

	<p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421</p> <p>Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</p>	
File No.	:	GEN/ADJ/COMM/121/2023-Adjn-O/o Pr Commr-Cus – Mundra
Order-in-Original No.	:	MUN-CUSTM-000-COM-03-24-25
Passed by	:	K. Engineer Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.
Date of order and Date of issue	:	17.04.2024 17.04.2024
SCN No. & Date	:	SCN No. GEN/ADJ/COMM/121/2023-Adjn dated 12.05.2023, issued by Commissioner of Customs, Customs House, Mundra.
Noticee(s) / Party / Importer	:	(1) M/s Dhartidhan Metal Alloys, Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006; (2) M/s Hub & Links Logistics (I) Pvt. Ltd., Suite No.101, Rishabh Arcade, Near to GST Bhawan, Plot No.83, Sector-8, Gandhidham- 370201.
DIN	:	20240471MO0000666F9E

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 (1)6के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1)के अंतर्गत प्रपत्र सीए-3में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है -

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004” “Customs Excise & Service Tax Appellate Tribunal,

**West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound,
Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."**

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

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

4. उक्त अपील के साथ 1000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो -/5000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं^o 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. 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.

7. 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

An intelligence input received identified following risky consignment of M/s Dhartidhan Metal Alloys (IEC No. ALYPK3655L), Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006 (hereinafter referred to as 'the importer' or 'M/s. Dhartidhan') at Mundra, Custom House, in relation to mis-declaration of country of origin of goods:

BE NO. & Date	Declared COO	Port of Shipment	Description	Declared CTH	Container No	Container Seal No in ICES	seal no. on PICT
8839340 dated 16.09.20	AE	AEJEA	BRASS SCRAP HONEY AS PER ISRI	74040022	DNAU 2713461	93810	93810

2. Acting on said intelligence, an enquiry was initiated by SIIIB, Mundra Customs and copy of BE No. 8839340 dated 16.09.2020 was downloaded from the ICE System and following details were mentioned in the said Bill of Entry:

TABLE-A

Name and address of the importer	M/s Dhartidhan Metal Alloys, Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006
Customs Broker	M/s Cargotrans Maritime Agencies Pvt. Ltd.
Bill of Entry No and date	8839340 dated 16.09.2020
Date of Out of Charge	21.09.2020
Description of goods and CTH	BRASS SCRAP HONEY AS PER ISRI (CTH 74040022)
Qty. of Goods	27.795 Mt.
Value	Rs.80,67490/-
Duty paid	BCD @2.5% Rs.201687 + SWS @10% Rs.20169 + IGST @18% Rs.1492082 = Total duty paid Rs.17,13,938/-
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.	DNAU2713461
Seal No.	93810
Country of Origin declared as	U.A.E.

3. Tracking of the said Container nos. DNAU2713461 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).

4. As per the tracking details obtained from PICT, it appears that container no. DNAU2713461 having Seal No.093810 had left from PKKHI (i.e. Port of Karachi) for the destination AEJEA (i.e. Port of Jabel Ali) on 27.08.2020 through vessel "Botany Bay 040W. Therefore, summons dated 23.03.2022 were issued to the importer for submission of import related documents and to record their statements. Statement of Sh. Khatod Nirav Suresh, Proprietor of firm M/s Dhartidhan Metal Alloys was recorded on 07.04.2022 under Section 108 of the Customs Act, 1962 wherein he stated inter-alia that:

- He is Proprietor of M/s Dhartidhan Metals Alloys, started by him in 2019 and in this firm, he is importing mainly Brass Scrap and Zinc Scrap and in his factory, manufacturing the goods viz. Brass Billets and Zinc Ingots. They are also trading the imported as well as domestic goods of Brass scrap, Zinc scrap and Zinc ingots. They are exporting Brass Billets;
- He submitted import documents viz. Copy of AADHAR Card copy, IEC copy, BL No.SASLMU20408 dated 06.09.2020, PSIC No.036/AJUL-RN/NEAA/2020 dated 09.08.2020, Sale Contract No.786/FZE/DHR/01/20-21 dated 08.08.2020, Intender contract of Al-Shafa International, Surat, remittance statement of 11.08.2020 and 17.09.2020 issued by Kotak Bank, Udyog Nagar Branch, Jamnagar, Form No.9, Freight certificate of supplier, packing list, COO issued by the supplier, Form No.6, BOE No.8839340 dated 16.09.2020, commercial invoice No.786/CMTFZE-30/20-21 dated 06.09.2020;
- he stated that they had imported goods i.e. Brass Scrap from M/s Al Julnar International F.Z.E, Dubai, UAE vide above said bill of entry and shipping line who had transported the said goods is M/s Shah Aziz Shipping Lines LLC and his local agent is M/s Hub & Links Logistics (I) P Ltd, Gandhidham, Kutch-370201;
- On being informed that from the bill of lading No. SASLMU20408 dated 06.09.2020 issued by M/s Shah Aziz Shipping Lines LLC, it appears that the said goods transported into container no. DNAU2713461 having seal no. 093810 and on being asked to check from BL and confirm, he stated that he was aware that the said imported goods transported into container no. DNAU2713461 having seal no. 093810;
- On being asked, he stated that he had imported above said goods from M/s Al Julnar International F.Z.E, Dubai, UAE first time, never imported any goods from said supplier earlier or after said BE. The sale contract made between them vide No. 786/FZE/DHR/01/20-21 dated 08.08.2020 as per that he has to sell Brass Scrap Honey @ 3975 USD per MT, total quantity 20.00 MT and payment terms is 10% advance and 90% Cash against document (CAD). For the said consignment, he had made remittance 10% of 7950 USD on 11.08.2020 and remaining 90% of 102555.13 USD on 17.09.2020 through Kotak Bank, Udyog Nagar Branch, Jamnagar.
- On being asked as to whether he has asked the supplier to supply goods of

any country as there is no clause in the contract that the goods should be of UAE origin only, he stated that in the sale contract, there is no such type of clause mentioned in the contract about the country of origin. It is also submitted that said import was booked through the intender M/s Al-Shafa International, 405, Sangini Megnus, Opp. Rushabh Tower, Rander Road, Adajan, Surat-395009. As per confirmation mail dated 07.08.2020 received from the intender, the origin of goods mentioned as Dubai. There is no direct contact with the exporters;

- On being asked as to whether he had visited Dubai for pre-shipment inspection of above said goods, he stated that he had not visited Dubai for pre-inspection of the goods and he was importing goods through various intenders and the intenders are charging commission from the exporters;
- On being pointed out that as he had confirmed the goods had been imported through container no. DNAU2713461 and seal no. 093810, and on being asked to 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. DNAU2713461 having seal no. 093810 for which he had filed bill of entry no. 8839340 dated 16.09.2020 are of "Pakistan" origin and Port of loading mentioned PKKHI (Karachi) to AEJEA (Jebel Ali), departure date – 27.08.2020 and whether he agrees, he confirmed that the details of container no. and seal no. are mentioned in the BL No.SASLMU20408 dated 06.09.2020 and PICT documents are same, regarding country of origin of Pakistan, he did not comment on the origin of goods. He made sale contract from Dubai based trader through the intender for supply of said goods and the intender has informed that the goods are Dubai origin;
- On being asked if there was any discussion made about the rates of Brass Scrap Honey of different countries, he stated that they are finalizing the rates of the said goods from the intender as per quality and purity of brass, because the rates of the goods decided as per London Metal Exchange (LME) rates basis;
- On being asked whether he knew 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, he stated that he doesn't know about the classification and duty of Pakistan origin goods;
- On being informed that as per container tracking website of PICT, it is established that the goods of BE No. 8839340 dated 16.09.2020 valued to Rs.80.67 lakhs are Pakistan origin and on being asked to explain why basic customs duty @ 200% + other applicable duties should not be recovered for the goods of said BOE, he requested that he made sales contract with the supplier for the import of above goods and it was not in his knowledge that goods are Pakistan origin. The intender has informed that the goods are of Dubai origin;
- He requested 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.

5. The enquiry was further extended and letters dated 13.06.2022 and 03.11.2022 were issued to the Shipping Line M/s Hub & Links Logistics (I) Pvt. Ltd. (**hereinafter referred as M/s. Hub for sake of brevity**), Suite No.101, Rishabh Arcade, Near to GST Bhawan, Plot No.83, Sector-8, Gandhidham- 370201 with request to provide Load Port Documents of the container no. DNAU2713461 pertaining to M/s Dhartidhan Metal Alloys for the import of Brass Scrap Honey. In compliance, the Shipping Line vide E-mail on 23.11.2022 sent the following documents and the same were downloaded from Email:-

- (i) Copy of Shipping Bill No. 1059/KPEX-SB-21475 dtd. 20.08.20 filed with Custom Office, MCC Export, Karachi by M/s Concrete Metal Traders, D 185 B.F.Q.Compound Haroonabad, Sher Shah Karachi (Pakistan) for export of 27.795 MTs. of Brass Scrap Honey to M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE) in Container No. DNAU2713461 ;
- (ii) Copy of Bill of Lading No. SASLMU20408 dtd.27.08.2020 issued by CIM Shipping INC wherein shipper is mentioned as "M/s Concrete Metal Traders, D 185 B.F.Q.Compound Haroonabad, Sher Shah Karachi (Pakistan), Consignee/ Notify party as M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE), load port as Karachi and port of discharge as Jabel Ali for transport of 27795 Kgs. of Brass Scrap Honey in Container No. DNAU2713461 having Seal No. 093810 .
- (ii) Copy of Bill of Lading No. SASLMU20408 dtd.06.09.2020 issued by Shah Aziz Shipping Lines LLC wherein shipper is mentioned as "M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE), Consignee/ Notify party as M/s Dhartidhan Metal Alloys, Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006, load port as Jabel Ali and port of discharge as Mundra for transport of 27795 Kgs. of Brass Scrap Honey in Container No. DNAU2713461 having Seal No. 093810.

6. Statement of Shri Sajish Sivaraj Puthenchira, General Manager of M/s Hub, Gandhidham was recorded on 23.02.2023 under Section 108 of the Customs Act, 1962 wherein he stated inter-alia that:

- He is General Manager of M/s Hub, Gandhidham) and responsible for all the activities related to import and export at Mundra/Kandla on behalf of the company. They are the agent of M/s Shah Aziz Shipping Lines LLC, Dubai. M/s Shah Aziz Shipping Lines LLC is 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.

➤ On being asked to explain the transactions in respect of import of Brass Scrap Honey from M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE) by M/s Dhartidhan Metal Alloys, Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006 in Container No. DNAU2713461 in Sept.2020 and submit all the related documents, he stated that Container No.DNAU2713461 was loaded from Jabel Ali on 06.09.2020 in vessel SIMA GISELLE Voy.006 and they were appointed delivery agent by their principal M/s Shah Aziz Shipping Lines LLC. In this regard, they have already submitted all the load port documents vide their mail dated 23.11.2022 from their mail id impdoc.kandla@hublinksindia.com to the siibmundra@gmail.com and these are as under :

1. Shipping Bill No. 1059/KPEX-SB-21475 dtd.20.08.2020 filed with Custom Office, MCC Export, Karachi by M/s Concrete Metal Traders, D 185 B.F.Q. Compound Haroonabad, Sher Shah Karachi (Pakistan), Karachi West site Town;
2. Bill of Lading No. SASLMU20408 dtd.27.08.2020 issued by CIM Shipping INC for transport of Brass scrap Honey in container no. DNAU2713461 from Karachi Port to Jabel Ali;
3. Bill of Lading No. SASLMU20408 dtd.06.09.2020 issued by Shah Aziz Shipping Lines LLC for transport of Brass scrap Honey in container no. DNAU2713461 from Jabel Ali to Mundra.

➤ On being informed that the details of above documents at Sr.No.1-3 are reproduced in the below table:

Particulars	Shipping Bill filed with Custom Office, MCC Export, Karachi	Bill of Lading FOR Karachi Port to Jabel Ali	Bill of Lading FOR Jabel Ali to Mundra
Document No. and date	1059/KPEX-SB-21475 dtd. 20.08.20	SASLMU20408 dtd.27.08.2020	SASLMU20408 dtd.06.09.2020
Filed by/Issued by	M/s Concrete Metal Traders, D 185 B.F.Q.Compound Haroonabad, Sher Shah Karachi	CIM Shipping INC	Shah Aziz Shipping Lines LLC

	(Pakistan), Karachi West site Town.		
Delivery Agent at place of Delivery	Shah Aziz Shipping Lines LLC, P.O.Box No.31600, Office 801, 8 th floor, Damac Smart Heights, Tecom, Dubai, UAE	M/s Hub & Links Logistics (I) Pvt. Ltd., Suite No.101, Rishabh Arcade, Near to GST Bhawan, Plot No.83, Sector-8, Gandhidham- 370201
Port of Shipment/ loading	MCC Export, Karachi	Karachi	Jabel Ali
Port of supply/ discharge	Jabel Ali	Jabel Ali	Mundra
Name and address of the Shipper/ Exporter	M/s Concrete Metal Traders, D 185 B.F.Q.Compound Haroonabad, Sher Shah Karachi (Pakistan), Karachi West site Town.	M/s Concrete Metal Traders, D 185 B.F.Q.Compound Haroonabad, Sher Shah Karachi (Pakistan)	M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE)
Name and address of the Consignee/ Notify party	M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE)	M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE)	M/s Dhartidhan Metal Alloyes, Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006
Description of goods	Brass Scrap Honey as per ISRI	Brass Scrap Honey as per ISRI	Brass Scrap Honey as per ISRI
Weight/qty.	27.795 MTs.	27795 Kgs.	27795 Kgs.
Container No.	DNAU2713461	DNAU2713461	DNAU2713461
Seal No.	093810	093810

And on being asked to peruse the details and offer comments, he stated that the details are correctly mentioned and he understands that 27795 Kgs. of Brass Scrap Honey were loaded in Container No. DNAU2713461 having seal no.093810 from Karachi Port and it has reached Mundra via Jabel Ali. Further, the said container was not opened at Jabel Ali as the seal No.093810 affixed at Karachi Port is found intact at Mundra Port.

- On being informed that numbers of Bill of lading of Karachi Port and Jabel Ali port are same as SASLMU20408 but the dates are different and to clarify the same, he stated that it was a case of switch Bill of Lading wherein the number remains same but the date of issue is changed. It is used when the traders do not want to disclose actual supplier to the consignee/buyer. All the details except shipper, consignee and/or notify party shall remain same in the switch Bill of lading.
- On being pointed out that as stated by him, it is clear that the goods were of Pakistan Origin and M/s Shah Aziz Shipping Lines LLC is the receiving agent at Dubai and issuer of Bill of ladings at Jabel Ali, but these goods were

presented before Customs at Mundra that goods were of UAE origin, therefore, it appears that they have deliberately mis-informed or mis-stated that 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 and stated that his company M/s Hub & Links Logistics India Pvt Ltd. are not the actual transporter but they acted as the agent of M/s Shah Aziz Shipping Lines LLC, Dubai who were the receiving agent at Dubai and in turn issued Bill of lading from Dubai 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 containers 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 Jabel 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.

7. While filing the B.E., the importer had uploaded Pre-shipment Inspection Certificate (PSIC) having reference No. 036/AJUL-RN/NFAA0234/2020 dated 09.08.2020 purported to have been issued by M/s Ravi Energie Gulf FZC, P.O. Box No.16241, UAE, therefore, the enquiry was made with the said agency regarding the genuineness of said certificate and a mail dated 13.02.2023 was sent from mail id “rajks.g019401@gov.in” of this office to the mail id “gulf@ravienergie.com (as mentioned in the said Certificate). However, no reply/response was received from the said agency. Further, since the PSIC inspection agencies are approved by the Directorate General of Foreign Trade (DGFT) and therefore, from the website <https://www.dgft.gov.in> of DGFT, list of all the PSIC agencies is checked and found that in the entire list there are only two agencies having the name of “RAVI”, which are as under :

1. Ravi Energie Pvt. Ltd., address :202 Manubhai Towers, B, Sayajigunj INDIA Baroda Gujarat 390005; mail id -india@ravienergie.com; Area of operation- **MALDIVES, MAURITIUS, SRI LANKA.**
2. Ravi Energie Inc. 1200 Route 22, Suite 2000 UNITED STATES Bridgewater New Jersey 08807 mail id -“americas@ravienergie.com”; Area of operation- UNITED ARAB AMIRATES and others

8. Therefore, it appears that no such agency having the name of M/s Ravi Energie Gulf FZC has been authorised by the DGFT to issue PSIC certificate. However, enquiry was also made with the above mentioned two agencies duly authorised by DGFT and mail dated 30.11.2022 was sent to Ravi Energie Pvt. Ltd.,

(sr.no. 1 above) from this office mail siibmundra@gmail.com for confirming the genuineness of PSIC certificate and they have replied vide mail dated 30.11.2022 that it does not pertain to them. Further, mail was also sent to Ravi Energie Inc. vide mail dated 30.03.2023 from the mail id rajks.g019401@gov.in and they have also confirmed that the said PSIC certificate was not issued by them vide mail dated 30.03.2023.

9. Therefore, from the above, it is clear that the PSIC certificate submitted by the importer is fake and fraudulent in as much as it has been issued in the name of M/s Ravi Energie Gulf FZC which has not been authorised by the DGFT. It further appears that that 27.795 MTs. of Brass Scrap Honey in Container No. DNAU2713461 having seal no.093810 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 at 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 country of origin and to evade payment of appropriate duty and it further appears that besides the importer, there was an active role of M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham in aiding and abetting of said attempt to evade duty .

10. The importer M/s Dhartidhan Metal Alloys (IEC No. ALYPK3655L), Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006 had imported Pakistan Origin Brass Scrap via Jebel Ali (United Arab Emirates) port by mis-declaring the Country of Origin (COO) as UAE to evade higher rate of the Customs duty i.e. BCD@200% adv. levied on goods of Pakistan Origin vide Notification No. 05/19-Cus dated 16.02.2019. The details of duty forgone in this matter is in table below:

Table B

BE No. & Date	Item Description	Country of Origin as per BE	Actual country of origin	CTH in BE	CTH actually classifiable	Assess able Value (Rs.)	Duty paid (Rs.) (BCD: 2.5%, SWS:10%, IGST:18%)	Duty Payable (Rs.) (BCD: 200%, SWS:10%, IGST:18%)	Differential Duty (Rs.)
8839340/ 16.09.20	Brass Scrap (Honey)	UAE	Pakistan	7404 0022	9806 0000	806749 0	1713938	22395352	206814 14

11. After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of Duty. In the instant case, the importer has mis-declared the Country of Origin as 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 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 resulted into short payment of the applicable Customs Duty.

12. The aforesaid facts shows 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 shows the ulterior motive of the importer to evade payment of applicable Customs Duty in respect of said imported goods cleared for home consumption. It is pertinent to mention here that the said fact of mis-declaration 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. Thus, as per Notification No.05/2019 - Customs dated 16.02.2019, the Duty on the goods imported from the Islamic State of Pakistan and appropriately classifiable under Chapter Tariff Heading No. 98060000 is leviable @ 200% BCD + 10% SWS + 18% IGST. Therefore, the total differential Customs Duty amounting to **Rs. 2,06,81,414/-** as detailed in Table-B, 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.

13. It further appears that by their act of omission and commission in as much as mis-declaration 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 for confiscation under Section 111(m) of Customs Act, 1962. It 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 under Section 111 of Customs Act, 1962. Further, it 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.

14. It appears that it was in the knowledge of the principal of M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham who 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 Jable Ali and

therefore, it 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 Hub & Links Logistics (I) Pvt. Ltd., Gandhidham has rendered themselves liable for imposition of penalty under Section 112(b)(ii) and Section 117 of Customs Act, 1962.

15. In view of above, a Show Cause Notice bearing F.No. GEN/ADJ/COMM/121/2023-Adj dated 12.05.2023 was issued to **M/s Dhartidhan Metal Alloys**, Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006 wherein the importer has been called upon to show cause to **the Commissioner of Customs**, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, within 30 days of the receipt of Notice as to why:

- (i) Classification of 27795 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No. DNAU2713461 under Chapter Tariff Heading No.74040022 under BoE No.8839340 dated 16.09.2020 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) 27795 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No.DNAU2713461 under BoE No.8839340 dated 16.09.2020 valued at **Rs.80,67,490/- (Rupees Eighty Lakh Sixty Seven Thousand Four Hundred Ninety only)** should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962;
- (iii) The differential Customs Duty of **Rs. 2,06,81,414/- (Rs. Two Crore Six Lakh Eighty One Thousand Four Hundred Fourteen only)**, as detailed in Table B in para 13 hereinabove, evaded by them should not 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;
- (iv) Penalty should not be imposed upon them under the provisions of Section 112 (a)(ii) or 114A of the Customs Act, 1962;
- (v) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

16. Vide the above show cause notice dated 12.05.2023 **M/s Hub & Links Logistics (I) Pvt. Ltd.**, was also called upon to show cause to **the Commissioner of Customs**, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, within 30 days of the receipt of 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

17. The importer vide letter dated 01.04.2024 has filed written submission. Their point wise submission is as under: -

17.1 The Bill of Entry No. 8839340 dated 16.09.2020 with Custom House, Mundra on the basis of following amongst other documents received from the overseas supplier, i.e., M/s. Al Julnar International FZE, Dubai, U.A.E.

- a) Invoice No. 786/CMTFZE-30/20-21 dated 06.09.2020 issued by overseas supplier, namely, M/s. Al Julnar International FZE, Dubai, UAE, showing port of shipment as Jebel Ali, U.A.E and country of origin as U.A.E.
- b) Packing list issued by the said overseas supplier showing port of shipment as Jebel Ali, U.A.E and country of origin as U.A.E.
- c) Bill of lading No. SASLMU20408 dated 06.09.2020 showing port of loading as Jebel Ali and port of discharge as Mundra.
- d) Certificate of origin issued by the said overseas supplier certifying origin from U.A.E. & loading from Jebel Ali, U. A. E. for Mundra.
- e) Certificate of Marine Insurance issued by M/s. Royal & Sun Alliance Insurance (Middle East) B. S. C. (c) for voyage from Jeel Ali, United Arab Emirates to Mundra.

17.2 The goods were duly examined by Custom officers at the port of import 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. Reliance is placed on the following case laws:-

- (i) Callmate India Pvt. Ltd. v/s Commissioner of Customs, New Delhi, 2023 (383) ELT 121 (Tri-Del.), Hon'ble Tribunal has held that:
- (ii) Alstom Transport Ltd. v/s Commissioner of Customs, Chennai, 2007 (220) ELT 312 (Tri.-Chennai), Hon'ble Tribunal
- (iii) Kirti Sales Corpn. v/s Commr. of Cus., Faridabad, 2008 (232) ELT 151 (Tri.-Del.)

17.2.1 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.

17.2.2 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)*.

17.3.1 Pursuant to initiation of inquiry, the officers recorded statements of following persons:

- i) Shri Nirav S. Khatod, Proprietor of importer.
- ii) Shri Sajish S. Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd.

17.3.2 In his statement dated 07.04.2022, Shri Nirav S. Khatod has stated the following facts to the Custom officers:

- i) The intender had confirmed the origin of goods as Dubai.
- ii) He was not in a position to comment on Pakistan origin because he had made sale contract from Dubai based trader through an indenter who had confirmed that goods were of Dubai origin; that he did not know that goods that were exported or re-exported were of Pakistan origin. (Ans. 8 refers)
- iii) Rates are finalized as per LME and not as per country of origin. (Ans. 10 & 13 refers).
- iv) He did not know that goods of Pakistan origin would attract a different classification under CTH 9806 and were liable to basic custom duty @ 200% (Ans. 11 refers).
- v) It was not in his knowledge that goods are of Pakistan origin; that the indenter had informed him that goods were of Dubai origin. (Ans. 12 refers).

17.3.3 The above facts stated by Shri Nirav S. Khatod, Proprietor of importer in his statement regarding absence of knowledge have not ostensibly been rebutted by any cogent evidence in the Show Cause Notice.

17.3.4 The officers also recorded statement of Shri Sajish S. Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd., wherein, he has stated that in reply to Q7 that *“..it was not in our knowledge or notice that what was the previous load port other than Jebel Ali in the instant case...”*. There is nothing in his statement to indicate that he had received any instructions from the importer regarding switch bill of lading and that the importer had any knowledge regarding previous load port, if any, in respect of the goods under consideration.

17.3.5 As a matter of fact, Shri Sajish Sivaraj Puthenchira, General Manager of the shipping line has stated in reply to Q4 that:

“..it was a case of switch Bill of Lading wherein the number remains the same but the date of issue is changed. It is used when the traders does not want to disclose actual supplier to the consignee/buyer..”

(Emphasis Supplied)

17.3.6 Hence, it is established that there is no evidence to show that the importer had any prior knowledge about the origin of goods.

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

17.3.8 The 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. Therefore, there is no basis for alleging "willful" mis-declaration of country of origin at the hands of importer.

17.3.9 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.

17.3.10 Consequently, the impugned notice dated 12.05.2023 demanding differential duty in respect of imported goods covered by bill of entry No. 8839340 dated 16.09.2020 is clearly time barred, having exceeded the time limit of two years that is imposed in Section 28 (1) of Customs Act,1962.

17.4. Inasmuch as extended period in terms of Section 28 (4) of Customs Act,1962 is not invocable, provisions of Section 114A providing for mandatory penalty equal to duty is also not attracted.

17.5 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."

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

17.7 The statement of importer that the indenter had all along not only assured them that goods were of U.A.E. origin but they were also provided documentary evidence like invoice, packing list, certificate of origin, etc. issued by the overseas

supplier inter alia certifying that goods were of U.A.E. origin.

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

17.9 On the above basis, it was 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.

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

17.11 The allegation is based on a communication (email dated 14.01.2022) from NCTC inter alia stating as under:

"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."

17.12 After receipt of aforesaid email from NCTC, documents like shipping bill filed with Customs, Karachi and bill of lading for container movement from Karachi to Jebel Ali and a separate bill of lading for container movement from Jebel Ali to Mundra were obtained from the shipping line, namely, M/s. Hub & Links Logistics (I) Pvt. Ltd.

17.13 It is based on the shipping bill and bills of lading showing container number and seal number that it is alleged that the country of origin of the goods loaded in the said container was Pakistan.

17.14 However, the entire evidence presented in the impugned notice does not extend beyond container number and seal number. It may be appreciated that loading of a container from a particular port/country is not the determining factor insofar as country of origin is concerned.

17.15 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.

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

17.17 It is a settled law that one who alleges should prove it. The impugned notice makes an assumption that when the website of PICT showed loading of a particular container from PICT, goods contained therein must have been of Pakistan origin.

17.24 However, it is also 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.

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

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

17.27 In view of the above submissions, it is prayed to drop the proceedings against M/s. Dhartidhan Metal Alloys.

18. The M/s. Hub & Links Logistics(I) Pvt Ltd vide letter dated 01.04.2024 has filed written submission. Their point wise submission is as under:

18.1 The Noticee submits that the seal cutting of the container is carried out in the presence of the proper officer of the Customs department, who later on examining the goods allows clearance. It is pertinent to note that in the instant case due process of law was carried out for clearing the goods and the department of customs should have identified the seal of the country of origin, Pakistan. It is beyond imagination and irrational to expect that the Noticee playing the role of a delivery agent could or should have detected the country of origin. The Noticee has neither seen the container or the seal, except the document, Bill of Lading or the

Bill of Entry which is in the form of paper. The Alert of the subject goods being shipped from the country of origin, Pakistan came to the notice of the department of customs only after the enquiry was initiated on the basis of NCTC Alert in the year 2022, when the goods had already been cleared in the presence of the proper officer of the customs department. In view of the above the Noticee shall be not be held liable and penalty should not be imposed u/s 112 (b) (ii) and 117 of the Customs Act, 1962.

18.2. The Noticee submits that the said goods were shipped during the period, when the Covid pandemic was at its peak. It is pertinent to note that the COVID-19 pandemic presented an unprecedented challenge to public health, food systems, trade transactions and the world of work. Millions of enterprises faced and existential threat, nearly the worlds 3.3 billion global workforce were at the risk of losing their livelihoods and it was a fight for survival. During such times of acute crises, it would be inhuman to even imagine that the Noticee were conniving with the Importers by aiding and abetting in attempt to evade duty. In view of the above the Noticee shall be not be held liable and penalty should not be imposed u/s 112 (b) (ii) and 117 of the Customs Act, 1962.

18.3. The Noticee, submits that all the allegations made in the SCN and more specifically at Page 6 of the last sub-para line 4 from above, of para 7 of the SCN read as "therefore, it appears that they have deliberately mis-informed or mis stated that facts before Customs and in this case, they may also be liable for penal action are without application of mind and based on surmises and conjectures. The Noticee, submits that at para 7 of the SCN the Department has admitted to the fact that the Department has received all the relevant information from the Noticee, through Shri. Sajish Sivaraj Puthenchira (GM) who recorded his statement on 23.02.2023 and the Noticee has explained in detail the mode of operation at para 7 pg. 5 line no. 2 from above of the SCN as "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."

18.3.1 Shri. Sajish Sivaraj Puthenchira (GM) thereafter at para 7 pg. 5 line no. 11 from above of the SCN have explained the entire transaction of in respect of import of Brass Scrap Honey from M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O. Box No.371836, Dubai (UAE) in Container No.

DNAU2713461 by M/s Dhartidhan Metal Alloys along with relevant documents as stated "On being asked to explain the transactions in respect of import of Brass Scrap Honey from M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE) by M/s Dhartidhan Metal Alloys, Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat- 361006 in Container No. DNAU2713461 in Sept.2020 and submit all the related documents, he stated that Container No.DNAU2713461 was loaded from Jabel Ali on 06.09.2020 in vessel SIMA GISELLE Voy.006 and they were appointed delivery agent by their principal M/s Shah Aziz Shipping Lines LLC. In this regard, they have already submitted all the load port documents vide their mail dated 23.11.2022 from their mail id impdoc.kandla@hublinksindia.com to siibmundra@gmail.com.

18.3.2 Shri. Sajish Sivaraj Puthenchira (GM) further at Page 6 of the last sub-para at line 7 form above of para 7 of the SCN has vehemently denied that "he denied the allegations outright and stated that his company M/s Hub & Links Logistics India Put Ltd. are not the actual transporter but they acted as the agent of M/s Shah Aziz Shipping Lines LLC, Dubai who were the receiving agent at Dubai and in turn issued Bill of lading from Dubai 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 containers 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 Jabel 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 were 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."

In view of the above, the Noticee submits that, due diligence has been exercised by the Noticee and they have not violated any provisions of the Customs Act, 1962 or any other law for the time being in force. The Noticee submits that the department has not identified any mis-declaration in the form of wrong declaration of goods description, wrong declaration of country of origin, wrong declaration of quantity, wrong declaration of weight and wrong declaration of value. The Noticee submits that mis-declaration are done usually to avoid payment of customs duty and in this present case the legal obligation to pay customs duty is on the importer and the Noticee should not be roped in for the unbecoming acts of the importer.

18.4. The beneficiary for mis-classification of goods under CTH 74040022 instead of 98060000 having applicable duty as BCD @ 200% would be the importer only and at no stretch of imagination the Noticee being a Delivery Agent, earning a

nominal fee for rendering its services could be roped in as an abettor. The Noticee, is not concerned with regards to the taxes to be borne by the importer and has nothing to gain from the unlawful and illegal acts of the importer towards evasion of basic customs duty under CTH 98600000, except earning his nominal fee for delivery of goods. Therefore, all the allegations levelled on the Noticee are liable to be dropped forthwith.

18.5. The Noticee, would inter alia submit that there is no malafide intention on its part for abetting the importer in attempting to clear goods by way of mis-declaring the certificate of origin in any manner by presenting the usual procedures followed by all Shipping lines/Agents for loading export laden containers from Sharjah to Mudra, India via. Jebel Ali, as mentioned below;

- a) There is no procedure for filing EGM (Export General Manifest) with Sharjah Customs for export laden containers for loading containers from Sharjah, UAE to the rest of the world via Jebel Ali or direct from Sharjah.
- b) Shipping Line or their agents do not file any EGM for the export laden containers loading from Sharjah, UAE.
- c) Shipping Line of their Agent will submit load list with Sharjah Port.
- d) Export laden containers loaded from Sharjah Port on EX M. V. GSL MANET VOY. 117W.
- e) Shipping Line or their agent will submit the T / S discharge list and T / S manifest with Jebel Ali port, once the export laden gets loaded from Sharjah for the cargo via Jebel Ali in order to discharge the container at Jebel Ali port as T / S
- f) Shipping line or their agent will submit load list with Jebel Ali port in order to re-ship T/S laden boxes on nominated vessel to final destination.

The Noticee, reiterates that that they came to know about the switch bill of lading only after the documents were arranged by them, before that, for them it were 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. Hence, they cannot be held liable for any violation of the provisions of the Customs Act, 1962 or any other act for the time being in force.

18.6. The Noticee, submits that on a plain reading of the statement u/s 108 of the Customs Act, 1962 given by the Shri. Sajish Sivaraj Puthenchira the General Manager of the Noticee has brought out the ethical standard of the Noticee the way it has conducted its business as a Delivery Agent. The Noticee, submits that there is no iota of evidence against the Noticee in the the statements u/s 108 of the Customs Act, 1962 given by all the Noticee's that could implicate the Noticee for abetting the importer in an attempt to clear goods by way of mis-declaring the country of origin at any stretch of imagination. Thus, there is no mis-statement or suppression of facts in the statement given u/s 108 of the Customs Act, 1962 that

could hold the Noticee liable for the illegal acts of the importer. The Noticee, submits that they have come with clean hands while giving statement u/s 108 of the Customs Act, 1962 and as there is no mis-statement or suppression of facts, neither have they concealed any fact from their end pertaining to the country of origin, hence no penalty can be imposed u/s 112 (b) (ii) and 117 of the Customs Act, 1962 against the Noticee, for no fault of theirs. The Noticee is relying on the following case laws;

- i) In **Cosmic Dye Chemical v. Collector of Central Excise**, 1995 (75) E.L.T. 721
- ii) **Continental Foundation Jt. Venture v. Commissioner of Central Excise**, 2007 (216) E.L.T. 177 to which one of us (Kapadia J.)
- iii) **Commr. of Cus. (Imports), Mumbai Versus Hyundai Heavy Indus. Co. Ltd [2018 (361) E.L.T. 837 (Bom.)]**

18.7. M/s Hub & Links Logistics (I) Pvt. Ltd. has submitted that penalty u/s 112 (b) (ii) and Section 117 of the Customs Act, 1962 in not imposable on them. They have submitted as under:-

18.7.1 The Role of the Noticee, as a Delivery Agent is liaisoning between the client and government agencies, i.e., the importer and the Government agencies. Section 111 (m) of the Customs Act, 1962 pertains to Confiscation of improperly imported goods, in the present case pertaining to "misdeclaration of origin" wherein penalty is imposable u/s 112 (b) and/or 117 of the Customs Act, 1962. The Noticee has immediately provided all the material details requested by the department after being summoned, which includes:

- (i) Shipping Bill No. 830/KPEX-SB-22764 dtd. 22.08.2020 filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, 154, Street 10, Akber Road, Block A; marked as Annx-B
- (ii) Bill of Lading No. SASLMU20437 dtd. 27.08.2020 issued by CIM Shipping INC for transport of Brass scrap Honey in container no. PCLU2011890 from Karachi Port to Jabel Ali; marked as Annx-C
- (iii) Bill of Lading No. SASLMU20437 dtd. 06.09.2020 issued by Shah Aziz Shipping Lines LLC for transport of Brass scrap Honey in container no. PCLU2011890 from Jabel Ali to Mundra, marked as Annx-D

The Noticee, submits that as they have not violated the provisions of Section 111 (m) of the Customs Act, 1962 pertaining to Confiscation of improperly imported goods, penalty u/s 112 (b) (ii) and 117 of the Customs Act, 1962 cannot be thrusted on the Noticee, without application of mind.

18.7.2. The Noticee has neither committed nor abetted nor committed to do anything which can render the goods liable for confiscation under section 111 of the Customs Act, 1962, hence, no penalty under section 112 (b)(ii) can be imposed on the Noticee.

18.7.3. The Noticee would also like to mention that they have not done any wrong act knowing and intentionally instead they have followed due process of law as per the laws governed by UAE govt. Therefore, no penalty under section 117 can be imposed on the Noticee.

18.7.4. No incriminating statement against the Noticee No. 7 by any person for any kind of allegation or abetment has been recorded in the SCN.

18.7.5. The Noticee relies on the following case laws:

- i) K. KAMALA BAI Versus COMMISSIONER OF CUS. & C. EX., TRICHY [2005 (186) E.L.T. 459 (Tri. - Chennai)]
- ii) PAWAN KUMAR SINGH Versus COMMR. OF C. EX. (ADJUDICATION), NEW DELHI [2017 (357) E.L.T. 186 (Tri. - All.)]
- iii) SAJID KHAN Versus COMMISSIONER OF CUSTOMS (EXPORT), NHAVA SHEVA [2019 (370) E.L.T. 793 (Tri. Mumbai)]
- iv) SACHIN KUMAR Versus COMMISSIONER OF CUSTOMS, MANGALORE [2020 (374) E.L.T. 775 (Tri. Bang.)]

18.8. The Noticee were shocked and surprised on service of SCN, after they had fully co-operated in the investigation and provided all the necessary and verifiable information supported with documentary evidence in the statement recorded u/s 108 of the Customs Act, 1962 dated 23.02.2023 (RUD-11) and the said information could not be questioned to be vague or uncertain.

In view of the contents of the information provided in the statement u/s 108 of the Customs Act, 1962 and all information provided to the department during investigation, only goes to prove that the Noticee is very transparent and honest in his dealings, thus the allegations of abetting the importer does not arise in the present case. No case of misdeclaration of country of origin and misclassification of goods under CTH 74040022 instead of 98060000 having applicable duty as BCD @200% is made out by the department against the Noticee. The entire facts of the present case goes to prove that the Noticee had neither committed nor omitted to do anything which would render the goods liable for confiscation under section 111 of the Customs Act, 1962, neither have the Noticee submitted any false and incorrect documents with the intent to abet the importer in any manner, to clear goods by way of mis-declaring the country of origin to render themselves liable for penal action u / s 112 (b)(ii) and 117 of the Customs Act, 1962.

18.8.1 The Noticee relies on the following case laws:

- 1) Jeena and Company Versus Commissioner Of Customs, Bangalore [2021 (378) E.L.T. 528 (Tri./Bang.)]
- ii) Kamal Sehgal Versus Commissioner of Customs (Appeals), New Delhi [2020 (371) E.L.T. 742 (Tri. Del.)]
- iii) Indian Acrylics Ltd. Versus Commissioner of Customs, Kandla [2015 (325) E.L.T. 753 (Tri. Ahmd.)]

18.9. The Noticee would like to submit that they are in no way directly or indirectly beneficiary in the import of the impugned goods. Their performance is irrelevant to the mis-declaration of origin of country and mis-classification of description of the goods.

18.9.1 Moreover, Noticee is neither related to the importer in any manner, nor does Noticee have any partnership with the importer. Noticee is not a beneficiary in the impugned import shipment.

18.10. The Noticee, submits that Shri. Shubam Surya (Partner) of M/s. Surya Udyog (RUD-2) in his Statement u/s 108 at Page 3 un-numbered para 5 line 3 from bottom has stated that "he made sale contract from Dubai based supplier for supply of goods and the supplier has informed that the goods are of Dubai Origin. He didn't know that the said goods are of Pakistan origin."

18.11. The Noticee further submits that Shri. Shubam Surya (Partner) of M/s. Surya Udyog (RUD-2) in his Statement u/s 108 at Page 3 un-numbered para 6 & 7 line has stated that rates of the goods were decided as per the London Metal Exchange (LME) an not on the country of origin and that he was not aware about the classification and duty of Pakistan origin goods.

In view of the above the Noticee shall not be held liable for the ignorance shown by the Importer themselves pertaining to the origin of goods from Pakistan and the Noticee shall not be held liable and no penalty shall be imposed u/s 112 (b) (ii) and 117 of the Customs Act, 1962.

18.12. Noticee would like to submit that they acted as Delivery agents 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.

18.13. Noticee, submits that the statement of Shri. Sajish Sivaraj Puthenchira, (GM) of the Noticee was recorded on 23.02.2023 u/s 108 of the Customs Act, 1962 on behalf of the Noticee. Wherein he stated that, they are the delivery agents of M / s Shah Aziz Shipping Lines LLC, Dubai. M/s Shah Aziz Shipping Lines LLC is having their own containers which are used for export/import of cargo in various ports and submitted documents.

18.13.1 Thus, it indicates that the Noticee had no malafide intention or any criminal intent (mens-reas) in the whole procedure. Furthermore, the has satisfied all the parameters regarding the containers without delay and the statement u/s 108 of the Customs Act, 1908 wherein the Noticee have provided necessary and verifiable information supported with the aforesaid documentary evidence. Without cogent evidence to show knowledge and mens-reas, the Noticee should not be penalised under Customs Act, 1962 and/or any other law for the time being in force. For this purpose, reliance is placed on the following Case Laws concerning Delivery Agent/Customs Brokers as their role is of liaison-ing, hence the ratio of the following judgements can be applied in the case of Delivery Agents:

- i) Hera Shipping Solutions Pvt. Ltd. Versus Commr. Of Customs, Chennai-IV [2022(382) E.L.T. 552 (Tri.- Chennai)]
- ii) M.S. EXIM SERVICES Versus C.C., LUDHIANA [2021 (377) E.L.T. 615 (Tri. Chan.)]
- iii) Jaiswal Steel Processing Versus Commissioner Of Central Excise [2014 (306) E.L.T. 159 (Chhattisgarh)]
- iv) Commissioner Of C. Ex., Chandigarh Versus Pepsi Foods Ltd. [2010 (260) E.L.T. 481 (S.C.)]
- v) P.D. Manjrekar v/s Commissioner of Customs (EP), Mumbai [2008 (230) ELT.515 (Tri.-Mumbai)]

18.14. On the basis of the above, penalty under section 112(b)(ii) and 117 should not be imposed on the Noticee. The Noticee further submits that importing the container/goods from Karachi, Pakistan to Sharjah, UAE was not made known to them, neither it was in their knowledge or notice that what was the previous load port other than Jabel 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 pertaining to the query raised by the department, before that, for them it was the original bill of lading i.e., Jabel Ali, UAE. 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. Thus, the Noticee had no knowledge of the aforesaid acts carried out by the importer and cannot be accused/charged for the importers unbecoming acts. Hence, the allegations levelled in the SCN are liable to be dropped in toto.

18.15. The Noticee would like to submit inter-alia that in the international trade the issuing of switch Bill of Lading is a common/ usual practice when the traders do not want to disclose actual supplier to the consignee/ buyer; that this a common practice in the internationally trade to conceal the details of actual supplier so as to secure their clientele/ business operation details. This has nothing to do with the import duty structure of the importing country.

18.15.1 Furthermore, the Noticee is not the beneficiary of duty evasion, if any, done by the importer.

18.15.2 Therefore, the Noticee has no intention to hide the information. The actual fact is that they did not about that switch Bill of Lading till those documents were arranged for investigation by the SIIB, Mundra Custom House. It shows that the Noticee was ignorant about the switch BL. Hence, the Noticee cannot be held responsible for issuing switch Bill of Lading because they were not aware of that. Therefore, the Noticee has neither committed nor omitted to do anything which can render the goods liable for confiscation under section 111 of the Customs Act, 1962. Hence no penalty under section 112 or section 117 of the Customs Act, 1962 is imposable on the Noticee.

18.16. The Noticee wishes to be heard in person before the case is adjudicated.

18.17 The M/s. Hub & Links Logistics(I) Pvt Ltd vide letter dated 01.04.2024 has filed additional following submissions:-

18.17.1 SCN itself says that cause of alleged act was in knowledge of Principal of Noticee, implying that Noticee did not know that shipment originated from Karachi instead of Jable Ali. Noticee cannot be held liable for the knowledge on part of their Principal. The subject BL was issued by Shah Aziz Shipping Lines Dubai. Noticee, being an agent of their principal Shah Aziz Shipping Lines Dubai cannot be held liable for the alleged act committed by the principal unless and until Noticee too had prior knowledge thereof.

18.17.2 Noticee is an agent of Shah Aziz Shipping Lines Dubai, in India for coordination with vessel operator / agent and also act as a Delivery Agent in imports. Bill of Lading is issued at Port of Export. No malafide intention Noticee collected all documents /information from their Principal and gave it to the Investigating Agency immediately.

18.17.3 Sec. 112 not applicable: No penalty can be imposed u / s 112(a)(ii) in absence of any knowledge on part of the Noticee.

18.17.4 Sec 117 not applicable: No penalty can be imposed u/s 117, if there

is no contravention of Customs Act is alleged against the notice.

18.18. In view of above submissions, M/s Hub & Links Logistics (I) Pvt. Ltd., has submitted that the penalty proposed in the may be SCN be dropped.

PERSONAL HEARINGS

19. Opportunity of personal hearing in the case was given to the Noticees on 06.02.2024, 28.02.2024 & 03.04.2024 under the provisions laid down in Customs Act, 1962 and following the principles of natural justice.

19.1. 1st PH on 06.02.2024:

No one appeared in the personal hearing fixed on 06.02.2024

19.2. 2nd PH on 28.02.2024:

19.2.1 Shri Ashwani K. Prabhakar, Advocate appeared on behalf of Noticee No. 2(M/s Hub & Links Logistics (I) Pvt. Ltd.) in the personal hearing held today on virtual mode. He reiterated his submission dated 13.01.2024 and additional submission dated 28.02.2024. He elaborately explained the role of noticee and requested to drop proceedings initiated them in the Show Cause Notice.

19.3. 3rd PH on 03.04.2024:

19.3.1. Shri Vikas Mehta, Authorized Representative/Consultant appeared on behalf of M/s Dhartidhan Metal Alloys(Importer). He reiterated his earlier submission made vide letter dated 01.04.2024

DISCUSSION AND FINDINGS

20. 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 27795 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No. DNAU2713461 under Chapter Tariff Heading No.74040022 under BoE No.8839340 dated 16.09.2020 is liable to be rejected and the same is 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 27795 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No.DNAU2713461 under BoE No.8839340 dated 16.09.2020 valued at **Rs.80,67,490/- (Rupees Eighty Lakh Sixty Seven**

Thousand Four Hundred Ninety only) is liable for confiscation under Section 111 (m) of the Customs Act, 1962;

(iv) Whether the differential Customs Duty of **Rs. 2,06,81,414/- (Rs. Two Crore Six Lakh Eighty One Thousand Four Hundred Fourteen 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 Hub & Links Logistics (I) Pvt. Ltd.**, the Shipping Line Agent is liable to penalty under the provisions of Section 112 (b)(ii) and Section 117 of the Customs Act, 1962.

21. 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. Dhartidhan are mis-classified under customs Tariff Item 25191000 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.

21.1. 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.

21.2. 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. 8839340 dated 16.09.2020 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 Dhartidhan Metal Alloys, Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006
Customs Broker	M/s Cargotrans Maritime Agencies Pvt. Ltd.
Bill of Entry No and date	8839340 dated 16.09.2020
Date of Out of Charge	21.09.2020

Description of goods and CTH	BRASS SCRAP HONEY AS PER ISRI (CTH 74040022)
Qty. of Goods	27.795 Mt.
Value	Rs.80,67490/-
Duty paid	BCD @2.5% Rs.201687 + SWS @10% Rs.20169 + IGST @18% Rs.1492082 = Total duty paid Rs.17,13,938/-
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.	DNAU2713461
Seal No.	93810
Country of Origin declared as	U.A.E.

21.2.1 As the intelligence received that the goods were of Pakistan Origin, tracking of aforesaid Container No. DNAU2713461 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: -

Container No:	DNAU2713461
Category:	Export
Lot No:	KPEXSB21475200820
Container Size:	20'
Weight:	29980 Kg.
Seal 1:	093810
Seal 2:	2994
Eq. Description:	20ft general
Terminal Status:	Departed
Yard Position:	
Commodity:	
VIR No.:	KAPE-0340-18092020
Vessel Name:	BOTANY BAY
Voyage:	040W
Expected Arrival:	24-Aug-2020 15:00
Expected Departure:	27-Aug-2020 04:30
Actual Arrival:	24-Aug-2020 16:48

From the above details, it becomes clear that the container no. DNAU2713461 having Seal No.093810 has left from PKKHI (i.e. Port of Karachi) for the destination AEJEA (i.e. Port of Jabel Ali) on 27.08.2020 through vessel "Botany Bay 040W.

21.3 I find that Sh. Khatod Nirav Suresh, Proprietor of firm M/s Dhartidhan Metal Alloys in his statement tendered before the SIIB on 07.04.2022 under Section 108 of the Customs Act, 1962 has confirmed that the details of container no. and seal no. mentioned in the BL No. SASLMU20408 dated 06.09.2020 and PICT (tracking website of PICT i.e. <https://pict.com.pk/en/online-tracking>) documents are same.

21.4 During the investigation, M/s Hub & Links Logistics (I) Pvt. Ltd., Suite No.101, Rishabh Arcade, Near to GST Bhawan, Plot No.83, Sector-8, Gandhidham-370201 vide email dated 23.11.2022 provided the following Load Port Documents of the container no. DNAU2713461 pertaining to M/s Dhartidhan Metal Alloys for the import of Brass Scrap Honey :

(i) Copy of Shipping Bill No. 1059/KPEX-SB-21475 dtd. 20.08.20 filed with Custom Office, MCC Export, Karachi by M/s Concrete Metal Traders, D 185 B.F.Q.Compound Haroonabad, Sher Shah Karachi (Pakistan) for export of 27.795 MTs. of Brass Scrap Honey to M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE) in Container No. DNAU2713461.

(ii) Copy of Bill of Lading No. SASLMU20408 dtd.27.08.2020 issued by CIM Shipping INC wherein shipper is mentioned as "M/s Concrete Metal Traders, D 185 B.F.Q.Compound Haroonabad, Sher Shah Karachi (Pakistan), Consignee/ Notify party as M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE), load port as Karachi and port of discharge as Jabel Ali for transport of 27795 Kgs. of Brass Scrap Honey in Container No. DNAU2713461 having Seal No. 093810.

(ii) Copy of Bill of Lading No. SASLMU20408 dtd.06.09.2020 issued by Shah Aziz Shipping Lines LLC wherein shipper is mentioned as "M/s Al Julnar International FZE, Office No.6WB 437, Dubai Airport Free Zone, P.O.Box No.371836, Dubai (UAE), Consignee/ Notify party as M/s Dhartidhan Metal Alloys, Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006, load port as Jabel Ali and port of discharge as Mundra for transport of 27795 Kgs. of Brass Scrap Honey in Container No. DNAU2713461 having Seal No. 093810.

21.4.1 From the above documents submitted by M/s. Hub, it is clearly evident the impugned goods loaded in Container no. DNAU2713461 having seal no. 093810 was dispatched from Karachi to Jabel Ali and reached at Mundra Port with the same seal no. 093810. The chronology of dates also indicates clearly that the goods were loaded at Karachi for onward movement to Mundra through Jebel Ali.

21.4.2 Further, I find that during the recording of statement by SIIB on 07.04.2024, Shri Saji Sivaraj Puthenchira, General Manager of M/s Hub, on being shown the above documents provided by them, agreed that Brass Scrap Honey Container

No. DNAU2713461 having seal no.093810 had been loaded from Karachi Port and it has reached Mundra via Jabel Ali.

21.5 As Import of metallic waste and scrap is subject to pre-inspection certificate (PSIC) from the country of origin, the verification of PSIC No. 036/AJUL-RN/NFAA0234/2020 dated 09.08.2020 issued by M/s Ravi Energie Gulf FZC, P.O. Box No.16241, UAE was conducted by SIB. In order to verify the genuineness of the PSIC, an email dated 13.02.2023 was sent to the M/s Ravi Energie Gulf FZC , however no reply received from them. Since the PSIC inspection agencies are approved by the Directorate General of Foreign Trade (DGFT) and therefore, from the website <https://www.dgft.gov.in> of DGFT, list of all the PSIC agencies was checked and found that there no agency in the name of M/s Ravi Energie Gulf FZC has been authorised by the DGFT to issue PSIC certificate. In the entire list available on the DGFT website, there are only two agencies having the name of “RAVI” was found. The details of two agencies are as under:

1. Ravi Energie Pvt. Ltd., address :202 Manubhai Towers, B, Sayajigunj INDIA Baroda Gujarat 390005; mail id -india@ravienergie.com; Area of operation- **MALDIVES, MAURITIUS, SRI LANKA.**
2. Ravi Energie Inc. 1200 Route 22, Suite 2000 UNITED STATES Bridgewater New Jersey 08807 mail id -“americas@ravienergie.com”; Area of operation- UNITED ARAB AMIRATES and others

Further, to ascertain the genuineness of PSIC, enquiry was also made with the above mentioned two agencies duly authorised by DGFT and mail dated 30.11.2022 was sent to Ravi Energie Pvt. Ltd., (sr.no. 1 above) from this office mail siibmundra@gmail.com for confirming the genuineness of PSIC certificate and they have replied vide mail dated 30.11.2022 that it does not pertain to them. Further, mail was also sent to Ravi Energie Inc. vide mail dated 30.03.2023 from the mail id rajks.g019401@gov.in and they have also confirmed that the said PSIC certificate was not issued by them vide mail dated 30.03.2023.

21.5.1 In view of above, I observe that the PSIC certificate submitted by the importer is fake and fraudulent in as much as it has been issued in the name of M/s Ravi Energie Gulf FZC which has not been authorised by the DGFT and the container no. DNAU2713461 having seal no.093810 was not opened at Jabel 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 .

21.6 From the facts and evidences on the records, I find that Container No. DNAU2713461 was loaded from Karachi Port and it has reached Mundra via Jabel 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, I hold that 27.795 MTs. of Brass Scrap Honey loaded in the container no. DNAU2713461 having seal no. 093810 was originated from Islamic Republic of Pakistan.

REJECTION OF CLASSIFICATION AND RE-CLASSIFICATION OF GOODS

22. 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. 8839340 dated 16.09.2020 were of Pakistan origin, now I proceed to classify the said goods.

22.1 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 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.

22.2 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 CTI 98060000 of Customs Tariff Act, 1975 and importer is liable to pay differential duty of Rs. 2,06,81,414/- as calculated in Table-B of Show Cause Notice under Section 28(8) of Customs Act, 1962. I hold so.

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

23. 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.

23.1 The importer has contended that Section 28(4) of Customs Act, 1962 cannot be invoked in the present case as there is no "willful mis-declaration of Country of Origin". They 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.

23.1.1. 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 was 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 goods have will originated from other country

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, the importer appears to 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. 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.

23.2 The facts and evidences placed before me clearly states that the Importer was willfully indulged in mis-stating and suppressing the fact that the goods were of Pakistan Origin. 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 shared by NCTC and investigation by SIIB. The importer had mis-declared the Country of Origin of such goods covered under the said Bills of Entry, as UAE. 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 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.

23.3 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:

24. 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;"

24.1 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.

24.1.1 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. Accordingly, I hold that the impugned goods are liable for confiscation under Section 111(m) of Custom Act, 1962.

24.2 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. 8839340 dated 16.09.2020. 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.

24.3. As regards applicability of redemption fine on goods, Bill of Entry No. 8839340 dated 16.09.2020, the goods have never been neither seized nor provisionally released; on the contrary, the goods imported by them have been allowed to be cleared for home consumption. 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 Kripalspat 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.

24.4 In this regard, I find that the goods imported Bill of Entry No. 8839340 dated 16.09.2020 were neither seized nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A ibid covering recovery of redemption fine is available. I, therefore, find that redemption fine cannot be imposed in respect of goods Bill of Entry No. 8839340 dated 16.09.2020.

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

25. I find that section 114A of Customs Act, 1962 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 Sub-section (8) of Section 28(8) ibid, is also liable to pay penalty under section 114A.

25.1 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. Had the investigating agency i.e. SII 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.

25.2 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.

25.3 I find that there is a mandatory provision of penalty under section 114A of Customs act, 1962 where duty is determined under Sub-Section (8) of Section 28 of Customs act, 1962. Therefore, I refrain from imposing penalty under section 112(a)/112(b) of Customs act, 1962.

25.4 As regards imposition of penalty under Section 114AA of Customs Act, 1962 on M/s. Dhartidhan, 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. Dhartidhan 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 M/s Hub & Links Logistics (I) Pvt. Ltd. under Section 112(b)(ii) and 117 under the Customs Act, 1962.

26. I have carefully examined the proposals for imposition of penalty on M/s Hub under Section 112(b)(ii) and 117 of Customs Act, 1962. M/s. Hub & Links Logistics (I) Pvt. Ltd. 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*".

26.1. Shri Sajish Sivaraj Puthenchira, General Manager of M/s Hub in his statement tendered before SIIB on 23.02.2023 has stated that they are agent of M/s Shah Aziz Shipping Lines LLC, Dubai. M/s Shah Aziz Shipping Lines LLC is 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. M/s Hub are not the actual transporter but they acted as the agent of M/s Shah Aziz Shipping Lines LLC, Dubai who were the receiving agent at Dubai and in turn issued Bill of lading from Dubai 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 containers 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 Jabel 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.

26.2 I find that Section 112(b) of Customs Act, 1962 pertains 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 Hub** had a role in such activities which makes him liable for penalty under Section 112(b) of Customs Act, 1962. Therefore, I do not find any reason to impose penalty on him under Section 112(b)(ii) of Customs Act, 1962.

26.3 As regards imposition of penalty on **M/s Hub** under Section 117 of Customs Act, 1962, during the investigation, M/s. Hub had submitted copy of Shipping Bill No. 1059/KPEX-SB-21475 dtd. 20.08.20 filed with Custom Office, MCC Export, Karachi, Copy of Bill of Lading No. SASLMU20408 dtd.27.08.2020, Copy of Bill of Lading No. SASLMU20408 dtd.06.09.2020 issued by Shah Aziz Shipping Lines LLC. On being shown the said documents to Shri Sajish Sivaraj Puthenchira, General Manager of M/s Hub during statement recorded on 23.02.2023, Shri Sajish Sivaraj stated that he understands that 27795 Kgs. Kgs. of Brass Scrap Honey were loaded in Container No. DNAU2713461 having seal no.093810 from Karachi Port and it has reached Mundra via Jabel 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 Principals. I find that M/s Hub 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.

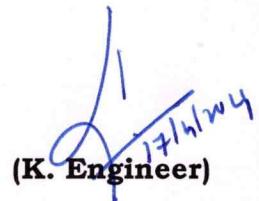
27. In view of above discussion and findings, I pass the following order: -

ORDER

- (i) I reject the Classification of 27795 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No. DNAU2713461 under Chapter Tariff Heading No.74040022 under BoE No.8839340 dated 16.09.2020 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. Dhartidhan for availing the benefit of BCD @ 2.5%;
- (iii) I order to confiscate total quantity of 27795 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No.DNAU2713461 under BoE No.8839340 dated 16.09.2020 valued at **Rs.80,67,490/- (Rupees Eighty Lakh Sixty Seven Thousand Four Hundred Ninety only)** under Section 111 (m) of the Customs Act, 1962; Since, the goods are neither available nor released provisionally under Bond, I refrain from imposing redemption fine on lieu of confiscation;
- (iv) I confirm the demand of differential Customs Duty of **Rs. 2,06,81,414/- (Rs. Two Crore Six Lakh Eighty One Thousand Four Hundred Fourteen only)**, as detailed in Table B of Show Cause Notice and order to recover the same from M/s.Dhartidhan under the provisions of Section 28(8) read with 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. 2,06,81,414/- (Rs. Two Crore Six Lakh Eighty One Thousand Four Hundred Fourteen 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. Dhartidhan under the provisions of Section 114A of the Customs Act, 1962;
- (vi) I refrain from imposing penalty on M/s. Dhartidhan 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. 5,00,000 (Rs. Five Lakh only)** on M/s. Dhartidhan under the provisions of Section 114AA of the Customs Act, 1962;
- (viii) I refrain from imposing penalty on **M/s Hub & Links Logistics (I) Pvt. Ltd.**, the Shipping Line Agent under the provisions of Section 112 (b)(ii) of the Customs Act, 1962 for the reasons discussed above;

(ix) I impose a penalty of **Rs. 50,000 (Rupees Fifty Thousand only)** on M/s. **Hub & Links Logistics (I) Pvt. Ltd.**, the Shipping Line Agent 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/121/2023-Adjn

Date:- 17.04.2024

DIN: 20240471MO0000666F9E

By RPAD/Email/Speed Post

To (Noticees):

- (1) M/s Dhartidhan Metal Alloys, Plot No.3, Godown A/B, Survey No.221P, 231, & 234, Lakhabawal, Jamnagar, Gujarat-361006;
- (2) M/s Hub & Links Logistics (I) Pvt. Ltd., Suite No.101, Rishabh Arcade, Near to GST Bhawan, Plot No.83, Sector-8, Gandhidham- 370201.

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

- a. The Chief Commissioner of Customs, CCO, Ahmedabad.
- b. The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
- c. The Deputy/Assistant Commissioner (SIIB), Customs House, Mundra
- d. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- e. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- f. Notice Board