



कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,
सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL
ECONOMIC ZONE, MUNDRA-370421

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Azadi Ka
Amrit Mahotsav

A. File No.	:	GEN/ADJ/COMM/126/2021-Adjn-O/o-Pr Mundra	Commr-Cus-
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-02-23-24	
C. Passed by	:	Shri T.V. Ravi Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of issue	:	25.05.2023 25.05.2023.	
E. SCN No. & Date	:	DRI/AZU/GRU-9/Karnawat/INT-3/2018 dated 25.01.2021	
F. Importer(s)/Party	:	M/s. Karnawat International Pvt Ltd and others	
G. DIN	:	20230571M0000000DDDB	

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3में 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 या शास्ति रूपये पाँच लाख या कम माँगा हो। 5000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक की माँगा हो। शुल्क का भुगतान खण्ड पीठ बैचाहियाहरित ब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राशीयकृत 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 मद्दसं 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 ड्यूटी/दंड/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. अपील प्रस्तुत करते समय, सीमा शुल्क (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.

7. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दंड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Brief Facts of the Case

1.1. Intelligence was gathered by the officers of Directorate of Revenue Intelligence (hereinafter referred to as 'DRI' for sake of brevity) that, M/s. Karnawat International Pvt. Ltd. (IEC 4100000278), Rajsamand, Rajasthan(hereinafter also referred to as 'M/s. KIPL' for sake of brevity) has imported polished marble slabs by mis-declaring the same as unpolished marble slabs under two Bills of entry Nos. 6226233 and 6226269 both dated 03.05.2018 at Mundra Port for their EOU, with an intention to evade payment of duty.

The other details pertaining to the said consignments as declared in the import documents submitted by the representative of Custom Broker were as under:

Goods arrived at	Hind Terminal CFS, Mundra	Ashutosh CFS, Mundra
BE No and Date	6226269 dated 03.05.2018	6226233 dated 03.05.2018
BL No.	VSTA40471P	VSTA40470P
BL Date	01.04.2018	01.04.2018
Container No.	GLDU3984203	TGHU2684316
Supplier Name	Marmor SG S.A. Marble and Granite, Kavalari P. C. 57200, Thessaloniki, Greece (Hereinafter referred to as "M/s. Marmor")	Marmor SG S.A. Marble and Granite, Kavalari P. C. 57200, Thessaloniki, Greece
Invoice No. and Date	40000232, dated 29.03.2018	40000233, dated 29.03.2018
Description of the goods	Marble Slabs 2 CM Thick (U POL)	Marble Slabs 2 CM Thick (U POL)
CTH	25151220	25151220
Quantity	398.149 SQM	370.022 SQM
Unit Price	180 Euro Per SQM	180 Euro Per SQM
Net weight as declared in BL	25620 Kgs.	26660 Kgs.
Gross weight as declared in BL	25940 Kgs.	26920 Kgs.
No. of packages	16	13
LC No. and Date	08141718FLU0004, dated 28.03.2018	08141718FLU0004, dated 28.03.2018
Original importer / Notify party	Paras Marble, Kalpana Kunj, NH 8, Village: Piparda, Rajsamand -313324 (Rajasthan)	Paras Marble, Kalpana Kunj, NH 8, Village: Piparda, Rajsamand -313324 (Rajasthan)

	(Proprietor: Shri Gun Sagar Karnawat) (Hereinafter referred to as "M/s. Paras")	(Proprietor: Shri Gun Sagar Karnawat)
IEC No. of original importer	1304007936	1304007936
Delivery Terms	FOB Piraeus Port, Greece	FOB Piraeus Port, Greece
Invoice Value	71666.82 Euro	66603.96 Euro
Assessable Value, as declared in BE	6254230.73	5817328.57
Permission No.	V(Misc) PERMISSION/ ANNEXURE/JDR/15/2018 /840, dated 17.04.2018	V(Misc) PERMISSION/ ANNEXURE/JDR/15/2018 /840, dated 17.04.2018
Amount of Duty Foregone (Rs.)	Rs.27,51,861/-	Rs.25,59,624/-

1.2 Further, detailed examination of the cargo pertaining to the aforesaid two Bills of Entry were carried out by the DRI officer on 18.05.2018 on availability of skilled labour by the importer in the presence of the representatives from M/s. KIPL as well as the representative of Customs Broker under two Panchnama both dated 18.05.2018 drawn at respective CFS and it was observed during examination that the goods were stacked in wooden frames wrapped in transparent plastic and at the rear side of some slabs, there were stickers indicating "Polished". Further on measurement of the cargo contained in each container, it was also observed that there was excess quantity of cargo compared to the declared quantity as per the following details:

B/E No and Date	6226269 dated 03.05.2018	6226233 dated 03.05.2018	Total
Container No.	GLDU3984203	TGHU2684316	
Quantity declared in B/E	398.15 SQM	370.02 SQM	768.17 SQM
Quantity observed during examination	436.7782 SQM	383.2417 SQM	820.0199 SQM
Excess Quantity	38.6282 SQM	13.2217 SQM	51.8499 SQM

From the detailed examination of the goods, it was observed that as against the declared description of goods in the Bills of Entry No. 6226233 and 6226269 both dated 03.05.2018, the goods pertaining to those two Bills of Entry were mis-declared in respect of description as well as quantity as it was observed that the marble slabs were "Polished" from one side and also quantity of 51.85 SQM were found excess.

1.3 In the light of above, the both the consignments of Polished Marble Slabs were placed under seizure, vide two different Seizure Memo both dated 24.05.2018 for each of the cargo

pertaining to those two containers. The seized goods were handed over under two separate Supratnama both dated 24.05.2018 to the respective CFS authorities for safe custody.

1.4 M/s. KIPL informed DRI that they had filed Bills of Entry No. 6226233 and 6226269, both dtd. 03.05.2018, for Unpolished Marble Slabs, but their esteemed exporter had mistakenly sent them Polished Marble Slabs, with which they got aware only after examination by the DRI; that due to unintentional mistake of their esteemed exporter, they had filed Bills of Entry for Unpolished Marble Slabs, however, they were ready to co-operate with the agency. They requested to release the cargo. They had also shown readiness to pay duty and other dues after necessary amendments in Bills of Entry.

1.5 Vide another letter dtd. 04.06.2018 to the Principal Commissioner of Customs, Mundra, M/s. KIPL requested to provisionally release the goods. Considering the request made by M/s. KIPL, the Commissioner of Customs, Mundra granted permission to M/s. KIPL for obtaining provisional release of the seized goods after submission of bond for the assessable value of Rs.1,28,64,980/- along with the BG for the total duty involved plus 25% of assessable value i. e. Rs. 88,61,690/-, which was conveyed to M/s. KIPL by the Assistant Commissioner of Customs, Group IV, Custom House, Mundra vide their letter F. No. VIII/48-296/Misc/Gr-I/Karnawat /MCH /Misc/18-19, dtd.19.06.2018.

1.6 As informed by the Customs Broker M/s. Krishna Shipping vide their letter dt.25.07.2018, M/s. KIPL submitted Bank Guarantee No. 37830133760, dtd. 23.07.2018 for Rs.32,16,245/- of State Bank of India, Rajsamand Branch, Rajsamand along with PD Bond No. 2001437109, dtd. 25.07.2018 for Rs.1,28,70,000/- before Customs, Mundra and they had also paid the duty along with interest on 25.07.2018 in respect of both the Bills of Entry. On 15.10.2018, M/s. KIPL made payment of duty of Rs. 26,47,624/- with interest of Rs. 89,221/- for B/E No. 6226233, dtd. 03.05.2018 and made payment of duty of Rs. 30,78,821/- with interest of Rs.1,01,359/- for B/E No. 6226269, dtd. 03.05.2018. After making necessary amendments in the Bills of Entry subject to the outcome of investigation, the seized goods pertaining to both the aforesaid Bills of Entry were permitted release by Mundra Customs on 26.07.2018. Later on, vide E-way Bill No. 7610 2256 3303 dtd. 02.08.2018 and 7010 2262 4688 dtd. 02.08.2018 the goods so released provisionally were moved from the Port to M/s. KIPL at their office located at Kalpana Kunj, Opp. City Hospital, Rajsamand. In the E-way Bills M/s. KIPL declared the taxable value of goods to be Rs. 9849998.68 for the 436 SQM goods falling under HSN 6802, pertaining to the B/E No. 6226269, dtd. 03.05.2018 and Rs. 8670425.67 for the 383.25 SQM goods falling under HSN 6802 pertaining to the B/E No. 6226233, dtd. 03.05.2018.

Later on, vide their letter dtd. 25.10.2018, M/s. KIPL informed DRI that they paid Customs duty for both the Bills of Entry and also provided BG. They were ready to pay the penalty of Rs. 8,48,318/- i.e. 15% on actual duty amount of Rs. 56,55,445/- by DD/Cheque No. 309859, dtd. 25.10.2018.

Vide letter dtd. 26.10.2018, M/s. Krishna Shipping provided copy of Challan No. MP&SEZ/3155/17-18, dtd.26.10.2018 towards penalty of Rs. 8,48,350/- @ 15% on duty amount paid to the Customs on account of aforesaid two Bills of Entry filed by M/s. KIPL.

Brief of the Investigation:-

2.1. It appears from the investigation that with a view to evade making payment of applicable Customs duty on importation of "Polished Marble Slabs", Shri Gun Sagar Karnawat, Proprietor of

M/s. Paras conspired with his another company M/s. KIPL and other persons. M/s. KIPL, is a company having two Directors viz. Shri Gun Sagar Karnawat and Shri Prabuddha Karnawat, having father-son relationship, and where Shri Gun Sagar Karnawat, the Proprietor of M/s. Paras is also one of the Directors in the said company. M/s. KIPL is also having status of 100% EOU for their factory located at NH-8, Village Piparda, Dist. Rajsamand, Rajasthan -313324 and the said company M/s. KIPL, being 100% EOU, is permitted to import raw materials and capital goods required for manufacturing within their EOU, free of Customs duty in terms of Notification No. 52/2003-Customs, dated 31.03.2003. Hence, Shri Gun Sagar Karnawat had placed orders from his Proprietary Concern M/s. Paras for the supply of "Polished Marble Slabs" with the supplier at Greece M/s. Marmor SG S.A. Marble and Granite.

2.2. Accordingly, a shipment of the goods described as "Marble Slabs" was made by the supplier M/s. Marmor from Greece on 01.04.2018 under the MRN No. 18GREX200100120270 filed on 29.03.2018 at Piraeus, Greece. At the time of export of said goods, the description of the goods was declared as 52860 Kgs Gross "Marble Slabs" falling under HS Code 68022100 and shipment was to be made to India in favour of M/s. Paras in two containers No. TGHU2684316 and GLDU3984203 with declared value of Euro 137070.78. After loading of said shipment from Piraeus, Greece, one Master BL No. MSCUPI783932, dated 01.04.2018 was issued by M/s. Mediterranean Shipping Company SA, wherein the shippers were mentioned as "M/s. Vista Maritime and Logistics SA, Greece", who are agent of the forwarders M/s. KEI in Greece, and the name of the consignee as well as Notify Party was mentioned as "M/s. KEI", who are the forwarders. As declared in the said Master BL, the description of the goods shipped is "Marble Slabs" with following particulars:

Particulars	Container No.	Container No.	Total
	GLDU3984203/20DV	TGHU2684316/20DV	
Seal No.	EU13558560	EU13558511	
Tare weight	2160 Kgs	2200 Kgs.	4360 Kgs
Packages	16	13	29
Net weight	25620 Kgs	26660 Kgs	52280 Kgs
Gross weight	25940 Kgs	26920 Kgs	52860 Kgs

2.3. After issue of the aforesaid Master BL dated 01.04.2018, M/s. MSC Greece issued a consolidated Invoice for freight to be collected from M/s. Vista, as per which for aforesaid Master BL No. MSCUPI783932, Euro 1945.82 was payable towards freight.

2.4. In the meantime, based on the MRN No. 18GREX200100120270 filed on 29.03.2018 at Piraeus, Greece, M/s. Vista prepared two draft House Bills of Lading No. VSTA40470P and VSTA40471P and sent the same to M/s. KEI for approval. Shri Bishnoo Sharma, Import-Export Documentation Executive of M/s. KEI forwarded those two draft BLs to Shri Prabuddha Karnawat of M/s. KIPL under information to Smt. Poonam Jaitley of M/s. KEI vide email dated 31.03.2018, and it was requested to Shri Prabuddha Karnawat to confirm the same. In both the draft House BLs, the Name of the Shipper/Exporter was mentioned as M/s. Marmor the consignee was mentioned as "To the order of UCO Bank, Opp. Gandhi Seva Sadan, Rajsamand, India" and the Notify Party was mentioned as "Paras Marble, N.H. 8, Village Piparda, Rajsamand 313324 (Rajasthan) India, IEC No. 1304007936/ GSTIN No. 08ADZPK8785E12M, Email: karnawatindia@gmail.com". The description of the goods shipped under both the House Bills of Lading was declared as "Marble Slabs".

After sailing of the vessel on 01.04.2018, Shri Bishnoo Sharma again requested Shri Prabuddha Karnawat vide email dated 04.04.2018 to confirm the HBLs since the vessel sailed on 01.04.2018 in order to avoid any manifest correction cost.

Vide email dated 10.04.2018, referring to the telephonic discussion Shri Bishnoo Sharma had with Shri Bhagwati Lal Khatri, Accounts Officer and Manager, Export-Import of M/s. Paras, requesting for amendment in HBLs, asked for details on urgent basis, as the vessel was already sailed. It was mentioned in the email that confirmation reply was awaited by M/s. KEI from M/s. KIPL.

Further telephonic discussion took place between Shri Bhagwati of M/s. Paras and Smt. Poonam Jaitley of M/s. KEI on 12.04.2018, during which inclusion of GSTIN No., Address and Email-id etc. was suggested by Shri Bhagwati, request for which was forwarded by Smt. Poonam Jaitley of M/s. KEI to M/s. Vista.

Based on the details provided from Smt. Poonam Jaitley of M/s. KEI, M/s. Vista contacted the shipper and asked for their consent. The shipper informed to M/s. Vista that they cannot proceed with the changes, unless the LC mentions them. The shipper attached relevant LC copy, which they sent to M/s. Vista. It was also informed by the shipper that their bank had not received LC copy till then. It was further asked by M/s. Vista whether it would be acceptable to mention remaining details in the BL body and that they would ask the shipper if they could accept the same.

The contents of the above message received by Smt. Poonam Jaitley of M/s. KEI from M/s. Vista were conveyed by Shri Bishnoo Sharma of M/s. KEI to Shri Prabuddha Karnawat vide email dated 13.04.2018, informing that the shipper refused to accept proposed amendment in the BL and they had accordingly forwarded final HBL.

2.5. M/s. KIPL filed application with the Customs Division, Jodhpur vide their letter dated 04.04.2018, which was filed on 10.04.2018, requesting to forward their application to allow exemption from Customs duty to the Customs, Mundra. Based on the documents submitted by M/s. KIPL, the Assistant Commissioner of Customs Division, Jodhpur issued a letter dated 17.04.2018 in favour of the Assistant Commissioner of Customs, Mundra, recommending exemption in favour of M/s. KIPL for duty-free procurement of raw material for usage in their EOU.

2.6. As appears, on the stamp paper issued on 15.02.2018, two High Sea sale agreements were made between M/s. Paras and M/s. KIPL on 16.04.2018, which were notarised on 23.04.2018.

2.7. As a part of the conspiracy to evade Customs duty, on 12.04.2018 simultaneously Manager of M/s. Paras, contacted Smt. Poonam Jaitley, Proprietor of M/s. KEI, with a request to get the House Bills of Lading amended to show the goods to be Unpolished with description as "Marble Slabs 2 cm thick (U-POL)", contrary to what was mentioned in the Master BL as "Marble Slabs". M/s. KIPL were fully aware that they were not eligible otherwise to claim duty exemption for "Polished Marble Slabs", as the Polished Marble slabs were not falling within the List of exempted raw materials permitted to them for duty free importation as per the LOP issued in favour of M/s. KIPL by the Development Commissioner, NSEZ under the provisions of the Foreign Trade (Development and Regulation) Act, 1992 and the Polished Marble Slabs was the finished product they have to export after carrying out process in their EOU. The directors of M/s. KIPL were fully aware that for the item Polished Marble Slabs they had not even claimed the benefits

of exemption, while executing legal agreement with the Development Commissioner, NSEZ, at the time of obtaining approval for EOU status. Thus, to avail undue benefits, M/s. KIPL and M/s. Paras had involved their freight forwarders in their conspiracy and got the House Bills of Lading amended with wrong description, in contrast to the description already mentioned in the Master B/L. Being instructed by M/s. Paras, Smt. Poonam Jaitley of M/s. KEI directed their agent at Greece M/s. Vista Maritime and Logistics SA, Greece for issue of two House Bills of Lading with description of goods as "Marble Slabs 2 CM thick (U-POL)". Accordingly, contrary to what was declared in the Master Bill of Lading No. MSCUPI783932 dated 01.04.2018 issued by M/s. MSC Greece, M/s. Vista issued two House Bills of Lading No. VSTA40471P and No. VSTA40470P, both dated 01.04.2018, where the shippers were mentioned as M/s. Marmor and the consignee was mentioned as "To order of UCO Bank, Opp. Gandhi SevaSadan, Rajsamand, India". The description of the goods shipped under both the House Bills of Lading was declared as "Marble Slabs 2 CM thick (U-POL)" and M/s. Paras were mentioned as Notified Party. Further there was mention of LC No. 08141718FLU0004, dated 28.03.2018. In the BL there was mention of "HC 68022100", which is HSN Code of the goods shipped from Greece and provided the same to the Manager of UCO Bank, Bhilwara as well as M/s. Paras for taking delivery of the goods from the Shipping Agency.

2.8. By way of providing the documents, which were known to M/s. KIPL as they were factually incorrect in respect of Description and measurement, to the Customs Broker for the purpose of filing of Bills of Entry on their behalf, M/s. KIPL had intended to avail undue benefits of exemption from Customs duty, in contravention of the condition of the Notification No. 52/2003-Cus., dated 31.03.2003 read with the terms of the LOP issued to them and overriding the terms of the Legal Agreement they had executed with the Development Commissioner, NSEZ. The Customs Broker M/s. Krishna Shipping electronically filed the Bs/E No. 6226269 dated 03.05.2018 and 6226233 dated 03.05.2018 with Customs, Mundra through ICEGATE on behalf of M/s. KIPL based on the documents provided to them by M/s. KIPL, where they had wrongly described the description of the imported goods and measurement of the imported goods. Based on those documents, the Customs Broker before electronically filing of Bs/E, prepared the check list with CTH no. for Unpolished Marble Slabs, which was approved by KIPL and it was reverted back by M/s. KIPL to the Customs Broker and thereafter the Bs/E were filed electronically by the Customs Broker. While electronically filing the Bs/E, the importer M/s. KIPL made and subscribed to a declaration as to the truth of the contents of such Bs/E in terms of Section 46(4) of the Customs Act, 1962. The importer M/s. KIPL had also purportedly affirmed about the accuracy and completeness of the information given therein as well as the authenticity and validity of the documents supporting in terms of Section 46(4A) of the Customs Act, 1962. It is apparent from the facts that in terms of Regulation (4) of Bill of Entry (Electronic Declaration) Regulation, 2011, upon entry of the electronic declaration in the ICEGATE, when BE numbers were generated for both the electronic declaration filed by M/s. KIPL, the said Bills of Entry were deemed to have been filed and self-assessment of duty was completed by M/s. KIPL. Upon completion of self-assessment of both the Bs/E electronically filed by M/s. KIPL on 03.05.2018, the Customs Broker presented the documents to the proper officer of the Custom and also obtained out of charge on 03.05.2018 for the goods pertaining to the BE No.6226269 dated 03.05.2018 in terms of Regulation (5) of the Bill of Entry (Electronic Declaration) Regulation, 2011.

2.9. Chapter 68 of the HSN covers the Articles of Stone, Plaster, Cement, Asbestos, Mica or similar materials. As per Chapter Note of said Chapter 68, the goods of Chapter 25 were specifically excluded from said Chapter.

Chapter Note for Chapter 25 of the HSN, categorically provided that "Except where the context or Note 4 of this Chapter otherwise requires, the headings of this Chapter covers only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical process (except crystallization), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

Heading 2515 covered the "Marble, travertine, ecaussine and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more, and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape". The heading 251512 covered the Marble and travertine, which are merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape, whereas heading 25151210 covered them in Blocks form, heading 25151220 covered them in Slabs form and 25151290 covered them in any other form.

From the above, it follows that when the goods exported were classified in the country of export under HS Code 68022100 by the exporter, it was clear that the goods exported by M/s. Marmor in favour of M/s. Paras were not classifiable under Chapter 25, that the goods were not in crude form and that the process which excluded them from Chapter 25 had already taken place on them prior to their export.

2.10. Acting on the intelligence, the DRI officers examined the goods under Panchnama drawn on 14.05.2018 and 18.05.2018 in the presence of the representative of M/s. KIPL as well as authorised person on behalf of the Customs Broker and found that the goods were Polished Marble Slabs and that there was excess quantity of 51.85 SQM Polished Marble Slabs, which is 6.65% more than the declared quantity, which was not at all mentioned in any of the documents produced by M/s. KIPL and there was no mention about the same in the Bs/E.

2.11. Had not the DRI officer acted on the intelligence and examined the goods, it could have not been revealed that M/s. KIPL had made gross mis-declaration in respect of the description of goods and classification of the goods declared by them in the form of CTH No. in the Bs/E electronically filed and self-assessed by them solely with a view to avail undue benefits of exemption from Customs duty. Not only that, it could not have also been revealed that M/s. KIPL had intended to import the 51.85 SQM Polished Marble Slabs having value of Rs.8,05,395/- in excess of the measurement of 768.17 SQM declared by them in the Bs/E No. 6226269 dated 03.05.2018 and 6226233 dated 03.05.2018 for the goods valued at Rs.1,20,71,560, and the said excess goods would have been cleared by them in the guise of goods meant for EOU without payment of applicable Customs duty of Rs.3,54,051/- payable thereon.

2.12. It is apparent from the facts narrated hereinabove that the exemption from import duty in terms of Notification No. 52/2003-Cus dated 31.03.2003 was intended to be availed wrongly by the Directors of M/s. KIPL in collusion with the Proprietor of M/s. Paras and also with the abetment from the Proprietor of M/s. KEI as well as representative of M/s. Vista in respect of 820.02 SQM "Polished Mable Slabs" actually imported by them from Greece, having value of Rs. 1,28,76,938/- by wilfully mis-stating the description of the subject goods as "Marble Slabs 2 Cm Thick (U-POL)" as well as mid-declaring the measurement as 768.17 SQM in the Bills of entry filed on behalf of M/s. KIPL before the Customs authority. M/s. KIPL had wilfully suppressed the facts, which were well known to them, from the Customs authorities that the goods so imported by them were nothing but the "Polished marble slabs". M/s. KIPL was also aware that if the fact of correct description and CTH No. of the imported goods came to be known to the Customs

authorities at the time of import, exemption from the Customs duty would not be granted. It was also open for the importer while filing the Bs/E electronically to declare their inability to make self-assessment of the goods covered by the respective Bs/E under Section 17(1) of the Customs Act, 1962 and to request in writing to the proper officer for assessment in terms of Section 18(1) of the Customs Act, 1962, but apparently the importer M/s. KIPL had not filed any such written request till the goods were examined on 14.05.2018 and it was revealed that the goods were not as declared and the description of the goods had been wrongly declared in the Bs/E. However, by way of entering into the falsification of the House Bills of Lading and based on such falsified Bills of Lading, upon electronically filing the Bills of Entry No. 6226269 and 6226233 as well as self-assessing the same, the importer M/s. KIPL had not only violated the provisions of Section 46(4) of the Customs Act, 1962, but also violated the provisions of Section 17(1) of the Customs Act, 1962. The declaration made by M/s. KIPL in both the Bills of Entry in respect of the description of the goods, CTH No. and measurement of the goods, being incorrect and improper, the same requires to be rejected. Further the declared description of the goods, CTH No. and measurement of the goods also requires to be modified. Consequently, the exemption from the payment of Customs duty payable on importation of the goods by M/s. KIPL upon wrongly self-assessing the Bs/E No. 6226233 and 6226269 both dated 03.05.2018 by M/s. KIPL, was never available to them and the imported goods covered by both the said Bs/E were never exempted and for that the Customs duty of Rs.56,60,702/-, which was rightly payable by them and/or recoverable from them was/is liable to be recovered from M/s. KIPL after rejecting the self-assessment and re-assessing both the Bills of Entry No. 6226233 and 6226269 both dated 03.05.2018 under Section 17(4) of the Customs Act, 1962 and demanding the payment of Customs duty of Rs. 56,60,702/-from the importer in terms of Section 28 (4) of Customs Act, 1962 along with the interest at applicable rate under Section 28AA of the Customs Act, 1962.

2.13. In their letter dtd. 15.06.2020 and 13.07.2020, M/s. KIPL attempted to defend their stand, but the content of said letters were raised by them as an afterthought and that too after a long gap of about one and half year from the date of the seizure. In the statements of both the Directors of M/s. KIPL, they never attempted to put forth their such contentions, but they confirmed the mistake on their part. It is evident from their own action of not entering the goods, after their provisional release from Mundra, in the relevant records of EOU that for them the imported goods viz. Polished Marble Slabs were never to be used as raw material for manufacture of finished goods within the EOU, but the same were to be treated by them as finished goods.

It is on the record that, the goods to be shipped from the Greece were required to be inspected by the importer M/s. Paras and Inspection certificate issued by the importer to that effect was necessary to negotiate the LC and release the payment in favour of supplier. Such inspection certificate has been received by bank also, which confirms that the importer was well aware about the nature of goods being supplied to them and they had no objection for taking delivery of the such goods i.e. Polished Marble, falling under HSN 6802. This way their subsequent claim for lawful entitlement for exemption is not tenable and acceptable. Rather, it leads to the fact that the importer M/s. Paras as well M/s. KIPL had managed to manipulate the documents with view to suppress the actual nature of goods from customs which were having liberal examination norms in the case of EOU. The Inspection certificate dated 02.05.2018 issued under the signature of Shri G. S. Karnawat (Shri Gunsagar Karnawat) has confirmed that the goods described in invoice was as per the LC and the material quality was satisfactory and acceptable to them. M/s. Paras attempted to dispute the authenticity of Inspection Certificate on the basis of mention of Pin Code of Rajsamand as 313324 in the said Certificate, but it is observed that in their letter dtd.02.05.2018 to the Branch Manager, UCO Bank, Rajsamand with request for

amendment in FLC, at the foot of the letter head, the same Pin Code 313324 was reflected and even in the Passport No. U4077254 also, in the address of Shri Gun Sagar Karnawat, Pin Code of Rajsamand is mentioned as 313324. Even if the authenticity of said Certificate is not established, preparation and issue of such certificate was to be considered as pre-planned conspiracy between M/s. Paras and M/s. Marmor, so as to get the documents released from bank easily. Irrespective the fact of inspection of goods, it is apparent that the said goods were described as Polished Marble Slabs at the load Port with its HSN Code 68022100, which details also appeared in the MRN generated at load port. The same HC 68022100 was found mentioned in the House Bills of Lading. It would be pertinent to mention here that the LC opened by M/s. Paras with UCO Bank, Bhilwara is for EUR 146986.02, which is almost same after adding the excess measurement in SQM found during examination by DRI, as against the Invoice value of EUR 138270.78 for the quantity of 816.589 SQM. It is evident from the statements of the Director of M/s. KIPL that the goods being Polished Marble Slabs, without availment of benefit of EOU, they intended to clear the goods from Customs on payment of duty, which confession also confirms the allegations of mis-declaration of quantity, classification and measurement. Thus, the import of Polished Marble slabs in the guise of Marble slabs with mis-declaration regarding description, CTH No. and measurement thereof was a pre-planned conspiracy of the persons involved in this illegal import with sole intention of evasion of payment of customs duty.

2.14. Further to the above, from the narration of aforesaid facts, it is also revealed that M/s. KIPL and M/s. Paras had intended to import 51.85 SQM Polished Marble Slabs valued at Rs.8,05,395/-under the Bs/E No. 6226233 and 6226269, both dated 03.05.2018, by way of not declaring about the same in any of the import documents. They had also not mentioned this quantity while electronically filing the Bs/E No. 6226233 and 6226269 both dated 03.05.2018. Thereby they apparently attempted to clear the said un-manifested and un-declared goods, without making payment of Customs duty of Rs. 3,54,051/- payable on the same, by way of using the concealment of the 768.17 SQM of slabs of Marble declared by them in the Bs/E No. 6226233 and 6226269, both dated 03.05.2018 for a value of Rs. 1,20,71,560/-, in addition to the fact that the said 768.17 SQM goods were also mis-declared about its description and CTH No. Apparently, M/s. KIPL had made false, incorrect and incomplete declaration details against subject goods while electronically filing the Bs/E No. 6226233 and 6226269 both dated 03.05.2018 in contravention of the provisions of Section 46(4) and 46(4A) of the Customs Act, 1962.

2.15 In view of the above, vide Show Cause Notice Number DRI/AZU/GRU-9/Karnawat/INT-3/2018 dated 25.01.2021, the following noticee were called upon to Show Cause Notice to the **Commissioner of Customs, Custom House, Mundra** as below:

2.15.1 **M/s. Karnawat International Pvt. Ltd.** (IEC 4100000278), having their Registered Office at Kalpana Kunj, Opp. General Hospital, Kishor Nagar, Kankroli, Rajsamand-313326 (Rajasthan) and having Factory at NH-8, Village: Piparda, Dist. Rajsamand, Rajasthan - 313324, were called upon to show cause in writing to the Principal Commissioner of Customs having his office situated at Mundra Port & SEZ, Port User Building, Custom House, Mundra Port, District Kutch -370421 within thirty days from the receipt of the SCN as to why:-

- (a) The classification, quantity and description of the goods, which have been declared in the electronically filed Bills of Entry Nos. 6226233 and 6226269, both dated 03.05.2018 filed by M/s. Karnawat International Pvt. Ltd as 768.17 SQM "Marble Slabs 2CM Thick (U-POL)" with CTH No. 25151220, having declared value of Rs.1,20,71,560/-, should not be rejected under the provisions of Rule 12 of the Customs Valuation (Determination of Value of

Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 for the reasons assigned herein above;

(b) The classification, quantity and description of the goods, which have been declared in the electronically filed Bills of Entry Nos. 6226233 and 6226269, both dated 03.05.2018 filed by M/s. Karnawat International Pvt. Ltd as 768.17 SQM "Marble Slabs 2CM Thick (U-POL)" with CTH No. 25151220, having declared value of Rs. 1,20,71,560/-, should not be determined as 820.02 SQM "Polished Marble Slabs 2CM Thick" falling under CTH No. 68022190, having value of Rs. 1,28,76,938/- under the provisions of Rule 12(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 for the reasons assigned herein above;

(c) The self-assessment of Bills of Entry Nos. 6226233 and 6226269, both dated 03.05.2018 made by M/s. Karnawat International Pvt. Ltd. with the benefits of Notification No. 52/2003-Customs dated 31.03.2003 under Section 17(1) of the Customs Act, 1962 read with Regulation 4 of the Bill of Entry (Electronic Integrated Declaration) Regulation, 2011 should not be cancelled;

(d) The Bills of Entry Nos. 6226233 and 6226269, both dated 03.05.2018 declaring 768.17 SQM "Marble Slabs 2 Cm Thick (U-POL)" with CTH No. 25151220, having value of Rs. 1,20,71,560/- as described in the Annexure-A attached with this Notice, with benefit of Notification No. 52/2003-Customs dated 31.03.2003 should not be re-assessed in terms of Section 17(4) of the Customs Act, 1962 describing the said goods as 820.02 SQM "Polished Marble Slabs 2 Cm Thick" with CTH No. 68022190, having value of Rs. 1,28,76,938/- with denial of the benefit of Notification No. 52/2003-Customs dated 31.03.2003.

(a) The duty of Rs. 56,60,702/-, as per the calculation provided in the Annexure-A attached with this Notice, which was not levied on the said goods, should not be demanded and recovered from M/s. Karnawat International Pvt. Ltd. under Section 28(4) of the Customs Act, 1962 along with applicable interest payable thereon under Section 28AA of the Customs Act, 1962;

(b) The goods, which have been declared in the electronically filed Bills of Entry Nos. 6226233 and 6226269, both dated 03.05.2018 filed by M/s. Karnawat International Pvt. Ltd as 768.17 SQM "Marble Slabs 2CM Thick (U-POL)" with CTH No. 25151220, having declared value of Rs.1,20,71,560/-, which actually being "Polished Marble Slabs 2CM Thick" falling under CTH No. 68022190 with total measurement of 820.02 SQM having value of Rs. 1,28,76,938/-as described in Annexure-A attached with this notice should not be held liable for confiscation under the provisions of Sections 111(f), 111(i), 111(j) 111(l), 111(m) & 111(o) read with Sections 119 and 120, as applicable, of the Customs Act, 1962;

(c) Penalty should not be imposed on them separately under each of the Section 112(a) & 112(b) /114A, Section 114AA and Section 117 of the Customs Act, 1962, for the reasons discussed above.

(d) Why the amount of duty Rs. 30,07,821/- and Rs. 26,47,624/- (total Rs .56,55,445/-) paid by M/s. KIPL vide Challan No. 2023506684 and 2023506720 both dated 25.07.2018 respectively against Bills of Entry No. 6226269 dated 03.05.2018 and 6226233 dated 03.05.2018 respectively should not be appropriated and adjusted

against the duty demanded at para (e) above. Further, the amount of interest of Rs. 1,01,359/- and Rs. 89,221/- (total Rs. 1,90,580/-) paid by M/s. KIPL vide Challan No. 2023506684 and 2023506720 both dated 25.07.2018 respectively against Bills of Entry No. 6226269 dated 03.05.2018 and 6226233 dated 03.05.2018 respectively should not be appropriated and adjusted against the interest demanded at para (e) above. Also, the amount of penalty of Rs. 8,48,350/- paid voluntarily should not be adjusted against the penalty proposed at para (g) above.

2.15.2. Further, the following persons/companies/firms/concerns as appearing in Column 2 of the following table, were individually and separately called upon to show cause in writing to the Pr. Commissioner/Commissioner of Customs, Mundra Custom House, having his office situated at Mundra Custom House, PUB Building, Mundra Port - 370421, within 30 days from the receipt of The SCN as to why Penalty should not be imposed on each of them individually and separately under below mentioned penal provisions of the Customs Act, 1962 (as appearing at Column 3 to 6 of the table):-

S. No.	Name (S/Shri/Ms/Smt/ M/s)	Penal provisions under Customs Act, 1962			
		(3)	(4)	(5)	(6)
1.	Shri Gun Sagar Karnawat, Prop. of M/s. Paras and Director of M/s. KIPL	112(a)	112(b)	114AA	117
2.	Shri Prabuddha Karnawat, Director of M/s. KIPL and Authorised signatory of M/s. Paras	112(a)	112(b)	114AA	117
3.	Shri Bhagwati Lal Khatri, Office Accountant of M/s. KIPL and M/s. Paras	112(a)	112(b)	114AA	117
4.	Smt. Poonam Jaitley, Prop. of M/s. Kartikae Exim International	112(a)	112(b)	114AA	117
5.	M/s. Vista Maritime & Logistics S.A.	112(a)	112(b)	114AA	117
6.	M/s. Marmor SG S.A. Marble and Granite, Greece	112(a)	112(b)	114AA	117
7.	M/s. Krishna Shipping and Allied Services	112(a)	112(b)	114AA	-
8.	Shri S. L. Sonarthi, Branch Head and the Chief Manager, UCO Bank, Bhilwara Branch (Earlier designated as Senior Manager, UCO Bank, Bhilwara Branch.)	-	-	-	117

Personal Hearing and Submission from Noticees:

3.1 Shri R.S. Mangal, Chartered Accountant attended the Personal Hearing on behalf of Notices M/s. Karnawat International Pvt. Ltd., Shri Gun Sagar Karnawat, Proprietor of M/s. Paras Marble and Director of M/s. Karnawat International Pvt. Ltd., Shri Prabuddha Karnawat, Director of M/s. Karnawat International Pvt. Ltd., Shri Bhagwati Lal Khatri, Office Accountant of M/s. Paras Marble and M/s. Karnawat International Pvt. Ltd., Smt. Poonam Jaitley, Proprietor of M/s. Kartikae Exim International and M/s. Krishna Shipping and Allied Services. He has reiterated the reply already submitted. He has further added that M/s Karnawat International Pvt. Ltd. is an EOU unit to manufacture marble slabs and articles of marbles etc., and was entitled to import duty free marble as their input. That M/s Karnawat International Pvt. Ltd. ordered unpolished marble vide the two consignments (Bills of Entry Nos. 6226233 and 6226269 both dated

03.05.2018) for EOU purpose, however, on examination by DRI alleged the goods to be "Polished".

He has further added that to avoid further litigation M/s Karnawat International Pvt. Ltd. paid total duty along with interest and 15% penalty at the time of investigation itself and requested the DRI to conclude the proceedings under section 28(5) & 28(6) of the Customs Act, 1962 in view of deposit of duty, interest and penalty but the impugned SCN has been issued hence he has requested to conclude the proceedings of the impugned SCN under section 28(5) & 28(6) of the Customs Act, 1962 as already requested in his reply dated 23.12.2022

3.2 Shri S L Sonarthi, Branch Head and Chief Manager of UCO Bank also attended the Personal Hearing. He had submitted during the personal hearing that he had submitted the documents required for investigation and whatever actions have been taken were as per his official duties. There was no personal involvement. Therefore, he cannot be penalised for official work and he requested for dropping proceedings initiated in the SCN.

3.3 Further, a written reply dated 20.02.2021 was received from Shri S L Sonarthi, Branch Head and Chief Manager of UCO Bank through DRI, Gandhidham wherein he stated that there was little delay on behalf of him due to following reasons:

- The documents sought were back two years old, the notice was not holding the office at that time and little he knew regarding the facts of the case, henceforth, it took some time for the bank personnel's and notice to search, collate and submit the documents with the department.
- Further, at the time when the documents were sought, there was a high panic and risk of COVID-19 all around the country. Many organization and businesses were striving hard to begin there working again. Notice being in the essential services, working for limited hours due to limited working hour constraint put up by the government, was already occupied with a high load of work with other essential works of his daily routine of business activity and therefore could not able to submit the required documents within the required period of time. Otherwise there was no malafide intention on behalf of the notice or delay submission of documents.

He further submitted that there was no mal intention on his part and he had submitted all the available documents.

3.4 Further, a written reply dated 23.12.2022 was received from R S Mangal, CA on behalf of M/s. Karnawat International Pvt. Ltd., Shri Gun Sagar Karnawat, Proprietor of M/s. Paras Marble and Director of M/s. Karnawat International Pvt. Ltd., Shri Prabuddha Karnawat, Director of M/s. Karnawat International Pvt. Ltd., Shri Bhagwati Lal Khatri, Office Accountant of M/s. Paras Marble and M/s. Karnawat International Pvt. Ltd., Smt. Poonam Jaitley, Proprietor of M/s. Kartikae Exim International and M/s. Krishna Shipping and Allied Services wherein he stated that all the duties along with penalty equivalent to 15% of the duty has been paid by the importer, therefore, the case is liable to be concluded in terms of section 28(5) and 28(6) of the Customs Act, 1962.

3.5 Personal hearings to M/s. Vista Maritime & Logistics S.A, Akti Miaouli 33, Piraeus 185 35, Greece (email-id: vista@vista-maritime.com) and M/s. Marmor SG S.A. Marble and Granite, Kavalari P.C. 57200, Thessaloniki, Greece (email-id: info@stonegroup.gr) were given to be present on 26.12.2022, 30.12.2022 and 02.01.2023, however, no one had attended the personal hearings on these days on behalf of these two noticees.

Discussion and Findings:

4.1 From the facts narrated hereinabove and on analysing them with the legal provisions and upon scrutiny of the evidences collected during investigation conducted by DRI, it appears that

the self-assessment of the Bs/E No. 6226233 and 6226269 both dated 03.05.2018 made by M/s. KIPL was wrong and incorrect. Thus, the Bs/E were required to be reassessed from the purview of description and quantity of the goods and consequently the classification of the goods also requires reclassification, duty exemption already availed by M/s. KIPL requires to be denied and demand of duty is required to be raised and recovered from M/s. KIPL, as per the following details:

BE No. and Date	6226233 dated 03.05.2018		6226269 dated 03.05.2018	
Changes to be made	As self-assessed	To be re-assessed as	As self-assessed	To be re-assessed as
Description of the goods	Marble Slabs 2 CM thick (U-Pol)	Polished Marble Slabs	Marble Slabs 2 CM thick (U-Pol)	Polished Marble Slabs
CTH No.	25151200	68022190	25151200	68022190
Quantity (SQM)	370.02	383.2417	398.15	436.7782
Value (Rs.)	58,17,328.57	60,22,673/-	62,54,230.73	68,54,266/-
Exemption benefits claimed/available under Notification No.	52/2003-Cus GST Cess-01/2017	N/A	52/2003-Cus GST Cess-01/2017	N/A
Duty rates	Nil	BCD 20% SWS 10% IGST 18%	Nil	BCD 20% SWS 10% IGST 18%
Duty payable (Rs.)	Nil	26,47,567/-	Nil	30,13,136/-

4.2. The description of the goods and CTH No., as declared by M/s. KIPL in the Bills of Entry filed by them as per the above details, are not in conformity with the particulars of shipment reflected in the MRN generated at load port, the Master BL and also from the set of House Bills of Lading, which were endorsed by the Authorised Signatory of UCO Bank, Rajsamand Branch as well as M/s. KEI. The communication made from M/s. Paras and M/s. KIPL with M/s. KEI to get the House Bills of Lading amended after the goods already shipped from the load port also indicate the malafide intention of M/s. KIPL and their associates to suppress the actual description, CTH No. and measurement of the goods. Shri Prabuddha Karnawat, Director of M/s. KIPL has also admitted it in his statement dtd. 19.07.2018 that the goods were Polished Marble Slabs and they were intending to clear them on payment of duty withdrawing their claim for exemption from duty for the EOU. In their letter dtd. 17.05.2018, M/s. KIPL had also sought clearance of the goods after necessary amendment in the Bills of Entry.

4.3. In respect of the aforesaid Bills of Entry M/s. KIPL have already deposited Customs duty of Rs. 56,55,445/- (Rs. 30,07,821/- + Rs. 26,47,624/-) against the duty required to be paid by them after re-calculation as Rs. 56,60,702/- (Rs. 30,13,136/- + Rs. 26,47,567/-). Hence, after appropriation of said amount of duty already paid by them, the balance amount of Rs. 5,257/- still remains as recoverable from M/s. KIPL, with applicable interest payable by them in respect of said differential amount of duty.

4.4 In the show cause notice it has been proposed to demand and recover the said amount of differential duty under Section 28(4) of the customs Act, 1962. The Section 28(4) of the Customs Act, 1962 reads:

"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 wilful 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 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, 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 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."*

I find that the provision of Section 28(4) of the Customs Act, 1962 provides for demand of duty not levied or short levied by reason of collusion or wilful misstatement or suppression of facts. As the noticee wilfully mis-declared the description of impugned imported goods by suppressing material facts, the said condition of Section 28 ibid is fulfilled in the instant case. Further, I find that the said provision provides that duty can be demanded by proper officer within five years from the relevant date. Thus, I find that Section 28(4) ibid provides mechanism to demand duty during the period starting from the relevant date and within five years from such relevant date. The relevant date has been defined in above mentioned Explanation-1 of Section 28. I find that in this case subject Bills of Entry were filed for clearance of the impugned goods but the goods could not be cleared as the goods were seized by DRI. The goods were released only after granting of provisional release. Therefore, consequent upon the order of provisional release, the assessment was done provisionally under section 18 of Customs Act, 1962 . In view of clause (b) of the said explanation, I find that the relevant date in this case will start from the date on which final assessment is done. In the instance case, the assessment of goods is pending for finalisation. Therefore, I find it premature to demand the duty under Section 28(4) ibid, as this Section would kick in only after final clearance (not provisional assessment) of goods by customs after importation.

As discussed below, the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962. Since the impugned imported goods are not prohibited goods, an

option of redeeming the goods is required to be granted to the noticee, against the order of confiscation by paying redemption fine as provided under Section 125 of the Customs Act, 1962. The amount of redemption fine will be decided here-in-below. I find that as provided under Section 125(2) *ibid*, the noticee will have to pay the amount of differential duty along with the redemption fine while exercising option to redeem the confiscated goods for home consumption. Thus, in view of these provisions, I hold that the differential duty can be recovered along with redemption fine when the noticee chooses to exercise the option to redeem the confiscated goods. Therefore, no need for demanding the duty separately under section 28(4) of the Customs Act, 1962.

Therefore, I find that as the case does not merit the demand under section 28(4), the request of representative of noticees regarding drop the proceeding in terms of section 28(5) and Section 28(6) cannot be considered.

5. Confiscation of goods:

5.1. I find that by mis-declaring the description of the imported goods in the Bills of Entry No. 6226233 and 6226269 both dated 03.05.2018 electronically filed by M/s. KIPL at Mundra Custom House through ICEGATE, as "Marble slabs 2 CM Thick (U Pol)" and also by way of mis-stating the CTH No. 25151220 of the goods imported by them under those Bills of Entry M/s. KIPL intended to suppress the correct description of the goods under import of "Polished Marble Slabs", which is correctly falling under CTH No. CTH 68022190 and by making self-assessment of the goods covered by both the Bills of Entry, M/s. KIPL has contravened the provisions of Section 46(4) and Section 17(1) of the Customs Act, 1962.

5.2 I find from the facts that the M/s. KIPL had not intended to come forward with the correct details and description about the goods being imported by them, till the goods were first taken up for examination on 14.05.2018 and realizing the implication, by way of filing letter dated 17.05.2018. M/s. KIPL came forward for the first time with admission about the incorrect declaration made by them in the said Bills of Entry and also showed their intention to make payment of duty applicable on the same. Thus, M/s. KIPL had malafide intention of evading payment of applicable Customs duty, had not they been caught during the examination of the goods. Though being in possession of correct details and documents, M/s. KIPL had provided incorrect documents with false description and details. For this, M/s. Paras, had in connivance with M/s. KIPL, also engaged Freight Forwarders and Container Line Agent M/s. KEI as well as Container Line M/s. Vista to amend and prepare the House Bills of Lading with incorrect description, which description was never mentioned in the Master Bill of Lading and which was contrary to the declaration made before the Customs authorities at the Load Port, as reflected in the copy of relevant MRN. After getting the fabricated House Bills of Lading from the forwarders with false details, M/s. KIPL provided the same to the Customs Broker for filing of Bills of Entry and claiming exemption based on the same. Thus, M/s. KIPL and M/s. Paras had knowingly and intentionally caused to make House Bills of Lading through M/s. KEI and M/s. Vista with false description of the goods, having material impact on grant of exemption from the Customs duty and thereby rendered the said goods liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. For that, the 820.02 SQM Polished Marble Slabs having value of Rs. 1,28,76,938/-, which were attempted to be cleared by M/s. KIPL by way of causing to prepare and provide the documents with false details, they opted to mis-declare the description and CTH No. of the imported goods in the Bills of Entry for claiming undue benefits of duty exemption for Rs. 56,60,702/-and thereby attempted to evade the payment of said duty of Rs. 56,60,702/-, are also liable to confiscation in terms of Section 111 (j) &(o) of the Customs Act, 1962.

5.3. I find that M/s. KIPL had actually imported 820.02 SQM Polished Marble Slabs, whereas in the documents provided and in the Bills of Entry electronically filed by them, they had shown import of 768.17 SQM Marble Slabs only with the value of Rs. 1,20,71,560. Thus, M/s. KIPL had in connivance with M/s. Paras had intended to clear 51.85 SQM excess goods having Assessable value of Rs. 8,05,395/-, and evading payment of Customs duty of Rs. 3,54,051/- payable thereon, by way of concealing the said goods with the goods of 768.17SQM valued at Rs. 1,20,71,560/- electronically declared in the Bills of Entry. Thus, the 51.85 SQM Polished Marble Slabs valued at Rs. 8,05,395/-imported by M/s. KIPL in connivance with M/s. Paras were neither declared in the Import documents nor the same were declared in the Bills of Entry electronically filed by them. The said excess goods were not even manifested in the concerned IGM, as they were not correctly declared and described in the concerned Bills of Lading also at the behest of M/s. Paras and M/s. KIPL. The said excess goods were mixed with other goods in such manner that the said excess goods cannot be separated from such other goods, measurement thereof were already declared in the Bills of Entry, although the said declared goods otherwise mis-declared in respect of its description and CTH. For that the said excess goods of 51.85 SQM, having value of Rs. 8,05,395/-, on which the Customs duty of Rs. 3,54,051/- was otherwise payable by the importer, is liable for confiscation in terms of Section 111(i), (j), (l), (m) and(o) of the Customs Act, 1962 read with Section 120 of the Customs Act, 1962. Further, 768.17 SQM goods having value of Rs.1 ,20,71,560/-, measurement thereof otherwise declared in the respective Bills of Entry, although mis-declaring description thereof, are also liable for confiscation under Section 111(j), (m) and (o) read with Section 119 and Section 120 of the Customs Act, 1962. Since the excess goods and the goods with the measurement thereof otherwise declared in the respective Bills of Entry were so mixed that they cannot be separated, the entire lot of the Polished Marble Slabs, having measurement of 820.02 SQM, and having total value of Rs. 1,28,76,938/- are liable for confiscation in terms of Section 120 of the Customs Act, 1962.

6.0. Relevant provisions of the Customs Act, 1962 pertaining to confiscation of goods:

6.1. I find that M/s. MSC Agency (India) Pvt. Ltd., the Shipping Agent for MV Vigo V-IT813A, who had filed IGM with the Customs, Mundra, described the quantity of "Marble Slabs" imported against the BL No. VSTA40471P dtd. 01.04.2018 and VSTA40470P, dtd. 01.04.2018 as 25940Kgs. and 26920Kgs respectively. However, during examination of the goods, "Polished Marble Slabs" were found from both the containers, which were not at all declared in the IGM filed by them. It would be pertinent to mention here that the IGM was filed by M/s. MSC Agency (India) Pvt. Ltd., being a carrier, on the basis of data provided to them by M/s. Vista and accordingly they had filed the IGM at Mundra with such incorrect details at the instance of M/s. Vista. M/s. Vista being a person, other than carrier, who is authorised to issue delivery orders in favour of an importer on the basis of which the goods are permitted to be delivered to such importer, they are equally authorised to file the IGM and also to seek amendment therein, if any, under the authority vested in them in terms of Notification No. 111/2003-Cus (NT) dtd.19.12.2003. issued under Section 30 of the Customs Act, 1962 M/s. Vista issuing compromised description with different sets of Bills of Lading are responsible for such act of non-declaration of goods i.e. "Polished Marble Slabs" in the IGM, as if they had never declared. The goods of different description were found is, thus, liable for confiscation under Section 111(f) of the Customs Act, 1962, as there was no mention of goods "polished marble slabs' at all in the IGM filed at Mundra Customs.

6.2. I find that the representative of M/s. Paras had inspected the goods in all respect and thereafter they had considered the goods as fit for shipment in their favour at the Load Port. The inspection carried out must have included the quality, quantity as well as other trade related aspects. Thus, they were fully aware about the quantity of 820.02 SQM goods being shipped from

the load port as against the quantity of 768.17 SQM declared in the documents. Thus, the excess quantity of 51.85 SQM was concealed by the shipper as well as the representative of M/s. Paras. It would be pertinent to note that M/s. Paras is eventually a Proprietorship concern owned by Shri Gun Sagar Karnawat, who is also a Director of M/s. KIPL, in whose favour the consignment was transferred by M/s. Paras on High sea sale basis and who had sought duty free clearance of the imported goods, which included the excess quantity in the concealed form inside the containers. The excess quantity of 51.85 SQM, having AV of Rs. 8,05,395/-, which being a quantity concealed with the quality of goods declared, is therefore, liable for confiscation in terms of Section 111(i) of the Customs Act, 1962.

6.3. I find that the goods, which were imported by M/s. KIPL are dutiable goods and for importing the said goods duty-free, they claimed exemption with reference to their status as EOU. It is apparent from the Panchnama, Statements and other evidences that in the EOU of M/s. KIPL, the goods permitted for duty free import is raw marble blocks/slabs to manufacture polished marble slabs/tiles. Since they were not permitted for duty free import of polished marble slabs under CTH No. 6802, they misdeclared the imported goods under CTH No. 25151220, and thereby they attempted to remove the goods with misdeclared CTH No., which is contrary to the terms of clearance of imported goods available to the importer. Hence the entire goods 820.02 SQM Polished Marble Slabs imported by them are liable to confiscation in terms of Section 111(j) of the Customs Act, 1962.

6.4. I find that the Panchnama drawn on 18.05.2018 in the presence of representative of the importer M/s. KIPL at Mundra that there was excess quantity in both the containers, which was not covered in the quantity of goods declared by the importer in the respective Bills of Entry and it is apparent that the importer had not produced any documents such as Invoice, Packing List or such other document and also not submitted any evidence of value thereof paid by them, so as to claim legal ownership of said excess quantity of 51.85 SQM, as per the following details, sent along with the declared quantity.

BE No and Date	6226269 dated 03.05.2018	6226233 dated 03.05.2018	Total
Container No.	GLDU3984203	TGHU2684316	
Quantity declared in BE	398.15 SQM	370.02 SQM	768.17 SQM
Quantity observed during examination	436.7782 SQM	383.2417 SQM	820.0199 SQM
Excess Quantity	38.6282 SQM	13.2217 SQM	51.8499 SQM

The quantity of 51.85 SQM Polished Marble Slabs detected during panchnama is not as per the quantity of goods declared in the respective Bills of Entry as Marble Slabs 2CM THICK (UPOL). The total quantity of 820.02 SQM Polished Mable Slabs, is found to be not at all declared in the respective Bs/E. Thus, the dutiable goods viz. Polished Marble Slabs of 820.02 SQM were not included in the respective Bills of Entry and 51.85 SQM were in excess of those included in the B/E, both of them are liable for confiscation in terms of Section 111(l) of the Customs Act, 1962.

6.5. I find that in pursuant to the examination of goods imported by M/s. KIPL vide Bs/E No. 6226269 and 6226233, it became apparent that the goods imported by them were Polished Marble Slabs falling under CTH No. 68022100 and not raw marble slabs falling under CTH No. 25151220. There was also excess quantity of 51.85 SQM goods than the quantity of 768.17SQM meant for importation as declared in both the Bills of Entry. The goods viz. 768.17 SQM of

Polished Marble Slabs, did not at all correspond in respect of the CTH No. and description declared in the respective Bills of Entry filed by M/s. KIPL. Hence such goods along with excess 51.85 SQM Polished Marble Slabs are liable for confiscation under Section 111(m) of the Customs Act, 1962 too.

6.6. I find that in terms of Notification No. 52/2003-Cus. dtd. 31.03.2003, an EOU is permitted for duty free import subject to the conditions specified in the said Notification. Advancing their status as EOU, M/s. KIPL claimed exemption from duty of Rs. 56,60,702/- otherwise payable by them and availed the same from Customs under the two Bs/E filed by them, but apparently, they had no intention to follow the condition prescribed in the said Notification, subject to which they were entitled for export. By not following the conditions prescribed in said duty exemption Notification, the declared quantity of 768.17 SQM along with the excess quantity of 51.85 SQM, in total 820.02 SQM polished Marble slabs are liable for confiscation under section 111(o) of the Customs Act, 1962.

6.7. I find that along with the declared quantity of 768.17 SQM Marble Slabs, during examination, 51.85 SQM Marble Slabs were found in addition to the quantity which was declared in the documents and the Bills of Entry (irrespective of its description difference as Polished / Unpolished). Thus, the said excess quantity of 51.85 SQM Marble Slabs were attempted for clearance by concealing the same with the declared quantity. The excess quantity of 51.85 SQM is liable for confiscation in terms of Section 111(i) of the Customs Act, 1962, whereas the declared quantity of 768.17 SQM Marble Slabs is liable for confiscation under Section 119 of the Customs Act, 1962.

6.8. I find that the 768.17 SQM Marble Slabs were liable for confiscation under Section 119 of the Customs Act, 1962, as they were used for concealing the excess quantity of 51.85 SQM Marble Slabs.

It is apparent that the smuggled goods, i. e. concealed quantity of 51.85 SQM is mixed with the other goods in such a manner that the said 51.85 SQM concealed Marble Slabs cannot be separated from the declared quantity of 768.17 SQM Marble Slabs. Hence in terms of Section 120(2) of the Customs Act, 1962, the whole of the goods i. e. total quantity of 820.02 SQM Marble Slabs is liable for confiscation.

7.1. Penalty on M/s. KIPL: I find that M/s. KIPL is a private limited company established in 2000 and Shri Prabuddha Karnawat and Shri Gun Sagar Karnawat are the Directors in this company since the inception of said company in 2000. Shri Gun Sagar Karnawat is also a Proprietor of M/s. Paras. M/s. KIPL is also running a 100 % Export Oriented Unit (EOU). M/s. KIPL is engaged in preparing different shapes and designs of marble products and handicrafts which involved sawing, polishing, moulding & designing and cutting to sizes of marble as per the requirement of the buyer. For this, they were importing Rough Marble Blocks/Slabs etc. From the statements of both the Directors of M/s. KIPL, it appears that the M/s. KIPL is fully aware of the legal provisions pertaining to the imports and duty exemption. M/s. Paras, a proprietary concern of Shri Gun Sagar Karnawat, who is also one of the Directors of M/s. KIPL, had intended to import Polished Marble Slabs from Greece, but to clear the same duty free, they entered into a conspiracy to clear the goods using the status of M/s. KIPL as 100% EOU for their factory, and entered into the wilful mis-declaration of the imported goods with the sole intention to evade the applicable Customs duty payable thereon. Apparently, while filing Bills of Entry No. 6226233 and 6226269 both dated 03.05.2018 M/s. KIPL did not provide the correct declaration regarding description of the goods and CTH No. thereof before the Customs authorities for availing duty-free clearance of the said goods. On the contrary, with a view to avail undue benefits of exemption and to support their such claim of exemption, they involved Freight Forwarders M/s.

KEI into the conspiracy and got the House Bills of Lading amended with false details about the description thereof and later on provided the same to the Customs Broker for further presentation before the Customs authorities to justify their claim of exemption. M/s. KIPL had, thus, filed false electronic declaration in the ICEGATE through their Customs Broker and made wrong self-assessment of the goods declared therein. Further they also intended to clear 51.85 SQM excess goods, having value of Rs.8,05,395/- without declaring the same in the respective Bills of Entry and attempted to clear the same without obtaining permission from the proper officer of Customs, by mixing the same with the other goods. Thus, M/s. KIPL had deliberately suppressed the material facts from the Customs Department and used the falsified documents with intention to avail undue benefits of exemption from Customs duty of Rs. 56,60,702/- by wrongly claiming exemption in terms of Notification No. 52/2003-Cus dated 31.03.2018 and such deliberate acts of commission and omission on the part of M/s. KIPL have rendered the "Polished Marble Slabs" imported under the cover of Bills of Entry No. 6226233 and 6226269 both dated 03.05.2018 liable to confiscation under provisions of Sections 111(f), 111(i), 111(j) 111(l), 111(m) & 111(o) read with Sections 119 and 120, as applicable, of the Customs Act, 1962 and by this, they made themselves liable to penalty as per provisions of Section 112 (a) and Section 114AA of the Customs Act, 1962.

7.2. Penalty on Shri Gun Sagar Karnawat, Proprietor of M/s. Paras and Director of M/s. KIPL: I find that Proprietor of M/s. Paras is Shri Gun Sagar Karnawat, who is also a Director of M/s. KIPL also. Originally, M/s. Paras ordered the marbles from Greece, which later on shown as sold to M/s. KIPL on High Sea Sale basis on 16.04.2018 to evade the payment of applicable Customs duty. It is also evident from the facts above that Shri Gun Sagar Karnawat had in his Proprietary concern M/s. Paras prompted the Freight Forwarders to obtain amendment in the House Bills of Lading, which was further submitted by M/s. Paras to KIPL and then the same was submitted to the Customs Broker for electronically filing Bills of Entry Nos. 6226233 and 6226269 both dated 03.05.2018 with wrong description and wrong CTH No. Not only that, but KIPL resorted to self-assessment of both the Bills of Entry against the evident fact known to them. He was aware of correct description of the goods but for availing undue benefit of Duty-free import under EOU scheme, he knowingly mis-declared the subject import consignments and subsequently shown to have sold the goods to M/s. KIPL on High Sea Sale basis, in order to evade applicable Customs duty of Rs. 56,60,702/- payable on importation of the subject goods. It also appears that despite being aware, he mis-declared the import consignments covered by the Bills of Entry No. No. 6226233 and 6226269 both dated 03.05.2018, self-assessed the said Bs/E and attempted to avail undue benefit of duty exemption under Not. No 52/2003-Cus dated 31.03.2003 showing that the said goods were required as procurement of duty-free raw material for use in EOU, as against the fact that the goods under import were already a Polished one. He was fully aware of the facts that the Polished Marble Slabs were being imported without being declared in the Bills of Entry correctly as regards their correct description and CTH details. Thus, it can be inferred that Shri Gun Sagar Karnawat deliberately involved his Proprietary concern M/s. Paras along with his company M/s. KIPL in deliberate suppression of the fact from Customs Department to evade the applicable Customs duty and these deliberate acts of commission and omission on the part of M/s. Paras and KIPL, where in both the concern and the company, he being a key person, have rendered the goods mentioned in the Bills of Entry Nos. 6226233 and 6226269 both dated 03.05.2018 liable to confiscation under the provisions of the Customs Act, 1962. By these acts of commission and omission, Shri Gun Sagar Karnawat has rendered himself liable to penalty under provisions of Section 112 (a) and Section 114AA of Customs Act, 1962 on behalf of both concerns.

Further to the above, from the facts on record, it is evident that Shri Gun Sagar Karnawat is active in business activity, which is evident from his role of placing orders at Greece, his making

signature on High Sea Sale Agreement and many other documents. In that case, he could have responded to the summons dated 03.10.2018 and 09.10.2018 issued by the SIO of DRI, Gandhidham to him under Section 108 of the Customs Act, 1962, but from the facts, it is evident that Shri Gun Sagar Karnawat avoided making appearance on vague grounds, which are contradictory to each other. He did not make compliance with the Summons dated 03.10.2018 and 09.10.2018 but, otherwise kept active in business. His so-called medical report was also non-specific about his two months rest; at the same time Shri Gun Sagar Karnawat, sought extension on the grounds of medical reason but responded to another summons stating that he was busy in Assembly election. Needless to say, that he thus has violated the provisions of Section 108 of the Customs Act, 1962 and for that he has rendered himself liable for penalty under Section 117 of the Customs Act, 1962.

7.3. Penalty on Shri Prabuddha Karnawat, Director of M/s. KIPL and Authorised person of M/s. Paras: I find that Shri Prabuddha Karnawat is a Director of M/s. KIPL, which is a 100% EOU. From the facts discussed hereinabove, it is evident that he was responsible to look after the management of M/s. KIPL as an EOU and also of M/s. Paras. Being Director of M/s. KIPL, he is fully aware about the legal provisions and the procedure pertaining to the said EOU. In his statement dated 19.07.2018, he clearly stated he was aware of the fact that as per Letter of permission (LOP), M/s KIPL being a 100% EOU is not eligible to import Polished Marble Slabs and since the Polished Marble Slabs had been imported by them, they were willing to pay the applicable duty on the same. From the facts narrated hereinabove, it also appears that he was aware of correct description of subject goods but for availing undue benefit of Duty free import under Notifications No. 52/2003-Customs dated 31.03.2003 pertaining to the EOU scheme, he knowingly engaged himself in mis-declaring the subject import consignments in connivance with his father Shri Gun Sagar Karnawat, who is another Director of M/s. KIPL and also a Proprietor of M/s. Paras and it was shown as the goods were sold on High Sea sale basis by M/s. Paras to KIPL in order to evade applicable Customs duty payable thereon. It also appears that despite being aware, he mis-declared the description of the imported goods as "Marble Slabs 2 CM Thick (U-POL)" in the Bs/E No. 6226233 and 6226269 both dated 03.05.2018 electronically filed by the Customs Broker appointed by them at their behest and on their behalf and also made self-assessment of the goods covered by the said Bills of Entry without informing the proper officer of Customs about their inability to self-assess the Bs/E otherwise, with sole intention to get the said consignments cleared duty free, evading the applicable Customs duty of Rs .56,60,702/- payable by them on the same. He was fully aware of the facts that the Polished Marble Slabs were being imported by them without being declared by correct description and measurement of the goods in the Bills of Entry being electronically filed on their behalf and he engaged himself in self-assessment of those Bills of Entry in a totally wrong manner. He was also aware that the goods mentioned in Bill of Entry Nos. 6226233 and 6226269 both dated 03.05.2018, if found mis-declared about its description and measurement, the same would be liable to confiscation under provisions of the Customs Act, 1962, even though he engaged himself in such act of commission and omission, by which he has rendered himself liable to the penalty under provisions of Section 112(a) and Section 114AA of Customs Act, 1962.

Further to the above, from the facts on record, it is evident that Shri Prabuddha Karnawat was active in business activity of M/s. Paras as well as M/s. KIPL, which is evident from his role of placing orders at Greece, his making signature on High Sea Sale Agreement and many other documents. In that case, he could have responded to the summons dated 11.09.2018 and 09.10.2018 issued by the SIO of DRI, Gandhidham to him under Section 108 of the Customs Act, 1962, but from the facts, it is evident that Shri Prabuddha Karnawat avoided making appearance on vague grounds, which are contradictory to each other. He did not comply the summons dated

11.09.2018 and 09.10.2018. His Medical report was also not specifically found suggesting that he required the two months rest. Rather, he at the same time claimed that, he had been busy in Assembly election, is apparently in intended violation of the obligation cast on the person for whom the summons under Section 108 of the Customs Act, 1962 is issued. Shri Prabuddha Karnawat thus has therefore violated the provisions of Section 108 (3) of the Customs Act, 1962 and for that he has rendered himself liable for penalty under Section 117 of the Customs Act, 1962.

7.4. Penalty on Shri Bhagwati Lal Khatri, Office Accountant of M/s. KIPL and M/s. Paras: I find that being Office Accountant of M/s. KIPL and M/s. Paras, Shri Bhagwati Lal Khatri is the third most responsible person after Shri Prabuddha Karnawat and Shri Gun Sagar Karnawat, as it appears, that he used to take decisions on behalf of M/s. KIPL and M/s. Paras and also on behalf of Shri Prabuddha Karnawat and Shri Gun Sagar Karnawat in their absence. Shri Bhagwati Lal Khatri used to make all communication to the forwarder M/s. KEI and Custom House Broker M/s. Krishna Shipping on behalf of M/s. KIPL and M/s. Paras.

Further to the above, from the facts on record, it is evident that Shri Bhagwati Lal Khatri was well aware about the business activity of M/s. KIPL as well as M/s. Paras. He was also knowing that the goods being imported was polished Marble Slabs. In spite having knowledge of actual description of the imported goods, he made all efforts and get amended both the House Bills of Lading with description of the goods as "Marble Slabs 2 CM Thick (U-POL)", based upon which M/s. KIPL initially claimed undue benefit of import duty exemption. He also approved the check list of the subject two Bills of Entry prepared by the Custom Broker M/s. Krishna Shipping. By these acts of commission and omission, Shri Bhagwati Lal Khatri has rendered himself liable to penalty under provisions of Section 112 (a) and Section 114AA of Customs Act, 1962.

Further to the above Shri Bhagwati Lal Khatri failed to produce the relevant import documents on vague grounds even after being repeatedly requested for the same, has therefore violated the provisions of Section 108 (3) of the Customs Act, 1962; and for that he has rendered himself liable for penalty under Section 117 of the Customs Act, 1962 too.

7.5. Penalty on Smt. Poonam Jaitley, Prop. Of M/s. KEI: I find that M/s. KEI is a proprietary firm dealing in freight forwarding business since 2007 providing containers to exporters and importers through shipping lines as per requirement. Smt. Poonam Jaitley is the proprietor of M/s. KEI. On inquiry about container and freight booking made by M/s. Paras, M/s. KEI passed on the said booking to their load port agent M/s. Vista who provided two containers to M/s. Marmor for loading of the goods. M/s. KEI got issued 2 HBLs viz. VSTA40470P & VSTA40471P on 01.04.2018 through their overseas agent M/s. Vista. The said HBLs were having description of goods as "Marble Slabs 2CM Thick (U POL)" as against the description of goods mentioned as "Marble Slabs" in Master BL No. MSCUPI783932 dated 01.04.2018. During the course of investigation, M/s. KEI could not clearly justify the deviation in description made by them in HBL as against the description of Master BL and also about the HSN Code mentioned on the HBL, which she had endorsed with seal of M/s. KEI and her signature and provided to M/s. MSC Mundra under letter head of M/s. KEI and in letter dtd. 25.05.2018, which HSN Code was later on found deleted in the subsequent copies provided from M/s. KEI. M/s. KEI could explain only that their agent prepared HBL based on the data provided by the Shipper and word "U Pol" was taken by their agent from Letter of Credit supplied by the importer to the shipper. The explanation given by M/s. KEI could not be acceptable as Instruction for B/L Issuance dated 29.03.2018 given by their agent M/s. Vista to the shipping line M/s. MSC clearly mentions the description of goods as "Marble Slabs". Thus, M/s. KEI involved themselves with M/s. KIPL into the conspiracy by way of getting issued House Bills of Lading from their overseas agent M/s. Vista with false details

about the description and thereby abetted M/s. KPIL in getting undue Customs duty exemption benefit. By these acts of commission and omission, M/s. KEI has rendered themselves liable to penalty under provisions of Section 112 (a) of Customs Act, 1962.

Further to the above, from the facts on record, it is evident that M/s. KEI being a freight forwarder and mediator between the importer and overseas shipping line M/s. Vista was well aware about the conspiracy being carried out by the importer by way of misdeclaration of goods in subject Bills of Entry. On being instructed by the importer, M/s. KEI directed their agent at Greece M/s. Vista for issue of two different sets of House Bills of Lading with description of goods as "Marble Slabs 2 CM thick (U-POL)". Further, knowingly, M/s. KEI did not mention HSN 68022100. By these acts of commission and omission, M/s. KEI has rendered themselves liable to penalty under provisions of Section 114AA of Customs Act, 1962.

However, Smt. Poonam Jaitley appeared before DRI on 12.09.2018 and 16.12.2019. Further, she responded to various communications to DRI. Therefore, Smt. Poonam Jaitley, Prop. Of M/s. KEI has not violated the provisions of Section 108 the Customs Act, 1962. Hence, Smt. Poonam Jaitley is not liable for penalty under Section 117 of the Customs Act, 1962.

7.6. Penalty on M/s. Vista: I find that M/s. Vista working as an overseas agent on behalf of M/s. KEI arranged and provided two containers to M/s. Marmor for loading of the goods at load port. M/s. Vista issued instruction for B/L Issuance dated 29.03.2018 to the shipping line M/s. MSC specifically mentioning therein the description of goods as "Marble Slabs". However, they issued 2 HBLs viz. VSTA40470P & VSTA40471P on 01.04.2018 with the description of goods as "Marble Slabs 2CM Thick (U POL)" as against the description of goods mentioned as "Marble Slabs" in Master BL No. MSCUPI783932 dated 01.04.2018 as well as their own instruction dated 29.03.2018 to shipping line for issuance of B/L. Not only that they also issued BL with mention of HSN Code and subsequently issued HBL deleting HSN Code from it. It clearly establishes that M/s. Vista deviated with regard to description of goods merely on the instructions of the importer through forwarder M/s. KEI and chose to differ from their own instruction as well as Master BL issued by the shipping line and thereby facilitated M/s. KPIL in claiming undue Customs duty exemption benefit. These acts of commission and omission on the part of M/s. Vista has rendered themselves liable to penalty under provisions of Section 112 (a) and Section 114AA of Customs Act, 1962.

Further to the above, I find that being a Overseas Agent it is not easy to present themselves in a foreign country and their Indian representative M/s KEI is already responding to the summons issued by the DRI. Therefore, I find that they have not rendered themselves liable for penalty under Section 117 of the Customs Act, 1962.

7.7. Penalty on M/s. Marmor: I find that being overseas supplier and not the importer, they were not required to file bill of entry to confiscation under Section 111 of Customs Act, 1962. Thus, they have not made any "entry" within the meaning assigned to the term under Section 2(16) of Customs Act, 1962. Further, Investigation did not prove any intention or mens rea. Hon'ble Tribunal in the case of Metro Marine Services Pvt. Ltd. v/s Commissioner of Customs, Kandla, 2008 (223) E.L.T. 227 (Tri.-Chennai) has held that firms cannot have mens rea and hence, penalty cannot be imposed on firms. Hence, they cannot be said to have rendered the goods liable to confiscation under the provisions of Section 111 of Customs Act, 1962. Accordingly, M/s. Marmor is not liable to penalty under the provisions of Section 112 (a) of Customs Act, 1962.

Further, M/s. Marmor are also not liable to penalty under Section 114AA of Customs Act, 1962 inasmuch as invocation of Section 114AA would require knowledge or intention on the part of person who 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. The notice does not cite any evidence to show that M/s. Marmor could have derived any benefit by shipping wrong goods to India. With such evidence, presence or knowledge or intention on the part of M/s. Marmor is not proved. Hence, M/s. Marmor Jet cannot be held liable to penalty under Section 114AA of Customs Act, 1962.

Further to the above, I find that being an Overseas Supplier it is not easy to present themselves in a foreign country. Further, investigation did not prove any mala fide intention to avoid the summons. Therefore, I find that they have not rendered themselves liable for penalty under Section 117 of the Customs Act, 1962.

7.8. Penalty on M/s. Krishna Shipping: I find that M/s. Krishna Shipping, a Customs Broker firm acted on behalf of M/s. KIPL for clearance of cargo pertaining to their shipment dated 01.04.2018 from M/s. Marmor. M/s. KIPL handed over the documents to M/s. Krishna Shipping for filing of Bill of Entry and to arrange clearance of the goods. M/s. Krishna Shipping who handles clearance activities in the capacity as the Custom Broker is responsible for clearance of "Polished Marble Slabs" only. As per section 147 of the Customs Act, 1962, where the act requires anything to be done by the owner, importer or exporter of any goods, it may be done on his behalf by his agent. Therefore, anything declared in bill of entry by CHA M/s. Krishna Shipping was declared on behalf of importer, M/s. KIPL. There is no positive evidence on record in investigation to show any mala fide intention on the part of Customs House Agent, M/s. Krishna Shipping. There is no failure in carrying out duties in accordance with law by the Customs House Agent, M/s. Krishna Shipping. There is not a sufficient ground for imposition of penalty under Section 1122 and 114AA of Customs Act, 1962, unless there is evidence to show any mala fide intention on his part.

7.9. Penalty on Shri S. L. Sonarthi, The Chief Manager, UCO Bank, Bhilwara (earlier designated as Sr. Manager): I find that UCO Bank, Bhilwara Branch had opened LC No. 08141718FLU0004, dated 28.03.2018 on the basis of request dated 21.03.2018 by M/s. Paras and details provided in their application in Form FR-2 for opening of FLC for EUR 146986.02 in terms of Proforma Invoice No. 12003285 dated 21.03.2018 issued by M/s. Marmor. The said LC No. 08141718FLU0004, dated 28.03.2018 was amended by UCO Bank, Bhilwara for EURO 138270.78 as requested by M/s. Paras on 26.04.2018. It appears that till the final LC got issued, various amendments were carried out by UCO Bank, Bhilwara Branch on request of M/s. Paras. On 14.05.2018 UCO Bank, Bhilwara Branch got the documents from M/s. Marmor against the LC, which included two original House Bills of Lading. Since the consignee for both the House Bills of Lading was mentioned as "To Order of UCO Bank, Opp. Gandhi SevaSadan, Rajsamand, India", the original Bills of Lading were sent by UCO Bank, Bhilwara Branch to UCO Bank, Rajsamand Branch on 15.05.2018 for discharge endorsement on the backside of both the original Bills of Lading in favour of M/s. Paras and then to hand over the same to M/s. Paras. Accordingly, after receipt of both original Bills of Lading duly endorsed by Authorised signatory of UCO Bank, Rajsamand Branch on the backside of both the House Bills of Lading, M/s. Paras submitted the same to M/s. KEI on or before 25.05.2018. Outward remittance was made by UCO Bank, Bhilwara Branch for EURO 66603.96 and 71666.82 on 02.07.2018 to M/s. Marmor being the beneficiary of LC No. 08141718FLU0004. During the investigation, The Branch Manager of UCO Bank, Bhilwara was requested to provide certain details and documents in respect of LC No. 08141718FLU0004 issued by them on request of M/s. Paras. Though Shri S.L. Sonarthi, the Sr. Manager of UCO Bank, Bhilwara Branch replied to the request letters issued from DRI under the provisions of Section

108 of the Customs Act, 1962, they did not comply fully in respect of requisition of specific documents made by the letters issued to them by the DRI.

However, DRI, Gandhidham forwarded written reply dated 20.02.2021 of Shri S L Sonarthi, Branch Head and Chief Manager of UCO Bank wherein he explained the reason that at the time when the documents were sought, there was a high panic and risk of COVID-19 all around the country. Many organization and businesses were striving hard to begin there working again. Notice being in the essential services, working for limited hours due to limited working hour constraint put up by the government, was already occupied with a high load of work with other essential works of his daily routine of business activity and therefore could not able to submit the required documents within the required period of time. Otherwise there was no mala fide intention on behalf of the notice or delay submission of documents.

I find that the documents called by DRI from any bank covered under Section 108A of the Customs Act, 1962. Penalty of Section 108A prescribed under Section 108B of customs act, 1962. Therefore, penalty under Section 117 cannot be imposed as Section 117 prescribe the penalty for contraventions of Customs Act where specific penalty of that contravention is not available. Therefore, in the instance case, penalty under Section 117 of the Customs Act, 1962 on Shri S L Sonarthi is not imposable.

8. In view of the forgoing discussions and findings, I pass the following order:

Order:

- (a) I reject the classification, quantity and description of the goods, which have been declared in the electronically filed Bills of Entry Nos. 6226233 and 6226269, both dated 03.05.2018 filed by M/s. Karnawat International Pvt. Ltd as 768.17 SQM "Marble Slabs 2CM Thick (U-POL)" with CTH No. 25151220, having declared value of Rs.1,20,71,560/-,
- (b) I order to re-assess the Bills of Entry Nos. 6226233 and 6226269, both dated 03.05.2018 filed by M/s. Karnawat International Pvt. Ltd describing the said goods as 820.02 SQM "Polished Marble Slabs 2 Cm Thick" with CTH No. 68022190, having value of Rs. 1,28,76,938/- with denial of the benefit of Notification No. 52/2003-Customs dated 31.03.2003 and appropriate the duty of Rs. 30,07,821/- vide challan no 2023506684 dated 25.07.2018 & Rs. 26,47,624/- vide challan no. 2023506720 dated 25.07.2018 and interest of Rs.1,01,359/- vide challan no. 2023506684 dated 25.07.2018 & Rs. 89,221/- vide challan no. 2023506720 dated 25.07.2018 paid during investigation,
- (c) I order to confiscate the impugned goods imported vide Bills of Entry Nos. 6226233 and 6226269, both dated 03.05.2018 filed by M/s. Karnawat International Pvt. Ltd as 768.17 SQM "Marble Slabs 2CM Thick (U-POL)" with CTH No. 25151220, having declared value of Rs.1,20,71,560/-, which actually being "Polished Marble Slabs 2CM Thick" falling under CTH No. 68022190 with total measurement of 820.02 SQM having value of Rs. 1,28,76,938/- under Sections 111(f), 111(i), 111(j) 111(l), 111(m), 111(o), 119 and 120 of the Customs Act 1962. However, I give an option to redeem the same on payment of redemption fine of Rs. 6,00,000/- (Rupees Six Lakh Only) under Section 125(1) of Customs Act, 1962,
- (d) I impose a Penalty of Rs. 5,00,000/- (Rupees Five Lakh Only/-) on M/s. Karnawat International Pvt. Ltd., N.H- 8, Village- Piparda, Rajsamand-313326 under Section 112(a) of the Customs Act, 1962, for the reasons discussed above. The amount of

penalty of Rs. 8,48,350/- paid voluntarily vide DD No. 209859 dated 25.10.2018 may be adjusted against the penalty,

- (e) I order to execute the Bank Guarantee No. 37830133760 dated 23.07.2018 for Rs. 32,16,245/- and order to appropriate the same against the duty, interest, fine and penalty imposed on importer M/s Karnawat International Pvt. Ltd.,
- (f) I impose a Penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on Shri Gun Sagar Karnawat, Director of M/s. KIPL under Section 112(a) of the Customs Act, 1962, for the reasons discussed above,
- (g) I impose a Penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on Shri Gun Sagar Karnawat, Director of M/s. KIPL under Section 114AA of the Customs Act, 1962, for the reasons discussed above,
- (h) I impose a Penalty of Rs. 20,000/- (Rupees Twenty Thousand Only) on Shri Gun Sagar Karnawat, Director of M/s. KIPL under Section 117 of the Customs Act, 1962, for the reasons discussed above,
- (i) I impose a Penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on M/s. Shri Prabuddha Karnawat, Director of M/s. KIPL and Authorised signatory of M/s. Paras under Section 112(a) of the Customs Act, 1962, for the reasons discussed above,
- (j) I impose a Penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on M/s. Shri Prabuddha Karnawat, Director of M/s. KIPL and Authorised signatory of M/s. Paras under Section 114A of the Customs Act, 1962, for the reasons discussed above,
- (k) I impose a Penalty of Rs. 20,000/- (Rupees Twenty Thousand Only) on M/s. Shri Prabuddha Karnawat, Director of M/s. KIPL and Authorised signatory of M/s. Paras under Section 117 of the Customs Act, 1962, for the reasons discussed above,
- (l) I impose a Penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on M/s. Shri Bhagwati Lal Khatri, Office Accountant of M/s. KIPL and M/s. Paras under Section 112(a) of the Customs Act, 1962, for the reasons discussed above,
- (m) I impose a Penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on M/s. Shri Bhagwati Lal Khatri, Office Accountant of M/s. KIPL and M/s. Paras under Section 114AA of the Customs Act, 1962, for the reasons discussed above,
- (n) I impose a Penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on M/s. Shri Bhagwati Lal Khatri, Office Accountant of M/s. KIPL and M/s. Paras under Section 117 of the Customs Act, 1962, for the reasons discussed above,
- (o) I impose a Penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on M/s. Smt. Poonam Jaitley, Prop. of M/s. Kartikae Exim International under Section 112(a) of the Customs Act, 1962, for the reasons discussed above,
- (p) I impose a Penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) on M/s. Smt. Poonam Jaitley, Prop. of M/s. Kartikae Exim International under Section 114AA of the Customs Act, 1962, for the reasons discussed above,
- (q) I refrain from imposing on Smt. Poonam Jaitley, Prop. of M/s. Kartikae Exim International under Section 117 of the Customs Act, 1962, for the reasons discussed above,
- (r) I impose a Penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on M/s. Vista Maritime & Logistics S.A. under Section 112(a) of the Customs Act, 1962, for the reasons discussed above,

- (s) I impose a Penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on M/s. Vista Maritime &Logistics S.A. under Section 114AA of the Customs Act, 1962, for the reasons discussed above,
- (t) I refrain from imposing penalty on M/s. Vista Maritime &Logistics S.A. under Section 117 of the Customs Act, 1962, for the reasons discussed above,
- (u) I refrain from imposing penalty on M/s. Marmor SG S.A. Marble and Granite, Greece under Section 112(a), Section 114AA or Section 117 of the Customs Act, 1962, for the reasons discussed above,
- (v) I refrain from imposing penalty on M/s. Krishna Shipping and Allied Services under Section 112(a) or 114AA of the Customs Act, 1962, for the reasons discussed above,
- (w) I refrain from imposing penalty on Shri S. L. Sonarthi, Branch Head and the Chief Manager, UCO Bank, Bhilwara Branch under Section 117 of the Customs Act, 1962, for the reasons discussed above.

9. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

10. The SCN F.No. DRI/AZU/GRU-9/Karnawat/INT-3/2018 dated 25.01.2021 issued by Pr. Additional Director General, DRI, Ahemdabad Zonal Unit, Ahemdabad is hereby disposed of.


(T.V. RAVI) 23/05/2023
Commissioner of Customs
Custom House, Mundra

F.No. Gen/Adj/Comm/126/2021-Adj

Date: 25.05.2023

BY SPEED POST/BY EMAIL/BY HAND/ NOTICE BOARD OR BY OTHER LEGALLY PERMISSIBLE MEANS:

To (The Noticees):

1. M/s. Karnawat International Pvt. Ltd., N.H- 8, Village- Piparda, Rajsamand-313326. (Rajasthan) and office at Kalpana Kunj, Opp. City Hospital, Kishor Nagar, Kankroli, Rajsamand-313324 (Rajasthan) (email-id:karnawatindia@gmail.com)
2. Shri Gun Sagar Karnawat, Proprietor of M/s. Paras Marble and Director of M/s. Karnawat International Pvt.Ltd.,Kalpana Kunj, Opp. City Hospital, Kishor Nagar, Kankroli, Rajsamand-313324(Rajasthan) (email-id:karnawatindia@gmail.com)
3. Shri Prabuddha Karnawat, Director of M/s. Karnawat International Pvt. Ltd., N.H- 8, Village- Piparda, Rajsamand-313326. (Rajasthan) and Authorised signatory of M/s. Paras Marble, having office at Kalpana Kunj, Opp. General Hospital, Kishor Nagar, Kankroli, Rajsamand-313324(Rajasthan). (email-id: karnawatindia@gmail.com, paras40336@gmail.com)
4. Shri Bhagwati Lal Khatri, Office Accountant of M/s. Paras Marble and M/s. Karnawat International Pvt.Ltd., having office at Kalpana Kunj, Opp. General Hospital, Kishor Nagar,

Kankroli, Rajsamand-313324 (Rajasthan) (email-id: karnawatindia@gmail.com, paras40336@gmail.com).

5. Smt. Poonam Jaitley, Proprietor of M/s. Kartikae Exim International, D-18B, 2nd Floor, Chhatarpur Enclave, New Delhi-110074 (email-id:info@kartikae.com, poonam@kartikae.com)
6. M/s. Vista Maritime & Logistics S.A, AktiMiaouli 33, Piraeus 185 35, Greece (email-id: vista@vista-maritime.com)
7. M/s. Marmor SG S.A. Marble and Granite, Kavalari P.C. 57200, Thessaloniki, Greece (email-id:info@stonegroup.gr)
8. M/s. Krishna Shipping and Allied Services, 53/54-A, Transport National Highway, Gandhidham (Kutch) -370201 (email-id:krishnagim@yahoo.co.in, import@krishnashippingkdl.com, krishnashipping.mun@gmail.com)
9. Shri S. L. Sonarthi, Branch Head and the Chief Manager, UCO Bank, Bhilwara Branch, Nagori Garden, Bhilwara – 311 001 (Rajasthan)
(Through the Dy General Manager, UCO Bank, Ajmer Zonal Office, Commercial Centre, Khiland Market, Ajmer – 315001)

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

- a. The Chief Commissioner of Customs, CCO, Ahmedabad.
- b. The Pr. ADG, DRI, AZU, Ahmedabad
- c. The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra
- d. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- e. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- f. The Pr. Commissioner/Commissioner of Customs, Mundra Port & SEZ, 5AE, Port User Building, Custom House, Mundra Port, District Kutch, Gujarat -370421 for adjudication purpose and for further necessary action in terms of CBLR, 2018 against M/s. Krishna Shipping and Allied Services, Gandhidham.
- g. The Additional Director General, Central Economic Intelligence Bureau, 6th Floor, B Wing, Janpath Bhawan, Janpath, New Delhi-110001
- h. The DGFT, New Delhi
- i. The Development Commissioner, Noida Special Economic Zone, Noida-Dadri Road, Phase-II, Noida-201305 (UP)
- j. The Commissioner of Customs, Jodhpur, New Central Revenue Building Statue Circle, 'C' Scheme, Jaipur-302 005 (Rajasthan)
- k. The Assistant Commissioner of CGST and Customs, Customs Division, Kuchaman Bungalow, PanchBatti, Rata Nada, Jodhpur
- l. The Superintendent of CGST and Customs, Customs Range, 142-B, Hir'an Magri, Sector 11, Udaipur
- m. The Dy General Manager, UCO Bank, Ajmer Zonal Office, Commercial Centre, Khiland Market, Ajmer – 315001 (Phone: 0145-2628522, Fax: 0145-2429552) (Email: zo.ajmer@ucobank.co.in)
- n. The Additional Director, DRI, Regional Unit, Plot No. 193, Sector 4, Gandhidham, Kutch, Gujarat - 370201.
- o. Guard File