

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A	FILE NO./फाइल संख्या	GEN/ADJ/ADC/511/2025-Adjn
B	OIO NO./आदेश संख्या	MCH/ADC/ZDC/495/2025-26
C	PASSED BY/जारीकर्ता	DIPAK ZALA, ADDITIONAL COMMISSIONER, CUSTOM HOUSE, MUNDRA.
D	DATE OF ORDER/आदेश की तारीख	05.01.2026
E	DATE OF ISSUE/जारी करने की तिथि	05.01.2026
F	SCN No. & Date/कारण बताओ नोटिस क्रमांक	SCN No.: GEN/ADJ/ADC/511/2025-Adjn dated 21.02.2025
G	NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	<ol style="list-style-type: none"> 1. M/s. Gujarat Peanut Products Ltd, 2. M/s. Eminent Shipping Services 3. M/s. Goodrich Logistics Pvt. Ltd. 4. M/s Paramount Sealinks Pvt. Ltd. 5. Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealink Pvt. Ltd. 6. Shri Prashant Thakker (Popat), Authorised signatory of M/s. Multigreen International.
H	DIN/दस्तावेज पहचान संख्या	20260171M00000888A64

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
2. This Order - in - Original is granted to the concerned free of charge.
3. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकता है-
4. Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त (अपील),
 चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
 नवरंगपुरा,अहमदाबाद 380 009”

**“THE COMMISSIONER OF CUSTOMS (APPEALS),
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN
ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”**

5. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।

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

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

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

i. उक्त अपील की एक प्रति और

A copy of the appeal, and

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

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

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

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

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

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

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

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

BRIEF FACTS OF THE CASE

Specific intelligence gathered by the Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') indicated that **M/s. Gujarat Peanut Products Ltd.(IEC: 2408002630)** (hereinafter also referred to as the "Importer") having address as Fac.- Survey No. 155/1, Jamnagar Road, Targhari Village TalukaPaddhari, Rajkot-360110,Office address- D-402,

The Imperial Heights, 150 Feet Ring Road, Rajkot, Gujarat-360005, was indulged into illegal import of Watermelon Seeds (also known as Melon Seeds) by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. As per said notification "Import Policy of Melon Seeds is 'Free' with effect from 01st May 2024 up to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import".

2. Acting upon the intelligence, the containers covered under the Bill of Entry No. 5094709 dated 16.08.2024 filed by the importer M/s Gujarat Peanut Products Ltd. at Mundra Custom House were tracked from the website of M/s Ocean Star line (star-liners.com/track-my-shipment/#listing-table) that there were major discrepancies between the details mentioned in Bill of Lading No.SDR24SDSA004883 for BE No. 5094709 dated 16.08.2024 and the tracking details downloaded from aforementioned website i.e. Name of the vessel, Shipped on Board date, etc. Accordingly, the import consignment covered under Bill of Entry No. 5094709 dated 16.08.2024 filed by the importer M/s Gujarat Peanut products ltd. lying in the CFS of M/s Saurashtra CFS, Mundra was put on hold 05.09.2024 for examination by officers of DRI. Subsequently, the import consignments covered under Bill of Entry No.5513750 dated 10.09.2024, 5513770 dated 10.09.2024, 5513709 dated 09.09.2024 & IGM No. 2387365 dated 06.09.2024(Line No. 54) were put on hold on 13.09.2024 imported by the said importer lying in the CFS of M/s Transworld Terminal Pvt. Ltd, Mundra for examination by DRI officers. The goods covered under Bill of Entry No. 5094709 dated 16.08.2024, 5513750 dated 10.09.2024, 5513770 dated 10.09.2024, 5513709 dated 09.09.2024 & IGM no. 2387365 dated 06.09.2024 were examined by the officers of DRI on 08.10.2024 (for 33 containers) & 15/16.10.2024 (for 05 containers) and accordingly a panchnama dated 08.10.2024, dated 15/16.10.2024 were drawn at the CFS of M/s Saurashtra CFS, Mundra and M/s Transworld Terminal Pvt. Ltd, Mundra in respect of the same.

3. During the investigation, searches were conducted at the office Premises of following firms/company. The details are as under-

Table-I

Sr No.	Name of the Firm/Company	Address	Panchnama Dated	Remarks
01	M/s Paramount Sealinks Pvt. Ltd. (General Agent working in India on behalf of M/s Ocean Star line)	Office No. 14, 2 nd Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201.	12.09.2024	Containers line
02	M/s Eminent Shipping Services LLP (General Agent working in India on behalf of M/s Sidra)	BOMGIM Building, 1 st Floor, Plot No. 133, Sector-8, Gandhidham (Kutch)	17.09.2024	Containers line

	Line)	– 370201.		
03	M/s Gujarat Peanut Products ltd.	The Imperial Heights, 150 Feet Ring Road, Gujarat-360005.	20.09.2024	Importer
04	M/s Unnati Cargo	Office No. 08. 1 st floor, Mundra CFS, Mundra.	14.09.2024	CHA

During the Panchnama proceedings carried out at the above said address, some e-mail correspondences, documents relating to present investigation were resumed by the visiting officers of DRI on a reasonable belief that the same were required for further DRI investigation.

4 . During the course of investigation, statements of concerned persons were recorded under Section 108 of the Customs Act, 1962 and some documents were collected as given below:

4.1 Statement of Shri Ravin Paul, Branch Manager of M/s Eminent Shipping Services LLP, (Delivery Agent of Shipping Line i.e. M/s Sidra Line), having address as 'BOMGIM Building, 1st Floor, Plot No. 133, Sector-8, Gandhidham (Kutch) – 370201', was recorded under Section 108 of the Customs Act, 1962 on 10.09.2024 wherein he inter alia stated that he is working as Branch Manager of M/s Eminent Shipping Services LLP and M/s Sidra Line is their principle and M/s Eminent Shipping Services LLP has been handling all shipping related activities in India i.e. Export and Import at Mundra Port since July 2024 on behalf of M/s Sidra Line; that 01 consignment of M/s Gujarat Peanut Products Ltd. has been received under the Bill of Lading No. SDR24SDSA004883 dated 29.06.2024 in respect of Container Nos. CAIU8850595, FLCU6005878 and BMOU5286368. On being shown tracking of said containers available on principal shipping line website (<https://www.sidraline.com/tracking>) wherein export received full at port is 05.07.2024, he confirmed the same and also submitted that when containers are loaded on vessel, then it is considered that the goods are shipped on board.

4.2 Statement of Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd., (Delivery Agent of Shipping Line i.e. M/s Ocean star line), having address as 'Office No. 14, 2nd Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201', was recorded under Section 108 of the Customs Act, 1962 on 10.09.2024 wherein he inter alia stated that he is working as Branch Manager of M/s Paramount Sealinks Pvt. Ltd. and M/s Ocean star line is their principle and M/s Paramount Sealinks Pvt. Ltd. has been handling all shipping related activities in India i.e. Export and Import at Mundra Port since long time on behalf of M/s Ocean star line. Further he stated that he generally received mail communication regarding consignments sent by M/s Oceanic Star Line, they sent him the details of arrival notice with containers details. Further, he stated that arrival of the consignment he looked after all clearance on behalf of Line to discharge the goods to his importers.

4.3 Statement of Shri Sagar Arun Kumar Chag, Partner of M/s. Gujarat

Peanut Products Ltd., was recorded under Section 108 of the Customs Act, 1962 on 24.10.2024 wherein he inter alia stated that in year 2011, his family member had started the firm M/s Gujarat Peanut Products Ltd. that they process the watermelon seeds at their factory premises and then they sell the processed seeds in domestic market only. Further, he stated that currently he and his father are partners and he looks after all the business-related work of M/s Gujarat Peanut Products Ltd. i.e. the work related to purchase and sales and import-export for M/s Gujarat Peanut Products Ltd. He submitted Invoice, Packing list, Bill of Ladings, COO, Phytosanitary certificate, Fumigation certificate etc. related to B/Es No. 5513750 dated 10.09.2024, 5513770 dated 10.09.2024, 5513709 dated 09.09.2024 and IGM no. 2387365 dated 06.09.2024 which were supplied to him by his overseas suppliers M/s Kokai Indo Foodstuff Trading LLC, Dubai, UAE and M/s Maasim Import and Export, Khartoum, Sudan on behalf of Manalee Trading FZE, Dubai, UAE. He also stated that he is well aware about the Notification No. 05/2023 dated 05.04.2024 issued by DGFT that if watermelons seeds had loaded or shipped on board before 30th June 2024 then it will be under 'Free' category, however if goods were loaded on ship or shipped on board after 30th June 2024, then it will be under category of 'restricted'.

During statement Shri Sagar Chag were shown the following documents related to 38 containers. The details are as under-

Table-II

Sr No.	Documents Type/Documents number	Shipped on board date mentioned	Downloaded /resumed from
01	Containers Tracking reports	05.07.2024	Sidra line website https://www.sidraline.com/tracking
02	BL no. OSLPZUMUN3084724	16.07.2024	Resumed during search at premise of M/s Paramount sealinks pvt. Ltd.
03	BL No. OSLPZUMUN3085224	17.07.2024	Resumed during search at premise of M/s Paramount sealinks pvt. Ltd.
04	BL No. OSLPZUMUN3085324	17.07.2024	Resumed during search at premise of M/s Paramount sealinks pvt. Ltd.
05	BL No. GLNPZUMUN0624046	30.06.2024	Submitted by M/s Goodrich Logistics pvt. Ltd. during recording the statements

On being shown the above said documents mentioned in table, for Sr. No. 01 in above table he stated that as per tracking of containers the shipped-on board date is 05.07.2024 for above said 03 containers loaded from Sudan Port which is mentioned at official website of M/s Sidra line covered under B/E No.5094709 dated 16.08.2024. Further stated about Sr. No. 02, 03, 04 in above said table that it appears that these are the original BLs and someone has manipulated in shipped on board date and making another fake BL (which is called Switch BL) for same consignments. He stated about sr. no. 05 mentioned in above said Table that after seeing the documents - Import general manifest filed by M/s Goodrich Logistics Pvt. Ltd. the B/L GLNPZUMUN0624046 dated 30.06.2024 which is the date on or before 30th June and the date 28.07.2024 which is SOB date mentioned in the alternate BL, it means that someone had tried to forge the original BL to comply with the DGFT notification.

On being shown, email communication dated 27.08.2024, 3.00PM between M/s. Paramount Sealinks Pvt. Ltd. through email ID impdocs@paramountsealink.com and others (which was resumed under the Panchnama dated 12.09.2024 drawn at the premises of M/s. Paramount Sealinks Pvt. Ltd.) in which BL No. OSLPZUMUN3084724 being replaced by switch BL No. OSLSBL-974/24, BL No. OSLPZUMUN3085224 being replaced by switch BL No. OSLSBL-975/24, BL No. OSLPZUMUN3085324 being replaced by switch BL No. OSLSBL-977/24 are mentioned and attached in said conversation, he stated that as per email conversation and attachment it appears that original BL No. OSLPZUMUN3084724 was replaced by switch BL No. OSLSBL-974/24, original BL No. OSLPZUMUN3085224 was replaced by switch BL No. OSLSBL-975/24 and original BL No. OSLPZUMUN3085324 was replaced by switch BL No. OSLSBL-977/24. I state that two sets of Bills of Lading had been made for same consignments by someone.

In context of above, he stated that after seeing the documents related to 38 containers covered under B/E No. 5094709 dated 16.08.2024, B/E No. 5513750 dated 10.09.2024, B/E No. 5513770 dated 10.09.2024, 5513709 dated 09.09.2024 and IGM No. 2387365 dated 06.09.2024, it appears that shipped on board date of these consignments are after 30th June 2024 and on that basis he could say that these goods are under restricted category and does not fulfill the criteria of Notification no. 05/2023 dated 05.04.2024. He stated that while making the deal with Shri Prashant Thakker (Broker of Ahmedabad based M/s Multigreen International), he had clearly told him to send the goods i.e. watermelon seeds only if ship on board date is before 30th June, otherwise don't send them.

4.4 Statement of Shri VankarBharatbhaiKhengarbhai, senior executive (imports) of M/s Paramount SealinksPvt.Ltd., Gandhidham was recorded under Section 108 of the Customs Act, 1962 on 23.12.2024 wherein on being shown the email communication dated 27.08.2024, 3.00PM between M/s. Paramount Sealinks Pvt. Ltd. through email ID impdocs@paramountsealink.com and others (which was resumed under the Panchnamadated 12.09.2024 drawn at the premises of M/s. Paramount Sealinks Pvt. Ltd.) in which BL No. OSLPZUMUN3084724 replaced by switch BL No. OSLSBL-974/24, BL No. OSLPZUMUN3085224

replaced by switch BL No. OSLSBL-975/24, BL No. OSLPZUMUN3085324 replaced by switch BL No. OSLSBL-977/24 are mentioned and attached in said conversation, he confirmed that these original and switched BLs received to M/s Paramount Sealinks Pvt. Ltd. from their principal M/s Ocean Star line and he also stated that the shipped-on-board date are after 30th June in above said documents.

During statement Shri Vankar Bharatbhai Khengarbhai were shown the following documents related to 30 containers. The details are as under-

Sr No.	Documents Type/Documents number	Shipped on board date mentioned	Downloaded /resumed from	Covered Bill of Entry/IGM no.
01	BL no. OSLPZUMUN3084724	16.07.2024	Resumed during search at premise of M/s Paramount Sealinks Pvt. Ltd.	5513709 dated 09.09.2024
02	BL No. OSLPZUMUN3085224	17.07.2024	Resumed during search at premise of M/s Paramount Sealinks Pvt. Ltd.	5513750 Dated 10.09.2024
03	BL No. OSLPZUMUN3085324	17.07.2024	Resumed during search at premise of M/s Paramount Sealinks Pvt. Ltd.	5513770 dated 10.09.2024

He stated that as per email conversation and attachment it appears that original BL No. OSLPZUMUN3084724 was replaced by switch BL No. OSLSBL-974/24, original BL No. OSLPZUMUN3085224 was replaced by switch BL No. OSLSBL-975/24, and original BL No. OSLPZUMUN3085324 was replaced by switch BL No. OSLSBL-977/24, and two Bills of lading had been made for same consignments by someone.

4.5 Statement of Shri Prashant Thakker (Popat), Authorized signatory of M/s Multigreen International, Ahmedabad has been recorded on 19.11.2024. During statement, Shri Prashant Thakker (Popat) stated that he looked after the work related to contracts with seller and buyers. M/s Multigreen International, specializing in the brokerage of season-based agricultural products. They connect local buyers in India with overseas suppliers, primarily from African countries like Sudan, Somalia, and Nigeria, to fulfill demand for products like sesame seeds, watermelon seeds, pulses, and coriander.

Further, he stated that he negotiates product pricing, brokerage fees and other charges with Indian importers and the shipper for most products. For watermelon and coriander seeds, he charges brokerage from both the shipper and importer. He further stated that he had talked with overseas suppliers of watermelon seeds situated at Sudan.

During his statement, Shri Prashant Thakker was shown the container tracking reports/documents listed in Table-II and was also questioned

about Notification No. 05/2023 dated 05.04.2024. Upon review, he confirmed that, according to the notification issued by DGFT, watermelon seeds shipped on board after 30.06.2024 fall under the restricted category. After examining the documents related to the 38 containers under B/E Nos. 5094709 dated 16.08.2024, 5513750 dated 10.09.2024, 5513770 dated 10.09.2024, 5513709 dated 09.09.2024, and IGM No. 2387365 dated 06.09.2024, it was confirmed that the shipped on board dates are after 30th June 2024. Therefore, it can be concluded that the goods in these 38 containers fall under the restricted category and do not comply with the criteria outlined in Notification No. 05/2023. It also appears that the shipped on board dates in the related documents submitted in Customs authority may have been manipulated or fabricated. Furthermore, Shri Prashant Thakker stated that, in the case of M/s Gujarat Peanut Products Ltd., Shri Paresh Thakker had spoken with Shri Sagar Chag, Partner of the said firm, regarding the importation of watermelon seeds.

4.6 Statement of Shri Raithatha Pareshkumar Dinsukhray, Proprietor of M/s. Padma Agro International, Fortune Business Hub, 919/920, 9th Floor, N/R Shell Petrol Pump, Science City Road, Thaltej, Ahmedabad, Gujarat 380060 on 30.12.2024 wherein he inter alia stated that M/s Padma Agro International was represented, specializing in the brokerage of season-based agricultural products. The process involves identifying local buyers/importers in India, or being approached by them, for products such as sesame seeds, watermelon seeds, pulses, and peanut. Once a demand was established, overseas suppliers, mainly from African countries like Sudan, Tanzania, and Mozambique, were contacted to facilitate imports based on the buyers' requirements. Further he stated that a fixed brokerage charge of \$10 USD per MT of goods was applied to the overseas suppliers. The role of intermediary was undertaken to ensure that both suppliers and importers agree on terms such as rate, quality, and quantity before goods are imported.

On being asked regarding M/s Gujarat Peanut Products, Rajkot, he stated that they have been known since 2001, when the brokerage business was started in Rajkot. In 2024, Shri SagarChag from M/s Gujarat Peanut was contacted to import watermelon seeds following the issuance of DGFT Notification No. 05/2023, which temporarily made watermelon seed imports free. Coordination with overseas suppliers from Sudan/Dubai was carried out by Shri PrashantPopat to secure the necessary watermelon seeds.

The sellers from Sudan/Dubai agreed to ship the seeds to Mundra Port with a "shipped on board" date of on or before June 30, 2024, in accordance with the DGFT notification. It is confirmed that the brokerage charge of \$10 USD per MT was agreed upon, and the water melon seeds were supplied as above planned.

During his statement, Shri Raithatha Pareshkumar Dinsukhray (Paresh Thakker) were shown the container tracking reports/documents listed in Table-II and was also questioned about Notification No. 05/2023 dated 05.04.2024. Upon review, he confirmed that, according to the notification

issued by DGFT, watermelon seeds shipped-on-board after 30.06.2024 fall under the restricted category. After examining the documents related to the 38 containers under B/E Nos. 5094709 dated 16.08.2024, 5513750 dated 10.09.2024, 5513770 dated 10.09.2024, 5513709 dated 09.09.2024, and IGM No. 2387365 dated 06.09.2024, it was confirmed that the shipped on board dates are after 30th June 2024. Therefore, it can be concluded that the goods in these 38 containers fall under the restricted category and do not comply with the criteria outlined in Notification No. 05/2023. It also appears that the shipped on board dates in the related documents submitted in Customs authority may have been manipulated or fabricated.

He also stated that, no instructions were given for changes to the shipment dates, and it was not known that any manipulation of documents had taken place. If these issues had been known, the consignments would not have been brokered.

4.7 Statement of Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics Private Limited recorded u/s 108 of the Customs Act, 1962 on 29.11.2024.

On being asked, he stated that the post of Branch Manager, M/s Goodrich Logistics Private Limited has been held by him since 2015, overseeing operations at Kandla, Mundra, and other Gujarat locations, his responsibilities encompass managing imports, exports, sales, and operations for the company. All shipping activities, including exports and imports, were handled on behalf of his principal, M/s Dragon Maritimo, whose head office is located in Dubai.

Further, a copy of the agreement between M/s Goodrich Logistics and M/s Dragon Maritimo, duly signed by him, was available which he submitted. He stated further that communications regarding consignments, including Bill of Lading (BOL) and container details, are regularly received from M/s Dragon Maritimo. Upon arrival, he acted as a delivery agent for the consignments, with responsibilities for handling clearance, payment, and issuing delivery orders to the importers.

On being asked he stated that a copy of the Bill of Lading GLNPZUMUN0624046 dated 30.06.2024, along with the manual IGM, BOL, tracking report, and tracking email from the POL agent related to M/s Gujarat Peanut Products Ltd., were submitted, and Atlantic Shipping Co. Ltd, located in Sudan acts as the POL agent for M/s Dragon Maritimo and manages all shipping-related activities at Port Sudan.

He further stated that the IGM for this consignment was filed based on the Sys Con system, software utilized by his company, which showed a date of 28.07.2024. However, the final Bill of Lading provided by the POL agent shows a shipped-on-board date of 30.06.2024, it appears that an error or manipulation in the date on the final BOL occurred, with no knowledge of it on his part.

On being asked he stated that when containers were dispatched for

stuffing and loaded onto the vessel, the goods are considered "shipped on board" when the vessel departs from the port. The error in the BOL date was attributed to a mistake made by the POL agent, Atlantic Shipping Co. Ltd.

4.8 Statement of Shri Chavda Dilipsinh, G-Card holder of M/s Unnati Cargo, recorded under Section 108 of the Customs Act, 1962, on 31.12.2024 wherein he inter alia stated that he has idea about the Notification No. 05/2023 dated 05.04.2024 issued by DGFT which stipulates that before 30.06.2024, the import of watermelon seeds is free and after 30.06.2024 the import of watermelon seeds is Restricted.

During statement Shri Chavda Dilipsinh was shown the Panchnama dated 12.09.2024 drawn at M/s Paramount Sealink Pvt. Ltd. and the resumed shipping documents i.e. Original Bills of Lading no. OSLPZUMUN3084724 (Shipped on board date -16.07.2024), OSLPZUMUN3085224 (Shipped on board date-17.07.2024), OSLPZUMUN3085324 (shipped on board date-17.07.2024), and switch BL No. OSLSBL-974/24, OSLSBL-975/24, OSLSBL-977/24 in reference of said original BL respectively. After seeing the said Bills of lading he stated that these documents were manipulated to show a shipment date before 30th June 2024. Further he shown the containers tracking report downloaded from website of Container line i.e Sidra line in respect of all 03 containers no. FLSU6005878, CAIU8850595, BMOU5286368 covered under B/L No. SDR24SDSA004883 dated 26.06.2024 and after seeing the documents he stated that as per tracking of containers the shipped-on board date is 05.07.2024 for above said 03 containers loaded from Sudan Port which is mentioned at official website of M/s Sidra line.

During statement he was shown the copy of Import general manifest filed by M/s Goodrich Logistics Pvt. Ltd. for five containers No. HDMU2505708, NYKU3094980, OOLU3786544, TCKU3658172, UESU2442550 covered under B/L No. GLNPZUMUN0624046 dated 30.06.2024 pertaining to IGM No. 2387365 dated 06.09.2024. After seeing documents, he stated that it appears that the date 28.07.2024 should be Shipped on board date.

After seeing the said documents, he stated that these documents were manipulated to show a shipment date before 30th June 2024 and If he had been aware of the actual shipment dates, he would not have filed the Bills of Entry related to said Bill of lading.

5. Evidences available on record during investigation for 38 containers covered under B/E no. B/E No. 5094709 dated 16.08.2024, 5513709 dated 09.09.2024, 5513750 Dated 10.09.2024, 5513770 dated 10.09.2024 and IGM no. 2387365 dated 06.09.2024:

5.1 For B/E No. 5094709 dated 16.08.2024

Tracking details of containers: The container movement details were tracked from the website of M/s Sidra line (<https://www.sidraline.com/tracking>) which shows that all the three containers FLSU6005878, CAIU8850595 & BMOU5286368 covered under Bill of Lading No. SDR24SDSA004883 and B/E No. 5094709 dated

16.08.2024 actually arrived at Port Sudan Terminal on 05.07.2024 and all 3 containers were loaded on vessel "Catalonia" and Voyage No. "24030" on 03.08.2024 with consignee M/s Unjha Agro Company, Unjha. During investigation it is evident that M/s Gujarat Peanut products ltd. purchased through High sea sale from M/s Unjha Agro Company, Unjha vide agreement dated 05.08.2024. It shows that Bill of Lading No. SDR24SDSA004883 dated 29.06.2024 showing 'Shipped on Board' date as 29.06.2024 (vessel name Sidra Ahlam/ TRS2406), which was submitted for filing IGM and Bill of Entry at Mundra Custom House were manipulated/forged to get the 'Restricted' goods cleared. The Notification No. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30th June 2024 then only it will be under 'Free' category.

5 . 2 For B/E No.5513709 dated 09.09.2024, 5513750 dated 10.09.2024, and 5513770 dated 10.09.2024-

5.2.1 Two types of Bills of Lading were found-

(i) Bills of Lading available with Container Line- During search at the premises of M/s Paramount Sealink Pvt. Ltd. two types of Bill of Lading are found for same containers in which Original Bills of Lading i.e. (i) BL No. OSLPZUMUN3084724 dated 11.07.2024 having Shipped on board date - 16.07.2024 covered under B/E No. 5513709 dated 09.09.2024 (ii) OSLPZUMUN3085224 dated 11.07.2024 having Shipped on board date- 17.07.2024, covered under B/E No. 5513750 Dated 10.09.2024 and (iii) OSLPZUMUN3085324 dated 11.07.2024 having shipped on board date- 17.07.2024 covered under B/E No. 5513770 dated 10.09.2024 were found, further another type of B/L i.e Switch BL i.e (i) OSLSBL-974/24 dated 26.06.2024 having shipped on board date-26.06.2024 (ii) OSLSBL-975/24 dated 26.06.2024 having shipped on board date-26.06.2024 (iii) OSLSBL-977/24 dated 26.06.2024 having shipped on board date- 26.06.2024 were found in respect of said 03 original BLs. It is evident that the said BLs were received from email tagwa@easternship.com, TagwaBadri, Marketing executive of M/s Eastern shipping Co. Ltd. Khartoum, Sudan on 27.08.2024 at 3.00PM by M/s Paramount Sealinks Pvt. Ltd. vide email ID impdocs@paramountsealink.com.

On scrutiny of the said documents it is evident that vessel Name IBN Al WALEED and voyage number 24906 are mentioned in said 03 original BL, however vessel Name Sunset X and voyage number 2423 are mentioned in said 03 Switch BLs.

5.3 For IGM No. 2387365 dated 06.09.2024

The Container line i.e. M/s Goodrich Logistics Pvt. Ltd. had filed the IGM No. 2387365 dated 06.09.2024 for 05 containers no. HDMU2505708, NYKU3094980, OOLU3786544, TCKU3658172, UESU2442550 having Bill of Lading No. **GLNPZUMUN0624046 dated 30.06.2024**. During statement, Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics Private Limited confirmed that M/s Dragon Maritimo was his Principal and M/s Goodrich Logistics Private Limited had been handling all

shipping related activities i.e. Export and Import for Kandla & Mundra and remaining Gujarat Locations on behalf of M/s Dragon Maritimo. During statement he submitted the related documents and as per documents i.e BL tracking Report (Atlantic Shipping co. ltd. and IGM (form III) in respect of M/s. Gujarat Peanut Products Ltd, it is found that the sailing of vessel date is 18.07.2024 and it was also confirmed by Shri Surya Prakash Mishra that sailing of vessel date is also the date of Shipped on board date i.e 18.07.2024.

5.4 During statement, Shri Sagar Chag had submitted the Bills of lading number (i) SDR24SDSA004883 dated 29.06.2024, (ii) OSLSBL-974/24 dated 26.06.2024 having shipped on board date-26.06.2024 covered under B/E No. 5513709 dated 09.09.2024, (iii) OSLSBL-975/24 dated 26.06.2024 having shipped on board date-26.06.2024 covered under B/E No. 5513750 Dated 10.09.2024, (iv) OSLSBL-977/24 dated 26.06.2024 having shipped on board date-26.06.2024, covered under B/E No. 5513770 dated 10.09.2024 (v) GLNPZUMUN0624046 dated 30.06.2024 covered under IGM no. 2387365 dated 06.09.2024.

5.5 Further, two types of Bills of Lading number discussed above in para 5.2.1 were found. Upon further investigation, it is clear that shipped on board dates, vessel name & Voyage number have been forged and accordingly prepared fabricate documents. It appears that in this case, M/s Ocean Star Line, M/s Paramount Sealinks Pvt. Ltd., Eastern Shipping Co. Ltd., Sudan, M/s Multigreen International, Ahmedabad, and the importer were found to be complicit in the creation of these fraudulent documents.

5.6 Further examination of the forged Bills of Lading, coupled with container tracking information, reveals that the "Shipped on Board" date for the containers covered under B/E No. 5094709 dated 16.08.2024, 5513709 dated 09.09.2024, 5513750 Dated 10.09.2024, 5513770 dated 10.09.2024 and IGM no. 2387365 dated 06.09.2024 is recorded as 05.07.2024, 16.07.2024, 17.07.2024, 17.07.2024, 18.07.2024 respectively. This discrepancy indicates that the involved parties likely fabricated these documents with the intent to exploit a specific notification. The manipulation of dates, coupled with the deliberate forging of shipping documents, suggests that the primary objective was to circumvent regulatory requirements and gain an unjust advantage of Notification no. 05/2023 dated 05.04.2024.

5.7 This coordinated effort to create and present fabricated documentation not only violates legal and procedural norms but also undermines the integrity of the shipping and import/export process. Such actions, could lead to severe legal repercussions for all involved parties. Through intentional misrepresentation and manipulation of dates, they sought to facilitate the clearance of restricted cargo in violation of the established regulations.

6. Seizure:

During the investigation, it was observed as per tracking details

available at website of M/s Ocean star line and as per other evidences gathered during investigation that the imported goods i.e. Watermelon Seeds have been loaded on board after 30th June 2024 and hence are restricted goods as per Notification no. 05/2023 dated 05.04.2024 issued by the DGFT. Thus, it appears that the imported goods by M/s Gujarat Peanut Products Ltd., for **38 containers** covered under Bill of Entry No. 5094709 dated 16.08.2024, 5513750 dated 10.09.2024, 5513770 dated 10.09.2024, 5513709 dated 09.09.2024 & IGM no. 2387365 dated 06.09.2024 filed at Mundra Custom House, appears to have been mis-declared in documents submitted to the Customs. Therefore, there being a reasonable belief that that the said goods are liable for confiscation under the provisions of Section 111 of the Customs Act, the same were placed under seizure under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 18.10.2024.

7. Brief of investigation conducted and liability of imported goods for confiscation:

7.1 Investigation conducted by DRI has revealed that the containers covered under Bill of Entry No. **B/E No. 5094709 dated 16.08.2024, 5513709 dated 09.09.2024, 5513750 Dated 10.09.2024, 5513770 dated 10.09.2024 and IGM no. 2387365 dated 06.09.2024**, were shipped from Sudan port on 05.07.2024, 16.07.2024, 17.07.2024, 17.07.2024, 18.07.2024 respectively, well beyond the cut-off date of 30.06.2024 specified in DGFT Notification No. 05/2023 dated 05.04.2024. The tracking details on the official website of M/s Sidra line (<https://www.sidraline.com/tracking>) and Original Bill of Lading No. OSLPZUMUN3084724 dated 11.07.2024, OSLPZUMUN3085224 dated 11.07.2024, OSLPZUMUN3085324 dated 11.07.2024 and GLNPZUMUN0624046 dated 30.06.2024 confirms that the containers were received at the port on 05.07.2024, 16.07.2024, 17.07.2024, 17.07.2024, 18.07.2024, further corroborating the lapse in compliance with the notification's timeline. Moreover, email correspondences and other evidence clearly demonstrate that a forged Bill of Lading No. SDR24SDSA004883 dated 29.06.2024, OSLSBL-974/24 dated 26.06.2024, OSLSBL-975/24 dated 26.06.2024 OSLSBL-977/24 dated 26.06.2024, GLNPZUMUN0624046 dated 30.06.2024, were created, falsely reflecting the 'shipped on board' date as 29.06.2024, 26.06.2024 (In 03 BLs), 30.06.2024, instead of the actual date of 05.07.2024, 16.07.2024, 17.07.2024, 17.07.2024 and 18.07.2024. This deliberate manipulation of shipping documents was aimed at unlawfully availing the benefits under the DGFT Notification No. 05/2023. The investigation indicates that the importer, in collusion with representatives of M/s Paramount Sealinks Pvt.Ltd., M/s Ocean star line, and Tagwa Badri, Marketing executive of M/s Eastern Shipping Co. Ltd. Sudan, M/s Eminent Shipping Services LLP, M/s Sidra Line, M/s Goodrich Logistics pvt. Ltd., M/s Dragon Maritimo orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted cargo. By doing so, the importer has failed to adhere to the conditions of DGFT Notification No. 05/2023, thereby violating the provisions of the Foreign Trade Policy 2023. This constitutes a serious breach of regulatory compliance and evidences deliberate intent to mislead

customs authorities.

7.2 The facts and evidence discussed above indicate that the Directorate General of Foreign Trade (DGFT), through Notification No. 05/2023 dated 05.04.2024, amended the import policy for Melon Seeds under CTH 12077090. As per the notification, the import of Melon Seeds was classified as 'Free' from 1st May 2024 to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import". It means that all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024. However, as established in the preceding paras, M/s. Gujarat Peanut products ltd., Fac. address- Survey No. 155/1, Jamnagar Road, Targhari Village TalukaPaddhari, Rajkot-360110, illegally imported Watermelon Seeds under Bill of Entry No. **5094709 dated 16.08.2024, 5513709 dated 09.09.2024, 5513750 Dated 10.09.2024, 5513770 dated 10.09.2024 and IGM no. 2387365 dated 06.09.2024**, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 05.07.2024, 16.07.2024, 17.07.2024, 17.07.2024, 18.07.2024 i.e. beyond the permissible date of 30th June 2024 using a forged Bill of Lading. Furthermore, it was revealed during the investigation that the importer deliberately withheld critical information from Customs Authorities, failing to disclose that the goods were shipped on board after the specified date of 30th June 2024. This reflects intentional non-compliance with the DGFT Notification No. 05/2023. Hence, the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. **5094709 dated 16.08.2024, 5513709 dated 09.09.2024, 5513750 Dated 10.09.2024, 5513770 dated 10.09.2024**, having total quantity **624.96 MTs** and declared assessable value of **Rs. 13,38,24,561/- (As per B/Es filed for 04 consignments)** and imported by M/s. Gujarat Peanut products ltd. are liable for confiscation under confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962.

The goods declared as 'Watermelon Seeds' under CTH 12077090 covered under IGM no. 2387365 dated 06.09.2024 having total quantity **90MTs** and value of **Rs.1,96,67,700/-** (value taken as per Invoice no. Ex-24012/1 dated 30.06.2024 i.e. 234000 USD) are liable for confiscation under confiscation under Section 111(d), 111(f) and 111(o) of the Customs Act, 1962.

8. Roles of persons/firms involved:

8.1 Role of the importer M/s Gujarat Peanut Products Ltd. (IEC No. 2408002630) (Partner: Shri Sagar Arun Kumar Chag):

Shri Sagar Arun Kumar Chag, Partner of M/s. Gujarat Peanut Products Ltd. and being importer, he was well aware of the Import policy and Notification. M/s Gujarat Peanut products ltd. had imported watermelon seeds covered under Bill of Entry No. **5094709 dated 16.08.2024,**

5513709 dated 09.09.2024, 5513750 Dated 10.09.2024, 5513770 dated 10.09.2024 and IGM no. 2387365 dated 06.09.2024 by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. The total quantity of the said goods is **714.96** MTs having declared Assessable value of **R s . 15,34,92,261/-**. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) 111(f) and 111 (o) of the Customs Act, 1962 and therefore is liable to penalty under **Section 112 (a) and 112 (b)** of the Customs Act, 1962. By not uploading the original documents as mandated during filing of Bill of Entry, the importer has attempted to mislead the department thereby rendering themselves liable to penalty under **Sec 114AA** of Customs Act, 1962.

8.2 Role of M/s Eminent Shipping Services LLP - working in India on behalf of M/s Sidra Line: The facts and evidences gathered during investigation that the container movement details were tracked from the website of M/s Sidra line (<https://www.sidraline.com/tracking>) which shows that all the three containers **FLSU6005878, CAIU8850595, BMOU5286368** covered under Bill of Lading No. **SDR24SDSA004883 and B/E No. 5094709 dated 16.08.2024** actually arrived at Port Sudan Terminal on 05.07.2024 and all 3 containers were loaded on vessel "Catalonia" and voyage no. "24030" on 03.08.2024 with consignee M/s UnjhaAgro Company, Unjha. During investigation it is evident that M/s Gujarat Peanut Products Ltd. purchased through High Sea Sale from M/s Unjha Agro Company, Unjha. It presented to Customs a Bill of Lading No. **SDR24SDSA004883** dated 29.06.2024 showing 'Shipped on Board' date as 29.06.2024 (vessel name Sidra Ahlam/ TRS2406).

During Statement dated 10.09.2024 of Shri Ravin Paul, Branch Manager Of M/s Eminent Shipping Services LLP (working in India on behalf of M/s Sidra Line), he accepted that the shipped on board (export received full at port) date is 05.07.2024 which is mentioned at official website of Sidra Line. In spite of it, he submitted the fabricated documents i.e Bill of Lading No. **SDR24SDSA004883** dated 29.06.2024 (vessel name Sidra Ahlam/ TRS2406) ,in which date 29.06.2024 was mentioned as Shipped on board date. It is a clear and compelling proof that M/s Eminent Shipping services LLP, acting on behalf of M/s Sidra Line, engaged in deliberate collusion with representatives from M/s Sidra Line, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation was carried out to facilitate the clearance of restricted cargo in direct violation of established regulations, which govern the shipping and clearance of goods in India.

It is evident that, the manipulation of the B/L was done intentionally, altering the actual shipped-on-board dates and vessel details to mislead customs authorities and facilitate the release of cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by M/s Eminent Shipping Services LLP make them liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under **Section 114AA** of the Customs Act, 1962

8.3 Role of M/s Goodrich Logistics pvt. Ltd. - working in India on behalf of M/s Dragon Maritimo

During investigation, it is evident that M/s Goodrich was well aware of the Import policy and Notification related to the goods i.e., Watermelon seeds. M/s Goodrich had filed IGM No. 2387365 dated 06.09.2024 for 05 containers no. HDMU2505708, NYKU3094980, OOLU3786544, TCKU3658172, UESU2442550 with Bill of Lading no. GLNPZUMUN0624046 dated 30.06.2024. However, from investigation it became evident that the actual shipped on board date is 18.07.2024 which makes the goods fall under restricted category as per above said Notification.

During statement, Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics Pvt. Ltd. submitted the tracking report of Bill of Lading no. GLNPZUMUN0624046, in which date 18.07.2024 was mentioned as vessel sailing date and further he stated during statement that the sailing date is also the Shipped-on board date.

It is a clear and compelling proof that M/s Goodrich Logistics Pvt. Ltd. - working in India on behalf of M/s Dragon Maritimo, engaged in deliberate collusion with representatives from M/s Dragon maritimo, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation was carried out to facilitate the clearance of restricted cargo in direct violation of established regulations, which govern the shipping and clearance of goods in India.

It is evident that, the manipulation of the B/L was done intentionally, altering the actual shipped-on-board dates and vessel details to mislead customs authorities and facilitate the release of cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by M/s Goodrich Logistics pvt. Ltd. make them liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under **Section 114AA** of the Customs Act, 1962.

8.4 Role of M/s Paramount Sealinks Pvt. Ltd. - working in India on behalf of M/s Ocean Star Line:

The facts and evidences gathered during the search, including Bill of

Lading and email correspondences, provide clear and compelling proof that M/s Paramount Sealinks Pvt. Ltd., acting on behalf of M/s Ocean Star Line, engaged in deliberate collusion with representatives from M/s Ocean Star Line and Mr. Tagwa Badri, Marketing Executive of Eastern Shipping Co. Ltd., Sudan, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation was carried out to facilitate the clearance of restricted cargo in direct violation of established regulations, which govern the shipping and clearance of goods in India.

It is evident that, the manipulation of the B/L was done intentionally, altering the actual shipped-on-board dates and vessel details to mislead customs authorities and facilitate the release of cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by M/s Paramount Sealinks Pvt. Ltd. make them liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under **Section 114AA** of the Customs Act, 1962.

8.5 Role of Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd. (working in India on behalf of M/s Ocean Star Line)

Shri Bharat Himmatlal Parmar, as the Branch Manager of M/s Paramount SealinksPvt. Ltd., a container line agent, was well-versed in the Import policy and Notifications. In his statement, Shri Parmar admitted to overseeing all operations of M/s Paramount SealinksPvt. Ltd., including documentation related to import-export activities as a container line agent. The facts and evidence gathered during the investigation, including the Bill of Lading and email correspondences, provide clear and compelling proof that M/s Paramount SealinksPvt. Ltd., acting on behalf of M/s Ocean Star Line, deliberately colluded with representatives from M/s Ocean Star Line and Mr. Tagva Badri, Marketing Executive of Eastern Shipping Co. Ltd., Sudan, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation aimed to facilitate the clearance of restricted cargo, in direct violation of established regulations governing the shipping and clearance of goods in India.

During the investigation, it is clear that Shri Bharat Parmar, as the branch manager, was kept fully informed of all communications, as Shri Tagva Badri, the Marketing Executive at Eastern Shipping Co. Ltd., sent him the forged documents via email. These actions demonstrate a blatant disregard for regulatory compliance and a clear intent to mislead the authorities. The deliberate acts and omissions by Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount SealinksPvt. Ltd., make him liable for penalties under Section **112(b)** of the Customs Act, 1962.

8.6 Role of Shri Prashant Thakker (Popat), Authorized representative of M/s Multigreen International, Ahmedabad:

During investigation, Shri Prashant Thakker accepted that they used to

import goods i.e. Watermelon seeds from Sudan. It was noticed that although Shri Prashant Thakker, was handling the import related work as a Broker and used to contact Sudanese suppliers in order to finalize the deal with the suppliers of the goods. He used to bargain with foreign suppliers and used to arrange the payment against the subject import goods to the Sudanese suppliers. During the investigation, it appears that Shri Prashant Thakker was constantly in touch with overseas suppliers as well as the container lines: 1. **M/s Eminent Shipping Services LLP - working in India on behalf of M/s Sidra Line** 2. **M/s Paramount Sealinks Pvt. Ltd. - working in India on behalf of M/s Ocean Star Line**) and 3. **M/s Paramount Sealinks Pvt. Ltd. - working in India on behalf of M/s Ocean Star Line**. He was involved in the fabrication of import documents. It also appears that Shri Prashant Thakker charged brokerage fees for these services and Shri Prashant Thakker had given instructions to the container lines through the overseas supplier that even if the goods are shipped after 30th June 2024, the documents must be maintained before 30th June 2024, only then the goods will be cleared in India. The facts and evidence gathered during investigation, clearly establish that Shri Prashant Thakker, acting as broker, deliberately colluded with representatives of container line to manipulate the actual dates on the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. It has also been established that Shri Prashant Thakker was in direct contact with container line and arranged forged documents with wrong dates in a manner that would mislead customs and enable the clearance of restricted cargo. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by Shri Prashant Thakker, Partner of M/s Multigreen International, Ahmedabad make him liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, his involvement in the creation of forged Bills of Lading a violation that renders him liable to penalties under **Section 114AA** of the Customs Act, 1962.

9. Relevant Legal provisions:

9.1. Import of Watermelon seeds falling under HS Code 12077090 was made from "Free" to "Restricted" for vide Notification No. 05/2023 dated 05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry under Section 3 and Section 5 of the FT(D&R) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP), 2023 as amended from time to time. The Import of watermelon seeds is subject to Policy condition No. 4 of Chapter 12 of the ITC (HS) Classification.

9.2 Whereas vide Notification No. 05/2023 dated 05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry, it has been envisaged that "Import Policy of Melon Seeds is 'Free' with effect from 01st May 2024 up to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import". As a corollary, all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI

Manufacturing License in line FSSAI Order dated 15.03.2024.

9.3 The other relevant policy provisions pertaining to the import of watermelon seeds along with relevant penalty provisions of the Customs Act, 1962 are as follows:

9.3.1 FTDR Act, 1992:

Section 3 of the FTDR Act, 1992: Powers to make provisions relating to imports and exports—

(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

Section 5 of the FTDR Act, 1992: Foreign Trade Policy—

The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:

Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette.

9.3.2 Foreign Trade Policy, 2023:

Para 1.02: Amendment to FTP

Central Government, in exercise of powers conferred by Section 3 and Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

Para 2.01: Policy regarding import /Exports of goods

(a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited,' 'Restricted', and STE items can be viewed under 'Regulatory Updates' at <https://dgft.gov.in>

(b) Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in

force.

9.3.3 Relevant Sections of the Customs Act, 1962:

SECTION 112 of the Customs Acts Penalty for improper importation of goods, etc. - Any person, -

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

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

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 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.

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.

10.1 Accordingly, Show Cause Notice dated 21.02.2025 was issued to M/s. Gujarat Peanut products ltd. wherein they were called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra as to why:

(a) The imported goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. **5094709 dated 16.08.2024, 5513709 dated 09.09.2024, 5513750 Dated 10.09.2024, 5513770 dated 10.09.2024**, having total quantity **624.96 MTs** and declared assessable value of **Rs. 13,38,24,561/-** should not be confiscated under Section **111 (d), 111(m) and 111(o)** of Customs Act, 1962 and also covered under IGM no. 2387365 dated 06.09.2024 having total quantity **90MTs** and value of **Rs. 1,96,67,700/-** should not be confiscated under Section **111(d), 111(f) and 111(o)** of the Customs Act, 1962.

(b) Penalty under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962 should not be imposed on **M/s. Gujarat Peanut Products Ltd.**, Survey No. 155/1, Jamnagar Road, Targhari Village TalukaPaddhari, Rajkot-360110, Office address- D-402, The Imperial Heights, 150 Feet Ring Road, Rajkot, Gujarat-360005.

10.2 M/s. Eminent Shipping services, M/s. Goodrich Logistics Private Limited, M/s. Paramount Sealink Pvt. Ltd. and Shri Prashant Thakker(Popat), Authorized signatory of M/s Multigreen International were called upon to show cause as to why penalty should not be imposed under Section 112(b) & 114AA of the Customs Act, 1962.

10.3 Shri Bharat Parmar, Branch Manager of M/s. Paramount Sealinks Pvt. Ltd. was called upon to show cause as to why penalty should not be imposed under Section 112(b) of the Customs Act, 1962.

WRITTEN SUBMISSIONS OF NOTICEES

11. Submission of Noticee No. 1 i.e. M/s. Gujarat Peanut Products Ltd.:

11.1 Noticee No.1 submitted their written submission dated 31.05.2025 and 06.06.2025 in response to the subject Show Cause Notice, wherein inter-alia stated as under that:-

11.2 M/s. Gujarat Peanut had received letter dated 08.04.2025 having DIN: 20250471MO000000BB67 intimating date of personal hearing i.e. 11.04.2025. On receipt of above referred letter, M/s. Gujarat had vide its letter dated 10.04.2025 sent via email on 11.04.2025 inter alia requested to your good office to released seized goods viz. "Watermelon Seeds" Imported under Bills of Entry Nos. **(1) 5094709 dated 16.08.2024 (total 3 containers) AND (2) 5513750 dated 10.09.2024, 5513770 dated 10.09.2024, 5513709 dated 09.09.2024 & IGM No. 2387365 dated 06.09.2024 (total 35 containers)** under two separate Seizure Memorandum with same F. No. DRI/AZU/GRU/INT-23/Gujarat Peanut/2024 both dated 18.10.2024 (DIN-202410DDZ1000000DBDC) by the DRI, Regional Unit,

Gandhidham may be released provisionally as provided under Section 110A of the Custom Act, 1962. We are ready to furnish Bond supported by Security. It was also prayed that adjudication of the impugned SCNs may be taken upon only after the decision on provisional release of seized goods.

11.3 It is also requested that meanwhile imported goods may be allowed to store in the warehouse till the decision/order in the above referred matters as provided under Section 49 of the Customs Act, 1962.

11.4 M/s. Gujarat before making legal submissions in the matter would like to submit that it was shocked and surprised to receive the impugned SCN as it clearly revealed from the investigation including duly highlighted paragraphs of the statements of authorised person of M/s. Gujarat and partner of broker in para supra and infra that it was not aware about the loading of cargo after 30.06.2024. It had received Bills of Lading and other documents through the broker M/s. Multigreen and date of issue of Bills of Lading also prior to 30.06.2024 which are not in dispute at all.

11.5 M/s. Gujarat submits that it is admitted fact on record by way of exculpatory statements dated 24.10.2024 of one of the directors of it and statement dated 13.01.2025 of Mr. Prashant Popat, partner of M/s. Multigreen Internatioanl & statement dated 30. 12.2024 of Mr. Pareshkumar Raithatha, Proprietor of M/s. Padma Agro International who has acted as brokers between it and foreign based supplier especially highlighted paragraphs supra and infra, as well as email dated 27.08.2024 relied upon at Sr. No. 26 of Annexure – R to the impugned SCN which is recovered during the search conducted at the office premises of M/s. Paramount Sealink Pvt. Ltd. (Delivery Agent of Shipping Line i.e. M/s. Oceanic Star Line) wherein there is no email ids of M/s. Gujarat & its brokers M/s. Multigreen and M/s. Padma nowhere stating or referring name of M/s. Gujarat and its brokers M/s. Multigreen and M/s. Padma that they were not aware about the loading of the goods on board vessel if any after 30.06.2024.

11.6 Shri Sagar Arunkumar Chang Director of M/s. Gujarat in his statement recorded under Section 108 of the Customs Act, 1962 on 24.10.2024 has inter alia stated that M/s. Gujarat was incorporated since year 2006; that during the statement he submitted duly singed copies of invoices, packing list, Bill of Ladings related to Bills of Entry No. 5513750 dated 10.09.2024, 5513770 dated 10.09.2024, 5513709 dated 09.09.2024 and IGM no. 2387365 dated 06.09.2024.

11.6.1 On being asked to provide the details of the person related to overseas suppliers with who he talks regarding import of watermelon seeds he stated that he never talks to any person of the overseas supplier related to import of watermelon seeds; that he talks to his broker company M/s. Multigreen International about import related matters and he makes payments to overseas suppliers as per broker's instruction. M/s. Multigreen International provides him the documents related to import of watermelon seeds on email. (Ans. to Q-6)

11.6.2 On being asked it was deposed that Shri Prashant Popat and

he had a conversation regarding the import of watermelon seeds from Sudan this year. Before importation of watermelon seeds from Sudan this year he told orally to Shri Prashant Popat that he made the payment to overseas supplier through broker, when the watermelon seeds loaded before 30th June, 2024, and he accepted this condition and got it loaded to Mundra and also sent him the related documents. Further, they have made sales contract on 15.06.2024 with M/s. Kokai Indo Foodstuff Trading LLC, Dubai. (Ans. to Q-8)

11.6.3 On being asked has he talk with any person of M/s. Paramount Sealing Pvt. Ltd. Gandhidham/Dubai or M/s. Eminent Shipping services LLP, Gandhidham/Dubai or M/s Goodrich logistics pvt. Ltd., he deposed that he has never talked with any person of M/s. Paramount Sealing Pvt. Ltd. Gandhidham/Dubai or M/s. Eminent Shipping services LLP, Gandhidham/Dubai or M/s Goodrich logistics pvt. Ltd., (Ans. to Q-11)

11.6.4 On being shown the tracking of 3 containers covered under B/L No. SDR24SDSA004883 and B/E No. 5094709 dated 16.08.2024 from M/s Sidra Line official Website sidraline.com/tracking in which Shipped on board date is 05th July, 2024 mentioned in respect of all said 3 containers, he deposited that while making the deal with his broker Shri Prashant Popat, he had clearly told him that he accepts the goods when shipped the watermelon seeds before 30th June, otherwise don't send them. (Ans. to Q-12)

11.6.5 On being shown the copy of panchnama dated 12.09.2024 in respect of search conducted at the premises of M/s. Paramount Sealink Pvt. Ltd. and documents viz. two different BLs founds during the search pertains to M/s. Gujarat for same consignments it was deposed that he never told any person for making two different Bill of Lading for same consignments. (Ans. to Q-13)

11.6.6 On being shown the printout of email conversation between Overseas Person Shri Tagwa Badri Sudan and M/s. Paramount Sealink Pvt. Ltd. Gandhidahm regarding Bill of Lading he stated two Bills of Lading had been made for same consignment by someone. (Ans. to Q-14)

11.6.7 On being shown the copy of BL No. OSLPZUMUN3084724 (for 10 Containers), BL No. OSLPZUMUN3085224 (for 10 containers) and BL No. OSLPZUMUN3085324 (For 10 Containers) in which Shipped on board date are 16.07.2024, 17.07.2024, 17.07.2024 mentioned and switch BL No. OSLSBL-974/24, switch BL No. OSLSBL-975/24, OSLSBL-977/24 in which the shipped on board date is 26.06.2024 mentioned, he deposed that it appears that these are the original BL and someone has manipulated in shipping on board date and making another fake BL (which is called Switch BL) for same consignments. However, he assured that he never instructed anyone for this type of mis-declaration. He state that he told to Shri Prashnat Popat that only if ships the watermelon seeds before 30th June, then He accepts the goods otherwise He will never purchase the watermelon seeds. He also stated that which documents send by Shri Prashant Popat to him, he submitted the same to the

customs. However, if he had known in advance that these shipment was loaded on after 30th June, 2024 he would never have imported it. (Ans. to Q-15)

11.6.8 On being shown Import general manifest filed by M/s Goodrich Logistics pvt. Ltd. for 5 containers covered under B/L No. GLNPZUMUN0624046 dated 28.07.2024 he deposited that It appears that this container pertains to IGM No. 2387365 dated 06.09.2024. After seeing the documents Import general manifest filed by M/s Goodrich Logistics Pvt. Ltd. the B/L GLNPZUMUN0624046 dated 28.07.2024 which is the date after 30th June and the date 28.07.2024 which is the date of BL, it means the date should be Shipped on board date i.e 28.07.2024. However, he states that he told to Shri Prashant Popat that that only if ships the watermelon seeds before 30th June, then he accepts the goods otherwise he will never purchase the watermelon seeds. He also states that which documents send by Shri Prashant Popat to him, he submits the same to the customs. However, If he had known in advance that these shipment was loaded on after 30th June, 2024 he would never have imported it. (Ans. to Q-16)

11.6.9 On being asked to comments that as per Notification No. 05/2023 dated 05.04.2024 issued by DGFT shipped on board date after 30.06.2024 will be restricted category of goods i.e. watermelon seeds then why you have imported watermelon seeds with 38 containers, he inter alia deposed that it appears someone has manipulated / fabricated in shipped on board date. However, he states that he told to Shri Prashant Popat that only if shipped the watermelon seeds before 30th June, then he accept the goods otherwise, he will never purchase the watermelon seeds. He also states that which documents send by Shri Prashant Popat to him, he submits the same to the customs. However, if he had known in advance that these shipment was loaded on after 30th June, 2024 he would never have imported it. However, if he had known in advance that this shipment was loaded on 26.07.2024 he would never have imported it. (Ans. to Q-17).

11.7 During the course of recording of the said statement, M/s. Gujarat had submitted B/L no. SDR24SDSA004883 having ship on board dated 29.06.2024, OSLSBL-974/24 having ship on board dated 26.06.2024, OSLSBL-975/24 having ship on board dated 26.06.2024, OSLSBL-977/24 having ship on board dated 26.06.2024 and GLNPZUMUN0624046 having ship on board dated 30.06.2024 related to B/E No. 5513750 dated 10.09.2024, 5513770 dated 10.09.2024, 5513709 dated 09.09.2024 and IGM no. 2387365 dated 06.09.2024 respectively, Commercial Invoices, Packing List. Even documents for all 3 Bills of Entry and IGM dated 06.09.2024 certificate of origin, phytosanitary certificate, fumigation certificate and sales contract were also of date 30.06.2024. Thus, when all these documents loudly speak that all bears date prior to 30.06.2024 and even shipment of cargo also prior to 30.06.2024 and he was not directly or indirectly in contact with the shipping line at Sudan or even with shippers, the allegations are totally baseless.

11.8 Shri Prashant Thakkar, Partner of M/s. Multigreen International in his statement dated 19.11.2024 recorded under Section 108 of the

Custom Act, 1962 has inter alia deposed that M/s. Multigreen International was established in 2017. Said firm is a partnership firm which was started by him and another partner Shri Nayan Bhai together. He looked after local sales and purchases from overseas in their company M/s. Multigreen International, Ahmedabad. He has been brokerage of Agri Products i.e. Sesame seeds, Watermelon seeds, pulses, peanut etc.

11.8.1 On being asked about the procedure of brokerage in his firm M/s. Multigreen International in case of watermelon he inter alia deposed that they have instructed the seller of Sudan/Dubai that please sent the watermelon seeds which had shipped on board date should be on or before 30th June, 2024. (Ans. to Q-4)

11.8.2 On being asked he deposed that he has never talked with any person of M/s. Paramount Sealink Pvt. Ltd., Gandhidham/Dubai or M/s. Eminent Shipping services LLP, Gandhidham/Dubai or M/s. Goodrich logistics Pvt. Ltd., Gandhidham. (Ans. to Q-11)

11.8.3 On being shown the tracking of 3 containers covered under a BL No. SDR24SDSA004883 and BE No. 5094709 dated 16.08.2024 which shows ship on board date 05th July, 2024 he deposed as per tracking the Shipped-on board date (export received full at port Sudan) is 05th July, 2024, but the shipper has not informed him about change in date in documents. He had provided him the B/L No. SDR24SDSA004883 issued on 29.06.2024 which seems that the B/L issued on 29.06.2024 had been manipulated by someone. (Ans. to Q-13)

11.8.4 On being shown the two different BLs with two different shipped on board date for the same consignments where manipulation the shipped on board dated is before 30.06.2024 he deposed that he never told any person neither for making two different B/L for same consignments nor to change the date of shipped on board on BL. He states that may be shipper had changed the date for selling more goods. (Ans. to Q-14)

11.8.5 On being shown the printout of email conversations between Overseas person Shri Tagwa Badri, Sudan and M/s. Paramount Sealink Pvt. Ltd. Gandhidham to comments it was inter alia deposed that as per email conversation and attachment it appears that Original BL replaced by switched BL. He states that two BL had been made for same consignments by someone. He does not know who told them to do so. Seller never told him about the same. (Ans. to Q - 15)

11.8.6 On being shown the copy of BL and asked that it appears that someone has made 03 switch BL on his instructions for getting the benefit of DGFT Notification No. 05/2023 dated 05.04.2024 he inter alia deposed that it appears that these are the main BLs and someone has manipulated in shipped on board date and made another fake BLs (which are called Switch BLs) for same consignments. However, he assured that he never instructed anyone for this type of mis-declaration. He does not know who told them to do so. Seller never told him about the same. Further he states that if he known in advance then never participate in these

consignments as broker. (Ans to Q. 16)

11.8.7 On being shown Import general manifest for 5 containers covered under BL no. GLNPZUMUN0624046 dated 28.07.2024 he deposed that he state that after seeing the documents Import General Manifest filed by M/s. Goodrich Logistic Pvt. Ltd. the BL No. GLNPZUMUN0624046 dated 28.07.2024, which is the date after 30th June and which is the date after 30th June and the date 28.07.2024 which is the date of BL, it means the date should be Shipped on board date i.e. 28.07.2024. Further he states that he never placed order after 30th June, he told them to send the goods in which shipped on board dated is before 30th June 2024. (Ans. to Q-17)

11.8.8 On being asked to comments that as per Notification No. 05/2023 dated 05.04.2024 issued by DGFT shipped on board date after 30.06.2024 will be restricted category of goods i.e. watermelon seeds then why you have imported watermelon seeds with 38 containers, he inter alia deposed that it appears that shipped on board dates are after 30th June, 2024 of those consignments and on that basis he can say that these goods are under restricted category and not fulfill the criteria of Notification No. 5/2024 dated 05.04.2024. It also appears that someone has manipulated / fabricated in shipped on board date. Further he states that he does not know who told for changing the date of shipped on board in documents and also he states that seller never told him about the same. (Ans. to Q-18)

11.8.9 On being shown email communication he deposed that he deposed that he states that he has no idea about the email communication. It appears that this conversation is regarding manipulation in BL and two BLs had been generated for same consignment and only one is right in both. The seller never told him about these manipulations. (Ans. to Q-21)

11.9 Shri Pareshkumar Raithatha, Properitor of M/s. Padma Agro International, in his statement dated 30.12.2024 recorded under Section 108 of the Custom Act, 1962 has inter alia deposed that M/s. Padma Agro International was established in 2017. Said company is a Proprietorship firm which was started by him and he is the proprietor. He looked after all work of brokerage related like local sales, purchases from overseas etc. in his company M/s Padma Agro International, Ahmedabad. He has been doing brokerage of Agri Products i.e. Sesame seeds, Watermelon seeds, pulses, peanut etc:

11.9.1 On being asked about the procedure of brokerage in his firm M/s. Padma Agro International in case of M/s. Gujarat import of watermelon seeds he inter alia deposed that as they have instructed the seller of Sudan/Dubai that please send the watermelon seeds which had shipped on board date should be on or before 30th June, 2024. He states further that his brokerage has been fixed @ 10 USD per MT from overseas suppliers. Further overseas suppliers agreed with his brokerage and said DGFT notification condition that he supplied the watermelon seeds for M/s. Gujarat. (Ans. to Q-5)

11.9.2 On being asked he deposed that he has never talked with any person of M/s. Paramount Sealink Pvt. Ltd., Gandhidham/Dubai or M/s. Eminent Shipping services LLP, Gandhidham/Dubai or M/s. Goodrich logistics Pvt. Ltd., Gandhidham. (Ans. to Q-12)

11.9.3 On being shown the tracking of 3 containers covered under a BL No. SDR24SDSA004883 and BE No. 5094709 dated 16.08.2024 which shows ship on board date 05th July, 2024, he deposed as per tracking of containers the Shipped-on board date is 05.07.2024 for said 3 containers loaded from Sudan Port which is mentioned at official website of M/s. Sidra Line. He further wants to state that as per tracking the shipped on board date (export received full at port Sudan) is 05th July, 2024, but the shipper has not informed him about change in date in documents. He had provided him the B/L No. SDR24SDSA004883 issued on 29.06.2024 which seems that the B/L issued on 29.06.2024 had been manipulated by someone. (Ans. to Q-14)

11.9.4 On being shown the two different BLs with two different shipped on board date for the same consignments, he deposed that he had never told any person either for making two different B/L for same consignments or to change the date of shipped on board on BL. He states that someone had manipulated the date. (Ans. to Q-15)

11.9.5 On being shown the printout of email conversations between Overseas person Shri Tagwa Badri, Sudan and M/s. Paramount Sealink Pvt. Ltd. Gandhidham he states that two different bill of lading had been made for same consignments by someone. He does not know who told them to do so. Overseas Suppliers never told him about the same. (Ans. to Q-16)

11.9.6 On being shown the copy of BL with shipped on board dates and Switched BL Dates it was asked that it appears that someone has made 3 switch BLs on his instructions for getting the benefit of DGFT Notification No. 05/2023 dated 05.04.2024 he deposed that it appears that these are the main BLs and someone has manipulated in shipped on board date with making another fake BLs (which are called Switch BLs) for same consignments. However, he assured that he never instructed anyone for this type of mis-declaration. He does not know who told them to do so. Shipper never told him about the same. However, he state that if he known in advance then never participate in these consignments as broker. (Ans. to Q 17)

11.9.7 On being shown Import general manifest for 5 containers covered under BL no. GLNPZUMUN0624046 dated 28.07.2024, he deposed that he state that after seeing the documents Import General Manifest filed by M/s. Goodrich Logistic Pvt. Ltd. the BL No. GLNPZUMUN0624046 dated 28.07.2024, which is the date after 30th June and which is the date after 30th June and the date 28.07.2024 which is the date of BL, it means the date should be Shipped on board date i.e. 28.07.2024. Further he states that he never placed order after 30th June, He told them to send the goods in which shipped on board dated is before 30th June 2024. (Ans. to Q-18)

11.9.8 On being asked as per Notification No. 05/2023 dated 05.04.2024 issued by DGFT shipped on board date after 30.06.2024 will be restricted category of goods i.e. watermelon seeds then why he has participated in importation watermelon seeds with 38 containers covered by various BEs and IGM he deposed that it appears that shipped on board dates are after 30.06.2024 of these consignments and on that basis he can say that these goods are under restricted category and do not fulfil the criteria of Notification No. 05/2023 dated 05.04.2024. It also appears that some has manipulated /fabricated in shipped on board date. Further he states that he does not know who told for changing the date of shipped on board in documents and also he states that seller never told him about the same. However, he states that if he known in advance he would have never participate in these consignments as broker. (Ans. to Q-19)

11.10 M/s. Gujarat submits that it is admitted facts on record that during the course of search of its office premises under panchnama dated 20.09.2024 and under Panchnama dated 12.09.2024 drawn at the premises of M/s. Paramount Sealink Pvt. Ltd., Gandhidham (local agent of M/s. Oceanic Star Line) including the surfing of the computers and emails printout running into Page 1 to 488, 1 to 472 and 1 to 394 (placed in 3 different files) and statement dated 10.09.2024 recorded under Section 108 of the Customs Act, 1962 of Branch Manager Shri Bharat Himmatlal Parmar of M/s. Paramount SealinkPvt. Ltd., Gandhidham and others nothing adverse, objectionable or involving it and its broker Mr. Prashant Thakkar (Popat) and Paresh Raithatha were found nor deposed by anyone involving them or deposing that they were aware about delay in shipment beyond 30.06.2024 or change in BL etc.

Thus, on the basis of exculpatory statements of M/s. Gujarat director, its broker's partner, local representative of shipping lines etc and all other documents it clearly reveals that neither M/s. Gujarat nor its brokers were aware about the dates of shipments of watermelon seeds were after 30.06.2024. It is not the case of the investigation that any one from M/s. Gujarat or its brokers were involved in manipulating / change in date of shipment if any by anyone shipper/shipping line so as to import goods which become restricted after 30.06.2024 due to loading after 30.06.2024. Looking to the date mentioned in the documents furnished through the broker, no one can visualise or doubt about delay in shipment.

Therefore, in view of the above no penalty is imposable upon M/s. Gujarat under any of the provisions of Section 112(a), Section 112(b) and Section 114AA of the Customs Act, 1962, apart from the further grounds discussed hereinunder.

11.11 M/s. Gujarat submits that thus on the basis of above it clearly reveals that allegations made against it at para 7.1 and 7.2 of the SCN that the investigation indicated that the importer, in collusion with representatives of Paramount Sea Links Pvt. Ltd., M/s Ocean Star Line and Tagwa Badri, Marketing executive of M/s. Eastern Shipping Co. Ltd. Sudan, M/s. Eminent Shipping Services LLP, M/s. Sidra Line, M/s. Goodrich Logistics Pvt. Ltd., M/s. Dragon Martimo orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance

of restricted cargo. By doing so, the importer has failed to adhere to the conditions of DGFT Notification No. 05/2023, thereby violating the provisions of the Foreign Trade Policy 2023. This constitutes a serious breach of regulatory compliance and evidences deliberate intent to mislead customs authorities;

that the during the investigation it revealed that the importer deliberately withheld critical information from Customs Authorities, failing to disclose that the goods were shipped on board after the specified date of 30th June 2024. This reflects intentional non-compliance with the DGFT Notification No. 05/2023, are nothing but baselessly implicating M/s. Gujarat are contrary to oral as well as documentary evidences discussed in para supra.

1 1 . 1 2 M/s. Gujarat submits that thus allegations made at para 7.2 of the SCN that the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under IGM no. 2387365 dated 06.09.2024 having total quantity 90MTs and value of Rs.1,96,67,700/- (value taken as per Invoice no. Ex-24012/1 dated 30.06.2024 i.e. 234000 USD) are liable for confiscation under Section 111(d), 111(f) and 111(o) of the Customs Act, 1962 are nothing but baselessly implicating M/s. Gujarat which are contrary to oral as well as documentary evidences discussed in para supra.

1 1 . 1 3 M/s. Gujarat submits that thus allegations made at para 8.1 of the SCN that the acts of commission and omission on the part of the importer rendered the subject goods imported vide both the bills of entry liable to confiscation and therefore liable to penalty under Section 112(a), Section 112(b) of the Customs Act, 1962. By not uploading the original documents as mandated during filing of Bill of Entry, the importer has attempted to mislead the department thereby rendering themselves liable to penalty under Section 114AA of Customs Act, 1962, baselessly implicating M/s. Gujarat are contrary to oral as well as documentary evidences discussed in para supra.

1 1 . 1 4 M/s. Gujarat without admitting anything further submits that in fact there is no violation of any of the provisions not to speak of Notification No. 05/2023- dated 05.04.2024 issued by DGFT as the said notification provides for issue of Bill of Lading issued till 30.06.2024. It is not matter of dispute that Bill of Lading were issued on 26.06.2024, 26.06.2024, 26.06.2024, 29.06.2024 and 30.06.2024. The said notification nowhere provides that "Consignments with shipped on board" should be before 30.06.2024 but BL should be issued before 30.06.2024. As per international practice when Bill of Lading is issued with only one date i.e. date of creating and signing date but same is also considered as ship on board date. However, when Bill of Lading is with two dates – Ship on board date and place of issue date, such dates can be same or different also. Thus, as per the language used in the column Sr. No. (ii) – Revised Policy Condition – date of issue of bill of lading should be before 30.06.2024 and not date of consignments with shipped on board. If the intention of the central government to recognise the date of consignments on shipped on board till 30.06.2024 for free import, it would

have differently worded by putting the word "and" between "Consignments with shipped on board" and "Bill of Lading issued till 30.06.2024 shall be treated as "Free to import". Therefore, as per the language Bill of Lading issued date i.e. 30.06.2024 is to be considered for free import of watermelon. As per admitted facts on record in the instant case Bill of Lading whether original submitted by the importer in this case BL dates are before 30.06.2024, so goods viz. watermelon imported by M/s. Gujarat are "Free to Import" and not restricted.

11.15 M/s. Gujarat without admitting anything further submits that **it is nowhere forth coming from the investigation that from where Bills of Lading - unsigned unstamped copies – Verify Copy** of BL No. OSLPZUMUN3084724 - place of issue date 11.07.2024 with Ship on Board Date 16.07.2024, OSLPZUMUN3085224 – place of issue date 11.07.2024 with Ship on Board Dated 17.07.2024, OSLPZUMUN3085324 – place of issue date 11.07.2024 with Ship on Board Dated 17.07.2024 by the Agent Eastern Shipping Company for the carrier Oceanic Star Line and **Non-Negotiable First Original Copy** BL No. GLNPZMUN0624046 – place and date of issue 30.06.2024 issued by Dragon Maritimo and BL No. SDR24SDSA004883 – place of issue and date of issue 29.06.2024 by the General Shipping Company for the carrier Sidra Line RUD No. 20 to 22, 27 and 30 are recovered from where or in whose possession or who has produced the same. It is nowhere forth coming on what basis all these unsigned copy of BLs can be relied upon over Original signed copy received through Banks and Broker. In absence of source of the same and its genuineness / authentication of issue by the shipping line, same cannot be relied upon over signed copy of the BL Copy received through broker.

11.16 M/s. Gujarat submits that the investigation for the date of loading of 3 containers covered under BL No. SDR24SDSA004883 after 30.06.2024 has relied upon track my shipment said to have been downloaded from official website of sidraline.com of M/s. Sidra Line without any base for relying upon for the date of ship on board cargo over Original BL received through broker. The said report as downloaded from the web site cannot be relied upon as name of Vessel on which goods are said to have been loaded on 05.07.2024 at Port of Sudan are CATALONIA for all 3 containers but as per BLs as received from the broker are showing vessel name SIDRA AHLAM in BL dated 29.06.2024. It is all possible that on whatsoever reason that after loading the cargo on the date stipulated in both the Bills of Lading on board vessel SIDRA AHLAM were again loaded after 30.06.2024 on another vessel CATALONIA after unloading from the said vessel SIDRA AHLAM.

11.17 M/s. Gujarat without admitting anything further submits that it is nowhere forth coming from the investigation that from where the Bill of Lading - unsigned unstamped copy – Verify Copy of BL No. OSLPZUMUN3084724, OSLPZUMUN3085224 and OSLPZUMUN3085324 by the Agent Eastern Shipping Company for the carrier Oceanic Star Line RUD No. 20 to 22 are recovered from where or in whose possession or who has produced the same. It is nowhere forth coming on what basis all these unsigned copy of BLs can be relied upon over Original signed copy received through the Broker. In absence of source of the same and its genuineness

/ authentication of issue by the shipping line, same cannot be relied upon over signed copy of the BL Copy received through broker.

11.18 Noticee submitted that statements of proprietor/partner/director etc. of the importers and Shri Prashant Popat are completely exculpatory and it clearly reveals that it was not within their knowledge about the Bills of Lading received by them and submitted to Customs with Ship on Board date and Place of Issue Date prior to 30.06.2024 were not correct and other Bills of Ladings with Ship on Board Date and Place of Issue Date before and after 30.06.2024 or vice versa or after 30.06.2024 (Irrespective of fact that such BLs are relied upon by the investigation are unsigned and unstamped which have no evidential value at all) for the same shipments were issued by the shipping line as relied upon by the investigation. If any switch over of Bills of Lading etc. was not within their knowledge they had contracted with the suppliers of goods for the Shipping Bills for the date prior to 30.06.2024 or of date 30.06.2024. Even they had not contacted any one including foreign suppliers and/or shipping line or their local agents for two sets of shipping bills with different dates for the same consignments. There was no reason to doubt on the copy of Bills of Lading duly signed and stamped received by them with the dates prior to 30.06.2024 especially when they had specifically contracted / ensured with the suppliers that goods should be on board with shipping bill on board date prior to 30.06.2024 otherwise they will not accept the goods.

11.19 M/s. Gujarat further submits that BL GLNPZUMUN0624046 dated 30.06.2024 the investigation has not disputed the date of issue i.e. 30.06.2024. No other BL found by the department during the investigation, so same cannot be disputed merely on the basis of BL Tracking report. According to BL tracking report of BL No. GLNPZMUN0624049 relied upon by the department various dates including date of Full Container in the Port date is 13.06.2024 at the Port Sudan and vessel sailing date is 18.07.2024. Therefore, the allegation made in the impugned SCN doesn't survive and liable to quash and set aside for the said BL Too. M/s. Gujarat further submits that goods of BL SDR24SDSA004883 dated 29.06.2024 were purchased on high seas with said BL Number in the High Seas Agreement entered with M/s. Unjha Agro Company, Unjha. No other BL found by the department during the investigation, so same cannot be disputed merely on the basis of BL Tracking report.

11.20 The Noticee further submitted that it is not the case of the investigation that importer was involved in manipulating / change in date of shipment if any by anyone shipper/shipping line so as to import goods which become restricted after 30.06.2024 due to loading after 30.06.2024 or bill of lading issue dates are after 30.06.2024. Looking to the documents including other documents uploaded with check list for Bills of Entry and also furnished by the importers during investigation no one can visualise or doubt about manipulation of Bills of Lading etc. if any. Since, Sudan is war affected country and goods are always transhipped through Jeddah delay in shipment so no one can doubt in delay in shipment as it is routine to receive goods late from Sudan.

11.21 M/s. Gujarat in view of the above submits that goods viz. 714.96 MT (624.96 MTs + 90 MTs) Watermelon Seeds valued at Rs. 15,34,92,261/- (Rs. 13,38,24,561/- Rs. 1,96,67,700/-) imported under the Bills of Entry dated 16.08.2024, 09.09.2024, 10.09.2024, 10.09.2024 and IGM dated 06.09.2024 are not liable to confiscation under the provisions of the Customs Act, 1962 not to speak of Section 111(d), Section 111(m) and Section 111(o) of the Customs Act, 1962. It is nowhere spelt out in the impugned SCN that how goods are liable to confiscation under the said 3 clauses. In any case it is not the case of the department that goods are prohibited (as per the SCN same is restricted), goods do not correspond in respect of value or in any particular with the entry made under the Customs Act (there was no mis-declaration at all as all entry made in the Bills of Entry are as per the documents furnished with the Bills of Entry etc as received from the suppliers through broker etc) and goods are prohibited in respect of import thereof under this act or any other law time being in force, in respect of which the condition is not observed (as per the SCN goods are restricted and not prohibited).

11.22 M/s. Gujarat further submits that in view of the above goods are not restricted goods as the BL is for the consignments with shipped on board Bill of Lading issued prior to 30.06.2024 but for the sake of argument it is presumed that as interpreted by the investigation that not only consignments with shipped on board also after 30.06.2024 even in that case goods become "restricted goods" as per the said Notification No. 5/2023 dated 05.04.2024 issued by DGFT and prohibited goods so goods cannot be liable to confiscation under Section 111(d) of the Customs Act, 1962.

The words "Prohibited Goods" are defined under Section 2(33) of the Customs Act, 1962 which reads as under:

Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

M/s. Gujarat further submits the words "Restricted Goods" are not defined under the Customs Act, 1962. As per amongst other following settled position of law "Prohibited Goods" and "Restricted Goods" are different and "Restricted Goods" cannot be absolutely confiscated but have to be provisionally released and also option to pay redemption fine have to be offered.

It was submitted that the goods imported are not prohibited goods under Notification issued under Section 11 of the Customs Act, 1962, so are not prohibited goods at all. Even goods are not prohibited goods under any other law time being force i.e. notification No. 5/2023 dated 05.04.2024 issued under Section 3 of the FTDRA, 1992 but same was restricted in the circumstances specified under the said notification.

It was further submitted that though the said Notification No.

5/2023 dated 05.04.2024 was issued under Section 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992 (Hereinafter referred to as FTDRA, 1992) as per sub-section (3) of Section 11 of the Customs Act, 1962, the said notification shall be executed under the provisions of that Act only if such prohibition or restriction is notified under the provisions of the Customs Act, 1962. Since, there is no notification issued under Section 11 of the Customs Act, 1962, the said notification dated 05.04.2024 cannot be executed even under the said Act i.e. FTDRA, 1992. Thus, goods cannot be considered as restricted goods under the said notification dated 05.04.2024 for the purpose of Customs Act, 1962 so question of considering the said goods as prohibited or restricted under the Customs Act, 1962 does not arise at all. Therefore, same are not liable to confiscation nor any penalty can be imposed upon any one including importers and Shri Prashant Popat.

It is further submitted that in absence of any specific provisions under the Customs Act, 1962 or FTDRA, 1992 authorising the proper officer of the Customs to adjudicate the case of violation of provisions of the FTDRA, 1992 or rules made thereunder or notification issued thereunder including the restricted goods under the said notification issued under Section 3 of the FTDRA, 1992. Only DGFT Officers are authorised under the said Act as proper officer to adjudicate the matter of goods liable to confiscation if any for under the said FTDRA, 1992 and notification issued thereunder. Thus, impugned SCNs issued by the Additional Commissioner, Customs is without jurisdiction and therefore, same are liable to be withdrawn.

Without prejudice to above your kind attention was invited towards following decisions on the subject:

**COMMISSIONER OF CUSTOMS Versus ATUL AUTOMATIONS PVT. LTD.
- 2019 (365) E.L.T. 465 (S.C.)**

“9. Unfortunately, both the Commissioner and the Tribunal did not advert to the provisions of the Foreign Trade Act. The High Court dealing with the same has aptly noticed that Section 11(8) and (9) read with Rule 17(2) of the Foreign Trade (Regulation) Rules, 1993 provides for confiscation of goods in the event of contravention of the Act, Rules or Orders but which may be released on payment of redemption charges equivalent to the market value of the goods. Section 3(3) of the Foreign Trade Act provides that any order of prohibition made under the Act shall apply mutatis mutandis as deemed to have been made under Section 11 of the Customs Act also. Section 18A of the Foreign Trade Act reads that it is in addition to and not in derogation of other laws. Section 125 of the Customs Act vests discretion in the authority to levy fine in lieu of confiscation. The MFDs were not prohibited but restricted items for import. A harmonious reading of the statutory provisions of the Foreign Trade Act and Section 125 of the Customs Act will therefore not detract from the redemption

of such restricted goods imported without authorisation upon payment of the market value. There will exist a fundamental distinction between what is prohibited and what is restricted. We therefore, find no error with the conclusion of the Tribunal affirmed by the High Court that the respondent was entitled to redemption of the consignment on payment of the market price at the reassessed value by the Customs authorities with fine under Section 112(a) of the Customs Act, 1962.”

SHREE BALAJI INDUSTRIES Versus ADDITIONAL/Joint COMMISSIONER OF CUSTOMS - 2024 (387) E.L.T. 294 (P & H)

Provisional release of goods, documents, things - Watermelon seeds - Bill of Entry dated 24-11-2022 - Department detained goods alleging that 'Watermelon Seeds' were misdeclared as 'Roasted Seeds Kernels' - Department also denied provisional release on ground that they were prohibited goods - DGFT Notifications dated 26-4-2021 and 21-6-2022 amended import policy for Melon seeds classifiable under HS Code 1207 70 90 of Customs Tariff Act, 1975 - Before Notification dated 26-4-2021, import of Melon Seeds was free and thereafter they were treated to be as restricted - As per Notification dated 21-6-2022, Watermelon Seeds imported by 30-9-2022 were treated to be free provided Bill of Entry was filed by 31-10-2022 - By 3-5-2023, Plant and Quarantine Department's report had come in favour of importer - HELD : Intention of Notification dated 21-6-2022 was not to reject import of Watermelon Seeds already before Customs Authority for examination by 31-10-2022 on ground that they were restricted - Prior to Notification dated 26-4-2021, import of Watermelon Seeds was free and importers did not require permit for import - As per DGFT Notification dated 26-4-2021 read with Notification dated 21-6-2022, Watermelon Seeds were only restricted goods after 30-9-2022, and not prohibited goods, and for their import without valid permit, they could be provisionally released subject to final adjudication order - It was moreso as report of Plant and Quarantine Department was in favour of importer - Section 110A of Customs Act, 1962. [paras 17, 20, 23]

COMMISSIONER OF CUSTOMS, BENGALURU Versus SRI BANASHANKR TRADERS - 2024 (390) E.L.T. 42 (Tri. - Bang.)

Improper import - Confiscation - Used digital multifunctional machines - Importer claimed classification of goods under Tariff Item 8443 31 00 of Customs Tariff - Department claimed classification under Tariff Item 8443 31 00 ibid. - Adjudication Authority ordered an absolute confiscation but Commissioner (Appeals) allowed appeals without specifying amount of fine and penalty or remand to original authority for their determination -

Department contended that goods were imported in violation of Customs Act, 1962 and other statutory provisions - Confiscation of used digital multifunctional machines was considered by various authorities, including Supreme Court in Atul Automations Pvt. Ltd. [2019 (365) E.L.T. 465 (S.C.)] and Digital Express and S.R. Enterprise [2021 (375) E.L.T. 643 (Kar.)] where it was held that they could not be absolutely confiscated even if imported in violation of statutory provisions, and in absence of evidence of profit margin, they could be redeemed on payment of fine of 10% of enhanced value and penalty of 5% of enhanced value - HELD : Issue was no more res-integra - There was no infirmity in allowing release of goods subject to payment of fine and penalty - Adjudicating Authority should release goods on payment of appropriate Customs duty on enhanced value, redemption fine and penalty - Section 111 read with Sections 112 and 125 of Customs Act, 1962. [paras 6, 7]

COMMR. OF CUS., LUDHIANA Versus B.E. OFFICE AUTOMATION PRODUCTS PVT. LTD. - 2020 (371) E.L.T. 592 (Tri. - Chan.)

Multi-Function Devices (MFD) - Used devices - Import of - Restricted but not prohibited - Issue already covered by decision of Supreme Court in Atul Automations Pvt. Ltd. [2019 (365) E.L.T. 465 (S.C.)] - Changes made in policy vide Notification No. 5/2015-2020, dated 7 May, 2019 not to make any impact - Goods cannot be absolutely confiscated - Redemption fine and penalty reduced to 10% and 5% of assessable value - Sections 111, 112 and 125 of Customs Act, 1962. [2019 (365) E.L.T. 465 (S.C.) followed]. [paras 6, 7, 8, 10]

Thus, since goods are restricted but not prohibited so same cannot be absolutely confiscated under Section 125 of the Customs Act, 1962 like prohibited goods so same cannot be confiscated under Section 111(d) of the Customs Act, 1962.

11.23 M/s. Gujarat without admitting anything alternatively prays that in any case if your good office may order for confiscation of seized goods a lenient view may be taken while giving an option to pay fine in lieu of confiscation under Section 125 of the Customs Act, 1962. As submitted in para supra goods are not prohibited goods but restricted goods so as per language used in Section 125(1) of the Customs Act, 1962 i.e. "shall" it is mandatory on your part to give an option to pay in lieu of confiscation.

As provided under Section 125(2) of the Customs Act, 1962 it is ready to pay duty of the customs as assessed by it with the reasonable amount of fine as per the above settled position of law and penalty as discussed in para infra.

11.24 M/s. Gujarat further submits that in view of the above, goods are not liable to confiscation under any of the clause of Section 111 of the Customs Act, 1962 therefore, no penalty is imposable upon it under

Section 112(a) and Section 112(b) of the Customs Act, 1962. M/s. Gujarat further submits penalty under Section 112(a) of the Customs Act, 1962 can be imposed only when any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act. As discussed in detailed the investigation carried out by the DRI in para supra it has not done or omitted to does any act in relation to the goods which act or omission would render such goods liable to confiscation nor abets the doing or omission of such an act, therefore, no penalty can be imposed upon it under Section 112(a) of the Customs Act, 1962.

11.25 M/s. Gujarat further submits penalty under Section 112(b) of the Customs Act, 1962 can be imposed only when any 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. As discussed in detailed in para supra that the investigation carried out by the DRI that though it has purchased the goods but it does not know or has reason to believe are liable to confiscation under Section 111, therefore, no penalty can be imposed upon it under Section 112(b) of the Customs Act, 1962.

11.26 M/s. Gujarat without admitting anything further submits that as stated in para supra no penalty is imposable upon it but in any case a person can either be penalised in the situations stated in clause (a) or (b) of Section 112 but cannot be penalised under both the sub-clause in any of the situation as both governs different situations.

Penalty under clause (a) can be imposed upon a person when a person acts or omits in relation to goods which render such goods liable to confiscation under Section 111 of the Customs Act, 1962 or one may abets in doing such acts or omission which render goods liable to confiscation under Section 111 of the Customs Act, 1962;

Whereas penalty under clause (b) can be imposed upon a person dealing with the goods in any manner including the manner specified in the clause with knowledge or reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962.

Apart from that in either of the situation of clause (a) or (b), quantum of penalty can be as per any of the clause (i) to (v) of Section 112 which is not specified, thereby it is not put to the proper notice. So it is not in a position to defend the matter properly. As per settled position of law such notice is liable to be quashed and set aside.

In any case as submitted in para supra goods are not prohibited but restricted so no penalty can be imposed under Section 112(a)(i) or Section 112(b)(i) of the Customs Act, 1962.

So without admitting anything it is submitted that at the most penalty under Section 112(a)(ii) or Section 112(b)(ii) i.e. Rs. 5,000/- can be

imposed as it is not the case of evasion of duty by M/s. Gujarat as per the investigation and allegations made in the impugned SCN.

11.27 M/s. Gujarat further submits that in view of the above no penalty is imposable upon it under Section 114AA of the Customs Act, 1962. A penalty under Section 114AA ibid can be imposed only when 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 transactions of any business for the purpose of this act, shall be liable to penalty.

It is not the case or allegation of the department that M/s. Gujarat 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 transactions of any business for the purpose of this act, so not penalty is imposable upon it under the said section irrespective of the fact that penalty under Section 114AA of the Customs Act, 1962 can be imposed upon a person only when there is export on paper without physical export of the goods so as to avail export incentives/benefits.

11.28 M/s. Gujarat without admitting anything further submits that proposal to impose penalty under Section 114AA of the Customs Act, 1962 upon it is also without understanding the provisions as well was legislature intention to insert the said section. In view of the above submission no penalty is imposable upon it. Even otherwise said proposal is also devoid of merits. Plain reading of Section 114AA very much clears that it can be imposed only when somebody intentional use of false and incorrect material, which reads as under:

SECTION 114AA. Penalty for use of false and incorrect material. *- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

The first and foremost requirement to bring any person under domain of Section 114AA is that he must be knowingly or intentionally using the declaration, statement or document and such declaration, statement or document should be for transaction under provisions of Customs Act, 1962. M/s. Gujarat most respectfully submits that none of the above element applies to it. As already discussed in para supra there was no declaration etc. of false or incorrect particular in any material. Hence question of imposing penalty under Section 114AA does not arise.

11.29 M/s. Gujarat without admitting anything, as regards to proposal for imposition of penalty under Section 114AA of the Customs Act, 1962 would further like to draw your kind attention towards the fact that same can be imposed only in the situation of export on paper without

physical export or involving fraudulent export and cannot be invoked for any alleged violation in import of goods.

For the above submission attention is further invited towards paragraph 62 to 66 of Standing Committee on Finance 27th Report - (2005-2006) – The Taxation Laws (Amendment) Bill, 2005.

Based on the same it is submitted that intention of legislature was to impose penalty under said Section 114AA only on exporters who were claiming export on paper and claiming illicit benefit of export incentives as is evident from following:

“Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114AA is proposed to be inserted after Section 114AA.”

Based on above, it is submitted that instant case is of import and not of export so in any case no penalty can be imposed under Section 114AA of the Customs Act, 1962.

11.30 M/s. Gujarat last but not least most respectfully further request to your goodself that shipping lines and concern CFS may also be directed/ recommended to waive the demurrage and detention charges as per Regulation 6(1)(l) Handling of Cargo in Customs Area Regulations, 2009 for the seizure period of the goods on merit of the case. M/s. Gujarat in view of the above and without admitting anything alternatively prays that in any case at least goods may be allowed to re-export that too without payment of any fine and penalty as per settled position of law.

11.31 In view of the above it was requested to drop the proceedings initiated under the impugned notice or goods may be provisionally released under Section 110A of the Customs Act, read with settled position of law pending adjudication as requested by the importers vide their letters or option to pay fine in lieu of confiscation with leniency may be offered with penalty of Rs. 5,000/- or allow re-export of the goods as requested above so to avoid any further complication and undue litigation with the foreign based exporters in the deal of import made by the importers.

11.32 M/s. Gujarat Peanut in view of the above requests to drop the proceedings initiated under the impugned notice or goods may be provisionally released pending adjudication and or allow re-export of the goods as requested above.

12. Submission of Noticee No. 2 i.e. M/s. Eminent Shipping Services LLP:

12.1 Noticee No.2 submitted their written submission vide letter dated 27.03.2025 in response to the subject Show Cause Notice, wherein inter-alia stated as under that:-

12.2 At the outset, we deny all the allegations made against us in the subject show cause notice. In fact, the subject show cause notice is not maintainable against us and the process leading to the issuance of the show cause notice against us is vitiated with grave irregularities and the same is per se illegal and unwarranted.

12.3 Without prejudice to the above, we submit that we are a partnership firm engaged in the business as a shipping agency, acting as agents of various foreign shipping lines. And that, in respect to the issue at hand, we are only the General Agent in India of M/s Sidra Lines, Turkey, which is a Shipping company engaged in the business of providing Container Line Services, Feeder Services, Project Cargo Services, End to End Services, and Port & Shipping Agency Services. We submit that we are mere agents of Sidra Lines in India and we have no decision-making powers with respect to the subject shipment and Bill of Lading. All the decisions relating to the same are vested upon with the Sidra Lines/Principal, Carrier, Shipper, and Consignee and we as Agents of the Shipping Line do not have any role in the same. We have no role in the issuance of the Bill of Lading nor in the uploading of information relating to the shipment in the online system of our Principal. Our role as the Agent of Sidra Lines is only related to filing the customs and port papers based on the information received from and under instructions of our Principal.

12.4 It is submitted that the first information of load list, we received from M/s Sidra Lines was through their Agent at the Transhipment Port of Jeddah/ M/s Haji Abdullah Alireza & Co. Ltd on 04.08.2024 i.e after loading from the Transhipment Port of Jeddah. Later upon checking the online software system of M/s Sidra Lines/Palma on 05.08.2024, it was noticed that the cargo was melon seeds and the loading date was 30.07.2024 and not 29.06.2024 as mentioned in the email dtd 01.08.2024 of M/s Sharaf Shipping Company and our Branch Manager Mr. Ravin Paul immediately informed the POL Agent of Sidra Line in Sudan i.e Sharaf Shipping Company vide email dtd 05.08.2024 that SOB date should be the actual loading date and informed them about the penalty for misdeclaration and also forwarded them the customs circular in this regard.

12.5 But, notwithstanding the above, our Principal M/s Sidra Line Port Sudan Agent M/s. Sharaf Shipping Co. Ltd instructed us to manifest the BL date as 29th June 2024 as received from Sudan (port of loading) and it was on the basis of such instructions that we filed the manifest with the

BL date as 29th June 2024.

12.6 We most humbly submit that we have not done any act in violation of customs laws and regulations. We have not manipulated or forged the Bill of Lading nor manipulated the date in the Bill of Lading as alleged, but rather, we have only acted as per the instructions and filed the manifest with BL date as 29th June 2024. It is to be noted that the Bill of Lading is issued by our Principal/Sidra Lines Agent at the Load Port and thus there arose no occasion for us to manipulate the date in the Bill of Lading. Moreover, on coming to know of the discrepancy in the Bill of Lading date and the on-board dates from the online system of our Principal, our Branch Manager immediately informed our Principal/their agents that the SOB date should be the actual loading date and also informed them about penalty for misdeclaration and most importantly, He also forwarded them the customs circular in this regard. We have all along diligently followed the provisions of Customs Act and Regulations and have not done any act in violation of the Act and Regulations.

12.7 It is most humbly submitted that we were not a party to the alleged scheme of misdeclaration of date of loading in the Bill of Lading and neither we or our employees have colluded with representatives of M/s Sidra Line and the load port agent M/s Sharaf Shipping Co. Ltd to manipulate the actual dates on the Bill of Lading. We also have no contract with the importer/consignee, and did not do any act for clearance of restricted cargo. It is very important to submit here that we have not issued the DO for the consignment.

12.8 In the facts and circumstances of the matter, it is humbly requested that your good self may please drop all proceedings initiated against us and grant us a personal hearing for proving our innocence before passing any orders in the above matter.

12.9 Eminent Shipping services LLP further submitted their additional submission through their representative Advocate Bijish B. Tom vide letter dated 24.04.2025, wherein inter-alia submitted:-

12.10 It is submitted that in the subject matter, Eminent Shipping Services LLP was only acting as an Agent of M/s Sidra Lines, Turkey, which is a Shipping company engaged in the business of providing Container Line Services, Feeding Services etc. Eminent Shipping Services was a mere agent and they had no decision-making powers with respect to the subject shipment and Bill of Lading. All the decisions relating to the same were vested upon their Principal i.e Sidra Lines.

12.11 It is further submitted that Eminent Shipping Services LLP had no role in the issuance of the Bill of Lading nor in the uploading of information relating to the shipment in the online system of their Principal. Their role as the Agent of their Principal/Sidra Lines was only related to filing the customs and port papers based on the information received from and under instructions of their Principal.

12.12 It is submitted that after the vessel sailed from the

Transhipment Port of Jeddah on 03.08.2024, Eminent Shipping Services LLP received an email from their Principal's Agent at Jeddah/ M/s Haji Abdullah Alireza & Co. Ltd on 04.08.2024. The true copy of the email dtd 04.08.2024 issued by M/s Haji Abdullah Alireza & Co. Ltd to Eminent Shipping Services is produced herewith and marked as Exhibit A.

12.13 Subsequently, on 05.08.2024, Eminent Shipping Services LLP checked the online software system of their Principal and it was noticed that the cargo was melon seeds and the loading date was 05.07.2024 and not 29.06.2024 as mentioned in the email dtd 01.08.2024 of the Principal's Agent at the Load Port of Sudan/ M/s Sharaf Shipping Company and the Branch Manager of Eminent Shipping Services immediately informed the POL Agent of their Principal i.e Sharaf Shipping Company vide email dtd 05.08.2024 that SOB date should be the actual loading date and informed them about the penalty for misdeclaration and also forwarded them the customs circular in this regard. The true copy of the email dtd 01.08.2024 issued by Sharaf Shipping Company to Eminent Shipping Services is produced herewith and marked as Exhibit B. The true copy of the email dtd 05.08.2024 issued by Eminent Shipping Services to Sharaf Shipping Company is produced herewith and marked as Exhibit C.

12.14 But, notwithstanding the above, the Principal through its Load Port Agent i.e M/s Sharaf Shipping Company instructed Eminent Shipping Services vide email dtd 05.08.2024 to manifest the SOB date as 29th June 2024. The true copy of the email dtd 05.08.2024 issued by M/s Sharaf Shipping Company to Eminent Shipping Services is produced herewith and marked as Exhibit D. This was followed by another mail dtd 06.08.2024 from M/s Sharaf Shipping Company re-iterating to file the manifest with SOB date as 29th June 2024. The true copy of the email dtd 06.08.2024 issued by M/s Sharaf Shipping Company to Eminent Shipping Services is produced herewith and marked as Exhibit E. It was on the basis of such instructions that Eminent Shipping Services filed the manifest with the SOB date as 29th June 2024.

12.15 It is submitted that Eminent Shipping Services had not manipulated or forged the Bill of Lading nor manipulated the date in the Bill of Lading in the subject matter, but rather, they have only acted as per the instructions of their Principal and filed the manifest with SOB date as 29th June 2024.

12.16 It is to be noted that the Bill of Lading is issued by their Principal at the Load Port and thus there arose no occasion for Eminent Shipping Services to manipulate the date in the Bill of Lading. Moreover, on coming to know of the discrepancy in the Bill of Lading date and the on-board dates from the online system of the Principal, Eminent Shipping Services immediately informed the Principal/their agents that the SOB date should be the actual loading date and also informed them about penalty for misdeclaration vide the aforementioned Exhibit C email. In fact, Eminent Shipping Services have all along diligently followed the provisions of Customs Act and Regulations and have not done any act in violation of the Act and Regulations.

12.17 It is most humbly submitted that Eminent Shipping Services LLP

were not a party to the alleged scheme of misdeclaration of date of loading in the Bill of Lading and they had not colluded with the representatives of M/s Sidra Line and M/s Sharaf Shipping Co. Ltd to manipulate the actual dates on the Bill of Lading. Eminent Shipping Services also have no contract with the importer/consignee, and did not do any act for clearance of restricted cargo and did not issue any Delivery Order to the Consignee.

12.18 In conclusion, it is submitted that Eminent Shipping Services LLP was only acting as an agent of Sidra Lines and all the acts done by them were on behalf of their principal as per the instructions of their principal. Eminent Shipping Services LLP had not done any act in furtherance of their individual interest.

12.19 In view of the above facts, it is most humbly prayed that further proceedings against Eminent Shipping Services LLP may be dropped, in the interest justice.

13. Submission of Noticee No. 3 i.e. M/s. Goodrich Logistics Private Limited:

13.1 Noticee No.3 i.e. M/s. Goodrich Logistics Private Limited submitted their written submission through their representative M/s. Lloyd & Johnson, Advocates & Shipping Consultants dated 10.04.2025 in response to the subject Show Cause Notice, wherein inter-alia stated as under:-

13.2 Goodrich is an Indian company incorporated under the relevant provisions of the Companies Act, 2013. Goodrich is engaged in the business of shipping and logistics. Apart from being a NVOCC, container operator, and consolidator, Goodrich inter alia acts as the Delivery Agent for various overseas NVOCCs, including that of M/s. Dragon Maritimo.

13.3 By way of the present SCN, at para 10.3, the Additional Commissioner of Customs, Office of Commissioner of Customs Mundra, required Goodrich to show cause as to why penalty under Section 112(b) and 114AA should not be imposed upon M/s Goodrich Logistics Private Limited. Accordingly, for the following factual and legal grounds narrated, Goodrich requires this office to consider them appropriately, and not impose any penalty or initiate any punitive actions.

13.4 In the background of the SCN, Goodrich as the Indian agent has secured additional information regarding the cargo movement from their principal as well as from the load port agent. In light of the above additional information gathered, we would like to submit the below reply, which is critical in understanding this matter from its perspective.

13.5 The role of Consignees & Exporters - Trade practice followed by the Indian Consignee (Importers) and their overseas Seller (Shipper).

13.5.1 Pre-determination of the seller (exporter), country of origin, port of loading, negotiation of the price of goods, determining the INCOTERMS and foreign remittance against commercial invoice etc. between the exporter and the consignee.

13.5.2 Based on the agreed INCOTERMS, either the shipper or the consignee, directly or through their nominated freight forwarding agent, identify and employ respective NVOCC for carriage of so agreed goods from the port of loading.

13.5.3 In the present case, as the shipment was under CIF terms, the exporter (Trader), through their freight forwarding agent identified the carrier at the port of loading (Port Sudan) for containers to carry the goods to India.

13.5.4 Before the arrival of the goods in India, Goodrich, acting as the agent of the carrier (Dragon Maritimo) has received a pre-alert of the arrival of the containers on board the vessel along with the copy of the Bill of Lading (BL).

13.5.5 Based on the said pre-alert and the copy of BL, the details of the shipment were compiled and given to the agent of the vessel operator, for them to file the IGM as per Customs Act, 1962.

13.5.6 That it is pertinent to note that Goodrich, in the present matter has not filed the IGM, rather, only has complied the data and shared with the vessel operator for them to file the IGM.

13.5.7 Following the provisions of the Customs Act, of 1962, the consignee filed the Bill of Entry for the clearance of imported goods.

13.5.8 Thus, from the above narration, among other things, it was primarily evident that;

- i. The consignee & shipper only had prior information on the goods-related matters, including the port of loading, the date of remittance of the cargo value, the estimated time of departure.
- ii. The carrier was appointed/ identified by the freight forwarder only after concluding the sale and INCOTERMS between the shipper & consignee.
- iii. Goodrich came to know about the shipment in question only when they received a pre-alert and the copy BL issued by their principal.
- iv. Based on the pre-alert, data was compiled and given to the vessel operator for them to file the IGM.

13.6 Statutory Filing of Bill of Entry and Customs Clearance Process:

13.6.1 While filing the Bill of Entry in accordance with Section 46 of the Customs Act, 1962, the consignee, through their appointed CHA or self, is supposed to produce the following document. To clarify, Goodrich has not filed the BOE in the present case.

- i. The commercial invoice;

- ii. The packing list;
- iii. The certificate of origin;
- iv. Any other statutory documents as required under the applicable laws and regulations to prove the value and origin.

13.6.2 By filing the Bill of Entry, the consignee undertakes a self-assessment of import duties, which are thereafter subject to reassessment or approval by the Customs Department based on the applicable classification under the Customs Tariff Heading (CTH), relevant notifications, and regulatory provisions.

13.6.3 In the present case, upon: receipt of SCN, we were brought to the knowledge of Goodrich that there was a DGFT notification which had imposed some restrictions on the importers with respect to the free import of the declared goods of watermelon seed.

13.6.4 Prior to the ongoing investigation pertaining to the goods, Goodrich being the Indian agent of the carrier, had no information regarding Notification No. 05/2023 dated 05.04.2024, issued by DGFT, restricting the free import of watermelon seeds, the date of loading of the goods from port of loading etc...

13.7 Applicability of Notification No. 05/2023, 05.04.2024 of DGFT to importers.

13.7.1 The consignee & the shipper ought to have been well aware of the provisions of Notification No. 05/2023 dated 05.04.2024 and its implications for the duty-free import of watermelon seeds.

13.7.2 The consignee must have informed the shipper of the notification's requirements;

13.7.3 The consignee has never informed Goodrich in advance of such a notification prior to importing the goods.

13.8 Therefore, for the above-mentioned reasons, the importer in the present case, who has filed the BOE, assessed or paid customs duty, can only give a reply to the alleged violations of the provisions of the Customs Act, 1962, in particular, Sections 112(b) & 114AA of the Customs Act, 1962.

13.9 Regarding the role of Goodrich in the transaction under SCN.

13.9.1 Goodrich has acted only as the container delivery agent of the disclosed principal in India in the present case.

13.9.2 The limited role and responsibility of Goodrich was to share the necessary particulars to the vessel operator/ Agent (Authorised Carrier/ Authorised Carrier's Agent) to file the IGM (Import General Manifest), issue the Delivery Order to the consignee and collect the empty containers from the consignee after cargo release.

13.9.3 Goodrich is supposed to collect the destination charges and issue the delivery order to the consignee in accordance with the agency contract with their principal.

13.9.4 Goodrich received a copy of the Bill of Lading of their principal i.e., M/s. Dragon Maritimo. The details of BL have been compiled for the vessel operator/ conveyance/ Agent to file the Import General Manifest (hereinafter referred to as IGM) under the provisions of the Customs Act, 1962 and the IGM was accordingly filed by the vessel operator.

13.9.5 Goodrich, while acting as the Indian delivery agent of the carrier, was not involved in overseas activities, including container booking, freight collection and issuance of Bills of lading, which are solely initiated and managed by the principal offices.

13.9.6 On arrival of the vessel at Mundra, the consignee/importer filed their Bill of Entry (BOE) declaring the essential details, including the port of loading, in accordance with their sale-purchase contract, invoice/packing list, certificate of origin etc. Thus, the importer assesses and pays duty on the imported goods in accordance with the act and notifications.

13.9.7 Goodrich, having a very limited role as the delivery agent of the principal, has not been involved in the issuance of a bill of lading or transfer of any documents between the shipper and consignee.

13.9.8 The freight and documentation charges were paid at the port of loading. Goodrich has collected only the destination (India) handling charges.

13.10 Regarding additional information secured by Goodrich from the port of loading.

13.10.1 The following information are given strictly without prejudice to the legal rights and contentions of Goodrich. The information given below is not to be considered as antithetical or contrary to the earlier statement role and responsibility of Goodrich in this case.

13.10.2 Upon further inquiries made with the overseas principal and their load port agent, Goodrich has secured the following additional information:

13.10.3 Port Sudan shippers and shipping agents companies, in particular, after the political-military-unrest, civil commotion, and terrorist movements in Port Sudan, have a trade practice of issuing the "On-Board Bills of ladings" after the confirmation of delivery of the fully customs-cleared goods at the dockside within the custom bonded area (port/warehouse).

13.10.4 Such agents and NVOCCs treat such "On-Board" bills of lading differently from the historical and the original "On-Board Bills of Ladings" used to be issued by the vessel operators through its Masters after loading bulk or break-bulk cargo on board such vessels.

13.10.5 Though such On-Board BLs are issued by such agents, based on the request from the shipper's request, the agents physically release such BLs to the shippers only after sailing the respective vessels from the port.

13.10.6 Such practices are followed by the NVOCCs and the trade/shippers on account of the erratic nature of vessel departures, extended stay in the port etc. even after the loading of the goods.

13.10.7 According to the trade agents in Port Sudan, the reasons for such delayed departures or extended stays at Anchorage etc. of vessels are often security threats at the outer seas, fear of piracy attacks, vessel arrests, non-availability of cargo, and small-time vessel operators.

13.10.8 It was on multiple occasions and subsequent events post the SCN, was informed by the POL to Goodrich, that in many cases, the vessels are not even available for live tracking because of the default malfunction / technical hampering of the GPS system by operators to avoid surveillance for reasons including privacy, US & EU Sanctions, and Terrorist attacks.

13.10.9 In support of the foregoing information, the POL office has undertaken to provide the requisite documentation as and when available. However, due to the prolonged Ramadan holidays, and that the POL/trade offices are yet to be resumed, we respectfully seek leave to submit the aforementioned documents as soon as they are made available to us by the POL.

13.11 The operational and procedural formalities followed at the Port of Loading (Port Sudan) by the Exporters and Shipping Agents:

13.11.1 Entry of the goods to be exported inside the port/ customs warehouse by the exporter.

13.11.2 Conducting fumigation and phytosanitary certification inside the port.

13.11.3 Customs clearance of the goods inside the port by the exporter.

13.11.4 Release of empty containers by the shipping agent to the exporter/freight forwarder on booking.

13.11.5 Pickup of empty containers from the empty container yard by the exporters, to stuff the goods which are custom cleared and lying inside the port (customs bonded area).

13.11.6 In the present case, as per the agent of the carrier, all the mandatory pre-shipment formalities and customs clearing were-duly completed prior to 30.06.2024, and the goods were stuffed inside the containers and sealed before 30.06.2024.

13.11.7 The relevant dates so secured from the port of the loading agent of the carrier, along with some documents, are given in the table below for easy comprehension:

(Activity: Empty container release to shipper: 12.06.24; Fumigation Certificate: 13.06.24; Phytosanitary Certification: 13.06.24; Foreign Remittance received by shipper: Advance dated 05.06.24; Export Declaration filed by shipper: 05.06.24)

13.11.8 With the above data and documents, the agent of the carrier is trying to establish the fact that the goods were actually inside the port, in sealed containers, after customs clearing. The agent further says that, therefore, the sailing date of the vessel can be different from the "on-board" date as the vessel sails very late and erratically for stated reasons in the letter. The agent further says that they will try and get actual vessel information, from the vessel operator. Goodrich undertakes and seeks leave to provide them, if and when received.

13.12 Conclusion and reply to the alleged violation of provisions of Customs Act, 1962, charges & penalties imposed by Goodrich:

13.12.1 Given the stated limited role of Goodrich and on the grounds of information gathered from the overseas agent of the carrier, it is evident that Goodrich has merely¹⁰⁰ acted in the capacity of an agent in India and was not aware of any of the activities at the port of loading.

13.12.2 It is further clear that the consignee only can provide more accurate information regarding accuracy and clarity on the date of planning the shipments, the effecting of foreign remittance etc.

13.12.3 Goodrich as the agent in India has no reason and source of knowing the actual date of sailing or onboard date or BL issuance date at the port of loading, prior to the initiation of the present proceedings.

13.12.4 For the above reasons, the SCN, under reply, fails to establish any grounds for imposing penalty on Goodrich for the alleged violation of the following provisions of the customs Act.

13.12.5 Section 112(b) of the Customs Act, 1962: Section 112 (a) - Any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to, confiscation under section 111, shall be liable...

13.12.6 As Goodrich has acted only as the delivery agent of an NVOCC/ container operator in India and is not "a person who is in relation to any goods", as stated in the penal provision. As this provision applies only to "any person who about any goods", naturally, the person in relation to the goods which is the subject matter of SCN is M/s. Pragati International, not Goodrich.

13.12.7 Goodrich was never in receipt of the goods in their possession, nor regulated the movement of the goods. Their involvement was limited to the

container; Goodrich was engaged to collect the destination charges and issue the delivery order.

13.12.8 Section 112 has to be harmoniously read with Section 111 and Section 2 (23) of the Customs Act 1962, which respectively governs the provisions for confiscation of improperly imported goods and the definition of the term "import".

13.12.9 Thus, the penal provision; Section 112 of the Customs Act, 1962 is to be imposed on the "importer" whose goods were confiscated due to improper importation as per Section 111 of the Customs Act, 1962. Both the Sections have to be read and interpreted holistically and not narrowly to contradict each other.

13.12.10 Therefore, M/s. Pragati International being the 'importer' of the said goods is to be treated as the "person in relation to the goods" and not Goodrich. Hence the imposition of penalty if any under S.112(b) of the Customs Act, 1962 against/Goodrich who is "not a person in relation to the goods" is against the provisions of law and hence not sustainable.

13.12.11 Section 114AA of the Customs Act. 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."

13.12.12 As already submitted, Goodrich has not made any false statement document or declaration before the Customs authorities. Therefore, no penalty can be imposed under this Section on Goodrich. In other words, a penalty under Section 114AA is imposable only in those situations where export benefits are claimed without exporting the goods and by presenting forged documents.

13.12.13 In support of this argument, reliance is placed on the Twenty-Seventh Report of the Standing Committee on Finance wherein insertion of Section 114AA was discussed at Para, No. 62 to 66. The purpose is to punish those people who avail export benefits without exporting anything. Such cases involve serious criminal intent, and it cannot be equated with the cases of duty evasion. According to the legislatures, Section 114AA of the Customs Act provided a penalty for improper exportation of goods and it was not covering situations of import of goods.

13.12.14 Even if, by any stretch of the imagination, Section 114AA is held to cover imports as well, this Section would only apply to those who make such mis-declaration for "the purpose of Customs Act". The purpose of the Customs Act is revenue augmentation and trade regulations or prohibitions among others, it is clear that only the consignee (in the form of filing statutory Bills of Entry U/s. 46 of the Act), has to be held responsible for making, signing or using, or caused to be made, signed or used, any declaration, statement or document which was false or incorrect

in any material particular, in the transaction of any business for the purposes of this Act.

13.12.15 The importer ought to have been aware of the DGFT Notification and hence should have acted in accordance with the notifications.

13.12.16 The present reply, statement given under section 108 of the Act and other submissions, etc., were made in good faith and representing by, Goodrich. Goodrich acted as the authorized agent of the disclosed principal within the territorial jurisdiction of India. Goodrich has no role in the overseas operations, documentation, or any related activities of the principal.

13.12.17 No evidence has been presented to establish that Goodrich possessed awareness of the SOB date at the relevant point of time. In the absence of such knowledge, Goodrich cannot be attributed with mens rea. Therefore, the assertion of such a finding lacks a factual basis, lacks evidential support, and thus warrants overturning.

13.13 Hence, Goodrich is not involved in any mis-declaration about the consignment in question and the penalties cannot be imposed on them.

13.14 In the above circumstances, we humbly consider this as the reply to the subject SCN and;

- i. Set aside the show cause notice against M/s. Goodrich Logistics Private Limited; and
- ii. Drop the allegations and charges framed against M/s. Goodrich Logistics Private Limited under the subject Show Cause Notice; and
- iii. Not to impose any penalty upon M/s. Goodrich Logistics Private Limited, as the agent for the alleged violations of any of the provisions of the Customs Act 1962 or any other applicable law; and
- iv. To give an opportunity of personal hearing, to provide further clarifications required, before this authority during adjudication of the subject SCN and pass orders accordingly;
- v. Allow us to leave, alter, amend, or modify our submission and to produce documents, till the time the matter is decided; and
- vi. To permit cross-examination of necessary witnesses/ representatives of the importer and the vessel operator or their agent; and
- vii. To pass any other relief as may be pleased by the Hon'ble Authority.

14. Submission of 4th Noticee i.e. M/s. Paramount Sealinks Pvt. Ltd.:-

14.1 Shri Santosh Upadhyay, Advocate on behalf of the Noticees No. 4 submitted their written reply vide letter dated 17.04.2025 on the following points:-

14.2 We submit that the allegation in the subject case that Noticee No.4 has orchestrated this transaction to conceal true Shipped on Board date in the Bills of Lading so as enable **GPPL (Gujarat Peanut Products Limited)** to import restricted goods (Watermelon Seeds) is incorrect on facts. Further, the levy of penalty under section 112(b) and 114AA of the Customs Act, 1962, on Noticee no.4 is also legally incorrect.

14.3 We hereby submit our counter against each, and every allegation levelled against Noticee No.4 with respect to subject import transaction.

14.4 We submit that Noticee No.4 is not privy to the trade transactions between the Sudan exporter and the Indian importer and neither the Noticee No.4 is aware about the import Custom tariffs which is categorically looked upon by the importers of the respective goods.

14.5 That the Noticee No.4 is a liner agent who facilitate the movement of export/import for the exporters/ importers all over India. In the present case, the Noticee No.4 has acted as a facilitator to issue Delivery Orders pertaining to the import of the impugned goods.

14.6 That the Noticee No.4 principal sub-agent has provided their services to the exporters in Sudan and that Noticee No.4 does not have any role in the misdeclaration of the Shipped on Board dates in the Bills of Lading by the importer i.e. Noticee No.1.

14.7 Though the Noticee No.1 denied their involvement in mis-declaration and submission of forged documents in the clearance of restricted goods, it is the Noticee No.1 who could only have benefited from the said mis-declaration.

14.8 In this regard, we would like to submit that demand of penalty under section 112(b) and 114AA under Customs Act, 1962 should not be raised from Noticee No.4, since the mis-declaration and submission of the alleged forged documents, if they are indeed forged, can conceivably only have been done by **GPPL**. Hence, the Noticee No. 4 has no role to play in this alleged clearance of restricted goods which has been actually committed by **GPPL**.

14.9 Further, it is **GPPL** who has benefitted from this wrong. **GPPL** has done certain acts and abetted certain doings which has led to clearance of restricted goods. Hence, it is clear that **GPPL** has submitted incorrect and manipulated documents to the customs by mis-declaring the Shipped on Board date in the Bills of Lading for the benefit of clearance of restricted goods.

14.10 We would like to submit that the request for issuance of

switch bills of lading was made by the shipper at the port of loading. However, the Noticee No.4 could not have been conceivably aware that the shipper and importer together in collusion to clear restricted goods had requested for issuance of switch Bills of Lading subject to the Notification no. 05/2023 dated 05.04.2024. Therefore, the allegation related to misdeclaration of Shipped on Board date in the Bills of Lading must be raised on **GPPL** and further demand of penalty should be demanded from Noticee No.1 only.

14.11 Without prejudice to the above, we would like to submit that, even though **GPPL** has denied the mistake, it is apparent that if any misconduct was indeed perpetrated then only **GPPL's** involvement in clearance of restricted goods can be established and therefore, the Noticee No.4 is not required to pay any penalty in this case.

There is no evidence against Noticee No.4 for orchestrating this transaction for enabling clearance of restricted goods at the end of M/s. Gujarat Peanut Products Ltd.

14.12 We would like to submit that no evidence has been put on table related to conspiracy or orchestrating by Noticee No.4 for this alleged crime. The Noticee No.4 is not a party to the alleged scheme of misrepresentation which has resulted in clearance of restricted goods by **GPPL**.

14.13 The Section 1 of the Customs Act, 1962, was amended via Finance Act, 2018 and came into effect from 29th March, 2018, and by virtue of the amendment, the exporter based in Sudan and the importer in India are to be proceeded against the Act, and not the shipping companies who do not gain anything from the unlawful acts committed by the importer in India.

14.14 That the Noticee No.4 principal sub-agent in Sudan is not conversant with the Custom laws of India, however it is the importer who has to be aware of such restrictions prior importing any material which is in contravention to the Indian Customs Act. As such the Noticee No.4 cannot be held liable to be penalized for the wrongful acts of the importer **GPPL**.

14.15 We would like to submit that the statements given by the employees of Noticee No.4 are exculpatory. The Noticee No.4 does not have any ill intention to this non-compliance. It is a matter of fact that the original 1st leg Bills of Lading were surrendered in Sudan basis which the 2nd leg Bills of Lading were released. The 2nd leg B/Ls are the switched Bills of Lading which were shared with Noticee No.4 by their principal sub-agent along with the pre-alerts and freight manifest to file the IGM at the discharge port. The procedure of issuance of switch bills of lading is a standard practice in the Maritime Industry. Even major shipping lines such as Maersk, CMA CGM, COSCO, etc, issue switch B/Ls on a case-to-case basis as per the International Shipping Laws which is applicable to all shipping companies. It is a matter of fact that maritime law does not restrict shipping companies for issuance of switch Bill of Lading once the

original Bill of Lading has been surrendered by the shipper at load port.

14.16 Concerning the allegations levelled against Noticee No.4 by your office pertaining to the Switch Bills of Lading issued in the aforementioned shipments, a Switch Bill of Lading is simply the second set of Bill of Lading issued by the carrier or its agent to substitute the Original Bills of Lading issued at the time of the shipment, even though it technically deals with the same cargo. To emphasize in detail, switch Bills of Lading are issued for replacement of certain details specified as below:

- (a) the original bill names a discharge port which is subsequently changed (e.g. because the receiver has an option or the good are resold) and new bills are required naming the new discharge port;
- (b) a seller of the goods in a chain of contracts does not wish the name of the original shipper to appear on the bill of lading, and so a new set is issued, sometimes naming the seller as the shipper. A variation on this is where party does not wish the true port of loading to be named on the bill;
- (c) the first set of bills may be held up in the country of shipment, or the ship may arrive at the discharge port in advance of the first set of bills. A second set may therefore be issued in order to expedite payment, or to ensure that delivery can take place against an original bill;
- (d) shipment of goods may originally have been in small parcels, and the buyer of those goods may require one bill of lading covering all of the parcels to facilitate his on sale. The converse may also happen i.e. one bill is issued for a bulk shipment which is then to be split.

Where switch bills are issued, the first set should be surrendered to the carrier in exchange for the new set. There is usually no objection to this practice. However, the switch bills may contain misrepresentations e.g., as to the true port of loading.

The above inference has been taken from the International Transport Intermediaries Club, Issuance of Switch Bill of Lading 2013,1.

Furthermore, International book Carriage of Goods by Sea Sixth Edition, Pg. No. 171 specifically states that :

5.7 Switch Bills

In concluding the survey of the functions of bills of lading, brief mention must be made of the modern practice of issuing switch bills. Under this procedure, the original set of bills of lading under which the goods have been shipped is surrendered to the carrier, or his agents, in exchange for a new set of bills in which some of the details, such as those relating to the name and address of the shipper, the

date of issue of the bills or the port of shipment, have been altered.

Hereto annexed and marked as **Annexure - "C"** are the copies of the printed details of Switch Bills of Lading mentioned in the International book Carriage of Goods by Sea, Sixth Edition.

14.17 It is pertinent to note that the Noticee No.4 was not aware that the switch Bills of Lading were requested by the shipper for the purpose of clearance of restricted goods by Noticee No.1. The Noticee No.4 principal sub-agent in Sudan shared only the second leg Bills of Lading with Noticee No.4 for import manifestation purpose, as the 1st leg Bills of Lading were already surrendered by the shipper in Sudan and hence the 1st leg Bill of Lading was considered as **null and void**. For all consignments exported from Sudan, it is outside the scope and authority of Noticee No.4 to inspect if the customs clearance is being done by the respective importers in India as per the prevailing customs laws. **Consequently, on this ground it is submitted that Noticee No.4 is not liable for any penalty under Section 112(b) and 114AA of the Customs Act, 1962.**

14.18 Also, Noticee No.4 was not aware about the customs notification regarding restriction on import of Watermelon Seeds after 30.06.2024. As such, we submit that Noticee No.4 is not party to this violation and hence they should not be penalized under the provisions of Customs Act.

14.19 The shipping line or their agents are not required to look into the authenticity of import documents provided by the importer to the Indian customs. This is operationally not possible and legally also not required to be done as the customs clearance is not done by the shipping lines or their agents. This is the responsibility of exporter /importer to ensure the correctness of documents and declarations. The importer **GPPL** has intentionally attempted to import watermelon seeds despite of being aware about the DGFT notification.

14.20 In view of the above legal provisions, we would like to submit that section 112 (a) is not applicable to Noticee No.4 since they have not done anything which will render the goods of **GPPL** to be confiscated. The Noticee No.4 has acted in a bonafide manner in relation to port of discharge procedures for subject consignment. We have also provided detailed submission against the same in above paragraphs.

14.21 Further section 114AA is also not applicable as Noticee No. 4 has not contributed in any way relating to the clearance of subject consignment. The importer is solely responsible for attempting to clear restricted goods from the customs by filing the Bill of Entries.

14.22 In the present case, the department has failed to appreciate that the Noticee No.4 being an agent of a foreign principal cannot be held liable for mis-declaration of Shipped on Board date in the Bills of Lading

which has been issued in Sudan. The onus shall, solely be attributed on the Importer only, in view of Section 147 of the Customs Act, 1962, Liability of Principal and agent.

14.23 On a bare reading of Section 147 of the Customs Act, 1962 it can be safely construed that any violation of provisions of the Customs Act, 1962 carried out by an agent does not absolve the importer and it is deemed that such violation has been done with the knowledge and consent of such owner, importer or exporter and in any proceedings initiated, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself and presumed to have been done with the knowledge and consent of such owner, importer or exporter, unless the contrary is proved.

In the present case nothing contrary has been adduced by the importer against the Noticee No.4 towards mis-declaration of Shipped on Board date in the bill of Lading as per Notification No. 05/2023 dated 05.04.2024. Therefore, no penalty is imposable on Noticee No.4.

a. Without prejudice to the above, the Noticee No.4 submits that considering the language of Section 114AA, the penalty under Section 114AA can be imposed on a natural person and not on a legal entity.

b. Without further prejudice to the above, the Noticee No.4 submits that the purpose of introduction of Section 114AA in the Customs Act, 1962 w.e.f. 13.07.2006 vide the Taxation Laws (Amendment) Act, 2006 was different i.e. to check frauds in export as evidenced by the observations of the Twenty Seventh Report of the Standing Committee on Finance (2005 – 06) in relation to the Taxation Laws (Amendment) Bill, 2005 as under:

“Clause 24 (Insertion of new section 114AA)

62. Clause 24 of the Bill reads as follows: After section 114A of the Customs Act, the following section shall be inserted, namely:—

“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.”

c. The information furnished by the Ministry states as follows on the proposed provision:

“Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide

for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.”

d. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a ‘false statement’ etc. Questioned on these concerns, the Ministry in their reply stated as under:

“The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case.”

e. The Ministry also informed as under: *“The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes.”*

The Committee observes that owing to the increased instances of willful fraudulent usage of export promotion schemes, the provision for levying of penalty up to five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment.”

f. In this regard, we also rely upon the ratio of Hon’ble Order in the case of M/s Access World Wide Cargo reported as 2021 (8) TMI 640 - CESTAT BANGALORE wherein it was held, inter-alia, that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra). It

was held, inter-alia, as under:

“6. Further, I find that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra). I also find that in the present case, the Department has failed to prove that there was a mala fide and wilful misrepresentation by the Customs Broker. It seems that the Commissioner (Appeals) has totally misunderstood the facts and has wrongly observed that the appellant (Customs Broker) and the exporter have been operating from the same premises and have an identical ICE Code which leads one to suspect the bona fides of the appellant. This finding of the Commissioner is factually incorrect and without any basis. Further, the Commissioner on the basis of these facts has wrongly come to the conclusion that the appellant is involved in the illegal export whereas the appellant is only a Customs Broker who has filed the shipping bills on the basis of the documents furnished by the exporter.

Therefore, in view of these facts, the imposition of penalty itself is not sustainable in law and therefore I set aside the imposition of penalty on the appellant by allowing the appeal of the appellant.”

g. We refer to the Hon'ble CESTAT order in the case of M/s Interglobe Aviation Ltd reported as 021 (7) TMI 1027 - CESTAT BANGALORE wherein it was held, inter-alia, as under:

“20. The appellants also contended that the penalty under the Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally. The present case does not relate to export at all and even for imports, all the documents presented for imports were genuine and not forged and thus penalty is not imposable under Section 114AA of the Customs Act, 1962. We find that there is merit in the argument of the appellants. As the case is not of export, we find that no penalty under Section 114AA of the Customs Act, 1962 is imposable.”.

h. We also refer to the Hon'ble CESTAT order in the case of appeal filed by the department against M/s Sri Krishna Sounds & Lightings reported as 2018 (7) TMI 867 - CESTAT CHENNAI wherein it was held, inter-alia, as under:

“7. On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction. I do not find any merit in the appeal filed by the department and the same is dismissed. The cross-objection filed by respondent also stands dismissed.”

In view of the above, in the facts of the present case which relates to import of goods, penalty is not imposable on the Noticee No.4 under Section 114AA on the above ground as well.

i. Without prejudice to the above, the Noticee No.4 submits that in the factual matrix of this case, there is no evidence that the Noticee No.4 had knowledge that the importer is trying to do the clearance of restricted goods. Penalty under Section 114AA of the Customs Act, 1962 can be levied only if the person has knowledge and intention in commission and omission of the act. There is no evidence to show that the Noticee No.4 had any prior knowledge or intention to mis-declare the Shipped on board date in the Bills of Lading of the said goods. Therefore, the penalty under section 114AA cannot be imposed on Noticee No.4.

14.24 The Noticee No.4 is an agent of a foreign principal **OSL**. The Article III (8) of the Indian Carriage of Goods by Sea Act, 1925 discharges the carrier from any and / or all liabilities and / or losses , arising due to any act or omission of the Shipper or the owner of the goods.

Article III – Responsibilities and Liabilities.

(8). Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

14.25 On this ground alone, it is submitted that Noticee No.4 is not liable for any misdeclaration on the part of the shipper / consignee and neither have they attributed their support in import of **Watermelon Seeds** by intentionally mis-declaring the Shipped on Board date in the Bills of Lading.

No investigation has been conducted with the supplier in Sudan.

14.26 That Section 1 of the Customs Act, 1962 was amended vide Finance Act, 2018 and came into effect from 29th March, 2018 and by virtue of the amendment, the overseas suppliers (the exporter based abroad) can also be proceeded against the Act and it is essentially for the purpose of obtaining / gathering evidences of offences /contraventions by the overseas suppliers, the COIN officers (functioning under the administrative control of the department investigative agency DRI) have been posted.

14.27 That despite armed with the personnel at its command, there is absolutely no evidence gathered and brought out to substantiate the allegations made in the impugned Notice. Concerning the allegations of

misdeclaration of Shipped on Board date in the Bills of Lading, the department should have probed the matter with the overseas shipper in Sudan through the said COIN officers.

14.28 The Noticee No.4 is not under the obligation to examine the cargo and its loading date at any point of time. The Noticee No.4 being an agent of a Foreign Liner, is not in a position to verify the declaration given by the importer to the Indian customs regarding the assessable value, customs duty or any other documents. The terms and conditions as set out in the Bill of Lading supports the Noticee No.4 contention that the Bill of Lading shall be *prima facie* receipt by the carrier in apparent good order and condition. The IGM was filed based on the details provided in the Switch Bills of Lading issued by the Noticee No.4 principal sub-agent in Sudan. The Noticee No.4 had no scope to know about the act of the importer and hence it cannot be held that the Noticee No.4 had conscious knowledge of the mis-declaration of Shipped on Board date in the Bills of Lading. Thus, there is no question of suppression of facts by Noticee No.4.

14.29 The Hon'ble Tribunal in the case of **M/s. Trans Asian Shipping Services P Ltd reported as 2018 (363) E.L.T. 635 (Tri. - All.)** has held that allegation of aiding and abetting cannot be upheld where IGM is filed on the basis of Bill of Lading. Relevant part of the order reads as under:-

2. *As per facts on records, the appellant is a shipping line and was carrying the container on behalf of M/s. Ankit Metals. On the basis of a letter addressed by M/s. Ankit Metals, they applied for amendment in IGM stating that Aluminium Scrap "Tread" Weight 22.096 may be allowed to be amended to Aluminium Scrap "Tread" Weight 7.552 MT & Copper Berry/Clove Weight 14.544 MT. The said amendment was rejected by the Assistant Commissioner.*

3. *Subsequently, the importer, M/s. Ankit Metals also addressed a number of letters to the Revenue for change in IGM based upon the communication received from the exporter. All the facts are not being adhered to, inasmuch as the same relates to imports by M/s. Ankit Metals. The only reason for imposing penalty upon the present appellant as recorded by the Commissioner is as under:*

"12.13 *The shipping line had filed the IGM No. 2124032 dated 12-11-2015 on the basis of the bill of lading No. TALADS01912416 dated 10-11-2015. The bill of lading No. TALADS01912416 dated 10-11-2015 was produced before the Superintendent (SUB), ICD, Loni on 9-8-2016 wherein the description of the goods was mentioned as Aluminium scrap 'tread' 22.096 MT. The said B/L was issued on the strength of invoice no. Y15/141A dated 4-11-2015 of M/s. Ala International Metal Scrap TR LLC and NOC dated 4-11-2015 of M/s. Al Raha Trading Company and export declaration no. 201-02420065-15 dated 4-11-2015 all containing description of goods as Aluminium*

Scrap 'tread' 22.096 MT. As per statement dated 9- 8-2016 of Shri Sandeep Vishwanath A. of the shipping Line, the folio No. of the bill of lading was TAL1066058. The revised bill of lading having the same Sl. No. was issued from Dubai by Dubai Arobian Shipping Agency, LLC, the agent for the carrier. As per Shri Sandeep the revised bill of lading had reference no. TAL1157913 which was issued on 5-1-2016. It is pertinent to notice that request for amendment to the IGM was filed on 28- 12-2015 by the shipping line. It thus shows that any B/L could be issued at free will at the behest of the importer/shipper. Having known that an application for amendment in the IGM was pending before the customs authorities since 28-12-2015, a final set of B/L was handed over to the shipper on 5-1-2016 without waiting for the outcome of their application for amendment. It has been contended by Shri Sandeep in his statement dated 9-8-2016 that B/L being a Line document, there was no need to seek approval from Customs for issue of the same. The argument is devoid of merit for the reason that statutory document viz. IGM is filed on the basis of bill of lading and therefore, it is imperative that sanctity of the documents i.e. bill of lading is maintained. Without checking the details of goods being carried and the supporting documents, the shipping line has issued the revised bill of lading without any check and balance and thus aided and abetted the importer in his nefarious design of importing the goods by misdeclaring the same with the intent to evade payment of Customs duty. The shipping line has knowingly made B/L which was false and incorrect in respect of material description of the goods with the view to use the same in the transaction of filing of IGM and clearance of goods for the purpose of Customs Act, 1962, and have thus rendered itself liable to penalty under Section 114AA of the Customs Act, 1962."

4. As is seen from the above, the penalty stands imposed upon the appellant on the ground that they have aided and abetted the importer in his nefarious design to import the goods by misdeclaration. However, I find that there is no evidence on record to show that the appellant was a party to such misdeclaration. They simplicitor filed IGM on the basis of bill of lading and on subsequently, after getting an communication from the importer, they applied for amendment of the same. In such a scenario, the allegation of the aiding and abetting cannot be upheld. Accordingly, the same is set aside and the appeal is allowed by setting aside the penalty imposed upon the appellant."

e . In the present case, the 1st leg B/L issued to the shipper in Sudan and later surrendered and thereafter the 2nd Leg B/L was issued which was relied upon by the Noticee No.4 in India for filing the IGM. Thus, the Noticee No.4 cannot be held guilty for misdeclaration with regard to the correctness of the content of the IGM filed by Noticee No.4 as required under section 30(2) of the Customs Act, 1962 and hence no penalty should be imposed upon the Noticee No.4 under Section 114AA of the Customs Act, 1962.

14.30 We would like to place our reliance on the **Singapore High Court ruling in the case of BNP Paribas v Bandung Shipping Pte Ltd., 2003** wherein the switch 12 Bills of Lading **were issued altering the port of loading** for consignment loaded from Batam, Indonesia and to be discharged at Kandla port, India. The details mentioned under the Facts paragraph no.2 are as under:

12 bills of lading were switched bills issued by Bandung in exchange for the original set, pursuant to an arrangement provided for in the voyage charterparty. The switched bills were issued for the same cargo as the original set, with some alteration in the details like date and load port.

The above evidence the fact that the issuance of switch Bills of Lading is a general practice in the maritime industry and in the Switch Bills of Lading, the date, port of loading and the port of discharge can be altered as per the requirement of the suppliers. Hereto annexed and marked as **Annexure - “D”** is the judgement copy of the Singapore High Court ruling in the case of BNP Paribas v Bandung Shipping Pte Ltd., 2003.

14.31 We are relying upon the case of Wollongong Coal Limited vs. PCL (Shipping) Pte Ltd.,(2020) decided by the **New South Wales, Supreme Court**.

- a. In this case, the Plaintiff Wollongong Coal Ltd (WCL) is an Australian coal mining company and at that relevant time, it was a subsidiary of **Gujarat NRE Coke Limited (“Gujarat India”)**, an Indian metallurgical coke producing company.
- b. The defendant PCL (Shipping) Pte. Ltd. is a Singaporean Shipping Company who sub- chartered the vessel Illawar Fortune.
- c. WCL sold coal to its parent company Gujarat India.
- d. Gujarat India contracted with PCL to carry the cargo from Port Kembla, Australia to Mundra port, India.
- e. Gujarat India as voyage charterer was liable to pay the ocean freight to PCL (Shipping) Pte. Ltd.
- f. The cargo was shipped in August 2013 and Charterparty Bills of Lading (**Original Bills**) were signed by Shipowners, naming WCL as the Shipper. Therefore WCL was a party to the bill of lading contract with the Owners. PCL issued a freight invoice to Gujarat India for approximately US\$3.2 million under the Voyage Charter.
- g. On 24 September 2013, WCL asked for the Original Bills to be “switched” and Switch Bills to be issued, naming New Alloys Trading Pte Ltd (New Alloys) as Shipper in place of WCL.
- h. PCL agreed to facilitate the switch. On 2 October 2013, when a

representative from New Alloys delivered the Original Bills to PCL's office, PCL marked each of the Original Bills 'Null and Void' on the Shipowner's instructions and sent these marked bills to the Shipowner.

- i. On 3 October 2013, PCL sought a letter of indemnity (**LOI**) from Gujarat India that indemnified PCL against any loss arising from the issue of the Switch Bills and on 4 October 2013 Gujarat India provided the requested LOI.
- j. On 4 October 2013, PCL provided a corresponding LOI to Owners who then released the new Switch Bills to New Alloys.
- k. As the above events unfolded, Sub-charterer Gujarat India failed to pay USD 3.2 Million freight to Disponent Owners PCL, time charterers of the Vessel Illawarra Fortune. After taking assignment of Owner's rights under the Bills of Lading, PCL tried to recover those sums from Shippers WCL. The Bills of Lading provided for "Freight payable as per Charter Party", i.e. the voyage charterer. However, following WCL's failure to pay part of freight costs, the Bills of Lading were marked "Null and Void" and substituted by switch bills identifying New Alloys as shippers. The effect of "Switching Bills of Lading" is that the original Bills of Lading contract is replaced by a new contract evidenced by the "switch bills of lading."
- l. The Court held that because of the novation WCL's liability under the Switch Bills of Lading was extinguished therefore neither the Owners nor PCL as their assignee could recover the freight and costs related to the voyage, given the prevalence of this practice in commercial shipping.
- m. The above judgement explicitly mentions the legitimacy of issuance of Switch Bills of Lading which is a common practice in the Shipping Industry and the same practice has also been adopted by Gujarat India to import coal from Australia to India which has been approved by the New South Wales Supreme Court to grant relief to Gujarat India and their subsidiary company WCL.

Based on the above judgement, the Noticee No.4 has not committed any wrong by filing the IGM basis the Switch Bill of Lading as per the standard maritime practice. Therefore, any mis-declaration by the exporter / importer to customs department cannot be attributed to any fault and / or act and / or omission and / or willful suppression by Noticee No4. Hereto annexed and marked as **Annexure - "E"** is the judgement copy of the New South Wales Supreme Court.

14.32 That further, Section 230 of the Indian Contract act, 1872 reads as below:

"230...Agent cannot personally enforce, nor be bound by

contract on behalf of principal-

In the absence of any contract to that effect an agent cannot personally enforce contract entered into by him on behalf of his principal, nor is he personally bound by them.”

That, if the principal personally initiates and concludes the contract with any party, acting in their own capacity without any representative, there is an assumption that the contract is made on behalf of someone else and no agent is involved. The Noticee No. 4 did not even negotiate the contract with the exporter/importer. The contract for shipment was entered into between Noticee No.4 principal sub-agent and the exporter as per the Bills of Lading. The Noticee No. 4 is an agent of a disclosed principal in a Foreign Country and hence in the absence of any contract to the contrary, the Noticee No.4 cannot be held liable on behalf of their principal sub-agent.

14.33 We would like to place our reliance on the Chennai CESTAT ruling in the case of **M/s Chakiat Agencies vs Commissioner of Customs (Exports) 2023 TAXSCAN (CESTAT) 175** wherein the court observed as below:

*“Be that as it may the appellant as a **CHA** cannot be expected to examine and ensure the nature of the goods in the consignment. There is no allegation or evidence to establish that the appellant had indulged in any overt act or played any role in any manner so as to assist the exporter in his attempt to export the goods. After appreciating the evidence and following the decision of the Tribunal in the above case, we are of the view that the penalty imposed on the appellants under section 114 of the Customs Act is not warranted.*

In the current case as well, the Noticee No.4 being a Liner agent, is not expected to verify the details submitted to the Customs by the importer at the time of filing of the Bill of Entries. Thus, they have not played any role in the incorrect importation of the goods in the discussion.

14.34 That the **Principal bench of Delhi CESTAT in the case of PURUSHOTTAM KUMAR JAIN vs COMMISSIONER OF CUSTOMS (PREVENTIVE) JODHPUR 2022 TAXSCAN (CESTAT) 567** has observed that the agent deliberately and intentionally has not provided any such information which was false or incorrect. As such, the penalty under section 114AA of the Customs Act, 1962 is not imposable on the agent.

14.35 That the Ludhiana CESTAT in the case of M/s M S Exim Services Vs Commissioner of Customs, Ludhiana 2021 (CESTAT)

14 has observed that the appellant had no mens rea and filed the documents being a bonafide facilitator and in view of the same no penalty was imposable upon the appellant Customs broker, therefore, the penalty imposed on the appellant under Section 112 along with 114AA of the Customs Act, 1962, was set aside.

Therefore, in the instant case, the Noticee No.4 being a Liner agent is not responsible for the wrong declaration given by the importer to the customs at the time of filing the Bill of Entries.

14.36 (i) In the case of *V. Lakshmipathy vs. Commissioner of Customs -2003(153) E.L.T. 640T* (Tri-Delhi) in respect of invocation of penalty under Section 112 had held the existence of mens rea as an essential ingredient to invoke the same. This presupposition is non-existing in the present matter as show cause notice leads no evidence to indicate a guilty mind on part of the appellant.

(ii). In the case of *Mohd. Iliyas vs. Commissioner- 2018 (362) ELT A 218 SC* the Honourable Apex Court had held the penalty under Section 114AA, as not leviable (among other reasons) for no discussion being made as to the type of false /incorrect material. Similar is however the position in the present case.

(iii). Moreover, in the case of *Parag Domestic Appliances vs. Commissioner of Customs, Cochin 2018(360) ELT 547 (Tri-Bang)*, it was held that for subjecting one to penalty under Section 114AA, the existence of knowledge or intention on the part of such person while carrying out any or all of the necessary actions stated therein is a must. Without demonstrating such an existence of knowledge no such penalty is leviable. Also, it is necessary to discuss the nature of false and incorrect material made use of as held in a slew of cases.

(iv). In the case of *Codognotto Logistics India Pvt. Ltd. vs. Commissioner of Customs (2022) (SB) (Tri-Delhi)*, had held that in the absence of mens rea and no deliberate connivance in evading customs duty, penalty under Section 112 and Section 114AA is not leviable upon the appellants and the appeal was allowed.

(iv). In the case of *Jeena and Company Versus Commissioner Of Customs, Bangalore [2021 (378) E.L.T. 528 (Tri. - /Bang.)]* Penalty on Customs House Agent (CHA) - No evidence to show that Agent had knowledge of wrongdoing of importer and colluded with importer to defraud Revenue - Not appropriate to punish CHA for filing document in good faith and on basis of documents supplied by importer - Penalty imposed set aside □ Section 112 of Customs Act, 1962. 12006 (200) E.L.T. 12 (Tribunal) relied on]. [paras 6, 7].

(v). In the case of *Indian Acrylics Ltd. Versus Commissioner Of*

Customs, Kandla [2015 (325) E.L.T. 753 (Tri. - Ahmd.)] Penalty on CHA - Penalty not imposable when CHA not involved in any manner in respect of manipulation of export documents No material on record showing appellant abetted the exporter for their gain - Penalty under Section 112(a) of Customs Act, 1962 not imposable. [para 14]

14.37 It is a settled position in law that penalty is not imposable where the Noticee has not acted contumaciously or in deliberate defiance of law. In support of this contention, reliance is placed on the law declared by the **Hon'ble Supreme Court in the case of Hindustan Steel Ltd 1978 (2) ELT J159 (SC)** wherein it was held that penalty shall not be imposed unless the conduct of a defaulter is found to be dishonest or contumacious. Reliance in this regard is also placed on the following binding judicial pronouncements which echo the settled principle that a penalty is not imposable where there is no dishonest conduct:

i. In the case of **Akbar Badruddin Jiwani vs Collector of Customs, 1990 (047) ELT 0161 (S.C.)**, where the **Hon'ble Supreme Court** has held that –

“57. Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the Appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law.

58. In the present case, the Tribunal has itself specifically stated that the Appellant has acted on the basis of bona fide behalf that the goods were importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate Tribunal, the penalty and fine in lieu of confiscation require to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal.”

14.38 That, the law which has been laid by various authorities for purposes of levying penalty is that the penalty under section 114AA can be levied only when mens-rea is established and when it is established that a person knowingly makes the false declaration or signs any such document. Before levying penalty 114AA Revenue has to establish mala fides which is of quintessence. In the instant case no malafide has been attributed to Noticee No.4.

14.39 That penalty cannot be levied unless it is established that Noticee No.4 knew or had reason to believe that the goods were liable

for confiscation under Section 111 of the Customs Act, 1962, and without establishing that Noticee No.4 has any *mala fide* motive or any motive to make abnormal gain.

14.40 There is no evidence against Noticee No.4 to establish any overt act or *mens rea* to facilitate the commission of the said offence. The allegation that the Noticee No.4 has facilitated the attempt to enable the importer to import restricted goods in the subject transaction is without any factual and legal basis and therefore penalties under section 112(b) and section 114AA of the Customs Act, 1962 are not sustainable on Noticee No.4.

14.41 In view of the above judgement and facts of the case, there is no case of acting knowingly or intentionally on the part of the Noticee No.4 and hence, the penalties imposed upon the Noticee No.4 under section 112(b) and 114AA of the Customs Act, 1962, does not sustain in the eyes of law and accordingly the impugned show cause notice should be set aside.

14.42 It is respectfully prayed that the Hon'ble Additional Commissioner of Customs, Mundra may be pleased to set aside the Show Cause Notice issued against M/s. Paramount Sealinks Pvt. Ltd.

15. Submission of 6th Noticee i.e. Shri Prashant Thakker (Popat):-

15.1 Shri P.D. Rachchh, Advocate on behalf of the Noticees No. 6 i.e. Shri Prashant Thakker submitted their written reply vide letter dated 31.05.2025 and 06.06.2025, wherein inter alia submitted that:-

15.2 Prashant at the very outset disowns the baseless allegations made against him on the following grounds which may please be considered without prejudice to one another and without admitting anything. Prashant before making legal submissions in the matter would like to submit that he was shocked and surprised to receive the impugned SCN as it clearly revealed from the investigation including his statement dated: 19.11.2024 that On being asked he deposed that he has never talked with any person of M/s. Eastern Shipping Co. Ltd., Sudan or M/s. Paramount Sealink Pvt. Ltd., Gandhidham, Gujarat;

On being shown the online tracking of 3 containers pertaining to bill of lading SDR24SDSA004883 and BE No. 5094709 dated 16.08.2024 which shows ship on board date 05th July, 2024 he deposed as per tracking the Shipped-on board date (export received full at port Sudan) is 05th July, 2024, but the shipper has not informed him about change in date in documents. He had provided him the B/L No. SDR24SDSA004883 issued on 29.06.2024 which seems that the B/L issued on 29.06.2024 had been manipulated by someone. (Ans. To Q-13)

On being shown the two different BLs with two different shipped on board date for the same consignments where manipulation the shipped on board dated is before 30.06.2024 he deposed that he never told any person

neither for making two different B/L for same consignments nor to change the date of shipped on board on BL. He states that may be shipper had changed the date for selling more goods. (Ans. to Q-14)

On being shown the printout of email conversations between overseas person Shri Tagwa Badri, Sudan and M/s. Paramount Sealink Pvi. Ltd. Gandhidham to comments it was inter alia deposed that as per email conversation and attachment it appears that Original BL replaced by switched BL. He states that two BL had been made for same consignments by someone. He does not know who told them to do so. Seller never told him about the same. (Ans. to Q-15)

On being shown the copy of BL and asked that it appears that someone has made 03 switch BL on his instructions for getting the benefit of DGFT Notification No. 05/2023 dated 05.04.2024 he inter alia deposed that it appears that these are the main BLs and someone has manipulated in shipped on board date and made another fake BLs (which are called Switch BLs) for same consignments. However, he assured that he never instructed anyone for this type of mis-declaration. He does not know who told them to do so. Seller never told him about the same. Further he states that if he known in advance then never participate in these consignments as broker. (Ans to Q. 16)

On being shown Import general manifest for 5 containers covered under BL no. GLNPZUMUN0624046 dated 28.07.2024 he deposed that he state that after seeing the documents Import General Manifest filed by M/s. Goodrich Logistic Pvt. Ltd. the BL No. GLNPZUMUN0624046 dated 28.07.2024, which is the date after 30th June and which is the date after 30th June and the date 28.07.2024 which is the date of BL, it means the date should be Shipped on board date i.e. 28.07.2024. Further he states that he never placed order after 30th June, he told them to send the goods in which shipped on board dated is before 30th June 2024. (Ans. to Q-17)

On being asked to comments that as per Notification No. 05/2023 dated 05.04.2024 issued by DGFT shipped on board date after 30.06.2024 will be restricted category of goods i.e. watermelon seeds then why you have imported watermelon seeds with 38 containers, he inter alia deposed that it appears that shipped on board dates are after 30th June, 2024 of those consignments and on that basis he can say that these goods are under restricted category and not fulfill the criteria of Notification No. 5/2024 dated 05.04.2024. It also appears that someone has manipulated / fabricated in shipped on board date. Further he states that he does not know who told for changing the date of shipped on board in documents and also he states that seller never told him about the same. (Ans. to Q-18)

On being shown email communication he deposed that he deposed that he states that he has no idea about the email communication. It appears that this conversation is regarding manipulation in BL and two BLs had been generated for same consignment and only one is right in

both. The seller never told him about these manipulations. (Ans. to Q-21)

15.3 Prashant submits that as per the reply submitted by M/s. Gujarat it is admitted fact on record by way of exculpatory statements dated 24.10.2024 of Director of M/s. Gujarat and his statement dated 19.11.2024 especially highlighted paragraphs supra and infra, as well as emails which is recovered during the search conducted at the office premises of M/s. Paramount Sealink Pvt. Ltd. (Delivery Agent of Shipping Line i.e. M/s. Oceanic Star Line) wherein there is no email ids of him and M/s. Gujarat etc, nowhere stating or referring name of him and M/s. Gujarat that they were aware about the loading of the goods on board vessel if any after 30.06.2024. So not repeating all the submissions made by M/s. Gujarat and request that same may be considered mutatis mutandis as part of this reply.

15.4 Prashant in view of the above as well as detailed submissions made by M/s. Gujarat submits that allegations made against him that he was constantly in touch with overseas suppliers as well as the container lines: 1. M/s Eminent Shipping Services LLP - working in India on behalf of M/s Sidra Line 2. M/s Paramount Sea links Pvt. Ltd. -working in India on behalf of M/s Ocean Star Line and 3. M/s Paramount Sea links Pvt. Ltd. – working in India on behalf of M/s Ocean Star Line. He was involved in the fabrication of import documents. It also appears that Prashant charged brokerage fees for these services and Prashant had given instructions to the container lines through the overseas supplier that even if the goods are shipped after 30th June 2024, the documents must be maintained before 30th June 2024, only then the goods will be cleared in India. The facts and evidence gathered during investigation, clearly establish that Prashant, acting as broker, deliberately colluded with representatives of container line to manipulate the actual date son the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. It has also been established that Prashant was indirect contact with container line and arranged forged documents with wrong dates in a manner that would mislead customs and enable the clearance of restricted cargo. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts an do missions by Prashant, Partner of M/s Multigreen make him liable for penalties under Section 112(b) of the Customs Act, 1962. Furthermore, his involvement in the creation of forged Bills of Lading a violation that renders him liable to penalties under Section 114AA of the Customs Act, 1962 are totally baseless and contrary to what revealed during the investigation.

15.5 Prashant further submits that in view of the above as well as submissions made by M/s. Gujarat, goods are not liable to confiscation under any of the clause of Section 111 of the Customs Act, 1962 therefore, no penalty is imposable upon him under Section 112(b) of the Customs Act, 1962.

15.6 Prashant further submits penalty under Section 112(b) of the Customs Act, 1962 can be imposed only when any 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.

As discussed in detailed in para supra as well as submissions made by M/s. Gujarat that the investigation carried out by the DRI that though he being a broker has arranged deal between Dubai based supplier and M/s. Gujarat for import of the goods but he does not know or has reason to believe that goods are liable to confiscation under Section 111, therefore, no penalty can be imposed upon him under Section 112(b) of the Customs Act, 1962. Penalty under clause (b) can be imposed upon a person dealing with the goods in any manner including the manner specified in the clause with knowledge or reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962.

Apart from that in the situation of clause (b), quantum of penalty can be as per any of the clause (i) to (v) of Section 112 which is not specified, thereby he is not put to the proper notice. So he is not in a position to defend the matter properly. As per settled position of law such notice is liable to be quashed and set aside.

In any case as submitted in para supra goods are not prohibited but restricted so no penalty can be imposed under Section 112(b)(i) of the Customs Act, 1962. So without admitting anything it is submitted that at the most penalty under Section 112(b)(ii) i.e. Rs. 5,000/- can be imposed as it is not the case of evasion of duty by M/s. Gujarat as per the investigation and allegations made in the impugned SCN.

15.7 Prashant further submits that in view of the above no penalty is imposable upon him under Section 114AA of the Customs Act, 1962. A penalty under Section 114AA ibid can be imposed only when a person knowingly or intentionally makes, signs or uses or causes to be made, singed or used any declaration, statement or document which is false or incorrect in any material particular, in the transactions of any business for the purpose of this act, shall be liable to penalty.

It is not the case or allegation of the department that Prashant has knowingly or intentionally makes, signs or uses or causes to be made, singed or used any declaration, statement or document which is false or incorrect in any material particular, in the transactions of any business for the purpose of this act, so no penalty is imposable upon him under the said section irrespective of the fact that penalty under Section 114AA of the Customs Act, 1962 can be imposed upon a person only when there is export on paper without physical export of the goods so as to avail export incentives/benefits.

15.8 Prashant without admitting anything further submits that proposal to impose penalty under Section 114AA of the Customs Act, 1962 upon him is also without understanding the provisions as well was legislature intention to insert the said section. In view of the above submission no penalty is imposable upon him. Even otherwise said proposal is also devoid of merits. Plain reading of Section 114AA very much clears that it can be imposed only when somebody intentional use of false and incorrect

material, which reads as under:

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

The first and foremost requirement to bring any person under domain of Section 114AA is that he must be **knowingly or intentionally** using the declaration, statement or document and such declaration, statement or document should be for transaction under provisions of Customs Act, 1962. Prashant most respectfully submits that none of the above element applies to it. As already discussed in para supra there was no declaration etc. of false or incorrect particular in any material. Hence question of imposing penalty under Section 114AA does not arise.

15.9 Prashant without admitting anything, as regards to proposal for imposition of penalty under Section 114AA of the Customs Act, 1962 would further like to draw your kind attention towards the fact that same can be imposed only in the situation of export on paper without physical export or involving fraudulent export and cannot be invoked for any alleged violation in import of goods.

For the above submission attention is further invited towards paragraph 62 to 66 of Standing Committee on Finance 27th Report - (2005-2006) – The Taxation Laws (Amendment) Bill, 2005.

Based on the same it is submitted that intention of legislature was to impose penalty under said Section 114AA only on exporters who were claiming export on paper and claiming illicit benefit of export incentives as is evident from following:

“Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114AA is proposed to be inserted after Section 114AA.”

Based on above, it is submitted that instant case is of import and not of export so in any case no penalty can be imposed under Section 114AA of the Customs Act, 1962.

Prashant in view of the above as well as submissions made by M/s. Gujarat requests to drop the proceedings initiated under the impugned notice.

RECORD OF PERSONAL HEARING

16.1.1 Shri P.D. Rachchh, Advocate, authorized representative of M/s. Gujarat Peanut Products Ltd. and Shri Prashant Thakker (Popat), authorized signatory of M/s. Multigreen international appeared for personal hearing on 30.04.2025 through virtual mode. He submitted that M/s. Gujarat Peanut have applied for provisional release of seized goods as provided under Section 110A of the Customs Act, 1962. They are ready to furnish Bond supported by Security. He requested to release the seized goods as per the provisions of Section 110A ibid read with the settled position of law amongst other referred and relied upon by M/s. Siddhachal Agro Industries, Mahesana in its letter dated 17.03.2025 i.e. SIDHARTH VIJAY SHAH Versus UNION OF INDIA - 2021 (375) E.L.T. 53 (Bom.) and ADDITIONAL DIRECTOR GENERAL (ADJUDICATION) Versus ITS MY NAME PVT. LTD. - 2021 (375) E.L.T.545 (Del.). He further submitted that reply to Show Cause Notice will be submitted at the earliest. He requested to first decide on applications for provisional release of seized goods. It was also submitted that after decision on the requests for provisional release of seized goods in all four cases and submissions of reply to the SCNs, they wish to be heard in person in the matter as no submission on merit was made. Nothing more to add.

16.1.2 Shri P. D Rachchh, Advocate, appeared for personal hearing on 02.06.2025 in virtual mode on behalf of M/s. Gujarat Peanut and Shri Prashant Popat. He submitted that M/s. Gujarat Peanut and Shri Paresh Popat have filed their reply to the SCN or will submit reply at an early date. Since, issue involved in all four SCNs are similar, submissions are common for, it was reiterated for all. He submitted that all the four importers have applied for provisional release of the seized goods viz. watermelon seeds as provided under Section 110A of the Customs Act, 1962 as same are not prohibited goods but restricted goods as per the impugned SCNs. They are ready to furnish Bond supported by Security. He requested to release the seized goods as per the provisions of Section 110A ibid read with settled position of law stated in application for provisional release made by all four importers as well as submission made at the time of hearing held on 30.04.2025.

Further, Sh. Rachchh stated that as per Notification No. 5/2023 dated 05.04.2024 policy the goods are 'restricted' if imported with Ship on Board Bill of Lading dated 30.06.2024. In case of all the four importers as per Bills of Lading submitted with the check list for the bills of entry and even for IGM where Bills of Entry are not filed are of the date prior to 30.04.2024, so goods are not liable to confiscation under any of the clause not to speak of Section 111(d), Section 111(1), Section 111(m) and Section 111(0) of the Customs Act, 1962. Therefore, no penalty is imposable upon any one under Section 112(a), Section 112(b) and Section 114AA of the Customs Act, 1962. It was alternatively and without admitting anything further submitted that since goods are not prohibited but restricted as per the impugned SCN and according to your goods office same are liable to

confiscation even in that case goods cannot be absolutely confiscated but confiscation if any have to be with an option to pay fine in lieu of confiscation that too with leniency as statements of proprietor/partners/director, Shri Prashant Popat and others are exculpatory. Even penalty cannot be more than Rs. 5,000/- as per Section 112 of the Customs Act, 1962. Alternatively, it was requested that goods may be allowed to re-export without imposing any fine and penalty or with fine and penalty with leniency.

16.2.1 Shri Bijish B. Tom, Advocate, appeared for personal hearing on 30.04.2025 through virtual mode on behalf of M/s. Eminent Shipping Services LLP. He submitted that bill of entry was filed by importer and they have no role in filing bill of entry nor in clearance process. Bill of lading was issued by load port. They have no role in BL issuance or container stuffing. They had no knowledge or intent to misrepresent shipment dates. He requested to take the lenient view and drop the proceedings against the noticee M/s. Eminent Shipping Services LLP. Nothing more to add.

16.2.2 Shri Bijish B. Tom, Advocate, appeared for personal hearing on 02.06.2025 through virtual mode on behalf of M/s. Eminent Shipping Services LLP. He submitted that there is no role of M/s. Eminent Shipping in issuing the bill of lading or container stuffing and the same were done by their principal/sidra lines. He further submitted that there was no mens rea on part of their client. Further, he requested to drop the proceedings as per their written submission dated 24.04.2025.

16.3 Ms. Taranjeet Phull (Advocate), Authorized Representative of M/s Goodrich Logistics Pvt Ltd attended the virtual hearing on 11.04.2025 and 02.06.2025. Ms. Phull, re-iterated their written submission dated 10.04.2025 and stated as follows:

1. Goodrich acted solely as Indian delivery agent for M/s. Dragon Maritimo, with no role in the issuance or preparation of the Bills of Lading.
2. Bill of Entry was filed by importer; Goodrich did not file or assist in filing the BOE nor in the clearance process.
3. Shipment details were received via pre-alert from the principal; no independent role was played in BL issuance or container stuffing or any other activity.
4. Goodrich had no knowledge or intent to misrepresent shipment dates; no mens rea attributable to Goodrich under Section 112(b) or 114AA of the Customs Act.

5. Request to drop all proceedings and allegations against Goodrich.

Further, Ms. Phull requested to set aside the above SCNs against their client M/s Goodrich Logistics Private Limited and proceedings be dropped against M/s Goodrich Logistics Private Limited based on their written submission dated 10.04.2025

16.4 Advocate Ms. Deepti Upadhyay and Advocate Mr. Santosh Upadhyay appeared for personal hearing on 09.09.2025 in virtual mode on behalf of M/s. Paramount Sealinks Pvt. Ltd and re-iterated their submission dated 21.04.2025. They have stated that, as delivery agents, their role is strictly limited to filing the Import General Manifest (IGM), collecting documents from the importer or their representative, and issuing the delivery order. Paramount Sealinks' scope is confined to verifying the details submitted by the importer when filing the Bill of Entry with customs. As agents of the shipping company, their responsibilities are restricted, and therefore, they cannot be held liable for any penalties. Paramount principal's sub-agent has provided their services to the exporters in Sudan and that Paramount does not have any role in the mis-declaration of the Shipped on Board dates in the Bill of Lading by the importer i.e. Noticee No. 1.

They relied on certain case laws pertaining to Switch bills of lading ruling by Singapore High Court and New south Wales Supreme Court, Australia which explicitly mentions that switch Bills of Lading are to be considered as legal document. Further they relied on section 230 of the Indian Contract Act which states that an agent cannot personally enforce, nor be bound by contract on behalf of the principal or principal's sub-agent. They are the shipping company agent in India and their scope is very limited and as such they can't be held liable for any penalties.

They relied on the observations of the Twenty Seventh Report of the Standing Committee on Finance (2005 - 06) in relation to the Taxation Laws (Amendment) Bill, 2005 pertaining to penalty imposed under section 114 of The Customs Act, 1962. They relied on various judicial precedents along with the detailed observations of the Twenty Seventh Report of the Standing Committee on Finance (2005-06) in relation to the Taxation Laws (Amendment) Bill, 2005 pertaining imposed under section 114 of the Customs Act, 1962. Further, they requested to drop the proceedings against Paramount Sealinks Pvt. Ltd considering the prayers outlined in their written submissions.

16.5 Personal Hearing in the subject matter was granted to Shri Bharat Himmatlal Parmar, Branch manager of M/s. Paramount Sealink Pvt Ltd for dated 11.04.2025, 30.04.2025, 02.06.2025 and 09.09.2025; however Shri Bharat Himmatlal Parmar neither appeared for personal hearing nor submitted any documents/submission in the subject matter in reference of the Show Cause Notice dated 21.02.2025.

DISCUSSION AND FINDINGS

17. I have carefully gone through the facts of the case, SCN, records of the case, written submission of the noticees. The principles of natural justice have been complied with by granting adequate opportunities to the noticee to present their defence. Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions and judicial precedents. On careful perusal of the Show Cause Notice and case records, I find that the following issues arise for determination in this adjudication:

- (i) Whether the imported goods i.e. "Water Melon Seed" are liable for confiscation under section 111(d), 111(f), 111(m) and 111(o) of the customs Act, 1962 or otherwise;
- (ii) Whether the noticees are liable for penalty as proposed under the SCN or otherwise.

18. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, submissions, and circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements.

19.1 I find that M/s. Gujarat Peanut Products Ltd. (Importer) imported watermelon seed in total 38 containers through three different shipping lines. The details are as follows:-

TABLE-A

	1st Consignment	2nd Consignment	3rd Consignment
Shipping Line	Eminent Shipping Services LLP	Paramount Sealinks Pvt. Ltd.	Goodrich Logistics Pvt. Ltd.
B/E No. & Date or IGM No.	5094709/ 16.08.2024	1. 5513709/10.09.2024 2. 5513750/10.09.2024 3. 5513770/10.09.2024	2387365/ 06.09.2024 (IGM)
No. of Containers	3	30 (10 containers in each bill of entry)	5

19.2 I noticed that based on intelligence gathered by DRI, Gandhidham indicating that importer is indulged into illegal import of Watermelon Seeds (Melon Seeds) by way of violation of Notification No. 05/2023 dated

5th April, 2024 issued by Directorate General of Foreign Trade, hold the consignments covered under (i) Bill of entry no. 5094709 dated 16.08.2024 on 05.09.2024 (3 containers); (ii) Remaining consignments imported under 35 containers were put on hold on 13.09.2024. The subject consignments were examined by the DRI officers on 08.10.2024 (for 33 containers) and 15/16.10.2024 (for 5 containers) under panchnamae drawn on the same date at the CFS i.e. M/s. Saurashtra CFS, Mundra and M/s. Transworld Terminal Pvt. Ltd., Mundra.

19.3.1 First consignment (B/E No. 5094709/16.08.2024) (3 containers):-

I observed that the tracking details of the vessel obtained from the website of M/s Sidra line (<https://www.sidraline.com/tracking>) shows that all the three containers (FLSU6005878, CAIU8850595 & BMOU5286368) covered under Bill of Lading No. SDR24SDSA004883 and B/E No. 5094709 dated 16.08.2024. On tracking details, "Export Received Full at Port" date mentioned as 05.07.2024. Goods were consigned to M/s Unjha Agro Company, Unjha.

Further investigation shows that M/s Gujarat Peanut products ltd. purchased these goods through High sea sale agreement on 05.08.2024. The Bill of lading No. SDR24SDSA004883 used for filing Bill of entry no. 5094709 dated 16.08.2024 indicated that vessel Sidra Ahlam (voyage no. TRS2406) 'Shipped on Board' from Port Sudan on 29.06.2024.

Shri Ravin, Branch Manager of M/s. Eminent Shipping during their statement, on the basis of tracking details, confirmed the Shipped on Board date is 05.07.2024. In view of the above, it is established Bill of lading was manipulated/forged to clear the restricted goods.

19.3.2 Second Consignment (B/E No. 5513709/09.09.2024, 5513750/10.09.2024 and 5513770/10.09.2024) (30 Containers, 10 containers in each Bill of entry):-

I noticed that during search at the premises of M/s. Paramount Sealink Pvt. Ltd. two types of Bill of Lading are found for same containers. The details are as follows:-

TABLE-B

B/E N o.	5513709/ 09.09.2024		5513750/10.09.2024		5513770/ 10.09.2024	
Bill of lading	Original BL OSLPZUM UN3084724	Switch Bill: OSLSBL-9 74/24	Original BL OSLPZUM UN3085224	Switch Bill: OSLSBL-9 75 /24	Original BL OSLPZUM UN3085324	Switch Bill: OSLSBL- 977 / 24
Vessel Name	IBN AL Wal eed	Sunset X	IBN AL Wal eed	Sunset X	IBN AL Wal eed	Sunset X eed
Voyag e No.	24906	2423	24906	2423	24906	2423
B/L is sue d ate	11.07.2024	26.06.2024	11.07.2024	26.06.2024	11.07.2024	26.06.2024

Ship on Board Date	16.07.2024	26.06.2024	17.07.2024	26.06.2024	17.07.2024	26.06.2024
B/L issued by	Eastern Shipping Company	Gulf Gate Shipping Company Ltd.	Eastern Shipping Company Ltd.	Gulf Gate Shipping Company Ltd.	Eastern Shipping Company Ltd.	Gulf Gate Shipping Company Ltd.

On perusing the vessel name, voyage no. and shipped on board date in the original BL and the switch BL received from Tagwa Badri through mails (tagwa@easternship.com) dated 27.08.2024. I observed that details in Bills of lading have been manipulated/forged to facilitate the clearance of restricted goods by falsely claiming eligibility period as stipulated in Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

19.3.3 Third consignment (IGM No. 2387365 dated 06.09.2024) (5 Containers):-

I find that M/s Goodrich Logistics Pvt. Ltd. filed the IGM No. 2387365 dated 06.09.2024 for 05 containers (HDMU2505708, NYKU3094980, OOLU3786544, TCKU3658172, and UESU2442550) under Bill of Lading No. GLNPZUMUN0624046 dated 30.06.2024. During the recording of statement of Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics, submitted B/L tracking Report (Atlantic Shipping co.ltd.) and IGM (form III) pertaining to M/s. Gujarat Peanut Products Ltd. On perusal of tracking report, sailing date of vessel has been established as 18.07.2024. Further, Shri Surya Prakash Mishra confirmed that sailing date of vessel is the date of shipped on board date i.e. 18.07.2024. Screen shot of tracking report is as under:-


Atlantic Shipping Co. Ltd.
 Ship Agents, Stevedores & Freight Forwarder
 بورتسودان
 Port Sudan
 Tel: +249 311 826461 / +249 311 834199
 Fax: +249 311 820660
 +249 311 826461 / +249 311 834199
 +249 311 820660
 BL: GLNPZUMUN0624046

ACTIVITY	DATE	PORT
SALE / PURCHASE CONTRACT B/W SHIPPER & CONSIGNEE	KNOWN TO CONSIGNEE	PORT SUDAN
EMPTY CONTAINER RELEASE TO SHIPPER	13.06.24	PORT SUDAN
EXPORT DECLARATION FILED BY SHIPPER	05.06.24	PORT SUDAN
FOREIGN REMITTANCE RECEIVED BY SHIPPER	KNOWN TO CONSIGNEE	PORT SUDAN
IMMIGRATION CERTIFICATE BY MINISTRY OF AGRICULTURE & FOREST DEPT	13.06.24	PORT SUDAN
FULL CONTAINER IN THE PORT	13.06.24	PORT SUDAN
VESSEL SAILING	18.07.24	JEDDAH
DISCHARGE DATE - TRANSHIPMENT PORT	22.07.24	JEDDAH
LOAD DATE - TRANSHIPMENT PORT	18.08.24	MUNDRA
DISCHARGE AT DESTINATION	07.09.24	

Yours Faithfully,

 Atlantic Shipping Co. Ltd.

12/24

19.4.1 I observed that Shri Ravin Paul, Branch Manager of M/s. Eminent Shipping Services LLP in his voluntary statement dated 10.09.2024 before DRI admitted that goods are shipped on board on 05.07.2024. He confirmed this after being shown tracking details of three containers imported vide Bill of entry no. 5094709 dated 16.08.2024, available on official Sidra line website (<https://www.sidraline.com/tracking>).

19.4.2 I find that Shri Sagar Arun Kumar Chag, Partner of M/s. Gujarat Peanut Products Ltd. has given voluntary statement on 24.10.2024 to the DRI. During statement, the following documents were shown to him. The details are as follows:-

TABLE-C

Sr. No.	Document	Shipped on Board date	Retrieved from	Cov. Enti
1.	Containers tracking reports	05.07.2024	Sidra line website (https://www.sidraline.com/tracking)	B/E 16.C
2.	B/L OSLPZUMUN3084724,		Resumed during search at premise of M/s. Paramount Sealinks Pvt. Ltd.	B/E 551

	OSLPZUMUN3085224, OSLPZUMUN3085324	16.07.2024, 17.07.2024, 17.07.2024		551 551
3.	BL: GLNPZUMUN0624046	30.06.2024	Submitted by M/s. Goodrich during recording the statement	IGM 238

I find that after being shown the above said documents, he admitted that shipped on board date is 05.07.2024 for 3 containers as per tracking report at Sr. No. 1. Further, for sr. no. 2 he stated that these are the original bill of lading and shipped on board date has been manipulated. Further, after being shown the email communication dated 27.08.024 between M/s. Paramount Sealinks Pvt. Ltd. and Tagwa Badri through mails (tagwa@easternship.com), he admitted that two sets of bills of lading have been made for same consignments. Shri Sagar agreed that shipped on board date of these consignments are after 30th June 2024; therefore goods falls under restricted category and does not fulfil the criteria of notification no. 05/2023 dated 05.04.2024.

19.4.3 I find that statement recorded by DRI, the Original bills of lading/Switch bills of lading received from their principal M/s. Ocean Star Line, email communication dated 27.08.2024 between M/s. Paramount Sealinks Pvt. Ltd. and Tagwa Badri through mails (tagwa@easternship.com) were presented to Shri Vankar Bharat Bhai, (Senior Executive, M/s. Paramount Sea Links Private Limited), he admitted that the shipped on board dates are after 30th June and two sets of bills of lading have been made for same consignments.

19.4.4 I find that statement recorded by DRI, container tracking documents and document listed in table-C were presented to Shri Prashant Thakker (Poapt), authorised signatory of M/s. Multigreen International, Ahmedabad he admitted that the shipped on board dates are after 30th June. Therefore, it can be concluded that the goods in these 38 containers fall under the restricted category and do not comply with the criteria outlined in DGFT Notification No. 05/2023 dated 05.04.2024 as the shipped on board dates manipulated.

19.5 I consider statements of noticees as material evidence in this case. It is relevant here to refer to some landmark judicial pronouncements on the issue of acceptability and evidentiary value of statements recorded under provisions of section 108 of the Act.

i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**^[1] and in the case of **Percy Rustomji Basta**^[2] has held "that the provisions of Section 108 are judicial provisions within which a statement has been read, correctly recorded and has been made without force or coercion. The provisions of Section 108 also enjoin that the statement has to

be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence".

ii. The Hon'ble Supreme Court in the case of **Badaku Jyoti Svant**^[3] has decided that "statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct".

iii. Hon'ble Punjab and Haryana High Court in the case of **Jagjit Singh**^[4] has decided that "It is settled law that Customs Officers were not police officers and the statements recorded under Section 108 of the Customs Act were not hit by Section 25 of the Evidence Act. The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in the matter of Ram Singh^[5], in which it is held that recovery of opium was from accused by officers of Narcotic Bureau. Accused made confession before said officers. Officers of Central Bureau of Narcotics were not police officers within the meaning of Section 25 and 26 of the Evidence Act and hence, confessions made before them were admissible in evidence".

19.6 In view of the foregoing discussion, I find that the statements recorded by DRI under the provisions of Section 108 of the Act form reliable evidence in the case supporting the charge of mis-declaration of import documents and submission of forged/manipulated Bills of lading.

19.7 Cross Examination sought by the Noticee No.3 (M/s. Goodrich Logistics Pvt. Ltd.):

(i) I find that M/s. Goodrich Logistics Pvt. Ltd. through their representative has requested for cross-examination of representative of importer and vessel operator.

(ii) I find that each noticee was given ample opportunity to present their defense, access all relied-upon documents (RUDs), and participate in personal hearings. The noticees were afforded full opportunity to defend themselves during hearings, this satisfied principles of *audi alteram partem*. I find that their request for cross-examination is baseless and an attempt to delay the adjudication proceedings.

(iii) Further, it is a settled position that proceedings as to which request of cross examination to be allowed in the interest of natural justice. I also rely on following case-laws in reaching the above opinion:-

- a. **Poddar Tyres (Pvt) Ltd. v. Commissioner - 2000 (126) E.L.T. 737-** wherein it has been observed that cross-examination not a part of natural justice but only that of procedural justice and not 4 'sine qua non'.
- b. **Kamar Jagdish Ch. Sinha Vs. Collector - 2000 (124) E.L.T. 118 (Cal H.C.):-** wherein it has been observed that the right to confront witnesses is not an essential requirement of natural justice where the statute is silent and the assessee has been offered an opportunity to explain allegations made against him.

- c. **Shivom Ply-N-Wood Pvt. Ltd. Vs Commissioner of Customs & Central Excise Aurangabad- 2004(177) E.L.T 1150(Tri.-Mumbai):-**
wherein it has been observed that cross-examination not to be claimed as a matter of right.
- d. Hon'ble Andhra Pradesh High Court in its decision in **Sridhar Paints v/s Commissioner of Central Excise Hyderabad** reported as 2006(198) ELT 514 (Tri-Bang) held that: denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, We find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized (Para 9)
- e. Similarly in **A.L Jalauddin v/s Enforcement Director reported as 2010(261)ELT 84 (mad) HC** the Hon High court held that; ".....Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons: We may refer to the following paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)".
- f. **In the case of Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;**
- g. "Adjudication — Cross-examination — Denial of—held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances — Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors — Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated." [para 23]
- h. **In the case of Suman Silk Mills Pvt. Ltd. Vs. Commissioner of Customs & C.Ex., Baroda [2002 (142) E.L.T. 640 (Tri.-Mumbai)], Tribunal observed at Para 17 that—**
"Natural Justice — Cross-examination — Confessional statements — No infraction of principles of natural justice where witnesses not cross-examined when statements admitting evasion were confessional."
- i. **In the case of Commissioner of Customs, Hyderabad v. Tallaja Impex reported in 2012 (279) ELT 433 (Tri.), it was held that—**
"In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross-examination cannot be claimed as a matter of right."
- j. **Hon'ble Tribunal in the case of P. Pratap Rao Sait v/s Commissioner of Customs reported as 1988 (33) ELT (Tri) has held in Para 5 that:**
"The plea of the learned counsel that the appellant was not permitted to cross-examine the officer and that would vitiate the impugned order on grounds of natural justice is not legally tenable."

Upon comprehensive review of the record, including the established facts, the corroborated documentary evidence presented, I find that request for cross-examination is devoid of legal or procedural merit. Accordingly, the application requesting to conduct of cross-examination is hereby denied.

19.8 As per my detailed findings in Para 19.1 to 19.5 above, the impugned goods did not fulfill the condition outlined as per the provisions of notification no. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30th June 2024 then only it will be under 'Free' category. However, evidence established that the importer intentionally submitted manipulated/forged Bills of Lading in a deliberate attempt to facilitate the customs clearance of restricted goods unlawfully.

19.9 I also find that it is a fact that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

19.10 From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-declared and mis-classified the goods and evaded the payment of applicable duty. I find that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

- (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.

19.11 I find that the Show Cause Notices propose confiscation of goods under the provisions of Section 111 (d), 111(f), 111(m) and 111(o) of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

111. Confiscation of improperly imported goods, etc.- goods are liable for confiscation:-

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

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an 1[arrival manifest or import manifest] or import report which are not so mentioned;

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

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

In the present case, the importer failed to comply with the condition of DGFT notification no. 05/2023-Cus dated 05.04.2024, which rendered the subject goods prohibited, hence, contravened the provisions of Section 46 of the Customs Act, 1962. I find that Bills of lading provided were forged /manipulated to meet the requirement of notification no. 05/2023-Cus dated 05.04.2024. This deliberate manipulation confirms malafide intention of noticees. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (d), 111(f), 111(m) and 111(o) of the Customs Act, 1962.

20. I find that the Show Cause Notices propose penalty on noticees under the provisions of Section 112(a), 112(b) and 114AA of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

“SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

- a. *who, in relation to any goods, does or omits to do any act which act or*

omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

.....

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

(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 5[not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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.]*

Roles and culpability of persons/firms involved:

20.1 Role and culpability of M/s. Gujarat Peanut Products Limited:-

M/s. Gujarat Peanut Products Ltd. (Importer), he was well aware of the Import policy and Notification No. 05/2023 dated 5th April, 2024 issued by the DGFT. M/s. Gujarat Peanut products ltd. had imported watermelon seeds covered under Bill of Entry No. 5094709 dated 16.08.2024, 5513709 dated 09.09.2024, 5513750 Dated 10.09.2024, 5513770 dated 10.09.2024 and IGM no. 2387365 dated 06.09.2024 by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. The total quantity of the said goods is

714.96 MTs having declared **Assessable value of Rs. 15,34,92,261/-**. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) 111(f) and 111(o) of the Customs Act, 1962 and therefore is liable to penalty under Section 112 (a) and 112 (b) of the Customs Act, 1962. I find that the evidences clearly indicating malafide intention on their part in respect of the imported goods warranting imposition of penalty under Section 112 (a) (i) as the fact of non-compliance of conditioned outlined in the Notification No. 05/2023-Cus dated 05.04.2024 issued by DGFT. Result is that proposal to impose penalty under Section 112 (a) (i) is correct and

sustainable in law.

I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty; therefore, I refrain from imposition of penalty on M/s. Gujarat Peanut Products Ltd. under Section 112(b) of the Customs Act, 1962.

I find that the SCN proposed imposition of penalty on the Importer under Section 114AA of the Customs Act, 1962. I find that in spite of well aware of import policy and conditioned outlined in the notification no. 05/2023-Cus dated 05.04.2024 issued by DGFT. As it is the obligation of the firm to ensure that proper and correct documents are maintained and as forged Bill of Lading was created which constitutes the violation, thus renders themselves liable to penalty under Sec 114AA of Customs Act, 1962. These acts of omission and commission on the part of the importer made the provisions of Section 114AA invokable. Therefore, I agree with the proposal of imposition of penalty on the importer under Section 114AA *ibid*.

20.2 Role of M/s Eminent Shipping Services LLP - working in India on behalf of M/s Sidra Line:

The facts and evidences gathered during investigation that the container movement details were tracked from the website of M/s Sidra line (<https://www.sidraline.com/tracking>) which shows that all the three containers FLSU6005878, CAIU8850595, BMOU5286368 covered under Bill of Lading No. SDR24SDSA004883 and B/E No. 5094709 dated 16.08.2024 actually arrived at Port Sudan Terminal on 05.07.2024 and all 3 containers were loaded on vessel "Catalonia" and voyage no. "24030" on 03.08.2024 consigned to M/s UnjhaAgro Company, Unjha. During investigation it is observed that M/s Gujarat Peanut Products Ltd. purchased through High Sea Sale from M/s Unjha Agro Company, Unjha.

Bill of Lading No. SDR24SDSA004883, dated 29.06.2024, was presented to Customs, citing a 'Shipped on Board' date of 29.06.2024 (Vessel: *Sidra Ahlam/TRS2406*). However, in a statement recorded on 10.09.2024, Shri Ravin Paul, Branch Manager of M/s. Eminent Shipping Services LLP (operating in India on behalf of M/s. Sidra Line), admitted that the actual 'Shipped on Board' date was 05.07.2024, as verified by the official Sidra Line website. Consequently, it is established that fabricated Bill of lading No. SDR24SDSA004883 dated 29.06.2024 (vessel name Sidra Ahlam/ TRS2406) was submitted which incorrectly cited the shipping date as 29.06.2024.

I noticed that M/s Eminent Shipping services LLP, acting on behalf of M/s Sidra Line, engaged in deliberate collusion to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation was carried out to facilitate the clearance of restricted cargo in direct violation of established regulations, which govern the shipping and clearance of goods in India.

I find that the manipulation of the B/L was done intentionally, altering the actual shipped-on-board dates and vessel details to mislead customs authorities and facilitate the release of cargo in direct violation of established regulations.

This deliberate acts and omissions by M/s Eminent Shipping Services LLP make them liable for penalties under Section 112(b) of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under Section 114AA of the Customs Act, 1962. I find proposal to impose penalty under Section 112 (b) and 114AA is correct and sustainable in law.

20.3 Role of M/s Goodrich Logistics pvt. Ltd. - working in India on behalf of M/s Dragon Maritimo:

During investigation, it is evident that M/s Goodrich was well aware of the Import policy and Notification related to the subject goods. M/s Goodrich filed IGM No. 2387365 dated 06.09.2024 for five containers (HDMU2505708, NYKU3094980, OOLU3786544, TCKU3658172, UESU2442550) under Bill of Lading no. GLNPZUMUN0624046 dated 30.06.2024. However, from investigation it became evident that the actual shipped on board date is 18.07.2024 which makes the goods fall under restricted category as per above said Notification. However, the investigation established that the actual 'Shipped on Board' date was 18.07.2024, the goods fall into the 'Restricted' category pursuant to the cited notification.

I find that this discrepancy was confirmed during a statement by Shri Surya Prakash Mishra, Branch Manager of M/s Goodrich Logistics Pvt. Ltd., who submitted a tracking report for the B/L showing a vessel sailing date of 18.07.2024. He further clarified that the sailing date and the 'Shipped on Board' date are same.

I noticed that M/s Goodrich Logistics Pvt. Ltd. - working in India on behalf of M/s Dragon Maritimo, engaged in deliberate collusion with representatives from M/s Dragon maritimo, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation was carried out to facilitate the clearance of restricted cargo in direct violation of established regulations, which govern the shipping and clearance of goods in India. This deliberate acts and omissions by /s Goodrich Logistics Pvt. Ltd make them liable for penalties under Section 112(b) of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under Section 114AA of the Customs Act, 1962. I find proposal to impose penalty under Section 112 (b) and 114AA is correct and sustainable in law.

20.4 Role of M/s Paramount Sealinks Pvt. Ltd. - working in India on behalf of M/s Ocean Star Line:

The facts and evidences gathered during the search, including Bill of Lading and email correspondences, provide clear and compelling proof that M/s Paramount Sealinks Pvt. Ltd., acting on behalf of M/s Ocean Star Line, engaged in deliberate collusion with representatives from M/s Ocean Star Line and Mr. Tagwa Badri, Marketing Executive of Eastern Shipping Co. Ltd., Sudan, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation was carried out to facilitate the clearance of restricted cargo in direct violation of established regulations, which govern

the shipping and clearance of goods in India.

I observed that the manipulation of the B/L was done intentionally, altering the actual shipped-on-board dates and vessel details to mislead customs authorities and facilitate the release of cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and intent to mislead the authorities. The deliberate acts and omissions by M/s Paramount Sealinks Pvt. Ltd. make them liable for penalties under Section 112(b) of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under Section 114AA of the Customs Act, 1962. I find proposal to impose penalty under Section 112 (b) and 114AA is correct and sustainable in law.

20.5 Role of Shri Bharat Himmatlal Parmar, Branch Manager of M/s. Paramount Sealinks Pvt. Ltd. (working in India on behalf of M/s Ocean Star

Line):-

Shri Bharat Himmatlal Parmar, in his statement admitted to overseeing all operations of M/s Paramount SealinksPvt. Ltd., including documentation related to import-export activities as a container line agent. The facts and evidence gathered during the investigation, including the Bill of Lading and email correspondences, provide clear and compelling proof that M/s Paramount SealinksPvt. Ltd., acting on behalf of M/s Ocean Star Line, deliberately colluded with representatives from M/s Ocean Star Line and Mr. Tagva Badri, Marketing Executive of Eastern Shipping Co. Ltd., Sudan, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation aimed to facilitate the clearance of restricted cargo, in direct violation of established regulations governing the shipping and clearance of goods in India.

During the investigation, it is clear that Shri Bharat Parmar, as the branch manager, was kept fully informed of all communications, as Shri Tagva Badri, the Marketing Executive at Eastern Shipping Co. Ltd., sent him the forged documents via email. These actions demonstrate a blatant disregard for regulatory compliance and a clear intent to mislead the authorities. Through his deliberate acts and omissions, the Branch Manager of M/s Paramount Sealinks Pvt. Ltd., Shri Bharat Himmatlal Parmar, has rendered himself liable for penalties under Section 112(b) of the Customs Act, 1962. In view of the above, I hold so.

20.6 Role of Shri Prashant Thakker (Popat), Authorized representative of M/s Multigreen International, Ahmedabad:

During the investigation, Shri Prashant Thakker admitted to importing watermelon seeds from Sudan. Although acting as a broker, Shri Thakker managed all import operations, including negotiating deals and arranging payments with Sudanese suppliers. He maintained constant communication with overseas suppliers and container lines—specifically M/s Eminent Shipping Services LLP (representing M/s Sidra Line) and

M/s Paramount Sealinks Pvt. Ltd. (representing M/s Ocean Star Line).

I noticed that investigation revealed that he instructed container lines, via the overseas supplier, to backdate documents to before June 30, 2024—even for goods shipped after that date—to ensure clearance in India. The evidence gathered confirms that Shri Thakker, acting as a broker, deliberately colluded with container line representatives to manipulate the actual dates on the Bills of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. It has been established that Shri Prashant Thakker was in direct contact with the container line and arranged forged documents. These actions reflect a blatant disregard for regulatory compliance and a clear intent to mislead the authorities. Consequently, the deliberate acts and omissions by Shri Prashant Thakker, Partner of M/s. Multigreen International, Ahmedabad, render him liable for penalties under Section 112(b) of the Customs Act, 1962. Furthermore, his involvement in the creation of forged Bills of Lading a violation that renders him liable to penalties under Section 114AA of the Customs Act, 1962. I find proposal to impose penalty under Section 112 (b) and 114AA is correct and sustainable in law.

21. In view of the above facts of the case and findings on record, I pass the following order:-

ORDER

- i. I order to absolute confiscation of impugned goods i.e. **624.96 MTS “Watermelon Seed”** imported vide Bills of Entry No. 5094709 dated 16.08.2024, 5513709 dated 09.09.2024, 5513750 Dated 10.09.2024, 5513770 dated 10.09.2024, having declared assessable value Rs. **13,38,24,561/- (Thirteen Crore Thirty-Eight Lakh Twenty-Four Thousand Five Hundred and Sixty-One only)** under Section 111 (d), 111(m) & 111(o) of the Customs Act, 1962 and 90 MTS covered under IGM No. 2387364 dated 06.09.2024 having declared value **Rs. 1,96,67,700/- (Rupees One Crore Ninety Six Lakh Sixty-Seven Thousand and Seven Hundred only)** under Section 111(d), 111(f) and 111(o) of the Customs Act, 1962.
- ii. I impose penalty of **Rs. 75,00,000/- (Rupees Seventy-Five Lakh only)** on the importer M/s. Gujarat Peanut Products Ltd. under Section 112 (a) (i) of the Customs Act, 1962, for their act of omission and commission.
- iii. I refrain from imposing penalty on the importer M/s. Gujarat Peanut Products Ltd. under Section 112(b) of the Customs Act, 1962.
- iv. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on the importer M/s. Gujarat Peanut Products Ltd. under Section 114AA of the Customs Act, 1962.
- v. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on M/s. Eminent Shipping Services under Section 112 (b)(i) of the Customs Act, 1962.
- vi. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on the

M/s. M/s. Eminent Shipping Services under Section 114AA of the Customs Act, 1962.

- vii. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on M/s. Goodrich Logistics Private Limited under Section 112 (b)(i) of the Customs Act, 1962.
- viii. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on the M/s. M/s. Goodrich Logistics Private Limited under Section 114AA of the Customs Act, 1962.
- ix. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on M/s Paramount Sealink Pvt. Ltd. under Section 112 (b)(i) of the Customs Act, 1962.
- x. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on the M/s. Paramount Sealink Pvt. Ltd. under Section 114AA of the Customs Act, 1962.
- xi. I impose penalty of **Rs. 25,000/- (Rupees Twenty-Five Thousand only)** on Sh. Bharat Parmar, Branch Manager of M/s Paramount Sealink Pvt. Ltd. Under section 112(b)(i) of the Customs Act, 1962.
- xii. I impose penalty of **Rs. 50,000/- (Rupees Fifty Thousand only)** on Shri Prashant Thakker (Poapat), Authorised signatory of M/s. Multigreen International under Section 112 (b)(i) of the Customs Act, 1962.
- xiii. I impose penalty of **Rs. 25,000/- (Rupees Twenty-Five Thousand only)** on Shri Prashant Thakker (Poapat), Authorised signatory of M/s. Multigreen International under Section 114AA of the Customs Act, 1962.

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

23. The Show Cause Notice bearing no. GEN/ADJ/ADC/511/2025-Adjn dated 21.02.2025 stands disposed in above terms.

(Dipak Zala)
Additional
Commissioner,
Custom House, Mundra.

F.No. GEN/ADJ/ADC/511/2025-Adjn-O/o Pr. Commr- Cus-Mundra

To,

(1) M/s. Gujarat Peanut products ltd.,
 Survey No. 155/1, Jamnagar Road,
 Targhari Village TalukaPaddhari,

Rajkot-360110,
Office address- D-402, The Imperial Heights,
150 Feet Ring Road, Rajkot, Gujarat-360005
(email- info@gujaratpeanut.com, sagar@sagarintl.com.)

(2) M/s Eminent Shipping services
Bomgim Building,
1st Floor, Plot No. 133, Sector-8,
Gandhidham.
(email- ravin.paul@eminentshipping.com)

(3) M/s Goodrich Logistics Private Limited
Office No. 106, Golden Arcade,
Plot No. 141, Sector 8 Gandhidham,
370201 (email- spmishra@goodrichlogistics.com)

(4) M/s Paramount Sealinks Pvt. Ltd.,
Office No. 14, 2nd Floor, Aviskar Building,
Plot No. 204, Ward 12-B, Gandhidham-370201.
(email- impdocs@paramountsealink.com,
specialequipments@paramountsealink.com)

(5) Shri Bharat Parmar, Branch Manager of
M/s Paramount Sealinks Pvt. Ltd.
situated at Office No. 14, 2nd Floor,
Aviskar Building, Plot No. 204, Ward
12-B, Gandhidham-370201
(email- bharat.prmr@gmail.com,
brmgr@paramountsealink.com)

(6) Shri Prashant Thakker (Popat),
Authorized signatory of M/s Multigreen
International Fortune Business Hub, 919, 9th Floor,
N/R Shell Petrol Pump, Science City
Road, Thaltej, Ahmedabad, Gujarat 380060.
(email- multigreeninternational@gmail.com)

Copy to:

1. The Additional Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch).
2. The DC/AC, (RRA, TRC, EDI), Mundra Customs.
3. Guard File.