

	<p>प्रधान सीमा शुल्क आयुक्त का कार्यालय, मुंद्रा आयुक्तालय सीमा शुल्क हाउस, अदानी योर्ट और एस.ई.जे.ड., मुंद्रा (कन्द्रा), <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCHMUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421</b></p> <p><b>Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62</b></p> <p style="text-align: right;">           Azadika Anshu Mehta       </p>
<b>A. File No.</b>	GEN/ADJ/COMM/217/2021-Adjn-O/o PrCommr-Cus-Mundra.
<b>B. Order-in-Original No.</b>	MUN-CUSTM-000-COM-23-24-25
<b>C. Passed by</b>	<b>K. Engineer, Principal Commissioner of Customs, Customs House, AP &amp; SEZ, Mundra.</b>
<b>D. Date of order and Date of issue</b>	18.09.2024. 18.09.2024.
<b>E. SCN No. &amp; Date</b>	SCN F.No. GEN/ADJ/COMM/217/2021-Adjn dated 21.09.2022 and DRI/AZU/GRU-45/2017-Crescent dated 10.09.2018
<b>F. Noticee(s) / Party / Importer</b>	<b>M/s. Crescent Traders (IEC No. 0317524631) 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombiwali West-421202, Dist-Thane, Maharashtra; and Others</b>
<b>G. DIN</b>	<b>20240971M000003353EO</b>

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

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

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

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

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

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

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

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

4. उक्त अपील के साथ - / 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो

10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

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

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

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

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

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

#### **FACTS OF THE CASE IN BRIEF:**

1. A specific intelligence was gathered by the officers of Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') that the goods covered under a Bill of Entry bearing no. 3130325 dated 06.09.2017 filed by M/s. Crescent Traders (IEC No. 0317524631), 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombiwali West - 421202, Dist-Thane, Maharashtra (hereinafter referred to as 'the importer') was mis-declared in respect of value and other material particulars. Intelligence also suggested that some of the goods were in violation of Bureau of Indian Standards (BIS) norms and some of the imported goods involved in the said Bill of Entry were counterfeit goods of some well-known brands and infringing Intellectual Property Rights; and that some officers of Specific Intelligence & Investigation Branch (SIIB), Custom House, Mundra had allowed clearance of said consignment in collusion with importer/importer's representative.

2. Acting on the said intelligence, officers of DRI detained the said consignment vide Detention Memo dated 22.09.2017 and initiated inquiry in the matter by way of detailed examination of the consignment under Panchnamas dated 23.09.2017, 25.09.2017, 26.09.2017, 27.09.2017 and 28.09.2017 drawn at Warehouse No. 1, MICT CFS, Mundra Port. During examination, the officers of DRI found total **1026 packages** in the container whereas the importer had declared total **1025 packages** in the import documents and Bill of Entry No. 3130325 dated 06.09.2017.

3. On completion of examination proceedings of whole consignment covered under Bill of Entry No. 3130325 dated 06.09.2017, the officers of DRI informed one person Shri Abdul Gani Khatri, Executive, MICT CFS, Mundra that the consignment covered under Bill of Entry No. 3130325 dated 06.09.2017 was under detention as per Detention Memo dated 22.09.2017 of DRI and asked him to keep the goods in safe custody and to not remove, part with or otherwise deal with the said goods. Copies of previous Panchnamas dated 23<sup>rd</sup>, 25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup> September 2017 along with respective Annexures, having details and quantity of goods, were also provided to Shri Abdul Gani Khatri.

4. Whereas, the importer vide Bill of Entry No. 3130325 dated 06.09.2017 supported with Invoice No. SH-093 dated 02.08.2017 and Packing List dated 02.08.2017, had filed declaration through Customs Broker M/s. All Marine Cargo Services, Gandhidham, mentioning the name of supplier as Shorewood Enterprises Co. Ltd., Unit K-1, 3/F, Wofoo Building, Nos. 204-210, Texaco Road, Tsuen Wan, N.T. with following further description, quantity, value etc. of the goods imported vide said Bill of Entry:-

**Table-i**

<b>Sr. No.</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price (USD)</b>	<b>Total amount (USD)</b>
1	USB Cable (Parts and Accessories for mobile)	21408.59	DOZ	0.34	7278.922
2	Charging Connector Socket(Parts and Accessories for mobile)	434	DOZ	0.80	347.2
3	Earphone(Parts and Accessories for mobile)	1625	DOZ	0.72	1170
4	USB Dock(Parts and Accessories for mobile)	458.33	DOZ	1	458.33
5	TPU Cover(Parts and Accessories for mobile)	1266.67	DOZ	0.28	354.67
6	Battery/PCB(Parts and Accessories for mobile)	2904	DOZ	0.32	929.28
7	Screen Guard(Parts and Accessories for mobile)	3556	GRS	1.66	5902.96
8	Touch Screen(Parts and Accessories for mobile)	266.67	DOZ	0.72	192.00
9	Mini Speaker	36	DOZ	1.2	43.2
10	Plastic Holder (for mobile)	5000	DOZ	0.8	4000
11	Side Bumper (for mobile)	84	DOZ	0.2	16.8
12	Stick (for Selfie)	167	DOZ	2	334
<b>Total</b>		<b>37206.26</b>			<b>21027.36</b>

5. Whereas, on 100% examination of goods carried out by the officers of DRI vide afore-mentioned Panchnamas, it was observed that the quantity of Mobile

Screen Guard, USB Cable, Mini Speaker, Selfie Stick for mobile, USB Dock Connector, Mobile Phone Cover TPU, Side Bumper for mobile, Charging Connector Socket, Mobile Battery, Touch Screen etc. were found to be short in quantity and Earphones was found to be excess in quantity than the quantity declared in the Bill of Entry/Packing List. Also, additional items viz., Headphone, Audio Cable, HDMI to lightening & HDMI to USB, Printed Circuit Board Strips and extra Packing articles were found to be undeclared in the Invoice, Packing List and Bill of Entry. The description & quantity of goods declared in the Bill of Entry/Invoice/Packing List, vis-à-vis, the description & quantity of goods found during examination of import consignment by the officers of DRI is tabulated hereunder: -

**Table-II**

Sr. No	Description as per Panchanama	Description as per Invoice /Packing List	Qty (PCS) As per Panchanama	Qty as per Invoice	Unit of Qty as per Invoice	Qty (Pcs) as per Invoice	Difference Invoice quantity minus actual quantity (Pcs)	Remarks/s/ quantity found (excess/less)
1.	USB Data / Charging Cable	USB Cable	254615	21408.59	dozen	256903.08	2288.08	Less
2.	Power Bank	Charging Connector Socket	4971	434	dozen	5208	237	Less
3.	Earphone	Earphone	19980	1625	dozen	19500	-480	Excess
4.	Car Mobile Charging Adaptor	USB Dock	5400	458.33	dozen	5499.96	99.96	Less
5.	Mobile Phone Cover	TPU Cover	12371	1266.67	dozen	15200.04	2829.04	Less
6.	Mobile Phone Battery	Battery/PCB	34818	2904	dozen	34848	30	Less
7.	Mobile Screen Guard (Tuffened Glass)	Screen Guard (Tuffened Glass)	510244	3556	gross	512064	1820	Less
8.	Touch Screen	Touch Screen	3200	266.67	dozen	3200.04	0.04	Slightly less
9.	Wireless mini Speaker	Mini Speaker	415	36	dozen	432	17	Less
10.	Mobile plastic holder	Plastic holder (for mobile)	60000	5000	dozen	60000	0	OK
11.	Bike Mobile Holder	Side Bumper (for mobile)	993	84	dozen	1008	15	Less
12.	Selfie stick for mobile	Stick (for selfie)	1987	167	dozen	2004	17	Less
13.	Headphone	Not declared in bill of entry	1475				-1475	Excess
14.	Audio Cable		500				-500	Excess
15.	HDMI to lightening & USB		232				-232	Excess

16.	Printed Circuit Board Strips (50 units in one strip)	440 Strips				440 Strips	Excess
17.	Packing articles	47346				-47346	Excess

6. During the course of detailed examination, some of the items of the subject consignment appeared to be of brands viz Xiom (Mi), Oppo, Vivo, JBL, Nokia, Samsung, Sony etc. The representatives of these brands were contacted and requested to give opinion in respect of such branded items. Representative of Samsung and Sony visited CFS premises and inspected items having marks / brands of said companies during Panchanama proceedings dated 28.09.2017. They opined that the Samsung and Sony branded goods appeared to be counterfeit.

7. Whereas, some of the goods viz. Mobile Battery and Power Banks imported in said consignment are covered under Schedule of Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order 2012 vide S. O. 2905 (E) dated 7th November 2014 and are allowed to be imported by person registered with Bureau of Indian Standards (BIS). Further, CIF value of entire goods declared in Bill of Entry was shown as **Rs.14,87,806/-** only while Market Price of some branded goods only as per brands mentioned thereon as checked on e-commerce websites appeared to be around **Rs.4.31 Crores** as on the day of inquiry conducted through e-commerce websites and worksheet prepared thereon.

8. Thus, *prima facie* on examination of goods conducted at Warehouse No. 1, MICT CFS, Mundra Port vide above mentioned Panchanamas, it was found that there were multiple counts of violations of Customs Act such as undervaluation, outright mis-declaration, non-declaration/ concealment and an attempt to import prohibited & deemed prohibited goods as also violation of allied Acts, involved in the instant import. It was also observed that the goods, as mentioned in the packing list were mis-declared in respect of quantity, brand name or actual feature of goods to avoid the provisions of BIS or other compliances required under law. The details of specification, compatibility etc. were also not declared and the invoice referred to only generic description of goods. The value of these types of goods depends on the qualitative standards as well, apart from the specification having been used for manufacturing the goods. For example, the charging in a mobile battery could last for 10 hours, 15 hours or 24 hours depending on the mAh (milli ampere hour) specification which is a measure of how long a battery will run before recharging. Therefore, merely the description given on the imported products was not sufficient for depicting the true qualitative standard of the products. The goods also appeared to be highly undervalued. Thus under a reasonable belief that the said consignment was being imported by resorting to multiple violations of Customs Act as also violation of IPR Enforcement Rules, 2007 and Violations of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 as amended, the import consignment was placed under seizure vide Seizure Memo dated 29.09.2017 for further investigation and the seized goods were handed over to Shri Abdulgani Khatri, Executive of M/s. MICT Pvt. Ltd. , CFS, Mundra under Supratnama dated 29.09.2017.

8.1. During the course of investigation, it was noticed from the data available on Systems that in the name of the importer M/s. Crescent Traders, import of 06 consignments were made at Delhi Air Cargo and following 01 consignment was imported at Mundra port:-

**Table-iii**

Bill of Entry No. and Date	Item declared	Qty	Declared Assessable Value (in Rs.)	Total Duty paid	Name of Customs Broker
3016001 dated 28.08.2017	USB cable (parts and accessories of mobile)other details as per invoice and packing list	10500 (DOZ)	234911.35	558848	M/s. All Marine Cargo Services-BASPR6595QCH002)
	Charging cable (parts and accessories of mobile)other details as per invoice and packing list	975 (DOZ)	51325.17		
	Earphone (parts and accessories of mobile)other details as per invoice and packing list	5487 (DOZ)	259958.04		
	Mobile display (parts and accessories of mobile)other details as per invoice and packing list	7086	139880.83		
	TPU cover (parts and accessories of mobile)other details as per invoice and packing list	267 (DOZ)	6324.84		
	Mobile cover (parts and accessories of mobile)other details as per invoice and packing list	3690 (DOZ)	121403.77		
	Screen glass (parts and accessories of mobile)other details as per invoice and packing list	89 (GRS)	9721.51		
	Touch screen (parts and accessories of mobile)other details as per invoice and packing list	3446 (DOZ)	163261.42		
	Polyester knitted fabric other details as per invoice and packing list	5069 (KGS)	963953.15		

9. Whereas, pursuant to the specific intelligence available with DRI, inquiry was also conducted by way of searches/visits by the officers of DRI at various related premises under Panchnamas dated 22.09.2017, 23.09.2017, 24.09.2017. The list and brief summary is as follows:-

Sl. No.	Panchnama dated	Panchnama Drawn at and outcome thereof
1	<b>Panchnama dated 22.09.2017</b>	drawn at Residence premises of Shri M. Loganathan, Superintendent of Customs, SIIB, Mundra situated at 13, Illark Banglow, Gansam Part-I, Mundra:-No incriminating documents related to import made by M/s. Crescent Traders, Dombivali (W) vide Bill of Entry No. 3130325 dated 06.09.2017, was found.

2	<b>Panchnama dated 23.09.2017</b>	drawn at SIIB Section of Customs House, Mundra, Room No. 301, Port User Building, Customs House, Mundra:- No incriminating documents related to import made by M/s. Crescent Traders, Dombivali (W) vide Bill of Entry No. 3130325 dated 06.09.2017, was found.
3	<b>Panchnama dated 23.09.2017</b>	drawn at Office premises of M/s. Sitaram Finance/Enterprises, Opp-Swami Narayan Mandir, Baroi Road, Mundra(the firm owned by Shri Rajdeepsinh Jadeja with whom Shri Ankit Travadi had financial dealings); -No incriminating documents related to import made by M/s. Crescent Traders, Dombivali (W) vide Bill of Entry No. 3130325 dated 06.09.2017, was found.
4	<b>Panchnama dated 24.09.2017</b>	drawn at office premises of M/s. Crescent Traders, 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombivali (West), Mumbai:- During the course of search conducted at said address which was consisting one room, kitchen & bathroom was mentioned as registered address of M/s. Crescent Traders in the IEC records, it was found that at this address one Shri Shridhar D. Kumbhar was residing with his family. It was gathered during search that Shri Shridhar D. Kumbhar was living there as tenant since one and half years and he did not know anything about M/s. Crescent Traders; that the said premises belonged to one Shri Gopichand Fulsing Tanwar who was working as Police Head Constable at Kulgaon Police Station, Badlapur (E). No document related to M/s. Crescent Traders, Dombivali (W) or Bill of Entry No. 3130325 dated 06.09.2017, was found during search.
5	<b>Panchnama dated 05.10.2017</b>	drawn at Office premises of M/s. Dabke Clearing & Forwarding Pvt. Ltd., 213, Kashish Arcade, Zero Point, Mundra (company in which Shri Mayur Mehta was Director) :- During the search, printouts of documents related to Bill of Entry No. 3130325 dated 06.09.2017 in the name M/s. Crescent Traders, Dombivali (W) were taken out from computer installed there and were resumed under Panchnama.(Page No. 33-49 of resumed file).
6	<b>Panchnama dated 05.10.2017</b>	drawn at office premises of Customs Broker M/s. All Marine Cargo Services, Office No. 110-112 B, 1 <sup>st</sup> Floor, Rishabh Corner, Sector-8, Gandhidham:-During the search, copy /printout of Bill of Entry No. 3130325 dated 06.09.2017 and other related documents such as Invoice, Packing List, Bill of Lading, IEC Certificate, KYC documents etc. were found and resumed by officers of DRI and also printouts of various email conversations between Shri Shera Ram Mehra of M/s. Krishna Shipping Logistics and M/s. All Marine Cargo Services related to preparation of documents for import made M/s. Crescent Traders were taken into possession by the officers of DRI. Also, similar set of documents in respect of another Bill of Entry No.3016001 dated 28.08.2017 of M/s. Crescent Traders was also resumed by the officers. KYC documents of M/s. Crescent Traders were handed over by Shri Amit Singh, Overall Incharge of M/s. All Marine Cargo Services for their Gandhidham office.

7	<b>Panchnama dated 05.10.2017</b>	drawn at office premises of M/s. Krishna Shipping & Logistics, Office No. 49, Ground Floor, Manali Tower, Plot No. 110, Sector-8, Gandhidham:- During the search, printouts of email conversations between M/s. Dabke Clearing and Forwarding Pvt. Ltd. and Shri Shera Ram Mehra of M/s. Krishna Shipping Logistics were taken and resumed by DRI officers. As per these email conversations, the latter asked for providing various documents required for filing Bill of Entry of M/s. Crescent Traders. In response, the former provided documents such as KYC documents, CHA appointment letter, Invoice, Packing List, Bill of Lading, IEC Certificate etc. to get filed Bill of Entry on behalf of M/s. Crescent Traders. Printouts of email from M/s. All Marine Cargo Services were also taken in which the check-list for filing Bill of Entry was sent to M/s. Krishna Shipping & Logistics for approval and confirmation of HS Codes. From such emails, it appears that M/s. Dabke Clearing and Forwarding Pvt. Ltd. assigned the work of filing Bill of Entry for M/s. Crescent Traders to M/s. Krishna Shipping & Logistics who further re-assigned the work of filing Bill of Entry to M/s. All Marine Cargo Services, Gandhidham. Another set of similar printouts in respect of another Bill of Entry No.3016001 dated 28.08.2017 of M/s. Crescent Traders was also resumed by the officers from the email of M/s. Krishna Shipping Logistics.
8	<b>Panchnama dated 05.10.2017</b>	drawn at Residence of Shri Vaibhav Dholakia (Soni), B-5, Rajhans Building (Apartment), Opp.-Raymond Showroom, Baroi Road, Mundra (with whom Shri Ankit Travadi had financial dealings):-No incriminating documents related to import made by M/s. Crescent Traders, Dombivali (W) vide Bill of Entry No. 3130325 dated 06.09.2017, were found.
9	<b>Panchnama dated 06.10.2017</b>	drawn at office premises of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Shop No. 1, Tony Compound, Road No. 1, Sahar Village, Andheri (E), Mumbai:-It was gathered that M/s. Dabke Clearing & Forwarding Pvt. Ltd. had already left this rented premises, no incriminating documents related to import made by M/s. Crescent Traders, Dombivali (W) vide Bill of Entry No. 3130325 dated 06.09.2017, were found.
10	<b>Panchnama dated 06.10.2017</b>	drawn at Shop No. 591/592 of M/s. Connect Mobile, City Centre Mall, 2 <sup>nd</sup> Floor, Bellasis Road, Opp.- BEST Bus Depo, Mumbai Central(shop owned by Shri Nasir Khan, the actual beneficiary owner of consignment covered under Bill of entry No. 3130325 dated 06.09.2017.During Panchnama proceedings, various documents such as IEC certificate in the name of M/s. Crescent Traders, Proprietor-Shri Sandesh Tanwar, Unsigned Cheque Leaves bearing Cheque No. 000009 to 000050 in respect of Bank Account No. 004820110000435 of M/s. Crescent Traders, Photocopy of PAN Card of Shri Nasir Phundan Khan (AWBPK7697N), Visiting Card of M/s. Connect Mobile etc. were found and resumed by the officers of DRI on a reasonable belief that the same would be useful in

		Further investigation The shop Connect Mobile was owned by Shri Nasir Khan and thus, it appeared from the resumption of Chequebook, IEC Certificate etc. of M/s. Crescent Traders from the shop premises of M/s. Connect Mobile, Owner-Shri Nasir Khan, that Shri Nasir Khan was the actual beneficiary owner of M/s. Crescent Traders.
11	<b>Panchnama dated 07.10.2017</b>	drawn in relation to handing over of Mobile Phones for investigation purpose by five SIIB officers viz. S/Shri Amit Das, M. Loganathan, Deepak Khatri all Superintendents and Gaurav Kumar, Sudhanshu Tyagi both Preventive Officers of Mundra Customs at office of DRI Regional Unit, Gandhidham:- All the officers voluntarily handed over their mobile phones under Panchnama for further investigation of the case.
12	<b>Panchnama s dated 06.08.2018 , 08.08.2018, 09/10.08.2018</b>	drawn at Central Forensic Laboratory, DRI, Mumbai Zonal Unit, Ground Floor, UTI Building, 13, Sir Vithaldas Thackersey Marg, Opp.-Patkar Hall, New Marine Lines, Mumbai-20 in relation to data retrieval from the electronic devices/mobile phones resumed/voluntarily surrendered by the officers of SIIB, Customs House Mundra and other persons. The data stored in some of the mobile phones/electronic devices could be retrieved and exported to the destination external Hard Disc Drives
13	<b>Panchnama dated 16.10.2017</b>	Drawn at office of DRI, Regional Unit, Gandhidham situated at Plot No. 193, Sector-4, OSLO, Gandhidham in relation to tracing a contact number of 'Vijay Kumar Angadia' from the mobile phone of Shri Chirag Travadi which was handed over by Shri Chirag to DRI officers on 23.09.2017 for investigation purpose. During the Panchnama proceedings, it appeared that Shri Ankit Travadi (ANKEET BHAI) had sent a contact no. of Shri Vijay Angadia (+919925207826) through message to Shri Chirag on 21.09.2017 in connection with the collection of Rs. 8 lakh from Bhuj.
14	<b>Panchnama dated 03.08.2018</b>	drawn by the officers of DRI at Mundra in presence of two independent Pancha witnesses in relation to market survey for getting average wholesale market prices of similar or identical goods imported at or around the time of import in the present case, from China and sold in India. During the Panchnama proceedings, three different mobile accessories shop owners gave their unanimous opinion regarding the average wholesale market prices of similar or identical goods imported at or around the time of import (within 90 days of the date of import i.e. 06.09.2017) in the present case, from China and sold in India in the presence of two independent Panchas. On the basis of average/per piece value suggested by the three mobile accessories shop owners, and total quantity of goods imported vide Bill of Entry No. 3130325 dated 06.09.2017, the total wholesale market value of such goods arrived at was taken to be Rs. 2,03,63,072/-.

15	<b>Panchnama dated 23.08.2018 and 24.08.2018</b>	drawn in the office premises of DRI, Regional Unit, Gandhidham in connection with valuation of goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 on the basis of inspection/examination of samples drawn by officers of DRI under Examination Panchnamas dated 23.09.2017, 25.09.2017, 26.09.2017, 27.09.2017 and 28.09.2017. Shri Athul B., Chartered Engineer/ Authorised Representative of DGFT approved valuer firm M/s. Value Guru Chartered Engineers & Valuers Pvt. Ltd., Shop No. 61, Ground floor, Shakthi Shopping Centre, Sakthi Nagar, Mundra (Kutch) appeared for aforesaid purpose and inspected/examined all the samples from all aspects, took their photographs with their packing box in presence of two independent Panchwitnesses and informed that their company would further examine the quality and other characteristics of items of these samples on the basis of their description and photographs taken by him. He also informed that their company will, if required, carry out market survey through their various sources to arrive at a reasonable value of goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 by M/s. Crescent Traders, Dombivali (W), Dist-Thane, Maharashtra.
16	<b>Panchnama dated 09.04.2019</b>	<b>drawn at the residential premises of Shri Nasir Khan, Flat No. 18, 5<sup>th</sup> Floor, Central Court, Motibai Street, Agripada, Mumbai.</b> During search some documents including documents relating to the firm being run by him were found available at the said premises which were taken into possession by the visiting officers.
17	<b>Panchnama dated 09.04.2019</b>	<b>drawn at the residential premises of Shri Uves Khakhu, situated at Irfan House, Room No. 4, First Floor, Greenland CHS. Opp. Nair Road, Agripada, Mumbai.</b> During search some documents including documents relating to the firm being run by him and documents relating to Shri Nasir Khan were found available at the said premises which were taken into possession by the visiting officers.

**10.** The data exported from the one of the mobile phones of Shri Nasir Khan was examined from such destination external Hard Disc Drives and relevant data/audio clips/voice messages retrieved from the mobile phone of Shri Nasir Khan which were found useful as evidence in investigation ; some of the audio clips / voice messages traced out from one of the mobile phones of Shri Nasir Khan are copied from HDD bearing S. No. 75HZS77CSTT1 to a CD/DVD.

**11.** During further investigation, the chats/messages/audios/image etc. and other related contents were traced out from the mobile phone of **Shri Nasir Khan**. **The owner of the mobile phone did not join the investigation** in spite of issuing repeated Summons to him, hence, the content of chats/messages/audios/images etc. is explained in the **Annexure-P** attached to subject Show Cause Notice as per the facts and case. The subject Chats have been copied from the Hard Disc Drive (Toshiba make Sr. No. 75HZS77CSTT1) containing data extracted from various electronic devices under panchnama to a

CD/Pendrive and enclosed. The data containing in mobile phones of Shri Mayur Mehta, Shri Ankit S. Travadi, Shri Deepak Khatri, Shri M. Loganathan and Shri Nasir Khan (01 of 02 mobile phones) could not be extracted completely at DRI, CFL Mumbai and hence these devices were sent to **Directorate of Forensic Science, Gandhinagar**, however except the Memory card of mobile phone of **Shri Ankit Travadi**, the data of other devices could not be extracted at DFS, Gandhinagar also.

**12.** The samples drawn by officers of DRI viz samples of imported Mobile Batteries were examined by Shri Sanjay Solanki, Authorised Representative of M/s. ASUS Technology Pvt. Ltd., and Samples of mobile phone accessories viz. Mobile Back Cover and USB cable said to be of Apple/iPhone, were examined by Shri Damian Fereira, Authorized Representative of M/s. Griffin Intellectual Property Services Pvt. Ltd. (authorized by M/s. Apple Inc.) whereby they informed that prima facie subject items appeared to be copy or counterfeit.

**STATEMENTS AND INQUIRY:**

**13.** During the course of investigation of the case, statements of various concerned persons with respect to the subject import of the subject consignment were also recorded. The brief of statements are as follows:

**13.1. Statement of Shri Ankit Shaileshbhai Travadi working in M/s Dabke Clearing and Forwarding Pvt. Ltd., Mundra**, recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 23.09.2017 wherein he interalia stated that Shri Mayurbhai Mehta, Director of M/s Dabke Clearing and Forwarding Pvt. Ltd. instructed him to find out any suitable Customs Broker for filing Bill of Entry for one import consignment of mobile accessories and then he contacted one Shri Sheraram Mehra of M/s Krishna Shipping, a freight forwarder and fixed the price and agreed to get the consignment cleared. Shri Sheraram Mehra approached Customs Broker M/s All Marine Cargo Services, Gandhidham who filed the Bill of Entry no. 3130325 dated 06.09.2017. Shri Ankit Travadi further stated that he received a call from one Bhavesh, H- Card holder of Customs Broker M/s All Marine Cargo Services that SIIB officers of Customs House Mundra were asking for the Bill of Entry file; that after the completion of assessment and duty payment on 12.09.2017, the file was given in SIIB Section where it was ordered for 100% de-stuffing of the cargo; that on 14.09.2017 and 15.09.2017, the goods were randomly examined by Shri Loganathan, Superintendent & Shri Gaurav, Preventive Officer both from SIIB section, Customs House Mundra and on 21.09.2017, differential duty of Rs 5,000/- was asked to be paid before clearance of the goods.

**13.1.1.** Shri Ankit Shaileshbhai Travadi further stated that the SIIB officers asked for favour of money for clearing the consignment; that he was the person who signed the Panchnama drawn by SIIB officers as Panch Witness-2 and he was directed by SIIB officers to put his signature in back date (18.09.2017) on the said Panchnama which was actually drawn on 21.09.2017. Shri Ankit Shaileshbhai Travadi also explained the Whatsapp chat had by him on 21.09.2017 with Shri Mayur Mehta regarding demand of money (Rs. 8.5 lakh) from SIIB officer Shri Dasin in relation to clearance of import consignment. He also stated that he was going to Bhuj to collect money from 'Angadia' after providing a Ten Rupee Note number to Shri Mayur Mehta but he returned back to Customs office and deposited extra Customs Duty challan of Rs. 5,000/- and his younger brother Chirag collected the money from 'Angadia'.

**13.2. Statement of Shri Ankit ShaileshbhaiTravadi working in M/s Dabke Clearing and Forwarding Pvt. Ltd., Mundra**, was also recorded on 29.09.2017 under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham wherein he inter alia submitted date wise events which took place in relation to clearance of consignment after examination by the officers of SIIB, Customs House, Mundra. He added that the imported goods involved in the container were examined by the SIIB officers by making two teams and the officers informed him that the goods were undervalued and there was involvement of duty in the consignment; that he called his boss Shri Mayur Mehta who discussed the matter with SIIB officers and directed him (Shri Ankit Travadi) to follow the instructions of SIIB officers; that on 21.09.2017, the SIIB officer Shri Das, Superintendent asked for Rs. 8.5 lakh to clear the consignment and Shri Mayur Mehta agreed to fix the deal at Rs. 8 lakh; that as per the direction of Shri Das they paid Rs. 5,000/- as extra duty and Shri Das obtained his signature on the Panchnama in back date i.e. 18.09.2017. Shri Ankit Travadi further reiterated that the amount of Rs. 8 lakh was arranged through Angadia and collected by his younger brother Chirag from Bhuj; that the said amount was given by him to Shri Rajdeep Sinh and Shri Vaibhav Soni (Dholakia) from whom he had borrowed earlier; that on 22.09.2017, he met Shri Das, Superintendent, SIIB and informed him about arrangement of money and in the evening Shri Das gave him the Bill of Entry file and told to show the Note Sheet to the Dock officers of MICT, Mundra; that the Dock officer Shri Charel, Superintendent had some doubt about name of Additional Commissioner for which Shri Das was contacted telephonically by Shri Ankit Travadi and Shri Das cleared the confusion of Shri Charel, Superintendent who accordingly gave out of charge of the consignment. Shri Ankit also stated that when he was leaving MICT CFS to hand over the Bill of Entry file to Shri Gaurav Kumar, Preventive Officer, SIIB, the DRI officers called him and started enquiries about the consignment. He also admitted that earlier one consignment of same goods and same importer was cleared under Bill of Entry No. 3016001 dated 28.08.2017.

**13.3. Another statement of Shri Ankit ShaileshbhaiTravadi working in M/s Dabke Clearing and Forwarding Pvt. Ltd., Mundra**, was also recorded on 07.10.2017 under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham wherein he inter alia submitted that the facts tendered by him in his earlier two statements dated 23.09.2017 and 29.09.2017 were correct.

**13.4. Statement of Shri Nirav H. Vasani, H Card Holder in Customs Broker firm M/s. VeljiDosabhai& Sons Private Limited, Office No. 203, 204, PUB Building, Customs House, Mundra** was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 07.10.2017 wherein he inter alia deposed that his name was appearing as Pancha Witness No.1 in the Panchnama shown to them which is said to have been drawn by the officers of SIIB, Mundra but he did not remember exactly about the facts of the said Panchnama dated 18.09.2017. He deposed that either on 21<sup>st</sup> or on 22<sup>nd</sup> September 2017, he received a call from SIIB Preventive Officer Shri Gaurav Kumar, Customs House Mundra in the evening who asked him (Shri Nirav. H. Vasani) to come to Room No. 301 in Customs House Building to sign on one Panchanama; that he went to Room No. 301 where Shri Gaurav Kumar Inspector and Shri Amit Das, Superintendent were present. Shri Amit Das asked him to sign the Panchanama in date of 18<sup>th</sup>

September 2017. Accordingly, he signed the Panchanama and put date as 18.09.2017 without going through the facts of the said Panchnama.

**13.5. Statement of Shri Chandan Singh, Resident of 62/G, Kalapurna Ashish, Opp.-St. Xavier's School, Baroi Road, Mundra, working in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham** was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 29.09.2017 in which he submitted that he being H Card Holder, went to SIIB Section, Mundra and handed over the Bill of Entry file to Shri Sudhanshu Tyagi, Preventive Officer, SIIB, Customs House Mundra; that he was not dealing with the said B/E file but Shri Bhavesh was handling B/E file and Shri Bhavesh sent him the B/E file with Shri Ankit to whom he (Chandan) met first time. He also clarified that on 21.09.2017, he put his signature on the Panchnama as per direction of SIIB officers in back date i.e. 18.09.2017 though he had not even read the said Panchnama drawn by SIIB officers.

**13.6. Statement of Shri Bhavesh N. Gori, Resident of Plot No. 12, Room No. 12, Opp-U S Villas, Baroi Road, Mundra, working as H Card Holder in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham** was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 03.10.2017 in which he submitted that he is H Card Holder, in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham but he gets salary from Shri Shera Ram Mehra, Prop. Of M/s. Krishna Shipping & Logistics; that he was attending field work assigned to him by Shri Shera Ram and he was dealing with routine work of assessment and clearance of kaoline from officers of Dock Examination; that Shri Chandan called him on 12<sup>th</sup> or 13<sup>th</sup> Sept., 2017 that Shri Sudhanshu Tyagi, PO, SIIB called for the B/E file but he asked Shri Ankit to give the B/E file to Shri Chandan. He further stated that on 21.9.2017, he was asked by Shri Shera Ram to reach SIIB, Mundra and sign on behalf of M/s. All Marine Cargo Services but he had reached home, so Shri Chandan had done so; that he did not know the importer of consignment under B/E No. 3130325 dated 06.09.2017 but he had earlier dealt with another consignment of same nature for which he had cut down the seal of container and Shri Ankit was also present there that time.

**13.7. Statement of Shri Abdulgani Khatri, Executive, MICT, CFS, Mundra** was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 29.09.2017 in which he submitted that on 14.09.2017 in the evening, as desired by Shri Tyagi, Preventive Officer of Customs, SIIB, Mundra he telephonically informed the said officer regarding shifting and de-stuffing of container no. PONU8179393. He also stated that on 22.09.2017, he put his signature on the Panchnama as per direction of SIIB officers in back date i.e. 18.09.2017 though he had not even read the said Panchnama drawn by SIIB officers.

**13.8. Statement of Shri Amit Kumar Singh, G-Card Holder and Power of Attorney Holder of Customs Broker Firm M/s. All Marine Cargo Services,** recorded under Section 108 of the Customs Act, 1962, before Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 06.10.2017 wherein he inter alia deposed that M/s. All Marine Cargo Services, Gandhidham is a proprietorship firm engaged in customs clearance and forwarding work. Its proprietor is Shri Subhanker Rastogi and he himself is holder of Power of Attorney of M/s. All Marine Cargo Services, Gandhidham and overall in-charge

of M/s. All Marine Cargo Services, Gandhidham; that he got the work of clearance of goods, i.e., mobile phone accessories imported by M/s Crescent Traders, Dombiwali (W) through Shri Sheraram Mehra, Proprietor of M/s Krishna Shipping and Logistics, Gandhidham. He further stated that he received copies of IEC, Letter of Bank of India confirming AD Code, GST Registration, Central Excise Registration, Reference Checklist, Aadhar Card of Shri Sandesh G. Tanwar (Proprietor of M/s. Crescent Traders as per ICEGATE website), Bill of Lading, Invoice, Packing List, Signature verification by Bank on letter head of said importer; that these documents were received by them from Shri Sheraram Mehra vide mail dated 23.08.2017 through his mail ID [info@krishnashippinglogistics.com](mailto:info@krishnashippinglogistics.com); that they have not verified the genuineness of the importer M/s. Crescent Traders, nor they had tried to contact any person of M/s. Crescent Traders. He further stated that they had fixed a charge of Rs. 5,000/- per container for customs clearance with Shri Sheraram Mehra.

**13.9. Statement of Shri Sheraram Mehra, Proprietor of M/s Krishna Shipping and logistics, Gandhidham**, was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 05.10.2017 wherein he inter-alia deposed that Shri Ankit ShaileshbhaiTravadi had approached him for clearance of cargo of mobile accessories and he agreed for the same on the price of Rs. 20,000/- and accordingly he forwarded this work to Customs Broker M/s All Marine Cargo Services.

**13.10. Statement of Shri Chirag ShaileshbhaiTravadi working in M/s. Dabke Clearing and Forwarding Pvt. Ltd., Mundra** recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 23.09.2017 who inter-alia deposed the facts as stated by Shri Ankit ShaileshbhaiTravadi in his statement dated 23.09.2017 and his Role and liability under Customs Act 1962 in the whole episode and how he collected money from *AngadiaatBhuj* and handed it over to his elder brother Shri Ankit ShaileshbhaiTravadi.

**13.11. Statement of Shri VikramjiAnandjiRajput, Manager in M/s. P. Vijay Kumar (Angadia), Maher Ali Chowk, Ridhi Sidhi Complex, 1<sup>st</sup> Floor, Vaniyawad, Bhuj and resident of Rajput Vas, Charup, Taluka Sarswati, District Patan, Gujarat** was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 01.11.2017 who inter-alia deposed that an amount of Rs. 8,00,000/- was given by him to one Shri Chirag Bhai on 21.09.2017 (Chirag Travadi). He produced the Slip (parchi)/Cash receipt in respect of the said handing of money; that on 21.09.2017 he received a call from their Mumbai office for payment of Rs. 8,00,000/- to one Shri Ankit Bhai; that the sender of the said amount as informed to him was one Shri Mayur Bhai but on being called Shri Ankit said that that his brother Chirag will come to collect the amount. Later on, the same day i.e. 21.09.2017, the amount Rs. 8,00,000/- was collected by Shri Chirag Bhai. He also explained the details available on the Slip (Parchi) and stated that as per practice they ask the person receiving the amount to fill the details in the slip (parchi). The details in the slip (Parchi) were filled by Shri Chirag Bhai at the time of receiving money; that the details available on slip were:  
- Received from **Mumbai**, Date- **21.09.2017**, Amount **800/-**, Receiver – **Ankit Bhai**, Mobile No. **8140408485** and **9574212855**, signed by **Shri Chirag Bhai**.  
On being asked, Shri Vikram Anand Rajput stated that the amount was mentioned in multiples of 1000s, so it was 800 instead of Rs. 8,00,000/-.

Receiver was mentioned as Shri Ankit bhai but money was collected by Shri Chirag bhai.

**13.12. Statements of Shri Rajdeepsinh Jadeja, Plot No. 53-A, Sitaram Nagar, Baroi Road, Mundra, Prop. of M/s. Sitaram Finance, Mundra and Shri Vaibhav Dholakia, B-5, Opp.-Raymond Showroom, Rajhans Tower, Baroi Road, Mundra,** Supervisor of M/s. Viable Associates, Mundra were recorded on 01.11.2017 and 06.10.2017 respectively in which they had interalia admitted the fact of lending money to Shri Ankit Travadi and also confirmed that Shri Ankit had returned Rs. 3 lakh and Rs. 5 lakh to them respectively on 21.09.2017.

**13.13. Statement of Shri Nathubhai L. Charel, Superintendent of Customs, Mundra** recorded under Section 108 of the Customs Act, 1962 was recorded on 07.11.2017, wherein he interalia submitted that he was posted in Dock Examination Section at Mundra since June, 2017. He further stated that in the Bill of Entry No. 3130325 dated 06.09.2017, the goods imported were 'mobile accessories'; that Shri Ankit Travadi came to him on 22.09.2017 with Bill of Entry file and requested for the Out of Charge of said consignment; that he gave the said consignment Out of Charge as per the approval of Additional Commissioner, SIIB, Mundra Customs on the Note Sheet of Bill of Entry file after confirming the fact from Shri Amit Das, Superintendent telephonically.

**13.14. Statement of Shri Mohammed Hanif Fakir Mohammed Shaikh, Resident of 306, C Wing, Jyoti Apartment, Narayan Nagar, Mumbra, Thane, Maharashtra,** was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 05.10.2017 wherein he initially presented himself as the **Power of Attorney Holder of M/s. Crescent Traders**, the declared importer in this case. He provided a visiting card of M/s. Crescent Traders containing his name showing it as one Shri Sandesh Tanwar. He also provided original/scanned Bill of Lading, Invoice, Packing List related to Bill of Entry No. 3130325 dated 06.09.2017. On being asked further, he could not reply to the questions related to the business activities of said importer and informed that he was a Salesman in a mobile accessories shop viz. M/s. Connect Mobile, 591/592, City Centre Mall, Bellasis Road, Opp. BEST Bus Depo, Mumbai Central-400008 which is run by its owner/controller Shri Nasir Khan; that he came to tender statement as per direction of Shri Nasir Khan who got prepared the said Power of Attorney in the name of Shri Sandesh Tanwar and he did not know who is Sandesh Tanwar and who signed the Power of Attorney on behalf of Shri Sandesh Tanwar.

**13.15. Statement of Shri Vinay Sadaka, Tax Assistant of Customs, working then as Cashier (now in Admin Section), Customs House, Mundra** was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 10.10.2017 wherein he interalia deposed that he was looking after the work related to manual deposits of duties/interest/penalty/fine etc. pertaining to importers/exporters by cash and by cheque and Demand Draft. On being asked about challan no. 1342 dated 21.09.2017 of Rs. 5000/- deposited by Broker M/s. All Marine Cargo Services on behalf of M/s. Crescent Traders, Shri Vinay Sadaka stated that on 21.09.2017, a person who appeared to be authorized signatory of Customs Broker M/s. All Marine Cargo Services requested him to deposit Rs. 5000/- in cash as duty on excess weight. Shri Vinay Sadaka provided an excel sheet of daily deposition amount related to import of 21<sup>st</sup> September, 2017 and specified the entry no. 1342 which was the last entry of 21.09.2017 and the same pertained to M/s. Crescent Traders.

**13.16. Statement of Shri Rajendrasinh Momayaji Jadeja, Officer in MICT, CFS, Mundra** was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 15.11.2017 wherein he interalia deposed that he was working as Warehouse Supervisor in MICT, CFS and his work was related to stuffing, destuffing, carting, delivery of Out of Charged cargo; that there are three warehouses in MICT CFS and CCTV cameras were installed in all warehouses of MICT CFS; that they place the cargo as per availability of space in front of CCTV camera; the clarity of capturing the view depends upon the position where the camera is installed. On being asked about goods/mobile accessories imported vide B/E No. 3130325 dated 06.09.2017, Shri Rajendrasinh Jadeja stated that the cargo was related to CHA/CB M/s. All Marine Cargo Services and the cargo was already destuffed from container when it was handed over to him (on 15.09.2017, as per duty schedule sheet) and it was known to him that the cargo pertains to SIIB examination; that his duty was off on 13.09.2017 and 14.09.2017, so he was not aware about the details about de-stuffing of said consignment. On being asked about the incidents happened on 15.09.2017 and 16.09.2017 at MICT CFS, he stated that he was the only person on duty and was looking after all the three warehouses of MICT CFS but he did not exactly remember whether any examination was done by Customs Officers on said dates for the said cargo as the same was not done in his presence; that security persons were always deployed in each warehouse and in general practice, the Customs Officers examine in presence of CHA/CB persons.

**13.17. Statement of Shri Kailash Chandra, Officer in MICT, CFS, Mundra** was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 15.11.2017 wherein he interalia deposed that he was working as Warehouse Supervisor in MICT, CFS and his work was related to stuffing and carting of export cargo and de-stuffing of import cargo; that his work also included guiding of security persons who were present in warehouse for security of cargo; that there are three warehouses in MICT CFS and CCTV cameras were installed in all warehouses of MICT CFS but as per his knowledge, there was no such instructions from MICT CFS regarding examination of cargo in CCTV camera by Customs officers, however, the CCTV cameras installed in the warehouse capture activities of complete warehouse area. On being asked the reason that the CCTV cameras were unable to clearly capture full warehouse view, Shri Kailash Chandra stated that being a technical matter, he was unable to state much about it. On being asked about goods/mobile accessories imported vide B/E No. 3130325 dated 06.09.2017, Shri Kailash Chandra stated that the cargo was related to CHA/CB M/s. All Marine Cargo Services and the cargo was already destuffed from container and was kept at Warehouse No. 1; that the cargo was handed over to him by previous warehouse Supervisor as was mentioned as SIIB examination cargo, however, in detail, he came to know about this when DRI officers came for examination of said cargo. On being specifically asked about the incidents happened from 17.09.2017 to 20.09.2017 related to said cargo, he stated that he did not remember. On being further asked whether any SIIB officer came for examination of aforesaid cargo during 17.09.2017 to 20.09.2017 (as Shri Kailash Chandra was not on duty on 15.09.2017 & 16.09.2017), Shri Kailash Chandra stated that as per his knowledge, no any officer came for examination of said cargo during the said period.

Summons dated 30.08.2018 was issued to Shri Ashokbhai Patel of M/s. P. Vijay Kumar & Sons, Mumbai, an Angadia firm in relation to record his

statement. Shri Ashokbhai Patel, Partner, M/s. P. Vijay Kumar & Sons, Mumbai vide his **letter dated 04.09.2018** has submitted that on 20.09.2017, Shri Mayur Mehta gave him Rs. 8 lakh to be sent to Shri Ankitbhai at their Bhuj branch; that the said amount of Rs. 8 lakh was collected by the recipient from their Bhuj branch under proper cash receipt; that he or his firm does not know any further details of Mayur Mehta, Ankit and Mobile Accessories issue and they also do not know the said sender/recipient personally.

**13.18. Statement of Mr. Sayyed Fahad Riyaj, Salesman at shop of M/s. Connect Mobile, 591/592, 2<sup>nd</sup> Floor, City Center Mall, Mumbai Central** was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham (Camp at Mumbai) on 26.07.2018 wherein he inter alia deposed that he was working as Salesman at M/s. Crescent Mobile (the board of Shop shows the name Connect) shop since October, 2017 and Shri Nasir Khan was the owner of that shop; that he was getting salary of Rs. 7,000/- per month in cash from Shri Nasir Khan who last visited that shop in June, 2018; that Shri Nasir Khan always makes call on the landline number of the shop from different landline numbers which were not remembered /written/saved by him and he was not aware about present address, contact number and other whereabouts of Shri Nasir Khan. On being asked how he was getting salary, he replied that as per direction of Shri Nasir Khan, he himself deduct his salary amount from the collection of sales of mobile accessories and balance collection amount was being given to any person who was told by Shri Nasir telephonically.

**13.19. Statement of Shri Mayur P. Mehta, Director of M/s Dabke Clearing and Forwarding Pvt. Ltd., 61, Rajendra S Tabela, Sahar Cargo Complex, Sutar Pakhadi, Opp. Cargo Complex, Sahar Village, Andheri(E), Mumbai-400099**, was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 22.10.2017 wherein he inter alia deposed that he came to know about M/s. Crescent Traders through Shri Nasir Khan (Mobile No. 9004200001) who was known to him since past 8-9 months and all the documents (i.e. Invoice, Packing List and Bill of Lading related to M/s Crescent Traders, Maharashtra along with KYC documents i.e., IEC Copy, PAN Copy, GST Copy, Address proof and other related documents for filing of Bill of Entry and clearance of the goods) were provided to him by Shri Nasir Khan (by hand) but he did not verify the genuineness of M/s. Crescent Traders. The status of the said company(firm) was showing online on the site of DGFT. He further stated that Shri Nasir Khan is having a shop of mobile accessories in City Centre, Mumbai Central, Mumbai and he gave him the work related to import and clearance of goods under the Bill of Entry no. 3130325 dated 06.09.2017 at Mundra Port related to M/s. Crescent Traders, Maharashtra (IEC No.0317524631); that he knew that Shri Nasir Khan does not have any IEC and is not concerned with M/s Crescent Traders in any way but still was providing all the documents related to the import made by the firm and he was also taking all the decisions in this regard on behalf of the firm. However, he had never verified the fact as to whether Shri Nasir Khan and Mr. Hanif Mohammad (Power of Attorney holder) are connected or concerned with the firm M/s. Crescent Traders, or not. He added that despite knowing all these facts, he went ahead for filing the bill of entry and clearance of the goods. Shri Mayur Mehta also informed that the draft checklist covering all the details such as CTH, description, duty structure, etc was prepared by Swati Vora alias Monika and forwarded to Shri Ankit Travadi for onward submission to the Customs Broker M/s All Marine Cargo Services. He further stated that he does not know Shri

Sandesh Tanwar who is shown as Proprietor of M/s Crescent Traders, also he did not know the business profile of M/s Crescent Traders.

**13.19.1.** Shri Mayurbhai further stated that the documents that were provided to him by Shri Nasir Khan were given by him to his staff Shri Ankit Travadi with a direction to approach any other Customs Broker for filing the bill of entry; accordingly, the Customs Broker M/s All Marine Cargo Services filed the said bill of entry. He admitted that the facts stated by Shri Ankit Travadi in his statements were correct. As regards the fact stated by Shri Ankit Travadi in his statement regarding demand of money from SIIB officers, Shri Mayur Mehta confirmed the Whatsapp conversation held by him with Shri Ankit Travadi and admitted that the above conversation was sent to him on his Whatsapp by Shri Ankit Travadi wherein Shri Ankit informed that Shri Das (SIIB Officer) was demanding Rs. 8.5 lakh. Shri Mayur Mehta also admitted that he went to SIIB Section, Room No. 301, IIIrd Floor, Mundra Customs House on 18.09.2017 and met SIIB officers, viz., Shri Longanathan, Shri Gaurav and Shri Khatri and they showed them the samples of the consignment and told about the issues related to under valuation, IPR and BIS with the goods and some of the goods would need to be destroyed; that he was told about the valuation aspect by SIIB officers and that the brand name was printed on the goods but some of these were not original; that the officers told that the duty element would be communicated after calculation from valuation aspect; that during the said conversation Shri Das, Superintendent also arrived in SIIB Section who was introduced to him by Shri Loganathan as his senior officer; that he (Shri Mayur Mehta) communicated with Shri Nasir Khan and conveyed him that he was shown the subject goods by SIIB officers, the cost of the goods appears too much and asked him why he undervalued the same; that Shri Nasir Khan asked to settle the matter any how by way of making payment of duty/interest/fine etc. Shri Mayur Mehta further deposed that the SIIB officers told him that there might be chances of differential duty comes to Rs. 35-40 lakhs appx. and enhancement of total value to more than Rs. One Crore. As the matter was taking too much time to settle, he directed Shri Ankit to sort out this issue by any means. Finally, he got call from Shri Ankit on 21.09.2017 to arrange Rs. 8.5 lakh for clearing the subject goods but he (Shri Mayur Mehta) told him to negotiate with Rs. 8 lakhs. Thus, the deal was finalized at Rs. 8 lakh for which Shri Nasir Khan also agreed and gave Rs. 8 lakhs to him (Shri Mayur Mehta) on 21.09.2017 which was forwarded through Angadia of Mumbai for further delivery to Bhuj; that as per his directions, Smt. Swati Vora alias Monika provided the number of ten rupee note to Shri Ankit to be told to Angadia for collecting cash of Rs. 8 lakh and the amount was received by Shri Ankit from Angadia in Bhuj and confirmed its receipt the same day. On 22.09.2017, Shri Ankit informed him that he got the consignment out-of-charge. He also stated that he (Shri Mayur Mehta) was the link person between the importer and customs and he mediated between them in case of any issue arises; that he was the person who initiated the solution for getting rid of the said issue by offering money to the concerned officers through Shri Ankit Travadi. Shri Mayur Mehta also deposed that he had deleted the photographs of the goods taken during the examination done by SIIB Officers and forwarded to him by Ankit Travadi and he had also deleted the Whatsapp chats regarding the money transfer involving Shri Nasir Khan, Angadia and Ankit Travadi.

**13.20. Summons dated 18.10.2017, 23.10.2017 and 06.11.2017 were also issued to Shri Sandesh G. Tanwar, R/o-Garibacha Wada, Dombivali (W), Tal-Kalyan, Dist-Thane, Maharashtra who is mentioned as Proprietor of M/s. Crescent Traders as per IEC Certificate.** In response, Shri Sandesh Tanwar,

vide letter dated 03.11.2017 sent by Speed Post informed DRI that he had no concern with M/s. Crescent Traders in any way but his father Shri Gopichand Fulsingh Tanwar was the owner of Room No. 1/10, Sai Dham Colony, Maharashtra Nagar, Dombivali (W), Dist-Thane and the said room was given by his father to Shri Shridhar D. Kumbhar for leave and license for a period upto 31.03.2018. **Shri Sandesh Tanwar, vide his further letter dated NIL received on 06.08.2018 has submitted that his friend Shri Sarvesh Subhash Yadav offered him a job in event management for which he collected copy of his Adhar Card, PAN Card and two passport size photos which were subsequently handed over to a person namely Shri Suraj Singh, R/o- Ambernath Taluka-Ambernath, Dist-Thane, Maharashtra on 24.05.2017; that Shri Suraj Singh paid him Rs. 400/- that day but he neither provided opportunity for job, nor returned his documents containing the address as 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombivali (W), Dist-Thane, Maharashtra. Shri Sandesh Tanwar further stated vide said letter that when he came to know that his name being used as Proprietor/ Director of M/s. Crescent Traders, 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombivali (W), Dist-Thane, Maharashtra, his father Shri Gopichand Tanwar lodged a complaint to Sr. Police Inspector, Vishnunagar Police Station, Dombivali(W) on 06.11.2017 and subsequently to Commissioner of Police, Thane City on 01.08.2018.** He added that he did not know any transaction regarding import made by M/s. Crescent Traders and he belongs to a poor family and presently studying in Second Year (Commerce) in Thane College. Shri Sandesh Tanwar also stated that Shri Suraj Singh or his successor may have misused his documents and registered a fake company in the name of Crescent Traders.

The present status of such complaints was sought vide letter dated 17.08.2018 followed by various reminders. In response, a letter dated 03.01.2019 was received from Additional Commissioner of Police, East Regional Kalyan, Thane City, vide which it was informed that the statement of Shri Sandesh Gopichand Tanwar was recorded in C.R. No. I 217/2018 I.P.C u/s 420, 465, 467, 468, 471 of Vishnu Nagar Police Station on 11.10.2018 against non-applicant accused person Suraj Singh, Nasir Khan and other accused and investigation was going on. Further, vide letter dated 25.12.2020, the Sr. Police Inspector, Vishnu Nagar Police Inspector informed that they have submitted their report before Hon'ble Court in the matter.

**13.21.** Statement of Shri Sandesh Tanwar was recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham (Camp at Mumbai) on 13.08.2018 wherein he interalia stated same facts as submitted vide his aforementioned reply letter dated 03.11.2017. Shri Sandesh Tanwar in his said statement also stated that he had not signed any General Power of Attorney as was produced by Shri Mohd. Hanif Shaikh, the salesman of M/s. Connect Mobile, to DRI. He also stated that he did not know any Shri Nasir Khan and he did not receive any amount from him but he was paid Rs. 400/- only through his friend Sarvesh Subhash Yadav who informed him that Shri Suraj Singh gave this amount of Rs. 400/- to each person whose documents were taken for account opening in relation to job.

**13.22.** **Summons dated 24.08.2018 and 30.08.2018 were issued to Shri Suraj Singh, R/o- Ambernath (W), Nr. Fatima School, Taluka-Ambernath, Dist.-Thane, Maharashtra directing him to appear for tendering statement.** In response, Shri Suraj Singh, vide letter dated 04.09.2018 has stated that he

does not know about any Crescent Traders; that one person namely Haider Khan had taken over documents of some of his friends viz. Sarvesh, Sandesh including his documents in relation to job in event management; that his friend Sarvesh told him about creation of a fake company in the name of Sandesh Tanwar but they were not involved in such behaviour. Further Summons dated 30.04.2020, 21.05.2020, 07.08.2020, 15.12.2020 and 09.06.2021 were issued to Shri Suraj Singh in response to which he vide email dated 06.08.2020 informed that he had given all the information available with him. But he did not appear to tender his statement.

**13.23.** During the course of investigation, it was observed that as per IEC records, Bank Account number 004820110000435, Bank of India, Wodehouse Branch, Mumbai was used in said IEC. Inquiry from respective Bank, reveals that the said Bank Account was opened in 2012 in the name M/s. Crescent Traders (Prop.-Shri Girish Keshav Bapat), RE-22, SamrutiBanglow, Gymkhana Road, MIDC, Dombivali (E), Dist.-Thane, Maharashtra. There was no major transaction in the said Bank Account number except a few which were made at the time of account opening or in the year 2012. A team of officers of DRI visited the address of Shri Girish K. Bapat and gathered by recording statement of one Shri Rajesh Keshav Bapat, brother of Shri Girish K. Bapat that Shri Girish K. Bapat left their family since 2007 and they have no financial relation with Shri Girish K. Bapat and they were not at all concerned with the activities done by Shri Girish K. Bapat. Shri Rajesh K. Bapat in his statement dated 14.08.2018, interalia deposed that the Bank Account opening form and related documents viz. PAN card, Ration Card and signatures of Account holder were pertaining to Shri Girish K. Bapat but no correspondence or letter was received from the said Bank at their address till date. On being asked about M/s. Crescent Traders, Shri Nasir Khan, Bill of Entry No. 3130325 dated 06.09.2017 regarding import of mobile accessories, Shri Rajesh K. Bapat stated that he was not aware or concerned with these firm/ name/documents.

**13.24. Statement of Shri Nasir Khan, Resident of 18, Central Court, 5<sup>th</sup> Floor, Motibhai Street, Agripada, Mumbai-400001, Owner of M/s. Connect Mobile, Shop No. 591/592, 2<sup>nd</sup> Floor, City Centre Mall, Bellasis Road, Opp. BEST Bus Depot, Mumbai Central, Mumbai -400008:-** Summons dated 06.11.2017 and 16.11.2017 were issued to Shri Nasir Khan directing him to produce documents/details in relation to inquiry in respect of goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 and to tender statement. However, he did not appear before the investigating officers of DRI. His statement could be recorded only after the officers of DRI visited Mumbai for that specific purpose. In his statement recorded under Section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham (Camp at Mumbai) on 01.03.2018, Shri Nasir Khan interalia deposed that he was in the business of mobile accessories since 2011 and he made a plan to import mobile accessories from China; that he visited China in March, 2017 and inquired about goods, rates etc. He stated that he met Shri Mayur Mehta in Mumbai who suggested to provide papers of goods after loading of goods from China and rest work would be done by him (Shri Mayur); that Shri Mayur Mehta told him to provide IEC and promised to provide goods after clearance from Customs. But meanwhile Shri Mayur Mehta asked him to arrange for IEC at his own for which he met Shri Sandesh Tanwar who agreed to use his IEC in lieu of Rs. 5000/- per consignment. Accordingly, the IEC of Shri Sandesh Tanwar was created (by a person whom he did not remember) and provided to Shri Mayur Mehta. Shri Nasir Khan in his statement further deposed that he had

given Rs. 8 lakh to Shri Mayur Mehta till 21.09.2017 in relation to clearance of import consignment. He also stated that Shri Mohammad Hanif Fakir Mohammad was an employee of his shop Connect Mobile and he was sent by him as Power of Attorney holder as advised by Shri Mayur Mehta. As regards the goods imported vide Bill of Entry No.3130325 dated 06.09.2017, Shri Nasir Khan stated that there were some 'copy' and 'no copy' of goods in mix of some old lot which were not being sold in China. Shri Nasir Khan also admitted that the value mentioned in the invoice and packing list (provided by Shri Mohammad Hanif during his statement dated 05.10.2017) was not representing the actual value. Shri Nasir Khan voluntarily submitted his original passport bearing no. J6094766 and two mobile phones for investigation purpose.

**13.24.1.** Further various summons dated 01.03.2018, 13.03.2018, 27.03.2018, 13.04.2018 were issued to Shri Nasir Khan vide which he was directed to appear for tendering further statement and to provide details /documents required for investigation, however, he did not appear. A team of officers of DRI visited his residential society viz. Central Court, Motlibhai Street, Agripada, Mumbai Central on 25.07.2018 to record his statement but he was not available there and accordingly a Summons dated 25.07.2018 was handed over vide letter dated 25.07.2018 to the Manager of Central Court Co-operative Housing Society Ltd., Agripada, Mumbai Central with a request to deliver the same to Shri Nasir Khan who was directed vide said Summons to appear in DRI office on 02.08.2018. The said Manager, vide letter no. CCHSL/18-19/16 dated 26.07.2018 informed that the Summons dated 25.07.2018 was delivered at residence of Shri Nasir Khan. The said team of officers of DRI also visited the shop owned by Shri Nasir Khan in the name Connect Mobile situated at 591/592, 2<sup>nd</sup> Floor, City Center Mall, Mumbai Central on 26.07.2018 but Shri Nasir Khan was not present there and a Summons dated 26.07.2018 issued in the name of Shri Nasir Khan directing him to appear in DRI office on 02.08.2018 was handed over to Mr. Sayyed Fahad Riyaj, Salesman. Further Summons dated and 13.02.2020, 07.08.2020, 08.09.2020 and 30.11.2021. However, Shri Nasir Khan did not appear before investigating officers. **A Criminal Complaint bearing no. 223/2019 was accordingly filed against him before Ho'ble CJM Court, Mundra on 12.02.2019 under Section 174,175,176 of IPC.**

**13.25.** Further, various summons dated 09.04.2019, 03.05.2019, 16.09.2019 and 04.10.2019 were issued to Shri UvesKhakhu vide which he was directed to appear for tendering further statement and to provide details /documents required for investigation, however, he did not appear. **A Criminal Complaint bearing no. 1849/2019 was accordingly filed against him before Ho'ble CJM Court, Mundra on 31.12.2019 under Section 174,175,176 of IPC.**

**13.26** Similarly, various Summons dated 23.10.2017, 06.11.2017, 16.11.2017 and 23.07.2018 were issued to Smt. Swati Vora alias Monika, Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd. to record her statement or to get further documents/details related to the case against M/s. Crescent Traders; however, she did not appear to tender her statement and every time the Summons was returned back undelivered from her residential addresses through the Postal Authorities. A team of officers of DRI also visited the address of M/s. Dabke Clearing & Forwarding Pvt. Ltd. i.e. 61, Rajendra S. Tabela, Suthar Pakhadi, Near Sahar Cargo Complex, Village-Sahar, Andheri, Mumbai on 13.08.2018 and it was gathered that the office was closed since 8-10 months; hence, neither summons could be served upon Smt. Swati Vora, nor her

statement could be recorded. Address of Smt. Swati Vora was gathered from other cases being investigated against her and further Summons dated 20.11.2017, 31.07.2018, 27.09.2018, 01.10.2018 and 17.10.2018 were issued to Smt. Swati Vora but no response was received. Officers of DRI tried to locate whereabouts of Smt. Swati Vora but to no avail. Further, on visit at residence of Smt. Lata Suresh Vora (mother of Smt. Swati Vora) at A-702, Indralok Phase-I, Bhayander (East), however, Ms. Swati Vora was not found present there too and her mother Smt. Lata Suresh Vora as well as her brother Shri Rudren Vora told the visiting officers that they were not in contact with Ms. Swati Vora and they did not know her whereabouts as she had left their family around one year and half ago from that point of time. **A Criminal Complaint bearing no. 1850/2019 was accordingly filed against her before Ho'ble CJM Court, Mundra on 31.12.2019 under Section 174,175,176 of IPC.**

**13.27. Statements of officers of SIIB, Customs House, Mundra were also recorded under Section 108 of the Customs Act, 1962, before the DRI / Customs Officers. The briefs are as hereunder:-**

**(i) Shri S.J. Singh, Deputy Commissioner (then under suspension), SIIB, Customs House, Mundra.**

Statement of Shri S.J. Singh, then Deputy Commissioner, SIIB, Customs House, Mundra (posted at CGST & Central Excise Commissionerate, Ahmedabad South) was recorded as per Para 5.5 of CBEC's Vigilance Manual, 2017 before Assistant Commissioner (Vigilance), Customs House, Mundra on 09.05.2018. Shri S.J. Singh deposed in his statement that there was no informer behind the examination of goods imported vide B/E No. 3130325 dated 06.09.2017 filed in the name of M/s. Crescent Traders and no DRI-1 was filed in the said case; that sensitive items are examined by SIIB on random basis and said B/E was taken for examination based on sensitive goods and 1<sup>st</sup> time importer (*though not first time actually -on 28.08.2017 another B/E of same importer was cleared from same Customs House*); that the said B/E was cleared under RMS hence examination was not prescribed and permission was sought from Additional Commissioner (SIIB) to open and examine the container.

After seeing a printout of WhatsApp conversation between Shri Sudhanshu Tyagi, Preventive Officer, then posted at SIIB, Customs House, Mundra, Shri Singh stated that he had given oral instruction to Shri Tyagi to track the said B/E and put the file after payment of duty; that the duty was paid on 12.09.2017 and accordingly Shri Tyagi put up the file on 13.09.2017 after payment of duty. He also deposed that he marked the file to then Additional Commissioner, SIIB and then Shri Sudhanshu Tyagi had carried away the file from the office of Shri S.J. Singh but thereafter he was not aware whether the file was taken to Additional Commissioner (SIIB), or otherwise; that he (Shri S.J. Singh) had not seen the file after permission from the then Additional Commissioner, SIIB viz. Shri Girraj Prasad Meena.

Shri S.J. Singh further stated that after obtaining permission from Additional Commissioner, he had given direction to stop and examine the container of B/E No. 3130325 dated 06.09.2017; that on 14.09.2017, Shri Sudhanshu Tyagi, Preventive Officer informed him that Shri Tyagi was not able to conduct the examination of B/E No. 3130325 dated 06.09.2017 since his examination at Ashutosh CFS was pending and he (Shri S.J. Singh) accepted the request of Shri Tyagi. Shri Singh also stated in his statement that Shri Sudhanshu Tyagi had neither carried out examination of said B/E, nor he had handled the said B/E file in any manner; that Shri Deepak Khatri was also not

engaged in the said case in any manner. On being asked, Shri S.J. Singh stated that he had given oral direction to Shri M. Loganathan, then Superintendent (SIIB) for examination of B/E No. 3130325 dated 06.09.2017 as Shri Sudhanshu Tyagi was busy with examination of electronic goods at Ashutosh CFS; that he had followed the inquiry against said B/E upto stage of examination only.

On being specifically asked whether he had noticed that file number was not mentioned in the note sheet in this case, Shri S.J. Singh replied that he was holding two charges i.e. SIIB and Dock Examination and due to heavy work load, he did not notice the file number.

**(ii) Shri Girraj Prasad Meena (G.P. Meena), then Additional Commissioner, Customs House, Mundra:**

Statement of Shri Girraj Prasad Meena, then Additional Commissioner, SIIB, Customs House Mundra was recorded under Section 108 of Customs Act, 1962 before Joint Director, DRI, Ahmedabad Zonal Unit on 26.10.2017 in which he *inter alia* deposed as under:

- a) that he was holding additional charge of other sections of Customs Commissionerate, Mundra (SIIB, Docks Examination etc.) at the relevant time, in addition to his regular charge, as the other Additional Commissioner (in-charge SIIB & Dock Examination etc.), Shri B K Singh was on leave.
- b) He explained the movement of files for his room and stated that the possibility of destroying the file (which was not having proper file number and could be destroyed as private record) was very remote, as before every out of charge, the entire B/E docket has to be scanned by the Document Management Service Centre and DMS centre has to give receipt of the charges collected for the scanning and electronic storing of B/E docket;
- c) that the In-charge of CFS (Custom officer) has to ensure that docket has been scanned and stored before OOC. Shri Girraj Prasad Meena added that he did not see the file number inadvertently and allowed examination as sought by Deputy Commissioner (SIIB);
- d) that since he was holding additional charge having lot of work pressure, and also the file was pertaining to most important section(SIIB) of Custom House and being dealt by the Senior Most Deputy Commissioner (SIIB), he could not presume that the B/E file would be destroyed anytime as a private record as it did not contain proper file number.
- e) On being asked who (i.e. which officer) received the information of excess cargo in respect of B/E No. 3130325 dated 06.0.2017 and on which date and whether there was any informer behind the so-called input received by SIIB or whether any DRI-I was filed in this regard, Shri Girraj Prasad Meena stated that he did not inquire about the same as he was holding additional charge and he relied on Deputy Commissioner (SIIB), Mundra for such issues;
- f) that he was in good impression that the Deputy Commissioner (SIIB), must have taken care of all required procedure related to handling of information.
- g) On being asked whether he specified the percent of and nature of examination required to be conducted to execute the information,

Shri Meena deposed that SIIB wing of Customs department was specially designed and created for such type of execution of information and conducting investigation. Therefore, as per procedure the officers of SIIB were required to follow the due process during the investigation and as he was holding additional charge of SIIB, he did not go for such enquiry.

**(iii) Shri Binod Kumar Singh (B. K. Singh), then Additional Commissioner, Customs House, Mundra:**

Statement of Shri Binod Kumar Singh, then Additional Commissioner, SIIB, Customs House Mundra was recorded under Section 108 of Customs Act, 1962 before Joint Director, DRI, Ahmedabad Zonal Unit on 30.10.2017 in which he *inter alia* deposed as under:

- a) that he approved the proposal for clearance of imported goods on the basis of submissions of Deputy Commissioner (SIIB) who informed him that there is Panchnama and also there is nothing other than excess cargo, in view of examination of goods done under Panchnama.
- b) As regards the discrepancies in opening of file without having proper numbering and processing thereof without any objection, Shri Binod Kumar Singh stated that he was only Additional Commissioner present at the Mundra Custom House that day and there was no Commissioner present at Mundra Custom House;
- c) that Other Additional Commissioner had gone for meeting out station and due to heavy workload of his regular charge and link charge of his colleague ADC, he could not pay attention to these aspects which remained unnoticed by him. Also, the file was already routed through Inspector, Superintendent, two Deputy Commissioners and one Additional Commissioner (in-charge SIIB), so he could not pay attention on the file number mentioned on the file.
- d) On being asked who (i.e. which officer) received the information of excess cargo in respect of B/E No. 3130325 dated 06.0.2017 and on which date and whether there was any informer behind the so-called input received by SIIB, Shri Binod Kumar Singh stated that the file was already processed by the Deputy Commissioner and the Additional Commissioner (in-charge SIIB) in relation to information, so he did not enquire the same. The use of word 'examination' without giving percentage and nature of examination means/indicates the full examination of the cargo.
- e) On being further asked whether he did not find it strange that the percent of and nature of examination required to be conducted to execute the said information was not mentioned in the file by him, Shri Binod Kumar Singh replied that the use of word 'examination' without giving percentage and nature of examination means/indicates the full examination of the cargo.
- f) As regards any verification/explanation of quantity, assessable value and computation of duty on the said excess quantity required to be asked from Shri Amit Das, Superintendent (SIIB), Shri Binod Kumar Singh deposed that the Deputy Commissioner (SIIB) explained to him that excess cargo was found in examination which was carried out under Panchnama; that he had also explained that without examination/counting, reaching the figure of excess quantity and duty payable was not possible. Accordingly,

he did not enquire further regarding the calculation aspect as it was seen and examined by the Superintendent.

- g) that he had perused and interpreted the note sheets of B/E file and proposal put up by Shri Amit Das, Superintendent for clearance of import consignment under B/E No. 3130325 dated 06.09.2017. He stated that on the basis of certification of Shri Amit Das, Superintendent that other than the excess of (110 Screen Guards) nothing excess found, further there was no reason for rejecting the proposal of Superintendent (SIIB) and Deputy Commissioner (SIIB). Accordingly, he accepted the proposal for clearance of import consignment.
- h) he explained the movement of file from/to his room and also clarified that the information was related to excess cargo and therefore focus was on the quantity aspects only due to which he did not raise query regarding valuation angle in respect of import consignment covered under B/E No. 3130325 dated 06.09.2017.

**[iv] Shri Milan Kumar Singh, then Deputy Commissioner, SIIB, Customs House Mundra:-**

Statement of Shri Milan Kumar Singh, then Deputy Commissioner, SIIB, Customs House Mundra was recorded under Section 108 of Customs Act, 1962 before Joint Director, DRI, Ahmedabad Zonal Unit on 27.10.2017 in which he *inter alia* deposed as under:

- a) that he had to attend more than 40 file before his examination (used to be conducted in post lunch) and since the B/E file was already processed by Shri S. J. Singh, Deputy Commissioner (SIIB) and Shri G. P. Meena, Additional Commissioner (SIIB), so his more focus was on the content of the note sheet part. Regarding private file cover, he stated that due to heavy workload of files, normally 'opened' files were put up before the officer for instant decision and in this case, Shri Amit Das, Superintendent put up 'opened' file before him for decision on both occasions
- b) As regards the improper numbering of the subject SIIB file, Shri Milan Kumar Singh clarified that he was link officer charge as per office order dated 12.06.2017 issued from F. No. II/03-22/Estt/2016 issued by Principal Commissioner and he had never worked in SIIB, so he was not aware of the procedure related to file opening procedure and assignment of file number in SIIB.
- c) He further stated that as per B/E file, the information was that B/E no. 3130325 dated 06.09.2017 was containing excess cargo which has been not declared with the intention to evade customs duty. But as the file was already processed with regard to information, he focussed on the finding of examination;
- d) that he verbally directed Shri Amit Das, Superintendent to put up detailed note with respect to investigation and due to paucity of time, in short had additionally written remarks "Has any other difference, other than tampered glass, been noticed in the said cargo during examination".
- e) he also explained how he had perused and interpreted the note sheets of B/E file and proposal put up by Shri Amit Das, Superintendent for clearance of import consignment under B/E No. 3130325 dated 06.09.2017. He stated that on the basis of Panchnama that other than the excess of (110 Screen Guards) nothing excess found, he believed in

goodfaith that Panchnama was real and other than screen guard there was nothing excess found;

ii) that he had accepted the submission made by Shri Amit Das on NSP-III of B/E file after taking reasonable care as per his understanding and in good faith; further no other discrepancy except excess cargo was put before him even after his query and duty was also paid so he sent the file to Additional Commissioner for conclusion of investigation and clearance of cargo.

(v) **Shri Amit Das, then Superintendent of Customs, SIIB, Mundra** in his statement dated 06.10.2017 stated as under:

a) that at the Note Sheet of Bill of Entry File, it was mentioned that the consignment covered under Bill of Entry No. 3130325 dated 06.09.2017 contained excess /mis-declared cargo with intent to evade Customs duty and accordingly it was proposed that the container was to be opened and examined for which necessary approval was given by Additional Commissioner of Customs on 13.09.2017 in the evening;

b) that he came to know about the approval of proposal for examination on 19.09.2017 but no action could be taken till 20.09.2017. He also admitted that the Panchnama for examination of consignment was prepared as late as on 21.09.2017 and no examination of goods was carried out as mentioned in the Panchnama purportedly drawn on 18.09.2017 and no aspect of involvement of IPR issue was checked. Shri Das stated that he relied upon the words of Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer and on a subsequent date i.e. on 21.09.2017, he had drawn the Panchnama with dates indicating as 18.09.2017;

c) that the said two officers did not give him any feedback regarding the brands or any other violations in the matter. Shri Das denied that there was any conversation regarding demand of money other than the differential duty amount of Rs. 4,948/- but he admitted that the original Bill of Entry file was handed over by him to Shri Ankit Travadi without verifying his Authorization to appear before Customs authorities.

(vi) **Shri M. Loganathan, then Superintendent of Customs, SIIB, Mundra**:- In his statement dated 06.10.2017, inter alia stated that he alongwith Shri Gaurav Kumar, Preventive Officer had examined the cargo covered under Bill of Entry No. 3130325 dated 06.09.2017 of M/s. Crescent Traders, Dombiwali West on 15.09.2017; that he opened the Bill of Entry file by putting it a number 'F.No. BE No. 3130325 dtd. 06.09.2017' and he had not put the actual file number as per the prescribed method generated by entry in the designated File Opening Register; that he did not draw any Panchnama regarding verification done on 15.09.2017 as he was not authorized under any written order; that they counted the box and found to be 1025 boxes as per quantity declared in the Bill of Entry; he added that "*we checked some packages randomly and found it to be in accordance with packing list*"; that he did not check credentials of Shri Ankit Travadi of M/s. Dabke Clearing and Forwarding Pvt. Ltd.

(vii) **Shri Gaurav Kumar, then Preventive Officer of Customs, SIIB, Mundra**:- Shri Gaurav Kumar, Preventive Officer of Customs in his statement dated 06.10.2017 stated that he alongwith Shri M. Loganathan, Superintendent had examined the cargo covered under Bill of Entry No. 3130325 dated 06.09.2017 of M/s. Crescent Traders, Dombiwali (West) on 15.09.2017; that the tally sheet of de-stuffed goods prepared by the Surveyor was compared with the

packing list of the supplier and the cartons listed in both the documents was almost tallied except few boxes; he added that "However, some boxes with markings "PHP" did not tally with the packing list"; that on 18.09.2017, Shri Ankit Travadi alongwith one person Shri Mayur Mehta visited SIIB Section and on 21.09.2017, Shri Ankit Travadi met Shri Das Sir who was dealing with the Bill of Entry file but he has no idea what discussions took place between the two and he also did not have any idea for demanding/arrangement of money for clearance of consignment.

**(viii) Shri Deepak Khatri, then Superintendent of Customs, SIIB, Mundra:** - Shri Deepak Khatri, Superintendent of Customs, in his statement dated 06.10.2017, *inter alia* stated as under:

- a) that SIIB, Mundra had taken up inquiry /investigation regarding import consignment of M/s. Crescent Traders;
- b) that on 14.09.2017, Shri Ankit Travadi and a person who was introduced to him as Shri Mayur Mehta came to SIIB Section and inquired about Shri Tyagi;
- c) that Shri Tyagi was not present at that time; hence they (Ankit & Mayur) told him that a file of M/s. Crescent Traders was called for by SIIB. Shri Deepak Khatri further stated that he knew Shri Ankit as they had come across during another case booked by him in the past in Ashutosh CFS; that he met Shri Mayur Mehta first time on that day and Shri Ankit introduced him as his boss. Shri Deepak Khatri also stated that he had casually seen the Bill of Entry file when Shri M. Loganathan, Superintendent was busy but later on he sent Shri Ankit Travadi to Shri M. Loganathan;
- d) that on 16.09.2017, Shri Ankit Travadi approached him for clearance of goods covered under said Bill of Entry No. 3130325 dated 06.09.2017 but he again asked Shri Ankit to meet Shri M. Loganathan, Superintendent. On being asked to offer comments on statement of Shri Ankit that he (Shri Khatri) had told Shri Ankit that there was undervaluation in the cargo and he has to pay duty "Here or There", to which Shri Khatri replied that he had not passed any such remark to Shri Ankit indicating payment of duty/money;
- e) that on 18.09.2017, Shri Ankit Travadi and Shri Mayur Mehta visited SIIB Section but after courtesy wishing of Good Morning to him, they met Shri Loganathan and that he (Shri Khatri) was busy in his work. On being asked, Shri Khatri stated that he was not aware whether Ankit Travadi visited SIIB on 20.09.2017 or 21.09.2017, or not.

**(ix) Statement of Shri Sudhanshu Tyagi, then Preventive Officer of Customs, SIIB, Mundra** in his statement dated 06.10.2017, Shri Sudhanshu Tyagi, Preventive Officer of Customs stated that as per the directions of then Deputy Commissioner, he put up the Bill of Entry File on 13.09.2017 which was cleared under RMS and proposed for examination of import consignment; that the file was routed through Shri Amit Das, Superintendent and then Additional Commissioner allowed for examination of consignment on the Note Sheet of file; that he got cut open the seal and asked the Surveyor and the person of Custodian to de-stuff the goods and place it as per the packing list for facilitating the examination and then he left for Ashutosh CFS to carry out examination of other cargo; that he neither carry out any examination in respect of Bill of Entry No. 3130325 dated 06.09.2017, nor he had handled the relevant file.

**15.28. Statement of Shri R.R. Chaubal, Ex-manager in Bank of India recorded on 05.10.2018, wherein he interalia stated as under:**

- a) On being asked, Shri R.R. Chaubal stated that he joined Bank of India in 1977 as Clerk and after serving in the banking service for 39 years, he retired as Manager in Oct., 2016 from Bank of India, Wodehouse Road Branch, Colaba, Mumbai; that at that time he was not doing any profession and enjoying his life after retirement; that he was posted in Wodehouse Road Branch of Bank of India, Colaba, Mumbai for the period Oct., 2012 to Oct., 2016. On being asked to explain whether the name of Account holder/Proprietor in case of Proprietorship firm can be changed in the bank records for same Account number, Shri R.R. Chaubal replied in negative and stated that only further names can be added but the name of account holder/proprietor cannot be changed for same account number; that an account number is required to be closed in case there is change in the name of account holder/proprietor.
- b) On specifically being asked the rank/designation of bank employee who can verify the signature as per request of any bank account holder, Shri R.R. Chaubal stated that any employee of Bank in the rank of officer could verify the signature as requested by any account holder. On being asked further, whether he had officially dealt with signature verification work in respect of Bank Account holders in the Bank of India, Wodehouse Road Branch, Colaba, Mumbai where he was posted as Manager, Shri R.R. Chaubal stated 'yes'; that as a Manager, he was officially doing signature verification work in respect of Bank Account holders in the Bank of India, Wodehouse Road Branch, Colaba, Mumbai.
- c) On being asked that on what basis he used to verify the signature of Account holders in his Bank branch, Shri R.R. Chaubal stated that for the said purpose, the signature available on the request form of account holder were verified from the scanned signatures of the Account holder available in the Bank records /systems.
- d) On being asked that in case the signature of an Account holder was found matched with the signature available on bank records, and the applicant asks to issue signature verification certificate, what was the procedure to issue certificate certifying that the signature of particular account holder has been verified, Shri R.R. Chaubal stated that in such case, the bank stamp showing verification of signature was put on the body of application/request letter of the applicant alongwith stamp of officer (with his Id No.) who has verified the signature. On being asked whether there was any Sr. No./Request No./Code No. of such verification given for signature verification, Shri R.R. Chaubal replied in negative and stated that no such Sr. No. /Request No./Code No. was given in respect of verification of signature.
- e) On being asked further whether any record/entry of signature verification applications received and disposed of in the bank, was maintained in his Bank Branch, Shri R.R. Chaubal replied in negative and stated that normally, when such application was received, he used to check the signatures from Bank records/system and verify the signatures by putting prescribed stamp of Bank and his Employee Id No. as well as his dated signature on the body of application and return the same in original to the applicant. On being asked, Shri R.R. Chaubal stated that generally, 5 to

10 applications in a week were received during his tenure as Manager in Wodehouse Branch, Colaba, Mumbai regarding signature verification.

- f) Shri R.R. Chaubal was shown copy of KYC documents such as Bank Account opening form, PAN card, Ration Card, Form ST-1 of a Account Holder in respect of Account No. 004820110000435 in the name Crescent Traders (Prop./Applicant-Girish Keshav Bapat) and asked to offer his comments and asked whether he had seen such application form, signature of the applicant and other records in respect of the said account number. After perusal of the same, Shri R.R. Chaubal stated that he seen the KYC documents such as Bank Account opening form, PAN card, Ration Card, Form ST-1 of the Account Holder in respect of Account No. 004820110000435 in the name Crescent Traders (Prop./Applicant-Girish Keshav Bapat) and further stated that submit that the application form does not have any date on the account opening form for the said bank account number and hence I am unable to recollect whether this account was opened in the said bank branch during my tenure (Oct., 2012 to Oct., 2016), or otherwise. Since around 2 years period has already passed after my retirement, it is not possible for me to comment whether I have ever seen such application form, signature of the applicant and other records in respect of this account number.
- g) Shri R.R. Chaubal was shown scanned copy of a letter addressed to the Manager, Bank of India, Wodehouse Branch, Mumbai in which a request for signature verification was made by the Proprietor of M/s. Crescent Traders. As per the said letter, the signature verification was done in the similar manner as he had explained above and the stamp of Employee Id was also showing 124496 (his employee Id) with his name. Also, there was stamp of Bank of India, Wodehouse Branch which shown that the signature verification in respect of the said letter was done by him. He was asked to offer his comments. On being perused the same, Shri R.R. Chaubal stated that the signature available on the body of the said letter which were totally different from his signature; that also, the signature were made in the said letter as "For Bank of India.....Chief Manager" whereas he had never worked as Chief Manager, nor he had ever put his signature "For Chief Manager" in absence of regular Chief Manager; that it appears that somebody has tried to copy his signature; that since the signature available on this letter were not his whereas his Employee Id No. and name was there; that it appears that the stamp of bank as well as stamp showing his Employee Id No. were forged and this appears a case of fraud as he had not at all made those signature for verification of signature.
- h) Shri R.R. Chaubal, further shown scanned copy of a letter Ref. No. WHRD:14-16/06 dated 02.05.2017 of Bank of India, Wodehouse Road Branch, Mumbai addressed to the Assistant Commissioner of Customs, Nhavasheva in which the name and designation of issuing authority was mentioned as R. R. Chaubal, Senior Manager, Bank of India, Wodehouse Branch, Mumbai and asked to offer his comments and explain whether he had issued and signed the said letter. On being perused the same, Shri R.R. Chaubal replied in negative and stated that he had not signed the said letter. Shri R.R. Chaubal further added that he had not signed and issued the said letter as the signature available on the body of the letter were totally different from his signature; that also, the signature were made in the said letter as "For Bank of India.....Chief Manager" whereas he had

not worked as Chief Manager, nor he had ever signed For Chief Manager in his absence; that at the place of signature, there was no signature but a round seal which indicates that the letter was not genuine; that also, in same letter, there were two designations i.e. Senior Manager and Chief Manager but there was no signature available for Senior Manager and the stamp having his Employee Id which had been used in the letter, was used in the said letter too; that the most important thing was that he retired in Oct., 2016 whereas, the letter was issued on 02.05.2017 i.e. after six months from his retirement. Shri R. R. Chaubal, further added that there was a mention that the Current Account No. 004820110000435 was being maintained with the said bank branch in the name M/s. Crescent Traders since 10.05.2017 which was not possible as the letter was containing date of issuance as 02.05.2017; that it has also been discussed in the letter that the certificate was issued on specific request from Sandesh Gopichand Tanwar, Proprietor of M/s. Crescent Traders whereas in the bank account opening form for said account number shown to him, another person Shri Girish Keshav Bapat was shown as Proprietor/Applicant on behalf of M/s. Crescent Traders; that he had already stated that the change in name of account holder/proprietor was not possible in case of proprietorship firm for same account number; that it appears that this was a fraud in which somebody has tried to copy his signature and also used forged/fake stamp showing his employee Id No. and forged/fake letter head of the bank.

- i) On being asked, Shri R.R. Chaubal stated that as far as he re-collect, the letter reference number was given to outgoing letters from the Bank Branch, however, as regards allotment and mention of dispatch/outward number on the letters issued from the bank, the dispatch clerk of the bank was looking after that matter.

**15.29. Statement of Shri Shubhankar Rastogi, Proprietor of Custom Broker Firm M/s. All Marine Cargo Services, recorded on 07.03.2019, wherein he interalia stated as under:**

- a) that he had obtained CHA/CB license in the name of M/s. All Marine Cargo Services, Gandhidham wherein he was the Proprietor; that he was also doing marketing work (finding out clients) for his firm M/s. All Marine Cargo Services, Gandhidham, in Dubai.
- b) that he had obtained CHA/CB license in the name of M/s. All Marine Cargo Services, Gandhidham wherein he was the Proprietor;
- c) that he was also associated with M/s. Bright view General Trading FZC, Dubai and M/s. GCF Cargo Services LLC/Pridel Cargo LLC, Dubai in which he was working as trading agent/broker as these companies were in the field of trading of millets, salt etc.;
- d) that he was also doing marketing work (finding out clients) for his firm M/s. All Marine Cargo Services, Gandhidham, in Dubai.
- e) that Shri Amit Kumar Singh, G-Card holder and the Power of Attorney holder in M/s. All Marine Cargo Services, Gandhidham filed the Bs/E No. 3016001 dated 28.08.2017 and 3130325 dated 06.09.2017 using the password allotted to him; that as KYC requirement, they call for self-attested copy of PAN Card, IEC Certificate, GSTIN/Central Excise/Service Tax Registration Certificate, Bank Details and Signature verification from Bank etc.

- i) On being asked whether his firm verify the genuineness/existence of importer M/s. Crescent Traders, Shri Shubhankar Rastogi stated that Shri Amit Kumar Singh, the Power of Attorney holder and In-charge of his firm at Gandhidham can reply for the same as he looks after the work at Gandhidham and he (Shri Shubhankar Rastogi) mostly used to look after the work from outside India;
- g) that he asked about verification of the importer from Shri Amit but he informed him that the importer was producing various documents issued by the Govt. Departments, accordingly he did not ask further about genuineness/existing of the importer after assurance from him.
- h) On being asked, whether they have made any effort to call or contacted the importer before proceeding for filing the Bill of Entry in case of import of goods, Shri Shubhankar Rastogi stated that mostly they did not call or contact the importer and they proceed for filing Bill of Entry on the basis of self-certified documents produced by the importer or his representative which were issued by the Govt. Departments.
- i) Shri Shubhankar Rastogi added that his firm M/s. All Marine Cargo Services, Gandhidham got the work of clearance of import cargo of M/s. Crescent Traders, 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombiwali West, 421202 through Shri Sheraram of M/s. Krishna Shipping & Logistics, Gandhidham;
- j) that Shri Sheraram was engaged in work of forwarding and he used to bring business to M/s. All Marine Cargo Services, Gandhidham. On being asked Shri Shubhankar Rastogi stated that they have filed only two Bills of Entry on behalf of M/s. Crescent Traders, Dombiwali (W) i.e. Bill of Entry No. 3016001 dated 28.08.2017 for parts and accessories of mobile phones & polyester knitted fabric and B/E No. 3130325 dated 06.09.2017 for parts and accessories of mobile phones.
- k) On being asked, about the documents provided by Shri Sheraram as KYC and documents in respect of consignments cleared under Bills of Entry No. 3016001 dated 28.08.2017 and 3130325 dated 07.09.2017 of firm M/s. Crescent Traders, Shri Shubhankar Rastogi stated that he had not seen those documents before filing of Bill of Entry as he was out of India that point of time;
- l) that however, later on i.e. after the intervention of DRI and booking of the case, he had seen that his firm received documents such as copies of IEC Certificate, Letter of Bank of India, GST Registration acknowledgement, Form ST-1 for Service Tax, Reference Checklist, Copy of Aadhar card & PAN card of Shri Sandesh G Tanwar (proprietor of M/s. Crescent Traders), Bill of Lading, Invoice, Packing List, Signature verification by Bank on letter head of importer.
- m) On being asked whether he or Shri Amit Kumar Singh had contacted Shri Sandesh Tanwar, or any other Authorized person of M/s. Crescent Traders, Dombiwali (W) and whether he had obtained any authorization from M/s. Crescent Traders in his firm before filing of Bill of Entry on their behalf, Shri Shubhankar Rastogi stated that he had not contacted the proprietor / Authorized person of M/s. Crescent Traders, Dombiwali (W) till date;

- n) that Shri Amit had also not contacted/called Shri Sandesh Tanwar, or any other Authorized person of M/s. Crescent Traders as they got the work through Shri Shera Ram.
- o) On being asked how he had confirmed the import documents/KYC documents which he received through Shri Sheraram belonged to M/s. Crescent Traders, Dombiwali (W) and the same were provided by its proprietor, Shri Shubhankar Rastogi stated that Shri Shera Ram was known to him and they had worked earlier, so in good faith they relied upon Shri Shera Ram and the documents supplied by him as that of belonging to M/s. Crescent Traders, Dombiwali (W) as those documents were issued by the Govt. Authorities and the same were containing name of Crescent Traders. He further added that no further efforts were made by them to verify identity / genuineness of their client M/s. Crescent Traders.
- p) On being asked how did his firm finalize checklist and verify the correctness of details, including classification, mentioned in checklist, for Bills of Entry No. 3016001 dated 28.08.2017 and 3130325 dated 07.09.2017 firm in respect of M/s. Crescent Traders, Shri Shubhankar Rastogi stated that Shri Amit Kumar Singh had prepared the Checklist on the basis of import documents received from Shri Sheraram in respect of both the said Bills of Entry. On being asked whether they have taken approval for check list from the importer, Shri Shubhankar Rastogi stated that Shri Amit Kumar Singh sent the check list for filing Bills of Entry to Shri Shera Ram for approval and no approval was taken from the importer by his firm or Shri Amit Kumar Singh in respect of both the said Bills of Entry. On being asked whether Shri Shera Ram had obtained approval of correctness of details of Checklist for aforesaid Bills of Entry from proprietor/authorized person of M/s. Crescent Traders, Shri Shubhankar Rastogi stated that he had no idea in this regard and Shri Shera Ram could reply to the same.
- q) On being asked how were goods covered under Bills of Entry No. 3016001 dated 28.08.2017 and 3130325 dated 06.09.2017 cleared and how the duty was paid in respect of these two Bills of Entry, Shri Shubhankar Rastogi stated that as per the documents seen by him in his office and to the best of facts known to him, the goods under Bill of Entry No. 3016001 dated 28.08.2017 were cleared after regular examination by Dock Examination officers and the goods covered under B/E No. 3130325 dated 06.09.2017 were granted Out of Charged after examination by SIIB officers of CH, Mundra; that they had received the duty payment confirmation through Shri Sheraram.
- r) On being asked further, Shri Shubhankar Rastogi stated that the importer might have paid duty as intimated by Shri Shera Ram; that however, they had not verified from whose bank account the duty was debited in respect of these two Bills of Entry. On being asked Shri Shubhankar Rastogi stated that he was not aware about the examination being done by officers of SIIB, CH, Mundra at that point of time; so no call /contact was made by him or by the importer to him;
- s) that he came to know about the issue when DRI officers carried out 100% examination but he did not call/contact the importer which was actually not known/traceable; that he had discussed the issue with Shri Shera Ram who informed him that he got the work of customs clearance of cargo through Shri Ankit Travadi, the representative of M/s. Dabke Clearing &

Forwarding Pvt. Ltd. and accordingly, Shri Amit Kumar Singh discussed the issue with Shri Ankit Travadi.

- t) On being asked, how Shri Ankit Travadi was connected to M/s. Crescent Traders, Dombiwali (W) and whether he was authorized person of M/s. Crescent Traders, Dombiwali (W), Shri Shubhankar Rastogi stated that he was told about Shri Ankit Travadi by Shri Amit Kumar Singh after DRI examination as Shri Ankit Travadi was representative of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai;
- u) that he was not aware as to how was he connected with M/s. Crescent Traders, Dombiwali (W); that he was also not aware if he was authorized signatory of M/s. Crescent Traders, Dombiwali (W), or not.
- v) On being asked about Shri Nasir Khan, Shri Mayur Mehta and Ms. Swati Vora from Mumbai, Shri Shubhankar Rastogi stated he has no idea prior to receipt of SCN dated 10.09.2018 of DRI about Shri Nasir Khan and Ms. Swati Vora; that he had come to know about Shri Nasir Khan and Ms. Swati Vora only after going through the said SCN;
- w) that as regards Shri Mayur Mehta, he was told by Shri Amit that Shri Mayur Mehta was Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai and was the boss of Shri Ankit Travadi. On being asked whether Shri Nasir Khan, Shri Mayur Mehta, Shri Ankit Travadi or any other person contacted him for payment of money to Customs officers in lieu of clearance of goods covered under the said two Bills of Entry, Shri Shubhankar Rastogi replied in negative.
- x) On being asked whether he had been able to establish contact with proprietor / authorized person of M/s. Crescent Traders, Dombiwali (W), Shri Shubhankar Rastogi stated that they had not been able to establish contact with proprietor/authorized person of M/s. Crescent Traders, Dombiwali (W) till date. On being asked, whether he was aware that the items imported under Bill of Entry No. 3130325 dated 06.09.2017 attracted BIS norms, IPR issue or any other compliance under Customs Act and other statutory provisions, Shri Shubhankar Rastogi stated he came to know about this case only after examination of cargo by DRI and therefore he could not make any effort in relation to prevention of smuggling offended goods. On being asked, whether he confirmed that the goods imported under Bill of Entry No. 3016001 dated 28.08.2017 filed in the name of M/s. Crescent Traders were undervalued and also attracted BIS norms, IPR issue or any other compliance under Customs Act and other statutory provisions, Shri Shubhankar Rastogi stated that he cannot comment on the same as he had not seen the goods covered under Bill of Entry No. 3016001 dated 28.08.2017 filed in the name of M/s. Crescent Traders.
- y) Shri Shubhankar Rastogi was shown copy of DGFT letter, Commercial Invoices of Supplier bearing no. SH-090 dated 31.07.2017 and SH-093 dated 02.08.2017 in respect of said two Bills of Entry i.e. Bill of Entry No. 3016001 dated 28.08.2017 and Bill of Entry no. 3130325 dated 06.09.2017. The description and unit price of the mobile phone accessories was same in both the invoices. Also, the supplier, importer, forwarding agent, were also same for both the Bills of Entries and even he could not trace the importer till then who had not come forward till then to claim the

goods in respect of Bill of Entry no. 3130325 dated 06.09.2017 after booking of case by DRI.

z) He was asked whether the goods imported under Bill of Entry No. 3016001 dated 28.08.2017 filed in the name of M/s. Crescent Traders were undervalued and also attracted BIS norms, IPR issue or any other compliance under Customs Act and other statutory provisions. After perusal of the same, Shri Shubhankar Rastogi stated that on going through the two invoices pertaining to Bills of Entry i.e. Bill of Entry No. 3016001 dated 28.08.2017 and Bill of Entry no. 3130325 dated 06.09.2017, he agreed that there might be undervaluation, and violation of BIS norms, IPR issue or other compulsory compliance under Customs Act and other statutory provisions. Shri Shubhankar Rastogi was shown copy of statement dated 06.10.2017 of Shri Amit Kumar Singh, Power of Attorney holder of M/s. All Marine Cargo Services, Gandhidham and asked to offer his comments. After perusal of the same, Shri Shubhankar Rastogi stated he was agreed with the facts mentioned in this statement.

aa) Shri Shubhankar Rastogi shown copy of order dated 10.10.2018 issued from F. No. 03/04/130/83841/AM18 of DGFT as received vide letter dated 12.11.2018 of Additional Director General of Foreign Trade, Mumbai for cancellation of IEC No. 0317524631 of M/s. Crescent Traders, and asked to offer his comments. Shri Shubhankar Rastogi stated that he did have anything to say in this regard.

bb) Shri Shubhankar Rastogi further stated that he admitted the mistake on their part in compliance as Customs Broker as we have relied upon documents only which were received from Shri Shera Ram.

**15.30. Further, statement of Shri Shubhankar Rastogi, Proprietor of Custom Broker Firm M/s. All Marine Cargo Services, recorded on 08.03.2019.**

a) On being asked, Shri Shubhankar Rastogi produced self-certified copy of Authority letter issued by Authorized Signatory of M/s. Crescent Traders, 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombiwali West, Thane- 421202 vide which his firm M/s. All Marine Cargo Services, Gandhidham was appointed as CHA/CB for filing Bill of Entry on their behalf. On being asked about the particulars of authorized signatory of M/s. Crescent Traders who signed this Authority Letter, he stated that he did not know who had put the signature on the said letter as Authorized Signatory of M/s. Crescent Traders; neither he was knowing any particular for the person who had signed the Authority Letter.

b) Shri Shubhankar Rastogi was shown copy of statement dated 07.10.2017 of Shri Ankit Travadi, employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai and on being asked to match the signature of Shri Ankit Travadi with the signature of Authorized Signatory of M/s. Crescent Traders available on the said Authority Letter and to comment thereon. After perusal of the same, Shri Shubhankar Rastogi stated that the signatures on both these documents were of same person and he could say that Shri Ankit Travadi had signed the said Authority Letter in the capacity of Authorized Signatory of M/s. Crescent Traders; that he had already stated in his earlier statement dated 07.03.2019 that he was not aware if Shri Ankit Travadi was actually working as Authorized Signatory of M/s. Crescent Traders, Dombiwali (W), or not.

- c) On being asked, how did they proceed for filing of Bill of Entry for M/s. Crescent Traders without even knowing the whereabouts of the importer and authority letter signing person (on behalf of the importer), Shri Shubhankar Rastogi stated that he was outside India that point of time and he did not see the said Authority Letter that time;
- d) that the Authority Letter was seen by Shri Amit Kumar Singh, the Power of Attorney holder of his firm; that he, however, admitted the mistake on the part of his firm that they could not verify the genuineness/existence of importer before proceeding to file the Bill of Entry.

**15.31. Statement of Mohd. Akbar Shaikh, Employee of M/s Connect, recorded on 11.4.2019, wherein he interalia stated as under:**

- a) that he joined M/s. Connect, a shop of mobile phone accessories etc. situated at 591/592 City Centre Mall, Mumbai Central in the month of April 2017 and worked there till January, 2019. On being asked Mohd. Akbar Shaikh stated that Mr. Nasir Khan was the owner of M/s. Connect; that he used to report to Mr. Nasir Khan and was looking after accounting and billing etc. in M/s. Connect. Mohd. Akbar Shaikh further stated that the goods were procured in this shop of M/s. Connect through import but the name of overseas supplier was known to Shri Nasir Khan or Shri Uves Khakhu (the business partner of Mr. Nasir Khan); that the goods were being sold in wholesale to various buyers like Prince Chennai, Vimal Bangalore, Umar Surat, various shops of City Centre Mall such as Shop No. 189,200,757, 970 etc. On being asked about Mr. Uves Khakhu, Mohd. Akbar Shaikh stated that Mr. Uves Khakhu and Mr. Nasir Khan were friends and business partners; that Mr. Uves Khakhu used to send business related instructions to him (Mohd. Akbar Shaikh) with Mr. Nasir Khan.
- b) On being asked further, Mohd. Akbar Shaikh stated that he had heard the name of said firm M/s. Crescent Traders from Mr. Nasir Khan and Mr. Uves Khakhu as the goods were imported in the name of this firm but he was not dealing with import of goods but dealing with the accounting and billing only; that he was not related to import work though the goods received at City Centre mall in the name of Mr. Nasir Khan were sent to the buyers and concerned billing and payment related work was looked after by him. On being asked whether he knew Shri Sandesh Tanwar, Mohd. Akbar Shaikh stated that he was not sure who Shri Sandesh Tanwar was.
- c) Mohd. Akbar Shaikh further stated that he was looking after accounting and billing of expenses of M/s. Connect only as per directions of Shri Nasir Khan and Shri Uves Khakhu; that the work relating to accounting of expenses of M/s. Crescent Traders, Shri Nasir Khan and Shri Uves Khakhu were looking after by Shri Nasir Khan and Shri Uves Khakhu. On being asked about Shri Yatin Sadashiv Mandavkar of M/s. Pragati Enterprises and Shri Atul Kumar Pappu pal of M/s. Samarth Impex, Mohd. Akbar Shaikh stated that he did not know these persons. On being asked whether he had paid or accounted for the payment to the overseas suppliers of goods, or not, Mohd. Akbar Shaikh stated that he had not dealt with the payment related work with respect to the overseas suppliers of goods.
- d) On being asked about Shri Mayur Mehta and whether he had paid any amount to him on behalf of M/s. Connect and/or M/s. Crescent Traders

and about his role in the business done by Shri Nasir Khan and Shri Uves Khakhu, Mohd. Akbar Shaikh stated he had made entries of payment made to him various times as per directions of Mr. Nasir Khan and Mr. Uves Khakhu but he did not know about the business relations between Shri Mayur Mehta and Mr. Nasir Khan/Mr. Uves Khakhu.

e) On being asked, Mohd. Akbar Shaikh stated that the payment was made in cash to the person (mostly to one Shri Sanjay) sent by Shri Mayur Mehta; that the cash was paid from the collection relating to sale of goods as per direction received from Mr. Nasir Khan or Mr. Uves Khakhu; that he was not aware for which work the payment was being made to Shri Mehta; that he was doing the same on the directions of Mr. Nasir Khan and Mr. Uves Khakhu and entered the remark of payment like 'SEA' or 'AIR' as directed by Mr. Nasir Khan and Mr. Uves Khakhu.

**15.32. Statement of Shri Atul Kumar Pappu Pal recorded on 11.04.2019, wherein he interalia stated as under:**

a) That he was working then as QC officer in Agog Pharma Ltd., Vasai, Mumbai. On being asked about M/s. Samarth Impex R. No. 204/B-2/, Classic Ami Park, Gokhiware Vasai (E), he stated that one of his friends Shri Rahul Sawant told him to earn money only after providing his Aadhar Card, PAN card, 02 photos and signing Bank Account Opening Form to his known Shri Vishal Kamble (Gamre) in the year 2017;

b) that his family was facing financial crises and he did not have even pocket money in those college days; that therefore he provided the said documents such as certified copy of PAN card, Aadhar Card, 02 photos, Driving license to Shri Vishal Gamre and also signed Bank Account opening form and other forms given to him;

c) that he was also taken to Andhra Bank by Vishal Gamre and later on he was informed by Shri Vishal Gamre that a firm in the name of M/s. Samarth Impex had been formed in his name and Bank Account was also opened in the name of said firm;

d) that he was also told that someone will import goods in the name of said firm and all the work responsibilities, tax payments and Govt. compliances would be done by that person and in lieu thereof Shri Vishal Gamre assured cash payment of Rs. 1500/- to Rs. 2000/- per month till 2018. Sh. Atul Kumar Pappu Pal further added that his friend Shri Rahul Sawant expired in the preceding month.

e) On being asked Sh. Atul Kumar Pappu Pal deposed that he had not handled any activity of M/s. Samarth Impex nor any banking transactions related with that firm;

f) that he did not know any Mr. Nasir Khan or Mr. Uves Khakhu nor he met them ever. On being confronted with Bank Account opening form of M/s. Samarth Impex his driving license, PAN Card, Aadhar Card, Property declaration form IEC code, Form 102 of Maharashtra State and Form-B-CST etc., he confirmed that those documents were bearing his signature which he had signed on instructions of Shri Vishal Gamre.

g) Upon perusing the Bank Statements of Andhra Bank of M/s. Samarth Impex, Shri Atul Kumar Pappu Pal confirmed that the statement was having high Value transactions but as he was belonging to poor family, he or his family had not made such high value transactions and he was not

aware as to who had made such transactions. He further added that he had not made payment of Customs Duty on behalf of M/s. Samarth Impex in relation to imports made by M/s. Crescent Traders, Dombivali; he further confirmed that he did not know M/s. Crescent Traders and had not affected any Customs Duty as the said Bank Account were not handled by him;

h) that neither he was engaged in import activities of any firm. On being shown the sheet containing details of imports by M/s. Samarth Impex, Shri Atul Kumar Pappu Pal denied knowledge about such import.

**15.33. Statement of Shri Yatin Sadashiv Mandavkar, Proprietor of M/s. Pragati Enterprises recorded on 12.04.2019, wherein he interalia stated as under:**

a) On being asked about a firm M/s. Pragati Enterprises, Room No. 104, Om Shree Gayatri Park, Tulinj Road, Opp-Jain Mandir, Shanti Nagar, Nalasopara (E), Dist-Thane, Shri Yatin Sadashiv Mandavkar stated that around three years back, one of his friends Shri Mahesh Suresh Bhonsle R/o Om Shanti Co Operative Society, Tulinj Road, Opp-Jain Mandir, Shanti Nagar, Nalasopara (E), Dist-Thane told him that he could earn good money by giving his documents and signing some forms and no other work was required to be done by him;

b) that he denied for his proposal but his elder brother Dinesh also suggested him to do so then he finally decided to accept their proposal as he had no money and his family was also facing financial crisis;

c) that Shri Mahesh introduced him to one Mr. Vishal to whom he handed over certified copies of his PAN Card, Light Bill, Adhaar Card, two photos and also signed a Bank Account opening form and some other forms; that he did not know the address of Shri Vishal but he told him that he was residing in Nalasopara (E);

d) that Shri Vishal told him that one company will do import-export business in which his documents would be required and he had nothing to do further; that he (Vishal) gave him Rs. 1,000/- that day and took him to Jogeshwari Branch of Andhra Bank where also he had put signatures on some forms as suggested by Shri Vishal;

e) that one person who was told to be a Chartered Accountant was also there and he was discussing with Vishal but he did not know the name of that person and he could not understand what they were discussing;

f) that a day after, Shri Vishal gave him cash of Rs. 3,000/- more and thus he (Vishal) had given him cash of Rs. 4,000/- till then in lieu of providing him his documents and signing some forms; that thereafter he received some letters at his address having his name with M/s. Pragati Enterprises then only he came to knew about this firm.

g) On being asked whether any letter or communication was received at his residence from any Govt. authority, bank etc. he stated that he received some more letters but he had handed over the same to Shri Vishal;

h) He was shown bank account opening form of Andhra Bank, Proprietary Declaration Form, Form ST-2, Form 102 of Maharashtra VAT, Certificate of Importer Exporter Code, his Adhar Card etc. On perusal of the same he stated that the signature appearing on these documents were his signature and the photo available in bank account form was also his photo, however

the photo on Certificate of Importer Exporter Code was edited from his photo as he had never ever worn such type of clothes as appearing in the photo on IEC Certificate.

- i) On being asked further, Shri Yatin Sadashiv Mandavkar stated that he did not know any Nasir Khan, Uves Khakhu and Mayur Mehta, nor he had ever met with the person of such names; that he was not having any bank account in any bank;
- j) that he did not know about the details of bank account opened in Jogeshwari branch of Andhra Bank as he always handed over all the envelopes/letters received at his residence (even without opening the envelopes).
- k) On being asked, Shri Yatin Sadashiv Mandavkar stated that he had not handled the bank account no. 259111100001574 opened in the name of M/s. Pragati Enterprises at Jogeshwari Branch of Andhra Bank; that he did not know the user id, password, PIN etc. related to said Bank Account.
- l) Shri Yatin Sadashiv Mandavkar was shown Bank statement related to said bank account and asked to offer his comments on the same. On perusal of the said documents, he stated that he found that the said statement was having high value transactions but he stated that none of those transactions was done by him, nor he was aware about the same. On being asked about a firm M/s. Crescent Traders, Dombivali (W), Dist-Thane, he stated that he did not know such firm and he had not made any transaction related to payment of Customs duty in respect of import done in the name of M/s. Crescent Traders; that the person who had handled the said bank account might have made the payment of Customs Duty and he was not aware about that person.
- m) Shri Yatin Sadashiv Mandavkar was shown a sheet of import made in the name of M/s. Pragati Enterprises and asked to offer his comments. Shri Yatin Sadashiv Mandavkar stated that as his name was mentioned as Proprietor of the said firm; that he truthfully stated that he had no idea who had done such imports, nor he had not done any transaction for such imports.
- n) On being asked why he had not complied with the earlier Summons issued from DRI Gandhidham, Shri Yatin Sadashiv Mandavkar stated that as and when he received the summons, he had made telephonic call to Shri Vishal who told him that there was nothing to worry about the summons;
- o) that moreover, his health was not good and he also did not have money enough to go Gandhidham to tender his statement. He further added that he had not received any other amount or benefit in the above matter or import except receiving cash of Rs. 4000/- from Vishal for giving him his documents and signing the various forms, Shri Yatin Sadashiv Mandavkar further stated that he was a patient of Tuberculosis and getting treatment at Municipal Corporation of Greater Mumbai, Group of Hospitals for Tuberculosis.
- p) Summons dated 12.10.2020, 15.12.2020 and 09.06.2021 were issued to Shri Vishal Gamre directing him to appear before investigating officer, to produce details/documents and to tender statement. However, he did not respond and dishonored the Summons issued to him.

**15.34. Statement of Mohd. Imran Yunus Navsariwala recorded on 01.10.2019, wherein he interalis stated as under:**

- a) that after leaving study in the year 2000, he had learnt sell-purchase work from his elder brother who was running his shop namely 'Toys Gallery' in Crawford Market of Mumbai;
- b) that thereafter he started his own business of sell-purchase of mobile phone accessories, bags, purse etc. on commission basis in the year 2001; that he did not issued bills ever and he used only delivery challans in relation to sell-purchase of goods on commission basis;
- c) that he had never seen bills issued by the sellers and neither bills were issued for such supplies.
- d) On being asked, Mohd. Imran Yunus Navsari Wala stated that he used to take goods i.e. mobie phone accessories from some person who were called as Rahimbhai, Saeedbhai, Yusufbhai, Kashifbhai etc. of Manish Market and City Centre Mall, Mumbai Central and used to supply the same to various person called as Nasirbhai, Babubhai, Sattarbhai etc. locally and also supplied the same to buyers of outstations at Chennai, Bangalore, Kerala etc.;
- e) that his commission was Rs. 0.10/- to Rs. 0.50/- per piece depending upon the nature of mobile phone accessories such as screen guards, back cover, handsfree, USB cable etc.
- f) On being asked whether the said suppliers were importers, or otherwise, Mohd. Imran Yunus Navsariwala stated that those suppliers were importers and also engaged in trading business with each other;
- g) that they were mainly based in Musafirkhana and were making supply to City Center Mall; that the IEC No., names and extact addresses of such supplier importers were not known to him and he assured to provide the same within a week time but did not provide the same.
- h) On being asked further, Mohd. Imran Yunus Navsariwala stated that in 2015, he was introduced to Nasir Khan by one of their common friends Mohammad who was residing in Agripada but his contact no. was not available with him right then; that Nasir Khan was owning shop no. 591/592 of mobile phone accessories in the name M/s. Connect at 2<sup>nd</sup> floor of City Central Mall in Mumbai Central;
- i) that he was the owner of M/s. Connect and residing at Central Court Building in Agripada area. He further stated that since they both were in same business, he started selling mobile phone accessories to him.
- j) On being asked Mohd. Imran Yunus Navsariwala stated that he was not related to the goods imported in the name of M/s. Crescent Traders, 1/10, Sai Dham Society, Jyotiba Phule Mark, Maharsahtra Nagar, Dombivali (W), Dist-Thane;
- k) that he had heard the name of that firm only from the Summons issued to him by DRI; that in the bunisess of mobile phone accessories being run at City Center Mall, Mumbai Central, no importer used to discuss or reveal about the names of their real importing firm, so he was not told by anyone about the importer firm;
- l) that after receiving DRI summons, on being inquired by him, he came to know that this firm was being controlled by Shri Nasir Khan, however, he

(Mohd. Imran Yunus Navsariwala) had never purchased any goods from Shri Nasir Khan as he used to arrange supply of goods to Shri Nasir Khan.

- m) On being asked whether he knew Shri Yatin Sadashiv Mandavkar of M/s. Pragati Enterprises and Shri Atul Kumar Pappu pal of M/s. Samarth Impex and Shri Sandesh Tanwar, Mayur Mehta and Swati Vora alias Monika, Mohd. Imran Yunus Navsariwala, replied in negative and stated that he did not know those persons, nor he had done any transactions with those persons.
- n) On being asked Mohd. Imran Yunus Navsariwala stated that Shri Nasir Khan used to make payment to him in cash only; either he himself made the payment or through his staff Mr. Hanifbhai;
- o) that till then, there was around Rs. 2.5 lakh to Rs. 3 lakh pending to be recovered by him from Shri Nasir Khan but he was not available at his residence and his contact numbers available with him were not reachable. Mohd. Imran Yunus Navsariwala stated that he had deleted call details/messages and contacts relating to Nasir Khan;
- p) that he met Shri Nasir Khan last time in the month of May, 2017 and last talked to him telephonically in the month of Sept., 2017.
- q) Mohd. Imran Yunus Navsariwala was shown the printouts of the content of following chats/messages/image etc. and asked to offer his comments and explain the facts/content of respective chat/message/ image etc. On being perused Mohd. Imran Yunus Navsariwala stated that he had carefully gone through the printouts shown to him and in this regard, he stated that those conversations were held between him and Nasir Khan regarding sell-purchase of mobile phone accessories with him and his firm M/s. Connect; that it being related to him, he explained the content of chat/message/ image /conversation.

**15.35. Statement of Mohd. Amin Navsariwala recorded on 05.11.2019, wherein he interala stated as under:**

- a) On being asked, Mohd. Amin Navsariwala stated that he had started business of sell-purchase of mobile phone accessories in the name of his firm M/s. Click in Musafirkhana till 2016; that he left this business due to some problems of importers in Customs Clearance. On being asked the name the importers with whom the problem relating to Customs Clearance occurred and about the nature of problem and how he was connected with such problem, Mohd. Amin Navsariwala stated that the names of importers were not readily remembered to him. He further stated that he used to purchase mobile phone accessories from such importers but the goods imported by these importers were having issues of undervaluation, IPR and non-compliance of statutory provisions of Customs Act and other allied Acts; that his firm being purchaser of such imported goods, he was called for by SII, Mumbai Customs to tender statement; that there was no role of his firm in the import of such goods as his role started after clearance of imported goods from Customs; that he did not receive any Show Cause Notice from the Customs Department in this regard.
- b) On being asked how he knew Mr. Nasir Phundan Khan, Shri Uves Khakhu, M/s. Crescent Traders, M/s. Connect India, Shri Sandesh Tanwar, Shri Suraj Singh, Shri Mayur Mehta, Ms. Swati Vora alias Monika; that he was in contact with him till last year i.e. 2018; that Mr. Nasir Khan was running

a shop in the name M/s. Connect in City Center Mall of Mumbai Central and he was residing at Central Court Building in Agripada area; that he had no any business relation with Shri Nasir Khan or his firm M/s. Connect; that he had not any idea about present location, contact no. and whereabouts of him. He further added that he knew Shri UvesKhakhu who was common friend of him and Shri Nasir Khan and was also in same business of mobile phone accessories; that he was not in contact with him since last one year i.e. 2018; that he had no any idea about present location, contact no. and whereabouts of him; that his residential address was in Agripada. He further stated that he came to know about the name of M/s. Crescent Traders after receipt of summons from DRI Gandhidham in the last month of October, 2019; that however, he was aware that an import consignment of mobile accessories pertaining to Nasir Khan was stuck at Mundra port in the year 2017 but he was not aware about the name of importer used for such import consignment i.e. M/s. Crescent Traders (as per IEC). He further stated that he did not know about Shri Sandesh Tanwar, Shri Suraj Singh, Shri Mayur Mehta and Ms. Swati Vora alias Monika; that he had not done any business transactions with the above-mentioned persons.

- c) On being asked how he was related to the goods imported in the name of M/s. Crescent Traders, 1/10, Sai Dham Society, Jyotiba Phule Marg, Maharashtra Nagar, Dombivali (W), Dist-Thane, Mohd. Amin Navsariwala stated that he was not having any business relation with Shri Nasir Khan or any firm directly or indirectly owned/controlled by him; that he was not related in any manner to the goods imported in the name of M/s. Crescent Traders, 1/10, Sai Dham Society, Jyotiba Phule Marg, Maharashtra Nagar, Dombivali (W), Dist-Thane.
- d) On being asked about Shri Yatin Sadashiv Mandavkar of M/s. Pragati Enterprises and Shri Atul Kumar Pappu pal of M/s. Samarth Impex, Mohd. Amin Navsariwala stated that he did not know these persons.
- e) Mohd. Amin Navsariwala was shown printouts of Whatsapp Chat conversations held between him and Shri Nasir Khan and asked to offer his comments. On being perused the same, Mohd. Amin Navsariwala stated that those conversations were held between him and Shri Nasir Khan; that it being related to him he explained the relevant content of chat/message/ image /conversation (as asked).

**15.36. Statement of Shri Sanjay Prerajibhai Solanki, Engineer of M/s. Compuage Infocom Ltd. [Authorised Service Partner of M/s. Asus Technology Pvt. Ltd.], recorded on 07.02.2020, wherein he interalia stated as under:**

- a) that he was working as Engineer with M/s. Compuage Infocom Ltd. [Authorised Service Partner of M/s. Asus Technology Pvt. Ltd. Mumbai since 2013];
- b) Shri Sanjay Prerajibhai Solanki was shown a copy of the Panchnama dated 23.11.2017 drawn at the office premises of DRI Regional Unit Gandhidham, Plot No. 193, Sector-4, Gandhidham. On being perused of the panchnama, he stated that on 22.11.2017, he was directed by their Regional Service Leader Mr. Umar Farukh Qureshi to appear in DRI Regional Unit Gandhidham office in relation to examination of Asus make mobile phone accessories (Mobile Phone Batteries);

- c) that accordingly, on 23.11.2017, he had visited DRI Regional Unit, Gandhidham office and examined the samples of Mobile Phone Batteries in presence of two witnesses and DRI officer;
- d) that during the Panchnama proceedings, he was shown samples of mobile phone batteries on which ASUS brand was printed alongwith some other details, however, the mobile phone batteries of all the samples shown to him were counterfeit /fake items. He confirmed that all the mobile phone batteries /samples shown to him during Panchnama dated 23.11.2017 were counterfeit.

**15.37. Statement of Shri Vishwadeep Singh, Authorised representative of M/s. Maersk Line India Pvt. Ltd was recorded on 19.03.2020, whrein he interalia stated as under:**

- a) that their holding company M/s. Maersk Line India Pvt. Ltd. was engaged in the work of shipping line and book the import-export consignment through forwarders;
- b) that M/s. Safmarine India Pvt. Ltd. was taken over by M/s. Maersk Line India Pvt. Ltd. and presently it was a group company of M/s. Maersk Line India Pvt. Ltd.
- c) On being asked about the consignments imported in India by M/s. Crescent Traders, Dombivali (W) through his company from exporter M/s. Shorewood Enterprise Co. Ltd., Unit K1, 3/F, WoFoo Building, Nos. 204-210, Texaco Road, Tsuen Wan, N.T., or any other exporter/supplier during last five years, Shri Vishwadeep Singh stated that their company had attended only two consignments in the month of August, 2017 and Sept., 2017 wherein the importer & exporter were M/s. Crescent Traders, Dombivali (W) and M/s. Shorewood Enterprise Co. Ltd., Unit K1, 3/F, WoFoo Building, Nos. 204-210, Texaco Road, Tsuen Wan, N.T., during last five years; that no other import consignment in the name of importer M/s. Crescent Traders was attended by them during last five years.
- d) On being asked who approached his company from the supplier/exporters in respect of booking of two consignments attended by his company in the month of August, 2017 and Sept., 2017 wherein the importer & exporter were M/s. Crescent Traders, Dombivali (W) and M/s. Shorewood Enterprise Co. Ltd., Unit K1, 3/F, WoFoo Building, Nos. 204-210, Texaco Road, Tsuen Wan, N.T., Shri Vishwadeep Singh stated that Mr. Joe Wong of M/s. Sino Ocean Group Ltd., China approached his company in connection with booking of two consignments (BL No. 769902622 & 769900897) pertaining to importer M/s. Crescent Traders and attended by his company in the month of August, 2017 and Sept., 2017.

(i) Shri Vishwadeep Singh further stated that his company was repeatedly asked by DRI to provide the following documents required for investigation in respect of said consignment covered under BL No. 769902622 which pertained to the importer M/s. Crescent Traders viz. (i) Copy of statutory documents viz. Customs Invoice, Customs Declaration Form, Insurance Policy/Insurance Policy application form, Customs Bond if any or other statutory documents required by China Customs for giving approval of export of goods.(ii) Bill of Lading alongwith copies of Shipping Bill, Export Invoice & Packing List issued by overseas supplier, Insurance Certificate and mail correspondence etc. issued or received.However, the said documents were not provided by them. Therefore, he was asked why his

company had not provided the same till then and again asked to provide the details/documents for said consignment and also the second consignment covered under BL No. 769900897. In response to the same, Shri Vishwadeep Singh stated their company was not taking any document from the clients in the year 2017 hence all these documents were not available with his company, however, on being asked by DRI, his company has tried at their best to collect the required documents through forwarder M/s. Sino Ocean Group Ltd., China;

- (ii) that this forwarder also could not get the documents from the said shipper as the shipper was not traceable, hence, it was not possible to him and his company as on today to provide the above mentioned documents required for DRI investigation;
- (iii) that the copy of documents available with them i.e. BL and Delivery Order in respect of consignment covered under BL No. 769902622 have already been provided to DRI and the same for second consignment covered under BL No. 769900897 would be provided by him within 2-3 times but he did not provide the same.
- (iv) On being asked whether the forwarder viz. Mr. Joe Wong or M/s. Sino Ocean Group Ltd., China was their regular client/forwarder, or otherwise and whether his company had carried out any inquiry/verification with respect to the said forwarder or the concerned shipper or the concerned exporter, Shri Vishwadeep Singh stated that the said forwarder viz. Mr. Joe Wong of M/s. Sino Ocean Group Ltd., China was not their regular client/forwarder; that their company did not carry out any inquiry/verification with respect to the said forwarder or the concerned shipper or the concerned exporter.

**16.** Whereas, on the basis of Statements, Panchnamas and evidences as revealed during investigation, it is revealed that the goods imported viz., mobile phone accessories from China without declaring correct description, quantity and value of the goods with intent to evade duty as also in violation of other statutory / mandatory requirements, was hatched by **Shri Nasir Khan**. Shri Nasir Khan was running a shop of mobile accessories and other articles in the name of Connect Mobile at 591/592, 2<sup>nd</sup> Floor, City Centre Mall, Mumbai Central and he was also working as a wholesale supplier of mobile phone accessories. **In the instant case**, he, under the guidance of **Shri Mayur Mehta, Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai** got the IEC in the name **M/s. Crescent Traders and used documents and photo of a college student viz. Shri Sandesh Tanwar**. From the documents of Shri Sandesh Tanwar, Shri Nasir Khan provided address of Crescent Traders in the IEC records as 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombivali (W), Dist-Thane, Maharashtra. This flat/room was owned by Shri Gopichand Fulsing Tanwar, father of Shri Sandesh Tanwar. During the course of search dated 24.09.2017 conducted by officers of DRI at said address i.e. 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombivali (W), Dist-Thane, Maharashtra, it appeared that one Shri Shridhar D. Kumbhar was residing there with his family as a tenant of Shri Gopichand Fulsing Tanwar. **Shri Sandesh Tanwar, vide his letter dated 03.11.2017 and statement dated 13.08.2018 submitted that he was not at all concerned with M/s. Crescent Traders in any manner and he did not know Shri Nasir Khan. Investigation revealed that the documents required for opening IEC such as PAN Card, Aadhar Card, Photo etc. of Shri Sandesh Tanwar were mis-used for opening**

**IEC 0317524631 in the name Crescent Traders to hide the identity of actual importer Shri Nasir Khan from the Govt. enforcement agencies. This inference is supported by an audio clip extracted from the mobile phone of Shri Nasir Khan in which a person (appearing to be Shri Mayur Mehta) suggested to Shri Nasir Khan to call for the boy in whose name the IEC was opened and to pay him some amount so that he may give a favourable statement and the investigation file can be closed.**

**17.** Shri Nasir Khan was also using a Bank Account no. 004820110000435 in respect of IEC no. 0317524631 which was opened in the name of M/s Crescent Traders. It is disclosed from the inquiries carried out from the concerned bank branch i.e. Bank of India, Wodehouse Branch, Colaba, Mumbai that the Account number 004820110000435 used in opening IEC No. 0317524631 was pertaining to Shri Girish Keshav Bapat, RE-22, SamrutiBanglow, Gymkhana Road, MIDC, Dombivali (E), Thane. As per the KYC documents received from the bank vide letter dated 31.10.2017 and bank statement received vide letter dated 15.11.2017, copy of Form ST-1 (Application Form for obtaining Service Tax Registration) and copy of Ration Card was used as address proof of M/s. Crescent Traders in which the address of this firm was mentioned as RE-22, SamrutiBanglow, Gymkhana Road, MIDC, Dombivali (E), Thane and the name and PAN of applicant were mentioned as Shri Girish Keshav Bapat and PAN as AGWPB0445J. Investigation further revealed that there were no high value transactions (of more than Rs. 1000/-; except two transactions of Rs. 5500/- and Rs. 5,000/- on 30.01.2012 and 05.10.2012 respectively) in the said Bank account, which indicates that the Bank Account in the name of Girish K. Bapat was used in the name of M/s Crescent Traders for irregular purposes only.

**18.** In order to investigate the aspect of Bank Account of M/s. Crescent Traders, Summons were issued to **Shri Girish Bapat** directing him to provide documents and to tender statement. In response to the Summons dated 14.08.2018, a reply was received from Shri Girish Bapat through email dated 30.09.2019 vide which he submitted that he was working abroad in Muscat, Sultanate of Oman since 02.05.2012; that he did not have any connection with Crescent Traders, Dombivali. He further submitted that he had never opened any account in the bank with name M/s. Crescent Traders; that his KYC documents were used for opening account as well to do transactions and activities in account. Shri Girish Keshav Bapat claimed that he did not have any connection with M/s. Crescent Traders not related to any activities in this firm. In response to another Summons dated 10.01.2020, Shri Girish Bapat submitted that he could not travel to India without clearing the matter related to VISA. He again claimed that he had no connection with M/s. Crescent Traders, nor he had made any transactions in this firm. Mr. Girish Bapat vide mail dated 12.05.2020 submitted that his signature was forged by someone on the Bank Account opening. He further claimed that he never opened current account in India in his life and never done any business in India. Therefore, it appeared that the Bank Account of M/s. Crescent Traders was opened with the forged documents to use such account by the concerned persons for their illegal activity of smuggling of goods.

**19.** Whereas the KYC documents of M/s Crescent Traders produced by Shri Nasir Khan through Shri Mayur Mehta to the CHA/CB M/s. All Marine Cargo Services were also not genuine, as regards evidence of signature verification of importer, a request letter dated nil on letter head of M/s. Crescent Traders addressed to Bank Manager, Bank of India, Wodehouse Branch, Colaba

requesting signature verification was enclosed as KYC documents. This letter though contained details of same Bank Account no. 004820110000435 which pertained to Girish K. Bapat, it did not contain signature as appearing in the Bank Account opening form. Further, in the statement of Shri R. R. Chaubal, Manager (Retd.), Bank of India, he had denied to have made such signatures on the signature verification letter and expressed doubt of fraud in the matter as he retired in October, 2016 whereas the IEC of the importer was issued in June, 2017 for which the signature verification letter was issued

**19.1. Shri Nasir Khan also admitted in his statement dated 01.03.2018 that he had hatched the entire conspiracy of said import in the fake name of M/s. Crescent Traders.** He further admitted that he had got opened the IEC in the name M/s. Crescent Traders by paying Rs. 15,000/- to a person who also arranged for Bank Account number for opening IEC, though the name of such person was not remembered by him that point of time and later on Shri Nasir Khan did not provide the name and address of said person, despite promising to provide the same.

**19.2.** Based on the facts, circumstances and evidences on record, it is evident that the importer M/s. Crescent Traders was a dummy firm as its purported Proprietor (as per IEC) Shri Sandesh Tanwar did not have any relation to M/s. Crescent Traders as his documents and photos given by him in relation to job, were mis-used for opening IEC in the name M/s. Crescent Traders, Dombivali (W); instead Shri Nasir Khan was the actual beneficiary owner of M/s. Crescent Traders, Dombivali (W) [IEC No. 0317524631] and he used fake documents/details in relation to fraudulent import of mobile phone accessories vide Bill of Entry No. 3130325 dated 06.09.2017 to evade his liability from the Govt. enforcement agencies.

**20.** Whereas, it also came forth that Shri Mayur Mehta assured Shri Nasir Khan to get cleared the said consignment covered under Bill of Entry No. 3130325 dated 06.09.2017 through Customs Authorities at Mundra Port through Shri Shera Ram Mehra of M/s. Krishna Shipping Logistics who further handed over the work of filing Bill of Entry to the Customs Broker M/s. All Marine Cargo Services. An amount of **Rs. 6,12,066/-** (5,47,066 + Rs. 65,000) was paid vide Challan No. 2019694773 dated 12.09.2017 as Customs duty in respect of the said Bill of Entry No. 3130325 dated 06.09.2017 filed by M/s. Crescent Traders. Investigation reveals that this amount was debited from different Bank Account numbers (259111100001574) other than the Account no. mentioned in IEC record of M/s. Crescent Traders. As per documents obtained from the concerned Bank i.e. Andhra Bank, Jogeshwari Branch, Mumbai, the said Account number (259111100001574) pertains to one M/s. Pragati Enterprises, R.No. 104, Om Shree Gayatri Park, Tuli NJ Road, Opp.-Jain Mandir, Shanti Nagar, Nalasopara, Palghar (Maharashtra). In this regard, Shri Mayur Mehta clarified in his statement dated 22.10.2017 that the duty was paid from a Bank Account number other than that of M/s. Crescent Traders on 1% commission basis.

**20.1.** On further investigation, it was also found that the payments of Customs Duty for the said 02 imports made by M/s. Crescent Traders vide Bill of Entry No. 3016001 dated 28.08.2017 and 3130325 dated 06.09.2017 was done through the Bank Accounts of M/s. Samarth Impex and M/s. Pragati Enterprises respectively. However, as appeared from the statements of **Shri Yatin Sadashiv Mandavkar, the Proprietor of M/s. Pragati Enterprises, and Shri Atulkumar Pappu Pal, Proprietor of M/s. Samarth Impex**, both these firms were created

fraudulently using the personal documents/details of these persons alluring them with monetary gratification. Looking to the connection of these two dummy firms with M/s. Crescent Traders, it appeared that Mr. Nasir Khan and his associates were controlling and operating said firms fraudulently and making transactions in respect of import and export from these firms. **A report in respect of the said two dummy firms and Importer Exporter Codes possessed by them, was conveyed to the DGFT, Mumbai by DRI. Acting upon the same, the DGFT Mumbai informed vide email dated 27.05.2020 that the IECs of both the firms were suspended.**

**20.2.** From the facts discussed in foregoing paras, it is evident that the M/s. Crescent Traders was a dummy firm and its IEC was obtained using forged documents, its Bank account was opened using forged documents and in the name of dummy person, the Customs Broker was provided fake/forged documents as KYC documents of M/s. Crescent Traders and the Customs Duty for the subject import consignments covered under Bill of Entry No. 3016001 dated 28.08.2017 and 3130325 dated 06.09.2017 was also paid through Bank account of dummy firms.

**21.** As regards the IEC No. of M/s. Crescent Traders, DRI vide letter 09.08.2018 conveyed the facts of the case and imports made by M/s. Crescent Traders proposing necessary action against the importer on the basis of fraudulent availment of IEC. The DGFT, Mumbai vide letter dated 12.11.2018 informed that the IEC No. 0317524631 issued to M/s. Crescent Traders was cancelled by their office vide Order dated 10.10.2018.

**22.** Whereas, it further cleared from the Note Sheet of concerned Bill of Entry File that there was information of excess cargo in Bill of Entry No. 3130325 dated 06.09.2017 with an intention to evade Customs duty, with SIIB officers at Mundra. The officers of SIIB, Customs House, Mundra had got approval of Additional Commissioner, SIIB, Customs House, Mundra for examination of the imported goods on the basis of such information. They put the said consignment (Container No. PONU8179393) on hold and then carried out the examination on 15.09.2017 after getting the container de-stuffed. However, the Panchnama for said examination was drawn up on 21.09.2017 and was signed in back date i.e. 18.09.2017. This has been admitted by Panchas and officers in their respective statements. It was disclosed from investigation that the said Panchnama was fictitious and was drawn up only as a façade (to convince senior officers to clear the consignment) and none of the Panchas had gone through the same before signing it in back date when the SIIB officers directed them to put their sign on Panchnama in back date i.e. 18.09.2017. Moreover, it also appears that the officers of SIIB, Customs House, Mundra concealed the gross mis-declarations in value and quantities, undervaluation and other violations such as infringement of Intellectual Property Rights, violations of BIS Order etc.; and in lieu of same, the officers had demanded illegal gratification in the form of money (Rs. 8.5 lakh) for clearance of said consignment.

**23.** Also, as regards the consignment covered under Bill of Entry No. 3130325 dated 06.09.2017, from the statements of various related persons, audio clips extracted from mobile phone of Shri Nasir Khan and other evidences, it appears that as and when Shri Mayur Mehta and Shri Nasir Khan agreed to pay Rs.8 lakhs, the SIIB officers allowed the consignment for clearance with a nominal payment of differential duty to the tune of Rs. 5,000/- only showing excess qty. of imported goods (110 gross of screen guard/toughened glass showing the same excess which were actually found less in DRI examination) having assessable

value of **Rs. 12,015/-** only whereas during investigation, it appears that the quantum of differential Duty was more than Rs. 45 lakhs. From the Note Sheet Page-I & II of the Bill of Entry File, it is evident that one of the SIIB officers put up a note in the file that the consignment has been examined and there was excess qty. of Mobile Screen Guards which attracts differential duty of Rs. 5000/- (approx.), and accordingly he proposed to ask the importer for payment of said duty amount. Acting on the said note, the higher officer asked whether there was any other difference noticed during examination of cargo? Even then, the concerned SIIB officers did not make any effort deliberately for examination of cargo and reiterated the facts that other than Screen Guard, nothing was found in excess of the declared goods and proposed to clear the consignment. These officers also ignored the contravention of BIS norms and IPR Rules by the importer in the present case. Thus, it is beyond doubt that the named officers of SIIB, Customs House Mundra not only misled their superior officers into clearing the goods but also connived with the importer in his fraudulent import of restricted / prohibited goods and the evasion of Customs duty.

**24.** Whereas the chronology of events in respect to B/E No. 3130325 dated 06.09.2017 has been as follows: -

- (i) B/E no. 3130325 was filed on 6<sup>th</sup> September, 2017 by M/s. All Marine Cargo Services on behalf of M/s Crescent Traders of Mumbai at Mundra SEZ Port, Mundra. (Goods declared: Parts and accessories for mobiles like touch screen, power bank, battery, screen guard, hands free etc.; Declared value in B/E: 14.87 lakhs approx.).
- (ii) RMS cleared B/E with order for assessment only, with no examination order. Duty was paid, as per assessment, on 12<sup>th</sup> September, 2017.
- (iii) Shri Sudhanshu Tyagi and Amit Das Suptd SIIB opened a SIIB file on 13.09.2017 and reported therein that Customs (SIIB) was in receipt of information that the above said Bill of Entry contains excess cargo which has not been declared with the intention to evade Customs duty. They accordingly sought permission through Deputy Commr (SIIB) from Addl Commissioner (SIIB) for examination and were given permission on 13.09.2017 to examine.
- (iv) The consignment was de-stuffed on 14.09.2017 and examination was conducted by the SIIB officers- Shri Loganathan and Shri Gaurav, Custom Officers of SIIB, Mundra Customs on 15.09.2017. Samples were drawn and some notes were made by Sh Loganathan during examination.
- (v) Sh Ankit Travadi is acting as facilitator at Mundra Customs on behalf of Shri Mayur Mehta of M/s Dabke Clearing & Forwarding Pvt. Ltd., a customs broker in Mumbai. On 16<sup>th</sup> September Shri Ankit met Sh Deepak Khatri, Suptd, SIIB who told that the goods are undervalued and there is duty involvement in the consignment and told him that duty has to be paid either here or there ("yahanyawahan") meaning "the money is to be paid to officers or duty to the Department".
- (vi) Shri Mayur Mehta, customs broker/ mastermind, was called by Shri Ankit Travadi as he was unable to convince officers to release the goods and conveyed the indication for illegal gratification to him.
- (vii) Sh Mayur Mehta, the customs broker/ mastermind, arrived at Mundra Customs House on 18<sup>th</sup> Sep, had detailed discussions with Shri Deepak Khatri, Loganathan and Gaurav in SIIB Room No 301 who showed him the

samples and told him the violations in import consignment. Sh Das also joined them after some time. After coming out of SIIB room, he communicated with beneficial owner Shri Nasir Khan, then re-met with S/ Sh Loganathan and Gaurav. Sh Mayur Mehta thereafter directed Sh Ankit to sort out this issue by any means.

- (viii) Further, on 20<sup>th</sup> Sep, the cargo was examined again by Shri Gaurav, who again took some samples.
- (ix) On 21<sup>st</sup> September, Sh Ankit again went to SIIB Section to enquire about clearance. All officers, Shri Deepak Khatri, Shri Lognathan, Shri Das, Shri Gaurav, Shri Tyagi were present. When he asked about clearance of file, Shri Das told him that Rs. 8.5 Lakhs would be required to clear the consignment. Accordingly, he informed the amount to Shri Mayur Mehta who told him to fix the deal at Rs. 8 Lakhs.
- (x) Sh Mayur Mehta collected Rs. 8 lakhs from Sh Nasir Khan on 21.9.2017 and forwarded the money through Sh Sanjay, angadia of Mumbai for further delivery to Bhuj. Shri Chirag collected Rs. 8 lakhs from Angadia at Bhuj and later on Ankit gave the money to one Shri Rajdeep Singh (Rs 3 lakhs) and one Shri Vaibhav Soni (Rs. 5 Lakhs).
- (xi) On 21.09.2017, a fictitious Panchnama was prepared by Sh Amit Das in back date of 18.9.2017 which was signed by Shri Ankit S. Travadi, Sh Chandan Singh and Shri AbdulGani Khatri on 21<sup>st</sup> / 22<sup>nd</sup> September. It appears that the said Panchnama was created to facilitate the clearance of smuggled consignment with only minimal liability of Rs 5,000/, when the same was liable for complete confiscation.
- (xii) The said bill of entry was accordingly cleared on 22<sup>nd</sup> Sep. and Out of Charge was given to consignment immediately thereafter on 22<sup>nd</sup> Sep.

**25.** As regards the goods, in sum, DRI investigations, have revealed the following major violations with regard to Customs Act, 1962 and its allied Acts:

- Mis- declaration of description, quantity and value of the goods
- Contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012
- Infringing the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as applicable.
- Violation of the provisions of the Wireless Telegraphy Act, 1933

**26.** While for some items they were found to be violations of provisions of individual statutes, for others there is violation of provisions of more than one statute. Even for violations of provisions within Customs Act, 1962, with or without violations of provisions of other statutes as above, certain items have violations of mis- declaration of description or of quantity or of value or all or some of these.

**27.** Smt. Swati Vora and Shri Mayur Mehta were Directors of M/s. Om Transfreight Cargo Pvt. Ltd. and M/s. Dabke Clearing & Forwarding Pvt. Ltd. The latter had rendered forwarding services with respect to clearance of cargo covered under B/E No. 3130325 dated 06.09.2017. Further, M/s. Om Transfreight Cargo Pvt. Ltd. had rendered CB services with respect to past consignments of M/s. Crescent Traders at Delhi Air Cargo Complex which are not part of this Show Cause Notice. Investigation revealed that Smt. Swati Vora, and Shri Mayur Mehta both were

actively involved in facilitating and abetting the illegal clearance of goods imported in the name of M/s. Crescent Traders. Smt. Swati Vora was also indulging in manipulation of documents and actively associated with persons involved in arranging fake visiting card for sending a dummy power of attorney holder of M/s. Crescent Traders. **As regards the action against these companies, it was gathered through a letter dated 05.03.2019 of Deputy Commissioner of Customs, Customs Broker Section, New Customs House, Ballard, Estate, Mumbai-1 vide that in pursuant to the SCN dated 10.09.2018 issued by DRI, the CB license of M/s. Dabke Clearing & Forwarding Pvt. Ltd. (CB No. 11/130) was put under suspension vide Order No. 105/2018-19 dated 29.01.2019 passed by Commissioner of Customs (Gen), NCH, Mumbai. It was further informed that the CB license of M/s. Dabke Clearing & Forwarding Pvt. Ltd. was already under suspension since 19.07.2017 in another case.**

### **23. VALUATION OF THE GOODS: -**

**23.1.** Whereas, based on the declaration of goods in the Bill of Entry No. 3130325 dated 06.09.2017 filed by the importer through Customs Broker and the samples withdrawn during the aforementioned Panchnamas dated 23.09.2017, 25.09.2017, 26.09.2017, 27.09.2017 and 28.09.2017, the imported goods were found to be of various brands and were unbranded too. To confirm the genuineness of the imported goods declared as branded, the respective companies of different brand owners, who appeared to be right holders/legal representatives of various brands registered under Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, were contacted. Representatives of four brand owners turned up for examination of so-called branded goods found during examination carried out by DRI. These representatives physically inspected the samples of the seized goods and took photographs of the same to find out whether the seized goods were genuine or counterfeit. The representatives of remaining brands except as given in below Table-III did not join the investigation/IPR proceedings. Based on the physical inspection and the observations made by the representatives of brands, the counterfeit reports of goods of the following brands were received. The details of the counterfeit reports submitted by the representatives of brands are summarized as follows:

**Table-iv**

<b>Sl. No</b>	<b>Brand</b>	<b>Item Description</b>	<b>Right Holder/Legal Representative/Brand company</b>	<b>Counterfeit report date submitted by Right Holder/Legal Representative/Brand company</b>	<b>Whether goods found counterfeit</b>
1.	SAMSUNG	USB Data/Charging cable, Plastic Mobile Holder, Ear Phone, Power Bank	React India Pvt. Ltd., Authorized Representative, SAMSUNG, E-32, LGF, Lajpat Nagar-III, New Delhi – 110024  Corporate Office:- 11, First Floor, Augusta Point, Sector-53, Sector Road, Gurugram (Haryana)	12.10.2017	Yes

2.	SONY	Ear Phone, Mobile Battery	Sony India Pvt. Ltd. 201, 2 <sup>nd</sup> Floor, Shivalik 10, Opp.-SBI Bank Regional Office, Near Nehru Nagar Char Rasta, Ambawadi, Ahmedabad-380009	23.10.2017	Yes
3.	Apple	Mobile Back Cover, USB Cable, Mobile Screen Guard	Griffin Intellectual Property Services Pvt. Ltd., 11/13, Mohammadi Minar, Ground Floor, 14 <sup>th</sup> Khetwadi, Girgaum, Mumbai (Authorized by M/s. Apple Inc.)	23.08.2018	Yes
4.	Asus	Mobile phone Battery	M/s. ASUS Technology Pvt. Ltd.	Statement dated 07.02.2020	Yes

**28.2.** Since the other brand owners did not join the investigation, hence the nature of imported goods containing names/logo of such other brands was ascertained from local traders. During the Panchnama proceedings dated 03.08.2018, the three mobile shop accessories owners inspected the imported goods and they unanimously stated that all the goods which were having name/logo of various brands seemed to be copy/counterfeit. Thus, clearly such goods imported vide Bill of Entry No. 3130325 dated 06.09.2017, were also counterfeit and prohibited & deemed prohibited goods as per Rule-6 of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

**28.3.** Whereas, valuation of imported goods is to be done in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as CVR, 2007). As per the said provisions of the Act and Rules, transaction value of the imported goods is to be accepted subject to Rule 12 of CVR, 2007.

**28.4.** In the instant case, it is apparent from the facts narrated above that the importer in whose name the Bill of Entry No. 3130325 dated 06.09.2017 was filed and in whose name the documents are shown to have been made is M/s Crescent Traders under the Proprietorship of Shri Sandesh Tanwar. **However, in his statement dated 13.08.2018, Shri Sandesh Tanwar has denied any connection with the import of goods and also denied to have made any financial transaction with reference to the goods covered by Bill of Entry No. 3130325 dated 06.09.2017. Hence "transaction value" as declared in import documents cannot be considered to be true and correct. Thus, there is no way by which it can be ascertained that whether the conditions of CVR proviso to Rule 3 (2) in order to consider value to be "transaction value" can be accepted or otherwise. Even otherwise in statement dated 01.03.2018, Shri Nasir Khan who is the actual beneficiary owner of import has also confirmed that the value of the goods mentioned in the invoice and accordingly declared in the Bill of Entry No. 3130325 dated 06.09.2017 is not representing correct value.** It has also been confirmed by Shri Nasir Khan that no payment has been made to the so-called supplier of the goods. In the absence of any apparent chain of transactions duly supported by any contract, LC or any such other commercial document of real transaction, the so-called

transactions in the guise of invoices provided vide the Bill of Entry appears dubious. It is also pertinent to mention here that neither Shri Sandesh Tanwar nor Shri Nasir Khan have specifically mentioned even the name of the authorized dealer/bank through whom they made or are likely to make any transactions with reference to the given import invoice. Moreover, the value of the goods having different make/models/technical specifications vary from each other on the basis of relevant technical parameters pertaining to the goods. However, it appears that in the instant case, not only the make and models of the goods have not been properly mentioned in import documents, but the technical specifications have also not been provided thereby making it almost impossible to arrive at the correct valuation of the goods. It also appears that though a particular kind of goods has been imported in different technical specifications, all such technical specifications have been avoided to be declared in the invoice as well as packing list and all such goods have been put under a single item, with a view to incorrectly adopt the valuation of goods at a single price, which should have been otherwise distinguished and different values should have been declared for different makes, models, sizes, quality etc. It is also found during examination by DRI that some undeclared goods are there which have not been declared in import documents and some goods were found excess in quantity than the quantity thereof declared in the Bill of Entry and import invoice. The value of undeclared and excess cargo was not forming the part of the invoice value. All these factors give reason to believe that the value of the goods reflected in the invoice is not reflecting the total payment made or to be made by the importer to or for the benefit of the seller for the imported goods. In view of these facts the declared value cannot be considered true and accurate "transaction value" for the purposes of section 14 of Customs Act, 1962 and is liable to be rejected in terms of Rule 12 of the CVR, 2007.

**28.5.** In order to ascertain the value of the goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 when Shri Sandesh Tanwar denied to have made any transactions with reference to the goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 in the name of his proprietary concern, efforts were made to call the actual controller and beneficiary owner Shri Nasir Khan to provide the actual value of goods which was paid by him to the supplier but he has intentionally avoided to appear in response to various summons issued to him. The Customs Broker or any other person involved in the matter could also not substantiate the actual value of the goods declared in the Bill of Entry. Despite repeated attempts to contact and repeated requests to co-operate in the investigation, no one from the importer, controller & beneficiary owner, Customs Broker or any representative turned up for providing the actual transaction details pertaining to the seized goods. Hence, there remains no option available with the investigating officers of DRI other than adopting the alternative methods of valuation prescribed under Customs Valuation Rules, 2007.

➤ **Since the declared value is liable for rejection in terms of the Rule 12 of CVR, 2007, the value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of CVR, 2007.**

**28.6.** Shri Nasir Khan admitted in his statement that the value mentioned in invoice/packing list did not represent the actual value; this is also evident from the Panchnamas of 100% examination of goods and statements of various persons stating that the goods were mis-declared with respect to quantity and value and documents like invoices and packing list had been manipulated with a view to evade payment of appropriate duty. Therefore, there are reasons to

believe that the documents related to import vide **Bill of Entry No. 3130325** dated **06.09.2017** do not reflect true and correct transaction value. As, the goods were found to be in discrepant in quantity and also the value thereof was declared very less, the value declared by the importer in the Bills of Entry did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007(hereinafter referred as CVR, 2007) and thus the same appear liable to be rejected in terms of Rule 12 of the CVR, 2007. Since the declared value is liable for rejection in terms of the Rule 12 of CVR, 2007, the value is required to be re-determined by sequentially proceeding in terms of **Rules 4 to 9 of CVR, 2007**.

**28.7.** Whereas, **Rule 4** of CVR (identical goods) applies where imported goods which are same in all respects, including physical characteristics, quality and reputation, as the goods being valued except for minor difference in appearance that do not affect the value of the goods. Whereas **Rule 5** of CVR (similar goods) applies where the imported goods with goods although not like in all respect but having characteristics and like component making them have the same functions and interchangeable commercially, both identical and similar goods should be produced in the country in which the goods being valued were produced and produced by the same person who produced the goods under examination, or where no such goods are available, goods purchased by different persons. Besides, while applying the said rules, the transaction rules of the identical/similar goods have to be viewed at the same commercial level and substantially in the same quantity the goods being valued. **Since in this instant case, proper description, specification, model no, characteristics of goods was not declared & data of goods (found on examination) was also not available, the value of the goods could not be determined under Rule 4 & 5 of CVR, 2007.**

**28.8.** As per the **Rule 6** of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.

**Rule 7** of the CVR, 2007, stipulates that-

(1) *Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons' who are not related to the sellers' in India, subject to the following deductions -*

(i) *either the commission usually paid or agreed to be paid or the additions usually made for profits anti general expenses in connection with sales in India of imported goods of the same class or kind;*

(ii) *the usual costs of transport and insurance and associated costs incurred within India;*

(iii) *the customs duties and other taxes payable in India by reason of importation or sale of the goods*

(2) *If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods*

are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

**28.9.** The consignment imported vide Bill of Entry No. 3130325 dated 06.09.2017 was having goods containing logo/name of various Brands which seem to be counterfeit. However, such counterfeit goods were imported to be sold in guise of branded goods. Accordingly, for valuation purpose, the value of branded goods could be considered to ascertain the value of goods imported vide Bill of Entry No. 3130325 dated 06.09.2017. Moreover, some of the purported branded goods were reported to be counterfeit; hence in order to arrive at a fair reasonable value of the subject goods in question within the framework of law and procedures as ordained in the Valuation Rules.

**28.10.** The Govt./ DGFT approved Chartered Engineer/ Valuer M/s. Value Guru Chartered Engineers & Valuers Pvt. Ltd., Shop No. 61, Ground floor, Shakthi Shopping Centre, Sakthi Nagar, Mundra (Kutch) was sought for assistance vide letter dated 17.08.2018.

**28.11.** The report on the request of the Department was given by the Chartered Engineer M/s. Value Guru Chartered Engineers & Valuers Pvt. Ltd. after making an exhaustive market survey based on the specification and model no. and makes found on the impugned goods. The opinion of the Valuer/ Chartered Engineer was obtained vide his Certificate/Report No. IND/ KAN/ 070918/ CRE/ CUS/ OPE/ DRI/ LCL/ ATH/ CER/ No. dated 07.09.2018. As per afore mentioned valuation report dated 07.09.2018 submitted by M/s. Value Guru Chartered Engineers & Valuers Pvt. Ltd. the total value of the above-mentioned imported goods i.e. average fair valuation amount CIF multiplied by respective quantity of goods, comes to **Rs. 1,30,59,885/-** which is net of all expenses incurred in similar quantity of goods after importation viz. Selling commission, general expenses selling profit transportation, insurance and associated cost custom duties and other taxes levied in India. The details as recommended by the Chartered Engineer is mentioned in the Chart enclosed as **Annexure-A** to subject SCN.

**28.12.** Whereas on the facts and evidences discussed above and keeping in view the related statutory provisions of Customs Act, 1962 and other regulations, as regards valuation aspect of the matter, it appears that M/s. Crescent Traders, through its beneficiary owner Shri Nasir Khan had imported mobile accessories vide Bill of Entry No. 3130325 dated 06.09.2017; M/s. Crescent Traders have suppressed the actual transaction values and have declared lower values of the above mentioned import consignment with an intention to evade payment of correct Customs Duties; that it transpires as per valuation report of DGFT approved Valuer, the value of goods arrived as **Rs. 1,30,59,885/-** (net of all expenses viz. Selling commission, general expenses selling profit transportation, insurance and associated cost custom duties and other taxes levied in India); which is much more than the assessable value declared in the Bill of Entry as **Rs. 14,87,806/-** only. In view of the above valuation arrived at under **Rule 7 of**

the **Customs Valuation Rule, 2007**, it is proposed to take **Rs.1,30,59,885/-** for the purpose of arriving at fair value for assessment.

29. Shri Nasir Khan, the actual importer and the beneficiary owner of M/s. Crescent traders had filed Special Civil Application bearing no 22398 of 2019 before Hon'ble Gujarat High Court challenging the valuation of the goods imported by him and also praying for other relief from the Hon'ble Court. Hon'ble Court had disposed of the SCA vide Order dated 16.06.2021 with a direction that *it would be open to the petitioner to make a fresh representation to Additional Director General, DRI, with regard to valuation arrived at by the concerned Valuer within a period of four weeks along with all the documents, upon which he relies. The said officer shall decide the representation after considering the documents produced by the petitioner. Since the petitioner himself does not want to appear before the authority, the officer may decide such representation after examining the documents in detail.*

Shri Nasir Khan filed the representation on 18.06.2021 received on 03.07.2021 to Additional Director General, DRI Zonal Unit, Ahmedabad which was rejected detailing the grounds of rejection which were communicated to Shri Nasir Khan vide letter dated 08.08.2022. Accordingly, valuation has been done and accepted as per CE reported dated 07.08.2019.

**Table v**

Sr. No.	Item description	TOTAL QUANTITY (PCS)	Total Wholesale Value (approx.) net of all expenses viz. Selling commission, general expenses, selling profit, transport, insurance & associate costs, taxes & Customs duty (AS PER VALUER)(Rs.)	Total duty payable (Rs.)	Commodity code rate as per tariff
1	Audio Cable	500	10000	3046	30.154
2	Mobile phone battery	34818	1097040	456323	41.154
3	Car mobile phone Charger/Adapter /USB Charger	5400	183000	55734	30.154
4	Earphone	19980	990765	301743	30.154
5	HDMI Cable to Lightening and USB	232	11600	4439	34.838
6	Head Phone & Bluetooth Headphone	1475	58750	17893	30.154
7	Mobile Phone Cover (TPU)	12371	61855	25729	41.154
8	Mobile Screen Guard (Tuffened Glass)	510244	2541670	1057229	41.154
9	Plastic holder for mobile phone	60000	1800000	748725	41.154
10	Wireless Speaker	415	41750	17366	41.154
11	Power Bank	4971	596520	248127	41.154

12	Printed Circuit Board Strips (50 units in one strip)	440	22000	4000	15
13	Selfistick for mobile phone	1987	88705	36898	41 184
14	Touch Screen	3200	112000	46587	41 684
15	Bike Mobile Holder	993	24825	10326	41 684
16	USB Data cable/charging cable	254615	5192125	1986864	37 986
17	Packing	47346	227280	69219	30 154
<b>Total</b>			<b>13059885</b>	<b>5090248</b>	

➤ **MIS-DECLARATION, MISCLASSIFICATION AND LIABILITY TO CONFISCATION OF IMPORT GOODS OF M/S. CRESCENT TRADERS: -**

30. From the foregoing paras, it appears that the transaction value of various goods imported in the name of M/s Crescent Traders (whose the actual beneficiary owner is Shri Nasir Khan) as declared in the Bill of Entry no. 3130325 dated and in the supporting invoice produced at the time of import into India were not reflecting the correct transaction value. Even after having knowledge that the price shown in the invoice attached with the Bill of Entry was not reflecting the correct transaction value, the Bill of Entry was through Customs Broker M/s. All Marine Cargo Services an attempt was made to get clearance of the goods from Customs after making self-assessment of the Bill of Entry. The importer/ actual beneficiary owner through the master mind Sh Mayur Mehta conspired with the officers of SIIB to get the imported goods cleared involved in respect of such goods and were able to obtain out of charge for the same on 22.09.2017. Further, as discussed above, there were mis-declaration with respect to quantity and description of import goods in the Bill of Entry no. 3130325 dated 06.09.2017. The mis-declarations in respect of value made by the importer with an intent to evade payment of appropriate Customs duty and other material particulars has made the said goods liable for confiscation under Section 111(m) of Customs Act, 1962.

30.1. It also appears that the goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 includes the goods with the brand names of Xiami (Mi), Oppo, Vivo, JBL, Nokia, Samsung, Sony, Apple etc. Such branding is to be termed as Intellectual Property and import of such branded goods into India is permissible only through the right holder or the person authorized by such right holders as per the relevant Intellectual Property law. Apparently, the importer/ the actual beneficiary owner has not come forward with any evidence which may establish them as right holder and who are legally eligible to import such branded goods. On the contrary, upon inspection of the goods, representatives of some of the right holders have already confirmed that the goods imported in the Bill of Entry no. 3130325 dated 06.09.2017 with their relevant brand name/s were counterfeit goods and the goods do not meet the standards of such branded goods. It is apparent from the Whatsapp Chat conversations and other evidences gathered during investigation that the actual beneficiary owner of the imported goods and other associates were also aware about the violations of **Intellectual Property Rights** and hence they attempted to devise an alternative strategy of re-exporting the such offending goods. Thus, the branded goods imported by the importer vide Bill of Entry No. 3130325 dated 06.09.2017, which are mixed with other unbranded goods, were imported by the importer in violation of the

provisions of **Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007** and the same shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962. The same are therefore liable to be confiscated under Section 111(d) of the Customs Act, 1962. **Accordingly, the goods mentioned at Sr. No. 1 to 445 of Annexure-B attached with subject SCN having value of Rs.74,90,630/- are liable to confiscation under Section 111(d) of the Customs Act, 1962.**

**30.2.** It also appears that the goods imported vide **Bill of Entry No. 3130325 dated 06.09.2017** includes the goods which attract the schedule of the Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 for which the mandatory Indian Standards apply and the supplier of such goods has to obtain BIS License for using standard mark on their product in terms of clause 2 (A) of Chapter 1A of the Indian Trade Classification (Harmonized System) of export and import read with Para 2.01 and 2.02 of the Foreign Trade Policy 2015-2020 notified under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 and they should also follow the relevant norms of Indian standard number for such products. Alternatively, the importer has to produce an exemption order issued by the competent authority under the provisions of the Bureau of Indian Standards Act, 1986 read with Rule-14 of the Bureau of Indian Standards Rules, 1987. However, the importer has not provided any such exemption order and also not provided any details regarding registration obtained by the supplier of the goods. **Therefore, the import of specified goods made by the importer is in violation of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and the provisions of Foreign Trade Policy 2015-2020 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992 which has rendered such goods liable for confiscation under Section 111(d) of the Customs Act, 1962.** Accordingly, the goods mentioned in Annexure-C (at Sr. No. 3 to 11, 19 to 24, 129 to 207, 582 to 615 and 734 to 736 of Annexure-A) to subject Show Cause Notice having value of **Rs.18,79,560/-** are liable to confiscation under Section 111(d) of the Customs Act, 1962.

**30.3.** It also appears that the goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 includes goods for which the NOC/License is required to be obtained from WPC Wing of the Ministry of Communication& Information Technology in terms of the provisions of the Wireless Telegraphy Act, 1933 for the purpose of import. In the absence of such NOC/License by the importer, the import of such product is to be considered as imported in violation of the provisions of **Wireless Telegraphy Act, 1933** and such import will be prohibited by virtue of Notification No. 71 - Cus dated 25.09.1953 as amended from time to time issued under Section 11 of the Customs Act, 1962. Since such goods are also restricted in terms of clause 16 of Chapter 1A of the Indian Trade Classification (Harmonized System) of export and import read with Para 2.01 and 2.02 of the Foreign Trade Policy 2015-2020 notified under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992, hence goods should also maintain relevant technical specifications as declared before the WPC wing while obtaining the NOC/License for such products. **However, the importer has not provided any such NOC/License. In that case, the import of specified goods made by importer is in violation of the provisions of Foreign Trade Policy 2015-2020 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992 which has rendered such goods liable for confiscation under Section 111(d) of the Customs Act, 1962.** The said goods are also in

contravention of the prohibition imposed under Section 11 of the Customs Act, 1962 and thereby also such goods are liable for confiscation under Section 111(d) of the Customs Act, 1962. Accordingly, the **goods mentioned in Annexure-D (at Sr. No. 14 to 18, 576 to 581, 617 to 618 and 1095 to 1101 of Annexure-A) to subject Show Cause Notice**, having value of **Rs. 51,750/-** are liable to confiscation under Section 111(d) of the Customs Act, 1962.

**30.4.** It also appears that in addition to the goods declared in the Bill of Entry there are some other goods which are not included in the declaration made in the Bill of Entry and the same are **in excess** of those included in the Bill of Entry. The said goods have been imported by the importer with an intent to evade payment of applicable duty as also to avoid compliance of mandatory / statutory conditions. Hence such goods are liable for confiscation under Section 111(l) & 111(i) of the Customs Act, 1962. For importing such undeclared and excess goods illegally, the importer had got the same concealed with the goods declared in the Bill of Entry, for which also the goods used for concealing the smuggled goods of **undeclared and excess** goods are liable for confiscation in terms of Section 119 of the Customs Act, 1962. Accordingly, the goods mentioned in **Annexure-E (at Sr. No. 1,2,12 to 18,98 to 115,527 to 545 and 616 of Annexure-A) attached to the Show Cause Notice**, having value of **Rs. 3,29,630/-** are liable for confiscation under Section 111(l) & 111(i) of the Customs Act, 1962. Whereas, the other goods which were used for concealing the said undeclared / excess goods having value of **Rs. 1,27,30,255/-** are liable to confiscation in terms of **Section 119** of the Customs Act, 1962.

**30.5.** In addition, goods mentioned in **Annexure-A** (excluding the goods mentioned in Annexure- B, Annexure- C, Annexure- D & Annexure- E as discussed in para 36.1 to 36.5 above), in respect of Bill of Entry No. 3130325 dated 06.09.2017 have been undervalued and appear to be liable for confiscation under Section 111(m) of the Customs Act, 1962.

**30.6.** Whereas for some items in the import consignment (Annexure-A) there are violations of provisions of individual statutes, for others there is violation of provisions of more than one statute. Even for violations of provisions of within Customs Act, 1962, with or without violations of provisions of other statutes as above, certain items have violations of mis- declaration of description or of quantity or of value or all or some of these. **Thus, it appears that the entire import goods involved in this case as mentioned at Sr. No. 1 to 1103 of attached Annexure-A to subject SCN having value of Rs.1,30,59,885/- appear to be liable for confiscation under Section 111(d) and/or, Section 111(m) and/or, Section 111(l) and/or, Section 111(i) and/or, Section 119 of the Customs Act, 1962 as the case may be, as discussed supra.**

**30.7.** Similarly, as apparent from the Whatsapp Chat conversations and sheet containing list of copy/counterfeit items recovered from the mobile phone of Shri Nasir Khan and other evidences gathered during investigation with respect to past consignment covered under Bill of Entry No. 3016001 dated 28.08.2017 as mentioned in **Table at para 12** and in **Annexure-Y** attached to subject SCN, there appeared import of copy/counterfeit goods of various brands and thus the same were imported by the importer in violation of the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 and the same shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962. The concerned goods covered under such past consignment (though the goods are not physically available) are also liable for confiscation under Section

111(d) of Customs Act, 1962. The goods listed in the said **Annexure-Y** have not been declared correctly with respect to its description and thus the same also appear to be liable for confiscation under Section 111(m) of the Customs Act, 1962.

**30.8.** In terms of **Rule-11 of Foreign Trade (Regulation) Rules, 1993**, on the importation into of any customs ports of any goods or goods connected with services or technology, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quantity, quality and description of such goods or goods connected with services or technology to the best of his knowledge and belief and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or any other documents. In the instant case, importer failed to declare the correct value, description etc. of the goods imported and hence contravened the provisions of the Rules 11 and 14 of Foreign Trade Regulation Rules, 1993 as also the provisions of Rule-11(1) of Foreign Trade (Development and Regulation) Act, 1992 in as much as they knew that the declarations made by them were incorrect with regard to goods imported. The contraventions of provisions of the Rule-11(1) of Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade Regulation Rules, 1993 is a prohibition of the nature as described under the Section 11 of the Foreign Trade (Development and Regulation) Act, 1992. In terms of Section 3(3) of the Act ibid the prohibitions are deemed to be prohibition under the Section 11 of Customs Act, 1962. **In the present case the goods in the import consignment there was mis- declaration of description, quantity and value of the goods being imported by M/s Crescent Traders as also contravention of the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as applicable.** As per Section 2(39) of Customs Act, 1962, "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113. Thus, the said goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 and also goods covered under past consignment covered under Bill of Entry No. 3016001 dated 28.08.2017 as discussed supra would be considered to be smuggled goods as per the definition under Section 2(39) of Customs Act, 1962 and appear liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

**30.9.** It is pertinent to mention here that a **Show Cause Notice bearing F.No. DRI/AZU/GRU-45/2017-Crescent dated 10.09.2018** has already been issued by the ADG, DRI proposing confiscation of the goods imported in the consignment covered under Bill of Entry No. 3130325 dated 06.09.2017 and imposition of penalty/fine etc. on all concerned and pending for adjudication. Penalty has also been proposed to impose upon following persons:

**Table vi**

<b>S.no.</b>	<b>Name (S/Shri/Ms/Smt/ M/s)</b>	<b>(3)</b>	<b>(4)</b>	<b>(6)</b>	<b>(7)</b>
<b>(1)</b>	<b>(2)</b>				
1	M/s. Crescent Traders (Shri Sandesh Tanwar, Proprietor)	112(a)	112(b)	114AA	-
2	Shri Nasir Khan	-	-	-	117
3	Ms. Swati Vora alias Monika	112(a)	112(b)	114AA	117
4	M/s. Dabke Clearing & Forwarding Pvt. Ltd.,	112(a)	112(b)	114AA	-

5	Shri Ankit Shaileshbhai Travadi Employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd.	112(a)	112(b)	114AA	-
6	Shri Shera Ram of M/s. Krishna Shipping Logistics	112(a)	112(b)	-	-
7	Shri Mohammad Hanif Fakir Mohammad Shaikh	112(a)	112(b)	114AA	117
8	Shri Bhavesh N. Gori, H Card Holder in Customs Broker firm M/s. All Marine Cargo Services	112(a)	112(b)	114AA	-
9	Shri Chandan Singh, H Card Holder in Customs Broker firm M/s. All Marine Cargo Services	112(a)	112(b)	114AA	-
10	M/s. All Marine Cargo Services, Gandhidham	112(a)	112(b)	114AA	-
11	Shri Amit Kumar Singh of M/s. All Marine Cargo Services, Gandhidham	112(a)	112(b)	114AA	-
12	Shri Chirag Shaileshbhai Travadi, Employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mundra	112(a)	112(b)	-	-
13	Shri Abdul Gani Khatri, Executive in MICT CFS, Mundra	112(a)	-	114AA	-
14	Shri Nirav Vasani, H Card Holder in Customs Broker firm M/s. Velji Dosabhai & Sons Private Limited	112(a)	-	114AA	-
15	Shri Amit Das, then Superintendent of Customs, SIIB, Mundra	112(a)	112(b)	114AA	-
16	Shri M. Loganathan, then Superintendent, SIIB, Mundra	112(a)	112(b)	114AA	-
17	Shri Gaurav Kumar, then Preventive Officer of Customs Mundra	112(a)	112(b)	114AA	-
18	Shri Deepak Khatri, then Superintendent, SIIB, Mundra	112(a)	112(b)	-	

### **31. MIS-CLASSIFICATION OF GOODS: -**

**31.1.** The importer had mis-declared certain items viz. Mobile phone battery, Car mobile phone Charger/Adapter /USB Charger, Touch Screen and USB data cable/charging cable respectively and mis-classified the same under CTH No. 85299090, 85299090, 85177090 and 85183000 and 85044030 respectively in the Bill of Entry bearing no. 3130325 dated 06.09.2017. Whereas, during the 100% examination, these goods were found as Mobile phone battery, Car mobile phone Charger/Adapter /USB Charger, Touch Screen and USB data cable/charging cables which are appropriately classifiable under CTH No. 85078000, 85044030, 85299090 and 85442090 respectively. Thus, the classification of these goods done by the importer under CTH No. 85299090, 85299090, 85177090 and 85183000 and 85044030 is liable to be rejected.

### **32. DEMAND OF CUSTOMS DUTY: -**

**32.1** Consequent to the aforesaid facts and evidences discussed in foregoing paras, it is apparent that the subject goods imported by the importer vide Bill of Entry bearing no. 3130325 dated 06.09.2017 filed at Customs House, Mundra were mis-declared with respect to value and other material particulars. The

importer had knowingly and deliberately declared lesser value of the subject goods in the Bills of Entry suppressing the actual transaction value of the imported goods with a clear intention to evade the differential Customs Duty. In spite of issuance of number of Summons to the importer/Shri Nasir Khan and his associates including Shri Uves Khakhu etc. and in spite of giving assurance by Shri Nasir Khan to provide the correct value of the goods and actual documents thereof, these persons neither joined the investigation, nor provided the actual import documents showing actual transaction value. Due to the non-cooperative attitude of the importer, the valuation of goods covered under B/E No. 3130325 dated 06.09.2017 was done through market survey and through Govt. approved Chartered Engineer/Valuer and for other Bills of Entry, the value has been obtained from the overseas network. Still the actual value of remaining 03 consignments could not be gathered as the concerned Authorities at China has not provided the same. Had the DRI not initiated investigation into the matter, the importer would have succeeded in his manipulations and the evasion of duty could not have been unearthed. As the importer has deliberately evaded the Customs Duty by suppressing material facts, extended period of demand of duty as laid down under Section 28(4) of the Customs Act, 1962 is clearly attracted in the instant case. The quantum of Customs Duty evaded by the importer in the above discussed manner is required to be demanded and recovered from them. The calculation of the applicable Customs Duty and differential Duty based on the valuation report of the Govt. approved Valuer is as per the Annexure-X attached with the SCN is summarised hereunder: -

**Table-vii**

Sl. No.	Item description	TOTAL QUANTITY (PCS)	Total Wholesale Value (approx.) net of all expenses viz. Selling commission, general expenses, selling profit, transport, insurance & associate costs, taxes & Customs duty (AS PER VALUER) (Rs.)	VALUE AFTER ADDING 1% LANDING CHARGE	Effective rate of duty (BCD+ED)	Total duty paid (in Rs.)	Total duty payable (Rs.) (BCD+ED, Cess+IGST)	Total Differential duty payable
1	Audio Cable	500	10000	10100	30.154	547066	3046	
2	Mobile phone battery	34818	1097040	1108010	41.184		456323	
3	Car mobile phone Charger/ Adapter /USB Charger	5400	183000	184830	30.154		55734	
4	Earphone	19980	990765	1000673	30.154		301743	
5	HDMI Cable to Lighting and USB	232	11600	11716	37.888		4439	
6	Head Phone & Bluetooth	1475	58750	59338	30.154		17893	

	h Headpho ne						4543182
7	Mobile Phone Cover (TPU)	12371	61855	62474	41.184	25729	
8	Mobile Screen Guard (Tuffened Glass)	51024 4	2541670	2567087	41.184	1057229	
9	Plastic holder for mobile phone	60000	1800000	1818000	41.184	748725	
10	Wireless Speaker	415	41750	42168	41.184	17366	
11	Power Bank	4971	596520	602485	41.184	248127	
12	Printed Circuit Board Strips (50 units in one strip)	440	22000	22220	18	4000	
13	Selfistick for mobile phone	1987	88705	89592	41.184	36898	
14	Touch Screen	3200	112000	113120	41.184	46587	
15	Bike Mobile Holder	993	24825	25073	41.184	10326	
16	USB Data cable/charging cable	25461 5	5192125	5244046	37.888	1986864	
17	Packing	47346	227280	229553	30.154	69219	
<b>Total</b>			<b>13059885</b>	<b>1319048</b>		<b>547066</b>	<b>5090248</b>
			<b>5</b>				<b>4543182</b>

**32.2.** Thus, the differential Customs duty totally amounting to **Rs.45,43,182/- (Rs. Forty-Five Lakh Forty-Three Thousand One Hundred and Eighty-Two Only)** is liable to be demanded and recovered from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962.

#### **ROLE AND CULPABILITY ON THE IMPORTER/PERSON/FIRM INVOLVED: -**

The role and liability under Customs Act 1962 of various private persons / entities involved in the instant case as revealed by investigations is discussed herein below: -

#### **33.1. Role and liability of M/s. Crescent Traders (Shri Sandesh Tanwar, Proprietor), under Customs Act 1962: -**

- From the facts of the case unearthed during investigation as mentioned in foregoing paras, it is found that the importer shown on paper in this case as M/s. Crescent Traders, which is a Proprietary concern owned by Shri Sandesh Tanwar but it appears a façade to clear the smuggled goods in illegal manner. The IEC No. 0317524631 was obtained on the basis of details and documents provided by Shri Sandesh Tanwar and it is also apparent that the Bank Account no. mentioned in the IEC records of M/s. Crescent Traders was also fraudulently opened showing Shri Girish K.

Bapat as Prop. /Account holder for M/s. Crescent Traders. Moreover, the payment of Customs Duty was also paid for clearance of import consignments imported in the name of M/s. Crescent Traders at Mundra port was also paid through Bank Account of dummy firms M/s. Pragati Enterprises and M/s. Samarth Impex. It appears that Shri Sandesh Tanwar who is an educated person has allowed his identity particulars to be used by Shri Nasir Khan and Shri Mayur Mehta for their intention of smuggling of goods for a monetary gain. Shri Nasir Khan, in his statement dated 01.03.2018 stated that he was in search for IEC through his known persons and he got reference of Shri Sandesh Tanwar from the market and Shri Sandesh Tanwar was in search of Job and money. Shri Nasir Khan further stated that he was going to keep Shri Sandesh Tanwar on job also. He further added that Shri Sandesh Tanwar agreed for using his IEC for which he (Sandesh Tanwar) asked him (Shri Nasir Khan) for Rs. 5,000/- per consignment for using his IEC.

- ii. It also appears from the whatsapp chat conversations, voice message/audio clip extracted from the mobile phone of Shri Nasir Khan in which Shri Mayur Mehta suggested Shri Nasir Khan to call for the boy in whose name the IEC was (Shri Sandesh Tanwar) and if required pay him 5-10-15 thousand rupees as he would be required to complete the investigating file. From the statement of Shri Nasir Khan and other evidences, it appears that Shri Sandesh Tanwar allowed his documents for creation of IEC and also allowed his IEC for import in lieu of monetary gain.
- iii. Thus, due to acts of omission and commission on the part of M/s Crescent Traders, Proprietor Shri Sandesh Tanwar, the imported goods were rendered liable for confiscation under Section 111 of the Customs Act, 1962. They have knowingly imported/purchased/sold the goods which were liable for confiscation and evaded payment of Customs Duty. They have made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. In view of the above, M/s Crescent Traders, Proprietor Shri Sandesh Tanwar has rendered themselves liable to penalty under Section 112(a) and (b) [read with Sections 112(i), Section 112 (ii)], 114A and Section 114AA of the Customs Act, 1962 for his various acts of omission and commission. Thus, M/s. Crescent Traders as well as Shri Nasir Khan would be jointly and severally liable to discharge the liabilities and penalties against the imports (except personal penalties which would be their individual liabilities).

### **33.2. Role and liability under Customs Act 1962 of Shri Nasir Khan, Mumbai: -**

- i. Shri Nasir Khan is the master mind behind import of goods without declaring correct description, quantity and value of the goods with clear cut intention to evade duty and in violation of various other statutory/mandatory requirements. He used to run a mobile shop in the name of Connect Mobile at City Centre, Mumbai Central and he used to import mobile accessories from China and Hongkong. He got in touch with Shri Mayur Mehta to help him in clearance of imported goods illegally from Customs. After getting assurance from Shri Mayur Mehta to get cleared the goods from Customs, Shri Nasir Khan finalized the subject import deal and arranged for IEC in the name of others as a precautionary measure to hide his actual identity in the case of any interception by Govt. agencies. He

accordingly arranged for IEC in the name of M/s. Crescent Traders and showed Shri Sandesh Tanwar as its Proprietor. Shri Nasir Khan provided copy of IEC Certificate and other related documents of import goods to Shri Mayur Mehta and also paid money for payment of Customs duty in relation to Bill of Entry No. 3130325 dated 06.09.2017. When the import cargo was examined by SIIB, Customs House, Mundra and SIIB officers raised the objection of mis-declaration/undervaluation etc, Shri Nasir Khan sent Rs. 8 lakhs to Shri Mayur Mehta through Angadia at Bhuj to be paid to SIIB officers as per deal finalized by Shri Mayur Mehta for clearance of import cargo. On being summoned by DRI, Shri Nasir Khan sent a fake owner of M/s. Crescent Traders, viz., Mr. Mohammad Hanif Fakir to tender statement in the capacity of Power of Attorney holder on behalf of Sandesh Tanwar whereas the said Power of Attorney was got prepared by Shri Nasir Khan. In his statement dated 01.03.2018, Shri Nasir Khan admitted the entire conspiracy of false information, mis-declaration, undervaluation and other violations in respect of goods imported by him in the name M/s. Crescent Traders vide Bill of Entry No. 3130325 dated 06.09.2017.

- ii. Various summons as discussed above were issued to Shri Nasir Khan to record his further statement or to get correct value of imported goods and further documents/details related to the case against M/s. Crescent Traders, however, he did not appear to tender his statement and sent evasive replies that he was ill etc. A team of officers of DRI visited his addresses i.e. 591/592, Connect Mobile, 2<sup>nd</sup> Floor, City Center Mall, Mumbai Central and at Central Court, Motlibhai Street, Agripada, Mumbai Central on 25.07.2018, 26.07.2018 and 09.04.2019. Summons issued in the name of Shri Nasir Khan were also handed over to the persons found available at the said addresses, however, Shri Nasir Khan did not present himself for tendering statement before the Sr. Intelligence Officers. Thus, he has disobeyed various Summons issued under Section 108 of Customs Act, 1962 and is absconding.
- iii. After initiation of investigation in this case by officers of DRI, summons were issued to Shri Nasir Khan who was the actual importer and the actual beneficiary owner of M/s. Crescent Traders in order to record his statement and to get the correct value of imported goods and actual documents thereof. In response, Shri Nasir Khan sent a dummy representative Mr. Mohammad Hanif Fakir, as Power of Attorney Holder. He presented himself before the Investigating officers as actual importer of goods and produced a Power of Attorney shown to have been signed by Shri Sandesh Tanwar who was shown as Proprietor of M/s. Crescent Traders in IEC records. He also produced a fake Visiting Card of Crescent Traders which was containing names of Shri Sandesh Tanwar and Shri Hanif Shaikh thereon. On being questioned by officers of DRI regarding his business procedure and other related questions, he disclosed his true identity as salesman at Connect Mobile shop which is owned by Shri Nasir Khan and informed that he was sent by Shri Nasir Khan. In this regard, statement of Mayur Mehta and audio clips extracted from the mobile phone of Shri Nasir Khan revealed that the said Power of Attorney and Visiting Card of M/s. Crescent Traders (showing name of Shri Mohammad Hanif Fakir) were got prepared by Shri Nasir Khan who sent the said person to DRI office as importer in this case to avoid the clutches of law.
- iv. Thus, Shri Nasir Khan hatched the entire conspiracy and was indulged in

the furnishing false declarations in the Bill of Entry and other related documents and also committed various offences including evasion of Customs Duty and those of mis- declaration of description, quantity and value of the goods being imported by M/s Crescent Traders as also contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and infringing the Intellectual Property Rights(Imported Goods) Enforcement Rules, 2007 as applicable. He also attempted to create false identity of importer by using Shri Mohd. Hanif Fakir Mohammad Shaikh to impersonate the importer. He has also dishonoured the various summonses issued to him under Section 108 of Customs Act, 1962 to appear before investigation and failed to provide the correct details/documents related to value of the goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 and also for the past consignment covered under Bill of Entry No. 3016001 dated 28.08.2017.

v. Whereas, from the facts of the case unearthed during investigation as discussed in foregoing paras, it is found that the importer shown on paper in this case is M/s. Crescent Traders, which is a Proprietary concern ostensibly owned by one Shri Sandesh Tanwar. However, it appears to be only a façade to clear the smuggled goods in illegal manner, for which the IEC No. 0317524631 was applied for and obtained on the basis of details and documents provided by Shri Sandesh Tanwar to one of his friends on some other pretext, as stated by Shri Sandesh Tanwar. There is strong *prima facie* evidence to suggest that M/s. Crescent Traders, Prop. Sandesh Tanwar is not the real importer but Shri Nasir Khan was the actual importer/owner and also a mastermind who hatched a conspiracy and employed the entire modus operandi for importing goods violating various provisions of Customs Act, 1962 and other statutory provisions. However, it appears that Shri Sandesh Tanwar who is an educated person has allowed his identity particulars to be used by Shri Nasir Khan and Shri Mayur Mehta for smuggling of goods for a monetary gain and did not take steps to prevent misuse of his identity particulars. Various evidences such as statement of Shri Mayur Mehta, statement of Shri Mohd. Hanif Shaikh, whatsapp chats and audio clips/voice messages retrieved from the mobile phone of Shri Nasir Khan and admission by Shri Nasir Khan himself in his statement clearly shows that Shri Nasir Khan appears to be real importer and the actual beneficiary owner in respect of goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 and also for the past consignment covered under Bill of Entry No. 3016001 dated 28.08.2017. As narrated above, it is also apparent that the Bank Account no. mentioned in the IEC records of M/s. Crescent Traders was also fraudulently opened showing Shri Girish K. Bapat as Prop. /Account holder for M/s. Crescent Traders. Moreover, the payment of Customs Duty was also paid for clearance of import consignments imported in the name of M/s. Crescent Traders at Mundra port was also paid through Bank Account of dummy firms M/s. Pragati Enterprises and M/s. Samarth Impex. Thus, M/s. Crescent Traders as well as Shri Nasir Khan would be jointly and severally liable to discharge the liabilities and penalties against the imports (except personal penalties which would be their individual liabilities). Various summonses dated 01.03.2018, 13.03.2018, 27.03.2018, 13.04.2018 and 25.07.2018 were issued to Shri Nasir Khan but he did not appear before investigating officer. Accordingly, a Criminal Complaint bearing no. 223/2019 was filed

against him before Ho'ble CJM Court, Mundra on 12.02.2019 under Section 174, 175, 176 of IPC. Further, Summons dated and 13.02.2020, 07.08.2020, 08.09.2020 and 30.11.2021 were issued to Shri Nasir Khan but he again did not appear before investigating officers and another criminal complaint under Section 174, 175, 176 of IPC was filed before Additional Chief Judicial Magistrate, Gandhidham.

vi. Thus, due to his acts of omission and commission, the imported goods were rendered liable for confiscation under Section 111 of the Customs Act, 1962 and he had evaded the Customs Duty actually payable on the imports made in the name of M/s. Crescent Traders. He has knowingly imported/purchased/ sold the goods which were liable for confiscation and has made/ signed/ used and/or caused to be made/ signed/ used the documents/ statements which were containing false/ incorrect material particulars. He did not provide the details/ documents sought from him vide Summons and also did not appear to tender statement. In view of the above, Shri Nasir Khan, the actual importer and actual beneficiary owner of M/s Crescent Traders has rendered himself liable to penalty under Section 112(a) and 112(b) [read with Sections 112(i), Section 112 (ii), 114A, Section 114AA and Section 117 of the Customs Act, 1962 for his various acts of omission and commission.

### **33.3. Role and liability under Customs Act 1962 of Shri Uves Khakhu, Mumbai: -**

- i. Shri Uves Khakhu was the business partner of Shri Nasir Khan and also deeply involved in the import of goods without declaring correct description, quantity and value of the goods with clear cut intention to evade duty and in violation of various other statutory / mandatory requirements. As emerged from the Whatsapp chat conversations and other evidences recovered from the mobile phone of Shri Nasir Khan, Shri Uves Khakhu was actively participating in each and every import of M/s. Crescent Traders and was part of conspiracy of evasion of Customs Duty and other violations. He was one of the close associates of Shri Nasir Khan, Shri Mayur Mehta, Smt. Swati Vora, Shri Mohammad Selia and other key persons in clearance of imported goods illegally from Customs. He was part of conspiracy hatched for sending a fake owner of M/s. Crescent Traders, viz., Mr. Mohammad Hanif Fakir to tender statement in the capacity of Power of Attorney holder on behalf of Sandesh Tanwar whereas the said Power of Attorney was got prepared by the associates of Shri Nasir Khan.
- ii. Various summons as discussed above were issued to Shri Uves Khakhu to record his statement or to get correct value of imported goods and further documents/details related to the case against M/s. Crescent Traders, however, he did not appear to tender his statement and sent evasive replies. A team of officers of DRI visited his residential address at Mumbai Central on 09.04.2019. Summons issued in his name was also handed over to the person /his brother who was found available at the said addresses, however, Shri Uves Khakhu did not present himself for tendering statement before the Sr. Intelligence Officers. Thus, he has disobeyed various Summons issued under Section 108 of Customs Act, 1962 and is absconding.
- iii. Thus, Shri Uves Khakhu was involved in hatching the entire conspiracy and was indulged in the furnishing false declarations in the Bill of Entry and other related documents and also committed various offences

including evasion of Customs Duty and those of mis- declaration of description, quantity and value of the goods being imported by M/s Crescent Traders as also contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and infringing the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as applicable. He was also deeply involved in attempting to create false identity of importer by using Shri Mohd. Hanif Fakir Mohammad Shaikh to impersonate the importer. He has also dishonoured the various summons issued to him under Section 108 of Customs Act, 1962 to appear before investigation and failed to provide the correct details/documents related to value of the goods imported vide **Bill of Entry No. 3130325 dated 06.09.2017** and also for the past consignment covered under **Bill of Entry No. 3016001 dated 28.08.2017**.

iv. Whereas, from the facts of the case unearthed during investigation as discussed in foregoing paras, Shri Uves Khakhu was involved in employing the entire modus operandi for importing goods violating various provisions of Customs Act, 1962 and other statutory provisions. Thus, due to his acts of omission and commission, the imported goods were rendered liable for confiscation under Section 111 of the Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation and has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. He did not provide the details/documents sought from him vide Summons and also did not appear to tender statement. In view of the above, Shri Uves Khakhu, has rendered himself liable to penalty under Section 112(a) and 112(b) [read with Sections 112(i), Section 112 (ii)], Section 114AA and Section 117 of the Customs Act, 1962 for his various acts of omission and commission.

**33.4. Role and liability under Customs Act 1962 of Shri Mayur P. Mehta, Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai/Mundra and M/s. Om Trans Freight Cargo Pvt. Ltd.: -**

i. Shri Mayur Mehta played crucial role in the illegal of clearing the goods imported by M/s. Crescent Traders vide Bill of Entry No. 3130325 dated 06.09.2017 and 3016001 dated 28.08.2017. He was in Customs clearance business since long and was one of the Directors in three other companies too. His company M/s. Dabke Clearing & Forwarding Pvt. Ltd. had two branches at Mumbai and Mundra but in Mundra they were not having permission to act as Customs broker. He was in hand and glove with Shri Nasir Khan ad other associates in relation to import of mobile phone accessories from China and Hongkong. Shri Nasir Khan provided him documents related to above consignment alongwith KYC documents viz. IEC Copy, PAN, GSTN, Address proof etc. of M/s. Crescent Traders but Shri Mayur Mehta did not verify the veracity of said documents pertaining to M/s. Crescent Traders. He also did not take any authorization or relevant documents from Shri Nasir Khan, which could have validated Shri Nasir Khan's connection with M/s. Crescent Traders. He admitted in his statement dated 22.10.2017 that he had already got cleared one Consignment of knitted fabrics and mobile phone accessories vide Bill of Entry No. 3016001 dated 28.08.2017 filed by M/s. Crescent Traders and from the Whatsapp chat conversations and other evidences gathered

during investigation it emerged that he was involved in clearance of other import consignments too through his another company M/s. Om Trans Freight Cargo Pvt. Ltd. He was also aware about fake IEC arranged by Shri Nasir Khan in the name of M/s. Crescent Traders and he was deeply involved in employing such fake owner of M/s. Crescent Traders to tender statement before investigating officer; but he overlooked all these aspects and tried to get the consignment cleared on the basis of these documents by conniving with Customs officers. He was aware that the Bank Account no. mentioned in the IEC records of M/s. Crescent Traders was also fraudulently opened showing Shri Girish K. Bapat as Prop. /Account holder for M/s. Crescent Traders and the payment of Customs Duty was also paid for clearance of import consignments imported in the name of M/s. Crescent Traders at Mundra port was also paid through Bank Account of dummy firms M/s. Pragati Enterprises and M/s. Samarth Impex. He also admitted that his another company M/s. Om Trans Freight Cargo Pvt. Ltd. had got cleared 06 consignments of mobile phone accessories of M/s. Crescent Traders from Delhi Air Cargo earlier in August, 2017 and Sept., 2017; that every time, Shri Nasir Khan used to provide him import related documents to file Bill of Entry for clearance of cargo from Customs. He sent the import documents related to Bill of Entry No. 3130325 dated 06.09.2017 to his staff Shri Ankit Travadi at Mundra who got filed the said Bill of Entry through another Customs broker M/s. All Marine Cargo Services as their own company did not have license to work as Customs broker at Mundra port. When the officers of SIIB, Customs House Kandla examined the import cargo and raised the objection, he visited Mundra and discussed the matter with SIIB officers who told him about various discrepancies such as undervaluation etc. in the said cargo. He admitted in his statement dated 22.10.2017 that he was informed by SIIB officers that the value of imported goods might be enhanced to more than Rs. One Crore involving duty aspect of around Rs. 35-40 lakh. To ensure that SIIB officers do not bring the discrepancies noticed by them during examination on record and confiscate the goods, he sent Shri Ankit Travadi to the SIIB officers to sort out the matter anyhow; and then the officers of SIIB demanded money for clearance of import cargo. Shri Ankit informed this fact and amount demanded by SIIB officers to Shri Mayur Mehta who after discussing with Shri Nasir Khan finalized the deal through Ankit Travadi at Rs. 8 lakhs. He collected cash of Rs. 8 lakhs from Shri Nasir Khan and sent it to Shri Ankit Travadi through Angadia (from whom Shri Chirag Travadi, brother of Ankit Travadi collected the amount at Bhuj) for further disbursement of the said amount to the SIIB officers. He admitted in his statement dated 22.10.2017 that he works as a link between importers and officers for solution to such issues by offering money to the concerned officers.

- ii. Thus, it was observed that Shri Mayur Mehta was deeply involved in smuggling and was knowingly and actively involved in the act of undervaluation, quantity mis-declaration and BIS norms violations etc in regards to import of goods (Mobile Accessories) imported vide bill of entry no. 3130325 dated 06.09.2017 filed by M/s. Crescent Traders, at Mundra Port and also for the past consignment. He also arranged illegal gratification for Customs officers to get cleared the said cargo involving mis-declaration, undervaluation and goods attracting BIS norms & IPR issues. His acts of omission and commission rendered the imported goods

liable for confiscation under Section 111(d) and Section 111(m) of Customs Act, 1962. His role in entire episode of this case is also supported by evidence available in the form of audio clips extracted from the mobile phone of Shri Nasir Khan.

- iii. After considering the nature of offence, the role of Shri Mayur Mehta involved and evidence available on record there was reason to believe that he had committed offences under Customs Act, 1962 punishable under the Sections 132 and 135 of the said Act. Accordingly, Shri Mayur Mehta was arrested on 22.10.2017 for the offences committed by him. He was granted judicial custody by the Court, where he died on 09.11.2017.
- iv. Thus, on account of act of omission and commission done by Shri Mayur Mehta, Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai, the imported goods were made liable for confiscation under Section 111 of the Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation and has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. Shri Mayur P. Mehta has thus rendered himself liable to penalty under Section 112(a) and 112(b) [read with Sections 112(i) & Section 112 (ii)] and 114AA of the Customs Act, 1962 for his various acts of omission and commission. However, Shri Mayur Mehta died on 09.11.2017. Hence no penalty is proposed against Shri Mayur Mehta under Customs Act, 1962.

**33.5. Role and Liability under Customs Act 1962 of Smt. Swati Vora alias Monika, Director M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai/Mundra and M/s. Om Trans Freight Cargo Pvt. Ltd.: -**

- i. Smt. Swati Vora, Director M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai and M/s. Om Trans Freight Cargo Pvt. Ltd. was actively involved in facilitating and abetting the illegal clearance of goods imported in the name of M/s. Crescent Traders in which there was mis- declaration of description, quantity and value of the goods being imported by M/s Crescent Traders as also contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and infringing the Intellectual Property Rights( Imported Gods) Enforcement Rules, 2007 as applicable. She had prepared the Check List and other related documents for Bill of Entry No. 3130325 dated 06.09.2017 for M/s. Crscent Traders. She also provided the currency number of ten rupee note to Shri Ankit which was required to be given to Angadia for collecting cash of Rs. 8 lakhs which was supposed to be given to the officers of SIIB, Customs House, Mundra in lieu of clearance of goods from Customs. It also appears from the Whatsapp Chat conversations and audio clips extracted from the mobile phone of Shri Nasir Khan that Smt. Swati Vora also assisted in preparing Power of Attorney for Shri Mohammad Hanif Shaikh to present him as actual importer before investigating officers. She also conveyed a suggestion to Shri Nasir Khan that a Visiting Card of Cresent Traders should be got prepared from market which must be containing the name of Proprietor of Crescent Traders and the name of person going for tendering statement before DRI. She was well aware about violations done by the persons involved in the entire gamut of smuggling and she was actively involved in the conspiracy by way of creation of forged documents.

ii. Thus, by above acts of omission and commission and by way of preparing check list and other documents, Smt. Swati Vora facilitated the fraudulent import and assisted in clearance of for contraband goods which rendered the imported goods liable for confiscation under Section 111 of the Customs Act, 1962. She has knowingly dealt with the goods which were liable for confiscation and has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. She was also issued various summons under Section 108 of Customs Act, 1962 including summons served upon by visiting her residences but dishonoured them by not appearing before the investigating authorities. Smt. Swati Vora alias Monika has thus rendered herself liable to penalty under 112(a) and 112(b) [read with Sections 112(j) & Section 112 (ii)], 114AA and 117 of the Customs Act, 1962 for her various acts of omission and commission.

**33.6. Role and liability under Customs Act 1962 of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai /Mundra: -**

i. Shri Mayur Mehta and Smt. Swati Vora alias Monika were Directors in M/s. Dabke Clearing & Forwarding Pvt. Ltd. but their company did not have permission to work as Customs Broker at Mundra Port. However, the company has office and staff viz. Shri Ankit Travadi and his brother Sh. Chirag Travadi at 213, Kashish Arcade, Zero Point, Mundra. The actual importer Shri Nasir Khan assigned the work of customs clearance of import consignment of M/s. Crescent Traders covered under Bill of Entry No. 3130325 dated 06.09.2017 to Shri Mayur Mehta, Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd. but the KYC documents and profile of importer was not verified by them. Shri Mayur Mehta and Smt. Swati Vora alias Monika handed over the work of filing Bill of Entry for said consignment to Shri Shera Ram of M/s. Krishna Shipping Logistics. During the course of search conducted by officers of DRI at the office premises of M/s. Krishna Shipping Logistics, email conversations between M/s. Dabke Clearing and Forwarding Pvt. Ltd. and Shri Shera Ram Mehra of M/s. Krishna Shipping Logistics were found. As per these email conversations, the latter asked for providing various documents required for filing Bill of Entry of M/s. Crescent Traders. In response, the former provided documents such as KYC documents, CHA appointment letter, Invoice, Packing List, Bill of Lading, IEC Certificate etc., most of which were fake or illegally obtained by Shri Nasir Khan, to get filed the Bill of Entry on behalf of M/s. Crescent Traders. During search, conversation through email between M/s. Krishna Shipping Logistics and M/s. All Marine Cargo Services were also found in which the check-list for filing Bill of Entry was sent to M/s. Krishna Shipping & Logistics for approval and confirmation of HS Codes. From such emails and other evidences, it appears that M/s. Dabke Clearing and Forwarding Pvt. Ltd. assigned the work of filing Bill of Entry for M/s. Crescent Traders to M/s. Krishna Shipping & Logistics having idea about the illegal / irregular nature of consignment and documents concerning the same. M/s. Krishna Shipping & Logistics further assigned the work of filing Bill of Entry to M/s. All Marine Cargo Services, Gandhidham who finally filed the Bill of Entry. Further, both the Directors and two employees of M/s. Dabke Clearing and Forwarding Pvt. Ltd., as discussed in previous paras, were actively involved, jointly and severally, every step of the way in the illegal clearance of import consignment of M/s. Crescent Traders by illegal influencing of Customs

officers. Thus, it appears that M/s. Dabke Clearing & Forwarding Pvt. Ltd. were involved and dealt with the import consignment in which there was mis-declaration of description, quantity and value of the goods being imported by M/s Crescent Traders as also contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and infringing the Intellectual Property Rights(Imported Goods) Enforcement Rules, 2007 as applicable. Smt Swati Vora alias Monika was also issued summons under Section 108 of Customs Act, 1962 including summons served upon by visiting her residences but dishonoured them by not appearing before the investigating authorities.

- ii. By their said acts on their part as Directors of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai /Mundra, as also by the acts of other employees acting on behalf of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai /Mundra dealing with the subject consignment, the subject goods have been rendered liable to confiscation under Section 111 of the Customs Act, 1962. They have knowingly dealt with the goods which were liable for confiscation and has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai /Mundra would be thus liable to penalty under 112(a) and 112(b) [read with Sections 112(i) & Section 112 (ii)] and 114AA of the Customs Act, 1962.

**33.7. Role and liability under Customs Act 1962 of Shri Ankit ShaileshbhaiTravadi, Employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai (Branch Office-Mundra): -**

- i. Shri Ankit ShaileshbhaiTravadi was working with M/s. Dabke Clearing & Forwarding Pvt. Ltd. As per the instructions of Shri Mayur Mehta, Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd. he contacted one Shri Sheraram Mehra of M/s. Krishna Shipping to get filed the Bill of Entry No. 3130325 dated 06.09.2017 in respect of mobile accessories imported in the name of M/s. Crescent Traders. Shri Sheraram Mehra managed to file the said Bill of Entry through M/s. All Marine Cargo Services. Shri Ankit Travadi through the representative of Customs Broker M/s. All Marine Cargo Services provided the Bill of Entry file to SIIB officers. Shri Ankit S. Travadi was not licenced to work at Mundra Customs House. Yet he has had unauthorized access in Customs area and also to SIIB file related to his consignment. When the officers of SIIB, Customs House Kandla examined the import cargo and raised their objections, he alongwith Shri Mayur Mehta visited SIIB, Customs House, Mundra. Shri Ankit S. Travadi has accepted in his statement recorded under Section 108 of the Customs Act, 1962 on 23.09.2017 and 29.09.2017 that he offered illegal gratification amount to Customs Officers, SIIB, Mundra for clearance of said goods and that he was also actively involved in negotiation with the Customs Officers. When the Customs Officer made demand of specific amount of Rs. 8.5 lakh, he informed his Director Shri Mayur Mehta. He acted as a link between SIIB officers and Shri Mayur Mehta to finalize the deal of Rs. 8 lakhs in lieu of clearance of import consignment. He was instructed by his Director Shri Mayur Mehta to collect cash from Angadia at Bhuj for disbursement to officers. He was made Panch witness in the Panchnama drawn by SIIB officers in relation to examination of imported

goods and accordingly he signed the Panchnama on 21.09.2017 in back date (18.09.2017). On 22.09.2017, for getting the Out of Charge of imported goods, he again met SIIB officers and conveyed to them that amount demanded has been arranged and requested them to clear the consignment. On same day, he collected the Bill of Entry file from the SIIB officers and got the imported goods Out of Charge. Thus, by it has been found that Ankit Shaileshbhai Travadi has knowingly and actively involved himself in the act of attempted clearance of import consignment of mobile accessories which was misdeclared, undervalued and was otherwise in violation of various allied Acts against Bill of Entry no. 3130325 dated 06.09.2017 filed by M/s. Crescent Traders at Mundra Port. His acts of omission and commission rendered the imported goods liable for confiscation under Section 111(d) and Section 111(m) of Customs Act, 1962.

- ii. Shri Ankit Shaileshbhai Travadi employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd. were actively involved in abetting the mis-declarations and undervaluation in respect of goods imported vide Bill of Entry No. 3130325 dated 06.09.2017. He approached Shri Shera Ram Mehra for filing Bill of Entry with false declarations and subsequently the Bill of Entry was filed through the CHA M/s. All Marine Cargo Services, Gandhidham. He also offered and arranged illegal gratification to Customs Officers of SIIB, Customs House Mundra to get cleared the import consignment having undervalued and mis-declared goods and goods infringing IPR and involvement of BIS norms. Thus, on account of acts of omission and commission done by Shri Ankit Shaileshbhai Travadi, employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., the imported goods were made liable for confiscation under Section 111 of the Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation and has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. Shri Ankit Travadi has thus rendered himself liable to penalty under Sections 112(a) and 112b) [read with Sections 112(i) & Section 112 (ii)] and 114AA of the Customs Act, 1962 for his various acts of omission and commission.
- iii. On considering the nature of offence, the role of Shri Ankit Shaileshbhai Travadi involved and evidences available there was reason to believe that he had committed offences under Customs Act, 1962 punishable under the Sections 132 and 135 of the said Act. Accordingly, Shri Ankit Shaileshbhai Travadi working in M/s Dabke Clearing and Forwarding Pvt. Ltd., Mundra was arrested under Section 104 of Customs Act, 1962 on 08.10.2017.

### **33.8. Role and liability under Customs Act 1962 of Shri Shera Ram of M/s. Krishna Shipping Logistics: -**

- i. **Shri Mayur Mehta, Director of M/s. Dabke Clearing and Forwarding Pvt. Ltd.** assigned the work of filing Bill of Entry for import consignment of M/s. Crescent Traders to Shri Shera Ram Proprietor of M/s. Krishna Shipping Logistics. From the email conversations between M/s. Krishna Shipping Logistics and M/s. All Marine Cargo Services, found during search at office of M/s. Krishna Shipping Logistics, it appears that M/s. Dabke Clearing and Forwarding Pvt. Ltd. assigned the work of filing Bill of Entry for M/s. Crescent Traders to M/s. Krishna Shipping & Logistics who

further re-assigned the work of filing Bill of Entry to M/s. All Marine Cargo Services, Gandhidham who finally filed the Bill of Entry. Thus, Shri Shera Ram/M/s. Krishna Shipping Logistics had worked as a chain between M/s. Dabke Clearing and Forwarding Pvt. Ltd. and the Customs Broker M/s. All Marine Cargo Services. Thus, the KYC documents and profile of importer, M/s. Crescent Traders should have been verified by Shri Shera Ram of M/s. Krishna Shipping Logistics but he did not do so and facilitated / abetted the illegal clearance of the import consignment involving mis-declaration and undervaluation etc. The said acts of omission and commission on his part have rendered the subject goods liable to confiscation under Section 111 of the Customs Act, 1962.

- ii. In view of this, by abetting the fraudulent import, **Shri Shera Ram, Proprietor of M/s. Krishna Shipping Logistics** has rendered himself liable to penalty under Section 112(a) [read with 112(i) & Section 112(ii)] of the Customs Act, 1962 for his acts of omission and commission.

### **33.9. Role and liability under Customs Act 1962 of Shri Mohammad Hanif Fakir Mohammad Shaikh: -**

- i. Mr. Mohammad Hanif Shaikh appeared before officers of DRI on 05.10.2017 to tender statement and to provide documents in response to summons issued by DRI to M/s. Crescent Traders. In his statement dated 05.10.2017, he presented himself as Power of Attorney holder of M/s. Crescent Traders and showed himself as actual importer. He produced original/scanned documents such as Bill of Lading, Invoice, Packing List etc. related to Bill of Entry No. 3130325 dated 06.09.2017 and a Visiting Card of Crescent Traders containing name of Shri Sandesh Tanwar and Shri Hanif Shaikh to DRI officers. Audio clips/voice messages extracted from the mobile phone of Shri Nasir Khan reveals that Smt. Swati Vora alias Monika suggested to Shri Nasir Khan to get prepared such Visiting Card containing name of Proprietor of Crescent Traders and the name of person going for tendering statement; she also suggested that no designation of these persons is required to be mentioned on the Visiting Card and it should contain the mobile number of person going to tender statement and address of Crescent Traders. She further suggested the list of documents to be prepared and to be sent with the person going to appear before investigating officers. Accordingly, Shri Hanif Shaikh appeared before officers of DRI and produced the Visiting Card having details as suggested by Ms. Swati Vora and other documents viz. Power of Attorney, Invoice, Packing List etc. However, on being questioned in depth by officers of DRI, Shri Hanif Shaikh could not hide his identity further and admitted that he was working as a salesman at shop of mobile accessories viz. Connect Mobile, Mumbai owned by Shri Nasir Khan and he presented himself as Power of Attorney holder of M/s. Crescent Traders as per the instructions of Shri Nasir Khan. Mr. Mohammad Hanif Shaikh has thus tried to mis-lead the investigation by impersonating some one that he was not, submitting fake visiting card and attempting to tender a false and fabricated statement before investigating officers in order to facilitate the illegal clearance of the subject import consignment and abet the smugglers. By abetting the fraudulent activities relating for clearance of imported goods, he has rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He had knowingly dealt with the goods which were liable for confiscation and has made/signed/used

and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. He has thus rendered himself liable to penalty under 112(a) and 112(b) [read with Sections 112(i) & Section 112 (ii)], 114AA and 117 of the Customs Act, 1962.

**33.10. Role and liability under Customs Act 1962 of Shri Mohammad Selia:-**

- i. Shri Mohammad Selia was close associate of Shri Nasir Khan, Shri Uves Khakhu and other key persons and was deeply involved in this case of smuggling and fraudulent import of mobile phone accessories. As emerged from the Whatsapp Chat conversations and Audio clips/voice messages extracted from the mobile phone of Shri Nasir Khan, Shri Mohammad Selia was one of the participants in the Whatsapp Groups made for contacting all related persons at single platform regarding line of action to clear the consignment involving undervaluation, mis-declaration, IPR issues and BIS norms etc. He was actively participating in each and every import of M/s. Cresent Traders and was part of conspiracy of evasion of Customs Duty and other violations. He was part of conspiracy hatched for sending a fake owner of M/s. Crescent Traders, viz., Mr. Mohammad Hanif Fakir to tender statement in the capacity of Power of Attorney holder on behalf of Sandesh Tanwar whereas the said Power of Attorney was got prepared by the associates of Shri Nasir Khan. It appears that he suggested in an audio message mentioned above at Para 12 that Shri Hanif should not disclosing anyone about where the money had come from, other than would be a big problem. This indicated that he was aware about illegal payment of gratification made to SIIB officers and for clearance of the consignment. He caused to be prepared such power of attorney which was having false content.
- ii. Various summons were issued to Shri Mohammad Selia to record his statement or to get correct value of imported goods and further documents/details related to the case against M/s. Crescent Traders, however, he did not appear to tender his statement and is absconding. Summons dated 30.11.2021 and 13.12.2021 were issued to Shri Mohammad Selia but he did not appear before investigating officer. Accordingly, Criminal Complaint under Section 172, 174, 175, 176 of IPC was filed before Additional Chief Judicial Magistrate, Gandhidham. By abetting the fraudulent activities relating for clearance of imported goods, he has rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation and has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. He has thus rendered himself liable to penalty under 112(a) and 112(b) [read with Sections 112(i) & Section 112 (ii)], 114AA and 117 of the Customs Act, 1962.

**33.11. Role and liability under Customs Act 1962 of Mohammad ImranNavsariwala:-**

- i. Mohammad Imran Navsariwala was close associate of Shri Nasir Khan, Shri Uves Khakhu and other key persons and was aware about smuggling and fraudulent import of mobile phone accessories. As emerged from the Whatsapp Chat conversations and other evidences extracted from the mobile phone of Shri Nasir Khan and statements of Mohammad ImranNavsariwala, he was dealing with sale-purchase of offending goods relating to Shri Nasir Khan including Mobile Phone batteries which were

imported in violation of IPR and/or BIS norms. He assured in his statement to provide various details/documents required for investigation but failed to do so in spite of issuance of several further Summons to him disobeying the same. By abetting the fraudulent activities relating for clearance of imported goods, he has rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation and did not provide the details/documents sought from him vide Summons and also did not appear to tender statement. He has thus rendered himself liable to penalty under 112(a) and 112(b) [read with Sections 112(i) & Section 112 (ii)] and 117 of the Customs Act, 1962.

**33.12. Role and liability under Customs Act 1962 of Shri Bhavesh N. Gori, H Card Holder in Customs Broker Firm M/s. All Marine Cargo Services, Gandhidham: -**

- i. He was H Card holder of Customs Broker Firm M/s. All Marine Cargo Services but was exclusively looking after the work brought to the said Customs Broker by Shri Shera Ram Mehra of M/s. Krishna Shipping & Logistics. His salary was also borne by Shri Shera Ram Mehra. In the instant case, the work related to filing B/E no. 3130325 dated 06.09.2017 was brought to M/s. All Marine Cargo Services by Shri Shera Ram Mehra. Hence, Shri Bhavesh was required to verify the credentials of importer before filing of Bill of Entry by said Customs Broker firm. Whereas, Shri Bhavesh stated in his statement that the consignment under B/E no. 3130325 dated 06.09.2017 was not being attended by him. Since he was exclusively looking after the work brought to the said Customs Broker by Shri Shera Ram Mehra of M/s. Krishna Shipping & Logistics, Shri Bhavesh must have handled the said consignment as stated by Shri Chandan Singh in his statement that Shri Bhavesh was dealing with consignment under B/E no. 3130325 dated 06.09.2017. Sh. Bhavesh had already attended earlier import consignment of similar nature with Shri Ankit Travadi and thus he was known to Ankit who was not authorized to appear in Customs but he sent his colleague Chandan alongwith B/E file, with Shri Ankit to SIIB, Mundra. Thus, it appears that Shri Bhavesh N. Gori was aware about mis-declaraton and other lapses in the import consignment under said B/E but he assisted in clearance of the same from Customs. He has also tried to mis-lead the investigation and tendered a false and fabricated statement before investigating officers.
- ii. Hence, M/s. All Marine Cargo Services, Gandhidham(Lic. No. BASPR6595QCH002), Shri Amit Kumar Singh, Overall In-charge of M/s. All Marine Cargo Services, Gandhidham and employee Shri Bhavesh N Gori submitted, in grossly negligent and callous manner through an unauthorized person, declarations in the Bill of Entry and other related documents which were violations including those of mis- declaration of description, quantity and value of the goods being imported by M/s Crescent Traders as also were contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and infringing the Intellectual Property Rights( Imported Goods) Enforcement Rules, 2007 as applicable, on behalf of the importer.
- iii. The admission statement of Shri Amit Kumar Singh, In-charge of M/s. All Marine Cargo Services, Gandhidham, recorded on 06.10.2017 and that of

Shri Bhavesh N Gori recorded on 03.10.2017 as also back dated signature of Shri Chandan Singh representative of M/s. All Marine Cargo Services on fictitiouspanchnama to facilitate illegal clearance of import goods rendered the subject goods liable to confiscation under Section 111 of the Customs Act, 1962. They have knowingly dealt with the goods which were liable for confiscation and have made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. M/s. All Marine Cargo Services, Shri Amit Kumar Singh, Overall In-charge of M/s. All Marine Cargo Services, Gandhidham, Shri Chandan Singh and Shri Bhavesh N Gori are thus liable to penalty under Section 112(a) and (b) [read with Sections 112(i), Section 112 (ii)] and Section 114AA of the Customs Act, 1962.

**33.13. Role and liability under Customs Act 1962 of Shri Chandan Singh, H Card Holder in Customs Broker Firm M/s. All Marine Cargo Services, Gandhidham: -**

- i. Shri Chandan Singh brought the file relating to Bill of Entry No. 3130325 dated 06.09.2017 to SIIB, Customs House, Mundra alongwith Shri Ankit Travadi who was not authorized to appear in SIIB, Customs House, Mundra. Being H Card holder, he was required to go through the B/E file, to verify the credential of importer, details of imported goods etc. but he did not do so and handed over the B/E file to Shri Sudhanshu Tyagi, Preventive Officer, SIIB. He also represented Customs Broker and, in that capacity, signed the fictitiousPanchnama in back date 18.09.2017 which was actually prepared by officers of SIIB, Mundra on 21.09.2017. Thus, Shri Chandan Singh also facilitated the conspiracy to defraud the exchequer and assisted in clearance of import consignment under B/E no. 3130325 dated 06.09.2017 having mis-declaration, undervaluation etc. By abetting the fraudulent activities relating for clearance of imported goods, he has rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation and has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. For his acts, he is liable to penalty under Section 112(a) and 112(b) [read with Sections 112(i), Section 112 (ii)] and 114AA of the Customs Act, 1962.

**33.14. Role and liability under Customs Act 1962 of Customs Broker M/s. All Marine Cargo Services, Gandhidham (Lic. No. BASPR6595QCH002) and Shri Amit Kumar Singh, Overall In-charge of M/s. All Marine Cargo Services, Gandhidham: -**

- i. Shri Amit Kumar Singh was G-Card Holder and overall In-charge of M/s. All Marine Cargo Services, Gandhidham and one Shri Shubhankar Rastogi was Proprietor of this firm. M/s. All Marine Cargo Services, Gandhidham filed Bill of Entry No. 3130325 dated 06.09.2017 in respect of goods imported by M/s. Crescent Traders without verifying the KYC documents and genuineness of the importer. The said Customs Broker had mis-declared/ undervalued the goods in question without applying their own mind and without inquiring further into the matter, in detail. They blindly obeyed and followed the instructions imparted by the middlemen of importer but grossly failed to assess the correct description, value and nature of the goods. As admitted by Shri Amit Kumar Singh they had not contacted proprietor/authorized person of M/s. Crescent Traders at

anytime; that they did not verify whether M/s. Crescent Traders was functioning at the address mentioned in IEC; that they did not verify the authenticity of person present on behalf of the importer during the examination of import goods by officers of SIIB, Customs House, Mundra. He also admitted that he did not even have contact number of the importer M/s. Crescent Traders at that time. From the above, it appears that the said Customs House Agent M/s. All Marine Cargo Services for his own vested interests had considered the illegitimate and un-justified request of the importer and accepted the manipulated/fabricated import documents submitted before the Customs, knowingly and intentionally and thereby facilitated the illegal clearance of import consignment.

- ii. The said CHA even failed to ascertain/ verify the correct value of the goods and did not even bother to examine and look into the correct prevailing value of the same. The applicability of BIS norms and provisions of IPR Rules was also not looked into by them. Basically it becomes the responsibility of the CHA to find out and ascertain the correct value of the goods in question and to ensure that the same have been correctly represented before the Customs instead of merely obtaining a letter from the importer and submitting the same before Customs for getting the value loaded/enhanced. Further CHA is duty bound to make the true and correct declarations before the Customs authorities, but in this case CHA appears to have knowingly and negligently mis-declared the quantity and value of the subject goods.
- iii. In the light of above discussed it is evident that they dealt with the import consignment involving mis-declaration and undervaluation etc. and the said act on his part has rendered the subject goods liable to confiscation under Section 111 of the Customs Act, 1962. They have knowingly dealt with the goods which were liable for confiscation and has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. In view of this, Customs Broker M/s. All Marine Cargo Services, Gandhidham (Lic. No. BASPR6595QCH002) and Shri Amit Kumar Singh have separately rendered themselves liable to penalty under Section 112(a) and 112(b) [read with 112(i) & Section 112(ii)] and 114AA of the Customs Act, 1962 for acts of omission and commission on their part.
- iv. M/s All Marine Cargo Services, Gandhidham also contravened the provisions of Customs Brokers Licensing Regulations, 2013 for which separate actions were already taken and their Customs Broker License KDL/CB/61/2014 (PAN No. BASPR6595Q) was revoked vide Order No. KND-CUSTM-000-COM-05-2019-20 dated 11.06.2019.

**33.15. Role and liability under Customs Act 1962 of Shri Chirag ShaileshbhaiTravadi, Employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mundra:-**

- i. He was an employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., at their Mundra branch. He took part in de-stuffing process of container for examination and collected money (Rs. 8 lakhs which was sent by Mayur Mehta to SIIB officer), from AngadiaatBhujand handed it over to his elder brother Shri Ankit ShaileshbhaiTravadi for further disposal. Thus, it appears that Shri Chirag Travadi had abetted smuggling and assisted in illegal clearance of the import consignment under B/E no. 3130325 dated 06.09.2017 from Customs. By abetting the fraudulent activities relating for

clearance of imported goods, he has rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation. For his acts he is liable to penalty under Section 112(a) and (b) [read with Sections 112(i), Section 112 (ii)] of the Customs Act, 1962.

**33.16. Role and liability under Customs Act 1962 of Shri Abdul Gani Khatri, Executive in MICT CFS, Mundra: -**

- ii. Shri Abdul Gani Khatri was working as Executive in MICT CFS, Mundra. His statement was recorded under Section 108 of Customs Act, 1962 on 29.09.2017 in which he inter alia deposed that his work was related to take permission from Customs for disposal of unclaimed cargo and to keep control on long standing cargo. His work also related to auction of unclaimed cargo and disposal thereof. On 14.09.2017, Shri Abdul Gani Khatri informed Shri Sudhanshu Tyagi, then Preventive Officer, SIIB, Customs House, Mundra that the de-stuffing work in respect of container no. PONUS179393 (containing cargo under B/E No. 3130325 dated 06.09.2017 filed in the name M/s. Crescent Traders) was done. On 21.09.2017, on being asked by Shri Gaurav Kumar, then Preventive Officer, SIIB, Customs House, Mundra, Shri Abdul Gani Khatri visited SIIB office and he had seen that Shri Gaurav Kumar was preparing a Panchnama with another officer whose name was not known to Shri Abdul Gani Khatri. As per Shri Abdul Gani Khatri, the said Panchnama could not be completed on 21.09.2017 and hence he was asked by Shri Gaurav Kumar to come next day. On 22.09.2017, he went to SIIB, Customs House Mundra and signed the Panchnama in back date i.e. 18.09.2017 which was prepared by Shri Gaurav Kumar showing examination of goods imported vide B/E No. 3130325 dated 06.09.2017, on 18.09.2017.
- iii. In the said Panchnama, Shri Abdul Gani Khatri was shown as representative of MICT CFS who supposedly led the officers and the Panch witnesses to show the de-stuffed import consignment and that he purportedly remained present during entire Panchnama proceedings. It was also mentioned in the Panchnama that the officers had done examination of import consignment and that it was found that the number of boxes were 1025 which were tallied with packing list and at Sr. No. 7 of Bill of Entry, the screen guard were found in excess of 110 gross. [However, the investigation and examination carried out by DRI in this case reveals that the officers mentioned in the Panchnama had not carried out any examination on 18.09.2017 as reported in the Panchnama and the number of boxes were 1026 and the screen guard were found actually less than that declared in Bill of Entry/Packing list.]
- iv. Shri Abdul Gani Khatri, working then as Executive in MICT CFS, Mundra at the time of import of said consignment, had signed the Panchnama in back date i.e. 18.09.2017 which was prepared by Customs Officers of SIIB, Mundra showing examination of goods imported vide B/E No. 3130325 dated 06.09.2017, on 18.09.2017 and was also having various incorrect facts. The said fictitious Panchnama was prepared by officers of SIIB, Customs House, Mundra to clear the goods involving blatant violation of Customs Act, 1962 and other regulations and on the basis of said Panchnama, the clearance of import consignment was approved by senior officers of SIIB, Customs House, Mundra and the offending goods were granted the Customs Out-of-Charge.

v. Shri Abdul Gani Khatri was looking after customs related work and he was supposed to be aware about the provisions of Customs Act, 1962. Hence, it appears that Shri Abdul Gani Khatri had knowingly and intentionally signed and approved the document/ Panchnama having false and incorrect information which document/ Panchnama was to be used and was used for misleading senior Customs officers in granting the illegal clearance of import goods. He abetted the doing of an act, i.e the smuggling of goods, which rendered the subject goods liable to confiscation. He has made/ signed/ used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. Thus, Shri Abdul Gani Khatri, working then as Executive in MICT CFS, Mundra has rendered himself liable to penalty under Section 112(a) [read with sections 112(i) and 112(ii)] and Section 114AA of the Customs Act, 1962.

**33.17. Role and liability under Customs Act 1962 of Shri Nirav Vasani, H Card Holder in Customs Broker firm M/s. VeljiDosabhai& Sons Private Limited, Office No. 203, 204, PUB Building, Custom House, Mundra - 370201:-**

- i. Shri Nirav Vasani was working as H Card Holder in Customs Broker Firm M/s. VeljiDosabhai& Sons Private Limited, Mundra. His statement was recorded under Section 108 of Customs Act, 1962 on 07.10.2017 in which he inter alia deposed that his work was to assist in work relating to custom clearance of export consignments and that relating processing factory stuffing permission of various exports etc in M/s. VeljiDosabhai& Sons.
- ii. Shri Nirav Vasani stated in his statement that either on 21<sup>st</sup> or on 22<sup>nd</sup> September 2017, he received a call from Shri Gaurav Kumar Inspector, SIIB, Customs House, Mundra in the evening; that he went to Room No. 301 where Shri Gaurav Kumar Inspector and Shri Amit Das, Superintendent were present; that Shri Amit Das asked him to sign the Panchnama in date of 18<sup>th</sup> September 2017. Accordingly, he signed the Panchnama and put date as 18.09.2017.
- iii. In the said Panchnama, Shri Nirav Vasani was shown as Panch Witness No. 1 who remained present during entire Panchnama proceedings and certified that the Panchnama was as per his version and say and in token of its correctness he put his signature on the Panchnama. It was mentioned in the Panchnama that the officers had done examination of import consignment and that it was found that the number of boxes were 1025 which were tallied with packing list and at Sr. No. 7 of Bill of Entry, the screen guard were found in excess of 110 gross. [However, the investigation and examination carried out by DRI in this case reveals that the officers mentioned in the Panchnama had not carried out any examination on 18.09.2017 as reported in the Panchnama and the number of boxes were 1026 and the screen guard were found actually less than that declared in Bill of Entry/Packing list.]
- iv. Shri Nirav Vasani working then as H Card Holder in Customs Broker firm M/s. VeljiDosabhai& Sons Private Limited, Mundra at the time of import of said consignment, had signed the Panchnama in back date i.e. 18.09.2017 which was prepared by Customs Officers of SIIB, Mundra showing examination of goods imported vide B/E No. 3130325 dated 06.09.2017, on 18.09.2017 and was also having various incorrect facts. The said fictitious Panchnama was prepared by officers of SIIB, Customs

House, Mundra to clear the goods involving blatant violation of Customs Act, 1962 and other regulations and on the basis of said Panchnama, the clearance of import consignment was approved by senior officers of SHB, Customs House, Mundra and the offending goods were granted the Customs Out of Charge.

v. Shri Nirav Vasani was looking after customs related work and he was supposed to be aware about the provisions of Customs Act, 1962. Hence, it appears that Shri Nirav Vasani had signed and approved document/Panchnama having false and incorrect information which document/Panchnama was to be used and was used for misleading senior Customs officers in granting the illegal clearance of import goods. He abetted the doing of an act, i.e the smuggling of goods, which rendered the subject goods liable to confiscation. He has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. Thus, Shri Nirav Vasani, working then as H Card Holder in Customs Broker firm M/s. Velji Dosabhai & Sons Private Limited, Mundra has rendered himself liable to penalty under Section 112(a) [read with sections 112(i) and 112(ii)] and Section 114AA of the Customs Act, 1962.

**33.18. Role and liability of M/s. Shri Suraj Singh, Shri Yatin Sadashiv Mandavkar, Shri Atulkumar Pappupal and Shri Vishal Gamre: -**

i. From the facts of the case unearthed during investigation as mentioned in foregoing paras, it is found that the importer shown on paper in this case as M/s. Crescent Traders, which is a Proprietary concern owned by Shri Sandesh Tanwar but it appears a façade to clear the smuggled goods in illegal manner. The IEC No. 0317524631 was obtained on the basis of details and documents provided by Shri Sandesh Tanwar and it is also apparent that the payment of Customs Duty in respect of 02 import consignments imported at Mundra port were made from the Bank Accounts of 02 dummy firms M/s. Pragati Enterprises and M/s. Samarth Impex. Investigation revealed that the firms M/s. Crescent Traders, M/s. Pragati Enterprises and M/s. Samarth Impex were controlled and operated by Shri Nasir Khan and his associates whereas these firms were created on the statutory documents viz. Aadhar Card, PAN Card etc. of Shri Sandesh Tanwar, Shri Yatin Sadashiv Mandavkar and Shri Atulkumar Pappupal respectively. Shri Sandesh Tanwar, Shri Yatin Sadashiv Mandavkar and Shri Atulkumar Pappupal were allured with monetary gain by the direct or indirect associates of Shri Nasir Khan viz. Shri Suraj Singh and Shri Vishal Gamre but these people though educated allowed the person involved to use their statutory documents in illegal and fraudulent means. Various Summons were issued to Shri Suraj Singh, Shri Vishal Gamre, Shri Yatin Sadashiv Mandavkar and Shri Atulkumar Pappupal but they did not appear to tender statement though the statement of Shri Yatin Sadashiv Mandavkar and Shri Atulkumar Pappupal could be recorded only by visiting their residential premises. During investigation, Summons/letter dated 12.10.2020, 15.12.2020, 09.06.2021 and 08.12.2021 were issued to Shri Vishal Gamre but he did not appear before investigating officer. Accordingly, Criminal Complaint under Section 172, 174, 175, 176 of IPC was filed before Additional Chief Judicial Magistrate, Gandhidham. Further various Summons/letter dated 29.01.2020, 30.04.2020, 21.05.2020, 06.08.2020

and 09.06.2021 were issued to Shri Yatin Sadashiv Mandavkar but he also did not appear before investigating officer. Accordingly, Criminal Complaint under Section 172, 174, 175, 176 of IPC was filed before Additional Chief Judicial Magistrate, Gandhidham.

ii. Thus, due to his acts of omission and commission, Shri Suraj Singh, Shri Vishal Gamre, Shri Yatin Sadashiv Mandavkar and Shri Atulkumar Pappu Pal abetted the fraudulent import and the imported goods were rendered liable for confiscation under Section 111 of the Customs Act, 1962. They have made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars and did not appear to tender statement in response to Summons issued to them. In view of the above, Shri Suraj Singh, Shri Vishal Gamre, Shri Yatin Sadashiv Mandavkar and Shri Atulkumar Pappu Pal have rendered each of them separately liable to penalty under Section 112(a), 114AA and 117 of the Customs Act, 1962 for his various acts of omission and commission discussed supra.

**34. The role and liability under Customs Act 1962 of the concerned SIIB officers in this offence is discussed as hereunder:**

**34.1. Role and liability under Customs Act 1962 of Shri Amit Das, then Superintendent of Customs, SIIB, Mundra: -**

i. It appears from investigation that Shri Amit Das while working as Superintendent, SIIB, Mundra sought examination of goods on the basis of having received an 'information' from Shri S.J. Singh, then Deputy Commissioner of Customs, SIIB, Mundra through Shri Sudhanshu Tyagi, Preventive Officer of excess quantity in the consignment under B/E No. 3130325 dated 06.09. 2017. The respective SIIB file of B/E No. 3130325 dated 06.09.2017 was opened by Shri Sudhanshu Tyagi, Preventive Officer which was subsequently dealt with by Shri Amit Das, Superintendent and Shri S.J. Singh, Deputy Commissioner. Later on, Shri M. Loganathan, Superintendent who was well aware of system generated file number, wrote B/E No. upon it in place of the regular file number. So, it appears that the file was like a private record which could have been destroyed whenever required, leaving no trace of proceedings carried out with regard to the same. Shri S.J. Singh in his statement dated 09.05.2018 has deposed that there was no informer behind the examination of goods imported vide B/E No. 3130325 dated 06.09.2017 filed in the name of M/s. Crescent Traders and no DRI-1 was filed in the said case; that sensitive items are examined by SIIB on random basis and said B/E was taken for examination based on sensitive goods and 1<sup>st</sup> time importer (*though not first time actually - on 28.08.2017 another B/E of same importer was cleared from same Customs House*).

ii. It also appears from investigations that Shri Amit Das, Superintendent got permission to examine the container of said Bill of Entry from senior officers but he did not examine the goods himself. Later Shri Amit Das came to know that Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer had unauthorizedly conducted examination of the said cargo which was required to be conducted by him (Shri Amit Das). He was also aware that no Panchnama or Examination report of such examination was prepared by Shri M. Loganathan and Shri Gaurav Kumar. However, he did not question the same or brought it to the notice of senior officers.

iii. It further appears that Shri Amit Das had got feedback from Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer who would have discovered the violations (after examining the already de-stuffed consignment for 4-5 hours and taking samples) which were blatant in nature as some goods were branded in nature, some were of BIS purview, IPR violation would also have been apparent etc. and would have informed to Shri Amit Das who was officially dealing with the matter. However, Shri Amit Das, Superintendent did not take any action to stop the smuggling. In this regard, Shri Amit Das, discussed verbally with Shri M. Loganathan. Shri Amit Das stated in his statement that he was informed about sensitive products and of 100% destuffed goods and they being in haphazard form and that actually only inspection of goods was done by counting the packages and no examination was done of contents inside the package (though both Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer have stated in their individual statements that they had randomly checked the contents of some packages and discrepancies were also found therein; also Shri Ankit Travadi had independently informed Shri Mayur Mehta that 100% examination was done by them). Thus, despite wrong and inadequate nature of such verbal report received from Shri M. Loganathan, Shri Amit Das did not himself examine the goods, though he still had the opportunity to do so. Though being aware of the violations, he had readily accepted the incomplete, inadequate and wrong verbal report of Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer and went about fabricating a false Panchnama of the examination having been conducted on 18.09.2017 and basically gave a clean chit to importer and the consignment. It also appears that the difference in declared weight and actual weight of container was already on record, so duty payment of merely Rs. 5,000/- appears to be only to get the file cleared by senior officers. Thus, Shri Amit Das misled senior officers into clearing the consignment. Shri Amit Das, Superintendent allowed Shri Gaurav Kumar, Preventive Officer to examine the consignment again on 20.09.2017 when Shri Gaurav was not authorised to do so. No Panchnama of the same was also either asked or drawn by Shri Gaurav. Thereafter, Shri Amit Das gave the SIIB file to the unauthorised person Shri Ankit Tarvadi for getting his consignment cleared from docks.

iv. The Panchanama purportedly showing proceedings of examination of goods of said Bill of Entry on 18.09.2017 conducted by Shri Amit Das, Superintendent was found in the said file. However, Shri Chandan Singh who was supposed to be present as representative of Customs Broker firm M/s. All Marine Cargo Services, Gandhidham, Shri AbdulGani Khatri, supposed to be present as representative of MICT CFS, Mundra, and Shri Nirav H. Vasani & Shri Ankit Travadi both of whom were supposed to be present as independent Panchas during proceedings of said Panchanama dated 18.09.2017 have, inter alia, stated in their respective statements recorded under Section 108 of Customs Act, 1962 that their signatures were obtained by Shri Amit Das and Shri Gaurav Kumar, Preventive Officer on the said Panchanama on either 21<sup>st</sup> or 22<sup>nd</sup> September 2017 and not on 18<sup>th</sup> September 2017 and that no such examination was carried out on 18.09.2017 in their presence. Thus, it appears that the fabricated and false Panchnama purportedly dated 18.9.2017 was created on 21/22.9.2017 with a carefully constructed narration of facts showing examination by Shri

Amit Das, Superintendent himself. Shri Ankit Travadi, who was the agent for the mastermind was made one of the Panch witness for the Panchnama proceedings. The Panchnama was created in back date (on the day when there was no examination) with signatures of remaining 04 persons on Panchnama taken on 21<sup>st</sup> and 22<sup>nd</sup> Sep., 2017 by Shri Amit Das. The said Panchnama was created to facilitate the clearance of smuggled consignment with only minimal liability of Rs. 5,000/-, when the same was liable for complete confiscation.

- v. Shri Ankit S. Travadi has accepted in his statement on 23.09.2017 and 29.09.2017 that he offered amount to accused Customs Officers for clearance of said goods and he was also actively involved in negotiation with the Customs Officers. The consignment under Bill of Entry 3130325 dated 06.09.2017 filed by M/s. Crescent Traders was examined by the SIIB officers viz. Shri Loganathan, Superintendent and Shri Gaurav Kumar, on 15.09.2017; that on 21st September, Shri Ankit S. Travadi went to SIIB Section where Shri Amit Das, Superintendent told him that Rs. 8.5 lakh would be required to clear the consignment and deal was ultimately fixed at Rs 8 lakh.
- vi. Shri Amit Das, Superintendent had demanded illegal gratification and had negotiated the amount with Shri Mayur Mehta, the mastermind. The amount was arranged through Angadia and had reached Mundra. This was done by constant interaction with facilitators / abettors (Shri Ankit and Shri Chirag) of the mastermind Shri Mayur Mehta (who were operating without any authorisation in Mundra Customs area) and with Shri Mayur Mehta himself on 18<sup>th</sup> and 21<sup>st</sup> Sep, 2017.
- vii. Shri Amit Das, Superintendent, SIIB, Customs House Mundra has admitted in his statement that he did not carry out any examination of goods on 18.09.2017 and made the said Panchanama purported to be of 18.09.2017 on 21.09.2017. Investigation reveals that there was a conversation on Whatsapp on 21.09.2017 between Shri Ankit Travadi and Shri Mayur P. Mehta in which Shri Ankit Travadi informed Shri Mayur P. Mehta that Shri Das is asking for Rs. 8.5 lakh and in response Shri Mayur P. Mehta directed him to fix the deal at Rs. 8 lakhs through an audio message through Whatsapp. After finalization of deal, the amount of Rs. 8 lakhs were sent by Shri Mayur P. Mehta (after collecting from Shri Nasir Khan) through Angadia and collected by Shri Chirag, brother of Shri Ankit Travadi at Bhuj. In addition to statements of Shri Mayur Mehta, Shri Ankit Travadi, Shri Chirag Travadi and Shri Nasir Khan, there are some audio clips /voice messages independently retrieved from the mobile phone of Shri Nasir Khan which show that Shri Nasir Khan and Shri Mayur Mehta sent big amount of illegal gratification to the Customs officers at Mundra.
- v.ii. From the above, it appears that Shri Amit Das, Superintendent, working then at SIIB, Customs House, Mundra had deliberately fabricated the examination Panchnama and showed it drawn in back date i.e. on 18.09.2017; he overlooked and suppressed the fact of undervaluation and applicability of BIS norms, IPR provisions etc. in the Panchnama in respect of the said import consignment vide Bill of Entry No. 3130325 dated 06.09.2017 from the senior officers. It also appears that Shri Amit Das, Superintendent, misguided his superior officers to aid in clearance of subject consignment illegally. He handed over Customs File (bill of entry no. 3130325 dated 06.09.2017) to a private person and used fabricated

Panchanama in clearance of goods. The subject goods contained items covered under BIS norms which could be imported by persons registered with Bureau of Indian Standards as also counterfeit goods; he did not carry out examination of imported goods but proposed clearance of goods on the basis of false information in the Note Sheet of Bill of Entry File. The fabricated Panchanama prepared by him concealed the facts and mis-declaration in quantity and value of goods and ultimately aided in illegal clearance of goods by Customs.

**34.2. Role and liability under Customs Act 1962 of Shri M. Loganathan, then Superintendent of Customs, SIIB, Mundra: -**

- i. Shri M. Loganathan, Superintendent, working then at SIIB, Customs House Mundra carried out examination of subject goods on 15.09.2017 without proper order. He had carried out examination in a casual and pre-conceived / planned manner despite having information about excess cargo and being under directions to do 100% examination of the cargo. He had examined goods which included goods covered under BIS norms, requiring importer to register with Bureaus of Indian Standards as also branded counterfeit goods. Despite coming to know of the fact of goods being prohibited as per Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order 2012 and discrepant in various respects, he did not bring these facts to notice of his colleagues and superior officers verbally or in the Bill of Entry file. Shri Amit Das, Superintendent has stated in his statement that Shri M. Loganathan told him that the subject consignment contained items viz. Screen guards, Touch Screens, USB cables but he did not inform the presence of other items viz. Power Banks etc. which were restricted for import or about other violations. Thus, it appears that Shri M. Loganathan, Superintendent, working then at SIIB, Customs House, Mundra did not carry out proper examination of imported goods even though there was supposedly information of quantity mis-declaration in the cargo. He mis-guided his colleagues and superior officers by providing false information which resulted into Customs giving Out of Charge to import consignment which was containing mis-declared & undervalued goods and goods infringing IPR Rules and BIS Order. The Role and liability under Customs Act 1962 of Shri M. Loganathan, Superintendent of Customs in the instant case is as under: -
- ii. As per the investigation carried out in the matter, it appears that the respective SIIB file of B/E No. 3130325 dated 06.09.2017 was opened by Shri Sudhanshu Tyagi, Preventive Officer which was subsequently dealt with by Shri Amit Das, Superintendent and Shri S.J. Singh, Deputy Commissioner. Later on, Shri M. Loganathan, Superintendent who, as per his statement, was well aware of procedure of opening files i.e. system generated file number, wrote B/E No. upon the file in place of respective file number. So, it appears that the file was like a private record which could be destroyed whenever required, leaving no trace of proceedings undertaken thereupon. This gives rise to a strong suspicion that the official file number was deliberately not given by Shri M. Loganathan for mala-fide reasons.
- iii. It further appears that there is no written authorisation of Shri M. Loganathan, Superintendent or Shri Gaurav Kumar, Preventive Officer to conduct the examination of consignment covered under Bill of Entry no.

3130325 dated 06.09.2017. Thus, the examination conducted by them (instead of by Shri Sudhanshu Tyagi, Preventive Officer and Shri Amit Das, Superintendent who were the authorised officers by order in writing on the file notesheet) appear to be unauthorised. Shri M. Loganathan, Superintendent had asked/directed Shri Gaurav Kumar, Preventive Officer to conduct the said examination with him though, like him, Shri Gaurav also was not authorised to do so.

- iv. 100% examination of goods is implied in all examinations conducted by SIIB, except specifically provided. However, only random examination was done besides counting of boxes. Further it appears that Shri M. Loganathan, Superintendent or Shri Gaurav Kumar, Preventive Officer would have discovered the violations on visual examination (after examining the already de-stuffed consignment for 4-5 hours and taking samples) and were obvious in nature since some goods were branded in nature, some were of BIS purview, IPR violation would also have been apparent etc; but they made no mention of it in any official record or told their Deputy Commissioner even verbally. As stated at points below, actually by their own admission and as found in DRI examination, there was extra box and some boxes were not matching with packing list, but they had done nothing about it.
- v. It also appears from the statement of Shri Ankit Travadi and statements of Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer that actually the inspection/examination was done by these officers by way of counting the packages and tallying with that declared in B/E. The same were found to be 1025 boxes, as per Shri M. Loganathan, Superintendent, whereas, the number of boxes were found 1026 during the examination done by officers of DRI under Panchnama dated 23.09.2017, 25.09.2017, 26.09.2017, 27.09.2017 and 28.09.2017.
- vi. Shri M. Loganathan in his statement stated that "we checked some packages randomly and found it to be in accordance with packing list". However, Shri Gaurav Kumar, Preventive Officer in his statement has stated that "However, some boxes with markings "PHP" did not tally with the packing list". Being a Senior Officer on the spot, Shri M. Loganathan concealed this fact and made no report about it. Similarly, Shri Gaurav Kumar, Preventive Officer also did not do so.
- vii. As stated by Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer in their respective statements, only 4-5 cartons were fully opened by them and examined against the order on file to conduct full examination of the contents of the container. Shri M. Loganathan, Superintendent mentioned that counting was completed late in evening so no proper examination could be conducted. It appears very strange reasoning since the examination could have continued on the next working day (Saturday or Sunday). All this indicates mala-fide intention on the part of Shri M. Loganathan, Superintendent. Moreover, Shri M. Loganathan, Superintendent mentioned in his statement that they did not draw any Panchnama of verification done on 15.9.17 since "they were not authorised under any written order". This also appears to be a strange reasoning of first doing unauthorised examination and later saying that because it was unauthorised therefore the discrepancies / smuggling noticed during examination were not brought on official record. The outcome of samples

drawn on 15.09.2017 was also not taken on record when the consignment was given clearance by SIIB.

- viii. It also appears from the statement of Shri Amit Das, Superintendent that verbally some incomplete, inadequate and wrong report was told during discussions by Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer to other officers of SIIB including Shri Amit Das. Hence by such incomplete, inadequate and wrong verbal report to Shri Amit Das Superintendent Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer caused to be made / used a panchnama which was false or incorrect in many material particulars.
- ix. Further, Shri M. Loganathan, Superintendent has stated that he knew Shri Ankit Travadi for quite some time (years) in his official capacity. It thus appears that he would be aware that Shri Ankit Travadi had no authorisation to work at Mundra port. Inspite of knowing about Ankit Travadi, Shri M. Loganathan still interacted with him and dealt with him as an owner of import consignment or owner's representative.
- x. As stated by Ankit in his statement dated 29.09.2017, that on 18<sup>th</sup> Sep., 2017, both officers viz. Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer were present in SIIB office when Mayur Mehta negotiated with them for clearance of his consignment. They were again present as a team on 21<sup>st</sup> Sep., 2017 during discussions amongst themselves after which Shri Amit Das, Superintendent demanded Rs. 8.5 lakh of illegal gratification from Shri Ankit, which is also borne out by voice message recovered from mobile phone of Shri Ankit. This is confirmed by Sh Mayur Mehta who in his statement dt 22.10.2017 has stated, "Shri Ankit informed that SIIB officers have examined the consignment 100% and have found many discrepancies in respect of declaration". He also stated w.r.t 18th Sep as follows: "Sh. Ankit introduced me to SIIB officers namely Shri Longanathan, Shri Gaurav and Sh. Khatri and they showed us the sample of the consignment and told me about the issues related to undervaluation, IPR and BIS with the goods and some of the goods would need to be destroyed. I was told about the valuation aspect by SIIB officers and I was told that the brand name is printed on the goods but some of these were not original". Further, w.r.t 20th Sep as follows: "Thereafter, I again met the Shri Longanathan and Shri Gaurav in SIIB Office on 20.09.2017 and requested them to please clear the goods on whatever duty, fine and penalty or any other means as deemed fit. Shri Loganathan assured me to confirm the valuation aspect and communicate it to Shri Ankit, as they want more samples to be drawn. But they told me that there might be chances of differential duty comes to Rs. 35-40 lakhs appx. and enhancement of total value to more than Rs. One Crore."
- xi. Whereas, it appears that massive discrepancies between the declared goods and actual goods in the said container as discovered by DRI later and concealing them from official records, seen in conjunction with facts stated by Ankit Travadi in his statement appears to indicate that Shri M. Loganathan, Superintendent in connivance with the smugglers was directly involved every step of the way, as also in overall conspiracy to defraud government exchequer for illegal monetary gains. He had constant interaction with the fixers (Sh Ankit and Sh Chirag) of the mastermind Shri Mayur Mehta, who were operating without any authorisation in Mundra Customs area and with Shri Mayur Mehta on 18<sup>th</sup> and 21<sup>st</sup> Sep., 2017.

**34.3. Role and liability under Customs Act 1962 of Shri Gaurav Kumar, then Preventive Officer of Customs, SIIB, Mundra: -**

- i. Shri Gaurav Kumar, Preventive Officer, working then at SIIB, Customs House Mundra carried out examination of subject goods on 15.09.2017 with Shri Loganathan, Superintendent without proper order. Some samples were also drawn from the cartons by Shri Gaurav. He had examined goods which included goods covered under BIS norms, requiring importer to register with Bureaus of Indian Standards, as also branded goods and counterfeit goods. He did not carry out examination properly and failed to find out exact quantity of goods despite having information of mis-declaration in respect of goods covered under the subject Bill of Entry. Despite coming to know of the fact of goods being prohibited as per Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order 2012, as also discrepant in various other respects he did not bring these facts to notice of his colleagues and superior officers verbally or in writing. He aided Shri Amit Das in fabricating a false Panchanama by way of obtaining signatures of concerned persons on back date. The said Panchanama was used in misguiding his superior officers to aid in clearance of subject consignment. The Role and liability under Customs Act 1962 of Shri Gaurav Kumar, Preventive Officer of Customs is discussed in detail as under: -
- ii. As per the investigation carried out in the matter, it appears that there was no written authorisation of Shri M. Loganathan, Superintendent or Shri Gaurav Kumar, Preventive Officer to conduct the examination of consignment covererd under Bill of Entry no. 3130325 dated 06.09.2017. Thus, the examination conducted by them (instead of by Shri Sudhanshu Tyagi, Preventive Officer and Shri Amit Das, Superintendent who were authorised in writing on the file notsheet) appears to be unauthorised. Though Shri M. Loganathan, Superintendent had asked/directed Shri Gaurav Kumar, Preventive Officer to conduct the said examination with him, Shri Gaurav was not authorised to do so.
- iii. 100% examination of goods is implied in all examinations conducted by SIIB, except specifically provided. However only random examination was done, besides counting of boxes. Further it appears that Shri M. Loganathan, Superintendent or Shri Gaurav Kumar, Preventive Officer would have discovered the violations on visual examination (after examining the already de-stuffed consignment for 4-5 hours and taking samples) and were obvious in nature since some goods were branded in nature, some were of BIS purview, IPR violation would also have been apparent etc; but they made no mention of it in any official record or told their Deputy Commissioner even verbally. As stated at points below, actually by their own admission and as found in DRI examination, there was extra box and some boxes were not matching with packing list, but they had done nothing about it.
- iv. It also appears from the statement of Shri Ankit Travadi and statements of Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer that actually the inspection/examination was done by these officers by way of counting the packages and tallying with that declared in B/E. The same were found to be 1025 boxes, as per Shri M. Loganathan, Superintendent, whereas, the number of boxes were found 1026 during the

examination done by officers of DRI under Panchnama dated 23.09.2017, 25.09.2017, 26.09.2017, 27.09.2017 and 28.09.2017.

- v. As stated by Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer in their respective statements, only 4-5 cartons were fully opened by them and examined as against the order on file to conduct full examination of the contents of the container. The outcome of samples drawn on 15.09.2017 was also not taken on record while the consignment was given clearance by SIIB.
- vi. It also appears from the statement of Shri Amit Das, Superintendent that verbally some incomplete, inadequate and wrong report was told during discussions by Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer to other officers of SIIB including Shri Amit Das. Hence by such incomplete, inadequate and wrong verbal report to Shri Amit Das Superintendent Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer caused to be made/ used a panchnama which was false or incorrect in many material particulars.
- vii. As stated by Ankit in his statement dated 29.09.2017, that on 18<sup>th</sup> Sep., 2017, both officers viz. Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer were present in SIIB office when Mayur Mehta negotiated with them for clearance of his consignment. They were again present as a team on 21<sup>st</sup> Sep., 2017 during discussions amongst themselves after which Shri Amit Das, Superintendent demanded Rs. 8.5 lakh of illegal gratification from Ankit which is also borne out by voice message recovered from mobile phone of Ankit. It also appears from the statement dated 29.09.2017 of Shri Ankit Travadi that on 20<sup>th</sup> Sep., 2017 Shri Gaurav Kumar, Preventive Officer again – for the second time – unauthorisedly conducted examination of goods and took samples of USB Cables whereas, this time no examination report or Panchnama was brought on record. The outcome of samples drawn by Shri Gaurav Kumar was also not taken on record while the consignment was given clearance by SIIB and is not known.
- viii. Whereas, it appears that massive discrepancies between the declared goods and actual goods in the said container as discovered by DRI later and concealing them from official records, seen in conjunction with facts stated by Ankit Travadi in his statement appears to indicate that Shri Gaurav Kumar, Preventive Officer in connivance with the smugglers was directly involved every step of the way, as also in overall conspiracy, to defraud government exchequer for illegal monetary gains. He had constant interaction with the fixers (Sh Ankit and Sh Chirag) of the mastermind Shri Mayur Mehta, who were operating without any authorisation in Mundra Customs area and with Shri Mayur Mehta on 18<sup>th</sup> and 21<sup>st</sup> Sep., 2017. In his statement one of the panchas Shri Nirav Vasani has stated that on 21<sup>st</sup> / 22<sup>nd</sup> Sep., 2017, it was Gaurav Kumar, Preventive Officer who had called him on telephone and had asked him to come to Room No. 301 of Customs House to sign the Panchnama.

**34.4. Whereas, as per Section 2(39) of Customs Act, 1962, “smuggling”, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.**

Shri Amit Das, Shri M. Loganathan and Shri Gaurav Kumar, officers of Customs, posted then in SIIB, Customs House, Mundra at the time of import of said

consignment, were required to examine the import goods after getting approval for examination from Deputy Commissioner of SIIIB, to unearth the evasion of Customs duty against information of quantity mis-declaration in the cargo. However, the officers did not carry out proper examination of import consignment and despite becoming aware of various violations pertaining to mis-declaration, undervaluation, applicability of BIS norms and infringement of IPR etc by the goods in the subject consignment, concealed the said facts from senior officers in order to facilitate the clearance of the cargo from out of Customs charge. Their culpability in this regard is established by independent evidences, their own admissions and by mutually corroborating statements of the concerned persons / officers. It also appears from the statements and evidences collected during investigation that these officers had done so for monetary gains after making a deal of illegal gratification with the importer's representative/s to clear the consignment. Thus, it appears that these officers knowingly and actively connived with the smugglers' in facilitating the smuggling of import goods. They concerned themselves in illegal removal and dealing in goods which they had reason to believe were liable to confiscation under Section 111 of Customs Act, 1962. As per Section 2(39) of Customs Act, 1962, "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113. Thus, in terms of Customs Act, 1962 Shri Amit Das, Superintendent, Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer of Customs would be considered to have indulged in "smuggling" within the meaning of Customs Act. They also either created or helped in creation of false Parchnama or gave their version which caused fictitious panchnama, which was false and incorrect in many material particulars, to be created and used.

**34.5.** Thus, Shri Amit Das, Superintendent, Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer of Customs have abetted the fraudulent import and rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. They have knowingly allowed and/or abetted clearance of the offending goods from Customs and made/signed/used and/or caused to be made/signed/used the documents which were containing false/ incorrect material particulars. Thus, all these officers have rendered themselves separately liable to penalty under **Section 112(a) and (b) [read with Sections 112(i), Section 112 (ii) and Section 114AA of the Customs Act, 1962]** for their acts of omission and commission.

**34.6.** After considering the nature of offence, the role and liability under Customs Act 1962 of the officers involved and evidence available on record there was reason to believe that Shri Amit Das, Superintendent and Shri Gaurav Kumar, Preventive Officer, while working in SIIIB of Customs House, Mundra had committed offences punishable under the Customs Act, 1962 under the Sections 132, 135 and 136 of the said Act and Shri M. Loganathan, Superintendent had committed offences punishable under Sections 135 and 136 of the said Act.

**34.7.** Accordingly, the above-mentioned officers of SIIIB, Customs House Mundra, viz., **Shri Amit Das, Superintendent, Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer** were arrested on 08.10.2017 under Section 104 of Customs Act, 1962. The officers were produced before Chief Judicial Magistrate, Bhuj vide Production Memo dated 08.10.2017 who granted them judicial custody. The officers filed applications for Bail under Section 437 of Criminal Procedure, 1973 on 10.10.2017 which was rejected by Chief Judicial Magistrate, Bhuj vide Order dated 13.10.2017. The officers then

preferred Misc. Criminal application no. 839 of 2017 before Sessions Judge, District Court, Bhuj for regular bail under Section 439 of Cr. PC, 1973 which was also rejected by Sessions Judge, District Court, Bhuj, vide Order dated 14.11.2017. The officers also preferred application for regular bail at Hon'ble High Court of Gujarat, against which DRI submitted reply affidavit dated 29.11.2017, but the application for regular bail filed before Hon'ble High Court of Gujarat was withdrawn by the officers, as appearing from Oral Order dated 04.12.2017 of Hon'ble High Court of Gujarat. Thereafter, the officers were granted bail under Section 167 (2) of Cr. PC by Chief Judicial Magistrate, Bhuj vide Order dated 08.12.2017.

**34.8. Role and liability under Customs Act 1962 of Shri Deepak Khatri, Superintendent, working then in SIIB, Customs House, Mundra: -**

- i. As per the statement dated 29.09.2017 of Shri Ankit Travadi, employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mundra, on 16.09.2017, he contacted Shri M. Loganathan, Superintendent, who told him that he (Shri Loganathan) would not go to office and asked to go to SIIB office and to contact Shri Deepak Khatri; that he contacted Shri Deepak Khatri and after his confirmation regarding his availability in office, he (Shri Ankit) went to SIIB office; that he asked to Shri Khatri if there was any problem in the consignment and whether he should call the importer or his boss Shri Mayur Mehta; that Shri Deepak Khatri told him that the goods were undervalued and there was involvement of duty in the consignment.
- ii. Shri Ankit Travadi has further stated that Shri Deepak Khatri told him that the duty had to be paid either here or there ("yahanyawahan"). On being asked specifically the meaning of these words of Shri Deepak Khatri, Shri Ankit Travadi clarified the meaning as 'the money is to be paid to the officers or duty to the department'. As per Shri Ankit, Shri Khatri then asked to contact Shri Loganathan about the consignment.
- iii. Shri Ankit further stated in his statement dated 29.09.2017 that thereafter he contacted Shri Mayur Mehta and told him to come to Mundra to get the consignment cleared; that Shri Mayur Mehta arrived Mundra **on 18.09.2017** and they went to SIIB Section and he entered in the Room No. 301 where Shri Loganathan, Shri Deepak Khatri and Shri Gaurav were present in the room; that Shri Loganathan asked him to meet Shri Khatri and accordingly he came out of the room and told Shri Mayur Mehta to meet Shri Khatri explaining him the sitting position of Shri Khatri. Shri Ankit further added that Shri Mayur Mehta went inside the room and remained there for about half an hour; that after coming out of the room, Shri Mayur Mehta asked him to follow the instructions of SIIB officers. Shri Ankit also stated that on 20<sup>th</sup> September, 2017, he went to SIIB office and met Shri Khatri, Shri Loganathan and Shri Gaurav and they told him to go to CFS and that Shri Das, Superintendent would examine the consignment.
- iv. Shri Mayur Mehta, Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai/Mundra in his statement dated 22.10.2017 has independently deposed that **on 18.09.2017**, Shri Ankit Travadi introduced him to SIIB officers namely Shri Loganathan, Shri Gaurav and Khatri and they were shown the samples of the consignment and told him about the issues related to undervaluation, IPR and BIS with the goods and some of the goods would need to be destroyed; that he was told about the valuation aspect by SIIB officers and also it was told to him that the brand name was

printed on the goods but some of these were not original; that the officers told that the duty element would be communicated to them after calculation of valuation aspect.

- v. Shri Deepak Khatri in his statement dated 06.10.2017 has stated that **on 14.09.2017** that Shri Ankit Travadi introduced Shri Mayur Mehta to him as his boss; that he had seen the file related to consignment of M/s. Crescent Traders casually and asked Shri Ankit Travadi and Shri Mayur Mehta to meet Shri Loganathan. On being specifically asked when did Shri Khatri had a meeting with Shri Ankit and Shri Mayur Mehta, Shri Khatri gave a vague reply but when he was specifically asked to explain the events from 18.09.2017 to 21.09.2017, Shri Deepak Khatri replied that **on 18.09.2017**, Shri Ankit and Shri Mayur Mehta came to SIIB section and after courtesy wishes of Good Morning, they met Shri Loganathan and he was busy with his work; that he did not meet Mayur Mehta.
- vi. On being further asked to offer comment on the facts stated by Shri Ankit in his statement dated 29.09.2017 regarding depositions of Shri Khatri about undervaluation of the cargo and payment of duty 'Here or There', Shri Khatri denied to have passed on any such remarks. Since Shri Deepak Khatri had refused to have passed such remark, another statement of Shri Ankit Travadi was recorded on 07.10.2017 in which he was asked regarding his agreement with the facts deposed by him in his earlier statements dated 23.09.2017 and 29.09.2017. In reply Shri Ankit Travadi has deposed that he was in agreement with all the facts of his earlier two statements and re-affirmed the same.
- vii. From the above, it appears that Shri Mayur Mehta had met Shri Deepak Khatri on 18.09.2017 i.e. after the examination of goods imported vide the B/E No. 3130325 dated 06.09.2017 in the name of M/s. Crescent Traders is as evident from the statements of Shri Ankit Travadi and Shri Mayur Mehta. Whereas, Shri Deepak Khatri had tried to mislead the investigating officers by stating that Shri Ankit Travadi introduced Shri Mayur Mehta to him on 14.09.2017. Shri Khatri had deliberately told the date of his meeting with Shri Mayur Mehta on 14.09.2017 i.e. prior to examination of consignment by SIIB officers so that he could escape from the episode showing that he was not aware about the issues involved in the consignment such as undervaluation, BIS, IPR etc. Investigation reveals that it was Shri Deepak Khatri who had initiated the negotiation for illegal gratifications (by passing the remark 'here or there' to the Shri Ankit) in lieu of clearance of such cargo as he was very well aware about the discrepancies and involvement of duty in the said cargo. It is also evident from the facts stated by Shri Ankit in his statement dated 29.09.2017 that Shri Mayur Mehta had discussed the matter with Shri Khatri and other officers of SIIB for around half an hour and after that meeting, Shri Mayur Mehta directed Shri Ankit to follow the instructions of SIIB officers.
- viii. Thus, it appears that Shri Deepak Khatri was very well aware about blatant violations of the provisions of the Customs Act, 1962 and other statutory provisions in the goods imported vide the B/E No. 3130325 dated 06.09.2017 but he did not bring the same to the notice of higher officers in any manner, neither he tried to make any effort to check the smuggling for the safeguard of Govt. revenue as was expected from him being working in Special Intelligence and Investigation Branch of Customs. Instead, Shri Deepak Khatri, Superintendent, had concealed the violations in subject

consignment and had instead initiated a deal of illegal gratification with the importer's representative to clear the consignment. He also tried to mis-lead the investigation by tendering incorrect statement. He has knowingly allowed and/or abetted clearance of the offending goods from Customs. Hence, it appears that Shri Deepak Khatri is liable to penalty under Section 112(a) & (b) [read with Sections 112(i) & Section 112(ii)] of the Customs Act, 1962 for his acts of omission and commission.

**35.** Looking to the role and culpability of public servants in this case read with violations of the provisions of Customs Act, 1962 and other allied Acts, reference was made to the CBI, Anti Corruption Branch, Gandhinagar on 16.10.2019. The CBI, after getting completed the investigation provided CBI Report dated 21.11.2019 and it was informed that the CBI has registered a case No. RC0292019A0010-GNR dated 23.07.2019 under Section 120-B r/w 511 r/w 420 of IPC, 1960, Section 15 r/w 13(1)(d) of the PC Act, 1988 against following officers/persons;

- (i) Shri Amit Das S/o Shri Nagendranath Das, then Superintendent, SIIB, O/o the Pr. Commissioner of Customs, Mundra.
- (ii) Shri Muthuswamy Loganathan, then Superintendent, SIIB, O/o the Pr. Commissioner of Customs, Mundra.
- (iii) Shri Deepak Khatri S/o Shri Rajpal Khatri, then Superintendent, SIIB, O/o the Pr. Commissioner of Customs, Mundra.
- (iv) Shri Gaurav Kumar S/o Shri Hari Singh, then Preventive Officer, SIIB, O/o the Pr. Commissioner of Customs, Mundra
- (v) Mr. Nasir Khan S/o Shri Phundan Khan, Owner of M/s. Connect Mobiles, Shop No. 591/592, 2<sup>nd</sup> Floor, City Centre Mall, Mumbai (Residential Address-Flat No. 18, Central Court, 5<sup>th</sup> Floor, MotlibaiRoiad, Agripada, Mumbai-400011).
- (vi) Shri Ankit Travadi S/o Shri Shailesh Travadi of M/s. Dabke clearing & Forwarding Pvt. Ltd., Zero Point, Mundra, Kutch, Gujarat (Res. House No. 35 A, Ridhi Nagar-2, Near Ganesh Temple, Umiya Nagar, Mundra Kutch, Gujarat).
- (vii) Shri Mayur Mehta (Expired on 09.11.2017), Owner of M/s. Dabke clearing & Forwarding Pvt. Ltd., Head office 61, Rajendra S. Tabela, Sahar Cargo Complex, Sutar Pakhadi, Opp. Cargo Complex, Sahar Village, Andheri (E), Mumbai-400099 (Res. 401, SurekhChs Ltd. Dadabhai Road, Ville Parle West, Near C.N.M.S. School, Mumbai-400056.)

**36.** In view of the above, a Show Cause Notice bearing **F.No. GEN/ADJ/COMM/ 217/2021-Adjn dated 20.09.2021** was issued to **Shri Nasir Khan**, F.No. 18, Central Court, Motlibai Street, Agripada, Mumbai Central), the actual beneficiary owner of **M/s. Crescent Traders (IEC No. 0317524631)**, Proprietor Shri Sandesh Tanwar), 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra Nagar, Dombiwali West, 421202 and was called upon to show cause in writing to the **Commissioner of Customs, Custom House, Mundra**, wherein it has been proposed, as to why:-

- (i) The declared transaction value of goods imported under Bill of Entry No. 3130325 dated 06.09.2017 amounting to **Rs. 14,87,806/- (Rupees Fourteen Lakh Eighty-Seven Thousand, Eight Hundred and Six Only)** should not be rejected under Rule 12 of the Customs Valuation

(Determination of value of imported goods) Rules, 2007 and re-determined under Section 14 of the Customs Act, 1962 read with Rule 7 of the CVR, 2007;

- (ii) The classification of Mobile phone battery, Car mobile phone Charger/Adapter /USB Charger, Touch Screen and USB data cable/charging cable done by the importer in the Bill of Entry no. 3130325 dated 06.09.2017 under CTH No. 85299090, 85299090, 85177090 and 85183000 and 85044030 should not be rejected and the same should not be classified under appropriate CTH No. 85078000, 85044030, 85299090 and 85442090, respectively of Customs Tariff as mentioned at Sr. No. 2, 3, 14 and 16 of Annexure X to subject SCN.
- (iii) The value of **Rs. 1,31,90,485/-** as mentioned in Annexure-X should not be considered as actual transaction value for demand of Customs Duty. Therefore, the Customs Duty totally amounting to **Rs.50,90,248/- (Rupees Fifty Lakh Ninety Thousand Two Hundred and Forty-Eight only)** on the import of subject goods, should not be demanded and recovered from them in terms of Section 28 (4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962. The Customs Duty of **Rs. 5,47,066/-** paid by them should not be appropriated against their said total liability of Duty.
- (iv) The goods mentioned in **Annexure-Y** attached with the subject SCN though not physically available in respect of **Bill of Entry No. 3016001 dated 28.08.2017** which have been found infringing the Intellectual Property Rights, should not be confiscated under Section 111(d) and 111 (m) of the Customs Act, 1962. Since the goods have already been cleared and not physically available for confiscation why redemption fine should not be imposed upon them in lieu of confiscation of the goods.
- (v) Penalty should not be imposed upon them under Section 112(a) and (b) [read with Sections 112(i), Section 112 (ii)], Section 114A and Section 114AA of the Customs Act, 1962.

**37.1.** Further, vide the said Show Cause Notice **F.No. GEN/ADJ/COMM/217/2021-Adjn dated 20.09.2022** penalty has also been proposed to impose upon following persons: -

**Table-viii**

<b>S. No.</b>	<b>Name (S/Shri/Ms/Smt/ M/s)</b>	<b>Penal provisions under Customs Act, 1962</b>				
		<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>
1	M/s. Crescent Traders (Shri Sandesh Tanwar, Proprietor)	112(a)	112(b)	114A	114AA	-
2	Shri Nasir Khan	112(a)	112(b)	114A	114AA	117
3	Shri Uves Khakhu	112(a)	112(b)	-	114AA	117
4	Ms. Swati Vora alias Monika	112(a)	112(b)	-	114AA	117
5	M/s. Dabke Clearing & Forwarding Pvt. Ltd.,	112(a)	112(b)	-	114AA	-
6	Shri Ankit Shaileshbhai Travadi Employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd.	112(a)	112(b)	-	114AA	-
7	Shri Shera Ram of M/s. Krishna Shipping Logistics	112(a)	-	-	-	-

8	Shri Mohammad Hanif Fakir Mohammad Shaikh	112(a)	112(b)	-	114AA	117
9	Shri Mohammad Selia	112(a)	112(b)	-	114AA	117
10	Mohammad ImranNavsariwala	112(a)	112(b)	-	-	117
11	Shri Bhavesh N. Gori, H Card Holder in Customs Broker firm M/s. All Marine Cargo Services	112(a)	112(b)	-	114AA	-
12	Shri Chandan Singh, H Card Holder in Customs Broker firm M/s. All Marine Cargo Services	112(a)	112(b)	-	114AA	-
13	M/s. All Marine Cargo Services, Gandhidham	112(a)	112(b)	-	114AA	-
14	Shri Amit Kumar Singh of M/s. All Marine Cargo Services, Gandhidham	112(a)	112(b)	-	114AA	-
15	M/s. Om Trans Freight Cargo Pvt. Ltd.	112(a)	112(b)	-	114AA	-
16	Shri Chirag ShaileshbhaiTravadi, Employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mundra	112(a)	112(b)	-	-	-
17	Shri Abdul Gani Khatri, Executive in MICT CFS, Mundra	112(a)	-	-	114AA	-
18	Shri Nirav Vasani , H Card Holder in Customs Broker firm M/s. VeljiDosabhai& Sons PrivateLimited	112(a)	-	-	114AA	-
19	Shri Atul Kumar Pappu Pal	112(a)	-	-	114AA	117
20	Shri Yatin Sadashiv Mandvkar	112(a)	-	-	114AA	117
21	Shri Suraj Singh	112(a)	-	-	114AA	117
22	Shri Vishal Gamre	112(a)	-	-	114AA	117
23	Shri Amit Das, then Superintendent of Customs, SIIB, Mundra	112(a)	112(b)	-	114AA	-
24	Shri M. Loganathan, then Superintendent, SIIB, Mundra	112(a)	112(b)	-	114AA	-
25	Shri Gaurav Kumar, then Preventive Officer of Customs Mundra	112(a)	112(b)	-	114AA	-
26	Shri Deepak Khatri, then Superintendent, SIIB, Mundra	112(a)	112(b)	-	-	-

37.2. A separate **Show Cause Notice** bearing F.No. DRI/AZU/GRU-45/2017-Crescent dated 10.09.2018 was also issued to M/s. **Crescent Traders (IEC No. 0317524631)** by the ADG DRI, Ahmedabad under section 124 of the Customs Act, 1962, whereby it has been proposed as to why:

- the goods imported in the consignment covered under Bill of Entry No. 3130325 dated 06.09.2017 should not be confiscated under Section 111(l), 111(d) and 111 (m) of the Customs Act, 1962.

ii. Further, vide the said Show Cause Notice **F.No. DRI/AZU/GRU-45/2017-Crescent dated 10.09.2018** penalty has also been proposed to impose upon following persons:

**Table ix**

S.no.	Name (S/Shri/Ms/Smt/ M/s)	(3)	(4)	(6)	(7)
(1)	(2)	(3)	(4)	(6)	(7)
1	M/s. Crescent Traders (Shri Sandesh Tanwar, Proprietor)	112(a)	112(b)	114AA	-
2	Shri Nasir Khan	-	-	-	117
3	Ms. Swati Vora alias Monika	112(a)	112(b)	114AA	117
4	M/s. Dabke Clearing & Forwarding Pvt. Ltd.,	112(a)	112(b)	114AA	-
5	Shri Ankit Shaileshbhai Travadi Employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd.	112(a)	112(b)	114AA	-
6	Shri Shera Ram of M/s. Krishna Shipping Logistics	112(a)	112(b)	-	-
7	Shri Mohammad Hanif Fakir Mohammad Shaikh	112(a)	112(b)	114AA	117
8	Shri Bhavesh N. Gori, H Card Holder in Customs Broker firm M/s. All Marine Cargo Services	112(a)	112(b)	114AA	-
9	Shri Chandan Singh, H Card Holder in Customs Broker firm M/s. All Marine Cargo Services	112(a)	112(b)	114AA	-
10	M/s. All Marine Cargo Services, Gandhidham	112(a)	112(b)	114AA	-
11	Shri Amit Kumar Singh of M/s. All Marine Cargo Services, Gandhidham	112(a)	112(b)	114AA	-
12	Shri Chirag Shaileshbhai Travadi, Employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mundra	112(a)	112(b)	-	-
13	Shri Abdul Gani Khatri, Executive in MICT CFS, Mundra	112(a)	-	114AA	-
14	Shri Nirav Vasani, H Card Holder in Customs Broker firm M/s. Velji Dosabhai & Sons Private Limited	112(a)	-	114AA	-
15	Shri Amit Das, then Superintendent of Customs, SIIIB, Mundra	112(a)	112(b)	114AA	-
16	Shri M. Loganathan, then Superintendent, SIIIB, Mundra	112(a)	112(b)	114AA	-
17	Shri Gaurav Kumar, then Preventive Officer of Customs Mundra	112(a)	112(b)	114AA	-
18	Shri Deepak Khatri, then Superintendent, SIIIB, Mundra	112(a)	112(b)	-	

The said SCN is also part of current round of adjudication proceedings.

**38. DEFENSE SUBMISSION:**

**38.1 Shri Sandesh Tanwar, Proprietor, M/s Crescent Traders (Noticee-1), submitted reply dated 15.10.2022** against impugned SCN, wherein they interalia submitted as under that:

- i. The Noticee has no concern with M/s. Crescent Traders (IEC No. 0317524631) in any way and he came to know that his name was being used as Proprietor/Director of M/s. Crescent Traders, (IEC No. 0317524631) in Sept. 2017 only when a team of officers from DRI Mumbai zonal unit conducted search at the room owned by his father Shri Gopichand Tanwar.
- ii. His father lodged a complaint to Sr. Police Inspector, Vishnunagar Police Station, Dombiwali (W) on 06.11.2017 and subsequently a letter to Commissioner of Police, Thane City on 01.08.2018 stating that my documents such as PAN Card, Aadhar Card, passport photographs have been mis-used to register a fake company in the name of Crescent Traders.
- iii. Investigation also revealed that the documents required for opening IEC such as PAN Card, Aadhar Card, Photo etc. of Shri Sandesh Tanwar were mis-used for opening IEC 0317524631 in the name Crescent Traders to hide the identity of actual importer Shri Nasir Khan from the Govt, enforcement agencies.
- iv. The inquiries carried out from the concerned bank branch ie. Bank of India, Wodellouse Branch, Colaba, Mumbai that the Account number 004820110000435 used in opening IEC No. 0317524631 pertaining to Shri Girish Keshav Bapat, RE-22, SamrutiBanglow, Gymkhana Road, MIDC, Dombiwali (E), Thane. As per the KYC documents received from the bank vide letter dated 31.10.2017 and bank statement received vide letter dated 15.11.2017, copy of Form ST-1 (Application Form for obtaining Service Tax Registration) and copy of Ration Card was used as address proof of M/s. Crescent Traders in which the address of this firm was mentioned as RE-22, SamrutiBanglow, Gymkhana Road, MIDC, Dombiwali (E), Thane and the name and PAN of applicant were mentioned as Shri Girish Keshav Bapat and PAN as AGWPB0445J. Investigation further revealed that there were no high value transactions (of more than Rs. 1000/-; except two transactions of Rs. 5500/- and Rs. 5,000/- on 30.01.2012 and 05.10.2012 respectively) in the said Bank account, which indicates that the Bank Account in the name of Girish K. Bapat was used in the name of M/s Crescent Traders for irregular purposes only.
- v. Based on the facts, circumstances and evidences on record, it is evident that the importer M/s. Crescent Traders was a dummy firm as its purported Proprietor (as per IEC) Shri Sandesh Tanwar did not have any relation to M/s. Crescent Traders as his documents and photos given by him in relation to job, were mis-used for opening IEC in the name M/s. Crescent Traders, Dombivali (W); instead Shri Nasir Khan was the actual beneficiary owner of M/s. Crescent Traders, Dombivali (W) (IEC No. 0317524631) and he used fake documents/details in relation to fraudulent import of mobile phone accessories vide Bill of Entry No. 3130325 dated 06.09.2017 to evade his liability from the Govt, enforcement agencies.
- vi. M/s. Crescent Traders in any way and hence it is requested to kindly drop all the penalties (i.e. Penal provisions 112(a), 112(b), 114A, 114AA etc) which is to be imposed on me under the penal provisions of the Customs Act 1962.

**38.2. Shri Nasir Khan (Noticee no. 2), submitted reply dated 21.10.2022, 31.07.2023against impugned SCN, wherein they interalia submitted as under that:**

- i. Various documents have been referred and relied upon by the Investigating Agency and the issuing authority, however, they have not been made part of the List of RUDs of the SCN. Hence, not supplied to the Noticee. The Noticee seeks the supply of all the referred documents to enable him to make an efficacious reply to the SCN. Moreover, there are illegible copies of RUDs. Therefore, the Noticee is absolutely constrained from preparing an effective reply to the SCN in the absence of the complete set of documents.
- ii. The Noticee may be permitted to submit a detailed and para-wise response to the SCN after being supplied with all the legible copies of the documents (as elucidated hereunder) and the opportunity to inspect the RUDs and RUA. It is also averred that the Noticees seek permission to add, amend, and supplement any grounds taken in the grounds of this application vide further additional replies and also in the final written submissions.
- iii. The notice also seeks cross-examination of DRI Officers.
- iv. the entire SCN is time barred looking to the transaction mentioned in SCN. Therefore, the SCN is time bar and no demand can be made against our client of any nature.

**38.3. Shri Sheraram Mehra (Noticee no. 7), of M/s. Krishna Shipping and Logistics, submitted reply dated 17.10.2022 against impugned SCN, wherein they inter alia submitted as under that:**

- i. From investigations it had appeared that actually one M/s. Dabke Clearing and forwarding Pvt. Ltd had assigned the work of filling bill of entry for M/s. Crescent Traders to one M/s. Krishna Shipping & Logistics who had further re-assigned the work of filling the bill of entry to M/s. All Marine Cargo Services, Gandhidham.
- ii. During the investigation, DRI has recorded the statement of Shri Ankit Travadi, of M/s. Dabke Clearing and Forwarding on 23.09.2017 wherein he has, inter alia, stated that my firm M/s. Krishna Shipping & Logistics is a freight forwarder and he (Ankit) contacted me to file the bill of entry on his request, I simply forwarded the documents to the custom Broker M/s. All Marine Services.
- iii. The notice has categorically stated in the statement that his firm M/s Krishna shipping and logistics is a forwarding firm. Since I am not having the license of Custom Broker, I have forwarded the documents to a Customs Broker M/s. All Marine cargo services for onward filing of the bill of entry. I took all the necessary documents in respect of KYC and forwarded these documents to the Customs Broker.
- iv. that I have neither acted as a representative of the importer nor acted as a Customs Broker. I have forwarded the documents after verification of KYC to the CB. I have verified IEC certificate online, GST registration number, PAN card, Adhar card etc. All these documents were shown to be "active" online at the time of verification.
- v. that the noticee was not having knowledge of the goods to the effect that there was any wrong in respect of valuation, contravention of BIS, contravention of IPR Rules, nor Shri Sheraram was having any knowledge of any type of dealing with any other person in any manner by the reasonable means to clear the goods from the customs Shri Sheraram has simply forwarded the documents received from Shri Ankit Travidi to M/s All marine cargo service, to file the checklist.

- vi. that the KYC obtained by the notice was proper. If there is anything wrong in the imported goods such as misdeclaration of the goods or any contravention of other law, it can only be verified by physical examination of the goods. Such wrong declaration or mis-declaration of goods cannot be verified from the papers or e-mails.
- vii. that noticee had no knowledge that the goods imported under bill of entry was in contravention of customs Act, 1962. and IPR Rules. Further there is no phone voice recording from where it can be said that the Noticee had even tried to hide anything from the department. His role was simply to pass on the documents on email which were received from M/s Dabke to M/s. All Marine (CHA). Even in the show cause notice, it has been observed by the DRI that the role of the noticee was to pass the documents to custom Broker which were received from the concerned person from mumbai. The role to verify the antecedent lies either upon the importer of the goods and to verify the correctness of the said documents lies upon Customs Broker, who had filed the bill of entry. In the instant case, the noticee's status is neither importer nor as Customs Broker. He has simply passed on the mail received from M/s. Dabke, Mumbai to M/s All Marine (CB). Thus, there is no contravention of any act on the part of the noticee, as per the customs Act, 1962 or any other Act for the time being in force.
- viii. there was no idea to the noticee either there was any involvement of the noticee in import of impugned goods. It has been observed in the notice that the directors of M/s Dabke and their two employees were actively involved, jointly and severally, every step of the way in illegal clearance of import consignment of M/s. Crescent Traders.
- ix. Shri Ankit Travadi, employee of M/s. Dabke was recorded wherein he, inter alia, reiterated that as per instruction of his one of the directors he contacted to the noticee who managed to file the bill of entry. Even in the said statement, he (Shri Ankit Travadi) has nowhere mentioned that noticee was having the knowledge that the imported goods were infringed or under valued in any manner which was in contravention of any Act or he was involved in contravention of any of the law as per which the imported goods are liable for confiscation under any sub-section 111 of the Customs Act, 1962.
- x. the noticee was not knowingly concerned with the impugned goods. Further no specific clear charges alleged in the show cause notice having basic essential ingredients of either Section 112 read with Section 112(i) and 112(ii) have been brought or alleged against the noticee therefore vague joint imposition of penalty has been proposed in the show cause notice, without bringing the specific charge with in respect of notice, and not connected in dealing with goods in any illicit manner.
- xi. the proceedings contemplated against the Noticee are liable to be dropped in the interest of justice. It is humbly prayed that submissions made be considered by the Hon'ble Adjudicating Authority and may be pleased to drop as proposed in the impugned show cause notice.

**33.4. Mr. Chandan Singh, H-Card Holder, M/s All Marine Cargo (Noticee no. 12), submitted reply dated 18.10.2022 against impugned SCN, wherein they interalia submitted as under that:**

- i. written submission will be submitted within 2 months; however, no submission has been made by the noticee.

**38.5. Shri AbdulGani Khatri, Executive, MICT CFS (Noticee no. 16), submitted reply dated 20.10.2022** against impugned SCN, wherein they interalia submitted as under that:

- i. I have not played any role in the alleged illegal import or attempted to fraudulent import the cargo and/or I have gained any benefit out of the same. I was on duty and was working in MICT, the concerned Officer requested me and relying upon his credibility I put my signature on the Panchnama and I was unaware of any wrongdoing or complicity of the concerned Officer in the alleged illegal import of the cargo.
- ii. I was unaware that the concerned Officer was preparing a fictitious Panchnama for clearing the goods, involving any violation of the Customs Act. I submit that had I been aware of any such violation, I would not have signed the Panchnama. As aforesaid considering the status of the concerned Officer and on his direction, I was compelled to sign the said Panchnama.
- iii. the concerned Officer had done his duty diligently and solely relying upon his status and credibility and believing him I signed the said Panchnama.
- iv. Given the peculiar facts and circumstances of the matter, the absence of any mens rea, a lenient view may be taken in the matter and no penalty be imposed on me and the Show Cause Notice may be discharged against me.

**38.6. Shri Amit Das, then Superintendent, SIIB section (Noticee no. 22), submitted reply dated 04.11.2022** against impugned SCN, wherein they interalia submitted as under that:

- i. except the bald allegation that I had demanded illegal gratification, there is no specific allegation against me to prove that I have done or omitted to do any act which by itself rendered the goods liable to confiscation. On the other hand, as evident from paragraph 16.2 of the Show Cause Notice dated 20.09.2022, Shri Ankit S. Travadi reiterated in his statement dated 29.09.2017 recorded under section 108 of the Customs Act. 1962 that the amount of Rs. 8 lakhs arranged through Angadia and collected by his younger brother Chirag from Bhuj: that the said amount was given by him to Shri Rajdeep Sinh and Shri Vaibhav Soni (Dholakia) from whom he had borrowed earlier. Shri Rajepsinh Jadeja and Shri Vaibhav Dholakia have in turn confirmed this fact in their respective statements dated 01.11.2017 and 06.10.2017, recorded under section 108 of the Customs Act, 1962. None of these persons has ever stated that they have paid any money to me. There is also no recovery of money from me.
- ii. Shri Ankit ShaileshbhaiTravadi, working in M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mundra is the person who has made allegations in his statements dated 23.09.2017 and 29.09.2017 regarding alleged demand of money by me. I may, therefore, be permitted to cross-examine Shri Ankit S. Travadi and other persons, as requested in my interim reply dated 11.10.2018 to the Show Cause Notice dated 10.09.2018.

**38.7. Shri Deepak Khatri, then Superintendent, SIIB section (Noticee no. 25), submitted reply dated 28.06.2023 and 17.07.2023** against impugned SCN, wherein they interalia submitted as under that:

- i. the noticee is in a state of uncertainty in as much as the two subject SCNs dated 10.09.2018 and 20.09.2022 were issued to the noticee on the same issue relying upon identical set of evidences and proposing identical penal action.

- ii. the department cannot issue two SCNs on the same cause of action proposing identical penal action, as it would amount to "double jeopardy" which is against the intent of Article 20(2) of the Constitution of India. This proposition has already been held by the Supreme court in various judgements including CCE vs Prince Gutka Ltd. (2017) 52 STR 83 (SC) in Civil Appeal No. 7048-7055 of 2005 order dated 16.07.2015.
- iii. the DRI is changing its stand/ conclusions every now and then, hence, in the interest of justice the undersigned requests the Ld. authority to allow him to cross-examine the officers of DRI including S/Sh. Ajit singh, Shailesh Kadyan, Chadan (the then IO(s), DRI, Gandhidham) S/Sh. Munesh Singh, Sanjeev Nagar, SA Ghanekar, Vikram Singh Meena (the then SIO(s), DRI, Gandhidham), Ms. Anupama Pant, Dr. Rajesh Nagora (the then AD/DD, DRI, Gandhidham), Sh. Ashish Verma (the then ADG, DRI, AZU) and other undeclared officers of DRI who had conducted and/or supervised and/or concluded the investigation and/or put up and/or approved the file noting and for drafted and/or finalized the two SCNs.
- iv. that as per intelligence, the DRI officers were not aware about the names and/or designations of the colluding SIIB officer(s), still they focused on one officer i.e. Sh. M. Loganathan. The noticee failed to understand that when name and/or designation of the officers were not available with DRI and when the DRI officers were aware (in the process of clearing OR had cleared, as the case may be) by the evening of 22.09.2017 that Shri Amit Das and Shri Sudhanshu Tyagi had opened and attended the file, yet they omitted to conduct more searches on 22.09.17 and/or on 23.09.2017, which clears that the intelligence, if any, regarding the collusion or involvement of other SIIB officers was not at all, specific at any point as worded in the instant SCN.
- v. that from the above facts on record it is crystal clear that no specific intelligence as worded in the instant SCN was available with the DRI officers and they acted just on the basis of suspicion and/or surmises and conjectures. However, the wanted to bring the notice within the ambit of SCN by any means, which they did.
- vi. that in any situation it is the case of DRI that the specific intelligence was gathered by the DRI officers after the goods were allowed for clearance by SIIB i.e. after the file was handed over to Sh. Ankit by Sh. Das in the evening of 22.09.2017, as alleged. In this regard it is submitted that it is a matter of record that the undersigned was not engaged in the matter in any manner from the very beginning. Further as per the SCN also, neither the noticee "allowed" clearance of the goods nor "colluded/abetted/connived" with any person, nor any such charges been framed against him.
- vii. none of the acts of omission and commission of the noticee, as alleged, had rendered the goods liable to confiscation under Section 111 of the Act ibid in any manner neither such allegation or charge has been framed against the noticee in the SCN, which is the primary condition for imposing penalty in terms of Section 112, CA, 1962 and hence the SCN qua the noticee is liable to be dropped on merits.
- viii. Even otherwise the DRI never intended to corroborate and/or to justify the fact that the noticee had sought any illegal gratification for himself or for any other person since there is not an iota of corroborative evidence brought on record to justify the proposed penal action.

- ix. the name of the noticee was not even whispered in the statement dated 23.09.17 (RUD-34) by Sh. Ankit even when he was specifically asked not once but twice: -
  - (a) "How was the import made under BE No. 3130325 dated 06.09.17 was cleared by SIIB Mundra Customs" he did not name the noticee in any manner. and again when he was asked (b) "Did any officer had asked for money (illegal gratification) for clearance of the B/E no. 3130325 dated 06.09.17", he did not name the noticee in any manner.
- x. it is ipso facto clear from the RUDs that there is no material evidence with DRI that corroborates the conclusion of DRI that the hint of the alleged "illegal gratification" initiated by the noticee, was conveyed by Sh. Ankit to and/or reached to Sh. Mehta, and thus the allegation is purely based on the whims and fancies of the DRI officers;
- xi. none of the other officers viz. S/Sh. BK Singh, GP Meena, Milan r. Singh, Dr. S J Singh, Amit Das, Loganathan, Sudhanshu Tyagi, Gaurav Kumar or any private persons had anywhere admitted that the noticee had any discussion with any of them regarding the clearance of the consignment and/or illegal gratification;
- xii. the noticee was not engaged in this matter in any manner by any of the officers that could even suggest that the noticee would have been aware about the nature of the impugned goods or could initiate any deal for illegal gratification;
- xiii. The noticee was, at no stage remotely connected to the case. Being busy in the seizure case of Gold smuggling booked by SIIB Mundra in July, 2017, the noticee had no time to interact with the any of the departmental officers and members of the trade as he was busy in drafting the reply to bail applications and/or moving applications the CJM/Sessions Courts at Bhuj and was totally focused towards that case.
- xiv. Assuming the utterance to be true, but not admitting, it is respectfully submitted that in the light of the facts and the then circumstances as also discussed in *paras-supra*, the noticee at the most could say that the cargo "**might be**" undervalued (but was could never be in a position to **confirm** as **obtained from** Sh. Ankit by DRI) further it is a fact that neither the cargo nor the connected case file was ever thoroughly examined by the noticee. As regards the remarks **HERE OR THERE**, at the time of statement, the noticee could not recall that any such remark was passed on by him and that's why the noticee requested the DRI officers to confront him to Sh. Ankit, which was denied. All that the noticee could recall at this stage, is that he told Sh. Ankit that the goods might be undervalued and the differential duty, if any, is to be **deposited to the Government either through SIIB (by booking the case) or through assessment section (recalling the file by the Appraisers)** of Mundra Customs but never expected any gratification from any one for any one, and hence, the noticee had denied of having made such remarks with that intention.
- xv. the allegations levelled against the noticees were investigated by the CBI, Gandhinagar (also a professional investigative agency) and **the report dated 21.11.2019** was issued by the SP, CBI, Gandhinagar, which is **RUD 123** to the subject SCN. The noticee wishes to draw the kind attention of the Ld. Authority towards **para no. 11.3 and 12 (iii)** of the report. It is specifically mentioned that **NO CRIMINAL ACT IS REVEALED AGAINST Sh. DEEPAK KHATRI**, even the departmental action was **NOT RECOMMENDED**. The undersigned humbly submits that **NO**

**DEPARTMENTAL ACTION/ VIGILANCE ENQUIRY was initiated against the undersigned till date, but for the subject SCN.**

xvi. it is a fact that being present or entering/exiting the room the noticee had the opportunity to exchange pleasantries with S/Sh. Mehta and Ankit. The exchange of pleasantries is a general courtesy extended to not only to Sh. Mehta and Ankit but also to everyone whosoever enters the SIIB room. The mere exchange of pleasantries ipso facto does not necessarily mean that the noticee was in league with other noticees.

xiv. that the subject SCN does not clearly narrate about the nature of the alleged offence I (if any committed/omitted by the noticee which ultimately would lead to the confiscation of the goods under Section 111 of CA, 1962), pertains to 112 (a) or 112 (b) and hence the SCN is liable to be dropped qua the noticee on merits itself.

**38.8. Shri M. Loganathan, then Superintendent, SIIB section (Noticee no. 23), submitted reply dated against impugned SCN, wherein they interalia submitted as under that:**

- i. Shri Ankit Travadi (prosecution witness no. 07), during the course of inquiry/ examination / cross examination on 27.07.2022, stated that before the Inquiry Officer that the examination was regarding fire crackers due to pre- Diwali and I had come to MICT CFS and seen 4 to 5 cartons (box) and nothing to do with Bill of Entry of Crescent Traders as well as examination. Further, he stated that I simply came to see if the goods contained crackers or not. He stated that I have no role in the Bill of Entry & clearances of the subject goods. During the cross examination, it was revealed that the subject file was looked after by Shri Amit Das, Superintendent but not by me. Further, Shri Ankit Travadi, in his statement dated 29.09.2017 tendered before DRI, he admitted that Shri Amit Das was looking after the file & examine the goods accordingly. At last, he admitted that I have no role in any conspiracy to clear the subject goods for any malafide intentions.
- ii. Shri Milan Kumar Singh (defence witness), now Additional Director, DGGI, Kolkatta during the course of inquiry/ examination/cross examination on 26.08.2022, stated that before the Inquiry Officer that I was not part of the clearances when this clearance took place because I was not associated with the file.
- iii. Shri G.P. Meena (defence witness), now Commissioner, DGoV, New Delhi during the course of inquiry / examination / cross examination on 02.09.2022, stated before the Inquiry Officer that as per the records available on the notesheet Shri M Loganathan, Superintendent did not deal with the file.
- iv. Shri BK Singh (defence witness) Retd., the then Additional Commissioner, during the course of inquiry / examination / cross examination on 25.08.2022, stated that I was not part of the clearances of the imported cargoes.
- v. Shri S. J. Singh, the Deputy Commissioner, Central GST Commissionerate, Ahmedabad South, Ahmedabad during the course of inquiry /examination/cross examination on 06.05.2022, has stated that there was smuggling of Chinese fire crackers at various ports during the pre-Diwali time, from cargoes imported from China, therefore, he had given Shri M Loganathan, Superintendent and Shri Gaurav Kumar, Inspector to check the random imports from China along with similar other consignments located in various CFS. He has given authorization (mandate) to me along

with Shri Gaurav Kumar only in respect of Chinese crackers but nothing to do with the examination of the goods covered under the Bill of Entry No. 3130325 dated 06.09.2017 of M/s Crescent Traders.

- v. After inspecting the same, it was orally informed to him that there was no such cargo noticed in the imported consignment. Accordingly, Shri S. J. Singh, the then Deputy Commissioner has accepted our version and nothing further told to do anything in respect of the subject goods. Further, Shri S. J. Singh, the then Deputy Commissioner submitted before the inquiry that I was not part of the clearances of the imported cargoes since I had not been authorized for the same and also I have neither drawn any Panchanama in this regard nor put up any examination report in respect of the Bill of Entry No. 3130325 dated 06.09.2017 of M/s Crescent Traders.
- vi. I have not signed / endorsed in the note sheets too. Therefore, during the course of inquiry, it is confirmed that I was neither part of the clearances of goods nor examination of the goods for the purpose of giving out of charge.
- vii. it is pertinent to refer the relevant provisions of the Customs Act, 1962. SECTION 2 of the Customs Act, 1962 defines who is/are the 'Proper Officer with reference to the Customs function.

*"(34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs;"*

- ix. Section 2(8) of the Customs Act, 1962 defines "the Principal Commissioner of Customs or Commissioner of Customs, except for the purposes of Chapter XV, includes an Additional Commissioner of Customs,"
- x. Accordingly, the Principal Commissioner of Customs or Commissioner of Customs, except for the purposes of Chapter XV, includes an Additional Commissioner of Customs as per Section 2(8) of the Customs Act, 1962. In view of the definition as per the Customs Act, except for APPEALS AND REVISION, the Additional Commissioner can assign any functions under the Customs Act to be performed by the Customs Officer. Specific assignment of particular functions is therefore, an essential criterion and only such officer/s that are specifically entrusted the functioning in that regard, could fall within the category of "proper officer"
- xi. In view of the above, it is crystal clear that then the Additional Commissioner of Customs, Mundra Custom House (Shri G.P. Meena) had assigned the function of examination/enquiry of the goods in respect of Bill of Entry No. 3130325 dated 06.09.2017 filed by M/s. Crescent Traders to other officers, under the supervision of Deputy Commissioner of Customs. Even those functions assigned by the Additional Commissioner of Customs cannot be modified by the Deputy/Assistant Commissioner on its own without prior approval of the competent authority. In support of that I rely upon in the case of COMMISSIONER OF CUSTOMS Versus SAYED ALI, [2011 (265) E.L.T. 17 (S.C.)], the Hon'ble Supreme Court of India has rightly held that, Powers of Customs officers Proper officer Specific entrustment of function by either C.B.E. & C. or Commissioner of Customs is governing test to determine whether an 'officer of customs' is 'proper officer' - Section 2(34) of Customs Act, 1962. [para 13]

- xii. the above legal provisions of Customs Act, 1962 in the instant case, I was not a proper officer as assigned by the competent authority as per the notesheet pages of the Bill of Entry. Further, I have not made any examination report or findings in the instant case; therefore, it is wrong to allege that I have visited MICT CFS as well as examined the goods in respect of the Bill of Entry.
- xiii. I have not carried out any examination in respect of Bill of Entry No. 3130325 dated 06.09.2017. on 15.09.2017 for clearances of goods or giving 'out of charge' since I was not authorized to do so by the higher officers neither orally nor with any written direction. Therefore, the allegation in the Inquiry Report that I have visited MICT CFS Mundra on 15.09.2017 in relation with the Bill of Entry (BoE) No 3130325/06.09.2017 is not sustainable as per the above submissions.

**38.9. Shri Gaurav Kumar, then Inspector, SIIB section (Noticee no. 24), submitted reply dated** against impugned SCN, wherein they interalia submitted as under that:

- i. The present SCN as well as SCN dated 10.09.2018 are issued to the undersigned for alleged offences in respect of the same Bill of Entry No.3130325 dated 06.09. 2017. The Hon'ble Supreme Court had in the case of in State (NCT of Delhi) v. Sanjay-2014 (9) SCC 772 held that:  
It is a well-known principle that the rule against double jeopardy is based on a maxim nemo debet bis vexari pro una et eadem causa, which means no man shall be put in jeopardy twice for one and the same offence. Article 20 of the Constitution provides that no person shall be prosecuted or punished for the offence more than once.
- ii. Penalty has been proposed to be imposed on me under 112(a) and (b) and Section 114AA of the Customs Act, 1962 in both the Show Cause Notices, for the same alleged offence in respect of the same Bill of Entry No.313025 dated 06.09.2017 This is clearly a case of multiple proceedings in respect of a single alleged offence and, which is violative of Article 20 of the Constitution of India as held by the Hon'ble Supreme Court.
- iii. The evidence on record clearly indicates that one Shri Sudhanshu Tyagi, Preventive Officer was directed to examine the goods by the Deputy Commissioner, SIIB, Customs, Mundra. It can be seen from the Note sheet of concerned File (RUD No. 109) pertaining to the said Bill of Entry that the undersigned was not directed to carry out the examination of the goods and no signature is present in any noting in the said file regarding examination of the goods. Such being the case, it has been falsely alleged that the undersigned had examined the goods and not brought the violations involved to the notice of the senior officers.
- iv. The allegations against the undersigned are also based on the Panchnama dated 18.09.2017 (RUD No.109). In this regard it is submitted that neither was the said Panchnama drawn by the undersigned and neither was the undersigned present during the examination proceedings carried out under the said Panchnama. These facts are clearly forthcoming from the said Panchnama itself wherein neither the name of the undersigned is mentioned nor is it signed by the undersigned.
- v. **Cross-examination** is requested of the Shri S. J. Singh, the then Deputy Commissioner, SIIB, Customs House Mundra who had given order on file for examination of the goods and Shri Milan Kumar Singh, the then Deputy Commissioner, SIIB, Customs House Mundra holding the charge of Deputy Commissioner, SIIB at that juncture.

vi. the valuation adopted by DRI, Gandhidham on the basis of which the SCN has been issued is also being challenged to bring out the biased investigation carried out with an intention to falsely implicate the appellant as well as bring the matter within the ambit of Section 135 of the Customs Act, 1902 i.e, a prosecutable offence. It is the allegation of DRI, Gandhidham that the goods imported vide the said Bill of Entry No.313025 dated 06.09.2017 are counterfeit goods. Consequently, if the goods are counterfeit, the same do not have any value and assigning of value on the basis of the value of original goods of the same brand name, is totally illegal. However, in the present case, the action of DRI, Gandhidham in adopting valuation contrary to the provisions of law on the basis of original goods, bearing the same brand name and also by relying upon a Valuer who is not competent and qualified to value the goods in question is a clear indication of their biased investigation.

vii. Except the bald allegation that I, in connivance with the smugglers, was directly involved every step of the way, as also in overall conspiracy, to defraud government exchequer for illegal monetary gains, there is no specific allegation against me to prove that I have done or omitted to do any act which by itself rendered the goods liable to confiscation. On the other hand, as evident from paragraph 16.2 of the Show Cause Notice dated 20.09.2022, Shri Ankit S. Travadi reiterated in his statement dated 29.09.2017 recorded under section 108 of the Customs Act, 1962 that the amount of Rs. 8 lakhs arranged through Angadia and collected by his younger brother Chirag from Bhuj, that the said amount was given by him to Shri Rajdeep Sinh and Shri Vaibhav Soni (Dholakia) from whom he had borrowed earlier. Shri Rajeev Singh Jadeja and Shri Vaibhav Dholakia have in turn confirmed this fact in their respective statements dated 01.11.2017 and 06.10.2017, recorded under section 108 of the Customs Act, 1962. None of these persons has ever stated that I have demanded any money from them or that they have paid any money to me. There is also no recovery of money from me.

viii. It is alleged in subpara-6 of para 34.3 that Shri Ankit Shaileshbhai Travadi, working in M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mundra, has made allegations in his statement dated 29.09.2017 regarding alleged demand of money by Shri Amit Das, Superintendent in my presence whereas same allegations are absent in statements dated 23.09.2017 and 29.09.2017 of Shri Ankit Shaileshbhai Travadi I may, therefore, be permitted to cross-examine Shri Ankit S. Travadi and other persons.

#### **RECORDS OF PERSONAL HEARING:**

**39. I observe that** '*Audi alteram partem*', is an important principle of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to all the noticees on 05.07.2023 and 26.07.2023. Details of the PH are as under:

(i) **1<sup>st</sup> PH conducted on 05.07.2023: Following noticee's appeared during PH:**

- **Shri Anand Sachwani**, Advocate appeared on behalf of **Shri Nasir Khan and Shri Uves Khakhu** and they have requested for RUDs.
- **Shri Deepak Khatri**- Shri Deepak Khatri appeared on 05.07.2023 and submitted reply dated 28.06.2023.

- **Shri Gaurav Kumar**- Shri Gaurav Kumar submitted reply dated 03.07.2023. He requested for cross examination of various noticee's.
- **Shri Amit Das** - Shri Amit Das submitted his reply and has requested for cross-examination of certain persons.
- **Shri Shera Ram**- Shri Shera Ram reiterated his written submission.

(ii) **2<sup>nd</sup> PH conducted on 26.07.2023: Following persons appeared to attend the PH.**

- **Shri Chandan Singh** requested to consider the written submission made by him in reply to the SCN. However, no submission has been given.
- **Shri Gaurav Kumar**- Shri Gaurav Kumar submitted reply dated 03.07.2023. He requested for cross examination of various noticee.
- **Shri M. Loganathan**- Shri M. Loganathan reiterated written submissions.
- **Shri Abdul gani Khatri**- Shri Abdulgani Khatri submitted his written reply.
- **Shri Bhavesh Gori** - Shri Bhavesh Gori submitted his written reply.
- **Shri Deepak Khatri**- Shri Deepak Khatri appeared and submitted reply dated 26.07.2023 requesting for cross-examination of DRI officers.
- **Shri B.K. Nair** Consultant appeared on behalf of Shri Gaurav Kumar and Shri Amit Das. They have reiterated their written submission.

(iii) **3<sup>rd</sup> PH conducted on 27.08.2024:** Shri M. Loganathan has appeared and submitted various written submissions.

**DISCUSSION AND FINDINGS:**

40. I have carefully gone through both the Show Cause Notice bearing F.No. GEN/ADJ/COMM/ 217/2021-Adjn dated 20.09.2021 issued by the Commissioner of Customs, Custom House, Mundra and Show Cause Notice bearing F.No. DRI/AZU/GRU-45/2017-Crescent dated 10.09.2018 issued by the Additional Commissioner of Customs, Custom House, Mundra, proposing confiscation of the goods imported in the consignment covered under Bill of Entry No. 3130325 dated 06.09.2017 and imposition of penalty/fine etc; facts of the case, the relied upon documents; submissions made by the Noticees, relevant legal provisions and the records available before me. The issues before me to decide are as under:

- (i) Whether the declared transaction value of goods imported under Bill of Entry No. 3130325 dated 06.09.2017 is liable to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and re-determined under Section 14 of the Customs Act, 1962 read with Rule 7 of the CVR, 2007;
- (ii) Whether the classification of Mobile phone battery, Car mobile phone Charger/Adapter /USB Charger, Touch Screen and USB data cable/charging cable done by the importer in the Bill of Entry no. 3130325 dated 06.09.2017 under CTH No. 85299090, 85299090, 85177090 and 85183000 and 85044030 is liable to be rejected and the same should be classified under appropriate CTH No. 85078000, 85044030, 85299090 and 85442090, respectively of Customs Tariff.

- (iii) Whether the value of **Rs. 1,31,90,485/-** as mentioned in Annexure-X to subject SCN is legal and proper to be considered as actual transaction value for demand of Customs Duty.
- (iv) Whether the Customs Duty totally amounting to **Rs.50,90,248/- (Rupees Fifty Lakh Ninety Thousand Two Hundred and Forty-Eight only)** on the import of subject goods, is liable to be demanded and recovered from the importer in terms of Section 28 (4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.
- (v) Whether the goods mentioned in **Annexure-Y** attached with the subject SCN in respect of Bill of Entry No. 3016001 dated 28.08.2017 which have allegedly been found infringing the Intellectual Property Rights, are liable to be confiscated under Section 111(d) and 111 (m) of the Customs Act, 1962, and redemption fine in lieu of imposition of confiscation is imposable or otherwise.
- (vi) Whether Penalty as proposed vide impugned SCN is liable to be imposed upon the noticees or otherwise,

**41.** I find that instant case arises out of mis-declaration and mis-classification of imported goods by the importer whereby they have allegedly evaded the duties of Customs in respect of two Bills of Entry viz. B/E No. 3130325 dated 06.09.2017 and B/E No.3016001 dated 28.08.2017.

**42.** I find that in the instant case, the investigating agency DRI have alleged the following major violations with regard to Customs Act, 1962 and its allied Acts:

- **Mis- declaration of description, quantity and value of the goods**
- **Contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012**
- **Infringing the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 as applicable.**
- **Violation of the provisions of the Wireless Telegraphy Act, 1933**

**43.** I have gone through the chronology of events in the investigation of present case in respect to B/E No. 3130325 dated 06.09.2017 as delineated in the SCN as under:-

- (i) B/E no. 3130325 was filed on 6<sup>th</sup> September, 2017 by M/s. All Marine Cargo Services on behalf of M/s Crescent Traders of Mumbai at Mundra SEZ Port, Mundra. (Goods declared: Parts and accessories for mobiles like touch screen, power bank, battery, screen guard, hands free etc.; Declared value in B/E: 14.87 lakhs approx.);.
- (ii) The RMS cleared B/E with order for assessment only, with no examination order. Duty was paid as per assessment on 12<sup>th</sup> September, 2017.
- (iii) Shri Sudhanshu Tyagi, Preventive Officer, SIIB and Shri Amit Das Suptd SIIB opened a SIIB file on 13.09.2017 and reported therein that Customs (SIIB) was in receipt of information that the above said Bill of Entry contains excess cargo which has not been declared with the intention to evade Customs duty. They accordingly sought permission through Deputy Commr (SIIB) from Addl Commissioner (SIIB) for examination and were given permission on 13.09.2017 to examine.

- (iv) The consignment was de-stuffed on 14.09.2017 and examination was conducted by the SIIB officers- Shri Loganathan, Superintendent SIIB Mundra and Shri Gaurav, Preventive Officer, SIIB, Mundra Customs on 15.09.2017. Samples were drawn and some notes were made by Sh Loganathan during examination.
- (v) Sh Ankit Travadi is acting as facilitator at Mundra Customs on behalf of Shri Mayur Mehta of M/s Dabke Clearing & Forwarding Pvt. Ltd., a customs broker in Mumbai. On 16<sup>th</sup> September Shri Ankit met Sh Deepak Khatri, Suptd, SIIB who reportedly told that the goods are undervalued and there is duty involvement in the consignment and told him that duty has to be paid either here or there ("yahan ya wahan") meaning "the money is to be paid to officers or duty to the Department".
- (vi) Shri Mayur Mehta, customs broker was called by Shri Ankit Travadi as he was reportedly unable to convince officers to release the goods and conveyed the expectation of illegal gratification to him.
- (vii) Sh Mayur Mehta, the customs broker, arrived at Mundra Customs House on 18<sup>th</sup> Sep, allegedly had detailed discussions with Shri Deepak Khatri, Loganathan and Gaurav in SIIB Room No 301 who showed him the samples and told him the violations in import consignment. Sh Das also joined them after some time. After coming out of SIIB room, he communicated with beneficial owner Shri Nasir Khan, then re-met with S/ Sh Loganathan and Gaurav. Sh Mayur Mehta thereafter directed Sh Ankit to sort out this issue by any means.
- (viii) Further, on 20<sup>th</sup> Sep, the cargo was allegedly examined again by Shri Gaurav, who again took some samples.
- (ix) On 21<sup>st</sup> September, Sh Ankit again went to SIIB Section to enquire about clearance. All officers, Shri Deepak Khatri, Shri Lognathan, Shri Das, Shri Gaurav, Shri Sudhanshu Tyagi were present. When he asked about clearance of file, Shri Das allegedly told him that Rs. 8.5 Lakhs would be required to clear the consignment. Accordingly, he informed the amount to Shri Mayur Mehta who told him to fix the deal at Rs. 8 Lakhs.
- (x) Sh Mayur Mehta collected Rs. 8 lakhs from Sh Nasir Khan on 21.9.2017 and forwarded the money through Sh Sanjay, angadia of Mumbai for further delivery to Bhuj. Shri Chirag collected Rs. 8 lakhs from Angadia at Bhuj and later on Ankit gave the money to one Shri Rajdeep Sinh (Rs 3 lakhs) and one Shri Vaibhav Soni (Rs. 5 Lakhs).
- (xi) On 21.09.2017, a allegedly fictitious Panchnama was prepared by Sh Amit Das in back date of 18.9.2017 which was signed by Shri Ankit S. Travadi, Sh Chandan Singh and Shri AbdulGani Khatri on 21<sup>st</sup> / 22<sup>nd</sup> September. It appears that the said Panchnama was created to facilitate the clearance of smuggled consignment with only minimal liability of Rs 5,000/, when the same was liable for complete confiscation.
- (xii) The said bill of entry was accordingly cleared on 22<sup>nd</sup> Sep. and Out of Charge was given to consignment immediately thereafter on 22<sup>nd</sup> Sep.

**43.1.** I would like to discuss the alleged violation of provisions of various laws committed by the importer of impugned goods as proposed by investigating agency:

**With regards to Bill of Entry No. 3130325 dated 06.09.2017:**

**Table X**

Sl. No.	Description of goods	Violation of Law proposed	Value of goods
1	Goods mentioned at Sr. No. 1 to 445 of Annexure-B attached to impugned SCN.	Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007	Rs. 74,85,630/-
2	Goods mentioned in Annexure-C (at Sr. No. 3 to 11, 19 to 24, 129 to 207, 582 to 615 and 734 to 736 of Annexure-A) to impugned SCN.	Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and the provisions of Foreign Trade Policy 2015-2020 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992.	Rs. 18,79,560/-
3	Goods mentioned in Annexure-D (at Sr. No. 14 to 18, 576 to 581, 617 to 618 and 1095 to 1101 of Annexure-A) to impugned SCN.	Wireless Telegraphy Act, 1933	Rs. 51,750/-
4	Annexure-E (at Sr. No. 1,2,12 to 18,98 to 115,527 to 545 and 616 of Annexure-A) attached to impugned SCN.	Goods found undeclared	Rs. 3,29,630/-

**43.1.1. Goods at serial no. 1**

**Violation of Intellectual Property Rights by subject import consignment**

- i. Government of India has enacted Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007. The above rules describe the process through which rights of IPR (Intellectual Property Right) holders can be enforced.
- ii. In the case of current consignment, during examination of the consignment, it appeared that the imported goods infringed Trademark rights of various companies. Accordingly, clearance of the goods was kept on hold and letters were issued to different IPR right holders to join the proceedings. Examination of the goods was conducted by representative of IPR Right holder after which they submitted their report.
- iii. As per laid down procedure, right holders are required to submit Bond and Bank Guarantee as per provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007. However, it appears that the required compliance was not fulfilled by the rightholders.
- iv. According to para 7 of the Board Circular No. 41/2007-Customs dated 29.10.2007, the surety and security shall be on consignment basis and shall be furnished along with the bond consequent upon interdiction of the consignment allegedly infringing rights of the right holder. Keeping in view the value of the goods and other incidental expenses, it has been decided that the bond amount shall be equal to 110% of the value of goods. However, the amount of security to be furnished along with the

bond shall be 25% of the bond value. The right holder may furnish security in the form of bank guarantee or fixed deposit. However, if the right holder fails to execute the consignment specific bond and to furnish security within three days from the date of interdiction of the goods, the same must be released forthwith.

- v. Since the right holders failed to execute the consignment specific bond and failed to furnish security, hence their right cannot be enforced in terms of provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007.
- vi. However, it is pertinent to mention that the impugned goods are also allegedly mis-declared by way of under-valuation as brought out the show cause notice following the re-valuation done with the help of the authorized Valuer. This misdeclaration of value if true would render such goods liable for confiscation under section 111(m) of the Customs Act, 1962.

#### **43.1.2. Goods at serial no. 2**

Violation of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and the provisions of Foreign Trade Policy 2015-2020 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992.

- i. The import of specified goods made by the importer is in violation of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and the provisions of Foreign Trade Policy 2015-2020 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992 which has rendered such goods liable for confiscation under Section 111(d) of the Customs Act, 1962. I see that no defense was put forth by the noticee's on this front further strengthening the culpability on this count.

#### **43.1.3. Goods at serial no. 3**

Violation of Wireless Telegraphy Act, 1933

- i. Prohibition of possession of wireless telegraphy apparatus without licence.—Save as provided by Section 4, no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act.
- ii. However, the impugned goods have been imported without licence or NOC from WPC Wing of the Ministry of Communication & Information Technology as prescribed under Wireless Telegraphy Act, 1933 which has rendered such goods liable for confiscation under Section 111(d) of the Customs Act, 1962. Here again, the noticee's have again not put forth any defense to the allegations made on this front in the notice.

#### **43.1.4. Goods at serial no. 4**

Goods found undeclared

- i. The impugned goods found un-declared are in substantial quantity, are clear indicator of the mala fide behind the action of non-declaration by the Importer and hence render such goods liable for confiscation under sections 111(i) and section 111(l) of the Customs Act, 1962.

Therefore, I find that impugned goods as mentioned in **Annexure-A, Annexure-B, Annexure- C, Annexure- D & Annexure- E** to impugned SCN are seemingly

in clear violation of various provisions of law as discussed above and as mentioned in below table :

**Table xi**

Sl. No.	Description of goods	Violation of Law/Finding	Value of goods
1	Goods mentioned at Sr. No. 1 to 445 of Annexure-B attached to impugned SCN.	Mis-declaration by way of under-valuation.	Rs. 74,85,630/-
2	Goods mentioned in Annexure-C (at Sr. No. 3 to 11, 19 to 24, 129 to 207, 582 to 615 and 734 to 736 of Annexure-A) to impugned SCN.	Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and the provisions of Foreign Trade Policy 2015-2020 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992.	Rs. 18,79,560/-
3	Goods mentioned in Annexure-D (at Sr. No. 14 to 18, 576 to 581, 617 to 618 and 1095 to 1101 of Annexure-A) to impugned SCN.	Wireless Telegraphy Act, 1933	Rs. 51,750/-
4	Annexure-E (at Sr. No. 1,2,12 to 18,98 to 115,527 to 545 and 616 of Annexure-A) attached to impugned SCN.	Goods found undeclared	Rs. 3,29,630/-

**43.2. With regards Bill of Entry No. 3016001 dated 28.08.2017:**

**I find that the impugned goods were** not physically available in respect of Bill of Entry No. 3016001 dated 28.08.2017 to decide whether the goods are copy/counterfeit goods or otherwise. On the ground of mere statements of noticees it can't be concluded that the goods are counterfeit goods. Further, for violation of IPR, Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 vide Notification 47/2007-Cus. (N.T.), dated 8-5-2007 needs to be enforced. Since the goods are physically not available it is not possible to conclusively decide whether the goods were liable for confiscation or otherwise. Accordingly, proposal of investigation agency in the show cause notice of confiscation of goods in respect of Bill of Entry no. 3016001 dated 28.08.2017 under section 111(d) of Customs Act, 1962 doesn't rest on strong grounds.

**44. Valuation of impugned Goods: -**

**44.1.** I observe that the valuation of imported goods ought to be done in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as CVR, 2007). As per the said provisions of the Act and Rules, transaction value of the imported goods is to be accepted subject to Rule 12 of CVR, 2007.

**44.3. I find that** in the instant case, Shri Sandesh Tanwar, *De-Jure* Proprietor of M/s. Crescent Traders in his statement dated 13.08.2018 has denied any connection with the import of goods and also denied to have made any financial

transaction with reference to the goods covered by **Bill of Entry No. 3130325 dated 06.09.2017**. Hence "transaction value" as declared in import documents cannot be considered to be true and correct. Thus, there remains no scope by which it can be ascertained that whether the conditions of CVR proviso to Rule 3(2) in order to consider value to be "transaction value" can be accepted or otherwise. I find that Shri Nasir Khan-the actual beneficiary owner of imported goods in his statement dated 01.03.2018 also confirmed that the value of the goods mentioned in the invoice and accordingly declared in the Bill of Entry No. 3130325 dated 06.09.2017 is not representing correct value. Shri Nasir Khan also confirmed that no payment was made to the so-called supplier of the goods. Thus, in absence of any apparent chain of transactions duly supported by any contract, LC or any such other commercial document of real transaction, it is evidently clear that the so-called transactions in the guise of invoices provided vide the Bill of Entry was dubious. I find that neither Shri Sandesh Tanwar nor Shri Nasir Khan have specifically mentioned the name of the authorized dealer/bank through which they made or were likely to make any transactions with reference to the given import invoice. Moreover, the value of the goods having different make/models/technical specifications vary from each other on the basis of relevant technical parameters pertaining to the goods. I find that in the instant case, neither the make and models of the goods were properly mentioned in import documents, nor was any technical specifications provided. Therefore, there is no straight method to arrive at the correct valuation of the goods. It also came forth that particular kind of goods were imported in different technical specifications, all such technical specifications were avoided to be declared in the invoice as well as packing list and all such goods were put under a single item, with an intent to adopt incorrect valuation of goods at a single price. I also find that during examination of impugned goods by DRI some undeclared goods along with goods in excess quantity than declared in the Bill of Entry and import invoice were found. The value of undeclared and excess cargo would not form part of the invoice value. Considering all these factors it is reasonable to believe that the value of the goods reflected in the invoice did not reflect the payment made or to be made by the importer to or for the benefit of the seller for the imported goods. I also observe that despite repeated attempts made by investigating agency DRI no one from the importer, controller & beneficiary owner, Customs Broker or any representative turned up to co-operate in the investigation and providing the actual transaction details pertaining to the seized goods. Therefore, in view of these facts I find that the declared value cannot be considered true and accurate "transaction value" for the purposes of **Section 14 of Customs Act, 1962** and thus, the same is liable to be rejected in terms of **Rule 12 of the CVR, 2007**.

#### **44.4. RE-DETERMINATION OF VALUE OF IMPUGNED GOODS:**

(i) I find that Shri Nasir Khan admitted in his statement that the value mentioned in invoice/packing list did not represent the actual value. The aforementioned fact is corroborated by the Panchnamas following 100% examination of goods and statements of various persons stating that the goods were mis-declared with respect to quantity and value and documents like invoices and packing list had been manipulated with a view to evade payment of appropriate duty. Therefore, it is in contestable that the documents related to import vide Bill of Entry No. 3130325 dated 06.09.2017 do not reflect true and correct transaction value. Moreover, the goods were found to be in discrepant in quantity and also the value thereof was declared very less, thus comprehensibly leading to the conclusion that the value declared by the importer in the Bills of Entry was not the true

transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007(CVR, 2007 for short). Therefore, the same is liable to be rejected in terms of Rule 12 of the CVR, 2007. Accordingly, the value is ought to be re-determined by sequentially proceeding in terms of Rules **4 to 9 of CVR, 2007**. I would like to discuss the same as under:

The relevant Rules of CVR, 2007 are reproduced hereunder: -

**3. Determination of the method of valuation. -**

(1) *Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

(2) *Value of imported goods under sub-rule (1) shall be accepted:*  
*Provided that -*

(a) *there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -*

(i) *are imposed or required by law or by the public authorities in India; or*

(ii) *limit the geographical area in which the goods may be resold; or*

(iii) *do not substantially affect the value of the goods;*

(b) *the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*

(c) *no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and*

(d) *the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.*

(3) (a) *Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.*

(b) *In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.*

(i) *the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;*

(ii) *the deductive value for identical goods or similar goods;*

(iii) *the computed value for identical goods or similar goods;*

*Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;*

(c) *substitute values shall not be established under the provisions of clause (b) of this sub-rule.*

(4) *if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.*

**Rule 4. Transaction value of identical goods. -**

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

**Rule 5. Transaction value of similar goods: -**

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

(ii) **Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.**

**Rule 7 of the CVR, 2007, stipulates that: -**

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions: -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods

are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

(iii) In view of above, I observe that the **Rule 4 of CVR, 2007** applies where imported goods are same in all respects, including physical characteristics, quality and reputation, as the goods being valued except for minor difference in appearance that do not affect the value of the goods. **Rule 5 of CVR, 2007 (similar goods)** applies where the imported goods are though not like in all respect however, they have same characteristics. Both identical and similar goods should be produced in the country in which the goods being valued were produced and produced by the same person who produced the goods under examination, or where no such goods are available, goods purchased by different persons. Besides, while applying the said rules, the transaction rules of the identical/similar goods have to be viewed at the same commercial level and substantially in the same quantity the goods being valued. Since in this instant case, proper description, specification, model no, characteristics of goods were not declared & data of goods (found on examination) was also not available, the value of the goods could not be determined under Rule 4 & 5 of CVR, 2007, and as per the Rule 6 of the CVR, 2007, **the value shall be determined under Rule 7 of CVR, 2007.**

**44.5.** The services of a Govt./DGFT approved Chartered Engineer/Valuer M/s. Value Guru Chartered Engineers & Valuers Pvt. Ltd., Shop No. 61, Ground floor, Shakthi Shopping Centre, Sakthi Nagar, Mundra (Kutch) was sought for valuation of impugned goods. Accordingly, after conducting exhaustive market survey based on the specification, model no. and make found on the impugned goods, they submitted **Certificate/ Report No. IND/ KAN/ 070918/ CRE/ CUS/ OPE/ DRI/ LCL/ ATH/ CER/ No. dated 07.09.2018**, whereby total value of the above-mentioned imported goods i.e. average fair valuation amount CIF multiplied by respective quantity of goods, comes to **Rs. 1,30,59,885/-** which is net of all expenses incurred in similar quantity of goods after importation viz. Selling commission, general expenses selling profit transportation, insurance and associated cost, custom duties and other taxes levied in India. The costing as recommended by the Chartered Engineer is mentioned vide Chart enclosed as **Annexure-A** to impugned SCN.

**44.6.** Whereas on the facts and evidences discussed above and keeping in view the related statutory provisions of Customs Act, 1962 and other regulations, as regards valuation aspect of the matter, it is incontestable that the importer has suppressed the actual transaction values and declared lower values of the above-mentioned import consignment with an intention to evade payment of correct Customs Duties. Further, it transpires as per valuation report of the DGFT approved Valuer that the actual value of goods is **Rs. 1,30,59,885/-** (net of all expenses viz. Selling commission, general expenses selling profit transportation, insurance and associated cost custom duties and other taxes levied in India); which is much higher than the assessable value declared in the subject Bill of Entry as **Rs. 14,87,806/-** only. In view of the above

facts, in line with the provisions of Rule 7 of the Customs Valuation Rule, 2007, the actual value of impugned goods is taken as **Rs. 1,30,59,885/-** for the purpose of arriving at fair value for assessment.

**45.** I find that Shri Nasir Khan-the actual importer and the beneficiary owner of M/s. Crescent traders had filed Special Civil Application bearing no 22398 of 2019 before Hon'ble Gujarat High Court challenging the valuation of the goods imported by him and also praying for other relief from the Hon'ble Court. The Hon'ble Court had disposed of the SCA vide Order dated 16.06.2021 with a direction that *it would be open to the petitioner to make a fresh representation to Additional Director General, DRI, with regard to valuation arrived at by the concerned Valuer within a period of four weeks along with all the documents, upon which he relies. The said officer shall decide the representation after considering the documents produced by the petitioner. Since the petitioner himself does not want to appear before the authority, the officer may decide such representation after examining the documents in detail.* Hereafter, Shri Nasir Khan filed a representation on 18.06.2021 which was received on 03.07.2021 by Additional Director General, DRI Zonal Unit, Ahmedabad. However, representation was rejected detailing the grounds of rejection and the same were communicated to Shri Nasir Khan vide letter dated 08.08.2022. Accordingly, valuation done as per CE reported dated 07.08.2018 stands accepted for further proceedings. It merits noting here that the Honourable Court has also noted the reluctance of Shri Nasir Khan to appear before the investigating agency, again indicative of the fact that Shri Nasir Khan has been in-cooperative throughout the investigation thereby casting doubts on his bonafides.

**46. MIS-DECLARATION, MISCLASSIFICATION AND LIABILITY TO CONFISCATION OF IMPORT GOODS OF M/S. CRESCENT TRADERS: -**

**46.1.** From the foregoing paras, it is apparent that the transaction value of various goods imported in the name of M/s Crescent Traders (whose actual beneficiary owner is Shri Nasir Khan) as declared in the **Bill of Entry no. 3130325 dated 06.09.2017** and in the supporting invoice produced at the time of import into India did not reflect the correct transaction value. Further, as discussed herein above, there were mis-declaration with respect to quantity and description of import goods in the said Bill of Entry. The mis-declarations in respect of value made by the importer with an intent to evade payment of appropriate Customs duty and other material particulars has made the said goods liable for confiscation under Section 111(m) of Customs Act, 1962.

**46.2. Violation of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and the provisions of Foreign Trade Policy 2015-2020:**

I find that the goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 includes goods which fall in the schedule of the Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 for which mandatory Indian Standards apply and the supplier of such goods has to obtain BIS License for using standard mark on their product in terms of clause 2 (A) of Chapter 1A of the Indian Trade Classification (Harmonized System) of export and import read with Para 2.01 and 2.02 of the Foreign Trade Policy 2015-2020 notified under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 and they should also follow the relevant norms of Indian

standard number for such products. Alternatively, the importer has to produce an exemption order issued by the competent authority under the provisions of the Bureau of Indian Standards Act, 1986 read with Rule-14 of the Bureau of Indian Standards Rules, 1987. However, the importer did not provide any such exemption order and also not provided any details regarding registration obtained by the supplier of the goods. Therefore, I find that the import of specified goods made by the importer is in violation of **Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and the provisions of Foreign Trade Policy 2015-2020** read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992 which has rendered such goods liable for confiscation under Section 111(d) of the Customs Act, 1962. Accordingly, such **goods as mentioned vide Annexure-C (at Sr. No. 3 to 11, 19 to 24, 129 to 207, 582 to 615 and 734 to 736 of Annexure-A) to impugned SCN**, having value of **Rs. 18,79,560/-** are liable to confiscation under Section 111(d) of the Customs Act, 1962.

**46.3. Violation of the provisions of Wireless Telegraphy Act, 1933:**

I find that the goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 includes goods for which NOC/License is required to be obtained from WPC Wing of the Ministry of Communication & Information Technology in terms of the provisions of the Wireless Telegraphy Act, 1933 for the purpose of import. In the absence of such NOC/License by the importer, the import of such product is to be considered as imported in violation of the provisions of **Wireless Telegraphy Act, 1933** and such import will be prohibited by virtue of Notification No. 71 -Cus dated 25.09.1953 as amended from time to time issued under Section 11 of the Customs Act, 1962. Since such goods are also restricted in terms of clause 16 of Chapter 1A of the Indian Trade Classification (Harmonized System) of export and import read with Para 2.01 and 2.02 of the Foreign Trade Policy 2015-2020 notified under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992, hence goods should also maintain relevant technical specifications as declared before the WPC wing while obtaining the NOC/License for such products. However, the importer did not provide any such NOC/License. In that case, the import of specified goods made by importer is in violation of the provisions of Foreign Trade Policy 2015-2020 read with Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992 which has rendered such goods liable for confiscation under Section 111(d) of the Customs Act, 1962. The said goods are also in contravention of the prohibition imposed under Section 11 of the Customs Act, 1962. Accordingly, such **goods mentioned in Annexure-D (at Sr. No. 14 to 18, 576 to 581, 617 to 618 and 1095 to 1101 of Annexure-A) to impugned SCN**, having value of **Rs. 51,750/-** are liable to confiscation under Section 111(d) of the Customs Act, 1962.

**46.4.** In addition, some other goods were found un-declared and some were found in excess in quantity to those included in the Bill of Entry dated 06.09.2017. The said goods have been imported by the importer with intent to evade payment of applicable duty as also to avoid compliance of mandatory/ statutory conditions. Hence, such goods are liable for confiscation under Section 111(l) & 111(i) of the Customs Act, 1962. The importer restored to improper importing of such goods by way of concealment, therefore, impugned goods are liable for confiscation in terms

of Section 119 of the Customs Act, 1962. Accordingly, the goods mentioned in **Annexure-E (at Sr. No. 1,2,12 to 18,98 to 115,527 to 545 and 616 of Annexure-A) attached to impugned SCN**, having value of **Rs. 3,29,630/-** are liable for confiscation under Section 111(l) & 111(i) of the Customs Act, 1962. Whereas, the other goods which were used for concealing the said undeclared/excess goods having value of **Rs.1,27,30,255/-** are also liable to confiscation in terms of **Section 119** of the Customs Act, 1962.

**46.5.** Furthermore, I find that the goods mentioned in **Annexure-A** (excluding the goods mentioned in Annexure- B, Annexure- C, Annexure- D & Annexure- E attached to impugned SCN), in respect of Bill of Entry No. 3130325 dated 06.09.2017 have been undervalued and thus are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**46.6.** Summarising the foregoing discussion I find that in view of violation of various provisions of law for the time being in force, I find that the entire imported goods involved in this case as mentioned at Sr. No. 1 to 1103 of attached Annexure-A having value of **Rs.1,30,59,885/-** are liable for confiscation under **Section 111(d) and/or, Section 111(m) and/or, Section 111(l) and/or, Section 111(i)** and/or, Section 119 of the Customs Act, 1962 as the case may be, as discussed supra.

**46.7.** I observe that in terms of **Rule-11 of Foreign Trade (Regulation) Rules, 1993**, on the importation into any customs ports of any goods or goods connected with services or technology, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quantity, quality and description of such goods or goods connected with services or technology to the best of his knowledge and belief and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or any other documents...

**46.8.** I find that in the instant case, the importer has conclusively failed to declare the correct value, description etc. of the goods imported and hence contravened the provisions of the **Rules 11 and 14 of Foreign Trade Regulation Rules, 1993** and also the provisions of Rule-11(1) of Foreign Trade (Development and Regulation) Act, 1992 in as much as they knew that the declarations made by them were incorrect with regard to goods imported. In terms of Section 3(3) of the Act ibid the prohibitions are deemed to be prohibition under Section 11 of Customs Act, 1962. In the present case the impugned goods were mis-declared in respect of description, quantity and value of the goods and also in contravention of the provisions of **Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 and of the violation of the provisions of Wireless Telegraphy Act, 1933** as applicable. As per **Section 2(39) of Customs Act, 1962**, "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113. Thus, the said goods imported vide **Bill of Entry No. 3130325 dated 06.09.2017** as discussed supra unambiguously fall under the definition of smuggled goods in terms of provisions of Section 2(39) of Customs Act, 1962 and thus are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. I hold so.

#### **MIS-CLASSIFICATION OF GOODS: -**

**47.** I find that the importer had mis-declared certain items viz. Mobile phone battery, Car mobile phone Charger/Adapter /USB Charger, Touch Screen and USB data cable/charging cable respectively and mis-classified the same under

CTH No. 85299090, 85299090, 85177090 and 85183000 and 85044030 respectively in the **Bill of Entry no. 3130325 dated 06.09.2017**. Whereas, during the examination, these goods were found to be appropriately classifiable under CTH No. 85078000, 85044030, 85299090 and 85442090 respectively. In view of same and taking into consideration the detail investigation carried out by the DRI and corroborated by various irrefutable and distinct evidences, the classification of these goods adopted by the importer under CTH No. 85299090, 85299090, 85177090 and 85183000 and 85044030 is liable to be rejected. I hold so.

**DEMAND OF CUSTOMS DUTY: -**

**48.** In view of the aforesaid facts and evidences discussed in foregoing paras, it is well established that the impugned goods imported by the importer vide Bill of Entry bearing no. 3130325 dated 06.09.2017 filed at Customs House, Mundra were mis-declared with respect to value and other material particulars. The importer while knowingly and deliberately declaring lesser value of the impugned goods in the Bills of Entry suppressed the actual transaction value of impugned goods with intent to evade the differential Customs Duty. Moreover, in spite of issuance of number of Summons to the importer/Shri Nasir Khan and his associates including Shri Uves Khakhu, Shri Nasir Khan did not provide the correct value of the goods and actual documents thereof. Moreover, these persons neither joined the investigation, nor did they provide the actual import or financial documents showing actual transaction value. Owing to non-cooperative attitude of the importer, the valuation of goods covered under B/E No. 3130325 dated 06.09.2017 was done through market survey and through Govt. approved Chartered Engineer/Valuer. I find that had the DRI not initiated investigation into the matter, the importer would have succeeded in his manipulations and the evasion of duty could not have been unearthed. As the importer has deliberately evaded the Customs Duty by suppressing material facts, extended period of demand of duty as laid down under **Section 28(4) of the Customs Act, 1962** is attracted in the instant case.

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

**49.1.1.** 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.*

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

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

**50.** The calculation of the applicable Customs Duty and differential Duty based on the valuation report of the Govt. approved Valuer is as per the Annexure-X attached to the instant SCN is summarised hereunder: -

**Table-xii**

Sr. No.	Item description	TOTAL QUANTITY (PCS)	Total Value (approx.) net of all expenses viz. Selling commission, general expenses, selling profit, transport, insurance & associate costs, taxes & Customs duty (AS PER VALUER) (Rs.)	VALUE AFTER ADDING 1% LANDING CHARGE	Effective rate of duty (BCD+E D. Cess+IGST)	Total duty paid (in Rs.)	Total duty payable (Rs.) (BCD+ED Cess+IGST)	Total Differential duty payable
1	Audio Cable	500	10000	10100	30.154	547066	3046	
2	Mobile phone battery	34818	1097040	1108010	41.184		456323	
3	Car mobile phone Charger/Adapter /USB Charger	5400	183000	184830	30.154		55734	
4	Earphone	19980	990765	1000673	30.154		301743	
5	HDMI Cable to Lightening and USB	232	11600	11716	37.888		4439	
6	Head Phone & Bluetooth Headphone	1475	58750	59338	30.154		17893	
7	Mobile Phone Cover (TPU)	12371	61855	62474	41.184		25729	
8	Mobile Screen Guard (Tuffened Glass)	510244	2541670	2567087	41.184		1057229	4543182
9	Plastic holder for mobile phone	60000	1800000	1818000	41.184		748725	
10	Wireless Speaker	415	41750	42168	41.184		17366	
11	Power Bank	4971	596520	602485	41.184		248127	
12	Printed Circuit Board Strips (50 units in one strip)	440	22000	22220	18		4000	
13	Selfistick for mobile phone	1987	88705	89592	41.184		36898	

14	Touch Screen	3200	112000	113120	41.184		46587	
15	Bike Mobile Holder	993	24825	25073	41.184		10326	
16	USB Data cable/charging cable	2546 15	5192125	5244046	37.888		1986864	
17	Packing	47346	227280	229553	30.154		69219	
	<b>Total</b>		<b>13059885</b>	<b>13190485</b>		<b>547066</b>	<b>5090248</b>	<b>4543182</b>

#### **50.1. Details of duty calculation**

- i. Customs Duty involved in goods falling under policy restriction amounts to **Rs. 7,60,184/-**.
- ii. Customs Duty involved in goods not falling under policy restriction amounts to **Rs. 43,30,064/-** (Rs. 50,90,248/- - Rs 7,60,184/-)

**50.2.** Thus, I hold that Customs duty totally amounting to **Rs. 50,90,248/- (Rs. Fifty Lakhs Ninety Thousand Two Hundred and Forty-Eight Only)** is liable to be demanded and recovered from the importer under **Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962.**

#### **51. IMPOSITION OF REDEMPTION FINE IN LIEU OF CONFISCATION OF THE GOODS UNDER SECTION 111(d), Section 111(f), 111(l) and Section 111 (m) OF THE CUSTOMS ACT, 1962:**

**(i).** I find that it is alleged in the SCN that the goods are liable for confiscation under Section 111(d), Section (i), Section (l) and Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the confiscation of improperly imported goods. The relevant legal provisions of Section 111(d), Section (i), Section (l) and Section 111(m) of the Customs Act, 1962 are reproduced below: -

.....

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

.....

*(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*

.....

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

.....

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

(iii). On plain reading of the above provisions of the Section 111(d), Section (i), Section (l) and Section 111(m) of the Customs Act, 1962 it is clear that the impugned goods have been improperly imported to the extent that such goods were concealed, mis-declared and grossly undervalued, therefore, shall be liable to confiscation. As discussed in the foregoing para's, it is evident the Importer has deliberately concealed/ misdeclared/ undervalued the imported goods with a malafide intention to evade duty. Therefore, I hold that the impugned imported goods are liable for confiscation as per the provisions of Section 111(d), Section 111(i), Section 111(l) and Section 111(m) of Customs Act, 1962.

(iii). As the impugned goods are found to be liable for confiscation under Section 111(d), Section 111(i), Section 111(l) and Section 111(m) 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 proposed vide impugned SCNs. The Section 125 ibid reads as under: -

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

iv. 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 where there is no restriction on policy provision for domestic clearance. I find that in the instant case option to pay the redemption fine can be given to the noticee for goods where there is no policy restriction.

## **52. Cross Examination sought by the Noticees:**

(i) I find that **Shri Nasir Khan**, Beneficial owner of the import goods (Noticee No.2) during his defense submission dated 26.07.2023 requested for Cross Examination of **DRI officers and panch witness and names as mentioned in the interim reply**. In this connection, I find that the statements of the Noticees have been incorporated in the impugned SCN and none of the noticees have retracted their statements. Further, I find that Shri Nasir Khan has not given any specific and valid grounds for seeking the cross-examination. I also observe from the facts of the case that various summonses were issued to Shri Nasir Khan but he did not appear before investigating officer. Accordingly, a Criminal Complaint bearing no. 223/2019 was filed against him before Hon'ble CJM Court, Mundra on 12.02.2019 under Section 174, 175, 176 of IPC. It has been observed that the evasion of duty in the present case being fraudulent in nature and considering absconding nature of Shri Nasir Khan during the investigation, I find that asking for cross examination at this juncture cannot be a matter of right for someone who has not even participated in the investigation proceedings. Cross-examination merits consideration when there is bonafide in the request and specific reasons are put forth for the same. The facts of the case being that Nasir Khan has deliberately kept away from participation during the

investigation and has flouted the law by not responding to repeated summons. Having chosen to behave so and squandered opportunities during the investigation to put forth his point of view, I observe that no purpose would be served to allow cross examination of DRI officers at this stage as same would only unnecessarily protract the proceedings and has not been sought on genuine grounds.

Accordingly, I find that denial of Cross-examination does not amount to violation of principles of natural justice in this case.

ii. I find that **Shri Gaurav Kumar** (The then Preventive Officer) vide their defense submission dated 03.07.2023 requested for Cross Examination of Shri S. J. Singh, the then Deputy Commissioner, SIIB, Customs House Mundra who had given order on file for examination of the goods and Shri Milan Kumar Singh, the then Deputy Commissioner, SIIB, Customs House Mundra holding the charge of Deputy Commissioner, SIIB at that juncture, Shri Ankit Shaileshbhai Travadi, Shri Sanjeev Dubey, Shri Rakesh Verma, Kamlesh Singh Rajput, Mahesh B Gadhvi, Bharat Singh Rajput, Shri Vikram Singh Meena, SIO, DRI, Shri Nirav H. Vasani, Shri Chandan Singh, Shri Abdul Ghani Khatri.

Shri Gaurav Kumar has not given any valid grounds for seeking cross-examination and it also does not appear from the facts of the case as laid down in the notice that the allegations against him are based solely on the statements of any one or few individuals. In this connection, from the records available before me I find that none of the aforementioned persons have retracted their respective statement. Also, the allegations against the individual rests chiefly on statements of various other individuals which were recorded during the course of investigation. The instant case is related to mis-declaration of goods in respect of classification, quantity, valuation and concealment by **M/s. Crescent Traders**, which is based on documentary evidences and corroborated by voluntary statements recorded under Section 108 of the Customs Act, 1962. Besides, I find that **the statements recorded under Section 108 of the Customs Act, 1962, also make for substantive evidences. Finally, it is also pertinent to mention that Shri Gaurav Kumar has withdrawn his request for cross-examination vide letter dated 26.07.2023.**

(ii) **Shri Deepak Khatri** (then Superintendent, SIIB) vide written submission requested for cross examination of DRI Officials. The allegations against the individual rests on statements of various other individuals which were recorded during the course of investigation. Accordingly, it has to be construed that Shri Deepak Katri has not given any valid grounds for seeking cross-examination. Furhter, *denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice*, the same has been held by various judicial pronouncements.

**53.1.** In this connection, from the records available before me I find that none the aforementioned persons have retracted their respective statement. Further, the instant case is related to mis-declaration of goods in respect of classification, quantity, valuation and concealment by **M/s. Crescent Traders**, which is based on documentary evidences and corroborated by voluntary statements recorded under Section 108 of the Customs Act, 1962. Besides, all the relied upon documents have already been supplied to the noticees, and the submissions made by them have been taken on record. I find that **the statements recorded**

under Section 108 of the Customs Act, 1962, also make for substantive evidences.

53.2. I also observe that when there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross examination. Reliance is placed on Judgement of Hon'ble Supreme Court in case of **K.L. Tripathi vs. State Bank of India & Ors [Air 1984 SC 273]**, as follows:

*"The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action."*

Therefore, I find that cross examination in the instant case is not necessary, has not been sought citing valid reasons and in certain cases sought by individuals who were evasive and did not take part in the investigations and now see this as an opportunity to delay the quasi-judicial process of adjudication.

53.3. I observe that the principles of proving beyond doubt and cross examination cannot be applied to a quasi-judicial proceeding where principle remains that as per the preponderance of probability the charges should be established. The cross examination of persons can be allowed during a quasi-judicial proceeding. It is true that as per 138B(2) the provision regarding cross examination shall so far as may be apply in relation to any other proceedings under the customs act. The usage of phrase 'so far as may be' in section 138B (2) shows that cross examination is not mandatory in all cases but the same may be allowed as per circumstances of the case.

53.4. I find that in the instant case there remains no scope of ambiguity for a man of prudence. Therefore, I observe that no purpose would be served to allow cross examination of such person as same has been sought only with the motive to protract the proceedings. I find that denial of Cross-examination does not amount to violation of principles of natural justice in every case. Further, it is a settled position that proceedings before the quasi-judicial authority is not at the same footing as proceedings before a court of law and it is the discretion of the authority as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

- a. **Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737**:- wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.
- b. **Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.):-** wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.
- c. **Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai):-** wherein it has been observed that cross-examination not to be claimed as a matter of right.

d. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: ..... denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)

e. Similarly in **A. L Jalauddin v/s Enforcement Director reported as 2010(261) ELT 84 (mad) HC** the Hon High court held that; ".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".

**53.5.** I observe that some noticees have raised objection that department cannot issue two notices for same set of fact and same Bill of Entry, i.e. *nemo debet bis vexari pro una et eadem causa*, which means no man shall be put in jeopardy twice for one and the same offence.

I find that notice dated 10.09.2018 was issued under section 124 of the Customs Act, 1962 for confiscation of the impugned goods. Whereas, the notice dated 20.09.2022 was issued under section 28 of the customs Act, 1962 for the demand of duty.

Reliance is placed on judgement of **Hon'ble Supreme Court in the case of Fortis Hospital Ltd vs. Commissioner of Customs, Import, [Civil Appeal No. 1049 of 2008]**

*"We make it clear that it would still be open to the Department to take appropriate independent action against the appellant for payment of import duty, in case it is still within period of limitation."*

Upon the receipt of the adjudicating order issued in consequence to a notice issued under Section 124 of the Act, in the event the assessee does not exercise the option to redeem its goods, duty cannot be demanded on the basis of the adjudicating order; the notice must therefore be issued by the Revenue Department under Section 28 to demand customs duty.

Accordingly, it follows that the department can issue two Show Cause Notice on the same issue under separate sections and no error can be attributed in the instant case on this front.

**54.** I find that during the course of investigation carried out by the DRI the statements of various persons have been recorded under Section 108 of the Customs Act, 1962 which have sufficient evidentiary value to prove the fact that the importer has improperly imported the impugned goods by way of concealment and mis- declaration of the same. I place reliance on the following relevant judgements of various Courts wherein evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 is emphasized.

➤ The Hon'ble Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculpating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant

with the act of contravention.

- In the case **Collector of Customs, Madras and Ors vs D. Bhoormull-1983(13)ELT 1546(S.C.)** the Hon'ble Supreme Court has held that Department was not required to prove its case with mathematical precision. The whole circumstances of the case appearing in the case records as well as other documents are to be evaluated and necessary inferences are to be drawn from these facts as otherwise it would be impossible to prove everything in a direct way.
- **Kanwarjeet Singh &Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)** wherein it is held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.
- Hon'ble High Court decision in the case of **Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)** wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement-and was not influenced by threat, duress or inducement etc. is a true one.
- In the case of **Govind Lal vs. Commissioner of Customs Jaipur {2000(117) E.L.t. 515(Tri)}**- wherein Hon'ble Tribunal held that- 'Smuggling evidence-statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'.

In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC**. Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is valid evidence under law.

#### **55. NOW I PROCEED TO EXAMINE THE ROLES OF THE VARIOUS NOTICEE'S IN THIS ELABORATE SCHEME TO DEFRAUD THE GOVERNMENT EXCHEQUER :**

**55.1. Role and liability of M/s. Crescent Traders (Shri Sandesh Tanwar, Proprietor), under Customs Act 1962: -**

- i. **M/s. Crescent Traders - A Proprietary concern of Shri Sandesh Tanwar**, it is revealed from the investigation that the documents required for opening IEC such as PAN Card, Aadhar Card, Photo Etc of Shri Sandesh Tanwar were mis-used for opening IEC 0317524631 in the name of Crescent Traders to hide the identity of actual importer Shri Nasir Khan from the government enforcement agencies. Further, the Bank Account number mentioned in the IEC records of M/s. Crescent Traders was also fraudulently opened showing Shri Girish K. Bapat as Prop. /Account holder for M/s. Crescent Traders. The payment of Customs Duty was also paid for through Bank Account of dummy firms M/s. Pragati Enterprises and M/s. Samarth Impex. Based on the facts, circumstances and evidences on record, I find that the importer M/s. Crescent Traders was a dummy firm as its purported Proprietor (as per IEC) Shri Sandesh Tanwar did not have any relation to M/s. Crescent Traders as his documents and photos given by him in relation to job, were misused for opening IEC in the name of M/s. Crescent Traders, Dombivali (W). Instead, as investigation has shown, Shri Nasir Khan was the actual beneficiary owner of M/s. Crescent

Traders, Dombivali (W) (IEC No. 0317524631] and he used fake documents/details in relation to fraudulent import of mobile phone accessories vide Bill of Entry No. 3130325 dated 06.09.2017 to evade his liability from the Govt, enforcement agencies.

I find that noticee when came to know that his name was being used as Proprietor/Director of M/s. Crescent Traders, (IEC No. 0317524631) in Sept. 2017 after conduction of search at the room owned by his father Shri Gopichand Tanwar, lodged a complaint to Sr. Police Inspector, Vishnunagar Police Station, Dombivali (W) on 06.11.2017 and subsequently a letter to Commissioner of Police, Thane City on 01.08.2018 (F.I.R copy has been enclosed) stating that his documents such as PAN Card, Aadhar Card, passport photographs have been misused to register a fake company in the name of Crescent Traders.

In view of above, I find that Shri Sandesh Tanwar has no relation with the firm M/s Crescent Traders. The noticee has no knowledge about the imported/purchased/sold the goods which were liable for confiscation and evaded payment of Customs Duty. On noticing the misuse of his necessary document, the noticee has filed a police complaint on 06.11.2017. I don't find evidence of involvement of Shri Sandesh Tanwar in the duty evasion and neither in violation of other statutory/mandatory requirements. Therefore, I **drop** the penalty proposed under Section 112(a), 112(b) and 114A by investigation agency against Shri Sandesh Tanwar. Further, I find that noticee has **not** made/signed/used and/or caused to be made/signed/used the documents which were containing false/ incorrect material particulars, thereby I drop penalty under Section 114AA of the Customs Act, 1962.

#### **55.2. Role and liability under Customs Act 1962 of Shri Nasir Khan, Mumbai: -**

- i. I find that in the foregoing paras, it is proved that Shri Nasir Khan was the mastermind behind import of impugned goods with intention to evade duty and in violation of various other statutory/ mandatory requirements. It is also established that in connivance with Shri Mayur Mehta, he arranged an IEC of M/s. Crescent Traders- a proprietary firm of Shri Sandesh Tanwar. Shri Nasir Khan provided copy of IEC Certificate and other related documents of import goods to Shri Mayur Mehta and also paid money for payment of Customs duty in relation to **Bill of Entry No. 3130325 dated 06.09.2017**. Shri Nasir Khan also sent Rs. 8 lakh to Shri Mayur Mehta through Angadia at Bhuj allegedly to bribe the SIIB officers to settle the objections of misdeclaration/ undervaluation raised by the Officers during examination. On being summoned by DRI, Shri Nasir Khan sent a fake owner of M/s. Crescent Traders, viz., Mr. Mohammad Hanif Fakir to tender statement in the capacity of Power of Attorney holder on behalf of Shri Sandesh Tanwar, whereas the said Power of Attorney was got prepared by Shri Nasir Khan. In his statement dated 01.03.2018, Shri Nasir Khan admitted the entire conspiracy of false information, mis-declaration, undervaluation and other violations in respect of goods imported by him in the name M/s. Crescent Traders vide Bill of Entry No. 3130325 dated 06.09.2017. Further, Shri Nasir Khan did not thereafter appear to tender his statement and sent evasive replies that he was ill etc. A team of officers of DRI visited his addresses and Summons issued in the name of Shri Nasir Khan were also handed over to the persons found available at such

addresses, nevertheless Shri Nasir Khan did not present himself for tendering statement before the Sr. Intelligence Officers. Since, he disobeyed various summons dated 01.03.2018, 13.03.2018, 27.03.2018, 13.04.2018 and 25.07.2018 issued under Section 108 of Customs Act, 1962, a Criminal Complaint bearing no. 223/2019 was filed against him before Ho'ble CJM Court, Mundra on 12.02.2019 under Section 174,175,176 of IPC. Further, Summons dated and 13.02.2020, 07.08.2020, 08.09.2020 and 30.11.2021 were issued to Shri Nasir Khan but he again did not appear before investigating officers and another criminal complaint under Section 174,175,176 of IPC was filed before Additional Chief Judicial Magistrate, Gandhidham.

- ii. So much so that Shri Nasir Khan produced fake Visiting Card of M/s. Crescent Traders which was containing names of Shri Sandesh Tanwar and Shri Hanif Shaikh thereon. On being questioned by officers of DRI regarding his business procedure and other related questions, he disclosed his identity as salesman at Connect Mobile shop which is owned by Shri Nasir Khan and informed that he was sent by Shri Nasir Khan. In this regard, statement of Shri Mayur Mehta and audio clips extracted from the mobile phone of Shri Nasir Khan revealed actual facts and disclosed conspiracy orchestrated by Shri Nasir Khan.
- iii. Thus, Shri Nasir Khan hatched the entire conspiracy and indulged in furnishing false declarations in the Bill of Entry and other related documents and also committed various offences including evasion of Customs Duty and those of mis- declaration of description, quantity and value of the impugned goods and also contravened the provisions of **Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012** among others. He committed to create false identity of importer by using Shri Mohd. Hanif Fakir Mohammad Shaikh to impersonate the importer. He also failed to provide the correct details/documents related to value of the goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 and also for the past consignment covered under Bill of Entry No. 3016001 dated 28.08.2017.
- iv. Thus, such acts of omission and commission on part of Shri Nasir Khan have rendered the impugned imported goods liable for confiscation under Section 111 of the Customs Act, 1962. He is also culpable for trying to evade the Customs Duty actually payable on the imports made in the name of M/s. Crescent Traders. He has knowingly imported/purchased/sold the goods which were liable for confiscation. In view of the above, Shri Nasir Khan, the actual importer and actual beneficiary owner of M/s Crescent Traders has rendered himself liable to penalty under Section 112(a) and 112(b) [read with Sections 112(i), Section 112 (ii)], Section 114A of the Customs Act, 1962. Shri Nasir Khan also made/signed/used and/or caused to be made/signed/used the documents/statements which were containing false/incorrect material particulars making him liable for action under Section 114AA of the Customs Act, 1962.
- v. I find that penalty under Section 117 of Customs Act,1962 has also been imposed upon the Noticee, however, I find that penalty under Section 117 of the Customs Act, 1962 is imposable for contravention of any provision for which no express penalty is elsewhere provided for such contravention or failure. I find that in the instant case, Penalty under Section 114(A) and Section 114AA of the Customs Act, 1962 has already been imposed;

therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon Shri Nasir Khan.

**56.3. Role and liability under Customs Act 1962 of Shri Uves Khakhu, Mumbai: -**

- i. I find that Shri Uves Khakhu was the business partner of Shri Nasir Khan and also deeply involved in the import of impugned goods without declaring correct description, quantity and value of the goods with intention to evade duty and in violation of various other statutory/ mandatory requirements. As revealed from the Whatsapp chat conversations and other evidences recovered from the mobile phone of Shri Nasir Khan, Shri Uves Khakhu was actively participating in each and every import of M/s. Crescent Traders and was one of the close associate of Shri Nasir Khan, Shri Mayur Mehta, Smt. Swati Vora, Shri Mohammad Selia and other key persons in clearance of imported goods illegally from Customs. He was part of conspiracy hatched for sending a fake owner of M/s. Crescent Traders, viz., Mr. Mohammad Hanif Fakir to tender statement in the capacity of Power of Attorney holder on behalf of Shri Sandesh Tanwar whereas the said Power of Attorney was got prepared by the associates of Shri Nasir Khan. Shri Uves Khakhu disobeyed various summons issued to him under Section 108 of Customs Act, 1962.
- ii. Thus, Shri Uves Khakhu was involved in hatching the entire conspiracy and indulged in furnishing false declarations in the Bill of Entry and other related documents and also committed various offences including evasion of Customs Duty and also contravened provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012.
- iii. Thus, such acts of omissions and commission on part of Shri Uves Khakhu, have rendered the imported goods liable for confiscation under Section 111 of the Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation. He did not provide the details/documents sought from him vide summons and also did not appear to tender statement. Therefore, Shri Uves Khakhu, has rendered himself liable to penalty under Section 112(a) and 112(b) [read with Sections 112(i) and Section 112 (ii)] of the Customs Act, 1962 for his various acts of omission and commission. Shri Uves Khakhu has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars; therefore, he is also liable to penalty under Section 114AA of the Customs Act, 1962.
- iv. I find that penalty under Section 117 of Customs Act, 1962 has also been imposed upon **the Noticee**. However, I find that in the instant case, Penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 has already been imposed; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon Shri Uves Khakhu.

**56.4. Role and liability under Customs Act 1962 of Shri Mayur P. Mehta, Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai/Mundra and M/s. Om Trans Freight Cargo Pvt. Ltd.: -**

- i. I find that Shri Mayur Mehta played crucial role in the illegalities involved in the clearing of the impugned goods imported by M/s. Crescent Traders vide Bill of Entry No. 3130325 dated 06.09.2017 and 3016001 dated

28.08.2017. He was in Customs clearance business since long and was one of the Directors in three other companies too. His company **M/s. Dabke Clearing & Forwarding Pvt. Ltd.** had two branches at Mumbai and Mundra but in Mundra they were not having permission to act as Customs broker. He acted hand in glove with Shri Nasir Khan and other associates in relation to import of mobile phone accessories from China and Hongkong. Shri Nasir Khan provided him documents related to above consignment alongwith KYC documents viz. IEC Copy, PAN, GSTN, Address proof etc. of M/s. Crescent Traders but Shri Mayur Mehta did not verify the veracity of said documents pertaining to M/s. Crescent Traders. He also did not take any authorization or relevant documents from Shri Nasir Khan, which could have validated Shri Nasir Khan's connection with M/s. Crescent Traders. He admitted in his statement dated 22.10.2017 that he had already got cleared one Consignment of knitted fabrics and mobile phone accessories vide Bill of Entry No. 3016001 dated 28.08.2017 filed by M/s. Crescent Traders and from the Whatsapp chat conversations and other evidences gathered during investigation it came forth that he was involved in clearance of other import consignments too through another company **M/s. Om Trans Freight Cargo Pvt. Ltd.** He also admitted that another company M/s. Om Trans Freight Cargo Pvt. Ltd. had got cleared 06 consignments of mobile phone accessories of M/s. Crescent Traders from Delhi Air Cargo earlier in August, 2017 and Sept., 2017. He sent the import documents related to Bill of Entry No. 3130325 dated 06.09.2017 to his staff Shri Ankit Travadi at Mundra who got filed the said Bill of Entry through another Customs Broker M/s. All Marine Cargo Services as their own company did not have license to work as Customs broker at Mundra port. He admitted in his statement dated 22.10.2017 that he was informed by SIIB officers of Custom House, Mundra that the value of imported goods might be enhanced to more than Rs. One Crore involving duty of around Rs. 35-40 lakh. He also sent Shri Ankit Travadi to the SIIB officers to sort out the matter. He also collected cash of Rs. 8 lakhs from Shri Nasir Khan and sent it to Shri Ankit Travadi through Angadia for further alleged disbursement of the said amount to the SIIB officers.

- ii. Thus, it was observed that Shri Mayur Mehta was deeply involved in smuggling and was knowingly and actively involved in the act of undervaluation, quantity mis-declaration and BIS norms violations etc in regards to import of goods (Mobile Accessories) imported vide bill of entry no. 3130325 dated 06.09.2017 filed by M/s. Crescent Traders, at Mundra Port and also for the past consignment. His acts of omission and commission rendered the imported goods liable for confiscation under Section 111(d) and Section 111(m) of Customs Act, 1962. His role in entire episode of this case is also supported by evidence available in the form of audio clips extracted from the mobile phone of Shri Nasir Khan.
- iii. After considering the nature of offence, the role of Shri Mayur Mehta involved and evidence available on record there was reason to believe that he had committed offences under Customs Act, 1962 punishable under the Sections 132 and 135 of the said Act. Accordingly, Shri Mayur Mehta was arrested on 22.10.2017 for the offences committed by him.
- iv. Thus, on account of act of omission and commission on part of Shri Mayur Mehta, Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai, the impugned imported goods were made liable for confiscation under

Section 111 of the Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation. Shri Mayur P. Mehta has thus rendered himself liable to penalty under Section 112(a) and 112(b) [read with Sections 112(i) & Section 112 (ii)] of the Customs Act, 1962. He also made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars; therefore, he is also liable to penalty under Section 114AA of the Customs Act, 1962. However, Shri Mayur Mehta passed away on 09.11.2017, hence no penalty is proposed to be imposed against Shri Mayur Mehta under Customs Act, 1962.

**56.5. Role and liability under Customs Act 1962 of Ms. Swati Vora alias Monika, Director M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai/Mundra and M/s. Om Trans Freight Cargo Pvt. Ltd.: -**

- i. I find that Ms. Swati Vora, Director M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai and M/s. Om Trans Freight Cargo Pvt. Ltd. was actively involved in facilitating and abetting the illegal clearance of goods imported in the name of M/s. Crescent Traders in which there was mis- declaration of description, quantity and value of the goods being imported by M/s Crescent Traders as also contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012. She had prepared the Check List and other related documents for Bill of Entry No. 3130325 dated 06.09.2017 for M/s. Crescent Traders. **She also provided the currency number of ten rupee note to Shri Ankit which was required to be given to Angadia for collecting cash of Rs. 8 lakh which was supposed to be given to the officers of SIIIB, Customs House, Mundra in lieu of clearance of goods from Customs.** It is also evident from the Whatsapp Chat conversations and audio clips extracted from the mobile phone of Shri Nasir Khan that Ms. Swati Vora also assisted in preparing Power of Attorney for Shri Mohammad Hanif Shaikh to present him as actual importer before investigating officers. She also conveyed a suggestion to Shri Nasir Khan that a Visiting Card of Crescent Traders should be got prepared from market which must be containing the name of Proprietor of Crescent Traders and the name of person going for tendering statement before DRI. She was well aware about violations done by the persons involved in the entire gamut of smuggling and she was actively involved in the conspiracy by way of creation of forged documents.
- ii. Thus, by above acts of omission and commission and by way of preparing check list and other documents, Ms. Swati Vora facilitated the fraudulent import and assisted in clearance of contraband goods which rendered the imported goods liable for confiscation under Section 111 of the Customs Act, 1962. She has knowingly dealt with the goods which were liable for confiscation and has made/signed/used and or caused to be made/signed/used the documents which were containing false/incorrect material particulars. She was also issued various summons under Section 108 of Customs Act, 1962 including summons served upon by visiting her residences but dishonoured them by not appearing before the investigating authorities. Ms. Swati Vora alias Monika has thus rendered herself liable to penalty under 112(a) and 112(b) and Section 114AA of the Customs Act, 1962.

iii. I find that penalty under Section 117 of Customs Act, 1962 has also been imposed upon the Noticee. However, I find that in the instant case, Penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 has already been imposed; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon Ms. Swati Vora.

**56.6. Role and liability under Customs Act 1962 of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai / Mundra: -**

i. I find that Shri Mayur Mehta and Ms. Swati Vora alias Monika were Directors in M/s. Dabke Clearing & Forwarding Pvt. Ltd. but their company did not have permission to work as Customs Broker at Mundra Port. However, the company has office and staff viz. Shri Ankit Travadi and his brother Sh. Chirag Travadi at 213, Kashish Arcade, Zero Point, Mundra. The actual importer Shri Nasir Khan assigned the work of customs clearance of import consignment of M/s. Crescent Traders covered under Bill of Entry No. 3130325 dated 06.09.2017 to Shri Mayur Mehta, Director of M/s. Dabke Clearing & Forwarding Pvt. Ltd. but the KYC documents and profile of importer was not verified by them. Shri Mayur Mehta and Ms. Swati Vora alias Monika handed over the work of filing Bill of Entry for said consignment to Shri Shera Ram of M/s. Krishna Shipping Logistics. During the course of search conducted by officers of DRI at the office premises of M/s. Krishna Shipping Logistics, email conversations between M/s. Dabke Clearing and Forwarding Pvt. Ltd. and Shri Shera Ram Mehra of M/s. Krishna Shipping Logistics were found. As per these email conversations, the latter asked for providing various documents required for filing Bill of Entry of M/s. Crescent Traders. In response, the former provided documents such as KYC documents, CHA appointment letter, Invoice, Packing List, Bill of Lading, IEC Certificate etc., most of which were fake or illegally obtained by Shri Nasir Khan, to file the Bill of Entry on behalf of M/s. Crescent Traders. During search, conversation through email between M/s. Krishna Shipping Logistics and M/s. All Marine Cargo Services were also found in which the check-list for filing Bill of Entry was sent to M/s. Krishna Shipping & Logistics for approval and confirmation of HS Codes. From such emails and other evidences, it clear that M/s. Dabke Clearing and Forwarding Pvt. Ltd. assigned the work of filing Bill of Entry for M/s. Crescent Traders to M/s. Krishna Shipping & Logistics having idea about the illegal / irregular nature of consignment and documents concerning the same. M/s. Krishna Shipping & Logistics further re-assigned the work of filing Bill of Entry to M/s. All Marine Cargo Services, Gandhidham who finally filed the Bill of Entry. Further, both the Directors and two employees of M/s. Dabke Clearing and Forwarding Pvt. Ltd., as discussed in previous paras, were actively involved, jointly and severally, every step of the way in the illegal clearance of import consignment of M/s. Crescent Traders by illegal influencing of Customs officers. Thus, it is evident that M/s. Dabke Clearing & Forwarding Pvt. Ltd. were involved and dealt with the import consignment in which there was mis- declaration of description, quantity and value of the goods being imported by M/s. Crescent Traders as also contravening the provisions of Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order. Ms. Swati Vora alias Monika was also issued summons under Section 108 of Customs Act, 1962 including summons served upon by visiting her residences but dishonoured them by not appearing before the investigating authorities.

ii. By their said acts on their part as Directors of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai /Mundra, as also by the acts of other employees acting on behalf of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai /Mundra dealing with the subject consignment, the subject goods have been rendered liable to confiscation under Section 111 of the Customs Act, 1962. They have knowingly dealt with the goods which were liable for confiscation and has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai /Mundra would be thus liable to penalty under 112(a) and 112(b) [read with Sections 112(i) & Section 112 (ii)] and 114AA of the Customs Act, 1962.

**56.7. Role and liability under Customs Act 1962 of Shri Ankit Shailesh Bhai Travadi, Employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mumbai (Branch Office-Mundra):-**

i. I find that Shri Ankit Shailesh Bhai Travadi employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd. was actively involved in abetting the mis-declarations and undervaluation in respect of goods imported vide Bill of Entry No. 3130325 dated 06.09.2017 - He approached Shri Shera Ram Mehra for filing Bill of Entry with false declarations and subsequently the Bill of Entry was filed through the CHA M/s. All Marine Cargo Services, Gandhidham- He also has been in the front in negotiating with Customs Officers of SIIB, Customs House Mundra to get cleared the import consignment having undervalued and mis-declared goods and goods infringing IPR and involvement of BIS norms. Thus, such acts of omissions and commission done by Shri Ankit ShaileshbhaiTravadi, employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., the imported goods were made liable for confiscation under Section 111 of the Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation and Shri Ankit's haileshbhai Travadi has thus rendered himself liable to penalty under Sections 112(a) and 112b) [read with Sections 112(i) & Section 112 (ii)] of the Customs Act, 1962. He made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars, therefore, he is also liable to penalty under Section 114AA of the Customs Act, 1962.

ii. On considering the nature of offence, the role of Shri Ankit Shailesh Bhai Travadi in the present case and evidences available there was reason to believe that he had committed offences under Customs Act, 1962 punishable under the Sections 132 and 135 of the said Act. Accordingly, Shri Ankit Shailesh Bhai Travadi working in M/s Dabke Clearing and Forwarding Pvt. Ltd., Mundra was arrested under Section 104 of Customs Act, 1962 on 08.10.2017.

**56.8. Role and liability under Customs Act 1962 of Shri Shera Ram of M/s. Krishna Shipping Logistics: -**

(i) I find that Shri Mayur Mehta, Director of M/s. Dabke Clearing and Forwarding Pvt. Ltd., assigned the work of filing Bill of Entry for M/s. Crescent Traders to M/s. Krishna Shipping & Logistics who further re-assigned the work of filing Bill of Entry to M/s. All Marine Cargo Services, Gandhidham who finally filed the Bill of Entry. Shri Shera Ram/M/s. Krishna Shipping Logistics being a forwarding agent had worked as a chain between M/s. Dabke Clearing and Forwarding Pvt. Ltd. and the Customs

Broker M/s. All Marine Cargo Services. The KYC documents and profile of importer, M/s. Crescent Traders have been verified by Shri Shera Ram of M/s. Krishna Shipping Logistics online and no alert or hint of malafide intent observed by Shri Shera Ram. I find that being just a forwarding agent Shri Shera Ram had done his part by forwarding all the details document after online verification. There is no evidence found during investigation that Shri Shera Ram was aware of the illegal clearance of the import consignment involving mis-declaration and undervaluation etc. Therefore, I find that the allegations of investigation agency that the onus of correct declarations of the goods in the Bill of Entry falls on the forwarding agent and that they were involved in facilitating the smuggling, does not rest on strong grounds. In view of above, I hold that penalties as proposed under Section 112(a) of the Customs Act, 1962 upon Shri Shera Ram., are not sustainable.

**56.9. Role and liability under Customs Act 1962 of Shri Mohammad Hanif Fakir Mohammad Shaikh: -**

- i. I find that Shri Mohammad Hanif Shaikh appeared before officers of DRI on 05.10.2017 to tender statement and to provide documents in response to summons issued by DRI to M/s. Crescent Traders. In his statement dated 05.10.2017, he presented himself as Power of Attorney holder of M/s. Crescent Traders and showed himself as actual importer. He produced original/scanned documents such as Bill of Lading, Invoice, Packing List etc. related to Bill of Entry No. 3130325 dated 06.09.2017 and a Visiting Card of M/s. Crescent Traders containing name of Shri Sandesh Tanwar and Shri Hanif Shaikh to DRI officers. However, on being questioned in depth by officers of DRI, Shri Hanif Shaikh could not hide his identity further and admitted that he was working as a salesman at shop of mobile accessories viz. Connect Mobile, Mumbai owned by Shri Nasir Khan and he presented himself as Power of Attorney holder of M/s. M/s. Crescent Traders as per the instructions of Shri Nasir Khan. Mr. Mohammad Hanif Shaikh has thus tried to mislead the investigation by impersonating someone that he was not, submitting fake visiting card and attempting to tender a false and fabricated statement before investigating officers in order to facilitate the illegal clearance of the subject import consignment and abet the smugglers. By way of abetting the fraudulent activities relating to clearance of imported goods, he has rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He had knowingly dealt with the goods which were liable for confiscation. He has thus rendered himself liable to penalty under 112(a) and 112(b) [read with Sections 112(i) & Section 112 (ii)] of the Customs Act, 1962. He also made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars; therefore, he is also liable to penalty under Section 114AA of the Customs Act, 1962.
- ii. I find that penalty under Section 117 of Customs Act, 1962 has also been imposed upon the Noticee. However, I find that in the instant case, Penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 has already been imposed; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon Mr. Mohammad Hanif Shaikh.

**56.10. Role and liability under Customs Act 1962 of Shri Mohammad Selia**

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- i. I find that Shri Mohammad Selia was a close associate of Shri Nasir Khan, Shri Uves Khakhu and other key persons and was deeply involved in this case of smuggling and fraudulent import of mobile phone accessories. Shri Mohammad Selia was one of the participants in the Whatsapp Groups made for contacting all related persons at single platform regarding line of action to clear the consignment involving undervaluation, mis-declaration, IPR issues and BIS norms etc. He was actively participating in each and every import of M/s. Cresent Traders and was part of conspiracy of evasion of Customs Duty and other violations. He was part of conspiracy hatched for sending a fake owner of M/s. Crescent Traders, viz., Mr. Mohammad Hanif Fakir to tender statement in the capacity of Power of Attorney holder on behalf of Sandesh Tanwar whereas the said Power of Attorney was got prepared by the associates of Shri Nasir Khan. He suggested in an audio message as mentioned vide Para 12 of impugned SCN that Shri Hanif should not be disclosing to anyone about where the money had come from, otherwise it would be a big problem.
- ii. Shri Mohammad Selia dishonoured summons dated 30.11.2021 and 13.12.2021 issued to him and did not appear before investigating officer. Accordingly, Criminal Complaint under Section 172, 174, 175, 176 of IPC was filed before Additional Chief Judicial Magistrate, Gandhidham. By way of abetting the fraudulent activities relating to clearance of imported goods, he has rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He knowingly dealt with the goods which were liable for confiscation and. He has thus rendered himself liable to penalty under 112(a) and 112(b) [read with Sections 112(i) & Section 112 (ii)] of the Customs Act, 1962. He has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars thereby rendered himself liable to penalty under Sectin 114AA of the Customs Act, 1962.
- iii. I find that penalty under Section 117 of Customs Act, 1962 has also been imposed upon the Noticee. However, I find that in the instant case, Penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 has already been imposed; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon Shri Mohammad Selia.

**56.11. Role and liability under Customs Act 1962 of Mohammad Imran Navsariwala: -**

- i. I find that Mohammad Imran Navsariwala was dealing with sale-purchase of offending goods relating to Shri Nasir Khan including Mobile Phone batteries which were imported in violation of IPR and/or BIS norms. He assured in his statement to provide various details/documents required for investigation but failed to do so disrespecting the Summons issued to him. By way of abetting the fraudulent activities relating for clearance of imported goods, he has rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation and did not provide the details/documents sought from him vide Summons and also did not appear to tender statement. He has thus rendered himself liable to penalty under 112(a) and 112(b) [read with Sections 112(i) & Section 112 (ii)] of the Customs Act, 1962.

ii. I find that penalty under Section 117 of Customs Act,1962 has also been imposed upon the Noticee. However, I find that in the instant case, Penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 has already been imposed; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon Mohammad Imran Navsariwala.

**56.12. Role and liability under Customs Act 1962 of Shri Bhavesh N. Gori, H Card Holder in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham:-**

i. I find that **Shri Bhavesh N. Gori** - H Card holder of Customs Broker firm M/s. All Marine Cargo Services was exclusively looking after the work brought to the said Customs Broker by Shri Shera Ram Mehra of M/s. Krishna Shipping & Logistics. In the instant case, the work related to filing B/E no. 3130325 dated 06.09.2017 was brought to M/s. All Marine Cargo Services by Shri Shera Ram Mehra. I find that Shri Chandan Singh in his statement stated that Shri Bhavesh N. Gori was dealing with consignment under B/E no. 3130325 dated 06.09.2017. I also find that Shri Bhavesh N. Gori had already attended earlier import consignment of similar nature with Shri Ankit Travadi and thus he was known to Shri Ankit Travadi. Thus, Shri Bhavesh N. Gori was aware about mis-declaraton and other lapses in the import consignment under said B/E but he assisted in clearance of the same from Customs. He has also tried to mislead the investigation and tendered a false and fabricated statement before investigating officers. Shri Bhavesh N Gori facilitated illegal clearance of import goods which has rendered the impugned goods liable to confiscation under Section 111 of the Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation and is thus liable to penalty under Section 112(a) and (b) [read with Sections 112(i), Section 112 (ii)] of the Customs Act, 1962. He also made/ signed/ used and/ or caused to be made/ signed/ used the documents which were containing false/ incorrect material particulars, thereby rendered himself liable to penalty under Section 114AA of the Customs Act, 1962.

**56.13. Role and liability under Customs Act 1962 of Shri Chandan Singh, H Card Holder in Customs Broker firm M/s. All Marine Cargo Services, Gandhidham:-**

i. I find that Shri Chandan Singh brought the file relating to Bill of Entry No. 3130325 dated 06.09.2017 to SIIB, Customs House, Mundra alongwith Shri Ankit Travadi. Being H Card holder, it was his responsibility to go through the B/E file, to verify the credential of importer, details of imported goods etc. but he did not do so and handed over the B/E file to Shri Sudhanshu Tyagi, Preventive Officer, SIIB. He also represented Customs Broke rand, in that capacity, signed a fictitious Panchnama back dated 18.09.2017 which was actually prepared by officers of SIIB, Mundra on 21.09.2017. Thus, Shri Chandan Singh also facilitated the conspiracy to defraud the exchequer and assisted in clearance of import consignment under B/E no. 3130325 dated 06.09.2017 having mis-declaration, undervaluation etc. By resorting to abetment of fraudulent activities relating for clearance of imported goods, he has rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation and. For his acts, he is liable to penalty under Section 112(a) and 112(b) [read with

Sections 112(i), Section 112 (ii)] of the Customs Act, 1962. He has made/ signed/ used and/ or caused to be made/ signed/ used the documents which were containing false/ incorrect material particulars; therefore, he has also rendered himself liable to penalty in terms of Section 114AA of the Customs Act, 1962.

**56.14. Role and liability under Customs Act 1962 of Customs Broker M/s. All Marine Cargo Services, Gandhidham (Lic. No. BASPR6595QCH002) and Shri Amit Kumar Singh, Overall In-charge of M/s. All Marine Cargo Services, Gandhidham:-**

- i. I find that Shri Amit Kumar Singh - G-Card Holder and overall In-charge of M/s. All Marine Cargo Services, Gandhidham filed Bill of Entry No. 3130325 dated 06.09.2017 in respect of goods imported by M/s. Crescent Traders without verifying the KYC documents and genuineness of the importer. As admitted by Shri Amit Kumar Singh that they had not contacted proprietor/authorized person of M/s. Crescent Traders at anytime; that they did not verify whether M/s. Crescent Traders was functioning at the address mentioned in IEC; that they did not verify the authenticity of person present on behalf of the importer during the examination of import goods by officers of SIIB, Customs House, Mundra. He also admitted that he did not even have contact number of the importer M/s. Crescent Traders at that time. Therefore, Shri Amit Kumar Singh failed to fulfil his duty-bound-responsibility as a G-Card Holder. He knowingly and intentionally facilitated the illegal clearance of import consignment. Thus the said act on his part has rendered the subject goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of this, Customs Broker M/s. All Marine Cargo Services, Gandhidham (Lic. No. BASPR6595QCH002) and Shri Amit Kumar Singh have separately rendered themselves liable to penalty under Section 112(a) and 112(b) [read with 112(i) & Section 112(ii)] of the Customs Act, 1962. Shri Anil Kumar Singh also made/signed/used and/or caused to be made/signed/used the documents which were containing false/ incorrect material particulars. Therefore, Customs Broker M/s. All Marine Cargo Services, Gandhidham (Lic. No. BASPR6595QCH002) and Shri Amit Kumar Singh have also separately rendered themselves liable to penalty in terms of Section 114AA of the Customs Act, 1962.
- ii. M/s All Marine Cargo Services, Gandhidham also contravened the provisions of Customs Brokers Licensing Regulations, 2013 for which separate actions were already taken and their Customs Broker License KDL/CB/61/2014 (PAN No. BASPR6595Q) was revoked vide Order No. KND-CUSTM-000-COM-05-2019-20 dated 11.06.2019.

**56.15. Role and liability under Customs Act 1962 of Shri Chirag Shaileshbhai Travadi, Employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mundra: -**

- i. I find that **Shri Chirag Shaileshbhai Travadi**- an employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., at their Mundra branch. He took part in de-stuffing process of container for examination and collected money (Rs. 8 lakh which was sent by Mayur Mehta allegedly for SIIB officers), from **Angadia** at Bhuj and handed it over to his elder brother Shri Ankit Shaileshbhai Travadi for further disposal. Thus, Shri Chirag Travadi had abetted smuggling and assisted in illegal clearance of the import consignment under B/E no. 3130325 dated 06.09.2017 from Customs. By

resorting to abetment of fraudulent activities relating for clearance of imported goods, he has rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. He has knowingly dealt with the goods which were liable for confiscation. Therefore, he is liable to penalty under Section 112(a) and (b) [read with Sections 112(i), Section 112 (ii)] of the Customs Act, 1962.

**56.16. Role and liability under Customs Act 1962 of Shri Abdul Gani Khatri, Executive in MICT CFS, Mundra: -**

- i. I find that Shri Abdul Gani Khatri was working as Executive in MICT CFS, Mundra. His statement was recorded under Section 108 of Customs Act, 1962 on 29.09.2017 in which he inter alia deposed that his work was related to obtain permission from Customs for disposal of unclaimed cargo and to keep control of long-standing cargo. His work also related to auction of unclaimed cargo and disposal thereof. On 14.09.2017, Shri Abdul Gani Khatri informed Shri Sudhanshu Tyagi, then Preventive Officer, SIIB, Customs House, Mundra that the de-stuffing work in respect of container no. PONU8179393 (containing cargo under B/E No. 3130325 dated 06.09.2017 filed in the name M/s. Crescent Traders) was done. On 21.09.2017, on being asked by Shri Gaurav Kumar, then Preventive Officer, SIIB, Customs House, Mundra, Shri Abdul Gani Khatri visited SIIB office and he had seen that Shri Gaurav Kumar was preparing a Panchnama with another officer whose name was not known to Shri Abdul Gani Khatri. As per the version of Shri Abdul Gani Khatri, the said Panchnama could not be completed on 21.09.2017 and hence he was asked by Shri Gaurav Kumar to come next day. On 22.09.2017, he went to SIIB, Customs House Mundra and signed the Panchnama in back date i.e. 18.09.2017 which was prepared by Shri Gaurav Kumar showing examination of goods imported vide B/E No. 3130325 dated 06.09.2017, on 18.09.2017.
- ii. I find that in the said Panchnama, Shri Abdul Gani Khatri was shown as representative of MICT CFS who supposedly led the officers and the Panch witnesses to show the de-stuffed import consignment and that he purportedly remained present during entire Panchnama proceedings. It was also mentioned in the Panchnama that the officers had done examination of import consignment and that it was found that the number of boxes were 1025 which were tallied with packing list and at Sr. No. 7 of Bill of Entry, the screen guard were found in excess of 110 gross. [However, the investigation and examination carried out by DRI in this case reveals that the officers mentioned in the Panchnama had not carried out any examination on 18.09.2017 as reported in the Panchnama and the number of boxes were 1026 and the screen guard were found actually less than that declared in Bill of Entry/Packing list.] The said fictitious Panchnama was prepared by officers of SIIB, Customs House, Mundra to clear the goods involving blatant violation of Customs Act, 1962 and other regulations and on the basis of said Panchnama, the clearance of import consignment was approved by senior officers of SIIB, Customs House, Mundra and the offending goods were granted the Customs Out of Charge.
- iii. Shri Abdul Gani Khatri was looking after customs related work and he was supposed to be aware about the provisions of Customs Act, 1962. Hence, thus it is beyond doubt that Shri Abdul Gani Khatri had knowingly and intentionally signed and approved the document/Panchnama having false

and incorrect information which document/Panchnama was to be used and was used for misleading senior Customs officers in granting the illegal clearance of import goods. He abetted the doing of an act, i.e the smuggling of goods, which rendered the subject goods liable to confiscation. The aforementioned acts of omissions and commission have rendered Shri Abdul Gani Khatri- then Executive of MICT CFS, Mundra liable to penalty under Section 112(a) [read with sections 112(i) and 112(ii)] of the Customs Act, 1962. He has made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars. Therefore, he is also liable to penalty under Section 114AA of the Customs Act, 1962. However, the quantum of penalty imposed on him will be taking into account the limited role played by him in the overall conspiracy and the lack of any monetary incentive flowing back to him.

**56.17. Role and liability under Customs Act 1962 of Shri Nirav Vasani, H Card Holder in Customs Broker firm M/s. VeljiDosabhai& Sons Private Limited, Office No. 203, 204, PUB Building, Custom House, Mundra – 370201: -**

- i. I find that Shri Nirav Vasani - an H Card Holder in Customs Broker firm M/s. VeljiDosabhai& Sons Private Limited, Mundra, in his statement dated 07.10.2017 recorded under Section 108 of Customs Act, 1962 deposed that his work was to assist in work relating to custom clearance of export consignments and that relating processing factory stuffing permission of various exports etc in M/s. Velji Dosabhai & Sons. He stated that either on 21<sup>st</sup> or on 22<sup>nd</sup> September 2017, he received a call from Shri Gaurav Kumar Inspector, SIIB, Customs House, Mundra in the evening then he went to Room No. 301 where Shri Gaurav Kumar Inspector and Shri Amit Das, Superintendent were present and Shri Amit Das asked him to sign the Panchnama in date of 18<sup>th</sup> September 2017. Accordingly, he signed the Panchnama and put date as 18.09.2017.
- ii. In the said Panchnama, Shri Nirav Vasani was shown as Panch Witness No. 1 who remained present during entire Panchnama proceedings and certified that the Panchnama was as per his version and say and in token of its correctness he put his signature on the Panchnama. It was mentioned in the Panchnama that the officers had done examination of import consignment under B/E No. 3130325 dated 06.09.2017 and that it was found that the number of boxes were 1025 which were tallied with packing list and at Sr. No. 7 of Bill of Entry, the screen guard were found in excess of 110 gross. [However, the investigation and examination carried out by DRI in this case reveals that the officers mentioned in the Panchnama had not carried out any examination on 18.09.2017 as reported in the Panchnama and the number of boxes were 1026 and the screen guard were found actually less than that declared in Bill of Entry/Packing list.]
- iii. I find that Shri Nirav Vasani failed to fulfil his duty-bound-responsibility as **H Card Holder**, and also failed to comply with the provisions of Customs Act, 1962. Moreover, Shri Nirav Vasani had signed and approved document/Panchnama having false and incorrect information which document/Panchnama was to be used and was used for misleading senior Customs officers in granting the illegal clearance of import goods. He abetted the act of smuggling of impugned goods, which has rendered the subject goods liable to confiscation. Thus, Shri Nirav Vasani, then H Card

Holder of Customs Broker Firm M/s. VeljiDosabhai& Sons Private Limited, Mundra has rendered himself liable to penalty under Section 112(a) [read with sections 112(i) and 112(ii)] of the Customs Act, 1962. He also made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars, thus rendered himself liable to penalty in terms of Section 114AA of the Customs Act, 1962. However, the quantum of penalty imposed on him will be taking into account the limited role played by him in the overall conspiracy and the lack of any monetary incentive flowing back to him.

**56.18. Role and liability of M/s. Shri Suraj Singh, Shri Yatin Sadashiv Mandavkar, Shri Atul Kumar Pappu pal and Shri Vishal Gamre: -**

- i. From the facts of the case unearthed during investigation as mentioned in foregoing paras, I find that the importer shown on paper in this case is M/s. Crescent Traders, which is a Proprietary concern owned by Shri Sandesh Tanwar but it was a façade to clear the smuggled goods in illegal manner. The IEC No. 0317524631 was obtained on the basis of details and documents provided by Shri Sandesh Tanwar and it is also apparent that the payment of Customs Duty in respect of 02 import consignments imported at Mundra port were made from the Bank Accounts of 02 dummy firms M/s. Pragati Enterprises and M/s. Samarth Impex. Investigation revealed that the firms M/s. Crescent Traders, M/s. Pragati Enterprises and M/s. Samarth Impex were controlled and operated by Shri Nasir Khan and his associates whereas these firms were created on the statutory documents viz. Aadhar Card, PAN Card etc. of Shri Sandesh Tanwar, Shri Yatin Sadashiv Mandavkar and Shri AtulkumarPappupal respectively. **Shri Sandesh Tanwar, Shri Yatin Sadashiv Mandavkar and Shri Atul Kumar Pappupal** were allured with monetary gain by the direct or indirect associates of Shri Nasir Khan viz. **Shri Suraj Singh and Shri Vishal Gamre** but these people though educated unknowingly allowed the person involved to use their statutory documents in serious offences.
- ii. I also find that Various Summons were issued to **Shri Suraj Singh, Shri Vishal Gamre, Shri Yatin Sadashiv Mandavkar and Shri Atul Kumar Pappupal** but they did not appear to tender statement though the statement of Shri Yatin Sadashiv Mandavkar and Shri AtulkumarPappupal could be recorded only by visiting their residential premises. During investigation, Summons/letter dated 12.10.2020, 15.12.2020, 09.06.2021 and 08.12.2021 were issued to Shri Vishal Gamre but he did not appear before investigating officer. Accordingly, Criminal Complaint under Section 172, 174, 175, 176 of IPC was filed before Additional Chief Judicial Magistrate, Gandhidham. Further various Summons/letter dated 29.01.2020, 30.04.2020, 21.05.2020, 06.08.2020 and 09.06.2021 were issued to Shri Yatin Sadashiv Mandavkar but he also did not appear before investigating officer. Accordingly, Criminal Complaint under Section 172, 174, 175, 176 of IPC was filed before Additional Chief Judicial Magistrate, Gandhidham.
- iii. Thus, due to theacts of omission and commission on part of Shri Suraj Singh, Shri Vishal Gamre, Shri Yatin Sadashiv Mandavkar and Shri Atulkumar Pappu Pal abetted the fraudulent import and the imported goods were rendered liable for confiscation under Section 111 of the Customs Act, 1962.In view of the above, Shri Suraj Singh, Shri Vishal Gamre, Shri Yatin Sadashiv Mandavkar and Shri AtulkumarPappupal

have rendered each of them separately liable to penalty under Section 112(a) of the Customs Act, 1962. They have made/signed/used and/or caused to be made/signed/used the documents which were containing false/incorrect material particulars and did not appear to tender statement in response to Summons issued to them. Therefore, Shri Suraj Singh, Shri Vishal Gamre, Shri Yatin Sadashiv Mandavkar and Shri Atulkumar Pappu Pal are liable to penalty in terms of Section 114AA of the Customs Act, 1962. However, the quantum of penalty imposed on him will be taking into account the limited role played by him in the overall conspiracy and the lack of commensurate monetary incentive flowing back to him.

iv. I find that penalty under Section 117 of Customs Act, 1962 has also been imposed upon the Noticees. However, I find that in the instant case, Penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 has already been imposed; therefore, it is not warranted to impose penalty under Section 117 of the Customs Act, 1962 upon them.

**57. The role and liability under Customs Act 1962 of the concerned SIIB officers in this offence is discussed as hereunder:**

**57.1. Role and liability under Customs Act 1962 of Shri Amit Das, then Superintendent of Customs, SIIB, Mundra: -**

- i. From detailed investigation carried out by the DRI and various statements recorded during the course of the same I find that Shri Amit Das then Superintendent, SIIB, Mundra sought examination of goods on the basis of having received an 'information' from Shri S.J. Singh, then Deputy Commissioner of Customs, SIIB, Mundra through Shri Sudhanshu Tyagi, Preventive Officer indicating excess quantity in the consignment under B/E No. 3130325 dated 06.09.2017. The respective SIIB file of B/E No. 3130325 dated 06.09.2017 was opened by Shri Sudhanshu Tyagi, Preventive Officer which was subsequently dealt with by Shri Amit Das, Superintendent and Shri S.J. Singh, Deputy Commissioner. Later on, Shri M. Loganathan, Superintendent who was well aware of system generated file number, in place of regular file number wrote B/E No. These facts along with other statements including a back-dated panchnama of an examination that took place indicate that the file opening and processing lacked bonafide. I find that Shri S.J. Singh in his statement dated 09.05.2018 has deposed that there was no informer behind the examination of goods imported vide B/E No. 3130325 dated 06.09.2017 filed in the name of M/s. Crescent Traders and no DRI-1 was filed in the said case.
- ii. I find that Shri Amit Das, Superintendent got permission from senior officers to examine the container of said Bill of Entry but he did not examine the goods himself. Later Shri Amit Das was privy to the improper examination and panchnama proceedings conducted by Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer. However, he did not question the same or brought it to the notice of senior officers indicating his complicity and being part of the serious misconduct by the officers of SIIB.
- iii. Being aware of the violations and being part of the scheme of fabricating a false Panchnama of the examination having been conducted on 18.09.2017 he went on to give a clean chit to importer and the consignment. The duty payment of merely Rs. 5,000/- was summarily made just to get the file

cleared by senior officers. Thus, Shri Amit Das misled senior officers into clearing the consignment. Thereafter, Shri Amit Das also gave the SIIB file to the unauthorized person Shri Ankit Tarvadi for getting his consignment cleared from docks.

- iv. I find that Shri Ankit S. Travadi has affirmed in his statement dated 23.09.2017 and 29.09.2017 that he offered amount to accused Customs Officers for clearance of said goods and he was also actively involved in negotiation with the Customs Officers. The consignment under Bill of Entry 3130325 dated 06.09.2017 filed by M/s. Crescent Traders was examined by the SIIB officers viz. Shri Loganathan, Superintendent and Shri Gaurav Kumar, on 15.09.2017; that on 21st September, Shri Ankit S. Travadi went to SIIB Section where Shri Amit Das, Superintendent allegedly told him that Rs. 8.5 lakh would be required to clear the consignment and deal was ultimately fixed at Rs 8 lakh. Thus, it comes out reasonably that Shri Amit Das, Superintendent had indeed demanded illegal gratification and had negotiated the amount with Shri Mayur Mehta, the mastermind. The amount is seen to have been arranged through Angadia and had reached Mundra.
- v. I find that Shri Amit Das, Superintendent, SIIB, Customs House Mundra has admitted in his statement that he did not carry out any examination of goods on 18.09.2017 and draw the said Panchanama purported to be of 18.09.2017 on 21.09.2017. Shri Chandan Singh - (representative of Customs Broker firm M/s. All Marine Cargo Services, Gandhidham), Shri AbdulGani Khatri, - (representative of MICT CFS, Mundra), and Shri Nirav H. Vasani & Shri Ankit Travadi (both of whom were supposed to be present as independent Panchas during proceedings of said Panchanama dated 18.09.2017) have also accepted the said facts. The said Panchanama was clearly created to facilitate the clearance of smuggled consignment with minimal liability of Rs. 5,000/-, when the same was liable for confiscation. In addition to statements of Shri Mayur Mehta, Shri Ankit Travadi, Shri Chirag Travadi and Shri Nasir Khan, there are some audio clips /voice messages independently retrieved from the mobile phone of Shri Nasir Khan which show that Shri Nasir Khan and Shri Mayur Mehta sent big amount of illegal gratification to the Customs officers at Mundra.
- vi. From the above, it is evident that Shri Amit Das, Superintendent, working then at SIIB, Customs House, Mundra had deliberately misguided his superior officers to aid in clearance of subject consignment illegally. He handed over Customs File (bill of entry no. 3130325 dated 06.09.2017) to a private person and used a fabricated Panchanama in clearance of goods.

**57.2. Role and liability under Customs Act 1962 of Shri M. Loganathan, then Superintendent of Customs, SIIB, Mundra: -**

- i. I find that Shri M. Loganathan, Superintendent, working then at SIIB, Customs House Mundra carried out examination of subject goods on 15.09.2017. He had carried out examination in a casual and pre-conceived/ planned manner despite having information about excess cargo and being under directions to do 100% examination of the cargo. Despite being aware of the impugned goods being prohibited as per Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order 2012 and discrepant in various respects, he did not bring these facts to notice of his colleagues and superior officers. Shri Amit Das, Superintendent has stated in his statement that Shri M. Loganathan told

him that the subject consignment contained items viz. Screen guards, Touch Screens, USB cables but he did not inform the presence of other items viz. Power Banks etc. which were restricted for import or about other violations. Thus, it is established that Shri M. Loganathan, Superintendent, working then at SIIB, Customs House, Mundra did not carry out proper examination of imported goods even though there was supposedly information of quantity mis-declaration in the cargo. He misguided his colleagues and superior officers by providing false information which resulted into clearance of such import consignment which was containing mis-declared and undervalued goods and goods infringing IPR Rules and BIS Order.

- ii. As per the investigation carried out in the matter, it was revealed that the respective SIIB file of B/E No. 3130325 dated 06.09.2017 was opened by Shri Sudhanshu Tyagi, Preventive Officer which was subsequently dealt with by Shri Amit Das, Superintendent and Shri S.J. Singh, Deputy Commissioner. Later on, Shri M. Loganathan, Superintendent who, as per his statement though well aware of procedure of opening files i.e. system generated file number, even then he wrote B/E No. upon the file instead of proper file number. This indicates strong suspicion that the official file number was deliberately not given by Shri M. Loganathan for mala-fide reasons.
- iii. Further, Shri M. Loganathan, Superintendent or Shri Gaurav Kumar, Preventive Officer without being officially authorized, proceeded to conduct the examination of consignment covered under Bill of Entry no. 3130325 dated 06.09.2017. Nonetheless, Shri M. Loganathan, Superintendent or Shri Gaurav Kumar, Preventive Officer would have discovered the violations on visual examination and would have definitely noticed the misdeclarations which were obvious in nature since some goods were branded in nature, some were of BIS purview, IPR violation would also have been apparent etc; but they made no mention of it in any official record or did not convey to their Deputy Commissioner in any manner.
- iv. I find that statement of Shri Ankit Travadi and statements of Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer revealed that actually the inspection/examination was done very cursorily.
- v. I also find that Shri M. Loganathan in his statement stated that "*we checked some packages randomly and found it to be in accordance with packing list*". However, Shri Gaurav Kumar, Preventive Officer in his statement has stated that "*However, some boxes with markings "PHP" did not tally with the packing list*". Being a Senior Officer on the spot, Shri M. Loganathan concealed this fact and made no report about it. Similarly, Shri Gaurav Kumar, Preventive Officer also did not do so.
- vi. I find that Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer in their respective statements stated that only 4-5 cartons were fully opened by them and examined against the order on file to conduct full examination of the contents of the container. Shri M. Loganathan, Superintendent mentioned that counting was completed late in evening so no proper examination could be conducted. Whereas, the examination could have continued on the next working day (Saturday or Sunday). All this indicates mala-fide intention on the part of Shri M. Loganathan, Superintendent. Clearly, he did not bring on official record the

discrepancies/ smuggling noticed during examination. The outcome of samples drawn on 15.09.2017 was also not drawn on record.

- vii. Further, Shri M. Loganathan, Superintendent has stated that he knew Shri Ankit Travadi for quite some time (years) in his official capacity. It indicates that he would be aware that Shri Ankit Travadi had no authorisation to work at Mundra port. Inspite of knowing about Shri Ankit Travadi, Shri M. Loganathan still interacted with him and dealt with him as an owner of import consignment or owner's representative.
- viii. I find that Shri Ankit Travadi in his statement dated 29.09.2017 stated that on 18<sup>th</sup> Sep., 2017, both officers viz. Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer were present in SIIB office when Mayur Mehta negotiated with them for clearance of his consignment. They were again present as a team on 21<sup>st</sup> Sep., 2017 during discussions amongst themselves after which Shri Amit Das, Superintendent allegedly demanded Rs. 8.5 lakh of illegal gratification from Shri Ankit Travadi, which is also established by voice message recovered from mobile phone of Shri Ankit Travadi. This is confirmed by statement dated 22.10.2017 of Sh Mayur Mehta. Shri Mayur Mehta also revealed that he met Shri Longanathan and Shri Gaurav in SIIB Office on 20.09.2017 .
- ix. I find that massive discrepancies between the declared goods and actual goods in the said container as discovered by DRI and concealing them from official records, seen in conjunction with facts stated by Shri Ankit Travadi in his statement indicate that Shri M. Loganathan, Superintendent has involved in serious misconduct which enabled the Importer in the conspiracy to defraud government exchequer for illegal monetary gains.

**57.3. Role and liability under Customs Act 1962 of Shri Gaurav Kumar, then Preventive Officer of Customs, SIIB, Mundra:-**

- i. I find that Shri Gaurav Kumar, Preventive Officer, working then at SIIB, Customs House Mundra carried out examination of subject goods on 15.09.2017 with Shri Loganathan, Superintendent without proper order. He did not carry out examination properly and failed to find out exact quantity of goods despite having information of mis-declaration in respect of goods covered under the subject Bill of Entry. Despite coming to know of the fact of goods being prohibited as per Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order 2012, as also discrepant in various other respects he did not bring these facts to notice of his colleagues and superior officers verbally or in writing. He aided Shri Amit Das and Loganathan in fabricating a false Panchanama by way of obtaining signatures of concerned persons on back date. The said Panchanama was used in misguiding his superior officers to aid in clearance of subject consignment.
- ii. As stated by Shri M. Loganathan, Superintedent and Shri Gaurav Kumar, Preventive Officer in their respective statements, only 4-5 cartons were fully opened by them and examined as against the order on file to conduct full examination of the contents of the container. The outcome of samples drawn on 15.09.2017 was also not taken on record while the consignment was given clearance by SIIB.

- iii. It also is clear from the statement of Shri Amit Das, Superintendent that verbally some incomplete, inadequate and wrong report was told during discussions by Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer to other officers of SIIB including Shri Amit Das. Hence by such incomplete, inadequate and wrong verbal report to Shri Amit Das Superintendent, Shri Gaurav Kumar, Preventive Officer caused to be made / used a panchnama which was false or incorrect in many material particulars.
- iv. As stated by Shri Ankit Travadi in his statement dated 29.09.2017, that on 18<sup>th</sup> Sep., 2017, both officers viz. Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer were present in SIIB office when Mayur Mehta negotiated with them for clearance of his consignment. They were again present as a team on 21<sup>st</sup> Sep., 2017 during discussions amongst themselves after which Shri Amit Das, Superintendent allegedly demanded Rs. 8.5 lakh of illegal gratification from Shri Ankit Travadi which is also borne out by voice message recovered from mobile phone of Shri Ankit Travadi. Shri Ankit Travadi in his statement dated 29.09.2017 deposed that on 20<sup>th</sup> Sep., 2017 Shri Gaurav Kumar, Preventive Officer again - for the second time - unauthorisedly conducted examination of goods and took samples of USB Cables whereas, this time no examination report or Panchnama was brought on record. The outcome of samples drawn by Shri Gaurav Kumar was also not taken on record while the consignment was given clearance by SIIB and is not known.
- v. Thus, from aforementioned facts it is established that Shri Gaurav Kumar, Preventive Officer has indulged in serious misconduct which enabled the Importer in his conspiracy to defraud government exchequer for illegal monetary gains. He had constant interaction with the fixers (Sh Ankit and Sh Chirag) of the mastermind Shri Mayur Mehta, who were operating without any authorisation in Mundra Customs area and with Shri Mayur Mehta on 18<sup>th</sup> and 21<sup>st</sup> Sep., 2017. In his statement one of the panchas Shri Nirav Vasani has stated that on 21<sup>st</sup> / 22<sup>nd</sup> Sep., 2017, it was Gaurav Kumar, Preventive Officer who had called him on telephone and had asked him to come to Room No. 301 of Customs House to sign the Panchnama.

**57.4. Whereas, as per Section 2(39) of Customs Act, 1962, "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113 of the Customs Act, 1962.**

- (i) Shri Amit Das, Shri M. Loganathan and Shri Gaurav Kumar, officers of Customs, posted then in SIIB, Customs House, Mundra knowingly and actively have aided the smugglers' in facilitating the smuggling of import goods. They have concerned themselves in dealing in goods which they had reason to believe were liable to confiscation under Section 111 of Customs Act, 1962. They also either created or helped in creation of a false Panchnama which was false and incorrect in many material particulars and was used to clear the consignment which was blatantly mis-declared and violative of law on various fronts, already discussed in detail in preceding paragraphs. Undoubtedly, the money trail evidence involving transfer of money through an Angadiya to Mundra is inconclusive in confirming that it was handed over to the officers. However, the paper trail and the statements recorded clearly bring out gross misconduct of these officers which has to be concluded was meant to aid in improperly clearing the mis declared consignment.

(ii) Thus, the investigation in the instant case clearly bring out that Shri Amit Das, Superintendent, Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer of Customs have abetted the fraudulent import and rendered the subject goods liable for confiscation under Section 111 of Customs Act, 1962. They have knowingly allowed and/or abetted clearance of the offending goods from Customs and made/signed/used and/or caused to be made/signed/used the documents which were containing false/ incorrect material particulars. Thus, all these officers have rendered themselves separately liable to penalty under **Section 112(a) and (b) [read with Sections 112(i), Section 112 (ii)] and Section 114AA of the Customs Act, 1962** for their acts of omission and commission.

(iii) It is pertinent to mention here that taking into consideration the nature of offence, the role and liability of the officers involved and evidence available on record there was reason to believe that Shri Amit Das, Superintendent and Shri Gaurav Kumar, Preventive Officer, while working in SIIB of Customs House, Mundra had committed offences punishable under the Customs Act, 1962 under the Sections 132, 135 and 136 of the said Act and Shri M. Loganathan, Superintendent had committed offences punishable under Sections 135 and 136 of the said Act. Accordingly, the above-mentioned officers of SIIB, Customs House Mundra, viz., **Shri Amit Das, Superintendent, Shri M. Loganathan, Superintendent and Shri Gaurav Kumar, Preventive Officer** were arrested on 08.10.2017 under Section 104 of Customs Act, 1962. The officers were produced before Chief Judicial Magistrate, Bhuj vide Production Memo dated 08.10.2017 who granted them judicial custody. The officers filed applications for Bail under Section 437 of Criminal Procedure, 1973 on 10.10.2017 which was rejected by Chief Judicial Magistrate, Bhuj vide Order dated 13.10.2017. The officers then preferred Misc. Criminal application no. 839 of 2017 before Sessions Judge, District Court, Bhuj for regular bail under Section 439 of Cr. PC, 1973 which was also rejected by Sessions Judge, District Court, Bhuj, vide Order dated 14.11.2017. The officers also preferred application for regular bail at Hon'ble High Court of Gujarat, against which DRI submitted reply affidavit dated 29.11.2017, but the application for regular bail filed before Hon'ble High Court of Gujarat was withdrawn by the officers, as appearing from Oral Order dated 04.12.2017 of Hon'ble High Court of Gujarat. Thereafter, the officers were granted bail under Section 167 (2) of Cr. PC by Chief Judicial Magistrate, Bhuj vide Order dated 08.12.2017.

**57.5. Role and liability under Customs Act 1962 of Shri Deepak Khatri, Superintendent, working then in SIIB, Customs House, Mundra: -**

- i. I find that Shri Ankit Travadi, employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Mundra, in his statement dated 29.09.2017 interalia stated that Shri Deepak Khatri told him that the goods were undervalued and there was involvement of duty evasion in the consignment. Shri Ankit Travadi also stated that Shri Deepak Khatri told him that the duty had to be paid either here or there ("yahan ya wahan"). However, besides this solitary incident, I find that the neither DRI or the investigation that was carried out failed to bring forth the required money trail or any further evidencial document to establish the case against him.

- ii. I find that Shri Deepak Khatri in his statement dated 06.10.2017 has stated that he had seen the file related to consignment of M/s. Crescent Traders casually and asked Shri Ankit Travadi and Shri Mayur Mehta to meet Shri Loganathan. With this alone, I find that connivance of Shri Deepak Khatri is not established.
- iii. I also find that CBI in their report dated 21.11.2019 has stated that no criminal act is revealed against Shri Deepak Khatri and accordingly no action has been recommended against Shri Deepak Khatri.
- iv. From the above discussion and evidences, it is not conclusive that Shri Deepak Khatri had connived with the importers in defrauding the govt. exchequer by way of evading duty. Further, the CBI, in their investigation, has also not found any criminal act done by Shri Deepak Khatri. Therefore, I find that the allegations of investigation agency that he was involved in the improper clearance of the impugned goods is not supported by facts on record. In view of above, I **drop** the penalty proposed by investigation agency against Shri Deepak Khatri under Section 112(a) and Section 112(b) of the Customs Act, 1962.

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

**ORDER**

**58.1. IN RESPECT OF SCN's NO F.NO. GEN/ADJ/COMM/217/2021-ADJN-O/O PR COMM'R-CUS-MUNDRA DATED 22.09.2022 and DRI/AZU/GRU-45/2017-Crescent dated 10.09.2018:**

- (i) I reject the declared value value of goods imported under Bill of Entry No. 3130325 dated 06.09.2017 amounting to **Rs. 14,87,806/-** (Rupees Fourteen Lakh Eighty-Seven Thousand, Eight Hundred and Six Only); in terms of Rule 12 of CVR, 2007; and order to re-determine the value of the same as **Rs. 1,31,90,485/-** in terms of Rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 readwith Section 14 of the Customs Act, 1962.
- (ii) I Reject the classification of Mobile phone battery, Car mobile phone Charger/Adapter /USB Charger, Touch Screen and USB data cable/charging cable done by the importer in the Bill of Entry no. 3130325 dated 06.09.2017 under CTH No. 85299090, 85299090, 85177090 and 85183000 and 85044030 and re-classify them under appropriate CTH No. 85078000, 85044030, 85299090 and 85442090, respectively of Customs Tariff as mentioned at Sr. No. 2, 3, 14 and 16 of Annexure X to this Show Cause Notice.
- (iii) I order to confiscate the impugned goods i.e. goods mentioned at Annexure B and Anexure E of Subject SCN having re-determined value at **Rs. 1,11,28,575/-** (Rs.1,30,59,885/- - Rs.18,79,560/- - Rs. 51,750/-) under Section 111(l) and Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs 15,00,000/- (Rupees Fifteen Lakhs Only)** under Section 125 of the Customs Act, 1962.

(iv) I order to absolutely confiscate the impugned goods i.e. goods mentioned at Annexure C and Annexure D of Subject SCN having re-determined value at **Rs. 19,31,310/-** under Section 111(d) of the Customs Act, 1962.

(v) I confirm the demand of Customs Duty amounting to **Rs. 43,30,064/-** (**Rupees Forty-Three Lakhs Thirty Thousand and Sixty-Four only**) payable on the aforesaid goods mentioned at (ii) from **M/s Crescent Traders (IEC No. 0317524631)** through its beneficiary owner of the goods **Shri Nasir Khan** in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962; along with interest at appropriate rate under Section 28AA of the Customs Act, 1962. The Customs Duty of **Rs. 5,47,066/-** paid by them would be appropriated against their said total liability of duty.

(vi) I impose penalty of **Rs. 43,30,064/-** (**Rupees Forty-Three Lakhs Thirty Thousand and Sixty-Four only**) upon **Shri Nasir Khan (Beneficial owner of the import goods)** under Section 114A of the Customs Act, 1962, however, I refrain from imposing penalty upon him under Section of 112(a)(ii) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under Section 112 and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112(a)(ii) is not imposable.

(vii) I impose penalty of **Rs 2,00,000/-** (**Rupees two lakh only**) upon **Shri Uves Khakhu** (Associate of beneficial owner) under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.

(viii) I impose penalty of **Rs 1,00,000/-** (**Rupees One Lakh only**) upon **Ms. Swati Vora Alias Monika** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.

(ix) I impose penalty of **Rs 2,00,000/-** (**Rupees Two Lakh only**) upon **M/s Dabke Clearing & Forwarding Pvt. Ltd.** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.

(x) I impose penalty of **Rs 3,00,000/-** (**Rupees Three Lakh only**) upon **Shri Ankit Shaileshbhai Travadi** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.

(xi) I impose penalty of **Rs 1,00,000/-** (**Rupees One Lakh only**) upon **Shri Mohammad Hanif Fakir mohammad Shaikh** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.

(xii) I impose penalty of **Rs 1,00,000/-** (**Rupees One Lakh only**) upon **Shri Mohammad Selia** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.

(xiii) I impose penalty of **Rs 1,00,000/-** (**Rupees One Lakh only**) upon **Shri Mohammad Imran Navsariwala** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.

(xiv) I impose penalty of **Rs 1,00,000/-** (**Rupees One Lakh only**) upon **Shri Bhavesh N. Gori** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962, for the reasons discussed hereinabove.

(xv) I impose penalty of **Rs 1,00,000/-** (**Rupees One Lakh only**) upon **Shri Chandan Singh** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962, for the reasons discussed hereinabove.

- (xvi) I impose penalty of **Rs 3,00,000/- (Rupees Three Lakh only)** upon **M/s All Marine Cargo Services** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962, for the reasons discussed hereinabove.
- (xvii) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **M/s Amit Kumar Singh** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962, for the reasons discussed hereinabove.
- (xviii) I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand only)** upon **Shri Chirag Shaileshbhai Travadi** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.
- (xix) I impose penalty of **Rs 25,000/- (Rupees Twenty-Five Thousand only)** upon **Shri Abdul Gani Khatri** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.
- (xx) I impose penalty of **Rs 25,000/- (Rupees Twenty-Five Thousand only)** upon **Shri Nirav Vasani** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.
- (xxi) I impose penalty of **Rs 25,000/- (Rupees Twenty-Five Thousand only)** upon **Shri Atul Kumar Pappu Pati** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.
- (xxii) I impose penalty of **Rs 25,000/- (Rupees Twenty-Five Thousand only)** upon **Shri Yatin Sadashiv Mandvkar** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.
- (xxiii) I impose penalty of **Rs 25,000/- (Rupees Twenty-Five Thousand only)** upon **Shri Suraj Singh** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.
- (xxiv) I impose penalty of **Rs 25,000/- (Rupees Twenty-Five Thousand only)** upon **Shri Vishal Gamre** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.
- (xxv) I impose penalty of **Rs 2,00,000/- (Rupees Two Lakh only)** upon **Shri Amit Das** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.
- (xxvi) I impose penalty of **Rs 2,00,000/- (Rupees Two Lakh only)** upon **Shri M. Loganathan** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.
- (xxvii) I impose penalty of **Rs 2,00,000/- (Rupees Two Lakh only)** upon **Shri Gaurav Kumar** under Section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.
- (xxviii) I refrain from imposing Penalty upon **M/s Crescent Traders, (IEC No. 0317524631)** under Section 112 and 114A of the Customs Act, 1962, for the reasons discussed in hereinabove.
- (xxix) I refrain from imposing penalty upon **Shri Shera Ram Mehra** under section 112(a)/112(b) of the Customs Act, 1962, for the reasons discussed hereinabove.
- (xxx) I refrain from imposing penalty upon **Shri Deepak Khatri** under section 112(a)/112(b) of the Customs Act, 1962, for the reasons discussed hereinabove.

- (xxxi) I impose penalty of **Rs 5,00,000/- (Rupees Five Lakh only)** upon **Shri Nasir Khan** (Actual beneficial owner) under Section 114(AA) of the Customs Act, 1962.
- (xxxii) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **Shri Uves Khakhu** (Associate of beneficial owner) under Section 114(AA) of the Customs Act, 1962.
- (xxxiii) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **Ms. Swati Vora Alias Monika** under Section 114(AA) of the Customs Act, 1962.
- (xxxiv) I impose penalty of **Rs 1,50,000/- (Rupees One Lakh Fifty Thousand only)** upon **M/s Dabke Clearing & Forwarding Pvt. Ltd.** under Section 114(AA) of the Customs Act, 1962.
- (xxxv) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **Shri Ankit Shaileshbhai Travadi** under Section 114(AA) of the Customs Act, 1962.
- (xxxvi) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **Shri Mohammad Hanif Fakir mohammad Shaikh** under Section 114(AA) of the Customs Act, 1962.
- (xxxvii) I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand only)** upon **Shri Mohammad Selia** under Section 114(AA) of the Customs Act, 1962.
- (xxxviii) I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand only)** upon **Shri Bhavesh N. Gori** under Section 114(AA) of the Customs Act, 1962.
- (xxxix) I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand only)** upon **Shri Chandan Singh** under Section 114(AA) of the Customs Act, 1962.
- (xli) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **M/s All Marine Cargo Services** under Section 114(AA) of the Customs Act, 1962.
- (xlii) I impose penalty of **Rs 1,00,000/- (Rupees One Lakh only)** upon **M/s Amit Kumar Singh** under Section 114(AA) of the Customs Act, 1962.
- (xliii) I impose penalty of **Rs 25,000/- (Rupees Twenty-Five Thousand only)** upon **Shri Abdul Gani Khatri** under Section 114(AA) of the Customs Act, 1962.
- (xlii) I impose penalty of **Rs 25,000/- (Rupees Twenty-Five Thousand only)** upon **Shri Nirav Vasani** under Section 114(AA) of the Customs Act, 1962.
- (xliiv) I impose penalty of **Rs 25,000/- (Rupees Twenty-Five Thousand only)** upon **Shri Atul Kumar Pappu Pal** under Section 114(AA) of the Customs Act, 1962.
- (xlv) I impose penalty of **Rs 25,000/- (Rupees Twenty-Five Thousand only)** upon **Shri Yatin Sadashiv Mandvkar** under Section 114(AA) of the Customs Act, 1962.
- (xlivi) I impose penalty of **Rs 10,000/- (Rupees Ten Thousand only)** upon **Shri Suraj Singh** under Section 114(AA) of the Customs Act, 1962.

- (xlvii) I impose penalty of **Rs 10,000/- (Rupees Ten Thousand only)** upon **Shri Vishal Gamre** under Section 114(AA) of the Customs Act, 1962.
- (xlviii) I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand only)** upon **Shri Amit Das** under Section 114(AA) of the Customs Act, 1962.
- (xlix) I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand only)** upon **Shri M. Loganathan** under Section 114(AA) of the Customs Act, 1962.
- (l) I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand only)** upon **Shri Gaurav Kumar** under Section 114(AA) of the Customs Act, 1962.
- (li) I refrain from imposing penalty on M/s Crescent Traders, (Shri Sandesh Tanwar, Proprietor) under section 114(AA) of the Customs Act, 1962, for the reasons discussed hereinabove.

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

  
(K. Engineer)  
Principal Commissioner of Customs,  
Custom House Mundra.  
Date: 18.09.2024.

**F.No. CUS/ADJ/COMM/217/2021-Adjn**

**BY SPEED POST/BY EMAIL/BY HAND/ NOTICE BOARD OR BY OTHER  
LEGALLY PERMISSIBLE MEANS:**

To,

1. M/s. Crescent Traders (IEC No. 0317524631)  
Proprietor-Shri Sandesh Tanwar S/o Shri Gopichand Tanwar, Residing at  
R/o-Garibacha Wada, Dombivali (W), Tal-Kalyan, Dist-Thane,  
Maharashtra), 1/10, Sai Dham Colony, Mahatma Phule Road, Maharashtra  
Nagar, Dombiwali West- 421202, Dist-Thane, Maharashtra
2. Shri Nasir Khan,  
F.No. 18, 5th Floor, Central Court,  
Motlibhai Street, Agripada,  
Mumbai Central, Mumbai-400011.
3. Shri Uves Khakhu, Room No- 4,  
Irfan House, 1 Floor, Greenland CHS, Opp. Nair Road,  
Agripada, Mumbai- 400011
4. Ms. Swati Vora alias Monika,  
207, Sai Krupa Building, Goddev Naka,  
Bhayander (East), Thane (Maharashtra)
5. M/s. Dabke Clearing & Forwarding Pvt. Ltd.,  
61, Rajendra S. Tabela, Sahar Cargo Complex,  
Sutar Pakhadi, Sahar Village, Andheri (E), Mumbai -400099.
6. Shri Ankit Travadi, S/o- Shri Shaileshbhai Travadi,

**employee of M/s. Dabke Clearing & Forwarding Pvt. Ltd., Umiya Nagar,  
Near Ganesh Temple, Mundra**

7. **Shri Shera Ram Mehra,  
Proprietor of M/s. Krishna Shipping and Logistics, Office No. 49, Ground  
Floor, Manali Tower, Plot No. 110, Sector-8, Gandhidham.**
8. **Shri Mohd. Hanif Fakir Mohammad Shaikh,  
306, C-Wing, Jyoti Apartment, Narayan Nagar, Mumbra, Thane,  
Maharashtra.**
9. **Shri Mohammad Selia, at Shop No. 83,  
Central Straps, Abedi Building,  
Ibrahim Rehmatulla Marg, Nr. Jabbari Hotel,  
Nr. J.J. Hospital, Bhendi Bazar, Mumbai.**
10. **Mohammad Imran Navsariwala,  
S/o Mohd. Yunus Navsariwala, 1603, A-Wing,  
16th Floor, Orchid Enclave, Mumbai, Central-8, Maharashtra**
11. **Shri Bhavesh N. Gori,  
H-Card Holder of M/s. All Marine Cargo Services, Gandhidham. R/o-Plot  
No. 12, Room No. 12, Opp-U S Villas, Baroi Road, Mundra.**
12. **Shri Chandan Singh,  
H-Card Holder of M/s. All Marine Cargo Services,  
Gandhidham, R/o-62/G, Kalapurna Ashish,  
Opp.-St. Xavier's School, Baroi Road, Mundra.**
13. **M/s. All Marine Cargo Services,  
Office No. 111, 112B, Rishabh Corner, Sector-8,  
Gandhidham-370201(Kutch)**
14. **Shri Amit Kumar Singh,  
S/o-Shri Ashok Kumar Singh,  
Plot No. 732, DC-5, Adipur-370205 (Kutch).**
15. **Shri Chirag Shaileshbhai Travadi,  
S/o- Shri Shaileshbhai Travadi, employee of M/s. Dabke Clearing &  
Forwarding Pvt. Ltd.,  
R/o-Umiya Nagar, Near Ganesh Temple, Mundra.**
16. **Shri Abdul Gani Katri,  
Executive, MICT CFS, New Mundra Port Road,  
Navinal, Mundra, Kutch, Gujarat.**
17. **Shri Nirav Vasani,  
H Card Holder in Customs Broker Firm M/s. Velji Dosabhai & Sons  
Private Ltd. Office No. 203- 204, PUB Building Customs House, Mundra  
Port, Kutch, Gujarat**
18. **Shri Atul Kumar Pappu PalShriAtulkumar Pappu Pal,**

**204/13-2, Classic Ami Park, Gokhivare,  
Vasai East, Dist-Thane, Maharashtra.**

**19. Shri Yatin Sadashiv Mandvkar**  
**Room No. 104, Om Shree Gayatri Park, Tulinj Road,**  
**Near Jain Mandir, Shanti Nagar, Nalasopara East,**  
**Vasai East, Dist-Thane, Maharashtra.**

**20. Shri Suraj Singh,**  
**R/o Ambernath (W), Nr. Fatima School,**  
**Taluka-Ambernath, Distt. Thane, Maharashtra.**

**21. Shri Vishal Anant Gamre S/o Shri Anant Gamre,**  
**Room No. 204, Chandresh Hills Building,**  
**BMC Colony, Near Krist Raj School,**  
**Gala Shirdinagar, Vasai, Thane-401209, Maharashtra.**

**22. Shri Amit Das, then Superintendent, Customs House, Mundra.**  
**23. Shri M. Loganathan, then Superintendent, Customs House, Mundra.**  
**24. Shri Gaurav Kumar, then Preventive Officer, Customs House, Mundra.**  
**25. Shri Deepak Khatri, then Superintendent, Customs House, Mundra.**

**Copy to:**

1. The Chief Commissioner of Customs, CCO, Ahmedabad
2. The Additional Director General, DRI, Lucknow Zonal Unit, 2/31 Vishal Khand, Gomti Nagar, Lucknow(UP)-226010.
3. The Additional DGFT, Udyog Bhawan, H-wing, Gate No-02, Maulana Azad Road, New Delhi -110011 for information and necessary action.
4. The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
5. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
6. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
7. Notice Board
8. Guard File.