

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A FILE NO. फाइल संख्या	GEN/ADJ/ADC/477/2025-Adjn-O/o Pr Commr-Cus-Mundra
B OIO NO. आदेश संख्या	MCH/ ADC/ZDC/492/2025-26
C PASSED BY जारीकर्ता	Dipak Zala, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा।
D DATE OF ORDER आदेश की तारीख	02.01.2026
E DATE OF ISSUE जारी करने की तिथि	02.01.2026
F SCN No. & Date कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/477/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 20.02.2025
G NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	i. M/s. PCM Agri Exports (IEC: CUEPM0337G) ii. M/s. Paramount Sealinks Pvt. Ltd. iii. Shri Bharat Himmatlal Parmar, Branch Manager of M/s. Paramount Sealink Pvt
H DIN/दस्तावेज पहचान संख्या	20260171MO0000818868

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

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

“सीमाशुल्कआयुक्त) अपील(
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा,अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA

**HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”**

3. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।

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

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

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

- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870-के मद सं० 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

5. अपील ज्ञापन के साथ ड्यूटी /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

BRIEF FACTS OF THE CASE

M/s. PCM Agri Exports (IEC: CUEPM0337G) (hereinafter referred to as the Importer”), having address as “Plot No. 16-18, Gokul Vihar Sedariya, Beawar, Ajmer-305901”, is indulged into illegal import of Watermelon Seeds (also known as Melon Seeds) at Mundra Port by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry.

1.1 Intelligence gathered by the Directorate of Revenue Intelligence (DRI), (hereinafter referred to as ‘DRI’) indicated that M/s. PCM Agri Exports is indulged into illegal import of Watermelon Seeds (also known as Melon Seeds) by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. As per said notification “Import Policy of Melon Seeds is ‘Free’ with effect from 0^{1st} May

2024 up to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import."

Examination, Search, Seizure and Statements:

2. Acting upon the intelligence, the 10 containers covered under the Bill of Entry No. 5571220 dated 12.09.2024 filed by the importer M/s PCM Agri Exports at Mundra Custom House were tracked from the website of M/s Oceanic Star Line and primarily it was noticed that there were major discrepancies between the details mentioned in BL of Lading No. OSLSBL956/24 for Bill of Entry No. 5571220 dated 12.09.2024 and the tracking details downloaded from aforementioned website i.e. Name of the vessel, Shipped on Board date, etc. Accordingly, the import consignment covered under Bill of Entry No. 5571220 dated 12.09.2024 filed by the importer M/s PCM Agri Exports lying at M/s Mundhra CFS, AP & SEZ, Mundra was put on hold for examination by officers of DRI. The goods covered under Bill of Entry No. 5571220 dated 12.09.2024 were examined by officers of DRI on 15.10.2024 and accordingly a panchnama dated 15.10.2024 was drawn at M/s Mundhra CFS, AP & SEZ, Mundra, in respect of the same.

3. During the investigation, a search was conducted at the office Premise of M/s Paramount Sealink Pvt. Ltd. (Delivery Agent working in India on behalf of M/s Oceanic Star Line) having office situated at 'Suit 20, 2nd Floor, Avishkar Complex, Ward-12/B, Plot No. 204, Gandhidham (Kutch) – 370201' under Panchnama dated 12.09.2024. During the Panchnama proceedings carried out at the said address, some e-mail correspondences relating to present investigation were resumed by the visiting officers of DRI on a reasonable belief that the same were required for DRI investigation. During the search, e-mail conversations were found in the e-mail address of the said delivery agent, in which it was explicitly stated that Bills of Lading were switched in some consignments, including Bill of Lading bearing no. OSLSBL956/24. The e-mail communications by Eastern Shipping Co. Ltd., Sudan, in the conversation related to manipulation/forging of BLs were also sent to Shri Bharat Himmatlal Parmar on his company e-mail brmgr@paramountsealink.com, being the branch manager of M/s Paramount Sea Links Pvt. Ltd. Further, from the documents resumed during the search, two different Bill of Lading OSLSBL95624 and OSLPZUMUN2993924 both dated 27.06.2024 showing different ship on Board date 25.06.2024 and 30.06.2024 respectively in respect of all 10 container nos. CLHU3726513, GATU0425262, GATU0480790, MOAU6703539, RRMU2830963, TCLU2472180, TDTU0702243, TEMU245597, TRLU3811652 and UETU2852040, were available. Further, it appeared that as per cargo manifest found during the said search proceedings, ship on board date was

found to be 01.07.2024. Thus, it appeared that the Bills of Lading were switched to avail the benefit of the subject notification. Accordingly, since it appeared that the subject consignment covered under the Bill of Entry No. 5571220 dated 12.09.2024 was liable for confiscation under the provisions of Customs Act, 1962, the same was put under seizure vide Seizure Memo dated 04.11.2024 .

4. During the course of investigation, statements of concerned persons were recorded under Section 108 of the Customs Act, 1962 and some documents were collected as given below:

4 . 1 Statement of Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sea Links Pvt. Ltd., (Delivery Agent of Shipping Line i.e. M/s Oceanic Star Line), having address as 'Suit 20, 2nd Floor, Avishkar Complex, Ward-12/B, Plot No. 204, Gandhidham (Kutch) – 370201', was recorded under Section 108 of the Customs Act, 1962 on 10.09.2024 wherein he inter alia stated that he is working as Branch Manager of M/s Paramount Sea Links Pvt. Ltd. and M/s Oceanic Star Line is their principle and M/s Paramount Sea Links Pvt. Ltd. has been handling all shipping related activities in India i.e. Export and Import at Mundra Port since April, 2024 on behalf of M/s Oceanic Star Line; that 01 consignment of M/s PCM Agri Exports have been received under the Bill of Lading No. OSLSBL95624 dated 27.06.2024 in respect of Container Nos. CLHU3726513, GATU0425262, GATU0480790, MOAU6703539, RRMU2830963, TCLU2472180, TDTU0702243, TEMU245597, TRLU3811652 AND UETU2852040.

4 . 2 Statement of Shri Deepam Mangrola, son of Shri Prakash Chand Mangrola, Proprietor of M/s. PCM Agri Exports, 'Plot No. 16-18, Gokul Vihar Sedariya, Beawar, Ajmer-305901', was recorded under Section 108 of the Customs Act, 1962 on 16.10.2024 and 28.11.2024 wherein he inter alia stated that in year April, 2023, he had started the proprietorship firm M/s PCM Agri Exports; that they process the watermelon seeds at their factory premises and then they sell the processed seeds in domestic market only; that he looks after all the business related work of M/s PCM Agri Exports i.e. the work related to purchase and sales and import-export for M/s PCM Agri Exports. He submitted Invoice dated 25.06.2024, Packing list dated 25.06.2024, Bill of Lading No. OSLSPL95624 (Shipped on board 25.06.2024), COO, Phytosanitary certificate, Fumigation certificate etc. related to 10 Containers No. CLHU3726513, GATU0425262, GATU0480790, MOAU6703539, RRMU2830963, TCLU2472180, TDTU0702243, TEMU245597, TRLU3811652 and UETU2852040 related to Bill of Entry no. 5571220 dated 12.09.2024 which were supplied to him by his overseas supplier M/s Kakan Trading FZCO, Dubai. He also stated that he is aware know about Notification No. 05/2023 dated

05.04.2024 issued by DGFT that if watermelons seeds had loaded or shipped on board before 30th June 2024 then it will be under 'Free' category, however if goods loaded on ship or shipped on board after 30th June 2024, then it will be under category of restricted. On being shown the two different Bill of Lading OLSBL956/24 and OSLPZUMUN2993924 both dated 27.06.2024 showing different ship on Board date 25.06.2024 and 30.06.2024 respectively in respect of all 10 container nos. CLHU3726513, GATU0425262, GATU0480790, MOAU6703539, RRMU2830963, TCLU2472180, TDTU0702243, TEMU245597, TRLU3811652 and UETU2852040 which were resumed from the office of the M/s Paramount Sea Links Pvt. Ltd. (Delivery agent of M/s Oceanic Star Line), he stated that he had no idea about any tempered/manipulated documents and stated that it appears that exporter along with shipping line had malafide intention and have cheated him while making the deal with Shri K S Prakash, Owner of M/s Hakan Trading FZCO, Duabi (Broker of UAE), he had clearly told him to send the goods i.e. watermelon seeds only if ship on board is before 30th June, otherwise don't send them. On being shown cargo manifest of Switch BL No. OLSBL95624 for the above said 10 containers, wherein BL date mentioned as 01.07.2024 and sailing dated of the vessel "Sunset X" is shown as 30.06.2024, he stated that he had no idea about any such tempered/manipulated documents/special arrangement and stated that it appears that exporter along with shipping line had malafide intention and have cheated him. During statement, he also provided payment particulars related to the said shipment. During the statement dated 28.11.2024, he was shown the Cargo manifest of Bill of Lading No. OLSBL-959/24 dated 01.07.2024 (*pertaining to another importer, M/s SRSS Agro Pvt. Ltd*), of M/s Oceanic Star Line, wherein sailing date of the vessel "Sunset X" was shown as 14.07.2024, while in the B/L No. OLSBL-956/24, it was shown as 30.06.2024, and being asked to explain the same, he stated that he was not aware of the same. He, however, insisted that the said documents appeared to have been manipulated by the supplier in connivance with the shipping line.

4 . 3 Statement of Shri Manoj Kumar Manglani, authorized person of M/s Right Ship Agency, CHA Office No. 201, Sun Shine Arcade, Plot no. 40, Sector-8, Gandhidham, was recorded under Section 108 of the Customs Act, 1962 on 03.01.2025 wherein he inter alia stated that he knew about the Notification No. 05/2023 dated 05.04.2024 issued by DGFT which stipulates that before 30.06.2024, the import of watermelon seeds is free and after 30.06.2024 the import of watermelon seeds is Restricted. On being shown the two different Bill of Lading OLSBL95624 and OSLPZUMUN2993924 both dated 27.06.2024 showing different ship on Board date 25.06.2024 and 30.06.2024 respectively in respect of all 10 container nos. CLHU3726513, GATU0425262, GATU0480790, MOAU6703539, RRMU2830963, TCLU2472180,

TDTU0702243, TEMU245597, TRLU3811652 and UETU2852040 which were resumed from the office of the M/s Paramount Sea Links Pvt. Ltd. (***Delivery agent of M/s Oceanic Star Line***), he stated that he had no idea about any tempered/manipulated documents and stated that it appeared that someone had manipulated/forged the documents and had tried to show shipped on board date as before 30th June; and that if he had known in advance that the shipment was shipped on board after 30th June 2024, he would not have filed the Bill of Entry on behalf of the importer.

5. **Evidences available on record, during the investigation:**

5 . Details of the evidences available on record during the investigation carried out by the DRI, is as given below:

Description of document	Details of the documents	Document date
Bill of Lading bearing no. OSLSBL-956/24 dated 27.06.2024	Switch Bill of Lading	27.06.2024
Bill of Lading No. OSLPZUMUN2993924 both dated 27.06.2024	First Bill of Lading	27.06.2024
Cargo manifest of Bill of Lading No. OSLSBL-959/24 dated 01.07.2024 (pertaining to another importer, M/s SRSS Agro Pvt. Ltd.)	Cargo Manifest for the vessel "Sunset X", which shows sailing date as 14.07.2024, the same vessel as Bill of lading No. OSLSBL-956/24 dated 27.06.2024	N/A (resumed during search at the address of the Delivery agent of Shipping Line)

5.2 Email conversation- during the search proceedings, carried out at the premises of M/s. Paramount Sealink Pvt. Ltd., e-mail conversations between M/s Eastern Shipping Co. Ltd., Shipping Agent of M/s Oceanic Star Line in Sudan and M/s Paramount Sealink Pvt. Ltd., were found, which showed that B/Ls were switched in the subject consignments. Some of the relevant e-mails are as given below:

E-mail Date	Sender Name, Designation, Firm Name	Receivers Name and E-mail IDs	Relevant portion of e-mail text
14.07.2024	Tagwa Badri, Marketing Executive, Eastern Shipping Co. Ltd.	MOHIT KUMAR Paramount Sealink Pvt. Ltd., Gandhidham, docs@paramountsealink.com	Dear Paramount (Mundra Team) Cc Ashraf // Jeddah T/S team Please find attached of Cargo Manifest, TDR and 6 DBL NO: OSLPZUMUN2889524 (10X20) OSLPZUMUN2992824 (6X20) OSLPZUMUN2993024 (7X20) OSLPZUMUN2993624 (20X20) OSLPZUMUN2993924 (10X20) OSLPZUMUN2993824 (1X40 HC) Remark Dear Paramount (Mundra Team) Please note I will send to you the final Cargo Manifest and 6 DBL ASAP , Please wait

		Branch Manager, Paramount Sealink brmgr@paramountsealink.com	
21072024	Tagwa Badri, Marketing Executive, Eastern Shipping Co. Ltd.	MOHIT KUMAR Paramount Sealink Pvt. Ltd., Gandhidham, imports@paramountsealink.com Branch Manager, Paramount Sealink brmgr@paramountsealink.com	Dear Mohit//Paramount Mundra Team Kindly find final 6 Switch B/L and Cargo Manifest and please make sure to file your manifest with the same OSLBL-958/24 (10x20) OSLBL-957/24 (6x20) OSLBL-961/24 (7x20) OSLBL-958/24 (10x20) OSLBL-960/24 (20x20) OSLBL-956/24 (10x20) OSLBL-959/24 (1x40 HC)
22072024	MOHIT KUMAR Paramount Sealink Pvt. Ltd., Gandhidham, imports@paramountsealink.com	Tagwa Badri Executive, Eastern Shipping Co. Ltd., Gandhidham, imports@easter shipping.com	Dear Ms. Tagwa, Kindly share TDR for the subject shipment, Kindly cross check again your previous BL and these BL container number, container number is same in both BLS so please check and confirm which BL is Wright. Previous BL. OSLPZUMUN2889524 (10X20) OSLPZUMUN2992824 (6X20) OSLPZUMUN2993024 (7X20) OSLPZUMUN2993624 (20X20) OSLPZUMUN2993924 (10X20) OSLPZUMUN2993824 (1X40 HC)
24072024	MOHIT KUMAR Paramount Sealink Pvt. Ltd., Gandhidham, imports@paramountsealink.com	Tagwa Badri Executive, Eastern Shipping Co. Ltd., Gandhidham, imports@easter shipping.com	Dear Tagwa, Kindly confirm which BL is wright kindly confirm urgently otherwise we will not be responsible for any wrong manifestation.

6. Brief of investigation conducted and liability of imported goods for confiscation:

6.1 Investigation conducted by DRI revealed that the containers covered under Bill of Entry No. 5571220 dated 12.09.2024, were shipped beyond the cut-off date of 30.06.2024 specified in DGFT Notification No. 05/2023 dated 05.04.2024. E-mail conversations were found in the e-mail address of the said delivery agent, in which it was explicitly stated that Bills of Lading were

switched in some consignments, including Bill of Lading bearing no. OLSBL956/24. Further, from the documents resumed during the search, two different Bill of Lading OLSBL95624 and OSLPZUMUN2993924 both dated 27.06.2024 showing different ship on Board date 25.06.2024 and 30.06.2024 respectively in respect of all 10 container nos. CLHU3726513, GATU0425262, GATU0480790, MOAU6703539, RRMU2830963, TCLU2472180, TDTU0702243, TEMU245597, TRLU3811652 and UETU2852040, were available. Thus, it appeared that the Bills of Lading were switched to avail the benefit of the subject notification. This deliberate manipulation of shipping documents was aimed at unlawfully availing the benefits under the DGFT Notification No. 05/2023. The investigation indicated that the importer, in collusion with representatives of Paramount Sea Links Pvt. Ltd. (***Delivery agent of M/s Oceanic Star Line***), orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted cargo. By doing so, the importer has failed to adhere to the conditions of DGFT Notification No. 05/2023, thereby violating the provisions of the Foreign Trade Policy 2023. From the investigation carried out, it is evident that Shri Bharat Parmar, as a branch Manager, was kept fully informed of all communications, as Shri Tagwa Badri, the marketing executive at M/s Eastern Shipping Co. Ltd., Sudan, had sent him the forged documents with e-mail. This constitutes a serious breach of regulatory compliance and evidences deliberate intent to mislead customs authorities.

6.2 The facts and evidence discussed above indicate that the Directorate General of Foreign Trade (DGFT), through Notification No. 05/2023 dated 05.04.2024, amended the import policy for Melon Seeds under CTH 12077090. As per the notification, the import of Melon Seeds was classified as 'Free' from 1st May 2024 to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import". It means that all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024. However, as established in the preceding paras, M/s. PCM Agri Exports (IEC: CUEPM0337G), Plot No. 16-18, Gokul Vihar Sedariya, Beawar, Ajmer-305901, illegally imported Watermelon Seeds under Bill of Entry No. 5571220 dated 12.09.2024, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 30th July 2024 i.e. beyond the permissible date of 30th June 2024 using a forged Bill of Lading. Furthermore, it was revealed during the investigation that the importer deliberately withheld critical information from Customs Authorities, failing to disclose that the goods were shipped on board after the specified date of 30th June 2024. This reflects intentional non-compliance with the DGFT

Notification No. 05/2023. Hence, the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5571220 dated 12.09.2024 having total quantity **156.237** MTs and declared assessable value of **Rs. 2,61,56,807/-** imported by M/s. PCM Agri Exports are liable for confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962.

7. Roles of persons/firms involved:

7.1 Role of the importer M/s PCM Agri Exports (Proprietor: Shri Deepam Mangrola):

Shri Deepam Mangrola is Proprietor of M/s. PCM Agri Exports and being importer, he was well aware of the Import policy and Notification. M/s. PCM Agri Exports had imported watermelon seeds covered under Bill of Entry No. 5571220 dated 12.09.2024 in by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. The total quantity of the said goods covered under the subject Bill of entry is **156.237 MTs** having declared Assessable value of **Rs. 2,61,56,807/-**. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and therefore is liable to penalty under **Section 112 (a) and 112 (b)** of the Customs Act, 1962. By not uploading the original documents as mandated during filing of Bill of Entry, the importer has attempted to mislead the department thereby rendering themselves liable to penalty under **Sec 114AA** of Customs Act, 1962.

7.2 Role of M/s Paramount Sea Links Pvt. Ltd. (Delivery agent of M/s Oceanic Star Line)

The facts and evidence gathered during the search, including email correspondences, clearly establish that M/s. Paramount Sea Links Pvt. Ltd. (**Delivery agent of M/s Oceanic Star Line**), deliberately colluded with representatives of M/s Oceanic Star Line and the supplier located in Sudan, to manipulate the actual dates on the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory

compliance and an intent to mislead the authorities. The deliberate acts and omissions by M/s. Paramount Sea Links Pvt. Ltd make them liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under **Section 114AA** of the Customs Act, 1962.

7.3 Role of Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sea Links Pvt. Ltd.:

Shri Bharat Himmatlal Parmar, as the Branch Manager of M/s Paramount Sealinks Pvt. Ltd., a container line agent, was well-versed in the Import policy and Notifications. In his statement, Shri Parmar admitted to overseeing all operations of M/s Paramount Sealinks Pvt. Ltd., including documentation related to import-export activities as a container line agent. The facts and evidence gathered during the investigation, including the Bill of Lading and email correspondences, provide clear and compelling proof that M/s Paramount Sealinks Pvt. Ltd., acting on behalf of M/s Ocean Star Line, deliberately colluded with representatives from M/s Ocean Star Line and Mr. Tagva Badri, Marketing Executive of Eastern Shipping Co. Ltd., Sudan, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation aimed to facilitate the clearance of restricted cargo, in direct violation of established regulations governing the shipping and clearance of goods in India. During the investigation, it is clear that Shri Bharat Parmar, as the branch manager, was kept fully informed of all communications, as Shri Tagva Badri, the Marketing Executive at Eastern Shipping Co. Ltd., sent him the forged documents via email. These actions demonstrate a blatant disregard for regulatory compliance and a clear intent to mislead the authorities. The deliberate acts and omissions by Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd., make him liable for penalties under **Section 112(b)** of the Customs Act, 1962.

8. Relevant Legal provisions :

8.1. Import of Watermelon seeds falling under HS Code 12077090 was made from “Free” to “Restricted” for vide Notification No. 05/2023 dated 05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry under Section 3 and Section 5 of the FT(D&R) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP), 2023 as amended from time to time. The Import of watermelon seeds is subject to Policy condition No. 4 of Chapter 12 of the ITC (HS) Classification.

8.2 Whereas vide Notification No. 05/2023 dated 05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry, it has

been envisaged that *“Import Policy of Melon Seeds is ‘Free’ with effect from 01st May 2024 up to 30th June 2024. Consignments with ‘shipped on board’ Bill of lading issued till 30th June 2024 shall be treated as ‘Free’ to import.”* As a corollary, all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on ‘Actual User’ basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024.

8.3 The other relevant policy provisions pertaining to the import of watermelon seeds along with relevant penalty provisions of the Customs Act, 1962 are as follows:

8.3.1 FTDR Act, 1992 :

Section 3 of the FTDR Act, 1992: Powers to make provisions relating to imports and exports—

(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

Section 5 of the FTDR Act, 1992: Foreign Trade Policy—

The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:

Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette.

8.3.2 Foreign Trade Policy, 2023 :

Para 1.02: Amendment to FTP

Central Government, in exercise of powers conferred by Section 3 and Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

Para 2.01: Policy regarding import /Exports of goods

(a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at <https://dgft.gov.in>

(b) Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

8.3.3 Relevant Sections of the Customs Act, 1962 :

SECTION 112 of the Customs Acts . Penalty for improper importation of goods, etc. - Any person, -

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

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

shall be liable, -

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

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

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

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77

(in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

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

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

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

9. Accordingly, Show cause Notice GEN/ADJ/ADC/477/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 20.02.2025 was issued to M/s. PCM Agri Exports, wherein they were called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why:

(a) The imported goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5571220 dated 12.09.2024 having total quantity **156.237 MTs** and declared Assessable value of **Rs. 2,61,56,807/-** should not be confiscated under Section 111 (d), 111(m) and 111(o) of Customs Act, 1962.

(b) Penalty under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962 should not be imposed upon them.

9.2 Vide SCN dated 20.02.2025, M/s Paramount Sealink Pvt. Ltd. (Delivery Agent working in India on behalf of M/s Oceanic Star Line) were called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why penalty should not be imposed on M/s Paramount Sealink Pvt. Ltd. under Section 112(b) & 114AA of the Customs Act, 1962.

9.3 Further, vide SCN dated 20.02.2025, Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealink Pvt. Ltd. was called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why penalty should not be imposed on him under **Section**

112(b) of the Customs Act, 1962.

10. Written Submission

10.1 M/s. PCM Agri Exports (IEC: CUEPM0337G) submitted their reply which was received in this office on 24.06.2025, wherein they have, *inter alia*, submitted that:

10.1.1 The Noticee submitted that goods not liable to confiscation and the imported goods viz. 156.237 MTs of 'Watermelon seeds' of CTH 12077090 covered under Bill of Entry No. 5571220 dated 12.9.2024 valued at Rs. 2,61,56,807 /- have been proposed in the show cause notice to be liable for confiscation under Section 111(d), 111 (m) and 111 (o) of the Customs Act, 1962. The Show Cause Notice alleges that the subject goods were imported in violation of DGFT Notification No. 05/2023 dated 5.4.2024 as the said goods were shipped on board on 30th July, 2024 which is beyond the permissible date of 30th June'2024 using a forged Bill of Lading. Further, the Show Cause alleges that the importer had deliberately withheld the critical information from the Customs Authorities that the subject goods were shipped on board after the specified date of 30th June'2024 which reflected intentional non-compliance of DGFT Notification No. 05/2023 dated 5.4.2024 and as such the same were liable to confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962.

10.1.2 Discussion on restriction and liability for confiscation w.r.t. DGFT Notification No. 05/2023 dated 5.4.2024:- The subject goods have been alleged to be liable for confiscation for noncompliance of DGFT Notification No. 05/2023 dated 5.4.2024 and therefore it is pertinent to go through the relevant content of the said notification which reads as under: *"Import policy of Melon Seeds is 'Free' with effect from 01st May 2024 up to 30th June 2024. Consignments with 'shipped on board' Bill of Lading issued till 30th June 2024 shall be treated as 'Free' to import" ..*

The above notification stipulates that the import of Melon seeds is free from 1st May 2024 to 30th June 2024. However, consignments with 'shipped on board' Bill of Lading issued till 30th June 2024 shall be treated as 'Free' to import". Thus, all consignments of Melon seeds shipped on board before 1st July 2024 are freely importable into India on 'Actual User' basis by processors of Melon seeds having a valid FSSAI Manufacturing license in line with FSSAI Order dated 15.03.2024. Accordingly, it needs to be examined whether the subject goods i.e. 156.237 MTs of 'Watermelon seeds' of CTH 12077090 covered under Bill of Entry No. 5571220 dated 12.9.2024 valued at Rs. 2,61,56,807 /- are in compliance to DGFT Notification No. 05/2023 dated

5.4.2024 or otherwise.

10.1.3 The Noticee submitted that Department has alleged that Bills of Lading were switched in some consignments including Bill of Lading bearing No. OSLSBL956/24. Basis of this allegation is the documents resumed from the office premises of the Delivery Agent, M/s Paramount Sealink Pvt. Ltd (Delivery Agent of M/s Oceanic Star Line). Show cause notice relies on two Bills of Lading No. OSLSBL956/24 and OSLPZUMUN2993924 both dated 27.6.2024, recovered from the Delivery Agent, but showing different 'Ship on Board' date of 25.6.2024 and 30.6.2024 respectively in respect of all the 10 containers. Based on the above, the department has jumped to the conclusion that the Bills of Lading were switched to avail the benefit of DGFT Notification No. 05/2023 dated 5.4.2024. The entire show cause notice has been constructed on such ground that the importer in collusion with the representatives of M/ s Paramount Sealink Pvt. Ltd orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted goods in violation of the conditions of DGFT Notification No. 05 /2023 dated 5.4.2024. However, it is very much apparent that 'Ship on Board' date of 25.6.2024 and 30.6.2024 in both the Bills of Lading is prior to the cut-off date of date of 30th June 2024 prescribed in Notification No. 05/2023.

10.1.4 The Show Cause notice heavily relies on two Bills of Lading No. OSLSBL956/24 and OSLPZUMUN2993924 both dated 27.6.2024, recovered from the Delivery Agent, but showing different 'Ship on Board' date of 25.6.2024 and 30.6.2024 respectively in respect of all the 10 containers. The Noticee submitted that in the case of Vatsal Resources Pvt. Ltd. Versus Commissioner of Central Excise & Service Tax, Surat - I 12023 (68) G.S.T.L. 279 (Tri. - Ahmd.)], the Hon'ble CESTAT has held as follows:-

*"5.2 We find that in the present matter it is on record that during the search at the premises of the Appellants, no invoices/ debit notes etc., raised to their customers were found. The department in the present matter recovered/ called the said alleged debit notes/ invoices from the customers. Further TDS Statement and other financial statement also seized by the department from the business premises of M l s. Forward Resources Pvt. Ltd. **However, presumption of documents in certain cases under section 36A of the Central Excise Act is available only when the documents are produced by or seized from the custody or control of the person concerned.** For the sake of convenience and ready reference Section 36A of Central Excise Act, 1944 is reproduced below:-*

Section 36A. • Presumption as to documents in certain cases. -
Where any document is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law and such document is tendered by the prosecution in evidence against

him or against him and any other person who is tried jointly with him, the Court shall, - unless the contrary is proved by such person, presume-

- i. *the truth of the contents of such document;*
- ii. *that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;*
- b. *admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.*

In view of above Section 36A of Central Excise Act, 1944 it is only when such document is tendered in evidence against the person who produced the same or from whose custody or control it was seized that the presumption under section 36A is available. In the present case admittedly none of the alleged invoices/ documents was produced by the Appellant or seized from the Appellant's premises or control. In view of the above, when the presumption under section 36A is not available. The burden of proof is squarely on the Department to prove that the source documents are related to the Appellant and that any taxable services under the source documents were actually provided by the Appellant. This burden has not been discharged in the present case. The department could not have simply accepted the customers' documents provided by them on its face value and the same needed strict corroboration which is completely absent in the present case."

Noticee submitted that the provisions of Section 36A of the Central Excise Act, 1944 are *pari-materia* to Section 139 of the Customs Act, 1962. Therefore, in view of the aforesaid decision of the Hon'ble CESTAT, burden of proof is on the department to prove that Bill of Lading No. OSLPZUMUN2993924 dated 27.6.2024, recovered from the Delivery Agent, pertains to goods imported by the noticee.

In the statement of Shri Bharat Himmatlal Parmar, Branch Manager of M/s. Paramount Sea Links Pvt. Ltd recorded under Section 108 of The Customs Act, 1962, he had categorically stated that 01 consignment of M/s. PCM Agri Exports have been received under the Bill of Lading No. OSLSBL95624 dated 27.06.2024 in respect of container no. CLHU3726513, GATU0425262,

GATU0480790, MOAU6703539, RRMU2830963, TCLU2472180, TDTU0702243, TEMU245597, TRLU3811652 and UETU2852040.

Therefore, presumptions made in the show cause notice on the basis of Bill of Lading no. OSLPZUMUN2993924 dated 27.06.2024 are not legally sustainable.

For the same reasons, Bill of Lading No. OSLSBL-959/24 dated 01.07.2024 pertaining to another importer has no evidentiary value for the present case.

The Noticee submitted that e-mail conversation between M/s. Eastern Shipping Co. Ltd. and M/ s. Paramount Sealink Pvt. Ltd. appears to be in relation to confirmation of details mentioned in the Draft Bill of Lading only. Those e-mail conversation nowhere establish that the "Shipped on Board" date of the import consignment was after 30.06.2024. In any case, as held in the decision in case of Vatsal Resources Pvt. Ltd. (supra), such e-mail conversation has no evidentiary value for present case.

In view of the above it is submitted that investigation has failed to bring on record any evidence to show that the goods had been shipped on board after 30th June 2024 and the Bills of Lading have been manipulated having date prior to 30th June 2024. Thus, allegation of switching of Bills of Lading doesn't sustains being based on assumption and presumption having no evidentiary value.

10.1.5 During the recording of the statement dated 16.10.2024 and 28.11.2024, Shri Deepam Mangrola, Proprietor had been shown two Bills of Lading No. OSLSBL956/24 and OSLPZUMUN2993924 both dated 27.6.2024, recovered from the Delivery Agent, but showing different 'Ship on Board' date of 25.6.2024 and 30.6.2024. He was also shown cargo manifest of OSLSBL956/24 wherein BL date is mentioned as 1.7.2024 and the sailing date of the vessel "Sunset X" is mentioned as 30.6.2024 to which he stated that he had no idea about the tempered/manipulated documents and maybe he got cheated by the exporter and the shipping line. To support his case, he provided payment particulars related to the said consignment. He was also shown cargo manifest of OSLSBL959/24 (pertaining to another importer, M/s SRSS Agro Pvt. Ltd.) of M/s Oceanic Star Line, wherein BL date is mentioned as 1.7.2024 and the sailing date of the vessel "Sunset X" is mentioned as 14.7.2024. He was asked to explain the difference in

dates to which he stated that he was not aware of the same and the supplier and the shipping line may have manipulated the same. It is pertinent to note that Notification No. 05/2023 prescribes that the consignments with 'shipped on board' Bill of Lading issued till 30th June 2024 shall be treated as 'Free' to import", the sailing date of the vessel i.e. the date on which the vessel leaves the port is not at all a deciding factor. During the course of investigation, statements of three persons i) Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealink Pvt. Ltd (Delivery Agent of M/s Oceanic Star Line) on 10.9.2024, ii) Shri Deepam Mangrola, Proprietor of M/s PCM Agri Exports and iii) Shri Manoj Kumar Maglani, authorized person of M/s Right Ship Agency, CHA had been recorded and none has admitted to switching of the Bill of Lading. There is no evidence on record to prove that the goods were 'shipped on board' after the cut-off date of 30.6.2024. There is neither any acceptance of any forgery or falsification of relevant dates on the Bills of Lading by anyone to facilitate the clearance of restricted goods nor there is any corroborative evidence to support the allegations on the basis of email correspondence between M/s Paramount Sealink Pvt. Ltd (Delivery Agent of M/s Oceanic Star Line) and M/s Eastern Shipping Co. Ltd Shipping Agent of M/s Oceanic Star Line in Sudan. The construction of the Show Cause Notice on such fallacious grounds is not sustainable and deserves to be set aside.

10.1.6 The Show Cause Notice is constructed on the premises that the importer in collusion with the representatives of M/s Paramount Sealink Pvt. Ltd orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted goods in violation of the conditions of DGFT Notification No. 05/2023 dated 5.4.2024. It is submitted that importer has no role in the business of M/s Paramount Sealink Pvt. Ltd (Delivery Agent of M/s Oceanic Star Line) and M/s Eastern Shipping Co. Ltd Shipping Agent of M/s Oceanic Star Line in Sudan. Therefore, allegation in the show cause notice about collusion and a conspiracy theory between the importer and shipping line and its agents is devoid of any cogent evidence which being baseless is liable to be dropped. Thus, in absence of any evidence to prove the allegations, the above discussions clearly establish that the subject goods have been imported in fulfillment of the specified date criteria of Notification No. 05/2023 dated 5.4.2024 and as such the charges alleged in the Show Cause notice are neither sustainable on facts nor sustainable on merit.

10.1.7 The Noticee submitted that Goods are not liable for confiscation, in view of above submissions, it is apparent that the subject goods viz 156.237 MTs of 'Watermelon seeds' of CTH 12077090 covered under Bill of Entry No. 5571220 dated 12.9.2024 valued at Rs. 2,61,56,807/- have been shipped on board before 1st July 2024 and have been imported in compliance to DGFT Notification No. 05/2023 dated 5.4.2024. Therefore, the same are not restricted in nature and as such Section 11 l(d) of the Customs Act is not applicable to the facts of the case at hand.

Further, the Show Cause Notice also proposes confiscation of the goods under Section 11 l(m) of the Customs Act, 1962. However, the show cause notice does not dispute the fact that the import goods were 'Watermelon Seeds'. The Invoice No. HTZ-SAL-178/2024 dated 25.6.2024 issued by M/s Hakan Trading , FZCO, Dubai, UAE, the supplier of goods, Bill of Lading OSLSBL- 956 /24 of M/s Oceanic Star Line, Fumigation Certificate No. 0076687 dated 6.6.2024, Certificate of Origin Reference No. 05921 dated 25.6.2024 and all the other documents describe the imported goods as 'Watermelon Seeds' and accordingly we have described the goods as 'Watermelon Seeds' in the Bill of Entry. It is nobody's case that the imported goods are not 'Watermelon Seeds'. The goods in question indeed being 'Watermelon Seeds', there is no charge of mis-declaration in the show cause notice, invocation of Section 11 l(m) of the Customs Act proposing confiscation of the goods is bad in law. Since we have correctly described the goods in the Bill of Entry, the provisions of Section 11 l(m) of the Customs Act are not applicable to the facts of the case.

Further, the Show Cause Notice also proposes confiscation of the goods under Section 11 l(o) of the Customs Act, 1962. As discussed above, the conditions of DGFT Notification No. 05/2023 dated 5.4.2024 have been fulfilled in the instant import, the subject goods are not restricted in nature and as such the subject goods are not liable to confiscation under Section 11 l(o) of the Customs Act, 1962.

10.1.8 Penalty under Section 112 not imposable when goods are not liable to confiscation:- Section 112 of the Customs Act comes into play only in cases where the goods have been rendered liable to confiscation under Section 111 of the Customs Act and the relevant text of the same is reproduced under:

Any person, -

- a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- b. *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

The above expressly indicates that liability of confiscation of goods is a pre requisite for imposition of penalty under Section 112 of the Customs Act. In the instant case, the goods are not liable to confiscation as elaborately discussed above and as such the provisions of Section 112 are not applicable to the facts of the case. Resultantly, no penalty can be imposed on the importer, M/s PCM Agri Exports or its proprietor Shri Deepam Mangrola under Section 112 of the Customs Act, 1962.

10.1.9 The Noticee submitted that Penalty under Section 114AA not imposable. The Show Cause Notice proposes imposition of penalty under Section 114AA of the Customs Act on the importer. However, the same is applicable only to cases where a false or incorrect declaration, statement or document is signed or used. The text of the said statute is reproduced under:

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

As discussed above, in the instant case, there is no false or incorrect declaration, statement or document signed or used by the importer or any person of the importer and as such no penalty is imposable under Section 114AA of the Customs Act either on the importer.

Further, the rationale for introduction of Section 114AA of the Customs Act, 1962 has been specified at para 63 & 65 of the Twenty Seventh Report of the Standing Committee on Finance (2005-06) in relation to The Taxation Laws (Amendment) Bill, 2005 as under:

63. *The information furnished by the Ministry states as follows on the proposed provision:*

"Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no

goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.

65. The Ministry also informed as under:

"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

The above clearly indicates that the intent of insertion of Section 114AA of the Customs Act, 1962 was to provide penalty for serious frauds where no goods were exported but only papers were created to avail the benefits of the export promotion schemes. The instant case deals with a situation where import of goods is concerned and as such the provisions of Section 114AA of the Customs Act, 1962 are not applicable to the facts of the case and as such penalty is not imposable on the importer.

As held by the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. Versus State of Orissa [1978 (2) E.L.T. (J 159) (S.C.)], an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. It has further been held that penalty will not *also* be imposed merely because it is lawful to do so.

10.1.10 In light of the submissions made herein above, factual as well as legal, noticee requested that the show cause notice be quashed and set aside and all the proceedings emanating therefrom may be dropped.

10.2 M/s. Paramount Sealinks Pvt. Ltd submitted their reply dated 17.04.2025, wherein he had, *inter alia*, submitted that:

10.2.1 The Noticee submitted that the allegation in the subject case that Noticee No.2 has orchestrated this transaction to conceal true Shipped on Board date in the Bills of Lading so as enable PCM Agri Exports to import

restricted goods (Watermelon Seeds) is incorrect on facts. Further, the levy of penalty under section 112(b) and 114AA of the Customs Act, 1962, on Noticee no.2 is also legally incorrect. We hereby submit our counter against each, and every allegation levelled against Noticee No.2 with respect to subject import transaction.

The Noticee submit that Noticee No.2 is not privy to the trade transactions between the Sudan exporter and the Indian importer and neither the Noticee No.2 is aware about the import Custom tariffs which is categorically looked upon by the importers of the respective goods. The Noticee No.2 is a liner agent who facilitate the movement of export/import for the exporters/ importers all over India. In the present case, the Noticee No.2 has acted as a facilitator to issue Delivery Orders pertaining to the import of the impugned goods. The Noticee No.2 principal sub-agent has provided their services to the exporters in Sudan and that Noticee No.2 does not have any role in the misdeclaration of the Shipped on Board dates in the Bills of Lading by the importer i.e. Noticee No.1. The Noticee No.1 denied their involvement in mis-declaration and submission of forged documents in the clearance of restricted goods, it is the Noticee No.1 who could only have benefited from the said mis-declaration.

In this regard, The Noticee would like to submit that demand of penalty under section 112(b) and 114AA under Customs Act, 1962 should not be raised from Noticee No.2, since the mis-declaration and submission of the alleged forged documents, if they are indeed forged, can conceivably only have been done by PCM Agri Exports. Hence, the Noticee No. 2 has no role to play in this alleged clearance of restricted goods which has been actually committed by PCM Agri Exports.

10.2.2 Further, it is PCM Agri Exports who has benefitted from this wrong. PCM Agri Exports has done certain acts and abetted certain doings which has led to clearance of restricted goods. Hence, it is clear that PCM Agri Exports has submitted incorrect and manipulated documents to the customs by mis-declaring the Shipped on Board date in the Bills of Lading for the benefit of clearance of restricted goods. The Noticee would like to submit that the request for issuance of switch bills of lading was made by the shipper at the port of loading. However, the Noticee No.2 could not have been conceivably aware that the shipper and importer together in collusion to clear restricted goods had requested for issuance of switch Bills of Lading subject to the Notification no. 05/2023 dated 05.04.2024. Therefore, the allegation related to mis-declaration of Shipped on Board date in the Bills of Lading must be raised on PCM Agri Exports and further demand of penalty should be demanded from Noticee No.1 only. Without prejudice to the above, The Noticee would like to submit that, even though PCM Agri Exports has denied the mistake, it is apparent that if any misconduct was indeed perpetrated, then only PCM Agri Exports involvement in clearance of restricted goods can be established and therefore, the Noticee No.2

is not required to pay any penalty in this case.

There is no evidence against Noticee No.2 for orchestrating this transaction for enabling clearance of restricted goods at the end of M/s. PCM Agri Exports.

10.2.3 The Noticee would like to submit that no evidence has been put on table related to conspiracy or orchestrating by Noticee No.2 for this alleged crime. The Noticee No.2 is not a party to the alleged scheme of misrepresentation which has resulted in clearance of restricted goods by PCM Agri Exports.

The Section 1 of the Customs Act, 1962, was amended via Finance Act, 2018 and came into effect from 29th March, 2018, and by virtue of the amendment, the exporter based in Sudan and the importer in India are to be proceeded against the Act, and not the shipping companies who do not gain anything from the unlawful acts committed by the importer in India.

10.2.4 The Noticee No.2 principal sub-agent in Sudan is not conversant with the Custom laws of India, however it is the importer who has to be aware of such restrictions prior importing any material which is in contravention to the Indian Customs Act. As such the Noticee No.2 cannot be held liable to be penalized for the wrongful acts of the importer PCM Agri Exports. The Noticee would like to submit that the statements given by the employees of Noticee No.2 are exculpatory. The Noticee No.2 does not have any ill intention to this non-compliance. It is a matter of fact that the original 1st leg Bills of Lading were surrendered in Sudan basis which the 2nd leg Bills of Lading were released. The 2nd leg B/Ls are the switched Bills of Lading which were shared with Noticee No.2 by their principal sub-agent along with the pre-alerts and freight manifest to file the IGM at the discharge port. The procedure of issuance of switch bills of lading is a standard practice in the Maritime Industry. Even major shipping lines such as Maersk, CMA CGM, COSCO, etc, issue switch B/Ls on a case-to-case basis as per the International Shipping Laws which is applicable to all shipping companies. It is a matter of fact that maritime law does not restrict shipping companies for issuance of switch Bill of Lading once the original Bill of Lading has been surrendered by the shipper at load port. Concerning the allegations levelled against Noticee No.2 by your office pertaining to the Switch Bills of Lading issued in the aforementioned shipments, a Switch Bill of Lading is simply the second set of Bill of Lading issued by the carrier or it's agent to substitute the Original Bills of Lading issued at the time of the shipment, even though it technically deals with the same cargo. To emphasize in detail, switch Bills of Lading are issued for replacement of certain details specified as below:

(a) the original bill names a discharge port which is subsequently changed (e.g. because the receiver has an option or the good are resold) and new bills are required naming the new discharge port:

(b) a seller of the goods in a chain of contracts does not wish the name of the original shipper to appear on the bill of lading, and so a new set is issued, sometimes naming the seller as the shipper. A variation on this is where party does not wish the true port of loading to be named on the bill;

(c) the first set of bills may be held up in the country of shipment, or the ship may arrive at the discharge port in advance of the first set of bills. A second set may therefore be issued in order to expedite payment, or to ensure that delivery can take place against an original bill;

(d) shipment of goods may originally have been in small parcels, and the buyer of those goods may require one bill of lading covering all of the parcels to facilitate his on sale. The converse may also happen i.e. one bill is issued for a bulk shipment which is then to be split.

Where switch bills are issued, the first set should be surrendered to the carrier in exchange for the new set. There is usually no objection to this practice. However, the switch bills may contain misrepresentations e.g., as to the true port of loading.

The above inference has been taken from the International Transport Intermediaries Club, Issuance of Switch Bill of Lading 2013,1.

Furthermore, International book Carriage of Goods by Sea Sixth Edition, Pg. No. 171 specifically states that :

5.7 Switch Bills

*In concluding the survey of the functions of bills of lading, brief mention must be made of the modern practice of issuing switch bills. Under this procedure, the original set of bills of lading under which the goods have been shipped is surrendered to the carrier, or his agents, in exchange for a new set of bills in which some of the details, such as those relating to the name and address of the shipper, **the date of issue of the bills** or the port of shipment, have been altered.*

Hereto annexed and marked as **Annexure - "C"** are the copies of the printed details of Switch Bills of Lading mentioned in the International book Carriage of Goods by Sea, Sixth Edition.

10.2.5 It is pertinent to note that the Noticee No.2 was not aware that the switch Bills of Lading were requested by the shipper for the purpose of clearance of restricted goods by Noticee No.1. The Noticee No.2 principal sub-agent in Sudan shared only the second leg Bills of Lading with Noticee No.2 for import manifestation purpose, as the 1st leg Bills of Lading were already

surrendered by the shipper in Sudan and hence the 1st leg Bill of Lading was considered as null and void. For all consignments exported from Sudan, it is outside the scope and authority of Noticee No.2 to inspect if the customs clearance is being done by the respective importers in India as per the prevailing customs laws. Consequently, on this ground it is submitted that Noticee No.2 is not liable for any penalty under Section 112(b) and 114AA of the Customs Act, 1962. Also, Noticee No.2 was not aware about the customs notification regarding restriction on import of Watermelon Seeds after 30.06.2024. As such, we submit that Noticee No.2 is not party to this violation and hence they should not be penalized under the provisions of Customs Act. The shipping line or their agents are not required to look into the authenticity of import documents provided by the importer to the Indian customs. This is operationally not possibly and legally also not required to be done as the customs clearance is not done by the shipping lines or their agents. This is the responsibility of exporter /importer to ensure the correctness of documents and declarations. The importer **PCM Agri Exports** has intentionally attempted to import watermelon seeds despite of being aware about the DGFT notification

Legal Provisions of section 112 (a) and under section 114AA of the Customs Act, 1962.

10.2.6 The foremost legal provisions are reproduced here:

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

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

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

In view of the above legal provisions, we would like to submit that section 112 (a) is not applicable to Noticee No.2 since they have not done anything which will render the goods of PCM Agri Exports to be confiscated. The Noticee No.2 has acted in a bonafide manner in relation to port of discharge procedures for subject consignment. We have also provided detailed submission against the same in above paragraphs.

Further section 114AA is also not applicable as Noticee No. 2 has not contributed in any way relating to the clearance of subject consignment. The importer is solely responsible for attempting to clear restricted goods from the

customs by filing the Bill of Entries.

In the present case, the department has failed to appreciate that the Noticee No.2 being an agent of a foreign principal cannot be held liable for mis-declaration of Shipped on Board date in the Bills of Lading which has been issued in Sudan. The onus shall, solely be attributed on the Importer only, in view of Section 147 of the Customs Act, 1962, Liability of Principal and agent:

" (1) Where this Act requires anything to be done by the owner, importer or exporter of any goods, it may be done on his behalf by his agent.

(2) Any such thing done by an agent of the owner, importer or exporter of any goods shall, unless the contrary is proved, be deemed to have been done with the knowledge and consent of such owner, importer or exporter, so that in any proceedings under this Act, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself.

(3) When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer or exporter of such goods for such purposes:

Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any willful act, negligence or default of the agent, such duty shall not be recovered from the agent unless in the opinion of 1[Assistant Commissioner of Customs or Deputy Commissioner of Customs] the same cannot be recovered from the owner, importer or exporter. "

10.2.7 On a bare reading of Section 147 of the Customs Act, 1962 it can be safely construed that any violation of provisions of the Customs Act, 1962 carried out by an agent does not absolve the importer and it is deemed that such violation has been done with the knowledge and consent of such owner, importer or exporter and in any proceedings initiated, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself and presumed to have been done with the knowledge and consent of such owner, importer or exporter, unless the contrary is proved.

In the present case nothing contrary has been adduced by the importer against the Noticee No.2 towards mis-declaration of Shipped on Board date in the bill of Lading as per Notification No. 05/2023 dated 05.04.2024. Therefore, no penalty is imposable on Noticee No.2.

a. Without prejudice to the above, the Noticee No.2 submits that considering the language of Section 114AA, the penalty under Section 114AA can be imposed on a natural person and not on a legal entity.

b. Without further prejudice to the above, the Noticee No.2 submits that the purpose of introduction of Section 114AA in the Customs Act, 1962 w.e.f. 13.07.2006 vide the Taxation Laws (Amendment) Act, 2006 was different i.e. to check frauds in export as evidenced by the observations of the Twenty Seventh Report of the Standing Committee on Finance (2005 – 06) in relation to the Taxation Laws (Amendment) Bill, 2005 as under:

“Clause 24 (Insertion of new section 114AA)

62. Clause 24 of the Bill reads as follows: After section 114A of the Customs Act, the following section shall be inserted, namely:

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

c. The information furnished by the Ministry states as follows on the proposed provision:

“Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.”

d. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a ‘false statement’ etc. Questioned on these concerns, the Ministry in their reply stated as under:

“The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being

examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case."

e. The Ministry also informed as under: *"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."*

The Committee observe that owing to the increased instances of willful fraudulent usage of export promotion schemes, the provision for levying of penalty up to five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."

f. In this regard, we also rely upon the ratio of Hon'ble Order in the case of M/s Access World Wide Cargo reported as 2021 (8) TMI 640 - CESTAT BANGALORE wherein it was held, inter-alia, that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra). It was held, inter-alia, as under:

"6. Further, I find that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra). I also find that in the present case, the Department has failed to prove that there was a mala fide and wilful misrepresentation by the Customs Broker. It seems that the Commissioner (Appeals) has totally misunderstood the facts and has wrongly observed that the appellant (Customs Broker) and the exporter have been operating from the same premises and have an identical ICE Code which leads one to suspect the bona fides of the appellant. This finding of the Commissioner is factually incorrect and without any basis. Further, the Commissioner on the basis of these facts has wrongly come to the conclusion that the appellant is involved in the illegal export whereas the appellant is only a

Customs Broker who has filed the shipping bills on the basis of the documents furnished by the exporter.

Therefore, in view of these facts, the imposition of penalty itself is not sustainable in law and therefore I set aside the imposition of penalty on the appellant by allowing the appeal of the appellant.”

- g. We refer to the Hon’ble CESTAT order in the case of M/s Interglobe Aviation Ltd reported as 021 (7) TMI 1027 - CESTAT BANGALORE wherein it was held, inter-alia, as under:

“20. The appellants also contended that the penalty under the Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally. The present case does not relate to export at all and even for imports, all the documents presented for imports were genuine and not forged and thus penalty is not imposable under Section 114AA of the Customs Act, 1962. We find that there is merit in the argument of the appellants. As the case is not of export, we find that no penalty under Section 114AA of the Customs Act, 1962 is imposable.”.

- h. We also refer to the Hon’ble CESTAT order in the case of appeal filed by the department against M/s Sri Krishna Sounds & Lightings reported as 2018 (7) TMI 867 - CESTAT CHENNAI wherein it was held, inter-alia, as under:

“7. On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction. I do not find any merit in the appeal filed by the department and the same is dismissed. The cross-objection filed by respondent also stands dismissed.”

In view of the above, in the facts of the present case which relates to import of goods, penalty is not imposable on the Noticee No.2 under Section 114AA on the above ground as well.

- i. Without prejudice to the above, the Noticee No.2 submits that in the factual matrix of this case, there is no evidence that the Noticee No.2 had knowledge that the importer is trying to do the clearance of restricted goods. Penalty under Section 114AA of the Customs Act, 1962 can be levied only if the person has knowledge and intention in commission and omission of the act. There is no evidence to show that the Noticee No.2 had any prior knowledge or intention to mis-

declare the Shipped on board date in the Bills of Lading of the said goods. Therefore, the penalty under section 114AA cannot be imposed on Noticee No.2.

11.2.8 The Noticee No. 2 is an agent of a foreign principal **OSL**. The Article III (8) of the Indian Carriage of Goods by Sea Act, 1925 discharges the carrier from any and / or all liabilities and / or losses , arising due to any act or omission of the Shipper or the owner of the goods.

Article III – Responsibilities and Liabilities.

(8). Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

10.2.9 On this ground alone, it is submitted that Noticee No.2 is not liable for any misdeclaration on the part of the shipper / consignee and neither have they attributed their support in import of **Watermelon Seeds** by intentionally mis-declaring the Shipped on Board date in the Bills of Lading.

No investigation has been conducted with the supplier in Sudan.

That Section 1 of the Customs Act, 1962 was amended vide Finance Act, 2018 and came into effect from 29th March, 2018 and by virtue of the amendment, the overseas suppliers (the exporter based abroad) can also be proceeded against the Act and it is essentially for the purpose of obtaining / gathering evidences of offences /contraventions by the overseas suppliers, the COIN officers (functioning under the administrative control of the department investigative agency DRI) have been posted. That despite armed with the personnel at its command, there is absolutely no evidence gathered and brought out to substantiate the allegations made in the impugned Notice. Concerning the allegations of misdeclaration of Shipped on Board date in the Bills of Lading, the department should have probed the matter with the overseas shipper in Sudan through the said COIN officers.

10.2.10 The Noticee No.2 is not under the obligation to examine the cargo and its loading date at any point of time. The Noticee No2 being an agent of a Foreign Liner, is not in a position to verify the declaration given by the importer to the Indian customs regarding the assessable value, customs duty or any other documents. The terms and conditions as set out in the Bill of Lading supports the Noticee No.2 contention that the Bill of Lading shall be prima facie receipt by the carrier in apparent good order and condition. The IGM was filed based on the details provided in the Switch Bills of Lading issued by the Noticee No.2 principal sub-agent in Sudan. The Noticee No.2 had no scope to know

about the act of the importer and hence it cannot be held that the Noticee No.2 had conscious knowledge of the mis-declaration of Shipped on Board date in the Bills of Lading. Thus, there is no question of suppression of facts by Noticee No.2.

The Hon'ble Tribunal in the case of **M/s. Trans Asian Shipping Services P Ltd reported as 2018 (363) E.L.T. 635 (Tri. - All.)** has held that allegation of aiding and abetting cannot be upheld where IGM is filed on the basis of Bill of Lading. Relevant part of the order reads as under:- *As per facts on records, the appellant is a shipping line and was carrying the container on behalf of M/s. Ankit Metals. On the basis of a letter addressed by M/s. Ankit Metals, they applied for amendment in IGM stating that Aluminium Scrap "Tread" Weight 22.096 may be allowed to be amended to Aluminium Scrap "Tread" Weight 7.552 MT & Copper Berry/Clove Weight 14.544 MT. The said amendment was rejected by the Assistant Commissioner.*

Subsequently, the importer, M/s. Ankit Metals also addressed a number of letters to the Revenue for change in IGM based upon the communication received from the exporter. All the facts are not being adhered to, inasmuch as the same relates to imports by M/s. Ankit Metals. The only reason for imposing penalty upon the present appellant as recorded by the Commissioner is as under:

"12.13 *The shipping line had filed the IGM No. 2124032 dated 12-11-2015 on the basis of the bill of lading No. TALADS01912416 dated 10-11-2015. The bill of lading No. TALADS01912416 dated 10-11-2015 was produced before the Superintendent (SUB), ICD, Loni on 9-8-2016 wherein the description of the goods was mentioned as Aluminium scrap 'tread' 22.096 MT. The said B/L was issued on the strength of invoice no. Y15/141A dated 4-11-2015 of M/s. Ala International Metal Scrap TR LLC and NOC dated 4-11-2015 of M/s. Al Raha Trading Company and export declaration no. 201-02420065-15 dated 4-11-2015 all containing description of goods as Aluminium Scrap 'tread' 22.096 MT. As per statement dated 9-8-2016 of Shri Sandep Vishwanath A. of the shipping Line, the folio No. of the bill of lading was TAL1066058. The revised bill of lading having the same Sl. No. was issued from Dubai by Dubai Arobian Shipping Agency, LLC, the agent for the carrier. As per Shri Sandeep the revised bill of lading had reference no. TAL1157913 which was issued on 5-1-2016. It is pertinent to notice that request for amendment to the IGM was filed on 28-12-2015 by the shipping line. It thus shows that any B/L could be issued at free will at the behest of the importer/shipper. Having known that an application for amendment in the IGM was pending before the customs authorities since 28-12-2015, a final set of B/L was handed over to the shipper on 5-1-2016 without waiting for the outcome of their application for amendment. It has been contended by Shri Sandeep in his statement dated 9-8-2016 that B/L being a Line document, there was no need to seek approval from Customs for issue of the*

same. The argument is devoid of merit for the reason that statutory document viz. IGM is filed on the basis of bill of lading and therefore, it is imperative that sanctity of the documents i.e. bill of lading is maintained. Without checking the details of goods being carried and the supporting documents, the shipping line has issued the revised bill of lading without any check and balance and thus aided and abetted the importer in his nefarious design of importing the goods by misdeclaring the same with the intent to evade payment of Customs duty. The shipping line has knowingly made B/L which was false and incorrect in respect of material description of the goods with the view to use the same in the transaction of filing of IGM and clearance of goods for the purpose of Customs Act, 1962, and have thus rendered itself liable to penalty under Section 114AA of the Customs Act, 1962."

As is seen from the above, the penalty stands imposed upon the appellant on the ground that they have aided and abetted the importer in his nefarious design to import the goods by misdeclaration. However, I find that there is no evidence on record to show that the appellant was a party to such misdeclaration. They simplicitor filed IGM on the basis of bill of lading and on subsequently, after getting an communication from the importer, they applied for amendment of the same. In such a scenario, the allegation of the aiding and abetting cannot be upheld. Accordingly, the same is set aside and the appeal is allowed by setting aside the penalty imposed upon the appellant."

In the present case, the 1st leg B/L issued to the shipper in Sudan and later surrendered and thereafter the 2nd Leg B/L was issued which was relied upon by the Noticee No.2 in India for filing the IGM. Thus, the Noticee No.2 cannot be held guilty for mis-declaration with regard to the correctness of the content of the IGM filed by Noticee No.2 as required under section 30(2) of the Customs Act, 1962 and hence no penalty should be imposed upon the Noticee No.2 under Section 114AA of the Customs Act, 1962.

10.2.11 The Noticee would like to place our reliance on the Singapore High Court ruling in the case of BNP Paribas v Bandung Shipping Pte Ltd., 2003 wherein the switch 12 Bills of Lading were issued altering the port of loading for consignment loaded from Batam, Indonesia and to be discharged at Kandla port, India. The details mentioned under the Facts paragraph no.2 are as under : *12 bills of lading were switched bills issued by Bandung in exchange for the original set, pursuant to an arrangement provided for in the voyage charterparty. The switched bills were issued for the same cargo as the original set, with some alteration in the details like date and load port.*

The above evidence the fact that the issuance of switch Bills of Lading is a general practice in the maritime industry and in the Switch Bills of Lading, the date, port of loading and the port of discharge can be altered as per the

requirement of the suppliers. Hereto annexed and marked as **Annexure - "D"** is the judgement copy of the Singapore High Court ruling in the case of BNP Paribas v Bandung Shipping Pte Ltd., 2003.

10.2.12 The Noticee are relying upon the case of Wollongong Coal Limited vs. PCL (Shipping) Pte Ltd.,(2020) decided by the **New South Wales, Supreme Court**.

- a. In this case, the Plaintiff Wollongong Coal Ltd (WCL) is an Australian coal mining company and at that relevant time, it was a subsidiary of **Gujarat NRE Coke Limited ("Gujarat India")**, an Indian metallurgical coke producing company.
- b. The defendant PCL (Shipping) Pte. Ltd. is a Singaporean Shipping Company who sub- chartered the vessel Illawar Fortune.
- c. WCL sold coal to its parent company Gujarat India.
- d. Gujarat India contracted with PCL to carry the cargo from Port Kembla, Australia to Mundra port, India.
- e. Gujarat India as voyage charterer was liable to pay the ocean freight to PCL (Shipping) Pte. Ltd.
- f. The cargo was shipped in August 2013 and Charterparty Bills of Lading (**Original Bills**) were signed by Shipowners, naming WCL as the Shipper. Therefore WCL was a party to the bill of lading contract with the Owners. PCL issued a freight invoice to Gujarat India for approximately US\$3.2 million under the Voyage Charter.
- g. On 24 September 2013, WCL asked for the Original Bills to be "switched" and Switch Bills to be issued, naming New Alloys Trading Pte Ltd (New Alloys) as Shipper in place of WCL.
- h. PCL agreed to facilitate the switch. On 2 October 2013, when a representative from New Alloys delivered the Original Bills to PCL's office, PCL marked each of the Original Bills 'Null and Void' on the Shipowner's instructions and sent these marked bills to the Shipowner.
- i. On 3 October 2013, PCL sought a letter of indemnity (**LOI**) from Gujarat India that indemnified PCL against any loss arising from the issue of the Switch Bills and on 4 October 2013 Gujarat India provided the requested LOI.
- j. On 4 October 2013, PCL provided a corresponding LOI to Owners who then released the new Switch Bills to New Alloys.
- k. As the above events unfolded, Sub-charterer Gujarat India failed to pay USD 3.2 Million freight to Disponent Owners PCL, time charterers of the Vessel Illawarra Fortune. After taking assignment of Owner's rights under the Bills of Lading, PCL tried to recover those sums from Shippers WCL. The Bills of Lading provided for "Freight payable as per Charter Party", i.e. the voyage charterer. However, following WCL's failure to pay part of freight costs, the Bills of Lading were marked "Null and Void" and substituted by switch bills identifying New Alloys as shippers. The effect of "Switching Bills of Lading" is that the original Bills of Lading contract is replaced by a new contract evidenced by the "switch bills of lading."
- l. The Court held that because of the novation WCL's liability under the Switch Bills of Lading was extinguished therefore neither the Owners nor PCL as their assignee could recover the freight and costs related to the

- voyage, given the prevalence of this practice in commercial shipping.
- m. The above judgement explicitly mentions the legitimacy of issuance of Switch Bills of Lading which is a common practice in the Shipping Industry and the same practice has also been adopted by Gujarat India to import coal from Australia to India which has been approved by the New South Wales Supreme Court to grant relief to Gujarat India and their subsidiary company WCL.

Based on the above judgement, the Noticee No.2 has not committed any wrong by filing the IGM basis the Switch Bill of Lading as per the standard maritime practice. Therefore, any mis-declaration by the exporter / importer to customs department cannot be attributed to any fault and / or act and / or omission and / or willful suppression by Noticee No.2. Hereto annexed and marked as **Annexure – “E”** is the judgement copy of the New South Wales Supreme Court.

10.2.13 That further, Section 230 of the Indian Contract act, 1872 reads as below :

“230...Agent cannot personally enforce, nor be bound by contract on behalf of principal-

In the absence of any contract to that effect an agent cannot personally enforce contract entered into by him on behalf of his principal, nor is he personally bound by them.”

That, if the principal personally initiates and concludes the contract with any party, acting in their own capacity without any representative, there is an assumption that the contract is made on behalf of someone else and no agent is involved. The Noticee No. 2 did not even negotiate the contract with the exporter/importer. The contract for shipment was entered into between Noticee No.2 principal sub-agent and the exporter as per the Bills of Lading. The Noticee No. 2 is an agent of a disclosed principal in a Foreign Country and hence in the absence of any contract to the contrary, the Noticee No.2 cannot be held liable on behalf of their principal sub-agent.

10.2.14 The Noticee would like to place our reliance on the Chennai CESTAT ruling in the case of M/s Chakiat Agencies vs Commissioner of Customs (Exports) 2023 TAXSCAN (CESTAT) 175 wherein the court observed as below:

“Be that as it may the appellant as a CHA cannot be expected to examine and ensure the nature of the goods in the consignment. There is no allegation or evidence to establish that the appellant had indulged in any overt act or played any role in any manner so as to assist the exporter in his attempt to export the goods. After appreciating the evidence and following the decision of the Tribunal in the above case, we are of the view that the penalty imposed on the

appellants under section 114 of the Customs Act is not warranted.

In the current case as well, the Noticee No.2 being a Liner agent, is not expected to verify the details submitted to the Customs by the importer at the time of filing of the Bill of Entries. Thus, they have not played any role in the incorrect importation of the goods in the discussion.

b. That the **Principal bench of Delhi CESTAT in the case of PURUSHOTTAM KUMAR JAIN vs COMMISSIONER OF CUSTOMS (PREVENTIVE) JODHPUR 2022 TAXSCAN (CESTAT) 567** has observed that the agent deliberately and intentionally has not provided any such information which was false or incorrect. As such, the penalty under section 114AA of the Customs Act, 1962 is not imposable on the agent.

c. That the **Ludhiana CESTAT in the case of M/s M S Exim Services Vs Commissioner of Customs, Ludhiana 2021 (CESTAT) 14** has observed that the appellant had no mens rea and filed the documents being a bonafide facilitator and in view of the same no penalty was imposable upon the appellant Customs broker, therefore, the penalty imposed on the appellant under Section 112 along with 114AA of the Customs Act, 1962, was set aside.

Therefore, in the instant case, the Noticee No.2 being a Liner agent is not responsible for the wrong declaration given by the importer to the customs at the time of filing the Bill of Entries.

10.2.15 (i) In the case of **V. Lakshmipathy vs. Commissioner of Customs -2003(153) E.L.T. 640T** (Tri-Delhi) in respect of invocation of penalty under Section 112 had held the existence of mens rea as an essential ingredient to invoke the same. This presupposition is non-existing in the present matter as show cause notice leads no evidence to indicate a guilty mind on part of the appellant.

(ii). In the case of **Mohd. Iliyas vs. Commissioner- 2018 (362) ELT A 218 SC the Honourable Apex Court** had held the penalty under Section 114AA, as not leviable (among other reasons) for no discussion being made as to the type of false /incorrect material. Similar is however the position in the present case.

(iii). Moreover, in the case of **Parag Domestic Appliances vs. Commissioner of Customs, Cochin 2018(360) ELT 547 (Tri-Bang)**, it was held that for subjecting one to penalty under Section 114AA, the existence of knowledge or intention on the part of such person while carrying out any or all of the necessary actions stated therein is a must. Without demonstrating such an existence of knowledge no such penalty is leviable. Also, it is necessary to discuss the nature of false and incorrect material made use of as held in a slew of cases.

(iv). In the case of **Codognotto Logistics India Pvt. Ltd. vs. Commissioner**

of Customs (2022) (SB) (Tri-Delhi), had held that in the absence of mens rea and no deliberate connivance in evading customs duty, penalty under Section 112 and Section 114AA is not leviable upon the appellants and the appeal was allowed.

(v). In the case of **Jeena and Company Versus Commissioner Of Customs, Bangalore [2021 (378) E.L.T. 528 (Tri. - /Bang.)]** Penalty on Customs House Agent (CHA) - No evidence to show that Agent had knowledge of wrongdoing of importer and colluded with importer to defraud Revenue - Not appropriate to punish CHA for filing document in good faith and on basis of documents supplied by importer - Penalty imposed set aside □ Section 112 of Customs Act, 1962. 12006 (200) E.L.T. 12 (Tribunal) relied on]. [paras 6, 7].

(vi). In the case of **Indian Acrylics Ltd. Versus Commissioner Of Customs, Kandla [2015 (325) E.L.T. 753 (Tri. - Ahmd.)]** Penalty on CHA - Penalty not imposable when CHA not involved in any manner in respect of manipulation of export documents No material on record showing appellant abetted the exporter for their gain - Penalty under Section 112(a) of Customs Act, 1962 not imposable. [para 14]

10.2.16 It is a settled position in law that penalty is not imposable where the Noticee has not acted contumaciously or in deliberate defiance of law. In support of this contention, reliance is placed on the law declared by the **Hon'ble Supreme Court in the case of Hindustan Steel Ltd 1978 (2) ELT J159 (SC)** wherein it was held that penalty shall not be imposed unless the conduct of a defaulter is found to be dishonest or contumacious. Reliance in this regard is also placed on the following binding judicial pronouncements which echo the settled principle that a penalty is not imposable where there is no dishonest conduct:

- i. In the case of **Akbar Badruddin Jiwani vs Collector of Customs, 1990 (047) ELT 0161 (S.C.)**, where the **Hon'ble Supreme Court** has held that –

“57. Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the Appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law.

58. In the present case, the Tribunal has itself specifically stated that the Appellant has acted on the basis of bona fide behalf that the goods were importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate Tribunal, the penalty and fine in lieu of confiscation require to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive

and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal.”

10.2.17 That, the law which has been laid by various authorities for purposes of levying penalty is that the penalty under section 114AA can be levied only when mens-rea is established and when it is established that a person knowingly makes the false declaration or signs any such document. Before levying penalty 114AA Revenue has to establish mala fides which is of quintessence. In the instant case no malafide has been attributed to Noticee No.2. That penalty cannot be levied unless it is established that Noticee No.2 knew or had reason to believe that the goods were liable for confiscation under Section 111 of the Customs Act, 1962, and without establishing that Noticee No.2 has any mala fide motive or any motive to make abnormal gain. There is no evidence against Noticee No.2 to establish any overt act or *mens rea* to facilitate the commission of the said offence. The allegation that the Noticee No.2 has facilitated the attempt to enable the importer to import restricted goods in the subject transaction is without any factual and legal basis and therefore penalties under section 112(b) and section 114AA of the Customs Act, 1962 are not sustainable on Noticee No.2.

In view of the above judgement and facts of the case, there is no case of acting knowingly or intentionally on the part of the Noticee No.2 and hence, the penalties imposed upon the Noticee No.2 under section 112(b) and 114AA of the Customs Act, 1962, does not sustain in the eyes of law and accordingly the impugned show cause notice should be set aside.

10.2.18 The Noticee prayed that the Hon'ble Additional Commissioner of Customs, Mundra may be pleased to set aside the Show Cause Notice issued against M/s. Paramount Sealinks Pvt. Ltd.

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Personal Hearing

11.1 Advocate Ms. Deepti Upadhyay and Advocate Mr. Santosh Upadhyay appeared for personal hearing on 09.09.2025 in virtual mode on behalf of M/s. Paramount Sealinks Pvt. Ltd and re-iterated their submission dated 21.04.2025. They have stated that, as delivery agents, their role is strictly limited to filing the Import General Manifest (IGM), collecting documents from the importer or their representative, and issuing the delivery order. Paramount Sealinks' scope is confined to verifying the details submitted by the importer when filing the Bill of Entry with customs. As agents of the shipping company, their responsibilities are restricted, and therefore, they cannot be held liable for any penalties. Paramount principal's sub-agent has provided their services to the exporters in Sudan and that Paramount does not have any role in the misdeclaration of the Shipped on Board dates in the Bill of Lading by the importer i.e. Noticee No. 1. They relied on certain case laws pertaining to Switch

bills of lading ruling by Singapore High Court and New south Wales Supreme Court, Australia which explicitly mentions that switch Bills of Lading are to be considered as legal document. Further they relied on section 230 of the Indian Contract Act which states that an agent cannot personally enforce, nor be bound by contract on behalf of the principal or principal's sub-agent. They are the shipping company agent in India and their scope is very limited and as such they can't be held liable for any penalties. They relied on the observations of the Twenty Seventh Report of the Standing Committee on Finance (2005 - 06) in relation to the Taxation Laws (Amendment) Bill, 2005 pertaining to penalty imposed under section 114 of The Customs Act, 1962. They relied on various judicial precedents along with the detailed observations of the Twenty Seventh Report of the Standing Committee on Finance (2005-06) in relation to the Taxation Laws (Amendment) Bill, 2005 pertaining imposed under section 114 of the Customs Act, 1962. Further, they requested to drop the proceedings against Paramount Sealinks Pvt. Ltd considering the prayers outlined in their written submissions.

11.2 Personal Hearing in the subject matter was granted to M/s. PCM Agri Exports for dated 11.04.2025, 30.04.2025, 02.06.2025, 24.06.2025, 09.09.2025 and 23.09.2025, however no one from M/s. PCM Agri Exports appeared for personal hearing however, they had submitted their written submission in the subject matter in reference of the Show Cause Notice dated 20.02.2025.

11.3 Further, personal Hearing in the subject matter was granted to Shri Bharat Himmatlal Parmar, Branch manager of M/s. Paramount Sealink Pvt Ltd for dated 11.04.2025, 30.04.2025, 02.06.2025, 24.06.2025 and 09.09.2025, however Shri Bharat Himmatlal Parmar neither appeared for personal hearing nor submitted any documents/submission in the subject matter in reference of the Show Cause Notice dated 20.02.2025.

Discussion and Findings

12. I have carefully gone through the facts of the case, Show Cause Notice dated 20.02.2025 and the noticee's submissions both, in written and in person. I find that in the present case, principle of natural justice have been complied with and Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions, applicable laws/rules, and written submissions, documentary evidences available on record and judicial precedents.

13. I now proceed to decide the issues framed in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be

decided at the stage of adjudication: -

- (i) Whether the imported goods i.e. "Water Melon Seed" are liable for confiscation under section 111(d), 111(m) and 111(o) of the customs Act, 1962 or otherwise;
- (ii) Whether the noticees are liable for penalty as proposed under the SCN or otherwise.

14. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, submissions, and circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements.

14.1 I find that M/s. PCM Agri Exports (Importer) imported Watermelon seed in ten containers under Bill of Entry no. 5571220 dated 12.09.2024 and Bill of Lading no. OSLSBL-956/24 dated 27/06/2024. Based on intelligence gathered by DRI, Gandhidham that importer is indulged into illegal import of Watermelon Seeds (Melon Seeds) by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade and major discrepancies has been noticed in the details mentioned in Bill of Lading No. OSLSBL-956/24 for BE No. 5571220 dated 12.09.2024, the investigation has been initiated by DRI. Accordingly, the proceedings of the examination were recorded under panchnama dated 15.10.2024 drawn at M/s. Mundhra CFS, AP & SEZ, Mundra.

14.2.1 I found that during the course of investigation, two different bills of lading were found. The details are as under:-

Table-A

Bill of lading No.	OSLSBL-956/24	OSLPZUMUN2993924
Vessel Name	SUNSET X	AL AHMED
Voyage No.	2423	24713
B/L issue date	27.06.2024	27.06.2024
Ship on board Date	25.06.2024	30.06.2024
Total no. of containers	10	10
B/L Issued by	Gulf Gate Shipping Company limited	Eastern Shipping Company

14.2.2 I observed that during the search at the premises of M/s. Paramount Sealink Pvt. Ltd. on dated 12.09.2024, above mentioned two different Bills of Lading nos. OSLSBL-956/24 and OSLPZUMUN2993924 both dated 27.06.2024 were found.

Shipped on board date in the Bill of Lading OSLSBL-956/24 dated 27.06.2024 and OSLPZUMUN2993924 dated 27.06.2024 was declared as 25.06.2024 and 30.06.2024 respectively in respect of all 10 container nos. CLHU3726513, GATU0425262, GATU0480790, MOAU6703539, RRMU2830963, TCLU2472180, TDTU0702243, TEMU245597, TRLU3811652 and UETU2852040.

14.2.3 I also observed that during the search at premises of M/s. Paramount Sealinks Pvt. Ltd, cargo manifest of BL no. OSLSBL-956/24 dated 27.06.2024 of the subject case and cargo manifest of BL no. OSLSBL-959/24 dated 01.07.2024 of another importer M/s. SRSS Agro Pvt Ltd were also found.

The Cargo manifests of BL no. OSLSBL-956/24 dated 27.06.2024 shows the BL date as 01.07.2024 and goods was sailed on 30.06.2024 via vessel SUNSET X having voyage no. 2423.

The Cargo manifests of BL no. OSLSBL-959/24 date 01.07.2024 shows the vessel SUNSET X having voyage no. 2423 was sailed from port Sudan on 14.07.2024.

Further, the Cargo manifests of BL no. OSLSBL-956/24 shows the BL date as 01.07.2024 and vessel sailed on 30.06.2024, however, BL no. OSLSBL-956/24 used for filing of subject Bill of Entry shows BL date as 27.06.2024 and SOB date as 25.06.2024.

Accordingly, the contradictory facts demonstrate that the Bill of Lading (BL) was manipulated/forged to clear the restricted goods.

14.2.4 In view of above, I find that as per Cargo manifests of BL no. OSLSBL-959/24 date 01.07.2024 of another importer M/s. SRSS Agro Pvt Ltd found during the search, the vessel SUNSET X having voyage no. 2423 was shipped from port Sudan on 14.07.2024, therefore, the goods of BL no. OSLSBL-956/24 in the subject case with same vessel name and same voyage no. must be shipped on 14.07.2024.

Thus, it is evident that the shipment in question, carried by the Vessel SUNSET X (Voyage No. 2423) from Port Sudan, was shipped after 30.06.2024.

It indicates that said Bill of Lading nos. OSLSBL-956/24 and OSLPZUMUN2993924 both dated 27.06.2024 were manipulated/forged by falsely indicating a 'Shipped On Board' date prior to June 30, 2024 in order to facilitate the clearance of 'Restricted' goods by falsely claiming eligibility period as stipulated in Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

14.3 E-mail conversation:-

14.3.1 The e-mail conversation recovered during search conducted at the office Premise of M/s. Paramount Sealink Pvt. Ltd. under Panchnama dated 12.09.2024 indicated that various communications were made between officials of M/s Eastern Shipping Co. Ltd. and M/s. Paramount Sealink Pvt. Ltd. (Delivery Agent working in India on behalf of M/s Oceanic Star Line) to manipulate the Bill of Lading for clearance of subject goods covered under Bill of Entry no. 5571220 dated 12.09.2024.

14.3.2 Upon careful examination of email correspondence specifically the messages sent and received by Mr. Tagwa Badri (Marketing executive, Eastern Shipping Co. Ltd. Sudan) to M/s. Paramount Shipping Pvt. Ltd. The relevant emails are as follows:-

- 14.07.2024 : Dear Paramount (Mundra Team) , Please find attached of Cargo Manifest, TDR and 6 DBL NO: OSLPZUMUN2889524 (10X20) OSLPZUMUN2992824 (6X20) OSLPZUMUN2993024 (7X20) OSLPZUMUN2993624 (20X20) **OSLPZUMUN2993924 (10X20)** OSLPZUMUN2993824 (1X40 HC) Remark Dear Paramount (Mundra Team) Please note I will send to you the final Cargo Manifest and 6 DBL ASAP , Please wait
- 21.07.2024: Dear Mohit//Paramount Mundra Team Kindly find final 6 Switch B/L and Cargo Manifest and please make sure to file your manifest with the same, OSLBL-958/24 (10x20), OSLBL-957/24 (6x20), OSLBL-961/24 (7x20), OSLBL-958/24 (10x20), OSLBL-960/24 (20x20), **OSLBL-956/24 (10x20), OSLBL-959/24 (1x40 HC).**
- 22.07.2024:- Dear Ms. Tagwa, Kindly share TDR for the subject shipment, Kindly cross check again your previous BL and these BL container number, container number is same in both BLS so pls check and confirm which BL is Wright. Previous BL. OSLPZUMUN2889524 (10X20) OSLPZUMUN2992824 (6X20) OSLPZUMUN2993024 (7X20) OSLPZUMUN2993624 (20X20) **OSLPZUMUN2993924 (10X20)** OSLPZUMUN2993824 (1X40 HC)
- 24.07.2024:- Dear Tagwa, Kindly confirm which BL is wright kindly confirm urgently otherwise we will not be responsible for any wrong manifestation.

On perusal of the email communication dated 14.07.2024, sent by M/s Eastern Shipping Co. Ltd., Sudan to M/s Paramount Sealink Pvt. Ltd. under the subject "OSL PRE ALERT AL AHMED//24713 PORT SUDAN – MUNDRA", contained the Cargo Manifest and Draft BL details including BL No. OSLPZUMUN2993924 (10X20) and vide subsequent email dated 21.07.2024, the earlier BL nos. OSLPZUMUN2993924 (10X20) was switched by BL no. OSLSBL-956/24.

Further, on comparing the vessel name, voyage no. and shipped on board

date in the BL no. OSLPZUMUN2993924, switched BL No. OSLSBL-956/24 received from Tagwa Badri through mails (tagwa@easternship.com) dated 14.07.2024 and 21.07.2024 respectively (as mentioned in Table A) with cargo manifest of BL no. OSLSBL-959/24 of M/s. SRSS Agro Pvt Ltd., the above said details found different, hence, it is evident that details in Bills of lading have been manipulated/forged to facilitate the clearance of restricted goods by falsely claiming eligibility period as stipulated in Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

14.4 I also find that during statement were recorded by DRI, the bills of lading Nos. OSLPZUMUN2993924, BL No. OSLSBL-956/24, cargo manifest of BL no. OSLSBL-956/24, cargo manifest of BL no. OSLSBL-959/24 of M/s. SRSS Agro Pvt Ltd. obtained from the site of Oceanic group and e-mail conversations (as discussed above) were presented to (i) Shri Deepam Mangrola, son of Shri Prakash Chand Mangrola, Proprietor of M/s. PCM Agri Exports (ii) Shri Manoj Kumar Manglani, authorized person of M/s Right Ship Agency, after analyzing they admitted in their statements that shipped on board date and Vessel details have been manipulated in Bills of Lading by the supplier in connivance with the shipping line in order to satisfy the conditions prescribed under Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

Ongoing through the entire documentary trail—including email correspondences, cargo manifest and statements, I find that the BLs were manufactured subsequently to misrepresent the original shipping date and acted in concert to suppress the actual shipping details and submitted manipulated documents before Customs.

Accordingly, I find that the goods covered under Bill of Entry no. 5571220 dated 12.09.2024 were shipped on 14.07.2024, beyond the time limit prescribed under DGFT Notification No. 05/2023 i.e. 30.06.2024.

In view of above, it is established that details in Bill of lading no. OSLPZUMUN2993924 and BL No. OSLSBL-956/24 both dated 27.06.2024 have been manipulated/forged in order to facilitate the clearance of restricted goods by falsely claiming eligibility period as stipulated in Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

14.5 I consider statements of noticees as material evidence in this case. It is relevant here to refer to some landmark judicial pronouncements on the issue of acceptability and evidentiary value of statements recorded under provisions of section 108 of the Act.

i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**^[1] and in the case of **Percy Rustomji Basta**^[2] has held "*that the provisions of*

Section 108 are judicial provisions within which a statement has been read, correctly recorded and has been made without force or coercion. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence”.

ii. The Hon’ble Supreme Court in the case of **Badaku Jyoti Svant**^[3] has decided that “*statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct*”.

iii. Hon’ble Punjab and Haryana High Court in the case of **Jagjit Singh**^[4] has decided that “*It is settled law that Customs Officers were not police officers and the statements recorded under Section 108 of the Customs Act were not hit by Section 25 of the Evidence Act. The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon’ble Supreme Court in the matter of Ram Singh*^[5], *in which it is held that recovery of opium was from accused by officers of Narcotic Bureau. Accused made confession before said officers. Officers of Central Bureau of Narcotics were not police officers within the meaning of Section 25 and 26 of the Evidence Act and hence, confessions made before them were admissible in evidence*”.

14.6 In view of the foregoing discussion, I find that the statements recorded by DRI under the provisions of Section 108 of the Act form reliable evidence in the case supporting the charge of mis-declaration of import documents and submission of forged/manipulated Bills of lading.

14.7 As per my detailed findings in para 14.2, 14.3 and 14.4 above, the impugned goods did not fulfill the condition outlined as per the provisions of notification no. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if ‘watermelons seeds’ have been loaded or shipped on board before 30th June 2024 then only it will be under ‘Free’ category. However, evidence established that the importer intentionally submitted manipulated/forged Bills of Lading in a deliberate attempt to facilitate the customs clearance of restricted goods unlawfully.

14.8 I also find that it is a fact that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; ‘Self-Assessment’ has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry

electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

14.9 From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-declared and mis-classified the goods and evaded the payment of applicable duty. I find that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

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

14.10 I find that the Show Cause Notices propose confiscation of goods under the provisions of Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

111. Confiscation of improperly imported goods, etc.- goods are liable for confiscation:-

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

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

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

In view of the facts and evidence discussed above, I find that the Directorate General of Foreign Trade (DGFT), through Notification No. 05/2023 dated 05.04.2024, amended the import policy for Melon Seeds under CTH 12077090. As per the notification, the import of Melon Seeds was classified as 'Free' from 1st May 2024 to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import". All consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024. However, as established in the preceding paras, M/s. PCM Agri Exports, illegally imported Watermelon Seeds under Bill of Entry No. 5571220 dated 12.09.2024, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 14th July 2024 i.e. beyond the permissible date of 30th June 2024 using a forged Bill of Lading. Furthermore, from the investigation carried out, I also find that the importer deliberately withheld critical information from Customs Authorities, failing to disclose that the goods were shipped on board after the specified date of 30th June 2024. This reflects intentional non-compliance with the DGFT Notification No. 05/2023 dated 05.04.2024, which rendered the subject goods prohibited, hence, contravened the provisions of Section 46 of the Customs Act, 1962. I find that Bills of lading provided were forged /manipulated to meet the requirement of notification no. 05/2023-Cus dated 05.04.2024. This deliberate manipulation confirms malafide intention of noticee's. Hence, the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5571220 dated 12.09.2024 having total quantity 156.237 MTs and declared assessable value of Rs. 2,61,56,807/- imported by M/s. PCM Agri Exports are liable for confiscation. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962.

15. I find that the Show Cause Notices propose penalty on noticees under the

provisions of Section 112(a), 112(b) and 114AA of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

SECTION 112 of the Customs Acts. Penalty for improper importation of goods, etc. - Any person, -

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

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

shall be liable, -

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

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

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

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

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

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

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any

declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

Roles and culpability of persons/firms involved:

15.1 Role and culpability of M/s. PCM Agri Exports:

M/s. PCM Agri Exports was well aware of the Import policy and Notification No. 05/2023 dated 5th April, 2024 issued by the DGFT. M/s. PCM Agri Exports had imported watermelon seeds covered under BL No. OSLSBL-956/24 dated 27.06.2024 vide Bill of Entry no. 5571220 dated 12.09.2025, by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. The total quantity of the said goods covered under the subject Bill of Entry is 156.237 MTs having Assessable value of Rs. 2,61,56,807/-. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and therefore is liable to penalty under Section 112 (a) and 112 (b) of the Customs Act, 1962. I find that the evidences clearly indicating malafide intention on their part in respect of the imported goods warranting imposition of penalty under Section 112 (a) (i) as the fact of non-compliance of conditioned outlined in the Notification No. 05/2023-Cus dated 05.04.2024 issued by DGFT. Result is that proposal to impose penalty under Section 112 (a)(i) is correct and sustainable in law.

I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on M/s. PCM Agri Exports under Section 112(b) of the Customs Act, 1962.

I find that the SCN proposed imposition of penalty on the Importer under Section 114AA of the Customs Act, 1962. I find that in spite of well aware of import policy and conditioned outlined in the notification no. 05/2023-Cus dated 05.04.2024 issued by DGFT. Accordingly, I find that the importer M/s. PCM Agri Exports has knowingly and wilfully filed the bill of entry with forged

Bills of Lading with the clear intention to import the restricted cargo in direct violation of established regulations. As it is the obligation of the firm to ensure that proper and correct documents are maintained and as forged Bill of Lading was created which constitutes the violation. By manipulating and forging Bills of Lading in collusion with their supplier and shipping line and filing import documents which were false and incorrect in material particulars. Accordingly, it is evident that M/s. PCM Agri Exports **knowingly and intentionally made, signed, used and/or caused to be made, signed or used** import documents and related papers that were **false or incorrect in material particulars** for the purpose of illegally importing the subject goods. Therefore, I find that importer is also liable for **penal action under Section 114AA** of the Customs Act, 1962.

15.2 Role and culpability of M/s. Paramount Sealink Pvt. Ltd.:

The facts and evidence gathered during the search, including email correspondences, clearly establish that M/s Paramount Sealink Pvt. Ltd, acting on behalf of M/s Oceanic Star Line, deliberately colluded with representatives of M/s Oceanic Star Line and Shri. Tagwa Badri of Eastern Shipping Co. Ltd., Sudan, to manipulate the actual dates on the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and intent to mislead the authorities. The deliberate acts and omissions by M/s Paramount Sealink Pvt. Ltd. make them liable for penalties under **Section 112(b)** of the Customs Act, 1962.

It has also been revealed during the investigation that M/s. Paramount Sealink Pvt. Ltd knowingly and intentionally, made, signed, used and/or caused to be made, signed, or used import documents and related records that were false or incorrect in material particulars, with the clear intention to import the restricted cargo in direct violation of established regulations. By manipulating and forging Bills of Lading in collusion with their overseas part and forwarding the forged BLs which were false and incorrect in material particulars. Accordingly, it is evident that M/s. Paramount Sealink Pvt. Ltd **knowingly and intentionally made, signed, used and/or caused to be made, signed or used** import documents i.e. creation of forged Bills of Lading and related papers that were **false or incorrect in material particulars** for the purpose of illegally importing the subject goods. Therefore, I find that M/s. Paramount Sealink Pvt. Ltd is also liable for **penal action under Section 114AA** of the Customs Act, 1962.

15.3 Role and culpability of Shri Bharat Himmatlal Parmar, Branch Manager of M/s. Paramount Sealink Pvt. Ltd.:

The facts and evidences gathered during the search, including email

correspondences, clearly establish that Shri Bharat Himmatlal Parmar, being the Branch Manager was made Cc to each and every mail conversations between their Principal Shipping Line (M/s. Oceanic Star Line) and overseas agents of their Principal Shipping Line (i.e. M/s. Eastern Shipping Co. Ltd., Sudan and M/s. Gulf Gate Shipping Co. Ltd., Jeddah). During investigation, it was revealed that he was fully aware about the manipulation of actual dates on Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. Despite being fully aware, he failed to disclose the actual facts to the customs department and in connivance with their principal shipping line and its overseas agents; he attempted to facilitate the clearance of restricted cargo. By engaging in the creation of forged Bills of Lading in collusion with shipper, broker and shipping line representatives, Shri Bharat Himmatlal Parmar not only mislead the customs department but also rendered himself liable to penalties under Section 112(b) of the Customs Act, 1962. In view of the above, I hold so.

16. In view of the above facts of the case and findings on record, I pass the following order:-

ORDER

- i. I order to absolute confiscation of impugned goods i.e. **156.237 MTS "Watermelon Seed"** imported vide Bill of Entry no. 5571220 dated 12.09.2024 having value Rs. **2,61,56,807/- (Two Crore Sixty One Lakh Fifty Six Thousand Eight Hundred and Seven only)** under Section 111(d), 111(m) & 111(o) of the Customs Act, 1962.
- ii. I impose penalty of Rs. 13,00,000/- (Rupees Thirteen Lakh only) on the importer M/s. PCM Agri Exports under Section 112 (a)(i) of the Customs Act, 1962.
- iii. I refrain from imposing penalty on the importer M/s. PCM Agri Exports under Section 112(b) of the Customs Act, 1962.
- iv. I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on the importer M/s. PCM Agri Exports under Section 114AA of the Customs Act, 1962.
- v. I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on M/s. Paramount Sealink Pvt. Ltd. under Section 112 (b) of the Customs Act, 1962.
- vi. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) on M/s. Paramount Sealink Pvt. Ltd. under Section 114AA of the Customs Act, 1962.
- vii. I impose penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) on Sh. Bharat Parmar, Branch Manager of M/s. Paramount Sealink Pvt. Ltd. Under section 112(b) of the Customs Act, 1962.

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

18. The Show Cause Notice bearing no. GEN/ADJ/ADC/477/2025-Adjn

dated 20.02.2025 stands disposed in above terms.

Zala Dipakbhai Chimanbhai

ADDITIONAL COMMISSIONER

ADC/JC-III-O/o Pr Commissioner-customs-mundra

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By Speed Post/Regd. Post/E-mail/Hand Delivery

List of Noticees

1. M/s. PCM Agri Exports, Plot No. 16-18, Gokul Vihar Sedariya, Beawar, Ajmer-305901
2. M/s Paramount Sealink Pvt. Ltd. (Delivery Agent working in India on behalf of M/s Oceanic Star Line), Suite 20, 2nd Floor, Avishkar Complex, Ward-12/B, Plot No. 204, Gandhidham (Kutch) – 370201
3. Shri Bharat Himmatlal Parmar, Branch Manager of of M/s Paramount Sealink Pvt. Ltd., Suite 20, 2nd Floor, Avishkar Complex, Ward-12/B, Plot No. 204, Gandhidham (Kutch) – 370201Sector-8, Gandhidham (Kutch) – 370201

Copy to:

1. The Additional Director General, DRI, Ahmedabad
2. The Additional Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch).
3. The Deputy Commissioner of Customs(RRA/TRC), Mundra Customs House.
4. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately).*
5. Guard File.

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