

the importer, supplier, description and quantity of the goods, on the basis of the same he had ascertained to be linked with the subject import consignment. Further he stated that the other details such as exact date of analysis, actual description of the goods, Invoice No., Packing list no. etc. through which the said report could be ascertained to be linked with the subject import consignment were not available in the Certificate of Analysis.

that it was possible that the said Certificate might be used for other import consignment of same quantity by M/s. UMANG IMPEX INDIA PVT. LTD, as no other details such as invoice, packing list, etc. were mentioned in the certificate.

that the importer had availed the benefit of country of origin for customs duty exemption but the goods were put on hold by DRI for examination to draw the representative samples from the goods. Further he stated that the samples were tested by DRI and he got to know that the actual import goods were different from the one as mentioned in the COO. He further stated that he agreed that the benefit of COO was not applicable to the subject consignment. He also stated that as the investigation of DRI was under progress in the said matter, he had applied for provisional release of the goods and their request was accepted by the Commissioner of Mundra Customs house and he got released the good on provisional basis. Customs House Mundra had issued a letter vide F. No. CUS/APR/BE/MISC/720/2023-Gr 2-O/o Pr. Commr-Cus-Mundra dated 19.06.2023, under which the following condition was applied for provisional release of the goods covered under Bill of Entry No. 4468293 dated 02.02.2023-

- i. *Taking bond of full assessable value and BG equivalent to Rs. 15,00,000/- (Rupees Fifteen Lakh only).*

that on the basis of letter of customs, the goods were provisionally released, and that importer had paid IGST of Rs. 2006323/-. Further he stated that they have submitted bond of full assessable value and Bank Guarantee (for Rs. 15 Lakh) and IGST of Rs. 2006323/-, the importer had not paid any customs duty manually or online. During the statement he submitted the copy of Bank Guarantee 0155NDDG00008824 dated 22.06.2023 amended on 28.06.2023 submitted by the importer in this regard.

On being asked to offer his comments on the incorrect details mentioned in Country of Origin, he stated that he told the importer about this, then he replied that he had submitted the same documents whatever he received from supplier. Further he stated that at the time of provisional release the importer had claimed the benefits of duty exemption on the basis of COO and he had not paid the Customs duty at the time of clearance of the import consignment.

8.2. Statement of Shri, Prashant Kumar Nayak, Director of M/s Umang Impex India Pvt. Ltd. recorded on 15.11.2023:

that his company M/s. Umang Impex India Pvt. Ltd., Delhi was doing import and trading for last 03 Years; that he was one of the directors of the firm since last 02 years, the other director in the firm was Shri Umang Garg, Delhi. He further stated that he handled day to day work of import and trading work of the company, he came into contact with a person of the company name Shri Umang Garg from Delhi in 2015.

that as of today, he and Shri Umang Garg are engaged in their earlier business of hotel and restaurant and he is also with him. On being asked he stated that the address of the restaurant is Rion, 167, Kapil Vihar, Pitampura, New Delhi-110034.

On being asked he produced the B/E, Invoice and packing list, COO, related to the imports by M/s. Umang Impex India Pvt. Ltd., pertaining to clearance of the import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023.

On being asked about the earlier imports of similar goods he had imported till date.

He stated that he had imported normally some consignment of PVC resin but the subject consignment of M/s. Umang Impex India Pvt. Ltd, of declared goods 'PVC clathrate' being imported by him for the first time. He further added that he contacted with foreign supplier name Shri Suthana for import of our consignment through internet.

that Shri Suthana, foreign supplier shared the B/L to another partner Shri Umang Garg and he subsequently shared the B/L to CHA, Rishi Kiran logistics Pvt. Ltd. for arranging for clearance from Mundra Port. Further he stated that he forwarded the said import documents to CHA, Rishi Kiran Logistics Pvt. Ltd.

He was shown the copies of B/L and respective Bs/E and other documents wherein details/description of the goods were mentioned as under:-

| S | B/L No.& d l ate | B/E No. and Date and er N o. | Con tai n er N o. | Items declared in BL & B/E | COO and No. | Declar ed ite m in C OO No | PANCH NAMA/ seizure OO No DTD. |
|---|---|--|-------------------------------|---|---|-------------------------------------|--|
| 1 | GOSUBKK 80261695 dated 07.0 1.2023 | 446829 3 dated 02.02.2 023 | DF SU 266 879 | PVC Clathrate (Vinyl Acetate Co in- Thailand an polymer) CTH 9043090 6 | (Country of Orig Country of Origin CTH 3d No. AI2023-0 002075 | Vinyl Acetat e Copo lymer | 02.03.2 023 & 26.04.2 023 |
| 2 | | | GL DU 980 655 4 | | | | |
| 3 | | | SE GU | | | | |

| | | | | | |
|----|--|--|--|--|--|
| 4 | | 209 866 2 TCL U22 780 30 | | | |
| 5 | | TCL U99 777 50 | | | |
| 6 | | TG HU 177 359 5 | | | |
| 7 | | UE SU 243 314 2 | | | |
| 8 | | ZIM U11 686 41 | | | |
| 9 | | ZIM U13 442 73 | | | |
| 10 | | ZIM U14 438 88 | | | |

He was asked to offer his comments, after perusal of the same, he stated that he noticed that the description of the goods mentioned in the Bill of Entry/Bill of Lading was different from as mentioned in the Country of origin of the subject goods. Further he stated that the above COO bearing No. AI2023-0002075 dated 13.01.2023 was the same which he had received from foreign Supplier and forwarded to CHA and consequently the CHA filed the Customs Clearing documents for clearance of the subject import consignment.

Since the descriptions mentioned in the COO and the B/E were different, he was asked who decided the description in the B/E and whether, he had sought any clarification/amendment in the said certificate from overseas supplier, he stated that, he verified the invoice, packing list and COO, in which he found that *PVC Clathrate* was mentioned in the invoice and packing list whereas '*vinyl acetate copolymer*' was mentioned in the COO. He further stated that he had received all documents from foreign supplier related to B/E 4468293 dated 02.02.2023 and forwarded to CHA without

any verification of documents and he did not notice such difference related to description in the documents; that he had not sought any clarification/amendment from our overseas supplier for amendment/correction.

that he was not aware whether his Customs Broker had noticed difference in description in the documents such as COO, BL and invoice etc., however the CHA had not told about the difference of the descriptions as shown per the COO, invoice and packing list at the time of filing of B/E. Further he stated that he also found that there was no description like 'PVC Clathrate' in the Chapter heading of Customs Tariff.

that he had imported PVC, however as per version of foreign supplier he had used the description of the said goods as PVC Clathrate in the related documents; that he received the documents from the supplier and he had forwarded the same to their CHA M/s. Rishi Kiran Logistics Pvt. Ltd. to file B/E without even looking at them.

he was shown copy of Bill of Lading No. GOSUBKK80261695 dated 07.01.2023 wherein the HS Code of the subject goods was mentioned as 390410, he was asked to offer his comments. He perused the said documents and put his dated signature on the said documents in token of having seen it. After perusal of the same he stated that the description of the Goods mentioned in the Bill of Lading is "PVC Clathrate Vinyl Acetate Copolymer and HS Code of the goods mentioned as 390410 which was different from the one as declared by them in the Customs documents.

that he had mentioned the HS Code 39043090 on the basis as the same mentioned in the Invoice and COO; that the HS Code of the goods in the corresponding Bill of Lading No. GOSUBKK80261695 dated 07.01.2023 (HS Code 390410) was different from as declared in the Bill of Entry. He further stated that his Customs Broker had not told about such difference mentioned the description in Bill of Lading No. GOSUBKK80261695 dated 07.01.2023; that he also had not noticed the said difference, if he had noticed the same he would have asked the foreign supplier about the same, although he had not been imported any cargo like Vinyl Acetate Copolymer under B/E no. 4468293 dated 02.02.2023.

He was shown the Test Reports dated 09.03.2023 received from the Laboratory related to the goods covered under Bill of Entry No. 4468293 dated 02.02.2023 filed by him for M/s. Umang Impex India Pvt. Ltd. and asked to offer his comments. He perused the Test Reports of the goods covered under Bill of Entry No. 4468293 dated 02.02.2023, in token of having seen the same he put his dated signature on the Test Reports. He further stated that the test report containing the description of the goods as "*It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material content, Ash content & it does not answer the test for Vinyl Acetate*". Further he stated that as per test report it seems that Vinyl Acetate Copolymer was not available. He further submitted that he had not imported any cargo like Vinyl Acetate Copolymer under B/E no. 4468293 dated 02.02.2023. Further he stated that the brief details of the Test

Reports were also conveyed to him by the Mundra Customs at the time of provisional release of the subject goods. He stated that on perusal of the test reports of the goods, he agreed that the subject import goods were different from as mentioned in the Country of Origin No AI2023-0002075 dated 13.01.2023.

The test reports indicate that 'Vinyl Acetate Co-polymer' were not found in the representative samples of subject goods, whereas the description of the goods in the Bill of Entry clearly mentioned as 'PVC Clathrate (Vinyl Acetate Copolymer. Therefore he was asked whether he agreed that the subject goods were different from as mentioned in the corresponding COO. He stated that he agreed that the actual goods were different from as mentioned in the COO; however, he stated that he had forwarded the documents to M/s Rishi Kiran Logistics Pvt. Ltd. related to this consignment as were received by him from overseas supplier.

On being asked whether he approved the check list before filing the Bill of Entry for the subject consignment sent by CHA and he was asked to provide the communication in this regard. He stated that he just told him on phone that he was going to file B/E and he had not received any email for approval of checklist from our Customs Broker M/s. Rishi Kiran logistics Pvt. Ltd.

that he was not aware whether Customs duty benefits under Country of Origin was available on the cargo and also M/s. Rishi Kiran Logistics Pvt. Ltd. did not inform him anything about the same. He further added that his partner Shri Umang Garg might have knowledge about the same.

On being asked whether he had taken the benefit of COO ref no. AI2023-0002075 dated 13.07.2023 on his subject import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023, he stated that they had claimed the benefit of Custom Duty under COO ref no. AI2023-0002075 dated 13.07.2023 on the Vinyl Acetate Copolymer; however, he had not placed order for import of 'Vinyl Acetate Copolymer'. He further added that he was not aware how the said description was mentioned in the Country of Origin for the cargo covered under B/E no. 4468293 dated 02.02.2023; that he had not carefully looked at the description of the cargo at the time of filing of import documents. He further stated that if the Customs Broker had discussed the matter earlier he would not have availed the Customs duty benefit on the subject import consignment and would have inquired about the same from the supplier who provided these documents having incorrect material particulars; that he agreed that he had availed the country-based benefit on his import consignment, however, he assured to pay the Customs duty alongwith applicable interest and penalty.

He was shown the Certificate of Analysis submitted by the importer wherein no details of Invoice/packing list/cargo connecting to the said specific consignment was mentioned, and asked whether it possible that the Certificate of analysis dated Dec, 2022 can also be used for other

import consignment in the name of M/s. Umang Impex India Pvt. Ltd., having same quantity, he stated that it was possible that the said Certificate may also be used for other import consignment of same quantity by M/s. Umang Impex India Pvt. Ltd., India Pvt. Ltd. as no other details such as invoice, packing list, etc. were mentioned in the certificate.

that they requested for provisional release of the goods and his request accepted by the Mundra Customs and they had granted the provisional release of the goods under Bank Guarantee of Rs. 15 Lakhs. The details of the of Bank Guarantee are as under;

| Bank Guarantee No. & Date of issue | Expiry Date | Claim Expiry Date | Currency | Amount of Bank Guarantee |
|--|-------------------|-------------------|------------|--------------------------|
| 0155NDDG00008824 dated 22.06.2023 amended on 28.06.2023 | 22.06.2024 | 22.06.2024 | INR | 1500000.00 |

that he had paid Rs. 9,70,000/- to CHA which includes providing services of 10 containers like CFS charges, shipping charges, clearance charges, transportation charges.

8.3. Shri Prashant Nayak was one of the Directors of M/s. Umang Impex India Pvt. Ltd. and Shri Umang Garg was the key person and beneficial owner in the company. As stated by Shri Prashant Nayak, Director of M/s. Umang Impex India Pvt. Ltd., he was handling all conversations with overseas supplier of the subject goods. Shri Umang Garg also used to contact the Customs Broker M/s. Rishi Kiran Logistics Pvt. Ltd. and submitted all the relevant documents for clearance of the subject goods. During investigation, various Summons were issued to record the statements of the authorized persons, however Shri Umang Garg did not appear before investigating officer. Some of the Summons were returned undelivered to the DRI office. The details of the Summons are as under;

| Sr. No. | Date of Summons | Date for appearance | Status |
|---------|-----------------|---------------------|---|
| 1 | 07.06.2023 | 14.06.2023 | No response received |
| 2 | 04.07.2023 | 17.07.2023 | No response received |
| 3 | 04.08.2023 | 09.08.2023 | No response received |
| 4 | 04.09.2023 | 12.09.2023 | No response received |
| 5 | 03.10.2023 | 11.10.2023 | Returned undelivered |
| 6 | 20.10.2023 | 27.10.2023 | Returned undelivered |
| 7 | 15.11.2023 | | Statement of Shri Prashant Nayak was recorded on 15.11.2023 |

From the above, it appears that no responsible person was earlier deliberately and intentionally responding to the Summons issued by the DRI, however ultimately a statement of Shri Prashant Nayak was recorded on 15.11.2023, wherein he specifically admitted that Shri Umang Garg of

M/s. Umang Impex India Pvt. Ltd. was handling all the import related conversations with overseas supplier as well as with the Customs Broker.

8.4. On-going through the IEC status of M/s. Umang Impex India Pvt. Ltd., it appears that some Shri Ramakanta Patra was also one of the Directors in the company including Shri Prashant Nayak. However, as submitted by Shri Prashant Nayak, all the business activities of the company were being handled by him alongwith Shri Umang Garg. The company was established in the name of Shri Umang Garg and Shri Umang Garg along-with Shri Prashant Kumar Nayak both were handling the business activities of the company.

9.1 The subject Bill of Entry as mentioned in above Table-1, filed by the importer, wherein they had declared the description, classification of goods and country of Origin, were self-assessed by them. However, as per test reports of the goods and description of goods mentioned in COO, invoice, packing list it is established that the importer of goods in question had not fulfilled the origin criteria in terms of Rules of Origin. Further, Shri Prashant Kumar Nayak director of M/s. Umang Impex India Pvt. Ltd., has submitted that he has not imported Vinyl Acetate Copolymer during his statement dated 15.11.2023.

9.2 The Test Report of the representative samples of the subject goods clearly show that the goods do not contain Vinyl Acetate which is also admitted by Shri Prashant Kumar Nayak therefore, it appears that the goods mentioned in COO having description of the goods as Vinyl Acetate Copolymer as submitted by the importer is not pertaining to the subject goods of M/s. Umang Impex India Pvt. Ltd. covered under subject Bill of Entry. Hence, the preferential tariff treatment to the imports of vinyl Acetate Copolymer claimed by the Importer is liable for rejection in terms of Section 28DA (10) of the Customs Act, 1962.

9.3 The Finance Act, 2011 has introduced "Self-Assessment" under the Customs Act, 1962 w.e.f. from 08.04.2011. Section 17 of the said Act provides for self-assessment of Duty on import of the goods by the Importer himself by filing of Bill of Entry, in the electronic form, as per Section 46. Thus, under self-assessment, it is the responsibility of the Importer to ensure that he declares the correct classification, applicable rate of Duty, value, benefit or exemption Notification claimed, if any in respect of the imported goods while presenting Bill of Entry. Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein importer making claim of preferential rate of Duty, in terms of any trade agreement shall possess sufficient information as regards to origin criteria. Therefore, by not self-assessing the subject goods properly, it appears that the importer wilfully evaded Customs Duty on the impugned goods. In the present case, the importer has wrongly availed the benefit of exemption Notification No. 46/2011 dated 01.06.2011 wherein imported goods had not fulfilled the origin criteria. The Importer appears to have indulged in suppression of facts', with intent to evade the payment of applicable Customs Duties.

9.4 Therefore, it appears that the Importer knowingly and deliberately availed the exemption Notification on the goods manufactured by M/s. Erawan Poly Co. Ltd., Thailand. It appears to be indicative of their mensrea. Moreover, the importer appears to have suppressed the said facts from the Customs authorities and also wilfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended during filing of the Bill of Entry at Mundra port and thereby caused evasion of Customs Duty. Accordingly, it appears that provisions of Section 28(4) of the Customs Act, 1962 are invokable in this case. For the same reasons, the Importer also appears liable to penalty under Section 114A of the Customs Act, 1962.

9.5 Provisional Release under Bank Guarantee-

The importer had applied for provisional release vide letter dated 19.04.2023 of the goods and their request was accepted by the Commissioner of Mundra Customs house and he got the goods released on provisional basis. Customs House Mundra had issued a letter vide F. No. CUS/APR/BE/MISC/720/2023-Gr 2-O/o Pr Commr-Cus-Mundra dated 19.06.2023, under which the following condition was applied for provisional release of the goods covered under Bill of Entry No. 4468293 dated 02.02.2023-

- i. *Taking bond of full assessable value and **BG (No. 0155NDDG00008824 dated 22.06.2023 amended on 28.06.2023) equivalent to Rs. 15,00,000/- (Rupees Fifteen Lakh only).***

10. Mis-declaration, Mis-classification and liability to confiscation of the goods: -

10.1 As mentioned in the forgoing paras, M/s. Umang Impex India Pvt. Ltd. imported goods covered under Bill of Entry No. 4468293 dated 02.02.2023 and claimed the Customs Duty exemption against Country of Origin (COO) Certificate in terms of Notification No.46/2011-Cus dated 01.06.2011, as amended. Hence, the goods imported under B/E 4468293 dated 02.02.2023 having assessable value of Rs. 1,11,37,083 - (Rupees one crore eleven lakh thirty seven thousand and eighty three only) are found mis-declared in terms of description and classification thereof. The import goods were declared as PVC Clathrate (Vinyl Acetate Co-polymers) whereas the Test reports clearly indicated that the goods were not containing Vinyl Acetate.

10.2 Further on going through the copy of Bill of Lading No. GOSUBKK80261695 dated 07.01.2023, it was noticed that the classification of the subject goods was 'HS Code 390410' which was different from 39043090 as declared by the importer. Also, as mentioned above, the Test Reports of the representative samples specifically denied the presence of Vinyl Acetate in the subject goods which was mentioned in the COO submitted by the importer. These facts indicate that the goods not only mis-declared in respect of its description but also mis-classified.

10.3 The Test Reports of the subject goods clearly mention that '*It is composed of mainly Polyvinyl Chloride (PVC) and inorganic material. % Ash=4.24 % by wt. It does not answer the test for Vinyl Acetate.*' The subject goods was containing 'Inorganic material between 3-4.5 % by wt'. Therefore, the subject goods appropriately are described as Other Polyvinyl Chloride mixed with other substances i.e. inorganic material and accordingly be covered under HS Code 39042100. The reports indicate that the goods was containing inorganic material i.e. Ash. Therefore, it appears that the subject goods falls under HS Code 39042100 (Other Polyvinyl Chloride mixed with other substances i.e. Non-plasticized) and attract Customs duty @ 7.5%.

10.4 The above facts indicate that the Certificate of Origin submitted by M/s. Umang Impex India Pvt. Ltd. do not contain complete and actual description of the goods which have actually been imported. Also, the importer could not submit satisfactory reasons for the said difference in the description and Classification of the goods. It appears that the importer and their Customs Broker have intentionally mis-declared the description as well as the classification of the goods. Further neither the importer nor the Customs Broker could satisfactory reply/give documentary evidence for mentioning the description of the goods as 'PVC Clathrate'. The said act and commission and omission on the part of the importer and the Customs Broker rendered the subject goods liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962.

11. Demand of Customs Duty and liability to penalties: -

11.1. During investigation conducted in this matter, it is clear that the subject goods do not conform the actual description and classification as mentioned by the importer. The description i.e. PVC Clathrate (Vinyl Acetate Copolymer and CTH 39043090). The reports indicate that the goods contained inorganic material i.e. Ash. Therefore, it appears that the subject goods falls under HS Code 39042100 (Other Polyvinyl Chloride mixed with other substances i.e. Non-plasticized). As per the facts revealed during investigation the subject goods may appropriately be described as '*Other Polyvinyl Chloride mixed with other substances i.e. inorganic material*' and accordingly be covered under HS Code 39042100. Also, the Certificate of Origin of the goods submitted by M/s. Umang Impex India Pvt. Ltd. does not contain complete description of the goods as per Section 28DA for claiming the benefit of Customs Duty as per Notification Nos. 46/2011-Cus dated 01.06.2011.

11.2. As appears from the Test Reports provided by the laboratory, the subject goods contain inorganic material Ash content having 3 to 5%. As per import data of the similar goods i.e. PVC blended with other substance falling under same HS code i.e. 39042100 of the goods, it appears that the assessable value of the said goods is approx. 0.7 USD per KG which is similar as declared by the importer for the subject consignment. Therefore, the assessable value of Rs. 1,11,37,083/- declared by the importer appears to be the appropriate assessable for

subject goods i.e. Other Poly Vinyl Chloride mixed with other substances (i.e. Non-plasticised-39042100). Hence, the same may be considered as appropriate assessable for the subject goods for demand of Customs duty.

11.3. Accordingly, it appears that the benefit claimed by M/s. Umang Impex India Pvt. Ltd. under Notification Nos. 46/2011-Cus dated 01.06.2011 while filing Bill of Entry No. 4468293 dated 02.02.2023 consisted of 10 Containers having total quantity 185 MTs for the subject import consignment is illegal and the same is required to be denied. Also, subject goods falling under HS Code 39042100 having assessable Value of Rs. 1,11,37,083/- attract Customs duty @ 7.5% along-with with appropriate SWS and IGST. The importer declared nil Basic Customs Duty at the time of filing Bill of Entry and only paid IGST for an amount of Rs. 20,04,675/-. It could, therefore, be seen that the importer by resorting to mis-declaration of description, mis-classifying the subject goods in order to avail undue benefit of notification No. 46/2011-Cus dated 01.06.2011 and had tried to evade customs duty amounting to **Rs. 10,84,195/-** is required to be demanded under the provisions of Section 28(4) of the Customs Act, 1962. The duty calculation is reproduced hereunder: -

TABLE-A

| | |
|--|--|
| Bill of entry No. & Date | 4468293 dated 02.02.2023 |
| Declared description of the goods in the Bill of Entry | PVC Clathrate (Vinyl Acetate Copolymer) |
| Description of the goods mentioned in the COO & Bill of Lading | Vinyl Acetate Co-polymer |
| Declared classification of the goods in the Bill of Entry | 39043090 |
| Declared Assessable Value of the goods (in Rs.) | 1,11,37,083/- |
| Declared Duty (BCD 0% + SWS 10% + IGST 18%) (in Rs.) | 20,04,675/- |
| Appropriate description of the goods | Other Poly Vinyl Chloride mixed with other substances (i.e. Non-plasticised) |
| Appropriate classification of the goods | 39042100 |
| Appropriate Customs Duty (in Rs.) @ 7.5% | 835281 |
| Appropriate Customs Duty (in Rs.) @ 10% | 83528 |
| applicable IGST (in Rs.) | 2170061 |
| Total duty to be paid (BCD+SWS+IGST) | 30,88,870 |
| Differential Duty | 10,84,195 |

11.4. Also, the act of omission and commission on the part of M/s. Umang Impex India Pvt. Ltd. and the Customs Broker M/s Rishi Kiran Logistics Pvt. Ltd. rendered themselves liable for penalty under **Section 112(a) and 112 (b) of the Customs Act, 1962.**

11.5. Also, as discussed above, it appears that M/s. Umang Impex India Pvt. Ltd. and M/s Rishi Kiran Logistics Pvt. Ltd. have submitted the documents which do not contain the true facts and material particulars of the subject goods. It appears that the importer and the Customs Broker have deliberately submitted the incorrect documents/details. Accordingly, M/s. Umang Impex India Pvt. Ltd., India Pvt. Ltd. and M/s Rishi Kiran Logistics Pvt. Ltd. also rendered themselves liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

12. Role and culpability on the importer/person/firm involved: -

12.1. Role of the importer M/s. Umang Impex India Pvt. Ltd., Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi: -

12.1.1 Shri Prashant Kumar Nayak was the Director of M/s. Umang Impex India Pvt. Ltd. During his statement he admitted that they forwarded the documents to their Customs Broker without any verification of description and classification. He was not able to submit the satisfactory documents/details on the basis of which they have decided to mention the description and classification of the subject goods. They failed to submit the reason of difference in description of the subject goods mentioned in the Certificate of Origin and that mentioned in the Bill of Entry. During his statement Shri Prashant Kumar Nayak also admitted that the Test Reports of the representative samples denied the presence of Vinyl Acetate in the subject imported goods. These facts indicate that the subject goods are different from the goods as mentioned in the Certificate of Origin. Shri Prashant Nayak also failed to submit the satisfactory reason for difference in the Classification mentioned in the corresponding Bill of lading (i.e. HS Code 390410) whereas they have mentioned the same as 39043090 in the other import documents.

12.1.2 In his statement dated 15.11.2023, Shri Prashant Kumar Nayak has made several noteworthy assertions regarding the importation of Vinyl Acetate Copolymer. Initially, he contends that he did not import this specific product, casting doubt on the accuracy of the goods description associated with his importation. Additionally, he admits to a lapse in due diligence by acknowledging that he did not properly scrutinize the country of origin during the importation process, particularly in relation to the goods specified as vinyl acetate copolymer.

12.1.3 However, amidst these admissions, Shri Prashant Kumar Nayak takes responsibility for an apparent error in judgment, conceding that he wrongfully availed the benefits accorded by Notification no. 46/2011 dated 01.06.2011. This admission of responsibility is a critical aspect of his statement, as it acknowledges a breach of compliance with the relevant regulations and signals a willingness to rectify the situation.

12.1.4 M/s. Umang Impex India Pvt. Ltd., is responsible for ensuring compliance with customs regulations and accurately declaring the nature, quantity, and classification of imported goods. However, in this particular case, the importer has deviated from ethical practices by taking advantage

of Notification no. 46/2011 dated 01.06.2011 through deliberate misdeclaration and misclassification of the goods. Shri Prashant Kumar Nayak director of M/s. Umang Impex India Pvt. Ltd., played a crucial role in maintaining the integrity of international trade by adhering to established regulations and contributing to transparent and lawful commerce. When an importer engages in mis-declaration and misclassification, it not only compromises the accuracy of customs documentation but also raises concerns about the legality and fairness of their trade practices.

12.1.5 The omission and commission of mis-declaration and mis-statement on part of M/s. Umang Impex India Pvt. Ltd. rendered the subject goods having total quantity 185 MTs covered under Bill of Entry No. 4468293 dated 02.02.2023 with assessable Value of **Rs. 1,11,37,083/-** imported through 10 Containers liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 and also rendered themselves liable to penalty under **Section 112(a)** and **112(b)** of the Customs Act, 1962.

12.1.6 M/s. Umang Impex India Pvt. Ltd., availed the undue benefits of Notification no. 46/2011 dated 01.06.2011 by way of mis-declaration and mis-statements, the importer not only jeopardizes their own standing but also undermines the credibility of the entire importation process. Also, M/s. Umang Impex India Pvt. Ltd., was knowingly connived in importing, purchasing/selling and dealing with the offending goods. Shri Prashant Kumar Nayak by way of submitting documents having incorrect material particulars causes to be made signed and used the declaration and documents which were having false or incorrect material particulars, rendered M/s. Umang Impex India Pvt. Ltd., also liable to penalty under **Section 114AA of the Customs Act, 1962.**

-

12.2 Role of Shri Prashant Kumar Nayak Director of M/s. Umang Impex India Pvt. Ltd. Ground Floor, G-960, DSIIIDC industrial Area, Narela, Delhi:-

12.2.1 Shri Prashant Kumar Nayak was one of the Directors of M/s. Umang Impex India Pvt. Ltd. During his statement Shri Prashant Kumar Nayak admitted that he and Shri Umang Garg another active person in the company forwarded the documents to their Customs Broker without any verification of description and classification. He was not able to submit satisfactory documents/details on the basis of which they decided to mention the description and classification of the subject goods. He failed to submit the reason of difference in description of the subject goods in the Certificate of Origin and what he has mentioned in the Bill of Entry. During his statement Shri Prashant Kumar Nayak also admitted that the Test Reports of the representative samples denied the presence of Vinyl Acetate in the subject import goods. These facts indicate that the subject goods were different from the goods as mentioned in the Certificate of Origin. M/s. Umang Impex India Pvt. Ltd. also failed to submit the satisfactory reason for difference in the Classification mentioned in the

corresponding Bill of lading (i.e. HS Code 390410) whereas they have mentioned the same as 39043090 in the other import documents.

12.2.2 In his statement dated 15.11.2023, Shri Prashant Kumar Nayak has made several noteworthy assertions regarding the importation of Vinyl Acetate Copolymer. Initially, he contends that he did not import this specific product, casting doubt on the accuracy of the goods description associated with his importation. Additionally, he admits to a lapse in due diligence by acknowledging that he did not properly scrutinize the country of origin during the importation process, particularly in relation to the goods specified as vinyl acetate copolymer. However, amidst these admissions, Shri Prashant Kumar Nayak takes responsibility for an apparent error in judgment, conceding that he wrongfully availed themselves of the benefits accorded by Notification no. 46/2011 dated 01.06.2011. This admission of responsibility is a critical aspect of his statement, as it acknowledges a breach of compliance with the relevant regulations and signals a willingness to rectify the situation.

12.2.3 Shri Prashant Kumar Nayak of M/s. Umang Impex India Pvt. Ltd, was responsible for ensuring compliance with customs regulations and accurately declaring the nature, quantity, and classification of imported goods. However, in this particular case, Shri Prashant Kumar Nayak has deviated from ethical practices by taking advantage of Notification no. 46/2011 dated 01.06.2011 through deliberate mis-declaration and misclassification of the goods. When an importer engages in mis-declaration and mis-classification, it not only compromised the accuracy of customs documentation but also raises concerns about the legality and fairness of their trade practices.

12.2.4 The omission and commission of mis-declaration and mis-statement on the part of Shri Prashant Kumar Nayak rendered the subject goods having total quantity 185 MTs covered under Bill of Entry No. 4468293 dated 02.02.2023 assessable Value of **Rs. 1,11,37,083/-** imported through 10 Containers liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 and also rendered himself liable to penalty under **Section 112(a) and 112(b) of the Customs Act, 1962.**

12.2.5 Also, during investigation, various Summons were issued to record the statement of the Director or authorised active person, however Shri Prashant Nayak initially did not appear before investigating officer. Some of the Summons was returned undelivered to the DRI office. The details of the Summons are as under:

| Sr. No. | Date of Summons | Date for appearance | Remark |
|---------|-----------------|---------------------|----------------------|
| 1 | 07.06.2023 | 14.06.2023 | No response received |
| 2 | 04.07.2023 | 17.07.2023 | No response received |
| 3 | 04.08.2023 | 09.08.2023 | No response received |
| 4 | 04.09.2023 | 12.09.2023 | No response received |

| | | | |
|---|------------|------------|---|
| 5 | 03.10.2023 | 11.10.2023 | Returned undelivered |
| 6 | 20.10.2023 | 27.10.2023 | Returned undelivered |
| 7 | 15.11.2023 | | Statement of Shri Prashant Nayak was recorded on 15.11.2023 |

12.2.6 From the above, it appears that no responsible person was earlier deliberately and intentionally responding to the Summons issued by the DRI, however ultimately a statement of Shri Prashant Nayak was recorded on 15.11.2023, wherein he specifically admitted that Shri Umang Garg of M/s. Umang Impex India Pvt. Ltd. was handling all the import related conversations with overseas supplier as well as with the Customs Broker. It appears that initially Shri Prashant Kumar Nayak deliberately avoided his presence and did not co-operate with the investigation. Therefore, Shri Prashant Nayak also rendered himself penalty under **Section 117 of the Customs Act, 1962**.

12.2.7 Shri Prashant Kumar Nayak as the Director key participant in the supply chain, is expected to act responsibly and in accordance with the established rules and regulations. By exploiting Notification no. 46/2011 dated 01.06.2011 for illegal benefits, the importer not only jeopardizes his own standing but also undermines the credibility of the entire importation process. Also, Shri Prashant Kumar Nayak was knowingly connived in importing, purchasing/selling and dealing with the offending goods. Shri Prashant Kumar Nayak by way of submitting documents having incorrect material particulars causes to be made signed and used the declaration and documents which were having false or incorrect material particulars, rendered themselves also, separately liable to penalty under **Section 114AA of the Customs Act, 1962**.

12.3. Role of Shri Umang Garg, key person of M/s. Umang Impex India Pvt. Ltd., Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi, and beneficial owner of the subject goods:-

12.3.1 Shri Umang Garg was the key person of M/s. Umang Impex India Pvt. Ltd. and beneficial owner of the subject goods. During his statement Shri Prashant Kumar Nayak admitted he used to forward the documents to the Customs Broker without any verification of description and classification. He was not able to submit the satisfactory documents/details on the basis of which they have decided to mention the description and classification of the subject goods. They failed to submit the reason of difference in description of the subject goods in the Certificate of Origin and they have mentioned in the Bill of Entry. During investigation, it is revealed that Shri Umang Garg also indulged in all the business activities of M/s. Umang Impex India Pvt. Ltd. Shri Umang Garg used to contact the Customs Broker Ms/. Rishin Kiran Logistics Pvt. Ltd. for arranging the clearance form Mundra Port. Shri Prashant Kumar Nayak also admitted that the Test Reports of the representative samples denied the presence of Vinyl Acetate in the subject import goods. These facts indicate that the subject goods are different from the goods as mentioned in the Certificate of Origin. M/s. Umang Impex India Pvt. Ltd. also failed to submit the satisfactory reason for difference in the Classification

mentioned in the corresponding Bill of lading (i.e. HS Code 390410) whereas they have mentioned the same as 39043090 in the other import documents.

12.3.2 In his statement dated 15.11.2023, Shri Prashant Kumar Nayak has made several noteworthy assertions regarding the importation of Vinyl Acetate Copolymer. Initially, he contends that he did not import this specific product, casting doubt on the accuracy of the goods description associated with his importation. Additionally, he admits to a lapse in due diligence by acknowledging that he did not properly scrutinize the country of origin during the importation process, particularly in relation to the goods specified as vinyl acetate copolymer. However, amidst these admissions, Shri Prashant Kumar Nayak takes responsibility for an apparent error in judgment, conceding that he wrongfully availed themselves of the benefits accorded by Notification no. 46/2011 dated 01.06.2011. This admission of responsibility is a critical aspect of his statement, as it acknowledges a breach of compliance with the relevant regulations and signals a willingness to rectify the situation.

12.3.3 Shri Umang Garg, the key person of M/s. Umang Impex India Pvt. Ltd, was responsible for ensuring compliance with customs regulations and accurately declaring the nature, quantity, and classification of imported goods. However, in this particular case, Shri Umang Garg has indulged into through deliberate mis-declaration and misclassification of the goods. He played a crucial role in the evasion of Customs duty by way of taking undue benefits of the exemption notification. When an importer engages in mis-declaration and misclassification, it not only compromised the accuracy of customs documentation but also raises concerns about the legality and fairness of their trade practices.

12.3.4 The omission and commission of mis-declaration and mis-statement on the part of Shri Umang Garg, rendered the subject goods having total quantity 185 MTs covered under Bill of Entry No. 4468293 dated 02.02.2023 assessable Value of **Rs. 1,11,37,083/-** imported through 10 Containers rendered the goods liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act,1962 and also rendered himself liable to penalty under **Section 112(a) and 112(b) of the Customs Act, 1962.**

12.3.5 Shri Umang Garg was the key person in the company and a beneficial owner. As stated by Shri Prashant Nayak, Director of M/s. Umang Impex India Pvt. Ltd., he was handling all conversations with overseas supplier of the subject goods. Shri Umang Garg also used to contact the Customs Broker M/s. Rishi Kiran Logistics Pvt. Ltd. and submitted all the relevant documents for clearance of the subject goods. During investigation, various Summons were issued to record the statement of the authorized persons, however he did not appear before investigating officer. Some of the Summons was returned undelivered to the DRI office. The details of the Summons are as under;

| Sr. No. | Date of Summons | Date for appearance | Remark |
|---------|-----------------|---------------------|---|
| 1 | 07.06.2023 | 14.06.2023 | No response received |
| 2 | 04.07.2023 | 17.07.2023 | No response received |
| 3 | 04.08.2023 | 09.08.2023 | No response received |
| 4 | 04.09.2023 | 12.09.2023 | No response received |
| 5 | 03.10.2023 | 11.10.2023 | Returned undelivered |
| 6 | 20.10.2023 | 27.10.2023 | Returned undelivered |
| 7 | 15.11.2023 | | Statement of Shri Prashant Nayak was recorded on 15.11.2023 |

12.3.6 From the above, it appears that no responsible person including Shri Umang Garg was earlier intentionally responding to the Summons issued by the DRI, however ultimately a statement of Shri Prahsant Nayak was arranged to be recorded on 15.11.2023, wherein he specifically admitted that Shri Umang Garg of M/s. Umang Impex India Pvt. Ltd. was handling all the import related conversations with overseas supplier as well as with the Customs Broker. It appears that initially Shri Umang Garg deliberately avoided his presence and did not co-operate with the investigation. Therefore, Shri Umang Garg also rendered himself penalty under **Section 117 of the Customs Act, 1962**.

12.3.7 Shri Umang Garg as key participant in the supply chain, is expected to act responsibly and in accordance with the established rules and regulations. By exploiting Notification no. 46/2011 dated 01.06.2011 for illegal benefits, the importer not only jeopardizes their own standing but also undermines the credibility of the entire importation process. Also, Shri Umang Garg was knowingly connived in importing, purchasing/selling and dealing with the offending goods. Shri Umang Garg by way of submitting documents having incorrect material particulars causes to be made signed and used the declaration and documents which were having false or incorrect material particulars, rendered themselves also, separately liable to penalty under **Section 114AA of the Customs Act, 1962**.

12.4. Role of Customs Broker M/s. Rishi Kiran Logistics Pvt. Ltd.

12.4.1 The role played by M/s. Rishi Kiran Logistics Pvt. Ltd., as a Customs House Agent, in facilitating the improper utilization of benefits under Notification No. 46/2011 dated 01.06.2011 is of significant concern. Customs House Agents serve as intermediaries between importers and customs authorities, entrusted with the responsibility of ensuring compliance with all regulatory norms. However, in the instance, M/s. Rishi Kiran Logistics Pvt. Ltd. has deviated from this crucial role by actively supporting the importer in obtaining wrongful benefits through the misapplication of Notification No. 46/2011 dated 01.06.2011 and thereby abetted the importer for to take undue benefit of duty exemptions.

12.4.2 In his statement of Shri Shanu Gupta, the Customs House Agent (CHA) acknowledges the creation of a new description based on the documents provided by the importer. He further asserts that he did not

seek clarification from the importer regarding the disparities in the descriptions, specifically related to vinyl acetate copolymer, as mentioned in the Country of origin documents and not in invoices and packing lists. This admission points to a critical lapse in due diligence on the part of the CHA.

12.4.3 As a Customs House Agent, the responsibility extends beyond merely processing the provided documents; it includes ensuring the accuracy and consistency of the information presented. Failing to seek clarification on discrepancies in product descriptions, especially when tied to the country of origin, undermines the agent's role in maintaining the integrity of customs declarations.

12.4.4 In his statement of Shri Shanu Gupta, Proprietor of M/s Rishi Kiran Logistics Pvt. Ltd., it appears that the Customs House Agent was engaged in the creation of a new description by amalgamating various invoices, packing lists, and country of origin information, which was not reflected in the Customs Tariff, to get benefit of Notification of 46/2011 dated 01.06.2011. As a Customs House Agent, the individual is entrusted with the responsibility of ensuring accurate and truthful documentation for import processes. However, the admission of creating a composite description, presumably to gain benefits related to the country of origin, reflects a clear departure from ethical standards. Manipulating information in this manner not only compromises the integrity of customs declarations but also undermines the transparency and fairness of the entire importation process.

12.4.5 The involvement of M/s. Rishi Kiran Logistics Pvt. Ltd. in facilitating the improper utilization of benefits under Notification no. 46/2011 dated 01.06.2011 is a matter of concern and raises questions about the integrity of the importation process. It appears that M/s Rishi Kiran Logistics Pvt. Ltd. has collaborated with the importer in taking advantage of the notification no. 46/2011 dated 01.06.2011 by way of mis declaration of descriptions. This collaboration implies a level of complicity in the misappropriation of trade-related benefits, indicating a breach of ethical and legal standards within the importation framework. Addressing this collaboration is essential not only for rectifying the specific instance at hand but also for deterring similar unethical practices in the future by M/s Rishi Kiran Logistics Pvt. Ltd., thus upholding the integrity of trade regulations and promoting a level playing field for all participants.

12.4.6 The collaboration of M/s Rishi Kiran Logistics Pvt. Ltd., in aiding the importer's actions is a blatant violation of the ethical standards expected from a Customs House Agent. Their involvement not only compromises the accuracy and legitimacy of customs declarations but also undermines the very foundation of fair-trade practices. As a consequence of their actions, penalties should be imposed on M/s Rishi Kiran Logistics Pvt. Ltd., to deter such malpractices in the future. The penalty imposed should reflect the severity of their role in the wrongful utilization of Country of Origin with Notification No. 46/2011 dated 01.06.2011, serving as a deterrent to both M/s. Rishi Kiran Logistics Pvt. Ltd., and other

Customs House Agents who might be tempted to engage in similar unethical practices.

12.4.7 M/s. Rishi Kiran Logistics Pvt. Ltd. handled the subject import consignments of M/s. Umang Impex India Pvt. Ltd. in such a casual manner that they did not even bothered to seek the reasons of difference of the classification of the goods mentioned in the corresponding Bill of Lading and other documents. The omission and commission of mis-declaration and mis-statement on part of M/s. Rishi Kiran Logistics Pvt. Ltd. abetted the importer and was also concerned with the offending goods having total quantity 185 MTs covered under Bill of Entry No. 4468293 dated 02.02.2023 and assessable Value of **Rs. 1,11,37,083/-** imported through 10 Containers which he knew were liable to confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 and also rendered themselves liable to penalty under **Section 112 (a) and 112 (b)** of the Customs Act, 1962.

12.4.8 It appears that M/s. Rishi Kiran Logistics Pvt. Ltd., has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention. M/s. Rishi Kiran Logistics Pvt. Ltd., is also liable to penalty under **Section 114AA of the Customs Act, 1962**.

13.1 Accordingly, Show Cause Notice dated 30.12.2024 was issued to M/s. UMANG IMPEX INDIA PVT. LTD (IEC No. AACCU8848F) wherein they were called upon to show cause to the Additional Commissioner of Customs, Customs House, Mundra, as to why: -

(i) The declared description i.e. PVC Clathrate (Vinyl Acetate Copolymer) and declared classification HS Code 39043090 of the subject goods covered under Bill of Entry No. 4468293 dated 02.02.2023 should not be rejected and the same not be classified under its appropriate classification 39042100 of the Customs Tariff Act, 1975.

(ii) The exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the importer against the goods imported under Bills of Entry No. 4468293 dated 02.02.2023 at Mundra Port, should not be disallowed in terms of Section 28DA (10) of the Customs Act, 1962.

(iii) The import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023 having assessable value of Rs. 1,11,37,083/- (Rupees one crore eleven lakh thirty-seven thousand eighty-three only) should not be held liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 of the Customs Act, 1962. Since the subject goods have already been released provisionally, why the Redemption Fine in lieu of confiscation should not be imposed under Section 125 of the Customs Act, 1962;

(iv) Total Customs Duty amounting to **Rs. 30,88,870/- (Rs. Thirty Lakhs Eighty-Eight Thousand Eight Hundred and Seventy only)** including other SWS and IGST **as given in Annexure-A**, should not be demanded and recovered under Section 28(4) of the Customs Act, 1962 along-with applicable interest under Section 28 AA of the Customs Act, 1962.

(v) Any duty/penalty/interest, if paid by the importer, should not be appropriated against the said amount mentioned at para (iv) above and the remaining amount should not be recovered from the Bank Guarantee submitted by the importer and the rest should not be demanded from the importer.

13.2 The penalties should not be imposed upon the persons and entities involved in the said case as follows:

(i) Penalty should not be imposed upon the Importer under Section 112(a), 112(b), 114A and 114AA of the Customs Act, 1962.

(ii) Penalty should not be imposed upon Shri Prashant Kumar Nayak Director of M/s. Umang Impex India Pvt. Ltd. Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi under Section 112(a), 112(b), 114AA and 117 of the Customs Act, 1962.

(iii) Penalty should not be imposed upon **Shri Umang Garg**, the key person of M/s. Umang Impex India Pvt. Ltd. Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi under Section 112(a), 112(b), 114AA and 117 of the Customs Act, 1962.

(iv) Penalty should not be imposed upon M/s. Rishi Kiran Logistics Pvt. Ltd. under Section 112(a), 112(b), 114AA of the Customs Act, 1962.

RECORD OF PERSONAL HEARING

14. In compliance of principle of natural justice “Audi alteram partem”, opportunities to be heard were granted to the noticees on 25.09.2025, 14.10.2025 and 10.11.2025 through virtual mode. The noticees failed to turn up for the personal hearing before the adjudicating authority or submit any written submission in his defence except noticee no. 4 i.e. M/s. Rishikiran Logistics Private Limited.

Shri Vikas Mehta, Consultant and Authorized Representative of M/s. Rishikiran Logistics Pvt. Ltd., Custom Broker appeared on 17.11.2025 at 3:30pm for hearing through virtual mode. Record of Personal Hearing is reproduced as under:-

“He inter alia submitted that if at all, goods became liable to confiscation, it was on account of sampling and testing of sample and not because of their role as a Custom Broker, who had no prior knowledge about the alleged mis-declaration and were not an expert in the field of chemical products. Hence, they were not liable to penalty under section 112 (a) and 112 (b) of Customs Act, 1962. The allegation contained in the notice that

they had "created" a new description by "amalgamating various invoices, packing lists and country of origin information is factually incorrect inasmuch as they had prepared the bill of entry on the basis of description contained in the bill of lading and the same was duly approved by the importer. He also sought cross-examination of importer to support the contention that check list was duly sent by them to importer and was submitted to Customs only after approval by importer. Further, it is evident from para 13.4 of the notice that section 112 (b) and 114AA (which both requires positive knowledge) cannot be invoked when the notice alleges casual approach against them. Casual approach and abetment cannot go hand in hand. The allegation that they "knowingly and internationally made, signed, used and/or caused to be made, signed, used which were false or incorrect in material particulars such as "description, value, etc" for the purpose of invoking Section 114AA is factually incorrect inasmuch as there is no proposal to reject the transaction value. As such, there is no mis-declaration of value. The alleged mis-declaration regarding description came into being only after testing by Customs laboratory and without any evidence to show their prior knowledge about the nature and character of goods, there is no justification to establish knowledge or intention on their part so as to bring them within the ambit of section 114AA of Customs Act, 1962. He also submitted that penalty cannot be imposed based on factually incorrect allegations and based on assumptions and presumptions considering that para 13.4 of the notice employs words and expressions like "presumably", "implies", etc. He requested for one week's time to make further/written submission. He had nothing more to add at this point in time".

WRITTEN SUBMISSION OF NOTICEE

15. M/s. Rishi Kiran Logistics Pvt. Ltd., (Noticee No.-4) submitted their written submissions vide letter dated 08.11.2025 through mail wherein submitted that:

15.1 We have received notice inter alia proposing to impose penalty upon use under section 112(a), 112(b) and 114AA of the Customs Act, 1962.

15.2 In this regard, it is submitted that our role was limited to filing the bill of entry, in the capacity of Custom Broker, describing the goods on the basis of description contained in the bill of lading placed in our hands by the importer, i. e. "PVC Clathrate Vinyl Acetate Copolymer".

15.3 The goods were tested by customs laboratory and were found to be "composed of mainly Polyvinyl Chloride (PVC)" and "it does not answer the test for "Vinyl Acetate"

15.4 Hon'ble Tribunal has held in the case of **D. K. Shipping Agency, 2016 (12) TMI 966- CESTAT KOLKATA** that-

"4. Heard both sides and perused the case records. The issue involved in the present proceedings is whether appellant is liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. It is

observed from the statement dated 24.11.2004 of the appellant that nowhere is stated that he was aware the goods being imported by the importer were not Natural Lime Stone Powder. The correct nature of the imported goods could be known only after chemical test was undertaken by the department. Even the examining officers could not detect the goods imported were other than Natural Lime Stone Powder. In the absence of any evidence, that appellant had the knowledge of imported goods being Calcium Carbonate Powder and not Natural Lime Stone Powder declared in the bill of entry, penalty imposed on the appellant is not justified and is set aside."

15.5 In the case of **M/s. Chakiat Agencies v/s Commissioner of Customs, Chennai, 2023 (2) TMI 490- CESTAT CHENNAI, Hon'ble Tribunal** has held that a CHA cannot be expected to examine and ensure the nature of the goods in the consignment.

15.6 Similarly, in the case of **M/s. HIM Logistics Pvt. Ltd. v/s Commissioner of Customs, New Delhi, 2016 (340) ELT 388 (Tri.- Del.), Hon'ble Tribunal** has set aside penalty imposed on CHA under Section 112 of Customs Act, 1962 by holding that issue of classification is of complex nature and it cannot be said that the CHA should have information that the goods were "Food Supplements" and not "Medicaments".

15.7 In **Ayushi Logistic Company, 2023 (4) TMI 510 CESTAT KOLKATA**, Hon'ble Tribunal has held that:

"12. The allegation in the Notice is that the Customs Broker has filed the said Bills of Entry for the importer M/s. Puskar Tradecom Pvt. Ltd, by declaring the goods as 'White Calcined Pigment' and 'Industrial Washing Liquid', whereas on examination, the goods were found to be 'Chlorides of Paraquat' and 'Emamectin Benzoate. The goods in question are chemicals which cannot be identified by naked eye. The Customs Broker has to file the Bills of Entry on the basis of the documents given by the importer. Only proper testing in a chemical lab will establish the correct description of the goods. The misdeclaration, in this case came to light only after the investigation conducted by DRI, after testing the samples in a chemical lab. The Custom Broker is not expected to draw samples and test in a lab to ascertain the correctness of the declaration made by the Importer, before filing the Bills of entry. Thus, there is no evidence on record to conclude that the Customs Broker was aware of the mis-declaration of the goods in the documents submitted by the importer before filing of the Bills of entry."

15.8 Even Hon'ble Commissioner of Customs, Mundra, Reliance, in Order-in-Original No. MUN-CUSTM-000-COM-12-23-24 dated 04.09.2023, has dropped penalty proposed on Custom Broker under Section 112 and 114AA of Customs Act, 1962, by noting that:

"11.2 I find that the Custom Broker has filed Bills of Entry on behalf of importer noticee on the basis of documents submitted by the importer. The invoices submitted by the importer to customs brokers clearly

mentioned ..along with description of goods. The item under dispute being technical in nature, Custom Broker having limited technical knowledge appears to have acted as per the contents of documents as supplied by the importer. There is nothing on record in the SCNs that Customs Brokers were in knowledge of wrong declaration by importer, in documents furnished by importer and they connived with importer to extend ineligible exemption benefit of Customs notification referred above.

11.3 I find that during investigation, no connivance of CB with importer in evasion of duty by wrongly claiming exemption came out, therefore, the Customs Brokers cannot be penalised.

11.4 Therefore, I hold that these noticees i.e. CB M/s. Vipul R. Modi and CB M/s. Swayam Shipping Services are neither liable to penalty under section 112 of Customs Act, 1962 nor under Section 114 AA of the Act *ibid.*"

15.9 In the case of **Prime Forwarders, 2008 (222) ELT 137 (Tri.-Ahmd.)**, Hon'ble Tribunal has set aside penalty imposed on Custom House Agent on the ground that there is nothing to show that he was aware of the containers being stuffed with Ferro Titanium instead of brass scrap.

15.10 In the course of inquiry, statements of following persons were recorded:

- i) Shri Shantu Gupta, Director of M/s. Rishi Kiran Logistics Pvt. Ltd.
- ii) Shri Prashant Kumar Nayak, Director of M/s. Umang Impex India Pvt. Ltd.

15.11 It may be kindly appreciated that none of the above statements reveal that we were aware about the alleged mis-declaration. Thus, invocation of section 112 (b) and 114AA is not supported by evidence.

15.12 Invocation of section 112 (b) and 114AA is also inappropriate and unjustified for the reason that the alleged mismatch in description has come to notice only on account of chemical testing and not by any other evidence. There is no evidence to show that we, as Custom Broker, had "knowledge" or "intention" borne out of any pointer, prior to chemical testing by department, indicating mis-declaration of description so as to fall within the scope of section 112 (b) of Customs Act, 1962. Inasmuch as the law does not require a Custom Broker to carry out any chemical test before filing bill of entry, there can be no "omission" qua such a legal provision so as to fall within the scope of section 112 (a) of Customs Act, 1962. Further, there is no mis-declaration of value inasmuch as there is no proposal to reject the value declared by the importer in the bill of entry. All in all, invocation of section 112 (a), 112 (b) and 114AA of Customs Act, 1962 is not justified insofar as we are concerned.

15.13 The bill of entry was filed after getting approval from Shri Prashant Kumar Nayak, Director, as duly admitted by him in his statement dated 15.11.2023. We may be permitted to cross-examine him in the event if

further corroboration is needed in this regard.

15.14 It is respectfully submitted that the notice suffers from following legal infirmities:

14.1 In para 13.4 ibid, on one hand, lack of due diligence, handling in a casual manner, etc. is alleged whereas on the other hand, complicity and abetment is alleged.

Both are mutually exclusive. Thus, the notice suffers from self-contradiction.

14.2 The allegation regarding creation of new description is factually incorrect inasmuch as checklist was prepared and approved by importer on the basis of description in bill of lading.

14.3 It is evident from words like "presumably", "implies", etc, that penalty is proposed on the basis of assumption and presumptions which is not permissible in the eyes of law. Reliance is placed on the decision of Hon'ble Tribunal in the case of Electronik Lab, 2005 (187) ELT 362 (Tri-Mumbai), wherein, it is held that presumptions and assumptions however strong cannot be substitute for evidence. Therefore, visit of penalty on such presumption and assumption of having knowingly dealt with the goods cannot be upheld.

15.15 It is also a trite law that the question of collusion and conspiracy must also be proved by the one who alleges it. These are questions which have to be proved by adducing evidence, as duly held by Hon'ble High Court of Madras in the case of Neyveli Lignité Corporation Limited v/s Union of India, 2009 (242) ELT 487 (Mad.)

15.16 In this case, merely because we filed bill of entry on the basis of bill of lading and chemical testing by department revealed mismatch in chemical composition, per se, does not tantamount to abetment and/or complicity, without an iota of evidence in the form of statement of importer and/or documentary evidence suggesting prior knowledge about alleged mis-declaration and quid pro quo, in any manner from the importer for preparing checklist and filing bill of entry notwithstanding such knowledge. In absence of this evidence, the onus to prove abetment and/or complicity cast upon the department is not discharged.

15.17 Hence, it is our humble submission to appreciate from the above submissions and citations that we have neither committed any offence amounting to abetment and/or complicity nor failed in exercising due diligence while preparing the checklist so as to attract penalty under section 112 (a), 112 (b) and/or 114AA of Customs Act, 1962,

15.18 In view of above, it is prayed to give due consideration to the above submissions and citations and drop the show cause notice issued to us. It is prayed to hear us in person before concluding adjudication.

DISCUSSION AND FINDINGS

1 6 . I have carefully gone through the Show Cause Notice, records

available before me; submissions made by the noticee, I now proceed to decide the case. The principles of natural justice have been complied with by granting adequate opportunities to the noticees to present their defence. The Noticee no. 1, 2 and 3 (Importer, director and owner) failed to turn up for the personal hearing before the adjudicating authority. Further, no representative of M/s. Umang Impex attended the scheduled personal hearing.

Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions and judicial precedents. On careful perusal of the Show Cause Notice and case records, I find that the following issues arise for determination in this adjudication:-

- (i) Whether the declared description and classification of the impugned goods imported vide bill of entry no. 4468293 dated 02.02.2023 are liable for rejection and rightly classifiable under CTH 39042100;
- (ii) Whether the claim of preferential duty under Notification No. 46/2011-Cus dated 01.06.2011, as amended is liable to be rejected in terms of the provisions of the sub-section (10) of the Section 28DA of the Customs Act, 1962;
- (iii) Whether the impugned goods imported vide bill of entry no. 4468293 dated 02.02.2023 are liable for confiscation under section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 and are redemption fine applicable under section 125 of ibid;
- (iv) Whether the differential duty is liable to be demanded and recovered under Section 28(4) of the Customs Act, 1962 along-with applicable interest rate under Section 28AA of ibid;
- (v) Whether the importer is liable to penalty under Section 112(a), 112(b), 114A and 114AA of the Customs Act, 1962;
- (vi) Whether Shri Prashant Kumar Nayak Director of M/s. Umang Impex India Pvt. Ltd and Shri Umang Garg, the key person of M/s. Umang Impex India Pvt. Ltd are liable under Section 112(a), 112(b), 114AA and 117 of the Customs Act, 1962;
- (vii) Whether M/s. Rishi Kiran Logistics Pvt. Ltd. is liable under Section 112(a), 112(b), 114AA of the Customs Act, 1962.

Whether the declared description and classification of the impugned goods imported vide bill of entry no. 4468293 dated 02.02.2023 are liable for rejection and rightly classifiable under CTH 39042100.

17.1 I find that M/s. Umang Impex India Pvt. Ltd. filed a bill of entry no. 4468293 dated 02.02.2023 for clearance of declared goods i.e. PVC (Vinyl Acetate Copolymer) under CTH 39043090 import from Thailand and claimed COO benefit under Notification No. 46/2011-Cus dated

01.06.2011.

17.2 I find that the subject consignment was put on hold and examined by DRI officers under panchnama dated 02.03.2023. 10 Representative samples were drawn and sent to laboratory to know nature, description and composition. Test reports received on 10.03.2023 clearly mentioned that '*It is composed of mainly Polyvinyl Chloride (PVC) and inorganic material. % Ash=4.24 % by wt. It does not answer the test for Vinyl Acetate.*' The subject goods were containing 'Inorganic material between 3-4.5 % by wt'. Therefore, it is evident from the outcome of test reports, that there are no traces of vinyl acetate were found in the consignments whereas importer described the goods as PVC Clathrate (Vinyl Acetate Copolymer). I observed that the description provided by the importer is inconsistent with the findings of the test reports.

17.3 I observed on perusal of Bill of Lading that it has different classification of the goods as 390410 whereas importer declared in the bill of entry as 39043090. There are clear discrepancies in the documentation. The description provided in the Bill of Entry does not match the actual goods identified in the test reports. Further, the classification mentioned on the Bill of Lading is also incorrect. Therefore, it is established that the importer had knowingly and deliberately mis-declared and mis-classified the goods with clear intention of evasion of applicable Customs Duty.

17.4 I perused relevant heading and sub-heading of chapter 39, which are re-produced below:

3904 Polymers of vinyl chloride or of other halogenated olefins, in primary forms
390410 - Poly (vinyl chloride), not mixed with any other substances:

.....

.....

- **Other poly(Vinyl chloride), mixed with other substances:**

39042100 -- Non-Plasticised

39042200 --- Plasticised

390430 - Vinyl Chloride-vinyl acetate co-polymers:

39043010 --- Poly (Vinyl derivatives)

39043090 --- Other

In determining the appropriate classification of the subject goods, I applied General Rule for Interpretation to the Harmonized System wherein I relied upon Rule 1 of the GRI, which mandates that Classification shall be determined according to the terms of the headings and relative Section or Chapter Notes:

- The goods are a Poly(vinyl chloride) (PVC) compound in primary form. The initial classification under the 4-digit heading (3904) is correct.
- The goods are a "**Composition... with inorganic material,**" meaning they are a **mixture** of PVC and "other substances", therefore, 3904.10 is **excluded**.
- **GRI 6** requires that the classification of goods in the subheadings of a heading

shall be determined according to the terms of those subheadings and any relative Subheading Notes, *mutatis mutandis*, applying the preceding GRIs.

- The classification is narrowed down to the subgroup for mixtures: "- **Other Poly(Vinyl chloride), mixed with other substances**". Since the goods are a mixture ("mixed with other substances"), they perfectly suitable to classify under CTH 390421.

In view of the above facts, findings, Customs Tariff, and outcome of test report dated 10.03.2023 received from CRCL, I hold that impugned goods are Composition of Poly vinyl chloride mixture with inorganic material and is rightly classifiable under CTH 39042100.

Whether the claim of preferential duty under Notification No. 46/2011-Cus dated 01.06.2011, as amended is liable to be rejected in terms of the provisions of the sub-section (10) of the Section 28DA of the Customs Act, 1962.

18.1 I find that importer claimed preferential duty under notification no. 46/2011-Cus dated 01.06.2011 (ASEAN INDIA Trade agreement). I observed that Section 28 DA of the Customs Act, 1962, provides the procedure regarding claim of preferential rate of duty as under: -

Section 28DA: Procedure regarding claim of preferential rate of duty: -

(1) *An importer making claim for preferential rate of duty, in terms of any trade agreement, shall -*

- (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;*
- (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;*
- (iii) furnish such information in such manner as may be provided by rules;*
- (iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.*

(2)

(3)

(4)

.....

.....

10. *Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-*

- (i) the tariff item is not eligible for preferential tariff treatment;*
- (ii) complete description of goods is not contained in the certificate of origin;*
- (iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;*
- (iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".*

18.2 From the above provisions of Sub-section 10 of Section 28DA, it is

evident that the preferential tariff may be refused/denied without verification, if tariff item is not eligible for preferential tariff treatment and if complete description of goods is not contained in the certificate of origin. In this instant case, Certificate of Origin submitted by importer does not contain complete description of the goods as per Section 28DA of the Customs Act, 1962 and also the descriptions mentioned in the COO and the B/E were different. I therefore, find that claims of notification benefit are liable to be rejected in terms of the provisions of the sub-section (10) of the Section 28DA of the Customs Act, 1962.

Whether the impugned goods imported vide bill of entry no. 4468293 dated 02.02.2023 are liable for confiscation under section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 and are redemption fine applicable under section 125 of ibid.

19.1 As per findings in Para 17 above, the impugned goods are composition of Polyvinyl Chloride and inorganic material and rightly classifiable under CTH 39042100. The importer has wilfully mis-declared and mis-classified the impugned goods to undue claim of preferential duty under notification no. 46/2011-Cus dated 01.06.2011.

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

19.3 From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-declared and mis-classified the goods and evaded the payment of applicable duty. I find

that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

- i. Accuracy and completeness of the information declared;
- ii. The authenticity and validity of any document supporting the information provided; and
- iii. Comply with restrictions or prohibitions relating to the goods under this Act or any law in force at the time being

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

The following goods brought from a place outside India shall be liable to confiscation under section 111:

111(f): “any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;

111(l): “any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act;

111(m): “any goods which do not correspond in respect of value or in any other particular with the entry made under this Act;

111(q): “any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder”.

19.5 In the present case, the importer failed to furnish the correct information such as item description, correct CTH, and proper/complete information in Certificate of Origin. Therefore, they contravened the provisions of Section 46 of the Customs Act, 1962. I observed that these acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (f), 111(l), 111(m) and 111(q) of the Customs Act, 1962.

19.6 As I have already held these goods liable for confiscation in previous para under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962, I find 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 impugned goods as alleged vide subject SCN. The Section 125 ibid read 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."

(i) I find that in the instant case, option to redeem the goods through provisional release has already been availed by the Importer. Now the question remains that whether redemption fine can be imposed on the goods which already provisionally released.

In this regard, I place reliance on the judgment of the Hon'ble Apex Court in the case of M/s. WESTON COMPONENTS LTD. Versus COMMISSIONER OF CUSTOMS, NEW DELHI- 2000 (115) E.L.T. 278 (S.C.) wherein the Apex Court held that:

"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine."

I believe the ratio of the aforementioned judgment is directly applicable to the present case, as the goods were provisionally released under Bond and Bank Guarantee. Hence, I find that redemption fine under Section 125 of Customs Act, 1962 is warranted in respect of goods imported under the subject Bills of entries.

Whether the differential duty is liable to be demanded and recovered under Section 28(4) of the Customs Act, 1962 along-with applicable interest rate under Section 28AA of ibid.

20.1 From the case records, it is evident that the goods were seized and subsequently provisionally released under Section 110A of the Customs Act, 1962, in line with Board Circular No. 35/2017. I noticed that the Show Cause Notice proposes a demand under Section 28(4); however, it is settled legal position that Sections 110 and 28(4) pertain to distinct stages and typically cannot be invoked simultaneously. Section 110 & 110A deal with seizure and provisional release pending adjudication, whereas Section 28(4) applies to the recovery of duty only after final assessment or clearance of goods. The Hon'ble Apex Court and Tribunals have upheld this differentiation in various rulings. Thus, I find that the demand of recovery of duty under the provisions of section 28 is pre-mature.

20.2 In the present case, the liability for duty flows directly from clear acts of misdeclaration, misclassification and undue benefit of notification, during the DRI's investigation. Therefore, even though the invocation of Section 28(4) in the SCN at this provisional juncture is premature, the applicable charges of short-payment of duty due to misdeclaration remains

independently sustainable under Section 14 of the Customs Act read with the relevant provisions of the Customs Tariff Act. I find that provisional release under Section 110A does not restrict the department from pursuing final assessment and collecting correct duty with interest and penalties. I observed that provisional relief is only interim and does not extinguish liability to duty or penalty once mis-declaration is established. I find that the Provisional release under Section 110A is merely a facilitative measure for seized goods pending inquiry and does not prejudice the adjudicating authority's jurisdiction to confiscate under Section 125 following issuance of a Show Cause Notice. Accordingly, I hold that notwithstanding the procedural inconsistency in invoking Section 28(4) at this provisional stage, the duty along with applicable interest is required to be paid by importer on account of final assessment by way of these proceedings under the provisions of the Customs Act, 1962. Further, as mentioned in para 19.5 and 19.6 above, wherein the goods held liable for confiscation and allowed to be redeemed under Section 125 of the Customs Act, 1962, it follows from Section 125(2) that “[2] Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]”. Therefore, the importer liable to pay duty as calculated in **Table-A** above.

Whether the importer is liable to penalty under Section 112(a), 112(b), 114A and 114AA of the Customs Act, 1962.

21.1 As observed in above Para, I find that with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

21.2 Since I have held above that Noticee have rendered the subject goods of the said Bills of Entry as liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962, I find that the next issue to be decided is the invocation of Section 112 (a), 112(b), 114A and 114AA proposed in the Notice. Provisions of relevant sections are reproduced herein below:

“Section: 112. Penalty for improper importation of goods, etc. — Any person, -

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

- (b) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in*

any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

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

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 wilful 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 9[sub-section (8) of section 28] shall, also be liable to pay a penalty equal to the duty or interest so determined:

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.]

21.3 I find that it is clear from the provision that penalty under Section 112(a)(ii) can be imposed in cases where the acts or omissions of the importer/noticee renders the goods liable for confiscation under Section 111 of the Act. From the discussions so far, I find that the evidences clearly indicating mis-declaration, mis-classification on their part in respect of the imported goods warranting imposition of penalty under Section 112 (a) (ii) as the fact of mis-declaration, mis-classification was known to the assessee and not the department on the grounds of self-assessment. Result is that proposal to impose penalty under Section 112 (a)(ii) is correct and sustainable in law. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty; therefore, I refrain from imposition of penalty under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

21.4 I find that the penalty under Section 114A of the Customs Act is considered "pari materia" (essentially the same in legal effect) to Section 28(4) of the Customs Act, as both sections deal with situations where duty is short-levied or not paid due to collusion, willful misstatement, or suppression of facts, and impose a penalty related to the amount of unpaid

duty or interest involved; essentially meaning that if a person is found liable under Section 28(4), they could also be subject to a penalty under Section 114A for the same actions. In the instant case, goods have been provisional released under Section 110 of the Act ibid. Therefore, demand under Section 28 is premature at this stage and based on the same reasoning the question of demand of duty under section 28 does not arise. Accordingly, I refrain from imposing penalty under section 114A of Customs Act, 1962.

21.5 I find that the SCN proposed imposition of penalty on the Importer under Section 114AA of the Customs Act, 1962. I find that in spite of well aware of the nature of the imported goods, importer, consciously mis-declared the description, mis-classified the goods which found to be incorrect during the course of investigation. These acts of omission and commission on the part of the Proprietor of the importing firm made the provisions of Section 114AA invokable. Therefore, I agree with the proposal of imposition of penalty on the importer under Section 114AA ibid.

Whether Shri Prashant Kumar Nayak Director of M/s. Umang Impex India Pvt. Ltd and upon Shri Umang Garg, the key person of M/s. Umang Impex India Pvt. Ltd are liable under Section 112(a), 112(b), 114AA and 117 of the Customs Act, 1962;

22.1 I find that Shri Prashant Kumar Nayak, one of the Directors of M/s. Umang Impex India Pvt. Ltd. admitted in his statement that he and Shri Umang Garg forwarded the documents to their Customs Broker without any verification of description and classification. He was not able to submit satisfactory documents/details on the basis of which they decided to mention the description and classification of the subject goods. He failed to submit the reason of difference in description of the subject goods in the Certificate of Origin and what he has mentioned in the Bill of Entry. During his statement Shri Prashant Kumar Nayak also admitted that the Test Reports of the representative samples denied the presence of Vinyl Acetate in the subject import goods. These facts indicate that the subject goods were different from the goods as mentioned in the Certificate of Origin. M/s. Umang Impex India Pvt. Ltd. also failed to submit the satisfactory reason for difference in the Classification mentioned in the corresponding Bill of lading (i.e. HS Code 390410) whereas they have mentioned the same as 39043090 in the other import documents.

22.2 I find that he admitted to a lapse in due diligence by acknowledging that he did not properly scrutinize the country of origin during the importation process, particularly in relation to the goods specified as vinyl acetate copolymer. However, amidst these admissions, Shri Prashant Kumar Nayak takes responsibility for an apparent error in judgment, conceding that he wrongfully availed themselves of the benefits accorded by Notification no. 46/2011 dated 01.06.2011. The omission and commission of mis-declaration and mis-statement on the part of Shri Prashant Kumar Nayak rendered the subject goods having total quantity 185 MTs covered under Bill of Entry No. 4468293 dated 02.02.2023

assessable Value of Rs. 1,11,37,083/- imported through 10 Containers liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act,1962 and also rendered himself liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. Further, summons issued to him were not honoured by him, therefore, I also find him to liable to penalty under Section 117 of the Act, *ibid*.

22.3 I observed that the SCN proposed imposition of penalty on the Importer under Section 114AA of the Customs Act, 1962. I find that Shri Prashant Kumar Nayak as the Director Key participant in the supply chain is expected to act responsibly and in accordance with the established rules and regulations. By exploiting Notification no. 46/2011 dated 01.06.2011 for illegal benefits, the importer not only jeopardizes his own standing but also undermines the credibility of the entire importation process. Also, Shri Prashant Kumar Nayak was knowingly connived in importing, purchasing/selling and dealing with the offending goods. Shri Prashant Kumar Nayak by way of submitting documents having incorrect material particulars causes to be made signed and used the declaration and documents which were having false or incorrect material particulars, rendered themselves also, liable to penalty under Section 114AA of the Customs Act, 1962. Therefore, I agree with the proposal of imposition of penalty on Shri Prashant Kumar Nayak under Section 114AA *ibid*.

22.4 I observed that Shri Umang Garg was the key person of M/s. Umang Impex India Pvt. Ltd. and beneficial owner of the subject goods. During investigation, it is revealed that Shri Umang Garg also indulged in all the business activities of M/s. Umang Impex India Pvt. Ltd. Shri Umang Garg used to contact the Customs Broker Ms/. Rishin Kiran Logistics Pvt. Ltd. for arranging the clearance form Mundra Port. Shri Umang Garg, the key person of M/s. Umang Impex India Pvt. Ltd, was responsible for ensuring compliance with customs regulations and accurately declaring the nature, quantity, and classification of imported goods. However, in this particular case, Shri Umang Garg has indulged into through deliberate mis-declaration and misclassification of the goods. He played a crucial role in the evasion of Customs duty by way of taking undue benefits of the exemption notification. When an importer engages in mis-declaration and mis-classification, it not only compromised the accuracy of customs documentation but also raises concerns about the legality and fairness of their trade practices. The omission and commission of mis-declaration and mis-statement on the part of Shri Umang Garg, rendered the subject goods having total quantity 185 MTs covered under Bill of Entry No. 4468293 dated 02.02.2023 assessable Value of Rs. 1,11,37,083/- imported through 10 Containers rendered the goods liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act,1962 and also rendered himself liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. Further, summons issued to him were not honoured by him and he never presented himself for a statement before the DRI officers. Therefore, I also find him to liable to penalty under Section 117 of the Act, *ibid*.

22.5 I find that the SCN proposed imposition of penalty on the Importer under Section 114AA of the Customs Act, 1962. I find that Shri Umang Garg as key participant in the supply chain is expected to act responsibly and in accordance with the established rules and regulations. By exploiting Notification no. 46/2011 dated 01.06.2011 for illegal benefits, the importer not only jeopardizes their own standing but also undermines the credibility of the entire importation process. Also, Shri Umang Garg was knowingly connived in importing, purchasing/selling and dealing with the offending goods. Shri Umang Garg by way of submitting documents having incorrect material particulars causes to be made signed and used the declaration and documents which were having false or incorrect material particulars, rendered themselves also liable to penalty under Section 114AA of the Customs Act, 1962. Therefore, I agree with the proposal of imposition of penalty on shri umang garg under Section 114AA *ibid.*

Whether M/s. Rishi Kiran Logistics Pvt. Ltd. is liable under Section 112(a), 112(b), 114AA of the Customs Act, 1962.

23.1(i) I find that M/s. Rishi kirin logistics private limited (Noticee No. 4), through their advocate in Personal Hearing and in his written submission dated 08.12.2025, has requested for cross-examination of Shri Prashant Kumar Nayak (Noticee No. 2).

(ii) I find that the request for cross examination has been made at the final stage of the proceedings. This appears to be a delaying tactic intended to prolong the adjudication process without any substantive justification. I find that each noticee was given ample opportunity to present their defense, access all relied-upon documents (RUDs), and participate in personal hearings. The noticees were afforded full opportunity to defend themselves during hearings, this satisfied principles of *audi alteram partem*.

(iii) I find that noticee seeks to cross examine Shri Prashant Kumar Nayak, Director (Noticee no. 2) to establish that the subject bill of entry was filed with his prior approval. I perused regulations 10 of CBLR, 2018 wherein obligations of Customs Broker defined. The same is re-produced herein below:

A Customs Broker Shall-

Regulation 10(d) of the CBLR, 2018:-

"advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

Regulation 10(e) of the CBLR, 2018:-

"exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

23.2 Statement of Shri Shantu Gupta, F-Card holder of M/s Rishi Kiran Logistics Pvt. Ltd. was recorded on 13.09.2023, wherein he stated that he verified the invoice, packing list and COO, in which he found that PVC

Clathrate was mentioned in the invoice and packing list whereas 'vinyl acetate copolymer' was mentioned in the COO, however he checked the CTH and found that the CTH were all similar, then he made the description of PVC(Vinyl Acetate Copolymer). Further, he stated that the HS Code of the goods in the Bill of Lading (HS Code 390410) was different from as he had declared in the Bill of Entry. Further he stated that his company had not sought any clarification from the importer or any other person about the said difference in HSN code between B/L and COO.

In this instant case, Customs Broker cannot escape their liabilities for the correctness of any information while filing of bill of entry by merely claiming that they received prior approval from Importer. The statutory obligations of a Customs Broker regarding the accuracy of information declared in a Bill of Entry remain intact as per CBLR, 2018.

23.3 Customs Broker failed to exercised due diligence as outlined in regulation 10 (d) & (e) of CBLR, 2018. This is evidenced by his own statement admitting he created a new description, using "PVC Clathrate" from the invoice/packing list and "Vinyl acetate Copolymer" from the Certificate of Origin (COO). Furthermore, the Customs Broker did not bring these discrepancies to the attention of Customs prior to filing the Bill of Entry. Therefore, I conclude there is a lack of due diligence and non-compliance on the part of the Customs Broker.

Cross-examination is an element of procedural justice, not a sine qua non of natural justice, and may be denied where statements are corroborated by independent evidence. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

- a. **Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737-** wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.
- b. **Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.)**:- wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- c. **Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai)**:- wherein it has been observed that cross-examination not to be claimed as a matter of right.
- d. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the

concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)

- e. Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC** the Hon High court held that; ".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".
- f. **In the case of Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;**
- g. "Adjudication — Cross-examination — Denial of—held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances — Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors — Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]

From the above discussion and comprehensive review of the record, I find the request for cross-examination is devoid of merit. It is unnecessary in view of the admitted facts and was also requested belatedly to delay the adjudication proceedings. Accordingly, the application requesting to conduct of cross-examination is hereby denied

23.4 These acts of failure by M/s. Rishi Kiran Logistics Pvt. Ltd. to fulfil their obligation renders them liable under Section 112(a) of the Customs Act, 1962, for abetting acts which made the goods liable to confiscation. In view of the above, I hold that their omission in pointing out evident discrepancies and their casual filing of Bill of entry attracts penalty under Section 112(a)(ii) of the Customs Act, 1962.

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

ORDER

(i) I order to reject the declared description i.e. PVC Clathrate (vinyl acetate co-polymer) and declared classification under CTH 39043090 and order to amend in description and re-classification as "Composition of polyvinyl chloride and inorganic material" under CTH 39042100.

(ii) I order to reject the claim of preferential duty Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the importer against the goods imported vide Bills of Entry No. 4468293 dated 02.02.2023 under the Provisions of the sub-section 10 of the

Section 28DA of the Customs Act, 1962.

(iii) I order to confiscate the impugned goods imported vide Bill of Entry No. 4468293 dated 02.02.2023 having assessable value of Rs. 1,11,37,083/- (**Rupees One Crore Eleven Lakh Thirty-Seven Thousand and Eighty-Three only**) under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 read with provisions of Section 46 (4) and Section 46 (4A) of the Customs Act, 1962 and since the impugn goods have already been released through provisional release, I impose redemption fine of **Rs. 10,00,000/- (Rs. Ten Lakh Only)** in respect of these goods for their redemption u/s 125 of the Customs Act, 1962;

(iv) I do not order to demand the differential duty under Section 28(4) of the Customs Act, 1962 for the reasons as stated under para 20 above. However, I order to re-assess the Bill of Entry for the purpose of levy of duty total amounting to Rs. 30,88,870/- (which includes differential duty of Rs. 10,84,195/-) as per calculated in Table-A. I also order to enforce Bond and the Bank Guarantees of **Rs. 15,00,000/- (Rupees Fifteen Lakh only)** dated 22.06.2023 furnished by the Noticee at the time of seeking provisional release of the goods against B/E No. 4468293 dated 02.02.2023 and appropriate the same; if the dues (as confirmed) are paid in full by the noticee, the Bond & Bank Guarantee may be released by the Competent Authority;

(v) I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on the M/s. Umang Impex India Pvt. Ltd. under Section 112(a)(ii) of the Customs Act, 1962; However, I refrain from imposing penalty on M/s. Umang Impex India Pvt. Ltd. under Section 112(b) of the Customs Act, 1962;

(vi) I impose penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on the M/s. Umang Impex India Pvt. Ltd. under Section 114AA of the Customs Act, 1962;

(vii) I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** upon **Shri Prashant Kumar Nayak**, Director of M/s. Umang Impex India Pvt. Ltd. under Section 112(a)(ii) of the Customs Act, 1962. However, I refrain from imposing penalty on Shri Prashant Kumar Nayak, Director of M/s. Umang Impex pvt. Ltd. under Section 112(b) of the Customs Act, 1962.

(viii) I impose penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** upon **Shri Prashant Kumar Nayak**, Director of M/s. Umang Impex India Pvt. Ltd. under Section 114AA of the Customs Act, 1962;

(ix) I impose penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand only)** upon **Shri Prashant Kumar Nayak**, Director of M/s. Umang Impex India Pvt. Ltd. under Section 117 of the Customs Act, 1962

(x) I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** **upon Shri Umang Garg**, the key person/beneficial owner of M/s. Umang Impex India Pvt. under Section 112(a)(ii) of the Customs Act, 1962. However, I refrain from imposing penalty on Shri Umang garg, Key person/beneficial owner of M/s. Umang Impex pvt. Ltd. under Section 112(b) of the Customs Act, 1962.

(xi) I impose penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** **upon Shri Umang Garg**, the key person/beneficial owner of M/s. Umang Impex India Pvt. under Section 114AA of the Customs Act, 1962;

(xii) I impose penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand only)** **upon Shri Umang Garg**, the key person/beneficial owner of M/s. Umang Impex India Pvt. under Section 117 of the Customs Act, 1962

(xiii) I impose Penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand only)** **upon M/s. Rishi Kiran Logistics Pvt. Ltd.** 112(a)(ii) of the Customs Act, 1962; However, I refrain from imposing penalty upon 112(b) and 114AA of the Customs Act, 1962.

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

26. The Show Cause Notice bearing no. GEN/ADJ/ADC/1184/2024-Adjn dated 30.12.2024 stands disposed in above terms.

**Dipak Zala,
Additional Commissioner,
Custom House, Mundra.**

List of Noticees:-

1. M/S. UMANG IMPEX INDIA PVT. LTD, Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi-110040 (email- umangimpexindiapvtltd@gmail.com)
2. Shri Prashant Kumar Nayak, Directors of M/s. Umang Impex India Pvt. Ltd. Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi-110040 (Email- umangimpexindiapvtltd@gmail.com).
3. Shri Umang Garg, key person and beneficial owner of M/s. Umang Impex India Pvt. Ltd. Ground Floor, G-960, DSIIDC industrial Area,

Narela, Delhi-110040 (Email-umangimpexindiapvtltd@gmail.com).

4. M/s Rishi kiran Logistics Pvt. Ltd., Customs Broker, Kiran House, Plot No. 8, Sector-8, Opp. Post Office, Gandhidham, Kutch-370201(email-Docs.cont@thekirangroup.com, SDG@thekirangroup.com).

Copy to:-

1. The Additional Director, DRI Regional Unit, Gandhidham.
2. The DC/AC, (TRC/ RRA/ EDI/Gr.-2G/ Bond-BG Section), Mundra Customs.
3. Guard file.