सीमा शुल्क (निवारक) के आयुक्त का कार्यालय, सीमा शुल्क भवन,
जामनगर - राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर (गुजरात) – 361 001

Office of the Commissioner of Customs (Preventive),
'SEEMA SHULK BHAVAN', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001

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दस्तावेज़ पहचान संख्या/ Document Identification Number (DIN)– 20251164WV0000222782

1.	फ़ाइल क्रमांक/ File Number	CUS/560/2022-Adjn.
2.	मूल आदेश क्रमांक/ Order-In-Original Number	JAM-CUSTM-PRV-COM-005-25-26
3.	आदेश पारित करने वाला प्राधिकारी/ Authority Passing the Order	धिरेन्द्र लाल / Dhirendra Lal आयुक्त /Commissioner, सीमा शुल्क (निवारक) / Customs (Preventive) जामनगर /Jamnagar.
4.	आदेश की तिथि/ Date of Order	25.11.2025
5.	आदेश जारी करने की तिथि/ Date of issue of Order	25.11.2025
6.	कारण बताओ नोटिस संख्या और तारीख/ Show Cause Notice number and date	Re-adjudication of SCN No. PC-03/2022-23 dated 04.11.2022 on remand back by the CESTAT, West Zonal Bench, Ahmedabad vide Final Order No.12943-12951/2024 dated 02.12.2024.
7.	नोटिस पाने वाले का नाम/ Name of the Noticee	(1)M/s. K. L. International, New Delhi (2)Mrs. Bharti, Proprietor, M/s. K. L. International, New Delhi (3) Shri Parshotam, M/s. Shivoy Enterprise, New Delhi (4) Shri Prem, New Delhi (5) Shri Jatin Arora, Gurugram (6) Shri Mohammad Shahzeb Azad, Authorized Signatory of M/s. Alburaq Dates Factory, LLC Dubai (7) Shri Rajveer Singh, M/s. Eskay Logistics Pipavav (8) Shri Shailendra Dhananjay Singh, M/s. Sidhant Logistics CHA Services Pvt. Ltd. NAVI MUMBAI (9) Shri Vijay S. Yadav, M/s. Sidhant Logistics CHA Services Pvt. Ltd. New Delhi (10) Shri Pankaj Tiwari, Proprietor of M/s. Lord Shiva & Co., Gurgaon.

1. इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है।
The original copy of this order is provided free of cost to the person concerned.

2. इस मूल आदेश से व्यथित कोई भी व्यक्ति, सीमा शुल्क अधिनियम, 129 की धारा 1962A)(1)a(, सीमा शुल्क नियम (अपील), 1982 के नियम 6(1) के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से तीन महीने के भीतर फॉर्म सीए 3-में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए 3-में अपील का प्रपत्र, चार प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से) ।(कम से कम एक प्रमाणित प्रति हो

सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण, पश्चिम जोनल बेंच, दूसरी मंजिल, बहुमाली भवन असरवा, गिरधर नगर ब्रिज के पास, गिरधर नगर, अहमदाबाद, (गुजरात) – 380 004	**Customs, Excise and Service Tax Appellate Tribunal (West Zonal Bench)** 2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad (Gujarat) – 380 004

(A) Person aggrieved by this Order-In-Original may file an appeal in Form CA-3, within three months from the date of receipt of this order, under the provisions of Section 129A(1)(a) of the Customs Act, 1962, read with Rule 6(1) of the Customs (Appeals)

Rules, 1982. The form of appeal in Form No. CA.-3 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

3. अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये) 0.50पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।

The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this 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.

4. अपील के साथ 1962, सीमा शुल्क अधिनियम ,की धारा) 129A) की उप) धारा-6) के अंतर्गत किसी भी राष्ट्रीयकृत बैंक द्वारा न्यायाधिकरण की उक्त पीठ के सहायक रेजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट रु। -/5000 रु। ,-/1000या रु। -/10,000जैसा भी लागू होऐसे स्थान पर स्थित शाखा के , है। जहां पर उक्त पीठ स्थित , लिए जारी किया जाना चाहिए

The appeal should be accompanied with a cross demand draft in favour of the Assistant Registrar of the Bench of the Tribunal, on a branch of any Nationalized Bank located at a place where the bench is located for Rs. 1,000/- (in cases where the duty, interest, fine, or penalty demanded is Rs. 5 lakh or less), Rs. 5,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 5 lakhs but less than Rs. 50 lakhs) and Rs. 10,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 50 lakhs) as applicable under Sub-Section (6) of the Section 129(A) of the Customs Act, 1962.

5. अपीलीय ज्ञापन के साथ शुल्क भुगतानअर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा /जुर्माना / शुल्क अधिनियम, ,1962 की धारा 129(E) के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।

Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 129 (E) of the Customs Act, 1962.

6. अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम,और सिस्टेट 1982 नियम (प्रोसीजर) प्रक्रिया,के सभी नियमो का पूरा पालन हुआ है। 1982

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

7. इस आदेश के खिलाफ अपील, सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।

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

BRIEF FACTS OF THE CASE:

An intelligence was received by the Directorate of Revenue Intelligence, Jamnagar to the effect that M/s. K. L. International, A-256, Old No. 55, Flat No.A-4, 3F, Chhaterpur Enclave - I, New Delhi-110074 (IEC No. CQUPB4708A)(hereinafter referred to as "the importer" / "Noticee No. 1") has imported 1272.050 MT of dry dates (CTH 08041030) having declared assessable value of Rs. 4,08,17,507/- vide Bills of Entry No. 6124787, 6124890, 6124557, 6124677 and 6125519 all dated 04.11.2021 filed at Custom House, Pipavav,and334.840 MT of dry dates, having declared assessable value of Rs. 1,08,77,251/- vide Bills of Entry No. 6277099 dated 16.11.2021 and No. 6926789 dated 03.01.2022 filed at Custom House, Nhava Sheva, by mis-declaring the country of origin. The imported goods (i.e., Dry dates) were declared to be UAE origin whereas as per the intelligence, the said imported goods were of Pakistani origin. As per Notification No.05/2019-Cus dated 16.02.2019, Customs Duty of 200% was imposed on Pakistani origin Dry dates which are to be classified under CTH 98060000. The importer, thus, appeared to have attempted to evade Customs duty by mis-declaring the country of origin of dry dates as UAE and by classifying the same under CTH 08041030 where the Customs duty rate is 20% instead of its correct CTH 98060000. As per the intelligence, the importer allegedly connived with the overseas suppliers and other persons to obtain country of origin certificate from UAE in respect of the goods which were of Pakistani origin.

02. On the basis of the above said intelligence, an enquiry was initiated against the following consignments of dry dates imported by M/s. K.L. International at the ports of Pipavav and Nhava Sheva.

BE No.	BE Date	Port Code	Qty-Kg	Assessable Value (In Rs.)	Bill of Lading No.	No. of containers
6124787	04/11/2021	INPAV1	138050	4429745	214124215	05
6124890	04/11/2021	INPAV1	330500	10605075	214312430	12
6124557	04/11/2021	INPAV1	250250	8030015	214124202	09
6124677	04/11/2021	INPAV1	278250	8928479	214306796	10
6125519	04/11/2021	INPAV1	275000	8824193	214124188	10
Not filed	Not filed	INPAV1	27500	882419	214702062	01
6277099	16/11/2021	INNSA1	139250	4468250	VASJEANSA007262	05
6926789	03/01/2022	INNSA1	195590	6409001	MLJEANSA047469	

Above Bills of Entry/Import General Manifest (IGM) were filed in the name of M/s. K.L. International for import clearance of the dry dates imported in the above said 59 containers [46 containers vide Bills of Entry No. 6124787, 6124890, 6124557, 6124677 and 6125519 all dated 04.11.2021 filed at Custom House, Pipavav, 01 container vide Bill of Landing (B/L) No.214702062(B/E not filed) and 12 containers vide Bills of Entry No.6277099 dated 16-11-2021 andNo.6925789 dated 03-01-2022 filed at Custom House, Nhava Sheva]. The said consignments were put on hold and examined.

Searches at the premises of M/s. K. L International:

03. On 18.11.2021, a team of officers of Customs, New Delhi and DRI, Jamnagar visited the registered address of the importer i.e.M/s. K.L. International, A-256, Old No. 55, Flat No. A-4, 3F, Chhaterpur Enclave–I, New Delhi - 110074. It was found that the registered premises of the importer was located in a residential flat and was found locked. On further enquiry, it was found that the said premises was legally occupied by Shri Devanshu Singh since Septmeber-2021. He was called and search was conducted under Panchnama proceedings dated 21-11-2021. During the search, no document pertaining to business dealings of M/s. K. L. International was found. Shri Devanshu Singh stated that a company of Shri Prem Kishanlal was functioning there earlier, which has been shifted. If any document/ dak/ courier of the company is received, the same was to be delivered to Shri Prem Kishanlal. The copy of rent agreementbetweenM/s K.L International and the owner of the premises showed that the firm was in existence only between 20.01.2020 to 19.12.2020. Further it was found that the said premises was occupied by Shri Devanshu Singh since September-2021.

04. M/s. K. L. International is a proprietorship concern of Mrs. Bharti. Therefore, a search was conducted on 18.11.2021 under panchnama by the officers of Customs, New Delhi and DRI, Jamnagar at the residence of Mrs. Bharti, located at 68, Block 19, Dakshinpuri Extension, Ambedkar Nagar, Pushpa Bhavan, New Delhi. During the search, Mrs. Bharti, proprietor of M/s. K. L. International stated that she did not have any knowledge about the business activities of M/s. K. L. International and that her husband Shri Prem was looking after the day to day work of the importer concern. She also stated [illegible] husband is serving in M/s. Shivoy Enterprises, 18, Surajkund Road, [illegible]dpur, New Delhi.

05. During the search, certain documents related to M/s. K.L. International were found. Mrs. Bharti was unable to explain anything about the documents. During the search, Shri Prem (husband of Mrs. Bharti) and Shri Parshotam (partner-owner of M/s. Shivoy Enterprise) arrived at the location. On being asked about the business activities of the importer firm, M/s. K. L. International, Shri Prem stated they were importing dry dates from UAE to India at Nhava Sheva, ICD Dadri and Pipavav. Shri Prem and Shri Parshotam placed orders by telephone/ WhatsApp and they used to share relevant documents through WhatsApp. Shri Prem also statedthat he and Shri Parshotam were working together for more than 20 years as clearing agents. They obtained IEC in the name of Mrs. Bharti last year (i.e., 2020), for importing dry dates and they started importing from the year 2021. With regard to the office premises of M/s. K.L. International, A-256, Old No. 55, Flat No.A-4, 3F, Chhaterpur Enclave–I, New Delhi 110074, Shri Prem stated that they have not used the premises since long time, for business purpose. During the search, certain documents and some electronic devices (one hard disk from the computer of Shri Prem, mobile phones of Shri Parshotam, Shri Premand Mrs. Bharti), used for business activities, were resumed for further investigation.

Statement of Proprietor of M/s. K.L. International:

06. Statement of Mrs. Bharti,Proprietor of M/s. K. L. International was recorded on 18.11.2021 under Section 108 of the Customs Act, 1962 by the Superintendent of Customs (Prev.) Delhi, wherein Mrs. Bharti stated that:

- M/s. K. L. International, having PAN No. CQUPB4708A,was her proprietorship concern, established in 2020.
- Her husband Shri Prem was looking after all the work of her proprietorship concern. She just signed the documents as per the instructions of her husband. She was not aware of the business activities of M/s. K. L. International.
- All the work, including Customs & DGFT related work of M/s. K. L. International was looked after by her husband Shri Prem. Therefore, he was responsible for all the deeds of M/s. K. L. International.
- The office premises of M/s. K. L. International, located at A-256, Old No. 55, Flat No. A-4, 3F, Chhaterpur Enclave – I, New Delhi 110074 was rented.
- On being asked about Bills of Entry No. 6124557, 6124677, 6124[illegible] 6124890 and 6125519 all dated 04.11.2021 and documents related to these Bills of Entry, she stated that she was not aware about [illegible] of

these Bills of Entry. Her husband would be able to answer the questions and provide copies of the documents.

- She knew that dry dates were imported by M/s. K. L. International. She was not aware about the overseas suppliers, how the orders were placed and how payments were made to them.
- She did not know who was operating bank accounts of her proprietorship concern and signing the cheques. She stated that her husband might be using her account.
- Her husband, Shri Prem and his employer,Shri Parshotam were working together in M/s. K. L. International.
- She never visited Dubai for any reason.

Search at the residence of Shri Parshotamof M/s. Shivoy Enterprise:

07. Since Shri Parshotam of M/s. Shivoy Enterprise was named as the operator of the business of the importer, M/s. K. L. International, a search was conducted on 18.11.2021 under panchnama by the officers of Customs, New Delhi and DRI, Jamnagar at the residence of Shri Parshotam, located at Block E-149, Lajpat Nagar – I, E Block, Opp. Pan house, New Delhi. During the search, several documents pertaining to various business entities were found. Relevant documents were resumed for further investigation.

08. A search was conducted on 18/19.11.2021 under panchnamaby the officers of Customs, New Delhi and DRI, Jamnagar at the office of Shri Parshotam located at M/s. Shivoy Enterprise, 18, Surajkund Road, Pul Prahladpur, New Delhi – 110044. Shri Prem and Shri Parshotam, both stated that the work of M/s. K. L. International was being handled at the office of M/s. Shivoy Enterprise and Shri Parshotam handled all the business activities of M/s. K. L. International, including placement of orders, clearance of the goods at Customs, DGFT matters, FSSAI matters, arrangement of funds, payment to foreign buyers, payment of Customs duty, all the clearance, stevedoring and transportation expenses. Shri Prem said that he and Shri Parshotam used to place orders telephonically/ by WhatsApp. After placing order, the overseas suppliers supply the goods and share related documents through WhatsApp. Shi Prem also stated that he was working under Shri Parshotam for more than 20 years as clearing agent. Last year (i.e., 2020), they obtained IEC in the name of M/s. Bharti for importing dry dates and they started imports from the year 2021. He also said that the office premises of M/s. K.L. International has not been visited

09. During the search, two computers were found having thousands of the documents. Therefore, two hard disks bearing Sr.No.W3TPL2KL (Seagate make, 500GB) and Sr.No.WCC6Y1FVZP0K (Western Digital make, 1 TB) were resumed and sealed in two different envelopes. During the search, Shri Parshotam and Shri Prem requested for some telephone numbers stored in their mobile phones which were seized/ resumed vide panchnama dated 18.11.2021 at the residence of Mrs. Bharti and Shri Prem. The officers, after providing the information, sealed the mobile phones again under panchnama proceedings.

Statement of actual operator of M/s. K. L. International:

10. Statement of Shri Parshotam Prajapati, S/o. Shri Ram Sarup Prajapati was recorded on 19.11.2021 under Section 108 of the Customs Act, 1962 wherein he *inter alia* stated that:

- He was working in M/s. Sidhant Logistics and also ran a partnership firm, M/s. Shivoy Enterprise. He was engaged in Customs clearance in his firm and also holding Customs Broker license.
- He knew Shri Prem since last 20 years. Since 2001, Shri Prem was working with him. In 2020, Shri Prem started M/s. K. L. International as a proprietorship concern of Mrs. Bharti (wife of Shri Prem). He also participated in the business of M/s. K L International by placing order, arranging customs clearance and sales in domestic market. He might have given funds to M/s. K. L. International but he did not remember.
- He used to place orders on behalf of M/s. K. L. International by telephone or WhatsApp. He generally contacted Shri Wasif and Shri Shahzeb Azad of M/s. Alburaq Dates Factory, LLC, Dubai (Mobile No. +97145830303 & +971557543727). In the past, he also placed orders to Shri Durani of M/s. Arbi Food Stuffs, Dubai, and Shri Wasim of M/s. Five Stone General Trading LLC, UAE. They did not enter into any written purchase contact with the suppliers. All the terms were verbal only. As per the oral/ verbal agreement, the payment was to be made after 60 days from the date of Bill of Lading. In recent invoices, the term of payment was 30 days from the date of invoice.
- As regards clearance of dry dates imported by M/s. K. L. International, he stated that the Customs clearance at Nhava Sheva was handled by Shri Shailendra of M/s. Sidhant Logistics (Customs Broker). The consignments at ICD-Dadri were cleared personally by him. The clearance of the goods at Pipavav was looked after by Shri Rajveer of M/s. Eskay Logistics. Apart from Shri Rajveer, Shri Souvik Guha Sarkar, wasalso looking after the

work. The expenses of Shri Souvik Sarkar were born by them through M/s. K. L. International. Shri Souvik Guha Sarkar worked with him as an associate but was not paid any fixed salary.

- As regards handling of business at the office of M/s. Shivoy Enterprise, he stated that Shri Prem is associated with him since last 20 years and working in M/s. Shivoy Enterprise. Though he is not partner, he actively participated in the business of M/s. K. L. International. The documents i.e., invoice, packing list, certificate of origin etc., were received through WhatsApp. Therefore, the same were stored in the desktop computer of his office. Physical documents of M/s. K. L. International were not kept by him.
- The Customs Broker license of his firm, M/s. Shivoy Enterprise was suspended by the Commissioner of Customs, Tughlakhabad in respect of a case pertaining to undervaluation of pumps.
- Shri Jatin Arora from Gurugram (Mobile No. +91 87970 85060) was the sales indenting agent who mediated in sale of dry dates imported by them.
- M/s. Lord Shiva &Co was their buyer of dry dates. They purchased almost 60% to 70% dry dates imported by M/s. K. L. International.
- The Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 (filed at Pipavav) and Bill of Entry No.6277099 dated 16-11-2021 and No.692689 dated 03-01-2022 (filed at Nhava Sheva) were filed by Shri Rajveer Singh of M/s. Eskay Logistics, Pipavav (Customs Broker) and Shri Shailendra of M/s. Sidhant Logistics (Customs Broker) respectively as per his instructions and all the documents i.e. Bill of Lading, invoice, freight invoice, country of origin certificate etc.,pertaining to these Bills of Entry were lying in the desktop computer of M/s. Shivoy Enterprise.
- As regards his profit-sharing formula with M/s. K. L. International, he stated that they decided to share profit in the ratio of 60:40 i.e., 60% will be his share and 40% will be the share of M/s. K. L. International. However, due to rotation of funds in other imports, they have not shared profit according to any fixed formula.
- Payment to overseas supplier is made through bank remittance from the account of M/s. K. L. International in SBI/ Indusind Bank.

Statement of the other operator of M/s. K. L. International:

11. Statement of Shri Prem, husband of Smt. Bharti and s/o Shri Kishan Lal was recorded on 19.11.2021 under Section 108 of the Customs Act, 1962, wherein he stated that:

- He was working in M/s. Shivoy Enterprise, where he attended documentation of Customs procedure i.e., preparation of check list, filing of Bills of Entry, arrangement of documents for examination, assessment and out of charge of the goods. His main work was arrangement of transportation of imported goods.
- M/s. K. L. International was proprietorship concern of his wife, Mrs. Bharti.
- He knew Shri Parshotam Prajapati since last 20 years and was working under him. He got salary of Rs. 8000/- per month. They were clearing various goods, including dry dates, of other importers. In the year 2020, he and Shri Parshotam thought of importing dry dates themselves. Therefore, they created the firm,M/s. K. L. International under the proprietorship of his wife. But actual work of import and sale was looked after by Shri Parshotam Prajapati. Therefore, the proprietorship in the name of his wife was only for namesake. The profit arising out of the import and subsequent sale of dry dates was shared between him and Shri Parshotam.
- Customs clearance work of dry dates imported by M/s. K. L. International was handled by Shri Parshotam.
- Shri Parshotamwas not partner of M/s. K. L. International, but he took all important decisions of the firm, i.e., placing import orders, negotiation of the terms, customs clearance etc.,after import, Shri Parshotam also looked after the sales of imported dry dates.
- Due to Covid-19 pandemic, he had stopped using the office of M/s. K. L. International at A-256, Old No. 55, Flat No. A-4, 3F, Chhaterpur Enclave – I, New Delhi 110074. Therefore, no documents were lying there. Since Shri Parshotamwas also partner in profit of M/s. K. L. International, they worked in the office of M/s Shivoy Enterprise.
- The documents i.e., invoice, packing list, certificate of origin etc., pertaining to M/s. K. L. International were received through WhatsApp. Therefore, the same were stored in desktop computer of the office of M/s Shivoy Enterprise. Physical documents were not kept by them.
- Arrangement of funds for payment of the imported goods, freight thereon, Customs duty and other overheads were looked after by Shri Parshotam.
- Shri Jatin Arora from Gurugram (Mobile No. +91 87970 85060) was the sales indenting agent who mediated in sale of dry dates imported by them. The dealing with Shri Jatin was handled by Shri Parshotam.
- M/s. Lord Shiva & Co was their buyer of dry dates, who purchased 60% to 70% of dry dates imported by them.

- He did not know how the payment was made to the suppliers of dry dates. The dealing with the suppliers and payment was looked after by Shri Parshotam.
- The bank account of M/s. K. L. International was handled by Shri Parshotam and payments were made online by him.

Statement of authorized representative of M/s.K.L. International:

12. First statement of Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International was recorded on 19.11.2021by the SIO, DRI, Jamnagar under Section 108 of the Customs Act, 1962, wherein he stated that:

- He was representing himself as authorized representative of M/s. K. L. International, New Delhi. He was appointed bySmt. Bharti, proprietor of M/s. K.L. International to represent M/s. K. L. International before Customs, Pipavav for clearance of dry dates imported by the importer. He produced an authorization letter dated 10.11.2021issued by the proprietor of M/s. K. L. International vide which he has been fully authorized to give any statement and sign documents on behalf of M/s. K.L. International.
- Shri Parshotam was looking after all the work of M/s. K.L. International. Smt. Bharti, Proprietor of the importer and her husband have lent the IEC of M/s. K.L. International to Shri Parshotam for import of dry dates. Shri Prem was employee of Shri Parshotam since last 15 to 20 years. All the imports of M/s. K. L. International was actually financed and managed by Shri Parshotam.
- He was freelance clearing & forwarding agent. He used to introduce the clients to C&F agents and earn commission. He had worked at Kolkata Sea Port only. It was for the first time that he had undertaken work at Pipavav for this consignment. He had introduced Shri Parshotam to M/s. Eskay Logistics for clearing and handling work and would get his commission of Rs. 20,000/- per container from M/s. Eskay Logistics.
- IEC of M/s. K.L. International was used by Shri Parshotam. Apart from this, Shri Parshotam had instructed him to get IEC in the name & PAN of his father. So, he had recently applied for IEC and obtained IEC No.ALJPG3083H in his father's PAN (Subrato Guha Sarkar). Name of the said firm was M/s. Ganpati Traders, which was his father's proprietorship concern. As informed by Shri Parshotam, he would be using this IEC to import dry dates only. Shri Parshotam had committed him to pay Rs. 000/- to Rs. 15,000/- per container for lending IEC to him. Shri

Parshotam said that he would transfer all the payment to the bank account of M/s. Ganpati Traders and from that account, he would pay to the suppliers and tax authorities by using ID & password of M/s. Ganpati Traders bank account which he has already shared with Shri Parshotam. Shri Parshotam had managed all the remaining work such as FSSAI certificate and other regulatory approvals. He had obtained signature of his father on 2 to 3 blank letter heads and given to Shri Parshotam. Mrs. Bharti and Shri Prem of M/s. K. L. International werealso working on the same condition and also getting the same amount as Shri Parshotam had offered to him.

- Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 of M/s. K. L. International were filed at Pipavav by M/s. Eskay Logistics on the directions of Shri Parshotam.
- On being shown an image of jute bag in which dry dates were imported under Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021, he stated that the Customs officers had noticed the above packing during the course of examination of the goods. He stated that the image of the jute bag in which dry dates were imported under abovementioned Bills of Entry refer to the name of "Sargodha Jute Mills Ltd" in Pakistan.
- On being asked about how the jute bag of Pakistan was there in the cargo from Dubai, he stated that in fact the goods have been brought from Pakistan via Dubai to evade the Customs duty on it.
- Shri Parshotam had started M/s. K. L. International specially to import dry dates from Pakistan. For this purpose, he convinced Shri Prem to obtain IEC in the name of his wife Mrs. Bharti. Rest of the work such as regulatory approvals, purchase from overseas suppliers, clearing & forwarding of imported goods was being looked after by Shri Parshotam.
- He had telephonically enquired with Shri Rajveer Singh of M/s. Eskay Logistics, Pipavav who had earlier cleared more than 150 containers of dry dates which according to his knowledge, were of Pakistani origin.
- He and Shri Parshotam visited Pipavav on 19.10.2021 and met Shri Rajveer Singh. Shri Parshotam, in his presence, told Shri Rajveer Singh that they were planning to import dry dates of Pakistan origin via Dubai port, and he (Shri Parshotam) would manage to get country of origin certificate of Dubai Chamber of Commerce. Since Shri Rajveer Singh was already clearing similar consignments, he responded that if the country of origin certificate got verified online, he would manage to clear the goods. Shri Rajveer Singh quoted the rates for clearing and handling of dry dates at Rs. 80,000/- per container. As per his earlier discussion with Shri

Rajveer Singh, a margin / commission of Rs. 20,000/- per container was kept for himself (Shri Souvik Guha Sarkar).

- While meeting Shri Rajveer Singh at Pipavav on 19.10.2021, they had decided to import the dry datesin the name of M/s. Ganpati traders also which was his father's proprietorship concern. But the documents of M/s. K. L. International were received earlier than M/s. Ganpati Traders. So, they asked Shri Rajveer Singh to manage clearance of the same in the name of M/s. K.L. International. However, due to some reasons, the goods were not cleared for more than 10-12 days. Therefore, Shri Parshotam asked him to go to Pipavav and manage clearance.
- As regards arranging overseas supply, he stated that Shri Parshotam was managing the same with the help of Shri Jatin of Delhi (Mobile Numbers +971582474986 & 8797085060). He met Shri Jatin once and had telephonic and WhatsApp conversations with him a number of times. On the instructions of Shri Parshotam, Shri Jatin managed to issue FSSAI certificate for his father's firm, M/s Ganpati Traders without charging any rupee from him. He was not aware about overseas supplier of Dubai or Pakistan.
- Local buyers of imported dry dates are looked after by Shri Parshotam and Shri Jatin.

13. Second Statement of Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International was recorded on 20.11.2021 by the Superintendent of Customs (Prev.), Jamnagar under Section 108 of the Customs Act, 1962, wherein he reiterated the contents of the statement dated 19.11.2021 given before the SIO, DRI, Jamnagar. On being shown a calculation sheet of differential duty evaded by M/s. K. L. International in respect of Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021, he admitted that differential duty of Rs. 9,05,16,902/- was about to be evaded by mis-declaration of Country of origin as UAE instead of Pakistan.

Statement of Customs Broker of M/s. K.L. International:

14. Statement of Shri Rajveer Singh Mathuram Mandadiya, employee of M/s. Eskay Logistics (Customs Broker of M/s. K. L. International at Pipavav) was recorded on 19.11.2021 under Section 108 of the Customs Act, 1962, wherein he stated that:

- M/s. Eskay Logistics was a Clearing agent/ Customs Broker. They had worked with M/s. K. L. International for the first time.

- Shri Souvik Guha Sarkar, Authorized representative of M/s. K. L. International called him on 12.10.2021 for clearing of the goods i.e., dry dates being imported by them. Subsequently, Shri Parshotam and Shri Souvik Guha Sarkar came to his office on 19.10.2021 for finalizing the deal. They finalized the deal at Rs. 80,000/- per container. In this 80,000/-, hehad kept margin/ commission of Rs. 20,000/- per container for Shri Souvik Guha Sarkar, as per his personal agreement with Shri Souvik.
- When Shri Souvik Guha Sarkar and Shri Parshotam visited his office on 19.10.2021, Shri Parshotam had clarified with him that the goods were of Pakistan origin, but they would manage to import via Dubai and would also manage Country of Origin certificate of Dubai which would be verifiable online. So, he undertook the work with the condition that if the Country of Origin certificate was verified online, he would manage to clear the same. For this purpose, he charged more than what he usually charged to other customers.
- When Shri Souvik Guha Sarkar and Shri Parshotam visited his office on 19.10.2021, they stated that they would import the goods in the IEC of M/s. Ganpati Traders. But, since the papers of M/s. K. L. International came prior to M/s. Ganpati Traders, Shri Parshotam asked him to clear the goods imported by him in the name of M/s. K. L. International.
- Most of the consignments of dry dates were supplied by M/s. Alburaq Dates Factory, LLC, Dubai. As per his knowledge, Shri Shahzeb Azad (Mobile Number +971557653727 and 9198477777) is the owner of M/s. Alburaq Dates Factory, LLC, Dubai. He had spoken to him once on phone and have communicated with him on WhatsApp several times.
- He did not know any local buyers of dry dates, but the goods were transported to Vashi, Indore, Delhi, Amritsar, Ahmadabad and Ghaziabad.
- Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 were filed on behalf of M/s. K. L. International by M/s. Eskay Logistics at Pipavav as per the instructions of Shri Parshotam.
- It was explained to him that Shri Parshotam was also working as CHA /Customs Broker. So, he trusted Shri Parshotam without due care to observe KYC norms.
- On being shown an image of jute bag in which dry dates were imported under Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021, he stated that the Customs officers had noticed the above packing during the course of examination of the goods. He stated that the image of the jute bag in which dry dates impo

under above-mentioned Bills of Entry referred to the name of "Sargodha Jute Mills Ltd" in Pakistan.

- On being asked about how the jute bag of Pakistan is there in the cargo from Dubai, he stated that in fact the goods have been brought from Pakistan via Dubai to evade the Customs duty on it.

15. Second statement of Shri Rajveer Singh Mathuram Mandadiya, employee of M/s. Eskay Logistics (Customs broker of M/s. K. L. International at Pipavav) was recorded on 20.11.2021 by the Superintendent of Customs (Prev.), Jamnagar under Section 108 of the Customs Act, 1962, wherein he reiterated the contents of the statement dated 19.11.2021 given before the SIO, DRI, Jamnagar. On being shown a calculation sheet of differential duty evaded by M/s. K. L. International in respect of Bills of Entry Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021, he admitted that differential duty of Rs. 9,05,16,902/- was about to be evaded by mis-declaration of Country of Origin as UAE instead of Pakistan.

Search at the premises of Custom Broker, M/s. Eskay Logistics:

16. A search was conducted on 19.11.2021 under a panchnama by the officers of Customs (Prev.), Jamnagar/ Pipavav and DRI, Jamnagar at the office premises of M/s Eskay Logistics, Office No. 3, Shri Ram Plaza, Pipavav. During the search, certain documents/ files pertaining to clearance of dry dates by M/s. Eskay Logistics were found, which were resumed for further investigation.

17. A search was conducted on 19.11.2021 under a panchnama by the officers of Customs (Prev.), Jamnagar/ Pipavav and DRI, Jamnagar at the residential premises of Shri Rajveer Singh Mathuram Mandaliya at 16A, Shyam Vadi, Near Railway Crossing, Dungar Road, Rajula, where Shri Rajveer Singh and Shri Souvik Guha Sarkar were present. During the search, certain electronic devices (laptop of Shri Rajveer Singh, mobile phones of Shri Rajveer Singh and Shri Souvik Sarkar)were seized for further investigation.

18. The mobile phones of Shri Rajveer Singh Mathuram Mandadiya, which were resumed from his residence vide panchnama dated 20.11.2021 were examined under a panchnama dated 30.11.2021. Shri Rajveer Singh stated that following two mobile phones belong to him:

i. Mobile Phone – Galaxy M12 – Samsung, Model No. SM-MI27G/DS, Sr. No. RZ8RAOTH8BX, IMEI-1 – 358451323843600, IMEI-2 – 359079863843604.

ii. Mobile Phone – Galaxy A31 – Samsung, Model No. SM-A315F/DS, Sr. No. RZ8N504XF2W, IMEI-1 – 355390111075335, IMEI-2 – 355391111075333.

Both the above mobile phones were examined in presence of Shri Rajveer Singh and independent panchas and necessary communications, chats and documents were taken. Print outs of all such documents were signed by Shri Rajveer Singh in presence of independent panchas.

Search at the residence of Shri Jatin Arora–indenting agent:

19. It appeared from the statements of Shri Parshotam, Shri Prem and Shri Souvik Guha Sarkar that Shri Jatin Arora of Gurugram is acting as an indenting agent who is handling local sales of dry dates so imported by various entities, including M/s. K. L. International. It also appeared that Shri Jatin is also frequently travelling between Delhi and Dubai and also looking after arrangements of fraudulent Certificate of Origin from Dubai Chamber of Commerce and also arranging dispatch of dry dates from Dubai/ UAE to India. Therefore, residence of Shri Jatin Arora, located at Flat No. 6B, Tower GH-1, Sector 54, Orchid Garden, Suncity, Gurugram was searched under panchnama proceedings dated 07.02.2022by the officers of DRI and Customs. During the search, Shri Jatin Arora was not available at the residence. However, certain documents were resumed for further investigation.

EXAMINATION AND SEIZURE OF GOODS

Examination and Seizure of Dry dates consignments at Pipavav Port:

20. Examination of 46 containers of dry dates imported by the importer, M/s. K. L. International vide Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 (filed at Pipavav) was undertaken at CFS Logix Park, Pipavav by team of Customs officers and DRI officer under panchnama proceedings dated 19.11.2021 in presence of Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International, Shri Rajveer Singh & Shri Vijay Rathod of M/s. Eskay Logistics, Customs Broker of the importer. The goods i.e., dry dates were found packed in jute bags stuffed with different descriptions on them during the examination. However, in some bags in the

container No. MNBU4000276 and MWCU5302098, some tag was seen with remarks "SARGODHA Jute Mills Limited, Manufacturers & Exporters of Quality Jute Products in Pakistan. Email: info@sargodhajute.com, site: www.sargodhajute.com".

21. On being asked about this, Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International admitted to the officers in presence of all the persons and panchas that *"the imported cargo i.e., dry dates is of Pakistan origin and it has been exported from Pakistan to UAE which were then imported into India. It is possible that in some bags the tag was left to be detached."* Shri Souvik also informed the officers before the panchas that the import duty from Pakistan was 200% and from UAE it was 20% and hence the modus operandi of hiding the actual country of origin was adopted.

22. Therefore, the goods i.e., Dry dates imported by M/s. K. L. International vide abovementioned Bills of Entry were placed under seizure under the provisions of the Customs Act, 1962 on a reasonable belief that the said goods were mis-declared in terms of "Country of Origin" in violation of the Customs Act, 1962 and therefore were liable for confiscation under the provisions of the Customs Act, 1962. A seizure memo dated 09.12.2021 in respect of the seizure of aforesaid import consignment was issued to the importer. Representative samples of some dry dates from one bag representing each container of respective Bills of Entry were taken.

23. Apart from the above said 46 containers of dry dates, M/s. K. L. International have also attempted to import one container no. MWCU5245763 having 27500 kg dry dates vide Bill of Lading No.MAEU214702062 dated 18-11-2021. However, no Bill of Entry was filed by them for this shipment of one container even after a period of more than 6 months.Therefore, thesaid Container bearing no. MWCU5245763 was examined under panchnama dated 19.07.2022 drawn at port CFS, Pipavav. Shri Rajveer Singh informed the officers and panchas that through he was CHA/Clearing agent in respect of the 46 containers imported by M/s. K.L. International which are already placed under seizure for mis-declarations, he has not received any documents pertaining to the instant Container no. MWCU5245763 or any instruction relating to filing of Bills of Entry in respect of this container from M/s. K.L. International till date.

On verification of the details mentioned on the bags containing "Dry Dates", it was observed that aforesaid container of "Dry Dates" attempted to be

imported by M/s. K.L. International, New Delhi is from the same supplier and was of same lot as that of the 46 containers of the 'Dry Dates' imported vide Bills of entry No. 6124557, No.6124677, No.6124787, No.6124890 and No.6125519 all dated 04.11.2021 and seized vide Seizure Memo dated 09-12-2021.

25. Thus, there was reasonable belief that in the instant consignment,being the same goods i.e., Dry dates and of the same importer and supplier, attempted to be imported under Container No. MWCU5245763 having total quantity 27500.00 Kgs. (550 Bags) vide B/L No. MAEU214702062, the importer/consignee has mis-declared the country of origin of goods with an intention to evade the Customs duty @200% adv. on Pakistan Origin goods. Further, it was also found that the Food Safety and Standard (Packing and Labeling) Regulations, 2011 are not followed on the packaging of the said goods. Therefore, the 'Dry dates' attempted to be imported vide Container No. MWCU5245763 having total quantity 27500 Kgs. (550 Bags) under B/L No. MAEU214702062 was also placed under seizure vide Seizure Memo dated 21-09-2022 under the provisions of Section 110 of the Customs Act, 1962, under the reasonable belief that the same are liable to confiscation under the provisions of the Customs Act, 1962.

26. During the examination of the above said container, it was noticed that FSSAI labels were affixed on some bags which were easily detachable. In order to ascertain the marks and FSSAI labels on the dry dates in the earlier 46 containers imported vide Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021, re-examination of those dry dates lying at LCL CFS, Pipavav was also carried out. It was found that in some bags were tagged with a slip containing details of exporter, importer and details of FSSAI, which can be easily separated/ detached from such packaging.

Examination and Seizure of the Dry dates consignments at JNCH:

27. It was further noticed that M/s. K.L. International had imported two consignments of dry dates vide Bills of Entry No. 6277099/16.11.2021 & 6926789/03.01.2022 filed at JNCH, Nhava Sheva. The examination in respect of 5 containers of dry dates imported vide Bills of Entry No. 6277099/16.11.2021 was carried out by the Inspector of Customs [SIIB(I)], JNCH, Nhava Sheva vide panchnama dated 04.12.2021.The examination in respect of 7 containers of dry dates imported vide Bills of Entry No. 6926789/03.01.2022 was carried out by the Superintendent of Customs

[SIIB(I)], JNCH, Nhava Sheva vide panchnama dated 16.01.2022. During the examination, it was noticed that in some of the jute bags, some washed off white-coloured tags were found attached and it appeared as if the said tags have been intentionally removed to hide description mentioned on them. The dry dates, having total declared assessable value of Rs.1,08,77,251/-, imported vide Bills of Entry No. 6277099/16.11.2021 & 6926789/03.01.2022 were placed under seizure vide seizure memo dated 24.01.2022 issued by the Superintendent of Customs [SIIB(I)], JNCH, Nhava Sheva.

SUMMARY OF THE FINDINGS

28. During the investigation, from the statements recorded and the evidences retrieved, it appeared that there is a larger syndicate of members involved in importing Dry dates from Pakistan by routing the goods through UAE in order to evade 200% Customs duty imposed on the goods originating in or exported from the Islamic Republic of Pakistan w.e.f. 16.02.2019. It appears that in the instant case, the syndicatemasterminded by,

1. Shri Parshotam Prajapati
2. Shri Mohammad Shahzeb Azad
3. Shri Jatin Arora

appeared to have procured dry dates from Pakistan; created fictitious overseas supplier in the name of M/s. Alburaq Date Factory LLC in Dubai; created various fictitious importer and buyer firms in India in the name of M/s. K.L. International, M/s. Ritika Exim etc.; availed Country of origin certificates from Dubai/Ajman Chamber of Commerce in the name of fictitious firm; imported the dry dates by willfully suppressing the facts and mis-declaring the country of origin in the Customs documents; supplied the dry dates to the fictitious buyer firms created by them. It appeared that the same syndicate has also imported dry dates of Pakistan origin by routing them through UAE in the name various other fictitious firms created by them through the ports of Nhava Sheva. Investigation on one such fictitious firm namely, M/s. Ritika Exim is undertaken by SIIB, Nhava Sheva for the same charges in the instant case against the same syndicate.

29. It also appeared from the investigation that the above mentioned masterminds have been actively abetted by,

1. Mrs. Bharti, Proprietor of M/s. K.L. International, New Delhi
2. Shri Prem, Husband of Mrs. Bharti
3. Shri Souvik Guha Sarkar, Authorized representative of K.L. International
4. Shri Rajveer Singh, Customs Broker at Pipavav port

5. Shri Pankaj Tiwari, Proprietor of the buyer firm, M/s. Lord Shiva & Co.
6. Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics CHA Services
7. Shri V.S. Yadav of M/s. Sidhant Logistics CHA Services

NON-COOPERATION/NON-APPEARANCE AND ACTION UNDER SECTION 174, 175 AND 176 OF THE IPC

Summons to the stake holders:

30. In view of the above findings, the stakeholders in the entire chain of events were summoned for giving statement and further evidences in order to proceed with the investigation.The summons issued are discussed hereunder:

30.1 Following summons were issued to Shri Parshotam Prajapati (the real/ actual importer of dry dates in the name of M/s. K. L. International). However, he did not appear on any of the dates given to him.

Sr.	Date of Summons	Date for appearance	Remarks / Reply
1	19.11.2021	20.11.2021	He sought two days' time for appearance
2	26.11.2021	01.12.2021	He replied that he will appear on 08.12.2021
3	09.12.2021	27.12.2021	He did not appear. Sent a hospital case.
4	28.12.2021	06.01.2022	He excused appearance on various grounds.

30.2 Following summons were issued to Shri Jatin Arora (an associate of Shri Parshotam). However, he did not appear by citing various reasons:

Sr.	Date of Summons	Date for appearance	Remarks / Reply
1	07.02.2022	08.02.2022	His mother replied that the summons could not be delivered to him.
2	14.02.2022	25.02.2022	He did not appear.
3	15.03.2022	04.04.2022	He did not appear.
4	06.04.2022	25.04.2022	He did not appear.

30.3 Following summons were issued to Shri Prem (husband of Mrs. Bharti, Proprietor of M/s. K.L. International). However, he did not appear on any of the dates given to him.

Sr.	Date of Summons	Date for appearance	Remarks / Reply
1	19.11.2021	20.11.2021	He sought two days' time for appearance
2	26.11.2021	01.12.2021	He replied that he will appear on 08.12.2021
3	09.12.2021	24.12.2021	He did not appear. Excused appearance.

4	28.12.2021	05.01.2022	He did not appear. Excused appearance.

30.4 Following summons were issued to Mrs. Bharti, Proprietor of M/s. K.L. International. However, she did not appear on any of the dates given to him.

Sr.	Date of Summons	Date for appearance	Remarks / Reply
1	23.11.2021	26.11.2021	She did not appear. Excused appearance.
2	26.11.2021	01.12.2021	She did not appear. Excused appearance.
3	09.12.2021	24.12.2021	She did not appear.

30.5 Following summons were issued to Shri V. S. Yadav of M/s. Sidhant Logistics, who had cleared consignments of dry dates at Nhava Sheva. However, he did not appear by citing various reasons:

Sr.	Date of Summons	Date for appearance	Remarks / Reply
1	03.12.2021	10.12.2021	He requested forfresh date as he was out of station till 22.12.2021.
2	28.12.2021	05.01.2022	He did not appear. Excused appearance.
3	06.01.2022	28.01.2022	He did not appear. Excused appearance.

30.6 Following summons were issued to Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics, who had cleared consignments of dry dates at Nhava Sheva. However, he did not appear by citing various reasons:

Sr.	Date of Summons	Date for appearance	Remarks / Reply
1	03.12.2021	10.12.2021	He did not appear. Excused appearance.
2	28.12.2021	04.01.2022	He did not appear. Excused appearance.
3	06.01.2022	27.01.2022	He did not appear. Excused appearance.

30.7 Following summons were issued to Shri Pankaj Kumar Tiwari, Proprietor of Lord Shiva & Company, Gurugram (Major buyer of M/s. K.L. International). However, summons were returned by the postal authority with remarks "Left" and "Door locked".

Sr.	Date of Summons	Date for appearance	Remarks / Reply
1	03.12.2021	10.12.2021	Returned by postal authority with remarks 'Left'

2	06.01.2022	25.01.2022	Returned by postal authority with remarks 'Door locked'

30.8 Following summons were issued to Shri Mohammad Shahzeb Azad (Authorized signatory of the M/s. Alburaq Dry Dates factory, Dubai). However, he did not appear giving non-satisfactory reply and lame excuses for non-appearance.

Sr.	**Date of Summons**	**Date for appearance**	**Remarks / Reply**
1	14.10.2022	21.10.2022	He did not appear. Excused appearance.
2	21.10.2022	28.10.2022	Not responded

31. As it could be ascertained from the above that, number of summons were issued to various persons to give their statement and submit evidences regarding genuineness of country of origin certificates. However, none of them have bothered to appear and facilitate investigation. All these absence and collective non-attendance/non co-operation in the investigation appeared to suggest that all of them are hand in gloves in the mis-declaration of the import goods with an intention to evade Customs duty.

Launch of criminal complaint for violation of Section 108 of the Customs Act, 1962:

32. Since none of the persons above remained present in response to the summons, actions under Section 174, 175 and 176 of the Indian Penal Code have been initiated against the actual operators of M/s. K.L. International, New Delhi namely Shri Parshotam, Shri Prem and Shri Jatin Arora. The details of the criminal complaint filed before Hon'ble Chief Judicial Magistrate, Jamnagar against these persons is as under:

Sr.	**Name of the person**	**CriminalComplaint Number**
1	Shri Parshotam	CC No. 4435/2022
2	Shri Prem	CC No. 4436/2022
3	Shri Jatin Arora	CC No. 4437/2022

It appeared from the non-cooperation/non-appearance of all the above persons despite repeated summons, that they wanted to hide truth about Pakistani origin of dry dates and obtained country of origin certificate from UAE by fraudulent manner. If certificates of origin were genuine and they have nothing

to hide, then importer and their associates would have come to join investigation with clear hand. Their failure to join investigation and escape from the inquiry itself proved that they have made fraudulent claim of country of origin in import of dry dates.

EVIDENCES AGAINST M/S.K.L. INTERNATIONAL AND ITS STAKEHOLDERS

33. Oral evidences :Confessions / Admissions:

33.1 The Authorized representative of M/s. K. L. International, Shri Souvik Guha Sarkar, in his statement dated 19.11.2021 recorded u/s 108 of the Customs Act, 1962 by the SIO, DRI, Jamnagar, admitted that the goods imported by M/s. K. L. International are of Pakistani origin and the same have been brought from Pakistan via Dubai to evade 200% Customs Duty on the goods imported from Pakistan. Further, Shri Souvik Guha Sarkar, in his statement dated 20.11.2021 recorded u/s 108 of the Customs Act, 1962 by the Superintendent of Customs (Prev.), Jamnagar, again admitted that the goods are of Pakistani origin. During the examination of the goods under panchnama proceedings, when he was specifically asked about the jute bags of Pakistan used in packing the dry dates imported from Pakistan, Shri Souvik Guha Sarkar, admitted to the officers in the presence of panchas that "the imported cargo i.e., dry dates is of Pakistan origin and it has been exported from Pakistan to UAE which were then imported into India. It is possible that in some bags the tag was left to be detached." Shri Souvik also informed the officers before the panchas that the import duty from Pakistan was 200% and from UAE it was 20% and hence the modus operandi of hiding the actual country of origin was adopted.

33.2 Shri Rajveer Singh Mathuram Mandaliya, employee of M/s. EskayLogistics (Customs Broker of M/s. K.L. International at Pipavav),in his statement dated 19.11.2021 recorded u/s 108 of the Customs Act, 1962 by the SIO, DRI, Jamnagar, admitted that the goods are of Pakistani origin and that Shri Parshotam & Shri Souvik Guha Sarkar had told him about the goods being of Pakistani origin and the same have been brought from Pakistan via Dubai to evade Customs Duty on it. On being specifically asked about the jute bags of Pakistan found in the cargo from Dubai, he stated that in fact the goods have been brought from Pakistan via Dubai to evade the Customs duty. Further, in thestatement of Shri Rajveer Singh recorded on 20.11.2021 u/s 108 of the Customs Act, 1962 by the Superintendent of Customs (Prev.), Jamnagar, he again admitted the fact about the Pakistani origin of the imported goods. Shri Rajveer Singh further admitted that generally, he charged around Rs. 3000 to

5000 per container as Service charge whereas considering the risk involved in the instant import in facilitating evasion of duty by mis-declaring country of origin as UAE instead of Pakistan,hehad negotiated for Rs.80,000/- per container to M/s. K.L. International. He said that these things were discussed in detail when Shri Parshotam and Shri Souvik Sarkar met him personally in the month of October 2021 in Pipavav. Hefurther added that Shri Parshotam, during their meeting said that though the goods are of Pakistani origin, he would manage the CountryofOrigin certificate from Dubai. Shri Rajveer accepted to clear the goods only on the condition that the CountryofOrigin is verifiable online.

33.3 The Authorized Representative and Customs Broker are crucial entities in any import. Authorized Representative functions on behalf of the Proprietor of the firm and is also authorized in the instant case vide letter dated 10.11.2021 to take any decision, sign and state on behalf of the firm.Customs Broker is a person who is registered for clearance of the imported goods from Customs. He collects all the relevant documents from the importer firm and submits the same to the Customs for clearance of the imported goods.

33.4 A very clear confession/admission by both, the Authorized Representative and Customs Broker that the goods i.e., Dry dates are of Pakistani originappeared to provebeyond doubt that the goods have originated from Pakistan and not form Dubai/ Ajman as declared in the Bills of Entry.

Modus Operandi:

33.5 Mrs. Bharti in her statement recorded on 18.11.2021 under Section 108 of the Customs Act, 1962 by the Superintendent of Customs (Prev.) Delhi, stated that she was not the one who was looking after day-to-day functions and Shri Prem (her husband) and Shri Parshotam (employer of her husband) were actually looking after the day to day functions of the firm.

33.6 Shri Souvik Guha Sarkar, Authorized Representative of M/s. K.L. International has in his statement recorded on 19.11.2021 by the SIO, DRI, Jamnagar under Section 108 of the Customs Act, 1962, admitted that he also obtained Import Export Code (IEC) Number in the name of his father for importing Dry Dates of Pakistani origin and created a firm in the name of M/s. Ganpati Traders on the directions of Shri. Parshotam. He said that he was ready to import Dry Dates in the name of M/s. Ganpati Traders, however, as documents of M/s. K.L. International were received earlier, they imported the

consignment in the name of M/s. K.L. International. He also admitted that he and Shri Prem had lent their IECs namely M/s. Ganpati Traders and M/s. K.L. International respectively to Shri Parshotam for the purpose of importing such dry dates.

33.7 Shri Premin his statement recorded on 19.11.2021 under Section 108 of the Customs Act, 1962 admitted that he had created the firm on the direction of his employer, Shri Parshotam who in-turn was looking after the day to day activities of M/s. K.L. International. He also said that the important decisions and payments related to M/s. K.L. International were done by Shri Parshotam.

33.8 Shri Parshotam Prajapati in his statement recorded on 19.11.2021 under Section 108 of the Customs Act, 1962, admitted that he was looking after all the activities of M/s K.L. International and the firm i.e.,M/s K.L. International was created by him in the name of Mrs. Bharti for import of Dry Dates. Documents retrieved from the office of Shri Parshotam also revealed that he has borrowed the IEC of some more firms like M/s. Ritika Exim for the purpose of importing dry dates.

33.9 Shri Rajveer Singh in his statement admitted that Shri Shovik Guha Sarkar and Shri Parshotam met him in the month of October-2021 and offered to clear the Dry Dates consignments, for which he charged Rs.80,000/- per container. Shri Rajveer Singh further admitted that normally he charged his clients, Rs.3000/- to Rs.5000/- per container but he quoted/charged Rs.80,000/- per container for clearing this consignment. Offering exorbitant amount which is 20 times higher than the regular charge for clearing container appeared to prove the illegal nature of the imported goods i.e., Dry Dates.

33.10 From these oralevidencesdiscussed above, it appeared thatMr. Parshotam has created number of fictitious firms in the name of his acquaintancesfor the purpose of importing Dry dates. He also has managed to get IECs of others lent to him for this purpose. When Mr. Parshotam himself is a Customs Broker, it is easier for him to import dry dates by creating company in his name itself. However, he had created the above said fictitious firmsin order to avoid scrutiny of the department and to illegally import dry dates from Pakistan by mis-declaring them of Dubai/Ajman origin.

34. Documentary evidences: Fictitious firms:

34.1 The importer firm M/s. K. L. International, New Delhi : Several letters and summons were issued to M/s. K.L. International located at A-256, Old No. 55, Flat No.A-4, 3F, Chhaterpur Enclave–I, New Delhi-110074.However, all of them were returned by the postal department with remarks 'Left /No such person'. During the search of the said premises by the officers of DRI/Customs, no document pertaining to business dealing of M/s. K. L. International was found. The copy of rent agreement between M/s K.L. International and the owner of the premises showed that the firm was in existence only between 20.01.2020 to 19.12.2020.Further it was found that the said premises was occupied by Shri Devanshu Singh since September-2021. This shows that the firm M/s.K.L. International was not in existence physically at the said address at the time of impugned import. There is no reason for creating a fictitious firm for making any legal import. Therefore, it appearedthat M/s. K.L. International is a fictitious firm created for the purpose of importing dry dates of Pakistani origin by mis-declaring them as of Dubai/Ajman origin.

34.2 The overseas supplier firm, M/s. Alburaq Dates Factory, LLC, Dubai: Majority of the imports of M/s. K.L. International are from M/s. Alburaq Dates Factory, LLC, Dubailocated at Head Office:3312, Churchil Tower, Business Bay, Dubai, UAEand whose Authorized Signatory is Mr. Mohammad Shahzeb Azad. However, on verification of the documents retrieved from Shri Parshotam during the search, it is found that there is another company in the name of M/s. Prolix International Trading LLC functioning at the same premises whose authorized signatory is Mr. Mohammad Shahzeb Azad. It is also revealed from the investigation that M/s. K.L. International has imported dry dated from M/s. Prolix International through the port of Nhava Sheva in the past.

34.3 On further verification, it appeared that M/s. Prolix International is owned by Mr.Mohammad Shahzeb Azad who seems to have created the following fictitious firms in India for receiving the illegally imported Dry Dates of Pakistani origin.

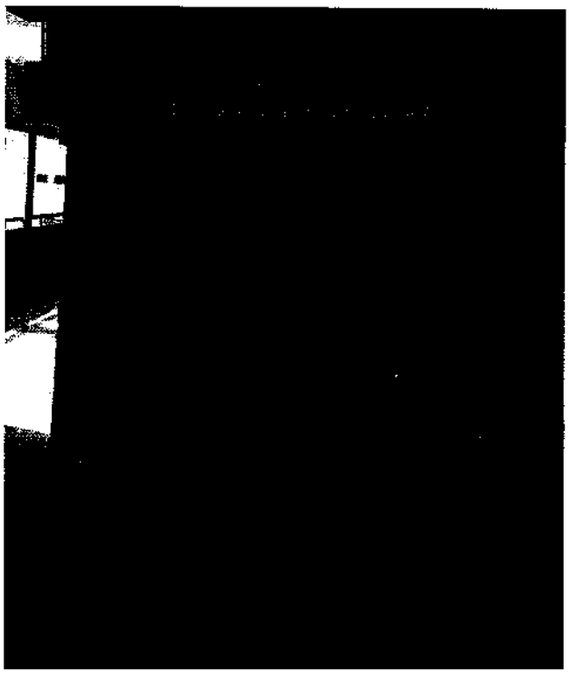
Sr. No.	Legal Name	Trade Name	GST Number & Regn. date	Remarks
1	MOHAMMAD SHAHZEB AZAD	MOHAMMAD SHAHZEB AZAD	09BBWPA6482N4ZO28/02/2021	Cancelled suo-moto (Effective from 03/06/2021)
2	MOHAMMAD SHAHZEB AZAD	PROLIX INTERNATIONAL	09BBWPA6482N3ZP15/07/2020	Cancelled suo-moto (Effective from 07/01/2021)

3	MOHAMMAD SHAHZEB AZAD	PROLIX POWERTECH	09BBWPA6482N1ZR28/06/2017	Cancelled suo-moto (Effective from 16/10/2019)
4	MOHAMMAD SHAHZEB AZAD	A.K. TRAVELS WORLDWIDE	09BBWPA6482N2ZQ14/10/2018	Cancelled suo-moto (Effective from 12/02/2020)

From the above table it was clear that GST number of all the firms created by Mr. Mohammad Shahzeb Azad were canceled suo-moto by GST department for violation of various provisions of Goods and Services Tax Act, 2017. It appears from all these facts that Mr. Mohammad Shahzeb Azad is a fly-by-night operator who has created many firms in his name. Therefore, it appearedthat M/s. Alburaq Dry dates factory LLC, Dubai is also a fictitious firm created by Mr. Shahzeb Azad in Dubai in an address where another firm i.e., M/s. Prolix International is in existence.When there is already a firm (M/s. Prolix International) in existence dealing with the business of Dry dates with India, there appears no valid justification for creating another firm (M/s. Alburaq Dry Dates Factory LLC) in the same address for the same business of Dry dates with India. The fact that Mr. Shahzeb Azad, being the supplier of Dry dates in Dubai from a controversial firm and at the same time being the buyer in India through fly-by-night firms appeared to prove beyond doubt the illegal nature of the commodity being imported by M/s. K.L. International into India.

34.4 The buyer firm of imported dry dates, M/s. Lord Shiva & Company:

The Dry dates imported by M/s. K.L. International have been supplied in India predominately to M/s Lord Shiva & Co. On physical verification of premise of M/s. Lord Shiva & Co., located at upper Ground Floor, H-235, Sushant Arcade, Gurgaon, Haryana-122009, it was found that the shop was closed since long and was not in function. It was registered in the name of one Mr. Pankaj Kumar Tiwari. He did not respond to any of the summons issued by the department. Snapshot of the premises is given below for reference.



From the evidences discussed above, it appeared beyond doubt that the entire chain of firms from the supplier to buyer is fictitious and exists only on record. Dummy firms seemed to have been created by the main masterminds purposefully to escape action by the department. Thus, there appearedno excuse with the importing firm or the stakeholders involved in the entire conspiracy to plead that the import of Dry dates by them is genuine.

34.5 Use of Pakistani based Logistic firm: Copy of the Bill of Lading MLJEANSA045918, issued by Merchant Lines was submitted by Mrs. Bharti vide her letter dated 25-11-2021. The BL pertains to the import made by M/s. K.L. International vide Bill of Entry No. 5651171 dated 30.09.2021 from the same supplier, M/s. Alburaq Dates Factory LLC, Dubai. This BL is issued by a shipping line based out of Pakistan. The standard conditions mentioned in the BL stipulates that -

> *"the contract evidenced by or contained in the bill of lading is governed by the law of Pakistan and any claim dispute arising thereunder or in connection herewith shall be determined by the* ***courts in Pakistan*** *and no other courts"*

When the goods are shipped from Dubai to India, the condition related to jurisdiction of Pakistan seems to be an indicative evidence that the goods have originally been shipped from Pakistan.It is not just a coincidence that a Pakistan based logistic firm is used in import of Dry Dates from Dubai given the

fact that the entire chain from the overseas supplier to the buyer, all appear to be fictitious.

35. Digital evidences:

Evidence showing manipulation of Country of Origin:

35.1 The working copy of the mobile phonebelonging to Shri Parshotam (resumed vide panchnama dated 18.11.2021) was extracted in the Cyber Forensic Laboratory, Directorate of Revenue Intelligence, Mumbai for forensic examination vide panchnama dated 25/26.11.2021. On scrutiny of the working image of the mobile phone data, following important conversations / WhatsApp chats were foundallegedly showing the involvement of the stakeholders in manipulation of the country of origin of the import goods. It is important to note that these conversations pertain to the import of past consignments by the very same importer firm, M/s. K.L. International, New Delhi at various ports like Nhava Sheva.

(i) Shri Parshotam had sent a message to Sunil Dixit on 14.10.2020 which reads as:

> *"CO now required from Dubai chamber of commerce if goods are declaring as country of origin UAE".*

This message from Shri Parshotam appeared to underline the fact that the original country of origin of the goods is different from Dubai. It is also important to note that Dry Dates from all other countries except Pakistan is allowed at a lower Customs duty in India which leads to the conclusion that the original country of origin of the goods under consideration is nothing but Pakistan. The message also appears to highlight the fact that Shri Parshotam is habitually engaged in manipulation of country of origin and has been frequently mis-declaring the same.

(ii) In response to a document shared by one Shri Sarfaraz, Shri Parshotam Prajapati sent a message on 31.12.2020 to Sarfaraz which reads as:

> "In column no.08 it should be mentioned CO as United Arab Emirates. Rest is ok".

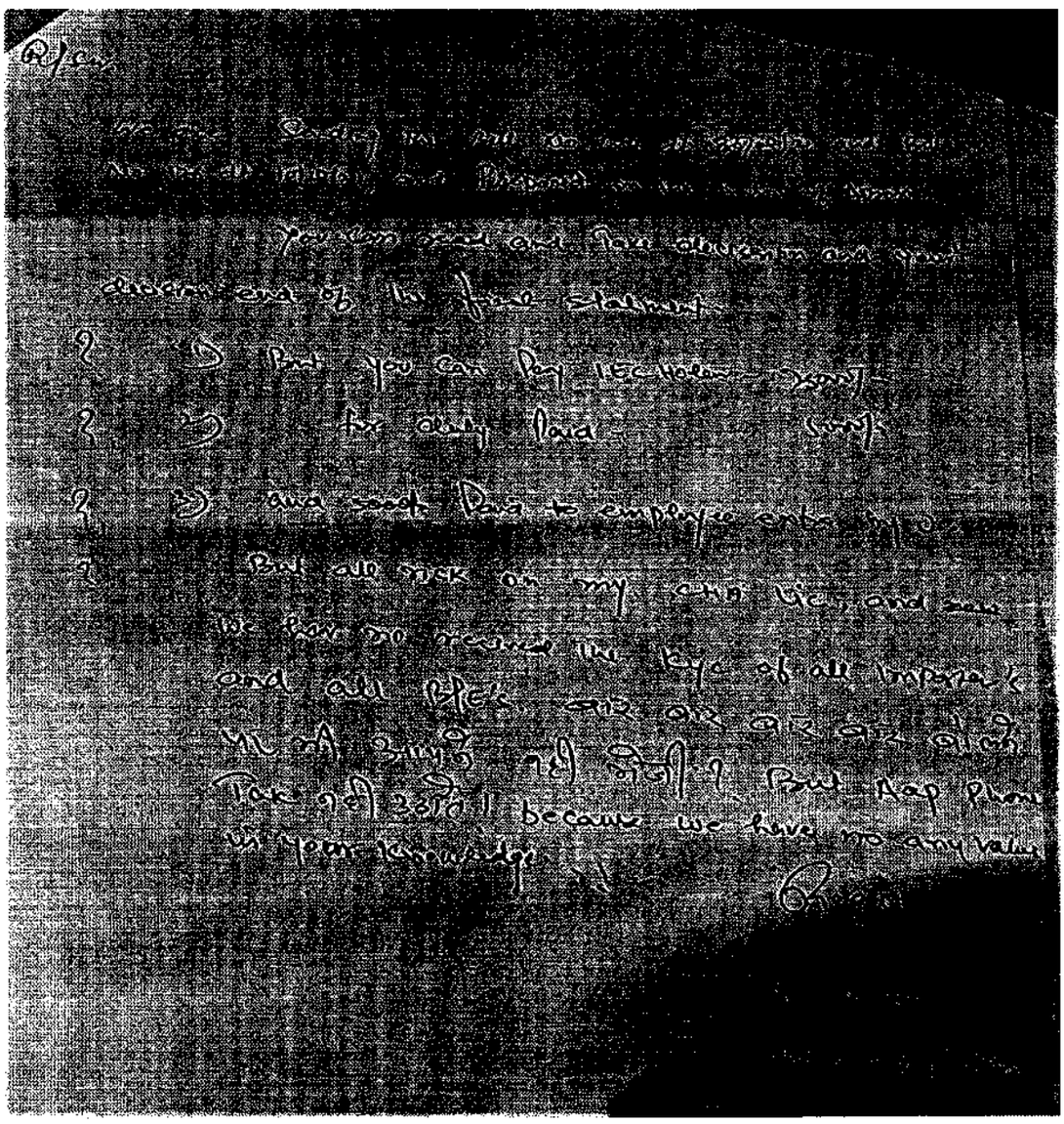
This message again points to the attempts of Shri Parshotam regarding manipulation of country of origin.

(iii) Ajay Sagar (employee/ associate of Shri Parshotam) sent a message on 20.04.2021 to Shri Parshotam which reads as:

"Still CHA has not replied, was saying if we clear it at Mundra than duty wud be 200% I told him we cannot clear at this value. He was saying will try to get this container at SEZ but will let u know after an hour, no reply has come so far.still waiting".

This message appeared to indicate that the syndicate of Shri Parshotam was very well aware of the fact that the Dry dates originating from Pakistan attracts 200% Customs duty but the syndicate was not willing to clear the goods at that rate and hence was involved in finding ways and means to evade Customs duty.

(iv) Shri V.S. Yadav of Sidhant logistics has sent a handwritten bill to Shri Parshotam which reads as under:



This bill clearly shown that the IECs used for the import of the dry dates were either fictitious or barrowed from others and a sum of Rs. 25000/- was

paid to them by Shri Parshotam through his agents. Further, the words "all risk on my CHA lic" highlights the illegality involved in importing the dry dates.

(iv) A Pakistani phone number +92 333 7761218 is saved with name "Shiraz Bhai CHA PK" in the mobile phone of Shri Parshotam. It appeared to be the contact number of Pakistani Custom House Agent who is handling clearance of dry dates from Pakistan to UAE, which are later exported to India with Country of Origin as Dubai.

(v) PREMSHIVOY@GMAIL.COM (i.e., Shri Prem) had sent a message to Shri Parshotam on 27.09.2021 which reads as:

"All Pkg stickers removed"

This message seemed to underline the fact that the Pakistani package stickers were removed before the export of the goods.It is pertinent to note that during the examination of dry dates of M/s. K.L. International at Pipavav, labels of Sargodha, Pakistan were found. Thus, this package stickers that Shri Prem is talking about, appeared to be nothing but removal of all the labels of Pakistan in the packing material.

(vi) Two chits of account of expenses pertaining to Bill of Entry No. 5651171 dated 30.09.2021 & 5499909 dated 18.09.2021 of M/s. K.L. International were found from the mobile of Shri Parshotam. In both the chits, label removing charges @ Rs. 2000/- per containers were mentioned. It appeared that these charges are nothing but labour expense incurred for removal of all the labels and marking which indicated that the goods were of Pakistani origin because there seems to be no other explanation for the removal of labels in the imported dry dates.

(vii) Sarker Special (i.e., Shri SouvikGuha Sarkar) had sent a message to Shri Parshotam on 05.07.2021 which reads as:

"Dry Dates
Dubai Expenses 2 Lac (@Rs. 7 per kg)
Duty 2 – 2.50 lac
Kolkata Clearing 1.30
Fassi 50,000
Transportation 1.50 to Delhi
Transportation 1.85 to Vashi and NhavaSheva
CFs 20,000

Miscellaneous 10,000

IEC 15,000

Total 8,60,000

According to me we can 1.25 to 1.50 lac profit per container as your rate given to me Rs

35per kg

Above message by the authorized representative of M/s. K.L. International to Shri Parshotam spoke about the expenses involved in the process of import of Dry dates through Kolkata port in India and to various destinations like Delhi, Mumbai etc. It is the job of CHA to get the goods cleared on the basis of the documents given by the importer. They have no role in expenses incurred at foreign country. This appears to prove the involvement of Shri Souvik Sarkar and Shri Parshotam in the import of Dry dates through M/s. K.L. International. Further, thevalue in the entry, 'Dubai expenses @ Rs.7 per Kg' seems to be very low for the goods worth of Rs.30-60per kg. Thisis only indicative of the fact that the goods have originated from some other place and Dubai is just a transit point. This also indicatedthat the syndicate of Shri Parshotam, Shri Souvik Guha Sarkar and their associates are actively involved in importing goods, including dry dates, from Pakistan via UAE.

All the above digital evidences appeared to point out the involvement of the syndicate in manipulating the country of origin of the goods imported by M/s. K.L. International in the past. There appeared no other reason that is apparent on the face of these evidences other than to evade the Customs duty at 200 % for the goods of Pakistan origin. Therefore, it appeared that the syndicate has meticulously planned to import Dry dates from Pakistan through Dubai by manipulating the Country of Origin of goods in order to evade Customs duty in India.

Master minds in the illegal imports of M/s. K.L. International:

35.2 Analysis of the email data of M/s. K.L. International (email id: klinternational2011@gmail.com)allegedlyshownthat Shri Parshotam and Shri Jatin Arora are the masterminds operating the importer firm, M/s. K.L. International. The following mail correspondencesretrieved from the e-mail id of M/s. K.L. International (email id: klinternational2011@gmail.com)which was sent by M/s. Alburaq Dates Factory, LLC, Dubai (email id: info@alburaqdates.com) to M/s. K.L. International (email id: klinternational2011@gmail.com) addressing Shri Jatin and Shri Parshotam to

be representing M/s. K.L. International in two different correspondenceare clear evidences for the same.

Gmail BHARTI BHARTI <klinternational2011@gmail.com>

Supply of UAE Dried Dates
1 message

info@alburaqdates.com <info@alburaqdates.com> Mon, Jun 14, 2021 at 4:21 PM
To: "klinternational2011@gmail.com" <klinternational2011@gmail.com>

Dear Mr. Jatin,

This is with reference to our subsequent discussion; please find attached herewith the entire set of documents for the shipment of 2X40 FCL of Dried Dates.

The documents are included of BL, COO, Phytosenitary Certificate, Fumigation Certificate, Packing List and Commercial Invoice.

Hope you will find the all documents satisfactory.

Regards,

Shahzeb Azad

Chairman/CEO

ALBURAQ DATES FACTORY LLC

+971 4 583 0303 | +971 56 754 3727

al buraq

info@alburaqdates.com

www.alburaqdates.com

#3312, Churchill Executive Tower,

Marasi Drive, Business Bay, Dubai, UAE

20210613114438.pdf

Gmail BHARTI BHARTI <klinternational2011@gmail.com>

Contact Us
1 message

info@alburaqdates.com <info@alburaqdates.com> Fri, Nov 19, 2021 at 10:42 PM
To: "klinternational2011@gmail.com" <klinternational2011@gmail.com>

Dear Mr. Purushottam,

We are trying to reach you since yesterday but unable to connect.

Please contact us ASAP and also update the status of our shipment.

Your immediate action is requested.

Shahzeb Azad

Chairman/CEO

ALBURAQ DATES FACTORY LLC

+971 4 583 0303 | +971 55 754 3727

info@alburaqdates.com

www.alburaqdates.com

#3312, Churchill Executive Tower,

Marasi Drive, Business Bay, Dubai, UAE

35.3 Mrs. Bharti, Proprietor of M/s. K.L. International in her statement had also admitted that Mr.Parshotam through Mr. Prem is the actual operators of M/s. K.L. International which was acknowledged by her husband, Mr. Prem who is also an employee of Mr. Parshotam. It appeared from the facts and evidences discussed above that Mrs. Bharti is only the namesake Proprietor of M/s. K.L. International and that the actual handlers of M/s. K.L. International are:

(1) Mr. Parshotam and

(2) Mr. Jatin Arora

It is pertinent to mention that none of the above persons are legally related to M/s. K.L. International which shows that the importer firm has been created in the name of Mrs. Bharti in order to avoid any scrutiny or suspicion by the department while Shri Parshotam and Shri Jatin Arora were operating from behind the scenes to illegally import Dry dates of Pakistan origin into India. Further, Mr. Jatin Arora and Shri Parshotam have not responded to the Summons/notices issued by the department for interrogation till date. During the search of the residence of Mr. Jatin Arora, certain travel documents retrieved clearly shown that he has been regularly travelling to Dubai in connection with the import of Dry Dates.

35.4 Further, M/s. K.L. International (email-klnternational2011@gmail.com) had sent one mail on 03-10-2021 to astrogulf.com (Shipping Agent at UAE) with a copy marked to Shahzeb@prolix.in and Wasif Ali <info@prolixtrade.com>, extract of which is reproduced below, under which M/s. K.L. International has confirmed their address and email, IEC, GST etc. in connection with 21 containers from Jebel Ali to NhavaSheva.

"..... **RE: Jebel Ali to NhavaSheva 21x40' HC**

BHARTI BHARTI <klinternational2011@gmail.com> Sun, Oct 3, 2021 at 3:19 PM
To: Khurram Rehman <khurram@astrogulf.com>
Cc: Jamilah <cs2@astrogulf.com>, ALI RAZA <operations@astrogulf.com>, RAFAQAT ALI <opsjafza@astrogulf.com>, SIRAJ KHOSO <opswh@astrogulf.com>, Imran Bhai <imran@astrogulf.com>, shahzeb@prolix.in, Wasif Ali <info@prolixtrade.com>

Dear All,
Reference to your email, I hereby declare confirm you that the other K L International does not belong to us and our Email id is klinternational2011@gmail.com and the proprietor name is Bharti and our registered office is as follows
KL INTERNATIONAL
A-256, Old No 55, Flat No A-4,3/F, Chatterpur Enclave Ph-1,
New Delhi, South West Delhi, Delhi, 110074
IEC: CQUPB4708A
GST: 07CQUPB4708A1Z2
Reference to the above mentioned details I hereby clear you confirm you to kindly process the further bookings.

Thanks & Regards
K L International
Team Accounts
[Quoted text hidden]

35.5 The above email from M/s. K.L. Internationalappeared to show that the owner of M/s. Alburaq Dates Factory LLC, Dubai (Supplier of Dry dates in the instant case), the owner of M/s. Prolix International, Dubai and the owner of fictitious firms in India (buyer of the Dry dates in the past consignments) are one and the same i.e., Shri MohammadShahzeb Azad. Therefore, it appeared that the above said firms are fake entities created by Shri Mohammad Shahzeb Azad in Dubai and India for importing Pakistani origin dry dates through UAE with likely fraudulent country of origin certificate. It is pertinent to mention here that the contact number and office addresses ofM/s. Prolix International Trading LLC and M/s. Alburaq Dates Factory LLC are one and the same.

35.6 As per the statements of Shri Parshotam and Shri Prem, Mr. Jatin Arora is looking after the sales of dry dates in India after importation thereof.However, as per the above evidences and travel history of Mr. Jatin Arora to Dubai during the same period, it appeared that he is one of the masterminds in this entire modus operandi planned to evade Customs duty by mis-declaring the Country of Origin of the Pakistan origin dry dates.

35.7 In view of the above, it appeared that Shri Parshotam and Shri Jatin Arora along with Shri Mohammad Shahzeb Azad have masterminded the entire modusof illegally importing dry dates of Pakistan origin by routing them through Dubai by way of creating fictitious firms at every level and fraudulently obtaining required documents from government agencies by submitting forged documents.

36. Other evidences:

Suspicious bank transaction:

On scrutiny of bank accounts M/s. K.L. International, New Delhi, it has been observed that MohammadShahzeb Azad, owner of M/s. Alburaq Dates

Factory LLC, Dubai (who is supplier of dry dates from UAE) has transferred money to M/s. K.L. International, New Delhi on several occasions. Sample copy of bank statement of account no.00000039337055926 of M/s. K.L. International with State Bank of India, Padam Singh Road Branch, is pasted below. Usually, the buyer of the goods (in this case M/s. K.L. International, New Delhi) is required to make payment to the supplier (i.e.AlburaqDates Factory LLC, Dubai). There is no reason for M/s. Alburaq Dry dates Factory LLC to pay M/s. K.L. International when there is no export of goods by the latter to the former.Therefore, these reverse transactions appeared to suggest that the syndicate itself is paying money to the importer firm for the Customs clearance and other charges.It also appeared to show that the overseas supplier himself is the buyer of the goods in India through the fictitious importer firm created for this purpose.

15-May-21 (15-May-2021)	TO TRANSFER INB	IG150621042851511067CKQ4771700 TRANSFER TO 32430948378 E-CUSTOMS POOLING A/C	2,02,651.00		8,29,279.01
15-May-21 (15-May-2021)	BY TRANSFER RTGS UTR NO: HDFCR52021051592680577	TRANSFER FROM 3199859044304 MOHAMMAD SHAHZEB AZAD		[redacted]	10,29,279.01
17-May-21 (17-May-2021)	TO TRANSFER INB NEFT UTR NO: SBIN221137402926 SANTOSH KUMAR	NEFT INB: CNABLSHYW9 TRANSFER TO 3197942044308 SANTOSH KUMAR	50,000.00		9,79,279.01
17-May-21 (17-May-2021)	TO TRANSFER INB NEFT UTR NO: SBIN221137436166 TRANSWORLD TERMINALS DADRI PVT LTD	NEFT INB: CNABLSJOG9 TRANSFER TO 3197942044308 TRANSWORLD TERMINALS DADRI PVT LTD	65,136.00		9,14,143.0
			14,900.00		8,94,243.0
(20-May-2021)	RTGS UTR NO: IBKLR62021052001509130 SHIVOY ENTERPRISES	[redacted] SHIVOY ENTERPRISES		[redacted]	5,10,183.01
20-May-21 (20-May-2021)	TO TRANSFER INB NEFT UTR NO: SBIN421140632631 PREM	NEFT INB: CNABLVGPD3 TRANSFER TO 3197942044308 PREM	79,600.00		4,30,583.01
21-May-21 (21-May-2021)	BY TRANSFER RTGS UTR NO: [redacted] MOHAMMAD SHAHZEB AZAD	TRANSFER FROM 3199859044300 MOHAMMAD SHAHZEB AZAD		[redacted]	19,30,583.01
21-May-21 (21-May-2021)	TO TRANSFER INB	IG210521054643904765CKQ4896530 TRANSFER TO 32430948378 E-CUSTOMS POOLING A/C	[redacted]		8,98,787.01
22-May-21 (22-May-2021)	BY TRANSFER RTGS UTR NO: IBKLR62021052201513040 SHIVOY ENTERPRISES	TRANSFER FROM 3199859044307 SHIVOY ENTERPRISES		[redacted]	14,70,787.01
22-May-21 (22-May-2021)	TO TRANSFER INB	IG220521112443437569CKQ5007149 TRANSFER TO 32430948378 E-CUSTOMS POOLING A/C	[redacted]		7,89,680.01
22-May-21 (22-May-2021)	TO TRANSFER INB NEFT UTR NO: SBIN521142820115 PREM CHAND AND COMPANY	NEFT INB: CNABLWDJN5 TRANSFER TO 3197942044308 PREM CHAND AND COMPANY	48,000.00		7,21,680.01
22-May-21 (22-May-2021)	TO TRANSFER INB NEFT UTR NO: SBIN521142826710 INDIAN CARGO CARRIERS	NEFT INB: CNABLWDYQ6 TRANSFER TO 3197942044308 INDIAN CARGO CARRIERS	50,000.00		6,71,680.01
22-May-21 (22-May-2021)	TO TRANSFER INB NEFT UTR NO: SBIN521142841903 STAR TRACK TERMINALS PVT LTD	NEFT INB: CNABLWEXM7 TRANSFER TO 3197942044308 STAR TRACK TERMINALS PVT LTD	55,295.00		6,16,385.01
22-May-21 (22-May-2021)	TO TRANSFER INB IMPS/P2A/114216780256/XXXXXXX553YESB	IMPS00023236881MOAEMKBDO4 TRANSFER TO 4597876182093	79,355.00		5,37,030.01
22-May-21 (22-May-2021)	BY TRANSFER RTGS UTR NO: HDFCR52021052203007318 MOHAMMAD SHAHZEB AZAD	TRANSFER FROM 3199859044300 MOHAMMAD SHAHZEB AZAD		[redacted]	15,37,030.01
23-May-21 (23-May-2021)	TO TRANSFER INB IMPS/P2A/114311548634/XXXXXXX416UTIB	IMPS00023293774MOAEMLSVB0 TRANSFER TO 4597882162095 NEFT INB: CNABLWQFW6	17,000.00		15,20,030.01
					14,70,030.01

36.2 Pakistani packing material:

During the examination of the imported goods vide panchnama dated 19.11.2021, packing bags having marks of "Sargodha Jute Mills Ltd., Pakistan" were found. Sample of the marks is pasted below:



The tags were removed in most of the bags or their contentwere erased in some bags which shown that the importer was trying to hide that the goods are of Pakistani Origin. It appeared that the label removal charges discussed in the digital evidences above pertain to the removal of the above said labels/stickers from the packing bags.

36.3 Non-compliance of FSSAI requirement:

Para 2.2.1(4) of Chapter 2 of the Food Safety and Standards (Packing and Labeling) Regulation, 2011 issued by FSSAI, Ministry of Health and Family Welfare, Government of India, stipulates that "Label in pre-packaged foods shall be applied in such a manner that they will not become separated from the container.".

However, during the course of examination, it was found that each bag in the consignments of dry dates was tagged with a slip containing the details of exporter and importer, which can be easily separated from such packaging of the bags. Hence, it appeared that the provisions of Food Safety and Standards (Packing and Labeling) Regulation, 2011 have been violated in the said imports.

36.4 Non-cooperation / Non-appearance by conspirators:

During the course of investigation, Shri Parshotam Prajapati,Shri Prem Bharti, Proprietor of M/s. K.L. International, Shri V. S. Yadav of

M/s. Sidhant Logistics (an associate of Shri Parshotam), Shri Shailendra Dhananjay Singh (An associate of Shri Parshotam who had cleared consignments of dry dates at Nhava Sheva), Shri Pankaj Tiwari, owner of the buyer firm, M/s. Lord Shiva & Co., Shri Jatin Arora (An associate of Shri Parshotam)and Shri Mohammad Shahzeb Azad were summoned to give documents and evidence.

As mentioned earlier, anumber of summons were issued to the stakeholders to give their statement and submit evidences regarding genuineness of country of origin certificates and other issues. However, none of them have bothered to appear and co-operate in the investigation. They were all giving fake excuses and reasons for avoiding personal appearances. All these absence and collective non-attendance/nonco-operation in the investigation itself suggested that all of them are hand in gloves in the entire conspiracy and mis-declaration in country of origin of the import goods. Ifcertificates of origin were genuine and they have nothing to hide, then importer and their associates would have come to join investigation with clear hands. Their failure to join investigation and escape from the inquiry itself appeared to prove their mala-fide intentions and fraudulent claim of country of origin in import of dry dates.

CONTRAVENTIONS AND CHARGES

37.1 Wilful misclassification of the imported goods:

As per Notification No.05/2019-Cus dated 16.02.2019, all the goods originating in or exported from the Islamic Republic of Pakistan are to be classified under the CTH 98060000 and attract Customs Duty of 200%. Whereas from the evidences discussed above, it was obvious that the imported goods were of Pakistani origin and the importer and its stakeholders were very well aware of the said fact. Both the Authorized representative of the importer and the Customs Broker have admitted to this fact in their respective statements recorded under Section 108 of the Customs Act, 1962. The documentary, digital and other evidences also show that the syndicate has entered into a conspiracy to manipulate the country of origin and misclassify the goods under CTH 08041030 in order to evade higher Customs duty at 200%.

Therefore, it appeared that the importer has willfully and intentionally misclassified the imported goods under CTH 08041030 attracting Customs duty at 20% instead of its correct classification of CTH 98060000 attracting Customs duty at 200% in the Bills of Entry filed with the department

with a clear intention to evade Customs Duty and thereby violating the provisions of the Customs Act, 1962.

37.2 Wilful mis-statement and suppression of facts:

All the above evidences collected during the investigation and discussed in the forgoing paras clearly shown that the importer and its syndicate knew very well that the imported goods i.e., Dry dates are of Pakistan origin. As discussed above, the Authorized representative of the importer and the Customs Broker have admitted to the fact that Shri Parshotam has clearly told them that the goods were of Pakistan origin, but he would arrange for the country of origin certificate from UAE which is verifiable online. Further, Mrs. Bharti, proprietor of the importer herself admitted that M/s. K.L. International was created in her name by her husband Shri Prem and his employer, Shri Parshotam and it was them (Shri Parshotam and Shri Prem) who were handling the day-to-day functions of the firm. Shri Parshotam himself is a Customs Broker and CHA by profession and therefore by no stretch of imagination, such mis-declaration and mis-statement can be regarded as without the will and intention, especially when such mis-declaration led to wrong benefit of duty to them.

Despite knowing the facts about the origin of goods, it appeared that the importer and its syndicate have entered into a conspiracy to suppress the actual country of origin of the imported goods and have willfully mis-stated the facts in respect of the classification and the Country of Origin of goods in the Customs documents submitted to the department with an intention to evade Customs duty.

Since the impugned goods are of Pakistani origin, the same are required to be classified under CTH 98060000 and corresponding Customs duty at 200% is required to be recovered from M/s. K. L. International. Therefore, total Customs duty of Rs.14,59,54,244/-(Rupees fourteen crore,fifty nine lakh,fifty four thousand,two hundred andforty four only) as per the Annexure-A attached to this Show Cause Notice, is required to be recovered from the importer under the provisions of Section 28 (4) of the Customs Act, 1962, along with interest under Section 28AA of the Customs Act, 1962.The relevant provisions of the said sections are as under:

***Section 28 (4)** of Customs Act, 1962 - Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded.—*

(1).....

(2).....

(3).....

(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) anywillful 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.

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 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.

(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.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

Further, since the duty in the instant case has not been paid on account of suppression of the facts and willful mis-statement, M/s. K.L. International is liable to penalty under Section 114A of the Customs Act 1962 for the goods imported by them. The relevant legal provisions are as under:

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], and twenty-five per cent 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

Non-compliance of FSSAI Standards:

Para 2.2.1(4) of Chapter 2 of the Food Safety and Standards (Packing and Labeling) Regulation, 2011 issued by FSSAI, Ministry of Health and Family Welfare, Government of India, stipulates that;

"Label in pre-packaged foods shall be applied in such a manner that they will not become separated from the container.".

During the course of examination, it was found that each bag in the consignments of dry dates was tagged with a slip containing the details of exporter and importer, which can be easily separated from such packaging of the bags. Hence, it appeared that the importer has violated the provisions of Food Safety and Standards (Packing and Labeling) Regulation, 2011 in respect of the said imported goods. Regulation 6 the Food Safety and Standards (Import) Regulations, 2011 reads as under:

Compliance with standards for packaging and labeling .-

(1) No Food Importer shall import articles of food that is not transported, or stored in optimal storage conditions of temperature and hygiene, packaged and labeled as per the regulations applicable to that particular article of food.

(2) Any consignment of food or multiple foods or food falling under different categories packed in a single container or carton or pallet or skid, shall be packed in such a manner that the Authorized Officer has easy access to all of them for inspection and sampling.

(3) If there is no proper stuffing list in respect of article of food, the Authorized Officer shall direct the customs officer to issue an order for de-stuffing the container and facilitate the de-stuffing, in order to facilitate inspection and sampling.

(4) In case of imported packaged food consignments, the following special dispensation on labeling shall be allowed for the rectifiable labeling deficiencies at the custom bound warehouse by affixing a single non detachable sticker or by any other non detachable method next to the principle display panel namely:—

(a) name and address of the importer;

(b) Food Safety and Standards Authority of India's Logo and license number,

(c) Non-Veg or Veg Logo

(d) Category or sub category along with generic name, nature and composition forproprietary food

(5).....

Since the imported goods were not in confirmation of the standards under the Food Safety and Standards (Packing and Labeling) Regulation, 2011 and Standards (Import) Regulations, 2011, the same are liable to confiscation under the provisions of Section 111(o) of the Customs Act, 1962.

37.4 Improper import:

From the enquiry conducted, as discussed in the foregoing paras, it appeared that the importer, by way of wilful mis-statement, mis-representation and suppression of facts in respect of the country of origin of goods and classification thereof, imported the subject goods under the CTH 08041030 attracting Customs duty at 20% instead of its correct CTH 98060000 attracting Customs duty at 200% with intent to avail fraudulent benefit of lower rate of duty. It is a settled law position that when an importer is claiming a duty benefit based on the country of origin, it is the responsibility of the importer to exercise reasonable care to the accuracy and truthfulness of the information supplied and the preferential claim. Therefore, the burden of proof naturally falls on the importer to prove the country of origin of goods. However, none of the stakeholders had appeared before the investigating agency to prove that the imported goods originated from UAE as declared. The only document that they have submitted so far is the Country of Origin certificate which is not at all sufficient when such claim led to huge duty benefit and presenceof handful of evidences discussed above showing manipulation and mis-declaration.

In view of the above, it appeared that the said import of goods by mis-declaring the actual country of origin of goods and classification of goods, squarely falls within the ambit of *'illegal import'* as defined in section 11(A)(a) of the Customs Act, 1962 in as much as the same was done in contravention of various provisions of the Customs Act, 1962, the Food Safety and Standards (Packing and Labeling) Regulation, 2011 and the Food Safety and Standards (Import) Regulations, 2011.

Therefore, the said imported goods appeared to be liable for confiscation under the provisions of Section 111(m) & (o) of the Customs Act, 1962. Further, the acts and omissions on the part of M/s. K. L. International and others have rendered themselves liable to penalty under Section 112(a)/ 112(b) of the Customs Act, 1962. The relevant provisions of the said sections are as under:



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

(a) ...

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

(n) ...

(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;

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,

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

shall be liable, -

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

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

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

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

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

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

37.5 Use of false and incorrect material – Fictitious firms and forged documents:

The evidences collected during the investigation led to the conclusion that the importer and its syndicate have created lot of fictitious firms right from the overseas supplier to the domestic buyer and have also deployed lot of forged documents for the purpose of obtaining IEC, GSTN, COO certificate etc. It was found from the investigation that the importer firm, M/s. K.L. International, New Delhi is not in existence at the registered premises which is a residential flat occupied one Shri Devanshu Singh. The proprietor of the importer has admitted that she is not aware of the day-to-day functioning of the firm. Further, it is also revealed that some other firm by name M/s. Prolix International is functioning at the office premises of the overseas supplier, M/s. Alburaq Dates Factory LLC, Dubai. During the investigation, it turned out that the major buyers like Lord Shiva & Company of the imported goods from the importer are existing only on record. The importer has submitted documents and declarations based on these fictitious firms and forged documents to the Customs department for the purpose of the clearance of the imported goods. Therefore, it appeared that the importer and its syndicate have knowingly and intentionally made, used declarations and documents which are false and incorrect during the import transaction under Customs Act, 1962 with the department with an intention to evade Customs duty thereby rendering themselves liable for penalty under Section 114AA of the Customs Act, 1962. The relevant provision of the said section is as under:

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.

Willful Mis-declaration:

Vide Finance Act, 2011, "Self-Assessment" has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, country of origin, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill.

However, it appeared that M/s. K.L. International have deliberately contravened the above said provisions with a malafide intention to avail lower rate of duty by mis-declaring country of origin and mis-classifying their imported goods. The relevant provisions of the said sections are as under:

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.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

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].

(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.

Since, M/s. K.L. International have violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but

no express penalty is elsewhere provided for such contravention or failure, they shall be liable to penalty under Section 117 of Customs Act, 1962 which reads as under:

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

38. Personal penalty:

38.1 Shri Parshotam, actual operator of M/s. K.L. International:

It appeared that Shri Parshotam Prajapati, son of Shri Ram Saroop is one of the masterminds behind import of Pakistani origin dry dates by arranging fictitious / dummy entities like M/s. K. L. International. From the documents found in his mobile phone & computer, it transpired that he was very well aware that the imported goods i.e., dry dates which are imported from UAE, under the certificate of origin issued by Dubai/ Ajman Chamber of Commerce, UAE, are actually of Pakistani origin. Further, several documentary and digital evidences as discussed above clearly indicated that he was very well aware that the dry dates which are imported from UAE are actually of Pakistani origin. From the statement of the Customs Broker, Shri Rajveer Singh, it is also clear that Shri Parshotam has offered clearing charges (Rs. 80,000/- per container) that is 20 times the regular charge (Rs. 3000/- to Rs. 4000/- per container) for clearance of the imported goods. Despite knowing the actual origin (i.e. Pakistani origin) of dry dates, Shri Parshotam, along with his other gang members entered into a conspiracy to import Pakistani origin dry dates by routing the same from UAE, by fraudulently obtaining certificates of origin from Dubai / Ajman Chamber of Commerce, UAE. When asked about the Pakistani stickers / labels that were found during the examination, Shri Rajveer Singh and Shri Souvik Guha Sarkar have confessed, in their statements given before DRI officers and Customs officers, at different time and place and before different officers that the goods were of Pakistani origin. Both of them have admitted that the real mastermind behind import of dry dates was Shri Parshotam. Thus, the gang, under leadership of Shri Parshotam imported dry dates of Pakistani origin and mis-declared the country of origin,where Bills of Entry have been filed. Once they came to know about the investigation being carried out, they refrained from filing Bills of Entry in respect of remaining

consignments and all of them collectively demonstrated non-cooperation in the investigation.

Further, it is on the face of the record that this is not the first time that Shri Parshotam is involved in such illegal activity for duping the department. Past cases and punishments under the Customs Act, 1962 have not stopped him from doing such illegal activities of smuggling and evasion of duty. Few of the cases listed below clearly show that Shri Parshotam is a habitual offender.

(1) The Principal Commissioner of Customs, ICD, Tuglakhabad vide OIO NO.06/2021/MKS./Pr.COMMR./ICD-IMP/TKD dated 22-02-2021 issued from F.No.VIII/ICD/TKD/6/Adj./Imp./Commr/04/2017 (DIN-20210274NE000000E1F8) imposed a penalty of Rs.15 lakhs on Shri Parshotam for smuggling of foreign origin cigarettes through concealment in HDPE granules.

(2) CHA licence of M/s. Shivoy Enterprise (Shri Parshotam) issued by Commissioner of Customs, Delhi has been suspended by the Commissioner of Customs, Delhi vide an order dated 26.03.2013, under Regulation 19(1) of CBLR, 2013 for irregularities committed by CHA in ICD, Tughlakabad.

From the above, it appeared that Shri Parshotam who is a habitual offender masterminded the entire conspiracy of fraudulent import of dry dates of Pakistani origin by creating fictitious / dummy entities along with his syndicate members. The acts and omissions on the part of Shri Parshotam rendered the imported goods liable to confiscation under section 111(m) &111(o) of the Customs Act, 1962. Therefore, he has rendered himself liable to penalty under Section 112(a) /112(b) of the Customs Act, 1962. He has also rendered himself liable to penalty under Section 114AA of the Customs Act, 1962 in as much as he knowingly & intentionally created, or arranged to be created, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority, for assessment at lower rate of duty and cause revenue loss to the exchequer.

38.2 Shri Shahzeb Azad, Authorized Signatory of fictitious overseas firm, M/s. Alburaq Dates Factory LLC, Dubai

Majority of the imports of M/s. K.L. International are from M/s. Alburaq Dates Factory, LLC, Dubai. However, from the documentary evidences it appeared that one company in the name of M/s. Prolix International Trading LLC is functioning at the same premises. On further verification, it was found that M/s. Prolix International is owned by Mr.Mohammad Shahzeb Azad who had created various fictitious firms as discussed above in India for receiving the illegally imported dry dates of Pakistani origin.On scrutiny of bank accounts M/s. K.L. International, New Delhi, it was found that Mohammad Shahzeb Azad had transferred money to M/s. K.L. International, New Delhi on several occasions. In genuine import transaction, the buyer of the goods in India i.e. M/s. K.L. International was required to make payment to the supplier i.e. Alburaq Dates Factory LLC, Dubai. However, these reverse transactions clearly suggested that the entire import transaction is manipulated.

Further, it appeared that he had created fictitious firms both at the supplier side (in Dubai) and the receiver side (in India). Other evidences as discussed above also led to the conclusion that ShriMohammad Shahzeb is one of the masterminds in the entire scheme of this illegal import of dry dates from Pakistan. Thus,it appeared that Shri Mohammad Shahzeb Azad, Authorized Signatory of M/s. Alburaq Dates Factory, LLC, Dubai (the supplier firm) is actively involved in sourcing Pakistani origin dry dates into India through UAE, in association with Shri Jatin Arora and Shri Parshotam with an intention to evade the Customs duty. His acts and omissions rendered the imported goodsliable to confiscationunder section 111(m) & (o) of the Customs Act, 1962. Therefore, he has rendered himself liable to penalty under Section 112(a) /112(b) of the Customs Act, 1962. He has also rendered himself liable to penalty under Section 114AA of the Customs Act, 1962 in as much as he knowingly & intentionally created, or arranged to be created, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority.

38.3 Shri Jatin Arora, another operator of M/s. K. L. International:

From the evidences as discussed above, it appeared that Shri Jatin Arora is also one of the masterminds of the entire conspiracy. This is evident from the statements of Shri Parshotam and Shri Souvik Guha Sarkar wherein they have mentioned that Shri Jatin Arora acted as the indenting agent for the sale of the imported dry dates. The same is also established from the travel history of Shri Jatin Arora during the relevant period. One of the mail communications from the overseas supplier to M/s. K.L. International mail id

addressing Shri Jatin clearly shows that Shri Jatin Arora is part and parcel of entire chain of firms especially, M/s. K.L. International, involved in the illegal import of dry dates from Pakistan. Therefore, it appeared that Shri Jatin Arora is actively involved in sourcing Pakistani origin dry dates in association with Shri Shahzeb Azad and Shri Parshotam with fabricated imports documents and country of origin certificate. His acts and omissions rendered the imported goods liable to confiscation under section 111(m) &111(o) of the Customs Act, 1962. Therefore, he has rendered himself liable to penalty under Section 112(a) /112(b) of the Customs Act, 1962. He has also rendered himself liable to penalty under Section 114AA of the Customs Act, 1962 in as much as he knowingly & intentionally created, or arranged to be created, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority.

38.4 Mrs. Bharti, Proprietor of M/s. K.L. International:

It appeared from the forgoing paras that the importer, M/s. K. L. International, under the proprietorship of Mrs. Bharti, knowingly and intentionally allowed Shri Parshotam and his syndicate to import such dry dates of Pakistani origin, under their IEC. They also allowed Shri Parshotam and others to operate bank account, mail id of M/s. K. L. International, import and clear the goods in their name and also allowed to sell the imported goods in their name. These acts and omissions of M/s. K. L. International and its proprietor Mrs. Bharti rendered the imported goods liable to confiscation. Therefore, they have rendered themselves liable to penalty under Section 112(a) /112(b) of the Customs Act, 1962. M/s. K. L. International also submitted the fake declaration regarding ownership and import of dry dates by them with the Customs department. Therefore, M/s. K. L. International have also rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

38.5 Shri Prem, husband of Mrs. Bharti:

It appeared from the investigation that Shri Prem (husband of Mrs. Bharti, proprietor of M/s. K. L. International) entered into conspiracy with Shri Parshotam to create a firm in the name of his wife for purpose of importing dry dates of Pakistan origin through UAE. He has willingly arranged for creation of a fictitious proprietorship concern in the name of his wife. He knowingly and intentionally agreed to import dry dates in the name of a proprietorship concern M/s. K. L. International. His acts and omissions rendered the imported goods

liable to confiscation. Therefore, he has rendered himself liable to penalty under Section 112(a) /112(b) and 114AA of the Customs Act, 1962.

38.6 Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International:

During the investigation, Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International and freelance clearing agent has admitted that he was aware that the imported goods were of Pakistan origin and that he functioned under the directions of Shri Parshotam for clearance of the goods. He also travelled to Pipavav along with Shri Parshotam to meet the Customs Broker, Shri Rajveer Singh in order to discuss about the clearance of such illegally imported dry dates from Pakistan. He has also entered into conspiracy with Shri Parshotam to create a fictitious firm, M/s. Ganpati Traders under the proprietorship of his father. He also admitted that he was planning to import dry dates in his firm M/s. Ganpati Traders, through Shri Parshotam. It is noteworthy to mention that Shri Souvik Guha Sarkar is also a habitual offender. In the past, he was penalized in a case of smuggling of foreign origin cigarettes along with Shri Parshotam. The Principal Commissioner of Customs, ICD, Tuglakhabad vide OIO NO.06/2021/MKS./Pr.COMMR./ICD-IMP/TKD dated 22-02-2021 imposed a penalty of Rs.5 lakhs on Shri S. Guha Sarkar for smuggling of foreign origin cigarettes through concealment in HDPE granules. The Customs Broker licence of S.Guha Sarkar & Co. was canceled for various irregularities made in performance of their role as Customs Broker.

Therefore, it appeared that Shri Souvik Guha Sarkar, as an authorized representative of M/s. K.L. International has willingly and intentionally played an active role in the illegal import of dry dates from Pakistan by suppressing the country of origin and misclassifying the goods. His acts and omissions have rendered the imported goods liable to confiscation. Therefore, he has rendered himself liable to penalty under Section 112(a)/112(b) and 114AA of the Customs Act, 1962.

38.7 Shri Rajveer Singh of M/s. Eskay Logistics (Customs Broker of M/s. K.L. International):

Shri Rajveer Singh, M/s. Eskay Logistics, filed Bills of EntryNo.s 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 on behalf of M/s. K. L. International. He failed to verify credentials and KYC of the

importer. During his statement under Section 108 of the Customs Act, 1962, Shri Rajveer Sigh has admitted that Shri Parshotam and Shri Souvik Guha Sarkar had informed him that the dry dates were of Pakistani origin. He further admitted that generally, he charges around Rs. 3000 to Rs. 5000 per container as Service charge whereas considering the risk involved in the instant import in facilitating evasion of duty by mis-declaring country of origin as UAE instead of Pakistan, he had negotiated for Rs.80,000/- per container to M/s. K.L. International. He said that these things were discussed in detail when Shri Parshotam and Shri Souvik Sarkar met him personally in the month of October 2021 in Pipavav. He further added that Shri Parshotam, during their meeting said that though the goods are of Pakistani origin, he would manage the Country-of-Origin certificate from Dubai.

Therefore, it appeared that Shri Rajveer Singh willingly and knowingly undertook clearing of the imported goods under fraudulently obtained Certificate of Origin and thereby assisted and abated M/s. K. L. International, Shri Parshotam and others in clearance of the goods and evasion of duty. His acts and omissions rendered the imported goods liable to confiscation. Therefore, he has rendered himself liable to penalty under Section 112(a) /112(b) of the Customs Act, 1962. He has also rendered himself liable to penalty under Section 114AA of the Customs Act, 1962 in as much as he knowingly & intentionally created, or arranged to be created, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority. Further, he is also liable to punitive actions under Customs Broker Licensing Regulations, 2013 for violating the provisions prescribed there under.

38.8 Shri Shailendra Dhananjay Singh and Shri Vijay S. Yadav of M/s. Sidhant LogisticsCHA Services Pvt. Ltd.:

Sidhant Logistics (Customs Broker No.AAUPY4535CCH001) filed Bills of Entry No.6277099 dated 16-11-2021 and B/E No.692689 dated 03-01-2022 at JNCH, Nhava Sheva on behalf of M/s. K.L. International. Shri Shailendra Dhananjay Singh and Shri Vijay S. Yadav who are looking after the clearance of goods in respect of M/s. K.L. International have failed to verify credentials and KYC of the importer. They, in association with Shri Parshotam were willingly involved in clearance of consignments of Pakistani origin dry dates at Nhava Sheva. During the investigation, a handwritten slip by V. S. Yadav, Sidhant Logistics to Shri Parshotam was retrieved from the mobile phone of Shri Parshotam wherein he has clearly expressed about the risk involved for

his firm in clearing the dry dates. It appeared that despite knowing that the dry dates were of Pakistani origin, they undertook willingly to clear the imported goods under fraudulently obtained Certificate of Origin. Thus, they knowingly and willingly assisted and abated M/s. K. L. International, Shri Parshotam and others in clearance of the goods and in evasion of duty. Despite repeated summons, he did not appear to facilitate investigation. Their acts and omissions rendered the imported goods liable to confiscation. Therefore, they have rendered themselves liable to penalty under Section 112(a) and/or (b) of the Customs Act, 1962. They havealso rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962 in as much as they knowingly & intentionally created, or arranged to be created, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority. Further, they are also liable for punitive actions under Customs Broker Licensing Regulations, 2013 for violating the provisions prescribed there under.

38.9 Shri Pankaj Tiwari, Proprietor of M/s. Lord Shiva & Co., Gurgaon:

The Dry dates imported by M/s. K.L. International have been supplied in India predominately to M/s Lord Shiva & Co. owned by Shri Pankaj Kumar Tiwari. On physical verification of premise of M/s. Lord Shiva & Co., located at upper Ground Floor, H-235, Sushant Arcade, Gurgaon, Haryana-122009, it was found that the shop was closed since long and was not in function. Shri Pankaj Kumar Tiwari did not respond to any of the summons issued by the department. Summons issued were returned by the postal authority with remarks, "Left" and "Door locked".

It appeared from the forgoing paras that the buyer, M/s Lord Shiva & Company, Gurugram under the proprietorship of Shri Pankaj Kumar Tiwari, knowingly and intentionally allowed Shri Parshotam and his syndicate to import and abated in disposing such illegally imported dry dates in the market. It appeared that Shri Pankaj Kumar Tiwari has aided the syndicate by creating a fictitious firm in his name for the purpose of diverting the illegally imported dry dates further in the market. These acts and omissions of M/s Lord Shiva & Company, Gurugram and its proprietor Shri Pankaj Kumar Tiwari rendered the imported goods liable to confiscation. Therefore, they have rendered themselves liable to penalty under Section 112(a) and/or 112(b) of the Customs Act, 1962. Therefore, Shri Pankaj Kumar Tiwari have also rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

CONFISCATION OF THE IMPORT GOODS

39. As discussed above, the imported goods are not confirming to the standards specified inthe Food Safety and Standards (Packing and Labeling) Regulation, 2011 and Standards (Import) Regulations, 2011. Further, the origin of the goods has been admittedly and knowingly mis-declared as UAE instead of correct of origin i.e., Pakistan. These acts and omissions have rendered the imported goods having total value of Rs.5,25,77,177/-(Rupees five crore, twenty five lakh, seventy seven thousand, one hundred and seventy seven only)liable to confiscation under the provisions of Section 111(m) & 111(o) of the Customs Act, 1962 as discussed above. The said goods were seized vide Seizure memos dated 09.12.2021, 24.01.2022 and 21-09-2022

PROVISIONAL RELEASE OF THE SEIZED GOODS

40. The importer vide their letter dated 10-02-2022 requested for provisional release of the seized goods. In response to the above, Deputy Commissioner, CH, Pipavav vide their letter F.No. VIII/10-09/Misc-Prev.2020-21/1939 dated 22-03-2022 conveyed to the importer that the Principal Commissioner, Customs (P), Jamnagar has acceded to their request for provisional release of the goods upon execution of bond for full value of seized goods and submitted bank guarantee or cash deposit of Rs.12 Crore. The importer vide their letter dated 12-09-2022 replied to the Deputy Commissioner, CH, Pipavav that aggrieved by the above communication dated 22-03-2022 they have filed an appeal with the CESTAT, Ahmedabad.

IMPORT AT MULTIPLE LOCATION AND COMMON ADJUDICATING AUTHORITY

41. The illegal imports of the dry dates of Pakistan origin through UAE has happened at multiple ports as shown in the table below:

BE No.	BE Dt	Port	Qty (in Kg)	Assessable Value (in Rs)	Jurisdictional Customs Authorities
6124787	04/11/2021	Pipavav	138050	4,08,17,507	Principal Commissioner of Customs (Prev.), Jamnagar
6124890	04/11/2021	Pipavav	330500		
6124557	04/11/2021	Pipavav	250250		
6124677	04/11/2021	Pipavav	278250		
6125519	04/11/2021	Pipavav	275000		

Not filed	Not filed	Pipavav	27500	8,82,419	
6277099	16/11/2021	Nhava Sheva	139250	1,08,77,251	Principal Commissioner of Customs, NS-V, JNCH, Nhava Sheva
6926789	03/01/2022	Nhava Sheva	195590		

42. As per Section 110AA of the Customs Act, 1962, inserted vide Finance Act, 2022 read with Notification No.28/2022-Customs (NT) dated 31.03.2022, the proper officer for exercising the powers under Section 28 and 28AAA of the Customs Act, 1962 in the case of multiple jurisdictions would be the Principal Commissioner/ Commissioner of Customs in the jurisdiction having the highest amount of duty. Hence, the Show Cause Notice to be made answerable to the Principal Commissioner/ Commissioner of Customs (Preventive), having his office situated at Room No. 501, "Seema Shulk Bhavan", Rajkot-Jamnagar Highway, Near Victoria Bridge, Jamnagar, Gujarat – Pin. 361001.

43. Accordingly, a Show Cause Notice No. PC-03/2022-23 dated 04.11.2022 was issued to M/s. K. L. International, A-256, Old No. 55, Flat No. A-4, 3F, Chhaterpur Enclave – I, New Delhi 110074 (IEC No. CQUPB4708A) whereby it was called upon to show cause to the Principal Commissioner/ Commissioner of Customs (Preventive), having his office situated at Room No. 501, "Seema Shulk Bhavan", Rajkot-Jamnagar Highway, Near Victoria Bridge, Jamnagar, Gujarat – Pin. 361001, as to why:

i. The declared classification under CTH 08041020 in respect of consignment of 12,72,050KgDry Dates imported at Pipavavvide Bills of Entry No. 6124787, 6124890, 6124557, 6124677 and 6125519 all dated 04.11.2021should not be rejected;

ii. The consignment of 12,72,050 Kg Dry Dates imported at Pipavav vide Bills of Entry No. 6124787, 6124890, 6124557, 6124677 and 6125519 all dated 04.11.2021 should not be classified under CTH 98060000 as the goods have been found to be of Pakistani origin;

iii. The consignment of 27,500 Kg of Dry Dates, attempted to be imported by M/s. K. L. International vide Bill of Lading No.214702062 (Container no.MWCU5245763)for which Bill of Entry has not been filed, should not be classified under CTH 98060000 as the goods have been found to be of Pakistani origin;

iv. The declared classification under CTH 08041020 in respect of consignment of 3,34,840 Kg Dry Dates imported at Nhava Sheva vide Bills of Entry No. 6277099/16.11.2021 & 6926789/03.01.2022 should not be rejected;

v. The consignment of 3,34,840 Kg Dry Dates imported at Nhava Sheva vide Bills of Entry No. 6277099/16.11.2021 & 6926789/03.01.2022 should not be classified under CTH 98060000 as the goods have been found to be of Pakistani origin;

vi. Total Customs Duty amounting to Rs.14,59,54,244/- (Rupees fourteen crore, fifty ninelakh,fifty four thousand,twohundred and forty fouronly) in respect of above consignments of total 16,34,390 Kgs. of Dry Dates, as calculated in Annexure-A attached to this show cause notice should not be recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962;

vii. The consignments of 16,34,390 Kg Dry Dates imported at Pipavav & Nhava Sheva, as detailed in Annexure-A attached to this show cause notice, having total assessable value of Rs.5,25,77,177/- (Rupees Five Crore Twentyfive Lakh Seventy Seven Thousand One Hundred Seventy Seven Only) should not be confiscated under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962;

viii. Penalty under Section 112(a) / 112(b) or 114A of the Customs Act, 1962, should not be imposed upon them;

ix. Penalty under Section 114AA of the Customs Act, 1962, should not be imposed upon them.

44. Further, the following persons were called upon to show cause to the Principal Commissioner/ Commissioner of Customs (Preventive), having his office situated at Room No. 501, "Seema Shulk Bhavan", Rajkot-Jamnagar Highway, Near Victoria Bridge, Jamnagar, Gujarat – Pin. 361001, as to why penalties under Section 112(a)/ 112(b) and Section 114AA of the Customs Act, 1962, should not be imposed on them.

1. Shri Parshotam Prajapatiof M/s. Shivoy Enterprise
2. Shri Mohammad Shahzeb Azad, Authorized Signatory of M/s .Alburaq Dates Factory, LLC, Dubai
3. Shri Jatin Arora, Associate of Shri Parshotam
4. Mrs. Bharti, Proprietor of M/s. K.L. International, New Delhi
5. Shri Prem, Husband of Mrs. Bharti
6. Shri Souvik Guha Sarkar, Authorized representative of K.L. International

7. Shri Rajveer Singh, Customs Broker, Eskay Logistics at Pipavav port
8. Shri Pankaj Tiwari, Proprietor of the buyer firm, M/s. Lord Shiva & Co.
9. Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics CHA Services Pvt. Ltd.
10. Shri V.S. Yadav of M/s. Sidhant Logistics CHA Services Pvt. Ltd.

45. After considering the written and oral submissions made by the Noticees, the Show Cause Notice was adjudicated vide Order-in-Original No. JAM-CUSTM-PRV-COM-003-23-24 dated 18.08.2023 wherein the adjudicating authority had :-

i. Rejected the declared classification under CTH 08041020 in respect of consignment of **12,72,050 Kg** Dry Dates imported by M/s. K.L. International at Pipavav vide Bills of Entry No. 6124787, 6124890, 6124557, 6124677 and 6125519 all dated 04.11.2021.

ii. Ordered that the consignment of **12,72,050 Kg** Dry Dates imported by M/s. K.L. International at Pipavav vide Bills of Entry No. 6124787, 6124890, 6124557, 6124677 and 6125519 all dated 04.11.2021 should be classified under **CTH 98060000** as the goods have been found to be of Pakistani origin, and the Bills of Entry be re-assessed accordingly.

iii. Ordered that the consignment of **27,500 Kg** of Dry Dates, attempted to be imported by M/s. K. L. International vide Bill of Lading No.214702062 (Container No. MWCU5245763) for which Bill of Entry has not been filed, should be classified under CTH 98060000 as the goods have been found to be of Pakistani origin.

iv. Rejected the declared classification under CTH 08041020 in respect of consignment of **3,34,840 Kg** Dry Dates imported by M/s. K.L. International at Nhava Sheva vide Bills of Entry No. 6277099/16.11.2021 and 6926789/03.01.2022.

v. Ordered that the consignment of **3,34,840 Kg** Dry Dates imported by M/s. K.L. International at Nhava Sheva vide Bills of Entry No. 6277099/16.11.2021 and 6926789/03.01.2022 should be classified under **CTH 98060000** as the goods have been found to be of Pakistani origin, and the Bills of Entry be re-assessed accordingly.

vi. Confirmed the demand of the total Customs Duty amounting to **Rs. 14,59,54,244/- (Rupees fourteen crore, fifty nine lakh, fifty four thousand, two hundred and forty four only)** not levied and not paid / short levied and short paid in respect of above consignments of total **16,34,390 Kg** of Dry Dates, as calculated in Annexure-A attached to the show cause notice, on the importer, M/s. K.L. International in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962 Ordered to appropriate the amount of customs duty and interest, if any, already paid by M/s. K.L. International in connection with clearance of provisionally released goods at Pipavav Port for which Bills of Entry were filed, towards recovery of the customs duty and interest respectively confirmed and demanded, and also ordered that the balance amount should be paid by / recovered from M/s. K.L. International forthwith.

vii. Confiscated the consignments of **16,34,390 Kg** Dry Dates imported at Pipavav and Nhava Sheva, as detailed in Annexure-A attached to the show cause notice, having total assessable value of **Rs.5,25,77,177/- (Rupees Five Crore, Twenty five Lakh, Seventy Seven Thousand, One Hundred and Seventy Seven Only)** under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962.

viii. Imposed fine of **Rs. 1,02,00,000/- [Rupees One Crore, Two Lakh only]** in lieu of confiscation under Section 125 (1) of the Customs Act, 1962 on M/s. K.L. International in respect of **12,72,050 Kg** Dry Dates having assessable value of **Rs. 4,08,17,507/-**, imported by M/s. K.L. International at Pipavav vide Bills of Entry No. 6124787, 6124890, 6124557, 6124677 and 6125519 all dated 04.11.2021 and released provisionally, which shall be in addition to any charges payable. I order for encashment of Bank Guarantee furnished by M/s. K.L. International at the time of provisional release of the said goods and appropriation thereof towards recovery of fine in lieu of confiscation.

ix. Offered that **27,500 Kg** of Dry Dates having assessable value of **Rs. 8,82,419/-**, attempted to be imported by M/s. K. L. International at Pipavav port vide Bill of Lading No. 214702062 (Container No. MWCU5245763) for which Bill of Entry has not been filed and ordered for confiscation herein, for redemption under Section 125 (1) of the Customs Act, 1962 upon payment of a fine of **Rs. 2,20,000/- (Rupees Two Lakh, Twenty Thousand Only)** in addition to any charges payable. It was

further ordered that as per the provisions of Section 125(3) of the Customs Act, 1962 if option of payment of fine was not exercised within 120 days from the date of the order, the same would become void.

x. Offered **3,34,840 Kg** Dry Dates having assessable value of **Rs. 1,08,77,251/-**, imported by M/s. K.L. International at Nhava Sheva vide Bills of Entry No. 6277099/16.11.2021 and 6926789 / 03.01.2022 seized at JNCH and ordered for confiscation for redemption under Section 125 (1) of the Customs Act, 1962 upon payment of a fine of **Rs. 27,00,000/- (Rupees Twenty Seven Lakh Only)** in addition to any charges payable. It was further ordered that as per the provisions of Section 125(3) of the Customs Act, 1962 if option of payment of fine was not exercised within 120 days from the date of this order, the would become void.

xi. Imposed a penalty of **Rs. 14,59,54,244/- (Rupees fourteen crore, fifty nine lakh, fifty four thousand, two hundred and forty four only)** plus penalty equal to the applicable interest under Section 28AA payable on the duty demanded and confirmed above on M/s K.L. International under Section 114A of the Customs Act, 1962 to be paid by / recovered from the Noticee forthwith.

xii. Did not impose any penalty on M/s. K.L. International under Section 112 of the Customs Act, 1962 as penalty was already imposed on M/s. K.L. International under Section 114A of the Customs Act, 1962.

xiii. Imposed a penalty of **Rs. 25,00,000/- [Rupees Twenty Five Lakh only]** on M/s. K.L. International under Section 114AA of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xiv. Imposed a penalty of **Rs. 1,00,000/- [Rupees One Lakh only]** on M/s. K.L. International under Section 117 of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xv. Did not impose any penalty on Mrs. Bharti, Proprietor of M/s. K.L. International, New Delhi under Section 112 and Section 114AA of the Customs Act, 1962 as penalty was already imposed on the Proprietorship firm M/s. K.L. International, New Delhi under Section 114A and Section 114AA of the Customs Act, 1962.

xvi. Imposed penalty of **Rs. 1,00,00,000/- [Rupees One Crore only]** on Shri Parshotam Prajapati of M/s. Shivoy Enterprise under Section 112 of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xvii. Imposed a penalty of **Rs. 25,00,000/- [Rupees Twenty Five Lakh only]** on Shri Parshotam Prajapati of M/s. Shivoy Enterprise under Section 114AA of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xviii. Imposed a penalty of **Rs. 1,00,00,000/- [Rupees One Crore only]** on Shri Prem, Husband of Mrs. Bharti under Section 112 of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xix. Imposed a penalty of **Rs. 25,00,000/- [Rupees Twenty Five Lakh only]** on Shri Prem, Husband of Mrs. Bharti under Section 114AA of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xx. Imposed a penalty of **Rs. 50,00,000/- [Rupees Fifty Lakh only]** on Shri Souvik Guha Sarkar, Authorized Representative of M/s. K.L. International under Section 112 of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxi. Imposed a penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri Souvik Guha Sarkar, Authorized Representative of M/s. K.L. International under Section 114AA of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxii. Imposed a penalty of **Rs. 50,00,000/- [Rupees Fifty Lakh only]** on Shri Jatin Arora, Associate of Shri Parshotam under Section 112 of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxiii. Imposed a penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri Jatin Arora, Associate of Shri Parshotam under Section 114AA of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxiv. Imposed a penalty of **Rs. 1,00,00,000/- [Rupees One Crore only]** on Shri Mohammad Shahzeb Azad, Authorized Signatory of M/s .Alburaq Dates Factory, LLC, Dubai under Section 112 of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxv. Imposed a penalty of **Rs. 25,00,000/- [Rupees Twenty Five Lakh only]** on Shri Mohammad Shahzeb Azad, Authorized Signatory of M/s .Alburaq Dates Factory, LLC, Dubai under Section 114AA of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxvi. Imposed a penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri Rajveer Singh, Customs Broker, Eskay Logistics at Pipavav port under Section 112 of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxvii. Imposed a penalty of **Rs. 1,00,000/- [Rupees One Lakh only]** on Shri Rajveer Singh, Customs Broker, Eskay Logistics at Pipavav port under Section 114AA of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxviii. Imposed a penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics CHA Services Pvt. Ltd. under Section 112 of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxix. Imposed a penalty of **Rs. 1,00,000/- [Rupees One Lakh only]** on Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics CHA Services Pvt. Ltd. under Section 114AA of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxx. Imposed a penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri V.S. Yadav of M/s. Sidhant Logistics CHA Services Pvt. Ltd. under Section 112 of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

Imposed a penalty of **Rs. 1,00,000/- [Rupees One Lakh only]** on Shri V.S. Yadav of M/s. Sidhant Logistics CHA Services Pvt. Ltd. under Section 114AA of the Customs Act, 1962 which was to be be paid by / recovered from the Noticee forthwith.

xxxii. Imposed a penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri Pankaj Tiwari, Proprietor of the buyer firm, M/s. Lord Shiva & Co. under Section 112 of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

xxxiii. Imposed a penalty of **Rs. 1,00,000/- [Rupees One Lakh only]** on Shri Pankaj Tiwari, Proprietor of the buyer firm, M/s. Lord Shiva & Co. under Section 114AA of the Customs Act, 1962 which was to be paid by / recovered from the Noticee forthwith.

46. Aggrieved by the above OIO, M/s. K.L.International and all the other Co-Noticee had preferred appeals before the Hon'ble CESTAT, West Zonal Bench, Ahmedabad. The Hon'ble CESTAT, vide Final Order No.12943-12951/2024 dated 02.12.2024 disposed of the appeals of all the Noticee except the appeal filed by Noticee No.5 i.e. Shri Souvik Sarkar, The Hon'ble CESTAT vide aforesaid order has remanded the matter back to the Adjudicating Authority with direction to re-consider the issue afresh by following the principles of natural justice and adherence to the provisions of Section 138C of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING AND WRITTEN SUBMISSION

47. Following the direction of the Hon'ble CESTAT, the subject case has been taken up for adjudication afresh and as a principle of natural justice, personal hearing was granted to the Noticees on 01.05.2025 except Noticee No.5 i.e. Shri Souvik Sarkar, whose appeal is still pending before the Hon'ble CESTAT, Ahmedabad.

The personal hearing was attended by Shri Aliakbar Devjani, Advocate and Shri S. S. Sekhon, Consultant on behalf of all the 09 Noticees except Noticee No.5 i.e. Shri Souvik Sarkar, and during the recording of PH, they contested matter on the following points:

(I) The importer firm already existed and was not a bogus firm as when the premises of the Proprietor and Shri Parshotam were searched, they were already present and it was informed that the firm was in existence and all the paper work was handled from the office of Shri Parshotam.

(II) The details extracted from the documents as mentioned against RUD no. 28 to 35 were extracted without following the Forensic procedure of which has been laid down under Section 138C of the Customs Act, thus, as they are in violation of Section 138C they could not be accepted as evidence.

(III) The recovered Whatsapp Chats were around September 2020, which are one year prior to the actual import, so they cannot be related. Also, no corroboration related to this has been made in any of the statements recorded and as they are also in violation of section 138C, they are not acceptable as evidence.

(IV) The material evidence considered by the department is only the tags recovered from the packing material of the goods. In this regard, it is submitted that Noticee no. 7 had already submitted through email in their written submissions alongwith all the available related documents directly to the Customs. This statement was not brought on record and not been included in the SCN. If this statement were perused it says that these gunny bags were procured locally from UAE by the

supplier and in support of this he had submitted an invoice related to purchase of 50000 gunny bags.

(V) No manuscript has been brought out to link with the present consignment.

47.1 The Authorized Representative of the Noticee filed consolidated synopsis for 9 Noticee wherein they *intera-alia* contended as under:

"1. The present submissions are being made on behalf of nine noticees, as noticee No. 2 (the proprietrix of M/s K.L. International) was exonerated by the earlier adjudicating authority, and noticee No. 5 (Shri Souvik Sarkar) whose appeal is pending before Hon'ble CESTAT.

2. This consolidated synopsis is being filed on behalf of all 9 out of 11 Noticees in response to the remand directions issued by the Hon'ble CESTAT in the matter arising from Show Cause Notice No. PC-03/2022-23 dated 04.11.2022. The submissions are supplementary to individual replies already on record

3. The Hon'ble Tribunal, in its remand order, observed that the matter requires reconsideration due to non-compliance with principles of natural justice, particularly the failure to examine deponents whose statements have been substantially relied upon. The appellants had expressly objected to the reliance on such statements without the opportunity of cross-examination, particularly when these statements were later retracted.

4. The Show Cause Notice heavily relies on the statements of Shri Souvik Sarkar and Shri Raj veer Singh, recorded on 19.11.2021 and 20.11.2021 respectively, to allege that the imported 'Dry Dates' are of Pakistani origin. These statements are referred to in Para 33.1 and 33.2 of the SCN. However, it is imperative to note that both statements stand retracted. Shri Souvik Sarkar had, after escaping alleged coercive conditions, submitted a sworn affidavit clearly stating that the contents of his earlier statement were not his own and were recorded under duress. This affidavit was submitted in proceedings before the Hon'ble CESTAT and was accepted on record. Surprisingly, the SCN fails to mention or rebut this material fact, even though it was in the possession of the department.

5. Further, the alleged 'Letter of Authorization' in the name of Shri Souvik Sarkar (RUD 11) lacks evidentiary value. The source of this document remains unidentified, and the statement of Shri Sarkar does not bear any admission of having been shown or accepted this authorization. No other party, including the purported author, has affirmed or attested to its authenticity.

6. The reliance on the statement of Shri Rajveer Singh is equally unsubstantiated. His statement refers to a meeting with one Mr. Parshotam, during which they allegedly discussed the Pakistani origin of the goods. However, there is no statement of Mr. Parshotam confirming such meeting or discussion. No documentary or circumstantial evidence has been presented to support that such a meeting even took place. Mere hearsay cannot be the basis for drawing conclusions of such magnitude.

7. In Para 33.3 and 33.4 of the SCN, the department concludes that the statements of the CHA and authorized representative are binding and establish the origin of goods. However, it is settled law that while statements recorded under Section 108 of the Customs Act are admissible, their reliability must be established through corroboration. The Hon'ble Madras High Court in the case of Sainul Abideen Neelam [2014 (300) ELT 342 (Mad)] held that retracted statements, in the absence of corroborative material, cannot be the sole basis for determining liability. This principle,

which has not been appealed against by the Revenue, applies squarely to the present case.

8. Thus, the absence of corroboration and the failure to bring the deponents forward for examination, even in the remand proceedings, renders the reliance on these oral evidences fundamentally flawed. In light of the remand order by the Hon'ble Tribunal specifically highlighting this omission, the adjudicating authority was under an obligation to summon these individuals to ascertain the veracity of their statements. Failure to do so vitiates the adjudication process.

9. Moreover, the alleged "Letter of Authorization" (RUD-11) implicating Shri Souvik Sarkar to be the 'Authorized Person' of the importer is shrouded in mystery. The document lacks his signature, and its source remains undisclosed in the SCN. Such dubious evidence cannot sustain the Department's allegations, particularly when the foundational statements themselves have been retracted.

10. The Department's reliance on documentary and digital evidence is equally unsubstantiated. The Bill of Lading (RUD-26), a non¬negotiable copy without signatures or dates, does not even pertain to the disputed consignments, as the container numbers do not match.

11. The mere presence of a clause referencing Pakistani law in the Bill of Lading does not ipso facto establish the Pakistani origin of the goods. It is also to be noted that the said Bill of Lading was submitted by the proprietrix herself and does not belong to the present consignment impugned under SCN and no other SCN for such previous import has been issued to the importer firm.

12. The digital evidence, comprising WhatsApp chats and emails (RUD-28 to RUD-35), is inadmissible as the extraction of this data was not conducted in compliance with Section 138C of the Customs Act, which mandates forensic procedures for electronic evidence. Also, the chats dated 2020-2021 are entirely unrelated to the imports in question, which occurred in late 2021. The Supreme Court, in Anvar P.V. v. P.K. Basheer (2014), has unequivocally held that electronic evidence without proper certification is inadmissible. The Department's attempt to weave a narrative out of these disjointed and irrelevant communications displays the framing of entire SCN only on basis of assumptions and presumptions. The department has also not taken any effort to bring out any relation between the alleged relied upon WhatsApp chats and the present imports as neither the person / individual from whose mobile / device the said chat has been recovered has been asked or his statement explaining the meaning behind such message is placed on record nor the person from or to whom the message has been sent has been questioned or even his statement been recorded.

13. The allegation regarding the packing material (Sargodha Jute Mills) is also baseless. Noticee No. 7 has submitted an invoice proving the purchase of used jute bags in the UAE, which the Department has conveniently ignored. Without any investigation into the supplier's procurement process or corroborative evidence, the Department's conclusion that the goods are of Pakistani origin is purely conjectural.

14.The CESTAT had made observations that adjudicating authority's failure to summon key witnesses for examination, despite their retractions, is a glaring procedural lapse. The CESTAT, in its remand order, explicitly directed adherence to the principles of natural justice, yet the Department has made no effort to produce Shri Souvik Sarkar or Shri Rajveer Singh for examination this act vitiates the entire remand proceedings."

DISCUSSION AND FINDINGS:

48. I have carefully gone through the case records including the show cause notice, Hon'ble CESTAT's Final Order No.12943-12951/2024 dated 02.12.2024, submission made by the Authorized Representative of 9 Noticee at the time of personal hearing held on 01.05.2025 (except for Shri Souvik Sarkar, whose appeal is still pending before the Hon'ble CESTAT) .

49. I find from the case records that, the investigation in the present case has been carried out by the officers of DRI and Customs suspecting that M/s. K.L. International (the Noticee No.1) with connivance of various other persons was indulged in import of Pakistan origin "Dry Dates" classifiable under CTH 98060000 (attracting customs duty @200%) by mis-classifying the same under CTH 08041030(attracting customs duty @20%) declaring the country of origin as "UAE" and thereby evading duty of customs.

During investigations, searches at the premises of various persons related to the above import transactions were carried out and several documentary/ digital evidences indicating the evasion of customs duty by the Noticee No.1 with the help of various persons have been recovered. The statements of persons appeared to be involved in the matter have also been recorded under Section 108 of the Customs Act, 1962. The consignments of "dry dates" ("impugned goods") imported by the Noticee No. 1 at Pipavav Port and Nhava Sheva Port were examined in presence of independent panchas and representatives of the Importer. Based on these proceedings a reasonable belief formed that the said goods are liable to confiscation under Section 111 of the Customs Act, 1962 and hence, the said imported goods sought to be cleared for home consumption from Pipavav Port and Nhava Sheva Port were placed under seizure in terms of provisions of Section 110 of the Customs Act, 1962. The goods i.e., Dry dates imported vide Bills of entry no. 6124557, 6124667, 6124787, 6124890 and 6125519 all dated 04.11.2021 were provisionaly released to the Noticee M/s. K L Internationl on furnishing requisite Bond and Bank Guarantees as ordered by the Hon'ble CESTAT vide order No. A/11353/2022 dated 23.11.2022.

The investigating agency continued the proceedings and summoned various persons appeared to be involved in the matter for recording their statements in light of the evidences collected during the course of investigation. However, they did not co-operate and appear before the investigating authority. Due to non-appearance and non-cooperation of persons summoned, the investigating agency sought for extension of time from the competent authority

to complete the investigation in terms of first proviso to Section 110(2) and finally concluded the investigation, so that the provisions of Section 110(2) read with its first proviso can be duly complied with and issued Show Cause Notice dated 04.11.2022 to the Noticee No.1 and other Co-Noticees.

49.1 As already mentioned above, the Show Cause Notice was earlier adjudicated vide Order-in-Original No. JAM-CUSTM-PRV-COM-003-23-24 dated 18.08.2023; wherein all the proposals made in the Show Cause Notice were confirmed except for no penalty was imposed upon Mrs. Bharti, Proprietor of M/s. K.L.International (Noticee No.2). Aggrieved, by the aforesaid OIO following 10 Noticee had filed an appeal before the Hon'ble CESTAT, Ahmedabad.

1. M/s. K. L. International, A-256, Old No. 55, Flat No. A-4, 3F, Chhaterpur Enclave – I, New Delhi 110074. (klinternational2011@gmail.com, premshivay1812@gmail.com, amitr4730@gmail.com)

2. Shri Parshotam, M/s. Shivoy Enterprise, 18, Surajkund Road, Pul Prahladpur, New Delhi. (parshotamparjapati84@gmail.com,)

3. Shri Prem, 68, Block 19, Dakshinpuri Extension, Ambedkar Nagar, Pushpa Bhavan, New Delhi (premshivay1812@gmail.com)

4. Shri Souvik Guha Sarkar, 43/10A, Jheel Road, Newland, Kolkata – 700031 (guhasarkarsouvik@aol.com, sguha2683@gmail.com)

5. Shri Jatin Arora, Flat No. 6B, Tower GH-1, Sector 54, Orchid Garden, Suncity, Gurugram. (Jatin-arora07@outlook.com)

6. Shri Mohammad Shahzeb Azad, Authorized Signatory of M/s. Alburaq Dates Factory, LLC, Dubai located at Head Office:3312, Churchill Tower, Business Bay, Dubai,UAE(shahzeb@prolix.in, info@alburaqdates.com, shahzebazad@gmail.com)

7. Shri Rajveer Singh, M/s. Eskay Logistics (Customs Broker No. ABDPN1577FCH003), Shri Ram Plaza, Office No. 3, Pipavav, Taluka-Rajula, Distt. Amreli – 365560. (eskaylogppv@gmail.com)

8. Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics CHA Services Pvt. Ltd. (Customs Broker No. AAUPY4535CCH001), 108, CHAWALA COMPLEX, SECTOR-15, C.B.D. BELAPUR, NAVI MUMBAI. Pin No.400614. (shailendra180408@gmail.com)

9. Shri Vijay S. Yadav of M/s. Sidhant Logistics CHA Services Pvt. Ltd. (Customs Broker No. AAUPY4535CCH001), C-9, Uppar Ground Floor, Vishwakarma Colony, M.B. Road, Badarpur, New Delhi- 110044. (vijaysidhant@gmail.com)

10. Shri Pankaj Tiwari, Proprietor of M/s. Lord Shiva & Co., located at Upper Ground Floor,H-235, Sushant Arcade, Gurgaon, Haryana-122009 (lordshivacompany@gmail.com)

The Hon'ble CESTAT, Ahmedabad vide Final Order No.12943-12951/2024 dated 02.12.2024 disposed of the appeals of all the above Noticee (Total 9 Noticee) except the appeal filed by Noticee No.5 i.e. Shri Souvik Sarkar, by way of remanding the matter back to the Adjudicating Authority with direction to re-consider the issue afresh by following the principles of natural justice and adherence to the provisions of Section 138B of the Customs Act, 1962.

49.2 The observations made by the Hon'ble CESTAT at Para 4 and 5 of the above Final Order are extracted below:

4. Heard both sides and perused the records of the case. We find that the issue involved in the present appeals pertains to the import of "Dry Dates" by appellant. The case of the department is that Appellants had filed Bills of Entry declaring the country of origin of the said goods as UAE, classified the said goods under CTH 08041030 where the Customs Duty rate is 20 % adv. and self-assessed the Bills Entry whereas correct country of origin of the said goods is Pakistan and therefore, the said goods are classified under CTH 98060000 for which Customs duty rate is 200 % adv.. The officers of DRI and Customs carried out investigation in the matter which includes search at the premises of various person related to the above import transaction and collection of documentary evidences/ digital evidence. Statements of various persons were also recorded. The Ld. Commissioner while confirming the demand observed that during the course of examination of goods, the packing material in which dry dates were packed was showing the name of "Sargodha Jute Mills Ltd in Pakistan" on it. The concrete and tangible evidence is further corroborated by the deposition of Shri Souvik Sarkar in his statement dtd. 19.11.2021 admitting inter alia, that "in fact the goods have been brought from Pakistan via Dubai to evade the Customs Duty on it, and Shri Rajeev Singh in his statement dtd. 19.11.2021 admitting, inter alia, that in fact the goods have been brought from Pakistan via Dubai to evade the Customs Duty on it. We find that in the present case, Shri Souvik Sarkar retracted his statement via filing affidavit, however, the same was not considered by the Ld. Adjudicating Authority on the ground that the appellant has not requested for any cross-examination of any witness including the independent panchas. However, it is not disputed that appellant has raised objection on the statement of said witness and said persons were not examined in the adjudicating proceedings even after the objection of the appellants.

5. In this background, in our considered view, the appeals filed by Appellants needs to be disposed of by way of remand to the adjudicating authority to reconsider the issue afresh by following the principles of natural justice and adherence to the provisions of Section 138B of Customs Act, 1962 on this point. All the issues are kept open. The order is therefore set aside and matter remanded to the Ld. Adjudicating authority to decide the issue a fresh.

50. Since the Hon'ble CESTAT has not decided the appeal filed by Noticee No.5 i.e. Shri Souvik Sarkar, the present proceedings are restricted to only 9 Noticee mentioned at Para 49.1 above (except Noticee No.5 i.e. Shri Souvik Sarkar). During the present remand proceedings, all these 9 Noticee have been represented by the same Authorised Representative, who has made common oral and written submission on behalf of all the 9 Noticee. In their common submissions, the Noticees have contended that Statements of Shri Souvik Sarkar and Rajveer Singh recorded on 19.11.2021 and 20.11.2021 relied upon in the Show Cause Notice stand retracted. It is further contended that, Shri Souvik Sarkar had filed sworn affidavit stating that the contents of his earlier statement were not his own and were recorded under duress. It is also contended that "Letter of Authorization" in the name of Shri Souvik Sarkar lacks evidentiary value.

50.1. I find that, since the Hon'ble CESTAT has not decided the appeal filed by Shri Souvik Sarkar till date, therefore, the findings recorded in Order-in-Original No. JAM-CUSTM-PRV-COM-003-23-24 dated 18.08.2023 w.r.t. the said Noticee, are still in vogue. As the appeal filed by Shri Souvik Sarkar is pending before the Hon'ble CESTAT, no fresh findings can be recorded on this issue, since the matter is *sub judice* before the Higher Appellate Authority i.e. Hon'ble CESTAT.

50.2 I find that, though the Noticees have contended that Shri Rajveer Singh has retracted his statement, but there is no record of such retraction filed during their earlier submission or during the course of present proceedings. In his statement dated 19.11.2021 recorded under Section 108 of the Customs Act, 1962, Shri Rajveer Singh has categorically admitted as under:

- M/s. Eskay Logistics, Pipavav a Custom Broker / CHA firm where he was working as employee and his proprietary firm M/s. Vinay Enterprise have handled clearing and forwarding works of goods imported by M/s. K. L. International, New Delhi (the Noticee No. 1) at Pipavav Port;
- Shri Souvik Guha Sarkar, Authorized representative of M/s. K. L. International called him on 12.10.2021 for clearing of the goods i.e., dry dates being imported by them. Subsequently, Shri Parshotam and Shri Souvik Guha Sarkar came to his office on 19.10.2021 for finalizing the deal. They finalized the deal at Rs. 80,000/- per container. In this 80,000/-, he had kept margin/ commission of Rs.

20,000/- per container for Shri Souvik Guha Sarkar, as per his personal agreement with Shri Souvik.

- When Shri Souvik Guha Sarkar and Shri Parshotam visited his office on 19.10.2021, **Shri Parshotam had clarified with him that the goods were of Pakistan origin, but they would manage to import via Dubai and would also manage Country of Origin certificate of Dubai** which would be verifiable online. So, he undertook the work with the condition that if the Country of Origin certificate was verified online, he would manage to clear the same. For this purpose, he charged more than what he usually charged to other customers.
- When Shri Souvik Guha Sarkar and Shri Parshotam visited his office on 19.10.2021, they stated that they would import the goods in the IEC of M/s. Ganpati Traders. But, since the papers of M/s. K. L. International came prior to M/s. Ganpati Traders, Shri Parshotam asked him to clear the goods imported by him in the name of M/s. K. L. International.
- Most of the consignments of dry dates were supplied by M/s. Alburaq Dates Factory, LLC, Dubai. As per his knowledge, Shri Shahzeb Azad (Mobile Number +971557653727 and 9198477777) is the owner of M/s. Alburaq Dates Factory, LLC, Dubai. He had spoken to him once on phone and have communicated with him on WhatsApp several times.
- He did not know any local buyers of dry dates, but the goods were transported to Vashi, Indore, Delhi, Amritsar, Ahmadabad and Ghaziabad.
- Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 were filed on behalf of M/s. K. L. International by M/s. Eskay Logistics at Pipavav as per the instructions of Shri Parshotam.
- It was explained to him that Shri Parshotam was also working as CHA /Customs Broker. So, he trusted Shri Parshotam without due care to observe KYC norms.
- On being shown an image of jute bag in which dry dates were imported under Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021, he stated that the Customs officers had noticed the above packing during the course of examination of the goods. He stated that the image of the jute bag in which dry dates imported under above-mentioned Bills of Entry referred to the name of "Sargodha Jute Mills Ltd" in Pakistan.

- On being asked about how the jute bag of Pakistan is there in the cargo from Dubai, **he stated that in fact the goods have been brought from Pakistan via Dubai to evade the Customs duty on it.**

In his statement dated 20.11.2021 besides affirming contents of his earlier statement dated 19.11.2021, Shri Rajveer Singh also admitted as under:-

- He has failed to verify the KYC norms of the firm M/s. K.L.International, New Delhi; that Shri Parshotam was the real owner of the firm M/s. K.L.International, New Delhi and he was also aware that M/s. K.L.International, New Delhi was a dummy unit;
- On being asked about the tax invoice of Dubai Chamber attached with the B/E No. 6124677 dtd. 04.11.2021; wherein it was mentioned that 100 AED was paid for issuance of New COO(Country of Origin), he stated that the it appears to be charges for issue of New Certificate of Origin (COO) from UAE managed by Shri Parshotam to hide actual Country of Origin i.e., Pakistan
- On being shown a calculation sheet of differential duty evaded by M/s. K. L. International in respect of Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021, he admitted that differential duty of Rs. 9,05,16,902/- was about to be evaded by mis-declaration of Country of Origin as UAE instead of Pakistan.
- On being shown a calculation sheet of differential duty evaded by M/s. K. L. International in respect of Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021, he admitted that differential duty of Rs. 9,05,16,902/- was about to be evaded by mis-declaration of Country of Origin as UAE instead of Pakistan.

The above statements of Shri Rajveer Singh clearly establish the Modus-operandi of the Noticee No. 1 of importing Pakistan origin Dry Dates via UAE where they managed to obtain Country of Origin certificate from the concerned authority of UAE, to evade the payment of Customs duty @ 200 % imposed vide Notification No.05/2019-Cus dated 16.02.2019 on import of the Pakistan origin 'Dry Dates', which are to be classified under CTH 98060000.

50.3 I observe that at the time of written submission dated 09.05.2025, the Authorized Representative of the Noticees contended that, the Hon'ble Tribunal while remanding the issue observed that, the matter requires re-consideration due to non-compliance with principles of natural justice. In this regard,

following the direction of the Hon'ble CESTAT, personal hearing was accorded on 01.05.2025 to all Noticees vide this office letter dated 21.04.2025 as a principle of natural justice. I find that, all Noticees have been represented by the same Advocate i.e. Sh. Aliakbar Devjani and the same Consultant, S.S. Sekhon, from which it can be very well deduced that Noticee along with other Co-Noticees are still in touch with one another. Moreover, none of the Noticees or their authorized representative has requested cross-examination of any of the witnesses /co-noticee after issuance of CESTAT order, during the course of personal hearing or by way of written submission etc. It is also observed that despite representing all the Noticee, the authorized representative has tendered a combined oral and written submission on behalf of all the Noticee. In this common oral and written submission also they have not requested for cross examination of any of the co-noticee/ witness. In case, if any of the Noticee had any complain or grievances related to recording of their statements at any point of time, then they should have raised the same during the present proceedings by filling specific submission in this regard. However, none of them have filed such submission. Also, their common representative has not named any of the Noticee/ witness they wanted to cross-examine. Under the circumstances, adhering to the time limit specified for adjudication under the Act, I have to decide the matter based on the available records and submissions filed by the Noticee in the present proceedings. Therefore, the Noticee's contention in this regard is devoid of merit.

51. I further observe that during the investigations, the DRI officers have recorded statements of several persons under Section 108 of the Customs Act, 1962 who were related to the matter. It also a settled legal position that statements recorded under Section 108 of the Customs Act, 1962 are admissible as evidence under judicial proceedings. It is also observed that except Shri Souvik Sarkar, whose appeal is yet to be decided by the Hon'ble Tribunal, none of the Noticee has retracted their statements till date. Even Shri Souvik Sarkar has filed his so-called retraction by way of affidavit and letter, but not before the authority who had recorded his statement. Also, such belated retraction by way of letter dated 08.03.2022/affidavit dated 07.10.2022 (as his statement was recorded on 19.11.2021) is required to be considered as an afterthought and legally invalid. In view of the above, and in absence of specific request for cross-examination of any of the Noticees, I find that all statements recorded during the investigation are required to be considered as relevant in terms of Section 138B of the Customs Act, 1962. In support of above observations, I also rely upon following judgments.

(i) SURJEET SINGH CHHABRA Vs. UNION OF INDIA reported in 1997 (89) E.L.T. 646 (S.C.) The observations of the Hon'ble Supreme Court at para :-3 of the judgments are as under:-

3. It is true that the petitioner had confessed that he purchased the gold and had brought it. He admitted that he purchased the gold and converted it as a Kara. In this situation, bringing the gold without permission of the authority is in contravention of the Customs Duty Act and also FERA. When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross-examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. ***We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner.*** *So there is no need to call Panch witnesses for examination and cross-examination by the petitioner.*

(Emphasis Supplied)

(ii) N.R. SPONGE PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE, RAIPUR 2020 (372) E.L.T. 321 (Chhattisgarh) The Hon'ble High Court while interpreting the provisions of Section 9D of the Act have observed as under:-

20. It will be worthwhile to make a reference to Section 9D of the Act, 1944 as well, to understand the real scope and extent of the provisions and hence, it is extracted below :

"9D. Relevancy of statement under certain circumstances. — (1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the Court and the Court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceedings under this Act, other than a proceeding before a Court, as they apply in relation to proceeding before a Court."

21. *The terminology used in Section 9D (1) of the Act, 1944 clearly reveals the*

enabling power of the Court to accept a statement made and signed by a person before any Central Excise officer of a gazetted rank during the course of any inquiry or proceeding under the Act, 1944; to be relevant to the extent as mentioned either in clause (a) or in clause (b). ***In other words, it is not a provision vouched in a 'negative sense' to hold that the statement given by the person concerned shall not be acceptable in evidence for the proceedings concerned. On the contrary, it is in respect of the power and jurisdiction of the "court" to accept the same as relevant. However, by virtue of sub-section (2) of Section 9D of the Act, 1944, such a course/power, as exercisable by the Court, is made applicable to any other proceeding under the Act as well (other than a proceeding before a Court) as they apply in relation to a proceeding before the Court. This clearly speaks about the extent of applicability i.e. it can only be to the extent as related to a proceeding before the Court, as mentioned in sub-section (1), and never beyond.***

22. *The mandate is crystal-clear from sub-section (1) of Section 9D of the Act, 1944 (to consider the extent and applicability). The statute makes it point blank that, it is for the purpose of proving, in any prosecution for an offence under the Act, before a Court. This clearly means that the statement given by a person can be accepted as relevant by a Court in a 'prosecution proceeding' for an offence either under clause (a) i.e. when the person who made statement is dead or cannot be found or incapable of giving evidence or such other circumstances as mentioned therein or under (b) i.e. when the person who made the statement is examined as witness in the case before the Court, when the Court having regard to the circumstances of the case, is of the opinion that the statement should be admitted in evidence in the interest of justice.* ***To put it more clear, the rigor is more with regard to the circumstance when it relates to a 'prosecution for an offence' under the Act i.e. to punish the guilty. When sub-section (2) of Section 9D says that the provisions of sub-section (1) shall apply 'as far as may be' in relation to any proceedings under the Act other than a proceeding before a Court, as they apply in relation to proceedings before the Court, it is explicitly clear that it can have extended application only in relation to an instance of inflicting the punishment for the offence and not for the quantification of the duty or extent of evasion. In other words, fixation of duty evaded is one thing, and mulcting of penalty for the offence in respect of such evasion is a different thing.*** *When the statement not recorded before the Adjudicating Authority cannot be relied upon to inflict penalty, it may still govern the field (if supported by other materials to reach the conclusion) insofar as fixation of quantum of duty evaded is concerned.*

(Emphasis Supplied)

(iii) PARAGON STEELS (P) LTD. Versus COMMISSIONER OF C. EX., CUS. & S.T., CALICUT reported in 2018 (15) G.S.T.L. 298 (Tri. – Bang), The Hon'ble Tribunal at Para 8.2 of their order has observed as under:

"The main ground on which the assessee has agitated against the duty demand is that out of 10 witnesses whose statements have been used against them, only one witness was produced for cross-examination, even though they

had requested for the cross-examination of all the 10 witnesses. It has been contended by the assessee that this amounts to non-observance of the provisions of Section 9D of the Central Excise Act, 1944. They have also relied on case laws in which the Hon'ble High Court of Punjab and Haryana has held that the provisions of Section 9D will be equally applicable to departmental proceedings and also criminal proceedings in the court. But the adjudicating authority has justified the non-production of 9 witnesses for cross-examination, on the ground that 9 witnesses were the employees of the company and since they are under the control of the assessee, the cross-examination will not serve any purpose as the assessee has held over them and they can be made to retract the facts contained in their statements. We find the stand taken by the adjudicating authority to be reasonable under the circumstances of the case. We find that only one of the statements recorded from Shri Jawahar has been retracted subsequent to the date of recording. However, Shri Jawahar has confirmed the facts in his subsequent statements nullifying the retraction. ***In the absence of retraction by any of the other witnesses, the denial of cross-examination does not vitiate the proceedings.*** *The adjudicating authority has confirmed the demand of duty of about Rs. 7,52,843/- on the basis of documents recovered from such proceedings and whose veracity has been proved from the corroborative evidences like regenerated invoice and gate register evidencing the clandestine removal of the ingots by the assessee. He has fairly dropped the demand which has been projected on the basis of theoretical calculation. In view of above discussions, we find no reasons to interfere with the demand of duty and imposing of penalty on the assessee.*

(Emphasis supplied)

As the provisions of Section 9D of Central Excise Act, 1944 are *pari-materia* to the provisions of Section 138B of the Customs Act, 1962, the ratio of above judgments is squarely applicable in the instant case.

Further, it is a settled legal position that the retraction of statements, if any, is required to be made only before the authority who recorded the statement or its superior authority. The following judgments are relevant in this regard.

(i) H.R. SIDDIQUE Versus DIRECTOR, ENFORCEMENT DIRECTORATE reported as 2015 (318) E.L.T. 182 (Del): The observations of the Hon'ble High court relevant to the present case are extracted below:-

13. *Having heard learned counsels and perused the record, including the adjudicating order and the impugned appellate order, I am of the view that there is no merit in this appeal. As noticed above,* ***the retraction of the confessional statement containing admission of wrong-doings by the appellant came after more than ten years, at the stage of personal hearing only, and not before that. Had the appellant been subjected to threat, coercion or pressure as alleged by him rather belatedly, he would have retracted his confessional statement soon after making the same, once the alleged threat, coercion or pressure ceased to influence the action of the appellant. It is not his case that the said factors continued to influence him for 10 long years. Moreover, the appellant failed to disclose as to***

how he was pressurized, coerced, or tortured, and by whom, when he made the earlier confessional statement. *The confessional statement was also duly corroborated by the aforesaid independent evidence viz. the list of persons to whom the monies had to be distributed, received by fax from Ubaidullah of Dubai.*

14. *The Supreme Court in K.I. Pavunny (supra) observed as follows :*

"It would thus be seen that ***there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or to make the same basis for conviction of the accused.*** *Practice and prudence require that the court could examine the evidence adduced by the prosecution to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement.* ***The court is required to examine whether the confessional statement is voluntary; in other words, whether it was not obtained by threat, duress or promise. If court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied upon to base the conviction.*** *However, prudence and practice require that court would seek assurance getting corroboration from other evidence adduced by the prosecution. "*

15. *Similarly, in K.T.M.S. Mohd. (supra), the Supreme Court observed :*

"We think it is not necessary to recapitulate and recite all the decisions on this legal aspect. But suffice to say that the core of all the decisions of this Court is to the effect that the voluntary nature of any statement made either before the Custom Authorities or the officers of Enforcement under the relevant provisions of the respective Acts is a sine quo non to act on it for any purpose and if the statement appears to have been obtained by any inducement, threat, coercion or by any improper means that statement must be rejected brevi manu. At the same time, it is to be noted that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc. to establish that such improper means has been adopted. However, even if the maker of the statement fails to establish his allegations of inducement, threat etc. against the officer who recorded the statement, the authority while acting on the inculpatory statement of the maker is not completely relieved of his obligations in at least subjectively applying its mind to the subsequent retraction to hold that the inculpatory statement was not extorted. It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated."

16. Thus, the plea of the appellant, founded upon his so-called highly ***retraction of his confessional statement, has to be rejected.*** *though the appellant sought to produce bank transaction statements he had been receiving monies from Ubaidullah of Dubai after the estion, and his consistent case is that he had been receiving monies*

from Ubaidullah of Dubai even earlier, he did not produce any material evidence to show that monies were earlier being received through a legal banking channel.

(Emphasis supplied)

(ii) Final order dated 19.02.2010 passed by the Hon'ble Tribunal in the case of COMMISSIONER OF C. EX., MUMBAI-V Versus CHAMPION CONFECTIONERY reported as 2010 (262) E.L.T. 865 (Tri. – Mumbai)) :- The Hon'ble Tribunal at Para:9 of their order have observed as under:-

9. *One of the main issues to be considered is whether the retraction said to be contained in the affidavits was rightly relied upon by the Commissioner (Appeals). As already mentioned, there was seizure of clandestinely removed goods in the transit and there was unaccounted stock of about Rs. 5 lakhs in the factory premises and that there were slips Sr. No. 43 to 50 all dated 30-6-2000 indicating clandestine clearance of goods valued at Rs. 1,40,575/-. In these circumstances, there can be no doubt about the fact of clandestine removal indulged in by the respondent firm. It is only the quantum of such clearances, which can be in dispute. Several persons concerned with the respondent firm and the marketing firm have admitted and corroborated the clandestine clearance by the respondent firm. Some of the dealers who purchased from the marketing firm also confirmed receipt of goods without bills. These admissions have been made in the statements recorded under Section 14 of the Central Excise Act on different dates.* ***The retraction of any statement, in our opinion, should be made to the authority before whom the statements were given. Thus, it is between the giver of the statement and the person before whom the statement was given. Any communication addressed to others can only be considered as representation or compliant. It is not their case that any retraction was given to the officer, who has recorded the statements. It is also not their case that they made any representation to the senior officers, who supervise the work of the officers, who recorded the statements alleging any threat or compulsion on the part of the officers while recording the statements. The affidavits have been signed before the Special Metropolitan Magistrate one set on 4-7-2000 and another set on 6-7-2000. These affidavits have been kept as a closely guarded secret and revealed for the first time in their reply to show-cause notice dated 11-4-2001.*** *Even in these affidavits, it was not being denied that there were clandestine clearances.* ***These affidavits cannot be considered as retraction of statements given under Section 14 of the Central Excise Act. At any rate, even if they were to be considered as retraction, the same cannot be considered as retraction made promptly as they surfaced only in April, 2001 for the first time.*** *Further, the clandestine removal is not totally denied in the affidavits. After swearing the affidavits on 4-7-2000, confessional statements have been given subsequently without referring to such affidavits.* ***These affidavits containing retractions are not worth relied upon and should have been ignored by the Commissioner (Appeals).*** *Further, it is noticed that the respondent deposited a sum of Rs. 1 lakh on 7-7-2000 by TR-6 challan after the swearing in of affidavits on 4-7-2000 and 6-7-2000. In other words, the statements given on 1-7-2000, 3-7-2000, 5-7-2000 etc. stand acted upon by payment of part of the disputed amounts. Having suppressed the production and clearance, having chosen to destroy the slips under which clearances have been*

made and having used the cash memo of M/s. Globe Food Products, the quantum of clearances clandestinely removed have to be revealed only by the respondent and the connected persons. In this case, it was revealed by the authorized signatory of the respondent firm that nearly 50% of the clearances were made without payment of duty and corroborated by others concerned. Considering the evidence relating to excess unaccounted stock found in the factory on the date of visit and the quantum of unaccounted clearances effected on 30-6-2000 and 1-7-2000, it is reasonable to conclude that the clandestine clearances are substantial.

(Emphasis supplied)

(iii) The Hon'ble Tribunal's order dated 25.09.2014 in the case of SHAIKH ANWAR SHAIKH ISMAIL Versus COMMISSIONER OF CUS. (IMPORT), MUMBAI reported as 2015 (315) E.L.T. 229 (Tri. - Mumbai):- The Hon'ble Tribunal at para: 5.1 of the order have observed as under:-

5.1 As regards Shri Kaushik G. Pandya, he was arrested by the DRI on 9-6-2000 and produced before the Magistrate who remanded him to judicial custody. Before the Magistrate, Shri Kaushik G. Pandya has not made any allegations of duress, threat or coercion by the DRI officers. Therefore, the retraction statement dated 12-6-2000, when he was in judicial custody, is only an after-thought. We further notice that in the retraction statement, he has made the allegation that "during obtaining my statements, the officers did not ask me about any facts and dictated the entire statement, after dictating the said statement I was asked by the said officers to sign the same". From a perusal of the statement it is seen that there are large number of details about the business activities of Shri Kaushik G. Pandya, from whom he took over the pharma business, what was the investments made by him, the details of various bank accounts maintained by him and so on. It is in the said statement he has admitted to purchasing 1500 Kgs of Vitamin B1 from Shri Shaikh Anwar Shaikh Ismail. He has also admitted that the said vitamin B1 given to him by Shri Shaikh Anwar Shaikh Ismail was imported and he had not asked for the bill of entry for these materials nor has he issued any bills for sale of these goods. He has also further admitted to having financed some of the imports made by Shri Shaikh Anwar Shaikh Ismail through M/s. Plus Point Enterprises. These details could not have been in the knowledge of department. Further the statement has been recorded in Gujarati in Shri Kaushik G. Pandya's own hands. Therefore, the allegation that the statements were dictated and obtained under duress is clearly unsustainable. ***We further notice that the retraction has been made before the Joint Director, DRI whereas the statement has been recorded by the Deputy Director as held by the Hon'ble Allahabad High Court in the case of Zaki Ishrati's case cited supra. If the retraction is not made before the officer to whom the statement was given it could not take away the effect of the statements. Therefore,the retraction can be considered only as an after-thought. It is a settled position that confessional statements recorded by the custom officer is a valid piece of evidence for the proceedings under the Customs Act.*** *Thus, the case against Shri Kaushik G. Pandya of aiding and abetting of [illegible]ling of Vitamin B1 is clearly established as he has dealt with the smuggled [illegible] undertaking resale after import. Therefore, penalty is correctly [illegible]under the provisions of Sections 112(a) & 112(b)of the Customs Act,*

(Emphasis supplied)

52. I further find that Sh. Rajveer Singh is an employee of Customs Broker, M/s. Eskay Logistics. Deposition of facts by the employee of the Customs Broker, who is filing Bills of Entry on behalf K. L. International itself is substantial to prove the Modus Operandi. I find that, Sh. Rajveer Singh has never retracted from his statements *ab initio* and has during his statements categorically admitted that the impugned goods i.e. dry dates imported by the Noticee is Pakistan Origin.

53. I find that, in his statement dated 19.11.2021, Sh. Parshottam Prajapati among other things categorically deposed that clearance of dry dates imported by the M/s. K. L. International at Pipavav port was looked after by Sh. Rajveer Singh and apart from Sh. Rajveer Singh, Sh. Souvik Sarkar was also looking after the work. The expenses of Sh. Souvik Sarkar were borne by them through their firm and Sh. Souvik Sarkar worked with him as an associate but was not paid any fixed salary. Such admission on behalf of Sh. Parshottam Prajapati, who was handling all the matters related to M/s. K. L. International, substantiate the fact that Sh. Rajveer Singh and Sh. Souvik Sarkar were authorized for clearance of dry dates imported by their firm, M/s. K. L. International at Pipavav port and they both were authorized person of the importer M/s. K. L. International. Hence, not asking question to Sh. Parshottam Prajapati regarding his meeting with Sh. Rajveer Singh would not affect the evidentiary value of these statements.

I also find that, Sh. Parshottam Prajapati also admitted in his statement dated 19.11.2021 that, the Customs Broker License of his firm, M/s. Shivoy Enterprise was suspended by the Commissioner of Customs, Tughlakhabad in respect of case a pertaining to undervaluation of pumps. So, he was well aware about the customs procedure and in-outs thereof. He actually seems to have mis-utilized his past experience to deviate the proceedings. Therefore, the submission made by the Noticee in this regard is untenable.

54. Having gone through the judgment of Hon'ble High Court in the case of Sainul Abiden Neelam (2014 (300) ELT342 (Mad.) relied upon by the Noticee in support of their stance, I find that the Hon'ble High Court in the above said case have raised doubt regarding genuineness of its contents of the statement of one of the person involved in the matter as he retracted his statement immediately but reiterated the original statement thereafter. There is no such incidence recorded in the present case, hence, the ratio of the above said judgment is not applicable.

55. As regard, the argument of the Noticee regarding, summoning the individual/ deponents to ascertain the veracity of their statements, I find that as already mentioned above, all the Noticee have attended the present proceedings including the personal hearing held in the matter, through their common Authorized Representative and filed their combined written/ oral submission accordingly. In their written/ oral submission none of the Noticee have requested to cross-examination of any individual/ co-noticee. Therefore, the argument is baseless and factually incorrect. Further, during the course of investigations several summons were issued to the co-noticee for recording their further statement in the matter but they have not appeared before investigating officer.

56. The copy of Bill of Lading MLJEANSA045918, issued by Merchant Lines was submitted by Mrs. Bharti, the Proprietor of the Noticee herself, vide her letter dated 25-11-2021, therefore, the Noticee cannot question the authenticity of the same. Though, the said Bill of Lading was in respect of earlier import made by M/s. K.L. International, however, the import was made from the same the supplier, M/s. Alburaq Dates Factory LLC, Dubai, who is the supplier of the consignments covered in the present case. The said Bill of Lading has been issued by a shipping line based out of Pakistan and the standard condition mentioned in the Bill of Lading stipulates that *"the contract evidenced by or contained in the bill of lading is governed by the law of Pakistan and any claim dispute arising there under or in connection herewith shall be determined by the courts in Pakistan and no other courts".*

On the basis of above document conclusion can be drawn that the Noticee had resorted to such fraudulent import in past also and goods exported by the above supplier to the Noticee in the past also and the impugned consignments, have actually been shipped from Pakistan. Thus, the above document is a corroborative evidence to prove that the Noticee No.1 with the help of various persons/Noticees have managed certificate of Country of Origin as UAE in respect of impugned goods even though the same have originally been shipped from Pakistan and are of Pakistan origin. Therefore, the argument made by the Noticee on this point is unacceptable.

57. It is Noticee's contention that WhatsApp chats and emails are inadmissible as the extraction this data was not conducted in compliance with Section 138C of the Customs Act, 1962. It is also Noticee's argument that department has not taken any effort to bring out any relation between the alleged relied upon WhatsApp chats and the present imports, nor statements of the concerned persons recorded in this regard.

57.1. In order to consider the above contention, it is imperative to examine the provisions of Section 138C of the Customs Act, 1962 which are extracted below:-

SECTION 138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence. —

(1) Notwithstanding anything contained in any other law for the time being in force, -

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely :-

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. *- For the purposes of this section, -*

(a) "computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

The above provisions govern the admissibility of *micro films, facsimile copies of documents and computer print outs as documents and as evidence.* The provisions also stipulate the conditions to be satisfied in this regard. However, I

find that in the present case, RUD-28 TO RUD-35 have been extracted from Mobile phones seized during the course Panchnama proceedings carried out at various premises. Thus, micro films or facsimile copies of documents or computer print outs have not been relied upon as documents and as evidence in the present case; hence, the provisions of Section 138C are not attracted. Notwithstanding the above facts, it is evident from these Panchnama that the Mobile phones were sealed in presence of independent Panch witnesses as well as various persons present during the proceedings. The Noticees have not raised any objection regarding these Panchnama proceedings or manner of sealing the mobile phones during the said proceedings. Further, the mobiles phones belonging to Shri Rajvir Singh were opened and verified in presence of independent Panches and Shri Rajvir Singh and proper Panchnama dated 30.11.2021 of the said proceedings have also been drawn. The mobile phone belonging to Sh. Parshottam Prajapati was also opened under proper Panchnama on 25.11.2021 to 26.11.2021, in presence of independent Panches at Cyber Forensic Laboratory, Mumbai. In both the above Panchnama proceedings, the seals of envelopes containing Mobiles phones were intact. Also, there was no incidence of any malfunction of these devices during the above Panchnama proceedings.

I would like to rely upon the following judgment of Hon'ble High Court of Gujarat in the case of PRINCIPAL COMMISSIONER OF CUSTOMS *Versus* KISHAN MANJIBHAI GADHESARIYA (2023) 2 Centax 63 (Guj) . The Hon'ble High Court while considering the argument made by the counsel of respondent regarding non-admissibility of digital evidence without certificate under Section 138(C) of the Cutoms Act,1962 have observed as under:-

" ***99. We do not find any merit in the above submission of Mr.Trivedi. The truth or the relevance of the documents has been admitted in no uncertain terms by the respondents in their statements recorded under section 108 of the Act 1962.*** *In such circumstances, it is too much for the respondents to say that the electronic evidence could not have been taken into consideration. In fact, the electronic evidence on record fortifies what has been stated by the respondents in their statements recorded under section 108 of the Act.*

100. *In the aforesaid context, we may refer to one order passed by the CESTAT Principal Bench, New Delhi, in the case of Laxmi Enterprises v. Commissioner of Customs [2018] 361 E.L.T. 1054 (Tri. - Del.). We quote the relevant observations made by the Principal Bench of the Tribunal as under :*

"11. ***The appellant has raised objections to the admissibility of the documents recovered from the laptop. They have cited the provisions of Section 138C of the Customs Act. We find such objections without basis in as much as the truth of the documents printed-out from the laptop has been admitted by Shri Sumit Chawla son of the proprietor in clear terms.*** *Further, their clear admission by him that these invoices recovered, reflect the correct valuation at which the transaction was concluded with the Pakistan supplier. Further the appellant was given an opportunity to prove the*

correct transaction value of the goods imported under 32 bills of entry by providing bank attested genuine invoices but Shri Sumit Chawla did not make same available. On the other hand, in his statement dated 19-1-2016, that the prices indicated in the invoices/commercial invoices could be taken for assessment of all past imports as the rate of product did not change much during period of imports. We are of the view that there is no infirmity on the part of the adjudicating authority in re-determining the value of the past imported goods on the basis of such invoices. In the peculiar facts and circumstances of the present case, there is no need for the Revenue to collect evidence in the form of contemporaneous imports."

101. *The aforesaid order passed by the Tribunal was challenged before the High Court of Delhi. The Delhi High Court dismissed the appeal vide order dated 6th August 2019 Laxmi Enterprises v. Commissioner of Customs [2019] 368 E.L.T. 890. The order passed by the Delhi High Court was further challenged by the assessee before the Supreme Court. The Supreme Court dismissed the SLP [Laxmi Enterprises v. Commissioner [2020] 372 E.L.T. A33], observing as under :*

"There is an inordinate delay of 623 days in filing this appeal and moreover we are not inclined to interfere with the impugned order passed the Customs, Excise and Service Tax Appellate Tribunal. Consequently, the appeal stands dismissed on the ground of delay as well as on merits."

102. *The Appellate Tribunal in its impugned order had held that the misdeclaration of the customs value in respect of the past clearances made under 32 Bills of Entry was established in view of the recovery of certain invoices/commercial invoices pertaining to the goods imported from laptop and mobile phones during the course of the search indicating procurement of goods from the foreign supplier at significantly higher prices than the amount declared to the department at the time of filing the Bills of Entry. These facts and the payment of money through extra banking channels were admitted during the investigations. Accordingly, the Adjudicating Authority rightly rejected the transaction value of the goods in terms of rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007."*

I also find that 4 summons were issued to Shri Parsotam Prajapati, to appear before the competent authority for recording his statements on 20.11.2021, 01.12.2021, 27.12.2021 and 06.01.2022 but he did not appear. Thus, enough opportunities were given to Shri Parsotam Prajapati to depose his statement in the matter. Only because of such non-cooperation and utter disregard for the proceedings initiated by the department his statement could not be recorded. Therefore, the argument of the Noticee that the statement of the individual from whose mobile phones WhatsApp chats has not been recorded and there is no statement of Shri Parshotam regarding meeting referred in Shri Rajveer Singh's statement is a blatant lie.

58. The Noticee has argued that the allegation regarding Packing material (Sargodha Jute Mills) is baseless; that the Noticee No. 7 has submitted an invoice proving the purchase of jute bags in the UAE which the department has ignored.

58.1. I find that during the examination carried out under Panchnama dated 19.11.2021; some packing bags were having marks of "Sargodha Jute Mills Ltd., Pakistan". It was also observed that the tags were removed in most of the bags

or their content was erased in some bags. The above observations clearly indicate that the Noticee i.e., the importer was trying to hide the fact that the goods were of Pakistani Origin. The above observations are corroborated from the mail sent from PREMSHIVOY@GMAIL.COM (i.e., Shri Prem) to Shri Parshotam on 27.09.2021 **(RUD-32)** which reads as:

"All pkg. stickers removed"

The above evidences prove that the impugned goods were of Pakistan origin and the Noticees were fully aware of the fact that the Pakistan origin goods attracted higher rate of duties of Customs (@200 %). Hence, to avoid detection, they used to remove Pakistan tags from packing bags and it is possible that some of the tags inadvertently remained attached to the packing bags which were ultimately detected during the Panchnama proceedings. If the impugned goods were of UAE origin as declared by the Noticee and only the packing materials from Pakistan was used, then they would not have removed the Packing materials tags. Also, Shri Souvik Guha Sarkar in presence of Panches admitted that the imported Cargo i.e.Dry Dates was of Pakistan Origin and it was exported from Pakistan to UAE, which were then imported into India; it was possible that in some bags the tag were left to be detached. He also informed during the Panchnama proceedings that import duty from Pakistan was 200 % and from UAE it was 20 %, so this modus operandi of hiding the actual county of origin was adopted.

Thus, the fraudulent intentions of the Noticees are evident, and their plea regarding the purchase of packing material from Pakistan is nothing but a fabricated afterthought.

59. It is also the Noticee's argument that despite CESTAT in its remand proceedings explicitly directed adherence to principle of natural justice, the department made no effort to produce Shri Souvik Sarkar or Shri Rajveer Singh for examination which vitiates the entire remand proceedings.

59.1 I find the above argument of the Noticee is without any basis. As already mentioned *supra,* the Noticees have not requested for cross examination of any witness, so question of producing Shri Souvik Sarkar and Shri Rajvir Singh does not arise. Since the Hon'ble Tribunal has not decided the appeal filed by Shri Souvik Sarkar, his matter is sub-judice. Further, Shri Rajveer Singh has already attended the present proceedings through his authorized representative and Shri Rajveer Singh as well as other Noticees participated in the present

proceedings have been given ample opportunity to present their case including request for cross-examination. I also find that Shri Rajveer Singh is also represented by the same Advocate, who represented all the other Noticees. Thus, there is no violation of principle of natural justice.

60. In view of above discussion, I find that the submissions made by the Noticees in the present proceedings appear to be only a fault finding exercise in the investigation which failed to prove that the impugned goods were not of Pakistan origin.

61. Since the Hon'ble Tribunal has kept all the issues open, now I proceed to examine the materials available on records as well as allegations made against the each Noticee afresh.

62. I find that the officers searched the residential premises of Mrs. Bharti, Proprietor of Noticee No. 1 located at 68, Block 19, Dakshinpuri Extension, Ambedkar Nagar, Pushpa Bhavan, New Delhi on 18.11.2021 and certain documents related to M/s. K.L. International were found but she could not explain anything about the documents. She also stated that she did not have any knowledge about the business activities of M/s. K.L. International and her husband Shri Prem was looking after the day to day work of above said firm. Shri Prem and Shri Parshotam were also present during the search proceedings. On being asked about the business activity of M/s. K.L. International , Shri Prem informed they are importing dry dates from UAE at Nhava Sheva and ICD Dadri and recently started importing at Pipavav port. He informed that he and Shri Parshotam place orders telephonically/ WhatsApp and after placing the order the overseas supplier supply the goods and send the documents through WhatsApp. On being asked about their registered premises at A-256, Old No. 55, Flat No. A-4, 3F, Chhaterpur Enclave-I, New Delhi – 110074, he stated that they have not used the same for long time after COVID-19 and currently not using for business purpose. During the search, certain documents and some electronic devices (one hard disk from the computer of Shri Prem, mobile phones of Shri Parshotam, Shri Prem and Mrs. Bharti), used for business activities, were resumed for further investigation.

I further find that, Mrs. Bharti in her statement dated 18.11.2021 stated that she just signed the documents as per the instructions of her husband; that she was not aware about filing of Bills of Entry dated 04.11.2021; that she was not aware about the overseas suppliers of dry dates, how the orders were placed and how payments were made; that she did not know who was operating bank

accounts of her proprietorship concern and signing the cheque and that her husband might be using her account; that her husband Shri Prem and his employer Shri Parshotam were working together in M/s. K.L. International. These depositions have not been retracted. From the above it is established that that Mrs. Bharti is the proprietor of the firm for namesake only and the business activities of the firm were handled by her husband Shri Prem and employer of her husband Shri Parshotam.

62.1 Since Shri Parshotam of M/s. Shivoy Enterprise was named as operator of the business of the importer M/s. K.L. International, Search was carried out at the residential premises of Shri Parshotam located at Block E-149, Lajpat Nagar – I, E Block, Opp. Pan house, New Delhi on 18.11.2021 where several documents pertaining to various business entities were found and relevant documents were resumed for further investigation. The Office premises of Shri Parshotam located at M/s. Shivoy Enterprise, 18, Surajkund Road, Pul Prahladpur, New Delhi – 110044 was also searched on 18/19.11.2021. The documents found in two computers were resumed in two hard disks for further investigation.

62.2 A Statement dated 19.11.2021 of Shri Prem, husband of Smt. Bharti, Proprietor of M/s. K.L. International was recorded under Section 108 of the Customs Act, 1962; wherein he *inter-alia* stated that, he was working in M/s. Shivoy Enterprise, where he attended documentation of Customs procedure i.e. preparation of check list, filing of Bills of Entry, arrangement of documents for examination, assessment and out of charge of the goods and his main work was arrangement of transportation of imported goods; he knew Shri Parshotam Prajapati since last 20 years and was working under him; that they were clearing various goods, including dry dates, of other importers; that in the year 2020, he and Shri Parshotam thought of importing dry dates themselves; that therefore, they created the firm, M/s. K. L. International under the proprietorship of his wife but actual work of import and sale was looked after by Shri Parshotam Prajapati; that the profit arising out of the import and subsequent sale of dry dates was shared between him and Shri Parshotam; that Customs clearance work of dry dates imported by M/s. K. L. International was handled by Shri Parshotam; that Shri Parshotam was not partner of M/s. K. L. International, but he took all important decisions of the firm, i.e., placing import orders, negotiation of the terms, customs clearance etc., after import and sales of imported dry dates; that since Shri Parshotam was also partner in profit of M/s. K. L. International, they worked in the office of M/s Shivoy Enterprise; that the documents i.e., invoice, packing list, certificate of origin etc., pertaining to

M/s. K. L. International were received through WhatsApp and therefore, the same were stored in desktop computer of the office of M/s Shivoy Enterprise; that arrangement of funds for payment of the imported goods, freight thereon, Customs duty and other overheads were looked after by Shri Parshotam; that Shri Jatin Arora from Gurugram was the sales indenting agent who mediated in sale of dry dates imported by them and the dealing with Shri Jatin was handled by Shri Parshotam; that M/s. Lord Shiva & Co was their buyer of dry dates, who purchased 60% to 70% of dry dates imported by them; that he did not know how the payment was made to the suppliers of dry dates and the dealing with the suppliers and payment was looked after by Shri Parshotam; that the bank account of M/s. K. L. International was handled by Shri Parshotam and payments were made online by him.

62.3 Shri Parshotam Prajapati's statement under Section 108 of the Customs Act, 1962 was also recorded on 19.11.2021. He deposed that he was working in M/s. Sidhant Logistics and also ran a partnership firm, M/s. Shivoy Enterprise; that he was engaged in Customs clearance in his firm and also holding Customs Broker license; that he knew Shri Prem since last 20 years; that in 2020, Shri Prem started M/s. K. L. International as a proprietorship concern of Mrs. Bharti (wife of Shri Prem); that he also participated in the business of M/s. K L International by placing order, arranging customs clearance and sales in domestic market; that he used to place orders on behalf of M/s. K. L. International by telephone or WhatsApp; that he generally contacted Shri Wasif and Shri Shahzeb Azad of M/s. Alburaq Dates Factory, LLC, Dubai and in the past, he also placed orders to Shri Durani of M/s. Arbi Food Stuffs, Dubai, and Shri Wasim of M/s. Five Stone General Trading LLC, UAE; that they did not enter into any written purchase contact with the suppliers and all the terms were verbal only; that as per the oral / verbal agreement, the payment was to be made after 60 days from the date of Bill of Lading and in recent invoices, the term of payment was 30 days from the date of invoice; that as regards clearance of dry dates imported by M/s. K. L. International, the Customs clearance at Nhava Sheva was handled by Shri Shailendra of M/s. Sidhant Logistics (Customs Broker), the consignments at ICD-Dadri were cleared personally by him and the clearance of the goods at Pipavav was looked after by Shri Rajveer of M/s. Eskay Logistics; that apart from Shri Rajveer, Shri Souvik Guha Sarkar, was also looking after the work and the expenses of Shri Souvik Sarkar were borne by them through M/s. K. L. International; that Shri Souvik Guha Sarkar worked with him as an associate but was not paid any fixed salary; that though he is not partner, he actively participated in the business of M/s. K. L.

International; that the documents i.e. invoice, packing list, certificate of origin etc., were received through WhatsApp and therefore, the same were stored in the desktop computer of his office and physical documents of M/s. K. L. International were not kept by him; that Shri Jatin Arora from Gurugram was the sales indenting agent who mediated in sale of dry dates imported by them; that M/s. Lord Shiva & Co was their buyer of dry dates and they purchased almost 60% to 70% dry dates imported by M/s. K. L. International; that the Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 (filed at Pipavav) and Bill of Entry No.6277099 dated 16-11-2021 and No.692689 dated 03-01-2022 (filed at Nhava Sheva) were filed by Shri Rajveer Singh of M/s. Eskay Logistics, Pipavav (Customs Broker) and Shri Shailendra of M/s. Sidhant Logistics (Customs Broker) respectively as per his instructions and all the documents i.e. Bill of Lading, invoice, freight invoice, country of origin certificate etc. pertaining to these Bills of Entry were lying in the desktop computer of M/s. Shivoy Enterprise; that as regards his profit-sharing formula with M/s. K. L. International, they decided to share profit in the ratio of 60:40 i.e. 60% will be his share and 40% will be the share of M/s. K. L. International; that payment to overseas supplier is made through bank remittance from the account of M/s. K. L. International in SBI/ Indusind Bank.

62.4. I find that during the search carried out at the registered premises of Noticee No. 1 M/s. K.L. International at A-256, Old No. 55, Flat No. A-4, 3F, Chhaterpur Enclave-I, New Delhi – 110074 on 21.11.2021 under proper Panchnama, it was observed that the said premises was occupied by one Shri Devanshu Singh since September, 2021. Further, as per the rent agreement between the Noticee No. 1 and owner of the premises, the firm was in existence at the said premises only between 20.01.2020 to 19.12.2020. Also, no document pertaining to business dealing of the Noticee No. 1 was found during the search. It was therefore evident that the firm was not operating from the said premises after 20.12.2020 and has not renewed rent agreement thereafter. Therefore, the importer firm was not physically operating at the above premises at the time of the import of the impugned goods.

63. The 46 containers of dry dates imported by the importer, M/s. K. L. International vide Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 (filed at Pipavav) were examined under Panchnama at CFS Logix Park, Pipavav by team of Customs officers and DRI officers on 19.11.2021 in presence of Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International, Shri Rajveer Singh & Shri Vijay Rathod of M/s. Eskay Logistics, Customs Broker of the importer. During the

examination, the goods i.e. dry dates were found packed in jute bags stuffed with different descriptions on them and it was found that in some bags in the container No. MNBU4000276 and MWCU5302098, there were some tag with remarks "SARGODHA Jute Mills Limited, Manufacturers & Exporters of Quality Jute Products in Pakistan. Email:info@sargodhajute.com, site: www.sargodhajute.com". On being asked about this, Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International admitted to the officers in presence of all the persons and panchas that *"the imported cargo i.e. dry dates is of Pakistan origin and it has been exported from Pakistan to UAE which were then imported into India. It is possible that in some bags the tag was left to be detached."* Shri Souvik also informed the officers before the panchas that the import duty from Pakistan was 200% and from UAE it was 20% and hence the modus operandi of hiding the actual country of origin was adopted. None of the Noticee has raised any doubts about the above Panchnama proceedings.

63.1. In the statement dated 19.11.2021 recorded under Section 108 of the Customs Act, 1962, Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International, inter alia, deposed that he was representing himself as authorized representative of M/s. K. L. International, New Delhi and was appointed by Smt. Bharti, Proprietor of M/s. K.L. International to represent M/s. K. L. International before Customs, Pipavav for clearance of dry dates imported by the importer; that he produce an authorization letter dated 10.11.2021 issued by the proprietor of M/s. K. L. International vide which he has been fully authorized to give any statement and sign documents on behalf of M/s. K.L. International; that Shri Parshotam was looking after all the work of M/s. K.L. International; that Smt. Bharti, Proprietor of the importer and her husband have lent the IEC of M/s. K.L. International to Shri Parshotam for import of dry dates; that all the imports of M/s. K. L. International was actually financed and managed by Shri Parshotam; that he was freelance clearing & forwarding agent; that he used to introduce the clients to C&F agents and earn commission; that it was for the first time that he had undertaken work at Pipavav for this consignment; that he had introduced Shri Parshotam to M/s. Eskay Logistics for clearing and handling work and would get his commission of Rs. 20,000/- per container from M/s. Eskay Logistics; that IEC of M/s. K.L. International was used by Shri Parshotam; that Shri Parshotam had instructed him to get IEC in the name & PAN of his father and so, he had recently applied for IEC and obtained IEC No. ALJPG3083H in his father's PAN (Subrato Guha Sarkar); that name of the said firm was M/s. Ganpati Traders, which was his father's proprietorship concern; that as informed by Shri Parshotam, he would be using this IEC to import dry dates only; that Shri Parshotam had committed

him to pay Rs. 10,000/- to Rs. 15,000/- per container for lending IEC to him; that Shri Parshotam said that he would transfer all the payment to the bank account of M/s. Ganpati Traders and from that account, he would pay to the suppliers and tax authorities by using ID & password of M/s. Ganpati Traders bank account which he has already shared with Shri Parshotam; that Shri Parshotam had managed all the remaining work such as FSSAI certificate and other regulatory approvals; that he had obtained signature of his father on 2 to 3 blank letter heads and given to Shri Parshotam; that Mrs. Bharti and Shri Prem of M/s. K. L. International were also working on the same condition and also getting the same amount as Shri Parshotam had offered to him; that Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 of M/s. K. L. International were filed at Pipavav by M/s. Eskay Logistics on the directions of Shri Parshotam; that on being shown an image of jute bag in which dry dates were imported under Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021, he stated that the Customs officers had noticed the above packing during the course of examination of the goods; that the image of the jute bag in which dry dates were imported under above mentioned Bills of Entry refer to the name of "Sargodha Jute Mills Ltd" in Pakistan; that on being asked about how the jute bag of Pakistan was there in the cargo from Dubai, he stated that in fact the goods have been brought from Pakistan via Dubai to evade the Customs duty on it; that Shri Parshotam had started M/s. K. L. International specially to import dry dates from Pakistan and for this purpose, he convinced Shri Prem to obtain IEC in the name of his wife Mrs. Bharti and rest of the work such as regulatory approvals, purchase from overseas suppliers, clearing & forwarding of imported goods was being looked after by Shri Parshotam; that he had telephonically enquired with Shri Rajveer Singh of M/s. Eskay Logistics, Pipavav who had earlier cleared more than 150 containers of dry dates which according to his knowledge, were of Pakistani origin; that he and Shri Parshotam visited Pipavav on 19.10.2021 and met Shri Rajveer Singh; that Shri Parshotam, in his presence, told Shri Rajveer Singh that they were planning to import dry dates of Pakistan origin via Dubai port, and he (Shri Parshotam) would manage to get country of origin certificate of Dubai Chamber of Commerce; that since Shri Rajveer Singh was already clearing similar consignments, he responded that if the country of origin certificate got verified online, he would manage to clear the goods; that Shri Rajveer Singh quoted the rates for clearing and handling of dry dates at Rs. 80,000/- per container; that as per his earlier discussion with Shri Rajveer Singh, a margin / commission of Rs. 20,000/- per container was kept for himself (Shri Souvik Guha Sarkar); that while meeting Shri Rajveer Singh at Pipavav on 19.10.2021, they had decided to import the dry dates in the name of

M/s. Ganpati traders also which was his father's proprietorship concern but the documents of M/s. K. L. International were received earlier than M/s. Ganpati Traders so, they asked Shri Rajveer Singh to manage clearance of the same in the name of M/s. K.L. International; that however, due to some reasons, the goods were not cleared for more than 10-12 days and therefore, Shri Parshotam asked him to go to Pipavav and manage clearance; that as regards arranging overseas supply, Shri Parshotam was managing the same with the help of Shri Jatin of Delhi; that on the instructions of Shri Parshotam, Shri Jatin managed to issue FSSAI certificate for his father's firm, M/s Ganpati Traders without charging any rupee from him; that he was not aware about overseas supplier of Dubai or Pakistan; that local buyers of imported dry dates are looked after by Shri Parshotam and Shri Jatin Further, as already discussed at Para *supra* the so called retraction of statement filed by Shri Souvik Guha Sarkar letter and affidavit after long time from recording his statement, is legally invalid and hence, the above statement is admissible as evidence in the present proceedings. In any case, the appeal filed by Shri Souvik Guha Sarkar is yet to be decided by the Hon'ble Tribunal.

63.2. The office premises of M/s Eskay Logistics, Office No. 3, Shri Ram Plaza, Pipavav was also searched on 19.11.2021 and certain documents / files pertaining to clearance of dry dates by M/s. Eskay Logistics were resumed for further investigation. The officers also searched the residential premises of Shri Rajveer Singh Mathuram Mandaliya at 16A, Shyam Vadi, Near Railway Crossing, Dungar Road, Rajula on 19.11.2021, where Shri Rajveer Singh and Shri Souvik Guha Sarkar were also present. During the search, certain electronic devices (laptop of Shri Rajveer Singh, mobile phones of Shri Rajveer Singh and Shri Souvik Sarkar) were seized for further investigation. The mobile phones of Shri Rajveer Singh Mathuram Mandadiya were examined in presence of Shri Rajveer Singh and independent panchas and necessary communications, chats and documents were taken. Print outs of all such documents were signed by Shri Rajveer Singh in presence of independent panchas. These Panchnama proceedings have also not been disputed by the Noticees.

63.3. The contents of the statement dated 19.11.2021 of Shri Rajveer Singh Mathuram Mandadiya, employee of M/s. Eskay Logistics (Customs Broker of M/s. K. L. International at Pipavav), recorded under Section 108 of the Customs Act, 1962, have already been discussed at Para 50.2 above hence, for the sake of brevity the same is not repeated here.

63.4. Apart from the 46 containers of dry dates for which total 5 Bills of Entry all dated 04.11.2021 were filed at Pipavav Port and which were subsequently seized on 09.12.2021, M/s. K. L. International had also attempted to import one container no. MWCU5245763 having 27500 kg dry dates vide Bill of Lading No. MAEU214702062 dated 18.11.2021. Since no Bill of Entry was filed by the importer M/s. K. L. International for the above container even after a period of more than 6 months, the said Container bearing no. MWCU5245763 was examined on 19.07.2022 at port CFS, Pipavav. Shri Rajveer Singh informed the officers and panchas that through he was CHA/Clearing agent in respect of the 46 containers imported by M/s. K.L. International placed under seizure for mis-declarations, he has not received any documents pertaining to the instant Container No. MWCU5245763 nor any instruction for filing of Bills of Entry in respect of the said container from M/s. K.L. International till date. On verification of the details mentioned on the bags containing "Dry Dates", it was observed that aforesaid container of "Dry Dates" attempted to be imported by M/s. K.L. International, New Delhi was from the same supplier and was of same lot as that of the 46 containers of the 'Dry Dates' imported vide 5 Bills of Entry all dated 04.11.2021 and seized vide Seizure Memo dated 09-12-2021. Further, it was also observed that the Food Safety and Standard (Packing and Labeling) Regulations, 2011 were not followed on the packaging of the said goods. It was noticed that FSSAI labels affixed on some bags were easily detachable. Therefore, the 'Dry dates' attempted to be imported vide Container No. MWCU5245763 having total quantity 27,500 Kgs. (550 Bags) under B/L No. MAEU214702062 was also placed under seizure vide Seizure Memo dated 21.09.2022 under the reasonable belief that in the instant consignment also, the same goods i.e. Dry dates of the same importer and supplier, attempted to be imported under Container No. MWCU5245763 having total quantity 27500.00 Kgs. (550 Bags) vide B/L No. MAEU214702062 and the importer/consignee has mis-declared the country of origin of goods with an intention to evade the Customs duty @200% adv. on Pakistan Origin goods and therefore liable to confiscation under the provisions of the Customs Act, 1962. In order to ascertain the marks and FSSAI labels on the dry dates in the earlier 46 containers imported vide Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021, re-examination of those dry dates lying at LCL CFS, Pipavav was also carried out and it was found that in some bags which were tagged with a slip containing details of exporter, importer and details of FSSAI, the same can be easily separated / detached from such packaging.

64. M/s. K.L. International had also imported two consignments of dry dates vide Bills of Entry No. 6277099/16.11.2021 & 6926789/03.01.2022 filed at JNCH, Nhava Sheva. The 5 containers of dry dates imported vide Bill of Entry No. 6277099/16.11.2021 were examined on 04.12.2021 whereas, 7 containers of dry dates imported vide Bill of Entry No. 6926789/03.01.2022 were examined on 16.01.2022. During the examination, it was noticed that in some of the jute bags, washed off white-coloured tags were attached and it appeared that the said tags were intentionally removed to hide description mentioned on them. Therefore, the dry dates imported vide the above said Bills of Entry were placed under seizure vide seizure memo dated 24.01.2022.

65. I find that the investigating agency has brought on record sufficient documentary as well as digital evidences to corroborate the outcome of examination of goods and statements made by related persons in their statements to substantiate the modus operandi of importing the dry dates by mis-declaring the country of origin so as to avoid payment of customs duty applicable for the said goods of Pakistan origin.

65.1 The investigating agency had issued summons to the following person to get further statements on the evidences brought on record during further investigation but they did not appear before the investigating agency and thereby have not cooperated in the investigation:

Name of person to whom summons were issued	Date of Summons	Date for appearance
Shri Parshotam Prajapati (the real/ actual importer of dry dates in the name of M/s. K. L. International)	19.11.2021 26.11.2021 09.12.2021 28.12.2021	20.11.2021 01.12.2021 27.12.2021 06.01.2022
Shri Jatin Arora (an associate of Shri Parshotam)	07.02.2022 14.02.2022 15.03.2022 06.04.2022	08.02.2022 25.02.2022 04.04.2022 25.04.2022
Shri Prem (husband of Mrs. Bharti, Proprietor of M/s. K.L. International)	19.11.2021 26.11.2021 09.12.2021 28.12.2021	20.11.2021 01.12.2021 24.12.2021 05.01.2022
Mrs. Bharti, Proprietor of M/s. K.L. International	23.11.2021 26.11.2021 09.12.2021	26.11.2021 01.12.2021 24.12.2021

Shri V. S. Yadav of M/s. Sidhant Logistics, who had cleared consignments of dry dates at Nhava Sheva.	03.12.2021 28.12.2021 06.01.2022	10.12.2021 05.01.2022 28.01.2022
Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics, who had cleared consignments of dry dates at Nhava Sheva	03.12.2021 28.12.2021 06.01.2022	10.12.2021 04.01.2022 27.01.2022
Shri Pankaj Kumar Tiwari, Proprietor of Lord Shiva & Company, Gurugram (Major buyer of M/s. K.L. International)	03.12.2021 06.01.2022	10.12.2021 25.01.2022
Shri Mohammad Shahzeb Azad (Authorized signatory of the M/s. Alburaq Dry Dates factory, Dubai)	14.10.2022 21.10.2022	21.10.2022 28.10.2022

The facts clearly suggests that M/s. K.L. International other Co-Noticee were involved in the fraudulent import of Pakistan origin Dry dates via UAE disguising them as UAE origin Dry dates and because of they were conscious of the fact that their further statements before the investigating agency will strengthen the case against them, they desisted from attending the further proceedings. Even though they did not respond to the summons but as soon as they received the Show Cause Notice they managed to appoint common authorized representatives, filed written submissions and attended the personal hearing through them. They also filed appeals before the Hon'ble CESTAT, and also filed common written and oral submissions through their Authorized Representative. This aspect establishes that M/s. K.L. International in connivance with the other Co-Noticee had indulged in the evasion of Customs Duty as alleged in the Show Cause Notice.

I rely upon the Hon'ble Tribunal's order in the case of *PHOOLA RAM Versus COMMISSIONER OF CUSTOMS, JAIPUR 2007 (208) E.L.T. 308 (Tri. – Del) The Hon'ble Tribunal's observations are extracted below:-*

6. *On the perusal of the records, I find, that the seizure of the gold biscuits was made on 23-10-97 and the statement of appellant no. '2' recorded on the spot which categorically indicates that, appellant no. '2' was an employee of appellant no. '4' and he was carrying the gold biscuits and the Indian currency, as per instructions of appellant no. '4'. The statement of appellant no. '2' also indicates that he informed the authorities that these gold biscuits were of smuggled nature. The authorities, during the search of appellant no. '2' did not come across any documentary evidence regarding licit possession of the gold biscuits. It was argued by the advocate for appellant that the appellant no. '2' had in his possession the photocopy of bill '12' dated 17-10-97 but the authorities refused to take cognizance of such bill. To my mind, this is not correct statement, inasmuch as that when appellant no. '2' was arrested and produced before the Chief Judicial Magistrate, no documents were produced nor there is any averment of the*

presence of the photocopy of the bill '12'dated 17-10-97. Further, I find that the appellant no. '2' had moved a bail application on 25-10-97, in which also he had not disclosed presence of the bill '12' dated 17-10-97 to indicate the licit possession of the gold biscuits. The appellant no. '2' also did not indicate in his bail application that the amount of Indian currency was towards part payment of the purchase of agricultural land. In the absence, of any such averments on the first instance, the statements recorded by the authorities of appellant no. '2' on 23-10-97 indicates that the appellant no. '2' was carrying smuggled foreign marked gold biscuits and the Indian currency, which was sale proceeds of smuggled silver. Further, I find that appellant no. '4' had claimed the ownership of the seized foreign marked gold biscuits and Indian currency. It was the contention of the appellant no. '4' that he had legally purchased these gold biscuits from M/s Dhan Cholia Sons, Delhi vide bill '12' dated 17-10-97. I find from records that the authorities had visited the residential/business premises of the appellant no. '4' in Bikaner on 24-10-97. On that date, appellant no. '4' was not available but his son was present in the residence/business premises. The search of the business premises did not reveal any sale or purchase of the gold and nor did son of appellant no. '4' produce any record regarding the purchases of foreign marked gold biscuits and the currency being in possession for sale and purchase transaction of agricultural land. ***I find from records that the appellant no. '4' did not attend summons which were issued by the authorities to him till 19-12-97. The authorities had issued 6 summons to the appellant no. '4' to cooperate in the investigation which was not attended to by the appellant no. '4', but on 19-12-97, bill '12' dated 17-10-97 of M/s. Dhan Cholia Sons, Delhi and some agreements regarding the sale and purchase of agricultural land were produced. If these documents were in the possession of the appellant no. '4', he should have produced these documents at the first instance when he was issued first summons by the authorities. The learned advocate could not point out from records why the appellant no. '4' did not respond to the summons issued by the authorities till 19-12-97. The non-cooperation of appellant no. '4' with the investigating authorities from 24-10-97 to 19-12-97 is enough to draw an adverse inference against the appellant no. '4'.*** *Since appellant no. '4' could not justify the non-production of the bill of M/s. Dhan Cholia Sons, Delhi and other documents regarding the sale and purchase of agricultural land, prior to 19-12-97, it is very evident that the appellant no. '4' had embarked upon a massive cover up operation to give legitimacy to the whole issue. I find that appellant no. '2' being an employee of the appellant no. '4', could not have given any statement which is wrong and which can be inculpatory against his own employers, unless and until it is a tact. The statements recorded of appellant no. '2' on the spot do not indicate any duress or coercion which can be noticed from the fact, that on request from appellant no. '2', the authorities took him to a safe place i.e. the Division Office of the Customs Authorities in Bikaner for search and examination of his bag. I find from the records that the bill no. '12' dated 17-10-97 as issued by M/s. Dhan Cholia Sons, Delhi only talks about sale of 5 gold biscuits but does not indicate any marks which were found on the gold biscuits seized from appellant no. '2'. It is a common knowledge that the gold biscuits with foreign marking, if legally imported, carry unique markings on them, which is generally reflected on the invoices which are issued for sale of such gold biscuits. Learned advocate was not able to show from the records that the markings which were found on the gold biscuits tallied with the markings as indicated on the invoices on M/s. Dhan Cholia Sons, Delhi. In the absence of any direct evidence regarding the licit possession of 5 foreign marked gold biscuits in the hands of appellant no. '2' and appellant no. '4', the absolute confiscation as ordered by the lower authorities is correct and does not require any interference.*

(Emphasis supplied)

65.2. As per observations made and evidences relied upon in the show cause notice, it undoubtedly transpires that there was a larger syndicate of members involved in importing Dry dates from Pakistan by routing the goods through UAE in order to evade 200% Customs duty imposed on the goods originating in or exported from the Islamic Republic of Pakistan w.e.f. 16.02.2019. In the instant case, the syndicate masterminded by,

1. Shri Parshotam Prajapati
2. Shri Mohammad Shahzeb Azad
3. Shri Jatin Arora

have procured dry dates from Pakistan; created fictitious overseas supplier in the name of M/s. Alburaq Date Factory LLC in Dubai; created various fictitious importer and buyer firms in India in the name of M/s. K.L. International, M/s. Ritika Exim etc.; availed Country of origin certificates from Dubai/Ajman Chamber of Commerce in the name of fictitious firm; imported the dry dates by willfully suppressing the facts and mis-declaring the country of origin in the Customs documents; supplied the dry dates to the fictitious buyer firms created by them. The above mentioned masterminds have been actively abetted by,

1. Mrs. Bharti, Proprietor of M/s. K.L. International, New Delhi
2. Shri Prem, Husband of Mrs. Bharti
3. Shri Souvik Guha Sarkar, Authorized representative of K.L. International
4. Shri Rajveer Singh, Customs Broker at Pipavav port
5. Shri Pankaj Tiwari, Proprietor of the buyer firm, M/s. Lord Shiva & Co.
6. Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics CHA Services
7. Shri V.S. Yadav of M/s. Sidhant Logistics CHA Services

66. Now I proceed to discuss the allegations made and evidences collected in respect of each Noticee one by one afresh as ordered by the Hon'ble Tribunal.

M/s. K.L. International, New Delhi [Noticee No. 1]

67. In the Show Cause Notice it is proposed to
(i) reject classification of the impugned goods under CTH 08041020 imported at Pipavav and Nhava Sheva port and reclassify the same under CTH 98060000 ;
(ii) Demand and recover customs duty amounting to Rs. 14, 59, 54, 244/- along with interest invoking provisions of Section 28(4) of Customs Act, 1962 and Section 28AA of the Customs Act, 1962;

(iii) Confiscate the impugned goods imported at Pipavav and Nhava Sheva port under Section 111(m) and 111(o) of the Customs Act, 1962;

(iv) Impose penalty under Section 112(a)/112(b) or 114A of the Customs Act,1962 ;

~~(v)~~ Impose penalty under Section 114AA of the Customs Act,1962;

67.1 I find from the case records that the 46 containers of dry dates imported by the importer, M/s. K. L. International vide Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 (filed at Pipavav) were examined under Panchnama at CFS Logix Park, Pipavav in presence of Shri Shri Souvik Guha Sarkar, authorized representative of Noticee No. 1 and Shri Rajveer Singh of M/s. Eskay Logistics, Customs Broker of Noticee No. 1 and independent Panchas on 19.11.2021. The Noticee No. 1 has not disputed that the examination of the goods in presence of the above named person nor raised any objection regarding the facts narrated in the Panchnama.

It is also on record that Mrs. Bharti, Proprietor of Noticee No. 1 letter of authorization dated 10.11.2021 had authorized Shri Souvik Sarkar to attend all work related to import of "dry dates" at Pipavav Port on behalf of the Noticee No. 1. Shri Souvik Sarkar himself has during his deposition in statement dated 19.11.2021. The said letter dated 10.11.2021 is addressed to the Deputy Commissioner, Customs, Pipavav and bears signature and stamp of the Proprietor of K.L. International which she has not denied. Further, the deposition by Shri Prem, Shri Parshotam and Shri Rajveer Singh confirms that Shri Souvik Sarkar acted as authorized person of Noticee No. 1 for clearance of the subject goods at Pipavav Port.

Shri Rajveer Singh, employee of M/s. Eskay Logistics, Customs Broker of Noticee No. 1 at Pipavav, also attended the work as CHA for filing Bills of Entry for clearance of the said goods for home consumption. It is also not in dispute that during the course of examination of goods, the packing material in which dry dates were packed was showing the name of "Sargodha Jute Mills Ltd. in Pakistan" on it. This concrete and tangible evidence is further corroborated by the deposition of Shri Souvik Sarkar in his statement dated 19.11.2021 admitting, inter alia, that "in fact the goods have been brought from Pakistan via Dubai to evade the customs duty on it", and Shri Rajveer Singh in his statement dated 19.11.2021 admitting, inter alia, that "in fact the goods have been brought from Pakistan via Dubai to evade the customs duty on it". The above Panchnama proceeding is a vital and concrete evidence to establish that the said goods are of Pakistan origin. I rely upon the following judgments in this regard:

(i) Hon'ble High Court's judgment in the case of M/s. VEERENDRA SINGH Versus UNION OF INDIA 2024 (388) E.L.T. 692 (Del):- The Hon'ble High Court's observations are extracted below:-

7. *It may be seen that the petitioner gave incriminating statements under Section 108 of the Customs Act admitting to the recovery of 7140 memory cards from the rack of the table, as also the recovery of 2360 memory cards from his laptop bag. He admitted that he did all this at the instance of one "Chacha". In his further statement dated 28-1-2011, he recognized Rajdeep Chawla as the same person who gave him Hong Kong Duty Free Shop poly bag from which memory cards were recovered from the room of Wing Incharge, AFRRO, Arrival Office. Rajdeep Chawla also stated in his statement under Section 108 of the Customs Act that on 26-1-2011, he landed at IGI Airport and started waiting near the escalator in the Arrival Hall and at the instance of one Mukesh, he handed over the packet to an Officer wearing immigration uniform. He identified the petitioner Veerendra Singh as the person whom he handed over the Hong Kong Duty Free Shop polythene bag in which the memory cards were kept. Even though, two Wing Incharges, in their statements, stated that the entry of Veerendra Singh in the room of Incharge with polythene bag was not within their knowledge, but as stated by them, the recovery of memory cards was effected at the instance of the petitioner in the manner stated above.* ***The statements were made by the petitioner on 27-1-2011 and 28-1-2011 but the same were retracted after a delay of four days on 1-2-2011. It is a settled law that the statement recorded under Section 108 of the Customs Act is a material piece of evidence and can be used as substantive evidence. The statements recorded under Section 108 of the Customs Act in this case are consistent, the witnesses are supporting each other regarding the incident of recovery and such statements are further corroborated by the Panchnamas prepared at the spot which bear the signatures of the petitioner as also the Panch Witnesses.***

8. *On a careful perusal of the reasons assigned and the case law relied on in the impugned order, it is evident that the Learned Joint Secretary conducted a meticulous exercise to examine and appreciate the evidence on record in the light of the settled principles of law and came to a categorical finding that the guilt of petitioner who is accused of colluding and abetting in the smuggling of impugned goods is established. The findings of the Learned Joint Secretary assume legally correct approach in the light of the deposition of the witnesses recorded under Section 108 of the Customs Act, duly corroborated by panchnamas of recovery.*

(Emphasis supplied)

Based the observations made by the Hon'ble High Court *supra,* I find that undisputed facts narrated in the above Panchnama and deposition made by Shri Souvik Sarkar and Shri Rajveer Singh emphatically prove that the impugned goods i.e. Dry Dates are of Pakistan origin imported via Dubai /UAE.

67.2 Further, as already mentioned *supra* Shri Parshotam who is one of the Master-Mind in whole conspiracy, was issued summons on 19.11.2021, 26.11.2021, 09.12.2021 and 28.12.2023 for appearance on 20.11.2021, 01.12.2021, 27.12.2021 and 06.01.2022 respectively but he did not appear and therefore actions under Section 174, 175 and 176 of the Indian penal Code have been initiated against him by filing Criminal Complaint No. 4435/2022 before

the Hon'ble Chief Judicial Magistrate, Jamnagar. In these circumstances, argument of the Noticee No. 1 regarding corroboration is not valid and tenable in law.

67.3 The Noticee No.1's registered address was A-256, Old No. 55, Flat No. A-4, 3F, Chhaterpur Enclave-I, New Delhi – 110074. When the DRI and Customs officers visited the said premises on 18.11.2021 for search proceedings, it was found that the said premises was occupied by one Shri Devanshu Singh since September, 2021. It is evident from rent agreement between the Noticee No. 1 and owner of the premises that the firm was in existence at the said premises only between 20.01.2020 to 19.12.2020. During the search, no document pertaining to business dealing of the Noticee No. 1 was found. Further, Shri Prem, husband of the Proprietor of firm, in his statement dated 19.11.202 has stated that the work of M/s. K.L. International was carried in the office premises of M/s. Shivoy Enterprise and the registered premises was not used by the firm. Under the circumstances, it is clear that the firm was physically not in existence at the above registered address at the time of import transactions covered in the show cause notice.

67.4. It is also evident from the Panchnama and statement of Mrs. Bharti, Proprietor of M/s. K.L. International that she was unable to explain anything about the documents of M/s. K.L. International found at her residential premises. She also stated that she did not have any knowledge about the business activities of M/s. K.L. International; that her husband Shri Prem was looking after the day to day work of the importer concern; that she just signed the documents as per the instructions of her husband; that she was not aware about filing of Bills of Entry dated 04.11.2021; that she was not aware about the overseas suppliers of dry dates, how the orders were placed and how payments were made; that she did not know who was operating bank accounts of her proprietorship concern and signing the cheque and that her husband might be using her account; that her husband Shri Prem and his employer Shri Parshotam were working together in M/s. K.L. International. These depositions are not retracted throughout the proceedings. It is therefore proved on record that Mrs. Bharti is the proprietor of the firm for namesake only and the business activities of the firm were not handled by her but by her husband Shri Prem and employer of her husband Shri Parshotam, that too, without any formal authorization / Power of Attorney in their favour, from a premises which was not registered for the activities of the firm.

67.5. In view of the above facts and other evidences brought on record, I find that allegations in the show cause notice that the firm was created

fictitiously so as to import dry dates of Pakistan origin by mis-declaring them as of Dubai / Ajman/UAE origin are correct.

67.6. As observed during the investigation, the Noticee No. 1 has earlier imported dry dated from M/s. Prolix International through the port of Nhava Sheva and Mr. Mohammad Shahzeb Azad was the owner of the said firm. The said person has floated various fictitious firms in India whose GST registration were cancelled by the department for violation of various provisions of Goods and Services Tax Act, 2017. He was also authorized signatory of M/s. Alburaq Dates Factory, LLC, Dubai. Both the above firms i.e., M/s. Prolix International and M/s. Alburaq Dates Factory, LLC, Dubai were created and operated by the same person from the same premises. It is obvious that Mr. Mohammad Shahzeb Azad created these fly-by-night firms for illegal import of dry dates in India. The documentary evidences of earlier imports and other documentary evidence placed on record corroborate the nexus between the firms exporting dry dates from overseas and the firms importing dry dates in India. These are circumstantial evidence to substantiate the allegations of fraudulent import in the present case.

67.7. I find from the statements of Shri Prem and Shri Parshotam dated 19.11.2021 that M/s. Lord Shiva & Co. purchased 60% to 70% of dry dates imported by the Noticee No. 1. The investigating officers visited premises of M/s. Lord Shiva & Co. located at upper Ground Floor, H-235, Sushant Arcade, Gurgaon, Haryana but it was observed that the shop was closed since long and not functioning. Mr. Pankaj Kumar Tiwari of M/s. Lord Shiva & Co. was issued summons but he did not respond. It is therefore rightly alleged that the entire chain of firms from the supplier to buyer were fictitious and existed only on record.

67.8. In the Show Cause Notice a copy of the Bill of Lading MLJEANSA045918, issued by Merchant Lines and submitted by Mrs. Bharti vide her letter dated 25-11-2021 have been relied upon in support of the allegation made against the Noticee No.1. I find that the said Bill of Lading relates to import made by M/s. K.L. International vide Bill of Entry No. 5651171 dated 30.09.2021 from the supplier, M/s. Alburaq Dates Factory LLC, Dubai, who is the supplier of the goods impugned in the present case. The said Bill of Lading was issued by a shipping line based out of Pakistan and the standard condition mentioned in the Bill of Lading stipulates that *"the contract evidenced by or contained in the bill of lading is governed by the law of Pakistan and any claim dispute arising there under or in connection herewith shall be determined by the courts in Pakistan and no other courts"*. When the goods have been

shipped from Dubai to India, but the condition related to jurisdiction of Pakistan has been mentioned, it is clear indication that the goods have originally been shipped from Pakistan. I find that the above documentary evidence corroborate the allegation that the Noticee No. 1 managed certificate of Country of Origin as UAE even though the goods have originally been shipped from Pakistan and are of Pakistan origin.

67.9. As per Show Cause Notice, working copy of the mobile phone belonging to Shri Parshotam was extracted in the Cyber Forensic Laboratory, Directorate of Revenue Intelligence, Mumbai for forensic examination and on scrutiny of the working image of the mobile phone data, some conversations / WhatsApp chats were found indicating the involvement of various persons in manipulation of the country of origin of the impugned goods. It is undisputed that these conversations pertain to the import of past consignments by the Noticee No. 1 M/s. K.L. International, New Delhi at various ports.

On going through the digital evidences relied upon at RUD- 28 to 36 in the Show Cause Notice, I find that these are conversation by / with Shri Parshotam who is handling all the activities of Noticee No. 1. Some of these conversations are clearly in connection with import transactions of dry dates and country of origin. These are extracts of conservations/ chats regarding managing /manipulating country of origin certificate, removal of stickers on the packages, applicable duty of 200% if the imported goods are sought to be cleared at Mundra Port, etc. These conversations/ chats between Shri Parshotam and other concerned persons corroborates the allegations that Shri Parshotam who was handling the business activities of the Noticee No. 1, in connivance of various persons had formed a syndicate to carry out fraudulent import of the Dry dates. They were fully aware of the huge difference in rate of duty in import of Pakistan origin goods and also which documents are required to be managed so as to disguise the actual country of origin. In addition, evidence in the form of handwritten bill sent by Shri V.S. Yadav of Sidhant Logistics to Shri Parshotam also indicates that Shri Parshotam used to borrow IEC of other persons for import of the goods which would not be required for genuine and legal import.

I find that though the said evidences are in connection with past transactions they definitely indicate involvement of Shri Parshotam and other concerned person in unlawful activity of manipulation of country of origin and importing through fictitious importers and thereby evade payment of higher duty of customs.

67.10. On verification of bank transactions it is revealed that Mohammad Shahzeb Azad, owner of M/s. Alburaq Dates Factory LLC, Dubai (who is supplier of dry dates from UAE) had transferred money to the Noticee No. 1 M/s. K.L. International, New Delhi (importer of the goods) on several occasions. In usual cases where the import if genuine, the buyer of the goods make payment to the supplier and there is no reason for the supplier to pay the Noticee No. 1 M/s. K.L. International when there is no export of goods by the Noticee No. 1 to Mohammad Shahzeb Azad, owner of M/s. Alburaq Dates Factory LLC, Dubai. The Noticee failed to submit any plausible explanation for such reverse transaction. In absence of any explanation from the Noticee, it is required to be construed that the supplier firm i.e., M/s. Alburaq Dates Factory LLC, Dubai is paying money to the importer firm M/s. K.L. International for the Customs clearance and other charges as if the overseas supplier himself is the buyer of the goods in India through the fictitious importer firm created for this purpose. The above aspect establishes the dubious nature of the import of the impugned goods by Noticee No. 1.

67.11 It is also revealed during the examination of the impugned goods under Panchnama dated 19.11.2021 that some of the packing bags were having marks of "Sargodha Jute Mills Ltd., Pakistan" and that the tags were removed in most of the bags or their content were erased in some bags. The investigation has also corroborated the evidence of removal of tags on the bags with the evidence of label/sticker removal charges. Based on this evidence, the investigation has rightly alleged that the importer was trying to hide that the goods are of Pakistani Origin.

67.12. During the course of examination, it was found that each bag in the consignments of dry dates was tagged with a slip containing the details of exporter and importer, which can be easily separated from such packaging of the bags and it violates provisions of Food Safety and Standards (Packing and Labeling) Regulation, 2011. I find that as per Para 2.2.1(4) of Chapter 2 of the Food Safety and Standards (Packing and Labeling) Regulation, 2011 issued by FSSAI, Ministry of Health and Family Welfare, Government of India, Label in pre-packaged foods shall be applied in such a manner that they cannot be separated from the container. Therefore, I find the Noticee No. 1 has also violated the FSSAI norms in import of the impugned goods.

67.13. In view of the discussion in the foregoing paras, I find that the investigation has placed on record sufficient evidences, both oral and documentary, to prove that the imported goods were of Pakistan origin and a

syndicate of Noticee No. 1 and various other persons have conspired to manipulate the country of origin and intentionally misclassified the goods under CTH 08041030 in order to evade higher Customs duty at 200%.

In view of the facts and evidences on record, I also find that the charges framed in the Show cause Notice stand proved and therefore, hold that the Noticee No. 1 has willfully and intentionally misclassified the imported goods under CTH 08041030 attracting Customs duty at 20% instead of its correct classification of CTH 98060000 attracting Customs duty at 200% in the Bills of Entry filed with the department with a clear intention to evade Customs Duty.

Though sufficient documentary and corroborative evidence is available in the present case to support the allegations made against Noticee No. 1, it is a common understanding that, in any fraudulent activity, the persons involved would invariably try to ensure that all documentary or other evidence is wiped out or destroyed so that no Government agency can implicate them in future. Hence, higher Appellate Authority have in several judgments have held that transactions of fraudulent nature cannot be proved with mathematical precisions.

I rely upon the following judgments in this regard.

(i) COLLECTOR OF CUSTOMS, MADRAS AND OTHERS Versus D. BHOORMULL 1983 (13) E.L.T. 1546 (S.C) :- The Hon'ble Supreme Court's observations relevant in the matter are as under:-

30. *It cannot be disputed that in proceedings for imposing penalties under clause (8) of Section 167, to which Section 178A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary.* ***But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, or universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it-"all exactness is a fake". El Dorado of absolute Proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case.***

31. *The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be*

considered to use the words of Lord Mansfield in Blatch v. Archar (1774) 1 Cowp. 63 at p. 65 "According to the Proof which it was in the power of one side to prove and in the power of the other to have contradicted". ***Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.***

32. Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every link of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. *On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned : and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty. As pointed out by Best in `Law if Evidence' (12th Edn. Article 320, page 291), the "presumption of innocence is, no doubt, presumptio juris : but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from the recent (unexplained) possession of stolen property," though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be considerably lightened even by such presumption of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden to discharge which very slight evidence may suffice.*

(Emphasis supplied)

In view of judgments *supra* and the evidences brought on record and discussed in the forgoing paras I find that the Noticee No. 1 and its syndicate were well aware of the fact that the imported goods i.e. Dry dates are of Pakistan origin. The Authorized representative of the importer and the Customs Broker have admitted that Shri Parshotam, one of the Master-mind who handled the business of the Noticee No.1, had clearly told them that the goods were of Pakistan origin, but he would arrange for the country of origin certificate from UAE which would be verifiable online. Further, Mrs. Bharti, proprietor of the importer herself admitted that M/s. K.L. International was created in her name by her husband Shri Prem and his employer, Shri Parshotam and they were handling the day-to-day functions of the firm. Shri Parshotam himself is a Customs Broker and Customs Broker by profession and hence he was fully aware of the documents required and Modus operandi to be adopted to disguise the actual country of origin so as to evade the payment of higher rate of duty. Therefore, I find that the mis-declaration and mis-statement on the part of the Noticee No. 1was wilful and with clear intent to evade the duty of customs. I further find that despite knowing the facts about the origin of goods, the Noticee No. 1 and its syndicate have entered into a conspiracy to suppress the actual country of origin of the imported goods and have willfully mis-stated the facts in respect of the classification and the Country of Origin of goods in the Customs

documents submitted to the department with an intention to evade Customs duty.

Since the impugned goods are held to be of Pakistani origin, the same are required to be classified under CTH 98060000 and corresponding Customs duty at 200% is required to be confirmed and recovered from Noticee No. 1 M/s. K. L. International. Therefore, total Customs duty of Rs. 14,59,54,244/- (Rupees fourteen crore, fifty nine lakh, fifty four thousand, two hundred and forty four only), as per Annexure-A to the Show cause Notice, is required to be confirmed and recovered from Noticee No. 1 M/s. K. L. International under Section 28 (4) of the Customs Act, 1962, as proposed in the Show Cause Notice.

67.14. The Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of Pratibha Processors Vs UOI – 1996 (88) ELT 12 (SC). Hence, I hold that the amounts demanded under Section 28 in the SCN and confirmed in this order are recoverable from the Noticee No. 1 together with interest at appropriate rate in terms of section 28AA of the Customs Act, 1962.

68. Since, the demand is confirmed under Section 28(4) of the Customs Act, 1962 on the grounds of willful mis-statement and suppression of facts with intent to evade the duty, the penalty under Section 114A of the Customs Act, 1962 is rightly applicable in this case.

69. In the Show cause Notice it is proposed to confiscate the impugned goods under the provisions of Section 111(m) and (o) of the Customs Act, 1962 which are placed under seizure at Pipavav and Nhava Sheva under the provisions of Section 110 of the Customs Act, 1962. The relevant statutory provisions are as under:

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

(a)

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

(n) ...
(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;

As already discussed above, there was non-compliance of FSSAI Standards at the time of import of the impugned goods by Noticee No. 1 and the imported goods were not conforming to the standards under the Food Safety and Standards (Packing and Labeling) Regulation, 2011 and Standards (Import) Regulations, 2011. As held above, the Noticee No. 1, by willful mis-statement, mis-representation and suppression of facts in respect of the country of origin of goods and classification thereof, imported the impugned goods classifying under CTH 08041030 attracting Customs duty @ 20% instead of its correct classification under CTH 98060000 attracting Customs duty at 200% with intent to avail fraudulent benefit of lower rate of duty. It is a settled law position that when an importer is claiming a duty benefit based on the country of origin, it is the responsibility of the importer to exercise reasonable care to the accuracy and truthfulness of the information supplied and the preferential claim. Therefore, the burden of proof naturally falls on the importer to prove the country of origin of goods. However, I find that none of Noticees/persons involved in the matter could rebut the evidences gathered by the investigation agency. In fact, most of the Noticee as mentioned in para *supra* did not appear before the investigating officers in response to the summons issued to them. This clearly proves their *Mens-rea*. The Country of Origin certificate submitted at the time of filing Bills of Entry is not sufficient when such claim leads to huge duty benefit and presence of handful of evidences discussed above indicating manipulation and mis-declaration. I therefore find that the said import of goods by mis-declaring the actual country of origin of goods and classification of goods, squarely falls within the ambit of *'illegal import'* as defined in section 11(A)(a) of the Customs Act, 1962 in as much as the same was carried out in contravention of various provisions of the Customs Act, 1962, the Food Safety and Standards (Packing and Labeling) Regulation, 2011 and the Food Safety and Standards (Import) Regulations, 2011. I therefore hold that the said

imported goods are liable for confiscation under the provisions of Section 111(m) & (o) of the Customs Act, 1962, as proposed in the Show Cause Notice.

69.1. I further find that once the goods are held liable to confiscation, penal action under Section 112 of the Customs Act, 1962 are attracted automatically. It is noted that penal provisions under Section 112 of the Customs Act, 1962 in the case of dutiable goods, other than prohibited goods are subject to the provisions of Section 114A of the Customs Act, 1962 and as per fifth proviso to Section 114A of the Customs Act, 1962, where any penalty has been levied under Section 114A, no penalty shall be levied under Section 112. In the present case, since customs duty of Rs. 14,59,54,244/- involved in the total quantity of illicitly imported goods having total assessable value of 5,25,77,177/- [comprising of the goods placed under seizure at Pipavav as well as Nhava Sheva Port] is demanded and confirmed under Section 28(4), along with interest and penalty under Section 114A of the Customs Act, 1962, penal action under Section 112 of the Customs Act, 1962 is not invokable on Noticee No. 1.

70. The Show Cause Notice also proposes penalty on the Noticee No. 1 under Section 114AA of the Act which reads as under: -

> *"SECTION 114AA: 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."*

I find that Noticee No. 1 has knowingly and intentionally filed Bills of Entry classifying the dry dates under CTH 08041030 instead of under CTH 98060000 and imported the goods by way of willful mis-statement and suppression of facts. Therefore, it is a fit case for imposing penalty under Section 114AA of the Customs Act, 1962. Further in the following cases, it is held that penalty under Section 114AA of the Customs Act is imposable for the circumstances mentioned therein related to imports and these cases have precedence value:

(i) S. M. Taufeek Vs Comm of Customs, Chennai-IV [2017(358) ELT 326 (Tri. Chennai)]
(ii) Brij Kishor Goel Vs Commissioner of Customs, Ahmedabad [2019(367)ELT 656(Tri-Ahmd)
(iii) Edelweiss Commodities Services Vs Pr. Commr of CT Hyderabad [2019(369) ELT1031(Tri.-Hyd.)]

Accordingly, I am of the view that the Noticee No. 1 is liable for penalty under Section 114AA of the Customs Act, 1962. However, considering the facts that penalty under Section 114A is already imposed, I take a lenient view in the quantum of penalty under Section 114AA of the Customs Act, 1962.

71. The Show Cause Notice also proposes penalty on the Noticee No. 1 under Section 117 of the Act which reads as under: -

> ***"Section 117*** *Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees"*

I find that Section 17 of the Customs Act, 1962 provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in electronic form, as per Section 46 or 50 respectively and therefore, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, country of origin, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, I find that the Noticee No. 1 M/s. K.L. International have deliberately contravened the above said provisions with a malafide intention to avail lower rate of duty by mis-declaring country of origin and mis-classifying their imported goods. Since the Noticee No. 1 has violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, I find that Noticee No. 1 is liable to penalty under Section 117 of Customs Act, 1962, as proposed in the Show Cause Notice.

Shri Parshotam Prajapati of M/s. Shivoy Enterprise [Noticee No. 3]

72. I find that it is proposed to impose penalty under Section 112(a) /112(b) and Section 114AA of the Customs Act, 1962 upon the Noticee in the Show Cause Notice.

72.1. I find from the evidences placed on record that Mrs. Bharti, Proprietor of M/s. K.L. International has deposed in her statement that her husband, Shri Prem and employer of her husband, Shri Parshotam were working together in M/s. K. L. International.

72.2 Shri Prem in his statement has stated that he and Shri Parshotam thought of importing dry dates themselves and therefore, they created the firm, M/s. K. L. International under the proprietorship of his wife but actual work of import and sale was looked after by Shri Parshotam Prajapati; that the proprietorship in the name of his wife was only for namesake; that the profit arising out of the import and subsequent sale of dry dates was shared between him and Shri Parshotam; that Customs clearance work of dry dates imported by M/s. K. L. International was handled by Shri Parshotam; that Shri Parshotam was not partner of M/s. K. L. International, but he took all important decisions of the firm, i.e. placing import orders, negotiation of the terms, customs clearance etc. after import, Shri Parshotam also looked after the sales of imported dry dates; that since Shri Parshotam was also partner in profit of M/s. K. L. International, they worked in the office of M/s Shivoy Enterprise; that arrangement of funds for payment of the imported goods, freight thereon, Customs duty and other overheads were looked after by Shri Parshotam; that the dealing with Shri Jatin Arora, sales indenting agent, was handled by Shri Parshotam; that the dealing with the suppliers and payment was looked after by Shri Parshotam; that the bank account of M/s. K. L. International was handled by Shri Parshotam and payments were made online by him.

72.3 Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International in his statement has deposed that Shri Parshotam was looking after all the work of M/s. K.L. International; that Smt. Bharti, Proprietor of the importer and her husband have lent the IEC of M/s. K.L. International to Shri Parshotam for import of dry dates; that all the imports of M/s. K. L. International was actually financed and managed by Shri Parshotam; that he had introduced Shri Parshotam to M/s. Eskay Logistics for clearing and handling work; that IEC of M/s. K.L. International was used by Shri Parshotam; that Shri Parshotam had instructed him to get IEC in the name and PAN of his father, so, he had recently applied for IEC and obtained IEC No.ALJPG3083H in his father's PAN (Subrato Guha Sarkar); that as informed by Shri Parshotam, he would be using this IEC to import dry dates only; that Shri Parshotam had committed him to pay Rs. 10,000/- to Rs. 15,000/- per container for lending IEC to him; that Shri Parshotam said that he would transfer all the payment to the bank account of M/s. Ganpati Traders and from that account, he would pay to the suppliers and tax authorities by using ID and password of M/s. Ganpati Traders bank account which he has already shared with Shri Parshotam; that Shri Parshotam had managed all the remaining work such as FSSAI certificate and other regulatory approvals; that he had obtained signature of his father on

2 to 3 blank letter heads and given to Shri Parshotam; that Mrs. Bharti and Shri Prem of M/s. K. L. International were also working on the same condition and also getting the same amount as Shri Parshotam had offered to him; that Bills of Entry of M/s. K. L. International were filed at Pipavav by M/s. Eskay Logistics on the directions of Shri Parshotam; that Shri Parshotam had started M/s. K. L. International specially to import dry dates from Pakistan and for this purpose, he convinced Shri Prem to obtain IEC in the name of his wife Mrs. Bharti; that rest of the work such as regulatory approvals, purchase from overseas suppliers, clearing & forwarding of imported goods was being looked after by Shri Parshotam; that he and Shri Parshotam visited Pipavav on 19.10.2021 and met Shri Rajveer Singh; that Shri Parshotam, in his presence, told Shri Rajveer Singh that they were planning to import dry dates of Pakistan origin via Dubai port, and he (Shri Parshotam) would manage to get country of origin certificate of Dubai Chamber of Commerce; that as regards arranging overseas supply, Shri Parshotam was managing the same with the help of Shri Jatin of Delhi; that local buyers of imported dry dates are looked after by Shri Parshotam and Shri Jatin.

72.4. Shri Rajveer Singh Mathuram Mandadiya, employee of M/s. Eskay Logistics (Customs Broker of M/s. K. L. International at Pipavav) in his statement has deposed that Shri Parshotam and Shri Souvik Guha Sarkar came to his office on 19.10.2021 for finalizing the deal; that when they visited his office on 19.10.2021, Shri Parshotam had clarified with him that the goods were of Pakistan origin, but they would manage to import via Dubai and would also manage Country of Origin certificate of Dubai which would be verifiable online and they stated that they would import the goods in the IEC of M/s. Ganpati Traders but since the papers of M/s. K. L. International came prior to M/s. Ganpati Traders, Shri Parshotam asked him to clear the goods imported by him in the name of M/s. K. L. International; that Bills of Entry were filed on behalf of M/s. K. L. International by M/s. Eskay Logistics at Pipavav as per the instructions of Shri Parshotam.

72.5. Shri Parshotam himself in his statement has stated that he participated in the business of M/s. K L International by placing order, arranging customs clearance and sales in domestic market; that he used to place orders on behalf of M/s. K. L. International by telephone or WhatsApp for which he generally contacted Shri Wasif and Shri Shahzeb Azad of M/s. Alburaq Dates Factory, LLC, Dubai; that they did not enter into any written purchase contact with the suppliers and all the terms were verbal only; that as regards clearance of dry dates imported by M/s. K. L. International, the Customs

clearance at Nhava Sheva was handled by Shri Shailendra of M/s. Sidhant Logistics (Customs Broker), the consignments at ICD-Dadri were cleared personally by him and the clearance of the goods at Pipavav was looked after by Shri Rajveer of M/s. Eskay Logistics; that though he is not partner, he actively participated in the business of M/s. K. L. International; that the documents i.e., invoice, packing list, certificate of origin etc., were received through WhatsApp and therefore, the same were stored in the desktop computer of his office; that the Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 (filed at Pipavav) and Bill of Entry No.6277099 dated 16-11-2021 and No.692689 dated 03-01-2022 (filed at Nhava Sheva) were filed by Shri Rajveer Singh of M/s. Eskay Logistics, Pipavav (Customs Broker) and Shri Shailendra of M/s. Sidhant Logistics (Customs Broker) respectively as per his instructions and all the documents i.e. Bill of Lading, invoice, freight invoice, country of origin certificate etc. pertaining to these Bills of Entry were lying in the desktop computer of M/s. Shivoy Enterprise; that as regards his profit-sharing formula with M/s. K. L. International, they decided to share profit in the ratio of 60:40 i.e. 60% will be his share and 40% will be the share of M/s. K. L. International.

72.6 From the above evidences on record, it is established that Shri Parshotam Prajapati, is one of the masterminds behind import of Pakistani origin dry dates by arranging fictitious / dummy entities like M/s. K. L. International. He was well aware of the fact that the impugned goods i.e. dry dates which imported from UAE, under the certificate of origin issued by Dubai/ Ajman Chamber of Commerce, UAE, were actually of Pakistani origin. From the statement of the Customs Broker, Shri Rajveer Singh, it is also established that Shri Parshotam had offered clearing charges (Rs. 80,000/- per container) that is 20 times the regular charge (Rs. 3000/- to Rs. 4000/- per container) for clearance of the imported goods. Despite knowing the actual country of origin (i.e. Pakistani) of dry dates, Shri Parshotam, in connivance with other persons hatched a conspiracy to import Pakistani origin dry dates by routing the same from UAE, by managing certificates of origin from Dubai / Ajman Chamber of Commerce, UAE. When asked about the Pakistani stickers / labels that were found during the examination, Shri Rajveer Singh and Shri Souvik Guha Sarkar have confessed, during the Panchnama and in their statements that the goods were of Pakistani origin and both of them have admitted that the real mastermind behind import of dry dates was Shri Parshotam. I therefore find that Shri Parshotam in connivance with other persons/ Noticees imported dry dates of Pakistani origin as detailed in Annexure–A attached to the show cause notice and mis-declared the country of origin, where Bills of Entry have been

filed and once they came to know about the investigation being carried out, they refrained from filing Bill of Entry in respect of remaining consignment and all of them collectively did not cooperate in the investigation by not appearing before the investigating agency in response to summons issued to them. It is also brought on record that this is not the first time that Shri Parshotam is involved in such illegal activity for duping the department and past cases and punishments under the Customs Act, 1962 have not stopped him from indulging in illegal activities of smuggling and evasion of duty. Shri Parshotam who is a habitual offender, has masterminded the entire conspiracy of fraudulent import of dry dates of Pakistani origin by creating fictitious / dummy entities along with his syndicate members.

72.7 The evidence in the form of packing material bearing the mark of Pakistani firm is brought on record which is further substantiated by the admissions from Shri Rajveer Singh and Shri Souvik Sarkar that the goods, in fact, are of Pakistani origin. Further, the WhatsApp chats and other documents/communications extracted from the Mobile devices of Shri Parshotam Prajapati also indicate that he was orchestrating the entire fraudulent transactions in connivance of various persons. The issue is discussed in detailed manner in the foregoing paras in connection with charges on the Noticee No. 1 M/s. K.L. International. It is also on record that despite several summons issued to him, he did not appear before the investigating agency, which establishes that he was conscious of the impugned fraudulent import and hence did not want to participate in the investigation. If his intentions were bonafide and impugned import transactions were genuine he obviously would have appeared before investigation officer to prove the authenticity of the import.

72.8 I therefore find that the acts and omissions on the part of Shri Parshotam rendered the imported goods liable to confiscation under section 111(m) & 111(o) of the Customs Act, 1962 and he has abetted the doing of such an act and therefore, he has rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. He has also dealt with the subject goods with knowledge and reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962 and therefore, he has also rendered himself liable to penalty under Section 112(b) of the Customs Act, 1962.

73. The Show Cause Notice also proposes penalty on the Noticee under Section 114AA of the Act which reads as under: -

"SECTION 114AA: 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, the Noticee knowingly and intentionally created, or arranged to be created, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority, for assessment at lower rate of duty and cause revenue loss to the exchequer. I also find that in the following cases, it is held that penalty under Section 114AA of the Customs Act is imposable for the circumstances mentioned therein related to imports and these cases have precedence value:

(i) S. M. Taufeek Vs Comm of Customs, Chennai-IV [2017(358) ELT 326 (Tri. Chennai)]
(ii) Brij Kishor Goel Vs Commissioner of Customs, Ahmedabad [2019(367)ELT 656(Tri-Ahmd)
(iii) Edelweiss Commodities Services Vs Pr. Commr of CT Hyderabad [2019(369) ELT1031(Tri.-Hyd.)]

Accordingly, I am of the view that the Noticee is liable for penalty under Section 114AA of the Customs Act, 1962. However, considering the facts that penalty under Section 112 is already imposed, I take a lenient view in the quantum of penalty under Section 114AA of the Customs Act, 1962.

Shri Prem, Husband of Mrs. Bharti[Noticee No. 4]

74. I find that it is proposed to impose penalty under Section 112(a) /112(b) and Section 114AA of the Customs Act, 1962 on the Noticee for the in the Show Cause Notice .

74.1 I find from the evidences placed on record that Mrs. Bharti, Proprietor of M/s. K.L. International has deposed in her statement that her husband, Shri Prem was looking after all the work of her proprietorship concern and she just signed the documents as per the instructions of her husband; that all the work, including Customs and DGFT related work of M/s. K. L. International was looked after by her husband Shri Prem and therefore, he was responsible for all the deeds of M/s. K. L. International; that she was not aware about filing of the Bills of Entry dated 04.11.2021 and her husband would be able to answer the questions and provide copies of the documents; that she did not know who was operating bank accounts of her proprietorship concern and

signing the cheques and that her husband might be using her account; that her husband, Shri Prem and employer of her husband, Shri Parshotam were working together in M/s. K. L. International.

74.2 Shri Prem himself in his statement has deposed that he and Shri Parshotam thought of importing dry dates themselves and therefore, they created the firm, M/s. K. L. International under the proprietorship of his wife but actual work of import and sale was looked after by Shri Parshotam Prajapati; that the proprietorship in the name of his wife was only for namesake; that the profit arising out of the import and subsequent sale of dry dates was shared between him and Shri Parshotam; that since Shri Parshotam was also partner in profit of M/s. K. L. International, they worked in the office of M/s Shivoy Enterprise and he had stopped using the office of M/s. K. L. International at A-256, Old No. 55, Flat No. A-4, 3F, Chhaterpur Enclave – I, New Delhi 110074 and therefore, no documents were lying there; that M/s. Lord Shiva & Co was their buyer of dry dates, who purchased 60% to 70% of dry dates imported by them.

74.3 From the above evidences on record, it is established that Shri Prem (husband of Mrs. Bharti, proprietor of M/s. K. L. International) entered into conspiracy with Shri Parshotam of importing dry dates of Pakistan origin through UAE and he has willingly floated a fictitious proprietorship concern in the name of his wife. It is also established that he knowingly and intentionally agreed to import dry dates in the name of a proprietorship concern M/s. K. L. International. I therefore find that Shri Prem along with Shri Parshotam and other persons/ Noticee imported dry dates of Pakistani origin as detailed in Annexure–A attached to the show cause notice and mis-declared the country of origin, where Bills of Entry have been filed and once they came to know about the investigation being carried out, they refrained from filing Bill of Entry in respect of remaining consignment and all of them collectively demonstrated non-cooperation in the investigation.

74.4 I find from the admissions made by the Noticee himself that he worked with Shri Parshotam for two decades. Having associated with Shri Parshotam for such a long time, there is no reason to believe that the Noticee was not aware about the activities being performed by Shri Parshotam in his firm and penal action invoked upon Shri Parshotam for different violations under the Customs Act, 1962. It is further brought on record that the Noticee decided to get the IEC as per suggestion of Shri Parshotam and got the same based on PAN of his wife. Though the Noticee was not holding any authorization

/ Power of Attorney from the Proprietor of M/s. K.L. International to handle activity on behalf of the firm, acted in unauthorized manner and lent the IEC of the firm to Shri Parshotam for import of dry dates. He also made verbal arrangement with Shri Parshotam for profit sharing as per deposition of Shri Parshotam which indicates that the Noticee was well aware about the illicit activities of import of dry dates of Pakistan origin being performed by Shri Parshotam.

74.5 I therefore find that the acts and omissions on the part of Shri Prem rendered the imported goods liable to confiscation under section 111(m) & 111(o) of the Customs Act, 1962 and he has abetted the doing of such an act and therefore, he has rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. He has also dealt with the subject goods with knowledge and reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962 and therefore, he has also rendered himself liable to penalty under Section 112(b) of the Customs Act, 1962.

75. The Show Cause Notice also proposes penalty on the Noticee under Section 114AA of the Act which reads as under: -

> *"SECTION 114AA: 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."*

The Penal provisions under Section 114AA are attracted when the ingredients therein are present in a case. In the present case, the Noticee knowingly and intentionally caused to be created and used, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority, for assessment at lower rate of duty and cause revenue loss to the exchequer. I also find that in the following cases, it is held that penalty under Section 114AA of the Customs Act is imposable for the circumstances mentioned therein related to imports and these cases have precedence value:

(i) S. M. Taufeek Vs Comm of Customs, Chennai-IV [2017(358) ELT 326 (Tri. Chennai)]
(ii) Brij Kishor Goel Vs Commissioner of Customs, Ahmedabad [2019(367)ELT 656(Tri-Ahmd)
(iii) Edelweiss Commodities Services Vs Pr. Commr of CT Hyderabad [2019(369) ELT1031(Tri.-Hyd.)]

Accordingly, I am of the view that the Noticee is liable for penalty under Section 114AA of the Customs Act, 1962. However, considering the facts that penalty under Section 112 is already imposed, I take a lenient view in the quantum of penalty under Section 114AA of the Customs Act, 1962.

Shri Jatin Arora, Associate of Shri parshotam [Noticee No. 6]

76. I find that Penal action is proposed under Section 112(a) /112(b) and Section 114AA of the Customs Act, 1962 on the Noticee in the Show Cause Notice .

Shri Parshotam has deposed in his statement that the Noticee was the sales indenting agent who mediated in sale of dry dates imported by them. Shri Prem in his statement has also deposed that the Noticee was the sales indenting agent who mediated in sale of dry dates imported by them and the dealing with the Noticee was handled by Shri Parshotam.

Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International in his statement has deposed that as regards arranging overseas supply, Shri Parshotam was managing the same with the help of the Noticee; that he met the Noticee once and had telephonic and WhatsApp conversations with him number of times; that on the instructions of Shri Parshotam, the Noticee managed to issue FSSAI certificate for his father's firm, M/s Ganpati Traders without charging any rupee from him; that local buyers of imported dry dates are looked after by Shri Parshotam and the Noticee.

76.1 Based on the above evidence, it was observed by the investigating agency that the Noticee Shri Jatin Arora of Gurugram acting as an indenting agent was handling local sales of dry dates imported by various entities, including M/s. K. L. International. It was also observed that the Noticee was also frequently travelling between Delhi and Dubai and looking after arrangements of fraudulent Certificate of Origin from Dubai Chamber of Commerce and dispatch of dry dates from Dubai/ UAE to India. Therefore, residence of the Noticee was searched by the officers of DRI and Customs but the Noticee was not available at the residence. The Noticee was issued Summons dated 07.02.2022, 14.02.2022, 15.03.2022 and 06.04.2022 for appearance on 08.02.2022, 25.02.2022, 04.04.2022 and 25.04.2022 respectively but he did not appear to give evidence in connection with

investigation. Evidence is placed on record that for non-appearance of the Noticee in response to the summons, actions under Section 174, 175 and 176 of the Indian Penal Code were initiated against the Noticee and criminal complaint No. CC No. 4437/2022 filed before Hon'ble Chief Judicial Magistrate, Jamnagar. Evidence in the form of email from the supplier firm M/s. Alburaq Dates Factory, LLC, Dubai to M/s. K.L. International which was addressed to the Noticee regarding forwarding documents in connection with consignments of dry dates, proves that the Noticee was representing M/s. K.L. International for import of dry dates.

76.2 I therefore find from the non-cooperation/non-appearance of the Noticee that despite repeated summons, the Noticee did not appear which indicates that he did not want to face the investigating agency and wanted to hide truth about Pakistani origin of dry dates and his participation in obtaining country of origin certificate from UAE by fraudulent manner. If certificates of origin were genuine and the Noticee had nothing to hide, then he would have joined investigation. His failure to join investigation and escape from the inquiry itself proves that he was a part of the conspiracy of making fraudulent claim of country of origin in import of dry dates.

76.3 From the above evidences on record, it is established that the Noticee is also one of the masterminds of the entire conspiracy. It is evident from the statements of Shri Parshotam and Shri Souvik Guha Sarkar wherein they have mentioned that the Noticee acted as the indenting agent for the sale of the imported dry dates and the same is also established from the travel history of the Noticee during the relevant period. From one of the mail communications from the overseas supplier to M/s. K.L. International mail id addressing the Noticee it is established that he was part and parcel of entire chain of firms especially, M/s. K.L. International, involved in the illegal import of dry dates from Pakistan and he was actively involved in sourcing Pakistani origin dry dates in association with Shri Shahzeb Azad and Shri Parshotam with fabricated imports documents and country of origin certificate.

76.4 I therefore find that the Noticee is also one of the masterminds of the entire conspiracy and the Noticee was actively involved in sourcing Pakistani origin dry dates in association with Shri Shahzeb Azad and Shri Parshotam with fabricated imports documents and country of origin certificate and his acts and omissions have rendered the imported goods liable to confiscation under section 111(m) & 111(o) of the Customs Act, 1962 and he has abetted the above fraudulent import and therefore, he has rendered himself liable to penalty under

Section 112(a) of the Customs Act, 1962. He has also concerned himself in selling and dealing with the subject goods with knowledge and reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962 and therefore, he has also rendered himself liable to penalty under Section 112(b) of the Customs Act, 1962.

76.5 The Show Cause Notice also proposes penalty on the Noticee under Section 114AA of the Act which reads as under: -

> *"SECTION 114AA: 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, the Noticee knowingly and intentionally created, or arranged to be created, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority for assessment at lower rate of duty and cause revenue loss to the exchequer. I also find that in the following cases, it is held that penalty under Section 114AA of the Customs Act is imposable for the circumstances mentioned therein related to imports and these cases have precedence value:

(i) S. M. Taufeek Vs Comm of Customs, Chennai-IV [2017(358) ELT 326 (Tri. Chennai)]
(ii) Brij Kishor Goel Vs Commissioner of Customs, Ahmedabad [2019(367)ELT 656(Tri-Ahmd)
(iii) Edelweiss Commodities Services Vs Pr. Commr of CT Hyderabad [2019(369) ELT1031(Tri.-Hyd.)]

Accordingly, I am of the view that the Noticee is liable for penalty under Section 114AA of the Customs Act, 1962. However, considering the facts that penalty under Section 112 is already imposed, I take a lenient view in the quantum of penalty under Section 114AA of the Customs Act, 1962.

Shri Mohammad Shahzeb Azad, Authorised Signatory of M/s. Alburaq Dates Factory, LLC, Dubai [Noticee No. 7]

77. I find that penalty under Section 112(a) /112(b) and Section 114AA of the Customs Act, 1962 is proposed to be imposed upon the Noticee in the Show Cause Notice.

77.1 I find that Shri Parshotam has deposed in his statement that he used to place orders on behalf of M/s. K. L. International by telephone or WhatsApp and he generally contacted Shri Wasif and Shri Shahzeb Azad of M/s. Alburaq Dates Factory, LLC, Dubai; that they did not enter into any written purchase contact with the suppliers and all the terms were verbal only.

Shri Rajveer Singh Mathuram Mandadiya, employee of M/s. Eskay Logistics (Customs Broker of M/s. K. L. International at Pipavav) in his statement has deposed that most of the consignments of dry dates were supplied by M/s. Alburaq Dates Factory, LLC, Dubai and as per his knowledge, Shri Shahzeb Azad is the owner of M/s. Alburaq Dates Factory, LLC, Dubai; that he had spoken to him once on phone and have communicated with him on WhatsApp several times.

77.2 Evidence is also placed on record in the form of copy of the Bill of Lading MLJEANSA045918 issued by Merchant Lines submitted by Mrs. Bharti vide her letter dated 25.11.2021 which pertains to the import made by M/s. K.L. International vide Bill of Entry No. 5651171 dated 30.09.2021 from the same supplier, M/s. Alburaq Dates Factory LLC, Dubai. The above Bill of Lading was issued by a shipping line based out of Pakistan and the standard conditions mentioned in the BL stipulated that *"the contract evidenced by or contained in the bill of lading is governed by the law of Pakistan and any claim dispute arising there under or in connection herewith shall be determined by the courts in Pakistan and no other courts"*. When the goods were shipped from Dubai to India, the condition related to jurisdiction of Pakistan indicate that the goods have originally been shipped from Pakistan and it would not be just a coincidence that a Pakistan based logistic firm is used in import of Dry Dates from Dubai. This supports the case of investigation that the entire chain from the overseas supplier to the buyer to be fictitious.

77.3 As per the evidences on record, majority of the imports of M/s. K.L. International were from M/s. Alburaq Dates Factory, LLC, Dubai located at Head Office:3312, Churchil Tower, Business Bay, Dubai, UAE and whose Authorized Signatory is Mr. Mohammad Shahzeb Azad. During further verification and investigation, evidences emerged that there was another company in the name of M/s. Prolix International Trading LLC functioning at the same premises whose authorized signatory was also Mr. Mohammad Shahzeb Azad and M/s. K.L. International had imported dry dated from M/s. Prolix International through the port of Nhava Sheva in the past. Evidences are also placed on record showing that Mr. Mohammad Shahzeb Azad had created

four fictitious firms in India for receiving the illegally imported Dry Dates of Pakistani origin, whose GST number were canceled *suo-moto* by GST department for violation of various provisions of Goods and Services Tax Act, 2017.

77.4 Above evidences indicate that Mr. Mohammad Shahzeb Azad was a fly-by-night operator who floated many firms in his name and there is reason to believe that M/s. Alburaq Dry dates factory LLC, Dubai is also a fictitious firm created by Mr. Shahzeb Azad in Dubai on an address where another firm i.e. M/s. Prolix International was in existence. It is imperative to note that when there was already a firm (M/s. Prolix International) in existence dealing with the business of Dry dates with India, there could be no valid justification for creating another firm (M/s. Alburaq Dry Dates Factory LLC) in the same address for the same business of Dry dates with India. The fact that Mr. Shahzeb Azad, being the supplier of Dry dates in Dubai from a controversial firm and at the same time being the buyer in India through fly-by-night firms prove the illegal nature import made by M/s. K.L. International into India.

77.5 The bank accounts of M/s. K.L. International, New Delhi reveal that Mohammad Shahzeb Azad had transferred money to M/s. K.L. International, New Delhi on several occasions. It is common understanding that in genuine import transaction, the buyer of the goods in India i.e. M/s. K.L. International would make payment to the supplier i.e. Alburaq Dates Factory LLC, Dubai Whereas in the present case Alburaq Dates Factory LLC, Dubai had transferred money to M/s. K.L. International, New Delhi, such reverse transactions clearly suggest that the entire import transactions were manipulated and fraudulent This evidence supports the case of investigation that the Noticee had created fictitious firms both at the supplier's end (in Dubai) and at the receiver side (in India) and the Noticee Shri Mohammad Shahzeb was one of the masterminds in the entire scheme of this illegal import of dry dates from Pakistan.

77.6 It is also on record that the Noticee was issued Summons dated 14.10.2022 and 21.10.2022 for appearance on 21.10.2022 and 28.10.2022 respectively but he did not appear to give evidence in connection with investigation. This also establishes his *mens rea*

From the above evidences on record, it is established that the Noticee Shri Mohammad Shahzeb Azad, Authorized Signatory of M/s. Alburaq Dates Factory, LLC, Dubai (the supplier firm) was actively involved in sourcing Pakistani origin dry dates for import into India through UAE, in association with

Shri Jatin Arora and Shri Parshotam with sole intention to evade the Customs duty.

The Noticee has not given any plausible explanation / clarification in respect of creation of various firms in India, whose GST registration cancelled by the department suo-motu, money transferred to the buyer firm in this case as well as condition of jurisdiction of law / court of Pakistan stipulated in Bill of Lading pertaining to earlier consignment supplied by him to the importer in this case.

77.7 I therefore find that the Noticee is also one of the masterminds of the entire conspiracy and was actively involved in sourcing Pakistani origin dry dates into India through UAE, in association with Shri Jatin Arora and Shri Parshotam with an intention to evade the Customs duty and his acts and omissions have rendered the imported goods liable to confiscation under section 111(m) & 111(o) of the Customs Act, 1962. As he has abetted such fraudulent act, he has rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. He has also concerned himself in selling and dealing with the subject goods with knowledge and reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962 and therefore, he has also rendered himself liable to penalty under Section 112(b) of the Customs Act, 1962.

77.8 The Show Cause Notice also proposes penalty on the Noticee under Section 114AA of the Act which reads as under: -

> *"SECTION 114AA: 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, the Noticee knowingly and intentionally created, or arranged to be created, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority. I also find that in the following cases, it is held that penalty under Section 114AA of the Customs Act is imposable for the circumstances mentioned therein related to imports and these cases have precedence value:

(i) S. M. Taufeek Vs Comm of Customs, Chennai-IV [2017(358) ELT 326 (Tri. Chennai)]

(ii) Brij Kishor Goel Vs Commissioner of Customs, Ahmedabad [2019(367)ELT 656(Tri-Ahmd)
(iii) Edelweiss Commodities Services Vs Pr. Commr of CT Hyderabad [2019(369) ELT1031(Tri.-Hyd.)]

Accordingly, I am of the view that the Noticee is liable for penalty under Section 114AA of the Customs Act, 1962. However, considering the facts that penalty under Section 112 is already imposed, I take a lenient view in the quantum of penalty under Section 114AA of the Customs Act, 1962.

Shri Rajveer Singh, Customs Broker, Eskay Logistics at Pipavav [Noticee No. 8]

78. In the Show Cause Notice , Penal action is proposed under Section 112(a) /112(b) and Section 114AA of the Customs Act, 1962 on the Noticee.

I find that Shri Parshotam has deposed in his statement that the clearance of dry dates imported by M/s. K. L. International, at Pipavav port was looked after by Shri Rajveer of M/s. Eskay Logistics; that the Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 (filed at Pipavav) were filed by Shri Rajveer Singh of M/s. Eskay Logistics, Pipavav (Customs Broker) as per his instructions.

Shri Souvik Guha Sarkar, authorized representative of M/s. K. L. International has deposed in his statement that he had introduced Shri Parshotam to M/s. Eskay Logistics for clearing and handling work and would get his commission of Rs. 20,000/- per container from M/s. Eskay Logistics; that Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 of M/s. K. L. International were filed at Pipavav by M/s. Eskay Logistics on the directions of Shri Parshotam; that he had telephonically enquired with Shri Rajveer Singh of M/s. Eskay Logistics, Pipavav who had earlier cleared more than 150 containers of dry dates which according to his knowledge, were of Pakistani origin; that he and Shri Parshotam visited Pipavav on 19.10.2021 and met Shri Rajveer Singh, and Shri Parshotam, in his presence, told Shri Rajveer Singh that they were planning to import dry dates of Pakistan origin via Dubai port, and he (Shri Parshotam) would manage to get country of origin certificate of Dubai Chamber of Commerce; that since Shri Rajveer Singh was already clearing similar consignments, he responded that if the country of origin certificate got verified online, he would manage to clear the goods; that Shri Rajveer Singh quoted the rates for clearing and handling of dry dates at Rs. 80,000/- per container and as per his earlier discussion with Shri

Rajveer Singh, a margin / commission of Rs. 20,000/- per container was kept for himself; that while meeting Shri Rajveer Singh at Pipavav on 19.10.2021, they had decided to import the dry dates in the name of M/s. Ganpati Traders also which was his father's proprietorship concern but the documents of M/s. K. L. International were received earlier than M/s. Ganpati Traders, so, they asked Shri Rajveer Singh to manage clearance of the same in the name of M/s. K.L. International.

78.1 Shri Rajveer Singh himself in his statement has deposed that Shri Souvik Guha Sarkar, Authorized representative of M/s. K. L. International called him on 12.10.2021 for clearing of the goods i.e. dry dates being imported by them and subsequently, Shri Parshotam and Shri Souvik Guha Sarkar came to his office on 19.10.2021 for finalizing the deal; that they finalized the deal at Rs. 80,000/- per container and in this 80,000/-, he had kept margin/ commission of Rs. 20,000/- per container for Shri Souvik Guha Sarkar, as per his personal agreement with Shri Souvik; that when Shri Souvik Guha Sarkar and Shri Parshotam visited his office on 19.10.2021, Shri Parshotam had clarified with him that the goods were of Pakistan origin, but they would manage to import via Dubai and would also manage Country of Origin certificate of Dubai which would be verifiable online, so, he undertook the work with the condition that if the Country of Origin certificate was verified online, he would manage to clear the same and for this purpose, he charged more than what he usually charged to other customers; that when Shri Souvik Guha Sarkar and Shri Parshotam visited his office on 19.10.2021, they stated that they would import the goods in the IEC of M/s. Ganpati Traders but since the papers of M/s. K. L. International came prior to M/s. Ganpati Traders, Shri Parshotam asked him to clear the goods imported by him in the name of M/s. K. L. International; that Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 were filed on behalf of M/s. K. L. International by M/s. Eskay Logistics at Pipavav as per the instructions of Shri Parshotam; that it was explained to him that Shri Parshotam was also working as CHA /Customs Broker and so, he trusted Shri Parshotam without due care to observe KYC norms; that the image of the jute bag in which dry dates imported under above mentioned Bills of Entry referred to the name of "Sargodha Jute Mills Ltd" in Pakistan; that on being asked about how the jute bag of Pakistan is there in the cargo from Dubai, he stated that in fact the goods have been brought from Pakistan via Dubai to evade the Customs duty on it; that differential duty of Rs. 9,05,16,902/- was about to be evaded by mis-declaration of Country of Origin as UAE instead of Pakistan.

78.2 From the above evidences it is established that the Noticee filed Bills of Entry No. 6124557, 6124677, 6124787, 6124890 and 6125519 all dated 04.11.2021 on behalf of M/s. K. L. International but failed to verify credentials and KYC of the importer. The Noticee has admitted that Shri Parshotam and Shri Souvik Guha Sarkar had informed him that the dry dates were of Pakistani origin. The Noticee further admitted that generally, he charges around Rs. 3,000/- to Rs. 5,000/- per container as Service charge whereas considering the risk involved in the instant import in facilitating evasion of duty by mis-declaring country of origin as UAE instead of Pakistan, he had negotiated for Rs. 80,000/- per container to M/s. K.L. International and these things were discussed in detail when Shri Parshotam and Shri Souvik Sarkar met him personally in the month of October, 2021 at Pipavav. The Noticee also deposed that Shri Parshotam, during their meeting said that though the goods are of Pakistani origin, he would manage the Country-of-Origin certificate from Dubai.

78.3 Further, his admission in respect of present proceedings is duly corroborated by the deposition of Shri Souvik Guha Sarkar and his deposition remains an admissible evidence even if retracted later on particularly when the Noticee himself has not retracted the depositions throughout the proceedings and corroborated the evidence which are further substantiated by other concrete and tangible evidences placed on record.

78.4 I therefore find that the Noticee willingly and knowingly handled clearance of the imported goods under fraudulently obtained Certificate of Origin at abnormally high charges and thereby assisted M/s. K. L. International, Shri Parshotam and others in fraudulent import of the impugned goods and evasion of duty. His acts and omissions have rendered the imported goods liable to confiscation under section 111 of the Customs Act, 1962 and since he has abetted the fradulent act he has rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. He has also concerned himself in dealing with the subject goods with knowledge and reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962 and therefore, he has rendered himself liable to penalty under Section 112(b) of the Customs Act, 1962.

78.5 The Show Cause Notice also proposes penalty on the Noticee under Section 114AA of the Act which reads as under: -

"SECTION 114AA: 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."

Penal provisions under Section 114AA are attracted when the ingredients therein are present in a case. In the present case, the Noticee knowingly and intentionally used or caused to be used, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority. I also find that in the following cases, it is held that penalty under Section 114AA of the Customs Act is imposable for the circumstances mentioned therein related to imports and these cases have precedence value:

(i) S. M. Taufeek Vs Comm of Customs, Chennai-IV [2017(358) ELT 326 (Tri. Chennai)]
(ii) Brij Kishor Goel Vs Commissioner of Customs, Ahmedabad [2019(367)ELT 656(Tri-Ahmd)
(iii) Edelweiss Commodities Services Vs Pr. Commr of CT Hyderabad [2019(369) ELT1031(Tri.-Hyd.)]

Accordingly, I am of the view that the Noticee is liable for penalty under Section 114AA of the Customs Act, 1962. However, considering the facts that penalty under Section 112 is already imposed, I take a lenient view in the quantum of penalty under Section 114AA of the Customs Act, 1962.

78.6 For proposal of punitive actions under Customs Broker Licensing Regulations, 2013 for violating the provisions prescribed thereunder made in the Show cause Notice, the Noticee has admitted in his statement that it was explained to him that Shri Parshotam was also working as CHA /Customs Broker and so, he trusted Shri Parshotam without due care to observe KYC norms. I find that during the earlier adjudication proceedings it was recommended that separate proceedings under Customs Broker Licensing Regulations, 2013 for violating the provisions prescribed thereunder may be initiated by the competent authority (who has issued Customs Broker license). Considering the conduct of the Noticee and the evidence available on record, I once again recommend that separate proceedings be initiated by the competent authority against the Noticee under the Customs Broker Licensing Regulations, 2013, if not already done

Shri Shailendra Dhananjay Singh [Noticee No. 9] and Shri Vijay S. Yadav [Noticee No. 10], of M/s. Sidhant Logistics CHA Services Pvt. Ltd.

79. Penal action is proposed under Section 112(a) /112(b) and Section 114AA of the Customs Act, 1962 on both the Noticees for the averments made in the Show Cause Notice.

79.1 I find from the evidences placed on record that Shri Parshotam has deposed in his statement that clearance of dry dates imported by M/s. K. L. International, at Nhava Sheva was handled by Shri Shailendra of M/s. Sidhant Logistics (Customs Broker); that the Bills of Entry No. 6277099 dated 16.11.2021 and No. 692689 dated 03.01.2022 (filed at Nhava Sheva) were filed by Shri Shailendra of M/s. Sidhant Logistics (Customs Broker) as per his instructions.

The Noticee Shri Shailendra Dhananjay Singh was issued Summons dated 03.12.2021, 28.12.2021 and 06.01.2022 for appearance on 10.12.2021, 05.01.2022 and 28.01.2022 respectively but he did not appear to give evidence in connection with investigation. The Noticee Shri Vijay S. Yadav was issued Summons dated 03.12.2021, 28.12.2021 and 06.01.2022 for appearance on 10.12.2021, 04.01.2022 and 27.01.2022 respectively but he did not appear to give evidence in connection with investigation. Such non-appearance and non-cooperation on the part of both the above Noticee is required to be considered as admission of guilt and their role in the impugned fraudulent import.

79.2 As per the case records, the Noticees who were looking after the clearance of goods in respect of M/s. K.L. International have failed to verify credentials and KYC of the importer. It is established from hand written slip by Shri V.S. Yadav of Sidhant Logistics to Shri Parshotam retrieved from the mobile phone of Shri Parshotam that he was aware of the risk involved for his firm in clearing the dry dates of Pakistan origin and that the Noticees, in association with Shri Parshotam, were knowingly involved in clearance of consignments of Pakistani origin dry dates at Nhava Sheva. Evidences also indicate that the Noticees did not co-operate the investigating agency and did not appear before the investigating agency in response to the summons. I find that despite knowing that the dry dates were of Pakistani origin, they willingly consented to clear the imported goods under fraudulently obtained Certificate of Origin and thus, they knowingly and willingly assisted and abetted M/s. K. L. International, Shri Parshotam and others in evasion of duty.

I therefore find that their acts and omissions have rendered the imported goods liable to confiscation under section 111 of the Customs Act, 1962 and [illegible] they have abetted the doing of such an act, they have rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. They have also

concerned themselves in dealing with the subject goods with knowledge and reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962 and therefore, they have rendered themselves liable to penalty under Section 112(b) of the Customs Act, 1962.

80. The Show Cause Notice also proposes penalty on the Noticees under Section 114AA of the Act which reads as under: -

> *"SECTION 114AA: 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, the Noticees knowingly and intentionally used or caused to be used, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority. I also find that in the following cases, it is held that penalty under Section 114AA of the Customs Act is imposable for the circumstances mentioned therein related to imports and these cases have precedence value:

(i) S. M. Taufeek Vs Comm of Customs, Chennai-IV [2017(358) ELT 326 (Tri. Chennai)]
(ii) Brij Kishor Goel Vs Commissioner of Customs, Ahmedabad [2019(367)ELT 656(Tri-Ahmd)
(iii) Edelweiss Commodities Services Vs Pr. Commr of CT Hyderabad [2019(369) ELT1031(Tri.-Hyd.)]

Accordingly, I am of the view that the Noticees are liable for penalty under Section 114AA of the Customs Act, 1962. However, considering the facts that penalty under Section 112 is already imposed, I take a lenient view in the quantum of penalty under Section 114AA of the Customs Act, 1962.

81. For proposal of punitive actions under Customs Broker Licensing Regulations, 2013 for violating the provisions prescribed thereunder made in the Show cause Notice, I find from the records that the CHA/CB firm operated from Mumbai and filed Bills of Entry at JNCH in this case and that the firm is also having office at Delhi where the parent CB Licence is registered and operated from. Considering the issue of punitive actions under Customs Broker Licensing Regulations, 2013 for violating the provisions prescribed thereunder and facts flowing from the submission about the CHA / CB firm operating from multiple jurisdiction and parent CB Licence is registered and operated from Delhi, I again recommend that suitable action in the matter may be initiated

separately by the competent authority in accordance with said Regulations by initiating separate proceedings under the said Regulations as already done in the earlier proceedings.

Shri Pankaj Tiwari, Proprietor of the buyer firm, M/s. Lord Shiva & Co.[Noticee No. 11]

82. Penal action is proposed under Section 112(a) /112(b) and Section 114AA of the Customs Act, 1962 on the Noticee for the averments made in the Show Cause Notice .

I find that Shri Parshotam has deposed in his statement that M/s. Lord Shiva & Co was their buyer of dry dates and purchased almost 60% to 70% dry dates imported by M/s. K. L. International. Shri Prem has also deposed in his statement that M/s. Lord Shiva & Co was their buyer of dry dates, who purchased 60% to 70% of dry dates imported by them.

In view of the above, it is evident that the Dry dates imported by M/s. K.L. International have been supplied in India predominately to M/s Lord Shiva &Co.. It is further brought on record that on physical verification of premise of M/s. Lord Shiva & Co., located at upper Ground Floor, H-235, Sushant Arcade, Gurgaon, Haryana-122009, it was found that the shop was closed since long and was not functioning and it was registered in the name of one Mr. Pankaj Kumar Tiwari.

The Noticee was issued Summons dated 03.12.2021 and 06.01.2022 for appearance on 10.12.2021 and 25.01.2022 respectively but he did not appear to give evidence in connection with investigation. Such non-appearance and non-cooperation on the part of the Noticee can be viewed as admission of guilt and his participation in the impugned fraudulent import of Pakistan origin Dry dates.

I find that the Noticee has not denied himself being a predominate buyer of dry dates imported by M/s. K.L. International and evidence placed on record indicate that his firm was closed since long and not functioning. The Noticee also did not respond the summons and did not appear before the investigating agency. This supports the case of investigation that the buyer firm was fictitious, existed only on record and the same was created by the main masterminds purposefully to escape action by the department. I therefore find that the buyer, M/s Lord Shiva & Company, Gurugram under the proprietorship of Shri Pankaj Kumar Tiwari, knowingly and intentionally helped Shri Parshotam and his syndicate by creating a fictitious firm in his name for

the purpose of diverting the illegally imported dry dates of Pakistan origin in the market.

82.1 In view of above, I find that the charges against the Noticee are proved and his acts and omissions have rendered the imported goods liable to confiscation under section 111 of the Customs Act, 1962 and he has abetted the doing of such an act and therefore, he has rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. He has also concerned himself in purchasing and dealing with the goods with knowledge and reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962 and therefore, he has rendered himself liable to penalty under Section 112(b) of the Customs Act, 1962.

83. The Show Cause Notice also proposes penalty on the Noticee under Section 114AA of the Act which reads as under: -

> *"SECTION 114AA: 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."*

Penal provisions under Section 114AA are attracted when the ingredients therein are present in a case. In the present case, the Noticee knowingly and intentionally caused to be used, fraudulent certificate of origin / documents and also arranged submission of these fraudulently obtained certificates of origin / documents before the Customs authority. I also find that in the following cases, it is held that penalty under Section 114AA of the Customs Act is imposable for the circumstances mentioned therein related to imports and these cases have precedence value:

(i) S. M. Taufeek Vs Comm of Customs, Chennai-IV [2017(358) ELT 326 (Tri. Chennai)]
(ii) Brij Kishor Goel Vs Commissioner of Customs, Ahmedabad [2019(367)ELT 656(Tri-Ahmd)
(iii) Edelweiss Commodities Services Vs Pr. Commr of CT Hyderabad [2019(369) ELT1031(Tri.-Hyd.)]

Accordingly, I am of the view that the Noticee is liable for penalty under Section 114AA of the Customs Act, 1962. However, considering the facts that penalty under Section 112 is already imposed, I take a lenient view in the quantum of penalty under Section 114AA of the Customs Act, 1962.

84. In view of above, I pass the following order:

O R D E R

i. I reject the declared classification under CTH 08041020 in respect of consignment of **12,72,050 Kg** Dry Dates imported by M/s. K.L. International at Pipavav vide Bills of Entry No. 6124787, 6124890, 6124557, 6124677 and 6125519 all dated 04.11.2021.

ii. I order that the consignment of **12,72,050 Kg** Dry Dates imported by M/s. K.L. International at Pipavav vide Bills of Entry No. 6124787, 6124890, 6124557, 6124677 and 6125519 all dated 04.11.2021 should be classified under **CTH 98060000** as the goods have been found to be of Pakistani origin, and the Bills of Entry be re-assessed accordingly.

iii. I order that the consignment of **27,500 Kg** of Dry Dates, attempted to be imported by M/s. K. L. International vide Bill of Lading No.214702062 (Container No. MWCU5245763) for which Bill of Entry has not been filed, should be classified under CTH 98060000 as the goods have been found to be of Pakistani origin.

iv. I reject the declared classification under CTH 08041020 in respect of consignment of **3,34,840 Kg** Dry Dates imported by M/s. K.L. International at Nhava Sheva vide Bills of Entry No. 6277099 dated 16.11.2021 and 6926789 dated 03.01.2022.

v. I order that the consignment of **3,34,840 Kg** Dry Dates imported by M/s. K.L. International at Nhava Sheva vide Bills of Entry No. 6277099 dated 16.11.2021 and 6926789 dated 03.01.2022 should be classified under **CTH 98060000** as the goods have been found to be of Pakistani origin, and the Bills of Entry be re-assessed accordingly.

vi. I confirm the demand of the total Customs Duty amounting to **Rs. 14,59,54,244/- (Rupees fourteen crore, fifty nine lakh, fifty four thousand, two hundred and forty four only)** not levied and not paid / short levied and short paid in respect of above consignments of total **16,34,390 Kg** of Dry Dates, as calculated in Annexure-A attached to the show cause notice, on the importer, M/s. K.L. International in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962. The amount of customs

duty and interest, if any, already paid by M/s. K.L. International in connection with clearance of provisionally released goods at Pipavav Port for which Bills of Entry were filed, is ordered to be appropriated towards recovery of the customs duty and interest respectively confirmed and demanded herein and the balance amount should be paid by / recovered from M/s. K.L. International forthwith.

vii. I confiscate the consignments of **16,34,390 Kg** Dry Dates imported at Pipavav and Nhava Sheva, as detailed in Annexure-A attached to the show cause notice, having total assessable value of **Rs.5,25,77,177/- (Rupees Five Crore, Twenty five Lakh, Seventy Seven Thousand, One Hundred and Seventy Seven Only)** under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962.

viii. I impose fine of **Rs. 1,02,00,000/- [Rupees One Crore, Two Lakh only]** in lieu of confiscation under Section 125 (1) of the Customs Act, 1962 on M/s. K.L. International in respect of **12,72,050 Kg** Dry Dates having assessable value of **Rs. 4,08,17,507/-**, imported by M/s. K.L. International at Pipavav vide Bills of Entry No. 6124787, 6124890, 6124557, 6124677 and 6125519 all dated 04.11.2021 and released provisionally, which shall be in addition to any charges payable. I order for encashment of Bank Guarantees furnished by M/s. K.L. International at the time of provisional release of the said goods and appropriation thereof towards recovery of fine in lieu of confiscation.

ix. I offer **27,500 Kg** of Dry Dates having assessable value of **Rs. 8,82,419/-**, attempted to be imported by M/s. K. L. International at Pipavav port vide Bill of Lading No. 214702062 (Container No. MWCU5245763) for which Bill of Entry has not been filed and ordered for confiscation herein, for redemption under Section 125 (1) of the Customs Act, 1962 upon payment of a fine of **Rs. 2,20,000/- (Rupees Two Lakh, Twenty Thousand Only)** which shall be in addition to any charges payable. Further, as per the provisions of Section 125(3) of the Customs Act, 1962 if option of payment of fine is not exercised within 120 days from the date of this order, the same shall become void.

x. I offer **3,34,840 Kg** Dry Dates having assessable value of **Rs. 1,08,77,251/-**, imported by M/s. K.L. International at Nhava Sheva vide Bills of Entry No. 6277099 dated 16.11.2021 and 6926789 dated 03.01.2022 seized at JNCH and ordered for confiscation herein for redemption under Section 125 (1) of the Customs Act, 1962 upon

payment of a fine of **Rs. 27,00,000/- (Rupees Twenty Seven Lakh Only)** which shall be in addition to any charges payable. Further, as per the provisions of Section 125(3) of the Customs Act, 1962 if option of payment of fine is not exercised within 120 days from the date of this order, the same shall become void.

xi. I impose penalty of **Rs. 14,59,54,244/- (Rupees fourteen crore, fifty nine lakh, fifty four thousand, two hundred and forty four only)** plus penalty equal to the applicable interest under Section 28AA payable on the duty demanded and confirmed above on M/s K.L. International under Section 114A of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xii. I do not impose any penalty on M/s. K.L. International under Section 112 of the Customs Act, 1962 as penalty is already imposed on M/s. K.L. International under Section 114A of the Customs Act, 1962.

xiii. I impose penalty of **Rs. 25,00,000/- [Rupees Twenty Five Lakh only]** on M/s. K.L. International under Section 114AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xiv. I impose penalty of **Rs. 1,00,000/- [Rupees One Lakh only]** on M/s. K.L. International under Section 117 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xv. I impose penalty of **Rs. 1,00,00,000/- [Rupees One Crore only]** on Shri Parshotam Prajapati of M/s. Shivoy Enterprise under Section 112 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xvi. I impose penalty of **Rs. 25,00,000/- [Rupees Twenty Five Lakh only]** on Shri Parshotam Prajapati of M/s. Shivoy Enterprise under Section 114AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xvii. I impose penalty of **Rs. 1,00,00,000/- [Rupees One Crore only]** on Shri Prem, Husband of Mrs. Bharti under Section 112 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xviii. I impose penalty of **Rs. 25,00,000/- [Rupees Twenty Five Lakh only]** on Shri Prem, Husband of Mrs. Bharti under Section 114AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xix. I impose penalty of **Rs. 50,00,000/- [Rupees Fifty Lakh only]** on Shri Jatin Arora, Associate of Shri Parshotam under Section 112 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xx. I impose penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri Jatin Arora, Associate of Shri Parshotam under Section 114AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xxi. I impose penalty of **Rs. 1,00,00,000/- [Rupees One Crore only]** on Shri Mohammad Shahzeb Azad, Authorized Signatory of M/s .Alburaq Dates Factory, LLC, Dubai under Section 112 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xxii. I impose penalty of **Rs. 25,00,000/- [Rupees Twenty Five Lakh only]** on Shri Mohammad Shahzeb Azad, Authorized Signatory of M/s .Alburaq Dates Factory, LLC, Dubai under Section 114AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xxiii. I impose penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri Rajveer Singh, Customs Broker, Eskay Logistics at Pipavav port under Section 112 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xxiv. I impose penalty of **Rs. 1,00,000/- [Rupees One Lakh only]** on Shri Rajveer Singh, Customs Broker, Eskay Logistics at Pipavav port under Section 114AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xxv. I impose penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics CHA Services Pvt. Ltd. under Section 112 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xxvi. I impose penalty of **Rs. 1,00,000/- [Rupees One Lakh only]** on Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics CHA Services Pvt. Ltd. under Section 114AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xxvii. I impose penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri V.S. Yadav of M/s. Sidhant Logistics CHA Services Pvt. Ltd. under Section 112 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xxviii. I impose penalty of **Rs. 1,00,000/- [Rupees One Lakh only]** on Shri V.S. Yadav of M/s. Sidhant Logistics CHA Services Pvt. Ltd. under Section 114AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xxix. I impose penalty of **Rs. 10,00,000/- [Rupees Ten Lakh only]** on Shri Pankaj Tiwari, Proprietor of the buyer firm, M/s. Lord Shiva & Co. under Section 112 of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

xxx. I impose penalty of **Rs. 1,00,000/- [Rupees One Lakh only]** on Shri Pankaj Tiwari, Proprietor of the buyer firm, M/s. Lord Shiva & Co. under Section 114AA of the Customs Act, 1962 which should be paid by / recovered from the Noticee forthwith.

85. This order is issued without prejudice to any other action that may be taken against the Noticees or any other person under the Customs Act, 1962 or any other law for the time being in force.

(Dhirendra Lal)
COMMISSIONER

F. No. CUS/560/2022-Adjn. Date: 25.11.2025

By Speed Post/ E-mail to:

1. M/s. K. L. International, A-256, Old No. 55, Flat No. A-4, 3F, Chhaterpur Enclave – I, New Delhi 110074. (klinternational2011@gmail.com, premshivay1812@gmail.com, amitr4730@gmail.com)

2. Mrs. Bharti, 68, Block 19, Dakshinpuri Extension, Ambedkar Nagar, Pushpa Bhavan, New Delhi. (premshivay1812@gmail.com, klinternational2011@gmail.com, amitr4730@gmail.com)

3. Shri Parshotam, M/s. Shivoy Enterprise, 18, Surajkund Road, Pul Prahladpur, New Delhi. (parshotamparjapati84@gmail.com,)

4. Shri Prem, 68, Block 19, Dakshinpuri Extension, Ambedkar Nagar, Pushpa Bhavan, New Delhi (premshivay1812@gmail.com)

5. Shri Jatin Arora, Flat No. 6B, Tower GH-1, Sector 54, Orchid Garden, Suncity, Gurugram. (Jatin-arora07@outlook.com)

6. Shri Mohammad Shahzeb Azad, Authorized Signatory of M/s. Alburaq Dates Factory, LLC, Dubai located at Head Office:3312, Churchill Tower, Business Bay, Dubai,UAE(shahzeb@prolix.in, info@alburaqdates.com, shahzebazad@gmail.com)

7. Shri Rajveer Singh, M/s. Eskay Logistics (Customs Broker No. ABDPN1577FCH003), Shri Ram Plaza, Office No. 3, Pipavav, Taluka-Rajula, Distt. Amreli – 365560. (eskaylogppv@gmail.com)

8. Shri Shailendra Dhananjay Singh of M/s. Sidhant Logistics CHA Services Pvt. Ltd. (Customs Broker No. AAUPY4535CCH001), 108, CHAWALA COMPLEX, SECTOR-15, C.B.D. BELAPUR, NAVI MUMBAI. Pin No.400614. (shailendra180408@gmail.com)

9. Shri Vijay S. Yadav of M/s. Sidhant Logistics CHA Services Pvt. Ltd. (Customs Broker No. AAUPY4535CCH001), C-9, Uppar Ground Floor, Vishwakarma Colony, M.B. Road, Badarpur, New Delhi- 110044. (vijaysidhant@gmail.com)

10. Shri Pankaj Tiwari, Proprietor of M/s. Lord Shiva & Co., located at upper Ground Floor,H-235, Sushant Arcade, Gurgaon, Haryana-122009. (lordshivacompany@gmail.com)

11. M/s. Kautiliya Consultancy Services, 103-104, 1st floor, Joshi Chamber,Ahmedabad Street, Carnac Bunder, Masjid(East), Mumbai-400 009.(ckautiliya@gmail.com) (Authorised Representative of the Noticees)

Copy submitted to:

1. The Principal Chief Commissioner, Customs, Ahmedabad.

2. The Additional Director General, Directorate of Revenue Intelligence, Zonal Unit, 15, Magnet Co-operate Park, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054 for kind information please.

3. The Additional Director General, Central Economic Intelligence Bureau, 6th Floor, B Wing, Janpath Bhawan, Janpath, New Delhi-110 001 for kind information please.

4. The Principal Commissioner of Customs, NS-V, JNCH, Nhava Sheva

5. The Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin, Tamil Nadu-628 004 [for necessary action on M/s. Eskay Logistics (Customs Broker No. ABDPN1577FCH003)]

6. The Commissioner of Customs, Delhi [for necessary action on M/s. Sidhant Logistics CHA Services Pvt. Ltd. (Customs Broker No. AAUPY4535CCH001)]

7. The Deputy / Assistant Commissioner, Custom House, Pipavav.

8. The Deputy Commissioner of Customs, NS-V, SIIB (Imp.), JNCH, Nhava Sheva

9. The Deputy Director, DRI, JRU, Jamnagar

10. The Deputy / Assistant Commissioner, Recovery, Hqrs., Customs (Prev.), Jamnagar.

11. The Deputy / Assistant Commissioner, Systems, Hqrs., Customs (P), Jamnagar.

12. Guard File.

