

DIN: 20240671MN0000999C82

	<b>अपर आयुक्त का कार्यालय, सीमा शुल्क</b> <b>OFFICE OF THE ADDITIONAL COMMISSIONER OF</b> <b>CUSTOMS</b> <b>आई. सी. डी. - तुम्ब</b> <b>INLAND CONTAINER DEPOT (ICD) - TUMB</b> <b>सर्व. न.: ४४/१/पी.के.२, गाँव - तुम्ब, तालुका-उमरगाँव, जिला- वलसाड, गुजरात: -</b> <b>३९६१५०</b> <b>(S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.: Valsad,</b> <b>Gujarat-396150)</b> <b>e-mail: cusicd-tumb@gov.in</b>
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Dated: 13.06.2024

F. No.	CUS/SHED/MISC/1589/2023-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
Name & Address of the Importer	<p>1. M/s. R R Kabel Limited, RS No. 201, 202/1, 202/2, 203 &amp; 327/3 Khanda Road, At &amp; P.O. Village-Waghodia</p> <p>2. M/s ESUCCESS Material Limited, Unit 2508A 25F, Bank Of America Tower, 12 Harcourt Road Central Hong Kong</p> <p>3. M/s Global Ocean Clearing Pvt. Ltd. (CHA No. AAFCG7390BCH010), C-101, Bussiness Square, Andheri Kurla Road, Opposite Kanakia Wall Street, Mumbai 400 093</p>
Order – in – Original No.	02/AR/ADC/TUMB/2024-25
DIN	20240671MN0000999C82
Passed by	ARUN RICHARD Additional Commissioner, Customs.
Date of Order	13.06.2024
Date of Issue	13.06.2024

(1) जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।  
 (1) This copy is granted free of charge for the use of the person, to whom it is issued.

(2) इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), सीमा शुल्क, चौथा तल, हुडको भवन, स्टेडियम के पास, आश्रम रोड, नवरंगपुरा, अहमदाबाद, 380009 में दाखिल कर सकता है।

(2) Any person deeming himself aggrieved by this order may appeal against the order to the Commissioner of Customs (Appeal), 4<sup>th</sup> Floor, HUDCO Bhawan, Near Stadium, Navarangpura, Ahmedabad - 380 009 within sixty (60) days from the date of receipt of the order.

(3) इस अपील पर रु. 2.00 (दो रूपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।  
 उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

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1. उक्त अपील की प्रति।
2. निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रु. 2.00 (दो रूपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

(3) The appeal should bear a Court fee stamp of Rupees Two only (Rs. 2.00/), and it must be accompanied by:

- i. A copy of the appeal and
- ii. This copy or any copy of this order will must bear a Court fee Stamp of Rupees Two only (Rs. 2.00/-).

(4) इस अपील आदेश के खिलाफ अपील करने का इच्छुक कोई व्यक्ति माँगीं गई शुल्क और जुर्माना जमा कर के, उसको भुगतान की सबूत इस अपील के साथ पेश कर सकते हैं। ऐसा न करने पर ये अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों के तहत अस्वीकार कर दिया जा सकता है।

(4). Any person desirous of appealing against this order shall, pending the appeal deposit the duty demanding or penalty levied therein and produce proof of such payment along with the appeal; failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 129 of the Customs Act, 1962.

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

M/s R R Kabel Limited, RS No. 201, 202/1, 202/2, 203 & 327/3 Khanda Road, At & P.O. Village-Waghodia (hereinafter also referred to as the importer) having IEC No. 0395047587, filed Bill of Entry No. 5964495 date 15.05.2023 (hereinafter referred to as the said 'Bill of Entry') have imported goods declaring as "PVC Resin" under CTH 39041020 through CHA M/s Global Ocean Clearing Pvt. Ltd. (CHA No. AAFCG7390BCH010) under Section 46 of the Customs Act, 1962 for importing goods from exporter M/s. Esuccess Material Limited, Unit 2508A 25F Bank of America Tower 12 Hardcourt Road Central Hong Kong vide Bill of Lading No. MEDUQB652210. The details of imported goods as declared by the importer in Bill of Entry are follows: -

Sr. No.	Container No.	Description of Goods as per Bill of Entry	Chapter Sub-Heading No.	Quantity (In Kg)	Invoice No./Date	Assessable value in Rs.
01	CAIU4494876	PVC Resin (PVC Resin with K-Value 70{Grade: S-1300})	39041020	79680	1/23-03-27 PVC dated 01.04.2023	5669664 (68640 in USD)
02	MSMU6810068					
03	MSDU5822427					
Total				79680		5669664

2. Assessment and examination was not prescribed for the RMS facilitated Bill of Entry and accordingly out of charge was granted for the Bill of Entry on 19/05/2023. However, the importer failed to take the custody of the imported goods from the custodian even after it was given the out of charge citing the non-availability of original Bill of Lading and that it was not supplied by its supplier. Further, the importer vide letter dated 17.07.2023 submitted that they don't want to take the material and afraid to take delivery because of the chances of fraud. Further, all the three containers were opened under Panchnama dated 26.07.2023 for examination in presence of Shri Suresh Asawa, General Manager (Purchase), M/s R R Kabel

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Limited, Shri Ashokkumar K Singh, Custom Broker – G Card holder of M/s. Global Ocean Clearing Pvt. Ltd. (CB firm of importer M/s R R Kabel Limited) and Shri Dhiren Mange, Dy. Manager, Adani Forwarding Agent Pvt. Ltd., the Custodian, Inspector of ICD, Tumb and 2 independent panchas. During the course of physical examination of the goods, it was noticed that the imported goods were packed in bags and were found to be powdery substance with greyish color in appearance. Further, in order to ascertain and identify the nature of the imported goods, separate samples were drawn from 03 containers under Test Memo No. 11761/26-07-2023 and sent to CRCL Vadodara and under Test Memo No. 84 sent to CIPET, Ahmedabad for testing.

**3.** In pursuance to the examination of the imported goods under panchnama dated 26.07.2023, the goods imported vide said Bill of Entry dated 15.05.2023, were detained vide Detention Memo F. No. CUS/SHED/61/2023-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 09.08.2023 and handed over to Shri Dhiren Mange for safe custody under Supratnama dated 09.08.2023.

**4.** CIPET, Ahmedabad vide their letter CIPET/AHMD/PTC/2023-24/2281 DATED 18.08.2023 have submitted their report wherein it has been stated that “as per analysis carried out at our lab sample no confirmatory evidence is found as per declared material mentioned in Test Memo.” Further, Examiner, Gr.II, CRCL, Vadodara vide letter dated 06.09.2023 submitted Test Report Lab No. RCL/SU/IMP/2098-2100/01-08-2023 (Doc No. 5964495/15-15-2023) wherein it has been reported that the three samples are in the form of off-white powder. Each composed of carbonate of calcium and magnesium with small amount of oxide of iron, aluminium, etc and siliceous matter. Each of the three sample under report is other than PVC Resin.

**5.** Prima-facie the goods, imported vide above said Bill of entry appears to be mis-classified as well as mis-declared. Accordingly, the goods were put for examination by the Chartered Engineer, empaneled by the Department under Public Notice No. 10/2017 dated 05.06.2017, issued by the Deputy Commissioner of Customs, Ahmedabad. Accordingly, M/s. B.G. Bhatt & Co. had been asked to depute chartered engineer for valuation of the imported goods.

**6.** Shri Bhasker G. Bhatt, Charted Engineer and Government Approved Valuer, Ahmedabad (M-103975/ 4 w.e.f 30.05.1991) inspected and examined the imported goods and submitted inspection report vide certificate Ref No. BB/I-25/23/RRKL/TUMB dated 09.10.2023 concluding that the imported consignment is other than PVC Resin i.e. mixture of CaO, MgO and Siliceous materials (white coloured Quartz sand) and not PVC Resin. The CE has valued the imported goods at Rs. 1,56,000/-.

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7. It appeared that the imported goods found during the course of examination were not as per declaration and description as mentioned in the Bill of Entry; accordingly, it appeared that it had been wrongly classified as PVC Resin under CTH 39041020 instead of Siliceous Material classifiable under CTH 25061020. Therefore, the goods imported under Bill of Entry 5964495 dated 15.05.2023 in 03 containers bearing No's. CAIU4494876, MSMU6810068 & MSDU5822427 were seized under panchnama dated 31.10.2023, in the presence of 02 independent panchas, Shri Suresh Asawa (General Manager, Purchase, M/s. R R Kabel Limited), Shri Ashokkumar K Singh (Customs Broker-G Card of M/s. Global Ocean Clearing Pvt. Ltd., CHA/CB Firm of importer M/s. R R Kabel Limited) and Shri Dhiren Mange (Dy. Manager, Adani Forwarding Agent Pvt Ltd.) and the goods were handed over to Shri Dhiren Mange for safe custody under suparthama dated 31.10.2023.

8. A statement dated 31.10.2023 of Shri Ashokkumar K Singh, Customs Broker-G Card of M/s Global Ocean Clearing Pvt Ltd. was recorded before the Assistant Commissioner (in-situ) of Customs, ICD, Tumb under the provisions of Section 108 of the Customs Act, 1962, wherein he interalia stated that he is looking after operations of the aforesaid CB Firm of importer M/s R R Kabel Limited for Bill of Entry No. 5964495 dated 15.05.2023); that he is working with M/s Global Ocean Clearing Pvt Ltd. since last one year and looking after the imports of different companies which are handled by their company and he can give explanations regarding the import under Bill of Entry No. 5964495 dated 15.05.2023 of M/s R R Kabel Limited; that he is reporting to Shri Anil Verma, Director of M/s Global Ocean Clearing Pvt Ltd.; that he has gone through the documents shown to him namely copy of Bill of Entry No. 5964495 dated 15.05.2023, panchnama dated 26.07.2023 drawn by the officer of Customs, ICD, Tumb for examination of the aforesaid import cargo and drawl of sample therein, copy of Detention Memo dated 09.08.2023, and copy of Test Memo No. 1176153/26- 07-2023 for sending samples to The Central Excise and Customs Laboratory (CRCL), Vadodara and have put his dated signature in token of having gone through and correctness of the same; that the aforesaid consignment was imported by M/s R R Kabel Limited from M/s. Esuccess Material Limited, Unit No. 2508A, 25/F Bank of America Tower, 12, Harcourt Road, Central Hong Kong through the CHA/CB Firm M/s Global Ocean Clearing Pvt Ltd. and they had handled the said consignment for Customs clearing; that Shipping line was arranged by the supplier; that he has seen the copy of Test Report Lab No. RCL/SU/IMP/2098-2100/01-08- 2023 (Doc No. 5964495/15-05-2023, Test Memo No. 1176153/26-7-2023) received from the Chemical Examiner, Gr.II, CRCL, Vadodara reporting that the three samples are other than PVC Resin, Copy of report Ref: BB/I-25/RRKL/TUMB dated 09.10.2023 received from Shri Bhasker G. Bhatt, Chartered Engineer and Government Approved Valuer, Ahmedabad, wherein it was submitted that the imported consignments are not PVC Resin instead it is a mixture of CaO, MgO and Siliceous materials (white coloured Quartz sand) and valued the imported consignment at Rs. 1,56,000/-; panchnama dated 31.10.2023 for seizure of

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the said consignment weighing 79680.000 Kgs. and put his dated signature in token of having gone through and correctness of all the documents shown; that he was present throughout during the aforesaid panchnama dated 31.10.2023 and fully agreed to the seizure and reasons for seizure of the consignment; that he accepted that they had filed the bill of entry No. 5964495 dated 15.05.2023 though their CHA/CB Firm M/s Global Ocean Clearing Pvt Ltd with declaration of the description as "PVC Resin (PVC Resin with K Value 70 (grade: S-1300)", Quantity 79680.000 Kgs and assessable value of Rs. 56,69,664/-; that he has seen the goods during the panchnama dated 26.07.2023 and also the copy of Test Report and Chartered Engineer report and confirm that the goods received are not PVC Resin; that they accept the liability, if any, in this regard and agree that the item received under the aforesaid Bill of Entry are not the item declared in the Bill of Entry.

**8.1** Further, a statement dated 31.10.2023 of Shri Suresh Asawa, General Manager Purchase, M/s R R Kabel Limited was recorded before the Assistant Commissioner (in-situ) of Customs, ICD, Tumb under the provisions of Section 108 of the Customs Act, 1962, wherein he interalia stated that he was working as General Manager, Purchase, M/s R R Kabel Limited., 142/2, Madhuban Dam Road, Rakholi, Silvassa and also looking imports of plant at R.S. No. 202/1, 202/2, 203 and 327/3, Khanda Road, At & PO Vill Waghodia, Vadodara; that he is working with M/s R R Kabel Limited since last 21 years and looking after the imports of the Company and he can give explanations regarding the imports; that he is reporting to CFO Shri Rajesh Babuji of M/s R R Kabel Limited.; that he has gone through the documents shown to him namely the copy of Bill of Entry No. 5964495 dated 15.05.2023 filed by M/s. R R Kabel Ltd. for the goods with the declared description "PVC Resin (PVC Resin with K Value 70 (grade: S-1300)" 79680.000 Kgs and declared assessable value of Rs. 56,69,664/- imported in three containers, containers (CAIU4494876, MSMU6810068 and MSDU5822427), panchnama dated 26.07.2023 drawn by the officer of Customs, ICD, Tumb for examination of the aforesaid import cargo and drawl of sample therein, copy of Detention Memo dated 09.08.2023 where under the goods imported under the aforesaid three containers weighing 79680.000 Kgs and declared as PVC Resin were placed under detention, copy of Supratnama dated 09.08.2023 where under the detained goods were handed over to Shri Dhiren Mange Dy Manager, Adani Forwarding Agents Pvt Ltd., copy of Test Memo No. 1176153/26- 07-2023 for sending samples to The Central Excise and Customs Laboratory (CRCL), Vadodara for testing and he has put his dated signature in token of having gone through and correctness of the same; that the aforesaid consignment was imported by M/s R R Kabel Limited purchased from M/s. Esuccess Material Limited, Unit No. 2508A, 25/F, Bank of America Tower, 12 Harcourt Road, Central Hong Kong through the CB Firm M/s Global Ocean Clearing Pvt Ltd.; that Shipping line was arranged by the supplier; that he has seen the copy of (1) Test Report Lab No. RCL/SU/IMP/2098-2100/01-08-2023 (Doc No. 5964495/15-05-2023, Test Memo No. 1176153/26-7-2023) received from the Chemical Examiner, Gr.II, CRCL, Vadodara reporting that the three samples are other than PVC Resin, (2) Copy of

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report Ref: BB/I- 25/RRKL/TUMB dated 09.10.2023 received from Shri Bhasker G. Bhatt, Chartered Engineer and Government Approved Valuer, Ahmedabad, wherein it has been submitted that the imported consignments are not PVC Resin instead it is a mixture of CaO, MgO and Siliceous materials (white coloured Quartz sand) and that the valuation of the imported consignment was at Rs. 1,56,000/- and (3) Copy of panchnama dated 31.10.2023 for seizure the said consignment weighing 79680.000 Kgs and that he has gone through the aforesaid documents shown to him and put his dated signature in token of having gone through and correctness of the same; that he was present throughout during the aforesaid panchnama dated 31.10.2023 and fully agreed to the seizure and reasons for seizure of the consignment; that he accept that they had filed the bill of entry No. 5964495 dated 15.05.2023 though their CB Firm M/s Global Ocean Clearing Pvt Ltd with declaration of the description as "PVC Resin (PVC Resin with K Value 70 (grade: S-1300)", Quantity 79680.000 Kgs and assessable value of Rs. 56,69,664/-; that he has seen the goods during the panchnama dated 26.07.2023 and also the copy of Test Report and Chartered Engineer report and confirm that the goods received are not PVC Resin; that they accept the liability, if any, in this regard and agree that the item received under the aforesaid Bill of Entry are not the item declared in the Bill of Entry.

**9.** As per the Test Report Lab No. RCL/SU/IMP/2098-2100/01-08-2023 (Doc No. 5964495/15-05-2023, Test Memo No. 1176153/26-7-2023) received from the Chemical Examiner, Gr.II, CRCL, Vadodara and Chartered Engineer report it appeared that the imported goods is not PVC Resin as declared in the BE but a mixture of CaO, MgO and Siliceous materials (white coloured Quartz sand). Therefore, it appeared that the importer had mis-declared the goods as PVC Resin under CTH 39041020 whereas, it appeared that the description of goods is of Siliceous Material and appeared to be classifiable under CTH 25061020.

**9.1** Further, it appeared that the supplier namely M/s ESUCCESS Material Limited, Unit 2508A 25F, Bank of America Tower, 12 Harcourt Road Central Hong Kong has issued invoice for the material PVC Resin as declared in the import documents viz; Invoice, BE, B/L etc. However, it appeared that the goods actual exported is other than the declared goods. To ascertain the facts three Summons, under Section 108 of the Customs Act, 1962 were issued to M/s ESUCCESS Material Limited, Unit 2508A 25F, Bank Of America Tower, 12 Harcourt Road Central Hong Kong and sent vide email dated 11/01/2024; 19/01/2024 and 30/01/2024 on email I'd sales@esuccessmaterial.com to give online statement on the following dates 18/01/2024; 25/01/2024 and 12.02.2024. However, no response has been received from M/s ESUCCESS Material Limited against all the three summons issued to them. Section 108 of the Customs Act, 1962, as amended, read as follows:

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*SECTION 108. Power to summon persons to give evidence and produce documents. — [(1) Any Gazetted officer of Customs [ \* \* \* ] shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.]*

*(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.*

*(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required :*

*Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.*

*(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).*

Section 1(2) of the Customs Act, 1962, as amended, read as follows:

*Section 1. Short title, extent and commencement.-*

*(1) This Act may be called the Customs Act, 1962.*

*(2) It extends to the whole of India [and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.]*

*(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*

**10.** It appeared that the importer, in the present case, have willingly availed the benefit of Advance Authorisation by declaring the imported goods as PVC Resin and accordingly, misclassifying the same under CTH 39041020 instead of actual description as Siliceous Material classifiable under CTH 25061020, with an intention to evade the payment of BCD @7.5% resulting in evasion of Customs duty. By way of such non-payment of BCD intentionally, the Importer appeared to have defaulted in payment of BCD amounting to Rs.7,800/-, SWS of Rs. 780/- & IGST of Rs. 8,229/-.

### **VIOLATION OF PROVISIONS UNDER CUSTOMS ACT, 1962**

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11. It appeared that the importer has willingly declared the imported goods as PVC Resin and accordingly, misclassifying the same under CTH 39041020 instead of actual description as Siliceous Material classifiable under CTH 25061020. Therefore, it appeared that the importer failed in presenting Bill of Entry in terms of its accuracy and completeness of the information given therein in contravention of Section 46 of the Customs Act, 1962. Thereby, it appeared that this resulted in violation of Section 46 of the Customs Act, 1962.

*Section 46 Entry of goods on importation. —*

(1) *The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting 1 [electronically] 2 [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing 3 [in such form and manner as may be prescribed]:*

*4 [Provided that the 5 [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically 6 [on the customs automated system], allow an entry to be presented in any other manner:*

*Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57" without warehousing the same.*

(2) *Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.*

*7 [(3) The importer shall present the bill of entry under sub-section (1) 8 [before the end of the day (including holidays) preceding the day] on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:*

*9 [Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:*

*Provided further that] a bill of entry may be presented 10 [at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:*

*11 [Provided also that] where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.*

(4) *The importer while presenting a bill of entry shall 12 [\* \* \*] make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, 13 [and such other documents relating to the imported goods as may be prescribed].*

<sup>14</sup> *[(4A) The importer who presents a bill of entry shall ensure the following, namely: -*

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

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*(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.*

**12.** The importer appears to have willfully suppressed the facts by mis-declaring the imported goods as PVC Resin and accordingly, misclassifying the same under CTH 39041020 instead of actual description as Siliceous Material classifiable under CTH 25061020. With the introduction of self-assessment & RMS under the Customs Act, faith is bestowed on the importer, as the practice of routine assessment, concurrent audit has been dispensed with and the importers have been assigned with the responsibility of self-assessing goods under Section 17 of the Customs Act, 1962. It was incumbent upon the importer to assess the duty leviable on imported goods correctly, however, it appeared that the importer failed to do so by selecting wrong CTH for payment of BCD, SWS & IGST by willful mis-statement with intent to evade payment of BCD, SWS & IGST and therefore, appeared that they have violated the provisions laid down under Section 17(1) of the Customs Act, 1962 inasmuch it appeared that they have failed to correctly self-assess the impugned goods and also willfully violated the provision of Sub Section (4) and 4(A) of Section 46 of the Custom Act, 1962. Further the BCD, SWS & IGST, therefore, appeared to be demanded from the said importer under Section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962. Accordingly, it appeared that the non-payment of BCD, SWS & IGST amounting to Rs. 16,809/- appears liable to be demanded from the Importer under section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

***Relevant Legal provisions, in so far as they relate to the facts of the case are as follows:-***

***Section 17. Assessment of duty. -***

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

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

*3 [Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]*

*4 [(3) For 5 [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]*

*(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*

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(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 6 [\*\*\*] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

7 [\*\*\*]

**Explanation.** - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]

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

(1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may,-

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(4) Where any duty has not been 3 [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

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

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been 4 [so levied or not paid] or which has been so short-levied or short-paid or to whom the the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

**Section 28AA. Interest on delayed payment of duty—**

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

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

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

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

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

**13.** It appeared that the Importer/Noticee has wilfully claimed the undue benefit for the import of the impugned goods resulting into non levy of Basic Customs Duty, SWS and short levy of IGST, by doing so, it appeared that the said importer has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. The goods imported vide the above mentioned Bill of Entry were self-assessed with declared assessable value of Rs. 56,69,664/- (Rupees Fifty Six Lakhs Sixty Nine Thousand Six Hundred Sixty Four Only), the same appeared to be liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. The relevant provisions are reproduced as follows:

***Section 111 of the Customs Act, 1962 deals with the Confiscation of improperly imported goods, etc. The relevant provision is reproduced below:-***

***Section 111. The following goods brought from a place outside India shall be liable to confiscation: -***

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

**PENAL PROVISIONS FOR VIOLATION OF PROVISIONS LAID DOWN UNDER CUSTOMS ACT, 1962**

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**14.** It appeared that the goods imported vide the subject Bill of Entry were self-assessed and cleared with declared assessable value of Rs. 56,69,664/- (Rupees Fifty Six Lakhs Sixty Nine Thousand Six Hundred Sixty Four Only) appeared to be liable for confiscation under the provisions of Section 111(m) of the Customs Act,1962. Therefore, it appeared that the importer has rendered themselves liable for penalty under Section 112(a) for willful mis-declaration by them and active involvement in wrong availment of the benefit under Advance Authorisation for payment of BCD by mis-declaring the CTH of the imported goods, which rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Relevant provisions are reproduced as follows:

***“Section 112: Penalty for improper importation of goods, etc:-*** Any person, -

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

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

*shall be liable, -*

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

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

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

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

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

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

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15. From the above paras, it appeared that the importer has failed to correctly self-assess the payment of appropriate duty and will fully suppressed the proper CTH of the imported goods with intent to evade the payment of duty resulting into short/non-payment of BCD, SWS and IGST amounting Rs. 16,809/- (BCD of Rs. 7,800/-, SWS of Rs.780/- & IGST of Rs.8,229/-). Therefore, such act of non-payment/short payment of appropriate duty by will fully suppressing/mis-declaring the proper CTH of the imported goods appeared to render the importer liable for penal action under Section 114A of the Customs Act, 1962. Further, such act of mis-declaration or use of false/incorrect particulars of the details viz. wrong particulars of the proper CTH of the imported goods appeared to have rendered the importer liable for penal action under Section 114AA of the Customs Act, 1962. The relevant provisions are as follows.

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

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 3 [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:*

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

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

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

**VIOLATION ON THE PART OF CUSTOMS BROKER**

16. It appears that the importer has filed the said BoE through the Customs Broker M/s. Global Ocean Clearing Pvt. Ltd. (CHA No. AAFCG7390BCH010), who is authorized to work on behalf of the Importer. The CHA is required upon to file correct Bill of Entry on behalf of the Importer. In the material case, in spite of the fact that the imported goods are Siliceous Material classifiable under CTH 25061020, the Customs Broker has filed the Bill of Entry declaring the goods as PVC Resin

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classifying the same under CTH 39041020. It is the obligation of the Customs Broker to exercise due diligence to ascertain the correctness of any information which he imparts to his client with reference to any work related to clearance of cargo. It is the obligation of the Customs Broker to advise his client to comply with the provisions of the Act and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. Whereas, in the material case, it appeared that the Customs Broker i.e. M/s. Global Ocean Clearing Pvt. Ltd. (CHA No. AAFCG7390BCH010) failed to comply with their obligations mentioned at 10 (d) and 10(e) of the Customs Broker Licensing Regulations, 2018. By this act on the part of the CHA, it appeared that the CHA failed to perform its duties/obligation as provided in terms of Customs Broker Licensing Regulations 2018, and therefore, appeared to be rendered themselves liable for penalty in terms of provisions of Section 117 of Customs Act, 1962. Regulation 10 of the Customs Broker Licensing Regulations, 2018 and Section 117 of the Customs Act, 1962 reads as follows:

***Regulation 10. Obligations of Customs Broker:-***

*A Customs Broker shall-*

.....  
*(d) advise his client to comply with the provisions of the Act, other allied acts and the rules and regulations thereof, and in case on non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*

*(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;*

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

**VIOLATION ON THE PART OF SUPPLIER (EXPORTER)**

**17.** It appeared that the M/s ESUCCESS Material Limited, Central Hong Kong supplier[exporter] who is liable to export goods namely PVC Resin classifiable under CTH 39041020, in the material case, in spite of the fact that the exported goods

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should have been PVC Resin classifiable under CTH 39041020 but they have actually exported Siliceous Material classifiable under CTH 25061020. It is the obligation of the Supplier/exporter to exercise due diligence to ascertain the correctness of any information which he imparts to his client with reference to any work related to supply of cargo. In the material case, it appeared that M/s ESUCCESS Material Limited, Central Hong Kong supplier[exporter] have deliberately supplied Siliceous Material classifiable under CTH 25061020 instead of PVC Resin classifiable under CTH 39041020. M/s ESUCCESS Material Limited has not responded to the summons issued under Section 108 of the Customs Act, 1962. It appeared that M/s ESUCCESS Material Limited, Central Hong Kong supplier[exporter], in conspiracy with M/s R R Kabel Limited exported 79680 Kgs of goods other than PVC Resin and appeared to have an over inflated the value by raising invoices to M/s R R Kabel Limited showing/declaring supply of PVC Resin valued at Rs. 56,69,664/- It appeared that M/s ESUCCESS Material Limited abetted with M/s R R Kabel Limited in overstating the value and misdeclaring the goods as PVC Resin. The details of the goods exported by M/s ESUCCESS Material Limited is as follows:

Export Invoice No. & date as mentioned in BoE	Qty (in Kgs)	Description of goods in Export Invoice	Declared value of goods in Export Invoice (In Rs.)	Description as per Test report of the subject goods	Valuation of Exported goods as per Chartered Engineer (In Rs.)
23-03-27 PVC dtd 01.04.2023	79,680	PVC Resin	56,69,664/-	Other than PVC Resin	1,56,000/-

Therefore, with the said acts of omissions and commissions made by M/s Esuccess, it appeared that M/s Esuccess abetted with M/s R R Kabel Limited in declaring the subject goods as PVC Resin and declaring the value as Rs.56,69,664/-; thereby M/s Esuccess appears to have rendered the subject goods liable to confiscation under Section 111(m) Custom Act and appeared also to have abetted in rendering the subject goods liable to confiscation under Section 111(m) Custom Act and thereby M/s Esuccess appeared to have rendered itself liable to penalty under Section 112(a) Custom Act. M/s Esuccess Material Limited, by raising the commercial export invoice No. 23-03-27 dated 01.04.2023 to M/s R R Kabel Limited, which appeared to be overinflated in terms of the value and exported other than PVC Resin in the guise of PVC Resin and the said documents were produced before the Customs for assessment, thereby M/s Esuccess Material Limited appears to have rendered itself liable to penalty under Section 114AA of the Customs Act, 1962.

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**18.** Accordingly, M/s R R Kabel Limited, RS No. 201, 202/1, 202/2, 203 & 327/3 Khanda Road, At & P.O. Village-Waghodia having IEC No. 0395047587, were called upon to Show Cause in writing to the Additional Commissioner of Customs, ICD Tumb, having his office at, 1<sup>st</sup> Floor ICD-Tumb, Tumb, Valsad, Gujarat as to why: -

- i. The declared classification of the subject goods under CTH 39041020 in the Bill of Entry No. 5964495 dated 15.05.2023 should not be rejected and the goods should not be re-classified and re-assessed under CTH 25061020 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);
- ii. The declared value of Rs. 56,69,664/- (Rupees Fifty Six Lakhs Sixty Nine Thousand Six Hundred Sixty Four Only) of the subject goods in the Bill of Entry No. 5964495 dated 15.05.2023 should not be rejected and the value of the goods should not be determined at Rs. 1,56,000/- (Rs. One Lakh Fifty Six Thousand Only);
- iii. The subject goods imported vide Bill of Entry No. 5964495 dated 15.05.2023, having declared assessable value of Rs. 56,69,664/- (Rupees Fifty Six Lakhs Sixty Nine Thousand Six Hundred Sixty Four Only) should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
- iv. the BCD of Rs. 7,800/- (Rupees Seven Thousand Eight hundred) should not be demanded under Section 28(4) of the Customs Act, 1962;
- v. the SWS of Rs. 780/- (Rupees Seven hundred and eighty only) should not be demanded under Section 28(4) of the Customs Act, 1962;
- vi. the IGST of Rs. 8,229/- (Rupees Eight thousand two hundred and twenty-nine only) should not be demanded under Section 28(4) of the Customs Act, 1962;
- vii. Appropriate Interest on above said amount should not be demanded under Section 28AA of the Customs Act, 1962;
- viii. Penalty should not be imposed under Section 112(a) of the Customs Act, 1962.
- ix. Penalty should not be imposed under Section 114A of the Customs Act, 1962.
- x. Penalty should not be imposed under Section 114AA of the Customs Act, 1962.

**19.** M/s ESUCCESS Material Limited, Unit 2508A 25F, Bank Of America Tower, 12 Harcourt Road Central Hong Kong were called upon to Show Cause in writing to the Additional Commissioner of Customs, ICD Tumb, having his office at, 1<sup>st</sup> Floor ICD, Tumb, Valsad, Gujarat, as to why:

- i. Penalty should not be imposed under Section 112(a) of the Customs Act, 1962.
- ii. Penalty should not be imposed under Section 114AA of the Customs Act, 1962.

**20.** M/s. Global Ocean Clearing Pvt. Ltd. (CHA No. AAFCG7390BCH010), C-101, Bussiness Square, Andheri Kurla Road, Opposite Kanakia Wall Street, Mumbai

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400 093 were called upon to Show Cause in writing to the Additional Commissioner of Customs, ICD Tumb, having his office at, 1<sup>st</sup> Floor ICD, Tumb, Valsad, Gujarat, as to why: -

- i. penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

### **DEFENCE SUBMISSIONS:**

**21.** The importer vide letter dated 29.02.2024 submitted their defence reply to the notice dated 23.02.2024. The written submission dated 29.02.2024 are reproduced as follows:

#### ***Factual Background:***

3. We had on 31-3-2023, placed Purchase Order on "ESUCCESS MATERIAL LIMITED", Unit 2508A 25/F Bank of America Tower, 12 Harcourt Road Central Hongkong, China (hereinafter "the foreign Supplier") for the purchase and import of "PVC RESIN with K-Value 70 (Grade S-1300)", in respect of which the foreign supplier raised their Invoice dated 1-4-2023.

4. The Terms of payment as per the Purchase Order and the Invoice were "Documents against Payment at Sight". **Copies of the said Purchase Order and Invoice are enclosed herewith.**

5. As per copies of documents received by us from the foreign supplier, which included photo-copy of the Bill of Lading, the goods had been shipped on 23-4-2023 and based on the said copies of documents we filed the above-mentioned Bill of Entry on 15-5-2023. The said Bill of Entry was assessed under RMS and out of charge was given on 19-5-2023.

6. In the meantime by **e-mails dated 9-5-2023 and 11-5-2023**, the foreign supplier had requested us to make payment for the goods and had assured us that on our making the payment, they would release the Bill of Lading by Telex on the same day. **Copies of the said e-mails dated 9-5-2023 and 11-5-2023 of the foreign supplier are enclosed herewith.**

7. Relying on the said assurance given by the foreign supplier, we made **remittance of the price of the goods** to the foreign supplier's bank account through HDFC Bank on 16-5-2023. **Copy of remittance advice of HDFC Bank is enclosed herewith.**

8. However, despite our having sent the payment, the foreign supplier did not release the Bill of Lading by telex in terms of the assurance given by them in their said e-mail dated 11-5-2023 and hence we could not clear the goods since the Shipping Company declined to release the goods without the original Bill of Lading.

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9. *Despite continuous follow-up by e-mail and what's app, the foreign supplier did not release the Bill of Lading by Telex and also did not attend our telephone calls.*

10. *The aforesaid conduct of the foreign supplier raised our suspicion about the bona fides of the foreign supplier and about the goods shipped by the foreign supplier. We accordingly requested HDFC Bank to call back the payment made, which however could not be done, and further we requested for survey of the goods by the Insurance company. During examination of the goods by the surveyor of the insurance company, it was noticed that the goods were not PVC Resin as ordered, but appeared to be some worthless material.*

11. *The mala fide intentions of the foreign supplier to defraud us are further evident from the fact that while the foreign supplier did not release the Bill of Lading by telex despite receiving payment from us, the foreign supplier subsequently sent the Original Bill of Lading through HSBC Bank with instructions to HSBC Bank to release the Original Bill of Lading against payment to HSBC Bank, thereby seeking to recover payment from us twice over. **Copy of advice/intimation dated 5-6-2023 from HSBC in this behalf is enclosed herewith.** Despite our informing HSBC Bank that payment had already been made to the account of the foreign supplier through HDFC Bank, HSBC Bank declined to release the Bill of Lading unless we made payment to HSBC Bank.*

12. *From the above facts, it is manifest that the foreign supplier has played a fraud on us firstly, by asking us to make the payment for release of the Bill of Lading by Telex which they failed to do despite receiving the payment, secondly, by shipping worthless goods other than those ordered by us and thirdly by trying to recover payment second time from us by sending the Original Bill of Lading through HSBC bank with instructions to release the same against payment.*

13. *In the circumstances, the goods which have arrived and for which we filed the above-mentioned Bill of entry are not the goods ordered by us, nor did the property in the said goods pass to us since the Original Bill of Lading was never received by us or endorsed in our favour.*

14. *By our letter dated 17-7-2023 addressed to the Deputy Commissioner of Customs, we brought the above facts to the notice of customs and requested that since the goods which had arrived were not the ones ordered by us and since we were victim of fraud played by the foreign supplier, the said Bill of Entry be cancelled and our Advance Authorization be re-credited. **Copy of the said letter dated 17-7-2023 is enclosed herewith.***

15. *Thereafter on 26-7-2023, the goods were examined by the Customs and samples were drawn from each of the three containers under Test Memo No. 11761/26-07-2023 and sent to CRCL Vadodara and under Test Memo No. 84 sent to CIPET, Ahmedabad for testing.*

16. *The said goods were detained vide Detention Memo F. No. CUS/SHED/61/2023-ICD-UMGN-CUS-COMMRTEAHMEDABAD dated 09.08.2023 and handed over to the custodian for safe custody under Supratnama dated 09.08.2023.*

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17. *CRCL, Vadodara vide letter dated 06.09.2023 submitted Test Report Lab No. RCL/SU/IMP/2098-2100/01-08-2023 (Doc No. 5964495/15-15-2023) wherein it has been reported that the three samples are in the form of off-white powder and that each composed of carbonate of calcium and magnesium with small amount of oxide of iron, aluminium, etc and siliceous matter. The said Test Report further stated that each of the three samples under report is other than PVC Resin.*

18. *The Customs re-determined the value of the said goods to Rs. 1,50,000/- in accordance with inspection report dated 09.10.2023 of the Chartered Engineer and Government approved valuer.*

19. *The said goods were seized by the Customs under panchnama dated 31.10.2023.*

20. *The customs recorded statements dated 31-10-2023 of our Customs Broker's employee, Ashokkumar K. Singh and our General Manager, Suresh Asawa.*

21. *Instead of acceding to our request for cancellation of the said Bill of entry and re-credit of our Advance Authorization, the present Show Cause Notice has been issued to us by customs, demanding duty of Rs.16,809 under Section 28(4) and proposing confiscation of the goods and imposition of penalty under Section 112(a), Section 114A and Section 114AA of the Customs Act, 1962.*

**Contentions in the Notice:**

22. *By completely ignoring the fact which is manifest from the turn of events as set out herein above, that the goods which have arrived are not the ones which we had ordered and paid for and that we are victim of a fraud played upon us by the foreign supplier, the Show Cause Notice seeks to add insult to our injury by contending that we have willingly availed the benefit of Advance Authorisation by declaring the imported goods as PVC Resin instead of actual description as Siliceous Material and by misclassifying the same with an intention to evade Customs duty of Rs.16,809/- !!!!!!*

23. *The Notice further contends that we appear to have wilfully suppressed the facts by mis-declaring and mis-classifying the goods.*

24. *The Notice has proposed confiscation of the goods under Section 111(m) of the Customs Act 1962 and imposition of penalties on us under Sections 112(a), 114A and 114AA of the Customs Act 1962.*

25. *In response to the contentions raised in the Notice, we submit as follows.*

**Submissions:**

***Allegation in the Show Cause Notice of intention to evade duty and wilful suppression of facts on our part is manifestly perverse, reckless and totally irresponsible:***

26. *At the outset we submit that the allegation in the Show Cause Notice made against us of intention to evade duty and of wilful suppression of facts, is manifestly perverse, reckless and totally irresponsible.*

27. *In making such allegation, the Show Cause Notice has turned a blind eye to the fact that we are victim of a fraud played on us by the foreign supplier, who*

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*duped us into making payment of the value of PVC Resin of US \$ 68640 (Rs.56,69,664/-) while shipping worthless material, which even according to the Show Cause Notice is worth only Rs.1,56,000/- . The duty on such worthless material is calculated in the Show Cause Notice as Rs.16,809/-.*

28. *To even suggest that we had intention to evade the said duty of Rs.16,809/- requires a bent of mind, which is totally and deliberately perverse and displays complete lack of a sense of responsibility which should be associated with exercise of statutory powers. The conferment of powers under Customs Act 1962 comes with a responsibility to exercise the same reasonably and it is totally inappropriate and unacceptable to make wild and reckless allegations with a view to mulct a victim of fraud with drastic and penal action under the Customs Act 1962.*

29. *It is totally preposterous to suggest that we would make payment of the value of PVC resin of over Rs.56,00,000/-, because we had intention to evade duty of Rs.16,809/-.*

30. *Equally irresponsible is the allegation that we had wilfully suppressed facts. The moment we learnt that the foreign supplier had played a fraud on us and supplied worthless material, we on our own approached customs by our letter dated 17-7-2023 and informed the customs about the same.*

31. *The Show Cause Notice against us, which is nothing but a crude exercise of adding insult to the injury of a victim of fraud, deserves to be discharged and dropped forthwith.*

*Settled law that where importer files Bill of Entry on the basis of import documents received from the foreign supplier, the importer cannot be accused of mis-declaration when wrong goods are supplied by the foreign supplier:*

32. *In the present case, the order placed by us on the foreign supplier was for purchase and import of PVC Resin. The foreign supplier's invoice is for PVC Resin and we have paid the value for PVC Resin. The import documents received from the foreign supplier describe the goods as PVC resin. We accordingly filed the Bill of Entry for PVC Resin. If, however, as it turns out, the foreign supplier has played a fraud on us and shipped some other worthless goods and thereby played a fraud on us, it cannot be said that there was mis-declaration on our part. We place reliance in this behalf on the following judgments:*

- a. *Oriental Containers Ltd v UOI- 2003 (157) ELT 503 (Bom)*
- b. *Guru Ispat Ltd v CC – 2003 (151) ELT 384*
- c. *CC v Guru Ispat Ltd – 2003 (157) ELT A87*
- d. *Trishla Steel Engg Co v CC – 2014 (313) ELT 443*
- e. *Makali Metals P. Ltd v CC – 2001 (138) ELT 607*
- f. *Gitanjali Gems Ltd v CC – 2011 (264) ELT 574.*

*In the circumstances, the proposal in the Show Cause Notice to impose penalty on us under Sections 112 (a), 114A and 114AA is thoroughly misconceived and patently unjust and liable to be dropped.*

33. *As regards the proposal in the Show Cause Notice to confiscate the goods, since the goods which have arrived are not the ones ordered and paid for*

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*by us, we do not claim the said goods. In fact, upon becoming aware of the fraud played by the foreign supplier of supplying some worthless goods other than those ordered and paid for by us, we duly informed the customs about the same. The goods may therefore be ordered to be destroyed. Since we have not taken delivery of the goods and the goods need to be destroyed, the question of our being liable to pay duty thereon does not arise.*

*The contention in the show cause notice that we wilfully suppressed and misdeclared the description and classification of the goods to evade duty of Rs.16,809/- is totally unsustainable in law:*

34. *The allegation in the Show Cause Notice against us of wilful suppression and misdeclaration is totally unsustainable. It is evident from our letter dated 17-7-2023 addressed to the Customs that we have been a victim of fraud played by the foreign supplier and that in view of the fraud played by the foreign supplier we had requested the customs for cancellation of the said Bill of Entry and re-credit of Advance Authorisation.*

35. *The said Show Cause Notice has been issued to us in complete disregard of the following facts set out in our letter dated 17-7-2023:*

- a. *We filed the said Bill of Entry on the basis of the copies of the documents issued by the foreign supplier including photocopy of the Bill of Lading,*
- b. *In the meantime, by e-mails dated 9-5-2023 and 11-5-2023, the foreign supplier had requested us to make payment for the goods and had assured us that on our making the payment, they would release the Bill of Lading by Telex on the same day and relying on the said assurance given by the foreign supplier, we made remittance of the price of the goods to the foreign supplier's bank account through HDFC Bank on 16-5-2023.*
- c. *However, despite our having sent the payment, the foreign supplier did not release the Bill of Lading by telex in terms of the assurance given by them in their said e-mail dated 11-5-2023 and hence we could not clear the goods since the Shipping Company declined to release the goods without the original Bill of Lading.*
- d. *Despite continuous follow-up by e-mail and whats app, the foreign supplier did not release the Bill of Lading by Telex and also did not attend our telephone calls.*
- e. *The aforesaid conduct of the foreign supplier raised our suspicion about the bona fides of the foreign supplier and about the goods shipped by the foreign supplier. We accordingly requested HDFC Bank to call back the payment made, which however could not be done. Further, we requested for survey of the goods by the Insurance company. During examination of the goods by the surveyor of the insurance company, it was noticed that the goods were not PVC Resin as ordered, but appeared to be some worthless material.*
- f. *The mala fide intentions of the foreign supplier to defraud us are further evident from the fact that while the foreign supplier did not release the Bill of Lading by telex despite receiving payment from us, the foreign supplier subsequently sent the Original Bill of Lading through HSBC Bank with instructions to HSBC Bank to release the Original Bill of Lading against payment to HSBC Bank, thereby seeking to recover payment from us twice over. Despite our informing HSBC Bank that payment had already been made to the account of the foreign supplier through HDFC Bank, HSBC Bank declined to release the Bill of Lading unless we made payment to HSBC Bank.*

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*The aforesaid facts clearly indicate that the foreign supplier played a fraud on us and on realising that the foreign supplier was defrauding us, we immediately requested the Customs for cancellation of the said Bill of Entry. Therefore, the contention in the Show Cause Notice that there was wilful suppression on our part to evade duty is absurd and totally unsustainable.*

36. *From the above facts, it is manifest that the foreign supplier has played a fraud on us firstly, by asking us to make the payment for release of the Bill of Lading by Telex which they failed to do despite receiving the payment, and secondly by trying to recover payment second time from us by sending the Original Bill of Lading through HSBC bank with instructions to release the same against payment. The fact that the foreign supplier played on fraud on us is in fact confirmed by the fact that on examination and testing the goods were found to be other than PVC resin.*

37. *The Customs should have allowed cancellation of the Bill of Entry on request made by us by our letter dated 17-7-2023 and upon confirmation of the fact of fraud played by the foreign supplier on us. However, it is not understood as to how the Customs has relied upon the Test Report of the CRCL to raise a duty demand on us and propose imposition of penalty on us. The fact that the goods were found on testing to be other than what we had ordered confirms the doubt of fraud raised by us by our letter dated 17-7-2023. It confirms the fact that we are the victims of fraud played by the foreign supplier. It is preposterous to contend that we mis-declared the description and classification of the said goods in connivance with the foreign supplier to evade duty, especially a meagre amount of duty of Rs.16,809/-.*

38. *In the above facts, we are in fact entitled to re-credit of Advance Authorisation.*

39. *Section 114AA of the Customs Act 1962 has no application whatever to the present case. As is apparent from the Twenty Seventh Report of the Standing Committee of Finance wherein insertion of section 114AA was discussed at para 62, the said Section 114 AA applies to export frauds where mere documents are filed without there being any export goods to claim export incentives. Reliance is placed in this behalf the decision of the Tribunal in Access World Wide Cargo v CC – 2022 (379) ELT 120. The present case is not one where mere documents were filed without any export goods to claim export incentives. Section 114AA is therefore clearly inapplicable in the present case.*

40. *Without prejudice to the aforesaid submissions, in any event, even otherwise, Section 114AA provides for imposition of penalty on a person who knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any false or materially incorrect declaration, statement or document in the transaction of any business for the purposes of the Customs Act 1962. We submit that we have not made, signed, used or caused to be made, signed or used any such false or materially incorrect declaration, statement or document. The present*

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*case is in fact one of fraud played on us by the foreign supplier as explained hereinabove. Therefore, there is no question of imposition of penalty on us.*

41. *In the circumstances the present Show Cause Notice against us is liable to fail and Your Honour is requested to discharge and drop the same.*

42. *A personal hearing is requested in the matter.”*

22. M/s. Global Ocean Clearing Pvt. Ltd. (CHA No. AAFCG7390BCH010) vide letter dated 14.03.2024 submitted their defence reply to the notice dated 23.02.2024. The written submission dated 14.03.2024 is reproduced as follows:

*“We are Custom Broker to M/S. R R Kabel from past few years. We have been performing our work as per the Custom Brokers Licencing Regulations. We are working at 14 Customs houses throughout India and have been filing around 8000 Bill of Entries / Shipping Bills every year.*

*The documents for Bill of Entry (BE) filing were received and accordingly as per the Commercial Invoice from the Supplier checklist was prepared and an approval was taken from the Importer. The BE was filed on 15/05/2023. BE was assessed under RMS and no examination was prescribed for the same. The Importer have been importing around 150 containers on an average every month for which we have been providing Custom Broker services to them. As per the Importer the Supplier had not given Original Bill of Lading in spite of getting the entire invoice amount and several reminders. We had guided the Importer to approach the Shipping Line and get in touch with the booking agent at load port but it didn't fetched any results and the issue was getting delayed. Hence citing something fishy or a fraud from the Suppliers end, we guided the Importer to apply with the Customs for cargo joint examination under Customs Supervision. Material facts were not known until the container was examined under Customs Supervision. Further course and actions taken are as per the details provided in the Show Cause Notice. We have been providing regular services to the Importer and have always been guiding them and all our clients regarding the Customs Act as and when required.*

*It is our humble request for not imposing any penalty, we have and we will follow the Act from time to time.”*

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**Personal Hearing:**

**23.** Shri J C Patel, Advocate for M/s. R R Kabel Limited appeared for hearing on 23.04.2024. He re-iterated submission made vide letter dated 29.02.2024.

**24.** Shri Shri Nitin Kaware, G Card Holder, M/s. Global Ocean Clearing Pvt. Ltd. (CHA No. AAFCG7390BCH010) appeared for hearing on 23.04.2024. He re-iterated submission made vide letter dated 14.03.2024.

**25.** M/s ESUCCESS Material Limited, Unit 2508A 25F, Bank Of America Tower, 12 Harcourt Road Central Hong Kong were issued 03(three) letters for personal hearing for dates 09.04.2024, 23.04.2024 & 03.05.2024 and the same were delivered through their email id sales@esuccessmaterial.com. However, the noticee, M/s ESUCCESS Material Limited, has not responded to the personal hearing letters i.e. neither appeared on any of the dates provided for personal hearing nor sought any adjournment.

**Discussions and Findings:**

**26.** I have carefully studied the case records and considered the subject matter.

**27.** I find that the issues for consideration before me are as follows:

- i. Issue of Classification, Valuation and Confiscation of subject goods.
- ii. Liability of M/s R R Kabel Limited to penal provisions under the provisions of Custom Act, 1962.
- iii. Liability of M/s. Global Ocean Clearing Pvt. Ltd. (CB No. AAFCG7390BCH010) to penal provisions under the provisions of Custom Act, 1962.
- iv. Liability of Supplier M/s ESUCCESS Material Limited to penal provisions under the provisions of Custom Act, 1962.

**28. Issue of Classification, Valuation and Confiscation of subject goods.**

**28.1** I find that the importer had declared the subject goods as "PVC Resin" in subject Bill of Entry No. 5964495 dated 15.05.2023 by classifying under CTH 39041020 with declared value of Rs. 56,69,664/- Further, I note that the three

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containers covered in the subject bill of entry were opened vide Panchnama dated 26.07.2023 for examination and separate samples were drawn from 03 containers and forwarded for testing in order to ascertain and identify the nature of the imported goods. The CIPET test report vide its letter CIPET/AHMD/PTC/2023-24/2281 dated 18.08.2023 reported as follows: "*as per analysis carried out at our lab sample no confirmatory evidence is found as per declared material mentioned in Test Memo.*" I find on record that CRCL, Vadodara vide letter dated 06.09.2023 submitted Test Report Lab No. RCL/SU/IMP/2098-2100/01-08-2023 (Doc No. 5964495/15-15-2023) wherein it has been reported as follows: "*the three samples are in the form of off-white powder. Each composed of carbonate of calcium and magnesium with small amount of oxide of iron, aluminium, etc and siliceous matter. Each of the three sample under report is other than PVC Resin*". In this regard, I find the empanelled Chartered Engineer Inspection Report vide certificate Ref No. BB/I-25/23/RRKL/TUMB dated 09.10.2023 which reported that the imported consignment is other than PVC Resin i.e. mixture of CaO, MgO and Siliceous materials (white coloured Quartz sand) and not PVC Resin and the empanelled Chartered engineer valued the subject goods at Rs. 1,56,000/-.

**28.2** On careful study of the Test Reports of the subject goods, I find that the subject goods are not PVC resin but merit to be described as siliceous material and with the goods description falling under the category of Siliceous material, I hold that the CTH applicable for the subject goods is CTH 25061010, as proposed in the subject SCN dated 23.02.2024. With the true description of the subject goods being siliceous material, I find it fit to reject the declared value and hold the value arrived by the Chartered engineer as the assessable value for the purposes of Customs valuation. I find that the subject goods do not correspond in respect of description, Classification and valuation with the entries made in the subject Bill of entry and thereby I find that the subject goods have been improperly imported and are thereby liable to confiscation under Section 111(m) Custom Act, 1962. I note that the said importer has submitted that it does not want to clear the subject goods. At this juncture, I draw attention to Section 125(1) Custom ACT, reproduced as follows:

**Section 125. Option to pay fine in lieu of confiscation. -**

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

2 [ **Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:

**Provided** further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

4 [(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

5 [(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

**Explanation** .-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date\*\* on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

**28.3** With the subject goods not being prohibited goods, I find that as per Section 125(1) Custom Act, the adjudicating authority shall give an option to the importer an

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option to pay fine in lieu of confiscation. Further, from the provision of section 125(3) of Custom Act, where the fine imposed is not paid within a period of 120 days from the date of option given, such option shall become void, unless an appeal against such order is pending. As per the provisions of Section 125(1) Custom Act, I find it apt to impose redemption fine in lieu of confiscation. Further, as per the provisions of Section 125(2) Custom ACT, I find that the importer if exercises the option to pay the Redemption fine, shall be liable to the duty payable in respect of such goods. Thus I hold that in case of redemption fine option is exercised by the said importer, the duty liability of BCD amounting to Rs.7,800/-, SWS of Rs. 780/- & IGST of Rs. 8,229/- shall be payable by the said importer.

**29. M/s R R Kabel Limited and CB M/s. Global Ocean Clearing Pvt. Ltd. (CHA No. AAFCG7390BCH010):**

**29.1** I have carefully studied the Statement recorded under Section 108 Custom Act, of Shri Suresh Asawa, General Manager Purchase, M/s R R Kabel Limited and the documents on record namely the letter dated 29.02.2024, purchase order dated 31.03.2023 issued by issued by M/s RR Kabel Limited and Invoice No. 23-03-27 PVC dated 01.04.2023 issued by M/s ESUCCESS Material Limited. I note that the importer submitted that they are victim of fraud played on them by the supplier M/s ESUCCESS Material Limited and that they (the said importer) were duped into making the payment of US \$ 68640 (Rs.56,69,664/-) for the subject goods. The said importer submitted that the supplier made them do remittance for value for the subject goods and that despite paying for subject goods through HDFC bank on 16.05.2023, the supplier did not release the Bill of lading by telex. Further, the said importer submitted that the supplier subsequently sent the Original Bill of Lading through HSBC Bank with instructions to HSBC Bank to release the Original Bill of Lading against payment to HSBC Bank, thereby seeking to receive payment from them twice. The importer submitted HDFC Bank remittance slip for \$68640.00 reflecting payment made to foreign supplier and new bill advice for an amount of \$68640.00 of HSBC against the imported goods. The importer submitted emails between them and the supplier i.e. M/s ESUCCESS Material Limited. In subject matter, I note that the subject investigation was initiated in pursuance to the importer's letter dated 17.07.2023 wherein the importer submitted that it did not want

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to take/ clear the subject goods suspecting fraud by the supplier. It was thereafter that the examination of the subject containers was done vide Panchnama proceedings dated 26.07.2023. Further, as per the importer's submission it had submitted that Purchase Order dated 31.03.2023 placed on the supplier was for purchase and import of 'PVC resin' and consequently the supplier raised invoice dated 01.04.2023 with the terms of payment as '**Documents against Payment at Sight**'. The importer's submission that despite remitting price of goods to the supplier's HDFC bank account, the supplier had not released the original bill of lading is on record along with the copy of remittance advice of HDFC Bank and correspondence with HSBC. With these documents on record, the importer's plea that it is victim of fraud holds ground. I note that vide its letter dated 17.07.2023 the said importer requested for cancellation of subject Bill of entry. Further, the said importer submits that they had filed the Bill of entry with the same particulars as had been received from the supplier's end vide the import documents and photo copy of the subject Bill of lading. I note that the export invoice no 23-03-27 PVC dated 01.04.2023 issued by the supplier to the said importer had the following particulars, as follows:

Descriptions	Quantity	Packing	Unit Price	Amount
PVC Resin with K-78.00 MTS Value 70 (Grade:S-1300);SINOPECQILU	25 KG/Bag, 26 MT/40	USD 880.00 /MT 3FCL	CIF NHALA SHEVA, India	US\$ 68,640.00

**29.2** I hold that the said importer had filed the subject Bill of entry on the basis of the documents submitted by the supplier vide Supplier's invoice and the photocopy of the bill of lading. I have studied the case laws cited by the said importer namely: Oriental Containers Ltd v UOI- 2003 (157) ELT 503 (Bom); Guru Ispat Ltd v CC – 2003 (151) ELT 384; CC v Guru Ispat Ltd – 2003 (157) ELT A87; Trishla Steel Engg Co v CC – 2014 (313) ELT 443; Makali Metals P. Ltd v CC – 2001 (138) ELT 607; Gitanjali Gems Ltd v CC – 2011 (264) ELT 574. With the documents on record, I hold that the said importer and thereby the Custom broker appointed by the said importer are not party to the fraud and that as the said importer had paid the price of

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subject goods to the supplier and yet not received the original bill of lading, I hold that they are victim of the fraud played by the supplier. I find that the said importer had taken effective steps and approached the Customs vide its letter dated 17.07.2023. Thus I find no malafie on behalf of the importer and thereby on behalf of its Custom broker also and they had proved their bonafides in subject matter. On considering the documents on record submitted by the said importer, I hold that the plea of the said importer that it was a victim of fraud played upon it by the supplier holds ground and thereby I do not find reason to invoke the penal provisions under Sections 112(a), 114A and 114AA of the Customs Act proposed in the subject SCN dated 23.02.2023 against the said importer. For the same reason that the Custom Broker M/s Global Ocean Clearing Pvt Ltd prepared the electronic declaration Bill of entry based on the particulars submitted by the supplier vide the supplier's invoice and that vide the Custom broker's submission that they had guided the importer to approach shipping line and booking agent at load port for the issue of not receiving the Bill of lading original and that they had guided the importer of chances of fraud by the supplier, I find no reason, in light of the documentary evidence on record, namely the supplier's invoice dated 01.04.2023 and the importer's letter dated 17.07.2023 and the Bank correspondence and emails submitted by the importer, to invoke the penal provisions under the Sections 117 of Custom Act on the Custom Broker as proposed in the subject SCN dated 23.03.2023.

**30.** Supplier of subject goods: **M/s ESUCCESS Material Limited**, Unit 2508A 25F, Bank of America Tower, 12 Harcourt Road Central Hong Kong (hereinafter referred as "M/s ESUCCESS" for sake of brevity)

**30.1** With regard to the exporter M/s ESUCCESS, I note that three Summons under Section 108 of the Customs Act, 1962 were issued on M/s ESUCCESS sent vide emails dated 11/01/2024; 19/01/2024 and 30/01/2024 on email Id: sales@esuccessmaterial.com to give online statement on the following dates 18/01/2024; 25/01/2024 and 12.02.2024. I note that M/s ESUCCESS neither complied with the summons nor responded to the emails. I also note that M/s ESUCCESS neither appeared for personal hearing nor responded to the letters when the opportunities of hearing were granted on three separate dates.

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**30.2** At this juncture, I find it of relevance to reproduce the provisions of Section 108 of the Customs Act, 1962, reads as follows:

*SECTION 108. Power to summon persons to give evidence and produce documents. — [(1) Any Gazetted officer of Customs [ \* \* \* ] shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.]*

*(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.*

*(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required :*

*Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.*

*(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).*

Further, I find it of relevance to reproduce Section 1(2) of the Customs Act, 1962, read as follows:

*Section 1. Short title, extent and commencement.-*

*(1) This Act may be called the Customs Act, 1962.*

*(2) It extends to the whole of India [and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.]*

*(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*

**30.3** I note from the Purchase Order dated 31.03.2023 placed by the said importer on M/s ESUCCESS that the order placed by the said importer on the supplier was for purchase and import of PVC Resin. The supplier's invoice dated 01.04.2023 has the details of the goods as PVC Resin and I note that the said importer had paid to the exporter the value for PVC Resin. I note that the subject seized goods have been misdeclared in description and value by the supplier vide the supplier's invoice and

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the malafide of the supplier hold ground, as the supplier had not released the original Bill of lading despite the payment made to the supplier by the said importer and that the supplier had misdeclared the goods and their value exported to M/s R R Kabel Limited. The misdeclaration of the goods and overvaluation by M/s ESUCCESS may be summarised as follows:

M/s ESUCCESS Export Invoice No.	Description of goods in Export Invoice	Declared value of goods in Export Invoice (In Rs.)	Actual description of goods on the basis on the test reports received	Valuation of subject goods arrived by the empaneled Chartered Engineer (In Rs.)
23-03-27 dtd 01.04.2023	PVC	PVC Resin 56,69,664/-	Other than PVC Resin	1,56,000/-

**30.4** From the documents on record, I hold that the exporter/ supplier misdeclared both the description and value of the goods exported to the said importer. The importer submitted that vide e-mails dated 09-05-2023 and 11-05-2023, the exporter/supplier informed them to make payment for the goods and had assured them that making the payment, the supplier would release the Bill of Lading by Telex on the same day and relying on the said assurance given by the supplier, they made remittance of the price of the goods to the foreign supplier's bank account through HDFC Bank on 16-5-2023 and that despite follow-up by e-mail and whatsaap, the foreign supplier did not release the Bill of Lading by Telex and also did not attend their telephone calls. The said importer submitted that the supplier subsequently sent the Original Bill of Lading through HSBC Bank with instructions to HSBC Bank to release the Original Bill of Lading against payment to HSBC Bank, thereby seeking to recover payment from the said importer twice. The importer submitted email chats, HDFC Bank remittance slip for \$68640.00 reflecting the payments made to foreign supplier and new bill advice for an amount of \$68640.00 of HSBC against the imported goods. Further, I note that the importer vide its letter dated 17.07.2023 submitted that it will not take the subject goods suspecting chances of fraud. In pursuance to the request of the said importer, goods were examined and investigation initiated in subject matter. From the facts on record, I find that M/s ESUCCESS Material Limited, instead of exporting PVC Resin, actually exported Siliceous Material to the said importer. From the documents on record, I hold that M/s ESUCCESS Material Limited, Central Hong Kong supplier had deliberately

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supplied Siliceous Material instead of PVC Resin and had not released the original Bill of lading on receipt of the sales value and thereby I find malafide by the exporter. Therefore, I hold that M/s ESUCCESS Material Limited misdeclared the description and value of the subject goods vide its invoice No. 23-03-27 dated 01.04.2023 and by this act have rendered the subject goods liable to confiscation under Section 111(m) Custom Act; and thereby M/s ESUCCESS shall be liable to penalty under Section 112(v) Custom Act to a penalty equal to the difference between the declared value and the value thereof. Further, M/s ESUCCESS knowingly and intentionally issued its said Invoice No. 23-03-27 dated 01.04.2023 which is false and incorrect with respect to the description and value of the subject goods and this invoice issued by M/s ESUCCESS was used in the transaction of business for the purposes of Custom Act and thereby M/s ESUCCESS shall be liable to penalty under Section 114AA Custom Act.

**31.** In conspectus of aforementioned Discussion and findings, I pass the order,

### **ORDER**

- 1.** I order to reject the declared description of goods 'PVC Resin' and Customs Tariff Heading 39041020 and order to re-classify the subject goods under Customs Tariff Heading No. 25061020 with the description "Other Than PVC Resin" and reassess the subject Bill of Entry accordingly.
- 2.** I order to reject the declared value of Rs. 56,69,664/- (Rupees Fifty Six Lakh Sixty Nine Thousand Six Hundred Sixty Four Only) of the subject goods in the Bill of Entry No. 5964495 dated 15.05.2023 and order to re-determine the value of the goods at Rs. 1,56,000/- (Rs. One Lakh Fifty Six Thousand Only).
- 3.** I order for confiscation of subject goods under Section 111 (m) of the Customs Act, 1962. However, I give the option to importer to redeem the goods on payment of Fine of Rs. 1000/- (Rs. One Thousand Only) under Section 125 of the Customs Act, 1962. If the importer exercises the option of paying redemption fine, thereby as per Section 125(2) Custom Act, the said importer shall pay the duties as ordered at Para 3.1, 3.2 and 3.3 of this Order.  
**3.1** I confirm the demand of BCD of Rs. 7,800/- (Rupees Seven Thousand Eight hundred Only) under Section 28(4) of the Custom Act and order recovery of the BCD from the Importer in case the Importer opts for payment of redemption fine.

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3.2 I confirm the demand of SWS of Rs. 780/- (Rupees Seven hundred and eighty only) under Section 28(4) of the Custom Act order recovery of the SWS from the Importer in case the Importer opts for payment of redemption fine.

3.3 I confirm the demand of IGST of Rs. 8,229/- (Rupees Eight thousand two hundred and twenty-nine only) under Section 28(4) of the Custom Act order recovery of the IGST from the Importer in case the Importer opts for payment of redemption fine.

3.4 As the subject seized goods are not cleared out of customs, thereby recovery of interest under Section 28AA Custom Act does not arise.

3.5 Where the fine imposed under sub-section (1) of section 125 Custom Act is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending, and thereafter after a period of one hundred and twenty days the goods shall become absolutely confiscated and as per Section 126 Custom Act, such goods shall thereupon vest in the Central Government.

4. I impose a penalty of Rs. 55,13,664/- (Rs. Fifty Five Lakh Thirteen Thousand Six Hundred and Sixty Four Only) on M/s ESUCCESS Material Limited under Section 112(v) of the Customs Act, 1962.

5. I impose a penalty of Rs. 1,56,000/- (Rs. One Lakh Fifty Six Thousand Only) on M/s ESUCCESS Material Limited under Section 114AA of the Customs Act, 1962.

6. I refrain from imposition of penalty under Section 112, 114A & 114AA of the Customs Act, 1962 on M/s. R R Kabel Limited for reasons discussed at para 29.1 & 29.2 above; and I refrain from imposition of penalty under Section 117 under the Customs Act, 1962 on M/s. Global Ocean Clearing Pvt. Ltd. (CHA No. AAFCG7390BCH010) for reasons discussed at para 29.1 & 29.2 above.

(Arun Richard)  
Additional Commissioner.

F. No. CUS/SHED/MISC/1589/2023-ICD-UMGN-CUS-COMMRTE-AHMEDABAD

DIN - 20240671MN0000999C82

Date: 13.06.2024

DIN: 20240671MN0000999C82

To,

1. R R Kabel Limited,

RS No. 201, 202/1, 202/2, 203 & 327/3  
Khanda Road, At & P.O.  
Village-Waghodia, Vadodara

2. M/s ESUCCESS Material Limited,

Unit 2508A 25F, Bank Of America Tower,  
12 Harcourt Road Central Hong Kong

3. M/s. Global Ocean Clearing Pvt. Ltd.

(CHA No. AAFCG7390BCH010),  
C-101, Bussiness Square,  
Andheri Kurla Road,  
Opposite Kanakia Wall Street,  
Mumbai 400 093

Copy To:

1. The Principal Commissioner, Customs Commissionerate, Ahmedabad.
2. The Deputy Commissioner, ICD Tumb.
3. The Deputy Commissioner, TAR, Custom Ahmedabad.
4. The Superintendent (Systems), HQ, Customs Commissionerate, Ahmedabad: with request to upload the subject OIO on the official website.
5. Guard File.