सीमाशुल्क(अपील) आयुक्तकाकार्यालय,अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ IshwarBhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281

DIN – 20260371MN0000621109

क	फ़ाइलसंख्या FILE NO.	S/49-298/CUS/JMN/JAN/2025-26 S/49-299/CUS/JMN/JAN/2025-26 S/49-300/CUS/JMN/JAN/2025-26 S/49-301/CUS/JMN/JAN/2025-26 S/49-304/CUS/JMN/JAN/2025-26 S/49-305/CUS/JMN/JAN/2025-26 S/49-306/CUS/JMN/JAN/2025-26 S/49-307/CUS/JMN/JAN/2025-26 S/49-310/CUS/JMN/FEB/2025-26 S/49-311/CUS/JMN/FEB/2025-26 S/49-312/CUS/JMN/FEB/2025-26 S/49-313/CUS/JMN/FEB/2025-26 S/49-314/CUS/JMN/FEB/2025-26 S/49-315/CUS/JMN/FEB/2025-26 S/49-316/CUS/JMN/FEB/2025-26 S/49-317/CUS/JMN/FEB/2025-26
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-448 to 463-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	17.03.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	14/Additional Commissioner/2025-26 dated 27.11.2025
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	17.03.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	**M/s. Kotak Petroleum LLP,** 2nd Floor, Standard House, Opp. Hotel Celebration, Indira Marg, Jamnagar - 361001. **& Others**

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.

2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क(	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage
(ख(	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग(	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
क) (	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
ख) (	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां, यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ — **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**

	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
क) (	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
ख) (	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10% अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER IN APPEAL

The present appeals have been filed by the Appellants (as mentioned in Table -1) under Section 128 of the Customs Act, 1962 against the Order-in-Original No. 14/Additional Commissioner/2025-26 dated 27.11.2025 (hereinafter referred to as "the impugned Order") passed by the Additional Commissioner of Customs (Preventive), Jamnagar (hereinafter referred to as "the Adjudicating Authority") whereby confiscation of the imported goods, vessel and imposition of penalties were ordered under the provisions of the Customs Act, 1962 against the Appellants as detailed in Table -1.

Table-1

S.No.	Appeal No.	Name of the Appellants
1	S/49-298/CUS/JMN/JAN/2025-26	M/s Prime Tankers LLC
2	S/49-299/CUS/JMN/JAN/2025-26	M/s Global Ace Shipping Lines INC
3	S/49-300/CUS/JMN/JAN/2025-26	Shri Jugwinder Singh Brar
4	S/49-301/CUS/JMN/JAN/2025-26	M/s Global Tankers Pvt. Ltd.
5	S/49-304/CUS/JMN/JAN/2025-26	M/s Velji P & Sons
6	S/49-305/CUS/JMN/JAN/2025-26	M/s K Infra Middle East FZE
7	S/49-306/CUS/JMN/JAN/2025-26	M/s Kotak Petroleum LLP
8	S/49-307/CUS/JMN/JAN/2025-26	M/s Hemal Kaniyalal Kotak
9	S/49-310/CUS/JMN/JAN/2025-26	M/s Shri Angarkar Dnyanesh Nandkishor
10	S/49-311/CUS/JMN/JAN/2025-26	Shri Don Bosco Dominic Pradeep
11	S/49-312/CUS/JMN/JAN/2025-26	Captain Sufiyan Khan
12	S/49-313/CUS/JMN/JAN/2025-26	Shri Barnabas Stephen
13	S/49-314/CUS/JMN/JAN/2025-26	Shri Midhun
14	S/49-315/CUS/JMN/JAN/2025-26	Shri Ramakant Mishra
15	S/49-316/CUS/JMN/JAN/2025-26	M/s Preetika Shipping Agencies Pvt. Ltd.
16	S/49-317/CUS/JMN/JAN/2025-26	Shri Deepak Mohanlal Khabrani

2.1 Facts of the case, in brief, are that the case originated from specific intelligence developed by the officers of the Directorate of Revenue Intelligence (DRI) to the effect that consignments of Bitumen Grade VG-30 (hereinafter referred to as "the goods") were being imported at Pipavav Port by mis-declaring the country of origin as Iraq, whereas the goods were actually originating from Iran. It was further gathered that fabricated shipping documents were being used to conceal the actual port of loading and the origin of the goods.

2.2 Acting upon the said intelligence, investigation was initiated in respect of import of 3828.879 MT of Bitumen Grade VG-30 imported by M/s. Kotak Petroleum LLP, Jamnagar, through the vessel M.T. Global Rani (Voyage No. 01/22). The said goods were imported through five Bills of Entry bearing Nos.

7120173, 7120174, 7120175, 7120562 and 7120564 all dated 18.01.2022, filed at Pipavav Port through the Customs Broker M/s. Velji P. & Sons, Jamnagar.

2.3 During investigation, the vessel M.T. Global Rani was rummaged on 20.01.2022 by the officers of DRI. During the course of rummaging, several documents including port clearance certificates and other records issued by authorities of the Islamic Republic of Iran were recovered from the vessel. These documents indicated that the vessel had called at Bandar Abbas Port, Iran, whereas the import documents submitted before Customs authorities declared the port of loading as Khor Fakkan and the country of origin as Iraq.

2.4 Investigation further revealed that the Bills of Lading dated 14.01.2022 issued in respect of the cargo declared Khor Fakkan as the port of loading, whereas the vessel had actually loaded the cargo at Bandar Abbas Port, Iran.

2.5 In view of the above discrepancies, statements of various persons connected with the import transaction and the operation of the vessel were recorded under Section 108 of the Customs Act, 1962.

- Shri Barnabas Stephen, Master of the vessel M.T. Global Rani, in his statement recorded under Section 108 of the Customs Act, 1962, inter-alia stated that the vessel had actually loaded the cargo of Bitumen from Bandar Abbas Port, Iran and thereafter sailed towards India. He also stated that the vessel had not entered Khor Fakkan port, though the shipping documents mentioned the same.
- Shri Don Bosco Dominic Pradeep, Chief Officer of the vessel, in his statement recorded during investigation, stated that the entries in the vessel's logbook were written by him as per the instructions of the Master of the vessel and that the entries relating to cargo transfer at Khor Fakkan were made as per such instructions.
- Shri Angarkar Dnyanesh Nandkishor, another Chief Officer of the vessel, in his statement recorded under Section 108 of the Customs Act, 1962, stated that he was working under the directions of the Master and that the cargo operations were carried out as per such instructions.
- Shri Hemal Kaniyalal Kotak, Partner of M/s. Kotak Petroleum LLP, in his statement recorded under Section 108 of the Customs Act, 1962, when confronted with the documents recovered during investigation, admitted that the cargo imported under the said Bills of Entry had been loaded from Bandar Abbas Port, Iran.

2.6 On the basis of documentary evidence recovered during rummaging of the vessel and the statements recorded during investigation, the officers formed a reasonable belief that the vessel M.T. Global Rani had been used for transportation of goods which were liable to confiscation under the provisions of

the Customs Act, 1962. Accordingly, the vessel was seized under the provisions of the Customs Act, 1962 and a Show Cause Notice was issued proposing confiscation of the vessel and imposition of penalties upon the importer, shipping entities, vessel officers and other persons connected with the import and operation of the vessel.

2.7 The Show Cause Notice alleged involvement of several entities and individuals including M/s. Kotak Petroleum LLP, Shri Hemal Kaniyalal Kotak, M/s. K Infra Middle East FZE, M/s. Velji P. & Sons (Customs Broker), M/s. Preetika Shipping Agencies Pvt. Ltd. (Shipping Agent), Shri Deepak Mohanlal Khabrani, Shri Barnabas Stephen, Shri Don Bosco Dominic Pradeep, Shri Angarkar Dnyanesh Nandkishor, M/s. Prime Tankers LLC., M/s. Global Tankers Pvt. Ltd., Shri Jugwinder Singh Brar and other employees associated with the vessel, for their alleged role in the handling, documentation and transportation of the impugned cargo.

2.8 In the impugned Order-in-Original dated 27.11.2025, the Adjudicating Authority ordered confiscation of the vessel M.T. Global Rani valued at Rs.12,74,00,000/- under Section 115(2) of the Customs Act, 1962, with an option to redeem the same on payment of redemption fine of Rs.50,00,000/- under Section 125(1) of the Customs Act, 1962. The Adjudicating Authority further imposed penalty of Rs.15,00,000/- under Section 114AA of the Customs Act, 1962 upon M/s. Global Ace Shipping Lines INC., Panama, the owner of the vessel, and ordered encashment of Bank Guarantee No. 240GT01220340005 dated 03.02.2022 amounting to Rs.2,00,00,000/- issued by HDFC Bank Limited, Rajula, submitted by the Shipping Agent, to be appropriated towards the redemption fine and penalty imposed. Further, penalty of Rs.5,00,000/- under Sections 112(a)(ii) and 112(b)(ii) of the Customs Act, 1962 and penalty of Rs.5,00,000/- under Section 114AA of the Customs Act, 1962 were imposed upon Shri Hemal Kaniyalal Kotak, Partner of M/s. Kotak Petroleum LLP, while penalty under Section 117 was dropped. The Adjudicating Authority also imposed penalty of Rs.5,00,000/- each under Sections 112(a)(ii) and 112(b)(ii) and Rs.5,00,000/- under Section 114AA upon M/s. K Infra Middle East FZE, UAE. Further, penalty of Rs.2,00,000/- under Section 117 of the Customs Act, 1962 was imposed upon M/s. Velji P. & Sons, Customs Broker, Jamnagar, while the proposal for penalty under Section 114AA against the importer M/s. Kotak Petroleum LLP was dropped. The Adjudicating Authority also imposed penalty of Rs.5,00,000/- each under Sections 112(a)(ii) and 112(b)(ii) and Rs.5,00,000/- under Section 114AA upon M/s. Preetika Shipping Agencies Pvt. Ltd., the Shipping Agent, and similar penalties upon Shri Deepak Mohanlal Khabrani, Director of the said company. In respect of the vessel's officers, penalty of Rs.5,00,000/- under Sections 112(a)(ii) and 112(b)(ii) and Rs.5,00,000/- under

Section 114AA was imposed upon Shri Barnabas Stephen, Master of the vessel, while penalty of Rs.2,00,000/- under Sections 112(a)(ii) and 112(b)(ii) and Rs.2,00,000/- under Section 114AA was imposed upon Shri Don Bosco Dominic Pradeep and Shri Angarkar Dnyanesh Nandkishor, Chief Officers of the vessel. Further, penalty of Rs.20,00,000/- under Sections 112(a)(ii) and 112(b)(ii) was imposed upon M/s. Prime Tankers LLC., Dubai, and penalty of Rs.25,00,000/- under the same provisions was imposed upon M/s. Global Tankers Pvt. Ltd., the manning agency of the vessel owner. Additionally, penalty of Rs.10,00,000/- under Sections 112(a)(ii) and 112(b)(ii) and penalty of Rs.10,00,000/- under Section 114AA was imposed upon Shri Jugwinder Singh Brar, Director of M/s. Global Tankers Pvt. Ltd. Further, penalty of Rs.2,00,000/- under Sections 112(a)(ii) and 112(b)(ii) and Rs.2,00,000/- under Section 114AA was imposed upon Shri Ramakant Mishra, Shri Midhun and Captain Sufiyan Khan, employees associated with M/s. Global Tankers Pvt. Ltd. / Prime Tankers LLP.

3. Being aggrieved by the impugned Order, the Appellants have filed the present appeals and mainly contended as under:

3.1 M/s Kotak Petroleum LLP:

- The appellant, inter alia, submits that the impugned order is a non-speaking order as the Learned Adjudicating Authority has failed to consider and deal with the various submissions and judicial precedents cited by the appellant.
- The appellant further submits that they had no prior knowledge that the vessel M.T. Global Rani (Voyage 01/22) had loaded the goods from Bandar Abbas, Iran, instead of Khor Fakkan, as declared in the import documents. According to the appellant, the fact that the goods were loaded at Bandar Abbas came to light only after the rummaging of the vessel by Customs officers at Pipavav, which led to recovery of certain documents and statements of crew members. It is contended that none of the persons examined under Section 108 of the Customs Act, 1962, including the Master of the vessel, Chief Officers, representatives of the overseas shipping agent, or officials connected with the vessel and shipping agencies, have implicated the appellant in the alleged mis-declaration of port of loading or country of origin. Hence, according to the appellant, there is no oral or documentary evidence linking them with the alleged mis-declaration.
- The appellant submits that the goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962, and the importer cannot be penalized where the Bills of Entry were filed on the basis of documents received from the overseas supplier and there was no mens rea or intention

to misdeclare. It is further contended that there has been no duty evasion arising from the alleged discrepancy.

- The appellant also contends that the requirements of Section 138C of the Customs Act, 1962 relating to admissibility of electronic evidence have not been complied with and therefore reliance placed on the data retrieved and printed under the Panchanama dated 24.01.2022 is legally unsustainable.
- With regard to the documents relied upon in the show cause notice, the appellant submits that the documents such as time sheets, inspection reports, ullage reports, certificates of quality, and bills of lading issued by M/s. Atlas Inspection Services KISH (Ltd.), as well as certain emails and chat communications, pertain to a period prior to filing of the first Bill of Entry dated 24.11.2021 and do not contain any reference to the appellant. It is contended that the Adjudicating Authority has failed to establish any correlation between these documents and the goods imported by the appellant. Further, the Bill of Entry dated 23.02.2022 relied upon in the notice pertains to M/s. Kotak Asphalt LLP, which is a separate legal entity, and in any case correctly declares the port of loading as Bandar Abbas and the country of origin as Iran, thereby negating any allegation of mis-declaration.

- The appellant submits that the allegation in the show cause notice that the appellant was habitually importing Iranian origin bitumen by mis-declaring the port of loading and country of origin is unsupported by any cogent evidence. It is also contended that the statement of Shri Hemal Kotak does not indicate any prior knowledge regarding the alleged mis-declaration and that certain consignments referred to in the notice were imported by M/s. Kotak Asphalt Ltd., which is a different legal entity.
- The appellant further submits that the goods were examined by Customs officers at the port of import and cleared for home consumption only after verification of the declarations and supporting documents, and therefore no case of mis-declaration arises.
- In support of the above contentions, the appellant relies upon the decisions in Neyveli Lignite Corporation Ltd. v. Union of India, 2009 (242) ELT 487 (Mad.), Alstom Transport Ltd. v. Commissioner of Customs, Chennai, 2007 (220) ELT 312 (Tri-Chennai), Kirti Sales Corporation v. Commissioner of Customs, Faridabad, 2008 (232) ELT 151 (Tri-Del.), Agarwal Industrial Corporation Ltd., 2020 (373) ELT 280 (Tri-Bang.), and Amit Petrolube Ltd., 2023 (12) TMI 796 (CESTAT Ahmedabad), wherein confiscation and penalties were set aside where declarations were made

on the basis of documents supplied by the foreign supplier and there was no deliberate mis-declaration.

- The appellant also submits that penalties under Sections 112(a), 112(b), 114AA and 117 of the Customs Act are not sustainable since the goods are not liable to confiscation, no false declaration or document was knowingly used before Customs, and Section 117 being a residuary provision cannot be invoked where specific penal provisions have already been applied, as held by the Hon'ble Bombay High Court in Frigorifico Allana Pvt. Ltd., 2024 (12) TMI 101 (Bom.). It is further contended that cumulative penalty under both clauses (a) and (b) of Section 112 is not legally permissible.
- Accordingly, the appellant prays that the impugned order be set aside and the penalties imposed upon them be dropped.

3.2 Shri Hemal Kotak:

- The appellant submits that the impugned order is a non-speaking order, as the Adjudicating Authority failed to deal with the submissions and judicial precedents relied upon by the appellant.
- It is contended that the Adjudicating Authority erred in not appreciating that the appellant had no prior knowledge that vessel MT Global Rani (Voyage 01/22) had loaded goods from Bandar Abbas (Iran) instead of Khor Fakkan. The alleged facts came to light only after rummaging of the vessel by Customs at Pipavav and statements of the Master and officers of the vessel. None of the persons examined under Section 108 of the Customs Act, 1962, including the Master, vessel officers, shipping agents abroad, representatives of Global Tankers, or the Indian shipping agent, implicated the appellant. Hence, there is no oral or documentary evidence connecting the appellant with the alleged mis-declaration of port of loading or country of origin.
- The appellant submits that the goods are not liable to confiscation under Section 111(m) as the Bills of Entry were filed on the basis of documents received from the overseas supplier and there was no mens rea or duty evasion involved in the alleged mis-declaration.
- It is further submitted that the requirements of Section 138C of the Customs Act regarding admissibility of electronic evidence have not been complied with; therefore, reliance on data retrieved and printed under the Panchanama dated 24.01.2022 is legally unsustainable.
- The show cause notice relies on several documents such as time sheets, inspection reports, ullage reports, emails, and a bill of lading relating to other vessels. The appellant submits that documents at Sl. Nos. 1–8 pre-date 24.11.2021, when the first Bill of Entry was filed by M/s. Kotak, and

none of these documents mention the appellant or establish any nexus with the imports in question. The document at Sl. No. 9 relates to a Bill of Entry filed by M/s. Kotak Asphalt LLP, a separate legal entity, wherein the port of loading and country of origin were correctly declared as Bandar Abbas, Iran. Hence, the allegation of mis-declaration is misplaced.

- Reliance is placed on Neyveli Lignite Corporation Ltd. v. Union of India [2009 (242) ELT 487 (Mad.)], wherein it was held that allegations of fraud, suppression, collusion, or conspiracy must be proved by the party making such allegations.
- The appellant submits that although the notice alleges habitual import of Iranian origin bitumen by mis-declaring the port of loading and country of origin, the Adjudicating Authority has not produced any cogent evidence linking the appellant with such alleged mis-declaration, and the documents relied upon do not relate to the appellant's imports.
- The appellant further submits that at no stage has the appellant admitted to importing goods of Iranian origin by mis-declaring the country of origin. The statement relied upon in the notice does not indicate prior knowledge of any mis-declaration. It is also submitted that certain quantities mentioned in the notice relate to M/s. Kotak Asphalt Ltd., a separate legal entity, and not the appellant.
- It is also contended that the goods were examined by Customs officers at the port of import and cleared for home consumption only after verification of the declarations and documents. Hence, there was no mis-declaration at the time of import and clearance, and consequently the provisions of Sections 111(m), 112(a) and 112(b) are not attracted.
- Reliance is placed on Alstom Transport Ltd. v. Commissioner of Customs [2007 (220) ELT 312 (Tri.)] and Kirti Sales Corporation v. Commissioner of Customs [2008 (232) ELT 151 (Tri.)], wherein confiscation and penalties were set aside when declarations were made based on documents provided by the foreign supplier and there was no deliberate mis-declaration.
- It is further submitted that confiscation under Section 111(m) is not sustainable in light of decisions in Agarwal Industrial Corporation Ltd. [2020 (373) ELT 280 (Tri.)], Amit Petrolube Ltd. [2023 (12) TMI 796 CESTAT Ahmedabad], Alstom Transport Ltd., and Kirti Sales Corporation.
- (L) Consequently, the appellant submits that penalties under Sections 112(a), 112(b), and 114AA are also not sustainable since the goods themselves are not liable to confiscation and there is no evidence that the appellant knowingly made or used false documents.
- The appellant further contends that cumulative penalties under both Sections 112(a) and 112(b) cannot be imposed simultaneously for the same act.

- For the same reasons, the appellant, being a partner of M/s. Kotak, cannot be held personally liable for penalties under Sections 112(a), 112(b), 114AA, or 117 of the Customs Act.
- Reliance is also placed on SKA Cashew & Others v. Commissioner of Customs, Ahmedabad [2024 (12) TMI 172 – CESTAT Ahmedabad], which followed the judgments in Jai Prakash Motwani [2010 (258) ELT 204 (Guj.)] and Vinod Kumar Gupta [2013 (287) ELT 54 (P&H)], wherein it was held that when penalty is imposed on a partnership firm, separate penalty on the individual partner is not warranted. Accordingly, it is prayed that the proceedings against Shri Hemal Kotak, Partner, be dropped.

3.3 M/s. K Infra Middle East FZE.:

- The appellant submits that the Adjudicating Authority failed to appreciate that the appellant firm was created only to facilitate payment transactions between M/s. Kotak Petroleum LLC (buyer) and M/s. Synergy (seller) and had no role in determining the origin of goods or preparation of documents relating to the country of origin. No document prepared by the appellant relating to origin of goods has been cited to justify penalties under Sections 112(a), 112(b) or 114AA of the Customs Act, 1962.
- It is further submitted that the Adjudicating Authority has not identified any document or act attributable to the appellant which establishes that the appellant was responsible for the alleged mismatch in the country of origin of goods imported by M/s. Kotak Petroleum LLP.
- The appellant submits that he did not file any Bill of Entry before Customs. Hence, the appellant did not perform any act or omission that rendered the goods liable to confiscation under Section 111 of the Customs Act, and therefore penalty under Section 112(a) is not sustainable.
- The appellant also contends that he never dealt with the goods either before or after their import into India. The appellant neither rendered the goods liable to confiscation nor dealt with goods knowing that they were liable to confiscation under Section 111. Further, any alleged liability of goods to confiscation could arise only after import into India, and therefore the appellant could not have dealt with the goods with knowledge of such liability. Accordingly, penalties under Sections 112(a) and 112(b) are not applicable.
- It is also submitted that the law does not permit imposition of cumulative penalties under both Sections 112(a) and 112(b) for the same alleged act, and therefore the impugned order is legally untenable on this ground as well.
- The appellant further submits that the Adjudicating Authority relied upon an employment certificate issued by M/s. Kotak Petroleum to Shri Kishan

Chandrakant Vaya for opening a bank account in Dubai in the name of the appellant firm, but failed to establish any evidence showing that the appellant participated in negotiations with the supplier M/s. Synergy or suggested any modification in the country of origin mentioned in the documents supplied by the seller. There is no evidence that the appellant altered any document received from M/s. Synergy or forwarded any altered document to M/s. Kotak Petroleum LLP, which filed the Bills of Entry before Customs.

- In the absence of any evidence demonstrating knowledge, intention, or involvement of the appellant in making or using false declarations or documents, the penalty imposed under Section 114AA is without factual or legal basis. Accordingly, the appellant submits that penalties under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962 are not sustainable in law.

3.4 M/s. Velji P. & Sons:

- The impugned order travels beyond the scope of the show cause notice, as there was no allegation in the notice regarding any contravention of Section 46 of the Customs Act, 1962. Since the penalty has been imposed on a ground not proposed in the show cause notice, the order is legally unsustainable.
- The appellant submits that Section 46 of the Customs Act imposes obligations upon the importer and not upon a Custom Broker. As the terms "importer" and "Custom Broker" are distinct and not interchangeable in the statute, invocation of Sections 46(4) and 46(4A) against the appellant, who acted only as a Custom Broker, is legally incorrect.
- It is further submitted that the impugned order does not cite any legal provision requiring a Custom Broker to independently verify the correctness of information contained in documents provided by the importer.
- The appellant submits that it is a settled legal position that a Custom Broker cannot be penalized when the Bill of Entry is prepared and filed on the basis of documents furnished by the importer, and there is no evidence to show that the broker had knowledge of any mis-declaration.
- In support of the above proposition, reliance is placed on the following judicial decisions:
  - D. Ankineedu Chowdry – 2005 (182) ELT 206 (Tri.-Chennai)
  - Prime Forwarders – 2008 (222) ELT 137 (Tri.-Ahmedabad)
  - G.M. Enterprises – 2010 (262) ELT 796 (Tri.-Mumbai)
  - Sindhu Cargo Services Ltd. – 2008 (226) ELT 282 (Tri.-Chennai)

- Akanksha Enterprises – 2006 (203) ELT 126 (Tri.-Delhi)
- Vetri Impex – 2004 (172) ELT 347 (Tri.-Chennai)
- Mahendra Patni – 2004 (164) ELT 259 (Tri.-Kolkata)
- V. Esakia Pillai – 2001 (138) ELT 802 (Tri.-Chennai)

➢ The appellant further submits that penalty under Section 117 cannot be imposed in the absence of mens rea or intentional contravention. Reliance is placed on the following decisions:

- Syndicate Shipping Services Pvt. Ltd. – 2003 (154) ELT 756 (Tri.-Chennai)
- Vijendra Singh CHA – 2017 (7) TMI 272 (CESTAT Allahabad)
- DHL Express (India) Pvt. Ltd. – 2016 (332) ELT 169 (Tri.-Mumbai)

➢ In view of the above submissions, the appellant contends that the penalty imposed under Section 117 of the Customs Act, 1962 is without legal basis and liable to be set aside.

3.5 **Shri Angarkar Dnyanesh Nandkishor**:

➢ The appellant submits that the Adjudicating Authority has erred in imposing penalties under Section 112(a)(ii), 112(b)(ii) and 114AA of the Customs Act, 1962 without recording any specific findings regarding the role of the appellant or explaining how the appellant's acts or omissions rendered the goods liable to confiscation under Section 111 of the Act. It is contended that the appellant was appointed as Chief Officer of the vessel only on 14.01.2022, and therefore had no role in the alleged manipulation of voyage documents or concealment of the last port of call. According to the appellant, no evidence has been brought on record to show that the appellant aided or abetted the Master of the vessel or the importer in mis-declaring the country of origin or port of loading. The appellant submits that he joined the vessel at Khor Fakkan when the cargo was already loaded and therefore had no knowledge regarding any alleged loading of goods at Bandar Abbas, Iran.

➢ The appellant further submits that the Adjudicating Authority has wrongly relied upon the statement recorded under Section 108 of the Customs Act to fasten liability. It is contended that the statement does not indicate that the appellant manipulated any documents or made incorrect entries in the logbook. The appellant submits that all relevant ship documents such as ullage reports, statement of facts, vessel experience factor, ROB/OBQ reports and other voyage records were duly maintained. It is argued that even if the Department alleges that some documents recovered during rummaging were not genuine, the appellant had no role in preparation of such documents, and therefore no penalty can be imposed on him.

- The appellant also contends that reliance on statements recorded during investigation is contrary to the provisions of Section 138B of the Customs Act, as the procedure prescribed therein was not followed. It is submitted that the Adjudicating Authority did not examine the appellant as a witness nor provide an opportunity for examination-in-chief before relying upon the statement. Reliance is placed on the decisions in Patidhar Products v. Commissioner, Bhavnagar, Forward Resources Pvt. Ltd. v. Commissioner, Surat-I, Reynolds Petrochem Ltd. v. Commissioner, Surat, Shree Hari Steel Industries v. Commissioner, Bhavnagar, J.P. Iscon Pvt. Ltd., and G-Tech Industries v. Union of India, 2016 (339) ELT 209 (P&H), wherein it has been held that statements recorded during investigation cannot be relied upon unless the requirements of Section 138B are complied with.
- The appellant further submits that the allegation that the cargo was loaded from Iran is based only on photocopies of certain documents recovered during rummaging, the authenticity of which has not been established. According to the appellant, no investigation was conducted to verify these documents from the issuing authorities or from the alleged suppliers in Iran. In the absence of corroborative evidence, the appellant submits that such documents cannot be relied upon, whereas the original shipping documents such as bill of lading, ullage reports, survey reports and statement of facts carried on board were genuine and consistent with the IGM filed by the shipping agent.
- The appellant also argues that the provisions of Section 112(a)(ii) and 112(b)(ii) have been wrongly invoked as these provisions apply in cases involving duty evasion, whereas in the present case there is no allegation of duty evasion and the dispute only relates to alleged mis-declaration of country of origin and port of loading. It is submitted that the Adjudicating Authority has also failed to establish that the appellant had knowledge or reason to believe that the goods were liable for confiscation so as to attract Section 112(b).
- With regard to the penalty imposed under Section 114AA, the appellant submits that the said provision applies only where a person knowingly or intentionally makes or uses a false declaration, statement or document. It is contended that the appellant neither prepared nor used any false document and had no knowledge of any alleged mis-declaration. Reliance is placed on the decisions in A.V. Global Corporation Pvt. Ltd. v. Commissioner of Customs, 2025 (391) ELT 509 (Tri.-Del.), Access World Wide Cargo v. Commissioner of Customs, 2022 (379) ELT 120 (Tri.-Bang.), and United Custom House Agency Pvt. Ltd. v. Commissioner of Customs (Preventive), Kolkata, 2023 (384) ELT 97 (Tri.-Kol.), wherein it was held

that penalty under Section 114AA cannot be imposed in the absence of deliberate or wilful misrepresentation.

- The appellant also relies upon the judgment of the Hon'ble Supreme Court in Hindustan Steel Ltd., 1978 (2) ELT (J159), wherein it was held that penalty should not be imposed merely because it is lawful to do so and can be imposed only where there is deliberate or contumacious conduct. It is submitted that in the present case no such conduct has been established against the appellant.
- Lastly, the appellant submits that the penalties imposed are highly disproportionate, particularly when the appellant derived no benefit from the alleged transaction and was only discharging his duties as Chief Officer of the vessel. Accordingly, it is prayed that the impugned order imposing penalties upon the appellant be set aside in the interest of justice.

3.6 Shri Don Bosco Dominic Pradeep:

- The appellant submits that the Adjudicating Authority has erred in imposing penalties under Sections 112(a)(ii), 112(b)(ii) and 114AA of the Customs Act, 1962 by alleging acts of omission and commission rendering the goods liable to confiscation and by holding that the appellant knowingly used false documents. It is contended that these findings are based solely on the statement of the appellant recorded on 21.01.2022, which according to the appellant was not recorded in a free and fair manner. The appellant submits that no penalty can be imposed solely on the basis of such statement.
- The appellant further submits that the Adjudicating Authority has relied upon the statement recorded during investigation without complying with Section 138B of the Customs Act, which governs the admissibility of such statements. It is argued that the said provision requires that the person whose statement is relied upon must be examined before the Adjudicating Authority so as to confirm the statement. In the present case, no such examination-in-chief was conducted and therefore the statement cannot be treated as admissible evidence. Reliance is placed on Patidhar Products v. Commissioner, Bhavnagar (Final Order No. A/11216-11224/2022 dated 18.10.2022), Forward Resources Pvt. Ltd. v. Commissioner, Surat-I [2023 (69) GSTL 76], Reynolds Petrochem Ltd. v. Commissioner, Surat [2023 (68) GSTL 292], Shree Hari Steel Industries v. Commissioner, Bhavnagar [2022 (8) TMI 1251], J.P. Iscon Pvt. Ltd. [2022 (63) GSTL 64], and G-Tech Industries v. Union of India [2016 (339) ELT 209 (P&H)], wherein it has been held that statements recorded during investigation cannot be relied upon unless the procedure prescribed under Section 138B is followed.

- The appellant further submits that the goods were loaded at Khor Fakkan, UAE, and that he had no role in any alleged mis-declaration regarding the country of origin or load port. It is stated that the charge of Chief Officer of the vessel was transferred to Shri Angarkar Dnyanesh Nandkishor on 14.01.2022, and therefore the appellant had no involvement in the voyage to Pipavav Port. The appellant also submits that the department has relied only on photocopies of certain documents allegedly recovered during rummaging to claim that the goods were loaded from Iran. According to the appellant, the authenticity of such photocopies has not been established through any corroborative evidence or verification from the issuing authorities, nor has any investigation been conducted regarding the alleged supply of Bitumen from Iran. On the contrary, the documents carried on board such as Bill of Lading, Ullage Reports, Statement of Facts and Survey Reports were genuine and consistent with the IGM filed by the shipping agent, and therefore the allegations based on such unverified documents are unsustainable.
- The appellant also contends that the provisions of Sections 112(a)(ii) and 112(b)(ii) have been wrongly invoked since these provisions relate to cases involving duty evasion, whereas the present case only alleges mis-declaration of country of origin and load port without any revenue implication. It is further submitted that the impugned order does not specify any concrete role played by the appellant which would render the goods liable to confiscation under Section 111, nor does it establish that the appellant had knowledge or reason to believe that the goods were liable for confiscation so as to attract Section 112(b).
- With regard to the penalty imposed under Section 114AA, the appellant submits that the said provision applies only where a person knowingly or intentionally makes or uses a false declaration or document. It is contended that there is no evidence to show that the appellant knowingly made or used any false document. The description of goods, namely Bitumen V-30, is undisputed and there is no allegation of excess or shortage of goods. The documents such as Bill of Lading and Ullage Reports were also consistent with the IGM, and therefore the ingredients of Section 114AA are not satisfied.
- The appellant further submits that Section 114AA is intended to deal with cases of fraudulent exports and cannot be invoked against persons such as vessel officers who merely handle documents in the course of their duties. Reliance is placed on A.V. Global Corporation Pvt. Ltd. v. Commissioner of Customs [2025 (391) ELT 509 (Tri.-Del.)], Access World Wide Cargo v. Commissioner of Customs [2022 (379) ELT 120 (Tri.-Bang.)], and United Custom House Agency Pvt. Ltd. v. Commissioner of Customs

(Preventive), Kolkata [2023 (384) ELT 97 (Tri.-Kol.)], wherein it was held that the provision is meant to address fraudulent exporters and cannot be invoked in the absence of wilful misrepresentation.

- The appellant also relies upon the judgment of the Hon'ble Supreme Court in Hindustan Steel Ltd. [1978 (2) ELT (J159)], wherein it was held that penalty should not be imposed merely because it is lawful to do so and can be imposed only where there is deliberate or contumacious conduct. The appellant submits that no such conduct has been established in the present case.
- Lastly, the appellant submits that the penalties aggregating to Rs. 4,00,000/- imposed upon him are highly disproportionate, particularly when the appellant derived no benefit from the alleged transaction and was only discharging his duties as Chief Officer of the vessel. It is therefore prayed that the impugned order imposing penalties upon the appellant be set aside in the interest of justice.

3.7 Captain Sufiyan Khan:

- The appellant submits that the Adjudicating Authority has erred in imposing penalties under Sections 112(a)(ii), 112(b)(ii) and 114AA of the Customs Act, 1962 without recording any specific findings regarding the role of the appellant or explaining how any act or omission on his part rendered the goods liable for confiscation under Section 111 of the Act. It is contended that the impugned order merely alleges that the appellant aided the Master of the vessel in manipulating voyage documents and concealing the last port of call, and also abetted the importer in mis-declaring the country of origin and port of loading, but no evidence or specific instances have been brought on record to substantiate such allegations. The appellant submits that he had no responsibility for preparation or submission of voyage documents and that the cargo had already been loaded with accompanying documents such as Bill of Lading when he joined the vessel. Accordingly, the allegations against the appellant are based only on assumptions and presumptions.

The appellant further submits that the impugned order relies upon statements of witnesses and co-accused recorded under Section 108 of the Customs Act, though none of these statements indicate that the appellant manipulated any documents. It is stated that the appellant merely forwarded routine ship documents such as Ullage Reports, Statement of Facts, Vessel Experience Factor, ROB/OBQ reports, etc., which were supplied by the employer and believed to be genuine. The appellant had no role in preparation of these documents and therefore cannot be penalized on that basis.

- The appellant also contends that reliance upon such statements is contrary to Section 138B of the Customs Act, which requires examination-in-chief of persons whose statements are relied upon. Since the adjudicating authority did not follow this procedure, the statements relied upon are inadmissible. In support, reliance is placed on Patidhar Products v. Commissioner, Bhavnagar (Final Order dated 18.10.2022), Forward Resources Pvt. Ltd. v. Commissioner, Surat-I [2023 (69) GSTL 76], Reynolds Petrochem Ltd. v. Commissioner, Surat [2023 (68) GSTL 292], Shree Hari Steel Industries v. Commissioner, Bhavnagar [2022 (8) TMI 1251], J.P. Iscon Pvt. Ltd. [2022 (63) GSTL 64], and G-Tech Industries v. Union of India [2016 (339) ELT 209 (P&H)], wherein it has been held that statements recorded during investigation cannot be relied upon unless the procedure under Section 138B is complied with.
- The appellant further submits that the department has alleged loading of goods from Iran only on the basis of photocopies of certain documents recovered during rummaging of the vessel. The authenticity of such photocopies has not been established through any corroborative evidence or verification from authorities in Iran. In contrast, the original ship documents such as Bill of Lading, Ullage Reports, Statement of Facts and Survey Reports were genuine and consistent with the IGM filed by the shipping agent, and therefore the allegations based on unverified photocopies are unsustainable.
- It is also contended that the provisions of Sections 112(a)(ii) and 112(b)(ii) have been wrongly invoked since these provisions apply to cases involving duty evasion, whereas the present case only alleges mis-declaration of country of origin and load port without any revenue implication. The impugned order also fails to establish that the appellant dealt with goods knowing or having reason to believe that they were liable for confiscation, which is a prerequisite for invoking Section 112(b).
- With regard to penalty under Section 114AA, the appellant submits that the provision applies only where a person knowingly or intentionally makes or uses a false declaration or document. No such evidence has been brought on record in the present case. The description of goods, namely Bitumen V-30, is undisputed and there is no allegation of excess or shortage of goods. The documents such as Bill of Lading and Ullage Reports were consistent with the IGM filed by the shipping agent.
- The appellant further relies upon A.V. Global Corporation Pvt. Ltd. v. Commissioner of Customs [2025 (391) ELT 509 (Tri.-Del.)], Access World Wide Cargo v. Commissioner of Customs [2022 (379) ELT 120 (Tri.-Bang.)], and United Custom House Agency Pvt. Ltd. v. Commissioner of Customs (Preventive), Kolkata [2023 (384) ELT 97 (Tri.-Kol.)], wherein it was held

that Section 114AA is intended for cases involving fraudulent exporters and cannot be invoked in the absence of wilful misrepresentation.

- The appellant also relies upon the judgment of the Hon'ble Supreme Court in Hindustan Steel Ltd. [1978 (2) ELT (J159)], wherein it was held that penalty should not be imposed merely because it is lawful to do so and can be imposed only where deliberate or contumacious conduct is established.
- Lastly, the appellant submits that the penalties aggregating to Rs. 4,00,000/- are highly disproportionate, particularly when the appellant derived no benefit from the alleged transaction and had no role in the alleged mis-declaration. Accordingly, it is prayed that the impugned order imposing penalties upon the appellant be set aside in the interest of justice.

3.8 Shri Barnabas Stephen:

- The appellant submits that the Adjudicating Authority has erred in imposing penalties under Sections 112(a)(ii), 112(b)(ii) and 114AA of the Customs Act, 1962 by wrongly holding that the appellant had knowingly used false documents and committed acts rendering the goods liable for confiscation. It is contended that such findings are based solely on the appellant's statements dated 20.01.2022 and 21.01.2022, which were not recorded in a free and voluntary manner and therefore cannot be relied upon for imposing penalties.
- The appellant further submits that the impugned order relies heavily on statements recorded under Section 108 of the Customs Act without complying with the mandatory requirements of Section 138B of the Act, which requires examination-in-chief of the person whose statement is relied upon before treating such statement as admissible evidence. Since the Adjudicating Authority has not followed the procedure prescribed under Section 138B, the statements cannot be relied upon for imposing penalties. Reliance in this regard is placed on Patidhar Products v. Commissioner, Bhavnagar (Final Order dated 18.10.2022), Forward Resources Pvt. Ltd. v. Commissioner, Surat-I [2023 (69) GSTL 76], Reynolds Petrochem Ltd. v. Commissioner, Surat [2023 (68) GSTL 292], Shree Hari Steel Industries v. Commissioner, Bhavnagar [2022 (8) TMI 1251], J.P. Iscon Pvt. Ltd. [2022 (63) GSTL 64], and G-Tech Industries v. Union of India [2016 (339) ELT 209 (P&H)], wherein it has been held that statements recorded during investigation cannot be relied upon unless the procedure under Section 138B is followed.
- The appellant also contends that the impugned order wrongly relies upon photocopies of documents such as Health Certificate, Sanitary Certificate

and Vessel Clearance documents, allegedly indicating loading from Iran, without establishing their authenticity through corroborative evidence. No verification was conducted from the concerned authorities in Iran and no evidence has been produced to prove the genuineness of these documents. The appellant submits that reliance on such unverified photocopies is unsustainable, particularly when the only alleged corroboration is the appellant's statement, which itself is disputed.

- The appellant further submits that the provisions of Sections 112(a)(ii) and 112(b)(ii) have been wrongly invoked since these provisions apply to cases involving duty evasion, whereas the present case involves only alleged mis-declaration of country of origin and port of loading, without any revenue implication. Therefore, the statutory requirements for invoking these provisions are not satisfied.
- It is also submitted that the appellant was merely acting as Master of the vessel and employee of M/s. Global Tankers Pvt. Ltd., and had no personal involvement in the alleged mis-declaration. The appellant only transported the cargo from Khor Fakkan, UAE to Pipavav, and had no role in preparation of import documents or declarations. Hence, the ingredients of Section 112(b) are not satisfied as there is no evidence that the appellant knowingly dealt with goods liable to confiscation.
- The appellant further contends that the penalty under Section 114AA is also unsustainable as the provision applies only where a person knowingly or intentionally makes or uses false declarations or documents, which has not been established in the present case. The description of goods as Bitumen V-30 is undisputed and there is no allegation of excess or shortage. The shipping documents such as Bill of Lading and Ullage Reports were consistent with the IGM filed by the shipping agent, and therefore the appellant cannot be said to have used any false document.
- Reliance is placed on A.V. Global Corporation Pvt. Ltd. v. Commissioner of Customs [2025 (391) ELT 509 (Tri.-Del.)], Access World Wide Cargo v. Commissioner of Customs [2022 (379) ELT 120 (Tri.-Bang.)], and United Custom House Agency Pvt. Ltd. v. Commissioner of Customs (Preventive), Kolkata [2023 (384) ELT 97 (Tri.-Kol.)], wherein it was held that Section 114AA is primarily intended for cases involving fraudulent exporters and cannot be invoked in the absence of wilful misrepresentation.
- The appellant also relies on the judgment of the Hon'ble Supreme Court in Hindustan Steel Ltd. [1978 (2) ELT (J159)], wherein it was held that penalty should not be imposed merely because it is lawful to do so and can be imposed only where deliberate or contumacious conduct is established.

- Lastly, it is submitted that the penalties aggregating to Rs. 10,00,000/- imposed upon the appellant are highly disproportionate, particularly when the appellant derived no benefit from the transaction and merely acted in his capacity as Master of the vessel. Accordingly, it is prayed that the impugned order imposing penalties upon the appellant be set aside.

3.9 Shri Midhun:

- The appellant submits that the Adjudicating Authority erred in imposing penalties under Sections 112(a)(ii), 112(b)(ii) and 114AA of the Customs Act, 1962 without establishing any specific act, omission, or role attributable to the appellant that rendered the goods liable to confiscation under Section 111 of the Act. It is contended that the appellant, being the Chief Officer of the vessel, had no responsibility for preparation or manipulation of voyage documents, declaration of country of origin, or declaration of load port. No evidence has been brought on record to show that the appellant aided or abetted the Master of the vessel or the importer in manipulation of documents or mis-declaration of the country of origin or port of loading. The allegations, therefore, are stated to be based on mere assumptions and presumptions.
- The appellant further submits that the findings in the impugned order are primarily based on statements recorded under Section 108 of the Customs Act, which cannot be relied upon unless the procedure prescribed under Section 138B of the Act is followed. Since the persons whose statements were relied upon were not examined before the adjudicating authority, such statements are inadmissible in evidence. In support of this contention, reliance is placed on the decisions in Patidhar Products vs. Commissioner, Bhavnagar (Final Order dated 18.10.2022), Forward Resources Pvt. Ltd. vs. Commissioner, Surat-I [2023 (69) GSTL 76], Reynolds Petrochem Ltd. vs. Commissioner, Surat [2023 (68) GSTL 292], Shree Hari Steel Industries vs. Commissioner, Bhavnagar [2022 (8) TMI 1251], J.P. Iscon Pvt. Ltd. [2022 (63) GSTL 64], and G-Tech Industries vs. Union of India [2016 (339) ELT 209 (P&H)], wherein it has been held that statements recorded during investigation cannot be relied upon unless the requirements of Section 138B are satisfied.
- It is also contended that the department relied upon photocopies of certain documents allegedly recovered during rummaging of the vessel to allege that the cargo originated from Iran. According to the appellant, these photocopies were neither corroborated nor verified through any independent investigation, nor was any inquiry conducted with the alleged port of loading or suppliers. In the absence of corroborative evidence, such

photocopies cannot be treated as reliable evidence, particularly when the vessel carried regular shipping documents such as Bill of Lading, Ullage Reports and Statement of Facts, which indicated loading from Khor Fakkan, UAE.

- The appellant further submits that the provisions of Section 112(a)(ii) and 112(b)(ii) are not applicable since there is no allegation of duty evasion in the present case. The show cause notice only alleges mis-declaration of country of origin and load port without any revenue implication. In the absence of duty sought to be evaded, the said provisions cannot be invoked. It is also contended that there is no finding that the appellant had possession of, or was concerned with carrying, concealing or dealing with goods with knowledge that they were liable for confiscation under Section 111.
- With regard to the penalty imposed under Section 114AA, the appellant submits that the said provision applies only where a person knowingly or intentionally makes or uses false or incorrect documents. In the present case, it is neither alleged nor proved that the appellant knowingly made, signed, or used any false document. The appellant merely handled routine vessel documents supplied by the employer and had no role in their preparation. Reliance is placed on the decisions in A.V. Global Corporation Pvt. Ltd. vs. Commissioner of Customs [2025 (391) ELT 509 (Tri-Del)], Access World Wide Cargo vs. Commissioner of Customs [2022 (379) ELT 120 (Tri-Bang.)], and United Custom House Agency Pvt. Ltd. vs. Commissioner of Customs (Preventive), Kolkata [2023 (384) ELT 97 (Tri-Kolkata)], wherein it was held that Section 114AA is intended to address fraudulent export transactions and cannot be invoked against intermediaries who merely act on the basis of documents provided to them.
- The appellant also relies on the judgment of the Hon'ble Supreme Court in Hindustan Steel Ltd. vs. State of Orissa [1978 ELT (J159)], wherein it was held that penalty should not be imposed merely because it is lawful to do so, unless there is deliberate, contumacious, or dishonest conduct. It is contended that no such conduct is established in the present case.
- Finally, the appellant submits that the penalties imposed are disproportionate, as the appellant neither derived any benefit from the alleged transaction nor played any role in the import process. Accordingly, it is prayed that the penalties imposed under Sections 112 and 114AA be set aside as being unsustainable in law.

3.10 Shri Ramakant Mishra:

- The appellant submits that the Adjudicating Authority has erred in imposing penalties under Sections 112(a)(ii), 112(b)(ii) and 114AA of the

Customs Act, 1962 without establishing any specific act, omission, or role attributable to the appellant which rendered the goods liable to confiscation under Section 111 of the Act. It is contended that no evidence has been brought on record to show that the appellant aided or abetted the Master of the vessel in manipulating voyage documents or concealing the last port of call, or that the appellant assisted the importer in mis-declaration of the country of origin or port of loading. The appellant submits that he had no responsibility for preparation or submission of voyage documents or logbook entries and had no knowledge regarding the alleged visit of the vessel to Bandar Abbas, Iran. The cargo was already loaded and accompanied by regular shipping documents such as Bill of Lading and other vessel documents provided by the employer, and therefore the allegations against the appellant are stated to be based only on assumptions and presumptions.

- The appellant further submits that the findings in the impugned order are primarily based on statements recorded under Section 108 of the Customs Act, which cannot be relied upon unless the procedure prescribed under Section 138B of the Act is complied with. Since the witnesses and co-accused whose statements were relied upon were not examined before the Adjudicating Authority, such statements are inadmissible in evidence. In support of this contention, reliance is placed on the decisions in Patidhar Products vs. Commissioner, Bhavnagar (Final Order dated 18.10.2022), Forward Resources Pvt. Ltd. vs. Commissioner, Surat-I [2023 (69) GSTL 76], Reynolds Petrochem Ltd. vs. Commissioner, Surat [2023 (68) GSTL 292], Shree Hari Steel Industries vs. Commissioner, Bhavnagar [2022 (8) TMI 1251], J.P. Iscon Pvt. Ltd. [2022 (63) GSTL 64] and G-Tech Industries vs. Union of India [2016 (339) ELT 209 (P&H)], wherein it has been held that statements recorded during investigation cannot be relied upon unless the procedure under Section 138B is followed.
- It is further contended that the department relied upon photocopies of certain documents allegedly recovered during rummaging of the vessel to allege loading of goods from Iran. According to the appellant, these photocopies were neither verified nor corroborated by any independent investigation. No inquiry was conducted in Iran to establish the authenticity of the documents or the alleged supply of bitumen from Iran. In the absence of corroborative evidence, such photocopies cannot be relied upon, particularly when the vessel carried regular shipping documents such as Bill of Lading, Ullage Reports and Statement of Facts, which indicated loading from Khor Fakkan, UAE.
- The appellant also submits that the provisions of Section 112(a)(ii) and 112(b)(ii) are not applicable in the present case since there is no allegation

of duty evasion. The show cause notice only alleges mis-declaration of the country of origin and load port without any revenue implication. In the absence of duty sought to be evaded, invocation of Section 112(a)(ii) and 112(b)(ii) is stated to be legally unsustainable. It is further contended that there is no finding that the appellant was in possession of, or concerned with carrying, concealing or dealing with goods with knowledge that they were liable to confiscation under Section 111 of the Act.

- With regard to the penalty imposed under Section 114AA, the appellant submits that the said provision is attracted only where a person knowingly or intentionally makes or uses false or incorrect documents. In the present case, it is neither alleged nor proved that the appellant knowingly made, signed, or used any false document. The appellant merely handled routine vessel documents supplied by the employer and had no role in their preparation. Reliance is placed on the decisions in A.V. Global Corporation Pvt. Ltd. vs. Commissioner of Customs [2025 (391) ELT 509 (Tri-Del)], Access World Wide Cargo vs. Commissioner of Customs [2022 (379) ELT 120 (Tri-Bang.)] and United Custom House Agency Pvt. Ltd. vs. Commissioner of Customs (Preventive), Kolkata [2023 (384) ELT 97 (Tri-Kolkata)], wherein it was held that Section 114AA is intended to address fraudulent export transactions and cannot be invoked against intermediaries who merely act on the basis of documents provided to them.
- The appellant further relies on the judgment of the Hon'ble Supreme Court in Hindustan Steel Ltd. vs. State of Orissa [1978 ELT (J159)], wherein it was held that penalty should not be imposed merely because it is lawful to do so unless there is deliberate or contumacious conduct. It is contended that no such conduct is established in the present case. The appellant also submits that the penalties imposed are disproportionate, as the appellant neither derived any benefit from the alleged transaction nor played any substantive role in the import process. Accordingly, it is prayed that the penalties imposed under Sections 112 and 114AA be set aside as being unsustainable in law.

3.11 M/s Preetika Shipping Agencies Pvt. Ltd. and Shri Deepak Mohanlal Khabrani:

- At the outset, the appellant submits that the impugned order is in violation of the principles of natural justice, as the Adjudicating Authority failed to consider the detailed submissions and judicial precedents relied upon by the appellant. Though various case laws were cited to establish that a shipping agent can be penalized only when there is evidence of deliberate involvement or knowledge in irregular import/export, the Adjudicating Authority ignored these precedents and imposed penalties without

recording reasoned findings. Such non-consideration of binding precedents renders the impugned order unsustainable.

- The Adjudicating Authority erred in holding that the appellant violated Section 30(2) of the Customs Act, 1962 while filing the Import General Manifest (IGM). The appellant submits that IGM No. 2301697 dated 17.01.2022 was filed strictly on the basis of the Bill of Lading and other documents provided by M/s. Prime Tankers LLC, UAE. There is no allegation that the details declared in the IGM were contrary to the documents supplied by the shipping line. A shipping agent cannot independently verify the genuineness of documents such as the Certificate of Origin or port of loading, and therefore cannot be held responsible for any alleged discrepancy in such documents.
- The Adjudicating Authority wrongly relied upon DG Shipping Expulsion Order No. 01/2021 dated 06.01.2021 issued to vessel MT Global Rani to conclude that the appellant was aware of the alleged modus operandi. The appellant submits that the said expulsion order has no nexus with the filing of IGM in the present case, especially when the ban on the vessel had already been lifted. There is no evidence to suggest that the appellant knew that the Bills of Lading or other documents were false or fabricated, or that the goods were loaded from any port other than Khor Fakkan.
- It is further submitted that the appellant made declarations before Customs authorities bonafide and based on the documents available. The Adjudicating Authority has merely alleged that the appellant aided the importer in mis-declaration without producing any cogent evidence establishing knowledge or participation of the appellant in the alleged irregular import. In absence of such evidence, penalty under Section 112(a) cannot be sustained.
- It is a settled legal position that penalty under Section 112(a) cannot be imposed without proof of knowledge or intent. Reliance is placed on Marine Container Services (I) Pvt. Ltd. vs. Commissioner of Customs (Preventive), Mumbai [2008 (221) ELT 233 (Tri-Mumbai)], wherein it was held that a shipping agent cannot be penalized for incorrect declaration when such details originate from documents provided by others. Similarly, in Ocean Shipping Services vs. Commissioner of Customs, Ahmedabad [2005 (191) ELT 890 (Tri-Mumbai)], the Tribunal held that a shipping agent is required to file the IGM only on the basis of the Bill of Lading and documents provided by the shipping line. In Rajathi Agencies vs. Collector of Customs [1993 (63) ELT 332 (Tribunal)], it was held that penalty cannot be imposed in absence of evidence connecting the shipping agent with the alleged offence.

- The appellant submits that the provisions of Section 112(b) are also wrongly invoked. The said provision applies only where a person acquires possession of or deals with goods knowing or having reason to believe that such goods are liable to confiscation under Section 111. In the present case, the appellant merely filed the IGM and was never concerned with carrying, concealing, or dealing with the goods in question. Hence, the essential ingredients of Section 112(b) are not satisfied.
- With regard to penalty under Section 114AA, the appellant submits that the provision is applicable only where a person knowingly or intentionally makes or uses false documents. Reliance is placed on Savithri Jewellers Pvt. Ltd. [2020 (374) ELT 754], wherein it was held that a Customs House Agent cannot be penalized under Section 114AA when documents are prepared in a bonafide manner based on declarations of the exporter/importer.
- It is further submitted that Section 114AA is primarily intended to address fraudulent export transactions, as evident from the 27th Report of the Standing Committee on Finance (2005). Reliance is placed on A.V. Global Corporation Pvt. Ltd. vs. Commissioner of Customs [2025 (391) ELT 509 (Tri-Del.)], Access World Wide Cargo vs. Commissioner of Customs [2022 (379) ELT 120 (Tri-Bang.)], and United Custom House Agency Pvt. Ltd. vs. Commissioner of Customs (Preventive), Kolkata [2023 (384) ELT 97 (Tri-Kolkata)], wherein it was held that Section 114AA is not invocable against intermediaries such as agents in absence of proof of knowledge or involvement.
- The appellant further submits that neither the show cause notice nor the impugned order establishes that the appellant knowingly or intentionally used false documents. In absence of evidence proving deliberate mis-declaration, invocation of Section 114AA is legally unsustainable.
- Reliance is also placed on the judgment of the Hon'ble Supreme Court in Hindustan Steel Ltd. vs. State of Orissa [1978 ELT (J159)], wherein it was held that penalty should not be imposed merely because it is lawful to do so unless the conduct of the assessee is deliberate, dishonest, or contumacious. No such conduct is established in the present case.
- The appellant further submits that the Adjudicating Authority wrongly rejected the request for cross-examination of witnesses, despite heavily relying on their statements. Denial of cross-examination violates the principles of natural justice. Reliance is placed on Pareshbhai Rambhai Amin (Gujarat High Court, Tax Appeal No. 505 of 2024, dated 14.11.2025) and Mitesh Impex [2025 (12) TMI 143 (Guj.)], wherein it was held that statements relied upon without granting cross-examination cannot be considered as valid evidence. Further reliance is placed on Additional DG

(Adjudication) vs. Its My Name Pvt. Ltd. [2021 (375) ELT 545 (Del.)], G-Tech Industries vs. Union of India [2016 (339) ELT 209 (P&H)], and Jindal Drugs Pvt. Ltd. vs. Union of India [2016 (340) ELT 67 (P&H)], wherein it was held that statements recorded during investigation can be relied upon only after compliance with the procedure prescribed under Section 138B of the Customs Act.

- The appellant further submits that penalty imposed on Appellant No. 2 (Director) is also unjustified, as he acted only in his official capacity and did not deal with the goods personally or derive any personal benefit. Reliance is placed on Z.U. Alvi vs. CCE, Bhopal [2000 (36) RLT 721], wherein it was held that employees acting in their official capacity cannot be penalized in absence of personal involvement.
- It is also submitted that the penalties imposed, i.e., ₹10,00,000 on the appellant company and ₹10,00,000 on the Director, are harsh and disproportionate, particularly when the appellant acted only as a shipping agent and did not derive any undue benefit. The doctrine of proportionality and rationality has not been considered by the Adjudicating Authority.

3.12 Global Ace Shipping Lines:

- The Appellant submits that the Ld. Additional Commissioner failed to appreciate that the Appellant is merely the owner of the vessel and not the owner of the imported cargo, namely Bitumen. The cargo had already been discharged and released for home consumption by the proper officer. In terms of Section 111 of the Customs Act, 1962 read with Section 2(16) of the Customs Act, 1962, confiscation can be ordered only in respect of imported goods, and not the vessel carrying such goods. Therefore, the confiscation of the vessel is legally unsustainable.
- It is further submitted that the alleged mis-declaration of the country of origin is not a ground contemplated under Section 115 of the Customs Act, 1962 for confiscation of a conveyance. Even otherwise, the proviso to Section 115(2) provides that where a conveyance is liable for confiscation, the owner must be given an option to redeem the conveyance on payment of fine not exceeding the market value of the alleged smuggled goods. Hence, the impugned order simultaneously confiscating the vessel and imposing penalty is contrary to the statutory scheme.

The Adjudicating Authority failed to appreciate that the Bitumen transported by the vessel cannot be regarded as "smuggled goods" within the meaning of Section 2(39) of the Customs Act, 1962, which defines smuggling as any act rendering goods liable to confiscation under Sections 111 or 113. Since the present case concerns import and not export, Section 113 of the Customs Act, 1962 is inapplicable, and the goods themselves were not prohibited or illegally imported.

- The Ld. Additional Commissioner also failed to consider the findings of the Bombay High Court in its order dated 10 December 2020, wherein it was categorically held that import of Bitumen from Iran is not prohibited, and therefore such import cannot be treated as an offence. The Court specifically observed that mis-declaration of port or country of origin may require investigation, but import of Bitumen from Iran per se is not illegal.
- In light of the above judicial findings, when the goods themselves are not prohibited or illegal, the vessel acting merely as a conveyance cannot be subjected to confiscation under Sections 111 or 115 of the Act.
- Without prejudice, even assuming that Section 115 is applicable, the interest of the revenue was already safeguarded by the Appellant by furnishing a Bank Guarantee of ₹2,00,00,000 issued by HDFC Bank Ltd. for securing the release of the cargo. Hence, confiscation of the vessel is wholly disproportionate and unjustified.
- The Adjudicating Authority further erred in ignoring that the order of the Bombay High Court dated 10 December 2020 is binding and had directed the release of the vessel, after considering the provisions of Sections 110, 110A, 114A and 115 of the Act. Issuance of the show cause notice seeking confiscation of the same vessel amounts to an attempt to circumvent the binding judicial order.
- It is submitted that Section 114AA of the Customs Act, 1962 can be invoked only where a person knowingly or intentionally uses a false declaration or document in the course of a customs transaction. In the absence of any allegation or evidence establishing mens rea, the penalty under this provision cannot be sustained.
- The Adjudicating Authority also failed to appreciate that the Appellant had acted bona fide in the course of international trade and had never intended to act contrary to the fiscal interests of the country.
- The mandatory procedure prescribed under Section 110(1B) of the Customs Act, 1962 for seizure of goods, including preparation of inventory and certification by a Magistrate, was not followed in the present case. Therefore, the seizure itself is legally defective.
- The Appellant had relied upon the following judicial precedents which were not properly considered:

  - *Sea Queen Shipping Services Pvt. Ltd. vs. Commissioner of Customs* – 2019 SCC OnLine CESTAT 1483 (Paras 2.2, 6.2, 7.2 & 8)
  - *Sameer Santosh Kumar Jaiswal vs. Commissioner of Customs (Import-II), Mumbai* – 2018 (362) ELT 348 (Tri-Mumbai)

- The impugned proceedings have also been initiated without any independent investigation establishing the involvement of the Appellant. The allegations are primarily based on statements of other noticees without corroborative evidence.
- It is well settled that uncorroborated statements recorded under Section 108 cannot be relied upon for imposing penalties in the absence of supporting documentary evidence.
- The Appellant acted under a bona fide belief that the Bitumen was loaded from Khor Fakkan, UAE, with the country of origin declared as Iraq, as reflected in the Bills of Entry and the Import General Manifest filed by the Shipping Agency. The Appellant had no role in filing these documents before Customs.
- The Appellant had neither knowledge nor reason to believe that the imports made by M/s Kotak Petroleum LLP were in violation of any provision of the Customs Act. The allegations against the Appellant are based merely on assumptions and presumptions without any tangible evidence.
- The penalties proposed under Section 112 of the Customs Act, 1962 are therefore unsustainable, as the Appellant had no role in the importation of goods and had no knowledge that the goods were allegedly liable to confiscation.
- The imposition of penalty is also mechanical and unsupported by proper findings. Reliance is placed on:
- Mayank Agarwal vs. Commissioner of Customs (Preventive), Lucknow – (2023) 12 Centax 296 (Tri-All)
- Rajeev Khatri vs. Commissioner of Customs – (2023) 9 Centax 412 (Delhi High Court)
- It is further settled that for imposing penalty for abetment, the burden lies on the Department to establish active involvement of the noticee through cogent evidence, which is absent in the present case. Reliance is also placed on:

Amit Ghosh vs. Commissioner of Customs (Preventive), Kolkata – 2023 (2) TMI 620 (CESTAT Kolkata)

wherein it was held that imposition of penalty under both clauses of Section 112 without clear findings is legally unsustainable.

3.13 M/s Prime Tankers LLC :

- The Appellant submits that the Ld. Additional Commissioner failed to appreciate that the Appellant is neither the owner of the vessel nor the owner of the imported cargo. The Appellant was merely engaged as a ship management service provider for the limited purpose of ensuring safe

delivery of the cargo on instructions of Global Ace. The Appellant has no ownership, control, or proprietary interest in either the vessel or the cargo.

- The Ld. Additional Commissioner failed to appreciate that the Appellant had no role whatsoever in the export or import of the Bitumen cargo, which in any case is not a prohibited good. Therefore, the question of fastening liability upon the Appellant for any alleged mis-declaration relating to the cargo does not arise.
- The Adjudicating Authority failed to consider that similarly placed vessels were treated differently by the Department. Another vessel, MT-R Ocean, was allowed to discharge similar cargo in 2021 without any action. Likewise, MT-Clayton, which was detained in a similar manner, was released by the Commissioner of Customs, Mumbai upon furnishing bank guarantee and cash deposit. The Appellant, who had no involvement in any alleged mis-declaration, has been subjected to discriminatory treatment.
- The Ld. Additional Commissioner failed to appreciate that Prime and Global Tankers were not involved in the export of Bitumen. Prime was merely a commercial operator dealing with cargo fixtures, while Global Tankers functioned as a manning agent. Since neither entity was involved in the handling or declaration of the cargo, no liability can be attributed to them, and consequently the Appellant cannot be held liable. Further, the Appellant is merely an investor in Prime and not its owner, and therefore cannot be held responsible for its actions.
- The Ld. Additional Commissioner failed to appreciate that the documents allegedly containing mis-declaration, such as Bills of Lading, Port Clearance Certificates, Arrival Documents and Port of Call records, were prepared either by the Master of the Vessel or the Shipping Agent, M/s Preetika Shipping Agency Pvt. Ltd. None of these documents bear the signature of the Appellant. The Appellant is therefore neither the creator nor originator of the documents containing the alleged mis-declaration.
- The Ld. Additional Commissioner also failed to appreciate that the Appellant's role was confined to commercial coordination relating to cargo fixtures, while Global Tankers functioned only as a manning agent. Neither of them had any role in the physical handling or declaration of the cargo.
- The allegation that the Appellant instructed the Master of the Vessel not to disclose Iranian ports or documents is based solely on the oral statement of the Master. No documentary evidence has been produced to corroborate such allegation.
- It is further submitted that the Statement dated 20.01.2022 of the Master of the Vessel does not categorically state that any such instructions were

issued by the Appellant. Therefore, the allegation made in the Show Cause Notice is unsupported by evidence and is contrary to the record.

- The Show Cause Notice itself is legally defective as it fails to clearly disclose the basis for proposing penalties against the Appellant, thereby depriving the Appellant of an effective opportunity to respond. Reliance is placed on the decision of the Supreme Court of India in Commissioner of Central Excise, Bangalore vs. Brindavan Beverages Pvt. Ltd.,

  wherein it was held that a Show Cause Notice forms the foundation of the Department's case, and vague or unspecified allegations render the proceedings unsustainable.
- The Ld. Additional Commissioner also failed to appreciate that no independent investigation was conducted to establish the Appellant's alleged involvement. The allegations regarding instructions to conceal Iranian origin, switch off AIS, or manipulate voyage records are purely speculative and unsupported by evidence.
- It is well settled that uncorroborated statements recorded under Section 108 cannot be relied upon without independent evidence. Reliance is placed upon:
  - *Rajendra Prasad vs. Commissioner of Customs* – 2001 (136) ELT 925 (Tri-Kolkata)
  - *Hasan Ali vs. Commissioner of Customs* – 2001 (138) ELT 197 (Tri-Kolkata)
- The Appellant had no knowledge or reason to believe that the imports made by M/s Kotak Petroleum LLP and exported by M/s K Infra Middle East FZE were allegedly in contravention of the provisions of the Act. The Import General Manifest filed by the Shipping Agency declared Khor Fakkan as the Port of Loading and Iraq as the Country of Origin, which the Appellant believed to be correct.
- The allegations against the Appellant are based entirely on assumptions and presumptions, without any concrete evidence showing direct involvement in any alleged irregularity.
- The penalties proposed against the Appellant are mechanical and unsupported by proper findings, and are based solely on statements of other noticees. Reliance is placed upon:
- Mayank Agarwal vs. Commissioner of Customs (Preventive), Lucknow – (2023) 12 Centax 296 (Tri-Allahabad)
- Penalty under Section 112 of the Customs Act, 1962 can be imposed only on a person concerned with the import of goods or dealing with goods knowing them to be liable for confiscation. Since the Appellant had no role

in the import process and no knowledge of any alleged mis-declaration, the penalty is unsustainable.

- It is settled law that the burden lies on the Department to establish abetment through cogent evidence, which is completely absent in the present case.
- Reliance is also placed upon the decision of the Delhi High Court in Rajeev Khatri vs. Commissioner of Customs – (2023) 9 Centax 412, wherein penalty under Section 112 was set aside as there was no evidence of knowledge of illegal import.
- The Appellant also relies upon the following decisions:
- MSA Shipping Pvt. Ltd. vs. Commissioner of Customs, Mundra – 2018 (2) TMI 1686
- Lalit Jain vs. Commissioner of Customs, Ahmedabad – 2022 (8) TMI 661
- Commissioner of Customs vs. Trinetra Impex Pvt. Ltd. – 2020 (372) ELT 332 (Delhi)
- wherein penalties under Section 112 were set aside where there was no evidence of collusion, knowledge, or involvement.
- The Appellant was only the commercial operator of the vessel and had no role in the importation, declaration, or handling of the goods, nor any knowledge regarding the alleged mis-declaration of the port of loading or country of origin.
- Reliance is further placed on the decision of CESTAT Kolkata in Amit Ghosh vs. Commissioner of Customs (Preventive), Kolkata – 2023 (2) TMI 620,

wherein it was held that mechanical imposition of penalty under both Sections 112(a) and 112(b) without clear findings is legally unsustainable.

3.14 Mr. Jugwinder Singh Brar:

- The Ld. Additional Commissioner failed to appreciate that the Appellant is neither the owner of the vessel nor the owner of the cargo. The Appellant is merely a director of Global Tankers, a crew managing company, and has no connection with the import of cargo at Pipava. None of the statements recorded during investigation contain any allegation regarding the involvement of the Appellant in the import process. Merely holding shares or being a director of a company cannot fasten liability in the absence of any allegation that the Appellant was overseeing or involved in the impugned transaction.
- The Ld. Additional Commissioner failed to appreciate that the Appellant had no connection with the export of Bitumen, which in any case is not a prohibited good. Consequently, the question of fastening any liability on the Appellant does not arise.

- The Ld. Additional Commissioner failed to consider that similarly placed vessels such as MT-R Ocean were allowed to discharge similar cargo without any action being initiated in 2021. Further, another vessel namely MT-Clayton, which was detained in a similar manner, was released by the Commissioner of Customs, Mumbai upon furnishing of bank guarantee and cash deposit. The Appellant in the present case has absolutely no involvement in the alleged mis-declaration of the port of origin.
- The Ld. Additional Commissioner failed to consider that Prime and Global Tankers were not involved in the export of Bitumen. Prime acted only as a commercial operator dealing with fixtures of cargo, whereas Global Tankers acted merely as a manning agent. Since neither entity was involved in cargo handling, they cannot be held liable for any alleged mis-declaration. In any event, the Appellant is only an investor in Prime and not its owner; therefore, no liability can be fastened upon him.
- The Ld. Additional Commissioner failed to appreciate that the Appellant had no association with Global Ace. The Appellant was only a Director in Global Tankers and an investor in Prime. Global Tankers acted solely as ISM and Technical Manager of the vessel and had no role in cargo operations. The documents relating to Bitumen were found at the premises of Global Tankers only because the Master of the vessel had mistakenly marked them in email communications. It was also an established trade practice to mention Iran as the place of origin for banking purposes and there was no intent to mislead the authorities.
- The Ld. Additional Commissioner failed to appreciate that Section 114AA of the Customs Act can be invoked only when it is established that a declaration or document used in the transaction of business for the purposes of the Act is knowingly false or incorrect. Mens rea is a necessary ingredient for imposing penalty under this provision. In the present case, there are no pleadings or allegations that the Appellant possessed the requisite mens rea, and therefore the invocation of Section 114AA is unsustainable.
- The Ld. Additional Commissioner failed to appreciate that there are no allegations that the Appellant was involved in the mis-declaration of the port of origin. The only statement referring to the Appellant is the statement dated 15.03.2023 of Mr. Hemal Kotak of M/s Kotak Petroleum LLP stating that he received certain documents from the Appellant through WhatsApp. However, the WhatsApp communications relied upon pertain to a different vessel (M.T. Global Genesis) and a different time period (June to September 2021), whereas the present case relates to the vessel M.T. Global Rani and the period from 30.12.2021 to 13.01.2022. Therefore, the said communications have no relevance to the present transaction.

- The Ld. Additional Commissioner failed to appreciate the settled legal principle that a company is a separate legal entity distinct from its directors and shareholders. A director can be held liable only if there is evidence of active involvement or specific statutory liability. In the present case, the Appellant has been penalized solely because he is a director. There is no allegation that any import document such as Bill of Lading, Certificate of Origin, or Bill of Entry bears the signature of the Appellant or that he created or used such documents.
- The Ld. Additional Commissioner failed to appreciate that the Customs authorities themselves have not complied with the mandatory provisions of Section 110(1B) of the Customs Act while seizing the vessel. The proper officer is required to prepare a detailed inventory and obtain certification from the Magistrate regarding the correctness of such inventory and photographs of the seized goods. No such compliance has been demonstrated in the present case.
- The Ld. Additional Commissioner failed to appreciate that penalties under Sections 112(a) and 112(b) can be imposed only on persons involved in the import of goods or dealing with goods liable for confiscation with knowledge or reason to believe so. The Appellant had no role in the importation of the goods and was unaware of the alleged mis-declaration regarding the port of loading or country of origin.
- The Ld. Additional Commissioner failed to appreciate that each allegation must be established by cogent evidence and not by assumptions or presumptions. The Show Cause Notice does not provide any substantive evidence linking the Appellant to the alleged offence and is based merely on conjectures.
- Reliance is placed on Sea Queen Shipping Services Private Limited v. Commissioner of Customs (2019 SCC OnLine CESTAT 1483) wherein it was held that penalties under Sections 112 and 114AA require proof of intentional or deliberate acts and the presence of mens rea. The Tribunal held that in the absence of evidence showing mala fide intent or abnormal gain, penalty cannot be sustained.
- Reliance is placed on Sameer Santosh Kumar Jaiswal v. Commissioner of Customs (Import-II), Mumbai [2018 (362) ELT 348 (Tri-Mumbai)], wherein it was held that penalty under Section 114AA can be imposed only where a person knowingly makes or signs a false declaration. In the absence of such act or evidence of short-payment of duty, the penalty is not sustainable.
- Reliance is also placed on Commissioner of Customs (Import) v. Trinetra Impex Pvt. Ltd. [2020 (372) ELT 332 (Del)], wherein it was held that penalties under Sections 112 and 114AA require proof of mens rea or

conscious knowledge. In the absence of any active role or knowledge attributable to the noticee, penalty cannot be imposed.

- The Ld. Additional Commissioner failed to appreciate that Section 106 of the Customs Act permits rummaging of a vessel only in cases involving smuggled goods. Since the present case does not involve smuggled goods, the search conducted under Section 106 is illegal. Further, under Section 105(2) of the Act, the procedure prescribed under the Code of Criminal Procedure is required to be followed.
- The Ld. Additional Commissioner failed to appreciate that the essential pre-conditions for invoking Sections 112(a), 112(b), and 114AA are absent in the present case as there is no evidence of intention or knowledge on the part of the Appellant. The evidence collected is also not in accordance with Sections 105 and 106 of the Customs Act. Even otherwise, the WhatsApp messages relied upon relate to another transaction and do not implicate the Appellant in the present case.

3.15 Global Tankers Pvt. Ltd:

- The Ld. Additional Commissioner failed to appreciate that the Appellant is neither the owner of the vessel nor the owner of the cargo imported through the vessel. The Appellant was merely engaged as a crew managing company and its role was strictly limited to providing crew management services in accordance with the instructions received. The Appellant has no relation with Global Ace and is not connected in any manner with the cargo imported or with the documents relating thereto. The Appellant merely discharged its limited responsibility of providing crew management services and had no role whatsoever in the import transaction.
- The Ld. Additional Commissioner further failed to appreciate that the Appellant was not even remotely involved in the export of Bitumen. The Appellant is a manning agency responsible only for providing and managing the crew on board the vessel. Its responsibility was confined to crew management and technical support relating to the vessel, and it had no role in the handling, management or operation of the cargo. In the absence of any involvement with the cargo operations, the Appellant cannot be held liable for any alleged mis-declaration relating to the goods. The Ld. Additional Commissioner also failed to observe that there is no cogent material in the Show Cause Notice to establish that the Appellant forged any document. In fact, there was no occasion or authority for the Appellant to issue such documents in the first place. The allegation that the Appellant forged documents is therefore a mere bald assertion and is completely unsupported by any evidence on record.
- It was further not appreciated that the Appellant was merely the ISM and Technical Manager of the vessel and had no relation with the cargo

operations. The documents relating to the Bitumen were recovered from the premises of the Appellant only because the Master of the vessel had inadvertently marked the Appellant in certain email communications. Merely because certain documents were available in the email chain cannot lead to the conclusion that the Appellant had any role in the alleged mis-declaration. The Appellant has no connection whatsoever with the companies involved in the importation of Bitumen and its role was restricted solely to providing crew management and technical services for the vessel.

- The Ld. Additional Commissioner also failed to appreciate that the Show Cause Notice has been issued without conducting any independent investigation to establish whether the Appellant had in any manner aided or abetted the alleged import of goods. The allegations that the Appellant instructed the Master of the vessel not to mention Iranian ports in the voyage memo, not to show Iranian documents at discharge ports, to switch off the vessel's AIS system, or to prepare forged voyage documents and forward them to the shipping agency are completely unsupported by any independent or corroborative evidence.
- The Ld. Additional Commissioner further failed to appreciate that the Appellant had no knowledge and no reason to believe that the alleged imports made by M/s Kotak Petroleum LLP and exported by M/s K Infra Middle East FZE were in contravention of the provisions of the Customs Act or any other law. The Appellant was unaware that the goods declared to have been loaded from Khor Fakkan and declared to be of Iraqi origin were allegedly illegal. The Import General Manifest for discharge of the goods at Pipavav Port was filed by the shipping agency which had declared the port of loading as Khor Fakkan, and the Appellant had no reason to doubt the correctness of such declaration.
- The Ld. Additional Commissioner also failed to appreciate that the allegation that the Appellant was aware of the alleged illegal import is based purely on assumptions and presumptions. The Department has not produced a single piece of concrete evidence to establish that the Appellant was directly involved in any illegal import. At best, the Appellant had merely forwarded the Bills of Lading to the shipping agency under the bona fide belief that the goods had been loaded from Khor Fakkan as declared in the documents.
- It was also not appreciated that the penalty proposed against the Appellant appears to have been imposed mechanically without proper examination of the Appellant's role. The allegations are based solely on uncorroborated statements of other noticees. In this regard reliance is placed on the decision in Mayank Agarwal vs. Commissioner of Customs Preventive,

Lucknow [(2023) 12 Centax 296 (Tri.-All)], wherein it was held that imposition of penalties under Sections 112(a) and 112(b) without recording reasons as to why the penalty is imposable reflects lack of understanding of the legal provisions and absence of proper application of mind.

- The Ld. Additional Commissioner further failed to appreciate that penalties under Sections 112(a) and 112(b) of the Act can be imposed only upon a person who is concerned with the import of goods or who has handled imported goods with knowledge or reason to believe that such goods are liable for confiscation. The Appellant had no role in the importation of the goods and had no knowledge whatsoever regarding the alleged mis-declaration relating to the port of loading or the country of origin.
- It is settled law that for alleging abetment the burden lies upon the Department to prove that the Appellant in some manner aided or facilitated the alleged illegal import. In cases of imposition of penalty, the Revenue is required to strictly establish each allegation with cogent evidence. In the present case, no evidence has been produced to demonstrate that the Appellant aided or abetted any illegal import.
- The Ld. Additional Commissioner also failed to appreciate that no concrete evidence has been placed on record to support the allegations against the Appellant except reliance upon statements of certain noticees. It is well settled that allegations cannot be sustained merely on the basis of assumptions or presumptions. In this regard reliance is placed on Rajeev Khatri vs. Commissioner of Customs [(2023) 9 Centax 412 (Del.)], wherein the Hon'ble Delhi High Court set aside penalty under Section 112(a) holding that in the absence of evidence demonstrating knowledge of illegal import, the assessee cannot be penalised for abetment.
- The Ld. Additional Commissioner further failed to appreciate that the Appellant had no role in the importation or physical handling of the goods and was unaware of any alleged mis-declaration regarding the port of loading or country of origin. The Appellant has not signed any documents relating to the alleged import of 38238.879 MTs of Bitumen Grade VG30. In the absence of such involvement, the imposition of penalty under Sections 112(a) and 112(b) is wholly unsustainable.
- It was also not appreciated that the Hon'ble Kolkata Tribunal in Amit Ghosh vs. Commissioner of Customs (Preventive), Kolkata [2023 (2) TMI 620] held that imposition of penalty under both Sections 112(a) and 112(b) simultaneously is legally erroneous as the two provisions operate in separate domains. The Tribunal further observed that where the adjudicating authority itself is uncertain about the role of the noticee, penalty cannot be imposed mechanically.

- The Ld. Additional Commissioner also failed to appreciate the settled legal principles laid down in several judicial pronouncements. In Surendra Kumar Jain v. Principal Commissioner [WP(C) 17700/2022], it was held that a Show Cause Notice must clearly set out the allegations against the noticee so that an effective opportunity of defence can be provided. In Commissioner of Central Excise v. Brindavan Beverages Pvt. Ltd. [Civil Appeal No. 3417–3425 of 2002], the Hon'ble Supreme Court held that the Show Cause Notice forms the foundation of the case and vague allegations render the proceedings unsustainable. In Gobinda Das vs. Commissioner of Customs [(2023) 7 Centax 201 (Tri.-Cal)], it was held that reliance on statements without granting cross-examination renders the penalty unsustainable. Similarly, in Lalit Jain vs. C.C., Ahmedabad [Customs Appeal No. 10061 of 2022], penalty under Section 112(b) was set aside where the noticee had neither possessed nor dealt with goods liable for confiscation. In MSA Shipping Pvt. Ltd. vs. C.C., Mundra [2018 (2) TMI 1686], the Tribunal held that penalty under Section 112(a) cannot be imposed where there is no evidence of collusion or connivance.
- Finally, the Ld. Additional Commissioner failed to appreciate that imposition of penalty under both Sections 112(a) and 112(b) without recording reasons demonstrates a complete misunderstanding of the scope of these provisions. In Visteon Automotive Systems India Limited [2018 (9) GSTL 142 (Mad.)], the Hon'ble Madras High Court clarified that Section 112(a) applies where a person's act renders goods liable to confiscation under Section 111, while Section 112(b) applies to persons who deal with goods knowing them to be liable to confiscation. Since the Appellant neither dealt with the goods nor performed any act rendering them liable to confiscation, the penalties imposed upon the Appellant are wholly unsustainable and liable to be set aside.

4 Record of Personal Hearing:

In accordance with the principles of natural justice, all Appellants were afforded the opportunity of personal hearing. The hearings were attended as under:

- **09.03.2026**: Appellants at Serial Nos. 1–8 (Table – 1) were represented by Shri Vikas Mehta, Consultant. During the course of hearing he reiterated the submissions made at the time of filling Appeals.
- **09.03.2026**: Appellants at Serial Nos. 09 - 16 were represented by Shri Aditya S. Tripathi. During the course of hearing he reiterated the submissions made at the time of filling Appeals.

5 Discussion and Findings:

5.1 I have carefully gone through the impugned Order dated 27.11.2025, the grounds of appeals, written submissions made by the appellants and the records of the case. It is observed that in respect of the Appellants at Serial No. 9 to 16 (Table -1) the appeals have been filed after a delay of 25 days beyond the prescribed period of limitation under Section 128(1) of the Customs Act, 1962.

5.2 I find that the Appellants have shown sufficient cause for the delay in filing the present appeals. Accordingly, in exercise of the powers conferred under the proviso to Section 128(1) of the Customs Act, 1962, the delay in filing the appeal is condoned.

5.3 Having condoned the delay, I proceed to decide the matter on merits. On the basis of the facts of the case and the submissions made by the appellants, the following issues arise for determination in the present appeals:

i. Whether the impugned goods and the goods imported in past vide 23 Bill of Entries are liable for confiscation under Section 111(m) of the Customs Act, 1962 on the allegation of mis-declaration of port of loading and country of origin.

ii. Whether the vessel M.T. Global Rani is liable for confiscation under Section 115(2) of the Customs Act, 1962, as held in the impugned order.

iii. Whether the penalties imposed upon the Appellants under Sections 112(a)(ii), 112(b)(ii), 114AA, 117 of the Customs Act, 1962 are legally sustainable, in the facts and circumstances of the case.

5.4 The principal allegation in the show cause notice is that the consignment of the impugned goods imported under Bills of Entry dated 18.01.2022 were actually loaded at Bandar Abbas, Iran, whereas the import documents declared the port of loading as Khor Fakkan and the country of origin as Iraq. On this basis, the adjudicating authority held the goods liable for confiscation and further ordered confiscation of the vessel under Section 115(2) of the Customs Act, 1962, besides imposing penalties upon various appellants connected with the import transaction and operation of the vessel. Since the issues involved in all the present appeals arise from the same show cause notice, the same set of facts and the same impugned order, all the appeals are taken up together for the purpose of common discussion and findings.

5.5 At the outset, it is observed that the present case does not involve any allegation of evasion or short-payment of customs duty. The show cause notice as well as the impugned order do not bring out any duty implication arising out of the alleged discrepancy regarding the port of loading or the country of origin

of the goods. It is also not the case of the Department that the import of the impugned goods was subject to any prohibition or restriction under the provisions of the Customs Act, 1962 or under any other law for the time being in force. Further, it is not alleged that M/s Kotak Petroleum LLP, Jamnagar (hereinafter referred to as "the Importer") had claimed any preferential rate of duty on the basis of the declared country of origin.

5.6 It is further observed that the relevance of the country of origin primarily arises in situations where the importer claims a preferential rate of duty under a trade agreement or where the import of goods from a particular country is subject to prohibition or restriction. However, in the present case, there are no allegations that the Importer had claimed any preferential rate of duty on the basis of the declared country of origin, nor is it the case of the Department that the import of the impugned goods from Iran was subject to any prohibition or restriction. The investigation has also not brought on record any material to explain as to why the Importer would intentionally mis-declare the country of origin when such declaration had no bearing on the rate of duty or the admissibility of the import.

5.7 It is further observed that the port of loading and the country of origin are two distinct concepts and cannot be treated as synonymous. The port of loading merely denotes the port from which the goods were shipped, whereas the country of origin refers to the country where the goods were manufactured or produced in terms of the applicable rules of origin. Thus, the country of origin of goods may, in certain circumstances, be different from the port of loading. In the present case, the allegation regarding Iranian origin of the goods appears to have been primarily based on the statements of the Master of the vessel and other vessel officers. However, it is observed that no investigation has been conducted by the department with the competent authorities of the concerned countries or with the manufacturer or supplier to independently ascertain the actual country of origin of the goods. In the absence of such verification or corroborative evidence, blanket reliance cannot be placed solely on the statement of the Master of the vessel to conclusively determine the country of origin of the impugned goods.

5.8 Moreover, it is also observed that the Importer had filed the Bills of Entry on the basis of commercial documents such as invoice, packing list, bill of lading and other import documents supplied by the overseas supplier. The records of the case do not reveal even an iota of evidence to suggest that the Importer had any prior knowledge regarding the alleged discrepancy in the country of origin or that the Importer had intentionally declared the country of origin as Iraq instead of Iran. In absence of any cogent evidence demonstrating deliberate mis-declaration or mala fide intention on the part of the Importer, the allegation that

the Importer intentionally mis-declared the country of origin cannot be sustained.

5.9 It is further observed that reliance has been placed in the impugned order on the statement of Shri Hemal Kotak, partner of M/s Kotak Petroleum LLP dated 15.03.2023 wherein he stated that the goods were loaded from Iran and not from Iraq as mentioned in the Bills of Entry. However, on careful examination of the records, it is evident that the said statement was made only after Shri Hemal Kotak was confronted with the statements of the Master of the vessel (Shri Barnabas Stephen) and other documents recovered during the course of investigation. Therefore, such statement cannot be ipso facto construed as an admission that Shri Hemal Kotak had prior knowledge, at the time of filing the Bills of Entry, that the goods were actually loaded from Iran or that the goods were of Iranian origin. In the absence of any independent corroborative evidence demonstrating that Shri Hemal Kotak was aware of the alleged discrepancy at the time of import, the said statement by itself cannot be treated as proof of intentional mis-declaration.

5.10 It is also observed that the adjudicating authority, while rendering findings with regard to the past import made by the importer, has relied upon the statement dated 15.03.2023 of Shri Hemal Kotak as well as the Bill of Lading dated 27.08.2021 allegedly recovered from the WhatsApp chat between Shri Hemal Kotak and the representative of M/s Prime Tankers, Captain Brar, in respect of the import of 3774.76 MTs of Bitumen carried by the vessel MT Global Genesis. However, on careful perusal of the said statement and the relevant documents forming part of the record, it is evident that Shri Hemal Kotak came to know about the alleged loading of the goods from Iran only on 24.09.2021 during the course of the said WhatsApp communication. On the other hand, the import of the said consignment had already taken place on 06.09.2021, which is much prior to the aforesaid communication relied upon by the Adjudicating Authority. Therefore, the said WhatsApp chat cannot be construed as evidence to establish that Shri Hemal Kotak had prior knowledge, at the time of importation, regarding the alleged loading of the goods from Iran.

5.11 In view of the foregoing discussion, it is evident that the Department has not brought on record any cogent and independent evidence to establish that the importer had deliberately or knowingly mis-declared the port of loading or the country of origin of the impugned goods. The records reveal that the Bills of Entry were filed by the importer on the basis of commercial documents supplied by the overseas supplier under a bona fide belief that the said documents were correct. Further, the case does not involve any duty implication, nor is there any allegation of violation of any prohibition or restriction on import of the impugned goods. The statements relied upon in the impugned order and the WhatsApp

communication referred to therein do not establish prior knowledge or deliberate mis-declaration on the part of the importer. In such circumstances, the essential ingredient of mens rea required to sustain the charge of mis-declaration is not established. Consequently, the goods cannot be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

5.12 The above view also finds support from the settled position of law laid down by the Hon'ble Tribunal in several cases. In Kirti Sales Corporation v. Commissioner of Customs, Faridabad, 2008 (232) ELT 151 (Tri. -Del.), the Tribunal held that when the importer files the Bill of Entry on the basis of documents supplied by the overseas supplier and there is no evidence to establish that the importer had knowingly or deliberately mis-declared the particulars of the goods, the provisions of Section 111(m) of the Customs Act, 1962 cannot be invoked. Similarly, in Agarwal Industrial Corporation Ltd. vs. Commissioner of Customs, 2020 (373) ELT 280 (Tri. -Bang.), it was held that confiscation and penalties cannot be sustained in the absence of cogent evidence demonstrating conscious or deliberate mis-declaration on the part of the importer. Further, in Amit Petrolube Ltd. vs. Commissioner of Customs, 2023 (12) TMI (CESTAT Ahmedabad), the Tribunal reiterated that when the declarations in import documents are made on the basis of records and documents supplied by the overseas supplier and there is no evidence of mens rea or deliberate suppression, the allegation of mis-declaration cannot be sustained. Likewise, in Alstom Transport India Ltd. vs. Commissioner of Customs, Chennai, 2007 (220) ELT 312 (Tri. -Chennai), it was observed that where the Department fails to establish conscious mis-statement or deliberate mis-declaration, confiscation under Section 111(m) of the Customs Act and consequential penalties cannot be sustained.

5.13 In view of the foregoing discussions and the judicial precedents cited above, I find that the Department has failed to establish any deliberate or conscious mis-declaration on the part of the importer. The importer had filed the Bills of Entry on the basis of documents supplied by the overseas supplier and there is no evidence on record to demonstrate that the importer had prior knowledge of the alleged discrepancy relating to port of loading or country of origin. Accordingly, the essential ingredients required for invoking the provisions of Section 111(m) of the Customs Act, 1962 are not satisfied in the present case. Consequently, the confiscation of the impugned goods and those imported in past vide 23 Bills of Entry during the year 2021 is not sustainable in law and the same is hereby set aside.

5.14 Now coming to the issue of confiscation of the vessel under Section 115 of the Customs Act, 1962, it is observed that the adjudicating authority in paragraph 46.2 of the impugned order has held that the vessel was used as a

means of transport for the alleged smuggling of the cargo, is to be confiscated under section 115 of the Customs Act, 1962.

5.15 I have carefully examined the provisions of Section 115(2) of the Customs Act, 1962, which reads as under:

> *"Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal."*

A plain and harmonious reading of the above provision clearly indicates that the foundational requirement for invoking Section 115(2) is the establishment that the conveyance was used in the smuggling of goods or for the carriage of goods which are smuggled in nature. In other words, the liability of a conveyance to confiscation under the said provision is contingent upon the Department first establishing that the goods transported are smuggled goods or that the conveyance has been used in the act of smuggling.

5.16 In the present case, however, it is observed that no such finding regarding the smuggled nature of the goods has been conclusively established. On the contrary, as discussed in the preceding paragraphs of this order, the confiscation of the impugned goods themselves has been set aside on merits. Once the very basis of treating the goods as liable for confiscation fails, the consequential action against the conveyance alleged to have transported such goods cannot independently survive. Therefore, in the absence of any cogent evidence establishing that the vessel was used in the smuggling of goods or in the carriage of smuggled goods, the essential statutory conditions required for invoking the provisions of Section 115(2) of the Customs Act, 1962 are clearly not satisfied.

5.17 Accordingly, I hold that the confiscation of the vessel under Section 115(2) of the Customs Act, 1962 is legally unsustainable and the same is hereby set aside with consequential relief, if any, in accordance with law.

5.18 Now coming to the issue of imposition of penalties under Section 112 of the Customs Act, 1962, I find that the adjudicating authority has imposed penalties upon the Appellants under Section 112(a)(ii) and Section 112(b)(ii) of the Customs Act, 1962.

5.19 At the outset, it is observed that as discussed in the preceding paragraphs of this order, the confiscation of the impugned goods has not been sustained and has been set aside on merits. It is a well-settled principle of law that penalty under Section 112 of the Customs Act is consequential to the liability of the goods for confiscation under the Act. Once the very basis for confiscation of the

goods fails, the consequential penalties imposed under Section 112 cannot independently survive.

5.20 Further, I have carefully examined the provisions of Section 112 of the Customs Act, 1962, particularly clauses 112(a)(ii) and 112(b)(ii), which have been invoked by the adjudicating authority for imposing penalties upon the appellants. The relevant provisions stipulate that any person who, by any act or omission, renders goods liable for confiscation under Section 111 of the Customs Act, 1962, or who knowingly deals with goods which he knows or has reason to believe are liable for confiscation, shall be liable to penalty. The statute further provides that in cases where the goods are not prohibited, the quantum of penalty shall not exceed the duty sought to be evaded on such goods or ₹5,000, whichever is greater.

A plain reading of the above provisions clearly indicates that the imposition as well as the quantum of penalty under Section 112(a)(ii) and Section 112(b)(ii) is intrinsically linked with the duty sought to be evaded in respect of the goods concerned. In other words, the statutory framework presupposes the existence of duty liability or duty evasion attributable to the improper importation of goods. However, in the present case, it is observed that no allegation of duty evasion has been made by the Department in respect of the impugned goods. As discussed in detail in the preceding paragraphs, the alleged mis-declaration relating to port of loading or country of origin has not resulted in any duty implication nor has any preferential rate of duty been claimed by the importer. Consequently, the essential statutory element of "duty sought to be evaded", which forms the very basis for determining penalty under Section 112(a)(ii) and Section 112(b)(ii), is conspicuously absent in the present case.

In such circumstances, the imposition of penalty under the aforesaid provisions does not fall within the four corners of Section 112 of the Customs Act, 1962. Accordingly, the penalties imposed upon the appellants under Section 112(a)(ii) and Section 112(b)(ii) of the Customs Act, 1962 are not legally sustainable and the same are hereby set aside.

5.21 Now coming to the issue of imposition of penalty under Section 114AA of the Customs Act, 1962, it becomes necessary to examine whether the essential statutory ingredients required for invoking the said provision are satisfied in the facts and circumstances of the present case. For ease of reference, the relevant provision reads as under:

> "If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any

business for the purposes of this Act, he shall be liable to a penalty not exceeding five times the value of goods."

A plain reading of the above provision indicates that penalty under Section 114AA can be invoked only when the following essential ingredients are cumulatively satisfied:

1. A declaration, statement or document is made, signed or used knowingly or intentionally;
2. Such declaration, statement or document is false or incorrect in a material particular; and
3. The said declaration, statement or document is used in the transaction of any business for the purposes of the Customs Act.

Thus, the existence of knowledge or intention (mens rea) coupled with the use of such false document in the course of a customs transaction forms the fundamental requirement for invoking the provisions of Section 114AA.

5.22 Upon careful examination of the records of the case, it is observed that the allegation against the appellants pertains to the filing of an incorrect Import General Manifest (IGM). However, it is evident that the said IGM has not been used as a document in any transaction of business for the purposes of the Customs Act which resulted in any duty implication or wrongful gain. The investigation has also not brought on record any material to demonstrate that the alleged incorrect declaration in the IGM resulted in any evasion of customs duty or that any undue benefit was derived by the importer, the shipping agent, or the master of the vessel.

5.23 It is also pertinent to note that, as discussed in the preceding paragraphs of this order, the confiscation of the impugned goods has already been set aside, and it has been held that the alleged discrepancy relating to port of loading or country of origin has not resulted in any duty implication nor has it led to violation of any prohibition or restriction under the Customs Act, 1962. In such circumstances, the necessary element of knowingly using a false document in the course of a customs transaction with the intent to derive undue advantage or defeat the provisions of the Act is clearly absent.

5.24 In this regard, guidance can be drawn from the decision of the Hon'ble Tribunal in Suresh Kumar Aggarwal v. Commissioner of Customs-III, Order No. A/85533/2024 (CESTAT Mumbai), wherein the Tribunal undertook a detailed examination of the legislative intent behind the insertion of Section 114AA through the Taxation Laws (Amendment) Act, 2006. The Tribunal referred to the observations of the Standing Committee on Finance in its Twenty-Seventh Report on the Taxation Laws (Amendment) Bill, 2005, wherein it was clarified

that the provision was introduced primarily to deal with serious cases of fraudulent transactions where exports were shown only on paper and no goods had actually crossed the border, thereby enabling unscrupulous persons to wrongfully avail benefits under export promotion schemes. The Tribunal further observed that the enhanced penal provision under Section 114AA was intended to address serious frauds involving fabricated documentation and fictitious paper transactions, and not routine discrepancies which do not result in any duty implication or undue benefit. Upon applying the principles of statutory interpretation, including the literal rule, mischief rule, and golden rule, the Tribunal concluded that the scope of Section 114AA is primarily directed at cases involving fraudulent paper transactions with Customs without the actual movement of goods, i.e., transactions sans goods.

5.25 Applying the ratio of the above decision to the facts of the present case, it is evident that the circumstances contemplated under Section 114AA are clearly absent. The case at hand does not involve any fictitious transaction, fabricated export/import documentation, or paper transactions undertaken to fraudulently avail benefits under any scheme. On the contrary, the goods in question had actually been imported and cleared through the customs process, and the alleged discrepancy relates only to the declaration of port of loading or country of origin, which, as already held, has no bearing on duty liability or admissibility of the goods. Therefore, in the absence of any material evidence demonstrating deliberate or conscious use of false documentation in the course of a customs transaction with the intent to derive undue benefit, the essential statutory ingredients required for invoking Section 114AA of the Customs Act, 1962 are clearly not satisfied.

5.26 Accordingly, I hold that the penalties imposed under Section 114AA of the Customs Act, 1962 on the Appellants are not legally sustainable and the same are hereby set aside.

5.27 Now coming to the issue of imposition of penalty under Section 117 of the Customs Act, 1962, it is observed that the adjudicating authority, in paragraph 54 of the impugned order, has itself recorded a categorical finding that there is nothing on record to suggest that the Customs House Agent (CHA), namely M/s Velji P. & Sons, was a beneficiary in the instant case. The adjudicating authority has further observed that the investigation has not been able to establish that the CHA had any prior knowledge regarding the alleged Iranian origin of the imported goods.

However, despite recording such findings, the adjudicating authority proceeded to impose a penalty upon the CHA under Section 117 of the Customs

Act, 1962 for the alleged contravention of the provisions of Section 46 of the Customs Act, 1962.

5.28 At this stage, it is relevant to note that Section 117 of the Customs Act is a residuary penalty provision, which can be invoked only in cases where a person contravenes any provision of the Act or the rules made thereunder for which no specific penalty is otherwise provided. Even under this provision, the imposition of penalty necessarily presupposes the existence of a clear and established contravention attributable to the person concerned. In the present case, the adjudicating authority itself has recorded that the CHA neither had knowledge of the alleged discrepancy regarding the country of origin nor derived any undue benefit from the transaction. It is also evident from the records that the CHA had filed the relevant documents and declarations strictly on the basis of documents furnished by the importer and the shipping documents accompanying the consignment, which is the normal course of business for a licensed customs broker.

Once it has been acknowledged by the adjudicating authority that the CHA had no prior knowledge of the alleged discrepancy and that they had not gained any undue advantage from the transaction, the very foundation for invoking the penal provisions under Section 117 ceases to exist. In the absence of any evidence demonstrating deliberate negligence, knowledge, or active involvement in any contravention of the provisions of the Customs Act, the imposition of penalty on the CHA cannot be sustained. Therefore, the action of the adjudicating authority in imposing penalty under Section 117 of the Customs Act, 1962, despite having recorded findings exonerating the CHA from knowledge or benefit in the alleged offence, appears to be legally untenable and unsustainable.

5.29 Accordingly, I hold that the penalty imposed upon M/s Velji P. & Sons under Section 117 of the Customs Act, 1962 is not justified and is hereby set aside.

6. In view of the above findings, the impugned order is set aside and the appeals are allowed with consequential relief, if any, in accordance with law.

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-298 to 301, 304 to 307, 310 to 317/CUS/JMN/2025-26 Date:17.03.2026

By Registered post A.D/E-Mail 625

To,

1. M/s. Kotak Petroleum LLP, 2nd Floor, Standard House, Opp. Hotel Celebration, Indira Marg, Jamnagar 361 001.

2. Shri Hemal Kaniyalal Kotak, Partner of M/s. Kotak Petroleum LLP, 2nd Floor, Standard House, Opp. Hotel Celebration, Indira Marg, Jamnagar 361001

3. M/s Preetika Shipping Agencies Pvt. Ltd., Shipping Agent, 4th Floor, M.K. Bhawan, 300, Shahid Bhagatsinh Road, Fort Mumbai-400001.

4. Shri Deepak Mohanlal Khabrani, Director of M/s Preetika Shipping Agencies Pvt. Ltd., Shipping Agent, 4th Floor, M.K. Bhawan, 300, Shahid Bhagatsinh Road, Fort, Mumbai-400 001.

5. Shri Barnabas Stephen, through M/s. Preetika Shipping Agencies Pvt. Ltd., 4th Floor, M.K. Bhawan, 300, Shahid Bhagatsinh Road, Fort Mumbai-400001.

6. M/s. Global Ace Shipping Lines INC., Through M/s Crawford Bayley & Co. State Bank Buildings, N.G.N. Vaidya Marg, Fort, Mumbai – 400023.

7. M/s. Prime Tankers LLC. Through M/s Crawford Bayley & Co. State Bank Buildings, N.G.N. Vaidya Marg, Fort, Mumbai – 400023.

8. Shri Jugwinder Singh Brar, House No. 213, Sector 36A, PO Chandigarh, India – 160036.

9. M/s. K Infra Middle East FZE, through Shri Vikas Mehta, Consultant, D'legal, 1st floor, Plot No. 159, Sector 1A, Gandhidham – 370201.

10. M/s. Global Tankers Pvt. Ltd, No. 213, Sector 36A, PO Chandigarh, India – 160036.

11. M/s. Velji P. & Sons, 1st Floor, Sajawat Apartment, Near Congress Bhawan, Limda Lane Jamnagar-361 001.

12. Shri Don Bosco Dominic Pradeep, through M/s. Preetika Shipping Agencies Pvt. Ltd., 4th Floor, M.K. Bhawan, 300, Shahid Bhagatsinh Road, Fort Mumbai-400001.

13. Shri Angarkar Dnyanesh Nandkishor, through M/s. Preetika Shipping Agencies Pvt. Ltd., 4th Floor, M.K. Bhawan, 300, Shahid Bhagatsinh Road, Fort Mumbai-400001.

14. Shri Ramakant Mishra, through M/s. Preetika Shipping Agencies Pvt. Ltd., 4th Floor, M K Bhawan, 300, Shahid Bhagat Singh Road, Fort, Mumbai – 400001.

15. Shri Midhun, through M/s. Preetika Shipping Agencies Pvt. Ltd., 4th Floor, M.K. Bhawan, 300, Shahid Bhagatsinh Road, Fort Mumbai-400001.

16. Captain Sufiyan Khan, through M/s. Preetika Shipping Agencies Pvt. Ltd., 4th Floor, M.K. Bhawan, 300, Shahid Bhagatsinh Road, Fort Mumbai-400001.

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs (Preventive), Jamnagar.
3. The Additional Commissioner of Customs (Preventive), Jamnagar.
4. Guard File.