

1211 to 1213

 <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</p>	
A. File No.	: GEN/ADJ/COMM/122/2023-Adjn-O/o Pr. Commr-Cus-Mundra
B. Order-in-Original No.	: MUN-CUSTM-000-COM-09-24-25
C. Passed by	: K. Engineer Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of passing of Order	: 09.05.2024 09.05.2024
E. SCN No. & Date	: GEN/ADJ/COMM/122/2022-Adjn-O/o Pr. Commr-Cus-Mundra dated 12.05.2023
F. Noticee(s) / Party/ Importer	: M/s Surya Udyog, Udyog Puri, Agar Road, Ujjain, MP-456001 and others.
G. DIN	: 20240571MO0000777BC7

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

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

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

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

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

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

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

Appeal shall be filed within three months from the date of communication of this order.

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

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

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

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

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

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

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

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

1. Brief Facts of the case

An intelligence inputs received from National Customs Targeting Centre [NCTC], DGARM, CBIC, Mumbai, via e-mail dated 14.01.2022 informing that on the basis of detailed risk analysis, the NCTC has identified following risky consignment of **M/s Surya Udyog (IEC 1196004676)**, Udgoy Puri, Agar Road, Ujjain, MP-456001 (*hereinafter referred to as 'the importer' also for the sake of brevity*) at Mundra, Custom House Code-INMUN1, in relation to mis-declaration of country of origin of goods:

BE NO.	Declared COO	Port of Shipment	Description	Declared CTH	Container No	Seal no. mentioned on BL	Seal no. on PICT
8765677 dtd. 10.09.2020	AE	AEJEA	BRASS SCRAP HONEY/ENGEL	7404002 2	PCLU2011 890	79436	79436

2. Acting on the said intelligence, an enquiry was initiated by SIIB, Mundra Customs and copy of BE No. 8765677 dated 10.09.2020, **(RUD-1)** was downloaded from the ICES 1.5 System, as per which the following details were mentioned in the said Bill of Entry:

Table A

Name and address of the importer	M/s Surya Udyog, Udgoy Puri, Agar Road, Ujjain, MP-456001
Customs Broker	M/s Prime Forwarders
Bill of Entry No and date	8765677 dated 10.09.2020
Date of Out of Charge	24.09.2020
Description of goods and CTH	BRASS SCRAP HONEY AS PER ISRI (CTH 74040022)
Qty. of Goods	27.795 Mt.
Value	Rs.76,87,549/-
Duty paid	BCD @2.5% Rs.192189 + SWS @10% Rs.19289 + IGST @18% Rs.14,21,812 = Total duty paid Rs.16,33,220/-
Exemption Notification availed	Sr.No.382 of Notification No.50/2017 - Cus dated 30.06.2017 for availing the benefit of BCD @2.5%.
Container No.	PCLU2011890
Seal No.	79436
Country of Origin declared as	U.A.E.

3. Tracking of the said Container nos. PCLU2011890 was done on the website i.e. <https://pict.com.pk/en/online-tracking> of **Pakistan International Container Terminal Ltd.**, Karachi, Pakistan (In short "PICT"), which revealed that the said Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to AEJEA (Jebel Ali, UAE). Image of PICT tracking for the said container is as under:

Top Screenshot (General Tracking Information):

Container No:	PCLU2011890
Category:	Export
Lot No:	KPEX5022764220820
Container Size:	20'
Weight:	29780 Kg.
Seal 1:	079436
Seal 2:	
Ex. Description:	20ft general
Terminal Status:	Departed
Yard Position:	
Commodity:	

Bottom Screenshot (Detailed Tracking Information):

VIR No:	KAPE-0348-18082020
Vessel Name:	BOTANY BAY
Voyage:	040W
Expected Arrival:	24-Aug-2020 15:00
Expected Departure:	27-Aug-2020 04:30
Actual Arrival:	24-Aug-2020 16:48

Vessel Name:	BOTANY BAY
Voyage:	040W
Expected Arrival:	24-Aug-2020 15:00
Expected Departure:	27-Aug-2020 04:30
Actual Arrival:	24-Aug-2020 16:48
Actual Departure:	27-Aug-2020 04:42
Port of Loading:	PKKHI
Port of Discharge:	AEJEA
Destination:	AEJEA
Empty Drop-off Location:	

Examination Marked:	
Grounding Date:	
Examination Completed:	
Holds:	
Released:	22-Aug-2020 23:55
Release Code:	AL

4. As per the above details, it appears that container no. PCLU2011890 having Seal No.079436 has left from PKKHI (i.e. Port of Karachi) for the destination AEJEA(i.e. Port of Jabel Ali) on 27.08.2020 through vessel "Botany Bay 040W. Therefore, summons dated 23.03.2022 was issued to the importer for submission of import related documents and to record their statements. Statement of Shri Shubham Surya S/o Sh. Sanjay Surya, Aged 23 years, Partner of M/s Surya Udyog was recorded on 11.04.2022 under section 108 of the Customs Act, 1962 wherein he stated inter-alia that:

- His name is Subham Surya S/o Sh. Sanjay Surya, became Partner of M/s. Surya Udyog, from 01.04.2022, before that since June 2019 he was looking after documentation and export work of this firm. He submitted copy of appointment & authorization of Company representative. This firm was started by his grandfather Late Sh. Kantilal Surya in 1969. In this firm, they are exporting mainly Brass Billets and Brass ingot and in this factory, they are manufacturing the goods viz. Brass Billets and utensils. They are also trading the imported as well as

domestic goods of Brass scrap, Zinc scrap and Zinc ingots.

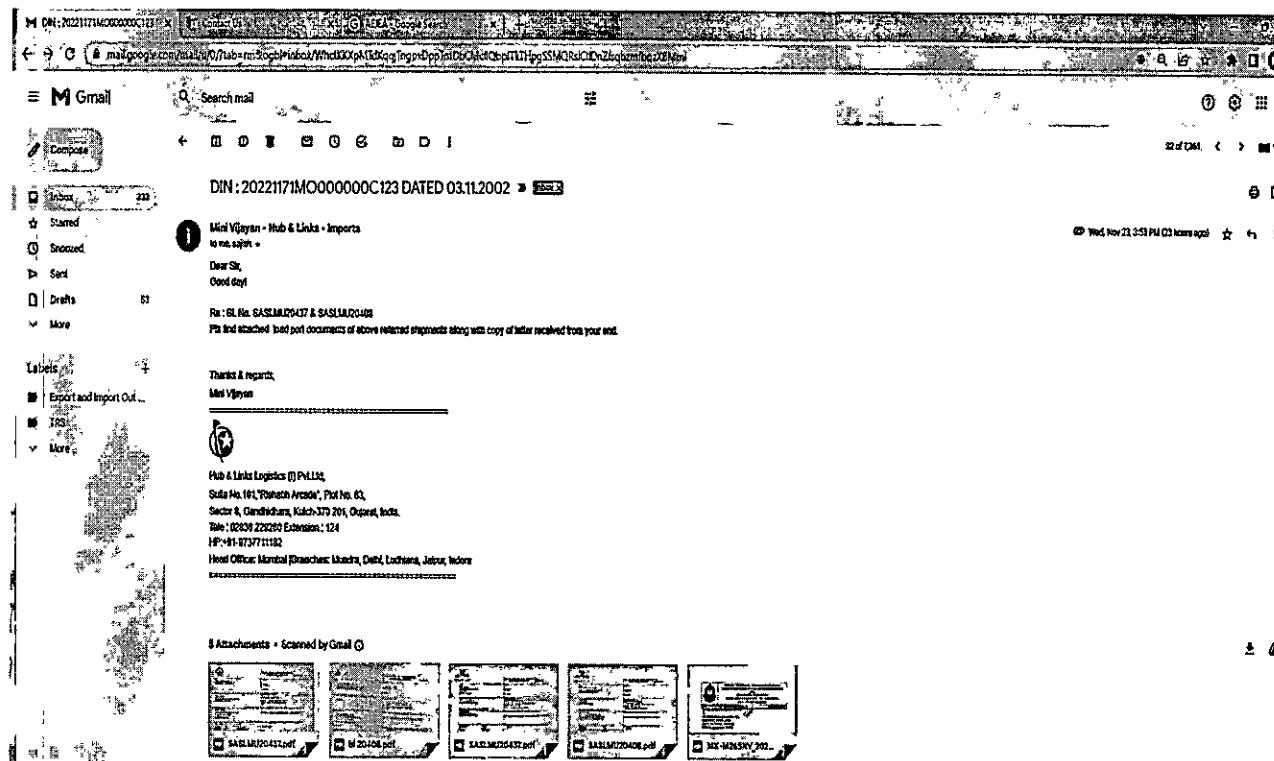
- He submitted import documents viz. Copy of AADHAR Card, copy of BL No. SASLMU20437 dated 06.09.2020, PSIC No WFZE/SHJ0/4343/2020 DT 04.09.2020, Sale Contract No.SC/143/2020 dated 15.08.2020, Form No.9, Form No.6, Freight certificate of supplier, packing list, COO issued by the supplier, BoE No.8765677 dated 10.09.2020, commercial invoice No. RT-390-2020 dated 06.09.2020.
- On being asked to explain from whom they had imported the goods vide bill of entry no.8765677 dated 10.09.2020 and to provide the name of Shipping Line who had transported the imported goods of said bill of entry for them, he stated they had imported goods i.e. Brass Scrap Honey/Engle from M/s Aden Scrap Trading (LLC), Sharjah-UAE vide above said bill of entry and shipping line who had transported the said goods is M/s Shah Aziz Shipping Lines LLC and his local agent is M/s Hub & Links Logistics (I) P Ltd, Suite No.101, Rishabh Arcade nr. To GST Bhawan, Plot No.83, Sector-8, Gandhidham, Kutch.
- On being pointed out that from the bill of lading No. SASLMU20437 dated 06.09.2020 issued by M/s Shah Aziz Shipping Lines LLC, it appears that the said goods transported into container no. PCLU2011890 having seal no. 079436 and on being asked to check from BL and confirm, he stated that he is aware that the said imported goods transported into container no. PCLU2011890 having seal no. 079436.
- On being further informed that as per above said BE, they had imported the goods from M/s Aden Scrap Trading (LLC), Sharjah-UAE and to inform from how many years they are importing goods from said exporter and what are the terms and conditions for imports, he stated that he had imported above said goods from M/s Aden Scrap Trading (LLC), Sharjah-UAE first time and never imported any goods from said supplier earlier or after said BE. The sale contract made between them vide No. SC/143/2020 dated 15.08.2020 and as per the agreement, the supplier has to sell Brass Scrap Honey @ 3950 USD per MT, total quantity 27 MT (+/-10%) and payment terms is 100% Cash against document (CAD). For the said consignment, they had made Payment of 108,526.25 USD on 19.09.2020 through HDFC bank, Indore branch.
- On being pointed out that on-going through the above said sale contract, it is found that there is no clause that the goods should be United Arab Emirates origin only and to explain as to whether they had asked him to supply goods of any country, he stated that in the above said sale contract there is no such type of clause mentioned in the contract about the country of origin.
- On being informed that as per BE No.8765677 dated 10.09.2020 the value of goods declared as Rs.76.87 lakhs, and to inform whether he had visited Dubai for pre-shipment inspection of above said goods, he stated that he had not visited Dubai for pre-inspection of the goods.
- On being informed that he had confirmed that the goods had been imported through container no. PCLU2011890 having seal no. 079436, and on being asked to go through the container tracking website of PICT i.e. <https://pict.com.pk/en/online-tracking>, as per that, it appeared that

the goods transported vide container no. PCLU2011890 having seal no. 079436 for which they have filed bill of entry no. 8765677 dated 10.09.2020 are of "Pakistan" origin and Port of loading mentioned PKKHI (Karachi) to AEJEA (Jebel Ali), departure date – 27.08.2020 and on being asked as to whether he agrees, he stated that he confirmed that the details of container no. and seal no. are mentioned in the SASLMU20437 dated 06.09.2020 and PICT documents are same, regarding country of origin of Pakistan, he did not comment on the origin of goods. He made sale contract from Dubai based supplier for supply of said goods and the supplier has informed that the goods are of Dubai origin. He didn't know that the said goods are of Pakistan origin.

- On being asked whether there was any discussion made about the rates of Brass scrap honey of different countries, he stated that they are finalizing the rates of the said goods as per quality and purity of brass, because the rates of the goods are decided as per London Metal Exchange (LME) rates basis.
- On being asked whether he had accepted/ negotiated lower rates of said goods of any country including Pakistan, he stated that the rates had been finalized as per LME.
- On being asked as whether he knows that Pakistan origin goods are classifiable under CTH-9806 and as per Notification No.5/2019-Customs, the BCD is applicable @ 200% and other applicable duties, he stated that he didn't know about the classification and duty of Pakistan origin goods, now he came to know that the rate of duty of Pakistan origin goods are very high.
- On being informed that as per container tracking website of PICT, it is established that the goods of BE No. 8765677 dated 10.09.2020 valued to Rs.76.87 lakhs are of Pakistan origin, and on being asked to explain why basic customs duty @ 200% + other applicable duties should not be recovered for the goods of said BOE, he requested that he made sales contract with the supplier for the import of above goods and it was not in his knowledge that goods are Pakistan origin.
- He requested that any mistake in this matter happened on the part of exporter/intender, as he had imported Brass Scrap on LME basis only and not on the basis of origin basis, therefore lenient view may be taken.

Enquiry with the shipping line agent

5. The enquiry was further extended and letters dated 13.06.2022 and 03.11.2022 were issued to the Shipping Line M/s Hub & Links Logistics (I) Pvt. Ltd., Suite No.101, Rishabh Arcade, Near to GST Bhawan, Plot No.83, Sector-8, Gandhidham- 370201 requesting them to provide Load Port Documents of the container no. PCLU2011890 pertaining to the importer M/s Surya Udyog for the import of Brass Scrap Honey. In compliance, the said Shipping Line sent following mail on 23.11.2022 to this office e-mail:



6. The document attached with the said mail were downloaded, details of which are as under:

- (i) Copy of Shipping Bill No. 830/KPEX-SB-22764 dtd. 22.08.2020 filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, 154, Street 10, Akber Road, Block A for export of 27.475 MTs. of Brass Scrap Honey to M/s Aden Scrap Trading LLC, P.O. Box 26745 Sharjah (UAE) in Container No. PCLU2011890;
- (ii) Copy of Bill of Lading No. SASLMU20437 dtd. 27.08.2020 issued by CIM Shipping INC wherein shipper is mentioned as "M/s Rafiq Traders, Karachi (Pakistan), Consignee/ Notify party as M/s Aden Scrap Trading LLC, P.O. Box 26745 Sharjah (UAE), load port as Karachi and port of discharge as Jabel Ali for transport of 27.475 MTs. of Brass Scrap Honey in Container No. PCLU2011890 having Seal No. 079436.
- (ii) Copy of Bill of Lading No. SASLMU20437 dtd. 06.09.2020 issued by Shah Aziz Shipping Lines LLC wherein shipper is mentioned as "M/s Aden Scrap Trading LLC, P.O. Box 26745 Sharjah (UAE), Consignee/ Notify party as M/s Surya Udyog, F/G Industrial Estate, Agar Road, Ujjain, MP-456001, load port as Jabel Ali and port of discharge as Mundra for transport of 27.475 MTs. of Brass Scrap Honey in Container No. PCLU2011890 having Seal No. 079436.

7. Statement of **Shri Sajish Sivaraj Puthenchira, General Manager of M/s Hub & Links Logistics (I) Pvt. Ltd.**, Gandhidham was recorded on 23.02.2023 under Section 108 of the Customs Act, 1962 wherein he stated inter-alia that:

- He is General Manager of M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham) and responsible for all the activities related to import and export at Mundra/Kandla on behalf of the company. They are the agent of M/s Shah Aziz Shipping Lines LLC, Dubai. M/s Shah Aziz Shipping Lines LLC is having their own containers which are used for export / import of cargo in various ports. Their scope of work is to coordinate with

vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM on the basis of the documents received from the load port, collect the charges and documents from consignee before releasing the Delivery Order. They act as a Delivery Agent in imports and their name is mentioned in the bill of lading. The importer or their CHA approaches them and submit the Original Bill of Lading (issued by load port agents) or surrendered copy of Bill of Lading if it is surrendered at load port, and pays their dues, then they release the container. They book the same empty containers for export and collect ocean freight and other origin charges at Port of Loading before releasing the Bill of Lading.

- On being asked to explain the transactions in respect of import of Brass Scrap Honey from M/s Aden Scrap Trading (LLC), Sharjah-UAE in Container No. PCLU2011890 by M/s Surya Udyog, F/G Industrial Estate, Agar Road, Ujjain, MP-456001 and to submit all the related documents, he stated that Container No. PCLU2011890 (of M/s Surya Udyog) was loaded from Jabel Ali on 06.09.2020 in vessel SIMA GISELLE Voy.006 and they were appointed delivery agent by their principal M/s Shah Aziz Shipping Lines LLC. In this regard, they have already submitted all the load port documents vide their mail dated 23.11.2022 from their mail id impdoc.kandla@hublinksindia.com to the siibmundra@gmail.com and these are as under :

 1. Shipping Bill No. 830/KPEX-SB-22764 dtd. 22.08.2020 filed with Custom Office, MCC Export, Karachi by M/s Rafiq Traders, 154, Street 10, Akber Road, Block A;
 2. Bill of Lading No.SASLMU20437 dtd.27.08.2020 issued by CIM Shipping INC for transport of Brass scrap Honey in container no. PCLU2011890 from Karachi Port to Jabel Ali;
 3. Bill of Lading No.SASLMU20437 dtd.06.09.2020 issued by Shah Aziz Shipping Lines LLC for transport of Brass scrap Honey in container no. PCLU2011890 from Jabel Ali to Mundra,

- **On being informed that the details of above documents at Sr.No.1-3 are re-produced in the below table:**

Particulars	Shipping Bill filed with Custom Office, MCC Export, Karachi	Bill of Lading Karachi Port to Jabel Ali	Bill of Lading Jabel Ali to Mundra
Document No. and date	830/KPEX-SB-22764 dtd. 22.08.2020	SASLMU20437 dtd.27.08.2020	SASLMU20437 dtd.06.09.2020
Filed by/Issued by	M/s Rafiq Traders, 154, Street 10, Akber Road, Block A	CIM Shipping INC	Shah Aziz Shipping Lines LLC
Delivery Agent at place of Delivery	Shah Aziz Shipping Lines LLC, P.O.Box No.31600, Office	M/s Hub & Links Logistics (I) Pvt. Ltd., Suite No.101, Rishabh Arcade,

		801, 8 th floor, Damac Smart Heights, Tecom, Dubai, UAE	Near to GST Bhawan, Plot No.83, Sector-8, Gandhidham- 370201
Port of loading	MCC Export, Karachi	Karachi	Jabel Ali
Port of supply/ discharge	Jabel Ali	Jabel Ali	Mundra
Name and address of the Shipper/ Exporter	M/s Rafiq Traders, 154, Street 10, Akber Road, Block A	M/s Rafiq Traders, Plot No.25, Near` Shar Shah, Akber Road, Karachi, Pakistan	M/s Aden Scrap Trading LLC, P.O.Box 26745 Sharjah UAE)
Name and address of the Consignee/ Notify party	M/s Aden Scrap Trading LLC, P.O.Box 26745 Sharjah UAE)	M/s Aden Scrap Trading LLC, P.O.Box 26745 Sharjah UAE)	M/s Surya Udyog, F/G Industrial Estate, Agar Road, Ujjain, MP-456001
Description of goods	Brass Scrap Honey as per ISRI	Brass Scrap Honey as per ISRI	Brass Scrap Honey as per ISRI
Weight/qty.	27.475 MTs.	27475 Kgs.	27475 Kgs.
Container No.	PCLU2011890	PCLU2011890	PCLU2011890
Seal No.	079436	079436

- On being asked to peruse the details and offer comments, he stated that the details are correctly mentioned and he understands that 27475 Kgs. Kgs. of Brass Scrap Honey were loaded in Container No. PCLU2011890 having seal no.079436 from Karachi Port and it has reached Mundra via Jabel Ali. Further, the said container was not opened at Jabel Ali as the seal No. 079436 affixed at Karachi Port is found intact at Mundra Port.
- On being informed that numbers of Bill of lading of Karachi Port and Jabel Ali port are same as SASLMU20437 but the dates are different and to clarify the same, he stated that it was a case of switch Bill of Lading wherein the number remains same but the date of issue is changed. It is used when the traders do not want to disclose actual supplier to the consignee/buyer. All the details except shipper, consignee and/or notify party shall remain same in the switch Bill of lading.
- On being pointed out that as stated by him, it is clear that the goods were of Pakistan Origin and M/s Shah Aziz Shipping Lines LLC is the receiving agent at Dubai and issuer of Bill of ladings at Jabel Ali, but these goods were presented before Customs that goods were of UAE origin, therefore, it appears that they have deliberately mis-informed or mis-stated that facts before Customs and in this case, they may also be liable for penal action and on being asked to offer comments, he denied the allegations outright and stated that his company M/s Hub & Links Logistics India Pvt Ltd. are not the actual transporter but they acted as the agent of M/s Shah Aziz Shipping Lines LLC, Dubai who were the receiving agent at Dubai and in turn issued Bill of lading from Dubai to Mundra. They have no control or interest in business of said firm. It was not in their knowledge that the goods were of Pakistan origin and further, no documents were in their possession and the load port

documents submitted by them were arranged by them by making request to the said firm. Their role was merely limited to deliver the containers to consignee on production of documents and payment of dues. He further stated that it was not at all in their knowledge or notice that what was the previous load port other than Jabel Ali in the instant case. In the instant case, they came to know about the switch bill of lading only after the documents were arranged by them, before that, for them it was original bill of lading. They cannot be held responsible for switch bill of lading, it was not done by them, nor it was in their notice, nor they had any say or approval in the matter.

Enquiry regarding Pre-Shipment Inspection Certificate

8. While filing the BE, the importer had uploaded Pre-Shipment Inspection Certificate (PSIC) No. WFZE/SHJ0/4343/2020 dated 04.09.2020 purported to have been issued by M/s Wise Services FZE, Sharjah-UAE, therefore, the enquiry was made with the said agency regarding the genuineness of said certificate and a mail dated 13.02.2023 was sent, from mail id "rajks.g019401@gov.in" of this office to the mail id "wisefze@yahoo.com, text of the same is re-produced as under:

Gentleman,

While investigating a case of evasion of Customs Duty, this office has come across a Pre-shipment Inspection Certificate issued in the name of your company i.e. M/s Wise Services, FZE, Sharjah. The said Certificate is attached herewith for ready reference please

It is requested to go through the same and inform as to whether it was issued by you or otherwise. Please certify its genuineness.

Immediate reply by return mail is requested please.

Regards.

9. In response, **M/s Wise Services FZE**, Sharjah vide a mail dated 16.02.2023 claiming that the said PSIC was issued by them and sent certain photographs of the closed and opened container having goods inside it. The text of the said mail is re-produced as under:-

With reference to your query regarding the genuineness of Pre- Shipment Inspection Certificate No: WFZE/SHJ0/4343/2020 DATED 04.09.2020, we confirm that the Certificate is Genuine and Authentic.

Importer: SURYA UDYOG.

Address: F/G, INDUSTRIAL ESTATE, AGAR ROAD, UJJAN (M.P.) - 456001, INDIA

PAN NO: AAFFS0827C, GST NO: 23AAFFS0827C1ZQ

IEC No: 1196004676

Material: BRASS SCRAP HONEY / ENGEL AS PER ISRI (HS CODE: 74040022)

Quantity: 27.475 MT (01 Container)

Container No: PCLU2011890

Copy of the Bill of Lading, Loading Photographs recorded at the time of Inspection and PSIC are also attached.

Sir, since you have mentioned that this is a case of evasion of Customs Duty, we wish to bring to your kind notice that the PSIC (Pre-Shipment Inspection Certificate) is NOT TO BE CONSIDERED AS A CERTIFICATE OF

QUALITY OR QUANTITY, we do not check the quality of the goods nor the quantity.

*As mandated by the DGFT and as mentioned on the PSIC, we certify that: -
"The Consignment does not contain any symbol related to ionising radiation and/ or any marking related to transport of dangerous goods classified as Class 7 under United Nations classification.*

The consignment does not contain any type of arms, ammunition, mines, shells, cartridges, or any other explosive material in any form either used or otherwise, and that the consignment was checked for radiation level, and it does not have radiation levels (gamma and neutron) in excess of natural background. The Radiation level of the Consignment is within the accepted range and is fit to be exported to India."

From the above, it is evident that we DO NOT CERTIFY either the Quality of the Material or the Quantity. Details of Material Description and Quantity are indicated as per details shown on the Ocean Bill of Lading (attached). Please revert if any additional information is required.

10. Since the photographs sent by the said agency does not prove that these were taken at Jable Ali and the examination was done there and further, this office is having evidences in the form of online verification of said container no. PCLU2011890 on the website of Pakistan International Container Terminal (PICT), Karachi, Pakistan as well as the confirmation in the form of documentary evidences received from the shipping line, as discussed hereinabove, that the said container was loaded at Karachi Port and no seal was opened at Jabel Ali and it is found intact at Mundra Port, therefore, another mail dated 21.02.2023 was issued to them requesting them to state the truth failing which they would be liable for penal action. The text of the said mail is also re-produced as under:

This is to bring to your notice that this office has gathered ample evidence that Container No.PCLU2011890 was loaded from Port of Karachi with Seal No.079436 and the said Seal was found intact at the Mundra Port . It reached Jabel Ali as a Trans-shipment cargo just to hide the facts of Goods of Pakistan Origin and consequent attempt of evasion of Custom Duty. This office is of the opinion that the said container was never opened at Jabel Ali.

This aspect can be verified by you also at your end by searching the details of said container on the website of Pakistan International Container Terminal (PICT), Karachi. Other evidence cannot be shared with you at present.

In view of the above, it is requested to offer your comments and to state the truth as your certificate also mention the same Seal no.079436. It may please be noted that furnishing false information or issuing fake certificate may invite penal action as per Law of Land.

11. On receipt of said mail, the said agency has sent an evasive reply vide mail dated 23.02.2023 seeking refuge under the circumstances created due to COVID 19 and stated that their staff is changed and new staff is not aware in the matter and they are trying to trace the records and sought time till 10.03.2023 to clarify further. The text of the said mail is also re-produced as

under: -

We are in receipt of your email dated 21.02.2023, kindly excuse the delay in reply.

This PSIC was issued during the height of the COVID19 pandemic, and it is now almost two and a half years since the certificate was issued. We are trying to trace all the records, but it is proving to be very difficult as the Inspector who carried out the Inspection and filed the Inspection report left our employment in 2020 and is also not reachable as he has left the UAE, due to the almost complete cessation and lockdown of all business activities in the UAE in 2020 /2021.

All the office staff in our UAE office who are dealing with the PSIC matters are new and do not have knowledge of Inspections and Certificates that were issued during the Pandemic period.

We are also trying to contact the Exporter ADEN SCRAP TRADING LLC, but we are only receiving voice messages from their telephone number and efforts to reach their offices is also not possible. We understand that the Exporter is likely to return to the UAE during the first week of March 2023. Hence. We kindly request you to give us some time up to the 10th of March 2023, which will enable us to conduct more investigations and to reply to you with all the details.

Thanking you for your kind consideration in advance.

Sincerely

WISE SERVICES FZE

12. Whereas no further communication was received from the said agency even after passing of more than 20 days since 10th March,2023, therefore, it appears that the said agency has issued a fake and fraudulent certificate claiming that the consignment was opened and examined at Jabel Ali but, it further appears that container was not opened at Jabel Ali and the photographs sent by the said agency must be pertaining to Karachi Port at the time of loading of goods.

13. Therefore, from the above, it appears that 27475 Kgs. of Brass Scrap Honey were loaded in Container No. PCLU2011890 having seal no.079436 from Karachi Port and it has reached Mundra via Jabel Ali and that the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan so as they can avoid the 200% Customs Duty. It further appears that the container was not opened at Jabel Ali as the seal affixed at Karachi Port is found intact at Mundra Port and that all the documents viz. Pre-shipment Inspection Certificate, country of origin certificate etc. appears to be forged and fraudulent and created only with the intention to hide the fact about country of origin and to evade payment of appropriate duty and it further appears that besides the importer, there was an active role of M/s Wise Services FZE, Sharjah-UAE and M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham in aiding and abetting of said attempt to evade duty.

14. For the sake of brevity, the relevant provisions of the Customs Act, 1962 are reproduced as under:

SECTION 17 Assessment of duty — (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section

50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

SECTION 46 Entry of goods on importation

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

SECTION 28 Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

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

any willful mis-statement; or

(c) suppression of facts,

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

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

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

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

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

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

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

SECTION 28AA Interest on delayed payment of duty— (1) Notwithstanding

anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to paid interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty -six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

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

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

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

Any person, -

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

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

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 1 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

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

3 [(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 4 [not exceeding the difference between the declared value and the value thereof or five thousand rupees],

whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 5 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 6 [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

SECTION 114A. *Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.*

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

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation. - For the removal of doubts, it is hereby declared that-

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date* on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

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

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

15. In view of the above, it appears that the importer M/s Surya Udyog (IEC 1196004676), Udgoy Puri, Agar Road, Ujjain, MP-456001 had imported Pakistan Origin Brass Scrap via Jebel Ali (United Arab Emirates) port by mis-declaring the Country of Origin (COO) as UAE to evade higher rate of the Customs duty i.e. BCD@200% adv. levied on goods of Pakistan Origin vide Notification No. 05/19-Cus dated 16.02.2019. The details of duty forgone in this matter is in table below:

Table B

BE No. & Date	Item Description	Country of Origin as per BE	Actual country of origin	CTH in BE	CTH actually classifiable	Assessable Value (Rs.)	Duty paid (BCD: 2.5%, SWS:1 0%, IGST: 18%)	Duty Payable (BCD: 200%, SWS:1 0%, IGST: 18%)	Differential Duty (Rs.)
8765 677/ 10.09 .20	Brass Scrap(Honey)	UAE	Pakistan	7404 0022	98060 000	76875 49	16332 20	21340 636	19707 416

16. After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. In the instant case, the importer has mis-declared the Country of Origin as UAE instead of actual Country of Origin i.e. Pakistan with intent to evade appropriate Customs Duty in terms of Notification No.05/2019 dated 16.02.2019 which provides for levy of BCD @200% in case of all the goods having country of Origin as Pakistan, during self-assessment at the time of filing of Bills of Entry. As such, the declaration with respect to the Country of Origin by the importer is misleading and this act on the part of importer resulted in short levy of Duty, which led to undue monetary benefit to the importer. Thus, the act of mis-declaration of Country of Origin of the imported goods by the importer resulted into short payment of the applicable Customs Duty.

17. Whereas the aforesaid facts show that the importer had resorted to willful mis-declaration of Country of Origin, the relevant Customs Duty Notification number in the Bill of Entry of the said imported goods by

suppressing the said material facts, which shows the ulterior motive of the importer to evade payment of applicable Customs Duty in respect of said imported goods cleared for home consumption. It is pertinent to mention here that the said fact of mis-declaration of Country of Origin came to the notice of Department only after the enquiry was initiated on the basis of NCTC alert, otherwise it would have gone un-noticed and caused huge loss to Govt. Exchequer. Since the goods were of Pakistan origin and as per Notification No.05/2019 - Customs dated 16.02.2019, the goods imported from the Islamic State of Pakistan are appropriately classifiable under Chapter Tariff Heading No. 98060000 and are leviable @ 200% BCD + 10% SWS + 18% IGST. Therefore, the total Customs Duty amounting to **Rs.1,97,07,416/-** as detailed in Table-C, evaded/short paid by the importer, is liable to be demanded under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

18. It further appears that by their act of omission and commission in as much as mis-declaration of country of origin as UAE as against the actual country i.e. Pakistan, with an intent to evade payment of Customs Duty as the goods of Pakistan origin attracts duty at much higher rate, therefore, it appears that the subject goods are liable for confiscation under Section 111(m) of Customs Act, 1962. It further appears that the importer has rendered themselves liable for imposition of penalty under Section 112 (a)(ii) of the Customs Act, 1962 for the goods being liable for confiscation. It appears that the importer is also liable for penalty under Section 114A of the Customs Act, 1962 for their act of omission and commission to evade duty on account of *collusion or any willful mis-statement or suppression of facts*. It further appears that their act of omission and commission to mis-declare the country of origin to evade the duty by way of producing bogus or fake documents (viz. PSIC, COO Certificate, Invoice etc.) has also rendered them liable for penalty under Section 114AA of the Customs Act, 1962.

19. It further appears that by their act of omission and commission of willful mis-statement or suppression of facts/issuing of false/fraudulent PSIC certificate which led to evasion of duty and caused huge loss of Govt. revenue, M/s Wise Services FZE, Sharjah-UAE has rendered themselves liable for imposition of penalty under Section 112 (b)(ii) and Section 114AA of Customs Act, 1962.

20. It further appears that it was in the knowledge of the principal of M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham and they were having all the documents for the fact that the goods were loaded at Karachi Port whereas another Bill of lading was prepared for giving the impression that the goods were supplied from Jable Ali and therefore, it further appears that by their said act of omission and commission which led to evasion of duty and caused huge loss of Govt. revenue, M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham has rendered themselves liable for imposition of penalty under Section 112(b)(ii) and Section 117 of Customs Act, 1962.

21. Therefore, Show Cause Notice **F.No. GEN/ADJ/COMM/122/2023-Adjn dated 12.05.2023**, was issued to **M/s Surya Udyog**, Udgoy Puri, Agar Road, Ujjain, MP-456001, and made answerable to **the Commissioner of Customs**, Mundra, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat 370421, wherein it is proposed to:

- i. Reject the Classification of 27475 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No. PCLU2011890 under Chapter Tariff Heading No.74040022 under BoE No. 8765677 dated 10.09.2020; and re-classify the same under Chapter Tariff Heading No.98060000 of the Customs Tariff Act, 1975; and also deny the exemption availed by them under Sr.No.382 of Notification No.50/2017 - Cus dated 30.06.2017 for availing the benefit of BCD @ 2.5%.
- ii. Confiscate 27475 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No. PCLU2011890 under BoE No.8765677 dated 10.09.2020 valued at **Rs.76,87,549/- (Rupees Seventy-Six Lakh Eighty-Seven Thousand Five Hundred Forty-Nine only)** under Section 111 (m) of the Customs Act, 1962;
- iii. The differential Customs Duty of **Rs. 1,97,07,416/- (Rs. One crore Ninety-Seven Lakh Seven Thousand Four Hundred Sixteen Only)**, as detailed at para 15 above, should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
- iv. Penalty should not be imposed upon them under the provisions of Section 112 (a)(ii) or 114A of the Customs Act, 1962;
- v. Penalty should not be imposed upon them under the provisions of Sections 114AA of the Customs Act, 1962.
- vi. Impose Penalty upon **M/s Wise Services FZE, Sharjah-UAE**, under the provisions of **Section 112(b)(ii) and Section 114 AA** of the Customs Act, 1962.
- vii. Impose Penalty upon **M/s Hub & Links Logistics (I) Pvt. Ltd.**, upon them under the provisions of **Section 112(b)(ii) and Section 117** of the Customs Act, 1962.

22. DEFENCE SUBMISSIONS OF THE NOTICEES:

22.1. DEFENCE SUBMISSION OF M/S. WISE SERVICES FZE, UAE, vide their written submission dated 10.06.2023 inter-alia submitted that:

1) M/S. WISE HAS ISSUED THE PSIC IN TERMS OF PROVISIONS PROVIDED UNDER HAND BOOK OF PROCEDURE. HENCE. PROVISIONS OF CUTOMS ACT, 1962 ARE NOT APPLICABLE:

- *In the instant case, M/s. WISE received a written request from M/s. ADEN SCRAP TRADING EEC., P.O. BOX 26745, SHARJAH, U.A.E 28.08.2020, requesting to carry out Pre-Shipment Inspection of one Container: PCLU2011890, which was located at Jebel Ali Port awaiting shipment and to issue them with a Pre-Shipment Inspection Certificate. Subsequently, they were supplied with a Certificate of Origin and a Commercial Invoice dated 06.09.2020. It explained to them that since it was the period of the COVID-19 Pandemic (travel and transport restrictions were in force), they said that had already loaded the container and sent it to Jebel Ali Port.*
- *Accordingly, Inspector of M/s. WISE visited Jebel Port and inspected the container PCLU2011890. Since the Container was already closed and sealed, Inspector externally inspected the container without opening the gate for Radio Activity levels using and explosives Radiation Survey Meters. The PS Inspector also checked any presence of explosives live or used with the help of Explosives*

Detection Kit (Trace X Explosive Detection Kit) approved by the DGFT. After the Inspection of closed container the Inspector prepared and submitted his Pre-Shipment Inspection Report (hereinafter referred to as "PSIR").

- *Based on the Inspector's PSIR, the Loading Photographs (supplied by the Exporter), Ocean Bill of Lading, Certificate of Origin and Exporter's Commercial invoice supplied by the exporter, PSIC Certificate No.: WFZE/SHJ0/4343/2020 dated 04/09/2020 was duly prepared and issued.*
- *The loading photographs showing the loaded material were supplied by the exporter were accepted by them, since the container was loaded and dispatched to Jebel AH Port amid Transport and Travel Restrictions imposed by the UAE Government during COVID-19 pandemic.*
- *It is further submitted that Fixing of the seals on the container is not normally done by a PSIC agency. The seal is fixed by the Customs Officer inspecting the goods and is often changed inside the load Port by Customs Officials. For this reason, M/s. WISE has accepted the Seal Number as mentioned in the BL to be the final seal. Also, DGFT has clarified that in case of any discrepancy in Seal Numbers on the Containers, the Seal Number mentioned in the BL is to be considered.*
- *It is pertinent to note that Jebel Ali Port has installed highly sophisticated Radio Activity Gate Scanner, and all containers entering into or exiting out of Jebel Ali Port are mandatorily scanned and monitored to ensure safe radio-activity levels, and that this was double checked at the Jebel Ali Port by them using their own instrument/kits.*

2) DGFT Para: Responsibility of PSI Agency:

- *In the instant case also there is no allegation that the non-ferrous scrap of brass loaded in the impugned container No. PCLU2011890 was contaminated with any radio-active substance OR it was mixed with any war material/ explosives. Since the material found inside container was indeed found to be Metallic Scrap/ Seconds/ Defective as per the internationally accepted parameters for such a classification. Thus, so far as question of country of origin is concerned, it is not a subject issue of a PSIA as per the Chapter 2 of the Hand Book of Procedures (hereinafter referred to as "HBP") because PSIA is technically equipped for Radiation and Explosive checks only.*
- *M/s. WISE submits that Para No. 2.54 of the HBP contemplates that import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.*
- *Further, as per Clause (b)(i) of Para 2.54 of HBP provides that at the time of the clearance of goods, importer shall furnish to the Customs pre-shipment inspection certificate as per the format to Appendix 2H from any of the Inspection & Certification agencies given in Appendix-2G, to the effect that the consignment checked for radiation level and scrap does not contain radiation level (gamma and neutron) in excess of natural background. The certificate shall give the value of background radiation level at that place as also the maximum radiation level on the scrap.*

3) *that the jurisdiction of M/s. WISE had limited mandate in terms of Para 2.54 of HBP, only to certify that the impugned consignment was not containing any type of arms, ammunition, mines, shells, cartridges, or any other explosive material in any form either used or otherwise, and that the consignment was checked for radiation level and*

it was not having radiation levels (gamma and neutron) in excess of natural background. The Radiation level of the Consignment was within the accepted range and was fit to be exported to India.

4) M/s. WISE submits that the procedure provided in HBP to issue certificate does not mandate any officer of the PSIA to remain present throughout before the container during the stuffing of the goods. Their responsibility was only to verify the level of radiation and that the impugned goods were not containing ammunition, shells and explosives etc., which has already done by M/s. WISE. In other words, there is no allegation in the Show Cause Notice that impugned brass scrap was mixed with war material OR contaminated with Radio Active substance. Therefore, allegation raised against M/s. WISE is not proper on the part of the department. Hence, SCN is illegal and bad in law.

5) M/s. WISE submits that during almost all the year 2020, the whole world was passing through COVID-19 pandemic and its transmission was significantly greater, with a significant total death toll. **Therefore, it was compulsory for the working persons to work online and to avoid personal contact, as a safeguard measures.** Therefore, M/s. Aden Scrap Trading L.L.C sent the photographs along with all the required documents which is on records. On the basis of visual inspection of the photographs, and the visual inspection and radio-activity testing of the container, the Inspector of M/s. WISE certified that the impugned goods were free from any arms, ammunition and explosives etc. **There is no allegation in the SCN that the imported brass scrap is not as per photographs sent by the overseas supplier.**

6) It is further submitted that Jebel Ali Port has installed highly sophisticated Radio-Activity Gate Scanners and that ALL Containers entering into or exiting out of the Jebel Ali Port are mandatorily scanned and monitored to ensure safe radio-activity levels, **and that this was double checked in Jebel Ali Port by them using their own instruments.** Thus, it is submitted that M/s. WISE has followed the procedures laid down under Chapter 2 of the HBP. In fact, there is no allegation in the Show Cause Notice that M/s. WISE has contravened any of the provisions of HBP.

7) THE PSIC ISSUED BY M/S WISE IS GENUINE AND AS PER ACCEPTED CONDITIONS OF HBP:

M/s. WISE has never accepted that they have not issued the impugned certificate for the brass scrap imported by M/s. Surya Udyog, nor they have certified that they have opened and examined the cargo. This certificate was issued on the basis of photos and documents provided by the oversea exporter as well as after inspecting and testing for radiation and explosives etc. from outside. It may kindly be noted that M/s Wise has been using following high-end sophisticated equipments and kits to Inspect the goods for radiation and explosives even without opening the container by using the Explosive Detection Kits available with them (approved by DGFT): **Therefore, the use of terms "fake" and "fraudulent" in the SCN for the certificate issued by M/s. WISE is incorrect.**

8) M/S. WISE HAS COMPLIED WITH THE PROVISIONS OF HBP. PENALTY PROPOSED UNDER CUSTOMS ACT. 1962 NOT APPLICABLE:

- i. M/s. WISE submits that though penalty on M/s. WISE under Section 112(b)(ii) *ibid* has been proposed in the SCN, but nothing has been mentioned in the SCN on basis of which the goods were held liable for confiscation under any of the provisions of Section 111 *ibid* for the act of M/s. WISE.
- ii. M/s. WISE submits that in the Show Cause Notice, there is no proposal that the impugned goods are held liable for confiscation under Section 111 *ibid* for the act on the part of M/s. WISE, therefore, in absence of proposal of confiscation under Section 111 *ibid* for the act of M/s. WISE, penalty can be imposed under Section

112(b)(ii) *ibid*. Further, M/s. WISE has not acquired the possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which the knowledge of M/s. WISE or had reason to believe the goods were liable to confiscation under Section 111.

iii. **M/s. WISE has nowhere certified that they have examined the cargo (as examination means opening and examining intensively) as they have only Inspected the container without opening it. Thus, M/s. WISE has complied with the Para 2.5 and 2.6 of the Hand Book of Procedures (HBP).**

iv. There is no element of mens rea or conscious knowledge which can be attributed to M/s. WISE. There is no active role attributed to M/s. WISE, which could have justified the imposition of the penalty under Section 112(b)(ii) of the Act. M/s. WISE relies upon the decision of CESTAT in the case of **MEIRS PHARMA (INDIA) PVT. LTD. Versus COMMISSIONER OF CUSTOMS, CHENNAI [2004 (167) E.L.T. 53 (Tri. - Chennai)]**, in support of above submission.

v. M/s. WISE further submits that they have not gained any extra monetary or other benefits for issuance of the PSIC Certificate. Therefore, unless there is contumacious conduct or there is any deliberate violation of the provisions of statute, penalty on M/s. WISE cannot be imposed.

vi. Without prejudice to above, it is further submitted that the impugned goods were not seized nor detained and released provisionally by the department. It is also not available physically. The department has not taken over the goods under their custody. Therefore, there is not a single ground on basis of which it can be said to be held liable for confiscation under any of the provision of the Section 111 *ibid*; **thus, when goods cannot be held liable for confiscation, penalty proposed under Section 112 (b)(ii) is not sustainable.**

vii. In view of the above, it is requested to drop the proposal of penalty.

9) Penalty under section 114AA of the Customs Act 1962:

M/s. WISE submits that the PSIC has been issued in terms of the Chapter 2 of the HBP and on the basis of photos & documents provided by the supplier as well as on the basis of Inspection/testing of the closed container with the help of handheld equipment/tools and kits. There is no allegation in the SCN that overseas M/s. WISE has gained any extra financial benefit for issuance of the impugned certificate. There is no evidence that PSIC was issued "**knowingly or intentionally**" to aid the importer to import the goods of Pakistan Origin. Further, the declarations made on PSIC certificate is correct in every particular materials as per the provisions of HBP. Therefore, proposal of penalty under section 114AA is not applicable in the instant case.

10) Reply to allegation made in Para 12 of the SCN(page-8):

They cannot confirm with confidence that photograph received from exporter in UAE might have been taken at Karchi port or otherwise, since they could not take the photographs of goods inside container, as they could only inspect the container in the situation provided. They acted in good faith with the exporter at Jebel Ali and their intention cannot be put in doubt, as we had no option available in such Covid 19 situation in September 2020 as they made their Inspection of locked container from outside only as it served the purpose. Being an Inspection agency M/s WISE has no the commercial interest to get advantage in customs duty and value or quality/quantity of the material. We might have been cheated by their exporter. But there is a saying: "**To cheat is an offence, but to be cheated is not an offence.**" **Finally, they would like to emphasize that there was no malafide on part of M/s Wise and PSIC issued by M/s Wise is genuine as it was issued after proper Inspection from outside which is effective and allowed.**

11) In view of the above submission, it may kindly be appreciated that the duty casted by the DGFT a PSI Firm have been duly discharged by their Firm M/S WISE Services FZE. Hence there is no penal liability on M/s WISE as alleged in the SCN. In view of the above facts, M/s. WISE submits that nothing has been suppressed from the department in issuance of PSIC certificate. In view of the above submissions, the impugned Show Cause Notice (SCN) is liable to be quashed in the interest of justice. M/s. WISE craves leave to add to, alter or delete any of the submissions before or during the course of hearing. They also request for an opportunity of personal hearing before the case is decided.

22.2. DEFENCE SUBMISSION MADE BY M/S HUB & LINKS LOGISTICS (I) PVT LTD., VIDE THEIR LETTER DATED 19.06.2023, WHEREIN THEY INTERALIA STATED AS UNDER:

1) **Facts are devoid of Merits:**

They deny that they have deliberately mis-informed or mis-stated any facts before the Customs or having prior knowledge that goods were from Pakistan origin and neither have, they in any manner abetted the importer in an attempt to clear goods by way of mis-declaring the country of origin and have thus rendered themselves liable for penal action u/s 112 (a) (ii) and 114AA of the Customs Act, 1962 or any other law for the time being in force. The Noticee submits that the aforesaid SCN issued by the Commissioner, is without application of mind and based on surmises and conjectures.

2) **Seal opened by the department and goods examined & cleared by the proper officer of the Customs:**

that the seal cutting of the container is carried out in the presence of the proper officer of the Customs department, who later on examining the goods allows clearance. It is pertinent to note that in the instant case due process of law was carried out for clearing the goods and the department of customs should have identified the seal of the country of origin, Pakistan. That they have neither seen the container or the seal, except the document, Bill of Lading or the Bill of Entry which is in the form of paper. The Alert of the subject goods being shipped from the country of origin, Pakistan came to the notice of the department of customs only after the enquiry was initiated on the basis of NCTC Alert in the year 2022, when the goods had already been cleared in the presence of the proper officer of the customs department. In view of the above they shall be not be held liable and penalty should not be imposed u/s 112 (b) (ii) and 117 of the Customs Act, 1962.

3) **Containerized goods shipped during COVID-19 Pandemic:**

The Noticee submits that the said goods were shipped during the period, when the Covid pandemic was at its peak. It is pertinent to note that the COVID-19 pandemic presented an unprecedented challenge to public health, food systems, trade transactions and the world of work. Millions of enterprises faced and existential threat, nearly the world's 3.3 billion global workforce were at the risk of losing their livelihoods and it was a fight for survival. During such times of acute crises, it would be inhuman to even imagine that the Noticee were conniving with the Importers by aiding and abetting in attempt to evade duty. In view of the above the Noticee shall be not be held liable and penalty should not be imposed u/s 112 (b) (ii) and 117 of the Customs Act, 1962.

4) **No mis-declaration of the country of origin by the Delivery Agent/Noticee:**

The Noticee submits that, due diligence has been exercised by the Noticee and they have not violated any provisions of the Customs Act, 1962 or any other law for the time being in force. The Noticee submits that the department has not identified any mis-declaration in the form of wrong declaration of goods description, wrong declaration of country of origin, wrong declaration of quantity, wrong declaration of weight and wrong declaration of value. The Noticee submits that mis-declaration are done usually to avoid payment of customs duty and in this present case the legal obligation to pay customs duty is on the importer and

the Noticee should not be roped in for the unbecoming acts of the importer.

5) Noticee not the beneficiary for mis-classification of goods originating in or exported from the Islamic Republic of Pakistan:

The Noticee, is not concerned with regards to the taxes to be borne by the importer and has nothing to gain from the unlawful and illegal acts of the importer towards evasion of basic customs duty under CTH 98600000, **except earning his nominal fee for delivery of goods.** Therefore, all the allegations levelled on the Noticee are liable to be dropped forthwith.

6) No malafide intention on the part of Noticee for abetting the importer in attempt to clear goods by way of mis-declaring the country of origin:

The Noticee, would inter alia submit that there is no malafide intention on its part for abetting the importer in attempting to clear goods by way of mis-declaring the certificate of origin in any manner by presenting the usual procedures followed by all Shipping lines/Agents for loading export laden containers from Sharjah to Mudra, India via. Jebel Ali. The Noticee, reiterates that that they came to know about the switch bill of lading only after the documents were arranged by them, before that, for them it were original bill of lading. They cannot be held responsible for switch bill of lading, it was not done by them, nor it was in their notice, nor they had any say or approval in the matter. Hence, they cannot be held liable for any violation of the provisions of the Customs Act, 1962 or any other act for the time being in force.

7) Mis-statement or suppression of facts must be wilful for implication:

The Noticee, submits that on a plain reading of the statement u/s 108 of the Customs Act, 1962 given by the Shri. Sajish Sivaraj Puthenchira the General Manager of the Noticee has **brought out the ethical standard** of the Noticee the way it has conducted its business as a Delivery Agent. The Noticee, submits that **there is no iota of evidence against the Noticee** in the the statements u/s 108 of the Customs Act, 1962 given by all the Noticee's that could implicate the Noticee for abetting the importer in an attempt to clear goods by way of mis-declaring the country of origin at any stretch of imagination. Thus, there is no mis-statement or suppression of facts in the statement given u/s 108 of the Customs Act, 1962 that could hold the Noticee liable for the illegal acts of the importer. The Noticee, submits that they have come with clean hands while giving statement u/s 108 of the Customs Act, 1962 and as there is no mis-statement or suppression of facts, neither have they concealed any fact from their end pertaining to the country of origin, hence no penalty can be imposed u/s 112 (b) (ii) and 117 of the Customs Act, 1962 against the Noticee, for no fault of theirs. The Noticee is relying on the following case laws;

- i) *In Cosmic Dye Chemical v. Collector of Central Excise, 1995 (75) E.L.T. 721*
- ii) *The same position was reiterated in Continental Foundation Jt. Venture v. Commissioner of Central Excise, 2007 (216) E.L.T. 177*
- iii) *Commr. of Cus. (Imports), Mumbai Versus Hyundai Indus. Co. Ltd [2018 (361) E.L.T. 837 (Bom.)].*

8) Section 111 read with Section 147 of the Customs Act, 1962 cannot attract penalty u/s 112 (b) (ii) and Section 117 of the Customs Act, 1962 on the Noticee in the present case:

- The Role of the Noticee, as a Delivery Agent is liaisoning between the client and government agencies, i.e., the importer and the Government agencies. **Section 111 (m) of the Customs Act, 1962** pertains to **Confiscation of improperly imported goods**, in the present case pertaining to "misdeclaration of origin" wherein penalty is imposable u/s 112 (b) and/or 117 of the Customs Act, 1962. The Noticee has immediately provided all the material details requested by the department after being summoned. The Noticee, submits that as they have not violated the provisions of Section 111 (m) of the Customs Act, 1962 pertaining to Confiscation of improperly imported goods, **penalty u/s 112 (b) (ii) and 117 of the Customs Act, 1962 cannot be thrusted on the Noticee**, without application

of mind.

- In the present case, the Notice, cannot be held liable, either for mis-declaration of the country of origin or for mis-classification of goods and the onus shall, solely be attributed on the Importer only. On a bare reading of Section 147 of the Customs Act, 1962 it can be safely construed that any violation of provisions of the Customs Act, 1962 carried out by an agent does not absolve the importer and it is deemed that such violation has been done with the knowledge and consent of such owner, importer or exporter and in any proceedings initiated, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself and presumed to have been done with the knowledge and consent of such owner, importer or exporter, unless the contrary is proved. In the present case nothing contrary has been adduced by the importer against the Noticee towards mis-declaration of country of origin and mis-classification of CTH 74040022 instead of CTH 98060000 as per Notification No. 05/2019-Customs dated 16.02.2019.

- The Noticee relies on the following case laws:

- i) *K. KAMALA BAI Versus COMMISSIONER OF CUS. & C. EX., TRICHY [2005 (186) E.L.T. 459 (Tri. - Chennai)]*
- ii) *PAWAN KUMAR SINGH Versus COMMR. OF C. EX. (ADJUDICATION), NEW DELHI [2017 (357) E.L.T. 186 (Tri. - All.)]*
- iii) *SAJID KHAN Versus COMMISSIONER OF CUSTOMS (EXPORT), NHAVA SHEVA [2019 (370) E.L.T. 793 (Tri. - Mumbai)]*
- iv) *SACHIN KUMAR Versus COMMISSIONER OF CUSTOMS, MANGALORE [2020 (374) E.L.T. 775 (Tri. - Bang.)]*

9) Noticee has no mens rea to make the subject goods liable to confiscation:

The entire facts of the present case goes to prove that the Noticee had neither committed nor omitted to do anything which would render the goods liable for confiscation under section 111 of the Customs Act, 1962, neither have the Noticee submitted any false and incorrect documents with the intent to abet the importer in any manner, to clear goods by way of mis-declaring the country of origin to render themselves liable for penal action u/s 112 (b)(ii) and 117 of the Customs Act, 1962.

10) The Noticee relies on the following case laws:

- i) *Jeena and Company Versus Commissioner Of Customs, Bangalore [2021 (378) E.L.T. 528 (Tri. - /Bang.)]*
- ii) *Kamal Sehgal Versus Commissioner of Customs (Appeals), New Delhi [2020 (371) E.L.T. 742 (Tri. - Del.)]*
- iii) *Indian Acrylics Ltd. Versus Commissioner of Customs, Kandla [2015 (325) E.L.T. 753 (Tri. - Ahmd.)]*

11) Noticee is not the beneficiary in the import Shipment:

The Noticee would like to submit that they are in no way directly or indirectly beneficiary in the import of the impugned goods. Their performance is irrelevant to the mis-declaration of origin of country and mis-classification of description of the goods. Moreover, Noticee is neither related to the importer in any manner, nor does Noticee have any partnership with the importer. Noticee is not a beneficiary in the impugned import shipment.

12) Goods imported by Importer from supplier on the basis of London Metal Exchange (LME) and not on the country of origin.

The Noticee further submits that Shri. Shubam Surya (Partner) of M/s. Surya Udyog (RUD-2) in his Statement u/s 108 has stated that rates of the goods were decided as per the London Metal Exchange (LME) and not on the country of origin and that he was not aware about the classification and duty of Pakistan origin goods. In view of the above the Noticee shall not be held liable for the ignorance shown by the Importer themselves pertaining to the origin of goods from Pakistan

and the Noticee shall not be held liable and no penalty shall be imposed u/s 112 (b) (ii) and 117 of the Customs Act, 1962.

13) **Noticee has no mens rea:**

Noticee would like to submit that they acted as Delivery agents their scope of work is to coordinate with vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM on the basis of the documents received from the load port, collect the charges and documents from consignee before releasing the Delivery Order. **They act as a Delivery Agent in imports and their name is mentioned in the bill of lading.** The importer or their CHA approaches them and submit the Original Bill of Lading (issued by load port agents) or surrendered copy of Bill of Lading if it is surrendered at load port, and pays their dues, then they release the container. They book the same empty containers for export and collect ocean freight and other origin charges at Port of Loading before releasing the Bill of Lading. Thus, it indicates that the Noticee had no malafide intention or any criminal intent (mens-reas) in the whole procedure. Furthermore, the has satisfied all the parameters regarding the containers without delay and the statement u/s 108 of the Customs Act, 1908 wherein the Noticee have provided necessary and verifiable information supported with the aforesaid documentary evidence. **Without cogent evidence to show knowledge and mens-reas, the Noticee should not be penalised under Customs Act, 1962 and/or any other law for the time being in force.** For this purpose, **reliance is placed on the following Case Laws** concerning Delivery Agent /Customs Brokers as their role is of liaison-ing, hence the ratio of the following judgements can be applied in the case of Delivery Agents:

- i) *Hera Shipping Solutions Pvt. Ltd. Versus Commr. of Customs, Chennai-IV [2022(382) E.L.T. 552 (Tri.-Chennai)]*
- ii) *M.S. EXIM SERVICES Versus C.C., LUDHIANA [2021 (377) E.L.T. 615 (Tri. - Chan.)]*
- iii) *Jaiswal Steel Processing Versus Commissioner of Central Excise [2014 (306) E.L.T. 159 (Chhattisgarh)]*
- iv) *Commissioner Of C. Ex., Chandigarh Versus Pepsi Foods Ltd. [2010 (260) E.L.T. 481 (S.C.)]*
- v) *P.D. Manjrekar v/s Commissioner of Customs (EP), Mumbai [2008 (230) ELT.515 (Tri.-Mumbai)]*

On the basis of the above, penalty under section 112(b)(ii) and 117 should not be imposed on the Noticee. Hence, the allegations levelled in the SCN are liable to be dropped in toto.

14) The Noticee craves leave to amend/ alter/ delete/ modify any or all of the above submissions before the case is finally adjudicated.

15) The Noticee wishes to be heard in person before the case is adjudicated.

22.3. DEFENCE SUBMISSION MADE BY M/S SURYA UDYOG: M/S. SURYA UDYOG VIDE THEIR LETTER DATED 31.08.2023 INTERALIA SUBMITTED AS UNDER:

- (i) The Noticee is a MSME Unit having a capital investment of Rs. 65 Lakhs only.
- (ii) The Noticee occasionally import Scraps, apart from purchasing from local market, for Trading and manufacture of Utensils. Their main business is manufacture of Utensils and selling it in the local market.
- (iii) The Noticee executed sales order No.SC/143/2020 dated 15-08-2020 with M/s Aden Scrap Trading (LLC), Sharjah (UAE) for purchase of Brass Scrap Honey of UAE Origin only.
- (iv) The Noticee never ordered for Brass Scrap Honey of Pakistan Origin,

nor there is any such mention in the Sales Order executed.

- (v) The Foreign Supplier M/s Aden Scrap Trading (LLC), Sharjah (UAE), cheated the Notice by directly forwarding the Brass Scrap Honey to Mundra Port, India, which was purchased by them from Pakistan, loaded at Karachi Port and transported to Jabel Ali Port UAE, without knowing the consequences thereon.
- (vi) The Noticee declared the consignment of Brass Scrap Honey as UAE Origin as it is clearly mentioned in all the import documents, viz. Certificate of Origin, PSIC Certificate, Commercial Invoice, Packing List, Bill of Lading etc. etc. Hence there was no scope for any doubt of the country of origin of the imported goods. The Noticee is an innocent victim of the fraud played by the foreign supplier. As soon as the Notice came to know about the fraud played by the foreign supplier, they have initiated effective legal action against them.
- (vii) The Noticee has correctly classified the imported Brass Scrap Honey under Customs Tariff heading No. 74040022 attracting Basic Customs Duty @ 2.5% adv.
- (viii) The imported Brass Scrap Honey was produced before the Customs Officers at Mundra Port with all the documents received, for inspection. Hence the Noticee has not hide, suppressed, mis-declared anything from the Department, or committed any fraud to evade Govt. revenue.
- (ix) The Brass Scrap Honey imported was sold at the same rate shown in the Sales Contract plus Customs duty plus other incidental charges plus profit. No illegal financial transaction was detected or proved by the Investigating Officers, as seen from the Show Cause Notice.
- (x) The Noticee lodged a complaint vide their e-mail dated 19/06/23 with the Regional Authority of DGFT (CQCTD), as per Chapter 8 of the Foreign Trade Policy, with copy to the Indian High Commissioner, Dubai, for initiating legal action against the Foreign Supplier M/s Aden Scrap Trading (LLC), Sharjah (UAE), for cheating the Noticee, by supplying different goods against the Sales Contract, and also issuing fake documents. Separate notice is also issued to the foreign supplier of the Brass Scrap Honey.
- (xi) Since Covid-19 pandemic was its height during the relevant period and its lockdown, neither the Noticee nor the Customs Officers were able to physically inspect the imported Container in question and the material contained therein, hence the issue was not detected.
- (xii) This is the first instance a show cause notice has been issued to the Notice for violation of the law prevailing in the union of India and implicated in a case in which they have not committed any mistake. The issue is of technical in nature as far as the Noticee is concerned which is to be condone and set aside the impugned show cause notice.
- (xiii) Further, notice requested for personal hearing before the case is decided.

22.4. DEFENCE SUBMISSION MADE BY M/S SURYA UDYOG: M/s. Surya

Udyog vide their letter dated 13.03.2024 interalia submitted as under:

1) PSIC Certificate Authenticity: In such cases where parties were accused for mis-declaration of country of origin for financial gains, the PSIC issuing agency issued fake PSIC certificate. However the PSIC agency when enquired has confirmed the genuineness of the certificate of our shipment. Hence the financial liability in such case should fall on PSIC agency or the Supplier of the goods or the Shipping line for providing false information (if proved).

2) Unintentional Misdeclaration: Surya Udyog is a MSME unit and has imported brass scrap after 15 years unaware of how tracking a shipment works or what documents are required. After our CHA provided all documents to the shipping line agent and due payments were made with the Customs i.e, The shipment was inspected and also investigated at port and hence was approved for lifting. Only after 5-7 days of arrival, the materiel was lifted and at no point we were communicated that the said brass scrap honey was of not Dubai origin.

Which in that case, we would have never lifted. We believe the inspecting officer, at the time of port delivery, had a responsibility to inform us of any potential misdeclaration, following standard operating procedures.

3) Commitment to Cooperation: Even after my medical condition of leg infection I travelled from Ujjain to present these facts in-person to prove there was no malafide intention of ours and we are willing to walk the mile to prove our innocence. As an MSME, we consider ourselves a victim in this situation involving larger entities.

4) Limited Information and Ongoing Investigation: All documents are provided by the supplier and are of UAE origin. We are still unaware and unsure of the origin of the materiel because the owner of the firm and the DGFT authorized PSIC agency has stopped responding our letters and emails. We have appeared in front of Consulate General of India in Dubai to pray them to help us in this matter.

5) The noticee requested to understand and accept our innocence in this matter and provide relief of the said financial liability.

23. PERSONAL HEARING:

23.1. Opportunity of personal hearing in the case was given to the Noticees on 06.02.2024, 06.02.2024, 14.02.2024 and 22.04.2024 under the provisions laid down in Customs Act, 1962 and following the principles of natural justice.

✓ **1st PH on 06.02.2024:**

No one appeared in the personal hearing fixed on 06.02.2024.

✓ **2nd PH on 14.02.2024:**

No one appeared in the personal hearing fixed on 06.02.2024. However, the importer M/s Surya Udyog has submitted a written submission dated 08.02.2024 and 13.03.2024.

✓ **3rd PH on 22.04.2024:**

Shri Ashwani K. Prabhakar, Advocate appeared on behalf of Noticee No. 2(M/s Hub & Links Logistics (I) Pvt. Ltd.) in the personal hearing held today on virtual mode. He reiterated his submission dated 13.01.2024 and additional submission dated 28.02.2024. He elaborately explained the role of noticee and requested to drop proceedings initiated them in the Show Cause Notice.

24. DISCUSSION AND FINDINGS:

24.1. I have carefully gone through the **Show Cause Notice F.No. GEN/ADJ/COMM/122/2023-Adjn-O/o Pr. Commr- Cus-Mundra dated 12.05.2023** issued by the Commissioner of Customs, Custom House, Mundra, relied upon documents, submissions made by the Noticees and the records available before me. The main issues involved in the case which are required to be decided in the present adjudication are as below:

- i. Whether, Classification of 27475 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No. PCLU2011890 under Chapter Tariff Heading No.74040022 under BoE No. 8765677 dated 10.09.2020 is liable to be rejected & the same is liable to re-classified under Chapter Tariff Heading No.98060000 of the Customs Tariff Act, 1975.
- ii. Whether, the exemption availed by them under Sr.No.382 of Notification No.50/2017 - Cus dated 30.06.2017 for availing the benefit of BCD @ 2.5% is liable to be denied.
- iii. Whether, 27475 kgs. of BRASS SCRAP HONEY AS PER ISRI imported in Container No.PCLU2011890 under BoE No.8765677 dated 10.09.2020 valued at **Rs.76,87,549/- (Rupees Seventy Six Lakh Eighty Seven Thousand Five Hundred Forty Nine only)** are liable to be confiscated under Section 111 (m) of the Customs Act, 1962;
- iv. Whether, the differential Customs Duty of **Rs. 1,97,07,416/- (Rupees One Crore Ninety-Seven Lakhs Seven Thousand Four Hundred Sixteen Only)**, are required to be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
- v. Whether Penalty under Section 112 (a)(ii) or Section 114A and Section 114AA of the Customs Act, 1962 are liable to imposed upon M/s Surya Udyog.
- vi. Whether Penalty under Section 112 (b)(ii) and Section 114AA of the Customs Act, 1962 are liable to imposed upon M/s Wise Services FZE, Sharjah-UAE.
- vii. Whether Penalty under Section 112 (b)(ii) and Section 117 of the Customs Act, 1962 are liable to imposed upon M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham.

24.2. I find that in the instant case M/s. Surya Udyog (IEC-1196004676), had imported Brass Scrap Honey (CTH-74040022) of Pakistan Origin via Jebel Ali, UAE port by mis-declaring the Country of Origin (COO) as UAE to evade higher rate of Customs duty i.e. BCD @200% Adv. Levied on goods of Pakistan origin vide Notification 0519-Cus dated 16.02.2019. Therefore, I find that the core issue in the present case is of misdeclaration of Country of origin of goods, and wrongly availing of Sr. No. 382 of Notification No. 50/2017-CUs dated

30.06.2017 for availing the benefit of BCD @2.5%.

24.3. I find that during the course of investigation, the subject Container No. PCLU2011890 was tracked on the website i.e. <https://pict.com.pk/en/online-tracking> of **Pakistan International Container Terminal Ltd.**, Karachi, Pakistan (In short "PICT"), which revealed that the said Container was loaded from PKKHI (Port of Karachi, Pakistan) and destined to AEJEA (Jebel Ali, UAE) on 27.08.2020 through vessel "Botany Bay 040W.

24.4. I find that the voluntary statement dated 11.04.2022 of **Shri Shubham Surya, Partner of M/s Surya Udyog** recorded under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that:

- They had imported goods i.e. Brass Scrap Honey/Engle from M/s Aden Scrap Trading (LLC), Sharjah-UAE vide bill of entry No. 8765677 dated 10.09.2020 and shipping line who had transported the said goods is M/s Shah Aziz Shipping Lines LLC and his local agent is M/s Hub & Links Logistics (I) P Ltd, Suite No.101, Rishabh Arcade nr. To GST Bhawan, Plot No.83, Sector-8, Gandhidham, Kutch.
- He confirmed that the goods covered under the bill of lading No. SASLMU20437 dated 06.09.2020 issued by M/s Shah Aziz Shipping Lines LLC, imported through container no. PCLU2011890 having seal no. 079436.
- On being pointed out that the subject sale contract (SC/143/2020 dated 15.08.2020), reads no clause that the goods should be United Arab Emirates origin only, he stated that in the above said sale contract there is no such type of clause mentioned in the contract about the country of origin.
- He confirmed the tracking of said container no. PCLU2011890 having seal no. 079436 through tracking website of PICT i.e. <https://pict.com.pk/en/online-tracking>, that the goods transported vide container no. PCLU2011890 having seal no. 079436 for which they have filed bill of entry no. 8765677 dated 10.09.2020 are of "Pakistan" origin and Port of loading mentioned PKKHI (Karachi) to AEJEA (Jebel Ali), departure date - 27.08.2020. He confirmed that the details of container no. and seal no. are mentioned in the Bill of Lading No. SASLMU20437 dated 06.09.2020 and PICT documents are same, regarding country of origin of Pakistan, he did not comment on the origin of goods. He made sale contract from Dubai based supplier for supply of said goods and the supplier has informed that the goods are of Dubai origin. He didn't know that the said goods are of Pakistan origin.
- On being asked as whether he knows that Pakistan origin goods are classifiable under CTH-9806 and as per Notification No.5/2019-Customs

the BCD applicable @ 200% and other applicable duties, he stated that he didn't know about the classification and duty of Pakistan origin goods, now he came to know that the rate of duty of Pakistan origin goods are very high.

- **he had imported Brass Scrap on LME basis only and not on the origin basis.**

24.5. I find that voluntary statement dated 23.02.2022 of Shri Sajish Sivaraj Puthenchira, General Manager of M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham recorded under Section 108 of the Customs Act, 1962, wherein he inter-alia stated that:

- Container No. PCLU2011890 (of M/s Surya Udyog) was loaded from Jabel Ali on 06.09.2020 in vessel SIMA GISELLE Voy.006 and they were appointed delivery agent by their principal M/s Shah Aziz Shipping Lines LLC. In this regard, they have already submitted all the load port documents:
- **he understands that 27475 Kgs. of Brass Scrap Honey were loaded in Container No. PCLU2011890 having Seal No.079436 from Karachi Port and it has reached Mundra via Jabel Ali. Further, the said container was not opened at Jabel Ali as the seal No. 079436 affixed at Karachi Port is found intact at Mundra Port.**
- that numbers of Bill of lading of Karachi Port and Jabel Ali port are same as SASLMU20437 but the dates are different, he stated that it was a case of **switch Bill of Lading** wherein the number remains same but the date of issue is changed. **It is used when the traders do not want to disclose actual supplier to the consignee/buyer.** All the details except shipper, consignee and/or notify party shall remain same in the switch Bill of lading.
- In respect of the goods were of Pakistan Origin and M/s Shah Aziz Shipping Lines LLC is the receiving agent at Dubai and issuer of Bill of lading at Jabel Ali, but these goods were presented before Customs that goods were of UAE origin, therefore, they have deliberately mis-informed or mis-stated that facts before Customs and in this case, they may also be liable for penal action, he denied the allegations outright and stated that his company M/s Hub & Links Logistics India Pvt Ltd. are not the actual transporter but they acted as the agent of M/s Shah Aziz Shipping Lines LLC, Dubai who were the receiving agent at Dubai and in turn issued Bill of lading from Dubai to Mundra. They have no control or interest in business of said firm. It was not in their knowledge that the goods were of Pakistan origin and further, no documents were in their possession and the load port documents submitted by them were arranged by them by making request to the said firm. Their role was merely limited to deliver the containers to consignee on production of documents and payment of dues. He further stated that it was not at all

in their knowledge or notice that what was the previous load port other than Jabel Ali in the instant case. In the instant case, they came to know about the switch bill of lading only after the documents were arranged by them, before that, for them it were original bill of lading. They cannot be held responsible for switch bill of lading, it was not done by them, nor it was in their notice, nor they had any say or approval in the matter.

24.6. I find that while filing the BE, the importer had uploaded Pre-shipment Inspection Certificate (PSIC) No. WFZE/SHJ0/4343/2020 dated 04.09.2020 purported to have been issued by M/s Wise Services FZE, Sharjah-UAE. M/s Wise Services FZE, Sharjah vide a mail dated 16.02.2023 **verified** that the said PSIC was issued by them and also sent certain **Loading Photographs recorded at the time of Inspection of the container.**

24.7. I find that the photographs sent by the said agency do not prove that these were taken at Jabel Ali and the examination was done there. Further, evidences in the form of online verification of said container no. PCLU2011890 on the website of Pakistan International Container Terminal (PICT), Karachi, Pakistan as well as the confirmation in the form of documentary evidences received from the shipping line, as discussed hereinabove, reveal that the said container was loaded at Karachi Port and no seal was opened at Jabel Ali and it is found intact at Mundra Port. Therefore, another mail dated 21.02.2023 was issued to them requesting them to state the truth failing which they would be liable for penal action. On receipt of said mail, the said agency has sent an evasive reply vide mail dated 23.02.2023 seeking refuge under the circumstances created due to COVID 19 and stated that their staff is changed and new staff is not aware in the matter and they are trying to trace the records and sought time till 10.03.2023 to clarify further. However, no communication, was received from the said agency.

24.8. I find that in written submission dated, M/s WISE contented that Inspector of M/s. WISE visited Jebel Port and inspected the container PCLU2011890. **Since the Container was already closed and sealed, Inspector externally inspected the container without opening the gate for Radio Activity levels using and explosives Radiation Survey Meter.** This instrument is registered with DGFT. The PS Inspector also checked any presence of explosives live or used with the help of Explosives Detection Kit (Trace X Explosive Detection Kit) approved by the DGFT. After the Inspection of closed container the Inspector prepared and submitted his Pre-Shipment Inspection Report. **Based on the Inspector's PSIR, the Loading Photographs (supplied by the Exporter),** Ocean Bill of Lading, Certificate of Origin and Exporter's Commercial invoice supplied by the exporter, PSIC Certificate No.: WFZE/SHJ0/4343/2020 dated 04/09/2020 was duly prepared and issued.

24.9. I observe that as per Para 2.56 of Handbook of Procedure 2015-2020, PSIA has following Responsibility and Liability of PSIA:

- (i) **The PSIA will also be required to take photographs or make video of the inspection carried out, duly capturing the following**

activities/details:

- (ii) **Photograph(s) or video clipping of the place of inspection with PSIA inspector (mandatory) and representatives of exporter/importer, if available (optional); with time, date of the inspection (at least 1 photograph or video clipping);**
- (iii) **Photograph(s) or video clipping of the testing instrument(s) used for inspection;**
- (iv) **Photograph(s) or video clipping of the process of stuffing containers showing the container number (at least 1 photograph or video clipping per container)**
- (v) **Photograph(s) or video clipping of the sealing process (at least 1 photograph or video clipping per container)**

As per the above said procedure, M/s Wise Services FZE, Sharjah-UAE had to take photographs or make video of the inspection carried out, duly capturing the above said activities/details, however, in the present case, I find that the said container was loaded at Karachi Port and no seal was opened at Jabel Ali and it is found intact at Mundra Port. M/s Wise Services FZE, Sharjah-UAE has issued fraudulent PSIC without following the above said procedure.

24.10. Therefore, in light of evidences produced vide impugned SCN it is evident that M/s Wise Services FZE, Sharjah-UAE failed to discharge their duty and consequently issued fake and fraudulent certificate claiming that the consignment was opened and examined at Jabel Ali but, the container was not opened at Jabel Ali and the photographs sent by the said agency must be pertaining to Karachi Port at the time of loading of goods.

24.11. I find that Shri Shubham Surya, Partner of M/s Surya Udyog in his statement confessed that the subject sale contract (SC/143/2020 dated 15.08.2020) between M/s. Surya Udyog and M/s Aden Scrap Trading (LLC), Sharjah-UAE, includes no clause that the goods should be United Arab Emirates origin only, he also confirmed that they were not aware of the fact that Pakistan origin goods are classifiable under CTH-9806 and as per Notification No.5/2019-Customs the BCD applicable @ 200% and other applicable duties.

24.12. I find that M/s. Surya Udyog vide their defence submission dated 13.03.2024 submitted that the shipment was inspected and also investigated at port and hence was approved for lifting. Only after 5-7 days of arrival, the materiel was lifted and at no point we were communicated that the said brass scrap honey was of not Dubai origin. Which in that case, we would have never lifted. We believe the inspecting officer, at the time of port delivery, had a responsibility to inform us of any potential misdeclaration, following standard

operating procedures.

24.12.1. I find that "*Ignorantia Juris Non Excusat*" is an important principle in law. This principle places the responsibility on individuals to know and follow the law, regardless of whether they were aware of the law or not. In other words, a person cannot avoid liability by claiming that they did not know the law. In this connection, I observe that the burden to prove the eligibility of exemption notification No. 50/2017-Cus dated 30.06.2017 is on importer whereby they have wrongly availed the benefit of BCD @2.5%. The exemption notification are subject to strict interpretation. I place reliance upon following relevant legal pronouncements:

- Hon'ble Supreme Court in the case of **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai [2009(234) ELT-389(SC)]** held that the burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense.
- Hon'ble Supreme Court in the case of **Krishi Upaj Mandi Samiti v/s. CCE reported in 2022 (58) GSTL 129 (SC)** held that law of the issue of interpretation of taxing statute has been laid down in catena of decisions that plain language capable of defined meaning used in a provision has to be preferred and strict interpretation has to be adopted except in cases of ambiguity in statutory provisions.
- Hon'ble Supreme Court in the case of **Uttam Industries V/s. CCE reported in 2011 (265) ELT 14(SC)** held that it is well settled law that exemption notification should be construed strictly and exemption notification is subject to strict interpretation by reading it literally.
- The constitutional bench dated July 30, 2018 of Hon'ble Supreme Court of India in the case of **COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI ...APPELLANT(S) VERSUS M/S. DILIP KUMAR AND COMPANY & ORS. (CIVIL APPEAL NO. 3327 OF 2007)** held that the benefit of ambiguity in exemption notification cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue/state. Exemption notifications are subject to strict interpretation.

Relevant Para the said judgement is reproduced hereunder:

"41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the

Revenue/ State."

25. In view of above paras, I find that 27475 Kgs. of Brass Scrap Honey were loaded in Container No. PCLU2011890 having seal no.079436 at Karachi Port and it has reached Mundra via Jabel Ali; the said container was not opened at Jabel Ali as the seal affixed at Karachi Port is found intact at Mundra Port; All the documents viz. Pre-shipment Inspection Certificate, country of origin certificate etc. submitted by the importer, are forged and fraudulent and created only with the intention to hide the fact about country of origin and to evade payment of appropriate duty. I find that as per **Notification No.05/2019 - Customs dated 16.02.2019**, the goods imported from the Islamic State of Pakistan are appropriately classifiable under Chapter Tariff Heading No. 98060000 and are leviable @ 200% BCD + 10% SWS + 18% IGST. In this present case, the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan so as they can avoid the 200% Customs Duty. Further, I find that besides the importer, there was an active role of M/s Wise Services FZE, Sharjah-UAE and M/s Hub & Links Logistics (I) Pvt. Ltd., Gandhidham in aiding and abetting of said attempt to evade payment of duty.

26. From the facts and evidences on the records, I find that Container No. PCLU2011890 was loaded from PKKHI (Port of Karachi, Pakistan) and it has reached Mundra via Jabel Ali and the importer has mis-declared the Country of Origin of the goods as United Arab Emirates instead of actual Country of Origin as Pakistan. I find that the PSIC certificate submitted by the importer is fake and fraudulent in as much as the facts that the container no. PCLU2011890 having seal no.79436 was not opened at Jabel Ali as the seal affixed at Karachi Port is found intact at Mundra Port and that all the documents viz. Pre-shipment Inspection Certificate, country of origin certificate etc. were forged. Thus, I hold that 27795 Kgs. of Brass Scrap Honey loaded in the container no. PCLU2011890 having seal no. 079436 covered under Bill of Entry 8765677 dated 10.09.2020 was originated from Islamic Republic of Pakistan.

REJECTION OF CLASSIFICATION AND RE-CLASSIFICATION OF GOODS

27. I observe that Government of India vide Notification No. 05/2019-Customs dated 16.02.2019 has inserted tariff item 98060000 in Ch. 98 of the First Schedule to Customs Tariff Act, 1975. The relevant portion of the Notification 05/2019-Customs dated 16.02.2019 is produced hereunder for sake of clarity: -

"In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely: -

1	2	3	4	5
"9806 00 00	All goods originating in or exported from the Islamic Republic of Pakistan	-	200 %	"

In light of said notification is clear that all goods originating in or exported from the Islamic Republic of Pakistan will fall under Customs Tariff item irrespective of their other entries in Customs Tariff Act, 1975.

27.1. I find that the classification adopted by the importer of the impugned goods under Customs Tariff Item 74040022 covered under Bill of Entry 8765677 dated 10.09.2020 is not correct and is correctly classifiable under Customs Tariff Item 98060000 of Customs Tariff Act, 1975 in terms of Notification No. 05/2019-Customs dated 16.02.2019 as the goods imported by them has originated from Islamic Republic of Pakistan. I find further that exemption availed by the importer under Notification No.50/2017 - Cus dated 30.06.2017(Sr.No.382) on impugned goods is also liable to be denied as the exemption under the said Notification is not available on the goods falling under CTI 98060000 of Customs Tariff Act, 1975, therefore, I hold that the importer is liable to pay differential duty of **Rs. 1,97,07,416/-** as calculated vide Table-B of Para 15 hereinabove, under Section 28(8) of Customs Act, 1962.

28. Applicability of extended period under section 28(4) of the Customs Act, 1962

28.1. The impugned Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

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

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

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

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

The term "relevant date" For the purpose of Section 28 ibid, has been defined in Explanation 1, as under:

Explanation 1. - For the purposes of this section, "relevant date" means,-

(a) in a case where duty is 21/not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

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

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

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

28.2. The importer has contested that they have correctly declared the Country of Origin as UAE on the basis of Certificate of origin and PSIC certificate and other documents like commercial invoice, packing list etc. issued by the foreign exporter, which is not disputed by the Customs, at the time of assessment of Bill of Entry. Therefore, there is no 'mis-declaration/ collusion/ willful misstatement/ suppression of facts on their part'.

I find that above contention of importer is not sustainable. After introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was the obligatory on the part of the importer to declare the correct country of origin of impugned goods and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. It is unreasonable to expect that an officer assessing the Bill of Entry will presume that the goods have will originated from other country and will start tracking of the containers on website of Ports of suspected country. The importer, therefore, by not disclosing the true and correct facts to the proper officer, at the time of clearance of imported goods, the importer appears to have indulged in mis-declaration and mis-classification by way of suppression of facts and wilfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable Custom duties. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods.

Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011 cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self assessment, is required to ensure that he declared the correct classification, country of origin, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.

29. I find that the facts and evidences placed before me clearly reveal that the Importer was willfully indulged in mis-stating and suppressing the fact that the goods were of Pakistan Origin. The importer had submitted all the documents

viz. Pre-shipment Inspection Certificate, country of origin certificate etc., which were fake and created only with the intention to hide the fact about country of origin and to evade payment of appropriate duty. Their act of suppression of facts was unearthed only after intelligence shared by NCTC and investigation by SIIB. The importer had mis-declared the Country of Origin of such goods covered under the said Bills of Entry, as UAE. The importer knowingly and deliberately has suppressed the material facts of Country of Origin from the Department and mis-declared the same in the Bills of Entry with a clear intention to evade the differential Customs Duty. Had the SIIB not initiated investigation into the matter, the importer would have succeeded in his manipulations and the evasion of duty could not have been unearthed. The Importer cannot take a stand that he had no idea of the fraud perpetrated by his supplier and seek relief from the charges made in the notice in the face of the evidence available in the instant case including especially submission of false PSIC certificate. If such leniency is extended in financial crimes, no case can be booked against erring Importers. The preponderance of probability in the instant case clearly points to culpability on the part of the Importer.

30. CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962:

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

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

(ii). In terms of Section 111(m) of the Customs Act, 1962, the goods not corresponding in respect of value or any other particular with the entry made under the Customs Act, 1962, are liable for confiscation. As discussed in the foregoing para's, it is evident that the importer has mis-declared the origin of the imported goods as UAE as against the actual origin i.e. Pakistan, with an intent to evade payment of Customs Duty as the goods of Pakistan origin attracts duty at much higher rate, therefore, the subject goods are liable for confiscation under Section 111(m) of Customs Act, 1962. I hold so.

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

“Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever

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

(iv) A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released provisionally under Section 110A of Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings.

(v). As regards applicability of Section 111(m) of the Customs Act, I find that any goods could be held liable for confiscation only when the goods were physically available for being confiscated. If the imported goods were seized and then released provisionally, then also such goods may be held liable for confiscation because they were released on provisional basis. But in this case, the goods imported by them have never been seized; on the contrary, the goods imported by them have been legally allowed to be cleared for home consumption. These goods are not available for confiscation at this stage. In case of **Manjula Showa Ltd. 2008 (227) ELT 330**, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods. The Larger Bench of the Tribunal in case of **Shiv Kripalspat Pvt. Ltd. 2009(235) ELT 623** has also upheld this principle. When no goods imported by them have been actually seized nor are they available for confiscation, the proposal to redemption of such non-existent goods does not have any legs to stand.

(vi). In this regard, I find that the impugned goods were neither seized, nor released provisionally. Hence, neither the goods are physically available nor bond for provisional release under Section 110A of the Customs Act covering recovery of redemption fine is available. I, therefore, find that redemption fine cannot be imposed in respect of subject imported goods.

31. NOW I PROCEED TO EXAMINE THE ROLES OF M/S SURYA UDYOG, M/S WISE SERVICES FZE, SHARJAH-UAE AND M/S HUB & LINKS LOGISTICS (I) PVT. LTD.

31.1 ROLE PLAYED BY M/S. SURYA UDYOG

(i). I find that the importer **M/s Surya Udyog (IEC 1196004676)**, had imported Pakistan Origin Brass Scrap via Jebel Ali (United Arab Emirates) port by mis-declaring the Country of Origin (COO) as UAE.

(ii). After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. In the instant case, I find that the importer has mis-declared the Country of Origin as UAE instead of actual Country of Origin i.e. Pakistan with intent to evade appropriate Customs Duty, during self-assessment at the time of filing of Bills of Entry.

(iii). It is pertinent to mention here that the said fact of mis-declaration of Country of Origin came to the notice of Department, otherwise it would have gone un-noticed and caused huge loss to Govt. Exchequer. Since the goods were of Pakistan origin and as per Notification No.05/2019 - Customs dated 16.02.2019, the goods imported from the Islamic State of Pakistan are appropriately classifiable under Chapter Tariff Heading No. 98060000 and are leviable @ 200% BCD + 10% SWS + 18% IGST. By way of mis-declaration of Country of Origin, the importer evaded the total Customs Duty amounting to **Rs.1,97,07,416/-**, thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the said Customs duty was evaded by reason of willful mis-statement and suppression of facts with a malafide intention. All the aforesaid acts of omission and commission on the part of M/s Surya Udyog have rendered the subject imported goods totally valued at **Rs.76,87,549/-** liable for confiscation under Section 111(m) of the Customs Act, 1962. M/s Surya Udyog are therefore liable to penalty under Section 112(a)(ii) of the Customs Act, 1962. In the present case, it is also evident that M/s Surya Udyog has mis-declared the country of origin to evade the duty by way of producing bogus or fake documents (viz. PSIC, COO Certificate, Invoice etc.). Therefore, M/s Surya Udyog have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 also.

(iv). I find that Section 114A stipulates that the person who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28, is also be liable to pay penalty under Section 114A. These acts and omissions of the Importer rendered them liable for penal action under Section 114A of the Customs Act, 1962.

(v) I observe that Section 112 (a) (ii) provides that penalty not exceeding ten percent of the duty or five thousand rupees, higher of either, is leviable in case of improper importation of dutiable goods.

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

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-*

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 5[not exceeding the value of the goods or five thousand rupees], whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:
- (iii) ...
- (iv) ...
- (v) ...

(vi). **In view of above**, I find that as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. Therefore, I refrain from imposing penalty under Section 112(a)(ii) of Customs Act, 1962.

31.2 ROLE PLAYED BY M/S WISE SERVICES FZE, SHARJAH-UAE:

As discussed in detail hereinabove, I find that **M/s Wise Services FZE, Sharjah-UAE**, issued fake PSIC certificate. By their act of omission and commission of issuing fake PSIC certificate which led to evasion of total Customs Duty amounting to **Rs.1,97,07,416/-**, and caused huge loss of Govt. revenue. Therefore, M/s Wise Services FZE, Sharjah-UAE has rendered themselves liable to penalty under Section 112 (b)(ii) and Section 114AA of Customs Act, 1962.

31.3. ROLE PLAYED BY M/S HUB & LINKS LOGISTICS (I) PVT. LTD:

I have carefully examined the proposals for imposition of penalty on M/s Hub under Section 112(b)(ii) and 117 of Customs Act, 1962. M/s. Hub & Links Logistics (I) Pvt. Ltd. is the Shipping Line Agent in the present case. I find that Section 112(b)(ii) provides for penalty on a person "who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111".

31.3.1. Shri Sajish Sivaraj Puthenchira, General Manager of M/s Hub in his statement tendered before SIIB on 23.02.2023 has stated that they are agent of M/s Shah Aziz Shipping Lines LLC, Dubai. M/s Shah Aziz Shipping Lines LLC is having their own containers which are used for export / import of cargo in various ports. Their scope of work is to coordinate with vessel operator (agent of vessel) and to provide details of the cargo to the said vessel agents for filing IGM on the basis of the documents received from the load port, collect the charges and documents from consignee before releasing the Delivery Order. They act as a Delivery Agent in imports and their name is mentioned in the bill of lading. The importer or their CHA approaches them and submit the Original Bill of Lading (issued by load port agents) or surrendered copy of Bill of Lading

if it is surrendered at load port, and pays their dues, then they release the container. They book the same empty containers for export and collect ocean freight and other origin charges at Port of Loading before releasing the Bill of Lading. M/s Hub are not the actual transporter but they acted as the agent of M/s Shah Aziz Shipping Lines LLC, Dubai who were the receiving agent at Dubai and in turn issued Bill of lading from Dubai to Mundra. They have no control or interest in business of said firm. It was not in their knowledge that the goods were of Pakistan origin and further, no documents were in their possession and the load port documents submitted by them were arranged by them by making request to the said firm. Their role was merely limited to deliver the containers to consignee on production of documents and payment of dues. He further stated that it was not at all in their knowledge or notice that what was the previous load port other than Jabel Ali in the instant case. In the instant case, they came to know about the switch bill of lading only after the documents were arranged by them, before that, for them it was original bill of lading. They cannot be held responsible for switch bill of lading, it was not done by them, nor it was in their notice, nor they had any say or approval in the matter.

31.3.2. I find that Section 112(b) of Customs Act, 1962 pertains activities mentioned in the said Section pertaining to any manner dealing with any goods which the person knows or has reason to believe are liable to confiscation. In this case, no evidences have been placed before me which proves that M/s Hub had a role in such activities which makes him liable for penalty under Section 112(b) of Customs Act, 1962. Therefore, I do not find any reason to impose penalty on him under Section 112(b) of Customs Act, 1962.

31.3.3. As regards imposition of penalty on M/s Hub under Section 117 of Customs Act, 1962, during the investigation, M/s. Hub had submitted copy of Shipping Bill No. 830/KPEX-SB-22764 dated 22.08.2020 filed with Custom Office, MCC Export, Karachi, Copy of Bill of Lading No. SASLMU20437 dtd.27.08.2020, Copy of Bill of Lading No. SASLMU20437 dtd.06.09.2020 issued by Shah Aziz Shipping Lines LLC. On being shown the said documents to Shri Sajish Sivaraj Puthenchira, General Manager of M/s Hub during statement recorded on 23.02.2023, Shri Sajish Sivaraj stated that he understands that 27795 Kgs. Kgs. of Brass Scrap Honey were loaded in Container No. PCLU2011890 having seal no. 79436 from Karachi Port and it has reached Mundra via Jabel Ali. As agents of their Principal, they cannot fully wash away the deliberate actions undertaken by their Principal which have played an important role in perpetrating the fraud of sizeable evasion of duty. They remain culpable to a certain extent to face penal action for the omissions and commissions committed by their Principals. I find that M/s Hub had not securitized the papers/documents available with them and have failed to exercise the due diligence required from them hence they are liable to penalty under Section 117 of the Customs Act, 1962. I hold so.

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

ORDER

- i. I reject the exemption availed by **M/s. Surya Udyog** under Sr.No.382 of

Notification No.50/2017 - Cus dated 30.06.2017 for availing the benefit of BCD @ 2.5%.

- ii. I reject the Classification of 27475 kgs. of BRASS SCRAP HONEY AS PER ISRI under **Chapter Tariff Heading No.74040022** covered under Bill of Entry No. 8765677 dated 10.09.2020; and order to re-classify the same under **Chapter Tariff Heading No.98060000** of the Customs Tariff Act, 1975 as the imported goods are origin of Pakistan.
- iii. I order to confiscate the impugned imported goods i.e. **27475 kgs. of BRASS SCRAP HONEY AS PER ISRI** valued at **Rs.76,87,549/- (Rupees Seventy-Six Lakh Eighty-Seven Thousand Five Hundred Forty-Nine only)** under the provisions of Section 111(m) of the Customs Act, 1962; however, the impugned goods have been cleared and are not physically available for confiscation and therefore, I refrain from imposing redemption fine in lieu of confiscation.
- iv. I confirm the demand of differential duty amounting to **Rs.1,97,07,416/- (Rupees One Crore Ninety-Seven Lakh Seven Thousand Four Hundred Sixteen Only)**, and order to recover the same from M/s Surya Udyog in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962.
- v. I order to recover the interest from M/s Surya Udyog at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty;
- vi. I impose penalty **Rs. 1,97,07,416/- (Rupees One Crore Ninety-Seven Lakh Seven Thousand Four Hundred Sixteen Only)**, upon M/s Surya Udyog in terms of **Section 114A** of the Customs Act, 1962 against confirmed demand of duty as mentioned at (iv) above; plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (iv) above.
- vii. I refrain from imposing penalty upon **M/s Surya Udyog** under Section of Section 112(a)(ii) of the Customs Act, 1962 since as per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive, hence, when penalty under section 114A is imposed, penalty under section 112 is not imposable.
- viii. I impose penalty of **Rs 5,00,000/- (Rupees Five Lakhs Only)** upon **M/s Surya Udyog** in terms of **Section 114AA** of the Customs Act, 1962 against demand of duty as mentioned at (iv) above.
- ix. I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs Only)** upon **M/s Wise Services FZE, Sharjah-UAE** in terms of **Section 112 (b)(ii)** of the Customs Act, 1962 against demand of duty as mentioned at (iv) above.
- x. I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakhs Only)** upon **M/s Wise Services FZE, Sharjah-UAE** in terms of **Section 114AA** of the Customs Act, 1962 against demand of duty as mentioned at (iv) above.
- xi. I impose penalty of **Rs 50,000/- (Rupees Fifty Thousand Only)** upon **M/s Hub & Links Logistics (I) Pvt. Ltd.**, Gandhidham in terms of **Section 117** of the Customs Act, 1962 against demand of duty as mentioned at (iv) above.

xii. I refrain from imposing penalty upon **M/s Hub & Links Logistics (I) Pvt. Ltd.**, Gandhidham in terms of **Section 112(b)(ii)** of the Customs Act, 1962 for the reasons discussed hereinabove vide Para 31.3.

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

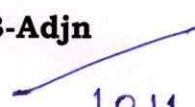

(K. Engineer)

Pr. Commissioner of Customs,
Custom House, Mundra

Date: 09.05.2024.

F. No. GEN/ADJ/COMM/122/2023-Adjn

By speed post/email


1211 to 1213

To (The Noticee),

1. M/s Surya Udyog,

Udgoy Puri, Agar Road, Ujjain, MP-456001.


O/C

2. M/s Hub & Links Logistics (I) Pvt. Ltd.,

Suite No.101, Rishabh Arcade, Near to GST Bhawan, Plot No.83, Sector-8, Gandhidham- 370201

3. M/s. WISE SERVICES FZE

Industrial Area No.10, Sharjah, UAE (Email:wisefze@yahoo.com)

Copy to:

1. The Chief Commissioner, Customs Ahmedabad Zone, Ahmedabad.
2. The Dy. Commissioner of Customs, SIIB, Customs House, Mundra.
3. The Addl. Director, DGFT, Udyog Bhawan, H-wing, Gate No-02, Maulana Azad Road, New Delhi -110011 {for necessary action against PSIC issuing agency M/s. WISE SERVICES FZE}
4. The Deputy Commissioner of Customs, EDI Section, Custom House, Mundra.
5. The Deputy Commissioner of Customs, Legal/ TRC Section, Custom House, Mundra.
6. Guard File.