

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A	FILE NO.	GEN/ADJ/ADC/901/2023-Adjn-O/o Pr Commr-Cus-Mundra
B	OIO NO.	MCH/ADC/AKM/181/2024-25
C	PASSED BY	AMIT KUMAR MISHRA ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
D	DATE OF ORDER	29.10.2024
E	DATE OF ISSUE	29.10.2024
F	SCN NUMBER & DATE	GEN/ADJ/ADC/901/2023-Adjn. Dated 31.10.2023
G	NOTICEE/ PARTY/ IMPORTER	(i) M/s. Arihant Enterprises (MOQPS7998K) (ii) Shri Dhananjay B Desai (iii) Shri Ashitosh Ramdas Salve
H	DIN NUMBER	20241071MO000022222D

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त) अपील(
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए ।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

- उक्त अपील की एक प्रति और A copy of the appeal, and
- इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870-के मद सं० 6-में

निर्धारित 5 -रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

.5 अपील ज्ञापन के साथ ड्यूटी /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

.6 अपील प्रस्तुत करते समय, सीमा शुल्क) अपील (नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 % भुगतान करना होगा।

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

FACTS OF THE CASE IN BRIEF

On the basis of specific intelligence the import consignments pertaining to the following containers of M/s. Arihant Enterprises were put on hold at Mundra Port for examination of the imported goods by the officers of DRI:

- i. GAOU6398844
- ii. HMCU9159360
- iii. PCIU9399099
- iv. EGHU9641158
- v. BMOU6427795
- vi. TRHU6362726

2. Officers of DRI Vapi examined the above said containers. Examination of container no. PCIU9399099 lying at Ashutosh Container Services Pvt. Limited, (hereinafter referred as “CFS- Ashutosh”) under Panchnama dated 19.11.2022 revealed that mis-declared/mis-classified/concealed foreign branded cosmetic products of a number of brands were found, which was grossly mis declared as per the bill of lading and was other than the declared Vanity case boxes. Further these items were concealed behind the declared items. The said cosmetic items and vanity boxes etc. were placed under detention as per the provisions of Customs Act, 1962 as the said items were being smuggled. The detained goods were handed over to Custodian CFS- Ashutosh, Mundra under the Suparatnama dated 19.11.2022.

2.1 The Officers of DRI, Sub-Regional Unit, Vapi examined the containers nos. TRHU6362726 & BMOU6427795 lying at Hind Terminals Mundra Pvt. Limited, Taluka- Mundra, Distt.-Kutch-370421 (hereinafter referred as “ CFS- Hind Terminal”) under Panchnama dated 20.11.2022. During the course of examination of the said containers, mis-declared/Mis-classified/concealed items viz. Hair Crown, Rubber Balloons of different

colors and wooden knife, spoon etc packed in cartons were found which was undeclared and was different from the declared items as per Bill of lading such as Alphabetic and Numbers (description as per Bill of lading) and these items were concealed behind the declared items. The above said items and declared items etc. were placed under detention as per the provisions of Customs Act, 1962 as the said items were being smuggled. The detained goods were handed over to the Custodian CFS- Hind Terminal, Mundra under the Suparatnama dated 20.11.2022.

2.2 Similarly, officers of DRI, Sub-Regional Unit, Vapi examined the containers nos. EGHU9641158, GAOU6398844 & HMCU9159360 lying at All Cargo Logistics Ltd (CFS), Mundra, Gujarat - 370421 (hereinafter referred as "CFS- All Cargo") under Panchnama dated 21.11.2022. During the course of examination of the said container, mis-declared/concealed and mis-classified items viz. Rubber Balloons of different colors packed in cartons, Table Cloths, and Rubber Balloons with glitter disc inside were found which was different from the items declared as per Bill of Lading and were concealed behind the declared items. The cartons of table cloths declared as decorative festival item in the BL were used for the concealment of other undeclared goods. The above said items and Decorative festivals items etc. were placed under detention under provisions of Customs Act, 1962 as the said items were smuggled. The detained goods were handed over to Custodian CFS- All Cargo, Mundra under the Suparatnama dated 21.11.2022.

2.3 Accordingly, samples of above detained goods were drawn by Shri Kunal Ajay Kumar, Customs Empanelled Chartered Engineer as appointed by the Principal Commissioner of Customs, Customs House, Mundra Port, Gujarat vide Public Notice No. 11/2021 dated 10.11.2021 for valuation of imported detained goods under various Panchnamas viz. Panchnama dated 21.11.2022. Shri Kunal Ajay Kumar vide Valuation Report nos. DRI/176/22-23 dated 22.11.2022, DRI/181/22-23 and DRI/182/22-23 both dated 25.11.2022 had submitted that the total value of detained goods stands to Rupees **8918 Lakhs** (Approx). All the above mentioned mis-declared/mis-classified/concealed goods were seized subsequently under Seizure Memos dated 26.11.2022, 28.11.2022 and 28.11.2022. Copy of Seizure memos dated 26.11.2022, 28.11.2022, and 28.11.2022, which were issued to M/s. Arihant Enterprises, were sent to their registered address at Shree Rukmani Vitthal Mandir, Chalisgaon, Shop No. 2, Jalgaon, Rukmani Nagar, Jalgaon, Dhule, Maharashtra-424001. However, these memos were returned to this office with the comment-address doesn't exist.

3. A letter F. No. DRI/AZU/SRU/VSU/INV-04/2022 dated 22.11.2022 was issued by the Deputy Director, DRI Surat Regional Unit, Surat to the Deputy Commissioner, Jalgaon Division, Nashik GST Commissionerate requesting to arrange a search at registered address of M/s. Arihant Enterprises (IEC-MOQPS7998K) i.e. Shree Rukmani Vitthal Mandir, Chalisgaon, Shop No. 2, Rukmani Nagar, Jalgaon, Dhule, 424101. The Deputy Commissioner, Jalgaon Division, Nashik GST Commissionerate vide their letter F.No.VGN(30) Misc/2022 Jalgaon dated 07.12.2022

informed that the premises of M/s. Arihant Enterprises at Shop No.2 Rukmani Nagar, Chalisgaon does not exist.

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

- Statement of Shri Akash Desai, General Manager of M/s. Empezar Logistics Pvt. Ltd. was recorded on 23.11.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Aditya Kodrani, Manager of M/s. Meera Logistics was recorded on 25.11.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Dineshbhai Joitabhai Chaudhary, Director of M/s. Shree Vijaylaxmi Logix Pvt. Ltd. was recorded on 25.11.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Rahul Bhanushali, Branch Head of Customs Broker firm M/s Pushpanjali Logistics was recorded on 25/26.11.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Rajesh Tulsidas Nakhua was recorded on 25/26.11.2022 under Section 108 of the Customs Act, 1962.
- Statement of Shri Dhananjay Balchandra Desai was recorded on 30.11.2022/01.12.2022 under Section 108 of the Customs Act, 1962

5. On scrutiny of the documents i.e. Commercial Invoices and Packing List of the goods covered under respective Commercial Invoices submitted by Shri Dhananjay Balchandra Desai, Controller and Financer of M/s. Arihant Enterprises, in his statement dated 30.11.2022/01.12.2022, it was found that in the packing list & commercial invoices in respect of import of aforementioned six containers, the total number of items were not matching with the total number of items found during examination under Panchnama dated 19.11.2022, 20.11.2022 & 21.11.2022. Further, the Bills of Lading wherein goods were declared as "Vanity Case" or "Alphabet and Number with decoration items" had been generated on the basis of Instruction by Chinese agent based in China on mutual understanding with Shri Dhananjay B Desai. In view of above facts, the Commercial Invoices in respect of above mentioned six Bills of Lading and Packing List of the goods covered under respective Commercial Invoices cannot be considered to be genuine as the said documents were received from the Shri Dhananjay B Desai after examination of the said consignments and "Vanity Case" or "Alphabet and Number with decoration items" were declared in bills of lading for the concealment or mis-declaration/ mis-classification and hence the value of the goods mentioned in the commercial invoices cannot be accepted.

6 . Thus, investigation so far indicated that Shri Dhananjay Balchandra Desai is the masterminded of the entire modus of importing through dummy IEC and importing goods other than the declared goods to evade payment of customs duty and smuggling of the goods eventually to supply them in the local market to earn profit. In his statement dated 30.11.2022/01.12.2022, Shri Dhananjay Balchandra Desai confessed that he had mis-declared/ mis-classified and smuggled goods that were not declared such as cosmetic items, Hair Crown, Rubber Balloons of different colors and Table Cloths etc. He was the key person who controls and finances M/s. Arihant Enterprises for smuggling of these items. The same facts had also been stated by Shri Rajesh Tulsidas Nakhua, Controller of M/s. Om Logistics which worked as forwarder to CHA Pushpanjali for M/s. Arihant Enterprise in his statement dated 25/26.11.2022. In view of the above it appeared that Shri Dhananjay Balchandra Desai was the mastermind behind the entire modus of smuggling of the different goods in contravention to the provisions of Customs Act, 1962 and in contravention of the Intellectual Property Rights and non-compliance of BIS standard, through dummy IEC to evade payment of customs duty and to import the prohibited goods in India. Shri Dhananjay Balchandra Desai, had knowingly and willingly concerned himself in the smuggling of the above discussed impugned goods in the guise of declaring them as (i) Vanity Case (ii) Alphabet and Numbers & (iii) Decorative Festivals in Bills of lading and smuggled various goods like branded high value cosmetic items without requisite licences, rubber balloons etc approx. valued at **Rs. 8918 Lakhs** and also undervalued these imported goods to evade payment of Customs duty. The importer had concealed the smuggled items behind the declared items. Thus, he was found involved in the commission of an act, which had made goods liable to confiscation under Section 111(d), Section 111(f) & Section 111(i) of the Customs Act and Shri Dhananjay Balchandra Desai has committed an offence of the nature described under Section 135(1)(i) (A), 135(1)(i)(B) and 135(1)(i)(C) of the Customs Act, 1962. Further, Shri Dhananjay Balchandra Desai for his acts of omission and commission was arrested on 01.12.2022 under Section 104 of the Customs Act, 1962 and produced before Judicial Magistrate (First Class), Daman vide Production Memo dated 01.12.2022 and Hon'ble JMFC vide order dated 01.12.2022 remanded Shri Desai to judicial custody till 14.12.2022. Shri Dhananjay Desai filed application dated 08.12.2022 for regular bail before Hon'ble JMFC, Daman. Hence, Hon'ble JMFC, Daman vide Notice letter No. CJJD-JMFC/MISC./2022/1585 dated 08.12.2022 (which received on 09.12.2022) requested to DRI to file reply on 09.12.2022. Accordingly, DRI officers attended the court proceedings on 09.12.2022 and Hon'ble JMFC adjourned the hearing on 13.12.2022. Hon'ble JMFC, Daman vide order dated 13.12.2022 approved the bail application and ordered the applicant to be released on regular bail on Personal Recognizance Bond and Surety Bond of Rs. 1,00,000/- and subject to other conditions as mentioned in the order.

7 . During the investigation it was revealed that some consignments (as mentioned below table) of M/s. Arihant Enterprise (IEC-MOQPS7998K) were still pending customs clearance at Mundra Port apart from 06 consignment (as mentioned in para above) which were already examined and seized by DRI:

Sr. No.	Container No.	Status of Container	Bill of lading	Bill of lading date
1	FDCU0040132	Not-examined	MEDUQ7747973	07.08.2022
2	TCKU7952858	Not-examined	800250085778	21.08.2022
3	TSSU5006454	Not-examined	799210470832	09.09.2022
4	TSSU5138996	Not-examined	800250092707	11.09.2022
5	TXGU6846421	Not-examined	799210338729	28.08.2022

A letter F.No. DRI/AZU/SRU/VSU/INV-04/2022 dated 12.12.2022 and reminder letter dated 06.02.2023 were issued to the Deputy Commissioner (SIIB), Customs House, Mundra to put on hold the above 5 containers.

7.1 Accordingly, officers of SIIB, Customs House, Mundra in the presence of officer of DRI, Sub-Regional Unit, Vapi examined the containers nos. TCKU7952858 & TXGU6846421 lying at All Cargo Logistics Ltd (CFS) under Panchnama dated 09.02.2023. During the course of examination of the said containers, there were found mis-declared and mis-classified items viz. Rubber Balloons of different colors packed in cartons, Decorative Curtains, Cubes, Clay and Magnet other than declared Alphabet and Number with Decoration items. These mis-declared goods were imported in place of declared goods as per Bill of Lading and were concealed behind the declared items. The above said items and Alphabet and Number with Decoration items etc. were placed under detention under the provisions of Customs Act, 1962 as the said items were smuggled in place of declared goods. The detained goods were handed over to Custodian the CFS- All Cargo, Mundra under Suparatnama dated 09.02.2023.

7.2 Similarly, officers of SIIB, Customs House, Mundra in the presence of officer of DRI, Sub-Regional Unit, Vapi examined the containers nos. TSSU5006454, TSSU5138996 & FDCU0040132 lying at All Cargo Logistics Ltd (CFS) under Panchnama dated 10.02.2023. During the course of examination of the said containers, there were found mis-declared and mis-classified items viz. Rubber Balloons and foil balloons of different colors packed in cartons, Decorative Curtains, Whistles, and Foil Decoration Items other than declared Alphabet and Number with Decoration items. These mis-declared and mis-classified items were imported in place of the declared items as per Bill of Lading and were concealed behind the declared items. The above said items and Alphabet and Number with Decoration items etc. were placed under detention under provisions of Customs Act, 1962 as the said items were smuggled in place of declared goods. The detained goods were handed over to Custodian of the CFS- All Cargo, Mundra under Suparatnama dated 10.02.2023.

7.3 Simultaneously, samples of above detained goods were drawn by Shri Kunal Ajay Kumar, Customs Empanelled Chartered Engineer as appointed by the Principal Commissioner of Customs, Customs House, Mundra Port, Gujarat vide Public Notice No. 11/2021 dated 10.11.2021 for valuation of imported goods, under Panchnamas dated 09.02.2023 and 10.02.2023 both drawn at the CFS- All Cargo as mentioned above at Para 13.1 & 13.2 of the SCN.

7.4. Shri Kunal Ajay Kumar, Customs Empanelled Chartered Engineer/valuer vide Valuation Report nos. DRI/218/22-23 dated

14.02.2023 and report DRI/220/22-23 dated 20.02.2023 had valued **the market retail price** of the cargo de-stuffed (from Containers No. TCKU7952858, TXGU6846421, TSSU5006454, TSSU5138996 and FDCU0040132) to be **Rs.10,90,58,460/- (Indian Rupees Ten Crores, Ninety Lakhs, Fifty Eight Thousand, Four Hundred and Sixty Only)**. Hence, detained goods valued totally at **Rs.1090.58 Lakhs** (Approx) were seized subsequently under Seizure Memos dated 14.03.2022. The said Seizure Memo dated 14.03.2022 issued to M/s. Arihant Enterprise at registered address at Shree Rukmani Vitthal Mandir, Chalisgaon, Shop No.2, Jalgaon, Rukmani Nagar, Jalgaon, Dhule, Maharashtra-424001, was returned to this office with the remarks "Chalishgaon mien nahi" on envelope.

8 . During the investigation of documents submitted by Akash Desai, General Manager of M/s. Empezar Logistics Pvt. Ltd. it was observed that a bank certificate in respect of M/s. Arihant Enterprise having Current Account no. 300421010000058 issued by Union Bank of India appeared to be unauthentic as no date was mentioned on it, hence a letter dated 25.01.2023 to the Bank Manager, Union Bank of India, Kapurbavdi branch was issued. Union Bank of India, Val Branch vide email dated 02.02.2023 forwarded KYC documents and account statement in respect of Current Account no. 300421010000058. On perusal of KYC documents, it was noticed that the said account no. belongs to another M/s. Arihant Enterprise and the proprietor of the said firm is Shri Ravichandra Raghuvver Panika. Only the name of firm matched with M/s. Arihant Enterprise (IEC-MOQPS7998K) but other details were pertaining to the firm whose proprietor was Shri Ravichandra Raghuvver Panika. Union Bank of India, Val Branch vide email dated 15.03.2023 confirmed that bank certificate having bank account no. 300421010000058 submitted to the customs authority was a fake certificate. They informed that the said above mentioned certificate was not issued by them and details regarding IEC number and AD code were not issued in respect of the said account by the Union Bank of India.

9 . Summons dated 25.01.2023 were issued to Shri Ashitosh Ramdas Salve, Proprietor of M/s. Arihant Enterprise, Shri Paresh Dulabhai Mori, Proprietor of M/s. Bajrangdas Logistics (transporter firm) and Shri Rajesh Tulsidas Nakhua, Forwarder of M/s. Arihant Enterprise. Summon dated 25.01.2023 was issued to Shri Ashitosh Ramdas Salve, Proprietor of M/s. Arihant Enterprise which was returned to this office undelivered.

9.1 Further, during the course of investigation, statements of following persons were also recorded. The facts of statements of such persons have been mentioned in the Show Cause Notice and the records of statements thereof have been attached to Show Cause Notice as RUDs. For sake of brevity contents of statements of such persons are not produced hereunder. The details of the persons whose statements were recorded are as under: -

- Statement of Shri Paresh Dulabhai Mori, Proprietor of M/s. Bajrangdas Logistics (transporter firm) was recorded on 07.02.2023 under section 108 of the Customs Act, 1962.

- Statement of Shri Ashitosh Ramdas Salve, Proprietor of M/s. Arihant Enterprise was recorded on 28.02.2023 under section 108 of the Customs Act, 1962.
- Statement of Shri Rajesh Tulsidas Nakhua, forwarder of M/s. Arihant Enterprise was recorded on 28.04.2023 under section 108 of the Customs Act, 1962.
- Statement of Shri Bhavesh Patel, Facility Head- Mundra CFS Of All Cargo Logistics Ltd (CFS), was recorded on 20.03.2023 under section 108 of the Customs Act, 1962.
- Statement of Shri Dhananjay Balchandra Desai, Controller and Financer of M/s. Arihant Enterprise was recorded on 07.07.2023 under section 108 of the Customs Act, 1962 wherein he perused his previous statements alongwith other statement and panchnamas.

10. Whereas based on the examination of consignment imported under Bill of Lading No. HUSG20982000 dated 18.08.2022 through container No. PCIU9399099 under Panchnama dated 19.11.2022, it was observed that the detained goods were found to be cosmetic items of various foreign brands. Therefore, Representative samples were taken under the Panchnama dated 08.02.2023 drawn at Ashutosh CFS.

11. Whereas based on the examination of consignment imported under Bill of Lading No. HUSG20982000 dated 18.08.2022 through container No. PCIU9399099 under Panchnama dated 19.11.2022 drawn at Ashutosh Container Services Pvt. Limited, Mundra and drawing of representative samples of seized goods under panchnama dated 08.02.2023, the seized goods were found to be of various foreign brands. To confirm the genuineness of the seized goods, the respective brand owners/ right holders / legal representatives of various brands were contacted. Representatives of the various brand owners turned up for examination of the seized branded goods. The examination of the samples of the seized goods were carried out under panchnama dated 13.03.2023 drawn at office premises of DRI, Vapi, by the representatives of brand owners and they physically inspected, took photographs and also took some samples for chemical testing/analysis of the same to find out whether the seized goods were genuine or counterfeit.

11.1 In reference to physical examination/verification and photographs taken by the representatives of brands under panchnama dated 13.03.2023 as discussed in the above paras, rights holders submitted their verification report confirming the goods bearing the brand names of various brands to be counterfeit. The details of report are tabulated as below:

Sr. No.	Authorised Right Holder	Brand	Verification Report date	Details of report
1	Lall & Sethi	Bobbi Brown	Letter dated 17.03.2023 through email	Seized goods are counterfeit and requested for absolute confiscation of goods, destruction of goods and grant hearing before passing order.
2	Lall & Sethi	Mac	Letter dated	Seized goods are counterfeit and

			17.03.2023 through email	requested for absolute confiscation of goods, destruction of goods and grant hearing before passing order.
3	Hindustan Unilever Limited	Elle18	Letter dated 20.03.2023 through email dated 21.03.2023	Seized goods are fake.
4	Anand and Anand	Maybelline & Matrix	Letter dated 23.03.2023	Seized goods are counterfeit. Requested for not to release the goods & take action as per IPR Rules.

11.2 The Deputy Commissioner of Customs, SIIB(I)/ IPR Cell, Jawaharlal Nehru Custom House and The Deputy Commissioner (SIIB), Custom House, Mundra vide letters dated 23.03.2023 were requested to provide whether brands (mentioned in the letter dated 23.03.2023) are registered with Indian Customs under Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. They were also requested to provide the details of Rights holders in India in respect of the said Brands/Companies along-with Unique Permanent Registration No. (UPRN), Registration No. and validity period (from-to).

11.3 The Deputy Commissioner of Customs, IPR Cell, JNCH, Nhava Sheva-V vide their letter F.No.SG/MISC-47/2021-22 IPR Cell JNCH dated 24.03.2023 informed that the brands “Mac”, “Bobbi Brown”, “Matrix”, “Maybelline” and “Elle18” are registered with the Customs under IPR (Imported Goods) Enforcement Rules, 2007. They also informed that the brands “L.A. Pro Girl”, “Note”, “Magic your life”, “Romantic Bears”, “Sunisa”, “Revolution”, “Laura Mercier”, “Pixi Beauty” and “Maybe Lucky” are not registered with Customs. They have also shared the details of right holders in respect of the brands “Mac”, “Bobbi Brown”, “Matrix”, “Maybelline” and “Elle18”.

11.3 Whereas in respect of some goods of other brands such as “L.A. Pro Girl”, “Note”, “Magic your life”, “Romantic Bears”, “Sunisa”, “Revolution”, “Laura Mercier”, “Pixi Beauty” and “Maybe Lucky” examination by the brand owners could not be carried out as the brand owners of these goods did not have any representative in India to represent them.

12. Summons dated 13.04.2023 were issued to another firm M/s. Arihant Enterprise whose Proprietor is Shri Ravichandra Raghuveer Pankika on addresses available in records and to Shri Vivek Nandgaonkar through Shri Dhanajay Balchandra Desai through email also but no one appeared or communicated anything to this office.

13. To conclude the investigation, financial transactions were verified for verifying the statements of Dhananjay B Desai and and the proprietor Ashitosh Ramdas Salve and the transactions involved in the import of the smuggled goods through various bank accounts of the mastermind. Further, a final statement of mastermind Shri Dhananjay B Desai was

required to be recorded regarding (i) another five containers which were examined and goods i.e. Toy Balloon made of Latex Rubber were seized and (ii) cosmetics items were found, which were counterfeit of the original products. Also statement of another person namely Shri Vivek Nandgaonkar and Shri Ravichandra Panika (Prop. of another firm M/s. Arihant Enterprise) was required to be recorded and hence, the investigation could not be completed in time. Therefore, recourse to the proviso to Section 110(2) read with Section 124 of Customs Act, 1962 was taken and accordingly, The Principal Commissioner of Customs, Mundra vide letter F.No. GEN/ADJ/ADC/901/2023-Adjn-O/o Pr Commr-Cus-Mundra dated 04.05.2023 accorded extension of time period for issuance of SCN by further period of six months in terms of Section 110(2).

FINANCIAL INVESTIGATION

14. On perusal of Statement dated 30.11.2022/01.12.2022 of Shri Dhananjay Balchandra Desai, Controller and Financer of M/s. Arihant Enterprise, it was observed that he was having savings accounts in four banks, namely, Punjab National bank, SBI, ICICI, all three are at Marol, Andheri East Branch and one in Canara Bank, at Crawford branch, Mumbai. Therefore, with regard to financial investigation, letters dated 14.03.2023 were issued to the Branch Managers of Punjab National bank, SBI, ICICI, all three at Marol, Andheri East branch and Canara Bank, at Crawford branch, Mumbai for the account details, KYC and AOF etc in respect of Shri Dhananjay Balchandra Desai (PAN-AEOPD7360J).

14.1 Canara Bank vide their email dated 16.03.2023 provided the account statement along with account opening form and KYC documents. On perusal of account statement provided by Canara Bank it appeared that there were some credit entries by Dhananjay's other bank accounts and cash deposit by Dhananjay B Desai. In view of this, letter dated 13.06.2023 was issued to the Chief Compliance Officer, IDFC First Bank Limited, Mumbai for the account details, KYC and AOF etc in respect of Shri Dhananjay Balchandra Desai (PAN-AEOPD7360J). IDFC Bank vide emails dated 16.06.2023 and 19.06.2023 had submitted account statements and KYC documents in respect of two accounts, one in the name of Shri Dhananjay B Desai (Account No. 10070635092) and second one in the name of M/s. Shree Sai Import and Export (Account No. 10071501851) and both having same PAN- AEOPD7360J. On perusal of bank statements provided by IDFC banks it appeared that the number of transactions regarding cash deposits and cash withdrawals was high and many debit and credit entries from various stakeholders were noticed.

14.2 ICICI Bank, Marol Branch vide email dated 21.03.2023 provided the 6 account statements pertaining to Shri Dhananjay Balchandra Desai and his companies. On perusal of the bank account statements forwarded by ICICI Bank, no incriminating transactions were found in the said accounts.

14.3 Punjab National Bank, Andheri Overseas Branch vide their email dated 21.03.203 informed that Shri Dhananjay Desai is having a saving account No. 6224000100019654 with their branch and hence, provided

the statement of account from 01.04.2022 to 20.03.2023. Further, they informed that Shri Dhananjay Balchandra Desai is a Director in the Company Shree Sai Snehal Import & Export Pvt. Ltd. having Account No. 6224002100001549 but this account is Dormant and there are no transactions in the account form more than 3 years. On perusal of the bank account statements forwarded by Punjab National Bank, no incriminating transactions could be noticed in the said account/s.

14.4 SBI vide their email dated 27.04.2023 & 28.04.2023 provided KYC details and bank statement and on scrutiny of the bank account details forwarded by SBI, no incriminating transactions were found in the said account.

15. It appeared that M/s. Arihant Enterprise had imported the 'Toy Balloons made of natural rubber latex' of different sizes from China under below mentioned various Bills of Lading declaring 'Decorative Festivals'/ 'Alphabet & Number with Decoration Items'/ 'Alphabet & Number' under tariff heading 95059090 instead of tariff heading 95030090.

Sr. No.	Bill of Lading	Bill of Lading Date	Declaration as per Bill of lading	Goods found during examination under various Panchnama
1	MEDUQ7747973	07.08.2022	Decorative Festivals HSN 95059090	Toy Latex /Rubber Balloons and Alluminium Foil Balloons
2	800250085778	21.08.2022	Alphabet And Number With Decoration Items HSN 9505 9090	Toy Latex /Rubber Balloons and other goods as Clay, Magnet, Cubes etc.
3	799210470832	09.09.2022	Alphabet And Number With Decoration Items HSN 9505 9090	Toy Latex /Rubber Balloons and Alluminium Foil Balloons
4	800250092707	11.09.2022	Alphabet And Number With Decoration Items HSN 9505 9090	Toy Latex /Rubber Balloons and Alluminium Foil Balloons
5	799210338729	28.08.2022	Alphabet And Number With Decoration Items HSN 9505 9090	Toy Latex/ Rubber Balloons and other goods as Clay, Magnet, Cubes etc.
6	HASLC56220800913	07.09.2022	Alphabet And Numbers HSN 95059090	Hair Crown, Alphabetic Foil Balloons, Toy Latex/ Rubber Balloons of Different colors
7	HASLC56220800649	25.08.2022	Alphabet And Numbers HSN 95059090	Hair Crown, Alphabetic Foil Balloons, Toy Latex/Rubber Balloons of different colors/size, Wooden Knife, Spoon & Fork
8	158200082972	06.08.2022	Decorative Festivals HSN 95059090	Table Cloth, Alphabetic Foil Balloons, Toy Latex/Rubber Balloons of different Colors
			Decorative Festivals	Alphabetic Foil Balloons, Toy Latex/Rubber

9	158200092722	04.09.2022	HSN 95059090	Balloons of different Colors
10	158200084649	16.08.2022	Decorative Festivals HSN 95059090	Alphabetic Foil Balloons, Toy Latex/Rubber Balloons of different Colors, Rubber Balloons with Glitter disc inside

16. CORRECT CLASSIFICATION OF 'TOY BALLOON MADE OF NATURAL RUBBER LATEX'

16.1. It appeared that goods imported by the importer during the period from 06.08.2022 to 11.09.2022 was in the nature of 'Toy Balloon made of Natural Rubber Latex' and correctly classifiable under tariff heading 95030090 of the first schedule to the CTA, 1975. The supplier had mis-declared the description of their exported products i.e. Toy Balloon made of Natural Rubber Latex as well as chapter sub-heading 9505 instead of 9503 as per mutual understanding with Shri Dhananjay B Desai, the Controller and Financer of M/s. Arihant Enterprise, the Importer. Further, during examination of these 11 consignments under various Panchnama at Mundra, no BIS certificate or BIS certified goods were observed.

16.2 It appeared that Shri Dhananjay B Desai was well aware about the classification of imported goods and Shri Dhananjay B Desai had instructed the supplier to change the description and HSN code in the documents viz. Bill of Lading to avoid to pay higher rate of Basic Customs Duty @ 60% under CTH 95030090 and to circumvent BIS standard regulations.

17. As per DGFT Notification No. 26/2015-2020 dated 01.09.2017, as amended vide Notification No. 33/2015-2020 dated 02.12.2019:

"Import of Toys (all items under EX1M Codes 95030010, 95030020, 95030030 and 95030090) shall be permitted freely when accompanied by the following certificates:

- i. *A certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS):*
 - a. *IS: 9873 (Part 1) — Safety of toys; Part — 1 Safety aspects related to mechanical and physical properties (Third Revision).*
 - b. *IS:9873 (Part 2) — Safety of Toys; Part —2 Flammability (Third Revision)*
 - c. *IS : 9873 (Part 3) — Safety of Toys; Part — 3 Migration of certain elements (Second Revision)*
 - d. *IS: 9873 (Part 4) Safety of Toys; Part —4 Swings, Slides and similar activities Toys for indoor and outdoor family domestic use.*
 - e. *IS: 9873 (Part 7) — Safety of Toys; Part — 7 Requirements and test methods for finger paints.*
 - f. *IS: 9873 (Part 9) — Safety of Toys; Part — 9 Certain phthalates esters in*

toys and Children's products.

g. *IS: 15644 — Safety of Electric Toys.*

- ii. *A Certificate that the toys being imported conform to the standards prescribed in IS: 9873 Part — 1, Part — 2, Part —3, Part —4, Part —7, Part —9 and 15644:2006.*
- iii. *Sample will be randomly picked from each consignment and will be sent to NABL accredited Labs for testing and clearance may be given by Customs on the condition that the product cannot be sold in the market till successful testing of the sample. Further, if the sample drawn fails to meet the required standards, the consignment will be sent back or will be destroyed at the cost of importer.*

17.1 Further, the DGFT vide Notification No. 33/2015-2020 dated 02.12.2019, added a new para (capital-D) to Section 2 (**Indian Quality Standards**) to the General Notes Regarding Import Policy of ITC(HS), 2017 as under:

2.(D) Import policy for Toys/Dolls etc: Import policy for Toys /Dolls and similar other recreational goods under any chapter will be governed by BIS standards as specified in Policy Conditions 2 of Chapter 95.

Thus the importer had to comply with the DGFT Notification No. 33/2015-2020 dated 02.12.2019, for the Import policy in respect of Toys/Dolls as specified in the Policy Conditions 2 of Chapter 95, which has to conform to BIS standards.

18. Legal Provisions:

18.1 Section 2(33) defines “**prohibited goods**” and the same is reproduced as under:

“(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;”

18.2 Section 2(39) of The Customs Act, 1962 defines “**smuggling**” and the same is reproduced as under:

“(39) “smuggling” in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;”

Thus the importer by violating the provisions of Section Section 2(33) & 2(39) of The Customs Act, 1962 indulged themselves in the act of smuggling as they have tried to import subject goods which are prohibited good under the provisions of Section 2(33) Of Customs Act,1962.

19. The import of cosmetics is governed as per Drugs and Cosmetics

Rules, 1945. Under Rules 129,129G, 129H and 130 under the provisions of Drugs and Cosmetics Rules, 1945, The importer of cosmetics is required to take Registration of cosmetic products imported into the India and also has to comply with the Standard prescribed, its labelling and packaging as per prescribed standard and submit specific documents to the Customs authority. In the present case the importer had not complied with these requirements of the Rules 129,129G, 129H and 130 under the provisions of Drugs and Cosmetics Rules, 1945.

20. The cosmetics products imported are required to comply with the provisions of The Legal Metrology (Packaged Commodities) Rules, 2011. In the present case the importer had not complied with the requirement as envisaged under the provisions of relevant rules 6 and 27 of the Legal Metrology (Packaged Commodities) Rules, 2011.

21 In view of the reports from the authorized persons of the Brand owners of various brands, whose cosmetic products were found during the course of examination of the imported goods, it was established that these products are counterfeit cosmetic products and are not the original products from these brands. Hence the report from the brand owners signifies that the importer had violated the provisions of Rule 6 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as they had imported counterfeit products and had infringed the intellectual property rights of the brand owners.

22. The DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000 requires compliance of all the provisions of Standards of Weights and Measures (Packaged Commodities) Rules, 1997 in respect of all packaged products when imported into India. Thus the importer had not complied with the requirements of provisions contained under the DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000

2 3 . As per Section 11 of The Foreign Trade (Development and Regulation) Act, 1992, which reads as:

“11. Contravention of provisions of this Act, Rules, Orders and Foreign Trade Policy.- (1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

(2)

.....

(9) market value of the goods or conveyance, as the case may be.”

Thus the importer had not complied with the requirements of provisions contained under Section 11 of The Foreign Trade (Development and Regulation) Act, 1992.

2 4 . As per Rule 11 and 14 of the Foreign Trade (Regulations) Rules, 1993 which reads as:

“Rule 11. Declaration as to value, quantity and quality of imported goods or services or technology.- On the importation into, or exportation out of, any customs ports of any goods or goods connected with services or technology, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quantity, quality and description of such goods or goods connected with services or technology to the best of his knowledge and belief and in case of exportation of goods or services or technology, certify that the quality and specification of the goods or goods connected with services or technology as stated in those documents are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods or goods connected with services or technology are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.”

“Rule 14. Prohibition regarding making, signing of any declaration, statement or documents.- (1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purpose of obtaining a licence, certificate, scrip or any instrument bestowing financial or fiscal benefits or importing any goods or services or technology or goods connected with such services or technology knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purpose of obtaining any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits or importing or exporting any goods or service or technology or goods connected with such services or technology.”

Thus, the importer had violated the Rule 11 and 14 of the Foreign Trade (Regulations) Rules, 1993 as they could not comply with the requirements of Rule 11 and 14 of the Foreign Trade (Regulations) Rules, 1993.

25. Valuation:

25.1 As discussed at Para 7.11 of SCN, the value of goods mentioned in the Commercial Invoices in respect of import consignments submitted by Shri Dhananjay B Desai in his statement dated 30.11.2022/01.12.2022 cannot be accepted as genuine or a valid document to arrive at the correct value of the seized goods. Since no Bill of Entry was filed for the said consignment imported under Bills of lading No. (i) MEDUQ7747973 dated 07.08.2022, (ii) 800250085778 dated 21.08.2022, (iii) 799210470832 dated 09.09.2022, (iv) 800250092707 dated 11.09.2022, (v) 799210338729 dated 28.08.2022, (vi) HUSG20982000 dated 18.08.2022, (vii) HASLC56220800913 dated 07.09.2022, (viii) HASLC56220800649

dated 25.08.2022, (ix) 158200082972 dated 06.08.2022, (x) 158200092722 dated 04.09.2022 and (ix) 158200084649 dated 16.08.2022, there were no declared values available for the said consignments earlier as no bill of entry was filed. Therefore, the value of goods in the present consignment cannot be re-determined on the basis of Customs Valuation Rules, 2007 in the absence of declared value and hence the valuation of the imported goods was carried out by the empanelled customs valuer.

25.2 Further, most of the branded goods were examined by the brand owners and found to be counterfeit. As these goods are counterfeit they are not identical to original branded goods. However, such counterfeit goods were smuggled to be sold as branded goods of the brand name appearing on the goods. Though the said goods are not identical but similar as the goods were having brand name and they perform the same function. Accordingly, for valuation purpose, the value of similar branded goods could be considered to ascertain the value of goods viz. Cosmetics items of brands of Mac/ Bobbie Brown/Elle18/Matrix etc. In view of this, Shri Kunal Ajay Kumar, Customs Empanelled Chartered Engineer vide Valuation Report nos. DRI/176/22-23 dated 22.11.2022 determined the Market retail price of cargo i.e. Cosmetic items and Vanity case inside Container No. PCIU9399099 through Bills of Lading No. HUSG20982000 dated 18.08.2022. Shri Kunal Ajay Kumar carried out Market analysis by distributing the samples, which were withdrawn under Panchnama dated 21.11.2022, to well-known local retail shops that deal in imported and branded cosmetic items and for products which were not available in the local market, their prices were checked on their official website or e-commerce platforms. Accordingly, the Market Value of similar branded goods as well as other branded/ unbranded goods as mentioned in Annexure-A to the SCN had been taken for arriving at the Market value of above mentioned smuggled similar branded goods which are counterfeit but have brand name, characteristics and uses as that of branded goods and other branded/ unbranded goods.

25.3 In respect of goods de-stuffed from containers other than Container No. PCIU9399099 through Bill of Lading No. HUSG20982000 dated 18.08.2022, viz. Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc., Shri Kunal Ajay Kumar, Customs Empanelled Chartered Engineer vide his Valuation Reports nos. DRI/181/22-23 and DRI/182/22-23 both dated 22.11.2022, DRI/218/22-23 dated 14.02.2023 and DRI/220/22-23 dated 20.02.2023 determined the Market retail price of cargo i.e. Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. Accordingly, the Market Value of the said goods as mentioned in Annexure-B to the SCN had been taken for arriving at the Market value of Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. goods.

25.4 As per above mentioned Para, the Market Value of goods viz.

Cosmetic items, smuggled by mis-declaration mis-classification and concealment vide Bills of Lading No. HUSG20982000 dated 18.08.2022 in the guise of "Vanity Case" is arrived at **Rs. 99,45,464/- (Rupees Seventy Three Crores Ninety Nine Lakhs, Forty Five Thousand Four Hundred and Sixty Four only)** as per **Annexure-A** to the SCN.

2 5 . 5 Similarly, the Market Value of goods viz. Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc., smuggled by mis-declaration mis-classification and concealment vide Bills of Lading No. (i) MEDUQ7747973 dated 07.08.2022, (ii) 800250085778 dated 21.08.2022, (iii) 799210470832 dated 09.09.2022, (iv) 800250092707 dated 11.09.2022, (v) 799210338729 dated 28.08.2022, (vi) HASLC56220800913 dated 07.09.2022, (vii) HASLC56220800649 dated 25.08.2022, (viii) 158200082972 dated 06.08.2022, (ix) 158200092722 dated 04.09.2022 and (x) 158200084649 dated 16.08.2022 in the guise of "Alphabet And Number With Decoration Items" or "Decorative Festivals" was arrived at **Rs.26,08,98,710/- (Rupees Twenty Six Crores Eight Lakh Ninety Eight Thousands Seven Hundred and Ten Only)** as per **Annexure-B** to this Investigation Report.

25.6 Therefore, the goods imported under Bills of lading No. (i) MEDUQ7747973 dated 07.08.2022, (ii) 800250085778 dated 21.08.2022, (iii) 799210470832 dated 09.09.2022, (iv) 800250092707 dated 11.09.2022, (v) 799210338729 dated 28.08.2022, (vi) HUSG20982000 dated 18.08.2022, (vii) HASLC56220800913 dated 07.09.2022, (viii) HASLC56220800649 dated 25.08.2022, (ix) 158200082972 dated 06.08.2022, (x) 158200092722 dated 04.09.2022 and (xi) 158200084649 dated 16.08.2022 in the guise of "Vanity Case" and "Alphabet And Number With Decoration Items" or "Decorative Festivals" and having total value of **Rs. 100,08,44,174/- (Rupees One Hundred Crore Eight Lakh, Forty Four Thousand One Hundred and Seventy Four only)** were seized vide seizure Memos dated 26.11.2022, 28.11.2022, 28.11.2022 and 14.03.2022 as mentioned at Para No. 2 & 14 of the SCN.

SUMMARY AND DISCUSSION ON EVIDENCES

2 6 . Whereas, from the facts discussed in the foregoing paras and material evidences in the form of seizure of Cosmetic items of various Brands, Vanity Case, Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. from the containerized cargos of M/s Arihant Enterprise, Jalgaon, and deposition dated 30.11.2022/01.12.2022 and dated 07.07.2023 of Shri Dhananjay B Desai, deposition dated 23.11.2022 of Shri Akash Desai, depositions dated 25.11.2023 of Shri Aditya Kodrani and Shri Dineshbhai Joitabhai Chaudhary, depositions dated 25/26.11.2022 of Shri Rahul Bhanusali and Shri Rajesh Tulsidas Nakhua, deposition dated 06.02.2023 of Shri Paresh Dulabhai Mori and deposition dated 28.02.2023 of Shri Ashitosh Ramdas Salve and the documents available on record, it appeared that:

26.1 The address of M/s Arihant Enterprise, Jalgaon, a proprietorship

firm as declared in IEC No. MOQPS7998K issued by DGFT viz Shree Rukmani Vitthal Mandir, Chalisgaon, Shop No 2, Jalgaon, Rukmani Nagar, Jalgaon, Dhule, Maharashtra, 424001 was found to be a non-existent. Hence, no business activity was being carried out from the said declared premises. Shri Ashitosh Ramdas Salve, the dummy Proprietor of M/s. Arihant Enterprise did not have any idea of any business activity or imports made by Shri Dhananjay B Desai in the name of M/s. Arihant Enterprise. Hence, it appeared that a dummy firm was created and further utilized for import of consignment vide Bills of lading No. (i) MEDUQ7747973 dated 07.08.2022, (ii) 800250085778 dated 21.08.2022, (iii) 799210470832 dated 09.09.2022, (iv) 800250092707 dated 11.09.2022, (v) 799210338729 dated 28.08.2022, (vi) HUSG20982000 dated 18.08.2022, (vii) HASLC56220800913 dated 07.09.2022, (viii) HASLC56220800649 dated 25.08.2022, (ix) 158200082972 dated 06.08.2022, (x) 158200092722 dated 04.09.2022 and (xi) 158200084649 dated 16.08.2022. This fact is corroborated with statements dated 30.11.2022/01.12.2022 and dated 07.07.2023 of Shri Dhananjay B Desai, statement dated 23.11.2022 of Shri Akash Desai, statement dated 25/26.11.2022 of Shri Rajesh Tulsidas Nakhua and statement dated 28.02.2023 of Shri Ashitosh Ramdas Salve. The fact that firm M/s Arihant Enterprise is a dummy firm was further corroborated from the facts that the account no. 300421010000058 mentioned in its IEC did not pertain to the M/s Arihant Enterprises (MOQPS7998K), Jalgaon but belonged to a firm named as M/s Arihant Enterprise (PAN-FOVPP7940J) whose proprietor is Shri Ravichandra Raghuvir Panika which means proprietor is different and signature on the bank certificate issued by the Assistant Manager, Union Bank of India, Kapurbavdi Branch, Dhanlaxmi Industrial Estate, Gokul Nagar, Near Navnit Motor, Thane-400601 certifying bank account no. 300421010000058 for IEC Code: MOQPS7998K in the name of M/s Arihant Enterprises, Jalgaon was found to be forged. The said fake bank certificate were resumed during statement of Shri Akash Desai, General Manager of Empezar Logistics Pvt. Ltd., a notified entity of M/s. Arihant Enterprise as he received the said documents either from CHA firm or Shri Dhananjay B Desai at the time of clearance of earlier consignment. On perusal of statement dated 07.07.2023 of Shri Dhananjay B Desai, it is observed that Shri Vivek Nandgaonkar used this fake bank certificate for the creation of IEC in the name of M/s Arihant Enterprises, Jalgaon.

26.2 Shri Ashitosh Ramdas Salve is the proprietor of the said firm but he did not have any information regarding the seized consignment at various CFS at Mundra as he was proprietor of the said firm on paper only and all activities and financial decisions have been taken by Shri Dhananjay B Desai. Shri Ashitosh Ramdas Salve was given some cash amount by Shri Dhananjay B Desai in lieu of on-paper Proprietorship and Shri Ashitosh Ramdas Salve hadn't concerned himself in any business activity of M/s. Arihant Enterprise. This fact is admitted by Shri Ashitosh Ramdas Salve, Proprietor of the said firm in his statement dated 28.02.2023 and corroborated with the statements of Shri Rajesh Tulsidas Nakhua, Shri Akash Desai and Shri Dhananjay B Desai as discussed in foregoing paras.

26.3 The container bearing number PCIU9399099 was imported vide

Bills of Lading No. HUSG20982000 dated 18.08.2022 at Mundra Port in the name of M/s Arihant Enterprise (MOQPS7998K), Jalgaon. On examination of the said container, assorted cosmetics items of different foreign brands and Vanity Cases valued at Rs. 73,99,45,464/- (Rupees Seventy Three Crores Ninety Nine Lakhs, Forty Five Thousand Four Hundred and Sixty Four only) as per Annexure-A to the SCN were found in place of declared goods i.e. "Vanity Case". The cosmetic items were concealed behind the vanity case and were not declared by the importer in their Bill of lading. The cosmetics items of different foreign brands and Vanity Cases were placed under seizure vide seizure memo dated 26.11.2022 under provisions of Customs Act, 1962 as the said items were smuggled in place of declared goods. Representative samples of the said goods were drawn under panchnama dated 08.02.2023, as per the provisions of Customs Act, 1962 for further analysis.

26.4 The containers bearing numbers TRHU6362726, BMOU6427795, EGHU9641158, GAOU6398844, HMCU9159360, TCKU7952858, TXGU6846421, TSSU5006454, TSSU5138996 and FDCU0040132 were imported vide Bills of Lading Nos. HASLC56220800649 dated 25.08.2022, HASLC56220800913 dated 07.09.2022, 158200082972 dated 06.08.2022, 158200092722 dated 04.09.2022, 158200084649 dated 16.08.2022, 800250085778 dated 21.08.2022, 799210338729 dated 28.08.2022, 799210470832 dated 09.09.2022, 800250092707 dated 11.09.2022 and MEDUQ7747973 dated 07.08.2022 respectively at Mundra Port in the name of M/s Arihant Enterprise (MOQPS7998K), Jalgaon. On examination of the said containers by the officers, assorted Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. valued at Rs.26,08,98,710/- (Rupees Twenty Six Crores Eight Lakh Ninety Eight Thousands Seven Hundred and Ten Only) as per Annexure-B to the SCN, were found in place of declared goods i.e. "Alphabet And Number With Decoration Items" or "Decorative Festivals". The mis-declared goods were concealed and place behind the declared goods under the container. The Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. were placed under seizure vide various seizure memos dated 28.11.2022, 28.11.2022 and 14.03.2023 under provisions of Customs Act, 1962 as the said items were mis-declared ,mis-classified and concealed.

26.5 The representative samples of the goods of various global brand such as MAC, Bobbi Brown, Maybelline or Matrix and Elle18 (Hindustan Unilever Limited) were inspected by the IPR holders of the above brands vide Panchnama dated 13.03.2023 drawn at DRI Vapi office. The IPR holders confirmed that the smuggled goods are counterfeit and do not meet the standards of their brand. Thus, the counterfeit branded goods smuggled under the guise of "Vanity Cases" vide Bills of Ladings No. HUSG20982000 dated 18.08.2022 by Shri Dhananjay B Desai, defacto/beneficial owner of M/s Arihant Enterprises had infringed the brand owners Intellectual Property hence these goods were smuggled into India in violation of the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

26.6 It appeared that the ownership of the above said smuggled goods lies with Shri Dhananjay B Desai. Shri Dhananjay B Desai purchased/used a dummy IEC from Shri Ashitosh Ramdas Salve with the help of Shri Vivek Nandgaonkar and utilised it for the smuggling of cosmetic items of various global brands (counterfeit), Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. by resorting to mis-declaration and mis-classification. The proprietor on records viz Shri Ashitosh Ramdas Salve did not have any knowledge regarding imports made by the firm M/s. Arihant Enterprise. Further, Shri Rajesh Tulsidas Nakhua in his statement dated 25/26.11.2022 stated that Shri Dhananjay B Desai had entrusted him with the customs clearance work of the consignment imported from China in the name of M/s Arihant Enterprise, Jalgaon and had requested him to get it cleared from the Customs. Shri Rajesh Tulsidas Nakhua further stated that he had not received any documents from Shri Dhananjay B Desai regarding above mentioned 11 consignments. Shri Ashitosh Ramdas Salve came into contact with Shri Dhananjay B Desai through a broker and trader named Shri Vivek Nandgaonkar. It was through this intermediary that Shri Ashitosh R Salve got connected to Shri Dhananjay B Desai. Dhananjay Desai needed someone to act as the legal proprietor of his import business, and therefore, he used M/s. Arihant Enterprise, on official documents. In return for being the official proprietor on paper, Ashitosh Salve had a limited role in the business. According to their partnership agreement, Ashitosh R Salve was considered a sleeping partner. His primary responsibility was to lend his name as the legal owner of the business, and he was entitled to a 10% share of the profits, which he received in cash. However, in practice, Shri Dhananjay B Desai was the one who actively managed and financed the business. He made all the operational decisions and was the primary contributor to the business's financial aspects. Shri Ashitosh R Salve's role was minimal, serving primarily as a legal cover to shield Shri Dhananjay B Desai from drawing too much attention due to his previous involvement in smuggling and legal issues. So, Shri Ashitosh R Salve's involvement in the offense was mainly limited to being a nominal owner of Arihant Enterprise, Jalgaon, while Shri Dhananjay B Desai was the one who orchestrated the plan and was running the business of illegal import by indulging in the act of smuggling. The arrangement explained in the above mentioned paras allowed Shri Dhananjay B Desai to operate discreetly and avoid attracting unwanted attention from authorities.

26.7 Shri Dhananjay Desai through his statements dated 30.11.2022/01.12.2022 and 07.07.2023 admitted his involvement in the offense and disclosed his modus operandi for importing goods from China. He confessed that he used a Chinese broker named Mr. Kairee, who communicated with him through the VECCHAT application. Mr. Kairee informed him about the individuals in India to whom he needed to pay in cash for the overseas purchases. Shri Dhananjay Desai acknowledged that he had paid approximately Rs. 1.75 Crore in cash to these individuals for past consignments and still owed payments for both past and present consignments. He also revealed that he instructed Mr. Kairee to declare specific items, such as Vanity Cases, Alphabet and Numbers, and

Decorative Festivals, etc in the Bills of Lading and invoices for customs clearance while keeping the actual cargo unveiled ,which was given to Shri Dhananjay Desai through any person coming to India or on VECHAT application . Furthermore, he requested Mr. Kairee to undervalue the goods in the invoices to reduce customs duties, thus outlining his strategy for the smuggling operation.

26.8 Shri Akash Desai, General Manager of Empezar Logistics Pvt. Ltd., a notified party of M/s. Arihant Enterprise as per Bills of Lading, in his statement dated 23.11.2022 explained that their company was just responsible for storing goods and didn't have direct contact with M/s. Arihant Enterprise, the entity involved in importing the goods of offending nature. Shri Dhananjay Desai used the services of Pushpanjali Logistics for customs clearance purpose for the past consignments. He provided false information, like using someone else's name, Shri Ashitosh Ramdas Salve, and borrowed Ashitosh Salve's import-export code (IEC) to hide his involvement. Shri Akash Desai only found out about Shri Dhananjay Desai's role during the investigation because he had no prior knowledge of him or his activity. Empezar Logistics Pvt. Ltd. wasn't directly connected to Shri Dhananjay Desai, who turned out to be the mastermind behind these illegal activities.

26.9 Shri Paresh Dulabhai Mori, the proprietor of Bajrangdas Logistics, in his statement dated 07.02.2023 described his firm's activities and clarified his role. In his capacity as the proprietor, Shri Paresh Dulabhai Mori is responsible for handling client orders and hiring trucks from other transport companies when necessary. He explained that their primary business activity is commission-based hiring of vehicles from other transporters as per clients' requirements. Regarding his involvement with M/s. Arihant Enterprise, Shri Paresh Dulabhai Mori stated that he was initially contacted by Shri Dhananjay B Desai, through Shri Sandeep alias Sandy, in July 2022. Shri Dhananjay B Desai required transportation services for Arihant Enterprise's consignments, offering to pay Rs. 1,00,000 in cash per container upon delivery. As Bajrangdas Logistics didn't have trucks, Shri Paresh Mori contacted Shri Dineshbhai Joitabhai Chaudhary, Director of M/s Shree Vijaylaxmi Logix Private Limited, to arrange trucks. The payment for one consignment of M/s. Arihant Enterprise was made in cash to Shri Paresh Mori through Shri Sandeep alias Sandy. Shri Paresh Mori after deducting his commission, deposited the cash into the bank account of M/s. Shree Vijaylaxmi Logix Pvt. Ltd. for transportation services provided. He also mentioned that his firm's transactions with Arihant Enterprise were limited to this one consignment only.

26.10 Based on the statement dated 28.02.2023 provided by Shri Ashitosh Ramdas Salve, it appeared that Dhananjay Balchandra Desai played a significant role in orchestrating a fraudulent scheme involving Shri Ashitosh R Salve. Shri Dhananjay B Desai initiated contact with Shri Ashitosh R Salve through a person named Vivek Nanagankar, offering him a job. This job involved signing some documents in exchange for money. Shri Ashitosh Salve, who was in need of money and hence accepted this

offer. Shri Dhananjay B Desai informed Shri Ashitosh Salve that he would create a company in Ashitosh's name. This company was named "Arihant Enterprise." Shri Ashitosh Salve likely had little or no knowledge of this company's operations. Shri Ashitosh R Salve claimed that he signed documents without fully understanding the implications. It seems that Dhananjay Desai used Ashitosh's identity and signatures with the help of Shri Vivek Nandgaonkar to register the company "Arihant Enterprise" with government authorities, including obtaining a GST registration certificate and an Importer Exporter Code (IEC). Shri Ashitosh R Salve claimed that he was unaware of these registrations and had no knowledge of the company's activities. Shri Dhananjay B Desai controlled the finances of "M/s. Arihant Enterprise" and kept the money received from various activities associated with the company. Shri Ashitosh R Salve mentioned receiving a total of 30,000 rupees from Shri Dhananjay Desai in installments but he was not involved in the financial transactions of the company. Shri Ashitosh Ramdas Salve repeatedly emphasized that he had little knowledge of the business activities conducted under his name and did not visit the GST and DGFT offices. He asserted that Shri Dhananjay B Desai orchestrated the entire operation and used him as a pawn. In summary, Dhananjay Desai appeared to have exploited Shri Ashitosh R Salve's financial vulnerability and lack of understanding of legal and business matters to carry out a fraudulent scheme. Shri Dhananjay B Desai with the help of Shri Vivek Nandgaonkar used Shri Ashitosh's identity and signatures to register a company and engage in various financial activities, all without Shri Ashitosh R Salve's full comprehension or consent.

26.11 It appeared that during the period when the consignment was placed on hold by DRI Gandhidham, spanning two months approx, neither Shri Dhananjay Desai nor anyone associated with him came forward to claim the goods or file the Bills of Entry. It became evident that they were aware of the actions taken by the Directorate of Revenue Intelligence (DRI) to hold the consignments, which raised suspicions about the nature of their involvement in the operation. Shri Dhananjay B Desai in his statement dated 30.11.2022/01.12.2022 also stated that he had not given any documents to Shri Rajesh Nakhua (the forwarder) regarding these consignments mentioning various Bills of Lading as he came to know that DRI Gandhidham had kept these containers on hold through his friend and afraid of being caught, he had not claimed the said consignments. Their conspicuous absence in failing to claim the consignment or file the necessary Bills of Entry during this two-month period raised serious questions about Shri Dhananjay Desai's involvement in the offense. This behaviour pointed towards a potential role in smuggling or other unlawful practices associated with the consignments in question.

26.12 Thus it became evident that Shri Dhananjay B Desai exercised comprehensive authority over all the operations and activities of the aforementioned firm M/s. Arihant Enterprise (IEC-MOQPS7998K), effectively establishing himself as the bona fide owner. Thus, for the sake of brevity Shri Dhananjay B Desai can be termed as "defacto owner/beneficial owner" of the said goods. His influential and authoritative

position within the firm leaves no room for doubt regarding his ultimate ownership and control over the said goods.

26.13 From the information provided in the partnership deed, it appeared that Dhananjay B Desai played a central and significant role in the offense. The partnership deed likely outlined his authority and control over the business operations. As a partner, he would have had substantial influence and responsibility within the firm, making key decisions and managing the day-to-day affairs. His position, as the partnership agreement corroborates, led him to directly involved in the planning and execution of the illegal activities, including smuggling and evading customs duties. Therefore, Dhananjay B Desai's role in the offense appears to be pivotal, and his actions and decisions within the partnership likely played a crucial part in the illegal activities associated with the firm. Furthermore, it appeared that the partnership deed may have been altered or corrected at some point, specifically regarding the date of the partnership deed. This suggests potential irregularities or changes made to the legal documents associated with the partnership. Such alterations could raise questions about the authenticity and legality of the partnership arrangement and may indicate an attempt to manipulate or conceal certain aspects of the partnership's history or activities by Shri Dhananjay B Desai.

26.14 Further, from the investigation conducted in respect of Toy Balloons made of Rubber Latex and from the foregoing discussions, it appeared that M/s. Arihant Enterprise (defacto owner/beneficial owner- Shri Dhananjay B Desai) was engaged in the import of 'Toy Balloon made of Natural Rubber Latex' and tried to import the same under different CTH i.e. 95059090. The said item i.e. 'Toy Balloon made of Natural Rubber Latex' is correctly classifiable under tariff heading 95030090 of the first schedule to the CTA, 1975. Shri Dhananjay B Desai, defacto owner/beneficial owner of M/s. Arihant Enterprise accepted that as per explanatory notes "Toy balloons" fall under Heading 9503 in his statement to DRI. As per Explanatory Notes to HSN with respect to Chapter Heading 9503 Toy Balloons fall under tariff Heading 95030090 of the first schedule to the CTA, 1975. Further, the CBIC has also clarified on the ambiguity as per explanation to the Sr No 29 of Notification No 02/2021-Customs dated 01.02.2021 that "Chapter 40 does not include Toy Balloons made up of Natural Rubber Latex (**Toy Balloons are classified under Custom Tariff Heading 9503**)". In terms of DGFT Notification No. 26/2015-2020 dated 01.09.2017, as amended vide Notification No. 33/2015-2020 dated 02.12.2019, BIS certification was required for the import of Toy Balloon. The importer had not imported the goods which were in conformity to the BIS standard as per the import policy in respect of the said item at the material time. The importer was fully aware about the facts that BIS compliance was required for import of Toy Balloon and thus they classified the said product by misstating the description of import items under CTH 95059090 with an intention to evade Customs Duty and circumvent BIS standard regulations. Thus the importer had misclassified the 'Toy Balloons made of Natural Rubber Latex' in guise of "Alphabet And Number With Decoration Items" or "Decorative Festivals" and indulged in smuggling of the said goods viz. Toy Latex /Rubber Balloons, Aluminium Foil Balloons, Clay, Magnet, Cubes

Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. valued at Rs. 26,08,98,710/- (Rupees Twenty Six Crores Eight Lakh Ninety Eight Thousand Seven Hundred and Ten Only) as per Annexure-B, by mis-declaration, mis-classification and concealment.

26.15 Shri Vivek Nandgaonkar was the person who initially contacted Shri Ashitosh R Salve and offered him a job opportunity. However, it's important to note that Shri Ashitosh R Salve had limited knowledge about the details of the agreement and the activities involving the firm "Arihant Enterprise." Shri Vivek Nandgaonkar's role appeared to be one of initial recruitment or facilitation. He introduced Shri Ashitosh R Salve to Shri Dhananjay B Desai and conveyed the proposition of working with him. It is possible that Shri Vivek Nandgaonkar may have played a pivotal role in recruiting individuals like Shri Ashitosh R Salve and facilitating their engagement with Shri Dhananjay Desai's activities. However, for a comprehensive assessment of Shri Vivek Nandgaonkar's involvement, his statement or his presence was required but his details and whereabouts could not be ascertained neither from Shri Dhananjay B Desai nor from Shri Ashitosh R Salve.

26.16 Shri Ashitosh R Salve provided signed copies of his KYC documents in lieu of Rs.30,000/- to Shri Dhananjay B Desai through Shri Vivek Nandgaonkar which was used for opening of a proprietorship firm in the name of M/s Arihant Enterprise. The said firm was registered at Shree Rukmani Vitthal Mandir, Chalisgaon, Shop No 2, Jalgaon, Rukmani Nagar, Jalgaon, Dhule, Maharashtra, 424001 which is not his residential address and from where no business activity was carried out. He in his statement dated 28.02.2023 stated that he did not have knowledge about the business activities or imports made by the said firm. Thus, he failed to act in due diligence regarding the use of his KYC documents which led to opening of a dummy firm M/s Arihant Enterprise (IEC-MOQPS7998K), Jalgaon and was used by Shri Dhananjay B Desai (Beneficial/defacto owner) for smuggling activities. Had he not provided his documents, the dummy IEC would not have been created and the whole smuggling activities could have been averted.

27. In view of facts as discussed in foregoing paras and material evidence available on record, it appeared that **Shri Dhananjay B Desai, defacto/beneficial owner of M/s Arihant Enterprise**, hatched a conspiracy and indulged himself in smuggling of cosmetic items of different foreign brands (Counterfeit), Vanity Cases, Toy Latex /Rubber Balloons, Aluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc **valued at Rs. 100,08,44,174/- (Rupees One Hundred Crore Eight Lakh, Forty Four Thousand One Hundred and Seventy Four only) (Market Value)** as detailed in Annexure-A & B to the SCN by way of mis-declaring mis-classifying the said goods as "Vanity Case" or "Alphabet And Number With Decoration Items" or "Decorative Festivals" under above mentioned various Bills of Ladings and further concealing the undeclared goods behind these declared goods. It appeared that Shri Dhananjay B Desai was the defacto/beneficial owner of M/s Arihant Enterprise, Jalgaon as he purchased/used a dummy IEC from Shri Vivek Nandgaonkar and utilised

it for the smuggling of cosmetic items of different foreign brands (Counterfeit), Vanity Cases, Toy Latex /Rubber Balloons, Aluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc by resorting to mis-declaration and mis-classification and concealment. The proprietor on records viz Shri Ashitosh R Salve did not have any knowledge regarding business activities or imports made by the firm M/s. Arihant Enterprise. Further, Shri Dhananjay B Desai had entrusted Shri Rajesh Tulsidas Nakhua with the customs clearance work of the consignment imported from China in the name of M/s Arihant Enterprise, Jalgaon as corroborated by the statement dated 25/26.11.2022 of Shri Rajesh Tulsidas Nakhua. Shri Dhananjay B Desai paid cash for transportation of previous consignment to Shri Paresh Mori as corroborated by the statement dated 07.02.2023 of Shri Paresh Dulabhai Mori. Thus from the above it appeared that Shri Dhananjay Balchandra Desai had full control of the affairs of the said firm and was the beneficial owner/defacto owner of M/s Arihant Enterprises, Jalgaon.

27.2 The goods smuggled under Bills of Lading No. HUSG20982000 dated 18.08.2022 includes the goods with foreign global brand names such as MAC, Bobbi Brown, Maybelline or Matrix and Elle18 (Hindustan Unilever Limited) and some unregistered brands etc. The IPR holders of the above brands conducted the inspection and confirmed that the smuggled goods are counterfeit and do not meet the standards of their brand. Thus, the counterfeit branded goods smuggled under the guise of "Vanity Case" vide Bills of Lading No. HUSG20982000 dated 18.08.2022 by Shri Dhananjay B Desai, defacto/beneficial owner of M/s Arihant Enterprise had infringed the brand owners Intellectual Property hence these goods were smuggled in violation of the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. It also appeared that Cosmetics smuggled under Bills of Lading No. HUSG20982000 dated 18.08.2022 attract the provisions of Rule 129 of the Drugs and Cosmetics Rules, 1945 according to which no cosmetic shall be imported into India unless the product is registered, complies with the specifications prescribed and packed and labelled in conformity with the Rules and shall bear the registration certificate number of the product and the name and address of the registration certificate holder for marketing the said product in India and Rule 130 of the Drugs and Cosmetics Rules, 1945 according to which before any cosmetics are imported, a declaration signed by or on behalf of the manufacturer or by on behalf of the importer that the cosmetics comply with the provisions of Chapter III of the Act and the Rules made there under has to be supplied to the Commissioner of Customs. Also the cosmetic products imported into India are also required to comply with the provisions of Rule 6 and 27 of The Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, the counterfeit branded goods including cosmetics smuggled under the guise of "Vanity Case" by Shri Dhananjay B Desai, defacto/beneficial owner of M/s Arihant Enterprise in violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, Drugs and Cosmetics Acts, 1940 & Rules, 1945 and the Legal Metrology Act, 2009 & the Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, the above-mentioned smuggled counterfeit branded goods, including cosmetics items concealed behind the

declared goods are to be treated as “prohibited goods” as defined under Section 2(33) of the Customs Act, 1962. Therefore, the said smuggled goods are liable to be confiscated under Section 111(d) of the Customs Act, 1962.

27.3 All the above mentioned smuggled goods and other smuggled goods seized vide various Seizure Memos dated 26.11.2022, 28.11.2022, 28.11.2022 and 14.03.2023 are also to be treated as “prohibited goods” as defined under Section 2(33) of the Customs Act, 1962, also because they have been smuggled in contravention of the provisions of Customs Act, 1962, Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & 14 of the Foreign Trade (Regulation) Rules, 1993 and therefore were appeared liable to be confiscated under Section 111 (d), (f) & 111(i) of the Customs Act, 1962. Further, all smuggled branded/unbranded goods were not included in the all Bills of Lading mentioned above. The said goods have been smuggled by mis-declaring them as the declared goods i.e. “Vanity Case” or “Alphabet and Number with Decoration Items” or “Decorative Festivals” and concealing them behind the declared goods. Therefore, these smuggled goods were also appeared to be liable for confiscation under Section Section 111 (d) & (f) of the Customs Act, 1962.

27.4 All these acts of commission and omission on the part of Shri Dhananjay B Desai beneficial/defacto owner of M/s. Arihant Enterprise appeared to had rendered the total smuggled goods viz. cosmetic items of various global brands, other unbranded goods and Vanity cases as detailed in Annexure-A SCN and goods viz. Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. as detailed in Annexure-B to the SCH liable to absolute confiscation under the provisions of Customs Act, 1962. The contravention of above-mentioned provisions of Customs Act, 1962, on the part of Shri Dhananjay B Desai, constitute an offence of the nature as described under Section 112(a) & 112(b) of the Customs Act, 1962 and hence rendered himself liable to penal action under the said Sections of the Act. Further, he intentionally and knowingly arranged/caused to acquire false IEC in the name of M/s. Arihant Enterprise and thereby, rendered himself liable for penal action under Section 114AA of the Customs Act, 1962.

28. Shri Ashitosh R Salve, Proprietor of M/s Arihant Enterprise, Jalgaon provided signed copies of his KYC documents to Shri Dhananjay B Desai through Shri Vivek Nandgaonkar which was used for opening of a proprietorship firm in the name of M/s Arihant Enterprise. The said firm was registered at Shree Rukmani Vitthal Mandir, Chalisgaon, Shop No 2, Jalgaon, Rukmani Nagar, Jalgaon, Dhule, Maharashtra, 424001 which is not his residential address and from where no business activity was carried out. He, in his statement dated 28.02.2023, stated that he had not knowledge about the business activities or imports made by the said firm. Had he not given his signed documents to Shri Dhananjay B Desai, the whole smuggling activity could have been averted. By his act, he had become the owner of the firm M/s. Arihant Enterprise. Thus, he failed to

act in due diligence regarding the use of his KYC documents which led to opening of a dummy firm M/s Arihant Enterprise, Jalgaon and was used by Shri Dhananjay B Desai (Beneficial/defacto owner). Shri Ashitosh R Salve abetted Shri Dhananjay B Desai in the smuggling of goods i.e. Cosmetic items of various global brand, vanity cases, Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. and his above acts of omission & commission have rendered the total smuggled goods as detailed in Annexure-A & Annexure-B to the SCN liable to absolute confiscation under the provisions of Section 111 (d), (f) & 111(i) of the Customs Act, 1962. The contravention of above-mentioned provisions of Customs Act, 1962, on the part of Shri Ashitosh R Salve, constitute an offence of the nature as described under Section 112(a) of the Customs Act, 1962 and hence have rendered himself liable to penal action under the said Section of the Act.

29.1 Accordingly, **Shri Dhananjay B Desai (beneficial/defacto owner of M/s Arihant Enterprises, IEC No. MOQPS7998K)** was called upon to show cause as to why:-

(i). The classification of items declared as “Alphabet and Number with Decoration Items” or “Decorative Festivals” etc. imported under the various bills of entry mentioned under Annexure-B should not be rejected and the same should not be classified under tariff heading **95030090** of the first schedule to the Customs Tariff Act, 1975.

(ii). Goods of different brands and unbranded goods, valued at **Rs. 73,99,45,464/- (Rupees Seventy Three Crores Ninety Nine Lakhs, Forty Five Thousand Four Hundred and Sixty Four only) (Market Value)** found mis-declared, mis-classified and concealed in the consignment covered under Bills of Lading No. HUSG20982000 dated 18.08.2022, placed under Seizure, as detailed in **Annexure-A** to the SCN, should not be held liable for absolutely confiscation under the provisions of Section 111 (d), (f) & 111(i) of the Customs Act, 1962;

(iii). Other Goods viz. Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc., valued at **Rs. 26,08,98,710/- (Rupees Twenty Six Crores Eight Lakh Ninety Eight Thousands Seven Hundred and Ten Only) (Market Value)** found mis-declared, mis-classified and concealed in the consignments covered under various Bills of Lading No. (i) MEDUQ7747973 dated 07.08.2022, (ii) 800250085778 dated 21.08.2022, (iii) 799210470832 dated 09.09.2022, (iv) 800250092707 dated 11.09.2022, (v) 799210338729 dated 28.08.2022, (vi) HASLC56220800913 dated 07.09.2022, (vii) HASLC56220800649 dated 25.08.2022, (viii) 158200082972 dated 06.08.2022, (ix) 158200092722 dated 04.09.2022 and (x) 158200084649 dated 16.08.2022, placed under Seizure, as detailed in **Annexure-B** to the SCN, should not be held liable for absolutely confiscation under the provisions of Section 111 (d), (f) & 111(i) of the Customs Act, 1962;

(iv). Further, Penalty should not be imposed upon **Shri Dhananjay B Desai separately** under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962.

29.2 Further, **Shri Ashitosh Ramdas Salve** (Dummy Proprietor of M/s. Arihant Enterprises) was also called upon to show cause as to why penalty should not be imposed upon **Shri Ashitosh Ramdas Salve** (Dummy Proprietor of M/s. Arihant Enterprises) under section 112(a) of the Customs Act, 1962.

RECORD OF PERSONAL HEARING

30. Following the principles of natural justice, opportunities of personal hearing were granted on dated 04.09.2024, 26.09.2024 and 15.10.2024. However, the Noticee/s neither submitted any defence submission nor appeared for any of the personal hearings on the scheduled date and time.

DISCUSSION AND FINDINGS:

31. I have carefully gone through the facts of the case, Show Cause Notices dated 01.11.2023. I find that the condition of Principles of Natural Justice under Section 122A of the Customs Act, 1962 has been complied and proper opportunities have been given to the Noticee/s, however, no one appeared on behalf of the Noticee/s. I observed that sufficient opportunity have been given to Noticee but they chose not to join adjudication proceedings. Considering this scenario, I find that there is no option but to proceed with the adjudication proceedings in terms of merit of the case ex-parte. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

32. I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- i. Whether the goods covered under the Annexure-A & Annexur-B to the Show Cause Notice dated 31.10.2023 are liable for absolute confiscation under the provisions of Section 111 (d), (f) & 111(i) of the Customs Act, 1962 or otherwise.
- ii. Whether **Shri Dhananjay B Desai** is liable for penal action under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962 or otherwise.
- iii. Whether **Shri Ashitosh Ramdas Salve** is liable for penal action under section 112(a) of the Customs Act, 1962 or otherwise.

33.1 I find that DRI put on hold 11 import consignments pertaining to M/s. Arihant Enterprises at Mundra Port. During the examination of container no. PCIU9399099, mis-declared/mis-classified/concealed foreign branded cosmetic products were found concealed behind the declared items, which were grossly mis declared as per the bill of lading and were other than the declared Vanity case boxes. The said cosmetic items and vanity boxes etc. were placed under detention as per the provisions of Customs Act, 1962 as the said items were being smuggled.

33.2 Further, during the examination of remaining 10 Containers, mis-declared/Mis-classified/concealed items viz. Hair Crown, Rubber Balloons of different colors and wooden knife, spoon etc packed in cartons were found which were undeclared and were different from the declared items as per Bill of lading such as Alphabetic and Numbers (description as per Bill of lading) and these items were concealed behind the declared items. The above said items and declared items etc. were placed under detention as per the provisions of Customs Act, 1962 as the said items were being smuggled.

33.3 Further, statement of various persons were recorded under Section 108 of the Customs Act, 1962 which are not reproduced here to avoid repetition and already incorporated under the Show Cause Notice dated 31.10.2023. From the deposition dated 30.11.2022/01.12.2022 and dated 07.07.2023 of Shri Dhananjay B Desai, deposition dated 23.11.2022 of Shri Akash Desai, depositions dated 25.11.2023 of Shri Aditya Kodrani and Shri Dineshbhai Joitabhai Chaudhary, depositions dated 25/26.11.2022 of Shri Rahul Bhanusali and Shri Rajesh Tulsidas Nakhua, deposition dated 06.02.2023 of Shri Paresh Dulabhai Mori and deposition dated 28.02.2023 of Shri Ashitosh Ramdas Salve and the documents available on record, I find that Shri Dhananjay B Desai is the key person behind the cartel of smuggling prohibited goods and the actual beneficial owner of the goods. As stated under the statement recorded of various persons, it was revealed that Shri Ashitosh Ramdas Salve, the dummy Proprietor of M/s. Arihant Enterprise did not have any idea of any business activity or imports made by Shri Dhananjay B Desai in the name of M/s. Arihant Enterprise. From the investigation, I find that a dummy firm was created and further utilized for import of consignment vide Bills of lading No. (i) MEDUQ7747973 dated 07.08.2022, (ii) 800250085778 dated 21.08.2022, (iii) 799210470832 dated 09.09.2022, (iv) 800250092707 dated 11.09.2022, (v) 799210338729 dated 28.08.2022, (vi) HUSG20982000 dated 18.08.2022, (vii) HASLC56220800913 dated 07.09.2022, (viii) HASLC56220800649 dated 25.08.2022, (ix) 158200082972 dated 06.08.2022, (x) 158200092722 dated 04.09.2022 and (xi) 158200084649 dated 16.08.2022. I observed that this fact was also corroborated with statements dated 30.11.2022/01.12.2022 & 07.07.2023 of Shri Dhananjay B Desai, statement dated 23.11.2022 of Shri Akash Desai, statement dated 25/26.11.2022 of Shri Rajesh Tulsidas Nakhua and statement dated 28.02.2023 of Shri Ashitosh Ramdas Salve. The fact that firm M/s Arihant Enterprise is a dummy firm is further corroborated from the facts that the account no. 300421010000058 mentioned in its IEC did not pertain to the M/s Arihant Enterprises (MOQPS7998K), Jalgaon but belonged to a firm named as M/s Arihant Enterprise (PAN-FOVPP7940J) whose proprietor is Shri Ravichandra Raghuvir Panika which means proprietor is different and signature on the bank certificate issued by the Assistant Manager, Union Bank of India, Thane-400601 certifying bank account no. 300421010000058 for IEC Code: MOQPS7998K in the name of M/s Arihant Enterprises, Jalgaon was found to be forged. The said fake bank certificate were resumed during statement of Shri Akash Desai, General Manager of Empezar Logistics Pvt. Ltd., a notified entity of M/s. Arihant Enterprise as he received the said

documents either from CHA firm or Shri Dhananjay B Desai at the time of clearance of earlier consignment. On perusal of statement dated 07.07.2023 of Shri Dhananjay B Desai, I find that Shri Vivek Nandgaonkar used this fake bank certificate for the creation of IEC in the name of M/s Arihant Enterprises, Jalgaon.

33.4 I find that Shri Ashitosh Ramdas Salve is the proprietor of the said firm but he did not have any information regarding the seized consignment at various CFS at Mundra as he was proprietor of the said firm on paper only and all activities and financial decisions have been taken by Shri Dhananjay B Desai. Shri Ashitosh Ramdas Salve was given some cash amount by Shri Dhananjay B Desai in lieu of on-paper Proprietorship and Shri Ashitosh Ramdas Salve hadn't concerned himself in any business activity of M/s. Arihant Enterprise. This fact is admitted by Shri Ashitosh Ramdas Salve, Proprietor of the said firm in his statement dated 28.02.2023 and corroborated with the statements of Shri Rajesh Tulsidas Nakhua, Shri Akash Desai and Shri Dhananjay B Desai as discussed in foregoing paras.

33.5 I find that representative samples of the goods of various global brand such as MAC, Bobbi Brown, Maybelline or Matrix and Elle18 (Hindustan Unilever Limited) were inspected by the IPR holders of the above brands vide Panchnama dated 13.03.2023 and further it had been confirmed that the smuggled goods were counterfeit and did not meet the standards of their brand. Thus, the counterfeit branded goods smuggled under the guise of "Vanity Cases" vide Bills of Ladings No. HUSG20982000 dated 18.08.2022 by Shri Dhananjay B Desai, defacto/beneficial owner of M/s Arihant Enterprises infringed the brand owners Intellectual Property hence these goods were smuggled into India in violation of the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

33.6 Further, I find that goods i.e. 'toys' found in Containers other than the Container imported under Bills of Ladings No. HUSG20982000 dated 18.08.2022, were imported in contravention of BIS certification and thus falls under the category of prohibited goods.

33.7 I find that Shri Rajesh Tulsidas Nakhua in his statement dated 25/26.11.2022 stated that Shri Dhananjay B Desai had entrusted him with the customs clearance work of the consignment imported from China in the name of M/s Arihant Enterprise and had requested him to get it cleared from the Customs. Shri Rajesh Tulsidas Nakhua further stated that he had not received any documents from Shri Dhananjay B Desai regarding above mentioned 11 consignments. Shri Ashitosh Ramdas Salve came into contact with Shri Dhananjay B Desai through a broker and trader named Shri Vivek Nandgaonkar. It was through this intermediary that Shri Ashitosh R Salve got connected to Shri Dhananjay B Desai. Dhananjay Desai needed someone to act as the legal proprietor of his import business, and therefore, he used M/s. Arihant Enterprise, on official documents. In return for being the official proprietor on paper, Ashitosh Salve had a limited role in the business. According to their partnership agreement, Ashitosh Salve was considered a sleeping partner.

His primary responsibility was to lend his name as the legal owner of the business, and he was entitled to a 10% share of the profits, which he received in cash. However, in practice, Shri Dhananjay B Desai was the one who actively managed and financed the business. He made all the operational decisions and was the primary contributor to the business's financial aspects. Shri Ashitosh R Salve's role was minimal, serving primarily as a legal cover to shield Shri Dhananjay B Desai from drawing too much attention due to his previous involvement in smuggling and legal issues. So, Shri Ashitosh R Salve's involvement in the offense was mainly limited to being a nominal owner of Arihant Enterprise, Jalgaon, while Shri Dhananjay B Desai was the one who orchestrated the plan and was running the business of illegal import by indulging in the act of smuggling. The arrangement explained in the above mentioned paras allowed Shri Dhananjay B Desai to operate discreetly and avoid attracting unwanted attention from authorities.

33.8 I find that Shri Dhananjay Desai through his statements dated 30.11.2022/01.12.2022 and 07.07.2023 admitted his involvement in the offense and disclosed his modus operandi for importing goods from China. He confessed that he used a Chinese broker named Mr. Kairee, who communicated with him through the VECHAT application. Mr. Kairee informed him about the individuals in India to whom he needed to pay in cash for the overseas purchases. Shri Dhananjay Desai acknowledged that he had paid approximately Rs. 1.75 Crore in cash to these individuals for past consignments and still owed payments for both past and present consignments. He also revealed that he instructed Mr. Kairee to declare specific items, such as Vanity Cases, Alphabet and Numbers, and Decorative Festivals, etc in the Bills of Lading and invoices for customs clearance while keeping the actual cargo unveiled, which was given to Shri Dhananjay Desai through any person coming to India or on VECHAT application. Furthermore, he requested Mr. Kairee to undervalue the goods in the invoices to reduce customs duties, thus outlining his strategy for the smuggling operation.

33.9 I find that neither Shri Dhananjay Desai nor anyone associated with him came forward to claim the goods or file the Bills of Entry after lapse of approx. two months as they got the information of hold of consignments by the DRI. Shri Dhananjay B Desai in his statement dated 30.11.2022/01.12.2022 also stated that he had not given any documents to Shri Rajesh Nakhua (the forwarder) regarding these consignments mentioning various Bills of Lading as he came to know that DRI Gandhidham had kept these containers on hold through his friend and afraid of being caught, he had not claimed the said consignments.

33.10 I find that there is no doubt that Shri Dhananjay B Desai exercised comprehensive authority over all the operations and activities of the aforementioned firm M/s. Arihant Enterprise (IEC-MOQPS7998K), effectively establishing himself as the bona fide owner. Thus, I state that Shri Dhananjay B Desai is the "defacto owner/beneficial owner" of the said goods. His influential and authoritative position within the firm leaves no room for doubt regarding his ultimate ownership and control over the said goods.

33.11 I also find that M/s. Arihant Enterprise (defacto owner/beneficial owner- Shri Dhananjay B Desai) was engaged in the import of 'Toy Balloon made of Natural Rubber Latex' and tried to import the same under different CTH i.e. 95059090 instead of under correct tariff heading 95030090 of the first schedule to the CTA, 1975. Shri Dhananjay B Desai, defacto owner/beneficial owner of M/s. Arihant Enterprise accepted that as per explanatory notes "Toy balloons" fall under Heading 9503. As per Explanatory Notes to HSN with respect to Chapter Heading 9503 Toy Balloons fall under tariff Heading 95030090 of the first schedule to the CTA, 1975. Further, the CBIC has also clarified on the ambiguity as per explanation to the Sr No 29 of Notification No 02/2021-Customs dated 01.02.2021 that "Chapter 40 does not include Toy Balloons made up of Natural Rubber Latex **(Toy Balloons are classified under Custom Tariff Heading 9503)**". In terms of DGFT Notification No. 26/2015-2020 dated 01.09.2017, as amended vide Notification No. 33/2015-2020 dated 02.12.2019, BIS certification is required for the import of Toy Balloon. The importer had not imported the goods which were in conformity to the BIS standard as per the import policy in respect of the said item at the material time. The importer was fully aware about the facts that BIS compliance was required for import of Toy Balloon and thus they classified the said product by misstating the description of import items under CTH 95059090 with an intention to evade Customs Duty and circumvent BIS standard regulations. Thus the importer had misclassified the 'Toy Balloons made of Natural Rubber Latex' in guise of "Alphabet And Number With Decoration Items" or "Decorative Festivals" and indulged in smuggling of the said goods viz. Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. valued at Rs.26,08,98,710/- (Rupees Twenty Six Crores Eight Lakh Ninety Eight Thousand Seven Hundred and Ten Only) as per Annexure-B to SCN, by mis-declaration ,mis-classification and concealment.

33.12 I observed that Shri Ashitosh R Salve provided signed copies of his KYC documents in lieu of Rs.30,000/- to Shri Dhananjay B Desai through Shri Vivek Nandgaonkar which were used for opening of a proprietorship firm in the name of M/s Arihant Enterprise and The said firm was registered at Shree Rukmani Vitthal Mandir, Chalisgaon, Shop No 2, Jalgaon, Rukmani Nagar, Jalgaon, Dhule, Maharashtra, 424001 which is not his residential address and from where no business activity was carried out. Shri Ashitosh R Salve in his statement dated 28.02.2023 stated that he did not have knowledge about the business activities or imports made by the said firm. Thus, he failed to act in due diligence regarding the use of his KYC documents which led to opening of a dummy firm M/s Arihant Enterprise (IEC-MOQPS7998K), Jalgaon and was used by Shri Dhananjay B Desai (Beneficial/defacto owner) for smuggling activities. Had he not provided his documents, the dummy IEC would not have been created and the whole smuggling activities could have been averted.

34. Valuation of the goods

34.1. As mentioned in the forgoing paras, this Show Cause Notice covers total 11 shipments for which no Bills of Entry were filed against the goods imported under Bills of lading Nos. (i) MEDUQ7747973 dated 07.08.2022, (ii) 800250085778 dated 21.08.2022, (iii) 799210470832 dated 09.09.2022, (iv) 800250092707 dated 11.09.2022, (v) 799210338729 dated 28.08.2022, (vi) HUSG20982000 dated 18.08.2022, (vii) HASLC56220800913 dated 07.09.2022, (viii) HASLC56220800649 dated 25.08.2022, (ix) 158200082972 dated 06.08.2022, (x) 158200092722 dated 04.09.2022 and (xi) 158200084649 dated 16.08.2022. During examination of mis-declared goods infringing IPR policy, BIS regulations etc. were found. As per policy condition 2 of the Chapter 95 of Customs Tariff, mandatory BIS compliance is required for import of the toys. As discussed at Para 7.11 of the SCN, the value of goods mentioned in the Commercial Invoices in respect of import consignments submitted by Shri Dhananjay B Desai in his statement dated 30.11.2022/01.12.2022 cannot be accepted as genuine or a valid document to arrive at the correct value of the seized goods and I also find that Bills of Entry were also not filed by the Importer. There were no declared values available for the said consignments earlier as no bills of entry were filed. Therefore, the value of goods in the present consignment cannot be re-determined on the basis of Customs Valuation Rules, 2007 in the absence of declared value and hence the valuation of the imported goods was carried out by the empanelled customs valuer.

34.2 I find that most of the branded goods were examined by the brand owners and found to be counterfeit. As these goods were counterfeit they were not identical to original branded goods. However, such counterfeit goods were smuggled to be sold as branded goods of the brand name appearing on the goods. Though the said goods were not identical but similar as the goods were having brand name and they perform the same function. Accordingly, for valuation purpose, the value of similar branded goods could be considered to ascertain the value of goods viz. Cosmetics items of brands of Mac/ Bobbie Brown/Elle18/Matrix etc. In view of this, Shri Kunal Ajay Kumar, Customs Empanelled Chartered Engineer as appointed by the Principal Commissioner of Customs, Customs House, Mundra Port, Gujarat vide Public Notice No. 11/2021 dated 10.11.2021, vide Valuation Report nos. DRI/176/22-23 dated 22.11.2022 determined the Market retail price of cargo i.e. Cosmetic items and Vanity case inside Container No. PCIU9399099 through Bills of Lading No. HUSG20982000 dated 18.08.2022. Shri Kunal Ajay Kumar carried out Market analysis by distributing the samples, which were withdrawn under Panchnama dated 21.11.2022, to well-known local retail shops that deal in imported and branded cosmetic items and for products which were not available in the local market, their prices were checked on their official website or e-commerce platforms. Accordingly, the Market Value of similar branded goods as well as other branded/ unbranded goods as mentioned in **Annexure-A to the SCN had** been taken for arriving at the Market value of smuggled similar branded goods which are counterfeit but have brand name, characteristics and uses as that of branded goods and other branded/ unbranded goods.

34.3 In respect of goods de-stuffed from containers other than Container No. PCIU9399099 through Bill of Lading No. HUSG20982000 dated 18.08.2022, viz. Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc., Shri Kunal Ajay Kumar, Customs Empanelled Chartered Engineer vide his Valuation Reports nos. DRI/181/22-23 and DRI/182/22-23 both dated 22.11.2022, DRI/218/22-23 dated 14.02.2023 and DRI/220/22-23 dated 20.02.2023 determined the Market retail price of cargo i.e. Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. Accordingly, the Market Value of the said goods as mentioned in **Annexure-B to the SCN were** taken for arriving at the Market value of Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. goods.

34.4 As mentioned above, I observed that the Market Value of goods viz. Cosmetic items, smuggled by mis-declaration mis-classification and concealment vide Bills of Lading No. HUSG20982000 dated 18.08.2022 in the guise of "Vanity Case" was arrived at **Rs. 73,99,45,464/- (Rupees Seventy Three Crores Ninety Nine Lakhs, Forty Five Thousand Four Hundred and Sixty Four only)** as per Annexure-A to the SCN. Similarly, Market Value of goods viz. Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc., smuggled by mis-declaration mis-classification and concealment vide Bills of Lading No. (i) MEDUQ7747973 dated 07.08.2022, (ii) 800250085778 dated 21.08.2022, (iii) 799210470832 dated 09.09.2022, (iv) 800250092707 dated 11.09.2022, (v) 799210338729 dated 28.08.2022, (vi) HASLC56220800913 dated 07.09.2022, (vii) HASLC56220800649 dated 25.08.2022, (viii) 158200082972 dated 06.08.2022, (ix) 158200092722 dated 04.09.2022 and (x) 158200084649 dated 16.08.2022 in the guise of "Alphabet And Number With Decoration Items" or "Decorative Festivals" was arrived at **Rs.26,08,98,710/- (Rupees Twenty Six Crores Eight Lakh Ninety Eight Thousands Seven Hundred and Ten Only)** as per Annexure-B to the SCN.

34.5 Therefore, I find that the goods valuation/market price as provided by the empanelled valuer may be considered as the value of these goods. Therefore, I hold it appropriate that the goods imported under these 11 Bills of ladings in the guise of "Vanity Case" and "Alphabet And Number With Decoration Items" or "Decorative Festivals" are having total value of Rs. 100,08,44,174/- (Rupees One Hundred Crore Eight Lakh, Forty Four Thousand One Hundred and Seventy Four only) which were seized vide seizure Memos dated 26.11.2022, 28.11.2022, 28.11.2022 and 14.03.2022.

35. CLASSIFICATION OF 'TOY BALLON MADE OF NATURAL RUBBER LATEX', BIS REQUIRMENT AND COFISCABILIY OF THE SAME:

35.1 I find that during the examination of 10 Container as per below table, 'Toy Balloons made of natural rubber latex' of different sizes were found and imported under the following various Bills of Lading declaring

the same as 'Decorative Festivals'/ 'Alphabet & Number with Decoration Items'/ 'Alphabet & Number' under tariff heading 95059090 instead of tariff heading 95030090.

Sr. No.	Bill of Lading	Bill of Lading Date	Declaration as per Bill of lading	Goods found during examination under various Panchnama
1	MEDUQ7747973	07.08.2022	Decorative Festivals HSN 95059090	Toy Latex /Rubber Balloons and Alluminium Foil Balloons
2	800250085778	21.08.2022	Alphabet And Number With Decoration Items HSN 9505 9090	Toy Latex /Rubber Balloons and other goods as Clay, Magnet, Cubes etc.
3	799210470832	09.09.2022	Alphabet And Number With Decoration Items HSN 9505 9090	Toy Latex /Rubber Balloons and Alluminium Foil Balloons
4	800250092707	11.09.2022	Alphabet And Number With Decoration Items HSN 9505 9090	Toy Latex /Rubber Balloons and Alluminium Foil Balloons
5	799210338729	28.08.2022	Alphabet And Number With Decoration Items HSN 9505 9090	Toy Latex/ Rubber Balloons and other goods as Clay, Magnet, Cubes etc.
6	HASLC56220800913	07.09.2022	Alphabet And Numbers HSN 95059090	Hair Crown, Alphabetic Foil Balloons, Toy Latex/ Rubber Balloons of Different colors
7	HASLC56220800649	25.08.2022	Alphabet And Numbers HSN 95059090	Hair Crown, Alphabetic Foil Balloons, Toy Latex/Rubber Balloons of different colors/size, Wooden Knife, Spoon & Fork
8	158200082972	06.08.2022	Decorative Festivals HSN 95059090	Table Cloth, Alphabetic Foil Balloons, Toy Latex/Rubber Balloons of different Colors
9	158200092722	04.09.2022	Decorative Festivals HSN 95059090	Alphabetic Foil Balloons, Toy Latex/Rubber Balloons of different Colors
			Decorative Festivals	Alphabetic Foil Balloons, Toy Latex/Rubber Balloons

10	158200084649	16.08.2022	HSN 95059090	of different Colors, Rubber Balloons with Glitter disc inside
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35.2 For the sake of further clarity, relevant tariff entries of “Toy Balloons made of Natural Rubber Latex” under heading 9503 and “Decorative Balloons (Party Item)” under heading 9505 are reproduced below:

Table:A

950300		Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls; other toys; reduced size (“scale”) models and similar recreational models, working or nor; puzzles of all kind, other than electronic toys:
95030010	---	Of wood
95030020	---	Of metal
95030030	---	Of plastics
95030090	---	Others

Table:B

9505		Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes
95051000	-	Article for Christmas festivities
950590	-	Other
95059010	---	Magical Equipments
95059090	---	Other

35.3 I find that the tariff classification of goods under the Harmonized System is governed by the principles set forth in the General Rules for the Interpretation of the Harmonized System, also known as the **General Interpretative Rules (GIR)**. The GIRs are intended to be consulted and applied each time goods are to be classified under the Harmonized System as they are the single set of legal principles that govern the classification of goods under the Harmonized System. There are six General Interpretative Rules in all. Rule 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of Rule 1, and if the headings and legal notes are not otherwise required, the remaining rules of interpretations may then be applied, taken in order. Rule 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the rules from 1 to 5, on the understanding that only subheadings at the same level are comparable.

35.4 Further, I find that the General Explanatory Notes to the Harmonized System provides that “Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by ‘-’, the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by ‘--’, the said article or group of

articles shall be taken to be a sub-classification of the immediately preceding description of the article or group articles which has '-'. Where the description of an article or group of articles is preceded by '---' or '----', the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has '--' or '---' respectively."

35.5 As per Rule 3(a) of "General Rules for the Interpretation of Import Tariff", the heading which provides the most specific description shall be preferred to headings providing a more general description. In the instant case, the explanatory Notes to HSN in respect of heading 9503 specifically covers "Toys Balloons". The balloons which are also used as toys. The Explanatory Notes to HSN with respect to Chapter Heading 9503 clearly mentioned that "This group covers toys intended essentially for amusements of persons (children or adults)." The relevant portion of Explanatory Notes to HSN with respect to Chapter Heading 9503 is as under:

"95.03- Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced size ("scale") models and similar recreational models, working or not; puzzles of all kind.

This heading covers :

- A. Wheeled Toys...
- B. Dolls' carriages (e.g. strollers), including folding types.....
- C. Dolls
- D. Others toys.

This group covers toys intended essentially for amusements of persons (children or adults). However, toys which, on account of their design, shape or constituent material, are identifiable as intended exclusively for animals, e.g. pets, do not fall in this heading, but are classified in their own appropriate heading. This group includes:

All toys not included in (A) to (C). Many of the toys are mechanically or electrically operated.

These include:

(i)...

(ii)...

....

(vii) Toy balloons and toy kites."

The relevant portion of Explanatory Notes to HSN with respect to Chapter Heading 9505 is as under:

"95.05-Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes.

This heading covers :

- A. **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable materials. They include:
 - 1. Festive decorations used to decorate rooms, tables, etc (such as garlands, lanterns, etc); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decoration which are traditionally associated with a particular festival (e.g. animals, flags).

2. *Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christsmases.*
3. *Articles of fancy dress, e.g.....*
4. *Throw-balls of paper or cotton-wool,*

.....

35.6 On combined and comprehensive reading of HSN of Chapter heading 9503 & 9505, I find that it nowhere mentioned that 'Toys Balloons made of Natural Latex' is to be classified as per its use as decorative items under heading 9505. Also, it mentions that "*Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable materials*" are covered under this CTH whereas Natural Latex is generally considered a durable material.

35.7 Further, I find that the CBIC has also clarified on the ambiguity as per explanation to the Sr No 29 of Notification No 02/2021-Customs dated 01.02.2021, "Chapter 40 does not include Toy Balloons made up of Natural Rubber Latex (**Toy Balloons are classified under Custom Tariff Heading 9503**)". As far as the Toy Balloon is concerned, the same is also differentiated from the Balloons falling under tariff heading 88010020 of first schedule to the Customs Tariff Act, vide Explanatory Notes to HSN with respect to Chapter Heading 88.01, as below-

*"In most cases balloons used in meteorology are very thin, high quality rubber allowing a high degree of expansion. Children's toy balloons are **excluded (heading 95.03)**. They may be distinguished by their inferior quality, short inflation necks and the advertisement or decorations often found on them."*

*"The heading also **excludes** models, whether or not built accurately to scale, used, for example, for decoration (e.g., heading 44.20 or 83.06), for purely demonstrational purpose (heading 90.23), or as toys or models for recreational purpose (heading 95.03)."*

35.8. Thus, I find that the goods imported by the importer was in the nature of 'Toy Balloon made of Natural Rubber Latex' and correctly classifiable under tariff heading 95030090 of the first schedule to the CTA, 1975. I find that the supplier had mis-declared the description of their exported products i.e. Toy Balloon made of Natural Rubber Latex as well as chapter sub-heading 9505 instead of 9503 as per mutual understanding with Shri Dhananjay B Desai, the Controller and Financer of M/s. Arihant Enterprise, the importer. Further, I find that goods were found to be imported without BIS certification during the during examination of these 11 consignments under various Panchnama at Mundra. I find that Shri Dhananjay B Desai was well aware about the classification of imported goods and he instructed the supplier to change the description and HSN code in the documents viz. Bill of Lading to avoid to pay higher rate of Basic Customs Duty @ 60% under CTH 95030090 and to circumvent BIS standard regulations.

35.9 Requirement of BIS Certification for import of 'Toys';

The import of the goods falling under Chapter 950300 of description "*Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced- size ("scale") models and similar*

recreational models, working or not; puzzles of all kinds" is allowed subject of fulfillment of Policy Condition 2 of the Chapter. The Policy Condition 2 of the Chapter is reproduced hereunder;

:(2) Import of Toys (all items under EXIM Codes 95030010, 95030020, 95030030 and 95030090) shall be permitted freely when accompanied by the following certificates:

(i) A certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS) (a) IS: 9873 (Part 1)-Safety of toys; Part-1 Safety aspects related to mechanical and physical properties (Third Revision)

(b) IS:9873 (Part 2) - Safety of Toys; Part-2 Flammability (Third Revision)

(c) IS:9873 (Part 3)-Safety of Toys; Part-3 Migration of certain elements (Second Revision)

(d) IS: 9873 (Part 4) Safety of Toys; Part-4 Swings, Slides and similar activities Toys for indoor and outdoor family domestic e (e) IS: 9873 (Part 7)-Safety of Toys; Part-7 Requirements and test methods for finger paints.

(f) IS: 9873 (Part 9)-Safety of Toys; Part-9 Certain phthalates esters in toys and Children's products. (g) IS: 15644-Safety of Electric Toys.

(ii) A Certificate that the toys being imported conform to the standards prescribed in IS: 9873 Part-1, Part-2, Part-3, Part-4 Part-2 and 15644:2006.

(iii) Sample will be randomly picked from each consignment and will be sent to NABL accredited Labs for testing and clearance given by Customs on the condition that the product cannot be sold in the market till successful testing of the sample. Further, sample drawn fails to meet the required standards; the consignment will be sent back or will be destroyed at the cost of importer.

35.9.1 Further, I find that the DGFT vide Notification No. 33/2015-2020 dated 02.12.2019, added a new para (capital-D) to Section 2 (**Indian Quality Standards**) to the General Notes Regarding Import Policy of ITC(HS), 2017 as under:

2.(D) Import policy for Toys/Dolls etc: Import policy for Toys /Dolls and similar other recreational goods under any chapter will be governed by BIS standards as specified in Policy Conditions 2 of Chapter 95.

Thus the importer had to comply with the DGFT Notification No. 33/2015-2020 dated 02.12.2019, for the Import policy in respect of Toys/Dolls as specified in the Policy Conditions 2 of Chapter 95, which had to conform to BIS standards.

35.10 Thus, as mentioned above, I find that importer by violating the provisions of Section 2(33) & 2(39) of The Customs Act, 1962 indulged themselves in the act of smuggling as they had tried to import subject goods which are prohibited under the provisions of Section 2(33) Of Customs Act, 1962. As these toys were not accompanied by mandatory BIS

compliance, I hold that the said toys, being the offending goods, are liable for confiscation under Section 111(d), 111(f), and 111(i) of the Customs Act, 1962.

3 6 . POLICY RESTRICTION ON “COSMETIC ITEMS” AND CONFISCABILITY OF THE SAME:

36.1 Upon examination of Container no. PCIU9399099 at CFS- Ashutosh, it was revealed that mis-declared/mis-classified/concealed foreign branded cosmetic products of a number of brands were found, which were grossly mis-declared as per the bill of lading and was other than the declared “Vanity case boxes”. Further these items were concealed behind the declared items. The said cosmetic items and vanity boxes etc. were placed under detention as per the provisions of Customs Act, 1962 as the said items were being smuggled. The detained goods were handed over to Custodian CFS- Ashutosh, Mundra under the Suparatnama dated 19.11.2022.

36.2 Further, to ascertain the IPR angle and confirm the genuineness of the seized goods, the respective brand owners/ right holders / legal representatives of various brands were contacted and the examination of the samples of the seized goods were carried out under panchnama dated 13.03.2023 by the representatives of brand owners and they physically inspected, took photographs and also took some samples for chemical testing/analysis of the same to find out whether the seized goods were genuine or counterfeit. I find that the rights holders of brands submitted their verification report confirming the goods bearing the brand names of various brands to be **counterfeit**. The details of report are tabulated as below:

Sr. No.	Authorised Right Holder	Brand	Verification Report date	Details of report
1	Lall & Sethi	Bobbi Brown	Letter dated 17.03.2023 through email	Seized goods are counterfeit and requested for absolute confiscation of goods, destruction of goods and grant hearing before passing order.
2	Lall & Sethi	Mac	Letter dated 17.03.2023 through email	Seized goods are counterfeit and requested for absolute confiscation of goods, destruction of goods and grant hearing before passing order.
3	Hindustan Unilever Limited	Elle18	Letter dated 20.03.2023 through email dated 21.03.2023	Seized goods are fake.
4	Anand and Anand	Maybelline & Matrix	Letter dated 23.03.2023	Seized goods are counterfeit. Requested for not to release the goods & take action as per IPR Rules.

36.3 The Deputy Commissioner of Customs, IPR Cell, JNCH, Nhava Sheva-V vide their letter F.No.SG/MISC-47/2021-22 IPR Cell JNCH dated 24.03.2023 informed that the brands “Mac”, “Bobbi Brown”, “Matrix”, “Maybelline” and “Elle18” are registered with the Customs under IPR (Imported Goods) Enforcement Rules, 2007. They also informed that the brands “L.A. Pro Girl”, “Note”, “Magic your life”, “Romantic Bears”, “Sunisa”, “Revolution”, “Laura Mercier”, “Pixi Beauty” and “Maybe Lucky” are not registered with Customs. They have also shared the details of right holders in respect of the brands “Mac”, “Bobbi Brown”, “Matrix”, “Maybelline” and “Elle18”.

36.4 I see that in respect of some goods of other brands such as “L.A. Pro Girl”, “Note”, “Magic your life”, “Romantic Bears”, “Sunisa”, “Revolution”, “Laura Mercier”, “Pixi Beauty” and “Maybe Lucky” examination by the brand owners could not be carried out as the brand owners of these goods did not have any representative in India to represent them.

37 LEGAL PROVSIONS FOR IMPORT OF COSMETIC PRODUCTS INTO INDIA:

37.1 I find that Import of Cosmetics is regulated under Drugs and Cosmetics Rules, 1945 and under Rules 129, 129G, 129H and 130 under the said rules, 1945, the importer of cosmetics is required to take Registration of cosmetic products imported into the India and also has to comply with the Standard prescribed, its labelling and packaging as per prescribed standard and submit specific documents to the Customs authority. The relevant rules are reproduced below for ready reference:

“129. Registration of cosmetic products imported into the country. – No cosmetic shall be imported into India unless the product is registered under the rules by the licensing authority appointed by the Central Government under Rule 21 or by any person to whom such powers may be delegated under Rule 22.”

“129G. Standard for imported cosmetics. – No cosmetics shall be imported unless it complies with the specifications prescribed under Schedule S and Schedule Q or any other standards of quality and safety, applicable to it, and other provisions under the rules. In case the cosmetic is not included under Schedule S, it shall meet with specifications under the rules and standards applicable to it in the country of origin.”

“129H. Labeling and Packing of Cosmetics. – No cosmetic shall be imported unless it is packed and labeled in conformity with the rules in Parts XV. Further the label of imported cosmetics shall bear registration certificate number of the product and the name and address of the registration certificate holder for marketing the said product in India.”

“130. Documents to be supplied to the Collector of Customs.– Before any cosmetics are imported, a declaration signed by or on behalf of the manufacturer or by on behalf of the importer that the cosmetics comply with the provisions of Chapter III of the Act, and the Rules made there under, shall be supplied to the Collector of Customs.”

From the above discussion, it may be seen that in the present case, the importer M/s. Arihant Enterprises had not complied with these requirements of the Rules 129, 129G, 129H and 130 under the provisions of Drugs and Cosmetics Rules, 1945.

37.2 I also find that cosmetics products imported are required to comply with the provisions of Legal Metrology (Packaged Commodities) Rules, 2011. In the present case the importer had not complied with the requirement as envisaged under the provisions of relevant rules 6 and 27 of the Legal Metrology (Packaged Commodities) Rules, 2011. The Rules 6 and 27 of the Legal Metrology (Packaged Commodities) Rules, 2011 are reproduced for ready reference is as under:

“6. Declaration to be made on every package.– (1) Every package shall bear thereon or on label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to-

- a. The name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer shall be mentioned.

Explanation I.– If any name and address of a company is mentioned on the label without any qualifying words ‘manufactured by’ or ‘packed by’, it shall be presumed that such name and address shall be that of the manufacturer and the liability shall be determined accordingly;

Explanation II.– If the brand name and address of the brand owner appear on the label as a marketer, then the brand owner shall be held responsible for any violation of these rules and action as may be required shall be initiated against the deemed manufacturer and in the event of more than one name and address appearing in the label, prosecution shall be launched against the manufacturer indicated on the label in the first place and not against all of them.

Explanation III.– In respect of packages containing food article, the provisions of this sub-rule shall not apply, and instead, the requirement of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules made there under shall apply.

- b. The common or generic names of the commodity contained in the package and in case of packages with more than one product, the name and number or quantity of each product shall be mentioned on the package.

- c. *The net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package shall be mentioned.*

- d. *The month and year in which the commodity is manufactured or pre-packed or imported shall be mentioned in the package:*

Provided that for packages containing food articles, the provisions of the Prevention of Food Adulteration Act 1954 (37 of 1954) and the rules made there under shall apply:

Provided further that nothing in this sub-clause shall apply in case of packages containing seeds which are labelled and certified under the provisions of the Seeds Act, 1966 (54 of 1966) and the rules made there under:

Provided that a manufacturer may indicate the month and year using a rubber stamp without overwriting:

Provided also that for packages containing cosmetics products, the provisions of the Drugs and Cosmetics Rules, 1945 shall apply.

- e. *The retail sale price of the package;*

Provided that for packages containing alcoholic beverages of spirituous liquor, the State Excise Laws and the rules made there under shall be applicable within the State in which it is manufactured and where the state excise laws and rules made there under do not provide for declaration of retail sale price, the provisions of these rules shall apply.

- f. *Where the sizes of the commodity contained in the package are relevant, the dimensions of the commodity contained in the package and if the dimensions of the different pieces are different, the dimensions of each such different price shall be mentioned.*

- g. *Such other matter as are specified in these rules:*

Provided that—

- A. *No declaration as to the month and year in which the commodity is manufactured or pre-packed shall be required to be made on—*

(i) any package containing bidi or incense sticks;

(ii) any domestic liquefied petroleum gas cylinder of 14.2kg or 5kg, bottled and marketed by a public sector undertaking;

- B. *Where any packaging material bearing thereon the month in which any commodity was expected to have been pre-packed is not exhausted during that month, such packaging material may be used for pre-packing the concerned commodity produced or manufactured during the next succeeding month and not there after, but the Central Government may, if it is satisfied that such packaging material could not be exhausted during the period aforesaid by reason of any circumstance beyond the control of the manufacturer or packer as the case may be extend the time during which such packing material may be used, and, where any such packaging material is exhausted before the expiry of the month indicated thereon, the packaging material intended to be used during the next succeeding month may be used for*

pre-packing the concerned commodity;

Provided that the said provision shall not apply to the packages containing food products, where the 'Best before or Use before' period is ninety days or less from the date of manufacture or packing.'

C. No declaration as to the retail sale price shall be required to be made on

(i) any package containing bidi;

(ii) any domestic liquefied petroleum gas cylinder of which the price is covered under the Administrative Price Mechanism of the Government.

Explanation I: The month and the year in which commodity is pre-packed may be expressed either in words, or by numerals indicating the month and the year, or by both.

(2) Every package shall bear the name, address, telephone number, E-mail address, if available, of the person who can be or the office which can be, contacted, in case of consumer complaints.

(3) It shall not be permissible to affix individual stickers on the package for altering or making declaration required under these rules:

Provided that for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the same shall not cover the MRP declaration made by the manufacturer or the packer, as the case may be, on the label of the package.

(4) It shall be permissible to use stickers for making any declaration other than the declaration required to be made under these rules.

(5) Where a commodity consists of a number of components and these components are packed in two or more units, for sale as a single commodity, the declaration required to be made under sub-rule (1) shall appear on the main package and such package shall also carry information about the other accompanying packages or such declaration may be given on individual packages and intimation to that effect may be given on the main package and if the components are sold as spare parts, all declarations shall be given on each package."

"27. Registration of manufacturers, packers and importers.-

1. Every individual, firm, Hindu undivided family, society, company or corporation who or which pre-packs or imports any commodity for sale, distribution or delivery shall made an application, accompanied by a fee of rupees five hundred, to the Director or the Controller for the registration of his or its name and complete address; and every such application shall be made,-

(i) in the case of an applicant pre-packing or importing any commodity on the date of commencement of these rules, within a period of ninety days from such commencement; or

(ii) in the case of any applicant who or which commences pre-packing or importing of any commodity after the commencement

of these rules, within ninety days from the date on which he or it commences such pre-packing.

2. *Every application referred in sub-rule (1) shall contain the following particulars, namely:-*

- a. *The name of the applicant;*
- b. *The complete address of the premises at which the pre-packing or import of one or more commodities is made by the applicant; and*
- c. *The name of the commodity or commodities pre-packed or imported by the applicant.*

Explanation: In this sub-rule, 'complete address' has the meaning assigned to it in the explanation to sub-rule (1) of rule 10.'

3. *For making any alteration in the registration certificate issued under sub rule (1), a fee of rupees one hundred shall be paid by the concerned manufacturer or packer or importer to the Director or Controller.*

4. *On receipt of the application made under sub-rule (1), the Director or Controller, who shall be the Registering Authority, shall-*

- a. *If the application is not complete in all respects, return the same to the applicant within a period of seven working days from the date of receipt of the application;*
- b. *If the application is complete in all respects, register the applicant and grant a registration certificate to the applicant to that effect."*

Form the facts and findings of the investigation carried out and examination conducted of the shipment, I find that the Importer had not complied with the requirement as envisaged under the provisions of relevant Rule 6 and 27 of the Legal Metrology (Packaged Commodities) Rules, 2011 as they have neither registered themselves as per the provision of Rule 27 nor any declaration was made by the importer as per the provisions of Rule 6.

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

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

In view of the report from the authorized persons of the Brand owners of various brands, whose cosmetic products were found during the course of examination of the imported goods, it was established that these products are counterfeit cosmetic products and are not the original products from these brands. Hence the report from the brand owners

signifies that the importer had violated the provisions of Rule 6 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as they had imported counterfeit products and has infringed the intellectual property rights of the brand owners.

37.4 I state that DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000 requires compliance of all the provisions of Standards of Weights and Measures (Packaged Commodities) Rules, 1997 in respect of all packaged products when imported into India. However, in the present case, the importer had not complied with the requirements of provisions contained under the DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000.

37.5 From the discussion and findings made in the above stated paras, I find that goods imported under Container No. PCIU9399099 (Bill of Lading No. HUSG20982000 dated 18.08.2022) in the name of M/s Arihant Enterprise (MOQPS7998K) were found mis-declared as cosmetic items valued at Rs. 73,99,45,464/- (Rupees Seventy Three Crores Ninety Nine Lakhs, Forty Five Thousand Four Hundred and Sixty Four only) as per Annexure-A. Accordingly, I hold that these mis-declared goods (cosmetic items) were found in place of declared goods i.e. "Vanity Case", were imported in contravention of provision discussed above, thus, are liable for absolute confiscation under the provisions of Section 111 (d), 111(f) & 111(i) of the Customs Act, 1962.

38. CONFISCATION OF GOODS UNDER SECTION 111(d), 111(f) and 111(i) OF THE CUSTOMS ACT, 1962:

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

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

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

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

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(ii). On plain reading of the above provisions of the Section 111(d), Section 111(f) and 111(i) of the Customs Act, 1962, it is clear that the impugned goods had been improperly imported to the extent that such goods were prohibited, concealed, mis-declared, undervalued etc., therefore, shall be liable to confiscation. As discussed in the foregoing para's, it is evident the Importer had deliberately concealed/ mis-declared/ undervalued the imported goods with a malafide intention to bypass BIS Compliance, IPR violation and other mandatory compliances viz RE-44, labelling etc. Therefore, I hold that the impugned imported goods are liable for confiscation under the provisions of Section 111(d), 111(f) and 111(i) of the Customs Act, 1962.

(iii) As the impugned goods are found to be liable for confiscation under Section 111(d), 111(f) and 111(i) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 ibid reads as under:-

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

(v i) A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. I find that in the instant case option to pay the redemption fine cannot be given to the noticee for clearance of the goods for home consumption due to the prohibition and restriction in force on the imported goods as elaborated in previous paras. In the instant case there has been gross mis-declaration of quantity, value and also goods are found to be prohibited under the definition of prohibited goods For the reasoning given above, the goods cannot allowed either for re-export or home consumption purpose. I find that allegations/charge levelled against the Importer M/s. Arihnat Enterprises alongwith other noticees had been well explained/established,

Hence, the imports made cannot be considered as bona fide and left no scope other than to confiscate the goods absolutely covered under the 11 shipments of the present Show Cause Notice dated 31.10.2024.

39. ROLE OF SHRI DHANANJAY B DESAI (BENEFICIAL/DEFACTO OWNER OF M/S ARIHANT ENTERPRISES, IEC NO. MOQPS7998K) AND LIABILITY FOR PENALTY:

- i. I find that Shri Dhananjay Balchandra Desai (Dhananjay for the sake of brevity) is the beneficial owner/defacto owner of the goods imported in the name of M/s. Arihant Enterprises and the fact was confirmed by Shri Dhananjay Balchandra Desai himself during his statement recorded on 30.11.2022/01.12.2022. Further he stated that On papers, Shri Ashitosh Ramdas Salve, is the legal proprietor of the proprietorship.
- ii. I find from the statement of Shri Dhananjay that previously he was involved in smuggling and had faced interrogation by Customs / DRI several times and if he carried out business in his name, it would be difficult for him to carry out such kind of illegal works as there might be tight monitoring/surveillance on his import consignments.
- iii. I find that payment were made by him to overseas suppliers in cash and he used to contact Mr. Kairee (a Chinese broker/agent +86158133XXXX) through VECCHAT application for making overseas purchases and to get documents viz. commercial invoice, packing list, Bills of Lading etc. Till date he had given Rs.1.75 Crore approx. only in cash to the concern person of Mr. Kairee in Mumbai for past 06 cleared consignments; that partial payment is still pending for the past 06 cleared consignments and payment of present 11 consignments is completely due.
- iv. I find that he instructed Mr. Kairee to declare the items as (i) Vanity Case (ii) Alphabet and Numbers & (iii) Decorative Festivals in the Bills of lading and also to mention the same in the invoices for Custom clearance but real invoice containing the actual cargo used to be issued separately and I also find that he directed Mr. Kairee to suppress the value than the actual value in the invoices to evade Customs duty.
- v. I find that for past 06 import consignments of M/s Arihant Enterprises through MPSEZ for which the Customs clearing work was handled by Pushpanjali Logistics and **he had provided the KYC documents** such as CHA authority letter, IEC copy, GST certificate, PAN card, Aadhar Card and Bank details etc. of M/s Arihant Enterprises, Jalgaon to **Shri Rajesh Nakhua** near Ghatkopar metro station.
- vi. Shri Dhananjay during his statement stated that he had not given any documents Shri Rajesh Nakhua for the present shipment as he came to know that DRI had put these containers on hold and he was afraid of being caught, and hence had not claimed the said consignments.
- vii. He accepted during his statements that he (Shri Dhananjay) paid cash amount to M/s Om Logistics for payment of Customs duty through cheque for past import consignment.
- viii. I find that Shri Dhananjay is the masterminded of the entire modus of importing through dummy IEC and importing goods other than the declared goods to evade payment of customs duty and smuggling of the goods eventually to supply them in the local market to earn profit.
- ix. I find that Shri Dhananjay in his own statement dated 30.11.2022/01.12.2022 had confessed that he had mis-declared/ mis-classified and smuggled the goods that were not declared such as cosmetic items, Hair Crown, Rubber Balloons of different colors and Table Cloths etc.
- x. I find that he is the key person who controls and finances M/s. Arihant Enterprises for smuggling of these items. The same facts have also been confirmed by Shri Rajesh Tulsidas Nakhua, Controller of M/s. Om Logistics which works as forwarder to CHA Pushpanjali for M/s. Arihant Enterprise in his statement dated 25/26.11.2022.

- xi. From the above, I find that Shri Dhananjay Balchandra Desai was the mastermind behind the entire modus of smuggling of the different goods in contravention to the provisions of Customs Act, 1962 and in contravention of the Intellectual Property Rights and non-compliance of BIS standard, through dummy IEC to evade payment of customs duty and to import the prohibited goods in India.
- xii. I find that Shri Dhananjay Balchandra Desai, had knowingly and willingly concerned himself in the smuggling of the above discussed impugned goods in the guise of declaring them as (i) Vanity Case (ii) Alphabet and Numbers & (iii) Decorative Festivals in Bills of lading and smuggled various goods like branded high value cosmetic items without requisite licences, rubber balloons etc approx. valued at **Rs. 8918 Lakhs** and also undervalued these imported goods to evade payment of Customs duty. The importer had concealed the smuggled items behind the declared items. Thus, he was found involved in the commission of an act, which had made goods liable to confiscation under Section 111(d), Section 111(f) & Section 111(i) of the Customs Act and Shri Dhananjay Balchandra Desai has committed an offence of the nature described under Section 135(1)(i)(A), 135(1)(i)(B) and 135(1)(i)(C) of the Customs Act, 1962. Further, Shri Dhananjay Balchandra Desai for his acts of omission and commission was arrested on 01.12.2022 under Section 104 of the Customs Act, 1962 and produced before Judicial Magistrate (First Class), Daman vide Production Memo dated 01.12.2022 and Hon'ble JMFC vide order dated 01.12.2022 remanded Shri Desai to judicial custody till 14.12.2022. Shri Dhananjay Desai filed application dated 08.12.2022 for regular bail before Hon'ble JMFC, Daman. Hence, Hon'ble JMFC, Daman vide order dated 13.12.2022 approved the bail application and ordered the applicant to be released on regular bail on Personal Recognizance Bond and Surety Bond of Rs. 1,00,000/- and subject to other conditions as mentioned in the order.
- xiii. In view of facts as discussed in foregoing paras and material evidence available on record, I find that **Shri Dhananjay B Desai, defacto/beneficial owner of M/s Arihant Enterprise**, hatched a conspiracy and indulged himself in smuggling of cosmetic items of different foreign brands (Counterfeit), Vanity Cases, Toy Latex /Rubber Balloons, Aluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc **valued at Rs. 100,08,44,174/- (Rupees One Hundred Crore Eight Lakh, Forty Four Thousand One Hundred and Seventy Four only) (Market Value)**, as detailed in **Annexure-A & B** to the SCN, by way of mis-declaring mis-classifying the said goods as "Vanity Case" or "Alphabet And Number With Decoration Items" or "Decorative Festivals" under various Bills of Lading and further concealing the undeclared goods behind these declared goods.
- xiv. I find that Shri Dhananjay B Desai placed order and imported smuggled counterfeit cosmetic items of reputed foreign brands. The said counterfeit branded goods including cosmetics smuggled under the guise of "Vanity Case" by Shri Dhananjay B Desai, defacto/beneficial owner of M/s Arihant Enterprise in violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, Drugs and Cosmetics Acts, 1940 & Rules, 1945 and the Legal Metrology Act, 2009 & the Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, I hold that above-mentioned smuggled counterfeit branded goods, including cosmetics items concealed behind the

- declared goods are to be treated as "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962. Therefore, I find that said smuggled goods are liable for confiscation under Section 111(d) of the Customs Act, 1962. Further, I find that other smuggled goods seized under various Seizure Memos are also treated as "prohibited goods" as defined under Section 2(33) of the Customs Act, 1962, also because they have been smuggled in contravention of the provisions of Customs Act, 1962, Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & 14 of the Foreign Trade (Regulation) Rules, 1993 and therefore are liable to be confiscated under Section 111 (d), (f) & 111(i) of the Customs Act, 1962.
- xv. Further, all smuggled branded/unbranded goods were not included in the all Bills of Lading mentioned above. The said goods have been smuggled by mis-declaring them as the declared goods i.e. "Vanity Case" or "Alphabet and Number with Decoration Items" or "Decorative Festivals" and concealing them behind the declared goods. Therefore, these smuggled goods are also liable for confiscation under Section 111 (d) & (f) of the Customs Act, 1962.
- xvi. I find that all these acts of commission and omission on the part of Shri Dhananjay B Desai beneficial/defacto owner of M/s. Arihant Enterprise have rendered the total smuggled goods viz. cosmetic items of various global brands, other unbranded goods and Vanity cases as detailed in Annexure-A to the SCN and goods viz. Toy Latex /Rubber Balloons, Aluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. as detailed in Annexure-B to the SCN liable for absolute confiscation under the provisions of Customs Act, 1962. The contravention of above-mentioned provisions of Customs Act, 1962, on the part of Shri Dhananjay B Desai, constitute an offence of the nature as described under Section 112(a) of the Customs Act, 1962 and hence rendered himself liable for penal action under Sections 112(a) (i) of the Customs Act, 1962.
- xvii. In view of above, I find that in the present case of import of goods in name of M/s. Arihant Enterprises, Shri Dhananjay B Desai had acted as the mastermind of the smuggling cartel and his role remains the same as has been described in above paras. Thus, such acts and omission on part of Shri Dhananjay B Desai have rendered impugned goods liable for confiscation under Section 111 of the Customs Act, 1962 and has also rendered himself liable to penalty under Section 112 of Customs Act 1962. With regards goods i.e. cosmetics item & Toys for which are prohibited goods, I find that Shri Dhananjay B Desai is liable to penalty under Section 112(a)(i) of the Customs Act, 1962.
- xviii. 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 the Customs Act, 1962, is to be imposed.
- xix. I find that Shri Dhananjay B Desai had used IECs of dummy firms for his own import, and he used KYCs of these dummy firms for clearance of various offending goods by way of mis-declaration/concealment/undervaluation. Further, for reasons/role stated above that he intentionally and knowingly arranged/caused to acquire false IEC in the name of M/s. Arihant Enterprise with mala-fide intention, and it is beyond doubt that Shri Dhananjay B Desai is also liable to penalty under Section 114AA of the Customs Act, 1962.

40. ROLE OF SHRI ASHITOSH R SALVE, PROPRIETOR OF M/S ARIHANT ENTERPRISE AND LIABILITY FOR PENALTY:

- i. I find that Shri Ashitosh R Salve, Proprietor of M/s Arihant Enterprise, Jalgaon provided signed copies of his KYC documents to Shri Dhananjay B Desai through Shri Vivek Nandgaonkar which was used for opening of a proprietorship firm in the name of M/s Arihant Enterprise.
- ii. I observed that had he not given his signed documents to Shri Dhananjay B Desai, the whole smuggling activity could have been averted.
- iii. I find that he lent the IEC of M/s. Arihant Enterprises to Shri Dhananjay B Desai in return of monetary favour and indirectly allowed import of prohibited goods in the name of his firm which was under his proprietorship.
- iv. From the above, I find that he failed to act in due diligence regarding the use of his KYC documents which led to opening of a dummy firm M/s Arihant Enterprise, Jalgaon and was used by Shri Dhananjay B Desai (Beneficial/default owner).
- v. I find that Shri Ashitosh R Salve abetted Shri Dhananjay B Desai in the smuggling of goods i.e. Cosmetic items of various global brand, vanity cases, Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc. and his above acts of omission & commission have rendered the total smuggled goods as detailed in Annexure-A & Annexure-B to the SCN liable for absolute confiscation under the provisions of Section 111 (d), (f) & 111(i) of the Customs Act, 1962. For the above stated reasons, I find that Shri Ashitosh R Salve, constituted an offence of the nature as described under Section 112(a) of the Customs Act, 1962 and hence have rendered himself liable for penal action under Section 112(a)(i) of the Customs Act, 1962.

41. In view of the aforesaid discussions and findings, I pass the following order:

ORDER

- i. I hold that the items declared as "Alphabet and Number with Decoration Items" or "Decorative Festivals" etc. imported under the various bills of entry mentioned under Annexure-B are rightly classifiable under tariff heading **95030090** of the first schedule to the Customs Tariff Act, 1975.
- ii. I order to absolute confiscate goods of different brands and unbranded goods, valued at Rs. 73,99,45,464/- (Rupees Seventy Three Crores Ninety Nine Lakhs, Forty Five Thousand Four Hundred and Sixty Four only) (Market Value) found mis-declared, mis-classified and concealed in the consignment covered under Bills of Lading No. HUSG20982000 dated 18.08.2022, as detailed in Annexure-A to the SCN under the provisions of Section 111 (d), (f) & 111(i) of the Customs Act, 1962.
- iii. I order to absolute confiscate other Goods viz. Toy Latex /Rubber Balloons, Alluminium Foil Balloons, Clay, Magnet, Cubes Hair Crown, Wooden Knife, Spoon & Fork and Table Cloth etc., valued at Rs.26,08,98,710/- (Rupees Twenty Six Crores Eight Lakh Ninety Eight Thousands Seven Hundred and Ten Only) (Market Value) found mis-declared, mis-classified and concealed in the consignments covered under various Bills of Lading No. (i) MEDUQ7747973 dated 07.08.2022, (ii) 800250085778 dated 21.08.2022, (iii)

- 799210470832 dated 09.09.2022, (iv) 800250092707 dated 11.09.2022, (v) 799210338729 dated 28.08.2022, (vi) HASLC56220800913 dated 07.09.2022, (vii) HASLC56220800649 dated 25.08.2022, (viii) 158200082972 dated 06.08.2022, (ix) 158200092722 dated 04.09.2022 and (x) 158200084649 dated 16.08.2022, placed under Seizure, as detailed in Annexure-B to the SCN, under the provisions of Section 111 (d), (f) & 111(i) of the Customs Act, 1962.
- iv. I impose penalty of **Rs. 5,00,00,000 (Rupees Five Crore only)** on Shri Dhananjay B Desai (beneficial owner of the goods) separately under Section 112(a)(i) of the Customs Act, 1962.
- v. I impose penalty of **Rs. 3,00,00,000/- (Rupees Three Crore only)** on Shri Dhananjay B Desai (beneficial owner of the goods) under Section 114AA of the Customs Act, 1962.
- vi. I impose penalty of **Rs. 3,00,00,000/- (Rupees Three Crore only)** on **Shri Ashitosh Ramdas Salve** (Dummy Proprietor of M/s. Arihant Enterprises) under Section 112(a)(i) of the Customs Act, 1962.
- vii. I do not impose penalty on Shri Dhananjay B Desai (beneficial owner of the goods) separately under Section 112(b) of the Customs Act, 1962.

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

43. The Show Cause Notice bearing No. GEN/ADJ/ADC/901/2023-Adjn dated 31.10.2023 stands disposed in above terms.

(AMIT KUMAR MISHRA)
Additional Commissioner
Customs House, Mundra.

F. No. GEN/ADJ/ADC/901/2023-ADJN.

Date: 29.10.2024.

DIN: 20241071MO000022222D

To,

Shri Dhananjay B Desai,

(beneficial/defacto owner of M/s Arihant Enterprises, IEC No. MOQPS7998K)

Residing at Flat number 1101, building No. A/2,
Ashok Towers CHS LTD, off Marol military road, Marol,
Andheri East, Mumbai 400072, Maharashtra.

Shri Ashitosh Ramdas Salve,

(Dummy Proprietor of M/s. Arihant Enterprises),
Residing at Azad Nagar, Near Shivsena Office,
Ulhasnagar 2, Ulhasnagar, Thane,
Maharashtra-421002

Copy to:

- a. The Deputy Commissioner of Customs (RRA), CH, Mundra
- b. The Deputy Commissioner of Customs (TRC), CH, Mundra
- c. The Deputy Commissioner of Customs (EDI), CH, Mundra
- d. The Additional Director General, Directorate of Revenue Intelligence,
Unit No. 15, Magnet Corporate Park, Near Sola Flyover, S. G.
Highway, Thaltej, Ahmedabad- 380054, for information please.