

 <p><b>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,</b>  <b>सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421</b>  <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,</b>  <b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-</b>  <b>370421</b>  <b>PHONE:02838-271426/271423 FAX:02838-271425 Email:</b>  <b>adj-mundra@gov.in</b></p>	 <p>આજાદીના અમૃત મહોત્સવ</p>
<b>A. File No.</b>	: GEN/ADJ/COMM/120/2023-Adjn-O/o Pr Commr-Cus-Mundra
<b>B. Order-in-Original No.</b>	: <b>MUN-CUSTM-000-COM- 033- 24-25</b>
<b>C. Passed by</b>	: <b>K. Engineer, Principal Commissioner of Customs, Customs House, AP &amp; SEZ, Mundra.</b>
<b>D. Date of order and Date of issue:</b>	: 31.12.2024. 31.12.2024
<b>E. SCN No. &amp; Date</b>	: SCN F. No. GEN/ADJ/COMM/120/2023-Adjn-O/o Pr Commr-Cus-Mundra, dated 03.01.2024.
<b>F. Noticee(s) / Party / Importer</b>	: (i) M/s Gopinath Metals, Plot No.23/1, STU Jamnagar-361004; (ii) M/s Win Win Maritime Ltd. (MUN), Shyam Paragon, 1st Floor, DBZ-South/61A, Near Rotary Bhawan, Gandhidham- 370201, Kutch. (iii) M/s Kashish Impex, Customs Broker.
<b>G. DIN</b>	: <b>20241271MO0000217205</b>

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 सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है।

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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 - / 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-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/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

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

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

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड 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:**

M/s Gopinath Metals, Plot No. 23/1, STU, Jamnagar – 361004 (hereinafter referred to as 'the importer') are engaged in the import of goods and are

holding IEC No. 1196004676 for the same.

**2.** Whereas intelligence input identified following risky consignments at Mundra, Custom House Code- INMUN1, in relation to mis-declaration of country of origin of goods:

Table A

BE No./dt.	Importer Name	IE Code	Declared COO	Port of Shipment	Description1	Declared CTH	Container No	Container Seal No in ICES	seal no. on PICT
5981296/25.10.21	GOPINATH METALS	2413000089	AE	AEJEA	BRASS SCRAP HONEY AS PER ISRI.(PSIC: ASIA21/MEM2310 202114729	74040022	HMCU 3038988	303633	303633

It was further indicated that:

1. The declared country of origin and port of shipment is UAE.
2. The container tracking on PICT (Pakistan International Container Terminal Limited) divulged that the container had originated from Pakistan. The seal which had been mentioned on the container on PICT are same as the seal number mentioned in IGM/ICES. Thus the goods imported into India originated in Pakistan. Hence, the country of origin declared by the importer seems incorrect. The screenshots of tracking of the container are attached.
3. The BCD for Pakistan origin goods is @ 200% applicable to all goods originating in or exported from the Islamic Republic of Pakistan (classifiable under CTI 98060000).
4. In addition, as per the FTP, at the time of the clearance of metal scrap, importer shall furnish to the Customs pre-shipment inspection certificate as per the format to Appendix 2H from any of the Inspection & Certification agencies given in Appendix-2G, to the effect that the consignment was checked for radiation level and scrap does not contain radiation level (gamma and neutron) in excess of natural background. The certificate shall give the value of background radiation level at that place as also the maximum radiation level on the scrap; and Importer shall also furnish copy of the contract with the exporter stipulating that the consignment does not contain any radioactive contaminated material in any form.
5. Apparently, in all these cases, the pre-shipment certificates are bogus, as the containers were not opened and goods were not examined by the Inspection & Certification Agency.
6. Besides, the consignment being of Pakistan origin, goods appear to be risky in terms of security / safety, under-valuation, mis-declaration and concealment.
7. Accordingly, it is requested to carry out a detailed investigation into all these consignments and the related entities (e.g., shipping line and Inspection & Certification Agency). All the other past such imports by this importer may also be investigated, as appropriate.

**3.** Therefore, an enquiry was initiated and copy of BE No. 5981296 dated 25.10.2021, (RUD-1) was downloaded from the ICE System, as per which following details were observed:

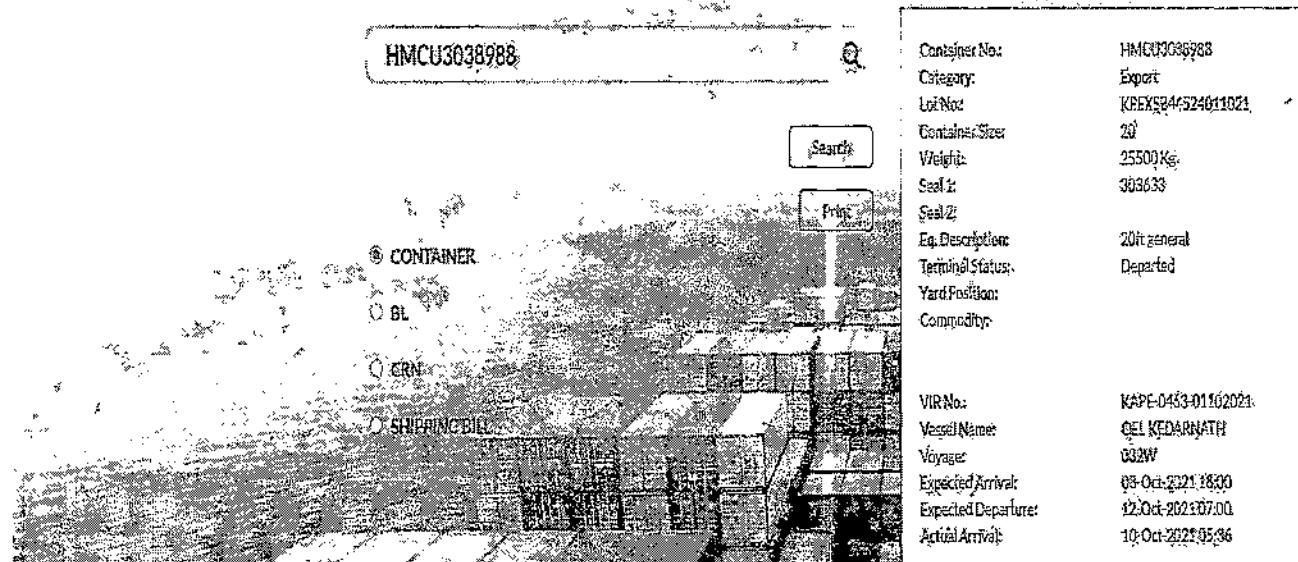
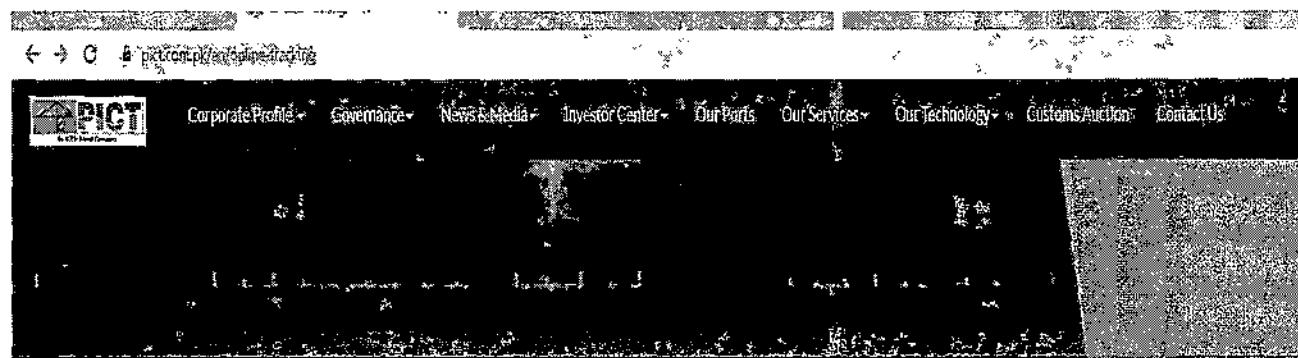
Table B

Name and address of the importer	M/s Gopinath Metals, Plot No.23/1,STU, Jamnagar-361004
----------------------------------	--

Customs Broker	M/s Kashish Impex		
Bill of Entry No and date	5981296 dated 25.10.2021		
Date of Out of Charge	30.10.2021		
Description of goods and CTH	BRASS SCRAP HONEY AS PER ISRI (CTH 74040022)		
Qty. of Goods	27.795 Mt.		
Value	Rs.93,48,490/-		
Duty paid	BCD @2.5%	Rs.2,33,715/-	
	+ SWS @10%	Rs.23,371/-	
	+ IGST @18%	Rs.17,29,003/-	
	Total duty paid Rs.19,86,087/-		
Exemption Notification availed	Sr.No.382 of Notification No.50/2017 - Cus dated 30.06.2017 for availing the benefit of BCD @2.5%.		
Container No.	HMCU3038988		
Seal No.	303633		
Country of Origin declared as	U.A.E.		

4. Tracking of the said Container no. HMCU3038988 was done on the website i.e <https://pict.com.pk/en/online-tracking> of **Pakistan International Container Terminal Ltd.**, Karachi, Pakistan (In short "PICT"), which revealed that the said Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to AEJEA (Jebel Ali, UAE). Image of PICT tracking for the said container obtained from the said website is as under:

#### IMAGE I



#### IMAGE II

PICT

CorporateProfile Governance News & Media InvestorCenter Our Ports Our Services Our Technology CustomsAuction ContactUs

HMCU3038988

Actual Arrival: 10-Oct-2021 05:36  
 Actual Departure: 12-Oct-2021 10:00  
 Port of Loading: PKKHI  
 Port of Discharge: AEJEA  
 Destination: AEJEA  
 Empty Drop-off Location:

Complaint Marked:  
 Grounding Date:  
 Examination Completed:  
 Hold:  
 Released: 01-Oct-2021 17:59  
 Release Code: AL

Activity	Performed Time
UNIT WEIGHTMENT	01-Oct-2021 16:57

5. As per the above details, it appears that container no. HMCU3038988 having Seal No.303633 has left from PKKHI (i.e..Port of Karachi) for the destination AEJEA (i.e. Port of Jebel Ali) on 12.10.2020 through vessel "OEL KEDARNATH".

#### **Recording of statement of Importer**

6. For conducting investigation, summon dated 23.03.2022 was issued to the importer and CB for submission of import related documents and to record their statements. In response, Shri Dangariya Jayeshbhai S/o Sh. Kanjibhai, Aged 39 years, Proprietor of M/s Gopinath Metals, Jamnagar, appeared and his statement was recorded on 06.04.2022 (**RUD-2**), under section 108 of the Customs Act, 1962, wherein he inter-alia stated that :-

- M/s. Gopinath Metals having IEC No.2413000089 was started by him in 2013 and in this firm they are importing mainly Brass and some quantity of Zinc and selling it to the domestic small industries at Jamnagar.
- He submitted documents viz. Copy of BL No.JMUNMR02743 dated 19.10.2021, Commercial Invoice No.OKAI/32/2021 dated 19.10.2021, packing list, Sale Contract No.OKAI/786/02/2021 dated 29.09.2021, PSIC No. ASIA21/MEM2310202114729 dated 14.10.2021.
- On being asked to explain from whom he had imported the goods vide bill of entry no. 5981296 dated 25.10.2021, he stated that they had imported goods i.e. Brass Scrap from M/s Okai Auto Used Trucks & Heavy Equip. Tr. LLC, Sharjah, vide above said bill of entry and shipping line who had transported the said goods is M/s Meridian Lines, Dubai.
- On being explained that from the bill of lading no. JMUNMR02743 dated 19.10.2021, issued by M/s Meridian Lines, Dubai, it appeared that the said goods transported into container no. HMCU-3038988 having seal no. 303633, and on being asked to check from BL and to confirm, he stated that, yes, he was aware that the said imported goods transported into container no. HMCU-3038988 having seal no. 303633.
- On being asked that as per above said BE, he had imported the goods from M/s

Okai Auto Used Trucks & Heavy Equip. Tr. LLC, Sharjah and to inform from how many years he was importing goods from said exporter and what are the terms and conditions for imports, he stated that he had imported above said goods from M/s Okai Auto Used Trucks & Heavy Equip. Tr. LLC, Sharjah, first time, and never imported from them earlier or after the said BE. The sale contract was made between them vide No. OKAI/786/02/2021 dated 29.09.2021, as per which he has to buy Brass Scrap Honey @ 5525 USD per MT, total quantity 23.00 MT (USD 127075) and payment term is Cash against document. For this consignment, he had made full payment of USD 128566.75 on 02.11.2021 through HDFC Bank, Ranjit Nagar branch, Jamnagar.

- On being pointed out that on going through the above said sale contract, it is found that there is no clause that the goods should be of United Arab Emirates origin only and to explain as to whether he had asked him to supply goods of any country, he stated that he agreed that in the above said sale contract there is no such type of contract, that the country of origin should be UAE only.
- On being informed that as per BE No. 5981296 dated 25.10.2021, the value of goods declared as Rs.93.49 lakhs, and to inform whether he had visited Sharjah for pre-shipment inspection of above said goods, he stated that the imported goods are very costly, however he had not visited Sharjah for pre-inspection of the goods.
- On being informed that as he had confirmed in ans. No.4 that the goods had been imported through container no. HMCU-3038988 with seal no. 303633, and on being asked to go through the container tracking on the website of PICT i.e. <https://pict.com.pk/en/online-tracking>, as per that it appeared that the goods transported vide container no. HMCU-3038988 seal no. 303633 for which he had filed bill of entry no. 5981296 dated 25.10.2021 are of "Pakistan" origin and Port of loading mentioned PKKHI (Karachi) to AEJEA (Jebel Ali) and on being asked about his confirmation, he confirmed that the details of container no. and seal no. are correct, regarding country of origin of Pakistan, he did not comment on that as he made sale contract from Sharjah based trader to supply the goods. He did not know that he has exported or re-exported the said goods of Pakistan origin.
- On being asked to explain that before the sales contract made with the said exporter, was there was any discussions made about the rates of Brass Honey of different countries, he stated that they were finalising the rates of the said goods from the exporter as per quality and purity of brass, they are not discussing about the country of origin, because the rates of the goods decided as per London Metal Exchange (LME) rates basis.
- On being asked that whether he knew that Pakistan origin goods are classifiable under CTH-9806 and as per Notification No. 5/2019-Customs and the BCD applicable @ 200% and other applicable duties, he expressed his ignorance.
- On being informed that as per container tracking website of PICT (discussed above in Q.No.8) it is established that the goods of BE No. 5981296 dated 25.10.2021 valued to Rs.93.49 lakhs are of Pakistan origin and asked to explain as to why basic customs duty @ 200% + other applicable duties should not be recovered on said BE, he stated that he made sales contract with M/s Okai Auto Used Trucks & Heavy Equip. Tr. LLC, Sharjah for the import of above goods and he did not know about country of origin from Pakistan.
- He further stated that any mistake in this matter happened on the part of

exporter/intender, as he had imported Brass Scrap on LME basis only and not on the basis of origin basis, therefore lenient view may be taken.

7. Although summon dated 23.03.2022 was also issued to the Custom Broker M/s Kashish Impex for recording of statement and to submit the documents related to the subject B/E No. 5981296 dated 25.10.2021 but the said C.B. has failed to appear for recording of statement. However, the documents were submitted by the importer.

#### **Enquiry with Shipping Line Agent**

8. The enquiry was further extended and letters dated 13.06.2022 (**RUD-3**) and 05.11.2022 (**RUD-4**) and 26.12.2022 (**RUD-5**) were issued to the Shipping Line Agent M/s Win Win Maritime Ltd. (MUN), Shyam Paragon, 1st Floor, DBZ-South/61A, Near Rotary Bhawan, Gandhidham- 370201, Kutch, requesting them to provide Load Port Documents of the container no. PCLU2011890 pertaining to the importer M/s Surya Udyog for the import of Brass Scrap Honey. In compliance, the said Shipping Line sent following mail (**RUD-6**) on 24.01.2023 to this office mail :

#### IMAGE III

From: [shyam@winwinmaritime.com](mailto:shyam@winwinmaritime.com) [mailto:[shyam@winwinmaritime.com](mailto:shyam@winwinmaritime.com)] Sent: Friday, January 20, 2023 11:45:22 AM To: [aditya@cgov.in](mailto:aditya@cgov.in) [mailto:[aditya@cgov.in](mailto:aditya@cgov.in)] Subject: Last 3 movements for Container no: HMGU3088988

**SARFARAZ**  
to whom, Operations, export  
Dear Sir,

Greetings !!

In Ref. to subject details requested via office letter of even no. dated 13.06.2022 and 05.11.2022, Attached, hereby required documents.

1. BL: KUEAMR02743 copy  
2. B/L: CHON A.B. METALS LETTER FOR BL: KUEAMR02743 SURRENDER  
3. BL: JAMUNMR02743 copy  
4. B/L: CHON A.B. LETTER FOR BL: JAMUNMR02743 SURRENDER

I kindly acknowledge the receipt.

Thanks & Regards,  
Sarfaraz Patel (M)  
Mobile: 919825660077  
Skype: <https://www.skype.com>



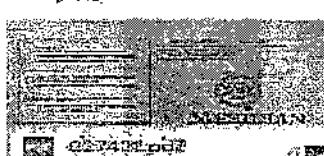
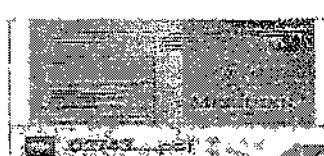
**WINWIN MARITIME LIMITED**  
"Shyam Paragon", 1st Floor,  
DBZ - South/61A, Near Rotary Bhawan,  
Gandhidham (Kutch) 370201  
Tel: 0091-2236-137300/237305/229212  
Web: [www.winwinmaritime.com](http://www.winwinmaritime.com),  
E-Mail: [export@winwinmaritime.com](mailto:export@winwinmaritime.com)





OUR OFFICES: MUNDRA | KANDLA | MUMBAI | AHMEDABAD | PIRAVAM | HAZIRA | DELHI | TUGLAQ  
Winner of INNOVATION OF THE YEAR in GUJARAT JUNCTION AWARDS 2019  
Winner of INNOVATION OF THE YEAR (IGP) in GUJARAT STAR AWARDS 2018  
Winner of INNOVATION OF THE YEAR in GUJARAT JUNCTION AWARDS 2018

3 Attachments - Scanned by Gmail

**9.** The document attached with the said mail were downloaded and are also reproduced as under :-

#### Image IV (RUD 7)

### Image V (RUD-8)

Image VI (RUD-9)

<b>A.B METALS</b>		S. +91 9717341409 M. Ubaid N. +91 321 3936571 O. <a href="http://www.abmetals.com">www.abmetals.com</a> Sohail Patel, Managing Director Munirulhaq, Head of Sales Chaudhry Rehan	
MESSRS. BALTIC SHIPPING KARACHI			
RE: REQUEST FOR THE ISSUANCE OF SWITCHED			
<b>MR.</b> <b>SHIPPER</b> <b>CONSIGNEE</b>		<b>ORUKEDAR BATH VOYAGE</b> 032W <b>A.B METALS</b> <b>OKAI AUTO USED TRUCKS &amp; HEAVY</b> <b>EQUIP. TR. LLC</b> <b>KARACHI</b> <b>JEBEL ALI</b> <b>01 CONTAINER SERIES</b>	
WE ARE HERE WITH SURRENDERING ORIGINAL B/L NO. MEHMRW742 DUE ATTENDED, WE REQUEST YOU TO KINDLY ISSUE SWITCH B/L IN THE FOLLOWING CHANGING.			
<b>INSTADAGE</b> <b>SHIPPER</b> <b>CONSIGNEE</b>		<b>A.B METALS</b> <b>OKAI AUTO USED TRUCKS &amp; HEAVY EQUIP. TR.</b> <b>LLC</b>	
<b>NOTIFY PARTY</b> <b>PORT OF LOADING</b> <b>PORT OF DISCHARGE</b>		<b>OKAI AUTO USED TRUCKS &amp; HEAVY EQUIP. TR.</b> <b>LLC</b> <b>KARACHI</b> <b>JEBEL ALI</b>	
<b>SHOULDESH</b> <b>SHIPPER</b>		<b>OKAI AUTO USED TRUCKS &amp; HEAVY EQUIP. TR. LLC</b>	
<b>CONSIGNEE</b> <b>NOTIFY PARTY</b> <b>PORT OF LOADING</b> <b>PORT OF DISCHARGE</b>		<b>TO ODER</b> <b>BORNATH METALS</b> <b>JEBEL ALI</b> <b>MUNDRA</b>	
ALL OTHER DETAILS WILL REMAIN UNCHANGED.			
IN CONSIDERATION OF YOUR AGREEING TO OUR REQUEST FOR ISSUING SWITCH B/L WITH OUR ABOVE REQUIREMENTS, WE HEREBY JOINTLY, GENERALLY AND IRREVOCABLY GUARANTEE AND AGREE AS FOLLOWS:			
TO PAY YOU ON DEMAND ALL FREIGHT AND OTHER CHARGES WHICH MAY BE DUE OR APPEAR TO BE DUE AND CHARGEABLE IN RESPECT OF SAID SHIPMENTS; AND INDEMNIFY YOU AND HOLD YOUR COMPANY, YOUR PRINCIPALS, YOUR AGENTS AND ALL THEIRS.			
THE VESSEL OWNERS, CHARTERERS, OPERATORS, MASTERS AND ITS AGENTS, HARMLESS FROM ALL DEMAND, CLAIMS, LIABILITIES, AND / OR EXPENSES, INCLUDING LEGAL EXPENSES AND ATTORNEY'S FEES, WHICH YOU MAY IN CURRAT ANY STAGE IN ISSUING SWITCH B/L AND TO PAY THE AMOUNT OF ALL LOSSES AND EXPENSES, INCLUDING LEGAL EXPENSES AND ATTORNEYS FEES, WHICH YOU MAY IN CURRY BY REASON OF ANY BREACH OF THE FOREGOING GUARANTEE AGREEMENTS, REPRESENTATIONS, UNDERTAKING AND WARRANTY.			
<b>FOR: A. B. METALS</b>			
<b>A.B METALS</b> <b>PARTNER</b>			
<b>ORIGINAL B/L SWITCDED</b>			

Image VII (RUD-10)

**OKAI AUTO USED TRUCKS & HEAVY EQUIP. TR. LLC**

MESSRS.  
SAETIC SHIPPING (PVT) LTD  
KARACHI

**RE: LETTER OF INDEMNITY – CHANGE OF NOTIFY AND OTHER DETAILS**

VESSEL: OEL KEDARNATH V-0329N  
BILL OF LADING NO: KIEAMR02743 DATED: 12/10/2021  
CONSIGNEE: OKAI AUTO USED TRUCKS & HEAVY EQUIP. TR. LLC.  
NOTIFY PARTY: OKAI AUTO USED TRUCKS & HEAVY EQUIP. TR. LLC.  
PORT OF SHIPMENT: KARACHI  
PORT OF DESTINATION: MUNDRA  
FROM: E NO: BAR-2021-0000039694 DATE: 01/10/2021 C&F VALUE: 5463283.20  
PACKAGES / DESCRIPTION OF GOODS: STAINLESS STEEL SCRAP

WE DESIRE AND REQUEST TO KINDLY REQUEST YOUR DESTINATION AGENTS TO MAKE FOLLOWING CHANGING IN THE MANIFEST:

INSTEAD OF: A.B METALS  
SHOULD BE: OKAI AUTO USED TRUCKS & HEAVY EQUIP. TR. LLC.

IN CONSIDERATION OF YOUR AGREEING TO OUR REQUEST FOR THE DESIRED CHANGING, WE HEREBY JOINTLY, SEVERALLY AND IRREVOCABLY GUARANTEE AND AGREE AS FOLLOWS:-

WE HOLD YOU INDEMNIFIED AND TO PAY YOU ON DEMAND ALL FREIGHT AND OTHER CHARGES WHICH MAY BE DUE OR APPEAR TO BE DUE AND CHARGEABLE IN RESPECT OF SAID SHIPMENTS; AND INDEMNIFY YOU AND HOLD YOUR COMPANY, YOUR PRINCIPALS, YOUR AGENTS AND ALL IT HEIRS, THE VESSEL OWNERS, CHARTERERS, OPERATORS, MASTERS AND ITS AGENTS, HARLESS FROM ALL DEMAND, CLAIMS, LIABILITIES, AND/OR EXPENSES INCLUDING BUT NOT LIMITED TO LEGAL EXPENSES AND ATTORNEYS' FEES, WHICH YOU MAY INCUR AT ANY STAGE IN MAKING AMENDMENTS AS STATED ABOVE AND TO PAY THE AMOUNT OF ALL LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO LEGAL EXPENSES AND ATTORNEYS' FEES, WHICH YOU MAY INCUR BY REASON OF ANY BREACH OF THE FOREGOING GUARANTEE, AGREEMENTS, REPRESENTATIONS, UNDERTAKING AND WARRANTY.

SIGNED AND SEALED AND DATED

ON / 20/10/2021

Yours faithfully,  
FOR: OKAI AUTO USED TRUCKS & HEAVY EQUIP. TR. LLC.



**ORIGINAL B.L. SURRENDERED**

البحرين - البحرين - ١٣: م不由: ٢٠٢٣/٠٢/٢٣  
Tel: ٠٥-٧٠٧٧٤٤٧ D.O. Box: ٣٦٥٧٩ Shajrah - United Arab Emirates

**10.** For recording the statement, summon dated 14.02.2023 was issued to Shipping Line Agent M/s Win Win Maritime Ltd. (MUN), Shyam Paragon, 1st Floor, DBZ-South/61A, Near Rotary Bhawan, Gandhidham- 370201, Kutch and Statement of Shri Dhawal Rawal, Operations Executive of M/s Win Win Maritime Ltd. (MUN), was recorded on 23.02.2023 (RUD-11) wherein he stated inter-alia that :

- M/s Win Win Maritime Ltd. (MUN), Gandhidham, are the agent of M/s Meridian Lines, Singapore who are having their own containers which are used for export / import of cargo in various ports. Their scope of work is to coordinate with vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM on the basis of the documents received from the load port, collect the charges and documents from consignee before releasing the Delivery Order. They act as a Delivery Agent in imports and their name is mentioned in the bill of lading. The importer or their CHA approaches them and submit the Original Bill of Lading (issued by load port agents) or surrendered copy of Bill of Lading, if it is surrendered at load port, and pays their dues, then

release the container. They book the same empty containers for export and collect ocean freight and other origin charges at Port of Loading before releasing the Bill of Lading. He further stated that he is working as the operation executive of M/s. WINWIN MARITIME Pvt Ltd, Gandhidham and responsible for all the activities related to import and export at Mundra/Kandla on behalf of their company.

➤ On being asked to explain the transactions in respect of import of Brass Scrap Honey from M/s Okai Auto Used Trucks & Heavy Equip, TR L.L.C., P.O. Box No.36978, Sharjah, UAE in Container No. HMCU 3038988 by M/s Gopinath Metals in Oct.2021 and to submit all the related documents, he stated that Container No. HMCU3038988 (of M/s GOPINATH METALS) was loaded from Jebel Ali on 16.10.2021 in vessel CAPE MANILA Voy.2118E and they were appointed delivery agent by their principal M/s MERIDIAN Lines LLC. In this regard, they have already submitted all the load port documents vide their mail dated 24.01.2023 from their mail id "[exports@winwinmaritime.com](mailto:exports@winwinmaritime.com)" to the mail id "[siibmundra@gmail.com](mailto:siibmundra@gmail.com)" and these are as under :

1. Bill of Lading No. JMUNMR027443 dtd.19.10.2021 issued by M/s Meridian Lines for transport of goods Brass scrap Honey in container no. HMCU 3038988 from Jebel Ali to Mundra;
2. Bill of Lading No. KJEAMR02743 dtd. 12.10.2021 issued by Meridian Lines for transport of Brass scrap Honey in container no. HMCU 3038988 from Karachi Port to Jebel Ali;
3. A request letter (without date) from M/s A.B. Metals, Shed No.234, Street No. 6, Super General Godown Haroonabad Near Ghani Chowrangi, Karachi to M/s Baltic Shipping Line, Karachi to switch over the bill of lading KJEAMR02743 in the name of M/s Gopinath Metal and port of discharge as Mundra;
4. A request letter/Letter Of Indemnity dated 20.10.2021 from M/s Okai Auto Used Trucks & Heavy Equip, TR L.L.C., P.O.Box No.36978, Sharjah, UAE to M/s Baltic Shipping Line, Karachi to make necessary change to make M/s Gopinath Metal as Notify party and port of discharge as Mundra.

➤ On being informed that the details of above documents at Sr.No. 1-2 are reproduced in the below table:

Particulars	Bill of Lading for transport of goods from Jebel Ali to Mundra	Bill of Lading for transport of goods from Karachi Port to Jebel Ali
Document No. and date	JMUNMR027443 dtd.19.10.2021	KJEAMR02743 dtd. 12.10.2021
Filed by/Issued by	<b>Meridian Lines</b>	<b>Meridian Lines</b>
Delivery Agent at place of Delivery	M/s Win Win Maritime Ltd. (MUN), Shyam Paragon, 1st Floor, DBZ-South/61A, Near Rotary Bhawan, Gandhidham-370201, Kutch	Winship Marine Services LLC (DBX), Office No.405 & 407, BMI Building, Khalid Bin Al walid Road, Al Mankhol, Bur Dubai, Dubai
Port of loading	Jebel Ali	Karachi
Port of supply/discharge	Mundra	Jebel Ali
Name and address of the Shipper/Exporter	M/s Okai Auto Used Trucks & Heavy Equip, TR L.L.C., P.O.Box No.36978, Sharjah, UAE.	A.B.Metals, Shed No.234, Street No.6, Super General Godown Haroonabad Near Ghani Chowrangi, Karachi, Karachi South Sadder Town.

Name and address of the Consignee/Notify party	M/s Gopinath Metals, Plot No.23/1, STU, Jamnagar - 361004	M/s Okai Auto Used Trucks & Heavy Equip, TR L.L.C., P.O.Box No.36978, Sharjah, UAE.
Description of goods	Brass Scrap Honey as per ISRI	Brass Scrap Honey as per ISRI
Weight/qty.	23270 kgs	23270 kgs
Container No.	HMCU 3038988	HMCU 3038988
Seal No.	303633	303633

And on being asked to peruse the details and offer comments, he stated that on perusal of above table and documents, the details are correctly mentioned and he finds that 23270 Kgs. of Brass Scrap Honey were loaded in Container No. HMCU 3038988 having seal no. 303633 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal No. 303633 affixed at Karachi Port is found intact at Mundra Port.

- On being asked to explain the details of documents listed at Sr.No.3-4 above, he stated that M/s A.B. Metals, Shed No.234, Street No.6, Super General Godown Haroonabad Near Ghani Chowrangi, Karachi has made a request to M/s Baltic Shipping Line, Karachi (agent of M/s Meridian Lines) to switch over the bill of lading KJEAMR02743 in the name of M/s Gopinath Metal (as notify party) and port of load as Jebel Ali and discharge port as Mundra;
- Another letter/Letter Of Indemnity dated 20.10.2021 is issued by M/s Okai Auto Used Trucks & Heavy Equip, TR L.L.C., P.O.Box No. 36978, Sharjah, UAE to M/s Baltic Shipping Line, Karachi (agent of M/s Meridian Lines) to make necessary change to make M/s Gopinath Metal as Notify party and port of discharge as Mundra.
- He further stated that on the basis of said requests made by above two parties i.e. the original supplier at Karachi (M/s A.B.Metals) and the original buyer (M/s Okai Auto Used Trucks & Heavy Equip, TR L.L.C), the new Bill of lading No. JMUNMR027443 dtd.19.10.2021 was issued.
- On being pointed out that, as stated by him, it is clear that in the instant case, goods were of Pakistan Origin and supplied by M/s A.B.Metals, Karachi, but these goods were presented before Mundra Customs, as if the goods were of UAE origin, therefore, it appears that they have deliberately mis-informed or mis-stated the facts before Customs and in this case, they may also be liable for penal action and on being asked to offer comments, he denied the allegations outright as his company M/s Win Win Maritime Ltd. are not the actual transporter in the case. They acted as the agent of M/s Meridian Lines who issued both the Bills of lading from Karachi to Jebel Ali and then switched Bill of lading from Jebel Ali to Mundra. They have no control or interest in the business of the said firm. It was not in their knowledge that the goods were of Pakistan origin and further, no documents were in their possession and the load port documents submitted by them were arranged by them on making request by the said firm. Their role was merely limited to delivering the container to consignee, on production of documents and payment of dues. He further stated that it was not at all in their knowledge or notice that what was the previous load port other than Jebel Ali in the instant case. In the instant case, they came to know about the switch bill of lading only after the documents were

arranged by them, before that, for them it was original bill of lading. They cannot be held responsible for switch bill of lading, it was not done by them, nor it was in their notice, nor they had any say or approval in the matter.

**11.** From the above, it appeared that all the documents were in the possession of said shipping line agents that the goods were actually loaded from Karachi Port for Mundra Port but the Bill of lading was modified in two parts i.e. from Karachi to Jebel Ali and from Jebel Ali to Mundra and when the goods reached at Mundra port, that bill of lading pertaining to Jebel Ali to Mundra was presented before Mundra Customs, just to give the impression that the goods were loaded from Jebel Ali Port for the purpose of evading payment of applicable custom duty leviable on goods of Pakistan origin.

**Enquiry regarding PSIC (Pre-shipment Inspection Certificate)**

**12.** The importer had submitted Pre-shipment Inspection Certificate No. ASIA21/MEM2310202114729 dated 14.10.2021 issued in the name of M/s Asia Inspection Agency Co. Ltd. and in this regard, it is checked from the website of DGFT that DGFT has authorized ASIA INSPECTION AGENCY LIMITED, 124/1, MOO 7; BANFA-TRAD KM 26 ROAD, BANGNOR, BANGNOR; SAMUTHPRAKARN 10560; THAILAND, BANGKOK 10560 [info@aiacl.com](mailto:info@aiacl.com) having Branch at 36, AL SUA AL KABEER BUILDING 2ND FLOOR OPP. MAWARID EXCHANGE KHALID BIN AL WALEED STREET, MEENA BAZAR, BURDUBAI, DUBAI, P.O. BOX 123989 UNITED ARAB EMIRATES, DUBAI 123989; [info@aiacl.com](mailto:info@aiacl.com). Further, necessary online verification of said PSIC Certificate was done at the website of DGFT "<https://www.dgft.gov.in/CP/?opt=info-for-customs-authorities#>" which asked for three details viz. PSIC number, Agency name and the IEC No. and on entering the said details, no result was found. It further appeared that on the body of said certificate, three mail ids were mentioned viz. [info@auacl.com](mailto:info@auacl.com), "aiac.thai@gmail.com" and "asianinspectionbkk@gmail.com" which were different from the mail ids mentioned on the website of DGFT, as detailed above. Further, an email dated 05.04.2023 was sent to all these three email ids for seeking genuineness of said PSIC certificate. Copy of said mail is as under :

**From:** "Raj kanwar singh" [rajks.g019401@gov.in](mailto:rajks.g019401@gov.in)

**To:** [info@auacl.com](mailto:info@auacl.com)

**Cc:** "aiachai" <[aiac.thai@gmail.com](mailto:aiac.thai@gmail.com)>, [asianinspectionbkk@gmail.com](mailto:asianinspectionbkk@gmail.com)

**Sent:** Wednesday, April 5, 2023 1:07:50 PM

**Subject:** Genuineness of PSIC Certificate

Gentleman,

While investigating a case of evasion of Customs Duty, this office has come across a Pre-shipment Inspection Certificate No. ASIA21/MEM2310202114729 dated 14.10.2021 issued in the name of M/s Asia Inspection Agency Co. Ltd., Thailand for import of container no. HCMU3038988 by M/s Gopinath Metals, Jamnagar (Gujarat).

The said Certificate is attached herewith for ready reference please

It is requested to go through the same and please inform as to whether it was issued by you or otherwise. Please certify its genuineness.

Your cooperation is solicited please as it is time bound Govt. enquiry under Customs Act, 1962, therefore, Immediate reply by return mail is requested please.

**13.** However, the mails were not delivered and the result was "failed". Therefore, it appeared that the importer had fabricated the PSIC certificate wherein all the details

including the mail ids of authorized agency (M/s Asia Inspection Agency Limited) were wrong and it was done deliberately to avoid verification at the end of said agency if correct mail id was mentioned.

**14.** Therefore, from the above, it appeared that Container No. HMCU 3038988 having seal no.303633 was loaded from Karachi Port and it has reached Mundra via Jebel Ali and that the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan to evade the appropriate payment of Customs Duty. It further appeared that the container was not opened at Jebel Ali as the seal affixed at Karachi Port was found intact at Mundra Port and that all the documents viz. Pre-shipment Inspection Certificate, country of origin certificate etc. appeared to be forged and fraudulent and created only with the intention to hide the fact about the country of origin and to evade payment of appropriate duty as the good of Pakistan origin are subject to BCD @200%.

**15.** After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. In the instant case, the importer appeared to have mis-declared the Country of Origin as UAE instead of actual Country of Origin i.e. Pakistan, with intent to evade appropriate Customs Duty in terms of Notification No.05/2019 dated 16.02.2019 which provides for levy of BCD @200% in case of all the goods having country of Origin as Pakistan, during self-assessment at the time of filing of Bills of Entry. As such, the declaration with respect to the Country of Origin by the importer was misleading and this act on the part of importer resulted in short levy of Duties, which led to undue monetary benefit to the importer. Thus, the act of mis-declaration of Country of Origin of the imported goods by the importer squarely fell under the purview of Section 28(4) of the Customs Act, 1962 as mis-declaration and mis-statement with an intent to evade appropriate Customs Duty, which resulted into short payment of the applicable Customs Duty.

**16.** Whereas the aforesaid facts showed that the importer had resorted to willful mis-declaration of Country of Origin, the relevant Customs Duty Notification number in the Bills of Entry of the said imported goods by suppressing the said material facts, which showed the ulterior motive of the importer to evade payment of applicable Customs Duty in respect of said imported goods cleared for home consumption. The said fact of misdeclaration of Country of Origin came to the notice of Department only after the enquiry was initiated, otherwise it would have gone un-noticed and caused huge loss to Govt. Exchequer. Since the goods appeared to be of Pakistan origin and as per Notification No.05/2019 - Customs dated 16.02.2019, the goods imported from the Islamic State of Pakistan were appropriately classifiable under Chapter Tariff Heading No. 98060000 and were leviable @ 200% BCD + 10% SWS + 18% IGST. Therefore, the total custom duty of Rs.2,59,95,408/- was required to be paid on the goods valuing Rs.93,48,490/. Since, the importer had paid the Customs duty Rs.19,86,087/- only (@ 2.5% BCD+10% SWS+18% IGST) he has evaded duty of Rs.2,39,65,321/- which was worked out as under:

**Table C**

Details of duty paid/payable in respect of BE No.5981296 dated 25.10.2021 (Amount in Rupees)

Assessable Value	Details of duty paid				Details of Duty Payable				Differenti al duty payable
	BCD @2.5%	SWS @ 10%	IGST @ 18%	Total duty paid @ 21.245%	BCD @200%	SWS @10%	IGST @18%	Total duty payable @ 277.60%	
9348490	233712	23371	1729003	1986087	18696980	1869698	5384730	25951408	23965321

**17.** Therefore, the total Customs Duty amounting to **Rs.2,39,65,321/-** evaded/short paid by the importer, is liable to be demanded under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

**18.** In view of the fact that the imported goods appear to be of Pakistan Origin but mis-declared as of UAE origin in Bill of Entry No. 5981296 dated 25.10.2021 which resulted in the evasion of Customs duty of Rs.2,39,65,321/-, as detailed in Table C in para 16 hereinabove, therefore, the said imported goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

**19.** It is evident from the above discussion and evidences available on record that the importer M/s Gopinath Metals, Plot No.23/1,STU, Jamnagar-361004 has intentionally mis-declared Country of Origin and produced false/incorrect import documents, (i.e. Invoice, Packing List, Form-6, Form-9, Country of Origin certificate, BL, PSIC Certificate etc.).

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

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

**SECTION 46** *Entry of goods on importation*

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

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

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

- (a) collusion; or*
- (b) any willful mis-statement; or*
- (c) suppression of facts,*

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

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

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

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

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

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

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

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

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

Any person, -

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

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

shall be liable, -

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

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

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

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

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

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

**SECTION 114A.** - Penalty for short-levy or non-levy of duty in certain cases.

- Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

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

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

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal

or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, not twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

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

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

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

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

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

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

**21.** It further appeared that by the said acts of omission and commission in as much as the misdeclaration of country of origin as UAE instead of the actual country of origin i.e. Pakistan, with an intent to evade payment of Customs Duty as the goods of Pakistan origin attracts duty at much higher rate, which rendered the subject goods liable to be confiscated under Section 111(m) of Customs Act, 1962. It further appeared that importer had rendered themselves liable for imposition of penalty under Section 112 (a)(ii) of the Customs Act, 1962, for the above said goods. It further appeared that the importer was also liable for penalty under Section 114A of the Customs Act, 1962 for their act of omission and commission to evade duty on account of *collusion or any willful mis-statement or suppression of facts*. It further appeared that their act of omission and commission to misdeclare the country of origin to evade the duty by way of producing bogus or fake documents (viz. PSIC, COO Certificate, Invoice etc.) has also rendered them liable for penalty under Section 114AA of the Customs Act, 1962.

**22.** Further, it appeared that M/s Kashish Impex, the Customs Broker had failed to appear for giving the statement when they were summoned by the Investigation team and they further appeared to have failed to advise their client to correctly assess and pay the Customs duty and therefore, it appeared that they are also liable for penal action under Section 117 of the Customs Act, 1962.

**23.** It further appeared that it was within the knowledge of the principal of Shipping line M/s Win Win Maritime Ltd. (MUN), Shyam Paragon, Ist Floor, DBZ-South/61A, Near Rotary Bhawan, Gandhidham- 370201, Kutch and was having all the documents to prove the fact that the goods were loaded at Karachi Port whereas another Bill of lading was prepared for giving the impression that the goods were supplied from Jebel Ali and therefore, it further appeared that by their said act of omission and commission, which led to evasion of duty and caused huge loss of Govt. revenue, M/s Win Win Maritime Ltd. (MUN), Shyam Paragon, Ist Floor, DBZ-South/61A, Near Rotary Bhawan, Gandhidham- 370201, Kutch have rendered themselves liable for imposition of penalty under Section 112 (b)(ii) and Section 117 of Customs Act, 1962.

**24.** In view of above, a Show Cause Notice bearing F.No. GEN/ADJ/COMM/120/2023-Adj dated 03.01.2025 was issued to the importer, M/s Gopinath Metals, Plot No.23/1,STU, Jamnagar-361004, wherein the importer was called upon to show cause to the Commissioner of Customs, Mundra having his office at 'Custom House', 1<sup>st</sup> Floor, Port User Building, Mundra, within 30 days of the receipt of the Notice as to why:

- (i) Classification of 23270 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No. HMCU-3038988 under Chapter Tariff Heading No.74040022 under BoE No. 5981296 dated 25.10.2021 should not be rejected & the same should not be classified under Chapter Tariff Heading No.98060000 of the Customs Tariff Act, 1975 and the exemption availed by them under Sr.No.382 of Notification No.50/2017 - Cus dated 30.06.2017 for availing the benefit of BCD @ 2.5% should also not be denied.
- (ii) 23270 kgs. of BRASS SCRAP HONEY AS PER ISRI imported vide BoE No.5981296 dated 25.10.2021 valued at **Rs.93,48,490/- (Rupees Ninety Three Lakh Forty Eight Thousand Four Hundred Ninety only)** should not be confiscated under Section 111 (m) of the Customs Act, 1962 :
- (iii) The Customs Duty of **Rs. 2,39,65,321/- (Rs. Two crore Thirty Nine Lakh Sixty five Thousand Three Hundred Twenty One Only)**, as detailed in Table C in para 9 hereinabove, evaded/short paid by them should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962;
- (iv) Applicable interest should not be charged and recovered from them under the provisions of Section 28 AA of the Customs Act, 1962.
- (v) Penalty should not be imposed upon them under the provisions of Sections 112 (a)(ii) and Section 114A of the Customs Act, 1962.

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

**25.** Vide the above show cause notice dated 03.01.2025, M/s Kashish Impex, the Customs Broker were also called upon to show cause to the Commissioner of Customs, Mundra having his office at 'Custom House', 1<sup>st</sup> Floor, Port User Building, Mundra, within 30 days of the receipt of the Notice as to why Penalty should not be imposed upon them under the provisions of Section 117 of the Customs Act, 1962.

**26.** Further, vide the above show cause notice dated 03.01.2025, M/s Win Win Maritime Ltd. (MUN), Shyam Paragon, 1<sup>st</sup> Floor, DBZ-South/61A, Near Rotary Bhawan, Gandhidham- 370201, Kutch, the Shipping Line Agent were also called upon to show cause to the Commissioner of Customs, Mundra having his office at 'Custom House', 1<sup>st</sup> Floor, Port User Building, Mundra, within 30 days of the receipt of the Notice as to why Penalty should not be imposed upon them under the provisions of Section 112(b)(ii) and Section 117 of the Customs Act, 1962.

### **WRITTEN SUBMISSION**

**27.** The importer M/s. Gopinath Metals, Jamnagar, vide letter dated 17.07.2024 has filed written submission. The contents of their written submission are as under: -

**27.1** We, M/s. Gopinath Metals, Jamnagar ("M/s. Gopinath") have received a notice asking us to show cause to your Honour as to why:

- (i) *Classification of 23270 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No. HMCU-3038988 under Chapter Tariff Heading No. 74040022 under BoE No. 5981296 dated 25.10.2021 should not be rejected & the same should not be classified under Chapter Tariff Heading No. 9806 0000 of the Customs Tariff Act, 1975 and the exemption availed by them under Sr. No. 382 of Notification No. 50/2017-Cus dated 30.06.2017 for availing the benefit of BCD @ 2.5% should also not be denied.*
- (ii) *23270 kgs of "BRASS SCRAP HONEY AS PER ISRI" imported vide BoE No. 5981296 dated 25.10.2021 valued at Rs. 93,48,490-..should not be confiscated under Section 111 (m) of the Customs Act, 1962;*
- (iii) *The Customs duty of Rs. 2,39.65.321/- .... should not be demanded and recovered from them under the provisions of Section 28 (4) of the Customs Act, 1962;*
- (iv) *Applicable interest should not be charged and recovered from them under the provisions of Section 28AA of the Customs Act, 1962.*
- (v) *Penalty should not be imposed upon them under the provisions of Section 112 (a)(ii)/ 114A of the Customs Act, 1962;*
- (vi) *Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962."*

2.1 The above proposals are based on following averments that are narrated in following paragraphs of the notice which are reproduced below for the ease of ready reference:

C

"14. Therefore, from the above, it appears that Container No. HMCU 3038988 having seal no. 3036333 was loaded from Karachi Port and it has reached Mundra via Jabel Ali and that the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan to evade the appropriate payment of Customs Duty. It further appears that the container was not opened at Jabel Ali as the seal affixed at Karachi Port is found intact in Mundra Port and that all the documents viz. Pre-shipment Inspection Certificate, country of origin certificate etc. appears to be forged and fraudulent and created only with the intention to hide the fact about origin country of origin and to evade payment of appropriate duty as the goods of Pakistan origin are subject to BCD @ 200%..

....

15. After introduction of self-assessment vide Finance Act,2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay correct amount of Duty. In the instant case, the importer has mis-declared the Country of Origin as United Arab Emirates instead of actual Country of Origin i.e. Islamic Republic of Pakistan with intent to evade appropriate Customs Duty (relevant Notification No. 05/2019 dated 16.02.2019) during self-assessment at the time of filing of Bills of Entry. As such, the declaration with respect to the Country of Origin by the importer is misleading and this act on the part of importer resulted in short levy of Duties, which led to undue monetary benefit to the importer. Thus, the act of mis-declaration of Country of Origin of the imported goods by the importer squarely falls under the purview of Section 28 (4) of the Customs Act,1962 as it is a mis-declaration aimed at suppression of the facts with the intent to evade appropriate Customs Duty resulting in to short payment of the applicable Customs Duty.

....

18. In view of the fact that the imported goods appear to be of Pakistan Origin but mis-declared as of UAE origin in Bill of Entry No. 5981296 dated 25.10.2021 which resulted in the evasion of Customs duty of Rs. 2,39,65,321/-, as detailed in Table C in para 16 hereinabove, therefore, the said imported goods are liable for confiscation under Section 111 (m) of the Customs Act,1962.

....

21. It further appears that by their act of omission and commission in as much as misdeclaration of country of origin as UAE as against the actual country i.e. Pakistan, with an intent to evade payment of Customs Duty as the goods of Pakistan origin attracts duty at much higher rate, therefore, it appears that the subject goods are liable to be confiscated under Section 111 (m) of Customs Act,1962. It further appears that importer has rendered themselves liable for imposition of penalty under Section 112 (a)(ii) of the Customs Act,1962 for the goods being liable for confiscation. It further appears that the importer is also liable for penalty under Section 114A of the Customs Act,1962 for their act of omission and commission to evade duty on account of collusion or any willful mis-statement or suppression of facts. It further appears that their act of omission and commission to mis-declare the country of origin to evade the duty by way of producing bogus or fake documents (viz. PSIC, COO Certificate, Invoice etc.) has also rendered them liable for penalty under Section 114AA of the Customs Act,1962."

3. At the outset, the allegations and averments leveled in the SCN are hereby denied. Save and except what is specifically admitted herein, no part of SCN which is not expressly dealt with, shall be deemed to be admitted.

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

4.1 It is a matter of record that the importer had filed Bill of Entry No. 5981296 dated 25.10.2021 with Custom House, Mundra on the basis of following amongst other documents received from the overseas supplier, i.e., Okai Auto Used Trucks & Heavy Equip. TR. LLC, Sharjah, United Arab Emirates:

- a) Invoice No. OKAI/32/2021 dated 19.10.2021 issued by overseas supplier M/s. Okai Auto Used Trucks & Heavy Equip. Tr. LLC, Sharjah-United Arab Emirates.
- b) Packing list issued by the said overseas supplier.
- c) Bill of lading No. JMUNMR02743 dated 19.10.2021 showing port of loading as Jebel Ali and port of discharge as Mundra.

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

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

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

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

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

(iii) In the case of Kirti Sales Corpn. v/s Commr. of Cus., Faridabad, 2008 (232) ELT 151 (Tri.-Del.), Hon'ble Tribunal has set aside confiscation ordered under Section 111 (m) of Customs Act, 1962 and consequential penalty under Section 112 (a) when the declaration was made on the basis of documents supplied by the foreign supplier and there was no intentional or deliberate wrong declaration or misdeclaration on its part.

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

4.2.3 Inasmuch as goods have already been cleared and are not available for confiscation (and redemption), it is submitted that fine in lieu of confiscation is not

imposable, as duly held by Larger Bench of Hon'ble Tribunal in the case of Shiv Kripa Ispat Pvt. Ltd. v/s Commissioner of C. Ex. & Cus., Nasik, 2009 (235) ELT 623 (Tri.-LB).

4.3 It may be appreciated that during the course of inquiry, officers of SIIB have recorded statement of following persons:

- (i) Shri Jayeshbhai Dangariya, Proprietor of M/s. Gopinath Metals.
- (ii) Shri Dhawal Rawal, Operations Executive of M/s. Win Win Maritime Ltd (MUN).

4.4 In his statement dated 06.04.2023, Shri Jayesh Dangariya, Proprietor of M/s. Gopinath have stated the following facts to the Custom officers:

*"Q. No. 8 As you have confirmed in ans. No. 4 that the goods had been imported through container no. HMCU-3038988 with seal no. 303633, please go through the container tracking website of PICT i.e. <https://pict.com.pk/en/online-tracking>, as per that it appeared that the goods transported vide container no. HMCU-3038988 seal no. 303633 for which you have filed bill of entry no. 5981296 dated 25.10.2021 are of "Pakistan" origin and Port of loading mentioned PKKHI (Karachi) to AEJEA (Jebel Ali) do you agree?*

*Ans: I confirm that the details of container no. and seal no. are correct, regarding country of origin of Pakistan, I don't comment on that as I made sale contract from Sharjah based trader to supply the goods. I don't know that he has exported or re-exported the said goods of Pakistan origin.*

..  
*Q No. 9. Please explain before the sales contract made with the said exporter there was any discussions made about the rates of Brass Honey of different countries?*

*Ans. We are finalizing the rates of the said goods from the exporter as per quality and purity of brass, we are not discussing about the country of origin, because the rates of the goods decided as per Londen Metal Exchange (LME) rates basis.*

*Q. No. 10. Whether you had accepted/negotiated lower rates of said goods of any country including Pakistan?*

*Ans. Rates had been finalized as per LME and not as per country of origin.*

*Q. No. 11 Do you know that Pakistan origin goods are classifiable under CTH- 9806 and as per Notification No. 5/2019-Customs the BCD applicable @ 200% and other applicable duties?*

*Ans. I don't know about the classification and duty of Pakistan origin goods.*

*Q. No. 12. As per container tracking website of PICT (discussed above in Q. No. 8), it is established that the goods of BE No. 5981296 dated 25.10.2021 valued to Rs. 93.49 lakhs are Pakistan origin, please explain why basic customs duty @ 200% + other applicable duties should not be recovered on said BE?*

*Ans. It is humble request that I made sales contract with M/s. Okai Auto Used Trucks & Heavy Equip. Tr. LLC, Sharjah for the import of above goods and I don't know about country of origin from Pakistan.*

*Q. No. 13. Do you want to say anything else?*

*Ans. Sir, it is again humble request you that any mistake in this matter happened on the part of exporter as we had imported goods on LME basis only*

*and not on the basis of origin basis."*

4.5 The above facts stated by Shri Jayesh Dangariya, Proprietor of M/s. Gopinath regarding absence of knowledge have not been rebutted by any cogent evidence in the Show Cause Notice.

4.6 The officers also recorded statement of Shri Dhawal Rawal, Operations Executive of M/s. Win Win Maritime Ltd. (MUN), wherein, he has inter alia stated that it was in their knowledge that goods were of Pakistan origin.

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

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

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

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

4.11 Consequently, the impugned notice dated 03.01.2024 demanding differential duty in respect of imported goods covered by bill of entry No. 5981296 dated 25.10.2021 is clearly time barred, having exceeded the time limit of two years that is imposed in Section 28 (1) of Customs Act,1962.

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

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

*"114AA. Penalty for use of false and incorrect material.*

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

5.2 It is evident from the statements recorded during investigation that none of the persons have deposed that the importer, their partner or any other person representing the importer had any prior knowledge about the origin of goods from Pakistan as alleged in the impugned notice.

5.3 The proprietor of M/s. Gopinath stated in his statement that he was not aware about the origin of goods.

5.4 Therefore, the importer had no reason to believe that goods were of Pakistan origin. The Custom authority at the port of import also permitted clearance after due verification of all the documents received from the overseas supplier as well as examination of goods. Hence, the importer had no reason to believe that the declaration, statement or document presented by them along with bill of entry with

regard to country of origin was allegedly false or incorrect in any material particular, as alleged by way of impugned notice after over two years of clearance of goods.

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

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

6.1 The allegation is based on documents like bill of lading for transport of goods from Karachi to Jabel Ali.

6.2 However, the above documents do not extend beyond container number and seal number. It may be appreciated that loading of a container from a particular port/country is not the determining factor insofar as country of origin is concerned.

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

6.4 The impugned notice does not even rely upon certificate of origin that must have been filed by the concerned exporter, namely, M/s. A. B. Metals, Karachi. The impugned notice also does not rely upon any other evidence to support the allegation that goods covered by the bill of entry filed by the importer at Mundra had undoubtedly its origin in Pakistan and not any other country from which it may have been supplied to Pakistan.

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

6.6 However, it is a settled law that no duty can be demanded and no penalty can be imposed based on mere assumptions and presumptions. The charge must be proved to the hilt. Inasmuch as no evidence in the form of certificate of origin, etc. claiming the goods to be of Pakistan origin is brought on record, demand of duty by treating such goods of Pakistan origin is not tenable in the eyes of law.

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

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

Prayer:

9. In view of the above submissions, it is prayed to drop the proceedings against M/s. Gopinath Metals, Jamnagar and oblige.

**28. The Custom Broker, M/s Kashish Impex, failed to file any written submission or defence reply in the matter, till date.** I observe that they had also failed to appear for providing evidence or giving statement in response to summons issued to them in the matter.

**29. M/s Win Win Maritime Ltd. (MUN), vide letter dated 17.02.2024, through their advocates-M/s Llyod and Johnson, have filed their written statement. The same is reproduced as under:**

**29.1 A. Brief Background & General Practice of the Trade -**

- i. Winwin is a company incorporated under the relevant provisions of the

Companies Act, of 1956. Winwin has been engaged in the business of shipping and logistics services since the year 2014, The Noticee holds the agency of M/s. Merdian Lines.

- ii. That on various dates, upon the receipt of copies of Bills of Lading from the overseas office of the Principal (Meridian Lines), Winwin as the delivery agent in India, has compiled the information for the vessel operator/ Conveyance, enabling them to file the Import General Manifest under the provisions of the Customs Act, 1962 and the Regulations thereupon.
- iii. The practice and custom of trade and law followed by Winwin for the filing of the Import General Manifest (IGM) by the conveyance/vessel operators, reference to Section. 30 of the Customs Act are stated below:
- iv. The import documentation department WinWin receives pre-alerts or copies of Bills of ladings from different load ports on a regular basis, from respective principals/agents.
- v. On a day-to-day basis, such information (BL Copies) is being printed and kept aside in specified files for the purpose of compilation and supply of credentials to the vessel operators/conveyances, enabling them to file the statutory IGM, in advance of arrival of such vessels at the discharge port/s.
- vi. On arrival of the vessels, Winwin shares the complied data to the respective vessel operators, for them to file the IGM.
- vii. The person in charge of the vessel/ agents of the vessel operators filed the IGM u/s. 30 of the Customs Act, 1962.
- viii. Winwin, while acting as an Indian delivery agent of the carrier has no participation in overseas activities including, container booking, freight collection and Bill of lading issuance initiated and managed by such principals.
- ix. The consignee/importer or their CHA or nominated agents approaches the office of Winwin, surrenders the Bills of Ladings, pays the local charges applicable at the Port of Discharge related to shipping/detention etc...and collects the Delivery Orders to take delivery of the cargo from the customs bonded area/s.
- x. In the present case, the named shippers, as per the Bill of Lading no. JMUNMR02743 dated 19.10.2021, as received from the overseas office of the principal were 'M/s. Okai Auto Used Trucks & Heavy Equip. TR. LLC' and Consignee 'To Order' with 'Notify Party' as M/s. 'Gopinath Metals'.
- xi. As per the letters dated 13.06.2022, 05.11.2022 and 26.12.2022 issued by the Customs department, Winwin was asked to furnish the last 3 port destination of container no. HMCU3038988 (Bill of Lading No. JMUNMR02743 dated 19.10.2021) and load port document of the said container.
- xii. In due compliance with the demands from SIIB, Winwin collected the required information, including additional information regarding switch Bills of Lading and submitted it to SIIB. It is reiterated that the fact of a switch BL or the existence of the 1<sup>st</sup> leg BL was not known to Winwin as an agent of the overseas principal.

xiii. Further, the freight and documentation charges, including for the cost of the later found switch Bills of Lading were collected by the Principal at the port of loading and Winwin has not made a collection or monetary gain whatsoever out of it.

xiv. Winwin acted as the bonafide agent of the named Principal. The BOE was filed by the Importer or their CHA, who has declared the port of origin in the EDI system. The customs duty was declared, assessed and paid by the importer in accordance with the declared port of loading. Winwin has no role whatsoever in filing the BOE and payment of duty.

Thus, the limited role of Winwin while handling the present import container was to arrange the delivery to the consignees on supply of necessary information for the filing of IGM by the vessel operators and later deliver the import containers/goods to the consignees having right, title & interest.

## **29.2 B. Reply to special allegation/ Charge against WinWin as per the SCN**

For convenient understanding, the paragraph 23 of the SCN is extracted below.

***“Para 23. It further appears that it was in the knowledge of the principal of M/s Win Win Maritime Ltd. (MUN), Shyam Paragon, 1st Floor, DBZ-South/61A, Near Rotary Bhawan, Gandhidham- 370201, Kutch and was having all the documents for the fact that the goods were loaded at Karachi Port whereas another Bill of lading was prepared for giving the impression that the goods were supplied from Jebel Ali and therefore, it further appears that by their said act of omission and commission which led to evasion of duty and caused huge loss of Govt. revenue, M/s Win Win Maritime Ltd. (MUN), Shyam Paragon, 1st Floor, DBZ-South/61A, Near Rotary Bhawan, Gandhidham- 370201, Kutch has rendered themselves liable for imposition of penalty under Section 112 (b)(i) and Section 117 of Customs Act, 1962 to the transaction pertaining to the Bill of Lading no. JMUNMR02743 dated 19.10.2021, which is the subject matter of the present SCN.”***

The following specific replies are given against the above charges alleged against Winwin;

- i. Winwin has not accepted the cargo booking at the port of origin for the importer.
- ii. Winwin has not issued the Bills of Ladings (Original or Switch) to the exporter or importer.
- iii. Only when Winwin called for the documents from Port of Loading, as required by SIIB, pursuant to the investigation, Winwin get the knowledge regarding the existence of the switch bill of lading.
- iv. The importer has secured the PSIC, and certificate of origin and on the strength of the same has declared the port of origin in the Bill of Entry and paid duty accordingly. Winwin has not participated in any of the said activities.

For the said reasons and in the above circumstances, M/s Winwin has acted only as the Indian delivery agent of the disclosed Principal, and has not declared the port of loading in the EDI system for assessment and payment of duty and hence is not liable for imposition of penalty under Section 112 (b)(i) and Section 117 of the Customs Act,

1962. Therefore, it is humbly prayed as follows:

- a. The allegations and charges framed against Winwin as the agent of the principal in subject Show cause Notice may be quashed and be exonerated from offences that are alleged to have been committed and;
- b. To not impose any penalty upon Winwin as the agent for the alleged violations of any of the provisions of the Customs Act or any other Acts for that matter;
- c. To give an opportunity of personal hearing, to provide further clarifications required, before this authority during adjudication of the subject SCN and pass orders accordingly;
- d. Allow us to alter, amend, or modify our submission until the time matter is decided;

**29.3** M/s Win Win, further submitted their additional submissions dated 28.11.2024, through their advocates M/s Llyod and Johnson wherein they submitted as under –

1. That the SCN in the present case has been issued beyond the statutory period of two years as prescribed under Section 28(1)(a) of the Customs Act, 1962. This provision governs cases where the non-levy or short levy of duty arises due to reasons other than collusion, wilful misstatement, or suppression of facts.
2. That at para 15 of the SCN, it is alleged that the non-levy of duty occurred due to the importer's misdeclaration of the country of origin. However, there is no clarity or substantive reasoning provided within the SCN to establish why it has been issued against Winwin in particular.
3. Furthermore, the SCN has been issued under Section 28(4) of the Act, wherein period of limitation for issuance of SCN is five years from the relevant date. However, to issue the SCN under this section, there are certain mandatory preconditions to be established which are the presence of collusion, wilful misstatement, or suppression of facts. In the present case, the SCN does not clearly establish any specific instances or evidence of willful misstatement or suppression of facts attributable to Winwin. The absence of such a finding renders the invocation of Section 28(4) legally unsustainable. It is further emphasized that alleging a misdeclaration of the country of origin, without linking such alleged misdeclaration to any intentional act of wilful misstatement or suppression by Winwin, is insufficient to justify the extended period of limitation for the issuance of SCN.
4. The issuance of the SCN under Section 28(4) without fulfilling the mandatory preconditions undermines its validity and constitutes a procedural irregularity, as well as a breach of the statutory safeguards enshrined in the Customs Act.
5. Winwin Maritime had no knowledge (mens rea) of the issuance of first-leg bills of lading, switch bills of lading, or the factum of transshipment. Therefore, the

imposition of penalties under the referenced sections contradicts the Commissioner's own findings and is both unlawful and untenable.

6. The Commissioner has failed to appreciate the scope of the agency relationship between Winwin Maritime and M/s. Meridian Lines. Winwin acted solely as the Indian agent of M/s. Meridian Lines and had no control over, knowledge of, or participation in any overseas activities conducted by Meridian or their other agents.
7. Winwin Maritime did not issue any bill of lading on behalf of the delinquent shipping line, M/s. Meridian Lines, or the person in charge of the vessels in question. All the bills of lading involved were issued by a separate juristic entity, and such issuance occurred outside India.
8. The bills of lading in question were issued at foreign ports by a distinct juristic entity on behalf of M/s. Meridian Lines. In the present Bill of Lading, Winwin Maritime is mentioned solely as a delivery agent in India. As such, the delivery agent appointed for operations within India has no role until the goods are discharged at an Indian port following customs clearance.
9. Winwin Maritime's agency relationship with M/s. Meridian Lines is strictly limited to operations within the territorial jurisdiction of India. Consequently, no liability can be imposed on Winwin for any actions or omissions of M/s. Meridian Lines relating to the issuance of first-leg bills of lading, switch bills of lading, transshipment, or concealment of the port of origin of the goods—activities that occurred outside the territorial waters of India.
10. Winwin Maritime did not file any Import General Manifests (IGMs) for the vessels in question with the Customs Authorities. These manifests were filed by the respective vessel agents. The findings to the contrary are factually incorrect.

In light of the foregoing, it is clear that the Winwin company bears no responsibility for the actions of M/s. Meridian Lines or their agents in relation to the issuance of the first-leg bills of lading, switch bills of lading, or the transshipment of goods. The findings of the Commissioner, based on a misapprehension of the agency relationship and the scope of Winwin's involvement, are legally flawed and unsustainable. Furthermore, the Show Cause Notice was issued beyond the prescribed statutory period, without substantiating the essential elements of collusion, willful misstatement, or suppression of facts, is invalid. Therefore, it is respectfully requested that the Show Cause Notice be quashed and any penalty or liability imposed on Winwin be dismissed as legally untenable.

#### **PERSONAL HEARINGS**

**30.** Opportunity of personal hearing in the case was given to the Noticees on 25.11.2024, 29.11.2024 and 09.12.2024 under the provisions laid down in Customs Act, 1962 and following the principles of natural justice.

**30.1. 1<sup>st</sup> PH on 25.11.2024:**

Ms. Taranjit Phul, Advocate and authorized representative of M/s. Win Win Maritime Ltd., appeared before adjudicating authority for scheduled Personal hearing on 25.11.2024 at 11.45 AM, through virtual mode. Ms. Taranjit Phul, Advocate during the hearing relied upon and reiterated their defence submission received in this office on 17.02.2024 and also added following points –

1. She provided a brief of the case, explaining that M/s. Winwin Maritime Private Limited operates as the Indian delivery agent for M/s. Meridian Lines, an overseas principal. The Customs Department issued a Show Cause Notice (SCN) alleging violations under section 112(b)(i) and section 117 of the Customs Act, 1962, against Winwin.
2. It was submitted that the Show Cause Notice (SCN) in the present matter has been issued beyond the statutory period of two years as prescribed under Section 28(1)(a) of the Customs Act, 1962, which applies to cases where non-levy or short levy of duty arises due to reasons other than collusion, wilful misstatement, or suppression of facts. While the SCN mentions that it was issued due to the importer's misdeclaration of the country of origin, there is no clarity or reasoning provided as to why the SCN has been issued against Winwin, the SCN, however, has been issued under Section 28(4) of the Act, invoking the extended period of limitation, without establishing any case of wilful misstatement or suppression of facts, which is a mandatory precondition for such invocation.
3. As an Indian delivery agent, Winwin's responsibilities are limited to:
  - a. Compiling information to assist vessel operators in filing the Import General Manifest (IGM).
  - b. Issuing delivery orders upon receiving surrendered bills of lading and local charges from consignees.
4. She clarified that Winwin did not participate in booking cargo at the port of origin or receive export bookings from overseas nor was involved in issuance of bills of lading or engaged in freight collection or declarations made by importers in Bills of Entry. Winwin did not assist consignees/importers in customs or cargo clearance.
5. She explained that only upon receiving summons did Winwin coordinate with its principal regarding the subject shipments. Documents were then obtained from the principal and submitted to the department. Winwin had no prior knowledge of the first-leg bills of lading. She reiterated that the company had no prior knowledge of the documents, which only came to light during the investigation.
6. She prayed for the dropping of all allegations and penalties under the SCN and requested three days' time to submit additional submissions and argument notes.

**30.2 2<sup>nd</sup> PH on 29.11.2024**

M/s Gopinath Metals could not appear for Personal Hearing on 25.11.2024, but requested another date for attending Personal Hearing. Consequently, another P.H. was granted to M/s Gopinath Metals on 29.11.2024, wherein, Shri Vikas Mehta, Consultant, representing M/s Gopinath Metals (Noticee No. 01), appeared through

virtual mode. Shri Vikas Mehta, Consultant, during the hearing, relied upon and reiterated their defence submission dated 17.07.2024 and also added that "container tracking system of Pakistan International Container Terminal at Karachi is in public domain since more than two years and as such, invocation of extended period is unjustified". He also requested the adjudicating authority to take a lenient view in the matter.

### **30.3. 3<sup>rd</sup> PH on 09.12.2024**

M/s Kashish Impex had not appeared on earlier P.H. scheduled on 25.11.2024, nor any adjournment sought by them. However, to meet the interests of justice another personal Hearing was granted to them on 09.12.024. However, again, nobody appeared on behalf of M/s Kashish Impex nor any request letter for adjournment received on their behalf.

### **DISCUSSION AND FINDINGS**

**31** After having carefully gone through the Show Cause Notice, relied upon documents, submissions made by the Noticees and the records available before me, I now proceed to decide the case. The main issues involved in the case which are required to be decided in the present adjudication are as below:

- (i) Whether Classification of 23270 kgs. of Brass Scrap Honey as per ISRI, imported in Container No. HMCU-3038988 under Chapter Tariff Heading No.74040022 under BoE No. 5981296 dated 25.10.2021, is liable to be rejected and the same to be re-classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975;
- (ii) Whether the exemption availed under Sr.No.382 of Notification No.50/2017 - Cus dated 30.06.2017 for availing the benefit of BCD @ 2.5% by the Importer is liable to be denied.
- (iii) Whether the total quantity of 23270 kgs. of Brass Scrap Honey as per ISRI, imported in Container No. HMCU-3038988 under BoE No. 5981296 dated 25.10.2021 valued at Rs.93,48,490/- (Rupees Ninety-Three Lakh Forty-Eight Thousand Four Hundred Ninety only) is liable for confiscation under Section 111 (m) of the Customs Act, 1962;
- (iv) Whether the said differential Customs Duty of Rs. 2,39,65,321/- (Rs. Two Crore Thirty-Nine Lakh Sixty-Five Thousand Three Hundred Twenty-One Only), is liable to be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962;
- (v) Whether the said Importer is liable to penalty under the provisions of Section 112 (a)(ii) or 114A, 114AA of the Customs Act, 1962;
- (vi) Whether M/s Kashish Impex, the Customs Broker, is liable to penalty under the provisions of Section 117 of the Customs Act, 1962; and

(vii) Whether **M/s** Win Win Maritime Ltd. (MUN), the Shipping Line Agent is liable to penalty under the provisions of Section 112 (b)(ii) and Section 117 of the Customs Act, 1962.

**32.** After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. The foremost issue before me to decide in this case is as to whether the goods imported by M/s. Gopinath Metals are mis-classified under customs Tariff Item 74040022 and the same is to be re-classified under Customs Tariff Item 98060000 and the exemption availed by them under Sr.No.382 of Notification No.50/2017 - Cus dated 30.06.2017 for availing the benefit of BCD @ 2.5% is liable to be denied.

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

**32.2.** I find that acting on intelligence in relation to mis-declaration of country of origin of goods, an enquiry was initiated by SIIB, Mundra Customs. Accordingly, copy of BE No. BE No. 5981296 dated 25.10.2021, was downloaded from the ICE System. The said Bills of Entry has been filed through customs Broker and the details of information/declarations submitted in the said Bill of Entry are as under: -

Name and address of the importer	M/s Gopinath Metals, Plot No.23/1, STU, Jamnagar-361004
Customs Broker	M/s Kashish Impex
Bill of Entry No and date	5981296 dated 25.10.2021
Date of Out of Charge	30.10.2021
Description of goods and CTH	BRASS SCRAP HONEY AS PER ISRI (CTH 74040022)
Qty. of Goods	27.795 Mt.
Value	Rs.93,48,490/-
Duty paid	BCD @2.5% Rs.2,33,715/- + SWS @10% Rs.23,371/- + <u>IGST @18%</u> <u>Rs.17,29,003/-</u> <u>Total duty paid Rs.19,86,087/-</u>
Exemption Notification availed	Sr.No.382 of Notification No.50/2017 - Cus dated 30.06.2017 for availing the benefit of BCD @2.5%.
Container No.	HMCU3038988
Seal No.	303633
Country of Origin declared as	U.A.E.

**32.2.1** As the intelligence was received that the goods were of Pakistan Origin, tracking of aforesaid Container No. HMCU3038988 was done on the website i.e. <https://pict.com.pk/en/online-tracking> of **Pakistan International Container Terminal Ltd.**, Karachi, Pakistan (In short "PICT"), which revealed that the Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to AEJEA (Jebel Ali, UAE). Image tracking status of said container obtained from PICT is produced hereunder for sake of clarity: -

**IMAGE I**

Container No:	HMCU3038988
Category:	Export
Lot No:	KPEYSA45403101
Container Size:	20
Weight:	25500Kg
Seal 1:	308333
Seal 2:	
Eq. Description:	20' general
Terminal Status:	Deported
Yard Position:	
Commodity:	
VRN No:	KAP04430102021
Vessel Name:	OL KENABNATH
Voyage:	02N
Expected Arrival:	01-01-2021 18:00
Expected Departure:	11-01-2021 07:00
Actual Arrival:	10-01-2021 05:36

IMAGE II

← → C <https://pict.com.pk/en/online-tracking>

PICT

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HMCU3038988

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CONTAINER  
OBL  
CRN  
SHIPPING BILL

Actual Arrival:	10-Oct-2021 0536
Actual Departure:	12-Oct-2020 1000
Port of Loading:	PKKHI
Port of Discharge:	AEJEA
Destination:	AEJEA
Empty Drop-off Location:	

Examination Marked:	
Grounding Date:	
Examination Completed:	
Holds:	
Released:	01-Oct-2021 1710
Return Code:	AI

Activity	Performed Time
UNLOADMENT	01-Oct-2021 1657

From the above details, it becomes clear that the container no. HMCU3038988 having Seal No. 303633 has left from PKKHI (i.e. Port of Karachi) for the destination AEJEA (i.e. Port of Jebel Ali) on 12.10.2020 through vessel "OEL KEDARNATH".

**32.2.2** I find that Shri Dangariya Jayeshbhai, Proprietor of M/s Gopinath Metals, Jamnagar, in his statement tendered before the SIIB on 06.04.2022 under Section 108 of the Customs Act, 1962 has confirmed that the details of container no. and seal no. mentioned in the BL No. JMUNMR02743 dated 19.10.2021 and PICT (tracking website of PICT i.e. <https://pict.com.pk/en/online-tracking>) documents are same. Further, Shri Dhawal Rawal, Operations Executive of M/s Win Win Maritime Ltd. (MUN), in his statement, recorded on 23.02.2023 has confirmed that "23270 Kgs. of Brass Scrap Honey were loaded in Container No. HMCU 3038988 having seal no. 303633 from Karachi Port and it has reached Mundra via Jebel Ali. Further, the said container was not opened at Jebel Ali as the seal No. 303633 affixed at Karachi Port was found intact at Mundra Port". I find that on the same container, the same seal was found intact, when the container left Karachi Port and landed at Mundra Port, via Jebel Ali. This sufficiently makes it clear that the goods "Brass Scrap Honey" as per ISRI, was loaded on Karachi port, on the container HMCU 3038988 with seal no. 303633, and the same was unloaded directly at Mundra Port. The fact that documentation were so created to camouflage the origin Port again is confirmatory

of the fact that goods were of Pakistan origin.

**32.3** During the investigation, Shipping Line Agent M/s Win Win Maritime Ltd. (MUN), Shyam Paragon, 1st Floor, DBZ-South/61A, Near Rotary Bhawan, Gandhidham- 370201 vide email dated 24.01.2023 provided the following Load Port Documents of the container no. HMCU 3038988 pertaining to M/s Gopinath Metals for the import of Brass Scrap Honey :

- (i) Copy of Bill of Lading No. KJEAMR02743 dtd. 12.10.2021 issued by M/s Meridian Lines for transport of Brass scrap Honey in container no. HMCU 3038988 from Karachi Port to Jebel Ali, wherein shipper is mentioned as "M/s A.B. Metals, South Sadder Road, Karachi (Pakistan), Consignee/ Notify party as M/s Okai Auto Used Trucks & Heavy Equip. TR. LLC. PO Box no. 36978, Sharjah, UAE, where load port was mentioned as Karachi and port of discharge as Jebel Ali for transport of 23270 Kgs. of Brass Scrap Honey in Container No. HMCU 3038988 having Seal No. 303633.
- (ii) Copy of Bill of Lading No. JMUMMR02743 dtd. 19.10.2021, issued by M/s Meridian Lines wherein shipper is mentioned as "M/s Okai Auto Used Trucks & Heavy Equip. TR. LLC. PO Box no. 36978, Sharjah, UAE, and Consignee/ Notify party mentioned as M/s Gopinath Metals, 21/2/2, Shankar Tekri, Udyog Nagar, Jamnagar, Gujarat-361004, load port as Jebel Ali and port of discharge as Mundra for transport of 23270 Kgs. of Brass Scrap Honey in Container No. HMCU 3038988 having Seal No. 303633.
- (iii) A request letter (without date) from M/s A.B.Metals, Shed No.234, Street No.6, Super General Godown Haroonabad Near Ghani Chowrangi, Karachi to M/s Baltic Shipping Line, Karachi to switch over the bill of lading KJEAMR02743 in the name of M/s Gopinath Metal and port of discharge as Mundra;
- (iv) A request letter/Letter of Indemnity dated 20.10.2021 from M/s Okai Auto Used Trucks & Heavy Equip, TR L.L.C., P.O.Box No.36978, Sharjah, UAE to M/s Baltic Shipping Line, Karachi to make necessary change to make M/s Gopinath Metal as Notify party and port of discharge as Mundra.

**32.3.1** From the above documents submitted by M/s. Win Win, it is amply clear the impugned goods loaded in Container no. HMCU 3038988 having Seal No. 303633 was dispatched from Karachi to Jebel Ali and reached at Mundra Port with the same seal no. 303633. The chronology of dates also indicates clearly that the goods were loaded at Karachi for onward movement to Mundra via Jebel Ali.

**32.3.2** Further, I find that during the recording of statement by SIIB on 23.02.2023, Shri Dhawal Rawal Operations Executive of M/s Win Win Maritime Ltd. (MUN), on being shown the above documents provided by them, agreed that Brass Scrap Honey Container No. HMCU 3038988 having Seal No. 303633 had been loaded from Karachi Port and it has reached Mundra via Jebel Ali.

**32.4** As Import of metallic waste and scrap is subject to pre-inspection certificate (PSIC) from the country of origin, the verification of PSIC No. ASIA21/MEM2310202114729 dated 14.10.2021, said to be issued by M/s Asia Inspection Agency Co. Ltd., was conducted by SIIB, from the website of DGFT "<https://www.dgft.gov.in/CP/?opt=info-for-customs-authorities#>" which asked for three details viz. PSIC number, Agency name and the IEC No. and on entering the said details, no result was found. In order to verify the genuineness of the PSIC, on the body of said certificate, three mail ids were mentioned viz. [info@auacl.com](mailto:info@auacl.com), "[aiac.thai@gmail.com](mailto:aiac.thai@gmail.com)" and "[asiainspectionbkk@gmail.com](mailto:asiainspectionbkk@gmail.com)" which are different from the mail ids mentioned on the website of DGFT, as detailed above. Further, an email dated 05.04.2023 was sent to all these three mail ids for seeking genuineness of the said PSIC certificate. However, the mails were not delivered and the result was "failed". Further, as the container was loaded from Karachi Port, Pakistan, and never opened till it reached Mundra Port, it is clear that there was no inspection done at Jebel Ali, and hence, from the above, I find that the PSIC certificate submitted by the importer is forged and fraudulent in as much as it has been issued by some agency whose email id does not exist, such agency could not verify the genuineness of the PSIC Certificate and the containers were never opened for Inspection.

**32.5** From the facts and evidences on the records as discussed above, I find that the container no. HMCU 3038988 having Seal No. 303633 was not opened at Jebel Ali as the seal affixed at Karachi Port is found intact at Mundra Port and that all the documents viz. Pre-shipment Inspection Certificate, country of origin certificate etc. were forged. The Container No. HMCU3038988 was actually loaded from Karachi Port and it has reached Mundra via Jebel Ali and the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan. Thus, it is beyond doubt that 23.270 MTs. of Brass Scrap Honey loaded in the container no. HMCU 3038988 having Seal No. 303633 was originated from Islamic Republic of Pakistan. I hold the same.

#### **REJECTION OF CLASSIFICATION AND RE-CLASSIFICATION OF GOODS**

**33.** In the aforesaid paras, I have held based on available documents and evidences that the impugned goods imported under the Bills of Entry bearing no. BE No. 5981296 / 25.10.21 were of Pakistan origin, now I proceed to classify the said goods.

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

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

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

From the above notification, it is clear that all goods originating in or exported from the Islamic Republic of Pakistan will fall under Customs Tariff item irrespective of their other entries in Customs Tariff Act, 1975.

**33.2** I find that the classification adopted by the importer of the impugned goods under Customs Tariff Item 74040022 is not correct and is correctly classifiable under Customs Tariff Item 98060000 of Customs Tariff Act, 1975 in terms of Notification No. 05/2019-Customs dated 16.02.2019 as the goods imported by the them has originated from Islamic Republic of Pakistan. I find further that exemption availed by the importer under Notification No.50/2017 - Cus dated 30.06.2017 (Sr.No. 382) on subject goods is also liable to be denied as the exemption under the said Notification is not available on the goods falling under CTH 98060000 of Customs Tariff Act, 1975 and importer is liable to pay differential duty of Rs. 2,39,65,321/- as calculated in Table-C of the Show Cause Notice under Section 28(4) of Customs Act, 1962. I hold so.

#### **Applicability of extended period under section 28(4) of the Customs Act, 1962**

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

*"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*

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

*(a) collusion; or*

*(b) any willful mis-statement; or*

*(c) suppression of facts."*

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

**The term "relevant date" For the purpose of Section 28 ibid, has been defined**

in Explanation 1, as under:

**Explanation 1 . -** For the purposes of this section, "relevant date" means,-

- (a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;
- (c) in a case where duty or interest has been erroneously refunded, the date of refund;
- (d) in any other case, the date of payment of duty or interest.

**34.1** The importer has contended that Section 28(4) of Customs Act, 1962 cannot be invoked in the present case as there is no "wilful mis-declaration of Country of Origin". They submitted that container tracking on PICT (Pakistan International Container Terminal Limited) is in public domain. As such, the details of container number and seal number appearing in the import documents that were supplied to importer by the seller from UAE were available for verification on the PICT website from the very date when container was loaded from PICT for UAE.

**34.1.1** I find that above contention of importer is not sustainable. After introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it is the obligatory on the part of the importer to declare the correct country of origin of impugned goods and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. It is unreasonable to expect that an officer assessing the Bill of Entry will presume that the Imported goods would have originated from any other country than declared and will start tracking of the containers on website of Ports of suspected country. The importer, therefore, by not disclosing the true and correct facts to the proper officer at the time of clearance of imported goods, have indulged in mis-declaration and mis-classification by way of suppression of facts and wilfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable Custom duties. Sub-section(4A) to Section 46 of the Customs Act, 1962, requires him to ensure completeness, correctness and authenticity of the information. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. **Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011**, cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self assessment, is required to ensure that he declared the correct classification, country of origin, applicable rate of duty, value,

benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. In EVERSHINE CUSTOMS (C & F) PVT LTD., New Delhi Vs. COMMISSIONER OF CUSTOMS, New Delhi, the CESTAT, Principal Bench observed as under -

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

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

**34.3** In view of above, I hold that there is no flaw in invoking Section 28(4) of Customs Act, 1962 to demand duty in the present case.

#### **Confiscation of the goods under section 111 (m) of the customs act, 1962:**

**35.** As far as confiscation of goods are concerned, I find that Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

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

**35.1** The importer in their submission have contended that the goods were examined

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

**35.1.1** The above submission of importer is not tenable as section 111(m) of Customs Act, 1962 provides that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act are liable for confiscation. From the above provisions, it is clear that goods which are imported by way of any type of mis-declaration, will be liable to confiscation. The above provisions are not confined to Quantity of the Goods only. In the present case it has already been held in paras supra that the Importer had mis-declared origin of the goods as UAE and has classified the same the under Customs Tariff Item 74040022 instead of correct classification under 98060000 of the Customs Tariff Act, 1975. Further, the case law of Callmate India Pvt. Ltd. v/s Commissioner of Customs, New Delhi, 2023 (383) ELT 121 (Tri-Del.) referred to by the noticee and other Case laws referred thereafter, are not squarely applicable in the present case, due to different facts and circumstances in those cases. Further, as per the ratio laid down in **Evershine Case**, referred above, I find that the importer has failed to impart due diligence, as both the COO and the PSIC certificate submitted by them are found to be fraudulent/forged. As per Section 46(4A) of the Customs Act, 1962, the Importer is duty bound to check the accuracy of the imformation given by them in the Bill of Entry and to ensure the authenticity and validity of any supporting documents, which the importer has failed to do so in thie instant matter. Accordingly, I hold that the impugned goods are liable for confiscation under Section 111(m) of Custom Act, 1962.

**35.2** As the impugned goods are found to be liable for confiscation under Section and 111(m) of the Customs Act, 1962, I find that it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the goods imported under Bill of Entry No. 5981296 dated 25.10.2021. The Section 125 ibid reads as under:-

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

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated

goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

**35.3.** As regards applicability of redemption fine on goods, Bill of Entry No. 5981296 dated 25.10.2021, the goods have never been neither seized nor provisionally released. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330**, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripa Ispat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not have any legs to stand. I, therefore, find that redemption fine cannot be imposed in respect of the goods imported vide Bill of Entry No. 5981296 dated 25.10.2021.

**Imposition of Penalty on M/s. Gopinath Metals, Jamnagar, under Section 114A, 112(a)(ii) and 114AA of the Customs Act, 1962**

**36.** I find that section 114A stipulates that the person, who is liable to pay duty by reason of collusion or any willful mis-statement or suppression of facts as determined under section 28(8) ibid, is also be liable to pay penalty under section 114A.

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

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

**36.3** As regards imposition of penalty under Section 114AA of Customs Act, 1962

on M/s. Gopinath Metals, the Section 114AA envisages penalty on a person who knowingly or intentionally makes, signs or uses, or causes to be made signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. I observe that M/s. Gopinath has mis-declared the country of origin to evade the duty by way of producing bogus or fake documents (viz. PSIC, COO Certificate, Invoice etc.) and for their act of omission and commission they have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962. I hold so.

**Imposition of Penalty on Custom Broker, M/s Kashish Impex under Section 117 under the Customs Act, 1962.**

**37** No defence submission was submitted by Custom Broker, M/s Kashish Impex, nor any adjournment sought by them. The Show Cause Notice proposes penalty upon them under Section 117 of the Customs Act, 1962. From the facts emerging from the Show Cause Notice and investigation conducted, I find that M/s Kashish Impex, was actively involved in preparation of papers and filing of import documents. All the work of import clearance was given to him by M/s Gopinath Metals. However, they failed to advise their client appropriately to correctly assess and pay the applicable Customs duty on goods imported from Pakistan.

**37. 1** The fact that they chose not to respond to the allegations in the notice depicts acceptance of the allegations made against them. Hence, I find that Custom Broker M/s Kashish Impex are liable to penalty under Section 117 of the Customs Act, 1962.

**Imposition of Penalty on M/s Win Win Maritime under Section 112(b)(ii) and 117 under the Customs Act, 1962.**

**38.** I have carefully examined the proposals for imposition of penalty on M/s Win Win Maritime Pvt. Ltd. (MUN) (Agent of M/s. Meridian Lines, Singapore) under Section 112(b)(ii) and 117 of Customs Act, 1962. M/s. Win Win Maritime is the Shipping Line Agent in the present case. I find that Section 112(b)(ii) provides for penalty on a person "*who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111*".

**38.1.** Shri Dhawal Rawal, Operations Executive of M/s Win Win Maritime in his statement tendered before SIIB on 23.02.2023 has stated that they are agent of M/s. Meridian Lines, Singapore. M/s. Meridian Lines, Singapore are having their own containers which are used for export / import of cargo in various ports. Their scope of work is to coordinate with vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM on the basis of the documents received from the load port, collect the charges and documents from consignee before releasing the Delivery Order. They act as a Delivery Agent in imports and their name is

mentioned in the bill of lading. The importer or their CHA approaches them and submit the Original Bill of Lading (issued by load port agents) or surrendered copy of Bill of Lading if it is surrendered at load port, and pays their dues, then they release the container. They book the same empty containers for export and collect ocean freight and other origin charges at Port of Loading before releasing the Bill of Lading. He further stated that M/s A.B. Metals, Shed No.234, Street No.6, Super General Godown Haroonabad Near Ghani Chowrangi, Karachi has made a request to M/s Baltic Shipping Line, Karachi (agent of M/s Meridian Lines) to switch over the bill of lading KJEAMR02743 in the name of M/s Gopinath Metal (as notify party) and port of load as Jebel Ali and discharge port as Mundra. Another letter/Letter Of Indemnity dated 20.10.2021 is issued by M/s Okai Auto Used Trucks & Heavy Equip, TR L.L.C., P.O. Box No.36978, Sharjah, UAE to M/s Baltic Shipping Line, Karachi (agent of M/s Meridian Lines) to make necessary change to make M/s Gopinath Metal as Notify party and port of discharge as Mundra. That on the basis of said requests made by above two parties i.e. the original supplier at Karachi (M/s A.B.Metals) and the original buyer (M/s Okai Auto Used Trucks & Heavy Equip, TR L.L.C) the new Bill of lading No.JMUNMR027443 dtd.19.10.2021 was issued. He stated that M/s Win Win Maritime are not the actual transporter but they acted as the agent of M/s Meridian Lines who issued both the Bills of lading from Karachi to Jebel Ali and then switched Bill of lading from Jebel Ali to Mundra. They have no control or interest in business of said firm. It was not in their knowledge that the goods were of Pakistan origin and further, no documents were in their possession and the load port documents submitted by them were arranged by them by making request to the said firm. Their role was merely limited to deliver the container to consignee on production of documents and payment of dues. He further stated that it was not at all in their knowledge or notice that what was the previous load port other than Jebel Ali in the instant case. In the instant case, they come to know about the switch bill of lading only after the documents were arranged by them, before that, for them it was original bill of lading. They cannot be held responsible for switch bill of lading, it was not done by them, nor it was in their notice, nor they had any say or approval in the matter.

**38.2** I find that Section 112(b) of Customs Act, 1962 pertains to activities mentioned in the said Section pertaining to any manner dealing with any goods which the person knows or has reason to believe are liable to confiscation. In this case, no evidences have been placed before me which proves that **M/s Win Win Maritime Pvt. Ltd. (MUN)** had a role in such activities which makes them liable for penalty under Section 112(b) of Customs Act, 1962. Therefore, I do not find any reason to impose penalty on them under Section 112(b)(ii) of Customs Act, 1962.

**38.3** As regards imposition of penalty on **M/s Win Win Maritime** under Section 117 of Customs Act, 1962, during the investigation, M/s. Win Win Maritime had submitted copy of Bill of Lading No. KJEAMR02743 dtd. 12.10.2021, Copy of Bill of Lading No. JMUNMR027443 dtd.19.10.2021 issued by M/s **Meridian Lines**, request letter to

M/s Baltic Shipping Line, Karachi (agent of M/s Meridian Lines) to switch over the bill of lading KJEAMR02743 in the name of M/s Gopinath Metal (as notify party) and port of load as Jebel Ali and discharge port as Mundra. Another letter/LETTER OF INDEMNITY dated 20.10.2021 is issued by M/s Okai Auto Used Trucks & Heavy Equip, TR L.L.C., P.O. Box No.36978, Sharjah, UAE to M/s Baltic Shipping Line, Karachi (agent of M/s Meridian Lines) to make necessary change to make M/s Gopinath Metal as Notify party and port of discharge as Mundra. On being shown the said documents to Shri Dhawal Rawal, Operations Executive of M/s Win Win Maritime during statement recorded on 23.02.2023, Shri Dhawal Rawal stated that he understands that 23270 Kgs. of Brass Scrap Honey were loaded in Container No. HMCU-3038988 seal no. 303633 from Karachi Port and it has reached Mundra via Jebel Ali. As agents of their Principal, they cannot fully wash away the deliberate actions undertaken by their Principal which have played an important role in perpetrating the fraud of sizeable evasion of duty. They remain culpable to a certain extent to face penal action for the omissions and commissions committed by their Principal. I find that M/s Win Win Maritime Pvt. Ltd. (MUN) had not securitized the papers/documents available with them and have failed to exercise the due diligence required from them, hence they are liable to penalty under Section 117 of the Customs Act, 1962. I hold so.

**39.** In view of above discussion and findings, I pass the following order: -

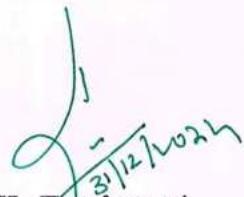
**ORDER**

- (i) I reject the Classification of 23270 kgs. of "Brass Scrap Honey as per ISRI" imported in Container No. HMCU-3038988 under Chapter Tariff Heading No.74040022 under BoE No. 5981296 dated 25.10.2021 and order to re-classify the same under Chapter Tariff Heading No.98060000 of the Customs Tariff Act, 1975;
- (ii) I disallow the exemption availed under Sr.No.382 of Notification No. 50/2017 - Cus dated 30.06.2017 by M/s. Gopinath Metals for availing the benefit of BCD @ 2.5%;
- (iii) I order to confiscate total quantity of 23270 kgs. of 'BRASS SCRAP HONEY AS PER ISRI' imported in Container No. HMCU-3038988 under BoE No. 5981296 dated 25.10.2021, valued at **Rs.93,48,490/- (Rupees Ninety Three Lakh Forty Eight Thousand Four Hundred Ninety only)** under Section 111 (m) of the Customs Act, 1962; however, since, the goods are neither available physically nor released provisionally under Bond, therefore, I refrain from imposing redemption fine on lieu of confiscation;
- (iv) I confirm the demand of differential Customs Duty of **Rs. 2,39,65,321/- (Rs. Two Crore Thirty-Nine Lakh Sixty-Five Thousand Three Hundred Twenty-One Only)**, as detailed in Table-C of Show Cause Notice and order to

recover the same from M/s. Gopinath Metals under the provisions of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;

- (v) I impose a penalty of **Rs. 2,39,65,321/- (Rs. Two Crore Thirty-Nine Lakh Sixty-Five Thousand Three Hundred Twenty-One Only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (iv) on M/s. Gopinath under the provisions of Section 114A of the Customs Act, 1962.
- (vi) I refrain from imposing penalty on M/s. Gopinath under the provisions of Section 112 (a)(ii) of the Customs Act, 1962 for the reasons discussed above;
- (vii) I impose a penalty of **Rs. 10,00,000 (Rs. Ten Lakh only)** on M/s. Gopinath Metals under the provisions of Section 114AA of the Customs Act, 1962.
- (viii) I impose a penalty of **Rs. 3,00,000 (Rs. Three Lakh only)** on M/s. Kashish Impex under the provisions of Section 117 of the Customs Act, 1962.
- (ix) I refrain from imposing penalty on M/s Win Win Maritime Pvt. Ltd. (MUN), Gandhidham, under the provisions of Section 112 (b)(ii) of the Customs Act, 1962, for the reasons discussed above.
- (x) I impose a penalty of **Rs. 4,00,000 (Rs. Four Lakh only)** on M/s. Win Win Maritime under the provisions of Section 117 of the Customs Act, 1962.

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



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

**F.NO. GEN/ADJ/COMM/120/2023-Adjn**

**Date:- 31.12.2024**

**By RPAD/Email/Speed Post**

**To (Noticees):**

- (i) M/s Gopinath Metals,  
Plot No.23/1, STU, Jamnagar-361004.
- (ii) M/s Win Win Maritime Ltd. (MUN), Shyam Paragon,  
1st Floor, DBZ-South/61A, Near Rotary Bhawan,  
Gandhidham- 370201, Kutch
- (iii) M/s Kashish Impex, the Customs Broker

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

- a.** The Chief Commissioner of Customs, CCO, Ahmedabad.
- b.** The Additional Commissioner (SIIB), C.H., Mundra
- c.** The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- d.** The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- e.** Notice Board/Guard File.