
	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,</b> <b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421</b> PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in</p>	 आज़ादी का अमृत महोत्सव
A. File No.	: F.No.: GEN/ADJ/COMM/205/2024-Adjn-O/o Pr Commr-Cus-Mundra	
B. Order-in-Original No.	: <b>MUN-CUSTM-000-COM- 004 - 25-26</b>	
C. Passed by	: <b>Nitin Saini,</b> <b>Commissioner of Customs,</b> <b>Customs House, AP &amp; SEZ, Mundra.</b>	
D. Date of order and Date of issue:	: 15.05.2025 15.05.2025	
E. SCN No. & Date	: SCN F.No. GEN/ADJ/COMM/205/2024-Adjn-Pr Commr-Cus-Mundra, dated 16.05.2024.	
F. Noticee(s) / Party / Importer	: <ol style="list-style-type: none"> <li>1. <b>M/s Bhimnath Udyog</b>, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai- 400706 (IEC - 0314057021).</li> <li>2. <b>Smt. Hansa Pravin Joisar</b>, Proprietor of M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai- 400706 (IEC - 0314057021).</li> <li>3. <b>Shri Pravin Thraryabhai Joisar</b>, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Row House No. 8, Park Avenue Society, Sector-17, Nerul, Navi Mumbai.</li> <li>4. <b>Shri Mahesh Thraryabhai Joisar</b>, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Row House No. 8, Park Avenue Society, Sector-17, Nerul, Navi Mumbai.</li> <li>5. <b>Shri Pritam Vasant Joisar</b>, of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Row House No. 8, Park Avenue Society, Sector-17, Nerul, Navi Mumbai.</li> <li>6. <b>Miss Dimple Joisar</b>, of importer M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai- 400706 (IEC - 0314057021).</li> <li>7. <b>Miss Yogini Vasant Joisar</b>, of Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Row House No. 8, Park Avenue Society, Sector-17, Nerul, Navi Mumbai..</li> </ol>	
G. DIN	: <b>DIN- 20250571MO0000016941</b>	

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

**“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”**

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

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

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

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

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प बहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील जापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

**BRIEF FACTS OF THE CASE:**

Intelligence was received that an import consignment being imported by M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai (IEC – 0314057021) at Mundra Port might have concealment or mis-declaration. Further, it was informed in the intelligence that Black Pepper is not indigenous to Afghanistan and India has not been importing Black Pepper from Afghanistan, hence the COO was needed to be verified as per CAROTAR, as the importer has claimed the benefits of SAFTA and that the import of Black Pepper under CTH 09041120 in India is prohibited for import under CIF Value Rs. 500/Kg. The Intelligence further suggested that the import goods i.e., pepper might have been used as a cover cargo for concealment of restricted/prohibited or high value items.

2. Acting upon the intelligence, the consignment being imported under Bill of Entry No. 6008074 dated 18.05.2023 (**RUD-1**) by M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai (IEC – 0314057021) at Mundra Port was put on hold for examination by the DRI officers. The consignment was examined at M/s Saurashtra CFS, Mundra under panchnama dated 22.05.2023 (**RUD-2**) by the DRI, wherein a total of 27934.16 Kgs of Black Pepper was found inside one container covered under the Consignment.

3. Search was carried out under panchnama dated 22.05.2023 (**RUD-3**) on the Mundra Office of M/s Pramanik Exim Services Pvt. Ltd., Customs Broker in the subject consignment, located at Ashutosh Dham-2, Plot No.18, First Floor, Sorathiya Hospital, Baroi Mundra Road, Vill. - Borai, Tal. - Mundra, Kachchh, and some relevant documents found during the search proceedings were resumed.

4. Voluntary Statement of Shri Mahesh Tharyabhai Joisar, Director of Customs Broker M/s Pramanik Exim Services Pvt. Ltd., was recorded on 22/23.05.2023 (**RUD-4**) wherein he, interalia stated that,

- (i) That he was H-Card holder and Director of M/s. Pramanik Exim Services Pvt. Ltd. (old address –M 33, M Gali, APMC Dana Bunder, Sector-19, Turbhe, Navi Mumbai) which is a Customs Broker company having Customs Broker License No. 11/713 and AAACP5687MCH001 registered with Mumbai Customs and that his company was engaged in providing Customs clearance services at Nhava Sheva and Mundra ports. The GSTIN of M/s. Pramanik Exim Services Pvt. Ltd. was 27AAACP5687M1ZR and his brother Shri Pravin T. Joisar (Mb. No. 9920079878) and himself were Directors in this company. He did not run any other firm/ company as Director/ owner/Partner/ Proprietor/ controller. His Bank Accounts and bank accounts of his company M/s. Pramanik Exim Services Pvt. Ltd. were at SBI, Vashi branch but the account nos. were not remembered to him. He further stated that he would provide the same within 03 days and that they had a branch office of his company at First Floor, Ashutosh Dham-2, Plot No. 18, Near Sorathiya Hospital, Baroi Road, Mundra (Kutch).
- (ii) On being asked about the work distribution in his company, he stated that he himself and his brother Shri Pravin T. Joisar both looked after logistics and Customs clearance related work together and that he would provide the copy of MOU of his company within 03 days.
- (iii) That M/s. Bhimnath Udyog (IEC No. 0314057021, GSTIN-27AEOPJ9157P2ZG) was a family firm in which his sister-in-law Smt.

Hansha Pravin Joisar (wife of his brother Shri Pravin Joisar) was the Proprietor. M/s. Bhimnath Udyog was an importer /exporter firm which was started in the year 2012-13. He further stated that they were three brothers including him, Shri Pravin Joisar and Shri Vasant Joisar (Mb. No. 932XXXXXXXXX). Other firms/companies being run by his family were M/s. Yogi Enterprises (Prop. Shri Vasant Joisar) which was engaged in the transportation business and they were having a shop in the name M/s. Bhimnath Udyog at B11 Masala Market, APMC, Vashi which was closed during lockdown and did not resume thereafter.

- (iv) On being asked, he stated that as an importer, M/s. Bhimnath Udyog imported Cashew nuts (roasted and raw) and in the year 2023, around 12-13 consignments of Cashew nuts were imported in the said firm. Recently, a consignment of Black Pepper had been imported at Mundra port under Bill of Entry No. 6008074 dated 18.05.2023. The clearance of the said consignment had been put on hold by DRI and accordingly, he had participated in the Panchnama proceedings relating to DRI examination of the subject consignment. He had remained present during the entire Panchnama proceedings and was fully satisfied with facts recorded and the manner of drawing the said Panchnama. He had also participated during the search proceedings carried out by officers of DRI at their Mundra office under Panchnama dated 22.05.2023 and was fully satisfied with the facts and manner of drawl of this Panchnama. From his said office premises, certain documents and polythene packets containing Urea, PVC powder, broken Rice & cashew mixture, etc. were found. On being asked the purpose of keeping these packets on the top of their office, he stated that those were auction samples obtained by him from Ashutosh CFS, Saurashtra CFS of Mundra port, however he did not have any documents relating to those packets. On being asked whether the goods contained in so called samples were any contrabands or prohibited/unlawful/illegal goods, he stated that those were not contrabands goods and the same might be tested in case of doubt. He assured full cooperation during investigation and for assurance, he was voluntarily surrendering his mobile phone for investigation purpose.
- (v) On being asked as to whom and how did the idea of importing Black pepper came, he stated that that was the first import of Black Pepper being made by M/s. Bhimnath Udyog. His brother Shri Pravin Joisar, his wife Smt. Hansa Joisar and daughter Miss Dimple Joisar (Mb. No. 9819928098) were looking after the entire activities relating to the present import of Black Pepper. He was not concerned with the said import.
- (vi) On being asked as to who had placed the order for importing Black Pepper covered under Bill of Entry No. 6008074 dated 18.05.2023, he stated that he was not aware.
- (vii) On being asked as to whom at overseas supplier end, the order was received and goods were dispatched from M/s. Bhimnath Udyog, he stated that he was not aware.
- (viii) On being asked as to who negotiated the rates at importer and supplier ends and what were the terms and condition of the import, he stated that he was not aware.
- (ix) On being asked whether any contract/agreement was signed between M/s. Bhimnath Udyog and the overseas supplier of subject consignment, he stated that he was not aware.

- (x) On being asked as to who were the buyer(s) of subject import consignment of Black Pepper in India, he stated that he was not aware.
- (xi) On being asked whether payment of the subject consignment covered under Bill of Entry No. 6008074 dated 18.05.2023 has been made to supplier, he stated that he was not aware.
- (xii) On being shown Bill of Entry No. Bill of Entry bearing No. 6008074 dated 18.05.2023 and related documents produced by him during Panchnama proceedings dated 22.05.2023; being apprised that as per the Bill of Entry, the goods covered under subject consignment / Bill of Entry No. 6008074 dated 18.05.2023 had been declared to be originated in Afghanistan whereas the port of loading was declared as Bandar Abbas, Iran, and asked to produce related document in support of their claim, he stated that he was not aware how did the subject consignment arrived at Bandar Abbas, Iran from Afghanistan and neither did he have any documents with him.
- (xiii) On being asked as to when and who approached him or his company for clearance of subject import consignment covered under Bill of Entry bearing No. 6008074 dated 18.05.2023, he stated that Smt. Hansa P. Joisar, Prop. of M/s. Bhimnath Udyog approached him telephonically and requested for clearance of the subject consignment in the month of May, 2023.
- (xiv) On being asked whether Smt. Hansa P. Joisar had sent documents relating to the subject consignment covered under Bill of Entry bearing No. 6008074 dated 18.05.2023, and If yes, the particulars thereof, or in case 'no', then who sent him the documents, he stated that Smt. Hansa P. Joisar did not send the documents relating to the subject consignment covered under Bill of Entry bearing No. 6008074 dated 18.05.2023 and Shri Pritam Vasant Joisar (Mb. No. 8828102085), his nephew had sent him the import documents.
- (xv) On being asked to explain the Customs Duty calculation in respect of the subject consignment covered under Bill of Entry bearing No. 6008074 dated 18.05.2023, he stated that the Duty calculation aspect was being looked after by his nephew Shri Pritam V. Joisar. Hence, he was not aware about Duty calculation in respect of the subject consignment covered under Bill of Entry bearing No. 6008074 dated 18.05.2023.
- (xvi) On being shown printouts of some of the Whatsapp Chat conversations held between him and one contact saved in his contact list as Pritam (Mb. No. 8828102085) and asked to explain the conversations and documents exchanged between him and the said contact on Friday, 19.05.2023, he stated the printouts were related to conversation between him and the contact no. 8828102085, who was of his nephew Shri Pritam V. Joisar. As per the conversations dated 19.05.2023 Shri Pritam V. Joisar had sent him two different PDF files (of Bill of Entry No. 6008074 dated 18.05.2023) having names 'CHK 17 without duty' and 'CHK 17 with duty'. In one of such Bill of Entry (without Duty), the Basic Customs Duty was applied at the rate of NIL which resulted in total Duty/IGST payable as Rs.7,13,340/-. Whereas, as per second PDF of Bill of Entry (with Duty), the Basic Customs Duty was applied at the rate of 70% which resulted in total Duty payable as Rs.1,22,48,044/-. Thereafter, his nephew had sent him the following message: -

\*12248044.00 – 713340.00= 11534704

*Total 1 crore 15 lakh 34 thousand*

*Ka duty save hora hai*

To which he had replied 'Ok'.

- (xvii) On being asked as to what was the purpose of sending such message by Shri Pritam to him in 19.05.2023 whereas the Bill of Entry was already filed on 18.05.2023, he stated that he was not aware.
- (xviii) On being asked that in the instant case, the subject Bill of Entry bearing no. 6008074 was filed on 18.05.2023. *His nephew had sent such different Bills of Entry having NIL rate of BCD and BCD@70%, which indicated that the benefit of Duty exemption/ SAFTA benefit was wrongly availed mis-declaring the Country of Origin as Afghanistan and that is why his nephew had stated that the Duty of Rs. 1 crore 15 lakh 34 thousand was saved.* On being asked to comment as he had replied in affirmative to the above message of his nephew Shri Pritam V. Joisar and Whether he had brought the matter to the notice of jurisdictional Customs Authorities, he stated that he was not in a position to recollect the matter and that he and his company did not bring the matter to the notice of the jurisdictional Customs Authorities.
- (xix) On being asked whether he or his company had sent any check list to M/s. Bhimnath Udyog for approval before filing of Bill of Entry and if such was the matter, to provide the printout of concerned conversation, he stated he did not have any idea, and he would have to check with their staff and revert back within 03 days.
- (xx) On being asked whether his/his company or M/s. Bhimnath Udyog had any written conversations with the overseas supplier of subject consignment and asked to provide printout/copy thereof, he stated that he and his company did not have any conversations with the overseas supplier of subject consignment. He further stated that he did not have any idea about the conversations if held between M/s. Bhimnath Udyog and the overseas supplier.
- (xxi) On being informed that he had avoided replying to most of the questions which indicates that he was not cooperating in the investigation or he had not checked and verified the details and facts relating to the subject import consignment,

*whereas as per the Regulation 10(d) of CBLR, 2018, a Customs Broker shall advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. Whereas, in terms of Regulation 10(e) of CBLR, 2018, a Customs Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. Moreover, as per regulation 10(q) of CBLR, 2018, a Customs Broker shall co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.*

and being apprised that it appeared that he/his company had failed in complying with their obligation as Customs Broker and asked to comment he stated that he would discuss the matter with his partner and other Director Shri Pravin T. Joisar to resolve the matter by making necessary compliance with respect to country of origin.

5. Searches were carried out at the premises of M/s Bhimnath Udyog and M/s Pramanik Exim Services Pvt. Ltd., located at Plot No. 5, 6, Flat No. 201, Vighnagar Society, Sector-14 Mumbai and Row House No. 8, Park Avenue Society, Sector-17, Nerul, Navi Mumbai, respectively, under panchnamas dated 23.05.2023 (**RUD-5**), during which no related persons of the importer or Customs Broker was found. No documents were resumed from the address of M/s Pramanik Exim Services Pvt. Ltd., some relevant documents including bank passbooks of Shri Pritam Vasant Joisar and Miss Yogini Vasant Joisar were resumed from the address of M/s Bhimnath Udyog.

6. Further summons issued to the concerned persons of the importer M/s Bhimnath Udyog and Customs Broker M/s Pramanik Exim Services Pvt. Ltd., however no one appeared against the said summons. The details of the said summons is as given in below table:

Sr. No.	Name of the person to which summon was issued	Firm which the person is related to	Date of summon/s issued
1.	Smt. Hansa Pravin Joisar	Proprietor of M/s Bhimnath Udyog	23.05.2023, 06.06.2023, 25.06.2023, 18.07.2023, 19.09.2023, 9.10.2023, 27.11.2023
2.	Shri Pravin Tharyabhai Joisar	Director of M/s Pramanik Exim Services Pvt. Ltd.	23.05.2023, 06.06.2023, 25.06.2023, 18.07.2023, 19.09.2023, 9.10.2023, 27.11.2023
3.	Shri Pritam Vasant Joisar	M/s Pramanik Exim Services Pvt. Ltd.	23.05.2023, 06.06.2023, 25.06.2023, 18.07.2023, 19.09.2023, 9.10.2023, 27.11.2023
4.	Shri Mahesh Tharyabhai Joisar	Director of M/s Pramanik Exim Services Pvt. Ltd.	22.05.2023, 23.05.2023, 19.09.2023, 9.10.2023, 27.11.2023
5.	Miss Dimple Joisar	M/s Bhimnath Udyog	15.10.2023, 31.10.2023, 15.12.2023
6.	Miss Yogini Vasant Joisar	M/s Pramanik Exim Services Pvt. Ltd.	19.09.2023, 9.10.2023, 27.11.2023

7. No concerned persons of the importer appeared to tender their statement or produced documents/evidences, related to the instant investigation. Further, no concerned person from the Customs Broker appeared against the further summons issued to them. Therefore, since it appeared from the Whatsapp chat between Shri Mahesh Tharyabhai Joisar and Shri Pritam Joisar, as per the

statement dated 22/23.05.2023 of Shri Mahesh Tharyabhai Joisar, that they have wilfully misdeclared the country of origin as Afghanistan to incorrectly avail the benefit of SAFTA, the goods covered under the consignment imported by M/s Bhimnath Udyog under Bill of Entry No. 6008074 dated 18.05.2023 were placed under seizure vide seizure memo dated 25.09.2023.

8. Further, letter dated 16.10.2023 (**RUD-6**) was sent to importer M/s Bhimnath Udyog, to provide documents required for verification of Country of Origin under CAROTAR Rules, 2020, in respect of the subject consignment imported by them under Bill of Entry 6008074 dated 18.05.2023 declared by them of Afghanistan Origin, wherein they have claimed the benefit of preferential trade agreement under SAFTA. In addition, the importer was also requested to provide the details of payments made to the supplier/exporter and any other related information possessed by them in respect of subject consignment. However, no reply to the above letter was received from the importer.

9. Statement of Shri Pratik Nitinbhai Chotara, authorised person of Shipping Line, M/s Transvision Shipping Pvt. Ltd., was recorded on 27.09.2023 (**RUD-7**), wherein he interalia stated that,

- (i) On being asked to describe the nature of work done by M/s Transvision Shipping Pvt. Ltd., he stated that M/s Transvision Shipping Pvt. Ltd. generally worked as a liner providing container for import and export purpose. M/s Transvision Shipping Pvt. Ltd., also possessed approx. 9000 containers ownership and provided the containers services for transportation of the cargo for import and export purpose. The head office of M/s Transvision Shipping Pvt. Ltd., was at Skylark Building, Plot No. 63, Opp. BP Marine Academy, Sector 11, CBD Belapur, Navi Mumbai, Maharashtra. Their office at office No. 202, 2<sup>nd</sup> floor, Plot No. 15-16, Sector-1A, Near Aatmaram Circle, Kutch Kala Road, Gandhidham was the branch office of M/s Transvision Shipping Pvt. Ltd., where they were looking after the handling work of the import/export container services at Mundra port and Kandla Port.
- (ii) On being asked who looked after the work relating to import in M/s Transvision Shipping Pvt. Ltd., at Gandhidham, he stated that he looked after the import vessel and port operation at Gandhidham branch and reported his day to day to Shri Karim Sir at their head office at Mumbai.
- (iii) On being asked as to what documents were called from the importer by their company at the time of delivery order of the consignment, he stated that in case of direct consignment, their clients provided them original Bill of lading/Surrender BL/Seaway BL, endorsed by the consignee and CHA, Bill of Entry, Packing List, Invoice, KYC, documents and Bond alongwith insurance if the goods had to be moved to the importer direct, otherwise Bond and insurance were not provided if the goods were de-stuffed at CFS. If the booking was through forwarder, the forwarders provided them copy of Master Bill of Lading, copy of House Bill of Lading alongwith Bond and insurance wherever applicable.
- (iv) On being asked to state whether the container bearing no. UESU5212649 pertained to his company M/s Transvision Shipping Pvt. Ltd., and asked to provide details of their clients to whom their company booked the said container in April 2023, alongwith the details of the person who booked the containers at the port of loading, alongwith related emails/communication, invoice and packing list, he stated that the said container bearing no. UESU5212649 pertained to his company M/s



Transvision Shipping Pvt. Ltd and the said container was booked by the supplier to export the goods into India during the month of April/May 2023, through their agent in Iran, M/s Mavaraye Cheshm Andaz. Shri Mohammed Muthia of M/s Darya Rokh Negar Co, Iran, forwarder agent booked the said container at the port of loading and had paid the freight pre-paid. Further, Shri Pratik Nitinbhai Chotara, provided the details of the persons, email communications and payment details duly signed by him.

- (v) On being asked to provide the Bill of Lading, Invoice and Packing list for the above import consignment, he produced the same duly signed by him.
- (vi) On being asked to provide the details of their clients who approached their company for Delivery Order of the said container, and the relevant emails/communication alongwith payment particulars, he stated that the importer m/s Bhimnath Udyog had approached to their office for the said container and their company had issued them local invoice for terminal handling charges, CFS charges, local port charges and security invoice. However, after that they were not approached by the importer or any other person for Delivery order of the subject consignments.
- (vii) On being asked if he had any other information related to the subject consignment, he stated that he did not have any other information at the time, however he would try to get more information and share the same promptly with the DRI.

#### **Findings of the Investigation:**

**10.** Acting upon the intelligence, the consignment being imported under Bill of Entry No. 6008074 dated 18.05.2023 by M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai (IEC – 0314057021) at Mundra Port was put on hold by the DRI officers and examined at M/s Saurashtra CFS, Mundra under panchnama dated 22.05.2023, wherein a total of 27934.16 Kgs of Black Pepper was found inside one container covered under the Consignment.

**11.** During the statement of Shri Mahesh Tharyabhai Joisar, Director of Customs Broker M/s Pramanik Exim Services Pvt. Ltd., recorded on 22/23.05.2023, he declined to have any information related to the consignment, but stated that the importer M/s Bhimnath Udyog was their family firm owned by his sister-in-law, and was being looked after by her, her husband and her daughter. On going through the Whatsapp chats found in his phone, it was noticed from the chats between him and his nephew Shri Pritam Vasant Joisar that two separate Bills of Entry, one with applicable duty without the benefit of SAFTA and another with duty after exemption of SAFTA was found, and Shri Pritam Joisar had sent him the above said Bills of Entry, with the message,

"12248044.00 – 713340.00= 11534704

Total 1 crore 15 lakh 34 thousand

Ka duty save hora hai",

to which Shri Mahesh Tharyabhai Joisar had replied in affirmative. Shri Mahesh Tharyabhai Joisar declined to comment on their responsibility as a Customs Broker, to inform the jurisdictional Customs Authorities about the incorrect SAFTA benefit being claimed by the importer M/s Bhimnath Udyog.

**12.** Further, letter dated 16.10.2023 was sent to importer M/s Bhimnath Udyog, to provide documents required for verification of Country of Origin under

CAROTA Rules, 2020, in respect of the subject consignment imported by them under Bill of Entry 6008074 dated 18.05.2023 declared by them of Afghanistan Origin, wherein they have claimed the benefit of preferential trade agreement under SAFTA. In addition, the importer was also requested to provide the details of payments made to the supplier/exporter and any other related information possessed by them in respect of subject consignment. However, no reply to the above letter was received from the importer.

13. No concerned person from the importer came forward to tender their statement and/or submit documents/evidences in support of their claim of preferential duty under SAFTA, which suggests that the importer did not have any documentary evidence and have incorrectly availed the benefit of SAFTA and tried to evade Customs Duty applicable. Further, no concerned person from the Customs Broker appeared against the further summons issued to them. Therefore, the competent authority was requested to grant extension for further 6 months, which was granted through letter dated 14.11.2023. **(RUD-8)**

14. Subsequently, letter dated 22.12.2023 **(RUD-9)** was sent to the Directorate of International Customs (FTA Cell), requesting them to carry out retroactive verification of the Country of Origin Certificate bearing reference no. 5315 dated 03.04.2023 said to be issued in Afghanistan for the export of Black Pepper (HS Code 09041140) from Afghanistan to India under SAFTA, in respect of the subject consignment imported by M/s Bhimnath Udyog, declared to be of Afghanistan Origin, which was forwarded to the PAI Division of the Ministry of External Affairs, Government of India vide letter dated 30.01.2024. However, no reply in the said matter has been received. Reminder dated 30.04.2024 was sent to Directorate of International Customs (FTA Cell), requesting them to provide information related to the said certificate of Origin, however it has been informed vide e-mail dated 06.04.2024, that *"the response from the Issuing Authority in the subject matter is still awaited"*.

15. Whereas, Section 28DA of the Customs Act, 1962 provides that,

**"Section 28DA: Procedure regarding claim of preferential rate of duty. -**

.....  
.....  
.....

16. Whereas Rule 4, 5 & 6 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, state that,

**"Rule 4. Origin related information to be possessed by importer-**

The importer claiming preferential rate of duty shall-

- (a) possess information, as indicated in Form I , .....and submit the same to the proper officer on request.
- (b) keep all supporting documents related to Form I for at least five years .....
- (c) exercise reasonable care to ensure the accuracy and truthfulness .....

**Rule 5. Requisition of information from the importer. -**

- (1) Where, during the course of customs clearance or thereafter, the proper officer has reason to believe ..... to ascertain correctness of the claim.
- (2) Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days .....
- (3) .....
- (4) Where the importer fails to provide requisite information and documents ....., the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.

(5) ....., disallow the claim of preferential rate of duty without further verification, where:

(a) The importer relinquishes the claim; or

(b) The information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

**Rule 6. Verification request. -**

(1) The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from Verification Authority where:

(a) there is a doubt regarding genuineness .....

(b) there is reason to believe that the country-of-origin criterion stated in the certificate of origin has not been met or the claim of preferential rate of duty made by importer is invalid; or

(c) verification is being undertaken on random basis, .....

**Provided that** .....

(2) Where information received in terms of sub-rule (1) is incomplete .....

(3) .....

(a) timeline as prescribed in the respective trade agreement; or

(b) in absence of such timeline in the agreement, sixty days from the request having been communicated.

(4) Where verification in terms of clause (a) or (b) of sub-rule (1) is initiated during the course of customs clearance of imported goods,

(a) The preferential tariff treatment of such goods may be suspended till conclusion of the verification;

(b) The verification Authority shall be informed of reasons for suspension of preferential tariff treatment while making request of verification; and

(c) The proper officer may, on the request of the importer.....

(5) All requests for verification .....

(6) .....

**Provided that** where a timeline to finalize verification is prescribed in the respective Rules of Origin, the proper officer shall finalize the verification within such timeline.

(7) The proper officer may deny claim of preferential rate of duty without further verification where:

(a) The verification Authority fails to respond to verification request within prescribed timelines;

(b) The verification Authority does not provide the requested information in the manner as provided in this rule read with the Rules of Origin; or

(c) ..... sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

**17.** Both as per the quantity mentioned in the Bill of Entry and the quantity found in examination, the CIF value of black pepper is above Rs. 500/kg, thus the goods being imported fulfilled the criteria of minimum import price and hence, was not prohibited for import.

**18.** As per subsection (1)(ii) and subsection (2) of Section 28DA and Rule 4 of CAROTA Rules 2020, importer has the responsibility to possess sufficient information to prove his claim of preferential rate of duty. However, as the facts of the investigation discussed above, the importer failed to provide such information when asked for, under subsection (3) of Section 28DA. Thus, as per subsection (4) (i) of Section 28DA and Rule 6 (1) (a) of CAROTAR Rules, 2020, verification request was sent to the issuing authorities, however, no information has been received by the DRI in respect to the Certificate of Origin verification request,

within the timeline prescribed in Rule 6 (3) (b) of CAROTA Rules, 2020, therefore, preferential rate of duty claimed by M/s Bhimnath Udyog, in the subject consignment is liable to be rejected, in terms of the provisions of sub section (8) of the Section 28DA of the Customs Act, 1962 read with the sub rule 7(a) of the Rule 6 of the CAROTAR Rules, 2020.

**18.1.** Since evidence has been found which reveals the preferential treatment has been claimed wrongly to evade customs duty, preferential rate of duty claimed by M/s Bhimnath Udyog, in the subject consignment is also liable to be rejected as per subrule 5(b) of Rule 5 of CAROTAR, 2020 and Section 28DA (11) of the Customs Act, 1962.

**18.2.** Thus, the goods imported by the importer under the same consignment are liable to be confiscated under the Section 111(m) and 111 (q) of the Customs Act, 1962.

#### **Demand of Duty:**

**19.** From facts of the case, investigations made so far; and the provisions of Section 28 DA of the Customs Act, 1962 and CAROTAR Rules, 2020, discussed at Para 15 to 18 above, it is evident that the importer had incorrectly availed the benefit of SAFTA. Total Duty Evaded by the importer in the subject import is as given in below table:

**(Amount in Rs.)**

Assessable Value	Quantity of goods	Unit Value	Total Duty on the Assessable Value at (A)	SWS @ 10% of (D)	Assessable value for IGST (A+D+E)	IGST applicable (@5% of (F))	Total Duty payable
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
1,42,66,795.90	28000 Kgs.	509.53	99,86,757.13	9,98,675.71	2,52,52,228.74	1262611.44	1,22,48,044.28

Therefore, the importer M/s Bhimnath Udyog, appeared liable to pay the duty as mentioned in column (H) of the table above along with applicable interest.

#### **ROLE OF THE FIRMS/ PERSONS IN THE EVASION OF CUSTOMS DUTY BY INCORRECT AVAILMENT OF SAFTA BY IMPORTER M/S BHIMNATH UDYOG**

##### **20. Role played by M/s Bhimnath Udyog/ Smt. Hansa Pravin Joisar, Proprietor of M/s Bhimnath Udyog:**

**20.1.** M/s Bhimnath Udyog imported one consignment of Black Pepper at Mundra Port under Bill of Entry No. 6008074 dated 18.05.2023, declaring the same of Afghanistan Origin, and availing the benefit of preferential rate of duty under SAFTA. From the statement of Shri Mahesh Tharyabhai Joisar, Brother-in-Law of Smt. Hansa Pravin Joisar and Director of M/s Pramanik Exim Services Pvt. Ltd., it appeared that they had incorrectly declared the country-of-origin as Afghanistan at the time of filing Bill of Entry to evade Customs Duty amounting to Rs.1,22,48,044.28/- (including IGST). Further, Smt. Hansa Joisar and other concerned person of M/s Bhimnath Udyog were issued summons to tender their statement and produce documents/evidences in support of their claim of preferential rate of duty in the subject consignment under SAFTA, however no one appeared against the said summons. Further, M/s Bhimnath Udyog did not respond to the letter dated 16.10.2023, to provide documents required for

verification of Country of Origin under CAROTAR Rules, 2020 and payment details of payments made to the supplier/exporter, in respect of the subject consignment. Smt. Hansa Pravin Joisar, proprietor of the importer M/s Bhimnath Udyog, did not co-operate in the investigation and had avoided her presence before the DRI, despite several summons issued to her by the DRI. Therefore, it appeared that M/s Bhimnath Udyog have incorrectly declared the country of origin, to incorrectly avail preferential rate of duty under SAFTA, thereby evading Customs Duty amounting to Rs.1,22,48,044.28/- (including IGST).

**20.2.** M/s. Bhimnath Udyog by way of fraud, collusion, suppression of facts and wilful mis-statement have violated the provisions of Customs Act, 1962, and CAROTAR Rules, 2022, in the import goods imported under Bill of Entry No. 6008074 dated 18.05.2023, and thereby rendered the subject goods liable to confiscation under Section 111(o) of Customs Act, 1962. By their acts of said commission and omission, M/s Bhimnath Udyog have thus rendered themselves liable for Penalty under Section 114A of Customs Act, 1962.

**20.3.** Smt. Hansa Pravin Joisar, proprietor of the importer M/s Bhimnath Udyog, did not co-operate in the investigation and had avoided her presence before the DRI, despite several summons issued to her by the DRI. Therefore, it appeared that M/s Bhimnath Udyog have incorrectly declared the country of origin, to incorrectly avail preferential rate of duty under SAFTA, thereby evading Customs Duty amounting to Rs. 1,22,48,044.28/- (including IGST). Thus, by involving herself in the said acts of commission and omission and furnishing incorrect documents/ material, Smt. Hansa Pravin Joisar rendered herself liable for Penalty under Section 112(a), Section 112(b) and Section 114AA, separately, of the Customs Act, 1962. Further, Smt. Hansa Pravin Joisar, did not appear against any of the summons issued to her by the DRI, thus rendering herself liable for penalty under Section 117 of the Customs Act, 1962.

**21. Role played by M/s Pramanik Exim Services/ Shri Pravin Tharyabhai Joisar/ Shri Mahesh Tharyabhai Joisar/ Shri Pritam Vasant Joisar:**

**21.1.** M/s Bhimnath Udyog imported one consignment of Black Pepper at Mundra Port under Bill of Entry No. 6008074 dated 18.05.2023, declaring the same of Afghanistan Origin, and availing the benefit of preferential rate of duty under SAFTA. M/s Pramanik Exim Services Pvt. Ltd. filed the Bills of Entry for the subject consignment. From the statement of Shri Mahesh Tharyabhai Joisar, Brother-in-Law of Smt. Hansa Pravin Joisar and Director of M/s Pramanik Exim Services Pvt. Ltd., it appeared that they had incorrectly declared the country-of-origin as Afghanistan at the time of filing Bill of Entry to evade Customs Duty amounting to Rs.1,22,48,044.28/- (including IGST). During the statement of Shri Mahesh Tharyabhai Joisar, in WhatsApp chat with Shri Pritam Joisar, his nephew, wherein Shri Pritam had sent such different Bills of Entry having NIL rate of BCD and BCD @70%, which indicated that the benefit of Duty exemption/SAFTA benefit was wrongly availed mis-declaring the Country of Origin as Afghanistan and that is why his nephew had stated that the Duty of Rs.1 crore 15 lakh 34 thousand was saved. On being asked to comment as he had replied in affirmative to the above message of his nephew Shri Pritam V. Joisar and Whether he had brought the matter to the notice of jurisdictional Customs Authorities, Shri Mahesh Tharyabhai Joisar had stated that his company did not bring the matter to the notice of the jurisdictional Customs Authorities. Further, Shri Pravin Tharyabhai Joisar and Shri Mahesh Tharyabhai Joisar were issued summons to tender their statement and produce documents/evidences in support of their claim of preferential rate of duty in the

subject consignment under SAFTA, however no one appeared against the said summons.

**21.2.** From the statement of Shri Mahesh Tharyabhai Joisar, it appeared that M/s Bhimnath Udyog and M/s Pramanik Exim Services Pvt. Ltd. are family firms, of Shri Pravin Tharyabhai Joisar and Shri Mahesh Tharyabhai Joisar. M/s. Bhimnath Udyog had, by way of fraud, collusion, suppression of facts and wilful mis-statement violated the provisions of Customs Act, 1962, and CAROTAR Rules, 2022, in the import goods imported under Bill of Entry No. 6008074 dated 18.05.2023, for which Bill of Entry was filed by M/s Pramanik Exim Services Pvt. Ltd. From the investigation it appeared that Shri Pravin Tharyabhai Joisar, Shri Mahesh Tharyabhai Joisar and Shri Pritam Vasant Joisar of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, wilfully mis-declared the country of Origin as Afghanistan to incorrectly avail the benefit of preferential duty under SAFTA. From the investigation, it is evident that M/s Pramanik Exim Services Pvt. Ltd., Shri Pravin Tharyabhai Joisar, Shri Mahesh Tharyabhai Joisar and Shri Pritam Vasant Joisar, have wilfully and deliberately involved themselves into violations of the provisions of Customs Act, 1962 and evasion of Customs Duty amounting to Rs.1,22,48,044.28/- (including IGST).

**21.3.** Thus, by involving themselves in the said acts of commission and omission and furnishing incorrect documents/material to evade payment of applicable Customs Duty, Shri Pravin Tharyabhai Joisar, Shri Mahesh Tharyabhai Joisar and Shri Pritam Vasant Joisar of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd have rendered themselves liable for Penalty under Section 112(a), Section 112(b) and Section 114AA, separately, of the Customs Act, 1962. Further, Shri Pravin Tharyabhai Joisar, Shri Mahesh Tharyabhai Joisar and Shri Pritam Vasant Joisar, did not appear against the summons issued to them by the DRI, thus rendering themselves liable for penalty under Section 117 of the Customs Act, 1962.

## **22. Role played by Miss Dimple Pravin Joisar/Miss Yogini Vasant Joisar:**

**22.1** Miss Dimple Pravin Joisar, daughter of Smt. Hansa Pravin Joisar and Shri Pravin Tharyabhai Joisar, was looking after the handling of the work of M/s Bhimnath Udyog. Miss Yogini Vasant Joisar had received various payments from M/s Pramanik Exim Services Pvt. Ltd., as noticed from the credit entries found in the passbooks resumed during search carried out at the address of M/s Bhimnath Udyog, during the investigation. Both of them were issued various summons to tender statement and produce evidence/documents in support of benefit of preferential rate of duty under SAFTA claimed by M/s Bhimnath Udyog. Hence it appeared that Miss Dimple Pravin Joisar and Miss Yogini Vasant Joisar, have involved themselves in the acts of omission and commission, and furnishing incorrect documents/material which resulted in evasion of applicable Customs Duty amounting to Rs.1,22,48,044.28/- (including IGST), they both, have rendered themselves liable for Penalty under Section 112(a), Section 112(b) and Section 114AA, separately, of the Customs Act, 1962/. Further Miss Dimple Pravin Joisar and Miss Yogini Vasant Joisar did not appear to tender their statement, thus rendering themselves liable for penalty under Section 117 of the Customs Act, 1962.

**23.** In view of above, a Notice bearing no. GEN/ADJ/COMM /205/ 2024-Adjn dated 16.05.2024 was issued to M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai- 400706 (IEC - 0314057021), wherein they were called upon to show cause in writing to the Principal Commissioner of Customs, Custom House, Mundra having his office situated at Mundra Customs House, PUB

Building, Mundra, within 30 days from the receipt of the notice as to why: -

- (i) The Claim of preferential duty under SAFTA by M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai- 400706 (IEC – 0314057021), in the import of Black Pepper which has been declared of Afghanistan Origin, under Bill of Entry no. 6008074 dated 18.05.2023, should not be rejected in terms of the provisions of the sub-Section (11) of the Section 28DA of the Customs Act, 1962; and Total of 27934.16 Kgs of Black Pepper, collectively valued at Rs.1,42,66,795/-, imported vide Bill of Entry No. 6008074 dated 18.05.2023 should not be confiscated under 111(m) and 111 (q) of the Customs Act, 1962.
- (ii) Total duty (BCD+SWS+IGST) amounting to Rs.1,22,48,044.28/- (*Rupees One Crore Twenty Two Lakhs Forty Eight Thousand Forty Four & Paise Twenty Eight only*), evaded by them by incorrectly claiming preferential rate of duty under SAFTA, should not be demanded and recovered under Section 28 (4) of Customs Act, 1962.
- (iii) Interest at appropriate rate should not be demanded and recovered on the duty demanded at (ii) above under Section 28AA of the Customs Act, 1962.
- (iv) Penalty should not be imposed upon them under Section 112(a), Section 112(b) and/or Section 114A, separately, of the Customs Act, 1962.

24. Further, vide above notice, Smt. Hansa Pravin Joisar, Proprietor of M/s Bhimnath Udyog, Shri Pravin Thraryabhai Joisar, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd., Shri Mahesh Thraryabhai Joisar, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Shri Pritam Vasant Joisar, of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Miss Dimple Joisar, of importer M/s Bhimnath Udyog, Miss Yogini Vasant Joisar, of Customs Broker M/s Pramanik Exim Services Pvt. Ltd, were also called upon to show cause as to why penalty should not be imposed upon them under Sections 112(a), 112(b), Section 114AA, and 117, separately, of the Customs Act, 1962.

## 25. WRITTEN SUBMISSION

**25.1** The importer, M/s Bhimnath Udyog (Noticee no. 01) and its proprietress (Noticee no. 02) vide their letter dated 19.06.2024, submitted their written statement wherein they submitted as under -

**1-** .....

**2-** At the outset, the noticees deny all the charges alleged in the impugned show cause notice and humbly submits that proposal in the impugned show cause notice to confiscate the impugned goods under Section 111(m) and 111(q) of the Customs Act 1962, levy of penalty under section 112(a),112(b),114A &114AA and 117 of the Customs Act 1962, are not sustainable in law for the reasons given hereunder:

**3-**The noticee proposed to reply the show cause notice under the following heading;

(a)—Factual background of the case

(b)—*Noticee acted in bonafide belief/ No collusion, willful mis-statement or suppression of facts.*

(c)—*All facts in knowledge of Customs authorities.*

(d)—*Show cause notice issued after inordinate delay;*

- (e)—Impugned goods are not liable for confiscation;
- (f)—No Penalty imposable;
- (g)—Proposal of penalty is vague/ Provision of section ;
- (h)—Penalty under section 112(a) and or 112(b) and or 114A not imposable;
- (i)—Penalty under 114AA not imposable;
- (j)—penalty not imposable in cases involving interpretation.
- (k) goods are still pending clearance with customs,
- (l) invocation of 28(4) is premature

#### **Submissions in detail:**

4-- The notice no.1 (Importer) is a proprietary firm and is in the business of import and holding a valid IEC issued by DGFT authorities; In pursuance of their business activities they imported a consignment of **"Black Pepper"** (the goods) and for clearance of the said goods from customs filed Bill of Entry No.6008074 dated 18-05-2023; the goods are covered by *INVOICE NO.209 dated 03-04-2023, TLNO-73674; Kandahar-AFGHANISTAN*. The description, value and quantity of the goods were declared as per the import documents; the clearance was claimed under SAFTA; The B/E was "not self assessed" but the assessment was to be made by the proper officer; The bill of entry was not assessed and it is still not assessed and pending with Customs authorities under a "query"

5--The impugned goods were detained by DRI on or about 18-05-2023 and thereafter, were examined under panchnama; on examination the goods were found to be as declared in the bill of entry; no discrepancy was noticed by DRI, despite, after lapse of more than 4 months only to justify their inaction, DRI seized the impugned goods on 25-09-2023;

6-The goods are under seizure for more than one year, neither extension of time is obtained from the competent authority or the goods were allowed to be cleared for home consumption as per section 110A of the Customs Act; after expiry of six months' time from the date of detention goods are illegally held by DRI/Mundra customs;

7--The Principal Commissioner of Customs Mumndra-Port issued Show Cause Notice F.No-GEN/ADJ/COMM/205/2024—Adj dated 16-05-2024; which was received by the importer/noticee on or about 25-05-2024; that after expiry of one year period from the date of seizure/dentention. In the show cause notice, it is proposed as mentioned at para 1 above;

8-PROPOSAL TO CONFISCATE UNDER SECTION 111(M) OR 111(Q) IS UNTENABLE; The proposal to confiscate the impugned goods under section 111(m) &111(q) is erroneous and not sustainable in law; for ease of reference relevant provisions of section 111 are extracted herein below;

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

(m) any goods which .....

(q) any goods imported on a claim of preferential .....

**8.1-**Perusal of above legal provisions reveal that Section 111(m) of the Customs Act 1962 provides for confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under the Act. It is respectfully submitted that the Noticee declared full, correct and proper



description of the goods "Black Pepper" and submitted all the documents showing full details of the goods. Therefore, there is no mis-declaration either in respect of value or description or in any other particular. Thus, the provisions of Section 111(m) of the customs Act are inapplicable and therefore, the proposal to confiscate the goods under section 111(m) of the Customs Act 1962 is unsustainable in law.

**8.2-** It is settled law that claim of classification or exemption of duty benefit under some notification by the importer is never considered to be a misdeclaration. The Hon'ble Apex Court in the case of *Northern Plastic Ltd. v. Collector of Customs & Central Excise* reported in 1998 (101) E.L.T. 549 (S.C.) wherein it was held that laying claim to some exemption, whether admissible or not, is a matter of belief of assessee and does not amount to misdeclaration and consequently confiscation under Section 111(m) of the Customs Act is not warranted in such cases. Further, the Hon'ble High Court of Bombay in the case of *CC v. Gaurav Enterprises* - 2006 (193) E.L.T. 532 held that declaration with regard to untenable claim which the authority felt was not admissible misdeclaration charge is not sustainable.

**8.3--** Section 111(q) stipulates that any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder; It mandates contravention of provisions of chapter VAA of the Customs Act; Noticee states that no evidence is forthcoming in the impugned show cause notice for contravention of provision of chapter VAA; It is further stated that section 28DA only stipulate the condition for availing duty benefit, in case the importer does not comply with the said conditions the Customs authorities may deny the benefit of duty and allow clearance on payment of customs duty on merit; The notice claimed duty benefit under SAFTA and for that Customs authorities raised an objection by issuing query, the noticee replied the same but the Customs authorities neither accepted nor denied it; therefore, proposal to confiscate the goods is unsustainable in law.

**9--PROPOSAL TO RECOVERY DUTY UNDER SECTION 28(4) OF THE CUSTOMS ACT AND RECOVERY OF INTEREST THEREON UNDER SECTION 28AA ARE PREMATURE AND HENCE UNTENABLE AND UNSUSTAINABLE IN LAW:**

The impugned show cause notice proposed to recovery duty under Section 28(4) of the Customs Act 1962 and interest under section 28AA;

9.1-The section 28(1) & 28(4) of the Customs Act 1962 for ease of reference are extracted herein below;

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

(1) Where any duty .....

(a) the proper officer shall, within two years .....

(4) Where any duty .....

9.2-- Bare perusal of provision of section 28, sub-section (1) or sub section (4) reveal that both sub-sections "begins with" **"Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded"**; In view of the above legal provisions there shall be 'either duty is not levied or not paid or short levied or short paid' to invoke section 28(1) and or 28(4);

9.3--In the present case the goods are yet to be assessed to duty; the Bill of Entry is still pending with the Customs authorities for assessment; the stage of short levied or short paid or not levied or not paid has not yet arrived; The show cause notice has misconceived and misunderstood section 28 in general and section 28(4) in particular and section 28AA; Therefore, the demand of duty under

section 28(4) of the customs Act 1962 and interest thereon is pre-mature and the show cause notice issued over hastily, therefore, untenable and unsustainable in law;

In view of the above submissions the demand of duty and interest thereon is premature. The show cause notice is untenable and unsustainable in law and therefore, liable to be discharged forthwith.

10-- The impugned Show Cause Notice proposes penalty under Section 112(a),112(b), 114A, 114AA and section 117 of the Custom Act 1962, on both the importer and its proprietresses. The impugned show cause notice proposed penalty under all the sections of the Customs Act under which the penalty can probably imposed; In order to properly appreciate the legal position, Section 112(a),112(b) &114A,114AA &117 of the Customs Act 1962, are extracted below;

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

(a) who, in relation to any goods, does or omits to do ....., or

(b) who acquires possession of or .....

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

**Section 114AA.** Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, .....

**SECTION 117.**Penalties for contravention, etc., not expressly mentioned. — Any person who contravenes .....

10.1--The impugned show cause notice proposed penalty on M/S Bhimnath Udyog, the importer as well as on its Proprietresses (notice no -2) in the show cause noticee ; Noticee state that the Proprietorship firm and proprietor is one single entity and cannot be treated as two different persons for imposition of separate penalty under the Customs Act 1962. While considering levy of penalty under the provisions of Customs Act proprietor and proprietary concern are to be considered as one and same; It is settled law that separate penalty is not imposable on proprietor when penalty has been imposed on proprietary firm burdened with penalty ;Some of cases are cited herein below;

## **10.2 PENALTY UNDER SECTION 112(a)**

Noticees state that Section 112(a) of the Customs Act 1962, provides imposition of penalty on any person 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 such an act. The noticees/importer have not committed any act or omissions and or have not aided or abetted in omission or commission of such acts which have allegedly rendered the goods liable to confiscation under section 111(m) or 111(q) of the Custom Act 1962. Thus, no penalty is imposable under Section 112(a) of the Custom Act 1962.

**10.2.1-** while considering the question as to whether penalty has to be imposed on any person for any commission or omission, which has rendered the goods liable for confiscation under Section 111, it has to be decided as to whether the goods became liable for confiscation on account of any act of omission or commission attributable to the person in question. In this regards the observations of the Hon'ble high court of kerala, in the case of O.T. ENASU,

reported in 2011 (272) E.L.T. 51 (Ker.), while examining the issue of imposition of penalty are as under;;

*\*6. Examining the provisions of Section 111 and Section 112, it can be seen that any penalty referable to Section 111(a) could be imposed under Section 112 only on the basis of clause (a)(ii) thereof, which states that any person 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, shall be liable in the case of dutiable goods, other than prohibited goods, to a penalty, not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is greater. The non-observance of the conditions of import of the goods in question gives the jurisdiction to impose an order of confiscation in terms of Section 111(a) of the Act. However, while considering the question as to whether penalty has to be imposed on any person for any commission or omission, which has rendered the goods liable for confiscation under Section 111(a), it has to be decided as to whether the goods became liable for confiscation on account of any act of omission or commission attributable to the person in question. Merely because a person is the Managing Director of a company, he would not be fastened with penalty, unless it is shown that he had, by his commissions or omissions, led the goods to be liable for confiscation.*

### **10.3--PENALTY UNDER SECTION 112(b)**

Section 112(b) of the Customs Act 1962 empowers the Customs Authorities to levy penalty on any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or "in any other manner dealing with any goods" which he knows or has reason to believe are liable to confiscation under section 111.

10.3.1-The impugned goods, immediate on filing bill of entry were detained/seized by DRI; the goods are neither assessed under section 17 nor cleared from Customs under section 47 of the Customs Act and are still in customs/DRI control, in such circumstances it can not be alleged that the noticees have acquired possession or being concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or any other manner dealing with the imported goods; The noticees have not physically dealt with the impugned goods; The provision of section 112(b) are not applicable; proposal for imposition of penalty under section 112(b) is unsustainable in law; therefore, the impugned show cause notice so far it relates to levy of penalty under Section 112(b) may be discharged ;

### **10.4-- Penalty under Section 114A of the Customs Act-1962**

Section 114A of the Customs Act empowers the custom authorities to levy penalty, where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined

10.4.1-Bare reading the provision of Section 114A of the Customs Act 1962 reveals that the penalty under this Section is directly related to determination /confirmation of duty under Section 28(8) of the Customs Act 1962, meaning thereby, if the notice for demand of duty is issued under Section 28(4) of the Customs Act, where the short levy is by reason of collusion or any wilful mis-statement or suppression of facts. There is no allegation either of collusion or any wilful mis-statement or suppression of facts in the show cause notice. Bare

mention of Section 28(4) in the show cause notice does not mean violation of provisions of Section 28(4).

10.4.2--As stated herein above the demand of duty either under section 28(1) or 28(4) of the Customs act itself is premature and issued hastily, therefore, there is no occasion for levy of penalty under Section 114A;

In view of the above submission there is no collusion or any wilful misstatement or suppression of facts. Therefore, proposal for levy penalty under Section 114A of the Customs Act is without authority of law and hence, untenable and unsustainable in law.

#### **10.5--Penalty under Section 114A Equal to Interest:**

It is settled law that tax, interest and penalty are three different concepts of the taxing statutes. The impugned show cause notice also proposed penalty equal to the amount of interest on the amount of duty allegedly evaded, on the notice/importer under Section 114A of the customs Act. Section 114A of the customs Act provides levy of penalty where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of Section 28 at the time of import, now sub-section (8) of Section 28, shall also be liable to pay a penalty equal to the duty or interest so determined.

**10.5.1--**As seen from above legal provisions, the said section is applicable to a person who is liable to pay the duty 'OR' interest as the case may be, who shall be liable to penalty equal to the duty or interest so determined. The expression used is "or", which is disjunctive between duty or interest. Further use of expression "as the case may be" clearly suggests that the said section is referring to two different persons and situations. One which may be liable to duty and the other which may be liable to interest only and provides that in both the situations, the person liable to duty would be liable to penalty equal to duty and the person liable to interest would be liable to penalty equal to interest. There is no warrant to read "or" as "and". Being a settled issue, some of the judgments are; *Mangalore Refinery & Petrochemicals Ltd.- 2014 (313) E.L.T. 353 (Tri. - Bang.)*, *Commr. Of C. EX., Cus. & S.T., Bangalore-I Versus B. Suresh Vasudev Baliga- 2015 (329) E.L.T. 433 (Tri. - Bang.)*,

#### **11--Penalty under Section 114AA of Customs Act 1962**

Section 114AA provides levy of penalty on person who knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Thus, Section 114AA specifically deals with cases where documentation, which is incorrect or false. No allegation is forthcoming in the above referred show cause notice that the noticee, have knowingly or intentionally made, signed or used, or causes to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular and violated the provisions of Section 114AA of the Customs Act;

12--SECTION 117 provides levy of penalty on Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure. The impugned

show cause notice does not specify as to which provision of Customs Act is contravened for which penalty under section 117 is proposed, the Customs authority mentioned all the sections of the Customs Act under which penalty can probably be imposed, the proposal is vague; when section 112(a) & 112(b), 114A and 114AA are invoked there is no justification to invoke residuary provisions of Section 117

**13-** The noticee states that the case involves interpretation of the provisions of the Customs Act, 1962, Customs Tariff Act 1975, IGST Act and or Notification issued thereunder or thereto. The Noticee acted in bonafide belief. It has been held by the Hon'ble Customs, Excise & Service Tax Appellate Tribunal in a large number of cases that no penalty is imposable in cases involving interpretation of the statutory provisions.

**14** The noticee states that the submissions in the foregoing paragraphs, being pleaded and submitted are without prejudice to one another and that they are in the alternative and are mutually exclusive. The noticee reserve their right and also seek liberty to add, delete or modify the submissions, if so advised.

In view of the foregoing, noticee request that the learned adjudication authority may be pleased to allow clearance of the goods as claimed and discharge the show cause notice;

The goods are pending clearance for more than one year; the goods are agricultural product and monsoon is already there; an early decision may be highly appreciable; The noticee may be given personal hearing before the show cause notice is adjudicated upon.

**25.2** M/s Bhimnath Udyog and all other noticees further submitted their common additional defence submission received via email on 12.05.2025 (along with case law compilation), which is reproduced as under –

*"The above show cause notice is common to all the above mentioned noticees based on identical facts; noticee No.1 is importer and Noticee-2 is its Proprietress, noticee no.3,4,5,6&7 are the relatives of Noticee No.2; charges as well as proposals are similar for levy penalty, hence common submissions;*

*All the noticees replied the impugned show cause notice; I refer to and rely upon all the averment, statements, submissions and contentions made therein, but for sake of brevity same are not repeated herein but reiterated.*

#### **A-FACTS IN BRIEF:**

1-The Notice no.1 is the importer and noticee No-2 is its proprietress; they imported a consignment of **"Black Pepper"** (the goods) and for clearance from customs filed Bill of Entry No.6008074 dated 18-05-2023; the goods are covered by invoice No. 209 dated 03-04-2023, TLNO-73674; Kandahar-Afghanistan, Country of Origin Certificate. The description, value and quantity of the goods were declared as per the import invoice, bill of lading, and Country of Origin Certificate and other related documents; the clearance was claimed under SAFTA with duty exemption under notification No.99/2011-cus dated 9-11-2011;

1.1-The B/E (the goods) was **"neither self-assessed nor assessed by the Customs"**; and the assessment was yet to be made by the proper officer; The bill of entry is pending with Customs authorities unassessed.

1.2-The impugned goods were detained **by DRI on 18-05-2023** and thereafter,

were examined under panchnama on 22-05-2023; on examination the goods were found as declared in the bill of entry; no discrepancy was found by DRI, despite, after lapse of more than 4 months only to justify their inaction, **DRI seized the impugned goods on 25-09-2023;**

1.3-The goods are under seizure **for about two years**, neither extension of time is obtained from the competent authority nor the goods are allowed to be cleared for home consumption as per section 110A of the Customs Act; after expiry of six months time from the date of seizure/detention goods are illegally held by DRI/Mundra customs;

1.4- Show Cause Notice F.No-GEN/ADJ/COMM/205/2024—Adj dated 16-05-2024; which was received by the importer/noticee **on or about 25-05-2024;** after expiry of one year period from the date of seizure/detention wherein it is proposed as below;

.....  
 .....

#### **SUBMISSIONS:**

##### **A-SHOW CAUSE NOTICE FOR SEIZED GOODS:**

In the present case the goods were detained on 18-05-2023; examined on 22-05-2023, but only to justify delay seized on 25-09-2023. Thus, the impugned goods stands seized on 18-05-2023; the Impugned show cause notice is dated 16-05-2024 received by the importer on 25-05-2024, i.e. after expiry of six months period from the dated of seizure; no extension as stipulated under the proviso to section 110(2) is forthcoming in the impugned show cause notice; any proceedings initiated by issuance of impugned show cause notice after expiry of six months time period are without authority of law and are legally invalid in law.

(i). The Hon'ble Supreme Court of India in the case of CHUHARMAL Versus Union of India And Others--1988 (35) E.L.T. 612 (S.C.), While considering issuance of show cause notice after seizure the hon'ble Apex court had held that Show cause notice to be issued within six months of seizure;

*" 3. It was contended by the petitioner's counsel that the notice, dated 4th May, 1974 issued under Section 124(a) of the Act was issued beyond the period of six months of the seizure of goods made on 12-5-1973 and as such the entire proceedings were invalid for this reason. It was also contended that the extension of the period of six months by another period of six months in accordance with the proviso to Sub-section (2) of Section 110 could not be made ex parte without notice to the petitioner. Reliance was placed on the decision of this Court in Assistant Collector of Customs v. Charan Das Malhotra 1983 (13) E.L.T. 1477 (S.C) = 1971 3 S.C.R. 802.*

(ii). Similar view was taken in the case of Assistant Collector of Customs And Superintendent, (Preventive Service Customs), Calcutta And Others Versus Charan Das Malhotra--1983 (13) E.L.T. 1477 (S.C.), the Apex court had held as:

*" Extension of period for retention of seized goods cannot be granted without sufficient cause and without an opportunity of being heard to the person whose goods are seized — Proviso to Sections 110(2) and 124 of the Customs Act, 1962, Scope."*

*Since sub-section (2) of Section 110 of the Customs Act contemplates some sort of enquiry, therefore, the Collector is expected not to pass*

*extension orders mechanically or as a matter of routine but only on being satisfied that there exists facts which indicate that the investigation could not be completed for bona fide reasons within the time laid in Section 110(2) and extension of the period has become necessary. Therefore, the words 'sufficient cause being shown' in Section 110(2) must mean that the Collector must determine on materials placed before him that they warrant extension of time. Therefore, there is no question in such cases of the subjective satisfaction of the collector because what he is asked to do by the proviso is to determine that the cause shown before him warrants an extension of time. Hence, it is difficult to comprehend how he can come to this determination unless he has before him the pros and cons of the matter because ex-parte determination by the Collector would expose his decision to be one sided and based on incorrect statement of facts. Therefore, the power under the proviso to Section 110 of the Customs Act, 1962 are not to be exercised without an opportunity of being heard given to the person from whom the goods were seized. [paras 12 to 15]*

**" 12.** *There can be no doubt that the proviso to the second sub-section of Section 110 contemplates some sort of inquiry. The Collector, obviously, is expected not to pass extension orders mechanically or as a matter of routine but only on being satisfied that there exist facts which indicate that the investigation could not be completed for bona fide reasons within the time laid down in Section 110(2), and that therefore, extension of that period has become necessary. He cannot, therefore, extend the time unless he is satisfied on facts placed before him that there is a sufficient cause necessitating extension. The burden of proof in such an inquiry is clearly on the Customs Officer applying for extension and not on the person from whom the goods are seized.*

**13.** *The question, therefore, is as to the nature of such a function and power entrusted to and conferred on the Collector by the proviso. It will be noticed that whereas sub-section (1) of Section 110 uses the expression "reason to believe" for enabling a Customs Officer to seize goods, the proviso to sub-section (2) uses the expression "sufficient cause being shown". It would seem that sub-section (1) does not contemplate an enquiry at the stage of seizure, the only requirement being the satisfaction of the concerned officer that there are reasons to believe that the goods are liable to confiscation by reason of their illegal importation. Even so, such satisfaction, as laid down in *Narayanappa v. Commissioner of Income Tax, Bangalore*, 63 ITR 219, is not absolutely subjective inasmuch as the reasons for his belief have to be relevant and not extraneous. It is clear that the legislature was not prepared to use the same language while giving power to the Collector to extend time and deliberately used the expression "sufficient cause being shown". The point is why should the legislature have used such a different expression while enacting the proviso if its intention was to confer power which would depend on a mere subjective satisfaction as to the cause for extension. The words "sufficient cause being shown" must mean that the Collector must determine on materials placed before him that they warrant extension of time. Where an order is made in bona fide exercise of power and within the provisions of the Act which confers such power, the order undoubtedly is immune from interference by a Court of law, and therefore, the adequacy of the cause shown may not be a ground for such interference. But there can be no doubt at the same time that the inquiry to be held by*

*the Collector has to be on facts, i.e., materials placed before him. There is, therefore, no question in such cases of the subjective satisfaction of the Collector, for, what he is asked to do by the proviso is to determine that the cause shown before him warrants an extension of time.*

(iii). The hon'ble CEGAT, NEW DELHI in the case of VAIBHAV TEXTILES Versus COMMISSIONER OF CUSTOMS, KOLKATA---2001 (132) E.L.T. 678 (Tri. - Del.)

**Show cause notice for seized goods - Extension** of time for issuance of show cause notice under proviso to Section 110(2) of the Customs Act - Not a routine matter but based on sufficient cause which is quasi-judicial, not administrative order therefore, appealable. - *The bare perusal of the proviso to Section 110(2) of the Customs Act shows that extension of time for serving show cause notice to the importer/owner for confiscation of the goods can be allowed only on sufficient cause. This proviso contemplates some sort of enquiry. Therefore, the Commissioner is expected not to pass extension order mechanically or as a matter of routine, but only on being satisfied that there existed facts which indicated that investigation could not be completed for bona fide reasons within the stipulated time. In the absence of extension of time, the importer/owner of the goods becomes entitled to release of the goods immediately under sub-section (2) of Section 110 of the Customs Act. Therefore, discretion under proviso to this sub-section for extending time for issuing show cause notice has to be exercised by the Commissioner judiciously after examining the material placed before him as his order extending the time would be affecting adversely the valuable right of the importer/owner of the goods who becomes entitled to receive back the goods if no notice within the stipulated period of six months from the date of seizure of the goods had been served on him. [paras 5, 6, 8, 13]*

**"8.** *The bare perusal of the proviso to Section 110(2) of the Customs Act shows that extension of time for serving show cause notice to the importer/owner for confiscation of the goods can be allowed only on sufficient cause. This proviso contemplates some sort of enquiry. Therefore, the Commissioner is expected not to pass extension order mechanically or as a matter of routine, but only on being satisfied that there existed facts which indicated that investigation could not be completed for bona fide reasons within the stipulated time. In the absence of extension of time, the importer/owner of the goods becomes entitled to release of the goods immediately under sub-section (2) of Section 110 of the Customs Act. Therefore, discretion under proviso to this sub-section for extending time for issuing show cause notice has to be exercised by the Commissioner judiciously after examining the material placed before him as his order extending the time would be affecting adversely the valuable right of the importer/owner of the goods who becomes entitled to receive back the goods if no notice within the stipulated period of six months from the date of seizure of the goods had been served on him."*

(iv). The HON'BLE Calcutta High Court in Kantilal Somchand Shah & Another, in an identical case of seizure of the goods under Section 110(2) of the Customs Act observed as under :

*"The quasi-judicial authorities exercising statutory powers, cannot act contrary to the law nor can they take advantage of their own illegality. The court further observed that since the provisions of Section 110(2) of the Customs Act are mandatory, therefore, the goods retained unlawfully cannot be confiscated without contravening the mandatory provisions of the section. A show cause notice for confiscation of the goods had to be*



*given to the owner within six months which cannot be extended without giving opportunity of being heard to the owner failing which the goods are liable to be returned to him.<sup>1</sup>*

## **B-CONFISCATION:**

PROPOSAL TO CONFISCATE UNDER SECTION 111(M) OR 111(Q) IS UNTENABLE;

The proposal to confiscate the impugned goods under section 111(m) & 111(q) is erroneous and not sustainable in law; for ease of reference relevant provisions of section 111 are extracted herein below;

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

*(m) any goods which do not correspond .....*;

*(q) any goods imported on a claim of preferential .....*

B.1-The description of the goods "Black Pepper" in the Bill of Entry declared correctly and properly; submitted import invoice, bill of lading, country of origin certificate and all the documents showing full particulars of the goods. Once the description, value, quantity and all other particulars of the goods are stated correctly, the importer has discharge the Burdon of proper declaration and no allegation of any misdeclaration can be alleged. There is no mis-declaration either in respect of value or description or in any other particular. Thus, the provisions of Section 111(m) of the customs Act are inapplicable and therefore, the proposal to confiscate the goods under section 111(m) of the Customs Act 1962 is erroneous and unsustainable in law.

It is settled law that claim of classification or exemption of duty benefit under some notification by the importer is never considered to be a misdeclaration. The Hon'ble Apex Court in the case of **Northern Plastic Ltd. v. Collector of Customs & Central Excise reported in 1998 (101) E.L.T. 549 (S.C.)** wherein it was held that laying claim to some exemption, whether admissible or not, is a matter of belief of assessee and does not amount to misdeclaration and consequently confiscation under Section 111(m) of the Customs Act is not warranted in such cases. Further, the Hon'ble High Court of Bombay in the case of **CC v. Gaurav Enterprises - 2006 (193) E.L.T. 532** held that declaration with regard to untenable claim which the authority felt was not admissible misdeclaration charge is not sustainable.

B.2--Section 111(q) stipulates that any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder; It mandates contravention of provisions of chapter VAA of the Customs Act; no evidence is forthcoming in the impugned show cause notice for contravention of provision of chapter VAA; section 28DA only stipulate the condition for availing duty benefit, in case the importer does not comply with the conditions the Customs authorities may deny the benefit of duty and allow clearance on payment of customs duty on merit; The noticee claimed duty benefit under SAFTA and for that Customs authorities raised an objection by issuing query, the noticee replied the same but the Customs authorities neither accepted nor denied it; therefore, proposal to confiscate the goods under section 111(q) is based on assumption and presumption bereft of any sustainable evidence, hence unsustainable in law.

## **C--THEORY OF OFFENDING GOODS**

- An order of confiscation of any goods rests on the theory of "offending goods", where goods have been unlawfully imported, those goods become the "offenders" and they are liable to be confiscated.
- For the purpose of confiscation of goods, physical existence of the goods is necessary.

C.1--In *Uma Rajeshwar Rao Patra's* case (1978 Cen-Cus 235D), hon'ble justice Amiya Kumar Mookerji, J. of the High Court of Calcutta examining a similar question almost on similar facts has expressed thus :

*"15. The power of confiscation is not restricted only to the seized goods. In Sections 111, 112 and 124 the words "any goods", "any person" are used. These words cannot be given a restricted meaning. Moreover, an order of confiscation rests on the theory of offending goods. Where the goods have been unlawfully imported, these goods became the offender and they might be confiscated without finding out the actual importer. But, for the purpose of confiscation of the goods physical existence of the goods are necessary. When seized goods are returned to the owner, in that case, the returned goods lose the character of "offending goods" and as such these goods could not be confiscated. It is true that Section 110 and Section 124 are two independent sections and time-limit as specified in sub-section (2) of Section. 110 does not control the issue of notice under Section 124. But even then there is a connecting link between the notice of confiscation of the goods and retention of the seized goods.*

*21. Now coming to the facts of this case, it appears that no notice under Section 124 was given within six months of the seized goods. The Collector of Customs also did not extend the period after giving the owner of the goods a reasonable opportunity of being heard. Two conditions have been laid down in Section 110 when the seized goods can be retained; (a) when notice under Section 124 is given within a period of six months from the date of the seizure of the goods; (b) when the Collector after hearing the owner of the goods, extends the period of six months. Besides these there is no other provision in the Act which empowers the customs to retain the seized goods. The provisions of Section 110(2) are mandatory, the goods "shall be returned to the person from whose possession they were seized".*

*22. Where under the law the goods "shall be returned", in my view, such goods retained unlawfully could not be confiscated under the Act. The goods which must have been returned under the law, were retained by the Customs contravening the mandatory provisions of Section 110(2) of the Act. A statutory authority exercising statutory powers cannot act contrary to law. There could not be any decision in an adjudication proceeding under the Act. If inherent nullity lies at the very root of the said proceeding, a quasi-judicial authority in exercising quasi-judicial powers cannot take advantage of its own illegality. The whole object of Section 110(2) of the Act becomes nugatory and meaningless, if by contravening the mandatory provision of the statute the Collector of Customs confiscated the seized goods which he has no right to retain and must have been returned to the owner long before".*

*In view of the facts and circumstances the goods under seizure,*

*by no stretch of imagination can be considered to be "offending goods"*

#### **D- CLAIM OF WRONG CLASSIFICATION OR EXEMPTION :**

It is settled law that to lay a claim for classification and or an exemption notification by the assessee is neither wilful suppression of facts nor wilful misdeclaration by the assessee. Even at the cost of repetition I refer the judgment of hon'ble Apex Court in the case of **Northern Plastic Ltd. v. Collector of Customs & Central Excise reported in 1998 (101) E.L.T. 549 (S.C.)** wherein, the hon'ble Apex court held that laying claim to some exemption, whether admissible or not, is a matter of belief of assessee and does not amount to misdeclaration and consequently confiscation under Section 111(m) of the Customs Act is not warranted in such cases. The Hon'ble Apex Court in that case was considering CVD exemption under Notification No. 50/88-C.E. in respect of imported cinematographic film and the Hon'ble Court held as follows :-

*"As regards the claim for exemption in payment of countervailing duty the appellant had stated that it was entitled to the benefit under Notification No. 50/88-C.E. The declaration made by the appellant has been found to be wrong by the Collector and the CEGAT on the ground that there was a separate exemption notification in respect of jumbo rolls for cinematographic films. While dealing with such a claim in respect of payment of customs duty, we have already observed that the declaration was in the nature of a claim made on the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act."*

**D.2-** the Hon'ble High Court of Bombay in the case of **CC v. Gaurav Enterprises - 2006 (193) E.L.T. 532** held that declaration with regard to untenable claim which the authority felt was not admissible misdeclaration charge is not sustainable. The Hon'ble High Court having observed as;

*"17. Having heard rival parties and having examined the factual scenario and the law laid down by the Apex Court in the case of Northern Plastics Ltd. (supra), we are of the view that even if the declaration made by the respondent-assessee with regard to the claim for exemption in payment of duty therein and that the respondent was entitled to exemption under Notification No. 11/97-Cus., the respondent did not commit any wrong. It cannot be said to be a case of misdeclaration."*

*18. In that view of the matter, there is no wilful suppression of facts or wilful misdeclaration by the respondent-assessee. Consequently, the Tribunal was justified in taking a view that the demand was barred by limitation. In that view of the matter, the Commissioner of Customs was not justified in invoking the extended period of limitation holding that the importer i.e., respondent herein was liable to pay penalty under Section 114A of the Customs Act.*

Held that there is no wilful suppression of facts or wilful misdeclaration by the assessee.

**D.3--**The Hon'ble Tribunal , KOLKATA in the case of **M/S R.G. SALES PVT. LTD. Versus COMMISSIONER OF CUSTOMS (PORT), CALCUTTA--2002 (148) E.L.T. 1076 (Tri. - Kolkata)**, while dealing with classification of the goods, had held that "Claim of wrong classification does not constitute mis-declaration so as to invite

penal action against importer - Penalty, confiscation and redemption fine set aside - Appeal allowed " Para 5 ,being relevant is as under ;

" 5. I have considered the submissions made from both sides. The appellants are not challenging the classification of the fabric in question and have paid the duty accordingly. The quantum of duty paid by them is also not challenged. However, their grievance is against the redemption fine and penalty imposed upon them. The appellants' contention is that the goods could not be confiscated and penalty imposed on the ground of wrong declaration of the classification in question. He submitted that they have declared the classification list as per their own understanding and if the Revenue was of the view that the goods fall under different sub-heading, they were at liberty to do so. I agree with the above contention of the appellants. The claim of wrong classification does not constitute mis-declaration so as to initiate the penal action the importer."

**D.4--**The Hon'ble CESTAT, MUMBAI in the case of PRINCE MARINE TRANSPORT SERVICES PVT. LTD. Versus C.C. (IMPORTS), MUMBAI--2015 (327) E.L.T. 283 (Tri-Mumbai), while considering confiscation, penalty and mis-declaration under Customs Act 1962 had held that "Claim of classification under a particular heading cannot be treated as misdeclaration - Confiscation and penalty set aside - Sections 111(m) and 112(a) of Customs Act, 1962. [para 5.4]"

**D.5-** The hon'ble CESTAT, CHENNAI, in the case of M/S AJINOMOTO INDIA PVT. LTD. Versus COMMISSIONER OF CUSTOMS, CHENNAI--2024 (390) E.L.T. 325 (Tri. - Chennai), while dealing with the issue of misclassification and wrong exemption has held as under:

***Demand and recovery - Limitation period - Misclassification and wrong exemption claim*** - Merely claiming benefit of exemption wrongly or to classify goods under a particular Tariff Entry did not amount to mis-declaration or suppression of facts as held in *Northern Plastic Ltd. [1998 (101) E.L.T. 549 (S.C.)]* - In absence of any additional facts to prove 'suppression', it could not be said that there was an intention on part of importers to mis-declare goods hence invocation of longer period of limitation of five years could not be justified, more so when importers had earlier been clearing goods with same description and classification for a long period without any objection - Section 28 of Customs Act, 1962. [paras 13 to 13.2]

***Penalty - Short levy or non-levy of duty - Misclassification and wrong exemption claim*** - No penalty could be imposed under Section 114A of Customs Act, 1962 if extended period of limitation was held not invocable in absence of suppression of facts with intent to misdeclare goods - Section 114A of Customs Act, 1962. [para 13.2]

#### **E-DEMAND OF DUTY UNDER SECTION 28(4) OF C.A.62:**

PROPOSAL TO RECOVER DUTY UNDER SECTION 28(4) OF THE CUSTOMS ACT AND RECOVERY OF INTEREST THEREON UNDER SECTION 28AA ARE PREMATURE AND HENCE UNTENABLE AND UNSUSTAINABLE IN LAW:

##### **E.1-ASSESSMENT?**

The word "assessment" is used as meaning sometimes the computation of rate of duty, sometimes the assessable value of goods and sometimes the whole

procedure laid down under the Act for imposing duty liability upon the exporter or importer. The word assessment is, thus, capable of bearing a very comprehensive meaning; in the context, it can comprehend the whole procedure for ascertaining and imposing duty liability.

- The Privy Council in the case of *Commissioner of Income Tax v. Khemchand Ramdas* has observed as under :-

*"One of the peculiarities of most Income-tax Acts is that the word 'assessment' is used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the taxpayer. The Indian Income-tax Act is no exception in this respect....."*

- In *Hirjibhai Tribhuvandas v. Income Tax Officer Rajnandgaon and Another* [1958 33 ITR 448] it was held as under :-

*"In the normal sense 'to assess' means 'to fix the amount of tax due or to determine such amount'. The process of re-assessment is to the same purpose and would thus be included in the connotation of the term 'assessment.'"*

*"The words levy, assessment and collection as we understand them include all the processes by which the tax is ascertained, demanded and realised and 're-assessment' being one of those processes comes within the ambit of the phraseology employed."*

*It will be observed that section 34 of the Income-tax Act contemplates four different cases in which the power to assess escaped income has been given. Where there has been no assessment at all, the term 'assessment' would be appropriate and where there was an assessment at too low a rate or with unjustified exemptions, the term 'reassessment' would be appropriate. It was thus necessary to resort to the use of two different terms to cover with clarity the different cases dealt with in that section. This does not mean that the terms should be treated as mutually exclusive.*

- The Apex Court in the case of *Income Tax Officer, Bangalore v. K.N. Guruswamy* [1958 ITR Vol. 34 601] explaining the meaning of the word assessment arising under the Income Tax Act has held as under :-

*"Total income means the total amount of income, profits and gains computed in the manner laid down in the Act, and there are no good reasons why the word 'assessment' occurring in the saving provisions should be restricted in the manner suggested so as to exclude proceedings for assessment of escaped income or under-assessed income.....In its normal sense, 'to assess' means 'to fix the amount of tax or to determine such amount'. The process of re-assessment is to the same purpose and is included in the connotation of the term 'assessment'. The reasons which led us to give a comprehensive meaning to the word 'assessment' in section 13(1) of the Finance Act, 1950, operate equally with regard to the saving provisions under present consideration."*

## **E.2--DEMAND UNDER SECTION 28(4);**

The section 28(1) & 28(4) of the Customs Act 1962 for ease of reference are

extracted herein below;

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

(1) *Where any duty .....—*

(a) *the proper officer .....*;

(4) *Where any duty .....*

**E.2.1-** Importer filed Bill of Entry on 18-05-2023; goods were detained by DRI on the same day i.e 18-05-2023; goods examined by DRI/Customs authorities on 22-05-2023 and thereafter seized on 25-09-2023; goods are never assessed under section 17 of the Customs Act either by customs authorities or self assessed and still pending assessment with the customs authorities; the amount of duty to be paid by the importer is yet to be ascertained by the Customs authorities; demand of duty and applicability of section 28 itself, either 28(1) or 28(4) are to be seen in this perspective;

**E.2.2-** Bare perusal of provision of section 28, sub-section (1) and or sub section (4) reveal that both sub-sections "begins with" "Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded"; section 28 of the Act contemplates cases where the assessment has been done under section 17 but after such assessment, some thing happened which necessitated the customs authorities to levy further duty, the expression "when any duty has not been levied" means when the assessment has been done". In view of the aforesaid there shall be 'either duty is not levied or not paid or short levied or short paid' to invoke section 28(1) and or 28(4);

**E.2.3 -** In the present case the goods are yet to be assessed to duty; the Bill of Entry is still pending with the Customs authorities for assessment; the stage of short levied or short paid or not levied or not paid not yet arrived; The show cause notice has misconceived and misunderstood section 28 in general and section 28(4) in particular and section 28AA; Therefore, the demand of duty under section 28(4) of the customs Act 1962 and interest thereon is pre-mature and the show cause notice **issued over hastily**.

*In view of the above submissions the demand of duty and interest thereon is premature. The show cause notice is untenable and unsustainable in law and therefore, liable to be discharged forthwith.*

**CASES:**

(i) THE CESTAT, MUMBAI in the case of M/S FINOLEX INDUSTRIES LTD. Versus HON'BLE COMMISSIONER OF CUSTOMS, MUMBAI--2003 (159) E.L.T. 949 (Tri. - Mumbai)-- 2003 (159) E.L.T. 949 (Tri. - Mumbai), while considering demand of duty( though for provisional assessment in that case ),has held asunder:

**Demand - Customs - Pre-mature** - Imported goods assessed provisionally under Section 18 of Customs Act, 1962 - Show cause notice issued for raising demand under Section 28 ibid without finalisation of provisional assessment being pre-mature, demand not sustainable. - *Sub-section (1) of Section 28 of Customs Act, 1962 provides for issue of notice for recovery of duty which has not been levied or short-levied or erroneously refunded within one year in case of imports, and six months in other cases or extended from relevant date. Sub-section (3) defines 'relevant date', and clause (b) of this sub-section provides that 'relevant date' in case where duty is provisionally assessed under Section 18, is the date of adjustment of duty after final assessment. Present notice did not propose*

*finalisation of the provisional assessment, but merely demanded duty under Section 28 of the Act. This notice is, therefore, pre-mature. [para 6]*

*"6. In its judgment in Godrej & Boyce [1989 (44) E.L.T. 3 (S.C.) the Bombay High Court had before it an identical question arising out of the provisional assessment order under Rule 9B of the Central Excise Rules, 1944. It accepted the contention of the appellant that notice under Section 11A of the Central Excise Act would not be issued before the relevant date. The date specified in Section 11A of the Central Excise Act, the date of adjustment of duty after finalisation of the provisional assessment. This not having done, the demand under Section 28 of the Act was premature. The same consideration would apply to provisional assessment under Section 18 of the Customs Act. Sub-section (1) of Section 28 of the Act provides for issue of notice for recovery of duty which has not been levied or short-levied or erroneously refunded within one year in the case of imports and six months in other case or extended from the relevant date. Sub-section (3) defines relevant date and clause (b) of this sub-section provides that the "relevant date" in case where duty is provisionally assessed under Section 18, the date of adjustment of duty after final assessment. The notice that was issued to the appellant which has resulted in the adjudication or did not propose to finalisation of the provisional assessment but merely demanded duty under Section 28 of the Act. That notice is therefore premature. The correct course would have been to finalise the provisional assessment and if there was any short-levy, if required, issue a notice under Section 28 thereafter in the event that the department was of the view that there was short-levy or non-levy or erroneous refund."*

(ii).The hon'ble CALCUTTA HIGH COURT AT in the case of GENERAL ELEC. CO. OF INDIA (MFG.) P. LTD. Versus COLLR. OF CUS., CALCUTTA reported vide-2000(126) ELT.27(CAL)

*"Demand (Customs) - Customs authorities not authorized to speculate on short levy of duty and issue demand notices without being satisfied about the short levy - Demand notices illegal - Section 39 of Sea Customs Act, 1878 (corresponding to Sections 28 and 142(1) of the Customs Act, 1962). - Section 39 does not authorize the customs authorities to speculate on short levy of duty and to issue demand notice without being satisfied that there had, in fact, been a short levy of a particular amount as duty or charge. The demand notices were issued, pending examination of the petitioner's books of account. That goes to show that customs authorities were unable finally to make up their mind as to short levy at that stage, without further investigation. The petitioner was also given liberty to make its representation against the demand, which further goes to show that the customs authorities were prepared to withdraw or to reconsider the demands, if they were convinced, after considering such representation, about the impropriety of the demands, as the petitioner might make. In the circumstances, the customs authorities are not entitled to issue demand notices, under Section 39. The customs authorities are not themselves sure whether there has, in fact, been a short levy and, if so, how much actually. They merely made a demand for anticipated short levy, which they were not entitled to do. The circumstances of this case is not such as disentitles the petitioner from discretion being exercised in his favour."*

(iii)..THE HON'BLE HIGH COURT OF CALCUTTA in the case of SOUTH INDIA CORPN. (AGENCIES) P. LTD. Versus ASSTT. COLLR. OF CUS., CALCUTTA reported vide –2000 (123) E.L.T. 251 (Cal.),while dealing issuance of demand of duty without assessment had held as below;

Assessment of duty - Customs - Section 17 when applicable and not Section 28 - Meaning of expression "when any duty has not been levied" - Includes nil assessment - Limitation - Vessel allowed to leave without assessment, on executing guarantee for duty payable - Assessment governed by Section 17 and not Section 28 of the Customs Act, 1962 - Hence no time limit applicable - Section 42 *ibid.* - *The duty which is leviable on goods, which are imported or exported, is so assessed under the provisions of Section 17. The said Section does not provide for any limitation as to time within which either notice has to be given or assessment has to be completed. This is the general Section under which duty would be assessed. Section 28 contemplates cases where the assessment has been done under Section 17 but after such assessment, something happened which necessitated the Custom authorities to levy further duties under certain circumstances. The expression "when any duty has not been levied" must necessarily mean when the assessment has been made, it has been a case of nil assessment. It was only under such circumstances, when it is subsequently found by the Custom authorities that such goods were dutiable goods and ought to have been assessed by levying some duty, that the period provided is six months within which the show cause notice has to be served in the manner as provided in the said Section. In the instant case, there had not been any assessment at the time the vessel was allowed to leave the port and the duty to be assessed and found leviable was provided for by a guarantee under the provisions of Section 42. The assessment order was, accordingly, made under Section 17. Therefore, the contention of the petitioner that the assessment had not been done within a period of six months as provided for under Section 28 and as such the order was liable to be quashed, is not valid inasmuch as Section 28 is not attracted in the case. [Hoare Miller & Co. Ltd. v. Union of India - 65 Cal. WN 1206 relied upon; AIR 1967 Mad 124 and AIR 1962 Cal. 258 distinguished]. [paras 1, 16 to 19, 21, 22, 24]*

**F—Assuming but without conceding, the demand is issued under section 28 particularly 28(4) of the Customs Act 1962**

Section 28 of the Customs Act contemplates two situations, (i) inadvertent non-payment and (ii) deliberate default. First is covered by Section 28(1) where time period to demand duty is TWO year, whereas 28(4) faces a limitation period of five years for which, the intention to deliberately default is a mandatory prerequisite

(i). The Hon'ble Apex Court in *Aban Loyd Chiles Offshore Limited and Ors. v. Commissioner of Customs, Maharashtra* - (2006) 6 SCC 482 = 2006 (200) E.L.T. 370 (S.C.) observed as under :-

*"The proviso to Section 28(1) can be invoked where the payment of duty has escaped by reason of collusion or any willful misstatement or suppression of facts. So far as "misstatement or suppression of facts" are concerned, they are qualified by the word "willful". The word "willful" preceding the words "misstatement or suppression of facts" clearly spells out that there has to be an intention on the part of the assessee to evade the duty."*

(ii). The Hon'ble Apex Court in the case of *UNI WORTH TEXTILES LTD. Versus COMMISSIONER OF CENTRAL EXCISE, RAIPUR*--2013 (288) E.L.T. 161 (S.C.), had analysed, indepth, the issue of proviso to Section 11A(which is similar to



Section 28(4) of the Customs Act) by considering the the case (i) *Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay* - 1995 Supp (3) SCC 462 = 1995 (78) E.L.T. 401 (S.C.), (ii) *Sarabhai M. Chemicals v. Commissioner of Central Excise, Vadodara* - (2005) 2 SCC 168 = 2005 (179) E.L.T. 3 (S.C.), (iii) *CCE v. Chemphar Drugs and Liniments* - (1989) 2 SCC 127, (iv) *Cosmic Dye Chemical v. CCE* - (1995) 6 SCC 117, (v) *Padmini Products v. CCE* - (1989) 4 SCC 275, (vi) *T.N. Housing Board v. CCE* - 1995 Supp (1) SCC 50 and *CCE v. H.M.M. Ltd.* (1995 Supp (3) SCC 322 = 1995 (76) E.L.T. 497 (S.C.), and *Anand Nishikawa Co. Ltd. v. Commissioner of Central Excise, Meerut* - (2005) 7 SCC 749 = 2005 (188) E.L.T. 149 (S.C.), In all these cases the Court was concerned with the applicability of the proviso to Section 11A of the Central Excise Act which, like in the case of the Customs Act, contemplated the increase in the period of limitation for issuing a show-cause notice in the case of non-levy or short-levy to five years from a normal period of six months...

Having analysed the issue in depth had held that the Proviso to Section 28 (1) ( now section 28(4)), finds applicable only when specific and explicit averments challenging the fides of the conduct of the assessee are made in the show cause notice, a requirement that in the show cause notice present case is wanting. No specific averments are mentioned in the impugned show cause notice which is a must for invoking section 28(4) of the Customs Act. Though, demand in itself is pre-mature; even otherwise, extended period of five years will not be applicable in this case; therefore, the demand of duty is barred by limitation.

#### **G- PENALTY:**

The impugned Show Cause Notice proposes penalty under Section 112(a), 112(b), 114A, 114AA and section 117 of the Custom Act 1962 on all the 7 (seven) noticees; Since, proposal for penalty on all the seven noticees is similar, hence common submissions: for ease of reference, Section 112(a), 112(b), 114A, 114AA and section 117 of the Custom Act 1962, are extracted herein below;

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

.....  
.....;

#### **Section 114AA. Penalty for use of false and incorrect material -**

.....  
.....

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

#### **G.1-PENALTY U/S 112(a)**

It is too settled a law that to levy penalty under Section 112(a) on any person, the goods shall become liable to confiscation due to omission or commission of an act attributable to the person. The issue for levy penalty under Section 112(a) of the customs Act was before the Hon'ble High Court of Kerala. The hon'ble High Court, while considering the question as to whether penalty has to be imposed on any person for any commission or omission, which has rendered the goods liable for confiscation under Section 111, it has to be decided as to whether the goods

became liable for confiscation on account of any act of omission or commission attributable to the person in question. In this regards the observations of the Hon'ble high court of Kerala, in the case of O.T. ENASU, reported in 2011 (272) E.L.T. 51 (Ker.), while examining the issue of imposition of penalty are as under;;

*"6. Examining the provisions of Section 111 and Section 112, it can be seen that any penalty referable to Section 111(o) could be imposed under Section 112 only on the basis of clause (a)(ii) thereof, which states that any person 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, shall be liable in the case of dutiable goods, other than prohibited goods, to a penalty, not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is greater. The non-observance of the conditions of import of the goods in question gives the jurisdiction to impose an order of confiscation in terms of Section 111(o) of the Act. However, while considering the question as to whether penalty has to be imposed on any person for any commission or omission, which has rendered the goods liable for confiscation under Section 111(o), it has to be decided as to whether the goods became liable for confiscation on account of any act of omission or commission attributable to the person in question. Merely because a person is the Managing Director of a company, he would not be fastened with penalty, unless it is shown that he had, by his commissions or omissions, led the goods to be liable for confiscation.*

## **G.2--PENALTY UNDER SECTION 112(b)**

Section 112(b) provides for penalty, when any person acquires possession of or is in any way concerned in carrying, removing, depositing, keeping, concealing, 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 to a penalty. The conduct which calls for a penalty under this section is **"he knows or has reason to believe that goods are liable to confiscation"**.

**G.3- Section 112(b) imposes two requirements to be satisfied before a penalty could be imposed. These are;**

- (1) that the person concerned should have acquired possession of or in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner dealing with the goods;*
- (2) that he must have knowledge or reason to believe that those goods are liable to be confiscated under the section 111 of C.A-62.*

In order to penalize a person under section 112(b), it has to be established that the person acquired possession of or was 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 knew or had reason to believe, were liable to confiscation under Section 111 of the Act.

In this case the goods are still under control of DRI/CUSTOMS and not yet cleared for home consumption; the stage for acts such as "carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods" not yet reached; no physical act of any of the noticees in relation to the impugned goods has been brought out in the show

cause notice to justify the proposal for penalty. The expression "in any other manner dealing with" has to be understood "ejusdem generis" with the preceding words/expressions in the clause in terms of the Apex Court's ruling in *Thakur Amar Singhji v. State of Rajasthan* [AIR 1955 SC 504]. The Court held thus :-

*"the true scope of the rule of 'ejusdem generis' is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by the general words which follow."*

#### **FOLLOWING CASES SUPPORT ABOVE CONTENTION**

(i). The hon'ble CESTAT Chennai in the case of *D. ANKINEEDU CHOWDRY Versus COMMISSIONER OF CUSTOMS, CHENNAI -2004(178)ELT-578(Tri-Chennai)* has examined the issue of levy of penalty under section 112(b) of the Customs Act 1962 in detail and held that "Nexus to confiscability, essential for penalty under Section 112 of Customs Act, 1962", relevant part of para 5 of the said judgment is extracted below;

**Para 5.** *We have carefully considered the submissions. The short question arising for consideration is whether the penalty imposed on the appellant under Section 112(b) of the Customs Act is sustainable on facts and in law.*

*.....This apart, as any penalty under Section 112 has a nexus to the confiscability of the imported goods,*

*Whether the above penalty was liable to be imposed on the appellant would depend on whether his conduct satisfied the requirement of Clause (b) of Section 112 of the Act. This clause reads as under :-*

*"(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....."*

*In order that a person is penalized under the above provision, it has to be established that he acquired possession of or was 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 knew or had reason to believe, were liable to confiscation under Section 111 of the Act.*

*We find that no physical act of the appellant in relation to the goods in question has been brought out to justify the penalty. The expression "in any other manner dealing with" has to be understood ejusdem generis with the preceding words/expressions in the clause in terms of the Apex Court's ruling in *Thakur Amar Singhji v. State of Rajasthan* [AIR 1955 SC 504]. The Court held thus :-*

*"the true scope of the rule of 'ejusdem generis' is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by the general words which follow."*

*According to the above doctrine, the meaning of the expression "in any other manner of dealing with" should be understood in a sense similar or comparable*

to how the preceding words viz. carrying, removing, depositing etc. are understood. In other words, "any other manner of dealing" with the goods is also some physical manner of dealing with the goods. In the impugned order, there is no finding that the appellant physically dealt with the goods in question, nor was any allegation to this effect raised against him in the relevant show cause notice. Therefore, the provisions of Section 112(b) were not applicable to the case. It would follow that the penalty imposed on the appellant is not sustainable on facts or in law."

*"The liability to penalty arises on account of conduct, act or omission or commission on the part of a person and not merely on account of holding an office or a position in a company. Therefore, in order to bring a case within Section 112 and or 114AA of the Customs Act the show cause notice must disclose the necessary facts which make a person liable."*

(ii). The Hon'ble CESTAT, New Delhi in the case of M/S KAMDEEP MARKETING PVT. LTD. Versus COMMISSIONER OF C. EX., INDORE reported vide 2004 (165) E.L.T. 206 (Tri. - Del.), has occasion to deal with Rule 209A of erstwhile Central Excise Rules, 1944, which is *peri materia* to section 112(b) of the Customs Act 1962. Rule 209A reads as under;

**"Penalty for certain offences.** - Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding three times the value of such goods or five thousand rupees, whichever is greater."

*"The sine qua non for a penalty on any person under the above rule is that either he has acquired possession of any excisable goods with the knowledge or belief that the goods are liable to confiscation under the Central Excise Act or Rules or he has been in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or has in any other manner dealt with any excisable goods with such knowledge or belief. Acquisition of possession of goods is, indisputably, a physical act, and so is each of the various ways of dealing with goods, specifically mentioned in the rule. The expression "any other manner" should be understood in accordance with the principle of ejusdem generis and would, then, mean "any other mode of physically dealing with the goods". This position has been recognized in Godrej Boyce & Mfg. Co. (supra) which has been followed in A.M. Kulkarni (supra). The decision in Ram Nath Singh (supra) is also to the same effect. Any person to be penalized under the above rule should also be shown to have been concerned in physically dealing with excisable goods with the knowledge or belief that the goods are liable to confiscation under the Act/Rules. He should have done the act with mens rea. We have held so in S.R. Foils (supra) and J. Mitra & Co. (supra). The decision in Standard Pencils (supra) is also to the same effect. In the instant case, neither of the essential ingredients of offence under Rule 209A has been shown to exist."*

Further, the phrases and expression 'any other manner' in Rule 209A of erstwhile Central Excise Rules, 1944 be understood in accordance with principle of ejusdem generis - Then, means any other mode of physically dealing with the goods. [para 3.2]

(iii). Similarly in the case of Ram Nath Singh Versus Commissioner Of Central Excise, Delhi-I, the hon'ble CEGAT had held as under;

*\*Penalty under Rule 209A of erstwhile Central Excise Rules, 1944 not imposable in absence of any allegation that the appellant had in any manner dealt with any excisable goods - Dealing with gate passes does not amount to dealing physically with excisable goods. [para 4]*

Similar view was taken in;

- (i) S.R. FOILS LTD. Versus COMMISSIONER OF CENTRAL EXCISE, NEW DELHI-I—reported vide 2001(138)ELT-719(TRI-DEL)
- (ii) J. MITRA & CO. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, NEW DELHI-I- 2002 (140) E.L.T. 524 (Tri. - Del.)
- (iii) STANDARD PENCILS PVT. LTD. Versus COLLECTOR OF CENTRAL EXCISE, MADRAS 1996(86)ELT-245(TRI)

### **G-3-Penalty under Section 114A of the Customs Act-1962**

Section 114A of the Customs Act empowers the custom authorities to levy penalty, where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of **collusion or any wilful mis-statement or suppression of facts**, the person who is liable to pay the duty or interest, as the case may be, **as determined under sub-section (8) of section 28** shall also be liable to pay a penalty equal to the duty or interest so determined

Bare reading the provision of Section 114A of the Customs Act 1962 reveals that the penalty under this Section is directly related to determination /confirmation of duty under Section 28(8) of the Customs Act 1962, meaning thereby, if the notice for demand of duty is issued under Section 28(4) of the Customs Act, where the short levy is by reason of **collusion or any wilful mis-statement or suppression of facts**. There is no allegation either of collusion or any wilful mis-statement or suppression of facts in the show cause notice. Bare mention of Section 28(4) in the show cause notice does not mean violation of provisions of Section 28(4),when demand of duty itself is erroneous, premature and not sustainable in law,no penalty can be imposed under 114A.

In view of the above submission there is no **collusion or any wilful mis-statement or suppression of facts**. Therefore, proposal for penalty under Section 114A of the Customs Act is without authority of law and unsustainable.

### **G.4--Penalty under Section 114AA of Customs Act 1962**

Section 114AA provides levy of penalty on a person who knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Thus, Section 114AA specifically deals with cases where documentation, which is incorrect or false.

No allegation is forthcoming in the above referred show cause notice that the noticees have knowingly or intentionally made, signed or used, or causes to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular and violated the provisions of Section 114AA of the Customs Act;

Hence, proposal to levy of penalty under Section 114AA of Customs Act 1962, in the facts and circumstances of the case, neither appropriate nor legally sustainable.

### **G.5- PENALTY U/S-117:**

SECTION 117 provides levy of penalty on Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure. The impugned show cause notice does not specify as to which provision of Customs Act is contravened for which penalty under section 117 is proposed, the Customs authority mentioned all the sections of the Customs Act under which penalty can probably be imposed, the proposal is vague; when section 112(a) & 112(b), 114A and 114AA are invoked there is no justification to invoke residuary provisions of Section 117.

**G.6**--The noticee No.3,4,5,6,& 7 are the close relatives of the Importer. It is well settled law that no penalty is imposable just because the noticee is the relative of the importer;

The Hon'ble High Court Of Karnataka at Bangalore, in the case of JEEVARAJ AND OTHERS *Versus* COLLECTOR OF CUSTOMS AND CENTRAL EXCISE, BANGALORE AND OTHERS—1985(22)ELT.44(kar), had as under;

Penalty - Imposition of without evidence but on relationship to the offender is not sustainable in law.

*Merely because one of the petitioners was related to the other petitioner who had committed an offence cannot be roped solely on the ground of his relationship to another person without any other reason or evidence. Therefore, the imposition of penalty against this petitioner which is based on no evidence, but on surmises, was not sustainable in law. [para 28]*

**"28.** *At either of the place of inspection and seizure by the proper officer, the petitioner in Writ Petition No. 4616 of 1978 who happens to be the younger brother of the petitioner in Writ Petition. 4614 of 1978 was present. At the relevant time he was only a student and was not doing any business at all. Unfortunately the Collector has roped in this petitioner solely on the ground that he is related to the petitioner in Writ Petition No. 4614 of 1978 and not on any other reason or evidence. On any principle a person cannot be roped in solely on the ground that he is related to another person that is found to have committed an offence. From this it follows that the finding and the imposition of penalty against this petitioner which is based on no evidence, but on mere surmises, cannot be upheld."*

H--CBIC vide its instruction NO.20/2024-Customs dated: 03-09-2024 has advised that the customs broker should not be made co-noticee in a routine manner in the matters involving interpretation of statute. Para 4 of the said instructions is extracted below;

**"4**--*Accordingly, implicating Customs Brokers as co-noticee in a routine manner, in matters involving interpretation of statute, must be avoided unless the element of abetment of the Customs Brokers in the investigation is established by the investigating authority. Further, the element of abetment should be clearly elaborated in the Show Cause Notice issued for the offence case under the provisions of the Customs Act, 1962....."*

*In view of the foregoing it is humbly requested that the ld. Adjudicating authority may be pleased to discharge the impugned show cause notice against all*

the notices.

**25.3** The noticee no. 03, Shri Pravin T. Joisar, submitted his defence reply received via email on 05.05.2025, wherein he submitted as under -

" .....

**2-** At the outset, the noticee denies all the charges alleged in the impugned show cause notice dated 16-05-2024 and submits that proposal to levy penalty under section 112(a),112(b),114AA and section 117 is not sustainable in law for the reasons given hereunder:

**3-** The allegation and charges against the Noticee (No.3) are summarized at Para 21.1&21.2 of the show cause notice wherein it is alleged that the Importer has incorrectly declared the country of origin "Afghanistan" and the benefit of duty wrongly availed; No evidence is neither discussed nor brought on record that the declaration of country of origin is incorrect; secondly, goods are not assessed to duty so far, are under seizure by DRI, the allegation that the benefit of duty was wrongly availed is hypothetic, speculative and imaginary;

**4-**The notice is one of the director of a Customs Broker company M/S Pramanik Exim Services Pvt Ltd; the description, quantity, value, and country of origin of the goods were declared as per the import invoice, country of origin certificate and other related import documents; there is no evidence that these document are not genuine;

**5-** The impugned Show Cause Notice proposes penalty under **Section 112(a),112(b), 114AA and section 117 of the Custom Act 1962**, In order to properly appreciate the legal position, Section 112(a),112(b) &114AA &117 of the Customs Act 1962, are extracted herein below;

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

.....

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

.....

**SECTION 117- Penalties for contravention, etc., not expressly mentioned. —**

.....

Impugned show cause notice proposed penalty under all the sections of the Customs Act 1962 under which the penalty can be probably be imposed

#### **5.1- PENALTY UNDER SECTION 112(a)**

Noticee state that Section 112(a) of the Customs Act 1962, provides imposition of penalty on any person 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. The noticee have not committed any act or omissions or commission of such acts which have allegedly rendered the goods liable to confiscation under section 111(m) or 111(q) of the Custom Act 1962. Thus, no penalty is imposable under Section 112(a) of the Custom Act 1962.

**5.2-**while considering the question as to whether penalty has to be imposed on any person for any commission or omission, which has rendered the goods liable for confiscation under Section 111, it has to be decided as to whether the goods became liable for confiscation on account of any act of omission or commission attributable to the person in question. In this regards the observations of the Hon'ble high court of kerala, in the case of O.T. ENASU, reported in 2011 (272) E.L.T. 51 (Ker.), while examining the issue of imposition of penalty are as under;;

*\*6. Examining the provisions of Section 111 and Section*

112, it can be seen that any penalty referable to Section 111(o) could be imposed under Section 112 only on the basis of clause (a)(ii) thereof, which states that any person 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, shall be liable in the case of dutiable goods, other than prohibited goods, to a penalty, not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is greater. The non-observance of the conditions of import of the goods in question gives the jurisdiction to impose an order of confiscation in terms of Section 111(o) of the Act. However, while considering the question as to whether penalty has to be imposed on any person for any commission or omission, which has rendered the goods liable for confiscation under Section 111(o), it has to be decided as to whether the goods became liable for confiscation on account of any act of omission or commission attributable to the person in question. Merely because a person is the Managing Director of a company, he would not be fastened with penalty, unless it is shown that he had, by his commissions or omissions, led the goods to be liable for confiscation.

#### **6--PENALTY UNDER SECTION 112(b)**

Section 112(b) of the Customs Act 1962 empowers the Customs Authorities to levy penalty on any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or "in any other manner dealing with any goods" which he knew or has reason to believe are liable to confiscation under section 111.

6.1--The impugned goods, immediate on filing bill of entry were detained/seized by DRI; the goods are neither assessed under section 17 nor cleared from Customs under section 47 of the Customs Act and are still in customs/DRI control, in such circumstances it can not be alleged that the noticee have acquired possession or being concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or any other manner dealing with the imported goods; The noticee have not physically dealt with the impugned goods; The provision of section 112(b) are not applicable; proposal for imposition of penalty under section 112(b) is unsustainable in law; therefore, the impugned show cause notice so far it relates to levy of penalty under Section 112(b) may be discharged ;

#### **7--Penalty under Section 114AA of Customs Act 1962**

Section 114AA provides levy of penalty on person who knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Thus, Section 114AA specifically deals with cases where documentation, which is incorrect or false. No allegation is forthcoming in the above referred show cause notice that the noticee, have knowingly or intentionally made, signed or used, or caused to be made, signed or used, any declaration, statement or document which was false or incorrect in any material particular and violated the provisions of Section 114AA of the Customs Act;

8-Section 117 provides levy of penalty on any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure. The impugned show cause notice does not specify as to which provision of Customs Act is



contravened for which penalty under section 117 is proposed, the Customs authority mentioned all the sections of the Customs Act under which penalty can probably be imposed, the proposal is vague; when section 112(a) & 112(b), and 114AA are invoked which are much more serious in nature, there is no justification to invoke residuary provisions of Section 117

**9-** The noticee states that the submissions in the foregoing paragraphs, being pleaded and submitted are without prejudice to one another and that they are in the alternate and mutually exclusive. The noticee reserve his right and also seek liberty to add, delete or modify the submissions, if so advised.

In view of the foregoing, noticee request that the learned adjudication authority may be pleased to discharge the show cause notice; The noticee may be given personal hearing before the show cause notice is adjudicated upon.

**25.4 The noticee no. 04, Shri Mahesh Tharyabhai Joisar**, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd., submitted his defence reply received via email on 05.05.2025, which is same as the reply submitted by Noticee no. 03, Shri Pravin T. Joisar, hence the same is not reproduced here for the sake of brevity.

**25.5 The noticee no. 05, Shri Pritam Vasant Joisar**, of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, submitted his defence reply received via email on 05.05.2025, which is same as the reply submitted by Noticee no. 03, Shri Pravin T. Joisar, hence the same is not reproduced here for the sake of brevity.

**25.6 The noticee no. 06, Miss Dimple Joisar**, of importer M/s Bhimnath Udyog, submitted her defence reply received via email on 05.05.2025, which is same as the reply submitted by Noticee no. 03, Shri Pravin T. Joisar, hence the same is not reproduced here for the sake of brevity.

**25.7 The noticee no. 07, Miss Yogini Vasant Joisar**, of Customs Broker M/s Pramanik Exim Services Pvt. Ltd, submitted her defence reply received via email on 05.05.2025, which is same as the reply submitted by Noticee no. 03, Shri Pravin T. Joisar, hence the same is not reproduced here for the sake of brevity.

#### **PERSONAL HEARINGS**

**26.** Opportunity of personal hearing in the case was given to the Noticees on 12.03.2025, 11.04.2025, 29.04.2025 and 13.05.2025 under the provisions laid down in Customs Act, 1962 and following the principles of natural justice.

**26.1** In all the scheduled PHs held on 12.03.2025, 11.04.2025 and 29.04.2025, the noticees sought adjournment on all occasions.

#### **26.2 PH held on 13.05.2025**

The Personal Hearing dated 13.05.2025 was attended by Shri Jhamman Singh, Advocate on 13.05.2025, at 11.30 AM via Virtual Mode on behalf of M/s Bhimnath Udyog and other noticees no. 02 to 07. The record of Personal Hearing is reproduced as under -

"Shri Jhamman Singh, Advocate, representing M/s Bhimnath Udyog, Noticee no. 01 and all the other six noticees appeared before me for scheduled Personal hearing on today, i.e. 13.05.2025 at 11.30 hours via virtual mode. Shri Jhamman Singh during the hearing reiterated the defence reply dated 19.06.2024 submitted by M/s Bhimnath Udyog and replies received on

01.05.2025 and 12.05.2025 from all Noticees no. 01 to 07 via email submitted by him.

Lastly, he prayed that the Show Cause Notice and any proceedings in furtherance thereof be dropped against them.”.

### **DISCUSSION AND FINDINGS**

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

- (i) Whether the Claim of preferential duty under SAFTA by M/s Bhimnath Udyog, Mumbai (IEC – 0314057021), on the import of Black Pepper which has been declared of Afghanistan Origin, under Bill of Entry no. 6008074 dated 18.05.2023, is liable to be rejected in terms of the provisions of the sub-Section (11) of the Section 28DA of the Customs Act, 1962;
- (ii) Whether the total of 27934.16 Kgs of Black Pepper, collectively valued at Rs.1,42,66,795/-, imported vide Bill of Entry No. 6008074 dated 18.05.2023 is liable to be confiscated under section 111(m) and 111 (q) of the Customs Act, 1962;
- (iii) Whether the total duty (BCD+SWS+IGST) amounting to Rs.1,22,48,044/- alleged to be evaded by Importer by fraudulently claiming preferential rate of duty under SAFTA, is liable to be demanded and recovered under Section 28(4) of Customs Act, 1962;
- (iv) Whether Interest at appropriate rate is liable to be demanded and recovered on the duty demanded at (iii) above under Section 28AA of the Customs Act, 1962.
- (v) Whether the said Importer is liable to penalty under the provisions of under Section 112(a), Section 112(b) and/or Section 114A, separately, of the Customs Act, 1962.
- (vi) Whether Smt. Hansa Pravin Joisar, Proprietor of M/s Bhimnath Udyog, Shri Pravin Tharyabhai Joisar, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Shri Mahesh Tharyabhai Joisar, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd., Shri Pritam Vasant Joisar, of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Miss Dimple Joisar, of importer M/s Bhimnath Udyog, and Miss Yogini Vasant Joisar, of Customs Broker M/s Pramanik Exim Services Pvt. Ltd. are liable to penalty under the provisions of Section 112(a), 112(b), Section 114AA, and 117, separately, of the Customs Act, 1962.

**28.** After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. The foremost issue before me to decide in this case is whether the claim of preferential duty under SAFTA by availing benefit of Notification no. 99/2011-Cus dated 09.11.2011, by M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai- 400706 (IEC – 0314057021), on the import of Black Pepper which has been declared of Afghanistan Origin, under Bill of Entry no. 6008074 dated 18.05.2023, is liable to be rejected in terms of the provisions of the sub-Section (11) of the Section 28DA of the Customs Act, 1962, read with CAROTAR, 2020.

**28.1.** I find that in the present case, the importer M/s. Bhimnath Udyog, Mumbai had imported “Black Pepper” (under CTH – 0904 1140) and claimed preferential rate of duty under Notification No. 99/2011-Cus dated 09.11.2011

(SAFTA) by declaring Country of Origin as Afghanistan.

**28.2** I observe that Section 28DA of the Customs Act, 1962, provides the procedure regarding claim of preferential rate of duty as under –

**\*Section 28DA: Procedure regarding claim of preferential rate of duty. -**

(1) An importer making claim for preferential rate of duty, in terms of any trade agreement, shall –

(2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.

(3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.

(4) Where importer fails to provide the requisite information for any reason, the proper officer may, -

(i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;

(ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:

**28.3** Further, Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (in short CAROTAR, 2020) provides the mechanism by which claim of country of origin can be verified by the Customs Officer, as under –

**Rule 4. Origin related information to be possessed by importer. -**

The importer claiming preferential rate of duty shall-

(a) -----

(b) Keep all supporting documents related to Form I for at least five years from date of filing of bill of entry and submit the same to the proper officer on request.

(c) exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents.

**Rule 5. Requisition of information from the importer. -**

(1) Where, during the course of customs clearance or thereafter, the proper officer has reason to believe that origin criteria prescribed in the respective Rules of Origin have not been met, he may seek information and supporting documents, as may be deemed necessary, from the importer in terms of rule 4 to ascertain correctness of the claim.

(2) Where the importer is asked to furnish information or documents, he shall provide the same to the proper officer within ten working days from the date of such information or documents being sought.

(5) Notwithstanding anything contained in this rule, the Principal Commissioner of Customs or the Commissioner of Customs may, for the reasons to be recorded in writing, disallow the claim of preferential rate of duty without further verification, where:

(a) The importer relinquishes the claim; or

(b) The information and documents furnished by the importer and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

**Rule 6. Verification request-**

(1) The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from Verification Authority where:

(a) there is a doubt regarding genuineness or authenticity .....

(b) there is reason to believe that the country-of-origin criterion stated in the certificate of origin has not been met or the claim of preferential rate of duty made by importer is invalid; or

Provided that a verification request in terms of clause (b) may be made only where the importer fails to provide the requisite information sought under rule 5 by the prescribed due date or the information provided by importer is found to be insufficient. Such a request shall seek specific information from the Verification Authority as may be necessary to determine the origin of goods.

(4) Where verification in terms of clause (a) or (b) of sub-rule (1) is initiated during the course of customs clearance of imported goods,

(a) The preferential tariff treatment of such goods may be suspended till conclusion of the verification;

(7) The proper officer may deny claim of preferential rate of duty without further verification where:

(a) The verification Authority fails to respond to verification request within prescribed timelines;

(b) The verification Authority does not provide the requested information in the manner as provided in this rule read with the Rules of Origin; or

**Rule 8. Miscellaneous. -**

(1) .....

(2) Where it is established that an importer has suppressed the facts, made wilful mis-statement or colluded with the seller or any other person, with the intention to avail undue benefit of a trade agreement, his claim of preferential rate of duty shall be disallowed and he shall be liable to penal action under the Act or any other law for the time being in force.

**28.4** From a combined reading of above provisions of Section 28DA and CAROTAR 2020, it is clear that the Customs officer can conduct verification of COO and call for additional documents from the importer or producer or the issuing authority of the COO Certificate and in absence of proper reply being received within the prescribed time limit, or if he is not satisfied with the reply received, he can disallow the benefit of preferential rate of duty under SAFTA. Further, if during verification it is found that the importer has suppressed the facts or made wilful mis-statement or colluded with the seller or any other person with the intention to avail undue benefit of a trade agreement, then the importer shall be liable to penal action under the Act.

**28.4.1** In the present case, I find that letter dated 16.10.2023 was addressed by DRI to the importer to provide additional documents to justify the genuineness of the COO Certificate. However, the importer never furnished this information, though it was obligatory on his part to furnish the same under Rule 5(2) of CAROTAR, 2020. Failure to furnish the information under CAROTAR, 2020, disentitled the importer from claiming preferential rate of duty. Further, a number of summons were issued by the DRI to seek information concerning country of origin of goods but none of the summoned persons including the importer herself appeared before the DRI.

**28.4.2** Further, a letter dated 22.12.2023 was sent by the DRI to the Directorate

of International Customs (FTA Cell), requesting them to carry out retroactive verification of the Country of Origin Certificate bearing reference no. 5315 dated 03.04.2023 said to be issued in Afghanistan for the export of Black Pepper (HS Code 09041140) from Afghanistan to India under SAFTA, in respect of the subject consignment imported by M/s Bhimnath Udyog, which was routed to the PAI Division of the Ministry of External Affairs, Government of India vide letter dated 30.01.2024. It has been informed by FTA Cell vide e-mail dated 06.05.2024, that *"the response from the Issuing Authority in the subject matter is still awaited"*. The screen shot of the email is attached hereunder-

Email

Gandhidham

**Re: Request of retroactive verification of Country- of - Origin Certificates in respect of Afghanistan Origin "Black Pepper" -regarding**

**From :** OSD FTA Cell 1 <ftacell1-cbic@gov.in> Mon, May 06, 2024 12:54 PM  
**Subject :** Re: Request of retroactive verification of Country- of - Origin Certificates in respect of Afghanistan Origin "Black Pepper" -regarding 4 attachments  
**To :** Gandhidham <driganru@nic.in>

Respected Sir/Madam

Please refer trail mail and attachments on the subject matter. In this regard it is to inform that the response from the Issuing Authority in the subject matter is still awaited, As and when this office receives, the same will be communicated to your office.

Regards  
 FTA Cell-1  
 DIC,CBIC

It has now been more than one year since the request was made to the Issuing Authority to verify Certificate of origin but it has failed to verify the same as was required under Rule 6(1) of CAROTAR, 2020 [within 60 days from the request as per Rule 6(3)(b)] and therefore as per Rule 6(7) of the CAROTAR 2020, the Customs can very well deny the claim of preferential rate of duty.

**28.4.3** I further find that the subject consignment was shipped from an Iranian port, i.e. Bandar Abbas, Iran which is evident from the Bill of Lading. Further, the statement recorded on 27.09.2023 of Shri Pratik Nitinbhai Chotara, authorized person of Shipping Line, M/s. Transvision Shipping Pvt. Ltd. revealed that the said container i.e. UESU5212649 was booked through their agent in Iran. In other words, the consignment, if originated from Kandhar as per claim made by the importer, would have been transported by road from Kandhar, Afghanistan to Bandar Abbas, Iran and then transshipped in a fresh container to India. But the importer has failed to provide any supporting documents including documents which would show crossing of Customs border between Afghanistan and Iran to substantiate how the consignment of black pepper actually reached Bandar Abbas, Iran.

**28.4.4** I reproduce the voluntary statement dated 22/23.05.2024 of Shri Mahesh Tharyabhai Joisar, Director of Customs Broker M/s Pramanik Exim Services Pvt. Ltd., wherein Shri Mahesh stated as under -

- On being asked as to whom and how did the idea of importing Black pepper came, he stated that that was the first import of Black Pepper being made by M/s. Bhimnath Udyog. His brother Shri Pravin Joisar, his wife Smt. Hansa Joisar and daughter Miss Dimple Joisar (Mb. No. 9819928098) were looking after the entire activities relating to the present import of Black Pepper. He was not concerned with the said import.

- On being shown Bill of Entry No. Bill of Entry bearing No. 6008074 dated 18.05.2023 and related documents produced by him during Panchnama proceedings dated 22.05.2023; being apprised that as per the Bill of Entry, the goods covered under subject consignment / Bill of Entry No. 6008074 dated 18.05.2023 had been declared to be originated in Afghanistan whereas the port of loading was declared as Bandar Abbas, Iran, and asked to produce related document in support of their claim, he stated that he was not aware how did the subject consignment arrived at Bandar Abbas, Iran from Afghanistan and neither did he have any documents with him.
- On being asked as to when and who approached him or his company for clearance of subject import consignment covered under Bill of Entry bearing No. 6008074 dated 18.05.2023, he stated that Smt. Hansa P. Joisar, Prop. of M/s. Bhimnath Udyog approached him telephonically and requested for clearance of the subject consignment in the month of May, 2023.
- On being asked whether Smt. Hansa P. Joisar had sent documents relating to the subject consignment covered under Bill of Entry bearing No. 6008074 dated 18.05.2023, and If yes, the particulars thereof, or in case 'no', then who sent him the documents, he stated that Smt. Hansa P. Joisar did not send the documents relating to the subject consignment covered under Bill of Entry bearing No. 6008074 dated 18.05.2023 and Shri Pritam Vasant Joisar (Mb. No. 8828102085), his nephew had sent him the import documents.
- On being asked to explain the Customs Duty calculation in respect of the subject consignment covered under Bill of Entry bearing No. 6008074 dated 18.05.2023, he stated that the Duty calculation aspect was being looked after by his nephew Shri Pritam V. Joisar. Hence, he was not aware about Duty calculation in respect of the subject consignment covered under Bill of Entry bearing No. 6008074 dated 18.05.2023.
- On being shown printouts of some of the Whatsapp Chat conversations held between him and one contact saved in his contact list as Pritam (Mb. No. 8828102085) and asked to explain the conversations and documents exchanged between him and the said contact on Friday, 19.05.2023, he stated the printouts were related to conversation between him and the contact no. 8828102085, who was of his nephew Shri Pritam V. Joisar. As per the conversations dated 19.05.2023 Shri Pritam V. Joisar had sent him two different PDF files (of Bill of Entry No. 6008074 dated 18.05.2023) having names 'CHK 17 without duty' and 'CHK 17 with duty'. In one of such Bill of Entry (without Duty), the Basic Customs Duty was applied at the rate of NIL which resulted in total Duty/IGST payable as Rs.7,13,340/- . Whereas, as per second PDF of Bill of Entry (with Duty), the Basic Customs Duty was applied at the rate of 70% which resulted in total Duty payable as Rs.1,22,48,044/-. Thereafter, his nephew had sent him the following message: -

"12248044.00 - 713340.00= 11534704

Total 1 crore 15 lakh 34 thousand

Ka duty save hora hai"

To which he had replied 'Ok'.

**28.4.5** From the above statement of Shri Mahesh T. Joisar, it is clear that the

CHA firm M/s Pramanik Exim was also being run by the same persons who are running the Importer firm M/s Bhimnath Udyog. It is also clear that Shri Mahesh T Joisar during the recording of his statement has adopted a totally hostile attitude and on the part of the importer firm and its Proprietress. They never came forward to provide the details regarding COO and failed to disclose how the goods were shipped from Kandhar, Afghanistan to Bandar Abbas, Iran. Not only that, despite issuance of number of summons to each member of the firms - M/s Bhimnath Udyog and M/s Pramanik Exim Services Pvt. Ltd., nobody turned up to provide any documentary evidence. In view of above, I hold that the importer firm has rendered themselves liable to be penal action under the provisions of the Customs Act, 1962.

**29.** I observe that the noticees have referred to a number of case laws in their reply to Show Cause Notice and also sent a compilation of case laws via email dated 12.05.2025. On going through the case laws referred to by the Noticees, I observe that none of these cases pertain to import of goods from Afghanistan on availment of preferential rate of duty benefit under SAFTA where Issuing Authority failed to verify the COO itself. Hence, the case laws referred to by the noticees in their written submission cannot be relied upon in the present matter.

**29.1** Further, I observe that the noticee has taken the plea that the Show cause notice was delivered to them on 25.05.2025 and therefore time barred. I find that even though the notice was signed on 16.05.2025, the notice was sent to the importer firm and the CHA firm on 17.05.2025 via email on their email ids [bhimnathudyog@gmail.com](mailto:bhimnathudyog@gmail.com); [pramanikexim@gmail.com](mailto:pramanikexim@gmail.com); [Info@pramanikexim.com](mailto:Info@pramanikexim.com); and [mareshjoisar123@gmail.com](mailto:mareshjoisar123@gmail.com), which they themselves had disclosed / furnished, and which is a valid mode of communication for receipt of such notice under the provisions of Section 153(c) of the Act, *ibid*. Further, I find that later on communications were also received from the same email ids of the noticees, such as requests for adjournment of personal hearing, submission of defence replies etc. Further, the notice was also uploaded on the website of Mundra customs on the same day, i.e. 17.05.2024. Hence, I find that the notice was duly delivered to the noticees on 17.05.2024, as per the provisions of Section 153 (c) and 153 (ca) the Customs Act, 1962. Hence, the plea of the noticees that the Notice was not delivered to them within time, is not sustainable. Further, on the plea of no issuance of notice for seizure portion to the noticees, I find that extension for issuance of such notice was duly obtained by the investigating agency in the matter, and the same was granted vide letter F. No. Gen/Adj/ADC/2130/2023-Adjn dated 14.11.2023 and communicated to the noticee and also made a RUD in the Notice (**RUD-08 of the SCN**). Hence, this plea of the noticees is also not sustainable.

### **30. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962**

**30.1.** The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

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

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

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts."

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person

chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."

**30.1.1** I find that the noticee has contended that "customs authorities at the port of import were very well aware of the fact the goods covered under the bill of entry no. No. 6008074 dated 18.05.2023 were imported in terms of Notification No. 99/2011-Cus. Dated 09.11.2011 (SAFTA). However, the real situation is reverse of this assertion in as much as noticees themselves absconded from joining the investigation once the DRI started entertaining doubt about the country of origin of black pepper and the Issuing Authority itself failed to verify the authenticity of COO furnished by the importer. Thus, only when the issue was investigated by DRI, that the duty evasion came to light. In any case, the importer never had any bonafide; they ran away from investigation; never appeared before the DRI; never replied to verification requests; never honoured any lawful summons issued to them. Hence, I find that Section 28(4) is rightly invocable in the present case and duty is liable to be recovered from the importer. Accordingly, differential Customs duty of Rs.1,22,48,044/- is recoverable from M/s. Bhimnath Udyog, Mumbai, along with the interest at the appropriate rate thereon under Section 28AA of the Customs Act, 1962. Further, importer is also liable to penalty under Section 114A of the Customs Act, 1962. However, I refrain from imposing penalty under Section 112(a)(ii) of Customs Act as penalties under Section 112 and Section 114A are mutually exclusive.

### **31. Confiscation of the goods under Section 111(m) and 111(q) of the Customs Act, 1962 and imposition of redemption fine:**

**31.1** SCN has alleged that the goods are liable for confiscation under Section 111(m) and 111(q) of the Customs Act, 1962. The relevant legal provisions of Section 111(m) & 111(q) of the Customs Act, 1962 are reproduced below: -

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

(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder"

**31.1.1** On plain reading of the above provisions of the Section 111(m) & 111(q) of the Customs Act, 1962, it is clear that any goods, being imported, contrary to any prohibition imposed by or under this Act, or imported by way of misdeclaration, or any goods exempted, subject to any condition, in respect of which the condition is not observed or any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder, will be liable to confiscation. As discussed in the foregoing paras, the importer has fraudulently declared that goods were of Afghanistan Origin and has failed to respond to CAROTAR verification, thereby contravening CAROTAR, 2020. Further, the authenticity of COO presented by the importer was not established even by the Issuing Authority. Hence, the impugned imported goods as imported vide Bill of Entry no. 6008074 dated 18.05.2023 are liable for confiscation under the provisions of Section 111(m) & 111(q) of the Customs Act, 1962.

**31.2.** As the impugned goods are liable for confiscation under Section 111(m) & 111(q) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide



subject SCN. The Section 125 *ibid* reads as under:-

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

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

In the case of *M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai)* it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the misdeclaration in respect of the parallel invoices issued prior to the date of filing of the Bills of Entry. Hence, there is misdeclaration and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

Further in case of *VISTEON AUTOMOTIVE SYSTEMS INDIA LIMITED Versus CESTAT, CHENNAI, 2018 (9) G.S.T.L. 142 (Mad.)* Hon'ble High Court of Madras has passed the landmark judgement contrary to the judgement of tribunal passed earlier. In the said judgement it has been held that:

"The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act ...." brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

In view of above discussions, based on the judgement of *M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai)*, *M/s Asia Motor Works vs Commissioner of Customs 2020 (371) E.L.T. 729 (Tri. - Ahmd.)* & *M/s Visteon Automotive Systems India Limited Versus CESTAT, CHENNAI, 2018 (9) G.S.T.L. 142 (Mad.)*, I find that goods imported vide Bill of Entry no. 6008074 dated 18.05.2023 are liable for confiscation under Section 111(m) & 111(q) of the Customs Act, 1962 and redemption fine is liable to be imposed on the said confiscated goods. I hold accordingly.

## **32. Imposition of Penalties on Co-Noticees**

**32.1** As regards imposition of penalty on the Proprietress of *M/s Bhimnath Udyog, Smt. Hansa Pravin Joisar, and Miss Dimple Joisar*, I find that by their acts of omission and commission; by fraudulently declared country of origin; and fraudulently availing preferential rate of duty under SAFTA, resulting in evasion of Customs Duty amounting to **Rs.1,22,48,044/-** (including IGST), they have rendered the goods liable to confiscation under Section 111(m) and 111(q) of the Customs Act, 1962. By their above acts, they have also rendered themselves liable to penalty under Section 112(a)(ii) and Section 114AA of the Act, *ibid*. Further, as a number of summons issued to them were not honoured by them, I also find them liable to penalty under Section 117 of the Act, *ibid*.

**32.2** I also find that *Shri Mahesh Tharyabhai Joisar, Brother-in-Law of Smt. Hansa Pravin Joisar, Shri Pravin Tharyabhai Joisar, both Directors of CHA firm M/s Pramanik Exim Services Pvt. Ltd., their nephew Shri Pritam V. Joisar and*

Miss Yogini Vasant Joisar, of CHA firm M/s Pramanik Exim Services Pvt. Ltd., were actively involved in abetting the duty evasion on the basis of fraudulent COO submitted by M/s Bhimnath Udyog. They were in the knowhow of duty evasion, since the very start, which is evident from the statement dated 22/23.05.2023 recorded under Section 108 of the Act, *ibid*, of Shri Mahesh Tharyabhai Joisar, Director of M/s Pramanik Exim Services Pvt. Ltd., wherein he conferred that his nephew had sent him different Bills of Entry having NIL rate of BCD and BCD @70% and also mentioned that 'duty of Rs. 1 crore 15 lakh 34 thousand is being saved', which clearly indicates that the benefit of duty exemption / SAFTA benefit was fraudulently availed by mis-declaring the Country of Origin as Afghanistan. Further, during his statement, Shri Mahesh Tharyabhai Joisar stated that his Custom Broker firm did not bring the matter to the notice of the jurisdictional Customs Authorities, thereby failing in their duties as custom broker under the CBLR Rules, thereby rendering themselves liable to penal action.

**32.3** Further, Shri Pravin Tharyabhai Joisar, Shri Mahesh Tharyabhai Joisar, Shri Pritam Vasant Joisar, and Miss Yogini Vasant Joisar of M/s Pramanik Exim were summoned multiple times to provide statements and produce the necessary documents related to their claim for a preferential rate of duty under SAFTA for the subject consignment. However, none of them appeared in response to these summons. This indicates a collusion between the Custom Broker firm and the importer to evade the customs duty amounting to Rs. 1.2248 Crore, with the operations being linked to individuals from the same family. Further illustrating this collaboration is the hostile attitude of Shri Mahesh T. Joisar of the CHA firm during his statement recorded on 22/23.05.2023, where to most questions he repeatedly replied that he doesn't know or doesn't remember the details. Thus, I find that M/s Pramanik Exim and its associates knowingly engaged in fraudulent import as discussed in foregoing paras. In light of the above, Shri Pravin Tharyabhai Joisar, Shri Mahesh Tharyabhai Joisar, Shri Pritam Vasant Joisar, and Miss Yogini Vasant Joisar, have rendered themselves liable for penalties under Section 112(a)(ii) and 114AA of the Customs Act, 1962. Furthermore, due to their repeated failure to honor the summons, they are also liable for penalty under Section 117 of the Customs Act, 1962.

**33.** IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

#### **ORDER**

- i. I order to reject the Claim of preferential duty under SAFTA by M/s Bhimnath Udyog, Mumbai (IEC - 0314057021), on the import of Black Pepper which has been declared of Afghanistan Origin, under Bill of Entry no. 6008074 dated 18.05.2023 under the provisions of the sub-Section (11) of the Section 28DA of the Customs Act, 1962, and order to confiscate the total of 27934.16 Kgs of Black Pepper, collectively valued at Rs.1,42,66,795/-, imported vide Bill of Entry No. 6008074 dated 18.05.2023 under the provisions of Section 111(m) and Section 111(q) of the Customs Act, 1962. However, I give an option to the importer to redeem the said goods on payment of redemption fine of Rs.20,00,000/- (Rupees Twenty Lakhs only), under Section 125 of the Customs Act, 1962.
- ii. I confirm the demand of duty (BCD+SWS+IGST) amounting to Rs.1,22,48,044/- (*Rupees One Crore Twenty-Two Lakhs Forty-Eight Thousand Forty-Four only*) evaded by the importer by incorrectly claiming

preferential rate of duty under SAFTA and order to recover the same from M/s. Bhimnath Udyog, Mumbai, (IEC – 0314057021) under the provisions of Section 28(4) of the Customs Act, 1962.

- iii. I order to recover the interest from M/s. Bhimnath Udyog, Mumbai, (IEC– 0314057021) at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty as mentioned at (ii) above;
- iv. I impose penalty of Rs.1,22,48,044/- (*Rupees One Crore Twenty-Two Lakhs Forty-Eight Thousand Forty-Four only*) on M/s. Bhimnath Udyog, Mumbai, (IEC – 0314057021) under the provisions of Section 114A of the Customs Act, 1962, payable on the duty demanded and confirmed at (ii) above; however, I refrain from imposing penalty upon M/s. Bhimnath Udyog, Mumbai, (IEC – 0314057021) under Section 112(a)/112(b) of the Customs Act, 1962, for the reasons as discussed above;
- v. I impose penalty of Rs.12,00,000/- (*Rupees Twelve Lakhs Only*) on Smt. Hansa Pravin Joisar, Proprietress of M/s Bhimnath Udyog under the provisions of Section 112(a)(ii) of the Customs Act, 1962; I also impose penalty of Rs.25,00,000/- (*Rupees Twenty Five Lakhs Only*) on Smt. Hansa Pravin Joisar under the provisions of Section 114AA of the Customs Act, 1962; I further impose penalty of Rs.2,50,000/- (*Rupees Two Lakhs Fifty Thousand Only*) on Smt. Hansa Pravin Joisar under the provisions of Section 117 of the Customs Act, 1962, for the reasons as discussed above;
- vi. I impose penalty of Rs.12,00,000/- (*Rupees Twelve Lakhs Only*) on Shri Pravin Tharyabhai Joisar, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd., under the provisions of Section 112(a)(ii) of the Customs Act, 1962; I also impose penalty of Rs.25,00,000/- (*Rupees Twenty Five Lakhs Only*) on Shri Pravin Tharyabhai Joisar under the provisions of Section 114AA of the Customs Act, 1962; I further impose penalty of Rs.2,50,000/- (*Rupees Two Lakhs Fifty Thousand Only*) on Shri Pravin Tharyabhai Joisar under the provisions of Section 117 of the Customs Act, 1962, for the reasons as discussed above;
- vii. I impose penalty of Rs.12,00,000/- (*Rupees Twelve Lakhs Only*) on Shri Mahesh Tharyabhai Joisar, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd., under the provisions of Section 112(a)(ii) of the Customs Act, 1962; I also impose penalty of Rs.25,00,000/- (*Rupees Twenty Five Lakhs Only*) on Shri Mahesh Tharyabhai Joisar under the provisions of Section 114AA of the Customs Act, 1962; I further impose penalty of Rs.2,50,000/- (*Rupees Two Lakhs Fifty Thousand Only*) on Shri Mahesh Tharyabhai Joisar under the provisions of Section 117 of the Customs Act, 1962, for the reasons as discussed above;
- viii. I impose penalty of Rs.12,00,000/- (*Rupees Twelve Lakhs Only*) on Shri Pritam Vasant Joisar, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd., under the provisions of Section 112(a)(ii) of the Customs Act, 1962; I also impose penalty of Rs.25,00,000/- (*Rupees Twenty Five Lakhs Only*) on Shri Pritam Vasant Joisar under the provisions of Section 114AA of the Customs Act, 1962; I further impose penalty of Rs.2,50,000/- (*Rupees Two Lakhs Fifty Thousand Only*) on Shri Pritam Vasant Joisar under the provisions of Section 117 of the Customs Act, 1962, for the reasons as discussed above

- ix. I impose penalty of Rs.12,00,000/- (*Rupees Twelve Lakhs Only*) on Miss Dimple Joisar, of M/s Bhimnath Udyog under the provisions of Section 112(a)(ii) of the Customs Act, 1962; I also impose penalty of Rs.25,00,000/- (*Rupees Twenty Five Lakhs Only*) on Miss Dimple Joisar under the provisions of Section 114AA of the Customs Act, 1962; I further impose penalty of Rs.2,50,000/- (*Rupees Two Lakhs Fifty Thousand Only*) on Miss Dimple Joisar under the provisions of Section 117 of the Customs Act, 1962, for the reasons as discussed above;
- x. I impose penalty of Rs.12,00,000/- (*Rupees Twelve Lakhs Only*) on Miss Yogini Vasant Joisar, of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd., under the provisions of Section 112(a)(ii) of the Customs Act, 1962; I also impose penalty of Rs.25,00,000/- (*Rupees Twenty Five Lakhs Only*) on Miss Yogini Vasant Joisar under the provisions of Section 114AA of the Customs Act, 1962; I further impose penalty of Rs.2,50,000/- (*Rupees Two Lakhs Fifty Thousand Only*) on Miss Yogini Vasant Joisar under the provisions of Section 117 of the Customs Act, 1962, for the reasons as discussed above;;

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

Dated 15.05.2025



(Nitin Saini)

Commissioner of Customs  
Custom House, Mundra.

To, (The Noticees),

1. M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai- 400706 (IEC - 0314057021).
2. Smt. Hansa Pravin Joisar, Proprietress of M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai- 400706 (IEC - 0314057021).
3. Shri Pravin Tharyabhai Joisar, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Row House No. 8, Park Avenue Society, Sector-17, Nerul, Navi Mumbai.
4. Shri Mahesh Tharyabhai Joisar, Director of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Row House No. 8, Park Avenue Society, Sector-17, Nerul, Navi Mumbai.
5. Shri Pritam Vasant Joisar, of the Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Row House No. 8, Park Avenue Society, Sector-17, Nerul, Navi Mumbai.
6. Miss Dimple Joisar, of importer M/s Bhimnath Udyog, Plot No. 5, 6, Flat No. 201, Sector-14 Mumbai- 400706 (IEC - 0314057021).
7. Miss Yogini Vasant Joisar, of Customs Broker M/s Pramanik Exim Services Pvt. Ltd, Row House No. 8, Park Avenue Society, Sector-17, Nerul, Navi Mumbai..

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

- a. The Additional Director, DRI regional Unit, Gandhidham;
- b. The Assistant Commissioner of Customs (RRA), CCO, Ahmedabad Zone.
- c. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- d. The Superintendent (EDI), Customs House, Mundra for uploading on Website.
- e. Notice Board/Guard File.