OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT& SPL ECONOMIC ZONE,
MUNDRA-370421
Phone No.02838-271165/66/67/68
FAX.No.02838-271169/62

A. File No.	:	GEN/ADJ/COMM/488/2023-Adjn-O/o Pr. Commr-Cus-Mundra.
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-35-24-25
C. Passed by	:	**K. Engineer** **Pr. Commissioner of Customs,** **Customs House, AP & SEZ, Mundra.**
D. Date of order and Date of issue:	:	10.01.2025 10.01.2025
E. SCN No. & Date	:	SCN No. GEN/ADJ/COMM/488/2023-Adjn-O/o Pr. Commr- Cus-Mundra dated 12.01.2024.
F. Noticee(s) / Party / Importer	:	1. M/s. Madhav Extrusion (IEC No.: 2406004040) having their address at Plot No. 3436/37/38, GIDC, Phase-3, Dared, Jamnagar-361004, 2. M/s. Aditi Cargo Movers (CHA Code: AETPD3701NCH001) having their address at 219, 2nd Floor, Madhav Palace, Sector-8, Plot No. 55, Gandhidham 3. M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham having their address at Suite No. 101, Rishabh Arcade, Near GST Bhawan, Plot No. 83, Sector-8, Gandhidham – 370201
G. DIN	:	**20250171MO000000F2B5**

1. यह अपील आदेश संबन्धित को नि:शुल्क 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 सीमाशुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सी ए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

   "केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd **फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद**-380 004" **"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill**

Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

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

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

4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज,दंड याशास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्तिया दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

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

FACTS OF THE CASE IN BRIEF

M/s. Madhav Extrusion, situated at Plot No. 3436/37/38, GIDC, Phase-3, Dared, Jamnagar-361004, Gujarat *(hereinafter referred to as 'the importer')* are engaged in the import of goods and are holding IEC No. 2406004040 for the same.

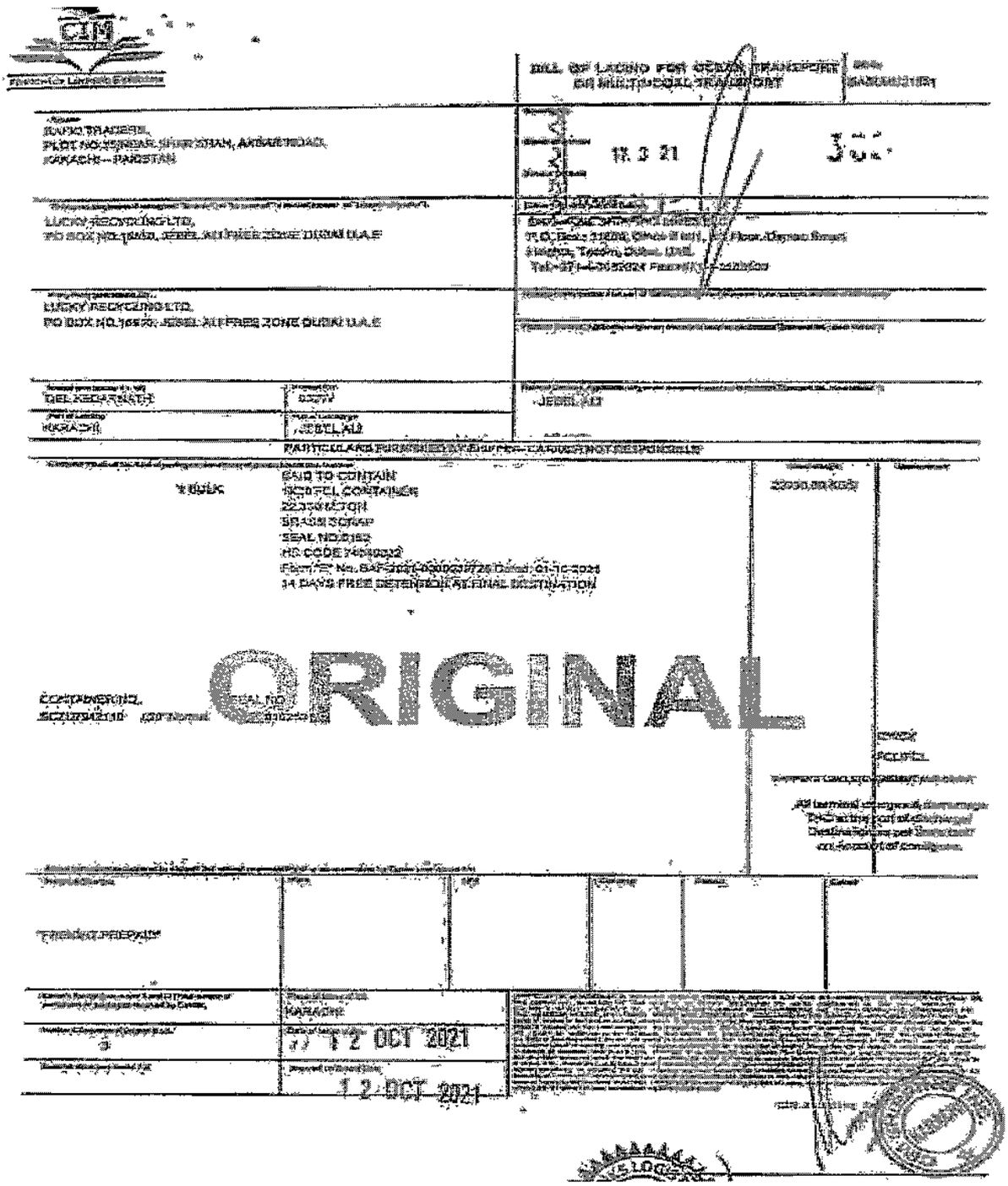
2. Whereas intelligence was gathered by the officers of SIIB Section, Custom House, Mundra as per which it appeared that the cargo under Container No. SCZU 7942110 was loaded from Port of Karachi, Pakistan and the importer had mis-declared the Country of origin of the goods as United Arab Emirates. M/s Aditi Cargo Movers, Customs Broker (CB/CHA) had filed Bill of Entry (BoE) No. 5982221 dated 25.10.2021 on behalf of M/s. Madhav Extrusion with respect to the cargo, said to be "Brass Scrap Honey as per ISRI", contained in Container No. SCZU 7942110.

3. The relevant details pertaining to the aforesaid BoE are as under:

Bill of Entry No. 5982221 dated 25.10.2021, BL No. SASLMU21551, Invoice No. RT-441-2021 dated 23.10.2021, Container No.: SCZU 7942110

Importer	**CHA**	**Cargo Declared / CTH**	**Qty.**	**Declared Value (Rs.)**	**Assessed Value(Rs.)**
M/s. Madhav Extrusion IEC-2406004040	M/s. Aditi Cargo Movers CHA Code - AETPD3701N CH001	Brass Scrap Honey as per ISRI 74040022	22330 Kgs	9224746	8970854
Declared Country of Origin		**Declared rate of duty**		**Assessed duty {Rs.}**	
United Arab Emirates		BCD-2.5% SWS-10% IGST-18%		19,05,858/-	

4. Documentary evidence in the form of Bill of Lading no. SASLMU21551 dated 12.10.2021 issued by CIM Shipping Inc. for transport of "Brass Scrap" in Container no. SCZU 7942110 from Karachi Port to Jebel Ali revealed that the said Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to Jebel Ali, UAE. Image of Bill of Lading no. SASLMU21551 dated 12.10.2021 for the said container (SCZU 7942110) is as under:



4.2 The above said Bill of Lading shows that the Container No. SCZU 7942110 bearing seal no. 018259 & 0152 has left from PKKHI (Port of Karachi) for AEJEA (Port of Jebel Ali) on 12.10.2021 on board the vessel "OEL Kedarnath". The Container number and seal number shown in Bill of Lading matches with that declared in import documents filed at Mundra Port wherein Country of Origin is declared to be United Arab Emirates.

4.3 Thus it appeared that the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan to evade the appropriate payment of Customs Duty. Therefore, the goods imported under the Bills of Entry No. 5982221 dated 25.10.2021 appeared to be liable for confiscation under the provisions of the Customs Act, 1962.

5. Whereas further investigation in the matter was initiated and statement of **Shri Sajish Sivaraj Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd.** (agent of M/s. Shah Aziz Shipping Lines LLC & delivery agent of the subject consignment at Mundra as per Master Bill of Lading No. SASLMU21551 dated. 21.10.2021) was recorded under Section 108 of the Customs Act, 1962, on 12.04.2023, wherein he interalia stated that:

- M/s. Hub & Links Logistics India Pvt Ltd, are the agent of M/s Shah Aziz Shipping Lines LLC, Dubai who are having their own containers used for export/import of cargo in various ports.
- Their scope of work is to coordinate with vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM on the basis of the documents received from the load port & collect the charges and documents from consignee before releasing the Delivery Order.
- The Container No. SCZU 7942110 was loaded from Jebel Ali and they were appointed delivery agent by their principal, M/s Shah Aziz Shipping Lines LLC. In this regard, they submit all the documents as under:
  (1) Shipping Bill No. KPEX-SB-48321 dated 08.10.2021 filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, 154 Street 10 Akber Road, Block-A;
  (2) Master Bill of Lading No. SASLMU21551 dated 12.10.2021 issued by CIM Shipping Inc. for transport of "Brass Scrap Honey as per ISRI" in Container no. SCZU 7942110 from Karachi Port to Jebel Ali;
  (3) Master Bill of Lading No. SASLMU21551 dated 21.10.2021 issued by Shah Aziz Shipping Lines LLC for transport of "Brass Scrap Honey as per ISRI" in Container no. SCZU 7942110 from Jebel Ali to Mundra;
  (4) Container tracking for Container no. SCZU 7942110;

  On perusal of above documents, he understands that 22330 Kgs. of "Brass Scrap" were loaded in Container No. SCZU 7942110 having seal no. 018259 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal No. 018259 affixed at Karachi Port is found intact at Mundra Port.
- Bill of lading no. of Karachi Port and Jebel Ali port are same as SASLMU21551 but dates are different since it is a case of switch Bill of Lading wherein the number remains same but the date of issue is changed. It is used when the traders do not want to disclose actual supplier to the consignee/buyer. All the details except shipper, consignee and/or notify party shall remain same in the switch Bill of lading. This is a usual practice undertaken by the traders to conceal the details of actual supplier so as to secure their clientele/source/business operation details.
- The allegation of Customs being deliberately mis-informed or mis-stated by M/s Hub & Links Logistics India Pvt. Ltd. is baseless since M/s Hub & Links Logistics India Pvt. Ltd. is not the actual transporter and they had no information regarding the previous load ports also. They came to know about the switch Bill of Lading only after the documents were arranged on enquiry by SIIB Section, Custom House Mundra. Before that, the switch Bill of Lading was the original bill of lading for them.
- They cannot be held responsible for switching of bill of lading as it was not done by them, nor it was in their notice, nor they had any say or approval in the matter.

6. Further, statement of **Sh. Dinesh Madhavlal Lahoti**, Partner, **M/s. Madhav Extrusion** was recorded under Section 108 of the Customs Act, 1962 on 17.04.2023, wherein he interalia stated that:

- The firm deals in manufacturing of Brass Extrusion Rods from goods procured from overseas as well as domestic suppliers.
- They are regular importers of Brass scrap.
- They are importing raw materials i.e. Brass Scrap for the past 15 years and are fully aware of the Customs procedures.
- On perusal of the following documents:
  (1). Shipping Bill No. KPEX-SB-48321 dated 08.10.2021 filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, Pakistan;
  (2). Bill of Lading No. SASLMU21551 dated 12.10.2021 issued by CIM Shipping Inc. for transport of "Brass Scrap" in Container no. SCZU 7942110 from Karachi Port to Jebel Ali;
  (3). Bill of Lading No. SASLMU21551 dated 21.10.2021 issued by Shah Aziz Shipping Lines LLC for transport of "Brass Scrap Honey as per ISRI" in Container no. SCZU 7942110 from Jebel Ali to Mundra;
  (4). Container tracking for Container no. SCZU 7942110;

he stated that it appears that 22330 Kgs. of Brass Scrap were loaded in Container No. SCZU 7942110 having seal no. 018259 & 0152 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal Nos. 018259 & 0152 affixed at Karachi Port is found intact at Mundra Port.

7. Further, statement of **Shri Vashav D Datta**, F Card Holder (CHA/F/6/2011) & Proprietor of Custom Broker M/s. Aditi Cargo Movers was recorded under Section 108 of the Customs Act, 1962, on 03.05.2023, wherein he interalia stated that:

- M/s Aditi Cargo Movers is a Custom Broker firm having office at 219, 2nd Floor, Madhav Palace, Sector-8, Plot No. 55, Gandhidham. They are engaged in clearances of import & export goods at Mundra Port as well as Kandla Port and primarily deal in import of Ferrous & Non-ferrous Metal Scrap, etc. and export of brass billets, ingots etc.
- For ensuring genuineness of their client, they collect the KYC documents and do cross referencing from their clientele.
- Being appointed as CHA, they had filed BoE no. 5982221 dated 25.10.2021, digitally signed the checklist and other documents and uploaded the same in E-Sanchit.
- M/s Madhav Extrusion had been their client for past 10 years and they didn't undertake detailed scrutiny of the documents and carried out the business on trust.
- On perusal of the following documents:
  (1). Shipping Bill No. KPEX-SB-48321 dated 08.10.2021 filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, Pakistan;
  (2). Bill of Lading No. SASLMU21551 dated 12.10.2021 issued by CIM

Shipping Inc. for transport of "Brass Scrap" in Container no. SCZU 7942110 from Karachi Port to Jebel Ali;

(3). Bill of Lading No. SASLMU21551 dated 21.10.2021 issued by Shah Aziz Shipping Lines LLC for transport of "Brass Scrap Honey as per ISRI" in Container no. SCZU 7942110 from Jebel Ali to Mundra;

(4). Container tracking for Container no. SCZU 7942110;

he stated that it appears that 22330 Kgs. of Brass Scrap Honey as per ISRI were loaded in Container No. SCZU 7942110 having seal no. 018259 & 0152 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal No. 018259 & 0152 affixed at Karachi Port is found intact at Mundra Port.

- He accepts that they have failed to fulfil their obligations laid down under Customs Brokers Licensing Regulations, 2018 while filing BoE No. 5982221 dated 25.10.2021 which had resulted in such mistake and ensure that the same will not be repeated in future.

8. While filing of BoE No. 5982221 dated 25.10.2021, the importer had uploaded Pre-shipment Inspection Certificate (PSIC) bearing no. WFZE/SHJ0/8637/2021 dated 11.10.2021 issued by M/s Wise Services FZE, Sharjah, UAE in terms of Para 2.54 of Handbook of Procedures 2015-20. An enquiry was made with the said agency regarding the genuineness of said certificate and e-mails dated 06.06.2023 & 09.06.2023 were sent to the e-mail id "wisefze@yahoo.com, text of the which is re-produced as under :

(E-mail dated 06.06.2023)

"Gentleman,

While investigating cases of evasion of Customs Duty, this office has come across three Pre-shipment Inspection Certificates (.....WFZE/SHJ0/8637/2021 dtd 11.10.2021 .....) issued by your company i.e. M/s Wise Services FZE, Sharjah. The said Certificates are attached herewith for ready reference please.

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

Regards"

(E-mail dated 09.06.2023)

"Gentleman,

Please forward copies of the certificates issued by you vide PSICs ..... WFZE/SHJ0/8637/2021 dated 11.10.2021 ..... for further investigation in the matter.

Regards"

9. Whereas communication/reply was received from the said Pre-shipment Inspection Agency (PSIA) vide e-mails dated 08.06.2023 & 09.06.2023. The PSIA (vide above referred e-mail dated 08.06.2023) has informed that there is a

mismatch in the details contained in the PSIC submitted by the importer (Certificate No. WFZE/SHJ0/8637/2021 dated 11.10.2021) and the one issued by them (Certificate No. WFZE/SHJ0/8637/2021 dated 27.11.2021) and as such the certificate submitted by the importer does not appear to be genuine. The PSIA also forwarded the genuine certificate issued by them under PSIC no. WFZE/SHJ0/8637/2021 dated 27.11.2021 (vide e-mail dated 09.06.2023).

10. Whereas it was evident from the above investigation and evidences available on record that seals mentioned in the BoE remained as such after its loading at Karachi Port till the Container reached at Mundra. It, therefore, appears that the imported goods "Brass Scrap Honey as per ISRI" imported in Container SCZU 7942110 covered under BL No. SASLMU21551 dated 21.10.2021, Invoice No. RT-441-2021 dated 23.10.2021 & BoE No. 5982221 dated 25.10.2021 are of Pakistan origin/exported from the Islamic Republic of Pakistan and not of UAE origin as claimed by the importer in BoE No. 5982221 dated 25.10.2021. The Bills of lading clearly indicate that the Container SCZU 7942110 sealed with seal no. 018259 & 0152 was loaded from Karachi, Pakistan and the goods therefore appear to be of Pakistan origin/exported from the Islamic Republic of Pakistan. Moreover, the container tracking obtained from M/s. Hub & Links Logistics (I) Pvt. Ltd. clearly indicates that the container SCZU 7942110 was loaded with goods at Karachi, Pakistan, then transshipped to Jebel Ali, UAE and finally reached Mundra Port, India where it was de-stuffed. It, therefore, appears that importer has mis-declared the Country of Origin of the said import item in the said Bill of Entry and the goods are in fact exported from the Islamic Republic of Pakistan.

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

10.3. Further, the PSIA's replies dated 08.06.2023 & 09.06.2023 suggests that the PSIC has been forged/fabricated with an intention to conceal the actual origin of goods and as such it appears that fake/fraudulent PSIC has been submitted to the Customs authorities at Mundra port to give an impression that the subject goods (covered under Bill of Entry No. 5982221 dated 25.10.2021) are of UAE origin instead of Pakistan Origin/exported from Islamic republic of Pakistan. This indicates that the importer has deliberately fabricated the PSIC, issued by M/s. Wise Services FZE, Sharjah, UAE in the name of some other importer, and submitted to the Customs authorities to conceal the actual origin of goods.

11. After introduction of "Self-assessment" vide Finance Act, 2011, the onus

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

12. Whereas the aforesaid facts shows that the importer had resorted to willful mis-declaration of Country of Origin in the Bill of Entry of the said imported goods by suppressing/fabricating/manipulating the said material facts, which shows the ulterior motive of the importer to evade payment of applicable Customs Duty (by classifying the goods under Chapter Tariff Heading No. 74040022) in respect of said imported goods cleared for home consumption. However, as per Notification No. 05/2019-Customs dated 16.02.2019, the Duty on the goods imported from the Islamic Republic of Pakistan and appropriately classifiable under Chapter Tariff Heading No. 98060000 is leviable @ 200% BCD. Also, as per Section 110(3) of the Finance Act, 2018, Social Welfare Charge (SWS) shall be calculated at the rate of 10% of the Customs Duty levied and collected under Section 12 of the Customs Act, 1962. Further, as per Schedule III of Notification No. 01/2017-I.T. (Rate) dated 28.06.2017 - Sr. No. 453, IGST @18% is chargeable on all the goods which are not specified in Schedules I, II, IV, V or VI and since CTH 98060000 is not specified in any of the Schedules in said Notification, therefore, the goods under said CTH are chargeable at 18% IGST. Therefore, the total Customs Duty amounting to Rs. 2,56,07,895/- (200% BCD + 10% SWS + 18% IGST) is liable to be demanded under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

13. In view of the fact that the imported goods appear to be of Pakistan Origin/exported from Islamic republic of Pakistan but mis-declared as of UAE origin in Bill of Entry No. 5982221 dated 25.10.2021 and imported in India in violation and contrary to the provisions of the Customs Act, 1962, therefore the said imported goods appeared liable for confiscation under Section 111 (m) of the Customs Act, 1962.

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

14.2 The lackadaisical approach adopted by the **Custom House Agent M/s. Aditi Cargo Movers** (CHA Code - AETPD3701NCH001) in filing the Bill of Entry No. 5982221 dated 25.10.2021 is evident from the fact that they themselves have admitted in their statement dated 03.05.2023 that they didn't undertake

detailed scrutiny of the documents & as such has failed to fulfill their obligations laid down under Customs Brokers Licensing Regulations, 2018 while filing BoE No. 5982221 dated 25.10.2021.

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

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

- **NOTIFICATION NO. 05/2019 – CUSTOMS NEW DELHI, THE 16TH FEBRUARY, 2019**

"

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

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
Notification No.05/2019-Customs
New Delhi, the 16thFebruary, 2019

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

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

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

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

....."

- **DGFT HANDBOOK OF PROCEDURES 2023**

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

2.51 Import of Metallic Waste and Scrap

Import of any form of metallic waste, scrap will be subject to the condition

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

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

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

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

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

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

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

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

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

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

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

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

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

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

➢ **SECTION 28AA Interest on delayed payment of duty**— *(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to paid interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

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

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

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

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

Any person, -

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

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

shall be liable, -

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

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

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

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

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

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

➢ **SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases.** - *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined*

under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

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

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

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

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso sha11 be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, nod twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

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

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

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

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

- **SECTION 114AA Penalty for use of false and incorrect material.**—*If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]*
- ***SECTION 117 Penalties for contravention, etc., not expressly***

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

➢ ***REGULATION 10 OF THE CUSTOMS BROKERS LICENSING REGULATIONS, 2018 –***

10 A Customs Broker shall —

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

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

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

17. Further, it also appeared that the **Custom Broker/Custom House Agent, M/s. Aditi Cargo Movers** (CHA Code: AETPD3701NCH001) has failed to fulfill their obligations laid down under Customs Brokers Licensing Regulations, 2018 and as such rendered themselves liable for imposition of penalty under Section 117 of the Customs Act, 1962.

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

19. Therefore, **M/s. Madhav Extrusion** (IEC No.: 2406004040) having their address at Plot No. 3436/37/38, GIDC, Phase-3, Dared, Jamnagar-361004, Gujarat were called upon to show cause to **the Commissioner of Customs**, Custom House, Mundra having his office at 5B, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why:

(i) Classification of 22330 Kgs. of "Brass Scrap Honey as per ISRI" imported in Container No. SCZU 7942110 covered under BL No. SASLMU21551 dated 21.10.2021, Invoice No. RT-441-2021 dated 23.10.2021 & Bill of Entry No. 5982221 dated 25.10.2021 under Chapter Tariff Heading No. 74040022 should not be rejected & the same should not be classified under Chapter Tariff Heading No. 98060000 of

the Customs Tariff Act, 1975.

(ii) 22330 Kgs. of "Brass Scrap Honey as per ISRI" imported in Container No. SCZU 7942110 covered under BL No. SASLMU21551 dated 21.10.2021, Invoice No. RT-441-2021 dated 23.10.2021 & Bill of Entry No. 5982221 dated 25.10.2021 valued at **Rs. 92,24,746/ -** *(Rupees Ninety Two Lakh Twenty Four Thousand Seven Hundred Forty Six Only)* should not be confiscated under Section 111 (m) of the Customs Act, 1962.

(iii) The **Customs Duty** of **Rs. 2,56,07,895/-** *(Rupees Two Crore Fifty Six Lakh Seven Thousand Eight Hundred Ninety Five Only)* ***(as detailed in Annexure-A to this Notice)*** should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 and why the Customs Duty of **Rs. 19,05,858/-** *(Rupees Nineteen Lakh Five Thousand Eight Hundred Fifty Eight only)* already paid by them, should not be appropriated and adjusted against the said demand.

(iv) Applicable interest should not be charged and recovered from them under the provisions of Section 28 AA of the Customs Act, 1962.

(v) Penalty should not be imposed upon them under the provisions of Sections 112(a)(ii)/114A of the Customs Act, 1962.

(vi) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

20. Further, **M/s. Aditi Cargo Movers** (CHA Code: AETPD3701NCH001) having their address at 219, 2nd Floor, Madhav Palace, Sector-8, Plot No. 55, Gandhidham were called upon to show cause to **the Commissioner of Customs**, Custom House, Mundra having his office at 5B, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why penalty should not be imposed on them under the provisions of Section 117 of the Customs Act, 1962.

21. Also, **M/s. Hub & Links Logistics (I) Pvt. Ltd.**, Gandhidham having their address at Suite No. 101, Rishabh Arcade, Near GST Bhawan, Plot No. 83, Sector-8, Gandhidham - 370201 were called upon to show cause to **the Commissioner of Customs**, Mundra having his office at 5B, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why penalty should not be imposed upon them under the provisions of Section 112(b)(ii) and Section 117 of the Customs Act, 1962.

22. DEFENCE SUBMISSION

M/s Madhav Extrusion vide letter dated 17.07.2024 submitted their written submission which is reproduced as below:

22.1 The allegations and averments leveled in the SCN are hereby denied. Save

and except what is specifically admitted herein, no part of SCN which is not expressly dealt with, shall be deemed to be admitted.

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

(i) It is a matter of record that the importer had filed Bill of Entry No. 5982221 dated 25.10.2021 with Custom House, Mundra on the basis of following amongst other documents received from the overseas supplier, i.e., Aden Scrap Trading (LLC), Sharjah- United Arab Emirates:

a) Invoice No. RT-441-2021 dated 23.10.2021 issued by overseas supplier M/s. Aden Scrap Trading (LLC), Sharjah-United Arab Emirates showing port of shipment as Jebel Ali, U.A.E to Mundra.

b) Packing list issued by the said overseas supplier for shipment from Jebel Ali-UAE to Mundra.

c) Bill of lading No. SASLMU21551 dated 21.10.2021 showing port of loading as Jebel Ali and port of discharge as Mundra.

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

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

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

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

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

In the case of Kirti Sales Corpn. v/s Commr. of Cus., Faridabad, 2008 (232) ELT 151 (Tri.-Del.), Hon'ble Tribunal has set aside confiscation ordered under

Section 111 (m) of Customs Act, 1962 and consequential penalty under Section 112 (a) when the declaration was made on the basis of documents supplied by the foreign supplier and there was no intentional or deliberate wrong declaration or misdeclaration on its part.

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

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

22.3 It may be appreciated that during the course of inquiry, officers of SIIB have recorded statement of following persons:
(i) Shri Dinesh Madhavlal Lahoti, Partner of M/s. Madhav Extrusion.
(ii) Shri Sajish S. Puthenchira, General Manager of M/s. Hub & Links Logistics (1) Pvt. Ltd.

22.4 In his statement dated 17.04.2023, Shri Dinesh Madhavlal Lahoti, Partner of M/s. Madhav has stated the following facts to the Custom officers:

*"**Q7.** On-going through the entries made in the subject Bill of Entry and the supporting documents as well as the documents shown to you (to establish that the goods are of Pakistani Origin), it appears that you have mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan to evade the appropriate payment of Customs Duty. Please comment.*
***Ans.** With respect to the evidences signaling that the subject goods are in fact of Pakistani origin, I state that we had no knowledge of the same and the order was placed by us for procurement of Brass Scrap Honey as per ISRI Of UAE origin. As such, it was not at all intentional and we had no intention to evade the appropriate payment of Customs Duty applicable on goods of Pakistan Origin."*

*"**Q8.** Do you want to state something else?*
***Ans.** It is to state that we had placed an order for purchase of Brass Scrap Honey as per ISRI of UAE origin from M/s. Aden Scrap Trading LLC, UAE as per Sales Contract bearing no. SC/186/2021 dated 29.09.2021. The goods supplied were stated to be of UAE origin by the said supplier. Since no other verification was done in this regard, we have not knowledge of the goods being of Pakistan origin/exported from the Islamic Republic of Pakistan."*

22.5 The above facts stated by Shri Dinesh Madhavlal Lahoti, Partner of M/s. Madhav regarding absence of knowledge have not been rebutted by any cogent evidence in the Show Cause Notice.

22.6 The officers also recorded statement of Shri Sajish S. Puthenchira, General Manager of M/s. Hub & Links Logistics (1) Pvt. Ltd., wherein, he has stated that in reply to Q5 that ".it was not in our knowledge that the goods were of Pakistan

origin. We had no information regarding the previous load ports also." There is nothing in his statement to indicate that he had received any instructions from the importer regarding switch bill of lading and that the importer had any knowledge regarding previous load port, if any, in respect of the goods under consideration.

22.7. As a matter of fact, Shri Sajish Sivaraj Puthenchira, General Manager of the shipping line has stated in reply to Q4 that:
"it is a case of switch Bill of Lading wherein the number remains the same but the date of issue is changed. It is used when the traders does not want to disclose actual supplier to the consignee/buyer."

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

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

22.10 The container tracking system of Pakistan International Container Terminal at Karachi is in public domain. As such, the details of container number and seal number obtained by department from the shipping agent were available for verification on the PICT website from the very date when container was loaded from PICT for UAE. Therefore, there is no basis for alleging "willful" suppression or mis-declaration of country of origin by M/s. Madhav.

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

22.12 Consequently, the impugned notice dated 12.01.2024 demanding differential duty in respect of imported goods covered by bill of entry No. 5982221 dated 25.10.2021 is clearly time barred, having exceeded the time limit of two years that is imposed in Section 28 (1) of Customs Act, 1962.

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

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

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

(ii) It is evident from the statements recorded during investigation that none of the persons have deposed that the importer, their partner or any other person

representing the importer had any prior knowledge about the origin of goods from Pakistan as alleged in the impugned notice.

(iii) The partner of M/s. Madhav have stated in his statement that the goods supplied to them were stated to be of UAE origin by the overseas supplier.

22.14 Therefore, the importer was under a bona fide belief that goods were of U.A.E. origin. This belief got conformed when customs authority at the port of import permitted clearance after due verification of all the documents received from the overseas supplier as well as examination of goods. Hence, the importer had no reason to believe that the declaration, statement or document presented by them along with bill of entry with regard to country of origin was allegedly false or incorrect in any material particular, as alleged by way of impugned notice after over two years of clearance of goods.

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

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

(i) The allegation is based on documents like shipping bill supposedly filed with Customs, Karachi and bill of lading for container movement from Karachi to Jebel Ali and a separate bill of lading for container movement from Jebel Ali to Mundra, all obtained from the shipping line, namely, M/s. Hub & Links Logistics (1) Pvt. Ltd.

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

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

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

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

(vi) However, it is a settled law that no duty can be demanded and no penalty can be imposed based on mere assumptions and presumptions. The charge must

be proved to the hilt. Inasmuch as no evidence in the form of certificate of origin, etc. claiming the goods to be of Pakistan origin is brought on record, demand of duty by treating such goods of Pakistan origin is not tenable in the eyes of law.

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

22.18 The allegation leveled against the importer that he had resorted to willful mis-declaration of Country of Origin, therefore, is unsubstantiated, unproved and therefore baseless. Consequently, the proposals contained in para 16 and 19 of the impugned notice are liable to be vacated, *in toto*.

22.19 The Noticee prayed to drop the proceedings and oblige.

23. M/s Aditi Cargo Movers (Noticee No. 2) submitted their written reply vide letter dated 12.02.2024 which is reproduced as below:

23.1 In regard to the proposed penalty on us under section 117 of the Customs Act, 1962, proposed in para 20 of the SCN and all their submissions, even if, these pertain to the Confiscation of the goods under section 111 and or in any other manner to the offending goods and/or in regard to any other violation, may please be strictly viewed as their defense against the proposed penalty under section 117 of the Customs Act, 1962, as we have nothing to do, anything otherwise, with confiscation of the offending goods and are thus making these submissions as the penalty and its quantum directly flows from liability to confiscation and other contraventions. We say and submit that the offending goods may otherwise be dealt with as per the provisions of the Customs Act, 1962 or any other law in force. We say that we are not concerned in any manner with any offending goods or its confiscation in any manner.

NO SHOW CAUSE FOR CONFISCATION U/S 111

23.2 At the outset, I put it on record that the SCN rightly does not call upon us to show cause as to why the goods should not be confiscated under the provisions of Section 111 of the Customs Act, 1962 and thus it is an admitted position that we have not done any acts or omissions, and have also not aided or abetted in any commission or omission of any acts which, have rendered the goods liable to confiscation under Section 111 of the Customs Act, 1962 and thus it is an admitted fact in the SCN that we have not acted with knowledge and/or have not abetted in any manner with knowledge in regard to the offending goods or the mis- declaration of origin of the goods and thus it an admitted position that we had acted bonafidely and thus the proposal to levy penalty on us is totally erroneous and thus the impugned SCN as far as it is directed against us is required to be set aside and it is prayed accordingly.

23.3 Further the evidence recorded under section 108 of the Customs Act, 1962 of various persons including importers, the Proprietor of the CB firm and, Shipping Lines personnel and others categorically confirm that the firm was ere not aware of the alleged mis-declaration of the COO and thus in absence of any knowledge, the proposal to levy penalty under section 117 is totally erroneously leveled and contrary to evidence on record and is thus required to be set aside.

23.4 Coming to the SCN, which invokes section 117 of the Act against the CB firm and for ready reference section 117 is reproduced herein below: -

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

23.5. The provision of section 117 is invoked against the CB firm on the basis of summary of allegations summarized at para 14.2, which for the purpose of ready reference is reproduced herein below:-

14.2 The lackadaisical approach adopted by the Custom House Agent M/s. Aditi Cargo Movers (CHA Code AETPD3701NCH001) in filing the Bill of Entry No. 5982221 dated 25.10.2021 is evident from the fact that they themselves have admitted in their statement dated 03.05.2023 that they didn't undertook detailed scrutiny of the documents & as such has failed to fulfill their obligations laid down under Customs Brokers Licensing Regulations, 2018 while filing BoE No. 5982221 dated 25.10.2021.

23.6. Further, the SC also refers to Regulation 10 (a) and (m) of the Customs Brokers Regulations, 2018 Hereinafter referred to as the Importer), which for the purpose of ready reference are reproduced herein below: -.

Regulation 10. Obligations of Customs Broker. - A Customs Broker shall
(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;
(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

23.7 Firstly, it is strongly denied that we have violated any provision of the CBLR and the reference to regulation 10(d) and (m) is totally erroneous as there is no evidence even to remotely suggest that there is violation of the CBLR. It is admitted position as per the investigation that we have taken due authorization and have verified the credentials of the importer, who was regular importer for more than a decade and whose clearances were handled by us on regular basis and the said importer has never come to any adverse notice. We have filed the Bill of Entry strictly on the basis of documents made available by the said importer. We filed the Bill of entry in a routine manner without having any doubt or suspicion about the genuineness of the documents. It is not the case of the importer or the department that he sought any clarification or advice from the CB and in fact the importer is not new to import business and thus was fully aware about the provisions of the Act and the rates of duty applicable on the goods imported by them. No advice was sought and thus there was no occasion to give any advice and if the importer had sought any advice about the origin of the goods and levy of duty, or we would have remotely suspected that there is any mis declaration likely to be made, we would have not only advised the importer to not resort to such activities and also would have brought these facts

to the notice of the department either by way of informing in writing or by way of intelligence sharing.

23.8 As regard rendering advice to the importer and the allegation of violation of Regulation 10(d) or (m) is concerned, we are placing reliance on the following judgments and thus the allegation of violation of CBLR is totally unsustainable and thus no penalty is imposable on the CB firm under section 117 of the Act. They have relied upon:-

2016 (337) E.L.T. 586. (Tri. - Del.)
In the CESTAT, Principal Bench, New Delhi P.V. Cargo Carriers P. Ltd Versus Commr. Of Customs (G), New Delhi Final Order No. C/A/51084/2016-CU(DB), dated 16-3-2016 in Appeal No. C/50741/2015

6. The other main allegation against the appellant is that they did not advice their client properly relating to importation of chemicals. We find that with this observation, original authority concluded that the appellant has actively connived with the importer under reference in their illegal and nefarious activities. We find such summary and serious conclusion has been drawn without any basis or evidence. Even if it is conceded that the appellant could have put in more efforts to explain to the clients the various conditions with reference to import of chemicals, such omission by itself cannot lead to a conclusion of active connivance which is a positive misconduct. The appellant obtained all the documents and filed the bill of entry based on the documents submitted by the importer. It is only on test by a competent laboratory the actual nature of the chemical could be found.

2016 (344) E.L.T. 954 (Tri. - Mumbai) Cargo Concept (Bombay) Pvt Ltd vs Commissioner of Custom (G), Mumbai

As regard the violation of the Regulation 13(d) and (n), we find that Id. Commissioner held that there is violation under Regulation 13(d), contending that appellant was given CHA work not directly by the exporter but through one shipping line, therefore, appellant have never met to the exporter, accordingly appellant have not advised the exporter. In this regard, we find that this is general practice in the CHA business that CHA work is brought by the various intermediary but ultimately it is CHA and importer or exporter which are under contract regarding the CHA clearance as well as payment term. Therefore, merely because some shipping line brought client to the appellant does not lead to any conclusion that there was no relation between appellant and exporter. As regard the charge on the appellant that they have not advised to the exporter, we do not find any substance in this charge for the reason that in the present case as regard the documents there was no discrepancy. Even after detection different nature of the goods the description of the goods remained same. Therefore, there was no occasion for CHA to advise client, hence this charge is not sustainable. As regard the charge of delay and deficiency in the performance by the CHA, we find that the appellant have performed their clearance work of export consignment in usual course and nothing brought on record that appellant as CHA have delayed in the clearance work or there is any deficiency in the performance of clearance work on the part of the appellant. Therefore, this charge under Regulation 13(n) does not establish. We have gone through the judgments cited by the rivals and considered the same, however we do not need to discuss each judgment as every case of revocation of CILA license is based on

fact of individual case. As per our above discussion, we are of the considered view that the impugned order is not sustainable, hence the same is set aside. Appeal is allowed.

23.9 The kind attention of the Hon'ble Commissioner is also invited to two very recent Judgments) of the Hon'ble Tribunal and one very recent judgment of the Hon'ble Delhi High Court wherein the allegation of violation of the CBLR were set-aside while observing as under: -

a. In the case of ***APS Freight & Travels Pvt. Ltd. Vs. Commissioner of Customs (General), New Delhi, reported in 2016 (344) ELT 602 (Tri. - Del)***

"4. We have heard both the sides and examined appeal records. The license of the appellant stands revoked only on the ground that they have failed in their obligation of verifying the identity of his client and their existence in the given address. The admitted facts of the case are that the importer's details as available in IEC, PAN Cards, Bank Account and electricity have been checked by the appellant. No physical verification of importer's premises is mandated in the regulations nor it is a general requirement as per business practice. No violations have been noticed in respect of transactions with Customs with reference to consignment cleared through the appellants. As such the order of revocation of license, only on the ground that on later verification the importer was not found in the indicated premises, is not justifiable"

b. In the case of ***Poonia & Brothers Vs. Commissioner of Customs (Preventive), Jaipur, 2019 (370) ELT 1074 (Tri. Del),*** wherein the Hon'ble Tribunal held that:

"6..... The CHA is not supposed to verify the each and every aspect about the business of importer as the Inspector of Department or investigating agency. From the submission made by the Id. Advocate and fact on record, it is apparent that the appellant has taken due diligence while verifying the KYC of the appellant based on the record submitted by him.....

c. In the ***Customs Appeal Nos. 51658/2021 & 51665/2021 of Bright Clearing & Carrier Pvt. Ltd. & Star Carrier filed with CESTAT, New Delhi (decided vide Final Order No. 51083-51084/2022 dated 18.11.2022)*** wherein the Hon'ble Tribunal held that:

"18. However, the burden of this very liberal, open, scheme and its potential misuse cannot be put at the doorstep of a Customs Broker. Just as the officer's responsibility ends with doing his part of the job (which may be issuing a registration without physical verification or allowing exports without assessing the documents or examining the goods), the Customs Broker's responsibility ends with fulfilling his responsibilities under Regulation 10 of the CBLR, 2018. In dispute in these appeals is CBLR 10(n) which, as we have discussed above, does not require any physical verification of the address of the exporter/importer by the Customs Broker."

d. In the Appeal No. ***C/50997/2021-DB filed by Mauli Worldwide Logistics with CESTAT, New Delhi (decided vide Final Order No. 50561/2022 dated 04.07.2022)*** wherein the Hon'ble Tribunal held that:

22. The Customs Broker is not Omniscient and Omnipotent. The responsibility of the Customs Broker under Regulation 10(n) does not extend to ensuring that all the documents issued by various officers of various departments are issued correctly. The Customs Broker is not an overseeing authority to ensure that all these documents were correctly issued by various authorities. If they were wrongly issued, the fault lies at the doorstep of the officer and not the Customs Broker.
i. Naman Gupta Vs. Commissioner of Customs airport & General New Delhi W.P. (C) 15808/2022 order dated 30.01.2024

19 As per reports of jurisdictional GST authorities, enquiries were conducted at the addresses of the exporters in February, 2021 i.e. more than six months from the date of export of the goods of the respective exporters. The Commissioner of Customs failed to appreciate that there was no specific finding of the jurisdictional GST authorities that such exporters were not in existence on the date of export. Therefore, it cannot be concluded that the exporters who engaged the petitioner to handle the clearance of the goods, were not in existence on the date of export. Moreover, once the IEC particulars as mentioned are verified from the system as maintained by the Customs, there is no requirement statutorily placed upon the CHA to undertake an independent exercise in order to verify the details as furnished by the exporter. Reliance in this regard may be placed upon the following observations rendered by the Division Bench of this Court in **Kunal Travels (Cargo) vs Commissioner of Customs (Import & General) New Customs House, IGI Airport, New Delhi [2017 SCC OnLine Del 76831**:-

"12. Clause (e) of the aforesaid Regulation requires exercise of due diligence by the CHA regarding such information which he may give to his client with reference to any work related to clearance of cargo. Clause (1) requires that all documents submitted, such as bills of entry and shipping bills delivered etc. reflect the name of the importer/ exporter and the name of the CHA prominently at the top of such documents, The aforesaid clauses do not obligate the CHA to look into such information which may be made available to it from the exporter/importer. The CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect to clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area, What is noteworthy is that the IE Code of the exporter M/s H.M. Impex was mentioned in the shipping bills, this itself reflects that before the grant of said IE Code, the background check of the said importer/exporter had been undertaken by the customs authorities, therefore, there was no doubt about the identity of the said exporter. It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE Code given to it by a client for each import/export transaction. When

such code is mentioned, there is a presumption that an appropriate background check in this regard i.e. KYC etc. would have been done by the customs authorities. There is nothing on record to show that the appellant had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported. In the absence of such knowledge, there cannot be any mens rea attributed to the appellant or its proprietor, Whatever may be the value of the goods, in the present case, simply because upon inspection of the goods they did not corroborate with what was declared in the shipping bills, cannot be deemed as mis- declaration by the CHA because the said document was filed on the basis of information provided to it by M/s H.M. Impex, which had already been granted an IE Code by the DGFT. The grant of the IE Code presupposes a verification of facts etc. made in such application with respect to the concern or entity. If the grant of such IE Code to a non-existent entity at the address WZ-156, Madipur, New Delhi-63 is in doubt, then for such erroneous grant of the IE Code, the appellant cannot be faulted. The IE Code is the proof of locus standi of the exporter. The CHA is not expected to do a background check of the exporter/client who approaches it for facilitation services in export and imports, Regulation 13(e) of the CHALR 2004 requires the CHA to: "exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage" (emphasis supplied). The CHAs due diligence is for information that he may give to its client and not necessarily to do a background check of either the client or of the consignment. Documents prepared or filed by a CHA are on the basis of instructions/documents received from its client/importer/exporter, furnishing of wrong or incorrect information cannot be attributed to the CHA if it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The mis-declaration would be attributable to the client if wrong information were deliberately supplied to the CHA. Hence there could be no guilt, wrong, fault or penalty on the appellant apropos the contents of the shipping bills. Apropos any doubt about the issuance of the IE Code to M/s H.S. Impex, it was for the respondents to take appropriate action. Furthermore, the inquiry report revealed that there was no delay in processing the documents by the appellant under Regulation 13(n).

1. It is thus evident from the legal position as enunciated in Kunal Travels (supra), Customs Broker is entitled to proceed on the basis that IEC has come to be generated in favour of the exporter after appropriate background check having been conducted by the customs authorities. The further details that may have been captured and form part of IEC Registration of an importer are aspects which have to be verified by the customs authorities themselves. Moreover, it is also not the case of the Department that IEC, GSTIN, PAN & Authorized Dealer Code of the exporters were not genuine. In the aforesaid backdrop the Court in Kunal Travels (supra) held that the obligation of the CHA under Section 13 (e) of the CHALR, 2004 cannot be stretched to it being obliged to undertake a further background check of the client. As such, as a Customs Broker, the petitioner cannot be held liable because exporters were not traceable, after the issuance of 'Let Export Orders' and export of the goods out of

the country.

2. In our considered opinion, the Commissioner of Customs erred in accepting the findings of the Inquiry Officer regards the failure of Customs Broker to comply with the provisions of Regulation 10(d), 10 (m), 10 (n) & 10 (q) of the CBLR, 2018.

3. The Writ Petition shall stand allowed. The impugned order dated 29.06.2022, insofar as, it revokes the CB License of the petitioner and levies penalty upon the petitioner shall stand quashed and set aside.

2019 (365) E.L.T. 395 (Del.) – Commissioner of Customs (G) vs KVS Cargo

3. The adjudicating or appellate authorities were thus not afforded the option of picking up the one element from the revocation and forfeiture option and imposing penalty along with forfeiture. To that extent, the CESTAT clearly went beyond the Regulations. However, this Court is not persuaded to exercise jurisdiction to set aside the order entirely because the role ascribed to the CB holder was one of carelessness and negligence. In this regard the Court notices that both the authorities - the Commissioner as well as he CESTAT appeared to have imposed almost impossibly high standards upon the CB holder who is expected to not only verify the correctness of the documents with reference to the publically available material but also carry out independent investigations. No doubt, the CB holder acts as an interface between the Customs Authorities and facilitates the task of a consignee/importer, vet to expect such an independent agent - who is not a public servant or in any way connected with the Customs Department to act as a public trustee (an expression used by the Commissioner), is beyond what is contemplated.

23.10. Without prejudice to the above, the Hon'ble Commissioner may please appreciate that no penalty under the provisions of section 114 or 112 or 117 can be imposed for alleged violation of the Customs Broker Licensing regulations as the CBLR itself provides for penal action if there is violation of any of the Regulations or the conditions of the customs broker license. The Hon'ble Tribunal may please appreciate that proceeding under the Customs Act and the Regulations are distinct and separate as per Regulations 18 proviso clause which abundantly makes it clear that the action under CBLR 2013 will be without prejudice to the action that may be taken under the Customs Act, 1962. Thus, no penalty under section 112,114 or 117 can be imposed on the ground of the alleged violation of CBLR and thus imposition of penalty is otherwise without any authority of law and is in excess of jurisdiction and thus is required to be set aside. Reliance in this regard is placed on the ***Final order No. 518 35/2018 dt. 24.4.2018 passed in the matter of Appeal No. 50830 of 2018 of M/s. Global Marine Agencies by Hon'ble CESTAT New Delhi***. wherein it was held as under:

Para 9:

"In view of the above discussions, we are of the view that the renewal of the Customs Broker License cannot be refused only for the reason that

the appellant has been penalized under section 114. Regulation 18 (provision) makes it absolutely clear that the actions taken under the CBLR,2013 will be without prejudice to the action that may be taken under Customs Act, 1962, thereby making it explicit that the proceedings under the Act as well as the Regulation are distinct and separate,"

23.11 The Hon'ble Commissioner may please appreciate that it is an admitted position that the we as a Custom Broker were not aware of any manipulation of COO or the any mis-declaration of the COO and thus and it is also a matter of record that we have verified the credential of the importer by taking reasonable steps as we have obtained the KYC documents. There being no allegation but only lackadaisical approach which cannot be an act rendering the goods liable to confiscation or any aiding or abetting the importer and thus no penalty under section 117 is imposable which presupposes knowledge. We in this regard rely upon a judgment of the Hon'ble Tribunal in the matter of ***P.D. Prasad & Sons Pvt Ltd 2017 (358) ELT 1004 (T)*** wherein it was held as under:

"5. It is not disputed on record that before filing the shipping bills the appellant took authorization letter as also verified the PAN card and IEC copy of the exporter. As per the Revenue, the only lapse of the CHA is that he did not physically verified address given by the exporter. According to the learned advocate, the said lapse on the part of the employee of the CHA cannot be held to be strong evidence so as to conclude that appellant aided and abetted the exporter in fraudulent exports. This may, at the best result in contravention of some provisions of the Regulation 13 of CHALR but cannot be made the basis for invoking the penal provisions of Section 114 of the Customs Act.

Tribunal in the case of Nirmal Kumar Agarwal v. Commissioner of Customs (Gen.) Mumbai [2013 (298) E.L.T. 133 (Tri.-Mum.)] observed that in the absence of any evidence showing the involvement of CHA as regards the fraudulent activities, ingredient of Section 114 cannot be held to be satisfied so as to impose penalties. Under similar circumstances, the penalty on the CHA was set aside in the case of Prime Forwarders v. Commissioner of Customs, Kandla [2008 (222) E.L.T. 137 (Tri.-Ahmd.)], wherein it was observed by the Tribunal that as CHA acted on the basis of documents given to him and there is nothing to show that he was aware of containers being stuffed with the material other than the one declared, it cannot be said, in the absence of any evidence to the contrary, that he was involved and had knowledge about the misdeclaration. Further, in the case of Akanksha Enterprises v. Commissioner of Customs, Mumbai [2006 (203) E.L.T. 125 (Tri.-Delhi)], it was observed that CHA's role is limited to facilitate the proper filing of the documents as received from the exporter and he is not required to go into the authenticity of the value of the goods.

6. In the present case also, the appellant filed shipping bills on the basis of documents received by them. If there is any difference in the value of the export consignment, the CHA cannot be held responsible for the same as it is not the duty of the CHA to adjudge the correct value of the goods. There is virtually no evidence on record to show that he was aware of the overvaluation of the export consignment and he simply proceeded by

the declaration made by the exporters. In such a scenario, the appellant cannot be held liable for any aiding and abetting and consequently to penalty.

7.In the case of Adani Wilmar Ltd. v. Commissioner of Customs (Prev), Jamnagar [2015 (330) E.L.T. 549 (Tri.- Ahmd.)] wherein it was held that non-following of the KYC norms of CHA Licence would result in breach of Regulation 13 of CHALR and not under Customs Act, 1962. In the absence of any evidence that CHA was aware of the alleged irregularities by the exporter, imposition of penalty on him is not justified. We find from the present impugned order that apart from the fact that the appellant did not physically verified the correctness of the address given to him by the exporter, whereas all other documents were verified from computer data and found to be correct. This fact by itself cannot lead to conclusion that he was aware of the overvaluation of the export consignment, thus calling for imposition of penalty upon him."

23.12. The Ld. Commissioner may kindly appreciate that section 117 clearly lays down the ingredients as abetment and the abetment presupposes knowledge and in absence of knowledge on the part of the CB in any mis-declaration of the particulars of offending goods in the subject consignment, allegation of aiding and abetting remains unproved and thus no penalty u/s 117 is imposable on the CB. The Ld. Commissioner may please appreciate that abetment presupposes knowledge of the proposed offense and also pre supposes benefit to be derived by the abettor. In the present case there is no allegation of any prior knowledge and there is no allegation that the undersigned was to derive any unlawful gains or was the beneficiary in any manner. Thus, in the present case abetment, which is pre-requisite for invoking section 117, cannot be alleged and the impugned SCN has been issued merely on the basis of assumption and presumption and thus the same is required to be set aside. Reliance in this regard placed on the judgment of the Hon'ble Tribunal in the matter of ***Commissioner of Customs Mumbai Vs. M. Vashi- 2003 (151) ELT 312. Success Engineering - 2008 (232) ELT 330 (T), & Sai Shipping Service 2009 (239) ELT 104 (T).***

2003 (151) E.E.T. 312 (Tri. - Mumbai) Commissioner of Customs, Mumbai Versus M. VASI Order Nos. 3954-58/2002-WZB/C-I, dated 12-11-2002 in Appeal Nos. C/991/2000

Penalty Abetment presupposes knowledge of the proposed offence and also presupposes benefit to be derived by the abettors there-from - Action of backdating of agreement even if held improper, nothing in evidence to indicate that the persons were aware that the backdated document was a cover up for an offence under the Customs Act, 1962 In the absence of conscious knowledge, penalty on charge of aiding and abetting would not sustain Section 112 of Customs Act, 1962. [para 20]

20. S/ Shri Lambat, Mutta and Pandey were alleged to have aided and abetted the acting of the two partners. Abetment presupposes knowledge of the proposed offence and also presupposes benefit to be derived by the abettors therefrom. Even if the action of backdating of the agreement is improper (and perhaps illegal), there is nothing in the evidence to indicate that these three persons were aware that the

backdated document was a cover up for an offence under the Customs Act, 1962. In the absence of conscious knowledge, penalty on charge of aiding and abetting would not sustain.

2008 (232) E.E.T. 330 (Tri. - Ahmd.) Success Engineering Versus Commissioner of Customs, Kandla

Penalty on Customs House Agent - CHA received document from another CHA, photocopies were bearing original bank stamp as attestations, proper authorization obtained from importing firms and bills of entry filed - No evidence to show that CHA firm and partner knew about undervaluation and they abetted importer on evasion and they were involved in fraud - Penalties imposed on CHA set aside - Section 112 of Customs Act, 1962. (paras 8, 9]

8. The other two appellants are, the CHA firm and the partner. In respect of these two appellants, it has been contended that they could not have detected that the documents submitted by the importers are not genuine. They had received the documents from M/s. Ultra Clearing Agencies; photocopies were bearing original bank stamp as attestations; they had obtained proper authorization from the importing firms and had filed bills of entry and therefore, they had acted in good faith and they had no intention to abet the importers. Commissioner has also observed that they should be more careful and not acted on the basis of copies of documents supplied to them by another CHA. He has also observed that there is nothing on record to show that they were involved in the fraud. Therefore, he observed that he has taken a lenient view and imposed penalties as discussed above. The CHA is required to exercise more care and make efforts to ensure that the documents submitted by him are proper. One of the most important requirements to be fulfilled by a CHA as per Customs House Agents Licence Regulations, 2004 is to obtain an authorization from the importers whom he is representing and advise the client to comply with the provisions of the Act.

9. In this case, there is no evidence to show that the CHA firm and the partner knew about undervaluation and they abetted the importer on evasion and they were involved in the fraud. Therefore, penalties imposed on them are set aside.

2009 (239) E.L.T. 104 (Tri. - Del.) Sai Shipping Services Versus Commissioner of Customs, New Delhi

Penalty on Customs House Agent Overvaluation Abetment Overvaluation of export goods and fraudulent availment of drawback alleged - Shipping bills filed by appellants based on documents supplied by exporter Representative of exporter accompanying goods during examination No evidence that appellant aware of fraudulent activities of exporter - Penalties set aside - Section 114 of Customs Act, 1962. [paras 2, 9, 10]

23.13 The Ld. Commissioner may kindly appreciate that for imposing penalty under Section 117, it is mandatory that the acts or omissions should be proved with the positive and cogent evidence and burden to prove squarely lies upon the department. In the present case there is no positive and cogent evidence brought on record and thus the department had miserably failed to discharge the burden of proving any acts or omission or any contravention of any provision of the Act and thus no penalty can be imposed on the CB firm. It is also settled legal

position that mere failure by the Customs broker to carry out the duties according to CBLR cannot be a sufficient ground for imposition of penalty under the Customs Act, 1962 and in this regard the Reliance is placed on the judgment of the Hon'ble Tribunal in the matter of-Syndicate Shipping Services-2003 (154) ELT 756 (T), Sethu Samudhra Shipping Services - 2010 (262) ELT 570 (T) & Liberty Marine Syndicate - 2010 (259) ELT 550 (T).

2003 (154) E.L.T. 756 (Tri. - Chennai) Syndicate Shipping Services Pvt. Ltd. Versus Commr. of Cus., Chennai

Penalty Customs House Agent Illegal export of contraband goods - Abetment of Sandalwood and peacock feather illegally exported in the guise of mica powder against shipping bills signed by Customs House Agent - No positive evidence on record to show any mala fide intention on the part of Customs House Agent, or that he was an accomplice or abettor - Penalty not imposable - Section 117 of Customs Act, 1962. Out of the total eight shipping bill, three were actually signed by the appellant, and five others were forged by Shri Gnanamani. If the appellant was an active abettor in the crime, he would have signed the balance five shipping bills also and there was no occasion for Shri Gnanamani to forge the signature of the appellant. This fact reflects upon the appellant's plea of innocence. [para 5]

Penalty - Customs House Agent - Mere failure in carrying out duties in accordance with law, not a sufficient ground for imposition of penalty under Section 117 of Customs Act, 1962, unless there is evidence to show any mala fide intention on his part. [para 5]

Sethu Samudhra Shipping Services Vs. Commissioner of Customs, Tuticorin [2010 (262) E.L.T. 570 (Tri. - Chennai)]

Penalty on Customs House Agent Smuggling of red sanders wood Lack of care to verify genuineness of export/exporters and filing export documents which were not from actual exporter - HELD: Allegations cannot lead to conclusion that CHA aided attempt to smuggle goods, though it may lead to action for failure to discharge duty under Customs House Agents Licensing Regulations, 1984 In absence of action/inaction rendering goods liable to confiscation, penalty could not be sustained on CHA under Section 114 of Customs Act, 1962. [para 8]

SECTION 117 IS A RESIDUARY PROVISION

23.14 The SCN invokes provisions of section 117 against the CB whereas the provisions of section 111 and consequent invocation of section 112, 114A and 114AA are invoked in the SCN on the ground of mis-declaration of COO by the importer, which clearly confirms that the contravention is covered under the specific provisions and thus the residual provisions of law has been invoked erroneously. It may please be appreciated that as it is settled law that the residual provisions can only be invoked when no specific provision is invokable, and thus, m invoking of residual as well as specific provisions simultaneously clearly demonstrates that the SCN is issued merely on the basis of assumption and presumption and or doubts or suspicion as far as it is directed against the CB firm and the same is not legally sustainable. Reliance in this regard is placed on the following judgments: -

2017 (357) E.L.T. 1239 (Tri. - All.) Commissioner of Cus. & C. EX., GHAZIABAD Versus Ruby Impex

Penalty on Revenue Officers and importing firm Import of prohibited goods, i.e., Lead/Zinc/Brass Scrap, live/empty Cartridges confiscated absolutely Failure of Inspector and Superintendent to examine containers fully and to discover discrepancies Since officers neither connived nor indulged in fraudulent activity, penalty not imposable - Section 112 of Customs Act, 1962. [para 6]
Penalty under Section 7 of Customs Act, 1962 - Provisions of said Section is residuary in nature and can be invoked when no express penalty provided elsewhere in the Customs Act, 1962 - Having invoked provisions of Section 112 ibid in show cause notice, provisions of Section 1 ibid not invocable - Section 117 of Customs Act, 1962. [para 6]

2009 (246) E.L.T. 543 (Tri. - Mumbai) SAISEA LOGISTICS (1) P. LTD. Versus COMMR. OF CUS. (IMPORT), NHAVA SHEVA

Confiscation of conveyance - Means of transport in smuggling Trailors used for transporting four containers carrying various goods Neither SCN nor Commissioner's order indicating that goods transported were smuggled goods or were being smuggled - Prima facie, provision of law under Section 115(2) of Customs Act, 1962 misapplied Recovery of fine stayed till final disposal of appeal Sections 125 and 129E of Customs Act, 1962.

Stay/Dispensation of pre-deposit - Penalty - Conveyance used for smuggling - Penalty imposed for providing trailers without caring to ascertain as to how they were going to be used No mention as to which provision of law contravened by appellants For penalty under Section 117 of Customs Act, 1962, there must be finding of contravention of some legal provision and that such contravention not covered by any other penal provisions - Pre-requisites missing - Prima facie good case against penalty Pre-deposit waived and recovery stayed - Section 129E ibid.

2008 (226) E.L.T. 282 (Tri. - Chennai) Sindhu Cargo Services Ltd. Versus Commissioner of Customs, Coimbatore

"Penalty on CHA Drawback Overvaluation for undue drawback-Abetment by Customs House Agent (CHA) - Functions of CHA is to verify, correctness of particulars mentioned in shipping bill and accompanying declaration and CHA duly carried out such job - No evidence that CHA abetted alleged offence by exporter No reason to invoke Section 114 of Customs Act,. 1962 against CHA - Revenue has invoked Section 117 ibid also against CHA Sections 114 and 17 ibid cannot operate simultaneously Impugned order set aside. [paras 4, 5]"

2004 (172) E.L.T. 347 (Tri. - Chennai) Vetri Impex Versus Commissioner of Customs, Tuticorin

Penalty- Customs-Customs House Agent Department not contended that the goods exported through appellants, were prohibited for exportation Hence, provisions of Section 114(1) of Customs Act, 1962 not invocable for imposition of penalty. [para 5]

Penalty - Customs - Residuary provision - Provisions of Section 114 of Customs

Act, 1962, having been invoked to penalize the appellant, residuary provisions of Section 117 ibid not invocable. [para 5]

Penalty- Customs-Customs House Agent No finding in Impugned order that appellant did anything, or omitted to do anything, in connivance of, or with the knowledge of illegal acts of exporter - Penalty not imposable - Section 114 of Customs Act, 1962. [para 5]

Customs House Agent's License- Suspension of -Order of suspension passed under Regulation 20 of Customs House Agents Licensing Regulations, 1984, which does not authorize suspension of license - Suspension order set aside. (para 5]

1985 (22) E.L.T. 587 (Tribunal) Chandan Mal M. Jain Versus Collector of Customs, Bombay

Customs - Sales of specified goods within specified areas - In absence of particulars of purchaser, goods presumed to be illegally exported by seller - Penalty imposable - Sections 11M and 114 of the Customs Act, 1962 - Section 117 ibid inapplicable.

When the appellant did not have precise particulars about the persons to whom he sold the silver, being "specified goods within the meaning of Section 11M, the department is legally justified in invoking the statutory presumption under the said Section in holding that the goods in question should have been illegally exported and the appellant should have been concerned in such illegal export. The appellant has not been able to rebut, satisfactorily, the statutory presumption against him and, as a logical consequence, the penal provision Incorporated in Section 114 would automatically come into operation. When such a specific penal provision has been provided for, the residuary penal clause in Section 1 will not be applicable. [para 9]

2003 (162) E.L.T. 1032 (Tri. - Kolkata)
Capstan Shipping & Estates Ltd. Versus Commissioner of Customs (P),

Penalty - Customs Disappearance/substitution of goods in container transshipped from abroad Steamer/shipping agent, having handed over the container with intact seal bearing same number as was on bill of lading, not responsible for disappearance/substitution of goods Penalty not imposable Sections 112 and 117 of Customs Act, 1962. [para 4].

1993 (66) E.L.T. 105 (Tribunal) Bhola Singh Versus Collector of Customs (Preventive)

Penalty Customs Show cause notice for imposition of penalty when issued under Section 117 of Customs Act, 1962, penalty not imposable under Section 112 ibid.

[para 5]

Penalty Customs - Knowledge of appellant about smuggling of Ganja in his vehicle not established Abetment of offence by appellant when not proved, penalty under Section 117 of Customs Act, 1962 not imposable. –

23.15 The Hon'ble Commissioner may pleas appreciate that the SCN alleges lackadaisical approach, which shows that the allegation is purely based on perception, incomplete information or misinterpretation of circumstances and thus is an unfair accusation. The allegation is made merely on the basis that the CB firm was negligent or was less diligent or vigilant but the fact remains that the penalty under the Customs Act cannot be imposed on the ground of the lack of knowledge, vigilance or diligence as these factors cannot lead to penal consequences. Thus, the provisions of section 117 have wrongly been invoked as it is settled law that no penalty can be imposed on the ground of negligence etc. Reliance in this regard is placed on the following judgments:

i) Bearrau Veritas -2003 (156) ELT 688 (T)

Penalty Imposition of penalty on Bureau Veritas on the ground of being careless in making report of valuation not sustainable, lack of care falling short of the requirement of abetment implying conscious awareness of the act or omission of abettor Section 112(b) of Customs Act, 1962.
(as affirmed by SC in 2005 (181) ELT 3 (SC))

ii) 1996 (83) E.L.T. 557 (Tribunal). Sanco Trans Limited

HELD: Negligence per se is different from culpable negligence Penalty not to be imposed for mere lack of exercise of proper inspection, supervision and diligence Mere admonition sufficient when bona fides of the Clearing Agent are not doubted - Section 112 of the Customs Act, 1962

iii) 1991 (52) E.L.T. 557 (Tri.) Shri. Khuller

Penalty Mere lack of proper care is not provided for as one of the grounds for attributing penal liability to a person under Section 112 of the Customs Act, 1962

iv) 2009 (243) ELT 439 (1)Trade Wings Limited

Penalty Abetment in attempt to illegally export Traveller's cheque - Unauthorized foreign exchange export - Traveller cheques issued by one money changer to another and intercepted from a person about to board flight - For mere lack of care and diligence by issuer of cheques to observe RBI guidelines, they could not be held liable to penalty for abetment-Section 114 of Customs Act, 1962. (para 2].

v) K. Ramanna 2009 (238) ELT 620 (T)

Penalty on CHA Negligence for not taking adequate precautions against employee not discharging functions of CHA responsibly - Employee of appellant-CHA not found to have knowingly assisted other persons in their joint effort to export contraband - Said Employee of appellant-CHA signed shipping bill on behalf of exporter without verifying antecedents of persons involved in transaction Commissioner unable to find that said employee continued to be an authorized employee of appellant-CHA at material time Indirect involvement of appellant-CHA found on account of role of his employee and not at all knowingly involved

in incriminating transaction - Penalty under Section 114 of Customs Act, 1962 not sustainable. [para 5]

23.16 The Ld. Commissioner may please appreciate that there are no allegations that the firm had deliberately and consciously violated any provisions of law or acted in a contumacious manner or in a fraudulent manner and thus no penalty is imposable on the firm and thus the SCN may please be ordered to be quashed sit prayed that

23.17 We say and submit that it is not even the case of the department that the we were aware and or were the beneficiary of the alleged mis-declaration of COO by the importer and thus the firm had not acted in any contumacious manner and thus no penalty is imposable on the firm as it is settled law that the penalty is imposed for some contumacious conduct or for deliberate violation of the provision of a particular statue. There is no allegation that the firm has violated any provision of any statue deliberately so as to gain unlawfully. On the contrary it is admitted position that the firm was not aware of the alleged mis- declaration of COO and were not the beneficiary in any manner. Thus, no penalty is imposable on the firm. Reliance is placed on the following judgments in this regard:

1990 (47) E.L.T. 161 (S.C.) Akbar Baddrudin Jiwani V/s.Collector of Customs.
1983 E.L.T. 1261 (Tribunal)Merck Spares, Delhi V/s. C.C.E. & C. New Delhi.

PROPOSITION
Mens rea to be established for imposition of penalty. No penalty Imposable when the party acts in a bonafide relief that the goods are not liable to confiscation.

1978 E.L.T. (J159) (S.C.) Hindustan Steel Ltd. V/s. State of Orissa.

PROPOSITION

Penalty should not be originally imposed unless the party acted in conscious disregard of its obligation or acted deliberately in Defiance of law.

1994(74) E.L.T. 481 (S.C.) Grauer & Well (India) Ltd. Vis. Collector of Central Excise, Baroda

PROPOSITION

Penalty should not be originally imposed unless the party acted in conscious disregard of its obligation or acted deliberately in Defiance of law.

1987 (32) E.L.T. 355 (A.P.) Boddu Ramaiah V/s. Government of India & Others.
1992 (60) E.L.T.481 (Tribunal), Robindra Textile Mills Vis. Collector of Central Excise.

PROPOSITION

Penalty imposable only in case the person had knowledge that the Goods are

liable for confiscation under section 111 of the Customs Act, 1962.

NO PENALTY ON DOUBT OR SUSPICION

23.18 The impugned SCN is merely issued on the basis of doubt and suspicion or assumption and presumption and these assumptions and presumption or doubt and suspicion cannot take place of proof, howsoever grave, these may be, to prove the knowledge on the part of CB firm. As the scn is issued merely on the basis of assumption and presumption and or doubt and suspicion the same is required to be dropped solely on this ground alone. Reliance in this regard is placed on the following judgments:

2008(227) E.L.T.74 (Tri) Tetra Plastics Pvt. Ltd.
1990 (45) E.L.T. 314 (Tri) Hemraj Agarwalla Vs. Collector of Customs & C. Excise(para 18)

"At best, it can be said that there is a suspicion to that effect and suspicion however strong cannot take the place of proof."

1995 (77) E.L.T. 333 (Tri.) (para 7) Karungadan Abdul Rehman Vs. Collector of Customs & C. Excise, Cochin.

"No doubt, certain circumstances do endanger a grave suspicion in my mind, but the proceedings being penal in nature suspicion however, grave it may be, can scarcely take the place of proof".

1989 (39) E.L.T. 622 (Tri.) (para 11) Ashok K. Singh Vs. Collector of Customs.

"No doubt the appellant is both the exporter and importer of the goods. Such a situation may create a little suspicion, but such suspicion should not by itself lead to an adverse inference".

1989 (41) E.L.T. 139 (Tri.) (para 7) Luxmi Enterprises Vs. Collector of C. Excise.

"It is settled principles of law that suspicion how-so-ever grave cannot take the place of proof".

1994 (71) E.L.T. 310 (Tri.) (para 37) Parekh & Co., Vs. Collector of Customs, Rajkot

"Further, suspicion how-so-ever grave cannot take the place of legal proof (refer Babcock Venkateshwara Pvt. Ltd., Vs. Collector of Customs - 1985 (20) E.L.T. 335 (Tri.)".

23.19. In view of the above, it is prayed that the SCN as far as it is directed against the CB firm may kindly be quashed.

24. M/s Hub & Links Logistics (I) Pvt. Ltd. Vide letter dated 09.02.2024 submitted their written submission which is reproduced as below:

24.1 We submit that the allegation in the subject case, that our client has orchestrated this transaction to conceal true origin of the goods so as enable ME to evade duty on the import is incorrect on facts. Further, the levy of penalty under section 112(b)(ii) and section 117 of the Customs Act, 1962 on our client is also legally incorrect.

24.2 We hereby submit counter against each and every allegation levelled against our client with respect to subject import consignment.

24.3 It is pertinent to note that from the routing of the vessel as mentioned in the PICT website, the container was loaded first from Karachi port and discharged at Jebel Ali port. Thereafter, the said container was loaded on another vessel from Jebel Ali port and discharged at Mundra port. The shipper and consignee are both different in both the 1st leg and second leg B/L's and so is the port of loading and port of discharge. Our client received all the pre-alert documents from Dubai mentioning details of shipper in Dubai and port of loading as Jebel Ali since the container was actually loaded from Jebel Ali port. The Noticee No.3 did not suspect the consignment's origin to be of Pakistan as all the supporting documents evidenced the goods origin to be U.A.E. and as such the IGM was manifested from Jebel Ali port to Mundra port.

Sr. No.	POL	POD	Vsl/Voy	Shipper	Consignee	B/L No.	B/L Date
I	Karachi	Jebel Ali	OEL Kedarnath 032W	Rafiq Traders	Lucky Recycling Ltd.	SASLMU2 1551	12.10.2021
2.	Jebel Ali	Mundra	Montpellier -21043	Aden Scrap Trading LLC	Madhav Extrusion	SASLMU21551	21.10.2021

24.4 We submit that Noticee No.3 is not privy to the trade transactions taken place between the Karachi supplier —Rafiq Traders and the Dubai buyer — Lucky Recycling Ltd and neither the Dubai supplier — Aden Scrap Trading (LLC) and Indian buyer — Madhav Extrusion. It is beyond the control of Noticee No.3 to inspect and enquire the authenticity and the origin of the goods purchased by the Dubai supplier - Aden Scrap Trading (LLC), mentioned as the shipper in the said Bill of Lading issued from Jebel Ali dated 21.10.2021.

24.5 We further submit that it is the job of the Noticee No.3 to book containers for export, perform forwarding and logistics related work and file IGM of import containers loaded from various ports. In the instant case, the container was loaded from Jebel Ali port as per the receipt of B/L copy and manifest received from the Noticee No.3 Dubai principal i.e. M/s. Shah Aziz Shipping Line LLC. Following are the sequence of events in the current shipment.

a. Pre-alert received from foreign shipping line / load port Dubai principal M/s. Shah Aziz Shipping lines LLC about arrival of Cargo.

b. Our client inquired about expected date of arrival of the cargo from foreign shipping line.

c. Our client received tentative timelines regarding expected time of

arrival (ETA)

d. Then vessel arrives and all procedure related to filling of import general manifest (IGM) were done basis Bill of Lading copy provided to our client by the foreign shipping line.

e. Our client issued invoices for the charges related to port clearance activity.

f. Upon receipt of import charges from the consignee, the Delivery Order was issued and Noticee No.3 liability in the said consignment ceased to exist.

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

24.6 Though the Noticee No.1 denied their involvement in duty evasion, the said connivance of duty evasion is deliberately committed by the Noticee No.1 as they could have only benefited from the duty evasion which is amounting to Rs. 2,56,07,895/- (Rupees Two Crores Fifty Six Lakhs Seven Thousand Eight Hundred Ninety Five Only) duty comprising of Basic customs duty (BCD) @ 200%, SWS@10% & IGST @18%. It is pertinent to note that ME has already deposited Rs. 19,05,858/- against the differential duty liability. Thus, ME has committed wrong as per the findings and so they are liable to pay the differential payments and penalties as per the law.

24.7 In this regard, we would like to submit that demand of penalty under section 112(b)(ii) and section 117 under Customs Act, 1962 should not be raised from Hub & Links Logistics (I) Pvt. Ltd., since all manipulation of documentation and submission for forged documents have been done by ME itself in collusion with their foreign supplier M/s. Aden Scrap Trading LLC, U.A.E. Hence, Hub & Links Logistics (I) Pvt. Ltd., has no role to play in this alleged non-compliance of evasion of basic customs duty.

24.8 Further, it is ME who has benefitted from this wrong. ME has done certain acts and abetted certain doings which has led to mis-declaration of origin of the goods. This has benefitted ME from BCD duty savings. Hence, it is clear that ME has collaborated with the foreign supplier for the benefit of duty savings.

24.9 We would like to submit that Shri Sajish Sivaraj Puthenchira while recording his statement on 12.04.2023 had mentioned that the Bill of Lading number of Karachi Port and Jebel Ali port are same as SASLMU215S1 but dates are different since it is a case of switch Bill of Lading wherein the number remains same but the date of issue is changed. It is used when the traders do not want to disclose actual supplier to the consignment. All the details except shipper, consignee and or notify party shall remain same in the switch Bill of Lading. This is a usual practice undertaken by the traders to conceal the details of actual supplier so as to secure their client/source/business operation details. The request for issuance of switch bills of lading can be made either by the

shipper or the consignee. The port of discharge agent has no role to play in issuance of switch bills of lading.

24.10 The Noticee No.3 was not aware that the cargo had originated from Karachi, Pakistan and came to know about this from the Customs officers after they had initiated the inquiry, and the Noticee No.3 was summoned by the customs officers. Thereafter, the Noticee No.3 contacted their principal to share the 1st leg Bill of Lading copy. It was then that the Noticee No.3 had information that the Bill of Lading provided to them by their load port agent Shah Aziz Shipping Lines LLC was a switched Bill of Lading issued from Dubai. Generally, the Switch Bills of Lading altering the port of loading as Jebel Ali is requested by the supplier of the importer to enable smooth functioning of forex transactions between the supplier and importer and it is a standard practice in the Maritime Industry to issue Switch Bills of Lading.

(a) The Noticee No.3 further submits that concerning the allegations levelled against the Noticee No. 3, pertaining to the Switch Bills of Lading issued in the aforementioned shipment, a Switch Bill of Lading is simply the second set of bill of lading issued by the carrier or its agent substitute the Original Bills of Lading issued at the time of the shipment, even though it technically deals with the same cargo. To emphasize in detail, Switch Bills of Lading are issued for replacement of certain details specified as below:

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

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

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

(iv) Shipment of goods may originally have been in small parcels, and the buyer of those goods may require one bill of lading covering all of the parcels to facilitate his on sale. The converse may also happen i.e. one bill is issued for a bulk shipment which is then to be split.

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

The above inference has been taken from the International Transport Intermediaries Club, Issuance of Switch Bill of Lading 2013, 1. Furthermore, international boo of carriage of Goods by Sixth Edition Pg. No. 117 specified that:-

5.7 Switch Bills

> In concluding the survey of the functions of bills of lading, brief mention must be made of the modern practice of issuing switch bills. Under this procedure, the original set of bills of lading under which the goods have been shipped is surrendered to the carrier, or his agents, in exchange for a new set of bills in which some of the details, such as those relating to the name and address of the shipper, the date of issue of the bills or the port of shipment, have been altered.
>
> Hereto annexed and marked as Annexure - B are the copies of the printed details of Switch Bills of Lading mentioned in the International book Carriage of Goods by Sea, Sixth Edition.

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

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

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

It is pertinent to note that in the above mentioned import shipment, the first leg of Bill of Lading was issued in Karachi and second leg of Bill of Lading has been issued by the load port agent in Dubai.

However, the Noticee No.3 initially received only the second leg bill of Lading and accordingly the Import General Manifest (IGM) was filed at destination port by the Noticee No.3 based on the information given in the second leg Bill of Lading. Also, the container loaded from Karachi was offloaded at Jebel Ali port and connected on another vessel for discharge at Mundra port. The Noticee No.3 is provided with only the final leg Bill of Lading to file IGM which enables the Noticee No.3 to issue the delivery order to the respective consignee at destination. For all import consignments, it is outside the jurisdiction and authority of the Noticee No.3 to inspect the contents of the goods stuffed inside the container and verify its origin. The Noticee No.3 can only rely upon the load port documents and Bills of Lading to ascertain the contents of the container and its port of loading details mentioned in the Bill of Lading to file the Import General Manifest (IGM) at the destination port. Consequently, on this ground it is submitted that the Noticee No.3 is not liable for any penalty under Section 112(b)(ii) and section 117 of the Customs Act, 1962.

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

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

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

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

a. That, our client is a shipping and logistics company in the field of Container/NVOCC/Projects/Bulk/Special equipment's.

b. That, our client acts as an agent for different foreign container lines and other shipping lines such as EM KAY LINE etc.

c. That, as an agent, our client is responsible for handling of containers of particular lines for clearance from port.

d. That, in subject "Brass Scrap Honey as per ISRI" import case, our client has acted as an agent at the port of discharge (POD) for ME.

e. That, all communications related to "Brass Scrap Honey as per ISRI" cargo import were received from the Dubai principal M/s. Shah Aziz Shipping Lines LLC, Dubai.

f. Our client received all documents from their foreign shipping line, and that our client did not correspond with either the Consignee, Shipper or the Customs Broker.

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

As such, we submit that our client is not a party to this violation and hence our client, the Noticee No.3 should not be penalized under the provisions of customs law.

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

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

Section 17. Assessment of duty..

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

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

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

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

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

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

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

SECTION 46, Entry of Goods on Importation.

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

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

24.16 There is mandated provision for verification of self-assessment under section 17 of the Customs Act, 1962 by proper officer. The change in declared valuation in Bill of Entries after due verification cannot be construed as undervaluation as verification of self-assessment is mandated under the Customs Act, 1962. In fact, section 17 (5) of the Customs Act, 1962 cast responsibility on proper officer to pass speaking order in case of change in valuation, which has not been done till date by the proper officer. Our Client

cannot be laden with responsibility of undervaluation of imported goods in self-assessment regime, once such responsibility of verification of undervaluation is cast upon proper officer under Section 17 of the Customs Act, 1962.

24.17 As such, the importer was required to ascertain the correctness of import declaration and duty on the goods. The current importer i.e. Noticee No.1 ME was having full information related to the imports.

24.18 The shipping line agents are not required to look into the authenticity of Certificate of origin and Pre-Shipment Inspection Certificate "PSIC" and they need to only declare information as it is received from foreign shipping line. Further, it is also not required at shipping agent's end to verify each and every container no. from Pakistan Customs Terminal website (PICT) or any other website to track the origin. This is operationally not possibly and legally also not required to be done. This is the responsibility of exporter /importer to ensure the correctness of documents and declarations. It is also the importer's responsibility to verify the authenticity of origin of goods before deciding to pay or not to pay basic customs duty. The importer ME has deliberately attempted to avoid payment of BCD by intentionally allowing incorrect documents for clearance from customs by mis-declaring the origin of goods.

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

24.19 The foremost legal provisions are reproduced here:

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

-

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

(ii) in the case of dutiable other than prohibited goods, to a penalty

[not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;

[SECTION 117. Penalties for contravention, etc., not expressly mentioned.

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

24.20 In view of the above legal provisions, we would like to submit that section 112 (b)(ii) is not applicable to our client since they have not done anything which will cause the goods of ME to be confiscated. Our client acted in a bonafide

manner in relation to port of discharge procedures for subject consignment. We have also provided detailed submission against the same in the above paragraphs.

24.21 Further Section 117 is also not applicable as our client has not abetted any contravention under the Act and is neither responsible for short levy of Basic Customs duty (BCD) in the clearance of subject consignment. The importer is solely responsible for payment of all applicable customs levies by declaring correct details of the consignment in the Bill of Entry. Further, our client has not used any false and incorrect material for filling of IGM intentionally. Our client was under bonafide belief that documents provided by the importer are correct. Therefore, these penalties under section 112(b)(ii) and section 117 are not applicable on our client.

24.22 Our client is an agent of the foreign shipping line, thus, Article IV (2) of the Carriage of Goods by Sea Act, 1925 and more specifically Article IV (2) (i) and (n), discharges the carrier from any and/or all liabilities and /or losses, arising due to any act or omission of the Shipper or the owner of the goods, his agent, or representative. On this ground alone, it is submitted that our client is not liable for any mis-declaration on the part of the shipper/consignee and neither have they attributed their support in import of "Brass Scrap Honey" and its duty evasion by mis- declaration of origin of the goods.

Judicial Pronunciations:

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

That in the instant case our client was not aware that importer has intended to evade BCD in the subject transaction and therefore penalty under section 112(b)(ii) is not sustainable on our client.

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

24.25 That the Ludhiana CESTAT in the case of M/s MS Exim Services Vs Commissioner of Customs, Ludhiana 2021 (CESTAT) 14 has observed that the appellant had no mens rea and filed the documents being a bonafide facilitator and in view of the same no penalty was imposable upon the appellant Customs broker, therefore, the penalty imposed on the appellant under Section 112 along with 114AA of the Customs Act, 1962, was set aside.

Therefore, in the instant case, our client being a bonafide facilitator and acting in the capacity of an agent of a foreign shipping line, filed the IGM as per the Bills of Lading received from their principal in Dubai and thus, is not responsible for checking the origin of the goods in the bills of lading provided by their Dubai counterpart.

24.26 In the case of V. Lakshmipathy vs. Commissioner of Customs 2003(153) E.L.T. 640T (Tri-Delhi) in respect of invocation of penalty under Section 112 had held the existence of mens rea as an essential ingredient to invoke the same. This presupposition is non-existing in the present matter as show cause notice leads no evidence to indicate a guilty mind on part of the appellant.

24.27 In the case of **Codognotto Logistics India Pvt. Ltd. vs. Commissioner of Customs (2022) (SB) (Tri-Delhi),** had held that in the absence of mens rea and no deliberate connivance in evading customs duty, penalty under Section 112 and Section 114AA is not leviable upon the appellants and the appeal was set aside.

24.28 In the case of **Vipul Joshi vs. C.C. Ahmedabad 2022 (Tri Ahmedabad)**, had held that direct participation and knowledge on the part of the person has to be established. In the absence of sufficient evidence, penalty u/s 112(b) of the Customs Act, 1962 cannot be levied.

24.29 It is a settled position in law that penalty is not imposable where the Noticee has not acted contumaciously or in deliberate defiance of law. In support of this contention, reliance is placed on the law declared by the Hon'ble Supreme Court in the case of Hindustan Steel Ltd 1978 (2) ELT J159 (SC) wherein it was held that penalty shall not be imposed unless the conduct of a defaulter is found to be dishonest or contumacious. Reliance in this regard is also placed on the following binding judicial pronouncements which echo the settled principle that a penalty is not imposable where there is no dishonest conduct:

24.30 We would like to place our reliance in the case of Akbar Badruddin Jiwani vs Collector of Customs, 1990 (047) ELT 0161 (S.C.), where the Hon'ble Supreme Court has held that -

> *"57. Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law.*
>
> *58. In the present case, the Tribunal has itself specifically stated that the appellant has acted on the basis of bona fide behalf that the goods were importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate*

Tribunal, the penalty and fine in lieu of confiscation require to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal."

24.31 The Hon'ble Tribunal in the case of **M/s. Trans Asian Shipping Services P Ltd reported as 2018 (363) E.L.T. 635 (Tri. - All)** has held that allegation of aiding and abetting cannot be upheld where IGM is filed on the basis of Bill of Lading. Relevant part of the order reads as under:-

2. As per facts on records, the appellant is a shipping line and was carrying the container on behalf of M/s. Ankit Metals. On the basis of a letter addressed by M/s. Ankit Metals, they applied for amendment in IGM stating that Aluminium Scrap "Tread" Weight 22.096 may be allowed to be amended to Aluminium Scrap "Tread" Weight 7.552 MT & Copper Berry/Clove Weight 14.544 MT. The said amendment was rejected by the Assistant Commissioner.

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

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

carried and the supporting documents, the shipping line has issued the revised bill of lading without any check and balance and thus aided and abetted the importer in his nefarious design of importing the goods by mis-declaring the same with the intent to evade payment of Customs duty. The shipping line has knowingly made B/L which was false and incorrect in respect of material description of the goods with the view to use the same in the transaction of filing of IGM and clearance of goods for the purpose of Customs Act, 1962, and have thus rendered itself liable to penalty under Section 114AA of the Customs Act, 1962."

4. As is seen from the above, the penalty stands imposed upon the appellant on the ground that they have aided and abetted the importer in his nefarious design to import the goods by mis-declaration. However, I find that there is no evidence on record to show that the appellant was a party to such mis-declaration. They simply filed IGM on the basis of bill of lading and on subsequently, after getting a communication from the importer, they applied for amendment of the same. In such a scenario, the allegation of the aiding and abetting cannot be upheld. Accordingly, the same is set aside and the appeal is allowed by setting aside the penalty imposed upon the appellant.

In the present case, the Noticee No.3 relied upon the Bill of Lading issued at Jebel Ali for filing IGM and thus, the Noticee No.3 cannot be held guilty for mis-declaration with regard to the correctness of the content of the IGM filed by them as required under section 30(2) of the Customs Act, 1962 and hence no penalty should be imposed upon the Noticee No.3 under Section 117 of the Customs Act, 1962.

24.32. When there is no evidence to establish any overt act or mens rea to facilitate the commission of offence, the allegations that the Noticee No.3 has facilitated the attempt to enable ME evade BCD in the subject transaction, is without any factual and legal basis and therefore penalty under section 112(b)(ii) and section 117 of the Customs Act, 1962 is not sustainable on the Noticee No.3.

24.33 In view of the above submission, there is no case of acting knowingly or intentionally on the part of the Noticee No.3. The Noticee No.3 was not aware that the importer M/s Madhav Extrusion intended to evade the BCD to avail the benefits in custom duty in the subject transaction and neither is there any evidence to show the existence of mens rea in the mis- declaration of the origin of goods by Noticee No.3. Thus, the penalties imposed under section 112(b)(ii) and section 117 of the Customs Act, 1962 does not sustain in the eyes of law and accordingly the impugned show cause notice need to be set aside. Hence, the Noticee No.3 should be granted relief from penalties and prosecution.

24.34 The Noticee No. 3 M/s Hub & Links Logistics (1) Pvt. Ltd.) prayed that the Hon'ble Commissioner of Customs, Mundra may be pleased to set aside the Show Cause Notice issued against the Noticee No.3.

25. RECORD OF PERSONAL HEARING:

25. I observe that *'Audi alteram partem'*, is an important principle of natural

justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to all the noticees on 14.11.2024 and 29.11.2024. Details of the PH are as under:

(i) 1st PH conducted on 14.11.2024: Following Noticee's appeared during PH:

- **Shri Mukesh Kumar Tewatia**, Advocate appeared in personal hearing on behalf of M/s Aditi Cargo Movers (CHA Code-AETPD3701NCH001) and reiterated the written submission made by them in reply to the Notice. He also stressed that the fact of relevant documents in original made available to them and other facts mentioned in their reply shows their bonafide in the instant case.

- **Shri Santosh Upadhyay and Ms. Deepti Upadhyay,** Advocate appeared before me in the personal hearing on behalf of M/s. Hub & Links Logistics (I) Pvt. Ltd. He stated that they are delivery agent and their role is very limited. They just filed IGM, collected the document issued the delivery order. In this case, penalty was imposed under section 112 b(ii) and Section 117. Their scope is very limited to check. They cannot check this origin of certificate. They have no power. When container comes in India they file the IGM. They collect the document original bill of lading and maybe surrender, surrender document and they issued the delivery order to the buyer, particular buyer or CHA or representative CHA. They cannot check the COO. They cannot check any other documents. They are not qualified and certified from the government department to do all these things. Penalty should not be imposed under section 112 b (ii) and Section 117.
  They relied on certain case laws. Switch bill of lading was also involved. They have supported fully during investigation. He referred to his submission at page-10. Switch bill- In concluding the survey of the function of bill of lading pre mentioned must be made of the modern practice of issuing switch bill Under this procedure, the original set of bill of lading under which the goods have been shipped is surrendered to the carrier or his agent in exchange for new set of bill in which some of the details such as those relating to the name and address, addresses of the shipper, the date of issue of bill, bills are the port of shipment have been altered.
  He relied on the exhibit, Annexure-B it is the carriage of goods by Sea by John F Wilson, He relied on his book. For switch bill of lading there is Singapore high court judgment. He referred BNP Paribas VS Bandung Shipping Limited 2003 where there was 12 bill of lading and it was switched and they altered the port also and the order was in his favour. He relied on the Supreme Court of Australia, Australia, NSW which is not mentioned. They will submit extra submission later on. He relied on Shobha Plastic Private Limited versus Commissioner, Commissioner of Custom and relied on the latest judgment of Ms. EXIM Services versus Commissioner of Custom. It has been observed the appellant had no mens-rea and filed the document being a bona fide facilitator and view of the same no penalty was imposable upon the appellant custom broker and these therefore, the penalty imposed on under Section 112 with the 114 of the Custom Act was set aside. He also relied on V Lakshmi Patti

versus Commissioner of Customs and Kotok Noto Logistic India Private Limited versus Commissioner of Custom Delhi Tribunal. Delhi 2022 held that in the absence of mens-rea no deliberate convince in evading custom duty penalty under section 112 and section 114 not leviable. He relied on Vipul Joshi versus CC Ahmedabad. Further he stated that Honorable Supreme Court in Hindustan Steel Limited held that penalties and not be imposed unless the conduct of defaulter is found of dishonest or computation.
He relied on Akbar Badruddin Jeevani versus collector of custom in 1999. In case of Trans Asia shipping services Pvt ltd, it was held that the fact record that allegation of avoiding the abetting cannot be upheld where IGM is filed on the basis of bill of lading. They are the shipping company, their scope is very limited, They can't be held liable for penalty. They will file additional submission in this case. He prayed to drop the penalty.

(ii) As consultant of M/s Madhav Extrusion sought adjournment for the Ist Personal Hearing opportunity given on 14.11.2024, 2rid PH opportunity was given on 29.11.2024. Shri Vikas Mehta, Consultant, and authorized representative of M/s. Madhav Extrusion appeared in Personal hearing in the matter of M/s. Madhav Extrusion. During the hearing, they relied upon and reiterated their defence submission dated 17.07.2024 and also added that "container tracking system of Pakistan International Container Terminal at Karachi is in public domain since more than two years and as such invocation of extended period is unjustified". He also requested to take a lenient view in the matter.

26. DISCUSSION AND FINDINGS:

26.1 I have carefully gone through the impugned **Show Cause Notice dated 12.01.2024**, relied upon documents, legal provisions, defense submissions, record of personal hearing and all records available before me. The main issues involved in the case which are to be decided in the present adjudication are as below whether:

i) Classification of 22330 Kgs. of "Brass Scrap Honey as per ISRI" imported in Container No. SCZU 7942110 covered under BL No. SASLMU21551 dated 21.10.2021, Invoice No. RT-441-2021 dated 23.10.2021 & Bill of Entry No. 5982221 dated 25.10.2021 under Chapter Tariff Heading No. 74040022 is liable to be rejected & the same to be re-classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975.

ii) 22330 Kgs. of "Brass Scrap Honey as per ISRI" imported in Container No. SCZU 7942110 covered under BL No. SASLMU21551 dated 21.10.2021, Invoice No. RT-441-2021 dated 23.10.2021 & Bill of Entry No. 5982221 dated 25.10.2021 valued at **Rs. 92,24,746/ -** ***(Rupees Ninety Two Lakh Twenty Four Thousand Seven Hundred Forty Six Only)*** is liable to be confiscated under Section 111 (m) of the Customs Act, 1962

iii) The **Customs Duty** of **Rs. 2,56,07,895/-** ***(Rupees Two Crore Fifty Six Lakh Seven Thousand Eight Hundred Ninety Five Only)*** is liable to be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 with applicable interest under Section 28AA of the Customs Act, 1962

and the Customs Duty of **Rs. 19,05,858/- *(Rupees Nineteen Lakh Five Thousand Eight Hundred Fifty Eight only)*** already paid by them, is liable to be appropriated and adjusted against the said demand.

iv) Penalty is imposable upon M/s Madhav Extrusion under the provisions of Sections 112(a) (ii)/114A and 114AA of the Customs Act, 1962

v) Penalty is imposable upon M/s Aditi Cargo Movers under the provisions of Section 117 of the Customs Act, 1962.

vi) Penalty is imposable upon M/s HUB & Links Logistics (I) Pvt. Ltd under the provisions of Section 112 (b) (ii) and Section 117 of the Customs Act, 1962.

26.2 After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. It is pertinent to mention here that opportunity for personal hearing following the principle of natural justice, has been given to all the Noticees in this case. Now, the foremost issue before me to decide in this case is as to whether the goods imported by M/s. Madhav Extrusion are mis-classified under customs Tariff Item 74040022 and the same is to be re-classified under Customs Tariff Item 98060000.

Rejection of classification and re-classification of Goods

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

26.4 I find that documentary evidence in the form of Bill of Lading no. SASLMU21551 dated 12.10.2021 issued by CIM Shipping Inc. for transport of "Brass Scrap" in Container no. SCZU 7942110 from Karachi Port to Jebel Ali revealed that the said Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to Jebel Ali, UAE. The above said Bill of Lading shows that the Container No. SCZU 7942110 bearing seal no. 018259 & 0152 has left from PKKHI (Port of Karachi) for AEJEA (Port of Jebel Ali) on 12.10.2021 on board the vessel "OEL Kedarnath". The Container number and seal number shown in Bill of Lading matches with that declared in import documents filed at Mundra Port wherein Country of Origin is declared to be United Arab Emirates.

26.5 I find that **Sh. Dinesh Madhavlal Lahoti,** Partner of **M/s. Madhav Extrusion** in his statement tendered before the SIIB on 17.04.2023 under Section 108 of the Customs Act, 1962 stated that 22330 Kgs of Brass Scrap were loaded in Container No. SCZU7942110 having seal No. 018259 & 0152 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the Seal No. 018259 & 0152 affixed at Karachi Port are found intact at Mundra Port. Further, Shri Sajish Sivaraj Puthenchira, General Manager of M/s HUB & Links Logistics (I) Pvt Ltd, in his statement, recorded on 12.04.2023 has confirmed that "22330 Kgs. of Brass Scrap Honey were loaded in Container No. SCZU 7942110 having seal no. 018259 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal no. 018259 affixed at Karachi Port was found intact at Mundra Port". I find that on the same

container, the same seal was found intact, when the container left Karachi Port and landed at Mundra Port, via Jebel Ali. This sufficiently makes it clear that the goods "Brass Scrap Honey" was loaded on Karachi port, on the container SCZU 7942110 with seal no. 018259, and the same was unloaded directly at Mundra Port. The fact that documentation was so created to camouflage the origin Port again is confirmatory that goods were of Pakistan origin.

26.6 From the documents submitted by M/s HUB & Links Logistics (I) Pvt Ltd, it is amply clear that impugned goods loaded in Container no. SCZU 7942110 having Seal No. 018259 was dispatched from Karachi to Jebel Ali and reached at Mundra Port with the same seal no. 018259. The chronology of dates also indicates clearly that the goods were loaded at Karachi for onward movement to Mundra via Jebel Ali. Further, in the Shipping Bill filed at Pakistan Customs which has been relied upon has a column CO Code where Pakistan has been specifically mentioned. Hence, the country of origin of the goods being Pakistan is proved beyond doubt.

26.7 I find that communication/reply was received from the said Pre-shipment Inspection Agency (PSIA) vide e-mails dated 08.06.2023 & 09.06.2023. The PSIA (vide above referred e-mail dated 08.06.2023) has informed that there is a mismatch in the details contained in the PSIC submitted by the importer (Certificate No. WFZE/SHJ0/8637/2021 dated 11.10.2021) and the one issued by them (Certificate No. WFZE/SHJ0/8637/2021 dated 27.11.2021) and as such the certificate submitted by the importer does not appear to be genuine. The PSIA also forwarded the genuine certificate issued by them under PSIC no. WFZE/SHJ0/8637/2021 dated 27.11.2021 (vide e-mail dated 09.06.2023). PSIA's replies dated 08.06.2023 & 09.06.2023 suggests that the PSIC has been forged/fabricated with an intention to conceal the actual origin of goods and fake/fraudulent PSIC has been submitted to the Customs authorities at Mundra port to give an impression that the subject goods (covered under Bill of Entry No. 5982221 dated 25.10.2021) are of UAE origin instead of Pakistan Origin/exported from Islamic republic of Pakistan. This indicates strongly that the importer has deliberately fabricated the PSIC, issued by M/s. Wise Services FZE, Sharjah, UAE in the name of some other importer, and submitted to the Customs authorities to conceal the actual origin of goods.

26.8 I find that Noticee in his submission dated 17.04.2024 has contended that merely because a particular container bearing a particular seal number was loaded from Karachi is not sufficient to establish that goods contained in such container also had its origin in Pakistan. Here, the Noticee has failed to appreciate the fact that in the export documents filed at Pakistan Customs, there is clear mention of Country of Origin of goods to be Pakistan. From the facts and evidences on the records as discussed above, I find that the container no. SCZU 7942110 having Seal No. 018259 was not opened at Jebel Ali as the seal affixed at Karachi Port is found intact at Mundra Port and that all the documents viz. Pre-shipment Inspection Certificate, country of origin certificate, etc. were forged. The Container No. SCZU 7942110 was actually loaded from Karachi Port and it has reached Mundra via Jebel Ali and the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan as also evident from the export documents filed at Pakistan Customs and the container tracking details. Thus, it is beyond doubt that 22.330 MTS. of Brass Scrap Honey loaded in the container no. SCZU 7942110 having Seal No. 018259 was originated from Islamic Republic of Pakistan.

Accordingly, I hold that goods are of Pakistani origin.

26.9 In the above para, I have held on the basis of available documents and evidences that the impugned goods imported under the Bills of Entry bearing no. BE No. 5982221 dated 25.10.2021 were of Pakistan origin, now I proceed to classify the said goods:

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

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

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

I find that the classification adopted by the importer of the impugned goods under Customs Tariff Item 74040022 is not correct and the same is correctly classifiable under Customs Tariff Item 98060000 of Customs Tariff Act, 1975 in terms of Notification No. 05/2019-Customs dated 16.02.2019 as the goods imported by them has originated from Islamic Republic of Pakistan.

26.10 Confiscation of the impugned Goods

a) Now, I proceed further to discuss the second issue to be decided. As far as confiscation of goods are concerned, I find that Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

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

b) As discussed in above para, the goods were mis-declared in terms of classification and Country of Origin, hence the goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

c) The Noticee in his submission dated 17.07.2024 has contended that goods were examined by Custom officers at the port of import and permitted for clearance for home consumption only after the same were found tallying with the declarations made in the bill of entry and documents presented by the importer that were received from the overseas supplier. As such, there was no mis-declaration, leave alone willful, at the time of import and clearance. Hence, provisions of Section 111 (m) of Customs Act, 1962 for confiscation of goods on the ground of mis-declaration are not applicable.

The above submission of importer is not tenable as section 111(m) of Customs Act, 1962 provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act are liable for confiscation. From the above provisions, it is clear that goods which are imported by way of any type of mis-declaration, will be liable to confiscation. The contention made by Importer that at the time of import no mis-declaration was found is insignificant as per the relevant provisions of Customs Act, 1962. In the present case it has already been held in paras supra that the Importer had mis-declared origin of the goods as UAE and has classified the same the under Customs Tariff Item 74040022 instead of correct classification under 98060000 of the Customs Tariff Act, 1975. I find that the importer has failed to impart due diligence, as both the COO and the PSIC certificate submitted by them are found to be fraudulent/forged. As per Section 46(4A) of the Customs Act, 1962, the Importer is duty bound to check the accuracy of the information given by them in the Bill of Entry and to ensure the authenticity and validity of any supporting documents, which the importer has failed to do so in this instant matter. Accordingly, I hold that the impugned goods are liable for confiscation under Section 111(m) of Custom Act, 1962.

d) Noticee has relied on the following judgments to support their contention:

Callmate India Pvt Ltd vs Commissioner of Customs, New Delhi, 2023(383) ELT121 (Tri-Del) – The fact of the case appeared to be different as in the cited case, the supplier has accepted his mistake in packing of the goods. However, there is nothing similar in the current case. Hence the ratio of judgment can't be applied.

Alstom Transport Ltd vs Commissioner of Customs, Chennai 2007(220) ELT 312 (Tri-Chennai)- In the cited case, no intent to evade duty was found. However, in the current case, forged/manipulated PSIC was produced before Customs Authority. Further container tracking details are also there to substantiate that goods are originated from Pakistan. The intent of the Noticee to evade customs duty is substantiated by too many evidences in the case. Accordingly, the ratio of judgment is not applicable in the case.

Kirti Sales Corporation vs Commr. Of Customs, Faridabad, 2008(232) ELT 151(Tri-Del) In the cited case, again intent to evade duty was not found in the case, however, in the current case the same has been found. Accordingly, the ratio of judgment is not applicable in the case.

Further, I find that in case of **EVERSHINE CUSTOMS (C & F) PVT LTD., New Delhi Vs. COMMISSIONER OF CUSTOMS, New Delhi, the CESTAT**, Principal Bench observed as under -

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

As per the ratio laid down in **Evershine Case**, referred above, I find that the importer has failed to impart due diligence, as both the COO and the PSIC certificate submitted by them are found to be fraudulent/forged. As per Section 46(4A) of the Customs Act, 1962, the Importer is duty bound to check the

accuracy of the information given by them in the Bill of Entry and to ensure the authenticity and validity of any supporting documents, which the importer has failed to do so in this instant matter. Accordingly, I hold that the impugned goods are liable for confiscation under Section 111(m) of Custom Act, 1962.

e) Applicability of Redemption fine-

As the impugned goods are found to be liable for confiscation under Section 111(m) 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 authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 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."*

***Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [3] [no such fine shall be imposed]:*

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

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

[5] [(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

***Explanation** .-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]*

first proviso which was introduced vide Finance Act, 2018 which says that *where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply.* Behind the proviso, there is an assumption that goods

become liable for confiscation when there is demand under Section 28. Interestingly, the liability to confiscation is assumed to arise even in cases that do not involve an extended period of limitation not being cases of collusion or willful mis-statement or suppression of facts.

At this point, one has to understand that there cannot be a demand of duty, where the goods are seized and are in the possession of the government. It is a basic principle that goods and duty travel together. Thus, when the goods are in the possession of the government having been seized, there cannot be a demand for duty. Duty payment, even differential duty payment arises when the goods are confiscated and ordered for release to the importer. Section 125(2) which provides that *where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods,* makes this above position clear.

Thus, the proviso which is inserted in Section 125 referring to cases under Section 28 which are essentially in respect of demand of duty where the goods are not seized/ detained by the department, gives room for interpretation that Redemption fine is imposable even if the goods are not seized and are not available for confiscation.

Further, these points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]***. Para 23 of the said Judgment is as follows:

"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

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

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the misdeclaration in respect of the parallel invoices issued prior to the date of filing of the Bills of Entry. Hence, there is misdeclaration and suppression of value and the offending goods are liable for confiscation under

Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

In case of ***Synergy Fertichem Ltd vs Union of India, reported in 2020 (33) G.S.T.L 513 (Guj.)*** has relied on the judgment in case of C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.) and "*held that we would like to follow the dictum as laid down by the Madras High Court"*

.

In case of M/s Asia Motor Works vs Commissioner of Customs 2020 (371) E.L.T. 729 (Tri. - Ahmd.) Hon'ble tribunal have demarcated between the words, ***"Liable for confiscation" and "Confiscation".***

Hence, from the above discussion and relying on the above judgments, I find that goods are liable for confiscation and fine can be imposed in view of judgment in case of ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)] .***

26.11 Duty Demand under Section 28(4) with applicable interest under Section 28AA of the Customs Act, 1962.

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

> *"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*
>
> *(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—*
>
> *(a) collusion; or*
>
> *(b) any willful mis-statement; or*
>
> *(c) suppression of facts."*
>
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

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

> ***Explanation 1*** *. - For the purposes of this section, "relevant date" means,-*
>
> *(a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;*

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

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

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

b) The importer has contended that Section 28(4) of Customs Act, 1962 cannot be invoked in the present case as there is no "willful mis-declaration of Country of Origin". They have filed the Bill of Entry on the basis of documents supplied by overseas supplier. They further submitted that container tracking on PICT (Pakistan International Container Terminal Limited) is in public domain. As such, the details of container number and seal number appearing in the import documents that were supplied to importer by the seller from UAE were available for verification on the PICT website from the very date when container was loaded from PICT for UAE. I find that after introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it is the obligatory on the part of the importer to declare the correct country of country of origin of impugned goods and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. It is unreasonable to expect that an officer assessing the Bill of Entry will presume that the imported goods would have originated from any other country than declared and will start tracking of the containers on website of Ports of suspected country. The importer, therefore, by not disclosing the true and correct facts to the proper officer at the time of clearance of imported goods, have indulged in mis-declaration and mis-classification by way of suppression of facts and willfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable Custom duties. Sub-section (4A) to Section 46 of the Customs Act, 1962, requires him to ensure completeness, correctness and authenticity of the information. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. **Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011,** cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that he declared the correct classification, country of origin, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. In the case of **EVERSHINE CUSTOMS (C & F) PVT LTD., New Delhi Vs. COMMISSIONER OF CUSTOMS, New Delhi, the CESTAT,** Principal Bench has stated that responsibility rests on the importer and observed as under -

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

Further in case of ***Chennai Port (import) vs Sree Nakoda Enterprises Customs Appeal No. 40261/2023 decided on 31.05.2023*** Hon'ble Tribunal has meticulously explained the burden of proof and held that Section 123 of the Customs Act requires burden of proof in certain cases and in the light of our above discussion, the 'burden of proof' which has not been defined under the Customs Act, therefore, has to be looked into from the point of the Indian Evidence Act. When a statutory authority entertains a doubt, a Show Cause Notice will be naturally issued based on certain observations and it is for the **noticee to satisfy and to prove that the observations / allegations of the statutory authority issuing such Show Cause Notice is wrong. The burden of proof, therefore, is always there on the noticee initially, which has to be discharged in the first place**. So by just stating that they have filed Bill of Entry as per documents supplied by overseas supplier without giving any evidences in support, they can't escape from the duty liability and penal provisions. If this stand of the Importer is given credence, no case of duty evasion as can be booked and all tax evaders on getting caught would just blame the foreign supplier with impunity and seek escape from penal proceedings under the law. Hence, in view of the above discussions, I find that the contention of Noticee is not sustainable.

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

e) In view of above, I hold that there is no flaw in invoking Section 28(4) of Customs Act, 1962 to demand differential duty in the present case with applicable interest as per Section 28AA of the Customs Act, 1962. I also hold that the customs duty already paid is to be appropriated against the said demand.

26.12 Imposition of Penalty on M/s Madhav Extrusion under Section 112A/114A and 114AA of the Customs Act, 1962.

I find that section 114A stipulates that the person, who is liable to pay

duty by reason of collusion or any willful mis-statement or suppression of facts as determined under section 28(8) ibid, is also be liable to pay penalty under section 114A.

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

However, I find that as per 5th proviso of section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under section 112 is not imposable. I find that there is a mandatory provision of penalty under section 114A of customs act, 1962 where duty is determined under Section 28 of customs act, 1962. Therefore, I refrain from imposing penalty under section 112(a) (ii) of Customs act, 1962.

As regards imposition of penalty under Section 114AA of Customs Act, 1962 on M/s. Madhav Extrusion, the Section 114AA envisages penalty on a person who knowingly or intentionally makes, signs or uses, or causes to be made signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. Noticee has provided the forged/fake documents to the customs authority with an intent to evade duty despite knowing the fact that they have to verify the authenticity of the documents as per section 46(4A). Further as per section 46 (4) they have given declaration as to truth of the contents of Bill of Entry which they have failed to do. From the discussions, held in above paras, it is beyond doubt that they have intentionally produced the fake documents to evade customs duty and hence rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962. Hence, I hold that M/s. Madhav Extrusion has mis-declared the country of origin to evade the duty by way of producing forged or fake documents (viz. PSIC, COO Certificate, Invoice etc.) and for their act of omission and commission they have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962.

26.13 Imposition of Penalty on Custom Broker, M/s Aditi Cargo Movers under Section 117 under the Customs Act, 1962.

a) I find that in the Show Cause Notice, it has been alleged that Custom Broker has failed to fulfil their obligations laid down under Customs Broker Licensing Regulation, 2018 and rendered themselves liable for imposition of penalty under Section 117 of the Customs Act, 1962.

b) Custom Broker in their submission has stated that SCN doesn't allege that they have done any omission and commission which have rendered goods liable for confiscation. They have not abetted in any matter with knowledge in regard

to the offending goods or the mis-declaration of origin of goods. They have denied the violation of regulation 10(d) and 10(m) of CBLR. They are handling the work of Importer since decade and they have no doubt or suspicion about the genuineness of the documents. No advice was sought by Importer. Ongoing through the facts of the case, it has been found that no charges for rendering the goods liable for confiscation has been alleged in the Show Cause Notice. The charges are framed for the violation of the CBLR 2018 on the basis of statement dated 03.05.2023. In the statement of **Shri Vashav D Datta**, F Card Holder (CHA/F/6/2011) & Proprietor of Custom Broker M/s. Aditi Cargo Movers recorded under Section 108 of the Customs Act, 1962, on 03.05.2023 he accepted that they didn't undertake detailed scrutiny of the documents and carried out the business on trust. He further accepted that they have failed to fulfil their obligations laid down under Customs Brokers Licensing Regulations, 2018 while filing BoE No. 5982221 dated 25.10.2021 which had resulted in such mistake. If we see Rule 10 (d) and Rule 10 (m) of CBLR 2018:

d) advises his client to comply with the provision of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the customs authority

m) discharge his duties as a Custom Broker with utmost speed and efficiency and without any delay

I find that CB has filed Bill of Entry on the basis of documents forwarded by Importer. Further, as per statement of Shri Vashav D Datta, F card holder, recorded on 03.05.2023, they have verified the credentials of the importer and providing CHA services to Importer for past 10 years. Further, Importer has also not sought any advice on record. In the Show Cause Notice, there is no allegation regarding how CB failed to advice his client or has not performed his duties with utmost speed. Further, the allegation of lackadaisical approach has not been corroborated in the SCN with facts. It is the statement of CB which has been relied to frame charges of Rule 10 (d) and Rule 10 (m) of CBLR, 2018. Furthermore, the statement of CB also doesn't corroborate the charges made in Show Cause Notice for violation of relevant rules. There is nothing on record in the Show Cause Notice that on the basis of documents provided to them, they could have verified the credibility of Country of Origin and subsequently advised their client. Further, nothing has been discussed in the Show Cause Notice that Custom Broker has not discharged his duties with utmost speed, efficiency and without delay and their relevance with the case. The charges made in the Show Cause Notice are on weak footing and no evidential facts are presented in the whole case. Accordingly, I find force in the contention of Noticee that charges framed for violation of Rule 10 (d) and Rule 10 (m) of CBLR, 2018 on CB is not sustainable in view of lack of evidences gathered during investigation.

c) Further M/s Aditi Cargo Movers has relied on the judgment in case of ***P.V. Cargo Carriers P. Ltd vs Commr of Cus (G), New Delhi Final Order No. C/A/51084/2016-CU (DB) dated 16.03.2016*** in which it was held that -

"The other main allegation against the appellant is that they did not advice their client properly relating to importation of chemicals. We find that with this observation, original authority concluded that the appellant has actively connived with the importer under reference in their illegal and nefarious activities. We find

such summary and serious conclusion has been drawn without any basis or evidence. Even if it is conceded that the appellant could have put in more efforts to explain to the clients the various conditions with reference to import of chemicals, such omission by itself cannot lead to a conclusion of active connivance which is positive misconduct. The appellant obtained all the documents and filed the bill of entry based on the documents submitted by the importer. It is only on test by a competent laboratory the actual nature of the chemical could be found."

There is nothing on record in the Show Cause Notice that on the basis of documents, they could have verified the credibility of Country of Origin. Hence, I find that the ratio of judgment is applicable in this case. Further, Noticee has relied on several judgments which are irrelevant to this case on the basis of different facts and scenarios.

Based on the above discussions, I hold that, the charges of violation of rule 10(d) and 10 (m) of CBLR, 2018 have been framed in the Show Cause Notice without any evidential and substantial ground. There is no sufficient grounds discussed in the Show Cause Notice to prove that Noticee has violated the aforesaid rules of CBLR, 2018. Hence, I refrain from imposing penalty on M/s Aditi Cargo Movers under Section 117 of the Customs Act, 1962.

26.14 Imposition of Penalty on M/s HUB & Links (I) Logistics Pvt Ltd under Section 112 (b) (ii) and 117 of the Customs Act, 1962.

a) I find that Shri Sajish Sivaraj Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd. (agent of M/s. Shah Aziz Shipping Lines LLC & delivery agent of the subject consignment at Mundra as per Master Bill of Lading No. SASLMU21551 dated. 21.10.2021) in his statement recorded under Section 108 of the Customs Act, 1962 has stated that M/s Hub & Links Logistics India Pvt. Ltd. is not the actual transporter and they had no information regarding the previous load ports also. They came to know about the switch Bill of Lading only after the documents were arranged on enquiry by SIIB Section, Custom House Mundra. Before that, the switch Bill of Lading was the original bill of lading for them. In the written submission dated 09.02.2024 they have stated that Switch bills of lading are valid. They have not got the first leg of Bill of Lading initially. They have filed IGM on the basis of 2nd leg of Bill of Lading. Noticee has stated that it is the Importer that has committed fraud and by relying certain provisions of customs act, they are not liable for penalty. Further they have stated that they have not done anything which has led the goods to be liable for confiscation. They have stated that they have not abetted any contravention under the act, hence section 112 (b) (ii) and section 117 are not applicable on them. They have relied on certain judgments to state that they are not liable for penalized under section 112. Further they have stated that they can't be held guilty for mis-declaration with regard to the correctness of the content of the IGM filed by them as required under section 30(2) of the Customs act and hence no penalty should be imposed under section 117 of the customs act. As the mens rea has not been found, penalty under section 112 (b) (ii) and section 117 of the customs act, 1962 should not be imposed.

b) Ongoing through judgments relied by the notice to support their contention that they are not liable to be penalized under Section 112(b) and 117

of the Customs Act, 1962, I find that cited case of ***Shobha Plastics Pvt Ltd vs Commissioner of Customs, 2022(382) E.L.T. 813 (Tri. Ahmd), M/s MS Exim Services vs CC Ludhiana 2021 (377) E.L.T. 615 (Tri- Chan), V. Lakshmipathy vs CC 2003(153) E.L.T. 640T (Tri-Delhi) , Codognotto Logistics India Pvt Ltd Vs Commissioner of Customs , Appeal No. 52111 of 2022 (SB), Hindustan Steel Ltd 1978 (2) ELT J159 (SC), Akbar Badruddin Jiwani vs Collector of Customs 1990 (047) ELT 0161 (SC), M/s Trans Asian Shipping Services P Ltd 2018 (363) E.L.T. 635 (Tri. ALL)*** are different from this case in terms of fact and penalty provision of Customs Act, 1962. Hence the same can't be relied upon. In case of ***Vipul Joshi vs CC Ahmedabad 2022 Customs Appeal No. 10053 of 2022***, it was held that for imposition of penalty under Section 112 (b), the knowledge of the offence on the part of Noticee has to be established. I agree with the same and the ratio of judgment can be relied upon in this case. Further vide additional submission dated 15.11.2024 they reiterated the submission dated 09.02.2024 and in support of their contention of legitimacy of issuance of Switch Bill of Lading, they have placed reliance on the judgment in Wollongong Coal Limited vs PCL (Shipping) Pte Ltd (2020) decided by the New South Wales, Supreme Court. I find that legitimacy of Switch Bill of Lading has not been challenged in Show Cause Notice. Further, they have placed reliance on ***Jeena and Company versus Commissioner of Customs, Bangalore (2021 (378) E.L.T. 528 (Tri. Bang) and JKG Infralogistics Pvt Ltd vs Commissioner of Customs, Kolkata (2023 Taxscan (CESTAT) 1652)***. In these two judgments the facts of the cases are different and they are related to CB violation, hence can't be relied upon.

c) I find that Section 112(b) of Customs Act, 1962 pertains to activities mentioned in the said section relating to any manner dealing with any goods which the person knows or has reason to believe are liable to confiscation. I rely on the judgment in case of ***Vipul Joshi vs CC Ahmedabad 2022 Customs Appeal No. 10053 of 2022***, wherein it was held that for imposition of penalty under Section 112 (b), the knowledge of the offence on the part of Noticee has to be established. In this case, no evidences have been placed before me which proves that **M/s. Hub & Links Logistics (I) Pvt. Ltd** had a role in such activities or have any prior information about the liability of goods for confiscation, which makes them liable for penalty under Section 112(b) of Customs Act, 1962. Therefore, I do not find any reason to impose penalty on them under Section 112(b)(ii) of Customs Act, 1962.

d) As regards imposition of penalty under Section 117 of the Customs Act, 1962, I find that during investigation, they have submitted some documents. On perusal of said documents during statement recorded on 12.04.2023, **Shri Sajish Sivaraj Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd.** stated that 22330 Kgs. of "Brass Scrap" were loaded in Container No. SCZU 7942110 having seal no. 018259 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal No. 018259 affixed at Karachi Port was found intact at Mundra Port. As agents of their principal, they cannot fully wash away the deliberate actions undertaken by their principal which have played an important role in perpetrating the fraud of evasion of duty. They remain culpable to a certain extent to face penal action for the omissions and commissions committed by their principal. I find that **M/s. Hub & Links Logistics (I) Pvt. Ltd** had not securitized the papers/documents available with them and have failed to exercise the due diligence required from them, hence they are liable to be

penalized under Section 117 of the Customs Act, 1962. Hence, the last issue before me has been decided in this case.

27. In view of the above discussion, I pass the following order.

ORDER

27.1 I reject the classification of 22330 Kgs. of "Brass Scrap Honey as per ISRI" imported in Container No. SCZU 7942110 under Chapter Tariff Heading No.74040022 covered under BoE No. 5982221 dated 25.10.2021 and order to re-classify the same under Chapter Tariff Heading No.98060000 of the Customs Tariff Act, 1975;

27.2 I hold that 22330 Kgs. of "Brass Scrap Honey as per ISRI" imported in Container No. SCZU 7942110 covered under BL No. SASLMU21551 dated 21.10.2021, Invoice No. RT-441-2021 dated 23.10.2021 & Bill of Entry No. 5982221 dated 25.10.2021 valued at **Rs. 92,24,746/ -** *(Rupees Two Crore Fifty Six Lakh Seven Thousand Eight Hundred Ninety Five Only)* are liable for confiscation under Section 111 (m) of the Customs Act, 1962. Further, I impose redemption fine of **Rs 9,00,000/-** *(Rupees Nine Lakh Only)* under Section 125 of the Customs Act, 1962.

27.3 I confirm the demand of differential duty of **Rs. 2,56,07,895/-** *(Rupees Two Crore Fifty Six Lakh Seven Thousand Eight Hundred Ninety Five Only)* determined in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962 with applicable interest under section 28AA of the Customs Act, 1962 **which is recoverable from Noticee M/s Madhav Extrusion.** Further I order to appropriate and adjust the customs duty of **Rs. 19,05,858/-** *(Rupees Nineteen Lakh Five Thousand Eight Hundred Fifty Eight only)* already paid by them, against the confirmed demand.

27.4 I impose penalty of **Rs 2,56,07,895/-** *(Rupees Two Crore Fifty Six Lakh Seven Thousand Eight Hundred Ninety Five Only)* on M/s Madhav Extrusion under Section 114A of the Customs Act, 1962. I refrain from imposing penalty under section 112 (a) (ii) of the Customs Act, 1962, since as per 5th proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

27.5 I impose penalty of **Rs 5,00,000/-** *(Rupees Five Lakh Only)* on M/s Madhav Extrusion under Section 114AA of the Customs Act, 1962.

27.6 I refrain from imposing penalty on M/s Aditi Cargo Movers under Section

117 of the Customs Act, 1962 for the reasons discussed above.

27.7 I impose penalty of **Rs 3,00,000**/- *(Rupees Three Lakh Only)* on M/s HUB & Links Logistics (I) Pvt Ltd under Section 117 of the Customs Act, 1962. However, I refrain from imposing penalty on M/s HUB & Links Logistics (I) Pvt Ltd under Section 112 (b) (ii) of the Customs Act, 1962 for the reasons discussed above.

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

(K. Engineer)
Pr. Commissioner of Customs,
Custom House, Mundra.

BY Speed Post A.D / E-mail

To, (The Noticee):-

(i) **M/s. Madhav Extrusion** (IEC No.: 2406004040) having their address at Plot No. 3436/37/38, GIDC, Phase-3, Dared, Jamnagar-361004, Gujarat

(ii) **M/s. Aditi Cargo Movers** (CHA Code: AETPD3701NCH001) having their address at 219, 2nd Floor, Madhav Palace, Sector-8, Plot No. 55, Gandhidham

(iii) **M/s. Hub & Links Logistics (I) Pvt. Ltd.**, Gandhidham having their address at Suite No. 101, Rishabh Arcade, Near GST Bhawan, Plot No. 83, Sector-8, Gandhidham – 370201

Copy to:

1. The Addl. Commissioner (SIIB), Customs House, Mundra.
2. The Deputy/ Assistant Commissioner (Review Section) CCO, Ahmedabad
3. The Deputy Commissioner (Gr-IV-A) Customs House, Mundra.
4. The Deputy/ Assistant Commissioner (EDI), Custom House, Mundra.
5. Notice Board.
6. Guard File