



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH**

MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421

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A	File No.	CUS/APR/BE/MISC/744/2023-Gr 3-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/112/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	06.07.2023
E	Date of Issue	07.07.2023
F	SCN No. & Date	SCN No. CUS/APR/BE/MISC/744/2023-Gr 3-O/o Pr Commr-Cus-Mundra dated 19.06.2023
G	Noticee/Party/ Importer/ Exporter	M/s. Bhadohi Carpets situated at Maryadpatti, Opposite Ram Talkies, Bhadohi-221401, Uttar Pradesh holding IEC No. 1511002417
H	DIN No.	20230771MO000000EF31

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“ सीमा शुल्क आयुक्त (अपील),
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“**THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**
**Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.**”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

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

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

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

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

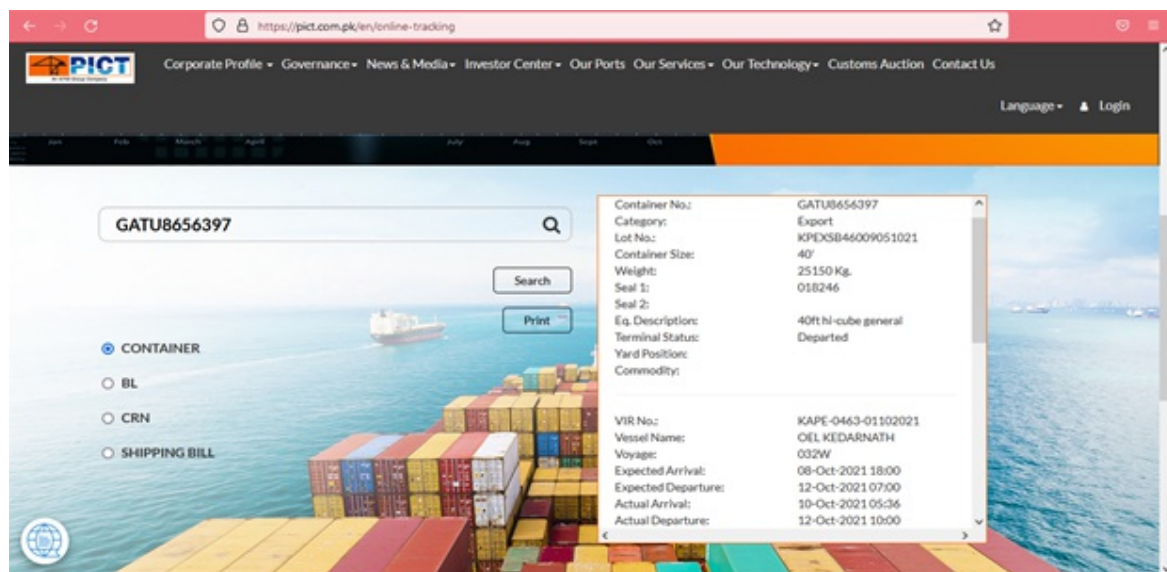
I/1280295/2023

BRIEF FACT OF THE CASE:-

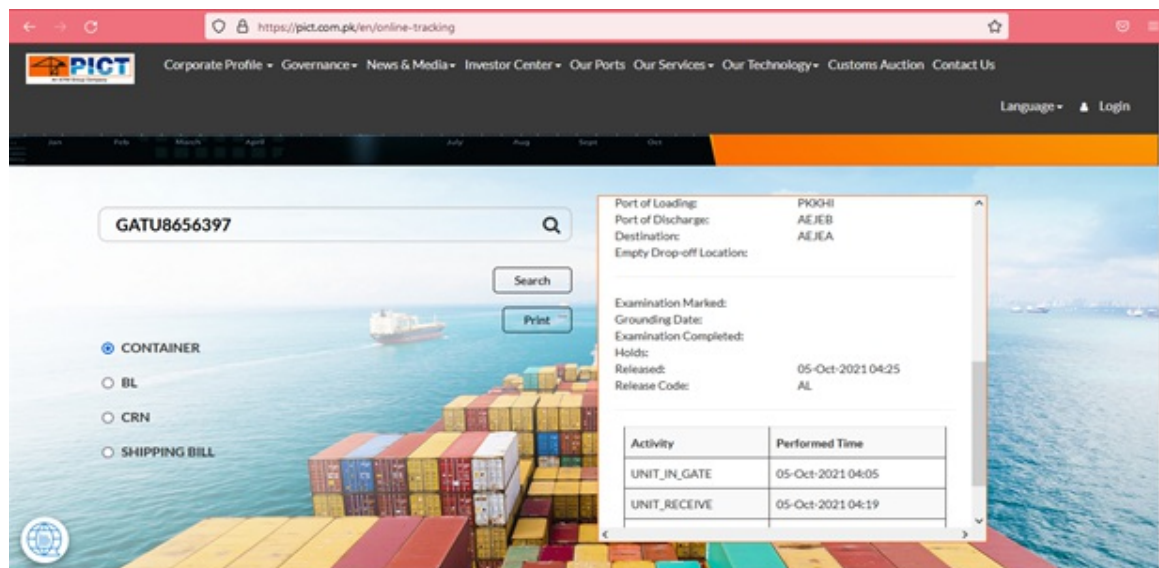
M/s. Bhadohi Carpets situated at Maryadpatti, Opposite Ram Talkies, Bhadohi-221401, Uttar Pradesh holding IEC No. 1511002417 (hereinafter referred to as 'the importer'), filed BE No. 6028125 dated 28.10.2021 (hereinafter referred to as 'the said Bill of Entry' for the sake of brevity) through their appointed Customs Broker M/s. SMG ICB Logistics for importation of goods, declared as '*Raw Wool (Carpet Grade Wool Micron 32 and Above* contained under container No. GATU8656397 from UAE. The total declared assessable value of the cargo is Rs. 13,75,614/- and total duty is Rs. 37,829/-.

2. Intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo under Container No. GATU8656397 was loaded from Port of Karachi, Pakistan and the importer had mis-declared the Country of origin of the goods as United Arab Emirates. Acting on the above intelligence, officers of SIIB, Customs House, Mundra intercepted the container No. GATU8656397 for Investigation.

3. Further, it was observed that the imported goods have originated from Pakistan and the same can be confirmed from Pakistan International Container Terminal (In short "PICT") website i.e. <https://pict.com.pk/en/online-tracking>, which revealed that the said Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to Jebel Ali, UAE. Image of PICT tracking Image of PICT tracking for the arrived container No. GATU8656397 is as under:



I/1280295/2023



4. The above said Tracking Report shows that the Container No. GATU8656397 bearing seal no. 018246 has left from PKKHI (Port of Karachi) for AEJEA (Port of Jebel Ali) on 12.10.2021 on board the vessel "OEL Kedarnath". The Container number and seal number shown in PICT website matches with that declared in import documents filed at Mundra Port wherein Country of Origin is declared to be United Arab Emirates.

5. Thus it appears that the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan to evade the appropriate payment of Customs Duty. Therefore, the goods imported under the Bills of Entry No. 6028125 dated 28.10.2021 are found to be liable for confiscation under the provisions of the Customs Act, 1962.

6. The matter was initiated and statement of Shri Sajish Sivaraj Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd. (agent of M/s. Shah Aziz Shipping Lines LLC & delivery agent of the subject consignment at Mundra as per Master Bill of Lading No. SASLMU21505 dtd 21.10.2021 was recorded under Section 108 of the Customs Act, 1962, on 23.02.2023, wherein he stated that they are not the actual transporter and they had no information regarding the previous load ports also. They came to know about the switch Bill of Lading only after the documents were arranged on enquiry by SIIB Section, Custom House Mundra.

7. Statement of Sh. Jawaharr M Khilnani, Authorized Representative, M/s. Bhadohi Carpets was recorded under Section 108 of the Customs Act, 1962 on 09.03.2023, wherein he stated that a mistake has been committed by them while filing Bill of Entry and showing the goods to be of UAE origin (as shown in BoE) instead of Iraqi origin (as per Certificate of origin). The details in respective Bill of Entry were filed by our CHA as per our contract with our indenting agent wherein the goods were mentioned to be of Iraq origin and a statement of Shri Deepak Pathak, Authorized Representative of CHA M/s. Ashwanee Shahi was recorded under Section 108 of the Customs Act, 1962.

7.1. Further, a statement of Shri Alok Uppal, Proprietor of M/s. Samrat Enterprises was recorded under Section 108 of the Customs Act, 1962, on 03.04.2023, wherein he stated that they are Indenting Agent for the importers

I/1280295/2023

who seek to import Raw Wool from outside India. Principally they arrange buyers for suppliers and in some cases they arrange suppliers for buyers. In this process, they earn commission from supplier and never from buyer. They act as agent for both the sides. They do their business with supplier on the basis of trust. They accept the documents provided by the Suppliers. No further verification is done by them in this regard since they only take commission for finalizing the deal between supplier and the buyer; and they do not have any idea and do not play any role with respect to the Customs procedure/duty structure.

8. In view of the above investigation, statements and evidences available on record that Seal mentioned in the BoE remained as such after its loading at Karachi Port till the Container reached at Mundra. It, therefore, appears that the imported goods "Raw Wool Carpet Grade Micron 32 and Above" imported in Container GATU8656397 covered under BoE No. 6028125 dated 28.10.2021 are of Pakistan origin/exported from the Islamic Republic of Pakistan and not of UAE origin as claimed by the importer in BoE No. 6028125 dated 28.10.2021. The Master Bills of lading and the House Bills of Lading clearly indicate that the Container GATU8656397 sealed with seal no. 018246 was loaded from Karachi, Pakistan and the goods therefore appear to be of Pakistan origin/exported from the Islamic Republic of Pakistan. Moreover, the container tracking obtained from M/s. Hub & Links Logistics (I) Pvt. Ltd. clearly indicates that the container GATU8656397 was loaded with goods at Karachi, Pakistan, then transhipped to Jebel Ali, UAE and finally reached Mundra Port, India where it was de-stuffed. It, therefore, appears that importer has mis-declared the Country of Origin of the said import item in the said Bill of Entry and the goods are in fact exported from the Islamic Republic of Pakistan.

9. Further, presence of container tracking as well as the two Master Bills of Lading with M/s. Hub & Links Logistics (I) Pvt. Ltd. clearly suggests that the entire movement of the container was in the knowledge of M/s. Hub & Links Logistics (I) P. Ltd. The clarification with regard to the two Master Bills of lading (by M/s. Hub & Links Logistics (I) P. Ltd. in their statement dated 23.02.2023) being switch Bills of Lading is also misleading since two Master Bills of lading are issued separately (independent of each other) for movement of a single container (first from Karachi to Jebel Ali & then from Jebel Ali to Mundra) to conceal the actual origin of the consignment. The issuance of two Master Bills of Lading itself suggests that the intention was to conceal the origin of goods and as such the delivery agent M/s. Hub & Links Logistics (I) P. Ltd. appears to have helped the importer in mis-declaring the Country of Origin.

10. After introduction of "Self-assessment" vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of Duty. In the instant case, the importer has mis-declared the Country of Origin as United Arab Emirates instead of actual Country of Origin i.e. Islamic Republic of Pakistan with intent to evade appropriate Customs Duty (relevant Notification No. 05/2019-Customs dated 16.02.2019) during self-assessment at the time of filing of Bill of Entry. As such, the declaration with respect to the Country of Origin by the importer is misleading and this act on the part of importer resulted in short levy of Duties, which led to undue monetary benefit to the importer. Thus, the act of mis-declaration of Country of Origin of the imported goods by the importer squarely falls under the purview of Section 28(4) of the Customs Act, 1962 as it is a mis-declaration aimed at suppression of the facts

I/1280295/2023

with an intent to evade appropriate Customs Duty resulting in to short payment of the applicable Customs Duty.

11. The aforesaid facts show that the importer had resorted to wilful mis-declaration of Country of Origin in the Bill of Entry of the said imported goods by suppressing the said material facts, which shows the ulterior motive of the importer to evade payment of applicable Customs Duty (by classifying the goods under Chapter Tariff Heading No. 51012900) in respect of said imported goods cleared for home consumption. However, as per Notification No. 05/2019-Customs dated 16.02.2019, the Duty on the goods imported from the Islamic Republic of Pakistan and appropriately classifiable under Chapter Tariff Heading No. 98060000 is leviable @ 200% BCD. Also, as per Section 110(3) of the Finance Act, 2018, Social Welfare Charge (SWS) shall be calculated at the rate of 10% of the Customs Duty levied and collected under Section 12 of the Customs Act, 1962. Further, as per Schedule III of Notification No. 01/2017-I.T. (Rate) dated 28.06.2017 - Sr. No. 453, IGST @18% is chargeable on all the goods which are not specified in Schedules I, II, IV, V or VI and since CTH 98060000 is not specified in any of the Schedules in said Notification, therefore, the goods under said CTH are chargeable at 18% IGST. **Therefore, the total Customs Duty amounting to Rs. 38,18,705/- (200% BCD + 10% SWS + 18% IGST) is liable to be demanded under Section 28(4) of the Customs Act, 1962,** along with applicable interest under Section 28AA of the Customs Act, 1962.

12. In view of the fact that the imported goods appear to be of Pakistan Origin/exported from Islamic republic of Pakistan but mis-declared as of UAE origin in Bill of Entry No. 6028125 dated 28.10.2021 and imported in India without valid PSIC in violation and contrary to the provisions of the Customs Act, 1962, therefore the said imported goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

13. Also, M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham (acting as agent of M/s. Shah Aziz Shipping Lines LLC) was having all the documents as well as information that the subject goods were loaded at Karachi Port and their act of omission and commission has led to the evasion of duty by the importer.

14. For the sake of brevity, the relevant provisions of the Customs Act, 1962 are reproduced as under:

Notification No. 05/2019 – Customs New Delhi, the 16th February, 2019

“

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
Notification No.05/2019-Customs

New Delhi, the 16th February, 2019

G.S.R.(E). – WHEREAS, the Central Government is satisfied that the import duty leviable on all goods originating in or exported from the Islamic Republic of Pakistan, falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), should be increased and

I/1280295/2023

that circumstances exist which render it necessary to take immediate action.

NOW, therefore, in exercise of the powers conferred by sub-section (1) of section 8A of the Customs Tariff Act, the Central Government, hereby directs that the First Schedule to the Customs Tariff Act, shall be amended in the following manner, namely: -

In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely: -

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
<i>"9806 00 00</i>	<i>All goods originating in or exported from the Islamic Republic of Pakistan</i>	<i>-</i>	<i>200 %</i>	<i>-"</i>

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 46 Entry of goods on importation

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

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

- a. collusion; or
- b. any willful mis-statement; or
- c. suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

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

(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

- b. in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the

I/1280295/2023

case may be;

c. in a case where duty or interest has been erroneously refunded, the date of refund ;

d. in any other case, the date of payment of duty or interest.

SECTION 28AA Interest on delayed payment of duty— (1) Notwithstanding anything contained in any judgment, decree, order or direction of any 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 paid 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.

(2) Interest at such rate not below ten per cent. and not exceeding thirty -six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

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

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

Any person, -

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

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

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 1 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

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

3 [(iii) in the case of goods in respect of which the value stated in the entry made

I/1280295/2023

under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 4 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 5 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 6 [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

SECTION 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 willful 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.

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, not 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 under 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,*

I/1280295/2023

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.]

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

15. In terms of Section 46(4) of the Customs Act, 1962, 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. Further, in terms of Section 46(4A), the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with restriction or prohibition, if any, relating to the goods under this act or under any other law for the time being in force. The impugned bill of entry was self-assessed by the importer in terms of Section 17(1) of the Customs Act, 1962. If the goods are of UAE Origin it attracts BCD @2.5%, but the goods appear to be of Pakistan Origin, therefore, the imported goods shall attract BCD@ 200% with applicable SWS @ 10%.

16. From the above discussed facts and statutory provisions, it appeared that the imported goods i.e. "Raw Wool Carpet Grade" Classified under CTH 51011900 are originated from Pakistan and is classifiable under CTH 98060000 which attracts higher rate of BCD, therefore the same appeared liable for confiscation under Section 111(m) of the Customs Act, 1962. The total duty payable amounting to Rs. 38,18,705/- (BCD@200%; SWS@10% & IGST@18%) as per notification no. 05/2019-Customs dated 16.02.2019, is required to be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The importer appears to be liable for penalty under Section 114AA for knowingly and intentionally making incorrect declaration for the COO of the goods to evade payment of duty. The importer M/s. Bhadohi Carpets appeared to be liable for penalty under Section 112(a)(ii) of the Customs Act, 1962 for rendering the goods liable to confiscation under Section 111 (m) of the Customs Act, 1962 and Section 117 for failing to comply with the provisions of the Customs Act, 1962.

17. It appears that M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham (acting as agent of M/s. Shah Aziz Shipping Lines LLC) was having all the documents as well as information that the subject goods were actually loaded at Karachi Port and then imported to India after transshipping the goods at Jebel Ali and as such has rendered themselves liable for imposition of penalty under Section 112(b)(ii) and Section 117 of Customs Act, 1962.

18. In addition to above, the indenting agent, M/s. Samrat Enterprises, has facilitated/helped the supplier in finding buyers in India without any proper verification, and has received commission from them. On one hand, they have been extra cautious (at the time of recording of their statement) and have refrained from signing documentary evidence and on the other, have facilitated/helped the overseas supplier in finding buyers in India without any verification/scrutiny. Had they shown circumspection and been cautious

I/1280295/2023

enough in choosing their clientele wisely, such loss of Government revenue could have been avoided. Such act of omission and commission on their part has led to import of goods that appear to be of Pakistan Origin/exported from Islamic Republic of Pakistan and as such has rendered themselves liable for imposition of penalty under Section 117 of Customs Act, 1962.

19. Therefore, M/s. Bhadohi Carpets IEC No. 1511002417 are called upon to show cause to the Additional Commissioner of Customs, Mundra having his office at 5B, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why:

(i) Classification of 21113 kgs. of "Raw Wool Carpet Grade Micron 32 and Above" imported in Container No. GATU8656397 covered BoE No. 6028125 dated 28.10.2021 under Chapter Tariff Heading No. 51012900 should not be rejected & the same should not be classified under Chapter Tariff Heading No. 98060000 of the Customs Tariff Act, 1975.

(ii) 21113 kgs. of "Raw Wool Carpet Grade Micron 32 and above" imported in Container No. GATU8656397 covered under BoE No. 6028125 dated 28.10.2021 valued at **Rs. 13,75,614/- (Rupees Thirteen Lakhs Seventy-Five Thousand Six Hundred Fourteen only)** should not be confiscated under Section 111 (m) of the Customs Act, 1962.

(iii) The Customs Duty of **Rs. 38,18,705/- (Rupees Thirty-Eight Lakh Eighteen Thousand Seven Hundred Five only)** should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 and why the Customs Duty of Rs. 37,829/- (Thirty-Seven Thousand Eight Hundred Twenty-Nine only) already paid by them, should not be appropriated and adjusted against the said demand.

(iv) Applicable interest should not be charged and recovered from them under the provisions of Section 28 AA of the Customs Act, 1962.

(v) Penalty should not be imposed upon them under the provisions of Sections 112(a)(ii) & 114A of the Customs Act, 1962.

(vi) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

20. Further, M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham having their address at Suite No. 101, Rishabh Arcade, Near GST Bhawan, Plot No. 83, Sector-8, Gandhidham - 370201 are called upon to show cause to the Additional Commissioner of Customs, Mundra having his office at 5B, Port User Building, Mundra, why penalty should not be imposed upon them under the provisions of Section 112(b)(ii) and Section 117 of the Customs Act, 1962.

21. Also, M/s. Samrat Enterprises, New Delhi having their address at R-662, New Rajender Nagar, New Delhi are called upon to show cause to the Additional Commissioner of Customs, Mundra having his office at 5B, Port User Building, Mundra, why penalty should not be imposed upon them under the provisions of Section 117 of the Customs Act, 1962.

22. M/s. SMG ICB Logistics (CHA Code: AFTPK3167QCH002) having their address at C-49, US Villa Society, Swaminagar, Baroi, Mundra-370421 are called upon to show cause to the Additional Commissioner of Customs, Mundra having his office at 5B, Port User Building, Mundra, within 30 days of the

I/1280295/2023

receipt of this Notice as to why penalty should not be imposed on them under the provisions of Section 117 of the Customs Act, 1962.

WAIVER OF PERSONAL HEARING

23. The importer vide their letter dated 03.07.2023 had informed that, as mentioned in the show cause notice itself, they have deposited the total duty alongwith the applicable interest and 15% of the total duty as penalty under the provisions of section 28(5) of the Customs Act, 1962; attached with the copy of the TR-6 Challan No. 1086 dated 03.07.2023 evidencing the payment of the total amount of **₹53,55,111.00 (Duty - ₹ 38,18,705/- + Int ₹9,63,600/- + Penalty @ 15% ₹5,72,806/-).**

In view of the above they requested that the proceeding proposed under the said show cause notice may please be deemed to have been concluded and the matter closed under the provisions of section 28(6) of the Act. In case of any short fall in the payment, the same may please be intimated.

DISCUSSION & FINDINGS

24. I have carefully gone through the Show Cause Notice dated 19.06.2023, submissions made before me and the available case records. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records. In this case, the matter to be decided by me is as to whether.

i. the country of origin of "*Raw Wool Carpet Grade wool Micron 32 & Above Yield 80%) (Not Carded or Combed)*" imported through Bill of Entry No. 6028125 dated 28.10.2021 is Pakistan or otherwise.

ii. the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

iii. the differential duty with interest is liable to be demanded and recovered as proposed in the SCN.

iv. the penalty is imposable upon the Importer under Section 112(a), 114A, & 114AA of the Customs Act, 1962 or not.

v. the penalty is imposable upon M/s SMG ICB Logistics under Section 117 of the Customs Act, 1962 or not.

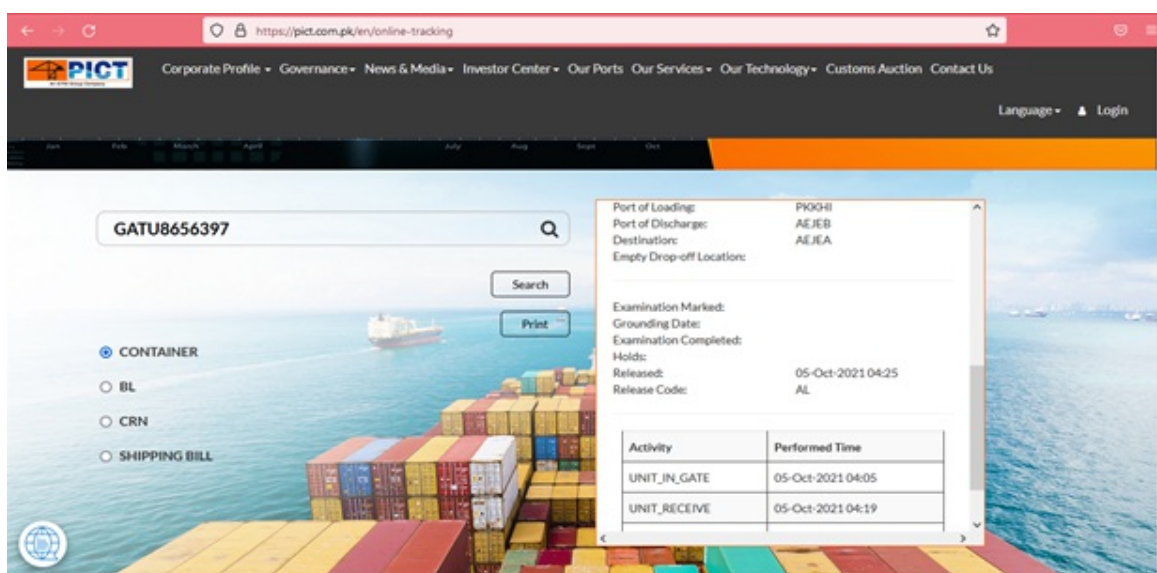
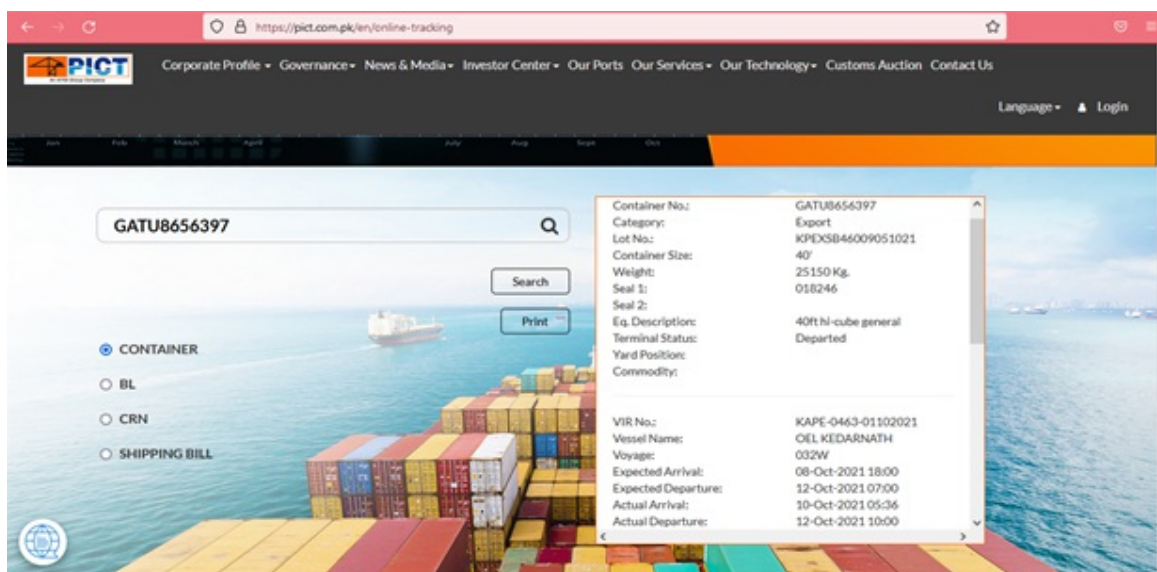
vi. the penalty is imposable upon M/s Hub & Links Logistics (I) Pvt. Ltd under Section 112(b)(ii) & 117 of the Customs Act, 1962 or not.

vii. the penalty is imposable upon M/s Samrat Enterprises under Section 112(b)(ii) & 117 of the Customs Act, 1962 or not.

I/1280295/2023

25. It is undisputable fact of the case that specific information received by the officers of SIIB Section, Custom House, Mundra that the cargo under Container No. GATU8656397 was loaded from Port of Karachi, Pakistan and the importer had mis-declared the Country of origin of the goods as United Arab Emirates. Acting on the above intelligence, officers of SIIB, Customs House, Mundra intercepted the container No. GATU8656397 for investigation.

26. I find that the imported goods have originated from Pakistan and the same can be confirmed from Pakistan International Container Terminal (In short "PICT") website i.e. <https://pict.com.pk/en/online-tracking>, which revealed that the said Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to Jebel Ali, UAE. Image of PICT tracking Image of PICT tracking for the arrived container No. GATU8656397 is as under:



27. The above said Tracking Report shows that the Container No. GATU8656397 bearing seal no. 018246 has left from PKKHI (Port of Karachi) for AEJEA (Port of Jebel Ali) on 12.10.2021 on board the vessel "OEL Kedarnath". The Container number and seal number shown in PICT website

I/1280295/2023

matches with that declared in import documents filed at Mundra Port wherein Country of Origin is declared to be United Arab Emirates. Thus it appears that the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan to evade the appropriate payment of Customs Duty. Therefore, the goods imported under the Bills of Entry No. 6028125 dated 28.10.2021 are found to be liable for confiscation under the provisions of the Customs Act, 1962.

28 . I find that statements of Shri Sajish Sivaraj Puthenchira, General Manager of M/s. Hub & Links Logistics (I) Pvt. Ltd. (agent of M/s. Shah Aziz Shipping Lines LLC & delivery agent of the subject consignment at Mundra, Shri Abhishek Kothari, authorised representative of M/s Shree Woollen Industries, statement of Shri Alok Uppal, proprietor of M/s Samrat Enterprises and statement of Shri Ashwanee Shahi G card Holder of CHA M/s. SMG ICB Logistics was recorded under Section 108 of the Customs Act, 1962.

29. I find that the imported goods "Raw Wool Carpet Grade Micron 32 and above" imported in Container GATU8656397 covered under BoE No. 6028125 dated 28.10.2021 are of Pakistan origin/exported from the Islamic Republic of Pakistan and not of UAE origin as claimed by the importer in BoE No. 6028125 dated 28.10.2021. The Master Bills of lading and the House Bills of Lading clearly indicate that the Container GATU8656397 sealed with seal no. 018246 was loaded from Karachi, Pakistan and the goods therefore appear to be of Pakistan origin/exported from the Islamic Republic of Pakistan. Moreover, the container tracking obtained from M/s. Hub & Links Logistics (I) Pvt. Ltd. clearly indicates that the container GATU8656397 was loaded with goods at Karachi, Pakistan, then trans shipped to Jebel Ali, UAE and finally reached Mundra Port, India where it was de-stuffed. It, therefore, appears that importer has mis-declared the Country of Origin of the said import item in the said Bill of Entry and the goods are in fact exported from the Islamic Republic of Pakistan.

30. I find that the clarification with regard to the two Master Bills of lading (by M/s. Hub & Links Logistics (I) P. Ltd. in their statement dated 23.02.2023) being switch Bills of Lading is also misleading since two Master Bills of lading are issued separately (independent of each other) for movement of a single container (first from Karachi to Jebel Ali & then from Jebel Ali to Mundra) to conceal the actual origin of the consignment. The issuance of two Master Bills of Lading itself suggests that the intention was to conceal the origin of goods and as such the delivery agent M/s. Hub & Links Logistics (I) P. Ltd. appears to have helped the importer in mis-declaring the Country of Origin.

31. I find that after introduction of "Self-assessment" vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of Duty. In the instant case, the importer has mis-declared the Country of Origin as United Arab Emirates instead of actual Country of Origin i.e. Islamic Republic of Pakistan with intent to evade appropriate Customs Duty (relevant Notification No. 05/2019-Customs dated 16.02.2019) during self-assessment at the time of filing of Bill of Entry. As such, the declaration with respect to the Country of Origin by the importer is misleading and this act on the part of importer resulted in short levy of Duties, which led to undue monetary benefit to the importer. Thus, the act of mis-declaration of Country of Origin of the imported goods by the importer squarely falls under the purview of Section 28(4) of the Customs Act, 1962 as it is a mis-declaration aimed at suppression of the facts with an intent to evade appropriate Customs Duty resulting in to

I/1280295/2023

short payment of the applicable Customs Duty.

32. I find that the importer had resorted to wilful mis-declaration of Country of Origin in the Bill of Entry of the said imported goods by suppressing the said material facts, which shows the ulterior motive of the importer to evade payment of applicable Customs Duty (by classifying the goods under Chapter Tariff Heading No. 51012900) in respect of said imported goods cleared for home consumption. However, as per Notification No. 05/2019-Customs dated 16.02.2019, the Duty on the goods imported from the Islamic Republic of Pakistan and appropriately classifiable under Chapter Tariff Heading No. 98060000 is leviable @ 200% BCD. Also, as per Section 110(3) of the Finance Act, 2018, Social Welfare Charge (SWS) shall be calculated at the rate of 10% of the Customs Duty levied and collected under Section 12 of the Customs Act, 1962. Further, as per Schedule III of Notification No. 01/2017-I.T. (Rate) dated 28.06.2017 - Sr. No. 453, IGST @18% is chargeable on all the goods which are not specified in Schedules I, II, IV, V or VI and since CTH 98060000 is not specified in any of the Schedules in said Notification, therefore, the goods under said CTH are chargeable at 18% IGST. **Therefore, the total Customs Duty amounting to Rs. 38,18,705 (200% BCD + 10% SWS + 18% IGST) is liable to be demanded under Section 28(4) of the Customs Act, 1962,** along with applicable interest under Section 28AA of the Customs Act, 1962. The importer appears to be liable for penalty under Section 114AA for knowingly and intentionally making incorrect declaration for the COO of the goods to evade payment of duty. The importer M/s. M/s. Bhadohi Carpets appeared to be liable for penalty under Section 112(a)(ii) of the Customs Act, 1962 for rendering the goods liable to confiscation under Section 111 (m) of the Customs Act, 1962.

33. I find that the imported goods appear to be of Pakistan Origin/exported from Islamic republic of Pakistan but mis-declared as of UAE origin in Bill of Entry No. 6028125 dated 28.10.2021 and imported in India without valid PSIC in violation and contrary to the provisions of the Customs Act, 1962, therefore the said imported goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962.

34. I find that M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham (acting as agent of M/s. Shah Aziz Shipping Lines LLC) was having all the documents as well as information that the subject goods were loaded at Karachi Port and their act of omission and commission has led to the evasion of duty by the importer therefore, they also appear to be liable for penalty under Section 112(b)(ii) and Section 117 of the Customs Act, 1962.

35. I find that M/s. Samrat Enterprises, has facilitated/helped the import of goods that appear to be of Pakistan Origin/exported from Islamic Republic of Pakistan, without any proper verification, by finding buyers in India and has received commission for the services from the Supplier. Such act of omission and commission on their part has led to import of goods that appear to be of Pakistan Origin/exported from Islamic Republic of Pakistan and as such rendered themselves liable for imposition of penalty under Section 117 of the Customs Act.

36. I find that Section 117 of the Customs Act, 1962 stipulates that any

I/1280295/2023

person who contravenes any provisions of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees]. I find that penalty under Section 117 is only applicable when there is no express penalty provided under other sections of the Customs Act, 1962 whereas in the Instant case penalty has already been invoked under Section 112 and 114 AA of the Customs Act, 1962. Therefore, the importer is not liable for penal action under Section 117 of the Customs Act, 1962.

37. I find that the importer vide their letter dated 03.07.2023 had informed that, they have deposited the total duty alongwith the applicable interest and 15% of the total duty as penalty under the provisions of section 28(5) of the Customs Act, 1962; attached with the copy of the TR-6 Challan No. 1086 dated 03.07.2023 evidencing the payment of the total amount **o f ₹53,55,111.00 (Duty - ₹ 38,18,705/- + Int ₹9,63,600/- + Penalty @ 15% ₹5,72,806/-).** Considering the facts mentioned above, being payment of duty alongwith interest and reduced penalty at their own, within 30 days from the date of Communication of Notice, by the importer, I am taking lenient view in the matter and pass the following order

38. In view of above, I pass the following order .

ORDER

(i) I order to reject the declared CTH 51012900 of 21113 kgs. of “Raw Wool Carpet Grade Micron 32 and Above” imported under bill of entry no. 6028125 dated 28.10.2021 and order to re-assess the same to CTH 98060000 of the Customs Tariff Act, 1975.

(ii) I hold the goods covered by BE No. 6195743 dated 10.11.2021 valued at **Rs. 13,75,614/- (Rupees Thirteen Lakhs Seventy-Five Thousand Six Hundred Fourteen only)** liable for confiscation, however, I refrain from imposing the fine as goods are not available for confiscation.

(iii) I order to confirm the Differential / Short paid duty amount as calculated as per above order and also ordered to appropriate the amount paid towards Differential Duty of **Rs. 38,18,705/- (Rupees Thirty-Eight Lakh Eighteen Thousand Seven Hundred Five Only)** already paid vide Challan No. 1086 dated 03.07.2023 as per the provisions of the Customs Act, 1962.

(iv) I order to confirm the Interest as per the provision of Section 28AA of the Customs Act, 1962 and ordered to appropriate the amount paid towards Interest of **Rs. 9,63,600/- (Rupees Nine Lakh Sixty-Three Thousand Six Hundred Only)** already paid vide Challan No 1086 dated 03.07.2023 as per the provisions of the Customs Act, 1962

(v) I order to accept the Penalty calculated by the Importer as per the provisions of the Section 28 (v) of the Customs Act, 1962 and ordered to appropriated an amount of **Rs. 5,72,806/- (being 15% calculated by the Importer at their own and intimated vide their letter) paid vide Challan No. 1086 dated 03.07.2023.**

I/1280295/2023

- (vi) I refrain from imposing any penalty on Co-Noticees M/s SMG ICB Logistics, M/s Hub & Links Logistics (I) Pvt. Ltd and M/s Samrat Enterprises.
- (vii) I ordered to accept the request made by the Importer and Co-Noticee to conclude the proceedings as per the provision of the Section 28 (6) of the Customs Act, 1962.

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

Signed by

Mukesh Kumari

Custom House, Mundra

Date: 06-07-2023 18:07:36

F. No. CUS/APR/BE/MISC/744/2023-Gr 3-O/o Pr Commr-Cus-Mundra

06-07-2023

To,

(i) M/s. Bhadohi Carpets situated at Maryadpatti, Opposite Ram Talkies, Bhadohi-221401, Uttar Pradesh holding IEC No. 1511002417

(ii) M/s. Hub & Links Logistics (I) Pvt. Ltd., Gandhidham having their address at Suite No. 101, Rishabh Arcade, Near GST Bhawan, Plot No. 83, Sector-8, Gandhidham – 370201

(iii) M/s. Samrat Enterprises, New Delhi having their address at R-662, New Rajinder Nagar, New Delhi-110060

Copy to:

- i. The Deputy Commissioner (SIIB), Customs House, Mundra.
- ii. The Deputy Commissioner (RRA) Customs House, Mundra.
- iii. The Deputy Commissioner (TRC) Customs House, Mundra
- iv. The Deputy Commissioner (EDI) Customs House, Mundra
- v. Guard File.