



2886 to
2894

	<p>सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62, Email-adj-mundra@gov.in</p>	
A. File No.	: GEN/ADJ/COMM/168/2022-Adjn-O/o Pr. Commr- Cus-Mundra	
B. Order-in-Original No.	: MUN-CUSTM-000-COM-016-24-25	
C. Passed by	: K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of passing of Order	: 10.07.2024. 10.07.2024.	
E. SCN No. & Date	: 1. SCN F.No. GEN/ADJ/COMM/168/2022-Adjn, dated 03.04.2023 issued to M/s. Benexi Vinyl Private Limited and others by the Commissioner of Customs, Customs House, Mundra. 2. SCN F.No. VIII/Cus/688/SCN/Benexi Vinyl/ICD/SNP/2021-22 dated 22.02.2022 issued to M/s. Benexi Vinyl Private Limited and others by the Deputy Commissioner, ICD Sonipat. 3. SCN No. VIII/ICD/TKD/6AG/Gr.2G/ Jammu Udyog/2199/2021 dated 18.01.2022 issued to M/s. Jammu Udyog and others by the Deputy Commissioner (Gr.2G), ICD, TKD, Import, New Delhi	
F. Noticee(s) / Party / Importer	: M/s Benexi Vinyl Private Limited, GF-59, QuilaKadam Sharif, Nabi Karim, New Delhi-110055 (IEC No.0514018402); M/s Jammu Udhog, 310A, 3rd Floor, Govardhan Building, Nehru Place, Delhi-110019 (IEC No. AANFJ9832E) & Seven Others.	
G. DIN	: 20240771MO000000CED5	

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

o/c

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs. 50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद सं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

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

An appeal against this order shall lie before the Tribunal 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.

FACTS OF THE CASE IN BRIEF:

Whereas, acting upon a specific intelligence regarding misuse of Advance Authorization Scheme by **M/s Benexi Vinyl Private Limited**, having declared address as GF-59, Quila Kadam Sharif, Nabi Karim, New Delhi-110055 (**IEC No.0514018402**) (*hereinafter referred to as 'M/s. Benexi' or as 'the importer' also for the sake of brevity*), and **M/s Jammu Udhog**, 310A, 3rd Floor, Govardhan Building, Nehru Place, Delhi-110019 (**IEC No. AANFJ9832E**) (*hereinafter referred to as 'M/s.Jammu', or as 'the importer' also for the sake of brevity*) the Import/export data of these companies was analysed which revealed as under:-

Table-1

M/s Benexi Vinyl Private Limited	M/s Jammu Udhog
2800 MTs of PVC Resin was imported by this company under Advance Authorisation Scheme during the period from 29.07.2019 to 18.09.2019	Around 2816.49 MTs of PVC Resin was imported by this company under Advance Authorisation Scheme during the period from 25.04.2019 to 24.06.2019.
The imports were made by the company under following three Advance Authorisations:- i. 510409863 dated 07.03.2019 ii. 510409864 dated 07.03.2019 iii. 510409990 dated 19.03.2019	The imports were made by the company under following three Advance Authorisations:- i. 510410151 dated 04.04.2019 ii. 510410343 dated 24.04.2019 iii. 510410460 dated 03.05.2019
Duty implication of around Rs. 9.07 Crore. No export was noticed by this company.	Duty implication of around Rs. 7.20 Crore. No export was noticed by this company

2. Accordingly, searches were conducted by DRI officers at the following addresses on 07.11.2019. The outcome of searches was as under: -

- i. **IEC Address of M/s Benexi Vinyl Private Limited- GF-59, Quila Kadam Sharif, Nabi Karim, Paharganj, New Delhi-110055-** Search was attempted by the officers of DRI on 07.11.2019. No such address was found, the entire area was densely populated residential area having small shops of daily needs; the houses of Quila Kadam Sharif were either numbered having four digit or their numbers were starting by letter 'K' followed by two digit; the officers tried their best to locate the address by no. 59, GF-59 as well as K-59, however could not find the address. Proceedings were recorded under Panchnama dated 07.11.2019.
- ii. **IEC Address of M/s Jammu Udhog- 310A, 3rd Floor, Govardhan Building, Nehru Place, Delhi-110019 -** Search was attempted by the officers of DRI on 07.11.2019. No such premises with address number 310A was found existing in the said Govardhan Building. Enquiry was made with the security guard and Estate Manager of the building who confirmed that there are premises with Nos. 301 to 308 only on the

third floor and no company/firm in the name of M/s Jammu Udhog exists in the said building.

- iii. **First Branch address of M/s Benexi Vinyl Pvt. Ltd and M/s Jammu Udhog- Plot No.04, Phase-02, Industrial Area Gangyal, Jammu, J&K-1800010** - Search was attempted by the officers of DRI on 07.11.2019 at this common address of above named firms. No such address was found in Phase-02, Gangyal Industrial Area, Gangyal, Jammu. Proceedings were recorded under Panchnama dated 07.11.2019.
- iv. **Second Branch address of M/s Benexi Vinyl Private Limited- Marble Market, Opp. Samsung Showroom, Jammu, J&K-180015** - Search was attempted by the officers of DRI on 07.11.2019. No such firm in the said locality was found. Proceedings were recorded under Panchnama dated 07.11.2019.
- v. **Second Branch address of M/s Jammu Udhog - Office No. 2, Sector-4, Ganesh Market, Opposite SBI, Channi Himmat, Jammu-180015**- Search was attempted by the officers of DRI on 07.11.2019. The address was found, however it was closed. The neighbours informed that an office of M/s Jammu Udhog was working at this address till February-March 2019. Proceedings were recorded under Panchnama dated 07.11.2019.
- vi. **Third Branch address of M/s Benexi Vinyl Private Limited and M/s Jammu Udhog - Phase No.-01, Lane No.-08, SIDCO IGC, Samba, Jammu, J&K-184121** - Search was attempted by the officers of DRI at this common address of above named firms. No such firm in name of M/s Benexi Vinyl Pvt. Ltd. or M/s Jammu Udhog was found in existence. Proceedings were recorded under Panchnama dated 07.11.2019

3. Efforts were also made on 07.11.2019 to locate the residences of Partners of M/s Jammu Udhog namely Shri Mumtaj resident of Plot No. 3 Trikuta Nagar Extn, Opposite Samsung Building, Marble Market Jammu-180020 and Shri Krishan Kumar resident of H. No. 386, Sector-5, Trikuta Nagar, Jammu-180004, however these addresses could not be located in that vicinity.

4. Summons was issued to CHA firm M/s Venkatesh Agencies, Office No.7, 1st Floor, Raja Bahadur Bldg, 128/132, Kazi Sayad Street, Masjid Bunder (West), Mumbai-400003 who filed Bills of Entry of M/s Benexi Vinyl Pvt. Ltd at Mundra Port. Shri Hardik Mehta son of Shri Rajnikant Mehta, authorized person of M/s Venkatesh Agencies appeared on 10.02.2020 and tendered his statement under Section 108 of the Customs Act, 1962 wherein he inter alia stated that;

- (i) Mr. Vishal Yadav of OSR Forwarders is CHA in some of their common clients who are clearing the material at Delhi(TKD); he came to their Mumbai office in the month of March 2019 and told them that his client M/s Benexi Vinyl Pvt. Ltd are planning to import PVC Resin at Mundra Port and clearing of the same is to be handled by OSR; he(Vishal) provided name & number of the related person of M/s Benexi Vinyl Pvt. Ltd named Jaswant Singh who is one of the Director. Jaswant Singh Emailed him KYC documents and informed telephonically that his employee Sanjay Kumar will coordinate with him for clearance work.

- (ii) He has never met Jaswant Singh or Sanjay Kumar;
- (iii) They have provided customs clearance work of total 18 consignments for M/s Benexi Vinyl Pvt. Ltd;
- (iv) out of total 18 consignments, 17 consignments were cleared from the port and transported by Kanhaiya Roadways and Khushi Cargo Movers and one consignment by Sonal Transport. He provided a list showing container No., BE No., and name of Transporter along with other details;
- (v) the importer M/s Benexi Vinyl Pvt. Ltd decided the name of Transporter on Email. He submitted printout of EMAILs.
- (vi) They received KYC documents from email ID of M/s Benexi Vinyl Pvt. Ltd;
- (vii) one consignments of 128.75 MT of PVC Resin SG-5 imported by M/s Benexi Vinyl Pvt. Ltd. under Bill of Entry No.4641691 dated 26.08.2019 cleared duty free under advance authorization has been kept on hold by him voluntarily after out of charge given by the Customs as it has come to his notice that the DRI, Pune has put on hold a consignment of his another party who imported PVC Resin under advance authorization. Later he came to know through DRI Pune that DRI Noida is investigating the imports made by M/s Benexi Vinyl Pvt. Ltd. therefore, in bonafide intention he voluntarily kept this consignment on hold.
- (viii) Further he stated that the IEC holder Shri Jaswant Singh approached him for release of the goods three times, however they denied on the ground that he(i.e. importer) should get NOC from DRI Noida.
- (ix) They have not visited premises of M/s Benexi Vinyl Pvt. Ltd.

5. During the course investigation, searches at other residential addresses of Directors of M/s Benexi Vinyl Pvt. Ltd namely Shri Jaswant Singh son of Amar Singh at 9/2553 Sector-9, Siddhartha Vihar Ghaziabad and Shri Bajrang Bahadur son of Ram Sundar resident at H.No.282, Ward No.24, Sangam Vihar-1, Loni Nagar Palika, Ghaziabad was conducted on 24.08.2020. The outcome of searches was as under:-

- i) **Shri Jaswant Singh son of Shri Amar Singh - 9/2553 Sector-9, Siddhartha Vihar Ghaziabad:-** Flat No. 9/2553, 3rd Floor, Siddhartha Vihar Sector-9, Ghaziabad was found closed. It was gathered from neighbours that said flat was closed for the last 2-3 years. On being enquired about Shri Jaswant Singh, it was informed by them that no such person was living in this building nor has anyone ever lived by that name
- ii) **Shri Bajrang Bahadur son of Ram Sundar-H.No.282, Ward No.24, Sangam Vihar-1, Loni Nagar Palika, Ghaziabad:-** There was no such address at Sangam Vihar-1, Loni Nagar Palika Parishad Ghaziabad as there is only Sangam Vihar which is densely populated area and divided into several streets. The H.No. 282 was not traceable as no landmark was mentioned.

The proceedings were recorded under respective Panchnamas.

6. On the basis of information provided by CHA Venkatesh Agencies during his statement dated 10.02.2020, one consignment of 128.75MT of PVC Resin

pertaining to M/s Benexi Vinyl Pvt. Ltd was put on hold by DRI, Noida Unit at Mundra Port, however, no one approached DRI Noida for release of the 128.75MT PVC Resin valued at Rs.82,09,060/-. Accordingly, this 128.75MT PVC Resin was seized vide seizure Memo dated 28.02.2020 for which a show cause notice has already been issued on 29.09.2020 under Section 124 of the Customs Act, 1962 proposing confiscation of the seized goods and proposing penalty on company.

7. Summons were issued to **Shri Kanhaiya Mishra**, owner of the transporter firms namely M/s Kanhaiya Roadways and M/s Khushi Cargo Movers. List provided by CHA M/s Venkatesh Agency was shared with him. Shri Kanhaiya Mishra appeared at DRI Noida Regional Unit on 17.02.2021 and tendered his statement under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that:

- i) They have not transported any material of M/s Benexi Vinyl Pvt. Ltd., however, on the basis of Truck No. and date mentioned in data sheet, he provided GR Copy, Bill and Invoice from his records related to those consignments;
- ii) He was given bills of M/s Aditya International, M/s.Riddhi Siddhi Polymers Gujarat, M/s.N N Polymers and Sunrise Exim Delhi on the basis of which the GRs were issued and goods were transported.;
- iii) These bills were provided to him by Shri Manoj @ Monu of M/s Riddhi Siddhi Polymers or his staff on Whatsapp;
- iv) He was shown a list compiled on the basis of data given in sheets submitted by M/s Venkatesh Agency and GRS submitted by him, on being asked about the place where these goods were transported, he stated that the goods were transported to the places mentioned in column '*Transported to*';
- v) The material was loaded from various CFS at Mundra Port;
- vi) He has received payment from M/s Aditya International, M/s.Riddhi Siddhi Polymers, M/s.N N Polymers and Sunrise Exim through RTGS against transportation of goods.

8. Summons were issued to the CHA Mukesh Grover, who handled the import consignments of M/s Benexi Vinyl Pvt. Ltd at **ICD Sonapat, Haryana**. Shri Mukesh Grover appeared on 31.03.2021. His statement was recorded under Section 108 of the Customs Act, 1962, wherein, he inter-alia stated that:

- i) He got the customs clearance work of this company through forwarder firm M/s Marine Space International,
- ii) He received authorization to work as CHA as well as KYC documents of M/s Benexi Vinyl Pvt. Ltd from the forwarder namely Mr. Atul Khanna owner of M/s Marine Space International;
- iii) He has cleared total 6 consignments for this company from ICD Sonapat, Haryana. Out of these 6 consignments, 5 consignments of PVC Resin were cleared under Advance Authorisation Scheme and one consignment of Chlorinated Polyethylene CPE - 135A was cleared on payment of duty;
- iv) He has met Mr. Jaswant Singh, Director of the company only once in the office of M/s Marine Space International situated at RZ 20A lane No. 5

Tughlakabad Extension, Okhla Main Road, Delhi-110019 in September 2019.

- v) He submitted copies of KYC documents and on being asked whether he conducted KYC verification and visited office or factory of M/s Benexi Vinyl Pvt. Ltd, he stated that he has not visited the factory premises of M/s Benexi Vinyl Pvt. Ltd., however, one of his employee was deputed to check the existence of this company at the declared address. His employee informed him that he could not find the address GF-59, Quila Kadam Sharif, Nabi Karim, New Delhi-110055 in that locality so he called Mr. Jaswant Singh on his mobile 8506023359. After few minutes, employee of Mr. Jaswant came and showed an office to my employee.
- vi) He doesn't have details of transporters who have transported the goods. After clearance of goods from Customs, his employee used to inform forwarder i.e. Mr. Atul Khanna of M/s Marine Space International. Only Mr. Atul Khanna may inform about the transporter.
- vii) He has received payment from account of M/s Marine Space International in bank account of his CHA firm.

9. Statement of **Shri Atul Khanna**, Partner of M/s Marine Space International, RZ-20A Lane No. 5 Tughlakabad Ext., Okhla Main Road, New Delhi-110019 was recorded on 31.03.2021 under Section 108 of the Customs Act, 1962, wherein, he inter-alia stated that:-

- i) This is a partnership firm established in 1995 for Shipping, clearing and forwarding. He and Mr. Pankaj Narain Seth are partners of this firm. They basically operate at ICD Tkd, Patparganj and other ports in Delhi NCR.
- ii) He got the customs clearance work of this company through one person named Mr. Himanshu Chopra (Mob No. 9811183046, 7428430227, 9971862799); he had telephonic discussion and after that he send Mr. Jaswant (Mob No. 8506023359) to meet him at his office; he arranged a meeting of Mr. Jaswant Singh with the CHA Mukesh Grover in his office. He (Jaswant) informed him that their live consignments are regularly being cleared from Mundra and now they have some shipments at ICD Sonapat for which they need our services; after negotiation of charges, we informed Mr. Himanshu Chopra and started customs clearance work of M/s Benexi Vinyl Pvt. Ltd.
- iii) Mr. Himanshu Chopra called him and told that he (Himanshu) has got his number from Mr. Manoj Gupta (Mob No. 9899915739) of M/s N Polymers for whom he has handled 2-3 consignments at ICD Sonapat under duty payment. He has never met Mr. Himanshu Chopra in person. He had only telephonic interaction with him. He has met Mr. Jaswant only once in his (Atul's) office.
- iv) He has interacted with Mr. Jaswant Singh, Director of the company and Mr. Himanshu Chopra in relation to import clearances of this company.
- v) Yes, CHA Mukesh Grover used to inform him after customs formalities were over and out of Charge given by Custom; after this he used to inform Mr. Himanshu Chopra over telephone; Shri Himanshu Chopra used to provide name and number of a person with the instructions to

handover the gate pass and BE copy to that person at ICD Sonapat; accordingly, his (Atul's) employee used to handover documents to that person; he was not concerned with the transport of goods, therefore, he doesn't have details of transporter.

vi) He doesn't remember the name of the person to whom he handed over documents.

vii) He has received payment from account of different companies/firms.

10. Another statement of **Shri Hardik Mehta** of M/s Venkatesh Agencies was recorded on 10.03.2021 under Section 108 of the Customs Act, 1962 wherein he inter alia stated that;

- i) He got customs clearance work of M/s Jammu Udhyog through Mr. Vishal Yadav of M/s OSR Forwarders, who is CHA in some of their common clients.
- ii) He has handled two consignments of M/s Jammu Udhyog at Mundra Port under BE No. 3367068 and 3367475 both dated 24.05.2019.
- iii) He has only interacted with Mr. Vishal Yadav in relation to clearance of above two consignments. He has not interacted with any of the partners of this firm.
- iv) He has received payment from M/s Jammu Udhyog through RTGS only.
- v) The transportation was arranged by Mr. Vishal Yadav.

11. Summons was issued to CHA firm **M/s OSR Forwarders**, J-Block Community Centre, 809 Ansal Classic Tower, Rajouri Garden, New Delhi-110017 who cleared the consignments of M/s Jammu Udhyog at Mundra port for this firm. Shri Vishal Yadav Prop/Authorised Signatory vide letter dated 04.02.2020 submitted copies of KYC documents and authority letter to work as CHA by this firm, copies of BEs and Advance Authorisation. Another summon was issued to Shri Vishal Yadav on 29.01.2021 for his appearance on 02.02.2021. Shri Vishal Yadav appeared on 02.02.2021 and 31.03.2021 and tendered his statements under Section 108 of the Customs Act, 1962 wherein he inter alia stated that;

- (i) He provided CHA services to M/s Jammu Udhyog;
- (ii) M/s Jammu Udhyog, M/s A.K. Enterprises, M/s Nagarjuna Tubes, M/s Benexi Vinyl Pvt. Ltd. and M/s A.M. Vinyl are being managed by Shri Himanshu Chopra.
- (iii) He helped Himanshu Chopra in getting office space at H B Twin Tower, NSP, Pitampura, Delhi through Shri Raunak Bindal Prop of M/s Bindal Polymers Pvt. Ltd.;
- (iv) The imported goods were transported by M/s Caravan Logistics Limited from Mundra;
- (v) He received customs clearance work of this firm from Shri Himanshu Chopra who is the Director of M/s A M Vinyl Pvt. Ltd. Himanshu Chopra informed him that M/s Jammu Udhyog is owned by his relative Mr. Krishan Kumar and requested him to handle customs clearance work of this firm;
- (vi) He has met Mr. Mumtaj, Partner of this firm. He (Mumtaj) used to visit his office for documentation work of this firm. He has never met Mr. Krishan Kumar, other partner of firm.

- (vii) Shri Himanshu Chopra used to contact him for day-to-day work of this firm;
- (viii) He verified the address of M/s Jammu Udhyog i.e. office No. 8.5, 8th Floor, H B Twin Tower, NSP, Pitampura, New Delhi;
- (ix) He received payment from M/s Jammu Udhyog through RTGS/NEFT;
- (x) Shri Himanshu Chopra informed him that M/s Benexi Vinyl Pvt. Ltd is his company and he (Himanshu) wants to import PVC Resin under Advance Authorisation Scheme in this company.
- (xi) He (Vishal) did not provide CHA services for M/s Benexi Vinyl Pvt. Ltd, however he introduced him (Himanshu) to CHA M/s Venkatesh Agencies.
- (xii) Shri Himanshu Chopra, who was Ex-Director in M/s Benexi Vinyl Pvt. Ltd was also a Director in a company namely M/s A.M. Vinyl Pvt. Ltd., having manufacturing unit at Bhiwadi, Alwar, Rajasthan.
- (xiii) M/s A M Vinyl Pvt. Ltd has also imported PVC Resin under Advance Authorisation Scheme.

12. As per documents provided by CHAs, the imports of PVC Resin made by M/s Benexi Vinyl Pvt. Ltd under advance authorization scheme are tabulated below:-

Table-2

S. No.	BE No.	BE date	QT (MT)	Value (INR)	Total Duty forgone (INR)	Port of import	Adv. Autho. No.
1	4277938	29.07.2019	128.75	7884530	4008277	INMUN1	0510409863
2	4277951	29.07.2019	128.75	7884530	4008277	INMUN1	0510409863
3	4278431	29.07.2019	156.00	9364888	4798263	INMUN1	0510409863
4	4278516	29.07.2019	156.00	9364888	4798263	INMUN1	0510409863
5	4278353	29.07.2019	208.00	12486518	6397684	INMUN1	0510409863
6	4280599	30.07.2019	104.00	8866166	3498914	INMUN1	0510409863
7	4277939	29.07.2019	128.75	7884530	4008277	INMUN1	0510409863
8	4277966	29.07.2019	128.75	7884530	4008277	INMUN1	0510409863
9	4571977	20.08.2019	85.00	5780879	1790916	INMUN1	0510409864
10	4573541	20.08.2019	128.75	8303417	4187502	INMUN1	0510409864
11	4573546	20.08.2019	128.75	8303417	4187502	INMUN1	0510409864
12	4573544	20.08.2019	128.75	8303417	4187502	INMUN1	0510409864
13	4571975	20.08.2019	104.00	9146218	3609432	INMUN1	0510409864
14	4573540	20.08.2019	128.75	8303417	4187502	INMUN1	0510409864
15	4641694	26.08.2019	128.75	8209060	4158270	INMUN1	0510409864
16	4641690	26.08.2019	128.75	8209060	4158270	INMUN1	0510409864
17	4883952	13.09.2019	104.00	9267149	3657156	INMUN1	0510409864
TOTAL OF 17 CONSIGNMENTS (A)			2204.50	145446613	69650284		
18	4899039	14.09.2019	128.75	8317600	4213251	INBDM6	0510409990
19	4899181	14.09.2019	128.75	8317600	4213251	INBDM6	0510409990
20	4899393	14.09.2019	128.75	8317600	4213251	INBDM6	0510409990
21	4899449	14.09.2019	128.75	8317600	4213251	INBDM6	0510409990
22	4953480	18.09.2019	128.75	8317600	4213251	INBDM6	0510409990
TOTAL OF 17 CONSIGNMENTS (B)			643.75	41588000	21066255		
GRAND TOTAL (A+B)			2848.25	187034613	90716538		

The above import data revealed that M/s Benexi Vinyl Pvt. Ltd has imported 2848.25 MT PVC Resin valued at Rs.18.70 Crores from Mundra Port (INMUN1) and ICD Sonapat Haryana during the period from 29.07.2019 to 18.09.2019 on which duty of Rs.9.07 Crores has been saved under Advance Authorisations.

13. As per documents provided by CHAs, the imports of PVC Resin made by M/s Jammu Udhyog under advance authorization scheme are tabulated below:-

Table-3

S. No.	BE No.	BE date	QT (MT)	Value (INR)	Total Duty forgone (INR)	Port of import	Adv Autho. No.
1	2977168	25/04/2019	156.000	9332294	4505760	INMUN1	0510410151
2	2977170	25/04/2019	156.000	9332294	4505760	INMUN1	0510410151
3	2977124	25/04/2019	208.000	12443059	6007680	INMUN1	0510410151
4	3277972	17/05/2019	206.000	12886933	5152719	INMUN1	0510410151
5	3278222	17/05/2019	154.500	9665200	3864539	INMUN1	0510410151
6	3278552	17/05/2019	154.500	9665200	3864539	INMUN1	0510410151
7	3367475	24/05/2019	103.000	6559778	3098849	INMUN1	0510410343
8	3367068	24/05/2019	103.000	6559778	3098849	INMUN1	0510410343
9	3585635	10/6/2019	198.000	12541006	3478248	INMUN1	0510410343
10	3585636	10/6/2019	198.000	12541006	3478248	INMUN1	0510410343
11	3731880	20/06/2019	154.500	9438948	4514206	INMUN1	0510410460
12	3732107	20/06/2019	206.000	12338494	5950499	INMUN1	0510410460
13	3732357	20/06/2019	154.500	9438948	4514206	INMUN1	0510410460
14	3778386	24/06/2019	154.490	9266434	4468934	INMUN1	0510410151
		TOTAL(A)	2306.49	142009372	60503036		
15	3338320	22/05/2019	255.000	16071291	5768676	INTKD6	0510410343
16	3390842	25/05/2019	255.000	16071291	5768676	INTKD6	0510410343
		TOTAL(B)	510.00	32142582	11537352		
		G. TOTAL (A+B)	2816.49	174151954	72040388		

14. None of the Director/Partner of these firms including Mr. Himanshu Chopra joined investigation despite issuing repeated summons.

ENQUIRY WITH BUYERS OF PVC RESIN AND HSS SELLERS:-

15. Outcome of enquiry with buyers of imported PVC Resin to whom the transporter Kanhaiya Mishra claimed to have delivered the duty free PVC Resin loaded from Mundra Port is tabulated below:-

S. No.	Name of the firm/company	Outcome
1	Rohit Wrappers, Mehlakpur Road, Agwanpur, Moradabad	Shri Satyaveer Singh, Manager of M/s Rohit Wrappers, Moradabad appeared on 07.04.2021 at DRI Noida office and tendered his statement under Section 108 of the Customs Act, 1962 wherein, he inter-alia

		stated that their firm is engaged in manufacturing of PVC Pipes; they have purchased PVC Resin of foreign brand from M/s Aditya International, Gujarat; Shri Amit Mittal is the owner of M/s Aditya International; they are purchasing PVC Resin of foreign brand since last four years from this firm; the 66MTs of PVC Resin transported from Mundra to Rohit Wrappers, Moradabad by M/s Kanhaiya Roadways vide GR No. 24779 dated 24.09.2019 and 24780 dated 25.09.2019 was received at their unit; they don't know firm named M/s Riddhi Siddhi Polymers or Mr. Manoj Gupta.
2	Mahavir Polyplast Pvt. Ltd., 704/3, Mauja Runkata, Kirawali Road, Agra	Vide letter dated 08.04.2021 submitted that their unit has not imported any PVC Resin under Advance Authorisation scheme in the year 2019 and 2020 under Customs Act, 1962. On being further summoned, vide letter dated 21.04.2021, it was reiterated that they have not made any import under Advance Authorisation Scheme. Nobody appeared in person despite repeated summons.
3	N Polymers, 101-104, GCP Business Centre, OPP. Mem Nagar Fire Station, Vijay Char Rasta, Mem Nagar, Ahmadabad	Vide letter 13.04.2021, Smt Sonal Gupta, wife of Shri Manoj Gupta sent the sale/purchase ledgers for the period from 01.01.2019 to 31.03.2021 and submitted that her husband Manoj Gupta is looking after her business and at present due to COVID conditions is unable to present herself and sought time. M/s N N Polymers vide letter dated 05.08.2021 submitted copies of documents related to purchase and sale during the period from 01.01.2019 to 31.12.2021, however all the invoices related to Gujarat branch was not available in those documents. On being asked, M/s N N Polymers vide letter dated 19.08.2021 submitted that the said documents were seized by DRI Pune vide Panchnama dated 18.12.2019.
4	Riddhi Siddhi Polymers, Khasara No. 155/43, Ground Floor, Phirni Road, Puth Khurd, Delhi-110039	Vide letter dated 13.04.2021, Shri Madan Gopal Gupta, Proprietor of the firm sent sale/purchase ledgers for the period 01.01.2019 to 31.03.2021. It was further submitted that an office in the name of Riddhi Siddhi Polymers was opened at unit No. 1101 to 1106, 11 th Floor, Earth Arise, Sarkhej, Gandhi Nagar Highway, Ahmadabad. He has established this office to make local purchase and sales from there and requisite GST registration was also taken at that address. In regard to the transport receipts in their name at Mundra, he submitted that he has to take payment from Mr. Himanshu Chopra and in lieu of the payment he (Himanshu) has given him the material and as such the transport receipt has been issued in the name of his firm. He is a senior citizen of 72 years and his son Manoj Gupta is looking after

		his business. On being summoned, Shri Manoj Gupta vide letter dated 21.04.2021 sought time due to COVID. Manoj Gupta was summoned on 05.07.2021, however he did not appear. M/s Riddhi Siddhi Polymers vide letter dated 05.08.2021 submitted copies of documents related to purchase and sale during the period from 01.01.2019 to 31.12.2021, however all the invoices related to Gujarat branch was not available in those documents. On being asked, M/s Riddhi Siddhi Polymers vide letter dated 19.08.2021 submitted that the said documents were seized by DRI Pune vide Panchnama dated 18.12.2019.
5	Diya Polymers, Jakhal Road, Focal Point, Chchhajili, Sunam, Sangrur, Punjab	Vide Email dated 08.05.2021 provided copies and invoices and ledger. On being further summoned to record statement, the party vide letter dated NIL, received on 16.07.2021 submitted that in case their presence is still needed in the enquiry proceedings, in such scenario their case may kindly be transferred to DRI Office Ludhiana Punjab.
6	Konark Irrigation Pvt. Ltd., Pachpeda, Barut Chajmal Road, Gabhana, Aligarh	Shri Amit Gupta, Authorised Signatory of the firm appeared on 15.07.2021 at DRI Noida in compliance of summons and tendered his statement under Section 108 of the Customs Act, 1962. Shri Amit Gupta in his statement stated that they have long business connection with M/s Aditya International from whom they used to purchase Chemicals; they have purchased PVC Resin of foreign origin from M/s Aditya International during 2019-20; the goods purchased from M/s Aditya International were transported by M/s Kanhaiya Roadways and transportation was arranged by M/s Aditya International.
7	Aditya International, 1 ST Floor, 173/A, Panchratna Market, NH-8/A, Padana, Gandhidham, Kutch Gujarat	Shri Amit Mittal Proprietor of firm appeared on 16.07.2021 at DRI Noida in compliance of summons and tendered his statement under Section 108 of the Customs Act, 1962. Shri Amit Mittal in his statement dated 16.07.2021 stated that he is in trading of PVC Resin since 2018 and had purchased PVC resin from various suppliers; on being asked about the source of PVC resin transported by M/s Kanhaiya Roadways and M/s Khushi Cargo Movers owned by Shri Kanhaiya Mishra from Mundra to UP under invoices of M/s Aditya International to M/s Rohit Wrapper, Moradabad, M/s Ambica Poly tubes, Agra and M/s Konark Irrigation, Aligarh, he stated that these consignments were purchased by him from M/s Riddhi Siddhi Polymers and M/s N N Polymers owned by Shri Manoj Gupta. He further stated that in the PVC Resin trade due to high freight implication, it is a

		common practice to purchase goods at port itself and transport directly to the end user. He provided names of 6 other firms from whom he purchased PVC Resin at Mundra port and transported directly to the end buyer under his invoices. He also submitted copies of invoices and Eway bills mailed by his office to the transporter Kanhaiya Mishra.
8	Ambika Polyubes, 13/22A, Nunbai Agra	Vide letter dated 05.04.2021 (Received on 12.04.2021) submitted copies of purchase bills related to 2019 and 2020. Nobody appeared in person despite repeated summons.
9	Dhuri Polymers, Bagrian Road, Dhuri Punjab-148024	Vide letter dated 06.04.2021 and 26.04.2021 sought time due to COVID pandemic.
10	Shiva Enterprises, Dadri Colony, Patiala Road, Samana, Punjab-147101	No response received.
11	Sunrise Exim, 117B-DDA Flats, Deep Enclave, Phase-III, Ashok Vihar Delhi-110052	No response received.

16. Copies of documents like Tax invoice, GRs, and Eway bills submitted by Shri Kanhaiya Mishra (Transporter) revealed that PVC Resin was transported to above named 11 firms under the cover of GST invoices raised by (i) M/s Aditya International, 1ST FLOOR, 173/A, Panchratna Market, NH-8/A, Padana, Gandhidham, Kutch Gujarat, (ii) M/s Riddhi Siddhi Polymers, unit No. 1101 to 1106, 11th Floor, Earth Arise, Sarkhej, Gandhi Nagar Highway, Ahmadabad, (iii) M/s N N Polymers, 101-104, GCP Business Centre, Opposite Mem Nagar Fire Station, Vijay Char Rasta, Mem Nagar, Ahmadabad and (iv) M/s Sunrise Exim, 117B-DDA Flats, Deep Enclave, Phase-III, Ashok Vihar Delhi-110052. Summons were issued to all these four entities. As detailed in table above, Shri Amit Mittal of M/s Aditya International appeared and tendered statement. M/s Riddhi Siddhi Polymers and M/s N N Polymers submitted documents and made submissions, however, M/s Sunrise Exim neither appeared nor submitted any documents. None of these firms claimed direct import or purchase from M/s Benexi Vinyl Pvt. Ltd. Therefore, purchase invoices submitted by them were examined and the corresponding supplier firms namely M/s Vikas Enterprises, 756/12 Budh Vihar, Pooth Kalan, Delhi-110086, M/s Gauri Shankar Overseas, Shop No. A2, Survey No. 167/4-1, Plot No. 9, Shakti Nagar, Nana Kapaya Mundra Kutch, Gujarat-370405, M/s Khurana Trading Company, 547 Ras Vihar, IP Extn Patparganj, Delhi-110092 and M/s Salasar Impex India Shop No. C-1, Survey No. 167/4-1, Plot No. 9,

Shakti Nagar, Nana Kapaya Mundra Kutch, Gujarat-370405 were summoned. None of these firms replied or appeared in compliance of summons. The summons sent on the address mentioned on the invoices of these firms received back undelivered.

17. The documents provided by CHA and import data revealed that M/s Benexi Vinyl Pvt. Ltd and M/s Jammu Udhog has purchased PVC Resin on High Sea Sale (i.e. HSS) basis from the following firms/companies:-

S. No.	HSS Seller	HSS to Benexi Vinyl Pvt. Ltd	HSS to Jammu Udhog
1	A K Enterprises, Office No. 8.17, 8 th Floor, HB Twin Tower, Netaji Subhash Palace, New Delhi	Yes	Yes
2	Cosmic Udyog, UG-17, Vishwsadan Building, District Centre Janakpuri, New Delhi-110057	Yes	No
3	Falcon Industries, UGD- UG-17, Vishwsadan Building, District Centre Janakpuri, New Delhi-110058	Yes	No
4	Ganpati Pipes, Office No. 8.2, 8 th Floor, HB Twin Tower, Netaji Subhash Palace, New Delhi	Yes	Yes
5	Jammu Udyog, 310A, Third Floor, Goverdhan Building, Nehru Place, Delhi-110019	Yes	No
6	Mahalakshmi Industries, Office No. 12, A, UG Floor, Kirti Shikhar Building, District Centre Janakpuri, New Delhi-110018	Yes	No
7	N N Polymers, 101-104, GCP Business Centre, Opposite Mem Nagar Fire Station, Vijay Char Rasta, Mem Nagar, Ahmadabad	Yes	No
8	Nagarjuna Tubes, Office No. 31, Opposite Samsung Plaza, Marble Market, Jammu-180012	Yes	Yes
9	Bindal Polymers Pvt. Ltd., O-112, Sector-1, Bawana Industrial Area, Delhi-110039	No	Yes
10	Hind Plastic, Sangaria Road, Dhuri, Sangrur-148024	No	Yes
11	Riddhi Siddhi Polymers, Khasara No. 155/43, Ground Floor, Phirni Road, Puth Khurd, Delhi-110039	No	Yes

Summons were issued to these High Sea Sellers on 22.02.2021, 17.03.2021, 30.03.2021, and 26.04.2021, however, no one responded to the summons except M/s N N Polymers, M/s Riddhi Siddhi Polymers and M/s Hind Plastics. Summons sent to rest of the firms received back undelivered. Smt. Sonal Gupta, Prop. of M/s N. N. Polymers vide letter dated 13.04.2021 sent the sale/purchase ledgers for the period from 01.01.2019 to 31.03.201 and

submitted that her husband Manoj Gupta is looking after her business and at present due to COVID conditions is unable to present herself and sought time. Shri Madan Gopal Gupta, Prop. of M/s Riddhi Siddhi Polymers vide letter dated 13.04.2021 sent the sale/purchase ledgers for the period from 01.01.2019 to 31.03.201 and submitted that an office in the name of Riddhi Siddhi Polymers was opened at unit No. 1101 to 1106, 11th Floor, Earth Arise, Sarkhej, Gandhi Nagar Highway, Ahmadabad. He is a senior citizen of 72 years and his son Manoj Gupta is looking after his business. M/s Hind Plastics vide letter dated 07.05.2021 (Received on 02.06.2021) informed that their firm has no concern with M/s Jammu Udhyog. Their High Sea Sale agreement was with M/s A.K. Enterprises, 10703/27, Jhandewalan Road, Nabi Karim, New Delhi-110055.

18. The DRI, Regional Unit Noida was investigating another case of diversion of PVC Resin imported duty-free under Advance Authorisation Scheme by M/s A M Vinyl Pvt. Ltd., Bhiwadi Rajasthan. During the said investigation DRI officers caused enquiry in respect of address Office No. 8,5, 8th Floor, H B Twin Tower, Netaji Subhash Palace, Pitampura, Delhi-110034 on 27.08.2019. It was found that a company namely M/s Progress Route Biz Hub LLP, 5th Floor, HB Twin Tower, Netaji Subhash Palace, Delhi-110034 has rented out this space. Vide letter dated 27.08.2019, M/s Progress Route Biz Hub LLP submitted that their company has taken 4 floors on lease viz 5,7,8 & 9 in HB Twin Tower, NSP, New Delhi and provides private cabin/office space to different clients under the brand name "CO-OFFIZ". In February 2019, their tenant Mr. Raunak Bindal and one person introduced to them as Mr. Vishal Yadav came to their office to take two cabin space on rent for business of import of polymer services. Initially they rented out two separate one seater cabin space to M/s A K Enterprises (Room No. 8.31) and M/s Benexi Vinyl (Room No. 8.17). Later they required two seater space for M/s A K Enterprises and shifted to two seater space (Room No. 8.13) and changed the name of company from M/s A K Enterprises to M/s Nagarjuna Tubes and M/s Benexi Vinyl to M/s Jammu Udhyog (Room No. 8.17). They have rented both the premises to Shri Vishal Yadav. The rent agreement was made in the name of Shri Sandeep Kumar, Authorised signatory of both the firms and gave to Shri Vishal Yadav, but he never returned them back. No computer and files were kept in this office space by these firms. Shri Vishal Yadav, Shri Sandeep Kumar, Shri Harjeet Singh and Shri Gaurav Mehra visited this office if there was some verification from bank or GST authorities. No other visitor was ever seen visiting the rented cabins. Since they do not receive any rent after May 2019 they have rented these cabins to others. Shri Raunak Bindal and Shri Sandeep Kumar were summoned to appear before the investigating officer; however, they did not appear.

FINDINGS OF THE INVESTIGATION:-

19. **M/s Benexi Vinyl Pvt. Ltd** has imported **2848.25MT** of duty free PVC Resin having assessable value of **Rs.18,70,34,613/-** on which total duty foregone is **Rs.9,07,16,538/-** (as tabulated in Para 12 above) and have diverted the same in domestic market. No exports under these Advance Authorisations have been made by this firm. There was no office at **GF-59, Quila Kadam Sharif, Nabi Karim, Paharganj, New Delhi-110055** which was declared to be IEC address. The Partners of the firm namely Shri Jaswant

Singh son of Amar Singh resident of 9/2553 Sector-9, Siddharth Vihar Ghaziabad and Shri Bajrang Bahadur son of Ram Sundar resident of H.No. 282, Ward No.24, Sangam Vihar-1, Loni Nagar Palika, Ghaziabad were also not found residing at the given addresses. There was no factory at any of the addresses declared to be branch addresses in the IEC of these firms. Their sole intention was to procure duty free PVC Resin and divert it in the domestic market, which is evident from the fact that for duty free clearances of the imported PVC Resin, Shri Jaswant Singh and Shri Bajrang Bahadur resorted to willful mis-statement of facts as the addresses, which were declared to be factory for manufacture of export goods did not exist at all.

20. M/s Jammu Udhog has imported **2816.49MT** of duty free PVC Resin having assessable value of **Rs.17,41,51,954/-** on which total duty foregone is **Rs.7,20,40,388/-** (as tabulated in Para 11 above) and have diverted the same in domestic market. No exports under these Advance Authorisations have been made by this firm. There was no office at **310A, 3rd Floor, Govardhan Building, Nehru Place, Delhi-110019** which was declared to be IEC address. The Partners of the firm namely Shri Mumtaj and Shri Krishan Kumar were also not found residing at the given addresses. There was no factory at any of the addresses declared to be branch addresses in the IEC of these firms. Their sole intention was to procure duty free PVC Resin and divert it in the domestic market, which is evident from the fact that for duty free clearances of the imported PVC Resin, Shri Mumtaj and Shri Krishan Kumar resorted to willful mis-statement of facts as the addresses, which were declared to be factory for manufacture of export goods did not exist at all.

21. Documents received from DGFT has revealed that M/s Jammu Udhog was having address at Office No. 8, 5, 8th Floor, H B Twin Tower, Netaji Subhash Palace, Pitampura, Delhi-110034 and these documents have been signed by one Shri Sandip Kumar as Partner/Authorised Signatory of M/s Jammu Udhog. As stated by Shri Vishal Yadav in his statement dated 02.02.2021, this premises was taken on rent for Shri Himanshu Chopra with the help of Shri Raunak Bindal who also happens to be one of the High Sea Seller (Bindal Polymers Pvt. Ltd) to M/s Jammu Udhog.

22. Shri Hardik Mehta of CHA M/s Venkatesh Agencies submitted a printout taken from website www.instafinancials.com during his statement dated 10.02.2020 . As per this document, Shri Ashok Chopra, Shri Himanshu Chopra and Shri Atul Chopra were appointed Directors of M/s Benexi Vinyl Pvt. Ltd w.e.f. 27.07.2010. This document (last updated on 20.08.2019) further reflects that Shri Jaswant Singh and Shri Bajrang Bahadur were appointed as Additional Director on 19.12.2017.

23. The CHA also submitted printout of IEC No. 0514018402 taken on 10.02.2019 from DGFT website. This printout mentions Shri Jaswant Singh and Shri Bajrang Bahadur as Directors of M/s Benexi Vinyl Pvt. Ltd and do not mention name of any other person. IEC Printout of M/s Jammu Udhog mentions Shri Mumtaj and Shri Krishan Kumar as Partners of M/s Jammu Udhog. Searches were attempted at all the addresses mentioned on these IEC printouts. Neither any manufacturing unit was found operating/existing at the address, nor any person was found residing/working at the addresses mentioned below their names.

24. Shri Hardik Mehta of CHA M/s Venkatesh Agencies in his statement dated 10.02.2020 stated that Mr. Vishal Yadav of OSR Forwarders came to their Mumbai office in the month of March 2019 and told them that his client M/s Benexi Vinyl Pvt. Ltd are planning to import PVC Resin at Mundra Port and clearing of the same is to be handled by OSR; he (Vishal) provided name & number of the related person of M/s Benexi Vinyl Pvt. Ltd named Jaswant Singh who is one of the Director. Jaswant Singh Emailed him KYC documents and informed telephonically that his employee Sanjay Kumar will coordinate with him for clearance work; he has never met Jaswant Singh and Sanjay Kumar; they have not visited premises of M/s Benexi Vinyl Pvt. Ltd.

25. **Shri Kanhaiya Mishra**, owner of the transporter firms namely M/s Kanhaiya Roadways and M/s Khushi Cargo Movers in his statement dated 17.02.2021 inter-alia stated that he was given bills of M/s Aditya International, Riddhi Siddhi Polymers Gujarat, N N Polymers and Sunrise Exim Delhi for transport of material, on the basis of which the GRs were issued and goods were transported from Mundra; these bills were provided to him by Shri Manoj @ Monu of M/s Riddhi Siddhi Polymers or his staff on Whatsapp.

26. Apart from Mundra, M/s Benexi Vinyl Pvt. Ltd also imported PVC Resin under Advance Authorisation Scheme from ICD Sonapat, Haryana. Bills of entry at this ICD were filed by CHA Mukesh Grover, who in his statement dated 31.03.2021 stated that he got the customs clearance work of this company through forwarder firm M/s Marine Space International; he received authorization to work as CHA as well as KYC documents of M/s Benexi Vinyl Pvt. Ltd from the forwarder namely Mr. Atul Khanna owner of M/s Marine Space International.

27. **Shri Atul Khanna**, Partner of M/s Marine Space International, in his statement dated 31.03.2021 stated that he got the customs clearance work of M/s Benexi Vinyl Pvt. Ltd through one person named Mr. Himanshu Chopra (Mob No. 9811183046, 7428430227, 9971862799); they had telephonic discussion and after that he(Himanshu) send Mr. Jaswant (Mob No. 8506023359) to meet him; CHA Mukesh Grover used to inform him after customs formalities were over and out of Charge given by Custom, after this he(Atul) used to inform Mr. Himanshu Chopra over telephone; Shri Himanshu Chopra used to provide name and number of a person with the instructions to handover the gate pass and BE copy to that person at ICD Sonapat. Accordingly, his employee used to handover documents to that person.

28. **M/s Jammu Udhog** and three of the High Sea Suppliers namely M/s A K Enterprises, M/s Benexi Vinyl and M/s Nagarjuna Tubes was found sharing a common address at 8th Floor, H B Twin Tower, Netaji Subhash Palace, Pitampura, Delhi-110034. The company M/s Progress Route Biz Hub LLP, 5th Floor, HB Twin Tower, Netaji Subhash Palace, Delhi-110034 who has rented out this space, vide letter dated 27.08.2019 submitted that in February 2019, their tenant Mr. Raunak Bindal and one person introduced to them as Mr. Vishal Yadav came to their office to take two cabin space on rent for business of import of polymer services. Initially they rented out two separate one seater cabin space to M/s A K Enterprises (Room No. 8.31) and M/s Benexi Vinyl (Room No. 8.17). Later they required two seater space for M/s A K Enterprises

and shifted to two seater space (Room No. 8.13) and changed the name of company from M/s A K Enterprises to M/s Nagarjuna Tubes and M/s Benexi Vinyl (to M/s Jammu Udhog (Room No. 8.17). They have rented both the premises to Shri Vishal Yadav. The rent agreement was made in the name of Shri Sandeep Kumar, Authorised signatory of both the firms and given to Shri Vishal Yadav, but he never returned them back. No computer and files were kept in this office space by these firms. Shri Vishal Yadav, Shri Sandeep Kumar, Shri Harjeet Singh and Shri Gaurav Mehra visited this office if there was some verification from bank or GST authorities. No other visitor was ever seen visiting the rented cabins. M/s Progress Route Biz Hub LLP has reportedly rented these cabins to others.

29. IEC printouts taken from DGFT website have revealed that M/s Jammu Udhog and M/s Benexi Vinyl Pvt. Ltd are having common addresses for first Branch and Third Branch.

30. Shri Manoj Gupta appears to have played a vital role in evasion of duty by M/s Benexi Vinyl Pvt. Ltd and M/s Jammu Udhog in collusion with Shri Vishal Yadav and Shri Himanshu Chopra. M/s N N Polymers, which is a proprietorship firm of wife of Shri Manoj Gupta have sold PVC Resin on high sea sale basis to M/s Benexi Vinyl Pvt. Ltd. similarly M/s Riddhi Siddhi Polymers, a proprietorship firm of father of Shri Manoj Gupta has sold PVC Resin on high sea sale basis to M/s Jammu Udhog. Shri Manoj Gupta's wife as well as his father has submitted in their respective letters that work of these firms was managed and looked after by Shri Manoj Gupta. Part of the material imported at Mundra port was transported on instructions of Shri Manoj Gupta under cover of Tax Invoices of M/s N N Polymers and M/s Riddhi Siddhi Polymers. Shri Madan Gopal Gupta, Proprietor of M/s Riddhi Siddhi Polymers submitted that this material was given to them by Shri Himanshu Chopra in lieu of their outstanding payment. Shri Manoj Gupta through the above named family owned firms M/s Riddhi Siddhi Polymers and M/s N N Polymers sold the goods in the domestic market which were imported duty free in the name of M/s Jammu Udhog and M/s Benexi Vinyl Pvt. Ltd by showing purchases from some domestic suppliers. These domestic suppliers appear to be dummy/non-existent firms as none of them responded to the summons.

31. Shri Vishal Yadav was CHA in most of the imports made by M/s Jammu Udhog and arranged transporters for Mr. Himanshu Chopra for transportation of duty-free imported PVC Resin. He helped Mr. Himanshu Chopra in getting office space at 8th Floor, H B Twin Tower, Netaji Subhash Palace, Pitampura, Delhi-110034 where M/s Jammu Udhog and three of the High Sea Suppliers namely M/s A K Enterprises, M/s Benexi Vinyl and M/s Nagarjuna Tubes were created by Himanshu Chopra in collusion with him. The company M/s Progress Route Biz Hub LLP, 5th Floor, HB Twin Tower, Netaji Subhash Palace, Delhi-110034 who has rented out this space, vide letter dated 27.08.2019 submitted that in February 2019, their tenant Mr. Raunak Bindal and one person introduced to them as Mr. Vishal Yadav came to their office to take two cabin space on rent for business of import of polymer services. Initially they rented out two separate one seater cabin space to M/s A K Enterprises (Room No. 8.31) and M/s Benexi Vinyl (Room No. 8.17). Later they required two seater space for M/s A K Enterprises and shifted to two seater space (Room No. 8.13) and changed the name of company from M/s A K Enterprises to M/s

Nagarjuna Tubes and M/s Benexi Vinyl to M/s Jammu Udhog (Room No. 8.17). They have rented both the premises to Shri Vishal Yadav. The rent agreement was made in the name of Shri Sandeep Kumar, Authorised signatory of both the firms. Shri Hardik Mehta of CHA Venkatesh Agencies has also stated that he got import clearance work of M/s Jammu Udhog and M/s Benexi Vinyl Pvt. Ltd through Shri Vishal Yadav. Thus, Shri Vishal Yadav appears to have played a prominent role in import clearance and subsequent diversion of PVC Resin imported in the name of M/s Jammu Udhog and M/s Benexi Vinyl Pvt. Ltd.

32. Shri Himanshu Chopra appears to be actual owner of M/s Benexi Vinyl Pvt. Ltd and beneficial owner of the goods imported by M/s Benexi Vinyl Pvt. Ltd and M/s Jammu Udhog in light of fact that he was one of the Director of M/s Benexi Vinyl Pvt. Ltd from 27.07.2010 till 19.12.2017 and he approached Shri Vishal Yadav, CHA M/s. OSR forwarder for import of PVC Resin under Advance Authorisation Scheme in 2019. Shri Vishal Yadav introduced him (Himanshu) to CHA M/s Venkatesh Agencies. Shri Atul Khanna who arranged CHA for clearance in the name of M/s Benexi Vinyl Pvt. Ltd at ICD Sonapat Haryana has also named Shri Himanshu Chopra as the person to whom goods were handed over after clearance. Shri Vishal Yadav in his statement dated 02.02.2021 and 31.03.2021 has stated that M/s Jammu Udhog, M/s A.K. Enterprises, M/s Nagarjuna Tubes, M/s Benexi Vinyl Pvt. Ltd. and M/s A.M. Vinyl were being managed by Shri Himanshu Chopra; he helped Himanshu Chopra in getting office space at H B Twin Tower, NSP, Pitampura, Delhi through Shri Raunak Bindal Prop of M/s Bindal Polymers Pvt. Ltd.; Himanshu Chopra informed him that M/s Jammu Udhog is owned by his relative Mr. Krishan Kumar and requested him to handle customs clearance work of this firm; Shri Himanshu Chopra used to contact him for day-to-day work of this firm; Shri Himanshu Chopra informed him that M/s Benexi Vinyl Pvt. Ltd was his company and he (Himanshu) wanted to import PVC Resin under Advance Authorisation Scheme in this company; he (Vishal) did not provide CHA services for Benexi Vinyl Pvt. Ltd, however he introduced him (Himanshu) to CHA M/s Venkatesh Agencies. Shri Himanshu Chopra was also a Director in a company namely M/s A.M. Vinyl Pvt. Ltd., having manufacturing unit at Bhiwadi, Alwar, Rajasthan. M/s A M Vinyl Pvt. Ltd have also imported PVC Resin under Advance Authorisation Scheme and evaded huge customs duty by way of diversion of the same.

It therefore appears that Shri Himanshu Chopra, Shri Vishal Yadav and Shri Manoj Gupta in collusion with each other planned this duty free import of PVC Resin and evasion of duty.

33. QUANTIFICATION OF DUTY SAVED ON IMPORTS

33.1. As per documents provided by CHAs, the imports of PVC Resin made by M/s Benexi Vinyl Pvt. Ltd under advance authorization scheme are tabulated below:-

S. No.	Port	QT (MT)	Value (INR)	Total Duty forgone (INR)
1	INMUN1	2204.50	145446613	69650284
2	INBDM6	643.75	41588000	21066255
GRAND TOTAL		2848.25	187034613	90716538

33.2. As per documents provided by CHAs, the imports of PVC Resin made by M/s Jammu Udhog under advance authorization scheme are tabulated below:-

S. No.	Port	QT (MT)	Value (INR)	Total Duty forgone (INR)
1	INMUN1	2306.49	142009372	60503036
2	INTKD6	510.00	32142582	11537352
GRAND TOTAL		2816.49	174151954	72040388

33.3. In view of above, a Show Cause Notice **F. No. GEN/ADJ/COMM/168/2022-Adjn dated 03.04.2023** was issued to **M/s. Benexi Vinyl Private Limited**, GF-59, Quila Kadam Sharif, Nabi Karim, New Delhi-110055 (IEC No.0514018402) by the Commissioner of Customs, Custom House, Mundra wherein it is proposed to:

- Confiscate the subject goods i.e. **2204.50 MTs** of PVC Resin having assessable value of **Rs.14,54,46,613/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended, under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said notification;
- Demand and recover the Duty of Customs amounting to **Rs.6,96,50,284/-** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use, from them jointly and severally under Notification No. 18/2015-Customs 01.04.2015 read with Section 28(4) of the Customs Act, 1962;
- Demand and recover the Interest under provision of Notification Number 18/2015-Cus 01.04.2015 from them for such delayed payment/non-payment of duty of Customs on the offending goods;
- Impose Penalty upon them under **Section 112(a) and/or 112(b)** of the Customs Act, 1962 for the reasons stated in forgoing paras,
- Impose Penalty upon them under **Section 114A** of the Customs Act, 1962 for the reasons stated in forgoing paras,
- Penalty has also been imposed upon following persons:**

Sr. No.	Name	Penal provisions under Customs Act, 1962				
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Shri Jaswant Singh , Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402)	112(a)	---	---	114AA	---
2	Shri Bajrang Bahadur , Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402),	112(a)	---	---	---	---
3	Shri Himanshu Chopra , Ex-Director of M/s Benexi Vinyl	---	112(b)	114A	114AA	---

	Private Limited (IEC No.0514018402)					
4	Shri Manoj Gupta , R/o H.No. 4294/5, Jai Mata Market, Tri Nagar, New Delhi-110035	---	112(b)	---	---	---
5.	Shri Vishal Yadav , R/o RL-26, 2nd Floor, Gangaram Vatika, Tilak Nagar, Delhi-110018	112(a)	112(b)	---	---	---

33.4. Vide the aforesaid show cause notice **M/s Jammu Udhog, 310A, 3rd Floor, Govardhan Building, Nehru Place, Delhi-110019 (IEC No. AANFJ9832E)** were called upon to the Commissioner of Customs, Custom House, Mundra wherein it is proposed to:

- (i) Confiscate the subject goods i.e. **2306.49 MTs** of PVC Resin having assessable value of **Rs.14,20,09,372/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended, under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said notification;
- (ii) Demand and recover the Duty of Customs amounting to **Rs.6,05,03,036/-** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use, from them jointly and severally under Notification No. 18/2015-Customs 01.04.2015 read with Section 28(4) of the Customs Act, 1962;
- (iii) Demand and recover the Interest under provision of Notification Number 18/2015-Cus 01.04.2015 from them for such delayed payment/non-payment of duty of Customs on the offending goods;
- (iv) Impose Penalty upon them under **Section 112(a) and / or 112(b) of the Customs Act, 1962** for the reasons stated in forgoing paras,
- (v) Impose Penalty upon them under **Section 114A of the Customs Act, 1962** for the reasons stated in forgoing paras,
- (vi) **Penalty was also imposed upon following persons:**

Sr. No.	Name	Penal provisions under Customs Act, 1962				
		(3)	(4)	(5)	(6)	(7)
1	Shri Mumtaj , Partner of M/s Jammu Udhog (IEC No. AANFJ9832E)	112(a)	---	---	---	---
2	Shri Krishan Kumar , Partner of M/s Jammu Udhog (IEC No. AANFJ9832E)	112(a)	---	---	---	---
3	Shri Himanshu Chopra , Ex-Director of M/s Benexi Vinyl Private Limited (IEC	---	112(b)	114A	114AA	---

	No.0514018402)					
4	Shri Manoj Gupta , R/o H.No. 4294/5, Jai Mata Market, Tri Nagar, New Delhi-110035	---	112(b)	---	---	---
5.	Shri Vishal Yadav , R/o RL-26, 2nd Floor, Gangaram Vatika, Tilak Nagar, Delhi-110018	112(a)	112(b)	---	---	---

34. The investigation carried out by the DRI revealed that **M/s. Benexi Vinyl Private Limited**, GF-59, Quila Kadam Sharif, Nabi Karim, New Delhi-110055 (IEC No.0514018402) and **M/s. Jammu Udyog** 310A, 3rd Floor, Govardhan Building, Nehru Place, Delhi-110019 (IEC No. AANFJ9832E) had also imported PVC Resin through other Inland Container depots and they had diverted the same into the local market instead of manufacturing of export goods in their licensed premises in contravention to the Scheme of Advance Authorisation. The details of such import are tabulated below: -

Sr.No	Importe r	Mundra Port (INMUN1)		ICD Panchi Sonipat (INBDM6)		ICD Tughlakabad (INTKD6)	
		Import t Qty. (In MT)	Duty foregone Amount (Rs.)	Import Qty. (In MT)	Duty foregone Amount (Rs.)	Import Qty. (In MT)	Duty foregone Amount(R s.)
1.	Benexi Vinyl Pvt. Ltd.	2204.50	69650284	643.75	21066255	-	-
2.	M/s. Jammu Udhog	2306.49	60503036	-	-	510.00	11537352

34.1. Therefore, one separate show cause notice **F.No. VIII/ Cus/ 688/ SCN/ Benexi Vinyl/ ICD/ SNP/2021-22 dated 22.02.2022** was issued to **M/s. Benexi Vinyl Private Limited**, GF-59, Quila Kadam Sharif, Nabi Karim, New Delhi-110055 (IEC No.0514018402) and others by **the Deputy Commissioner, ICD Sonipat**. Later, the said Show Cause Notice was made answerable to Principal Commissioner of Customs, Custom House, Mundra Port, Kutch, Gujarat-370421 vide **Corrigendum dated 16.01.2022** in terms of Notification No. 28/2022-Cus(NT) dated 31.03.2022 and 29/2022-Cus(NT) dated 31.03.2022.

34.2. Further, in respect of goods imported by **M/s. Jammu Udyog** from ICD Tughlakabad, New Delhi a **SCN No. VIII/ICD/TKD/6AG/Gr.2G/ Jammu Udyog/2199/2021 dated 18.01.2022** was also issued to **M/s. Jammu Udyog** 310A, 3rd Floor, Govardhan Building, Nehru Place, Delhi-110019 (IEC No. AANFJ9832E) by **the Deputy Commissioner (Gr.2G)**, ICD, TKD, Import, New Delhi; and subsequently made answerable to Principal Commissioner of Customs, Custom House, Mundra Port, Kutch, Gujarat-370421 vide **Corrigendum dated 31.01.2023 in terms of Notification No. 29/2022-Cus(NT) dated 31.03.2022**.

34.3. The Show cause notice **F.No. VIII/ Cus/ 688/ SCN/ Benexi Vinyl/ICD/SNP/2021-22 dated 22.02.2022** issued to **M/s. Benexi Vinyl Private Limited**, GF-59, Quila Kadam Sharif, Nabi Karim, New Delhi-110055

(IEC No.0514018402) and others by **the Deputy Commissioner, ICD Sonipat** proposes as under:-

- (i) Confiscate the subject goods i.e. **643.75 MTs** of PVC Resin having assessable value of **Rs.4,15,88,000/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended, under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said notification;
- (ii) Demand and recover the Duty of Customs amounting to **Rs.2,10,66,255 /-** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use, from them jointly and severally under Notification No. 18/2015-Customs 01.04.2015 read with Section 28(4) of the Customs Act, 1962;
- (iii) Encash Bank Guarantee submitted for the above imports and appropriate the proceeds against duty demanded;
- (iv) Demand and recover the Interest under provision of Notification Number 18/2015-Cus 01.04.2015 from them for such delayed payment/non-payment of duty of Customs on the offending goods;
- (v) Impose Penalty upon them under **Section 112** of the Customs Act, 1962,
- (vi) Impose Penalty upon them under **Section 114A** of the Customs Act, 1962,
- (vii) **Penalty has also been imposed upon following persons:**

Sr. No.	Name	Penal provisions under Customs Act, 1962				
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Shri Jaswant Singh , Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402)	112(a) /112(b)	---	---	114AA	---
2	Shri Bajrang Bahadur , Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402),	112(a)	---	---	---	---
3	Shri Himanshu Chopra , Ex-Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402)	---	112(b)	---	114AA	---
4	Shri Manoj Gupta , R/o H.No. 4294/5, Jai Mata Market, Tri Nagar, New Delhi-110035	---	112(b)	---	---	---
5.	Shri Vishal Yadav , R/o RL-26, 2nd Floor, Gangaram Vatika, Tilak Nagar, Delhi-110018	112(a)	---	---	---	---

34.4. The Show Cause Notice No. VIII/ICD/TKD/6AG/Gr.2G/ Jammu Udyog/2199/2021 dated 18.01.2022 issued to M/s. Jammu Udyog 310A, 3rd Floor, Govardhan Building, Nehru Place, Delhi-110019 (IEC No. AANFJ9832E) by the Deputy Commissioner (Gr.2G), ICD, TKD, Import, New Delhi; proposes as to why: -

- (i) Subject goods i.e. **510MTs** of PVC Resin having assessable value of Rs.3,21,42,582/- imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said notification;
- (ii) Duty of Customs amounting to **Rs.1,15,37,352/- (Rupees One Crore Fifteen Lakh Thirty Seven Thousand Three Hundred Fifty Two only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use, should not be demanded and recovered from them jointly and severally subject to total demand and recovery not more than **Rs.1,15,37,352/-** under Notification No. 18/2015-Customs 01.04.2015 read with Section 28(4) of the Customs Act, 1962;
- (iii) Bank Guarantee, if any, submitted for the above imports should not be encashed and the proceeds should not be appropriated against duty demanded;
- (iv) Interest under provision of **Notification Number 18/2015-Cus 01.04.2015** should not be demanded and recovered from them for such delayed payment/non-payment of duty of Customs on the offending goods;
- (v) Penalty should not be imposed upon them under **Section 112(b) of the Customs Act, 1962** for the reasons stated in impugned SCN,
- (vi) Penalty should not be imposed upon them under **Section 114AA of the Customs Act, 1962** for the reasons stated in impugned SCN,
- (vii) **Penalty has also been imposed upon following persons.**

Sr. No.	Name	Penal provisions under Customs Act, 1962				
		(3)	(4)	(5)	(6)	(7)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Shri Mumtaj , Partner of M/s Jammu Udhog (IEC No. AANFJ9832E),	112(a)	---	---	---	---
2	Shri Krishan Kumar , Partner of M/s Jammu Udhog (IEC No. AANFJ9832E),	112(a)	---	---	---	---
3	Shri Himanshu Chopra , Ex-Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402) and beneficial owner of the goods imported by M/s Jammu Udhog (IEC No. AANFJ9832E)	---	112(b)	---	114AA	---
4	Shri Manoj Gupta ,	---	112(b)	---	---	---

5.	Shri Vishal Yadav,	---	112(b)	---	---	---
----	--------------------	-----	--------	-----	-----	-----

WRITTEN SUBMISSION AND PERSONAL HEARING

35.1. The noticees did not filed any submission in their defense in respect of impugned Show Cause Notices.

35.2. '*Audi alteram partem*', is an important principle of natural justice that dictates to hear the other side before passing any order; therefore, Personal hearing in the matter was granted to all the noticees on 23.08.2023 and 04.04.2024. Details of the PH are as under:

- (i) **1st PH conducted on 23.08.2023:** None of the noticee appeared to attend the PH.
- (ii) **2nd PH conducted on 04.04.2024:** None of the noticee appeared to attend the PH.

DISCUSSION AND FINDINGS

36.1. **M/s. Benexi Vinyl Private Limited**, GF-59, Quila Kadam Sharif, Nabi Karim, New Delhi-110055 (IEC No.0514018402) and **M/s. Jammu Udyog** 310A, 3rd Floor, Govardhan Building, Nehru Place, Delhi-110019 (IEC No. AANFJ9832E) have imported PVC Resin through Mundra Port, ICD Sonipat and ICD Tuglakabad, New Delhi. Acting upon an intelligence, regarding misuse of Advance Authorisation Scheme, an investigation was initiated by DRI, Regional unit NOIDA, UP. The said investigation culminated to the issuance of **three Show Cause Notices** to the importers and other persons by the jurisdictional Customs Authorities. After publication of **Notification No. 29/2022-Customs (NT) dated 31.03.2022**, Commissioner of Customs, Customs House, Mundra, is the proper authority to adjudicate the above SCNs, being highest amount of duty involved at Mundra Port. Accordingly, the **two Show Cause Notices** issued by other Customs Authorities viz. Deputy Commissioner, ICD, Sonipat and Deputy Commissioner (Gr.2G), ICD, Tuglakabad have been made answerable to me.

➤ **The details of the Show Cause Notices which are to be adjudicated in the present order, are as under:**

- (i) F. No. GEN/ADJ/COMM/168/2022-Adjn dated 03.04.2023 issued to **M/s. Benexi Vinyl Private Limited and others** by the Commissioner of Customs, Custom House, Mundra.
- (ii) Show cause notice **F.No. VIII/Cus/688/SCN/Benexi Vinyl/ICD/SNP/2021-22 dated 22.02.2022** issued to **M/s. Benexi Vinyl Private Limited**, and others by the Deputy Commissioner, ICD Sonipat.
- (iii) **Show Cause Notice No. VIII/ICD/TKD/6AG/Gr.2G/ Jammu Udyog/2199/2021 dated 18.01.2022** issued to **M/s. Jammu Udyog and others** by the Deputy Commissioner (Gr.2G), ICD, TKD, Import, New Delhi.

36.2. I observe that all above three show cause notices have issued invoking the provisions of Section 28(4) of the Customs Act, 1962, whereas Section 28(9)

of the Customs Act prescribed a time limit of one year to determine the duty from date of issuance of show cause notice, therefore, it is imperative to firstly examine whether the adjudication proceedings of the said three show cause notices are within the time limit prescribed in Section 28(9) *ibid*. I find that after pronouncement of Judgement dated 09.03.2021 by Hon'ble Apex court in case of M/s. Canon India Vs. Commissioner of Customs, the Board had issued a specific instruction (Instruction No.04/2021-Customs dated 17.03.2021) to keep the Adjudication proceedings pending where the SCN were issued by DRI or Investigation was carried out by DRI and following the said instruction the two show cause notices viz. **SCN No. VIII/ICD/TKD/6AG/Gr.2G/Jammu Udyog/2199/2021 dated 18.01.2022** issued by the Deputy Commissioner (Gr.2G), ICD, TKD, Import, New Delhi and **SCN No. F.No. VIII/Cus/688/SCN/Benexi Vinyl/ICD/SNP/2021-22 dated 22.02.2022** issued by the Deputy Commissioner, ICD Sonipat were kept in abeyance and transferred to Call Book by the competent authority under the provisions of Section 28(9A) (*inserted w.e.f. 29.03.2018 vide Finance Act, 2018*) of the Customs Act. The another show cause notice bearing **F.No. GEN/ADJ/COMM/168/2022-Adjn, dated 03.04.2023** issued by the Commissioner of Customs, Custom House, Mundra was also kept in call book and the same was intimated to the noticees vide letter dated 24.04.2023. The case has been retrieved from the call book on **19.07.2023** hence the time limit to adjudicate the instant case will govern under the provisions of Section 28(9A) of Customs Act, 1962 and Section 28(9) of Customs Act. Therefore, I find that in the present proceedings of Adjudication all the Show Cause Notices are within the limit in terms of Section 28(9A) and Section 28(9) of the Customs Act, 1962.

37. Now, I proceed to examine the charges of the case, I have carefully gone through the Show Cause Notices, the relied upon documents, legal provisions and the records available before me. The issues before me to decide are as under:

- a) Whether the subject goods i.e. of PVC Resin imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended, are liable for confiscation under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said notification;
- b) Whether the Duty of Customs amounting payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use, is to be demanded and recovered from them jointly and severally under Notification No. 18/2015-Customs 01.04.2015 read with Section 28(4) of the Customs Act, 1962;
- c) Whether the Bank Guarantee is to be encashed, if any, submitted for the above imports and appropriate the proceeds against duty demanded;
- d) Whether the interest under provision of Notification Number 18/2015-Cus 01.04.2015 is recoverable from them for such delayed payment/non-payment of duty of Customs on the offending goods;
- e) Whether the Penalty is imposable upon various persons under **Section 112, Section 112(b), Section 114A and Section 114AA of the Customs Act, 1962** as proposed vide impugned SCNs,

38. I observe that Personal Hearings in the case was scheduled on two occasions i.e. 23.08.2023 and 04.04.2024 in order to provide natural justice to all the noticees; however, no one appeared for PH on aforementioned dates nor did they submit any request for adjournment in the matter. The adjudication is a time bound process which cannot be kept pending for long. Hence, I find that principles of natural justice have been duly followed since sufficient opportunities have been granted to all the noticees to defend their case. Therefore, the instant case is taken up for adjudication based on material facts, provisions of law and documents available on records.

I observe that the Section 122 A of the Customs Act, 1962 ('the Act' in short) provides that adjudicating authority shall not grant adjournment more than three time, to the noticees during the proceeding. Section 122A of the Act is reproduced hereunder:

122A. Adjudication procedure.

(1)The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2)The adjudicating authority may, if sufficient cause is shown at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.]

Emphasis supplied

39. I find that the investigation carried out by DRI, Noida initiated against M/s Benexi and M/s. Jammu revealed as under:

➤ **In case of M/s. Benexi:**

- **M/s. Benexi** has imported **2848.25MT** of duty free PVC Resin having assessable value of **Rs.18,70,34,613/-** on which total duty foregone is **Rs.9,07,16,538/-** (as tabulated in Para 12 above) and have diverted the same in domestic market. However, no exports under these Advance Authorisations have been made by M/s. Benexi.
- During search conducted by DRI, no such office at **GF-59, Quila Kadam Sharif, Nabi Karim, Paharganj, New Delhi-110055** which was declared to be IEC address, was found in existence. Moreover, the Partners of the firm namely Shri Jaswant Singh son of Amar Singh resident of 9/2553 Sector-9, Siddharth Vihar Ghaziabad and Shri Bajrang Bahadur son of Ram Sundar resident of H.No. 282, Ward No.24, Sangam Vihar-1, Loni Nagar Palika, Ghaziabad were also not found residing at the given addresses.
- No factory was found in existence at any of the addresses declared to be branch addresses in the IEC of these firms.
- This reflects that their sole intention was to procure duty free PVC Resin and divert it in the domestic market, which is evident from the fact that for duty free clearances of the imported PVC Resin, Shri Jaswant Singh and Shri Bajrang Bahadur resorted to willful mis-statement of facts as

the addresses, which were declared to be factory for manufacture of export goods did not exist at all.

➤ **In case of M/s Jammu Udhyog,:**

- M/s. Jammu has imported **2816.49MT** of duty free PVC Resin having assessable value of **Rs.17,41,51,954/-** on which total duty foregone is **Rs.7,20,40,388/-** (as tabulated in Para 13 above) and have diverted the same in domestic market. No exports under these Advance Authorisations have been made by M/s. Jammu.
- During the course of search at the declared premises in IEC as **310A, 3rd Floor, Govardhan Building, Nehru Place, Delhi-110019** found non-existent. The Partners of the firm namely Shri Mumtaj and M/s Shri Krishan Kumar were also not found residing at the given addresses.
- No factory was found in existence at any of the addresses declared to be branch addresses in the IEC of these firms. This clearly reflect their sole intention was to procure duty free PVC Resin and divert it in the domestic market, which is evident from the fact that for duty free clearances of the imported PVC Resin, **Shri Mumtaj and Shri Krishan Kumar** resorted to willful mis-statement of facts as the addresses, which were declared to be factory for manufacture of export goods did not exist at all.

39.1. I find that documents received from **DGFT** have revealed **that M/s Jammu Udhyog** was having address at Office No. 8, 5, 8th Floor, H B Twin Tower, Netaji Subhash Palace, Pitampura, Delhi-110034 and these documents have been signed by one Shri Sandip Kumar as Partner/Authorised Signatory of M/s Jammu Udhyog.

39.2. I find that during the search dated 24.08.2020 conducted at other residential addresses of **Shri Jaswant Singh** son of Amar Singh, the Directors of M/s Benexi Vinyl Pvt. Ltd., at 9/2553 Sector-9, Siddhartha Vihar Ghaziabad; it was found that no such person was lived there and it was learnt from neighbours that the said residence was closed for last 2-3 days.

39.3. I find that during the search dated 24.08.2020, residential address of **Shri Bajrang Bahadur** son of Ram Sundar at H.No.282, Ward No.24, Sangam Vihar-1, Loni Nagar Palika, Ghaziabad, was not found traceable.

39.4. I find that **Shri Vishal Yadav**, Prop/Authorised Signatory of M/s OSR Forwarders in his statement dated 02.02.2021 stated that this premises was taken on rent for Shri Himanshu Chopra (Beneficial Owner of goods Imported by M/s Benexi Vinyl Private Limited, and M/s Jammu Udhyog.

39.5. I find that the **Shri Hardik Mehta** of CHA M/s Venkatesh Agencies submitted printout of IEC No. 0514018402 taken on 10.02.2019 from DGFT website. This printout mentions Shri Jaswant Singh and Shri Bajrang Bahadur as Directors of M/s Benexi Vinyl Pvt. Ltd and do not mention name of any other person.

39.6. I find that IEC Printout of **M/s. Jammu** mentions **Shri Mumtaj and Shri Krishan Kumar** as Partners of M/s. Jammu Udhyog. During searches at all the addresses mentioned on these IEC printouts, neither any manufacturing unit was found operating/existing at the address, nor any person was found residing/working at the addresses mentioned below their names.

39.7. I find that apart from Mundra, **M/s Benexi** also imported PVC Resin under Advance Authorisation Scheme from ICD Sonapat, Haryana. The Bills of entry at this ICD were filed by CHA Mukesh Grover, who in his statement dated 31.03.2021 stated that he got the customs clearance work of this company through forwarder firm M/s Marine Space International; he received authorization to work as CHA as well as KYC documents of M/s Benexi from the forwarder namely Mr. Atul Khanna owner of M/s Marine Space International.

39.8. I find that **M/s Jammu** and three of the High Sea Suppliers namely M/s A K Enterprises, M/s Benexi Vinyl and M/s Nagarjuna Tubes was found sharing a common address at 8th Floor, H B Twin Tower, Netaji Subhash Palace, Pitampura, Delhi-110034. The company M/s Progress Route Biz Hub LLP, 5th Floor, HB Twin Tower, Netaji Subhash Palace, Delhi-110034 who has rented out this space, vide letter dated 27.08.2019 submitted that in February 2019, their tenant Mr. Raunak Bindal and one person introduced to them as Mr. Vishal Yadav came to their office to take two cabin space on rent for business of import of polymer services. Later on they changed the name of company from **M/s A K Enterprises to M/s Nagarjuna Tubes and M/s Benexi Vinyl (to M/s Jammu Udhyog** (Room No. 8.17). They have rented both the premises to Shri Vishal Yadav. The rent agreement was made in the name of Shri Sandeep Kumar, Authorised signatory of both the firms and given to Shri Vishal Yadav, but he never returned them back. No computer and files were kept in this office space by these firms. Shri Vishal Yadav, Shri Sandeep Kumar, Shri Harjeet Singh and Shri Gaurav Mehra visited this office if there was some verification from bank or GST authorities. No other visitor was ever seen visiting the rented cabins. M/s Progress Route Biz Hub LLP has reportedly rented these cabins to others.

39.9. I find that **Shri Manoj Gupta** has played a vital role in evasion of duty by M/s Benexi and M/s Jammu in collusion with Shri Vishal Yadav and Shri Himanshu Chopra. M/s N N Polymers, which is a proprietorship firm of wife of Shri Manoj Gupta have sold PVC Resin on high sea sale basis to M/s Benexi. Similarly M/s Riddhi Siddhi Polymers, a proprietorship firm of father of Shri Manoj Gupta has sold PVC Resin on high sea sale basis to M/s Jammu. Further, I find that Shri Manoj Gupta's wife as well as his father has submitted in their respective letters that work of these firms was managed and looked after by Shri Manoj Gupta.

39.10. I find that part of the material imported at Mundra port was transported on instructions of Shri Manoj Gupta under cover of Tax Invoices of M/s N N Polymers and M/s Riddhi Siddhi Polymers. Shri Madan Gopal Gupta, Proprietor of M/s Riddhi Siddhi Polymers submitted that this material was given to them by **Shri Himanshu Chopra** in lieu of their outstanding payment. I find that Shri Manoj Gupta through the aforementioned family owned firms M/s Riddhi Siddhi Polymers and M/s N N Polymers sold the goods in the domestic market which were imported duty free in the name of M/s Jammu and M/s Benexi by showing purchases from some domestic suppliers. These domestic suppliers appear to be dummy/non-existent firms as none of them responded to the summons.

39.11. I find that **Shri Vishal Yadav** was CHA in most of the imports made by M/s Jammu Udhyog and arranged transporters for Mr. Himanshu Chopra for transportation of duty-free imported PVC Resin. He helped Mr.

Himanshu Chopra in getting office space at 8th Floor, H B Twin Tower, Netaji Subhash Palace, Pitampura, Delhi-110034 where M/s Jammu Udhog and three of the High Sea Suppliers namely M/s A K Enterprises, M/s Benexi Vinyl and M/s Nagarjuna Tubes were created by Himanshu Chopra in collusion with him.

39.12. I find that **Shri Hardik Mehta** of CHA Venkatesh Agencies has also stated that he got import clearance work of M/s Jammu Udhog and M/s Benexi Vinyl Pvt. Ltd through Shri Vishal Yadav. Thus, it is evident that Shri Vishal Yadav has played a prominent role in import clearance and subsequent diversion of PVC Resin imported in the name of M/s Jammu Udhog and M/s Benexi Vinyl Pvt. Ltd.

39.13. I find that **Shri Himanshu Chopra** is actual owner of M/s Benexi Vinyl Pvt. Ltd and beneficial owner of the goods imported by M/s Benexi Vinyl Pvt. Ltd and M/s Jammu Udhog in light of fact that he was one of the Director of M/s Benexi Vinyl Pvt. Ltd from 27.07.2010 till 19.12.2017 and he approached Shri Vishal Yadav, CHA M/s OSR forwarder for import of PVC Resin under Advance Authorisation Scheme in 2019. Shri Atul Khanna who arranged CHA for clearance in the name of M/s Benexi Vinyl Pvt. Ltd at ICD Sonapat Haryana has also named Shri Himanshu Chopra as the person to whom goods were handed over after clearance.

39.14. I find that **Shri Vishal Yadav** in his statement dated 02.02.2021 and 31.03.2021 has stated that M/s Jammu Udhog, M/s A.K. Enterprises, M/s Nagarjuna Tubes, M/s Benexi Vinyl Pvt. Ltd. and M/s A.M. Vinyl were being managed by Shri Himanshu Chopra; he helped Himanshu Chopra in getting office space at H B Twin Tower, NSP, Pitampura, Delhi through Shri Raunak Bindal Prop of M/s Bindal Polymers Pvt. Ltd.; Himanshu Chopra informed him that M/s Jammu Udhog is owned by his relative Mr. Krishan Kumar and requested him to handle customs clearance work of this firm; Shri Himanshu Chopra used to contact him for day-to-day work of this firm; Shri Himanshu Chopra informed him that M/s Benexi Vinyl Pvt. Ltd was his company and he (Himanshu) wanted to import PVC Resin under Advance Authorisation Scheme in this company; he (Vishal) did not provide CHA services for Benexi Vinyl Pvt. Ltd, however he introduced him (Himanshu) to CHA M/s Venkatesh Agencies. Shri Himanshu Chopra was also a Director in a company namely M/s A.M. Vinyl Pvt. Ltd., having manufacturing unit at Bhiwadi, Alwar, Rajasthan. M/s A M Vinyl Pvt. Ltd have also imported PVC Resin under Advance Authorisation Scheme and evaded huge customs duty by way of diversion of the same.

39.15. In view of above, it is evident that **Shri Himanshu Chopra, Shri Vishal Yadav and Shri Manoj Gupta** in collusion with each other orchestrated a systemic plan to mis-use the Advance Authorisation scheme in respect of duty free import of PVC Resin in order to evade duty of Customs.

40. I OBSERVE THAT CONDITIONS ARE STIPULATED IN RESPECT OF ADVANCE AUTHORISATION SCHEME:

CONDITIONS ATTACHED TO IMPORTS UNDER ADVANCE AUTHORISATION SCHEME:-

➤ Para **4.16 of the Foreign Trade Policy 2015-20 stipulates that;**

- (i) Advance Authorisation and/ or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However,

Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

- Para **4.21 of the Hand Book of Procedure 2015-20 stipulates that;** Every Advance Authorisation holder shall maintain a true and proper account of consumption and utilization of duty free imported/ domestically procured inputs against each authorisation as prescribed in Appendix 4-I. This record in Appendix 4-I format, duly verified and certified by the jurisdictional Excise Authority, shall be submitted to the concerned Regional Authority at the time of filing application for redemption / bond waiver. Regional Authority shall compare the details of Appendix 4-I, with that of the inputs allowed in the authorisation, before allowing redemption or bond waiver against individual authorization. Such records shall be preserved for a period of at least three years from the date of redemption.
- The Condition Sheet attached with the Advance Authorisations issued by the DGFT have following conditions amongst others:
 - i) **condition No. 6:-** The exempt goods imported against this authorisation shall only be utilized in accordance with the provisions of paragraph 4.16 of the Foreign Trade Policy 2015-20 and other provisions and the relevant Customs Notification [Custom Notification No. 18/2015 dated 01.04.2015 (for physical exports), 21/2015 dated 01.04.2015 (for deemed exports), 22/2015 dated 01.04.2015 (for advance authorizations for prohibited goods) and 20/2015 (for annual advance authorizations) as the case may be], as amended from time to time.
 - ii) **condition No. 7:-** The authorisation holder shall abide by the instructions contained in paragraph 4.21 of the HBP, (2015-2020), as the case may be, for maintenance of a true and proper account of consumption and utilization of inputs and furnish returns to the concerned Regional Authority as per the provisions of FTP and the procedure laid there under.
 - iii) **condition No. 10:-** the authorisation holder to comply with the provisions of paragraph 4.10 and paragraph 4.35 of Handbook of Procedure, 2015-2020, as amended from time to time, with regard to transfer of any material from one unit of the authorisation holder to any other unit of the authorisation holder included in IEC or to the supporting manufacturer/jobber.
- Condition No. (x) of the Notification No. 18/2015-Customs dated 01.04.2015 stipulates that **"the said authorisation shall not be transferred and the said materials shall not be transferred or sold"**. Further the condition no. (iv) of the Notification No. 18/2015-Customs dated 01.04.2015 stipulates that, **"the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;"**

41. I find that the spirit of the Advance Authorisation Scheme and Customs Notification no. 18/2015 dated 01.04.2015 is to provide raw material to the manufacturer exporters at globally prevailing price, to give them adequate time (which can be further extended by the DGFT) to manufacture and export goods and in case the manufacturer exporter is somehow not able to export goods, he may pay back the duty with interest. However, no concession has been provided in actual user condition and the duty free goods can be used for manufacture of export goods by third party subject to the condition that manufacturer has provided its name on Authorisation. Thus the scheme and notification has taken care of exporter manufacturer as well another importer who may like to import goods for domestic market as in case of failure to export, levy of duty and interest on duty free goods would make their price at par with that of other importer who has paid duty at the time of import. This notification is a piece of beneficial legislation aimed to reduce cost of manufacturing of domestic manufacturer exporters and to make their products competitive in International Market so that the country and the Manufacturer Exporter both are benefitted, however, by way of misuse of this notification and breach of trust placed by the Government in manufacturer exporters, these importers have not only caused loss to the exchequer but also pushed the genuine trader importers (who import these goods on payment of duty) out of market by supplying these goods without invoice and may be at a slight lower price as they did not incur the burden of any duty or tax. I find that in the instant case the importers have orchestrated an organized and systemic conspiracy to evade duty of Customs under the garb of import of PVC resin under the Notification No. 18/2015-Customs dated 01.04.2015. Therefore, the importers have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they had diverted duty free imported goods supposed to be used in manufacturing of export goods, thereby they mis-stated/ suppressed the facts from the department, in order to evade the duty of Customs.

42. In this connection, I observe that the burden to prove the eligibility of exemption notification is on importer; and that the exemption notifications are subject to strict interpretation. I place reliance upon following relevant legal pronouncements:

- Hon'ble Supreme Court in the case of **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai [2009(234) ELT-389(SC)]** held that the burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense.
- Hon'ble Supreme Court in the case of **Krishi Upaj Mandi Samiti v/s. CCE reported in 2022 (58) GSTL 129 (SC)** held that law of the issue of interpretation of taxing statute has been laid down in catena of decisions that plain language capable of defined meaning used in a provision has to be preferred and strict interpretation has to be adopted except in cases of ambiguity in statutory provisions.
- Hon'ble Supreme Court in the case of **Uttam Industries V/s. CCE reported in 2011 (265) ELT 14(SC)** held that it is well settled law that exemption notification should be construed strictly and exemption notification is subject to strict interpretation by reading it literally.

43. From the fact and evidences placed before me, I find that **M/s. Benexi** and **M/s. Jammu** had imported duty free PVC Resin and diverted the same in domestic market. Both the importers did not make any exports under these Advance Authorisations. Moreover, no factory premises were found in existence at any of the addresses declared to be branch addresses in the IEC of these importers. Therefore, it is evident that their sole intention was to procure duty free PVC Resin and divert it in the domestic market, in order to evade the duty of Customs.

44. The total imports of PVC Resin made by **M/s Benexi Vinyl Pvt. Ltd.**, and **M/s Jammu Udhog** through Mundra Port, ICD Sonipat, Haryana and ICD Tughlakabad, New Delhi under advance authorization scheme are tabulated below: -

• **IMPORTS OF PVC RESIN MADE BY M/S BENEXI VINYL PVT. LTD. UNDER ADVANCE AUTHORIZATION SCHEME**

S.No.	Port	QT (MT)	Value (INR)	Total Duty forgone (INR)
1	INMUN1	2204.50	145446613	69650284
2	INBDM6	643.75	41588000	21066255
GRAND TOTAL		2848.25	187034613	90716538

• **IMPORTS OF PVC RESIN MADE BY M/S JAMMU UDHYOG UNDER ADVANCE AUTHORIZATION SCHEME:-**

S. No.	Port	QT (MT)	Value (INR)	Total Duty forgone (INR)
1	INMUN1	2306.49	142009372	60503036
2	INTKD6	510.00	32142582	11537352
GRAND TOTAL		2816.49	174151954	72040388

45. DUTY DEMAND UNDER SECTION 28(4) OF CUSTOMS ACT, 1962

45.1. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

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

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

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

Explanation- For the purposes of this section, "relevant date" means, -

(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund

(d) in any other case, the date of payment of duty or interest.

45.2. I find that **Notification No. 18/2015-Customs dated 01.04.2015** provides for demand from importer, the importer is required to submit a Bond which categorically provides for pay back/recovery from importer in case of default. Section 28(4) provides for recovery of duty evaded by way of collusion, willful mis-statement and suppression of facts. **M/s Benexi Vinyl Pvt. Ltd and M/s Jammu Udhog** have filed Bills of Entry at EDI ports claiming exemption from whole of the duty under Notification No. 18/2015-Cus dated 01.04.2015 meaning thereby that the material so cleared by them would be used only for manufacturing of export goods in their licensed premises, however, no factory or any manufacturing facility was found at the addresses mentioned on Advance Authorisation or IEC. Thus, there was repeated collusion, willful misstatement and suppression of facts which led to non-levy and non-payment of duty. Therefore the duty evaded on the imports made by **M/s Benexi Vinyl Pvt. Ltd and M/s Jammu Udhog** is recoverable under Section 28(4) of the Customs Act, 1962 in addition to the inbuilt provision under Notification no.18/2025-Cus dated 01.04.2015.

45.3. I observed that Section 28(4) of the Customs Act, 1962 provides for recovery of duties from the importer and agent or employee of the importer. Definition of the term importer has been amended to include beneficial owner. In light of the findings emerged in the investigation carried out by the DRI Noida and submissions of CHAs, Transporters and forwarder mentioned in the foregoing paras, it is revealed that that **Shri Himanshu Chopra** is the actual beneficial owner in respect of imports made by **M/s Benexi Vinyl Pvt. Ltd and M/s Jammu Udhog**. Therefore, I find that the evaded duty/ saved duty is recoverable jointly and severally from **M/s Benexi Vinyl Pvt. Ltd, M/s Jammu Udhog and beneficial owner of goods** imported by these companies namely **Shri Himanshu Chopra**. The quantum of duty which is liable to be recovered under the provisions of Section 28(4) of the Customs Act, 1962 from the importer and beneficial owner is hereby determined as per following table under the provisions of Section 28(8) of Customs Act, 1962: -

Sr. No.	Importer	Mundra Port (INMUN1)	ICD Sonipat (INBDM6)	ICD Tughlakabad (INTKD6)
		Duty Payable (Rs.)	Duty Payable (Rs.)	Duty Payable (Rs.)
1.	Benexi Vinyl Pvt. Ltd.	6,96,50,284/-	2,10,66,255/-	-
2.	M/s. Jammu Udhog	6,05,03,036/-	-	1,15,37,352/-

45.4. I observe that in terms of Section 28AA (1) of the Customs Act, 1962 the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA of the Customs Act, 1962, whether such payment is made voluntarily or after determination of the duty under that section.

46. CONFISCATION OF THE GOODS UNDER SECTION 111(o) OF THE CUSTOMS ACT, 1962:

(i). I find that it is alleged in the SCN that the goods imported by M/s. Benexi and M/s. Jammu Udhyog through Mundra port, ICD Sonipat and ICD Tughlakabad are liable for confiscation under Section 111(o) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(o) of the Customs Act, 1962 are reproduced below: -

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

.....

.....

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

.....

.....

.....

(ii). On plain reading of the above provisions of the Section 111(o) of the Customs Act, 1962 it is clear that subject to any condition, if any goods, exempted from duty or any prohibition in respect of import, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, shall be liable to confiscation. As discussed in the foregoing paras, it is evident the Importers have deliberately the imported goods only to divert the same in domestic market with a malafide intention to evade duty. In light of these acts of mis-using of Advance Authorisation scheme, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(o) of Customs Act, 1962. I hold so.

(iii). As the impugned goods are found to be liable for confiscation under Section 111(o) 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 SCNs. 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.”

(iv) 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. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings. I place reliance on the judgment of Hon'ble Apex Court in the case of Weston Components Ltd. Vs. Commr. of Customs, New Delhi (2000 (115) E.L.T.278(S.C.) wherein the Hon'ble Apex Court has held as under:

"It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine".

(v) I find that the condition no. (iv) of the Notification No. 18/2015-Customs dated 01.04.2015 stipulates that, "the importer at the time of clearance of the imported materials **executes a bond with such surety or security** and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;". M/s. Benexi and M/s. Jammu Udyog have imported the goods under the scheme of Advance Authorization and the said goods have been cleared by proper officer against a Bond which was a statutory requirement under the conditions of Notification No. 18/2015-Cus dated 01.04.2015, therefore, I find that redemption fine under Section 125 of Customs Act, 1962 is liable to be imposed in lieu of confiscation on such goods.

47. NOW I PROCEED TO EXAMINE THE ROLES OF THE NOTICEES IN THIS ELABORATE SCHEME TO DEFRAUD THE GOVERNMENT EXCHEQUER BY WAY OF EVADING DUTIES OF CUSTOMS.

I find that the investigation carried out by the DRI corroborated by irrefutable evidences make it evidently clear, that in the instance aforementioned importers imported duty free PVC resin meant for using in manufacturing of export goods, nonetheless, they diverted these duty free goods in domestic market, in order to evade the payment of duty of Customs. Therefore, the instant case is a well-organized and systematic evasion of customs duty by a group of persons under the garb of import under Customs **Notification no. 18/2015 dated 01.04.2015.**

47.1. ROLE AND CULPABILITY OF M/S BENEXI VINYL PVT. LTD:

I find that **M/s Benexi Vinyl Pvt. Ltd.**, imported duty free goods viz. PVC Resin by way of availing **Notification No. 18/2015-Cus dated 01.04.2015** and did not fulfilled the mandatory conditions of said notification. During the investigation it revealed that instead of declared purpose such goods were

diverted/sold in domestic area. Such acts of omissions and commissions have rendered the goods imported under the name of these companies liable for confiscation under Section 111(o) of the Customs Act, 1962, Thus, **M/s Benexi Vinyl Pvt. Ltd**, are liable for penalty under **Section 112(a)(ii) of the Customs Act, 1962**.

Further, I find that in the foregoing paras Customs duty on the imported good have been determined under the provisions of Section 28(8) and Section 28(4) of Customs Act, 1962 as there was repeated collusion, willful misstatement and suppression of facts. Therefore, I find that **M/s Benexi Vinyl Pvt. Ltd** are liable for penalty under **Section 114A of the Customs Act, 1962**.

However, I observe that as per 5th proviso of **Section 114A**, penalties under section 112 and 114A are mutually exclusive. When penalty under **Section 114A of the Customs Act, 1962** is imposed, penalty under **Section 112 of the Customs Act, 1962** is not imposable. Therefore, I refrain from imposing penalty upon **M/s Benexi Vinyl Pvt. Ltd** under **Section 112 of the Customs Act, 1962**.

47.2. ROLE AND CULPABILITY OF M/S JAMMU UDHYOG:

I find that **M/s Jammu Udhog** imported duty free goods viz. PVC Resin by way of availing **Notification No. 18/2015-Cus dated 01.04.2015** and did not fulfilled the mandatory conditions of said notification. During the investigation it revealed that instead of declared purpose such goods were diverted/sold in domestic area. Such acts of omissions and commissions have rendered the goods imported under the name of these companies liable for confiscation under Section 111(o) of the Customs Act, 1962, Thus, **M/s Jammu Udhog** are liable for penalty under **Section 112(a)(ii) of the Customs Act, 1962**.

Further, I find that in the foregoing paras Customs duty on the imported good have been determined under the provisions of Section 28(8) and Section 28(4) of Customs Act, 1962 as there was repeated collusion, willful misstatement and suppression of facts. Therefore, I find that **M/s Jammu Udhog** are liable for penalty under **Section 114A of the Customs Act, 1962**.

However, I observe that as per 5th proviso of **Section 114A of the Customs Act, 1962**, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. Therefore, I refrain from imposing penalty upon **M/s Jammu Udhog** under Section 112 of the Customs Act, 1962 of Customs Act, 1962.

47.3. ROLE AND CULPABILITY OF SHRI HIMANSHU CHOPRA:

I find that **Shri Himanshu Chopra**, the actual owner of the goods imported by the **M/s. Benexi Vinyl Pvt. Ltd.**, in light of the fact that he was one of the appointed Director of **M/s. Benexi Vinyl Pvt. Ltd.**, from 27.07.2010 till 19.12.2017 and he approached **Shri Vishal Yadav**, **CHA M/s OSR forwarder** for import of PVC Resin under Advance Authorisation Scheme in 2019. I find that **Shri Vishal Yadav** introduced him (**Himanshu**) to **CHA M/s Venkatesh Agencies**. **Shri Atul Khanna** who arranged **CHA** for clearance in the name of **M/s Benexi Vinyl Pvt. Ltd** at **ICD Sonapat Haryana** has also named **Shri Himanshu Chopra** as the person to whom goods were handed over after

clearance. I find that from statements dated 02.02.2021 and 31.03.2021 of Shri Vishal Yadav it is clear that **M/s Jammu Udhog**, M/s A.K. Enterprises, M/s Nagarjuna Tubes, **M/s Benexi Vinyl Pvt. Ltd.** and M/s A.M. Vinyl were being managed by Shri Himanshu Chopra; and Shri Himanshu Chopra informed him that M/s Benexi Vinyl Pvt. Ltd was his company and he (Himanshu) wanted to import PVC Resin under Advance Authorisation Scheme in this company. In view of above, I find that **Shri Himanshu Chopra** is liable for penalty under **Section 112 (b)** of the Customs Act, 1962 as he acquired possession and was concerned in carrying, depositing, keeping goods which he knew and has reason to believe were liable to confiscation as the duty free goods were transported on his instructions and unloaded at the places other than the declared place.

I find that there has been repeated collusion, willful misstatement and suppression of facts which led to non levy and non-payment of duty. Therefore, I find that **Shri Himanshu Chopra** is liable for penalty under **Section 114A of the Customs Act, 1962** separately against the evasion of duty by **M/s Benexi Vinyl Pvt. Ltd** and **M/s Jammu Udhog**, for by his acts of willful misstatement/ suppression of facts as discussed in detail vide foregoing paras, evaded the duty.

As regards imposing of penalty on **Shri Himanshu Chopra** under the provisions of Section 114AA of Customs Act, 1962, I find that **Shri Himanshu Chopra** was main person who in connivance in other person hatched the conspiracy to escape from the payment of customs duty and for this he obtained Advance Authorisation from DGFT in the name of such premises for authorized activity declaring which was actually non-existent. Bills of entry were filed under **Notification No. 18/2015-Cus dated 01.04.2015** declaring that the goods will be brought to the premises declared on Advance Authorisations and used in manufacture of the export goods, however, there was no manufacturing premises at all. From the Statements of CHAs and forwarder, it has emerged that **Shri Himanshu Chopra** was instrumental in planning and documentation for imports by these companies and for these act he has made himself liable for penalty under the provisions of Section 114AA of Customs Act, 1962. Further, I find support from the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that **"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority"**.

In this connection, I observe that as per 5th proviso of Section 114A, penalties under **Section 112** and **Section 114A** are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. Therefore, I refrain from imposing penalty upon **Shri Himanshu Chopra** under Section 112(b) of the Customs Act, 1962 separately of Customs Act, 1962 in such cases where penalty under Section 114A of Customs Act, 1962 is imposed.

47.4. ROLE AND CULPABILITY OF SHRI JASWANT SINGH AND SHRI BAJRANG BAHADUR, DIRECTORS OF M/S BENEXI VINYL PVT. LTD.:

1. I find that **Shri Jaswant Singh and Shri Bajrang Bahadur, Directors of M/s Benexi Vinyl Pvt. Ltd** have violated conditions of the Notification No.

18/2015-Cus dated 01.04.2015 and their acts of omission and commission have rendered the goods imported under the name of M/s. Benexi Vinyl Pvt. Ltd., liable for confiscation under Section 111(o) of the Customs Act, 1962. Further the duty free goods were purchased, removed, deposited, and sold in the manner which made these goods liable for confiscation under Section 111(o) of the Customs Act, 1962, therefore, both of them are liable for penalty under **Section 112(a)(ii) of the Customs Act, 1962, separately**. Further, the Show Cause Notice also proposes penalty under Section 112(b) of the Customs Act, 1962, in this regard, I find that **Shri Jaswant Singh and Shri Bajrang Bahadur** have been held liable for penalty under Section 112(a)(ii) of Customs Act, 1962 and the same person cannot be penalized twice for same offence, therefore, I refrain from imposing a penalty on them under Section 112(b) of customs Act, 1962.

Further, I find that **Shri Jaswant Singh**, Director of M/s Benexi Vinyl Pvt. Ltd, signed applications seeking advance authorizations, being fully aware that their company was not having facilities to utilize the duty free material intended to be imported by him or to manufacture the export product claimed to be manufactured and exported. Repeated Bills of entry were filed in the name of his company claiming exemption under Customs notification No. 18/2015 dated 01.04.2015, despite being aware that the material was not being used in manufacture of export goods. Thus, **Shri Jaswant Singh** is liable for penalty under **Section 114AA** of the Customs Act, 1962 separately as he knowingly and intentionally made, signed and used declarations, statements or documents which were false for duty free import through their company.

47.5. ROLE AND CULPABILITY OF SHRI MUMTAJ AND SHRI KRISHAN KUMAR, PARTNERS OF M/S JAMMU UDHYOG:

I find that IEC Printout of **M/s Jammu Udhog** mentions **Shri Mumtaj** and **Shri Krishan Kumar** as Partners of M/s Jammu Udhog. Therefore, searches were attempted at all the addresses mentioned on these IEC printouts, however, neither any manufacturing unit was found operating/ existing at the address, nor any person was found residing/working at the addresses mentioned below their names. It is evident that M/s. Jammu Udyog did not have any factory at any of the addresses declared to be branch addresses in their IEC. Their sole intention was to procure duty free PVC Resin and divert it in the domestic market, which is evident from the fact that for duty free clearances of the imported PVC Resin, Shri Mumtaj and Shri Krishan Kumar resorted to willful mis-statement of facts as the addresses, which were declared to be factory for manufacture of export goods did not exist at all.

Therefore, I find that Partners of **M/s Jammu Udhog** i.e. **Shri Mumtaj** and **Shri Krishan Kumar** are liable for penalty under **Section 112(a)(ii) of the Customs Act, 1962** on each of them separately as they have violated conditions of the Notification No. 18/2015-Cus dated 01.04.2015 and their acts of omission and commission have rendered the goods imported under the name of this firm liable for confiscation under Section 111(o) of the Customs Act, 1962.

47.6. ROLE AND CULPABILITY OF SHRI MANOJ GUPTA:

I find that **Shri Manoj Gupta** was having effective control over family owned firms namely M/s Riddhi Siddhi Polymers and M/s N N Polymers. Further, Shri Manoj Gupta through the above named family owned firms sold the goods in the domestic market which were imported duty free in the name of

M/s Jammu Udhog and M/s Benexi Vinyl Pvt. Ltd. by showing purchases from some domestic suppliers. These domestic suppliers were found to be dummy/non-existent firms as none of them responded to the summons. Thus, I find that Shri Manoj Gupta is liable to penalty under **Section 112(b)(ii) of the Customs Act, 1962** as he has acquired possession and was concerned in with carrying, removing, depositing, keeping, selling and purchasing of the goods which he knew were liable to confiscation under Section 111(o) of the Customs Act, 1962.

47.7. ROLE AND CULPABILITY OF SHRI VISHAL YADAV, OF M/S OSR FORWARDERS:

I find that **Shri Vishal Yadav** was CHA in most of the imports by **M/s Jammu Udhog** and he arranged transporters for **Mr. Himanshu Chopra** for transportation of duty-free imported PVC Resin. He helped Mr. Himanshu Chopra in getting office space at 8th Floor, H B Twin Tower, Netaji Subhash Palace, Pitampura, Delhi-110034 where **M/s Jammu Udhog** and three of the High Sea Suppliers namely M/s A K Enterprises, M/s Benexi Vinyl and M/s Nagarjuna Tubes were created by Himanshu Chopra in collusion with him. The company M/s Progress Route Biz Hub LLP, had rented the premises to Shri Vishal Yadav. I find that Shri Hardik Mehta of CHA Venkatesh Agencies stated that he got import clearance work of **M/s Jammu Udhog and M/s Benexi Vinyl Pvt. Ltd.** through **Shri Vishal Yadav**. Thus, I find that **Shri Vishal Yadav** has played a prominent role in import clearance and subsequent diversion of PVC Resin imported in the name of **M/s Jammu Udhog and M/s Benexi Vinyl Pvt. Ltd.** In view of above, I find that Shri Vishal Yadav is liable for penalty under **Section 112(b)(ii)** of the Customs Act, 1962 as he acquired possession and was concerned in carrying goods which he knew and has reason to believe were liable to confiscation as the duty free goods were cleared by him from Customs for Mr. Himanshu Chopra which were further transported to the places other than the declared places. Shri Vishal Yadav of M/s OSR Forwarders also rendered himself liable for penalty under **Section 112(a)(ii)** of the Customs Act, 1962 as his acts of omission and commission have resulted in violation of conditions of the **Notification No. 18/2015-Cus dated 01.04.2015** and rendered the goods imported under the name of **M/s Jammu Udhog and M/s Benexi Vinyl Pvt. Ltd** liable for confiscation under Section 111(o) of the Customs Act, 1962. Further, I observe that penalty under Section 112(a) and Section 112(b) of Customs Act, 1962 cannot be imposed simultaneously as the same person cannot be penalized twice for same offence.

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

:ORDER:

48.1. IN RESPECT OF SCN F.NO. GEN/ADJ/COMM/168/2022-ADJN, DATED 03.04.2023 ISSUED TO M/S. BENEXI VINYL PRIVATE LIMITED AND OTHERS BY THE COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA:-

➤ **In case of M/s Benexi Vinyl Private Limited, (IEC No.0514018402):**

- (i) I order to confiscate the Subject goods i.e. **2204.50 MTs** of PVC Resin having assessable value of **Rs.14,54,46,613/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended, under

Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said notification. However, I give M/s Benexi Vinyl Private Limited to redeem the impugned confiscated goods on payment of redemption fine of **Rs.1,50,00,000/- (Rs. One Crore Fifty Lakh Only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.

- (ii) I confirm the demand of Duty of Customs amounting to **Rs.6,96,50,284/- (Rupees Six Crore Ninety Six Lakh Fifty Thousand Two Hundred Eighty Four only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use, and order to recover the same from **M/s Benexi Vinyl Private Limited, (IEC No.0514018402)** jointly and severally subject to total demand and recovery not more than Rs.6,96,50,284/- under Notification No. 18/2015-Customs 01.04.2015 in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with interest at appropriate rate under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962.
- (iii) I impose the Penalty of **Rs.6,96,50,284/- (Rupees Six Crore Ninety Six Lakh Fifty Thousand Two Hundred Eighty Four only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon **M/s. Benexi Vinyl Private Limited, (IEC No.0514018402)** under Section 114A of the Customs Act, 1962 for the reasons stated in forgoing paras.
- (iv) I refrain from imposing penalty upon **M/s. Benexi Vinyl Private Limited, (IEC No.0514018402)** under Section of Section 112(a) and 112(b) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable.
- (v) I impose the penalty of **Rs.50,00,000/- (Rupees Fifty Lakh Only)** upon **Shri Jaswant Singh**, Director of M/s. Benexi Vinyl Private Limited (IEC No.0514018402) under Section 112(a)(ii) of the Customs Act, 1962 for the reasons discussed in foregoing paras.
- (vi) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Jaswant Singh, Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402)** under **Section 114AA** of the Customs Act, 1962 for the reasons discussed in foregoing paras.
- (vii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Bajrang Bahadur, Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402)**, under **Section 112(a)(ii)** of the Customs Act, 1962 for the reasons discussed in foregoing paras.
- (viii) I impose penalty of **Rs.6,96,50,284/- (Rupees Six Crore Ninety Six Lakh Fifty Thousand Two Hundred Eighty Four only)** upon **Shri Himanshu Chopra**, Ex-Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402), under **Section 114A** of the Customs Act, 1962 for the reasons discussed in foregoing paras.

- (ix) I refrain from imposing penalty upon **Shri Himanshu Chopra, Ex-Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402)** under Section of Section 112(b) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive.
- (x) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Himanshu Chopra, Ex-Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402)** under Section 114AA of the Customs Act, 1962 for the reasons discussed in foregoing paras.
- (xi) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Manoj Gupta**, under Section 112(b)(ii) of the Customs Act, 1962 for the reasons discussed in foregoing paras.
- (xii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Vishal Yadav**, under Section 112(a)(ii) of the Customs Act, 1962 for the reasons discussed in foregoing paras.
- (xiii) I refrain from imposing penalty upon **Shri Vishal Yadav** under Section 112(b) of the Customs Act, 1962 since the penalty under Section 112(a) of the Customs Act, 1962 has already been imposed.

➤ **IN CASE OF M/S JAMMU UDHYOG, (IEC NO. AANFJ9832E)**

- (i) I order to confiscate the subject goods i.e. **2306.49 MTs** of PVC Resin having assessable value of **Rs.14,20,09,372/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended, under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said notification; However, I give M/s Jammu Udhog to redeem the impugned confiscated goods on payment of redemption fine of **Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh Only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.
- (ii) I confirm the demand of Duty of Customs amounting to **Rs.6,05,03,036/- (Rupees Six Crore Five Lakh Three Thousand Thirty Six only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use; and order to recover from **M/s Jammu Udhog, (IEC No. AANFJ9832E)** jointly and severally subject to total demand and recovery not more than **Rs.6,05,03,036/-** under Notification No. 18/2015-Customs 01.04.2015 read with the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with interest at appropriate rate under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962.
- (iii) I impose penalty of **Rs.6,05,03,036/- (Rupees Six Crore Five Lakh Three Thousand Thirty Six only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon **M/s Jammu Udhog, (IEC No. AANFJ9832E)** under **Section 114A of the Customs Act, 1962**.
- (iv) I refrain from imposing penalty upon **M/s Jammu Udhog, (IEC No. AANFJ9832E)** under provisions of Section of Section 112(a) and 112(b) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive.

- (v) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Mumtaj**, Partner of M/s Jammu Udhog (IEC No. AANFJ9832E), under **Section 112(a)(ii) of the Customs Act, 1962** for the reasons discussed in foregoing paras.
- (vi) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Krishan Kumar**, Partner of M/s Jammu Udhog (IEC No. AANFJ9832E), under **Section 112(a)(ii) of the Customs Act, 1962** for the reasons discussed in foregoing paras.
- (vii) I impose penalty of **Rs.6,05,03,036/- (Rupees Six Crore Five Lakh Three Thousand Thirty Six only)** on **Shri Himanshu Chopra**, Ex-Director of M/s. Benexi Vinyl Private Limited (IEC No.0514018402) and beneficial owner of the goods imported by **M/s Jammu Udhog (IEC No. AANFJ9832E)**, under **Section 114A** of the Customs Act, 1962 for the reasons discussed in foregoing paras.
- (viii) I refrain from imposing penalty upon **Shri Himanshu Chopra**, Ex-Director of M/s. Benexi Vinyl Private Limited (IEC No.0514018402) and beneficial owner of the goods imported by **M/s Jammu Udhog (IEC No. AANFJ9832E)** under Section of Section 112(b) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive.
- (ix) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Himanshu Chopra**, Ex-Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402) and beneficial owner of the goods imported by **M/s Jammu Udhog (IEC No. AANFJ9832E)** under **Section 114AA of the Customs Act, 1962** for the reasons discussed in foregoing paras.
- (x) I impose a penalty of **Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand only)** upon **Shri Manoj Gupta**, under **Section 112(b)(ii) of the Customs Act, 1962** for the reasons discussed in foregoing paras.
- (xi) I impose a penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Vishal Yadav**, under Section 112(a)(ii) of the Customs Act, 1962;
- (xii) I refrain from imposing penalty upon **Shri Vishal Yadav** under **Section 112(b) of the Customs Act** for the reasons penalty under Section 112(a) has already been imposed.

48.2. IN RESPECT OF SCN F.NO. VIII/CUS/688/SCN/BENEXI VINYL/ICD/SNP/2021-22 DATED 22.02.2022 ISSUED TO M/S. BENEXI VINYL PRIVATE LIMITED AND OTHERS BY THE DEPUTY COMMISSIONER, ICD SONIPAT.

- (i) I order to confiscate the Subject goods i.e. **643.75 MTs** of PVC Resin having assessable value of **Rs.4,15,88,000/-** imported duty free under **Notification No.18/2015-Cus 01.04.2015**, as amended, under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said notification; However, I give M/s. Benexi Vinyl Private Limited to redeem the impugned confiscated goods on payment of redemption fine of **Rs.50,00,000/- (Rupees Fifty Lakh**

Only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

- (ii) I confirm the demand of Duty of Customs amounting to **Rs.2,10,66,255/- (Rupees Two Crore Ten Lakh Sixty Six Thousand Two Hundred and Fifty Five only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use; and order to recover the same from **M/s. Benexi Vinyl Private Limited, (IEC No.0514018402)** jointly and severally subject to total demand and recovery not more than Rs. **2,10,66,255/-** under Notification No. 18/2015-Customs 01.04.2015 in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with Interest under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962.
- (iii) I order to en-cash the Bank Guarantee, if any, submitted for the above imports and order that the proceeds to be appropriated against duty demanded;
- (iv) I impose a penalty of **Rs.2,10,66,255/- (Rupees Two Crore Ten Lakh Sixty-Six Thousand Two Hundred and Fifty Five only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon **M/s Benexi Vinyl Private Limited, (IEC No.0514018402)** under the provisions of **Section 114A** of the Customs Act, 1962,
- (v) I refrain from imposing penalty upon **M/s Benexi Vinyl Private Limited, (IEC No.0514018402)** under Section 112 of the Customs Act, 1962, since as per 5th proviso of Section 114A penalties under section 112 and 114A are mutually exclusive;
- (vi) I impose a penalty of **Rs.20,00,000/- (Rupees Twenty Lakh only)** upon **Shri Jaswant Singh**, Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402) under **Section 112(a)(ii)** of the Customs Act, 1962;
- (vii) I refrain from imposing penalty upon **Shri Jaswant Singh, Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402)** under Section 112(b)(ii) of the Customs Act, 1962 for the reasons penalty under Section 112(a)(ii) already imposed on him;
- (viii) I impose a penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** upon **Shri Jaswant Singh**, Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402) under **Section 114AA** of the Customs Act, 1962.
- (ix) I impose a penalty of **Rs.20,00,000/- (Rupees Twenty Lakh only)** upon **Shri Bajrang Bahadur**, Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402), under **Section 112(a)(ii)** of the Customs Act, 1962.
- (x) I impose a penalty of **Rs.20,00,000/- (Rupees Twenty Lakh only)** upon **Shri Himanshu Chopra, Ex-Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402)**, under **Section 112(b)** of the Customs Act, 1962.
- (xi) I impose penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** upon **Shri Himanshu Chopra, Ex-Director of M/s Benexi Vinyl Private**

Limited (IEC No.0514018402) under **Section 114AA** of the Customs Act, 1962.

- (xii) I impose penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** upon **Shri Manoj Gupta**, under **Section 112(b)(ii)** of the Customs Act, 1962.
- (xiii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Vishal Yadav**, under **Section 112(a)(ii)** of the Customs Act, 1962.

48.3. IN RESPECT OF SCN NO. VIII/ICD/TKD/6AG/GR.2G/JAMMU UDYOG/2199/2021 DATED 18.01.2022 ISSUED TO M/S. JAMMU UDYOG (IEC NO. AANFJ9832E):

- (i) I order to confiscate the subject goods i.e. **510 MTs** of PVC Resin having assessable value of **Rs.3,21,42,582/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended, under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said notification; However, I give M/s. Jammu Udhdyog to redeem the impugned confiscated goods on payment of redemption fine of **Rs.35,00,000/- (Rupees Thirty Five Lakh Only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.
- (ii) I confirm the demand of Duty of Customs amounting to **Rs.1,15,37,352/- (Rupees One Crore Fifteen Lakh Thirty Seven Thousand Three Hundred Fifty Two only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use, and order to recover the same from them jointly and severally subject to total demand and recovery not more than **Rs.1,15,37,352/-** under Notification No. 18/2015-Cus 01.04.2015 read with the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with Interest at appropriate under provision of **Notification Number 18/2015-Cus 01.04.2015** read with Section 28AA of the Customs Act, 1962.
- (iii) I order to en-cash the Bank Guarantee, if any, submitted for the above imports and order that the proceeds are to be appropriated against duty demanded;
- (iv) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **M/s Jammu Udhdyog**, (IEC No. AANFJ9832E) under **Section 112(b)(ii)** of the Customs Act, 1962 for the reasons stated in forgoing paras.
- (v) I impose penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** upon **M/s Jammu Udhdyog**, (IEC No. AANFJ9832E) under **Section 114AA** of the Customs Act, 1962 for the reasons stated in forgoing paras,
- (vi) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Mumtaj**, Partner of **M/s Jammu Udhdyog** (IEC No. AANFJ9832E), under **Section 112(a)(ii)** of the Customs Act, 1962 for the reasons discussed in foregoing paras.
- (vii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Krishan Kumar**, Partner of **M/s Jammu Udhdyog** (IEC No. AANFJ9832E), under **Section 112(a)(ii)** of the Customs Act, 1962 for the reasons discussed in foregoing paras.

- (viii) I impose penalty of **Rs.10,00,000/- (Rupees Ten Lakh only)** upon **Shri Himanshu Chopra**, Ex-Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402) and beneficial owner of the goods imported by **M/s Jammu Udhog (IEC No. AANFJ9832E)** under **Section 112(b)(ii) of the Customs Act, 1962.**
- (ix) I impose penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** upon **Shri Himanshu Chopra**, Ex-Director of M/s Benexi Vinyl Private Limited (IEC No.0514018402) and beneficial owner of the goods imported by **M/s Jammu Udhog (IEC No. AANFJ9832E)** under **Section 114AA of the Customs Act, 1962** for the reasons discussed in foregoing paras.
- (x) I impose penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** upon **Shri Manoj Gupta**, under **Section 112(b)(ii) of the Customs Act, 1962** for the reasons discussed in foregoing paras.
- (xi) I impose the penalty of **Rs.5,00,000/- (Rupees Five Lakh only)** upon **Shri Vishal Yadav**, under **Section 112(b)(ii) of the Customs Act, 1962** for the reasons discussed in foregoing paras.

49. 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.

o/c


(K. Engineer)

Principal Commissioner of Customs
Custom House Mundra.

Date: 10.07.2024.

DIN-20240771MO000000CED5
F.No. CUS/ADJ/COMM/168/2022-Adjn.

2886 to 2894

BY SPEED POST/BY EMAIL/ NOTICE BOARD:

To (Noticees)

1. M/s Benexi Vinyl Private Limited,
GF-59, QuilaKadam Sharif, Nabi Karim,
New Delhi-110055.
(IEC No.0514018402)
2. M/s Jammu Udhog,
310A, 3rd Floor, Govardhan Building,
Nehru Place, Delhi-110019
(IEC No. AANFJ9832E)
3. Shri Jaswant Singh, Director
M/s Benexi Vinyl Private Limited,

**GF-59, Quila Kadam Sharif, Nabi Karim,
New Delhi-110055**

**4. Shri Bajrang Bahadur, Director
M/s Benexi Vinyl Private Limited,
GF-59, QuilaKadam Sharif, Nabi Karim,
New Delhi-110055**

**5. Shri Mumtaj
Plot No. 3 Trikuta Nagar Extn,
Opposite Samsung Building,
Marble Market Jammu-180020**

**6. Shri Krishan Kumar
Resident of H. No. 386, Sector-5,
Trikuta Nagar, Jammu-180004**

**7. Shri Himanshu Chopra, Beneficial Owner of goods
Imported by M/s Benexi Vinyl Private Limited, and
M/s Jammu Udhog
Resident of S-222, Greater Kailash-I
New Delhi**

**8. Shri Manoj Gupta
4294/5, Jai Mata Market, Tri Nagar
New Delhi-110035**

**9. Shri Vishal Yadav
RL-26, 2nd Floor, Gangaram Vatika,
Tilak Nagar, Delhi-110018**

COPY TO:-

- 1) The Chief Commissioner of Customs, CCO, Ahmedabad.**
- 2) The Additional Director General, DRI, Lucknow Zonal Unit, 2/31,
Vishal Khand, Gomati Nagar, Lucknow for information.**
- 3) The Additional DGFT, Udyog Bhawan, H-wing, Gate No-02, Maulana
Azad Road, New Delhi -110011 for information and necessary
action.**
- 4) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs
House, Mundra.**
- 5) The Deputy/Assistant Commissioner (Recovery/TRC), Customs
House, Mundra.**
- 6) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.**
- 7) Notice Board.**
- 8) Guard File.**