



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

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DIN - 20250971MN0000611086

क	फ़ाइल संख्या FILE NO.	S/49-276/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-208-25-26
ग	पारितर्कता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.09.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AK/128/2024-25 dated 27.08.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Ashapura Shipping Agency, Office - 113, 1st floor, Manali Tower, Sector-8, Opp. Bomzim Corporate Office, Gandhidham



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को अहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेंद्र के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दाखल करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जफती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपये दो सौ मात्र) या रु. 1000/- (रुपये एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Ra.200/- (Rupees two Hundred only) or Ra.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपील अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मागे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील :- अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

ORDER-IN-APPEAL

Appeal has been filed by M/s. Ashapura Shipping Agency, Office - 113, 1st floor, Manali Tower, Sector-8, Opp. Bomzim Corporate Office, Gandhidham (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/128/2024-25 dated 27.08.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit suggested that M/s. Aadinath Enterprise, were illegally importing 'Green Peas' falling under CTH No. 07131020 of Customs Tariff at Mundra port in an import consignment covered under Bill of Entry No. 8074974 dated 30.03.2022 having declared description of goods as 'Black Eye Beans'. The intelligence further indicated that as per the prevailing import policy, the import of Green Peas was restricted and subject to Minimum Import Price (MIP) of Rs. 200/- CIF per KG. Further, the import of Peas shall be subject to an annual (fiscal year) quota of 1.5 lakh MT as per procedure notified by Directorate General of Foreign Trade (DGFT) and it will be subject to Minimum Import Price (MIP) of Rs. 200/- CIF per KG and above and import is allowed through Kolkata sea port only. Intelligence further suggested that to bypass the restrictions imposed under Foreign Trade Policy; M/s. Aadinath Enterprise had arranged concealment of bags of Green Peas behind the bags of Black Eye Beans and also manipulated the import documents.

2.1 Acting upon the intelligence, investigation was initiated by DRI with respect to the subject consignment but it was gathered that the said consignment was already cleared from Customs as the subject Bill of Entry No. 8074974 dated 30.03.2022 was given out of charge on 05.04.2022 having following particulars: -



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Table -I

Invoice No. & Date	Bill of Lading No.	Name and address of the shipper/supplier	Container Number	Port of export	Declared Description of goods	Qty. (KG)	Declared assessable Value (Rs.)	Duty payable
EXP0375 dated 09.03.2022	TSVAEJEA 22025052 Dated 22.03.2022	M/s. Akshar General Trading LLC, P.O. Box 127254, Dubai, UAE	CRXU3192857 GLDU3920111	Jebel Ali Port, Dubai	Black Eye Beans (CTH No. 07133500)	26085 26085	2482888.02	NIL in terms of Notification No. 50/2017

2.2 On being inquired, it was gathered that the subject consignment having 02 containers was cleared from M/s. Seabird Marine Service (Gujarat) Pvt. Ltd. (Seabird CFS), Mundra on 05.04.2022 and the containers were mounted on truck trailers as detailed below :-

Table -II

Sl. No.	Container No.	Gate Pass No. and date (RUD No. 2)	Truck Trailer No.	Net Weight of Cargo (KG)
1	CRXU3192857	152775 dated 05.04.2022	GJ 12 Z 2537	25150
2	GLDU3920111	152776 dated 05.04.2022	GJ 12 Z 9700	24340

2.3 In order to locate the subject consignments, inquiries were carried out with the concerned owner of aforementioned Truck Trailers vide which the subject consignments were taken out of the CFS [M/s. Seabird Marine Service (Gujarat) Pvt. Ltd.], Mundra port. It was gathered that such Truck Trailers bearing Registration No. GJ 12 Z 2537 and GJ 12 Z 9700 were pertaining to one Shri Divyesh Patel of M/s. Galaxy Logistics, Mundra. Statement of Shri Divyesh Jamnadas Patel, Partner of M/s. Galaxy Logistics, Mundra was recorded under Section 108 of Customs Act, 1962 on 06.04.2022. In his statement, Shri Divyesh Jamnadas Patel inter alia stated that their Firm was having two trucks which were looked after by their Supervisor Shri Amitbhai. On being asked about the movements of truck trailers with loads since last 2 days, he confirmed that on receiving phone call from DRI, they had stalled both of their vehicles in as where they were positioned in GIDC, Mundra; that after DRI hold, he alongwith others had seen their truck trailers and empty containers were checked by opening



doors.; that Green peas were seen scattered on floors of both containers as well as in between space of containers. He added that from the containers mounted on his trailers, the bags were transferred into other trucks; that it was also observed that at the place of crossing the seeds of green p eas and paper stickers of FSSAI were found lying in dust in those labels "Madagascar Origin" & "Black Eye Beans" and exporter was shown Akshar General Trading LLC Dubai and importer was shown Cypher one 8 Thane, Maharashtra was seen printed. On being asked about the Truck Numbers of transferred goods and people present, he stated that their drivers informed that they did not remember those truck numbers but they would identify drivers if confronted.

2.4 Statement of Shri Amit Sureshbhai Lodaya, Manager cum Supervisor of M/s. Galaxy Logistics, Mundra was recorded under Section 108 of Customs Act, 1962 on 06.04.2022. In his statement, Shri Amit Sureshbhai Lodaya interalia stated that he was Supervisor in M/s. Galaxy Logistics and he was handling work relating to trucks 9700 & 2537; that he used to take bookings on phone as per orders, billing, recovery, coordinating with drivers for loading and unloading with respect to said 02 trucks. Shri Amit Sureshbhai Lodaya further stated that driver Dinesh bhai used to drive truck no. GJ 12 Z 9700 and his mobile No. is 9879005696 and Shri Ramji Kaka driver was running truck no. GJ 12 Z 2537 whose mobile No. was 9687794483. Shri Amit Sureshbhai Lodaya further stated that the work related to repairing of trucks etc. were looked after by their active partner Shri Divesh Patel. On being asked about bookings done on 05.04.2022 and 06.04.2022 with respect to said two trucks, Shri Amit Sureshbhai Lodaya stated that he had received call from cell No. 704655888 of Customs Broker Shri Nimeshbhai Bhanushali on 05.04.2022 at 07.10 evening and he had booked both vehicles for loading and had given drivers numbers to Shri Nimeshbhai and gave Nimeshbhai's number to his drivers; that he informed the drivers that they had to take loading from Seabird CFS. He further stated that he was not informed as to what talks had taken place between drivers and the said Customs Broker and when the loaded trucks were cleared from Seabird CFS; that at around 09.00AM to 10.00 A.M. on 06.04.2022, the drivers

telephonically informed him that the trailers were emptied; that as per telephonic instructions received by him about holding of containers, he had stalled both the trailers which were lying there at GIDC.

2.5 On being asked who was Shri Nimesh Bhanushali, Shri Amit



Sureshbhai Lodaya stated that as per his knowledge Shri Nimeshbhai was of M/s H.V. Logistics and he was working on Customs Broker Licence of M/s. Ashapura Logistics (M/s. Ashapura Shipping Agency). He further stated that after DRI hold on 06.04.2022, he visited that GIDC where 02 empty containers were seen by all present and empty containers were got opened for inspection; that on floors of both the containers and in space between trucks and container scattered Green peas were seen; that the officers had enquired about the destination of goods, on which drivers lead to a place little ahead opposite blue coloured gate where driver Ramjikaka informed that the goods from his trailer GJ 12 Z 2537 were transferred to closed body truck and the bags of the other truck were transferred to other open truck between 05 to 07 AM through labourers. Further, the place where transfer was made, Green peas were found scattered on road with the few FSSAI stickers. He added that on opening stickers of FSSAI, there were printed "MADAGASCAR Origin Black Eye Bean" and exporter Akshar Goods Trans LLC Dubai and importer was Cypher one8 Thane, Maharashtra which was seen. On being asked about truck No. in which goods were transferred, Shri Amit Lodaya informed that it was responded by drivers that Number plates were not remembered but they can identify drivers if confronted.

2.6 Search was carried out at the office premises of Customs Broker M/s. Ashapura Shipping Agency, Office No. 113, Plot No. 110, 1st Floor, Manali Tower, Opp.- Bom Gim Office, Sector-8, Gandhidham (Kutch) under Panchnama dated 06.04.2022. During the course of search, various incriminating documents were resumed from which it was noticed that other Firms Viz. M/s. H.V. Logistics (Prop. Arjun Bhanushali of M/s H.V. Logistics) and M/s. Sarveshwara Logistics (Prop. - Shri Nimesh Bhanushali of M/s Sarveshwara Logistics) were also running from the same premises. A team of DRI officers visited the office premises of declared importer M/s. Aadinath Enterprise, Above Maruti Alloys, 4, Vaid Vadi, Near Tapulal Dasani Estate, Gondal Road, Rajkot to carry out search operation at the office premises of importer. However, the

premise was found locked and on being inquired, it was gathered that Shri Yogesh Patel of M/s. Aadinath Enterprise was out of station and on being telephonically contacted, Shri Yogeshwar C. Panchani assured to reach the premises by the evening but in spite of waiting for more than 4-5 hours, he did not arrive at the premises and later on his mobile phone was found switched off. The visiting officers then sealed the office premises in presence of two independent ~~Parichas~~ under Panchnama dated 06.04.2022.



2.7 Acting upon the intelligence, DRI officers called back the said two trucks carrying subject imported goods, through the aforesaid transporter Shri Lokendra Singh Rathod, Proprietor of M/s. Shree Ram Carrying Corporation, Mundra on 06.04.2022. The consignment was taken back to Mundra port and DRI officers carried out 100% examination of the subject goods imported vide aforesaid Bill of Entry under Panchnama dated 07.04.2022 drawn at M/s. Hind Terminals Pvt. Ltd CFS, Mundra in presence of two independent Panchas and following private persons: -

- (i) Shri Bharat Bhanushali, Employee of Customs Broker Firm M/s. Ashapura Shipping Agency and forwarder Firm M/s. H.V. Logistics
- (ii) Shri Suresh Bhanwarlal, Employee of Customs Broker Firm M/s. Ashapura Shipping Agency and forwarder Firm M/s. H.V. Logistics
- (iii) Shri Lokendra Rathod, Prop. of transporter Firm M/s. Shree Ram Carrying Corporation
- (iv) Shri Ramesh Chand, Driver of a Truck No. HR 67 C 2807
- (v) Mr. Anish Khan, Driver of a Truck No. HR 55 U 3048
- (vi) Shri Vijayraj and Shri Uresh Davda, Executives of Hind Terminal, CFS, Mundra

2.8 During the Panchnama proceedings, Shri Bharat Bhanushali further stated that after clearance of the said consignment covered under Bill of Entry no. 8074974 dated 30.03.2022 from Customs, the concerned two containers CRXU3192857 and GLDU3920111 were placed/mounted on trailer no. GJ 12 Z2537 and GJ 12 Z 9700 to take them out of Mundra port and subsequently the said imported goods stuffed in these two containers bearing no. CRXU3192857 and GLDU3920111 were shifted/loaded to 02 trucks bearing Reg. No. HR 67 C 2807 and HR 55 U 3048. The following two invoices and e-way

bills were prepared by the key persons involved in the smuggling showing transportation of subject goods from Mundra to Maharashtra but they had mentioned the place of dispatch as Thane and place of delivery to Barave, Kalyan West, Maharashtra :-

Invoice No. & Date	E-way Bill No. & Date	Vehicle No.	Name and address of the Seller	Name and address of the buyer	Declared Description of the goods	Qty.



114 Dated 06.04.2022	201414670416 dated 06.04.2022 (From Thane to Barave, Kalyan West)	HR55U3048	M/s CYPHER ONE8, Shop No. 4&5, Plot No. 102, Samadhan CHSL, Sector-2, Koparkhairn e, Navi Mumbai, Thane- 400709	M/s Adiyogi Enterprises, Room No. 1, Hazare Building, Near Shankar Temple, Kalyan, Thane- 421301, Maharashtra	Black Eyed Beans	26085 Kgs.
113 Dated 06.04.2022	201414669133 dated 06.04.2022 (From Thane to Barave, Kalyan West)	HR67C2807			Black Eyed Beans	26085 Kgs

2.9 On realization that the said e-way bills were having wrong particulars of place of dispatch, following two fresh e-way bills were prepared by the key persons and sent to the transporter/drivers of said trucks through Shri Ronak Bhadra.

Invoice No. & Date	E-way Bill No. & Date	Vehicle No.	Name and address of the Seller	Name and address of the buyer	Declared Description of the goods	Qty.
114 dated 06.04.2022	221414822282 dated 06.04.2022 (From Mundra to Barave, Kalyan West.)	HR55U3048	M/s CYPHER ONE8, Shop No. 4&5, Plot No. 102, Samadhan CHSL, Sector- 2, Koparkhairne, Navi Mumbai, Thane- 400709	M/s Adiyogi Enterprises, Room No. 1, Hazare Building, Near Shankar Temple, Kalyan, Thane- 421301, Maharashtra	Black Eyed Peas	26085 Kgs
113 dated 06.04.2022	271414817692 dated 06.04.2022 (From Mundra to Barave, Kalyan West.)	HR67C2807			Black Eyed Beans	26085 Kgs

2.10 During the examination process, white PP bags were found stacked in the trucks and the PP bags were stucked with the two type of labels in which

the description of goods were mentioned as 'Black Eye Bean'. During examination, the officers started poking the bags stacked in the trucks and it was noticed that some bags are stuffed with the light brown colour beans and others with pale green granules which prima facie appeared as 'Green Peas'. The goods found in the form of pale green granules were 'Green Peas' and other goods found as light brown colored beans were found to be 'Black Eye Beans'. On counting of bags which were of 30 KG each, 'Green Peas' having total weight 44250 Kgs were found concealed in the import cargo of declared description.



'Black Eye Beans' having total weight 5730 Kgs, as tabulated below:-

Truck No.	Green Peas		Black Eye Beans	
	No. of Bags	Qty. @30 Kg per Bag	No. of Bags	Qty. @30 Kg per Bag
HR67C2807	722	21660	98	2940
HR55U3048	753	22590	93	2790
Total	1475	44250	191	5730

2.11 After examination, the entire subject goods were handed over to CFS representative Shri Uresh Davda under Supratnama dated 09.04.2022 for safe custody who was directed by DRI officer not to release/remove or deal or part with the goods without prior permission from the proper officer/competent authority. In terms of DGFT Notification No. 37/2015-20 dated 18.12.2019 issued under Section 3 of Foreign Trade (Development & Regulation) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-20 as extended, the import of Green Peas is restricted and subject to Minimum Import Price (MIP) of Rs. 200/- CIF per KG as per the Import Policy of Green peas. Import of Peas shall be subject to an annual (fiscal year) quota of 1.5 lakh MT as per procedure notified by DGFT and it will be subject to Minimum Import Price (MIP) of Rs. 200/- CIF per KG and above and import is allowed through Kolkata sea port only. Thus, the Green Peas were imported at Mundra port in violation of Foreign Trade Policy. Further, the importer had mis-declared the goods imported under Bill of Entry No. 8074974 dated 30.03.2022 in respect of quantity, description, classification, value. Therefore, the imported goods covered under Bill of Entry No. 8074974 dated 30.03.2022 i.e. Green Peas having quantity 44250 Kgs, appeared to be liable for confiscation under the Section 111 (d), 111 (e), 111(f), 111(i), 111(l), 111 (m), 111 (o) of the Customs Act, 1962. Further the 'Black Eye Beans' having Total weight 5730 Kgs were found liable for confiscation under Section 119 of Customs Act, 1962 in as much as the same were used for concealment of smuggled goods i.e. Green Peas. The aforesaid goods were

accordingly placed under seizure vide Seizure Memo dated 09.04.2022 under the provisions of Section 110 (1) of Customs Act, 1962.

2.12 Shri Suresh Bhanwarlal, Employee of Customs Broker Firm M/s. Ashapura Shipping Agency and forwarder Firm M/s. H.V. Logistics who was present during examination Panchnama proceedings dated 07.04.2022 had dealt with the clearance of subject consignment from Customs as field staff of

said Customs Broker. Statement of Shri Suresh Bhanwarlal was recorded under

Section 108 of Customs Act, 1962 on 07.04.2022. Statement of Shri Bondi Kesav Rao, Sr. Manager Operations of M/s. Seabird Marine Services Gujarat Pvt. Ltd, Mundra, Kutch, 370421 Gujarat recorded on 07.04.2022. 12. Statements of drivers of trucks bearing no. GJ 12 Z2537 and GJ 12 Z 9700 which were used for taking out the import containers from Seabird CFS, Mundra to GIDC, Mundra, were recorded under Section 108 of Customs Act, 1962. Statement of Shri Ramesh Chandra S/o- Shri Baisakhi Ram, R/o- Barsat, Karnal, Haryana (Driver of Truck No. HR 67 C 2807) recorded on 08.04.2022. Statement of Shri Anees S/o- Shri Mahmood, R/o- House No. 34, Village- Kangraka, Tehsil -Taoru, Mewat, Haryana (Driver of Truck No. HR 55 U 3048) recorded on 08.04.2022.

2.13 In the Bill of Lading pertaining to the subject import consignment, the name of importer was mentioned as M/s. Aadiyogi Enterprises, Room No. 1, Hazare Building, Near Shankar Temple, Kalyan, Thane-421301, Maharashtra whereas in the cway bills and invoices used for transportation of subject goods, M/s. Aadiyogi Enterprises was shown recipient/buyer of subject consignment. Hence, search was carried out at the premises of M/s. Aadiyogi Enterprises under Panchnama dated 09.04.2022. During the course of search, it was gathered that one Smt. Kanchan Sanjay Salunke was the Proprietor of M/s. Aadiyogi Enterprises. Nothing incriminating was found/resumed during search.

2.14 Statement of Smt. Kanchan S. Salunke, Proprietor of M/s. Aadiyogi Enterprises was recorded under Section 108 of Customs Act, 1962 on 09.04.2022. Further Statement of Shri Ramesh Chandra S/o- Shri Baisakhi Ram, R/o- Barsat, Karnal, Haryana (Driver of Truck No. HR 67 C 2807) recorded on 11.04.2022. Statement of Shri Lokendra Singh Rathod, Proprietor of M/s. Shree Ram Carrying Corporation, Mundra-370421 was recorded on 09.04.2022. Statement of Shri Nimesh Dhuker Alias Shri Nimesh Bhanushali, Manager of M/s. H.V. Logistics and M/s. Ashapura Shipping Agency was recorded on 12.4.2022. Statement of Shri Yogeshwar C. Panchani Alias Shri Yogesh Patel, Prop. of importer Firm M/s. Aadinath Enterprise, Rajkot was recorded on 13.04.2022. Further statement of Shri Yogeshwar C. Panchani Alias Shri Yogesh Patel, Proprietor of importer Firm M/s. Aadinath Enterprise, Rajkot was recorded on 14.04.2022. Statement of Shri Bharat Trikambhai Mange Alias Shri Bharat Bhanushali, Manager of M/s.H.V. Logistics and M/s. Ashapura Logistics, recorded on 14.04.2022. Statement of Shri Bhanushali Arjun Hansraj alias Arjun Bhanushali/Joysar, Prop. of M/s H.V. Logistics and Manager of M/s. Ashapura Shipping Agency, Gandhidham was recorded on 14.04.2022. Statement of Shri Suresh Bhanwarial was recorded under Section 108 of

Customs Act, 1962 on 15.04.2022. Further Statement of Shri Yogeshwar C. Panchani Alias Shri Yogesh Patel, was recorded on 15.04.2022 & 16.04.2022.

2.15 Search was carried out at the office premises of importer M/s. Aadinath Enterprise, Above Maruti Alloys, 4, Vaid Vadi, Near Tapulal Dasani Estate, Gondal Road, Rajkot under Panchnama dated 16.04.2022. During the search, various documents relating to import made by M/s. Aadinath Enterprise were resumed. Search was carried out at the residence premises of Shri Mahesh Bhanushali situated at 903, Cloud 36, Ghansoli, Navi Mumbai-400701 under Panchnama dated 04.05.2022. During the search proceedings, Smt. Shilpa Mahesh Bhanushali was present at his residence and she informed that Shri Mahesh Bhanushali had gone Delhi for business purpose. She stated that she was not fully aware about but his husband was in the business of import/export. Statement of Shri Mahesh Ramji Bhanushali, was recorded under Section 108 of Customs Act, 1962 on 09.05.2022. Shri Mahesh Bhanushali was arrested on 10.05.2022 and produced before Hon'ble CJM Court, Mundra on 10.05.2022 and the Hon'ble CJM Court enlarged him under the judicial custody. He filed the application for his release on bail the same day i.e. 10.05.2022 before Hon'ble CJM Court, Mundra, and the Hon'ble CJM, Mundra rejected the bail application of Shri Mahesh Bhanushali who subsequently moved the application before Hon'ble Sessions Court, Bhuj on 16.05.2022 under Section 439 of Cr. PC. He was granted conditional bail by Hon'ble Sessions Court on 21.05.2022. Further statement of Shri Bharat Bhanushali was recorded on 18.5.2022.

2.16 During the investigation, the Firm M/s. Cypher One 8 was found non-existing at the given address as discussed above. In order to carry out search at another address of M/s. Cypher One 8 gathered during investigation as 216, Rajasthan Technical Centre, LBS Road, Ghatkopar West, Mumbai -84, a team of DRI officers visited at this address on 04.05.2022 but neither M/s. Cypher One 8, nor Shri Rahul Bhanushali was found at the address as discussed in a Visit Note was accordingly prepared by the visiting officers. Similarly, at one more address of M/s. Cypher One 8 at RZ-3 and RZ-9, Village Dabri Colony, Dabri-Palam Extension, New Delhi-45 was gathered during investigation. A team of DRI officers visited the address but no Firm in the name of M/s. Cypher One 8 could be located and the visiting officers reported vide Incident Report dated 20.06.2022 that the partial/wrong address was used by the concerned key persons of M/s. Cypher One 8. Search was carried out at the residence premises of Shri Rahul Bhanushali situated at House No. A-10, Niwara Society, Himalaya

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Road, Behind Nand Kutir, Asalfa Village, Ghatkopar West, Mumbai-84 under Panchnama dated 24.05.2022 and his statement was recorded on 25.05.2022 & 26.05.2022, 01.06.2022 & 02.06.2022. Shri Rahul Bhanushali was arrested on 02.06.2022 and produced before Hon'ble CJM Court, Mundra on 03.06.2022 and the Hon'ble CJM Court enlarged him under the judicial custody. He filed the application for his release on bail the same day i.e. 03.06.2022 before Hon'ble CJM Court, Mundra, which was rejected. Shri Rahul Bhanushali then moved the application before Hon'ble Sessions Court, Bhuj under Section 439 of Cr. PC. and he was granted conditional bail by Hon'ble Sessions Court on 14.06.2022.

2.17 Statement of Shri Ronak Bhadra was recorded on 25.05.2022 & 26.05.2022. Further Statement of Shri Mahesh Bhanushali was recorded on 28.05.2022. Further Statement of Shri Yogeshwar C. Panchani Alias Shri Yogesh Patel was recorded on 04.06.2022. Further Statement of Shri Arjun Bhanushali was recorded on 06.06.2022.

2.18 The forensic data extraction from the electronic devices (mobile phones) voluntarily surrendered by the concerned persons during investigation was carried out at Cyber Forensic Laboratory, DRI Mumbai Zonal Unit, Mumbai under Panchnamas dated 24/25/26/.05.2022 and 27/28/29/30.12.2022. On analysis of mobile phone data extracted forensically from the mobile phones of key persons connected to the instant case, various Whatsapp Chat conversations/ images/ videos/ documents/ files were found in respect of the subject import consignments. As the investigation of the case was time taking process specially with respect to the analysis of mobile phone data extracted forensically and also the investigation was involving certain crucial aspects such

as role of Customs officers in examination of import consignment, non-cooperation of the Customs Broker etc., the period of issuance of notice under Section 124 of Customs Act, 1962 in respect of seizure of goods imported vide aforesaid Bill of Entry was extended for further six months by the competent authority as conveyed vide letter dated 04.10.2022 of Deputy Commissioner (Adj.), Customs House, Mundra.

2.19 The Valuation of subject import consignment covered under Bill of Entry No. 8074974 dated 30.03.2022 was carried out by Govt. approved Valuer M/s. Bhasker G. Bhatt of M/s. B.G. Bhatt & Co. As per Valuation Report bearing Ref. No. BB/DRI/G'DHAM/22/D-07 dated 28.12.2022, the market value of Green Peas and Black Eye Beans was reported as under:-



Sl. No.	Description	Qty. (KG)	Rate/KG	Value (Rs.)
1	Green Peas	44250	253	11195250
2	Black Eye Beans	5760 (5730+30)	203	1169280
	Total	50010		12364530

2.20 As per investigation, it appeared that the Bill of Entry No. 8074974 dated 30.03.2022 was under the 'First Check' and out of charges was given on 05.04.2022 without any physical examination done by the officer of Customs in spite of 100% prescribed for the consignment. It further appeared that the officers have put report of 100% examination done on system to clear the consignment which was cleared on the basis of such false examination report. Further, it also appeared that the FSSAI officer had also given the FSSAI clearance without doing proper inspection of Green Peas contained in the consignment. However, in order to get the name of officer who had carried out inspection/sampling of subject consignment for FSSAI NOC, letter dated 16.09.2022 followed by reminders dated 01.11.2022 was sent to the Authorized Officer, FSSAI, Mundra. In response, the Authorised Officer, FSSAI, Mundra vide letter dated 10.11.2022 informed that as per the Clause 5(1)(b) of FSS (import) regulations, 2017 the officers deputed by the authorized officer were assigned to carry out "visual inspection" the process in which only the physical condition of the food consignment, scrutiny of documents and compliance of packaging and labeling regulations are ascertained for the commodities declared in the BOE issued by the customs authority; that as per FSSAI office order dated 13.07.2021 they were directed by FSSAI to facilitate and carryout the clearance process of

pulses on priority without any delay to expedite clearance and hence they cannot detain any consignment without any specific reason. It was further discussed in the letter that FSSAI does not have its own intelligence department to check for the undeclared /illegal goods/commodities present in the consignments like the Customs department; that FSSAI have also not received any intelligence information's from the Customs regarding the presence of illegal goods and neither any scanning documents was shared to their office with regards to the particular consignment. It was added that the purview of FSSAI is only to check the compliance of the commodities declared in the submitted BOE to all the FSSAI act, rules, and regulations made thereafter; that the sampling of the said consignment was carried out by Technical officer Shri Vishnu A S who was presently posted at Food Import Clearance office, Mundra.




2.21 Summons dated 03.02.2023 was issued to the concerned officer Shri Vishnu A.S., Technical Officer, FSSAI, Mundra to record his statement. However, the officer did not appear and it was informed by Authorized Officer, FSSAI, Mundra vide letter dated 16.02.2023 that the matter was referred by them to Director (WR), Mumbai and FSSAI (HQ), Delhi for further direction till then it was inappropriate to send the officer for tendering statement. It was assured in the letter that once they get directions from their HQ, the same would be communicated to DRI. No further update was received from FSSAI, Mundra and the concerned officer of FSSAI did not appear to tender statement.

2.22 Statement of following officers of Customs posted in Dock Examination Section of Customs House, Mundra (I/c Seabird CFS) during the period from 30.03.2022 (Date of filing subject Bill of Entry) to 05.04.2022 (Date of clearance of subject import consignment) were recorded under Section 108 of Customs Act, 1962. Statement of Shri Anand, Inspector of CGST & Central Excise, Kalol Division, Ahmedabad Commissionerate, R/o- J3-903, Meadows Shantigram, Near Vaishno Devi Circle, Ahmedabad (the then Preventive Officer, Customs House, Mundra), recorded on 15.11.2022. Statement of Shri Lalit Kumar, Appraiser (SIIB-Import), Air Cargo Complex, Zone-III, Mumbai, (then Appraiser, Customs House, Mundra), recorded on 17.11.2022. Statement of Shri M.P. Sinha, Superintendent, Customs House, Mundra posted then in Dock Examination Section at Seabird CFS, Mundra recorded on 10.01.2023. Statement of Shri Vikas, Preventive Officer, Customs House, Mundra, recorded on 11.01.2023. Further statement of Shri Yogeshwar C. Panchani Alias Shri

Yogesh Patel, Owner/Proprietor of M/s. Aadinath Enterprise was recorded on 01.03.2023. Further Statement of Shri Bharat Trikambhai Mange Alias Shri Bharat Bhanushali, Manager of M/s.H.V. Logistics and M/s. Ashapura Shipping Agency was recorded on 09.03.2023. Further statement of Shri Bhanushali Arjun Hansraj, Proprietor of M/s. H.V. Logistics was recorded on 09.03.2023. Further statement of Shri Mahesh Ramji Bhanushali was recorded on 21.03.2023.

2.23 Investigation carried out by DRI revealed that Shri Mahesh Bhanushali is the Mastermind in this racket of organized outright smuggling and illegal import of Green Peas which is restricted for import at ports of India other than Kolkata sea port subject to fulfilment of other condition as per DGFT Notification No. 37/2015-20 dated 18.12.2019. Shri Mahesh Bhanushali assisted his friend Smt. Kanchan S. Salunke to obtain IEC in the name of her



Firm M/s. Adiyogi Enterprises using her documents. Smt. Kanchan S. Salunke was allured by Shri Mahesh Bhanushali to provide assistance in import of pulses from Dubai and sandals from China and as per version of Smt. Kanchan S. Salunke, the instant consignment having declared description of goods as 'Black Eye Beans' in two containers (CRXU3192857 and GLDU3920111) covered under Bill of Lading no. TSVATJEA22025052 dated 22.03.2022 was imported in her Firm M/s. Adiyogi Enterprises without her knowledge. Other import documents such as invoice/packing list, Certificate of Origin, were also issued in connivance with the overseas supplier M/s. Akshar General Trading LLC, Dubai in favour of M/s. Adiyogi Enterprises, Thane declaring the description of goods as 'Black Eye Beans' only whereas Green Peas were also concealed in the consignment.

2.24 In order to get cleared the subject import consignment from Customs at Mundra port, Shri Mahesh Bhanushali hatched the conspiracy with Shri Arjun Bhanushali and Shri Bharat Bhanushali as M/s. Adiyogi Enterprises was not having FSSAI License. For this purpose, Shri Arjun Bhanushali and Shri Bharat Bhanushali conspired with Shri Yogeshwar C. Panchani alias Shri Yogesh Patel, Prop. of M/s. Aadinath Enterprise, Rajkot who allowed his IEC and FSSAI license of M/s. Aadinath Enterprise to be used for clearance of subject consignment. Thus, as per a well hatched conspiracy, fabricated High Sea Sale agreement having forged signature of Smt. Kanchan S. Salunke (Prop. of M/s. Adiyogi Enterprises) and bogus High Sea Sale invoice and other related documents were arranged by Shri Rahul Bhanushali, another associate of Shri

Mahesh Bhanushali. Shri Nimesh Dhuker alias Shri Nimesh Bhanushali put forged signature of Shri Yogeshwar Panchani Alias Shri Yogesh Patel, on this High Sea Sale agreement as allowed by Shri Yogesh Patel himself. On the basis of such forged and fabricated High Sea Sale agreement and other related documents, which were merely an eyewash to clear the smuggled goods from Customs, Bill of Entry bearing no. 8074974 dated 30.03.2022 was arranged to be filed with Customs Mundra in the name of M/s. Aadinath Enterprise at Nil rate of Customs duty in terms of Notification No. 50/2017-Cus dated. 30.6.2017. A payment of Rs. 35,000/- towards late filing fee of Bill of Entry was made by M/s. Aadinath Enterprise.

2.25 Investigation revealed that though 100% examination was prescribed for the subject import consignment, no officer of Customs had attended examination of the goods and the Customs officers had uploaded examination report on systems of having done 100% examination of the goods.




Hence, without even de-stuffing of subject goods, the consignment was given out of charged and cleared from Customs. Similarly, no inspection /sampling was done by FSSAI officer with respect to the Green Peas stuffed in the containers. The 02 containers having out of charged goods were brought outside the concerned Seabird CFS of Mundra port to GIDC, Mundra using two truck trailers bearing registration no. GJ 12 Z 2537 and GJ 12 Z 9700 which were arranged by Shri Nimesh Dhuker alias Shri Nimesh Bhanushali through transporter Shri Divyesh Patel of M/s. Galaxy Logistics and his Supervisor Shri Amit Lodaya. Shri Mahesh Bhanushali was in jail at that time and hence as per his direction, Shri Anil Bhanushali was taking follow up of clearance and transportation of subject consignment. Shri Anil Bhanushali with help of Shri Ronak Bhadra arranged two trucks bearing no. HR 55 U 3048 and HR 67 C 2807 for transportation of subject goods from GIDC, Mundra to Maharashtra through transporter Shri Lokendra Singh Rathod of M/s. Shree Ram Carrying Corporation. At GIDC, Mundra the subject goods were shifted from said containers to two trucks in supervision of Shri Suresh Bhanvarlal as directed by Shri Bharat Bhanushali.

2.26 During crossing/shifting, Shri Suresh Bhanvarlal stacked the bags of imported goods in the trucks as the same were stacked in the containers that the bags of Green Peas were stuffed first in the trucks and the bags of Black Eye Beans were stacked near the door of trucks to avoid interception of concealed

Green Peas. After crossing/shifting and loading of goods from containers to trucks, Shri Suresh Bhanvarlal had taken away one bag of 30 KG imported goods 'Black Eye Beans' which were recovered from his residence premises during search carried out under Panchnama. Dated 14.04.2022. In order to ensure easy movement of the trucks from Mundra to Maharashtra (Bhiwandi/Vashi/Kalyan/Mumbai; as different version of destination were reported in statements and mentioned in documents), two e-way bills and invoices were arranged by Shri Anil Bhanushali and sent to the truck drivers through Shri Ronak Bhadra and transporter Shri Lokendra Singh Rathod. These invoices and e-way bills were showing the name of the seller of goods as M/s. Cypher One 8 (a non-existing Firm owned by Shri Rahul Bhanunshali), whereas the name of original importer M/s. Adiyogi Enterprises was shown as receiver of the goods. These invoices and e-way bills were façade, merely to avoid interception and checks of enforcement agencies, whereas no sale or transaction were even agreed between the said seller and buyer. It was astonishing that the goods were being shown as sold ultimately to M/s. Adiyogi Enterprises, who had



already shown the sale of the said goods on high sea sale basis in favour of M/s. Aadinath Enterprise.

2.27 Based on the Intelligence, the subject consignment of imported goods declared as Black Eye Beans, cleared from Mundra Port vide B/E No. 8074974, dtd.30.03.2022 filed by M/s. Aadinath Enterprise, Rajkot was followed up by officers of DRI. On being asked, the transporters of those two trucks called back both the trucks to Mundra Port from their route of destination and the examination of cargo stuffed therein was carried out under Panchnama dated 07.04.2022 drawn at M/s. Hind Terminals Pvt. Ltd. CFS, Mundra. On examination, the trucks were found loaded with two types of goods viz. 5730 Kgs Black Eye Beans and 44250 Kgs Green Peas. Hence, 44250 Kgs 'Green Peas', having market value of Rs. 1,11,95,250/- and 5760 Kgs 'Black Eye Beans', having market value of Rs. 11,69,280/- were seized vide Seizure Memo dated 09.04.2022 (including 30 Kgs 'Black Eye Beans' seized on 06.05.2022 in follow up actions). During the investigation, Shri Yogeshwar Panchani alias Yogesh Patel, Prop. Of importer Firm M/s. Aadinath Enterprise, Shri Mahesh Bhanushali, the mastermind and Shri Rahul Bhanushali, Prop. Of M/s. Cypher One 8 and associate of Shri Mahesh Bhanushali, were arrested and at subsequent stage released on bail by Sessions Court, Bhuj. Action under CBLR, 2018 were proposed against Customs Broker License of CB Firm M/s. Ashapura

Shipping Agency which resulted in suspension of License and a Show Cause Notice has been issued proposing revocation of the License.

2.28 In order to examine the role of concerned officers of Customs House, Mundra in clearance of illegally imported consignment of restricted/prohibited goods, statements of 04 Customs Officers were recorded and Summons were also issued to FSSAI officer who reportedly visited to inspected the subject import consignment but submitted NOC/Inspection Report of Black Eye Beans only. However, the FSSAI officer did not appear to tender statement.

2.29 In view of above and facts of investigation narrated in foregoing paras, it appeared that the subject 44250 Kgs Green Peas having market value of Rs. 1,11,95,250/- which have been imported illegally in the subject import consignment in concealed manner are thus smuggled goods in terms of 2(39) of Customs Act, 1962 and prohibited goods for import in as much as the main condition prescribed for its importation i.e. import through Kolkata Sea Port has not been observed in this present import. The condition stipulated for import at



Kolkata Sea port only as per the Foreign Trade Policy, was not at all complied with by the importer, in respect to the illegal import of Green peas made by them, which was sought clearance by them under the said Bill of Entry. Thus, there was evident mis-declaration with sole aim to circumvent the restrictions imposed on its import under the Foreign Trade Policy. Further, the importer has also violated the prohibitions imposed concerning the PPQ and FSSAI laws in as much as the no compliance of PPQ/FSSAI inspection has been made with respect to the concealed 44250 KG Green Peas. Moreover, it also appeared that by indulging into mis-declaration of the goods in the Bill of Entry filed by M/s Aadinath at Mundra Customs, they have violated the provisions of the Foreign Trade Policy 2015- 2020 as extended and have also committed the offence pertaining to the violation of the provisions of Section 11(1) and Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992, Rule 14 of the Foreign Trade (Regulation) Rules, 1993, where also the goods imported by them are liable for confiscation under the provisions of Section 11(8) of the FTDR Act, 1992. Thus, it appeared that the goods (44250 Kgs Green Peas) were liable to confiscation under Section 111(d) and 111 (o) of the Customs Act, 1962.

2.30 As apparent from the Panchnama of examination, facts and evidences gathered investigation and statements of key persons recorded under

Section 108 of Customs Act, 1962, the subject 44250 Kgs Green Peas were found concealed in the guise of Black Eye Beans in the import consignment and the same were not declared in the Import General Manifest filed in this case. It is apparent from the Whatsapp Chat conversations that the key persons involved such as Shri Mahesh Bhanushali his associate Shri Anil Bhanushali and Manager of Customs Broker Firm viz. Shri Bharat Bhanushali etc. were well aware about concealment of Green Peas in the subject consignment. However, in spite of working for Customs Broker, they did not bring the matter to the notice of Customs and on the contrary, while crossing/shifting of subject goods from containers to trucks at GIDC Mundra also, the bags of green peas were stuffed inside the trucks and the bags of Black Eye Beans were placed near the doors of trucks to conceal the Green Peas bags. Thus, the goods (44250 Kgs Green Peas) are liable to confiscation under Section 111(e), 111 (f) and 111 (i) of the Customs Act, 1962.

2.31 As narrated above, M/s. Aadinath Enterprise have imported the subject goods vide Bill of Entry No. 8074974 dated 30.03.2022 under gross mis-declaration and the import was made on the basis of bogus/forged High Sea Sale



agreement by adopting fraud, collusions, mis-statement and suppression of facts. As apparent from the facts and evidences gathered during investigation that the Green Peas were not declared in the Bill of Entry and quantity and value of Black Eye Beans were also mis-declared in the Bill of Entry filed by them with Customs Authorities at Customs House, Mundra. As apparent from the Whatsapp Chat conversations and statements of key persons as discussed above, the correct material particulars of the impugned goods were not made by M/s. Aadinath in the respective Bill of Entry filed by them with Customs House, Mundra and hence these subject goods do not correspond in respect of description, qty., value and other material particulars with the Bill of Entry filed by the importer. Thus the entire goods (44250 Kgs Green Peas having market value of Rs. 1,11,95,250/- and 5760 Kgs 'Black Eye Beans' having market value of Rs.11,69,280/-) appeared liable to confiscation under Section 111(m) of the Customs Act, 1962. The said 44250 Kgs Green Peas which were not included in the Bill of Entry also appeared liable for confiscation under Section 111(l) of the Customs Act, 1962.

2.32 Further, the 5760 Kgs 'Black Eye Beans' having market value of Rs. 11,69,280/- were used for concealing the smuggled goods (44250 Kgs Green

Peas) and thus, the said 5760 Kgs 'Black Eye Beans' also appeared liable for confiscation under Section 119 of the Customs Act, 1962.

2.33 From the investigations carried out as narrated in foregoing paras, it was revealed that the importer M/s. Aadinath Enterprise had filed the subject Bill of Entry bearing No. 8074974 dated 30.03.2022 for import of Black Eye Beans (Tariff Item 07133500) declaring the total quantity 52170 KG (1636 Bags). Whereas, during the 100% examination of the subject goods carried out by DRI and further follow up actions, only 192 Bags of 5760 KG Black Eye Beans were found and 1475 Bags having 44250 KG Green Peas (Tariff Item 07131020) were found concealed / undeclared in the Bill of Entry and other import documents. Thus, the importer had mis-declared the subject import goods. Further, the import of Green Peas at Mundra port was restricted / prohibited thus the importer M/s. Aadinath Enterprise had imported restricted/prohibited goods illegally in the guise of Black Eye Beans and submitted false documents and made false declaration under Customs Act, 1962 while filing the Bill of Entry. The importer had mis-declared the imported goods in respect of quantity, description, value and other material particulars and imported the restricted goods violating the import policy provisions laid down vide DGFT Notification



37/2015-20 dated 18.12.2019, issued under Section 3 of FT(D&R) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-20 as extended as discussed supra.

2.34 Investigation revealed that the invoices and other documents i.e. Certificate of Origin, Bill of Lading etc. issued in the name of M/s. Adiyogi Enterprises were containing only "Black Eye Beans" and the goods Green Peas were not declared anywhere in connivance with the overseas supplier M/s. Akshar General Trading LLC, Dubai, UAE. As a part of well hatched conspiracy, the goods imported under Bill of Lading No. TSVATJEA22025052 dated 22.03.2022 were shown as sold by M/s. Adiyogi Enterprises on High Sea Sales basis to M/s. Aadinath (Prop. Shri Yogeshwar C. Panchani Alias Shri Yogesh Patel). It emerged during investigation that forged and fabricated documents of High Sea Sales such as High Sea Sale Agreement, Invoice, Letter to Customs, Letter to container line etc. were prepared on which the forged signature of the Proprietor of both the Firms were admittedly made by the associates of the key persons. On the basis of such forged and fabricated High Sea Sale agreement and other related documents, which were merely an eyewash to clear the

smuggled goods from Customs, Bill of Entry bearing no. 8074974 dated 30.03.2022 was arranged to be filed with Customs Mundra in the name of M/s. Aadinath Enterprise and the goods were cleared from Customs.

2.35 The High Sea Sale Agreement between M/s. Aadinath Enterprise and M/s. Adiyogi Enterprises did not contain any particulars of witnesses and Shri Yogesh Patel has stated that he did not sign this agreement but allowed Shri Nimesh Dhuker to put his (Yogesh') signature on the same which Shri Nimesh did. No transaction for so called High Sea Sale were made between seller and buyer even after clearance of subject goods. Surprisingly, Shri Yogesh Patel deposed that he had not fixed any consideration for such so called facilitation of clearance of offending goods using his IEC and even after making payment of late filing fee of Rs. 35,000/- which indicates that he is one of the key persons involved in organized outright smuggling with intend to circumvent the policy provisions for illegal import of restricted item. He has allowed the IEC and FSSAI License of his Firm M/s. Aadinath Enterprise for import of offending goods and facilitated the clearance thereof from Customs on the basis of bogus High Sea Sale Agreement containing forged signature. As a part of well hatched conspiracy, the High Seas Sale purchase of offending goods in the name of Firm owned by Shri Yogesh Patel i.e. M/s. Aadinath Enterprises was a façade as



apparent from the concerned E-way bills which were prepared containing seller and buyers other than M/s. Aadinath Enterprise. Thus the so called High Sea Sale was a façade. In view of above, the main role of Shri Yogeshwar C. Panchani alias Yogesh Patel is summarized as under :-

- (i) He was Proprietor of importer Firm M/s. Aadinath Enterprise who filed Bill of Entry mis- declaring the description of goods and other material particulars for illegal import of Prohibited goods.
- (ii) He, in connivance with employees of Customs Broker Firm M/s. Ashapura Shipping Agency , allowed his IEC and FSSAI License to be used in clearance of the subject consignment from Customs in guise of High Sea Sale between M/s. Adiyogi Enterprises and M/s. Aadinath Enterprise which was merely an eyewash.
- (iii) He asked Shri Nimesh Bhanushali to put his forged signature on the High Sea Sale Agreement having forged signature of Kanchan S. Salunke on behalf of M/s. Aadiyogi Enterprises.
- (iv) He allowed to make and use forged High Sea Sale agreement and other related forged and fabricated documents to clear the goods from Customs.
- (v) He approved check list for filing Bill of Entry having false material particulars and asked to get done FSSAI inspection the same day.
- (vi) He had paid late filing fee of Rs. 35,000/- abetting the illegal import though the goods were again being sent to M/s. Adiyogi Enterprises.
- (vii) He did not disclose the details of other persons involved in the illegal import of prohibited goods.

2.36 It therefore appeared that M/s. Adinath Enterprise through its Proprietor Shri Yogeshwar C. Panchani alias Yogesh Patel have connived with other key persons involved in the smuggling cartel and have imported restricted goods by way of mis-declaration and also such goods do-not correspond to the documents produced by them. They have used the false, fabricated and incorrect documents showing wrong material particulars of the goods. They used such



false documents, even after subscribing to declaration as to the truth of the contents of such bill of entry and its supporting documents under section 46 of the Customs Act, 1962, in order to get the restricted goods cleared from Customs. The aforementioned quantity of Green peas were imported M/s Adinath Enterprise at Mundra port in violation of Foreign Trade Policy and thereby provisions of the FTDR Act, 1992. As such, the importer M/s Adinath Enterprise through its Proprietor Shri Yogeshwar C. Panchani alias Yogesh Patel by their these acts of omission and commission rendered the entire goods liable for confiscation under Section 111 and/or 119 of the Custom Act, 1962.

2.37 The omission and commission on the part of M/s. Adinath Enterprise through its Proprietor Shri Yogeshwar C. Panchani alias Yogesh Patel i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/-) liable to confiscation under

section 111(d), 111(e), 111(f), 111(i), 111(j), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. Also, since M/s. Adinath Enterprise through its Proprietor Shri Yogeshwar C. Panchani alias Yogesh Patel were knowingly concerned in importing, concealing, purchasing/selling and dealing with such goods, they have rendered themselves liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since M/s. Adinath Enterprise through its Proprietor Shri Yogeshwar C. Panchani alias Yogesh Patel knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents, High Sea Sale agreement, Bill of Entry and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore they are also be liable to penalty under Section 114AA of the Customs Act, 1962. For various acts of misleading the investigation by not revealing the correct facts and details of other key persons involved in this case, as discussed above, Shri Yogeshwar C. Panchani alias Yogesh Patel (Prop. of M/s. Adinath Enterprise) is liable to penalty under Section 117 ibid too.

2.38 Shri Mahesh Bhanushali was the mastermind and main kingpin behind the illegal import of Green Peas in violation of provisions of Customs Act, 1962, Import policy and other allied acts. He, in connivance with the overseas



supplier, arranged import documents having false, incomplete and and incorrect material particulars and willfully and deliberately indulged into conspiracy of importing the consignment of Green Peas by concealing the same in the consignment of Black Eye Beans imported at Mundra. He was the controller and handler of original importer Firm M/s. Adiyogi Enterprise; in whose name the import of offending goods was originally made. He was also controlling the Firm M/s. Cypher One8, who was shown as seller in the e-way bills to transport the goods from Mundra to destination place. He caused to forge the High Sea Sale agreement, fake invoice and other related documents containing false details to show the High Sea Sale genuine which was admittedly an eyewash.

2.39 Shri Mahesh Bhanushali has mis-lead by way of shifting the omission and commission on some Patel Lobby and Shri Rahul Bhanushali but he neither provided any evidence, nor the complete details/whereabouts of such key persons of Patel lobby. He attempted to save Shri Anil Bhaushali and Shri Ronak Bhadra stating that they were his friends and not concerned with the subject import consignment covered under Bill of Lading No. TSVAEJEA22025052 in the name of consignee M/s. Adiyogi Enterprises and Bill of Entry no. 8074974 dated 30.03.2022. Shri Rahul Bhanushali provided a name of Shri Vijay Patel but without having complete details, such person could not be identified/examined during investigation. Whereas statements of Ms. Kanchan S. Salunke, Proprietor of M/s. Adinath Enterprise, Shri Bharat Bhanushali, Manager of Customs Broker Firm M/s. Ashapura Shipping Agency and Forwarder M/s. H.V. Logistics, Shri Arjun Bhanushali, Proprietor of forwarder Firm M/s. H.V. Logistics, Shri Yogesh Patel, Proprietor of M/s. Aadinath Enterprise etc. and whatsapp chat evidences gathered during investigation, are suggesting that Shri Mahesh Bhanushali is the mastermind behind illegal import of Green Peas in guise of Black Eye Beans. It was observed that -

- (i) He had hatched the conspiracy of illegal import of Green Peas which is prohibited item for import at Mundra Port
- (ii) To import the prohibited item, he had used IEC of a Firm fraudulently as the Proprietor of the IEC holder Firm was admittedly not aware about the import.
- (iii) He had caused arranging and supplying forged and fabricated documents for High Sea Sale of subject goods from M/s. Adiyogi Enterprises to M/s. Aadinath Enterprise which was merely an eyewash to clear the offending goods from Customs
- (iv) In order to transport the goods from Mundra to destination, he/ his




associates had generated e-way bills showing M/s. Cypher One 8, which was owned/controlled by his cartel, as seller of the goods.

(v) He did not reveal the details of Shri Anil Bhanushali, other persons involved in the smuggling.

2.40 Further, Shri Mahesh Bhanushali is a habitual offender. He was found involved in the offence of smuggling of around 19 KG gold detected at Nhava Sheva Port, in which case, he was arrested in 2019 under the provisions of the Customs Act, 1962 and later on vide order dtd.01.07.2019, he was permitted to be released on bail, with specific conditions. On adjudication of the said case of smuggling of 19 Kgs gold, the adjudicating authority i.e. Additional Commissioner of Customs, CAC, JNCH, Nhava Sheva, vide Order No. 567/2020-21/ADC/NS-III/CAC/JNCH dated 22.02.2021 had confirmed the charges framed against Shri Mahesh Bhanushali and imposed penalty of

Rs. 12,00,00,000/- (Rupees Twelve Crore) under the provisions of Customs Act, 1962. He was also penalized by the Joint Commissioner of Customs (Import/NS-3) vide Order No. 407/2017/JC/NS-III/CAC/JNCH dated 28.11.2017 for the illegal import of Whey Protein by concealing the same in the scrap material.

2.41 As informed by Shri Rahul Bhanushali vide letter dated 05.12.2022 that Shri Mahesh Bhanushali was in Jail due to launching of proceedings against him under COFEPOSA.

2.42 The omission and commission on the part of Shri Mahesh Bhanushali i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. Also, since Shri Mahesh Bhanushali was knowingly concerned in importing, concealing, purchasing/selling and dealing with such goods, he has rendered himself liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since Shri Mahesh Bhanushali knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, High Sea Sale related documents, Bill of Entry and other related documents, which were false or incorrect, in

material particulars, for the purposes of illegal import of subject goods, therefore he is also be liable to penalty under Section 114AA of the Customs Act, 1962. For various acts of mis-leading the investigation by not revealing the correct facts and details of other key persons involved in this case, as discussed above, Shri Mahesh Bhanushali is liable to penalty under Section 117 ibid too.

2.43 As narrated in foregoing paras, M/s. Adiyogi Enterprises were the original importer in the name of which all the import documents were got issued containing false, incorrect and incomplete material particulars in connivance with overseas supplier. As per the statement of Smt. Kanchan S. Salunke, Prop. of M/s. Adiyogi Enterprises, Shri Mahesh Bhanushali had assured her to assist in importing pulses from Dubai as he was having contacts there and she had given her statutory documents to get issued IEC and thereby abetted the illegal import of prohibited goods. Though she showed her unawareness with the present import, her version and submission that the import was done either by Shri Mahesh Bhanushali or his friend Shri Rahul Bhanushali indicates that she had allowed IEC of M/s. Adiyogi Enterprises for import of subject consignment. It appears that she had allowed the key persons Shri Mahesh Bhanushali, his associate Shri Rahul Bhanushali and others for using name of her Firm for preparing forged High Sea Sale agreement and other related documents such as High Sea Sale invoices etc. for clearance of subject consignment from Customs on the basis of forged, false documents. It further appears that after clearance of subject goods from Customs, Smt. Kanchan S. Salunke had allowed the key persons in using name of her Firm as buyer of subject goods in E-way bills and related invoices for easy movement of the offending goods in transportation for delivery thereof at the destination.

2.44 The omission and commission on the part of M/s. Adiyogi Enterprises through its Proprietor Smt. Kanchan S. Salunke i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value-Rs.1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act,1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act,1962. Also, since M/s. Adiyogi Enterprises through its Proprietor Smt. Kanchan S. Salunke were knowingly concerned in importing, concealing, purchasing/selling and dealing with such goods, they have rendered themselves



liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since M/s. Adiyogi Enterprises through its Proprietor Smt. Kanchan S. Salunke knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents, High Sea Sale related documents, the Bill of Entry and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore they are also be liable to penalty under Section 114AA of the Customs Act, 1962.

2.45 Shri Rahul Dayaram Bhanushali is key associate of Shri Mahesh Bhanushali who was the mastermind behind this case of illegal import. Statement of Smt. Kanchan S. Salunke, the on-paper Proprietor of the original importer Firm M/s. Adiyogi Enterprises, Shri Mahesh Bhanushali and other key persons involved in this case have suggested that the illegal import of Green Peas in the guise of Black Eye Beans under Bill of Lading No. TSVATJEA22025052 dated 22.03.2022 was made at the active association of the Shri Rahul Bhanushali. He had arranged issuance of the IEC of M/s. Adiyogi Enterprises and managed the High Sea Sale agreement between M/s. Adiyogi Enterprises and M/s. Aadinath Enterprises. Similarly, statement of key persons and admittal statement of Shri Rahul Bhanushali himself suggest that he had created and supplied forged documents of High Sea Sale to clear the offending goods from Customs through M/s. Aadinath Enterprise and he also arranged the High Sea Sale agreement having forged signatures of the concerned persons between whom the so called agreement was to be signed. Shri Rahul Bhanushali prepared the e-way bills and invoices having false material particulars for transportation of subject goods from Mundra to Maharashtra. He was Proprietor of M/s. Cypher One 8 which was shown as seller of subject goods in the E- way Bills and invoices while transporting from Mundra to destination but the Firm was found non-existing at address mentioned in these invoices/e-way bills and there was no such sale/purchase took place between M/s. Cypher One 8 and M/s. Adiyogi Enterprises.

2.46 Shri Rahul Bhanushali stated in his statement that one Shri Vijay Patel was introduced by him to Shri Mahesh Bhanushali for the Customs Clearance; that the plan was that the goods would be imported by Shri Vijay Patel and Shri Mahesh Bhanushali would handled the Customs Clearance and his (Rahul's) job was to do trading of the imported goods for which Shri Vijay Patel offered him commission of Rs 2/- per Kg. On being asked, Shri Rahul Bhanushali failed to provide details/complete whereabouts of Shri Vijay Patel due to which Shri Vijay Patel if any could not be examined. He also failed to



provide details of other imports/transactions made by M/s. Cypher One 8 and M/s. Adiyogi Enterprises. Further, the incomplete submissions on the part of Shri Rahul Bhanushali mis-lead the investigation.

2.47 The Firm M/s. Cypher One 8 was working under Proprietorship of Shri Rahul Bhanushali but it was under control of Shri Mahesh Bhanushali and Shri Rahul Bhanushali was only working as Proprietor on paper. Thus, for entire omission and commission committed on the part of Shri Mahesh Bhanushali, M/s. Cypher One 8 and Shri Rahul Bhanushali, M/s. Cypher One 8 is also separately responsible and liable to be penalized other than its Proprietor Shri Rahul Bhanushali. The omission and commission on the part of Shri Rahul Bhanushali and M/s. Cypher One 8 i.e. facilitating the mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs.1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. Also, since Shri Rahul Bhanushali and M/s. Cypher One 8 were knowingly concerned in purchasing/selling and dealing with such goods, they have rendered themselves separately liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since Shri Rahul Bhanushali and M/s. Cypher One 8 knowingly and intentionally made, signed or used and/or caused to be made/signed/used the High Sea Sale documents, High Sea Sale agreement, Bill of Entry and other related documents, away bills and invoices showing M/s. Adiyogi Enterprises and M/s. Cypher One 8 as buyer and seller of subject goods respectively, for the purposes of illegal import of subject goods and transportation thereof, therefore they have rendered themselves separately liable to penalty under Section 114AA of the Customs Act, 1962. For various acts of mis-leading the investigation by not revealing the correct and complete facts and details of other key persons involved in this case, as discussed above, Shri Rahul Bhanushali and M/s. Cypher One 8 have rendered themselves separately liable to penalty under Section 117 ibid too.

2.48 Shri Ronak Bhadra arranged transportation on commission basis and taken follow up of transportation of subject offending goods from Mundra to destination of Delivery as per directions of Shri Anil Bhanushali. As apparent from the Whatsapp Chat conversations between Shri Anil Bhanushali and Shri




Ronak Bhadra, Shri Ronak Bhadra there was reason to believe that the goods for which he had arranged transportation were offending in nature and Shri Arjun Bhanushali was attempting to deliver the same at any cost. Even then, he continued his efforts for successful delivery. Thus, it appears that Shri Ronak Bhadra had facilitated the transportation of offending goods and thereby abetted the smuggling of restricted /prohibited goods. The omission and commission on the part of Shri Ronak Bhadra i.e. facilitating the smuggling and abetting the illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs.11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. Also, since Shri Ronak Bhadra was knowingly concerned in arranging transportation /dealing with such goods, he has rendered himself liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since Shri Ronak Bhadra knowingly and intentionally caused to be made/ used the away bills and invoices showing M/s. Adiyogi Enterprises and M/s. Cypher One 8 as buyer and seller of subject goods respectively, which were false or incorrect, in material particulars, therefore he is also be liable to penalty under Section 114AA of the Customs Act, 1962.

2.49 M/s. Akshar General Trading LLC, Dubai, UAE was declared supplier of subject goods and counterpart of the conspiracy of mis-declaration of the description, quantity and other material particulars of subject goods in the invoice, COO, Bill of Lading etc. It appears that from this supplier part also, the stacking of Black Eyed Beans were made near the door of containers and Green Peas were stuffed behind the cover cargo of Black Eyed Beans. Summons dated 10.03.2023 (RUD No. 70) was issued and sent by email to this overseas supplier at their email Id akshargt@eim.ae declared in the invoice issued by them, to get their version about the goods exported by them to India but the email was not delivered which indicates that M/s. Akshar General Trading LLC, Dubai, UAE has declared wrong email Id in the invoice issued by them. The omission and commission on the part of M/s. Akshar General Trading LLC, Dubai i.e. mis-declaration of subject goods by way of falsifying the documents, fraud, collusion, willful mis- statement and suppression of facts and illegal import of prohibited goods to India have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs.1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Indian Customs Act, 1962 and declared imported goods Black Eye Beans



Handwritten signature or initials.

Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Indian Customs Act, 1962. Also, since M/s. Akshar General Trading LLC, Dubai was knowingly concerned in concealing, selling and dealing with such goods, they have rendered himself liable to penalty under Section 112 (a) and Section 112 (b) of the Indian Customs Act, 1962. Since M/s. Akshar General Trading LLC knowingly and intentionally made, signed or used the import documents, and/or caused to be made/signed/used High Bill of Entry and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods into India, therefore they are also liable to penalty under Section 114AA of the Customs Act, 1962. Since M/s. Akshar General Trading LLC, Dubai, UAE has declared wrong email id in the invoice issued by them, it appears that they have deliberately mis-declared the email id to escape themselves from contacting by the enforcement agencies. This act on the part of M/s. Akshar General Trading LLC, Dubai, UAE rendered them liable to penalty under Section 117 of Indian Customs Act, 1962.

2.50 Shri Bharat Bhanushali was Manager of forwarder Firm M/s. H.V. Logistics and CB Firm M/s. Ashapura Shipping Agency and he was active associate of mastermind Shri Mahesh Bhanushali. Shri Bharat Bhanushali was actively involved in the smuggling cartel and he had played crucial role at every stage of smuggling of subject consignment involving prohibited and mis-declared goods. As apparent from the WhatsApp Chat conversations between him and mastermind Shri Mahesh Bhanushali, Shri Mahesh Bhanushali hatched the conspiracy with Shri Bharat Bhanushali for arranging IEC and FSSAI License to clear the goods on the basis of forged High Sea Sale agreement. He was looking after Mundra operation of CB Firm as private person without having any authorization. He had made necessary arrangement for getting the cargo out of charged from Customs without examination whereas 100 % examination was prescribed for the same. As per the plan of ploy, he arranged bringing containers from CFS/port to GIDC Mundra to shift the cargo in trucks to avoid interception of the vehicle during movement towards delivery destination in Maharashtra. He arranged placing of Green Peas bags inside the trucks and the Black Eye Beans bags near the door of trucks to avoid interception of concealed smuggled goods. When Shri Suresh Bhanwarlal informed him about two type of cargo noticed in the consignment, he did not bring the matter to Customs and falsely assured Shri Suresh Bhanwarlal to do the needful, which indicates he was well aware about the conspiracy and was involved actively in the illegal import of prohibited goods. From the WhatsApp Chat conversations held between Shri Bharat Bhanushali and Shri Anil Bhanushali as extracted from mobile phone of Shri



Bharat Bhanushali, it is apparent that they both were very well aware about concealed Green Peas in the import consignment having declared goods 'Black Eye Beans'. Even though Shri Bharat Bhanushali was looking after Customs clearance work as Manager of Customs Broker M/s. Ashapura Shipping Agency, he deliberately did not bring the matter of gross violation of provisions of Customs Act, 1962 and other allied Acts to the notice of jurisdictional Customs Authorities. On the contrary, they had made all possible efforts to get the consignment cleared on the basis of forged and false documents of so called High Sea Sale and also on the basis of import documents having incorrect material particulars. From the WhatsApp Chat conversations held between Shri Bharat Bhanushali and Shri Suresh Bhanwarlal, it appears that Shri Bharat Bhanushali was attempting to get uploaded the examination report of the subject consignment anyhow at the same day. During investigation, his statements were recorded on 14.04.2022 and 18.05.2022 wherein he did not disclose that he was very well aware concealment of Green Peas in the guise of Black Eye beans which was confirmed on analysis of data extracted forensically from his mobile phone, thus, he had mis-led the investigation. It appears that Shri Bharat Bhanushali directed Shri Ronak Bhadra to divert the vehicle carrying offending goods towards Bhuj but Shri Anil Bhanushali directed to send the goods to Mumbai without stopping.

2.51 The omission and commission on the part of Shri Bharat Bhanushali i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. Also, since Shri Bharat Bhanushali was knowingly concerned in transporting, concealing, purchasing/selling and dealing with such goods, he has rendered himself liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since Shri Bharat Bhanushali knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, High Sea Sale documents and agreement, Bill of Entry and other related documents, e-way bills and invoices showing M/s. Adiyogi Enterprises and M/s. Cypher One 8 as buyer and seller of subject goods respectively which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods. Therefore, Shri Bharat



Bhanushali is also be liable to penalty under Section 114AA of the Customs Act, 1962. For various acts of mis-leading the investigation by not revealing the correct facts and details of other key persons involved in this case, as discussed above, Shri Bharat Bhanushali is liable to penalty under Section 117 ibid too.

2.52 Shri Arjun Bhanushali was Manager of forwarder Firm M/s. H.V. Logistics and CB Firm M/s. Ashapura Shipping Agency and he was active associate of mastermind Shri Mahesh Bhanushali. He was the key person who initially accepted proposal of Shri Mahesh Bhanushali to clear his import consignments from Customs and for this work he deployed the ploy with Shri Bharat Bhanushali to do the needful for clearance of import consignments of Shri Mahesh Bhanushali. Investigation revealed that Shri Arjun Bhanushali connived with Shri Bharat Bhanushali for arranging IEC and FSSAI License to clear the goods on the basis of forged High Sea Sale agreement. He sent the format for High Sea Sale agreement to Shri Rahul Bhanushali. Even though Shri Arjun Bhanushali was looking after Customs clearance work as Manager of Customs Broker M/s. Ashapura Shipping Agency, he did not bring the matter of gross violation of provisions of Customs Act, 1962 and other allied Acts to the notice of jurisdictional Customs Authorities. On the contrary, he had made all possible efforts to get the consignment cleared on the basis of forged and false documents of so called High Sea Sale and also on the basis of import documents having incorrect material particulars. During investigation, he did not disclose the correct facts with respect to role of Shri Ashok Bhanushali by stating that he was having no role/control in M/s. H.V. Logistics. From the mobile phone of Shri Arjun Bhanushali, conversations regarding pasting of FSSAI stickers having name of M/s. Cypher One 8, address of warehouse at GIDC Mundra where the goods were shifted from containers to trucks, etc. were recovered which indicate role of Shri Arjun Bhanushali at each step of smuggling of prohibited and mis-declared goods in this case.

2.53 The Firm M/s. H.V. Logistics was working as a forwarder Firm under Proprietorship of Shri Arjun Bhanushali and they were using the Customs Broker license of M/s. Ashapura Shipping Agency for clearance of consignments from Customs. The billing and payment collection was made by Shri Arjun Bhanushali and other employees towards clearance of import/export consignments and related activities in this Firm M/s. H.V. Logistics. Investigation revealed that Shri Arjun Bhanushali was shown Proprietor of M/s. H.V. Logistics merely to divide the volume of work on Customs Broker Firm M/s. Ashapura Shipping Agency, whereas the entire control over M/s. H.V. Logistics



was with Shri Ashok Bhanushali. Thus, for entire omission and commission committed on the part of M/s. H.V. Logistics and Shri Arjun Bhaushali, M/s. H.V. Logistics is also separately responsible and liable to be penalized other than its Proprietor Shri Arjun Bhaushali. The omission and commission on the part of Shri Arjun Bhanushali and M/s. H.V. Logistics in mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis- statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs.11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. Also, since Shri Arjun Bhanushali and M/s. H.V. Logistics were knowingly concerned in transporting, concealing, purchasing/selling and dealing with such goods, they have rendered themselves separately liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since Shri Arjun Bhanushali and/or M/s. H.V. Logistics knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, High Sea Sale documents and agreement, Bill of Entry and other related documents, e-way bills and invoices showing M/s. Adiyogi Enterprises and M/s. Cypher One 8 as buyer and seller of subject goods respectively which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, they have rendered themselves separately liable to penalty under Section 114AA of the Customs Act, 1962. For various acts of mis-leading the investigation by not revealing the correct facts and details of other key persons involved in this case, as discussed above, Shri Arjun Bhanushali and his Firm M/s. H.V. Logistics are separately liable to penalty under Section 117 ibid too.

2.54 Shri Nimesh K. Dhuker Alias Shri Nimesh Bhanushali was Manager of forwarder Firm M/s. H.V. Logistics and Customs Broker Firm M/s. Ashapura Shipping Agency. He signed the High Sea Sale agreement imitating signature of Shri Yogesh Patel and on the basis of this High Sea Sale Agreement having forged signature, the Bill of Entry was filed and the subject goods were cleared from Customs. He had arranged filing of the Bill of Entry having false material particulars after getting approval from Shri Yogesh Patel. He coordinated with the transporter and arranged two trucks for taking out the containers from the Mundra port and conveyed the trailer nos. to their associates through Whatsapp Group created by him. Shri Nimesh Bhanushali informed about IGM filing and insisted to call for import documents in the email Id of his Firm M/s.



Sarveshwara Logistics, whereas he tendered mis-leading and false statement to save himself and his Firm M/s. Sarveshwara Logistics in whose email Id the Bill of Lading and other incriminating/forged documents were sent by Shri Mahesh Bhanushali.

2.55 During investigation, on being asked, Shri Nimesh Bhanushali assured to provide various details/documents such as Power of attorney holder details of their CB Firm M/s. Ashapura Shipping Agency, imports made by M/s. Aadinath, residential address of Shri Arjun Bhanushali etc. In order to save the name of main conspirator Shri Mahesh Bhanushali, he did not disclose his name and stated that the subject Bill of Lading was sent to them by Shri Yogesh Patel. The Firm M/s. Sarveshwara Logistics was working as a forwarder Firm under Proprietorship of Shri Arjun Bhanushali and they were using the Customs Broker license of M/s. Ashapura Shipping Agency for clearance of consignments from Customs. The import documents were sent by the key persons from email Id of M/s. Cypher One 8 to the email Id of M/s. Sarveshwara Logistics which were subsequently processed for clearance of subject consignment using CB License of M/s. Ashapura Shipping Agency. Investigation revealed that Shri Nimesh Bhanushali was shown Proprietor of M/s. Sarveshwara Logistics merely to divide the volume of work on Customs Broker Firm M/s. Ashapura Shipping Agency, whereas the entire control over M/s. Sarveshwara Logistics was with Shri Ashok Bhanushali. Thus, for entire omission and commission committed on the part of M/s. Sarveshwara Logistics and Shri Nimesh Bhanushali, M/s. Sarveshwara Logistics is also separately responsible and liable to be penalized other than its Proprietor Shri Nimesh Bhanushali.

2.56 The omission and commission on the part of Shri Nimesh K. Dhuker Alias Shri Nimesh Bhanushali and M/s. Sarveshwara Logistics in mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. Also, since Shri Nimesh K. Dhuker Alias Shri Nimesh Bhanushali and M/s. Sarveshwara Logistics were knowingly concerned in arranging transportation, filing of Bill of Entry, documentation and dealing with



such goods, they have rendered themselves separately liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since Shri Nimesh K. Dhuker Alias Shri Nimesh Bhanushali and M/s. Sarveshwara Logistics knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, High Sea Sale documents and agreement, Bill of Entry and other related documents, e-way bills and invoices showing M/s. Adiyogi Enterprises and M/s. Cypher One 8 as buyer and seller of subject goods respectively which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods. Therefore, Shri Nimesh K. Dhuker Alias Shri Nimesh Bhanushali and M/s. Sarveshwara Logistics have rendered themselves separately to penalty under Section 114AA of the Customs Act, 1962. For various acts of mis-leading the investigation by tendering false statement and by not providing details assured by Shri Nimesh K. Dhuker during statement, as discussed above, Shri Nimesh K. Dhuker Alias Shri Nimesh Bhanushali and M/s. Sarveshwara Logistics have rendered themselves separately liable to penalty under Section 117 ibid too.

2.57 Shri Suresh Bhanwarlal was field staff of forwarder Firm M/s. H.V. Logistics and Customs Broker Firm M/s. Ashapura Shipping Agency and he was looking after operations relating to Customs clearance at Mundra port. He was looking after Mundra operation of CB Firm as private person without having any authorization/power of attorney. As per directions of Shri Bharat Bhanushali, he coordinated with officers of FSSAI and Customs, Transporters, Truck Drivers in respect of examination of goods, getting out of charged, taking out of CFS/port, shifting from import containers to trucks. It emerged during investigation that as per directions of Shri Bharat Bhanushali, he had directed the labourers to place/stack Black Eye Beans near the doors of trucks and Green Peas inside the truck. He took away one bag of 30 KG Black Eye Beans to his home, which were recovered and seized later. From the Whatsapp Chat conversation held between Shri Bharat Bhanushali and Shri Suresh Bhanwarlal, he attempted to get uploaded the examination report from Customs Officers without doing examination and also withdrawn samples for FSSAI inspection from Black Eye Beans bags only. He was regularly coordinating with Customs but in spite of being aware that there were two types of goods stuffed in the import containers i.e. Green Peas and Black Eye Beans, he did not bring the matter to the notice of Customs Authorities. On the contrary, he informed non availability of FSSAI stickers on the bags of imported goods to Shri Bharat Bhanushali and not to Customs and also arranged printing of FSSAI stickers and stuck the same on the bags of imported goods which should have been



pasted by the overseas supplier. He also drew samples for FSSAI inspection only from one bag of Black Eye Beans and not randomly or from the bags of Green Peas. Thus, he had also abetted the violation of FSSAI/PPQ related provisions. All these facts indicate that Shri Suresh Bhanwarlal was well aware about mis-declaration and concealment of restricted/prohibited goods rather he was hand in gloves with other key persons of subject smuggling.

2.58 The omission and commission on the part of Shri Suresh Bhanwarlal i.e. assisting in clearance of offending goods involving mis-declaration by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs.1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act,1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act,1962. Also, since Shri Suresh Bhanwarlal was knowingly concerned in facilitating clearance and dealing with such goods, he has rendered himself liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since Shri Suresh Bhanwarlal knowingly and intentionally caused to be made/signed/used the e-way bills and invoices showing M/s. Adiyogi Enterprises and M/s. Cypher One 8 as buyer and seller of subject goods respectively which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods. Therefore, Shri Suresh Bhanwarlal is also be liable to penalty under Section 114AA of the Customs Act, 1962. For his act of taking away the offending goods 30 KG Black Eye Beans to his home in unlawful manner, as discussed above, Shri Suresh Bhanwarlal is liable to penalty under Section 117 ibid too.

2.59 Shri Anil Bhanushali was close associate of Shri Mahesh Bhanushali and when the latter was in jail, he had taken follow up with respect to clearance and transportation of subject import consignment. From the Whatsapp Chat conversations held between Shri Bharat Bhanushali and Shri Anil Bhanushali as extracted from mobile phone of Shri Bharat Bhanushali, it is apparent that Shri Anil Bhanushali was very well aware about concealed Green Peas in the import consignment having declared goods 'Black Eye Beans'. He coordinated with Shri Ronak Bhadra for shifting the cargo from import containers to trucks for transportation of the same from Mundra to destination in Maharashtra. He directed Shri Ronak Bhadra to bring the goods to Mumbai



without stopping. He arranged e-way bills and invoices having false material particulars to Shri Ronak Bhadra who further sent the same to the drivers of trucks through transporter.

2.60 The omission and commission on the part of Shri Anil Bhanushali i.e. facilitating the smuggling and abetting the illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. Also, since Shri Anil Bhanushali was knowingly concerned in clearing, arranging transportation /dealing with such goods, he has rendered himself liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since Shri Anil Bhanushali knowingly and intentionally caused to be made/ used the e-way bills and invoices showing M/s. Adiyogi Enterprises and M/s. Cypher One 8 as buyer and seller of subject goods respectively, which were false or incorrect, in material particulars, therefore he is also be liable to penalty under Section 114AA of the Customs Act, 1962.

2.61 Shri Lokendra Singh Rathore provided transportation to subject goods from Mundra to Maharashtra and sent two trucks bearing registration no. HR 67 C 2807 and HR 55 U 3048 in which the subject offending goods were shifted from the import containers at GIDC Mundra. He admittedly provided these trucks without getting LR from Shri Ronak Bhadra though the LR is basic required document for transportation. This clearly indicates that Shri Lokendra Singh Rathore did not even check and verify the documents pertaining to the subject goods. During investigation, Shri Lokendra Singh Rathore assured to provide details of transactions between him and Shri Ronak Bhadra which he never provided. It appears that by way of sending aforesaid trucks for transportation to subject goods from Mundra to Maharashtra, without verifying the required documents. The omission and commission on the part of Shri Lokendra Singh Rathore i.e. facilitating the transportation of smuggled goods and thereby abetting the illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. By doing



so, Shri Anil Bhanushali has rendered himself liable to penalty under Section 112 (a) of the Customs Act, 1962. By not providing details assured by him during statement, as discussed above, Shri Lokendra Singh Rathore is liable to penalty under Section 117 ibid too.

2.62 M/s. Ashapura Shipping Agency was appointed Customs Broker of importer M/s. Aadinath Enterprise, however, the Customs Broker License of the said CB Firm M/s. Ashapura Shipping Agency has been used by M/s H.V. Logistics for clearance of subject consignment. Investigation revealed that Shri Ashok Bhanushali, Partner of M/s. Ashapura Shipping Agency was overall head of their group companies including M/s. Ashapura Shipping Agency and M/s H.V. Logistics. Shri Arjun Bhanushali, Shri Nimesh Bhanushali, Shri Bharat Bhanushali and Shri Suresh Bhanwarlal etc. were employees of said CB Firm M/s. Ashapura Shipping Agency as well as forwarder M/s H.V. Logistics. As discussed above, the import of present consignment was initiated by Shri Mahesh Bhanushali on assurance given by Shri Arjun Bhanushali with subsequent aid given by Shri Bharat Bhanushali. The other employees of said CB Firm M/s. Ashapura Shipping Agency as well as forwarder M/s H.V. Logistics viz. Shri Nimesh Bhanushali, Shri Suresh Bhanwarlal etc. also assisted in clearance of subject consignment as narrated supra. None of these employees have passed any exam under CBLR, nor having power of attorney /authorization for acting as person authorized to attend clearance related work with Customs including filing of Bill of Entry. They were not authorized by the Customs Broker duly approved by DC/AC of Customs to assist the Customs Broker for attending work relating to clearance of cargo. Thus, they had attended customs clearance related work as private persons in an unauthorized manner without following the procedure prescribed under CBLR, 2018.

2.63 Shri Ashok Bhanushali, Partner of M/s. Ashapura Shipping Agency has been issued Summons dated 12.04.2022, 14.04.2022 and 12.05.2022 but he avoided his presence before investigating officers and has not appeared to tender statement. As discussed in foregoing paras that the key persons of said CB Firm were actively involved in this case right from hatching conspiracy of clearance of import consignment covering prohibited/restricted goods, to forging documents to show High Sea Sale, violating FSSAI provisions, assisting in shifting of goods from containers to trucks, concealing the smuggled prohibited/restricted goods by arranging stacking of goods in the trucks, documentation /filing of Bill of Entry and other documents having false particulars and declarations, knowingly suppressing the facts of concealment



and mis-declaration from the Customs Authorities, arranging / abetting transportation of offending goods in violation of Customs Act, 1962 and other allied Acts.

2.64 The omission and commission on the part of said CB Firm M/s. Ashapura Shipping Agency i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis- statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(j), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs.11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. Also, since key persons of M/s. Ashapura Shipping Agency was knowingly concerned in transporting, concealing, purchasing/selling and dealing with such goods, they have rendered themselves liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since key persons of M/s. Ashapura Shipping Agency knowingly and intentionally made, signed or used and/or caused to be made/signed/used the import documents, High Sea Sale documents and agreement, Bill of Entry and other related documents, e-way bills and invoices showing M/s. Adiyogi Enterprises and M/s. Cypher One 8 as buyer and seller of subject goods respectively which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods. Therefore, M/s. Ashapura Shipping Agency have also rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962. For various acts of mis-leading the investigation by not providing details/documents required for investigation, by not revealing the correct facts and details of other key persons involved in this case, etc. as discussed above, M/s. Ashapura Shipping Agency have also rendered themselves liable to penalty under Section 117 ibid too.

2.65 In view of above, it appeared that the said Customs Broker Firm M/s. Ashapura Shipping Agency through its associates has connived with the conspirators and abetted the illegal import of Green Peas which is a restricted item for import at Mundra port. They have failed to verify the genuineness of the original importer, KYC documents and material particulars of import documents. They have allowed private persons to deal with Customs related matters and deliberately failed to bring the mis-declaration by concealment of import goods



to the notice of the customs authorities. Thus, it further appears that the said Customs Broker has also violated the following provisions of CBLR, 2018:-

- (i) Regulation 10 (b):- By transacting business in the Customs Station through unauthorized employee who were not approved by the Deputy/Assistant Commissioner of Customs
- (ii) Regulation 10 (d):- By failing to advise their client to comply with the provisions of the Customs Act, 1962, and in case of non-compliance, failed to bring the matter to the notice of the Deputy / Assistant Commissioner of Customs
- (iii) Regulation 10 (e):- By failing to exercise due diligence to ascertain the correctness of information which they imparted to their client M/s. Aadinath Enterprise about material particulars of the subject consignment for clearance thereof
- (iv) Regulation 10 (n):- By failing to verify correctness of whereabouts and functioning of their clients M/s. Adiyogi Enterprises and its associate M/s. Cypher One 8 etc.
- (v) Regulation 13 (4) read with Regulations 13(3), 13(5) and 13 (6):- By failing to obtain approval of the Deputy/Assistant Commissioner of Customs, regarding persons employed by them to attend work relating to the clearance of goods
- (vi) Regulation 13 (7) read with Regulations 13(8) to 13(12):- By failing to authorize only such employee who has been issued a photo identity card in Form F or Form G as the case may be to sign the declaration on the bills of entry, annexure thereof or any other document.

2.66 Accordingly, actions under CBLR, 2018 were proposed against the said Customs Broker viz. M/s. Ashapura Shipping Agency through competent authority. It has been gathered that Commissioner of Customs, Customs House, Mundra had suspended the CB License of M/s. Ashapura Shipping Agency vide Order dated 26.08.2022 and a Show Cause Notice dated 04.11.2022 has been issued by the Commissioner, Customs House, Mundra proposing revocation of the said License.

2.67 Shri Ashok Bhanushali, Partner of Customs Broker Firm M/s. Ashapura Shipping Agency and overall controller of operations of this CB Firm



[Handwritten signature]

as well as other associate Firms viz. M/s H.V. Logistics, M/s. Sarveshwara Logistics etc. He has allowed using his CB license by M/s. H.V. Logistics and its key persons who were the employees of M/s. Ashapura Shipping Agency. Shri Ashok Bhanushali has allowed private persons who are dealing with Customs related work at Mundra port unauthorized way without giving power of attorney to them. He has not appeared to tender statement in response to repeated Summons issued to them and thus avoided joining the investigation. Shri Ashok Bhanushali being Partner of Customs Broker Firm M/s. Ashapura Shipping Agency is responsible for omission and commission committed by M/s. Ashapura Shipping Agency as narrated above. In view of above, the omission and commission on the part of Shri Ashok Bhanushali i.e. clearance of offending goods involving mis-declaration through his Customs Broker License by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/- liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. Also, since Shri Ashok Bhanushali was knowingly concerned in facilitating clearance and dealing with such goods, he has rendered himself liable to penalty under Section 112 (a) and Section 112 (b) of the Customs Act, 1962. Since Shri Ashok Bhanushali knowingly and intentionally caused to be made/signed/used the import documents, High Sea Sale documents, High Sea Sale Agreement, Bill of Entry and other related documents, invoices and e-way bills showing M/s. Adiyogi Enterprises and M/s. Cypher One 8 as buyer and seller of subject goods respectively which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods. Therefore, Shri Ashok Bhanushali is also be liable to penalty under Section 114AA of the Customs Act, 1962. For his act of non-cooperating in the investigation by not appearing for tendering statements before investigating officers, as discussed above, Shri Ashok Bhanushali is liable to penalty under Section 117 ibid too.

2.68 From the facts and evidences gathered during investigation and statements of Shri Bondi Kesav Rao, Sr. Manager Operations of M/s. Seabird CFS, Shri Bharat Bhanushali, Shri Suresh Bhanwarlal and officers of Customs House Mundra posted during the period from 30.03.2022 (Date of filing of Bill of Entry bearing no. 8074974 dated 30.03.2022) to 05.04.2022 (Date of clearance of subject consignment, it appears that the examination of subject consignment

was not done though the consignment was under 'first check' and 100% examination was prescribed for the same. Investigation revealed that the said Bill of Entry was filed on 30.03.2022 and seal cutting permission was granted on 31.03.2022 (second half) by the then Preventive Officer of Customs posted in the Dock Examination in charge of concerned CFS i.e. Seabird CFS, Adani Ports & SEZ, Mundra but it appears that due to monthly rotational transfer of Dock Examination officers of Customs posted on 31.03.2022 in the said CFS, the examination of subject consignment could not be carried out on 31.03.2022.

2.69 It appeared that on 01.04.2022, Shri Anand, the then Preventive Officer and Shri Lalit Kumar, Superintendent joined their duties / charge of dock examination at Seabird CFS, Adani Ports & SEZ, Mundra. On 05.04.2022, Shri Anand, then Preventive Officer uploaded examination report on systems which is reproduced hereunder along with Examination Order prescribed for subject consignment and approval of then Superintendent (Dock Examination), In charge of Seabird CFS, Adani Ports & SEZ, Mundra :-

**Exam Order:*

..... first check:

please inspect the containers, vfy marks, numbers and seals of the containers, open both containers and examine 100% of consignment and look for misdeclaration in item description and number of packages and quantity of item. vfy coo. vfy load port phytosanitary certificate & pq noc. vfy fssai noc. vfy ccr instructions and report pls.

by 100xxxxx on 30/03/2022 at 07.11 p.m.

Inspector's Report:

.....

opened and examined 2 pkgs in the presence of cha. special observation:

01 container was selected for scanning and reported mismatch.

checked container number & seal number and found in order with bill of lading. opened, destuffed & examined 100% of the cargo of both containers as per examination order under supervision of supdt (docks) and in presence of cb.

verified product description , weight /qty. with invoice, packing list, bill of lading & other import documents. on visual examination, the goods cargo



appears to be as declared in import documents.

cfs wt. 49440 kgs bl wt. 52170 kgs

fssai noc may be verified before ooc.

by 10051366 dated 05/04/2022 at 04.58 p.m."

"verified import documents uploaded in e-sanchit. by 10048520 dated 05/04/2022 at 07.24 p.m."

2.70 On the basis of above mentioned report uploaded by Shri Anand, then Preventive Officer on systems and approved by Shri Lalit Kumar, the then Superintendent, the consignment was given out of charge and cleared from Customs. On being asked, these officers stated that they did not carry out any examination of subject consignment. As regards the reason for not carrying out examination and on being asked on what basis the said examination report was uploaded and approved which shows that examination was done 100% in presence of Superintendent (Docks) and Customs Broker, the said officers stated that mainly on the basis of FSSAI inspection report available on systems, they interpreted that the examination of subject goods have been done by the officers posted in Dock Examination (I/c of Seabird CFS) prior to them. It is pertinent to mention here that no examination report of Customs was admittedly available that time on systems. This indicates that the examination of subject goods was not carried out by any officer of Customs which resulted in clearance of restricted/prohibited goods (Green Peas) concealed in the subject consignment and other goods (Black Eye Beans) mis-declared with respect to quantity, value etc. and used as cover cargo to conceal the smuggled goods. It also appears that the examination report submitted by Shri Anand, then Preventive Officer and approved by Shri Lalit Kumar, then Superintendent, Customs House, Mundra before granting the consignment Out of Charge, was false.

2.71 From the facts discussed in foregoing paras, it appeared that by not carrying out examination of subject consignment in spite of first check and 100% examination prescribed, and by uploading or approving false examination report, Shri Anand, then Preventive Officer and Shri Lalit Kumar, then Superintendent, Customs House, Mundra had abetted the smuggling by way of clearing the restricted/prohibited goods (Green Peas) concealed in the subject consignment and other goods (Black Eye Beans) mis-declared with respect to quantity, value etc. and used as cover cargo to conceal the smuggled goods. By abetting the mis-



declaration of subject goods involving forging of documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods, Shri Anand, then Preventive Officer and Shri Lalit Kumar, then Superintendent, Customs House, Mundra have rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs. 1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962 and declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. It therefore appeared that Shri Anand, the then Preventive Officer and Shri Lalit Kumar, the then Superintendent, Customs House, Mundra have rendered themselves liable to penalty under Section 112 (a) of the Customs Act, 1962.

2.72 It further appeared that by way of knowingly submitting false examination report, Shri Anand, the then Preventive Officer, Customs House, Mundra and by way of approving the said false report for granting the subject consignment out of charged, Shri Lalit Kumar, the then Superintendent, Customs House, Mundra have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

2.73 It appeared that the subject import consignment containing food items required FSSAI inspection for which Shri Vishnu A.S., Technical Officer, FSSAI, Mundra was assigned the visual inspection and related work but it appeared that he did not carry out proper inspection and relied upon the sample drawn by Shri Suresh Bhanwarlal from only 01 of the 1667 bags of stuffed in two containers. Since the Bags of Green Peas appeared to be stuffed inside the containers and as appeared Shri Vishnu A.S. did not inspect/draw samples himself, no inspection/verification of Green peas was done as apparent from the FSSAI inspection report/NOC uploaded on systems and provided by Shri Bharat Bhanushali during investigation. In the instant case, the authorized Officer, FSSAI, Mundra vide letter dated 16.02.2023 informed that as per clause 5(1)(b) of Food Safety and Standards (Import) Regulations, 2017, the officers deputed by the authorized officer are assigned to carry out visual inspection. It has been

mentioned in the letter that checking the undeclared goods/illegal goods in imported consignment is the prerogative of the Customs Authority.

2.74 In terms of Regulation 6(1) of Food Safety and Standards (Import)




Regulations, 2017, no Food Importer shall import articles of food that is not transported, or stored in optimal storage conditions of temperature and hygiene, packaged and labeled as per the regulations applicable to that particular article of food. As discussed in foregoing paras that the bags of subject consignment were not labeled on the part of the supplier but Shri Suresh Bhanwarlal had pasted stickers on the bags after getting printed from Mundra. Further, as per Panchnama dated 07.04.2022 there were two type of stickers/labels containing name of two importers viz. M/s. Cypher One 8 and M/s. Adiyogi Enterprises were found. This aspect can be verified by visual inspection but no report or order for rectifying the labeling or re-inspection in this regard was submitted by Shri Vishnu A S, Technical Officer, FSSAI, Mundra as provided under Regulation 6 of Food Safety and Standards (Import) Regulations, 2017 and sub-regulations thereof. Thus, it appears that due to above act of casual inspection said to have been done by Shri Vishnu A.S., Technical Officer, FSSAI, Mundra, the 44250 KG Green peas were cleared from Customs without FSSAI inspection/verification/NOC in contravention of provisions of Customs Act, 1962 and other allied Acts as well as provisions of Food Safety and Standards (Import) Regulations, 2017.

2.75 From the facts discussed in foregoing paras, it appeared that by not carrying out proper inspection of Green peas covered under the subject consignment, Shri Vishnu A.S., Technical Officer, FSSAI, Mundra had abetted the smuggling by way of clearing the restricted/prohibited goods (Green Peas) covered in the subject consignment. By abetting the smuggling of subject goods involving forging of documents, fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods, Shri Vishnu A.S., Technical Officer, FSSAI, Mundra has rendered the subject illegally imported goods Green Peas (Qty. 44250 KG, Market Value- Rs.1,11,95,250/-) liable to confiscation under section 111(d), 111(e), 111(f), 111(i), 111(j), 111(m), 111(o) of the Customs Act, 1962 and cover cargo i.e. declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-) liable to confiscation under section 111(m) and 119 of the Customs Act, 1962. It therefore appears that Shri Vishnu A.S., Technical Officer, FSSAI, Mundra has rendered himself liable to penalty under Section 112 (a) of the Customs Act, 1962.

2.76 It further appeared that by way of knowingly submitting incomplete inspection report, Shri Vishnu A.S., Technical Officer, FSSAI, Mundra rendered himself liable to penalty under Section 114AA of the Customs Act, 1962. For his act of non-cooperating in the investigation by not appearing for tendering



statement before investigating officers, as discussed above, Shri Vishnu A.S., Technical Officer, FSSAI, Mundra appears liable to penalty under Section 117 ibid too.

2.77 In view of the above, a Show Cause Notice was issued under F. No. GEN/ADJ/ADC/794/2022-Adjn dated 03.04.2023 whereby M/s. Adinath Enterprise, Above Maruti Alloys, 4, Vaid Vadi, Near Tapulal Dasani Estate, Gondal Road, Rajkot (IEC No. 2406006921) (Prop. Shri Yogeshwar C. Panchani alias Yogesh Patel) were called upon to show cause to the Additional Commissioner of Customs, Mundra Custom House, Kutch, Gujarat, as to why:

- (a) The illegally imported goods i.e. Green Peas (Qty. 44250 KG, Market Value- Rs.1,11,95,250/-) should not be confiscated under section 111(d), 111(e), 111(f), 111(i), 111(l), 111(m), 111(o) of the Customs Act, 1962.
- (b) The declared imported goods Black Eye Beans Peas (Qty. 5760 KG, Market Value- Rs. 11,69,280/-), used for the purpose of concealment of smuggled 44250 KG Green Peas, should not be confiscated under the provisions of Section 111 (m) & 119 of the Customs Act, 1962.
- (c) Penalty should not be imposed on them under Section 112(a) & 112(b), 114AA & 117 of the Customs Act, 1962.

2.78 Vide the impugned Show Cause Notice dated 03.04.2023, the following persons/companies/firms/concerns as appearing in Column 2 of the following Table-IV, be individually and separately were called upon to show cause in writing to the Additional Commissioner of Customs, Mundra Custom House, Kutch, Gujarat, as to why Penalty should not be imposed on each of them separately and individually in terms of provisions of Customs Act, 1962 as mentioned below (as appearing at Column (3) to (6) of the table): -

Table-IV

Sl. No.	Name (S/Shri/Ms/Smt/ M/s)	Penal provisions under Customs Act, 1962			
(1)	(2)	(3)	(4)	(5)	(6)
1	Shri Mahesh Ramji Bhanushali	112(a)	112(b)	114AA	117
2	M/s. Adiyogi Enterprises (Prop. Smt. Kanchan S. Salunke)	112(a)	112(b)	114AA	
3	Shri Rahul Dayaram Bhanushali	112(a)	112(b)	114AA	117
4	M/s. Cypher One 8	112(a)	112(b)	114AA	117



5	Shri Ronak Bhadra	112(a)	112(b)	114AA	
6	M/s. Akshar General Trading LLC, Dubai, UAE	112(a)	112(b)	114AA	117
7	Shri Bharat Trikambhai Mange Alias Shri Bharat Bhanushali	112(a)	112(b)	114AA	117
8	Shri Bhanushali Arjun Hansraj alias Arjun Bhanushali	112(a)	112(b)	114AA	117
9	M/s. H.V. Logistics	112(a)	112(b)	114AA	117
10	Shri Nimesh K. Dhuker Alias Shri Nimesh Bhanushali	112(a)	112(b)	114AA	117
11	M/s. Sarveshwara Logistics	112(a)	112(b)	114AA	117
12	Shri Suresh Bhanwarlal	112(a)	112(b)	114AA	117
13	Shri Anil Bhanushali	112(a)	112(b)	114AA	
14	Shri Lokendra Singh Rathore	112(a)			117
15	M/s. Ashapura Shipping Agency	112(a)	112(b)	114AA	117
16	Shri Ashok Bhanushali	112(a)	112(b)	114AA	117
17	Shri Lalit Kumar	112(a)		114AA	
18	Shri Anand	112(a)		114AA	
19	Shri Vishnu A.S.	112(a)		114AA	117

2.79 Consequently, the Adjudicating Authority passed the following order:

(i) He ordered to confiscate the goods i.e. Black Eye Peas (Qty. 5760 Kgs., Market Value 11,69,280/-) used for the purpose of concealment of smuggled 44250 Kgs Green Peas under the provision of Section 111(m) and 119 of the Customs Act, 1962. However, he gave an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs.2,35,000/- under Section 125 of the Customs Act, 1962;

(ii) He ordered for absolute confiscation of the illegally imported goods i.e. Green Peas (Qty. 44250 Kgs., Market Value Rs. 1,11,95,250/) under the provisions of Section 111(d), 111(e), 111(f), 111(i), 111(j), 111(m) and 111(o) of the Customs Act, 1962.

(iii) He imposed penalty of Rs.20,00,000/- on M/s Aadinath Enterprises, Above Maruti Alloys, 4, Vaid Vadi, Near Tapulal Dasani Estate, Gondal Road, Rajkot (IEC No. 2406006921) under section 112(a)(i) of the Customs Act, 1962.

(iv) He imposed penalty of Rs.5,00,000/- on M/s Aadinath Enterprises, Above Maruti Alloys, 4, Vaid Vadi, Near Tapulal Dasani Estate, Gondal Road, Rajkot (IEC No. 2406006921) under section 112(b)(i) of the Customs Act, 1962.

(v) He imposed penalty of Rs.10,00,000/- on M/s Aadinath Enterprises, Above Maruti Alloys, 4, Vaid Vadi, Near Tapulal Dasani Estate, Gondal Road, Rajkot (IEC No. 2406006921) under section 114AA of the Customs Act, 1962.



(vi) He imposed penalty of Rs.25,00,000/- on Shri Mahesh Bhanushali under section 112(a)(i) of the Customs Act, 1962.

(vii) He imposed penalty of Rs.10,00,000/- on Shri Mahesh Bhanushali under section 112(b)(i) of the Customs Act, 1962.

(viii) He imposed penalty of Rs.15,00,000/- on Shri Mahesh Bhanushali under section 114AA of the Customs Act, 1962.

(ix) He imposed penalty of Rs.25,00,000/- on M/s Adiyogi Enterprises having address R. No. 1, Hazare Building, Near Kalyan Temple, Kalyan, Thane-421301(IEC No. BTKPS9807D) under section 112(a)(i) of the Customs Act, 1962.

(x) He imposed penalty of Rs.10,00,000/- on M/s Adiyogi Enterprises having address R. No. 1, Hazare Building, Near Kalyan Temple, Kalyan, Thane-421301(IEC No. BTKPS9807D) under section 112(b)(i) of the Customs Act, 1962.

(xi) He imposed penalty of Rs.15,00,000/- on M/s Adiyogi Enterprises having address R. No. 1, Hazare Building, Near Kalyan Temple, Kalyan, Thane-421301(IEC No. BTKPS9807D) under section 114AA of the Customs Act, 1962.

(xii) He imposed penalty of Rs.10,00,000/- on Shri Rahul Bhanushali, proprietor of M/s Cypher One8 under section 112(a)(i) of the Customs Act, 1962.

(xiii) He imposed penalty of Rs.4,00,000/- on Shri Rahul Bhanushali, proprietor of M/s Cypher One8 under section 112(b)(i) of the Customs Act, 1962.

(xiv) He imposed penalty of Rs.7,00,000/- on Shri Rahul Bhanushali, proprietor of M/s Cypher One8 under section 114AA of the Customs Act, 1962.

(xv) He imposed penalty of Rs.10,00,000/- on M/s Cypher One8 having address as Shop No. 4&5, Plot No. 102, Samadhan CHSL, Sector-2, Koparkhairne, Navi Mumbai, Thane-400709 under section 112(a)(i) of the



Customs Act, 1962.

(xvi) He imposed penalty of Rs.4,00,000/- on M/s Cypher One8 having address as Shop No. 4&5, Plot No. 102, Samadhan CHSL, Sector-2, Koparkhairne, Navi Mumbai, Thane-400709 under section 112(b)(i) of the Customs Act, 1962.

(xvii) He imposed penalty of Rs.7,00,000/- on M/s Cypher One8 having address as Shop No. 4&5, Plot No. 102, Samadhan CHSL, Sector-2, Koparkhairne, Navi Mumbai, Thane-400709 under section 114AA of the Customs Act, 1962.

(xviii) He imposed penalty of Rs.8,00,000/- on Shri Ronak Bhadra under section 112(a)(i) of the Customs Act, 1962.

(xix) He imposed penalty of Rs.3,00,000/- on Shri Ronak Bhadra under section 112(b)(i) of the Customs Act, 1962.

(xx) He imposed penalty of Rs.5,00,000/- on Shri Ronak Bhadra under section 114AA of the Customs Act, 1962.

(xxi) He imposed penalty of Rs.20,00,000/- on M/s Akshar General Trading LLC, Dubai, UAE, supplier of impugned goods, under section 112(a)(i) of the Customs Act, 1962.

(xxii) He imposed penalty of Rs.5,00,000/- on M/s Akshar General Trading LLC, Dubai, UAE, supplier of impugned goods, under section 112(b)(i) of the Customs Act, 1962.

(xxiii) He imposed penalty of Rs.15,00,000/- on M/s Akshar General Trading LLC, Dubai, UAE, supplier of impugned goods, under section 114AA of the Customs Act, 1962.

(xxiv) He imposed penalty of Rs.10,00,000/- on Shri Bharat Bhanushali, Manager of forwarder firm M/s H. V. Logistics and CB Firm M/s Ashapura Shipping Agency under section 112(a)(i) of the Customs Act, 1962.

(xxv) He imposed penalty of Rs.3,00,000/- on Shri Bharat Bhanushali, Manager of forwarder firm M/s H. V. Logistics and CB Firm M/s Ashapura Shipping



Agency under section 112(b)(i) of the Customs Act, 1962.

(xxvi) He imposed penalty of Rs.5,00,000/- on Shri Bharat Bhanushali, Manager of forwarder firm M/s H. V. Logistics and CB Firm M/s Ashapura Shipping Agency under section 114AA of the Customs Act, 1962.

(xxvii) He imposed penalty of Rs.15,00,000/- on Shri Arjun Bhanushali, Manager of forwarder firm M/s H. V. Logistics and CB Firm M/s Ashapura Shipping Agency under section 112(a)(i) of the Customs Act, 1962.

(xxviii) He imposed penalty of Rs.8,00,000/- on Shri Arjun Bhanushali, Manager of forwarder firm M/s H. V. Logistics and CB Firm M/s Ashapura Shipping Agency under section 112(b)(i) of the Customs Act, 1962.

(xxix) He imposed penalty of Rs.10,00,000/- on Shri Arjun Bhanushali, Manager of forwarder firm M/s H. V. Logistics and CB Firm M/s Ashapura Shipping Agency under section 114AA of the Customs Act, 1962.

(xxx) He imposed penalty of Rs.8,00,000/- on M/s H. V. Logistics having address as office No. 113, Plot No. 110, 1st Floor, Manali Tower, Opp. Bam Gim Office, sector-8, Gandhidham under section 112(a)(i) of the Customs Act, 1962.

(xxxi) He imposed penalty of Rs.4,00,000/- on M/s H. V. Logistics having address as office No. 113, Plot No. 110, 1st Floor, Manali Tower, Opp. Bam Gim Office, sector-8, Gandhidham under section 112(b)(i) of the Customs Act, 1962.

(xxxii) He imposed penalty of Rs.6,00,000/- on M/s H. V. Logistics having address as office No. 113, Plot No. 110, 1st Floor, Manali Tower, Opp. Bam Gim Office, sector-8, Gandhidham under section 114AA of the Customs Act, 1962.

(xxxiii) He imposed penalty of Rs.8,00,000/- on Shri Nimesh K Dhukar Alias Shri Nimesh Bhanushali, Proprietor of M/s Sarveshwara Logistics under section 112(a)(i) of the Customs Act, 1962.

(xxxiv) He imposed penalty of Rs.4,00,000/- on Shri Nimesh K Dhukar Alias Shri Nimesh Bhanushali, Proprietor of M/s Sarveshwara Logistics under



section 112(b)(i) of the Customs Act, 1962.

(xxxv) He imposed penalty of Rs.6,00,000/- on Shri Nimesh K Dhukar Alias Shri Nimesh Bhanushali, Proprietor of M/s Sarveshwara Logistics under section 114AA of the Customs Act, 1962.

(xxxvi) He imposed penalty of Rs.8,00,000/- on M/s Sarveshwara Logistics having address as office No. 113, Plot No. 110, 1st Floor, Manali Tower, Opp. Bam Gim Office, sector-8, Gandhidham under section 112(a)(i) of the Customs Act, 1962.

(xxxvii) He imposed penalty of Rs.4,00,000/- on M/s Sarveshwara Logistics having address as office No. 113, Plot No. 110, 1st Floor, Manali Tower, Opp. Bam Gim Office, sector-8, Gandhidham under section 112(b)(i) of the Customs Act, 1962.

(xxxviii) He imposed penalty of Rs.6,00,000/- on M/s Sarveshwara Logistics having address as office No. 113, Plot No. 110, 1st Floor, Manali Tower, Opp. Bam Gim Office, sector-8, Gandhidham under section 114AA of the Customs Act, 1962.

(xxxix) He imposed penalty of Rs.6,00,000/- on Shri Suresh Bhanwarlal, field staff of forwarder firm M/s H. V. Logistics and CB Firm M/s Ashapura Shipping Agency under section 112(a)(i) of the Customs Act, 1962.

(xl) He imposed penalty of Rs.2,00,000/- on Shri Suresh Bhanwarlal, field staff of forwarder firm M/s H. V. Logistics and CB Firm M/s Ashapura Shipping Agency under section 112(b)(i) of the Customs Act, 1962.

(xli) He imposed penalty of Rs.4,00,000/- on Shri Suresh Bhanwarlal, field staff of forwarder firm M/s H. V. Logistics and CB Firm M/s Ashapura Shipping Agency under section 114AA of the Customs Act, 1962.

(xlii) He imposed penalty of Rs.10,00,000/- on Shri Anil Bhanushali under section 112(a)(i) of the Customs Act, 1962.

(xliii) He imposed penalty of Rs.4,00,000/- on Shri Anil Bhanushali under section 112(b)(i) of the Customs Act, 1962.



(xlv) He imposed penalty of Rs.6,00,000/- on Shri Anil Bhanushali under section 114AA of the Customs Act, 1962.

(xlv) He imposed penalty of Rs.3,00,000/- on Shri Lokendra Singh Rathore, Proprietor of M/s Shree Ram Carrying Corporation under section 112(a)(i) of the Customs Act, 1962.

(xlv) He imposed penalty of Rs.15,00,000/- on Custom Broker firm M/s Ashapura Shipping Agency having address as office No. 113, Plot No. 110, 1st Floor, Manali Tower, Opp. Bam Gim Office, sector-8, Gandhidham under section 112(a)(i) of the Customs Act, 1962.

(xlvii) He imposed penalty of Rs.8,00,000/- on Custom Broker firm M/s Ashapura Shipping Agency having address as office No. 113, Plot No. 110, 1st Floor, Manali Tower, Opp. Bam Gim Office, sector-8, Gandhidham under section 112(b)(i) of the Customs Act, 1962.

(xlviii) He imposed penalty of Rs.12,00,000/- on Custom Broker firm M/s Ashapura Shipping Agency having address as office No. 113, Plot No. 110, 1st Floor, Manali Tower, Opp. Bam Gim Office, sector-8, Gandhidham under section 114AA of the Customs Act, 1962.

(xlix) He imposed penalty of Rs.8,00,000/- on Shri Ashok Bhanushali, Partner of CB Firm M/s Ashapura Shipping Agency under section 112(a)(i) of the Customs Act, 1962.

(i) He imposed penalty of Rs.4,00,000/- on Shri Ashok Bhanushali, Partner of CB Firm M/s Ashapura Shipping Agency under section 112(b)(i) of the Customs Act, 1962.

(ii) He imposed penalty of Rs.6,00,000/- on Shri Ashok Bhanushali, Partner of CB Firm M/s Ashapura Shipping Agency under section 114AA of the Customs Act, 1962.

(iii) He refrained from imposing penalty on Shri Lalit Kumar (the then Superintendent) and Shri Anand (the then Preventive Officer) under section 112(a) and 114AA of the Customs Act, 1962.



(liii) He refrained from imposing penalty on Shri Vishnu A. S., Technical Officer, FSSAI, Mundra under section 112(a), 114AA and 117 of the Custom Act, 1962.

SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 A perusal of the Show-cause Notice would show that the same is issued by the Additional Commissioner, Custom House, Mundra. It is claimed therein that intelligence was gathered by DRI that one M/s. Aadinath Enterprise were illegally importing 'Green Peas' falling under CTH No. 07131020 of Customs Tariff at Mundra Port in an import consignment covered under Bill of Entry No. 8074974 dtd. 30/03/2022 having declared description of goods as Black Eye Beans. It is mentioned in the Show-cause Notice that as per prevailing import policy, the import of green peas was restricted and subject to Minimum Import Price (MIP) of Rs.200/- CIF per KG; the import of peas shall be subject to an Annual (Fiscal Year) quota of 1.5 lac MT as per procedure notified by Directorate General of Foreign Trade (DGFT) and it will be subject to minimum import price (MIP) of Rs.200/- CIF per KG and above and import is allowed through Kolkata Sea Port only. It is mentioned in the Show-cause Notice that to bypass the restrictions imposed under Foreign Trade Policy (FTP) we had arranged concealment of bags of green peas behind the bags of black eye beans and also manipulated the import documents. However, appellant has not concern with the same.

3.2 A perusal of the Show-cause Notice would show that reliance is placed on following statements:

01. Statement dtd. 06/04/2022 of Shri Divyesh Patel, Partner of M/s. Galaxy Logistics, Mundra
02. Statement dtd. 06/04/2022 of Shri Amit Sureshbhai Lodaya, Manager-cum-Supervisor of M/s. Galaxy Logistics, Mundra
03. Statement dtd. 07/04/2022 of Shri Suresh Bhavaria
04. Statement dtd. 07/04/2022 of Shri Binod Keshav Rao, Senior Manager Operations of M/s. Seabird Marine Services Gujarat Pvt. Ltd., Mundra, Kutch
05. Statement dtd. 08/04/2022 of Shri Ramji Rai, Truck Driver ,
06. Statement dtd. 08/04/2022 of Shri Dinesh Rai, Truck Driver,

07. Statement dtd. 08/04/2022 of Rameshchandra, Truck Driver ,
08. Statement dtd. 08/04/2022 of Anish, Truck Driver ,
09. Statement dtd. 09/04/2022 of Smt. Kanchan S. Salunke ,
10. Statement dtd. 09/04/2022 of Shri Lokendrasingh, Proprietor of M/s. Shree Ram Carrying Corporation ,
11. Statement dtd. 11/04/2022 of Shri Rameshchandra, Truck Driver,
12. Statement dtd. 12/04/2022 of Shri Nimesh Dhuker @ Nimesh Bhanushali, Manager of M/s. H.V. Logistics and M/s. Ashapura Shipping Agency
13. Statement of Yogeshwar C. Panchani @ Yogesh Patel, Proprietor of M/s. Aadinath Enterprise, dtd. 13/04/2022
14. Statement of Yogeshwar C. Panchani @ Yogesh Patel, Proprietor of M/s. Aadinath Enterprise, dtd. 14/04/2022
15. Statement dtd. 14/04/2022 of Shri Bharat Trikambhai Mange @ Bharat Bhanushali, Manager of M/s. H.V. Logistics and M/s. Aashapura Logistics
16. Statement dtd. 14/04/2022 of Shri Bhanushali Arjun Hansraj @ Arjun Bhanushali / Joysar
17. Statement dtd. 15/05/2022 of Shri Suresh Bhavarlal (RUD - 33),
18. Statement of Yogeshwar C. Panchani @ Yogesh Patel, Proprietor of M/s. Aadinath Enterprise, dtd. 15/04/2022
19. Statement of Yogeshwar C. Panchani @ Yogesh Patel, Proprietor of M/s. Aadinath Enterprise, dtd. 16/04/2022
20. Statement of Yogeshwar C. Panchani @ Yogesh Patel, Proprietor of M/s. Aadinath Enterprise, dtd. 07/05/2022
21. Statement dtd. 09/05/2022 of Shri Mahesh Ramji Bhanushali
22. Statement dtd. 18/05/2022 of Shri Bharat Bhanushali
23. Statement dtd. 25/05/2022 of Shri Rahul Bhanushali, Proprietor of M/s. Cypher One 8
24. Statement dtd. 26/05/2022 of Shri Rahul Bhanushali, Proprietor of M/s. Cypher One 8
25. Statement dtd. 01/06/2022 of Shri Rahul Bhanushali, Proprietor of M/s. Cypher One
26. Statement dtd. 02/06/2022 of Shri Rahul Bhanushali, Proprietor of M/s. Cypher One 8
27. Statement dtd. 25/05/2022 of Shri Ronak Bhadra
28. Statement dtd. 26/05/2022 of Shri Ronak Bhadra



29. Statement dtd. 28/05/2022 of Shri Mahesh Ramji Bhanushali
30. Statement of Yogeshwar C. Panchani @ Yogesh Patel, Proprietor of M/s. Aadinath Enterprise, dtd. 04/06/2022
31. Statement dtd. 06/06/2022 of Shri Bhanushali Arjun Hansraj @ Arjun Bhanushali / Joysar
32. Statement dtd. 15/11/2022 of Shri Anand, Inspector of CGST and Central Excise, Kalol Division, Ahmedabad Commissionerate (The Then Preventive Officer, Custom House, Mundra)
33. Statement dtd. 17/11/2022 of Shri Lalitkumar, Appraiser, (The Then Superintendent, Custom House, Mundra)
34. Statement dtd. 11/01/2023 of Shri M.P. Sinha, Superintendent, Custom House, Mundra
35. Statement dtd. 11/01/2023 of Shri Vikas, P.O. Custom House, Mundra
36. Statement of Yogeshwar C. Panchani @ Yogesh Patel, Proprietor of M/s. Aadinath Enterprise, dtd. 01/03/2023
37. Statement dtd. 09/03/2023 of Shri Bharat Bhanushali
38. Statement dtd. 09/03/2023 of Shri Arjun Bhanushali
39. Statement dtd. 21/03/2023 of Shri Mahesh Bhanushali

3.3 In the Show-cause Notice, apart from the aforesaid statements, reliance is also placed on various documents including WhatsApp communications retrieved by way of Forensic Data Extraction from the electronic devices (mobile phones) voluntarily surrendered by the concerned persons during investigation. The data extraction was carried out at Cyber Forensic Laboratory, DRI, Mumbai Zonal Unit, Mumbai under panchnamas dtd. 24-25-26/05/2022 and panchnama dtd. 27-28-29-30/12/2022. On the basis of the aforesaid statements as well as various documentary evidences including the aforesaid WhatsApp communications, it is sought to conclude in the Show-cause Notice that as M/s. Aadinath Enterprises had filed Bill of Entry bearing No. 8074974 dtd. 30/03/2022 for import of 'Black Eye Beans' (Tariff Item - 07133500) declaring the total quantity 52170 KGs (1636 bags) and on 100% examination of the DRI, it was found that only 192 bags of 5760 KGs of 'Black Eye Beans' were available and 1475 bags having 44250 KGs were of 'Green Peas' (Tariff Item - 07131020) which is restricted / prohibited, the importer had mis-declared the imported goods in respect of quantity, description, value and other material particulars and imported the restricted goods violating the import policy provisions laid down vide DGFT Notification No. 37/2015-20 dtd. 18/12/2019,



issued u/s. 3 of FT (D&R) Act, 1992 r/w para 1.02 and 2.01 of Foreign Trade Policy, 2015-20 as extended.

3.4 It is clearly mentioned in the Show-cause Notice that in the invoice and other documents i.e. Certificate of Origin, Bill of Lading, etc. issued in the name of M/s. Aadiyogi Enterprises, the description of the goods was mentioned as 'Black Eye Beans' and 'Green Peas' were not declared anywhere by the overseas supplier M/s. Akshar General Trading LLC, Dubai, UAE. It is also clearly mentioned in the Show-cause Notice that the goods were imported under Bill of Lading No. TSVATJEA22025052 dtd. 22/03/2022. In the said document it was shown that the importer i.e. M/s. Aadiyogi Enterprises has sold the goods on High Seas Sale basis to M/s. Aadinath Enterprise (Proprietor Yogeshwar C. Panchani @ Yogesh Patel). It is mentioned in the Show-cause Notice that the said High Seas Sale agreement was also not proper, inasmuch as there were no witnesses in the said agreement. The signatures of the parties in the High Seas Sale agreement were also fabricated signatures.

3.5 It is submitted that a perusal of the aforesaid statements recorded by the DRI as well as perusal of all the other relied upon documents including the WhatsApp chat messages would show that as far as appellant is concerned, they have no role in the alleged smuggling. They have not connived with the main party i.e. owner of M/s. Aadiyogi Enterprises. There is absolutely no reason why they should be made a party to the Show-cause Notice. Despite this, the Adjudicating Authority had failed to consider the submissions of the appellant and had illegally imposed penalty on him.

3.6 On perusing the Show-cause Notice itself, more particularly in para 65, it may be found that it is clearly mentioned that Shri Mahesh Bhanushali was the mastermind and main kingpin behind the illegal import of 'Green Peas' in violation of provisions of Customs Act, 1962, Import Policy and other allied acts. He, in connivance with the overseas supplier, arranged import documents having false, incomplete and incorrect material particulars and wilfully and deliberately indulged into conspiracy of importing the consignment of 'Green Peas' by concealing the same in the consignment of 'Black Eye Beans' imported at Mundra. He was the controller and handler of original importer firm M/s. Aadiyogi Enterprises in whose name the import of offending goods was originally made. He was also controlling the firm M/s. Cypher One8, who was shown as seller in the E-way bills to transport the goods from Mundra to destination place. He caused to forge the High Seas Sales agreement, fake invoice and other related



documents containing false details to show that High Seas Sale genuine which was admittedly an eye-wash. Shri Mukesh Bhanushali had mis-led by way of shifting the omission and commission on some Patel Lobby and Shri Rahul Bhanushali but he neither provided any evidence, nor the complete details / whereabouts of such key persons of Patel Lobby. He attempted to save Shri Anil Bhanushali and Shri Ronak Bhadra stating that they were his friends and not concerned with the subject import consignment covered under Bill of Lading No. TSVAEJEA22025052 in the name of consignee M/s. Aadiyogi Enterprises and Bill of Entry No. 8074974 dtd. 30/03/2022. Shri Rahul Bhanushali provided a name of Shri Vijay Patel but without having complete details, such person could not be identified / examined during investigation. It is submitted that, in absence of examination of the said main person, no allegations could have been levelled against the appellant. No penalty could have been imposed on the appellant. Therefore, the penalty may be set aside and impugned order may be quashed in so far as the appellant is concerned.

3.7 In very same para 65 of the impugned Show-cause Notice, it is also mentioned that from the statements of various people as mentioned hereinabove as well as from the WhatsApp chat evidences gathered during investigation, it clearly suggests that Shri Mahesh Bhanushali is the mastermind being illegal import of 'Green Peas' which is prohibited item for import at Mundra Port. Not only that but Shri Mahesh Bhanushali is a habitual offender. He was found involved in the offence of smuggling of around 19 KGs gold detected at Nhava Sheva Port, in which case, he was arrested in 2019 under the provisions of Customs Act, 1962 and later on vide Order dtd. 01/07/2019, he was permitted to be released on bail with specific conditions. On adjudication of the said case of smuggling of 19 KGs gold, the Adjudicating Authority vide order dtd. 22/02/2021 had confirmed the charges framed against Shri Mahesh Bhanushali and imposed penalty of Rs.12.00 Crores under the provisions of Customs Act, 1962. He was also penalized by another Adjudicating Authority vide order dtd. 28/11/2017 for illegal import of whey protein by concealing the same in the scrap material. Mahesh Bhanushali was in jail due to launching proceedings against him under COFEPOSA. It is pertinent to note that there is absolutely no evidence worth the name to suggest that the appellant has abated said Mahesh Bhanushali or that the appellant is hand in glove with said Mahesh Bhanushali.

3.8 In para 66 of the Show-cause Notice, it is clearly mentioned that M/s. Aadiyogi Enterprises were the original importer in the name of which all the import documents were got issued containing false, incorrect and incomplete



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material particulars in connivance with overseas supplier. As per statement of Smt. Kanchan S. Salunke, Proprietor of M/s. Aadiyogi Enterprises, Mahesh Bhanushali had assured her to assist in importing pulses from Dubai as he was having contacts there and she had given her statutory documents to get issued IEC and thereby abetted the illegal import of prohibited goods. Though she showed her unawareness with the present import, her version and submission that the import was done either by Shri Mahesh Bhanushali or his friend Shri Rahul Bhanushali indicates that she had allowed IEC of M/s. Aadiyogi Enterprises for import of subject consignment. It appears that she had allowed the key persons Mahesh Bhanushali, his associate Rahul Bhanushali and others for using the name of her firm for preparing forged High Seas Sale agreement and other related documents such as High Seas Sale Invoices, etc. for clearance of subject consignment from customs on the basis of forged, false documents. After clearance of subject goods from customs, Kanchan S. Salunke had allowed the key persons in using the name of firm as buyer of subject goods in the e-way bill and related invoices for easy movement of offending goods in transportation for delivery thereof at the destination. However, it is pertinent to note that during the course of investigation, absolutely no role of the appellant is found in the alleged offence.

3.9 In para 67 of the impugned Show-cause Notice, it is mentioned that Shri Rahul Dayaram Bhanushali is key associate of Shri Mahesh Bhanushali who was the mastermind behind this case of illegal import. They have made illegal import of 'Green Peas' in the guise of 'Black Eye Beans' under Bill of Lading No. TSVATJEA22025052 dtd. 22/03/2022. Rahul Bhanushali had arranged issuance of IEC of M/s. Aadiyogi Enterprises and managed the High Seas Sale agreement between M/s. Aadiyogi Enterprises and M/s. Aadinath Enterprise. Rahul Bhanushali had created and supplied forged documents of High Seas Sales to clear the offending goods from customs through M/s. Aadinath Enterprise. Rahul Bhanushali prepared the e-way bills and invoices having false material particulars for transportation of subject goods from Mundra to Maharashtra. He was the proprietor of M/s. Cypher One8 which was shown as seller of subject goods in the e-way bills and invoices while transporting from Mundra to destination but the firm was found non-existent at the address mentioned in these invoices / e-way bills and there was no such sale / purchase took place between M/s. Cypher One8 and M/s. Aadiyogi Enterprises. Rahul Bhanushali has clearly stated in his statement that one Vijay Patel was introduced by him to Mahesh Bhanushali for the customs clearance that the plan was that the goods would be imported by Shri Vijay Patel and Shri Mahesh



Bhanushali would handle the customs clearance and Rahul Bhanushali's job was to do trading of the imported goods for which Vijay Patel offered him commission of Rs.2/- per KG. It is clearly mentioned in said para 67 of the Show-cause Notice that Rahul Bhanushali failed to provide whereabouts of Vijay Patel. He also failed to provide details of other imports / transactions made by M/s. Cypher One8 and M/s. Aadiyogi Enterprise. Rahul Bhanushali mis-led the investigation. M/s. Cypher One8 was working under proprietor of Rahul Bhanushali but it was under control of Mahesh Bhanushali. Rahul Bhanushali was only a proprietor on paper. However, appellant is not concerned in any way.

3.10 In para 68 of the Show-cause Notice, it is mentioned that Ronak Bhadra arranged for transportation on commission basis and taken follow-up of transportation of subject offending goods from Mundra to destination of delivery as per direction of Shri Anil Bhanushali. But no role is attributable to the appellant at all.

3.11 As clearly mentioned in para 69 of the impugned Show-cause Notice, M/s. Akshar General Trading LLC, Dubai, UAE was declared supplier of subject goods and counter part of the conspiracy of mis-declaration of the description, quantity and other material particulars of subject goods in the invoice, Certificate of Origin, Bill of Lading, etc. The said shipper had stacked 'Black Eye Beans' near the door of the container and 'Green Peas' were stuffed behind the cover cargo of 'Black Eye Beans'. There is absolutely nothing in the Show-cause Notice to suggest that appellant has any concern whatsoever with the same supplier of subject goods or with any other person for that matter.

3.12 Likewise in para 74 of the impugned Show-cause Notice, it is concluded that Shri Anil Bhanushali was close associate of Shri Mahesh Bhanushali. When Mahesh Bhanushali was in jail, Anil Bhanushali had taken follow-up with respect to clearance and transportation of subject import consignment. From the WhatsApp chat conversation, it is apparent that Anil Bhanushali was very well aware about concealed 'Green Peas' in the import consignment having declared goods 'Black Eye Beans'. He coordinated with Ronak Bhadra for shifting the cargo from import containers to trucks for transportation of the same from Mundra to destination in Maharashtra. He directed Ronak Bhadra to bring the goods to Mumbai without stopping. However, appellant has no role at all.

3.13 Thus, as concluded in the Show-cause Notice itself, the whole racket was committed by Mahesh Bhanushali, M/s. Aadiyogi Enterprises (Proprietor



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Smt. Kanchan S. Salunke), Rahul Bhanushali and his firm M/s. Cypher One8, Ronak Bhadra, M/s. Akshar General Trading LLC, Dubai, UAE, Anil Bhanushali only. Appellant is not involved in the process. Appellant had absolutely no knowledge about the offence committed by these people. These people only are responsible behind illegally importing 'Green Peas' in guise of 'Black Eye Beans'. Appellant had not connived with them. It is important to note that the DRI has chosen not to even record statement of Shri Ashok Bhanushali. Even the DRI was completely convinced that they have no role to play. As far as all other statements recorded by the DRI and any other relied upon documents / WhatsApp messages, there is no iota of evidence which could suggest any role of appellant in the racket of bringing 'Green Peas' in guise of 'Black Eye Beans'.

3.14 MAHESH BHANUSHALI HAD COMPLETELY MIS-GUIDED AND CHEATED M/s. AASHAPURA SHIPPING AGENCY, M/s. H.V. LOGISTICS, M/s. SARVESHWARA LOGISTICS, ARJUN BHANUSHALI, NIMESH K. DHUKER @ NIMESH BHANUSHALI, ASHOK BHANUSHALI AND IN TURN, SURESH BHAVARLAL (OUR EMPLOYEE) AND YOGESH PATEL OF M/s. AADINATH ENTERPRISE WERE ALSO MIS-GUIDED BECAUSE OF SUCH REPRESENTATION OF MAHESH BHANUSHALI, RAHUL BHANUSHALI, ANIL BHANUSHALI, M/s. ADIYOGI ENTERPRISES, M/s. CYPHER ONE8, RONAK BHADRA AND AKSHAR GENERAL TRADING LLC, DUBAI, UAE.

3.15 Without prejudice to the above, it is submitted that even if it is assumed that any of the co-noticees have stated anything against appellant in any of the respective statements, even in that case, attention is invited to the judgement of Hon'ble Supreme Court of India in the case of Vinod Solanki V/s. Union of India reported at 2009 (233) ELT 157 (S.C.) whereby it is settled that a statement of co-noticee/co-accused cannot be used against them. Without prejudice to the above, even if it is assumed that WhatsApp message has something against them and an adverse inference could be drawn from the said WhatsApp messages against them, in that case it is submitted that the said WhatsApp messages are not reliable in evidence in light of the fact that mandatory requirement of Section 138C of the Customs Act, 1962 is not followed. They are electronic evidences. Unless said requirements are followed, they cannot be admitted as evidence. Said submission find support from the judgement of Delhi Tribunal in the case of S.N. Agrotech V/s. Commissioner of Customs, New Delhi reported at 2018 (361) ELT 761 (Tri - Delhi).



3.16 In short, it is absolutely clear beyond any scope of doubt that appellant was not at all aware about the mischief played by Mahesh Bhanushali of importing 'Green Peas' in guise of 'Black Eye Beans'. In this circumstance, no penalty could be imposed upon them u/s. 112(a), 112(b), 114AA or 117 of Customs Act, 1962. It deserves appreciation that appellant had not done or omitted to do any act which act or omission would render the goods liable to confiscation u/s. 111. Appellant has not abetted the doing or omission of doing such an act. Appellant has not acquired possession of or appellant is not in any way concern in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which appellant knew or had reason to believe were liable to confiscation u/s. 111. Since it is so, no penalty could be imposed on them u/s. 112(a) or 112(b)(supra). The Adjudicating Authority is completely wrong in imposing penalty on the appellant u/s 112(a)(i) and 112(b)(i) of Customs Act, 1962. The said penalty requires to be set aside.

3.17 Appellant has not, knowingly or intentionally made, signed or used or caused to be made, signed or used any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business for the purposes of Customs Act, 1962. Since it is so, no penalty could be imposed on them u/s. 114AA(supra). The Adjudicating Authority is wrong in imposing said penalty on the appellant. Said penalty requires to be set aside. It is most respectfully submitted that the Adjudicating Authority has failed to understand that no penalty could have been imposed on a partnership firm and its partners. It is a settled law that separate penalty could not be imposed on both of them. The Adjudicating Authority has gone forward to impose penalty aggregating Rs.35,00,000/- on the appellant herein i.e. M/s Ashapura Shipping Agency and separate penalty aggregating to Rs.18,00,000/- on Mr. Ashok Bhanushali, the partner of the said partnership firm. Even, in that view of the matter, in light of the settled law, impugned order in so far as it relates to imposition of penalty on the appellant herein deserves to be quashed and set aside.

3.18 Lastly, it is submitted that the Adjudicating Authority has failed to appreciate that in order to adjudicate a Show-cause Notice placing reliance on statements of several people, if the Adjudicating Authority wishes to place reliance on any of the said statements in order to decide the Show-cause Notice against the appellant, it was incumbent upon the Adjudicating Authority to afford cross-examination of all those people whose statements are relied upon.



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In absence of cross examination, no reliance could have been placed on any of the statements of any of the witnesses / persons.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 10.09.2025, following the principles of natural justice wherein Shri Devashish K Trivedi, Advocate, appeared for the hearing. He reiterated the submissions made at the time of filing of appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that the appellant have contested the imposition of penalties upon them and the following issues need to be addressed:

- i. Whether the penalties imposed on the appellant is justified under Sections 112(a)(i), 112(b)(i), and 114AA of the Customs Act, 1962.
- ii. Whether the appellants' claims of being "bona-fide" and not knowing about the illegal activity are valid.
- iii. Whether the appellants' contention regarding the inadmissibility of electronic evidence and co-noticee statements is legally tenable.

5.2 The Directorate of Revenue Intelligence (DRI) investigation revealed that M/s. Aadinath Enterprise illegally imported "Green Peas" at Mundra port, which is a violation of the Foreign Trade Policy. The policy specifies that the import of Green Peas is restricted and must meet specific conditions, including a Minimum Import Price (MIP) of ₹200 per kilogram (CIF) and import through the Kolkata sea port only. Since the import was made at Mundra port, it was in direct violation of this policy. The goods were mis-declared in the Bill of Entry. The consignment, declared as "Black Eye Beans," actually contained 44250 KG of Green Peas concealed behind the bags of Black Eye Beans. This concealment and mis-declaration rendered the goods liable for confiscation under various sections of the Customs Act, 1962. Under Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, goods imported in violation of a government order are considered "prohibited goods" under Section 11 of the



Customs Act, 1962. The import of Green Peas at Mundra port, contrary to the DGFT notification, falls under this category. The confiscation of the 44250 KG of Green Peas was justified and therefore, the goods were liable for confiscation.

5.3 The investigation clearly established that the Black Eye Beans were used to conceal the smuggled Green Peas. The bags of Black Eye Beans were deliberately stacked near the doors of the containers and trucks to prevent the discovery of the Green Peas hidden behind them. According to Section 119 of the Customs Act, 1962, any goods used for concealing smuggled goods are themselves liable for confiscation. The Black Eye Beans were also mis-declared in quantity and value in the Bill of Entry, further solidifying their liability for confiscation under Section 111(m). Therefore, the confiscation of the Black Eye Beans was correct and fully supported by the evidence gathered during the investigation.

5.4 The evidence on record, particularly the statements of multiple individuals and WhatsApp chats, clearly establishes a well-planned conspiracy to illegally import restricted goods. Shri Mahesh Bhanushali is identified as the mastermind who conspired with the overseas supplier, M/s. Akshar General Trading LLC, to mis-declare Green Peas as Black Eye Beans. The claim of being a "bona-fide" businessman of M/s. Aadinath Enterprise (proprietor Shri Yogeshwar C. Panchani) is not credible. Shri Yogeshwar C. Panchani admittedly allowed his IEC and FSSAI license to be used for the import without any formal agreement. He even authorized Shri Nimesh Bhanushali to forge his signature on the High Seas Sale (HSS) agreement. This demonstrates his active connivance in the scheme. The WhatsApp chats between him and Shri Bharat Bhanushali further show his direct involvement in directing the filing of the Bill of Entry and arranging the FSSAI inspection. His actions rendered the goods liable for confiscation and him for penalty.

5.5 As far as M/s. H.V. Logistics, M/s. Sarveshwara Logistics, and their proprietors/employees are concerned, including Shri Arjun Bhanushali, Shri Nimesh K. Dhuker, Shri Bharat Bhanushali, and Shri Suresh Bhanwarlal, were deeply involved. Shri Arjun Bhanushali initially accepted the proposal from the mastermind, Shri Mahesh Bhanushali, and directed his staff, including Shri Bharat Bhanushali, to proceed with the clearance. He also provided the format for the HSS agreement to Shri Rahul Bhanushali. Shri Bharat Bhanushali was the operational head, actively coordinating with the other conspirators, arranging for the clearance, and directing the physical concealment of the Green



Peas in the trucks. His WhatsApp chats with Shri Anil Bhanushali confirm his prior knowledge of the concealed goods. Shri Nimesh K. Dhuker forged Shri Yogeshwar C. Panchani's signature on the HSS agreement. He also arranged for the initial transportation of the containers from the CFS to the GIDC godown. Shri Suresh Bhanwarlal, a field employee, carried out the instructions to illegally paste FSSAI stickers on the bags and to stack the bags in the trucks to conceal the Green Peas. He even took a bag of Black Eye Beans home, which was later seized. His acts, even if under direction, show his knowing involvement.

5.6 Further, M/s. Ashapura Shipping Agency and its Partner, Shri Ashok Bhanushali used their Customs Broker license through M/s. H.V. Logistics and M/s. Sarveshwara Logistics. Shri Ashok Bhanushali, as the "overall head," allowed this arrangement without proper authorization and failed to respond to multiple summons from the DRI, thereby obstructing the investigation. His claim of having no role is contradicted by the finding that he was the overall controller of the group of firms.

5.7 The appellant argue that he was unaware of the illicit activity and were misled by the mastermind, Shri Mahesh Bhanushali. He claims to be bona fide service provider or victim of a conspiracy, thus lacking the required mens rea to be penalized. The OIO meticulously details a complex conspiracy to import restricted Green Peas by concealing them in a consignment of Black Eye Beans. The investigation, primarily conducted by the Directorate of Revenue Intelligence (DRI), uncovered a chain of fraudulent activities involving multiple individuals and firms.

5.8 The evidence, including forensic data from mobile phones, clearly demonstrates the active involvement of the appellant. For instance, Shri Bharat Bhanushali's WhatsApp conversations with Shri Mahesh Bhanushali explicitly show they were aware of the concealment of Green Peas. Similarly, the chat logs of Shri Nimesh Dhuker and Shri Arjun Bhanushali reveal their coordination in arranging for the clearance and transportation of the goods and their knowledge of the fraudulent activities. The argument of being "cheated" or "misled" is not credible in light of the objective evidence. Shri Bharat Bhanushali admitted to getting FSSAI stickers printed locally and arranging for the bags to be stacked in a specific manner to conceal the Green Peas. Shri Suresh Bhanwarlal, a field staff member, admitted to following these directions and even illegally taking a bag of the Black Eye Beans home, which was later recovered from his residence.




5.9 The argument that appellant had no knowledge of the mis-declaration is directly contradicted by the evidence and his own statements as well as statements of other notices where they were aware of two different types of goods and deliberately chose not to inform the authorities. The coordinated effort to create fraudulent High Sea Sale documents and arrange for the goods to be re-stuffed in a particular way to evade detection unequivocally establishes mens rea.

5.10 The appellant has challenged the admissibility of electronic evidence (WhatsApp chats) and co-noticee statements and relied upon case of S.N. Agrotech v. Commissioner of Customs. However, as noted in the OIO, these devices were voluntarily surrendered and the data was extracted under panchnama proceedings. This voluntary submission and the detailed process recorded in the panchnamas provide a strong foundation for the admissibility of this evidence, distinguishing it from cases where evidence might have been obtained or processed irregularly. In the present case, the data was retrieved through forensic analysis under a panchnama and was corroborated by the voluntary statements of the individuals involved, who admitted to the conversations.

5.11 The appellant has cited the Supreme Court's judgment in the case of Vinod Solanki v. Union of India to argue that a co-noticee's statement cannot be used against them. While this is a well-established principle in criminal law, it is not an absolute bar in quasi-judicial proceedings under the Customs Act. Statements recorded under Section 108 of the Customs Act are admissible as substantive evidence unless retracted and proved to be taken under duress. In this case, the statements of the various individuals are largely corroborative of each other, painting a consistent picture of the conspiracy, and have not been retracted under any legally valid process. The principle is that where a statement is to be used against a party, that party must have the opportunity to cross-examine the maker of that statement. However, in this case, the penalties are primarily based on each appellant and other noticees own incriminating statements and the corroborating electronic evidence, which directly ties them to the conspiracy. The failure to grant cross-examination, while a procedural concern, does not invalidate the entire order when the evidence is so extensive and self-incriminating.

5.12 The confiscation of the 44250 KG of Green Peas is legally sound as the import was in direct contravention of the import policy. The confiscation of



the Black Eye Beans is also justified under Section 119 as they were used for the concealment of the smuggled goods. The appellant contend that penalties under Sections 112(a)(i), 112(b)(i), and 114AA are not applicable to them. Section 112(a)(i) and 112(b)(i) impose penalties on any person who does or omits to do any act which would render such goods liable to confiscation or acquires possession of or is in any way concerned in... dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111. The OIO clearly established that the appellant, by their acts of commission and omission, including assisting in documentation, coordinating transportation, and concealing the goods, rendered the entire consignment liable for confiscation. The role played by the Appellant, as detailed in the OIO, is not passive but directly instrumental to the smuggling operation. Therefore, the penalties under these sections are rightly imposed.

5.13 Section 114AA penalizes any person who knowingly or intentionally makes, signs or uses... any declaration, statement or document which is false or incorrect in any material particular. The OIO provides ample evidence that the appellant was involved in preparing and using forged High Sea Sale agreements and other falsified documents to facilitate the import. The penalties under Section 114AA are therefore well-founded. The imposition of penalties under Sections 112(a)(i), 112(b)(i), and 114AA is appropriate for the appellant involved in the conspiracy. Section 112(a)(i) applies to those who do or omit to do any act that renders goods liable to confiscation, or abets such an act. Section 112(b)(i) targets those who knowingly deal with goods liable for confiscation. Section 114AA penalizes a person who intentionally makes, signs, or uses any false or incorrect document in a material particular. The collective and individual acts of the appellant and other notices, as detailed in the OIO, fall squarely within the ambit of these sections.

5.14 The appeal by the appellant is to be rejected based on the clear evidence of their complicity. Their claims of being unaware or misled are contradicted by their own statements and statements of other notices and the WhatsApp chats. The penalties are justified, and the OIO's reasoning is sound.

5.15 Based on a thorough review of the case facts, the OIO, and the appellants' submissions, I find that the appellants' claims are not supported by the evidence. The conspiracy to illegally import restricted goods by mis-declaration and concealment is well-established. The appellants' roles, as detailed in the OIO, were integral to this scheme. The penalties imposed are fully

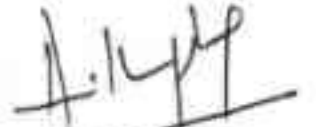


justified under the relevant provisions of the Customs Act, 1962. Therefore, the appeal is liable to be rejected.

5.16 In light of the above discussion and findings, I hereby pass the following order:

i. The penalties imposed on the appellant under Sections 112(a)(i), 112(b)(i) and 114AA of the Customs Act, 1962 in the impugned order are upheld.

6. The appeal filed by the appellant is accordingly rejected.



(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-276/CUS/MUN/2024-25

3785

Date:26.09.2025

By Speed post /E-Mail



To,

1. M/s. Ashapura Shipping Agency,
Office - 113, 1st floor, Manali Tower, Sector-8,
Opp. Bomzim Corporate Office, Gandhidham
2. Shri Devashish K. Trivedi, Advocate
D/307, Ganesh Meridian, Opp. Gujarat High Court,
S.G. Highway, Sola, Ahmedabad- 3800 60
(E-Mail:- devashish.trivedi@gmail.com)

सत्यापित/ATTESTED


अधीक्षक/SUPERINTENDENT
बीमा शुल्क (अपील), अहमदाबाद,
CUSTOMS (APPEALS), AHMEDABAD.

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.