

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62	
A. File No.	:	GEN/ADJ/ADC/755/2022-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in- Original No.	:	MCH/ADC/MK/84/2023-24
C. Passed by	:	Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order passed	:	21.06.2023
E. Date of order issued	:	21.06.2023
F. Show Cause Notice No. & Date	:	GEN/ADJ/ADC/755/2022-Adjn-O/o Pr. Commr-Cus-Mundra dated 23.09.2022
G. Noticee(s)/Party/ Importer	:	M/s. Able Shipping (India) Pvt. Ltd. & Others

DIN-20230671MO000000FFF2

1. यह अपील 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 अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क 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 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**“ सीमा शुल्क आयुक्त (अपील), मुंद्रा
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”**

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th 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/- रुपये 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 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 सं०-6 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 चाहिये।

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

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

**Sub.:- SCN No. GEN/ADJ/ADC/755/2022-Adjn-O/o Pr. Commr-Cus-Mundra dated 23.09.2022 issued to
M/s. Able Shipping (India) Pvt. Ltd.**

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Brief Facts of the Case:-

Intelligence was gathered by the Directorate of Revenue Intelligence (Hereinafter referred to as the "DRI") regarding smuggling of huge quantity of foreign brand cigarettes, in a consignment at Mundra Port in one 40 feet Container No. EMCU9324266, arriving in vessel MV Montpellier. A large quantity of foreign brand Cigarettes was concealed inside the 40 feet container and in the IGM (IGM No. 2307702 dated 30.03. 2022), the goods were declared as '*1680 Packages of Hotel supplies Bed sheet, Pillow covers*'. The Container agent for the said cargo has been M/s. Able Shipping Agencies (India) Pvt. Ltd., Office No. S-3, 2nd Floor, Arjans Mall, Opp. Hotel Sarovar Portico, Plot No. 118 & 119, Sector-8, Gandhidham, Kachchh, Gujarat, and they were planning to file switched Bill of Lading, later to substitute the original Bill of lading filed at port of Shipment.

2. Acting on the intelligence, the container was examined by the officers of DRI, Regional Unit, Gandhidham on its arrival at Mundra Port (INMUN1) and a Panchanama dated 01.04.2022 was drawn accordingly. During the course of examination the container was found stuffed with around 8/9 feet high and 4x5 feet wide boxes, wrapped with black colored stretch pack standing on wooden pallets. On removing black polythene it was found that 40 brown corrugated boxes/cartons were wrapped in one pallet. The cartons were printed with logo overlapping letter "BBM" & words "PRIDE FILTER STICKS", on each carton with a stamp of "Made in UAE". Each Carton contained golden colored 50 long boxes with brand name "PRIDE" followed by word "FILTER KINGS". Each long box contained 10 packets and each packet had 20 pieces of cigarettes with filter with brand name "PRIDE". There were 4 lakh cigarettes per pallet and total 21 pallets were found in the container. Thus total 84,00,000 (84 Lakh) pieces of cigarettes were found stuffed in the said container No. EMCU9324266. During examination the declared goods i.e. "*Hotel Supplies Bed Sheet Pillow Covers*" were not found in the said container and the whole container was found fully loaded with foreign brand cigarettes. Total quantity of 84,00,000 Sticks of Filter Cigarettes 84mm length of Brand 'BBM PRIDE FILTER KINGS' having market value around Rs. 16,80,00,000/- and representative samples of the above mentioned brand of Cigarettes were obtained. Further these smuggled cigarettes even did not bear mandatory pictorial warnings on their packets and thereby

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contravened provisions of Tobacco and Other Products (Packaging & Labeling) Rules 2008 & Tobacco and Other Products (Packaging & Labeling) Amendment Rules 2014.

3. Since the above mentioned 84,00,000 cigarette sticks were not declared in the IGM No. 2307702 dated 30.03.2022, there existed reasonable belief that the same were liable for confiscation under the provisions of the Customs Act, 1962 the said 84,00,000 cigarettes sticks along with the container No. EMCU 9324266, were placed under seizure under section 110(1) of the Customs Act, 1962 vide Seizure Memorandum dated 01.04.2022 (DIN-202204DDZ10000999DB1). The seized consignment was handed over to the custodian M/s All Cargo Logistics Ltd., CFS, AP&SEZ, Mundra under Supartnama dated 01.04.2022. The details of the consignment declared in the IGM are as under:

IGM No. & Date	Bill of Lading No. & Date	Name of Shipper	Name of Consignee	Description of goods Declared in IGM	Container No. Seal No.
2307702 & 30.03.2022	JEAMUN22002 dated 22.02.22	JSKR General Trading LLC P O Box 377279 DEIRA, Dubai, UAE Tel.04223978, Fax: 043232366	1. As per B/L : Consignee and Notify Party : M/s Luxury Bedding Group Ltd. (Address : T/A Luxury Bedding Company, Unit No.10, Melthem Mills Ind EST, Huddersfield, West, Yorkshire-HD94DS , Phone : 01484-485207 (2) As per Invoice cum Packing List: M/s Able Shipping Container Pvt. Ltd. Mundra	1680 packages Hotel supplies Bed Sheet Pillow cover	EMCU 9324266

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4. During investigation, statements of following persons were recorded, which are briefly discussed herein-below:

4.1 Statement of Shri Vijay Prajapati, Branch Manager, M/s Able Shipping Agencies (India) Pvt. Ltd., Gandhidham was recorded under Section 108 of the Customs Act, 1962 on 01/02.04.2022 wherein he stated, inter alia that M/s Able Shipping Agencies (India) P. Ltd. has been working as NVOCC & Shipping Agent as well as international freight forwarders; that they handle the work of shipping lines for (i) filing of IGM (ii) Export forwarding, (ii) import of tank containers (iv) container allocations by issuing DO and collecting the rentals and other charges from the users. He stated that the Import Executive Mr. Vinit Ganatra of their office had filed the IGM for vessel Montpellier V.22012 on 30.03.22, which was berthed at Mundra on 01.04.2022; that the IGM was filed as per documents received by them, without amending or adding any details which they have received from their Dubai Office through email. He further stated that they filed the IGM based on the B/L copy which they have received. He remained present during the above panchnama proceedings dated 01.04.2022 and agreed with the examination carried out by the DRI officers at M/s Allcargo Logistics CFS, Mundra. He stated that the goods declared as per the IGM, were total 1680 packages of 'Hotel Supplies bed sheets and pillow covers' but in fact total 21 pallets containing 4 lakh each cigarette sticks of "Pride filter kings Cigarettes" made in UAE, were found stuffed in the container; that the container was under transshipment and he had filed requirement on 31.03.22, vessel MSC Maria Elyaana for its further export to Liverpool, England. He admitted that M/s Able Shipping (India) Pvt. Ltd, Gandhidham has failed to file correct IGM for the goods imported under B/L JEAMUN22002 dated 22.02.22. Further, Shri Vijay Pajapati was shown Inv. No.IND20022 DATED 14.03.2022 of M/s J.S.K.R General Trading LLC, PO Box 377279, Deira, Dubai issued to M/s Able Shipping Container Pvt. Ltd., Mundra Gujarat, India for the '*1680 packages of Hotel Supplies Bed Sheet and Pillow cover*' and was asked whether the invoice has been reflecting the same consignment for which he replied in affirmative but he doesn't know the exact reason for why their firm has been named as the buyer for the consignment. He stated that he had received invoice cum packing list from Sh. Shantaram of their Dubai office alongwith other documents. Further, Shri Vijay Pajapati was shown Tax Invoice, receipt No.49472238 dated 17.03.2022, issued by DP World, UAE Region FZE, PO Box 17000, JA Dubai UAE issued to the customer

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M/s J.S.K.R General Trading LLC, Dubai, UAE for B/E No.201-05987346 22/Imp:201-05987346-22 for "Document Processing Charge", with payer details showing "payment is made based on Bill of Entry. Paid by EURO LINK FREIGHT SERVICES LLC (eurolink)" and asked to comment on that for which he replied that it was receipt of M/s D.P.World's charges towards the Document processing Charges for importation by M/s JSKR General Trading LLC, Dubai, and among the documents produced by him to the DRI. He confirmed that the container No. EMCU9324266 was a shipper owned container (SOC) i.e. JSKR General Trading LLC, Dubai, UAE. He stated that he had received all the documents through email from Sh. Shantaram of their Dubai office on 01.04.2022 and the same set was forwarded through whatsapp message from Sh. Ganesh Bingi of their Mumbai Office.

4.2 Statement of Shri Ganesh Dasharath Bingi, Managing Director of M/s Able Shipping Agencies (India) Pvt. Ltd., Gandhidham was recorded under Section 108 of the Customs Act, 1962 on 04.04.2022 wherein he *interalia* stated that the container No. EMCU 9324266 has been owned by the Shipper M/s JSKR General Trading LLC, Dubai; that Shri Mohammad from M/s JSKR General Trading LLC, Dubai approached their Dubai office around 16.03.2022 to 19.03.2022 and asked for shipment of said container from Jebel Ali to Liverpool via Mundra. Then they contacted the Vessel Operator M/s. Express Feeder Dubai who booked space for the container in the vessel Montpelier from Jebel Ali to Mundra, after that the container was loaded on 22.03.2022 on the vessel Montpelier and they prepared the Bill of Lading No. JEAMUN22002 dated 22.02.2022 ; that they send the copy of the said Bill of Lading (unsigned) to Shri Mohammad of M/s JSKR General Trading LLC, Dubai for approval and Shri Mohammad confirmed the details of the said Bill of lading, then the container No. EMCU 9324266 reached Mundra on 01.04.2022. On perusal of the Bill of Lading No. JEAMUN22002, he stated that the date of issuance has been mentioned as 22.02.2022 ; that he prepared the Bill of Lading, their Dubai office has sent the above mentioned Bill of Lading No. JEAMUN22002 dated 22.03.2022 to the Customer Shri Mohammad of M/s JSKR General Trading LLC, Dubai on 22.03.2022 and due to typographical error the same was mentioned as 22.02.2022 instead of 22.03.2022. He further stated that he was in contact with Shri Muneez of M/s JSKR General Trading LLC, Dubai who contacted him for the consignment of bed sheet from Jebel Ali to Liverpool via Mundra; that the

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MSC vessels to Liverpool UK are routed through Mundra so they discharged the container at Mundra and further they were planning to transship the same to Liverpool. He stated that the Bill of Lading no. JEAMUN22002 was not issued till that time; that Shri Mohammod of M/s JSKR General Trading LLC, Dubai did not come in Dubai office and has not cleared their dues, so they have not issued the Bill of Lading no. JEAMUN22002 and only draft BL was issued till that date. Further, Bill of Lading has been required to be issued after sailing of vessel within a week otherwise penalty of AED 150 per week are payable but till date they have not issued the Bill of lading as they have not received their payment from shipper. He stated that in the present matter he prepared the Bill of lading no. JEAMUN22002 dated 22.02.2022 and forwarded the same to Shri Shantram D. Racha who forwarded the same to their Gandhidham office, then their Import Executive Mr. Vinit Ganatra prepared the IGM file and send the same to Vessel Operator M/s Express feeder to file the IGM. On being asked why IGM was filed on the basis of Draft Bill of Lading i.e. without issuance of Final Bill of Lading he stated that if they had not filed the IGM documents on the basis of draft Bill of Lading, the container would be returned on board to port of Loading i.e. Jebel Ali. On perusal of Panchanama dated 01.04.2022 he stated that total 21 pallets containing 4 lakh each cigarette sticks of "Pride filter kings Cigarettes" made in UAE, were found stuffed in the container No. EMCU9324266. He agreed with the contents and facts mentioned in the Panchanama dated 01.04.2022. He stated that Shri Muneez of M/s JSKR General Trading LLC, Dubai on 27.03.2022 has made an inquiry for a quote for 1x40 ft container from Jebel Ali for Chaittagong via Mundra. He further stated that on 01.04.2022 their Gandhidham office told that the container number EMCU9324266 has been put on hold by Customs, then he immediately told Muneez then Shri Muneez told him to edit the description and HS code to 24022000. On perusing the export shipping Bill and invoice submitted by him, he stated that the destination port has been mentioned as India in the Shipping Bill. Further, on perusing the Shipping Bill, Invoice-cum Packing list and DP World Tax invoice, he stated that Liverpool or consignee M/s Luxury Bedding group Ltd is not mentioned in the export documents filed at Customs in Dubai. On being asked he stated that in invoice cum packing list issued by M/s JSKR General trading LLC, Dubai in the name of M/s Able Shipping Container Pvt. Ltd., Mundra, Gujarat, India ; that these documents were sent to their Gandhidham

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office for filing Transshipment permission at Mundra Port. He stated that he does not have any document mentioning port of delivery as Liverpool and consignee/Notify party as M/s Luxury Bedding group Ltd. ; that Shri Muneez on 01.03.2022 has sent him the name of consignee M/s Luxury Bedding group Ltd., On 7th March Muneez asked him Mundra consignee address and then he (muneez) prepared the invoice-cum packing list in the name of M/s Able Shipping Agencies (India) Pvt. Ltd., Mundra, Gujarat.

4.3 Further Shri Ganesh Dasharath Bingi, in his statement dated 05.04.2022 *inter alia* stated that M/s. Able Shipping Line LLC, Dubai has acted as an NVOCC (Non Vessel operator container carrier) and has booked space on vessel Montpellier through vessel agent M/s. MILAHA, Jebel Ali, Dubai and after loading of container in the vessel they have issued B/L; that all the work from Dubai office is handled by Shri Shantaram D. Racha. They have provided documents to the vessel operator M/s. Sea Consortium Shipping (India) Pvt. Ltd to file IGM at Mundra Port and further to discharge the import container at Mundra in the port account of M/s Able shipping agencies (India) Pvt. Ltd and arrange for loading on the said container on MSC MARIA ELENA which is scheduled to depart from Mundra to Liverpool on 13.04.2022. He stated that he had prepared both the Bills of Lading bearing No. JEAMUN22002 one having consignee M/s Luxury Bedding Group Ltd (port of Delivery Liverpool) and the other having consignee M/s Able Shipping Agencies (India) Pvt. Ltd. (port of Delivery Mundra). As per the consignee details given by Muneez of M/s JSKR General Trading on 01.03.2022 he prepared the Bill of Lading showing consignee name M/s Luxury Bedding Group Ltd, Yorkshine (port of Delivery Liverpool). The other Bill of lading in which consignee is mentioned as M/s Able Shipping Agencies (India) Pvt. Ltd. (port of Delivery Mundra) shipping agencies (India) Pvt. Ltd mentioned as consignee was prepared for filing IGM purpose for shipment from Jebel Ali, Dubai upto Mundra Port, India. He further stated that FORM III Cargo Declaration was filed with Customs by Vinit Ganatra who is looking after the work of Import/EDI/IGM/Transshipment at Mundra Port after receiving cargo arrival notice from vessel operator M/s. Sea Consortium Shipping (India) Pvt. Ltd. Shri Shantaram Racha send all the required documents i.e. B/L copy, invoice cum packing list and Dubai customs documents from Dubai through email for filling of IGM. On being asked whether he was aware about Section 123 of the Customs Act, 1962 and

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Notification No. 103/2016-Cus.(N.T.) dated 25.07.2016 according to which 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. The cigarettes seized from the container No. EMCU 9324266 are in the possession of M/s Able Shipping, the burden of proving is on you. He answered in affirmative.

4.4 Statement of Shri Ganesh Dasharath Bingi, dated 06.04.2022 wherein he *inter alia* stated that he did not have Invoice & Packing list issued by Shipper M/s JSKR General Trading LLC, Dubai in the name of consignee M/s Luxury Bedding Group Ltd. (Address: T/A Luxury Bedding Company, Unit No.10, Melthem Mills Ind. EST, Huddersfield, West, Yorkshine-HD94DS and stated that he had asked Shri Shantaram Racha to bring that with him. Further, he stated that during examination of the container, the goods were found mis-declared as mentioned/declared by them in the Bill of Lading and IGM and Cigarettes were found in place of declared goods as "Bed sheet and Pillow cover". On being asked, whether he agree that this import of Cigarettes by mis-declaring the same is illegal and injurious to the economy and has been in violation to Section 11 of the Customs Act, 1962, he agreed that this import of Cigarettes by mis-declaring the same as "Bed sheet and Pillow cover" has been illegal and injurious to the economy and is in violation to Section 11 of the Customs Act, 1962. On being asked whether he was aware about the provision of transshipment in Section 53, 54 & 55 in Chapter VIII of the Customs Act, 1962 he stated that as per his understanding the Transshipment of goods has been allowed without payment of duty subject to the provisions of Section 11 of the Custom Act, 1962. He agreed that the consignment was in violation to provisions of Section 11 of the Customs Act, 1962 and is liable for payment of duty.

4.5 Statement of Shri Nikhil Ganesh Bingi, Documentation Clerk at M/s Able Shipping Line, LLC, Dubai was recorded under Section 108 of the Customs Act, 1962 on 07.04.2022 wherein he *inter alia* stated that the details for preparing Draft Bill of Lading No. JEAMUN22002 dated 22.02.2022 were given to him by Shri Ganesh Bingi and he prepared the draft B/L according to that and send back the draft to Shri Ganesh Bingi for Checking the same; that he had prepared the draft Bill of Lading only on the basis of details provided on whatsapp by Shri Ganesh Bingi, he did

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not have seen any documents like Invoice, Packing List, Export declarations pertaining to the Shipment mentioned in the said B/L. He further stated that the name of shipper mentioned in the Bill of Lading is M/s JSKR General Trading LLC, Dubai. He has prepared the same on the basis of details shared on whatsapp by Shri Ganesh Bingi, he did not know anything about the Shipper. He never met or seen or in contact with any person from the shipper's firm.

4.6 Statement of Shri Arvind Prajapati, Branch Manager, M/s Sea Consortium Shipping India Pvt. Ltd., Riddhi Siddhi Arcade, Office No. 206, Plot No. 13, Sector 8, Gandhidham was recorded under Section 108 of the Customs Act, 1962 on 11.04.2022 wherein he *inter alia* stated that M/s Sea Consortium Shipping India Pvt. Ltd. has been a vessel owner and operator having Head Quarter at Singapore and the head office in India is located at Mumbai. The branch office at Gandhidham is at Riddhi Siddhi Arcade, Office No. 206, Plot No. 13, Sector 8, Gandhidham. Their Brand name is X-press feeders. They provide space/ slots to the container Lines/ owners for the purpose of Import and Export. He stated that they were the agents of the vessel MV Montpellier and being vessel agents have filed the IGM No. 2307702 & 30.03.2022 at Mundra Port for the said vessel. From their Dubai office, they have received the Loading List from Jebel Ali (Dubai) for all containers which were planned to discharge at Mundra Port. On receipt of the same they have sent import arrival notice to all the container agents. For the Container no. EMCU 9324266, they have sent the Import arrival notice to M/s Able Shipping Agencies India Pvt. Ltd., Gandhidham. He further stated that thereafter, M/s Able Shipping Agencies India Pvt. Ltd., Gandhidham on 30.03.2022 submitted EDI IGM, Form III Cargo Declaration, Import Advance List, Copy of Bill of Lading No. JEAMUN22002 dated 22.02.22 for the consignment arriving in the container No. EMCU 9324266. As per the documents submitted by the Container Agent M/s Able shipping agencies India Pvt. Ltd., the said consignment was under Foreign Transshipment Permit (FTP) from AEJEA (Jebel Ali) to GBLIV (Liverpool) declaring the goods as "Hotel Supplies Bed sheet Pillow cover" and the consignee/ Notify party declared was M/s Luxury Bedding Group Ltd. He stated that they have received all the above mentioned documents along with Bill of Lading vide email dated 30.03.2022 from Shri Vinit Ganatra of M/s Able shipping agencies India Pvt. Ltd, Gandhidham from emailed: ABLE-KANDLA-VINIT

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<Kandla.imp@ablesshipping.co.in.

4.7 Statement of Shri Munees Anandankandy S/o Musthafa Balarath, BaitulRabiya, Near Kannotheppally, Chokli, Kannur, Kerala 670672 was recorded under Section 108 of the Customs Act, 1962 on 26.04.2022 wherein he *inter alia* stated that as far as his understanding M/s. Luxury bedding group limited, united kingdom have been the customers of M/s. Fast line Free Zone Company and M/s. JSKR General Trading Company and they have the trading license to do import and export of goods. It's a general practice in Dubai that clearing and forwarding companies use trading companies like M/s. JSKR General Trading Company by paying a nominal amount to use their import export license. He further stated that he met Shri Ganesh through Shri Sukant Dole during February 2022 and they discussed the shipment of cigarettes to M/s. Luxury bedding group, Liverpool which included that the shipment of cigarettes should be routed through either Colombo or India or Singapore for which Shri Ganesh responded positively. Thereafter, he was in regular touch with Shri Ganesh through his Dubai Whatsapp number. They also discussed about shipment of cigarettes from Dubai to Chittagong via Colombo and to various European destinations via Singapore. Thereafter, he spoke to Shri Ganesh about this particular consignment of cigarettes which was seized at Mundra port as per the directions of his friend Shri Salman, Dubai for the shipment to United Kingdom. Shri Ganesh advised them to purchase Shipper owned container as the business of cigarettes export is illegitimate and as the chances of getting caught by the Customs of the respective countries is very high for which they readily agreed and Shri Salman purchased the container number EMCU 9324266. He further stated that as both he and Shri Ganesh knew that it will not be possible to ship cigarettes to United Kingdom/India without mis-declaring, they decided to declare the cargo as Bed sheets and Pillow covers; that in the present consignment of Cigarette his profit was 2000USD and Shri Ganesh's profit was 5000USD plus the shipping expenditure. He stated that he knew Shri Abdul Jabbar since last 15 years who has been the proprietor of M/s. Connect logistics and cargo LLC., Dubai; that since Shri Jabbar Bhai already had an existing business of freight forwarding and logistics business, he arranged a meeting with Shri Ganesh of M/s. Able shipping Agencies (India) Pvt. Ltd., Gandhidham who wanted to start a new business in Dubai with Shri Jabbar Bhai. Shri Jabbar Bhai has no role to play in this consignment which is seized in Mundra port. He further stated

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that as Shri Ganesh was insisting for the ultimate consignee details, he spoke to Shri Mohammad about the same who in turn gave the details of consignee in UK to Shri Shantaram Racha who works for M/s. Able Shipping, Dubai, the Consignee details were given by Shri Mohammad to Shri Shantaram Racha ; that Shri Shantaram has prepared the draft Bill of Lading in which M/s Able shipping Agencies (India) Pvt. Ltd., Gandhidham was the consignee as Shri Ganesh assured that M/s. Able Shipping Agencies has a port account in Mundra. He further stated that the draft Bill of Lading from Dubai was in the name of M/s. Able shipping Agencies (India) Pvt. Ltd., Gandhidham, however, Shri Ganesh of M/s. Able shipping Agencies (India) Pvt. Ltd., Gandhidham contacted him on 01.04.2022 and informed about the seizure of cigarettes and asked him to give one more company's name in India so that he can send back the shipment to Jebel Ali, accordingly, he contacted Shri Salman, Dubai who in turn gave him the name of M/s. Sea Shore Exim, Trichy. He further stated that in the entire transaction Shri Ganesh assured him that if any problem arises due to Customs Authorities he will send back the consignment to Dubai showing it as wrong consignment. He also assured that any loss occurring out of this business transaction will be borne by him.

4.8 Statement of Shri Munees Anandankandy dated 06.05.2022 wherein he inter alia stated that he looked after all the works of the company viz. freight forwarding, logistics, Land freight etc. M/s Gemeni Logistic solution LLC was a Logistic company located in Jebel Ali free Zone. Dubai and most of the customers around 258 are related to trading in Tobacco & Cigarettes in Europe and London. He stated that M/s JSKR General Trading LLC Dubai has been the name used for export of the shipment of Cigarette in the guise of Bedsheet & Pillow cover in the container No. EMCU 93324266 from Jebel Ali to Liverpool and the same was seized at Mundra Port on 01.04.2022; that this company name was provided by Mr. Salman of M/s Fast line Free Zone Company; that as per his knowledge M/s JSKR has been a dummy company used for import and export of goods from Dubai and to Dubai. He stated that these are the normal practices done by clearing and Forwarding agents in UAE. These type of companies are provided by PRO's in UAE (Public relation offices) on payment of nominal charges. He stated that he did not know the owner of the company. He further stated that as his Indian bank account was freezed since August 2021, he received the money through Western Union money transfer in

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parts by his cousin Mr. Mufeed, he has received the whole amount in part payment of Rs. 49,900/- around 10 April 2022 in Chennai. The Western Union money exchange is located in Express Avenue, Royapetta, Chennai. He further stated that he knew that if anybody do transshipment via Singapore it cost around 20000USD plus actual expenses, for transshipment via Colombo it is 8000USD plus actual expenses but in India this was our first consignment and Shri Ganesh Bhai offered 5000USD plus actual expenses. So, he told Shri Salman that 5000USD is for Ganesh Bingi and 2000USD is for him and he can charge upto 3000USD from his Customer or the owner of Cigarettes. He stated that none of them were the investor in the consignment of Cigarettes, they offered services in the transshipment of Cigarettes by mis-declaring the same as Bed Sheet and Pillow cover and taken their share of money. On being asked that he knew M/s JSKR General Trading LLC Dubai is a dummy company and he has tried to import/ Transship Cigarettes by mis declaring as "Bed Sheet & Pillow cover" and whether the act done by him is legal. He stated that the act is illegal and accepted his mistake.

4.9 Statement of Shri Ganesh Dasharath Bingi, Managing Director of M/s Able Shipping Agencies (India) Pvt. Ltd., Gandhidham was recorded under Section 108 of the Customs Act, 1962 on 06.05.2022 wherein he stated, inter alia that he has handled no consignment of Shri Munees Anandakandy except the subject consignment covered under Bill of Lading No. JEAMUN22002 dated 22.02.2022. He stated that in the month of March, 2022, Shri Munees Anandakandy called him and requested him to meet as he had to discuss regarding import consignments. He (Ganesh) met Shri Munees Anandakandy in a Hotel Monarch Plaza at Chennai between 15 or 16 March, 2022. During, their conversations Shri Munees Anandakandy informed him that he has a container bearing No. EMCU9324266 in Dubai which contained Bed Sheets and Cigarettes. He further informed that this container has to be transshipped from Dubai to Liverpool, U. K. through Colombo, Sri Lanka. He (Ganesh) informed him that there is congestion in Sri Lankan Port for transshipment containers. He further suggested him that the said container can be transshipped through Mundra Port to Liverpool. He also informed him that they can arrange to the transshipment of the said container through Mundra Port. He further stated that Shri Munees Anandakandy provided them the documents such as Invoice Packing List, of the declared goods as 'Bed Sheet Pillow Cover. On the basis of the said documents they have filed the

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transshipment details before Customs Authorities at Mundra Port. On being asked that as he was aware of the concealment of Cigarettes in the Container and as a responsible Shipping agent why he had not suggested him to mention the actual details in the documents, Shri Ganesh Bingi stated that Shri Munees Anandakandy, has informed him that he has business dealings in China relating to Oppo mobile accessories and he will have to import of related goods from China to India through Dubai in approx. 500 600 containers in the next 04 years. He (Munees) assured him (Ganesh) to give the said business to his company, due to which he was ready to handle his said consignment of 01 container for transshipment through Mundra to Liverpool, U. K. Further, he stated that when he came to know that the container was hold by DRI, he immediately contacted Shri Munees Anandakandy and asked what to do in the matter; that Shri Munees Anandakandy informed that the container was fully stuffed with Cigarettes and there is no declared cargo such as Bed Sheet Pillow Cover' in the container; that on being informed by him, Shri Munees Anandakandy requested him to prepare the documents with actual description of the cargo i.e. Cigarettes. However, he informed him that it was too late and that time it was not possible to do so. Further, he perused the statement dated 26.04.2022 of Shri Munees and stated that all the facts related to his company and their conversations were correct except the amount of \$5000 USD as mentioned to the answer to Question No. 3; that they had the deal of payment only 1000 USD, after reaching the shipment for the said consignment and admitted that all the remaining facts in the said statement were true and correct. He has perused the copy of invoice IND20022 dated 14.03.2022 and in this regard he stated that this invoice was prepared for shipment of subject consignment of Cigarettes. He admitted that the name reflected as 'Able shipping Container Pvt. Limited' referred to only his company M/s. Able Shipping Agencies (India) Pvt. Ltd.

4.10 Statement of Shri Shantaram Dayaram Racha, of M/s Able Shipping Line, LLC, Dubai was recorded under Section 108 of the Customs Act, 1962 on 06.05.2022 wherein he *inter alia* stated that Shri Ganesh Bingi his wife Smt. Anuradha Bingi (Sleeping Director) and he have been the Directors in M/s. Able Shipping Agencies India Pvt. Ltd.; that in 2018, they started another company M/s. Able Shipping Line LLC, Dubai wherein he has been a Director having 25% share, Mr. Ganesh Bingi is another Director for 24% and one local person Mr. Sultan Essa Sultan Alhumrani

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Alshamsi has been sponsor Director having 51% share. He stated that he has also been a partner in one firm viz. M/s. Able Logistics which is inactive at present. On being asked regarding booking of container No. EMCU 9324266 for shipment from Dubai to Mundra, he stated that in the mid of March, 2022, he was told by Shri Ganesh Bingi, Managing Director of his company M/s. Able Shipping Agencies India Pvt. Ltd., that a shipper owned container (SOC) bearing No. EMCU 9324266 was to be loaded from Dubai to Mundra and the same was to be transshipped at Mundra for subsequent destination to UK. Shri Ganesh Bingi told him that the consignment was pertaining to one Mr. Muneez ; that he accordingly arranged space in vessel Montepellier through one Shri Mahamood Salman of a transportation company M/s. Connect Logistics and informed Shri Ganesh Bingi, Mr. Muneez and other related persons through email dated 17.03.2022 using his email Id ; that after some time, Shri Mahamood Salman of M/s. Fast Line Shipping called him telephonically and during discussion, he asked him to provide documents required for preparing Bill of Lading i.e. Invoice cum packing list, Export Declaration Form and Container CSC Certificate ; that he was given these documents by hand by one employee of Shri Mahamood Salman ; that the invoice cum packing list No. IND20022 dated 14.03.2022 was containing name of shipper as M/s. JSKR General Trading LLC, Dubai and the name of addressee was mentioned in the invoice as M/s. Able Shipping Container Pvt. Ltd. On being asked why he had used the email Id of Shri Nikhil Bingi for sending the draft BL to Gandhidham office when he had sent previous email dated 17.03.2022 from his email Id, he stated that Nikhil Bingi was on leave on 23.03.2022, thus he was using his computer system and his email was opened so, he had sent the email from email Id of Shri Nikhil. On being asked why the shipper M/s. JSKR General Trading LLC, Dubai addressed the invoice no. IND20022 dated 14.03.2022 to his company (though name was slightly different as M/s. Able Shipping Container Pvt. Ltd. in place of M/s. Able Shipping Agencies India Pvt. Ltd.) and why he had prepared draft BL mentioning the name of consignee therein as M/s. Able Shipping Agency India Pvt. Ltd., he stated that he was not aware why the shipper M/s. JSKR General Trading LLC, Dubai addressed the invoice no. IND20022 dated 14.03.2022 to their company on the basis of which he had mentioned his company as consignee in the draft BL bearing no. JEAMUN22002, but later on, as suggested by Shri Ganesh Bingi, they had changed the name of consignee in the draft BL on receipt of another invoice addressing to M/s. Luxury Bedding Group Ltd., West Yorkshire. He

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shared the revised draft BL to all concerned through email dated 01.04.2022. On being asked why there is no invoice no. and date on the second invoice said to has been issued by M/s. JSKR General Trading LLC addressing to M/s. Luxury Bedding Group Ltd., West Yorkshire, he stated that he was not aware the reason for this. He stated that Mr. Mahamood of M/s JSKR General Trading LLC, Dubai told him that the consignment was to be routed through Mundra so they discharged the container at Mundra in their name and further they were planning to transship the same to UK as per directions of the representatives of shipper via. Mr. Munees and Mr. Mahamood. On being asked whether they have issued the Original BL for the aforesaid draft BL, he stated that they have not been paid any amount by the shipper, so they did not finalize the draft BL till date ;that they requested the above mentioned representatives of shipper for payment but they did not pay, whereas, his company had paid the charges of vessel i.e. AED 2526.43 against invoice no. FE/JEA/INV/22/05383 dated 27.03.2022 issued by M/s. Qatar Navigation, Dubai. On being asked who prepared and filed the IGM for the container No. EMCU 9324266 at Mundra Customs, he stated that their employees at Gandhidham viz. Mr. Vinit Ganatra and Ms. Aruna prepared the IGM and filed the same with Customs authorities. He was shown both draft Bs/L bearing no. JEAMUN22002 dated 22.02.2022 and IGM bearing no. 2307702 dated 30.03.2022 which have been prepared by his company. He stated that he was aware that they had declared the description of subject goods in these documents as "Hotel supplies Bed Sheet Pillow Cover, he was also shown Panchnama dated 01.04.2022 drawn at Mundra port by the officers of DRI vide which examination of the consignment covered said BL/IGM and stuffed in container No. EMCU9324266 was carried out in presence of witnesses and representative of his company. He found that during the examination, 8400000 sticks of Pride Filter Kings brand Cigarettes were found in the said container bearing no EMCU9324266 and no goods of the declared description was found in the container ; that he agreed with the contents and facts mentioned in the Panchanama dated 01.04.2022 and also agreed that it was a gross mis-declaration violating the provisions of Indian Customs Act, 1962. On being asked why did he has mis-declared the description of subject goods in the draft BL which further resulted in mis-declaration in IGM and violation of provisions of Indian Customs Act, 1962, he stated that he had worked as per directions from Shri Ganesh Bingi and he did not verify the actual cargo. On being asked who are the owner /controller and key persons of the shipper M/s. JSKR General

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Trading LLC, Dubai, he stated that Mr. Muneez and Mr. Mahamood are connected to the said shipper company as they had approached them to send the consignment to Mundra but he is not aware as to whether they are owner/controller of M/s. JSKR General Trading LLC, Dubai, or otherwise. He is not aware about the same and this was their first dealing with M/s. JSKR General Trading LLC, Dubai. On being further asked, he stated that they have not verified the genuineness/existence of M/s. JSKR General Trading LLC in any manner. On being asked what happened after detection of 8400000 sticks of Cigarettes in the consignment having declared description of cargo as "Hotel supplies Bed Sheet Pillow Cover" and what was the conversations held between his company and the said shipper, he stated that on interception of Cigarettes from container, the shipper asked them to recall the container from Mundra to Jebel Ali Port, Dubai. In the letter dated 01.04.2022 received by email dated 04.04.2022 at 11.47 AM, the shipper mentioned that they had wrongly stuffed Pride filter Cigarettes cargo instead of bed sheet pillow cover as mentioned on the Export Declaration copy; that it was fully their mistake and they told to stuff the correct cargo and to re-export it back. He was shown statement dated 05.04.2022 of Shri Ganesh Bingi who in reply to question no. 10 of the statement stated that he did not know about products in which the shipper M/s JSKR was dealing with; that Mr. Muneez once enquired about transshipment of cigarettes from Jebel Ali to Chittagon via Mundra and by this trend, he may be dealing with exports of Cigarettes from Dubai; that Shantaram (himself) is better person to answer this question. On being asked to comment upon this, he stated that he have gone through the statement dated 05.04.2022 of Shri Ganesh Bingi and in this regard, he stated that he do not know the actual profession of Mr. Muneez.

4.11 Summons were issued to the overseas Shipper M/s. JSKR General Trading LLC, UAE to get the required details/documents and their version in the matter, and to appear before investigating officer, but no response received from them against the Summons. Summons was also issued to the overseas buyer M/s. Luxury Bedding Group Ltd., to get the required details/documents and their version in the matter, and to appear before investigating officer but no response received from them against the Summons.

5. From the investigation conducted in the matter and substantiated by the corroborated statements of various persons, it appeared that the

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smugglers of Cigarettes has planned the whole conspiracy and exported the foreign brand Cigarettes from Jebel Ali (UAE) to Mundra Port for transshipment to Liverpool, UK. The conspirators by way of not declaring the correct material particulars of the goods i.e. Cigarettes and by way of avoiding correct classification thereof under CTH No. 24022090 and mis-declaring the same as "Hotel Supplies Bed Sheet Pillow Cover" under CTH No. 63049240 of Customs Tariff, the goods were exported to India.

The conspirators used the name of M/s JSKR General trading LLC, Dubai for creating documents for the purpose of the export. The commercial license of the said company bearing No. 725170 show expiry date as 26.01.2022 the same was also verified from the Dubai government website <https://eservices.dubaided.gov.ae/>. The conspirators used the company with expired license and non-existence for exporting the foreign brand Cigarettes by mis-declaring & mis-classifying the same as "Hotel Supplies Bed Sheet Pillow Cover" under CTH No. 63049240.

The conspirators used the 40 feet container No. EMCU 9324266. The Evergreen Container lines have sold the said container to Multiface General Trading LLC in 2012 in Jebel Ali, UAE against Invoice Number 1112001336. Multiface Containers is a global container trading and logistics company based in the UAE. The said container was purchased by the conspirators and transported that from free zone to Jebel Ali Port and got the custom clearance by filing export document bearing ED No. 201-05987346-22, dtd.17.03.2022 at Jebel Ali port in the name of M/s JSKR General trading LLC, for export from Jebel Ali to Mundra Port, India by mis-declaring & misclassifying the goods. The port code Maxx Marine Container Line LLC, Dubai was used by them at Jebel Ali. The Maxx Marine Container line Pvt. Ltd vide their letter dated 13.07.2022 submitted the invoice No. 202609 dated 26.03.2022 raised by them along with the email correspondences, in that invoice the Shipper is mentioned as JSKR General trading LLC, Consignee is Able Shipping Agencies(India) Pvt. Ltd and Customer is shown as Able Shipping Line LLC.

The slot in the vessel MV Montplier was booked through the shipping line firm "Milaha" who has been a slot partner of Unifeeder group. The Draft bill of lading No. JEAMUN22002 dated 22.02.22 was issued with mis-declared goods and fake documents by M/s Able Shipping LLC, Dubai and IGM was filed in India at Mundra Port for transshipment to Liverpool, UK. The Cigarettes then arrived at Mundra port as mis-declared & mis-classified goods.

Further, two Bills of Lading bearing same No. JEAMUN22002 were

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issued, one showing consignee as M/s Luxury Bedding Group Ltd. (Address: T/A Luxury Bedding Company, Unit No.10, Melthem Mills Ind EST, Huddersfield, West, Yorkshine-HD94DS (Phone 01484-482507) (port of Delivery Liverpool and the other one showing consignee M/s Able Shipping Agencies (India) Pvt. Ltd., Gandhidham (port of Delivery Mundra) were prepared by M/s Able Shipping LLC, Dubai. The address of M/s Luxury Bedding Group Ltd in the Bill of Lading is written as "Yorkshine", however the M/s Luxury Bedding Group Ltd., is situated at "Yorkshire" thus the address of the consignee was incorrect. Further, in the statements of the concerned persons, nobody knew or have KYC of the M/s Luxury Bedding Group Ltd., UK.

Thus aforesaid illegal import has been executed in a planned manner having a well-defined role for each stake holder viz. Shri Ganesh Dashrath Bingi, Shri Shantaram Racha, Shri Muneez Anandankandy, Shri Mahamood Salman etc. Shri Munees Anandankandy in his statement dated 26.04.2022 stated that he did not know the details of M/s. JSKR General Trading LLC., Dubai. This name was given by his friend Shri Salman who lives in Dubai and works for M/s. Fast line Free Zone Company as a Manager. Shri Munees met Shri Ganesh during February 2022 and they discussed the shipment of cigarettes to M/s. Luxury bedding group, Liverpool which included that the shipment of cigarettes should be routed through either Colombo or India or Singapore for which Shri Ganesh responded positively. Thereafter, he was in regular touch with Shri Ganesh through his Dubai Whatsapp number. Thereafter, he spoke to Shri Ganesh about this particular consignment of cigarettes which is seized now at Mundra port as per the directions of his friend Shri Salman for shipment to United Kingdom. Shri Ganesh advised them to purchase Shipper owned container as the business of cigarettes export is illegitimate and as the chances of getting caught by the Customs of the, respective countries is very high for which they readily agreed and Shri Salman purchased the container number EMCU 9324266. As both Shri Munees Anandankandy and Shri Ganesh knew that it would not be possible to ship cigarettes to India without mis-declaring, they decided to declare the cargo as Bed sheets and Pillow covers. In this present consignment of Cigarette his profit was of 2000USD and Shri Ganesh's profit was 5000USD plus the shipping expenditure .

Though Shri Munees stated that he met Shri Ganesh Bingi in February 2022 but they were in contact with each other prior to that and the conspiracy was hatched much before that. As per the email

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conversation submitted by Maxx Marine Container Line Pvt. Ltd., Shri Shantaram D. Racha of M/s Able Shipping Agencies LLC has written an email on 23 December 2021 to Maxx Marine referring about the conversation of Muneez with them(Maxx Marine) about loading of 1 x 40' HC SOC container from Jebel Ali to Mundra and Shri Shantaram requested their port account usage charges. The copy of said email was marked to Shri Ganesh Bingi also. Further, vide email dated 16.03.2022 Shri Shantaram D Racha provided the details of Container as EMCU 9324266/40' HC and requested Maxx Marine to arrange for laden container movement in port in their port account. Also Shri Shantaram D. Racha has mentioned that space is confirmed for vessel Montpellier V. 22012 ETA JEA T2 22.03.2022 ETA Mundra 01.04.2022 ROT 879161 from Jebel Ali to Mundra. Thus from the admitted statement of Shri Munees and the email correspondences of Shantaram D. Racha (Able Shipping Line LLC) confirmed that the conspirators were planning the export of Cigarettes to India by mis-declaring and mis-classifying the same. They were further planning to prepare switch Bill of Lading but the plan did not get executed as the DRI has seized their consignment on 01.04.2022.

Shri Munees in his statement dated 06.05.2022 stated that upto 2019, he has exported Cigarettes by mis-declaring them to UK and Europe via China, Singapore. But this time he has tried to transship the Cigarettes for the first time via India. They were well aware that they were doing illegal activity and were prepared for that. Shri MunnesAnadankandy in his statement dated 26.04.22 stated that Shri Ganesh Bingi advised them to purchase Shipper owned container as the business of cigarettes export has been illegitimate. Also Shri Ganesh Bingi assured them that he can route this subject consignment through Mundra port as there are turmoils/political uncertainty in Srilanka. Shri Ganesh assured them that if any problem arises due to Customs Authorities he will send back the consignment to Dubai showing it as wrong consignment. He also assured that any loss occurring out of this business transaction will be borne by him. Thereafter, when the DRI seized the smuggled Cigarettes at Mundra Port on 01.04.2022, then M/s Able Shipping Agencies (India) Pvt. Ltd., vide letter dated 04.04.2022 submitted a letter to DRI that the Shipper M/s JSKR general trading LLC, Dubai had wrongly stuffed Pride Filter Cigarettes cargo instead of Bed Sheet Pillow cover as mentioned in the ED copy and requested to allow them to Re-export the container. They also submitted email correspondence dated 04.04.2022 from Mahamood Ismail with email id jskrtraders@gmail.com. The examination of goods under

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Panchnama was done by the Respondent on 01.04.2022 and on the same date, the letter is issued by the shipper confirmed that the same was not genuine, particularly when there is no specific manner of receipt of the said communication is clarified and the Commercial License of the company M/s JSKR Trading LLC was expired long ago. This is also not palatable, because M/s Able Shipping Services LLC themselves placing excuse of non-issue of Bill of Lading by them to the shipper, but the shipper has clearly mentioning about the B/L number etc. in the so-called letter dtd.01.04.2022. Further, the website of M/s JSKR Trading LLC, Dubai was created by M/s WeblinkIndia.net c/o Weblink.In.Pvt. Ltd., 33 & 33A Ratna Road, Industrial Area, Near Kirti Nagar Metro Station, New Delhi- 110015 on 01.07.2021. The mail correspondence dated 20.09.2021 of M/s Weblink with M/s JSKR group shows the email id's created for M/s JSKR by them are infor@jskrgroup.com, farhan@jskrgroup.com, Tushar.k @jskrgroup.com, Asra@jskrgroup.com, Noora@jskrgroup.com, Tracking@jskrgroup.com. However, the email id of Mohammad Ismail i.e. jskrtraders@gmail.com and is not genuine in light of the facts that license of M/s JSKR General trading LLC is expired on 26.01.2022 itself. Therefore issuance of such letter was an afterthought and it was forged or fabricated with sole aim to mislead the investigation. Further, Shri Ganesh DashrathBingi, Shri Shantaram D Racha & Shri MuneesAnandankandy were arrested on 06.05.2022 and were sent to Judicial Custody who were further release on bail by the Court on 05.07.2022.

6. Further, for the purpose of the levying duty on import goods the value of the goods is 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"). 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*". 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 are not available. Further going forward, Rule 5 (1) of Rules 2007 provides for determination of value on the basis of value of similar goods. Therefore for ascertaining the

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correct value of the goods, services of Government approved Chartered Engineer were availed. The goods covered under above consignment have common brand name, length more than 75 MM and comparable commercial quantity. The goods were examined under panchanama dated 13.09.2022 and valued by Chartered Engineer and Government approved Valuer Shri Kunal Ajay Kumar of M/s Suvikaa Associates. Shri Kunal Kumar (vide his Certificate DRI/129/22-23 dated 14.09.2022) has found the length of cigarettes to be 84 MM including filter. Further market price of one cigarette stick has been determined to Rs. 18/- and value of container determined to Rs. 3,50,000/- (Rs. Three Lakh Fifty Thousand). Therefore, applying the unit value of Rs. 18/- per stick, the appropriate value of the said illegally imported 84,00,000 cigarettes comes to Rs. 15,12,00,000/- (Rs. Fifteen Crore Twelve Lakh only), in terms of Rule 5 of Rules 2007.

7. The goods imported in container bearing Nos. EMCU9324266 covered under bill of Lading No. JEAMUN 22002 dated 22.02.2022, imported vide Import General Manifest No. 2307702 dated 30.03.2022 filed at Custom House, Mundra were mis-declared as "1680 packages of Hotel Supplies Bed Sheet Pillow Covers". However, on examination 84,00,000 cigarette sticks of "BBM Pride Filter Kings" brand were found. The subject cigarette sticks were also not declared in the Import General Manifest. The value of 84,00,000 subject cigarettes in terms of Section 14 of Customs Act, 1962 read with Rules 2007 has been determined as Rs. 15,12,00,000/-. The facts revealed that the Cigarettes were smuggled into India without declaring the same in the import documents filed at AP&SEZ Mundra. In terms of General Note 13 of Schedule-I of Import Policy, the import of cigarettes or any other tobacco products are subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2009. 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 Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2014, as amended. In the light of these provisions all Tobacco products manufactured / packaged / imported for sale into India have to bear the specified pictorial health warnings. However, examination of goods under Panchanama dated

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01.04.2022 and report of Chartered Engineer (DRI/129/22-23 dated 14.09.2022) based on examination of samples of cigarettes reveals that the packages of the subject cigarettes were not having specified pictorial health warnings. In view of the above, 84,00,000 cigarettes found in container No. EMCU9324266 during Panchanama dated 01.04.2022, having value Rs. 15,12,00,000/-, are liable to confiscation under Section 111 (d), 111(f), 111(l), 111 (m) and 111(o) of Customs Act, 1962 and the Container No. EMCU9324266 having value of Rs. 3,50,000/- used in the smuggling of cigarettes is also liable to confiscation under the provisions of Section 119 of the Customs Act, 1962;

8. Therefore, an SCN bearing no.-GEN/ADJ/ADC/755/2022-Adjn-O/o Pr. Commr-Cus-Mundra dated 23.09.2022 has been issued to:

(1) M/s Able Shipping (India) Pvt. Ltd., S-3, 2nd Floor, Arjan Mall. Opp. Hotel Sarovar Portico, Plot No. 118, Sector-8, Gandhidham
(2)M/s. Able Shipping Agencies LLC, Dubai, and any persons having claim over 84,00,000 cigarette sticks and container No. EMCU 9324266 seized vide seizure memo dated 01.04.2022 were called upon to show cause to the Additional Commissioner of Customs, Mundra having his office situated at 5-B, 1st, Floor, Customs House, AP& SEZ, Mundra (Kutch) – 370421, within thirty days from the receipt of the notice as to why:

- i. 84,00,000 cigarette sticks, having value of Rs. 15,12,00,000/-, should not be confiscated under the provisions of 111 (d), 111(f), 111(l), 111 (m) and 111(o) of the Customs Act, 1962;
- ii. Container No. EMCU 9324266 having value Rs. 3,50,000/- should not be confiscated under the provisions of Section 119 of the Customs Act, 1962;

(3) Shri Ganesh DashrathBingi, Director M/s Able Shipping (India) Pvt. Ltd., S-3, 2nd Floor, Arjan Mall. Opp. Hotel Sarovar Portico, Plot No. 118, Sector-8, Gandhidham & and M/s Able Shipping Line LLC, PO Box No. 124962, Dubai, UAE residing at Flat no. 9, B Wing, First Floor, LaxmanNiwas CHS, Rammilan G Shukla Marg, GTB Nagar, Mumbai
(4)Shri Shantaram D Racha, M/s Able Shipping Line LLC, PO Box No. 124962, Dubai, UAE, residing at HUB Town CHS B-902, MA Road, SION Koliwada, Mumbai
(5) M/s Able Shipping Line LLC,

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PO Box No. 124962, Dubai, UAE **(6) M/s Able Shipping (India) Pvt. Ltd.**, S-3, 2nd Floor, Arjan Mall. Opp. Hotel Sarovar Portico, Plot No. 118, Sector-8, Gandhidham were called upon to show cause in writing to the Additional Commissioner of Customs, Mundra having his office situated at 5-B, 1st Floor, Customs House, AP& SEZ, Mundra (Kutch) – 370421, within thirty days from the receipt of this notice as to why:

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

(7) Shri MuneesAnandankandy S/o MusthafaBalarath, BaitulRabiya, Near Kannotheppally, Chokli, Kannur, Kerala 670672 was called upon to show cause in writing to the Additional Commissioner of Customs, Mundra having his office situated at 5-B, 1st Floor, Customs House, AP& SEZ, Mundra (Kutch) – 370421, within thirty days from the receipt of this notice as to why:

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

(8) M/s.Luxury Bedding Group Ltd., T/A Luxury Bedding Company, Unit No.10, Melthem Mills Ind EST, Huddersfield, West, Yorkshshire-HD94DS **(9) M/s. JSKR General Trading LLC**, PO Box 377279, Deira, Dubai are hereby called upon to show cause in writing to the Additional Commissioner of Customs, Mundra having his office situated at 5-B, 1st Floor, Customs House, AP& SEZ, Mundra (Kutch) – 370421, within thirty days from the receipt of this notice as to why:

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

DEFENCE SUBMISSION:

9. Shri MuneesAnandankandy vide letter dated 14.11.2022 submitted a

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reply to the instant Show Cause Notice wherein he submitted that total quantity of 84,00,000 sticks of filter cigarettes 84 mm length of brand "BBM" "PRIDE FILTER KINGS" having market value around rupees 16,80,00,000 is false and baseless. He further stated that the allegation that he met Shree Ganesh Dasharath Bingi in February 2022 and were in contact with each other prior to that and the conspiracy was hatched as per the email conversation submitted by Maxmarine container line private limited and Shri Shantaram D. Racha written in email on 23.12.2021 is false. He submitted that he was wrongfully arrested and sent to judicial custody and stated all the allegations levelled against him are false and he was not involved in the case in any manner and there was no conspiracy as stated in the instant Show cause Notice. Further, he submitted that he had never given any voluntary statement as such and the same concocted to suit the case and retract the same. Further, he submitted that the instant SCN issued only by referring into the records prepared by the customs officers without confirming is not proper and unlawful, hence the further course of action is impermissible under the law. Further, he denied his connection to the container by submitting that he did not have any knowledge about cigarette packet and submitted that there was no occasion or permitted to declare if at all the goods said to have been shipped from Dubai as required under Section 77 of the Custom Act. Further, he submitted that the said Cigarettes have been detained in the said container was valued as such is baseless, no evidence, no documentary proof and is only an assumption. No Mahazar was drawn before him and also in the presence of independent witnesses. It was prepared and obtained under the signatures of witnesses for convenience of DRI/customs officers. He denied all the charges levelled against him in the subject Show Cause Notice and requested to drop the charges invoked against him vide the SCN.

PERSONAL HEARING:

10. Personal hearing in the matter was fixed on 03.01.2023 which was attended by Shri Ganesh Dashrath Bingi he also represented M/s. Able Shipping Line LLC & M/s. Able shipping Agencies (India) Pvt. Ltd. as well. Shri Ganesh Bingi submitted a written submission dated 03.01.2023 wherein he submitted that about this shipment Mr. Sukant Dole had given the reference of Mr. Muneez and informed they have some export shipments from Jebel Ali to UK & EUROPE Ports. While discussing with

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Mr. Muneez he informed him whether they can handle export shipment from Jebel Ali to UK and EUROPE Ports and Cargo will be Bed Sheets; that for Bed sheets cargo they required service from Jebel Ali to Liverpool via Mundra as there is direct service of MSC Line, so the SOC Container to be loaded from Jebel Ali to Mundra and same SOC container after its discharged at Mundra as Transshipment container should be loaded from Mundra to Liverpool. On this basis he confirmed that it can be handled by them & there is no issue. He stated that that M/s. Able Shipping Line LLC, Dubai office has not worked as a shipper at Dubai and M/s. Able Shipping Line LLC Dubai office had not done any export declaration (ED) / Custom Clearance at Dubai; that M/s. Able Shipping Line LLC Dubai office had only arranged the laden container 'gate in' permission copy by Max Marine Shipping Line LLC who have their port account/stack at Jebel Ali port for loading the said container from Jebel Ali to Mundra and sent e-mail to connect Mr. Anfal. Using that port account/stack of Max Marine Mr. Muneez had given this container booking to him. He further stated that M/s. Able Shipping Line LLC, Dubai office also took space with vessel operator (Milaha i.e. Qatar Navigation LLC) to load the said container on vessel Montpellier from Jebel Ali to Mundra & their India office Able Shipping Agencies (India) Pvt. Ltd. had to do the transshipment handling at Mundra Port. He further submitted that as per shipper instructions first draft BL (Bill of lading) JEAMUN22002 dated 22.03.2022 was prepared up to Mundra for transshipment filling at Mundra Port. BL draft showing JSKR Trading LLC as Shipper & Consignee/Notify Party as "Able Shipping Agencies (India) Pvt. Ltd." This 1st BL was only sent as an intimation that said SOC container no. EMCU9324266 was loaded onboard from Jebel Ali to Mundra & he had sent the same draft to Mr. Muneez who later provided the correct BL details. He further submitted that M/s. Able Shipping Line LLC prepared the Draft BL as per Dubai custom document attached copy, as per the sipper requirement only, with description 'Hotel supplies Bed sheet pillow cover' as mentioned in ED copy (E.D No. 202-059873 46-22) dated 17/03/2022; that Able Shipping Dubai and India office were not aware what exactly inside the container as transportation & custom clearance was not done by M/s. Able Shipping Line LLC. He submitted that in first Draft BL, which was sent to shipper & their Mundra office, was only for filing the Transshipment manifest for the SOC container as "International Transshipment Container" at Mundra port in which shipper has been shown as JSKR General Trading LLC & consignee/Notify party as "Able Shipping Container Pvt. Ltd." later Mr. Muneez had forwarded the

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correct consignee & notify party details as "LUXURY BEDDING GROUP LTD OF UK, accordingly he prepared the correct DRAFT BL with changes in consignee/notify party & place of delivery as M/S LUXURY BEDDING GROUP LTD WEST YORKSHIRE Port of Loading: Jebel Ali, Port of Discharge: Mundra & Port of Delivery: LIVERPOOL. The 2nd BL draft was prepared by him and the same was sent to Mr. Shantaram D. Racha who accordingly attached the draft PDF file and sent to Able Shipping Mundra office before vessel arrival at Mundra port for International Transshipment Manifest Filing. He submitted that Able Shipping Agencies (India) Pvt. Ltd., had also Booked space with MSC Carrier Line for loading the SOC container from Mundra to Liverpool on 28/04/2022 vessel, so there was no question for clearing these goods from custom at Mundra port. He submitted that in this case and his role was for handling this container and to use their Port A/c at Mundra and to file it as Transshipment container and load it further as it was to be transshipped from Mundra to Liverpool. He further submitted that M/s. Able Shipping Agencies (India) Pvt. Ltd., and M/s. Able Shipping Line LLC hereby claim that they were not aware of the mis-declaration done by the shipper in the shipment. He submitted that they deny the entire allegations against them and had nothing to do with the said consignment, container and goods that any person of M/s. Able Shipping Line LLC and M/s. Able Shipping Agencies (India) Pvt. Ltd., Company has not gain any amount from the said transaction. He submitted that therefore the allegations framed in the Para 11 of the show cause notice cannot be charged against M/s. Able Shipping Line LLC and M/s. Able Shipping Agencies (India) Pvt. Ltd., and their MD/ED/Employees and thus Section 112 (a) & Section 114AA of the Customs Act, 1962 do not apply on them.

11. Further, Shri Shantaram D. Racha attended for personal hearing on 30.01.2023 he also represented M/s. Able Shipping Line LLC & M/s. Able shipping Agencies (India) Pvt. Ltd. as well. He also submitted a written submission dated 30.01.2023 wherein he submitted that that the facts mentioned in the show cause notice are not true and correct. He submitted that that the contentions of the statement admitted in the reply were true and correct and rest of all allegations and admission are hereby denied, as confessional statement given by an accused before a DRI officer is inadmissible as evidence. He submitted that he had nothing to do with the goods imported and/or exported through container i.e. 'Bedsheet and/or Cigarettes' and therefore he wanted to make submission in person or

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through his Council when the case is taken for adjudication. He submitted that this has been Shipper Own Container (SOC) & empty container was not provided by Able Shipping Line LLC, Dubai but the shipper had arranged to buy that container on their own; that M/s. Able Shipping Line LLC, Dubai office was not the shipper at Dubai; that M/s. Able Shipping Line LLC Dubai office has not done any export declaration (ED) / Custom Clearance at Dubai ; that M/s. Able Shipping Line LLC Dubai office had not done the transportation at Dubai. He submitted that M/s. Able Shipping Line LLC Dubai office had only arranged the laden container 'gate in' permission copy by Max Marine Shipping Line LLC who have their port account/stack at Jebel Ali port for loading the said container from Jebel Ali to Mundra. He submitted that M/s. Able Shipping Line LLC, Dubai also took space with vessel operator (Milaha i.e. Qatar Navigation LLC) to load the said container on vessel Montpellier from Jebel Ali to Mundra & their India office Able Shipping Agencies (India) Pvt. Ltd. had to do the transshipment handling at Mundra Port. He submitted that as per shipper Instructions first draft BL (Bill of lading) JEAMUN22002 dated 22.02.2022 (said to be 22.03.2022) was prepared up to Mundra for transshipment filling at Mundra Port; that M/s. Able Shipping Line LLC prepared the Draft BL as per Dubai export custom document with description Hotel supplies Bed sheet pillow cover as mentioned in ED copy (E.D No. 202-059873 46-22) dated 17/03/2022. Able Shipping was not aware what exactly is inside the container as transportation & custom clearance is not done by the M/s. Able Shipping Line LLC. He further reiterated what has been submitted under reply dated 03.01.2023 by Shri Ganesh Dashrath Bingi.

12. Further, other Noticees viz. Shri Munees Anandankandy, M/s. Luxury Bedding Group Ltd. & M/s. JSKR General Trading LLC or none of their representative appeared on the scheduled PH date i.e.-03.01.2023. Therefore, next personal hearing was again fixed on 12.01.2023 but again no one appeared on behalf of the Noticee. In the event of non-appearance, a last opportunity to attend the personal hearing was fixed on 07.02.2023, but none appeared on behalf of the Noticee.

Discussions and Findings;

13. I have gone through the Show Cause Notice and the submissions made during the Personal Hearing. In the instant case, the Show Cause Notice

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proposes to confiscate the Goods, namely, 84,00,000 cigarette sticks, having value of Rs. 15,12,00,000/-, under the provisions of 111 (d), 111(f), 111(l), 111 (m) and 111(o) of the Customs Act, 1962. The Show Cause Notice also proposes to confiscate the Container bearing Number EMCU 9324266 having value Rs. 3,50,000/-. The Show Cause Notice also proposes to impose penalties U/s 112(a)/ 114 AA on the (i) Shri Ganesh Dashrath Bingi, Director M/s Able Shipping (India) Pvt. and M/s Able Shipping Line, Dubai, (ii) Shri Shantaram D Racha, M/s Able Shipping Line LLC, Dubai. (ii) M/s Able Shipping Line LLC, Dubai (iii) M/s Able Shipping (India) Pvt. Ltd., Gandhidham (iv) Shri MuneesAnandankandy (v) M/s.Luxury Bedding Group Ltd. West, Yorkshine (vi) M/s. JSKR General Trading LLC, Dubai.

14. I find that a huge quantity of foreign brand Cigarettes was concealed inside the 40 feet container and under IGM (IGM No. 2307702 dated 30.03. 2022), filed by the Container agent for the said cargo M/s. Able Shipping Agencies (India) Pvt. Ltd., the goods were declared as '*1680 Packages of Hotel supplies Bed sheet, Pillow covers*'. Further, on examining the said imported goods by the officers of DRI, Regional Unit, Gandhidham on its arrival at Mundra Port it was found that total 84,00,000 (84 Lakh) pieces of cigarettes with brand name "PRIDE" followed by word "FILTER KINGS", valued at Rs. 15,12,00,000/-, were stuffed in the said container No. EMCU9324266. During examination the declared goods i.e., "*Hotel Supplies Bed Sheet Pillow Covers*" were not found in the said container and the whole container was found fully loaded with foreign brand cigarettes.

15. I find that the goods imported in container Nos. EMCU9324266 covered under bill of Lading No. JEAMUN 22002 dated 22.02.2022, imported vide Import General Manifest No.2307702 dated 30.03.2022 filed at Custom House, Mundra were mis-declared as "1680 packages of Hotel Supplies Bed Sheet Pillow Covers". I find that on examination 84,00,000 cigarette sticks of "BBM Pride Filter Kings" brand were found in the said container and the cigarette sticks were not declared in the Import General Manifest. I find that the value of 84,00,000 subject cigarettes in terms of Section 14 of Customs Act, 1962 read with Rules 2007 has been Rs. 15,12,00,000/-. I find that Cigarettes were smuggled into India without declaring the same in the import documents filed at AP&SEZ Mundra. In terms of General Note 13 of Schedule-I of Import Policy, the import of

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cigarettes or any other tobacco products are subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2009. 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 Cigarettes and other Tobacco Products (Packaging and Labeling) Amendment Rules, 2014, as amended. In the light of these provisions all Tobacco products manufactured / packaged/ imported for sale into India have to bear the specified pictorial health warnings. I find that the packages of subject cigarettes were not having specified pictorial health warnings. In view of the above, 84,00,000 cigarettes found in container No. EMCU9324266 during Panchanama dated 01.04.2022, having value Rs. 15,12,00,000/- which were mis-classified and mis-declared under IGM, are liable to confiscation under Section 111 (d), 111(f), 111(l), 111 (m) and 111(o) of Customs Act, 1962 and the Container No. EMCU9324266 having value of Rs. 3,50,000/- used in the smuggling of cigarettes is also liable to confiscation under the provisions of Section 119 of the Customs Act, 1962. For more clarity I reproduce the said section as under;

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

- (a)
- (b)
- (c)
- (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;*
- (e)
- (f) *the prevention of injury to the economy of the country by the uncontrolled import or export of 2[gold or silver or any other goods];*
- (g)
- (h);
- (j);
- (k);
- (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;*
- (m) *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;*

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(n)

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

(p)

(q)

16. I find that Shri Ganesh Dasharath Bingi, Managing Director of M/s Able Shipping Agencies (India) Pvt. Ltd., Gandhidham in his statement dated 04.04.2022, 05.04.2022 and 06.04.2022 *inter alia* stated that they contacted the Vessel Operator M/s Express Feeder Dubai who booked space for the said container in the vessel Montpellier from Jebel Ali to Mundra, which was loaded on 22.03.2022 on the vessel Montpellier and they prepared the Bill of Lading No. JEAMUN22002 dated 22.02.2022. I find that on perusal of the Bill of Lading No. No. JEAMUN22002, he stated that he prepared the Bill of Lading; their Dubai office has sent the above mentioned Bill of Lading No. JEAMUN22002 dated 22.03.2022 to the Customer Shri Mohammod of M/s JSKR General Trading LLC, Dubai on 22.03.2022. I find that he admitted that he was in contact with Shri Muneez of M/s JSKR General Trading LLC, Dubai He stated that their Import Executive Mr. Vinit Ganatra prepared the IGM file and send the same to Vessel Operator M/s Express feeder to file the IGM. On being asked he stated that the IGM filed on the basis of draft Bill of Lading. I find that on perusal of Panchanama dated 01.04.2022 he stated that total 21 pallets containing 4lakh each cigarette sticks of "Pride filter kings Cigarettes" made in UAE, were found stuffed in the container No. EMCU9324266. I find that he agreed with the contents and facts mentioned in the Panchanama dated 01.04.2022. I find that on perusing the export shipping Bill and invoice submitted by him, he stated that the destination port has been mentioned as India in the Shipping Bill. Further, on perusing the Shipping Bill, Invoice-cum Packing list and DP World Tax invoice, he stated that Liverpool or consignee M/s Luxury Bedding group Ltd is not mentioned in the export documents filed at Customs in Dubai. On being asked he stated that in invoice cum packing list issued by M/s JSKR General trading LLC, Dubai in the name of M/s Able Shipping Container Pvt. Ltd., Mundra, Gujarat, India for filing Transshipment permission at Mundra Port. Shri Ganesh Dasharath Bingi stated that he has booked space on vessel Montpellier through vessel agent M/s. MILAHA, Jebel Ali, Dubai and after loading of container in the vessel

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they have issued B/L. They have provided documents to the vessel operator M/s. Sea Consortium Shipping (India) Pvt. Ltd to file IGM at Mundra Port and further to discharge the import container at Mundra in the port account of M/s Able shipping agencies (India) Pvt. Ltd and arrange for loading on the said container on MSC MARIA ELENA which is scheduled to depart from Mundra to Liverpool on 13.04.2022. He stated that he had prepared both the Bills of Lading bearing No. JEAMUN22002 one having consignee M/s Luxury Bedding Group Ltd (port of Delivery Liverpool) and the other having consignee M/s Able Shipping Agencies (India) Pvt. Ltd. (port of Delivery Mundra). As per the consignee details given by Muneez of M/s JSKR General Trading on 01.03.2022 he prepared the Bill of Lading showing consignee name M/s Luxury Bedding Group Ltd, Yorkshine (port of Delivery Liverpool). The other Bill of lading in which consignee is mentioned as M/s Able Shipping Agencies (India) Pvt. Ltd. (port of Delivery Mundra) shipping agencies (India) Pvt. Ltd mentioned as consignee was prepared for filing IGM purpose for shipment from Jebel Ali, Dubai upto Mundra Port, India. He further stated that FORM III Cargo Declaration was filed with Customs by Vinit Ganatra who is looking after the work of Import/EDI/IGM/Transshipment at Mundra Port after receiving cargo arrival notice from vessel operator M/s. Sea Consortium Shipping (India) Pvt. Ltd. I find that on being asked whether he was aware about Section 123 of the Customs Act, 1962 and Notification No. 103/2016-Cus.(N.T.) dated 25.07.2016 according to which when any goods (Silver and Cigarette) were seized under the Act under the reasonable belief that being smuggled goods, the burden of proving lie on the person in whose possession these goods are seized, he agreed in this regard. I find that on being asked, whether he agree that this import of Cigarettes by mis-declaring the same is illegal and injurious to the economy and is in violation to Section 11 of the Customs Act, 1962, he agreed that this import of Cigarettes by mis-declaring the same as "Bed sheet and Pillow cover" is illegal and injurious to the economy and has been in violation to Section 11 of the Customs Act, 1962. On being asked whether he was aware about the provision of transshipment in Section 53, 54 & 55 in Chapter VIII of the Customs Act, 1962 he stated that as per his understanding the transshipment of goods is allowed without payment of duty subject to the provisions of Section 11 of the Custom Act, 1962. I find that he agreed that the said consignment has been in violation to provisions of Section 11 of the Customs Act, 1962 and is liable for payment of duty.

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I find that Shri Ganesh Dasharath Bingi, under his statement dated 06.05.2022 on being asked that as he was aware of the concealment of Cigarettes in the Container and as a responsible Shipping agent why he had not suggested him to mention the actual details in the documents, Shri Ganesh Bingi stated that Shri Munees Anandakandy, has informed him that he has business dealings in China relating to Oppo mobile accessories and he will have to import of related goods from China to India through Dubai in approx. 500 600 containers in the next 04 years. He (Munees) assured him (Ganesh) to give the said business to his company, due to which he was ready to handle his said consignment of 01 container for transshipment through Mundra to Liverpool, U.K. I find that on perusal of statement dated 26.04.2022 of Shri Munees admitted that all the facts related to his company and their conversations were correct except the amount of \$5000 USD as mentioned to the answer to Question No. 3, he admitted that they had the deal of payment only 1000 USD, after reaching the shipment for the said consignment and admitted that all the remaining facts in the said statement were true and correct. On perusal of copy of invoice IND20022 dated 14.03.2022 he stated that this invoice was prepared for shipment of subject consignment of Cigarettes. He admitted that the name reflected as 'Able shipping Container Pvt. Limited' referred to only his company M/s. Able Shipping Agencies (India) Pvt. Ltd.

17. I find that Shri Shantaram Dayaram Racha, Director of M/s Able Shipping Line, in his statement dated 06.05.2022 he *inter alia* stated that in the mid of March, 2022, he was told by Shri Ganesh Bingi, Managing Director of his company M/s. Able Shipping Agencies India Pvt. Ltd., that a shipper owned container (SOC) bearing No. EMCU 9324266 was to be loaded from Dubai to Mundra and the same was to be transshipped at Mundra for subsequent destination to UK., accordingly he arranged space in vessel Montepellier. He also stated the name of addressee was mentioned in the invoice as M/s. Able Shipping Container Pvt. Ltd, on being asked that why he had prepared draft BL mentioning the name of consignee therein as M/s. Able Shipping Agency India Pvt. Ltd., he stated that he was not aware why the shipper M/s. JSKR General Trading LLC, Dubai addressed the invoice no. IND20022 dated 14.03.2022 to their company on the basis of which he had mentioned his company as consignee in the draft BL bearing no. JEAMUN22002, but later on, as suggested by Shri Ganesh Bingi, they had changed the name of consignee

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in the draft BL on receipt of another invoice addressing to M/s. Luxury Bedding Group Ltd., West Yorkshire. I find that on being asked whether they have issued the Original BL for the aforesaid draft BL, he stated that they have not been paid any amount by the shipper, so they did not finalize the draft BL till date; that they requested the above mentioned representatives of shipper for payment but they did not pay, whereas, his company had paid the charges of vessel i.e. AED 2526.43 against invoice no. FE/JEA/INV/22/05383 dated 27.03.2022 issued by M/s. Qatar Navigation, Dubai. I find that he also stated that he was aware that they had declared the description of subject goods in these documents as "Hotel supplies Bed Sheet Pillow Cover". He agreed with the contents and facts mentioned in the Panchanama dated 01.04.2022 and also agreed that it was a gross mis-declaration violating the provisions of Indian Customs Act, 1962. On being asked why did he has mis-declared the description of subject goods in the draft BL which further resulted in mis-declaration in IGM and violation of provisions of Indian Customs Act, 1962, he stated that he had worked as per directions from Shri Ganesh Bingi and he did not verify the actual cargo.

18. I find that both Shri Ganesh Dasharath Bingi and Shri Shantaram Dayaram Racha have tendered their statement under Section 108 of the Customs Act, 1962 which was not further retracted by them under reasonable time period. I find that Shri Ganesh Dasharath Bingi during personal hearing dated 03.01.2023 submitted that M/s. Able Shipping Agencies (India) Pvt. Ltd., and M/s. Able Shipping Line LLC were not aware of the mis-declaration done by the shipper in the shipment. He denied the entire allegation against them and had nothing to do with the said consignment, container and goods that any person of M/s. Able Shipping Line LLC and M/s. Able Shipping Agencies (India) Pvt. Ltd., Company has not gained any amount from the said transaction. He submitted that the allegations framed in the Para 11 of the show cause notice cannot be charged against M/s. Able Shipping Line LLC and M/s. Able Shipping Agencies (India) Pvt. Ltd., and their MD/ED/Employees and thus Section 112 (a) & Section 114AA of the Customs Act, 1962 do not apply on them. On similar line during personal hearing dated 30.01.2023 Shri Shantaram Dayaram Racha denied all the charges.

I find the statements of Ganesh Dasharath Bingi and Shri Shantaram Dayaram Racha were recorded under Section 108 of Custom Act 1962 which were not further retracted by any of them within

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reasonable time. Therefore, what they have submitted during personal hearing are only after thoughts and cannot be relied upon. I find support of my view from following case laws;

- i. K. Rahuman Sait vs. Commr. Of Customs, Trichy reported in 2021 (376) E.L.T. 476 (Mad.)
- ii. Principal Commr.of Customs vs. Ahmed Mujjaba Lhaleffa reported in 2019 (368) ELT 1084 (Del.)

In view of above I find that Shri Ganesh Dashrath Bingi and Shri Shantaram D. Rachawere having full knowledge regarding mis-declaration of goods and rendered the goods liable for confiscation as discussed supra. Therefore, I hold that **Shri Ganesh DashrathBingi, Shri Shantaram D Racha, M/s Able Shipping (India) Pvt. Ltd., Gandhidham and M/s Able Shipping Line LLC, Dubai are liable for (i) penalty under Section 112 (a) Section 114AA of the Customs Act, 1962.**

19. I find that the name of **M/s JSKR General trading LLC, Dubai** has been used for creating documents for the purpose of illegal export foreign brand Cigarettes by mis-declaring &mis-classifying the same as "Hotel Supplies Bed Sheet Pillow Cover" under CTH No. 63049240. The said contraband goods were stuffed in 40 feet container No. EMCU 9324266, initially belongs to Evergreen Container lines which was sold to Multi face General Trading LLC in 2012 in Jebel Ali, UAE against Invoice Number 1112001336. The documents bearing ED No. 201-05987346-22, dtd.17.03.2022 was filed at Jebel Ali port in the name of M/s JSKR General trading LLC, for export of contraband goods from Jebel Ali to Mundra Port, India. I find that under this transaction one Draft bill of lading No. JEAMUN22002 dated 22.02.22 was issued with by M/s Able Shipping LLC, Dubai and IGM was filed in India Customs at Mundra Port showing transshipment of the said goods to Liverpool, UK. Another Bills of Lading bearing same No. JEAMUN22002 was issued wherein the name of consignee shown as M/s Luxury Bedding Group Ltd. West, Yorkshine. It is also found that under statements of the concerned persons nobody claimed to have knowledge or having KYC of the M/s Luxury Bedding Group Ltd., UK. In view of the above I refrain from imposing penalty under Section 112(a) of the Customs Act, 1962 on M/s JSKR General trading LLC, Dubai

20. I find that **Shri Munees Anandankandy** in his statement dated 26.04.2022 stated that he did not know the details of M/s. JSKR General

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Trading LLC., Dubai. I find that he met Shri Ganesh during February 2022 and they discussed the shipment of cigarettes to M/s. Luxury bedding group, Liverpool which included that the shipment of cigarettes should be routed through either Colombo or India or Singapore for which Shri Ganesh responded positively. Thereafter, he was in regular touch with Shri Ganesh through his Dubai Whatsapp number. Thereafter, he spoke to Shri Ganesh about this particular consignment of cigarettes which was seized at Mundra port as per the directions of his friend Shri Salman, Dubai for shipment to United Kingdom. Shri Ganesh advised him to purchase shipper owned container as the business of cigarettes export has been illegitimate and as the chances of getting caught by the Customs of the, respective countries is very high for which they readily agreed and Shri Salman purchased the container number EMCU 9324266. I find that as both Shri Munees Anandankandy and Shri Ganesh knew that it would not be possible to ship cigarettes to United Kngdom/India without mis-declaring, they decided to declare the cargo as Bedsheets and Pillow covers. From the admitted statement of Shri Munees and the email correspondences of Shantaram D. Racha (Able Shipping Line LLC) it confirms that the conspirators were planning the export of Cigarettes to India by mis-declaring and mis-classifying the same since December 2021 and just sticking to their plan purchased the SOC container, prepared fake documents in the name of entity whose license was already expired, booked the slot in vessel Montpellier through vessel operator agent "Milaha" and used port code of Maxx marine at Dubai and smuggled the cigarettes to India from Jebel Ali to Mundra. They were further planning to prepare switch Bill of Lading but the plan did not get executed as the DRI has seized their consignment on 01.04.2022. I find that shri Munees in his statement dated 06.05.2022 stated they were well aware that they were doing illegal activity and were prepared for that.

21. I find that Shri Munees Anandankandy under his submission dated 14.11.2022, denied all the charges and also denied what he has already stated before the customs officer. He denied his involvement and all the proceedings. But I find that he has already admitted his involvement and all the wrong doings under various statements recoded under Section 108 of Custom Act 1962 which were not further retracted by him within reasonable time. Therefore, what he has submitted are only after thoughts and can-not be relied upon. I find support of my view from the case laws relied supra. In view of the above I hold that Shri Munees Anandankandy is liable for penalty under Section 112(a) of the Customs Act, 1962 as

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proposed under Show Cause Notice.

22. In respect of M/s Luxury Bedding Group Ltd T/A Luxury Bedding Company, I find that M/s Able Shipping (India) Pvt. Ltd. and M/s Able Shipping Line LLC (Dubai) have only used the name of the said M/s Luxury Bedding Group Ltd T/A Luxury Bedding Company and its involvement in the aforesaid mis-declaration and misclassification is not established. Under these circumstances, in my view no penalty under section 112(a) or under Section 114AA of Custom Act, 1962 can be imposed upon M/s Luxury Bedding Group Ltd.

23. In view of the forgoing discussions and findings, I pass the following order:

Order

- i. I confirm and order for absolute confiscation of the goods viz. 84,00,000 cigarette sticks, having value of Rs. 15,12,00,000/-, under the provisions of Section 111 (d), 111(f), 111(l), 111 (m) and 111(o) of Customs Act, 1962 of the Customs Act, 1962.
- ii. I confirm and order for absolute confiscation of Container No. EMCU 9324266 having value Rs. 3,50,000/- under the provisions of Section 119 of the Customs Act, 1962;
- iii. I impose penalty of Rs. 25,00,000/- (Rs. Twenty Five lakhs) under section **112(a)** of the Customs Act, 1962 and penalty of Rs. 1,00,00,000/- (Rs. One Crore) under Section **114AA** of the Customs Act, 1962 on **Shri Ganesh Dashrath Bingi**, Director M/s Able Shipping (India) Pvt. Ltd., Gandhidham & M/s Able Shipping Line LLC, Dubai, UAE.
- iv. I impose penalty of Rs. 25,00,000/- (Rs. Twenty Five lakhs) under section **112(a)** of the Customs Act, 1962 and penalty of Rs. 1,00,00,000/- (Rs. One Crore) under Section **114AA** of the Customs Act, 1962 on **Shri Shantaram D Racha**, of M/s Able Shipping Line LLC, Dubai, UAE.
- v. I impose penalty of Rs. 25,00,000/- (Rs. Twenty Five lakhs) under section **112(a)** of the Customs Act, 1962 and penalty of Rs. 1,00,00,000/- (Rs. One Crore) under Section **114AA** of the Customs Act, 1962 on **M/s Able Shipping Line LLC, PO Box No. 124962, Dubai,.**
- vi. I impose penalty of Rs. 25,00,000/- (Rs. Twenty Five lakhs) under section **112(a)** of the Customs Act, 1962 and penalty of Rs. 1,00,00,000/- (Rs. One Crore) under Section **114AA** of the Customs Act, 1962 on **M/s Able Shipping (India) Pvt. Ltd., Gandhidham.**
- vii. I impose penalty of Rs. 1,00,00,000/- (Rs. One Crore) on **Shri**

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Munees Anandankandy under Section **112(a)** of the Customs Act, 1962.

- viii. I refrain from imposing penalty on **M/s JSKR General Trading** LLC, Dubai, and **M/s Luxury Bedding Group** Ltd.,Yorkshire-Under Section 112(a) & 114AA of the Customs Act, 1962.

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

25. The SCN No. GEN/ADJ/ADC/755/2022-Adjn of dated 23.09.2022 issued by the Additional Commissioner of Customs (SIIB), Custom House, Mundra, is hereby disposed of in aforesaid manner.

Signed by
Mukesh Kumari
Additional Commissioner,
Customs House, Mundra
Date: 21-06-2023 18:01:59

F.No. GEN/ADJ/ADC/755/2022-Adjn.

Date: 21-06-2023

BY SPEED POST

To,

1. Shri Ganesh Dashrath Bingi, M/s Able Shipping (India) Pvt. Ltd., S-3, 2nd Floor, Arjan Mall. Opp. Hotel Sarovar Portico, Plot No. 118, Sector-8, Gandhidham residential address Flat no. 9, B Wing, First Floor, Laxman Niwas CHS, Rammilan G Shukla Marg, GTB Nagar, Mumbai.
2. M/s Able Shipping (India) Ptv. Ltd., S-3, 2nd Floor, Arjan Mall. Opp. Hotel Sarovar Portico, Plot No. 118, Sector-8, Gandhidham
3. M/s. Able Shipping Agencies LLC, Dubai
4. Shri Shantaram D Racha, HUB Town CHS B-902, MA Road, SION Koliwada, Mumbai
5. Shri Munees Anandankandy S/o Musthafa Balarath, Baitul Rabiya, Near Kannothpally, Chokli, Kannur, Kerala 670672
6. M/s.Luxury Bedding Group Ltd. T/A Luxury Bedding Company, Unit No.10, Melthem Mills Ind EST, Huddersfield, West, Yorkshine-HD94DS
7. M/s. JSKR General Trading LLC, PO Box 377279, Deira, Dubai

Copy to :

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1. The Principal ADG, DRI, Ahmedabad Zonal Unit, Ahmedabad
2. The Deputy/Assistant Commissioner (RRA), Customs House, Mundra
3. The Deputy/Assistant Commissioner (TRC), Customs House, Mundra
4. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra