OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,

CUSTOM HOUSE: MUNDRA, KUTCH

MUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421

Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A. File No.	:	GEN/ADJ/CLBK/4/2021-Adjn-O/o Pr. Commr- Cus-Mundra.
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-39/26-27
C. Passed by	:	**Nitin Saini** **Commissioner of Customs,** **Customs House, AP & SEZ, Mundra.**
D. Date of order and Date of issue:	:	11.11.2026 11.11.2026
E. SCN No. & Date	:	SCN No. DRI/AZU/GRU/CIGARETTES/INT-42/2015-Pt.IV dated 21.12.2020
F. Noticee(s) / Party / Importer	:	Shri Vijay Vashrambhai Sabhaya & 29 Others

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सी ए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

   "**केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण**, **पश्चिम जोनल पीठ**, 2nd **फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद**-380 004" **"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."**

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

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

4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज,दंड याशास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्तिया दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्डपीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

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

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

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

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

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

Brief Fact of the Case

1.1. On the basis of an intelligence that certain contraband goods were being smuggled into India by way of concealment in a container bearing No. IALU2252554, the goods imported in the said container, which were sought clearance under Warehouse Bill of Entry No. 3140016 dated 03.11.2015 filed by M/s. Krishna Brass Industries, Plot No. 3962, GIDC, Phase-III, Dared, Jamnagar (IEC No. 2414004193) **(hereinafter referred to as "KBI")** at Mundra Custom House, were examined at Transworld CFS in Mundra Port, by the officers of Directorate of Revenue Intelligence **("DRI" for short)** vide Panchnama dated 04.11.2015. The description of the goods imported in the said container was declared as "Mix Metal Brass Scrap with other impurities" in the import documents and in the Warehouse B/E No. 3140016, dtd. 03.11.2015 also. However, on examination of the goods contained in the said Container No. IALU2252554, it was found that the said container was stuffed with 60 boxes of Cigarettes concealed behind Jumbo bags containing brass scrap. In addition to the cigarettes and Brass Scrap, un-used articles of brass, scrap of radiators & metallic ingots were also found stuffed in the said container. The detailed examination of those items was carried out under Panchnama dated 18.02.2016. The quantity of different goods found stuffed in container No. IALU2252554, as per Panchnama dated 04.11.2015 and Panchnama dated 18.02.2016, is summarised, as described in the **Table-1** below:

Table -1

Sr. No.	Description	Quantity
1	Cigarettes *(of length 10 Centimeters)*	24,59,400 sticks
2	Mixture of Brass scrap and unused items of brass (opined to be "brass scrap" by Chartered Engineer)	12830 Kgs
3	Scrap of radiators	1930 Kgs
4	Metallic ingots (opined to be "Cast Iron ingots" by Chartered Engineer)	5175 Kgs

1.2. A Show Cause Notice F. No. DRI/AZU/GRU/CIGARETTES/INT-42/2015-16 dated 02.05.2016 was issued to M/s. KBI, Jamnagar, Shri Shailesh D. Patel, POA-holder of M/s. KBI, Shri Ankit D. Changani, Partner of M/s. Amardeep Exports (100% EOU), Jamnagar **(Hereinafter referred to as "M/s. AE")**, and Shri Anil M. Parmar, proposing confiscation of cigarettes smuggled into India by them in the

container No. IALU2252554 along with the other goods found in the said container for concealing the cigarettes and also proposing penalties on the concerned noticees. Pending adjudication of the said SCN dtd.02.05.2016, the cigarettes were auctioned, and the sale proceed of Rs.26,25,000/- was received under Section 110(1A) of the Customs Act, 1962. The said SCN dtd.02.05.2016 has been adjudicated by the Principal Commissioner of Customs, Custom House, Mundra vide OIO No. MUN-CUSTM-000-COM-02-19-20, dtd.15.05.2019, whereby the cigarettes recovered from Container No. IALU2252554 were ordered for confiscation under Section 111(d), 111(f), 111(j), 111(i) and 111(l) of the Customs Act, 1962 and sale proceed of Rs.26,25,000/-, which was realized upon disposal of the same were also ordered for appropriation under Section 126 of the Customs Act, 1962. The goods used for concealment of cigarettes viz. 5175 Kgs of Cast Iron Ingots, 12830 Kgs of Mixed Brass Scrap and 1930 Kgs of Scrap of Old and Used radiators were also ordered for confiscation under Section 111(m) of the Customs Act, 1962. Further to this, penalties as described below in **Table-2** have also been imposed on the concerned persons:

Table-2

Name of the Party/Person	**Amount of penalty**	**Penalty provision**
KBI, (100% EOU) Jamnagar (IEC No. 2414004193)	50,00,000/-	112(a)
	25,00,000/-	114AA
Shailesh Damjibhai Patel, POA holder of KBI, Jamnagar	50,00,000/-	112(a)
	25,00,000/-	114AA
Ankit D. Changani, Partner of M/s. Amardeep Exports, (100% EOU) Jamnagar **(Hereinafter referred to as "M/s. AE")**	10,00,000/-	112(a)
Anil M. Parmar, Jamnagar	10,00,000/-	112(a)
	10,00,000/-	114AA

Copy of the SCN dtd.02.05.2016 and OIO dtd.15.05.2019 are attached with this Notice.

1.3. Similarly, in another case of fraudulent exports made by M/s. AE, Jamnagar, a Show Cause Notice F. No. DRI/AZU/GRU/AMARDEEP EXPORTS/INT-46/2015-16, dtd.05.05.2016 was issued to M/s. AE and Shri Ankit D. Changani, Partner of M/s. AE, Jamnagar. The said SCN dtd. 05.05.2016 read with corrigendum dated

08.05.2018 made answerable to the Deputy/Assistant Commissioner of Customs (Exports), Mundra. The final outcome of said SCN is not conveyed to DRI so far.

1.4. Further to the above, a Show Cause Notice F. No. DRI/AZU/GRU/Amardeep/INT-46/2015-16, dtd.04.03.2020 was also issued to M/s. AE, Jamnagar, Shri Ankit D. Changani, Partner of M/s. AE, Jamnagar and Shri Dinesh B. Changani, Partner of M/s. AE, Jamnagar in respect of duty demand concerning to the diversion of raw material as well as finished goods from the EOU. The said SCN dtd.04.03.2020 has been adjudicated by the Commissioner of Central Excise and CGST, Rajkot vide OIO No. RAJ-EXCUS-000-COM-03-20-21, dtd.08/12.10.2020, with orders in brief as follow:

(a) Confirmation of duty demand of Rs.83,17,029/- under Section 28(8) of the Customs Act, 1962 read with Section 72 of the Customs Act, 1962 with applicable interest thereon under Section 28AA of the Customs Act, 1962

(b) Confirmation of duty demand of Rs.5,64,422/- under Section 11A(2) (now Section 11A(10) of the Central Excise Act, 1944 with appliable interest thereon under Section 11AA (erstwhile Section 11AB) of the Central Excise Act, 1944.

(c) Imposition of penalty of Rs.83,17,029/- on M/s. AE, Jamnagar under Section 114A of the Customs Act, 1962 with option of reduced penalty of 25% under the proviso to Section 114A of the Customs Act, 1962.

(d) Imposition of penalty of Rs.5,64,422/- on M/s. AE, Jamnagar under Section 11AC (1) of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 with option of reduced penalty of 25% under the proviso to Section 11AC(1)(e) of the Central Excise Act, 1944.

(e) Enforcement of B-17 Bond executed by M/s. AE, Jamnagar for recovery of the aforesaid sum of duties, interest and penalties.

(f) Cancellation of Pvt. Bonded warehouse Licence issued to M/s. AE under Section 58B of the Customs Act, 1962.

(g) Imposition of penalty of Rs.15,00,000/- under Section 112(a) & (b) of the Customs Act, 1962, Imposition of penalty of Rs.5,00,000/- under Section 114AA of the Customs Act, 1962 and Imposition of penalty of Rs.1,00,000/- under Section 117 of the Customs Act, 1962 on Shri Ankit D. Changani, Partner of M/s. AE, Jamnagar. (Total Penalty of Rs.21,00,000/-)

(h) Imposition of penalty of Rs.75,000/- under Rule 26(1) of the Central Excise Rules, 2002 and Rs.5000/- under Rule 27 of the Central Excise Rules, 2002 on M/s. AE, Jamnagar.

(i) Imposition of penalty of Rs.5,00,000/- under Section 112(a) of the Customs Act, 1962, Imposition of penalty of Rs.50,000/- under Rule 26(1) of the Central Excise Rules, 2002 on Shri Dinesh B. Changani, Partner of M/s. AE, Jamnagar. (Total Penalty of Rs.5,50,000/-)

(j) 166.213 MTs imported "Mix Metal Brass Scrap" having value of Rs.3,95,25,611/- held as liable for confiscation under the provisions of Section 111(o) of the Customs Act, 1962, but no redemption fine imposed in lieu of confiscation as the goods were not available for confiscation.

(k) 4.37 MTs "Brass Electrical Parts: Brass Terminals" having value of Rs.21,35,675/- held as liable for confiscation under the provisions of Rule 25 of the Central Excise Rules, 2002, but no redemption fine imposed in lieu of confiscation as the goods were not available for confiscation.

Copy of the SCN dtd.04.03.2020 and OIO dtd.08.10.2020 are attached with this Notice.

1.5. Subsequent to the illegal import of cigarettes in contravention of Customs Act, 1962 mentioned in Warehouse B/E No. 3140016, dtd. 03.11.2015 (as referred in para 1.1. above), two more such containers with cigarettes were imported into India/transited illegally through India after their import. The present Show Cause Notice deals with import of these two containers viz IPXU3062264 & TTNU3535220

and related matters thereto, which are not covered in the aforesaid SCNs or the OIOs mentioned in the paras above.

2.0. BRIEF FACTS RELATING TO THE DEVELOPMENT OF THE CASE:

2.1. When the investigation relating to the illegal import of contraband goods by Container No. IALU2252554 was going on, further intelligence was received by DRI, which indicated that the contraband goods/cigarettes were being smuggled into India by way of concealment in two more containers bearing Nos. IPXU3062264 & TTNU3535220. During the course of investigation in the context of said further intelligence, it came to the notice that those two containers were already arrived at Mundra Port in vessel MV Chicago on 07.11.2015, but the said two containers were taken back to Jebel Ali Port.

2.2. During investigation, the documents collected in this respect from the Shipping Agent M/s MBK Logistix Private Limited revealed that those two containers IPXU3062264 & TTNU3535220 were loaded from Jebel Ali Port by the Shipper M/s. Alliance Metal General Trading LLC, P.O. Box 238286, Dubai, UAE **(hereinafter referred to as "AMGTL")** for delivery at Mundra Port, in vessel MV Chicago under the two Bills of Lading No. ATSJEAMUN153178 dated 28.10.2015 and ATSJEAMUN153177 dated 27.10.2015 **(RUD No. 10)** respectively; the details thereof along with the past consignment, which was arrived at Mundra under Container No. IALU2252554, are provided in **Table-3** below:

Table-3

Bill of Lading No.	**ATSJEAMUN153178 dated 28.10.2015**	**ATSJEAMUN153177 dated 27.10.2015**	**JEAMUN044235, dtd.25.10.2015**
Bill of Lading issued by	-	-	IAL Container Line (UK) Limited
Vessel on which the goods loaded	MV Chicago	MV Chicago	MV OEL Emirates
Date of Loading of the container	29/10/2015	29/10/2015	-
Load Port	Jebel Ali	Jebel Ali	Jebel Ali
Port of Discharge (as mentioned in the B/L)	Mundra	Mundra	Mundra
Container No.	IPXU3062264	TTNU3535220	IALU2252554,

Name and address of the shipper (as mentioned in the BL)	M/s. Alliance Metal General Trading LLC, PO Box No. 238286, Dubai UAE	M/s. Alliance Metal General Trading LLC, PO Box No. 238286, Dubai UAE	M/s. Alliance Metal General Trading LLC, PO Box No. 238286, Dubai UAE
Name and address of the consignee (As mentioned in the BL)	M/s. Krishna Brass Industries (100% EOU), Plot No. 3962 Road No. U, GIDC, Phase III, Dared, Jamnagar, IEC No. 241004193	M/s. Amardeep Export, 414 & 417, GIDC Phase-II, Dared, Jamnagar – 361004, Gujarat, India, IEC No. 3705001035	M/s. Krishna Brass Industries (100% EOU), Plot No. 3962 Road No. U, GIDC, Phase III, Dared, Jamnagar, IEC No. 241004193
Description of goods, as mentioned in the BL	Mix Metal Brass Scrap with other Impurities	Mix Metal Brass Scrap with other Impurities	Mix Metal Brass Scrap with other Impurities
Qty of Goods as mentioned in the BL (Kgs) (Net Weight)	23120 kgs	18540 kgs	22260 kgs
Name and address of the Local Agent of the container Line, who was to be contacted for delivery of goods	Radiant Maritime India Pvt. Ltd., Office No. 14 & 20, 2nd Floor, Avishkar Complex, Plot No. 204, Ward – 12/B, Gandhidham, Kutch, Gujarat, Pin-370201	Radiant Maritime India Pvt. Ltd., Office No. 14 & 20, 2nd Floor, Avishkar Complex, Plot No. 204, Ward – 12/B, Gandhidham, Kutch, Gujarat, Pin-370201	IAL Logistics India Limited, Kandla Branch, Maritime House, Room No. 112, Plot 45, Sector No. 9, Gandhidham - 370201

2.3. From the above details, it is evident that the two container Nos. IPXU3062264 & TTNU3535220 said to contain "Mix Metal Brass Scrap with other Impurities" were shipped from Jebel Ali Port for unloading at Mundra on account of shipper M/s. AMGTL, who were the same shipper, who had shipped earlier a container No. IALU2252554 in favour of M/s. KBI, which was found on examination stuffed with 24,59,400 cigarette sticks and other goods, instead of the declared goods of "Mix Metal Brass Scrap with other Impurities" duly recorded under Panchnama dated 04.11.2015 at Mundra.

2.4. The intelligence about attempted smuggling of cigarettes into India in two container Nos. IPXU3062264 & TTNU3535220 and the fact that instead of being unloaded the two containers at Mundra Port, the same were being returned back to Jebel Ali Port, was communicated by DRI to the Dubai Customs for verification through the Consulate General of India at Dubai. Consulate General of India, Dubai vide its letter CE/IV/1/2015 dated 13.12.2015 addressed to the DRI informed that the said two containers Nos. IPXU3062264 & TTNU3535220 were inspected by the Dubai Customs and they were found full of cigarettes, contrary to the description

made in the respective Bills of Lading. It was also informed that the Exporter M/s. AMGTL, Dubai was registered with Dubai Chamber of Commerce with Membership No. 45790, which was valid up to 08.09.1999 and that they were having Trading Licence No. 501123 issued by Department of Economic Development on 09.09.1997, which was valid up to 08.09.1999.

3.0. DETAILS OF LITIGATION ISSUES PERTAINING TO ARREST, BAIL ETC.

3.1. During investigation into attempt of smuggling of cigarettes in container Nos. IPXU3062264 & TTNU3535220 and for other matters, various summons were issued to Shri Vijay Sabhaya, Prop. of M/s. KBI, Jamnagar and Shri Shailesh Damjibhai Patel, POA-holder of M/s. KBI, Jamnagar under Section 108 of the Customs Act, 1962, but none of them appeared before investigating officer in response to the summons issued to them. Instead, they filed Special Criminal Application (Direction) No. 6814/2015 before Hon'ble Gujarat High Court seeking to quash summons issued to them and also sought to restrain the Investigating officer and DRI from taking any coercive action against them. The Hon'ble High Court of Gujarat did not find any merit in the petition filed by the petitioners and rejected the same vide Order dtd.08.12.2015. Thereafter, Shri Vijay Sabhaya and Shri Shailesh Damjibhai Patel filed Criminal Misc. Application No. 621/2015 before the Hon'ble Additional Sessions Judge, Gandhidham seeking anticipatory bail under Section 438 of the CrPC, on which the Hon'ble Additional Sessions Judge, Gandhidham passed Order dtd.04.01.2016, allowing anticipatory bail to the applicants with condition to co-operate with the Investigating officer in the investigation and such other conditions.

3.2. In the meantime, considering the role of Shri Ankit D. Changani, Partner of M/s. AE, Jamnagar in the case of fraudulent exports as well as looking to his active involvement in the case of illegal import of cigarette concealed with other materials detected on 04.11.2015 and illegal transit of two fully loaded containers of Cigarettes, he was arrested under the provisions of the Customs Act, 1962 on 09.03.2016. Later on, he filed Criminal Misc Application No. 785/2016 before the Hon'ble Chief Judicial Magistrate, Bhuj and considering the default bail provisions under Section 167(2) of the Criminal Procedure Code, he was allowed release on bail vide order dtd.09.05.2016 passed by the Hon'ble Chief Judicial Magistrate, Bhuj upon imposition of specific conditions in the same order. Later, Shri Ankit D. Changani

filed application for modification in condition of the bail, so as to get released of his Passport and permitting him for visiting abroad. However, vide Order dtd.19.10.2016, his application was rejected by the Hon'ble Chief Judicial Magistrate, Bhuj. Against the said Order dtd.19.10.2016, Shri Ankit D. Changani filed Criminal Misc Application No. 785/2017 before the Hon'ble Additional Sessions Judge, Bhuj. After considering the circumstances as well as contentions raised in the application, the Hon'ble Additional Sessions Judge, Bhuj partly allowed his application vide Order dtd.05.10.2017, and partly rejected the same. Therefore, Shri Ankit D. Changani filed Criminal Misc Application (for Modification of Order) No. 4440/2018 before the Hon'ble Gujarat High Court. The Hon'ble Gujarat High Court vide Order dtd.05.05.2018 partly allowed the application filed by Shri Ankit D. Changani allowing him relief from the condition relating to marking periodical presence before DRI, but kept the condition to co-operate in investigation as and when required, whereas in respect of his application for returning the passport permanently, the Hon'ble High Court rejected the same with observation that the lower court may be requested as and when required.

3.3. In the meantime, Shri Anil Parmar of M/s. AMGTL also filed a Criminal Misc Application No. 256/2016 before the Hon'ble Additional Sessions Judge, Gandhidham seeking anticipatory bail in the case of illegal import of cigarette concealed with other materials detected on 04.11.2015 and illegal transit of two fully loaded containers of Cigarettes, based on the order dtd.04.01.2016 passed by the Hon'ble Additional Sessions Judge in the case of Shri Vijay Sabhaya and Shri Shailesh D. Patel. The Hon'ble Additional Sessions Judge, Gandhidham allowed the application filed by Shri Anil Parmar with imposition of specific conditions vide Order dtd. 05.10.2016 and upon furnishing local surety from Kutch District for Rs. 15,000/- and furnishing the bond of Rs.15,000/- also before the Investigating officer, if he was arrested. Shri Anil Parmar never turned up to give his evidence in response to the subsequent summons dtd. 01.07.2016 issued to him and the summons issued to him in continuation thereof on various dates were returned by the postal authorities undelivered. The particulars of summons issued to Shri Anil Parmar as well as his Dubai based company M/s. AMGTL and outcome of the same, are provided in **Table-4** here below:

Table-4

Sr. No.	Summons No. and Date, issued by whom	Addressed to	Date of attending the inquiry officer specified in the summons	Mode of service by which the summons was served on the Respondent with details and date of receipt
1	CA 142/ 7073, dtd.03.03.2016	Shri Anil Parmar, 90, Opp. Smashan Wadi Area, Dhrol, Kalavad, Jamnagar	15.03.2016	Summons was received by the Respondent. However, no response received from the Respondent.
2	CA No. 142/ 7099 dtd.08.04.2016	Shri Anil Parmar, 90, Opp. Smashan Wadi Area, Dhrol, Kalavad, Jamnagar	12.04.2016	Summons was received by the Respondent. However, no response received from the Respondent.
3	CA No. 143/ 7107 dtd.25.04.2016	Shri Anil Parmar, 90, Opp. Smashan Wadi Area, Dhrol, Kalavad, Jamnagar	27.04.2016	Summons was received by the Respondent. However, no response received from the Respondent.
4	CA No. 144/ 7163 dtd.01.07.2016	Shri Anil Parmar S/o Shri Manjibhai Parmar, Mahaprabhuji Bethak, O/s. Kalavad Gate, Jamnagar	15.07.2016	Summons sent vide Speed Post vide No. EG 925395290 dtd. 04.07.2016 booked at the Gandhidham Post office. The envelope containing the summons, received undelivered by the postal authorities with remarks “Left India”.
5	CA No. 145/ 7208 dtd.22.07.2016	Shri Anil Parmar S/o Shri Manjibhai Parmar, Mahaprabhuji Bethak, O/s. Kalavad Gate, Jamnagar	11.08.2016	Summons was received by the Respondent. However, no response received from the Respondent.
6	CA No. 147/ 7310 dtd.10.10.2016	Shri Anil M. Parmar, Mahaprabhuji no Bethak, Kalavad Nakabahr, Jamnagar	20.10.2016	Summons sent vide Speed Post vide No. EG 900427853, dtd. 14.10.2016 booked at the Gandhidham Post office. The envelope containing the summons, received undelivered by the postal authorities with remarks “Addressee

				Absent" and "Addressee out of India" Summons was also sent by email at the email address of the Respondent alliancemetalgt@gmail.com on 14.10.2016.
7	CA 147/ 7317, dtd.21.10.2016	Shri Anil M. Parmar, Mahaprabhuji no Bethak, Kalavad Nakabahr, Jamnagar	17.11.2016	Summons sent vide Speed Post vide No. EG 925686037 dtd. 24.10.2016 booked at the Gandhidham Post office. The envelope containing the summons, received undelivered by the postal authorities with remarks "Door Locked" and "Addressee left". Copy of the summons was received by the mother of the Respondent on 24.10.2016 on behalf of the Respondent. Summons was also sent by email at the email address of the Respondent alliancemetalgt@gmail.com on 21.10.2016. Vide scanned copy of the letter dtd. 14.11.2016, was sent by the Respondent from the email address the Respondent alliancemetalgt@gmail.com sought further time of 30 days, on the frivolous pretext that

				he was busy with the social responsibility. The said letter dtd.14.11.2016 was sent by one Mr. Mahendra (Mob. No. 9712411620) on behalf of the Respondent
8	CA 147/ 7319, dtd.24.11.2016	Shri Anil M. Parmar, Mahaprabhuji no Bethak, Kalavad Naka bahr, Jamnagar	30.11.2016	Summons sent vide Speed Post vide No. EG 936613000 dtd. 25.11.2016 booked at the Gandhidham Post office. The envelope containing the summons, received undelivered by the postal authorities with remarks "Addressee Left", "Permanently Left" Summons was also sent by email at the email address: alliancemetalgt@gmail.com and parmaranil229@gmail.com on 25.11.2016.
9	CA 148/7388, dtd. 25.01.2017	Shri Anil M. Parmar, Mahaprabhuji no Bethak passe, Kalavad Naka bahr, Jamnagar-361006	07.02.2017	Summons sent vide Speed Post vide No. EG 936653247 dtd. 25.01.2017 booked from Gandhidham Post office. The envelope containing the summons, received undelivered by the postal authorities with remarks "Since there was insufficient name and address, hence returned". Summons was also sent by email at the email address: alliancemetalgt@gmail.

				com and parmaranil229@gmail.com on 25.01.2017. The Respondent sought further time till May 2017.
10	19.11.2019	Letter addressed to M/s. Alliance Metal General Trading LLC, Dubai (UAE) owned by Shri Anil Parmar	30.11.2019	Calling for information under Section 108 of the Customs Act, 1962 and the envelope containing letter was returned undelivered.
11	10.02.2020	Letter addressed to M/s. Alliance Metal General Trading LLC, Dubai (UAE) owned by Shri Anil Parmar, alliancemetalgt@gmail.com	19.02.2020	Calling for information under Section 108 of the Customs Act, 1962 was sent by email at the email address alliancemetalgt@gmail.com No reply received.
12	09.03.2020	Letter addressed to M/s. Alliance Metal General Trading LLC, Dubai (UAE) owned by Shri Anil Parmar, alliancemetalgt@gmail.com	20.03.2020	Calling for information under Section 108 of the Customs Act, 1962 was sent by email at the email address alliancemetalgt@gmail.com No reply received.
13	14.05.2020	Letter addressed to M/s. Alliance Metal General Trading LLC, Dubai (UAE) owned by Shri Anil Parmar, alliancemetalgt@gmail.com	26.05.2020	Calling for information under Section 108 of the Customs Act, 1962 was sent by email at the email address alliancemetalgt@gmail.com No reply received.
14	14.07.2020	Letter addressed to M/s. Alliance Metal General Trading LLC, Dubai (UAE) owned by	20.07.2020	Calling for information under Section 108 of the Customs Act, 1962 was sent by email at

		Shri Anil Parmar, alliancemetalgt@gmail.com		the email address alliancemetalgt@gmail.com No reply received.
15	CA 202/ 10094, dtd.02.09.2020	Anil Parmar, Owner of M/s. Alliance Metal General Trading LLC, alliancemetalgt@gmail.com, parmaranil229@gmail.com	10.09.2020	Summons sent by email addresses: alliancemetalgt@gmail.com parmaranil229@gmail.com No reply received.

In light of the fact of deliberate non-attendance of Shri Anil Parmar before the Investigating Officer in response to the various summons issued to him, and also looking to the fact that he was deliberately avoiding to supply the specific documents/details, a complaint under Section 174, 175 and 176 of the Indian Penal Code, 1860 has been filed by the SIO, DRI, Gandhidham against Shri Anil Parmar on 22.10.2020 vide CC No. 1683/2020 filed before the Hon'ble Chief Judicial Magistrate, Gandhidham. Further to this, in light of the violation of specific conditions imposed while granting anticipatory bail to Shri Anil Parmar vide Order dtd. 05.10.2016, a Revision Application vide Misc. Criminal Application No. 516/2020 in the Criminal Misc. Application No. 256/2016 has also been filed by DRI on 22.10.2020 before the Hon'ble Additional Sessions Judge, Gandhidham requesting to revoke the Order dtd.05.10.2016 granting anticipatory bail to Shri Anil Parmar.

3.4. Summons dtd.27.02.2016 was issued to Shri Jaysukh Muljibhai Ranpariya @ Jayeshbhai Muljibhai Ranpariya @ Jayesh M. Patel in connection with the subject inquiry, under the provisions of Section 108 of the Customs Act, 1962. Instead of making appearance before the inquiring officer, Shri Jaysukh Muljibhai Ranpariya @ Jayeshbhai Muljibhai Ranpariya @ Jayesh M. Patel filed a Special Criminal Application No. 1547/2016 before Hon'ble High Court of Gujarat with prayer for quashing the proceedings against him. The said matter is pending before Hon'ble High Court of Gujarat as of now. No specific order has been passed in the matter so far.

3.5. In the meantime, it has come to the notice that a case was booked by Jamnagar C Division Police against Shri Jaysukh Ranpariya @ Jayesh Patel vide Crime Regi. No. 135/2016 under the provisions of Section 406, 420, 465, 467, 468, 471, 34, 120(B) of the Indian Penal Code, 1860, where he was arrested and granted bail, with condition that the Respondent should not leave India without permission from the Hon'ble Sessions Court. However, without obtaining the permission from the Hon'ble Sessions Court the Respondent had attempted to flee out of India from CSI Airport, Mumbai on the basis of a passport No. R-6542794, dtd. 11.10.2017 obtained by him from Passport Office, Pune based on false details and even after holding a Passport No. H-0130169 dtd. 08.08.2008 issued by the Passport Office, Ahmedabad, and, therefore, he was apprehended by the Immigration authorities and he was arrested. In said case, he was granted bail by the Hon'ble Gujarat High Court with direction to him to appear before the Bopal Police Station, Ahmedabad every alternate day. The present status of said case is being ascertained.

3.6. In addition to the above, in a case of smuggling of cigarettes, booked by Mumbai DRI during 2017, Shri Jaysukh Ranpariya @ Jayesh Patel was found as mastermind of the smuggling of cigarettes valued at Rs.6,92,64,000/- and in that case, officer of the Mumbai DRI had arrested other persons involved in the case. DRI, Mumbai had also arrested Shri Jaysukh Ranpariya @ Jayesh Patel in January, 2018 and he was produced before the Hon'ble Additional Chief Metropolitan Magistrate, Esplanade on 08.01.2018. In the said case, he was later on released on bail. In that case, after adjudication of case vide OIO No. JC/R&I/SG/05/2018-19, dtd.14.12.2018, penalty of Rs.3,00,00,000/- was imposed on him under the provisions of the Customs Act, 1962.

3.7. Further to this, Shri Jaysukh Ranpariya @ Jayesh Patel has been booked by Jamnagar Police under the provisions of GujCTOC Act, 2019 as well as Indian Penal Code, 1860, in which case he has been found absconding. In the said matter, the Gujarat Police has got issued Red Corner Notice by INTERPOL to find out Shri Jaysukh Ranpariya @ Jayesh Patel.

3.8. Considering his role in the present case of smuggling of cigarettes, which was contrary to his version in the statement dtd. 19.04.2016 given by him under Section

108 of the Customs Act, 1962, Summons dtd. 02.12.2020 was again issued to Shri Jaysukh Muljibhai Ranpariya @ Jayeshbhai Muljibhai Ranpariya @ Jayesh M. Patel (his role is discussed in later paras of this notice) in connection with the subject inquiry, under the provisions of Section 108 of the Customs Act, 1962 for appearance on 10.12.2020, but he did not make his appearance; hence a complaint has been filed under the provisions of Section 174, 175 and 176 of the Indian Penal Code, 1860 before the Hon'ble Chief Judicial Magistrate, Gandhidham on 16.12.2020. The matter is under legal process with the Court.

3.9. Summons dtd. 02.12.2020 was also issued to one Shri Sanjay Shastri (his role is discussed in later paras of this notice) in connection with the subject inquiry, under the provisions of Section 108 of the Customs Act, 1962 for appearance on 11.12.2020, but he did not make his appearance; hence a complaint has been filed under the provisions of Section 174, 175 and 176 of the Indian Penal Code, 1860 before the Hon'ble Chief Judicial Magistrate, Gandhidham on 16.12.2020. The matter is under legal process with the Court.

3.10. Further to the above, looking to the roles of various persons in illegal import of cigarettes in Container No. IALU2252554, including the roles of Shri Vijay Sabhaya, Shri Shailesh D. Patel, Shri Ankit D. Changani, and Shri Anil Parmar, a prosecution complaint vide CC No. 312/2020 has been filed by the officer of Mundra Customs on 20.10.2020 before the competent court at Mundra under the provisions of the Customs Act, 1962.

3.11. In the meantime, it was gathered that Shri Anil Parmar was arrested by the Jamnagar City A Police Station vide Crime Register No.11202008202186/2020 in the month of October, 2020 in the case booked by them and investigated by them under the various provisions of GujCTOC Act, 2019 and Indian Penal Code, 1860 and he was presented before the Special (GujCTOC) Court, which extended judicial custody to Shri Anil Parmar and sent him to Lajpoore Prison at Surat. Therefore, on 04.12.2020 an application was filed before Special (GujCTOC) Court, Rajkot requesting for the custodial interrogation of Shri Anil Parmar. On the application filed by DRI, the Special (GujCTOC) Court passed order dtd. 04.12.2020, allowing to record statement of Shri Anil Parmar at Lajpore Prison, Surat during the period from 07.12.2020 to 12.12.2020.

3.12. Upon getting information from the statements given by Shri Anil Parmar about the account opened by Shri Anil Parmar with Axis Bank and transactions made therein, the details pertaining to those bank accounts were obtained from Axis Bank, Gandhidham on 10.12.2020. It was revealed from the transactions made in the account No. 916010010171472, during the period from 17.02.2016 to 26.04.2016, under total 16 transactions, total amount of more than Rs.8 Crores were deposited in said account either in Cash or through RTGS. Against the amount so deposited, the amount of Rs. 8,64,15,000/- was transferred in favour of various persons as per the following details:

Name of the person/s in whose favour the remittance was made (S/Shree)	**No. of transactions made**	**Total amount remitted (Rs.)**
Pravin P. Chovatiya	09	2,30,75,000/-
Chandrakant V. Sanghani	06	99,00,000/-
Mayur M. Sabhaya	09	2,75,50,000/-
Jaman D. Moliya	07	2,49,00,000/-
Self	01	9,90,000/-

3.13. It also came to notice that in the course of case booked by Police under GujCTOC Act, 2019, they had arrested Shri Pravin P. Chovatiya, whereas in respect of Shri Jaysukh Ranpariya @ Jayesh Patel, they had got issued a Red Corner Notice, through the INTERPOL, as Shri Jaysukh Ranpariya @ Jayesh Patel was not appearing for evidence in their case and he was absconding leaving no trail of himself.

4.0. PARTICULARS OF THE EVIDENCES COLLECTED; STATEMENTS RECORDED ETC.:

In the course of investigation into attempt of smuggling of cigarettes in container Nos. IPXU3062264 & TTNU3535220, as well as **(To be removed)** statements of various persons were recorded under the provisions of Section 108 of Customs Act 1962 and various evidences were also collected from different sources. The narration of statements so recorded and the evidences so collected is discussed, herein below, in brief along with the brief details of the other evidences collected. **(To be removed)**

4.1. Statement of Shri Sachin S. Naik, Regional Manager of M/s. MBK Logistix Private Limited, Gandhidham-Kutch (hereinafter also referred to as "MBK") was recorded on 02.03.2016 **(RUD No. 12)**, wherein he, inter alia, stated that:

- M/s. MBK was Shipping Agent and handling the work of vessel clearance including filing of Import General Manifest **(Hereinafter also referred to as "IGM")**
- M/s. MBK had agency agreement with M/s. Sima Marine India Pvt. Ltd. **(Hereinafter referred to as "SMIPL")** (a subsidiary company of M/s. Simatech Shipping LLC, Dubai) **(Hereinafter referred to as "SSL")**;
- The said company M/s. SSL, Dubai owned and operated vessels;
- M/s. MBK handled vessels on behalf of M/s. SSL.
- The vessel MV Chicago was being operated by M/s. SSL;
- The container Nos. TTNU3535220 and IPXU3062264 were loaded on MV Chicago and it sailed from Jebel Ali Port on 31.10.2015;
- Said two containers were loaded on the vessel on behalf of Container Line of M/s. Asian Tiger Shipping LLC, Dubai **(Hereinafter referred to as "ATS")**
- M/s. Radiant Maritime India Pvt. Ltd., **(Hereinafter referred to as "RMIPL")** were the agents of M/s. ATS, Dubai in India.
- They had sent arrival Notice of container Nos. TTNU3535220 and IPXU3062264 to M/s. RMIPL (Mundra agents of M/s. ATS, Dubai, on behalf of whom the containers were loaded for export to India) on 02.11.2015;
- The IGM in respect of voyage No. 006 of MV Chicago (Mundra visit on 07.11.2015) was filed electronically on 05.11.2015 (Sr. No. 2123552) and manually at Customs Mundra on 06.11.2015 (Sr. No. 1601).
- The details of container Nos. TTNU3535220 and IPXU3062264 were not declared in the IGM filed by them.

On being asked as to why the container Nos. TTNU3535220 and IPXU3062264 were not unloaded at Mundra Port, he, interalia, stated that

- Their Principal M/s. SSL, Dubai got instructions from M/s. ATS, Dubai to not unload said containers at Mundra Port, as the Shipper had recalled the containers;
- M/s. MBK was instructed by their principal M/s. SSL, Dubai vide mail dated 04.11.2015 (12:24) to recall the containers.
- The said containers were converted to ROB (i.e. Remain On Board) and sent back to Jebel Ali port, accordingly.
- The said container Nos. IPXU3062264 & TTNU3535220 were not declared in IGM in any other way either;
- They did not obtain any permission from proper office of Customs to not unload from vessel or return back the said containers.
- They did not intimate the event of not unloading / return of container Nos. IPXU3062264 & TTNU3535220 to the customs.
- They did not have any type of correspondence with M/s. RMIPL or with the consignees viz. M/s. KBI, Jamnagar or M/s. AE, Jamnagar, with regard to unloading / not unloading of containers.

4.2. Statement of Mr. Bhupinder Singh Saini of M/s. RMIPL, Gandhidham (Container Handling Agent) was recorded on 18.01.2016 **(RUD No. 13)**, wherein, he, interalia, stated that:

- They were the handling agents of M/s. ATS, Dubai;
- The container Nos. IPXU3062264 & TTNU3535220 loaded on MV Chicago from Dubai for consignees M/s. KBI, Jamnagar and M/s. AE, Jamnagar were to be discharged at Mundra Port;
- The said containers were not unloaded at Mundra port and returned back to Dubai;
- They received an email from ATS, Dubai to not unload said containers from vessel at Mundra and to return the containers back to Jebel Ali Port;
- Two container Nos. IPXU3062264 & TTNU3535220 were not included in the IGM filed.
- Mr. Anil Parmar (M No. +971522726864) had contacted M/s. ATS, Dubai to call back containers.

4.3. Statement of Shri Ankit Dineshbhai Changani, Partner of M/s. AE, (100% EOU), Jamnagar was recorded under Section 108 of the Customs Act, 1962, on 26.11.2015, 22.02.2016 and 09.03.2018 **(RUD No. 14, 15 & 16)**, in which he, interalia, stated that:

- Shri Jayeshbhai Patel is of his (Ankit) caste and he (Jayeshbhai @ Jaysukh) is his (Ankit) friend. He (Ankit) had borrowed Rs.50 lakh in cash on his request.
- Shri Jayesh Patel is also known as Shri Jayesh Ranpariya and doing business of import of brass scrap in the name of M/s. Patel Trading Co., Ranjit Sagar Road, Opposite Maru Kansara Hall, Jamnagar. He (Jaysukh) had given him (Ankit) total Rs.50 lakhs, from which he (Ankit) had paid Rs.5 lakh to Shri Rameshbhai of M/s. Mitesh Impex, Rs.1 lakh to Shri Ranchhhodbhai, Rs.4 lakh to Shri Babubhai of M/s. Vikas Brass, Rs.5 lakh to Shri Ratilalbhai of M/s. V Nine Machines, Rs.3 lakh to Shri Nileshbhai Bhanderi of M/s. Grow More Brass Products, Rs.5 lakh to Shri Aum Dudani of M/s. Aggarwal Traders, Rs.5 lakh to Shri Kaushal Nanda of M/s. Rajdeep Brass and Rs.3 lakh to his (Ankit) mother.
- Shri Jayesh Ranpariya wanted to become partner of M/s. AE, Jamnagar and therefore, he (Jayesh) agreed to pay Rs.50 lakh in the month of June/July, 2015, but later he (Jayesh) changed his mind and asked him (Ankit) to return the money. However, he had already paid the money to the persons named by him in his statement dtd.26.11.2015 as he was owed them money. He had a debt of about Rs.8 Crores.
- Shri Jayeshbhai did not have money in the bank. He (Jayesh) had money in cash only.
- Transactions in cash was allowed only upto Rs.20,000/- and above that limit, transaction in cash was illegal.
- He had not made payment to foreign suppliers in respect of about 6-7 import consignments; only in respect of one import consignments imported from M/s. AMGTL, Dubai payments had been made by him and in respect of subsequent 6-7 import consignments payment had not been made by him.
- He had not received import documents in respect of import consignment arrived in container No. TTNU3535220 in vessel MV Chicago on 07.11.2015;

- He had last talked with Mr. Anil Parmar in last week of October or first week of November (2015);
- He (Anil Parmar) did not tell anything about the said consignment sent in container No. TTNU3535220.

4.4. Statement of Shri Vijay Vashrambhai Sabhaya, Proprietor of M/s. KBI (100% EOU), Jamnagar was recorded under Section 108 of the Customs Act, 1962, on 20.01.2016, 21.01.2016 and 08.02.2016 **(RUD No. 17, 18 & 19)**, in which he, interalia, stated that:

- He had given power of attorney to Shri Shaileshbhai Damjibhai Patel;
- Shri Shaileshbhai was handling the work relating to M/s. KBI;
- The cigarettes imported in the Container was imported by Shri Shaileshbhai;
- He had broken his mobile phone and also deleted the mail messages from his email id for fear of detection thereof by DRI;
- The containers No. IALU2252554 and IPXU3062264 were booked by Shri Shaileshbhai.

4.5. Statement of Shri Shailesh Damjibhai Patel, Power of Attorney holder for M/s. KBI (100% EOU), Jamnagar was recorded under Section 108 of the Customs Act, 1962, on 01.02.2016, 03.02.2016 **(RUD No. 20 & 21)**, in which he, interalia, stated that:

- During 2015, he went to Mumbai;

- In one Bar, he met one person Mr. Shoyaib, who told him (Shailesh) that he (Shoyaib) could give many business ideas to make speedy money;
- He (Shailesh) again went to Mumbai in March, 2015 and met Mr. Shoyaib, who lured him to import cigarettes in the guise of brass scarp;
- He (Shoyaib) told him (Shailesh) to manage import and export procedure and offered Rs. 8 to 10 lacs per container;
- To manage the import-export procedure, he joined M/s. KBI, Jamnagar during July-August, 2015;
- A partnership deed dtd.11.08.2015 was also made and then after he had taken over functions of the factory;

- Mr. Shoyaib had dispatched the container of cigarettes from Dubai to Mundra Port;
- On the date of the seizure of cigarettes, Mr. Shoyaib had phoned him and informed him about the seizure;
- He was used to talk with Mr. Shoyaib from a separate mobile, which he had broken;
- He did not remember the said mobile number;
- He had invested Rs.30 to Rs.40 lakhs in M/s. KBI in cash prior to the seizure of cigarettes by DRI;
- He knew that the cigarettes were there in the container;
- The said container of cigarettes was booked through email of M/s. KBI, Jamnagar, but they had deleted the mails to destroy the evidence.

4.6. Statement of Shri Jaysukh Muljibhai Ranpariya @ Jayesh M. Patel, Prop. of M/s. Patel Trading Co., Jamnagar was recorded under Section 108 of the Customs Act, 1962, on 19.04.2016 **(RUD No. 22)**, in which he, interalia, stated that:

- He was dealing in the property and besides this business, he had two more proprietary concern. One M/s. Patel Saw Mill, which is dealing in manufacturing of wooden plates from timber, whereas gift articles being manufactured from the waste thereof, whereas another is M/s. Patel Trading Co., Jamnagar, in which brass or zinc waste being imported and its trading is being done.
- Before 3-4 years, there was huge debt on M/s. AE, Jamnagar and one of his friends viz. Shri Babulal Bhuvanbhai Dovariya had to collect Rs.35,00,000/- from them.
- Shri Babubhai was asking Shri Dinesh (Father of Ankit) for making payment of due amount.
- He was knowing Shri Dineshbhai, who is from the same Patel community, hence he (Dineshbhai) requested him (Jaysukh) to request Shri Babubhai for providing some time to repay the amount.
- After this incident, he came into more contact with Shri Dinesh and Shri Ankit.
- Some more incidents of this kind happened in between period, where also he had consulted them (Shri Babubhai Sanghani and Shri Milanbhai

Bhanushali) to give time extension for repayment by Shri Ankit and Shri Dinesh.

- After about one-year gap, Shri Ankit suggested him (Jaysukh) that he could export gift articles of wooden material. In this connection, Shri Anil Mavjibhai Parmar, who was looking after gift article work in M/s. Patel Saw Mill, had shown various gift articles to Shri Ankit bhai and also obtained details of remuneration upon export thereof. Since he (Jaysukh) did not find any profitability in such business, he (Jaysukh) opted not to proceed ahead in it.
- Before about one-year, Shri Ankit asked him (Jaysukh) to accompany him (Ankit) while visiting Dubai and informed him that they would get brass items at lucrative rate. Hence, upon being insisted by him (Ankit), he went to Dubai.
- In Dubai, Shri Sanjay Shastri, a childhood friend of Shri Ankit, was there. Shri Ankit went to the residence of Shri Sanjay and he (Jaysukh) stayed at Hotel Oberoi.
- Next day, they called him at Sharjah, where along with Shri Ankit and Shri Sanjay Shastri, he had visited 8-10 Brass Scrap Yards.
- Shri Sanjay Shastri informed him (Jaysukh) that he (Sanjay) was importing there the Brass Terminals from India and also assisting in purchase of brass scrap from Dubai and Sharjah.
- Then they three went to the residence of Shri Sanjay, where they took lunch, where they also met Shri Rushit Nileshbhai Bhanderi (Who is also a resident of Jamnagar).
- He (Jaysukh) came to know that Shri Rushit Nileshbhai Bhanderi and Shri Sanjay Shastri were running a company viz. M/s. Secure Link General Trading LLC, Dubai, where they were importing brass articles from India.
- He also came to know that there was dispute between Shri Ankitbhai, Shri Rushit Nileshbhai Bhanderi and Shri Sanjay Shastri relating to some financial matter.
- He (Jaysukh) returned India after 2-3 days.
- After making inquiry about the rate of brass scrap, he could not find any profitability in importing brass scrap from Dubai and Sharjah, hence he did not indulge into import thereof at that time.
- However, after some time (in around April, 2015), when Shri Sanjay Shastri offered him lucrative rates of brass scrap, he imported 14 containers of Bras

Scrap and Zinc Scrap in the name of M/s. Patel Trading Co. during May to August, 2015. Their IEC No. is 2410001297.

- In addition to the above, he (Jaysukh) had on several occasions provided financial help to Shri Ankitbhai, whenever he (Ankit) had asked for the same.
- He (Jaysukh) had no more business transactions with Shri Ankit bhai or M/s. AE, Jamnagar.
- He (Jaysukh) had given on credit Rs.3 to 8 lakhs on 3-4 occasions to Shri Ankitbhai, from which except a transaction for credit of Rs.5.5 lakh, remaining sum he (Ankit) had returned to him (Jaysukh)
- He (Jaysukh) had never given any amount to Shri Ankit bhai or M/s. AE, Jamnagar for taking him into partnership in M/s. AE, Jamnagar.
- He had never given Rs.50 lakh on credit to Shri Ankit bhai. His friend Shri Babulal Dovariya had extended time to repay the amount of Rs.35 lakh given to Shri Ankit bhai, due to his (Jaysukh) advise and at his (Jaysukh) risk. In addition to this, he (Ankit) had to return him (Jaysukh) the amount of Rs.5.5 lakh given on credit by him (Jaysukh).
- He had made 5 to 6 times foreign tour during last one-year period. He had been to Dubai in June, 2015, July-August 2015, September, 2015 and in the last in March, 2016.
- In June, 2015 he went to Dubai for a meeting with a party (Shri Husein Tahirbhai Makati), who is settled in Dubai, for purchasing property from him.
- Shri Husein Tahirbhai Makati (971555578742, 9769053634) was residing earlier in Jamnagar, thenafter he settled at Mumbai (Kandivali) and then after he (Husein) went to Dubai.
- He purchased a property located in Jamnagar, which is in the name of the grandfather of Shri Husein Tahirbhai Makati. He (Jaysukh) went to Dubai to settle pending issues pertaining to the said transaction.
- He rang Shri Anil Parmar at that time and also met him.
- Shri Anil Parmar was earlier looking after the work relating to manufacturing of wooden articles, but later on, before one and a half year, he (Anil) left his (Jaysukh) work and also sold his (Anil) plot in Jamnagar and went to Dubai, where he (Anil) was dealing in the brass and zinc scrap.
- He (Anil) is partner in M/s. AMGTL.
- Since he (Anil) offered him (Jaysukh) lucrative rate of zinc scrap, he (Jaysukh) imported two containers of zinc scrap from him (Anil),

- He (Jaysukh) had no other dealing with him (Anil).
- On being requested by him (Anil), in addition to the payment towards the consignments of two containers (of zinc scrap) had given to him (Anil) on credit the additional amount of approx. Rs.30 lakhs during June/July, 2015 by RTGS, which he (Anil) had to repay him (Jaysukh). Details thereof would be provided by him (Jaysukh) within 2-3 days.
- Thenafter in July-August and later in September, he went to Dubai in connection with deal of purchase of property.
- In partnership of one of his (Jaysukh) friend Shri Sachin Patel, who is resident of Jamnagar, and who had been settled in Dubai, they had attempted to purchase a hotel in Dubai, but that deal was not accomplished successfully.
- During all these times, he met with Shri Anil Parmar, Shri Sanjay Shastri and other suppliers like M/s. Sharif Metals, M/s. Bell China etc. Shri Sanjay Shastri had helped him in deal of purchasing brass scrap from M/s. Lucky, M/s. Bell China and M/s. Sharif Metals, for which he had remitted a commission of USD 50 PMT in favour of supplier for giving it to Shri Sanjay Shastri.
- During each of his (Jaysukh) visit, he (Jaysukh) used different numbers (of mobile phone) and he (Jaysukh) did not remember the same, but he (Jaysukh) would provide details thereof within 2-3 days.
- He (Jaysukh) used to talk with Shri Anil Parmar at his (Anil) number 971522726864. He (Jaysukh) had no idea of any other numbers of Shri Anil Parmar.
- Family of Shri Anil Parmar used to reside Outside Kalavad Naka, in Vadi Vistar, Jamnagar. His (Anil) local number is 7874122917. He (Anil) was in Jamnagar before 2-2.5 months and probably he had returned to Dubai. He (Jaysukh) would provide the residential address of him (Anil) within 2 days.
- He (Jaysukh) and Shri Vijay (of M/s. KBI) studied together in Chandragadh together. Being his (Jaysukh) fast friend, he (Vijay) used to help him in selling of scrap by him (Jaysukh). Sometimes, he (Vijay) was used to take financial help from him by way of money credit. He (Jaysukh) had no other business dealing with him (Vijay).
- Shailesh was in property dealing business for last six-seven years, hence he (Jaysukh) was knowing him (Shailesh). They worked together in property dealing for two years. No other business dealing with him (Shailesh).

- No import export made with M/s. Secure Link General Trading LLC, Dubai.
- He (Jaysukh) had imported two containers zinc from Shri Anil Parmar of M/s. AMGTL and till then he had in credit Rs.30 lakhs, which he (Jaysukh) had to recover from him (Anil).

4.7. Later on, Shri Jaysukh Muljibhai Ranpariya @ Jayeshbhai Muljibhai Ranpariya @ Jayesh M. Patel provided copy of the Driving Licence No. GJ10 20060127116, dtd.22.03.2006 for LMV issued by RTO, Jamnagar to Shri Anil Parmar S/o Shri Mavjibhai Parmar, DOB 31.12.1987, residing at address Mahaprabhuji Bethak, O/s Kalavad Gate, Jamnagar. The Licence was valid from 21.04.2014 till 21.03.2026. He also provided copies of the Invoices No. AMGT/001/2015, dtd.07.06.2015 and AMGT/002/2015, dtd.07.06.2015 issued by M/s. AMGTL for purchase of Zinc Ingots by M/s. Patel Trading Co. The Invoices were signed by Shri Anil Parmar. He also provided extract of bank account transaction made in the bank account of M/s. Patel Trading Co. in the account No. 910020011143107 with Axis Bank Ltd., as per which on 13.07.2015, M/s. Patel Trading Co. had remitted Rs.27,34,802.57 and Rs.62,27,516.49 by RTGS in favour of M/s. AMGTL. Further to this, he also provided a copy of ledger account pertaining to the transaction made by M/s. Patel Trading Co. with M/s. AMGTL during 01.04.2015 to 31.03.2016, as per which after settlement of Import bills for two containers of zinc ingots, Rs.27,36,359/- was lying in credit for recovery/settlement from M/s. AMGTL. No specific explanation was provided in respect of said transaction of advance remittance.

4.8. A statement of Shri Gagan Malhotra, Manager of M/s. Geo Chem Laboratories Pvt. Ltd. (Hereinafter referred to as "GLPL") was recorded on 15.07.2016 under Section 108 of the Customs Act, 1962 **(RUD No. 23)** , wherein he interalia stated that he was serving as Manager of M/s GLPL.; that M/s GLPL was working in India only; that there was no relationship between M/s Geo-Chem Middle East and M/s. GLPL.

4.9. Mr. Mansour Shalaby, an authorized signatory of M/s. Geochem Middle East, Dubai (hereinafter referred to as "GME"), being a Pre-Shipment Inspection and Certification Agency **(Hereinafter referred to as "PSIA")**, who are duly recognized by the Director General of Foreign Trade **(Hereinafter referred to as "DGFT")** under Paragraph 2.54 (b)(i) of the Handbook of Procedure 2015-2020

(Hereinafter referred to as "HBP") read with Sr. No. 12 of the List of Inspection and Certification Agencies with Area/Region of Operation notified at Appendix 2G of the HBP 2015-20, had issued three different Pre-Shipment Inspection Certificates **(Hereinafter referred to as "PSIC")** for the goods shipped from UAE in aforesaid three containers.

On being asked by DRI vide email dtd.15.07.2016, Mr. Mansour Shalaby on behalf of M/s. GME replied vide email dtd.18.07.2016 that they do not have any office in India and asked to communicate with them.

Therefore, on being asked by DRI vide email dtd.18.07.2016, Mr. Mansour Shalaby supplied copies of those three PSICs issued by him vide his email dtd.27.07.2016, which were reflecting the following details **(RUD No. 24)**:

PSIC No.	**0886, dtd.18.10.2015**	**0899, dtd.26.10.2015**	**0906, dtd.27.10.2015**
Container No.	IALU2252554	TTNU3535220	IPXU3062264
Name of the Importer	KBI (100% EOU), Jamnagar	AE (100% EOU), Jamnagar	KBI (100% EOU), Jamnagar
Name of the Exporter	AMGTL, Dubai	AMGTL, Dubai	AMGTL, Dubai
Description of the metallic scrap	Mix Metal Brass Scrap with other impurities	Mix Metal Brass Scrap with other impurities	Mix Metal Brass Scrap with other impurities
Country of Inspection	United Arab Emirates	United Arab Emirates	United Arab Emirates
Place of Inspection	Jebel Ali, UAE	Jebel Ali, UAE	Jebel Ali, UAE
Date of Inspection	18.10.2015	26.10.2015	27.10.2015
Geochem Seal No., which were applied after inspection of goods	DPWJ885735	4283192	4283190

It was also observed that Mr. Mansour Shalaby, an authorized signatory of M/s. GME, Dubai had in all the aforesaid 3 PSICs, among other things, certified that he had visually inspected the respective consignments and that the same were also checked for radiation level and the same did not contain the radiation level in excess of natural background; that the radiation level of the consignment was within the accepted range and were fit to be exported to India; and that those consignments did

not contain any type of arms, ammunition, mines, shells, cartridges or any other explosive material in any form. It was also certified in each of the aforesaid certificates that the photographs of the inspection carried out, along with duly signed inspection report of the Inspector and scanned copies of the aforesaid PSIC were uploaded on DGFT website/e-mailed by them to the DGFT.

In response to the request made to M/s. GME vide email dtd.18.07.2016, it was informed by Mr. Mansour Shalaby of M/s. GME, Dubai in the email dtd. 27.07.2016 that Mr. Anil Parmar had approached them for the inspection of cargo pertaining to aforesaid three containers. He also provided copies of the three PSICs and given the details of the exporter as "M/s. Alliance Metal General Trading LLC, P.O. Box No. 238286, Dubai, UAE, Tel: +971-4-3966081, Mob.: +971-52-2726864 Mr. Anil Parmar (Owner of the Company)"

4.10. On being asked further by DRI vide email dtd.01.12.2016 to join the investigation by the person who inspected the goods pertaining to aforesaid three containers, followed by email dtd.26.12.2016, Shri Jay Reddy of M/s. GME had vide email dtd.27.12.2016 acknowledged the mail dtd.26.12.2016 and assured to revert with their response in due course. Since no information received, reminders were issued to M/s. GME vide email dtd.24.01.2017, and dtd.06.02.2017 and in response it was informed from M/s. GME vide their email dtd.07.02.2017 that Mr. Azhar Zaidi of M/s. GME had inspected all the aforesaid consignments. It was further informed by M/s. GME that after inspection of the containers, their attending surveyor had sealed the containers with Geo Chem seals at the place of inspection at Sharjah Industrial Area Yard; that the containers then might had moved to Jebel Ali Free Zone Port area by the shippers, in which they do not have a control and the Customs generally open the containers for inspection and seal the containers with their own seals, which is not in their presence; that the transit time from Sharjah Industrial Area to Jebel Ali Free Zone Area is approximately 2 to 3 hours; that so that they had limited to comment regarding the variation of goods found at the time of inspection by their surveyor and found in Jebel Ali Port by the Customs or at Mundra. In this regard, M/s. GME were asked again vide email dtd.27.02.2017 to respond in the matter. Replying to the same M/s. GME sent email dtd.08.03.2017, wherein it was informed that the seal numbers mentioned on their certificates were reproduced from the BOL documents provided to them by the shippers, which might had been sealed

by Dubai Customs or Shipping Lines after their inspection at Jebel Ali Port. Therefore, in continuation of the same, M/s. GME were asked vide email dtd.09.03.2017 to clarify in respect of seals and other details mentioned in the PSICs. Replying to the same, it was informed by M/s. GME that the concerned person, who had carried out the below inspections was on vacation; that they would check with the concerned person as soon as he is back and revert with their response on the enquiry. Vide email dtd.20.03.2017, M/s. GME were asked to provide the photographs and such other details. Responding to the same vide email dtd.22.04.2017, M/s. GME provided some photographs of each containers and inspection. It was also informed that Shri Anil Parmar (Owner of the company) was present at the time of inspection done on 18.10.2015, 26.10.2015 and 27.10.2015. They also attached photograph of Radiation Meter Model Syclone Sr. No. 50031. On specific query to confirm whether the seal number DPWJ885735 (PSIC 0886), 4283190 (PSIC 0906) and 4283192 (PSIC 0899) were affixed by the PSIA or by the exporter, it was informed by M/s. GME that the seal numbers as above were not sealed by the PSIA; that after inspection, the containers were shifted to the port of loading (Jebel Ali) and the Customs along with shipper agents generally open the container for inspection removing the seals, which their inspector had affixed at the time and place of inspection; that once the inspection was done by the port authorities, they would re-seal the containers with their own seals, which was not in their presence; that they used to mention the seal numbers in the B/L in their report provided by the shipper; that in the above case, Geo Chem seal numbers for each containers affixed upon the completion of stuffing and attached few available pictures for reference.

IALU 2252554: Geo Chem Seal 352712

IPXU 3062264: Geo Chem Seal 380445

TTNU 3535220: Geo Chem Seal 380452.

It was also informed from M/s. GME that after inspection of the containers/loading supervision and Radioactivity test, their attending surveyor would seal the stuffed containers with the Geo Chem Seal at the place of inspection.

4.11. Though asked by the DRI vide email dtd.01.12.2016, nobody from M/s. GME appeared before the DRI to join the investigation. No reasons were also provided for not joining the investigation.

4.12. M/s. GME, Dubai were asked further vide email/letter dtd. 09.03.2020 to clarify the details provided by them with documents and details, which was followed vide letter/email dtd.14.05.2020. In the letter dtd.14.05.2020, M/s. GME were asked to clarify with reference to the PSIC No. 0886, dtd.18.10.2015, where the first page was on page No. 138121 and second page was on page No. 138120, for which they were asked to confirm whether the same was issued correctly or the PSIC was manipulated. Same way in respect of PSIC No. 0899 dtd.26.10.2015, the first page was showing page No. 142768 and second page was numbered as 142548, for which clarification was sought for from M/s. GME. They were also asked to verify the genuineness of PSIC No. 0906, dtd.27.10.2016. This was followed by reminder letter/email dtd.10.07.2020. Replying to the letter/email dtd.10.07.2020, it was informed by M/s. GME vide their email dtd.19.07.2020 that:

- As on 07.02.2017, Mr. Azhar Zaidi was employee of M/s. GME, however, he left UAE to his home country Pakistan on annual vacation on 12.06.2018, thereafter he (Azhar Zaidi) informed them on 17.07.2018 that he (Azhar) had decided not to return to UAE and subsequently his employment with M/s. GME was discontinued effective from 12.07.2018 (due date of his return to the UAE after vacation). The details of Mr. Azhar Zaidi, when he was working with M/s. GME, as per their records are as below with copies of certificates:

Name	Syed Azhar Hussain Zaidi
Nationality	Pakistan
Position	Petroleum Surveyor
Current Location/Current Employer	Dubai, UAE and Geo Chem Middle East
Mobile Number	+971 56 3264436
Date of Birth	3-11-1971
Qualifications	Higher Secondary Education (HSC)
Capabilities	Inspection & Sampling of: Crude Oil Petroleum Products Edible, Non-edible Oil Petrochemicals

	Container stuffing/destuffing Bunker Survey Bulk Solids (Draft Survey) Loss Control Investigation
Experience	24 years of experience in Inspection Industry

As regards genuineness of the PSIC No. 0866, 0899 and 0906, it was confirmed by M/s. GME that the same were printed correctly and issued by them; that the letter head serial numbers were not in continuous order, the certificates were printed correctly and issued by them.

4.13. In continuation of the above, vide email/letter dtd. 23.07.2020, followed by letter/email dtd.30.07.2020, M/s. GME were asked specifically to clarify on the following aspects, pertaining to the three PSICs issued by them:

- As per Para 2.54 (b)(1) and 2.54 (d)(1) of the Hand Book of Procedure 2015-20, the PSIC issued by them must give the value of the background radiation level at the place as also the maximum radiation level on the scrap, so as to compare both the values to ascertain whether the radiation level (gamma and neutron) was not in excess of natural background. It was, however, observed that in all the three PSIC No. 0899, 0886 and 0906, the relevant value was given in the vague manner, as follow:

PSIC No.	**Background radiation level (MuSv/h)**	**Container radiation level (MuSv/h)**
0899	<0.005 Mr/Hr	<0.005 Mr/Hr
0889	<0.005 Mr/Hr	<0.005 Mr/Hr
0906	<0.005 Mr/Hr	<0.005 Mr/Hr

- This practice of giving value of radiation level in vague manner was not in accordance with the Policy provisions. It was possible that the value, though remains < 0.005 Mr/Hr, but the container radiation level is 0.004 Mr/Hr against the natural background radiation level of 0.003 Mr/Hr, which may restrain such consignment from becoming export worthy.

- Moreover, it was required that the monitor was suitable to measure dose rate from 1urem/hour, then not to mention such specific details lead to assume

about either the incapability of the meters or non-use thereof during inspection.

- In above context, the reasons for not mentioning exact value of radiation level be provided and it may also be explained whether the PSIC was issued without any such inspection by the Surveyor from your PSIA. Please also explain whether the said three PSICs could be considered as issued in contravention of Para 2.55 (e) of the Hand Book of Procedure 2015-20.

- As per the Para 2.54 (b)(1) of the Hand Book of Procedure 2015-20, the recognized PSIA has to issue PSIC as per the format to Appendix 2H (Format of PSIC, notified vide Annexure B to the Public Notice No. 12/2015-20, dtd.18.05.2015), the Surveyor, who had visually inspected the consignment has to certify the same. In the instant case, it was observed that the certificates were issued by Mr. Mansour Shalaby, whereas as per your saying the goods pertaining to all those three PSICs were inspected by Mr. Syed Azhar Hussain Zaidi, which was not in accordance with the norms and format provided for issue of such PSIC.

- The reasons in this respect were sought for from M/s. GME and they were further asked to justify the authenticity of the PSIC as issued as per the prescribed format in terms of Appendix 2-H and para 2.54 of the Hand Book of Procedure 2015-20. M/s. GME were also asked to explain whether the said three PSICs could be considered as issued in contravention of Para 2.55 (e) of the Hand Book of Procedure 2015-20.

- As per Para 2.54(b)(1) and Para 2.54(d)(1) of the Hand Book of Procedure 2015-20, the PSIC was to be issued as per the Format provided vide Appendix 2H. In the format of PSIC, in respect of certification vide Field (g)(iv) as provided in the prescribed format of PSIC, the “duration of inspection (in hours) from to ” has to be mentioned by the PSIA, whereas it was observed that in respect of all three PSICs, the exact time of starting of inspection and finishing the inspection was conveniently avoided to be mentioned in specific manner and it was mentioned as “4 Hrs” in vague manner in all three PSICs, giving impression about casual manner of issuing such certificates. It was not

transpiring from the PSICs what had prompted the PSIA to delete the field of "from to " provided in the prescribed format. In this context, M/s. GME were asked to clarify as to whether the aforesaid three PSICs could be considered as issued in terms of Para 2.54 of Hand Book of Procedure.

- Please clarify the reasons for the above and also justify the authenticity of the PSIC as issued as per the prescribed format in terms of Appendix 2-H and para 2.54 of the Hand Book of Procedure 2015-20. Please also explain whether the said three PSICs can be considered as issued in contravention of Para 2.55 (e) of the Hand Book of Procedure 2015-20.

- Whether the copy of the contract entered into between the importer and exporter was provided to M/s. GME, prior to placing requisition for inspection, or at the time of inspection. In case any such contract was provided, copies thereof were also asked to be provided.

- In the relevant fields (c) and (d) of the PSIC, which pertains to Telephone No., Mobile No. and Email of the importer as well as the Mobile No. and email of the exporter, M/s. GME had certified as Nil. Those fields were mandatory in nature and to be filled in with proper details. However, prior to issue of PSICs, it appears that M/s. GME had avoided to ensure compliance with the same, by giving vague certification, just to avoid contact details of the persons involved in the transaction.

- M/s. GME were asked to clarify their stand in above respect and also to justify the authenticity of the PSIC as issued as per the prescribed format in terms of Appendix 2-H and para 2.54 of the Hand Book of Procedure 2015-20. They were also asked to explain whether the said three PSICs could be considered as issued in contravention of Para 2.55 (e) of the Hand Book of Procedure 2015-20.

- In email message dtd.27.07.2016, M/s. GME had provided some details of the contact person for the exporter, which includes the Mobile No. of Mr. Anil Parmar as +9715 22726864, but avoided to provide the email details of said exporter or its representative. The reasons for the same were also asked to be

provided with explanation as to what restrained them as PSIA to provide those details, which were either already available with them or they were required to ensure their availability prior to initiating the process of inspection.

- They were asked to provide the constitutional details of their firm/company with the names of the directors/partners/proprietor and their contact details.

- M/s. GME were asked to provide (a) the copies of all the PSICs issued by them being PSIA in respect of inspection carried out during 15.10.2015 to 31.10.2015, (b) the validity period of calibration of all the radiation survey meters, with reference to the specifications of manufacturer, which were used by the PSIA during 2015-2020 with (c) the specific details of usage of each of such meters during the period from 15.10.2015 to 31.10.2015.

- M/s. GME were also asked to provide the particulars of Bank Guarantee of Rs.10,00,000/- or USD 20000 deposited or equivalent financial instrument they had provided with the DGFT for obtaining recognition as PSIA in terms of Para 2.55(g) of the Hand Book of Procedure 2015-20.

- M/s. GME were also asked to provide the evidence about the uploading of the following on DGFT website or emailed to the DGFT at the relevant time, as provided vide Para 2.56(c) and 2.56(d) of the Hand Book of Procedure 2015-20. (1) The aforesaid three PSICs (in pdf format), (2) Photograph (s) or video clipping of the place of inspection with PSIA inspector (mandatory) and representatives of exporter/importer, with time, date of inspection, (3) Photograph of the video clipping of the testing instrument used for inspection, (4) Photograph(s) or video clipping of the process of stuffing of container showing the container number, and (5) Photograph or video clipping of the sealing process

It was specifically informed to M/s. GME that none out of the aforesaid three PSICs were till then retrieved from the data received in the DGFT email, giving impression that those three PSICs were never issued by M/s. GME or M/s. GME had failed to comply with the relevant process prescribed in the Hand Book of Procedure 2015-20.

- The copies of communication M/s. GME had made with or M/s. GME had received from the exporter or importer of the goods, which were covered by aforesaid three PSICs were also asked to be provided.

- The copies of bills issued from M/s. GME in respect of said inspection pertaining to three PSICs with the particulars of payment received and mode of payment indicating transaction number/Cheque no. etc. with specific bank name.

- In case M/s. GME had carried out in the past or later on, any inspection of any goods pertaining to the exporter or the importer, as the case may be, the details thereof as well as copies of all such PSICs were also asked to be provided.

- M/s. GME were asked to provide the copy of fresh application in ANF 2L (new format) they had filed with the DGFT in terms of Para 4 of the Public Notice No. 12/2015-20, dtd.18.05.2015 with copies of all of its enclosures/attachments, updating the details of their offices/branches /authorized representatives. M/s. GME were asked to confirm that the persons, who had issued and inspected the goods covered by aforesaid three PSICs were already mentioned in such application and also to confirm that such persons were possessing minimum qualification as provided for the same. As regards not possessing educational qualification by Mr. Syed Azhar Hussain Zaidi in Science (Physics and Chemistry) was also asked to be explained in this context.

- M/s. GME were asked to provide the copies of the passport of such inspecting officer and authorized signatory pertaining to those three PSICs.

- Looking to the details of Mr. Syed Azhar Hussain Zaidi, who had inspected the subject consignments covered by three PSICs, he was holding the post of **Petroleum Surveyor** and have no capabilities or experience for inspection of **Metal Scrap**, even then M/s. GME had permitted him (Azhar) for inspection of metal scrap consignments consistently for three times and more. The

reasons and justification for the same were also asked to be provided with the details of all the PSICs of metal scrap consignments issued under the inspection of said Petroleum Surveyor Mr. Syed Azhar Hussain Zaidi.

It was observed that in all the three PSICs, the details of radiation survey meter which was used, were provided in the following manner:

Make: RD Probe

Model: ND 2 RPC

Serial No.: 79662

Last date of Calibration: 24.10.2014.

However, while responding vide email dtd.22.04.2017, it was informed by M/s. GME that testing instrument/Radiation Meter used for inspection was of Model Syclone, and Sr. No. 50031. They had provided photos of said Instrument.

4.14. No response was received from M/s. GME in response to the letter/email dtd.23.07.2020 and 30.07.2020, however, vide email dtd. 24.07.2020, they sought time extension and vide email dtd.28.07.2020, they informed that they tried to compile the information as required, however they were unable to retrieve most of the information since they were archived since long, and their offices were working with less than 30% of the strength due to Covid situation and also the surveyor who attended those inspections was no more working with them, hence they required more time to compile the information and therefore they requested to bear with them till 25.08.2020, when they trusted that they would be able to get back with a response covering all points raised in the letter. Further to this, vide email dtd.04.08.2020, M/s. GME informed that they hope to get details from the archives before 25.08.2020, in which case they would send through earlier, but not later than 25.08.2020.

4.15. Replying the email dtd.30.07.2020, M/s. GME submitted their reply vide email dtd.25.08.2020 **(RUD No. 25)**, in which they submitted as follow;

(1) The meters used during inspection pertaining to three PSICs were the same meters, which they had mentioned in their application for recognition as PSIA. The results mentioned in the three PSICs were as per the findings of the attending inspector and the same were not issued in vague manner. None of the PSICs, including the three PSICs were issued in contravention of Para 2.55(e) of the Hand Book of Procedure2 2015-20.

(2) The procedure adopted by their office for the issuance of the PSIC was that the unsigned report was prepared by the concerned Inspector being Mr Syed Azhar Hussain Zaidi at the particular location based on the reading of the rotation measurement and other factors as per the Hand Book of Procedure. The said report along with the photographs of the scrap taken at the various stages were sent to their office. After duly checking the report as well as examining the photographs, the PSICs were issued by their office. The Handbook of Procedure did not explicitly require that the PSIC should be issued from the place of inspection.

Mr. Syed Azhar Hussain Zaidi after following the due process as laid down in the Hand Book of Procedures had inspected the consignment and that as per the practice followed in their offices, the final certificates were generated at their office as per the findings reported by the attending inspectors and issued from their office signed by the attending surveyors line manager, who was already listed in the application to the DGFT, as approved personnel for signing the documents. The said general practice followed by them were audited and in agreement by the ISO certification bodies as an acceptable fair practice. Therefore, the said 3 PSICs were not issued in contravention of Para 2.55(e) of the Hand Book of Procedures 2015-20.

(3) There had been an inadvertent secretarial error on the part of their team of inspectors to not mention the specific time of inspection but to only mention the hours as required while issuing the PSICs. However, as soon as their office was made aware of the said inadvertent secretarial error made by their employees, their office to comply with the said requirement, had already taken appropriate corrective measures to avoid any such further incidents in future. The said three PSICs were authentic PSICs issued in terms of Para 2.54 and have not been issued in contravention of Para 2.55(e) of the Hand Book of Procedures, 2015-20.

(4) Due to confidentiality of the information and the commercials entered into between the importer and the exporter under the contract, their office was not provided with the copies of the contracts entered into between the importer and the exporter prior to and/or after placing requisition for inspections.

(5) Their office is only in contact with the exporter, who provided all the details in respect to the consignment to be inspected. In respect to the three PSICs, exporter had not provided the contact details of the importer, even after repeated requests, but had only provided the B/L copy, after the pre-shipment inspection. It was only when the containers were ready for inspection that their office was receiving call on their office number from the exporter to carry out the necessary inspection. The attending inspector at the time of inspection did not have the contacts details of the exporter and hence the same was inadvertently not mentioned in the certificate. Thereafter, their office by an email dtd.27.07.2016 had provided the exporters mobile number. It was not the case that their office intentionally did not mention the said details, as required and this was evident from the issuance of the other PSICs. Their office had thereafter made it mandatory to obtain all the information of any client approaching their office to appoint for any kind of inspection.

(6) The information requested is following:

> Geo Chem Middle East Plot No. TP/010305 National Industries Park Jebel Ali, P. O. Box 2209, Dubai, United Arab Emirates. Partners:
> 1. Ms. Fatima Khamis Salem Eid Aljneibi Tel.: +971 56 9423366
> 2. Mr. Rajiv Bahl Tel.: +971 50 4509001

(7) Copies of all PSICs issued for inspection carried out during 15.10.2015 and 31.10.2015 were provided. They were unable to find calibration certificates of meters and details of usage used for the inspection during the abovementioned period from

their archives since those were archived five years ago. However, if their office was able to retrieve the said information, the same would be provided.

(8) Copy of the Bank Guarantee of US $ 20,000 was attached.

(9) As the inspection was carried out during October, 2015, their office did not readily have available the evidences of providing to the DGFT with the said information. However, the said three PSICs were authentic PSICs issued in terms of Para 2.54 and had not been issued in contravention of Para 2.55(e) of the Hand Book of Procedures 2015-20.

(10) All the communication received by their office in respect of the PSICs belong to the year 2015, and that their office had implemented new portal and email since 2017, and therefore most of the old communication and data were untraceable. However, certain emails which were traceable from their archives were provided.

(11) The invoices for scrap inspections were generally prepared as draft copies and sent to the exporters of the scrap for their review and advise on which the entity their office need to raise the final invoices, since the same was not available to them at the time of inspection. Further in certain cases, it was the supplier, who used to pay and in other cases, the shipper/exporter used to pay the inspection charges. They provided an invoice for one container, which was approved and thereafter the original invoice was issued and settled. In respect to the other two PSICs, the same could not be provided as the shipper/exporter was found missing and/or had absconded. Their office on several occasions physically visited their office, but they were not traceable.

(12) They had not carried out any inspections earlier or later for the said exporter or importer.

(13) Copy of fresh application in ANF-2L with copies of all enclosures/attachments, with the details of their offices/branches/authorised representatives.

The personnel, who had issued the document and inspected the goods covered by the three PSICs, was not mentioned in their application, as he was employed by their company in the month of September, 2015, which was evident from the Passport

Copy. However, they were well trained to carry out the inspections. Their offices conduct inhouse job training under supervision of a senior inspector for all their inspectors, when they join their company till the supervisor signs off the new inspectors as competent to carry out any inspections unsupervised. The inspector, who attended 3 PSICs was well trained and further having experience of 24 years in the field of inspection of various commodities and in all types of container inspection/loading supervision including metallic/non-metallic scrap inspection. There were unannounced field audits conducted on the jobs occasionally by their senior inspectors to ensure the jobs were carried out as per the respective inspection requirements. Evidences of these all were audited by external independent inspection bodies, who had certified their inspection division against ISO standards and also approved by IFIA (International Federation of Inspection Agency) currently known as TIC Council (Testing, Inspection & Certification Council). Furthermore, the inspector attended the 3 PSICs was holding a valid IFIA Certificate and they were satisfied that the inspector attended the subject inspections had adequate knowledge and experience to carry out such inspections. As IFIA (TIC Council) had only exams for Petroleum Inspections previously, in the certificate stated as Petroleum Inspector. Copy of the Passport of the authorised signatory of the PSICs was provided.

4.16. From the copy of Annual Membership Certificate 2012 issued by the Secretary of IFIA (International Federation of Inspection Agencies), London, which was attached with the application filed by M/s. GME with the DGFT on 18.05.2015 in ANF 2L, it became evident that Geochem Group of Companies were represented by M/s. GLPL operating from Geochem House, 294, Shahid Bhagat Singh Road, Fort, Mumbai-400001 and the group companies included M/s. GME, P.O. Box 5778, Techno Park, South Free Zone, Dubai (UAE) and M/s. Geo Chem Far East Pte. Ltd., Blk 47, Ayer Rajah Crescent, #05-01, Ayer Rajah Industrial Estate, Singapore- 139947. From this, it was also getting highlighted that this aspect of relationship between M/s. GME and M/s. GLPL was suppressed by both M/s. GME as well as M/s. GLPL, while making submission before the Investigating Officer and it was stated that they had no relation.

4.17. However, on various aspects, the explanation provided by M/s. GME was not found in conformity with the relevant statutory provisions, hence they were asked again to clarify on those aspects vide letter/email dtd. 04.11.2020. Reply from M/s.

GME was anticipated, but instead of clarifying their stand, vide email dtd. 11.11.2020 they informed that their office would require further time to provide the same and requested to grant further extension. Since no reply received from M/s. GME in response to the letter dtd.04.11.2020 even after passage of a period of more than one month, a reminder was issued to them vide email dtd.11.12.2020 and 16.12.2020.

4.18. In the above context, request was also made to the Additional DGFT, HQ, New Delhi vide email dtd.19.11.2019 to provide the copies of the photographs provided by M/s. GME as well as the copies of the PSICs issued by M/s. GME, which were uploaded or sent by email by M/s. GME to them, in compliance of the conditions set out for their being PSIA. This request was further followed vide letter dtd.10.02.2020, 09.03.2020. Replying to the same, some PSICs were provided from the DGFT Office vide email dtd.12.03.2020, but none of them were pertaining to the subject three consignments. Hence, vide letter/email dtd.12.03.2020, the Additional DGFT was again requested to provide the copies of the PSIC uploaded by M/s. GME with photographs etc. This request was followed vide letter/email dtd.14/15.05.2020, 10/13.07.2020, 23.07.2020, 30.07.2020, 01.09.2020. Replying to the same vide letter F. No. 01/53/misc/AM 21/1-10/IC/861, dtd.09.09.2020, the Deputy DGFT informed that information received/uploaded vide email dtd.23.07.2015, 16.08.2015 and 17.08.2015 by M/s. GME in respect of M/s. AMGTL was enclosed; that apart from that information, they were not able to find any other certificate/data uploaded by M/s. GME in respect of M/s. AMGTL. **(RUD No. 26)**

4.19. Copies of the IGM and EGM pertaining to MV Chicago which arrived at Mundra Port on 07.11.2015 and sailed on 09.11.2015 were requested from Mundra Customs and the requested copies of the IGM No. 9248162 and EGM No. 95705 were supplied by the Mundra Customs vide letter F. No. VIII/48-40/MCD/MP&SEZ/2016-17-Pt. I, dtd.30.08/06.09.2019. From the copies of the IGM and EGM, which were filed by the Shipping Agent M/s. MBK with the Customs, Mundra, it was evident that the two container Nos. IPXU3062264 & TTNU3535220, which were containing goods described as “Mix Metal Brass Scrap with other impurities”, and which were actually fully stuffed with the Cigarettes, were not declared by the Shipping Agent M/s. MBK in the IGM either in the goods to be unloaded at Mundra Port or in the separate list of the Same Bottom Cargo. Same way, those two container Nos. IPXU3062264 &

TTNU3535220 were also not declared by M/s. MBK in the EGM as the goods being carried to Jebel Ali or in the list of the Same Bottom Cargo. **(RUD No. 27)**

4.20. In the meantime, the Chief Manager of Jawaharlal Nehru Port Trust was requested by DRI vide letter dtd. 07.11.2019 to provide the copies of the Import and Export Manifest filed in respect of MV Chicago which arrived at their Port during November, 2015 and such other relevant details. In response to the same, it was informed by the Dy. Manager (MCB), JNP Container Terminal, Traffic Department, JNPT vide their letter No. JNP/M (MCB)/DRI/2019, dtd.14.12.2019 **(RUD No. 28)** , interalia, that as per the data available in TOS, container bearing numbers IPXU3062264 & TTNU3535220 were declared as remain on board OR stay on board i.e. not for JNPT/Nhava Sheva discharge; that their Port of Loading was declared as "Jebel Ali" and the Port of Discharge as "Mundra"; that the IGM and EGM including cargo details were filed by the concerned container handling shipping agencies to Jawahar Customs as per the prevailing public notices.

4.21. Vide letter dtd.10.02.2020, the Chief Manager of MICT Terminal, Mundra was requested to provide the specific details/particulars relating to two containers and the vessel MV Chicago. Replying to the same, it was informed by Shri Sachin Garg, General Manager OPS, MICT Pvt. Ltd., Mundra vide their letter dtd.03.03.2020 **(RUD No. 29)** that the IGM and EGM copies were not available with them as they were filed directly by the agents with the Mundra Customs; that they were in receipt of IAL (Import Advance List) and Inward EDI (baplie) from the vessel agents; that the soft copies of both the IAL and Inward Baplie were emailed by them; that the container Nos. IPXU3062264 & TTNU3535220 were to be kept as ROB units as per email received from the vessel agents; that those containers were restowed via wharf via wharf on chargeable basis and invoice for the said activity was raised as per their agreed tariff with the customer.

4.22. In the above context, statement of Shri P. K. Shivashankar, Regional Manager of M/s. SMIPL was recorded on 03.02.2020 under Section 108 of the Customs Act, 1962, **(RUD No. 30)** in which, he, interalia, stated that:

- M/s. SMIPL had agency agreement with M/s. MBK and M/s. MBK handles vessels on behalf of M/s SSL.
- MV Chicago vessel was a chartered vessel (not ownership vessel) for M/s. SSL;

On being asked whether he was aware that Container No. TTNU3535220 and IPXU3062264 were loaded at MV Chicago from Jebel Ali Port for import to India and to discharge at Mundra Port, he replied that:

- He was aware and the container Nos.TTNU3535220 and IPXU3062264 was loaded from Jebel Ali on the vessel MV Chicago.
- The vessel's voyage/ rotation started from Jebel Ali – Sohar (Oman) – Nhava Sheva – Mundra.
- When the containers arrive at the load port, the containers are group / stacked with POD (port of discharge) Vessel wise and in the same way loaded on to the ship, thereafter the port gives the load plan to the ship, the vessel checks the load plan and after approval i.e. stability of vessel on sea, the loading takes place.
- The containers Nos. TTNU3535220 and IPXU3062264 were 20 feet containers, the details of the place as per the load plan mentioned below:

TTNU3535220	The container was loaded at Jebel Ali on 29.10.2015 on vessel Chicago 006 at location 310884. The 310884 is deciphered as 31 is the Bay 08 is the row and 84 is the tier on deck(height)
IPXU3062264	The container was loaded at Jebel Ali on 29.10.2015 on vessel Chicago 006 at location 171314. The 171314 is deciphered as 17 is the Bay 13 is the row and 14 is the tier under deck(height)

- Both the containers were put within the group of other containers, which were to be discharged at Mundra and provided the load plan with locations for the containers TTNU3535220 and IPXU3062264.
- Their office had received mail for Container Nos.TTNU3535220 and IPXU3062264 from M/s. SSL on 04.11.2015 that the containers were NOT to be discharged at Mundra as per the Customer's request.
- The Customer was person named Shri Girlie, Customer Service Manager of M/s. ATS and the correspondence for NOT to discharge these Container

Nos.TTNU3535220 and IPXU3062264 started on 04.11.2015 and got completed on 05.11.2015,

- He submitted the copies of the email correspondence, which started between Shri Girlie, Customer Service Manager of M/s. ATS and M/s. SSL their Principal office.

On being asked to explain about the email, he stated that

- The correspondence was started by person named Shri Girlie, Customer Service Manager of M/s. ATS and it was addressed to Shri P. J. Manuel,
- Shri P. J. Manuel was the person at their Simatech Shipping LLC, Dubai.
- Shri P. J. Manuel had sent email to Shri Vinish Mathew, their planner at Cochin, M/s. SMIPL to know the cost to remain on board (ROB) re-stow for returning of the containers TTNU3535220 and IPXU3062264 back to Jebel Ali without discharging at Mundra.
- Shri Vinish Mathew had sent email to Shri Rafiq, their appointed agent's person i. e. Regional Manager of M/s. MBK handling their vessels at Kandla and Mundra.

On being asked what were the re-stow charges confirmed by Shri Rafiq of M/s. MBK and who had confirmed the rates of re-stow charges / ROB charges, he stated that

- The re-stow charges / ROB charges as confirmed by Shri Rafiq was US $ 150.48 for a single 20 feet containers, after the email sent by Shri P. J. Manuel and getting confirmation by Shri Girlie, Customer Service Manager of M/s. ATS.
- He stated that the container Nos. TTNU3535220 and IPXU3062264 were re-handled (discharged and loaded back) as per the below details:

	Location till Mundra arrival	**Location after Mundra departure**

TTNU3535220	The container was loaded at Jebel Ali on 29.10.2015 on vessel Chicago 006 at location 310884. The 310884 is deciphered as 31 is the Bay 08 is the row and 84 is the tier on deck(height)	The container was re-handled at Mundra from location 310884 to 251586 The 251586 is deciphered as 25 is the Bay 15 is the row and 86 is the tier on deck(height)
IPXU3062264	The container was loaded at Jebel Ali on 29.10.2015 on vessel Chicago 006 at location 171314. The 171314 is deciphered as 17 is the Bay 13 is the row and 14 is the tier under deck(height)	The container was re-handled at Mundra from location 171314 to 271586 The 271586 is deciphered as 27 is the Bay 15 is the row and 86 is the tier on deck(height)

- Both the containers were put within the group of other containers, which were to be discharged at Jebel Ali.
- He provided the load plan of Mundra indicating the two containers for Jebel Ali discharge.

He was shown the provisions of Section 116 of Customs Act, 1962 and asked to comment on it, to which he stated that:

- They were unaware about the provision; otherwise, they would have asked their agents at Mundra to take permission from Assistant Commissioner of Customs, Mundra for returning the containers to Jebel Ali.
- The decision to recall the containers was taken by the Shipping Line M/s. Asian Tiger Shipping on the basis of the request made by the Shipper.

On being asked to explain why the agent has not mentioned the Containers TTNU3535220 and IPXU3062264 in the IGM No.2123552 dated 5.11.2015 (electronic) or in IGM No.1601 dated 6.11.2015 (Manual) filed at Mundra, he stated that

- As the container line M/s. RMIPL had not provided the manifest for the Containers TTNU3535220 and IPXU3062264 to their agent M/s. MBK, both the containers were not shown in the IGM No.2123552 dated 5.11.2015 (electronic) or in IGM No. 1601 dated 6.11.2015 (Manual).
- They did not have any type of correspondence or contact with M/s. KBI, Jamnagar or M/s. AE, Jamnagar or any person of these companies about arrival / return of these containers.

On being informed that the Containers No. TTNU3535220 and IPXU3062264, which were returned back to Jebel Ali were opened and inspected by Dubai Customs and both the containers were found stuffed with cigarettes, he stated that

- They were not aware about the provisions of Section 116 of Customs Act, 1962.
- Further they got to know nothing about the consignee, description of goods until local Shipping Agents provides details required for IGM.
- They were not in contact with Shipper or Consignee and decision to recall the two containers were taken by the Shipping Line M/s. Asian Tiger Shipping.

4.23. Various summons as already described in **Table-4** above, were issued to M/s. AMGTL, Dubai and Shri Anil Parmar, under the provisions of Section 108 of the Customs Act, 1962, but they did not respond to the same. Summons was also issued to Shri Jaysukh Ranpariya @ Jayesh Patel on 02.12.2020 and 14.12.2020, to which he did not respond. Summons dtd.03.03.2016, 02.12.2020 and 14.12.2020 were issued to Shri Sanjay Shastri also, but he also did not respond to the same. The summons were also issued to four persons viz. S/ Shree Pravin P. Chovatiya, Chandrakant Sanghani, Mayur Sabhaya and Jaman Moliya on 17.12.2020, but they also failed to appear in response to the summons issued to them under Section 108 of the Customs Act, 1962.

4.24. The Principal Officer of Mercantile Marine Department, (MMD) was requested to provide the particulars pertaining to MV Chicago with present status of said vessel. Vide email dtd. 20.10.2020 **(RUD No. 31)** , the Nautical Officer provided the following particulars of MV Chicago:

The vessel visited at Mundra port on 29.02.16 16:30 with Name of MV CHICAGO. Presently vessel is trading with name of Maersk Yangtze. Detail follows:

1. Present name of the vessel - MAERSK YANGTZE
2. Present owner of the vessel with address and contact number thereof – Care of NSB Niederelbe Schiffahrtsgesellschaft mbH & Co KG (NSB Group), Harburger Strasse 47-51, 21614 Buxtehude, Germany.Phone: +49 4161 645-0Fax: +49 4161 645-299Email: info@reederi-nsb.com
3. Present flag of the vessel - Portugal [PT
4. Present value of the vessel – N/A
5. OTHER IMPORTANT DETAILS OF THE VESSEL: Changed names as per below:Year of Built: 2003 / Hanjin Chicago2014 / Chicago2018 / Maersk Yangtze

Vessel Class: DNV-GLP&I Club: Sveriges Angfartys Assurans Forening (Swedish Club)

4.25. Further to the above, vide letter F. No. SG/Misc-119/2018-19/CIU/JNCH Pt. II dtd. 07.10.2020, issued by the Joint Commissioner of Customs, CIU/JNCH of Office of the Commissioner of Customs (General), Mumbai Zone-II, JNCH, Nhava Sheva **(RUD No. 32)** provided copy of the IGM No. 2123276 dated 02.11.2015 and EGM No. 95046 dated 23.10.2015 filed by M/s. Sima Marine India Pvt. Ltd., Navi Mumbai.

4.26. Vide letter/email dtd. 08.12.2020 **(RUD No. 33)**, the present owner of the vessel viz. NSB Niederelbe Schiffahrtsgesellschaft mbH & Co KG (NSB Group) were asked to provide the details of the owner of MV Chicago in 2015 with the details of the purchase of vessel by them. They were further asked to clarify about non-declaration of two containers in the IGM filed at Mundra by the agent of the vessel. They were asked to clarify specifically by 10.12.2020. However, no reply received

from them, hence reminders were issued vide email dtd. 16.12.2020. However, they opted not to respond to the same.

4.27. Statements of Shri Anil Parmar was recorded in the Lajpore Prison, Surat on 07.12.2010, 08.12.2020, 09.12.2020, 10.12.2020 and 11.12.2020 **(RUD No. 34 to 38)**, under the provisions of Section 108 of the Customs Act, 1962, in which he, interalia, stated that:

- He was residing previously at the address of Mahaprabhuji Bethak, Outside Kalavad Naka, Jamnagar and House No. 16/1209, Jadeshwar Society Street No. 2, Behind Patel Park, Ranjit Sagar Road, Jamnagar.
- Approximately in the end period of 2012, one person named Dharmesh Muljibhai Patel, who is brother of Jayesh Muljibhai Patel (Ranpariya), contacted him and offered to do work of wooden gift article on labour work basis and for the said labour work they paid me Rs.15,000/- per month in cash. This work was carried out in the name of M/s. Patel Trading Co. and he was salaried person there. His salary was increased to Rs.18,000/- after six months.
- After about two or two and half year, they closed the business of wooden gift articles. Thereafter, Jayesh Muljibhai Patel (Ranpariya) called him and asked whether he (Anil) had knowledge of brass scrap or otherwise, to which he (Anil) replied yes, so he (Jayesh) asked him (Anil) to go to Dubai for work related to finding and purchasing of brass scrap. On being replied positively by him (Anil), he (Jayesh) made arrangements for him (Anil) to go Dubai and around in winter season of 2014, he (Anil) went to Dubai.
- As instructed by Jayesh Muljibhai Patel (Ranpariya), there he (Anil) met one person named “Al Baab”, whose full name he (Anil) did not remember as it was too long. There along with him (Al Baab) as arranged and instructed by Jayesh Muljibhai Patel (Ranpariya), he (Anil) and Al Baab formed a partnership firm named M/s. Alliance Metal General Trading LLC, Dubai (UAE). The registration of this firm and all other procedures were done by Al Baab. For this, he (Anil) had signed all the documents wherever his (Anil’s) signature was required.

In addition to the above, Shri Anil Parmar further also stated that:

- After reaching Dubai in 2014, he stayed in hotel for 3-4 months, thereafter he was residing in rental house at Abu Sagara, Sharjah, for which rent was paid through cheque of their firm's bank account.
- There he bought local sim-card for mobile, its mobile no. was +971 522726864.
- Within 15-20 days after reaching Dubai, partnership firm named M/s. Alliance Metal General Trading LLC was started by him and Al Baab. In this firm, he (Anil) and Al Baab, whose real name he did not know, were only two partners. The firm's partner is usually called as Al Baab in Dubai. As such he (Anil) also knew another partner of his firm as Al Baab and also calling him (Al Baab) with the such name. He did not know his (Al Baab's) other details. Al Baab was local citizen of Dubai-UAE. He did not know anything about office address of his firm or other persons working in the office, because his work was only to purchase the scrap from yard and therefore, he had never gone to office of the firm.

- They had taken a covered shed on rent having area of approx. 2000 square feet at Street No. 10, Industrial Area, Sharjah. Its monthly rent was approx. 10,000 Dirham. He was paying rent through his firm's cheque signed by himself.
- He was used to purchase approximately 40 to 50 metric ton brass scrap and radiator having brass. In starting 2-3 months details/instructions relating to work and purchase was received from Jaysukh alias Jayesh Muljibhai Patel Ranpariya (Jayesh Patel in short), then after Al Baab used to give such details or instructions. He was used to purchase brass scrap after deciding the rate depending on the quality and he used to pay in cash if amount is small otherwise, he used to pay through his firm's bank account cheque if amount is big, he used to sign cheque for such payment. The firm's cheque book was received at the time of opening bank account and ATM card was received at his rental house through post. He was looking after only purchase related work in his firm. He did not know anything about sales or export because such work was looked after by Al Bab or Jayesh Patel.
- Though he was partner in the firm, he was not given part in profit. Jayesh Patel used to deliver Rs.30,000/- in cash every month at his home at

Jamnagar as a remuneration of his Dubai work. He (Anil) used to withdraw monthly approx. 1200 to 1500 Dirham towards cost of his living/eating at Dubai through ATM card of their firm's bank account.

- Jayesh Patel had called him at Dubai over phone in the first week of November, 2015 and informed that DRI has detained the container of brass scrap sent to M/s. Krishna Brass Industries and cigarettes have been found in it. He (Jayesh) told him (Anil) to stay cautious. Jayesh Patel also told him (Anil) that two other containers having cigarettes were returning back. He asked Jayesh Patel about how cigarettes came in brass scrap container, he (Jayesh) told him that he (Jayesh) had arranged to put cigarettes in those containers. After some days, as per the instruction of Jayesh Patel, Al Bab took him (Anil) to an advocate. Advocate made him to sign some documents. He did not know the contents written in those documents. When he asked Al Baab about those documents, he (Al Baab) stated him (Anil) that those documents were pertaining to the containers returning back.
- In 2016, he permanently returned from Dubai to India. Thereafter he had not gone to Dubai. During his stay at Dubai between 2014 to 2016, he visited Jamnagar 2-3 times.
- His person email-id is parmaranil229@gmail.com, which he was using for facebook and smartphone login. He never used the said email-id to see or send the email.
- His firm's email-id is alliancemetalgt@gmail.com but it was used by Al Bab or any other person of Dubai office. He had never used office email-id and he did not have the password of the same.
- He as well as Al Baab, whose real name he did not know, were only two partners in M/s. AMGTL, which was started in the end of 2014. Their firm was in the business of purchase and export of brass scrap. Their firm had not dealt with other commodities. He only knew that export was made to India. He did not know whether export was made to other countries or not. Because he was not attending export related work.
- The firm was in running position, when he came to India after leaving Dubai in 2016. There after he never tried to know whether the firm was running or not, or who was handling the business. Because after knowing involvement of the firm in illegal activities, he got tensed. And that is why he came back to India.

- He did not have any knowledge whether his firm M/s. AMGTL was used to send cigarettes in the guise of brass scrap or otherwise, because his job was just to purchase. And his partner never let him know in this matter.
- He was shown the Bill of Lading No. JEAMUN044235 dated 25.10.2015 for container No. IALU2252554, its Invoice No. AMGT/021/2015 dated 18.10.2015, Packing List dated 18.10.2015, Form-6 dated 18.10.2015, Certificate of Origin dated 18.10.2015, Sales Contract No. SC00120/2015 dated 26.09.2015. He did not know who had signed on all those documents on behalf of their firm. But he had not signed above documents. He did not know about concealment of cigarettes behind mix metal brass scrap in the said container. But after container was detained, Jayesh Patel informed him that there were cigarettes in it and cigarettes were arranged for putting there by him i. e. Jayesh Patel.
- He was shown other two Bill of Lading No. ATSJEAMUN153178 dated 28.10.2015 and Bill of Lading No. ATSJEAMUN153177 dated 27.10.2015. Jayesh Patel had informed him about returning back of those two containers. He did not know anything about above two documents.

When he was asked with reference to the Bill of Lading No. ATSJEAMUN153178 dated 28.10.2015 for container No. IPXU3062264 issued for M/s. Krishna Brass Industries, Jamnagar and Bill of Lading No. ATSJEAMUN153177 dated.27.10.2015 for container No. TTNU3535220 issued for M/s. Amardeep Exports, Jamnagar, as to whether the said cargo pertained to M/s. Krishna Brass Industries and M/s. Amardeep Exports or it was for any other firm or person?, to which he stated that he did not have any knowledge in this regard because he was not doing export work of their firm. He also denied having any idea about the Pre-Shipment Inspection Certificate (PSIC).

He was shown Pre-Shipment Inspection Certificate (1) GC/SCRAP/INSP/0886/10/2015 dated 18.10.2015, (2) GC/SCRAP/INSP/0899/10/2015 dated 26.10.2015, and (3) GC/SCRAP/INSP/0906/10/2015 dated 27.10.2015 issued by M/s. GME and asked whom he had approached in M/s. GME for issuance of those three PSICs and how he had managed to get those three fake/false certificates and whether those three

fake/false certificates were issued after verifying the goods? In reply, he stated that he did not know anything about the same.

He was also shown the Invoice No. DXS/10909 dated 29.10.2015 of M/s. GME issued to their firm M/s. AMGTL for PSIC, wherein in the contact details there was mention of Sanjay and his email id was written as slinkgt@gmail.com and asked to provide details about the same. In response, he stated that that person was owner of M/s. Secure Link General Trading LLC, Dubai and his (Sanjay) firm was also used to export brass scrap from Dubai and used to import brass taps and like items; why the name of Sanjay was mentioned in contact details in above bills that he did not know. He stated that he did not have knowledge of inspection work, as he was not looking after any work related to export.

He further stated as follow:

- He had opened his personal NRI account in Axis Bank and account of their firm was opened in RAK Bank at Sharjah. He used to given cheques only for payment towards purchasing; he did not have any knowledge about any other transaction. He had not normally used his personal NRI account for himself. But as per Jayesh Patel's instruction he had deposited total approx. rupees 3 to 3.5 crores in 5-6 parts in his personal NRI account. Whenever, money was to be deposited like that, the money was delivered to him in Dubai or Sharjah by strangers through Jayesh Patel, which he was used to deposit in bank immediately or on next day. The money was given to him in Dirham. Jayesh Patel told him to do such transactions and he also told him that he would reverse the entries over the period of time. Besides this, as per Jayesh Patel's instruction, he had also deposited rupees 30 lakhs in his NRI account, which was left over from the money received from his firm for purchasing goods. He had given online username and password of his NRI account to Jayesh Patel which he (Jayesh Patel) was using for transferring money to the accounts of other persons. He did not know the details of how much money Jayesh Patel had transferred to which person, but the same details could be obtained from his bank statement.
- When he came to Dubai from Jamnagar, Jayesh Patel gave him 1000 American Dollar and 4000 Dirham. And other money was delivered to him by

Jayesh Patel through Al Baab in Dubai. All that money was invested as his share in partnership firm, when he first started business in Dubai.

- In the business of their firm, he used to do only purchasing in Dubai, he did not have any in India. He was never given any share in the profit of the firm and he had never asked for it because he was paid Rs.30,000/- per month as salary as decided.
-

When he was asked to give names of the persons or firms, to whom he or his firm sold or exported cigarettes, to which he stated that he did not have any knowledge about sales or export of cigarettes by his firm.

He also stated that the Brass scrap containers of their firm were stuffed from their Sharjah godown but he did not have any information and knowledge about stuffing of cigarettes in containers, because he was never present during the container stuffing and he was not given any information by anybody as to when any container would be stuffed. He did not know about involvement of any other person or firm.

He further stated that

- He (Anil) knew Shri Vijay Vashrambhai Patel (Sabhaya).
- Before he (Anil) went to Dubai, he (Anil) met him (Vijay) several times at the place of other businessmen. But at that time, he (Anil) knew him (Vijay) by name only.
- But after returning from Dubai, he came to know that he (Vijay) is the proprietor of M/s. KBI.
- He never met Shailesh Damjibhai Patel personally. But when he was employed with Jayesh Patel, there he had heard his (Shailesh) name from Jayesh Patel's mouth.
- He was knowing Ankit Dineshbhai Changani of M/s. AE, because when he (Anil) was employed with Jayesh Patel, he (Ankit) used to come to meet Jayesh Patel.
- He did not know any person named Mr. Al Zurani or Sanjiv Kumar. He neither met them nor heard their names.

When he was asked how M/s. KBI and M/s. AE were connected with each other, he stated that he did not have any knowledge in this regard.

He was shown copy of Commercial Invoice No. AMGT/001/2015 dated 07.06.2015 of his firm, wherein the description of goods was written as Zinc Ingots and asked to explain. In response, he stated that he had never purchased Zinc Ingots and that he was used to purchase brass scrap only and that he had no knowledge about Zinc Ingots. He also denied his knowledge as to whether there was cigarettes also along with the Zinc Ingots sent through the said Invoice No. AMGT/001/2015 dated 07.06.2015.

When he was asked to explain why his firm was getting advance payment from M/s. Patel Trading Co., Jamnagar, he replied that he did not have any knowledge about advance payment from M/s. Patel Trading Co., Jamnagar and that his name was only there in their Dubai firm, whereas all the activities was being administered by Jayesh Patel and he (Jayesh) was used to give him (Anil) the fixed salary; that M/s. Patel Trading Co., Jamnagar was also owned by Jayesh Patel.

He denied having knowledge about the person named Shoaib. He (Anil) neither met him (Shoaib) nor heard his (Shoaib) name. He knew one person named Rishit who is relative of Ankitbhai Dineshbhai Changani.

When he was asked to explain the link/relation between M/s. Secure link General Trading LLC, Dubai **(For short "SLGTL")** and his firm M/s. AMGTL, he stated that as per his knowledge, there was no relation between both those firms.

He also stated that

- As instructed by Jayesh Patel, there he (Anil) met one person named Mr. Al Baab. There, along with him (Al Baab) as arranged and instructed by Jayesh Patel, he and Al Baab formed a partnership firm named M/s. AMGTL.
- In addition to this, after his arrival in India, Jayesh Patel arranged lawyer for anticipatory bail with regard to the DRI summons received by him and expenses were borne by him (Jayesh).
- Their Dubai firm was being run by Jayesh Patel, and he was just a salaried employee.
- Jayesh Patel was mostly talked with him (Anil) on WhatsApp call, only once or twice he (Jayesh) talked with normal call.

When he was shown a copy of the bank statement of M/s. Patel Trading Co. and asked as to why Jayesh Patel was sending advance money to his (Anil) firm even without supply of goods or contract and categorically asked as to whether that money was sent for illegal work, he stated that he did not have any knowledge about the same. Even so, the administration and control of both M/s. Patel Trading Co. and their Dubai based firm was with Jayesh Patel, so he (Jayesh) might have made this type of bank transactions. He was just a salaried employee.

In addition to the above, when he was asked to clarify about who sent email to the container line for calling back those two containers No. IPXU3062264 and No. TTNU3535220 and by whose instruction it was sent, he stated that he was totally unaware about by whom and by whose instruction email was sent to the container line for calling back both the containers No. IPXU3062264 and No. TTNU3535220 containing cigarettes. He was believing that Al Baab or Jayesh Patel or anyone else on his (Jayesh) instruction might have sent email to the container line to return those two containers, because the entire administration of their firm was in the hands of both of them.

With reference to the data of Indian Customs Department, brass ingots and brass electrical parts were exported to his firm M/s. AMGTL, means purchased by his firm, from M/s. KBI through Indian Customs Shipping Bills No. 9562466 dated 14.05.2015, 9815039 dated 27.05.2015, 1378890 dated 24.06.2015 and 1980290 dated 23.07.2015 and by M/s. AE through Indian Customs Shipping Bill No.2142807 dated 31.07.2015 and 2253350 dated 06.08.2015, whereas he had stated in that his firm was only in the business of buying and exporting brass scrap and his firm had not dealt with in any other commodity and asked to clarify. In response he stated that he used to buy only brass scrap for their firm and he believed that no other item was purchased except brass scrap in their firm. Therefore, based on the information with him, he had stated accordingly, which was true as per his belief. He had no idea if any goods other than brass scrap had been bought / sold or imported / exported by Jayesh Patel, Al Baab or any other person in their firm.

When he was asked how did the payment were received in respect of goods exported by their firm to M/s. KBI and M/s. AE, to which he stated that he had never seen their firm's bank statement, because the bank statement used to come on their firm's

email, password of which he did not have, hence, he did not have any knowledge about how payment was received in respect of goods exported by their firm to M/s. KBI and M/s. AE. Jayesh Patel or Al Baab would be knowing about this, because they had the email password of their firm.

When he was asked specifically that except M/s. KBI and M/s. AE to whom did M/s. AMGTL sent cigarettes by concealing and in the guise of brass scrap or other goods, to which he answered that in M/s. AMGTL, the work related to selling or export of goods was dealt with by Jayesh Patel or Al Baab only. He used to do work related to purchase of brass scrap only, therefore, he did not have any information in the said matter.

With reference to the Container No. IPXU3062264 and No. TTNU3535220, which were loaded on the ship MV Chicago and which were called back through the same ship and both the containers were found stuffed fully with the cigarettes, he was asked when those containers were examined by Dubai Customs how many cigarettes sticks and of which brand, were found as exported by M/s. AMGTL in those containers and what was its purchase price, to which he denied having any knowledge about the same and further stated that only Jayesh Patel or Al Baab would be knowing about the same. He also denied having any knowledge as to whether the cigarettes were concealed behind mix metal brass scrap or otherwise in those two containers. He was not present at the time of examination of those two containers by Dubai Customs and he was not even aware of the matter. He did not know if any other representative of their firm was present there. He also stated that he himself had never paid any penalty; that he was not aware if his firm or other partner had paid any kind of penalty; that he did not have any knowledge whether Dubai Customs had seized both the above container or released on payment of penalty. He was not aware about the person who made payment of penalty, if any. He also denied knowledge as to whether the container line or any of its person involved in sending of cigarettes concealing the same by M/s. AMGTL.

He was shown the letters sent through emails dated 15.11.2016 and 06.02.2017 through their email id alliancemetalgt@gmail.com in response to the summons sent to him, wherein he had requested time of 30 days and 4 months respectively and asked as to why he did not appear even after passage of said period also, to which

he stated that he had not sent any such email of letter and signatures on those letters were not his. In addition, he stated that he did not have the password of the email-id alliancemetalgt@gmail.com of their firm.

He also stated that they had purchased their own independent house at the address of Gokul Darshan Society that is why they had gone there in August-2020. He had not informed anyone regarding change of address as per the court order.

He denied knowledge of having made any contract or agreement between M/s. AMGTL and M/s. KBI before sending the goods "Mix Metal Brass Scarp with other impurities" in container No. IPXU3062264, which was called back. Similarly, he denied knowledge about having made any contract or agreement between M/s. AMGTL and M/s. AE before sending the goods "Mix Metal Brass Scarp with other impurities" in container No. TTNU3535220 which was called back.

He also stated that he, Al Baab and Jayesh Patel were associated with M/s. AMGTL. Apart from this, he had no information if any other persons were associated. The registration and all other legal process of their firm M/s. AMGTL was done by Al Baab. He did not know more details. When he left Dubai and came to India, he did not separate from M/s. AMGTL and he had not tendered his resignation also. Hence, did not inform Dubai authority or any other authority about separation from partnership firm.

He also stated that he did not have any information regarding how many transactions were made by M/s. AMGTL with M/s. KBI and M/s. AE during 2014-15 and 2015-16. Because he just had to do the purchasing. But he can surely say that he was used to buy approx. 40-50 tons of brass scrap per month during that period. He had no information about the relationship between M/s. KBI and M/s. AE.

He denied his knowledge about the export transaction made between M/s. AMGTL and M/s. AE and the details of the financial transactions made for it. He also denied his knowledge about the financial transactions and other transactions made by M/s. AMGTL with Jayesh Patel and his related companies/ persons.

He was shown the statement dtd.19.04.2016 given by Jaysukh Muljibhai Ranpariya, Jamnagar, as per which he (Anil) was doing work of wooden gift articles in a firm named M/s. Patel Saw Mill and he (Anil) left his (Jayesh) firm in the end of 2014 and after selling plot moved to Dubai, where he (Anil) was a partner in M/s. AMGTL and he was doing work related to brass and zinc scrap, whereas he (Anil) had earlier stated in his (Anil) statement dated 07.12.2020 that he (Anil) was working in M/s. Patel Trading Co. on salary basis and asked to explain. With reference to the statement made by Jayesh Patel that he (Anil) came to India in January-February, 2016 and that he (Anil) owe him (Jayesh) Rs.30,00,000/-, which he (Anil) had not returned and asked to explain the same also. In response Shri Anil Parmar stated as follow:

- Jaysukh Muljibhai Ranpariya is Jayesh Muljibhai Patel.
- He was working with M/s. Patel Trading Co. on salary basis and doing work of wooden gift articles. Billing of wooden gift articles manufactured by them was done in the name of M/s. Patel Trading Co.
- M/s. Patel Saw Mill and M/s. Patel Trading Co., both the firms were belonged to Jayesh Patel only.
- He was doing work related to purchase of brass scrap only in M/s. AMGTL. He had never bought zinc scrap.
- As regards the mention of sale of plot, the same was not his (Anil) but the plot was of the paternal property of his (Anil) father and his (Anil) brother. That plot was sold by his (Anil) father and his (Anil) brother, not by him (Anil). His (Anil) father kept the money he (Manjibhai) had got from the said sale as his (Manjibhai) share. He (Manjibhai) did not give anything from that money.
- Jayesh Patel stated in his (Jayesh) statement that he (Jayesh) had imported two containers of zinc scrap from them (AMGTL). In this regard, he stated that he had never purchased zinc scrap. And not a single container of zinc scrap was exported to Jayesh Patel.
- He was not aware if Jayesh Patel had imported zinc scrap from their firm M/s. AMGTL through any other person.
- Jayesh Patel had sent money through RTGS. He was not aware of this because there was no RTGS entry in his personal NRI account. He was not aware if Jayesh Patel had done RTGS in the bank account of their firm M/s. AMGTL. He did not owe Jayesh Patel any money.

He was shown the statement dtd.18.01.2016 of Bhupendra Singh Saini of M/s. RMIPL wherein he (Bhupendra) had stated therein that Anil Parmar of M/s. AMGTL, Mobile No. 00971522726864 had contacted M/s. ATS for calling back the container No. IPXU3062264 and No. TTNU3535220 and asked to explain. In response, he stated that he did not know M/s. ATS is and what work they (ATS) do. He had never contacted M/s. ATS or any person of them. He did not know why they (ATS) had given his (Anil) name and phone number.

He was also shown statements dtd.22.02.2016 and 09.03.2016 of Shri Ankit Dineshbhai Changani, Partner of M/s. AE, wherein he had stated that he (Ankit) assured him (Anil) and Mr. Al Zoorani of M/s. AMGTL to pay all outstanding debt, so he (Anil) had trusted him. Explaining this, Shri Anil Parmar stated that he (Anil) never had such conversation with Ankit Dineshbhai Changani and that he (Anil) did not have knowledge about who Mr. Al Zoorani is and he (Anil) do not know him (Al Zoorani).

When he was asked with reference to the statement made by Shri Ankit Dineshbhai Changani that he (Anil) had visited his (Ankit) factory at Jamnagar for marketing and sales of brass scrap, to which Shri Anil Parmar stated that he had once went to his (Ankit) factory to meet Ankit Dineshbhai Changani but he did not talk about the marketing and sale of brass scrap and that he (Anil) had just visited him (Ankit) as he (Ankit) was known to him (Anil).

With reference to the statement made by Ankit Dineshbhai Changani that he (Ankit) had talk with him (Anil) over phone in the last week of October or first week of November after Container No. TTNU3535220 was called back by him (Anil), Shri Anil Parmar stated that Ankit Dineshbhai Changani had never spoken to him (Anil) through a normal call or WhatsApp call.

Shri Anil Parmar was further asked to clarify truthfulness referring to the statement made by Shri Ankit Dineshbhai Changani that it was his (Anil) intention that since he (Ankit) was in need of money to pay debt, he (Ankit) would agree to accept the cigarettes sent by way of concealment in the container no. TTNU3535220 upon his (Anil) insistence and would get the goods clear. Replying to the same, Shri Anil Parmar stated that the details given by Ankit Dineshbhai Changani in his statements

were totally wrong; that he (Anil) had never done any export related work in respect of Container No. TTNU3535220 or any other container and that he (Anil) did not know anything about that.

After showing the statement dtd.03.02.2016 of Shri Shailesh Damjibhai Patel, wherein it was stated that the work was started for brass scrap with Alliance company 15-20 days before the container with cigarettes was detained and Shoaib managed to put cigarettes, Shri Anil Parmar was asked to clarify when and what conversation took place with Shailesh Damjibhai Patel or Shoaib. Replying to the same, Shri Anil Parmar stated that he (Anil) never had any conversation with Shailesh or Shoaib; that he (anil) did not even know Shoaib and he (Anil) never met him (Shoaib); that he did not know if work was started for brass scrap with Mr. Al Baab or Jayesh Patel or any other person in M/s. AMGTL.

In the context of statement dtd.18.02.2016 of Shri Shailesh Damjibhai Patel, wherein he (Shailesh) bought in the name of KBI; that he had contact in Alliance company in Dubai and that Vijaybhai introduced him (Shailesh) with party and used to send order of goods through email, Shri Anil Parmar was asked to clarify. In reply Shri Anil Parmar stated that when he (Anil) came into acquaintance with Shailesh, he (Shailesh) was doing work related to land-building; that he did not even know when Shailesh got into the brass business; that in their M/s. AMGTL, with whom he (Shailesh) had contacts or how he (Shailesh) used to give order for goods, he was not knowing about the same at all; that Shailesh never contacted him (Anil) about that matter.

With reference to the statement dtd.18.02.2016 of Shri Shailesh Damjibhai Patel, wherein Shri Shailesh had stated that Vijaybhai got him (Shailesh) to talk to the party in Dubai through his phone, Shri Anil Parmar was asked what kind of talk he (Anil) had with Shailesh Damjibhai Patel or Vijaybhai on the phone. Replying to the same, Shri Anil Parmar stated that he had never spoken to Shailesh Damjibhai Patel or Vijaybhai through either a normal call or a WhatsApp call.

In his statement dtd. 08.02.2016, Shri Vijay Vashrambhai Sabhaya, had stated that Ankitbhai was used to contact in Dubai and talk about brass scrap, thenafter contract copy was being received through email from Dubai and they used to send

the same by return email after signing the same and scanning it. Denying to same, Shri Anil Parmar categorically stated that he had no information about the same, because he did not have to look after the work related to sale or export of goods.

As regard the contention made by Shri Vijay Vashrambhai Sabhaya in his statement dated 08.02.2016 that he (Anil) had his (Anil) own factory in Jamnagar Dared GIDC and was manufacturing different brass items in the same, Shri Anil Parmar stated that he had never owned any factory in Jamnagar Dared GIDC or anywhere else.

When asked about the mode of payment in the context of statement dtd. 08.02.2016 of Shri Vijay Vashrambhai Sabhaya that the payment of consignment sent by him (Vijay) was received through bank from AMGTL, Shri Anil Parmar stated that he did not know whether Vijay Vashrambhai Sabhaya or M/s. KBI used to send goods to their firm M/s. AMGTL; that he was used to pay only for the purchases he had made from the local yards by cash or cheque and he had never made payment to Shri Vijay Vashrambhai Sabhaya or M/s. KBI.

Shri Anil Parmar was asked to clarify with reference to the statement dtd.08.02.2016 of Shri Vijay Vashrambhai Sabhaya with contention that they (Vijay) were sending brass ingots in exchange for payment for the consignment exported by M/s. AMGTL, to which Shri Anil Parmar stated that he did not have any knowledge of the said type of transactions.

Replying to the question as to how Shri Jayesh Patel was used to transfer money from the NRI bank account of Shri Anil Parmar to the bank accounts of someone else, Shri Anil Parmar stated that Jayesh Patel had asked him (Anil) to deposit the money received by me (Anil)/ delivered to him (Anil) in his (Anil) NRI bank account which he (Jayesh) would return by depositing after some time to reverse the entry. And on the same condition he (Anil) allowed to transfer money to the bank account of others. He gave the online username and password of his (Anil) NRI account to Jayesh Patel, which Jayesh Patel was used to transfer money to other persons' accounts. Whenever such transfer to be made, Jayesh Patel would call him (Anil) on WhatsApp for OTP to complete the transaction. Approximately 6-7 times Jayesh Patel called him (Anil) for OTP and he gave it.

Shri Anil Parmar was shown a copy of the Sales Contract No. SC00120/2015, dtd.26.09.2015 of his firm M/s. AMGTL, wherein 80 Ton Mix Metal Brass Scrap to be supplied to M/s. KBI at the rate of USD 3600 per 1 Metric Ton and the first Container No. IALU2252554 supplied against the said contract was detected by DRI with cigarettes at Mundra Port. It was asked to Shri Shailesh Parmar Whether the container No. TTNU3535220 was the second container against the said contract, which was called back at Dubai and he was also asked to explain whether the remaining goods sent by him in terms of said contract in some other container or it was remained to be sent. Replying to the same, Shri Anil Parmar stated that he was not aware about any such contract and the signature on it was not his. He also stated that he had not signed any export documents.

Shri Shailesh Parmar also stated that after going for business in Dubai, he had arrived in India three times. He arrived in India on 20th April, 2015, second time on 24th July, 2015 and last time on 14th June, 2016. When he arrived in India in April, 2015 and July, 2015, he stayed in India for 10 to 15 days and returned. When he came into India in June 2016, he had not gone back to Dubai. When he went Dubai for the first time, the air fare was paid by Jayesh Patel. Then after, whenever he purchased ticket from Dubai, all time the payment was made by himself in cash after withdrawal of amount by using ATM card of the bank account of his Dubai firm M/s. AMGTL, whereas for the ticket for journey from India to Dubai, he made payment from the cash amount with him.

He also stated that when he had been at Dubai, Jayesh Patel met him (Anil) for the first time in 2015. Jayesh Patel came to his (Anil) residence at Sharjah and he (Jayesh) came there casually. No business-related discussion took place between them.

When he was shown a copy of statement of transactions made in his Axis Bank NRI account No. 916010010171472 during 01.01.2016 to 30.09.2020, he stated that the said NRI account he had opened at the instruction of Jayesh Patel. With 16 entries, the amounts were deposited in his said bank account and the details thereof were as follow:

Sr.	Date	Amount INR
1	17.02.2016	4867707

2	14.03.2016	2766640
3	15.03.2016	5470000
4	17.03.2016	3654000
5	18.03.2016	4525344
6	21.03.2016	9015146
7	29.03.2016	723227
8	06.04.2016	5418713
9	07.04.2016	1799640
10	07.04.2016	3600000
11	12.04.2016	7206847
12	13.04.2016	5397265
13	18.04.2016	7226378
14	21.04.2016	8078635
15	22.04.2016	9880000
16	25.04.2016	7212044
	TOTAL	**86841586**

In relation to the aforesaid credit entries, in total he had deposited Rs. 3 to 3.5 Crores in cash in his account, which were sent to him at Dubai by Jayesh Patel. The amount which he had deposited was in Dirham. He was not aware who made credit in his account, because the bank statement of his account must have been sent at the email id of his firm M/s. AMGTL, hence he was not aware about those details.

He further stated that he had never given any Chaque to any person and not made payment. The user name and password pertaining to the said bank account as well as the Chaque book of his account after making his signature on each of the blank Chaques, were given by him to Jayesh Patel. The email id of this bank account was of M/s. AMGTL and he was not having password with him. Out of all the persons in whose favour the debit entries were being shown in the bank statement, means money payments were made to them, he knew only one person Pravin P. Chovatiya, whereas he did not know any persons from Chandrakant V Sanghvi, Mayur M. Sabhaya and Jaman D. Moliya. At the time when he was working with M/s. Patel Trading Co., Jamnagar, Pravin Chovatiya was having tractor repairing garage near their factory and he knew him accordingly.

After returning in India in 2016, he had never used the sim card of mobile number of Dubai. He was using Samsung mobile there, which Samsung Mobile he had handed over to Al Baab, when he was returning to India. He had handed over the RAK Bank ATM Card of his firm M/s. AMGTL to Al Baab.

He further stated that Jayesh Patel had informed him about the seizure of cigarettes by WhatsApp call. He also stated categorically that he did not know any person with name as Mansour Shalaby as well as Saiyad Azhar Hussain Zaidi.

As can be seen from the statement above, Shri Anil Parmar despite overwhelming independent and corroborative evidences which point to his being an integral and pivotal part of the smuggling syndicate tried to deny his any involvement in the illicit activities.

4.28. Statement of Shri Sachin Garg, General Manager (Operation) of M/s. Mundra International Container Terminal Pvt. Ltd. was recorded on 09.12.2020 **(RUD No. 39)**, in which he interalia stated as follow:

- when IAL (Import Advance List) and Arrival Baplie file was sent to MICT terminal by the Shipping Agent M/s. MBK Logistix Pvt. Ltd., Mundra and it was informed by the agent that the two containers IPXU3062264 & TTNU3535220 to be kept as ROB units for discharge at Jebel Ali Port.
- That the IGM is not provided by vessel agent to Terminal, IGM is filed by vessel agent directly in the Customs EDI Systems, the operations at Terminal are carried out on the basis of IAL.
- That they do not insist for IGM as the information required for operations are available in IAL and the shipping Agent make the IAL based on the filing IGM.
- That no permission is obtained for discharge of restow (Same vessel discharge and load back) containers at Mundra.
- The Container Nos. IPXU3062264 & TTNU3535220 were restowed because they were found loaded with other Mundra discharge containers. Since instructions to keep these containers as ROB were obtained from vessel agent, they had to carry out restow via wharf for both containers. In practice at Mundra no separate permission is obtained for carrying out restow of containers via wharf.
- That no permission from Customs was obtained for loading of restow containers Nos. IPXU3062264 & TTNU3535220back on vessel as per practice at Mundra. That no intimation for loading or unloading of these containers was provided to Mundra Customs as per normal practice in Mundra for handling restow.

- On being asked whether the loading/unloading of containers were done under Customs Supervision as prescribed under Section 34 of the Customs Act, 1962, he stated that all activities in the terminal related to cargo handling were carried out under supervision of designated officers of Mundra Customs, further stated that no separate information was provided to Custom officers for handling of restow containers as per normal practice at Mundra.
- that all imported goods discharged at their terminal for Indian destinations were allowed to exit only after due customs permissions were provided by either Shipping Line, importer and Container Freight Stations. All records pertaining to these containers were maintained and available with them, with regard to the container numbers IPXU3062264 & TTNU3535220 were restowed and not imported into Mundra, the records pertaining to these containers had been maintained and furnished on demand.
- On being asked whether they followed the Section 6(b) of Handling of Cargo in Customs Areas Regulations, 2009he stated that all records pertaining to containers handled by their terminal were properly maintained and available with them.
- On being asked whether they followed the Section 6(f) of Handling of Cargo in Customs Areas Regulations, 2009, he stated that all import, export and transshipment containers handled by their terminal were allowed to exit only after proper permissions are provided by the designated officers (Customs).
- On being asked whether they followed the Section 6(h) of Handling of Cargo in Customs Areas Regulations, 2009, he stated that import manifest of all containers for import into the country was filed by the shipping line or their agents and they at the Terminal do not handle import cargo for which import manifest had not been filed.
- On being asked whether they followed the Section 6(k) of Handling of Cargo in Customs Areas Regulations, 2009, he stated that any container exiting for another Customs Station was allowed to leave after proper Transshipment permit details have been provided and containers exiting for container freight stations within Mundra were allowed to exit only after proper customs permission was provided.
- On being asked whether they followed the Section 6(q) of Handling of Cargo in Customs Areas Regulations, 2009, he stated that their terminal followed all rules, regulations, notifications and orders issued under Customs Act, 1962.

- On being asked whether they followed the Section 6(3) of Handling of Cargo in Customs Areas Regulations, 2009, he stated that all container related charges including charges for restow containers were part of their public tariff which was displayed on their website.
- He stated that the container nos. IPXU3062264 & TTNU3535220 were not declared for Mundra discharge by vessel agents and no law, rule, regulation or notification had been violated by their terminal and they not accept any wrong doing in restowing those containers via wharf due to operational reasons to allow handling of Mundra discharge/loading containers. This restow activity was an internationally accepted trade practice; and requested that no penalty be levied.

4.29. Axis Bank and Bank of Baroda were asked to provide the details of bank accounts operated with them by Shri Anil Parmar, Shri Jayesh Ranpariya @ Jayesh Patel and others. It was revealed from the transactions made in the AXIS Bank account No. 916010010171472, during the period from 17.02.2016 to 26.04.2016 (RUD No. 40), under various transactions, total amount of more than Rs.8 Crores were deposited in said account either in Cash or through RTGS. Against the amount so deposited, the amount of Rs. 8,64,15,000/- was transferred in favour of various persons, also Shri Sanjay Shastri had also deposited the amount of Rs.6,33,55,000/- to these persons in the same Bank A/c, the transactions were found when the statements of the bank accounts from of Shri Pravin P.Chovatiya, Chandrakant V.Sanghani, Mayur M.Sabhaya, Jaman D.Moliya was available, the details of amount received mentioned were as follow:

Name of the person/s in whose favour the remittance was made (S/Shree)	**Total amount remitted (Rs.)**	**No. of transactions made**
Pravin P. Chovatiya	2,30,75,000/-	09
Chandrakant V. Sanghani	99,00,000/-	06
Mayur M. Sabhaya	2,75,50,000/-	09
Jaman D. Moliya	2,49,00,000/-	07
Self	9,90,000/-	01

Shri Sanjay A.Shastri had deposited following amount to the same persons

Name of the person/s in whose favour the remittance was made (S/Shree)	**No. of transactions made**	**Total amount remitted (Rs.)**
Pravin P. Chovatiya	07	2,04,05,000/-
Chandrakant V. Sanghani	05	1,53,00,000/-

Mayur M. Sabhaya	05	1,25,00,000/-
Jaman D. Moliya	05	1,51,50,000/-

4.30. Jayesh Muljibhai Ranpariya @ Jayesh Patel appears to be the habitual offender being actively and continuously involved in the smuggling of foreign origin cigarettes into India in connivance with other persons. It is evident from the case booked by the officers of DRI, Mumbai Zonal Unit in October-2017 when a premise at Bhiwandi was searched by them on specific intelligence. Show Cause Notice F.No. DRI/MZU/C/Int-158/2017 dated 13.04.2018 (RUD No. 41) was issued by the Additional Director, DRI, Mumbai Zonal Unit after completion of investigation in the matter. The said SCN was adjudicated vide OIO No. JC/R&I/SG/05/2018-10 dated 14.12.2018 (RUD No. 42) by the Joint Commissioner of Customs (Preventive), Rummaging and Intelligence Division, Adjudication Cell, Mumbai.

Brief facts of the case are summarized as below:

(A) Based on the specific intelligence, searches conducted by the officers of DRI, Mumbai Zonal Unit on 26.10.2017 at two premises at Bhiwandi resulted in seizure of total 69,26,400 sticks of foreign origin smuggled cigarettes having approximate value of Rs.6.92 crores. Both the said premises were taken on rent by one Shri Kishor Kumbhabhai Mevada native of Jamnagar.

(B) Admitted facts in respect of Jaysukh Muljibhai Ranpariya @ Jayesh Patel by Shri Kishor Kumbhabhai Mevada in his various statements recorded on 01.01.2018, 10.01.2018 and 12.03.2018 (RUD No. 43) by DRI, MZU are that -

- Smuggled Gudang Garam cigarettes valued at Rs. 6.92 crore seized under panchnama were sent by one Mr. Jaysukhbhai Muljibhai Ranpariya @ Jayesh Patel;
- Jayesh Patel was involved in real estate brokering business in which he was also involved and their friendship grew while conducting real estate business;
- around two years back, Jayesh Patel offered him business of distribution of smuggled cigarettes of "Gudang Garam" brand and Jayesh told him that he smuggled cigarettes through Mundra/Kandla/Nhava Sheva ports with help of some persons operating in these ports;
- Jayesh Patel sent first truck of smuggled cigarettes in the month of January 2016

- in January 2017, Jayesh Patel called him and asked to meet him; upon meeting he informed that he was going to start smuggling of cigarettes again and asked him to acquire godown for storing smuggled cigarettes at Bhiwandi and accordingly he rented premises in Bhiwandi;
- from January onwards he started receiving smuggled cigarettes from Jayesh Patel and each time he used to receive 100 big cartons at his warehouse in Bhiwandi
- Jayesh Patel did not reveal the name of CHA or container number to him and he was never handed over any import document related to cigarettes; he used to receive around 300 cartons per month from Jayesh Patel and he used to sell these smuggled cigarettes within a week;
- Jayesh Patel used to send one Anil alias Bolone to Bhiwandi for handing over smuggled cigarettes at his place;
- Jayeshbhai Patel was running a Land Mafia in Gujarat and defaulted payments to the tune of Rs. 60 crores to various suppliers; when he tried to flee the country on the basis of duplicate passport through CSI Airport, Mumbai, Immigration authorities apprehended him and he was arrested;
- Jayesh Patel was then directed to appear at Bopal Police Station, Ahmedabad every alternate day;
- on receipt of phone call on 26.10.2017 informing him that DRI was searching both the premises where the smuggled cigarettes were stored, he immediately informed Jayesh Patel through WhatsApp who asked him to go out of Mumbai and on the instructions of Jayesh Patel, he fled to Bangkok via Hyderabad on 29.10.2017;
- Jayesh Patel informed him that he smuggled Gudang Garam cigarettes through various ports with the help of his known sources operating over there;
- Jayesh Patel had sent smuggled cigarettes of Gudang Garam in tempo Tata 407 make and every time different tempos and drivers used to bring smuggled cigarettes to his godown;
- he used to send back the payments for consignment received by him in cash to various persons sent by Jayesh Patel and he couldn't remember the names of persons who used collect the cash;
- he had filed retraction dated 12-01-2018 in the form of letter to Hon'ble Court out of fear of Jayesh Patel's financial/political clout;

- the cigarettes seized by DRI, MZU on 26/27.10.2017 were indeed sent by Jayesh Patel through his associate Anil alias Bolone; however, he could not confirm whether name of Anil alias Bolone is real or fictitious one;
- the seized cigarettes were received by him from Jayesh Patel in the month of September 2017 and October 2017; he was not selling the same in market as Jayesh Patel had reduced his commission and Jayesh Patel was asking him to sell the cigarette at enhanced rate which he could not get; he was asking for more commission from Jayesh Patel;
- he was employed by Jayesh Patel only for storing and selling the cigarettes through his contacts; he used to get instructions from Jayesh Patel on phone; he and Jayesh Patel used to contact each other on WhatsApp on Bangkok registered mobile numbers;
- Jayesh Patel had told him not meet in Jail; in 2016, he met Jayesh Patel for dealing in relation with sale of cigarettes, in 2017, he met Jayesh Patel thrice i.e. in the months of September and October 2017; he also met Jayesh Patel in the month of October 2017 at Santacruz for finalizing his commission rate for the consignment under seizure;
- he had received the consignment of cigarettes around 10-12 times and each time he used to receive 50-120 big cigarettes cartons; in total he had received around 800 big cartons of cigarettes, similar to seized consignment from Jayesh Patel;

(C) Statement of Jaysukh Muljibhai Ranpariya @ Jayesh Patel was recorded on 07.01.2018 (RUD No. 44) in the office of DRI, Ahmedabad Zonal Unit wherein he stated that -

- he knew Mr. Kishor Kumbhabhai Mevada who lives in Mumbai Santacruz since his childhood; he is engaged in business of property in Jamnagar; and also own a mobile shop in Santacruz east;
- he didn't want to say anything about Mr. Kishor Mevada's statement dated 01.01.2018, wherein Mr. Kishor Mevada stated that Mr Kishor Mevada used to work for him and seized cigarettes belonged to him;
- he met Mr. Kishor Mevada in October, 2017 for the last time;
- he has two passports; one issued by Ahmedabad Passport Office which is valid till 2018; and the other one which was issued by Pune Passport office which is valid up to 2026;

- whatever stated by Mr. Kishor Mevada in his statement i.e. about he (Mr. Jayesh) running a land mafia in Gujarat and there was a case booked against Mr. Jayesh Patel for committing fraud in dealing with a land worth of 60 crores and he (Mr. Jayesh) was caught by Immigration Authorities at CSI Airport while attempting to flee out of India on the strength of duplicate passport, are indeed correct;
- as per conditions imposed by Ahmadabad High Court while granting him bail, he had to mark his attendance at Bopal Police station, Ahmedabad on alternate days;
- in the year 2015-16, an enquiry was conducted with him by DRI, Gandhidham in connection with a case booked against smuggling of cigarettes;
- he didn't want to say anything about Anil @ Bolone, who was named by Mr. Kishor Mevada as his (Mr. Jayesh's) person who interacted with Mr. Kishor on his (Mr. Jayesh's) behalf;

(D) On the basis of evidence on record Mr. Jayesh Muljibhai Ranpariya @Jayesh Patel was arrested under the provisions of Section 104 of the Customs Act, 1962 for his involvement in the smuggling of cigarettes. He was produced before learned Additional Chief Metropolitan Magistrate, Esplanade on 08.01.2018. He was remanded to Judicial Custody by the Honourable Magistrate.

(E) Key facts summarized in respect of another case against Shri Jayesh Muljibhai Ranpariya @ Jayesh Patel by the DRI, Mumbai Zonal Unit on completion of their investigation are as below: A conspiracy was hatched by Jayesh Muljibhai Ranpariya @ Jayesh Patel to smuggle in consignments of foreign made cigarettes through Mundra/Kandla/Nhava Sheva ports, in import containers by mis declaring the goods as genuine permissible import goods. Due to his experience in handling export import consignments, he ensured smooth clearance of such smuggled cigarettes through mis-declaration/concealment. Ports such as Kandla/Mundra were selected due to huge cargo being imported from these ports which, results in less scrutiny and perhaps because he was aware of local conditions/contacts. He took advantage of the examination norms and facilitation measures; in place in the port and might have declared innocuous cargo which would have been cleared with minimal or nil officer's interface. Jayesh Patel who was mastermind of smuggling syndicate was utilizing the services of Mr. Kishor Mevada for distribution and selling of his smuggled cigarettes

in Mumbai and its adjoining cities. Jayesh Patel managed to procure Indonesian origin Gudang Garam cigarettes through his sources abroad. He had assigned the work of delivering the cigarettes to Mr. Kishor Mevada, through his key associate Anil alias Bolone. Anil Bolone used to deliver the smuggled cigarettes to Mr. Kishor Mevada at his storage premises located at Bhiwandi. Mr. Kishor Mevada then used to receive sale proceeds of said cigarettes in cash and used to send the said sales proceeds to Mr. Jayesh Patel through various persons sent to him, by Mr. Jayesh Patel. Mr. Jayesh Patel and Mr. Kishor Mevada both have admitted their personal meeting at Mumbai during the first week of October 2017 i. e. just few days before the seizure of cigarettes took place; one can logically presume that the said meeting was apparently to discuss about the disposal of the consignment, which were subsequently seized by DRI.

Records related to past cases of Mr. Jayesh Patel and various current cases booked against him reveals that, Mr. Jayesh Patel has been indulging in illegal activities even while being inside jail premises. He has apparently used his clout for indulging in smuggling of cigarettes, since huge profits earned out of smuggling becomes financial base for their other illegal activities like land grabbing etc. Moreover, he was also arrested in November 2017, by immigration authorities for attempting to flee the country on the strength of duplicate passport. His key associate Shri Anil @ Bolone, who was attending delivery of the smuggled cigarettes to Shri Kishor Mevada, was the same Anil M. Parmar, who was made partner of M/s AMGTL at the instructions of Jayesh Patel and who had earlier arranged for supply of cigarettes by misdeclaration of goods and had also facilitated in illegal transactions in violation of relevant statutory provisions.

Further, the adjudicating authority in his findings specifically observed that –

Mr Jaysukh Muljibhai Ranpariya @ Jayesh Patel has nowhere denied the import / acquisition of the said goods by way of smuggling the same into India. The impugned goods were seized from the possession of Mr. Kishor Kumbhabhai Mevada, to which he also stated that the goods were smuggled into India by Mr. Jayesh Patel. Mr. Jayesh Patel has not denied these allegations made against him by Mr Kishor Mevada. Mr. Jayesh Patel did not deny the Statement. of Mr. Kishor Mevada and

hence, it is clear that the Mr. Jayesh Patel had smuggled the impugned seized goods and supplied the same to Mr. Kishor Mevada.

Mr. Jayesh Patel accepted that he possessed duplicate passport, he was involved in a case of fraudulent land dealing worth Rs.60 Crore. A case was booked against him at Ahmedabad and he was out on bail with condition to attend Bopal Police Station, Ahmedabad on alternate days, in 2015-16. He was also involved in a case booked for smuggling of cigarettes and was questioned by DRI, Gandhidham. Further, Mr. Jayesh Patel also remained silent on Mr. Anil @ Bolone, who was named by Mr. Kishor Mevada as Mr. Jayesh Patel's person. Mr. Jayesh Patel was arrested on 08.01.2018 and remained in the judicial custody.

The Adjudicating Authority found that acts on the part of the Mr. Jaysukhbhai Muljibhai Ranpariya @ Jayesh Patel has rendered him liable for penal action under section 112 (a) of the Customs Act, 1962.

The Adjudicating Authority vide Order-in-Original dated 14.12.2018 ordered absolute confiscation of 69,26,400 sticks of Gudang Garam Cigarettes of foreign origin valued at Rs. 6,92,64,000/-under Section 111(d), 111(1) and 111(m) of the Customs Act, 1962, read with Section 7 of the COPTA Act, 2003 and the label and specified warning on packets of cigarettes as prescribed in Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2014. Severe Penalty of Rs.3,00,00,000/- was also imposed on Mr. Jayesh Muljibhai Ranpariya @ Jayesh Patel under Section 112(a) of the Customs Act, 1962 along with imposition of severe penalties on other noticees.

4.31 Statement of Jamanbhai Moliya (the receipient of deposits from Shri Anil Parmar and Shri Sanjay Shastri was recorded on 18.12.2020(RUD No.45), in which he interalia stated as follows:

- His main business is farming. Along with farming, he is also doing work of selling-buying of property.
- He has two bank accounts, one in Bank of Baroda, Dared Branch and second in Axis Bank, Jolly Bangla (Digvijay Branch), Jamnagar wherein approximately amount of Rs.45 lakhs and Rs.50,000/- is lying however, this amount has been seized by the government / bank.

- The amount lying with bank has been seized by Enforcement Directorate. He had given statement to Enforcement Directorate, Ahmedabad in this regard.
- In the end 2015, Pravin Purushotambhai Chovatia, his relative, gave offer to buy a land at cheaper rate but due to non-availability of funds he hesitated but Pravin assured him to arrange funds from Sanjay Shastri and Anil Parmar from Dubai who will give loan at bank rates. Pravin asked him to get two more partners for purchasing the land. Pravin suggested the name of Mayur Sabhaya and probably Indravardhan. Pravin asked me to open a current bank account. He (Jaman) opened Current Account at Axis Bank in March-2016. As per the guarantee of Pravin, money got deposited in his Current Account since April-2016. Pravin told him that the loan was arranged by his friends Anil Parmar and Sanjay Shastri.
- Pravin is doing business of Tractor and sale-purchase of land. Pravin told him that Sanjay Shastri is having business of brass, however he did not tell about business of Anil Parmar. There is no written agreement with any person. Pravin himself arranged all these on his guarantee.
- Neither he knows the cost of plot nor amount of loan. Everything was arranged by Pravin.
- Pravin told him that said land was to be purchased from Amrish Vinodchandra Mehta, however. He and Amrish Mehta never talked about it. However, there was Sale Deed and written agreement, in which he had signed. After that He returned the documents to Amrish.
- Regarding sharing of profit was never discussed among his partners Mayur Sabhaya and probably Indravardhan. Praving told him that after selling of land, profit will shared equally between partners.
- He met Anil Parmar and Sanjay Shastri in 2015-16 separately at different point time at Lalpur Road, Jamagar and at Pravin's office respectively. He met Pramin 2-3 months back.
- He received approx. Rs.3.5 crores and on the instruction of Pravin he gave different cheques to Amrish. He did not receive any receipt from Amrish or any other person. He never insisted for it.
- Amount of Rs.4 crores was deposited in Axis Bank account No. 916020017822671 in April- 20:16 which was paid to Amrish through cheques.

- Due to the disputes between Amrish Mehta and his (Amrish) family, a police case was filed by them against us regarding cheating and encroachment and this reason we cancelled the deal and return the land to Amrish and he (Amrish) gave back money through cheques which he (Jaman) deposited in his Bank of Baroda account. He returned the amount to Pravin which was received from Amrish. There is balance of Rs.45 lakhs in my account which was seized by Enforcement Directorate.
- He identified photographs of Anil Manjibhai Parmar and Jaysukh Ranpariya @ Jayesh Patel. He neither met Jaysukh Ranpariya @ Jayesh Patel nor he had talked to him. He does not know anything either about cigarette business of Jayesh Patel and Anil Parmar or any related case. He does not know whether Jayesh Patel is related with my bank account transactions or not.
- He does not know the actual/original source of money received in his bank account. Pravin or Anil Parmar can tell about the source of money.
- He does not know the present whereabouts of Jayesh Patel and Amrish Mehta. He heard that Jayesh Patel is currently residing at Dubai.
- He knows Chandrakant Sanghani through Pravinbhai however, he has no relation or monetary transactions with him (Charndrakant). He does know anything about Pravin Gelabhai Barot.
- He knows Vijay Sabhaya who is in brass business and Vijay Sabhaya is relative of Mayur Sabhaya. He does not know anything about Shailesh Damjibhai Patel, Ankit Changani and Rishit Bhandari.
- He deposited passport with Enforcement Directorate.
- He has never been involved in any Customs related case.

5.0. Discussion of facts and analysis of the evidences: -

5.1. From the aforesaid evidences, it transpires that Shri Vijay Vasrambhai Sabhaya @ Patel, Proprietor of M/s. KBI (100% EOU), Jamnagar and Shri Ankit Changani, Partner of M/s. AE (100% EOU), Jamnagar had in collusion and connivance with Shri Jaysukh Ranpariya @ Jayesh Patel and Shri Shailesh Patel conspired for importing illegally the consignments of cigarette in the guise of "Mix Metal Brass Scrap with other impurities" in their respective EOUs through Shri Anil Parmar and Shri Al Zarooni @ Al Baab of M/s. AMGTL, Dubai and in this matter, they were to get assistance from Shri Shoyaib and Shri Sanjay Shastri. As per the arrangement

made between them, Shri Anil Parmar of M/s. AMGTL, Dubai, who originally belongs to Jamnagar, and who was working on behalf of Shri Jaysukh Ranpariya @ Jayesh Patel, and who was partner of M/s. AMGTL at Dubai, was to provide with the assistance from Shri Al Zarooni @ Al Baab the shipments of Cigarettes from Jebel Ali, without any advance payment from M/s. KBI and M/s. AE, by mis-declaring the goods as "Mix Brass Scrap with other impurities" and finance for the same was arranged by Shri Jaysukh Ranpariya @ Jayesh Patel, being the kingpin and mastermind of the conspiracy. Further, Shri Anil Parmar made arrangement. through Shri Sanjay Shastri with Mr. Mansour Shalaby, an authorized signatory of M/s. GME, Dubai for providing fabricated PSICs in connection with such consignments, without actual inspection of the goods by the PSIA M/s. GME, and providing sealing of the container after stuffing of the cigarettes in the containers. Shri Anil Parmar had signed and issued the statutory Form 9 for Transboundary Movement Regulations of the Metal scrap under the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2015. As per the arrangement made, on importation of the consignment at Mundra Port, the goods were to get clearance from Customs under liberal examination Policy at Mundra Port for 100% EOU consignments and thereafter Shri Jayesh Ranpariya @ Jayesh Patel was to take over the concealed cigarettes from the container through Shri Shoyaib or such other person, while the container was to be enroute from Mundra to Jamnagar. In the statements made by Shri Anil Parmar, he has specifically stated that Shri Jayesh Patel was fully aware about the cigarettes and at his instructions, the cigarettes were also placed in the consignment of metal scarp meant for EOUs being controlled by him. It is a statement of Shri Ankit Changani that he was lured by Shri Shoyaib. Although no identification details of Mr. Shoyaib could be gathered, it was evident that to dispose of the smuggled cigarettes, Jayesh Patel had prepared a second rank of conspirators, to immediately dispose of the smuggled cigarettes in the illegal market. For allowing use of 100% EOU status and to arrange for clearance of the consignment of cigarette, M/s. KBI and M/s. AE were to get Rs.8 to 10 lakhs per container. In this respect, Shri Jayesh Ranpariya @ Jayesh Patel made finance of Rs.50 lakh in cash to Shri Ankit Changani and further finance of about Rs.30 Lakh was also made in favour of M/s. AMGTL of Shri Anil Parmar from his proprietary concern M/s. Patel Trading Co. In this connection, Shri Ankit Changani and Shri Jayesh Patel also visited Dubai and met Shri Anil Parmar and Shri Sanjay Shastri to finalize their illicit deal of importing cigarettes in the consignment meant

for EOU. For making arrangement of further movement of the smuggled cigarettes, Shri Jayesh Patel had prepared gang of persons, including S/Shree Sanjay Shastri, Anil Parmar, Pravin Chovatiya, Chandrakant Sanghani, Mayur Sabhaya, Jaman Moliya and such other unidentified persons, using their names Jayesh Patel was making frequent transaction in foreign currency either through the banking channels or through the hawala route.

5.2. According to the conspiracy hatched between the aforesaid conspirators, one such consignment of a 1X20' fully loaded container No. IALU2252254 with cigarette was arranged by Shri Anil Parmar of M/s AMGTL, Dubai with the financial assistance from Shri Jayesh Patel and with the active assistance from Shri Sanjay Shastri for supply thereof from Jebel Ali in favour of M/s. KBI (100% EOU), declaring the contents of Gross 22300 Kgs and Net 22260 Kgs Mix Metal Brass Scrap with other impurities, with freight prepaid for which the PSIC No. 0886 dtd. 18.10.2015 was issued by Mr. Mansour Shalaby, an authorized signatory of M/s GME, Dubai showing that the goods were inspected by him on 18.10.2015 at Jebel Ali and after inspection, the same was stuffed in the container and he had sealed the same with Seal No. DPWJ885735 after confirming that the goods stuffed therein were fit to be exported to India. Shri Anil Parmar had signed and issued the statutory Form 9 for Transboundary Movement Regulations of the Metal scrap. The said container was received on 25.10.2015 by the Container Liner at Dubai/Jebel Ali, loaded on MV OEL Emirates, which sailed from Jebel Ali on 25.10.2015 under B/L No. JEAMUN044235 issued by M/s. IAL Container Line (UK) Ltd., Dubai for discharge at Mundra.

5.3. From the facts and evidences, various kind of infirmities/manipulations were observed there in respect of issuance of said PSIC No. 0886 dtd. 18.10.2015 by M/s. GME. Some of such infirmities are described herein below:

- M/s. GME having office at P.O. Box No. 5778, Plot No. TP/010305, Techno Park, Dubai, United Arab Emirates had issued the PSIC No. 0886 dtd. 18.10.2015 for goods contained in Container No. IALU 2252554. As per PN No. 38/2012 dated 18.12.2012 issued by the DGFT under the provisions of Para 2.55 of HBP 2015-20, whereas M/s. GME, having office at No. 102, Karama, P.O. Box No. 5778, Dubai, UAE were authorised to carry out the job as PSIA for the shipment made from Jebel Ali. Thus, the PSIC issued by M/s.

GME having office at P.O. Box No. 5778, Plot No. TP/010305, Techno Park, Dubai, United Arab Emirates was not duly authorised.

- Immediately after issue of PSIC, the PSIA were required to upload the details of inspection carried out by them on the DGFT website, but since the PSIC was mere façade, no details of PSIC were either uploaded by M/s GME or supplied to the DGFT by email.
- The goods, which were, stated to have been inspected by Shri Syed Azhar Hussain, who was not possessing required qualification to act as surveyor for metal scrap.
- The PSIC was also not in the format as prescribed vide Para 2.54 (b)(1), 2.54 (d)(1) and 2.55 (e) of HBP 2015-20.
- The PSIC No. 0906 and 0899 was issued by Mansour Shelby but subsequently it was claimed that it was issued by Mr. Syed Azhar Hussain Zaidi. Even otherwise, said Mr. Syed Azhar Hussain Zaidi was not having required qualification to carry out the survey work for metal scrap.
- It was claimed by M/s GME that the inspection was carried out in the presence of Shri Anil Parmar, whereas in his statements Shri Anil Parmar has categorically denied to have contacted M/s. GME for pre-shipment inspection work and also denied to have remained present during inspection of goods.

5.4. According to the conspiracy hatched between Shri Vijay Sabhaya @ Patel, Proprietor of M/s. KBI (100% EOU), Jamnagar, Shri Shailesh Patel, POA-holder of M/s. KBI (100% EOU), Jamnagar, Shri Ankit Changani, Partner of M/s. AE (100% EOU), Jamnagar, Shri Jayesh Ranpariya @ Jayesh Patel, Shri Anil Parmar of M/s AMGTL, Dubai, Shri Sanjay Shastri, Shri Shoyaib and Mr. Mansour Shalaby, an authorized signatory of M/s GME, Dubai, one such consignment of a 1X20' fully loaded container No. IPXU3062264 with cigarette was arranged by Shri Anil Parmar of M/s AMGTL, Dubai for supply from Jebel Ali in favour of M/s. KBI (100% EOU), declaring the contents of Gross 23160 Kgs and Net 23120 Kgs Mix Metal Brass Scrap with other impurities, with freight prepaid for which the PSIC No. 0906, dtd.27.10.2015 was issued by Mr. Mansour Shalaby, an authorized signatory of M/s. GME, Dubai showing that the goods were inspected by him on 27.10.2015 at Jebel Ali and after inspection, the same was stuffed in the container and he had sealed the same with Seal No. 4283190 after confirming that the goods stuffed therein were fit to be exported to India. Shri Anil Parmar had signed and issued the statutory Form

9 for Transboundary Movement Regulations of the Metal scrap. The said container was received on 28.10.2015 by the Container Liner at Dubai/Jebel Ali, loaded on MV Chicago, which sailed from Jebel Ali on 30.10.2015 under B/L No. ATSJEAMUN153178 dtd. 28.10.2015 issued by M/s ATS, Dubai for discharge at Mundra.

5.5. Later on, one more such consignment of a 1X20' full load container No. TTNU3535220 loaded fully with cigarette was also arranged by Shri Anil Parmar of M/s. AMGTL, Dubai for supply from Jebel Ali in favour of M/s. AE (100% EOU), Jamnagar, declaring the contents of Gross 18580 Kgs and Net 18540 Kgs "Mix Metal Brass Scrap with other impurities", with freight prepaid for which the PSIC No. 0899, dtd.26.10.2015 was also issued by Mr. Mansour Shalaby, an authorized signatory of M/s. GME, Dubai showing that the goods were inspected by him on 26.10.2015 at Jebel Ali and after inspection, the same was stuffed in the container and he had sealed the same with Seal No. 4283192 after confirming that the goods stuffed therein were fit to be exported to India. The said container was received on 27.10.2015, loaded on MV Chicago, which sailed from Jebel Ali on 30.10.2015 under B/L No. ATSJEAMUN153177 dtd. 27.10.2015 issued by M/s. ATS, Dubai for discharge at Mundra.

5.6. After discharge of both the aforesaid container Nos. IPXU3062264 & TTNU3535220 from Jebel Ali, M/s RMIPL, Gandhidham were nominated by M/s. ATS, Dubai to act as their agent on their behalf, who (RMIPL) had to arrange for delivery of the containers to the concerned consignees at the discharge port after collection of required charges on behalf of M/s. ATS, Dubai. Being agent of M/s SMIPL, M/s MBK, Gandhidham had also issued Arrival notices on or about 02.11.2015 to M/s. RMIPL in respect of all the containers loaded on the vessel MV Chicago and which were to arrive at Mundra, including the two containers container Nos. IPXU3062264 & TTNU3535220.

5.7. The container Nos. TTNU3535220 and IPXU3062264 were loaded on MV Chicago on 29.10.2015 at location 0310884 and 0171314 respectively. Those two containers were meant for discharge at Mundra. MV Chicago left Jebel Ali on 31.10.2015 to sail for Sohar Port in Oman, then sailed from Sohar Port on

01.11.2015 for JNPT, Nhava Sheva and then sailed from JNPT, Nhava Sheva on 06.11.2015 for Mundra, where she reached on 07.11.2015.

5.8. Before arrival of MV Chicago at Nhava Sheva IGM No. 2123276, dtd.02.11.2015 was filed by M/s. SMIPL with JNPT Customs, Nhava Sheva, where they had not listed out the Same Bottom Cargo, but they had mentioned the number of containers on board, which was further divided into 20 feet and 40 feet. From the details received vide letter F. No. SG/Misc-119/2018-19/CIU/JNCH Pt. II dtd. 07.10.2020, issued by the Joint Commissioner of Customs, CIU/JNCH of Office of the Commissioner of Customs (General), Mumbai Zone-II, JNCH, Nhava Sheva it is apparent that container Nos. IPXU3062264 & TTNU3535220 on board of MV Chicago were for discharge at Mundra. Further from the statement of Shri P.K. Shivashankar, Regional Manager of M/s SMIPL recorded on 03.02.2020 and later on from the details provided by him vide letter dated 10.02.2020 & 13.02.2020, it is evident that the container Nos. IPXU3062264 & TTNU3535220 were brought into India from outside India and thus imported into India per MV Chicago on or about 04.11.2015 and the same were part of the containers which were listed in the IGM filed by M/s. SMIPL at Nhava Sheva for the containers to be carried as Same Bottom Cargo meant for discharge at Mundra. Meanwhile the earlier consignment sent by M/s AMGTL was caught and upon getting information about such action by DRI, Shri Jaysukh Ranpariya @ Jayesh Patel got ample time and he immediately alerted Shri Anil Parmar and instructed him to ensure that the two containers were to be recalled. Accordingly, the Shipping Agents and the Container agents were instructed by Shri Anil Parmar not to unload two containers at Mundra and to recall the containers back to the load port.

5.9. It is apparent that while MV Chicago was in journey from Jebel Ali to Mundra, there was exchange of messages on email, as per the following details: (RUD No. 30 & RUD No. 39)

(a) A mail message dtd.04.11.2015 (13:23 PM) was received from M/s. ATS, Dubai by M/s. MBK, where referring to the mail received from the booking party, it was requested to recall both the containers Nos. IPXU3062264 & TTNU3535220 at Dubai, as the party was not agreed to pay the shipper due amount.

(b) Again, a mail message dtd.04.11.2015 (16:01 PM) was received from M/s. ATS, Dubai, where referring to the mail received from the booking party, requesting to recall both the containers Nos. IPXU3062264 & TTNU3535220 and also referring to the fact that the containers were on board and the vessel was to reach at Mundra on 07.11.2015, as per the Schedule fixed.

(c) By mail message dtd.04.11.2015 (16:17 PM), M/s. MBK noted the request and informed M/s. ATS, Dubai that re-stow charges at Mundra as well as Slot charges from Mundra to Jebel Ali were leviable with additional charges, if any.

(d) On receipt of aforesaid mail message, M/s. ATS, Dubai asked vide mail message dtd.04.11.2015 (16:20 PM) to provide charges, which would be for ROB and it was informed that the Containers were not needed to be discharged in Mundra; to avoid further formalities.

(e) M/s. ATS, Dubai asked again to M/s. MBK vide mail message dtd.04.11.2015 (16:49 PM) to advise the charges as they need to inform the customer.

(f) M/s MBK responded vide mail message dtd.04.11.2015 (16:50 PM) that they would revert back shortly.

(g) On 05.11.2015, M/s ATS, Dubai asked again to M/s MBK vide mail message dtd.05.11.2015 (08:37 AM) as a reminder request in the matter.

(h) M/s. MBK replied vide mail message dtd.05.11.2015 (09:09 AM) that with details of re-stow charges of 32 USD + 14% ST = 150.48 USD per 20' with slot charges from Mundra to Jebel Ali. It was asked to confirm the charges to proceed with the ROB.

(i) M/s. ATS, Dubai sent mail message dtd.05.11.2015 (09:36 AM) to M/s. MBK that they had noted and would be reverting shortly.

(j) On 05.11.2015 (11:44 AM), M/s. ATS, Dubai confirmed the charges and asked M/s MBK to proceed. It was also asked to advise the ETA for Jebel Ali for the same vessel.

(k) Vide email dtd.06.11.2015 (04:10 PM), Shri Mahesh Keniya of M/s MBK informed M/s. MICT Pvt. Ltd. to do the ROB for two containers for JEA discharge and it was also conveyed that related charges to be on account of M/s. MBK

5.10. Thereafter, M/s. MBK filed IGM for MV Chicago (Voyage 006) electronically on 05.11.2015 (Sr. No. 2123552) and manually at Customs Mundra on 06.11.2015 (Sr. No. 1601). In the said IGM, M/s. MBK did not disclose the two subject containers either in the list of the containers to be discharged at Mundra or in the list of Containers to be retained on board (Same Bottom Cargo). Looking to the frequency

of the communication entered between M/s MBK and M/s. ATS during 04.11.2015 and 05.11.2015, there can not be any reason for them that they failed to consider those containers by mistake, particularly when they charged and collected re-stow charges also for those two containers. Further, M/s MBK had also informed M/s MICT about unloading and reloading of those two containers vide email dtd. 06.11.2015 Thus, the non-mention of those two containers in the IGM filed at Mundra was intentional, deliberate and it was part of the malicious design to somehow keep those two containers from coming to any attention of the Indian Customs law enforcement authorities. This was also in violation of the obligation cast on the Master of the Ship and the agents appointed by such Master of the ship to subscribe to the truth of the contents of the IGM filed by them in terms of Section 30 (2) of the Customs Act, 1962.

5.11. Without declaring those two containers in the IGM, restowing of the container TTNU3535220 and IPXU3062264 in the ship took place, for which those two containers were unloaded at the notified place of Jetty of Mundra Port, without any mention of those two containers in the IGM filed for MV Chicago at Mundra. After restowing, the locations of those two containers on the ship were changed from 0310884 and 0171314 to 0251586 and 0271586 respectively. Before unloading such containers, which were not at all declared in the IGM filed at Mundra, no information was passed on either by the Shipping Agent M/s. MBK or M/s. MICT to the Customs and no permission was obtained by them from Mundra Customs for such activity and no customs supervision was also ensured during such unloading and loading activity pertaining to those two containers in violation of the provisions of Section 34 of the Customs Act, 1962. The inaction on the part of M/s. MICT in this respect is apparently in violation of the obligation cast on them as Custodian appointed under Section 45 of the Customs Act, 1962 as well as being Customs Cargo Service Provider as defined under Regulation 2(b) of the Handling of Cargo in Customs Areas Regulations, 2009. In terms of Regulation 6(b) (f) (h) and (q) of the HCCAR, 2009, being Custodian and Customs Cargo Services Provider, M/s. MICT Pvt. Ltd. were required to ensure that the record of each activity or action taken in relation to movement or handling of imported or export goods and the goods brought for transhipment is kept by them; that not to permit goods to be removed from the Customs area or otherwise dealt with, except under and in accordance with the permission in writing of the Superintendent of Customs or Appraiser; that not to

permit any import cargo to enter the Customs area or be unloaded therein without the import manifest having been filed with the Deputy/Assistant Commissioner of Customs; that to abide by all the provisions of the Customs Act, 1962 and the rules, regulations, notifications and orders issued thereunder. It is apparent that M/s. MICT Pvt. Ltd. have failed in complying with such statutory responsibility cast on them. Similarly, the Shipping Agent M/s. MBK also failed to comply with those statutory obligation.

5.12. With the same intention, M/s. MBK did not disclose those two containers in the EGM filed by them at Mundra, even after sailing of the vessel from Mundra on 09.11.2015 with deliberate intent to bypass their obligation in terms of Section 41(2) of the Customs Act, 1962 as regards subscribing the truth of the contents of the EGM delivered by them, looking to the fact that they had all reason to believe that those two containers were on board the vessel and that they were under obligation to declare them in the EGM. The deliberate omission is noticed on the part of M/s MBK in making due compliance with the legal provisions. It is apparent that M/s MBK were statutorily obliged to ensure correctness of the facts being stated by them in the relevant IGM and EGM. However, M/s. MBK had intentionally bypassed such legal obligation cast on them. The deliberate action on the part of M/s. MBK, who were representing the ship owner as well as the person-in-charge of the conveyance MV Chicago, is thus astonishing looking to their long standing in the field of shipping, where they were believed to be experienced and fully aware about the statutory provisions.

5.13. In fact, upon having come to know that DRI had started to examine their container No. IALU2252554 on 04.11.2015 under Panchnama, which was started at 13:00 Hrs, and that it would eventually go on to detect the cigarettes concealed in the container, the aforesaid syndicate became alerted to DRI possibly becoming aware of two more containers containing contraband to soon arrive at Mundra and hence request for recalling the two container Nos. IPXU3062264 & TTNU3535220 was moved by Shri Anil Parmar on 04.11.2015 itself at 13:23 Hrs. without waiting for the final outcome of examination of Container No. IALU2252554 under the instructions he (Anil) had received from Shri Jayesh Patel.

Thus, M/s. MBK had intentionally engaged themselves and colluded with the syndicate in manipulating evidences relating to arrival of those two fully loaded containers with cigarettes in India and more particularly at Mundra.

5.14. Shri Sachin S. Naik, in his capacity as Regional Manager of M/s. MBK, the in-charge of vessel agents at Mundra port, has stated in his statement that they received list of containers to be discharged at Mundra port and that arrival notice were issued by them to the concerned shipping agents/container handling agents M/s. RMIPL, in respect of container Nos. IPXU3062264 & TTNU3535220 sent on 02.11.2015. It is also apparent from his statement that M/s. MBK had Agency agreement dated 15.07.2012 with M/s. SMIPL. As per said agreement M/s. MBK may book, receive shipment; prepare and/or sign and/or issue and/or send out receipts, manifests, loading permits, bills of lading, arrival notices and delivery orders etc. on behalf of M/s. SMIPL which is wholly owned subsidiary of M/s. Simatech Shipping Forwarding L.L.C., Dubai (hereinafter referred to as "SSFL, Dubai"). M/s. SMIPL are general agents of M/s. SSFL, Dubai and M/s. Simatech Shipping PTE Ltd., Singapore (hereinafter referred to as "SSPL, Singapore"), in India. As per the said agency agreement, M/s. MBK are sub agents of M/s. SSFL Dubai and M/s. SSPL, Singapore and were attending inward and outward clearance of containers, equipment and vessels on behalf of them. Similarly, M/s. RMIPL were agent of M/s ATS, Dubai. Shri Sachin S. Naik has further stated in his statement that the two container Nos. IPXU3062264 & TTNU3535220 were not unloaded from the vessel on the basis of instructions received in email dated 04.11.2015 from their principal M/s. SSFL, Dubai, who had in turn got instructions from M/s. ATS, Dubai to not unload said containers at Mundra Port. He further stated that the Shipper had asked M/s. ATS, Dubai to call back the containers. Similarly, Shri Bhupinder Saini, Branch Manager of M/s. RMIPL (the container handling agents of M/s. ATS, Dubai at Mundra) in his statement dtd. 18.01.2016, has stated that they received mail dated 04.11.2015 from M/s. ATS, Dubai stating that the said containers had been called back by booking Party and also produced copy of letter dated 05.11.2015 of Shipper M/s. AMGTL.

5.15. Further from the statement of Shri Anil Parmar, it is apparent that information was provided on phone by Shri Jaysukh Ranpariya @ Jayesh Patel to him about detection of cigarettes by DRI and further instructing him to recall two more containers, which were also containing cigarettes. Thus, all activities pertaining to

concealed contraband goods was being monitored by the syndicate under the leadership of Shri Jaysukh Ranpariya @ Jayesh Patel.

5.16. In addition to the above, it is apparent from the copies of the three PSICs provided by Mr. Mansour Shalaby, an authorized signatory of M/s GME, Dubai and also from the statements of Shri Ankit, Shri Vijay Sabhaya and Shri Shaileshbhai Patel that in connivance with Shri Anil Parmar of M/s. AMGTL, Shri Jayesh Patel, Shri Sanjay Shastri and Mr. Shoyaib, they had attempted to import consignments of Cigarettes in the guise of goods described as "Mix Metal Brass Scrap with other impurities", for which they had arranged fabrication of three PSICs with the assistance of Mr. Mansour Shalaby, an authorized signatory of M/s. GME, Dubai so as to suppress the actual contents of the aforesaid three containers. Later on, upon detection of false details mentioned in those PSICS, it was informed from M/s. GME vide email dtd.07.02.2017 that the consignments were inspected by Mr. Azhar Zaidi, without any supporting evidence for the same and in contrast to the name of Mr. Mansour Shalaby mentioned as person in whose presence the inspection of goods were carried out in those PSICs, which was provided by them vide their earlier email dtd.27.07.2016. The particulars of radiation meter used for inspection as mentioned in those three PSICs were in contrast with the radiation meter used for inspection as mentioned in the email dtd.22.04.2017 with supporting photograph. The PSICs were not with all the details, as prescribed in the relevant provisions of Para 2.54 (b)(1), 2.54 (d)(1), 2.55 (e), 2.55(g), 2.56(c) and 2.56 (d) of the Hand Book of Procedure 2015-20. The inspection of the goods, as informed by M/s. GME, was carried out by Mr. Azhar Zaidi, who was not experienced enough and not having basic qualification to act as Surveyor. The PSICs were indicating that the inspection was carried out with the Radiation Survey Meter of Make: RD Probe, Model: ND 2 RPC, Sr. No. 79662, Last date of Calibration: 24.10.2014, but no such Radiation Survey Meter was found in the list of Approved Spectrometers and Survey Meters for issuance of PSIC as possessed by M/s. GME on the date of issue of said PSICS.

5.17. Moreover, upon detection of the consignment of cigarettes and other articles contained in Container No. IALU2252554, the other two container Nos. IPXU3062264 & TTNU3535220 being on way to Mundra, which were fully stuffed with the cigarettes, but the Bills of Lading for the same had falsely described the contents of 'Mix Metal Brass Scrap' meant for discharge at Mundra, were instantly

reverted back to Dubai instead of being unloaded at Mundra. All these were deliberately done in connivance with the Shipping Agents and Shipping Line, so as to prevent interception of these consignments too by DRI. To avoid attention of the DRI and Customs about the said consignments, these two containers loaded on MV Chicago from Jebel Ali for discharge at Mundra, were not declared by the Shipping Agents M/s. MBK in the IGM No. 2123552 dated 05.11.2015 filed by them electronically as well as in the IGM No. 1601 dated 06.11.2015 filed manually. It is apparent from the provisions of Section 30 of the Customs Act, 1962, the Shipping Agents, who are acting on behalf of the Master of the vessel, has to file IGM subscribing to the truth of its contents, in the format as prescribed vide Import Manifest (Vessels) Regulations, 1971 (hereinafter referred to as "IMVR, 1971"), as they were in force during the material period. The provisions of the erstwhile IMVR, 1971 prescribed that the Import Manifest must contain Cargo declaration and such Cargo declaration to be filed in separate sheets for (a) Cargo to be landed (b) Unaccompanied Baggage, (c) Goods to be transshipped and (d) Same Bottom Cargo or retention Cargo. It is apparent that the two containers Nos. IPXU3062264 & TTNU3535220 were loaded from Jebel Ali for discharge at Mundra Port, and though on board the vessel, they were not declared intentionally and deliberately by the Shipping Agents M/s MBK in any of the sheets of the Import Manifest they had filed for the vessel MV Chicago under their agency, so as to save the respective importers and the shipper from the legal consequences of illegal imports being made with mis-declared contents and to prevent the said cargo from legal confiscation. It is also evident from the above that till date, the Shipping Agent M/s. MBK has not approached the Mundra Customs for amending the contents of the IGM filed by them, which substantiates their involvement in conspiracy and abetment in illegal import of the two-container load of cigarettes with misdeclaration. Had the DRI not detected the consignment of cigarettes in Container No. IALU2252554 on 04.11.2015, the Shipper, Importer, Shipping Agent and all other conspirators would have been successful in clearance of their two more misdeclared consignments unchecked from Mundra port; intending to mis-use of the liberal process of examination of cargo meant for 100% EOUs. It is evident that after detection of cigarettes etc. from Container No. IALU2252554 by DRI on 04.11.2015, the shipper for the consignments of two containers No. IPXU3062264 & TTNU3535220, which were already loaded on MV Chicago and the vessel, which was already sailed from Dubai, had requested for calling back the two containers to Jebel Ali vide email

dtd.04.11.2015 from M/s. ATS, Dubai. Later on, in support of request dtd.04.11.2015 made for calling back the two containers, the shipper also provided a scanned copy of the letter dtd.05.11.2015 by email, which was addressed to M/s. ATS, Dubai, but no specific supporting documents were forwarded with such request letter dtd.05.11.2015 and no genuine reason was also advanced, except that the receivers disagreed to pay them their dues, for which they intended to get those containers returned back to Jebel Ali.

5.18. It is also evident from the aforesaid evidences that M/s. MBK, being agent of the person-in- charge of MV Chicago and also being agent of the owner of the vessel, had filed EGM in terms of Section 41 of the Customs Act, 1962, where the truth stated therein was subscribed by M/s. MBK in terms of Section 41(2) of the Customs Act, 1962. Inspite of their conscious awareness about the two container Nos. IPXU3062264 & TTNU3535220 and contents thereof, M/s. MBK intentionally did not state correct details in EGM and suppressed the facts and details of these those two containers, while filing the EGM No. 95705 on 03.11.2015. They, after sailing of MV Chicago, however finally submitted the EGM on 14.11.2015 but M/s. MBK even then did not furnish the details pertaining to the containers IPXU3062264 & TTNU3535220 being submitted by them in the EGM. These commissions and omissions on their part is in violation of Section 41(2) of the Customs Act, 1962.

5.19. The MV Chicago sailed from Mundra on 09.11.2015 along with those two container Nos. IPXU3062264 & TTNU3535220 on board, and reached at Jebel Ali, where the containers were examined by the Dubai Customs and it was confirmed by them that these two containers were fully loaded with cigarettes, as communicated by the Consulate General of India, Dubai vide their letter dtd.13.12.2015.

5.20. It is evident that two container Nos IPXU3062264 & TTNU3535220 were not declared on board of MV Chicago, when the said vessel arrived at Mundra and when she sailed from Mundra on 09.11.2015, the restowing activity was done for those two containers and the same were unloaded on wharf and later on those two containers were finally unloaded from MV Chicago at Jebel Ali/Dubai. This was done with support from the custodian M/s. MICT Pvt. Ltd.

6.0. Estimation of duty leviable on Cigarettes contained in container Nos. IPXU3062264 & TTNU3535220

6.1. Whereas, as discussed above, Consulate General of India, Dubai has informed vide letter CE/IV/1/2015 dated 13.12.2015 that said two container Nos. IPXU3062264 & TTNU3535220 were inspected by Dubai Customs and were found "full of cigarettes", but exact quantum of recovery of cigarettes and its value were not supplied by Dubai Customs. Hence the most reasonable. ascertainment of quantity of cigarettes is to treat quantity of cigarettes in each of two Container Nos. IPXU3062264 & TTNU3535220 as roughly equivalent to that calculated on the basis of volume/space ascertainably occupied by cigarette sticks/cartons in container No. IALU2252554 vis-à-vis the full volume / space in each of two Container Nos. IPXU3062264 & TTNU3535220.

On going through the import of 'Mixed Brass Scrap with impurities' by the M/s KBI during 2015, it was observed that the average scrap supplied by the same supplier and covered in eight bills of entry for 20 feet container came to 21.23 MT (net) approximately. Further, the average of three containers IALU2252554, IPXU3062264 & TTNU3535220 containing declared net weight comes to 21.30 MT which is almost of the same weight of the average of 8 such container loads(net). The standard volume of a twenty feet container in terms of Cubic Feet is 1172 Cubic Feet. In above terms, the average scrap occupancy per cubic feet in volume terms, thus comes to 55.02 (1172/21.30). It is on the record that the scrap found in the container no. IALU2252554 was 19.935 MTs. Applying this ratio, the total space occupied by 19.93 MT scrap in the said container comes to 1096.55 Cubic Feet. Thus, by leaving a space of 75.45 Cubic Feet which was used in concealment of 24,59,400 No. of Cigarettes. Hence, per cubic feet 32596.42 no. of Cigarettes sticks can be filled. In view of above calculatioris, the total space of 1172 Cubic Feet i. e. full container load for occupying the smuggled cigarettes per container comes to 3,82,03,006 no. of Cigarettes. The Container Nos. IPXU3062264 & TTNU3535220 were not made available in India for examination of cargo stuffed therein. As per the examination report of Dubai Customs pertaining to the above said two containers-Container Nos. IPXU3062264 & TTNU3535220 were found "full of cigarettes".

Since, the maximum portion of duties on cigarettes falling under CTH No. 2402 is levied with reference to the quantity i. e. number of cigarette sticks, the quality and value of cigarettes does not substantially affect the total amount of duty leviable on cigarettes. This also supports the view that duty leviable on cigarettes found in each of Container Nos. IPXU3062264 & TTNU3535220 would be roughly equivalent to that on numbers of sticks of cigarettes which will be arrived at by calculating the number of sticks in two Container Nos. IPXU3062264 & TTNU3535220 in terms of volume/space occupied by each cigarette stick/carton in container No. IALU2252554 vis-à-vis the full inner volume / inner space in each of two Container Nos. IPXU3062264 & TTNU3535220.

6.2. In immediate past, a similar 20 feet container shipped by the same shipper M/s. AMGTL, Dubai in favour of M/s. KBI, Jamnagar was found partly stuffed with cigarettes upon examination by DRI under Panchnama dated 04.11.2015 i. e. just 3 days prior to scheduled import of subject two containers at Mundra. A comparison chart is provided at Table 3 of this SCN to reach at analogy and understanding the nexus between the three containers carrying contraband cigarettes.

6.3. Whereas, duties leviable on cigarettes smuggled into India in container No. IALU2252554 have been discussed in Para 8.2 of Show Cause Notice F. No. DRI/AZU/GRU/CIGARETTES/INT-42/2015-16 dated 02.05.2016. Total duties of customs leviable on 24,59,400 cigarette sticks contained in container No. IALU2252554 was ascertained as Rs. 1,18,24,325/-, as mentioned in Annexure I to the said SCN DRI/AZU/GRU/CIGARETTES/INT-42/2015-16, dated 02.05.2016. As per calculation above mentioned in Para 6.1 above, it is clear that both the container nos. IPXU3062264 & TTNU3535220 were containing 3,82,03,006 no. of Cigarettes each. Hence, the duty calculated as per attached Annexure A to this notice comes to Rs. 19,92,23,482/- for each of the importer. Quantification details in this respect are provided vide Annexure A attached to this notice.

6.4. Each of 2X20' containers falling under CTH No. 86090000, having Nos. IPXU3062264 & TTNU3535220 and each of them having value of approximately Rs. 1,00,000/- will also be liable for levy of Customs duty of Rs. 29,441/- thereon, as described in Annexure B to this notice, which remained unpaid. Hence, in respect of both the container Nos. IPXU3062264 & TTNU3535220, having total value of Rs.

2,00,000/-, the Customs duty of Rs. 58,882/- has not been paid and is required to be demanded accordingly.

6.5. It would be pertinent to mention here that as provided by Section 12 of the Customs Act, 1962, the duties of Customs should be levied at such rates as specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on the goods imported into India. As per Section 2(23) ibid import means 'bringing into India from a place outside India'; while as per Section 2(27) ibid "India" includes the territorial waters of India'. From the narration of the facts aforesaid, it is undisputed that two containers were full of cigarettes were clandestinely brought into India per MV Chicago first at Nhava Sheva and then at Mundra during the period from 04.11.2015 to 07.11.2015, intended for home consumption and were even unloaded at Mundra (for restowing on the vessel for taking them back to Jebel Ali). Hence, the duty of customs is appropriately leviable on them and their contents.
As per Section 53 of the Customs Act, 1962, for any goods imported in a conveyance and mentioned in the arrival manifest, import manifest as for transit in the same conveyance to any place outside India, the proper officer may allow the goods and conveyance to transit without payment of duty, subject to the prescribed conditions. It is apparent from the facts aforesaid that two containers were not at all declared by the Shipping Agent M/s MBK in the Import Manifest as well as Export Manifest filed by them at Mundra, whereas it is necessary for claiming exemption from duty that such goods and containers should be mentioned in the arrival manifest, import manifest as for transit in the same conveyance. Since these essential conditions were not met, the question of any exemption from duty being allowed to them by the proper officer would be out of question and the duty on the two containers and the goods contained therein, was required to be levied and recovered from the concerned importers/owners of the goods and the containers.

The non-levy of duty on those two containers and the goods contained therein is in contravention of the provisions of Section 53 of the Customs Act, 1962 and M/s. MBK and other associates thereof had abetted the importer of the goods viz. M/s. KBI and M/s. AE from evading the levy of duty on the two containers and the goods contained therein in illegal manner, under the instructions from Shri Anil Parmar of M/s AMGTL as well as other persons of the syndicate in connivance with the intended importers of the said goods viz. M/s. KBI and M/s. AE as well as Jayesh Patel.

Similarly, Section 54 of Customs Act provides that where any goods imported into a Custom station are intended for transshipment, a bill of transshipment is required to be filed and proper officer, if the goods imported in customs station are duly mentioned in the arrival manifest or import manifest, may allow transshipment without payment of duty and subject to the conditions as prescribed. Further Section 55 of the Customs Act, 1962 specifies that where any goods are allowed to be transited under Section 53 or transshipped under Section 54, they shall on their arrival at such station be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof.

By provisions of Chapter VIII of Customs Act, 1962 the Customs law has laid down proper checks and balances to regulate the goods in transit/ trans-shipment and to ensure their proper reporting and accounting, to cause their effective monitoring and to enforce proper measures to safeguard the rightful Govt. revenue in case of failure and contravention of the said provisions and Rules and regulations made thereunder.

As per Section 28(4) of the Customs Act, 1962, where any duty has not been levied or not paid or has been short levied or short paid or erroneously refunded by reason of collusion, willful mis-statement or suppression of facts, by the importer or the agent or employee of the importer, the proper officer shall within five years from the relevant date, serve notice on the person chargeable with duty, which has not been so levied or not paid, requiring him to show cause why he should not pay the amount specified in the notice. In the instant case, the duty has not been levied due to collusion of the importers with the supplier of the goods and the Shipping Agent, who had deliberately made mis- statement and suppressed the facts regarding two containers and goods contained therein, in the IGM and EGM filed by them at Mundra and also suppressed the material facts relating to the same. Hence the duty on such containers and the goods contained therein is required to be recovered from the person chargeable with duty i. e. the importers in the instant case.

The provisions of Section 15 of the Customs Act, 1962, pertaining to the date for determination of rate of duty and tariff valuation of imported goods, is a procedural provision and subsidiary to the basic provision of Section 12 and Section 28 of the

Customs Act, 1962, whereunder the rate of duty and tariff valuation applicable to any imported goods, shall be the rate and valuation in force (a) in the case goods entered for home consumption under Section 46, on the date on which a bill of entry in respect of such goods is presented under that Section; (b) in the case of goods cleared from warehouse under Section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that Section, and (c) in the case of other goods, on the date of payment of duty. This provision does not constrain or restrict the basic provisions of Sections 12 and 28 of the Customs Act, 1962, which give authority to charge duty and to recover duties not levied or not paid or short levied and short paid. Section 15 of the Customs Act, 1962 provides provisions for determining the rate of duty and tariff valuation of goods, without vitiating the basic feature of Section 12 and 28 of the Customs Act, 1962. From the facts of the case, it is apparent that no bill of entry for home consumption either under Section 46 or under Section 68 of the Customs Act, 1962 have been filed by any of the party in respect of the two containers and the goods contained therein, hence the two containers and the goods contained therein, on which the duty was not at all been levied due to its non-mention in the Import Manifest, the same has to be recovered from the concerned party, till they make payment of duty. Thus, the relevant date in the context of Section 15 of the Customs Act, 1962 would be any date on which the payment of duty becomes due for recovery from the concerned party.

Therefore, the duty, which has not been levied on the two containers and the goods contained therein, is required to be recovered from the person concerned i. e. importer. As provided in Section 2(26) of the Customs Act, 1962, the importer, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer. In the instant case, the goods were consigned in favour of M/s KBI and M/s. AE, who were the beneficial owner, hence the duty on the containers and the goods so imported is required to be recovered from them. It would be pertinent to mention here that if the concealment made in the container No. IALU2252554 was not detected, the two containers meant for unloading at Mundra for delivery to M/s AE and M/s. KBI, would have been got cleared by the said importers into domestic tariff area without disclosing actual content of the containers, with sole motive to evade the huge amount of duty.

6.6. MV Chicago (IMO No. 9248162), which was owned by M/s. SSFL, Dubai at the material time of November, 2015 and M/s. MBK were acting as agents of the owner of the vessel at the material time, i. e. during November, 2015 and which is now renamed as MV MAERSK YANGTZE and owned by M/s. NSB NIEDERELBE SCHIFFAHRTSGES, bears approximate value of Rs. 50,00,00,000/-, looking to the size and other parameters pertaining to the said vessel, as described below:

IMO No. 9248162
GRT: 65918 tons
DWT: 68037 tons
Length Overall (LOA): 278.91 m
Container Capacity: 5752 TEU

6.7. M/s. MICT Pvt. Ltd are the custodian of terminal, which has been notified under Section 8 of the Customs Act, 1962 as landing place vide Notification No. 03/2003 dtd. 07.03.2003. MV Chicago arrived at Mundra at the said terminal notified under Section 8 of the Customs Act, 1962. Further M/s. MICT Ltd. have been approved as Custodian of the imported goods in respect of said landing place, duly approved by the Commissioner of Customs (Prev.), Jamnagar, vide Notification No. 04/2003 dtd. 07.03.2003 issued under the authority of Section 45 of the Customs Act, 1962. It is the duty of the Custodian to ensure that only those goods are landed at the approved landing place, which has been declared in the Import Manifest. Apparently, two containers were not at all mentioned in the Import Manifest filed by M/s MBK with the Mundra Customs and yet they unloaded two containers and changed their locations on the ship after loading and restowing. M/s. MICT Pvt. Ltd. did not ensure to check before permitting unloading of two containers at the landing place in their charge, that those two containers were mentioned in the Import manifest or otherwise. They were conducting activities on the basis of the IAL they were receiving from the Shipping Agent and not caring to ensure that the details mentioned in the IAL were in accordance with the IGM submitted with the Customs. What is required by the statute is to follow IGM, whereas the IAL is not seen by Customs and it is a document created for private purpose, with which no connection of Customs can be established. Evidently M/s. MICT Pvt. Ltd. They did not care to obtain required permission from the proper officer of Customs for the intended purpose of restowing of two containers. It is also evident that M/s MICT Pvt. Ltd. had manipulated the

report to be submitted by them to the Customs for the record to be maintained by them for landing, which took place in the Customs area in their charge and not mentioned restowing activity pertaining to those two container therein. It is not a case that M/s. MICT Pvt. Ltd were unaware of the fact relating to such activity, as they have charged the fees for restowing activity and usage of the wharf/landing place in their charge. Thus, even after having knowledge of the activity of unloading and loading of the two containers, by permitting usage of the landing place, in contravention of Section 32 and Section 34 of the Custorns Act, 1962, they have contravened the obligation cast upon them as custodian in terms of Section 45 (2) of the Customs Act, 1962 read with the provisions of Handling of Cargo in Customs Areas Regulations, 2009, thereby rendering themselves to penalty under Section 117 of the Customs Act, 1962 and as appears also for the action against them in terms of Regulation 12 of the Handling of Cargo in Customs Areas Regulations, 2009.

7. CONFISCATION OF CONTAINERS, GOODS AND CONVEYANCE

In the light of the facts narrated above and upon analysis of the evidences gathered during investigation, various contraventions of the various provisions of the Customs Act, 1962 as well as other allied Acts, two container Nos. IPXU3062264 & TTNU3535220 with full load of undeclared cigarettes brought / imported into India appear liable to confiscation and the Customs duty, which could not be expressly levied in Customs documents on them due to their non-declaration in the IGM, the same are to be levied and are liable to be recovered from the concerned importers; also the vessel MV Chicago appears liable to confiscation under the different provisions of the Customs Act, 1962, as discussed herein below:

7.1. Confiscation under Section 111(n) of the Customs Act, 1962: For argument sake if the version of M/s MBK is considered that the two container Nos. IPXU3062264 & TTNU3535220 were considered for retention on board prior to their filing of IGM and for that they did not mention in the Import Manifest, but in that case, the said goods may have to be considered as "Transit goods" or "Same Bottom Cargo" and the same were required to be declared in the import manifest accordingly. In the format of the IGM as prescribed vide Section 30 of the Customs Act, 1962, List of the Goods in Transit or Same Bottom Cargo is already prescribed at Regulation 3(1) (b) and S(1) (d) of the IMVR, 1971. As per the second proviso to Regulation 5 of the IMVR, 1971, at least the details relating to nature of cargo and number of packages were to be

declared in a separate sheet, but it is not a case of the Shipping Agent M/s. MBK that they had declared those two container Nos. IPXU3062264 & TTNU3535220 and contents thereof accordingly in the separate sheet they had filed while filing the IGM by them. In this regard, looking to the provisions of Section 53 of the Customs Act, 1962, transit of the goods without payment of duty may be allowed by proper officer only under two conditions viz. (1) the goods are not prohibited under Section 11 of the Customs Act, 1962 (2) goods are so mentioned in the IGM with specific mention about its destination outside India or to any other Customs station. From the facts narrated above and from the statement of Shri Sachin S. Naik of M/s. MBK, it is not at all a case of the Shipping Agent that they had mentioned the contents of those two containers as well as those two container Nos. IPXU3062264 & TTNU3535220 in the IGM filed by them for MV Chicago. The provisions of Section 12 of the Customs Act, 1962 empowers levy of Customs duty on any goods, which is imported into India. In that case, the Customs duty of Rs. 19,92,23,482/- comes for each container was, otherwise, to be levied on 3,82,03,006 no. of cigarette sticks in each container which were contained in those two container Nos. IPXU3062264 & TTNU3535220, which were imported into India on 07.11.2015 per MV Chicago at Mundra. Had M/s. MBK any intention to take out the goods imported into India in those two containers without payment of duty, they were required to comply with the provisions of Section 53 of the Customs Act, 1962. The provisions of Section 53 of the Customs Act, 1962 and Section 55 of the Customs Act, 1962 makes the following provisions:

Section 53 of the Customs Act, 1962 prescribes that "where any goods imported in a conveyance and mentioned in the import manifest as for transit in the same conveyance to any place outside India, the proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed."

Section 55 of the Customs Act, 1962 prescribes that "Where any goods are allowed to be transited under Section 53, or transhipped under Section 54(3) to any Customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of the Customs Act, 1962 and any rules and regulations shall, so far as may be, apply in relation to such goods.

In the instant case, two containers containing the goods were loaded on MV Chicago and first arrived at Nhava Sheva, from where they were transhipped to Mundra for discharge at Mundra Port. Hence in terms of Section 55 of the Customs Act, 1962, on their arrival at Mundra, they were liable to duty and should have been entered in like manner as goods entered on the first importation thereof. To bypass the duty liability cast on the containers as well as goods contained therein, these two containers and goods contained therein were avoided intentionally from declaration to be made before Mundra Customs. Later on, the containers were unloaded and reloaded without the knowledge of the Customs with sole motive to avail undue benefit of duty free clearance as provided in Section 53 of the Customs Act, 1962.

Further to the above said violations of statutory provisions, in the instant case, by not declaring those two containers in IGM, and more particularly in the list of goods meant for transit in the category of Same Bottom Cargo or Retention Cargo prescribed under Regulation 5(1) (d) IMVR, 1971, they made the said goods i. e. 3,82,03,006 no. of sticks of cigarettes contained in each of those two containers, each of which having assessable value of Rs. 2,30,17,039/-, liable to suffer the Customs duty of Rs. 19,92,23,482/- for each container on their first importation into India in terms of Section 55 and 53 of the Customs Act, 1962. It is not a case of M/s MBK that those two containers had not arrived at Mundra from foreign port per MV Chicago on 07.11.2015. Also they were unloaded for restowing activity in unauthorised manner. It is evident from the report received from Consulate at Dubai that those two containers reached at Dubai, were opened and examined by Dubai Customs and were found 'full of cigarettes'. The goods had been imported into India but had been taken back to foreign port, they were leviable to duty. They could have been permitted for transit without payment of duty, only if application was made before the proper officer of Customs after entering those containers and goods in the IGM. But for that M/s. MBK/RMIPL were required to strictly follow the process prescribed in Section 53 read with Section 55 of the Customs Act, 1962. Apparently, M/s. MBK/RMIPL had in collusion with the conspirators, deliberately avoided to declare those two containers and the contents thereof in the IGM as well as EGM, and thereby transited those two containers in contravention of the provisions set out in Chapter VIII of the Customs Act, 1962 and more particularly the provisions of Section 12, Section 53 and Section 55 of the Customs Act, 1962. In this manner they evaded the payment of Customs duty of Rs. 19,92,23,482/- payable on import of

3,82,03,006 no. of cigarette sticks valued at Rs. 2,30,17,039/- for each container (details as per Annexure A enclosed with Notice), and Customs duty of Rs.58,882/- payable on import of two container Nos. IPXU3062264 & TTNU3535220 valued at Rs. 2,00,000/-, making the said total undeclared 7,64,06,012 no. of sticks of cigarettes having assessable value of Rs. 4,60,34,078 as well as two undeclared container No. s IPXU3062264 & TTNU3535220 valued at Rs.2,00,000/- liable for confiscation in terms of Section 111(n) of the Customs Act, 1962.

7.2. Confiscation under Section 111(f) of the Customs Act, 1962: The provisions of section 111(f) of the Customs Act, 1962 reads as "any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;" and whereas provisions of Section 30 of Customs Act, 1962 require the person-in-charge of vessel or any other specified person, to deliver, to the proper officer of customs person, an Import General Manifest, in prescribed format, prior to arrival of conveyance.

Shri Sachin S. Naik of M/s. MBK has stated in his statement that vessel MV Chicago is owned and operated by M/s. SSFL, Dubai. Therefore, M/s. SSFL, Dubai has to be considered as in charge of vessel MV Chicago, in terms of Section 30 of Customs Act, 1962 read with Notification No. 111/2003-Cus (NT), dtd.19.12.2003. In India, M/s. SMIPL were acting on behalf of M/s SSFL, Dubai and said M/s. SMIPL had appointed M/s. MBK to act on their behalf as their agent at Mundra for filing of IGM, EGM etc. in respect of the vessels owned and operated by M/s SSFL, Dubai.

Vide Notification No. 111/2003-Cus (N.T.), dated 19.12.2003, as amended by notification no. 17/2004-Cus (N.T.) dated 16.02.2004, the person who is authorised to issue delivery orders in favour of an importer, on the basis of which goods are permitted to be delivered to such importer has been specified as "any other person" for the purposes of Section 30 of the Customs Act, 1962. In respect of vessel MV Chicago, which arrived at Mundra Port on 07.11.2015, with container Nos. IPXU3062264 & TTNU3535220 with contents thereof on board, M/s MBK, who, as agents of M/s. SMIPL and sub agent of M/s SSFL, Dubai, presented IGM and attended inward and outward clearance of vessels, hence they are the "specified person" in terms of provisions of Notification No. 111/2003-Cus (N.T.), dated

19.12.2003 read with that of Section 30 of Customs Act, 1962 for the vessel MV Chicago.

Further, the container Nos. IPXU3062264 & TTNU3535220 were shipped to India by M/s. ATS, Dubai. M/s. RMIPL being agents of M/s. ATS, Dubai were responsible at the material time to issue delivery orders in respect of containers shipped by M/s ATS, Dubai. As such, M/s. RMIPL are also to be considered as any other specified person in terms of Notification No. 111/2003-Cus (N.T.), dated 19.12.2003 read with provisions of Section 30 of Customs Act, 1962, specifically in respect of Container Nos. IPXU3062264 & TTNU3535220.

It has been already revealed in the statement of Shri Bhupinder Saini (Branch Manager of M/s RMIPL) and in that of Shri Sachin S. Naik of M/s MBK that IGM No. 2123552 dated 05.11.2015 (manual IGM No. 1601 dated 06.11.2015) was filed in respect of MV Chicago by M/s. MBK. In doing so, the details forming Cargo Declaration of IGM were obtained by them from respective container handling agents viz. M/s RMIPL. Therefore, M/s. SSFL Dubai, M/s SMIPL, M/s MBK, M/s. ATS and M/s RMIPL were jointly and individually responsible to file correct IGM in proper format in respect of vessel MV Chicago and that in respect of container Nos. IPXU3062264 & TTNU3535220, but since they have failed in mentioning those two containers in the IGM filed by M/s. MBK with their correct details with or without required corrections or amendment in the IGM, each of them have jointly and individually have rendered the container Nos. IPXU3062264 & TTNU3535220, both having total value of Rs.2,00,000/- as well as containing 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078, liable to confiscation under the provisions of Section 111(f) of the Customs Act, 1962.

From the facts narrated above, it is evident that the Consulate General of India, Dubai has informed vide letter CE/IV/1/2015 dated 13.12.2015 that said two container Nos. IPXU3062264 & TTNU3535220 were inspected by Dubai Customs and were found full of cigarettes. The two container Nos. IPXU3062264 & TTNU3535220 reached Mundra on board vessel MV Chicago, on 07.11.2015. However, just three days earlier i. e, on 04.11.2015 DRI had examined container No. IALU2252554 imported in the name of M/s. KBI, Jamnagar and placed under seizure as the misdeclared cigarettes were found concealed therein. The said container No.

IALU2252554 was shipped by M/s AMGTL, Dubai in favour of M/s. KBI, Jamnagar, and in the instant case the said shipper M/s. AMGTL, Dubai had also shipped container Nos. IPXU3062264 & TTNU3535220 in favour of M/s. KBI, Jamnagar and M/s. AE, Jamnagar. It is obvious that persons involved in smuggling of cigarettes got alarmed upon detection of their smuggling of cigarettes in container No. IALU2252554 and apprehending that DRI would also examine /seize these two containers too, immediately decided to recall the said two container Nos. IPXU3062264 & TTNU3535220 back to Dubai, and seeking to avoid detection / attention of DRI did not got declared and got suppressed the fact of their presence in the relevant IGM and EGM. Since the dutiable goods, which were required to be mentioned under the IMVR, 1971 in the arrival manifest, were not at all mentioned; hence the two Containers Nos. IPXU3062264 & TTNU3535220, valued at Rs. 2,00,000/- and 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078 are liable to confiscation under Section 111(f) of the Customs Act, 1962 also.

7.3. Section 111(j) of the Customs Act, 1962: By not mentioning the said dutiable goods in the Import manifest, even after bringing the said dutiable goods and two container Nos. IPXU3062264 & TTNU3535220 within the Notified Customs area of Mundra Port and also unloading it and then taking the same out of the Customs area of Mundra Port to foreign destination, M/s. MBK have illegally, with due assistance of Custodian M/s. MICT Pvt. Ltd., removed the dutiable goods and two container Nos. IPXU3062264 & TTNU3535220 from the Customs area without any permission of the proper officer of Customs for the same in collusion with the custodian M/s. MICT Ltd.. It is not a case of M/s. MBK that they were having any such permission granted to them by the proper officer of Customs and it is also not a case of M/s. MBK that they had even applied for such permission from the proper officer of Customs. On the contrary, Shri Sachin S. Naik of M/s. MBK has admitted that they had not at all disclosed those two containers and contents thereof in the IGM filed by them for MV Chicago. It is evident that at no stage M/s. MBK or any other person came forward with request to amend/correct the IGM filed by M/s. MBK under the provisions of Section 30(3) of the Customs Act, 1962, that too when each of M/s. MBK, M/s. SSFL, Dubai, M/s. SMIPL, M/s ATS, Dubai and M/s. RMIPL were well aware about their dealing with the two container Nos. IPXU3062264 & TTNU3535220 and contents thereof and also well aware that those container Nos.

IPXU3062264 & TTNU3535220 and contents thereof were not mentioned in the IGM filed by M/s. MBK, which leads to inference that the IGM was deliberately filed with incorrect and incomplete details with intent to quietly escape from Indian law enforcement agencies. There could have been certain apprehension in their minds that if they apply for amendment in IGM they could come under scrutiny by the enforcement agencies in as much as their earlier consignment was already seized by DRI just three days back. All these commission and omission made deliberately on their part has ultimately made those two containers Nos IPXU3062264 & TTNU3535220, having total value of Rs. 2,00,000/- and 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078/- contained therein liable to confiscation under the provisions of Section 111(j) of the Customs Act, 1962.

7.4. Section 111(g) of the Customs Act, 1962:

Vide Sr. No. (17) under the provisions of Section 7(a) of the Customs Act, 1962 by a Notification No. 62/94-Cus., dtd.21.11.1994 as amended from time to time, Mundra has been appointed by the Central Government as "Customs Port" within the Gujarat State, for the purpose of unloading of imported goods and loading of export goods or any class of such goods.

Vide Notification No. 03/2003 dtd. 07.03.2003 the Commissioner of Customs (Prev.), Jamnagar, under the provisions of Section 8 of the Customs Act, 1962 specified the limit of Customs area and approved proper place in Mundra Port for the unloading of imported goods and loading of goods or for any class of such goods.

Vide Notification No. 04/2003 dtd. 07.03.200, issued under Section 45(1) of the Customs Act, 1962, the Commissioner of Customs (Prev.), Jamnagar, had further approved M/s. MICT Ltd. to act as custodian for the imported goods to be unloaded at the aforesaid Customs area notified vide Notification No. 03/2003 dtd. 07.03.2003 under Section 8 of the Customs Act, 1962.

In terms of Section 45(2) (a) of the Customs Act, 1962, the Custodian approved as such under Section 45 (1) of the Customs Act, 1962, having custody of any imported goods in a Customs area, whether under the provisions of Section 45(1) of the Customs Act, 1962 or under any law for the time being in force, should keep record of such goods unloaded at the approved Customs area and should also send a copy thereof to the proper officer of Customs.

In terms of Section 45(2) (b) of the Customs Act, 1962, the Custodian approved as such under Section 45 (1) of the Customs Act, 1962, having custody of any imported goods in a Customs area, whether under the provisions of Section 45(1) of the Customs Act, 1962 or under any law for the time being in force, should not permit such goods to be removed from the Customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed.

From the aforesaid facts narrated herein above, it is apparent that two containers Nos. IPXU3062264 & TTNU3535220, having declared goods as "Mix Metal Brass Scrap with other impurities" but actually containing cigarettes therein, brought from Jabel Ali, Dubai per MV Chicago arrived at Mundra Port on 07.11.2015 and these two containers as well as contents thereof were not at all declared by the Shipping Agent M/s. MBK in the IGM filed by them at Mundra Port. Even then the person-in-charge of the vessel MV Chicago had unloaded those two containers at the Customs area, for which M/s. MICT Pvt. Ltd. were approved as Custodian, in contravention of the provisions of Section 32 of the Customs Act, 1962, that too without any supervision of the Customs officer in contravention of the provisions of Section 34 of the Customs Act, 1962. After unloading of those two containers at the approved Customs area, those two containers were loaded on MV Chicago without supervision of the Customs officer in contravention of Section 34 of the Customs Act, 1962. After loading of two containers, vessel MV Chicago carried with her those two containers and thereby removed from the approved Customs area those two containers and their contents, which were imported into India. Apparently, no written permission was obtained either by the Shipping Agent or by the Custodian from the proper officer of Customs permitting such removal of the goods from the Customs area or permitting restowing activity to deal with such undeclared containers and their contents, which were imported into India per MV Chicago.

Thus, two containers Nos. IPXU3062264 & TTNU3535220 with their contents, which were unloaded at the Customs area in contravention of Section 32 of the Customs Act, 1962 and which were not entered by the Custodian M/s MICT Pvt. Ltd. into the record kept by them under Section 45(2) of the Customs Act, 1962, are liable for confiscation under Section 111(g) of the Customs Act, 1962.

7.5. Section 111(h) of the Customs Act, 1962

It is apparent from the facts that the two container Nos IPXU3062264 & TTNU3535220 with their contents, which were imported into India without declaring the same in the IGM filed for MV Chicago at Mundra Port, were unloaded at the Customs area without any supervision of the Customs Officer in terms of Section 34 of the Customs Act, 1962 and after unloading thereof they were re-loaded/restowed in the same vessel MV Chicago without any supervision of the Customs Officer.

In terms of Section 34 of the Customs Act, 1962, it is mandatory for the person in charge of the conveyance to ensure that the unloading of imported containers with their contents, take place under the supervision of the Customs officer, but those two containers and their contents were not at all declared in the Import Manifest and they were unloaded without informing the Customs officer and thereby unloaded without supervision of the Customs Officer. Further no general or special permission from the competent authority allowing them to unload those two containers with goods therein at approved Customs area of Mundra Port was obtained by them.

Thus, the unloading activity carried out by the person in charge of the conveyance MV Chicago, so far it pertains to unloading of two containers with the goods therein, was in specific contravention of the mandatory procedure prescribed in Section 34 of the Customs Act, 1962 and therefore the unloading of those two container Nos IPXU3062264 & TTNU3535220 with their contents from MV Chicago, in absence of supervision of the Customs officer, being in contravention of the provisions of Section 34 of the Customs Act, 1962, and thereby the person in charge of MV Chicago and others associated with the said activity appears to have rendered the aforesaid two container Nos IPXU3062264 & TTNU3535220 with the goods therein as liable for confiscation in terms of Section 111(h) of the Customs Act, 1962.

7.6. Section 111(i) of the Customs Act, 1962

It is apparent from the facts narrated hereinabove, that the Bills of Lading pertaining to two container Nos IPXU3062264 & TTNU3535220 were declaring contents of "Mix Metal Brass Scarp with other impurities", and these two containers and their contents were not at all declared in the Import Manifest filed for MV Chicago at Mundra. These two containers were after unloading at Mundra Port, reloaded on MV Chicago and removed from the approved Customs area of Mundra Port without permission from the Customs officer. From the report received from the Consulate General of India vide No. CE/IV/X/1/2015 dtd. 13.12.2015, it is apparent that those

two containers were actually having concealment of cigarettes, in the like manner as earlier consignment of cigarettes smuggled into India in Container No. IALU2252554, rather those two containers were full of cigarettes, as per the report dtd. 13.12.2015. Thus, the two subject containers while unloaded at Mundra Port and removed from there, were having concealment of cigarettes inside, instead of declared goods as "Mix Metal Brass Scrap with other impurities". The concealment of dutiable goods of cigarettes in two container Nos IPXU3062264 & TTNU3535220 with the goods therein, appears to make them liable for confiscation in terms of Section 111(i) of the Customs Act, 1962.

7.7. Section 111(o) of the Customs Act, 1962

As provided vide Section 53 of the Customs Act, 1962, where any goods imported in a conveyance and mentioned in the Import Manifest, as for transit in the same conveyance to any place outside India, then and only then the proper officer of Customs may allow such goods and the conveyance to transit such goods without payment of duty, subject to such conditions, as may be prescribed. Thus, the goods imported into India for transit outside India may be permitted exemption from duty, only if such goods are mentioned in the Import Manifest as meant for transit outside India. It is prime condition to avail the exemption in respect of goods meant for transit. In the instant case, on entering in India, the two containers Nos IPXU3062264 & TTNU3535220 with the goods therein were meant for unloading at Mundra Port, but when the vessel MV Chicago arrived at Mundra Port, those two containers and their contents were neither declared in the Manifest as against the scheduled and intended import no these were cleared at Mundra Port for subsequent clearance for consumption in India nor they were declared in the list of Same Bottom Cargo, which was to be taken out of India in the same vessel. Thus, without following such essential condition of declaring the containers and their contents in the Import Manifest, they tried to escape from the provisions to be fulfilled otherwise by the person-in charge of the conveyance. It is apparent that since the arrival of the vessel at Mundra in November, 2015, the Shipping Agent M/s. MBK has not filed any application for allowing amendment in the IGM as well as EGM for allowing them to enter those two containers and their contents in the IGM as well as EGM in terms of 30(3) and Section 41(3) of the Customs Act, 1962 respectively or under Section 149 of the Customs Act, 1962. Thus, it is apparent that the Master of the vessel represented by M/s. MBK had acted deliberately by non-disclosure of two containers

and their contents, to avail undue advantage from escaping from duty in respect of those two containers and their contents, without following mandatory condition of disclosure thereof in the IGM and without getting non-observance of said condition duly enforceable by the proper officer of Customs, rendered the said two container Nos IPXU3062264 & TTNU3535220 and contents thereof as liable for confiscation in terms of Section 111(o) the above discussed provisions of Customs Act, 1962.

7.8. Section 115(2) of the Customs Act, 1962: Further to the above, since the vessel MV Chicago (IMO No.9248162), which was then owned by M/s. SSFL, Dubai at the material time and M/s. MBK were acting as agents of the owner of the vessel at the material time, i. e. during November, 2015 and which is now renamed as MV MAERSK YANGTZE and presently owned by M/s. NSB NIEDERELBE SCHIFFAHRTSGES, having approximate value of Rs. 50,00,00,000/-, has been used as a means of conveyance in the illegal transit of the cigarettes with those two container Nos IPXU3062264 & TTNU3535220, without mention thereof in the IGM and EGM filed at Mundra. The said vessel was knowingly used by the erstwhile vessel owner M/s SSFL Dubai and their agent M/s MBK as well as the whole syndicate of smugglers in carriage of the goods in the two containers IPXU3062264 & TTNU3535220, which are liable to confiscation under Section 111 of the Customs Act, 1962 as discussed herein above. They deliberately did not disclose and declare the correct details in the IGM filed by them at Mundra Customs as against their statutory obligation under Section 30 of the Customs Act, 1962, though they charged re-stow charges and other charges against those two containers from their clients, and got removed these two container Nos. IPXU3062264 & TTNU3535220 out of the Customs area of Mundra Customs(and back to Jebel Ali) without proper permission from the Customs officer and not mentioning in the EGM filed. Thus, they indulged in illegal transit of container Nos IPXU3062264 & TTNU3535220 in contravention of Section 53 of the Customs Act, 1962, read with Section 55 of the Customs Act, 1962, by which they had rendered the said container Nos IPXU3062264 & TTNU3535220 having total value of Rs.2,00,000/- containing 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078 liable to confiscation under Section 111 (f), (g), (h), (i), (j), (n) & (o) of the Customs Act, 1962. Further, the said MV Chicago (Now MV Maersk Yangtze), which was used as a means of carrier and conveyance for transportation of the offending goods is also liable to confiscation in terms of Section 115(2) of the Customs Act, 1962.

It is evident that M/s. MBK, M/s. SSF, Dubai, M/s. SMIPL, M./s. ATS, Dubai and M/s. RMIPL, who were acting as agent of the Person-in-charge as well as owner of the vessel at the material time in terms of Section 30 of the Customs Act, 1962 read with Notification No. 111/2003-Cus (N.T.), dated 19.12.2003, had conscious knowledge about the carriage and illegal transit of two containers as well as the 7,64,06,012 sticks of cigarettes contained in those two container Nos. IPXU3062264 & TTNU3535220 (or at least about the carriage and illegal/unauthorised transit of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', otherwise, contained in those two container Nos. IPXU3062264 & TTNU3535220), but by concealing presence of the same in the IGM, they have acted in contravention of the provisions of Section 30(2), Section 53 and Section 55 of the Customs Act, 1962, for which they had no satisfactory explanation to submit at any stage that they had no such knowledge about those goods and two container Nos. IPXU3062264 & TTNU3535220. Being professionally active in the field, all of them were well aware that instance of non-declaring the goods i. e. 7,64,06,012 sticks of cigarettes as well as two container Nos. IPXU3062264 & TTNU3535220 in the IGM, may render the said goods and two containers liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. From the facts it is evident that M/s. MBK had in connivance with the smuggling syndicate, intentionally avoided to mention two container Nos IPXU3062264 & TTNU3535220 and 7,64,06,012 sticks of cigarettes as contents thereof in the IGM and also in the EGM filed at Mundra. For this, the said vessel MV Chicago (IMO No. 9248162), which was owned by M/s. SSFL, Dubai at the material time and M/s. MBK were acting as agents of the owner of the vessel at the material time, i. e. during November, 2015 (and which is now renamed as MV Maersk Yangtze and owned by M/s. NSB Niederelbe Schiffahrtsges at present, having approximate value of Rs. 50,00,00,000/-), is liable to confiscation in terms of Section 115(2) of the Customs Act, 1962.

7.9 Confiscation of sale proceed of smuggled goods.

It is evident that the smuggled cigarettes were being sold into Indian market illegally by the gang of Shri Jayesh Patel with assistance from S/Shri Pravin Chovatiya, Chandrakant Sanghani, Mayur Sabhaya, Jaman Moliya, Shoyaib and such other persons and after generating illegal money, the same were arranged to be sent overseas by Shri Jayesh Patel for depositing in the NRI account of his counterpart in the conspiracy including Shri Anil Parmar, Shri Sanjay Shastri and such other

persons. From the NRI account the illegally earned money was being sent back to India by transfer entries in favour of various persons engaged by Shri Jayesh Patel. The money so received is again being used in making various illegal activities and thereby the organized racket of illegal activities including smuggling was being run by Shri Jayesh Patel. In his statement Shri Anil Parmar has categorically stated that the huge transactions of money made in his NRI bank account with Axis Bank was totally managed by Shri Jayesh Patel and using his signed cheque book, online username and password, Shri Jayesh Patel was making such transactions, with which Shri Anil Parmar has denied his otherwise relation with same. It is evident that Shri Anil Parmar was being instrumental in the racket of smuggling of cigarettes run by Shri Jayesh Patel and he was fully aware about the same. Similarly, it has been stated by Shri Jaman Moliya that amount of Rs. 45 lakhs approx. lying as balance in his bank account with Bank of Baroda has been attached by the ED authorities.

The amount of Rs.5,15,235/-, lying in the NRI bank account No. 916010010171472 of Shri Anil Parmar with Axis Bank, Main Branch, Jamnagar as on 30.09.2020 is therefore, liable for confiscation in terms of Section 121 of the Customs Act, 1962 being the sale proceed of smuggled goods.

8. Role and penal liability of each of the accomplice/conspirators, Confiscation and Penalty proposal

8.1 M/s. MBK

It is evident from the facts narrated herein above, M/s. MBK were acting as agent for MV Chicago which arrived at Mundra on 07.11.2015 and it was their duty to deliver the IGM in terms of Section 30 of the Customs Act, 1962 before the proper officer of Customs at Mundra while ensuring that the contents of said IGM were in prescribed format and that the same were true, correct and complete. In the instant case, by way of not declaring two containers Nos. IPXU3062264 & TTNU3535220, which were originally loaded on MV Chicago on 28.10.2015 and 27.10.2015 respectively from Jebel Ali for discharge at Mundra on account of M/s. KBI, Jamnagar and M/s AE, Jamnagar under Bills of Lading No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 respectively, which were containing 7,64,06,012 sticks of cigarettes in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', in the IGM as well as EGM, unloading the same at Mundra

without any knowledge, permission or supervision of the Mundra Customs and reloading the same on the same vessel and also by removing those goods and two 1X20' containers out of Customs area of Mundra Port, without obtaining permission from the proper officer of Customs by M/s. MBK and M/s. MICT Pvt. Ltd. and without making payment of duty, M/s. MBK as well as M/s SSF, Dubai, M/s SMIPL, M/s. ATS, Dubai, M/s RMIPL, have illegally transited the goods and two containers, rendering the said goods and two containers liable for confiscation under Section 111 (f), (g), (h), (i), (j), (n) & (o) of the Customs Act, 1962. It is apparent from the facts narrated herein above that none of them have applied for supplementing, correcting or amending the IGM or the EGM, though they were well aware about the strategy adopted for illegal transit of the said goods and two containers with a view to escape detection of the investigating agency. It is also evident from the facts narrated above and from the communication made by M/s MBK with other parties concerned that for doing so, in the name of re-stow charges etc. they had also collected their remuneration from the shipper of the goods. Apparently, they intended not to disclose those containers before Customs and they did not make any payment in this respect to Customs or the port authorities. Hence, from such deliberate act it is evident that M/s. MBK and other specified persons have also abetted in evading the Customs duty of Rs. 39,84,46,964/- payable on 7,64,06,012 sticks of cigarettes contained in two container Nos. IPXU3062264 & TTNU3535220, while removing the said goods and two containers out of the Customs area of Mundra Port and thereby indulged in illegal transit of the said goods and two containers, which made the vessel MV Chicago (Now MV Maersk Yangtze) valued at Rs. 50,00,00,000/- liable for confiscation under Section 115(2) of the Customs Act, 1962. By indulging into such commission and omission, M/s. MBK have rendered themselves liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962 and by way of knowingly and intentionally filing IGM and EGM for MV Chicago, which were false or incorrect or incomplete by way of non-declaration of two container Nos IPXU3062264 & TTNU3535220 valued at Rs. 2,00,000/- and containing 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078, in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', M/s. MBK have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962 also.

Being agent of the person-in-charge of MV Chicago, M/s. MBK were liable to account for the goods, which were brought at Mundra for discharge there. It is evident from

the facts that 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078, in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', which were contained in two containers Nos IPXU3062264 & TTNU3535220, would have been levied with the duty of Rs. 39,84,46,964/- in the case of Cigarette. By way of loading those two containers covered by Bills of Lading No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015, favouring M/s KBI, Jamnagar and M/s. AE, Jamnagar respectively and by way of not unloading the same at Mundra and not providing proper accounting of the same to the satisfaction of the proper officer of Customs, the person-in-charge of the vessel, represented by M/s. MBK, appear to have rendered themselves liable to penalty under Section 116 of the Customs Act, 1962 if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs.

It is also evident that M/s. MBK had filed incorrect and incomplete EGM for the vessel MV Chicago, by way of not declaring transit/Same Bottom Cargo on board of MV Chicago, which sailed form Mundra on 09.11.2015, against their obligation under Section 41(2) of the Customs Act, 1962 to file EGM with true, correct and complete details of all cargo carried by the vessel. Since the contravention of the provisions of Section 41(2) of the Customs Act, 1962 are not specified elsewhere in any of the provisions of the Customs Act, 1962, the provisions of Section 117 will be attracted, rendering M/s. MBK liable for penalty under Section 117 of the Customs Act, 1962 separately for each of the lines of EGM for two containers No. IPXU3062264 & TTNU3535220 and the goods contained therein.

8.2. M/s. SSF, Dubai

It is evident from the facts narrated herein above, M/s SSF, Dubai, were the owner and handler of MV Chicago, which arrived at Mundra on 07.11.2015. It is their duty to ensure that the IGM for MV Chicago is delivered in terms of Section 30 of the Customs Act, 1962 before the proper officer of Customs at Mundra while ensuring that the contents of said IGM were in prescribed format and that the same are true, correct and complete. In this regard, M/s. SSF, Dubai appointed M/s SMIPL to act on their behalf; so far, the vessels owned and operated by M/s SSF, Dubai are operated in India. M/s SMIPL made agreement with M/s. MBK to comply with such legal obligation on their behalf, so far, the vessels owned and operated by M/s SSF, Dubai.

M/s. SSF, Dubai being well aware about two containers loaded on MV Chicago vide Bills of Lading No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 and they had provided such details to M/s MBK, for which M/s. MBK had issued arrival notices to M/s RMIPL and others also on 02.11.2015. But later on upon initiation of investigation by DRI in respect of the container No. IALU2252554 arrived at Mundra, the shipper M/s AMGTL got alerted and they requested through M/s ATS, Dubai for calling back both the container Nos. IPXU3062264 & TTNU3535220 on 04.11.2015. Even if those containers were to be considered as Retention on board of MV Chicago, they were required to be declared in the IGM and EGM accordingly, but it appears that under the influence of the shipper and the entire syndicate, those two container Nos. IPXU3062264 & TTNU3535220 which were brought in India per MV Chicago were not at all declared in the IGM and EGM, either in the list of the cargo to be landed or in the cargo under transit/Retention on Board/Same Bottom Cargo, though the re-stow charges for those two containers were collected by them from the shipper through M/s. MBK. Apparently, they intended not to disclose those containers before Customs and they did not make any payment in this respect to Customs or the port authorities. In terms of Notification No. 35-Cus dtd. 17.04.1971 issued under Section 30 of the Customs Act, 1962, they were also to be treated as specified person for ensuring filing of correct IGM, and apparently, they have failed in fulfilment of their such legal obligation.

In the instant case, by way of not declaring two containers Nos. IPXU3062264 & TTNU3535220, which were originally loaded on MV Chicago on 27.10.2015 & 28.10.2015 respectively from Jebel Ali for discharge at Mundra on account of M/s. KBI, Jamnagar and M/s AE, Jamnagar under Bills of Lading No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 respectively, which were containing 7,64,06,012 sticks of cigarettes in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', in the IGM as well as EGM, and also by removing those goods and two 1X20' containers out of Customs area of Mundra Port, without obtaining permission from the proper officer of Customs by M/s MBK under the instructions from and on behalf of M/s. SSF, Dubai and without making payment of duty or availing exemption from such payment of duty, M/s. MBK as well as M/s SSF, Dubai, M/s. SMIPL, M/s ATS, Dubai, M/s. RMIPL, have illegally transited the goods and two containers, rendering the said

goods and two containers liable for confiscation under Section 111 (f), (g), (h), (i), (j), (n) & (o) of the Customs Act, 1962. It is apparent from the facts narrated herein above that none of them have applied at any of the later date for supplementing, correcting or amending the IGM or the EGM, as they were well aware about the strategy adopted by them in collusion with each other for illegal transit of the said goods and two containers with a view to take them away from the clutches of the investigating agency. They have also abetted in evading the Customs duty of Rs. 39,84,46,964/- payable on 7,64,06,012 sticks of cigarettes contained in two container Nos. IPXU3062264 & TTNU3535220, while removing the said goods and two containers out of the Customs area of Mundra Port and thereby indulged into illegal transit of the said goods and two containers, which made the vessel MV Chicago (Now MV Maersk Yangtze) valued at Rs.50,00,00,000/- owned and operated at the material time by M/s SSF, Dubai, liable for confiscation under Section 115(2) of the Customs Act, 1962. By indulging into such commission and omission, M/s. SSF, Dubai have rendered themselves liable to penalty under Section 112(a), 112(b) of the Customs Act, 1962 and by way of knowingly and intentionally cause to file IGM and EGM for MV Chicago through M/s MBK, which were false, incorrect or incomplete by way of non-declaration two container Nos. IPXU3062264 & TTNU3535220 valued at Rs. 2,00,000/- and contents thereof i. e. 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078, in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', M/s. SSF, Dubai have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962 also.

Being person-in-charge of MV Chicago, M/s SSF, Dubai were liable to account for the goods, which were brought at Mundra for discharge there. It is evident from the facts that 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078, in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', which were contained in two containers Nos. IPXU3062264 & TTNU3535220, would have been levied with the duty of Rs. 39,84,46,964/- in the case of Cigarette By way of loading those two containers covered by Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015, favouring M/s. KBI, Jamnagar and M/s AE, Jamnagar respectively and by way of not unloading the same at Mundra and not providing proper accounting of the same to the satisfaction of the proper officer of Customs, the person-in-charge of the vessel i. e. M/s SSF, Dubai, represented by M/s. MBK, appear to have rendered themselves

liable to penalty under Section 116 of the Customs Act, 1962 if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs. The Vessel MV Chicago is presently owned by M/s. NSB Niederelbe Schiffahrtsgesellschaft mbH & Co KG (NSB Group), Harburger Strasse 47-51, 21614 Buxtehude, Germany, The present owner of MV Chicago (Now MV Maersk Yangtze). M/s. NSB Niederelbe Schiffahrtsgesellschaft mbH & Co KG are also liable for penalty under Section 117 of the Customs Act, 1962 as they have not co-operated with the investigation.

8.3. M/s. SMIPL

It is evident from the facts narrated herein above, M/s. SSF, Dubai, were the owner and handler of MV Chicago, which arrived at Mundra on 07.11.2015. It is their duty to ensure that the IGM for MV Chicago is delivered in terms of Section 30 of the Customs Act, 1962 before the proper officer of Customs at Mundra while ensuring that the contents of said IGM were in prescribed format and that the same are true, correct and complete. In this regard, M/s. SSF, Dubai appointed M/s. SMIPL to act on their behalf; so far, the vessels owned and operated by M/s. SSF, Dubai are operated in India. M/s. SMIPL made agreement with M/s MBK to comply with such legal obligation on their behalf.

M/s. SSF, Dubai as well as M/s. SMIPL, being well aware about two containers loaded on MV Chicago vide Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 and they had provided such details to M/s. MBK, for which M/s. MBK had issued arrival notices to M/s RMIPL and others also on 02.11.2015. But later on, upon initiation of investigation by DRI in respect of the container No. IALU2252554 arrived at Mundra, the shipper M/s. AMGTL got alerted and they requested through M/s ATS, Dubai for calling back both the container Nos. IPXU3062264 & TTNU3535220 on 04.11.2015. Even if those containers were to be considered as converted as Retention on board of MV Chicago, they were required to be declared in the IGM and EGM accordingly, but it appears that under the influence of the shipper and the entire syndicate, those two container Nos. IPXU3062264 & TTNU3535220 which were brought in India per MV Chicago were not at all declared in the IGM and EGM, either in the list of the cargo to be landed or in the cargo under transit/Retention on Board/Same Bottom Cargo, though the re-stow charges for those two containers were collected by M/s. SSF, Dubai and M/s. SMIPL from the shipper through M/s. MBK. Apparently, they intended not to disclose those

containers before Customs and they did not make any payment in this respect to Customs or the port authorities. In terms of Notification No. 35-Cus dtd. 17.04.1971 issued under Section 30 of the Customs Act, 1962, they were also to be treated as specified person for ensuring filing of correct IGM, and apparently, they have failed in fulfilment of their such legal obligation.

In the instant case, M/s. SMIPL were the agent of the vessel at Nhava Sheva, where they had declared those two containers as meant for discharge at Mundra, but at Mundra by way of not declaring two containers Nos. IPXU3062264 & TTNU3535220, which were originally loaded on MV Chicago on 27.10.2015 & 28.10.2015 respectively from Jebel Ali for discharge at Mundra on account of M/s. KBI, Jamnagar and M/s. AE, Jamnagar under Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 respectively, which were containing 7,64,06,012 sticks of cigarettes in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', in the IGM as well as EGM filed by M/s. MBK, the sub-agent appointed by them at Mundra, and also by removing those goods and two 1x20' containers out of Customs area of Mundra Port, without obtaining permission from the proper officer of Customs by M/s. MBK under the instructions from and on behalf of M/s. SSF, Dubai and M/s. SMIPL and without making payment of duty or availing exemption from such payment of duty, M/s. MBK as well as M/s. SSF, Dubai, M/s. SMIPL, M/s ATS, Dubai, M/s. RMIPL, have illegally transited the goods and two containers, rendering the said goods and two containers liable for confiscation under Section 111 (f), (g), (h), (i), (j), (n) & (o) of the Customs Act, 1962.

It is apparent from the facts narrated herein above that none of them have applied at any of the later date for supplementing, correcting or amending the IGM or the EGM, as they were well aware about the strategy adopted by them in collusion with each other for illegal transit of the said goods and two containers with a view to take them away from the clutches of the investigating agency. They have also abetted in evading the Customs duty of Rs. 39,84,46,964/- payable on 7,64,06,012 sticks of cigarettes contained in two container Nos. IPXU3062264 & TTNU3535220, while removing the said goods and two containers out of the Customs area of Mundra Port and thereby indulged into illegal transit of the said goods and two containers, which made the vessel MV Chicago (Now MV Maersk Yangtze) valued at Rs.50,00,00,000/-

, owned and operated at the material time by M/s. SSF, Dubai, represented by M/s SMIPL, liable for confiscation under Section 115(2) of the Customs Act, 1962.

By indulging into such commission and omission, M/s. SMIPL have also rendered themselves liable to penalty under Section 112(a), 112(b) of the Customs Act, 1962 and by way of knowingly and intentionally cause to file IGM and EGM for MV Chicago through M/s. MBK, which were false or incorrect by way of non-declaration two container Nos. IPXU3062264 & TTNU3535220 valued at Rs. 2,00,000/- and goods containing therein 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078, in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', M/s SMIPL, Dubai have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962 also.

Being person-in-charge of MV Chicago, M/s. SSF, Dubai, represented by M/s. SMIPL were liable to account for the goods, which were brought at Nhava Sheva for discharge at Mundra. It is evident from the facts that 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078, in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', which were contained in two containers Nos. IPXU3062264 & TTNU3535220, would have been levied with the duty of Rs. 39,84,46,964/- in the case of Cigarette. By way of loading those two containers covered by Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 favouring M/s. KBI, Jamnagar and M/s AE, Jamnagar respectively and by way of not unloading the same at Mundra and not providing proper accounting of the same to the satisfaction of the proper officer of Customs, the person-in-charge of the vessel i. e. M/s. SSF, Dubai, represented by M/s SMIPL and M/s. MBK, have rendered themselves liable to penalty under Section 116 of the Customs Act, 1962 if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs.

8.4. Shri Sachin S. Naik

Shri Sachin S. Naik, Regional Manager of M/s. MBK is responsible to ensure the proper conduct of the company which he represents. Being authorised signatory of M/s MBK, he was required to ensure that the IGM, EGM etc. which were being filed by M/s. MBK in their official action before Customs, were in conformity with the relevant legal provisions. However, it is evident from the facts narrated herein above

and also as per his own admission, M/s. MBK did not declare two container Nos. IPXU3062264 & TTNU3535220, which were on board of MV Chicago arrived at Mundra, in the relevant IGM and EGM for MV Chicago filed at Mundra and that those two containers were removed from the Customs area of Mundra Port without declaring the same and without obtaining permission from the proper officer of Customs. On being asked, he had no plausible reasons for such failure on the part of the shipping agent company M/s. MBK. However, it appears that he was fully aware of the fact that those two containers were loaded on MV Chicago vide Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015, for which M/s. MBK had issued arrival notices to M/s. RMIPL and others also on 02.11.2015. But later on, upon initiation of investigation by DRI in respect of the container No. IALU2252554 arrived at Mundra, the shipper M/s AMGTL got alerted and they requested M/s. MBK through M/s. ATS, Dubai for calling back both the container Nos. IPXU3062264 & TTNU3535220 on 04.11.2015. Even if those containers were to be considered as converted as Retention on board of MV Chicago, they were required to be declared in the IGM and EGM accordingly, but it appears that under the influence of the shipper and the entire syndicate, those two container Nos. IPXU3062264 & TTNU3535220 which were brought in India per MV Chicago were not at all declared in the IGM and EGM, either in the list of the cargo to be landed or in the cargo under transit/Retention on Board/Same Bottom Cargo, though the re-stow charges for those two containers were collected by M/s. SSF, Dubai and M/s. SMIPL from the shipper through M/s. MBK. Apparently, they intended not to disclose those containers before Customs and they did not make any payment in this respect to Customs or the port authorities.

In the instant case, by way of not declaring two containers Nos. IPXU3062264 & TTNU3535220, which were originally loaded on MV Chicago on 27.10.2015 & 28.10.2015 respectively from Jebel Ali for discharge at Mundra on account of M/s KBI, Jamnagar and M/s. AE, Jamnagar under Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 respectively, which were containing 7,64,06,012 sticks of cigarettes in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', in the IGM as well as EGM, and also by removing those goods and two 1x20 containers out of Customs area of Mundra Port, without obtaining permission from the proper officer of Customs by M/s MBK under the instructions from and on behalf of M/s. SSF, Dubai and M/s SMIPL and without

making payment of duty or availing exemption from such payment of duty, M/s. MBK as well as M/s. SSF, Dubai, M/s. SMIPL, M/s. ATS, Dubai, M/s. RMIPL, have illegally transited the goods and two containers, rendering the said goods and two containers liable for confiscation under Section 111 (f), (g), (h), (i), (j), (n) & (o) of the Customs Act, 1962. Shri Sachin Naik, representing M/s. MBK had played active role in this respect.

Since Shri Sachin Naik, who was acting as Regional Manager of M/s MBK and accordingly in charge of M/s. MBK and responsible to M/s. MBK for the conduct of the business of M/s. MBK, is to be considered as guilty of the offence along with M/s. MBK. It is not forthcoming anywhere that Shri Sachin Naik was totally unaware of what is going on in respect of two containers, hence he is liable to be proceeded against in terms of Section 140 of the Customs Act, 1962 along with the process against M/s. MBK under Section 112(a)&(b), 115(2), 114AA, 111 (f), (g), (h), (i), (j), (n) & (o) (of the Customs Act, 1962 and accordingly to be considered as liable for penalty in terms of Section 112(a)&(b) and 114AA of the Customs Act, 1962. He is also liable for penalty under Section 117 of the Customs Act, 1962 as he has not co-operated with the investigation.

8.5. Shri Mahesh Keniya

Shri Mahesh Keniya of M/s. MBK conveyed vide email dtd.06.11.2015 to M/s. MICT Pvt. Ltd. to do the ROB for two containers for Jebel Ali Port discharge and also conveyed to make related charges on M/s MBK account. He did not ask MICT to inform / declare the same before Customs and comply with legal / procedural obligations in this regard. In the IAL and HAZ supplied with the said email dtd.06.11.2015, he had not at all mentioned those two containers even though he had asked M/s. MICT Pvt Ltd. to carry out restow activity within the vicinity of Customs area approved under Section 8 of the Customs Act, 1962.

In the instant case, by way of not declaring two containers Nos. IPXU3062264 & TTNU3535220, which were originally loaded on 27.10.2015 & 28.10.2015 respectively from Jebel Ali MV Chicago for discharge at Mundra on account of M/s. KBI, Jamnagar and M/s. AE, Jamnagar under Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 respectively, which were containing cigarettes in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', in the IGM as well as EGM, and also by arranging their removal out of

Customs area of Mundra Port, without obtaining permission from the proper officer of Customs and without making payment of duty or availing exemption from such payment of duty, Shri Mahesh Keniya had abetted the offence of illegal transit of the goods and two containers, rendering the said goods and two containers liable for confiscation under Section 111 (f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962.

Shri Mahesh Keniya, represented M/s. MBK, and it is not forthcoming anywhere that Shri Mahesh Keniya completely unaware of what was going on in respect of two containers; in fact for deliberate omission to inform / declare the same before Customs and comply with legal / procedural obligations, he is liable to be proceeded against in terms of Section 140 of the Customs Act, 1962 along with the process against M/s. MBK under Section 112(a)&(b), 115(2), 114AA, 111 (f), (g), (h), (i), (j), (n) & (o) of the Customs Act, 1962 and accordingly to be considered as liable for penalty in terms of Section 112(a)&(b) and 114AA of the Customs Act, 1962.

8.6. M/s. ATS, Dubai

M/s. ATS, Dubai are the owner and operator of the container Line, owning two container Nos. IPXU3062264 & TTNU3535220 and they had provided those two containers to M/s. AMGTL, Dubai, represented by Shri Anil Parmar, for stuffing of cargo in those two containers for export to Mundra in favour of M/s. KBI, Jamnagar and M/s. AE, Jamnagar. After stuffing of two container Nos. IPXU3062264 and TTNU3535220, with declaration from the shipper that the same were containing 23.12 MTs and 18.54 MTs 'Mix Metal Brass Scrap with Other Impurities' respectively, they received those containers on 28.10.2015 and 27.10.2015 for delivery thereof at Mundra and accordingly issued Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 respectively. Those two containers were then loaded on board MV Chicago on 27.10.2015/28.10.2015, which sailed for Mundra via Port of Oman and JNPT, Nhava Sheva in India. It was evidently meant for delivery in favour of M/s. KBI, Jamnagar and M/s. AE, Jamnagar through their (M/s. ATS, Dubai) agent M/s. RMIPL, after unloading of those two containers at Mundra.

M/s ATS, Dubai were well aware about two containers loaded on MV Chicago vide Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 and they had provided such details to M/s. MBK through M/s. SSF and SMIPL, for which M/s. MBK had issued arrival notices to M/s. RMIPL, agent of M/s ATS, Dubai in India and others on 02.11.2015. But later on, upon initiation of

investigation by DRI in respect of the container No. IALU2252554 which had arrived at Mundra, the shipper M/s AMGTL got alerted and they requested M/s. ATS, Dubai for calling back both the container Nos. IPXU3062264 & TTNU3535220 on 04.11.2015. Even if those two containers were to be considered as Retention on Board of MV Chicago, they were required to be declared in the IGM and EGM accordingly at Mundra in terms of Notfn No 111/2003-Cus. (NT) dated 19.12.2003 as amended, but it appears ears that under the influence of the shipper and the entire syndicate, those two container Nos. IPXU3062264 & TTNU3535220 which were brought in India per MV Chicago were not at all declared in the IGM and EGM, either in the list of the cargo to be landed or in the cargo under transit/Retention on Board/Same Bottom Cargo, though the re-stow charges for those two containers were charged ad collected from the shipper. Apparently, they(M/s ATS) in collusion with M/s MBK and the syndicate of smugglers concealed the presence of those two containers on board the vessel meant for discharge into domestic tariff area of India, from Customs with a view to smuggle cigarettes into India without payment of duty. In terms of Notification No. 35-Cus dtd. 17.04.1971 issued under Section 30 of the Customs Act, 1962, they were also to be treated as specified person for ensuring filing of correct IGM; apparently, they failed in fulfilment of their such legal obligation.

In the instant case, by way of not declaring two containers Nos. IPXU3062264 & TTNU3535220, owned by themselves (M/s ATS), which were originally loaded on MV Chicago on 27.10.2015 & 28.10.2015 respectively from Jebel Ali for discharge at Mundra on account of M/s. KBI, Jamnagar and M/s. AE, Jamnagar under BLs No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 respectively issued by M/s. ATS, Dubai, which were containing 7,64,06,012 sticks of cigarettes in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', in the IGM as well as EGM, and also by removing those goods and two 1X20' containers out of Customs area of Mundra Port (back to Jebel Ali Port), without obtaining permission from the proper officer of Customs through M/s. MBK under the instructions from and on behalf of M/s. SSF, Dubai and M/s. SMIPL and without making payment of duty or availing exemption from such payment of duty, M/s. MBK as well as M/s SSF, Dubai, M/s. SMIPL, M/s. ATS, Dubai, M/s RMIPL, have illegally transited the goods and two containers, rendering the said goods and two

containers liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) & (o) of the Customs Act, 1962.

By indulging in such commissions and omissions, M/s. ATS have also rendered themselves liable to penalty under Section 112(a), 112(b) of the Customs Act, 1962 and by way of knowingly and intentionally causing to file IGM and EGM for MV Chicago through M/s. MBK, which were false, incorrect or incomplete by way of non-declaration of two container Nos. IPXU3062264 & TTNU3535220 valued at Rs. 2,00,000/- and goods containing therein i.e. 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078, in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', M/s. ATS, Dubai have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962 also.

8.7. M/s. RMIPL

M/s RMIPL are agents of M/s. ATS, Dubai who are the owner and operator of the container Line, owning two container Nos. IPXU3062264 & TTNU3535220 and they had provided those two containers to M/s. AMGTL, Dubai, represented by Shri Anil Parmar, for stuffing of cargo in those two containers for export to Mundra in favour of M/s. KBI, Jamnagar and M/s. AE, Jamnagar. After stuffing of two container Nos. IPXU3062264 and TTNU3535220, with declaration from the shipper that the same were containing 23.12 MTs and 18.54 MTs 'Mix Metal Brass Scrap with Other Impurities' respectively, they received those containers on IPXU3062264 and TTNU3535220 for delivery thereof at Mundra and accordingly issued Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 respectively. Those two containers were then loaded on board of MV Chicago on 27.10.2015/28.10.2015, which sailed for Mundra via Port of Oman and JNPT, Nhava Sheva in India. It was evidently meant for delivery in favour of M/s. KBI, Jamnagar and M/s. AE, Jamnagar through their agent M/s. RMIPL, after unloading of those two containers at Mundra.

M/s RMIPL as well as M/s. ATS, Dubai were well aware about two containers loaded on MV Chicago vide Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 and they had provided such details to M/s. MBK through M/s SSF and SMIPL, for which M/s. MBK had issued arrival notices to M/s. RMIPL, agent of M/s ATS, Dubai in India and others on 02.11.2015. But later on, upon initiation of investigation by DRI in respect of the container No.

IALU2252554 which had arrived at Mundra, the shipper M/s. AMGTL got alerted and they requested M/s. ATS, Dubai for calling back both the container Nos. IPXU3062264 & TTNU3535220 on 04.11.2015. Even if those two containers were to be considered as Retention on Board of MV Chicago, they were required to be declared in the IGM and EGM accordingly at Mundra in terms of Notfn No 111/2003-Cus. (NT) dated 19.12.2003 as amended, but it appears that under the influence of the shipper and the entire syndicate, those two container Nos. IPXU3062264 & TTNU3535220 which were brought in India per MV Chicago were not at all declared in the IGM and EGM, either in the list of the cargo to be landed or in the cargo under transit/Retention on Board/Same Bottom Cargo, though the re-stow charges for those two containers were charged ad collected from the shipper. Apparently, they(M/s RMIPL and M/s ATS) in collusion with M/s MBK and the syndicate of smugglers concealed the presence of those two containers on board the vessel meant for discharge into domestic tariff area of India, from Customs with a view to smuggle cigarettes into India without payment of duty. In terms of Notification No. 35-Cus dtd. 17.04.1971 issued under Section 30 of the Customs Act, 1962, they were also to be treated as specified person for ensuring filing of correct IGM; apparently, they failed in fulfilment of their such legal obligation.

In the instant case, by way of not declaring two containers Nos. IPXU3062264 & TTNU3535220, owned by themselves (M/s ATS, whose agents in India were M/s RMIPL), which were originally loaded on MV Chicago on 27.10.2015 & 28.10.2015 respectively from Jebel Ali for discharge at Mundra on account of M/s KBI, Jamnagar and M/s. AE, Jamnagar under BLS No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 respectively issued by M/s. ATS, Dubai, which were containing 7,64,06,012 sticks of cigarettes in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', in the IGM as well as EGM, and also by removing those goods and two 1X20' containers out of Customs area of Mundra Port (back to Jebel Ali Port), without obtaining permission from the proper officer of Customs through M/s MBK under the instructions from the syndicate and without making payment of duty or availing exemption from such payment of duty, M/s MBK as well as M/s. SSF, Dubai, M/s. SMIPL, M/s. ATS, Dubai, M/s RMIPL, have illegally transited the goods and two containers, rendering the said goods and two containers liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) & (o) of the Customs Act, 1962.

By indulging in such commissions and omissions, M/s. RMIPL have also rendered themselves liable to penalty under Section 112(a), 112(b) of the Customs Act, 1962 and by way of knowingly and intentionally causing to file IGM and EGM for MV Chicago through M/s. MBK, which were false, incorrect or incomplete by way of non-declaration of two container Nos. IPXU3062264 & TTNU3535220 valued at Rs. 2,00,000/- and goods containing therein i.e. 7,64,06,012 no. of cigarette sticks having assessable value of Rs. 4,60,34,078, in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', M/s RMIPL have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962 also.

8.8. Shri Bhupinder Singh Saini

Shri Bhupinder Singh Saini, Branch Manager of M/s. RMIPL is responsible to ensure the proper conduct of the company which he represents. Being authorised signatory of M/s. RMIPL, he was required to ensure that the IGM, EGM etc. which were being filed on their behalf in their official action before Customs, were in conformity with the relevant legal provisions. However, it is evident from the facts narrated herein above and also as per his own admission, M/s MBK did not declare two container Nos. IPXU3062264 & TTNU3535220, which were on board of MV Chicago arrived at Mundra, in the relevant IGM and EGM for MV Chicago filed at Mundra and that those two containers were removed from the Customs area of Mundra Port without declaring the same and without obtaining permission from the proper officer of Customs. On being asked, Shri Bhupinder Singh Saini had no plausible reasons for such failure on the part of the Container Line company M/s. ATS, Dubai or Container Agent company M/s RMIPL. However, it appears that he was fully aware of the fact that those two containers were loaded on MV Chicago vide Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015, for which M/s. MBK had issued arrival notices to M/s. RMIPL and others also on 02.11.2015. But later on, upon initiation of investigation by DRI in respect of the container No. IALU2252554 arrived at Mundra, the shipper M/s. AMGTL got alerted and they requested M/s MBK through M/s. ATS, Dubai for calling back both the container Nos. IPXU3062264 & TTNU3535220 on 04.11.2015. Even if those two containers were to be considered as Retention on Board of MV Chicago, they were required to be declared in the IGM and EGM accordingly at Mundra in terms of Notfn No 111/2003-Cus. (NT) dated 19.12.2003 as amended, but it appears that under the influence of the shipper and the entire syndicate, those two container Nos.

IPXU3062264 & TTNU3535220 which were brought in India per MV Chicago were not at all declared in the IGM and EGM, either in the list of the cargo to be landed or in the cargo under transit/Retention on Board/Same Bottom Cargo, though the re-stow charges for those two containers were charged and collected from the shipper.

In the instant case, by way of not declaring two containers Nos. IPXU3062264 & TTNU3535220, owned by themselves (M/s ATS, whose agents in India were M/s RMIPL), which were originally loaded on MV Chicago on 27.10.2015 & 28.10.2015 respectively from Jebel Ali for discharge at Mundra on account of M/s KBI, Jamnagar and M/s. AE, Jamnagar under BLs No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 respectively issued by M/s. ATS, Dubai, which were containing 7,64,06,012 sticks of cigarettes in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', in the IGM as well as EGM, and also by removing those goods and two 1X20' containers out of Customs area of Mundra Port (back to Jebel Ali Port), without obtaining permission from the proper officer of Customs through M/s MBK under the instructions from the syndicate and without making payment of duty or availing exemption from such payment of duty, M/s MBK as well as M/s SSF, Dubai, M/s. SMIPL, M/s. ATS, Dubai, M/s. RMIPL, have illegally transited the goods and two containers, rendering the said goods and two containers liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) & (o) of the Customs Act, 1962.

Since Shri Bhupinder Singh Saini, who was acting as Branch Manager of M/s RMIPL and accordingly responsible for the conduct of their business in India. It is not forthcoming anywhere that he was completely unaware of what is going on in respect of two containers; in fact for deliberate omission to inform / declare the same before Customs and comply with legal / procedural obligations, he is liable to be proceeded against in terms of Section 140 of the Customs Act, 1962 along with the process against M/s. RMIPL under Section 112(a)&(b), 114AA, and accordingly to be considered as liable for penalty in terms of Section 112(a)&(b) and 114AA of the Customs Act, 1962.

8.9. M/s. AMGTL, Dubai

From the analysis of the evidences, it is evident that M/s. AMGTL run by Shri Anil Parmar and Shri Al Zarooni @ Al Baab, being partners thereof, had played a pivotal role in the entire scam. Shri Anil Parmar along with Shri Al Zarooni @ Al Baab made

a conspiracy under the instruction of Shri Jayesh Patel and with active assistance of Shri Sanjay Shastri and Shri Shoyaib and engaged Shri Shailesh Patel and Shri Ankit Changani to materialise their scheme of importing the consignment of Cigarettes in the guise of Brass Scarp on account of EOUs. As per the conspiracy hatched between them, Shri Shailesh Patel also got Shri Vijay Sabhaya involved in their game plan. With a view to smuggle the cigarette, Shri Jayesh Patel provided finance to Shri Anil Parmar as well as Shri Ankit Changani and accordingly, Shri Anil Parmar of M/s. AMGTL supplied a consignment of Cigarette in the guise of Brass Scrap/Metal Scrap stuffed in Container No. IALU2252554, for which Shri Anil Parmar had also made Shri Mansour Shalaby of M/s. GME ready for issue of PSIC No. 0886 dtd.18.10.2015, to certify that the goods stuffed therein was nothing but metal scrap, which had to be exported from Jebel Ali/Dubai to India, without conducting actual inspection and suppressing the real contents of said container. Shri Anil Parmar also prepared and supplied false Transboundary Movement Certificate, though he was fully aware that the Container was not containing the goods as described in the said Certificate, but it was containing huge quantity of Cigarettes also. Thereafter the container No. IALU2252554, owned by M/s. ATS, Dubai, stuffed with Cigarettes and other goods, was handed over to Container Line and then to the Shipping Line on 25.10.2015 for further transportation to Mundra. On receipt of said container, M/s. ATS, Dubai issued B/L No. JEAMUN044235 dated 25.10.2015 where the contents were declared as 22.26 MTs 'Mix Metal Brass Scrap with Other Impurities', with name of shipper as M/s AMGTL and name of the consignee as M/s KBI. According to the plan, freight for the said container was also paid by M/s. AMGTL. The documents for the same were sent by Shri Anil Parmar to M/s. KBI, who filed B/E No. 3140016 dtd.03.11.2015 at Mundra Port seeking clearance of the goods described as 22.26 MTs 'Mix Metal Brass Scrap with Other Impurities', with claim for exemption in terms of Notification No. 52/2003 dtd.22.07.2003. However, acting on the intelligence when said container was taken up by DRI for examination at Mundra on 04.11.2015, it was noticed that in place of declared goods, other undeclared goods along with Cigarettes were stuffed. The said consignment was seized by DRI and further investigation was initiated.

During further investigation, another intelligence was received that two more consignments of Cigarettes were despatched by M/s AMGTL at Mundra in container Nos. IPXU3062264 and TTNU3535220. On verifying it was noticed that those two

containers were shipped on MV Chicago, a vessel owned by M/s. SSF, Dubai, sailed from Jebel Ali/Dubai on 31.10.2015 and for the same two Bs/L No. ATSJEAMUN153178 dtd. 28.10.2015 and ATSJEAMUN153177 dtd. 27.10.2015 were issued favouring M/s KBI, Jamnagar and M/s. AE, Jamnagar. However, MV Chicago had instead of unloading those two containers at Mundra, secretly taken them back to Dubai. On further checking, it was noticed that those two containers were not declared by the Shipping Agent M/s. MBK in the IGM or EGM for MV Chicago filed by them at Mundra. On investigation, it was revealed that the said containers were unloaded at Jebel Ali/Dubai and on inspection of said containers by Dubai Customs it was found that both the containers were full of cigarettes. On inquiring with M/s. MBK, they informed that both the containers were received at Jebel Ali on account of M/s. ATS, who informed on 04.11.2015 to stop unloading the containers and to return them back. M/s MBK had accordingly arranged to return back the containers and also arranged for not disclosing both the containers at Mundra in the respective IGM No. 2123552 dated 05.11.2015 and EGM No. 95705 filed by them for all the cargo which MV Chicago had carried in terms of Section 30 and 41 of the Customs Act, 1962 read with the provisions of IMVR, 1971, to keep both the containers away from the attention of any investigating agency and Customs, upon being alerted by detection of a consignment of cigarette sent by M/s. AMGTL at Mundra on 04.11.2015 in favour of M/s. KBI, Jamnagar in the guise of declared cargo as 'Mix Metal Brass Scrap with Other Impurities'. They indulged in this modus after conspiring with all the parties involved in the ploy, to save the said consignment being seized and confiscated by the DRI and Customs and to evade payment of duty due to non levy in respect of those two containers and their contents. By not declaring the said two container Nos IPXU3062264 & TTNU3535220 in the IGM as well as EGM, M/s. MBK had arranged for illegal transit of those two containers containing approx. 7,64,06,012 sticks of cigarettes without payment of duty and in contravention of Section 53 of the Customs Act, 1962. In this manner and as discussed above, M/s AMGTL, Dubai had rendered the consignment of two container Nos. IPXU3062264 & TTNU3535220 containing 7,64,06,012 sticks of cigarettes with two containers liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962.

Even after issuance of various summons, M/s AMGTL did not join the investigation and thereby avoided to co-operate in investigation. On the contrary, Shri Anil

Parmar, partner of M/s. AMGTL filed Anticipatory bail application before the Additional Sessions Judge, Gandhidham by way of filing Misc. Criminal Application No. 256/2016 and obtained order dtd. 05.10.2016 for allowing them to get released on bond and such other conditions. They were directed to co-operate in investigation, but they never turned up. This also implies their malicious intention. They did not provide any evidence to substantiate their genuineness and bonafides in the entire process. Thus, looking to their active involvement in the criminal conspiracy to import two container Nos. IPXU3062264 & TTNU3535220 containing 7,64,06,012 Sticks of cigarettes in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities', they had rendered the said two containers and contents thereof liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962 and also made themselves liable for penalty in terms of Section 112(a)&(b) of the Customs Act, 1962 read with Section 114AA of the Customs Act, 1962. They have also not co-operated with the investigation; hence, they are liable for penalty under Section 117 of the Customs Act, 1962.

8.10. Shri Anil Parmar

From the evidences collected, it appears that being an active partner of M/s. AMGTL, Dubai and utilising his acquaintance with Jamnagar trade, Shri Anil Parmar had hatched a conspiracy under the leadership of Shri Jayesh Patel, with consent of Shri Al Zarooni @ Al Baab, another partner of M/s AMGTL and in connivance with Shri Vijay Vashrambhai, Shri Ankit Changani, Partner of M/s Amardeep Exports, Shri Shoyaib and others to illegal import of cigarettes into India by way of not declaring/mis-declaring the same and importing the same in the guise of 'Mix Metal Brass Scrap with Other Impurities' for the EOUS M/s. KBI and M/s. AE. For this, under the instructions of Shri Jayesh Patel Shri Anil Parmar had planned to import one such consignment per Container No. IALU2252554, where he had arranged with the help from Shri Sanjay Shastri for PSIC from Shri Mansour Shalaby of M/s. GME certifying that the said container was containing Mix Metal scrap as declared in the PSIC, B/L and other shipping document. Shri Anil Parmar also signed and supplied a Transboundary Movement certificate, though he was fully aware that the Container was not containing the goods as described in the said Certificate, but it was containing huge quantity of Cigarettes also. With his criminal mind, Shri Anil Parmar put his different mode of signature than the mode of signature he was used to make in bank related documents. Shri Anil Parmar had also arranged for two more

consignments covered by container Nos. IPXU3062264 & TTNU3535220 which is subject matter of this instant show cause notice, shipped on account of M/s. AMGTL and consigned in favour of M/s KBI, Jamnagar and M/s AE, Jamnagar respectively. On the basis of intelligence, when the earlier container No. IALU2252554 was taken up for examination by DRI on 04.11.2015 at Mundra, Shri Jayesh Patel became alert and he alerted Shri Anil Parmar and instructed Shri Anil Parmar to approach the container line to recall two containers on way to Mundra. M/s. AMGTL asked M/s. MBK through M/s ATS, Dubai for returning two containers loaded on MV Chicago on 04.11.2015 itself and also made arrangement in connivance with M/s. SSF, Dubai, M/s. SMIPL, M/s. MBK, M/s. ATS, Dubai and M/s. RMIPL for not declaring those two containers in IGM and EGM and to illegally transit the same without payment of duty. He succeeded in his illegal motive and both the containers were reached at Dubai and on inspection of both the containers at Dubai, it was found that both of them were fully stuffed with cigarettes. As already discussed, this commission and omission on the part of Shri Anil Parmar of M/s AMGTL, Dubai and others made those two container Nos. IPXU3062264 & TTNU3535220 as well as 7,64,06,012 sticks of cigarettes contained therein in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities' liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962 and looking to the active participation as a key person and master mind in the entire scam, Shri Anil Parmar has rendered himself liable for penalty in terms of Section 112(a) and (b) of the Customs Act, 1962 read with Section 114AA of the Customs Act, 1962.

Shri Anil Parmar has opened NRI bank account with Axis Bank, Jamnagar being instructed by Shri Jayesh Patel and he permitted Shri Jayesh Patel to utilize the said bank account by providing him blank signed cheque book, online username and password. He also made deposit of money of sale proceed of smuggling sent to him by Shri Jayesh Patel through hawala route, in his said NRI bank account from which the said money was being sent to the persons involved in the illegal conspiracy to provide it a colour of legitimate remittance received in India. The transactions made from said NRI account of Shri Anil Parmar has direct linkage with smuggling of cigarettes. Shri Anil Parmar was also made aware about all such activities by Shri Jayesh Patel. Accordingly, the amount of Rs.5,15,235/- remained in the NRI Bank account No. 916010010171472 in the name of Shri Anil Parmar with Axis Bank, Jamnagar as on 30.09.2020 is nothing but an amount of sale proceed of smuggled

goods and therefore, same is also liable for confiscation of Section 121 of Customs Act, 1962.

Even after issuance of various summons under Section 108 of the Customs Act, 1962 to Shri Anil Parmar of M/s. AMGTL opted not to join the investigation and thereby avoided to co-operate in investigation. On the contrary, Shri Anil Parmar of M/s AMGTL filed Anticipatory bail application before the Additional Sessions Judge, Gandhidham by way of filing Misc. Criminal Application No. 256/2016 and obtained order dtd. 05.10.2016 for allowing him to get released on bond and such other conditions. He was directed to co-operate in investigation, but he never turned up. However, he did not care to comply with the summons issued to him on 03.03.2016, 08.04.2016, 25.04.2016, 01.07.2016, 22.07.2016, 10.10.2016, 21.10.2016, 24.11.2016, 25.01.2017, 19.11.2018, 10.02.2020, 09.03.2020, 14.05.2020, 14.07.2020, and 02.09.2020 under Section 108 of the Customs Act, 1962. During the time, he made huge financial transactions under the instructions of Jayesh Patel, where some more persons also joined him. He had also assisted Shri Jayesh Patel in delivering the smuggled cigarettes to Shri Kishor Mevada, introducing himself as Shri Anil @ Bolone and the facts relating to the same came to the knowledge of the DRI, Mumbai, who seized the smuggled cigarettes in 2017. He was able to do all those activity against the statutory provisions, but did not join the investigation. Even when his statement was recorded at Lajpor Jail, Surat under Section 108 of the Customs Act, 1962, instead of providing complete facts, he attempted to mislead investigation by providing incorrect and incomplete details, though he had full knowledge about the entire chain of transactions, which took place with his active role. This implies his malicious intention to frustrate the investigation, for which Shri Anil Parmar has rendered himself liable for penalty in terms of Section 117 of the Customs Act, 1962 also.

8.11. Shri Al Zarooni @ Al Baab, Partner of M/s. AMGTL

From the evidences collected, it appears that being an active partner of M/s. AMGTL, Dubai, Shri Al Zarooni @ Al Baab had hatched a conspiracy under the leadership of Shri Jayesh Patel, with consent of Shri Anil Parmar, another partner of M/s. AMGTL and in connivance with Shri Vijay Vashrambhai, Shri Ankit Changani, Partner of M/s AE and Shri Shoyaib to illegal import of cigarettes into India by way of not declaring/mis-declaring the same and importing the same in the guise of 'Mix Metal Brass Scrap with Other Impurities' for the EOUs M/s. KBI and M/s AE. For this,

Shri Anil Parmar had planned with the consent of Shri Al Zarooni @ Al Baab to import one such consignment per Container No. IALU2252554, where Shri Anil Parmar had arranged for PSIC from Shri Mansour Shalaby of M/s. GME certifying that the said container was containing Mix Metal scrap as declared in the PSIC, B/L and other shipping document. Shri Anil Parmar had signed and supplied a Transboundary Movement certificate, though having full knowledge that the consignment was also containing cigarettes in substantial amount. With the consent of Shri Al Zarooni @ Al Baab, Shri Anil Parmar had also arranged for two more consignments covered by container Nos. IPXU3062264 & TTNU3535220, which is subject matter of this instant show cause notice, shipped on account of M/s. AMGTL and consigned in favour of M/s KBI, Jamnagar and M/s. AE, Jamnagar respectively. On the basis of intelligence, when the earlier said container was taken up for examination by DRI on 04.11.2015 at Mundra, on the basis of intelligence, M/s. AMGTL became alert and they asked M/s MBK through M/s. ATS, Dubai for returning two containers loaded on MV Chicago on 04.11.2015 itself and also made arrangement in connivance with M/s SSF, Dubai, M/s. SMIPL, M/s MBK, M/s. ATS, Dubai and M/s RMIPL for not declaring those two containers in IGM and EGM and to illegally transit the same without payment of duty. He succeeded in his illegal motive and both the containers reached Dubai and on inspection of both the containers at Dubai, it was found that both of them were fully stuffed with cigarettes. It is evident that Shri Al Zarooni @ Al Baab had prepared the documents for two containers, which were although signed by Shri Anil Parmar. As already discussed, this commission and omission on the part of Shri Al Zarooni @ Al Baab of M/s. AMGTL, Dubai and others made those two container Nos. IPXU3062264 & TTNU3535220 as well as 7,64,06,012 sticks of cigarettes contained therein in the guise of 41.660 MTs of 'Mix Metal Brass Scrap with other impurities' liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962 and looking to the active participation as a key person and master mind in the entire scam, Shri Al Zarooni @ Al Baab has rendered himself liable for penalty in terms of Section 112(a) and (b) of the Customs Act, 1962 read with Section 114AA of the Customs Act, 1962.

Even after issuance of various summons under Section 108 of the Customs Act, 1962 to M/s. AMGTL opted not to join the investigation and thereby avoided to co-operate in investigation. On the contrary, with due consent of Shri Al Zarooni @ Al Baab, Shri Anil Parmar of M/s AMGTL had filed an Anticipatory bail application before the

Additional Sessions Judge, Gandhidham by way of filing Misc. Criminal Application No. 256/2016 and obtained order dtd. 05.10.2016 for allowing him to get released on bond and such other conditions. Shri Anil Parmar was directed to co-operate in investigation, but he never turned up. Even then, Shri Anil Parmar did not care to comply with the summons issued to M/s AMGTL as well as him on 03.03.2016, 08.04.2016, 25.04.2016, 01.07.2016, 22.07.2016, 10.10.2016, 21.10.2016, 24.11.2016, 25.01.2017, 19.11.2018, 10.02.2020, 09.03.2020, 14.05.2020, 14.07.2020, and 02.09.2020 under Section 108 of the Customs Act, 1962. During the time, he permitted huge financial transactions from the bank accounts of M/s AMGTL under the instructions of Jayesh Patel, where some more persons also joined him. He was able to do all those activity against the statutory provisions, but did not join the investigation. This implies his malicious intention to frustrate the investigation, for which Shri Al Zarooni @ Al Baab has rendered himself liable for penalty in terms of Section 117 of the Customs Act, 1962 also.

8.12. M/s. GME

M/s GME, who were designated as PSIA by the DGFT in terms of Para 2.55(d) of HBP 2015-20 in Appendix 2G, were required to issue PSIC in respect of consignments of Metal scrap to inspect the same in accordance with a well-defined process. Shri Mansour Shalaby was representing M/s. GME and he being lured by Shri Anil Parmar of M/s. AMGTL, Dubai had issued three PSIC without inspection, against the fact that the said containers were not containing 'Mix Metal Brass Scrap with other impurities', as being certified by M/s GME in the PSIC No. 0886 dtd. 18.10.2015, 0906 dtd. 27.10.2015 and 0899 dtd. 26.10.2015 issued in respect of Container Nos. IALU2252554, IPXU3062264 & TTNU3535220, certifying that the same were containing 22.260 MTs, 23.120 MTs and 18.540 MTs 'Mix Metal Brass Scrap with other impurities' and also providing seals No. DPWJ885735, 4283190 and 4283192 for those consignments. Those three containers were found to contain cigarettes and there was no mention at all of the same in the subject PSICs. When the difference between the contents reported in the PSIC and actual inspection at Dubai was informed, M/s. GME informed vide their email dtd.07.02.2017 that the inspection was carried out by Mr. Azhar Zaidi, which was contrary to the facts reported in those PSICS. As the clarification was not convincing. the reasons asked from them to explain the difference of the content with supporting evidence. M/s. GME also failed to join the investigation, even though they were asked to do so. Thus,

by issue of three fake PSICS, M/s. GME had acted against the terms of the notification of DGFT to act as PSIA for the area of Oman, Qatar, Saudi Arabia, Kuwait, Bahrain, Jordan, Sudan Egypt, Iran, Nigeria, UAE, Afghanistan, which is in violation of the relevant provisions of the FTDR Act, 1992 as well as various other legal provisions. It was also reported by DGFT that post-inspection reporting about those three PSICs on the DGFT website or on the email id, was not carried out though it was required of them, further substantiating that those three PSICs were manipulated and not genuine. They had also attempted to mislead the investigation by providing false details in response to the summons/email messages issued to them under Section 108 of the Customs Act, 1962 and also avoided to provide reply to the Summons issued to them. This commission and omission on their part has rendered the consignment covered in the Container No. IALU2252554 liable for confiscation under Section 111 (i) of the Customs Act, 1962. This had also made M/s GME liable for penalty under Section 112(a) and (b) of the Customs Act, 1962 read with Section 114AA of the Customs Act, 1962. M/s. GME are also liable for action under Section 117 of the Customs Act, 1962 for misleading the investigation and for not joining the investigation.

8.13. Shri Mansour Shalaby of M/s. GME

M/s. GME, who were designated as PSIA by the DGFT in terms of Para 2.55(d) of HBP 2015-20 in Appendix 2G, were required to issue PSIC in respect of consignments of Metal scrap to inspect the same in accordance with the well-defined process. Shri Mansour Shalaby was representing M/s. GME and he being lured by Shri Anil Parmar of M/s. AMGTL, Dubai had issued three PSIC without inspection, against the fact that the said containers were not containing 'Mix Metal Brass Scrap with other impurities', as being certified by M/s. GME in the PSIC No. 0886 dtd. 18.10.2015, 0906 dtd. 27.10.2015 and 0899 dtd. 26.10.2015 issued in respect of Container Nos. IALU2252554, IPXU3062264 & TTNU3535220, certifying that the same were containing 22.260 MTs, 23.120 MTs and 18.540 MTs 'Mix Metal Brass Scrap with other impurities' and also providing seals No. DPWJ885735, 4283190 and 4283192 for those consignments. Those three containers were found to contain cigarettes and there was no mention at all in the subject PSICs. When the difference between the contents reported in the PSIC and actual inspection at Dubai was informed, M/s. GME informed vide their email dtd.07.02.2017 that the inspection

was carried out by Mr. Azhar Zaidi, which was contrary to the facts reported in those PSICS. As the clarification was not convincing. the reasons asked from them to explain the difference of the content with supporting evidence. M/s GME also failed to join the investigation, even though they were asked to do so. It was also reported by DGFT that post-inspection reporting about those three PSICs on the DGFT website or on the email id, was not carried out though it was required of them, further substantiating that those three PSICs were manipulated and not genuine. Thus, by issue of three fake PSICs, Shri Mansour Shalaby, representing M/s GME had acted against the terms of the notification of DGFT to act as PSIA for the area of Oman, Qatar, Saudi Arabia, Kuwait, Bahrain, Jordan, Sudan Egypt, Iran, Nigeria, UAE, Afghanistan, which is in violation of the relevant provisions of the FTDR Act, 1992 as well as various other legal provisions. They had also attempted to mislead the investigation by providing false details in response to the summons/email messages issued to them under Section 108 of the Customs Act, 1962 and also avoided to provide reply to the Summons issued to them. This commission and omission on their part has rendered the consignment covered in the Container No. IALU2252554 liable for confiscation under Section 111 (i) of the Customs Act, 1962. This had also made Mr. Mansour Shalaby of M/s. GME liable for penalty under Section 112(a) and (b) of the Customs Act, 1962 read with Section 114AA of the Customs Act, 1962. Mr Mansour Shalaby of M/s GME is also liable for action under Section 117 of the Customs Act, 1962 for misleading the investigation and for not joining the investigation.

8.14. Shri Azhar Zaidi of M/s. GME

Mr. Azhar Zaidi, Surveyor was holding the post of Petroleum Surveyor and have no capabilities or expertise for inspection of Metal Scrap, even though M/s GME had permitted him (Azhar) for inspection of metal scrap consignments. Mr. Azhar Zaidi had never surveyed any of three containers sent in India on account of M/s. AMGTL, but on the records of M/s GME, the name of Mr. Azhar Zaidi was mentioned as a surveyor, who surveyed said metal scrap consignments. Even after having experience of survey activity, although not pertaining to survey of metal scrap consignment and having only idea of petroleum survey activity, he permitted usage of his name as surveyor of aforesaid three containers, so as to prepare and provide manipulated PSICS.

This commission and omission on the part of Mr. Azhar Zaidi has rendered the consignment covered in the Container No. IALU2252554 liable for confiscation under Section 111 (i) of the Customs Act, 1962. This had also made Mr. Azhar Zaidi of M/s GME liable for penalty under Section 112(a) and (b) of the Customs Act, 1962 read with Section 114AA of the Customs Act, 1962.

8.15. Shri Vijay Vashrambhai Sabhaya, Proprietor of M/s KBI

From the evidences collected, it appears that being an active person, representing M/s AMGTL, Dubai and utilising his acquaintance with Jamnagar trade, Shri Anil Parmar had hatched a conspiracy for illegal import of cigarettes into India by way of not declaring/misdeclaring the same and importing the same in the guise of 'Mix Metal Brass Scrap with Other Impurities' for the EOUS, under the leadership of Shri Jayesh Patel, for which Shri Anil Parmar had planned to import one such consignment per Container No. IALU2252554, in connivance with Shri Shoyaib, Shri Vijay Sabhaya of M/s. KBI, Jamnagar, Shri Shailesh Patel and Shri Ankit Changani, where Shri Anil Parmar had arranged for PSIC from Shri Mansour Shalaby of M/s. GME certifying that the said container was containing Mix Metal scrap as declared in the PSIC, B/L and other shipping document. Shri Anil Parmar also signed and supplied a Transboundary Movement certificate, though having full knowledge that the consignment was containing cigarettes also. On import of said consignment at Mundra, M/s. KBI, Jamnagar filed B/E No. 3140016 dtd.03.11.2015, declaring that the goods imported by them were 22.26 MTs of 'Mix Metal Brass Scrap with Other Impurities' and also claimed exemption from duty in terms of Notification No. 52/2003 dtd.22.07.2003 on the basis of their status as EOU.

Shri Anil Parmar in the instant case had also arranged for two other consignments covered by container Nos. IPXU3062264 and TTNU3535220 shipped on account of M/s AMGTL and consigned in favour of M/s. KBI, Jamnagar and M/s. AE, Jamnagar respectively under the instructions of Shri Jayesh Patel. But when the container No. IALU2252554 covered by B/E No. 3140016 dtd. 03.11.2015 was taken up for examination by DRI on 04.11.2015 at Mundra, on the basis of intelligence, Shri Jayesh Patel, M/s. KBI, M/s. AE and M/s. AMGTL became alert and under the instructions of Shri Jayesh Patel, Shri Anil Parmar of M/s AMGTL asked M/s. MBK through M/s. ATS, Dubai for returning two containers loaded on MV Chicago on 04.11.2015 itself and also made arrangement in connivance with M/s. SSF, Dubai, M/s SMIPL, M/s MBK, M/s. ATS, Dubai and M/s RMIPL for not declaring those two

containers in IGM and EGM to be filed at Mundra and to illegally transit the same without payment of duty. He succeeded in his illegal motive and both the containers, including the container No. IPXU3062264 out of those two containers and which was consigned in favour of M/s KBI, Jamnagar vide B/L No. ATSJEAMUN153178 dtd. 28.10.2015, were reached at Dubai and on inspection of both the containers at Dubai, it was found that both of them were fully stuffed with cigarettes. Had not the DRI taken up investigation into the illegal import of cigarettes and not taken up for examination the consignment covered by B/E No. 3140016 dtd.03.11.2015 filed by M/s. KBI, Jamnagar, their another consignment was ready for arrival and importation into India and the same would have also been cleared from Customs in the guise of 'Mix Metal Brass Scrap with Other Impurities'. As already discussed, this commission and omission on the part of Shri Vijay Sabhaya of M/s. KBI, Jamnagar and others made those two container Nos. IPXU3062264 & TTNU3535220 as well as 7,64,06,012 sticks of cigarettes contained therein in the guise of 41.660 MTs 'Mix Metal Brass Scrap with Other Impurities' liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962 of the Customs Act, 1962 and looking to the active participation of Shri Vijay Sabhaya of M/s. KBI, Jamnagar in the entire scam, Shri Vijay Sabhaya, Prop. of M/s. KBI, Jamnagar has rendered himself liable for penalty in terms of Section 112(a), 112(b), 114A and Section 114AA of the Customs Act, 1962. By providing incorrect and incomplete facts, in response to the summons issued to him under Section 108 of the Customs Act, 1962, Shri Vijay Sabhaya of M/s. KBI, Jamnagar has also made himself liable for penalty under Section 117 of the Customs Act, 1962 also.

8.16. Shri Shailesh Damjibhai Patel (Sanghani), POA-holder of M/s. KBI

Shri Shailesh Patel is POA-holder of M/s. KBI, it appears that being an active person, who was handling EOU related activities, he had made all arrangement for illegal import of cigarettes in connivance with Shri Jayesh Patel, Shri Ankit Changani, Shri Shoyaib, Shri Anil Parmar and other associates. He was part of syndicate which had planned to illegally import cigarettes into India in the guise of 'Mix Metal Brass Scrap with Other Impurities' for the EOU of M/s. KBI, one such consignment per Container No. IALU2252554, in connivance with Shri Shoyaib, Shri Vijay Sabhaya, Shri Anil Parmar and Shri Ankit Changani, under the leadership of Shri Jayesh Patel. On import of said consignment at Mundra, M/s. KBI, Jamnagar filed B/E No. 3140016 dtd.03.11.2015, declaring that the goods imported by them were 22.26 MTs of 'Mix

Metal Brass Scrap with Other Impurities' and also claimed exemption from duty on the basis of their status as EOU. This container No. IALU2252554 covered by B/E No. 3140016 dtd. 03.11.2015 was, however, taken up for examination by DRI on 04.11.2015 at Mundra, on the basis of intelligence and upon finding concealment of cigarettes therein the goods were seized.

Shri Shailesh Patel had also arranged for import of one more consignments covered by container Nos. IPXU3062264. When the container No. IALU 2252554 was taken up for examination by DRI on 04.11.2015, Shri Jayesh Patel, Shri Shailesh Patel of M/s KBI, M/s. AE and M/s. AMGTL became alert and Shri Anil Parmar of M/s AMGTL was informed and directed by Shri Jayesh Patel on 04.11.2015 itself to request immediately M/s. MBK through M/s ATS, Dubai for recalling two containers loaded on MV Chicago. Shri Shailesh Patel succeeded in his illegal motive and both the containers, including the container No. IPXU3062264 out of those two containers and which was consigned in favour of M/s. KBI, Jamnagar vide B/L No. ATSJEAMUN153178 dtd. 28.10.2015, were reached at Dubai and on inspection the containers at Dubai by the Dubai Customs, it was found that both of containers were full of cigarettes.

Had not the DRI taken up investigation into the illegal import of cigarettes and not taken up for examination the consignment covered by B/E No. 3140016 dtd. 03.11.2015 filed by M/s. KBI, Jamnagar, their another consignment was ready for arrival and importation into India and the same would have also been cleared from Customs in the guise of 'Mix Metal Brass Scrap with Other Impurities'. It is also evident that Shri Shailesh Patel was fully aware that the illegal import of cigarettes was being monitored and managed by Shri Jayesh Patel, but when he was asked during investigation, he did not reveal anything about the role of Shri Jayesh Patel and his other associates and misled the inquiry. As already discussed, this commission and omission on the part of Shri Shailesh Patel of M/s KBI, Jamnagar made those two container Nos. IPXU3062264 and TTNU3535220 as well as 7,64,06,012 sticks of cigarettes contained therein in the guise of 41.660 MTs 'Mix Metal Brass Scrap with Other Impurities' liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962 and looking to the active participation of Shri Shailesh Patel of M/s. KBI, Jamnagar in the entire scam, Shri Shailesh Patel, POA-holder of M/s. KBI, Jamnagar has rendered himself liable for

penalty in terms of Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962 as well as Section 117 of the Customs Act, 1962.

8.17. M/s. AE

M/s AE having status of EOU, through its partner Shri Ankit Changani, had allowed their such status of EOU to be used for illegal imports of cigarettes being planned by Shri Jayesh Patel. They had earlier attempted to make export of cement bricks in the guise of brass items, which consignment would have been facilitated at Dubai by Shri Sanjay Shastri of M/s. Secure Link General Trading LLC. When Shri Jayesh Patel planned to import cigarettes illegally into India, Shri Ankit Changani went to Dubai with Shri Jayesh Patel and asked Shri Sanjay Shastri to help Shri Anil Parmar in making arrangement for manipulated PSIC. A container No. TTNU3535220 consigned in the name of M/s. AE was also arranged for importing cigarettes into India illegally. When the earlier sent container No. IALU2252254 in favour of M/s. KBI was taken up for investigation and examination by DRI on 04.11.2015, the entire syndicate became alert immediately and Shri Jayesh Patel had on the same day on 04.11.2015 instructed Shri Anil Parmar to request Container Line M/s. ATS to arrange for recalling of two containers, which were also containing cigarettes. They were fully aware that if the container No. TTNU3535220 is also detected then they have to face severe consequences and therefore, through Shri Anil Parmar and in connivance with M/s ATS and other shipping related companies in the chain, not only to recall those two containers, but also not to declare the same before Customs. They could have requested for declaring those containers in transit, instead of discharge at Mundra, but that could have been alerted the Customs and agencies and their illegal ploy could have been detected, hence they managed for not disclosing those containers at Mundra. They succeeded in their illegal motive and both the containers, including the container No. TTNU3535220 out of those two containers and which was consigned in favour of M/s. AE, Jamnagar vide B/L No. ATSJEAMUN153177 dtd. 27.10.2015, were reached at Dubai and on inspection of both the containers at Dubai by the Dubai Customs, it was found that both of them were fully stuffed with cigarettes.

Had not the DRI taken up investigation into the illegal import of cigarettes and not taken up for examination the consignment covered by B/E No. 3140016 dtd. 03.11.2015 filed by M/s. KBI, Jamnagar, the consignment was ready for arrival and importation into India on account of M/s. AE, Jamnagar also, as arranged by Shri

Jayesh Patel, the partner of M/s. AE Shri Ankit Changani and others and the same would have also been cleared from Customs in the guise of 'Mix Metal Brass Scrap with Other Impurities'.

It would be pertinent to mention here that to manage the activity of M/s, AE, Shri Jayesh Patel had once made offer to include him in the partnership of M/s AE, but later on it was changed and Shri Jayesh Patel provided financial assistance to M/s AE, which was ultimately to facilitate the illegal consignments to be cleared easily in the guise of EOU status of M/s. AE.

Thus, this commission and omission on the part of M/s. AE, Jamnagar and others made those two container Nos. IPXU3062264 and TTNU3535220 as well as 7,64,06,012 sticks of cigarettes contained therein in the guise of 41.660 MTs 'Mix Metal Brass Scrap with Other Impurities' liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962 and looking to the active participation of M/s AE, Jamnagar in the entire scam, M/s. AE, Jamnagar has rendered themselves liable for penalty in terms of Section 112(a), 112(b), 114A and Section 114AA of the Customs Act, 1962. By providing incorrect details, mis-leading the inquiry and not co-operating in the investigation, M/s. AE has rendered themselves liable for penalty under Section 117 of the Customs Act, 1962 also.

8.18. Shri Ankit Changani, Partner of M/s AE

M/s AE having status of EOU, through its partner Shri Ankit Changani, had allowed their such status of EOU to be used for illegal imports of cigarettes being planned by Shri Jayesh Patel. They had earlier attempted to make export of cement bricks in the guise of brass items, which consignment would have been facilitated at Dubai by Shri Sanjay Shastri of M/s. Secure Link General Trading LLC. When Shri Jayesh Patel planned to import cigarettes illegally into India, Shri Ankit Changani went to Dubai with Shri Jayesh Patel and asked Shri Sanjay Shastri to help Shri Anil Parmar in making arrangement for manipulated PSIC. A container No. TTNU3535220 consigned in the name of M/s. AE was also arranged for importing cigarettes into India illegally along with one more container in favour of M/s. KBI, Jamnagar.

It has also been revealed during investigation that Shri Ankit Changani had made all arrangement to import consignment of cigarettes in the name of M/s. KBI also, who were also having EOU status. When the earlier sent container No. IALU2252254 in favour of M/s KBI was taken up for investigation and examination by DRI on

04.11.2015, the entire syndicate became alert immediately and Shri Jayesh Patel had on the same day on 04.11.2015 instructed Shri Anil Parmar to request Container Line M/s. ATS to arrange for recalling of two containers, which were also containing cigarettes. They were fully aware that if the container No. TTNU3535220 is also detected then they have to face severe consequences and therefore, through Shri Anil Parmar and in connivance with M/s. ATS and other shipping related companies in the chain, not only to recall those two containers, but also not to declare the same before Customs. They could have requested for declaring those containers in transit, instead of discharge at Mundra, but that could have been alerted the Customs and agencies and their illegal ploy could have been detected, hence they managed for not disclosing those containers at Mundra. They succeeded in their illegal motive and both the containers, including the container No. TTNU3535220 out of those two containers and which was consigned in favour of M/s. AE, Jamnagar vide B/L No. ATSJEAMUN153177 dtd. 27.10.2015, were reached at Dubai and on inspection of both the containers at Dubai by the Dubai Customs, it was found that both of them were fully stuffed with cigarettes.

Had not the DRI taken up investigation into the illegal import of cigarettes and not taken up for examination the consignment covered by B/E No. 3140016 dtd. 03.11.2015 filed by M/s. KBI, Jamnagar, the consignment was ready for arrival and importation into India on account of M/s. AE, Jamnagar also, as arranged by Shri Jayesh Patel, the partner of M/s. AE Shri Ankit Changani and others and the same would have also been cleared from Customs in the guise of 'Mix Metal Brass Scrap with Other Impurities'.

It would be pertinent to mention here that to manage the activity of M/s, AE, Shri Jayesh Patel had once made offer to include him in the partnership of M/s. AE, but later on it was changed and Shri Jayesh Patel provided financial assistance to M/s AE, which was ultimately to facilitate the illegal consignments to be cleared easily in the guise of EOU status of M/s. AE. As already discussed, this commission and omission on the part of Shri Ankit Changani of M/s. AE, Jamnagar and others made those two container Nos. IPXU3062264 & TTNU3535220 as well as 7,64,06,012 sticks of cigarettes contained therein in the guise of 41.660 MTs 'Mix Metal Brass Scrap with Other Impurities' liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962 and looking to the active participation of Shri

Ankit Changani, Partner of M/s. AE, Jamnagar in the entire scam, Shri Ankit Changani, Partner of M/s. AE, Jamnagar has rendered himself liable for penalty in terms of Section 112(a) and (b) of the Customs Act, 1962 read with Section 114AA of the Customs Act, 1962. By providing incorrect and incomplete facts, in response to the summons issued to him under Section 108 of the Customs Act, 1962, Shri Ankit Changani, Partner of M/s. AE has also made himself liable for penalty under Section 117 of the Customs Act, 1962 also.

8.19. Shri Shoyaib

From the statements made by Shri Shailesh Patel and Shri Ankit Changani, it appears that Shri Shoyaib had made offer before Shri Shailesh Patel and Shri Ankit Changani for illegal import of cigarettes into India by way of not declaring the same and importing the same in the guise of 'Mix Metal Brass Scrap with Other Impurities' for the EOUs. But in fact they had provided incomplete facts. The entire conspiracy of illegal import of cigarettes was planted and planned by Shri Jayesh Patel. As per the arrangement, under the leadership of Shri Jayesh Patel, Shri Anil Parmar had planned to import a consignment per Container No. IALU2252554, in connivance with Shri Jayesh Patel, Shri Shoyaib, Shri Vijay Sabhaya of M/s KBI, Jamnagar, Shri Shailesh Patel and Shri Ankit Changani of M/s. AE, Jamnagar, where Shri Anil Parmar had with the help of Shri Sanjay Shastri arranged for PSIC from Shri Mansour Shalaby of M/s GME certifying that the said container was containing 'Mix Metal Brass Scrap with Other Impurities' as declared in the PSIC, B/L and other shipping document. On import of said consignment at Mundra, M/s. KBI, Jamnagar filed B/E No. 3140016 dtd. 03.11.2015, declaring that the goods imported by them were 22.26 MTs of 'Mix Metal Brass Scrap with Other Impurities' and also claimed exemption from duty in terms of Notification No. 52/2003 dtd.22.07.2003 on the basis of their status as EOU. As per the arrangement made, upon getting clearance of the consignment, while it was enroute to Jamnagar, Shri Shoyaib or some other person under the instruction of Shri Jayesh Patel, was to take out the cigarettes from the container and to dispose of the same in illegal market.

Being instructed by Shri Jayesh Patel, Shri Anil Parmar had also arranged for two more consignments covered by container Nos. IPXU3062264 and TTNU3535220 shipped on account of M/s. AMGTL and consigned in favour of M/s. KBI, Jamnagar and M/s. AE, Jamnagar respectively. But when the container No. IALU2252554 covered by B/E No. 3140016 dtd. 03.11.2015 was taken up for examination by DRI

on 04.11.2015 at Mundra, on the basis of intelligence, Shri Jayesh Patel, M/s. KBI, M/s. AE and M/s. AMGTL became alert and being instructed by Shri Jayesh Patel, M/s. AMGTL asked M/s MBK through M/s. ATS, Dubai for returning two containers loaded on MV Chicago on 04.11.2015 itself and also made arrangement in connivance with M/s. SSF, Dubai, M/s. SMIPL, M/s. MBK, M/s. ATS, Dubai and M/s. RMIPL for not declaring those two containers in IGM and EGM to be filed at Mundra and to illegally transit the same without payment of duty. They succeeded in their illegal motive and both the containers reached at Dubai and on inspection of both the containers at Dubai by the Dubai Customs, it was found that both of them were fully stuffed with cigarettes.

Had not the DRI taken up investigation into the illegal import of cigarettes and not taken up for examination the consignment covered by B/E No. 3140016 dtd. 03.11.2015 filed by M/s. KBI, Jamnagar, their another consignment was ready for arrival and importation into India on account of M/s. KBI, Jamnagar as well as M/s. AE, Jamnagar, as arranged by Shri Jayesh Patel, Shri Shoyaib and others and the same would have also been cleared from Customs in the guise of 'Mix Metal Brass Scrap with Other Impurities'.

As already discussed, this commission and omission on the part of Shri Shoyaib and others made those two container Nos. IPXU3062264 & TTNU3535220 as well as 7,64,06,012 sticks of cigarettes contained therein in the guise of 41.660 MTs 'Mix Metal Brass Scrap with Other Impurities' liable for confiscation under 111(f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962 of the Customs Act, 1962 and looking to the participation of Shri Shoyaib in the entire scam, Shri Shoyaib has rendered himself liable for penalty in terms of Section 112(a) and (b) of the Customs Act, 1962 read with Section 114AA of the Customs Act, 1962.

8.20. Shri Jaysukh Ranpariya @ Jayesh Patel

From the evidences collected, it is emerging that Shri Jaysukh Ranpariya @ Jayesh Patel is the mastermind and kingpin of this entire scam of smuggling cigarettes. With an only intention of smuggling cigarettes, Shri Jayesh Patel make Shri Anil Parmar prepared to visit Dubai with the finance from him. At Dubai, Anil Parmar had made partnership with Shri Al Zarooni @ Al Baab with all prior arrangement determined by Shri Jayesh Patel. Immediately after making partnership deed for M/s. AMGTL, Shri Anil Parmar and Shri Al Zarooni @ Al Baab were instructed by Shri Jayesh Patel

for illegal import of cigarettes into India by way of not declaring the same and importing the same in the guise of 'Mix Metal Brass Scrap with Other Impurities' for the EOUS. To involve Shri Ankit Changani in the illegal deal, Shri Jayesh Patel provided him huge finance for no apparent reason. Shri Anil Parmar had planned to import one such consignment per Container No. IALU2252554, in connivance with Shri Jayesh Patel, Shri Shoyaib, Shri Vijay Sabhaya of M/s. KBI, Jamnagar, Shri Shailesh Patel and Shri Ankit Changani of M/s AE, Jamnagar, where Shri Anil Parmar had with the help of Shri Sanjay Shastri arranged for PSIC from Shri Mansour Shalaby of M/s. GME certifying that the said container was containing 'Mix Metal Brass Scrap with Other Impurities' as declared in the PSIC, B/L and other shipping document. Shri Anil Parmar also signed and supplied a Transboundary Movement certificate, though having full knowledge that the consignment was also containing substantial quantity of cigarettes. On import of said consignment at Mundra, M/s KBI, Jamnagar filed B/E No. 3140016 dtd. 03.11.2015, declaring that the goods imported by them were 22.26 MTs of 'Mix Metal Brass Scrap with Other Impurities' and also claimed exemption from duty in terms of Notification No. 52/2003 dtd.22.07.2003 on the basis of their status as EOU.

Being instructed by Shri Jayesh Patel, Shri Anil Parmar had also arranged for two more consignments covered by container Nos. IPXU3062264 and TTNU3535220 shipped on account of M/s. AMGTL and consigned in favour of M/s. KBI, Jamnagar and M/s AE, Jamnagar respectively. But when the container No. IALU2252554 covered by B/E No. 3140016 dtd. 03.11.2015 was taken up for examination by DRI on 04.11.2015 at Mundra, on the basis of intelligence. Information was provided on phone by Shri Jaysukh Ranpariya @ Jayesh Patel to Shri Anil Parmar about detection of cigarettes by DRI and further Jayesh Patel instructed Anil Parmar to recall IPXU3062264 and TTNU3535220, which were containing cigarettes. Thus, all activities pertaining to concealed contraband goods was being monitored by the syndicate under the leadership of Shri Jaysukh Ranpariya @ Jayesh Patel. Shri Jayesh Patel, M/s. KBI, M/s. AE and M/s. AMGTL became alert and being instructed by Shri Jayesh Patel M/s. AMGTL asked M/s MBK through M/s. ATS, Dubai for returning two containers loaded on MV Chicago on 04.11.2015 itself and also made arrangement in connivance with M/s SSF, Dubai, M/s. SMIPL, M/s. MBK, M/s. ATS, Dubai and M/s RMIPL for not declaring those two containers in IGM and EGM to be filed at Mundra and to illegally transit the same without payment of duty. He

succeeded in his illegal motive and both the containers, including the container No. TTNU3535220 out of those two containers and which was consigned in favour of M/s. AE, Jamnagar vide B/L No. ATSJEAMUN153177 dtd. 27.10.2015, were reached at Dubai and on inspection of both the containers at Dubai by the Dubai Customs, it was found that both of them were fully stuffed with cigarettes.

Had not the DRI taken up investigation into the illegal import of cigarettes and not taken up for examination the consignment covered by B/E No. 3140016 dtd. 03.11.2015 filed by M/s. KBI, Jamnagar, their another consignment was ready for arrival and importation into India on account of M/s KBI, Jamnagar as well as M/s. AE, Jamnagar, as arranged by Shri Jayesh Patel, Shri Ankit Changani and others and the same would have also been cleared from Customs in the guise of 'Mix Metal Brass Scrap with Other Impurities'. It would be pertinent to note that Shri Ankit Changani had also visited Dubai along with Shri Jayesh Patel, before the shipments of the aforesaid three containers took place from Dubai on account of M/s. AMGTL, where they met Shri Sanjay Shastri, Shri Anil Parmar and other concerned to finalise their deal. It is evident from the evidences collected that Shri Jayesh Patel had made four persons viz. S/Shree Pravin Chovatiya, Chandrakant Sanghani, Mayur Sabhaya and Jaman Moliya ready to make huge financial transactions in foreign currency with Shri Anil Parmar and Shri Sanjay Shastri for no apparent reasons and without following proper statutory provisions, which money were being used for finalising their other arrangements for smuggling cigarettes and other illegal activities. Shri Jayesh Patel was booked by police in 2016, where to jump the condition of bail, he had got prepared duplicate passport from Pune in 2017, though having the first passport validity as issued by Ahmedabad Passport office, for which the Immigration Officer had apprehended him while he was trying to flee out of India and sent him to judicial custody. Jayesh Patel after obtaining bail in said case, got himself engaged into smuggle in consignments of foreign made cigarettes through Mundra/Kandla/Nhava Sheva ports, in import containers by mis-declaring the goods as genuine permissible import goods. Jayesh Patel masterminded of smuggling syndicate was utilizing the services of Mr. Kishor Mevada for distribution and selling of his smuggled cigarettes in Mumbai and its adjoining cities. DRI Mumbai booked case against Jayesh Patel and others for smuggling of cigarettes and he was also arrested. After obtaining bail in said case, he engaged in the racket of illegal deal pertaining to land grabbing etc., for which Jamnagar Police booked case against him

under the provisions of GujCTOC and IPC, where he was not appearing and absconding. Red Corner Notice has been issued in his case by INTERPOL. In the meantime, in the instant case, when the facts emerged during investigation were found totally in contradiction of his own statement dtd.19.04.2016, summons were issued to him on different dates under Section 108 of the Customs Act, 1962, but he did not appear, hence a Complaint under Section 174, 175 and 176 of the Indian Penal Code, 1860 has been filed against him before the CJM, Gandhidham.

As already discussed, this commission and omission on the part of Shri Jayesh Patel and others made those two container Nos. IPXU3062264 & TTNU3535220 as well as 7,64,06,012 sticks of cigarettes contained therein in the guise of 41.660 MTs 'Mix Metal Brass Scrap with Other Impurities' liable for confiscation under Section 111(f), (g), (h), (i), (j), (n) and (o) of the Customs Act, 1962 and looking to the active participation of Shri Jayesh Patel in the entire scam, Shri Jayesh Patel has rendered himself liable for penalty in terms of Section 112(a) and (b) of the Customs Act, 1962 read with Section 114AA of the Customs Act, 1962. By providing incorrect and incomplete facts, and not appearing in response to the summons issued to him under Section 108 of the Customs Act, 1962, Shri Jayesh Patel has also made himself liable for penalty under Section 117 of the Customs Act, 1962 also.

8.21. Shri Sanjay Shastri

From the evidences collected, it is emerging that Shri Sanjay Shastri is conduit of Shri Jaysukh Ranpariya @ Jayesh Patel at Dubai, in the scam of smuggling cigarettes. With intention of smuggling cigarettes, Shri Jayesh Patel financed all illicit activities and made Shri Anil Parmar visit Dubai. Shri Anil Parmar had made partnership with Shri Al Zarooni @ Al Baab with all arrangements determined by Shri Jayesh Patel. Immediately after making partnership deed for M/s. AMGTL, Shri Anil Parmar and Shri Al Zarooni @ Al Baab were instructed by Shri Jayesh Patel for illegal import of cigarettes into India by way of not declaring the same and importing the same in the guise of 'Mix Metal Brass Scrap with Other Impurities' for the EOUs. Shri Anil Parmar had planned to import one such consignment per Container No. IALU2252554, in connivance with Shri Jayesh Patel, Shri Shoyaib, Shri Vijay Sabhaya of M/s. KBI, Jamnagar, Shri Shailesh Patel and Shri Ankit Changani of M/s. AE, Jamnagar, where Shri Anil Parmar had with the help of Shri Sanjay Shastri arranged for PSIC from Shri Mansour Shalaby of M/s. GME certifying that the said container was containing 'Mix Metal Brass Scrap with Other Impurities' as declared

in the PSIC, B/L and other shipping document. It is evident from the Invoice favouring M/s. AMGTL provided by M/s. GME to DRI that the contact person for the said activity was Shri Sanjay Shastri. Shri Anil Parmar also signed and supplied a Transboundary Movement certificate, though having full knowledge that the consignment was also containing substantial quantity of cigarettes. On import of said consignment at Mundra, M/s KBI, Jamnagar filed B/E No. 3140016 dtd. 03.11.2015, declaring that the goods imported by them were 22.26 MTs of 'Mix Metal Brass Scrap with Other Impurities' and also claimed exemption from duty in terms of Notification No. 52/2003 dtd.22.07.2003 on the basis of their status as EOU.

Being instructed by Shri Jayesh Patel, and with the assistance of Shri Sanjay Shastri, Shri Anil Parmar had again arranged for two more consignments covered by container Nos. IPXU3062264 and TTNU3535220 shipped on account of M/s. AMGTL and consigned in favour of M/s. KBI, Jamnagar and M/s AE, Jamnagar respectively. But when the container No. IALU2252554 covered by B/E No. 3140016 dtd. 03.11.2015 was taken up for examination by DRI on 04.11.2015 at Mundra, on the basis of intelligence, Shri Jayesh Patel, M/s. KBI, M/s AE and M/s. AMGTL became alert and being instructed by Shri Jayesh Patel M/s AMGTL asked M/s MBK through M/s. ATS, Dubai for returning two containers loaded on MV Chicago on 04.11.2015 itself and also made arrangement in connivance with M/s. SSF, Dubai, M/s. SMIPL, M/s. MBK, M/s. ATS, Dubai and M/s RMIPL for not declaring those two containers in IGM and EGM to be filed at Mundra and to illegally transit the same without payment of duty. He succeeded in his illegal motive and both the containers, including the container No. TTNU3535220 out of those two containers and which was consigned in favour of M/s AE, Jamnagar vide B/L No. ATSJEAMUN153177 dtd. 27.10.2015, were reached at Dubai and on inspection of both the containers at Dubai by the Dubai Customs, it was found that both of them were fully stuffed with cigarettes.

Had not the DRI taken up investigation into the illegal import of cigarettes and not taken up for examination the consignment covered by B/E No. 3140016 dtd. 03.11.2015 filed by M/s. KBI, Jamnagar, their another consignment was ready for arrival and importation into India on account of M/s KBI, Jamnagar as well as M/s AE, Jamnagar, as arranged by Shri Jayesh Patel, Shri Ankit Changani and others and the same would have also been cleared from Customs in the guise of 'Mix Metal Brass Scrap with Other Impurities'. It would be pertinent to note that Shri Ankit

Changani had also visited Dubai along with Shri Jayesh Patel, before the shipments of the aforesaid three containers took place from Dubai on account of M/s. AMGTL, where they met Shri Sanjay Shastri, Shri Anil Parmar and other concerned to finalise their deal. It is evident from the evidences collected that Shri Jayesh Patel had made four persons viz. S/Shree Pravin Chovatiya, Chandrakant Sanghani, Mayur Sabhaya and Jaman Moliya ready to dispose off the smuggled goods and sending sale proceed by hawala route in illegal manner to Shri Anil Parmar, Shri Sanjay Shastri and others to bring back the same money into India by way of remittance sent by bank. It is apparent that Shri Sanjay Shastri made huge financial transactions in foreign currency for no consideration or for no valid business reasons and without following proper statutory provisions, which money were being used for finalising their other arrangements for smuggling cigarettes and other illegal activities including the activities pertaining to murder etc. with support of organized gang. Shri Jayesh Patel was booked by police in 2016, where to jump the condition of bail, he had got prepared duplicate passport from Pune in 2017, though having the first passport validity as issued by Ahmedabad Passport office, for which the Immigration Officer had apprehended him while he was trying to flee out of India and sent him to judicial custody. After obtaining bail in said case, he got himself engaged again smuggling of cigarettes, where he was booked by Mumbai DRI and arrested. After obtaining bail in said case, he engaged in the racket of illegal deal pertaining to land grabbing etc., for which Jamnagar Police booked case against him under the provisions of GujCTOC and IPC, where he was not appearing and absconding. Red Corner Notice has been issued in his case by INTERPOL. In the meantime, in the instant case, when the facts emerged during investigation were found totally in contradiction of his own statement dtd.19.04.2016, summons were issued to Shri Sanjay Shastri on different dates under Section 108 of the Customs Act, 1962, but he did not appear, hence a Complaint under Section 174, 175 and 176 of the Indian Penal Code, 1860 has been filed against him before the CJM, Gandhidham.

As already discussed, this commission and omission on the part of Shri Sanjay Shastri and others made those two container Nos. IPXU3062264 & TTNU3535220 as well as 7,64,06,012 sticks of cigarettes contained therein in the guise of 41.660 MTs 'Mix Metal Brass Scrap with Other Impurities' liable for confiscation under Section 111(i) of the Customs Act, 1962 and looking to the active participation of Shri Sanjay Shastri in the entire scam, Shri Sanjay Shastri has rendered himself

liable for penalty in terms of Section 112(a) and (b) of the Customs Act, 1962 read with Section 114AA of the Customs Act, 1962. By not appearing in response to the summons issued to him under Section 108 of the Customs Act, 1962, Shri Sanjay Shastri has also made himself liable for penalty under Section 117 of the Customs Act, 1962 also.

8.22. M/s MICT Pvt. Ltd.:

During investigation, it was found that for restow activity (Unloading and loading on same vessel) no permission was obtained by M/s. MICT Pvt. Ltd. from the proper authority of Customs for such activity. The inaction on the part of M/s. MICT Pvt. Ltd. in this respect is apparently in violation of the obligation cast upon them as Custodian appointed under Section 45 of the Customs Act, 1962 as well as being Customs Cargo Service Provider as defined under Regulation 2(b) of the Handling of Cargo in Customs Areas Regulations, 2009. In terms of Regulation 6(a), (b), (f), (h), (k) and (q) of the HCCAR, 2009, being Custodian and Customs Cargo Services Provider, M/s. MICT Pvt. Ltd. were, inter-alia, required to ensure the following:

(a) keep a record of imported goods, goods brought for export or transshipment, as the case may be, and produce the same to the [Inspector of Customs or Preventive officer or Examining officer as and when required;

(b) keep a record of each activity or action taken in relation to the movement or handling of imported or export goods and goods brought for transhipment;

(f) not permit goods to be removed from the customs area, or otherwise dealt with, except under and in accordance with the permission in writing of the (Superintendent of Customs or Appraiser];

(h) not permit any import cargo to enter the customs area or be unloaded therein without the import report or the import manifest having been filed with the [Deputy Commissioner of Assistant Commissioner of Customs);

(k) be responsible for the secure transit of the goods from the said customs area to any other customs area at the same or any other customs station in accordance with the permission granted by the [Deputy Commissioner of Assistant Commissioner of Customs];

(q) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

However, they failed on each of these above-mentioned counts by deliberately concealing all information and activities relating to the two containers of imported goods.

Looking to the provisions of Section 141 of the Customs Act, 1962, it is always to be considered that all the conveyances and goods in a customs area are subject to the control of officers of Customs. It is also specified in the provisions of Section 141(2) that the imported goods may be received, stored, delivered, dispatched or otherwise handled in a customs area in such manner as prescribed and the responsibility of persons engaged in the aforesaid activity should be such as may be prescribed. To give effect to these provisions, the provisions of the Handling of Cargo in Customs Area Regulation, 2009 have been created.

The provisions of Section 45 of the Customs Act, 1962 are very important and means of controlling all the goods, which are imported into India from revenue angle as well as from national security angle. Therefore, all the activities pertaining to unloading of imported goods in the place, within the port area, which is solely notified for loading and unloading activity are to be properly monitored by way of keeping accurate record thereof. The statues also provide that all imported goods should be unloaded only in the landing place approved for the same to facilitate the monitoring of imported goods. The imported goods which are not permitted for clearance or removal out of port area by the proper officer are therefore, to be controlled within the approved place. To implement such statutory provisions the Customs Commissioner approves a person to act as Custodian of such imported goods on behalf of Customs, under the provisions of Section 45(1) of the Customs Act, 1962. While approving such person to be a custodian of the imported goods, it is expected that such person who has been appointed as Custodian will keep record of all the imported goods landed there and will keep the proper officer of Customs duly informed about the activity of loading-unloading conducted there as well as the imported goods which were cleared out of customs area into DTA. The provisions do not allow for any exception in this regard and all the imported goods are to be accounted for. If the goods are pilfered out of approved place, the Custodian is held accountable for loss of the same and also has to bear the revenue lost to the government on account of such pilferage. Thus, the provisions of Section 45 of the Customs Act, 1962 are not merely procedural, but are substantive, having far reaching consequences for their violations with regard to imported goods.

In the instant case, M/s. MICT Pvt. Ltd. are appointed as a Custodian of imported goods since 2003 and they have shown their professional ability in the field. It is evidently observed that M/s. MICT Pvt. Ltd. has not taken any care to obtain a copy of IGM before starting activity of unloading of imported goods within the area of Customs looked after by them on behalf of Customs. They were satisfying themselves on the basis of IAL (Import Advance List) and Arrival Bapile File. They considered those documents as standard documents for information exchange and accordingly acting on the basis of such privately prepared data. They were aware that those data was given to them by the Shipping Agent and not by the Customs. They were also aware that the data given by Shipping Agent in the form of IAL and ABF was not exactly the same which the shipping agent is declaring in IGM filed before Customs as per the statutory requirement. In that case, their activity of handling cargo within the customs area is solely on the basis of documents which were not at all approved by Customs and it is against the statutory provisions of Section 45 of the Customs Act, 1962 also. While acting on the basis of IAL and ABF, M/s MICT Pvt. Ltd. have ignored their statutory liability as provided under Section 45 of the Customs Act, 1962 and they failed to follow the responsibility cast on them as Custodian.

The Handling of Cargo in Customs Area Regulation, 2009 are specifically dealing with handling of import and export goods in the customs area specified under Section 8 of the Customs Act, 1962 and it covers all the persons responsible for receipt, storage, delivery, dispatch or otherwise handling the imported goods, which includes custodian approved under the Section 45 of the Customs Act, 1962. The regulation 6 of said Regulations have made responsibility of customs cargo service provider specified among many other things. The regulation 6(a), (b), (f), (h), (k) and (q) are most relevant in this case where the custodian has not kept proper record of imported goods and not produced the same to the officer of Customs. It is also observed that they have not maintained record of each activity or action taken in relation to the movement or handling of imported goods. As against their responsibility for not permitting the goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the Custom officer, they have permitted restow activity in respect of two containers involved in the present case. Same way they permitted unloading of two containers, which were imported goods, for unloading at the approved place without checking and confirming that those two containers were properly declared in the IGM filed by the

shipping agent with the Customs. The basic responsibility of custodian for ensuring due compliance with the provisions of law has been ignored, and they have given secured transit of the goods from the customs area without obtaining any permission from the officer of Customs. The action as well inaction on the part of M/s MICT Pvt. Ltd. are not at all meeting the standards of a professional organisation, which can be permitted to act as Custodian and to act prominently on behalf of Customs to control each and every imported consignment brought at the place under their control. It is more surprising that when a statement of the Manager (Operations) was recorded on 09.12.2020, instead of considering they fault in above respect, he made categorical statement that no law, rule, regulation or notification has been violated by them and he also denied to accept any wrong doing in restowing of those two containers. He also made blunt statement that the terminal follows all rules, regulations, notifications and orders issued under the Customs Act, 1962, though he himself admitted that they were allowing restow activity etc. on the basis of IAL and without insisting for IGM. Thus, the seriousness of the job of custodian and the intent of statute have been patently ignored by M/s. MICT Pvt.

M/s. MICT Pvt Ltd., have failed to comply with Regulation 6(a) of HCCAR, 2009 as they have not kept a record of imported goods, goods brought for export or transshipment in case of two containers; M/s. MICT Pvt Ltd., have also failed to comply with Regulation 6(b) of HCCAR, 2009 as they have not kept record of every activity taken in relation to the movement or handling of imported goods brought for transshipment. They also failed to comply with the Regulation 6(f) of HCCAR, 2009 as they have not sought any permission from Customs Mundra for removal of the imported goods from the Customs Area. They also failed to comply with Regulation 6(h) of HCCAR, 2009 as they have allowed to unload the container without the import manifest filed at Customs Mundra. They also failed to comply with Regulation 6(k) as they did not carry out their responsibility of ensuring secure transit of imported goods in accordance with the permission granted by the officer of Customs. They also failed to comply with Regulation 6(q) as they did not follow the Customs rules and regulations issued under the Customs Act, 1962.

It is apparent that M/s. MICT Pvt. Ltd. have failed in complying with such statutory responsibility cast upon them. Same way, the Shipping Agent M/s MBK also failed to comply with those statutory obligation. Looking to the commission and omission on the part of M/s. MICT Pvt. Ltd., they made those two container Nos. IPXU3062264

& TTNU3535220 as well as 7,64,06,012 sticks of cigarettes contained therein in the guise of 41.660 MTs 'Mix Metal Brass Scrap with Other Impurities' liable for confiscation under Section 111(h), (i), (j) and (n) of the Customs Act, 1962 For the said lapse on part of M/s MICT Pvt. Ltd., they are liable for penalty under Section 112(a), 112(b), 114AA and 117 of the Customs Act, 1962.

8.23. Shri Pravin P. Chovatiya, Shri Chandrakant V. Sanghvi, Shri Mayur Sabhaya and Shri Jaman Moliya are the persons, who were acting at the instance of Shri Jayesh Patel and dealing with the smuggled goods, sending by hawala the amount of sale proceeds of smuggled goods to Dubai for depositing in the bank account of Shri Anil Parmar or Shri Sanjay Shastri or such other persons and later on receiving the said amount of sale proceeds of smuggled goods as remittance received from Shri Anil Parmar or Shri Sanjay Shastri, which amount was later on utilized by Shri Jayesh Patel for arranging his illegal and criminal activities. Thus, it appears that they were deployed by Shri Jayesh Patel for arranging the disposal/sale of smuggled goods and to bring the illegally earned money of the sale proceeds of smuggled goods back to India, by giving them a façade of legitimacy. The amount of illegally earned sale proceed were sent through hawala to Dubai thereby laundering the money so received by depositing in the bank accounts of these four persons; thereby they were abetting in the smuggling activity. When in the present case, their involvement is noticed, they were asked to appear before investigating officer and to clarify the purpose of their transactions, but except Shri Jaman Moliya, other three persons have deliberately not responded to the summons issued to them under Section 108 of the Customs Act, 1962 or to give the reasons for their non-appearance or any other clarification.

Shri Jaman Moliya was the part this syndicate, headed by Shri Jayesh Patel. On instruction of Shri Jayesh Patel, Shri Jaman Moliya opened a current account in the AXIS Bank for transferring of funds from Dubai. Shri Jayesh Patel was used to send illegally earned sale proceed of smuggled goods through hawala channel to Shri Anil Parmar and Shri Sanjay Shastri or such other persons having NRI status against the statutory provisions provided in this regard. But when a statement was recorded, Shri Jaman Moliya has not given correct facts in his statement, which is evident from the statement of Shri Anil Parmar that the money given by him was totally transferred by Shri Jayesh Patel from his account and he (Shri Jayesh Patel) is totally unaware. In his statement Shri Jaman Moliyas' statement that the amount he received is a

loan, is thus vague and with a sole intention to mis-lead the inquiry. Even though he appeared in response to summons, Shri Jaman Moliya has violated the provisions of the Section 108(3) of the Customs Act, 1962 and accordingly he has made himself liable for penalty under the Customs Act, 1962.

Further confirmations about the role of each of these four persons and the source and purpose of transactions can be made when the statements of absconding persons are recorded and further evidences are brought on record.

Thereby, all the aforesaid four persons have rendered themselves individually liable for penalty under Section 112(b) and Section 117 of the Customs Act, 1962.

8.24. M/s. Geochem Laboratories Pvt. Ltd.

They are the leader of all group companies including M/s. GME. However, when they were asked to explain their relationship with M/s GME, Shri Gagan Malhotra, Manage of M/s. GLPL denied having any relationship with the said Dubai based company. However, it is evident from the documents submitted by M/s. GME before the DGFT for obtaining recognition as PSIA that they were the Group companies. Thus, the statement given by Shri Gagan Malhotra, Manager of M/s. GLPL on 15.07.2016 was misguiding and obstructing the inquiring officer to arrive at the facts of the case, rendering them liable for penalty under Section 117 of the Customs Act, 1962.

8.25. Shri Gagan Malhotra of M/s. Geochem Laboratories Pvt. Ltd.

M/s. GLPL are the leader of all group companies including M/s. GME. However, when they were asked to explain their relationship with M/s. GME Shri Gagan Malhotra, Manage of M/s GLPL denied having any relationship with the said Dubai based company. However, it is evident from the documents submitted by M/s. GME before the DGFT for obtaining recognition as PSIA that they were the Group companies. Thus, the statement given by Shri Gagan Malhotra, Manager of M/s. GLPL on 15.07.2016 was misguiding and obstructing the inquiring officer to arrive at the facts of the case, rendering them liable for penalty under Section 117 of the Customs Act, 1962.

8.26. NSB

They are the present owner of the vessel MV Chicago (Present name MV Maersk Yangtze) (IMO No. 9248162). Vide Letter/email dtd. 08.12.2020, they were asked to

explain their status with reference to the subject conveyance and also asked to explain the connection of the vessel owned by them in connection with the offending goods. However, even after reminder on 16.12.2020, they opted to remain silent and avoided to provide reply to the summons issued to them under Section 108 of the Customs Act, 1962. Therefore, irrespective the confiscability of the conveyance in terms of Section 115 of the Customs Act, 1962, they were also liable for penalty in terms of Section 117 of the Customs Act, 1962.

8.27. Shri Sachin Garg of M/s. MICT Pvt. Ltd.

Being senior representative of custodian M/s. MICT Pvt. Ltd., he is required to be fully aware about the legal provisions and procedure; instead despite clear evidences of violations of provisions of Handling of Cargo in Customs Area Regulation, 2009 read with Sections 45 and 34 of Customs Act, 1962 by MICT, while giving his statement under Section 108 of the Customs Act, 1962, he bluntly stated that they had not violated any legal provisions in incorrect manner thereby disowning any and all responsibility of the Custodians; for which he is liable of penalty under Section 117 of the Customs Act, 1962.

9.1 Shri Vijay Vashrambhai Sabhaya, Prop. of M/s. Krishna Brass Industries, Plot No. 3962, GIDC, Phase-III, Dared, Jamnagar (IEC No. 2414004193) were called upon to show cause in writing to the Pr. Commissioner/Commissioner of Customs, Mundra Custom House, having his office situated at Mundra Custom House, PUB Building, Mundra Port 370421, within 30 days from the receipt of this notice as to why: -

(i) the 3,82,03,006 cigarette sticks contained in container No. IPXU3062264 valued at Rs.2,30,17,039/- (rupees two crores thirty lakhs seventeen thousand and thirty nine only) should not be confiscated under Section 111(f), 111(g), 111(h), 111(i), 111(j), 111(n) and 111(o) of the Customs Act, 1962; however the goods are not available;

(ii) the applicable Customs duty amounting to Rs. 19,92,23,482/- (Rupees nineteen crores ninety two lakhs twenty three thousand four hundred eighty two only) chargeable on the said cigarettes (as shown in enclosed Annexure-A) should not be demanded and recovered under Section 28 (4) of Customs Act, 1962 read with Sections 53 and 55 of the Customs Act, 1962;

(iii) interest at appropriate rate should not be demanded and recovered on the duty demanded at (ii) above under Section 28AA of the Customs Act, 1962;

(iv) penalty should not be imposed upon them separately under each of the provisions of Sections 112(a), 112(b), 114A, 114AA and 117 of the Customs Act, 1962.

9.2 M/s. Amardeep Exports (100% EOU), Plot No. 414 & 417, Phase-II, GIDC, Dared, Jamnagar (IEC No. 3705001035) were called upon to show cause in writing to the Pr. Commissioner/Commissioner of Customs, Mundra Custom House, having his office situated at Mundra Custom House, PUB Building, Mundra Port 370421, within 30 days from the receipt of this notice as to why: -

(i) the 3,82,03,006 cigarette sticks contained in container No. TTNU3535220 valued at Rs.2,30,17,039/- (rupees two crores thirty lakhs seventeen thousand and thirty nine only) should not be confiscated under Section 111(f), 111(g), 111(h), 111(i), 111(j), 111(n) and 111(o) of the Customs Act, 1962; however the goods are not available;

(ii) the applicable Customs duty amounting to Rs. 19,92,23,482/- (Rupees nineteen crores ninety two lakhs twenty three thousand four hundred eighty two only) chargeable on the said cigarettes (as shown in enclosed Annexure-A) should not be demanded and recovered under Section 28 (4) of Customs Act, 1962 read with Sections 53 and 55 of the Customs Act, 1962;

(iii) interest at appropriate rate should not be demanded and recovered on the duty demanded at (ii) above under Section 28AA of the Customs Act, 1962;

(iv) penalty should not be imposed upon them separately under each of the provisions of Sections 112(a), 112(b), 114A, 114AA and 117 of the Customs Act, 1962.

9.3 M/s. ATS, (represented in India by M/s. RMIPL) were called upon to show cause in writing to the Pr. Commissioner/Commissioner of Customs, Mundra Custom House, having his office situated at Mundra Custom House, PUB Building, Mundra Port 370421, within 30 days from the receipt of this notice as to why: -

(i) the container Nos. IPXU3062264 and TTNU3535220 totally valued at Rs. 2,00,000/- (Rs. Two Lakhs Only) should not be confiscated under Section 111(f), 111(g), 111(h), 111(i), 111(j), 111(n) and 111(o) of the Customs Act, 1962;

(ii) the Customs duty amounting to Rs. 58,882/- (Rupees Fifty-Eight Thousand, Eight Hundred and Eighty-Two Only) chargeable on the said containers should not be demanded and recovered under Section 28 (4) of Customs Act, 1962 read with Section 53 and 55 of the Customs Act, 1962;

(iii) interest at appropriate rate should not be demanded and recovered on the duty demanded at (ii) above under Section 28AA of the Customs Act, 1962.

M/s ATS represented by M/s. RMIPL are liable to make available both the container Nos. IPXU3062264 and TTNU3535220 before the Pr. Commissioner/Commissioner of Customs, Mundra Custom House, having his office situated at Mundra Custom House, PUB Building, Mundra Port 370421, within 30 days from the receipt of this notice.

9.4 (i) M/s. MBK Logistix Private Limited, Office No. 5, Om Corner, Plot No. 336, 337 and 343, Ward No. 12B, Gandhidham-Kutch,

(ii) M/s. Sima Marine (India) Pvt. Ltd., Ground Floor, Sai Commercial Annexe, B.K.S. Devshi Marg, Govandi Station Road, Govandi Estate, Mumbai 400088 and

(iii) M/s. Simatech Shipping Forwarding L.L.C., Dubai (in charge of MV Chicago)

(iv) M/s. NSB NIEDERELBE SCHIFFAHRTSGES present owner of the vessel MV Chicago

were called upon to show cause in writing to the Pr. Commissioner/Commissioner of Customs, Mundra Custom House, having his office situated at Mundra Custom House, PUB Building, Mundra Port 370421, within 30 days from the receipt of this notice as to why the Vessel MV Chicago (IMO No.9248162) valued at Rs. 50,00,00,000/- (Rs. Fifty Crores Only) which was earlier owned by M/s. SSFL, Dubai at the material time and M/s. MBK were acting as agents of the owner of the vessel MV Chicago at the material time, i.e. during November, 2015 and which is now renamed as MV MAERSK YANGTZE and presently owned by M/s NSB NIEDERELBE SCHIFFAHRTSGES; which was used as a means of conveyance in the illegal transit of the cigarettes with those two container Nos IPXU3062264 & TTNU3535220 should not be confiscated under Section 115(2) of the Customs Act, 1962;

M/s. SSF (represented in India by M/s SMIPL and in Mundra by M/s. MBK) along with M/s. NSB Niederelbe Schiefahrtsges are jointly and severally liable to make available the vessel MV Chicago (Now MV Maersk Yangtze before the Pr. Commissioner/Commissioner of Customs, Mundra Custom House, having his office situated at Mundra Custom House, PUB Building, Mundra Port - 370421, within 30 days from the receipt of this notice.

9.5 Shri Anil Parmar and Shri Jayesh Patel were individually and separately called upon to show cause in writing to the Pr. Commissioner/Commissioner of Customs, Mundra Custom House, having his office situated at Mundra Custom House, PUB Building, Mundra Port 370421, within 30 days from the receipt of this notice as to why the amount of Rs.5,15,235/- lying as balance in the NRI bank account No. 916010010171472 of Shri Anil Parmar with Axis Bank, Jamnagar as on 30.09.2020 should not be confiscated under the provisions of Section 121 of the Customs Act, 1962.

9.6 The following persons/companies/firms/concerns as appearing in Column 2 of the following table, were individually and separately called upon to show cause in writing to the Pr. Commissioner/Commissioner of Customs, Mundra Custom House, having his office situated at Mundra Custom House, PUB Building, Mundra Port 370421, within 30 days from the receipt of this notice as to why penalty should not be imposed on each of them individually and separately under below mentioned penal provisions of the Customs Act, 1962:

S. No.	**Name (S/Shri/MsSmt// M/s)**	**Penal provisions under Customs Act, 1962**
1.	Shri Shailesh Damjibhai Patel (Sanghani), Power of Attorney Holder of M/s Krishna Brass Industries	112(a), 112(b), 114AA, 117
2.	Shri Ankit Changani, Partner of M/s Amardeep Exports (100% EOU)	112(a), 112(b), 114AA, 117
3.	M/s. MBK Logistix Private Limited	112(a), 112(b), 114AA, 117
4.	M/s. Sima Marine (India) Pvt. Ltd.	112(a), 112(b), 114AA
5.	M/s. Simatech Shipping Forwarding L.L.C., Dubai	112(a), 112(b), 114AA
6.	Shri Sachin Naik, Regional Manager of M/s. MBK Logistix Private Limited	112(a), 112(b), 114AA, 117

7.	Shri Mahesh Keniya of M/s. MBK Logistix Pvt. Ltd.	112(a), 112(b), 114AA
8.	M/s Radiant Maritime India Private Limited	112(a), 112(b), 114AA
9.	Bhupinder Singh Saini of M/s. Radiant Maritime India Private Limited	112(a), 112(b), 114AA
10.	M/s. Asian Tiger Shipping LLC	112(a), 112(b), 114AA
11.	M/s. Alliance Metal General Trading LLC	112(a), 112(b), 114AA, 117
12.	Anil Parmar, Partner of M/s. Alliance Metal General Trading LLC	112(a), 112(b), 114AA, 117
13.	Shri Al Zarooni @ Al Baab, Partner of M/s. Alliance Metal General Trading LLC	112(a), 112(b), 114AA, 117
14.	M/s. Geo-Chem Middle East	112(a), 112(b), 114AA, 117
15.	Shri Mansour Shalaby, Operation Manager, M/s. Geo-Chem Middle East	112(a), 112(b), 114AA, 117
16.	Mr. Azhar Zaidi, M/s. Geo-Chem Middle East	112(a), 112(b), 114AA
17.	Shri Shoyaib (Whereabouts not known)	112(a), 112(b), 114AA
18.	Shri Jaysukh Ranpariya @ Jayesh Patel	112(a), 112(b), 114AA, 117
19.	Shri Sanjay Shastri	112(a), 112(b), 114AA, 117
20.	M/s. MICT Pvt. Ltd.	112(a), 112(b), 117
21.	Shri Pravin P. Chovatiya	112(b), 117
22.	Shri Chandrakant V. Sanghvi	112(b), 117
23.	Shri Mayur M. Sabhaya	112(b), 117
24.	Shri Jaman D. Moliya	112(b), 117
25.	Shri Gagan Malhotra, Manager of M/s. Geochem Laboratories Pvt. Ltd.	117
26.	Geochem Laboratories Pvt. Ltd., Mumbai	117
27.	M/s. NSB Niederelbe Schiffahrtsgesellschaft mbH & Co KG (NSB Group), Harburger Strasse 47-51, 21614 Buxtehude, Germany, The present owner of MV Chicago (Now MV Maersk Yangtze)	117
28.	Shri Sachin Garg of M/s. MICT Pvt. Ltd.	117

10. Defence Submission

i) Noticee No. 3,4,5,6,7,8,29,23, 30, 15, 18, 19 and 25 has submitted their written reply.

10.1 Written submission of Shri Pravin P Chovatiya (Noticee No. [25])

Shri Pravin P Chovatiya, vide his written reply dated 06.11.2026, inter alia submitted as under:

(i) Limitation: The SCN is grossly time-barred. Even if the extended period of five years applies, it must be computed from the date the Department received actionable information. That information was received through the Indian Consulate's letter dated 13.11.2015, stating that the container was allegedly full of cigarettes. The period therefore expired on 13.11.2020, whereas the SCN was issued on 21.12.2020.

(ii) No nexus with the goods: The SCN is confined to Container Nos. IPXU3062264 and TTNU3535220, which, on the Department's own case, were recalled on 04.11.2015, carried back to Jebel Ali and opened by Dubai Customs. The goods never cleared Customs in India, never reached any Indian buyer and generated no sale proceeds in India. The credits to him are dated February to April 2016, three to five months after the recall. The SCN identifies no consignment, quantity, buyer, date or place of sale in which he took part. The allegation of sale in the Indian market is a bare assertion that names him only in a list.

(iii) Section 112(b): The ingredients of Section 112(b), namely dealing with the goods, liability of the goods to confiscation under Section 111, and knowledge or reason to believe, are not made out. The SCN does not allege that he possessed, carried, stored, sold or bought the containers or any cigarettes. Money received in a bank account is not dealing with goods liable to confiscation. Sale proceeds of smuggled goods are dealt with separately under Section 121, and no such proceeding is proposed against him or any sum in his hands. No statement, message, call record, document or meeting connects him with the cigarettes, the EOUs (KBI and AE), M/s Alliance Metal General Trading LLC, the shipping lines or the PSICs. The references to his state of mind in paras 5.1 and 8.23 of the SCN are conclusions without any premise.

(iv) Section 117: Section 117 is a residuary provision, and the SCN does not identify any provision contravened or duty not complied with. The SCN does not state the mode of service or date of receipt of the summons dated 17.12.2020, or whether it was received at all, and no reminder is mentioned. The SCN was issued only four days after the summons. He was lodged in Sabarmati Jail on 17.12.2020 in a GujCTOC case, and hence his non-appearance was neither wilful nor a contravention.

(v) Cross-examination: Under Section 138B(2) of the Customs Act, 1962, a statement recorded under Section 108 can be used to prove the truth of its contents only after the maker is examined as a witness and the authority forms the opinion that it should be admitted in the interests of justice. He relied on *Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II (2015)* (Supreme Court), and disputed the statements of Shri Anil Parmar and Shri Jaman Moliya to the extent read against him. He sought cross-examination of:

- Shri Anil Parmar;
- Shri Jaman Moliya;
- Shri Jayash Ranpariya;
- the Axis Bank officer who furnished the statement obtained on 10.12.2020; and
- the Investigating Officer who recorded the statements and issued the summons dated 17.12.2020.

(vi) Prayer: He requested that the proceedings against him be dropped and sought a personal hearing, reserving the right to amend, alter or add to his submissions at the time of hearing.

10.2 Written submission of M/s Geo-Chem Laboratories Pvt. Ltd. (Noticee No. 19) and Shri Gagan Malhotra (Noticee No.18)

The above Noticees, through their advocates, M/s India Law Alliance, vide reply dated 05.11.2026, denied all the allegations in the SCN and inter alia submitted as under:

(i) No role in the impugned import: M/s Geo-Chem Laboratories Pvt. Ltd. (GLPL) carries on testing, inspection and laboratory services in India, and Shri Malhotra has been its General Manager - Agri Operations since 2008. Neither Noticee is a PSIA for the UAE region, and neither inspected, sealed or certified the three containers or

issued the three PSICs. The SCN does not allege any contact with the importers, the exporter, Shri Anil Parmar, the shipping lines, the custodian or any other noticee, and proposes no penalty under Sections 112(a), 112(b) or 114AA. The sole allegation is that Shri Malhotra's statement dated 15.07.2016 was misguiding.

(ii) Separate legal entities: GLPL and M/s Geo-Chem Middle East, Dubai (GME) are separate entities incorporated in different countries. GLPL holds no shares in GME, has no common directors with it and exercises no management or operational control over it. It had no role in GME's recognition as a PSIA, its inspections or its PSICs. Group companies remain distinct in law, and the corporate veil can be lifted only in exceptional circumstances such as fraud or sham, which the SCN does not allege. The common name "Geo-Chem" neither makes GLPL answerable for GME nor renders the statement of no relationship untrue.

(iii) No obstruction of investigation: The only material relied upon to allege a relationship is the 2012 Annual Membership Certificate issued by IFIA, a private trade association, and attached by GME to its own application to the DGFT dated 18.05.2015. DRI wrote directly to GME by email dated 15.07.2016. GME replied on 18.07.2016 and furnished the three PSICs on 27.07.2016, and DRI corresponded directly with GME up to December 2020. Shri Malhotra appeared and tendered his statement when called upon, and the SCN does not allege any failure to appear, produce documents or answer questions.

(iv) Section 117: Section 117 can be invoked only for contravention of, abetment of contravention of, or failure to comply with, a specific provision of the Act. The SCN identifies no such provision, and an allegedly misguiding statement is not itself a contravention. The proposed penalty is also unsupported by any reasoned finding on its basis or proportionality. Reliance was placed on *PL Shipping and Logistics Pvt. Ltd. v. Commissioner of Customs, Tuticorin* [2026 (9) TMI 668-CESTAT Chennai] and *Dahnay Logistics Pvt. Ltd. v. Commissioner of Customs, Chennai* [2026 (8) TMI 1535-CESTAT Chennai].

(v) No deliberate defiance: Relying on *Hindustan Steel Ltd. v. State of Orissa* [1978 (2) E.L.T. (J 159) (S.C.)], the Noticees submitted that penalty is not ordinarily imposable unless a party acted deliberately in defiance of law, was guilty of contumacious or dishonest conduct, or acted in conscious disregard of its obligations. Penalty may be unwarranted for a technical or venial breach or one arising from a bona fide belief, and the discretion must be exercised judicially.

(vi) Delay: The SCN was issued more than four years and five months after the statement dated 15.07.2016 and has remained pending for nearly six years. The Noticees are prejudiced because the events are a decade old and the relevant records and persons are no longer readily available. Even where no limitation is prescribed, jurisdiction must be exercised within a reasonable period, for which they relied on *State of Punjab v. Bhatinda District Co-op. Milk Producers Union Ltd.* [2007 (217) ELT 325 SC].

(vii) Section 28(9): The SCN was issued, inter alia, under Section 28(4), proposing duty of Rs. 19,92,23,482/- each on M/s Krishna Brass Industries and M/s Amardeep Exports and Rs. 58,882/- on M/s Asian Tiger Shipping. The one-year period under Section 28(9) expired on 20.12.2021, and the outer limit of two years, even if extended, expired on 20.12.2022. No extension order, or intimation of abeyance under Section 28(9A) or transfer to the call book, was communicated to them. The proceedings therefore stand concluded as if no notice had been issued under the second proviso, and the penalty proposals in the same notice cannot be adjudicated.

(viii) Prayer: The Noticees requested that the penalties proposed under Section 117 be dropped, sought a personal hearing, and craved leave to add, alter, amend, supplement or delete their submissions.

10.3 Written submission of M/s Sima Marine (India) Pvt. Ltd. (Noticee No. 6), dated 20.08.2021

M/s Sima Marine (India) Pvt. Ltd. (SMIPL), vide reply dated 20.08.2021, denied all the charges and inter alia submitted as under:

(i) Role: SMIPL was the shipping agent of MV Chicago at JNPT, Nhava Sheva, and appointed M/s MBK Logistix Pvt. Ltd. (MBK) as sub-agent for Mundra. M/s Simatech Shipping and Forwarding LLC, Dubai, was the owner (chartered by the said LLC) and in charge of the vessel. It is a feeder operator allotting space to NVOCCs/MLOs. The containers were loaded on a slot purchase basis at the direction of M/s Asian Tiger Shipping Co., Dubai (ATS), agent of the shipper.

(ii) Recall at the instance of ATS: By email dated 04.11.2015, ATS enquired about returning the containers to Dubai. Stow charges at Mundra and additional freight from Mundra to Dubai were intimated, and ATS agreed by email dated 05.11.2015. The decision was taken on the NVOCC's instruction, without knowledge that the

container was under DRI scrutiny, and the message was passed on to MBK. Abetment cannot be inferred from this.

(iii) No knowledge of the goods: SMIPL and MBK relied entirely on the declaration of the customers/NVOCC and received only container numbers for listing, which is the practice in feeder operations.

(iv) No evasion of duty: The goods never crossed the customs area, no Bill of Entry was filed for home clearance, and the containers were returned to the port of origin. The incidence of duty therefore did not arise.

(v) Restow: Re-stowing is a normal shipping activity and was carried out on the principal's direction. It has been brought to SMIPL's notice that MBK did not inform Customs of the re-stowing, but the necessary information was given to the terminal authorities as per the practice then followed at Mundra. There was no intention or involvement in smuggling and no extra consideration or monetary benefit, and the Department has merely inferred abetment.

(vi) Vessel: The goods were never imported or cleared by SMIPL or MBK, and the containers were reloaded after re-stowing. The vessel owner and its agents had no intention to import the goods and acted on instructions received through ATS. There is nothing on record to show that they were hand in glove with the importers or shipper, and hence the vessel cannot be confiscated.

(vii) Section 112: Penalty under Section 112 is imposable for improper importation, whereas the SCN states that the goods were not imported but were under transit and were brought back to Dubai by their owner. MBK did not mention the restow in the IGM only because that practice was not followed at Mundra during that period.

(viii) Section 114AA: MBK filed the IGM and EGM, and the decision to bring back the containers was taken by the shipper/NVOCC. SMIPL and MBK had no knowledge of the goods and did not act in connivance with the importer or exporter, and there is no proof of any act done falsely, knowingly or intentionally.

(ix) Prayer: SMIPL requested that the proposed penalties under Sections 112(a), 112(b), 114AA and 117 and the direction to produce the vessel for confiscation be dropped, and sought a personal hearing.

10.4 Additional written submission of M/s Sima Marine (India) Pvt. Ltd. (Noticee No. 6) and M/s Simatech Shipping Forwarding L.L.C. (Noticee No. 7), dated 28.10.2026

The above Noticees, through Advocate Taranjeet Phull of M/s Lloyd & Johnson, vide additional reply dated 28.10.2026, stated that SMIPL's reply dated 20.08.2021 stands and is to be read with this reply. Simatech joined without prejudice to its objection that the SCN was not validly served on it. They denied all allegations not expressly admitted and inter alia submitted as under:

(i) Limitation: The events occurred between 29.10.2015 and 12.11.2015, and the five-year period under Section 28(4) expired, at the latest, on 06/07.11.2020. The SCN dated 21.12.2020 relies in para 15 on the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020/TOLA, which is an admission that the period ran from November 2015. TOLA does not save the SCN because:

- the Noticees are not persons chargeable with duty, and only penalties and confiscation of the vessel are proposed against them;
- TOLA extends a deadline but does not supply the grounds of collusion, wilful misstatement or suppression; and
- the notification dated 30.09.2020 (F. No. 450/61/2020-Cus.IV (Part-1)) is not among the RUDs.

(ii) No suppression and no reasonable time: DRI's SCN dated 02.05.2016 on Container No. IALU2252554 narrated the recall of the two containers, relied on the statements of Shri Saini and Shri Naik, the shipper's letter, the draft B/Ls and the Consulate letter dated 13.12.2015, and stated that the two containers were being dealt with separately. No step concerning the vessel interests was taken for over three years before the pandemic. Penalty proposals on facts known since November 2015 were not made within a reasonable time. Reliance was placed on *Government of India v. Citadel Fine Pharmaceuticals*, (1989) 3 SCC 483; *State of Punjab v. Bhatinda District Co-operative Milk Producers Union Ltd.*, (2007) 11 SCC 363; and *Nizam Sugar Factory v. Collector of Central Excise*, (2006) 11 SCC 573.

(iii) Section 28(9): The one-year period expired on 20.12.2021, and the outer limit, even with the maximum extension, expired on 20.12.2022. No extension order or intimation under Section 28(9A) was received, and placing the file in the call book/sine die without intimation cannot stop time. Even after excluding 15.03.2020

to 28.02.2022 under *In Re: Cognizance for Extension of Limitation* (Suo Motu W.P.(C) No. 3 of 2020), the period expired on 29.02.2024. The proceedings therefore stand concluded under the second proviso, and with no evasion left to abet, the penalty proposals cannot survive. Reliance was placed on *Siddhi Vinayak Syntex Pvt. Ltd. v. Union of India*, 2017 (352) E.L.T. 455 (Guj.); *Parle International Ltd. v. Union of India*, 2021 (375) E.L.T. 633 (Bom.); and *Vos Technologies India Pvt. Ltd. v. Principal Additional Director General, DRI* (Delhi High Court, 2024). They requested that the preliminary objections be decided first by a reasoned order, and stated that they attend any hearing under protest.

(iv) Prejudice: MV Chicago was renamed Maersk Yangtze in 2018 and is outside India, the Dubai Customs examination cannot now be tested, and the allegations concern events eleven years old. Proceeding now would violate natural justice and Article 14 of the Constitution.

(v) Role of Simatech and SMIPL: Simatech was charterer and slot provider, not owner or carrier of the cargo; the owner was NSB, Germany (RUD 29). The containers belonged to ATS, were booked with ATS and were loaded as ATS's slot cargo, with delivery through its agent, M/s Radiant Maritime India Pvt. Ltd. (RMIPL). Simatech issued no B/L and had no contact with the shipper or consignees. It received sealed containers as shipper's load, stow, count and seal, with no right or means to open them. SMIPL acted as vessel agent at JNPT, where the containers were correctly declared as remain on board with Mundra as port of discharge (RUD 28). The IGM and EGM at Mundra were filed by MBK, and the SCN does not explain how a charterer abroad, or its agent at another port, is responsible for them.

(vi) Recall a routine commercial request: ATS's request of 04.11.2015 (16:01 hrs) cited non-payment of the shipper's dues and was received before the vessel's arrival and the filing of the Mundra IGM. The emails under the subject "ROB REQUEST" went to many recipients, only the terminal's restow charges and slot charges were involved, and written notice was given to the custodian. The Noticees had no means of knowing of DRI's examination of IALU2252554, which involved a different line, vessel, agent and facility. The 2016 SCN attributed knowledge of the seizure to the consignees and shipper. There was no consideration beyond the restow and slot charges.

(vii) Contents not proved: The two containers were never seized, examined, sampled or inventoried in India. The only material on their contents is the Consulate letter

dated 13.12.2015 (RUD 11), which relies on an unnamed source in Dubai Customs, gives no officer, date, place, brand, count, weight, value or inventory, and shows that the inspection report was yet to be signed. No such report is on record. The quantity of 3,82,03,006 sticks, value of Rs. 2,30,17,039 and duty of Rs. 19,92,23,482 per container are conjectural, being extrapolated by volumetric formula from a different container. Shri Anil Parmar denies sending any request to the line, and no statement suggests that the Noticees knew or suspected the contents.

(viii) No import and no duty evaded: The containers remained on board apart from a restow on the wharf by the terminal, and left India on the same vessel. No IGM or Bill of Entry was filed in respect of them, and the goods never crossed the customs barrier (*Garden Silk Mills Ltd. v. Union of India*, (1999) 8 SCC 744). Sections 53 and 55 do not apply, since the containers were same-bottom cargo and were not transhipped from Nhava Sheva.

(ix) Section 111:

- Clause (f) fails because the Noticees did not deliver or sign the Mundra manifest and the line had withdrawn the containers before the IGM was filed.
- Clause (g) fails because a restow within the customs area is not unloading at a customs station under Section 32, and the contents are not proved.
- Clause (h) fails because the restow took place at the approved place under Customs supervision, without separate intimation as per normal practice at Mundra (RUD 39).
- Clause (i) depends on contents that are not proved.
- Clause (j) fails because the containers did not leave the customs area into India.
- Clauses (n) and (o) fail because no transit permission or exemption was sought or used.

Confiscation of unavailable goods is academic. In the case of IALU2252554, where cigarettes were actually found, no penalty was proposed on the carrier, vessel operator or vessel agent.

(x) Penalties:

- Section 112(a) requires intentional aiding with knowledge, of which there is no evidence.
- Section 112(b) requires knowledge or reason to believe, of which there is no material.
- Section 114AA requires a knowing or intentional false declaration, and the Noticees made, signed and used none at Mundra.
- Section 116 is not invoked in the charging para 9.6 (*Commissioner of Customs v. Toyo Engineering India Ltd.*, (2006) 7 SCC 592), and in any event every step is accounted for.
- Any breach was at most technical or venial (*Hindustan Steel Ltd. v. State of Orissa*, (1969) 2 SCC 627).
- Principal, agent and sub-agent cannot each be penalised for a single alleged omission without an independent act or knowledge of their own.

(xi) Section 115(2): Simatech does not own or control the vessel and cannot be directed to make it available. The vessel is outside India and has not been seized, and its value of Rs. 50,00,00,000 is a guess. The goods were not landed or cleared in India, and the charterer and its agents had no knowledge of the contents. Any saving for an owner without knowledge or connivance is for NSB to invoke, and the proviso provides an option of fine for a conveyance used for carriage of goods for hire. Confiscation of a 5,752 TEU vessel for two slot containers of another line would be grossly disproportionate.

(xii) Cross-examination: Relying on Section 138B and *Andaman Timber Industries v. Commissioner of Central Excise*, (2016) 15 SCC 785, the Noticees sought cross-examination of the following, failing which the corresponding statement or document must be excluded:

(xiii) Prayer: The Noticees requested that limitation and Section 28(9) be decided as preliminary issues and the proceedings against them be dropped. They further requested that the proposal under Section 115(2), the direction to make the vessel available, and the penalties under Sections 112(a), 112(b) and 114AA be dropped, and that it be held that no penalty under Section 116 or 117 can be imposed. They also sought the documents, cross-examination, a personal hearing thereafter and leave to file further submissions.

10.5 Additional written submission of M/s MBK Logistix Pvt. Ltd. (Noticee No. 5), Shri Sachin S. Naik (Noticee No. 8) and Shri Mahesh Keniya (Noticee No. 29), dated 28.10.2026

The above Noticees, through Adv. Nimit Shukla, vide additional reply dated 28.10.2026, stated that their previous reply stands and is to be read with this reply, and adopted, to the extent applicable, the replies of SMIPL. They denied all allegations not expressly admitted and inter alia submitted as under:

(i) Limitation: The five-year period under Section 28(4) expired, at the latest, on 06/07.11.2020, and without TOLA the SCN dated 21.12.2020 is admittedly out of time. TOLA does not help because the Noticees are not persons chargeable with duty, TOLA does not supply the grounds for the extended period, and the notification dated 30.09.2020 is not among the RUDs.

(ii) No suppression and no reasonable time: The facts were known to the Department by November/December 2015, and the SCN dated 02.05.2016 narrated the recall and recorded that the two containers were being dealt with separately. Penalty proposals more than five years after the event are not within a reasonable time. Reliance was placed on *Citadel Fine Pharmaceuticals*, *Bhatinda District Co-operative Milk Producers Union Ltd.* and *Nizam Sugar Factory* (citations as in the preceding reply).

(iii) Section 28(9): The one-year period expired on 20.12.2021 and the outer limit on 20.12.2022. No extension order or intimation under Section 28(9A) was received, and call book transfer without intimation cannot stop time. Even after the exclusion ordered in Suo Motu W.P.(C) No. 3 of 2020, the period expired on 29.02.2024. The proceedings stand concluded, and no evasion remains to be abetted. Reliance was placed on *Siddhi Vinayak Syntex*, *Parle International* and *Vos Technologies*. They requested that the preliminary objections be decided first and stated that they attend any hearing under protest.

(iv) Prejudice: The vessel has been renamed and is outside India, the Dubai Customs examination cannot now be tested, and the events are eleven years old, resulting in violation of natural justice and Article 14 of the Constitution.

(v) MBK acted as sub-agent: MBK was SMIPL's sub-agent for Simatech's vessels under an agreement dated 15.07.2012. It filed IGM No. 2123552 dated 05.11.2015 (electronic)/No. 1601 dated 06.11.2015 (manual) and EGM No. 95705. It acted on

Simatech's instructions, which followed ATS's request. It had no contact with the shipper or consignees and knew only the container numbers, sizes, weights and port of discharge. Its role was limited to giving its principal the terminal's restow charges (USD 132 + 14% service tax = USD 150.48 per 20' container), noting their recovery from the customer, and arranging the restow with the terminal.

(vi) Errors in the SCN regarding emails and charges: MBK did not correspond with ATS. The emails attributed to MBK at 16:17 hrs on 04.11.2015 and 09:09 hrs on 05.11.2015 were sent by Simatech, and the "13:23 PM" email does not appear in the chain in RUD 30. MBK did not collect remuneration from the shipper. The restow charges were MICT's tariff charges, recovered through Simatech's Dubai office, and the slot charge belonged to Simatech.

(vii) Omission from the IGM: The cargo declaration had to come from ATS through RMIPL, which the SCN treats as the specified person for these containers. RMIPL's Branch Manager stated that the return email was received before the IGM was filed and that the containers were therefore not covered in it (RUD 13). SMIPL's Regional Manager confirmed that RMIPL had not provided the manifest to MBK (RUD 30). The containers were thus not cargo to be landed at Mundra and remained on board as same-bottom cargo.

(viii) Procedural omission only: At its highest, the case is one of not listing two same-bottom containers on a separate sheet. Same-bottom cargo was shown only by number and size of containers (RUD 32; SCN para 5.8), and restows via the wharf were done without separate intimation to Customs as per normal practice at Mundra (RUD 39). There was no revenue loss. The EGM records goods loaded at Mundra for export, which these containers were not, and the restow was performed by the terminal for operational reasons. Nothing was hidden, as MBK issued arrival notices and told the custodian in writing to keep the containers as ROB units. The consequence, if any, would be a penalty under Section 117 and not a finding of abetment.

(ix) Shri Mahesh Keniya: His email dated 06.11.2015 to MICT identified the two containers as ROB units for Jebel Ali. The Import Advance List covers only containers to be discharged at Mundra, and so could not include them. He followed the port's practice on intimation to Customs, was never summoned, and no statement of his was recorded.

(x) Shri Sachin S. Naik: He appeared and gave a full statement on 02.03.2016, which DRI accepted as confirming the facts in its 2016 SCN. The SCN identifies no summons that he failed to answer, and the allegation of non-cooperation underlying the Section 117 proposal is unsupported. He did give a reason for the omission, namely that the recall came from the principal on the line's instructions before the IGM was filed.

(xi) Contents not proved and no import: The containers were never examined in India. The Consulate letter (RUD 11) is second-hand information from an unnamed source, is not a Dubai Customs report, and the SCN misquotes its number. The quantity, value and duty are conjectural volumetric extrapolations from a different container. Shri Anil Parmar denies sending any request to the line. No Bill of Entry was filed and the goods never crossed the customs barrier (*Garden Silk Mills*), so no duty could be evaded or abetted. Sections 53 and 55 do not apply, since the containers were same-bottom cargo and were not transhipped.

(xii) Section 111:

- Clause (f) fails because the declaration had to come from the line, which withdrew the containers before the IGM was filed.
- Clause (g) fails because a restow within the customs area is not unloading under Section 32, and the contents are not proved.
- Clause (h) fails because the restow took place at the approved place under Customs supervision.
- Clause (i) depends on contents that are not proved.
- Clause (j) fails because the containers did not leave the customs area into India.
- Clauses (n) and (o) fail because no transit permission or exemption was sought or used.

Confiscation of unavailable goods is academic. No penalty was proposed on the vessel interests for IALU2252554, and in the 2016 SCN they were treated as witnesses and not suspects.

(xiii) Penalties on MBK:

- Section 112(a) requires intentional aiding with knowledge, and there is no evidence that MBK knew or suspected the contents.
- Section 112(b) requires knowledge or reason to believe, and MBK had only the line's description, later supported by the PSICs.
- Section 114AA is not attracted, as the IGM stated nothing false about the containers and an omission in accordance with prevailing practice is not knowing or intentional falsity.
- Section 117 is residuary and cannot apply along with Sections 112 and 114AA for the same omission. Any penalty could only be a single penalty for the manifest, and not "for each of the lines", within the maximum applicable in November 2015.
- Section 116 is not invoked in para 9.6 (*Toyo Engineering*), every step is accounted for, and the provision is directed at the person in charge of the conveyance.
- Reliance was also placed on *Hindustan Steel* for a technical or venial breach or bona fide belief.

(xiv) Penalties on employees: Section 140 deals with criminal liability for offences by companies and does not apply to penalties in adjudication. The employees acted only in the course of employment, on the instructions of the company's principal, and gained nothing personally. No independent act, knowledge or benefit is alleged, and it is unexplained why they have been singled out, since the emails on restow charges were exchanged by another MBK employee.

(xv) Cross-examination: Relying on Section 138B and *Andaman Timber Industries*, the Noticees sought cross-examination of the following, failing which the corresponding statement or document must be excluded:

(xvii) Prayer: The Noticees requested that limitation and Section 28(9) be decided as preliminary issues and the proceedings against them be dropped. They further requested that the proposed penalties be dropped against MBK and Shri Naik under Sections 112(a), 112(b), 114AA and 117, and against Shri Keniya under Sections 112(a), 112(b) and 114AA. They sought a finding that no penalty under Section 116 can be imposed on MBK and that MBK is not answerable for the vessel, and that the Section 115(2) proposal be dropped against it. They also sought the documents,

cross-examination, a personal hearing thereafter and leave to file further submissions.

10.6 Written submission of M/s Amardeep Exports (100% EOU), Jamnagar (Noticee No. 3])

M/s Amardeep Exports, vide reply dated 02.11.2026, inter alia submitted as under:

(i) Scope of the SCN: The SCN deals only with the alleged import of Container Nos. IPXU3062264 and TTNU3535220 and related matters. Other matters have been adjudicated through separate SCNs and OIOs and do not form part of the present proceedings.

(ii) Limitation: The SCN is grossly time-barred. Even if the extended period of five years applies, it must be computed from the date the Department received actionable information and came to know of the alleged contravention. That information was received through the Indian Consulate's letter dated 13.11.2015, stating that the container was allegedly "full of cigarettes". The period therefore expired on 13.11.2020, whereas the SCN was issued on 21.12.2020.

(iii) Not the importer: The firm never claimed the goods in Container No. TTNU3535220 and filed no Bill of Entry for them. It is therefore neither the owner of the goods nor a person holding itself out to be the importer, and no duty can be demanded from it.

(iv) "Beneficial owner" not applicable: The sole ground for demanding duty is that the firm is the alleged beneficial owner under Section 2(26), its name being reflected as consignee in the Bill of Lading. The term "beneficial owner" was added to Section 2(26) by the Finance Act, 2017 with effect from 31.03.2017, and was not part of the definition at the relevant time. The firm therefore cannot be termed an importer, and the proposed duty is liable to be dropped.

(v) Contents not proved: The demand rests on assumptions and presumptions. The container was never unloaded or checked in India and no Bill of Entry was filed. The only evidence that it held cigarettes, and not "Mix Metal Brass Scrap with other impurities" as shown in the Bill of Lading, is one line in the Indian Consulate's letter to DRI. No inspection report, photographs or other evidence of the nature and quantum of the alleged cigarettes is annexed to the SCN.

(vi) Sections 112(a) and 112(b): The firm did no act or omission rendering the goods liable to confiscation under Section 111(f), (g), (h), (i), (j), (n) or (o), and had no knowledge of any consignment arriving at Mundra in Container No. TTNU3535220. These clauses are specific and cannot be given a general meaning. They relate to activities usually undertaken by cargo handlers, shipping lines and freight forwarders, and the firm acted in none of these roles. The SCN brings no particular evidence on record to substantiate the contraventions.

(vii) Section 114A: This penalty is connected to the proposal to recover duty. Since no duty is payable by the firm, the penalty for non-levy becomes moot and unsustainable.

(viii) Section 114AA: The firm did not file or execute any document under the Customs Act, 1962 in respect of the container, including any Bill of Entry. The SCN produces no document specifically alleged to have been falsified by it.

(ix) Section 117: The firm always cooperated with the investigation and did not falsify any records. The SCN puts forth no particular allegation or evidence to substantiate this penalty.

(x) Cross-examination: The SCN relies on statements of various persons to allege that the firm knew of the container and its contents and was actively involved in the alleged illegal activities. Citing the settled position that a statement cannot be relied upon without first being offered for cross-examination, the firm sought cross-examination of Shri Sachin S. Naik, Shri Bhupendra Singh Saini, Shri Vijay Vasrambhai Sabhavaya, Shri Shailesh D. Patel, Shri Jaysukh M Panpariya and Shri Anil Parmar.

(xi) Prayer: The firm requested that the proceedings against it be dropped and sought a personal hearing, reserving the right to amend, alter or add to its submissions at the time of hearing.

10.7 Written submission of Shri Ankit Changani, Partner of M/s Amardeep Exports (Noticee No. [4])

Shri Ankit Changani, vide reply dated 02.11.2026, inter alia submitted as under:

(i) Scope of the SCN: The SCN deals only with the alleged import of Container Nos. IPXU3062264 and TTNU3535220 and related matters. Other matters have been

adjudicated through separate SCNs and OIOs and do not form part of the present proceedings.

(ii) Limitation: The SCN is grossly time-barred. Even if the extended period of five years applies, it must be computed from the date the Department received actionable information through the Indian Consulate's letter dated 13.11.2015. The period therefore expired on 13.11.2020, whereas the SCN was issued on 21.12.2020.

(iii) Not the importer: He never claimed the goods in Container No. TTNU3535220 and filed no Bill of Entry for them. He is therefore neither the owner of the goods nor a person holding himself out to be the importer, and no duty can be demanded from him.

(iv) "Beneficial owner" not applicable: The sole ground for the demand is the allegation of beneficial ownership under Section 2(26), based on the name reflected as consignee in the Bill of Lading. The term "beneficial owner" was added by the Finance Act, 2017 with effect from 31.03.2017 and was not part of the definition at the relevant time. The proposed duty is therefore liable to be dropped.

(v) Contents not proved: The container was never unloaded or checked in India and no Bill of Entry was filed. The only evidence that it held cigarettes is one line in the Indian Consulate's letter to DRI, with no inspection report, photographs or other evidence of the nature and quantum of the alleged cigarettes annexed to the SCN.

(vi) Sections 112(a) and 112(b): He did no act or omission rendering the goods liable to confiscation under Section 111(f), (g), (h), (i), (j), (n) or (o), and had no knowledge of any consignment arriving at Mundra in the said container. These clauses are specific, relate to activities usually undertaken by cargo handlers, shipping lines and freight forwarders, and he acted in none of these roles. The SCN brings no particular evidence on record to substantiate the contraventions.

(vii) Section 114AA: He did not file or execute any document under the Customs Act, 1962 in respect of the container, including any Bill of Entry. The SCN produces no document specifically alleged to have been falsified by him.

(viii) Section 117: He always cooperated with the investigation and did not falsify any records. The SCN puts forth no allegations or evidence to substantiate this penalty.

(ix) Penalty on both partner and firm: M/s Amardeep Exports is a co-noticee in the same SCN. A partnership firm is the same as its partners and has no separate legal

existence, and hence, as a settled position of law, penalties cannot be imposed on both a partner and the firm for the same actions in the same matter.

(x) Cross-examination: Citing the settled position that a statement cannot be relied upon without first being offered for cross-examination, he sought cross-examination of Shri Sachin S. Naik, Shri Bhupendra Singh Saini, Shri Vijay Vasrambhai Sabhavaya, Shri Shailesh D. Patel, Shri Jaysukh M Panpariya and Shri Anil Parmar.

(xi) Prayer: He requested that the proceedings against him be dropped and sought a personal hearing, reserving the right to amend, alter or add to his submissions at the time of hearing.

10.8 Written submission of M/s Geo-Chem Middle East, Dubai (Noticee No. 15)

M/s Geo-Chem Middle East (GME), through its advocates, M/s India Law Alliance, vide reply dated 16.09.2026, denied all the allegations in the SCN as vague, baseless and lacking corroborative evidence, and inter alia submitted as under:

(i) Status and role: GME is a company incorporated and operating under UAE law, with its office at Techno Park, Jebel Ali, and has no branch, office, employee, agent, bank account or other business presence in India. It is a DGFT-recognised PSIA under Para 2.55 of the HBP 2015-20. In October 2015, it was engaged in the ordinary course of business to inspect and certify three export containers declared as "Mix Metal Brass Scrap with other impurities". It issued PSIC Nos. 0886 dated 18.10.2015, 0899 dated 26.10.2015 and 0906 dated 27.10.2015, based on the report of its deputed inspector and its then-standard verification process.

(ii) No interest and full cooperation: GME had no interest in the underlying transaction, no relationship with the shippers/exporters beyond the inspection engagement and no financial stake in the cargo. It derived no benefit from, and had no knowledge of, any concealment of cigarettes. It cooperated with the Department by responding to correspondence, furnishing its inspection process details by email dated 25.08.2020, and clarifying its corporate structure and area of operation.

(iii) No jurisdiction: The alleged faulty inspection and the issue of the PSICs occurred entirely at Jebel Ali, wholly outside India. In October 2015, Section 1(2) of the Customs Act, 1962 extended only to the whole of India. The extension to offences or contraventions committed outside India by any person came only through the Finance Act, 2018 with effect from 29.03.2018, and is prospective. Relying on *Karl*

Mayer STOLL Textilmaschinenfabrik GmbH & Anr. v. Union of India & Ors. [(2026) 41 Centax 324 (Bom.)], GME submitted that before the amendment, Indian Customs had no extraterritorial jurisdiction over a foreign entity with no direct presence or operations in India for acts occurring outside India. The SCN does not establish any presence of GME in India.

(iv) No nexus or connivance: There is no evidence that GME was part of the import chain or was in contact or connived with the importer, exporter or any other noticee. No Section 108 statement relied upon establishes any connection, connivance or involvement. In his statements (RUD Nos. 34-38), Shri Anil Parmar denied any contact with GME and any knowledge of the three PSICs, its authorised signatory or the surveyor, Shri Saiyad Hussain Zaidi.

(v) Section 111(i) wrongly applied: Section 111(i) addresses goods found concealed in any package before or after unloading, and is directed to the physical state of the goods at the time of import/unloading. The alleged non-cooperation and misleading statements occurred after Container No. IALU2252554 had been examined. Such post-detection conduct has no temporal or causal nexus and cannot retroactively render the goods liable to confiscation.

(vi) Sections 112(a) and 112(b) cannot apply together: These clauses operate in separate domains and under different circumstances, and cannot be imposed simultaneously (*M/s Birendra Kumar Gupta v. Commissioner of Customs (Prev.), Kolkata* [2025 (1) TMI 959-CESTAT Kolkata]).

(vii) Section 112(a): The provision requires a positive act or omission with a direct causative link to the goods becoming liable to confiscation, or proof of abetment. GME was neither importer nor beneficial owner and had no knowledge of the cigarettes. The SCN shows no direct act or omission and no abetment with requisite clarity and specificity. Mens rea is essential for abetment. Reliance was placed on *Rajesh Maikhuri v. Commissioner of Customs* [2018 (363) E.L.T. 274 (Tri.-Del.)] and *Rajeev Khatri v. Commissioner of Customs (Export)* [(2023) 9 Centax 412 (Del.)].

(viii) Section 112(b): The SCN does not specify any act constituting dealing with the goods, or show possession, physical dealing or knowledge that the goods were liable to confiscation. GME's function was limited to ensuring that a consignment contained no explosives, arms, ammunition or hazardous/medical waste and to testing radiation levels in scrap and metallic waste. It did not handle the goods

beyond the limited, arm's-length function of inspecting and certifying the declared cargo prior to stuffing/sealing at the exporter's premises. Reliance was placed on *D. Ankineedu Chowdhry v. Commissioner of Customs* [2004 (178) ELT 578], *M/s GND Cargo Movers v. Commissioner of Customs (Import), New Delhi* [2025 (6) TMI 375-CESTAT New Delhi] and *Shri Vipul Joshi v. C.C.-Ahmedabad* [2022 (10) TMI 211].

(ix) Section 114AA: The provision requires prior knowledge or intention, wilful misrepresentation, mala fides and connivance with the importer. There is no evidence that GME knowingly or intentionally caused a wrong declaration in the PSICs or participated in any illegal activity, and the SCN does not state how GME's actions fall within the provision. The penalty is penal in nature and cannot be imposed mechanically. Reliance was placed on:

- *Shri Srimanta Rakshit, M/s Sri Durga Impex and Logistics v. Commissioner of Customs (Port), Kolkata* [2025 (11) TMI 1654-CESTAT Kolkata];
- *Bosch Chassis Systems India Ltd. v. Commr. of Cus., New Delhi* [2015 (325) E.L.T. 372 (Tri.-Del.)];
- *Commissioner of Customs (Import) v. Trinetra Pvt. Limited* [2020 (372) E.L.T. 332 (Del.)]; and
- *Suresh Kumar Aggarwal v. Commissioner of Customs III, Raigad* [2024 (6) TMI 779-CESTAT Mumbai].

(x) Section 117: The provision is residuary and cannot be invoked when specific penalties are proposed under Sections 112(a), 112(b) and 114AA (*CONCOR CFS v. Principal Commissioner of Customs, Noida* [(2026) 39 Centax 356 (Tri.-All.)]). The SCN's allegations that GME both did not join the investigation and misled it are contradictory, vague and without reasonable justification.

(xi) Prayer: GME requested that the penalties proposed under Sections 112(a), 112(b), 114AA and 117 be dropped and sought a personal hearing before any order is passed, craving leave to add, alter, amend, supplement or delete its submissions.

10.9 Written submission of M/s MICT (Noticee No. 23) and Shri Sachin Garg (Noticee No. 23)

i) No permission was required to be obtained for doing restow activity.

ii) Entire activity is always under the supervision of customs, hence it is incorrect to say that restowing of containers were done without the knowledge of authorities.

iii) Customs officers have never insisted on submitting IGM historically.

iv) MICT has never unloaded the container, the activity was done only the Remain on Board i.e.e restow back to vessel. Therefore, the basic genesis of the provisions of section 45 of the customs act, 1962 that all imported goods unloaded in a customs area shall remain in the custody of such person until they are cleared for home consumption. These containers were to be returned back to Jebel Ali Port and were not meant for home consumption. Secondly MICT did keep the record of both these containers with them and supplied to the customs authority whenever it was required. They had not violated the provision of Section 45(1) and (2) of the Customs Act, 1962.

v) No goods were unloaded only position were changed.

vi) No such omission has been done by MICT that may make the goods and containers liable for confiscation.

vii) No mens rea have been alleged for invocation of Section 114AA. The impugned notice is issued in contradictory to the other provisions, and therefore proposal to levy penalty under section 117 is not tenable

viii) The noticee Sachin garg has given under capacity of employee of MICT. He was not having any personal knowledge or interest in the entire activity. He has supported the investigation. At the time of incident he was not an employee he has joined in 2017. No adverse evidence against the noticee. Hence penalty is not tenable.

11. Record of Personal Hearing:

Opportunities of personal hearing in the case were given to the Noticee under the provisions laid down in Customs Act, 1962 and following the principles of natural justice on different dates i.e. 02.09.26, 03.09.2026, 05.10.26, 06.10.2026, 28.10.2026, 03.11.2026 and 06.11.2026. Noticee/Representative of Noticee has not appeared except Noticee No. 3,4,5,6,7,8,29,23, 30, 15, 18, 19 and 25 before me in any of the occasions. Noticee who has appeared before me has re-iterated their written submission.

12. <u>Discussions and Findings:</u>

12.1. In compliance with Section 28(8) and Section 153 of the Customs Act, 1962 and the principles of natural justice, sufficient opportunities were afforded to the

Noticee to file replies and appear for personal hearing. The Noticee except those mentioned in the above paras failed to participate despite due service of personal hearing notices. Such non-cooperation cannot be allowed to delay a time-bound adjudication, particularly in a matter involving recovery of Government dues. I therefore hold that the principles of natural justice have been duly complied with and proceed to adjudicate the case ex-parte against the Noticee except those mentioned at the foregoing paras on the basis of evidence available on record, as supported by the following decisions in:

(i) Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]

(ii) Modipon Ltd. Vs. CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]

The present proceeding emanates from Show Cause Notice No. DRI/AZU/GRU/Cigarettes/INT-42/2015-16 dated 21.12.2020. The case was put in call book on 07.04.2021 in view of the Board Instruction No. 04/21 dated 17.03.2021. All the Noticees were duly communicated regarding keeping the case in Call Book vide letter dated 08.04.2021. Further one of the Noticee filed SCA No. 10663 dated 02.08.2021 where Hon'ble High Court has stayed the further proceedings. The case was finally decided by Hon'ble Court on 12.11.2025 and hence the case was taken out from Call Book for adjudication proceedings. After having carefully gone through the Show Cause Notice and the relied upon documents available on record, I now proceed to decide the case on merit. The main issues involved in the case which are required to be decided in the present adjudication are as below:

(i) Whether 3,82,03,006 cigarette sticks contained in container No. IPXU3062264 valued at Rs.2,30,17,039/- (rupees two crores thirty lakhs seventeen thousand and thirty nine only) are liable for confiscation under Section 111(f), 111(g), 111(h), 111(i), 111(j), 111(n) and 111(o) of the Customs Act, 1962;

(ii) Whether the applicable Customs duty amounting to Rs. 19,92,23,482/- (Rupees nineteen crores ninety two lakhs twenty three thousand four hundred eighty two only) chargeable on the said cigarettes are liable to be demanded and recovered from Sh Vijay Sabhaya prop. of M/s Krishna Brass

Industries under Section 28 (4) of Customs Act, 1962 read with Sections 53 and 55 of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Customs Act, 1962.

(iii) Whether penalty should not be imposed upon him separately under each of the provisions of Sections 112(a), 112(b), 114A, 114AA and 117 of the Customs Act, 1962

(iv) Whether 3,82,03,006 cigarette sticks contained in container No. TTNU3535220 valued at Rs.2,30,17,039/- (rupees two crores thirty lakhs seventeen thousand and thirty nine only) are liable for confiscation under Section 111(f), 111(g), 111(h), 111(i), 111(j), 111(n) and 111(o) of the Customs Act, 1962; however the goods are not available

(v) Whether applicable Customs duty amounting to Rs. 19,92,23,482/- (Rupees nineteen crores ninety two lakhs twenty three thousand four hundred eighty two only) chargeable on the said cigarettes (as shown in enclosed Annexure-A) is liable to be demanded and recovered under Section 28 (4) of Customs Act, 1962 read with Sections 53 and 55 of the Customs Act, 1962 from M/s Amardeep Export along with applicable interest under Section 28 (AA) of the Customs Act, 1962.

(vi) penalty should not be imposed upon them separately under each of the provisions of Sections 112(a), 112(b), 114A, 114AA and 117 of the Customs Act, 1962.

(vii) Whether container Nos. IPXU3062264 and TTNU3535220 totally valued at Rs. 2,00,000/- (Rs. Two Lakhs Only) are liable for consfiscation under Section 111(f), 111(g), 111(h), 111(i), 111(j), 111(n) and 111(o) of the Customs Act, 1962.

(viii) Whether the Customs duty amounting to Rs. 58,882/- (Rupees Fifty-Eight Thousand, Eight Hundred and Eighty-Two Only) chargeable on the said containers is liable to be demanded and recovered under Section 28 (4) of Customs Act, 1962 read with Section 53 and 55 of the Customs Act, 1962 along with applicable interest from M/s ATS. Whether ATS represented by M/s RMIPL are liable for making those containers available.

(ix) Whether Vessel MV Chicago (IMO No.9248162) valued at Rs. 50,00,00,000/- (Rs. Fifty Crores Only) which was earlier owned by M/s. SSFL, Dubai at the material time and M/s. MBK were acting as agents of the owner of the vessel MV Chicago at the material time, i.e. during November, 2015 and which is

now renamed as MV MAERSK YANGTZE and presently owned by M/s NSB NIEDERELBE SCHIFFAHRTSGES; which was used as a means of conveyance in the illegal transit of the cigarettes with those two container Nos IPXU3062264 & TTNU3535220 is liable for confiscation under Section 115(2) of the Customs Act, 1962. Whether M/s. SSF (represented in India by M/s SMIPL and in Mundra by M/s. MBK) along with M/s. NSB Niederelbe Schiefahrtsges are jointly and severally liable to make available the vessel MV Chicago (Now MV Maersk Yangtze

(x) Whether the amount of Rs.5,15,235/- lying as balance in the NRI bank account No. 916010010171472 of Shri Anil Parmar with Axis Bank, Jamnagar as on 30.09.2020 are liable for confiscation under the provisions of Section 121 of the Customs Act, 1962.

(xi) Whether persons/firms named in para 9.6 of Notice are liable for penalty under the different sections as mentioned against their name.

12.2. Duty Demand on goods/containers and Penalty under Section 114A

a. I find that the present Show Cause Notice proposes to demand duties on the cigarettes which has been allegedly entered into the territorial water of India and left India return on Board without mentioning in the Import General Manifest and without clearing in India for home consumption. Duty has been proposed to be demanded from the beneficial owner i.e. M/s KBI and M/s AE. Where Noticee M/s KBI has not filed any reply in this matter, noticee Amardeep Export has attended personal hearing and has also submitted the written reply. Noticee has contended that Notice is time barred, however I find that notice has addressed the issue of delay in para 15 stating that the taxation and other laws ordinance dated 31.03.2020 was promulgated by the president of India under Article 123 (i) of the Constitution provides relaxation in the provisions of certain acts and for matter connected therewith or incidental thereto and Customs Act. The Show Cause Notice was issued in terms of Customs Act, 1962 read with Section 6(a) of the Ordinance ibid and Notification dated 30.09.2020. Hence, the contention of the Noticee is not sustainable. He has further contended that they have not filed any bill of entry for the same, therefore neither they are the owners of the goods, nor have they held themselves out to be the importer with regards to the goods in Container No. TTNU3535220. Therefore, any duty, if applicable, for import of

such goods, cannot be demanded from the noticee. He has further contested the SCN allegation that the notice falls under the definition of "importer" under section 2(26) as a beneficial owner, as their name was reflected in the Bill of Lading as the consignee, and thus they can be termed as importer for the purposes of the Customs Act, 1962. He further submitted that the term "beneficial owner" was added to the definition of importer in section 2(26) vide Finance Act, 2017 dated 31- 3-2017 and with effect from 31-3-2017. He further added that at the relevant point of time, the definition of "importer" did not include the term "beneficial owner". The sole ground stated by the SCN to impose duties upon the noticee is that they are alleged to be the beneficial owner, and thus termed to be the importer. However, as shown above, the term "beneficial owner" was not part of the definition of importer at the relevant point in time. Therefore, the noticee cannot be termed as an importer and no duties can be demanded from them for consignments for which they are not the importers at all. He has further contended that the import duty is levied based on assumptions and presumptions of the department alone. The said container was never unloaded or checked in India, and neither any Bill of Entry was filed for the same. The SCN alleges that the Bill of Lading had shown the goods onboard the Container No. TTNU3535220 to be "Mix Metal Brass Scrap with other impurities", while on alleged inspection by the UAE Customs and the Indian Consulate in UAE, it was allegedly found that the said container was "full of cigarettes". However, the evidence for the same is only a letter by the Indian Consulate to the DRI simply stating that the container was found to be "full of cigarettes". However, no inspection report, photographs taken at the time of inspection, nor any other evidence has been annexed with the SCN to prove the nature and quantum of the alleged cigarettes that were found in the container upon return to Jebel Ali Port, Dubai. Noticee has contended that allegation of such grave nature, without any backing of substantial evidence, and only on the basis of one line in a letter, cannot be sustained.

b) Ongoing through the case records, I have to agree with noticee that the SCN has not brought on record any cogent or corroborative evidence to establish that M/s AE and M/s KBI were, in fact, the beneficial owners of the goods in question. Merely because their names were reflected in the Bill of Lading as

consignees, the same, in the absence of supporting evidence establishing their ownership or beneficial interest in the goods, cannot conclusively establish that they were the beneficial owners thereof. In the investigation, nowhere it has been established that any correspondence with Shipping line were done by these two Noticees.It is relevant to point out that Bill of Lading (in this case draft B/L relied upon document SR No. 10) is issued by the Shipping Line on basis of instructions/details received from the shipper of goods and no consent/confirmation is taken from the consignee before his name is reflected as such by the shipping line in Bill of Lading. There is also no evidence that the impugned cigarettes were purchased by the said Noticees. It has also not been ascertained that consideration towards the purchase thereof was paid by them, Further, no evidence has been brought on record that they were entitled to the sale proceeds thereof, or that they independently exercised effective control over the impugned consignments. Further, neither of the Noticee has admitted in any of the statement that they were the owner of the goods. In paragraph 8.17 of the Show Cause Notice, it has been alleged that M/s. Amardeep Exports, through its partner Shri Ankit Changani, had allowed its EOU status to be used for illegal imports of cigarettes planned by Shri Jayesh Patel. The said allegation is totally unsubstantiated as true in so far as these two containers are concerned. I further observe that the expression "beneficial owner" was incorporated in the definition of "importer" under Section 2(26) of the Customs Act, 1962, by the Finance Act, 2017, with effect from 31.03.2017, whereas the in present case the two containers crossed the territorial water of India on 08.11.2015. Thus, the said expression was not part of the statutory definition of "importer" at the relevant point of time. Consequently, fastening the liability of an importer upon M/s AE and M/s KBI by retrospectively applying the subsequently incorporated expression "beneficial owner" would not be legally sustainable. In view of the absence of evidence establishing the actual beneficial ownership of the goods by M/s AE and M/s KBI and the non-applicability of the subsequently introduced expression "beneficial owner" to the facts of the present case, I find that the proposed demand of Customs duty under Section 28(4) of the Customs Act, 1962, against M/s AE and M/s KBI is not sustainable.

c) Further in the instant case, the goods as well containers were not cleared

from the customs area. In fact, no bill of Entry was even filed by anyone for the two containers for their clearance in India. Further No IGM was filed. Hence, the invocation of Section 28 (4) of the Customs Act, 1962 is not sustainable as the same is invokable only after goods have been cleared from Customs area and granted OOC. Here, I would like to refer a judgement of Hon'ble CESTAT Principal Bench Delhi in case of *Evershine Customs (c & f) Pvt Ltd vs commissioner of customs in customs appeal no. 51320 of 2019* wherein the Hon'ble Tribunal has answered thequestion "Can a differential duty can be demanded under section 28(4) on the goods even before the goods have been cleared for home consumption? The relevant portion of the said judgement is as under: -

Thus, the legal position settled by the Hon'ble Supreme Court in the above case laws is that the power under Section 28 is a power of review which has been specially conferred on the proper officer who has done the assessment or his successor in office. Only he can issue the SCN for the purpose. 31. It is also evident from the `Relevant date' for calculating the 'limitation of time for issuing a notice under Section 28. It is the defined in the explanation to Section 28 as follows: Explanation 1- For the purposes of this section, "relevant date" means, (a) in a case where duty is not levied or not paid or short-levied or short paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods; (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re assessment, as the case may be; (c) in a case where duty or interest has been erroneously refunded, the date of refund; (d) in any other case, the date of payment of duty or interest. 32. Evidently, if the order clearing the goods for home consumption was not issued, the assessment is still open and the goods are still imported goods assessable to duty under section 17. There cannot be any demand under section 28. In the present case, the goods were not yet cleared. The importer (or his CB) filed a Bill of Entry self-assessing the duty which has been found to be erroneous. The duty has to be reassessed and a speaking order has to be passed by the proper officer. If, the officer of DRI is also the proper officer [under Section 28(11) or otherwise] and has done the reassessment, he must pass a speaking order. Any SCN under Section 28 can only arise after the goods have been cleared for Home. Consumption and not before. This is because a demand under section 28 is in the

nature of review of the assessment already done under section 17 by the proper officer. Without the assessment under section 17 being completed, there cannot be review. under section 28 and the relevant date under section 28 for reckoning the time limit has not yet arisen. For this reason, the .demand under section 28 in respect of the goods which have not yet been cleared for home consumption cannot be sustained and the answer to the question (c) which we raised is `No under section 28 can be issued unless the goods have been cleared for home consumption and hence the demand does not sustain'.

In view of the foregoing, I find that, since the impugned goods/containers were neither assessed nor cleared for home consumption, the demand of Customs duty under Section 28(4) of the Customs Act, 1962, is technically flawed and, therefore, unsustainable.

d) I also find that the demand of Customs duty proposed in the Show Cause Notice is calculated on assumptions and presumptions rather than on established facts and cogent evidence. The Show Cause Notice has proceeded on the premise that the impugned containers contained cigarettes. The existence of cigarette is attested by a letter dated 13.12.2015 by the PA to the Consulate General of India, Dubai wherein it has been stated that “Our Source in Dubai Customs confirmed that the Containers have been opened and inspected in the presence of representative of the exporter and found to contain full of Cigarettes”. If one looks at the language used in letter, even this attestation is based on a "Source" from Dubai Customs and not the Dubai Customs Authorities itself. Critically for determining the duty demand and its calculation, the said letter/communication does not specify or even hint the actual quantity, brand or other particulars of the cigarettes allegedly found in the impugned containers.

I further find that to fill the information gap, the alleged quantity of cigarettes has been arrived in the Show Cause Notice through a hypothetical volumetric calculation of the number of cigarettes that could potentially be accommodated in a twenty-foot container. Such a theoretical estimation, in the absence of any corroborative evidence establishing the actual quantity of cigarettes contained therein, cannot constitute a statutory sustainable basis for the quantification of Customs duty. Moreover, the quantity of cigarettes so determined has neither

been admitted by any of the Noticees in their respective statements nor substantiated by any independent documentary evidence. Furthermore, in determining the assessable value of the impugned goods, the methodology prescribed under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, has not been followed at all which was required as no transaction value exists in this case.

In view of the foregoing discussion, I find that the determination of both the quantity and the assessable value of the impugned goods suffers from fundamental infirmities for which there is no cure. Consequently, even independent of my findings regarding the applicability of Section 28(4) and the status of the Noticees as beneficial owners, the quantum of Customs duty proposed in the Show Cause Notice, being founded in theoretical calculations, is legally unsustainable.

e) Consequentially, I hold that the demand of Customs duty for the alleged goods as well as containers under Section 28(4) of the Customs Act, 1962, is not sustainable against M/s AE and M/s KBI. Further demand not being sustainable, the essential basis for imposition of penalty under Section 114A of the Customs Act, 1962, against them does not survive. Accordingly, the penalty proposed under Section 114A against M/s AE and M/s KBI is also liable to be dropped.

12.3 Applicability of Interest under Section 28AA of the Customs Act, 1962

a) In view of my foregoing findings, wherein I have held that the demand of Customs duty under Section 28(4) of the Customs Act, 1962, is not sustainable against M/s AE and M/s KBI, the consequential demand of interest under Section 28AA of the Customs Act, 1962, also does not survive. Accordingly, the proposed demand of interest under Section 28AA of the Customs Act, 1962, against M/s AE and M/s KBI is liable to be dropped.

12.4 Confiscation of the goods and Containers under section 111(f), (j), (g), (h), (i), (o) of the Customs Act, 1962;

i) Noticee MBK Logistix Pvt Ltd has contended that they have received the recall request before filing of IGM. The reason was payment dispute between shipper and consignee. ATS's agent RMIP confirmed that normally on the

shippers request we return the container prior to the filing an IGM before the customs. The Noticee was not in knowledge of other container's examination was DRI. There was no benefit to them. The Contents of the two containers have never been proved as no Indian officer ever saw the inside of the container. The only material to the contents is the letter of PA to Consul (economic) not a report of Dubai Customs. They have further stated that it records only that our source in Dubai Customs confirmed that the containers have been opened and inspected and found full of cigarette. Dubai customs was still summoning the exporter to sign the report. Further the quantities are arrived by a volumetric formula, hence no penalty can be quantified or abetment inferred on assumed goods. Further Noticee has contended that the container line withdrew the containers before the IGM was filed, so they were not cargo to be landed at Mundra. They have further submitted that the only defect alleged is that they were not listed separately in the same bottom cargo.

ii) In this regard, I find that the contemporaneous email correspondence dated 04.11.2015 establishes that the instructions for recalling the containers were received before the filing of the IGM on 05.11.2015. I further find that the containers were subsequently returned to Jebel Ali on the same vessel. The Noticees have also sent a communication dated 06.11.2015 addressed to M/s. MICT Pvt. Ltd., the port custodian, informing it about the retention-on-board status of the containers. Further, SCN doesn't alleges any prior knowledge of the alleged goods inside the container to the MBK, ATS, SMIPL, SSF. There were no prior information passed by the officer of DRI to the Shipping line not to restow the container back. I find that the containers already reached Jebel Ali port on 12.11.2015 and the DRI, passed the intelligence on the two container on 17.11.2015. Hence, I find that the restowing activities itself as done by Shipping line even before the passing of intelligence by DRI, doesn't attract any of the clause of Section 111 of the Customs Act, 1962.

iii) In para 12.2 (d), I have already discussed that the most significant deficiency in the present Show Cause Notice relates to the identification and ascertainment of the goods allegedly contained in the two containers. Admittedly, the containers were not intercepted or examined by Indian Customs authorities and no physical examination, inventory, weighment, sampling or verification of

their contents was undertaken in India. The subsequent communication received through the Consulate General of India, Dubai does not provide any authenticated examination report of Dubai Customs specifying the exact nature, description, brand, quantity or weight of the cigarettes allegedly found in the containers. It is a "Source" report. Consequently, the actual nature and quantity of the goods allegedly imported is not known but which is a requirement that can't be dispensed with for adjudging under Section 126 of the Customs Act, 1962 because upon confiscation, the goods is to vest in the Central Government and the officer adjudging confiscation is to take and hold possession of the confiscated goods. But when neither the nature nor quantity of the alleged goods (leave alone value), is known, it is impossible for the adjudicating authority to order vesting of unknown amount of unknown nature of goods to vest in central govt and take hold of the possession. I also find that the investigation has failed to conclusively establish the identity of the persons who owned or exercised effective control over the alleged cigarettes. Even assuming that the provisions of Section 111 of the Customs Act, 1962, are attracted in the present case, I find that the requirements of Section 124 of the Customs Act, 1962, are also required to be duly considered. Section 124 stipulates, inter alia, that no order confiscating any goods or imposing any penalty on any person shall be made under Chapter XIV unless the owner of the goods or such person has been given a notice informing him of the grounds on which confiscation or penalty is proposed. In the instant case, as already held by me that Show Cause Notice has failed to establish the beneficial ownership of the alleged goods. Moreover, the goods were never seized by Indian Customs authorities and were no longer available for identification /verification/confiscation. In view of the foregoing facts and circumstances, I find that the proposal for confiscation of the alleged goods as well as containers under Section 111 of the Customs Act, 1962, as framed in the Show Cause Notice, is not sustainable. Accordingly, I refrain from ordering confiscation of the impugned goods under any clause of Section 111 of the Customs Act, 1962.

12.5 Section 115 (2) of the Customs act, 1962

i) SCN proposes to confiscate the means of carrier and conveyance for transportation of the offending goods under section 115(2) of the Customs Act,

1962.

ii) Section 115 (2) of the Customs Act, 1962 stipulates that

Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the conveyance or animal

iii) M/s SMIPL in his defence reply has submitted that it can't be called upon to answer for confiscation of a property which is not their own. Further, the goods were not landed or cleared in India, hence can't be termed as smuggled goods. Further they were not in knowledge of the alleged content of the goods as proved from RUD 12, 13 ad 30.

iv) I find that Section 115(2) of the Customs Act, 1962, provides that any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the conveyance or animal. In the instant case, I find that the investigation has not brought on record any cogent or corroborative evidence establishing that the owner of the vessel, its agents or the person-in-charge had knowledge of the actual contents of the impugned containers or had connived in the alleged smuggling activities. The documentary evidence indicates that the containers were recalled pursuant to a commercial dispute between the shipper and the consignee, and no material has been brought on record to establish that the concerned shipping agents were aware of the alleged concealment of cigarettes. I further find that the impugned goods were neither cleared for home consumption in India nor physically examined by Indian Customs authorities. Moreover, the allegation regarding the actual quantum/nature of cigarettes in the containers has not been substantiated by any authenticated examination report or inventory prepared by Dubai Customs establishing the actual nature, description and quantity of the alleged goods. Consequently, the investigation has failed to establish, on the basis of reliable and corroborative evidence, that

the vessel was used for the carriage of goods proved to have been smuggled in contravention of the Customs Act, 1962. In the absence of sufficient evidence establishing the alleged smuggling and having regard to the lack of evidence regarding the knowledge or connivance of the vessel owner, its agents or the person-in-charge, I find that the essential factual basis for invoking Section 115(2) has not been satisfactorily established. Accordingly, I hold that the proposal for confiscation of MV Chicago under Section 115(2) of the Customs Act, 1962, is not sustainable.

v) In view of the above discussion, I held that vessel MV Chicago is not liable for confiscation under Section 115 (2) of the Customs Act, 1962. As I have held that goods are not liable for confiscation, I find that vessel is not liable to be made available.

12.6 Confiscation of Sale proceed under Section 121 of the Customs Act, 1962

i) Since the goods were not cleared into India, the question of sale proceed doesn't arises for the current case. Hence I find that the amount Rs. 5,15,235/- is not liable for confiscation under Section 121 of the Customs act, 1962.

12.7 Examination of proposed penalty on different persons-

a) M/s MBK Logisitic pvt ltd.

i) As I have held goods are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed on any of the noticee. Noticee in his defence reply has stated that penalty under Section 114AA of the Customs Act, 1962 can be imposed in case of knowingly or intentionally activities. However, it did not list them as cargo to be landed because the line had withdrawn them. An omission to list the same bottom cargo in separate sheet is not knowingly intention, hence penalty under Section 114AA of the Customs Act, 1962 is not imposable.

ii) I agree with the contention of noticee as investigation doesn't reveal any intentional activities with regard to not include the containers in the IGM by M/s Mbk Logistics Pvt Ltd. Hence, I find that penalty can't be imposable under Section 114AA of the Customs Act, 1962.

iii) Noticee has accepted that there was an omission on their part to include the two containers in the separate list of same bottom cargo. Further, MBK has filed incorrect and incomplete EGM for the vessel MV Chicago by way of not declaring transit/same bottom cargo on board, which sailed from Mundra on 09.11.2015 against their obligation under Section 41 (2) of the Customs Act, 1962 to file EGM with true, correct and complete details of all cargo carried by the vessel. Since the penal provisions for contravention of the Section 41(2) of the Customs Act, 1962 is not mentioned elsewhere, the penalty under Section 117 is imposable on M/s MBK Logistics Pvt Ltd. Hence, I find that penalty under Section 117 of the Customs Act, 1962 is imposable on them.

b) Sh Sachin S Naik

i) As I have held goods are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA and 117 of the Customs Act, 1962. Noticee in his defence reply has stated that penalty under Section 114AA of the Customs Act, 1962 can be imposed in case of knowingly or intentionally activities. Noticee further contested that they did not list them as cargo to be landed because the line had withdrawn them and an omission to list the same bottom cargo in separate sheet is not knowingly intention, hence penalty under Section 114AA of the Customs Act, 1962 is not imposable.

ii) I agree with the contention of noticee as investigation doesn't reveal any intentional activities with regard to not include the containers in the IGM by M/s Mbk Logistics Pvt Ltd. Hence, I find that penalty can't be imposable under Section 114AA of the Customs Act, 1962.

iii) Noticee has also contened that penalty under Section 117 is also not sustainable as he has appeared for statement on issuance of summon by DRI officer. I find that statement was recorded on 02.03.2016 by DRI. SCN states that he has not co-operated in the investigation, however no evidence of such allegation has been recorded. Hence, I find that no penalty under Section 117 of the Customs Act, 1962 is imposable on Sh Sachin Naik.

c) Sh Mahesh Keniya

i) As I have held goods are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA of the Customs Act, 1962. Noticee in his defence reply has stated that no summon was given to Mahesh Keniya for recording of statement under section 108 of the Customs Act, 1962. No penalty can be imposed on the employee as they gained nothing personally, they were working on the instructions of their principal. There is no allegation of any independent act, knowledge or benefit on their part.

ii) I find that Notice/investigation doesn't reveal anything that proves the act was done intentionally or any component of mens-rea. Further, he was never called for participating in the investigation process. Hence, I find that penalty under Section 114AA can't be imposed on him.

d) Shri Vijay Sabhaya, proprietor of M/s KBI

i) As I have held goods are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA and 117 of the Customs Act, 1962

ii) I find that nothing in the investigation reveals that Vijay sabhaya has 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. Hence, Penalty under Section 114AA of the Customs Act, 1962 is not imposable. Further SCN alleges that Vijay Sabhaya has provided incorrect and incomplete facts in response to the summons issued to him under Section 108 of the Customs Act, 1962. In the statement he had stated that he has broken mobile phone and deleted email to escape from DRI's detection and hence disregarded the statutory compliances of section 108 of the Customs Act, 1962. Hence, I find that penalty under Section 117 is imposable on Shri Vijay Sabhaya.

e) Shri Shailesh Damjibhai Patel, POA of M/s KB

i) As I have held goods are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA

and 117 of the Customs Act, 1962. I find that nothing in the investigation reveals that he has 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. Hence, Penalty under Section 114AA of the Customs Act, 1962 is not imposable. Shri Shailesh Damjibhai Patel was fully aware that the illegal import of cigarettes was being monitored and managed by Shri Jayesh Patel, but when he was asked during investigation, he did not reveal anything about the role of Shri Jayesh Patel and his other associates and misled the inquiry, hence I find that penalty under Section 117 is imposable on Shri Shailesh Patel.

f) M/s Amardeep Export and Shri Ankit Changani , Parnter of M/s AE

i) As I have held goods are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA and 117 of the Customs Act, 1962. Noticee has contended that they have not filed or executed any documents for the purposes of the Customs Act, 1962 with respect to the present SCN relating to the Container No. TTNU3535220. The noticee has not even filed a bill of entry or any other document which can be alleged to be falsified or filled with incorrect information. In the absence of any documents or material that contravene the provisions of section 114AA, the penalties under the same cannot be imposed upon the noticee. It is further submitted that no documents are produced in the SCN which are specifically alleged to have been falsified by the noticee. Thus, the penalties under section 114AA are also liable to be dropped.

ii) I agree with the contention of Noticee here that nothing in the investigation reveals that Amardeep Export has 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. Hence, Penalty under Section 114AA of the Customs Act, 1962 is not imposable on M/s Amardeep Export as well Shri Ankit Changani.

iii) Further Noticee has contended that they have always cooperated with the investigation and have not falsified any records. Further, no particular allegations or evidence is put forth in the SCN to substantiate the grounds for penalty under section 117 of the Customs Act, 1962. Therefore, the penalty is unsubstantiated and liable to be dropped. In this regard, I find that Noticee has appeared for statement and the same was recorded under Section 108 of the Customs Act, 1962. No instances have been quoted in te Show Cause Notice where it has been explicitly mentioned that he has not cooperated in the investigation. Accordingly, I find that penalty under Section 117 is not imposable on M/s AE and Sh Ankit Changani.

g) M/s Radiant Maritime India Pvt Ltd

i) As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA. I find that nothing in the investigation reveals that he has 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. Hence, Penalty under Section 114AA of the Customs Act, 1962 is not imposable.

h) Shri Bhupinder Singh Saini

i) As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA. I find that nothing in the investigation reveals that he has 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. Hence, Penalty under Section 114AA of the Customs Act, 1962 is not imposable.

i) M/s Asian Tiger Shipping Line LLC

i) As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA. I find that nothing in the investigation reveals that he has 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. Hence, Penalty under Section 114AA of the Customs Act, 1962 is not imposable.

j) M/s AMGTL, Dubai

i) As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA and section 117 of the Customs Act, 1962. I find that nothing in the investigation reveals that he has 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. This firm has disregarded the summons and didn't appear for investigation at several instance. However, on the decision of the Hon'ble Bombay High Court in Karl Mayer STOLL Textilmaschinenfabrik GmbH & Anr. v. Union of India & Ors. [(2026) 41 Centax 324 (Bom.)] (para no. 14) wherein it was settled that prior to the 2018 amendment to Section 1(2) of the Act, Indian customs authorities had no extraterritorial jurisdiction to initiate or maintain proceedings against a foreign entity with no direct presence or operations in India, for acts occurring outside India. The prospective nature of the amendment deprives the Indian customs authorities of any extraterrestrial jurisdiction in acts prior to the amendment of the Act. The SCN fails to establish that the Noticee directly had a presence in India. Hence, I find that penalty under Section 117 can't be imposed on him.

k) Sh Anil Parmar

i) As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of

the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA and section 117 of the Customs Act, 1962. I find that nothing in the investigation reveals that he has 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. However, he has disregarded the summons and didn't appear for investigation at several instance, accordingly, penalty under Section 117 is imposable on him.

l) Sh Al Zarooni @ Al Baab, Partner of M/s AMGTL

i) As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA and section 117 of the Customs Act, 1962. I find that nothing in the investigation reveals that he has 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. His firm has disregarded the summons and didn't appear for investigation at several instance. However, on the decision of the Hon'ble Bombay High Court in Karl Mayer STOLL Textilmaschinenfabrik GmbH & Anr. v. Union of India & Ors. [(2026) 41 Centax 324 (Bom.)] (para no. 14) wherein it was settled that prior to the 2018 amendment to Section 1(2) of the Act, Indian customs authorities had no extraterritorial jurisdiction to initiate or maintain proceedings against a foreign entity with no direct presence or operations in India, for acts occurring outside India. The prospective nature of the amendment deprives the Indian customs authorities of any extraterrestrial jurisdiction in acts prior to the amendment of the Act. The SCN fails to establish that the Noticee directly had a presence in India. Hence, I find that penalty under Section 117 can't be imposed on him.

m) M/s GME, Shri Mansour Shalaby of M/s GME and Shri Azhar Zaidi of M/s GME

i) Noticee M/s GME has submitted that inspection was carried out in the year 2015. At that time Section 1 (2) of the Customs Act, 1962 extend the Act

only to the Whole of India. Section 1 (2) was later amended to extend the Act to any offence committed outside India by any person in 2018. In the decision of the Hon'ble Bombay High Court in Karl Mayer STOLL Textilmaschinenfabrik GmbH & Anr. v. Union of India & Ors. [(2026) 41 Centax 324 (Bom.)] (para no. 14) wherein it was settled that prior to the 2018 amendment to Section 1(2) of the Act, Indian customs authorities had no extraterritorial jurisdiction to initiate or maintain proceedings against a foreign entity with no direct presence or operations in India, for acts occurring outside India. The prospective nature of the amendment deprives the Indian customs authorities of any extraterrestrial jurisdiction in acts prior to the amendment of the Act.

ii) I find that I have already held that goods are not liable for confiscation under Section 111 of the Customs Act, 1962, hence no penalty is imposable under Section 112 of the Customs Act, 1962. I hereby agree with the contention of the Noticee and further bound by the principle of judicial precedence. I find that no penalty is liable to be imposed on M/s GME, Shri Mansour Shalaby and Sh Azhar Zaide.

n) Shri Shoyaib

i) As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA of the Customs Act, 1962. I find that nothing in the investigation reveals that he has 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. Hence, I find that penalty under section 114AA of the Customs Act, 1962 is not imposable on him.

o) Shri Jayesh Patel

i) As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA and section 117 of the Customs Act, 1962. I find that nothing in the investigation reveals that he has 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. However, he has disregarded the summons and didn't appear for investigation at several instance, accordingly, penalty under Section 117 is imposable on him.

p) Shri Sanjay Shastri

i) As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. SCN also proposes to impose penalty under Section 114AA and section 117 of the Customs Act, 1962. I find that nothing in the investigation reveals that he has 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. However, he has disregarded the summons and didn't appear for investigation at several instance, accordingly, penalty under Section 117 is imposable on him.

q) Shri Pravin P Chovatiya

i) Noticed proposes to impose penalty on Sh Pravin Chovatiya under Section 112(b) and 117 of the Customs Act, 1962. Noticee has contended that the section 112(b) applies to a person who acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with, any goods which he knows or has reason to believe are liable to confiscation under Section 111. Three elements are needed: dealing with goods; the goods being liable to confiscation under Section 111; and knowledge or reason to believe. he SCN does not allege that the Noticee had possession of, carried, stored, sold or bought the two containers or any cigarettes. The allegation is about money. Money received into a bank account is not n act of dealing with the goods liable to confiscation under Section 111. Where the Act deals with sale proceeds of smuggled goods, it does so separately, by Section 121, and no proceeding under Section 121 is proposed against the Noticee or against any sum in his hands. The SCN also records that the Noticee was arrested by Jamnagar Police in a GujCTOC case. It is submitted

that the noticee was lodged in Sabarmati Jail on 17-12-2020. A person in police custody cannot comply with a summons to appear before Customs officers. Non-appearance in these circumstances is not wilful and is not a contravention. As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. Further as the Noticee was inside the jail, the allegation of not attending summon is not sustainable. Hence, I find that penalty under Section 117 of the Customs Act, 1962 can't be imposed.

r) Shri Chandrakant V Sanghvi and Shri Mayur Sabhaya

i) Noticed proposes to impose penalty on Shri Chandrakant V Sanghvi and Shri Mayur Sabhaya under Section 112(b) and 117 of the Customs Act, 1962. As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. However, they have disregarded the summons and didn't appear for investigation at several instance, accordingly, penalty under Section 117 is imposable on him.

s) Shri Jaman D Moliya

i) Noticed proposes to impose penalty on Sh Jaman D Moliya under Section 112(b) and 117 of the Customs Act, 1962. As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed. However, Shri Jayesh Patel was used to send illegally earned sale proceed of smuggled goods through hawala channel to Shri Anil Parmar and Shri Sanjay Shastri or such other persons having NRI status against the statutory provisions provided in this regard. But when a statement was recorded, Shri Jaman Moliya has not given correct facts in his statement, which is evident from the statement of Shri Anil Parmar that the money given by him was totally transferred by Shri Jayesh Patel from his account and he (Shri Jayesh Patel) is totally unaware. In his statement Shri Jaman Moliyas' statement that the amount he received is a loan, is thus vague and with a sole intention to mis-lead the inquiry., accordingly, penalty under Section 117 is imposable on him for disregarding section 108 (3) of the Customs Act, 1962.

t) M/s NSB

i) In the foregoing paras, I have held that at the time of alleged offence, Section 1 (2) of the Customs Act, 1962 extend the Act only to the Whole of India. Section 1 (2) was later amended to extend the Act to any offence committed outside India by any person in 2018. In the decision of the Hon'ble Bombay High Court in Karl Mayer STOLL Textilmaschinenfabrik GmbH & Anr. v. Union of India & Ors. [(2026) 41 Centax 324 (Bom.)] (para no. 14) wherein it was settled that prior to the 2018 amendment to Section 1(2) of the Act, Indian customs authorities had no extraterritorial jurisdiction to initiate or maintain proceedings against a foreign entity with no direct presence or operations in India, for acts occurring outside India. The prospective nature of the amendment deprives the Indian customs authorities of any extraterrestrial jurisdiction in acts prior to the amendment of the Act. Hence, I refrain to impose any penalty on M/s NSB.

u) M/s Geo Chem Laboratories Pvt Ltd and Shri Gagan Malhotra, Manager of M/s Geo Chem Pvt Ltd

i) Notice has proposed penalty under Section 117 on both. Noticee has contended Noticee Company and GME are separate and distinct legal entities, incorporated in different countries and governed by different laws. Noticee Company holds no shares in GME, has no common directors with GME, and exercises no management or operational control over GME. Noticee Company had, and has, no role in GME's recognition as a PSIA, in its inspections, or in the issuance of its PSICs. It is settled law that every company is a separate legal person, and that companies belonging to the same group, or sharing a common trade name, remain separate entities in law. It is a settled law that a holding company and its subsidiaries, and companies within a group, are distinct legal entities, and that the corporate veil cannot be lifted save in exceptional circumstances such as fraud or sham. The SCN does not allege any such circumstance. The use of the name Geo-Chem by both companies does not make Noticee Company/GLPL answerable for GME, nor does it render untrue a statement that Noticee Company had no relationship with GME. He further contended that only material relied upon by the SCN to allege a relationship is an Annual Membership Certificate 2012 issued by IFIA, a private trade

association in London, and attached by GME to its own application filed with the DGFT on 18.05.2015. It is further submitted that the statement of Shri Malhotra did not, and could not, obstruct the investigation in any manner. It is the DRI wrote directly to GME by email dated 15.07.2016 and GME replied by email dated 18.07.2016 and furnished copies of the three PSICs by email dated 27.07.2016. The DRI thereafter corresponded directly with GME on numerous occasions up to December 2020. The investigation was therefore never deprived of access to GME, or to any fact concerning the PSICs, on account of anything stated by the Noticees. It is pertinent to note that Shri Malhotra appeared before the investigating officer and tendered his statement when called upon to do so. The Noticees have at all times co-operated with the investigation. The SCN itself does not allege that either of the Noticees failed to appear, failed to produce any document, or failed to answer any question put to them. SCN proposes penalty upon each of the Noticees under Section 117 of the Act. It is submitted that a bare perusal of Section 117 makes it evident that it can be invoked only where a person contravenes, abets the contravention of, or fails to comply with, a specific provision of the Act. The SCN does not identify any provision of the Act which either of the Noticees is alleged to have contravened or failed to comply with. The allegation that a statement was misguiding and obstructing the inquiring officer is not a contravention of any provision of the Act. In the absence of the identification of any such provision, the proposal of penalty under Section 117 against each of the Noticees is without jurisdiction and ought to be dropped.

ii) I agree with the contention of Noticee. Noticee has cooperated in the investigation and never obstructed the investigation. Noticee have contended that they have nothing to do with the GME. Hence, the allegation made in the Notice is not sufficient to derive the fact and provisions of Customs Act, 1962 which was violated. Hence I find no reasoning in imposing penalty under Section 117 of the Customs Act, 1962.

v) M/s MICT and Sh Sachin Garg

i) Notice proposes penalty on Noticee under section 112, 114AA and 117 of the Customs Act, 1962. As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty

under Section 112 of the Customs Act, 1962 can be imposed. Noticee has contended that penalty under Section 114AA of the Customs Act, is based on the principle of Mens rea. No allegation was made in the notice about the knowledge of alleged illegal activity by any of the noticee. I find that nothing in the investigation reveals that he has 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. Further notice alleges the violation of provisions of 6 (a), (b), (f), (h), (k) and (q) of HCAAR, 2009. Noticee has contended that it is stated that MIC'T has fully complied with its obligation of keeping the record of each activity or action taken in relation to the movement of said 2 containers. MICT has maintained each and every record with respect to the said 2 containers ie. IAL, Bapile file, invoices raised by MICT for doing the restow activity and provided the copies of the same to DRI at the time of investigation of the matter. It should be appreciated that the IGM does not contain the details of these 2 containers and the fact of existence of these 2 containers on the vessel, which forms the entire basis of investigation by DRI, can be proved by the documents provided by MICT to DRI. It is not the case of the authority that the IAL and Bapile file submitted by MICT does not have the details of these two containers. Thus, there has been no violation of the Regulation 6 (a) and (b) of the HCCAR, 2009 by MICT or its officer. MICT was instructed by the shipping agent by its email dated 6.11.2015 to do the ROB of the two containers in question. Both these containers were mentioned in the IAL and Bapile File. There were no reasons not to execute the instructions of the shipping agent as the work of the Custodian was to lift those two containers to take out other containers that were below the said containers, as explained in the preceding paragraphs. Since the containers were not to unload at the port for clearance and in the absence of any knowledge about the discrepancies between the IAL/Bapile File and IGM, MICT genuinely believed that the customs authorities are fully aware of these two ROB containers, therefore relocated the same into the vessel. MICT did not permit the goods to be removed from the customs area, nor dealt with the goods to clear the same without permission in the customs area. The noticees never failed in discharging their obligation as provided under Regulation 6(f) of the HCCAR,

2009. 21. The responsibility to file the IGM is always with the shipping agent/master of the vessels, and it was never the obligation of the Custodian to file the same. The master of the vessel or the shipping agent files the IGM directly to the Customs departments in electronic form, but they do not necessarily supply the copy of the same to the Custodian as there is no provision in the Customs Act for the same. The Custodian gets the IAL or the Bapile files from the master of the vessel or the shipping agent, and on the said basis, entire work is done under the observation of the Customs department. In the present case, the shipping agent has filed the IGM with the customs, and MICT also submitted the IAL and Bapile Files to the customs when it was asked for. Therefore, the allegations that MICT had failed in discharging obligation of regulation 6(h) of HCCAR, 2009 also does not stand true. The impugned notice alleges that MICT failed in discharging obligation under regulation 6 (k) of the HCCAR, 2009 which requires the custodian to secure the transit of goods from one customs area to any other customs area in accordance with the permission of Customs officer. In the instant case, the said 2 containers were never unloaded and discharged from one customs area to other. Since the containers were not meant for discharge at Mundra customs area it is incorrect to infer that there has been transit of goods from one customs area to another customs area. The only role of MICT in this entire process was to change the locations of the 2 containers in the vessel and nothing beyond that. Therefore, there was no question of discharging any obligation under regulation 6(k) of HCCAR, 2009. 23. MICT has been abiding by all the provisions of the Act and the Rules, regulations, notification, and order issued thereunder. In the entire notice, there is no evidence or specific allegations with reasons that how MICT did not comply with the regulation 6(q) of HCCAR, 2009. Merely alleging that MICT failed to comply with the obligation under 6(q) without any evidence and without recording any reasons to support the said allegations is not sufficient. Further it has been submitted by the Noticee that Shri Sachin Garg has given the statement in the capacity of employee and has joined in the year 2017 and the alleged offence was done in the year 2015.

I agree with the contention of Noticee and find that no penalty under Section 117 is imposable on the Noticees.

w) SSF, Dubai

i) Notices proposes to impose penalty under Section 112, 114AA and 116 of the Customs Act, 1962. As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed on any of the noticee. Noticee in his defence reply has stated that penalty under Section 114AA of the Customs Act, 1962 can be imposed in case of knowingly or intentionally activities. I find that nothing in the investigation reveals that they have 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. Hence, I find that penalty under section 114AA of the Customs Act, 1962 is not imposable on him.

ii) I agree with the contention of noticee as investigation doesn't reveal any intentional activities with regard to not include the containers in the IGM by M/s Mbk Logistics Pvt Ltd. Hence, I find that penalty can't be imposable under Section 114AA of the Customs Act, 1962.

iii) Further, Noticee has contended that every step was accounted for, the containers were returned on board as per the instructions by container line before filing of IGM. I find that the charging para of the Noticee doesn't proposes the imposition of penalty under Section 116 of the Customs Act, 1962, however in the discussion part it suggest that M/s SSF appear to have rendered themselves penalty under section 116 of the customs act, 1962 if the failure to unload or the deficiency is not accounted for to the satisfaction of AC/DC of customs. I find that containers were never listed in the IGM and was returned on Board by container lines. Further every step was accounted for. Hence, I find that penalty under Section 116 of the Customs Act is not imposable on M/s SSF Dubai.

x) M/s SMIPL

i) Notices proposes to impose penalty under Section 112, and 114AA of the Customs Act, 1962. As I have held goods and containers are not liable for confiscation under Section 111 of the Customs Act, 1962. Hence, no penalty under Section 112 of the Customs Act, 1962 can be imposed on any of the

noticee. Noticee in his defence reply has stated that penalty under Section 114AA of the Customs Act, 1962 can be imposed in case of knowingly or intentionally activities. I find that nothing in the investigation reveals that they have 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. Hence, I find that penalty under section 114AA of the Customs Act, 1962 is not imposable on him.

13. In view of the above discussion, I pass the following order.

Order

i) I hold that goods contained in container No. IPXU3062264 are not liable for confiscation under Section 111(f), 111(g), 111(h), 111(i), 111(j), 111(n) and 111(o) of the Customs Act, 1962.

ii) I hold that the Customs duty amounting to Rs. 19,92,23,482/- (Rupees Nineteen Crore Ninety Two Lakhs Twenty Three Thousand Four Hundred Eighty Two Only) can't be demanded and recovered under Section 28 (4) of Customs Act, 1962 from M/s Vijay Sabhaya. I also hold that interest can't be demanded on such amount under Section 28AA of the Customs Act, 1962.

iii) I refrain from imposing any penalty under section 112 (a), 112 (b), 114A and 114AA of Customs Act, 1962 on Shri Vijay Sabhaya.

iv) I impose penalty of Rs 1,00,000/- (Rupees One Lakh Only) on Sh Vijay Sabhaya under Section 117 of the Customs Act, 1962.

v) I hold that goods contained in container No. TTNU3535220 are not liable to be confiscated under Section 111(f), 111(g), 111(h), 111(i), 111(j), 111(n) and 111(o) of the Customs Act, 1962.

vi) I hold that the Customs duty amounting to Rs. 19,92,23,482/- (Rupees Nineteen Crore Ninety Two Lakhs Twenty Three Thousand Four Hundred Eighty Two Only) can't be demanded and recovered under Section 28 (4) of Customs Act, 1962 from M/s Amardeep Export. I also hold that interest can't be demanded on such amount under Section 28AA of the Customs Act, 1962.

vii) I refrain from imposing any penalty under section 112 (a), 112 (b), 114A, 114AA and 117 of Customs Act, 1962 on M/s Amardeep Export.

viii) I hold that containers bearing Nos. IPXU3062264 and TTNU3535220 are not liable for confiscation under Section 111(f), 111(g), 111(h), 111(i), 111(j), 111(n) and 111(o) of the Customs Act, 1962.

ix) I hold that the Customs duty amounting to Rs. 58,882/- (Rupees Fifty-Eight Thousand, Eight Hundred and Eighty-Two Only) on the said containers can't be demanded and recovered under Section 28 (4) of Customs Act, 1962 from M/s ATS. I also hold that interest can't be demanded on such amount under Section 28AA of the Customs Act, 1962.

x) I hold that Vessel MV Chicago (IMO No.9248162) is not liable for confiscation under Section 115 (2) of the Customs Act, 1962.

xi) I hold that amount of Rs.5,15,235/- lying as balance in the NRI bank account No. 916010010171472 of Shri Anil Parmar with Axis Bank, Jamnagar as on 30.09.2020 is not liable for confiscation under the provisions of Section 121 of the Customs Act, 1962.

xii) I impose penalty on various firms/persons on the different penal provisions under Customs Act, 1962 as mentioned below:

Sr No	Name of the Person/Firm	Section 112 (a)	Section 112(b)	Section 114AA	Section 117
1	Shri Shailesh Damjibhai Patel (Sanghani), Power of Attorney Holder of M/s Krishna Brass Industries	Nil	Nil	Nil	Rs. 1,00,000/-
2	Shri Ankit Changani, Partner of M/s Amardeep Exports (100% EOU)	Nil	Nil	Nil	Nil
3	M/s. MBK Logistix Private Limited	Nil	Nil	Nil	Rs. 1,00,000/-

4	M/s. Sima Marine (India) Pvt. Ltd.	Nil	Nil	Nil	Nil
5	M/s. Simatech Shipping Forwarding L.L.C., Dubai	Nil	Nil	Nil	Nil
6	Shri Sachin Naik, Regional Manager of M/s. MBK Logistix Private Limited	Nil	Nil	Nil	Nil
7	Shri Mahesh Keniya of M/s. MBK Logistix Pvt. Ltd.	Nil	Nil	Nil	Nil
8	M/s Radiant Maritime India Private Limited	Nil	Nil	Nil	Nil
9	Bhupinder Singh Saini of M/s. Radiant Maritime India Private Limited	Nil	Nil	Nil	Nil
10	M/s. Asian Tiger Shipping LLC	Nil	Nil	Nil	Nil
11	M/s. Alliance Metal General Trading LLC	Nil	Nil	Nil	Nil
12	Anil Parmar, Partner of M/s. Alliance Metal General Trading LLC	Nil	Nil	Nil	Rs. 1,00,000/-
13	Shri Al Zarooni @ Al Baab, Partner of M/s. Alliance Metal General Trading LLC	Nil	Nil	Nil	Nil
14	M/s. Geo-Chem Middle East	Nil	Nil	Nil	Nil

15	Shri Mansour Shalaby, Operation Manager, M/s. Geo-Chem Middle East	Nil	Nil	Nil	Nil
16	Mr. Azhar Zaidi, M/s. Geo-Chem Middle East	Nil	Nil	Nil	Nil
17	Shri Shoyaib (Whereabouts not known)	Nil	Nil	Nil	Nil
18	Shri Jaysukh Ranpariya @ Jayesh Patel	Nil	Nil	Nil	Rs. 1,00,000/-
19	Shri Sanjay Shastri	Nil	Nil	Nil	Rs. 1,00,000/-
20	M/s. MICT Pvt. Ltd.	Nil	Nil	Nil	Nil
21	Shri Pravin P. Chovatiya	Nil	Nil	Nil	Nil
22	Shri Chandrakant V. Sanghvi	Nil	Nil	Nil	Rs. 1,00,000/-
23	Shri Mayur M. Sabhaya	Nil	Nil	Nil	Rs. 1,00,000/-
24	Shri Jaman D. Moliya	Nil	Nil	Nil	Rs. 1,00,000/-
25	Shri Gagan Malhotra, Manager of M/s. Geochem Laboratories Pvt. Ltd.	Nil	Nil	Nil	Nil
26	Geochem Laboratories Pvt. Ltd., Mumbai	Nil	Nil	Nil	Nil

27	M/s. NSB Niederelbe Schiffahrtsgesellschaft mbH & Co KG (NSB Group), Harburger Strasse 47-51, 21614 Buxtehude, Germany, The present owner of MV Chicago (Now MV Maersk Yangtze)	Nil	Nil	Nil	Nil
28	Shri Sachin Garg of M/s. MICT Pvt. Ltd.	Nil	Nil	Nil	Nil

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

Digitally signed by
Nitin Saini
Date: 11-11-2026
20:12:20

(Nitin Saini)
Commissioner of Customs,
Custom House, Mundra.

BY Speed Post A.D / E-mail

To, (The Noticee):-

1 Shri Vijay Vashrambhai Sabhaya, Proprietor of M/s Krishna Brass Industries, Plot No. 3962, GIDC, Phase-lll, Dared, Jamnagar, Gujarat (email-id : krishnabrassind@gmail.com)

2 Shri Shailesh Damjibhai Patel (Sanghani), Power of Attorney Holder of M/s Krishna Brass Industries, Plot No. 3962, GIDC, Phase-lll, Dared, Jamnagar, Gujarat (email-id krishnabrassind@gmail.com)

3 M/s. Amardeep Exports (100% EOU), Plot No. 414 & 417, Phase-ll, GIDC, Dared, Jamnagar

4. Shri Ankit Changani, Partner of M/s Amardeep Exports (100% EOU), Plot No. 414 & 417, Phase-ll, GIDC, Dared, Jamnagar and residing at 1st Slop (pahelo dhaliyo) Opp. Ram Mandir, Gulab Nagar, Jamnagar, (email-id : ankitdchangani@gmail.com)

5. M/s. MBK Logistix Private Limited, Office No. 5, Om Corner, Plot No. 336, 337 and 343, Ward No. 12B, Gandhidham-Kutch (email-id : sachin@mbklogistixpl.com)

6. M/s. Sima Marine (India) Pvt. Ltd., Ground Floor, Sai Commercial Annexe, B.K.S. Devshi Marg, Govandi Station Road, Govandi Estate, Mumbai 400088 (email-id : shiva(aisimamarine.in)

7 M/s. Simatech Shipping Forwarding L.L.C., Dubai *(through M/s. MBK Logistix Private Limited, Office No. 5, Om Corner, Plot No. 336, 337 and 343, Ward No. 12B, Gandhidham-Kutch*

8. Shri Sachin Naik, Regional Manager of M/s. MBK Logistix Private Limited, Office No. 5, Om Corner, Plot No. 336, 337 and 343, Ward No. 12B, Gandhidham-Kutch, residing at Ground Floor, 01, 180/181, Sanandya Apartment, Sector 7 A, Gurukul, Gandhidham. (email-id :sachin (Smbklogistixpl.com)

9. M/s. Radiant Maritime India Private Limited, 14 & 20, Second Floor, Avishkar Complex, Plot No. 204, Ward 12B, Gandhidham-Kutch (email-id : kdlaccts(Sradiant-india.net)

10 Shri Bhupinder Singh Saini, Branch Manager of M/s. Radiant Maritime India Private Limited, 14 & 20, Second Floor, Avishkar Complex, Plot No. 204, Ward 12B, Gandhidham-Kutch

11. M/s. Asian Tiger Shipping LLC, Office Suite No. 309, 3rd Floor, Al Kahllej Centre, Bur Dubai, UAE P.O. Box No. 125635 (through their Indian Agent M/s Radiant Maritime India Private Limited)

12 M/s. Alliance Metal General Trading LLC, PO Box No. 238286, Dubai UAE (email-id :alliancemetalgt@gmail.com)

13. Shri Anil Manjibhai Parmar, Partner of M/s. Alliance Metal General Trading LLC, PO Box No. 238286, Dubai UAE (email-id: alliancemetalgt@gmail.com and parmaranil229@gmail.com) having residence address at Mahaprabhuji Bethak, O/s. Kalavad Gate, Jamnagar (Presently at Lajpor Central Jail, Surat)

14 Shri Al Zarooni @ Al Baab, Partner of M/s. Alliance Metal General Trading LLC, PO Box No. 238286, Dubai UAE (email-id : alliancemetalgt@gmail.com)

15. M/s. Geo-Chem Middle East, P.O. Box 5778, Plot No. TP/010305, Techno Park, Dubai-UAE (email-id operations@geochem.ae and laboratory@geochem.ae)

16 Mr. Mansour Shalaby, Operation Manager, M/s. Geo-Chem Middle East, P.O. Box 5778, Plot No. TP/010305, Techno Park, Dubai-UAE
(email-id : operationsdubai@geochemglobal.com)

17. Mr. Azhar Zaidi, M/s. Geo-Chem Middle East, Plot No. TP/010305, Techno Park, P. 0. Box 2209, Jebel Ali, UAE (email-id : operationsdubai@geochemglobal.com) (Mobile No.+971563264436)

18 Shri Gagan Malhotra, Manager of M/s. Geochem Laboratories Pvt. Ltd., Geochem Flouse, 294, Shahid Bhagat Singh Road, Fort, Mumbai-400001

19 M/s. Geochem Laboratories Pvt. Ltd., Geochem House, 294, Shahid Bhagat Singh Road, Fort, Mumbai-400001

20 Shri Shoyaib (whereabouts not known). Service to be made by affixing on Notice Board of the Custom House or uploading on the official website of Customs in terms of Section 153(e) of the Customs Act, 1962.

21 Shri Jaysukh Muljibhai Ranpariya @ Jayesh Patel, 64, Sardar Nagar, Dhaneshwari Apartment, Block No. 4104, Jamnagar-361001
(email-id : patel_shomill@yahoo.com)

22 Shri Sanjay Anantray Shastri, 119-53-1, Khadiaa Plot, Fatak thi Sarkari Godown Sudhi, Porbandar and Representative of M/s. Secure Link General Trading LLC, P.O. Box 183948, Deira, Dubai (UAE), email linkgt@gmail.com

23 M/s. Mundra International Container Terminal Pvt. Ltd., New Mundra Port, Navinal, Mundra (Kutch)-370421

24 M/s. NSB Niederelbe Schiffahrtsgesellschaft mbH & Co KG (NSB Group), Harburger Strasse 47-51, 21614 Buxtehude, Germany, The present owner of MV Chicago (Now MV Maersk Yangtze) (email-id : info@reederi-nsb.com)

25 Shri Pravin Parsottam Chovatiya, 106, Patel Park-3, Street No. 3, Ranjit Sagar Road, Behind Pump House, Jamnagar-361001 (Presently at Sabarmati Central Jail, Ahmedabad)

26 Shri Chandrakant Vallabhbhai Sanghani, Ran'jit Sagar Road, Behind Panchvati Society, Mayur Bag, Jamnagar-361001 and 46, Ram Nagar, Pana Khan, Near Khodiyar Pan, Jamnagar-361005.

27 Shri Mayur Magan Sabhaya, Village: Chandragadh, Khobabaraba, Tal. /Dist. Jamnagar-361012

28 Shri Jaman Devji @ Manji Moliya, Saraswati Society, Street No.4, Opp. Satyam Colony, Jamnagar-361006

29 Shri Mahesh Keniya of M/s. MBK Logistix Pvt. Ltd., Office No. 5, Om Corner, Plot No. 336, 337 and 343, Ward No. 12B, Gandhidham-Kutch
(email-id : mahesh@mbklogistixpl.com)

30. Shri Sachin Garg, General Manager (Operations), M/s. Mundra International Container Terminal Pvt. Ltd., New Mundra Port, Navinal, Mundra (Kutch) -370421 (email id : sachin.garg@dpworld.com)

Copy to:

1. The Addl. Director, DRI, AZU, Ahmedabad.
2. The Addl. Director, DRI GRU, Gandhidham.
3. The Deputy Commissioner of Customs, CCO, Ahmedabad.
4. The Deputy/ Assistant Commissioner (EDI), Custom House, Mundra.
5. Notice Board.
6. Guard File