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|  | <p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,<br/>सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421<br/><b>OFFICE OF THE PRINCIPAL COMMISSIONER OF<br/>CUSTOMS,<br/>CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp;<br/>SPL ECONOMIC ZONE, MUNDRA-370421</b></p> |
| <b>A. File No.</b>  | : GEN/ADJ/COMM/320/2024-Adjn-O/o-Pr.Commr-Cus-Mundra   |
| <b>B. Order-in-Original No.</b>   | : MUN-CUSTM-000-COM-66-2025-26   |
| <b>C. Passed by</b>   | : Nitin Saini<br>Commissioner of Customs,<br>Customs House, AP & SEZ, Mundra.  |
| <b>D. Date of order and Date of issue</b>   | : 16.03.2026<br>16.03.2026   |
| <b>E. SCN No. &amp; Date</b>  | : F.No. S/43-01/R&I/2015-16 dated 11.08.2016 read with Addendum dated 03.08.2018   |
| <b>F. CESTAT Order, in case of denovo</b>   | : 10554-10555/2024 dated 08.03.2024  |
| <b>G. Noticee(s)/Co-noticee(s)</b>  | (i) M/s. D. D. International Global,<br>Harchand Mill Road,<br>Mandi, Gobindgarh-147 301<br><br>(ii) Shri Saakshat Dhir, Partner<br>Harchand Mill Road,<br>Mandi, Gobindgarh-147 301   |
| <b>H. DIN</b>   | : 20260371MO0000007E8A   |

- यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
- 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 सीए-3 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, 2<sup>nd</sup> फ्लोर, बहुमालीभवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”  
“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> 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/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो -/5000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्ड पीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा। Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद सं० 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए। The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमा शुल्क (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.

**BRIEF FACTS OF THE CASE-**

Acting on specific information that M/s. D. D. International Global is engaged in smuggling of foreign origin cigarettes concealed in the cargo of Metal Scrap imported in containers at Mundra Port, the officers of Rummaging & Intelligence wing of Customs Commissionerate, Mundra intercepted five containers with the declared cargo "LMS Bundles" on 11-09-2015, which were imported by vessel MV. Ville De Aquarius. The importer of these containers is M/s. D. D. International Global, Harchand Mill Road, Mandi, Gobindgarh-147301 (hereinafter referred to as "the importer"). The containers were taken to M/s. All Cargo Container Freight Station, Mundra for detailed examination. The details of the containers are as under:

| Sl. No. | Bill of Lading No.  | Container No. | Declared quantity of LMS Bundles (in MTs) |
|---------|---|---------------|---|
| 1       | 03700206/0019010/16,<br>dated issued by M/s.<br>Caravel Lines Pvt. Ltd. | GESU2581742   | 21.950                                    |
| 2       |   | CRXU3000851   | 22.300                                    |
| 3       |   | GESU2248095   | 21.900                                    |
| 4       |   | CRXU3344939   | 23.420                                    |
| 5       |   | CLSU2117727   | 23.680                                    |

2. From the details given above, it is found that all the five containers were covered in the same Bill of Lading issued by M/s. Caravel Lines Pvt. Ltd. (hereinafter referred to as "the liner"). As per the details given in the Bill of Lading, the consignor/shipper is M/s. Al Mehtab Trading Co. LLC, PO. Box=6354, Deira, Dubai; the consignee is the importer; the port of loading is Jebel Ali, UAE; Port of Discharge is Mundra and Place of Delivery is ICD, Ludhiana. All the above mentioned five containers were examined one by one at M/s. All Cargo Container Freight Station, Mundra in presence of panchas under panchnama on dated 12-09-2015.

3. Brief of examination of above mentioned five containers is as under:

(a) After opening the door of the container No. GESU2581742 and de-stuffing about initial 40% cargo of metal scrap bundles stuffed in the container, it was noticed that the remaining cargo are in boxes wrapped in gunny bags. On opening gunny bags and boxes therein, it was found that the boxes were containing cigarettes of "Mond" brand Super Slim cigarettes of various flavours, namely, "grape", "cherry", "chocolate" and "paan". All the gunny bags containing cigarettes were taken out and an inventory was taken. It was found that a total of 158 boxes of cigarettes were concealed between bundles of metal scrap, stuffed at the front and back side of the container. Detailed inventory of the Cigarettes were taken as mentioned in Annexure-A to the panchnama, dated 12-09-2015. The weight of metal scrap used for concealing the gunny bags of cigarettes was also ascertained as 21.000 MTs of scrap, as detailed in Annexure-B to the panchnama, dated 12-09-2015.

3(b). After opening the door of the container No. CRXU3000851 and de-stuffing about 40% of metal scrap bundles, the remaining cargo were found in boxes wrapped in gunny bags. On opening gunny bags and boxes therein, it was found that the boxes were containing cigarettes of brands - "Bril Light" and "Gunung Gajah". All the gunny bags containing cigarettes were taken out and inventoried. It was found that a total of 86 boxes of cigarettes were concealed between bundles of metal scrap, which were stuffed at the front and back side of the container. Detailed inventory of the Cigarettes were taken and given in Annexure-A to the panchnama, dated 12-09-2015. The weight of metal scrap used for concealing the gunny bags of cigarettes was also ascertained as 18.330 MTs of scrap, as detailed in Annexure-B to the panchnama, dated 12-09-2015.

3(c). After opening the door of the container No. GESU2248095 and removing the metal scrap bundles stuffed in front of the container, the remaining cargo were found in boxes wrapped in gunny bags. On opening gunny bags and the boxes therein, it was found that the boxes were containing cigarettes of brands- "Bril Light" and "Benson & Hedges Special Filter". All the gunny bags containing cigarettes were taken out and inventoried. It was found that a total of 132 boxes of cigarettes were concealed between bundles of metal scrap, which were stuffed at the front and back side of the container. Detailed inventory of the Cigarettes were taken and given in Annexure-A to the panchnama, dated 12-09-2015. The weight of metal scrap used for concealing the gunny bags of cigarettes was also ascertained as 15.900 MTs of scrap, as detailed in Annexure-B to the panchnama, dated 12-09-2015.

3(d). On verification of the other two containers bearing No. CRXU3344939 and CLSU2117727 covered in the same Bill of Lading No. 03700206/0019010/16, it was found that the entire cargo stuffed in these two containers was of Metal scrap bundles.

3(e). Thus, from the examination of five containers, carried out under panchnama dated 12-09-2015, it appears that the importer has concealed 39,80,000 sticks of cigarettes of various brands in three containers, as detailed in Annexure-A to the panchnama, dated 12-09-2015. Details of the cigarettes are given below:

| Sl. No. | Container Number | Type/Brand                | Total Boxes | Total sticks in each box | Total No. of Sticks |
|---------|------------------|---------------------------|-------------|--------------------------|---------------------|
| 1       | GESU2581742      | Super Slim Mond Grape     | 10          | 20x10x50=1000<br>0       | 100000              |
|         |                  | Super Slim Mond Cherry    | 50          | 20x10x50=1000<br>0       | 500000              |
|         |                  | Mond Chocolate Super Slim | 68          | 20x10x50=1000<br>0       | 680000              |
|         |                  | MondPaan Super Slim       | 30          | 20x10x50=1000<br>0       | 300000              |
|         |                  | <b>Total</b>              | <b>158</b>  |                          | <b>1580000</b>      |
| 2       | CRXU3000851      | Bril Lights               | 36          | 20x10x50=1000<br>0       | 360000              |
|         |                  | Gunung Gajah              | 50          | 12x20x60=1440<br>0       | 720000              |
|         |                  | <b>Total</b>              | <b>86</b>   |                          | <b>1080000</b>      |
| 3       | GESU2248095      | Bril Lights               | 32          | 20x10x50=1000<br>0       | 320000              |
|         |                  | Benson & Hedges Special   | 100         | 20x10x50=1000            | 1000000             |

|                    |              |            |                |
|--------------------|--------------|------------|----------------|
|                    | Filter       |            | 0              |
|                    | <b>Total</b> | <b>132</b> | <b>1320000</b> |
| <b>Grand Total</b> |              | <b>376</b> | <b>3980000</b> |

3(f). Detailed inventory of metal scrap stuffed in all the five containers is given in Annexure-B to the panchnama, dated 12-09-2015. The details of the same are reproduced below:

| Sl. No.      | Container No. | Net weight of Metal Scrap (in MTs) |
|--------------|---------------|------------------------------------|
| 1            | GESU2581742   | 21.000                             |
| 2            | CRXU3000851   | 18.330                             |
| 3            | GESU2248095   | 15.900                             |
| 4            | CRXU3344939   | 27.370                             |
| 5            | CLSU2117727   | 26.580                             |
| <b>Total</b> |               | <b>109.180</b>                     |

3(g). As per the Bills of Lading No.03700206/0019010/16 dated 04-09-2015 and issued by the liner; and as per the declaration made in the Import General Manifest, the item declared as stuffed in the containers is "LMS Bundles", whereas on examination of the containers, it was found that the importer has concealed undeclared goods, namely "Cigarettes" of various brands between the cargo of Metal scrap bundles. In view of the above, it appears that the goods so imported, namely "Cigarettes" are to be treated as "smuggled goods" as defined under Section 2(39) of Customs Act, 1962 and therefore, the said goods, are liable for confiscation under Section 111 of the Customs Act, 1962. Further the entire cargo of Metal Scrap bundles used for concealing the cigarettes are also liable for confiscation under Sec 119 of the Customs Act, 1962. Under this reasonable belief the Customs officers seized 39,80,000 sticks of "Cigarettes", as detailed in Annexure-A to the panchnama, dated 12-09-2015, and metal scrap bundles to the quantity of 109.180 MTs as detailed in Annexure-B to the panchnama, dated 12-09-2015 under Sec 110 of the Customs Act, 1962; and handed over to Shri Harimohan Kumawat, Assistant Manager-Operation of All Cargo CFS, Mundra for safe custody under Supratnama dated 12-09-2015.

4. In a follow up action, the office premises of the importer located at "office No.3, Plot No.223, Ward 12-B, Gandhidham-370 201 was searched under panchnama, dated 12-09-2015, but the office was found closed and no records or goods were found at the premises.

5. In a further follow up action, the office premises of the importer located at "Harchand Mill Road, Mandi, Gobindgarh-147301" was searched in presence of panchason 15-09-2015 by the officers of Central Excise & Service Tax, Chandigarh-I Commissionerate and recovered certain documents as mentioned in the panchnama dated 15-09-2015.

6. The intelligence inputs received by the Customs officers also indicated seven more containers being imported by the same set of exporter and importer and were expected to arrive Mundra Port by vessel MV. Ville D'Orion. As soon as the vessel berthed at Container Terminal-2, Berth-4 of AMCT, Mundra Port on 16-09-2015 at 13.55 hrs, the Customs Officers intercepted seven containers at the terminal, after unloading from the vessel in presence of panchas. In the case of these containers also, the cargo declared in the Bills of Lading is "LMS Bundle". The details of the containers and the Bills of Lading are given as under.

| Sl. No. | Bill of Lading No.   | Container No. | Declared quantity of LMS Bundles (in Kgs) |
|---------|--|---------------|---|
| 1       | 03700206/0019941/16 ,<br>dated 10-09-2015 issued by<br>M/s.Caravel Lines Pvt. Ltd. | CLSU2111014   | 19800                                     |
| 2       |  | CLSU2112793   | 21250                                     |
| 3       |  | TEMU2352259   | 22600                                     |
| 4       |  | TRLU2724044   | 23330                                     |
| 5       | 03700206/0019947/16,<br>dated 10-09-2015 issued by<br>M/s. Caravel Lines Pvt. Ltd. | GESU2168240   | 26320                                     |
| 6       |  | GESU2402791   | 22400                                     |
| 7       |  | GESU2569198   | 23420                                     |

It is found that all the seven containers were covered in two Bills of Lading issued by the liner M/s. Caravel Lines Pvt. Ltd. As per the details given in the Bills of Lading, the consignor/shipper is the same M/s. Al Mehtab Trading Co. LLC, PO. Box=6354, Deira, Dubai; the consignee is the same importer M/s. D. D. International Global, Harchand Mill Road, Mandi, Gobindgarh-147 301; the port of loading is Jebel Ali, UAE; Port of Discharge is Mundra and the Place of Delivery is ICD, Ludhiana. All the above mentioned seven containers were shifted in presence of panchas to M/s. MICT CFS for detailed examination. Detailed examination of each of the above mentioned containers were carried out in presence of panchas under panchnama dated 17-09-2015.

7(a). As per the panchnama dated 17-09-2015, on verification of the cargo stuffed in the Container No. TRLU2724044, after opening the door of the container and de-stuffing about initial 20% of the container, the remaining cargo were found in boxes wrapped in gunny bags. On opening gunny bags and then the boxes, it was found the boxes were containing cigarettes of brands- "In Black Bril" and "Benson & Hedges Special Filter". All the gunny bags containing cigarettes were taken out and inventoried. It was found that the a total of 61 boxes of cigarettes out of which 30 boxes were of "In Black Bril" brand cigarettes and 31 boxes were of "Benson & Hedges Special Filter" were concealed between bundles of metal scrap, which were stuffed at the front and back side of the container. Detailed inventory of the Cigarettes is given in Annexure-A to panchnama, dated 17-09-2015. The weight of metal scrap used for concealing the gunny bags of cigarettes was also ascertained to the quantity of 19.570 MTs, as detailed in Annexure-B to the panchnama, dated 17-09-2015.

7(b) Thereafter, the next Container No. GESU2168240 was taken up for de-stuffing in presence of panchas. In this container also, after de-stuffing of metal scrap bundles stuffed in the initial about 20% of the container, the remaining cargo in the container were found to be in boxes wrapped in gunny bags. On opening, the boxes were found to contain cigarettes of "Esse Lights"; "Esse Menthol" and "Esse Gold". On detailed examination, it was found that there were a total of 161 boxes of Cigarettes out of which 85 boxes of brand "Esse Lights"; 50 boxes of brand "Esse Menthol" and 26 boxes of brand "Esse Gold" were stuffed in the container. The detailed inventory of the Cigarettes is given in Annexure-A to panchnama, dated 17-09-2015. Thus, it appears that 161 boxes of Cigarettes were concealed between bundles of metal scrap, which were stuffed at the front and back side of the container. The weight of the metal scrap used for concealing the cigarettes was also ascertained to the quantity of 24.050 MTs as detailed in Annexure-B to the panchnama, dated 17-09-2015.

7(c). Similarly, the Container No. TEMU2352259 was also examined under panchnama dated 17-09-2015. After removing about 30% of the Metal scrap bundles stuffed in the container, it was found that a total of 192 boxes of Cigarettes wrapped in plastic gunny bags, out of which 120 boxes of brand "Mond Paan Superslim" cigarettes; 32 boxes of brand "Mond Chocolate Superslim" cigarettes and 40 boxes of brand "Superslim Mond Grapes" cigarettes, stuffed in the middle part of the container between the metal scrap bundles. The detailed inventory of the Cigarettes is given in Annexure-A to panchnama, dated 17-09-2015. Thus, it appears that 192 boxes of Cigarettes were concealed between bundles of metal scrap, which were stuffed at the front and back side of the container. The total weight of the metal scrap used to conceal the boxes of cigarettes in the container was also ascertained to the quantity of 19.910 MTs, as detailed in Annexure-B to the panchnama, dated 17-09-2015.

7(d). Container No. CLSU2111014 was also examined under panchnama. After removing 40% of the cargo of Metal scrap bundles found stuffed on opening the container, it was found that the remaining cargo in the container was in boxes wrapped in gunny bags. On detailed examination of the boxes, it was found that a total 72 boxes of brand "Gunung Gajah" Cigarettes were stuffed in the container in the middle part, between the metal scrap bundled stuffed in the front and back side of the container. The detailed inventory of the Cigarettes is given in Annexure-A to the panchnama dated 17-09-2015. Thus, it appears that 72 boxes of Cigarettes were concealed between bundles of metal scrap in the container. The total weight of the metal scrap used to conceal the boxes of cigarettes in the container was also ascertained to the quantity of 17.860 MTs, as detailed in Annexure-B to the panchnama, dated 17-09-2015.

7(e). Thereafter, the Container No. GESU2402791 was also examined under panchnama dated 17-09-2015. After de-stuffing about 30% of the cargo of metal scrap bundles from the container, the remaining cargo was found to be 80 boxes of Cigarettes wrapped in gunny bags, out of which 8 boxes were Cigarettes of brand "Bril Lights" and 72 boxes were of brand "In Black Bril". Detailed inventory of the Cigarettes is given in Annexure-A to the panchnama, dated 07-09-2016. These gunny bags containing boxes of cigarettes were found to be stuffed in the middle of the container, between the cargo of Metal scrap bundles stuffed in the front and back side of the container. The total weight of the metal scrap used to conceal the boxes of cigarettes in the container was also ascertained to the quantity of 19.590 MTs, as detailed in Annexure-B to the panchnama, dated 17-09-2015.

7(f). Thereafter, the next Container No. CLSU2112793 was examined in presence of panchas under panchnama dated 17-09-2015. After de-stuffing about 50% of the cargo of metal scrap bundles stuffed in the front side of the container, the remaining cargo was found to be boxes of cigarettes wrapped in gunny bags. On detailed examination of the cigarettes, it was found that a total of 58 boxes of Cigarettes were stuffed in the container, out of which 2 boxes were of brand "Esse Lights"; 8 boxes were of brand "Esse Special Gold" and 48 boxes were of brand "Gunung Gajah". Further, these cigarette boxes were found stuffed in the middle part of the container between the cargo of metal scrap bundles stuffed in the front and back side, in a concealed manner. The detailed inventory of the Cigarettes were taken by the Customs Officers, and given in Annexure-A to the panchnama, dated 17-09-2015. The total weight of the metal scrap used to conceal the boxes of cigarettes was also ascertained to

the quantity of 19.280 MTs, as detailed in Annexure-B to the panchnama, dated 17-09-2015.

7(g). Thereafter, the container No. GESU2569198 was completely de-stuffed and it was found that the entire cargo was of Metal Scrap Bundles only. The weight of metal scrap found stuffed in the container was also ascertained to the quantity of 27.320 MTs, as detailed in Annexure-B to the panchnama, dated 17-09-2015. It appears that as a modus operandi, the importer has used this container, fully loaded with the cargo of metal scrap bundles as declared in the Bill of Lading, for presentation before the Customs officers at the time of examination to give an impression that all the containers covered in the Bills of Lading are of the same nature as declared, and get the rest of the containers cleared without any detailed examination.

7(h). Thus, from the examination of seven containers carried out under panchnama dated 17-09-2015, it appears that the importer has concealed cigarettes of various brands in six containers as follows:

| Sl. No.            | Container Number | Type/Brand                     | Total Boxes | Total sticks in each box | Total No. of Sticks |
|--------------------|------------------|--------------------------------|-------------|--------------------------|---------------------|
| 1                  | TRLU2724044      | In Black Bril                  | 30          | 16x10x80=12800           | 384000              |
|                    |                  | Benson & Hedges Special Filter | 31          | 20x10x50=10000           | 310000              |
|                    |                  | <b>Total</b>                   | <b>61</b>   |                          | <b>694000</b>       |
| 2                  | GESU2168240      | Esse Lights                    | 85          | 20x10x50=10000           | 850000              |
|                    |                  | Esse Menthol                   | 50          | 20x10x50=10000           | 500000              |
|                    |                  | Esse Special Gold              | 26          | 20x10x50=10000           | 260000              |
|                    |                  | <b>Total</b>                   | <b>161</b>  |                          | <b>1610000</b>      |
| 3                  | TEMU2352259      | MondPaanSuperslim              | 120         | 20x10x50=10000           | 1200000             |
|                    |                  | Mond Chocolate Superslim       | 32          | 20x10x50=10000           | 320000              |
|                    |                  | SuperslimMond Grapes           | 40          | 20x10x50=10000           | 400000              |
|                    |                  | <b>Total</b>                   | <b>192</b>  |                          | <b>1920000</b>      |
| 4                  | CLSU2111014      | Gunung Gajah                   | 72          | 12x20x60=14400           | 1036800             |
|                    |                  | <b>Total</b>                   | <b>72</b>   |                          | <b>1036800</b>      |
| 5                  | GESU2402791      | Bril Lights                    | 8           | 20x10x50=10000           | 80000               |
|                    |                  | In Black Bril                  | 72          | 20x10x50=10000           | 921600              |
|                    |                  | <b>Total</b>                   | <b>80</b>   |                          | <b>1001600</b>      |
| 6                  | CLSU2112793      | Esse Lights                    | 2           | 20x10x50=10000           | 20000               |
|                    |                  | Esse Special Gold              | 8           | 20x10x50=10000           | 80000               |
|                    |                  | Gunung Gajah                   | 48          | 12x20x60=14400           | 691200              |
|                    |                  | <b>Total</b>                   | <b>58</b>   |                          | <b>791200</b>       |
| <b>Grand Total</b> |                  |                                | <b>624</b>  |                          | <b>7053600</b>      |

7(i). Detailed inventory of metal scrap stuffed in all the five containers is given in Annexure-B to the panchnama, dated 17-09-2015. The details of the same are reproduced below:

| Sl. No.      | Container No. | Net weight of Metal Scrap (in MTs) |
|--------------|---------------|------------------------------------|
| 1            | TRLU2724044   | 19.570                             |
| 2            | GESU2168240   | 24.050                             |
| 3            | TEMU2352259   | 19.910                             |
| 4            | CLSU2111014   | 17.860                             |
| 5            | GESU2402791   | 19.590                             |
| 6            | CLSU2112793   | 19.280                             |
| 7            | GESU2569198   | 27.320                             |
| <b>Total</b> |               | <b>147.580</b>                     |

7(j). As per the Bills of Lading No. 03700206/0019941/16 and 03700206/0019947/16, both dated 10-09-2015, issued by the liner; and as per the declaration made in the Import General Manifest, the item declared as stuffed in the containers is "LMS Bundles", whereas on examination of the containers, it was found that the importer has concealed undeclared goods, namely "Cigarettes" of various brands between the cargo of Metal scrap bundles. In view of the above, it appears that the goods so imported, namely "Cigarettes" are to be treated as "smuggled goods" as defined under Section 2(39) of Customs Act, 1962 and therefore, the said goods, are liable for confiscation under Section 111 of the Customs Act, 1962. Further the entire cargo of Metal Scrap bundles used for concealing the cigarettes are also liable for confiscation under Sec 119 of the Customs Act, 1962. Under this reasonable belief the 70,53,600 sticks of "Cigarettes", as detailed in Annexure-A to the panchnama, dated 17-09-2015, and metal scrap bundles to the quantity of 147.850 MTs as detailed in Annexure-B to the panchnama, dated 17-09-2015 were seized under Sec 110 of the Customs Act, 1962; and handed over to Shri Ketan Solanki, CFS Supervisor of M/s. MICT CFS, Mundra for safe custody under Supratnama dated 17-09-2015.

8. Thus, both the seizures, effected on 12-09-2015 and 17-09-2015 combined together, a total of 1,10,33,600 sticks of cigarettes, totally valued at Rs.6,96,25,200/- were seized by the department, along with the metal scrap bundles to the quantity of 256.760 MTs valued at Rs.59,05,480/-. Thus, the total value of the goods seized appeared to be Rs.7,55,30,680/-.

9. Summons were issued to Shri Subhash Dhir and Shri Saakshat Dhir, partners of the importer company on 22-09-2015 asking them to appear on 30-09-2015, but Shri Subhash Dhir informed his inability to appear before the Superintendent on the given date vide his letter dated 29-09-2015. Another summons were issued to both the partners on 29-09-2015, requiring them to appear on 12-10-2015. Shri Subhash Dhir, one of the partners appeared on 12-10-2015, in response to summons and his statement was recorded under Section 108 of the Customs Act, 1962.

(a). In his statement recorded on 12-10-2015, Shri Subhash Dhir has stated that he is one of the partners of M/s. D. D. International Global; that his son Shri Saakshat Dhir is the other partner; that they are in the business of trading of metal scrap for the last 34 years and he is looking after the entire business dealings including purchase and sale in their firm. Shri Subhash Dhir also stated that they are dealing in trading of HMS (Heavy Metal Scrap) and Re-rollable scrap; and that they normally import scrap from South Africa and United States. On being asked about their dealings with M/s. Al Mehtab Trading Co. (LLC), Dubai, he has stated that they purchase HMS and Re-rollable scrap from the said firm; that they never purchased LMS (Light Metal Scrap) from them; and that they used to contact Mr. Wilson of M/s. Al Mehtab Co. (LLC) by email, whenever they purchase goods. Further, on being asked regarding the order placed to the said firm and regarding advance payments, if any paid, Shri Subhash Dhir stated that they enter into sale contract with M/s. Al Mehtab Trading Co. (LLC) and as per the contract they pay 10% to 15% of the amount in the bank as advance; and that such advance payments are made on receipt of the sale contract from the supplier through email. On going through the Bills of Lading No. BL No. 03700206/0019010/16, dated 04-09-2015, 03700206/0019941/16 & 03700206/0019947/16, both dated 10-09-

2015, wherein the consignor/shipper is mentioned as M/s. Al Mehtab Trading Co. LLC, Dubai and the Consignee is mentioned as M/s. D. D. International Global, Mandi Gobindgarh-147301, Shri Subhash Dhir has stated that those goods were not imported by their firm and they are not at all concerned with those imports; that they had never placed any order for LMS bundles to anybody; and that they are not at all dealing with such items, i.e. LMS. Further, on being specifically asked as to whether M/s. Al Mehtab Trading Co. (LLC), Dubai have placed any demand or claim from you regarding the cargo imported under Bills of Lading No. BL No. 03700206/0019010/16, dated 04-09-2015, 03700206/0019941/16 & 03700206/0019947/16, both dated 10-09-2015, Shri Subhash Dhir stated that no demand had been made by M/s. Al Mehtab Trading Co. (LLC), Dubai for payment against those cargo, as they had not placed any order for the same; and that M/s. Al Mehtab Trading Co. (LLC), Dubai has not discussed about such consignments with them at all. On being specifically asked about the 12 containers imported under Bills of Lading No. 03700206/0019010/16, dated 04-09-2015 and 03700206/0019941/16 & 03700206/0019947/16, both dated 10-09-2015 and the seizure of cigarettes of huge quantity concealed in the cargo of metal scrap bundles, Shri Subhash Dhir stated that they totally disown the above consignments, as they had not placed any such order and they are not at all dealing in Cigarettes. He also stated that somebody had misused the name of their firm M/s. D.D. International Global for doing such mischief. He also stated that they have no objection at all, if the department auction the consignments imported under Bills of Lading No. 03700206/0019010/16, dated 04-09-2015, 03700206/0019941/16 & 03700206/0019947/16, both dated 10-09-2015, as the same were not imported by them. Regarding their recent business dealings with M/s. Al Mehtab Trading Co. (LLC), Dubai, Shri Subhash Dhir stated that they had imported Re-rollable scrap under Bill of Lading No.954355756, dated 18-09-2015 of Mearsk Line and the Bill of Entry No. is 2834635, dated 07-10-2015 through M/s. Al Mehtab Trading Co. (LLC), Dubai.

(b). Further, summons' were issued to Shri Subhash Dhir on 12-10-2015 and 18-11-2015 requiring him to appear on 02-11-2015 and 30-11-2015, but Shri Subhash Dhir instead of appearing in person, sent copies of documents vide his letter dated 04-11-2015 and 30-11-2015.

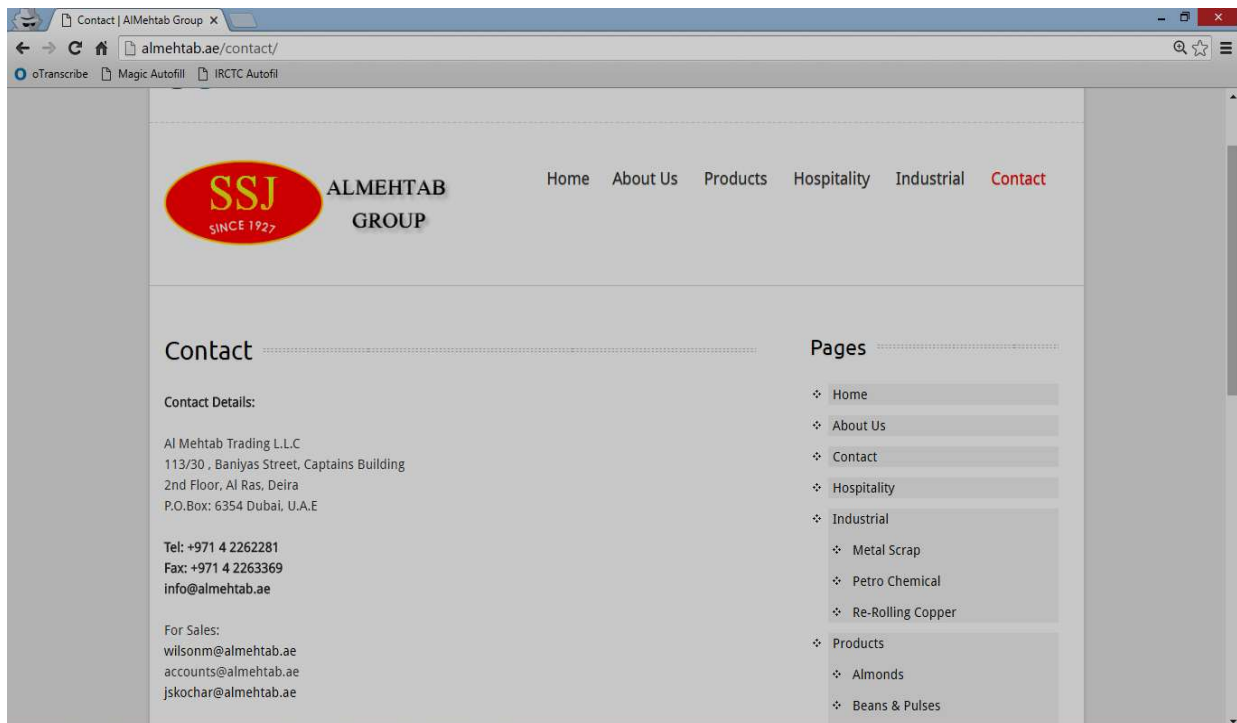
(c). Six summons' were issued to Shri Saakshat Dhir, son of Shri Subhash Dhir, who is the second partner of the importer. First summons was issued to Shri Saakshat Dhir on 22-09-2015 asking him to appear on 29-09-2015 and the second was issued on 29-09-2015 requiring him to appear on 12-10-2015. Third summons was issued to Shri Saakshat Dhir on 12-10-2015, requiring him to appear on 02-11-2015, and the same was personally acknowledged by his father Shri Subhash Dhir on 12-10-2015, but Shri Saakshat Dhir did not appear before the investigating officer. Another summons was issued to Saakshat Dhir on 04-12-2015, requiring him to appear on 17-12-2015, but again he did not turn up. Shri Saakshat Dhir vide letter dated 17-12-2015 acknowledged the receipt of the summons and informed his inability to appear at Mundra Customs office due to ill health of his father. Another summons was issued on 21-12-2015, requiring him to appear on 06-01-2016, which was acknowledged by Shri Saakshat Dhir vide his letter dated 06-01-2016 and again informed his inability to attend. Final summons was issued to Shri Saakshat Dhir on 29.07.2016, but he did not attend before the investigating officer. His attitude appeared to be non-cooperating with the investigation by

deliberate defiance of summons issued by the officer competent under Sec 108 of the Customs Act, 1962.

10. Instead of appearing before the investigating officer, in reply to the summons issued, the partners of the importer sent various letters to the investigating officer.

11. A statement of Shri Collin George, Manager-Lines of M/s.Caravel Logistics Pvt. Ltd., Plot No.170, Sector-1A, Patel Avenue, 1<sup>st</sup> Floor, Office No.2, Gandhidham-370201 was recorded on 11-01-2016 under Sec 108 of the Customs Act, 1962. Shri Collin George after going through the panchnamas dated 12-09-2015 and 17-09-2015, and on being asked, produced copies of email correspondences made by Shri Saakshat Dhir of the importer and M/s. Caravel Logistics Pvt. Ltd regarding booking and loading of the containers involved. He also stated that the first request for booking of containers came from the importer on 26-08-2015; and that no booking was made by them for the importer prior to that. He also stated that after the seizure made on 17-09-2015, no request was received by them for booking of containers. Further, on being asked, he has stated that they have not received any payment relating to the 12 containers involved in the two seizures effected on 12-09-2015 and 17-09-2015.

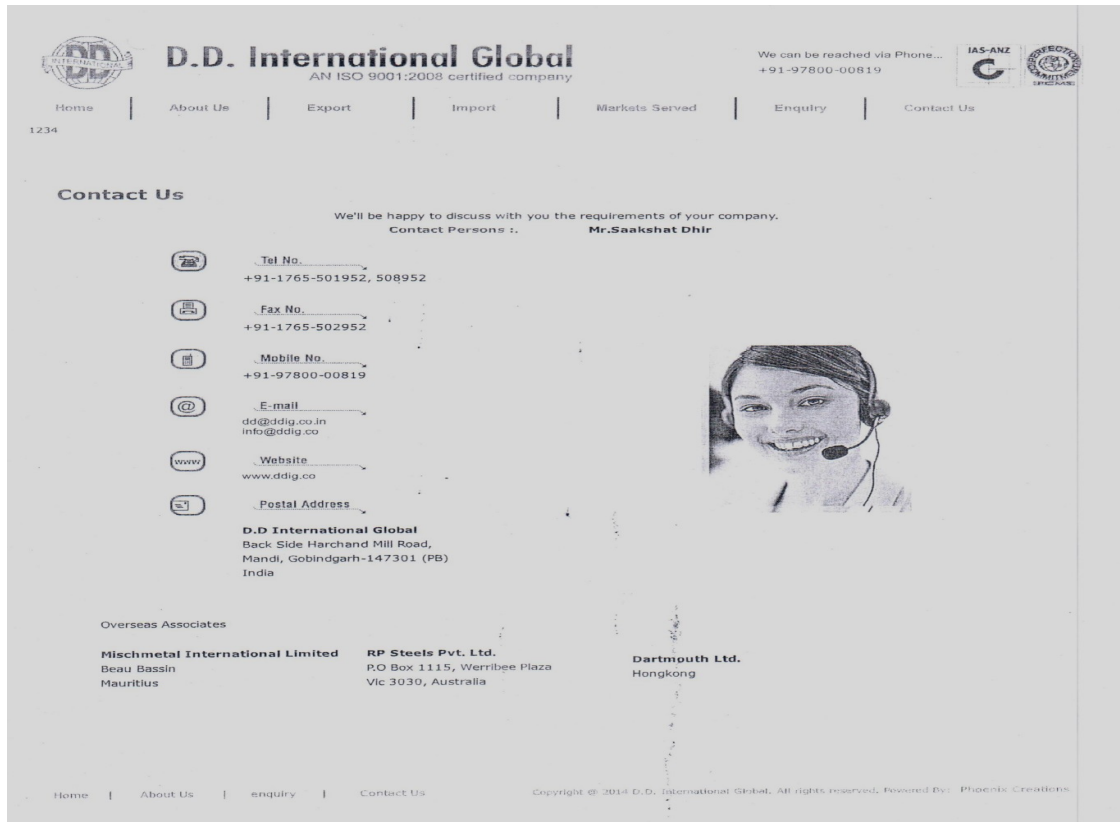
12. The email correspondences between Caravel Logistics and Shri Saakshat Dhir made during the period from 26-08-2015 to 13-09-2015 have been examined. It appeared that Shri Saakshat Dhir was sending emails to M/s. Caravel Logistics from the email address [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae). But from the website, "almehtab.ae", it appeared that the said website belonged to "Almehtab group of Companies". The telephone number +97142262281 also belonged to M/s.Al Mehtab Trading L.L.C, P.O Box No.6354, Deira, Dubai, UAE. A screen shot of the website is given as below:



From the above screen shot, it was very clear that the domain name "almehtab.ae" belonged to the supplier of the goods, namely M/s.Al Mehtab Trading L.L.C, P.O Box No.6354, Deira, Dubai, UAE.

13. Further it appeared from the email correspondences that Shri Sathosh, Customer Support Executive-Liner of the shipping line M/s.Caravel Logistics sent an email message on 02-09-2015 at 12.19 hrs to Shri Saakshat Dhir on the email address of the importer [dd@ddig.co.in](mailto:dd@ddig.co.in) as "Pl provide BL instructions for "9 "containers CLSU2117727, CRXU3000851, CRXU3344939, GESU-2248095, GESU2569198, TRLU2724044, GESU2402791, GESU2581742, and TEMU2352259." But, reply to this email message was given by Shri Saakshat Dhir on 02-09-2015 at 14.59 hrs from the email address [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae) as "Please note we intend to send only 5 Teus in this vessel and we informed regarding same to Amal yesterday itself, and underwritten is the Shipping Instruction for 5 containers. Please find underwritten packing list and SI. Shipper Al Mehtab Trading Co. LLC, PO Box-6354, Deira, Dubai Consignee D.D.International Global, Harchand Mill Road, Mandi Gobindgarh 147301. Final destination ICD Ludhiana. CISU2117727-23.68, CRXU3000851-22.3, GESU-2248095, CRXU3344939-23.42, GESU2581742-21.95" along with the details of seal Nos. Also. From this also, it appears that Shri Saakshat Dhir was very well aware of all the containers and the goods imported.

14. Further, from the website of the importer, M/s.D. D. International Global, it appeared that the domain, viz. "ddig.co.in" belongs to them. A print out of the website of the importer is given as follows:



Further, in reply to summons issued to Shri Saakshat Dhir and Shri Subhash Dhir, Partner of the importers, by the Superintendent of Customs, R&I Section, Mundra from F. No.S/43-01/R&I/2015-16 requiring them to appear on 02-11-2015 in his office for recording their oral evidences, a letter signed by both Shri Subhash Dhir and Shri Saakshat Dhir, was issued, which was received by the office of the Customs, Mundra on 04-11-2015. A copy of the letter is placed below: The letter head of the importer M/s. D. D. International Global also shows that the email domain "ddig.co" belonged to the importer only.

TIN No. : 03732055906

Subject to Fatehgarh Sahib Jurisdiction only

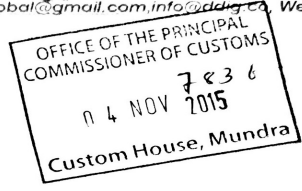
Off. : +91 1765-501952  
 Fax : +91 1765-502952  
 Mob. : +91 98141-36752



# D. D. International Global

Behind Harchand Mill Road, MANDI GOBINDGARH-147301(Pb.)  
 e mail : doc ddinternationalglobal@gmail.com, info@ddig.co, Web site www.ddig.co

To  
 The Superintendent (R&I)  
 Custom House  
 Mundra Port,  
Mundra



Sir,  
 Sub: Compliance of summons dated 21.10.2015  
 Ref No: F.No. S/43-01/R&I) 2015-16

We are in receipt of a bare mentioned summons, where by your good self has directed me to appear personally on 02.11.2015 at 12 hrs. You have also directed to produce all original / photocopy of documents as mentioned in summons.

But I am sorry to inform you that as my mother in law has expired on 28th Oct, 2015 after few days illness, so it is not possible to come on 2-11-2015 as I am eldest in the family. It will take 15-20 days for last rituals so please give us a date in the last of month or in December.

So I am sending you all the documents required by you through Courier.

Thanking you.

Yours Faithfully.

For D.D. International Global  
  
 Saakshat Dhir  
 Partner

Yours Faithfully.

For D.D. International Global  
  
 Subhash Dhir  
 Partner

Thus, it appeared from the above mentioned email messages that an email message sent to Shri Saakshat Dhir from his email address [dhirs@ddig.co.in](mailto:dhirs@ddig.co.in), which belonged to the importer M/s.D.D.International Global is replied from the email address of [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae), which belongs to the supplier M/s.Al Mehtab Trading LLC, Deira, Dubai. From this it appears that Shri Saakshat Dhir, the partner of the importer was very much involved in procuring and smuggling goods from Dubai to India. It also appears from the email correspondences that he was referring to all the containers seized by the Customs officers, in his email correspondences and continuously monitoring their loading at the load port.

15. Further, It also appears from another email correspondence made by Shri Saakshat Dhir with the Shipping line on 12-09-2015 at 04.42 hrs that when he came to know about the first seizure of the containers made by the Customs officers at Mundra on 11/12-09-2015, he tried his level best to get the remaining containers recalled and offloaded at Dubai. Further, to the email request made by Shri Saakshat Dhir from his email address [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae) on 12-09-2015 at 04.42pm to recall the containers, Ms. Asha, an executive of M/s.Caravel Logistics replied to confirm the container numbers GESU2168240, GESU 2402791, GESU2569198, CLSU2111014, CLSU2112793, TEMU 2352259, TRLU 2714044 and relevant charges, Shri Saakshat dhir via email message sent by him on 12-09-2015 at 05.45 hrs from email address [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae) to Ms. Asha, on [adexb@caravellogistics.com](mailto:adexb@caravellogistics.com), had confirmed to pay all the relevant charges for all the containers and agreed to pay all relevant charges. Thus, it appears that he was well aware of that the cigarettes were concealed and smuggled in the remaining containers also and for the said reason, he was worried that those containers would also be seized by the Customs officers in all probability.

16. It also appears that the concerned parties involved in the smuggling of the seized goods viz. 1,10,33,600 sticks of various brands of cigarettes, valued at Rs.6,96,25,200/- by way of concealment in the cargo of metal scrap bundles weighing 256.760 MTs valued at Rs.59,05,480/-, have not approached for provisional release of the seized goods. Since the seized goods viz. cigarettes are perishable in nature and having limited shelf-life, and looking to the fact that no person approached for provisional release of the seized goods or to claim the ownership, the seized "cigarettes" were placed in e-auction to protect the Government revenue after following the procedures prescribed under Sub-sec (1A), (1B) and (1C) of Sec 110 of the Customs Act, 1962. Two auctions were held on 22.02.2016 & 26.02.2016 and total amount of Rs. 14305500 (Rs. 3576375+Rs. 10729125) have been recovered.

17. Further, it appears that the items under import have been grossly mis-declared in terms of description, quantity and value, as detailed below:

**Consignment - I**

| Sl. No. | Bill of Lading No.     | Container No. | Declared quantity of LMS Bundles (in MTs) |
|---------|------------------------|---------------|---|
| 1       | 03700206/0019010/16,   | GESU2581742   | 21.950                                    |
| 2       | dated issued by        | CRXU3000851   | 22.300                                    |
| 3       | M/s.Caravel Lines Pvt. | GESU2248095   | 21.900                                    |

|   |      |             |        |
|---|------|-------------|--------|
| 4 | Ltd. | CRXU3344939 | 23.420 |
| 5 |      | CLSU2117727 | 23.680 |

**Consignment-II**

| Sl. No.      | Container No. | Net weight of Metal Scrap (in MTs) |
|--------------|---------------|------------------------------------|
| 1            | TRLU2724044   | 19.570                             |
| 2            | GESU2168240   | 24.050                             |
| 3            | TEMU2352259   | 19.910                             |
| 4            | CLSU2111014   | 17.860                             |
| 5            | GESU2402791   | 19.590                             |
| 6            | CLSU2112793   | 19.280                             |
| 7            | GESU2569198   | 27.320                             |
| <b>Total</b> |               | <b>147.580</b>                     |

The importer has declared only LMS Bundles in the Bill of Lading. But, on examination of the goods, Cigarettes of different Brands, which were not declared in the Bill of Lading documents, were also found concealed between these LMS Bundles. These items were neither declared in the IGM, not in the Bill of Lading filed before the Customs authorities. The detailed summary is as under:-

**Consignment - I**

| Sl. No.            | Container Number | Type/Brand                     | Total Boxes | Total sticks in each box | Total No. of Sticks |
|--------------------|------------------|--------------------------------|-------------|--------------------------|---------------------|
| 1                  | GESU2581742      | Super Slim Mond Grape          | 10          | 20x10x50=10000           | 100000              |
|                    |                  | Super Slim Mond Cherry         | 50          | 20x10x50=10000           | 500000              |
|                    |                  | Mond Chocolate Super Slim      | 68          | 20x10x50=10000           | 680000              |
|                    |                  | MondPaan Super Slim            | 30          | 20x10x50=10000           | 300000              |
|                    |                  | <b>Total</b>                   | <b>158</b>  |                          | <b>1580000</b>      |
| 2                  | CRXU3000851      | Bril Lights                    | 36          | 20x10x50=10000           | 360000              |
|                    |                  | Gunung Gajah                   | 50          | 12x20x60=14400           | 720000              |
|                    |                  | <b>Total</b>                   | <b>86</b>   |                          | <b>1080000</b>      |
| 3                  | GESU2248095      | Bril Lights                    | 32          | 20x10x50=10000           | 320000              |
|                    |                  | Benson & Hedges Special Filter | 100         | 20x10x50=10000           | 1000000             |
|                    |                  | <b>Total</b>                   | <b>132</b>  |                          | <b>1320000</b>      |
| <b>Grand Total</b> |                  |                                | <b>376</b>  |                          | <b>3980000</b>      |

**Consignment-II**

| Sl. No. | Container Number | Type/Brand    | Total Boxes | Total sticks in each box | Total No. of Sticks |
|---------|------------------|---------------|-------------|--------------------------|---------------------|
| 1       | TRLU2724044      | In Black Bril | 30          | 16x10x80=12800           | 384000              |

|                    |                 |                                   |            |                    |                |
|--------------------|-----------------|-----------------------------------|------------|--------------------|----------------|
|                    |                 | Benson & Hedges<br>Special Filter | 31         | 20x10x50=100<br>00 | 310000         |
|                    |                 | <b>Total</b>                      | <b>61</b>  |                    | <b>694000</b>  |
| 2                  | GESU216824<br>0 | Esse Lights                       | 85         | 20x10x50=100<br>00 | 850000         |
|                    |                 | Esse Menthol                      | 50         | 20x10x50=100<br>00 | 500000         |
|                    |                 | Esse Special Gold                 | 26         | 20x10x50=100<br>00 | 260000         |
|                    |                 | <b>Total</b>                      | <b>161</b> |                    | <b>1610000</b> |
| 3                  | TEMU23522<br>59 | MondPaanSuperslim                 | 120        | 20x10x50=100<br>00 | 1200000        |
|                    |                 | Mond Chocolate<br>Superslim       | 32         | 20x10x50=100<br>00 | 320000         |
|                    |                 | SuperslimMond Grapes              | 40         | 20x10x50=100<br>00 | 400000         |
|                    |                 | <b>Total</b>                      | <b>192</b> |                    | <b>1920000</b> |
| 4                  | CLSU211101<br>4 | Gunung Gajah                      | 72         | 12x20x60=144<br>00 | 1036800        |
|                    |                 | <b>Total</b>                      | <b>72</b>  |                    | <b>1036800</b> |
| 5                  | GESU240279<br>1 | Bril Lights                       | 8          | 20x10x50=100<br>00 | 80000          |
|                    |                 | In Black Bril                     | 72         | 20x10x50=100<br>00 | 921600         |
|                    |                 | <b>Total</b>                      | <b>80</b>  |                    | <b>1001600</b> |
| 6                  | CLSU211279<br>3 | Esse Lights                       | 2          | 20x10x50=100<br>00 | 20000          |
|                    |                 | Esse Special Gold                 | 8          | 20x10x50=100<br>00 | 80000          |
|                    |                 | Gunung Gajah                      | 48         | 12x20x60=144<br>00 | 691200         |
|                    |                 | <b>Total</b>                      | <b>58</b>  |                    | <b>791200</b>  |
| <b>Grand Total</b> |                 |                                   | <b>624</b> |                    | <b>7053600</b> |

Thus, it appears that the importer has contravened the provisions of Sec 46 of Customs Act, 1962 in as much as they had given wrong declaration of the goods imported, in the corresponding Bill of Lading No. 03700206/0019010/16, dated 04.09.2015& 03700206/0019941/16 & 03700206/0019947/16, both dated 10-09-2015 issued by M/s.Caravel Lines Pvt. Ltd.

18. Therefore, it appears that the above acts on the part of the importer has rendered the entire goods seized under two panchnamas dated 12.09.2015 & 17.09.2015, having total market value of Rs.7,55,30,680/-, as detailed in Annexure\_B to the show cause notice, are to be treated as smuggled goods in terms of Section 2(39) of Customs Act, 1962, and hence they are liable for confiscation under Section 111(f), 111(i), 111(l) and 111(m) of the Customs Act, 1962 and the goods so imported are to be termed as smuggled goods in terms of Section 2(39) of Customs Act, 1962.

19. The valuation of seized goods is done based on the price of the products in international market. The total value of the seized goods is arrived at Rs.7,55,30,680/- and the duty involved on the same is calculated to

Rs.5,95,08,787/-, as detailed in Annexure-A to the show cause notice. It appeared that the importer, M/s. D. D. International Global, Harchand Mill Road, Mandi, Gobindgarh-147 301, has smuggled the entire goods seized under panchanamas dated 12.09.2015 & 17.09.2015 into India by mis-declaring, suppressing the description, value and quantity with intent to clear the goods in Local Market, without payment of duty. Therefore, it appears that the duty amounting to Rs.5,95,08,787/-(as detailed below in para 14) to this show cause notice is required to be recovered from them under section 28(4) of Customs Act, 1962, along with interest applicable thereon.

20. It appears from the email correspondences made by Shri Saakshat Dhir with the Shipping line, M/s.Caravel Logistics that he is the master mind in arranging, booking and smuggling the cigarettes and metal scrap into India. Shri Saakshat Dhir has dis-honoured all the Summons issued by the investigating officer under Section 108 of the Customs Act, 1962, by avoiding his appearance before the investigating officer. It also appears that by not appearing before the investigating officer, Shri Saakshat Dhir is not co-operating with the investigation and hiding the facts. Thus, due to the non-cooperation attitude shown by Shri Saakshat Dhir, one of the partners of the importer and the master mind in the smuggling activity in this case, the investigation could not be completed within the time limit of six months prescribed under Sec 110(2) of the Customs Act, 1962. The time period prescribed for issuance of Show Cause Notice under Section 110(2) of the Customs Act, 1962 in respect of impugned goods seized under panchnamas dated 12-09-2015 and 17-09-2015, was extended for a further period of six months by the Principal Commissioner of Customs, Mundra vide Order-In-Original, dated 02-03-2016 passed by him while deciding the Show Cause Notice dated 17.02.2016 as per Section 110 (2) of the Custom Act, 1962, read with Section 124 of the Customs Act, 1962.

21. It appears that Shri Saakshat Dhir is the master mind of the smuggling activities in this case, and he has disobeyed all the summons issued by the investigating officer. Therefore, necessary complaint application is being filed before the Hon'ble Chief Judicial Magistrate of Bhuj under Section 174, 175, 176 and 178 of IPC read with Section 200 of Criminal Procedure Code (Crpc) for issuance of non-bailable warrant. Since Shri Saakshat Dhir has not cooperated with the investigation, necessary action against him under the Customs Act, 1962, and the rules made thereunder and any other relevant rules is kept in abeyance till the completion of investigation. After completion of the investigation, separate action will be initiated against him under the provisions of Customs Act, 1962 and or other relevant Acts.

21A. Accordingly, a complaint application was submitted to the Public prosecutor Shri K.C, Goswami, Bhuj for filing of complaint application before the Hon'ble Chief Judicial Magistrate of Bhuj under Section 174, 175, 176 and 178 of IPC read with Section 200 of Crpc for issuance of non-bailable warrant. However, the Public Prosecutor on 30.03.2016 has suggested that "as per the instructions of the CGM Bhuj before filing the Criminal Complaint in the Court of CGM Bhuj, Custom Mundra have to paste summons at his house and nearby landmark of his house under the Proper panchnama in presence of two independent witness, and after completion of proceeding of pasting of Summons at Shri Saakshat Dhir's house/nearby land mark, a fresh application may be submitted for filing of penal complaint before the Court of CGM Bhuj alongwith photos of such proceedings and copy of such Panchnama.

Accordingly, three more summons dated 03.05.2018, 31.05.2018 and 28.06.2018 were issued to Shri Saakshat Dhir for appearing before the investigating officer on 14.05.2018, 28.06.2018 and 12.07.2018 respectively. The said summons were also sent to Central Excise/GST Commissionerate, Chandigarh-I vide this office letters dated S/43-01/R&I/2015-16 dated 03.05.2018, 31.05.2018 and 28.06.2018 respectively to deliver the said summons to Shri Saakshat Dhir or to paste the above said summons at the house of Shri Saakshat Dhir at a place easily visible to all in presence of two independent Panchas under proper Panchanama. In response to this office letters as mentioned above, Assistant Commissioner, GST Division, Mandi Gobindgarh, Chandigarh-I Commissionerate, vide their letter F.No. CE-20/Prev./MGG/03/2014/Pt. dated 29.06.2018 & F.No. CE-20/Prev./MGG/03/2014/Pt. dated 09.07.2018 forwarded the copy of the Panchnama dated 11.05.2018, 25.06.2018 & 09.07.2018 respectively regarding pasting of the said summons on the main gate of residential premises i.e. House No. 29, Sector-2, Block-A, Adarsh Nagar, Mandi Gobindgarh in presence of the two independent Panchas.

In spite of the issuance of further three Summons, Shri Saakshat Dhir did not appear before the Investigating officer. However, Shri Saakshat Dhir, later on, appeared before the Investigating Officer on 20.07.2018 for statement and his statement was recorded on 20.07.2018, wherein he stated that he is regularly dealing with the suppliers M/s. Al-Mehtab Trading LLC, Dubai and having very goods relations with the suppliers M/s. Al Mehtab Trading LLC Dubai; that he is indenter for overseas traders and financiers; that in most of the cases he works as a guarantor to overseas suppliers/financers; that there was no talk or dealing made by him with the suppliers in respect of this particular consignment; that after hearing about this illegal import of contraband goods on his company name, he immediately contacted with the suppliers and the supplier had informed Shri Saakshat Dhir that said Mr. Ravi Jain and Mr. Vipin Jain (who were introduced to the supplier by him for financing of Ferrous and Non-Ferrous Scrap), were approached to the supplier for financing of Aluminium Scrap; that the supplier was not having the full confidence on Mr. Ravi Jain and Mr. Vipin Jain, therefore, for safety of their (supplier) money, the supplier made M/s. D.D. International Global as consignee, so that the supplier may have control over the goods till their (supplier) money was received and this is the reason that M/s. D.D. International Global name was mentioned on the respective B/L without Shri Saakshat Dhir's knowledge and consent; that he has already made a request for registering a FIR to the police department against above said Mr. Ravi Jain and Mr. Vipin Jain; that he will submit the copies of the said request letter (FIR) within a week's time; that he will provide the whereabouts, contact No. and all possible details of above said Jain brothers; that he will also try to provide proofs regarding involvement of the Jain brothers in the said incident with the help of suppliers.

Whereas Shri Saakshat Dhir's vide his letter dated 06.01.2016, has submitted that the said consignment has been booked by Shri Bharat Sangwa and suppliers has made the Bill of Lading on the name of M/s. D D International Global because the Shri Bhagat Sangwa was not having his company registered for export from Dubai to India. From going to above, it appears that Shri Shaksat Dhir statement recorded on 20.07.2018 and his submission dated 06.01.2016 is completely contradictory.

Whereas, till today, Shri Saakshat Dhir has failed to submit any proof of his statement regarding Jain Brothers/his submission regarding Shri Bharat Sangwa. He also defied ten summons issued by the investigating officer [as detailed in para 9(c) to 10 and as mentioned above] to delay the investigations and shows his non-cooperative attitude. From going through above, it appears that Shri Saakshat Dhir is only trying to delay the investigation by not appearing before the investigating officer in spite of ten summons and misguiding the department by taking names of Jain Brothers/Shri Bharat Sangwa without any proof.

Whereas on going through the above and discussion and made in para 11 to 15 & 20 of said show cause notice, it appears that Shri Saakshat Dhir was sending emails to M/s. Caraval Logistics from the email address [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae) and after knowing the first seizure of the containers made by Customs Mundra on 11/12-0921, he tried his level best to get the remaining containers recalled and offloaded at Dubai by making emails to M/s. Caraval Logistics. Thus, it appears that he was well aware of that the cigarettes were concealed and smuggled in the containers.

Therefore, it appears that Shri Saakshat Dhir is the mastermind of this smuggling activity of Cigarettes as discussed in Para 11 to 15 & 20 and is liable to penal action under Section 112 and/or 114A and/or 114AA of Customs Act, 1962 and Rules made thereon.

22. Therefore, M/s. D. D. International Global, Harchand Mill Road, Mandi, Gobindgarh-147 301 were called upon to show cause to the Principal Commissioner of Customs, having his office at "Custom House, 5-B, Port User Building (PUB), MP & SEZ, Port Road, Mundra, Mundra-370 421, Dist: Kutch" in writing within 30 days of receipt of this notice, with all the supporting documents which they intend to rely, as to why

- (a) The entire goods viz. cigarettes total 1,10,33,600 sticks of various brands value at Rs.6,96,25,200/- by way of concealment in the cargo of metal scrap bundles to the weighing to 256.76 MTs valued at Rs.59,05,480/-, seized under two Panchnamas dated 12.09.2015 and 17.09.2015 should not be confiscated under section 111(f), 111(i), 111(l) and 111(m) of the Customs Act, 1962;
- (b) Total Customs duty amounting to **Rs.5,95,08,787/-** should not be demanded and recovered from them on the goods seized under panchanamas dated 12.09.2015 and 17.09.2015, under section 28(4) of the Customs Act, 1962.

The duty sheet is detailed below:-

Cigarettes:-

| Quantity (Sticks) | Value (Rs.) | Basic@30% (Rs.) | CVD@3375/ per 1000 (Rs.) | Total duty (Rs.) |
|-------------------|-------------|-----------------|--------------------------|------------------|
| 11033600          | 69625200    | 20887560        | 37238400                 | 5,81,25,960/-    |

Metal Scrap:-

| Quantity | Value (Rs.) | Total duty Rate | Total duty (Rs.) |
|----------|-------------|-----------------|------------------|
|----------|-------------|-----------------|------------------|

|        |         |         |             |
|--------|---------|---------|-------------|
| (MTs)  |         |         |             |
| 256.76 | 5905480 | 23.416% | 13,82,827/- |

and;

- (c) Penalty should not be imposed upon them under section 112(a) and/or 114A of the Customs Act, 1962 for the contraventions on their part as detailed in para-12 of this show cause notice.

22A. Shri Saakshat Dhir appears to be indulged in the said smuggling of cigarettes and was called upon to show cause vide Addendum dated 03.08.2018 to the Commissioner of Customs in writing within 30 days as to why penalty should not be imposed under Section 112 and/or 114A and/or 114AA of the Customs Act, 1962 for the contravention on his part as detailed in Para 20, 21 and 21A to the Show cause notice.

23. The Show Cause notice dated 11.08.2016 and Addendum dated 03.08.2018 were adjudicated vide OIO No. MUN-CUSTOM-000-19-18-19 dated 19.11.2018 holding the goods liable for absolute confiscation under Section 111(f), 111(i), 111(l) and 111(m) of the Customs Act, 1962. The then adjudicating authority imposed penalty of Rs. 1,00,00,000/- on M/s. DD International under Section 112(a) of the Customs Act, 1962 and Rs. 1,00,00,000/- under 112(a) and Rs. 50,00,000/- under Section 114AA on Shri Saakshat Dhir.

24. Being aggrieved with the OIO dated 19.11.2018, both the noticees preferred an appeal before the Hon'ble CESTAT. The Tribunal, vide Order No. 10554-10555/2024 dated 08.03.2024, remanded the matter to the adjudicating authority with a direction to reconsider the issue afresh after granting the noticees an opportunity of personal hearing and to present their submissions.

#### **PERSONAL HEARING-**

25. In pursuance of the directions of the Hon'ble CESTAT vide order dated 08.03.2024, this office vide letter dated 10.02.2025 granted them an opportunity of personal hearing on 18.02.2025. In response of which M/s. D.D. International & Shri Saakshat Dhir vide email dated 17.02.2025 sought adjournment of the personal hearing. Accordingly, another opportunity of personal hearing was provided to the noticees on 12.03.2025 vide this office letter dated 03.03.2025.

25.1 Shri Anil Kumar Rawal, Consultant and Shri Anil Gupta, Advocate appeared on behalf of M/s. D.D. International Global and Shri Saakshat Dhir on 12.03.2025. During the course of personal hearing, they reiterated the submission dated 12.03.2025. They sought cross examination of certain persons related to the case, as also requested in their preliminary reply and requested leave to file their final reply after the cross examination, if granted. They also sought certain document. Lastly they prayed to drop the proceedings in view of the Preliminary reply to the Show Cause Notice.

25.2 Considering their request, this office vide email dated 13.03.2025 provided all the documents sought by them during the personal hearing. Further, this office vide letter dated 19.03.2025 informed the noticees that their request for cross examination had been denied and they were requested to submit their final reply.

25.3 They made their final submission on 04.04.2025 and Shri Anil Kumar Rawal appeared for final hearing on 04.04.2025. During the course of hearing, he reiterated the submissions dated 12.03.2025 and 04.04.2025 and requested to drop the proceedings.

25.4 Consequent upon the change in the adjudicating authority, three further opportunities of personal hearing were granted to the noticees on 21.07.2025, 04.09.2025 and 26.12.2025, vide this office letters dated 07.07.2025, 20.08.2025 and 16.12.2025 respectively. However, the noticees did not appear for the personal hearings. Therefore, I proceed to decide the case.

#### **SUBMISSION-**

26. M/s. D.D. International and Shri Saakshat Dhir vide their submission dated 12.03.2025, inter alia, stated that-

- (i) All the charges are denied as they without any basis and not supported by any evidence.
- (ii) The evidence is vague, inconclusive, a fragment of imagination and fraught with innumerable contradictions.
- (iii) Alleged knowledge of the consignment- No concrete evidence: Under Section 111, goods are liable to confiscation only if there is an intent to smuggle or mis declare them. However, the department has not provided any evidence that Noticee was aware of the import.
  - a. The burden of proof lies with the department to establish that the noticees had prior knowledge and played a role in smuggling. Mere emails or circumstantial evidences are insufficient unless they are corroborated by actual transactions, payment records, or statements proving conscious involvement.
  - b. The department has failed to verify the claims that M/s Al-Mehtab Trading LLC had used Noticee's name without their consent, which constitutes a serious investigative lapse.
- (iv) SCN is time barred. Under S.110(2), the SCN should have been issued within six months from the date of seizure i.e. by 12.03.2016, with a possible extension up to 12.09.2016. However, the SCN was issued on 11.08.2016, and an addendum was issued much later on 03.08.2018. This delay renders the entire SCN procedurally defective and unenforceable.
- (v) Furthermore, any extension of the seizure period must be duly communicated to the appellant before the expiry of the initial six-month period. The extension order dated 17.06.2016 has not been served on the appellant in time. This non-compliance makes the extension legally invalid.
- (vi) The SCN asserts that Noticee No.2 was involved in procuring and smuggling cigarettes. However, his statement recorded on 20.07.2018 clearly asserts that he had no prior knowledge of the shipment. M/s. Al-Mehtab Trading LLC used his firm's name without his consent as a consignee to secure payments. This contradicts the department's assertion that he knowingly facilitated smuggling, as no concrete evidence has been provided to establish prior intent or knowledge of mis declaration.

- (vii) Another key contradiction arises in the accusation of non-cooperation. The department alleges that Noticee No.2 failed to appear for multiple summons. However, he did appear on 20.07.2018 and provided a detailed statement explaining his lack of involvement. Furthermore, the department itself acknowledges that summons were merely pasted at his residence rather than being personally served, raising procedural concerns regarding proper compliance in serving notices.
- (viii) The department also presents contradictory statements regarding third party involvement. In his letter dated 06.01.2016, Noticee No.2 stated that Shri Bharat Sangwa had booked the consignment and misused his firm's name as the consignee without authorization. Later, in his statement dated 20.07.2018, he clarified that Ravi Jain and Vipin Jain were responsible for unauthorized booking of the shipment. The department cites this as contradiction but it actually supports the Noticee's defence- his firm's name was misused by third parties, and as more information came to light during the investigation, further clarity emerged regarding the actual perpetrators. However, the department has failed to verify these claims or provide evidence linking noticee 2 to smuggling activities shows they were not interested in exploring the truth but fabricating the noticee for the offence not done by it.
- (ix) Furthermore, the department has no evidence of any financial transactions supporting the allegations of smuggling. There is no evidence of payments made by Noticee No.2 or his firm to M/s. Al-Mehtab trading LLC for the alleged shipments. The Noticee has consistently maintained that no order was placed, and no payment was ever demanded by the supplier for these consignments, which strongly suggests that his firm's name was fraudulently used. This is further reinforced by the statement of Shri Subhash Dhir, a partner in the firm, who categorically denied placing any order for LMS Bundles or engaging in any dealings related to cigarettes.
- (x) The reliance on email communications as evidence of smuggling intent is also highly questionable. The department's case hinges on emails allegedly sent from [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae), an address associated with Al-Mehtab Trading LLC. However, there is no proof that these emails were exchanged with knowledge or intent to facilitate smuggling. The alleged attempt to recall containers after the first seizure.
- (xi) Additionally, there is a misinterpretation of supplier relationships and business practices. The Noticee has stated that he functioned as an indenter and guarantor for overseas traders and financiers but had no involvement in this particular consignment. The department has failed to prove that his firm had any contractual obligations to accept the consignment or make any payments for it. This defense aligns with standard trade financing practices, where a consignee's name may be used to secure payments without participation in procuring the goods.
- (xii) A crucial flaw in the department's case is the disposal of goods without due process. The department auctioned the seized cigarettes and recovered Rs. 1,43,05,500/- before the conclusion of investigation.

- (xiii) The noticee is neither an importer nor an owner of goods. The undisputed evidence identifying multiple third party actors who misused the Noticee's firm's credentials without his knowledge and consent established innocence of noticee and only reinforces the lack of his any involvement. The objective of investigation is to find the facts and book the offence and issue show cause notice to the persons who are found responsible for the offence.
- (xiv) Customs duties and penalties are imposed on individuals or entities who import goods into India, provided they fall within the legal definition of an "importer" under Section 2(26) of the Customs Act, 1962. The law mandates that liability for Customs duty arises only when an individual or entity takes responsibility for the goods, either by filing a Bill of Entry, making payments or otherwise exercising control over the shipment.
- (xv) Noticee No.2 never filed a Bill of Entry for the goods in question, which means he never claimed ownership over them. The entire customs liability is based on the misuse of Noticee No.1's Importer Exporter Code (IEC), which was allegedly used without his knowledge. The absence of a Bill of Entry negates any presumption that Noticee No.1 was responsible for the shipment, as customs liability only arises when goods are formally cleared for home consumption.
- (xvi) No Act of "Holding out" as an importer: Shri Dhir never claimed himself as the importer of these goods at any stage. He has not placed any order for the cigarettes nor did he provide any authorization to use his firm's IEC. Not even an iota of evidence has been put up forth by the department to link the Noticee to the purchase, loading transportation of or import of goods. Mere assertion by the department and holding the noticee accountable for the alleged offence without actually reaching at the truth. The noticee has identified the actual persons namely Mr. Bharat Sangwa, Ravi Jain and Vipin Jain who were actually responsible for the purchase and import the impugned consignments, yet strangely the Customs Department failed to investigate their involvement. This failure to examine the real perpetrators and shifting the burden on Noticee No.2 constitute a serious lapse in investigation and on this count alone the show cause notice stands liable to be set aside.
- (xvii) The definition of importer under S. 2(26) doesn't apply to him (Noticee No.2) as no financial trail or contractual obligation links him to the consignment.
- (xviii) The Department relies on unauthenticated blank Bills of Lading provided by a whom which is not known. These documents lack signatures or authentication from relevant authorities, casting serious doubts on their legitimacy. The reliance on such unauthenticated documents fails to establish liability under the Customs Act, 1962.
- (xix) Additionally, the department's reliance on selective interpretations of statements, without verification or supporting material evidence, undermines the credibility of its claims. The absence of a conclusive determination regarding the actual perpetrators raises serious doubts about the validity of the allegations against the noticee. In the absence of substantive proof demonstrating his

- deliberate role in facilitating smuggling, the accusations remain speculative and legally unsustainable.
- (xx) In view of the same DD international can not be treated as an importer under S. 2(26) of the Customs Act, 1962, as there is no Bill of Entry or claim of ownership over the goods. The reliance on unauthenticated blank Bills of Lading is insufficient to establish liability.
  - (xxi) The domain [ddig.co.in](http://ddig.co.in) doesn't exist yet the department has attributed certain email communications to the Noticee without verifying their origin. The domain [ddig.co.in](http://ddig.co.in) is not held by the noticee at any point of time. The email id [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae) does not belong to the noticee or his firm. The email also belongs to some one from Dubai as the domain is of Dubai. The department has not demonstrated how this email id is connected to the Noticee nor have they provided any evidence linking it to him. The emails also lack any financial correspondence, purchase orders, or invoices that could substantiate an actual business transaction between the noticee and M/s. Al Mehtab Trading LLC. Given the lack of forensic validation, missing corroborative evidence and the contradictory timelines, these emails hold no evidentiary value and can not for the basis of any penal action under the Customs Act, 1962.
  - (xxii) Furthermore the digital evidence presented is riddled with inconsistencies as multiple email addresses are cited such as [dhir@ddig.co.in](mailto:dhir@ddig.co.in), [Dhirs@almehtab.ae](mailto:Dhirs@almehtab.ae), and [dhirs@almehtab.ae-all](mailto:dhirs@almehtab.ae-all) purportedly related to the same conversation. However none of these copies have been provided as RUD, raising serious doubts about their authenticity. The discrepancies in their email IDs strongly suggest that the evidence is fabricated and possibly orchestrated by the shipping line to create a misleading narrative. Without consistent, verified, and properly authenticated communications, these verified email addresses undermine any claim of a direct or reliable link between the Noticee and the alleged smuggling activities rendering the digital evidence completely devoid of evidentiary value.
  - (xxiii) Even otherwise the records provided by the shipping line do not bear digital timestamps, authenticated logs, or certified copies as required under Section 65B of the Indian Evidence Act, 1872 which governs electronic evidence. Moreover there is no clarity on the process used by the shipping line to generate and store these records, raising concerns about potential tampering or retrospective modifications. The department has blindly relied on these documents without verifying whether they meet the evidentiary standards prescribed under Section 85A and 85B of the IT Act, which mandate proper certification for admissibility of electronic records. Thus, the reliance on such improperly documented shipping records is legally unsustainable and cannot be used to implicate the noticee in the alleged offence.
  - (xxiv) There is procedural lapse in serving summons.
  - (xxv) Shipment interception before filing of Bill of Entry. Thus no liability created. The shipment was intercepted and examined before the BE was filed, meaning that no liability under the Customs Act was triggered. The legal position is clear- a Bill of Entry is a fundamental document that establishes the importer's

intent to claim ownership and clear goods. Since no such document was filed by Noticee No.1 there is no valid basis for a duty demand or penal action against them.

- (xxvi) Under Customs law, import liability arises only when an importer files a Bill of Entry acknowledging ownership of goods and seeking clearance. In this case, the shipment was seized at the port before any Bill of Entry was filed, which means Noticee No.1 had not accepted ownership nor made any claim for the consignment. The interception alone doesn't create liability, as held in Mohanlal Bhaskar V. C.C. Mumbai 2017 (352) ELT 309, where it was ruled that customs duty and penalties can not be imposed on a party unless a Bill of Entry is filed.
- (xxvii) Furthermore, Noticee No.2's statement indicates that the consignment did not belong to Noticee No.1 but to another party who may have misused their IEC to facilitate the import. It is also possible that the actual importer had intended to file a High Sea Sale Bill of Entry in their own name, but due to the department's preemptive interception, this was not investigated. The department has not verified whether another party had already initiated clearance formalities, nor has it traced the actual importer.
- (xxviii) The failure of the department to establish the rightful owner before seizing and attributing the goods to Noticee No.1 raises significant procedural lapses. Without proof that the noticees had control over the shipment at the time of importation, the SCN is legally untenable.
- (xxix) Since no bill of entry was filed and ownership of the goods was never established in favor of Noticee No.1, the entire basis of the SCN collapses. Customs liability can not arise without a formal act of import clearance, and since the noticees never undertook such an act, they can not be held liable. Furthermore, the department's failure to investigate alternative ownership possibilities and the potential misuse of the IEC code further weakens the case. As a result, the SCN must be set aside and all related demands and penalties must be withdrawn.
- (xxx) A big flaw in the department's approach is its selective assumption of facts while completely ignoring the other possibilities. If the department assumes that the mere mention of Noticee No.1's IEC in shipping documents is sufficient to impose liability, then by the same logic, it should have also assumed that the consignment may have been under fake IEC, which would absolve Noticee No.1 from all customs liabilities. This means that the entity listed on the Bill of Lading is not necessarily the importer, but someone who used the name and of the noticee before reaching India but
- a. The department has not investigated who has the ownership of the consignment on its arrival in India.
  - b. The interception of the consignment at the port doesn't automatically make Noticee No.1 liable for import duties.
  - c. A bill of Lading is merely a transport document and does not establish ownership or liability for custom duties.
- (xxxi) Since no Bill of Entry was filed by the Noticee No.1, the department's assumption that it was the importer is legally flawed. The burden was on the department to investigate whether

another entity had ownership of the goods before arrival. Its failure to do so renders the SCN unsustainable.

- (xxxii) No financial Trail linking the noticees to the Consignment. For an import transaction to be legally attributable to a party, there must be some form of financial transaction, such as advance payments, invoices, payment receipts, or banking transactions reflecting consideration for the consignment. However, in this case, the department has failed to establish any such financial link, which fundamentally undermines its allegations.
- (xxxiii) Ordinarily, in an import transaction, the importer either pays an advance to the supplier settles the amount through letters of credit, bank transfers, or other financial instruments. Yet there is no evidence on record showing that Noticee No.1 made any payment to M/s. Al Mehtab Trading LLC for the seized consignment. The supplier had not raised any demand or invoice against the Noticees, further confirming that the goods were never ordered by them. The absence of any remittance, ledger entry, or financial correspondence regarding the transaction suggests that the noticees had no financial interest or involvement in the shipment.
- (xxxiv) Additionally, in cases where importers attempt to evade duty, financial transaction often exist under disguised arrangements, such as third party remittances or under-invoiced payments. However, in the present case, the department has not presented any evidence of clandestine financial dealings or any attempt by the Noticees to make or facilitate payments through alternate channels. This further weakens the case, as no illicit financial arrangement has been unearthed that would indicate an intent to smuggle.
- (xxxv) The lack of a financial trail directly contradicts the department's allegations that the Noticees were responsible for the import of the seized goods. Without any payment records, bank transactions, or financial dealings linking the Noticee No.1 to the supplier, the entire foundation of the SCN collapses.
- (xxxvi) Since the department has not produced any financial link-which is an essential element in proving ownership or involvement in an import- the SCN is bad in law and must be set aside. A demand cannot be sustained in the absence of a financial trail, as it negates the presumption of involvement in the import. Given these deficiencies, the SCN should be dropped, and the demand withdrawn in its entirety.
- (xxxvii) The department's case relies almost entirely on email exchanges between two third parties, which do not constitute evidence of intent to smuggle. The primary allegation stems from communications about shipping logistics, which do not establish criminal intent, especially when there is no evidence linking the Noticee to the procurement of the goods. The emails in questions were allegedly sent from [dhirs@ddig.co.in](mailto:dhirs@ddig.co.in) an email id that has never existed. Despite this, the SCN fails to explain how the shipping line obtained and used this non-existent email address. Further no forensic verification has been provided in the SCN to prove the authenticity of these emails, raising serious doubts about their admissibility as evidence.

- (xxxviii) Moreover the department has failed to establish any financial trail or payment transactions linking the noticee to the alleged smuggling activities. There is no evidence that the Noticee ever paid M/s. Al Mehtab Trading LLC for the seized shipments, nor has the supplier demanded any payment from the Noticee. This strongly supports the contention that the Noticee's IEC was misused by a third party without their consent. Without any bank transactions, purchase orders, or payment receipts, the mere existence of unverified email exchanges cannot form the basis of a legally sustainable case.
- (xxxix) Additionally, case law supports the principle that mere email communications without corroborative evidence cannot be used to prove smuggling. In this case, no proof exists, making the department's reliance on emails wholly inadequate to sustain the SCN.
- (xl) The department auctioned the cigarettes before the conclusion of the investigation, which was significantly lower than the charged value. If the noticee was genuinely involved in smuggling, why did they not attempt to reclaim the goods? This premature auctioning of goods indicates a lack of substantial evidence against the noticee, further weakening the department's case.
- (xli) A crucial aspect overlooked by the department in the SCN is that Noticee No.2 has already lodged a police complaint against the actual perpetrators who misused his firm's IEC to facilitate the importation of the seized goods. In his statements recorded during the investigation, Shri Dhir categorically named Shri Bharat Sangwa, alongwith Ravi Jain and Vipin Jain as the individuals responsible for the unauthorized booking of the shipment. Following this revelation, he took immediate legal action by filing a formal complaint with the police authorities to establish his lack of involvement and to bring the real offenders to justice.
- (xlii) The police complaint serves as an independent, verifiable document that supports the noticee's defense that they were the victims of IEC misuse and had no role in the alleged smuggling. Despite this, the department has completely ignored this critical piece of evidence in the SCN. Instead of verifying the claims made in the police complaint or conducting a parallel investigation into the named individuals, the department has proceeded with allegations against Noticee No.2 and Noticee No.1 based purely on assumption and circumstantial email evidences.
- (xliii) There is procedure violations in the valuation and disposal of seized goods.
- (xliv) No justification on confiscation of cigarettes and Metal scrap under Section 111 of the Customs Act, 1962.
- (xlv) They have sought cross-examination of the following noticees:-
- a. Officials from M/s. Caravel logistics pvt. Ltd.
  - b. Representatives of M/s. Al-Mehtab trading LLC, Dubai
  - c. Persons who are the owners of the shipment namely Ravi jain,Vipin Jain and Bharat Sangwa.

27. M/s. DD International and Shri Saaksaht Dhir vide submission dated 04.04.2025, interalia, submitted that-

- (i) Both Shri Saakshat Dhir and Shri Shubhash Dhir partners in the said firm have denied the import of the alleged shipment by M/s. D.D. International Global. Shri Shubhash Dhir, one of the partners of M/s. D.D. International Global appeared before the authorities on 12.10.2015 in response to summons issued under S.108 of the Customs Act, 1962. His statement recorded voluntarily and without coercion, clearly and unequivocally establishes no involvement of the firm in the importation of the seized goods. He categorically stated that the firm have never imported LMS (Light Melting Scrap) Bundles, nor have it ever placed any orders for such goods with M/s. Al Mehtab Trading Co. LLC, Dubai-the alleged consignor. He further clarified that their firm deals exclusively in Heavy Melting scrap (HMS) and Rerollable Scrap, and have never traded in or dealt with cigarettes at any time in the past.
- (ii) Upon being shown Bills of Lading bearing no. 03700206/0019010/16 dated 04.09.2015 and 03700206/0019941/16 and 03700206/0019947/16 both dated 10.09.2015-where the consignor was shown as M/s. Al Mehtab trading Co. LLC, Dubai and the consignee as M/s. DD International Global, Shri Shubhash Dhir emphatically stated that these goods were not imported by their firm, and they were in no way connected with these consignments. He affirmed that no payment demand had ever been raised by the said Dubai entity for these goods and that no order had been placed by the firm for such material. He further stated that the firm had no objection to the Customs department auctioning the goods which is a clear indication that the firm had no proprietary or commercial interest in the consignment.
- (iii) The noticee submitted that he cannot be legally or factually categorized as an “importer” of the impugned goods under Section 2(26) of the Customs Act, 1962. The law provides that an importer, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer. In the present case, the noticees neither ordered the consignment in question nor had any role in its shipping or handling. Merely being named in the Bill of lading does not ipso facto create a statutory status of importer under Section 2(26) of the Customs Act, 1962, especially when the Noticees have neither claimed ownership nor taken any steps to clear the consignment.
- (iv) Under S.46(1) of the Customs Act, 1962, “The importer of any goods shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or for warehousing in such form and manner as may be prescribed.” The declaration made in a Bill of Entry is binding on the importer and is treated as a formal undertaking of all liabilities, duties, and penalties as applicable under law. In the absence of such declaration by the noticees, there is no act of importation, no assumption of liability, and no invocation of statutory obligations under the Customs Act that can be sustained against the Noticees. It is well settled that mere mention of a person’s name in the Bill of Lading, without a corresponding Bill of Entry, does not

confer the status of “importer” as defined under S. 2(26) of the Customs Act. There must be an overt act of import- such as filing the Bill of Entry, payment of duty, or clearance of goods-before any penal provision can be attracted.

- (v) They have relied upon the decision of Hon’ble CESTAT in RS Impex v. Commissioner of Customs, New Delhi [2017, TIOL, 3194, CESTAT, DEL]
- (vi) Furthermore, they have relied upon Commissioner of Customs & Central Excise vs. Kabul Textiles LLC [2005 (5) BOM CR 325], Pacific International Traders v. Union of India [2002 (142) ELT 544 (Bom)], Shri Arockiraj v. Commissioner of Customs, Chennai [2015, TIOL, 2328, CESTAT, MAD] etc. to argue that in the absence of a Bill of Entry or ownership claim, the consignee could not be fastened with the liabilities of import or mis-declaration.
- (vii) They have relied upon various other judicial pronouncements to argue that filing of a Bill of Entry is sine qua non for fixing the status of the importer.
- (viii) No Presumption in Law based on Bill of lading alone. While the Show Cause Notice may rely heavily on the appearance of the Noticee’s name on the Bill of Lading, the Tribunal in R.S. Impex have authoritatively held:  
 “The original authority fell in error in treating the description of goods in the Bill of Lading as evidence of misdeclaration under the Customs Act. Such presumptive reasoning is not supported by any statutory provision. Furthermore, the Tribunal noted that “The appellant did not file a Bill of Entry or commit any act or omission that would render the goods liable for confiscation. The only evidence against them was the Bill of lading, which is inadequate in law.”
- (ix) The only evidence the department is relying upon to establish liability against the noticee is:
  - (a) the Bill of lading (BL) in which the name of the noticee’s firm is mentioned as the consignee, and
  - (b) the statement of Shri Colin George, Manager, Caravel Logistics Pvt. Ltd, recorded under Section 108 of the Customs Act, 1962.

However, both these pieces of evidence are fundamentally flawed and legally untenable.

- (x) It is submitted that while the Bill of lading and Import General Manifest (IGM) are important procedural documents in the process of international shipping, they are governed by separate provisions under the Customs Act, 1962 and associated rules-but they do not, by themselves, confer the legal status of an importer. The Bill of Lading is a commercial document issued by the carrier under international shipping law and is governed in Indian practice under Section 30 of the Indian Contract Act, 1872 and Article III of the Hague Rules (incorporated into Indian law through the Carriage of Goods by Sea Act, 1925). It serves as evidence of the contract of carriage and the delivery terms agreed between the exporter and shipping line, and merely names a consignee for purposes of delivery at the port.
- (xi) Further, under Section 30 of the Customs Act, 1962, the IGM must be filed by the carrier prior to the arrival of goods at the

customs port. This document is filed by the shipping line or agent, not by the consignee, and is governed by the Import Manifest (Aircraft) Regulations, 1976 and Import Manifest (Vessels) Regulations, 1971. These documents are meant solely to notify the customs authorities of cargo arriving at the Indian port and to enable manifest clearance. It is important to note that the Bill of Lading and the IGM, though used to initiate port procedures, are governed by separate statutory provisions and do not assign liability or confer importer status unless followed by a valid Bill of Entry. The IGM is filed by the carrier or shipping agent not the consignee. Likewise the Bill of lading merely reflects the name of the consignee but doesn't constitute a statutory declaration of import.

- (xii) In the present case, the only party responsible for initiating the shipment was the exporter, M/s. Al Mehtab Trading Co. LLC, Dubai. All procedural and documentary steps until the filing of a Bill of Entry-including inclusion of the Noticee's name in the shipping documents- are attributable to the actions of the consignor. No act or conduct on the part of the Noticees indicate any ownership claim, acceptance of goods, or compliance with post import formalities. In fact, the noticees have explicitly denied the goods and clarified that the consignment was never ordered, accepted, or dealt with in any manner.
- (xiii) A careful review of the Panchnama documents shows that while some annexures to the Seizure Memo may bear signatures, the Bills of Lading themselves-being central to the allegation of import-have not been signed or endorsed by the panchas. This is a procedural lapse.
- (xiv) Secondly, the department relies heavily on the statement of Shri Colin George, Manager at Caravel Logistics Pvt. Ltd., recorded on 11.01.2016. In his statement, Mr. George claims to have submitted email correspondences purportedly between the Noticees and Caravel Logistics regarding the booking and loading of the alleged consignments. However, none of these email correspondences have been made part of the RUDs annexed to the SCN. This raises serious concern regarding both the authenticity and admissibility of these communications. The selective inclusion of only the statement while withholding the alleged emails makes the evidence incomplete, unverifiable, and legally infirm.
- (xv) Furthermore, the credibility of Mr. George's statement is itself questionable. He admits that this was the first transaction between his company and either the alleged importer or exporter and yet provides no phone number, email verification, IP logs, or contact details of the person with whom he claims to have communicated. He further states that no payments were received for these shipments. Neither he shows that there were any efforts to recover the same. This contradicts the Bills of Lading, which themselves state that the consignments were prepaid. The inconsistency between documentary records and Mr. George's oral statement undermines its reliability.
- (xvi) Moreover, Caravel Logistics Pvt. Ltd maintains an office in Ludhiana which the declared destination of the cargo. The goods were to be delivered at ICD Ludhiana, and it is highly irregular that all booking and communication was managed from the

- Gandhidham office, particularly in the absence of any documentation from their Ludhiana branch. This casts further doubt on the legitimacy and completeness of the investigation.
- (xvii) Even assuming that such email communications existed, their evidentiary value is nullified by the department's failure to comply with Section 65B of the Indian Evidence Act, which mandates certification for the admissibility of electronic records. No certificate have been produced confirming the source, authenticity, or origin of these emails. Additionally, multiple email addresses are mentioned in the SCN, including 'dhirs@almehtab.ae' and 'ddig@ddig.co.in' but the SCN doesn't clarify which address was actually used for communication. The domain '@almehtab.ae' belongs to a Dubai based entity, namely M/s. Almehtab Trading LLC, and not to the Noticees. The department have made no attempt to verify the ownership of these email addresses, nor have it produced any forensic report, IP address data, or server logs to establish any nexus between the Noticees and these emails.
- (xviii) Therefore, the statement of Shri Colin George lacks credibility and appears evasive. He provides no verifiable contract, payment, or documentary trail, yet claims knowledge of a first time transaction involving unknown parties. His failure to identify the actual individual who booked the cargo, despite having access to shipping records, strongly suggests deliberate withholding of material facts. By vaguely attributing the booking to the Noticees without producing any supporting emails or certified communication, Mr. George appears to be shielding the real persons involved and misdirecting the investigation, thereby rendering his testimony unreliable and inadmissible.
- (xix) Thus, the department's reliance on defective Bills of Lading and an unsupported, inconsistent, and uncorroborated statement of Mr. Colin George-without producing the actual emails or following the legal procedure for their admissibility-renders the entire evidentiary basis of the SCN unsustainable in law. These procedural and evidentiary lapses strike at the root of the case and reinforce that no case exists against the Noticees either on facts or in law.
- (xx) The entire case against the Noticees hinges on documents and communications that were not recovered from the noticees himself but were merely submitted by a third party, M/s. Caravel Logistics Pvt. Ltd whose credibility in this matter is seriously under doubt. These documents including the alleged email communications, were neither recovered from the possession of the Noticees nor traced to any device, server or account under his control. Instead, they were presented by Caravel Logistics on record without any verification of their origin, authorship or authenticity. This uncorroborated third party submission stands in stark contrast to the outcome of the searches conducted by the customs authorities at the business premises of the Noticees. It is a matter of record that no incriminating documents, physical or digital, were recovered during the said searches that could in any way connect the Noticees with the impugned consignments. No evidence such as email accounts, import documentation, invoices or financial records were found to substantiate the allegations.

Even the alleged email IDs cited in the Show cause notice have not been shown to belong to or be operated by the Noticees. In this factual matrix, the only documents being relied upon are those furnished by an external entity and without compliance with evidentiary standards. Therefore, such submissions without independent corroboration and in the absence of any recovery from the Noticees cannot form the basis of penal consequences under the Customs Act. This further demonstrates that the proceedings initiated are not supported by lawful or substantive evidence and are liable to be dropped in toto.

- (xxi) Though the said emails have not been marked as relied upon documents in the Show Cause Notice, the detailed reference to such emails therein and their purported role in linking the Noticees to the impugned consignment make it imperative to address their evidentiary worth. The mere mention of such emails as central to the allegations, without their production, authentication, or proper procedural compliance, renders the entire reliance upon them legally untenable.
- (xxii) No certification under S.65B of the Indian Evidence Act have been provided.
- (xxiii) Valuation of cigarettes is flawed and arbitrary. In the instant case, the department has neither identified a transaction value nor provided evidence of any comparable price at which such or like goods are "ordinarily sold" in the course of international trade. There is no invoice, no proof of import order, no buyer seller contract, and no payment trail indicating the transaction value of the seized goods. The entire valuation is based on conjecture, and the demand is calculated without any contemporaneous import data, valuation database, or trade price comparisons.
- (xxiv) In fact, the only real world market price that is available on record is the auction sale value of the seized goods, which is Rs. 1.43 crore. This figure must, in law, be treated as a cum duty price, since confiscated goods are sold as is by the Customs department with applicable duties built into the price. Using reverse computation, the actual assessable value would be approximately Rs. 71.5 lakh, assuming an average duty incidence of 100%, which is far below the inflated notional value of Rs. 6.96 crore adopted by the authorities.
- (xxv) Further, the record shows that no premium or branded cigarettes were found except for a small quantity of Benson and Hedges. The remaining goods consist of non branded or unregistered brands which have negligible market presence in India and do not command premium pricing. Therefore, no justification exists for the abnormally high valuation assigned to these goods.
- (xxvi) No Customs or penal liability in absence of Bill of Entry or ownership.
- (xxvii) Improper invocation of Sections 111(f), 111(i), 111(l) and 111(m) of the Customs Act.
  - (a) Section 111(f)- This provision, post amendment (Finance Act 2018) includes non-declaration in the import manifest as a ground for confiscation. However, the present seizure occurred in 2015, prior to the amendment. Moreover, the Import manifest is filed by the shipping line and the consignor, not the consignee. Hence, this clause is not applicable retrospectively nor factually.

(b) Section 111(i): This clause pertains to concealment or non declaration in import documents. Since the Noticees have not filed any Bill of Entry or import documentation, no concealment or allegation can be alleged against them.

(c) Section 111(l): It applies where prohibited goods are imported in violation of any restriction under law. The seized goods are not proven to be prohibited and no notification or statutory bar is cited in the SCN. Also, no violation of any licensing condition or prohibition by the Noticees is shown.

(d) Section 111(m): This provision applies in cases of mis-declaration in the Bill of Entry. The noticees have not filed any such declaration. Mere mention in the Bill of Lading is not equivalent to a statutory declaration, and, hence, no mis declaration can be attributed to the Noticees.

### **DISCUSSION AND FINDINGS-**

28. I have carefully gone through the Show Cause Notice F.No. S/43-01/R&I/2015-16 dated 11.08.2016 read with Addendum dated 03.08.2018, written submissions dated 12.03.2015 and 04.04.2015, records of personal hearing dated 12.03.2015 and 04.04.2015 and all the evidences placed on record.

29. The present proceedings are in compliance with the directions of the Hon'ble CESTAT to consider the issue after providing the noticees an opportunity of personal hearing. As discussed earlier, the personal hearing has been duly conducted, the submissions of the noticees during hearing have been duly taken on record, and all written representations have been taken on record. Thus, the principle of natural justice has been adhered to.

30. In light of the Show cause notice and submissions of the noticees, I find that the main issues that require consideration are:-

(i) Whether the noticees can be legally treated as "importer" under Section 2(26) of the Customs Act, 1962, in the absence of filing of any Bill of Entry or ownership claim, or clearance attempt for the impugned goods as claimed by the noticee. Whether absence of any financial trail or payment evidence linking the noticees to the overseas supplier negates allegations of import, ownership, or smuggling intent;

(ii) Whether mere mention of the noticee's name as consignee in the Bill of Lading and IGM is sufficient to fasten customs liability, including duty demand, confiscation, and penalties;

(iii) Whether the burden of proving conscious knowledge, intent, and involvement in smuggling has been discharged by the department, or whether the case rests only on circumstantial and uncorroborated evidence;

(iv) Evidentiary value and admissibility of email communications relied upon by the department;

(v) Credibility and evidentiary worth of the statement of Shri Colin George (Caravel Logistics Pvt. Ltd.), in light of Alleged contradictions with documentary records, absence of corroborative emails, contracts, or payment records, First-time transaction claim and lack of verification details;

(vi) Issue of Cross-examination of various persons;

- (vii) Whether the Show Cause Notice is barred by limitation under Section 110(2) of the Customs Act, 1962, including Validity and communication of extension of seizure period, Legal effect of the addendum issued subsequently.
- (viii) Whether interception and seizure of goods prior to filing of any Bill of Entry creates any customs duty or penal liability on the noticees and whether such duty can be demanded under Section 28(4) of the Customs Act, 1962.
- (ix) Whether confiscation of cigarettes and metal scrap under Sections 111(f), 111(i), 111(l) and 111(m) is legally tenable, considering:
- Applicability of amended provisions retrospectively,
  - Non-filing of Bill of Entry by noticees,
  - Responsibility for filing IGM and shipping documents.
- (x) Whether penalties under Sections 112, 114A and 114AA can be imposed on the noticees.

***BRIEF OF THE INVESTIGATION AND DISCUSSION ON ALL THE EVIDENCES RELIED UPON DURING THE INVESTIGATION-***

31. Before proceeding to take up the individual issues for detailed discussion and findings, it is considered necessary and appropriate to first examine, analyse and appreciate the documentary, oral and other evidences relied upon and brought on record during the course of investigation. The investigation in the present case was initiated on the basis of specific intelligence and culminated in detailed examination of twelve import containers declared as "LMS metal scrap bundles". The panchnamas drawn during examination unequivocally establish that the declared metal scrap was used merely as a means of concealment, and that large quantities of foreign-origin cigarettes of assorted brands were ingeniously hidden inside the scrap bundles. The inventories prepared at the time of seizure, the brand-wise and quantity-wise tally of cigarettes, and the presence of foreign markings without statutory health warnings collectively demonstrated that the goods were of foreign origin and intended for clandestine entry into the domestic market.

***PANCHNAMA DATED 11/12.09.2015-***

32. I find that five containers viz. GESU2581742, CRXU3000851, GESU2248095, CRXU3344939, CLSU2117727 imported via vessel M/v Ville D Aquarius, vide Bill of lading no. 03700206/0019010/16 dated 04.09.2015 issued by M/s. Caravel Lines Pvt. Ltd. lying at ALL Cargo Logistics Ltd.,CFS, Mundra, were examined, in the presence of two independent Panchas and Assistant Manager-Operation, All Cargo Logistics ltd. on 12.09.2025. As per the details given in the Bill of Lading, the consignor/shipper was M/s. Al Mehtab Trading Co. LLC, PO. Box=6354, Deira, Dubai; the consignee was D.D International Global Harchand Mill Road Mandi Gobindgarh 147301; the port of loading was Jebel Ali, UAE; Port of Discharge was Mundra and Place of Delivery was ICD, Ludhiana. Further, as per the Bill of Lading dated 04-09-2015 and as per the declaration made in the Import General Manifest, the item declared as stuffed in the containers was "LMS Bundles", however, on examination, it was noticed that a total of 39,80,000 sticks of cigarettes of various brands were concealed between the cargo of metal Scrap, as detailed in Annexure-A to the panchnama, dated 12-09-2015. Details of the cigarettes are given below:

| Sl. No.            | Container Number | Type/Brand                     | Total Boxes | Total sticks in each box | Total No. of Sticks |
|--------------------|------------------|--------------------------------|-------------|--------------------------|---------------------|
| 1                  | GESU2581742      | Super Slim Mond Grape          | 10          | 20x10x50=10000           | 100000              |
|                    |                  | Super Slim Mond Cherry         | 50          | 20x10x50=10000           | 500000              |
|                    |                  | Mond Chocolate Super Slim      | 68          | 20x10x50=10000           | 680000              |
|                    |                  | MondPaan Super Slim            | 30          | 20x10x50=10000           | 300000              |
|                    |                  | <b>Total</b>                   | <b>158</b>  |                          | <b>1580000</b>      |
| 2                  | CRXU3000851      | Bril Lights                    | 36          | 20x10x50=10000           | 360000              |
|                    |                  | Gunung Gajah                   | 50          | 12x20x60=14400           | 720000              |
|                    |                  | <b>Total</b>                   | <b>86</b>   |                          | <b>1080000</b>      |
| 3                  | GESU2248095      | Bril Lights                    | 32          | 20x10x50=10000           | 320000              |
|                    |                  | Benson & Hedges Special Filter | 100         | 20x10x50=10000           | 1000000             |
|                    |                  | <b>Total</b>                   | <b>132</b>  |                          | <b>1320000</b>      |
| <b>Grand Total</b> |                  |                                | <b>376</b>  |                          | <b>3980000</b>      |

33. Detailed inventory of metal scrap stuffed in all the five containers is as per Annexure-B to the panchnama, dated 12-09-2015. The details of the same are reproduced below:

| Sl. No.      | Container No. | Net weight of Metal Scrap (in MTs) |
|--------------|---------------|------------------------------------|
| 1            | GESU2581742   | 21.000                             |
| 2            | CRXU3000851   | 18.330                             |
| 3            | GESU2248095   | 15.900                             |
| 4            | CRXU3344939   | 27.370                             |
| 5            | CLSU2117727   | 26.580                             |
| <b>Total</b> |               | <b>109.180</b>                     |

#### **PANCHNAMA DATED 16/17.09.2015-**

34. The intelligence further indicated that seven more containers were being imported by the same exporter and same importer vide Bills of Lading No. 03700206/0019941/16 and 03700206/0019947/16, both dated 10-09-2015 and were expected to arrive Mundra Port by vessel MV. Ville D'Orion. As soon as the vessel berthed at Container Terminal-2, Berth-4 of AMCT, Mundra Port on 16-09-2015 at 13.55 hrs, the Customs Officers intercepted seven containers at the terminal, after unloading from the vessel in the presence of two

independent panchas. In the case of these containers also, the cargo declared in the Bills of Lading was “LMS Bundle”, whereas on examination of the containers, it was found that the importer had concealed undeclared goods, namely “Cigarettes” of various brands between the cargo of Metal scrap bundles as follows:

| Sl. No.            | Container Number | Type/Brand                     | Total Boxes | Total sticks in each box | Total No. of Sticks |
|--------------------|------------------|--------------------------------|-------------|--------------------------|---------------------|
| 1                  | TRLU2724044      | In Black Bril                  | 30          | 16x10x80=12800           | 384000              |
|                    |                  | Benson & Hedges Special Filter | 31          | 20x10x50=10000           | 310000              |
|                    |                  | <b>Total</b>                   | <b>61</b>   |                          | <b>694000</b>       |
| 2                  | GESU2168240      | Esse Lights                    | 85          | 20x10x50=10000           | 850000              |
|                    |                  | Esse Menthol                   | 50          | 20x10x50=10000           | 500000              |
|                    |                  | Esse Special Gold              | 26          | 20x10x50=10000           | 260000              |
|                    |                  | <b>Total</b>                   | <b>161</b>  |                          | <b>1610000</b>      |
| 3                  | TEMU2352259      | MondPaanSuperslim              | 120         | 20x10x50=10000           | 1200000             |
|                    |                  | Mond Chocolate Superslim       | 32          | 20x10x50=10000           | 320000              |
|                    |                  | SuperslimMond Grapes           | 40          | 20x10x50=10000           | 400000              |
|                    |                  | <b>Total</b>                   | <b>192</b>  |                          | <b>1920000</b>      |
| 4                  | CLSU2111014      | Gunung Gajah                   | 72          | 12x20x60=14400           | 1036800             |
|                    |                  | <b>Total</b>                   | <b>72</b>   |                          | <b>1036800</b>      |
| 5                  | GESU2402791      | Bril Lights                    | 8           | 20x10x50=10000           | 80000               |
|                    |                  | In Black Bril                  | 72          | 20x10x50=10000           | 921600              |
|                    |                  | <b>Total</b>                   | <b>80</b>   |                          | <b>1001600</b>      |
| 6                  | CLSU2112793      | Esse Lights                    | 2           | 20x10x50=10000           | 20000               |
|                    |                  | Esse Special Gold              | 8           | 20x10x50=10000           | 80000               |
|                    |                  | Gunung Gajah                   | 48          | 12x20x60=14400           | 691200              |
|                    |                  | <b>Total</b>                   | <b>58</b>   |                          | <b>791200</b>       |
| <b>Grand Total</b> |                  |                                | <b>624</b>  |                          | <b>7053600</b>      |

35. Detailed inventory of metal scrap stuffed in all the five containers, as given in Annexure-B to the panchnama, dated 17-09-2015 is reproduced below:

| Sl. No.      | Container No. | Net weight of Metal Scrap (in MTs) |
|--------------|---------------|------------------------------------|
| 1            | TRLU2724044   | 19.570                             |
| 2            | GESU2168240   | 24.050                             |
| 3            | TEMU2352259   | 19.910                             |
| 4            | CLSU2111014   | 17.860                             |
| 5            | GESU2402791   | 19.590                             |
| 6            | CLSU2112793   | 19.280                             |
| 7            | GESU2569198   | 27.320                             |
| <b>Total</b> |               | <b>147.580</b>                     |

It is observed that the findings of the examination have not been disputed by the noticees in their submissions. However, they have, inter alia, challenged the valuation adopted by the department and have also raised objections regarding the ownership of the goods.

#### **SEIZURE OF GOODS-**

36. It was observed that the goods so imported, namely "Cigarettes" were to be treated as "smuggled goods" as defined under Section 2(39) of Customs Act, 1962 and therefore, the said goods, were liable to confiscation under Section 111 of the Customs Act, 1962. Further the entire cargo of Metal Scrap bundles used for concealing the cigarettes were also liable for confiscation under Sec 119 of the Customs Act, 1962. Both the seizures, effected on 12-09-2015 and 17-09-2015 combined together, a total of 1,10,33,600 sticks of cigarettes, totally valued at Rs.6,96,25,200/- were seized by the department, along with the metal scrap bundles to the quantity of 256.760 MTs valued at Rs.59,05,480/- and the total value of the goods seized was Rs.7,55,30,680/-.

#### **DISCUSSION ON STATEMENTS OF VARIOUS PERSONS & OTHER DOCUMENTARY EVIDENCES-**

*Statement of Shri Shubhash Dhir, partner of M/s. D.D. International-*

37. I find that the statement of Shri Subhash Dhir, partner of M/s. D.D. International Global, recorded under Section 108 of the Customs Act, 1962 on 12.10.2015, is required to be appreciated in the context of his overall conduct during the course of investigation. The records reveal that summons were initially issued to Shri Subhash Dhir on 22.09.2015 requiring his appearance on 30.09.2015, to which he expressed his inability to appear vide letter dated 29.09.2015. Thereafter, fresh summons were issued on 29.09.2015 requiring him to appear on 12.10.2015, in response to which he appeared and his statement was recorded. Subsequently, further summons were issued to him on 12.10.2015 and 18.11.2015 requiring his appearance on 02.11.2015 and 30.11.2015 respectively; however, instead of appearing in person, Shri Subhash Dhir chose to send certain documents by way of letters dated 04.11.2015 and 30.11.2015. Thus, despite repeated opportunities afforded to him, Shri

Subhash Dhir avoided personal appearance before the investigating authority, reflecting a clear reluctance to cooperate fully with the investigation.

In his statement dated 12.10.2015, while admitting that he was a partner of the firm and was looking after the entire business dealings, Shri Subhash Dhir sought to disown the imported consignments by claiming that no order was placed for LMS bundles and that the firm was not dealing in such goods. This denial, however, stands in clear contradiction to his own admission regarding the firm's commercial dealings with M/s. Al Mehtab Trading Co. LLC, Dubai. During the statement dated 12.10.2015, he acknowledged that their firm had been purchasing HMS and Re-rollable scrap from M/s. Al Mehtab Trading Co. (LLC), Dubai and that they used to communicate with Mr. Wilson of the said firm through email whenever such purchases were made. Thus, the existence of prior business relations with the said supplier stands admitted on record. In these circumstances, the attempt to completely disassociate the firm from the impugned consignments is clearly an afterthought, evidently made with a view to distancing the firm from the smuggling activity. Further, when such denial is examined in the backdrop of his evasive conduct and repeated failure to appear before the investigating officer despite lawful summons issued under Section 108 of the Customs Act, 1962, the explanation offered by him lacks credibility.

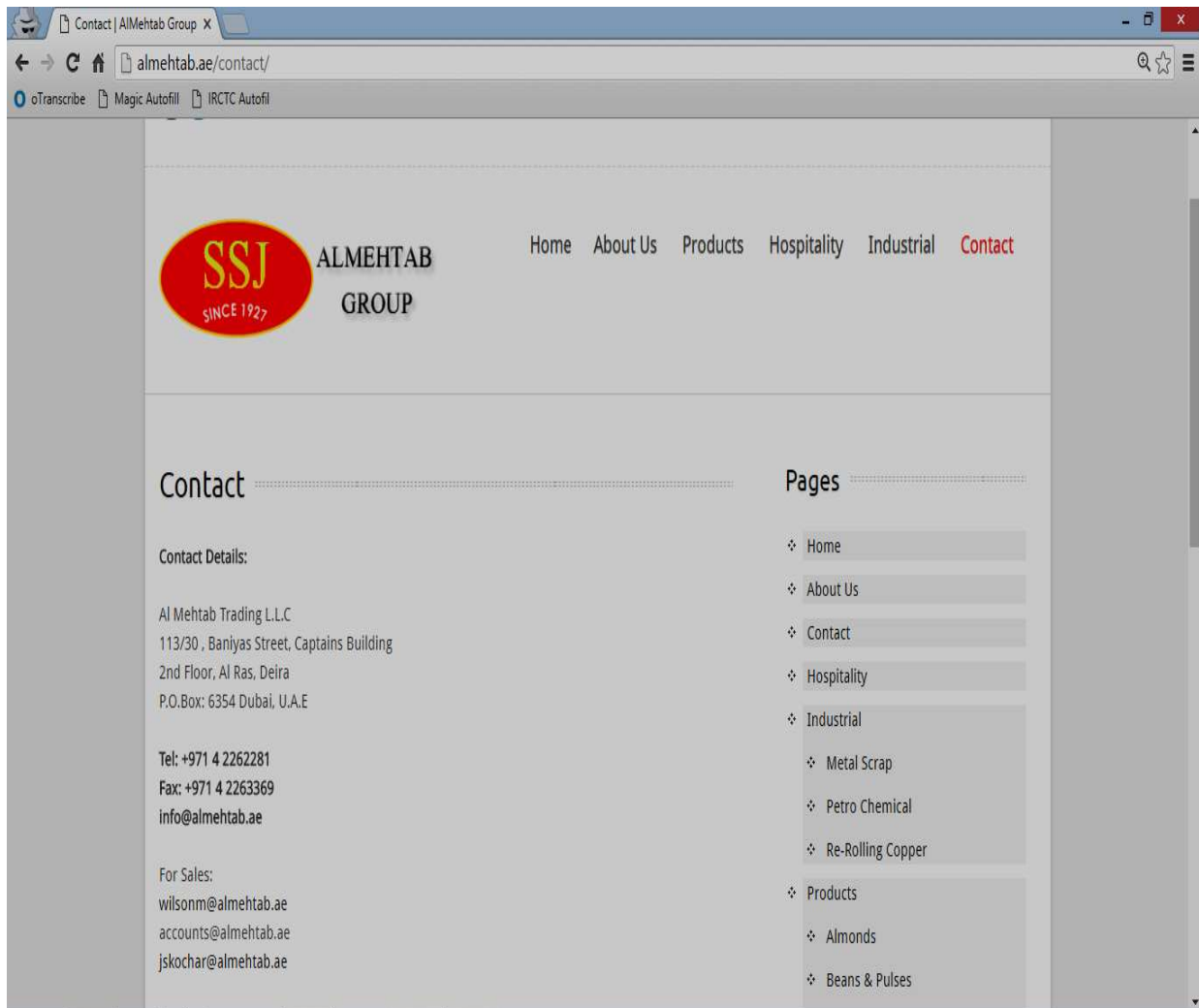
*Statement of Shri Saakshat Dhir, partner of M/s. D.D International-*

38. I find that the statement of Shri Saakshat Dhir, partner of M/s. D.D. International Global, recorded under Section 108 of the Customs Act, 1962 on 20.07.2018, has to be examined in light of his prolonged and deliberate non-cooperation during investigation. The records reveal that multiple summons were issued to him commencing from 22.09.2015, followed by further summons dated 29.09.2015, 12.10.2015, 04.12.2015, 21.12.2015 and 29.07.2016, requiring his appearance on various dates. In this regard, it is pertinent to note that the summons dated 12.10.2015 was duly acknowledged by Shri Subhash Dhir. Further, Shri Saakshat Dhir, vide his letter dated 17.12.2015, acknowledged receipt of the summons dated 04.12.2015 but expressed his inability to appear before the investigating officer. Thereafter, Shri Saakshat Dhir again acknowledged the summons dated 21.12.2015 vide his letter dated 06.01.2016; however, he once again failed to appear and did not cooperate with the investigation. Thereafter, a complaint application was submitted to the public prosecutor for filing before the Chief Judicial Magistrate, Bhuj for issuance of non-bailable warrant. However, as per the instructions of CJM Bhuj, before filing of the complaint application, summons were to be pasted at his house and near by land mark of his house under the proper Panchnama in presence of two independent witness. Accordingly, three more summons dated 03.05.2018, 31.05.2015 & 28.06.2018 were issued to Shri Saakshat Dhir for appearing before the Investigating officer on 14.05.2018, 28.06.2018 and 12.07.2018. He did not appear on the said dates. Later on Shri Saakshat Dhir appeared on 20.07.2018 for recording of statement under Section 108 of the Customs Act, 1962. When Shri Saakshat Dhir eventually appeared and his statement was recorded on 20.07.2018, he sought to deny any role in the impugned imports by attributing the booking of the consignments alternately to third parties, namely the Shri Ravi Jain and Shri Vipin Jain. However, he failed to furnish any documentary evidence in support of these claims, despite specific undertakings given during the statement. His version is further contradicted by his earlier written submissions dated 06.01.2016 wherein he

stated that the said consignment had been booked by Shri Bharat Sangwa and suppliers had made the Bill of lading in the name of M/s. D D International Global because Shri Bharat Sangwa was not having his company registered for export from Dubai to India. Thus, his statement and submission are contradictory in nature.

#### EMAIL CORRESPONDENCE BETWEEN SHRI SAAKSHAT DHIR AND LINER-

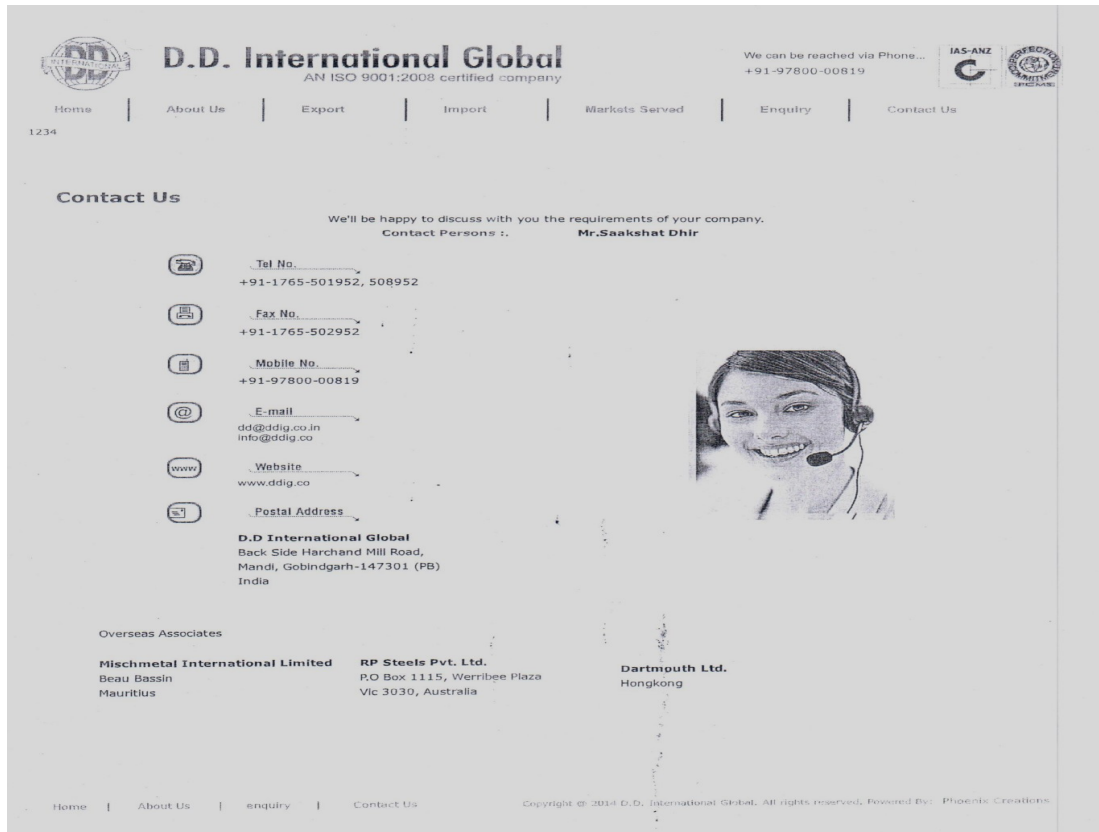
39. The email records produced by Shri Collin George, Manager-Lines of M/s. Caravel Logistics Pvt. Ltd clearly demonstrate the active involvement of Shri Saakshat Dhir in coordinating shipment details, container numbers and shipping instructions. The email correspondences between Caravel Logistics and Shri Saakshat Dhir made during the period from 26-08-2015 to 13-09-2015 were examined during the investigation and it was observed that Shri Saakshat Dhir was sending emails to M/s. Caravel Logistics from the email address [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae). But from the website, "almehtab.ae", it is seen that the said website belonged to "Almehtab group of Companies". The telephone number +97142262281 also belonged to M/s.Al Mehtab Trading L.L.C, P.O Box No.6354, Deira, Dubai, UAE. A screen shot of the website is given as below:



From the above screen shot, it is clear that the domain name “almehtab.ae” belonged to the supplier of the goods, namely M/s.Al Mehtab Trading L.L.C, P.O Box No.6354, Deira, Dubai, UAE.

40. Further it is seen from the email correspondences that Shri Sathosh, Customer Support Executive-Liner of the shipping line M/s.Caravel Logistics sent an email message on 02-09-2015 at 12.19 hrs to Shri Saakshat Dhir on the email address of the importer [dd@ddig.co.in](mailto:dd@ddig.co.in) as “Pl provide BL instructions for "9 "containers CLSU2117727, CRXU3000851, CRXU3344939, GESU-2248095, GESU2569198, TRLU2724044, GESU2402791, GESU2581742, and TEMU2352259.” But, reply to this email message was given by Shri Saakshat Dhir on 02-09-2015 at 14.59 hrs from the email address [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae) as “Please note we intend to send only 5 Teus in this vessel and we informed regarding same to Amal yesterday itself, and underwritten is the Shipping Instruction for 5 containers. Please find underwritten packing list and SI. Shipper Al Mehtab Trading Co. LLC, PO Box-6354, Deira, Dubai Consignee D. D. International Global, Harchand Mill Road, Mandi Gobindgarh 147301. Final destination ICD Ludhiana. CISU2117727-23.68, CRXU3000851-22.3, GESU-2248095, CRXU3344939-23.42, GESU2581742-21.95” along with the details of seal numbers. From this also, it is amply clear that Shri Saakshat Dhir was very well aware of all the containers and the goods imported.

41. Further, from the website of the importer, M/s. D. D. International Global, it is observed that the domain, viz. “ddig.co.in” belongs to them. A print out of the website of the importer is reproduced below:



42. Further, in reply to summons issued to Shri Saakshat Dhir and Shri Subhash Dhir, Partner of the importers, by the Superintendent of Customs, R&I Section, Mundra from F. No.S/43-01/R&I/2015-16 requiring them to appear on 02-11-2015 in his office for recording their oral evidences, a letter signed by both Shri Subhash Dhir and Shri Saakshat Dhir, was issued, which was received by the office of the Customs, Mundra on 04-11-2015. A copy of the letter is placed below: The letter head of the importer M/s. D. D. International Global also shows that the email domain "ddig.co" belonged to the importer only.

TIN No. : 03732055906

Subject to Fatehgarh Sahib Jurisdiction only

off. : +91 1765-501952  
 Fax +91 1765-502952  
 Mob. +91 98141-36752



## D. D. International Global

Behind Harchand Mill Road, MANDI GOBINDGARH-147301(Pb.)  
 e mail : doc.ddinternationalglobal@gmail.com, info@ddig.co, Web site www.ddig.co

To  
 The Superintendent (R&I)  
 Custom House  
 Mundra Port,  
 Mundra



Sir,  
 Subj: Compliance of summons dated 21.10.2015  
 Ref No. F.No. S/43-01/R&I) 2015-16


We are in receipt of above mentioned summons, where by your good self has directed me to appear personally on 02.11.2015 at 12 hrs. You have also directed to produce all original / photocopy of documents as mentioned in summons.

But I am sorry to inform you that as my mother in law has expired on 28th Oct, 2015 after few days illness, so it is not possible to come on 2-11-2015 as I am eldest in the family. It will take 15-20 days for last rituals so please give us a date in the last of month or in December.

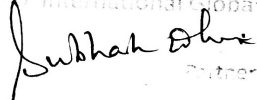
So I am sending you all the documents required by you through Courier.

Thanking you.

Yours faithfully.

For D.D. International Global  
  
 Partner

Yours faithfully.

For D.D. International Global  
  
 Partner

43. Thus, it is evident from the above mentioned email messages, that an email message sent to Shri Saakshat Dhir by the shipping line M/s. Caravel Logistics Pvt. Ltd. on email address [dhirs@ddig.co.in](mailto:dhirs@ddig.co.in), which belonged to the importer M/s. D. D International Global, was replied by the importer from the

email address of [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae). From this it is clear that Shri Saakshat Dhir, the partner of M/s. D.D International was actively involved in procuring and smuggling goods from Dubai to India. It is also clear from the email correspondences that he was referring to all the containers seized by the Customs officers, in his email correspondences and continuously monitoring their loading at the load port also.

*ATTEMPT TO RECALL THE CONTAINERS BY SHRI SAAKSHAT DHIR AFTER THE FIRST SEIZURE-*

44. Further, I find from another email correspondence made by Shri Saakshat Dhir with the Shipping line on 12-09-2015 at 04.42 hrs that when he came to know about the first seizure of the containers made by the Customs officers at Mundra on 11/12-09-2015, he tried his level best to get the remaining containers recalled and offloaded at Dubai. Further, to the email request made by Shri Saakshat Dhir from his email address [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae) on 12-09-2015 at 04.42pm to recall the containers, Ms. Asha, an executive of M/s. Caravel Logistics replied to confirm the container numbers GESU2168240, GESU 2402791, GESU2569198, CLSU2111014, CLSU2112793, TEMU 2352259, TRLU 2714044 and relevant charges, Shri Saakshat dhir via email message sent by him on 12-09-2015 at 05.45 hrs from email address [dhirs@almehtab.ae](mailto:dhirs@almehtab.ae) to Ms. Asha, on [adexb@caravellogistics.com](mailto:adexb@caravellogistics.com), had confirmed to pay all the relevant charges for all the containers and agreed to pay all relevant charges. Such prompt and decisive action to recall the remaining containers immediately after the first seizure clearly establishes his prior knowledge of the illicit nature of the consignments and demonstrates his apprehension that the remaining containers would also be intercepted by Customs.

45. Therefore, in view of the contradictions in his statement and submission, absence of supporting evidence, and his evasive conduct throughout the investigation, I find that the statement of Shri Saakshat Dhir lacks credibility insofar as it seeks to deny knowledge or involvement in the smuggling of cigarettes. On the contrary, the material on record, as discussed above, clearly establishes his conscious and deliberate role in the smuggling activity.

*Statement of Shri Collin George, Manager-Lines of M/s. Caravel Logistics Pvt. Ltd.-*

46. Further, I find that the statement of Shri Collin George, Manager-Lines of M/s. Caravel Logistics Pvt. Ltd., recorded on 11.01.2016 under Section 108 of the Customs Act, 1962, assumes crucial importance as independent corroborative evidence. Shri Collin George categorically stated that the booking of the concerned containers originated from the importer, and he produced email correspondences exchanged between the shipping line and Shri Saakshat Dhir, partner of M/s. D.D. International (discussed above) regarding booking, loading and shipment of the very containers involved in the seizures. He further confirmed that the first request for booking of containers was received from the importer on 26.08.2015 and that no payment had been received for the said consignments, which is in line with the modus operandi of smuggling without intention to regularise import through lawful clearance. Being a third-party service provider with no stake in the outcome of the proceedings, the statement of Shri Collin George carries high evidentiary value and effectively demolishes

the claim of the importer that the consignments were imported without their knowledge or consent.

### **DISCUSSION ON VARIOUS ISSUES HIGHLIGHTED IN THE SUBMISSION OF THE NOTICEES-**

#### *CROSS-EXAMINATION-*

47. The noticees in their submission has sought cross-examination of the following persons:-

- a. Officials from M/s. Caravel logistics pvt. Ltd.
- b. Representatives of M/s. Al-Mehtab trading LLC, Dubai
- c. Persons who are the owners of the shipment namely Ravi Jain, Vipin Jain and Bharat Sangwa.

47.1 I find that the request made by the noticees for cross-examination of officials of M/s. Caravel Logistics Pvt. Ltd., representatives of M/s. Al-Mehtab Trading LLC, Dubai, and the persons namely Shri Ravi Jain, Shri Vipin Jain and Shri Bharat Sangwa is devoid of merit and liable to be rejected. The request for cross-examination of officials of M/s. Caravel Logistics Pvt. Ltd. has been made in a vague and mechanical manner, without specifying any reasons or indicating how such cross-examination would advance the defence of the noticees. The evidences relied upon during the investigation primarily consist of documentary and electronic records, including Bills of Lading, Import General Manifest, panchnamas and contemporaneous email correspondences, which stand independently on their own footing, and the statement of the shipping line officials has only a corroborative value. Further, no statement of any representative of M/s. Al-Mehtab Trading LLC, Dubai has been recorded or relied upon in the present proceedings. Consequently, the request for cross-examination of such representatives is misconceived. As regards the persons namely Shri Ravi Jain, Shri Vipin Jain and Shri Bharat Sangwa, it is noted that their names were introduced by Shri Saakshat Dhir for the first time only during the recording of his statement. During his voluntary statement, Shri Saakshat Dhir undertook to furnish their whereabouts, contact details and all possible particulars, and also agreed to provide documentary proof, with the assistance of the supplier M/s. Al-Mehtab Trading Co. LLC, Dubai, to substantiate his claim that the alleged mischief was committed by the said persons. However, till date, no such details or supporting evidence have been furnished by him. In the absence of any statements of these persons being relied upon in the show cause notice, and in view of the failure of the noticee to substantiate his own assertions, the request for their cross-examination serves no useful purpose. It is well settled that cross-examination is not an absolute right and is warranted only where the adjudication is founded solely on oral statements, which is not the case herein.

47.2 In this regard, I find that denial of request for cross-examination has been held as not violating the principles of natural justice during quasi-judicial proceedings in the following case laws:

I. In the case of Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.) Hon'ble Bombay High Court has held that;

*“Adjudication – Cross-examination – Denial of- held does not amount to violation of principles of natural justice in every case, instead it depends on the particular facts and circumstances – Thus, right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors – Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated.” [para 23]*

II. In the case of Commissioner of Customs, Hyderabad V. Tallaja Impex reported in 2012(279) ELT 433 (Tri.), it was held that-

*“In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross examination cannot be claimed as a matter of right.”*

III. Hon’ble Tribunal in its decision in Sridhar Paints v/s Commissioner of Central Excise, Hyderabad reported as 2006(198) ELT 514 (Tri-Bang) has held that:

*“..... denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, we find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized” (Para 9)*

IV. Hon’ble Punjab and Haryana High Court in its decision in the case of Azad Engg Works v/s Commissioner of Customs and Central Excise, reported as 2006(2002) ELT 423, held that;

*“..... It is well settled that no rigid rule can be laid down as to when principles of natural justice apply and what is their scope and extent. The said rule contains principles of fair play. Interference with an order on this ground cannot be mechanical. Court has to see prejudice caused to the affected party. Reference may be made to judgment of Hon’ble the Supreme Court in K.L. Tripathi v. State Bank of India and others, AIR 1984 SC 273”*

V. Similarly in A.L Jalauddin v/s Enforcement Director reported as 2010(261) ELT 84 (Mad HC) the Hon High court held that ;

*“... Therefore, we do not agree that the principles of natural justice have been violated by not allowing the appellant to cross-examine these two persons. We may refer to the paragraph in AIR 1972 SC 2136 = 1983 (13) E.L.T. 1486 (S.C.) (Kanungo & Co. v. Collector, Customs, Calcutta)”*

From the above discussion, I hold that the request for cross-examination is devoid of merit.

*Whether the noticees can be legally treated as “importer” under Section 2(26) of the Customs Act, 1962, in the absence of filing of any Bill of Entry or ownership claim, or clearance attempt for the impugned goods or absence of any financial trail or payment evidence linking the noticees to the overseas supplier as claimed by the noticee.*

48. The primary objection of the noticees is that they cannot be treated as “importer” under Section 2(26) of the Customs Act, 1962, since no Bill of Entry was filed by them, no ownership was claimed, and no clearance of goods was attempted. This contention requires detailed examination on two distinct aspects—first, the scope and ambit of the definition of “importer” under Section 2(26) of the Act, and second, whether the act of filing a Bill of Entry alone confers the legal status of importer. Both aspects merit careful consideration.

48.1 Section 2(26) of the Customs Act, 1962 [prior to amendment of Finance Act, 2017 which substituted “any owner with “any owner, beneficial owner”] defines “importer” as “*in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.*” The definition is intentionally wide and inclusive. It does not restrict the status of importer only to a person who files a Bill of Entry. The statute consciously uses the expression “*includes*” and extends the scope to cover any person who, during the relevant period, is the owner or holds himself out to be the importer. In the present case, the impugned consignments were shipped from Jebel Ali, UAE to Mundra Port with M/s. D.D. International Global shown as the consignee in the Bills of Lading and the Import General Manifest. These documents were generated in the ordinary course of international trade and filed with Customs by the shipping line. The repeated mention of M/s. D.D. International Global as the consignee in as many as twelve containers covered under three Bills of Lading cannot be ignored merely on the ground that no Bill of Entry was filed in respect of the said consignments. The plea that the firm’s name was used without its knowledge or consent remains a bald assertion, unsupported by any evidence. On the contrary, the evidence on record clearly establishes active involvement of Shri Saakshat Dhir, partner of the firm, in the logistics and shipping process. The email correspondence examined during investigation shows that shipping instructions, container details, seal numbers and destination particulars were communicated in a coordinated manner, and that Shri Saakshat Dhir was in constant touch with the shipping line regarding booking, loading and movement of the containers. Further, the attempts made by Sri Saakshat Dhir to recall the remaining containers immediately after the first seizure clearly establish conscious knowledge of, and effective control over, the impugned consignments. Such conduct squarely attracts the expression “*holding himself out to be the importer*” as defined under Section 2(26) of the Customs Act, 1962.

48.2 The contention of the noticees that the absence of a Bill of Entry absolves them from the status of importer is wholly misconceived. Section 46 of the Customs Act, 1962 categorically provides that “*the importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.*” The statutory mandate itself presupposes the existence of an importer prior to the act of filing the Bill of Entry, for it is only upon the importer that the obligation to file such entry is cast. In other words, the status of importer is not created by the mere mechanical act of filing a Bill of Entry; rather, it belongs to the person who owns the goods, or who holds himself out to be the importer at any time between their importation and clearance for home consumption. Such status attaches from the moment the goods enter the territorial waters of India, and not only upon the procedural step of filing a Bill of Entry under Section 46 of the Customs Act, 1962. Acceptance of the noticees’ argument would lead to

an untenable and absurd consequence whereby any person engaged in smuggling or fraudulent import could evade liability merely because the goods were intercepted before the statutory stage of filing the Bill of Entry. Such an interpretation would defeat the scheme and object of the Customs Act, which attaches liability at the point of importation itself. The determination of importer status must therefore rest upon the substance of the transaction, the documentary evidence such as Bills of Lading, the degree of control exercised over the goods, and the overall conduct of the parties, rather than on the mere procedural act of filing a Bill of Entry under Section 46 of the Act.

48.3 Judicial precedents relied upon by the noticees are distinguishable on facts. In those cases, there was either no material to show involvement beyond the name appearing in the Bill of Lading, or the consignee had demonstrably disowned the goods at the earliest stage without any evidence of participation in shipping or logistics. In the present case, however, the department has brought on record material showing nexus between the noticees and the shipment, including electronic correspondence, shipping instructions and conduct consistent with ownership and control. Therefore, this is not a case where liability is sought to be fastened merely on the basis of a Bill of Lading.

48.4 Further, the plea that the IEC was misused by unknown third parties also does not hold merit at this stage. IEC misuse, if any, is a matter peculiarly within the knowledge of the noticees. Apart from inconsistent explanations naming different third parties at different points of time, no documentary proof such as FIR contemporaneous to the imports, correspondence with DGFT, or protest to the shipping line at the time of shipment has been produced to substantiate this claim. Mere assertion of misuse, without credible supporting evidence, cannot override the documentary and circumstantial evidence pointing towards the noticees' involvement. It is also relevant that the noticees did not dispute the authenticity of the Bills of Lading at the time of shipment, nor did they immediately approach Customs to disclaim the consignments when the vessels arrived. Their subsequent disowning of the goods appears to be an afterthought once the contraband was detected. Such post facto denial does not negate importer status when the pre-import and contemporaneous conduct establishes otherwise.

48.5 In view of the above, I find that the definition of "importer" under Section 2(26) of the Customs Act, 1962 is clearly attracted in the present case. M/s. D.D. International Global, through its partner Shri Saakshat Dhir, held itself out to be the importer of the impugned consignments, exercised control over the shipping process, and was integrally connected with the importation of the goods up to the point of seizure. The absence of a filed Bill of Entry does not dilute or extinguish this status.

*Whether mere mention of the noticee's name as consignee in the Bill of Lading and IGM is sufficient to fasten customs liability, including duty demand, confiscation, and penalties.*

49. In this regard, it is noted that the Customs Act, 1962 does not treat the Bill of Lading or the Import General Manifest as inconsequential documents. The Import General Manifest is a statutory declaration filed under Section 30 of the Customs Act on the basis of the Bills of Lading and reflects the particulars of importation as declared by the shipping line in accordance with the instructions received from the shipper and the consignee. Accordingly, the

repeated and uniform mention of M/s. D.D. International Global as consignee in the Bills of Lading and Import General Manifest covering twelve containers is a legally relevant circumstance and cannot be treated as accidental. While mere mention of a name in isolation may not, in every case, be sufficient to fasten liability, the present case does not rest on such mention alone. The said documentary evidence is corroborated by contemporaneous electronic correspondence exchanged with the shipping line and statements recorded under Section 108 of the Customs Act, which establish that the shipments were arranged, monitored and sought to be controlled as per instructions originating from the noticees' side, thereby demonstrating conscious association and involvement in the importation.

*Credibility and evidentiary worth of the statement of Shri Colin George, Caravel Logistics Pvt. Ltd.*

50. A careful reading of the statement shows that Shri Colin George has explained the role of Caravel Logistics as a shipping and logistics intermediary acting on instructions received from the importer. Statements recorded under Section 108 of the Customs Act, 1962 are recorded in exercise of statutory powers and possess significant evidentiary value in customs adjudication proceedings, unless it is established that such statements were obtained under coercion or have been validly and convincingly retracted. In the present case, the noticees have not produced any material to show that the statement of Shri Colin George was involuntary, coerced, or retracted in a legally sustainable manner. In the absence of such proof, the statement retains its evidentiary worth.

*Evidentiary value and admissibility of email communications relied upon by the department-*

51. The noticees have objected to the reliance placed on email communications on the ground that the same are not supported by a certificate under Section 138C(4) of the Customs Act, 1962 / Section 65B of the Indian Evidence Act. I find that this objection is not sustainable in the facts of the present case. The Hon'ble Supreme Court, in Additional Director General (Adjudication), Directorate of Revenue Intelligence v. Suresh Kumar & Co. Impex Pvt. Ltd. (Civil Appeal Nos. 11339-11342 of 2018), has held that a certificate under Section 138C(4) is not mandatory in a mechanical sense in all cases, particularly where the electronic documents are produced, perused, and relied upon during investigation and their authenticity is established through statements recorded under Section 108 of the Customs Act. The Hon'ble Court has clarified that where electronic records form part of the investigation record, and are acknowledged or not disputed when put to the noticee during statutory proceedings, insistence on a formal certificate alone cannot render such evidence inadmissible. In the instant case, it is observed that the email communications relating to booking of containers, shipment schedules, loading particulars, seal numbers, and movement of cargo were furnished by Shri Collin George, an official of the shipping line M/s. Caravel Logistics Pvt. Limited, Gandhidham, during the course of his statement dated 11.01.2016 recorded under Section 108 of the Customs Act. In his statement, Shri Collin George categorically stated that the first booking of the impugned containers was made by the importer M/s. D.D International on 26.08.2015. It is further noted that the statement of Shri Collin George was put to Shri Sakshat Dhir during his statement recorded under Section 108 of the Customs Act. Shri

Sakshat Dhir perused the said statement. At that stage, he did not dispute the correctness, authenticity, or truthfulness of either the statement of Shri Collin George or the email communications provided therein. He also did not allege fabrication, manipulation, or misuse of the email correspondence, nor did he question the fact that the bookings and communications had taken place in the manner stated by Shri Collin George. His response was limited to a general denial of involvement in the import of the goods, without addressing or rebutting the specific contents of the emails or the factual assertions made by the shipping line official.

In view of the above, I find that the email communications relied upon by the department have been rightly considered as corroborative material forming part of the statements recorded under Section 108 of the Customs Act.

*Whether the burden of proving conscious knowledge, intent and involvement in smuggling has been discharged by the department*

52. In the present case, the department has brought on record a consistent, cogent, and corroborated body of evidence which, when viewed cumulatively, establishes conscious knowledge and deliberate involvement of the noticees in the smuggling of foreign-origin cigarettes. The very manner of concealment, wherein cigarettes were hidden inside metal scrap bundles declared as "LMS Bundles", reflects a carefully planned and deliberate act aimed at evading detection and customs duty. Such concealment is neither accidental nor incidental and could not have occurred without prior knowledge and intent. As discussed earlier, the email correspondences reveal active coordination with the shipping line regarding booking of containers, shipment schedules, loading particulars, and tracking of cargo movement. Such detailed involvement in the logistical aspects of the consignments establishes the mens rea of the importer. This evidence is further reinforced by statements recorded under Section 108 of the Customs Act, 1962 from shipping line, which further corroborates that the shipments were arranged and processed as per instructions emanating from the noticees' side. The conduct of the noticees subsequent to the seizure further strengthens the inference of guilty knowledge. The attempts made to stop or recall the remaining containers immediately after detection of contraband in the first consignment clearly demonstrate awareness of the illicit nature of the goods. Such conduct cannot be reconciled with the defence of IEC misuse or alleged framing by third parties. An innocent party would ordinarily cooperate with the investigation or seek legal remedies, rather than take discreet steps to halt further shipments. It is also relevant that the noticees failed to comply promptly with summons issued under Section 108 of the Customs Act and offered contradictory explanations during the course of investigation. Such evasive conduct further reinforces the conclusion of conscious involvement. The absence of any plausible explanation as to how such large quantities of cigarettes came to be concealed in consignments declared in their name weighs heavily against them. When the physical seizure of contraband, the method of concealment, shipping documents, electronic correspondence, statements of independent persons, and the conduct of the noticees are considered together, they form a complete and coherent chain of evidence.

*Whether the Show Cause Notice is barred by limitation under Section 110(2) of the Customs Act, 1962, including Validity and communication of extension of seizure period, Legal effect of the addendum issued subsequently.*

53. The noticees has argued that SCN is time barred. Under Section 110(2), the SCN should have been issued within six months from the date of seizure i.e. by 12.03.2016, with a possible extension up to 12.09.2016. However, the SCN was issued on 11.08.2016, and an addendum was issued much later on 03.08.2018. This delay renders the entire SCN procedurally defective and unenforceable. Furthermore, any extension of the seizure period must be duly communicated to the appellant before the expiry of the initial six-month period. The extension order dated 17.06.2016 has not been served on the appellant in time. This non-compliance makes the extension legally invalid.

53.1 The goods in question were seized under panchnamas dated 12.09.2015 and 17.09.2015. In terms of the proviso to Section 110(2) of the Customs Act, 1962, the then Principal Commissioner of Customs, Mundra issued Show Cause Notice F. No. S/43-01/R&I/2015-16 dated 17.02.2016 to M/s. D.D. International Global, calling upon them to explain as to why the statutory time period for issuance of a notice under Section 124 of the Customs Act should not be extended by a further period of six months. The noticees were also directed to appear for personal hearing on 29.02.2016. As per the records, Shri Subhash Dhir, Partner of M/s. D.D. International Global, vide letter dated 26.02.2016, submitted a reply to the said Show Cause Notice, wherein he requested that the seized goods be disposed of by the department through auction or otherwise and further sought dropping of the proceedings initiated vide the Show Cause Notice dated 17.02.2016 and any other related proceedings. However, the noticees did not appear for the personal hearing fixed on 29.02.2016.

53.2 In view of the above, the then Principal Commissioner, vide Order-in-Original No. MCH/Pr.Commr./PVR/36/2015-16 dated 03.03.2016, extended the time limit for issuance of the Show Cause Notice under Section 124 of the Customs Act, 1962 by a further period of six months, i.e., up to 11.09.2016, in terms of Section 110(2) of the Customs Act. It is observed that the impugned Show Cause Notice was issued on 11.08.2016, well within the extended period prescribed under Section 110(2) of the Customs Act, 1962. Accordingly, the contention of the noticees on this ground is devoid of merit and is rejected.

*Whether interception and seizure of goods prior to filing of any Bill of Entry creates any customs duty or penal liability on the noticees and whether such duty can be demanded under Section 28(4) of the Customs Act, 1962.*

54. The issue for consideration is whether any customs duty liability arises in respect of the impugned goods which were intercepted and seized prior to the filing of any Bill of Entry and before clearance for home consumption, and whether duty can be demanded under Section 28(4) of the Customs Act, 1962. Upon careful consideration of the facts and the settled legal position, I find that no such duty demand is sustainable in the present case.

54.1 In this regard, I rely upon the decision of Hon'ble Supreme Court in the matter of Kiran Spinning Mills v. CC 1999 (113) ELT 753 = AIR 2000 SC 3448 = 2000 AIR SCW 2090 (SC 3 member bench), wherein it has been held that import is completed only when goods cross the customs barrier. The taxable

event is the day of crossing of customs barrier and not on the date when goods landed in India or had entered territorial waters. In the case of goods which are in the warehouse the customs barrier would be crossed when they are sought to be taken out of the customs and brought to the mass of goods in the country.

54.2 I also rely upon the decision of Apex court in Garden Silk Mills Ltd. v. UOI 1999 AIR SCW 4150 = 1999 (113) ELT 358 = AIR 2000 SC 33 [SC 3 member bench – same bench which passed judgment in Kiran Spinning Mills (Supra)], wherein it was held that import of goods in India commences when they enter into territorial waters but continues and is completed when the goods become part of the mass of goods within the country. The taxable event is reached at the time when the goods reach customs barrier and bill of entry for home consumption is filed.

54.3 In the present case, it is an admitted position that the impugned goods were intercepted and seized prior to the filing of any Bill of Entry and before any request for clearance for home consumption was made. It is further noted that the impugned goods were subsequently confiscated and disposed of by the department through auction in accordance with law. Once the goods stand confiscated and are disposed of by the department, the question of levy or recovery of customs duty on such goods does not arise. Accordingly, I hold that no customs duty demand is sustainable in the present case under Section 28(4) of the Customs Act, 1962.

#### **CONFISCATION OF GOODS-**

55. The Show cause notice has proposed confiscation of cigarettes total 1,10,33,600 sticks of various brands valued at Rs. 6,96,25,200/- under Section 111(f), 111(i), 111(l) and 111(m) of the Customs Act, 1962 and confiscation of metal scrap bundles used to conceal the smuggling of cigarettes weighing 256.76 MTs valued at Rs. 59,05,480/- under Section 119 of the Customs Act, 1962. The noticees contend that the invocation of Sections 111(f), 111(i), 111(l) and 111(m) of the Customs Act, 1962 is legally untenable, as the seizure pertains to the year 2015, prior to the amendment of Section 111(f), and further, the Import Manifest is filed by the shipping line and not by the consignee. They further submit that in the absence of filing of any Bill of Entry or statutory import declaration by them, no concealment, misdeclaration, violation of prohibition, or contravention of any licensing condition can be attributed to them merely on the basis of entries in the Bill of Lading.

55.1 The extract of Section 111 of the Customs Act, 1962 is reproduced below:-

*111. Confiscation of improperly imported goods, etc.—*

*The following goods brought from a place outside India shall be liable to confiscation:—*

*(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;*

*(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods; (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;*

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

*(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;*

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

.....  
*(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*

.....  
*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

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

55.2 Section 111 opens with the expression “*The following goods brought from a place outside India shall be liable to confiscation...*”. Thus, the liability to confiscation under Section 111 attaches to goods brought from a place outside India, irrespective of whether such goods are ultimately cleared for home consumption or not. The provision is intended to cover not only regular imports but also smuggled goods and attempted illicit imports intercepted at any stage after importation. Therefore, the absence of a Bill of Entry does not, by itself, take the goods outside the ambit of Section 111, though the applicability of individual clauses must be examined with reference to their specific statutory ingredients.

#### Confiscation under Section 111(f)

Section 111(f) applies to goods which are required to be mentioned in the Import Manifest or Import Report but are not so mentioned. In the present case, the concealed goods i.e. foreign origin cigarettes were not reflected in the Import General Manifest filed under Section 30 of the Customs Act on the basis of the Bills of Lading. Thus, the essential requirement of Section 111(f) is satisfied, and the impugned goods are liable to confiscation under Section 111(f).

#### Confiscation under Section 111(i)

Section 111(i) covers goods which are found concealed in any manner so as to evade detection by Customs authorities. In the present case, the foreign-origin cigarettes were concealed inside metal scrap bundles declared as “LMS Bundles”. Such concealment was designed to evade customs examination and detection. Therefore, I find that the impugned cigarettes are liable to confiscation under Section 111(i) of the Customs Act, 1962.

#### Confiscation under Section 111(l)

Section 111(l) provides for confiscation of goods which are not accounted for in a Entry or which are in excess of those entered in the Bill of Entry. A plain

reading of this clause makes it clear that its application presupposes the filing of a Bill of Entry under Section 46 of the Customs Act. In the present case, it is an admitted position that no Bill of Entry was filed in respect of the impugned consignments, as the goods were intercepted and seized prior to any such filing. In the absence of a Bill of Entry, the question of goods being “not accounted for” or being “in excess of those entered” does not arise. Consequently, Section 111(l) is not attracted in the facts of the present case.

#### Confiscation under Section 111(m)

Section 111(m) provides for confiscation where goods do not correspond in respect of value, description, quantity or any other particular with the entry made under the Act or with the declaration or documents produced. The applicability of Section 111(m) is confined only to cases where a Bill of Entry has been filed. Accordingly, I hold that the impugned goods are not liable to confiscation under Section 111(m) of the Customs Act, 1962.

55.3 As regards the metal scrap declared as “LMS Bundles”, it is evident that the same was used for concealment of foreign-origin cigarettes and thereby facilitated the attempted smuggling. Accordingly, the metal scrap weighing 256.76 MTs valued at Rs. 59,05,480/- is liable for confiscation under Section 119 of the Customs Act, 1962.

55.4 In this regard, I observe that upon confiscation, the impugned goods stood vested in the Central Government in terms of Section 126 of the Customs Act, 1962. Consequently, the Department proceeded to dispose of the said goods by way of auction, as discussed in the succeeding paragraph of this order. In view of the fact that the goods have already been disposed of, the imposition of redemption fine under Section 125 of the Customs Act, 1962 does not arise.

#### **DISPOSAL OF GOODS-**

56. The seized foreign origin cigarettes were disposed through e-auction after following the due process of law and the amount of Rs. 1,43,05,500/- was realised.

56.1 The metal scrap weighing 256.76 MTs valued at Rs. 59,05,480/- declared as “LMS Bundles”, used for concealment of foreign-origin cigarettes has been disposed through e-auction after following the due process of law and the amount of Rs. 60,15,033/- was realised.

#### **DISCUSSION ON PENALTIES-**

57. With regard to penal provision under Section 114A of the Customs Act, 1962 upon M/s. D.D International and Shri Saakshat Dhir, partner of M/s. D.D. International, I find that the said provision is linked to the determination and recovery of duty under Section 28(4) of the Customs Act. Since, in the present case, no duty demand is held to be sustainable under Section 28(4), the penal provisions of Section 114A are not attracted.

58. With regard to the proposal for imposition of penalty upon M/s. D.D International and Shri Saakshat Dhir, partner under Section 112(a) of the Customs Act, 1962, I find that the said provision is attracted where any person,

by any act or omission, renders goods liable to confiscation under Section 111 of the Act. In the present case, it is already established that the impugned foreign-origin cigarettes were concealed inside metal scrap and brought into India in a deliberate and clandestine manner with the intent to evade customs control. Such acts and omissions have rendered the goods liable to confiscation under the Section 111(f) and 111(i) of the Customs Act. Accordingly, the noticees, M/s. D.D International and Shri Saakshat Dhir, partner having engaged themselves in the improper importation and attempted smuggling of the said goods, are liable to penalty under Section 112(a) of the Customs Act, 1962.

59. With regard to the proposal for imposition of penalty under Section 114AA of the Customs Act, 1962 upon Shri Saakshat Dhir, I find that the said provision is attracted where any person knowingly or intentionally makes, signs, uses, or causes to be made or used, any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business relating to customs. In the present case, the evidence on record establishes that Shri Saakshat Dhir actively caused the filing of an improper Import General Manifest before Customs by using Bills of Lading which falsely declared the consignments as metal scrap (LMS Bundles), while the containers were in fact used for concealment of foreign-origin cigarettes. The Import General Manifest, being a statutory declaration under Section 30 of the Customs Act, was filed by the shipping line on the basis of particulars and documents supplied by or on behalf of the importer. By providing and using such incorrect Bills of Lading for the purpose of filing of the IGM, Shri Saakshat Dhir knowingly facilitated the submission of false material particulars to Customs, thereby attracting the provisions of Section 114AA of the Customs Act, 1962. Accordingly, I hold Shri Saakshat Dhir liable to penalty under Section 114AA of the Act.

60. In view of the above discussion and findings, I hereby pass the following order:-

**ORDER-**

- (a) I hold that the goods viz. cigarettes total 1,10,33,600 sticks of various brands valued at Rs.6,96,25,200/- by way of concealment in the cargo of metal scrap seized under two Panchnamas dated 12.09.2015 and 17.09.2015 are liable to confiscation under section 111(f) and 111(i) of the Customs Act, 1962. The said goods have been disposed through e-auction realizing the amount of Rs. 1,43,05,500/-.

Since the goods have already been disposed of in terms of Section 126 of the Customs Act, 1962, Redemption fine is not imposed in terms of Section 125 of the Customs Act, 1962.

- (b) I hold that the goods viz. Metal Scrap totally weighing 256.76 Mts valued at Rs. 59,05,480/- are liable for confiscation under Section 119 of the Customs Act, 1962. The said goods have been disposed through e-auction realizing the amount of Rs. 60,15,033/-.

Since the goods have already been disposed of in terms of Section 126 of the Customs Act, 1962, Redemption fine is not imposed in terms of Section 125 of the Customs Act, 1962.

- (c) I drop the demand of total Customs duty amounting to Rs.5,95,08,787/- as the same is not sustainable under Section 28(4) of the Customs Act, 1962 for the reasons discussed above.
- (d) I refrain from imposing penalty under Section 114A of the Customs Act, 1962 upon M/s. D.D International Global and Shri Saakshat Dhir, partner of M/s. D.D International Global.
- (e) I impose a penalty of Rs. 1,00,00,000/-(Rupees One Crore Only) upon M/s. D.D International Global under Section 112(a) of the Customs Act, 1962.
- (f) I impose a penalty of Rs. 1,00,00,000/-(Rupees One Crore Only) upon Shri Saakshat Dhir, partner of M/s. D.D International Global under Section 112(a) of the Customs Act, 1962.
- (g) I impose a penalty of Rs. 50,00,000/-(Rupees Fifty Lakhs Only) upon Shri Saakshat Dhir, partner of M/s. D.D International Global under Section 114AA of the Customs Act, 1962.

61. This order is issued without prejudice to any action that can be taken against the importer or any other person under this Act or any other law for the time being in force.

**Nitin Saini**  
**(Commissioner)**

F.No. GEN/ADJ/COMM/320/2024-Adjn-O/o-Pr Commr-Cus-Mundra  
BY SPEED POST

To,

(i) M/s. D. D. International Global,  
Harchand Mill Road,  
Mandi, Gobindgarh-147 301

(ii) Shri Saakshat Dhir, Partner  
Harchand Mill Road,  
Mandi, Gobindgarh-147 301

Copy To-

1. The Chief Commissioner, CCO, Ahmedabad for review.
2. The Assistant/Deputy Commissioner (EDI/TRC/Recovery/legal) for information and necessary action.
3. The Assistant/Deputy Commissioner (R&I) for information.
4. Guard File.