

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:</b> <b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.</b> <b>PHONE : 02838-271426/271163 FAX :02838-271425</b> <b>E-mail id- adj-mundra@gov.in</b></p>	
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<b>A FILE NO.</b> फ़ाइल संख्या	GEN/ADJ/ADC/736/2025-Adjn-O/o Pr Commr-Cus-Mundra
<b>B OIO NO.</b> आदेश संख्या	MCH/ ADC/ ZDC/566/2025-26
<b>C PASSED BY</b> जारीकर्ता	Dipak Zala, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा।
<b>D DATE OF ORDER</b> आदेश की तारीख	20.01.2026
<b>E DATE OF ISSUE</b> जारी करने की तिथि	20.01.2026
<b>F SCN No. &amp; Date</b> कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/736/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 21.03.2025
<b>G NOTICEE/ PARTY/ IMPORTER</b> नोटिसकर्ता/पार्टी/आयातक	i. M/s. Diksha Enterprise (IEC-ANUPS4631E) ii. M/s SRV Shipping (Customs Broker) iii. M/s. Freight Link Logistics (Custom broker) iv. Shri Dhirendra Shukla alias Sonu Shukla v. Shri Krishna Nand Shahi alias Shri Krishna Shahi vi. Shri Sanatan Jha
<b>H DIN/दस्तावेज़ पहचान संख्या</b>	20260171MO000077907F

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

‘सीमाशुल्क आयुक्त (अपील)

**चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,  
नवरंगपुरा,अहमदाबाद 380 009”**  
**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA  
HAVING HIS OFFICE AT 4<sup>TH</sup> FLOOR, HUDCO BUILDING, ISHWAR BHUVAN  
ROAD,  
NAVRANGPURA, AHMEDABAD-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-  
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –
- i. उक्त अपील की एक प्रति और A copy of the appeal, and  
ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870 के मद 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, 1982और सीमाशुल्क अधिनियम, 1962के 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.

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**BRIEF FACTS OF THE CASE**

Intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit suggested that M/s. Diksha Enterprise (IEC-ANUPS4631E), 38, Barrah Etaye, Mariahu, Jaunpur- 222161 (hereinafter referred to as 'M/s Diksha Enterprise/the Importer' for the sake of brevity), is indulged in duty evasion through mis-declaration of goods.

**2.1** Whereas, acting on the intelligence, investigation was initiated by DRI with respect to the following live consignments pending for clearance at Mundra Custom House as mentioned in Table A below:

**TABLE-A**

<b>Sl. No</b>	<b>Bill of Entry No.</b>	<b>Bill of Entry Date</b>	<b>Bill of Lading No. and date</b>	<b>Container No.</b>	<b>IGM No. and Date</b>
1	5611842	14-09-2024	COAU7252747020 dated 18.08.2024	FCIU9849961	2387666 dated 10.09.2024
2	5595336	13-09-2024	EGLV143464465291 dated 24.08.2024	FFAU5003601	2387526 dated 07.09.2024
3	5595343	13-09-2024	EGLV143454760711 dated 24.08.2024	EMCU1641407	2387526 dated 07.09.2024
4	5611821	14-09-2024	COAU7252652310 dated 18.08.2024	TGBU5023318	2387666 dated 10.09.2024
5	5595341	13-09-2024	EGLV143464465312 dated 24.08.2024	TGBU8031955	2387526 dated 07.09.2024
6	5611817	14-09-2024	KMTCNBO8204957 dated 24.08.2024	BMOU6377797	2387785 dated 11.09.2024
7	5611818	14-09-2024	COAU7252747140 dated 18.08.2024	CBHU7082640	2387666 dated 10.09.2024
8	5611823	14-09-2024	COAU7252652350 dated 18.08.2025	OOCU8522804	2387666 dated 10.09.2024
9	6176035	17-10-2024	EGLV143464474508 dated 05.09.2024	EITU1436501	2388662 dated 20.09.2024
10	6176039	17-10-2024	ONEYNB4J1F761700 dated 03.09.2024	TCLU7973014	2388734 dated 21.09.2024
11	6314267	24-10-2024	031E574465 dated 22.08.2024	WHSU5545571	2387857 dated 11.09.2024
12	6314300	24-10-2024	031E574468 dated 22.08.2024	WHSU6643530	2387857 dated 11.09.2024
13	6314278	24-10-2024	EGLV143464470511 dated 30.08.2024	TRHU5232760	2388144 dated

					14.09.2024
14	6314289	24-10-2024	EGLV143464470529 dated 30.08.2024	EITU9034263	2388144 dated 14.09.2024
15	6339125	25-10-2024	EGLV143469496984 dated 05.09.2024	EITU1026744	2388765 dated 21.09.2024
16	6339179	25-10-2024	EGLV143459204875 dated 11.09.2024	EMCU9899527	2389323 dated 28.09.2024
17	6375284	28-10-2024	EGLV143459194543 dated 30.08.2024	EITU1242661	2388144 dated 14.09.2024
18	6375224	28-10-2024	EGLV143459190653 dated 03.09.2024	BSIU9510661	2388734 dated 21.09.2024

The goods contained in the aforementioned containers of **Table- A** were examined under the respective panchnama drawn at the respective Container Freight Station, Mundra with the details as mentioned in the **Table-B** and representative samples were drawn from them.

**TABLE-B**

Sr. No.	BE No./ Date	Container No.	Panchnama No. and Date	Panchnama drawn at Container Freight Station (CFS) Detail M/s.	CTH declared in BE	CTH declared in IGM	CTH declared in BL provided by Custom Broker during panchanam	Shipping Line	CTH declared in BL supplied by Shipping Line	CTH in Bill of Lading
1	5611842 dated 14.09.2024	FCIU984961	18/19.10.2024	Saurashtra Freight Pvt. Ltd. Mundra	52082290	FABRIC HS 59039090	FABRIC HS 52082290	Cosco Shipping Lines (India) Pvt. Ltd.	FABRIC HS 59039090	FABRIC HS 52082290
2	5595336 dated 13.09.2024	FFUA5001	16/11.2024	Saurashtra Freight Pvt. Ltd. Mundra	52082290	FABRIC HS 59039090	FABRIC HS 52082290	Evergreen line	FABRIC HS 59039090	FABRIC HS 52082290
3	5595343 dated 13.09.2024	EMUC1407	13/12.2024	Saurashtra Freight Pvt. Ltd. Mundra	52082290	FABRIC HS 59039090	FABRIC HS 52082290	Evergreen line	FABRIC HS 59039090	FABRIC HS 52082290
4	5611821 dated	TGBU5202	13/12.2024	Saurashtra Freight Pvt. Ltd. Mundra	52082290	FABRIC HS 59039090	FABRIC HS 52082290	Cosco Shipping Lines (I	FABRIC HS 59039090	FABRIC HS 52082290

	14.09.2024	023318	4			090		ndia) Pvt. Ltd.		HS 52082290
5	5595341 dated 13.09.2024	TG B U8	16.11.2024	Saurashtra Freight Pvt. Ltd. Mundra	52082290	FABRICHS 59039090	FABRIC HS 52082290	Evergreen line	FABRIC HS 59039090	FABRIC HS 52082290
6	5611817 dated 14.09.2024	B M O U6	12.11.2024	Seabird Marine Services (Gujarat) Pvt. Ltd.	52082290	FABRICHS COD E 59039090	FABRIC HS 59039090	KMTC Line	FABRIC HS 59039090	FABRIC HS 52082290
7	5611818 dated 14.09.2024	CB H U7	18/19.10.2024	Saurashtra Freight Pvt. Ltd. Mundra	52082290	FABRICHS 59039090	FABRIC HS 52082290	Cosco Shipping Lines (India) Pvt. Ltd.	FABRIC HS 59039090	FABRIC HS 52082290
8	5611823 dated 14.09.2024	O O U8	30.11.2024	Saurashtra Freight Pvt. Ltd. Mundra	52082290	FABRICHS 59039090	FABRIC HS 52082290	Cosco Shipping Lines (India) Pvt. Ltd.	FABRIC HS 59039090	FABRIC HS 52082290
9	6176035 dated 17.10.2024	EI TU	25.11.2024	Transworld Terminals Pvt. Ltd. Mundra	55151130/60063200/54075290	FABRICHS 59039090	FABRIC HS 59039090	Evergreen line	FABRIC HS 59039090	FABRIC HS 52082290
10	6176039 dated 17.10.2024	TC LU	06.12.2024	Landmark CFS, Mundra	55151130/60063200	FABRICHS 59039090	FABRIC HS 59039090	Ocean Network Express	FABRIC HS 59039090	FABRIC HS 52082290
11	6314267 dated 24.10.2024	W HS U5	28.11.2024	Landmark CFS, Mundra	55151130	FABRICHS 59039090	FABRIC HS 59039090	Wan Hai lines (India) Pvt. Ltd.	FABRIC HS 59039090	FABRIC HS 52082290
11	6314	W	13.	Landmark CFS,	55151130/6	FABRIC	FABRIC	Wan Hai	FABRIC	FABRIC

2	300 d ated 24.10 .2024	HS U6 64 35 30	12. 202 4	Mundra	0063200	IC HS 59039 090	HS 59039090	lines (In dia) Pvt. Ltd.	HS 590390	BRI C HS 590 390 90
1 3	6314 278 d ated 24.10 .2024	TR H U5 23 60	06. 202 4	Landmark CFS, Mundra	55151130/6 0063200/54 075290	FABR ICHS 59039 090	FABRIC HS 59039090	Evergre en line	FABRIC HS 590390 90	FA BRI C HS 590 390 90
1 4	6314 289 d ated 24.10 .2024	EI TU 90 34 26 3	16. 202 4	Landmark CFS, Mundra	54075290/6 0063200/55 151130	FABR ICHS 59039 090	FABRIC HS 59039090	Evergre en line	FABRIC HS 590390 90	FA BRI C HS 590 390 90
1 5	6339 125 d ated 25.10 .2024	EI TU 10 26 74 4	11. 202 4	Landmark CFS, Mundra	58109290/6 0063200/60 019200/540 76190	FABR IC	FABRIC	Evergre en line	FABRIC	FA BRI C
1 6	6339 179 d ated 25.10 .2024	E M C U9 89 95 27	25. 202 4	Transworld Ter minals Pvt. Ltd. Mundra	58109290/5 4075290/60 019200/540 76190	FABR IC(HS COD E:600 632	FABRIC	Evergre en line	FABRIC	FA BRI C
1 7	6375 284 d ated 28.10 .2024	EI TU 12 42 66 1	11. 202 4	Landmark CFS, Mundra	58109290/5 4075290/60 019200/600 63200	FABR IC	FABRIC	Evergre en line	FABRIC	FA BRI C
1 8	6375 224 d atd 2 8.10. 2024	BS IU 95 10 66 1	16. 202 4	Landmark CFS, Mundra	58109290/5 4075290/60 019200/600 63200/6303 9200	FABR IC	Fabric	Evergre en line	FABRIC	FA BRI C

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During investigation, it was noticed that different CTH were declared by the respective shipping lines while filing of IGM in respect of import consignments as mentioned in Table-B above at Sr. No. 1, 2, 3, 4, 5, 7 and 8 and accordingly the copies of Bills of Lading were called for and it was found that corresponding Bills of Lading contains the CTH as "59039090" and same CTH was declared while filing of IGM. However, during the examination of the import consignments the concerned Custom Broker i.e. M/s. SRV Shipping

have produced copies of Bills of Lading containing the different CTH declared as "52082290" and same CTH was declared while filing corresponding Bills of Entry in respect of Bills of Entry at Sr. No. 1, 2, 3, 4, 5, 7 and 8 of Table-A above. Moreover, it is also noticed that the importer in connivance with Custom Broker had deliberately changed the CTH in corresponding Bill of Entry mentioned at Sr. No. 6 and had forged the corresponding Bills of lading with two different CTH for the same cargo with one Bill of Lading having details as FABRIC HS 59039090, produced during the examination and other Bill of Lading with details as FABRIC HS 52082290, produced to the Customs and uploaded in ICES. During the panchnama proceedings, representative samples were drawn from each container for laboratory testing of fabric.

**2 . 2** The representative samples so drawn under panchnama dated 18/19.10.2024, 12.11.2024, 16.11.2024, 25.11.2024, 28.11.2024, 30.11.2024, 06.12.2024, 11.12.2024, 13.12.2024 and 16.12.2024 were forwarded to Custom House Laboratory, Custom House Kandla for necessary testing therefore in respect of nature, characteristics, GSM, etc. of the fabric.

**2 . 3** The test reports were received from Custom House Laboratory, Custom House Kandla for samples forwarded vide Test Memo No. 519/2024 to 571/2024 dated 09.12.2024 and Test Memo No. 582/2024 to 651/2024 dated 30.12.2024. All the test reports were received vide letters dated 01.01.2025, 10.01.2025, 17.01.2025, 28.01.2025 and 05.02.2025 issued by Custom House Laboratory, Kandla.

**2 . 4** On going through the test report received from Custom House Laboratory, Custom House Kandla, it came to notice that goods imported vide Bills of Entry mentioned at Sr. No. 1 to 18 of Table-A were mis-declared in terms of description, CTH etc. with intention to evade applicable customs duties. From the Test Reports received from Custom House Laboratory, Custom House Kandla, it appears that the declared description and classification in corresponding Bills of Entry filed for the subject goods is liable to be rejected. Further, it was noticed that the CTH mentioned in these Bills of Entry mentioned from Sr. No. 9 to 14 of the Table-A were deliberately changed against the CTH mentioned in corresponding Bills of Lading in connivance of the Customs Broker/CHA i.e. M/s. SRV Shipping. Also, it was noticed that there was reason to believe that the subject goods imported vide 18 Bills of Entry mentioned in Table-A were liable for confiscation as per provisions of Section 111 of Customs Act, 1962. In view of the above facts, the subject imported goods were placed under seizure as per the provisions of Section 110(1) of the Customs Act, 1962 vide Seizure Memos dated 19.02.2025 and 20.02.2025. The same has been summarized in Table-C below:

**Table C**

Sr. no.	BE no. and date (2)	Goods declared in BE (3)	CTH declared in B L IC ES (4)	CTH declared in B E (5)	CTH Ascertained as per Test Reports (6)
1	5611842	COTTON WOVEN UNDYED FABRIC	FABRIC	52082290	60063200

	date d 14. 09.2 024		HS 5 2082 290		
2	5595 336 date d 13. 09.2 024	COTTON WOVEN UNDYED FABRIC	FAB RIC HS 5 2082 290	52082290	54079200, 5 4075129, 600 63200
3	5595 343 date d 13. 09.2 024	COTTON WOVEN UNDYED FABRIC	FAB RIC HS 5 2082 290	52082290	58019090, 6 0019200, 600 63200, 60063 100, 5407920 0
4	5611 821 date d 14. 09.2 024	COTTON WOVEN UNDYED FABRIC	FAB RIC HS 5 2082 290	52082290	60063200
5	5595 341 date d 13. 09.2 024	COTTON WOVEN UNDYED FABRIC	FAB RIC HS 5 2082 290	52082290	60063200, 6 0063100
6	5611 817 date d 14. 09.2 024	COTTON WOVEN UNDYED FABRIC	FAB RIC HS 5 2082 290	52082290	60063200, 5 8101000, 540 76900, 5810 9290, 58041 090
7	5611 818 date d 14. 09.2 024	COTTON WOVEN UNDYED FABRIC	FAB RIC HS 5 2082 290	52082290	60063200, 5 4079200,
8	5611 823 date d 14. 09.2 024	COTTON WOVEN UNDYED FABRIC	FAB RIC HS 5 2082 290	52082290	60019200, 6 0063200
9	6176 035 date d 17. 10.2 024	POLYSTER VISCOS FABRIC WIDTH 58, KNITTED FABRIC, POLYSTER FABRIC	FAB RIC HS 5 9039 090	55151130 /6006320 0/540752 90	60019200, 5 4079200, 600 63200
10	6176 039	POLYSTER VISCOS FABRIC WIDTH 58, KNITTED FABRIC	FAB RIC	55151130 /6006320	58019090, 6 0019200, 540

	date d 17. 10.2 024		HS 50 9039 090	76900, 54079 200, 6006320 0
1 1	6314 267 date d 24. 10.2 024	POLYSTER VISCOS FABRIC WIDTH 58	FABRIC HS 50 9039 090	55151130 54079200, 6 0063200, 540 76190, 60019 200
1 2	6314 300 date d 24. 10.2 024	POLYSTER VISCOS FABRIC WIDTH 58, KNITTED FABRIC	FABRIC HS 50 9039 090	55151130 /6006320 60063200, 5 4076900
1 3	6314 278 date d 24. 10.2 024	POLYSTER VISCOS FABRIC WIDTH 58, KNITTED FABRIC, POLYESTER FABRIC	FABRIC HS 50 9039 090	55151130 /6006320 0/540752 90 54079200, 6 0019200, 600 63200, 54076 900
1 4	6314 289 date d 24. 10.2 024	POLYESTER FABRIC WIDTH 58, KNITTED FABRIC, POLYESTER VISCOS FABRIC WIDTH 58	FABRIC HS 50 9039 090	54075290 /6006320 0/551511 30 54078290, 6 0063200, 540 76900, 54079 200, 5801909 0
1 5	6339 125 date d 25. 10.2 024	EMBROIDERY FABRICS 58*, POLYESTER KNITTED FABRICS, PILED KNITTED FABRICS, POLYESTER WOVEN FABRICS 58(2247.60 KGS) (29142 MTRS 42932 SQM)	FABRIC HS 50 9039 090	58109290 /6006320 0/600192 00/54076 190 54079200, 6 0019200, 540 76900, 58101 000,
1 6	6339 179 date d 25. 10.2 024	POLYESTER KNITTED FABRICS, PILED KNITTED FABRICS, POLYESTER WOVEN FABRICS 58(27750 KGS) ( 27076 MTRS AND 39888 SQM ), POLYESTER DYED FABRICS 58*	FABRIC HS 50 9039 090	58109290 /5407529 0/600192 00/54076 190 60063200, 5 4076900
1 7	6375 284 date d 28. 10.2 024	EMBROIDERY FABRICS 58*, POLYESTER KNITTED FABRICS, PILED KNITTED FABRICS, POLYESTER WOVEN FABRIC 58"(3580 KGS)(34402 MTRS AND 50681 SQM )	FABRIC HS 50 9039 090	58109290 /5407529 0/600192 00/60063 200 58101000, 6 0019200, 540 76900, 54079 200
1 8	6375 224 date d 28.1 0.20 24	EMBROIDERY FABRICS 58, POLYESTER KNITTED FABRICS, PILED KNITTED FABRICS, POLYESTER WOVEN CURTAIN FABRICS 118*-119*, POLYESTER WOVEN FABRICS 58(1007 KGS) ( 10546 MTRS AND 15536SQM ), POLYESTER DYED FABRICS 58*	FABRIC HS 50 9039 090	58109290 /5407529 0/600192 00/60063 200/6303 9200 60063100, 5 4076190, 540 75290, 54076 900, 5810100 0, 60019200

**2.5** In view of the test report received from Custom House Laboratory, Kandla it came to notice that goods covered under the said 18 Bills of Entry of Table-C were mis-declared in terms of description and CTH, by the importer with intention to evade applicable customs duties. Moreover, it was observed that the goods of the Bills of Entry at Serial No. 1, 2, 3, 4, 5, 7 and 8 of Table-A above, were mis-declared in the Bills of Lading/IGM Entries and forged/parallel Bills of Lading were submitted before Customs during assessment as well as during examination of the import goods by DRI. Moreover, it is also noticed that the importer in connivance with Custom Broker had deliberately changed the CTH in corresponding Bill of Entry mentioned at Sr. No. 6 and had forged the corresponding Bills of lading with two different CTH for the same cargo. It was also noticed that the importer has filed Bills of Entry from serial number 9 to 18 of the Table-C above after initiation of enquiry by DRI with different CTH, description filed in Bills of entry as compared with the CTH, description mentioned in the respective Bills of Lading. Further, it was noticed that even then the importer has mis-declared these goods in terms of CTH, description etc. in the said Bills of Entry. It appears that the importer had got changed the CTH, description in Bills of Entry from serial no. 9 to 18 of the Table-C above against the CTH, description mentioned in the corresponding Bills of Lading after initiation of DRI enquiry to evade enforcement action.

**2.6** Further during the investigation, summons were issued to the persons mentioned in the below Table C1 for tendering their statements and produce/explain the documents:

**Table-C1**

<b>Sr. No.</b>	<b>Name of the person/importer to whom summon issued</b>	<b>Summon issued date</b>	<b>Date of appearance as per summon issued</b>
1.	Proprietor of M/s. Diksha Enterprise	17.01.2025	28.01.2025
2.	Proprietor of M/s. Freight Link Logistics	17.01.2025 13.02.2025	31.01.2025 17.02.2025
3.	Partner of M/s. SRV Shipping	17.01.2025	30.01.2025
	Partner of M/s. SRV Shipping	13.02.2025	17.02.2025
	Partner of M/s. SRV Shipping	27.02.2025	05.03.2025
	Partner of M/s. SRV Shipping	12.03.2025	12.03.2025
4.	Shri Dharendra Shukla	10.03.2025	12.03.2025

**2.6.1** Further, the facts of statements of persons whose statements were recorded have been mentioned in the Show Cause Notice and the records of statements thereof have been attached to Show Cause Notice as RUDs. For sake of brevity contents of statements of such persons are not produced hereunder. The details of the persons whose statements were recorded are as under: -

- Statement of Shri Akhilesh Singh, son of Lt. Shri Rai Bahadur Singh, Proprietor of M/s. Diksha Enterprise was recorded on 29.01.2025 under section 108 of the Customs Act.
- Statement of Shri Deepak Singh, Son of Shri Vinod Singh, Manager of Custom Broker firm M/s. Freight Link Logistics was recorded on 17.02.2025 under section 108 of the Customs Act.
- Statement of Shri Sanatan Jha, Son of Shri Rajendra Jha, Authorised

Representative of Custom Broker firm M/s. SRV Shipping was recorded on 12.03.2025 under section 108 of the Customs Act.

**2 . 7** The records indicate that the importer actively engaged with the authorities and via correspondence dated 05.12.2024 and 21.12.2024, requested the issuance of an NOC for warehousing under Section 49 of the Customs Act, 1962. These requests were approved, with letters issued to Customs House Mundra on 06.12.2024 and 23.12.2024 respectively.

### **3. Seizure:**

In view of the test report received from Custom House Laboratory, Kandla it came to notice that goods covered under Bills of Entry from Serial No. 01 to 18 of the Table C above were mis-declared in terms of description, CTH, etc. by the importer. Further as mentioned above, parallel Bills of Lading were forged for the cargo covered under Bills of Entry from Serial No. 1 to 8 of the Table -B above, showing clear intention of the importer to evade the applicable customs duty. Hence, there was reason to believe that the subject goods imported vide all 18 Bills of Entry as mentioned from serial no. 1 to 18 of the Table- B above, were liable for confiscation as per provisions of Section 111 of Customs Act, 1962. Accordingly, the subject imported goods were placed under seizure as per the provisions of Section 110(1) of the Customs Act, 1962 vide Seizure Memo dated 19.02.2025 and 20.02.2025.

### **4. Rejection of declared CTH of the imported goods:**

Ongoing through the Test Reports related to the subject import consignments of M/s. Diksha Enterprise received from Custom House Laboratory, Custom House Kandla, it is revealed that the subject goods are not only mis-declared in respect of description of the goods but also mis-declared in respect of classification thereof. The declared classification and actual classification of the subject import consignment is mentioned under **Table-C** for all the 18 Bills of Entry. Hence the declared CTH in these Bills of Entry as summarized in Column 5 of Table C is liable to be rejected and re-determined as mentioned in Column 6 of Table C.

### **5 . Rejection of Assessable Value of the imported goods and re-determination of assessable value:**

**5.1.** For the Bills of Entry mentioned at Sr. No. 1 to 18 in Table C, the actual goods covered under the import consignments of M/s Diksha Enterprise were found different from the goods declared in the said Bills of Entry and Bills of Lading. Hence, the value declared in the Bills of Entry cannot be considered as true assessable value when the nature of goods declared in the Bills of Entry and Bills of Lading are itself wrong. Hence the declared value of the consignment is liable to be rejected as per Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

**5.2.** In view of the above, the value declared by the importer in the corresponding Bills of Entry and invoices did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007. The value is required to be re-determined by

sequentially proceeding in terms of **Rules 4 to 9 of CVR, 2007**.

**5.3** Since data of import of identical goods is not available hence value of the goods cannot be determined using Rule 4. Subsequently Rule 5 of Customs Valuation Rules 2007 is to be applied to arrive at the correct value of the subject consignment.

**5.4** The subject import consignments have been imported from China by M/s Diksha Enterprise. As appeared from contemporary data of import of the said fabrics, it is noticed that some importers have imported similar type of fabric having similar thickness, description, nature etc. during the month of June, 2024 to November, 2024 vide Bills of Entry filed at Indian ports/Air Cargo Centres as detailed in the Annexure A to this notice with one such example as Bill of Entry No. 6265717 dated 22.10.2024 filed at port INMAA1. On going through the details available, relevant unit price has been taken and considering the quantity found during examination of goods covered under all the 18 Bills of Entry as mentioned in table-A above, an **Annexure-A** has been prepared which shows the amount of duty intended to be evaded through mis-declaration. The said Annexure-A contains declared value and new ascertained value on the basis of contemporary imports. Therefore, it appears that the importer M/s. Diksha Enterprise have deliberately mis-declared the assessable value of the subject 18 consignments as **Rs. 6,11,00,316/-** on which declared total customs duty comes to **Rs. 3,27,16,424/-** whereas considering the valuation based on contemporary imports, the appropriate assessable value comes to **Rs. 60,91,70,219/-** on which total customs duties comes to **Rs. 16,27,41,189/-**.

**5.5** As mentioned above, the declared transaction value of **Rs. 6,11,00,316/-** declared by the importer while filing the 18 Bills of Entry as mentioned in the Table-A above is liable to be rejected under Rule 12 of Customs Valuation Rules 2007. Since the declared value of the subject goods is liable to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007, therefore, the same is required to be re-determined under Section 14 of the Customs Act, 1962 under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007 as **Rs. 60,91,70,219/-**. The re-determined new value for individual Bill of Entry considering correct CTH and rate is also mentioned in **Annexure-A** to this Notice.

## **6. Liability of imported goods for confiscation**

**6.1** It appears that M/s. Diksha Enterprise mis-declared the description and classification of the goods in their bills of entry. The quantity of various types of fabric actually found during examination was also different from those mentioned in the Bills of Entry. By resorting to this fraud, the importer also managed to declare very low value in the Bills of Entry and attempted to fraudulently evade the payment of applicable customs duty. On the basis of facts discussed above, it appears that against 18 (Eighteen) Bills of Entry, the assessable value of the same has been declared as **Rs. 6,11,00,316/-**. Whereas, the appropriate assessable value of the subject import consignments comes to **Rs. 60,91,70,219/-**. During investigation, the appropriate value of the subject import consignments of M/s. Diksha Enterprise covered under total 18 (Eighteen) Bills of Entry comes to **Rs. 60,91,70,219/-**. Therefore, the declared assessable value of the goods as **Rs. 6,11,00,316/-** cannot be considered the actual transaction value for the subject import consignments.

The same appeared to have grossly been mis-declared with clear intention of evasion of appropriate Customs duty applicable thereon.

**6.2** It is apparent from the above that the importer has mis-declared the description, CTH and value in the import documents. Hence, it appears that the goods covered under 18 (Eighteen) Bills of Entry are actually classifiable under CTH mentioned in **Column No. (12) of Annexure-A** instead of declared CTH as mentioned in **Column No. (4) and Column No. (6) of Annexure-A** having declared total assessable value **Rs. 6,11,00,316/-** and re-determined total amount as **Rs. 60,91,70,219/-** are liable for confiscation under **Section 111(m)** of the Customs Act, 1962.

**6.3** Investigation also revealed that in the IGM/Bills of lading for these consignments, the description of the goods was not correct. It appears that the importer had not mentioned the actual description of the goods in IGM/Bill of Lading in connivance with foreign supplier in order to hide the true nature of the fabric being imported. Hence, it appears that the subject goods are also liable for confiscation under **Section 111(f)** of the Customs Act.

**6.4** Further, investigation revealed that for consignments covered under Serial No 1 to 8 of Table C, the importer had imported "Polyester Knitted Fabric having CTH 60063100 and 60063200 by way of concealment. As per DGFT Notification No. 77/2023 dated 16.03.2024, for import of goods falling under CTH 60063100 and 60063200, a minimum import price of 3.5 USD per KG is imposed. Any import of these goods below Minimum Import price is prohibited. It appears that the importer had not declared these goods having CTH 60063100 and 60063200 in the Bills of Entry for consignments covered under Serial No 1 to 8 of Table C, as summarized in Column 5 and Column 6 of the Table-C, with the intention to evade the application of Minimum import price on these goods. The importer had attempted to import "Polyester Knitted Fabric having CTH 60063100 and 60063200, by way of concealment and below minimum import price as mandated by DGFT Notification No. 77/2023 dated 16.03.2024" thereby It appears that the subject goods covered under Bill of Entry from Serial no. 1 to 8 of the Table-C are liable for confiscation under **Section 111(d)** of the Customs Act 1962.

## **7. Presentation of False documents/ declarations/entries to Customs**

**7.1** During the course of investigation, it was noticed that for 7 consignments (SL no. 1,2,3,4,5,7,8 of Table-D below) two types of Bills of Lading were available for the same set of consignments. First was the Bill of Lading provided by the Custom Broker during examination proceedings/ uploaded in the ICES Portal while filing Bill of Entry and the second was the Bill of lading provided by the concerned Shipping Line. These two types of Bills of Lading were having different CTH declaration as "**52082290**" in the Bill of Lading provided by the Custom Broker during examination proceedings/ uploaded in the ICES Portal while filing Bill of Entry and CTH "**59039090**" in the Bill of lading provided by the concerned Shipping Line. For consignment mentioned at Serial No. 6 of Table-D below, it was observed that the Custom Broker was already having two sets of Bill of Lading one with CTH declaration as "**52082290**" submitted to customs and uploaded in the ICES portal and the other with CTH declaration as "**59039090**" for the subject cargo and provided to DRI officers during examination/provided by the concerned Shipping line.

Bills of lading had varying descriptions of goods and CTH mentioned in them as

per Table –D below.

**Table-D**

Sr. No.	BE no. dated	Container No.	CTH declared in BE	CTH declared in BL provided by Custom Broker during panchanam	Shipping Line	CTH declared in BL supplied by Shipping Line	CTH in BL uploaded in ICES
1	5611842 dated 14.09.2024	FCIU9849961	52082290	FABRIC HS 52082290	Cosco Shipping Lines (India) Pvt. Ltd.	FABRIC HS 59039090	FABRIC HS 52082290
2	5595336 dated 13.09.2024	FFAU5003601	52082290	FABRIC HS 52082290	Evergreen line	FABRIC HS 59039090	FABRIC HS 52082290
3	5595343 dated 13.09.2024	EMCU1641407	52082290	FABRIC HS 52082290	Evergreen line	FABRIC HS 59039090	FABRIC HS 52082290
4	5611821 dated 14.09.2024	TGBU5023318	52082290	FABRIC HS 52082290	Cosco Shipping Lines (India) Pvt. Ltd.	FABRIC HS 59039090	FABRIC HS 52082290
5	5595341 dated 13.09.2024	TGBU8031955	52082290	FABRIC HS 52082290	Evergreen line	FABRIC HS 59039090	FABRIC HS 52082290
6	5611817 dated 14.09.2024	BMOU6377797	52082290	FABRIC HS 59039090	KMTC Line	FABRIC HS 59039090	FABRIC HS 52082290
7	5611818 dated 14.09.2024	CBHU7082640	52082290	FABRIC HS 52082290	Cosco Shipping Lines (India) Pvt. Ltd.	FABRIC HS 59039090	FABRIC HS 52082290
8	5611823 dated 14.09.2024	OOCU8522804	52082290	FABRIC HS 52082290	Cosco Shipping Lines (India) Pvt. Ltd.	FABRIC HS 59039090	FABRIC HS 52082290

**7.2** From the above facts and evidences, it is revealed that two types of Bills of Lading with different CTH declaration as “**52082290/ 59039090**” and description as “Fabrics” were available in respect of import consignments of M/s. Diksha Enterprise. The Bill of lading issued by the Shipping Line is unique and can not be modified by the Custom Broker /Importer as per his whims and fancies. It appears that both the importer and customs broker, M/s SRV Shipping, which has filed Bills of Entry for these 08 consignments, were involved in forging the Bills of Lading by not declaring the correct CTH and mis-declaring the CTH having low customs duty implications in order to evade applicable custom duties. Also, from the test reports received from the Customs House Laboratory, Kandla it is evident that the importer had imported “Polyester Knitted Fabric having CTH 60063100 and 60063200 prohibited as

per DGFT Notification No. 77/2023 dated 16.03.2024” and the importer in connivance with the Custom Broker M/s SRV Shipping (Customs Broker, CB Code: ADLFS0369JCH001) had not declared the same in the above 08 Bills of Entry shows clear intentions of the importer to evade the applicable customs duty.

**7.3** After initiation of enquiry by DRI, it is observed that, in order to save themselves from penal consequence for their act of forging the Bills of lading, the custom broker, M/s SRV Shipping (Customs Broker, CB Code: ADLFS0369JCH001) and the importer have restrained themselves from submitting the forged Bills of Lading for the Bills of Entry at serial No. 9 to 14 of the Table-A above and had filed the said Bills of Entry with CTH declared on copy of Bills of Lading/IGM details. Also, for the Bills of Entry from Serial No. 15 to 18 M/s. Freight Link Logistics had filed the said Bills of Entry for the importer. However, from the test reports received from the Custom House Laboratory, Kandla, it is evident that even the declared CTH by the importer/ Custom Broker in the said Bills of Entry from Serial No. 1 to 18 of the Table-C above are incorrect.

## **8. Relevant Legal provision**

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

.....

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

.....

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

.....

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

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

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

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

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding

the value of the goods or five thousand rupees, whichever is the greater;

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

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

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

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

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

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

## **9. Role of various persons involved:**

### **9.1 Role of M/s. Diksha Enterprise:**

**9.1.1** From the investigations carried out as narrated in foregoing paras, it is revealed that the importer M/s. Diksha Enterprise (IEC-ANUPS4631E), 38, Barrah Etaye, Mariahu, Jaunpur- 222161, imported goods and mis-declared the same vide Bills of Entry from serial No. 1 to 18 of Table-C above and mentioned in **Annexure-A** and mis-declared the description, classification, value etc. in the import documents in violation to the provisions of Section 46 of the Customs Act, 1962.

“Section 46(2) provides that *“Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.”*

Section 46(4A) puts certain responsibilities on the importer as mentioned below:

*“The importer who presents a bill of entry shall ensure the following, namely:-*

*(a) the accuracy and completeness of the information given therein;*

*(b) the authenticity and validity of any document supporting it; and*

*(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]”*

In the current case the importer has violated the provisions of Section 46(2) as the bills of entry filed by them did not correspond to the goods mentioned in the Bill of lading in case of 08 consignments mentioned in **Table D**. The importers also appears to have violated the provisions of Section 46(4A) as they have not declared true description, classification and valuation of goods in their Bills of Entry for all 18 consignments.

It also appears that the importer has mis-declared the description, CTH, quantity and value in the Bills of Entry thereby rendering the goods covered under subject 18 (Eighteen) Bills of Entry having declared total assessable value **Rs. 6,11,00,316/-** and re-determined total amount as **Rs. 60,91,70,219/-** liable for confiscation under Section 111(m) of the Customs Act, 1962. It also appears that the importer had not mentioned the actual description of the goods in IGM/Bill of Lading in connivance with foreign supplier in order to hide the true nature of the fabric being imported thereby rendering the subject goods liable for confiscation under Section 111(f) of the Customs Act. Further, for the goods covered under Bills of Entry from Serial No. 1 to 8 of Table-C above, the importer had imported “Polyester Knitted Fabric having CTH 60063100 and 60063200, by way of concealment and below minimum import price as mandated by DGFT Notification No. 77/2023 dated 16.03.2024” thereby rendering the subject goods liable for confiscation under Section 111(d) of the Customs Act 1962. From the above, it appears that the importer is liable for penal action under **Section 112 (a)** and **112(b)** of the Customs Act, 1962.

**9.1.2** During the course of investigation, the shipping line M/s. Cosco Shipping Lines (India) Pvt. Ltd., M/s. Evergreen line and M/s. KMTTC Line submitted the copy of Bill of Lading as detailed in the Table-D above, in respect of import consignment wherein declared CTH is mentioned as “59039090”. However, it is revealed that parallel Bill of Lading but with different CTH declaration as “52082290” was submitted to Customs and uploaded in systems while filing of the respective Bill of Entry. From the above, it appears that the importer was engaged in submitting forged Bills of Lading to Customs by not declaring the correct CTH and mis-declaring the CTH having low customs duty implications in order to evade applicable custom duties. Accordingly, it appears that M/s Diksha Enterprise knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore, they are also be liable to penalty under **Section 114AA** of the Customs Act, 1962.

## **9.2 Role of M/s SRV Shipping (Customs Broker, CB Code: ADLFS0369JCH001):**

**9.2.1** The Customs broker is responsible for filing the Bill of Entry with correct declarations. In the current case, it is observed that **M/s SRV Shipping** had uploaded forged Bills of Lading with different CTH for the Bills of Entry mentioned at serial no. 1 to 8 of Table-C above. The actual Bills of lading provided by the Shipping Lines for these consignments were having different CTH. It appears that such forging has been done by the Custom Broker to ensure that the CTH mentioned by them in the Bills of Entry matches with the

CTH mentioned in the Bills of lading uploaded in ICES. Further, it was also observed that Shri Rajesh Kumar Jain of M/s. SRV Shipping, the Custom House Agent in case of Bills of Entry from serial no. 1 to 14 of the Table-C has digitally signed all the uploaded Bills of Lading in the ICES, authenticating the truthfulness of the information provided to the customs. Also, for consignment mentioned at Serial No. 6 of Table-D above, it was observed that the Custom Broker was already having two sets of Bill of Lading one with CTH declaration as **"52082290"** submitted to customs and uploaded in the ICES portal and the other with CTH declaration as **"59039090"** for the subject cargo and provided to DRI officers during examination/provided by the concerned Shipping line. Thus, shows clear involvement and intention of the Custom Broker to assist the importer in concealment and mis-declaration in order to evade restrictions of minimum import price/evade the applicable customs duty.

It is also observed that after the initiation of enquiry against M/s Diksha Enterprises by the DRI, the concerned Custom Broker had filed the Bill of Entry from serial no. 9 to 14 of the table-C above by uploading the original Bill of Lading issued by Shipping Line without any forging. However for these consignments the CTH declared in the Bills of Entry was not matching with the uploaded Bills of lading in clear violation of provisions of Section 46 of the Customs Act. It clearly shows that the Customs broker had willfully mis-declared the goods in these Bills of Entry. It also shows that they had full knowledge of the fact that there was difference in the description, CTH, etc. of the goods in these consignments from what has been declared in the bills of entry.

All the 14 consignments for which Bills of Entry was filed by the said customs broker were found to be grossly mis-declared as per test reports from the Custom House Laboratory, Kandla. Such acts on the part of M/s SRV Shipping (Customs Broker, CB Code: ADLFS0369JCH001) who were knowingly concerned in mis-declaration of the description, classification and value in the import documents have rendered themselves liable to penalty under **Section 112 (a)** and **112(b)** of the Customs Act, 1962.

Moreover, during the course of investigation, the shipping line M/s. Cosco Shipping Lines (India) Pvt. Ltd., M/s. Evergreen line and M/s. KMTCL Line submitted the copy of Bill of Lading as detailed in the Table-D above, in respect of import consignment wherein declared CTH is mentioned as "59039090". However, it is revealed that parallel Bill of Lading but with different CTH declaration as "52082290" was submitted to Customs and uploaded in systems while filing of the respective Bill of Entry. Also, for consignment mentioned at Serial No. 6 of Table-D above, it was observed that the Custom Broker was already having two sets of Bill of Lading one with CTH declaration as **"52082290"** submitted to customs and uploaded in the ICES portal and the other with CTH declaration as **"59039090"** for the subject cargo and provided to DRI officers during examination/provided by the concerned Shipping line. From the above, it appears that the customs broker was involved in forging the Bills of Lading by not declaring the correct CTH and mis-declaring the CTH having low customs duty implications in order to evade applicable custom duties. Accordingly, M/s SRV Shipping knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore they are also be liable to penalty under **Section 114AA** of the Customs Act, 1962.

### **9.3 Roles of M/s. Freight Link Logistics (Custom Broker):**

**9.3.1** During the investigation, it is observed that the custom broker M/s. Freight Link Logistics had filed the respective Bills of Entry from serial no. 15 to 18 of the table-C above in consultation with the importer. Further, upon testing of the samples drawn from the said Bills of Entry filed from serial No. 15 to 18 of the Table-C above from the Custom House Laboratory, Kandla, the respective test reports revealed that the CTH and description of the goods as per respective Bills of Entry to be incorrect. In all these cases, the Bills of Lading uploaded for these Bills of Entry on ICES were having different descriptions than those mentioned by the Custom Broker in the Bills of Entry. It indicates that the Custom Broker was aware of the nature of mis-declaration in the cargo and yet assisted the importer in resultant concealment and mis-declaration in order to evade restrictions of minimum import price/evade the applicable customs duty.

The omission and commission on the part of M/s. Freight Link Logistics who were knowingly concerned in mis-declaration of the description, classification and value in the import documents have rendered themselves liable to penalty under **Section 112 (a)** and **112(b)** of the Customs Act, 1962.

#### **9.4 Role of Shri Dharendra Shukla alias Sonu Shukla:**

During the course of investigation, it is revealed that Shri Dharendra Shukla alias Sonu Shukla is the actual **beneficiary owner** of the cargo covered under the subject 18 Bills of Entry as per Table-C above and filed in the name of M/s. Diksha Enterprise. During investigation it is revealed that Shri Akhilesh Singh, son of Lt. Shri Rai Bahadur Singh, Proprietor of M/s. Diksha Enterprise, on advice of Shri Dharendra Shukla alias Sonu Shukla had procured the Import-Export certificate from DGFT for importing the goods. Further, it is revealed that Shri Akhilesh Singh had never visited China nor was in direct contact with the overseas shipper and Shri Dharendra Shukla had assured him for providing assistance in importing fabric material from China.

Further, during investigation, it is revealed that Shri Dharendra Shukla alias Sonu was the actual beneficiary owner of the subject cargo as he was the key person who was giving directions to Shri Akhilesh Singh and was directly in contact with overseas shipper and was the one deciding the CTH of the subject import cargo, approved checklist and co-ordinated with the Custom Broker. Also, Shri Akhilesh Singh informed that it was first time that M/s. Diksha Enterprise had imported 21 consignment of fabrics (18 in Mundra and 03 in Nhava Sheva) but he was not the actual beneficiary owner of the subject cargo nor he had paid anyone for the subject cargo and on directions of Shri Dharendra Shukla alias Sonu, he was handling marketing and procuring orders from domestic market only.

The omission and commission on the part of Shri Dharendra Shukla alias Sonu Shukla, who was knowingly concerned in mis-declaration of the description, classification and value in the import documents have rendered themselves liable to penalty under **Section 112 (a)** and **Section 112(b)** of the Customs Act, 1962.

Also, Shri Dharendra Shukla alias Sonu Shukla, knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods,

therefore Shri Dharendra Shukla alias Sonu Shukla is also liable to penalty under **Section 114AA** of the Customs Act, 1962.

Also, Shri Dharendra Shukla of M/s. SRL Shipping during the course of investigation didn't joined the investigation proceedings and showed cleared disregard to the summons issued dated 10.03.2025 by not appearing for recording his statement and explaining the documents. Thus, had made himself liable to penalty under **Section 117** of the customs Act, 1962.

#### **9.5 Role of Shri. Krishna Nand Shahi alias Shri Krishna Shahi:**

During the investigation, it is revealed that Shri Krishna Shahi (Mob. No. 7666339214) of M/s. SRL Shipping was an accomplice to Shri Dharendra Shukla, importer and the Custom Broker in providing the false information and documents to the Customs related to the Bills of entry from serial no. 1 to 14 of the Table-C above. Further, during the course of investigation it is revealed that M/s. SRL Shipping used to send all the related documents of import consignments in respect of importer M/s. Diksha Enterprise through mail id – import.srl@gmail.com to official mail id - sjlogisticsgdm@gmail.com who inturn used to forward to official mail id – srvshipping@gmail.com of M/s. SRV Shipping for further documentation and filing of the Bills of Entry.

Further, it is also revealed that M/s. SJ Logistics used to send a draft checklist for reference to M/s. SRV Shipping, who after preparation of the final draft checklist used to send it back to the M/s. SJ Logistics for approval and only after receiving the approved Checklist from the forwarder/importer through M/s. SJ Logistics, M/s. SRV Shipping used to file the respective Bill of Entry for the said importer thus clearly shows that Shri Krishna Shahi/M/s. SRL Shipping was fully aware about the mis-declaration of the consignments and yet assisted the importer in resultant concealment and mis-declaration in order to evade restrictions of minimum import price/evade the applicable customs duty. Also, it was revealed that Shri Krishna Shahi was actively involved in handling the work related to examination, getting out of charge from customs as well as handling loading/unloading and logistics of the import consignment. It was Shri Krishna Shahi who provided forged Bills of lading for filing these Bills of Entry.

The omission and commission on the part of Shri Krishna Shahi, who was knowingly concerned in mis-declaration of the description, classification and value in the import documents have rendered themselves liable to penalty under **Section 112 (a)** and **Section 112(b)** of the Customs Act, 1962.

Also, Shri Krishna Shahi, knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore Shri Krishna Shahi, is also liable to penalty under **Section 114AA** of the Customs Act, 1962.

#### **9.6 Role of Shri Sanatan Jha:**

During the course of investigation, it was revealed by Shri Sanatan Jha that M/s. SRL Shipping used to send all the related documents of import consignments in respect of importer M/s. Diksha Enterprise through mail id – import.srl@gmail.com to mail id - sjlogisticsgdm@gmail.com who in turn used to forward to mail id – srvshipping@gmail.com of M/s. SRV Shipping for further

documentation and filing of the Bills of Entry in the name of M/s Diksha Enterprise. Also, it was revealed that Shri Krishna Nand Shahi was actively involved in handling the work related to examination, getting out of charge from customs as well as handling loading/unloading and logistics of the import consignment. Shri Sanatan Jha had previously worked with M/s SRV Shipping (Customs Broker) and was very well aware of the Customs procedure. He was also aware that no other person except the authorized employees of Customs Broker is allowed to handle examination and clearance of imported cargo. Despite knowing the same, the same was being handled by unauthorized persons. Shri Sanatan Jha had not provided any supportive claim i.e. e-mail correspondences etc. evidencing that he used to get approval of importer before filing of Bill of Entry.

The omission and commission on the part of Shri Sanatan Jha, who was knowingly concerned in mis-declaration of the description and classification in the import documents have rendered himself liable to penalty under **Section 112 (a)** and **Section 112 (b)** of the Customs Act, 1962. Also, Shri Sanatan Jha, knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore Shri Sanatan Jha, is also liable to penalty under **Section 114AA** of the Customs Act, 1962. For not providing the supportive evidence of his claim regarding correspondence on e-mails from import.srl@gmail.com to srvshipping@gmail.com, Shri Sanatan Jha is also liable to penalty under **Section 117** of the Customs Act, 1962.

**10.** In view of above, after completion of investigation, Show cause notice GEN/ADJ/ADC/736/2025-Adjn-O/oPr Commr-Cus-Mundra dated 21.03.2025 was issued, wherein:

**10.1. M/s. Diksha Enterprise (IEC-ANUPS4631E)** had been called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra, as to why:-

- i. the declared description/CTH of import goods declared as per Column No. 6 of Annexure-A in the respective 18 (Eighteen) Bills of Entry should not be rejected and re-determined/re-assessed as per Column No. (12) of Annexure-A;
- ii. Since the goods mentioned in subject import consignments covered under the subject 18 Bills of Entry from serial No. 1 to 18 as mentioned in column 2 of the Annexure-A are found mis-declared in respect of value thereof, therefore the declared assessable value **Rs. 6,11,00,316/-** should not be rejected and re-determined as **Rs. 60,91,70,219/-** under Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
- iii. the goods covered under **the subject 18** Bills of Entry having declared assessable value **Rs. 6,11,00,316/-** should not be confiscated under Section 111(m) and 111 (f) of the Customs Act, 1962;
- iv. the goods covered under **the subject 08** Bills of Entry from serial no. 1 to 8 of table-C above, having declared assessable value **Rs. 1,39,59,270/-** and found to contain the goods "Polyester Knitted Fabric having CTH 60063100 and 60063200," and imported in contravention to the DGFT Notification No. 77/2023 dated 16.03.2024" should not be confiscated under Section 111(d) of the Customs Act, 1962;
- v. penalty should not be imposed on the importer under **Section 112 (a), Section**

**112(b) & Section 114AA** of the Customs Act, 1962;

**10.2 M/s SRV Shipping (Customs Broker)** had been called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra, as to why:

- i. Penalty should not be imposed on him under Section 112 (a), Section 112(b) & Section 114AA of the Customs Act, 1962 considering forging of 8 Bills of Lading and/or mis-declaration in all 14 (Fourteen) Bills of Entry mentioned at serial no. 1 to 14 of Table-C above and in Annexure-A to this Notice;

**10.3 M/s. Freight Link Logistics** had been called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why:

- i. Penalty should not be imposed on him under Section 112 (a) and Section 112(b) of the Customs Act, 1962 considering mis-declaration in all 04 (Four) Bills of Entry mentioned at Serial No. 15 to 18 of Table-C above and in Annexure-A to this Notice;

**10.4 Shri Dharendra Shukla alias Sonu Shukla** had been called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra, as to why:

- i. Penalty should not be imposed on him under Section 112 (a), Section 112(b), Section 114AA & Section 117 of the Customs Act, 1962 considering forging of 08 Bills of Lading and/or mis-declaration in all 18 (Eighteen) Bills of Entry mentioned at serial no. 1 to 18 of Table-C above and in Annexure-A to this Notice;

**10.5 Shri Krishna Nand Shahi alias Shri Krishna Shahi** had been called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra, as to why:

- i. Penalty should not be imposed on him under Section 112 (a), Section 112(b) & Section 114AA of the Customs Act, 1962 considering forging of 08 Bills of Lading and/or mis-declaration in all 14 (Fourteen) Bills of Entry mentioned at serial no. 1 to 14 of Table-C above and in Annexure-A to this Notice;

**10.6 Shri Sanatan Jha** had been called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra, as to why:

- i. Penalty should not be imposed on him under Section 112 (a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962 considering forging of Bills of Lading and/or mis-declaration in all 14 (Fourteen) Bills of Entry mentioned at serial no. 1 to 14 of Table-C above and mentioned in Annexure-A to this Notice.

## **11. Written Submission**

**11.1.1 M/s. Diksha Enterprise submitted their reply, which was received in this office on 12.06.2025, wherein they have, *inter alia*, submitted that:**

**11.1.1.** A manifest deficiency in procedural propriety and evidentiary foundation under Customs Valuation Regime

**a.** Noticee submits that paragraph 5.4 of the captioned Show Cause Notice warrants a meticulous and critical examination, particularly concerning its purported basis for the redetermination of the value of the subject import consignments. The paragraph, in its present articulation, suffers from a constellation of legal and procedural infirmities, notably its conspicuous silence on the crucial mandates enshrined within Rule 2(f) and Rule 4(3) of the

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as "CVR 2007") read in conjunction with the instructive Note appended to Rule 5 of the said Rules. Furthermore, a patent procedural impropriety arises from the non-furnishing of a pivotal document explicitly relied upon within the paragraph itself.

**b.** At its core, Paragraph 5.4 postulates that the subject import consignments, originating from China and imported by M/s. Diksha Enterprise, are susceptible to a redetermination of value. This redetermination is ostensibly predicated upon a comparison with "contemporary data of import of the said fabrics," wherein it is alleged that "some importers have imported similar type of fabric having similar thickness, description, nature etc. during the month of June, 2024 to November, 2024 vide Bills of Entry filed at Indian ports/Air Cargo Centres as detailed in the Annexure A to this notice with one such example as Bill of Entry No. 6265717 dated 22.10.2024 filed at port INMAA1." Based on a purported "relevant unit price" derived from these unspecified import transactions and the quantity of goods examined across eighteen Bills of Entry pertaining to the Noticee, Annexure A is stated to quantify the "amount of duty intended to be evaded through mis-declaration."

**c.** However, the very edifice of this proposed redetermination crumbles under the weight of a fundamental procedural lapse. The Show Cause Notice explicitly and unequivocally cites Bill of Entry No. 6265717 dated 22.10.2024, filed at port INMAA1, as a concrete exemplification of the comparable import data forming the bedrock of the allegations leveled against the Noticee. Astonishingly, and with profound prejudice to the principles of natural justice and fair procedure, a copy of this purportedly crucial Bill of Entry has been conspicuously and unjustifiably omitted from the panoply of relied-upon documents furnished to the Noticee. This omission constitutes a grave impediment to the Noticee's ability to effectively comprehend the evidentiary basis of the allegations, to critically analyze the purported comparability of the cited transaction, and consequently, to mount a cogent and informed defense. The failure to provide this foundational document strikes at the very heart of a fair and transparent adjudicatory process.

**d.** Furthermore, the analysis within Paragraph 5.4 betrays a potential misapprehension of the statutory framework governing customs valuation. While the paragraph alludes to "contemporary data of import" and a "relevant unit price," it remains conspicuously silent on the critical distinction between the transaction value as mandated by Section 14(1) of the Customs Act, 1962,

and the assessed value as recorded in a Bill of Entry. Rule 5 of the CVR 2007, when read in conjunction with Section 14 of the Customs Act, 1962, unequivocally mandates that the redetermination of value based on "similar goods" must be anchored in the transaction value of those similar goods, provided such value has been previously accepted under Rule 3 of the CVR 2007.

e. The value reflected in a Bill of Entry is the assessed value, which may or may not be equivalent to the transaction value. The assessed value could be the transaction value itself, or it could be a value arrived at after assessment by the customs authorities, potentially involving enhancements, provisional assessments under Section 18 of the Customs Act, 1962 (as explicitly excluded under the proviso to Rule 5(1) and Rule 4(1)(a) of the CVR 2007), or adjustments made in accordance with the various rules of the CVR 2007. To merely rely on a value extracted from a Bill of Entry without demonstrating that this value represents the transaction value of comparable goods, accepted under Rule 3, constitutes a fundamental flaw in the application of Rule 5 of the CVR 2007. The Show Cause Notice fails to bridge this crucial evidentiary gap.

f. Moreover, Paragraph 5.4 exhibits a conspicuous silence concerning the rigorous criteria stipulated in Rule 2(f) of the CVR 2007, which defines "similar goods." This rule mandates that "similar goods" must possess like characteristics and like component materials enabling them to perform the same functions and be commercially interchangeable with the goods being valued, having regard to quality, reputation, and the existence of a trademark. Additionally, Rule 2(f) specifies the country of origin and the producer of the similar goods. The bald assertion in Paragraph 5.4 that the compared fabrics are of "similar type having similar thickness, description, nature etc." falls far short of demonstrating compliance with the nuanced and specific definitional requirements of Rule 2(f). There is no articulation of how the customs authorities have ascertained the "like characteristics," "like component materials," functional interchangeability, quality, reputation, or trademark considerations of the allegedly similar goods. This omission renders the very premise of comparison legally suspect.

g. Furthermore, Rule 4(3) of the CVR 2007, which pertains to the transaction value of identical goods (and is made applicable mutatis mutandis to similar goods under Rule 5(2)), necessitates that if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of the imported goods. While Paragraph 5.4 refers to "contemporary data of import" and a "relevant unit price," it provides no clarity on whether multiple instances of similar imports were identified, and if so, whether the "lowest such value" was indeed considered and utilized. This silence raises concerns about the selective use of data and the potential inflation of the purported benchmark value.

h. Finally, Paragraph 5.4 remains conspicuously silent on the Note to Rule 5 of the CVR 2007. This Note provides crucial guidance on the application of Rule 5, explicitly stating that "the proper officer of customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued." The paragraph provides no indication that this fundamental directive has been adhered to. There is no mention of whether the compared import transaction occurred at the same commercial level or involved substantially the same quantities as the import consignments of M/s. Diksha Enterprise. The failure to address this crucial

aspect of the Note to Rule 5 further undermines the reliability and legality of the proposed valuation methodology. Moreover, the second part of the Note to Rule 5 explicitly makes "all other provisions contained in note to rule 4" applicable mutatis mutandis to similar goods. Paragraph 5.4 provides no indication of adherence to the principles enunciated in the Note to Rule 4 either.

i. In summation, Paragraph 5.4 of the Show Cause Notice suffers from significant legal and procedural deficiencies. The failure to furnish a copy of the explicitly relied-upon Bill of Entry No. 6265717 constitutes a grave violation of natural justice. Furthermore, the paragraph's silence on the rigorous definitional criteria of "similar goods" under Rule 2(f) of the CVR 2007, its lack of clarity on the derivation of the "relevant unit price" in relation to the transaction value mandate of Section 14 and Rule 5, its omission regarding the application of Rule 4(3) concerning the lowest value, and its complete disregard for the crucial directives contained within the Note to Rule 5 of the CVR 2007, collectively render the proposed redetermination of value legally infirm and procedurally unsustainable. The Noticee is entitled to a transparent and legally sound process, predicated on the full disclosure of all relevant evidence and a demonstrable adherence to the statutory valuation framework, none of which is adequately evinced in the current articulation of Paragraph 5.4.

11.1.2 In *Hari Priya Traders, Firdouse International Trading Company, Shabeer Enterprises, Mohammed Fariz And Co., Pk Traders, Keveeyam Company Supariwala Pvt Ltd Versus C.C. Cochin-Cus*, the Hon'ble Tribunal observed

*4.2 In the present case, Department has rejected transaction value under Rule 12 (1) and re-determined under Rule 5 of the Customs (Determination of Value of Imported Goods) 2007, finding that there are contemporaneous imports through the ports at Chennai and Nhava Sheva on higher transaction value. Rules are very clear to the extent that, in order to invoke Rule 5, evidences of similar goods at the same commercial level and in substantially the same quantities, as the goods being valued are required and in the absence of the later, conditions contemplated under Sub Rule (1) (c) of Rule 4 has to be followed. In so far as the present case is concerned no evidences are available on records to prove that the relied upon contemporaneous imports through Chennai and Nhava Sheva were similar goods at the same commercial level and in substantially the same quantities. In the absence of any evidence, we are of the considered view that the Order in Original as well as Order in Appeal failed to meet the necessities mandated under Rule 5 of the Customs Valuation Rules 2007. Reliance is placed on the judgments of Hon'ble Supreme Court in Commissioner of Central Excise and Service Tax, Noida V. Sanjivani Non-Ferrous Trading Pvt. Ltd. (2019) 2 SCC 378.*

In *M/S DM MARKETING INC VERSUS PRINCIPAL COMMISSIONER, CUSTOMS (IMPORT) ICD PATPARGANJ NEW DELHI 2022 (12) TMI 1338- CESTAT NEW DELHI*

*The least one would expect while comparing the prices is to specify what goods were imported in the contemporaneous Bills of Entry, their quantity, specifications, country of origin, port of import etc., so that the same can be compared with the disputed goods. Needless to say the Bills of Entry and other documents must be provided to the appellant importer so that it has an opportunity to examine them and put up a proper defence. It also needs to be pointed out that in sub-rule (3) of Rule 4 which also applies to Rule 5, if more than one such transaction of identical goods/ similar goods are found, the*

*lowest of such values should be used to determine the value of imported goods. Table C of the Order-in-Original does not indicate that the values therein were the lowest values.*

The following case laws were relied upon:

-M/S National Steel And Agro Pvt. Ltd. Versus Commissioner Of Customs Mumbai-I 2022 (2) tmi 307 - cestat mumbai

-Commissioner of Customs, Tuticorin Versus M/S. Crescent Enterprises 2019 (5) Tmi 1358 - Cestat Chennai

-Stephen M Fernandes Vs Commr of Customs Goa 2018(362) ELT 370 (Tri-Mumbai)

In light of the above the value redetermined under Rule 5 of CVR 2007 is incorrect and merit rejection. Thus the declared invoice value must be accepted.

#### 11.1.3. **No extra sale consideration made by the Noticee importer:**

The Noticee submits that there is no findings in the investigation that the noticee send any payment through to their supplier through other channels there transactions are through proper banking channels. Therefore their transaction value merits acceptance.

In case of Divine International Versus Commissioner of Customs, New Delhi as reported in 2016 (338) E.L.T. 142 (Tri. - Del.) the Hon'ble Tribunal held;

*"6. It stands strongly contested before us that once the transaction value of the goods is available, it is not open to the Revenue to adopt the other measures of valuation, without first rejecting the transaction value by producing sufficient and cogent evidence. In the entire order of the Commissioner, he has not even alleged that the appellant had paid more than the payment as reflected in the invoice. We note that it is settled law that in terms of provisions of Rule 3 of the Customs Valuation Rules, the transaction value has to be accepted as the correct assessable value unless contrary evidence is available to show that the payments made by the importer to the exporter stand influenced by the other compelling circumstances. Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 clearly lay down that the value of imported goods shall be the transaction value and shall be accepted subject to examination and circumstances of sale of the imported goods enumerated therein; that is there are no restriction as to dispensation or use of the goods by the buyers; that the sale or price are not subject to some condition or consideration for which the value cannot be determined; no part of the proceeds by any subsequent sale will accrue directly or indirectly to the seller; that the buyer and seller are not related. Even in terms of sub-rule (3) of Rule 3, where the buyer and seller are related, the transaction value was to be accepted provided that examination and circumstances of sale of the imported goods indicated that relationship did not influence the price. As such, it is clear from the reading of the said rule that transaction value is required to be accepted as correct assessable value unless the circumstances mentioned therein are available. Even in the case of related parties, the transaction value has been given importance provided the relationship has not influenced the said transaction value. As such, we are of the view that there being no*

*evidence, much less an allegation to the effect that transaction value stand influenced by any circumstances mentioned in said Rule and in the absence of any allegation of flow back of money to the seller of goods, the transaction value has to be adopted as the correct assessable value "*

11.1.4 The Noticee respectfully submits that the preceding submissions unequivocally demonstrate the absence of any mis-declaration on their part. Consequently, the goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962

11.1.5 The Noticee submits that the bills of entry are filed by them, as per best of their knowledge, in accordance with their description of the goods. However in case of Bill of lading, is created by the shipping lines/agents/companies based on the information provided by the supplier. Crucially, no evidence has been presented to indicate any connivance or instruction from the Noticee to the supplier to furnish an incorrect description. Secondly it is not a case that the goods were not mentioned in the IGM /bill of Lading, the whole case rests on improper CTI. As long as the goods are mentioned in IGM there is no violation of 111(f). Therefore, in the absence of such evidence, the goods cannot be deemed liable for confiscation under Section 111(f) of the Customs Act, 1962.

11.1.6 Confiscation of the goods is sine qua non for imposing any penalty under section 112(a) of Customs act 1962. As submitted in earlier para the goods are not liable for confiscation no penalty can be imposed. Section 112(b) deals with acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, with a prior knowledge that goods are liable for confiscation. The noticee is nowhere related to a position of carrying or removing or depositing etc. as prescribed in section 112(b) of custom Act 1962.

11.1.7 The Noticee emphatically submits that they have not engaged in any activity whatsoever pertaining to forgery or any similar illicit practices and they had no such intention. Consequently, given their complete absence of involvement in such activities, the imposition of a penalty under Section 114AA of the Customs Act, 1962, is unwarranted and legally unsustainable. The foundational premise for invoking Section 114AA, which pertains to acts of forgery or the use of false and incorrect documents, is entirely absent in the present case with respect to the Noticee.

The Show Cause Notice's claim that the CTI was changed in the Bill of Lading to manipulate classification is unfounded. The CTI stated in the Bill of Lading is not the definitive factor in classification; rather, classification is accurately established and verified by the goods description on the invoice (as CTI in Bill of lading is casually mentioned in few cases). Furthermore, the reasoning presented in the Show Cause Notice is internally contradictory.

The Noticee submits, with utmost emphasis, that neither the Customs authorities nor any other co-noticee has proffered any scintilla of credible, admissible evidence sufficient to establish, beyond a reasonable doubt, the veracity of the claim that the Noticee engaged in the egregious act of forgery of Bills of Lading. Such a grave accusation, devoid of evidentiary support, constitutes a profound affront to the professional integrity and ethical standing of the Noticee.

11.1.8 The investigation purportedly conducted by the Directorate of Revenue Intelligence (DRI), and the resultant Show Cause Notice predicated upon said investigation, have conspicuously and egregiously failed to categorically ascertain, much less demonstrate with any degree of legal certainty, the existence of any plausible motive or demonstrable benefit that would have inured to the Noticee from the alleged and unsubstantiated alteration of the Customs Tariff Item in the Bills of Lading. This fundamental and conspicuous lacuna in the prosecutorial narrative gives rise to an inherent, irreconcilable, and legally fatal contradiction within the core allegations articulated in the Show Cause Notice. A meticulous and scientific vivisection, a precise and critical dissection, of the allegations pertaining to the Bills of Lading reveals the following critical inconsistencies and logical absurdities:

- Allegation of Forged Bills of Lading (Sr. No. 1 to 8): The Show Cause Notice specifically alleges that uploaded "forged" Bills of Lading, characterized by a CTI that demonstrably and materially differed from the CTI declared in the "actual" and purportedly authentic Bills of Lading provided by the Shipping Lines, in relation to Bills of Entry pertaining to serial numbers 1 to 8 of Table-C.
- Change in Behavior After DRI Enquiry (Sr. No. 9 to 14): The Show Cause Notice, in a further exercise of self-contradiction, subsequently asserts that, subsequent to the commencement of the DRI's investigation, the CB, ostensibly chastened by the scrutiny, filed Bills of Entry for serial numbers 9 to 14 using the "original" Bills of Lading furnished by the Shipping Line. However, and this is a point of paramount legal significance, the Show Cause Notice is forced to concede that, even under this purportedly reformed practice, the in these Bills of Entry still did not align with the in the Bills of Lading, a discrepancy that the Customs authorities, in a further display of flawed logic, present as a further violation and indicium of culpability.

Therefore, the Customs authorities, in a display of internally inconsistent and logically untenable assertions, advance the proposition that the Noticee purportedly engaged in the illicit act of altering the CTI in the Bills of Lading, substituting the CTI originally provided by the supplier with a CTI of the Noticee's own contrivance. This line of argumentation implicitly, and indeed unavoidably, suggests that the CTI provided by the supplier was, in the Customs authorities' own estimation, the accurate and correct CTI. However, this tenuous and self-serving position is fundamentally and irretrievably undermined by the Customs authorities' subsequent and contradictory claim that even when the "original" and untampered Bills of Lading emanating from the Shipping Line were employed (for Bills of Entry pertaining to serial numbers 9 to 14), the CTI in the Bills of Entry remained demonstrably and materially inconsistent with the CTI in said Bills of Lading. This latter assertion inexorably compels the logical and legally unavoidable conclusion that, according to the Customs authorities' own narrative, even the CTI on the Bills of Lading originating from the Shipping Line was, in fact, incorrect.

11.1.9 A series of critical and as yet unanswered questions of profound legal and logical import thus arise, demanding rigorous and impartial scrutiny: Why, under what conceivable rationale, and with what discernible motive, would the Shipping Line, a commercial entity with no vested interest in the alleged fraud, furnish an incorrect CTI in the Bills of Lading in the latter scenario, particularly

given the well-established and legally recognized fact that there exists no mandatory legal requirement or statutory obligation to declare the CTI in the Bill of Lading? Therefore, there exists no discernible or logical necessity, no *raison d'être*, for a Shipping Line to intentionally and deliberately declare an "INCORRECT" CTI in the Bills of Lading for Bills of Entry numbered 9 to 14. Furthermore, if, as alleged by the Customs authorities, the Bills of Lading were already tainted by an incorrect CTI (as per the allegations pertaining to serial numbers 1 to 8), the purported act of forgery by the Noticee becomes even more inexplicable, more logically absurd, and more devoid of any rational basis. Why, one is compelled to ask, would the Noticee engage in the highly risky and legally perilous act of forging a document to introduce yet another layer of incorrectness, to superimpose a further falsehood upon a falsehood, when, according to the Customs authorities' own convoluted and self-contradictory narrative, the underlying document was already incorrect?

11.1.10 The findings of the investigation, as presented in the Show Cause Notice, are demonstrably and irrefutably characterized by direct contradiction, glaring inconsistencies, and are replete with logical paradoxes and absurdities. The Noticee expresses profound surprise, shock, and dismay that, predicated upon such patently confusing, internally inconsistent, and logically untenable versions of events, the Customs authorities have proceeded to level the grave, serious, and legally consequential allegation of forgery, an allegation that is utterly devoid of evidentiary support, wholly speculative in nature, and is therefore categorically unacceptable and vigorously and vehemently contested by the Noticee.

11.1.11 The penalty under 114AA can be imposed only in the cases of Exports. The provision of penalty under section 114AA was brought as a measure to curb the fraudulent exports which were in the paper only without physically exporting the goods. As the fraudsters were taking benefit of export-based incentive only on the basis of forged documents of exports where goods were not physically present. In order to avoid this *modus operandi* where only forged documents are presented, the provisions of section 114AA was brought in on the basis of Twenty Seventh Report Standing Committee On Finance (2005-2006) (Fourteenth Lok Sabha) The Taxation Laws(Amendment) Bill, 2005.

Present case pertains to imports and therefore penalty under Section 114AA cannot be imposed. The Noticee relies upon following decisions:

- 2019 (4) TMI 37 - CESTAT Chennai

Shri. M.A. Dhandapani, Managing Director Of M/S. Onkyo Sight & Sound India Pvt. Ltd., Chennai Versus Commissioner of Customs, Custom House, Chennai

-2018 (7) TMI 867 - CESTAT Chennai

Commissioner of Customs, Sea, Chennai Versus M/S. Sri Krishna Sounds and Lightings

-022 (11) TMI 108 - CESTAT Mumbai

M/S Food World And M/S Authentic Stuff General Versus Commissioner of Customs (Preventive), Mumbai.

11.1.12 In their final and earnest submission, the Noticee unequivocally states that they are conducting their business with utmost genuineness and integrity. Regarding the present import, the goods were procured and declared based on their limited internal knowledge, and they respectfully highlight their lack of specialized expertise in the intricate domain of customs classification. It

is pertinent to note that the consignment arrived in October 2024 and remains unreleased to date, resulting in a substantial accrual of demurrage and detention charges amounting to Rupees One Crore. Furthermore, the protracted storage of these fabrics within warehouses poses a significant risk of deterioration in their quality and marketability. Considering these compelling circumstances, the imposition of a substantial duty liability would be unduly burdensome and financially unsustainable for the Noticee. As a final recourse, should their primary appeal not find favour with the esteemed Department, the Noticee humbly requests the compassionate consideration of allowing the re-export of the subject goods to their original supplier, thereby mitigating further losses and resolving this protracted matter.

11.1.13 Based on the aforementioned arguments and evidence, we respectfully request that the SCN) DIN: 20250371M00000515096 dated 21.03.2025, issued to be unequivocally revoked. The Noticee firmly maintain they have acted with utmost diligence, integrity, and in strict adherence to all applicable laws and regulations. They are confident that a thorough and impartial review of our submission will substantiate our claims and exonerate them.

**11.2 M/s SRV Shipping (Customs Broker) submitted their reply, which was received in this office on 12.06.2025, wherein they have, *inter alia*, submitted that:**

11.2.1 M/s. SRV Shipping is a licensed Customs Broker, operating within the framework of the Customs Act, 1962, and related regulations. We have consistently maintained a strong reputation for integrity and compliance, prioritizing lawful and ethical conduct in all its professional activities. We categorically and unequivocally denies all allegations of forging Bills of Lading, mis-declaration of goods, collusion with the importer, or any intention to evade customs duties. We firmly assert that our actions were performed in accordance with the information and documents provided to us, and within the scope of our responsibilities as a Customs Broker.

11.2.2 It is imperative to define the precise role and responsibilities of a Customs Broker. Our primary duty is to facilitate the customs clearance process based on the information and documentation provided by the importer. We are not the originators of the transactional documents, nor are we obligated to conduct exhaustive independent verification of their accuracy, absent concrete reasons for suspicion.

11.2.3 The allegation against the noticee is outlined in para 9.2 of the Order. The assertion within the Show Cause Notice that the Noticee, M/s. SRV Shipping, wilfully and with malfeasance uploaded forged Bills of Lading is not merely denied but is vehemently and unequivocally contested as a baseless and prejudicial imputation. The Noticee submits, with utmost emphasis, that neither the Customs authorities nor any other co-noticee has proffered any scintilla of credible, admissible evidence sufficient to establish, beyond a reasonable doubt, the veracity of the claim that the Noticee engaged in the egregious act of forgery of Bills of Lading. Such a grave accusation, devoid of evidentiary support, constitutes a profound affront to the professional integrity and ethical standing of the Noticee.

11.2.4 The Show Cause Notice alleges that M/s. SRV Shipping uploaded "forged" Bills of Lading with a different CTI (52082290) than the CTI (59039090)

declared by the Shipping Lines in the IGM for Bills of Entry at serial numbers 1 to 8 of Table-C. In response, we submit that M/s. SRV Shipping prepared and filed the Bills of Entry based on the Bills of Lading and other documents provided to us by the authorized representatives of the importer.

The discrepancies in the CTI declarations between the Bills of Lading provided to us and those provided by the Shipping Lines indicate a potential issue originating with the importer or the shipping line, and not necessarily an act of forgery by M/s. SRV Shipping. It is plausible that the importer provided M/s. SRV Shipping with a specific version of the Bill of Lading, and the Shipping Line provided a different version to the Customs authorities. Shipping lines sometimes amend Bills of Lading at the request of the shipper. M/s. SRV Shipping was not privy to any such amendments. M/s. SRV Shipping acted in good faith, relying on the documents provided to us, and had no intention to mis-declare the goods or evade customs duties.

11.2.5 The Show Cause Notice specifically alleges that M/s. SRV Shipping, in collusion with the importer, deliberately changed the CTI in the Bill of Entry at Sr. No. 6 and forged the corresponding Bill of Lading. We vehemently deny this allegation. There is no evidence to support the claim that M/s. SRV Shipping actively participated in forging any documents. As stated earlier, M/s. SRV Shipping's actions were based on the documents furnished by the importer's representatives. If there were discrepancies in the CTI, it is attributable to the information provided in those documents, and not to any fraudulent intent on our part.

11.2.6 M/s. SRV Shipping received the necessary documents, including Bills of Lading, commercial invoices, and packing lists, from the importer or their authorized representatives. The Customs Broker's role is to process these documents and file the Bills of Entry based on the information provided. We are not experts in the technical classification of goods, and we rely on the accuracy of the information provided by the importer. The statement of Shri Sanatan Jha, recorded under Section 108 of the Customs Act, 1962, corroborates this fact. He clearly outlined the process of receiving documents from the importer's representatives and forwarding them to M/s. SRV Shipping for filing the Bills of Entry.

11.2.7 A fundamental principle of law is mens rea, which requires the establishment of a guilty intention to commit an offense. The Customs authorities must prove beyond a reasonable doubt that M/s. SRV Shipping had the intention to defraud or evade customs duties. There is a complete lack of evidence to suggest any such intention on the part of M/s. SRV Shipping. Our actions were consistent with standard customs brokerage practices, and we acted in good faith based on the information provided to us. We did not benefit from any alleged mis-declaration. Our fees are for the services rendered, and we have no vested interest in the value or classification of the goods.

11.2.8 As a co-noticee, the imposition of a penalty under Section 112 is contingent upon the fulfilment of two critical conditions: first, it must be unequivocally established that the actions of the Noticee directly resulted in the goods becoming liable for confiscation; and second, the presence of mens rea, or a guilty intention, with respect to such activity must be conclusively demonstrated.

The entirety of the department's case rests fundamentally upon the

alleged misdeclaration of the description of the imported goods in relation to their Central Tariff Item (CTI) classification. However, the investigation conducted has failed to adduce even a scintilla of evidence to suggest, let alone establish, that the Noticee possessed any awareness whatsoever of this alleged misdeclaration or had any form of participation, direct or indirect, in bringing about such alleged misdeclaration. Furthermore, with respect to the alleged manipulation of the Bill of Lading, the investigation has similarly yielded no evidence implicating the Noticee in any manner. Notably, the Noticee's own statement, duly recorded under the provisions of Section 108 of the Customs Act, 1962, along with the statements of other co-noticees also recorded during the course of the investigation, are conspicuously devoid of any indication or admission that the Noticee engaged in any activity, overt or covert, related to the alleged misdeclaration of the goods. In essence; the investigative findings, including the testimonial evidence gathered, provide no basis to connect the Noticee to the central allegation of misdeclaration that forms the sole foundation of the department's case.

11.2.9 The penalty under 112 is imposable upon a person only if the person in relation to any goods, does or omits to do an act which would render the goods liable for confiscation. Thus, imposition of this penalty requires the identification of a person who has actively engaged in or neglected to perform an action that would result in the confiscation of goods. In this present case, the investigation has failed to uncover any such involvement by the noticee that would warrant the confiscation of goods.

Noticee says that the purported misclassification did not result in any benefit accruing to them. Moreover, the SCN is devoid of any averments substantiating a claim that the Noticee derived benefit from the said misdeclaration. Not even an iota of evidence of the involvement of the Noticee was brought on record. The full Bench of Hon'ble Bombay High Court in case of AMRITLAKSHMI MACHINE WORK Vs. COMMR (Import); 2016 (335) ELT 225 (Bom.),Held that for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, 'mens-rea" may not be required to be proved as condition precedent, however when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present therefore no penalty can be imposed on Noticee under Section 112(a) of the Customs Act, 1962.

The fundamental principle of law dictates that a penalty cannot be imposed on a co-noticee without establishing mens rea (guilty mind) mens rea is a crucial element that must be conclusively proven before any punitive action can be taken. The department failed to make any specific findings regarding the existence of mens rea. No evidence has been presented to demonstrate any intentional wrongdoing or criminal intent. The order lacks proper examination and analysis of the material element required for imposing penalties, which are:

a) Financial Benefit:

The SCN fails to demonstrate how the Noticee derived any benefit from the alleged misdeclaration No monetary advantage of gain has been established or quantified

b) Testimonial Evidence:

No statement from the importer exists that implicates the Noticee in any

wrong doing The Noticee has made no admission or statement accepting culpability in fact no statement of the noticee is recorded. No corroborative evidence links the Noticee to the allegation made in SCN. The SCN is conspicuously silent on the aspect of criminal intent. Documents fail to establish the essential elements required for penalty imposition.

In the absence of established mens rea, any penalty imposed would be legally untenable. The lack of evidence regarding criminal intent makes the penalty proceedings fundamentally flawed. Abetment, a serious offense as mandated under section 112(a) for a co noticee, necessitates specific actions, such as instigating, conspiring, or intentionally aiding another person in committing a crime. Mere awareness or presence at the scene of a crime is insufficient to establish abetment. Active participation or encouragement, coupled with a guilty mind or mens rea, is essential. This mens rea involves intentional facilitation, knowledge of potential consequences, and conscious involvement in the criminal act. The SCN failed to establish the necessary mens rea or guilty intent. There is no evidence of active participation, direct benefit derived, or any supporting witness testimony or circumstantial evidence presented in the SCN. The burden of proof lies with the department, who must prove all elements of the offense.

While dealing with the meaning and scope of the word abetment qua section 112(a) of the Customs Act in detail, the Hon'ble High Court Delhi in Custom Appeal no. CUSAA 3/2021 in case of RAJEEV KHATRI VERSUS COMMISSIONER OF CUSTOMS (EXPORT) held that in the context of Section 112(a) of the Customs Act, by definition, the expression 'abet' means instigating, conspiring, intentionally aiding the acts of commission or omission that render the goods liable for confiscation. The Hon'ble Delhi High Court specifically observed that mere knowledge is not sufficient but the intention, conspiracy is must for abetment. In the present case there is no evidence that Noticee's had the knowledge.

Further in case of HIM LOGISTICS PVT. LTD. Versus. COMMISSIONER OF CUSTOMS, NEW DELHI reported in 2016 (340) E.L.T: 388 (Tri. - Del.) the Hon'ble Court held;

*"From the impugned order, it appears that the original authority has levelled the penalty only on the ground that the appellant has failed to exercise due diligence to ascertain the correctness of the information as regards the correct classification of the goods being imported by his client. The appellant is mainly a CHA and the issue of classification is of complex nature. It cannot be said that the CHA should have information that the goods were 'Food Supplements' and not 'Medicaments'. It is for the Customs Department to classify the goods. Under these circumstances, the levy of the penalty is not justified. By following the earlier decision of the Tribunal dated 28-4-2016, we find no reason to sustain the penalty and, therefore, set aside the impugned order. The appeal stands disposed of accordingly."*

The Noticee additionally cite the following precedents in support of their contention

-2021 (377) E.L.T. 615 (Tri. - Chan.) M.S. EXIM SERVICES Versus C.C., LUDHIANA

-2018 (363) E.L.T. 644 (Tri. - Bang.) N.S. MAHESH Versus COMMISSIONER OF

## CUSTOMS; COCHIN

-2017 (4) TMI 601 - CESTAT NEW DELHI BRIJESH INTERNATIONAL Versus COMM. OF CUS. (IMPORT & GENERAL), NEW DELHI

11.2.10 Section 112(b) deals with acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, with a prior knowledge that goods are liable for confiscation. The showcase notice fails to allege any allegation on the noticee that he has prior knowledge or intimation that goods are liable for confiscation. The noticee is a co noticee and main noticee being importer/exporter. The absence of any allegation regarding the co-noticee's benefit conclusively demonstrates the lack of mens rea, a critical element for imposing a penalty. In simpler terms, without evidence of the co-noticee's intent or knowledge of wrongdoing, a penalty cannot be justified

11.2.11 The Show Cause Notice alleges violations of Section 46 of the Customs Act, 1962, which pertains to the filing of Bills of Entry. M/s. SRV Shipping maintains that we have complied with the provisions of Section 46 to the best of our ability. We filed the Bills of Entry based on the documents and information provided to us, which we had no reason to believe were false or inaccurate. To hold the Customs Broker solely responsible for any and all discrepancies, regardless of intent or knowledge, would be an unreasonable and unjust application of Section 46.

11.2.12 The penalty under 114AA can be imposed only in the cases of Exports The provision of penalty under sec The show cause also proposes for imposition of Penalty under. Section, 114AA of Customs Act 1962. With respect to the present matter, the Noticee affirms that they possessed neither knowledge nor intention with regard to the purported misdeclaration. It is further submitted that no false or incorrect information was furnished by the Noticee. It is noteworthy that the SCN is devoid of any investigative details or explicit articulation of the grounds upon which an alleged violation of Section 114AA of the Customs Act 1962 is predicated.

Section 114AA of Customs act 1962 was brought as a measure to curb the fraudulent exports which were in the paper only without physically exporting the goods. As the fraudsters were taking benefit of export-based incentive only on the basis of forged documents of exports where goods were not physically present. In order to avoid this modus operandi where only forged documents are resented, the provisions of section 114AA was brought in on the basis of Twenty Seventh Report Standing Committee On Finance (2005-2006) (Fourteenth Lok Sabha) The Taxation Laws(Amendment) Bill, 2005. Present case pertains to imports and and therefore penalty under Section 114AA cannot be imposed.

The Noticee relies upon following decisions

- 2019 (4) TMI 37 - CESTAT Chennai  
Shri. M.A. Dhandapani, Managing Director Of M/S. Onkyo Sight & Sound India Pvt. Ltd., Chennai Versus Commissioner of Customs, Custom House, Chennai

-2018 (7) TMI 867 - CESTAT Chennai  
Commissioner of Customs, Sea, Chennai Versus M/S. Sri Krishna Sounds and Lightings

-022 (11) TMI 108 - CESTAT Mumbai

M/S Food World And M/S Authentic Stuff General Versus Commissioner of Customs (Preventive), Mumbai

The Noticee emphatically submits that they have not engaged in any activity whatsoever pertaining to forgery or any similar illicit practices. Consequently, given their complete absence of involvement in such activities, the imposition of a penalty under Section 114AA of the Customs Act, 1962, is unwarranted and legally unsustainable. The foundational premise for invoking Section 114AA, which pertains to acts of forgery or the use of false and incorrect documents, is entirely absent in the present case with respect to the Noticee.

11.2.13 The Show Cause Notice (SCN) heavily emphasizes and centers its allegation on the purported discrepancy in the Customs Tariff Item (CTI), submitted by the Customs Broker at the time of filing the Bill of Entry. In response to this central contention, the Noticee submits that the Bill of Entry is fundamentally generated based on the comprehensive description of the imported goods and the corresponding CTI identified by the importer or their authorized representative. In stark contrast, the Bill of Lading, primarily a shipping document that serves as a receipt for goods and a contract of carriage between the shipper and the carrier, carries negligible weight in customs classification, particularly concerning the CTI. Its core function lies in facilitating the transportation and delivery of goods, not in providing precise tariff classification details. Consequently, it frequently omits the CTI altogether. Even when a description of the goods is included in the Bill of Lading, it typically provides only a generic overview, lacking the specificity and granularity required for accurate tariff classification under the Harmonized System of Nomenclature (HSN), which demands a level of detail that the Bill of Lading, in its commercial context, simply does not provide. This distinction is crucial: the Bill of Lading is geared towards logistical and commercial shipping needs, while the Bill of Entry is tailored to the specific requirements of customs authorities for revenue collection and regulatory compliance. Moreover, the declaration made by the Customs Broker or the importer at the time of filing the Bill of Entry is by no means considered sacrosanct or the final word on classification. This declaration is inherently subject to the thorough scrutiny and verification processes mandated by Section 17 of the Customs Act, 1962. While there is no dispute regarding the emphasis placed on self-declaration under Section 46 of the Act, and it is equally acknowledged that the era of self-assessment underscores the importer's initial responsibility in determining the correct classification, it is crucial to understand the limitations and subsequent verification mechanisms inherent in this system.

11.2.14 Section 17 of the Customs Act 1962 stipulates that a self-assessment is done under subsection (1) by importer/exporter, but the said self-assessment is to be verified by proper officer under sub section (2) and for this purpose he may examine or test the goods. In case of Textile goods the subsection (3) says that for verification of self-assessment the proper officer may call for documents and where it is found that self assessment is not done correctly the proper officer may re assess such self-assessment under subsection (4) of section 17 of Customs act 1962. Therefore, a self-assessment by importer is not sacrosanct and the self-assessment is subject to verification and examination by proper officer under sub section (2) and (3) of Customs Act 1962. An assessment is final only after it crosses the rigors of sub-section (2) and (3) of Section 17 of Customs act 1962. Therefore, filing a Bill of lading with incorrect CTI would have no effect on the classification of the goods and it is

immaterial even if a bill of lading with incorrect CTI (though not admitted is submitted at the time of filing the bill of entry.

11.2.15 The Show Cause Notice highlights discrepancies between the Bills of Lading provided by the Shipping Lines and those used for filing the Bills of Entry. M/s. SRV Shipping reiterates that we used the Bills of Lading provided to us by the importer's representatives. We were not involved in the issuance or modification of the original Bills of Lading by the Shipping Lines. The responsibility for any discrepancies in the Bills of Lading rests with the Shipping Lines.

11.2.16 The Show Cause Notice refers to the test reports that indicate a mis-declaration of the goods. Customs Brokers are not qualified to determine the technical classification of goods. We rely on the description and classification provided in the importer's documents. Any discrepancies revealed by the test reports are attributable to the importer's mis-declaration, and not to any wrongdoing by M/s. SRV Shipping.

11.2.17 The Show Cause Notice alleges collusion between M/s. SRV Shipping and the importer. We categorically deny this allegation. There is no evidence to support the claim that we conspired with the importer to evade customs duties. Our actions were limited to our professional duties as Customs Brokers, and we acted without any fraudulent intent.

M/s. SRV Shipping respectfully requests the Customs authorities to consider the facts and legal arguments presented in this reply with fairness and impartiality. We urge the authorities to drop all the charges and penalties against M/s. SRV Shipping, given the absence of any evidence of our involvement in the alleged fraudulent activities.

**11.3 M/s. Freight Link Logistics (Custom broker) submitted their reply, which was received in this office on 12.06.2025, wherein they have, *inter alia*, submitted that:**

11.3.1 M/s. Freight Link Logistics is a duly licensed Customs Broker, operating under the laws and regulations governing such entities. We have consistently upheld the highest standards of professional integrity and ethical conduct throughout our operational history. Our core principle is strict adherence to compliance, and we possess a strong track record of facilitating lawful trade. We categorically and unequivocally deny each and every allegation of mis-declaration, collusion, fraud, or any involvement in actions aimed at the evasion of customs duties, as presented in the Show Cause Notice. We firmly assert that our actions have been fully within the purview of our duties and responsibilities as a Customs Broker.

11.3.2 It is of paramount importance to delineate the precise scope of a Customs Broker's responsibilities. Our role is primarily to process customs documentation and facilitate the clearance of goods based on the information and documents provided by the importer. We operate under the presumption that the information furnished by the importer is accurate and truthful. In this context, our actions were fundamentally reliant on the documentation provided by M/s. Diksha Enterprise, and we acted in good faith.

11.3.3 The allegation against the noticee is outlined in para 9.3 of the Order. To dispel any ambiguity, we must reiterate the specific consignments for which

M/s. Freight Link Logistics provided Customs Brokerage services. Our involvement was strictly limited to the filing of Bills of Entry bearing Serial Numbers 15 to 18 of Table-C as detailed in the. Show Cause Notice: The Noticee were not involved whatsoever in the processing or clearance of consignments listed as Serial Numbers 1 to 14. These were handled entirely by M/s. SRV Shipping. This distinction is critical and must be acknowledged to accurately assess our role.

11.3.4 The allegations in the SCN is without any basis. Shri Deepak Singh, Son of Shri Vinod Singh, Manager of the Noticee in his statement recorded on 17.02.2025 under section 108 of the Customs Act, in reply to question number 10 categorically stated that he has prepared the checklist on the basis of the description given in the commercial invoice in consultation with the importer. The preparation and filing of Bills of Entry for consignments 15 to 18 were executed based solely on the documents and information furnished by the Importer, M/s. Diksha Enterprise. This is the established and accepted practice within the customs brokerage industry. These documents typically include commercial invoices, packing lists, and Bills of Lading. Customs Brokers are not equipped, nor are they legally obligated, to conduct independent and exhaustive verification of the veracity of every detail within these documents, absent explicit reasons for suspicion.

11.3.5 We draw specific attention to the statements recorded under Section 108 of the Customs Act, 1962, wherein the proprietor of M/s. Diksha Enterprise, Shri. Akhilesh Singh, detailed the process by which documents were provided for the clearance of the consignments. This testimony supports our assertion that we acted based on the information provided by the importer.

The allegations articulated in the Show Cause Notice are wholly devoid of any factual or legal basis. To definitively refute the contention that the Noticee, M/s. Freight Link Logistics, acted with knowledge of any impropriety, we draw the authority's attention to the unequivocal testimony of Shri Deepak Singh, Son of Shri Vinod Singh, Manager of the Noticee. In his statement, duly recorded on 17.02.2025 under the statutory provisions of Section 108 of the Customs Act, 1962, Shri Deepak Singh, in direct response to question number 10, explicitly and categorically affirmed that the checklist was prepared solely and exclusively based upon the descriptions provided within the commercial invoice, and in direct consultation with the importer. It is of paramount legal significance that Shri Deepak Singh made no admission whatsoever, either explicitly or implicitly, suggesting any awareness of the discrepancies now alleged by the prosecution. It is a fundamental and settled principle of law that statements recorded under Section 108 of the Customs Act, 1962, constitute substantive and admissible evidence. Therefore, the totality of the record and the available evidence demonstrably and irrefutably establishes that the Noticee possessed no knowledge of any discrepancies as alleged in the Show Cause Notice. Consequently, the assertion that the Noticee was knowingly concerned in the mis-declaration of the description, classification, and value in the import documents is not only unsubstantiated but also directly contradicted by the evidence on record, and must therefore be dismissed as entirely without merit.

11.3.6 The Show Cause Notice highlights discrepancies between the findings of the test reports and the CTI and descriptions declared in the Bills of Entry we filed. We must emphasize that the classification of goods, particularly complex items like fabrics, can be a highly technical exercise. Customs Brokers are not technical experts in textile classification. We rely on the information provided in

the importer's documents, specifically the commercial invoice and packing list, which should, in principle, provide an accurate description of the goods. If any discrepancy arise from the test reports, it may be primarily attributable to the Importer and not to any malfeasance or negligence on our part.

11.3.7 The Show Cause Notice refers to discrepancies between the Bills of Lading and the Bills of Entry. It is imperative to reiterate that the discrepancies in Bills of Lading for consignments 1 to 14 are wholly outside the purview of M/s. Freight Link Logistics, as these were handled by M/s. SRV Shipping. We cannot be held accountable for actions or documentation related to consignments we did not handle. Regarding the Bills of Entry, we did handle (15 to 18), we acted upon the Bills of Lading provided to us by the importer. If discrepancies exist, it implies an error by the overseas supplier, and not an intentional act of mis-declaration by M/s. Freight Link Logistics.

11.3.8 A critical legal principle in determining liability for any offense, including customs violations, is the concept of mens rea, or guilty intent: The prosecution must establish not only that a prohibited act occurred, but also that the accused had the intention to commit that act. In the present case, there is a complete absence of any evidence to suggest that M/s. Freight Link Logistics harboured any intention to evade customs duty. Our actions were consistent with standard customs brokerage practices, and we operated in good faith, relying on the information provided to us. We derived no direct benefit from the alleged mis-declaration. Our fees were limited to standard brokerage charges, and we had no stake in the value of the goods or the duties payable.

11.3.9 The Show Cause Notice alleges that M/s. Freight Link Logistics colluded with the importer to conceal and mis-declare the goods. We categorically refute this allegation. There is no evidence, direct or circumstantial, to support this serious charge. Our role was confined to the procedural aspects of customs clearance. We did not participate in the procurement of the goods, their valuation, or any decisions related to their description or classification.

11.3.10 The Show Cause Notice cites alleged violations of Section 46 of the Customs Act, 1962, which pertains to the filing of Bills of Entry. We contend that we have diligently fulfilled our obligations under this section. We submitted Bills of Entry that accurately reflected the information provided to us by the importer. We had no independent means of verifying the accuracy of this information, nor are we legally mandated to do so in every instance. To impose strict liability on Customs Brokers for any and all errors in the importer's declaration, regardless of intent or knowledge, would create an untenable and unfair burden on the profession.

11.3.11 The penalty under 112 is imposable upon a person only if the person in relation to any goods, does or omits to do an act which would render the goods liable for confiscation. Thus, imposition of this penalty requires the identification of a person who has actively engaged in or neglected to perform an action that would result in the confiscation of goods. In this present case, the investigation has failed to uncover any such involvement by the noticee that would warrant the confiscation of goods.

Noticee says that the purported misclassification did not result in any benefit accruing to them. Moreover, the SCN is devoid of any averments substantiating a claim that the Noticee derived benefit from the said misdeclaration. Not even an iota of evidence of the involvement of the Noticee

was brought on record. The full Bench of Hon'ble Bombay High Court in case of AMRITLAKSHMI MACHINE WORK Vs. COMMR (Import); 2016 (335) ELT 225 (Bom.), Held that for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, 'mens-rea' may not be required to be proved as condition precedent, however when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present therefore no penalty can be imposed on Noticee under Section 112(a) of the Customs Act, 1962.

The fundamental principle of law dictates that a penalty cannot be imposed on a co-noticee without establishing mens rea (guilty mind) mens rea is a crucial element that must be conclusively proven before any punitive action can be taken. The department failed to make any specific findings regarding the existence of mens rea. No evidence has been presented to demonstrate any intentional wrongdoing or criminal intent. The order lacks proper examination and analysis of the material element required for imposing penalties, which are:

a) Financial Benefit:

The SCN fails to demonstrate how the Noticee derived any benefit from the alleged misdeclaration. No monetary advantage of gain has been established or quantified.

b) Testimonial Evidence:

No statement from the importer exists that implicates the Noticee in any wrong doing. The Noticee has made no admission or statement accepting culpability in fact. No statement of the noticee is recorded. No corroborative evidence links the Noticee to the allegation made in SCN. The SCN is conspicuously silent on the aspect of criminal intent. Documents fail to establish the essential elements required for penalty imposition.

In the absence of established mens rea, any penalty imposed would be legally untenable. The lack of evidence regarding criminal intent makes the penalty proceedings fundamentally flawed. Abetment, a serious offense as mandated under section 112(a) for a co noticee, necessitates specific actions, such as instigating, conspiring, or intentionally aiding another person in committing a crime. Mere awareness or presence at the scene of a crime is insufficient to establish abetment. Active participation or encouragement, coupled with a guilty mind or mens rea, is essential. This mens rea involves intentional facilitation, knowledge of potential consequences, and conscious involvement in the criminal act. The SCN failed to establish the necessary mens rea or guilty intent. There is no evidence of active participation, direct benefit derived, or any supporting witness testimony or circumstantial evidence presented in the SCN. The burden of proof lies with the department, who must prove all elements of the offense.

While dealing with the meaning and scope of the word abetment qua section 112(a) of the Customs Act in detail, the Hon'ble High Court Delhi in Custom Appeal no. CUSAA 3/2021 in case of RAJEEV KHATRI VERSUS COMMISSIONER OF CUSTOMS (EXPORT) held that in the context of Section 112(a) of the Customs Act, by definition, the expression 'abet' means instigating, conspiring, intentionally aiding the acts of commission or omission that render the goods liable for confiscation. The Hon'ble Delhi High Court specifically observed that mere knowledge is not sufficient but the intention,

conspiracy is must for abetment. In the present case there is no evidence that Noticee's had the knowledge.

Further in case of HIM LOGISTICS PVT. LTD. Versus. COMMISSIONER OF CUSTOMS, NEW DELHI reported in 2016 (340) E.L.T: 388 (Tri. - Del.) the Hon'ble Court held;

*"From the impugned order, it appears that the original authority has levelled the penalty only on the ground that the appellant has failed to exercise due diligence to ascertain the correctness of the information as regards the correct classification of the goods being imported by his client. The appellant is mainly a CHA and the issue of classification is of complex nature. It cannot be said that the CHA should have information that the goods were 'Food Supplements' and not 'Medicaments'. It is for the Customs Department to classify the goods. Under these circumstances, the levy of the penalty is not justified. By following the earlier decision of the Tribunal dated 28-4-2016, we find no reason to sustain the penalty and, therefore, set aside the impugned order. The appeal stands disposed of accordingly."*

The Noticee additionally cite the following precedents in support of their contention

-2021 (377) E.L.T. 615 (Tri. - Chan.) M.S. EXIM SERVICES Versus C.C., LUDHIANA

-2018 (363) E.L.T. 644 (Tri. - Bang.) N.S. MAHESH Versus COMMISSIONER OF CUSTOMS; COCHIN

-2017 (4) TMI 601 - CESTAT NEW DELHI BRIJESH INTERNATIONAL Versus COMM. OF CUS. (IMPORT & GENERAL), NEW DELHI

11.3.12 Section 112(b) deals with acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, with a prior knowledge that goods are liable for confiscation. The showcase notice fails to allege any allegation on the noticee that he has prior knowledge or intimation that goods are liable for confiscation. The noticee is a co noticee and main noticee being importer/exporter. The absence of any allegation regarding the co-noticee's benefit conclusively demonstrates the lack of mens rea, a critical element for imposing a penalty. In simpler terms, without evidence of the co-noticee's intent or knowledge of wrongdoing, a penalty cannot be justified

11.3.13 We respectfully draw the authority's attention to relevant case laws and circulars issued by the Central Board of Indirect Taxes and Customs (CBIC) that delineate the responsibilities and liabilities of Customs Brokers. These legal precedents often establish that Customs Brokers cannot be held liable for mis-declarations by importers unless there is clear and convincing evidence of their active collusion or fraudulent intent. We are prepared to furnish copies of these supporting legal documents upon request. Additionally we rely upon following case law.

-2021 (377) E.I.T. 615 (Tri, - Chan.) M.S. EXIM SERVICES Versus C.C., LUDHIANA

-2018 (363) E.L.T. 644 (Tri. - Bang.) N.S. MAHESH Versus COMMISSIONER OF

## CUSTOMS, COCHIN

-2017 (4) TMI 601 - CESTAT NEW DELHI BRIJESH INTERNATIONAL Versus COMMR. OF CUS. (IMPORT & GENERAL

-AKBAR BADRUDDIN JIWANI Versus COLLECTOR OF CUSTOMS (NEW DELHI 1990 (47) E.L.T. 161 (S.C.)

11.3.14 Given the totality of the facts, our adherence to ethical practices, and the absence of any evidence of malfeasance on our part, we respectfully request the Customs authorities to take a lenient and equitable view of the matter. We urge the authorities to drop all charges and penalties against M/s. Freight Link Logistics. The imposition of penalties would be unjust and unwarranted, given the limited scope of our involvement and the lack of any substantiation for the allegations against us.

**11.4 Shri Dharendra Shukla alias Sonu Shukla submitted their reply, which was received in this office on 12.06.2025, wherein they have, *inter alia*, submitted that:**

11.4.1 The allegations against Noticee are legally unsound and demonstrably defective, resting entirely on an evidentiary foundation that is inherently weak and unreliable. A critical and decisive flaw in the Show Cause Notice is its reliance on the statements of other individuals as the sole basis for the charges against the Noticee. No independent corroborative evidence, documentary or otherwise, has been presented to substantiate these allegations.

11.4.2 It is submitted by the Noticee that the purported misclassification did not result in any benefit accruing to them. Moreover, the SCN is devoid of any averments substantiating a claim that the Noticee derived benefit from the said misdeclaration. Not even an iota of evidence of the involvement of the Noticee was brought on record. The full Bench of Hon'ble Bombay High Court in case of - AMRITLAKSHMI MACHINE WORK Vs. COMMR (Import), 2016 (335) ELT 225 (Bom.), held that for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, '*mens-rea*' may not be required to be proved as condition precedent, however when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present therefore no penalty can be imposed on Noticee under Section 112(a) of the Customs Act, 1962.

11.4.3 The fundamental principle of law dictates that a penalty cannot be imposed on a co-noticee without establishing *mens rea* (guilty mind) *mens rea* is a crucial element that must be conclusively proven before any punitive action can be taken. The department failed to make any specific findings regarding the existence of *mens rea*. No evidence has been presented to demonstrate any intentional wrongdoing or criminal intent. The order lacks proper examination and analysis of the material element required for imposing penalties, which are:

a) Financial Benefit:

The SCN fails to demonstrate how the Noticee derived any benefit from the alleged misdeclaration. No monetary advantage or gain has been established or quantified.

b) Testimonial Evidence:

No statement from the importer exists that implicates the Noticee in any wrong doing. The Noticee has made no admission or statement accepting culpability in fact no statement of the noticee is recorded. No corroborative evidence links the Noticee to the allegation made in SCN. The SCN is conspicuously silent on the aspect of criminal intent. Documents fail to establish the essential elements required for penalty imposition.

In the absence of established *mens rea*, any penalty imposed would be legally untenable. The lack of evidence regarding criminal intent makes the penalty proceedings fundamentally flawed.

11.4.4 The section 112(a) mandates that the penalty under the section can be imposed on co noticee on abetment. Abetment, a serious offense, necessitates specific actions, such as instigating, conspiring, or intentionally aiding another person in committing a crime. Mere awareness or presence at the scene of a crime is insufficient to establish abetment. Active participation or encouragement, coupled with a guilty mind or *mens rea*, is essential. This *mens rea* involves intentional facilitation, knowledge of potential consequences, and conscious involvement in the criminal act. The SCN failed to establish the necessary *mens rea* or guilty intent. There is no evidence of active participation, direct benefit derived, or any supporting witness testimony or circumstantial evidence presented in the SCN. The burden of proof lies with the department, who must prove all elements of the offense.

While dealing with the meaning and scope of the word abetment qua section 112(a) of the Customs Act in detail, the Hon'ble High Court Delhi in Custom Appeal no. CUSAA 3/2021 in case of RAJEEV KHATRI VERSUS COMMISSIONER OF CUSTOMS (EXPORT) held that in the context of Section 112(a) of the Customs Act, by definition, the expression 'abet' means instigating, conspiring, intentionally aiding the acts of commission or omission that render the goods liable for confiscation. The Hon'ble Delhi High Court specifically observed that mere knowledge is not sufficient but the intention, conspiracy is must for abetment. In the present case there is no evidence that Noticee's had the knowledge.

Further in case of HIM LOGISTICS PVT. LTD. Versus. COMMISSIONER OF CUSTOMS, NEW DELHI reported in 2016 (340) E.L.T: 388 (Tri. - Del.) the Hon'ble Court held;

*"From the impugned order, it appears that the original authority has levelled the penalty only on the ground that the appellant has failed to exercise due diligence to ascertain the correctness of the information as regards the correct classification of the goods being imported by his client. The appellant is mainly a CHA and the issue of classification is of complex nature. It cannot be said that the CHA should have information that the goods were 'Food Supplements' and not 'Medicaments'. It is for the Customs Department to classify the goods. Under these circumstances, the levy of the penalty is not justified. By following the earlier decision of the Tribunal dated 28-4-2016, we find no reason to sustain the penalty and, therefore, set aside the impugned order. The appeal stands disposed of accordingly."*

The Noticee additionally cite the following precedents in support of their contention

-2021 (377) E.L.T. 615 (Tri. - Chan.) M.S. EXIM SERVICES Versus C.C.,

## LUDHIANA

-2018 (363) E.L.T. 644 (Tri. - Bang.) N.S. MAHESH Versus COMMISSIONER OF CUSTOMS; COCHIN

-2017 (4) TMI 601 - CESTAT NEW DELHI BRIJESH INTERNATIONAL Versus COMMR. OF CUS. (IMPORT & GENERAL), NEW DELHI

11.4.5 Section 112(b) deals with acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, with a prior knowledge that goods are liable for confiscation. The showcase notice fails to allege any allegation on the noticee that he has prior knowledge or intimation that goods are liable for confiscation. The noticee is a co noticee and main noticee being importer/exporter. The absence of any allegation regarding the co-noticee's benefit conclusively demonstrates the lack of mens rea, a critical element for imposing a penalty. In simpler terms, without evidence of the co-noticee's intent or knowledge of wrongdoing, a penalty cannot be justified.

11.4.6 The Noticee emphatically submits that they have not engaged in any activity whatsoever pertaining to forgery or any similar illicit practices and they had no such intention . Consequently, given their complete absence of involvement in such activities, the imposition of a penalty under Section 114AA of the Customs Act, 1962, is unwarranted and legally unsustainable. The foundational premise for invoking Section 114AA, which pertains to acts of forgery or the use of false and incorrect documents, is entirely absent in the present case with respect to the Noticee.

The Show Cause Notice's claim that the CTI was changed in the Bill of Lading to manipulate classification is unfounded. The CTI stated in the Bill of Lading is not the definitive factor in classification; rather, classification is accurately established and verified by the goods description on the invoice (as CTI in Bill of lading is casually mentioned in few cases). Furthermore, the reasoning presented in the Show Cause Notice is internally contradictory.

The Noticee submits, with utmost emphasis, that neither the Customs authorities nor any other co-noticee has proffered any scintilla of credible, admissible evidence sufficient to establish, beyond a reasonable doubt, the veracity of the claim that the Noticee engaged in the egregious act of forgery of Bills of Lading. Such a grave accusation, devoid of evidentiary support, constitutes a profound affront to the professional integrity and ethical standing of the Noticee.

The investigation purportedly conducted by the Directorate of Revenue Intelligence (DRI), and the resultant Show Cause Notice predicated upon said investigation, have conspicuously and egregiously failed to categorically ascertain, much less demonstrate with any degree of legal certainty, the existence of any plausible motive or demonstrable benefit that would have inured to the Noticee from the alleged and unsubstantiated alteration of the Customs Tariff Item in the Bills of Lading. This fundamental and conspicuous lacuna in the prosecutorial narrative gives rise to an inherent, irreconcilable, and legally fatal contradiction within the core allegations articulated in the Show Cause Notice. A meticulous and scientific vivisection, a precise and critical dissection, of the allegations pertaining to the Bills of Lading reveals the following critical inconsistencies and logical absurdities:

- Allegation of Forged Bills of Lading (Sr. No. 1 to 8): The Show Cause Notice specifically alleges that uploaded "forged" Bills of Lading, characterized by a CTI that demonstrably and materially differed from the CTI declared in the "actual" and purportedly authentic Bills of Lading provided by the Shipping Lines, in relation to Bills of Entry pertaining to serial numbers 1 to 8 of Table-C.
- Change in Behavior After DRI Enquiry (Sr. No. 9 to 14): The Show Cause Notice, in a further exercise of self-contradiction, subsequently asserts that, subsequent to the commencement of the DRI's investigation, the CB, ostensibly chastened by the scrutiny, filed Bills of Entry for serial numbers 9 to 14 using the "original" Bills of Lading furnished by the Shipping Line. However, and this is a point of paramount legal significance, the Show Cause Notice is forced to concede that, even under this purportedly reformed practice, the in these Bills of Entry *still* did not align with the in the Bills of Lading, a discrepancy that the Customs authorities, in a further display of flawed logic, present as a further violation and indicium of culpability.

Therefore, the Customs authorities, in a display of internally inconsistent and logically untenable assertions, advance the proposition that the Noticee purportedly engaged in the illicit act of altering the CTI in the Bills of Lading, substituting the CTI originally provided by the supplier with a CTI of the Noticee's own contrivance. This line of argumentation implicitly, and indeed unavoidably, suggests that the CTI provided by the supplier was, in the Customs authorities' own estimation, the accurate and correct CTI. However, this tenuous and self-serving position is fundamentally and irretrievably undermined by the Customs authorities' subsequent and contradictory claim that even when the "original" and untampered Bills of Lading emanating from the Shipping Line were employed (for Bills of Entry pertaining to serial numbers 9 to 14), the CTI in the Bills of Entry remained demonstrably and materially inconsistent with the CTI in said Bills of Lading. This latter assertion inexorably compels the logical and legally unavoidable conclusion that, according to the Customs authorities' own narrative, even the CTI on the Bills of Lading originating from the Shipping Line was, in fact, incorrect.

A series of critical and as yet unanswered questions of profound legal and logical import thus arise, demanding rigorous and impartial scrutiny: Why, under what conceivable rationale, and with what discernible motive, would the Shipping Line, a commercial entity with no vested interest in the alleged fraud, furnish an incorrect CTI in the Bills of Lading in the latter scenario, particularly given the well-established and legally recognized fact that there exists no mandatory legal requirement or statutory obligation to declare the CTI in the Bill of Lading? Therefore, there exists no discernible or logical necessity, no *raison d'être*, for a Shipping Line to intentionally and deliberately declare an "INCORRECT" CTI in the Bills of Lading for Bills of Entry numbered 9 to 14. Furthermore, if, as alleged by the Customs authorities, the Bills of Lading were already tainted by an incorrect CTI (as per the allegations pertaining to serial numbers 1 to 8), the purported act of forgery by the Noticee becomes even more inexplicable, more logically absurd, and more devoid of any rational basis. Why, one is compelled to ask, would the Noticee engage in the highly risky and legally perilous act of forging a document to introduce yet another layer of incorrectness, to superimpose a further falsehood upon a falsehood, when, according to the Customs authorities' own convoluted and self-contradictory narrative, the underlying document was already incorrect?

The findings of the investigation, as presented in the Show Cause Notice, are demonstrably and irrefutably characterized by direct contradiction, glaring inconsistencies, and are replete with logical paradoxes and absurdities. The Noticee expresses profound surprise, shock, and dismay that, predicated upon such patently confusing, internally inconsistent, and logically untenable versions of events, the Customs authorities have proceeded to level the grave, serious, and legally consequential allegation of forgery, an allegation that is utterly devoid of evidentiary support, wholly speculative in nature, and is therefore categorically unacceptable and vigorously and vehemently contested by the Noticee.

11.4.7 The penalty under 114AA can be imposed only in the cases of Exports. The provision of penalty under sec The show cause also proposes for imposition of Penalty under. Section, 114AA of Customs Act 1962. With respect to the present matter, the Noticee affirms that they possessed neither knowledge nor intention with regard to the purported misdeclaration. It is further submitted that no false or incorrect information was furnished by the Noticee. It is noteworthy that the SCN is devoid of any investigative details or explicit articulation of the grounds upon which an alleged violation of Section 114AA of the Customs Act 1962 is predicated.

Section 114AA of Customs act 1962 was brought as a measure to curb the fraudulent exports which were in the paper only without physically exporting the goods. As the fraudsters were taking benefit of export-based incentive only on the basis of forged documents of exports where goods were not physically present. In order to avoid this modus operandi where only forged documents are resented, the provisions of section 114AA was brought in on the basis of Twenty Seventh Report Standing Committee On Finance (2005-2006) (Fourteenth Lok Sabha) The Taxation Laws(Amendment) Bill, 2005. Present case pertains to imports and and therefore penalty under Section 114AA cannot be imposed.

The Noticee relies upon following decisions

- 2019 (4) TMI 37 - CESTAT Chennai

Shri. M.A. Dhandapani, Managing Director Of M/S. Onkyo Sight & Sound India Pvt. Ltd., Chennai Versus Commissioner of Customs, Custom House, Chennai

-2018 (7) TMI 867 - CESTAT Chennai

Commissioner of Customs, Sea, Chennai Versus M/S. Sri Krishna Sounds and Lightings

-022 (11) TMI 108 - CESTAT Mumbai

M/S Food World And M/S Authentic Stuff General Versus Commissioner of Customs (Preventive), Mumbai

11.4.8 From the reading of the said section it is quite evident that penalty under this section is a residual penal provision, could be imposed only for contravention of the provisions of the Custom Act, either directly or indirectly by abetting in such contravention or for failure to comply with the provisions of the of the act *ibid*. Further it is important to note that the entire show cause notice fails to put any ingredient suggesting any malafide intention of the noticee.

**(i)** In case M. RENGANATHAN Versus COMMISSIONER OF CUSTOMS, CHENNAI 2009 (235) E.L.T. 860 (Tri. - Chennai), the Hon'ble tribunal observed,

3. After considering the submissions, I have found a valid point with the learned counsel. The text of Section 117 indicates that it is a residual penal provision under the Customs Act, which can be invoked against a person who has failed to comply with any provision of the Act or has contravened any provision of the Act or has abetted such contravention. No such case was made out against the appellant in the show-cause notice, wherein the only allegation was misdeclaration in bill of entry. Misdeclaration of any kind in bill of entry can attract confiscation of the goods under Section 111 of the Act and, consequently, the offender can attract a penalty under Section 112 of the Act. It would follow that the allegation raised against the CHA in the show-cause notice was, at best, relatable to Section 112 of the Act. Consequently, the residual provisions of Section 117 were not invocable. Moreover, this provision could be invoked only where the person sought to be penalised has failed to comply with any provision of the Act or has contravened any provision of the Act or has abetted any such contravention. There was no allegation to this effect in the show-cause notice.

4. In the result, the penalty imposed on the appellant under Section 117 of the Act is vacated and this appeal is allowed.

( i i ) In case of M/S. PD PRASAD & SONS PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS (EXPORT), NEW DELHI reported in 2017 (5) TMI 1179 The Hon'ble Tribunal held ,

6. In the present case also, the appellant filed shipping bills on the basis of documents received by them. If there is any difference in the value of the export consignment, the CHA cannot be held responsible for the same as it is not the duty of the CHA to adjudge the correct value of the goods. There is virtually no evidence on record to show that he was aware of the over-valuation of the export consignment and he simplicitor proceeded by the declaration made by the exporters. In such a scenario, the appellant cannot be held liable for any aiding and abetting and consequently to penalty.

(underline supplied)

(iii) In case of HLPL GLOBAL LOGISTICS PVT. LTD. VERSUS COMM. OF CUS. (GEN.), NEW DELH 2018 (364) E.L.T. 427, the Hon'ble Tribunal held,

4. After hearing both the sides, it appears that Shri Raj Kumar Wadhwa, the importer has supplied the necessary information and on the basis of the documents, the appellant has classified the goods which were rectified later. From the impugned order, it appears that importer Shri Raj Kumar Wadhwa is the controller of importer firm and on the basis of whatever documents he has sent, Bill of Entry was filed by CHA. Thus, in the instant case, no mala fide intention is on the part of the appellant and he filed Bill of Entry in bona fide manner

(underline supplied)

(iv) In case of M/S. BRIJESH INTERNATIONAL VERSUS C.C. (IMPORT & GENERAL) , NEW DELHI 2017 (4) TMI 601, the Hon'ble Tribunal held ,

4. We have also gone through the Order-in-Original passed by the adjudicating authority. While discussing the issue of imposition penalty upon CHA, he has only referred to the fact of mis-declaration of

*classification as also valuation by the main importer, M/s. Maya Overseas and has nowhere produced any evidence to show that the CHA knew about the incorrect classification and valuation of the Goods. Otherwise also, we observe that the CHA declared the goods in the Bills of Entry based upon the information given to him by the importer and is not expected to investigate and find out the correct classification or value of the goods. In such a scenario, we find no reason to impose penalty upon the appellant. Accordingly, we set aside the impugned order and allow the appeal with consequential relief to the appellant*

Therefore, penalty under section 117 cannot be imposed on the noticee.

**11.5 Shri Krishna Nand Shahi alias Shri Krishna Shahi submitted their reply, which was received in this office on 12.06.2025, wherein they have, *inter alia*, submitted that:**

11.5.1 The Noticee, clarifies his association with M/s. SRL Shipping. It is important to accurately define the nature of this association to properly assess his alleged role. The Noticee unequivocally and categorically denies all allegations of providing false information and documents to Customs, collusion with the importer or Customs Broker, or any involvement in actions aimed at mis-declaration of goods or evasion of customs duties.

11.5.2 The Noticee asserts that his involvement was limited to facilitating the logistical aspects of the import process, based on the information and documents provided to him. He emphasizes that he did not have the authority or responsibility to determine the classification or valuation of goods.

11.5.3 The Show Cause Notice alleges that the Noticee was an accomplice to the importer and the Customs Broker in providing false information and documents to Customs related to Bills of Entry from serial numbers 1 to 14 of Table-C. The Noticee contends that he acted in good faith, relying on the information and documents provided to him by the importer and/or their representatives. He asserts that his role primarily involved coordinating the logistics and transportation of the imported goods, and that he was not responsible for the accuracy of the declarations made in the Bills of Entry.

11.5.4 The Show Cause Notice details the communication chain wherein M/s. SRL Shipping used to send documents to M/s. SJ Logistics, who in turn forwarded them to M/s. SRV Shipping for filing Bills of Entry. The Noticee clarifies that this communication chain was established for the efficient processing of documents and that he acted as a facilitator in this process. He emphasizes that the responsibility for the accuracy of the information rested with the importer and the Customs Broker who filed the Bills of Entry.

11.5.5 The Show Cause Notice mentions that M/s. SJ Logistics used to send a draft checklist to M/s. SRV Shipping for approval. The Noticee explains that this draft checklist was a preliminary document used for reference and that the final checklist, upon which the Bills of Entry were based, was the responsibility of the Customs Broker. The Show Cause Notice acknowledges that the Noticee was involved in handling, loading/unloading, and logistics of the import consignments. The Noticee confirms his involvement in these activities, stating that they were essential to ensure the smooth movement of goods. He reiterates that these logistical activities did not involve the determination of the classification or valuation of the goods.

11.5.6 The Show Cause Notice alleges that the Noticee provided forged Bills of Lading for filing the Bills of Entry. The Noticee vehemently denies this allegation. He asserts that he provided the documents received from the importer or their representatives and had no knowledge of, or involvement in, any forgery. He challenges the Customs authorities to provide concrete evidence to substantiate this serious allegation. The Noticee emphasizes the legal principle of \*mens rea\*, which requires the establishment of a guilty intention to commit an offense. He asserts that there is no evidence to suggest that he had any intention to defraud the Customs authorities or to assist in the evasion of customs duties. He acted in his capacity as a facilitator of the import process, relying on the information provided to him, without any intention to deceive.

11.5.7 The Noticee emphasizes that the burden of proof lies with the Customs authorities to establish, with clear and convincing evidence, that he was actively involved in the alleged mis-declaration and had the intention to evade customs duties. Mere allegations and assumptions are not sufficient to prove culpability. The Noticee reiterates the importance of \*mens rea\* and argues that it must be proven that he had the specific intention to commit the alleged offenses. He asserts that his actions were based on the information provided to him and that he lacked the necessary knowledge or intent to participate in any fraudulent activity. The Noticee submits that his role was limited to logistical support and that he cannot be held liable for errors or mis-declarations made by the importer or the Customs Broker.

11.5.8 The Noticee respectfully requests the Customs authorities to consider the facts and legal arguments presented in this reply with fairness and impartiality. He urges the authorities to drop all charges and penalties against him, given the absence of any evidence of his involvement in the alleged fraudulent activities.

**11.6 Shri Sanatan Jha submitted their reply, which was received in this office on 12.06.2025, wherein they have, *inter alia*, submitted that:**

11.6.1 The SCN alleges that I was "knowingly concerned" in the mis-declaration of the description and classification of the imported goods. This allegation is incorrect and untenable. I was working as a documentation handler. My role, as has been clearly stated in my statement recorded under Section 108 of the Customs Act, 1962, was limited to receiving documents from M/s. SRL Shipping and forwarding them to M/s. SRV Shipping for the purpose of documentation and filing of Bills of Entry. I had no authority or responsibility to determine or verify the description or classification of the imported goods. These details were provided to me by M/s. SRL Shipping, and I proceeded on that basis.

11.6.2 The SCN acknowledges that the Bills of Entry were filed by M/s. SRV Shipping. I was not involved in the actual filing of the Bills of Entry, and therefore, I cannot be held responsible for any alleged mis-declaration contained therein. It is a standard practice in the trade for Custom Brokers to rely on the information provided by the importer or their representatives (in this case, M/s. SRL Shipping) for the purpose of documentation. I had no reason to doubt the veracity of the information provided to me.

11.6.3 The SCN alleges that I was involved in the forgery of Bills of Lading. This allegation is completely baseless and without any supporting evidence. I categorically deny having forged or having any knowledge of the alleged forgery

of any Bill of Lading. I received the Bills of Lading from M/s. SRL Shipping in the regular course of business. I had no reason to believe that these documents were not genuine. The SCN itself admits that there are two sets of Bills of Lading - one provided by the Shipping Line and the other provided by the Custom Broker. The SCN fails to provide any evidence to show my involvement in the preparation or manipulation of any of these documents. My statement clearly outlines the process of receiving and forwarding documents, and there is no indication of any wrongdoing on my part.

11.6.4 The SCN alleges that I was aware that unauthorized persons were handling the examination and clearance of imported cargo, which is a violation of customs procedure. This allegation is also denied. While I was generally aware of the customs procedures, my primary responsibility was limited to documentation. I did not have any supervisory role or control over the examination and clearance of goods. This was handled by M/s. SRL Shipping and M/s. SRV Shipping. The SCN does not provide any specific instance or evidence to show that I was directly involved in, or responsible for, any alleged procedural violation.

11.6.5 The SCN alleges that I did not provide any supportive evidence, such as email correspondences, to prove that I used to get approval from the importer before filing the Bills of Entry. I wish to submit that all the documents and correspondences that were available with me and were relevant to the investigation were provided to the authorities. If there are any specific documents that are required, I am willing to make all efforts to locate and provide them, subject to availability and my ability to access the same. The absence of specific email correspondences, if any, does not imply any wrongdoing on my part. It is possible that some communications were verbal or through other modes, which are not readily available now.

11.6.6 It is important to emphasize that the SCN does not provide any direct or concrete evidence to substantiate the serious allegations leveled against me. The SCN is largely based on assumptions, conjectures, and inferences, rather than on clear and unambiguous proof. There is no statement from any witness implicating me directly in the alleged forgery or mis-declaration. There is no document or electronic record that shows my involvement in any illegal activity. The SCN relies heavily on the statements of other parties, and attempts to draw adverse conclusions against me without any independent verification or corroboration.

11.6.7 I respectfully submit that the SCN is in violation of the principles of natural justice. The SCN is vague and ambiguous in its allegations against me. It does not specify the exact nature of my involvement or the specific acts of omission or commission on my part. The SCN is based on hearsay evidence and unsubstantiated claims. I have not been given an opportunity to cross-examine the persons whose statements are relied upon in the SCN.

11.6.8 The SCN proposes serious penalties against me, including imposition of penalty under Sections 112, 114AA and 117 of the Customs Act, 1962, without establishing my guilt beyond reasonable doubt. In light of the foregoing, I respectfully submit that:

a. I have acted in good faith and discharged my responsibilities with due diligence and to the best of my ability.

- b. I had no knowledge of, or involvement in, any alleged forgery of Bills of Lading or mis-declaration of goods.
- c. My role was limited to documentation, and I relied on the information provided to me by M/s. SRL Shipping in the regular course of business.
- d. There is no direct or concrete evidence to substantiate the allegations against me.
- e. The SCN is in violation of the principles of natural justice.

In view of the above, noticee pray that the allegations against him in the SCN be dropped and no penalty be imposed on him.

### **Personal Hearing**

**12.** Shri Rajkumar Maji, Advocate, appeared for personal hearing on 18.07.2025 in virtual mode on behalf of M/s. Diksha Enterprise, M/s SRV Shipping, Freight Link Logistics, Shri Dharendra Shukla alias Sonu Shukla, Shri Krishna Nand Shahi, and Shri Sanatan Jha. During the hearing, he reiterated the submission made earlier in respect of above noticees. Further, he requested to allow re-export of all consignment mentioned in show cause notice dated 21.03.2025. He further requested to take lenient view.

### **Discussion and Findings**

**13.** I have gone through the facts of the case, Show Cause Notice dated 21.03.2024 and the noticee's submissions both, in written and in person and the applicable legal provisions. I find that in the present case principle of natural justice have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on record.

**14.** I find that investigation was initiated by DRI in respect of 18 Bills of Entry mentioned in Table-A hereinabove, filed by importer M/s. Diksha Enterprise. The goods imported vide 18 Bills of Entry mentioned in Table-A were examined and representative samples were drawn and forwarded to Custom House Laboratory, Custom House Kandla for necessary testing in respect of nature, characteristics, GSM, etc. of the fabric.

**15.** I find that during investigation, it has been revealed that different CTH were declared by the respective shipping lines while filing of IGM in respect of import consignments as mentioned in Table-B above at Sr. No. 1, 2, 3, 4, 5, 7 and 8 and accordingly the copies of Bills of Lading were called for and it was found that corresponding Bills of Lading contains the CTH as "59039090" and same CTH was declared while filing of IGM. However, during the examination of

the import consignments the concerned Custom Broker i.e. M/s. SRV Shipping have produced copies of Bills of Lading containing the different CTH declared as "52082290" and same CTH was declared while filing corresponding Bills of Entry in respect of Bills of Entry at Sr. No. 1, 2, 3, 4, 5, 7 and 8 of Table-A above. Moreover, it is also noticed that the importer in connivance with Custom Broker had deliberately changed the CTH in corresponding Bill of Entry mentioned at Sr. No. 6 and had forged the corresponding Bills of lading with two different CTH for the same cargo with one Bill of Lading having details as FABRIC HS 59039090, produced during the examination and other Bill of Lading with details as FABRIC HS 52082290, produced to the Customs and uploaded in ICES. During the panchnama proceedings, representative samples were drawn from each container for laboratory testing of fabric.

**16.** I find that the test report received from Custom House Laboratory, Custom House Kandla indicated that goods imported vide Bills of Entry mentioned at Sr. No. 1 to 18 of Table-A were mis-declared in terms of description, CTH etc. with intention to evade applicable customs duties. As per the Test Reports received from Custom House Laboratory, Custom House Kandla, I find that the declared description and classification in corresponding Bills of Entry filed for the subject goods is liable to be rejected. Further, it was noticed that the CTH mentioned in these Bills of Entry mentioned from Sr. No. 9 to 14 of the Table-A were deliberately changed against the CTH mentioned in corresponding Bills of Lading in connivance of the Customs Broker/CHA i.e. M/s. SRV Shipping.

**17.** Further, I find that the Test Reports related to the subject import consignments of M/s. Diksha Enterprise received from Custom House Laboratory, Custom House Kandla, revealed that the subject goods are not only mis-declared in respect of description of the goods but also mis-declared in respect of classification thereof. The declared classification and actual classification of the subject import consignment is mentioned under **Table-C** hereinabove for all the 18 Bills of Entry. Hence the declared CTH in these Bills of Entry as summarized in Column 5 of Table C is liable to be rejected and re-determined as mentioned in Column 6 of Table C hereinabove.

**18.** I find that for 7 consignments (SL no. 1,2,3,4,5,7,8 of Table-D hereinabove) two types of Bills of Lading were available for the same set of consignments. First was the Bill of Lading provided by the Custom Broker during examination proceedings/ uploaded in the ICES Portal while filing Bill of Entry and the second was the Bill of lading provided by the concerned Shipping Line. These two types of Bills of Lading were having different CTH declaration as "**52082290**" in the Bill of Lading provided by the Custom Broker during examination proceedings/ uploaded in the ICES Portal while filing Bill of Entry

and CTH **"59039090"** in the Bill of lading provided by the concerned Shipping Line. For consignment mentioned at Serial No. 6 of Table-D, it was observed that the Custom Broker was already having two sets of Bill of Lading one with CTH declaration as **"52082290"** submitted to customs and uploaded in the ICES portal and the other with CTH declaration as **"59039090"** for the subject cargo and provided to DRI officers during examination/provided by the concerned Shipping line.

**19.** From the above facts and evidences, I find that two types of Bills of Lading with different CTH declaration as **"52082290/59039090"** and description as "Fabrics" were available in respect of import consignments of M/s. Diksha Enterprise. The Bill of lading issued by the Shipping Line is unique and cannot be modified by the Custom Broker /Importer as per his whims and fancies. I find that both the importer and customs broker, M/s SRV Shipping, which has filed Bills of Entry for these 08 consignments, were involved in forging the Bills of Lading by not declaring the correct CTH and mis-declaring the CTH having low customs duty implications in order to evade applicable custom duties. Also, from the test reports received from the Customs House Laboratory, Kandla it is evident that the importer had imported "Polyester Knitted Fabric having CTH 60063100 and 60063200 prohibited as per DGFT Notification No. 77/2023 dated 16.03.2024" and the importer in connivance with the Custom Broker M/s SRV Shipping (Customs Broker, CB Code: ADLFS0369JCH001) had not declared the same in the above 08 Bills of Entry shows clear intentions of the importer to evade the applicable customs duty.

**20.** Further, I find that in order to save themselves from penal consequence for their act of forging the Bills of lading, the custom broker, M/s SRV Shipping (Customs Broker, CB Code: ADLFS0369JCH001) and the importer have restrained themselves from submitting the forged Bills of Lading for the Bills of Entry at serial No. 9 to 14 of the Table-A above and had filed the said Bills of Entry with CTH declared on copy of Bills of Lading/IGM details. Also, for the Bills of Entry from Serial No. 15 to 18 M/s. Freight Link Logistics had filed the said Bills of Entry for the importer. However, from the test reports received from the Custom House Laboratory, Kandla, it is evident that even the declared CTH by the importer/ Custom Broker in the said Bills of Entry from Serial No. 1 to 18 of the Table-C hereinabove are incorrect.

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## **21. Valuation:**

21.1 I find that for the Bills of Entry mentioned at Sr. No. 1 to 18 in Table C, hereinabove the actual goods covered under the import consignments of M/s Diksha Enterprise were found different from the goods declared in the said Bills

of Entry and Bills of Lading. Hence, the value declared in the Bills of Entry cannot be considered as true assessable value when the nature of goods declared in the Bills of Entry and Bills of Lading are itself wrong. Hence the declared value of the consignment is liable to be rejected as per Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for reasons for mis-declaration of goods in parameters such as description and quantity, non-declaration of specifications of goods and submission of fraudulent and manipulated documents by the importer at the time of filing Bills of Entry.

21.2 In view of the above, the value declared by the importer in the corresponding Bills of Entry and invoices is not the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and thus the same is liable to be rejected in terms of Rule 12 of CVR, 2007. The value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of CVR, 2007. The relevant Rules of CVR, 2007 are reproduced hereunder: -

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

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

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

*Provided that -*

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

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

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

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

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

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

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

*(3) (a) Where the buyer and seller are related, the transaction value shall be*

*accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

goods.

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

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

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

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

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

21.3 Further, I find as per Rule 3(4) & 12(1) of CVR, 2007, if the value cannot be determined under the provisions of sub-rule 3(1), the value of the imported goods is required to be determined by proceeding sequentially through Rule 4 to 9 of the CVR, 2007. From the plain reading of Rule 4, it is evident that the said Rule provides for the determination of transaction value of the imported goods by comparing the declared value with the contemporaneous imports of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods. The importer, in their bills of entry, had mentioned description of goods as Fabric. The value of the fabric depends upon their constituents, width, thickness, GSM finish, design etc. The importer had not declared the different constituents of the fabrics in bills of entry. It was only after testing/examination, the different constituents were known. During examination different types of fabrics were found in the containers and the lab tests confirmed that the fabrics so found had different constituents in terms of GSM, width, thickness, type of yarns etc. therefore, it is not feasible to identify the identical goods imported by the other importers during contemporaneous time for comparing the value declared by the other importers vis a vis value declared by the instant importer. Since data of import of identical goods is not available hence value of the goods cannot be determined using Rule 4 of Customs Valuation Rules 2007. Subsequently Rule 5 of Customs Valuation Rules 2007 is to be applied to arrive at the correct value of the subject consignment.

21.4 Further, I find that Rule 5 of the CVR 2007 provides for the determination of the transaction value of the imported goods by comparing the declared transaction value of the similar goods imported by other importer(s) at or around the same time and goods which can be considered as similar goods are specified in Rule 2(f) of the CVR, 2007.

I find that the subject import consignments have been imported from

China by M/s Diksha Enterprise. From contemporary data of import of the said fabrics, it is noticed that some importers have imported similar type of fabric having similar thickness, description, nature etc. during the month of June, 2024 to November, 2024 vide Bills of Entry filed at Indian ports/Air Cargo Centers as detailed in the Annexure A to this order with one such example as Bill of Entry No. 6265717 dated 22.10.2024 filed at port INMAA1. Ongoing through the details available, relevant unit price has been taken and considering the quantity found during examination of goods covered under all the 18 Bills of Entry as mentioned in table-A above, an Annexure-A has been prepared which shows the amount of duty intended to be evaded through mis-declaration. The said Annexure-A contains declared value and new ascertained value on the basis of contemporary imports. Therefore, I find that the importer M/s. Diksha Enterprise have deliberately mis-declared the assessable value of the subject 18 consignments as **Rs. 6,11,00,316/-** on which declared total customs duty comes to **Rs. 3,27,16,424/-** whereas considering the valuation based on contemporary imports, the appropriate assessable value comes to Rs. **60,91,70,219/-** on which total customs duties comes to **Rs. 16,27,41,189/-**.

21.5 In the view of the above discussion, I find that the declared transaction value of **Rs. 6,11,00,316/-** declared by the importer while filing the 18 Bills of Entry as mentioned in the Table-A above is liable to be rejected under Rule 12 of Customs Valuation Rules 2007. Since the declared value of the subject goods is liable to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007, therefore, the same is required to be re-determined under Section 14 of the Customs Act, 1962 under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007 as Rs. 60,91,70,219/-. The re-determined new value for individual Bill of Entry considering correct CTH and rate is also mentioned in Annexure-A to this order.

## **22. Liability to Confiscation:**

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

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

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

*( f ) any dutiable or prohibited goods required to be mentioned under the*

*regulations in an 1 [arrival manifest or import manifest] or import report which are not so mentioned;*

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

22.2 I find that that M/s. Diksha Enterprise mis-declared the description and classification of the goods in their bills of entry. The quantity of various types of fabric actually found during examination was also different from those mentioned in the Bills of Entry. By resorting to this fraud, the importer also managed to declare very low value in the Bills of Entry and attempted to fraudulently evade the payment of applicable customs duty. On the basis of facts discussed above, I find that against 18 (Eighteen) Bills of Entry, the assessable value of the same has been declared as Rs. 6,11,00,316/-, whereas, the appropriate assessable value of the subject import consignments comes to Rs. 60,91,70,219/-. During investigation, the appropriate value of the subject import consignments of M/s. Diksha Enterprise covered under total 18 (Eighteen) Bills of Entry comes to Rs. 60,91,70,219/-. Therefore, the declared assessable value of the goods as Rs. 6,11,00,316/- cannot be considered the actual transaction value for the subject import consignments. The declared value have grossly been mis-declared with clear intention of evasion of appropriate Customs duty applicable thereon.

22.3 It is apparent from the above that the importer has mis-declared the description, CTH and value in the import documents. Hence, I find that the goods covered under 18 (Eighteen) Bills of Entry are actually classifiable under CTH mentioned in Column No. (12) of Annexure-A instead of declared CTH as mentioned in Column No. (4) and Column No. (6) of Annexure-A having declared total assessable value Rs. 6,11,00,316/- and re-determined total amount as Rs. 60,91,70,219/-are liable for confiscation under Section 111(m) of the Customs Act, 1962.

22.4 Investigation also revealed that in the IGM/Bills of lading for these consignments, the description of the goods was not correct. The importer had not mentioned the actual description of the goods in IGM/Bill of Lading in connivance with foreign supplier in order to hide the true nature of the fabric being imported. Hence, I find that the subject goods are also liable for confiscation under Section 111(f) of the Customs Act.

22.5 Further, investigation revealed that for consignments covered under Serial No 1 to 8 of Table C, the importer had imported “Polyester Knitted Fabric having CTH 60063100 and 60063200 by way of concealment. As per DGFT Notification No. 77/2023 dated 16.03.2024, for import of goods falling under CTH 60063100 and 60063200, a minimum import price of 3.5 USD per KG is imposed. Any import of these goods below Minimum Import price is prohibited. I find that the importer had not declared these goods having CTH 60063100 and 60063200 in the Bills of Entry for consignments covered under Serial No 1 to 8 of Table C, as summarised in Column 5 and Column 6 of the Table-C, with the intention to evade the application of Minimum import price on these goods. The importer had attempted to import “Polyester Knitted Fabric having CTH 60063100 and 60063200, by way of concealment and below minimum import price as mandated by DGFT Notification No. 77/2023 dated 16.03.2024” therefore the subject goods covered under Bill of Entry from Serial no. 1 to 8 of the Table-C are liable for confiscation under Section 111(d) of the Customs Act 1962. The summary of Annexure –A and Bill of Entry wise confiscation details are summarized as below:-

**Table-E**

<b>Bill of Entry Sr. no.</b>	<b>Declared value</b>	<b>Re-determined value</b>	<b>Declared duty</b>	<b>Re-determined duty</b>	<b>Differential duty</b>	<b>Confiscation Clause under Customs Act, 1962</b>
1-8	Rs. 1,39,59,270/-	Rs. 19,44,11,620/-	Rs. 23,10,262/-	Rs. 5,21,78,573/-	Rs. 4,98,68,311/-	111(d), 111(f) & 111(m)
9-18	Rs. 4,71,41,046/-	Rs. 41,47,58,599/-	Rs. 3,04,06,162/-	Rs. 11,05,62,616/-	Rs. 8,01,56,454/-	111(f) & 111(m)
<b>Total( 18 B/E)</b>	Rs. 6,11,00,316	Rs. 60,91,70,219/-	Rs. 3,27,16,424/-	Rs. 16,27,41,189	Rs. 13,00,24,765/-	

### **23. Imposition of Redemption Fine**

As the impugned goods are found to be liable for confiscation under Section 111 (d), 111(f) and 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN dated 21.03.2025. The Section 125 ibid reads as under: -

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

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. The importer in his submission and during personal hearing requested for permission for **re-export** of the goods. I find that the Importer is involved in mis-declaration of goods in terms of quantity, description and valuation. However, the importer's request for re-export of the goods can be considered on payment of redemption fine under section 125(1) of the customs act, 1962

#### **24. Imposition of penalty on Importer M/s. Diksha Enterprise:**

24.1 I find that the Show Cause Notices propose penalty on noticees under the provisions of Section 112(a), 112(b), 114AA and 117 of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

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

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

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

*shall be liable, -*

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

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

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

**Section 117. Penalties for contravention, etc., not expressly mentioned.—***Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding 3 [four lakh rupees].*

24.2 From the investigations carried out, I find that the importer, M/s Diksha Enterprise imported goods and intentionally mis-declared the same in the Bills of Entry (serial numbers 1 to 18 of Table-C supra and Annexure-A). The importer mis-declared the description, classification and value of the goods in the import documents, in violation of the provisions of Section 46 of the Customs Act, 1962. In particular, the importer has violated the provisions of Section 46(2), since the Bills of Entry filed by them did not correspond to the goods declared in the Bills of Lading in respect of 08 consignments as indicated in Table-D. Furthermore, they have violated Section 46(4A), as the true description, classification and valuation of the imported goods were not declared in any of the 18 consignments.

24.3 It is also evident that the importer mis-declared the description, CTH, quantity and value in the Bills of Entry, thereby rendering the goods covered under the said 18 Bills of Entry, having a declared total assessable value of Rs. 6,11,00,316/-, and a re-determined value of Rs. 60,91,70,219/-, liable for confiscation under Section 111(m) of the Customs Act, 1962. Moreover, by not mentioning the actual description of the goods in the IGM/Bills of Lading in connivance with the foreign supplier in order to conceal the true nature of the goods, the importer has rendered the subject goods further liable for confiscation under Section 111(f) of the said Act. In view of the foregoing, I find that the importer is liable for penal action under Sections 112(a)(ii) of the Customs Act, 1962.

24.4 Additionally, with respect to the goods covered under Bills of Entry at Serial Nos. 1 to 8 of Table-C, the importer has imported "Polyester Knitted Fabric" (CTH 60063100 & 60063200) by way of concealment and at prices below the minimum import price mandated by DGFT Notification No. 77/2023

dated 16.03.2024, thereby rendering the subject goods liable for confiscation under Section 111(d) of the Customs Act 1962. In view of the above, I find that the importer is liable for penal action under Sections 112(a)(i) of the Customs Act, 1962.

24.5 With regards to imposition of penalty under Section 112 of the Customs Act, 1962, I find that it is well settled that mens-rea is not required for invoking penalty in civil cases. Further mens-rea is not required to be proved for invocation of penalty under section 112(a). It has been held in case of Imperial Trading LLC V. CC (Import), Nhava-Sheva, 2005 (181) E L T 29 at Para 32 (Tri. Mumbai) that "*Mens rea is not a necessary ingredient for imposing a penalty under section 112(a)*".

24.6 From the foregoing discussion, it is clearly established the ingredient of mens rea in their attempt to evade the Customs duty. Even though, I find that it is well settled law that in case of taxing statute, various penal provisions are in the nature of civil obligations and do not require any mens rea or wilful intention until and unless the relevant provision provides for the same. Hon'ble Supreme Court in the case of UOI vs Dharmendra Textile Processors - 2008 (231) ELT3 (SC) observed that mens rea is not essential ingredient in a civil liability. Further, the Apex Court in the case of Chairman, SEBI v. Shriram Mutual Fund [(2006) 5 S.C.C. 361] held as under:-

*"Mens rea is not an essential ingredient for contravention of the provisions of a civil Act. Unless the language of the statute indicates the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred and it is wholly unnecessary to ascertain whether such a violation was intentional or not. The breach of a civil obligation which attracts a penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not."*

24.7 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on importer M/s Diksha Enterprise under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

24.8 I also find that during the course of investigation, the shipping lines M/s Cosco Shipping Lines (India) Pvt. Ltd., M/s Evergreen Line and M/s KMTC Line submitted copies of the Bills of Lading (as detailed in Table-D above) in respect of the relevant import consignments, wherein the declared CTH was mentioned as "59039090". However, it has been revealed that parallel Bills of Lading

bearing a different CTH declaration ("52082290") were submitted to Customs and uploaded in the system at the time of filing of the respective Bills of Entry. Thus, the importer deliberately submitted forged Bills of Lading to Customs by mis-declaring the CTH with a lower duty implication in order to evade the applicable customs duties. Accordingly, it is evident that M/s Diksha Enterprise knowingly and intentionally made, signed, used and/or caused to be made, signed or used import documents and related papers that were false or incorrect in material particulars for the purpose of illegally importing the subject goods. Therefore, I find that importer is also liable for penal action under Section 114AA of the Customs Act, 1962.

## **25. Imposition of penalty on M/s SRV Shipping (Customs Broker):**

25.1 I find that that M/s SRV Shipping, acting as the Customs Broker for various import consignments, is responsible for serious procedural and legal violations under the Customs Act, 1962. In particular, for the Bills of Entry (BoE) listed at Serial Nos. 1 to 8 of Table-C, M/s SRV Shipping uploaded forged Bills of Lading (BoL) to the ICES portal, wherein the Customs Tariff Heading (CTH) was deliberately altered. The actual Bills of Lading, as received from the respective Shipping Lines, contained a different CTH than those uploaded. This clearly indicates that the Customs Broker manipulated the Bills of Lading documents so that the declared CTH in the Bill of Entry corresponded with the falsified Bills of Lading, with the apparent intent of avoiding detection of misclassification and facilitating the clearance of goods under incorrect classification. Further, it is established that Shri Rajesh Kumar Jain, representing M/s SRV Shipping, had digitally signed all the uploaded Bills of Lading in the ICES portal for the Bills of Entry at Serial Nos. 1 to 14 of Table-C. The act of digitally signing these documents constitutes a formal declaration to Customs of the truthfulness and accuracy of the information being submitted. Therefore, such actions demonstrate the willful authentication of false or manipulated import documents.

25.2 I observed that specifically, for the consignment at Serial No. 6 of Table-D, M/s SRV Shipping was in possession of two separate sets of Bills of Lading for the same cargo:

- One BoL bearing CTH **52082290**, which was submitted to Customs and uploaded in ICES,
- Another BoL bearing CTH **59039090**, which was produced by the concerned Shipping Line and also submitted to DRI during examination.

The availability and selective use of two different BoLs for the same

consignment clearly demonstrates the Customs Broker's active involvement in document manipulation and deliberate mis-declaration, aimed at assisting the importer in Concealing the true nature and classification of goods, Misusing lower-duty CTHs, Evading restrictions related to Minimum Import Price (MIP) and Avoiding applicable customs duties. These actions amount to fraudulent conduct, and indicate that M/s SRV Shipping was knowingly and actively involved in forging documents and misrepresenting facts to Customs authorities. Such conduct constitutes a gross violation of the responsibilities entrusted to a licensed Customs Broker under the Customs Act, 1962 and the Customs Brokers Licensing Regulations (CBLR), 2018.

25.3 Subsequent to the initiation of enquiry by the Directorate of Revenue Intelligence (DRI) against the importer M/s Diksha Enterprises, it has been observed that M/s SRV Shipping (Customs Broker, CB Code: ADLFS0369JCH001) continued to file Bills of Entry for consignments listed at Serial Nos. 9 to 14 of Table-C. In these cases, the Customs Broker uploaded the original Bills of Lading issued by the respective Shipping Lines without any tampering or alteration. However, it was found that the Customs Tariff Headings (CTH) declared in the corresponding Bills of Entry did not match those appearing in the uploaded Bills of Lading. This discrepancy represents a clear violation of the provisions of Section 46 of the Customs Act, 1962, which mandates accurate and truthful declaration of all particulars, including classification, at the time of filing the Bill of Entry.

The mismatch between the CTH declared in the Bills of Entry and those in the supporting documents (BoLs) indicates deliberate and willful mis-declaration on the part of the Customs Broker. Given the ongoing investigation and the heightened scrutiny, the Customs Broker was undoubtedly aware of the differences in description and classification of the goods, yet proceeded to declare incorrect information to Customs. This establishes culpable knowledge and intent on the part of M/s SRV Shipping. Furthermore, as confirmed by test reports issued by the Custom House Laboratory, Kandla, all 14 consignments (i.e., Serial Nos. 1 to 14 of Table-C) were found to be grossly mis-declared in terms of Description of goods, Classification (CTH), and declared value. The cumulative findings indicate that M/s SRV Shipping was knowingly concerned in acts of mis-declaration, thereby aiding the importer in Facilitating the improper clearance of goods, evading applicable customs duties and circumventing regulatory requirements. Accordingly, such actions render M/s SRV Shipping liable to penalty under Section 112(a)(ii) of the Customs Act, 1962, for their role in mis-declaration and use of incorrect import documents in the customs clearance process.

Additionally, with respect to the goods covered under Bills of Entry at

Serial Nos. 1 to 8 of Table-C, “Polyester Knitted Fabric” (CTH 60063100 & 60063200) have been imported by way of concealment and at prices below the minimum import price mandated by DGFT Notification No. 77/2023 dated 16.03.2024, thereby rendering the subject goods liable for confiscation under Section 111(d) of the Customs Act 1962. In view of the above, I find that M/s SRV Shipping is liable for penal action under Sections 112(a)(i) of the Customs Act, 1962 for Customs Broker’s active involvement in document manipulation and deliberate mis-declaration, aimed at assisting the importer in Concealing the true nature and classification of goods, Misusing lower-duty CTHs, Evading restrictions related to Minimum Import Price (MIP) and Avoiding applicable customs duties.

25.4 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on M/s SRV Shipping under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

25.5 During the course of investigation, it was found that the Shipping Lines, namely M/s Cosco Shipping Lines (India) Pvt. Ltd., M/s Evergreen Line, and M/s KMTCL Line, submitted to the investigating authorities the original copies of Bills of Lading (BoLs) pertaining to import consignments detailed in Table-D. In each of these cases, the Bills of Lading issued by the shipping lines declared the Customs Tariff Heading (CTH) as “59039090”. However, it was revealed that a parallel set of Bills of Lading, carrying a different CTH — “52082290”, was submitted to Customs and uploaded in the ICES system at the time of filing the respective Bills of Entry. This manipulation resulted in a mismatch between the CTH actually declared by the shipping lines and that presented to Customs, and is indicative of deliberate falsification of import documents. In particular, for the consignment listed at Serial No. 6 of Table-D, it was conclusively observed that M/s SRV Shipping was in possession of two different versions of the Bill of Lading. One Bill of Lading with CTH 52082290, uploaded to the ICES portal and submitted to Customs, Another Bill of Lading with CTH 59039090, which was presented to DRI officers during examination and also directly obtained from the shipping line. This dual documentation establishes that the Customs Broker had prior knowledge of the original classification and yet proceeded to upload and use a falsified Bills of Lading containing an incorrect CTH with lower duty implications, thereby facilitating mis-declaration and duty evasion.

From the above facts, it is evident that M/s SRV Shipping was knowingly and intentionally involved in forging or altering import documents, including Bills of Lading, mis-declaring the Customs Tariff Heading (CTH) to benefit from

lower customs duty, submitting such documents to Customs in the course of clearance to mislead authorities and evade lawful levies. Accordingly, I find that M/s SRV Shipping is liable for penalty under Section 114AA of the Customs Act, 1962, in addition to penalties already attracted under 112(a), for knowingly using false and incorrect documents in the course of Customs clearance.

## **26. Imposition of penalty on M/s. Freight Link Logistics (Custom Broker)**

26.1 I find that that the Customs Broker M/s Freight Link Logistics was responsible for filing the Bills of Entry from Serial Nos. 15 to 18 of Table-C in coordination with the concerned importer. Upon examination and testing of samples drawn from the subject consignments by the Custom House Laboratory, Kandla, it was conclusively established that the Customs Tariff Headings (CTH) and the descriptions of the goods declared in the respective Bills of Entry were incorrect and inconsistent with the actual nature of the goods.

Further, a comparative analysis of the Bills of Lading uploaded in the ICES portal in support of these Bills of Entry revealed that the descriptions of the goods in the Bills of Lading were different from those declared in the Bills of Entry. This discrepancy strongly indicates that M/s Freight Link Logistics was fully aware of the mis-declaration in terms of description and classification of the imported goods.

26.2 I further find that despite having access to the actual descriptions through the Bills of Lading and in active consultation with the importer, the Customs Broker proceeded to file incorrect classification (CTH) and description in the Bills of Entry, submit mis-declared information to Customs and facilitate clearance of goods under incorrect duty liability. These actions demonstrate a deliberate attempt to assist the importer in the concealment of the true nature of goods, thereby enabling evasion of restrictions such as Minimum Import Price (MIP), and applicable customs duties by mis-classifying the imported items under lower-duty tariff headings. Thus I find that M/s Freight Link Logistics, by knowingly participating in the filing of mis-declared Bills of Entry, has rendered itself liable to penalty under 112(a)(ii) of the Customs Act, 1962, for acts of commission and omission that led to the import of goods in contravention of lawful provisions.

26.3 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on M/s Freight Link Logistics under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is

to be imposed.

## **27. Imposition of penalty on Shri. Dhirendra Shukla alias Sonu Shukla**

27.1. During the course of investigation, it has been established that Shri Dhirendra Shukla alias Sonu Shukla is the actual beneficiary owner of the cargo covered under the 18 Bills of Entry, as detailed in Table-C, although the imports were formally filed in the name of M/s. Diksha Enterprise. Further inquiry revealed that Shri Akhilesh Singh, son of Late Shri Rai Bahadur Singh and the proprietor of M/s. Diksha Enterprise, had obtained an Import-Export Certificate (IEC) from the DGFT on the advice of Shri Dhirendra Shukla for the purpose of facilitating imports.

It has also been determined that Shri Akhilesh Singh had no direct involvement in the procurement of goods, had never travelled to China, and was not in direct contact with the overseas suppliers. The entire import operation was managed and directed by Shri Dhirendra Shukla, who had assured Shri Akhilesh Singh of assistance in importing fabric materials from China.

27.2. I find that Shri Dhirendra Shukla alias Sonu Shukla is the actual beneficial owner of the subject import consignments. Evidence gathered indicates that he was the principal person responsible for issuing instructions to Shri Akhilesh Singh, Proprietor of M/s. Diksha Enterprise, and was in direct contact with the overseas supplier. It has also been ascertained that Shri Dhirendra Shukla independently determined the Customs Tariff Headings (CTH) of the goods, approved the import documentation checklists, and personally coordinated with the appointed Customs Broker for clearance-related procedures. Additionally, Shri Akhilesh Singh, in his statement, disclosed that this was the first instance where M/s. Diksha Enterprise had engaged in import activity, specifically importing 21 consignments of fabrics (comprising 18 at Mundra Port and 3 at Nhava Sheva Port). He further clarified that he was not the actual beneficiary of the said consignments, did not make any payment towards the procurement of the imported goods, and was engaged solely in marketing activities and order procurement in the domestic market, under the directions of Shri Dhirendra Shukla. Accordingly, I find that such actions render Shri Dhirendra Shukla alias Sonu Shukla liable to penalty under Section 112(a)(ii) of the Customs Act, 1962, for their role in mis-declaration and use of incorrect import documents in the importation of the impugned goods. Further, with respect to the goods covered under Bills of Entry at Serial Nos. 1 to 8 of Table-C, "Polyester Knitted Fabric" (CTH 60063100 & 60063200) have been imported by way of concealment and at prices below the minimum import price mandated by DGFT Notification No. 77/2023 dated 16.03.2024, thereby rendering the subject goods liable for confiscation under Section 111(d) of the

Customs Act 1962. Thus, I find that Shri Dharendra Shukla alias Sonu Shukla is liable to penalty under Section 112(a)(i) of the Customs Act, 1962 for his active involvement in document manipulation and deliberate mis-declaration, aimed at assisting the importer in Concealing the true nature and classification of goods, Misusing lower-duty CTHs, Evading restrictions related to Minimum Import Price (MIP) and Avoiding applicable customs duties.

27.3. I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on Shri Dharendra Shukla alias Sonu Shukla under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

27.4. It has also been revealed during the investigation that Shri Dharendra Shukla alias Sonu Shukla, knowingly and intentionally, made, signed, used and/or caused to be made, signed, or used import documents and related records that were false or incorrect in material particulars, with the intention of facilitating the unauthorized and illegal import of the subject goods. Such actions were undertaken to misrepresent the true nature and ownership of the consignments, thereby violating the provisions of the Customs Act. Accordingly, by wilfully submitting or causing the submission of falsified documents in connection with the import of goods, Shri Dharendra Shukla alias Sonu Shukla has rendered himself liable for penal action under Section 114AA of the Customs Act, 1962, which provides for a penalty in cases where any person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document that is false or incorrect in any material particular in the transaction of any business relating to customs.

27.5 It is further observed that Shri Dharendra Shukla, associated with M/s. SRL Shipping, has failed to comply with the summons issued to him under Section 108 of the Customs Act, 1962, dated 10.03.2025, requiring his presence for the purpose of recording his statement and for providing clarification on the documents seized during the investigation. Despite having received the summons, Shri Dharendra Shukla willfully did not appear before the investigating authority and thereby demonstrated clear disregard for the lawful process. Such non-cooperation and deliberate non-compliance with statutory summons amount to an obstruction in the investigation process. In the view of the above, I find that Shri Dharendra Shukla is liable for penalty under Section 117 of the Customs Act, 1962, which provides for penal action against any person who contravenes or fails to comply with any provision of the Act or any condition of any bond, licence, or undertaking, or any direction issued under the Act, for which no express penalty is separately provided.

## **28. Imposition of penalty on Shri. Krishna Nand Shahi alias Shri Krishna Shahi**

28.1 During the course of investigation, it has been revealed that Shri Krishna Shahi (Mobile No. 7666339214) of M/s. SRL Shipping acted as an accomplice to Shri Dharendra Shukla, the actual importer and beneficial owner of the subject goods, as well as to the Custom Broker, in furnishing false information and documents to Customs authorities in connection with the clearance of import consignments covered under Bills of Entry from Serial No. 1 to 14 of Table-C above. Further, evidence gathered during the investigation indicates that M/s. SRL Shipping, through its email ID import.srl@gmail.com, was actively involved in the circulation of import-related documents. These documents, concerning consignments imported in the name of M/s. Diksha Enterprise, were transmitted to the official email ID sjlogisticsgdm@gmail.com, which in turn forwarded them to the email ID srvshipping@gmail.com of M/s. SRV Shipping, the entity responsible for preparation and filing of the relevant Bills of Entry. This chain of document transmission and coordination establishes the active involvement and complicity of M/s. SRL Shipping and its representative Shri Krishna Shahi in the submission of false documentation to Customs, thereby contributing to the facilitation of misdeclaration and improper clearance of goods under the Customs Act, 1962.

28.2 Further I find that M/s. SJ Logistics was responsible for preparing and sharing draft checklists with M/s. SRV Shipping for reference. Upon receiving the draft, M/s. SRV Shipping would prepare the final draft checklist and send it back to M/s. SJ Logistics for approval. Only after receiving the approved checklist—routed through the forwarder/importer via M/s. SJ Logistics—did M/s. SRV Shipping proceed to file the respective Bills of Entry on behalf of the importer, M/s. Diksha Enterprise. This chain of communication and coordination clearly establishes that Shri Krishna Shahi of M/s. SRL Shipping was fully aware of the mis-declaration of goods in the subject consignments. Despite such knowledge, he knowingly assisted the importer in carrying out mis-declaration and concealment of the actual nature, quantity, and value of the goods with the intent to circumvent applicable restrictions, such as minimum import price (MIP) norms, and to evade lawful customs duties.

28.3 I find that additionally, Shri Krishna Shahi was found to be actively involved in the operational handling of the imported consignments, including customs examination procedures, obtaining out-of-charge orders, and managing logistics operations such as loading/unloading. Crucially, it has been revealed that it was Shri Krishna Shahi who supplied forged Bills of Lading, which were subsequently used in the filing of the fraudulent Bills of Entry. Such actions amount to deliberate and active participation in the commission of

customs violations and render Shri Krishna Shahi and M/s. SRL Shipping liable for penal action under the relevant provisions, for abetment, mis-declaration, and use of falsified documents in customs clearance. In the view of the above, I find that Shri Krishna Shahi is liable to penalty under Section 112(a)(ii) of the Customs Act, 1962. Further, with respect to the goods covered under Bills of Entry at Serial Nos. 1 to 8 of Table-C, "Polyester Knitted Fabric" (CTH 60063100 & 60063200) have been imported by way of concealment and at prices below the minimum import price mandated by DGFT Notification No. 77/2023 dated 16.03.2024, thereby rendering the subject goods liable for confiscation under Section 111(d) of the Customs Act 1962. Thus, I find that Shri Krishna Shahi is liable to penalty under Section 112(a)(i) of the Customs Act, 1962 for his active involvement in document manipulation and deliberate mis-declaration, aimed at assisting the importer in Concealing the true nature and classification of goods, Misusing lower-duty CTHs, Evading restrictions related to Minimum Import Price (MIP) and Avoiding applicable customs duties.

28.4 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on Shri Krishna Shahi under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

28.5 I find that Shri Krishna Shahi, knowingly and intentionally, made, signed, used and/or caused to be made, signed, or used import documents and related records that were false or incorrect in material particulars, with the intention of facilitating the unauthorized and illegal import of the subject goods. Such actions were undertaken to misrepresent the true nature and ownership of the consignments, thereby violating the provisions of the Customs Act. Accordingly, by wilfully submitting or causing the submission of falsified documents in connection with the import of goods, Shri Krishna Shahi has rendered himself liable for penal action under Section 114AA of the Customs Act, 1962, which provides for a penalty in cases where any person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document that is false or incorrect in any material particular in the transaction of any business relating to customs.

## **29. Imposition of penalty on Shri Sanatan Jha**

29.1 I find that from the statement of Shri Sanatan Jha that M/s. SRL Shipping was transmitting all documents pertaining to the import consignments of M/s. Diksha Enterprise through e-mail ID *import.srl@gmail.com* to *sjlogisticsgdm@gmail.com*, which were thereafter forwarded to *srvshipping@gmail.com* of M/s. SRV Shipping for the purpose of documentation

and filing of Bills of Entry in the name of M/s. Diksha Enterprise. It further came to light that Shri Krishna Nand Shahi was actively engaged in activities relating to examination of goods, securing "out of charge" from Customs, as well as managing loading/unloading and logistics of the imported consignments covered under Bills of Entry mentioned at serial no. 1 to 14 of Table-C above.

29.2 I find that Shri Sanatan Jha had earlier been associated with M/s. SRV Shipping (a licensed Customs Broker) and was well conversant with Customs clearance procedures. Being fully aware that, as per the provisions of the Customs Broker Licensing Regulations (CBLR), only authorized employees of a Customs Broker are permitted to undertake examination and clearance of imported cargo, he nevertheless allowed unauthorized persons to handle such sensitive Customs-related activities. Further, Shri Sanatan Jha failed to produce any corroborative evidence, such as e-mail correspondences or written authorizations, to substantiate his claim that he had been obtaining the prior approval of the importer before filing the Bills of Entry. Thus I find that the omissions and commissions on the part of Shri Sanatan Jha, who was knowingly concerned in the mis-declaration of the description and classification of the imported goods in the import documents, have rendered him liable to penalty under the provisions of Section 112(a)(ii) of the Customs Act, 1962. Further, with respect to the goods covered under Bills of Entry at Serial Nos. 1 to 8 of Table-C, "Polyester Knitted Fabric" (CTH 60063100 & 60063200) have been imported by way of concealment and at prices below the minimum import price mandated by DGFT Notification No. 77/2023 dated 16.03.2024, thereby rendering the subject goods liable for confiscation under Section 111(d) of the Customs Act 1962. Thus, I find that Shri Sanatan Jha is liable to penalty under Section 112(a)(i) of the Customs Act, 1962 for his active involvement in document manipulation and deliberate mis-declaration, aimed at assisting the importer in Concealing the true nature and classification of goods, Misusing lower-duty CTHs, Evading restrictions related to Minimum Import Price (MIP) and avoiding applicable customs duties..

29.3 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on Shri Sanatan Jha under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

29.4 I find that Shri Sanatan Jha, knowingly and intentionally, made, signed, used and/or caused to be made, signed, or used import documents and related records that were false or incorrect in material particulars, with the intention of facilitating the unauthorized and illegal import of the subject goods. Such actions were undertaken to misrepresent the true nature and ownership of the

consignments, thereby violating the provisions of the Customs Act. Accordingly, by wilfully submitting or causing the submission of falsified documents in connection with the import of goods, Shri Sanatan Jha has rendered himself liable for penal action under Section 114AA of the Customs Act, 1962, which provides for a penalty in cases where any person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document that is false or incorrect in any material particular in the transaction of any business relating to customs.

29.5 I also find that Shri Sanatan Jha failed to produce any corroborative evidence, such as e-mail correspondence or other documentary proof, in support of his claim regarding prior approval from the importer for filing of Bills of Entry. His failure to comply with the statutory obligations and his acts of omission in this regard attract penal action under Section 117 of the Customs Act, 1962.

30. In view of above, I pass the following order:

#### ORDER

- i. I reject the declared description/CTH of import goods declared as per Column No. 6 of Annexure-A in the respective 18 (Eighteen) Bills of Entry and order to re-determine/re-assess as per Column No. (12) of Annexure-A.
- ii. I reject the declared assessable value **Rs. 6,11,00,316/- (Rupees Six crore eleven lakh three hundred sixteen only)** of the goods mentioned in subject import consignments covered under the subject 18 Bills of Entry from serial No. 1 to 18 as mentioned in column 10 of the Annexure-A under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine the same as **Rs. 60,91,70,219/- (Rupees Sixty crore ninety one lakh seventy thousand two hundred nineteen only)** under Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as per column 25 of Annexure-A.
- iii. I order to confiscate the goods covered under **the subject 08** Bills of Entry from serial no. 1 to 8 of table-C & table E above, having re-determined assessable value **Rs. 19,44,11,620 /-(Rupees Nineteen crore forty four lakh eleven thousand six hundred twenty only)** and found to contain the goods "Polyester Knitted Fabric having CTH 60063100 and 60063200," and imported in contravention to the DGFT Notification No. 77/2023 dated 16.03.2024" under Section 111(d), 111(m) and 111 (f) of the Customs Act, 1962. However as per the request of importer, I give an option to the importer to redeem the confiscated goods for re-export purpose only on payment of redemption fine of **Rs. 65,00,000/- (Rupees Sixty Five Lakhs Only)** under Section 125 of Customs Act, 1962.
- iv. I order to confiscate the goods covered under **the subject 10** Bills of Entry from serial no. 9 to 18 of table-C & table-E hereinabove, having re-determined assessable value **Rs. 41,47,58,599/- (Rupees Forty one crore forty seven lakh fifty eight thousand five hundred ninety nine only)** under Section 111(m) and 111 (f) of the Customs Act, 1962. However as per the request of

- importer, I give an option to the importer to redeem the confiscated goods for re-export purpose only on payment of redemption fine of Rs. 1,30,00,000/- (Rupees One Crore Thirty Lakh Only) under Section 125 of Customs Act, 1962.
- v. I order to re-assess the subject 18 Bills of Entry from serial No. 1 to 18 as per the revised valuation and CTH of Annexure A attached herewith.
  - vi. I impose penalty of **Rs. 35,00,000/- (Rupees Thirty Five Lakh Only)** upon the Importer **M/s. Diksha Enterprise** under Section 112(a)(i) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 1 to 8 of table-C above.
  - vii. I impose penalty of **Rs. 70,00,000/- (Rupees Seventy Lakh Only)** upon the Importer **M/s. Diksha Enterprise** under Section 112(a)(ii) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 9 to 18 of table-C above.
  - viii. I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** upon the Importer **M/s. Diksha Enterprise** under Section 114AA of the Customs Act, 1962;
  - ix. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh Only)** upon **M/s SRV Shipping** under Section 112(a)(i) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 1 to 8 of table-C above.
  - x. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** upon **M/s SRV Shipping** under Section 112(a)(ii) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 9 to 14 of table-C above.
  - xi. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** upon **M/s SRV Shipping** under Section 114AA of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 1 to 14 of table-C above.
  - xii. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** upon **M/s. Freight Link Logistics** under Section 112(a)(ii) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 15 to 18 of table-C above.
  - xiii. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh Only)** upon **Shri Dhirendra Shukla alias Sonu Shukla** under Section 112(a)(i) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 1 to 8 of table-C above.
  - xiv. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** upon **Shri Dhirendra Shukla alias Sonu Shukla** under Section 112(a)(ii) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 9 to 18 of table-C above.
  - xv. I impose penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** upon **Shri Dhirendra Shukla alias Sonu Shukla** under Section 114AA of the Customs Act, 1962.
  - xvi. I impose penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** upon **Shri Dhirendra Shukla alias Sonu Shukla** under Section 117 of the Customs Act, 1962.

- xvii. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh Only)** upon **Shri Krishna Nand Shahi alias Shri Krishna Shahi** under Section 112(a)(i) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 1 to 8 of table-C above.
- xviii. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** upon **Shri Krishna Nand Shahi alias Shri Krishna Shahi** under Section 112(a)(ii) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 9 to 14 of table-C above.
- xix. I impose penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** upon **Shri Krishna Nand Shahi alias Shri Krishna Shahi** under Section 114AA of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 1 to 14 of table-C above.
- xx. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh Only)** upon **Shri Sanatan Jha** under Section 112(a)(i) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 1 to 8 of table-C above.
- xxi. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** upon **Shri Sanatan Jha** under Section 112(a)(ii) of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 9 to 14 of table-C above.
- xxii. I impose penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** upon **Shri Sanatan Jha** under Section 114AA of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 1 to 14 of table-C above.
- xxiii. I impose penalty of **Rs. 25,000/- (Rupees Twenty Five Thousand Only)** upon **Shri Sanatan Jha** under Section 117 of the Customs Act, 1962 in respect of Bill of Entry mentioned at serial no. 1 to 14 of table-C above.
- xxiv. I refrain from imposing penalty on M/s. Diksha Enterprise, M/s SRV Shipping, M/s. Freight Link Logistics, Shri Dharendra Shukla alias Sonu Shukla, Shri Krishna Nand Shahi alias Shri Krishna Shahi, Shri Sanatan Jha under Section 112(b) of the Customs Act, 1962.

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

**32.** The Show Cause Notice issued vide F. No. GEN/ADJ/ADC/736/2025-Adjn. dated 21.03.2025 is hereby disposed off on above terms.

**Zala Dipakbhai Chimanbhai**  
**ADDITIONAL COMMISSIONER**  
**ADC/JC-III-O/o Pr Commissioner-customs-mundra**

**Encl: Annexure-A****By Speed Post/Regd. Post/E-mail/Hand Delivery****To,**

1. M/s. Diksha Enterprise (IEC-ANUPS4631E), 38, Barrah Etaye, Mariahu, Jaunpur- 222161 (*email id: dikshaenterprise8@gmail.com*)
2. M/s SRV Shipping (Customs Broker), Bunglow No. 42, Navratan Drems, Behind Club Holiday Resorts, Meghpar Borichi, Kachchh, Gujarat – 370110.
3. M/s. Freight Link Logistics (Custom broker), Second Floor, office No. 8, Plot No. 69, Sector-9C, Gandhidham, Kachchh, Gujarat – 370201.
4. Shri Dharendra Shukla alias Sonu Shukla having address as Flat No. 303, 3rd Floor, Sal Kutir CHS Ltd., Plot No. 184, Sector-17, Ulwe, Panvel, Raigarh, Maharashtra-410206 (*dhirendrakshukla7379@gmail.com*).
5. Shri Krishna Nand Shahi alias Shri Krishna Shahi having address as Pappu Arcade, Room No. 47, Baroi Road, Mundra – 370421 (*email : krishnanandshahi@gmail.com*)
6. Shri Sanatan Jha having address as House No. 21, Bageshree Township-06, LS No. 476/1, Varsamedi, Anjar, Kutch, Gujarat-370110 (*email: sjlogisticsgdm@gmail.com, sanatanjha87@gmail.com*).

**Copy to:**

1. The Additional Director General, Directorate of Revenue Intelligence, Ahmedabad.
2. The Additional Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch).
3. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
4. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... (*with the direction to upload on the official website immediately*).
5. Guard File.