



कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,  
सीमाशुल्क अधिनियम, 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



<b>A</b>	<b>FILE NO.</b> फाइल संख्या	GEN/ADJ/11/2024-Adjn-O/o Pr Commr-Cus-Mundra
<b>B</b>	<b>OIO NO.</b> आदेश संख्या	MCH/AKM/ADC/302/2024-25
<b>C</b>	<b>PASSED BY</b> जारीकर्ता	Amit Kumar Mishra/ अमित कुमार मिश्रा, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुन्द्रा।
<b>D</b>	<b>DATE OF ORDER</b> आदेश की तारीख	15.02.2025
<b>E</b>	<b>DATE OF ISSUE</b> जारी करने की तिथि	17.02.2025
<b>F</b>	<b>SCN No. &amp; Date</b> कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/11/2022-Adjn. Dated 27.02.2024
<b>G</b>	<b>NOTICEE/ PARTY/ IMPORTER</b> नोटिसकर्ता/पार्टी/आयातक	(i) M/s. Azha Overseas (IEC: CTRPA7986D) <b>(Prop: Shri Mohammad Azhar Arshad Jamal Ansari),</b> (ii) Shri Imran (iii) Ms. Ruksar / Ms. Ruksar Salim Bhiklani (iv) Shri Ishaak / Ishaque Sikander Mansuri (v) Shri Ashfak Mehmood P.
<b>H</b>	<b>DIN/दस्तावेज पहचान संख्या</b>	20250271MO000011161B

1. यह आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

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

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

“सीमाशुल्क आयुक्त) अपील,  
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,  
नवरंगपुरा, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA

HAVING HIS OFFICE AT 4<sup>TH</sup> FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,  
NAVRANGPURA, AHMEDABAD-380 009.”

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

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

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- 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-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

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

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

6. अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982 और 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.

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

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

#### BRIEF FACTS OF THE CASE

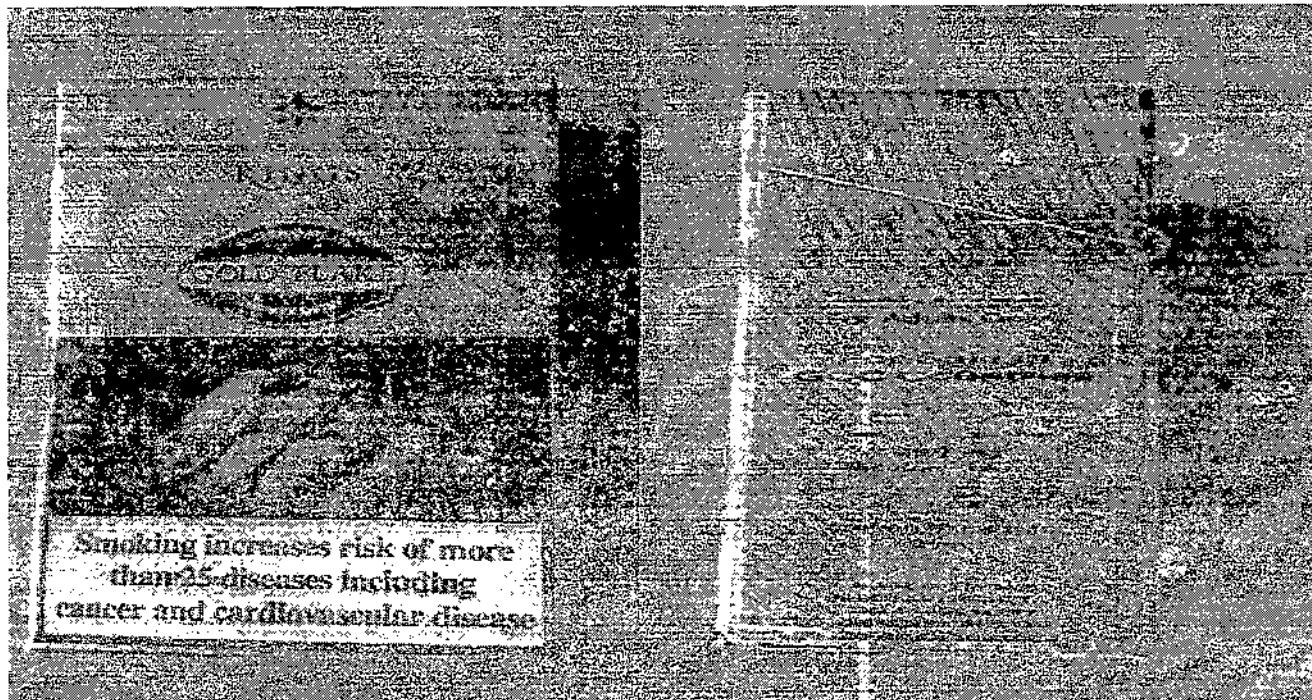
Intelligence was gathered by the officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (hereinafter referred to as DRI) that M/s. Azha Overseas (IEC: CTRPA7986D), 4<sup>th</sup> floor, 406, Sagar City, Bldg No-06, V. P. Road, Lower Floor, Office 57, Off. S. V. Road, Gillberi hill Road, Andheri West, Mumbai Suburban, Maharashtra-400058 was suspected to be indulged in smuggling of cigarettes through Mundra Port by mis-declaration of the description of the goods to be imported. Acting upon the said specific intelligence, DRI intercepted a container bearing no. SIKU2985000 shipped from Dubai, UAE, which was covered under BL No. PMJEAMUN2308037 dated 19.08.2023 and the said consignment was declared as 'Auto Air Freshener Device'. The container SIKU2985000 was attempted to be imported into India by M/s. Azha Overseas, Mumbai. The said Bill of Lading was incorporated/updated in Import General Manifest (IGM), however, Bill of Entry was not filed for the said container. The consignment attempted to be illegally imported was destined to ICD Khodiar, Ahmedabad.

2.1. The said container was kept at the premises of M/s Ashutosh Container Services Pvt Ltd, Mundra. During examination proceedings, Shri Dinesh Bhanani, Authorized Representative of M/s United Liner Shipping Services LLP produced the copy of Bill of Lading No. PMJEAMUN2308037 dated 19.08.2023 and Copy of Cargo Declaration Form III for the container No. SIKU2985000. The details of Bill of Lading is hereby reproduced below:

S.N.	Detail Heading	Particulars
1.	Name of Shipper	Noor Alrayan General Trading LLC, Dubai-UAE
2.	Name of Consignee	Azha Overseas, 4the Floor, 406, Sagar City, Bldg No.-6, V. P. Road, Lower Floor, Office 57, Off S V Road, Gillbert Hill road, Andheri West, Mumbai – 400058

		PAN No. CTRPA7986D IEC No. CTRPA7986D
3.	Notify Party	Same as Consignee
4.	Place of Loading	Jebel Ali
5.	Port of Discharge	Mundra
6.	Place of Delivery	Khodiyar
7.	Final Destination	Khodiyar
8.	Container No.	SIKU2985000
9.	Description of goods	Auto Air Freshener Device (HSN 84248900)
10.	Total packages	369
11.	Destination Agent Details	United Liner Shipping Services LLP, Cargo Honda Building (Opp. BM Petroleum), Office no: 1, 01 <sup>st</sup> Floor, Plot No. 351, Ward 12/B, Tagore Road, Gandhidham

**2.2.** On opening the door of the above said container, it was found that the said container was stuffed with Carton boxes stacked on one another and the same were wrapped in HDPE plastic bags. Further, first two rows of cartons stacked in the container were de-stuffed and each of the cartons was opened and examined one by one, wherein, it was found that all the cartons of the first two rows were containing Auto Air Freshener Device of different brands. Further, cartons placed at third row in the container were de-stuffed and examined. On examination of each carton of third row, it was found that all the cartons of third row were containing cigarette boxes of Gold Flake Brand. Subsequently, the entire cartons of the said container bearing no. SIKU2985000 were de-stuffed and examined by the officers of DRI. During the said examination proceedings, two types of cigarettes were found. One type of cigarette packet indicated the brand name Gold Flake "Made in Turkey" and other type indicated the brand name Gold Flake "Made in India". All the cartons of the said container were segregated in three parts containing Air Fresheners, Cigarette Made in Turkey and Cigarette made in India respectively. During the said proceedings, pictures of the 'Gold Flake' Cigarette 'Made in Turkey' as well as 'Made in India' was taken, which is affixed below.



**2.3.** On further examination of one carton of Gold Flake cigarettes 'Made in Turkey', it was found that a carton box contains 50 small size boxes/packings, each such small box/packings contains 10 packets of Cigarettes and each packet contains 20 cigarette sticks. Accordingly, each carton was containing 10000 cigarette sticks. It was also found that pictorial warning mentioned on the cigarette packets was not in accordance to the Cigarettes and other tobacco Products (Packaging and Labelling) Rules, 2022 and on the

side of each packets, remarks viz. 'For Adults Only'; 'For Sale in GCC Countries' Tar 7mg Nicotine 0.6mg', Carbon Monoxide 9 mg and 'Made in Turkey under Authority of the Trade Mark owner by British American Tobacco' were printed. On front side of the packet "KINGS GOLD FLACE honey dew", pictorial warning and SMOKING INCREASES RISK OF MORE THAN 25 DISEASES INCLUDING CANCER AND CARDIOVASCULAR DISEASE were printed. Further, it was found that similar nature Quantity /packings/content were available in all the other cartons/boxes/packets.

**2.4.** On examination of one carton of Gold Flake Cigarette "Made in India", it was found that a carton contains 50 small size boxes, each such small box contains 20 packets of Cigarettes. Further, each packet contains 10 cigarette sticks. Accordingly, each carton was containing 10000 sticks. During the examination proceedings, it was also found that that the pictorial warning mentioned on the cigarette packets was not in accordance to the Cigarettes and other tobacco Products (Packaging and Labelling) Rules, 2022. On front side of the packet pictorial warning, TOBACCO CAUSES PAINFUL DEATH, QUIT TODAY CALL 1800-11-2356: HONEY DEW SMOOTH were printed. Similar nature/quantity /packings were available in all the other carton boxes. The detailed inventory of the goods found during the examination is as below:

S. N.	Item Description	No. of Cartons	Particulars	Total
1.	Auto Air Freshener Device/Air perfume	44	-	44 Cartons
2.	Gold Flake Cigarette "Make in Turkey"	160	160 Carton*50 Small size boxes*10 packets*20 sticks	1600000 Sticks
3.	Gold Flake Cigarette "Make in India"	165	165 Carton*50 Small size boxes*20 packets*10 sticks	1650000 Sticks

**2.5.** It was found that the description of the goods was grossly mis-declared as 'Air Auto Freshener Devices' in the import documents. The goods contained in the said imported cargo were completely mis-declared and said mis- declared cigarettes were found to be non-compliant accordance to the Cigarettes and other tobacco Products (Packaging and Labelling) Rules, 2022. The above cigarettes were seized under Section 110 of the Customs Act, 1962 under the panchnama dated 01.09.2023. Further, 44 cartons of Auto Air Freshener Device/Air Perfume of different brands used for concealment of Cigarettes were also seized under Section 110 of the Customs Act, 1962 on a reasonable belief that the same are liable for confiscation under Section 119 of the Customs Act, 1962.

### **3. VERIFICATION OF THE PREMISES OF IEC HOLDER: M/s. AZHA OVERSEAS:**

**3.1.** The premises of M/s Azha Overseas located at 4<sup>th</sup> Floor, 406, Sagar City, Bldg No.-6, V. P. Road, Lower Floor, Office 57, Off S V Road, Gillbert Hill road, Andheri West, Mumbai - 400058 was searched on 01.09.2023. During the search, it was found that the said premises was a residential premises, which belonged to Shri Mohammad Azhar Arshad Jamal Ansari, the proprietor of IEC firm M/s Azha Overseas. During the search proceeding at above premises, certain documents/records were segregated and recovered from them. Scrutiny of documents recovered from the above premises indicated that the said documents pertain to GST related transaction/details of M/s Azha Overseas.

**3.2.** Statement of Shri Mohammad Azhar Arshad Jamal Ansari, proprietor of IEC firm M/s Azha Overseas was also recorded on 01-02.09.2023 under Section 108 of the Customs Act, 1962, wherein, he inter-alia stated that he came to know about the firm M/s Azha Overseas running in his name; that one of his friends Shri Mudassir Khan had informed him that a person named Shri Imran had opened a fake firm in his name; that it had raised a doubt in his mind as Shri Imran in past had also asked him to open an account for which, Shri Imran had offered him Rs. 5000. Further, on being asked about Shri Imran, he stated that one of the friends of his sister, named Ms. Ruksaar had introduced him to her relative

named Isaak through telephone; that Shri Isaak telephonically asked him to open a bank account in his name for which Shri Isaak had offered him Rs. 5,000/- and asked him to send copy of his Adhaar Card, PAN Card and Light Bill for the same; that Shri Isaak had given him contact details of a person named Shri Imran and asked him to contact Shri Imran for opening of Bank Account; that he had contacted Shri Imran through whatsapp; that he handed over the signed photocopies above required documents to Shri Imran; that he along with Shri Imran had gone to Bombay Mercantile Co-operative Bank Limited, P D Mello Road, Mumbai for opening of Bank Account; that after opening of bank account, Shri Imran had given him Rs. 2,000/- in cash; that Shri Isaak had sent him Rs. 3,000/- via Google Pay.

#### **4. VERIFICATION AT THE END OF M/s UNITED LINER SHIPPING SERVICES LLP**

**4.1.** M/s United Liner Shipping Services LLP vide their letter dated 01.09.2023 submitted the certain details/documents such as Packing List & Commercial Invoices, Overseas freight Prepaid Details, Mail Communication etc. to this office in respect of import consignment SIKU2985000 covered by BL – PMJEAMUN2308037. They also informed that no one contacted to their Mumbai Office for the said shipment. They further provided contact details of Mr. Hector, Manager of M/s United Liner Shipping Services LLP at Ahmedabad office.

**4.2.** On examination of packing list & Commercial Invoice submitted by United Liner Shipping Services LLP, it was found that the same were also containing the description & quantities of goods as Auto Air Freshener Device & 369 Cartons respectively. The said packing list & commercial invoice have been issued by M/s Noor Alrayan General Trading L.L.C., Dubai. Further, country of origin shown in Packing List and that in Commercial Invoice are China and Japan respectively, which appeared to be contradictory to each other.

**4.3.** As per email communication between M/s United Liner Shipping Services LLP and their counterpart i.e. ILINE Shipping LLP at Dubai, it was communicated by their counterpart i.e. ILINE Shipping LLP at Dubai to M/s United Liner Shipping Services LLP that shipper i.e. M/s Noor Alrayan General Trading L.L.C. had surrendered full set of OBL, and further communicated to their Indian counterpart to release the Delivery Order (DO) to the consignee without presenting OBL; vide the email chat, contact details of consignee was also provided by M/s ILINe Shipping LLP, Dubai to M/s United Liner Shipping Services LLP. The said details are as under:

Email - [ashfakmido@gmail.com](mailto:ashfakmido@gmail.com)

Mobile no. - 8898319194

#### **5. VERIFICATION OF CONTACT DETAILS OF CONSIGNEE PROVIDED BY M/s UNITED LINER SHIPPING SERVICES LLP:**

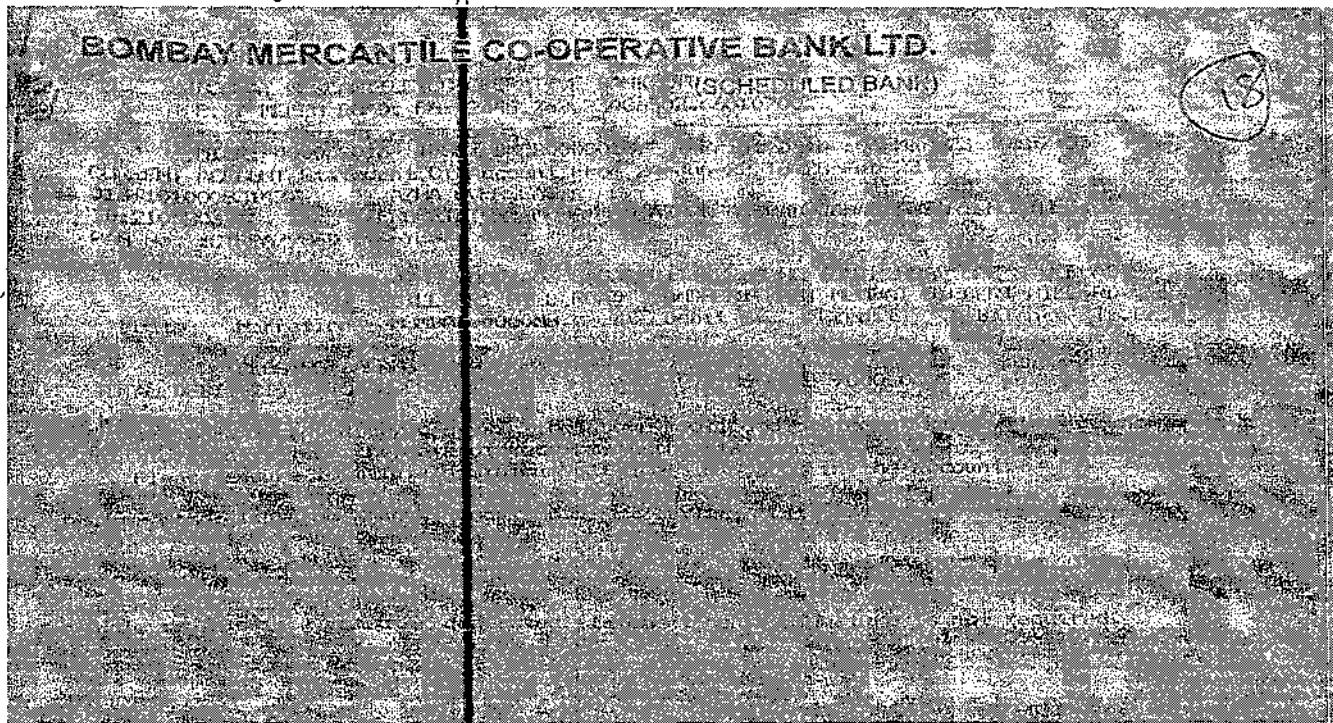
**5.1.** Verification of the said mobile no. 8898319194 of consignee led to the the finding that the said no. belonged to a person namely Shri Ashfak Mehmood P, Room No. 2-C/107, Shree Sai Ganesh Krupa C H S Limited, Pipeline, MIDC, Near Patani Computer, Andheri, Mumbai. The above premises of Shri Ashfak Mehmood P located was searched on 02.09.2023 under Section 105 of the Customs Act, 1962. Panchanama dated 02.09.2023 detailing the said proceedings was also drawn. The above premises was found to be residential premises, where a person namely Shri Salim Khalid was found available, who informed that he is living in the said premises along with Shri Firdos Mehmood P, owner of the said premises. During the entire search proceedings, nothing incriminating was found.

**6.** Statement dated 02-03.09.2023 of Shri Mohammad Azhar Arshad Jamal Ansari, Proprietor of IEC firm M/s Azha Overseas was recorded under Section 108 of the Customs Act, 1962. The contents of the statement are not being repeated here for the sake of brevity. During the recording of the above statement, he voluntarily submitted his dual sim mobile phone 'realme X7 Max – having model No. RMX3031/S. N. C6CUBUIVQ8MZIV59/IMEI No. 864045054254297 & 864045054254289 with Sim Card bearing Mobile No. 7021561546 for your further investigation.

7. Statement dated 06.09.2023 of Shri Sanjay Biren Gadekar, General Manager, M/s United Liner Shipping Services LLP was recorded under Section 108 of the Customs Act, 1962.

8. Shri Hector Sequeira, Assistant General Manager of M/s United Liner Shipping Services LLP, Ahmedabad in his statement dated 06.09.2023 recorded under Section 108 of the Custom Act, 1962.

9.1. During the course of investigation, it was revealed that the bank account was opened in Bombay Mercantile Co-operative Bank Limited, P. D. Mello Road, Mumbai by Shri Mohammad Azhar Arshad Jamal Ansari, which was assisted by Shri Imran. Examination of statement of Current Account No. 013110100083142 maintained at Bombay Mercantile Co-operative Bank Limited, P. D. Mello Road, Mumbai for the period 24 June 2022 to 28 February 2023 revealed that the said bank account statement also contained the details of Account Holder as M/s Azha Overseas and the name of proprietor as Shri Mohammad Azhar Arshad Jamal Ansari. From the above, it appeared that the said back account was opened in the name of M/s Azha Overseas and Shri Mohammad Azhar Arshad Jamal Ansari is the proprietor of M/s Azha Overseas. The picture of front page of the said account statement is hereby affixed below:



9.2. From the above foregoing paras, it had been revealed that Ms. Ruksaar and Shri Isaak acted as an inter-mediate between the IEC holders viz. Shri Mohammad Azhar Arshad Jamal Ansari, proprietor of M/s. Azha Overseas, and Shri Imran, who appears to be the mastermind and kingpin behind the smuggling of cigarettes, which were attempted to be illegally imported in the guise of import of 'Auto Air Freshener Device'. It had been revealed from the statements of Shri Mohammad Azhar Arshad Jamal Ansari that Shri Imran aided by Ms. Ruksaar and Shri Isaak lured them for monetary considerations and obtained the KYC documents such as Adhaar Card, PAN card etc. and opened bank accounts in the name of the firm viz. M/s. Azha Overseas showing Azhar Arshad Jamal Ansari as Proprietors of the said firm. Shri Imran had obtained the documents and signatures of Shri Azhar Arshad Jamal Ansari by way of involving Ms. Ruksaar and Isaak and subsequently obtained IEC in the name of the above firms. It was also revealed from the statements of Shri Mohammad Azhar Arshad Jamal Ansari that Shri Imran had paid him Rs. 2,000/- in cash and remaining Rs. 3000/- was paid to him by Shri Isaak.

9.3. From the above, it also clearly transpired on records that Shri Mohammad Azhar Arshad Jamal Ansari, the proprietor had concerned himself in smuggling of prohibited goods i.e. cigarettes Gold Flake made in Turkey/made in India by way of mis-declaration

through the Customs port of Mundra vide above mentioned container lying at Mundra Port, which were liable for confiscation under section 111 of the Customs Act, 1962.

**9.4.** Further, the evidences, both oral and documentary, available on records, clearly established the role of Shri Mohammad Azhar Arshad Jamal Ansari, in the organized smuggling of the said mis-declared/prohibited/contrabands goods without whom, the said smuggling could not have been taken place. Accordingly, Shri Mohammad Azhar Arshad Jamal Ansari, aged 25 years, S/o Shri Arshad Jamal Ansari resident of 406, SRA building, 4<sup>th</sup> Floor, Sagar City, Building No. 6 ,VTC, Andheri (West), Mumbai Maharashtra -400058, Proprietor of IEC firm M/s Azha Overseas was arrested on 03.09.2023 vide Arrest Memo dated 03.09.2023 under the provisions of Section 104 of the Customs Act, 1962, after getting required order from the competent authority, as there are enough reasons and evidences to be believed that he had committed an offence punishable under Section 135 of the Customs Act, 1962. Therefore, he was arrested and produced before the Hon'ble ACMM court on 04.09.2023. The Court had granted judicial custody of the applicant.

**9.5.** Further, from the investigations conducted it had been revealed that Shri Imran appeared to be the main mastermind in the entire act of smuggling of Cigarettes in the container attempted to be illegally imported in the name of M/s. Azha Overseas by declaring the goods as 'Auto Air Freshener Devices'. Shri Imran for this purpose had utilized the services of Ms. Ruksaar and Shri Isaak to entice other person named Shri Mohammad Azhar Arshad Jamal Ansari and obtained his documents and signature and created firms in the name of M/s. Azha Overseas. It appeared from the statement of Shri Mohammad Azhar Arshad Jamal Ansari that Shri Imran aided by Ms. Ruksaar and Shri Isaak had enticed Shri Mohammad Azhar Arshad Jamal Ansari, for monetary considerations and made him as Proprietor of the firm viz. M/s Azha Overseas. Thus, Shri Imran aided by Ms. Ruksaar and Shri Isaak in association with Shri Mohammad Azhar Jamal Ansari had attempted to smuggle the Cigarettes, which were declared in the Bills of Lading, Packing List & Commercial Invoice to hoodwink the Customs authorities at the time of import. Shri Imran for this purpose had entered into conspiracy with Shri Ashfak Mehmood P. for clearance of the above goods through ICD, Khodiyar. Shri Imran was partially successful in getting the goods imported in the name of M/s. Azha Overseas. It was due to the intervention of the officers of DRI, Ahmedabad, that the entire smuggled goods through the consignments illegally imported in the name of M/s. Azha Overseas were seized under Section 110 of the Customs Act, 1962 as the same were liable for confiscation.

**10.1.** During the course of recording of statement, Shri Mohammad Azhar Arshad Jamal Ansari, proprietor of M/s. Azha Overseas had provided contact nos. of Shri Imran, Shri Isaak and Ms. Ruksaar, who appeared to be involved in the above said smuggling of Cigarettes. However, he did not provide the whereabouts such as full name, address etc of the above persons.

**10.2.** Further, to ascertain the whereabouts of other persons involved in the instant case as mentioned by Shri Azhar Arshad Jamal Ansari in his statement, Subscriber Details Records (SDR) in respect of the following mobile nos. provided by him were obtained from the respective service providers, which are as under:

S. N.	MOBILE NO. GIVEN BY SHRI MD. AZHAR ARSHAD JAMAL ANSARI	HOLDER AS PER SDR	ADDRESS AS PER SDR
1.	9152734884 (Imran)	Nadir Khan	House No. 580, Shuklaji Street, Mumbai - 400006
2.	9152474454 (Imran)	Mohammad Minhaj Mahamud Alam	Room No. 2, Allarakha Building, Memon Road, Masjid, Memon Road, Bhendi Bazar, Mumbai, Maharashtra - 400003
3.	7786937868 (Imran)	Mohammad Minhaj Mahamud Alam	Dhobighatta, Katihar, Salmari, Bihar 855113

4.	9082460996 (Ruksar)	Ms. Ruksar Salim Bhiklani	D/W/o Shri Mustaq Shaikh, 147/B, Vithal Pada Khar Danda Khar West Next to Bhangre House, Mumbai-400052
5.	8898319194 (Ashfak)	Ashfak Mehmood P	Room 2C/107, Shree Sai Ganesh Krupa, CHS Limited, Nr. Patni Computer, Piteline MIDC, Andheri, Mumbai
6.	9082510515 (Ishaak)	Ishaque Sikander Mansuri	S/o Sikander Mansuri, 149/Zakaria Masjid Street, 4th Floor, Room No. 17, Masjid Bander, Zakaria Masjid, Mumbai.

**10.3.** From the above it appears that Imran had been using above three nos. 9152734884, 9152474454 & 7786937868, which are registered in the name of three different persons. All the said three subscribers were summoned but none of them appeared in this office. On examination of SDR/KYC of Mobile No. 7786937868, it was also noticed that reference person for the issuance of said no. was Shri Imran Allahwala, Ground Floor Room No. 95, Bhajiya Building, Zakaria Masjid Street, Chinch Bunder, Dongri, Mumbai, Maharashtra 400009. From the above details of subscribers, it also appears that Ms. Ruksar's full name is Ruksar Salim Bhiklani and Ishaak's full name is Ishaque Sikander Mansuri.

**10.4.** Further, several summons were issued to the persons shown in above table. Summons issued to Shri Ashfak Mehmood P., Imran, Ruksaar & Mohammad Minhaj Mahamud Alam got returned 'undelivered' to this office having postal remarks viz. not known/insufficient address. None of them turned up for recording of statement and consequently none of them joined the investigation.

#### **11. VALUATION OF GOODS SEIZED UNDER PANCHANAMA DATED 01.09.2023**

**11.1.** It appeared that the mis-declared goods viz. Gold Flake Cigarettes 'Made in India' as well as 'Made in Turkey' were attempted to be illegally imported in container bearing no SIKU2985000 covered by BL PMJEAMUN2308037 dated 19.08.2023 filed in the names of M/s. Azha Overseas by concealing the same behind the declared goods i.e. 'Auto Air Freshener Devices' in violation of the provisions of the Customs Act, 1962. Further, it evidently appeared that the declared goods viz. Auto Air Freshener Devices were used to conceal the smuggled Cigarettes. Hence, all these acts of omission and commission tantamount to "prohibited goods" under Section 2(33) and "Smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. Two types of Cigarettes i.e. (i) Gold Flake 'Made in India' and (ii) Gold Flake 'Made in Turkey' were recovered from the said container. The said Cigarettes were also non-compliant to the provisions of Section 3(0), 7(1), 7(2), 7(3) of the Cigarettes and Other Tobacco Products Act, 2003 (Prohibition of Advertisement and regulation of trade & commerce, production, supply and distribution); Rule 2 of the provisions of Legal Metrology (Packaged Commodities) Rules, 2011; Rule 6 read with Section 18 of the Legal Metrology Act, 2009; Rule 3 GSR 727(E), Rule 2 Clause 4(h) of Notification dated 15<sup>th</sup> October 2014. Consequently, all the mis-declared goods i.e. Cigarettes along with declared goods i.e. Auto Air Freshener Devices, which were used for concealing the mis-declared goods, were seized under Section 110 of the Customs Act, 1962, with a reasonable belief that the same are liable for confiscation under Section 111 & Section 119 of the Customs Act, 1962 respectively.

**11.2.** Market value of Gold Flake Cigarette 'Made in India' has been estimated to INR 165/- per packet and the value of Gold Flake Cigarette 'Made in Turkey' has been estimated to INR 320/- per packet. However, the value of 'Auto Air Freshener Device' used for concealing the above smuggled goods have been taken as NIL. Further, Seizure Memo dated 27.09.2023 was also issued for the goods seized under Panchanama dated 01.09.2023. The same are as under:

Declared Description of the Goods with HS Code	Goods found Stuffed in the Container	Qty (Cartons)	Packing	Unit Value	Total Value (Value in Rs.)
Auto Air Freshener Devices- CTH 84248900	Cigarettes- Gold Flake Made In Turkey	160 Cartons	1 Carton*50 Small Size Boxes*10 Packets of Cigarette*20 Sticks	160*50*10*320/- (MRP of Per Packet)	2,56,00,000/-
	Cigarettes- Gold Flake Made In India	165 Cartons	1 Carton*50 Small Size Boxes*20 Packets of Cigarette*10 Sticks	165*50*20*165/- (MRP of Per Packet)	2,72,25,000/-
	Auto Air Freshener Devices	44 Cartons	-----	-----	-----

From the above, it appeared that total 3250000 sticks of Cigarettes (1600000 sticks of Cigarettes 'Made in Turkey' and 1650000 sticks of Cigarettes 'Made in India') for total value of INR 5,28,25,000/- (Rupees Five Crores Twenty Eight Lakh and Twenty Five Thousand) were seized and the same appeared to be liable for confiscation under Section 111 of the Customs Act, 1962. In addition to the same, 44 Cartons of Declared goods i.e. Auto Air Freshener Device' were also seized and the same appeared to be liable for confiscation under Section 119 of the Customs Act, 1962.

**12.** It has been learnt that Cigarettes bearing Gold Flake brand are manufactured and sold in India under the control of M/s ITC Limited. Accordingly, a letter dated 15.09.2023 was issued to ITC, Limited, Ahmedabad. Consequent to the said letter, ITC Limited vide their letter dated 21.09.2023 informed this office that the goods described in the said letter as Cigarettes are counterfeit goods, falsely bearing the trademark 'GOLD FLAKE'; that ITC Limited has no cigarette manufacturing unit in Turkey or anywhere else outside India; that even in the case of the goods purportedly made in India, they are unaware of such goods and apprehend that those goods are smuggled goods; that ITC Limited's Gold Flake cigarettes are not exported out of India; that one of the FMCG businesses of ITC Limited is cigarettes marketed under a wide range of well-known trademarks, including 'GOLD FLAKE'; that ITC Limited, the brand owner of GOLD FLAKE' has been using it since 1901; that ITC Limited is also the registered proprietor of several 'GOLD FLAKE' trademarks under the Trade Marks Act, 1999; that in addition to the trademark rights, ITC Limited also has statutory rights under the Copyright Act, 1957 in the artistic works in all the variants of its 'GOLD FLAKE'; that cigarettes bearing trademark 'GOLD FLAKE' are manufactured and marketed by ITC Limited.

### **13. FORENSIC EXAMINATION**

**13.1.** The mobile phone voluntarily submitted by Shri Mohammad Azhar Arshad Jamal Ansari under his statement dated 2-3.09.2023 was sent to national Forensic Sciences University (NFSU) for forensic examination and data retrieval of the said device in the process of obtaining further evidences, if any. NFSU vide their letter dated 15<sup>th</sup> January 2024 informed that all the data from the submitted digital exhibits have been extracted using Advance Logical method and they provided the same to this office for further investigation. NFSU also submitted Certificate under Section 65B of Indian Evidence Act, 1872 vide their F. N. NFSU/CoEDF-DFL/107/23. The data so extracted from his mobile Realme, Model: RMX3031 were copied in an external pendrive and further submitted by them to this office. The data so retrieved were examined and it was found that there were some images pertaining to M/s Azha Overseas. To illustrate the same, some images are shown below:

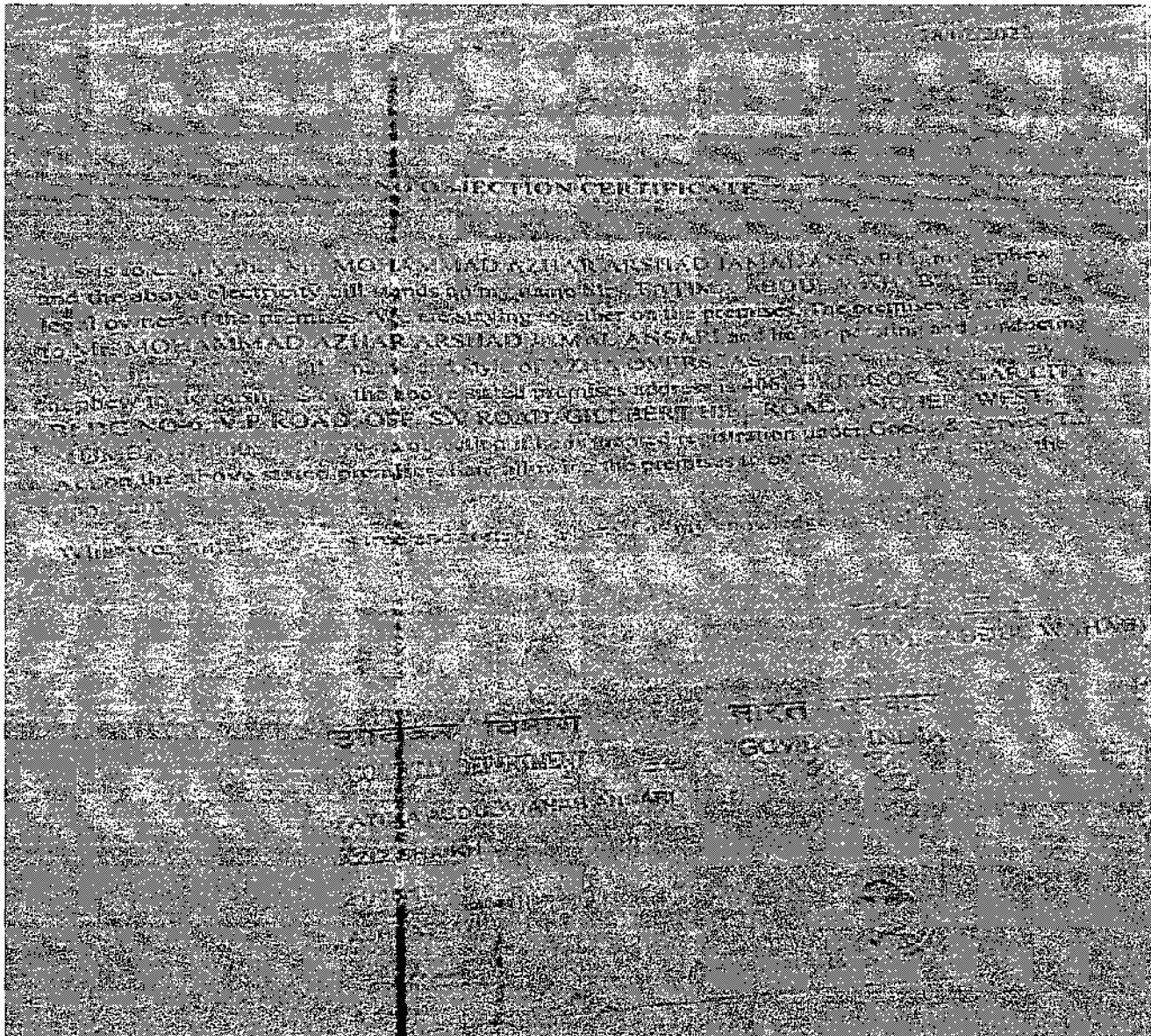


Image – 1

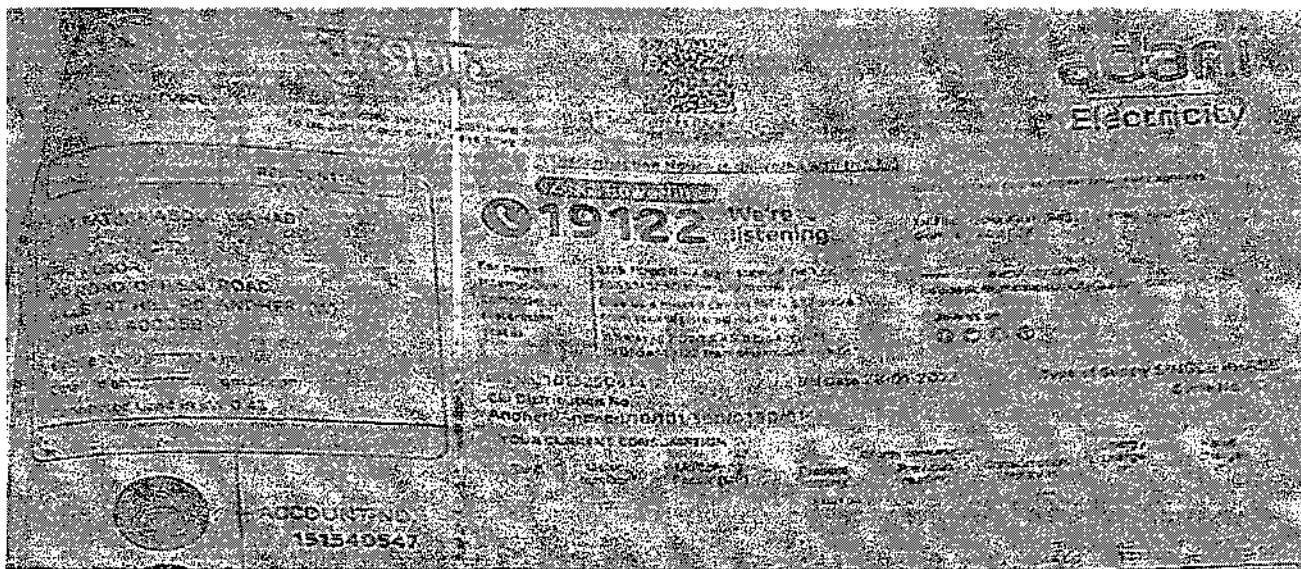


Image – 2

13.2. From the above Image – 1, it is clear that the Shri Mohammad Azhar Arshad Jamal Ansari had knowingly obtained 'No Objection Certificate' from Mrs. Fatima Abdul Wahav, the legal owner of the premises i.e. 4<sup>th</sup> Floor, 406, Sagar City, Bldg 6, V P Road, Off S V Road, Gilbert Hill Road, Andheri West, Mumbai-400058, residing at 406, 4<sup>th</sup> Floor, Sagar City, Bldg No. 6, V P Road, Off S V Road, Gilbert Hill Road, Andheri West, Mumbai-400058 for operating and conducting business of toys in the name and style of M/s Azha Overseas. Further, above Image – 2, which is copy of electricity bill evidently indicated Mrs. Fatima Abdul Wahav as the owner of the said premises.

#### **14. SUMMATION**

14.1. Investigations revealed that Shri Imran aided by Shri Ruksar and Shri Isaak, had created firm in the name & style of M/s. Azha Overseas by luring Shri Mohammad Azhar Arshad Jamal Ansari, for monetary consideration and making him the Proprietor of the firm. It also appeared that Shri Mohammad Azhar Arshad Jamal Ansari had knowingly provided all his details such as copy of Aadhar Card, PAN Card alongwith all other necessary documents as well as his signatures to Shri Imran for monetary consideration and assisted him in opening a bank account and creating a firm in the name of M/s Azha Overseas. M/s Azha Overseas attempted to illegally import 3250000 sticks of cigarettes bearing GOLD FLAKE brand for estimated market value of INR 5,28,25,000/- in guise of declared goods viz. Auto Air Freshener Devices. During the course of examination of the container SIKU2985000 under panchnama dated 01.09.2023, it was noticed that as against declared goods of 369 cartons of Auto Air Freshener Devices, there were only 44 cartons containing such Auto Air Freshener Devices, which were used for concealment of mis declared and smuggled goods i.e. cigarettes.

14.2. The said imported goods i.e. in respect to cigarette packets/packing (made in India), does not contain the Indian Statutory Health Warning (which is 85% of the front & back face of the pack and contains the text/pictures in terms of Section 3 & Section 7 of the Cigarettes and other Tobacco Products Act, 2003 (prohibition of advertisement and regulation of trade and commerce, production, supply and distribution) (herein after referred to as COTPA). Further, It does not comply with the declaration requirement in terms of Rule 2 of the Provisions of the Legal Metrology (Packaged Commodities) Rules, 2011; Rule.6 read with Section 18 of the Legal Metrology Act, 2009 for foreign/imported products (including cigarettes) viz. Name & Address of Importer/Manufacturer, Common or generic name of the commodity (i.e. cigarettes), Net quantity (i.e. 10 or 20 cigarettes), Month & year in which the commodity is imported, Retail sale price of the packet (i.e. MRP), Per unit price (i.e. Per stick Price) & Name, Address, Telephone, Email Address (if available), of person who can be contacted in case of consumer complaints. Further, it appears that it does not satisfy the requirements of particulars to be there on every packing/packages/packets of cigarette in terms of rule: 3 GSR 727(E), Rule 2 clause 4 (h) notification dated 15th Oct 2014, says, viz. a. Name of the product b. Name and address of the manufacturer or importer or packer c. Origin of the product (for import) d. Quantity of the product. Date of manufacture. Further, in respect to the cigarette packets/packings (Made in Turkey), it is observed that that the said packages/packets are also non-compliant to the provisions of Section 7(3) of the COTPA, which reads as "No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning".

14.3. It also appeared that the goods imported into India without declaring and concealing the same behind the declared goods appears to be imported into India in contravention of the relevant provisions of the Foreign Trade Policy, as well as, the Customs Act, 1962. Hence the un-declared goods, as well as, the declared goods, which were used for concealment were seized under Panchanama dated 01.09.2023. The seized goods totally valued at Rs. 5,28,25,000/-, as aforesaid had already been handed over to the custodian of M/s Ashutosh Container Services Private Limited, for safe custody under Supratnama dated 01.09.2023. The value of seized goods was based on the prevailing market value/MRP.

14.4. It appeared that Shri Imran aided by Mr. Ruksar & Shri Issak had lured Shri Mohammad Azhar Arshad Jamal Ansari with a promise of monetary considerations and taken his documents and opened bank accounts in the name of the firms as Proprietor. Shri Ruksar and Shri Isaak had acted as a conduit between the IEC holder and Shri Imran. It also appeared that Shri Mohammad Azhar Arshad Jamal Ansari was well aware of opening of such firm in the name & style of M/s Azha Overseas as image recovered from his phone indicates that he knowingly had got issued No Objection Certificate from Fatima Abdul Wahab, owner of the premises, where, M/s Azha Overseas was registered. It had also been found that despite issuance of several summons to the above persons involved, no one

turned in this office for recording of statements. Many of the summons got returned undelivered to this office from postal remarks as not known/left/incomplete address.

**14.5.** Examination of contact no. of consignee provided by M/s United Liner pertains to a person namely Shri Ashfak Mehmood P and he appeared to be a key person in nexus with Shri Imran for getting the said consignment cleared. Necessary verification was done, but this office couldn't locate Shri Ashfak Memood P. Several summons were also issued to him, but all the summons issued to him were returned undelivered from the postal authorities.

**14.6** From all the foregoing paras, it appeared that in a very planned manner & with conspiracy Shri Imran aided by Ms. Ruksaar & Shri Isaak in association with Shri Mohammad Azhar Arshad Jamal Ansari & Shri Ashfak Memood P. had knowingly and willingly involved themselves in the smuggling of Cigarettes along with the declared goods imported in the name of M/s Azha Overseas. All of them form a syndicate of smuggling of cigarettes in the instant case.

#### **15. VIOLATIONS & CONTRAVENTION OF VARIOUS PROVISIONS:**

**15.1.** The seized goods, i.e. 1600000 sticks of Gold Flake Cigarettes 'Made in Turkey' and 1650000 sticks of Gold Flake Cigarettes 'Made in India' totally valued at Rs. 5,28,25,000/- had been attempted to be illegally imported into India by way of gross mis-declaration and without valid/proper documents in violation of the provisions of the Customs Act, 1962. The said goods were mis-declaring as "Auto Air Freshener Devices" with a motive to smuggle into India by way of fraudulently circumventing the restrictions and prohibitions imposed under the Customs Act 1962 and other allied Acts, Rules and Regulations.

**15.2.** Further, the seized packets of cigarettes i.e. Gold Flake "Made in India" as well as Gold Flake "Made in Turkey" do not bear pictorial warning as mandated under Section 7 of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and Rule 3 of the cigarettes and Other Tobacco products (Packaging and Labeling) Rules, 2008 and its Amendment Rules, 2017, read-with Circular No. 09/2017- Customs, issued under F. No. 711/07/2003-Cus (AS) dated 29.03.2017 and therefore appears to be a violation of the said provisions. Further, in terms of General Note 13 (regarding Import Policy) of the schedule to the Customs Tariff Act, 1975, the import of cigarettes or any other tobacco product are subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2009, as notified by the Ministry of Health & Family Welfare. Accordingly, all the cigarettes and tobacco products should have new specified health warning and new pictorial health warning on all cigarette's packets for sale in India when imported as prescribed in the Notification dated 27.05.2011 of Ministry of Health and Family Welfare. It therefore appeared that the seized consignment of Cigarettes, had been smuggled/ imported, contrary to the prohibitions imposed by Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) and in contravention of the provisions of Foreign Trade Policy 2015-20 and Section 11(1) read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 as amended. Therefore, the same may be treated as imported illegally into India and liable for confiscation under the provisions of Section 111(d) of the Customs Act, 1962.

**15.3.** Thus, the import made as such is in violation of the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules, 1993 and Para 2.01(b), 2.03(a) of the Foreign Trade Policy 2015-2020. Therefore, the same may be treated as imported illegally into India and liable for confiscation under the provisions of Section 111(d) of the Customs Act, 1962.

**15.4.** As per clause 5 of the Chapter 1A of the General Notes regarding Import Policy given with the ITC (HS) Classification, import of all packaged commodities which are subject to the provisions of Legal Metrology (Packaged Commodities) Rules, 2011, shall also be subject to the condition laid down in the aforesaid Rules and non-compliance with such provisions shall

constitute violation of the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules, 1993 and Para 2.01(b), 2.03(a) of the Foreign Trade Policy. The packages of Cigarettes being ready to consume goods, Name and Address of the Importer, Maximum Retail Sale Price, Consumer Care number etc. details were also required to be pre-printed on the packages in terms of the provisions of the Rule 6(1)(e), 6(2), and 10 of the Legal Metrology (Packaged Commodities) Rules, 2011, but it is observed that such details are absent on each of the packages of the concealed goods. Further in terms of Rule 27 of the Legal Metrology (Packaged Commodities) Rules, 2011, the importer of any pre-packed commodity should register with the Director or Controller. Section 18 of the Legal Metrology Act, 2009 also prescribes the manner of making declaration on the pre-packed commodities. It is evident that M/s. Azha Overseas or the masterminds involved in the smuggling or any other claimant/beneficiary of the goods has not produced any such registration certificate issued to them so far and for that the goods imported by them under concealment do not follow the manner of making declaration as prescribed. This is being in violation of the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules, 1993 and Para 2.01(b), 2.03(a) of the Foreign Trade Policy 2015-2020. Therefore, the same has to be treated as imported illegally into India and liable for confiscation under the provisions of Section 111(d) of the Customs Act, 1962.

**15.5.** The packages of Cigarettes of Gold Flake Brand are of well-known branded products and it appeared that such branded goods are protected as "intellectual property" in terms of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. M/s. Azha Overseas or the masterminds involved in the smuggling or any other claimant of the goods had not come forward with the evidence of them being legal right holders for importing such goods into India for sale and marketing within India. Further, they had not produced any evidence to establish that the goods imported by them were not bearing false trade mark, brand name etc. Moreover, on being enquired from ITC Limited, the legal holder of such Trade Mark of Gold Flake, explicitly informed this office that ITC Limited does not import or export cigarettes of Gold Flake Brand and such cigarettes are counterfeit Cigarettes. Therefore, the goods imported illegally by way of concealment may be treated as imported illegally into India, infringing the intellectual property rights and thereby the same appeared to be liable for confiscation under the provisions of Section 111(d) of the Customs Act, 1962 read with the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

**15.6.** The above Cigarettes were not declared in the relevant Bill of Lading No. PMJEAMUN2308037 dated 19.08.2023 and same were found concealed behind the declared goods viz. 'Auto Air Freshener Devices' and hence the same appeared liable for confiscation under the provisions of 111(i) and 111(l) of the Customs Act, 1962. Moreover, the 44 Cartons/boxes of 'Auto Air Freshener Devices', having assessable value NIL has been used for concealment of illegally imported Cigarettes in container bearing no. SIKU 2985000 covered by Bill of Lading No. PMJEAMUN2308037 dated 19.08.2023, for which the said 44 Cartons/boxes of 'Auto Air Freshener Devices', having assessable value NIL appeared to be liable for confiscation under Section 119 of the Customs Act, 1962.

**16.** Cigarette is an item specified under Section 123 of Customs Act, 1962 by virtue of Notification No.103/2016 dated Cus (N.T.) dated 25.07.2016. The burden of proof that 1600000 sticks of Gold Flake Cigarettes 'Made in Turkey' and 1650000 sticks of Gold Flake Cigarettes 'Made in India' totally valued at Rs. 5,28,25,000/-, placed under seizure are not smuggled goods lies with the legal owner/claimant/beneficiary/importer of such goods.

**17. ROLES OF PERSONS INVOLVED IN THE ABOVE SMUGGLING, WHICH HAVE BEEN ASCERTAINED BASED ON INVESTIGATION CONDUCTED AND STATEMENT RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT.**

**17.1 ROLE OF SHRI AZHAR ARSHAD JAMAL ANSARI, PROPRIETOR OF IEC FIRM M/S. AZHA OVERSEAS:**

It appeared that Shri Mohammad Azhar Arshad Jamal Ansari, had knowingly and intentionally involved himself in the smuggling of Cigarettes, by providing the KYC documents such as PAN card, Adhaar Card, Signatures etc., to Shri Imran for monetary considerations. Shri Mohammad Azhar Arshad Jamal Ansari had further signed the documents for opening of bank account in the name of M/s. Azha Overseas. He himself along with Imran had gone to bank for getting the said bank account opened in the name of M/s Azha Overseas. He also shared OTP on receipts of the same, as and when, Shri Imran asked to share the same with him. Image – 1 as shown in para supra also evidently indicated that he had obtained No Objection Certificate from Fatima Abdul Wahab for operating the business in the name of M/s Azha Overseas. Based on such documents & signature, the firm in the name of M/s Azha Overseas was created and Shri Mohammad Azhar Arshad Jamal Ansari was well aware of such firm. Hence, his all claims about unawareness of his firm M/s Azha Overseas are hereby negated. Shri Azha Arshad Jamal Ansari, Proprietor of M/s. Azha Overseas, appeared to be associate of Shri Imran in the instant case, as he appeared to be instrumental for effecting the smuggling of Cigarettes, which were concealed behind the declared goods viz. 'Auto Air Freshener Devices' attempted to be imported from Dubai, UAE. He is the person who had signed all the documents and provided his KYC documents which was the basis for the import of the above goods vide Bill of Lading PMJEAMUN2308037 dated 19.08.2023. The said willful mis-declaration of actual goods imported and suppression of facts on the part of Shri Mohammad Azhar Arshad Jamal Ansari, Proprietor of M/s. Azha Overseas, construes "smuggling" as defined in section 2(39) of the Customs Act, 1962. It, thus, appeared that Shri Mohammad Azhar Arshad Jamal Ansari, Proprietor of M/s. Azha Overseas, is involved in the smuggling of goods by resorting to concealment of the cigarettes behind the declared goods viz. 'Auto Air Freshener Device' with an intent to smuggle the same into India.

Thus, it appeared that, Shri Mohammad Azhar Arshad Jamal Ansari, Proprietor of M/s. Azha Overseas, by his acts of commission and omission rendered the undeclared, as well as, declared goods liable to confiscation under the provisions of Section 111 and Section 119 of the Customs Act, 1962, as he knowingly and intentionally made, signed and used, and caused to be made, signed and used, declaration, statement and document which was false and incorrect in material particulars, in the transaction of business for the purposes of the Customs Act, 1962 and thereby appeared to be liable for penalty under Sections 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

## **17.2 ROLE OF SHRI IMRAN:**

Based on the statement of Shri Mohammad Azhar Arshad Jamal Ansari, it appeared that Shri Imran, aided by Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri, was the mastermind and main kingpin who had knowingly and intentionally involved himself in the smuggling of cigarettes, by creating firm in the name of M/s. Azha Overseas, in association with Shri Azha Arshad Jamal Ansari obtained the KYC documents such as PAN card, etc., got bank accounts opened in the name of the above firms and operated the same. From the statements of Shri Mohammad Azhar Arshad Jamal Ansari, Proprietor of M/s. Azha Overseas, it is revealed that Shri Imran in association with Shri Mohammad Azhar Arshad Jamal Ansari created a firm M/s Azha Overseas, which attempted to illegally import 1600000 sticks of cigarettes of Gold Flake 'Made in Turkey' and 1650000 sticks of cigarettes of Gold Flake 'Made in India', by way of concealing the same by declared goods 'Auto Air Freshener Device' in containerized cargo bearing no. SIKU2985000 vide BL No. PMJEAMUN2308037 dated 19.08.2023. Shri Imran in a much planned manner in association with Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri and Shri Azhar Arshad Jamal Ansari conspired such illegal importation of Cigarettes in violation of various provisions of the Customs Act, 1962 as well as allied acts & rules made thereunder. Hence, it appeared that **Shri Imran is the beneficial owner of these smuggled goods.** The said willful mis-declaration of actual goods imported and suppression of facts on the part of Shri Imran, construes "smuggling" as defined in section 2(39) of the Customs Act, 1962. It, thus, appeared that Shri Imran, is also involved in the

entire organized smuggling of goods by resorting to concealment of the consumer goods behind the declared goods with an intent to smuggle the same into India.

Thus, it appeared that, Shri Imran, by his acts of commission and omission rendered the declared, as well as, undeclared goods liable to confiscation, as he was concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing and dealing with the goods which he knew were liable to confiscation under the provisions of Section 111 and Section 119 of the Customs Act, 1962, as he knowingly and intentionally used and caused to be made, signed and used, declaration, statement and document which was false and incorrect in material particulars, in the transaction of business for the purposes of the Customs Act, 1962 and thereby he is liable for penalty under Sections 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

#### **17.3. ROLE OF Ms. RUKSAR/RUKSAR SALIM BHIKLANI AND SHRI ISAAK/ ISHAQUE SIKANDER MANSURI**

From the statement of Shri Mohammad Arshad Jamal Ansari, it appeared that Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri acted as intermediates between Shri Azhar Arshad Jamal Ansari, proprietor of M/s. Azha Overseas and Shri Imran, who appeared to be the mastermind and kingpin behind the smuggling of Cigarettes, which were attempted to be illegally imported in the guise of import of 'Auto Air Freshener Device'. It is revealed from the statements of Shri Mohammad Azhar Arshad Jamal Ansari that Shri Imran lured them for monetary considerations and obtained the KYC documents such as Adhaar Card, PAN card etc. and opened bank accounts in the name of the firm viz. M/s. Azha Overseas showing Shri Mohammad Azhar Arshad Jamal Ansari as Proprietors of the said firm. Shri Imran had obtained the documents and signatures of Shri Azhar Arshad Jamal Ansari by way of involving Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri and subsequently created the above firms. Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri, had knowingly and intentionally involved themselves in the smuggling of cigarettes, by playing vital roles for convincing Shri Azhar Arshad Jamal Ansari to provide various documents & signatures to Shri Imran for creating firm in the name of M/s. Azha Overseas. Shri Imran in a very planned manner in association with Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri and Shri Azhar Arshad Jamal Ansari conspired such illegal importation of Cigarettes in violation of various provisions of the Customs Act, 1962 as well as allied acts & rules made thereunder. Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri and Shri Azhar Arshad Jamal Ansari knowingly involved themselves in such smuggling of cigarettes. The said willful mis-declaration of actual goods imported and suppression of facts on the part of Shri Imran, construes "smuggling" as defined in section 2(39) of the Customs Act, 1962. It, thus, appeared that Shri Imran, is also involved in the entire organized smuggling of goods by resorting to concealment of the consumer goods behind the declared goods with an intent to smuggle the same into India. Several summons were also issued to them but none of them appeared in this office and hence they did not join investigation.

Thus, it appeared that, Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri, by his acts of commission and omission rendered the declared, as well as, undeclared goods liable to confiscation, as they were concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing and dealing with the goods which they knew were liable to confiscation under the provisions of Section 111 and Section 119 of the Customs Act, 1962, as they knowingly and intentionally used and caused to be made, signed and used, declaration, statement and document which was false and incorrect in material particulars, in the transaction of business for the purposes of the Customs Act, 1962 and thereby they appeared to be liable for penalty under Sections 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962.

#### **17.4. ROLE OF SHRI ASHFAK MEMOOD P.**

It appeared that as per email communication submitted by United Liner Shipping Services LLP with their counterpart i.e. ILINE Shipping LLP at Dubai, it was communicated by their counterpart i.e. ILINE Shipping LLP at Dubai that shipper i.e. M/s Noor Alrayan General Trading L.L.C. had surrendered full set of OBL, and further communicated to their Indian counterpart to release the DO to the consignee without presenting OBL; vide the email chat, contact details of consignee was also provided by M/s ILINE Shipping LLP, Dubai to M/s United Liner Shipping Services LLP. The said details were email - ashfakmidc@gmail.com & Mobile no. - 8898319194. Subscriber Details Records (SDR) obtained from respective service provider of the said no. indicated that the subscriber of the said no. is Shri Ashfak Mehmood P. Hence, it evidently appeared that Shri Ashfak Mehmood P. was key contact person for getting the above consignment of cigarettes cleared from the Customs Authorities. However, the said container was put on hold and examined by the DRI officers. Consequently, Shri Ashfak Mehmood P. didn't approach liner for such clearances. It appeared that Shri Ashfak Mehmood P. was involved in such smuggling of cigarettes.

Thus, it appeared that, Shri Ashfak Mehmood P., by his acts of commission and omission rendered the declared, as well as, undeclared goods liable to confiscation, as he was concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing and dealing with the goods which he knew were liable to confiscation under the provisions of Section 111 and Section 119 of the Customs Act, 1962 and thereby he is liable for penalty under Sections 112(a) & (b), and Section 117 of the Customs Act, 1962.

**18.1** Accordingly, **M/s Azha Overseas (Proprietor: Shri Mohammad Azhar Arshad Jamal Ansari)** was called upon to show cause as to why:-

- (i) the seized 160 Carton boxes packages containing 1600000 sticks of Gold Flake Cigarettes 'Made in Turkey' and 165 Carton boxes containing 1650000 sticks of Gold Flake Cigarettes 'Made in India', which were not declared having total assessable value of Rs. 5,28,25,000/- (Rupees Five Crores Twenty Eight Lakhs Twenty Five Thousand only), which were smuggled in containers bearing no. SIKU2985000 vide Bill of Lading No. PMJEAMUN2308037 dated 19.08.2023, should not be confiscated under the provisions of Section 111(d), 111(i) and 111(l) of the Customs Act, 1962;
- (ii) the seized 44 Cartons of declared goods i.e. 'Auto Air Freshener Device', which were used for concealment of above Cigarettes mentioned at (i) above (undeclared and concealed goods), should not be confiscated under the provisions of Section 119 of the Customs Act, 1962;
- (iii) Penalty should not be imposed upon him under Section 112(a) and/or 112(b) and/or Section 114AA and/or 117 of the Customs Act, 1962.

**18.2** The following persons were also called upon to show cause as to why Penalty (as mentioned under column no. 3 of below table) should not be imposed upon them separately under the various provisions/sections of the Customs Act, 1962:

<b>Sr. No.</b>	<b>Name of Noticee</b>	<b>Section</b>
1	Shri Imran	112(a) & 112(b), 114AA and 117
2	Ms. Ruksar / Ms. Ruksar Salim Bhiklani	112(a) & 112(b), 114AA and 117
3	Shri Ishaak / Ishaque Sikander Mansuri	112(a) & 112(b), 114AA and 117
4	Shri Ashfak Mehmood P.	112(a) & 112(b) and 117

## **19. DEFENCE SUBMISSIONS:**

**19.1 Shri Mohammad Azhar Arshad Jamal Ansari (Noticee-1) submitted reply dated 02.02.2024 (which were received on 22.01.2025 after attending personal hearing on 16.01.2025) wherein he interalia stated that:**

- So far as averments made in paragraph 4.1 of the show cause notice in question are concerned, I state the averments made in the paragraph under reference is regarding my residential address which is owned by my mother i.e. Fatima Abdul Vahab Kathewadi.
- So far as averments made in paragraph 4.3 of the show cause notice in question are concerned, I state that consequent to the summons, statement of myself was also recorded on 01/02.09.2023 under Section 108 of the Customs Act, 1962, wherein, it is stated that I am a proprietor of IEC firm M/s Azha Overseas is not true and correct and I deny the same. I further state I have stated that I came to know about the firm M/s Azha Overseas running in my name through one of my friends Shri Mudassir Khan had informed me that a person named Shri Imran had opened a fake firm in my name and it had raised a doubt in my mind as Shri Imran in past had also asked me to open an account for which, Shri Imran offered me Rs. 5000/- . Further, one of the friends of my sister, named Ms. Ruksar had introduced me to her relative named Isaak through telephone and that Shri Isaak telephonically asked me to open a bank account in my name for which Shri Isaak had offered me Rs. 5,000/- and asked me to send copy of my Adhaar Card, PAN Card and Light Bill for the same and that Shri Isaak had given me contact details of a person named Shri Imran and asked me to contact Shri Imran for opening of Bank Account and that I had contacted Shri Imran through whatsapp and handed over the signed photocopies above required documents to Shri Imran and I along with Shri Imran had gone to Bombay Mercantile Cooperative Bank Limited, P D Mello Road, Mumbai for opening of Bank Account and after opening of bank account, Shri Imran had given me Rs. 2,000/- in cash and Shri Isaak had sent him Rs. 3,000/- via Google Pay. I further state that I was lured to receive the meager amount and I signed the documents and sent the copies thereof. I was not aware about the purpose for which such exercise has been done. I state that Mr. Imran and Mr. Isaak along with Ms. Rukshar have tempted me to signed the documents for opening the bank account, except this, I have no knowledge or the intention of any illegal transactions.
- So far as averments made in paragraph 7.1 of the show cause notice in question are concerned, the same are true and correct except paragraph aj. I state that what is stated in paragraph aj of paragraph 7.1 is not true and correct and I deny the same.
- So far as averments made in paragraph 10.2 of the show cause notice in question are concerned, I state that the averments made therein are true and correct.
- So far as averments made in paragraph 10.3 of the show cause notice in question are concerned, I state that I deny the averments made therein, I state that I am not concerned in smuggling of prohibited goods i.e. cigarettes Gold Flake made in Turkey /made in India by way of misdeclaration through the Customs port of Mundra vide above mentioned container lying at Mundra Port.
- So far as averments made in paragraph 10.4 of the show cause notice in question are concerned, I deny the same as the same are not true and correct. I further state that I am not engaged in the organized smuggling of the said misdeclared / prohibited / contrabands goods.
- So far as averments made in paragraph 10.5 of the show cause notice in question are concerned, I deny the same as the same are not true and correct. I state that there was no any evidence against me under section 135 of Customs Act 1962 and I have not committed any-offence thereof and I was falsely and wrongly arrested and produced before the Honourable Court.
- I further state that I was enticed by Mr. Imran, Ms. Ruksar and Mr. Isaak for meager monetary consideration.
- I deny that I had knowingly obtained No Objection Certificate from Mrs. Fatima Abdul Vahab, the legal owner of the premises for operating and conducting the business of toys in the name and style of. M/s Azha Overseas. I state that No Objection Certificate

was got up and forged. The photo on the Pan Card is a different from my mother. In the photo, it is clearly seen that young lady is there who is not my mother.

- So far as averments made in paragraph 16.5 of the show cause notice in question are concerned, I deny the same. It is false and incorrect to state that as mentioned in the paragraph under reference that myself was well aware of opening of such firm in the name and style of M/s Azha Overseas and it is also not true that I had knowingly got issued No Objection Certificate from Mrs. Fatima Abdul Wahab, owner of the premises. I state that No Objection Certificate was got up and forged. The photo on the Pan Card is a different from my mother. In the photo, it is clearly seen that young lady is there who is not my mother.
- So far as averments made in paragraph 16.7 of the show cause notice in question are concerned, I deny the same. I state that it is not true that I in association with Mr. Imran, Ms. Rukshar and Mr. Isaak and Mr. Ashfak Mehmood P. had knowingly and willingly involved in smuggling of cigarettes. It is not true that all of us formed syndicate of smuggling of cigarettes in the instant case. I state that I have nothing to do with the smuggling business.
- I state that it is not true that I am knowingly and intentionally involved myself in the smuggling of Cigarettes, by providing the KYC documents such as PAN card, Adhaar Card, Signatures etc., to Shri Imran for monetary considerations and that I had further signed the documents for opening of bank account in the name of M/s. Azha Overseas and that I myself along with Imran had gone to bank for getting the said bank account opened in the name of M/s Azha Overseas and that I also shared OTP on receipts of the ~game, as and when, Shri Imran asked to share the same with him. It is not correct to say that image 1 as shown in para supra also evidently indicated that I had obtained No Objection Certificate from Fatima Abdul Wahab for operating the business in the name of M/s Azha Overseas and based on such documents & signature, the firm in the name of M/s Azha Overseas was created and I was well aware of such firm. It is not true and correct that I have associated being the Proprietor M/s. Azha Overseas with Shri Imran in the instant case, as he appears to be instrumental for effecting the smuggling of Cigarettes, which were concealed behind the declared goods viz. 'Auto Air Freshener Devices' attempted to be imported from Dubai, UAE. I deny that I had signed all the documents and provided KYC documents which was the basis for. The import of the above goods vide Bill of Lading PMJEAMUN2308037 dated: 19.08.2023. I deny that the said willful mis- declaration- of actual goods imported and suppression of facts on my part construes "smuggling" as defined in section 2(39) of the Customs Act, 1962. I deny that I am involved in the smuggling of goods by resorting to concealment of the cigarettes behind the declared goods viz. 'Auto Air Freshener Device' with an intent to smuggle the same into India. I further state that No Objection Certificate from Mrs. Fatima Abdul Wahab was forged and got up by somebody and the same was not obtained by me. On this fact only, it is not proper to negate my all claims about unawareness of the firm i.e. M/s Azha Overseas. I state that all the transactions done by me were not knowingly and intentionally and I was not aware for what purpose, the signatures were obtained and the bank account was opened. I state that No Objection Certificate was forged and got up by somebody and it was not obtained by me.
- I further state that it is not true that by my acts of commission and omission rendered the undeclared as well as declared goods liable to confiscation. It is also not true that I knowingly and intentionally made, signed and used and caused to be made signed and used, declaration, statement and document which was false and incorrect in material particulars in the transaction of business for the purposes of the Customs Act, 1962. It is also not true and correct that thereby I am liable for penalty under sections 112(a) and (b), section 114AA and section 117 of the Customs Act 1962.
- So far as averments made in paragraph 21 of the show cause notice in question regarding the role of Ms. Imran are concerned, I state that it is true and correct.
- So far as averments made in paragraph 22 of the show cause notice in question regarding the role of Ms. Rukshar and Mr. Isaak are concerned, I state that it is true and correct.

- So far as averments made in paragraph 23 of the show cause notice in question regarding the role of Mr. Ashfak Mehmood P. are concerned, I state that it is true and correct.
- I state that I was lured by Mr. Imran, Ms. Rukshar, Mr. Isaak for meager amount in lieu of making signatures on the documents, OTPs were supplied. I further stated that I came to know about this false and fake opening of firm when GST Officer visited my residential house. I further state that when I came to know about the fake firm, I immediately wrote to the GST Officer to cancel the registration of fake firm. I have also submitted an affidavit for cancellation of GST registration of the firm in the name and style of M/s Azha Overseas. I state that the GST Officer visited my residential house and inspected the house and gave me the order for cancellation of registration dated 21.9.2023. Copy of the affidavit, application and order for cancellation of registration by the GST Officer are annexed herewith for ready reference and perusal.

**20. RECORDS OF PERSONAL HEARING.**

- (i) Following the principles of natural justice, opportunities of personal hearings were granted on dated 18.10.2024, 08.11.2024 & 16.01.2025. Shri Mohammad Azhar Arshad Jamal Ansari (Noticee-1) appeared for personal hearing on 16.01.2025 and stated that during the lockdown period Ms. Ruksar/Ms. Ruksar Salim Bhikiani (Noticee-3) suggested that that government is paying Rs. 5000/- due to corona pandemic. M/s. Ruksar shared contact no. of Shri Ishaak/Ishaque Sikander Mansuri (Noticee-4) and Ishaak Shared contact no of Shri Imran (noticee-2). Then, I (noticee-1 & IEC holder) gave documents to Shri Imran. He stated that he don't know about any import and export related activities. He even don't aware about the procedure for import clearance. He sought 10 days' time to submit his final reply.
- (ii) Other noticees neither appeared for personal hearings nor submitted any written submissions.

**DISCUSSIONS AND FINDINGS**

**21.** I have gone through the facts of the case, Show Cause Notice dated 27.02.2024 and the noticee's submissions both, in written and in person. I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- i. Whether goods i.e. "Gold Flake Cigarettes" having total value of Rs. 5,28,25,000/- (Rupees Five Crores Twenty Eight Lakhs Twenty Five Thousand only), which were smuggled in containers bearing no. SIKU2985000 vide Bill of Lading No. PMJEAUN2308037 dated 19.08.2023 are liable for confiscation under the provisions of Section 111(d), 111(i) and 111(j) of the Customs Act, 1962 or otherwise.
- ii. Whether the seized 44 Cartons of declared goods i.e. 'Auto Air Freshener Device', which were used for concealment of above Cigarettes mentioned at (i) above (undeclared and concealed goods), are liable for confiscation under the provisions of Section 119 of the Customs Act, 1962;
- iii. Whether Penalty under Section 112(a) and/or 112(b) and/or Section 114AA and/or 117 of the Customs Act, 1962 is liable to imposed on **M/s Azha Overseas (Proprietor: Shri Mohammad Azhar Arshad Jamal Ansari)** or otherwise.
- iv. Whether penalty is liable to be imposed upon co-noticees under Section 112(a) & 112(b), 114AA and 117 of the Customs Act, 1962 or otherwise.

**22.** I find that the present show cause notice is centered on the goods imported through containers SIKU2985000 covered under Bill of Lading No. PMJEAUN2308037 dated 19.08.2023 wherein good were declared as 'Auto Air Freshener Device'. However, upon

examination, prohibited goods viz. cigarettes (counterfeit goods) were found which were imported by way of mis-declaration in the description of goods mentioned in the Bill of Lading. I find that IGM (Import General Manifest) has been filed for the said Container. The Container was destined for ICD Khodiyar.

**22.1.** On perusal of the examination report, I observed that only the first two rows were containing Auto Air Freshener Device of different brands and other cartons of third row were containing cigarette boxes of Gold Flake Brand. During the said examination proceedings, two types of cigarettes were found. One type of cigarette packet indicated the brand name Gold Flake "Made in Turkey" and other type indicated the brand name Gold Flake "Made in India". During examination the following goods were found in the Container:

S. N.	Item Description	No. of Cartons	Particulars	Total
1.	Auto Air Freshener Device/Air perfume	44	-	44 Cartons
2.	Gold Flake Cigarette "Make in Turkey"	160	160 Carton*50 Small size boxes*10 packets*20 sticks	1600000 Sticks
3.	Gold Flake Cigarette "Make in India"	165	165 Carton*50 Small size boxes*20 packets*10 sticks	1650000 Sticks

From the above, it is evident that total 3250000/- sticks of cigarettes were found in the Container which were not declared in the IGM. The description of the goods was grossly mis-declared as 'Air Auto Freshener Devices' in the import documents. The goods contained in the said imported cargo were completely mis-declared and said mis-declared cigarettes were found to be non-compliant accordance to the Cigarettes and other tobacco Products (Packaging and Labelling) Rules, 2022. Thus, I have no doubt that the goods are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962.

**22.2** I observed that only 01 person namely Shri Mohammad Azhar Arshad Jamal Ansari, proprietor of IEC firm M/s Azha Overseas was turned up during the investigation period and other noticees have not responded to the summons issued by the investigation agency. Thus, statements of Shri Mohammad Azhar Arshad Jamal Ansari is the key evidences to hold charges against co-noticees. From the investigation it is emerged that Shri Imran (beneficial owner of the goods) aided by Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri, had created firm in the name of M/s. Azha Overseas by luring Shri Mohammad Azhar Arshad Jamal Ansari, for monetary consideration and making him the Proprietor of the firm. I observed that a person Shri Ashfak Mehmood P. was key contact person for getting the above consignment of cigarettes cleared from the Customs Authorities. However, the said container was put on hold and examined by the DRI officers. Consequently, Shri Ashfak Mehmood P. didn't approach liner for such clearances. I noticed that Shri Imran was the mastermind and main kingpin in the present case. During the investigation period, based on the statements of IEC holder, summons were issued to the all noticees, however, none of them turned up during the investigation.

**22.3** The fact is not in dispute that Shri Mohammad Azhar Arshad Jamal Ansari had provided all his details such as copy of Aadhar Card, PAN Card alongwith all other necessary documents as well as his signatures to Shri Imran for monetary consideration and assisted him in opening a bank account and creating a firm in the name of M/s Azha Overseas. Prohibited goods i.e Cigarettes Gold Flake "Made in India" as well as Gold Flake "Made in Turkey" were imported under the IEC of M/s Azha Overseas.

**22.4** I note that total quantity of 3250000 sticks of Cigarettes of Gold Flake Brand having market value around Rs. 5,28,25,000/- were found and further these smuggled cigarettes had not even bear mandatory pictorial warnings on their packets and thereby contravened provisions of Tobacco and Other Products (Packaging & Labeling) Rules 2008 & Tobacco and Other Products (Packaging & Labeling) Amendment Rules 2014. Since the said

3250000 Cigarette sticks were not declared in the IGM, the goods were placed under seizure under section 110 of the Customs Act, 1962.

### **23. VALUATION OF THE GOODS:**

**23.1** I find that Bill of Entry was not filed for the consignment imported under Bill of Lading No. PMJEAMUN2308037 dated 19.08.2023 pertaining to Container No. SIKU2985000. Hence, value was not declared for the said shipment. However, for the purpose of the levying penalty on illegal import of goods, the value of the goods is required to be determined in accordance with provisions of Section 14 of Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter also referred to as "Rules 2007"). I find that Rule 3(1) of Rules 2007 provides that "*subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10*". Rule 3(4) ibid states that "*if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9 of Custom Valuation Rules, 2007*". The relevant Rules of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are reproduced hereunder:-

#### ***3. Determination of the method of valuation-***

*(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

*(2) Value of imported goods under sub-rule (1) shall be accepted:*

*Provided that -*

*(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -*

*(i) are imposed or required by law or by the public authorities in India; or*

*(ii) limit the geographical area in which the goods may be resold; or*

*i. do not substantially affect the value of the goods;*

*(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*

*(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and*

*(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.*

*(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.*

*(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.*

*(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;*

*(ii) the deductive value for identical goods or similar goods;*

*(iii) the computed value for identical goods or similar goods;*

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

#### **4. Transaction value of identical goods. -**

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

#### **Rule 5 (Transaction value of similar goods).-**

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.

#### **Rule 7 of the CVR, 2007, stipulates that:-**

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions :-

- (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;
- (ii) the usual costs of transport and insurance and associated costs incurred within India;
- (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

**Rule 8 of the CVR, 2007, stipulates that:-**

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

**Rule 9 of the CVR, 2007, stipulates that:-**

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of this rule on the basis of-

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.

**23.2** I state that "Value" has been defined under Section 2(41) of the Customs Act, 1962 as "Value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14".

**23.3** The Section 14 ibid provides, inter alia, that the value of the imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such their conditions as may be specified in the rules made in this behalf. Further, its proviso provides that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf. I find that as per the above provision value of any imported goods is the price actually paid or payable for the goods plus the components of other incidental charges to the extent mentioned in proviso to Section 14 ibid and in the manner specified in the Rules made under Section 14 ibid. In the instant as stated above, the whole consignment was found mis-declared with prohibited goods and the price actually paid not provided by any Noticee. Market value of Gold Flake Cigarette 'Made in India' has been estimated to INR 165/- per packet and the value of Gold Flake Cigarette 'Made in Turkey' has been estimated to INR 320/- per packet. However, the value of 'Auto Air Freshener Device' used for concealing the above smuggled goods have been taken as NIL. The fact already emerged that the goods are counterfeit and cannot be manufactured outside of India, hence, import data not available for the said prohibited goods.

**23.4** I find that Rule 4 (1) (a) of Rules 2007 stipulates determination of value of goods on the basis of value of identical goods. However, details of imports of identical goods were not available. Rule 5, providing for transaction value of similar goods, can also not be invoked as the goods have been found mis declared in terms of description, undeclared, prohibited, counterfeited etc. I also noticed that no exact sales values and data required for quantification of the deductions was available, hence, rule 7 cannot be invoked. Further, computed value, as provided under Rule 8, cannot be calculated in the absence of quantifiable data relating to cost of production, manufacture or processing of import goods. In such scenario, I find it appropriate to invoke the provisions of Rule 9 i.e. residual method for determining the value of the impugned import goods. Rule 9 provides for determination of value using reasonable means consistent with the principles and general provisions of these rules.

**23.5** I find that in absence of credible data of import of similar goods and other constraints the value of these goods cannot be determined in terms of Rule 4, 5, 6, 7, 8 of Customs Valuation Rules 2007. Hence, the value is to be determined in terms of Rule 9 of said rules. In view of the above, I find that the market price as determined during the investigation period has to be considered as the basis for arriving at Market value of these goods. I hold it appropriate to determine the Market value of Gold Flake Cigarette 'Made in India' as Rs. INR 165/- per packet and the value of Gold Flake Cigarette 'Made in Turkey' as INR 320/- per packet. However, as proposed in the notice, the value of 'Auto Air Freshener Device' used for concealing the above smuggled goods has been considered as NIL. Accordingly, The value determined is as per below table:

Declared Description of the Goods with HS Code	Goods found Stuffed in the Container	Qty (Cartons)	Packing	Unit Value	Total Value (Value in Rs.)
Auto Air Freshener Devices CTH 84248900	Cigarettes Gold Flake Made in Turkey	160 Cartons	1 Carton*50 Small Size Boxes*10 Packets of Cigarette*20 Sticks	160*50*10*320/- (MRP of Per Packet)	2,56,00,000/-
	Cigarettes Gold Flake Made in India	165 Cartons	1 Carton*50 Small Size Boxes*20 Packets of Cigarette*10 Sticks	165*50*20*165/- (MRP of Per Packet)	2,72,25,000/-
	Auto Air Freshener Devices	24 Cartons		-----	-----

In view of the above, I hold that the value under Section 14 of the Customs Act, 1962 read with Rule 9 of the CVR, 2007; comes to **Rs. 5,28,25,000/- (Rupees Five Crores Twenty Eight Lakh and Twenty Five Thousand only).**

**24. CONFISCATION OF THE GOODS UNDER SECTION 111(d), 111(i), 111(l) and 119 OF THE CUSTOMS ACT, 1962:**

**24.1** It is alleged in the SCN that the goods are liable for confiscation under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111 of the Customs Act, 1962 are reproduced below: -

*(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;*

*(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

**24.2** In view of the facts and material evidence on record, it is clearly established that Shri Imran with his associates had attempted to smuggle the foreign origin cigarettes of Gold Flake brand in guise of "Auto Air Freshener Devices". Further, I find that the description of the goods had been declared as "Auto Air Freshener Devices" in the import documents, however, on examination of the impugned goods, total 32,50,000 cigarette sticks (1600000 sticks of Gold Flake Cigarettes 'Made in Turkey' and 1650000 sticks of Gold Flake Cigarettes 'Made in India') were found. The value of 32,50,000 subject cigarettes in terms of Section 14 of Customs Act, 1962 read with CVR Rules 2007 has been determined as Rs. 5,28,25,000/-. These items were neither declared in the IGM, nor in the Bill of Lading filed before the Customs authorities. Thus, I find that the Noticees have contravened the provisions of Customs Act, 1962, in as much as they had willfully mis-declared the imported goods, in the corresponding import documents. Thus, I find that the said smuggled 32,50,000 Cigarette sticks, having market value of Rs. 5,28,25,000/- are liable to confiscation under the provisions of Section 111(d), 111(i) and 111(l) of the Customs Act, 1962.

**24.3** I observed that Gold Flake Brand is a well-known brand in India and M/s. Azha Overseas or the masterminds involved in the smuggling or any other claimant of the goods had not came forward with the evidence of them being legal right holders for importing such goods into India for sale and marketing within India. Further, they had not produced any evidence to establish that the goods imported by them were not bearing false trade mark, brand name etc. I also find that ITC Limited (brand owner/ Trade Mark holder of 'Gold Flake') clarified during the investigation that ITC Limited does not import or export cigarettes of Gold Flake Brand and such cigarettes are counterfeit Cigarettes. Therefore, I have not doubt in my mind that cigarettes were imported illegally by way of concealment into India, infringing the intellectual property rights and thereby the same are liable for confiscation under the provisions of Section 111(d) of the Customs Act, 1962 read with the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The above Cigarettes were not declared in the relevant Bill of Lading No. PMJEAMUN2308037 dated 19.08.2023 and same were found concealed behind the declared goods viz. 'Auto Air Freshener Devices' and hence the same appeared liable for confiscation under the

provisions of 111(i) and 111(l) of the Customs Act, 1962. Further, I find that remaining goods i.e "Auto Air Freshener Devices" which were used for concealment of these prohibited goods are also liable for confiscation under Section 119 of the Customs Act, 1962.

**24.4** I note that Import of cigarettes is subject to provisions contained in Section 7(3) of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, as amended, read with Cigarettes and other Tobacco Products (Packaging and Labeling) Rules, 2008 and its Amendment Rules, 2017, read with Circular No. 09/2017- Customs, issued under F. No. 711/07/2003-Cus (AS) dated 29.03.2017, as notified by the Ministry of Health & Family Welfare, that import of cigarettes which do not bear specified health warnings on their packages is prohibited as per Foreign Trade Policy and such cigarettes cannot be imported/allowed to be cleared from Customs. The subject Rules as amended by the Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2014, require that the specified health warning should cover at least 85% of Principal Display Area of the package of which 60% shall cover pictorial health warning and 25% shall cover textual health warning and shall be positioned on the top edge of the package and in the same direction as the information on the principal display area. However, it is evident from the Panchanama dated 01.09.2023 that the packages of the Cigarettes recovered from Container No. SIKU2985000 were not having any type of pictorial health warnings. Further, in terms of General Note 13 (regarding Import Policy) of the schedule to the Customs Tariff Act, 1975, the import of cigarettes or any other tobacco product are subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2009, as notified by the Ministry of Health & Family Welfare. However, the said goods were also found non-compliance of the said import policy.

**24.5** I find that the goods were found in pre-packed condition, hence, in terms of Rule 27 of the Legal Metrology (Packaged Commodities) Rules, 2011, the importer of any pre-packed commodity should register with the Director or Controller. Section 18 of the Legal Metrology Act, 2009 also prescribes the manner of making declaration on the pre-packed commodities. However, no such registration is available with the goods or produced during the investigation. I also find that M/s. Azha Overseas or the masterminds involved in the smuggling or any other claimant/beneficiary of the goods has not produced any such registration certificate issued to them so far and for that the goods imported by them under concealment do not follow the manner of making declaration as prescribed. This is being in violation of the provisions of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules, 1993 and Para 2.01(b), 2.03(a) of the Foreign Trade Policy 2015-2020. Therefore, the same are falls under the category of illegally importation into India and liable for confiscation under the provisions of Section 111(d) of the Customs Act, 1962.

**24.6** From the above, it is evident that the said 32,50,000 Cigarette sticks, having market value of Rs. 5,28,25,000/-, are covered under the definition of "prohibited goods" as per Section 2(33) of the Customs Act, 1962 and consequently, they are liable for absolute confiscation under the provisions of Section 111 (d) of the Customs Act, 1962. Also, the import of subject cigarettes in the manner described above constitutes an act of "smuggling" as defined in Section 2(39) of the Customs Act, 1962 and the subject cigarettes are required to be treated as smuggled goods under the provisions of Customs Act, 1962.

**24.7.1** From the above, it is clear that the impugned goods had been improperly imported to the extent that such goods were prohibited, not mentioned in the import manifest, concealed, mis-declared and other material particulars, therefore, liable for confiscation. As the impugned goods are found to be liable for confiscation under the provisions of Section 111 of the Customs Act, 1962, it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 ibid reads as under:

**"Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."**

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. A fundamental requirement in considering requests for re-export is whether the importer has made a truthful declaration at the time of import. In the instant case goods were found totally different from the declared description. I find that no one has claimed the goods, despite the fact the Shri Imran is the beneficial owner of the imported goods. The namesake owner of the IEC is also unaware of how the goods were imported under his IEC. Shri Imran (beneficial owner of the imported goods) not came forward to claim the goods as he knows that the goods are not going to be cleared. However, Shri Imran cannot distance himself from the responsibility of the improper import made by him being beneficial owner of the imported goods. Apart from the said fact, as I have already discussed, I find that goods were found prohibited and falls within the meaning of Section 11 of the Customs Act, 1962; are liable for absolute confiscation. Further, I also hold that other goods i.e. Auto Air Freshener Device' are also liable for absolute confiscation alongwith the prohibited goods being used/medium for smuggling of the prohibited goods.

**24.7.2** Apart from the above, it is pertinent mention here that the import of the prohibited goods have taken place after a well hatched conspiracy by the members of smuggling cartel. If the consignment got cleared there would have been negative impact on the consumer of the country who ultimately use the said prohibited goods. I cannot treat the present case like other cases. Hence, the imports made cannot be considered as bona fide and left no scope to take lenient view in such type of cases. In view of the blatant violation of the Customs Act and outright attempted smuggling of foreign origin cigarettes, I find it appropriate to absolute confiscate the goods imported under the impugned consignment.

**25. Liability under Section 123 of the Customs Act, 1962:** As per the provisions of Section 123 of the Customs Act, 1962, the burden to prove that the goods are not smuggled goods is required to be decided in the instant case. Section 123 of the Customs Act, 1962, states that:

**SECTION 123. Burden of proof in certain cases. —**

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—

(a) in a case where such seizure is made from the possession of any person, —

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold and manufactures thereof watches, and any other class of goods which the Central Government may by notification in the Official Gazette, specify.

**25.1** I find that Hon'ble Supreme Court in the case of **J.K. BARDOLIA MILLS v. M.L. KHUNGER, DEPUTY COLLECTOR- 1994 (72) E.L.T. 813(S.C.)**, have interalia held that:

**“7. The conditions to be satisfied for application of the provisions of Section 123 of the Act are (a) the goods must be one to which Section 123 applies; (b) the goods are seized under the Act and (c) the goods must be seized in the reasonable belief that they are smuggled.”**

In the instant case total 32,50,000 Cigarettes sticks have been seized under the reasonable belief that the same were smuggled goods and therefore, burden of proving that the said Cigarettes are not smuggled goods is upon the Noticees from whose possession the same was seized. None of the co-noticees have disputed the fact of smuggling of Cigarettes into India. Further, the Central Government vide Notification No. 103/2016-Cus.(N.T.) dated 25.07.2016 specified Silver and Cigarettes as any other class of goods for the purpose of Section 123 of the Customs Act, 1962. Therefore as per this Notification No. 103/2016-Cus.(N.T.) dated 25.07.2016 when any goods (Silver and Cigarette) are seized under the Act under the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods lie on the person whose possession these goods were seized. However, Shri Imran, IEC holder or any other claimant failed to prove that the goods are not smuggled goods, hence, the noticees are liable for penal action under the provisions of the Customs Act, 1962.

**25.2** The Hon'ble High Court Culcutta in the case of **commissioner of Customs (preventive) Versus rajendra kumar damani @ raju damani- 2024 (389) E.L.T. 444 (Cal.)** passed a judgment on 15-05-2024 and clearly stated that:

*“24. What is important to note is that though the respondent took a plea that the gold bars was made out of old gold jewellery purchased in cash it was a very faint plea which was raised by the respondent and the co-noticees. Assuming such a plea was required to be considered, the onus is on the respondent and the co noticees to establish with documents that the gold which was seized was from and out of the old gold jewellery purchased by cash. This aspect of the matter was never established by the respondent and the co-notices. Therefore, the Learned Tribunal erroneously shifted the burden on the department stating that the same has not been denied. The question of denial will come only if the onus is discharged by the respondent and the co-noticees as required under section 123 of the Act. Thus, without any document placed by the respondent and the co-noticees, the tribunal could not have come to the conclusion that the department did not establish the same by cogent evidence. This finding is absolutely perverse and contrary to the scheme of Section 123 of the Act.*

Further, in the said judgment the Hon'ble Court also held that:

*“25. merely because the statement is said to have been retracted, it cannot be regarded as involuntary or unlawfully obtained. In this regard, the revenue has rightly placed reliance on the decision of the Hon'ble Supreme Court in Vinod Solanki v. Union of India and Others [2009 (233) E.L.T. 157 (S.C.)].”*

**25.3** I also refer the judgment of CESTAT Principal Bench, New Delhi in the case of **Commr. Of Customs (Preventive), NCH, New Delhi versus Suresh Bhonsle- 2024 (388) e.l.t. 90 (tri. - del.)** wherein it has been held that: “as per Section 123 of the Act the department was under reasonable belief that it was smuggled gold and therefore the burden was on the appellant being the owner of it to prove that the gold seized was not smuggled gold, which remained undischarged at his end”.

I find that the ratio of the said judgment is directly applicable to the present case, as the concerned persons failed to discharge the burden of prove that the cigarettes were not smuggled goods.

**25.4** Further, I place reliance on the judgment of Hon'ble CESTAT, CHENNAI in the case of **M/s. Gaurav Agarwal versus Commissioner of Customs, Tiruchirapalli [2020 (372) E.L.T. 724 (Tri. - Chennai)]** wherein it has been held that “Appellant not able to establish that silver was legally imported and suffered Customs duty- Confiscation of goods and penalties imposed are legal and proper - Sections 111, 112 and 123 of Customs Act, 1962”:

“6. In the present case, the silver is not in the nature of bars or coins. It is in the form of silver granules. As per the circular, when silver bullion is found in possession with foreign markings the same can be subject to seizure, if it is less than 100 kgs. In the present case, the quantity of silver bullion is 60 kgs. Then the question arises, whether silver granules would fall within the definition of silver bullion. The Commissioner (Appeals) in para 8 of his order has explained the meaning of bullion as seen in Wikipedia. Ordinary meaning of bullion given as per the dictionary is “Platinum, Gold or Silver, which is in bulk quantities”. The meaning of bullion thus does not take away platinum, gold or silver in the form of grains/granules. Thus, granules also fall within the definition of bullion. This would lead to the consequence that if the silver granules has foreign markings even though less than 100 kgs. would not be covered by the above Board circular. The next question then is whether silver granules in the present case has foreign markings. Needless to say that marking cannot be endorsed on silver granules as in case of silver coins or silver bars. The only practical way to endorse a marking on silver in the form of granules is to mention the markings on the packing/boxes which holds the silver granules. In the present case, the silver granules were found in carton boxes on which there was specific mention of the name of foreign manufacturer, lot nos., the date of manufacture etc. ....

7. The decisions relied upon by the Learned Counsel for the appellant are cases in which there were no foreign markings and, therefore, distinguishable. The decision in M/s. Murarilal Agarwal (*supra*) relied upon by the Learned Counsel, is a case of silver bars of foreign origin weighing less than 46.7 kgs and therefore is of no assistance to appellant. The appellant therein had produced bills of entry to show that the silver bars were licitly imported. The appellant here, has not been able to establish that the goods were licitly imported into India. In the case of M/s. Shambunath (*supra*) the Larger Bench was dealing with silver which was not in the form of granules. The said case relates to 101 slabs silver which varied in weight and purity, and entirely on different set of facts.

7.1 From the foregoing, I am of the view that the appellant has not been able to establish that the silver was legally imported and suffered Customs duty. In such circumstances, I find the confiscation of goods and penalties imposed are legal and proper. The impugned order requires no interference. The appeal filed by the appellant is, dismissed.”

I find that ratio of the above judgment is also directly applicable in the present case. I observe that the burden of proving that the goods, i.e., cigarettes, were not smuggled, has not been discharged by the Noticees. Therefore, I find that Shri Imran and other noticees to the Show cause had rendered the subject goods liable for confiscation, and as a result of this act, they are also liable for penalty under the provisions of the Customs Act, 1962.

26. I find that core issues of the case have been discussed in the foregoing paras in details. Now, I proceed to examine the **roles** of the various noticees and **liability** in this elaborate scheme of mis-declaration and smuggling of the imported goods with intent to defraud the government exchequer. Accordingly, I will proceed with the discussion on the remaining issues.

#### **26.1 ROLE AND LIABILITY OF PENALTY ON SHRI AZHAR ARSHAD JAMAL ANSARI, PROPRIETOR OF IEC FIRM M/S. AZHA OVERSEAS UNDER SECTION 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:**

- i. I find that M/s. Azha Overseas is a proprietorship firm opened in the name of Shri Mohammad Azhar Arshad Jamal Ansari. From the investigation, it has been emerged that Shri Imran (beneficial owner of the goods) with the help of Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri obtained documents from Mohammad Arshad Jamal Ansari (IEC Holder). Based on these documents, a fake import firm was opened, which was later used to import prohibited goods, such as cigarettes.
- ii. I find that Shri Mohammad Azhar Arshad Jamal Ansari in his statement dated 02-03.09.2023 admitted that he met Shri Imran on several occasions, for providing of KYC documents related to bank account opening formalities. With Shri Imran, he also went to Mercantile Bank at Masjid Bunder, Mumbai for bank account opening related

formalities. He also supplied his Aadhar Card, Pan Card, Photograph etc. to Shri Imran. He further admitted to receive Rs. 2000/- in cash and Rs. 3000/- in his ICICI Bank account. I also observed that he shared OTP with Shri Imran, however, he never bothered to know as to why Imran is asking OTPs. He also admitted that he signed documents for the purpose of "sign-change form", however, he had not put new signature on the said form. He also signed on one form for applying cheque-book. From the investigation it has been emerged that Imran is the common friend of Smt. Ruksaar (Mob: 90\*\*\*\*\*996, 93\*\*\*\*\*92), who was his family friend. I also observed that GST Registration was done of M/s Azha Overseas on his address and he came to know about this fact only when the GST officer visited for verification of firm in August, 2023. Further, he claimed that on 01.09.2023, officers of DRI, MZU visited his house for enquiring about the said consignment, and then only he came to know that the said consignment was imported in his name and was seized by the officers. He further claimed that nobody had called or met him in respect of the said consignment. This fact indicates that Shri Mohammad Azhar Arshad Jamal Ansari is only namesake proprietor of the said firm i.e. M/s. Azha Overseas.

- iii. From the above, I noticed that Shri Imran lured Mohammad Azhar Arshad Jamal Ansari and opened a dummy firm for importation of prohibited goods. The fact which is here cannot be overlooked that Mohammad Azhar Arshad Jamal Ansari had provided documents/shared OTP with Shri Imran. If Shri Imran had not lured Mohammad Azhar Arshad Jamal Ansari to share documents and mobile OTPs with him, the prohibited goods would not have been imported into India. Shri Imran lured Mohammad Azhar Arshad Jamal Ansari, however Mohammad Azhar Arshad Jamal Ansari never tried to inquire whether his documents could be misused. He never attempted to find out from Imran or his relatives why the GST firm registration was done in his name. This act of Mohammad Azhar Arshad Jamal Ansari concerned himself with the importation of goods through a dummy firm which was opened by using his name. This act done by him made the goods liable for confiscation under the provisions of the Customs Act, 1962 and also made him liable for penal action.
- iv. From the investigation, it is also observed that Mohammad Azhar Arshad Jamal Ansari has not claimed the goods and shown his ignorance about the creation of IEC of M/s. Azha Overseas and importation of goods by him. I also observed that investigation already held that Shri Imran is the beneficial owner of the goods, hence, I am inclined to accept that Mohammad Azhar Arshad Jamal Ansari is not the owner of the goods. However, his role as discussed above cannot be overlooked.
- v. I find that Show Cause Notice had been issued proposing penalty on M/s. Azha Overseas through its proprietor Mohammad Azhar Arshad Jamal Ansari under Section 112(a), 112 (b), 114AA & 117 of the Customs Act, 1962 for act of omission and/or commission and for the reasons and allegations as discussed above. In this regard I find it pertinent to mention that the proprietorship firm doesn't have an identity distinct from its proprietor, therefore imposition of separate penalty on both would tantamount to imposition of double penalty for the same offence. Therefore, I hold that separate penalty as proposed under SCN on both is not warranted.
- vi. From the factual matrix of the case, I find that the Mohammad Azhar Arshad Jamal Ansari was not aware of the mis-declaration of the imported goods at his name as there was no evidence to the claim of the department that Mohammad Azhar Arshad Jamal Ansari knew about mis-declaration and further all incriminating documents recovered during investigation indicate that Shri Imran is the actual beneficial owner of imported goods. Shri Imran during investigation period had not joined the investigation. I find that the Shri Imran is the actual '*beneficial owner*' and '*Importer*' of the subject goods as per the definition of defined under Section 3 [3A] & 2(26) of the Customs Act, 1962. Thus, the penalty being an Importer will also be borne by Shri Imran on behalf of the firm M/s. Azha Overseas.

vii. I find that Mohammad Azhar Arshad Jamal Ansari let his documents to be used by unscrupulous elements and never bothered to get to know the business activities which were being conducted in the name of M/s. Azha Overseas. Though he had claimed innocence, I find that he cannot shed the legal liability of taking responsibility of goods imported in his IEC. I also find that he had provided his documents to unscrupulous elements based on which the present consignments containing prohibited goods were imported. By doing such acts and omissions which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under and thus, he has made goods liable to confiscation under Section 111 of the Customs Act, 1962. In view of above, Mohammad Azhar Arshad Jamal Ansari through his firm has concerned himself liable to penalty under Section 112(b) of Customs Act 1962. Therefore, I find that Mohammad Azhar Arshad Jamal Ansari is liable to penalty under **Section 112(b)(i)** of Customs Act, 1962. 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 under Section 112(a) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

viii. As regards the penalty on M/s. Azha Overseas through its proprietor under Section 114AA of the Customs Act, 1962 is concerned, Section 114AA mandates penal action for intentional usage of false and incorrect material against the offender. From the investigation and other material particulars, I find that documents and OTPs were shared by Mohammad Azhar Arshad Jamal Ansari for creation of dummy IEC on his name. Further, he accepted that he has signed on the form of "Sign Changing Form" but not singed the new signature. This act of him involved him for use false and incorrect materials and made himself liable for penal action under the provisions of Section 114AA of the Customs Act, 1962. He had knowingly and intentionally made/signed/used and/or caused to be made/ signed/ used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it is beyond doubt that Mohammad Azhar Arshad Jamal Ansari is also liable to penalty under Section 114AA of the Customs Act, 1962.

ix. As regards the penalty under Section 117 proposed on Mohammad Azhar Arshad Jamal Ansari, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against Mohammad Azhar Arshad Jamal Ansari already confirmed under the provisions of Section 112 and 114AA of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against Mohammad Azhar Arshad Jamal Ansari.

x. I notice that the purpose of penalties under the Customs Act, 1962 is to deter individuals and businesses from violating customs regulations by imposing financial punishments for actions like smuggling, under-declaring goods, or attempting to evade customs duties, thereby protecting the country's economy and ensuring fair trade practices. I find that the IEC holder has neither gained any monetary benefit nor claimed the goods stating that he is nowhere concerned with the goods imported. Thus, a lenient view may be taken while imposing penalty on the namesake IEC holder.

## **26.2 ROLE AND LIABILITY OF PENALTY ON SHRI IMRAN UNDER SECTION 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:**

i. I find that Summons were issued to Shri Imran by the investigating agency, however, he had given no heed to the summons and opted for not responding to the same and deliberately avoided their appearance. This act of him is in the contravention of the provisions of Section 108(3) of the Customs Act, 1962. I find that Shri Imran (beneficial owner of the goods) with the help of Ms. Ruksaar/Ruksar Salim Bhikiani

and Isaak/ Shri Ishaque Sikander Mansuri obtained documents from Mohammad Arshad Jamal Ansari (IEC Holder). Based on these documents, a fake import firm M/s. Azha Overseas was opened by Shri Imran, which was later used by him to import prohibited goods, such as cigarettes.

- ii. From the investigation, there is no ambiguity that Shri Imran in a much planned manner in association with Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri and Shri Azhar Arshad Jamal Ansari conspired such illegal importation of Cigarettes in violation of various provisions of the Customs Act, 1962 as well as allied acts & rules made thereunder. From the investigation, it is emerged that Shri Imran contacted Mohammad Azhar Arshad Jamal Ansari (namesake IEC holder) through one common friend Ms. Rukhsaar, who told him to approach a person named Shri Isaak (Mob: 90\*\*\*\*\*15) for sharing of documents with Shri Imran.
- iii. I noticed that Shri Imran lured Mohammad Azhar Arshad Jamal Ansari and opened a dummy firm for importation of prohibited goods. Shri Imran, by deceiving Mohammad Azhar Arshad Jamal Ansari, obtained documents and OTPs with the help of his associates and used them to import prohibited goods. If Shri Imran had not lured Mohammad Azhar Arshad Jamal Ansari to share documents and mobile OTPs with him, the prohibited goods would not have been imported into India. This act done by him made the goods liable for confiscation under the provisions of the Customs Act, 1962 and also made him liable for penal action. I also noticed that Shri Imran paid Rs. 5,000/- to Mohammad Azhar Arshad Jamal Ansari for the opening bank account in Mercantile Bank at Masjid Bunder. Mohammad Azhar Arshad Jamal Ansari confirmed that Shri Imran sent gave him Rs 2000/- cash and Rs. 3000/- transferred in his ICICI Bank account (A/C number 001101605850, in Andheri West Branch). Shri Imran obtained OTPs from the IEC holder for purpose of opening firm and obtaining GST registration number. Shri Imran at Minara Masjid area got the sing on "sign-change form" from Mohammad Azhar Arshad Jamal Ansari. Shri Imran told Mohammad Azhar Arshad Jamal Ansari not to sign at "new signature" area of the form and took the said form. This of Shri Imran clearly involved him in the manipulation of the import documents. This act was done by him with the clear intention to manipulate import documents. These act of the Shri Imran and finding of the investigation indicate that the he is the controller and actual beneficiary owner of the imported goods imported vide Container No. SIKU2985000 (BL PMJEAMUN2308037 dated 19.08.2023).
- iv. I find that the investigation carried out by the DRI revealed that for Customs clearance and transportation of goods Shri Imran acted hand in gloves with Shri Ashfak Mehmood P. If the consignment was not intercepted by the DRI, they would have cleared the prohibited goods i.e cigarettes.
- v. I find that in the present case of import of goods in name of M/s. Azha Overseas, Shri Imran had acted as the mastermind of the smuggling cartel. It is evident that Shri Imran had willfully and deliberately indulged into conspiracy of importing and clearance of goods prohibited goods i.e Cigarettes by way of mis-declaration/concealment. Shri Imran knew that the cigarettes being imported in the current shipment were prohibited, which is why he did not mention these prohibited goods in the import documents. Thus, such acts and omission on part of Shri Imran have rendered impugned goods liable for confiscation under Section 111 of the Customs Act, 1962 and had also rendered himself liable to penalty under Section 112(a)(i) of the Customs Act 1962. 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 under Section 112(b) of the Act where ever, penalty under Section 112(a) of Act, is to be imposed. Further, I also hold that penalty under Section 112(a)(i) on behalf of the firm M/s. Azha Overseas will be also be borne by Shri Imran being the controller of the firm and actual beneficiary owner of the goods as the penalty has already been confirmed on the IEC holder under

Section 112(b) of the Customs Act, 1962 for the contravention done by the IEC holder as discussed in foregoing paras.

vi. I find that Shri Imran had used IECs of dummy firms for his own import, and he used KYCs of these dummy firms for clearance of prohibited goods i.e. Cigarettes by way of mis-declaration/concealment. He had also obtained KYC details and sign changed form from the namesake IEC holder for purpose of incorrect documents for filing of Bills of Entry for this consignment with false declarations. He had knowingly and intentionally made/signed/used and/or caused to be made/ signed/ used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it is beyond doubt that Shri Imran is also liable to penalty under Section 114AA of the Customs Act, 1962.

vii. As regards the penalty under Section 117 proposed on Shri Imran, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against Shri Imran already confirmed under the provisions of Section 112 and 114AA of the Customs Act, 1962, hence, penal action under section 117 does not appear to be warranted in the subject case against Shri Imran.

### **26.3 ROLE AND LIABILITY OF PENALTY ON Ms. RUKSAR/RUKSAR SALIM BHIKLANI AND SHRI ISAAK/ ISHAQUE SIKANDER MANSURI UNDER SECTION 112(a), 112(b), 114AA AND 117 OF THE CUSTOMS ACT, 1962:**

i I find that Summons were issued to Ms. Ruksar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri by the investigating agency, however, they had given no heed to the summons and opted for not responding to the same and deliberately avoided their appearance. This act of them is in the contravention of the provisions of Section 108(3) of the Customs Act, 1962.

ii I find that Shri Imran (beneficial owner of the goods) with the help of Ms. Ruksar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri obtained documents from Mohammad Arshad Jamal Ansari (IEC Holder). Based on these documents, a fake import firm M/s. Azha Overseas was opened by Shri Imran, which was later used by Shri Imran to import prohibited goods, such as cigarettes. I find that Ms. Ruksar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri acted as inter-mediates between Shri Azhar Arshad Jamal Ansari, proprietor of M/s. Azha Overseas and Shri Imran (controller and actual beneficial owner of the goods).

iii The investigation has made it clear that if Ms. Ruksar/Ruksar Salim Bhiklani and Isaak/Shri Ishaque Sikander Mansuri had not tempted Shri Azhar Arshad Jamal Ansari, then Imran would never have been able to get the documents and OPT from Ansari, and prohibited goods i.e. cigarettes would not have been imported into India.

iv From the investigation, there is no ambiguity that Shri Imran in a much planned manner in association with Ms. Ruksar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri and Shri Azhar Arshad Jamal Ansari conspired such illegal importation of Cigarettes in violation of various provisions of the Customs Act, 1962 as well as allied acts & rules made thereunder. Despite knowing the fact that import of cigarettes in the present shipment is prohibited, they indulged themselves in the illegal importation of the prohibited goods. They were confident that Shri Azhar Arshad Jamal Ansari (IEC holder) is not going to verify or ask about the documents retrieved from him for the purpose of opening a dummy firm. These acts clearly involves Ms. Ruksar/Ruksar Salim Bhiklani and Isaak/Shri Ishaque Sikander Mansuri in the importation of prohibited goods i.e. cigarettes.

v In view of the above, it is evident that Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri, had knowingly and intentionally involved themselves in the smuggling of cigarettes, by playing vital roles for convincing Shri Azhar Arshad Jamal Ansari to provide various documents & signatures to Shri Imran for creating firm in the name of M/s. Azha Overseas.

vi In view of above, I find that Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri knowingly concerned themselves dealing with and smuggling of Prohibited goods i.e. Cigarettes. I find that Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri has willfully and deliberately indulged into conspiracy of importing and clearance of prohibited goods by way of mis-declaration and concealment. Therefore, such acts of omissions and commission on part of Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri by dealing with Prohibited goods and other mis-declared goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under; has made goods liable to confiscation under Section 111 of the Customs Act, 1962. I find that Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri have also rendered themselves liable to penalty under Section 112(b)(i) of Customs Act, 1962. 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 under Section 112(a) of the Act where ever, penalty under Section 112(a) of Act, is imposed.

viii. As regards the penalty on Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri under Section 114AA of the Customs Act, 1962 is concerned, Section 114AA mandates penal action for intentional usage of false and incorrect material against the offender. From the investigation and other material particulars, I find that both the noticees were aware about the uses of documents of the namesake IEC holder and helped to deliver it to Shri Imran. They time to time guided Shri Imran to how to obtain documents from Shri Mohammad Arshad Jamal Ansari. They aware about the forgery of documents and associated with Shri Imran. They further not joined the investigation and did not honor the summons issued by the investigation agency, thus, I am inclined to accept that they were associated with Shri Imran and aware about the creation of dummy firm of M/s. Azha Overseas also aware about the forgery of documents and used of manipulated documents for importation of prohibited goods i.e. Cigarettes. The fact is beyond doubt that they made the IEC holder to handover the documents to Shri Irma with some malafide intentions. Thus, they had knowingly and intentionally made/signed/used and/or caused to be made/ signed/ used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and it is beyond doubt that they both are also liable to penalty under Section 114AA of the Customs Act, 1962.

vii As regards the penalty under Section 117 proposed on Shri Imran, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against Ms. Ruksaar/Ruksar Salim Bhiklani and Isaak/ Shri Ishaque Sikander Mansuri already confirmed under the provisions of Section 112 of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against them.

#### **26.4 ROLE AND LIABILITY OF PENALTY ON SHRI ASHFAK MEMOOD P. UNDER SECTION 112(a), 112(b) AND 117 OF THE CUSTOMS ACT, 1962:**

i I find that Summons were issued to Shri Ashfak Mehmoor P. by the investigating agency, however, he had given no heed to the summons and opted for not responding to the same and deliberately avoided their appearance. This act of Shri Ashfak Mehmoor P. is in the contravention of the provisions of Section 108(3) of the

Customs Act, 1962. I noticed that as per email communication submitted by United Liner Shipping Services LLP with their counterpart i.e. ILINE Shipping LLP at Dubai, it was communicated by their counterpart i.e. ILINE Shipping LLP at Dubai that shipper i.e. M/s Noor Alrayan General Trading L.L.C. had surrendered full set of OBL, and further communicated to their Indian counterpart to release the DO to the consignee without presenting OBL; vide the email chat, contact details of consignee was also provided by M/s ILINE Shipping LLP, Dubai to M/s United Liner Shipping Services LLP. The said details were email - [ashfakmidc@gmail.com](mailto:ashfakmidc@gmail.com) & Mobile no. - 8898319194. Subscriber Details Records (SDR) obtained from respective service provider of the said no. indicated that the subscriber of the said no. is Shri Ashfak Mehmood P. Hence, it clear that Shri Ashfak Mehmood P. was key contact person in India who was going to take delivery of the impugned consignment of cigarettes after clearance from the Customs. However, Shri Ashfak Mehmood P. had not approached liner for clearance of the said shipment as the shipment was intercepted by the DRI officers. This act on part of Shri Ashfak Mehmood P. clearly indicate that he was aware about the importation of prohibited goods i.e. cigarettes in the Container No. SIKU2985000 vide Bill of Lading No. PMJEAMUN2308037 dated 19.08.2023.

- ii In view of above, I find that Shri Ashfak Mehmood P. knowingly concerned themselves dealing with and smuggling of Prohibited goods i.e. Cigarettes. I find that Shri Ashfak Mehmood P. has willfully and deliberately indulged into conspiracy of importing and clearance of prohibited goods by way of mis-declaration and concealment. Therefore, such acts of omissions and commission on part of Shri Ashfak Mehmood P. by dealing with Prohibited goods and other mis-declared goods which resulted in contravention of the provisions of Customs Act, 1962 and rules made there under; has made goods liable to confiscation under Section 111 of the Customs Act, 1962. I find that Shri Ashfak Mehmood P. have also rendered themselves liable to penalty under Section 112(b)(i) of Customs Act, 1962. 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 under Section 112(a) of the Act where ever, penalty under Section 112(a) of Act, is imposed.
- iii As regards the penalty under Section 117 proposed on Shri Ashfak Mehmood P., I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against Shri Ashfak Mehmood P. already confirmed under the provisions of Section 112 of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against Shri Ashfak Mehmood P.

**27. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:**

**ORDER**

- i. I order to absolute confiscate 160 Carton boxes packages containing 1600000 sticks of Gold Flake Cigarettes 'Made in Turkey' and 165 Carton boxes containing 1650000 sticks of Gold Flake Cigarettes 'Made in India', having total assessable value of Rs. 5,28,25,000/- (Rupees Five Crores Twenty Eight Lakhs Twenty Five Thousand only) under the provisions of Section 111(d), 111(i) and 111(l) of the Customs Act, 1962.
- ii. I order to absolute confiscate 44 Cartons of declared goods i.e. 'Auto Air Freshener Device', which were used for concealment of above Cigarettes mentioned at (i) above (undeclared and concealed goods), under the provisions of Section 119 of the Customs Act, 1962.
- iii. I impose a Penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs Only)** on M/s. Azha overseas through its controller and beneficiary owner/Importer **Shri Imran** under Section 112(a)(i) of the Customs Act, 1962.

- iv. I impose a Penalty of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** on **Shri Mohammad Azhar Arshad Jamal Ansari** (namesake IEC holder) under Section 112(b)(i) of the Customs Act, 1962.
- v. I impose a Penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs Only)** on **Shri Imran** (controller and beneficiary owner) under Section 112(a)(i) of the Customs Act, 1962.
- vi. I impose a Penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs Only)** on **Ms. Ruksar/ Ms. Ruksar Salim Bhiklani** under Section 112(b)(i) of the Customs Act, 1962.
- vii. I impose a Penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs Only)** on **Shri Ishaak/ Ishaque Sikander Mansuri** under Section 112(b)(i) of the Customs Act, 1962.
- viii. I impose a Penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs Only)** on **Shri Ashfak Mehmood P.** under Section 112(b)(i) of the Customs Act, 1962.
- ix. I do not impose penalty upon Ms. Ruksar/ Ms. Ruksar Salim Bhiklani, Shri Ishaak/ Ishaque Sikander Mansuri and Shri Ashfak Mehmood P. under Section 112(a) of the Customs Act, 1962.
- x. I do not impose penalty upon Shri Imran under Section 112(b) of the Customs Act, 1962.

**27.1 IMPOSITION OF PENALTY UNDER SECTION 114(AA) OF THE CUSTOMS ACT, 1962:**

- i. I impose a Penalty of **Rs. 15,00,000/- (Rupees Twenty Lakhs Only)** on **Shri Imran** under Section 114AA of the Customs Act, 1962.
- ii. I impose a Penalty of **Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousands Only)** on M/s. Azha Overseas through its proprietor Mohammad Azhar Arshad Jamal Ansari (namesake IEC holder) under Section 114AA of the Customs Act, 1962.
- iii. I impose a Penalty of **Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousands Only)** on Ms. Ruksar/ Ms. Ruksar Salim Bhiklani under Section 114AA of the Customs Act, 1962.
- iv. I impose a Penalty of **Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousands Only)** on Shri Ishaak/ Ishaque Sikander Mansuri under Section 114AA of the Customs Act, 1962.

**27.2** I do not impose penalty on M/s. Azha overseas (Prop: Mohammad Azhar Arshad Jamal Ansari), Ms. Ruksar/ Ms. Ruksar Salim Bhiklani, Shri Ishaak/ Ishaque Sikander Mansuri & Shri Ashfak Mehmood P. and Mohammad Azhar Arshad Jamal Ansari under Section 117 of the Customs Act, 1962 for the reasons as stated above.

**28.** This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

**29.** The Show Cause Notice bearing No. GEN/ADJ/ADC/11/2024-Adjn dated 27.02.2024 stands disposed off in above terms.

अपर आयुक्त सीमा शुल्क,  
(अधिनियम अनुभव)  
कस्टम हाउस, मुंद्रा।

By RPAD/ By Hand Delivery/Email/Speed Post

(i) **M/s Azha Overseas**

(Proprietor: **Shri Mohammad Azhar Arshad Jamal Ansari**),  
IEC: CTRPA7986D, 4th floor, 406, Sagar City, Block No-06,  
V. P. Road, Lower Floor, Office 57, Off. S. V. Road,  
Gillberi hill Road, Andheri West, Mumbai  
Suburban, Maharashtra-400058

(ii) **Shri Imran (Service through Notice Board)**

(iii) **Ms. Ruksar/ Ms. Ruksar Salim Bhiklani**,  
Residing at D/W/o Shri Mustaq Shaikh, 147/B,  
Vithal Pada Khar Danda Khar  
West Next to Bhangre House, Mumbai-400052;

(iv) **Shri Ishaak/ Ishaque Sikander Mansuri**,  
residing at S/o Sikander Mansuri,  
149/Zakaria Masjid Street, 4th Floor,  
Room No. 17, Masjid Bander, Zakaria Masjid, Mumbai 400009.

(v) **Shri Ashfak Mehmood P.**,  
residing at Room 2C/107,  
Shree Sai Ganesh Krupa, CHS Limited,  
Nr. Patni Computer, Piteline MIDC, Andheri, Mumbai- 400096

Copy to:

1. The Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad ([driazu@nic.in](mailto:driazu@nic.in))
2. The Deputy/Assistant Commissioner (Legal/Prosecution), CH, Mundra.
3. The Dy./Asstt. Commissioner (Review Cell), Customs House, Mundra
4. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
5. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately in terms of Section 153 of the Customs Act, 1962)*
6. The Dy./Asstt. Commissioner, Disposal Section, CH, Mundra.
7. Guard File.