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565752/2023



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS**  
**CUSTOM HOUSE: MUNDRA, KUTCH**  
 MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421  
 Phone No. 02838-271029/423 FAX No. 02838-271425  
 Email : importsectionmundra@gmail.com

A	File No.	GEN/ADJ/ADC/37/2023-Adjn-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	<b>MCH/ADC/MK/134/2023-24</b>
C	Passed by	<b>Mukesh Kumari</b> Additional Commissioner of Customs (Adjudication) Custom House, Mundra.
D	Date of order	04.08.2023
E	Date of Issue	04.08.2023
F	SCN No. & Date	SCN No. S/43- 31/SIIB-B/Inv-BKSales/CHM/19-20 dated 06.08.2020
G	Noticee/Party/ Importer/ Exporter	<b>M/s B.K. Sales Corporation, 7, Shop No 8. Mani Complex, Plot No 84, Opp Multiplex Cinema, Gandhidham Kutch, Gujarat.</b>
H	DIN No.	<b>20230871MO0000318893</b>

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है।

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

"सीमा शुल्क आयुक्त (अपील),  
 7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009"  
**"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**  
**Having his office at 7<sup>th</sup> Floor, Mridul Tower, Behind Times of India,**  
**Ashram Road, Ahmedabad-380 009."**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए।

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

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

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

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

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

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

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

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**Brief Facts of the Case:**

Whereas, pursuant to the specific intelligence available with SIIB, Mundra Customs House, that goods "Methanol" loaded on Tanker Vessel MT Opec Galaxy (IMO No 9363833) (hereinafter referred to as "the vessel" for the sake of brevity) is originated from Iran, however, the importer i.e. M/s. B.K. Sales Corporation, Delhi), in connivance with supplier has mis-declared the country of origin of goods, i.e, Oman instead of Iran, in order to evade sanctions imposed by USA on Iran for trading in petroleum products.

On further enquiry, it is found that the vessel has unloaded 17,520.67 MTs of Methanol at Mundra Port and the importer has filed 04 Bills of Entry for clearance of the same. The Details of the Bills of Entry as below-

**Table- A**

Sr. No.	Bill of Entry No. and Date	Qty of Goods (In MTs)	Value of Goods (In Rs.)
1	6722171 dated 01.02.2020 (Warehouse B/E)	7352.67	13,43,56,625.63
2	6693897 dated 30.01.2020 (Warehouse B/E)	8000	14,61,85,400
3	6697200 dated 31.01.2020 (Home Consumption B/E)	1000	1,82,73,175
4	6698121 dated 31.01.2020 (Home Consumption)	1000	1,82,73,175
	Total	17352.67 MTs	Rs. 31,70,88,376/-

**2.** On receipt of the intelligence, the officers of R & I along with the officers of SIIB, Mundra re-boarded the vessel on 01.02.2020 and retrieved the following documents -

1. Port of Call List 2. Deck Log Book 3. Cargo Record Book 4. Visitor Log Book 5. Anchor Watch Log 6. Cargo Loading/De-ballasting Plan 7. Inspection Certificate for the cargo loaded 8. Cargo Manifest and 9. Letter of Indemnity dated 28.01.2020 for delivering the cargo issued by M/s Seastar Maritime Co. Ltd and 10. Emails from the Master of the tanker which revealed that the vessel loaded 17352.67 MTs of Methanol at Dayyer Port, Iran and not in Sohar Port, Oman.

In the retrieved e-mails, the Master was instructed to take the vessel to Oman Port and stay at Oman Port after loading charterers cargo from Dayyer Port. Therefore, the officers of SIIB, Mundra Customs recorded statement of the Master Shri. Thin Van Luyen, a Vietnamese citizen under Section 108 of the Customs Act, 1962 on 3 February, 2020 (RUD) wherein the Master Shri. Thin Van Luyen stated that the Port of Loading of goods i.e. 17352.67 MTs Methanol which is unloaded at Mundra Port on 29.01.2020 to 02.02.2020 is Dayyer, Iran and not Sohar, Oman. The retrieved e-mails from the Master's computer also showed instructions given by the ship owner's company to take the vessel to Sohar only for using the Bank letter of Credit and to complete the export and import formalities.

**3.** Inference from the above statement of the Master of the Vessel: From

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the voluntary statement of the Master of the Vessel MT Opec Galaxy, it was evident that the cargo (17.52.67 MTS of Methanol) discharged at Mundra Port was actually loaded at Dayyer Port in Iran between 24th January, 2020 to 25th January, 2020 and that no loading or discharge of cargo took place in Sohar, Oman. However, the arrival documents submitted before Customs, Bills of Lading and Ship's log books were manipulated on the instructions of the Ship's owners/cargo operators to hoodwink the Indian authorities with malafide intentions to mis-declare the Country of Origin of the goods as Oman.

Thus it appeared that material fact of country of origin of the goods was suppressed to circumvent US sanctions against international trade of petroleum products with Iran. Therefore, the impugned goods appeared to be liable for confiscation in terms of **Section 111(m) of Customs Act, 1962** and since the vessel has been used as a conveyance to smuggle the said goods, **the vessel is also liable to confiscation under section 115(2) of the Customs Act, 1962**. Accordingly, the vessel MT Opec Galaxy was seized vide Seizure Memo dated 03.02.2020.

#### **4.1 Documents retrieved from the Vessel MT OPEC GALAXY:**

**(i)** Emails 11.01.2020, 20.01.2020 and 24.01.2020 from M/s. Seastar Maritime Co. Ltd- Scrutiny of emails pointed towards the well planned conspiracy of the vessel owners to disguise the Iranian origin of the goods by declaring the same as Omanian Origin at the time of discharge in Mundra.

**(ii)** Original Deck log book, Cargo Record Book and Visitors Log Book showing the visit of vessel to Dayyer Port, Iran between 23.01.2020 to 26.01.2020- The part of the said log books showing the visit of the vessel MT OPEC GALAXY to Dayyer Port, Iran in January-2020 is mentioned below:

**(a) Deck Log Book** - Entry in Deck-Log Book showing presence of vessel at Dayyer Port, Iran on 23.01.2020 to 26.01.2020, however the same has not been mentioned in the "Port of Call List" submitted by the master of vessel while filling IGM for the vessel. From entry made in "Deck Log Book", it is seen that the vessel arrived at Sohar, Oman on 2330 Hrs on 26.01.2020 and left on 27.01.2020 at 0700 Hrs i.e. only after 7.5 Hrs of arrival at the said port.

**(b) Cargo Record Book** - From the "Cargo Record Book", it is seen that that the goods i.e. Methanol was loaded on the vessel on 27.01.2020 at Sohar, Oman and the same was also mentioned in Inspection Certificate, Certificate of Quantity Report NO. CQ-27-01/2020-OPG, Certificate of Analysis Report No. AN-27-01/2020-OPG, Ullage Report No. AN-27-01/2020-OPG, Time Sheet Report No. TS-27-01/2020-OPG and others all dated 27.01.2020 issued by M/s Middle East Services.

**(c) Time Sheet** – In the Time Sheet, it is mentioned that that the vessel arrived at Anchorage in Sohar, Oman at 1130 Hrs on 25.01.2020 and cargo loading commenced on 0250 Hrs on 26.01.2020 and loading

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completed on 0010 Hrs on 27.01.2020.

**(d) Cargo Loading/De-Ballasting Plan** – From the Cargo Loading/De-Ballasting Plan submitted by the Master of vessel, it is found that the same was prepared on 26.01.2020 at Sohar, Oman. Also it is mentioned in the “Cargo Loading/De-Ballasting Plant” that loading rate was 1000 M<sup>3</sup> per hour and there were 12 stages for loading of the cargo and each stage calculation is 2 Hrs. From the rate of cargo loading as mentioned in “Cargo Loading/De-Ballasting Plan”, it is noticed that 17352.67 MTs of Methanol couldn’t have been loaded on the vessel during its stay at Sohar, Oman as found from the Deck Log Book.

**(e) Visitors Log Book** – From the “Visitors Log Book”, it is seen that entries were made in Iran for visit of the Customs Officers, Loading Master Agents etc. It is evident from the “Visitors Log Book” that the Customs formalities were also done at Dayyer Port, Iran including loading of the goods.

**(f) Anchor Watch Log** – It is seen that the vessel was anchored at Dayyer Port, Iran from 23.01.2020 to 24.01.2020, 1100 Hrs.

**4.2** The above-mentioned retrieved emails instructions dated 11.01.2020, 20.01.2020 and 24.01.2020 received by the Master of the vessel, the entries in the Deck log book, Cargo Record Book and Visitor Log Book, further affirmed the admission of the master that the cargo was actually loaded in Dayyer Port in Iran. Further, the scrutiny of the original Deck Log Book available with the Master of Vessel, the vessel visited and stayed at Dayyer Port from 23.01.2020 to 26.01.2020 however the same was not has not been mentioned in the “Port of Call List”. It appeared that there was gross mis-declaration made by the Master of Vessel regarding its Port of Call List, The Cargo Loading and Unloading from the Vessel and pointed towards the wilful misstatement and suppression of the fact of loading of the Iranian origin goods from Dayyer port in Iran. Further, hiding the visit of vessel to Dayyer Port from 23.01.2020 to 26.01.2020 points towards the well planned modus operandi to suppress the visit of the Vessel to Iran.

## **5. Detention and Seizure;**

**5.1** After receipts of the information from SIIB Section, Mundra, it was evident that the entire cargo of 17,352.67 MTS of Methanol discharged at Mundra Port for which Bills of Entry have been filed by the importer had not been loaded at Sohar Port, Oman and the actual COO of the goods i.e. Iran was mis-declared in the import documents filed for clearance of the goods. Accordingly, the imported goods vide Bills of Entry No. 6722171 dated 01.02.2020 (Warehouse B/E), 6693897 dated 30.01.2020 (Warehouse B/E), 6697200 dated 31.01.2020 (Home Consumption B/E) and 6698121 dated 31.01.2020 (Home Consumption) were seized under the provisions of Section 110 (1) of Customs Act, 1962.

**6.** Further statement of the Shri Sanjay Gupta, Partner of M/s. B. K. Sales Corporation was recorded under Section 108 of the Customs Act, 1962 on 05.02.2020 by the officers of SIIB Customs House Mundra

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wherein he interalia stated that they were not aware about the misdeclaration in country of origin and as all the documents i.e. Commercial Invoices issued by the supplier, Bill of Lading issued by Shipping Line, Packing List, Sail Certificate issued by the DG of Customs, Oman, Certificate Analysis submitted by an independent agency issued by independent agencies categorically stating country of origin as "Oman", they had no reason to disbelieve the documents.

## **7. Summary and Outcome of Investigations;**

From the investigations conducted in the subject matter as detailed here-in above, it appeared that:

**7.1** The vessel MT Opec Galaxy arrived at Mundra Port, carrying 17352.67 Metric Tonnes (MTS) of Methanol declared to be loaded from Sohar Port in Oman and Country of Origin (COO) as Oman. However, from the scrutiny of the documents retrieved from the vessel such as Log Books, e-mails etc., it was evident that the vessel had visited Dayyer Port in Iran between 23rd and 26th January, 2020 for loading of 17352.67 MTS of Methanol and no loading/discharge happened at Sohar Port in Oman.

**7.2** Contrary to the declaration of the Country of Origin and Load Port as Sohar, Oman, the fact that the vessel had visited Iran and the Cargo was loaded from Dayyer Port in Iran was further confirmed from the following evidences and voluntary statements of Mater of the vessel:

- (i) Emails 11.01.2020, 20.01.2020 and 24.01.2020 containing the instructions from the cargo operator to the Master of the Vessel to stay at Sohar OPL after loading charterers cargo from Dayyer.
- (ii) Original Deck Log Book, submitted by the Master of the vessel wherein it is mentioned that the vessel visited the Dayyer port, Iran on 23.01.2020 to 26.01.2020, however the same has not been mentioned in the "Port of Call List" submitted by the Master of the vessel while filing the IGM for the vessel.
- (iii) There was discrepancy in the entries made in "Deck Log Book" and Time Sheet. As per "Deck Log Book", the vessel arrived at Sohar, Oman at 2330 Hrs on 26.01.2020 and left at 0700 Hrs (after 7.5 Hrs of arrival at Sohar, Oman), however in the Time Sheet, it is mentioned that the vessel arrived at Anchorage in Sohar, Oman at 1130 Hrs on 25.01.2020 and the cargo loading was commenced on 0250 Hrs of 26.01.2020 (i.e. loading process completed in 10 Hrs).
- (iv) As per the information given by the Master of vessel, the loading rate is 1000m<sup>3</sup>/Hr and there are 12 stages for loading of cargo and each stage require 2 Hrs i.e. it is not possible to load 17352.67 MTS of Methanol into the vessel with 7 Hrs stay at Sohar, Oman.
- (v) In the Visitors Log Book, entries were made in Iran for the visit of the Customs Officers, Loading Master Agents etc verifying that the Customs formalities were also done at Dayyer Port, Iran.
- (vi) As per "Anchor Watch Log" it is seen that the vessel was anchored at

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Dayyer Port, Iran from 23.01.2020 to 24.01.2020.

(vii) Bell book and Radar Log Book which has entries showing the visit and the loading of the 28064.675 MTS of Methanol at to Dayyer Port, Iran between 15.01.2020 to 18.01.2020.

(viii) The Master of the Vessel MT Opec Galaxy, Mr. Thin Van Luyen in his statement dated 03.02.2020 admitted that 17352.67 MTs of Methanol were loaded from Dayyer Port, Iran and the Log Book entries further confirmed that the vessel MT Opec Galaxy had visited Dayyer, Iran from 23rd-26th January, 2020. He further accepted that he had received instructions through various e-mails from Chartered and the documents like Inspection Report and Cargo Manifest found on the vessel are false documents and were prepared on the instructions of the Charterer M/s Seastar Maritime Co. Ltd. He also stated that no goods were loaded at Sohar, Oman and the vessel went to Sohar, Oman only for using the Bank Letter of Credit and to complete the export and import formalities.

**7.3** The Time Chartered M/s Seastar Maritime Co. Ltd Ltd through their agent M/s Samudra Marine Services Pvt. Ltd submitted letter dated Nil wherein it was stated that

Seastar Maritime Co. Ltd Co Ltd. as despondent owner and time charterers of MT OPEC GALAXY have contracted into fixture with the voyage charterer, Petro Kavesh Design and Engineering Co, who had hired the vessel MT Opec Galaxy for carriage of Methanol from Dayyer, Iran to Mundra.

In view of above, the fixture was made with the voyage charterer whereby the voyage charterer has issued a direction to sail to Dayyer Port for loading of 17352.67 MTs of Methanol via email dated 20.01.2020. Further voyage charterer has instructed Seastar Maritime Co. Ltd to stay at SOHAR and cooperate with agent, whom was appointed by the voyage charterers to process the proper import/export formalities for onboard cargo without actual pumping out. They never realized that this procedure would be violating Indian Law.

From the Letter of Indemnity (LOI) dated 28.01.2020 it was noticed that M/s Petro Kavesh Design and Engineering Co (hereinafter referred to as "the Voyage Charterer") made request to the owner of M T Opec Galaxy, which is reproduced below-

*"The above cargo was shipped at [Dayyer, Iran], the above vessel by [Trade Unity FZE] on 25.JAN 2020 and consigned [B.K. Sales Corporation, Shop No 08. Mani Complex, Plot no 84, Ground Floor, Sector-8, Gandhidham, Kachchh Gujarat-370201 (India) for delivery at [Mundra Port, India], but we [Petro Kavesh Design & Engineering Co.] hereby request you to state [Sohar, Oman] as loading Port and [27.Jan. 2020] as BL Date in the bill of lading and the vessel to proceed to and deliver the said cargo at [Mundra Port, India]."*

Few of the clauses in the "Fixture Note" are reproduced as-

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- (i) Due to banking sanctions we need owner's flexibility on following items about Bills of Lading.
- (ii) The word "Iran" if requested by us; shall be omitted from B/L and not to be shown anywhere.
- (iii) The shipper may be inserted as SPECPelican or Others due to our request
- (iv) Load Port may be needs to be mentioned "Middle East Port", "Singapore""Jebel Ali" "Sohar" or somewhere else I/O BIK/ASSALUYEN.
- (v) Place of issue may be needs to be inserted the, Middle East Port", "Singapore". "Jebel Ali" "Sohar" or somewhere else I/O Tehran.
- (vi) If required after getting switching OBL LOI from charterer side, owner to prepare 2nd set of bill of lading will remain in owners/agents office until the first full set is surrendered to owners/agents office. Owners are to release the 2nd set of Bill of Lading within 24 house after surrendered the first set. Owners agree to discharge the cargo against 2nd set of Bill of Lading Original Upon charterer providing a simple LOI in Owners P and I Club wording without bank guarantee. All additional cost for switching BL will be to the account of charterer.

Further, Shri Sanjay Gupta, Partner of M/s. BK Sales Corporation accepted that on going through the Incident Report and statement of Mr Thin Van Luyen, Master of the vessel dated 03.02.2020, the cargo appeared to be loaded at Iran port.

**7.4** Further, the Master of the Vessel M T Opec Galaxy, Mr. Thin Van Luyen in his statement dated 03.02.2020 submitted that as per the instructions received from the charterer, vessel went to Sohar only for using the Bank letter of Credit and to complete the export and import formalities. He further accepted that the "Inspection Report" and "Cargo Manifest" found on the vessel are false documents and were prepared on the directions of M/s Seastrar Maritime.

**7.5** On the basis of the investigation conducted and the evidences on record, the goods appear that the goods are liable for confiscation under section 111 (m) of Customs Act, 1962. Since the vessel has been used as conveyance to smuggle the said goods, the vessel also liable for confiscation under section 115 (2) of Customs Act, 1962.

**7.6** From the scrutiny of the documents, statements recorded and the investigations as above, it appeared that the Master of the vessel M T Opec Galaxy, on the instructions of M/s Seastrar Maritime Co. Ltd, had intentionally and knowingly manipulated, signed and used documents that were false or incorrect viz. Log book of vessel, the voyage memo and other arrival documents wrongly depicting port of loading as Sohar, Oman although he was well aware of the fact that the cargo was actually loaded in Dayyer Port in Iran between 23.01.2020 to 26.01.2020. It appeared that mis-declaration of the port of loading by way of forgery of documents was done to circumvent the US imposed sanctions on trade with Iran, which in turn appeared to be done to avoid the restrictions on dollar trade

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with Iran. This pointed towards the mensrea on the part of the Time Chartered and the Master of the Vessel to mis-declare the Origin of the goods as correctly declaring the Loading at Iran would have restricted the payments to be made in Indian rupees only.

**7.7** Further, it has been substantiated that importer M/s B. K. Sales Corporation have filed wrong declaration under the provisions of Section 46 of the Customs Act, 1962. The subject goods were loaded originally from Iran, but the same was shown loaded from Oman. The subject importer is under the statutory obligation in terms of section 46(4A) to verify the genuineness and correctness of the documents filed before the customs authorities.

#### **8. Grounds for Penal Provisions:**

**(i)** From the investigations carried out and brought out here-in-above, it is evident that the imported goods do not correspond in respect of the country of origin and port of loading with the entry made under the provisions of Section 46 and 46 (4A) of the Customs Act, 1962. The importer M/s. B. K. Sales Corporation have failed to ascertain the correctness of the import documents filed before the customs authorities and intentionally made use of false documents in transaction of their business. Therefore, the subject importer is liable for penal action under section 114AA of the Customs Act, 1962,

**(ii)** Further, investigations have pointed that M/s. Seastar Maritime Co. Ltd, have knowingly and intentionally made use of false, fabricated and bogus Bills of Lading of Methanol showing the port of discharge as Sohar, Oman, even though they were fully aware that no goods were loaded from Oman and that the imported goods were actually loaded at Dayyer, Iran. Further, M/s. Petro Kaveh Design & Engineering Co. Ltd have instructed the Time Chartered M/s Seastar Maritime Co. Ltd to load the cargo from Dayyer and switch the Bill of Lading mentioned loading port as Sohar.

The act of willful use of false documents have rendered M/s. Petro Kaveh Design & Engineering Co. Ltd and M/s. Seastar Maritime Co. Ltd liable to be penalized under Section 114AA of the Customs Act, 1962. The omission and commission as discussed above, have rendered the subject goods liable for confiscation under Section 111 (m) of the Customs Act, 1962, and M/s. Seastar Maritime Co. Ltd rendered himself liable for penal action under Section 112(a) of the Customs Act, 1962.

**(iii)** Further, Thin Van Luyen, Master of the vessel M T Opec Galaxy has knowingly and intentionally signed the document which were false or incorrect i.e. logbook of vessel, certificate of analysis, Time Sheet, cargo manifest and other arrival documents wrongly depicting port of loading as Sohar, Oman. Further, he has suppressed the fact that the imported goods were loaded at Dayyer, Iran and didn't mention Iran port in the voyage memo and has suppressed Iranian documents at discharge ports. The above acts of omission and commission has rendered the goods imported under Bills of Entry as mentioned in Table A above, liable to confiscation under Section 111 (m) of the Customs Act, 1962, and the master of the vessel Thin Van Luyen is liable for penalty under Section 112(a) of, 1962

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the Customs Act. Further, his act of knowingly and intentionally signing and using the false documents has rendered him liable to be penalized under Section 114AA of the Customs Act, 1962.

**(iv)** M/s Trade Unity FZE, UAE issued invoice and packing list mentioning the load port as Sohar, Oman, however from the statement of master of vessel, it is seen that the goods were loaded at Dayyer, Iran. Therefore, it appears that the invoice and packing list issued by M/s Trade Unity FZE, UAE is false and fabricated to mislead and to believe that the goods originated from Oman rendering them liable for penal action under section 114AA of Customs Act, 1962.

**9.** Therefore, the importer M/s. B. K. Sales Corporation, Time Charterer Seastar Maritime Co. Ltd, Voyage Charterer M/s Petro Kaveh Design & Engineering, Supplier M/s Trade Unity FZE, UAE, Master of vessel Mr. Thin Van Luyen were issued Show Cause Notice F.No. S/43-31/SIIB-B/Inv-BKSales/CHM/19-20 dated 06.08.2020 for reply to the Additional Commissioner of Customs, Custom House, Mundra within 30 (thirty) days from the date of receipt of this notice as to why:

**(i)** The imported goods of declared FOB value of Rs 31,70,88,376/- (Rs. Thirty-One Crore Seventy Lakh Eighty-Eight Thousand Three Hundred Seventy-Six only) imported under Bill of Entry 6722171 dated 01.02.2020, 6693897 dated 30.01.2020, 6698121 dated 31.01.2020 and 6697200 dated 31.01.2020 should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962.

**(ii)** Penalty should not be imposed on M/s B.K. Sales Corporation, 7, Shop NO 8. Mani Complex, Plot No 84, Opp Multiplex Cinema, Gandhidham Kutch, Gujarat under Section 112 of the Customs Act, 1962.

**(iii)** The vessel MT Opec Galaxy (IMO No 9363833) having value of Rs 110,02,87,500/- (One Hundred Ten Crore Two Lakh Eighty-Seven Thousand Five Hundred) should not be held liable to confiscation under Section 115(2) of the Customs Act, 1962.

**(iv)** Penalty should not be imposed on M/s Seastar Maritime Co. Ltd, Rm 2112, Techno- Mart21 Building, 85, Gwangnaru, 56-gil, Gwangin-gu, Seo, Korea under Section 114AA of the Customs Act, 1962.

**(v)** Penalty should not be imposed on Mr Thin Van Luyen, Master of Vessel MT Opec Galaxy, a Vietnamese Citizen having Passport No B7201857 under Section 114AA of the Customs Act, 1962.

**(vi)** Penalty should not be imposed on M/s Petro Kaveh Design & Engineering Co Ltd No 4, Kaveh Building, (Shahid Mazhidi) Oshan Blvd, North End of Imam Ali Highway. 1956983111-Tehran, Iran under Section 114AA of the Customs Act, 1962.

**(vii)** Penalty should not be imposed on M/s Trade Unity FZE, P5 Office No E-32G- 18, Hamriyah Freezone, Sharjah, UAE under Section 114AA of the Customs Act, 1962.

## **10. Defence Submission:**

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### **10.1 Defence submission by M/s. B.K. Sales Corporation:**

The Noticee submitted their defence submission vide mail dated 27.06.2023 wherein they inter-alia submitted that:

The proposal of confiscation of goods under section 111 (m) alongwith imposition of penalty under section 112 of the Customs Act, 1962 is unjustified as borne out in the following submissions.

**A.** Show Cause Notice is vague and the investigation carried out by the department does not establish any connivance on part of BK Sales Corporation.

**A.1** The show cause notice has been issued to BKS on the basis of an investigation carried out by officers of SIIB and officers of R & I Section. The said notice inter alia relies upon discrepancies in documents recovered from vessel and statement made by Master of vessel at the time of investigation. Accordingly, it is incumbent upon the department to share such material evidence however the same has not been done. The reliance is placed on the case i.e. Commissioner of C. EX., Bangalore VS Brindavan Beverages (P) Ltd 2007 (213) E.L.T. 487 (S.C.)

**A.2** The said notice also relies on Mr. Thin Van Luyen, Master of vessel, MT OPEC GALAXY's statement dated 03.02.2020. As per whom M/s Petro Kaveh Design & Engineering, an entity based in Iran was the actual supplier of methanol to BKS and that on the charterer's i.e. M/s Seastar Maritime Co. Ltd directions methanol was not only loaded in Iran but the documents such as inspection report along with cargo manifest were also falsely prepared. If at all statement dated 03.02.2020 is considered to be true, then master of vessel pins the blame squarely on charterer for concealing the loading of goods from Iran and does not suggests anywhere that M/s B. K. Sales was involved in any way or that M/s B. K. Sales was aware of the dealing between M/s Petro Kaveh Design & Engineering and the charterer. Additional documents such as ship's ullage report, vessel ullage survey, stowage plan etc. were also provided by master of vessel to the department however the details of the same have neither been shared nor disclosed to the notice.

**A.3** At the time of provisional release of vessel, vide letter date Nil (forwarded by M/s Samudra Marine Services Pvt. Ltd. through letter dated 06.02.2020) it was submitted by the charterer that along with MT OPEC GALAXY they had contracted into a fixture with M/s Petro Kaveh Design & Engineering, who hired MT OPEC GALAXY for carriage of methanol from Dayyer to Mundra Port. Further, as per LOI dated 28.01.2020, enclosed with letter dated Nil, it was mentioned that the port of loading was changed from Dayyer to Sohar at M/s Petro Kaveh Design & Engineering request.

Apart from LOI mentioned above, other enclosures such as email from M/s Petro Kaveh Design & Engineering to charterer for loading the cargo from Dayyer, email to charterer from M/s Petro Kaveh Design & Engineering to switch bill of lading port as Sohar etc. were also part of the letter dated NIL submitted by the charterer however their contents have

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not been disclosed in the notice.

**B. M/s B. K. Sales is a bonafide importer having no intention to, and No monetary benefit to mis-declare the origin of goods.**

- (i) There is No revenue loss at all.
- (ii) M/s B. K. Sales has not claimed any preferential duty
- (iii) Nor any undue benefit accrued to M/s B. K. Sales due to alleged misdeclaration of Country of Origin.
- (iv) Goods (whether IRAN origin or otherwise) are Not prohibited under customs act or Foreign Trade Policy
- (v) Hence there is no reason for M/s B. K. Sales to mis declare the country of Origin.

**B.1** In the Pro forma invoice PL No: TUFPI20006 dated 23.12.2019 issued by M/s Trade Unity FZE to M/s B. K. Sales, it was specifically mentioned that contract for 17 KT (Thousand Ton) of methanol was confirmed, however subjected to the condition that interest of any country, entity or individual who had been prohibited or sanctioned by UN/US law in the goods being imported was barred. The said condition as mentioned in the pro forma invoice is being reproduced hereunder:

"No Country or Entity or Individual who is prohibited and/or sanctioned by UN/US law or regulation, shall have any interest in the product sold under this contract"

Adherence to the said condition was a prerequisite in procurement of goods from M/s Trade Unit FZE. The supplier M/s Trade Unity FZE provided M/s B. K. Sales with

- (i) Invoices, packing list and country of origin certificate duly stamped and signed by Oman Chamber of Commerce & Industries (hereinafter referred to as OCCI) at the time of import by M/s Trade Unity FZE..
- (ii) They had additionally been provided with Bills of ladings which were duly signed by master of vessel certifying that methanol was loaded from Sohar, Oman, and
- (iii) Other certificates as quality certificate, certificate of quantity issued by third party surveyors again certifying that methanol was loaded on vessel MTOpec Galaxy from Sohar, Oman.
- (iv) Sail certificate issued by Royal Oman Police, DG customs validating vessel MTOpec Galaxy with its crew left Sohar on 27th January 2020.

Hence given the nature of contract between M/s B. K. Sales and M/s Trade Unity FZE, and various documents issued by different independent agencies accompanying the consignment and Oman's reputation of being one of the largest manufacturer/ exporter of methanol. M/s B. K. Sales had no reason to disbelieve either the origin of goods or authenticity of documents accompanying it.

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**B.2** It is worthwhile to add at this juncture that BKS vide letter dated 26.06.2020 to the department submitted an entire sequence of correspondence done through e-mail with M/s Trade Unity FZE. Ongoing through the said correspondence it can be seen that M/s Trade Unity FZE had repeatedly mailed documents evidencing origin of goods as Oman. Nowhere in their correspondence any reference to Iran was made by M/s Trade Unity FZE therefore in this backdrop, M/s B. K. Sales had no other option but to believe its supplier.

**B.3** It is worthwhile to place on record that Oman has huge Methanol production facilities. Producing about 2.5 million tons per annum, hence M/s B. K. Sales belief that goods were of Oman origin was well placed.

**B.4** Post Customs Investigations, in the email a 9th February 2020 and again on 16th February 2020 sent by M/s B. K. Sales to M/s Trade Unity FZE, M/s B. K. Sales expressed their utter dismay at being misled about the origin of goods contrary to supplier's express promise for shipping only Non-Iran cargo as per the contract. Contract clearly mentions that "No Entity/Individual/Country under US or UN sanctions should have any interest in the goods being sold under the contract" Through the above emails, M/s B. K. Sales also put the supplier on notice that all costs and damages resulting from the seizure shall be to the account of the supplier alone.

**B.5** The item methanol is being imported by M/s B. K. Sales under Chapter Heading 29051100 by availing the benefit of general exemption Notification No. 50/2017- Customs (T) dated 30.06.2017, attracting basic customs duty of 5 % along with requisite social welfare surcharge and integrated goods and services tax. These duties of customs are applicable on methanol Irrespective of their place of origin and such duties have to be paid in case of their imports from either Iran or Oman. In addition, there is no preferential tariff agreement between India and Oman which bestows any concessional rate of duty on imports of methanol from Oman.

Thus given the legal framework, M/s B. K. Sales intent to misdeclare the origin of goods in the absence of any occasion for evasion of duty and risking the confiscation of entire consignment betrays common sense. M/s B. K. Sales stood to gain nothing by misdeclaring, as neither the import of Methanol nor the import of Methanol from Iran is prohibited by the Government of India. It is to be added that nowhere in notice has any notification or circular been cited which states that import of methanol from Iran was prohibited.

Therefore, from whatever little evidence placed on record, the department has been unable to establish any complicity or connivance on M/s B. K. Sales's part. On the contrary if the findings of investigations are to be taken on its face value then it seems that M/s B. K. Sales was duped by unscrupulous business practices of foreign entities.

**C. No confiscation can be made under Section 111(m) of the Customs Act, 1962.**

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**C.1** In the present case M/s B. K. Sales declared country of origin to be Oman, based on the certificate of origin and other accompanying relevant documents as signed by OCCL. These documents were provided by M/s Trade Unity FZE and the same were filed at the time of importation. Authenticity of such documents could not have been ascertained by M/s B. K. Sales while being situated in India. Further even the department has not alleged that the certificate of Origin has not been issued by the Oman chamber of Commerce. Since there was no intention to evade payment of duty and the item imported is not prohibited, confiscation under Section 111(m) cannot take place as the alleged change in country of origin is purely technical in nature, not having any revenue implications. In this respect The reliance is placed on the following case laws:-

- (i) Kumar Associates Vs Collector of Customs-1993 (65) E.L.T. 500 (Tribunal).
- (ii) Bel India Trade Pvt. Ltd. Vs Commissioner of Customs, New Delhi - 2007 (216) E.L.T. 441 (Tri. Del.)

**D. Penalty under Section 112 of the Customs Act, 1962 not imposable as there is no mens rea.**

The notice is ambiguous in determining under which clause of Section 112, penalty should be imposed upon M/s B. K. Sales. A reference to Section 112 at paragraph 9 (ii) in the notice has been made however the clause under which penalty is being proposed has not been specified. The reliance is placed on the following case laws:-

Hon'ble Madras High Court in the matter B. Lakshmi chand Vs Government of India-1983 (12) E.L.T. 322 (Mad.)

**D.2** M/s B. K. Sales submits that there is no finding in the entire impugned SCN that the alleged actual Port of Loading, viz Dwyer Port, Iran was either in the knowledge of the Appellant or the Appellant was acting in collusion with the foreign supplier to wilfully suppress such a fact from the Indian Customs Authorities. Accordingly, penalty under section 112 of the act in absence of any mens rea is not imposable. The reliance is placed on the following case laws:-

- (i) Akbar Badruddin Jiwani vs Collector of Customs reported in 1990 (47) E.L.T 161.
- (ii) Kuwait Airways Corporation Vs Commissioner of C.Ex. Mumbai 2005 (191) E.L.T 686 (Tri - Mumbai).
- (iii) Trishla Steel Engg. Co. Vs Commissioner of Cus (Import), Nhava Sheva 2014 (313) E.L.T 443 (Tri. - Mumbai).
- (iv) Pepsi foods Ltd vs Commissioner of Central Excise in Supreme Court.
- (v) Aggarwal Industrial Corporation vs Bangalore Customs 2020 (373) E.L.T. 280.

**10.2 Defence submission by M/s. Petro Kaveh Design & Engineering**

Advocate Sujit Lahoti & Associates appearing on behalf of their client M/s Petro Kaveh Design & Engineering vide their submission dated

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20.03.2023 address 3 issues

Part-I Response to the proposed confiscation under section 115.

- (i) Section 115 (2) is inapplicable to the present facts.
- (ii) Interest of Revenue adequately protected.

Part-II Response to the analysis of the statements and documents submitted by different parties.

Part -III No case made out for the imposition of a penalty under section 114AA.

- (i) Non-applicability of Section 114AA to our clients.
- (ii) No case made out for the imposition of penalty on our client.

Further they also placed reliance of the following cases, (i) Sea Queen Shipping Services Private Limited Vs. Commissioner of Customs [2019 SCC online CESTAT 1483] (Paragraph Nos 2.2, 6.2, 7.2 and 8) and (ii) Sameer Santosh Kumar Jaiswal vs Commissioner of Customs (Import-II), Mumbai [2018(362) ELT 348 (Tri- Mumbai)] (Paragraph No. 4).

After the personal hearing, the Advocate, vide mail dated 22.07.2023 submitted one more submission dated NIL wherein they stated that

**(a)** It is humbly submitted that instead of conducting an independent inquiry the Customs Department has only relied on the statements given by the Master of the vessel under section 108 of the Customs Act, 1962 dated 03.02.2020 while issuing this Show Cause Notice. It is submitted that the Customs Department ought to have inquired and conducted a thorough investigation and gathered evidence to support allegations made against the Noticee in the Show Cause Notice.

**(b)** The Noticee humbly submits that, the allegation against the Noticee in the Notice are not on the basis of Customs Departments own independent investigation and findings but on the basis of statement of co-Noticee. The aforesaid judgment makes it amply clear that if the adjudicating authority finds evidence of the witness admissible, then such witness should be offered for cross examination and only thereafter the evidence is admissible. It is therefore submitted that the allegations made against the Noticee based on the statements of the co-Noticees lack any material and substance. Further, the Noticee states that they disagree with the content submitted by the Voyage Charterer through its Letter, the contents mentioned in it is factually incorrect and the Noticee demands for a cross examination of the Voyage Charterer. The Noticee relies upon the judgment of CESTAT Mumbai in the case of Shri. Mridual Agarwal & Others v/s Commissioner of Customs [2018-TIOL-2495-CESTAT-ALL].

**(c)** The Noticee humbly submits that, the allegation against the Noticee by the Customs Department are not on the basis of their own independent investigation and findings but on the basis of statement of co-Noticee. The aforesaid judgment makes it amply clear that the statement of a co-Noticee in absence of any corroborative evidence is not warranted. Further, the

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Customs Department without any sufficient proof or reasoning has alleged that the time for which Vessel was in Oman was insufficient to load goods. It is therefore submitted that the allegations made against the Noticee based on the statements of the co-Noticees lack any material and substance.

(d) The Noticee denies that they entered into contract of Consecutive Voyage Charter with the Time Charterer with an intent to form modus-operandi of mis-declaring the loading port of the goods and smuggle the goods in India or commit any act which will lead to violation of Indian law. Further, the Noticee denies every documents presented by Time Charterer. The Noticee states that, there have been no documents which are made by them, besides that the Noticee also denies all the contention raised by the Time Charterer with respect to Letter of Indemnity. Further, the Noticee does not admit or takes into consideration the emails or any other documents, as submitted by the Time Charterer. On the contrary, the emails or any other documents as submitted by the Time Charterer against the Noticee alleging them of providing instructions to forge the documents is denied in entirety. Thus, penalty should not be imposed on the Noticee for the reason stated above. Further, in the alleged Letter of Indemnity dated 28th January 2020 submitted by the Voyage Charterer clause 2 mentions that in case of any proceedings initiated the Noticee would provide sufficient funds against the demand. But when the Vessel was confiscated it was the BK sales "importer" who gave bank guarantee and not the Noticee. Therefore, the Noticee denies any such documents presented by Time Charterer on record as it lacks credibility and cannot be relied upon.

(e) The provisions of Section 114AA, have been reproduced herein below for reference-

*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.*

A plain perusal of the section reveals that the penalty u/s 114AA can only be imposed if someone 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. The Noticee submits that they have not made any documents which proves that the Noticee have colluded in mis-declaration. Thus, a question of making mis-declaration and forged documents does not arise at all.

(f) The allegation that the Noticee, being the exporter is involved in the preparation Bills of lading, mate Receipts and other documents is completely false. Further, it is submitted that, Section 114AA of the Act can only be invoked when it is established that a declaration/document

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submitted in the transaction of business for the purposes of the Act is false or incorrect. Therefore, no penalty against the Noticee should be imposed under Section 114AA of the Act. It is further submitted that penalty ought not to be imposed upon the Noticee as the essential ingredients under Section 114AA of the Act are not fulfilled. The Noticee has failed to show that the Noticee have knowingly or intentionally made, signed or used or caused to be made, signed or used any declaration, statement or document which is false or incorrect. Further, there was no direct or indirect involvement of the Noticee in making the documents. Therefore, a question of the Noticee making a mis-declaration thus could not have arisen. The suggestion that the Noticee had instructed the Master of the Vessel to not mention Iran as the Port of Origin, to not show any Iranian documents at discharge ports is entirely denied as the Notice has failed to place on record any evidence to substantiate the said allegation. It is pertinent to note that the Noticee has not provided any bogus Port Clearance Certificate, as alleged, either. Thus, there is no material in the Notice to show that the Noticee had forged any document.

(g) Without Prejudice the Notice has failed to establish as to how, the Noticee in its individual capacity had in transaction of any business submitted any document or declaration to the Customs Department which was false or incorrect. The Master of Vessel in his statement before the Customs Authority u/s 108 of the Act has not mentioned the name of the Noticee as an instructing authority. Further, the Mails submitted by the Time Charterer mentions the word "Charterer", Thus Penalty ought not to be imposed on the Noticee.

(h) Without prejudice it is humbly submitted that, even if there has been a mis-declaration of country of origin yet there has been no loss of revenue thus it would be wrong to impose penalty on the Noticee, the Customs Department ought to have to have imposed No penalty or minimum if any had to be imposed. Reliance is also placed on the following cases (i) In the Judgement of CESTAT Bangalore, in the case of Siemens Gamesha Renewable Power Pvt. Ltd Vs Commissioner of Customs, Mundra [2019 (365) E.L.T. 631 (Tri. - Ahmd.)] and (ii) Judgement of CESTAT Bangalore, in the case of AFL Private Limited Vs Commissioner of Customs [2006(200) E.L.T 257 (Tri. - Bang.)

Therefore, It would be grave injustice that the mention of word "charterer" is the sole reason of the case against the Noticee. Thus, it is submitted that penalty u/s 114AA ought not to be imposed and it would be a grave injustice if imposed.

### **10.3 Defence submission by M/s. Trade Unity FZE.**

Advocate Crawford Bayley & Co. appearing on behalf of their client M/s trade Unity FZE vide their submission dated 20.03.2023 address 3 issues

Part-I Response to the proposed confiscation under section 115.

- (i) Section 115 (2) is inapplicable to the present facts.
- (ii) Interest of Revenue adequately protected.

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Part-II Response to the analysis of the statements and documents submitted by different parties.

Part -III No case made out for the imposition of a penalty under section 114AA.

(i) Non-applicability of Section 114AA to our clients.

(ii) No case made out for the imposition of penalty on our client.

Further they also placed reliance of the following cases (i) Sea Queen Shipping Services Private Limited Vs. Commissioner of Customs [2019 SCC online CESTAT 1483] (Paragraph Nos 2.2, 6.2, 7.2 and 8) and (ii) Sameer Santosh Kumar Jaiswal vs Commissioner of Customs (Import-II), Mumbai [2018(362) ELT 348 (Tri- Mumbai)] (Paragraph No. 4).

After the personal hearing, the Advocate, vide mail dated 22.07.2023 submitted one more submission dated NIL wherein they stated that

(a) It is humbly submitted that instead of conducting an independent inquiry the Customs Department has only relied on to the statements given by the Master of the vessel under section 108 of the Customs Act, 1962 dated 03.02.2020. It is submitted that the Customs Department ought to have inquired and conducted a thorough investigation and gathered evidence to support allegations made against the Noticee. The Noticee relies upon the judgment of CESTAT Mumbai in the case of Union of India v/s Kisan Ratan Singh [2020 (372) E.L.T. 714 (Bom.)].

(b) The Noticee humbly submits that, the allegation against the Noticee are not on the basis of independent investigation and findings but solely on the basis of statement of co-Noticee. The aforesaid judgment makes it amply clear that the statement of a co-Noticee in absence of any corroborative evidence cannot be the basis to conclude the guilt of the Noticee. Further, Customs Department without any sufficient documentary proof or reasoning has alleged that the time for which Vessel was in Oman was insufficient to load goods, It is therefore submitted that the allegations made against the Noticee based on the statements of the co-Noticees lack any material and substance.

(c) The provisions of Section 114AA, have been reproduced herein below for reference

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.*

A plain perusal of the section reveals that the penalty u/s 114AA can only be imposed if someone 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

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transaction of any business. The Noticee submits that they have received a Certificate for Country of Origin from Oman, issued by Chambers of Commerce Oman, which is issued after due diligence. Thus, a question of making mis-declaration and forged documents does not arise at all. The allegation that the Noticee, being the exporter is involved in the preparation of bogus documents leading to mis-declaration of the port of loading and country of origin of the goods is completely false. Further, it is submitted that, Section 114AA of the Act can only be invoked when it is established that a declaration/ document submitted in the transaction of business for the purposes of the Act is false or incorrect. Therefore, no penalty against the Noticee should be imposed under Section 114AA of the Act

(d) It is further submitted that penalty ought not to be imposed upon the Noticee as the essential ingredients under Section 114AA of the Act are not fulfilled. The Noticee has failed to show that the Noticee have knowingly or intentionally made, signed or used or caused to be made, signed or used any declaration, statement or document which is false or incorrect.

(e) It is pertinent to note that the Customs Department has nowhere in the Notice objected to the Country of Origin ("COO") certificate issued by the Oman Chamber of Commerce. The Noticee states that the goods have originated from Oman for which they received Certificate of Origin bearing No. 364208 from Chamber of Commerce, Oman. In present case, the COO on the certificate is Oman which in no way is disputed or objected by the department and thus the Customs Department has accepted validity and/or legality of the COO since they have not even once challenged the validity of the same or made any efforts to get the COO cancelled or amended by contacting the Chambers of Commerce of Oman.

(f) The Noticee states that they have discharged their onus of proving that the Country of Origin of the goods is Oman by providing Certificate of Country of Origin. The Noticee relies upon the judgement of CESTAT Mumbai in the case of Hazari Trading Co. v/s Commissioner of Customs, Mumbai [2012 (284) E.L.T. 91 (Tri.-Bom)]. In the aforesaid matter as the Department had not controverter/disputed the genuineness of documents confirming Country of Origin, the Hon'ble Tribunal had observed that the assesee had discharged its onus of proving the Country of Origin. Evidently in the present matter, there isn't even a whisper disputing the genuineness of the COO Certificate submitted to the Customs Authorities, which was issued by the competent authority of the originating country in the first place if the Customs Department believes that the COO submitted is false and the only reason the Noticee acquired it is by submitting false document, the Noticee humbly states that the Customs Department should have written to the Certificate issuing Authority i.e Chambers of Commerce, Oman to cancel the issued COO. the Noticee relies upon the judgment of CESTAT Kolkata in the case of M/s SO-hum Trading Company vs. Commissioner of Customs (Preventive). Kolkata (2021 (11) TMI 489 - CESTAT Kolkata).

(g) Without Prejudice, and in alternative it is humbly submitted that, even if the Additional Commissioner of Customs had to rely upon the

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statements u/s108 of the Act of Master of the Vessel and the Importer to make a case against the Noticee, it is important to note that none of the statements recorded mentions/states that the alleged mis-declaration of goods was done on directions of the Noticee. Further, it is submitted that the Noticee reserves the right to cross examine the persons whose statements have been relied upon. Customs Department have merely issued the Notice to every party involved in the trade without independently investigating the role of each and everyone involved.

(h) Without prejudice it is humbly submitted that, even if there has been a mis-declaration of country of origin yet there has been no loss of revenue thus it would be wrong to impose penalty on the Noticee, the Additional Commissioner ought to have to have imposed No penalty or minimum if any had to be imposed. Reliance is also placed on the following cases (i) In the Judgement of CESTAT Bangalore, in the case of Siemens Gamesha Renewable Power Pvt. Ltd Vs Commissioner of Customs, Mundra [2019 (365) E.L.T. 631 (Tri. - Ahmd.)] and (ii) Judgement of CESTAT Bangalore, in the case of AFL Private Limited Vs Commissioner of Customs [2006(200) E.L.T 257 (Tri. - Bang.)]

Thus, It is submitted that in absence of any material on record to show that the documents were forged or its genuineness were questioned by Indian Customs, the COO can be a considered as a substantive and conclusive evidence. Therefore, the penalty u/s 114AA ought not to be imposed upon the Noticee.

## 11. Records of Personal Hearing:

**11.1 PH to M/s. B.K. Sales Corporation:** Personal Hearing in the matter was given to them on 06.12.2022, 28.02.2023, 23.03.2023, 18.05.2023 and 21.06.2023. The Noticee availed the opportunity of being heard on 21.06.2023 and Shri. Sanjay Gupta, partner, M/s B. K. Sales appeared for the personal hearing and reiterated the facts of the case and stated that they are unaware about the mis-declaration of country of origin as Oman instead of Iran. Further he also stated that they are not liable for any penal action and there is no revenue loss in the subject case. After personal hearing, M/s B. K. Sales submitted detailed submission vide mail dated 27.06.2023.

**11.2 PH to M/s. Petro Kaveh Design & Engineering:** Personal Hearing in the matter was given to them on 06.12.2022, 28.02.2023, 23.03.2023, 18.05.2023 and 21.06.2023. Advocate Sujit Lahoti & Associates on behalf of M/s Petro Kaveh Design & Engineering appeared for the personal hearing on 21.06.2023 and reiterated their earlier submission dated 20.03.2023 and stated that as per the statement of Master, the goods were loaded at Iran and not at Oman as per the instructions given by Time Charterer M/s Seastar Maritime Co. Ltd. Being Voyage Charterer they are not liable for penal action under Customs Act, 1962. Further the documents submitted by the Co-Noticee cannot be made basis of allegations without giving opportunity of cross examination.

They also stated that in the present case, the country of origin is not disputed by any authority and also there is no loss of revenue, accordingly,

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requested to drop the proceedings against their client M/s Petro Kaveh Design & Engineering. After personal hearing, Advocate Sujit Lahoti on behalf of their client M/s Petro Kaveh Design & Engineering vide their mail dated 22.07.2023 submitted additional submission.

**11.3 PH to M/s Trade Unity FZE:** Personal Hearing in the matter was given to them on 06.12.2022, 28.02.2023, 23.03.2023, 18.05.2023 and 21.06.2023. Advocate Crawford Bayley & Co. on behalf of M/s Trade Unity FZE appeared for the personal hearing on 21.06.2023 and reiterated their earlier submission dated 20.03.2023 and stated that they issued import documents i.e. commercial invoice, packing list and bill of lading on the basis of country of origin and in the whole case, the country of origin is never disputed. Further there is no mention of M/s Trade Unity, FZE in the statement of master. Further as there is no differential duty involved and no loss to revenue, they are not liable for penal action under section 114AA of Customs Act, 1962 and requested to drop the proceedings against their client M/s Trade Unity FZE. After personal hearing, Advocate Crawford Bayley & Co. on behalf of their client M/s Trade Unity FZE vide their mail dated 22.07.2023 submitted additional submission.

**11.4 PH to M/s Seastar Maritime Co. Ltd:** Personal Hearing in the matter was given to them on 06.12.2022, 28.02.2023, 23.03.2023, 18.05.2023 and 21.06.2023. However, no one appeared for the personal hearing.

**11.5 PH to Mr. Thin Van Luyen;** Personal Hearing in the matter was given to them on 06.12.2022, 28.02.2023, 23.03.2023, 18.05.2023 and 21.06.2023. However, no one appeared for the personal hearing.

## **12. Discussion & Findings:**

**12.1** I have carefully gone through the instant Show Cause Notice, written submissions of Noticee, oral submissions made during the course of hearing on 21.06.2023 and the available records of the case. I find that the following issues are involved in the subject Show Cause Notice, which are required to be decided-

- (i) Whether the imported goods of declared FOB value of Rs 31,70,88.376/- (Rs. Thirty-One Crore Seventy Lakh Eighty-Eight Thousand Three Hundred Seventy-Six only) imported under Bill of Entry 6722171 dated 01.02.2020, 6693897 dated 30.01.2020, 6698121 dated 31.01.2020 and 6697200 dated 31.01.2020 are liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (ii) Whether M/s B.K. Sales Corporation, 7, Shop No 8. Mani Complex, Plot No 84, Opp Multiplex Cinema, Gandhidham Kutch, Gujarat is liable for penal action under Section 112 of the Customs Act, 1962.
- (iii) Whether the vessel MT Opec Galaxy having value of Rs 110,02,87,500/- (One Hundred Ten Crore Two Lakh Eighty-Seven Thousand Five Hundred) is liable for confiscation under Section 115(2) of the Customs Act, 1962.
- (iv) Whether M/s Seastar Maritime Co. Ltd, Rm 2112, Techno- Mart21

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Building, 85, Gwangnaru, 56-gil, Gwangin-gu, Seo, Korea is liable for penal action under Section 114AA of the Customs Act, 1962.

(v) Whether Mr Thin Van Luyen, Master of Vessel MT Opec Galaxy, a Vietnamese Citizen having Passport No B7201857 is liable for penal action under Section 114AA of the Customs Act, 1962.

(vi) Whether M/s Petro Kaveh Design & Engineering Co Ltd No 4, Kaveh Building, (Shahid Mazhidi) Oshan Blvd, North End of Imam Ali Highway. 1956983111-Tehran, Iran is liable for penal action under Section 114AA of the Customs Act, 1962.

(vii) Whether M/s Trade Unity FZE, P5 Office No E-32G- 18, Hamriyah Free zone, Sharjah, UAE is liable for penal action under Section 114AA of the Customs Act, 1962.

**12.2** I find that on receipt of the intelligence, inquiry was initiated by SIIB, Mundra and it was found that M/s. B K Sales Corporation had imported Methanol weighing 17,352.67 MTS, had filed Warehouse Bills of Entry and Bill of Entry for Home consumption at Mundra Port.

**12.3** I find that vessel M.T. Opec Galaxy was arrived at Mundra Port, carrying 17,352.67 Metric Tonnes (MTS) of Methanol declared to be loaded from Sohar Port in Oman. M/s. Samudra Marine Service Pvt. Ltd., the shipping agent of the Vessel had filed the IGM No. 2245483 dated 29.01.2020 indicating the Country of Origin (COO) as Oman. However, the intelligence available with Customs suggested that the actual COO was Iran which was mis-declared as Oman in the documents filed before Customs at the time of arrival of the vessel at Mundra Port. Further, it was found that M/s. B K Sales Corporation had filed Bills of Entry and IGM was filed by M/s. Samudra Marine Service Pvt. Ltd., showing Port of loading as Sohar, Oman, However, no export of Methanol took place from Oman.

**12.4** From the voluntary statement of the Master of the Vessel MT Opec Galaxy, it was evident that the cargo (17352.67 MTS of Methanol) discharged at Mundra Port was actually loaded at Dayyer Port in Iran between 23rd January, 2020 to 26th January, 2020 and that no loading or discharge of cargo took place in Sohar, Oman. However, the arrival documents submitted before Customs, Bills of Lading and Ship's log books were manipulated to hoodwink the Indian authorities with malafide intentions to mis-declare the Country of Origin of the goods as Oman.

**12.5** I find that some documents were also retrieved from the vessel MT Opec Galaxy viz. emails, Log Book, Cargo Record Book, Cargo Loading/De-Ballasting Plan, vistions Log Book, Emails dated 11.01.2020, 20.01.2020 and 24.01.2020 shows that the goods were actually loaded at Dayyer Port, Iran and not from Sohar, Oman. Further hiding of original documents from Indian Customs pointed towards the wilful misstatement and suppression of facts of loading of the Iranian origin goods from Dayyer Port in Iran and showing manipulated entries in log book, points towards the well planned modus operandi to suppress the visit of the Vessel to Iran.

**12.6** As it was evident that the entire cargo of 17352.67 MTS of Methanol

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discharged at Mundra Port for which Bills of Entry has been filed by the importer had not been loaded at Sohar Port, Oman and the actual COO of the goods i.e. Iran was mis-declared in the import documents filed for clearance of the goods. The officer of the Custom House, Mundra seized the goods available, vide seizure memo dated 31.01.2020 under the provisions of Section 110(1) of the Customs Act, 1962. Further, the Mis-declared goods seized as mentioned above were provisionally released on execution of Bond for the value of the goods and Bank Guarantee of amount equal to 10 % of the Bond value.

**12.7** I find that on the basis of the Bills of Lading received by M/s. B K Sales Corporation, filed Bills of Entry declaring the Country of Origin as Oman and Port of Loading as Sohar, Oman. These bills of Entries were filed on the basis of the invoices issued by the supplier M/s. Trade Unity FZE, UAE. In the invoices itself Port of Loading has been shown as Sohar and as discussed above, it is clear that the subject goods were not loaded in Sohar, Oman but the same were loaded at Dayyer, Iran. Thus, the Port of Loading and County of Origin declared in both invoices and the Bills of Lading are not correct. Since, the declaration of Port of Loading and Country of Origin declared in Bills of Lading and invoices are not correct, these documents needs to be considered as manipulated and not the correct documents.

The importer has argued that they have filed the Bills of Entry on the basis of the documents supplied by the supplier and the Shipping agent. They have also argued that no revenue is involved even considering that mentioning of wrong Country of Origin and Port of Loading in the Bill of Entry and Bill of Lading, as they are not availing any exemption based on these two aspects. I want to refer to Section 46(4A) of the Customs Act, 1962 which states as below:

[(4A) The importer who presents a bill of entry shall ensure the following, namely-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force].

Therefore, it is the responsibility of the importer to ensure correctness of the information given by them. It has been well established as discussed in above paras, that goods were never loaded in Oman but were loaded in Iran. Moreover, all the documents were handed over to the Master of the Vessel at Oman. Thus, documents to be submitted at Customs in India were fabricated at Oman to prove port of loading as Oman. Importer was also aware regarding Iran being country having embargo on it by USA as they are the regular importers. Thus knowledge of importer regarding manipulation of documents appears to be there as they are main beneficiary of trade transaction being importer of goods. I also find that as per Section 111(m) of the Customs Act, 1962 any goods which do not correspond in respect of value or in any other particular in the entry made under Customs Act, 1962, the goods are liable for confiscation. Since, in the present case, there is a mis-declaration with

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regard to Country of Port of Loading and the Country of Origin, the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and the importer M/s B. K. Sales Corporation is liable for penal action under section 112 (a) (ii) of Customs Act 1962.

I find that M/s. B K Sales Corporation has placed reliance on case law of Associates Vs Collector of Customs-1993 (65) E.L.T. 500 (Tribunal) wherein the case was pertaining to mis-declaration of country of origin; the goods were declared as of Japan origin as per certificate of origin where the goods were found to be Canadian origin. In this case the Tribunal held that there was no finding that the goods (Driers) of Japanese origin differ from similar goods of Canadian origin. But in the present case the goods are shown to be of Oman origin whereas investigation and documentary evidences revealed that the goods were of Iranian origin and there has been restriction on import of goods from Iran as per sanction imposed. Thus in this case the goods are of restricted in nature and therefore liable for confiscation.

I also find that M/s. B K Sales Corporation has placed reliance on case law of Bel India Trade Pvt. Ltd. Vs Commissioner of Customs, New Delhi - 2007 (216) E.L.T. 441 (Tri. Del.) wherein the goods were declared of Ghana origin and it was found that the goods were of Chinese origin. In cited case the Tribunal held that there has been no change of duty, therefore, it cannot be said that the misdeclaration and set aside the order of confiscation. But in this present case the detailed investigation and documentary evidences revealed that the goods were mis-declared to be of Oman origin whereas the goods were of Iranian origin from where the import has been restricted as per sanction imposed.

I find that M/s. B K Sales Corporation, have relied upon the case law of Commissioner of C. EX., Bangalore VS Brindavan Beverages (P) Ltd 2007 (213) E.L.T. 487 (S.C.) wherein the Hon'ble Supreme Court. In cited case the M/s. Brindavan Beverages Pvt. Ltd., has been franchise holder and manufacturing aerated water and under brand names of various manufacturers and claiming that the brand name owners, were registered with the Directorate of Industries as a Small Scale Unit and, therefore, they were also eligible for exemption under the said Notifications (SSI exemption). The brand holders made arrangements for evasion of duty to which M/s. Brindavan Beverages Pvt. Lt., was not involved. But in the present case M/s B. K. Sales Corporation is the importer of goods and has been under obligation as per Section 46(4A) of the Customs Act, 1962 to produce complete and accurate information, for authenticity and validity of documents and compliance in case of restricted or prohibited goods, to which M/s B. K. Sales Corporation failed to do so.

I also find that M/s. B K Sales Corporation have submitted that in absence of any mens rea penalty under section 112 is not imposable, they submitted various case laws in their support. But I find that cases where penalty under Section 112(a) (ii) of the Customs Act, 1962 is there is no need of mens rea, I find support of my view from case law of Amritlakshmi Machine Works vs Commr. Of Cus (Import), Mumbai, reported in 2016 (335) ELT 225(Bom.) wherein it is held that;

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It, therefore, follows that in all cases (other than abetment) falling under Section 112(a) of the Act, unlike Section 112(b) of the Act, mens rea is not a sine qua non for the imposition of penalty. The Supreme Court in *Chairman, SEBI v. Shriram Mutual Fund - 2006 (5) SCC 361*, has held mens rea is not an essential element/ingredient to impose penalty for a breach of a civil obligation, unless the language of the statute indicates the need to establish the same. Therefore, normally where Section 112(a) of the Act is invoked (save cases of abetment on the part of the noticee), Section 140 of the Act cannot be read into it. This is so as an offence under Section 135(1)(a) of the Act would postulate that the person has knowingly committed an offence. Thus in cases other than abetment falling under Section 112(a) of the Act the liability for penalty is strict without any reference to mens rea/knowledge. Therefore, the attribute of knowledge, necessary for being an offence under Section 135(1)(a) of the Act, cannot be read into Section 112(a) of the Act for the purposes of imposing penalty [except in cases of abetment]. Therefore, for purposes for imposition of penalty under Section 112(a) of the Act unlike Section 112(b) of the Act mens rea/knowledge is irrelevant (save cases of abetment). Therefore, where the notice under Section 112(a) of the Act against the firm is of abetment then it also is an offence under Section 135(1)(a) of the Act, making Section 140 of the Act applicable.

**13.** I proceed to consider the proposal of confiscation of MT Opec Galaxy (IMO No. 9363833) having value of Rs. 110,02,87,500/- (One Hundred Ten Crore Two Lakh Eighty-Seven Thousand Five Hundred), under the provisions of Section 115(2) of the Customs Act, 1962. In this connection, I have gone through the provisions of Section 115 of Customs Act, 1962 which reads as under: Confiscation of conveyances. -

(1) xxxxxx

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal.

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

**Explanation-** In this section, "Market Price" means market price at the date when the goods are seized.

From the statement of Mr. Thin Van Luyen, Master of vessel, it is evident that the goods of Iranian Origin were loaded in the vessel with the consent of Shipping Line M/s Seastar Maritime Co. Ltd.

I find that as per documents available on the records like letter of Indemnity (LOI) dated 28.01.2020 wherein M/s Petro Kaveh Design and Engineering Co (hereinafter referred to as "the Voyage Charterer") made

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request to the owner of M T Opec Galaxy which is reproduced below-

**"The above cargo was shipped at [Dayyer, Iran], the above vessel by [Trade Unity FZE] on 25.JAN 2020 and consigned [B.K. Sales Corporation, Shop No 08. Mani Complex, Plot no 84, Ground Floor, Sector-8, Gandhidham, KachchhGujarat-370201 (India) for delivery at [Mundra Port, India], but we. [Petro Kaveh Design & Engineering Co.] hereby request you to state [Sohar, Oman] as loading Port and [27.Jan. 2020] as BL Date in the bill of lading and the vessel to proceed to and deliver the said cargo at [Mundra Port, India]".**

Further few of the clauses in the "Fixture Note" are also reproduced as-

(i) Due to banking sanctions we need owner's flexibility on following items about Bills of Lading.

(ii) The word "Iran". if requested by us; shall be omitted from B/L and not to be shown anywhere.

(iii) The shipper may be inserted as SPEC Pelican or Others due to our request.

(iv) Load Port may be needs to be mentioned "Middle East Port", "Singapore" "Jebel Ali" "Sohar" or somewhere else I/O BIK/ASSALUYEN.

(v) Place of issue may be needs to be inserted the, Middle East Port", "Singapore". "Jebel Ali" "Sohar" or somewhere else I/O Tehran.

(vi) If required after getting switching OBL LOI from charterer side, owner to prepare 2nd set of bill of lading will remain in owners/agents office until the first full set is surrendered to owners/agents office. Owners are to release the 2nd set of Bill of Lading within 24 house after surrendered the first set Owners agree to discharge the cargo against 2nd set of Bill of Lading Original Upon charterer providing a simple LOI in Owners P and I Club wording without bank guarantee. All additional cost for switching BL will be to the account of charterer.

From the above 2 documents, I find that M/s Seastar Maritime Co. Ltd and the Mr. Thin Van Luyen, Master of vessel, had knowledge that the goods loaded in the vessel are of Iranian origin and Iran is a country having embargo on it by USA.

In the present case, it is established that M/s Seastar Maritime Co. Ltd and Mr. Thin Van Luyen, Master of vessel had complete knowledge that the goods are of Iranian origin and the country of origin as Oman is mis-declared in order to evade sanctions imposed by USA on Iran for trading of petroleum products. Accordingly, I hold that the vessel MT Opec Galaxy (IMO No. 9363833) having value of Rs. 110,02,87,500/- (One Hundred Ten Crore Two Lakh Eighty-Seven Thousand Five Hundred), is liable for confiscation under section 115(2) of Customs Act, 1962. I find support of my view from case law of Muk Tin Ful & Another vs Collector of Customs (P) Bombay, reported in 1986 (25) ELT 982 (Tribunal) wherein it is held that

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"9. As regards the appellant's plea that the ship Ngan Chau was not liable to confiscation under Section 115 as there was no mens rea on the part of the owners, it is seen that the master of the ship was very much involved in this case of smuggling. The ship has been confiscated under Section 115(2) of the Customs Act.

**14.** The Show Cause Notice seeks to impose a penalty Mr. Thin Van Luyen, Master of Vessel, MT Opec Galaxy under section 114AA of the Customs Act, 1962.

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.*

I find that the Mr. Thin Van Luyen, Master of Vessel, MT Opec Galaxy has not attended any personal hearing and even not bothered to submit any reasons behind the same, even after giving them enough opportunities of personal hearings. He did not respond to the department in this matter, this intention on his part gives weightage to the department's findings in the instant case.

I find that Mr. Thin Van Luyen, Master of Vessel MT Opec Galaxy has knowingly and intentionally prepared/signed the document which were false or incorrect i.e. port of call list, Cargo Record Book, Cargo Loading/De-Ballasting Plan, Inspection Certificate port of loading of the goods and other arrival documents wrongly depicting the port of loading as Sohar, Oman. Further, during the statement of Master of Vessel, he admitted that no goods were loaded at Sohar, Oman and submitted documents like Ship's Ullage Report, Statement of Fact, Notice of Readiness, Stowage Plan, Vessel Ullage Survey and Master Receipt for Shipping Documents. All the documents mentioned above clearly indicate that the goods were loaded at Dayyer, Iran. I find that he had suppressed the fact that the imported goods were loaded at Dayyer, Iran and didn't mention Iranian port in the voyage memo and has suppressed Iranian documents at the discharge port. Further, the Master, on the instructions of the cargo operators, presented forged documents to the Customs on the arrival of the vessel at Indian Port. He also forwarded forged documents to the shipping agent for the purpose of filing of an incorrect Import General Manifest. I find that he was aware that he had committed the above mis-declaration and suppression. In this regard, I find that his act of knowingly and intentionally signing and using false documents has rendered him liable to be penalized under Section 114AA of the Customs Act, 1962.

**15.** In the show cause notice, there is also proposal of penalty under section 114AA on M/s Seastar Maritime Co. Ltd., (Time Charterer). I find that M/s Seastar Maritime Co. Ltd Co (the Time Charterer) contracted into a fixture with actual supplier of the goods i.e. M/s Petro Kaveh Design & Engineering Co Ltd, Iran (Voyage Charterer) and devised modus operandi

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to mis-declare the country of origin of the goods as evident from the "Fixture Note" signed between them. In this regard, the relevant portion of the Fixture Note is reproduced as below-

- (i) Due to banking sanctions we need owner's flexibility on following items about Bills of Lading.
- (ii) The word "Iran", if requested by us; shall be omitted from B/L and not to be shown anywhere.
- (iii) The shipper may be inserted as SPEC, Pelican or Others due to our request.
- (iv) Load Port may be needs to be mentioned "Middle East Port". "Singapore", "Jebel Ali" "Sohar" or somewhere else I/O BIK/ASSALUYEN.
- (v) Place of issue may be needs to be inserted the, Middle East Port", "Singapore". "Jebel All" "Sohar" or somewhere else I/O Tehran.
- (vi) If required after getting switching OBL LOI from charterer side, owner to prepare. 2nd of bill of lading will remain in owners/agents office until the first full set is surrendered to owners/agents office Owners are to release the 2 set of Bill of Lading within 24 house after surrendered the first set Owners agree to discharge the cargo against 2 set of Bill of Lading Original Upon charterer providing a simple LOI in Owners P and I Club wording without bank guarantee. All additional cost for switching BL will be to the account of charterer.

I find that M/s Seastar Maritime Co. Ltd (Time Charterer) on instructions/request of the Voyage Charterer, M/s Petro Kaveh Design & Engineering has prepared false documents such as Bills of Lading, Inspection Report and Cargo Manifest which are not true to the material particulars (Load Port, Shipper/Consignor, Shipment Date) mentioned therein. Further, the Master of the Vessel in its statement has mentioned that these false documents have been prepared by the Time Charterer. Accordingly, I find that M/s Seastar Maritime Co. Ltd Co Ltd, Time Charterer of the vessel is liable for penal action under section 114AA of the Customs Act, 1962.

**16.** On the proposal of penalty on M/s Petro Kaveh Design & Engineering under section 114AA of Customs Act, 1962, I find that M/s Petro Kaveh Design & Engineering act as Voyage Charterer in the subject case and in contract with the M/s Seastar Maritime Co. Ltd, Time Charterer for carriage of Methanol from Dayyer, Iran to Mundra. M/s Seastar vide their letter dated Nil stated that they were instructed by the voyage Charterer to stay at Sohar and cooperate with the agent appointed by the Voyage Charterer to complete the import/export formalities at Sohar Port to show that the goods were loaded at Sohar Port, Oman without the actual loading of goods.

The Voyage Charterer M/s Petro Kaveh Design & Engineering vide Letter of Indemnity (LOI) requested M/s Seastar Maritime Co. Ltd and the request reproduced below-

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**"The above cargo was shipped at [Dayyer, Iran], the above vessel by [Trade Unity FZE] on 25.JAN 2020 and consigned [B.K. Sales Corporation, Shop No 08. Mani Complex, Plot no 84, Ground Floor, Sector-8, Gandhidham, KachchhGujarat-370201 (India) for delivery at [Mundra Port, India], but we. [Petro Kaveh Design & Engineering Co.] hereby request you to state [Sohar, Oman] as loading Port and [27.Jan. 2020] as BL Date in the bill of lading and the vessel to proceed to and deliver the said cargo at [Mundra Port, India]".**

From the above discussion, I find that M/s Petro Kaveh Design & Engineering Voyage Charterer instructed the Time Charterer M/s Seastar Maritime Co. Ltd to prepare false and fabricated documents. Thus the act of commission and omission have rendered themselves liable for penal action under section 114AA of Customs Act, 1962.

**17.** In the Show Cause Notice, it has been alleged against the exporter M/s Trade Unity FZE, UAE that being the exporter of the goods, it was their responsibility for making truthful declaration before Customs, however they produced false and fabricated documents to mislead the department and accordingly, they are liable for penal action under section 114AA of Customs Act, 1962. I find that M/s Trade Unity FZE, UAE issued invoice, packing list mentioning the port of loading as Sohar, Oman and on the basis of invoice and packing list issued by them, they got certificate of origin issued by Oman Chamber of Commerce. The invoice and packing list issued by M/s Trade Unity FZE, mentioning the country of origin as Sohar, Oman are fake and fabricated as no goods were loaded at Sohar, Oman. I find that M/s Trade Unity FZE suppressed the facts and issued fake documents rendering them liable to be penalized under Section 114AA of the Customs Act, 1962.

**18.** In view of above, I pass the following order-

(i) I find that the 17352.67 MTS Methanol of Rs 31,70,88,376/- (Rs. Thirty-One Crore Seventy Lakh Eighty-Eight Thousand Three Hundred Seventy-Six only) imported under Bill of Entry 6722171 dated 01.02.2020, 6693897 dated 30.01.2020, 6698121 dated 31.01.2020 and 6697200 dated 31.01.2020 are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give an option to the importer, to redeem the goods on payment of redemption fine of Rs. 3,00,00,000/- (Rupees Three Crore only) under section 125 of Customs Act, 1962.

(ii). I imposed penalty of Rs. 1,00,00,000 /- (Rupees One Crore only) on B.K. Sales Corporation, 7, Shop No 8. Mani Complex, Plot No 84, Opp Multiplex Cinema, Gandhidham Kutch, Gujarat under section 112 (a) (ii) of the Customs Act, 1962.

(iii). I order to confiscate the vessel MT Opec Galaxy having value of Rs 110,02,87,500/- (One Hundred Ten Crore Two Lakh Eighty-Seven Thousand Five Hundred) under Section 115(2) of the Customs Act, 1962, However, I give an option to the importer, to redeem the vessel on payment of redemption fine of Rs. 11,00,28,750/- (Rupees Eleven Crore Twenty Eight Thousand Seven Hundred Fifty only) under section 125 of Customs Act, 1962. As the vessel owner has furnished the Bank Guarantee of Rs.

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11,00,28,750/- at the time of provisional release of goods, I order to encash the BG in lieu of redemption fine.

(iv). I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on M/s Seastar Maritime Co. Ltd, Rm 2112, Techno- Mart21 Building, 85, Gwangnaru, 56-gil, Gwangin-gu, Seol, Korea under Section 114AA of the Customs Act, 1962.

(v). I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on Mr Thin Van Luyen, Master of Vessel MT Opec Galaxy, a Vietnamese Citizen having Passport No B7201857 action under Section 114AA of the Customs Act, 1962.

(vi). I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on M/s Petro Kaveh Design & Engineering Co Ltd. No 4, Kaveh Building, (Shahid Mazhidi) Oshan Blvd, North End of Imam Ali Highway. 1956983111-Tehran, Iran under Section 114AA of the Customs Act, 1962.

(vii). I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on M/s Trade Unity FZE, P5 Office No E-32G- 18, Hamriyah Free zone, Sharjah, UAE under Section 114AA of the Customs Act, 1962.

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

Signed by

Mukesh Kumari

Date: 04-08-2023 15:40:30  
Additional Commissioner of Customs  
Customs House, Mundra

**GEN/ADJ/ADC/37/2023-ADJN**

3624  
By speed post/By hand/by Email

1. M/s B.K. Sales Corporation, 7, Shop No 8. Mani Complex, Plot No 84, Opp Multiplex Cinema, Gandhidham Kutch, Gujarat.

2. M/s Seastar Maritime Co. Ltd, Rm 2112, Techno- Mart 21 Building; 85, Gwangnaru, 56-gil, Gwangin-gu, Seol, Korea

3. Mr Thin Van Luyen, Master of Vessel MT Opec Galaxy, a Vietnamese Citizen having Passport No B7201857

4. M/s Petro Kaveh Design & Engineering Co Ltd. No 4, Kaveh Building, (Shahid Mazhidi) Oshan Blvd, North End of Imam Ali Highway. 1956983111-Tehran, Iran

5. M/s Trade Unity FZE, P5 Office No E-32G- 18, Hamriyah Free zone, Sharjah, UAE

Copy to:

1. Mundra. The Deputy/Assistant Commissioner (RRA), Custom House,
2. Mundra. The Deputy/Assistant Commissioner (TRC), Custom House,
3. Mundra. The Deputy/Assistant Commissioner (Group-I), Custom House,
4. Mundra. The Deputy/Assistant Commissioner (SIIB), Custom House,
5. Guard File.