

DIN-20241171ML000000C878

	<p><b>OFFICE OF THE COMMISSIONER</b> <b>CUSTOM HOUSE, KANDLA</b> <b>NEAR BALAJI TEMPLE, NEW KANDLA</b> <b>Phone : 02836-271468/469 Fax: 02836-271467</b></p>
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A	File No.	GEN/ADJ/COMM/181/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-13-2024-25
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	08.11.2024
E	Date of Issue	08.11.2024
F	SCN No. & Date	GEN/ADJ/COMM/181/2024-Adjn-O/o Commr-Cus-Kandla dated 23.04.2024 and Corrigendum dated 09.09.2024
G	Noticee / Party / Importer / Exporter	M/s. Aditya Exports and others

1. This Order - in - Original is granted to the concerned free of charge.
2. 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:  

**Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,**  
**2nd Floor, Bahumali Bhavan Asarwa,**  
**Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004**
3. Appeal shall be filed within three months from the date of communication of this order.
4. 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. 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. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in disupte, or penalty wise penalty alone is in dispute.

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**BRIEF FACTS OF THE CASE-**

M/s Aditya Exports, Shed No. 85-88, Sector-I, Kandla Special Economic Zone, Gandhidham (IEC/PAN: 3798000212/AAFFA0429C), (hereinafter referred to as “Noticee No. 1”) had been granted Letters of Approval (LOA) No. KASEZ/IA/1909/2002-03 dated 3/3/2003 00:00:00, to perform operations in Kandla Special Economic Zone as per the provisions of SEZ Act, 2005 (for brevity “SEZ Act”), read with SEZ Rules, 2006 (for brevity “SEZ Rules”) and warehousing activity was added to this existing LOA of Aditya Exports vide F.No. KASEZ / IA / 1909 / 02-03 – 3916 dated 09.11.2020(**RUD 1**).

2. Utilizing the above-mentioned approval from KASEZ, from 28.10.2022 till 06.03.2023, the Noticee No. 1 had imported 64 containers (40’ each) of black pepper said to be of Afghanistan origin. Out of the said 64 import containers (1792 MT valued at INR 52.64 Cr. Approx.), Bills of Entry of 54 containers (1512 MT valued at INR 77.47 Cr. approximately), for sale in DTA as it is, without any processing, were filed by M/s Cuthbert Winner LLP (hereinafter referred to as “Noticee No. 2”) and M/s Cuthbert Oceans LLP (hereinafter referred to as “Noticee No. 3”) (IEC No.: AAPFC1386C and AAPFC1389P respectively). Black pepper otherwise attracts a total Customs duty of 77% [excluding IGST].

3. Directorate of Revenue Intelligence, Zonal Unit, Ludhiana (DRI) gathered intelligence that Noticee No. 1 was importing ‘Black Pepper’ below CIF value of Rs. 500/- kg in violation of LOA Condition as well as the Country of Origin shown in the documents submitted during the import were not genuine inasmuch as ships/vessels on which goods had shown to be transported from Afghanistan to Bandar Abbas, Iran to Jebel Ali, Dubai, never docked/visited Bandar Abbas Port during the transit period shown on the documents(**e-mails from shipping lines as RUD-2**). It was also found out that M/s Aditya Exports was already under investigation by DRI Gandhidham and was booked in November, 2022 for showing bogus exports of arecanuts and black pepper to Bangladesh.

3.1 As per condition No. IV in the permission letter, issued vide F.No. KASEZ / IA / 1909 / 02-03 – 3916 dated 09.11.2020, to the Noticee No. 1 by KASEZ and also as per Rule 19 of the SEZ Rules, 2006, the warehousing permission was allowed to the Noticee No. 1 only if the CIF value of goods at Sr. No 8 was Rs. 500 Per Kg. The said warehousing condition and import table Sr. No. 8 reads as follows:-

*iv) Further, with respect to warehoused item at Sr. No. 1 the same is allowed to be warehoused provided Import CIF value is Rs. 720 /- per kg or more, for item at Sr. No. 5, the same is allowed to be warehoused provided that the import CIF value is Rs. 251- per Kg or more, for item at Sr. No. 8, the same is allowed to be warehoused provided that the import CIF value is Rs. 500/- per Kg.*

		08028090 08029000	
6	Dates	08041010 08041020 08041030	Dates Fresh (excluding wet dates) Dates Soft( Khayzur or wet dates) Dates-Hard (Chhohara or kharek)
7	Raisins	08062010	Raisins
8	Pepper	09041110 09041130 09041140	Pepper, long Black pepper, garbled Black pepper ungarbled
9	Chocolate	18061000 to 18069090	Chocolate and other food preparations containing cocoa.

4. On analysis of import data and that for DTA clearance it was found that 280 MT of Black Pepper, which was declared to be of Afghanistan origin and imported vide SEZ Bills of Entry No. (Thoka No.) 1002182 dt 11.02.2023, 1002472 dt. 16.02.2023, 1002948 dt. 25.02.2023 and

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1003415 dt 06.03.2023, had not yet been cleared into DTA till date. The details of them are as follows:-

Table-1

REQUEST ID	THOKA / NOTING NUMBER	REQUEST SUBMISSION DATE	REQUEST ASSESSMENT DATE	SUPPLIER COUNTRY	COUNTRY OF ORIGIN	CTH NO.	ITEM DESCRIPTION	QUANTITY	Goods Measurement	UNIT PRICE (IN INVOICE CURRENCY)	CIF VALUE FOR THE ITEM IN INR
172300278124.00	1002182	11-Feb-23	13-Feb-23	UAE	Afghanistan	9041140	BLACK PEPPER (CO NO-15232 DTD 07.11.2022 , 15233 DTD 07.11.2022)	56	MTS	3500	16401463.75
172300484506.00	1002472	16-Feb-23	16-Feb-23	UAE	Afghanistan	9041140	BLACK PEPPER (CO NO 15301 DTD 09.11.2022 , 15302 DTD 09.11.2022)	56	MTS	3500	16401463.75
172300484705.00	1002948	25-Feb-23	26-Feb-23	UAE	Afghanistan	9041140	BLACK PEPPER (CO NO-15241 DTD 08.11.2022,15299 DTD 09.11.2022,15300 DTD 09.11.2022)	84	MTS	3500	24869772.38
172300515730.00	1003415	6-Mar-23	6-Mar-23	UAE	Afghanistan	9041140	BLACK PEPPER (CO NO-15303 DTD 09.11.2022,15304 DTD 09.11.2022,15305 DTD 09.11.2022)	84	MTS	3500	24825176.25

5. The scrutiny of the documents in respect of above four consignments revealed as under:-

5.1.1 On import invoices as well as on Bills of Entry submitted at the time of importation of the said goods (Afghanistan origin Black Pepper) into KASEZ by Noticee No. 1 the import price of the goods is USD 3500 per metric tonne (**USD 3.5 / INR 290 per kg**) **which is below the CIF value of Rs.500/- allowed under LOA** dated 09.11.2020 and in contravention to the provisions of Special Economic Zones Act, 2005 read with SEZ rules, 2006 and since the conditions laid out in the LOA are not fulfilled the goods become prohibited in nature and cannot be imported into India and SEZ.

5.1.2 The “Prohibited Goods” are defined in Section 2(33) of the Customs Act, 1962 as meaning “any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force”. Thus, a prohibition under any other law can be enforced under the Customs Act, 1962. The Hon’ble Apex Court in the case of Commissioner of Central Excise & Customs A. P vs Suresh Jhunjhunwala&Ors cited as 2006 (203) E.L.T. 353 (S.C.) in para 13 of the judgment has held that the definition of prohibited goods is a broad one. The said provision not only brings within its sweep an import or export of goods which is subject to any prohibition under the said Act; but also, any other law for the time being in force.

5.1.3 The Hon’ble Supreme Court of India in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi cited as 2003 (155) E.L.T. 423 (S.C.) has held that Prohibition of importation or exportation could be subject to certain prescribed conditions, to be fulfilled before or after clearance of goods - If conditions are not fulfilled, it may amount to prohibited goods - Sections 2(33), 111 and 113(d) of the Customs Act, 1962. The relevant paragraphs are reproduced below:-

- “8. Further, Section 2(33) of the Act defines “prohibited goods” as under: -*
- “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.”*
- 9. From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either ‘absolutely’ or ‘subject to such conditions’ to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes*

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*specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in ShekihMohd. Omer v. Collector of Customs, Calcutta and Others [(1970) 2 SCC 728] wherein it was contended that the expression ‘prohibition’ used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negated the said contention and held thus :-*

*‘...What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to “any prohibition imposed by any law for the time being in force in this country” is liable to be confiscated. “Any prohibition” referred to in that section applies to every type of “prohibition”. That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression “any prohibition” in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions “prohibiting”, “restricting” or “otherwise controlling”, we cannot cut down the amplitude of the word “any prohibition” in Section 111(d) of the Act. “Any prohibition” means every prohibition. In other words, all types of prohibitions. Restrictions is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues.”*

**5.2.** During scrutiny of all the bill of lading documents submitted in KASEZ by Noticee No. 1 corresponding for importation of Black pepper of Afghanistan origin in respect of above consignments shown to be transported from Afghanistan to Bandar Abbas Port of Iran via land route and thereafter through sea route from Bandar Abbas to Jebel Ali and then to Mundra Port in India. The vessel and voyage details of the above-mentioned consignments are stated in the table as follows:-

**Table-2**

REQUEST ID	IMPORT BE THOKA / NOTING NUMBER	IMPORT BE REQUEST SUBMISSION DATE	BL Number	BL Date	VESSEL NAME	IMO CODE	VOYAGE NUMBER	PORT OF RECEIPT	PORT OF LOADING	PORT OF DISCHARGE	PORT OF DELIVERY
172300278124.00	1002182	11.02.2023	ASCLJEAMUN2301884	30.01.2023	STEPHANIE C	9694531	2301W	BANDAR ABBAS	BANDAR ABBAS	MUNDRA	MUNDRA
172300484506.00	1002472	16.02.2023	ASCLJEAMUN2301959	10.02.2023	NORTHERN PRACTISE	9450301	0034	BANDAR ABBAS	BANDAR ABBAS	MUNDRA	MUNDRA
172300484705.00	1002948	25.02.2023	ASCLJEAMUN2301984	20.02.2023	GULF BARAKAH	9464314	2303E	BANDAR ABBAS	BANDAR ABBAS	MUNDRA	MUNDRA
172300515730.00	1003415	06.03.2023	ASCLJEAMUN2302011	22.02.2023	WADI BANI KHALID	9352391	2303E	BANDAR ABBAS	BANDAR ABBAS	MUNDRA	MUNDRA

Further, emails dated 19.04.2023 were received from the operators of Vessels SSL Mumbai (01 consignment), GFS Giselle (06 consignments) and Majd (03 consignments) regarding no movement from Bandar Abbas port of Iran. Also emails dated 20.04.2023 were received from the operators of Vessels Gulf Barakah (01 consignment), Northern Practice (08 consignments) and Northern Dedication (03 consignments) regarding no movement from Bandar Abbas port of Iran. Thus, it was clear that the vessel/ship on which goods were shown to be transported from Bandar Abbas to Jebel Ali, Dubai to Mundra Port never docked/visited/sailed from Badar Abbas Port. Port call data during the said tenure, of the said container vessels, gathered from open-source portal [www.myshiptracking.com](http://www.myshiptracking.com) also suggested the same.

Also, In all the Shipping Bills alleged to have been filed before the Afghanistan Customs, export goods were classified under CTH 0709 which covered vegetable [Afghan Bell Pepper] whereas black pepper is a spice of CTH 0904.



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Thus, it appeared that the documents submitted by Noticee No. 1 were not genuine and that Noticee No. 1 used forged documents to make the goods appear to be of Afghanistan Origin with an intention to misuse the provisions provided under SEZ Rules and SAFTA and LDC FTA (Customs Notification No. 55/2011). Thus, it also appeared that goods mentioned in table are liable to confiscation inasmuch as-

- (i) goods in question were prohibited goods and liable for confiscation under Section 111(d) and 111(o) of the Customs Act, 1962,
- (ii) the import documents filed by M/s Aditya Exports appears to be not genuine and as goods imported using improper declaration and documents is liable for confiscation under Section 111(m) of the customs Act, 1962
- (iii) import documents filed by M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP appears to be not genuine and as goods imported using improper declaration and documents is liable for confiscation under Section 111(m) & Section 111(q) of the customs Act, 1962.

**6.** Accordingly, search was conducted at the said premises of the Noticee No. 1 located at Shed No. 85-86, CPWD Type, Sector-1, Kandla Special Economic Zone, Gandhidham-370230 and search proceedings were recorded under Panchnama dated 24.04.2023(**RUD 3**). During search, 196 MT of Black Pepper declared to be of Afghanistan Origin, imported to KASEZ by Noticee No. 1 vide SEZ Bills of Entry no. 1002182 dt 11.02.2023, 1002472 dt. 16.02.2023 and 1002948 dt. 25.02.2023, were found at the warehouse premises.

**6.1.** Whereas, Noticee No. 1 was an SEZ entity, which had been granted LOA under Rule 19 of SEZ Rules, 2009, to operate in KASEZ, a team of officers of DRI Ludhiana Zonal Unit was authorized by Additional Director General, Ludhiana Zonal Unit, to investigate, inspect and search the premises of Noticee No. 1 inside Kandla SEZ premises and seize all improperly imported cargo. After, the search proceedings, the imported goods i.e. 196 MT of Black Pepper claimed to be of Afghanistan origin, valued at 5.69 Crores, imported to KASEZ by M/s Aditya Exports vide SEZ Bills of Entry Nos. 1002182 dt 11.02.2023, 1002472 dt. 16.02.2023 and 1002948 dt. 25.02.2023 were seized under Section 110 of the Customs Act, 1962 vide **Seizure Memo dated 24.04.2023(RUD 4)** on a reasonable belief that they were liable for confiscation under Section 111(d), 111(m) and 111(o) read with Notification of Ministry of Commerce and Industry S.O. 2665(E) dated 05.08.2016. During search, transport related documents corresponding to M/s Aditya Exports and M/s Zest Marine were resumed.

**6.2.** Further, searches were also conducted at residential premises located at H.No. Plot No. 159, Bageshree Township 2, Airport Road, Versamedi, TA-ANJAR, Kachchh, Gujarat-370110 and H.No. Plot No. 59, Ward 10/B-C, Opposite IFFCO Main Gate, Gandhidham, Kachchh, Gujarat-370201 of Shri Mehul Pujara and Shri Naimish H. Sodha, respectively (both are partners in M/s Aditya Exports) and search proceedings were recorded under Panchnamas both dated 24.04.2023.

**7.** Summons dated 23.04.2023 were served upon Shri Mehul Pujara S/o Shri Pujara Navichandra, partner in M/s Aditya Exports and his voluntary Statement dated 24.04.2023 (**RUD 5**) was recorded under Section 108 of the Customs Act, 1962, wherein he stated, inter alia as under:-

- that he was Partner in M/s Aditya Exporters, (IEC-3798000212); that this firm deals in import of various commodities from Dubai; that he does not take active part in this business but he had given his digital signature dongle to Shri Pankaj Thakkar to use in the day to day business in M/s Aditya Exports; that in case of OTP on registered mobile for M/s Aditya Exporters, he provided the details to Shri Pankaj Thakkar; that Shri Pankaj

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Thakkar provided him 200 dollars for each container to be imported in SEZ as warehouse charges in M/s Aditya Exporters.

- that other than him, Shri Naimish H. Sodha is Partner in M/s Aditya Exporters; that all the operations of M/s Aditya Exporters are handled by Sh. Pankaj Thakkar partner in M/s Krishna Shipping and allied services (GST Code-24AADFK8760C2ZH); that Shri Pankaj Thakkar is a CHA and brother-in-law of Shri Naimish H. Sodha.
- that in 2019, he was working along with Pankaj Thakkar in import and local purchase & sale of Base oil (Petroleum Products). Thus, they built a strong business relation. Thereafter, Pankaj Thakkar told him that there is a business premises in KASEZ of his brother-in-law which he (Naimish) wants to sale or add a new partner in it; that he (Mehul) finalised the deal and became a partner in M/s Aditya Exports by owning 49% of total shares of M/s Aditya Exports; that he (Mehul) had only verbal agreement with Pankaj Thakkar that he (Pankaj) will help me in business of M/s Aditya Exports. Also, Pankaj Thakkar helped him (Mehul) financially to grow his business.
- On being provided with a list of Bills of Entry filed by their firm M/s Aditya Exports at KASEZ for import of Black Pepper said to be of Afghanistan origin and being asked to give details of his Afghanistan contact point, purchase orders and supplier of Afghanistan origin goods (Black Pepper), he stated that he was not aware of all those Bills of entry, although he was aware that his firm had imported Black pepper; that he had visited Dubai once and the supplier of Black pepper to be imported in India are mostly Dubai based traders; that Shri Pankaj Thakkar deals with the suppliers for import of various goods for M/s Aditya Exports, Gandhidham and he (Pankaj) maintains all the record in his office i.e. Krishna Clearing Agency, Transport Nagar, Gandhidham.
- On being shown an email dated 13.04.2023 received in adityawarehousekasez@gmail.com (official email id of M/s Aditya Exports) in which COO certificate of Afghanistan origin goods (Black Pepper) are shown, he put his dated signatures on the same as a token of having seen and understood the same and stated that he had no say on those documents.
- That he had never visited Afghanistan and he didn't have any knowledge about the suppliers of Black pepper in Afghanistan.
- On being asked as to how can he prove that said goods were of Afghanistan origin he submitted that he had never ordered for import of any goods from Afghanistan and that he knew about the COO certificate, but he never asked or applied for that COO certificate from any authority.
- On being asked if he was aware of Toriyal Khan Mahsilzai, supplier of Black pepper from Afghanistan he stated that he was not aware of any such details; that he has his bank account in Bank of Baroda, KASEZ Branch in name of M/s Aditya Exports in which he (Mehul) and Shri Naimish H. Sodha both are signing authority; that KYC details in said account was of him (Mehul) and Shri Naimish H. Sodha, Registered Mobile no. i.e. 9099072236 of said Bank account was in name of M/s Krishna Shipping and allied services; that the said mobile was used by Shri Vijay Suresh Bhai Rathore who was employer in M/s Krishna Shipping and allied services in which Pankaj Thakkar was a partner along with his father Karsan M. Thakkar; that in case of payment done for M/s Aditya Exports through cheque he (Mehul) signed the same otherwise all the payments were done through Internet Banking which was controlled by Pankaj Thakkar.
- On being asked as to how did their import consignment reached to India from Afghanistan, he stated that generally import of goods was done by shipping vessels via sea ways; that he can't say anything about Afghanistan origin import goods; that payment for transport of containers from Mundra port to KASEZ Gandhidham was done by M/s Krishna Shipping and allied services.
- On being asked to present the LOA agreement granted to M/s Aditya Exports by KASEZ for warehousing/manufacturing under Rule 19 of SEZ rules 2006, he stated that he had the said LOA in his mobile and that he had read and understood the said LOA certificate.

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- On being shown LOA & Bill of Entry wherein M/s Aditya Exports had imported Black pepper which is at Sr No. 8 of their LOA for warehousing and that the price of goods is Rs 290/Kg which was much less than the Rs 500/Kgs as per condition no. 4 of LOA, he stated that he had signed the same in token of having seen and understood the same; that it was clear violation of LOA; that the import price of Black pepper was much less than the one mentioned in LOA of M/s Aditya Exports.
- On being asked that who filed Bill of entry in SEZ Gandhidham for M/s Aditya Exports and who paid for the import goods from Afghanistan; he stated that the said documents were filed by employers of M/s Krishna Shipping & Allied Services on say of Shri Pankaj Thakkar and that the buyer of Black pepper directly paid to the supplier in Afghanistan.
- On being shown the email dated 27.03.2023 in which no Bill of Entry had been filed for goods imported from Afghanistan as on date and being asked who was paying the demurrage charges for the containers in said Bills of Entry he stated that he had signed the printout of email dated 27.03.2023 in token of having seen and understood the same; that in this regard, Demurrage charges applicable on said containers were paid by M/s Krishna Shipping and Allied Services.
- On being asked as to how did he know M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and how did he come in contact with them & who his current contact person with them was and who looks after their payment & all documents formalities of Goods supplied by them (M/s Aditya) he stated that he was not aware of both the firms; that he had never met any person from M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP; that these were the clients/customers /buyer who dealt with Pankaj Thakkar only; that in 2021, he (Mehul) was not having any profitable business, Shri Pankaj Thakkar then gave him idea to be a partner in M.s Aditya Exports; that then he became the registered partner in said firm and gave consent to Pankaj Thakkar that he (Pankaj) can work on his (Mehul) behalf; that he (Pankaj) told him (Mehul) that he (Pankaj) will give him (Mehul) the rent for warehousing and himself (Pankaj) will do all the business in M/s Aditya Exports to which he (Mehul) said ok.
- On being asked who were the transporters utilised by M/s Aditya Exports for delivering all DTA cleared goods to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and how were they contacted or paid, he stated that Shri Pankaj Thakkar partner in M/s Krishna Shipping & Allied Services, Gandhidham was himself a CHA; that he (Pankaj) had all the contacts of transporters and he (Pankaj) paid for the transportation cost for goods travelled from Mundra to KASEZ Gandhidham; that transportation cost for goods to be supplied to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP was not borne by M/s Aditya Exports and nor by M/s Krishna Shipping & Allied Services; that it was paid by the party themselves who filed Bill of entry for DTA clearance.
- On being shown the latest DTA Bill of Entry dated 14.03.2023, assessment date 20.04.2023, OOC date 21.04.2023 filed by M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP with M/s Aditya Exports and asked who was co-ordinating for all those DTA sale of imported goods, he stated that he had seen the documents and that in this regard, all Customs related work was handled by Shri Sanjeev Roy who was an employer of M/s Aditya Exports; that he (Sanjeev) looked after all of the work such as co-ordination with Customs officials for smooth import or DTA sale of import goods.

**7.1.** Also, Summons dated 23.04.2023 were served upon Shri Naimish H. Sodha S/o Shri Sodha Himatlal, partner in M/s Aditya Exports and his voluntary Statement dated 24.04.2023 (**RUD 6**) was recorded under Section 108 of the Customs Act, 1962, wherein he stated, interalia as under:

- That he was Partner in M/s Aditya Exporters, (IEC-3798000212); that this unit was purchased by him in 2005; that this firm dealt in import of various commodities from Dubai and other countries; that he did not take active part in this business but he had

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given his digital signature dongle to Shri Pankaj Thakkar to use in the import business in M/s Aditya Exporters.

- That besides him, Mehul Pujara was Partner in M/s Aditya Exporters; that all the operation in M/s Aditya Exporters were handled by Shri Pankaj Thakkar who was also owner/partner of Krishna Clearing and Services; that he (Pankaj) was a CHA and his (Naimish) brother-in-law.
- On being asked how was Pankaj Thakkar, partner in M/s Krishna Shipping and Allied Services related to M/s Aditya Exporters, he stated that he (Naimish) was working in export of Plastic Garbage bags and in 2018 due to change in plastic policy he (Naimish) had to face a huge loss and thus, his (Naimish) Unit in SEZ remained closed for 03 years. Therefore, he requested Shri Pankaj Thakkar to help him (Naimish) in sale of said Unit, KASEZ. Instead of sale, Shri Pankaj Thakkar introduced him (Naimish) to Shri Mehul Pujara with whom he (Naimish) became partner in M/s Aditya Exports; that they only have verbal agreement with Pankaj Thakkar that he (Pankaj) will help both the partners in establishing and profit in their business in M/s Aditya Exports.
- On being provided with a list of Bills of Entry filed by their firm M/s Aditya Exports at KASEZ for import of Black Pepper said to be of Afghanistan origin and being asked to give details of his Afghanistan contact point, purchase orders and supplier of Afghanistan origin goods (Black Pepper), he stated that he was not aware of all those Bills of Entry; that although he was aware that his firm had imported Black pepper; that Shri Pankaj Thakkar dealt with the suppliers for import of various goods for M/s Aditya Exports, Gandhidham and he (Pankaj) maintained all the record in his (Pankaj) office i.e. Krishna Clearing Agency, Transport Nagar, Gandhidham.
- On being shown an email dated 13.04.2023 received in adityawarehousekasez@gmail.com (official email id of M/s Aditya Exports) in which COO certificate of Afghanistan origin goods (Black Pepper) were shown, he signed the said documents in token of having seen and understood the same and stated that he had no say on those documents.
- That he had never visited Afghanistan and he didn't have any knowledge about the suppliers of Black pepper in Afghanistan.
- On being asked as to how can he prove that said goods were of Afghanistan origin he submitted that he had never ordered for import of any goods from Afghanistan and that he knew about the COO certificate, but he never asked or applied for that COO certificate from any authority.
- On being asked if he was aware of Toriyal Khan Mahsilzai, supplier of Black pepper from Afghanistan he stated that he was not aware of any such details; that he has his bank account in Bank of Baroda, KASEZ Branch in name of M/s Aditya Exports in which he (Naimish) and Shri Mehul Pujara both are signing authority; that KYC details in said account was of him (Naimish) and Shri Mehul Pujara, Registered Mobile no. i.e. 9099072236 of said Bank account was in name of M/s Krishna Shipping and allied services; that the said mobile was used by Shri Vijay Suresh Bhai Rathore who was employer in M/s Krishna Shipping and allied services in which Pankaj Thakkar was a partner along with his father Karsan M. Thakkar; that all the payments were done through Internet Banking which was controlled by Pankaj Thakkar.
- That he had never visited Afghanistan in person.
- On being asked as to how did their import consignment reached to India from Afghanistan, details of the shipping line and container lines used for transportation and how did they contact them & make payments, he stated that he was not aware about any of these details. Warehouse charges and other regular Bills were paid by M/s Krishna Shipping and allied services through Bank account of M/s Aditya Exports.
- On being asked to present their LOA agreement granted to M/s Aditya Exports by KASEZ for warehousing/manufacturing under Rule 19 of SEZ rules 2006 he stated that he did not have copy of the said LOA.



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- On being shown LOA & Bill of Entry wherein M/s Aditya Exports had imported Black pepper which was at Sr No. 8 of their LOA for warehousing. The price of goods was Rs 290/Kg which was much less than the Rs 500/Kgs per condition no. 4 of LOA, he stated that he had seen the LOA and Bill of Entry and other import documents and that this was clear violation of LOA; that the import price of Black pepper was much less than the one mentioned in LOA.
- On being asked that who filed Bill of Entry in SEZ Gandhidham for M/s Aditya Exports, he stated that those documents were filed by employers of M/s Krishna Shipping & Allied Services on say of Sh. Pankaj Thakkar.
- On being asked as to how did he know M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and how did he came in contact with them & who his current contact person with them was and who looks after their payment & all documents formalities of Goods supplied by them (M/s Aditya) he stated that he was not aware of these both firms; that he had never met any person from M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and that these were the clients/customers /buyer who dealt with Pankaj Thakkar only.
- On being asked who were the transporters utilised by M/s Aditya Exports for delivering all DTA cleared goods to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and how were they contacted or paid, he stated that Shri Pankaj Thakkar partner in M/s Krishna Shipping & Allied Services, Gandhidham was himself a CHA; that he (Pankaj) had all the contacts of transporters and he (Pankaj) paid for the transportation cost for goods travelled from Mundra to KASEZ Gandhidham.
- On being shown the latest DTA Bill of Entry dated 14.03.2023, assessment date 20.04.2023, OOC date 21.04.2023 filed by M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP with M/s Aditya Exports and that who was co-ordinating for all this DTA sale of imported goods, he stated that all Customs related work were handled by Sh. Sanjeev Roy who is an employer of M/s Aditya Exports; that he (Sanjeev) looked after all of the work such as co-ordination with Customs officials for smooth import or DTA sale of import goods.

**7.2.** For the commissions and omissions on the part of Shri Mehul Pujara and Shri Naimish Sodha were of a very serious nature and they had shown scant regard to the Law of the Land, both of them were placed under arrest on 25.03.2023 and relegated to judicial custody. It is also pertinent to mention here that Shri Pankaj Thakker and Shri Mehul Pujara were earlier arrested in November, 2022 by DRI Gandhidham in connection with another export fraud involving M/s Aditya Exports i.e. Noticee No. 1 only and are on bail in that case too.

**8.** Statement dated 12.05.2023(**RUD 7**) of Shri Sanjeev Roy, Customs Representative, was recorded under Section 108 of the Customs Act, 1962, wherein he stated, inter alia as under:

- On being asked what was his association with Aditya Exports and 'Krishna Shipping and Allied Services', he stated that he was working as Customs Executive for Aditya Exports from December, 2022 to 26.04.2023 and he was hired by Shri Pankaj Thakker and tasked to perform Customs related work of Aditya Exports.
- On being asked how he received his salary, he stated that Aditya Exports used to pay his salary through Aditya Exports account maintained in Bank of Baroda, KASEZ and this bank account was handled by Shri Pankaj Thakker. On being asked who gave him instructions relating to Aditya Exports, he answered as below:

*"Shri Pankaj Thakkar used to give directions for all works of M/s Aditya Exports. On his (Pankaj Thakker's) directions, I used to file Bills of Entry using DSCs of Shri Mehul Pujara and Shri Naimesh Sodha. Then getting assessment done from Customs and informing Raj (Employee of M/s Krishna Shipping and Allied Services) was my responsibility. Shri Pankaj Thakker then used to decide about delivery order (D.O) of import cargo and send vehicles in M/s Aditya Exports for Unloading of import cargo,*

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*Afterwards DTA Bill of Entry was prepared by Raj (Employee of M/s Krishna Shipping and Allied Services firm of Shri Pankaj Thakkar). Such DTA Bill of Entry prepared by Raj was finally submitted by me using DSCs of Shri Mehul Pujara / Shri Naimesh Sodha after taking permission of Shri Pankaj Thakker. Then on directions of Shri Pankaj Thakker, I used to get the assessment done and challan generated in respect of DTA Bill of Entry. Payment of Challan generated was handled by Shri Pankaj Thakker in his firm M/s Krishna Shipping and Allied Services. Then, after payment Shri Pankaj Thakker used to send trucks for loading and domestic clearance of goods. Afterwards, getting cargo inspection done and out of charge issued by Customs was handled by me on directions of Shri Pankaj Thakker.*

*Apart from the above, whenever any documents need to be submitted before customs on behalf of M/s Aditya Exports, it was provided by Shri Pankaj Thakker and I used to submit the same to customs on his directions."*

- On being asked to state the process being followed to operate the DSC dongles belonging to Aditya Exports. (Digital Signature Certificate i.e. DSC dongle is a hardware device which can be plugged to any computer to enable the computer to file bills of entry/Shipping Bills on SEZ online portal and authenticate them with DSC without which the portal will not accept the Bill of Entry/Shipping Bill), he stated that DSC dongle of Shri Naimish Sodha (Partner of M/s. Aditya Exports) was handed over by Shri Naimish Sodha to Shri Pankaj Thakker, who used to instruct him to file Bills of Entry. After earlier raid by the DRI in 2022, Shri Naimish Sodha took back his DSC dongle and then Shri Pankaj Thakker provided him the DSC dongle of Shri Mehul Pujara to file Bills of Entry.
- On being questioned why he changed the registered mobile number in SEZ login id of Aditya Exports (which is used to receive OTP generated by portal and authenticate Bills of Entry/Shipping Bills filed), he stated that on 20.04.2023, a disagreement emerged between Shri Mehul Pujara and Shri Pankaj Thakker and therefore, Shri Pankaj Thakker instructed him to register mobile No.90812-34143 of Shri Nikunj Kumar Laxmanbhai Prajapati in place of mobile number 9925225253 of Shri Mehul Pujara; that after assessment of DTA Bills of Entry, challans for payment of duty were generated by him on directions of Sh. Pankaj Thakker and copies of challans were forwarded to Sh. Pankaj Thakker through whatsapp on mobile number 9099025228.

**8.1** Statement dated 12.05.2023(**RUD 8**)of Shri Nikunj Kumar Laxmanbhai Prajapati who was working as an employee in M/s Aditya Exports and whose salary was paid in cash by Shri Sanjeev Roy was recorded under Section 108 of the Customs Act, 1962, wherein, on being asked as to on whose directions and orders he had given his personal Mobile number 90812-34143 for M/s. Aditya Exports' SEZ login id, he stated that Shri Pankaj Thakker called Shri Sanjeev Kumar Roy who then mapped his number to SEZ login ID.

**9.** Meanwhile, as 1512 MT of Black Pepper of Afghanistan Origin, valued at INR 77.47 Crores, which had been cleared to DTA by M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and stored in various cold stores and warehouses in Kundli, Sonapat and Khari Baoli was also liable for confiscation under Section 111(m) and 111(q) of the Customs Act, 1962. So, searches were conducted at the following Cold storages:

- a) Kufri Cold Storage, Sonapat, Kundli, Haryana-131028: Search proceedings were recorded under Panchnama dated 24.04.2023 and during search **3865 Kattas of Inshell Walnuts** (having average weight of 24 Kgs each) belonging to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP were detained vide the said Panchnama dated 24.04.2023 (**RUD-9**) and supurdari of the goods i.e. inshell walnuts was handed over to the Director, Kufri Cold Storage, Sonapat, Kundli, Haryana-131028 vide Supurdaginama dated 24.04.2023.

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- b) Leh Cold Store, Rai Industrial Area, Sonapat, Haryana-131028: Search proceedings were recorded under Panchnama dated 24.04.2023(**RUD-10**) and during search no stock of Kali Mirch (Black Pepper) imported to KASEZ by M/s Aditya Exports and DTA sales to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP was found at their premises. Whereas, **2240 Kattas of Inshell Walnuts** (having average weight of 25 Kgs each) weighing **56 MT** belonging to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP were detained vide the said Panchnama dated 24.04.2023 and supurdari of the goods i.e. inshell walnuts was handed over to the storekeeper, Leh Cold Store, Rai Industrial Area, Sonapat, Haryana-131028 vide Supurdaginama dated 24.04.2023.
- c) ParbhuKripa Cold Store, Kundli, Sonapat, Haryana-131028: Search proceedings were recorded under Panchnama dated 24.04.2023(**RUD-11**) and **33.2 MT** (664 white colour bags weighing 50 Kgs each) of **Black pepper** of Afghanistan origin valued at Rs. 1.66 Crores, imported to KASEZ by M/s Aditya Exports and DTA sales to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP were seized vide **Seizure Memo dated 24.04.2023** and supurdari of the seized goods was handed over to the Manager, ParbhuKripa Cold Store, Kundli, Sonapat, Haryana-131028 Supurdaginama dated 24.04.2023. Also **163.8 MT of Walnuts** belonging to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP were detained vide Detention Memo dated 24.04.2023 and supurdari of the goods i.e. walnuts was handed over to the Manager, ParbhuKripa Cold Store, Kundli, Sonapat, Haryana-131028 vide Supurdaginama dated 24.04.2023.
- d) Anant Cold Store, Kundli, Haryana-131028: Search proceedings were recorded under Panchnama dated 24.04.2023(**RUD-12**) and during search no stock of Kali Mirch (Black Pepper) imported to KASEZ by M/s Aditya Exports and DTA sales to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP was found at their premises. Whereas, **1714 Kattas of Inshell Walnuts** (having average weight of 25 Kgs each) belonging to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP were detained vide the said Panchnama dated 24.04.2023 and supurdari of the goods i.e. inshell walnuts was handed over to the storekeeper, Anant Cold Store, Kundli, Haryana-131028 vide Supurdaginama dated 24.04.2023.

**9.1** Search was conducted at the business premises of M/s Krishna Shipping and Allied Services, 53/54-A, Tanker Association Building, Transport Nagar, National Highway, Gandhidham, Kutch, Gujarat and search proceedings were recorded under Panchnama dated 24.04.2023 (**RUD-13**). During search KYC documents, IEC and other docs along with Import/DTA documents pertaining to Noticee No. 1 and documents corresponding to Customs transactions of M/s Zest Marine KASEZ and M/s OWS Warehouse APSEZ from their office were resumed.

**9.2** Search was attempted on 25.04.2023 at the business premises of M/s Cuthbert Winner LLP located at Level-2, Elegance, Old Mathura Road, Jasola, New Delhi, and proceedings were recorded under Panchnama dated 25.04.2023(**RUD-14**). It was found that M/s Cuthbert Winner LLP had entered into work space agreement from 01.02.2022 to 31.01.2023 through Shri Sameer Arora r/o H.No. 73A, Ram Nagar, Krishna Nagar, Delhi East; that they had not paid the rent of the space since July, 2022 and that the M/s Cuthbert Winner LLP no longer existed at the said premises.

**9.3** Search was also attempted on 25.04.2023(**RUD-15**) at the residential premises of Shri Sameer Arora, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP; located at H.No. 73A, Ram Nagar, Krishna Nagar, Delhi East, however, Shri Sameer Arora could not be traced at the said premises and it was reported to the visiting officer that he no longer lived there since last some years and his whereabouts are not known.

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**9.4** On 25.04.2023, 56 MT of Black pepper of alleged Afghanistan origin, belonging to M/s Cuthbert Oceans LLP, were found to be offloading at an unnamed warehouse in Nathupur in Harayana, instead of the place of delivery mentioned on the E-way bills, Accordingly, the said 56 MT of Black Pepper of alleged Afghanistan origin was seized along with the 2 transport trucks bearing numbers RJ19GG2122 and RJ04GC8558, carrying the said 56 MT of Black Pepper vide Seizure Memo dated 25.04.2023 (**RUD-16**) and Supurdari of the seized goods was handed over to executive at ICD-PanchiGujaran, Sonipat.

**9.5** Search was attempted on 03.05.2023 (**RUD-17**) at the business premises of M/s Cuthbert Oceans LLP located at Agarwal City Square, Pitampura, however, where M/s Cuthbert Oceans LLP was found to be non-existent at the said address.

**10.** Shri Sudhakar Chikati, Kandla Branch manager of M/s Aiyer Shipping Agency Pvt. Ltd. and Shri Ankit Sharma, Business Development Manager in Kandla for M/s Vision Container Line Pvt. Ltd and M/s Evershine Container Line Pvt. Ltd respectively, who are shipping agents for M/s Aditya Exports, in their statement and declaration dated 26.04.2023 and 28.04.2023 respectively, categorically stated that, all the Bills of Lading of cargo from Bandar Abbas in which their names appear as 'shipping agents' for delivery of goods in India, were fake and that Black Pepper had actually sailed for India from Jebel Ali only;

Shri Sudhakar Chikati, Kandla Branch Manager of M/s Aiyer Shipping Agency Pvt. Ltd in his statement dated 25.04.2023 (**RUD-18**) tendered under Section 108 of the Customs Act, 1962 stated that the only contact for goods imported by M/s Aditya Exports was 'Krishna Shipping and Allied Services' at email id import@krishnashippingkdl.com and they had done all the correspondences with regards to the impugned import instances on the email id import@krishnashippingkdl.com.

Also, Shri Ankit Sharma in declaration dated 28.04.2023 (**RUD-19**) confirmed that they have received documents in relation to import of M/s. Aditya Exports from 'Krishna Shipping and Allied Services'.

**10.1** Summons dated 24.04.2023 were issued to Shri Vijay Sureshbhai Rathod, Accountant in M/s Krishna Shipping and Allied Services and Statement dated 24.04.2023 (**RUD-20**) of Shri Vijay Sureshbhai Rathod S/o Shri Suresh Bhai, Accountant in M/s Krishna Shipping and Allied Services, Gandhidham was recorded under Section 108 of the Customs Act, 1962, wherein he stated, that, on the directions of Sh. Pankaj Thakker, he looked after accounting work of Aditya Exports and made payments from firm's account on direction of Sh. Pankaj Thakker for expenses such as electricity bill charges, salary, GST payments, water charges etc..

**10.2** Statements dated 26.06.2023 (**RUD-21**) and Statement dated 27.06.2023 (**RUD-22**) of Sh. Sharad Shetty, Director of M/s Zest marine Services Pvt. Ltd, Kandla SEZ were recorded under Section 108 of the Customs Act, 1962, wherein, he stated, interalia as under:

- On being asked about the day to day warehousing operations of his SEZ unit, he informed that he had handed over his dongle to staff of M/s Aditya Exports, Shri Sanjeev Kumar Roy, since April-2022, on instructions of Shri Pankaj Thakkar; that day to day warehousing operations of M/s Zest Marine Services Pvt. Ltd (ZMSPL) since April-2022 is being controlled by Shri Sanjeev Kumar Roy on direct instructions of Shri Pankaj Thakkar and he has no role in the same;
- that ZMSPL is just the warehouser of the goods and not the owner of the goods; that through his warehousing unit, Pankaj Thakkar used to operate business of Dry dates and dry fruit items, without mentioning the country of origin details to him and because of this, only Pankaj Thakkar or any other actual/beneficial owners of goods would be able to ascertain about the origin and other declared parameters whether they were correct or not ;

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- that ZMSPL had signed an agreement with M/s Kayak International Inc., Dubai and M/s Cosco Shipping and Warehousing – FZE/LLC for warehousing and delivery of goods to the Indian DTA Buyers; that, warehousing business of ZMSPL is being de-facto controlled by Shri Pankaj Thakker; that he never used to interact with Dubai based entities or Indian DTA buyers M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, corresponding to the goods available in his warehousing unit. As all of them were only known to Shri Pankaj Thakker and he only used to interact with the said parties and he only used to control every aspect of their trade, ranging from Customs formalities to arranging transportation of the goods. All the activities were done without consulting with him (Sharad);
- that he had never visited Afghanistan or USA and had never booked any consignments of any dry fruits from any supplier of either of the countries; that he was not aware of the firms by the names M/s Toryal Khan Mahsilzai Trading, Kabul, Afghanistan (Supplier of walnut kernel of Afghanistan Origin) and M/s Crain Marketing Inc and M/s Valley Oasis foods LLC of California (Supplier of Inshell walnuts of USA origin). He only knew about the Dubai based firms he had done warehousing agreements with, and that too on goodwill on behalf of Shri Pankaj Thakker, as he only knew them personally. In his knowledge, the goods came from Dubai only;
- that he was not even aware of the name of the transporters and it was available with staff of M/s Krishna Shipping & Allied Service and payments to them were done by them (staff of Krishna shipping) only on directions of Pankaj Thakker. Similarly M/s Zest marine Services Pvt. Ltd. was not involved in interaction with shipping agents and in their knowledge, that part was also being done by staff of M/s Krishna Shipping & Allied Service along with the payments made to them, on instructions of Shri Pankaj Thakker;
- that even the payments to all the stakeholders was done through accounts of M/s Krishna Shipping and Allied Services, on instructions of Shri Pankaj Thakker, on his own accord, without any formal authorization from ZMSPL; that all the Bills of Entry, corresponding to their warehousing business, be of import or DTA sales, were filed by Shri Pankaj Thakker of M/s Krishna Shipping & Allied Services or on his instructions by staff of M/s Krishna Shipping & Allied Services, using ZMSPL's DSC dongle, as, Pankaj Thakker de-facto controls the warehousing business of M/s Zest marine Services Pvt. Ltd. The said DSC dongle was handed over to Shri Pankaj Thakker of M/s Krishna Shipping & Allied Services by him (Sharad), as, Pankaj Thakker had introduced himself as CHA for ZMSPL's foreign and DTA clients, though there was no formal authorization as per Customs Broker Licensing Regulations (CBLR), 2018, available with them from M/s Cosco Shipping & Warehousing-FZE/LLC, M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, regarding the same; that he believed Shri Pankaj Thakker on goodwill as he was known to him from childhood.
- that ZMSPL had never paid or received any payment from M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and everything inclusive of duty and IGST payments was managed by Shri Pankaj Thakker of M/s Krishna Shipping & Allied Services; that they had never authorized them formally for the same; that he was not aware of the documents uploaded on SEZ Online portal, corresponding to inshell walnuts from USA (from Crain Marketing INC, C/o Valley Oasis Foods LLC, Corning, California, USA) to M/s Zest Marine Services Pvt. Ltd (viz. Bill of lading, Commercial invoice, Packing list etc), wherein, as per the submitted invoice price of 1Kg of inshell walnuts is USD 0.75. He was not aware of any such documents, as, in his knowledge, the goods did not belong to ZMSPL and they had never raised any invoice or purchase order in this regard with any of the firms in USA.

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- On being shown documents corresponding to the following DTA sale Bills of entry uploaded on SEZ online platform, using his DSC dongles by Shri Pankaj Thakker of M/s Krishna Shipping and Allied Services :
  - (a) Bill of Entry No. 2004858 dt 28.03.2023 and Bill of Lading No. HLCUBS2301BFV09 dt 20.01.2023.(**RUD-23**)
  - (b) Bill of Entry No. 2003785 dt 13.03.2023 and Bill of Lading No. LBOLX222714 dt 15.12.2022(**RUD-24**)
  - (c) Bill of Entry No. 2003622 dt 09.03.2023 and Bill of Lading No. NAM58801556 dt 15.12.2022. (**RUD-25**)

And on being informed, that, in all the documents mentioned above, supplied by the USA suppliers of Inshell Walnuts, M/s Crain marketing Inc, C/o Valley Oasis Foods, LLC, 25990, South Ave, Corning, CA 96021, before American authorities, viz. Bill of lading, Commercial invoice, packing list, certificate of origin issued by Red Bluff-Tehama County chamber of commerce, phytosanitary certificate issued by American Govt. body USDA, Fumigation certificate and Aflatoxin certificate, ZMSPL was being shown as the “CONSIGNEE” of goods, and that the name M/s Cosco Shipping & Warehousing-FZE/LLC, whom they claim to be the owner/consignee of the goods, and for whom ZMSPL claims to be providing warehousing services only, was not seen anywhere on these documents except the Bill of lading and commercial invoice, and that too as the second notify party, besides M/s Cosmic Middle East – FZE/LLC, who were notified as first notify party; he acted surprised on the finding and spoke to Shri Pankaj Thakker telephonically regarding the same. He (Sharad) stated that as per telephonic conversation with Shri Pankaj Thakker, he had been informed that actual consignee is M/s Cosco Shipping and Warehousing – FZE/LLC and it was a general practice to misrepresent the warehousing unit as consignee in front of foreign authorities, for cargo moving to KASEZ, though, Shri Pankaj Thakker was not able to provide him details about any legal provision in SEZ Act, 2005 and SEZ Rules, 2006, stating to misrepresent the facts officially before the foreign authorities, when goods are bound to an SEZ warehouse;

- that he (Sharad) or any of his staff in M/s Zest Marine Services Pvt. Ltd was not aware of any company named M/s Cosmic Middle East -FZE / LLC and was hearing this name for the first time and even their warehousing partners M/s Cosco Shipping and Warehousing – FZE/LLC, for whom they had warehoused the goods, had never mentioned about any such company to them ever;
- that their company’s (ZMSPL) name had been wrongly used by their warehouser M/s Cosco Shipping and Warehousing – FZE / LLC and Shri Pankaj Thakker for importing the cargo into India, without their knowledge and any of his staff at M/s Zest Marine Services Pvt. Ltd was not informed in past or present before filing the said documents before Indian customs; that he had never in his trading career witnessed 2 different companies issuing commercial invoices bearing same number and date and in exact same format and was doubtful about the genuineness of documents supplied by foreign suppliers to M/s Krishna Shipping and Allied services, to be attached in Bill of entries, which were further filed on ZMSPL’s behalf by Pankaj Thakker or any of his staff, using ZMSPL’s DSC dongle; that, to confuse Indian customs, 2 parallel invoices must have been uploaded on ZMSPL’s import and DTA bill of entry filed by Shri Pankaj Thakker; that such practice is either used to undervalue imported goods or use such fake invoices to make hawala remittances to foreign players, who are not directly associated with imported goods; that the genuineness of the invoices was doubtful as same commodity was being invoiced twice by different companies, bearing same format, invoice number and date; that in the invoice raised by M/s Cosco Shipping and Warehousing – FZE / LLC they have stated M/s Cosco Shipping and Warehousing – FZE / LLC as “Notify (2)”



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and this made him (Sharad) believe that it was a fake invoice, as, that was not a common trade practice, wherein a party issuing invoice is NOTIFYING SELF;

- that he had never witnessed such cheap valued / invoiced walnuts. Price of USD 0.75 per Kg did not appear genuine to him, since the walnut was from USA and that too branded; that, in all likelihood, walnuts should have cost as per the value declared by brand on their website.

**10.3** Statement dated 03.07.2023 (**RUD-26**) of Shri V. Krishnamoorthy, Managing Director of M/s Aiyer Shipping Agency Pvt. Ltd, Mumbai, was recorded under Section 108 of the Customs Act, 1962, wherein he stated, interalia as under:

- On being asked about KASEZ warehousing unit M/s Aditya Exports and his firm's association with them, he informed that M/s Aditya Exports was listed as an import customer in their company and interacted with them for the first time by virtue of their shipment, that arrived using ASCL Line, who is a Principal they represented in India and their team had interacted with them through emails with their nominated representative, M/s Krishna Shipping & Allied Services, Gandhidham, whom, they had perceived on their own, to be the CHA for M/s Aditya Exports, although, they did not have any communication / authorization from M/s Aditya Exports employing / appointing M/s Krishna Shipping and Allied services as their CHA, as per CBLR, 2018;
- that while taking the delivery order, KYC for both M/s Aditya Exports and M/s Krishna Shipping and Allied Services, was handed over in their Gandhidham office by staff from M/s Krishna Shipping and Allied Services; that, As far as communications with M/s Aditya Exports is concerned, they only had physically given them nomination letters to hand over the DO to either of the 2 staffs of M/s Krishna Shipping and Allied Services named R. K. Pillai and Govind Manglia and also endorsed BL copies bearing the Sign and Stamp of nominated representatives of their firm M/s Aditya Exports and M/s Krishna Shipping and Allied Services. Besides them, all Communications regarding shipments of M/s Aditya Exports were received from same e-mail id import@krishnashippingkdl.com , which belonged to Sh. R. K. Pillai of M/s Krishna Shipping and Allied Services;
- that email id – import@krisnashippingkdl.com was either shared by POL (Port of Loading) office along with the pre arrival notice/ terminal departure report (TDR), which was understood to be shared to the POL agent office by the booking party/notified party (exporter of the cargo); that neither of the signatures of Shri Mehul Pujara or Shri Naimish Sodha, who were Managing Partners in M/s Aditya Exports, as appearing on their respective statements, was appearing on the letters submitted to their (Aiyer Shipping) office by them and some person, who was not actually the authorized signatory of M/s Aditya Exports, had signed the letters, wherein permissions were granted to staff of M/s Krishna Shipping and Allied Services to collect the DO on behalf of M/s Aditya exports;
- that Aiyer, Gandhidham team accepted payments from M/s Krishna Shipping & Allied Services, as they perceived M/s Krishna Shipping and Allied Services to be authorized CHA for M/s Aditya Exports, based on nomination latter issued by M/s Aditya Exports for Delivery Order (DO) collection, though, they did not had any explicit formal communication for the same; that even though their firm's name appears on DSCL Bill of Lading (BL), DSCL BL for the shipments was completely unknown to them and had nowhere been received by their company. So, he was not aware as to the authenticity of the DSCL BL submitted before Customs authorities and in his knowledge and that of his staff, it was a fake / forged document;
- that as per the communications shared with them by their Dubai based principal line M/s Alligator Shipping Container Line (ASCL), all the containers for the said consignments

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were booked and loaded in Dubai only and they had no information about goods having any relation with any other country.

- On being asked about the presence of words “GOODS IN TRANSIT FROM BANDAR ABBAS, IRAN TO MUNDRA, INDIA VIA JEBEL ALI UAE”, despite knowing the fact that containers were booked and stuffed in Dubai only for all the consignments, he stated that they had no action with regards to the BL clauses added at Port of Loading (POL) end by the principal line or its UAE agents; that when checked with Principal line ASCL, they were informed that the booking party/shipper at POL had submitted all Shipping Instructions for Bills of Lading through mail bearing ID Kumar@cosmic.hk.
- On being asked about who was the person behind the mail id Kumar@cosmic.hk, he stated that from the telephonic details that he had received from his principal line ASCL, this e-mail id pertained to one Shri M Kumar, CEO of M/s Cosmic Limited. He also submitted the KYC documents corresponding to the firm M/s Cosmic Shipping LLC and some communications received from his principal line ASCL, from the e-mail id Kumar@cosmic.hk. He also informed that as per telephonic discussions with his Dubai based principal line, ASCL, all the communications pertaining to consignments of M/s Aditya Exports and M/s Zest marine Services Pvt. Ltd were received from same e-mail id Kumar@cosmic.hk, only and no separate communication/e-mail had been received from any of the parties whose name appeared in bill of lading as supplier / Consignee / notified parties etc. Even the instruction to put their names in Bill of lading document were received from e-mail id Kumar@cosmic.hk, only, which as per the KYC done at their end pertains to Shri M. Kumar of M/s Cosmic Limited, which apparently is de-facto controlling M/s Cosmic Shipping LLC too; That, In his and ASCL's opinion, the goods always belonged to Sh. M. Kumar of M/s Cosmic Limited and the rest of the details / parties / names added in the bill of lading were as per the shipping instruction received from Sh. Kumar's e-mail id.

**10.4** As per the statement of Sh. V. Krishnamoorthy and the e-mail communications received by their Dubai based principal line ASCL from email id of Shri M. Kumar of M/s Cosmic Limited, more details were fetched about this person from various open sources(**RUD-27**). From the said sources, it was unearthed that full name of Shri M. Kumar was Manish Kumar Jain and besides M/s Cosmic Global HK, he is CEO of M/s Cosmic Inheritance and Cuthbert Group too. It was also found out that Shri Manish Kumar Jain was a COFEPOSA offender and absconder since January 2019.

**11.** Meanwhile letter dated 26.04.2023 was written to the Deputy Commissioner of Customs, KASEZ to cancel all the Customs transactions of the Noticee No. 1 from 26.04.2023 onwards.

**11.1** Letters dated 02.05.2023 addressed to the Commissioner of GST and Central Excise, Delhi East Commissionerate and letter dated 04.05.2023 addressed to Commissioner of GST and Central Excise, Delhi West Commissionerate were written to cancel GSTIN of M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP respectively. Also, letter dated 02.05.2023 and 04.05.2023, addressed to The Additional Director, Directorate General of Foreign Trade; was written to cancel the IEC, of M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP respectively. Also, letter dated 04.05.2023, addressed to the jurisdictional Development Commissioner, KASEZ was written to cancel the LOA granted to M/s Aditya Exports.

**12.** As both the firms, namely M/s Cuthbert Oceans LLP and M/s Cuthbert Winner LLP were found to be non-existent, the goods “Inshell Walnuts” belonging to the Noticee Nos. 2 & 3 and detained during various Panchnama proceedings at cold storages in Kundli, Sonipat, were seized vide Seizure Memos all dated 04.05.2023, and details are shown as under:

- a) 96.25 MT of Inshell Walnuts at premises of M/s Kufri Cold Storage(**RUD-28**)
- b) 42.85 MT of Inshell Walnuts at premises of M/s Anant Cold Storage(**RUD-29**)
- c) 56 MT of Inshell Walnuts at premises of M/s Leh Cold Storage(**RUD-30**)

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d) 161.3 MT of Inshell Walnuts at premises of M/s Prabhu Kripa Cold Storage**(RUD-31)**

**12.1** Also, the bank accounts of all the firms involved, details as under, which were identified in the investigation.On a reasonable belief that proceeds of sale of the imported duty free goods using forged documents were circulated amongst each other and also sent to the overseas mastermind of the entire fraud through the said accounts,the said accountswere seized and debit freeze over them was instructed to the respective banking institutions under the provisions of section 110(5) and 121 of the Customs Act, 1962.

Sr. No.	Name of the Party (M/s)	Bank Name	Branch	Bank Account No.
1	Aditya Exports	Bank of Baroda	Kandla FTZ, Kandla SEZ	3760200001841
2	Aditya Exports	The Gandhidham Mercantile Co-operative Bank	Gandhidham	80110012001011372
3	Cuthbert Oceans LLP	IndusInd Bank	Barakhamba Road, New Delhi	259865098564
4	Cuthbert Oceans LLP	Axis Bank	Outram Lines, Kingsway Camp, New Delhi	922020055345423
5	Cuthbert Winner LLP	Axis Bank	Jasola, New Delhi	922020046134298
6	Cuthbert Winner LLP	HDFC Bank	Sector-110, Noida	59200000009716
7	Cuthbert Winner LLP	IndusInd Bank	Barakhamba Road, New Delhi	250707198589
8	Krishna Clearing Agency	Bank of Baroda	Gandhidham	10080200002272
9	Krishna Shipping & Allied Services	Bank of Baroda	Gandhidham	10080400000304
10	Krishna Shipping & Allied Services	State Bank of India	Gandhidham	31761582720

**13.** Further, theCivil Writ Petitions, bearing nos. 11758 / 2023 and 11233 / 2023, filed by the Noticee nos. 02 and 03 before the Hon’ble High Court of Punjab and Haryana, it was contended by the Noticee nos. 02 and 03 that the goods covered by seizure memos dated 04.05.2023 bearing DIN Nos. 202305DDZ70000823181 and 202305DDZ7000000F8B8 and present at M/s Prabhu Kripa cold Storage and M/s Leh cold storage respectively, were actually cleared by them from M/s Zest marine Services Pvt. Ltd (Shed. No. 361, 1A, Type-II, Sector IV, Kandla Special Economic Zone, Kandla Gujarat) and not from M/s Aditya Exports as claimed in the seizure memo.

**13.1** Thus, based on the aforesaid disclosure by the Noticee Nos. 02 & 03, and detailed investigation on the said context thereon, the seizure memos, corresponding to Noticee Nos. 02 and 03 imported inshell walnuts, seized at M/s Prabhu Kripa Cold Storage Pvt. Ltd, Sonapat and M/s Leh Cold Storage Pvt. Ltd, Sonapat, vide memos dated 04.05.2023 and bearing DIN Nos. 202305DDZ70000823181 and 202305DDZ7000000F8B8respectively, were vacated and the aforesaid imported goods, present at M/s Prabhu Kripa Cod Storage Pvt. Ltd, Sonapat and M/s

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Leh Cold Storage Pvt. Ltd, Sonapat, were seized U/s 110 of the Customs Act, 1962, under fresh seizure memos dated 24.08.2023(**RUD-32**).

**13.2** During investigations, it appeared that both the firms i.e. Noticee No. 2 and Noticee No. 3, were being utilized by one Sh. Pankaj Thakkar, partner in M/s Krishna Shipping and Allied Services, who, appeared to be one of the masterminds of this entire economic fraud and the “beneficial owner” of the smuggled goods too and his co-accomplice and COFEPOSA absconder Sh. Manish Kumar Jain. By virtue of the investigation conducted, it is also apparent that Sh. Pankaj Thakkar, partner in M/s Krishna Shipping and Allied Services along with his fellow mastermind and co-accomplice in the entire fraud Sh. Manish Jain (the COFEPOSA abscondee based in UAE), was de-facto controlling two of the Kandla SEZ (KASEZ) warehousing units namely M/s Aditya Exports (Noticee No. 1) and M/s Zest Marine Services Pvt. Ltd (for brevity ‘ZMSPL’) and also one of the warehouse units in Adani Ports and SEZ (APSEZ), Mundra, namely M/s OWS Warehouse Services Pvt. Ltd. (for brevity ‘OWS’), and that too illegally, without any legal authorization from either of the three warehousing units.

**14.** M/s. Aditya Exports, operating as a warehousing unit at Shed No. 85 - 88, Sector-I, KASEZ, Gandhidham (IEC / PAN: 3798000212 / AAFFA0429C) under Letter of Authorization (in short LOA) dated 09.11.2020, had imported 1792 MT of Black Pepper (CTH 0904) into KASEZ, allegedly from Afghanistan between October, 2022 and March, 2023. The black pepper shipments were claimed to have been passed through Kabul Customs, transported there from by land to Bandar Abbas port, Iran, stuffed into containers at the port and sailed in vessels/ships for destination Mundra via Jebel Ali, Dubai.

A total of 17 such voyages, covering 30 consignments / Bills of Lading, were claimed to have undertaken from Bandar Abbas Port. After customs clearance into SEZ by M/s Aditya Exports, Black pepper was further removed into DTA by two firms - M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP at Nil rate of duty in terms of SAFTA (South Asian Free Trade Area) Notification No. 99/2011-Cus, which inter alia grants customs duty exemption to Afghanistan origin goods. Black pepper otherwise attracts a total customs duty of 77% [excluding IGST].

Out of this 1792 MT of Black pepper of Alleged Afghanistan origin, imported for warehousing into KASEZ warehousing unit M/s Aditya Exports, 1596 MT of the said black pepper, valued at INR 80.1 Crores, was brought/imported for home consumption into Indian territory using forged documents, via firms M/s Cuthbert Winner LLP, Delhi and M/s Cuthbert Oceans LLP, Delhi allegedly from Afghanistan between October, 2022 and March, 2023.

**14.1** Besides Black pepper, during the same period, 510 MT inshell walnuts, 110 MT walnut kernels, 5 MT pista kernels and 27 MT almond kernels, claiming to be of Afghanistan origin, imported for warehousing into M/s Aditya Exports, were brought/imported/cleared for home consumption into Indian territory, using forged documents, via the petitioner firms namely M/s Cuthbert Winner LLP, Delhi and M/s Cuthbert Oceans LLP, Delhi, which are being utilized by Sh. Pankaj Thakkar of M/s Krishna Shipping and Allied Services and his co-accomplice and COFEPOSA absconder Sh. Manish Kumar Jain.

**14.2** The Noticee Nos. 2 & 3 were also utilized by Shri. Pankaj Thakkar, to file Bills of Entry for Home Consumption / DTA import of 800 MT of inshell Walnuts, claimed to be of USA origin, which were imported for warehousing into Kandla SEZ from Dubai, by another SEZ unit M/s Zest Marine Services Pvt. Ltd.(ZMSPL).All the inshell walnuts seized at the 4 cold storages in Kundli were imported through warehouse of M/s Zest marine Services Private Ltd. only.

**14.3** Besides 800 MT of Inshell walnuts, claimed to be of USA origin, 75 MT of walnut kernels, again claimed to be of Afghanistan origin, were imported from Dubai, for warehousing into Kandla SEZ, by M/s Zest Marine Services Pvt. Ltd., by firms M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, which were being stage-managed by Sh. Pankaj Thakker of M/s Krishna Shipping and Allied Services and his co-accomplice and COFEPOSA absconder Sh. Manish Kumar Jain.

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**14.4** Besides the above mentioned goods, 616 MT of Black Pepper, 748.35 MT of inshell walnuts, 50 MT of inshell Pistachios and 48.6 MT of walnut Kernel, again claimed to be of Afghanistan origin, were imported from Dubai, for warehousing into Adani ports and SEZ (APSEZ) Mundra, by M/s OWS Warehouse Services Pvt. Ltd., by firms M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, which were being stage-managed by Sh. Pankaj Thakker of M/s Krishna Shipping and Allied Services and his co-accomplice and COFEPOSA absconder Sh. Manish Kumar Jain.

**14.5** In the case of 285.2 MT of seized black pepper and 139.7 MT of Seized inshell walnuts, imported from M/s Aditya Exports, KASEZ (285.2 MT of black pepper and 96.85 MT of inshell walnuts) and M/s OWS warehouse services Pvt, Ltd, APSEZ (42.85 MT of Inshell Walnuts), claimed to be of Afghanistan origin, firms i.e. Noticee Nos. 2 & 3, while filing the Bills of Entry for import/home consumption, provided FAKE COUNTRY OF ORIGIN and TRANSSHIPMENT DOCUMENTS in SEZ online portal, to claim Nil rate of duty in terms of SAFTA (South Asian Free Trade Area) Notification No. 99/2011-Cus, which inter alia grants Customs duty exemption to Afghanistan origin goods.

**14.6** As far as seized 217.3 MT of Inshell Walnuts imported from M/s Zest marine Services Pvt. Ltd, KASEZ are concerned, the same were claimed to be of USA origin and undervalued invoices were presented before the Customs authorities for clearing the said goods. For said consignments, bills of entry for home consumption/import into India, were filed by firms i.e. M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, which were being utilized by Sh. Pankaj Thakker of M/s Krishna Shipping and Allied Services and his co-accomplice and COFEPOSA absconder Sh. Manish Kumar Jain.

**15.** During investigation, the bank account statements of M/s Krishna Shipping and Allied Services were procured from the banks. It was found that the Customs duty payments (IGST component) for DTA removal to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP were made by M/s Krishna Shipping and Allied Services, even though in terms of the Customs Act, 1962 read with SEZ Rules, 2006, the duty payments were required to be made by the recipient of DTA removed good i.e. M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, in the extant case. Further, a huge amount of money flowed from/to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP from/to M/s Krishna Shipping and Allied Services.

**15.1** As per bank statement summary, M/s Krishna Shipping and Allied Services is in receipt of Rs. 20.17 Crore from M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP.

**16.** FTA Cell of International Customs Division got verified the Country-of-Origin certificates from Afghanistan Embassy in India through Ministry of External Affairs (MEA), which enclosed a letter dated 12.02.2023 from Afghanistan Chamber of Commerce and Industry (ACCI) declaring that Country-of-Origin certificates in question were issued by Nangarhar Chamber of Commerce in Afghanistan. However, as the investigation established that none of the seized consignments imported by M/s Aditya Exports into SEZ were actually from Afghanistan, a detailed reference was sent to the Principal Commissioner, Directorate of International Customs, vide DRI Ludhiana Zonal Unit's letter dated 04.05.2023 and, they, in turn, referred the matter to MEA vide reference letter dated 11.05.2023 for taking up the matter with Afghanistan Embassy. Another letter, as per format specified in CAROTAR, 2020, along with a detailed questionnaire for Afghanistan authorities was sent to Principal Commissioner, Directorate of International Customs, vide DRI Unit's letter dated 30.06.2023 and, they, in turn, referred the matter to MEA vide reference letter dated 19.07.2023 for taking up the matter with Afghanistan Embassy. In view of overwhelming evidence to the contrary, the authenticity of Country-of-Origin Certificates for the present case remains under cloud and are insufficient to claim the benefit of SAFTA duty concessions.

**16.1** Even if it is assumed that Country-of-Origin Certificates in question were issued by Nangarhar Chamber of Commerce from Afghanistan, the fact remains that the consignments which actually arrived in India had sailed from Dubai and never from Afghanistan and that these

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certainly cannot be equated or identified with the consignments which might or might not have been checked by Nangarhar Chamber of Commerce in Afghanistan.

**16.2** Considering the gravity of the matter, the fact that M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP who had executed the Provisional Assessment Duty Bonds, were untraceable and that the signatures of Notary Advocate Shri V. K. Sharma on PA Bonds differed from Bond to Bond [total 17 such bonds], it was decided to approach the Notary in Delhi for verification of the executed Bonds. Shri V. K. Sharma, Advocate in his letter dated 11.05.2023(**RUD-33**) confirmed that his registration for notary (Bearing registration No. 1625) stood expired way earlier in the year 2020; that the signature and stamps on the said PA bonds were not his; that these were used by the culprits M/s Cuthbert Winner LLP and M/s Cuthbert Ocean LLP without his knowledge; that he had no relation to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP or to any person connected to them.

**17.** On 18.07.2023, search was attempted at the business premises of M/s Cosmic Inheritance Pvt. Ltd., located at 602, NaurangBhawan, 21, K.G. Marg, New Delhi-110001, however, it was found that the said firm never existed at 602, NaurangBhawan, 21, K.G. Marg, New Delhi-110001.

**17.1** Further, on 18.07.2023 search was also attempted at the business premises of M/s Cuthbert Maxwell LLP (Shown to be one of the current partners of M/s Cuthbert Winner LLP), 4th Floor, Rectangle One, D-4, District Center, Saket, New Delhi-110017, however, it was found that the said premises was occupied by a business firm namely M/s Regus Centre Saket Private Limited, who provided co-working space to various firms. It was gathered that M/s Cuthbert Maxwell LLP had a co-working agreement with the firm M/s Regus Centre Saket Private Limited and M/s Cuthbert Maxwell LLP was operating under an office service agreement signed on 29.12.2021, for the period 01.02.2022 to 31.01.2023. It was also gathered that M/s Cuthbert Maxwell had no employees working at their premises and that the services of M/s Cuthbert Maxwell LLP were restricted in 07/2022 due to non-payment of the monthly services at M/s Regus.

**17.2** Furthermore, the notary namely Ms. Sanyogita, who had notarized the LLP agreement involving M/s Cuthbert Winner LLP, was also untraceable and the document appeared to be dubious as the same did not even bear the register entry of the notary and the signatures of the notary were also missing.

**17.3** Also, the address of Shri Devender Kumar (associated with both M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP) was fake. During inquiries, the address i.e. House no. 7, Street no. 6A, Biharipur Extension, Biharipur, North East Delhi, Delhi-110094, was found to be owned by one Shri Rajender Prasad S/o Shri Harsahay Singh, for the past 42 years. It was gathered that Shri Devender Kumar had resided at the said address in 2018-19 only and had vacated the premises in 2019. (**RUD-34**)

**17.4** Further, statement dated 20.07.2023 of Shri Rajan Sareen was recorded under Section 108 of the Customs Act, 1962 wherein he stated that he held no position in M/s Cosmic Inheritance Pvt. Ltd, 602, NaurangBhawan, 21, K.G. Marg, New Delhi-110001; that he had not signed any LLP agreement; that he was known to Devender Kumar and Manish Jain, who had taken his signatures for opening an account in his (Rajan's) name and had promised to provide him (Rajan) a job in Dubai; that he had no business association with Devender Kumar and Manish Jain;

**17.5** Thus, in view of above searches, inquiries and statement of Shri Rajan Sareen, it appeared that the above said firms were created on paper only and had no real operations. The firms also appear to have prepared a series of forged documents.

**18.** Summonses dated 01.06.2023, 08.06.2023 and 19.06.2023 were issued to partners of M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, Sh. Devender Kumar, Sh. Samir Arora and Sh. Pravin Parshuram Raut, for appearance on 07.06.2023, 16.06.2023 and 27.06.2023



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respectively, to join the investigation and tender their voluntary statement, which they failed to comply.

**19.** M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP through Shri Samir Arora filed Civil Writ petitions CM-17011-CWP-2023 and CWP-11758-2023 (O&M) before the Hon’ble High Court of Punjab & Haryana and the hon’ble court vide order dated 12.10.2023, ordered for provisional release of 161.3 MT and 56 MT of USA origin inshell walnuts seized at M/s Prabhu Kripa Cold Storages Pvt. Ltd. and M/s Leh Cold Storage Pvt. Ltd. respectively. The said order read as under:

*“Heard, learned counsels for the parties and end of the justice would be met by keeping all the grounds and arguments available to both the sides open and at this stage, since the goods involved are perishable in nature, the respondents are directed to release the goods subject to furnishing of personal bond/surety to the satisfaction of Commissioner of Customs.”*

**20.** Total Duty evasion of seized goods, i.e. Black Pepper and Inshell walnuts, from SEZ units M/s Aditya Exports, M/s ZMSPL and M/s OWS warehouse services Pvt. Ltd to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP is shown as under:-

**Table-A (Annexure-A)**

**(Duty Calculation Chart For 196 MT of Declared Afghanistan Origin Black Pepper Seized at Warehouse Premises of M/s Aditya Exports In KASEZ)**

Sr No	IEC NAME	IEC CODE	IMPORT BILL OF ENTRY NUMBER	Import BE DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	Quantity SEIZED (in MT)	Declared COO	Declared CIF value in INR	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR as per MIP	DUTY PAYABLE AFTER DENIAL OF SAFTA BENEFITS @85.85% OF CIF VALUE (70% BCD; 10% CESS ON BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	Aditya Exports	3798000212	1002182	11.02.2023	BLACK PEPPER (CO NO-15232 DTD 07.11.2022, 15233 DTD 07.11.2022)	56	56	Afghanistan	1,64,01,463.75	2,88,44,490.50	2,47,62,995.09	2,47,62,995.09
2	Aditya Exports	3798000212	1002472	16.02.2023	BLACK PEPPER (CO NO 15301 DTD 09.11.2022, 15302 DTD 09.11.2022)	56	56	Afghanistan	1,64,01,463.75	2,88,44,490.50	2,47,62,995.09	2,47,62,995.09
3	Aditya Exports	3798000212	1002948	25.02.2023	BLACK PEPPER (CO NO-15241 DTD 08.11.2022,15299 DTD 09.11.2022,15300 DTD 09.11.2022)	84	84	Afghanistan	2,48,69,772.38	4,32,66,735.75	3,71,44,492.64	3,71,44,492.64
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 196 MT OF DECLARED AFGHANISTAN ORIGIN BLACK PEPPER SEIZED FROM WAREHOUSE OF ADITYA EXPORTS												8,66,70,482.83

**Table-B (Annexure-B)**

**(Duty Calculation Chart For 56 MT of Declared Afghanistan Origin Black Pepper Seized from Trucks at unnamed Godown in Nathupur, Haryana, cleared in DTA from KASEZ warehouse of M/s Aditya Exports)**

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSION DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	QUANTITY SEIZED(in MT)	Declared COO	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID AFTER CLAIMING SAFTA BENEFITS (ONLY IGST @ 5% OF THE CIF VALUE) IN INR	ACTUAL DUTY PAYABLE AFTER DENIAL OF SAFTA BENEFITS @85.85% OF CIF VALUE (70% BCD; 10% CESS ON BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT OCEANS LLP	AAPFC1389P	2003933	14-Mar-23	BLACK PEPPER (WE HAVE IMPORTED THIS CARGO AGAINST BOE NO 1003415-06.03.2023)	84	56	Afghanistan	2,88,44,490.64	14,42,224.53	2,47,62,995.21	2,33,20,770.68
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 56 MT OF DECLARED AFGHANISTAN ORIGIN BLACK PEPPER SEIZED FROM TRUCKS												2,33,20,770.68

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Table-C (Annexure-C)

(Duty Calculation Chart For 33.2 MT of Declared Afghanistan Origin Black Pepper Seized FromPrabhuKripa Cold Storage, Kundli, Sonipat, Haryana, cleared in DTA from KASEZ warehouse of M/s Aditya Exports)

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSION DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	QUANTITY SEIZED ( in MT)	Declared COO	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID AFTER CLAIMING SAFTA BENEFITS (ONLY IGST @ 5% OF THE CIF VALUE) IN INR	ACTUAL DUTY PAYABLE AFTER DENIAL OF SAFTA BENEFITS @85.85% OF CIF VALUE (70% BCD; 10% CESS ON BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT WINNER LLP	AAPFC1386C	2000953	20-Jan-23	BLACK PEPPER (WE HAVE IMPORTED THIS CARGO AGAINST BOE NO 1000875-17.01.2023)	56	33.2	Afghanistan	1,68,54,904.29	8,42,745.21	1,44,69,935.33	1,36,27,190.12
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 33.2 MT OF DECLARED AFGHANISTAN ORIGIN BLACK PEPPER SEIZED FROM PRABHU KRIPA COLD STORAGE, KUNDLI												1,36,27,190.12

Table-D (Annexure-D)

(Duty Calculation Chart For 96.85 MT of Declared Afghanistan Origin Inshell Walnut Seized FromKufri Cold Storage, Kundli, Sonipat, Haryana, cleared in DTA from KASEZ warehouse of M/s Aditya Exports)

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSIO N DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	QUANTITY SEIZED ( in MT)	Declared COO	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID AFTER CLAIMING SAFTA BENEFITS (ONLY IGST @ 5% OF THE CIF VALUE) IN INR	ACTUAL DUTY PAYABLE AFTER DENIAL OF SAFTA BENEFITS @131% OF CIF VALUE (120% BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT WINNER LLP	AAPFC1386C	2002782	23-Feb-23	INSHELL WALNUTS (WE HAVE IMPORTED THIS CARGO AGAISNT BOE NO 1002473-16.02.2023)	20	16.85	Afghanistan	27,07,795.00	1,35,389.75	35,47,211.45	34,11,821.70
2	CUTHBERT WINNER LLP	AAPFC1386C	2003594	09-Mar-23	INSHELL WALNUTS (WE HAVE IMPORTED THIS CARGO AGAISNT BOE NO 1002947-25.02.2023)	80	80	Afghanistan	1,28,32,000.00	6,41,600.00	1,68,09,920.00	1,61,68,320.00
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 96.85 MT OF DECLARED AFGHANISTAN ORIGIN INSHELL WALNUTS SEIZED FROM KUFRI COLD STORAGE, KUNDLI												1,95,80,141.70

Table-E (Annexure-E)

(Duty Calculation Chart For 42.85 MT of Declared Afghanistan Origin Inshell Walnut Seized FromAnant Cold Storage, Kundli, Sonipat, Haryana, cleared in DTA from APSEZ Mundra warehouse of M/s OWS Warehouse Services Pvt. Ltd.)

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSIO N DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	Quantity seized (in MT)	Declared COO	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID AFTER CLAIMING SAFTA BENEFITS (ONLY IGST @ 5% OF THE CIF VALUE) IN INR	ACTUAL DUTY PAYABLE AFTER DENIAL OF SAFTA BENEFITS @131% OF CIF VALUE (120% BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT WINNER LLP	AAPFC1386C	2002499	07-Feb-23	INSHELL WALNUTS (CO NO-12527 DTD 27.09.2022 ,12533 DTD 27.09.2022 , 12536 DTD 27.09.2022)	60	42.85	Afghanistan	71,73,090.00	3,58,654.50	93,96,747.90	90,38,093.40
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 42.85 MT OF DECLARED AFGHANISTAN ORIGIN INSHELL WALNUTS SEIZED FROM ANANT COLD STORAGE, KUNDLI												90,38,093.40

Table-F (Annexure-F)

(Duty Calculation Chart For 161.2 MT of Declared USA Origin Inshell Walnut Seized From PrabhuKripa Cold Storage, Kundli, Sonipat, Haryana, cleared in DTA from KASEZ warehouse of M/s Zest marine Services Private Ltd.)

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSION DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	QUANTITY SEIZED (in KG)	Declared COO	Price per KG in USD	Price per KG in INR	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID BY IMPORTER	BRAND VALUE per KG in USD as per the insurance document	BRAND VALUE per KG in INR as per the insurance document	NEW ASSESABLE VALUE (CIF) FOR THE ITEM IN INR as per BRAND	ACTUAL DUTY PAYABLE for USA origin walnuts as per Brand value @131% OF CIF VALUE (120% BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT OCEANS LLP	AAPFC1389P	2003622	09-Mar-23	INSHELL WALNUTS (WE HAVE IMPORTED THIS CARGO AGAINST BOE NO-1003037-27.02.2023)	100000	80600	USA	1.25	105.8	85,27,480.00	93,80,228.00	2.26	191.20	1,54,10,397.60	2,01,87,620.86	1,08,07,392.86
2	CUTHBERT WINNER LLP	AAPFC1386C	2003785	13-Mar-23	INSHELL WALNUTS (WE HAVE IMPORTED THIS CARGO AGAISNT BOE NO 1003492-07.03.2023)	100000	80600	USA	1.25	105.8	85,27,480.00	93,80,228.00	2.26	191.20	1,54,10,397.60	2,01,87,620.86	1,08,07,392.86
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 161.2 MT OF DECLARED USA ORIGIN INSHELL WALNUTS SEIZED FROM PRABHU KRIPA COLD STORAGE, KUNDLI																	2,16,14,785.71

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Table-G (Annexure-G)

(Duty Calculation Chart For 56 MT of Declared USA Origin Inshell Walnut Seized From Leh Cold Storage, Kundli, Sonipat, Haryana, cleared in DTA from KASEZ warehouse of M/s Zest marine Services Private Ltd.)

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSION DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	QUANTITY SEIZED (in KG)	Declared COO	Price per KG in USD	Price per KG in INR	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID BY IMPORTER	BRAND VALUE per KG in USD as per the insurance document	BRAND VALUE per KG in INR as per the insurance document	NEW ASSESSABLE VALUE (CIF) FOR THE ITEM IN INR as per BRAND	ACTUAL DUTY PAYABLE for USA origin walnuts as per Brand value @131% OF CIF VALUE (120% BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT WINNER LLP	AAPFC1386C	2003995	15-Mar-23	INSHELL WALNUTS (WE HAVE IMPORTED THIS CARGO AGAISNT BOE NO 1003613-09.03.2023)	100	56,000	USA	1.25	105.80	59,24,800.00	65,17,280.00	2.26	191.20	1,07,07,200.00	1,40,26,432.00	75,09,152.00
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 56 MT OF DECLARED USA ORIGIN INSHELL WALNUTS SEIZED FROM LEH COLD STORAGE, KUNDLI																	75,09,152.00

Table-H (Annexure-H)

(Total Differential Duty Payable Corresponding To the Seized Goods)

TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 196 MT OF DECLARED AFGHANISTAN ORIGIN BLACK PEPPER SEIZED FROM WAREHOUSE OF ADITYA EXPORTS (in KASEZ)	8,66,70,482.83
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 56 MT OF DECLARED AFGHANISTAN ORIGIN BLACK PEPPER SEIZED FROM TRUCKS (From KASEZ)	2,33,20,770.68
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 33.2 MT OF DECLARED AFGHANISTAN ORIGIN BLACK PEPPER SEIZED FROM PRABHU KRIPA COLD STORAGE, KUNDLI (From KASEZ)	1,36,27,190.12
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 96.85 MT OF DECLARED AFGHANISTAN ORIGIN INSHELL WALNUTS SEIZED FROM PRABHU KRIPA COLD STORAGE, KUNDLI (From KASEZ)	1,95,80,141.70
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 42.85 MT OF DECLARED AFGHANISTAN ORIGIN INSHELL WALNUTS SEIZED FROM ANANT COLD STORAGE, KUNDLI (From APSEZ Mundra)	90,38,093.40
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 161.2 MT OF DECLARED USA ORIGIN INSHELL WALNUTS SEIZED FROM PRABHU KRIPA COLD STORAGE, KUNDLI (From KASEZ)	2,16,14,785.71
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 56 MT OF DECLARED USA ORIGIN INSHELL WALNUTS SEIZED FROM LEH COLD STORAGE, KUNDLI (From KASEZ)	75,09,152.00
TOTAL DIFFERENTIAL DUTY PAYABLE ON SEIZED GOODS	18,13,60,616.44

21. The importer has undervalued the seized goods listed in TABLE/ANNEXURE- F & G. This resulted in short payment of duty amounting to Rs. 2,91,23,937.71 [differential BCD amounting to Rs. 26678416.22& differential IGST amounting to Rs. 2445521.49], which is recoverable under Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA of the Customs Act, 1962

22. Since the importer undervalued the seized goods i.e. Inshell Walnuts, the value of these goods declared by the importer in their bills of entry stands liable for rejection and thus requiresto be re-determined. The provisions relating to valuation of imported goods are contained in Section 14 of the Customs Act, 1962 that reads as follows:-

“**SECTION 14. Valuation of goods.**— (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf :

**Provided** that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions

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*and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:*

***Provided*** further that the rules made in this behalf may provide for,-

- (i) *the circumstances in which the buyer and the seller shall be deemed to be related;*
- (ii) *the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
- (iii) *the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:*

***Provided*** also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) *Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.*

***Explanation.*** — *For the purposes of this section —*

- (a) *“rate of exchange” means the rate of exchange —*
  - (i) *determined by the Board, or*
  - (ii) *ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;*
- (b) *“foreign currency” and “Indian currency” have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]*

**22.2.** Thus, for the purpose of levying duty at rates specified in the Customs Tariff or any other law for the time being in force, Section 14 allows acceptance of the value of the imported goods, as declared by the importer thereof, as the transaction value or the assessable value, if:-

- (i) it represents the price actually paid or payable for the goods;
- (ii) the goods have been sold for export to India;
- (iii) the price is for delivery of those goods at the time and at the place of importation;
- (iv) the buyer and seller of the goods are not related to each other; and
- (v) price is the sole consideration for the sale of the goods.

Where any one or more of the above ingredients of the price paid or payable are missing, the value declared by the importer may not be accepted as the transaction value. In such a situation, Section 14(1) read with Section 156(2)(a) of the Act empowers the Government to frame appropriate rules laying down the manner of rejection of the value declared by the importer and its re-determination.

**22.3** In exercise of the power conferred by Section 14(1) and Section 156(2)(a), the Government has indeed framed the Customs Valuations (Determination of Value of Imported Goods) Rules, 2007 [hereinafter referred to as ‘the CVR, 2007’]. Rule 12 of the CVR, 2007 prescribed the procedure for “Rejection of the declared value” and Rule 3 thereof laid down the

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manner for “Determination of the method of valuation.” Relevant parts of these rules are reproduced below:-

**“Rule 12.Rejection of declared value. —** (1) *When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*

(2) *At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*

*Explanation.- (1) For the removal of doubts, it is hereby declared that:-*

(i) *This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.*

(ii) *The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.*

(iii) *The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -*

(a) *the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*

(b) *the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*

(c) *the sale involves special discounts limited to exclusive agents;*

(d) *the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;*

(e) *the non declaration of parameters such as brand, grade, specifications that have relevance to value;*

(f) *the fraudulent or manipulated documents.*

**Rule 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*

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*(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.*

**22.4.** Rule 12 of CVR, 2007 prescribes 4 step procedure for rejection of the value of imported goods declared by an importer:-

- (I) the proper officer must have **reasons to doubt** the truth or accuracy of the value declared in relation to imported goods;
- (II) if he has, he must ask the importer of the goods to furnish further information including documents or other evidence. The proper officer may ask for the same orally or in writing. If, however, the importer so requests, the proper officer must intimate the importer in writing the reasons for doubting the truth or accuracy of the value declared by him;
- (III) if the importer furnishes such information, the proper officer must consider it; and finally
- (IV) where the proper officer, after considering the information furnished by the importer or where the importer does not respond at all, still has **reasonable doubt** about the truth or accuracy of the value so declared, he may reject the value declared by the importer.



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**22.5** Given the facts and circumstances discussed above and the fact that the importer undervalued the seized goods i.e. Inshell walnuts listed in Table/Annexure- F & G, the value of the seized goods i.e. Inshell Walnuts declared by the importer to be of USA origin in their bills of entry, stands liable for rejection under the provisions of Rule 12 of CVR, 2007 and is required to re-determined as per the provisions of Rule 3 of CVR, 2007.

**22.6** In view of the evidences unearthed during the investigations, as discussed supra(value as stated in the insurance certificate attached with goods covered under BL No. NAM5880156 dated 15.12.2022 (**RUD 35**), it appears that the importer has misdeclared the value of imported goods i.e. Inshell Walnuts declared of USA origin and the correct transaction value of the goods imported by them in the import consignments is as in the insurance certificate attached with goods covered under BL No. NAM5880156 dated 15.12.2022

**22.7** The importer indulged in mis-declaring the price in their import consignments listed in Table/Annexure- F & G and the actual value of the said imported goods i.e. Inshell Walnuts declared by the importer to be of USA origin has been found to be the one mentioned in the insurance certificate attached with goods covered under BL No. NAM5880156 dated 15.12.2022 Therefore, the actual transaction value for the import consignments is listed in Table/Annexure- F & G, as per Sub-Rule (1) of Rule 3 of CVR, 2007 read with Section 14 of the Customs Act, 1962.

**23. Relevant legal provisions of the Customs Act, 1962 are reproduced hereunder:-**

**SECTION 17.Assessment of duty.** - (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

**SECTION 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 wilful 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.

1) Where any duty has not been levied or not paid or has been short-levied or short paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded for any reason other than the reasons of collusion or any wilful mis-statement or suppression facts:-

- (a) the proper officer shall, within twoyears from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been 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;

Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;

- (b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of:-

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- (i) his own ascertainment of such duty, or
- (ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

**SECTION 28AA. Interest on delayed payment of duty.**-(1) Notwithstanding anything contained in any judgment, decree, order or direction of court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section(2), whether such payment is made voluntarily or after determination of the duty under that Section.

**Section 46(4).** The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed

**Section 46(4A).** The importer who presents a bill of entry shall ensure the following, namely:-

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

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

- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- (m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;
- (q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.

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

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

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

**Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

**Provided** also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

**Provided** also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

**Provided** also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

**Explanation . -** For the removal of doubts, it is hereby declared that -

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

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

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

**23.1.** Section 17(1) of the Act provides that "an importer entering any imported goods under Section 46, or an exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods". Therefore, the responsibility to correctly assess duty has been cast on the importer. The government has thus placed huge reliance on the self-assessment made by the importer. It appears that the importer undervalued the seized goods i.e. Inshell Walnuts and evaded Customs Duty. The importer by their aforesaid act of omission and commission has thus contravened the provisions of Section 46(4) and 46(4A) of the Act. The Section 111 of the Act provides for confiscation of goods brought from a place outside India. As the importer undervalued the impugned goods i.e. Inshell Walnuts, with intention to evade Customs Duties, the same, are liable to confiscation under Section 111(d), 111(m), 111(o) and 111(q) of the Act.

**23.2.** Section 114A of the Act, provides that where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as

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determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

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

In the present case, as M/s Aditya Exports, M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP have evaded the Customs duty by reason of collusion, wilful mis-statement and suppression of facts by way of submission of fake country of origin documents of Afghanistan origin and also undervaluing the import of Inshell Walnuts from USA as stated in preceding paras and thus, by their act of omission and commission, M/s Aditya Exports, M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP appear to be liable for penal action under Section 114A and M/s Zest Marine Services Pvt. Ltd., M/s OWS Warehouse Services Pvt. Ltd along with its partners, Shri Pankaj Thakkar, Shri Mehul Pujara, Shri Naimish Sodha, Shri Manish Jain and Shri Sharad Shetty appear to be liable for penalty under Section 114AA of the Act.

**24.** From the investigation conducted, evidences gathered and sequence of events, the following facts emerge:

- a) That it is a clear case of fraudulent evasion of duty and it was a pre-planned, cool minded, clever, intelligent and deliberate act committed in conspiracy, which has caused loss to the Government Exchequer.
- b) Shri Pankaj Thakker, Partner cum F-Card holder of Customs Broker firm M/s Krishna Shipping & Allied Services (CB License No. KDL/CHA/R/43/201) is one of the masterminds, operating from Gandhidham, Gujarat. He, along with his overseas partner / mastermind and COFEPOSA absconder Shri Manish Kumar Jain, are beneficiaries of entire fraud in which Customs duty to the tune of Rs.66.10 Crore was evaded in collusion with firms M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, which were being utilized by both of them, on account of 1596 MT of 'black pepper' removed into DTA at NIL rate of customs duty by claiming it to be of Afghanistan origin.
- c) DTA clearance (import for home consumption) to firms/IEC holders M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP was made through warehousing firms in KASEZ, M/s Aditya Exports and M/s Zest Marine Services Private Ltd, which are de-facto controlled and operated by Shri Pankaj Thakker only. M/s Aditya Exports and M/s Zest Marine Services Pvt. Ltd. filed the bill of entry for warehousing, while Bill of entry for Home Consumption / import into India, was being filed by firms M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP. All the above said firms were apparently either being de facto controlled or utilized by Shri Pankaj Thakkar of M/s Krishna Shipping and Allied Services, in collusion with his overseas partner/mastermind and COFEPOSA absconder Shri Manish Kumar Jain, without being formally authorized by any of them.
- d) Goods of alleged Afghanistan origin (black pepper and Inshell walnuts), were brought into KASEZ, from abroad (Dubai), on fake documents of origin and transit. Bills of entry for warehousing the alleged Afghanistan goods, without paying any duty, was filed by M/s Aditya Exports and M/s OWS Warehouse Services Private Ltd, on directions of one of the Masterminds Shri Pankaj Thakker.
- e) Similarly, goods of alleged USA origin (inshell walnuts), were brought into KASEZ from abroad (Dubai), for warehousing, without paying any duty or producing any country-of-origin certificate. Bill of entry for warehousing these alleged USA origin goods, without paying any Customs duty, was filed by M/s Zest Marine services private Ltd, again, on directions of mastermind Shri Pankaj Thakker.

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- f) Every operation, like, filing bills of entry for warehousing, booking of trucks, coordinating the loading and unloading of all imported cargo into SEZ, getting the Delivery Order from shipping lines, Freight payment to the container lines and payment of salary of staff associated with M/s Aditya Exports, was done on specific directions of Shri Pankaj Thakker. Important is to note that for doing all these activities, Shri Pankaj Thakker of M/s Krishna Shipping and Allied Services, was never authorized officially by either of M/s Aditya Exports and M/s Zest Marine Services Pvt. Ltd.
- g) Both the firms i.e., M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP are untraceable and even the provisional assessment bonds executed by them and submitted to the Deputy Commissioner, KASEZ by the hands of Shri Sanjeev Kumar Roy, who acted solely on directions of Shri Pankaj Thakker, have been found to be carrying forged seals and signatures of the Notary i.e. Shri V. K. Sharma, Advocate and thus the bonds itself are fake.
- h) The financial trail has pointed that all the payments were made to an account in Dubai, instead of the Afghanistan Based Supplier M/s Toryal Khan Mahsilzai, despite Afghanistan being covered by SWIFT network for foreign payments, which incidentally are owned or operated by Shri Manish Kumar Jain, a COFEPOSA absconder and alibi of Shri Pankaj Thakker in the instant case.

**25.** Now, therefore, the following persons are hereby called upon to show cause in writing to the Commissioner, Customs House Kandla, as to why:-

- (i) the impugned goods i.e. 196 MT Black pepper declared to be of Afghanistan origin (Table/Annexure-A) by violating the provisions as stipulated by Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, imported by **M/s. Aditya Exports** by violating the LOA norms and presently warehoused at M/s. Aditya Exports warehouse in KASEZ totally valued at Rs. 10,09,55,716.75, should not be confiscated under the provisions of Section 111 (d), 111 (m) & 111 (o) of the Customs Act, 1962;
- (ii) The differential duty amounting to Rs. 2,33,20,770.68 [differential BCD amounting to Rs. 1,90,15,188.68, differential SWS amounting to Rs. 19,01,518.87 & differential IGST amounting to Rs. 24,04,063.14] should not be demanded and recovered from **M/s Cuthbert Oceans LLP** in respect of Black pepper declared to be of Afghanistan origin (Table/Annexure-B), imported in DTA by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently under Supurdari of ICD-PanchiGujaran, Sonipat, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
- (iii) Also, the impugned goods i.e. 56 MT Black pepper declared to be of Afghanistan origin (Table/Annexure-B) by violating the provisions as stipulated by Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, imported in DTA by **M/s Cuthbert Oceans LLP**, by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently under Supurdari of ICD-PanchiGujaran, Sonipat totally valued at Rs. 2,88,44,490.64, should not be confiscated under the provisions of Section 111 (m) and 111 (o) of the Customs Act, 1962;
- (iv) The differential duty amounting to Rs. 1,36,27,190.12 [differential BCD amounting to Rs. 1,11,11,279.07, differential SWS amounting to Rs. 11,11,127.91 & differential IGST amounting to Rs. 14,04,783.14] should not be demanded and recovered from **M/s Cuthbert Winner LLP** in respect of Black pepper declared to be of Afghanistan origin (Table/Annexure-C), imported in DTA by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at PrabhuKripa Cold Storage, Sonipat, under Section 28(4) of

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the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;

- (v) Also, the impugned goods i.e. 33.2 MT Black pepper declared to be of Afghanistan origin (Table/Annexure-C) by violating the provisions as stipulated by Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, imported in DTA by **M/s Cuthbert Winner LLP** by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at PrabhuKripa Cold Storage, Sonipat totally valued at Rs. 1,68,54,904.29, should not be confiscated under the provisions of Section 111 (m) and 111 (o) of the Customs Act, 1962;
- (vi) The differential duty amounting to Rs. 1,95,80,141.70 [differential BCD amounting to Rs. 1,79,36,007.66 & differential IGST amounting to Rs. 16,44,134.04] should not be demanded and recovered from **M/s Cuthbert Winner LLP** in respect of Inshell Walnut declared to be of Afghanistan origin (Table/Annexure-D), imported in DTA by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at Kufri Cold Storage, Sonipat, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
- (vii) Also, the impugned goods i.e. 96.85 MT Inshell Walnut declared to be of Afghanistan origin (Table/Annexure-D) by violating the provisions as stipulated by Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, imported in DTA by **M/s Cuthbert Winner LLP** by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at Kufri Cold Storage, Sonipat totally valued at Rs. 1,55,39,795.00, should not be confiscated under the provisions of Section 111 (m) and 111 (o) of the Customs Act, 1962;
- (viii) The differential duty amounting to Rs. 90,38,093.40 [differential BCD amounting to Rs. 82,79,169.53 & differential IGST amounting to Rs. 7,58,923.87] should not be demanded and recovered from **M/s Cuthbert Winner LLP** in respect of Inshell Walnut declared to be of Afghanistan origin (Table/Annexure-E), imported in DTA by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at Anant Cold Storage, Sonipat, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962
- (ix) Also, the impugned goods i.e. 42.85 MT Inshell Walnut declared to be of Afghanistan origin (Table/Annexure-E) by violating the provisions as stipulated by Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, imported in DTA by **M/s Cuthbert Winner LLP** by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at Anant Cold Storage, Sonipat totally valued at Rs. 71,73,090.00, should not be confiscated under the provisions of Section 111 (m) and 111 (o) of the Customs Act, 1962;
- (x) The declared value of Rs. 85,27,480.00 of the impugned goods imported by **M/s Cuthbert Oceans LLP** detailed in Sr. No. 1 of Table/Annexure -F and also, the declared value of Rs. 85,27,480.00 of the impugned goods imported by **M/s Cuthbert Winner LLP** detailed in Sr. No. 2 of Table/Annexure -F should not be rejected under Rule 12 of CVR, 2007 read with Section 14 of the Act and be re-determined the same to Rs. 1,54,10,397.60 for impugned goods imported by M/s Cuthbert Oceans LLP and Rs. 1,54,10,397.60 for impugned goods imported by M/s Cuthbert Winner LLP, under sub-rule (1) of Rule 3 of CVR, 2007 and consequently, the differential duty amounting to Rs. 1,08,07,392.86 [differential BCD amounting to



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- Rs. 98,99,901.853 & differential IGST amounting to Rs. 9,07,491.00] should not be demanded and recovered from M/s Cuthbert Winner LLP and the differential duty amounting to Rs. 1,08,07,392.86 [differential BCD amounting to Rs. 98,99,901.853 & differential IGST amounting to Rs. 9,07,491.00] should not be demanded and recovered from M/s Cuthbert Oceans LLP in respect of Inshell Walnut declared to be of USA origin (Table/Annexure-F), imported in DTA by presenting under-valued commercial invoices in front of the Customs Authorities and presently kept seized at PrabhuKripa Cold Storage, Sonipat, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
- (xi) Also, the impugned goods i.e. 161.2 MT Inshell Walnut declared to be of USA origin (Table/Annexure-F), imported in DTA by **M/s Cuthbert Winner LLP & M/s Cuthbert Oceans LLP** by presenting under-valued commercial invoices in front of the Customs Authorities and presently kept seized at PrabhuKripa Cold Storage, Sonipat totally valued at Rs. 3,08,20,795.20 (Rs. 1,54,10,397.60 for each importer individually), should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962;
  - (xii) The declared value of Rs. 59,24,800.00 of the impugned goods imported by **M/s Cuthbert Winner LLP**, as detailed in Table/Annexure -G should not be rejected under Rule 12 of CVR, 2007 read with Section 14 of the Act and be re-determined the same to Rs. 1,07,07,200.00 under sub-rule (1) of Rule 3 of CVR, 2007, and consequently, the differential duty amounting to Rs. 75,09,152.00 [differential BCD amounting to Rs. 68,78,612.52 & differential IGST amounting to Rs. 6,30,539.48] should not be demanded and recovered from M/s Cuthbert Winner LLP in respect of Inshell Walnut declared to be of USA origin (Table/Annexure-G), imported in DTA by presenting under-valued commercial invoices in front of the Customs Authorities and presently kept seized at Leh Cold Storage, Sonipat, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
  - (xiii) Also, the impugned goods i.e. 56 MT Inshell Walnut declared to be of USA origin (Table/Annexure-G), imported in DTA by **M/s Cuthbert Winner LLP** by presenting under-valued commercial invoices in front of the Customs Authorities and presently kept seized at Leh Cold Storage, Sonipat totally valued at Rs. 1,07,07,200.00, should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962;
  - (xiv) The said trucks bearing numbers RJ19GG2122 and RJ04GC8558 of **M/s Shree Karni Roadways**, which were being used for transport of the smuggled goods should not be confiscated U/s 115(2) of The Customs Act, 1962.
  - (xv) Penalty should not be imposed on **M/s Aditya Exports, M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP** under Section 114A of the Customs Act, 1962 on Aditya Exports;
  - (xvi) Penalty should not be imposed on **M/s Zest Marine Services Pvt. Ltd** under Section 114AA of the Customs Act, 1962;
  - (xvii) Penalty should not be imposed on **M/s OWS Warehouse Services Pvt. Ltd** under Section 114AA of the Customs Act, 1962;
  - (xviii) Penalty should not be imposed on **M/s Krishna Shipping & Allied Services Pvt. Ltd** under Section 114AA of the Customs Act, 1962;
  - (xix) Penalty should not be imposed on **Sh. Pankaj Thakkar, Partner in M/s Krishna Shipping & Allied Services Pvt. Ltd** under Section 114AA of the Customs Act, 1962;

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- (xx) Penalty should not be imposed on **Sh. Karsanbhai Morumal Thakkar, Partner in M/s Krishna Shipping & Allied Services Pvt. Ltd** under Section 114AA of the Customs Act, 1962;
- (xxi) Penalty should not be imposed on **Sh. Manish Jain**, person associated with Cosmic International Group and Cuthbert group and also the overseas mastermind of the entire fraud beside Shri Pankaj Thakkar under Section 114AA of the Customs Act, 1962;
- (xxii) Penalty should not be imposed on **Sh. Mehul Pujara, Partner in M/s Aditya Exports** under Section 114AA of the Customs Act, 1962;
- (xxiii) Penalty should not be imposed on **Sh. Naimish Sodha, Partner in M/s Aditya Exports** under Section 114AA of the Customs Act, 1962;
- (xxiv) Penalty should not be imposed on **Shri Sameer Arora, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP** under Section 114AA of the Customs Act, 1962;
- (xxv) Penalty should not be imposed on **Shri Devender Kumar, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP** under Section 114AA of the Customs Act, 1962;
- (xxvi) Penalty should not be imposed on **Sh. Pravin Parshuram Raut, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP** under Section 114AA of the Customs Act, 1962;
- (xxvii) Penalty should not be imposed on **Sh. Sharad Shetty, Director of M/s Zest Marine Services Pvt. Ltd** under Section 114AA of the Customs Act, 1962;
- (xxviii) Penalty should not be imposed on **Shri Pankaj Surani, Partner in OWS Warehouse Services Pvt. Ltd** under Section 114AA of the Customs Act, 1962;
- (xxix) Penalty should not be imposed on **Shri Vineet Sharma, Partner in OWS Warehouse Services Pvt. Ltd** under Section 114AA of the Customs Act, 1962;
- (xxx) Penalty should not be imposed on **Smt. Sonam Sharma, Partner in OWS Warehouse Services Pvt. Ltd** under Section 114AA of the Customs Act, 1962;
- (xxxi) Penalty should not be imposed on **Shri Mangal Kiran Sharma, Partner in OWS Warehouse Services Pvt. Ltd** under Section 114AA of the Customs Act, 1962;

**26.** Further, a corrigendum was issued vide F.No. GEN/ADJ/COMM/181/2024-Adjn dated 09.09.2024 for the following corrections/additions in the SCN dated 23.04.2024:-

(i) In Para 25(i) of the subject SCN, the words-

*"...should not be confiscated under the provisions of Section 111 (d), 111 (m) & 111 (o) of the Customs Act, 1962"*

*may be read as*

*"...should not be confiscated under the provisions of Section 111 (d), 111 (m) & 111 (o) of the Customs Act, 1962, read with Notification of Ministry of Commerce and Industry S.O. 2665(E) dated 05.08.2016".*

(ii) A new Para 25(xv)(a) is hereby inserted, after Para 25(xv) at Page No. 42 of 45 of the subject SCN, as given below-

*(xv) (a) Penalty should not be imposed on M/s Aditya Exports under Section 112 of the Customs Act, 1962, read with Notification of Ministry of Commerce and Industry S.O. 2665(E) dated 05.08.2016.*

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**PROVISIONAL RELEASE OF GOODS-****Proceedings before High Court of Haryana and Punjab-**

**27.** M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP vide CWP-11758-2023 and 11233-2023 applied for provisional release of 161.3MT and 56MT Inshell Walnuts seized and lying at M/s. Prabhu Kripa Cold storage and M/s. Leh Cold storage respectively. The respondents in the CWPs 11758 and 11233 are as follows:-

- a. Union of India
- b. Additional Director, DRI, Ludhiana
- c. IO, DRI Ludhiana
- d. Specified Officer, KASEZ

The undersigned, being the adjudicating authority, in respect of goods cleared from KASEZ and found to be liable for confiscation, in terms of Rule 47(5) of SEZ Rules, 2006 has not been made a respondent in either of the writ petition. Accordingly, in pursuance of orders dated 12.10.2023, 20.09.2024, 25.09.2024 and 04.10.2024 of the Hon'ble High Court of Punjab and Haryana, this office vide letter dated 04.10.2024 released the said goods, as per the directions of the Hon'ble court, on furnishing of Bond by Shri Samir Arora, Partner, M/s. Cuthbert Oceans LLP and M/s. Cuthbert Winner LLP.

**27.1** Subsequently, M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP vide letters dated 17.10.2024 and 22.10.2024 requested for provisional release of other goods (lying and seized in various cold storages in Haryana) on furnishing of Bond by Shri Samir Arora. The said request was disposed off by rejecting the request of provisional release of goods vide order F.No. GEN/ADJ/COMM/181/2024-Adjn dated 07.11.2024.

**Proceedings before High Court of Gujarat-**

**27.2** Further, I find that M/s. A2Z Gulf General Trading FZE/LLC (supplier of goods in the instant case) has approached Hon'ble High Court of Gujarat, vide SCA 10875 of 2023, for release of Black pepper, seized vide Seizure Memo dated 24.04.2023 and currently lying in premises of M/s. Aditya Exports, KASEZ. The petitioner i.e. M/s. A2Z Gulf General trading has made the following five respondents in the said SCA:-

(i) Union of India, (ii) The Development Commissioner, KASEZ, (iii) The Deputy Commissioner, Customs, KASEZ, (iv) The Authorised Officer, KASEZ, (v) M/s. Aditya Exports, KASEZ Unit.

**27.2.1** The undersigned, being the adjudicating authority, in respect of goods improperly imported in KASEZ and found to be liable for confiscation, in terms of Rule 47(5) of SEZ Rules, 2006, has not been made a respondent in the said SCA.

**27.2.2** The Hon'ble High Court of Gujarat vide order dated 22.08.2024 directed the respondent no. 5 (M/s. Aditya Exports, KASEZ) to release the goods on furnishing of Bank Guarantee of 30% of the differential duty to the satisfaction of respondent no. 1 to 4.

**27.2.3** In this regard, this office received a letter dated 27.09.2024 issued by DCC, KASEZ intimating that in pursuance of order dated 22.08.2024, M/s. Aditya Exports vide email/letter dated 28.08.2024 submitted 3 Bonds and 3 Bank guarantees (issued by Bank of Baroda) on behalf of M/s. Cuthbert Winner LLP. On verification with the advocate notarising the Bonds and respective bank, all the Bonds and BGs were found to be fake/forged. The goods have not been released yet and the said SCA is still pending for disposal.

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PERSONAL HEARING-

28. Opportunities of personal hearings were provided to all the noticees as given below:-

S. No.	Name of the noticee	Dates of Hearing	Adjournment request letter dtd.	Date of Hearing	Adjournment request letter dtd.	Date of hearing	Date of hearing attended
1	M/s Aditya Exports	11.06.2024 & 24.09.2024	20.09.2024	15.10.2024	15.10.2024	04.11.2024	04.11.2024
2	M/s Cuthbert Winner LLP	24.09.2024	20.09.2024	15.10.2024	15.10.2024	04.11.2024	Not attended
3	M/s Cuthbert Oceans LLP	24.09.2024	20.09.2024	15.10.2024	15.10.2024	04.11.2024	Not attended
4	M/s Shree Karni Roadways	24.09.2024	21.09.2024	16.10.2024	16.10.2024	05.11.2024	05.11.2024
5	Sh. Manish Jain, person associated with Cosmic International Group and Cuthbert group	24.09.2024	---	15.10.2024	----	04.11.2024	Not attended
6	Sh. Mehul Pujara, Partner in M/s Aditya Exports	24.09.2024	20.09.2024	15.10.2024	15.10.2024	04.11.2024	04.11.2024
7	Sh. Naimish Sodha, Partner in M/s Aditya Exports	24.09.2024	20.09.2024	15.10.2024	15.10.2024	04.11.2024	04.11.2024
8	Shri Samir Arora, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP	24.09.2024	20.09.2024	15.10.2024	15.10.2024	04.11.2024	Not attended
9	Shri Devender Kumar, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP	24.09.2024	20.09.2024	15.10.2024	15.10.2024	04.11.2024	Not attended
10	Sh. Pravin Parshuram Raut, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP	24.09.2024	20.09.2024	15.10.2024	15.10.2024	04.11.2024	Not attended
11	M/s Zest Marine services Pvt. Ltd, KASEZ	25.09.2024	24.09.2024	16.10.2024	16.10.2024	05.11.2024	05.11.2024
12	Sh. Sharad Shetty, Director of M/s Zest Marine Services Pvt. Ltd	25.09.2024	24.09.2024	16.10.2024	16.10.2024	05.11.2024	05.11.2024
13	M/s Krishna Shipping & Allied Services Pvt. Ltd	25.09.2024	20.09.2024	16.10.2024	16.10.2024	05.11.2024	05.11.2024
14	Sh. Pankaj Thakkar, Partner in M/s Krishna Shipping & Allied Services Pvt. Ltd	25.09.2024	20.09.2024	16.10.2024	16.10.2024	05.11.2024	05.11.2024
15	Sh. Karsanbhai Morumal Thakkar, Partner in M/s Krishna Shipping & Allied Services Pvt. Ltd	25.09.2024	20.09.2024	16.10.2024	16.10.2024	05.11.2024	05.11.2024
16	M/s OWS Warehouse Services LLP, APSEZ, Mundra	25.09.2024	Shri Subendhu Patnaik attended PH on 24.09.2024 on behalf of all the 5 noticees.				
17	Shri Pankaj Surani, Partner in OWS Warehouse Services Pvt. Ltd	25.09.2024					
18	Shri Vineet Sharma, Partner in OWS Warehouse Services Pvt. Ltd	25.09.2024					

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19	Smt. Sonam Sharma, Partner in OWS Warehouse Services Pvt. Ltd	25.09.2024	
20	Shri Mangal Kiran Sharma, Partner in OWS Warehouse Services Pvt. Ltd	25.09.2024	

**29.** Sufficient opportunities of personal hearing were provided to all the noticees as shown in the above table. M/s. Aditya Exports, KASEZ were provided four opportunities of personal hearing and rest of the noticees were given three opportunities of personal hearing.

**30.** Out of the twenty noticees, fourteen noticees have attended hearings given to them.

(a) Seven out of the fourteen noticees (who attended personal hearing) have submitted their final submission and did not request for any other hearing as illustrated in Para 30.1 below.

(b)Rest seven noticees out of the fourteen noticees (who attended personal hearing) requested, per se, for cross-examination of the persons whose statements have been relied upon as illustrated in Para 30.2 below.

(c) Six noticees have not appeared for personal hearing. Both the DTA importers viz. M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP and its three partners viz. Shri Samir Arora, Shri Devender Kumar, Shri Pravin Parshuram Raut did not appear for personal hearings given to them and DTA importers vide letter dated 04.11.2024 requested for supplying of Non-RUDs and for keeping the adjudication proceeding in abeyance as illustrated in Para 35 below. Shri Manish Jain, COFEPOSA absconder neither appeared for personal hearing nor made any request for adjournment.

**RECORD OF PERSONAL HEARING-**

**30.1** Out of the twenty noticees, seven noticees viz. M/s OWS Warehouse Services LLP, APSEZ, Mundra, Shri Pankaj Surani, Partner in OWS Warehouse Services Pvt. Ltd, Shri Vineet Sharma, Partner in OWS Warehouse Services Pvt. Ltd, Smt. Sonam Sharma, Partner in OWS Warehouse Services Pvt. Ltd, Shri Mangal Kiran Sharma, Partner in OWS Warehouse Services Pvt. Ltd, M/s. ZEST Marine services Pvt. Ltd and its Director Shri Sharad Shetty appeared for personal hearing and made their respective submissions and requested for dropping the proceedings.

**30.1.1Shri Shubendu Patnaik**, consultant appeared for personal hearing on behalf of M/s. OWS Warehouse Services LLP and its four partners on 24.09.2024. They filed a written submission dated 21.09.2024, which is taken on record. During the course of personal hearing, he submitted that there is no evidence in the SCN against the noticees that attracts penalty under Section 114AA. No search was conducted, no goods or documents were seized from him or his premises. They conducted business in a bonafide belief and manner with due diligence and following due procedure. They are in business for 20 years. He further submitted that charges should be dropped as SCN had no evidence against them. He also referred to case law and Board Circular dated 03.09.2024 issued in the case of CBs.

**30.1.2Shri Vikas Mehta**, Consultant appeared for personal hearing on behalf of Ltd, M/s. ZEST Marine services Pvt. Ltd and its Director Shri Sharad Shettyon 05.11.2024. During the course of personal hearing, he referred to the submission dated 21.10.2024, which is already taken on record. He submitted that charges of S.114AA are ill conceived and devoid of merit and the same needed to be dropped.

**30.2Shri N H Gadhvi**, Advocate appearedfor personal hearing on behalf of M/s. Aditya Exports, KASEZ and its two partners viz. Shri Mehul Pujara and Shri Naimish Sodha on 04.11.2024. During the course of personal hearing, he made submission dated 04.11.2024 stating that they did not admit allegations contained in the impugned SCN. The submission dated 04.11.2024 has been taken on record. He reiterated the submission dated 04.11.2024 and requested for cross examination of all the persons whose statements have been relied

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upon in the SCN. He also referred to S.O. 2666(E) dt. 05.08.2016 issued by Ministry of Commerce.

**30.2.1 Shri N.B Dave**, Advocate appeared for personal hearing on 05.11.2024 on behalf of M/s. Krishna Shipping & Allied services Pvt. Ltd and its two partners viz. Shri Pankaj Thakker and Shri K M Thakker. During the course of personal hearing, he reiterated the submission dated 05.11.2024 and opposed the charges in the SCN and says are liable to be dropped. He requested for cross-examination of all the persons whose statements have been relied upon in the Show cause notice dated 23.04.2024. He has relied upon certain case laws. He has also relied upon the Noti. No. S.O. 2665(E) dated 05.08.2016 to argue that the charges framed against their noticees were not in consonance with the said Notification. He has further requested that he would be filing an interim reply within few days and the final reply would be filed by them after the cross-examination is allowed.

**30.2.2 Shri R.M Baldania**, Advocate appeared for personal hearing on 05.11.2024 on behalf of M/s. Shri Karni roadways. During the course of personal hearing, he reiterated the submission dated 05.11.2024 and opposed the charges in the SCN and says are liable to be dropped. He requested for cross-examination of all the persons whose statements have been relied upon in the Show cause notice dated 23.04.2024. He has relied upon certain case laws. He has also relied upon the Noti. No. S.O. 2665(E) dated 05.08.2016 to argue that the charges framed against their noticees were not in consonance with the said Notification. He has further requested that he would be filing an interim reply within few days and the final reply would be filed by them after the cross-examination is allowed. He has also stated that he was lawfully transporting the goods in question but not aware of the offending nature of goods as alleged in the show cause notice.

### **WRITTEN SUBMISSION-**

**31.** Shri Subhendu Patnaik, on behalf of M/s. OWS Warehouse services LLP vide submission dated 21.09.2024, interalia, submitted that-

- a) the investigation has alleged that the warehouse owned by the Noticees is controlled by some person(s) alleged to be COFEPOSA absconder(s). The allegation is bizarre, untruthful, wild, malicious, mischievous and without any evidence. The warehouse in SEZ is appointed through a rigorous and lengthy process where credentials of all persons associated with the warehouse is thoroughly investigated including police verification of each and every person associated with the warehouse. Further, the Noticees have warehouses at multiple locations such as Mundra and Mumbai and is a well-known brand in warehousing sector in the western India and such a bizarre and malicious allegation against the Noticees is not acceptable at all.
- b) And for record, it is hereby declared that the Noticees's warehouse is controlled and managed by the persons associated with it only and they have impeccable record for their fair and honest reputation in the industry.
- c) It is submitted that the language used in the para 14.5 is ambiguous and it connotes that the Noticee No.1 was the importer and warehouser in the case. While truth is that the importer approached the Noticee No.6 for warehousing his imports with the warehouse created by the Noticees in SEZ and as per stipulated Rules and Regulations, the Noticee No. 1 agreed and warehoused the impugned goods. And therefore, the Noticee did not have any role in pre-import, import or post import activities except warehousing the goods as per SEZ Rules and Regulations.
- d) As a warehouse service provider, role of the Noticee No. 6 was limited to provide warehousing services based on the documents received from the importer or representative of the importer and based on the assessed Import Bill of Entry.
- e) It is beyond comprehension why the Noticees have been made Noticees in this case where the Noticee did not have any role in pre-import, import or post import activities except warehousing the goods as per SEZ Rules and Regulations. • It is submitted that the Noticees are no way related to the goods while import was made and the warehousing is a post import process. • The differential duty has been demanded

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challenging the COO of goods, the Noticee being a warehousing service provider is no way related to the pre-import activities like COO of the goods as the same is a pre-import activity and the warehousing is a post import activity. • The import Bill of Entry was assessed by the department and it has gone through the rigours of assessment, examination and audit of the Bill of Entry and based on the said BE, the Noticee No.1 through his CB has filed BE for Home Consumption for payment of duty on the goods which is just a facility where the duty is paid (along with applicable interest) on piecemeal as and when the goods are cleared for home consumption. And in such a situation, the role of warehouse service provider in assessment of the goods is just beyond imagination. • Issue of alleged fake COO and transshipment of imported goods are preimport activities and therefore, the warehouse or Partners associated with the warehouse cannot be held responsible by any yardstick or even by wild imagination.

- f) It is submitted that all the partners in the company of warehouse service provider appointed by SEZ under SEZ Act. It is submitted that the Noticees are no way related to the goods while import was made as the warehousing is a post import process. And in view of the above provision of the Law, they neither signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes. Neither they had any opportunity to know about the alleged forging of documents nor they had expertise to find whether any document was fake as alleged. Further, there was no reason to doubt the bonafides of the documents because the same were already seen, verified, processed and accepted by the jurisdictional Customs authorities. In view of the above, neither of the partners is liable for imposition of penalty under Section 114AA of the Act or any other provision of law.
- g) We rely on following case laws wherein it is held that no penalty can be imposed if there are no specific charges; • Mumbai high court order-Commissioner v. Santosh Textile - 2013 (294) E.L.T. A88 (Bom.) Excerpts: The Appellate Tribunal in its impugned order had held that MD/Chairman of CHA is not concerned with day-to-day affairs and it is not his duty to process shipping bill either in docks or Customs House. His instructions to his staff to render assistance to client cannot be construed as mala fides in absence of specific evidence that he gave directions for manipulation of findings on charge of conspiracy. Thus, penalty on CHA was set aside.
- h) EICHER DEMM Versus COMMISSIONER OF C. EX., CHANDIGARH 2002 (140) E.L.T. 227 (Tri. - Del.) Excerpts: Penalty - Not to be imposed without any proceedings on a charge of duty evasion - Penalty set aside - Erstwhile Rule 173Q of Central Excise Rules, 1944. [para 4] 4. In the present case no adjudication proceedings under Section 11A of the Central Excise Act or any other provisions had been conducted at all. A perusal of Section 11AC and 11AB makes it clear that those sections can be invoked only in cases where determination regarding evasion of payment of duty had taken place under Section 11A. In these circumstances, the impugned order passed under Section 11AC and 11AB cannot be sustained. Penalty under Rule 173Q also cannot be imposed without any proceeding on a charge of duty evasion. Accordingly, impugned orders are set aside and appeal is allowed with consequential relief, if any, to the appellant.
- i) the role of Warehouse in a SEZ is akin to a Freight Forwarder or Transporter-the cargo remains in control of the warehouse for a short period i.e. for a period after import to supply to the end user. Therefore, we refer to and rely upon the following decision in support of the submissions that even the Customs broker who files documents and interacts with Customs is not responsible for the declarations in the Bills of Entry/shipping bills.

**32. Shri Vikas Mehta**, Consultant, on behalf of M/s. Zest Marine services and its Director Shri Sharad Shetty, vide submission dated 21.10.2024, interalia, submitted that-

- a) Section 114AA can extend to person only if he knowingly or intentionally commits the specified acts. In other words mens rea is the pre-requisite for invocation of Section 114AA.
- b) Hon'ble Tribunal in the case of Metro Marine services Pvt. Ltd. vs. Commissioner of Customs, Kandla 2008 (223) ELT 227( Tri.-Chennai) wherein it was held that firms can not have mens rea and penalty under section 112(b) cannot be imposed on firms.



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- c) The role of M/s. Zest was limited to providing space to the goods of their clients namely M/s. Kayak International INC, Dubai or M/s. Cosco Shipping & warehouse-FZE/LLC, Dubai.
- d) I don't know M/s. Cuthbert Oceans LLP and M/s. Cuthbert winner LLP and I have never transaction with them.

**33. Shri N H Gadhvi**, Advocate, on behalf of M/s. Aditya Exports, KASEZ and its two partners viz. Shri Mehul Pujara and Shri Naimish Sodha, vide submission dated 04.11.2024, submitted that-

(1) We do not admit the allegations contained in the impugned SCN. It has been issued on the basis of investigation by officers of DRI in SEZ without any authority of law.

(2) The SCN has been issued relying on statements of total nine persons. It is our submission that the statements are not factual and hence the allegations are liable to be dropped. We want to submit that as per Section 138B of the Customs Act, statements of any person can be used only when the persons who gave the statements are examined. We rely following judgement:

Rajputana Stainless Ltd Vs. Union of India reported in 2023 (384) ELT 300 (Guj)/(2023) 4 Centax 7 (Guj)

Swadeshi Polytex Ltd V. Collector of Central Excise, Meerut reported in 2000(122) ELT 641(SC)

Kay Pan Sugandh Pvt Ltd Vs. Commissioner of C.Ex., Cus & S.T., Rourkela reported in 2017 (7) GSTL 276 (Oris.)

(3) It is requested that all the persons whose statements have been relied in the SCN may be summoned, examined and we may be allowed to cross-examine them to bring truth on record. We will submit our interim reply in a few days and final reply after cross examination of the persons whose statements have been relied.

**34. Shri N B Dave, Advocate and Shri R. M Baldania**, Advocate, on behalf of M/s. Krishna Shipping and allied services and its two partners viz. Shri Pankaj Thakker and Shri KM Thakker & M/s. Shree Karni Roadways respectively, vide submissions dated 05.11.2024, submitted that-

(1) The SCN has been issued on the basis of investigation by officers of DRI in SEZ where they are not authorized. Therefore, the SCN is bad in law and all the allegations contained in it deserve to be dropped on this count.

(2) The SCN is mainly based on statements of various persons. The statements are not factual and it appears to have been recorded under duress. In order establish truth and expose falsehood, it is necessary to examine the persons whose statements have been relied and also to allow us to cross-examine them. Otherwise also, it is mandatory by law to examine and cross examine such persons in adjudication. As per Section 138B of the Customs Act, 1962, statements made before gazetted officer of customs during investigation shall be relevant for the proving truth of the facts when the person who made the statement is examined as a witness.

(3) In this aspect a large number of judicial pronouncements have been delivered by various Hon'ble Courts.

(a) Andaman Timbers Industries Vs. Commissioner of C.Ex, Kolkata-II

(b) Swadeshi Polytex Ltd v. Collector of Central Excise, Meerut

(c) Swiber Offshore Construction Pvt. Ltd

(4) It is requested that all the persons whose statements have been relied upon in the SCN maybe summoned, examined and may be allowed to cross-examine them to bring out truth on record.

(5) We will submit our interim reply in a few days and final reply after cross examination of the persons whose statements have been relied.

**35. M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP**, vide their letters dated 04.11.2024, interalia, submitted the following-

(i) They had filed the Writ Petition before the Hon'ble Punjab & Haryana High Court, Chandigarh, wherein, challenged the Show Cause Notice No. GEN/ADJ/COMM/181/2024-Adjn dated 23.04.2024 issued by the Commissioner of Customs, New Customs House, Near Balaji Temple, New Kandla- 370 210 and same had been e-file vide Diary No. APB20240003092C202400039 dated 15.10.2024( M/s Cuthbert Winner LLP and another Vs Commissioner of Customs and others).

(ii) Their Writ had not been listed as the Registry has raised various objections and the Court was not functional due to ongoing Diwali Vacations as informed by our counsel and the copy of the email dated 03.11.2024 is herewith annexed.

(iii) It is submitted that since the subject Show Cause Notice is sub-judice, it is requested that the adjudication proceeding may be deferred till the outcome of the above-mentioned Writ Petition.

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(iv) it is requested to provide the communications with the FTA Cell of International Customs Division got verified the Country-of-Origin certificates from Afghanistan Embassy in India through Ministry of External Affairs (MEA). The following non-Rud documents as mentioned in the Ref: SCN, para 16, pg. 24 which as follows:

- i. Letter dated 12.02.2023 from Afghanistan Chamber of Commerce and Industry (ACCI) declaring that Country-of- Origin certificates in question were issued by Nangarhar Chamber of Commerce in Afghanistan.
  - ii. letter dated 04.05.2023 wherein, a detailed reference was sent to the Principal Commissioner, Directorate of International Customs,
  - iii. the matter to MEA vides reference letter dated 11.05.2023 for taking up the matter with Afghanistan Embassy.
  - iv. Another letter dated 30.06.2023, as per format specified in CAROTAR, 2020, along with a detailed questionnaire for Afghanistan authorities was sent to Principal Commissioner, Directorate of International Customs, vide this Unit’s letter dated 30.06.2023 and referred the matter to MEA vide reference letter dated 19.07.2023 for taking up the matter with Afghanistan Embassy.
  - v. Any other communication with the Directorate of International Customs or Afghanistan
- (v) the reliance had been placed onthe judgment of Hon’ble Delhi High Court in case on R.S. WINDLASS &SONS Versus UNION OF INDIA reported in 2016 (338) E.L.T. 34 (Del.),wherein, held that-

“Adjudication - Inspection of documents - Rejection of request – Noreason forthcoming in letter of adjudicating authority, denying suchinspection - After mentioning in show cause notice that non-reliedupon documents could be collected from investigating agency,rejecting request of their inspection, not proper - Similarly disallowinginspection of investigation file without assigning reasons thereof,also not fair - Accordingly said rejection letter set aside -Adjudicating authority directed to ensure return of non-RUDs andallow inspection of investigation file or reject such request withreasoned order within two weeks”.

**DISCUSSION AND FINDINGS-**

**36.** I have carefully gone through the SCN dated 23.04.2024, Corrigendum dated 09.09.2024, record of personal hearing, written submissions made by the noticees and all the evidences available on record.

**37.** In the context of SCN, submission on record, I find that the issues to be decided before me are:-

- (i) Whether cross examination of all the nine persons is to be allowed as sought by some of the noticees;
- (ii) Whether the adjudication proceedings can be kept in abeyance as argued by the DTA importers M/s. Cuthbert Oceans LLP and M/s. Cuthbert Winner LLP;
- (iii) Whether demand of duty under Section 28(4) of the Customs Act, 1962 is sustainable alongwith interest under Section 28AA of the Customs Act, 1962
- (iv) Whether penalties under various sections are sustainable as proposed in the SCN.

**ISSUE OF CROSS-EXAMINATION-**

**38.** As regard request for cross-examination by some of the noticees, I find that the statements of the following persons have been recorded under Section 108 of the Customs Act, 1962:-

Sr. No	Name of the person whose statement has been recorded	Date of the statement	Cross examination is sought by-
1.	Shri Mehul Pujara	24.04.2023	(i) M/s. Aditya Exports, KASEZ
2.	Shri Naimish H. Sodha	24.04.2023	
3.	Shri Sanjeev Roy, Customs Executive	12.05.2023	

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	for Aditya Exports		(ii) Shri Mehul Pujara
4.	Shri Nikunj Kumar Laxmanbhai Prajapati, Employee, M/s Aditya Exports	12.05.2023	(iii) Shri Naimish Sodha
5.	Shri Sudhakar Chikati, Kandla Branch manager of M/s Aiyer Shipping Agency Pvt. Ltd	25.04.2023	(iv) M/s. Krishna Shipping and allied services
6.	Shri Ankit Sharma, Business Development Manager in Kandla for M/s Vision Container Line Pvt. Ltd and M/s Evershine Container Line Pvt. Ltd	28.04.2023	(v) Shri Pankaj Thakker and
7.	Shri Vijay Sureshbhai Rathod, Accountant in M/s Krishna Shipping and Allied Services	24.04.2023	(vi) Shri KM Thakker&
8.	Sh. Sharad Shetty, Director of M/s Zest marine Services Pvt. Ltd, Kandla SEZ	26.06.2023 & 27.06.2023	(vii) M/s. Shree Karni Roadways
9.	Shri V. Krishnamoorthy, Managing Director of M/s Aiyer Shipping Agency Pvt. Ltd, Mumbai	03.07.2023	
10.	Shri Rajan Sareen	20.07.2023	

**39.** I find that M/s. Aditya Exports, KASEZ and its two partners viz. Shri Mehul Pujara and Shri Naimish Sodha, vide submission dated 04.11.2024 and M/s. Krishna Shipping and allied services and its two partners viz. Shri Pankaj Thakker and Shri KM Thakker& M/s. Shree Karni Roadways, vide submissions dated 05.11.2024, requested for cross-examination of all the nine persons whose statements have been relied in the SCN dated 23.04.2024.

**40.** In this regard, considering the plea for cross-examination, I observe that the right of cross-examination in any quasi-judicial proceeding is a valuable right given to the Noticees, however, under certain circumstances and facts relevant to a given case, the request of cross-examination need not be acceded to on merits as this right of cross-examination is not absolute. It is well established that the evidence in customs adjudication proceeding need not be like the one in criminal cases.

In so far as the request made for cross-examination of the all the persons, I observe that the investigation was initiated by the officers of DRI Ludhiana and the case of importation and subsequent clearance of prohibited goods and undervaluation in respect of Walnuts of USA origin was unearthed by the officers of DRI.

**40.1** I find that all the statements tendered by those ten persons were voluntary in nature and have never been retracted.

**40.2** It is pertinent to note from above stated requests for cross-examination that these requests are found made mechanically and they have not stated any reason for the same.

Further, Shri Mehul Pujara and Shri Naimish Sodha, in their submission have sought cross-examination of nine persons whose statements have been relied upon in the SCN and during the course of personal hearing. Thus they have sought cross-examination of all the persons whose statements have been relied upon inthe SCN, which infers that they both want to cross-examine themselves, when they seek cross-examination of all the persons (ten). However, Section 138B of the Customs Act doesn’t allow cross-examining oneself. Once an adjudication proceeding is initiated, and a statement made under Section 108 of the Act of 1962 is introduced as a piece of evidence in such adjudication proceeding, then, the person making that statement

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can be made available for cross-examination to the party against whom such statement has been used in the adjudication proceedings, subject to the provisions of Section 138B of the Act of 1962.

**40.3** Further while there are statements recorded of ten persons, M/s. Aditya export, KASEZ and Shri Mehul Pujara and Shri Naimish sodha in their submissions have requested for cross-examination of nine persons and did not specify which of the nine they would like to cross-examine and also they did not state reasons for such request.

**40.4** Thus request for cross-examination of nine persons or all the persons whose statements have been recorded under section 108 and relied upon in the Show Cause notice dated 23.04.2024 in submission and or during the course of personal hearing is arbitrary and not supported by any reason. However, there were total 10 persons whose statements have been recorded under Section 108 of the Customs Act, 1962. Therefore, as said already, their request is arbitrary and without any basis.

**40.5** I also find that they have not filed any detailed submission w.r.t allegation in the notice. Further, while making the request for cross-examination, as stated above, they did not give any reason as to why the cross-examination of all the nine persons is necessary for appropriate disposal of the notice. In this regard, I find that denial of request for cross-examination has been held as not violating the principles of natural justice during quasi-judicial proceedings in the following case laws;

I. In the case of Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;

*“Adjudication – Cross-examination – Denial of- held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances – Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors – Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated.” [para 23]*

II. In the case of Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., Baroda [2002 (142) E.L.T. 640 (Tri.-Mumbai)], Tribunal observed at Para 17 that-

*“Natural Justice – Cross-examination – Confessional statements – No infraction of principles of natural justice where witnesses not cross-examined when statements admitting evasion were confessional.”*

III. In the case of Commissioner of Customs, Hyderabad V. Tallaja Impex reported in 2012(279) ELT 433 (Tri.), it was held that-

*“In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross examination cannot be claimed as a matter of right.”*

IV. Hon'ble Tribunal in its decision in Sridhar Paints v/s Commissioner of Central Excise, Hyderabad reported as 2006(198) ELT 514 (Tri-Bang) has 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)*

V. Hon'ble Punjab and Haryana High Court in its decision in the case of Azad Engg Works v/s Commissioner of Customs and Central Excise, reported as 2006(2002) ELT 423, held that;

*“..... It is well settled that no rigid rule can be laid down as to when principles of natural justice apply and what is their scope and extent. The said rule contains principles of fair play. Interference with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon'ble the Supreme Court in K.L. Tripathi v. State Bank of India and others, AIR 1984 SC 273”*

VI. Hon'ble Tribunal in the case of P Pratap Rao Sait v/s Commissioner of Customs reported as 1988 (33) ELT (Tri) has held in Para 5 that:

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*“..... The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable.*

VII. 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 paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)”*

The above discussion regarding request for Cross Examination indicates that-

- (a) The noticees have not filed respective replies explaining their stand vis-a-vis charges against them;
- (b) The noticees have not stated reasons as to why cross-examination is asked for;
- (c) The noticees have not retracted their statements nor there is any evidence or claim that the statements were not voluntary;
- (d) In case of request by partners of M/s. Aditya Exports, it is seen that they have asked for their own cross-examination;
- (e) In case of others, they have not stated which of the nine persons they would like to cross-examine;
- (f) The request for cross examination is found to be mechanical, arbitrary and not in furtherance of adjudication of the proceedings under show cause notice.

Thus, request for cross examination is found devoid of merit in the context of facts of the present case.

**Whether the adjudication proceedings can be kept in abeyance as argued by the DTA importers M/s. Cuthbert Oceans LLP and M/s. Cuthbert Winner LLP**

**41.** In this regard, I find that M/s. Cuthbert Oceans LLP and M/s. Cuthbert Winner LLP have informed this office vide letters dated 15.10.2024 and 04.11.2024 that they have filed the Writ Petition before the Hon'ble Punjab & Haryana High Court, Chandigarh, wherein, they have challenged the Show Cause Notice No. GEN/ADJ/COMM/181/2024-Adjn dated 23.04.2024 same had been e-file vide Diary No. APB20240003092C202400039 dated 15.10.2024. They have further informed that their Writ had not been listed as the Registry has raised various objections and the Court was not functional due to ongoing Diwali Vacations.

**42.** From the submission it is clear that their writ challenging the SCN dated 23.04.2024 has not been listed till date. Therefore, it is clear that the adjudication proceedings have not been stayed by the Hon'ble High Court of Punjab and Haryana, Chandigarh as provided in Section 28(9A)(b) of the Customs Act, 1962. Thus, the adjudication proceedings are to be completed within the stipulated time as per the provisions of Section 28(9) of the Customs Act, 1962. I find no reason to keep the matter in abeyance and proceed further to decide the matter on merit.

**43.** Before proceeding further, it is necessary to examine the request vide letter dated 04.11.2024 of the DTA importers viz. M/s. Cuthbert Oceans LLP and M/s. Cuthbert Winner LLP to provide them the below mentioned non-RUDs:-

- i. Letter dated 12.02.2023 from ACCI declaring that COO certificates in question were issued by Nangarhar Chamber of Commerce in Afghanistan.
- ii. Letter dated 04.05.2023 wherein a detailed reference was sent to the PC, Directorate of International Customs (DIC).
- iii. the matter to MEA vide reference letter dated 11.05.2023 for taking up the matter with Afghanistan Embassy.

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iv. Letter dated 30.06.2023 as per format specified in CAROTAR, 2020 alongwith a detailed questionnaire for Afghanistan authorities was sent to PC, DIC, vide this unit's letter dated 30.06.2023 and referred the matter to MEA vide reference letter dated 19.07.2023 for taking up the matter with Afghanistan embassy.

v. Any other communication with the Directorate of International Customs of Afghanistan.

In this regard, they have relied upon certain case laws.

**44.** In this regard, I find that Para 13.0 of the Master Circular No. 1053/02/2017-CX lays down the necessary instructions as given below:-

*“13.0 Service of Show Cause Notice and Relied upon Documents: A show cause notice and the documents relied upon in the Show Cause Notice needs to be served on the assessee for initiation of the adjudication proceedings. **The documents/records which are not relied upon in the Show Cause Notice are required to be returned under proper receipt to the persons from whom they are seized.** Show Cause Notice itself may incorporate a clause that unrelieved records may be collected by the concerned persons within 30 days of receipt of the Show Cause Notice. The designation and address of the officer responsible for returning the relied upon records should also be mentioned in the Show Cause Notice. This would ensure that the adjudication proceedings are not delayed due to non-return of the non-relied upon documents.*

Clearly, the said provision of Circular mandates that Non-RUDs **which have been seized** are required to be returned. The documents/records (not relied upon in the SCN) which are seized during search are to be returned. However, the above mentioned documents were not a part of seizure as those documents were sent by investigating agency to other agencies/ministries etc. Thus, I find that the said documents are not required to be supplied to the noticees. Further it is pertinent to mention that both the noticees and their partners have not made any submission to the Show Cause notice dated 23.04.2024 till date and their request for seeking the above mentioned documents is a strategy to derail the adjudication proceedings.

**44.1** It is pertinent to mention here that ACCI although has declared that COO certificates in question were issued by Nangarhar Chamber of Commerce in Afghanistan, however, subsequently no response was received from them in this regard. Further the noticees have not rebutted the claim of the department that the COO certificates were not fake.

## **EVIDENCES CITED IN SCN IN SUPPORT OF PROPOSAL OF DEMAND DUTY AND OTHER PROPOSALS-**

The discussion in this regard is made under the following heads-

- (a) **Evidences cited by the Show cause notice- Enquiry with shipping lines, other sources, violation of Minimum import price etc.**
- (b) **Statements recorded under Section 108 of the Customs Act, 1962**
- (c) **Undervaluation**

**45.** The financial trail has pointed that all the payments were made to an account in Dubai, instead of the Afghanistan Based Supplier M/s Toryal Khan Mahsilzai, despite Afghanistan being covered by SWIFT network for foreign payments, which incidentally are owned or operated by Shri Manish Kumar Jain, a COFEPOSA absconder and alibi of Shri Pankaj Thakker in the instant case.

**46.** As per condition No. IV in the permission letter, issued vide F.No. KASEZ / IA / 1909 / 02-03 – 3916 dated 09.11.2020, to the Noticee No. 1 by KASEZ and also as per Rule 19 of the SEZ Rules, 2006, the warehousing permission was allowed to the Noticee No. 1 only if the CIF value of goods at Sr. No 8 was Rs. 500 Per Kg. The said warehousing condition and import table Sr. No. 8 reads as follows:-

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iv) Further, with respect to warehoused item at Sr. No. 1 the same is allowed to be warehoused provided Import CIF value is Rs. 720 /- per kg or more, for item at Sr. No. 5, the same is allowed to be warehoused provided that the import CIF value is Rs. 251- per Kg or more, for item at Sr. No. 8, the same is allowed to be warehoused provided that the import CIF value is Rs. 500/- per Kg.

**47.** However, on analysis of import data and that for DTA clearance it was found that 280 MT of *Black Pepper*, which was declared to be of Afghanistan origin and imported vide SEZ Bills of Entry No. (Thoka No.) 1002182 dt 11.02.2023, 1002472 dt. 16.02.2023, 1002948 dt. 25.02.2023 and 1003415 dt 06.03.2023, it was found that On import invoices as well as on Bills of Entry submitted at the time of importation of the said goods (Afghanistan origin Black Pepper) into KASEZ by Noticee No. 1 the import price of the goods is USD 3500 per metric tonne (**USD 3.5 / INR 290 per kg**) **which is below the CIF value of Rs.500/- allowed under** LOA dated 09.11.2020 and in contravention to the provisions of Special Economic Zones Act, 2005 read with SEZ rules, 2006 and since the conditions laid out in the LOA are not fulfilled the goods become prohibited in nature and cannot be imported into India and SEZ.

**48.** Further, I find that emails dated 19.04.2023 were received from the operators of Vessels SSL Mumbai (01 consignment), GFS Giselle (06 consignments) and Majd (03 consignments) regarding no movement from Bandar Abbas port of Iran. Also emails dated 20.04.2023 were received from the operators of Vessels Gulf Barakah (01 consignment), Northern Practice (08 consignments) and Northern Dedication (03 consignments) regarding **no movement from Bandar Abbas port of Iran**. Thus, it is clear that the vessel/ship on which goods were shown to be transported from Bandar Abbas to Jebel Ali, Dubai to Mundra Port never docked/visited/sailed from Bandar Abbas Port. Port call data during the said tenure, of the said container vessels, gathered from open-source portal [www.myshiptracking.com](http://www.myshiptracking.com) also suggested the same. Also, In all the Shipping Bills alleged to have been filed before the Afghanistan Customs, export goods were classified under CTH 0709 which covered vegetable [Afghan Bell Pepper] whereas black pepper is a spice of CTH 0904.

**49.** Thus, it is clear that the documents submitted by Noticee No. 1 (M/s. Aditya Exports, KASEZ) were not genuine and that Noticee No. 1 used forged documents to make the goods appear to be of Afghanistan Origin with an intention to misuse the provisions provided under SEZ Rules and SAFTA and LDC FTA (Customs Notification No. 55/2011).

**50.** I find that Shri Sudhakar Chikati, Kandla Branch manager of M/s Aiyer Shipping Agency Pvt. Ltd. and Shri Ankit Sharma, Business Development Manager in Kandla for M/s Vision Container Line Pvt. Ltd and M/s Evershine Container Line Pvt. Ltd respectively, who were shipping agents for M/s Aditya Exports, in their statement and declaration dated 26.04.2023 and 28.04.2023 respectively, categorically stated that, ***all the Bills of Lading of cargo from Bandar Abbas in which their names appear as 'shipping agents' for delivery of goods in India, were fake and that Black Pepper had actually sailed for India from Jebel Ali only.***

In this regard, it is important to note that the noticees have not rebutted the evidence and also not offered any explanation for presenting incorrect facts. They failed to discharge the burden cast on them on account of above evidence brought on record by the investigating agency. The above evidence is further supporting following oral evidences recorded under Section 108 of the Customs Act, 1962.

#### STATEMENTS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962-

**51.** I find that Shri Mehul Pujara, partner in M/s Aditya Exports in his voluntary Statement dated 24.04.2023 (**RUD 5**) recorded under Section 108 of the Customs Act, 1962, stated inter alia as under:-

- that he was Partner in M/s Aditya Exporters, (IEC-3798000212); that this firm deals in import of various commodities from Dubai; that he does not take active part in this business but he had given his digital signature dongle to Shri Pankaj Thakkar to use in the day to day business in M/s Aditya Exports; that in case of OTP on registered mobile for M/s Aditya Exporters, he provided the details to Shri Pankaj Thakkar; that Shri Pankaj Thakkar provided him 200 dollars for each container to be imported in SEZ as warehouse charges in M/s Aditya Exporters.



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- that other than him, Shri Naimish H. Sodha is Partner in M/s Aditya Exporters; that all the operations of M/s Aditya Exporters are handled by Sh. Pankaj Thakkar partner in M/s Krishna Shipping and allied services (GST Code-24AADFK8760C2ZH); that Shri Pankaj Thakkar is a CHA and brother-in-law of Shri Naimish H. Sodha.
- that in 2019, he was working along with Pankaj Thakkar in import and local purchase & sale of Base oil (Petroleum Products). Thus, they built a strong business relation. Thereafter, Pankaj Thakkar told him that there is a business premises in KASEZ of his brother-in-law which he (Naimish) wants to sale or add a new partner in it; that he (Mehul) finalised the deal and became a partner in M/s Aditya Exports by owning 49% of total shares of M/s Aditya Exports; that he (Mehul) had only verbal agreement with Pankaj Thakkar that he (Pankaj) will help me in business of M/s Aditya Exports. Also, Pankaj Thakkar helped him (Mehul) financially to grow his business.
- On being provided with a list of Bills of Entry filed by their firm M/s Aditya Exports at KASEZ for import of Black Pepper said to be of Afghanistan origin and being asked to give details of his Afghanistan contact point, purchase orders and supplier of Afghanistan origin goods (Black Pepper), he stated that he was not aware of all those Bills of entry, although he was aware that his firm had imported Black pepper; that he had visited Dubai once and the supplier of Black pepper to be imported in India are mostly Dubai based traders; that Shri Pankaj Thakkar deals with the suppliers for import of various goods for M/s Aditya Exports, Gandhidham and he (Pankaj) maintains all the record in his office i.e. Krishna Clearing Agency, Transport Nagar, Gandhidham.
- On being shown an email dated 13.04.2023 received in adityawarehousekasez@gmail.com (official email id of M/s Aditya Exports) in which COO certificate of Afghanistan origin goods (Black Pepper) are shown, he put his dated signatures on the same as a token of having seen and understood the same and stated that he had no say on those documents.
- That he had never visited Afghanistan and he didn't have any knowledge about the suppliers of Black pepper in Afghanistan.
- On being asked as to how can he prove that said goods were of Afghanistan origin he submitted that he had never ordered for import of any goods from Afghanistan and that he knew about the COO certificate, but he never asked or applied for that COO certificate from any authority.
- On being asked if he was aware of Toriyal Khan Mahsilzai, supplier of Black pepper from Afghanistan he stated that he was not aware of any such details; that he has his bank account in Bank of Baroda, KASEZ Branch in name of M/s Aditya Exports in which he (Mehul) and Shri Naimish H. Sodha both are signing authority; that KYC details in said account was of him (Mehul) and Shri Naimish H. Sodha, Registered Mobile no. i.e. 9099072236 of said Bank account was in name of M/s Krishna Shipping and allied services; that the said mobile was used by Shri Vijay Suresh Bhai Rathore who was employer in M/s Krishna Shipping and allied services in which Pankaj Thakkar was a partner along with his father Karsan M. Thakkar; that in case of payment done for M/s Aditya Exports through cheque he (Mehul) signed the same otherwise all the payments were done through Internet Banking which was controlled by Pankaj Thakkar.
- On being asked as to how did their import consignment reached to India from Afghanistan, he stated that generally import of goods was done by shipping vessels via sea ways; that he can't say anything about Afghanistan origin import goods; that payment for transport of containers from Mundra port to KASEZ Gandhidham was done by M/s Krishna Shipping and allied services.
- On being asked to present the LOA agreement granted to M/s Aditya Exports by KASEZ for warehousing/manufacturing under Rule 19 of SEZ rules 2006, he stated that he had the said LOA in his mobile and that he had read and understood the said LOA certificate.
- On being shown LOA & Bill of Entry wherein M/s Aditya Exports had imported Black pepper which is at Sr No. 8 of their LOA for warehousing and that the price of goods is Rs 290/Kg which was much less than the Rs 500/Kgs as per condition no. 4 of LOA, he stated that he had signed the same in token of having seen and understood the same; that it was clear violation of LOA; that the import price of Black pepper was much less than the one mentioned in LOA of M/s Aditya Exports.
- On being asked that who filed Bill of entry in SEZ Gandhidham for M/s Aditya Exports and who paid for the import goods from Afghanistan; he stated that the said documents were filed by employers of M/s Krishna Shipping & Allied Services on say of Shri Pankaj Thakkar and that the buyer of Black pepper directly paid to the supplier in Afghanistan.
- On being shown the email dated 27.03.2023 in which no Bill of Entry had been filed for goods imported from Afghanistan as on date and being asked who was paying the demurrage charges

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for the containers in said Bills of Entry he stated that he had signed the printout of email dated 27.03.2023 in token of having seen and understood the same; that in this regard, Demurrage charges applicable on said containers were paid by M/s Krishna Shipping and Allied Services.

- On being asked as to how did he know M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and how did he came in contact with them & who his current contact person with them was and who looks after their payment & all documents formalities of Goods supplied by them (M/s Aditya) he stated that he was not aware of both the firms; that he had never met any person from M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP; that these were the clients/customers /buyer who dealt with Pankaj Thakkar only; that in 2021, he (Mehul) was not having any profitable business, Shri Pankaj Thakkar then gave him idea to be a partner in M.s Aditya Exports; that then he became the registered partner in said firm and gave consent to Pankaj Thakkar that he (Pankaj) can work on his (Mehul) behalf; that he (Pankaj) told him (Mehul) that he (Pankaj) will give him (Mehul) the rent for warehousing and himself (Pankaj) will do all the business in M/s Aditya Exports to which he (Mehul) said ok.
- On being asked who were the transporters utilised by M/s Aditya Exports for delivering all DTA cleared goods to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and how were they contacted or paid, he stated that Shri Pankaj Thakkar partner in M/s Krishna Shipping & Allied Services, Gandhidham was himself a CHA; that he (Pankaj) had all the contacts of transporters and he (Pankaj) paid for the transportation cost for goods travelled from Mundra to KASEZ Gandhidham; that transportation cost for goods to be supplied to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP was not bore by M/s Aditya Exports and nor by M/s Krishna Shipping & Allied Services; that it was paid by the party themselves who filed Bill of entry for DTA clearance.
- On being shown the latest DTA Bill of Entry dated 14.03.2023, assessment date 20.04.2023, OOC date 21.04.2023 filed by M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP with M/s Aditya Exports and asked who was co-ordinating for all those DTA sale of imported goods, he stated that he had seen the documents and that in this regard, all Customs related work was handled by Shri Sanjeev Roy who was an employer of M/s Aditya Exports; that he (Sanjeev) looked after all of the work such as co-ordination with Customs officials for smooth import or DTA sale of import goods.

**52.** I find that Shri Naimish H. Sodha S/o Shri Sodha Himatlal, partner in M/s Aditya Exports in his voluntary Statement dated 24.04.2023 (**RUD 6**) recorded under Section 108 of the Customs Act, 1962, stated, interalia as under:

- That he was Partner in M/s Aditya Exporters, (IEC-3798000212); that this unit was purchased by him in 2005; that this firm dealt in import of various commodities from Dubai and other countries; that he did not take active part in this business but he had given his digital signature dongle to Shri Pankaj Thakkar to use in the import business in M/s Aditya Exporters.
- That besides him, Mehul Pujara was Partner in M/s Aditya Exporters; that all the operation in M/s Aditya Exporters were handled by Shri Pankaj Thakkar who was also owner/partner of Krishna Clearing and Services; that he (Pankaj) was a CHA and his (Naimish) brother-in-law.
- On being asked how was Pankaj Thakkar, partner in M/s Krishna Shipping and Allied Services related to M/s Aditya Exporters, he stated that he (Naimish) was working in export of Plastic Garbage bags and in 2018 due to change in plastic policy he (Naimish) had to face a huge loss and thus, his (Naimish) Unit in SEZ remained closed for 03 years. Therefore, he requested Shri Pankaj Thakkar to help him (Naimish) in sale of said Unit, KASEZ. Instead of sale, Shri Pankaj Thakkar introduced him (Naimish) to Shri Mehul Pujara with whom he (Naimish) became partner in M/s Aditya Exports; that they only have verbal agreement with Pankaj Thakkar that he (Pankaj) will help both the partners in establishing and profit in their business in M/s Aditya Exports.
- On being provided with a list of Bills of Entry filed by their firm M/s Aditya Exports at KASEZ for import of Black Pepper said to be of Afghanistan origin and being asked to give details of his Afghanistan contact point, purchase orders and supplier of Afghanistan origin goods (Black Pepper), he stated that he was not aware of all those Bills of Entry; that although he was aware that his firm had imported Black pepper; that Shri Pankaj Thakkar dealt with the suppliers for import of various goods for M/s Aditya Exports, Gandhidham and he (Pankaj) maintained all the record in his (Pankaj) office i.e. Krishna Clearing Agency, Transport Nagar, Gandhidham.

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- On being shown an email dated 13.04.2023 received in adityawarehousekasez@gmail.com (official email id of M/s Aditya Exports) in which COO certificate of Afghanistan origin goods (Black Pepper) were shown, he signed the said documents in token of having seen and understood the same and stated that he had no say on those documents.
- That he had never visited Afghanistan and he didn't have any knowledge about the suppliers of Black pepper in Afghanistan.
- On being asked as to how can he prove that said goods were of Afghanistan origin he submitted that he had never ordered for import of any goods from Afghanistan and that he knew about the COO certificate, but he never asked or applied for that COO certificate from any authority.
- On being asked if he was aware of Toriyal Khan Mahsilzai, supplier of Black pepper from Afghanistan he stated that he was not aware of any such details; that he has his bank account in Bank of Baroda, KASEZ Branch in name of M/s Aditya Exports in which he (Naimish) and Shri Mehul Pujara both are signing authority; that KYC details in said account was of him (Naimish) and Shri Mehul Pujara, Registered Mobile no. i.e. 9099072236 of said Bank account was in name of M/s Krishna Shipping and allied services; that the said mobile was used by Shri Vijay Suresh Bhai Rathore who was employer in M/s Krishna Shipping and allied services in which Pankaj Thakkar was a partner along with his father Karsan M. Thakkar; that all the payments were done through Internet Banking which was controlled by Pankaj Thakkar.
- That he had never visited Afghanistan in person.
- On being asked as to how did their import consignment reached to India from Afghanistan, details of the shipping line and container lines used for transportation and how did they contact them & make payments, he stated that he was not aware about any of these details. Warehouse charges and other regular Bills were paid by M/s Krishna Shipping and allied services through Bank account of M/s Aditya Exports.
- On being asked to present their LOA agreement granted to M/s Aditya Exports by KASEZ for warehousing/manufacturing under Rule 19 of SEZ rules 2006 he stated that he did not have copy of the said LOA.
- On being shown LOA & Bill of Entry wherein M/s Aditya Exports had imported Black pepper which was at Sr No. 8 of their LOA for warehousing. The price of goods was Rs 290/Kg which was much less than the Rs 500/Kgs per condition no. 4 of LOA, he stated that he had seen the LOA and Bill of Entry and other import documents and that this was clear violation of LOA; that the import price of Black pepper was much less than the one mentioned in LOA.
- On being asked that who filed Bill of Entry in SEZ Gandhidham for M/s Aditya Exports, he stated that those documents were filed by employers of M/s Krishna Shipping & Allied Services on say of Sh. Pankaj Thakkar.
- On being asked as to how did he know M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and how did he came in contact with them & who his current contact person with them was and who looks after their payment & all documents formalities of Goods supplied by them (M/s Aditya) he stated that he was not aware of these both firms; that he had never met any person from M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and that these were the clients/customers /buyer who dealt with Pankaj Thakkar only.
- On being asked who were the transporters utilised by M/s Aditya Exports for delivering all DTA cleared goods to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and how were they contacted or paid, he stated that Shri Pankaj Thakkar partner in M/s Krishna Shipping & Allied Services, Gandhidham was himself a CHA; that he (Pankaj) had all the contacts of transporters and he (Pankaj) paid for the transportation cost for goods travelled from Mundra to KASEZ Gandhidham.
- On being shown the latest DTA Bill of Entry dated 14.03.2023, assessment date 20.04.2023, OOC date 21.04.2023 filed by M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP with M/s Aditya Exports and that who was co-ordinating for all this DTA sale of imported goods, he stated that all Customs related work were handled by Sh. Sanjeev Roy who is an employer of M/s Aditya Exports; that he (Sanjeev) looked after all of the work such as co-ordination with Customs officials for smooth import or DTA sale of import goods.

**53.** I find that Shri Sanjeev Roy, Customs Representative, in his statement dated 12.05.2023 recorded under Section 108 of the Customs Act, 1962, stated, interalia as under:

- On being asked what was his association with Aditya Exports and 'Krishna Shipping and Allied Services', he stated that he was working as Customs Executive for Aditya Exports from

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December, 2022 to 26.04.2023 and he was hired by Shri Pankaj Thakker and tasked to perform Customs related work of Aditya Exports.

- On being asked how he received his salary, he stated that Aditya Exports used to pay his salary through Aditya Exports account maintained in Bank of Baroda, KASEZ and this bank account was handled by Shri Pankaj Thakker. On being asked who gave him instructions relating to Aditya Exports, he answered as below:

*“Shri Pankaj Thakkar used to give directions for all works of M/s Aditya Exports. On his (Pankaj Thakker's) directions, I used to file Bills of Entry using DSCs of Shri Mehul Pujara and Shri Naimesh Sodha. Then getting assessment done from Customs and informing Raj (Employee of M/s Krishna Shipping and Allied Services) was my responsibility. Shri Pankaj Thakker then used to decide about delivery order (D.O) of import cargo and send vehicles in M/s Aditya Exports for Unloading of import cargo, Afterwards DTA Bill of Entry was prepared by Raj (Employee of M/s Krishna Shipping and Allied Services firm of Shri Pankaj Thakkar). Such DTA Bill of Entry prepared by Raj was finally submitted by me using DSCs of Shri Mehul Pujara / Shri Naimesh Sodha after taking permission of Shri Pankaj Thakker. Then on directions of Shri Pankaj Thakker, I used to get the assessment done and challan generated in respect of DTA Bill of Entry. Payment of Challan generated was handled by Shri Pankaj Thakker in his firm M/s Krishna Shipping and Allied Services. Then, after payment Shri Pankaj Thakker used to send trucks for loading and domestic clearance of goods. Afterwards, getting cargo inspection done and out of charge issued by Customs was handled by me on directions of Shri Pankaj Thakker.*

*Apart from the above, whenever any documents need to be submitted before customs on behalf of M/s Aditya Exports, it was provided by Shri Pankaj Thakker and I used to submit the same to customs on his directions.”*

- On being asked to state the process being followed to operate the DSC dongles belonging to Aditya Exports. (Digital Signature Certificate i.e. DSC dongle is a hardware device which can be plugged to any computer to enable the computer to file bills of entry/Shipping Bills on SEZ online portal and authenticate them with DSC without which the portal will not accept the Bill of Entry/Shipping Bill), he stated that DSC dongle of Shri Naimish Sodha (Partner of M/s. Aditya Exports) was handed over by Shri Naimish Sodha to Shri Pankaj Thakker, who used to instruct him to file Bills of Entry. After earlier raid by the DRI in 2022, Shri Naimish Sodha took back his DSC dongle and then Shri Pankaj Thakker provided him the DSC dongle of Shri Mehul Pujara to file Bills of Entry.
- On being questioned why he changed the registered mobile number in SEZ login id of Aditya Exports (which is used to receive OTP generated by portal and authenticate Bills of Entry/Shipping Bills filed), he stated that on 20.04.2023, a disagreement emerged between Shri Mehul Pujara and Shri Pankaj Thakker and therefore, Shri Pankaj Thakker instructed him to register mobile No. 90812-34143 of Shri Nikunj Kumar Laxmanbhai Prajapati in place of mobile number 9925225253 of Shri Mehul Pujara; that after assessment of DTA Bills of Entry, challans for payment of duty were generated by him on directions of Sh. Pankaj Thakker and copies of challans were forwarded to Sh. Pankaj Thakker through whatsapp on mobile number 9099025228.

**54.** I find that Statement dated 12.05.2023(**RUD 8**) of Shri Nikunj Kumar Laxmanbhai Prajapati who was working as an employee in M/s Aditya Exports and whose salary was paid in cash by Shri Sanjeev Roy was recorded under Section 108 of the Customs Act, 1962, wherein, on being asked as to on whose directions and orders he had given his personal Mobile number 90812-34143 for M/s. Aditya Exports' SEZ login id, he stated that Shri Pankaj Thakker called Shri Sanjeev Kumar Roy who then mapped his number to SEZ login ID.

**55.** Shri Sudhakar Chikati, Kandla Branch manager of M/s Aiyer Shipping Agency Pvt. Ltd. and Shri Ankit Sharma, Business Development Manager in Kandla for M/s Vision Container Line Pvt. Ltd and M/s Evershine Container Line Pvt. Ltd respectively, who are shipping agents for M/s Aditya Exports, in their statement and declaration dated 26.04.2023 and 28.04.2023 respectively, categorically stated that, all the Bills of Lading of cargo from Bandar Abbas in

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which their names appear as 'shipping agents' for delivery of goods in India, were fake and that Black Pepper had actually sailed for India from Jebel Ali only;

Shri Sudhakar Chikati, Kandla Branch Manager of M/s Aiyer Shipping Agency Pvt. Ltd in his statement dated 25.04.2023(**RUD-18**) tendered under Section 108 of the Customs Act, 1962 stated that the only contact for goods imported by M/s Aditya Exports was 'Krishna Shipping and Allied Services' at email id import@krishnashippingkdl.com and they had done all the correspondences with regards to the impugned import instances on the email id import@krishnashippingkdl.com.

Also, Shri Ankit Sharma in declaration dated 28.04.2023(**RUD-19**) confirmed that they have received documents in relation to import of M/s. Aditya Exports from 'Krishna Shipping and Allied Services'.

**56.** I find that Statement dated 24.04.2023(**RUD-20**) of Shri Vijay Sureshbhai Rathod S/o Shri Suresh Bhai, Accountant in M/s Krishna Shipping and Allied Services, Gandhidham was recorded under Section 108 of the Customs Act, 1962, wherein he stated, that, on the directions of Sh. Pankaj Thakker, he looked after accounting work of Aditya Exports and made payments from firm's account on direction of Sh. Pankaj Thakker for expenses such as electricity bill charges, salary, GST payments, water charges etc..

**57.** I find that Statements dated 26.06.2023 (**RUD-21**) and Statement dated 27.06.2023 (**RUD-22**) of Sh. Sharad Shetty, Director of M/s Zest marine Services Pvt. Ltd, Kandla SEZ were recorded under Section 108 of the Customs Act, 1962, wherein, he stated, interalia as under:

- On being asked about the day to day warehousing operations of his SEZ unit, he informed that he had handed over his dogle to staff of M/s Aditya Exports, Shri Sanjeev Kumar Roy, since April-2022, on instructions of Shri Pankaj Thakkar; that day to day warehousing operations of M/s Zest Marine Services Pvt. Ltd (ZMSPL) since April-2022 is being controlled by Shri Sanjeev Kumar Roy on direct instructions of Shri Pankaj Thakker and he has no role in the same;
- that ZMSPL is just the warehouser of the goods and not the owner of the goods; that through his warehousing unit, Pankaj Thakkar used to operate business of Dry dates and dry fruit items, without mentioning the country of origin details to him and because of this, only Pankaj Thakkar or any other actual/beneficial owners of goods would be able to ascertain about the origin and other declared parameters whether they were correct or not ;
- that ZMSPL had signed an agreement with M/s Kayak International Inc., Dubai and M/s Cosco Shipping and Warehousing – FZE/LLC for warehousing and delivery of goods to the Indian DTA Buyers; that, warehousing business of ZMSPL is being de-facto controlled by Shri Pankaj Thakker; that he never used to interact with Dubai based entities or Indian DTA buyers M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, corresponding to the goods available in his warehousing unit. As all of them were only known to Shri Pankaj Thakker and he only used to interact with the said parties and he only used to control every aspect of their trade, ranging from Customs formalities to arranging transportation of the goods. All the activities were done without consulting with him (Sharad);
- that he had never visited Afghanistan or USA and had never booked any consignments of any dry fruits from any supplier of either of the countries; that he was not aware of the firms by the names M/s Toryal Khan Mahsilzai Trading, Kabul, Afghanistan (Supplier of walnut kernel of Afghanistan Origin) and M/s Crain Marketing Inc and M/s Valley Oasis foods LLC of California (Supplier of Inshell walnuts of USA origin). He only knew about the Dubai based firms he had done warehousing agreements with, and that too on goodwill on behalf of Shri Pankaj Thakker, as he only knew them personally. In his knowledge, the goods came from Dubai only;
- that he was not even aware of the name of the transporters and it was available with staff of M/s Krishna Shipping & Allied Service and payments to them were done by them (staff of Krishna shipping) only on directions of Pankaj Thakker. Similarly M/s Zest marine Services Pvt. Ltd. was not involved in interaction with shipping agents and in their knowledge, that part was also

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being done by staff of M/s Krishna Shipping & Allied Service along with the payments made to them, on instructions of Shri Pankaj Thakker;

- that even the payments to all the stakeholders was done through accounts of M/s Krishna Shipping and Allied Services, on instructions of Shri Pankaj Thakker, on his own accord, without any formal authorization from ZMSPL; that all the Bills of Entry, corresponding to their warehousing business, be of import or DTA sales, were filed by Shri Pankaj Thakker of M/s Krishna Shipping & Allied Services or on his instructions by staff of M/s Krishna Shipping & Allied Services , using ZMSPL's DSC dongle, as, Pankaj Thakker de-facto controls the warehousing business of M/s Zest marine Services Pvt. Ltd. The said DSC dongle was handed over to Shri Pankaj Thakker of M/s Krishna Shipping & Allied Services by him (Sharad), as, Pankaj Thakker had introduced himself as CHA for ZMSPL's foreign and DTA clients, though there was no formal authorization as per Customs Broker Licensing Regulations (CBLR), 2018, available with them from M/s Cosco Shipping & Warehousing-FZE/LLC, M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, regarding the same; that he believed Shri Pankaj Thakker on goodwill as he was known to him from childhood.
- that ZMSPL had never paid or received any payment from M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP and everything inclusive of duty and IGST payments was managed by Shri Pankaj Thakker of M/s Krishna Shipping & Allied Services; that they had never authorized them formally for the same; that he was not aware of the documents uploaded on SEZ Online portal, corresponding to inshell walnuts from USA (from Crain Marketing INC, C/o Valley Oasis Foods LLC, Corning, California, USA) to M/s Zest Marine Services Pvt. Ltd (viz. Bill of lading, Commercial invoice, Packing list etc) , wherein, as per the submitted invoice price of 1Kg of inshell walnuts is USD 0.75. He was not aware of any such documents, as, in his knowledge, the goods did not belong to ZMSPL and they had never raised any invoice or purchase order in this regard with any of the firms in USA.
- On being shown documents corresponding to the following DTA sale Bills of entry uploaded on SEZ online platform, using his DSC dongles by Shri Pankaj Thakker of M/s Krishna Shipping and Allied Services :

(a) Bill of Entry No. 2004858 dt 28.03.2023 and Bill of Lading No. HLCUBS2301BFV09 dt 20.01.2023. **(RUD-23)**

(b) Bill of Entry No. 2003785 dt 13.03.2023 and Bill of Lading No. LBOLX222714 dt 15.12.2022 **(RUD-24)**

(c) Bill of Entry No. 2003622 dt 09.03.2023 and Bill of Lading No. NAM58801556 dt 15.12.2022. **(RUD-25)**

And on being informed, that, in all the documents mentioned above, supplied by the USA suppliers of Inshell Walnuts, M/s Crain marketing Inc, C/o Valley Oasis Foods, LLC, 25990, South Ave, Corning, CA 96021, before American authorities, viz. Bill of lading, Commercial invoice, packing list, certificate of origin issued by Red Bluff-Tehama County chamber of commerce, phytosanitary certificate issued by American Govt. body USDA , Fumigation certificate and Aflatoxin certificate, ZMSPL was being shown as the "CONSIGNEE" of goods, and that the name M/s Cosco Shipping & Warehousing-FZE/LLC, whom they claim to be the owner/consignee of the goods, and for whom ZMSPL claims to be providing warehousing services only, was not seen anywhere on these documents except the Bill of lading and commercial invoice, and that too as the second notify party, besides M/s Cosmic Middle East – FZE/LLC, who were notified as first notify party; he acted surprised on the finding and spoke to Shri Pankaj Thakker telephonically regarding the same. He (Sharad) stated that as per telephonic conversation with Shri Pankaj Thakker, he had been informed that actual consignee is M/s Cosco Shipping and Warehousing – FZE/LLC and it was a general practice to misrepresent the warehousing unit as consignee in front of foreign authorities, for cargo moving to KASEZ, though, Shri Pankaj Thakker was not able to provide him details about any legal provision in SEZ Act, 2005 and SEZ Rules, 2006, stating to misrepresent the facts officially before the foreign authorities, when goods are bound to an SEZ warehouse;

- that he (Sharad) or any of his staff in M/s Zest Marine Services Pvt. Ltd was not aware of any company named M/s Cosmic Middle East -FZE / LLC and was hearing this name for the first time and even their warehousing partners M/s Cosco Shipping and Warehousing – FZE/LLC, for

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whom they had warehoused the goods, had never mentioned about any such company to them ever;

- that their company's (ZMSPL) name had been wrongly used by their warehouser M/s Cosco Shipping and Warehousing – FZE / LLC and Shri Pankaj Thakker for importing the cargo into India, without their knowledge and any of his staff at M/s Zest Marine Services Pvt. Ltd was not informed in past or present before filing the said documents before Indian customs; that he had never in his trading career witnessed 2 different companies issuing commercial invoices bearing same number and date and in exact same format and was doubtful about the genuineness of documents supplied by foreign suppliers to M/s Krishna Shipping and Allied services, to be attached in Bill of entries, which were further filed on ZMSPL's behalf by Pankaj Thakker or any of his staff, using ZMSPL's DSC dongle; that, to confuse Indian customs, 2 parallel invoices must have been uploaded on ZMSPL's import and DTA bill of entry filed by Shri Pankaj Thakker; that such practice is either used to undervalue imported goods or use such fake invoices to make hawala remittances to foreign players, who are not directly associated with imported goods; that the genuineness of the invoices was doubtful as same commodity was being invoiced twice by different companies, bearing same format, invoice number and date; that in the invoice raised by M/s Cosco Shipping and Warehousing – FZE / LLC they have stated M/s Cosco Shipping and Warehousing – FZE / LLC as "Notify (2)" and this made him (Sharad) believe that it was a fake invoice, as, that was not a common trade practice, wherein a party issuing invoice is NOTIFYING SELF;
- that he had never witnessed such cheap valued / invoiced walnuts. Price of USD 0.75 per Kg did not appear genuine to him, since the walnut was from USA and that too branded; that, in all likelihood, walnuts should have cost as per the value declared by brand on their website.

**58.** I find that Statement dated 03.07.2023 (**RUD-26**) of Shri V. Krishnamoorthy, Managing Director of M/s Aiyer Shipping Agency Pvt. Ltd, Mumbai, was recorded under Section 108 of the Customs Act, 1962, wherein he stated, interalia as under:

- On being asked about KASEZ warehousing unit M/s Aditya Exports and his firm's association with them, he informed that M/s Aditya Exports was listed as an import customer in their company and interacted with them for the first time by virtue of their shipment, that arrived using ASCL Line, who is a Principal they represented in India and their team had interacted with them through emails with their nominated representative, M/s Krishna Shipping & Allied Services, Gandhidham, whom, they had perceived on their own, to be the CHA for M/s Aditya Exports, although, they did not have any communication / authorization from M/s Aditya Exports employing / appointing M/s Krishna Shipping and Allied services as their CHA, as per CBLR, 2018;
- that while taking the delivery order, KYC for both M/s Aditya Exports and M/s Krishna Shipping and Allied Services, was handed over in their Gandhidham office by staff from M/s Krishna Shipping and Allied Services; that, As far as communications with M/s Aditya Exports is concerned, they only had physically given them nomination letters to hand over the DO to either of the 2 staffs of M/s Krishna Shipping and Allied Services named R. K. Pillai and Govind Manglia and also endorsed BL copies bearing the Sign and Stamp of nominated representatives of their firm M/s Aditya Exports and M/s Krishna Shipping and Allied Services. Besides them, all Communications regarding shipments of M/s Aditya Exports were received from same e-mail id import@krishnashippingkdl.com , which belonged to Sh. R. K. Pillai of M/s Krishna Shipping and Allied Services;
- that email id – import@krishnashippingkdl.com was either shared by POL (Port of Loading) office along with the pre arrival notice/ terminal departure report (TDR), which was understood to be shared to the POL agent office by the booking party/notified party (exporter of the cargo); that neither of the signatures of Shri Mehul Pujara or Shri Naimish Sodha, who were Managing Partners in M/s Aditya Exports, as appearing on their respective statements, was appearing on the letters submitted to their (Aiyer Shipping) office by them and some person, who was not actually the authorized signatory of M/s Aditya Exports, had signed the letters, wherein permissions were granted to staff of M/s Krishna Shipping and Allied Services to collect the DO on behalf of M/s Aditya exports;

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- that Aiyer, Gandhidham team accepted payments from M/s Krishna Shipping & Allied Services, as they perceived M/s Krishna Shipping and Allied Services to be authorized CHA for M/s Aditya Exports, based on nomination letter issued by M/s Aditya Exports for Delivery Order (DO) collection, though, they did not have any explicit formal communication for the same; that even though their firm's name appears on DSCL Bill of Lading (BL), DSCL BL for the shipments was completely unknown to them and had nowhere been received by their company. So, he was not aware as to the authenticity of the DSCL BL submitted before Customs authorities and in his knowledge and that of his staff, it was a fake / forged document;
- that as per the communications shared with them by their Dubai based principal line M/s Alligator Shipping Container Line (ASCL), all the containers for the said consignments were booked and loaded in Dubai only and they had no information about goods having any relation with any other country.
- On being asked about the presence of words "GOODS IN TRANSIT FROM BANDAR ABBAS, IRAN TO MUNDRA, INDIA VIA JEBEL ALI UAE", despite knowing the fact that containers were booked and stuffed in Dubai only for all the consignments, he stated that they had no action with regards to the BL clauses added at Port of Loading (POL) end by the principal line or its UAE agents; that when checked with Principal line ASCL, they were informed that the booking party/shipper at POL had submitted all Shipping Instructions for Bills of Lading through mail bearing ID Kumar@cosmic.hk.
- On being asked about who was the person behind the mail id Kumar@cosmic.hk, he stated that from the telephonic details that he had received from his principal line ASCL, this e-mail id pertained to one Shri M Kumar, CEO of M/s Cosmic Limited. He also submitted the KYC documents corresponding to the firm M/s Cosmic Shipping LLC and some communications received from his principal line ASCL, from the e-mail id Kumar@cosmic.hk. He also informed that as per telephonic discussions with his Dubai based principal line, ASCL, all the communications pertaining to consignments of M/s Aditya Exports and M/s Zest marine Services Pvt. Ltd were received from same e-mail id Kumar@cosmic.hk, only and no separate communication/e-mail had been received from any of the parties whose name appeared in bill of lading as supplier / Consignee / notified parties etc. Even the instruction to put their names in Bill of lading document were received from e-mail id Kumar@cosmic.hk, only, which as per the KYC done at their end pertains to Shri M. Kumar of M/s Cosmic Limited, which apparently is de-facto controlling M/s Cosmic Shipping LLC too; That, In his and ASCL's opinion, the goods always belonged to Sh. M. Kumar of M/s Cosmic Limited and the rest of the details / parties / names added in the bill of lading were as per the shipping instruction received from Sh. Kumar's e-mail id.

**59.** As per the statement of Sh. V. Krishnamoorthy and the e-mail communications received by their Dubai based principal line ASCL from email id of Shri M. Kumar of M/s Cosmic Limited, more details were fetched about this person from various open sources (RUD-27). From the said sources, it was unearthed that full name of Shri M. Kumar was Manish Kumar Jain and besides M/s Cosmic Global HK, he is CEO of M/s Cosmic Inheritance and Cuthbert Group too. It was also found out that Shri Manish Kumar Jain was a COFEPOSA offender and absconder since January 2019.

**60.** I find that statement dated 20.07.2023 of Shri Rajan Sareen was recorded under Section 108 of the Customs Act, 1962 wherein he stated that he held no position in M/s Cosmic Inheritance Pvt. Ltd, 602, Naurang Bhawan, 21, K.G. Marg, New Delhi-110001; that he had not signed any LLP agreement; that he was known to Devender Kumar and Manish Jain, who had taken his signatures for opening an account in his (Rajan's) name and had promised to provide him (Rajan) a job in Dubai; that he had no business association with Devender Kumar and Manish Jain.

**61.** I find that the statements tendered by the above persons are a crucial piece of evidence in establishing the conspiracy hatched by the masterminds to evade the duties of customs and defraud the exchequer.



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**61.1** In this regard, I rely on the following judgements wherein the courts have held the evidentiary value of statements recorded under Section 108 and effect of retraction of statements:-

- a. The Hon'ble Supreme Court in the judgement in the case of Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar-1997 (96) E.L.T 211(S.C) has held as under:-

“7. An attempt was made to contest the admissibility of the said statements in evidence.

**It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence** vide Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940 and K.I Pavunny v. Asstt. Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C) = (1997) 3 SCC 721.”

- b. The Hon'ble Supreme Court has observed in the case of Naresh J. Sukhwani Vs Union of India reported as 1996 (83) E.L.T 258 and held as under :-

**“4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs official under Section 108 of the Customs Act, 1962. That material incriminates the petitioner inculpating him in contraventions of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention as much as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we don't think that there is any illegality in the order of confiscation of foreign currency and imposition penalty. There is no ground warranting reduction of fine.”**

- c. The Hon'ble Courts have held that mere retraction of a statement recorded under Section 108 of the Customs Act, 1962 doesn't affect the evidential value of the statement. In the matter of Asstt. Collector of Customs v. Apinos Victor and Ors., 1992 (38)A-77, the Hon'ble Bombay Court has held that-

**“.....Such retractions have become order of the day and are found on the file of each and every customs case. Mere retraction alone is not going to affect the evidentiary value of the statements recorded under Section 108 of the Customs Act, 1962.”**

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- d. The Hon'ble CESTAT, Mumbai in the case of M/s. S.M. Steel Ropes reported as 2014 (304) E.L.T.591 (Tri. Mumbai), wherein the Hon'ble Tribunal, by referring to various judgements of Hon'ble Supreme court and High Courts, held that confirmation of duty demand on the basis of voluntary statements is sustainable in law. Relevant Para 5.1 is reproduced as under:-

*"5.1 As regards ....."*

*..... The adjudicating authority has confirmed the demand only on the basis of figures given in the statements of Shri Balkrishna Agarwal. In the absence of delivery challans which were recovered and seized at the time of Panchanama proceedings, he has not taken the computation of demands based on such delivery challans as reflected in the annexure to the show cause notice. Therofore, the adjudicating authority has strictly proceeded based on the evidences available which in the present case are the statements of Shri Balkrishna Agarwal. As to the question whether the demands can be confirmed on the strength of confessional statements, this position stands settled by the decision of the Hon'ble Apex Court in the case of K.I pavunny v. Asstt. Cotlector (HQ) Cervtral Excise Collectorate, Cochin- 1997 (90) E.L.T. 241 (S.C.) wherein it was held that confessional statements of accused, if found to be voluntary, can form the sole basis for conviction. Only if it is retracted, the Court is required to examine whether it was obtained by threat, duress or promise and whether the confession is truthful. In the present case, we find that there is no retraction of the confessional statement by Shri Balkrishna Agarwal. As regards the lack of corroborative evidence, it is a settled position of law that "admitted facts need not be proved" as held by the Hon'ble High Court of Madras in the case of Govindasamy Ragupathy- 1998 (98) E.L.T. 50 (Mad). In a recent decision in the case of Telestar Travels Pvt. Ltd. -2013 (289) E.L.T. 3 (S.C.), the Hon'ble Apex Court held that reliance can be placed on statement if they are based on consideration of relevant facts and circumstances and found to be voluntary. Similarly in the case of CCE, Mumbai vs. Kalvert Foods India Pvt. Ltd. -2011 (270) E.L.T. 643 (S.C.) the Hon'ble Apex Court held that if the statements of the concerned persons are out of their volition and there is no allegation of threat, force, coercion, duress or pressure, such statements can be accepted as a valid piece of evidence. **In the light of the above decisions, we are of the considered view that the confirmation of duty demand based on the voluntary statements of the Managing Partner of the appellant firm is sustainable in law. Consequently the interest and penal liabilities imposed on the appellants would also sustain***

**61.2** In view of the above, it is amply clear from the statements of various persons recorded under Section 108 of the Customs Act, 1962 that DTA importers M/s. Cuthbert Oceans LLP and M/s. Cuthbert Winner LLP in connivance with M/s. Aditya Exports, M/s. OWS warehousing services and M/s. Zest Marine services and persons associated with them alongwith Shri Pankaj Thakker, Shri Manish Jain hatched a conspiracy to smuggle goods into SEZ and then clear into DTA under the guise of SAFTA benefits in order to evade duties of Customs and defraud the exchequer. Goods were imported from Dubai, however, by sumitting forged documents before the customs, they declared the goods to be of Afghanistan origin in order to get the benefit of exemption from Custom duties vide SAFTA Notification. Further it is pertinent to note that the above oral evidence in the form of statements recorded under Section 108 of the Customs Act, 1962 are supported by the evidence collected from shipping line and evidence brought on record regarding payments made to Dubai.

**62.** From the above discussion, I find that it is a clear case of fraudulent evasion of duty and it was a pre-planned, cool minded, clever, intelligent and deliberate act committed in conspiracy,

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which has caused loss to the Government Exchequer. Shri Pankaj Thakker, Partner cum F-Card holder of Customs Broker firm M/s Krishna Shipping & Allied Services (CB License No. KDL/CHA/R/43/201) is one of the masterminds, operating from Gandhidham, Gujarat. He, along with his overseas partner / mastermind and COFEPOSA absconder Shri Manish Kumar Jain, are beneficiaries of entire fraud in which Customs duty to the tune of Rs. 66.10 Crore was evaded in collusion with firms M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, which were being utilized by both of them, on account of 1596 MT of 'black pepper' removed into DTA at NIL rate of customs duty by claiming it to be of Afghanistan origin. DTA clearance (import for home consumption) to firms/IEC holders M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP was made through warehousing firms in KASEZ, M/s Aditya Exports and M/s Zest Marine Services Private Ltd, which are de-facto controlled and operated by Shri Pankaj Thakker only. M/s Aditya Exports and M/s Zest Marine Services Pvt. Ltd. filed the bill of entry for warehousing, while Bill of entry for Home Consumption / import into India, was being filed by firms M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP. All the above said firms were apparently either being de facto controlled or utilized by Shri Pankaj Thakker of M/s Krishna Shipping and Allied Services, in collusion with his overseas partner/mastermind and COFEPOSA absconder Shri Manish Kumar Jain, without being formally authorized by any of them. Goods of alleged Afghanistan origin (black pepper and Inshell walnuts), were brought into KASEZ, from abroad (Dubai), on fake documents of origin and transit.

**63.** Further, I find from above discussion that Bills of entry for warehousing the alleged Afghanistan goods, without paying any duty, were filed by M/s Aditya Exports and M/s OWS Warehouse Services Private Ltd, on directions of one of the Masterminds Shri Pankaj Thakker. Similarly, goods of alleged USA origin (inshell walnuts), were brought into KASEZ from abroad (Dubai), for warehousing, without paying any duty or producing any country-of-origin certificate. Bill of entry for warehousing these alleged USA origin goods, without paying any Customs duty, was filed by M/s Zest Marine services private Ltd, again, on directions of mastermind Shri Pankaj Thakker. Every operation, like, filing bills of entry for warehousing, booking of trucks, coordinating the loading and unloading of all imported cargo into SEZ, getting the Delivery Order from shipping lines, Freight payment to the container lines and payment of salary of staff associated with M/s Aditya Exports, was done on specific directions of Shri Pankaj Thakker. Important is to note that for doing all these activities, Shri Pankaj Thakker of M/s Krishna Shipping and Allied Services, was never authorized officially by either of M/s Aditya Exports and M/s Zest Marine Services Pvt. Ltd.

**64.** I also find that both the firms i.e., M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP are untraceable and even the provisional assessment bonds executed by them and submitted to the Deputy Commissioner, KASEZ by the hands of Shri Sanjeev Kumar Roy, who acted solely on directions of Shri Pankaj Thakker, have been found to be carrying forged seals and signatures of the Notary i.e. Shri V. K. Sharma, Advocate and thus the bonds itself are fake.

It is amply clear that the oral evidence in the form of statements recorded under Section 108 of the Customs Act, 1962 supports the evidence collected from shipping line and evidence brought on record regarding payments made to Dubai.

In this regard, it is important to note that the noticees have neither retracted the statement nor offered any explanation for presenting their case. They failed to discharge the burden cast on them on account of above evidence brought on record by the investigating agency.

#### **UNDERVALUATION OF GOODS-**

**65.** I find that the importers have undervalued the seized goods i.e. Inshell walnuts listed in Table/Annexure- F & G and therefore, transaction value stands liable for rejection under the provisions of Rule 12 of CVR, 2007 and is required to re-determined as per the provisions of Rule 3 of CVR, 2007.

**66.** In view of the evidences unearthed during the investigations, it is clear that the importer has misdeclared the value of imported goods i.e. Inshell Walnuts declared of USA origin and the

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correct transaction value of the goods imported by them in the import consignments is as in the insurance certificate attached with goods covered under BL No. NAM5880156 dated 15.12.2022.

In this regard, it is pertinent to note that the noticees have neither rebutted the Insurance certificate nor offered any explanation for presenting their case. They failed to discharge the burden cast on them on account of above evidence brought on record by the investigating agency

QUANTIFICATION OF DUTY-

67. Total Duty evasion of seized goods, i.e. Black Pepper and Inshell walnuts, from SEZ units M/s Aditya Exports, M/s ZMSPL and M/s OWS warehouse services Pvt. Ltd to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP is shown as under:-

Table-A (Annexure-A)

(Duty Calculation Chart For 196 MT of Declared Afghanistan Origin Black Pepper Seized at Warehouse Premises of M/s Aditya Exports In KASEZ)

Sr No	IEC NAME	IEC CODE	IMPORT BILL OF ENTRY NUMBER	Import BE DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	Quantity SEIZED (in MT)	Declared COO	Declared CIF value in INR	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR as per MIP	DUTY PAYABLE AFTER DENIAL OF SAFTA BENEFITS @85.85% OF CIF VALUE (70% BCD; 10% CESS ON BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	Aditya Exports	3798000212	1002182	11.02.2023	BLACK PEPPER (CO NO-15232 DTD 07.11.2022, 15233 DTD 07.11.2022)	56	56	Afghanistan	1,64,01,463.75	2,88,44,490.50	2,47,62,995.09	2,47,62,995.09
2	Aditya Exports	3798000212	1002472	16.02.2023	BLACK PEPPER (CO NO 15301 DTD 09.11.2022, 15302 DTD 09.11.2022)	56	56	Afghanistan	1,64,01,463.75	2,88,44,490.50	2,47,62,995.09	2,47,62,995.09
3	Aditya Exports	3798000212	1002948	25.02.2023	BLACK PEPPER (CO NO-15241 DTD 08.11.2022,15299 DTD 09.11.2022,15300 DTD 09.11.2022)	84	84	Afghanistan	2,48,69,772.38	4,32,66,735.75	3,71,44,492.64	3,71,44,492.64
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 196 MT OF DECLARED AFGHANISTAN ORIGIN BLACK PEPPER SEIZED FROM WAREHOUSE OF ADITYA EXPORTS												8,66,70,482.83

Table-B (Annexure-B)

(Duty Calculation Chart For 56 MT of Declared Afghanistan Origin Black Pepper Seized from Trucks at unnamed Godown in Nathupur, Haryana, cleared in DTA from KASEZ warehouse of M/s Aditya Exports)

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSION DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	QUANTITY SEIZED( in MT)	Declared COO	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID AFTER CLAIMING SAFTA BENEFITS (ONLY IGST @ 5% OF THE CIF VALUE) IN INR	ACTUAL DUTY PAYABLE AFTER DENIAL OF SAFTA BENEFITS @85.85% OF CIF VALUE (70% BCD; 10% CESS ON BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT OCEANS LLP	AAPFC1389P	2003933	14-Mar-23	BLACK PEPPER (WE HAVE IMPORTED THIS CARGO AGAINST BOE NO 1003415-06.03.2023)	84	56	Afghanistan	2,88,44,490.64	14,42,224.53	2,47,62,995.21	2,33,20,770.68
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 56 MT OF DECLARED AFGHANISTAN ORIGIN BLACK PEPPER SEIZED FROM TRUCKS												2,33,20,770.68

Table-C (Annexure-C)

(Duty Calculation Chart For 33.2 MT of Declared Afghanistan Origin Black Pepper Seized From Prabhu Kripa Cold Storage, Kundli, Sonipat, Haryana, cleared in DTA from KASEZ warehouse of M/s Aditya Exports)

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSION DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	QUANTITY SEIZED (in MT)	Declared COO	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID AFTER CLAIMING SAFTA BENEFITS (ONLY IGST @ 5% OF THE CIF VALUE) IN INR	ACTUAL DUTY PAYABLE AFTER DENIAL OF SAFTA BENEFITS @85.85% OF CIF VALUE (70% BCD; 10% CESS ON BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT WINNER LLP	AAPFC1386C	2000953	20-Jan-23	BLACK PEPPER (WE HAVE IMPORTED THIS CARGO AGAINST BOE NO 1000875-17.01.2023)	56	33.2	Afghanistan	1,68,54,904.29	8,42,745.21	1,44,69,935.33	1,36,27,190.12
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 33.2 MT OF DECLARED AFGHANISTAN ORIGIN BLACK PEPPER SEIZED FROM PRABHU KRIPA COLD STORAGE, KUNDLI												1,36,27,190.12

Table-D (Annexure-D)

(Duty Calculation Chart For 96.85 MT of Declared Afghanistan Origin Inshell Walnut Seized From Kufri Cold Storage, Kundli, Sonipat, Haryana, cleared in DTA from KASEZ warehouse of M/s Aditya Exports)

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Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSIO N DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	QUANTITY SEIZED ( in MT)	Declared COO	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID AFTER CLAIMING SAFTA BENEFITS (ONLY IGST @ 5% OF THE CIF VALUE) IN INR	ACTUAL DUTY PAYABLE AFTER DENIAL OF SAFTA BENEFITS @131% OF CIF VALUE (120% BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT WINNER LLP	AAPFC1386C	2002782	23-Feb-23	INSHELL WALNUTS (WE HAVE IMPORTED THIS CARGO AGAISNT BOE NO 1002473-16.02.2023)	20	16.85	Afghanistan	27,07,795.00	1,35,389.75	35,47,211.45	34,11,821.70
2	CUTHBERT WINNER LLP	AAPFC1386C	2003594	09-Mar-23	INSHELL WALNUTS (WE HAVE IMPORTED THIS CARGO AGAISNT BOE NO 1002947-25.02.2023)	80	80	Afghanistan	1,28,32,000.00	6,41,600.00	1,68,09,920.00	1,61,68,320.00
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 96.85 MT OF DECLARED AFGHANISTAN ORIGIN INSHELL WALNUTS SEIZED FROM KUFRI COLD STORAGE, KUNDLI												1,95,80,141.70

Table-E (Annexure-E)

(Duty Calculation Chart For 42.85 MT of Declared Afghanistan Origin Inshell Walnut Seized From Anant Cold Storage, Kundli, Sonipat, Haryana, cleared in DTA from APSEZ Mundra warehouse of M/s OWS Warehouse Services Pvt. Ltd.)

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSIO N DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	Quantity seized (in MT)	Declared COO	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID AFTER CLAIMING SAFTA BENEFITS (ONLY IGST @ 5% OF THE CIF VALUE) IN INR	ACTUAL DUTY PAYABLE AFTER DENIAL OF SAFTA BENEFITS @131% OF CIF VALUE (120% BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT WINNER LLP	AAPFC1386C	2002499	07-Feb-23	INSHELL WALNUTS (CO NO-12527 DTD 27.09.2022, 12533 DTD 27.09.2022, 12536 DTD 27.09.2022)	60	42.85	Afghanistan	71,73,090.00	3,58,654.50	93,96,747.90	90,38,093.40
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 42.85 MT OF DECLARED AFGHANISTAN ORIGIN INSHELL WALNUTS SEIZED FROM ANANT COLD STORAGE, KUNDLI												90,38,093.40

Table-F (Annexure-F)

(Duty Calculation Chart For 161.2 MT of Declared USA Origin Inshell Walnut Seized From Prabhu Kripa Cold Storage, Kundli, Sonipat, Haryana, cleared in DTA from KASEZ warehouse of M/s Zest marine Services Private Ltd.)

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSION DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	QUANTITY SEIZED (in KG)	Declared COO	Price per KG in USD	Price per KG in INR	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID BY IMPORTER	BRAND VALUE per KG in USD as per the insurance document	BRAND VALUE per KG in INR as per the insurance document	NEW ASSESSABLE VALUE (CIF) FOR THE ITEM IN INR as per BRAND	ACTUAL DUTY PAYABLE for USA origin walnuts as per Brand value @131% OF CIF VALUE (120% BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT OCEANS LLP	AAPFC1389P	2003622	09-Mar-23	INSHELL WALNUTS (WE HAVE IMPORTED THIS CARGO AGAINST BOE NO-1003037-27.02.2023)	100000	80600	USA	1.25	105.8	85,27,480.00	93,80,228.00	2.26	191.20	1,54,10,397.60	2,01,87,620.86	1,08,07,392.86
2	CUTHBERT WINNER LLP	AAPFC1386C	2003785	13-Mar-23	INSHELL WALNUTS (WE HAVE IMPORTED THIS CARGO AGAISNT BOE NO 1003492-07.03.2023)	100000	80600	USA	1.25	105.8	85,27,480.00	93,80,228.00	2.26	191.20	1,54,10,397.60	2,01,87,620.86	1,08,07,392.86
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 161.2 MT OF DECLARED USA ORIGIN INSHELL WALNUTS SEIZED FROM PRABHU KRIPA COLD STORAGE, KUNDLI																	2,16,14,785.71

Table-G (Annexure-G)

(Duty Calculation Chart For 56 MT of Declared USA Origin Inshell Walnut Seized From Leh Cold Storage, Kundli, Sonipat, Haryana, cleared in DTA from KASEZ warehouse of M/s Zest marine Services Private Ltd.)

Sr No	DTA BUYER NAME	DTA BUYER IE CODE	DTA SALE BILL OF ENTRY NUMBER	DTA SALE BILL OF ENTRY REQUEST SUBMISSION DATE	ITEM DESCRIPTION	DECLARED QUANTITY AS PER DTA BE (IN MT)	QUANTITY SEIZED (in KG)	Declared COO	Price per KG in USD	Price per KG in INR	ASSESSABLE VALUE (CIF) FOR THE SEIZED GOODS IN INR	DUTY PAID BY IMPORTER	BRAND VALUE per KG in USD as per the insurance document	BRAND VALUE per KG in INR as per the insurance document	NEW ASSESSABLE VALUE (CIF) FOR THE ITEM IN INR as per BRAND	ACTUAL DUTY PAYABLE for USA origin walnuts as per Brand value @131% OF CIF VALUE (120% BCD; 5% IGST) IN INR	DUTY EVADED IN INR
1	CUTHBERT WINNER LLP	AAPFC1386C	2003995	15-Mar-23	INSHELL WALNUTS (WE HAVE IMPORTED THIS CARGO AGAISNT BOE NO 1003613-09.03.2023)	100	56,000	USA	1.25	105.80	59,24,800.00	65,17,280.00	2.26	191.20	1,07,07,200.00	1,40,26,432.00	75,09,152.00
TOTAL EVADED DIFFERENTIAL DUTY PAYABLE ON 56 MT OF DECLARED USA ORIGIN INSHELL WALNUTS SEIZED FROM LEH COLD STORAGE, KUNDLI																	75,09,152.00

68. However, the duty evasion amounting to Rs. 8,66,70,482/- in respect of 196MT of black Pepper seized and lying in SEZ unit is recoverable only when goods are removed in DTA as per the provisions of Section 30 of the SEZ Act, 2005 read with Section 28 of the Customs Act, 1962.

69.In view of the above, I hold that M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP as DTA importers are liable to pay duties of Customs under Section 28(4) of the Customs Act, 1962 as proposed in the Show cause Notice dated 23.04.2024.

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## CONFISCATION OF GOODS-

**70.** Relevant provisions of Section 111 of the Customs Act, 1962 are reproduced herein below-

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

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

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

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

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

**71.** I find that the Show Cause Notice dated 23.04.2024 has proposed 196 MT Black Pepper declared to be of Afghanistan origin (Table/Annexure-A) presently warehoused at M/s. Aditya Exports warehouse in KASEZ totally valued at Rs. 10,09,55,716.75, for confiscation under the provisions of Section 111 (d), 111 (m) & 111 (o) of the Customs Act, 1962. I find that the said goods were imported by M/s. Aditya Exports, KASEZ in violation of the provisions of Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, and by violating the LOA norms. Such act on their part has rendered the said goods liable for confiscation under Section 111(d) and 111(o) of the Customs Act, 1962. Further, as already discussed, they have wilfully filed incorrect details in the Bills of Entry for warehousing insofar as the condition no. iv of LOA is concerned which has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

**72.** I find that the show cause notice has proposed confiscation of (i) 56MT Black Pepper valued at Rs. 2,88,44,490.64/- (ii) 33.2MT Black Peppervalued at Rs. 1,68,54,904.29 (iii) 96.85 MT Inshell Walnutvalued at Rs. 1,55,39,795.00/- (iv) 42.85 MT Inshell Walnut valued at Rs. 71,73,090.00/- (v) 161.2 MT Inshell Walnut valued at Rs. 3,08,20,795.20/- (vi) 56 MT Inshell Walnut valued at Rs. 1,07,07,200.00/- under Section 111(m) and 111(o) of the Customs Act, 1962. The said goods have been cleared into DTA by the DTA importer in violation of provisions of Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, and by violating the LOA norms rendering their goods liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

## CONFISCATION OF TRUCKS-

**73.** I find that the trucks bearing numbers RJ19GG2122 and RJ04GC8558 of M/s Shree Karni Roadways, were being used for transport of the smuggled goods and therefore are liable for confiscation U/s 115(2) of The Customs Act, 1962.

## ROLE PLAYED BY VARIOUS FIRMS AND PERSONS AND PENALTIES-

**74. Role played by M/s. Aditya exports and its partners Shri Mehul pujara and Shri Naimish Sodha-**

**74.1** M/s. Aditya Exports were granted an LOA dated 03.03.2003 as amended to import and warehouse, among other things, Black Pepper (mentioned at Sr. No. 8 of the import table) provided that the import CIF value was Rs. 500/- Per kg. However, as discussed, they imported

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the Black Pepper at Rs. 290 per kg in violation of LoA granted to them. Such acts on their part had rendered the goods liable for confiscation, as already discussed, under Section 111 of the Customs Act, 1962. Further, the COO certificates and emails dated 19.04.2023 and 20.04.2023 received from operators of vessels clearly suggested that the import of Black Pepper was in clear violation of SAFTA benefits. Similarly, they imported and cleared into DTA Inshell walnuts, claiming to have imported the same from Afghanistan, by submitting fake/forged documents in order to evade duties of customs by wrongly availing the benefit of SAFTA Notification. The documents submitted by M/s. Aditya exports were not genuine and they used forged documents to make the goods appear to be of Afghanistan Origin with an intention to misuse the provisions provided under SEZ Rules and SAFTA and LDC FTA. Further, it is seen that they imported Inshell walnuts from USA by undervaluing the same, as clearly evident from Insurance certificate. Such acts on their part have made M/s. Aditya Exports liable for penal action under Section 112(a) of the Customs Act, 1962.

**74.2** As regard the proposal of penalty upon M/s. Aditya Exports, KASEZ under Section 114A of the Customs Act, 1962, I find that penalty under Section 114A of the Customs Act, 1962 is imposed upon the person who is liable to pay duty or interest as determined under Section 28(8) of the Customs Act. In the instant case, M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP are liable to pay duty or interest, therefore, penalty upon M/s. Aditya Exports under Section 114A of the Customs Act, 1962 is not attracted.

**74.3** I find from the statement, tendered by Shri Mehul Pujara (partner in M/s. Aditya Exports), that his firm dealt in import of various commodities from Dubai. He had given his digital signature dongle to Shri Pankaj Thakkar to use in the day to day business in M/s Aditya Exports. I find that he provided the details to Shri Pankaj Thakkar in case of OTP on registered mobile for M/s Aditya Exporters. He admitted that Shri Pankaj Thakkar provided him 200 dollars for each container to be imported in SEZ as warehouse charges in M/s Aditya Exporters. I find that he has his bank account in Bank of Baroda, KASEZ Branch in name of M/s Aditya Exports in which he (Mehul) and Shri Naimish H. Sodha both are signing authority. The KYC details in said account was of him (Mehul) and Shri Naimish H. Sodha, Registered Mobile no. i.e. 9099072236 of said Bank account was in name of M/s Krishna Shipping and allied services. Further the said mobile was used by Shri Vijay Suresh Bhai Rathore who was employer in M/s Krishna Shipping and allied services in which Pankaj Thakkar was a partner along with his father Karsan M. Thakkar. He further admitted that in case of payment done for M/s Aditya Exports through cheque he (Mehul) signed the same otherwise all the payments were done through Internet Banking which was controlled by Pankaj Thakkar.

**74.3.1** I further find that he has admitted in his statement that the import price of Black Pepper was much less than the one mentioned in LoA. He further admitted that he had visited Dubai once and the supplier of Black pepper to be imported in India are mostly Dubai based traders and he was not aware of the Afghanistan origin of imported goods.

**74.3.2** Being a partner in the M/s. Aditya Exports, KASEZ, I find that he was fully responsible for the act of smuggling of goods in contravention of the LoA and SAFTA Notification. He wilfully gave his digital signature, details of bank account and OTP received on his mobile for filing the Bills of Entry for warehousing the smuggled goods. His argument that he was not aware of the Bills of Entry filed by their firm has no substance as he was paid 200 dollars per container, which shows his active involvement. It is ironical that on one hand he admits that he was well aware that Black pepper is usually imported from Dubai, and on the other hand he argues that he was unaware of the Black Pepper of Afghanistan origin being imported in his SEZ unit. **3** Further it is on record that Shri Pankaj Thakkar and Shri Mehul Pujara were arrested in November, 2022 by DRI Gandhidham in connection with another export fraud involving M/s Aditya Exports only and are on bail in that case too. This shows that Shri Mehul Pujara is a habitual offender.

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This proves that he was hand in glove with all the conspirators in the instant case. Such act on his part has rendered him liable for penal action under Section 114AA of the Customs Act, 1962 for signing or causing to sign the documents which were found to be fake/false.

**74.4** I find from the statement, tendered by Shri Naimish Sodha (partner in M/s. Aditya Exports), that his firm dealt in import of various commodities from Dubai and other countries. He had given his digital signature dongle to Shri Pankaj Thakkar to use in the day to day business in M/s Aditya Exports. I find that he provided the details to Shri Pankaj Thakkar in case of OTP on registered mobile for M/s Aditya Exporters. He admitted that Shri Pankaj Thakkar provided him 200 dollars for each container to be imported in SEZ as warehouse charges in M/s Aditya Exporters. I find that he has his bank account in Bank of Baroda, KASEZ Branch in name of M/s Aditya Exports in which he (Naimish) and Shri Mehul Pujara both are signing authority. The KYC details in said account was of him (Nimish) and Shri Mehul Pujara, Registered Mobile no. i.e. 9099072236 of said Bank account was in name of M/s Krishna Shipping and allied services. Further the said mobile was used by Shri Vijay Suresh Bhai Rathore who was employer in M/s Krishna Shipping and allied services in which Pankaj Thakkar was a partner along with his father Karsan M. Thakkar. He further admitted that in case of payment done for M/s Aditya Exports through cheque he (Mehul) signed the same otherwise all the payments were done through Internet Banking which was controlled by Pankaj Thakkar.

**74.4.1** I further find that he has admitted in his statement that the import price of Black Pepper was much less than the one mentioned in LoA. He further admitted that he had visited Dubai once and the supplier of Black pepper to be imported in India are mostly Dubai based traders and he was not aware of the Afghanistan origin of imported goods.

**74.4.2** Being a partner in the M/s. Aditya Exports, KASEZ, I find that he was fully responsible for the act of smuggling of goods in contravention of the LoA and SAFTA Notification. He wilfully gave his digital signature, details of bank account and OTP received on his mobile for filing the Bills of Entry for warehousing the smuggled goods. His argument that he was not aware of the Bills of Entry filed by their firm has no substance as he was paid 200 dollars per container, which shows his active involvement. It is ironical that on one hand he admits that he was well aware that Black pepper is usually imported from Dubai, and on the other hand he argues that he was unaware of the Black Pepper of Aghanistan origin being imported in his SEZ unit. This proves that he was hand in glove with all the conspirators in the instant case. Such act on his part has rendered him liable for penal action under Section 114AA of the Customs Act, 1962 for signing or causing to sign the documents which were found to be fake/false.

## **75. Role played by M/s. OWS Warehouse services Pvt. Ltd and its four partners.**

**75.1** I find that 616 MT of Black Pepper, 748.35 MT of inshell walnuts, 50 MT of inshell Pistachios and 48.6 MT of walnut Kernel, claimed to be of Afghanistan origin, were imported from Dubai, for warehousing into Adani ports and SEZ (APSEZ) Mundra, by M/s OWS Warehouse Services Pvt. Ltd., by firms M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, which were being stage-managed by Sh. Pankaj Thakker of M/s Krishna Shipping and Allied Services and his co-accomplice and COFEPOSA absconder Sh. Manish Kumar Jain.

**75.2** I find that Bills of entry for warehousing the alleged Afghanistan goods, without paying any duty, was filed by M/s OWS Warehouse Services Private Ltd, on directions of one of the Masterminds Shri Pankaj Thakker.

**75.3** Clearly such act on their part has rendered M/s. OWS warehouse services and its four partners viz. Shri Pankaj Surani, Shri Vineet Sharma, Smt. Sonam Sharma and Shi Mangal Kiran Sharma liable for penal action under Section 114AA of the Customs Act, 1962.

## **76. Role played by M/s. Zest Marine and its Director.**

**76.1** I find that Shri Sharad Shetty, Director, M/s. Zest Marine in his statement admitted that he had handed over his dongle to staff of M/s Aditya Exports, Shri Sanjeev Kumar Roy, since April-2022, on instructions of Shri Pankaj Thakkar. He further admitted that day to day



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warehousing operations of M/s Zest Marine Services Pvt. Ltd (ZMSPL) since April-2022 was being controlled by Shri Sanjeev Kumar Roy on direct instructions of Shri Pankaj Thakker.

**76.2** I find that all the Bills of Entry, corresponding to their warehousing business, be of import or DTA sales, were filed by Shri Pankaj Thakker of M/s Krishna Shipping & Allied Services or on his instructions by staff of M/s Krishna Shipping & Allied Services, using ZMSPL's DSC dongle, as, Pankaj Thakker de-facto controlled the warehousing business of M/s Zest Marine Services Pvt. Ltd.

**76.3** I find that he further stated in his statement that he was not aware of the documents uploaded on SEZ Online portal, corresponding to inshell walnuts from USA (from Crain Marketing INC, C/o Valley Oasis Foods LLC, Corning, California, USA) to M/s Zest Marine Services Pvt. Ltd (viz. Bill of lading, Commercial invoice, Packing list etc), wherein, as per the submitted invoice price of 1Kg of inshell walnuts is USD 0.75.

**76.4** I find that he further stated in his statement that their company's (ZMSPL) name had been wrongly used by their warehouser M/s Cosco Shipping and Warehousing – FZE / LLC and Shri Pankaj Thakker for importing the cargo into India, without their knowledge and any of his staff at M/s Zest Marine Services Pvt. Ltd was not informed in past or present before filing the said documents before Indian customs.

**76.5** I also find that he has admitted in his statement that he had never witnessed such cheap valued / invoiced walnuts. Price of USD 0.75 per Kg did not appear genuine to him, since the walnut was from USA and that too branded; that, in all likelihood, walnuts should have cost as per the value declared by brand on their website.

It is clear that their firm was de-facto controlled by Shri Pankaj Thakker and Shri Manish Jain to import and clear smuggled goods in order to evade duties of customs and defraud the exchequer. Their argument that they were not aware of such conspiracy has no merit as they handed over their DSC and other details to Shri Pankaj Thakkar for filing Bills of Entry and other day to day warehousing operations. This clearly establishes their involvement in the instant case of smuggling. Such act on their part has rendered M/s. Zest Marine and Shri Sharad Shetty, individually and separately, liable for penal action under Section 114AA of the Customs Act, 1962.

## **77. Role played by M/s. Krishna Shipping and allied services and its partners.**

**77.1** I find that Sh. Pankaj Thakkar, partner in M/s Krishna Shipping and Allied Services, one of the masterminds of this entire economic fraud and the "beneficial owner" of the smuggled goods too and his co-accomplice and COFEPOSA absconder Sh. Manish Kumar Jain with the help of DTA firms i.e. M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP were engaged in importing Black Pepper and Inshell Walnuts by wilfully misdelcaring the same to be of Afghanistan origin in order to claim SAFTA benefits. In order to hatch the conspiracy, Sh. Pankaj Thakkar, partner in M/s Krishna Shipping and Allied Services along with his fellow mastermind and co-accomplice in the entire fraud Sh. Manish Jain (the COFEPOSA abscondee based in UAE), was de-facto controlling two of the Kandla SEZ (KASEZ) warehousing units namely M/s Aditya Exports and M/s Zest Marine Services Pvt. Ltd and also one of the warehouse units in Adani Ports and SEZ (APSEZ), Mundra, namely M/s OWS Warehouse Services Pvt. Ltd., and that too illegally, without any legal authorization from either of the three warehousing units.

**77.2** Further it is on record that Shri Pankaj Thakker and Shri Mehul Pujara were arrested in November, 2022 by DRI Gandhidham in connection with another export fraud involving M/s Aditya Exports only and were on bail in that case too. This shows that Shri Pankaj Thakkar is an habitual offender.

**77.3** In view of the extensive discussion made in earlier paras, it is proven beyond doubt that Shri Pankaj Thakkar was controlling and managing the import through these three warehousing units and further clearance in DTA. The Customs duty payments (IGST component) for DTA

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removal to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP were made by M/s Krishna Shipping and Allied Services, even though in terms of the Customs Act, 1962 read with SEZ Rules, 2006, the duty payments were required to be made by the recipient of DTA removed good i.e. M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP, in the extant case. Further, it is seen that a huge amount of money flowed from/to M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP from/to M/s Krishna Shipping and Allied Services. As per bank statement summary, M/s Krishna Shipping and Allied Services received Rs. 20.17 Crore from M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP.

**77.4** I find that Shri V. Krishnamoorthy, Managing Director of M/s Aiyer Shipping Agency Pvt. Ltd, Mumbai, in his statement has admitted that delivery orders used to be handed over to M/s. Krishna shipping and allied services. He further admitted that all Communications regarding shipments of M/s Aditya Exports were received from same e-mail id import@krishnashippingkdl.com, which belonged to Sh. R. K. Pillai of M/s Krishna Shipping and Allied Services.

**77.5** I find that all the Bills of Entry (warehousing as well as DTA clearance) were filed as per the directions of Shri Pankaj Thakker and Shri K M Thakker only and clearly this act on their part has rendered M/s. Krishna shipping, Shri K M Thakker and Shri Pankaj Thakker liable for penal action under Section 114AA of the Customs Act, 1962.

**Role played by M/s. Cuthbert Winner LLP, M/s. Cuthbert Oceans LLP and person associated with it-**

**78.** I find that in the present case, M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP have evaded the Customs duty by reason of collusion, wilful mis-statement and suppression of facts by way of submission of fake country of origin documents of Afghanistan origin and also undervaluing the import of Inshell Walnuts from USA. Shri Manish Jain, COFEPOSA absconder in active collusion with Shri Pankaj Thakker wilfully indulged in importation of Black Pepper and Inshell Walnuts from Dubai by claiming them to be of Afghanistan origin in order to evade duties of Customs. They hatched a conspiracy to import goods into SEZ units (M/s. Aditya Exports, M/s. OWS warehousing and M/s. Zest Marine services) and then clearing the same into DTA to M/s. Cuthbert Oceans LLP and M/s. Cuthbert Winner LLP.

**78.1** Black pepper was removed into DTA by these two firms - M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP by claiming them to be of Afghanistan origin by submitting forged certificates, at Nil rate of duty, in terms of SAFTA (South Asian Free Trade Area) Notification No. 99/2011-Cus, which inter alia grants customs duty exemption to Afghanistan origin goods. Black pepper otherwise attracts a total customs duty of 77% [excluding IGST].

**78.2** Besides Balck Pepper, during the same period Inshell Walnuts claiming to be of Afghanistan origin, imported for warehousing into SEZ units, were brought/imported/cleared for home consumption into Indian territory, using forged documents, by M/s Cuthbert Winner LLP, Delhi and M/s Cuthbert Oceans LLP, Delhi in order to evade duties of customs.

**78.3** Further, I find that bills of entry for home consumption/import into India, were filed by M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP for DTA clearance of Inshell Walnuts from M/s Zest marine Services Pvt. Ltd, KASEZ by claiming the same to be of USA origin and by presenting undervalued invoices before the Customs authorities.

**78.4** Further during the provisional release of goods, following facts in respect of M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP and Shri Samir Arora have emerged-

1. DRI Ludhiana, vide letters dated 07.07.2023 and 07.11.2023 informed that M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP did not exist at their all known business premises and provisional assessment Bonds furnished by them to the KASEZ Custom Officers were fake.

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2. APSEZ, Mundra vide letter dated 12.01.2024 has also informed that M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP have submitted forged 06 Bank Guarantees (allegedly issued by Bank of Baroda). On confirmation with the Bank, it was found that none of the BGs had been issued by the respective Bank.

3. The DTA importers have submitted forged/fake PD Bonds and Bank Guarantees before the KASEZ custom authorities, in the matter of provisional release of Black pepper, in pursuance of orders dated 18.10.2023 and 22.08.2024 of Hon'ble High Court of Gujarat in SCA 10875 of 2023. On verification with the Bank in respect of submitted bank Guarantees, it was found that the Bank Guarantees were not issued by the Bank and the same were fake. On verification of the three Bonds submitted by M/s. Cuthbert Winner LLP, it was found that the Notarizing Advocate Mr. Raj Kumar, informed the office of KASEZ that he had never notarized the said PD Bonds and the same were fake.

4. Shri Samir Arora, partner, M/s. Cuthbert Winner LLP and M/s. Cuthbert Ocean LLP provided his address as "73-A Ram Nagar, Krishna Nagar, H.O. East Delhi-110051" while filing the CWP-11758 and 11233. Thereafter, the address was updated as "C-401, Maurya Apartment, Near Opposite Singla Sweets, Parpadganj, Laxmi Nagar, Delhi-110092" while appearing before the undersigned on 23.09.2024 as per the directions of the Hon'ble Court. Further, when Shri Samir Arora submitted the Bond on 04.10.2024 before the Hon'ble Court the address was once again changed to "Flat No. 616, Technology apartments, Plot No.24, I.P extension, Patparganj, Delhi-110092". I find that the letter dated 14.10.2024 (Speed Post No. RG134946688IN) issued by this office to Shri Samir Arora on this address returned undelivered with a remark, "No such person".

**78.5** This shows that M/s. Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP and its all the partners alongwith Shri Manish Jain have time and again engaged in submitting fake/forged documents and incorrect/false Bills of Entry while clearing the goods into DTA in order to evade duties of Customs which has rendered them liable for penal action under Section 114AA of the Customs Act, 1962.

**78.6** Further as regard to penal provisions under Section 114A of the Customs Act, 1962, I find that it is already held in earlier paras that both the DTA firm are liable to pay duties of Customs under Section 28 of the Customs Act, 1962, therefore, penalty under Section 114A of the Customs Act equal to the duty plus interest is liable to be imposed in terms of Circular No. 61/2002-Cus dated 20.09.2002.

**79.** In view of the above discussion and findings, I hereby pass the following order-

- (i) I order to confiscate the impugned goods i.e. 196 MT Black pepper declared to be of Afghanistan origin (Table/Annexure-A) by violating the provisions as stipulated by Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, imported by **M/s. Aditya Exports** by violating the LOA norms and presently warehoused at M/s. Aditya Exports warehouse in KASEZ totally valued at Rs. 10,09,55,716.75, under the provisions of Section 111 (d), 111 (m) & 111 (o) of the Customs Act, 1962;

However, I give M/s. Aditya Exports, KASEZ an option to pay a fine of **Rs. 1,00,95,571/-(Rupees One Crore Ninety Five Thousand Five Hundred and seventy one only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.

- (ii) I determine and confirm the differential duty amounting to Rs. 2,33,20,770.68 [differential BCD amounting to Rs. 1,90,15,188.68, differential SWS amounting to Rs. 19,01,518.87 & differential IGST amounting to Rs. 24,04,063.14] and order to recover the same from **M/s Cuthbert Oceans LLP** in respect of Black pepper declared to be of Afghanistan origin (Table/Annexure-B), imported in DTA by

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presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently under Supurdari of ICD-Panchi Gujaran, Sonipat, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;

- (iii) I order to confiscate the impugned goods i.e. 56 MT Black pepper declared to be of Afghanistan origin (Table/Annexure-B) by violating the provisions as stipulated by Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, imported in DTA by **M/s Cuthbert Oceans LLP**, by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently under Supurdari of ICD-Panchi Gujaran, Sonipat totally valued at Rs. 2,88,44,490.64, under the provisions of Section 111 (m) and 111 (o) of the Customs Act, 1962;

However, I give M/s Cuthbert Oceans LLP an option to pay a fine of **Rs. 28,84,449/- (Rupees Twenty Eight lakhs Eighty Four Thousand Four Hundred and Forty Nine only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.

- (iv) I determine and confirm the differential duty amounting to Rs. 1,36,27,190.12 [differential BCD amounting to Rs. 1,11,11,279.07, differential SWS amounting to Rs. 11,11,127.91 & differential IGST amounting to Rs. 14,04,783.14] and order to recover the same from **M/s Cuthbert Winner LLP** in respect of Black pepper declared to be of Afghanistan origin (Table/Annexure-C), imported in DTA by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at Prabhu Kripa Cold Storage, Sonipat, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;

- (v) I order to confiscate the impugned goods i.e. 33.2 MT Black pepper declared to be of Afghanistan origin (Table/Annexure-C) by violating the provisions as stipulated by Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, imported in DTA by **M/s Cuthbert Winner LLP** by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at Prabhu Kripa Cold Storage, Sonipat totally valued at Rs. 1,68,54,904.29, under the provisions of Section 111 (m) and 111 (o) of the Customs Act, 1962;

However, I give M/s Cuthbert Winner LLP an option to pay a fine of **Rs.16,85,490/- (Rupees Sixteen Lakh Eighty Five Thousand Four Hundred and Ninety only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.

- (vi) I determine and confirm the differential duty amounting to Rs. 1,95,80,141.70 [differential BCD amounting to Rs. 1,79,36,007.66 & differential IGST amounting to Rs. 16,44,134.04] and order to recover the same from **M/s Cuthbert Winner LLP** in respect of Inshell Walnut declared to be of Afghanistan origin (Table/Annexure-D), imported in DTA by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at Kufri Cold Storage, Sonipat, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;

- (vii) I order to confiscate the impugned goods i.e. 96.85 MT Inshell Walnut declared to be of Afghanistan origin (Table/Annexure-D) by violating the provisions as stipulated by Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, imported in DTA by **M/s Cuthbert Winner LLP** by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at Kufri Cold Storage, Sonipat totally valued at Rs. 1,55,39,795.00, under the provisions of Section 111 (m) and 111 (o) of the Customs Act, 1962;

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However, I give M/s Cuthbert Winner LLP an option to pay a fine of **Rs.15,53,979/- (Rupees Fifteen Lakh Fifty Three Thousand Nine Hundred and Seventy Nine only)** in lieu of confiscation under Section 125 of the Customs Act, 1962

- (viii) I determine and confirm the differential duty amounting to Rs. 90,38,093.40 [differential BCD amounting to Rs. 82,79,169.53 & differential IGST amounting to Rs. 7,58,923.87] and order to recover the same from **M/s Cuthbert Winner LLP** in respect of Inshell Walnut declared to be of Afghanistan origin (Table/Annexure-E), imported in DTA by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at Anant Cold Storage, Sonipat, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962
- (ix) I order to confiscate the impugned goods i.e. 42.85 MT Inshell Walnut declared to be of Afghanistan origin (Table/Annexure-E) by violating the provisions as stipulated by Customs Notification no. 99/2011 dated 09.11.2011, issued under Section 25 of the Customs Act, 1962, imported in DTA by **M/s Cuthbert Winner LLP** by presenting Fake Country of Origin documents and transshipment documents viz. Bill of Lading from Bandar Abbas and presently kept seized at Anant Cold Storage, Sonipat totally valued at Rs. 71,73,090.00, under the provisions of Section 111 (m) and 111 (o) of the Customs Act, 1962;

However, I give M/s Cuthbert Winner LLP an option to pay a fine of **Rs.7,17,309/- (Rupees Seven Lakh Seventeen Thousand Three Hundred and Nine only)** in lieu of confiscation under Section 125 of the Customs Act, 1962

- (x) I reject the declared value of Rs. 85,27,480.00 of the impugned goods imported by **M/s Cuthbert Oceans LLP** detailed in Sr. No. 1 of Table/Annexure -F and also, the declared value of Rs. 85,27,480.00 of the impugned goods imported by **M/s Cuthbert Winner LLP** detailed in Sr. No. 2 of Table/Annexure -F under Rule 12 of CVR, 2007 read with Section 14 of the Act and order to re-determine the same to Rs. 1,54,10,397.60 for impugned goods imported by M/s Cuthbert Oceans LLP and Rs. 1,54,10,397.60 for impugned goods imported by M/s Cuthbert Winner LLP, under sub-rule (1) of Rule 3 of CVR, 2007 and consequently, I determine and confirm the differential duty amounting to Rs. 1,08,07,392.86 [differential BCD amounting to Rs. 98,99,901.853 & differential IGST amounting to Rs. 9,07,491.00] and order to recover the same from M/s Cuthbert Winner LLP and I confirm the differential duty amounting to Rs. 1,08,07,392.86 [differential BCD amounting to Rs. 98,99,901.853 & differential IGST amounting to Rs. 9,07,491.00] and order to recover the same from M/s Cuthbert Oceans LLP in respect of Inshell Walnut declared to be of USA origin (Table/Annexure-F), imported in DTA by presenting under-valued commercial invoices in front of the Customs Authorities and provisionally released vide order dated 04.10.2024, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
- (xi) I order to confiscate impugned goods i.e. 161.2 MT Inshell Walnut declared to be of USA origin (Table/Annexure-F), imported in DTA by **M/s Cuthbert Winner LLP & M/s Cuthbert Oceans LLP** by presenting under-valued commercial invoices in front of the Customs Authorities and provisionally released vide order dated 04.10.2024, totally valued at Rs. 3,08,20,795.20 (Rs. 1,54,10,397.60 for each importer individually), under the provisions of Section 111 (m) of the Customs Act, 1962;

However, I give M/s Cuthbert Winner LLP and M/s. Cuthbert Oceans LLP an option to pay a fine of **Rs. 15,41,039/- (Rupees Fifteen Lakh Forty One Thousand and Thirty Nine only)** each in lieu of confiscation under Section 125 of the Customs Act, 1962

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(xii) I reject the declared value of Rs. 59,24,800.00 of the impugned goods imported by **M/s Cuthbert Winner LLP**, as detailed in Table/Annexure -G under Rule 12 of CVR, 2007 read with Section 14 of the Act and order to re-determined the same to Rs. 1,07,07,200.00 under sub-rule (1) of Rule 3 of CVR, 2007, and consequently, I determine and confirm the differential duty amounting to Rs. 75,09,152.00 [differential BCD amounting to Rs. 68,78,612.52 & differential IGST amounting to Rs. 6,30,539.48] and order to recover the same from M/s Cuthbert Winner LLP in respect of Inshell Walnut declared to be of USA origin (Table/Annexure-G), imported in DTA by presenting under-valued commercial invoices in front of the Customs Authorities and provisionally released vide order dated 04.10.2024, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

(xiii) I order to confiscate the impugned goods i.e. 56 MT Inshell Walnut declared to be of USA origin (Table/Annexure-G), imported in DTA by **M/s Cuthbert Winner LLP** by presenting under-valued commercial invoices in front of the Customs Authorities and provisionally released vide order dated 04.10.2024, totally valued at Rs. 1,07,07,200.00, under the provisions of Section 111 (m) of the Customs Act, 1962;

However, I give M/s. Cuthbert Winner LLP an option to pay a fine of **Rs.10,70,720/- (Rupees Ten Lakh Seventy Thousand Seven Hundred and Twenty only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.

(xiv) I order to confiscate the said trucks bearing numbers RJ19GG2122 and RJ04GC8558 of **M/s Shree Karni Roadways**, which were being used for transport of the smuggled goods U/s 115(2) of The Customs Act, 1962.

However, I give M/s Shree Karni Roadways an option to pay a fine of **Rs. 10,00,000/-(Rupees Ten lakhs only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.

(xv) I impose penalty equal to the duty plus interest confirmed above at (iv), (vi), (viii), (x) and (xii) on **M/s Cuthbert Winner LLP** under Section 114A of the Customs Act, 1962;

I impose penalty equal to the duty plus interest confirmed above at (ii) and (x) on **M/s Cuthbert Oceans LLP** under Section 114A of the Customs Act, 1962

I don't impose any penalty on M/s. Aditya Exports under Section 114A of the Customs Act, 1962.

(xva) I impose penalty equal to **Rs 1,50,00,000/- (Rupees One Crore Fifty lakhs)** on M/s. Aditya Exports under Section 112 of the Customs Act, 1962.

(xvi) I impose penalty, equal to the amount mentioned in column 2 of the table below on persons/firms given in Column 1 of the table, as follows-

Name of the firm/person	Penalty under Section 114AA (Amount in Rs.)
M/s Zest Marine Services Pvt. Ltd	5,00,00,000/- (Five Crores)
M/s OWS Warehouse Services Pvt. Ltd	2,00,00,000/- (Two Crores)
M/s Krishna Shipping & Allied Services Pvt. Ltd	10,00,00,000/- (Ten Crores)
Sh. Pankaj Thakkar, Partner in M/s Krishna Shipping & Allied Services Pvt. Ltd	15,00,00,000/- (Fifteen Crores)
Sh. Karsanbhai Morumal Thakkar, Partner in M/s Krishna Shipping & Allied Services Pvt.	1,00,00,000/- (One Crore)

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Ltd	
Sh. Manish Jain	5,00,00,000/- (Five Crores)
Sh. Mehul Pujara, Partner in M/s Aditya Exports	7,50,00,000/- (Seven Crore Fifty lakhs)
Sh. Naimish Sodha, Partner in M/s Aditya Exports	7,50,00,000/- (Seven Crore Fifty lakhs)
Shri Sameer Arora, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP	10,00,00,000/- (Ten Crores)
Shri Devender Kumar, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP	5,00,00,000/- (Five Crores)
Sh. Pravin Parshuram Raut, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP	5,00,00,000/- (Five Crores)
Sh. Sharad Shetty, Director of M/s Zest Marine Services Pvt. Ltd	5,00,00,000/- (Five Crores)
Shri Pankaj Surani, Partner in OWS Warehouse Services Pvt. Ltd	50,00,000/- (Fifty lakhs)
Shri Vineet Sharma, Partner in OWS Warehouse Services Pvt. Ltd	50,00,000/- (Fifty lakhs)
Smt. Sonam Sharma, Partner in OWS Warehouse Services Pvt. Ltd	50,00,000/- (Fifty lakhs)
Shri Mangal Kiran Sharma, Partner in OWS Warehouse Services Pvt. Ltd	50,00,000/- (Fifty lakhs)

(Xvii) I order to enforce the Bonds submitted by Shri Samir Arora, while taking the provisional release of 161.2 MT and 56 MT Inshell walnut released vide order dated 04.10.2024, against the liabilities of M/s. Cuthbert Oceans LLP and M/s. Cuthbert Winner LLP confirmed above.

**80.** This order is issued without prejudice to any action that can be taken against the importers or any other persons under this act or any other law for the time being in force.

**(M. Ram Mohan Rao)**  
**Commissioner of Customs**  
**Customs House Kandla**  
**Date:- 08.11.2024**

**F.No. GEN/ADJ/COMM/181/2024-Adjn**

**DIN-20241171ML000000C878**

**To,**

**Noticees:**

1. M/s Aditya Exports, Shed No. 85-88, Sector-I, Kandla Special Economic Zone, Gandhidham

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2. M/s Cuthbert Winner LLP, IInd, 44, Regal Building, Outer Circle, Connaught Place, new Delhi-110001
3. M/s Cuthbert Oceans LLP, Unit No. 111, Aggarwal City Square, Plot No. 10, Mangalam Place, Sector-3, Rohini, New Delhi-110085
4. M/s Shree Karni Roadways, Shop No. 21, Plot No. 77, Jay Ambe Chamber, National Highway, Gandhidham, Gujarat-370201 (for trucks bearing nos.RJ19GG2122 and RJ04GC8558)
5. M/s Zest Marine services Pvt. Ltd (IEC – 3705001051 / PAN – AAACZ1355L), Shed No. 361, A-II Type, Sector – IV, Kandla Special Economic Zone, Gandhidham, Gujarat – 370230
6. M/s OWS Warehouse Services LLP, Sector-8 Survey no-169, Village Dhruve, Mitap Road, Adani Port & Special Economic Zone, Mundra, Kutch, Gujarat-370421
7. M/s Krishna Shipping & Allied Services Pvt. Ltd, 53/54-A, Tanker Association Building, Transport Nagar, National Highway, Gandhidham (Kutch)
8. Sh. PankajThakkar, Partner in M/s Krishna Shipping & Allied Services Pvt. Ltd
9. Sh. KarsanbhaiMorumalThakkar, Partner in M/s Krishna Shipping & Allied Services Pvt. Ltd
10. Sh. Manish Jain, person associated with Cosmic International Group and Cuthbert group
11. Sh. MehulPujara, Partner in M/s Aditya Exports
12. Sh. NaimishSodha, Partner in M/s Aditya Exports
13. Shri Sameer Arora, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP
14. ShriDevender Kumar, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP
15. Sh. PravinParshuramRaut, Partner in M/s Cuthbert Winner LLP and M/s Cuthbert Oceans LLP
16. Sh. SharadShetty, Director of M/s Zest Marine Services Pvt. Ltd
17. ShriPankajSurani, Partner in OWS Warehouse Services Pvt. Ltd under Section
18. ShriVineet Sharma, Partner in OWS Warehouse Services Pvt. Ltd
19. Smt. Sonam Sharma, Partner in OWS Warehouse Services Pvt. Ltd
20. ShriMangalKiran Sharma, Partner in OWS Warehouse Services Pvt. Ltd

**Copy to:-**

- (i) The Development Commissioner, KASEZ, Gandhidham
- (ii) The Deputy Commissioner, Customs, KASEZ, Gandhidham
- (iii) The Additional Director General, DRI, Ludhiana
- (iv) The chief Commissioner, Customs Ahemdabad Zone, Ahmedabad for review
- (v) Guard File.