

	<b>सीमा शुल्क के प्रधान आयुक्त का कार्यालय</b> <b>सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात</b> <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF</b> <b>CUSTOMS</b> <b>CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT</b> <b>Phone No.02838-271165/66/67/68</b> <b>FAX.No.02838-271169/62,</b> <b>Email-adj-mundra@gov.in</b>	
<b>A.</b> File No.	:	GEN/ADJ/ADC/1184/2024-Adjn-O/oPr. Commr- Cus-Mundra
<b>B.</b> Passed by	:	Amit Kumar Mishra, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra.
<b>C.</b> Date of SCN	:	30.12.2024
<b>D.</b> Noticee(s) / Party / Importer	:	<b>M/s. UMANG IMPEX INDIA PVT. LTD.</b> IEC No. AACCUC8848F
<b>E.</b> DIN	:	20241271MO00000580B8

**SHOW CAUSE NOTICE**  
**ISSUED UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962.**

**Whereas it appears that**

**M/s. UMANG IMPEX INDIA PVT. LTD,** (IEC No. AACCUC8848F), Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi, engaged in declared import goods PVC (Vinyl Acetate copolymer) having declared HS Code 39043090 under B/E No. 4468293 dated 02.02.2023 from Thailand. The said import consignment was imported at Mundra Port and to be cleared through M/s. Honeycomb Logistics Pvt. Ltd., Mundra Port & SEZ Road, Mundra, Gujarat-370421.

2. The Directorate of Revenue Intelligence gathered intelligence that M/s. Umang Impex India Pvt. Ltd., was indulged in evasion of Customs duty by way of mis-declaration of description, classification etc. of the subject goods.

The importer had submitted Country of Origin No. A/2023-0002075 dated 13.01.2023 at the time of filing Bill of Entry No. 4468293 dated 02.02.2023 and claimed benefit of Notification Nos. 46/2011-Cus dated 01.06.2011. Accordingly, the importer did not pay any Customs duty at the time of clearance of the subject import consignment. The Bill of Entry No. 4468293 dated 02.02.2023 of PVC (Vinyl Acetate Copolymer) consisted total 10 containers claimed to have been imported from Thailand and claimed benefit of Notification No. 46/2011-Cus dated 01.06.2011.

3. Acting upon the intelligence, above import consignments were put on hold and examination of the goods was conducted by the officers of DRI under panchnama dated 02.03.2023 (**RUD No. 1**). The description of the goods as declared for the said import consignments in the B/E and Corresponding Bills of Lading are given as under;

Table-1

Sr. No.	Container No.	Bill of Lading No. and date	B/E NO. and date	Declared Description and classification in B/E & BL	Quantity of goods	Total Assessable value(in Rs.)
1	(1)DFSU2668796, (2)GLDU980655, (3)SEGU209866, (4)TCLU2278030, (5)TCLU9977750, (6)TGHU177359, (7)UESU243314, (8)ZIMU1168641, (9)ZIMU1344273, (10)ZIMU144	GOSUBK K802616 95	4468293 dated 02.02.2023 ( <b>RUD No. 2</b> )	PVC Clathrate (Vinyl Acetate Copolymer) CTH- 39043090	185000	11137083/-

	3888,					
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4. During examination of the goods representative samples were drawn to find out the actual nature, description and classification of the goods. The samples so drawn were sent to the laboratory for necessary testing. The Laboratory provided Test Reports Nos. 10533-DRI/10.03.2023 to 10542-DRI/10.03.2023 (**RUD No. 3**). The brief details of Test results of the representative samples are as under;

**Table-2**

<b>Sr. No.</b>	<b>Test Memo No. and date</b>	<b>Container No.</b>	<b>Lab No.</b>	<b>Test Result</b>
01	06/2023 dated 09.03.2023	DFSU2668 796	10533-DRI/10.03 .2 023	It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash =4.30% by wt. It does not answer the test for Vinyl Acetate
02	07/2023 dated 09.03.2023	GLDU980 655	10534-DRI/10.03 .2 023	It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash =3.46% by wt. It does not answer the test for Vinyl Acetate.
03	08/2023 dated 09.03.2023	SEGU209 866	10535-DRI/10.03 .2 023	It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash =4.01% by wt. It does not answer the test for Vinyl Acetate.
04	09/2023 dated 09.03.2023	TCLU2278 030	10536-DRI/10.03 .2 023	It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash= 3.60% by wt.

				It does not answer the test for Vinyl Acetate
05	10/2023 dated 09.03.2023	TCLU9977 750	10537- DRI/10.03 .2 023	It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash=4.40% by wt. It does not answer the test for Vinyl Acetate.
06	11/2023 dated 09.03.2023	TGHU177 359	10538- DRI/10.03 .2 023	It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash=3.53% by wt. It does not answer the test for Vinyl Acetate.
07	12/2023 dated 09.03.2023	UESU243 314	10539- DRI/10.03 .2 023	It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash =4.11% by wt. It does not answer the test for Vinyl Acetate.
08	13/2023 dated 09.03.2023	ZIMU1168 641	10540- DRI/ 10.03.202 3	It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash=3.64% by wt. It does not answer the test for Vinyl Acetate.
09	14/2023 dated 09.03.2023	ZIMU1344 273	10541- DRI/ 10.03.202 3	It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material % Ash=4.03% by wt. It does not answer the test for Vinyl Acetate.
10	15/2023 dated	ZIMU1443 888	10542- DRI/	It is composed of mainly Polyvinyl Chloride (PVC)

	09.03.2023		10.03.2023	and Inorganic Material % Ash=4.24% by wt. It does not answer the test for Vinyl Acetate.
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5. As mentioned above, from the Test Reports the import consignments were found containing PVC alongwith other Inorganic Material, and no traces of Vinyl Acetate were identified, whereas the importers have declared the description of goods as PVC Clathrate (Vinyl Acetate Copolymer) (HS Code 39043090) in B/E and as PVC Clathrate in Invoice & packing list. It seems that the description provided by the importer is inconsistent with the findings outlined in the test report. It appears that there is a misdeclaration, potentially with the intention of leveraging benefits from a specific notification No. 46/2011 dated 01.06.2011 or regulation. This discrepancy raises concerns about the accuracy and transparency of the information provided by the importer.

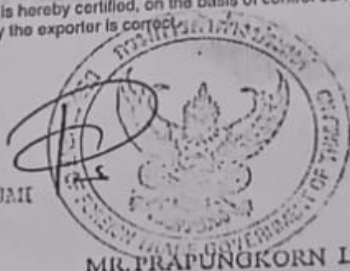
**Notification No. 46/2011-Customs, dated 01.06.2011-**

*G.S.R. 423(E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 153/2009-Customs dated the 31st December, 2009 [G.S.R. 944 (E), dated the 31st December, 2009], except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description as specified in column (3) of the Table appended hereto and falling under the Chapter, Heading, Sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as specified in the corresponding entry in column (2) of the said Table, from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in,— column (4) of the said Table, when imported into the Republic of India from a country listed in APPENDIX I; or column (5) of the said Table, when imported into the Republic of India from a country listed in APPENDIX II at Sr. No. 461 .*

*Provided that the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix I, in accordance with provisions of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009, published in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 189/2009-Customs (N.T.), dated the 31<sup>st</sup> December 2009.*

6.1. At the time of filing Bill of Entry for the subject import consignment, the importer had claimed the benefit of Notification no. 046/2011 dated 01.06.2011 (ASEAN country) declared the country of Origin as Thailand. For claiming the benefit of import from ASEAN, M/s. Umang Impex India Pvt. Ltd. have submitted ASEAN-India Free Trade Area certificate Form A1 No. A/2023-0002075 dated 13.01.2023. On perusal of the said document, it is noticed that the said document containing description of the goods as i.e. Vinyl Acetate Co-polymer and containing HS code for the same as 39043090 (**RUD No.4**). However, at the time of filing Bill of Entry number 4468293 dated 02.02.2023, the importer declared the description of the goods as "PVC Clathrate (Vinyl Acetate Copolymer) and as PVC Clathrate in Invoice & Packing list (**RUD No.5**). However, the Test Reports of the subject goods indicated that there is 'no traces of Vinyl Acetate' were identified therein.

This description diverges from the information provided in the Country of Origin and other documents, creating a notable discrepancy. It appears that on the basis of imported goods from Thailand (ASEAN Country), the importer wrongly availed benefit of Notification no. 046/2011 dated 01.06.2011 by mis-declaration of the goods in country of Origin documents. Scanned image of the said certificate of origin, Invoice & packing list are reproduced below: -

<b>1. Goods consigned from (Exporter's business name, address, country)</b> ERAWAN POLY CHEMICAL CO. LTD. 999/94 MOO 15, BANG SAO THONG, BANG SAO THONG, SAMUT PRAKAN 10540 THAILAND TEL: 0646/01090 FAX ID: 0105565105551		<b>Reference No</b> <b>A12023-0002075</b> <b>ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN</b> (Combined Declaration and Certificate)			
<b>2. Goods consigned to (Consignee's name, address, country)</b> UMANG IMPEX INDIA PVT. LTD. GROUND FLOOR, G-960, DSHD INDIA AREA NARELA, DELHI, 110040 INDIA GST No.: 07AACCU8846F1Z0 IEC CODE: AACCU8846F E-mail: umangimpeindia@gmail.com		<b>FORM A1</b> <b>Issued in</b> <b>THAILAND</b> (Country) See Notes Overleaf			
<b>3. Means of transport and route (as far as known)</b> <b>BY SEA FREIGHT</b> Departure date 7/01/2023 Vessel's name/Aircraft etc. SEA OF LUCK V.252S Port of Discharge MUNDRA PORT INDIA		<b>4. For Official Use</b> <b>ISSUED RETROACTIVELY</b> <input type="checkbox"/> Preferential Tariff Treatment Given Under ASEAN-India <input type="checkbox"/> Free Trade Area Preferential Tariff <input type="checkbox"/> Preferential Tariff Treatment Not Given (Please state reason/s)			
<b>5. Item</b>		<b>6. Marks and numbers on packages</b>			
<b>7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)</b>		<b>8. Origin criterion (see Notes overleaf)</b>			
<b>9. Gross weight or other quantity and value (FOB)</b>		<b>10. Number and date of invoices</b>			
Page: 1 of 1					
1	ERAWAN	HS. CODE. 3904.30.00 VINYL ACETATE COPOLYMER **** TOTAL: SEVEN THOUSAND FOUR HUNDRED (7,400) BAGS**** TWO HUNDRED SEVENTY (270) M3****	"WO"	185,740.00 KGS 129,500.00 USD	EPCADP/02 3/01/2023
<b>11. Declaration by the exporter</b> The undersigned hereby declares that the above details and statement are correct, that all the goods were produced in <b>THAILAND</b> (Country) and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to <b>Republic of India</b> (Importing Country) <b>SAMUT PRAKAN 10540 13/01/2023</b> Place and date, signature of authorised signatory		<b>12. Certification</b> It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.  <b>13. JUL 2023</b> <b>MR. PRAPUNGKORN LOMWONG</b> Place and date, signature and stamp of certifying authority			
<b>13. Where appropriate please tick:</b> <input type="checkbox"/> Third Country Invoicing <input type="checkbox"/> Exhibition <input type="checkbox"/> Back-to-Back CO <input type="checkbox"/> Cumulation					







# ERAWAN POLY CHEMICAL CO. LTD.

Address: 999/94 Bangkok Free Trade Zone, MOO 15, Bang saothong, Bang saothong, Samutprakan 10570  
 ที่อยู่: 999/94 บังกอกฟรีเทรดโซน หมู่ 15 ซ. บังสาธอง อ. บังสาธอง จ. สมุทรปราการ 10570  
 Tax ID/เลขประจำตัวผู้เสียภาษี: 0105565105551 E-mail: accounts@erawan-group

## INVOICE

<b>SHIPPER:</b> ERAWAN POLY CHEMICAL CO. LTD. 999/94 BANGKOK FREE TRADE ZONE, MOO 15, BANG SAO THONG BANGSAOTHONG, SAMUT PRAKAN 10570 THAILAND Tax ID/เลขประจำตัวผู้เสียภาษี: 0105565105551 E-mail: accounts@erawan-group				<b>INVOICE NO:</b> EPC/EXP/02 <b>DATED:</b> 03-Jan-23 <b>CREDIT TERMS:</b> ADVANCE PAYMENT <b>DUE DATE:</b> <b>JOB NO:</b> <b>CURRENCY:</b> USD		
<b>CONSIGNEE:</b> UMANG IMPEX INDIA PVT. LTD. GROUND FLOOR, G-960, DSIIDC INDL. AREA NARELA, DELHI, NORTH WEST DELHI, DELHI, 110040 INDIA GST No.: 07AACC08848F120 IEC CODE: AACC08848F E-MAIL: umangimpeindiapvtltd@gmail.com				<b>SHIPMENT FROM:</b> FOB LAEM CHABANG, THAILAND  <b>To:</b> MUNDRA, INDIA INDIA		
Item	Description of Goods	HS Code	Quantity (KG)	Total Quantity CBM	Price in USD /KG	Total (USD)
1	PVC CLATHRATE	39043090	185000	10x20'	0.7	129500
						129500
<b>TOTAL</b>						

**Amount:** USD ONE HUNDRED TWENTY NINE THOUSAND & FIVE HUNDRED ONLY  
**Origin:** THAILAND  
**Net Weight:** 185000 Kgs  
**Gross Weight:** 185740 Kgs  
**Quantity:** 7400 BAGS  
**Shipping Mark:** ERAWAN  
**Cubic Meter:** 270

P1? AH  
02/03

CB1 Jm  
02/03/23

P2, P-Clay  
02/03/23

CR52 Jm  
21/3/2023



Jm  
15/11/2023



6.2. Further, the importer submitted Bill of Lading No. GOSUBKK80261695 dated 07.01.2023 for the subject import consignment

SHIPPER / EXPORTER (NAME & ADDRESS)		BILL OF LADING FOR PORT TO PORT OR COMBINED TRANSPORT	
<b>GOLD STAR LINE Ltd.</b> (INCORPORATED IN HONG KONG)		<b>BOOKING NO.</b> GOSUBKK80261695	
<b>CONSIGNEE (NAME &amp; ADDRESS)</b> CHIEF OVERSEA CO., LTD. 35/138 SOI LADPRAO 124(SAWADDIKARN), PHIBILA, WANGTHONGLANG, BANGKOK 10310 Thailand		<b>BILL OF LADING NO.</b> GOSUBKK80261695	
<b>UMANG IMPEX INDIA PRIVATE LIMITED</b> GROUND FLOOR, G-960, DSIIDC INDL. AREA NARELA, DELHI, NORTH WEST DELHI, DELHI, 110040 INDIA #		<b>FORWARDING AGENT F.M.C. No.</b> ERAWAN POLY CHEMICAL CO.,LTD.	
<b>POINT AND COUNTRY OF ORIGIN (FOR MERCHANT'S REFERENCE ONLY)</b> INDIA #		<b>REMARKS / EXPORT OR OTHER INSTRUCTIONS</b> SHIPPED ON BOARD 07/01/2023 A MISDECLARATION FEE SHALL BE CHARGED TO THE MERCHANT - AT CARRIER'S FULL DISCRETION - IN ANY CASE OF SHIPPERS' DANGEROUS GOODS / HAZMAT MISDECLARATION. FREIGHT PREPAID	
<b>INITIAL CARRIAGE</b> VESSEL * SEA OF LUCK 2525 PORT OF DESTINATION * MUMBAI, INDIA		<b>PLACE OF RECEIPT OF GOODS *</b> (IF CONTRACTED FOR) BANGKOK, THAILAND <b>FINAL DESTINATION *</b> (IF CONTRACTED FOR)	
<b>AD VALOREM FREIGHT</b> 10 CONT TOT. TARE : 22,190		<b>CARGO W : TOTAL</b> 185,740.00 <b>MEASUREMENT</b> 270.00	
<b>DETAILS</b> 259 0089		<b>PREPAID</b> THREE	
<b>AD VALOREM FREIGHT</b> 10 CONT TOT. TARE : 22,190		<b>CARGO W : TOTAL</b> 185,740.00 <b>MEASUREMENT</b> 270.00	
<b>DETAILS</b> 259 0089		<b>PREPAID</b> THREE	
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<b>DETAILS</b> 259 0089		<b>PREPAID</b> THREE	
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<b>DETAILS</b> 259 0089		<b>PREPAID</b> THREE	
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<b>DETAILS</b> 259 0089		<b>PREPAID</b> THREE	
<b>AD VALOREM FREIGHT</b> 10 CONT TOT. TARE : 22,190		<b>CARGO W : TOTAL</b> 185,740.00 <b>MEASUREMENT</b> 270.00	
<b>DETAILS</b> 259 0089		<b>PREPAID</b> THREE	
<b>AD VALOREM FREIGHT</b> 10 CONT TOT. TARE : 22,190		<b>CARGO W : TOTAL</b> 185,740.00 <b>MEASUREMENT</b> 270.00	
<b>DETAILS</b> 259 0089		<b>PREPA</b>	

Page 2 of 2

ATTACHED LIST FOR B/L : GOSUBKK80261695

VESSEL:SEA OF LUCK VOYAGE: 252S

LOAD PORT: BANGKOK,THAILAND

PORT OF DESTINATION: MUNDRA,INDIA FINAL DESTINATION:

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<u>MKS &amp; NOS/SEAL NO</u>	<u>DESCRIPTION OF GOODS</u>	<u>WEIGHT</u>	<u>MEASURE</u>
		KGS	M3
ERAWAN	PVC CLATHRATE VINYL ACETATE COPOLYMER HS CODE:390410	No. of Containers: 10	
#GST NO.: 07AACCU8848F1Z0 IEC CODE: AACCU8848F			
TEL : 91 9313333108			
EMAIL: UMANGIMPEXINDIAPVTLD@GMAIL.COM			

CONT:DFSU2668766 SEAL A420379846/DV20 (CY/CY)	740 BAGS	CONT TARE WEIGHT:	2160	18,574.00	27.00
CONT:GLDU9806054 SEAL A4220379844/DV20 (CY/CY)	740 BAGS	CONT TARE WEIGHT:	2180	18,574.00	27.00
CONT:SEGU2098562 SEAL A4220379848/DV20 (CY/CY)	740 BAGS	CONT TARE WEIGHT:	2180	18,574.00	27.00
CONT:TCLU2278030 SEAL A4220379882/DV20 (CY/CY)	740 BAGS	CONT TARE WEIGHT:	2200	18,574.00	27.00
CONT:TCLU9977730 SEAL A4220379843/DV20 (CY/CY)	740 BAGS	CONT TARE WEIGHT:	2260	18,574.00	27.00
CONT:TGHU1773585 SEAL A4220379832/DV20 (CY/CY)	740 BAGS	CONT TARE WEIGHT:	2200	18,574.00	27.00
CONT:UESU2433142 SEAL A4220379825/DV20 (CY/CY)	740 BAGS	CONT TARE WEIGHT:	2230	18,574.00	27.00
CONT:ZIMU1168541 SEAL A4230379817/DV20 (CY/CY)	740 BAGS	CONT TARE WEIGHT:	2260	18,574.00	27.00
CONT:ZIMU1344273 SEAL A4220379823/DV20 (CY/CY)	740 BAGS	CONT TARE WEIGHT:	2260	18,574.00	27.00
CONT:ZIMU1443886 SEAL A4220379824/DV20 (CY/CY)	740 BAGS	CONT TARE WEIGHT:	2260	18,574.00	27.00

SHIPPER'S LOAD STOWAGE & COUNT: CONT TOT. TARE: 22190

TOTAL: SEVEN THOUSAND FOUR HUNDRED BAGS ONLY.

10	CONT TOT. TARE : 22,190	CARGO W :	185,740.00	270.00
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AGENTS FOR  
 GOLD STAR LINE (AS CARRIER)

Scanned with CamScanner

**6.3.** From the above, it is clear that apart from the description mentioned by the importer in the Bill of Entry not only different from the actual description of the goods identified in the Test Reports but also the goods having different Classification mentioned in the BL and IGM. Therefore, it appears that the importer had knowingly and deliberately mis-declared and mis-classified the goods with clear intention of evasion of applicable Customs Duty.

## **7. Seizure:**

Since the subject goods imported by M/s. Umang Impex India Pvt. Ltd. having total quantity 185 MTs having declared assessable value of **Rs. 11137083/-** of declared goods PVC Clathrate (Vinyle Acetate Copolymer) found to be mis-declared in terms of its description, classification and also found claiming undue benefit of Notification of 46/2011 dated 01.06.2011 vide Certificate No. A/2023-0002075 dated 13.01.2023 which appears not valid for the subject goods, the subject goods covered under Bill of Entry No. 4468293 dated 02.02.2023 placed under seizure under provisions of Section 110 of the Customs Act, 1962 Seizure Memo dated 26.04.2023 (**RUD-07**).

**8.** During investigation, statements of following persons were recorded under Section 108 of the Customs Act, 1962, which are briefly discussed herein-below:

**8.1 Statement of Shri Shanu Gupta, F-Card holder of M/s Rishi Kiran Logistics Pvt. Ltd., Plot No. 8, Sector No.-8, Opp. Post office, Gandhidham, Kutch, Gujarat, India-370201, recorded on 13.09.2023 (RUD No. 8).**

On being asked to explain the constitution and work jurisdiction of M/s Rishi Kiran Logistics Pvt. Ltd., Gandhidham and his responsibilities as operational head Shri Shanu Gupta stated that his company M/s Rishi Kiran Logistics Pvt. Ltd, Gandhidham was a CHA license holder since last 06 years and he was F-Card Holder and the main Directors in the company; that he used to handle day to day work of customs clearance as a CHA, apart from him there were around 40 persons as office and field staff.

Further he stated that he supervised filing of Bills of Entry, clearance of import containers, loading unloading and marketing etc.

On being asked about work related to M/s Umang Impex India Pvt. Ltd. handled by them, he stated that he came into contact with M/s UMANG IMPEX INDIA PVT. Ltd. India Pvt. Ltd. through a partner of the company named Shri Umang Garg from Delhi in January 2023; that Shri Umang Garg contacted him for the clearance of the import cargo. He further stated that apart from Umang Garg, he also knew Ankur Jindal from UMANG IMPEX INDIA PVT. LTD. and he was in contact with Mr. Ankur Jindal since January 2023.

During statement he produced the copies of B/E, Invoice and packing list, COO, Bank Guarantee related to the imports by M/s UMANG IMPEX INDIA PVT. LTD. pertaining to clearance of the import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023, and he put his dated signature on every page of the said documents.

On being asked about earlier imports of similar goods he had handled, Shri Shanu Gupta stated that he handled normal PVC regularly but the subject consignment of M/s. UMANG IMPEX INDIA PVT. LTD. of declared goods 'PVC Clathrate' being handled by him for the first time. Shri Shanu Gupta further stated that Mr. Umang Garg from M/s UMANG IMPEX INDIA PVT. LTD , contacted in January 2023 and shared him the B/L ; that he shared ETA with him and he informed him about arrival of these Import consignments and asked him for arranging for clearance from Mundra Port and he had received those import documents from his mail account.

On being asked to go through the details shown in the respective B/L and B/E thereof reproduced as below regarding the details of Consignments as shown and offer his comments.

<b>S I.</b>	<b>B/L No.&amp; date</b>	<b>B/E No. and Date</b>	<b>Container No.</b>	<b>items declared in BL/B/E</b>	<b>COO and No.</b>	<b>Declared item in COO No</b>	<b>PANC HNAMA/ seizure DTD.</b>

1	GOSUB KK8026	44682 93	DFSU266 8796	PVC	Country	Vinyl	02.03.
2	1695	dated	GLDU980	Clathrate	of Origin-	Acetat	2023 &
3	dated	02.02.	6554	(Vinyl	Thailand	e	26.04.
07.01.2		2023	SEGU209	Acetate	and No.	Copol	2023
023			8662	Copolyme	AI2023-	ymer	
4			TCLU227	r) CTH	0002075		
5			8030	3904309			
6			TCLU997	0			
7			7750				
8			TGHU177				
9			3595				
10			UESU243				
			3142				
			ZIMU1168				
			641				
			ZIMU1344				
			273				
			ZIMU1443				
			88				

After perusal of the said documents he stated that he had gone through the details mentioned in Bill of Lading, Bill of Entry and Country of Origin for above import consignment and noticed that the description of the goods mentioned in the Bill of Entry/Bill of Lading was different from as mentioned in the Country of origin of the subject goods. Further he stated that the above COO bearing No. AI2023-0002075 dated 13.01.2023 was the same which he had produced before Customs Authorities at the time of filing of import documents for clearance of the same.

On being asked about the difference in descriptions as shown in the COO and the B/E and asked on whose direction the description of the goods were mentioned in the Bill of Entry, Shri Shanu Gupta stated that he verified the invoice, packing list and COO, in which he found that *PVC Clathrate* was mentioned in the invoice and packing list whereas '*vinyl acetate copolymer*' was mentioned in the COO, however he checked the CTH and found that the CTH were all similar, then he made the description of PVC(Vinyl Acetate Copolymer) and send the same to the importer for approval; that the importer approved the same and asked him to mention the same in the B/E. Further he stated that he also found that there was no description like 'PVC Clathrate' in the Chapter heading of Customs Tariff.

On being asked about since there was no description like PVC Clathrate in that CTH 3904, then why did he mentioned the same in the Bill of Entry, he stated that he found PVC Clathrate mentioned in the invoice and packing list as far as he knew there was also generic name mentioned in the invoice and packing list. Further he stated that he verified B/L and found that the description name PVC Clathrate (Vinyl Acetate Copolymer) was mentioned in corresponding B/L and he combined all description of the goods from COO, invoice, B/L and packing list and then mentioned the description name as PVC Clathrate (Vinyl Acetate Copolymer) in B/E.

He was shown the copy of Bill of Lading No. GOSUBKK80261695 dated 07.01.2023 wherein the classification of the subject goods was different from the classification as mentioned in the Bill of Entry. After perusal of the same Shri Shanu Gupta stated that he had perused the copy of Bill of Lading related to the subject goods and he put his dated signature on the same. Further he stated that the description of the Goods mentioned in the Bill of Lading was "PVC Clathrate Vinyl Acetate Copolymer and HS Code of the goods mentioned as 390410.

On being asked he stated that he had mentioned the HS Code 39043090 on the basis of Invoice and COO. Further he also stated that the HS Code of the goods in the Bill of Lading (HS Code 390410) was different from as he had declared in the Bill of Entry. Further he stated that his company had not sought any clarification from the importer or any other person about the said difference in HSN code between B/L and COO.

He was shown the Test Reports dated 09.03.2023 received from the Laboratory related to the goods covered under Bill of Entry No. 4468293 dated 02.02.2023 and asked to offer his comments. After perusal of the same Shri Shanu Gupta stated that he found that the test report mentions the goods as "It was composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material content, Ash content and it did not answer the test for Vinyl Acetate". Further he stated that he found that the laboratory had not



issued a clear report in respect of the Vinyl Acetate copolymer was present or not. Further he stated that as per the test report it seems that Vinyl Acetate Copolymer could be available or not available.

On being asked about no content like vinyl acetate copolymer had been found in the lab test report and did he ask for test report from importer before filing B/E, he stated that he had asked for the chemical analysis report, and he had submitted a copy of the Chemical Analysis report provided by the importer. However, from the Chemical Analysis Report, actual description and nature of the goods could not be identified.

On being asked about whether he got approval on Check list prior to filing of the Bill of Entry for the subject consignment. If yes, he was asked to provide the communication in this regard he stated that, Yes, he had sought approval on the Check list prior to filing of Bill of Entry for the subject import consignment through email. Further he stated that he was providing the copy of email communication for approval of Check list.

On being asked whether he was aware of the benefit of COO on the PVC Clathrate(Vinyl Acetate Copolymer) imported from Thailand per Notification No.046/2011-Cus dated-01.06.2011, he stated that he checked the notification 046/2011-Cus dated -01.06.2011 and found that there was benefit of duty free import on PVC and Vinyl Acetate Copolymer from Thailand.

According to the Certificate of Analysis dated Dec., 2022 submitted by him which was said to have been provided by the importer the description of the goods mentioned in the said certificate was 'PVC Clathrate', however from the analysis report it appeared that the result mentioned in the Certificate of analysis not showing the actual description of the goods i.e. same was not clear that the goods was PVC Clathrate or Vinyl Acetate Copolymers. On being asked to offer his comments on the above facts, he stated that he had received the analysis report from the importer and after checking the name of the supplier and the quantity, he had filed the Bill of Entry. Further he

stated that, with the lack of product technical knowledge, he was unable to judge the actual description of the products as per certificate of analysis.

On going through the details of Certificate of analysis dated Dec, 2022 produced by him on that day related to the subject import consignment, it was not clear that the said goods were pertaining to the import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023 and how, he had finalized as the same was related to the subject import consignment, he stated that he had only seen the name of the importer, supplier, description and quantity of the goods, on the basis of the same he had ascertained to be linked with the subject import consignment. Further he stated that the other details such as exact date of analysis, actual description of the goods, Invoice No., Packing list no. etc. through which the said report could be ascertained to be linked with the subject import consignment were not available in the Certificate of Analysis.

On being asked to clarify the said facts, he stated that it was possible that the said Certificate might be used for other import consignment of same quantity by M/s. UMANG IMPEX INDIA PVT. LTD, as no other details such as invoice, packing list, etc. were mentioned in the certificate.

The importer has claimed benefit of duty exemption under Notification No.046/2011-Cus. Dated 01.06.2011 for clearance of the subject import consignment inspite of variation in the description of the goods. Accordingly, he was asked to offer his comments, he stated that the importer had availed the benefit of country of origin for customs duty exemption but the goods were put on hold by DRI for examination to draw the representative samples from the goods. Further he stated that the samples were tested by DRI and he got to know that the actual import goods were different from the one as mentioned in the COO. He further stated that he agreed that the benefit of COO was not applicable to the subject consignment. He also stated that as the investigation of DRI was under progress in the said matter, he had applied for provisional release of the goods and their request was accepted by the Commissioner of Mundra Customs house and he got released the good on provisional basis. Customs House Mundra had issued a letter vide F. No. CUS/APR/BE/MISC/720/2023-Gr 2-O/o Pr. Commr-Cus-Mundra

dated 19.06.2023, under which the following condition was applied for provisional release of the goods covered under Bill of Entry No. 4468293 dated 02.02.2023-

- (i) *Taking bond of full assessable value and BG equivalent to Rs. 15,00,000/- (Rupees Fifteen Lakh only).*

that on the basis of letter of customs, the goods were released, and that importer had paid IGST of Rs. 2006323/- . Further he stated that they have submitted bond of full assessable value and Bank Guarantee (for Rs. 15 Lakh) and IGST of Rs. 2006323/-, the importer had not paid any customs duty manually or online. During the statement he submitted the copy of Bank Guarantee 0155NDDG00008824 dated 22.06.2023 amended on 28.06.2023 submitted by the importer in this regard.

On being asked to offer his comments on the incorrect details mentioned in Country of Origin, he stated that he told the importer about this, then he replied that he had submitted the same documents whatever he received from supplier. Further he stated that at the time of provisional release the importer had claimed the benefits of duty exemption on the basis of COO and he had not paid the Customs duty at the time of clearance of the import consignment. He further stated that at the time of provisional release importer had submitted the bond of full assessable value and the Bank Guarantee of Rs. 15,00,000/-.

The details of the Bank Guarantee are as under;

<b>Bank Guarantee No. &amp; Date of issue</b>	<b>Expiry Date</b>	<b>Claim Expiry Date</b>	<b>Currency</b>	<b>Amount of Bank Guarantee</b>
<b>0155NDDG00008824 dated 22.06.2023 amended on 28.06.2023</b>	<b>22.06.2024</b>	<b>22.06.2024</b>	<b>INR</b>	<b>1500000.00</b>

**8.2. Statement of Shri, Prashant Kumar Nayak, Director of M/s Umang Impex India Pvt. Ltd. recorded on 15.11.2023 (RUD No. 09)**

On being asked about the constitution and work jurisdiction of M/s UMANG IMPEX INDIA Pvt. Ltd., New Delhi, and his responsibilities, he stated that his company M/s. Umang Impex India Pvt. Ltd., Delhi was doing import and trading for last 03 Years; that he was one of the directors of the firm since last 02 years, the other director in the firm was Shri Umang Garg, Delhi. He further stated that he handled day to day work of import and trading work of the company, he came into contact with a person of the company name Shri Umang Garg from Delhi in 2015.

On being asked he stated that as of today, he and Shri Umang Garg are engaged in their earlier business of hotel and restaurant and he is also with him. On being asked he stated that the address of the restaurant is Rion, 167, Kapil Vihar, Pitampura, New Delhi-110034.

On being asked he produced the B/E, Invoice and packing list, COO, related to the imports by M/s. Umang Impex India Pvt. Ltd., pertaining to clearance of the import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023.

On being asked about the earlier imports of similar goods he had imported till date.

He stated that he had imported normally some consignment of PVC resin but the subject consignment of M/s. Umang Impex India Pvt. Ltd, of declared goods 'PVC clathrate' being imported by him for the first time. He further added that he contacted with foreign supplier name Shri Suthana for import of our consignment through internet.

On being asked he stated that Shri Suthana, foreign supplier shared the B/L to another partner Shri Umang Garg and he subsequently shared the B/L to CHA, Rishi Kiran logistics Pvt. Ltd. for arranging for clearance from Mundra Port. Further he stated that he forwarded the said import documents to CHA, Rishi Kiran Logistics Pvt. Ltd.

He was shown the copies of B/L and respective Bs/E and other documents wherein details/description of the goods were mentioned as under;

SI .	B/L No.& date	B/E No. and Date	Container No.	Items declared in BL & B/E	COO and No.	Declared item in	PAN CHN AMA /
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						<b>COO No</b>	<b>seiz ure DTD</b>
1	GOSUBK	44682	DFSU2668	PVC	Country	Vinyl	02.0
2	K802616	93	796	Clathrate	of	Aceta	3.20
3	95 dated	dated	GLDU9806	(Vinyl	Origin-	te	23 &
4	07.01.20	02.02.	554	Acetate	Thailan	Copol	26.0
5	23	2023	SEGU2098	Copolymer)	d and	ymer	4.20
6			662	CTH	No.		23
7			TCLU2278	39043090	AI2023-		
8			030		000207		
9			TCLU9977		5		
10			750				
11			TGHU1773				
12			595				
13			UESU2433				
14			142				
15			ZIMU1168				
16			641				
17			ZIMU1344				
18			273				
19			ZIMU1443				
20			888				

He was asked to offer his comments, after perusal of the same, he stated that he had gone through the details mentioned in Bill of Lading, Bill of Entry and Country of Origin for above import consignment and he noticed that the description of the goods mentioned in the Bill of Entry/Bill of Lading was different from as mentioned in the Country of origin of the subject goods. Further he stated that the above COO bearing No. AI2023-0002075 dated 13.01.2023 was the same which he had received from foreign Supplier and forwarded to CHA and consequently the CHA filed the Customs Clearing documents for clearance of the subject import consignment.

Since the descriptions mentioned in the COO and the B/E were different, he was asked who decided the description in the B/E and whether, he had sought any clarification/amendment in the said certificate from overseas supplier, he stated that, he verified the invoice, packing list and COO, in which he found that *PVC Clathrate* was mentioned in the invoice and packing list whereas '*vinyl acetate copolymer*' was mentioned in the COO. He further stated that he had received all documents from foreign supplier

related to B/E 4468293 dated 02.02.2023 and forwarded to CHA without any verification of documents and he did not notice such difference related to description in the documents; that he had not sought any clarification/amendment from our overseas supplier for amendment/correction.

On being asked whether his Customs Broker M/s. Rishi Kiran Logistics Pvt. Ltd. had noticed the difference in description in the documents such as COO, BL and invoice etc., he stated that he was not aware whether his Customs Broker had noticed such difference, however the CHA had not told about the difference of the descriptions as shown per the COO, invoice and packing list at the time of filing of B/E. Further he stated that he also found that there was no description like 'PVC Clathrate' in the Chapter heading of Customs Tariff.

On being asked when he came to know that there was no description like PVC Clathrate in that CTH 3904, then why had he mentioned the said description in the import documents, he stated that he had imported PVC, however as per version of foreign supplier he had used the description of the said goods as PVC Clathrate in the related documents; that he received the documents from the supplier and he had forwarded the same to their CHA M/s. Rishi Kiran Logistics Pvt. Ltd. to file B/E without even looking at them.

He was shown copy of Bill of Lading No. GOSUBKK80261695 dated 07.01.2023 wherein the HS Code of the subject goods was mentioned as 390410, he was asked to offer his comments. He perused the said documents and put his dated signature on the said documents in token of having seen it. After perusal of the same he stated that the description of the Goods mentioned in the Bill of Lading is "PVC Clathrate Vinyl Acetate Copolymer and HS Code of the goods mentioned as 390410 which was different from the one as declared by them in the Customs documents.

On being asked about HS code of the subject import consignment mentioned in the Bill of Lading as 390410 whereas he had mentioned the HS Code in the Bill of Entry as 39043090 and whether his Customs Broker M/s. Rishi Kiran Logistics Pvt. Ltd. had asked him about the difference in the HS Code and whether he had discussed with their Customs Broker about mentioning any specific HS Code in the import documents, he stated that he had mentioned the HS Code 39043090 on the basis as the same mentioned in the Invoice and COO; that the HS Code of the goods in the corresponding Bill of Lading No. GOSUBKK80261695 dated 07.01.2023 (HS Code 390410) was different from as declared in the Bill of Entry. He further stated that his Customs Broker had not told about such difference mentioned the description in Bill of Lading No. GOSUBKK80261695 dated 07.01.2023; that he also had not noticed the said difference, if he had noticed the same he would have asked the foreign supplier about the same, although he had not been imported any cargo like Vinyl Acetate Copolymer under B/E no. 4468293 dated 02.02.2023.

He was shown the Test Reports dated 09.03.2023 received from the Laboratory related to the goods covered under Bill of Entry No. 4468293 dated 02.02.2023 filed by him for M/s. Umang Impex India Pvt. Ltd. and asked to offer his comments. He perused the Test Reports of the goods covered under Bill of Entry No. 4468293 dated 02.02.2023, in token of having seen the same he put his dated signature on the Test Reports. He further stated that the test report containing the description of the goods as *"It is composed of mainly Polyvinyl Chloride (PVC) and Inorganic Material content, Ash content & it does not answer the test for Vinyl Acetate"*. Further he stated that as per test report it seems that Vinyl Acetate Copolymer was not available. He further submitted that he had not imported any cargo like Vinyl Acetate Copolymer under B/E no. 4468293 dated 02.02.2023. Further he stated that the brief details of the Test Reports were also conveyed to him by the Mundra Customs at the time of provisional release of the subject goods. He stated that on perusal of the test reports of the goods, he agreed that the subject import goods were different from as mentioned in the Country of Origin No AI2023-0002075 dated 13.01.2023.



The test reports indicate that 'Vinyl Acetate Co-polymer' were not found in the representative samples of subject goods, whereas the description of the goods in the Bill of Entry clearly mentioned as 'PVC Clathrate (Vinyl Acetate Copolymer. Therefore he was asked whether he agreed that the subject goods were different from as mentioned in the corresponding COO. He stated that he agreed that the actual goods were different from as mentioned in the COO, however, he stated that he had forwarded the documents to M/s Rishi Kiran Logistics Pvt. Ltd. related to this consignment as were received by him from overseas supplier.

On being asked whether he approved the check list before filing the Bill of Entry for the subject consignment sent by CHA and he was asked to provide the communication in this regard. He stated that he just told him on phone that he was going to file B/E and he had not received any email for approval of checklist from our Customs Broker M/s. Rishi Kiran logistics Pvt. Ltd.

On being asked whether he aware of the benefit of COO on the PVC Clathrate (Vinyl Acetate Copolymer) imported from Thailand and as per Notification No.046/2011-Cus dated 01.06.2011, he stated that he was not aware whether Customs duty benefits under Country of Origin was available on the cargo and also M/s. Rishi Kiran Logistics Pvt. Ltd. did not inform him anything about the same. He further added that his partner Shri Umang Garg might have knowledge about the same.

On being asked Whether he had taken the benefit of COO ref no. AI2023-0002075 dated 13.07.2023 on his subject import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023, he stated that they had claimed the benefit of Custom Duty under COO ref no. AI2023-0002075 dated 13.07.2023 on the Vinyl Acetate Copolymer, however, he had not placed order for import of 'Vinyl Acetate Copolymer'. He further added that he was not aware how the said description was mentioned in the Country of Origin for the cargo covered under B/E no. 4468293 dated 02.02.2023; that he had not carefully looked at the description of the cargo at the time of filing of import documents. He further stated that if the Customs Broker had discussed the matter earlier he would not have availed the Customs duty benefit on the subject import consignment and would have inquired about

the same from the supplier who provided these documents having incorrect material particulars; that he agreed that he had availed the country-based benefit on his import consignment, however, he assured to pay the Customs duty alongwith applicable interest and penalty.

He was shown the Certificate of Analysis submitted by the importer wherein no details of Invoice/packing list/cargo connecting to the said specific consignment was mentioned, and asked whether it possible that the Certificate of analysis dated Dec, 2022 can also be used for other import consignment in the name of M/s. Umang Impex India Pvt. Ltd., having same quantity, he stated that it was possible that the said Certificate may also be used for other import consignment of same quantity by M/s. Umang Impex India Pvt. Ltd., India Pvt. Ltd. as no other details such as invoice, packing list, etc. were mentioned in the certificate.

On being asked about the provisional release of the subject import consignment, he stated that they requested for provisional release of the goods and his request accepted by the Mundra Customs and they had granted the provisional release of the goods under Bank Guarantee of Rs. 15 Lakhs. The details of the of Bank Guarantee are as under;

<b>Bank Guarantee No. &amp; Date of issue</b>	<b>Expiry Date</b>	<b>Claim Expiry Date</b>	<b>Currency</b>	<b>Amount of Bank Guarantee</b>
<b>0155NDDG00008824 dated 22.06.2023 amended on 28.06.2023</b>	<b>22.06.2024</b>	<b>22.06.2024</b>	<b>INR</b>	<b>1500000.00</b>

On being asked about the charges system for the services provided by CHA, he stated that he had paid Rs. 9,70,000/- to CHA which includes providing services of 10 containers like CFS charges, shipping charges, clearance charges, transportation charges.

**8.3.** Shri Prashant Nayak was one of the Directors of M/s. Umang Impex India Pvt. Ltd. and Shri Umang Garg was the key person and beneficial

owner in the company. As stated by Shri Prashant Nayak, Director of M/s. Umang Impex India Pvt. Ltd., he was handling all conversations with overseas supplier of the subject goods. Shri Umang Garg also used to contact the Customs Broker M/s. Rishi Kiran Logistics Pvt. Ltd. and submitted all the relevant documents for clearance of the subject goods. During investigation, various Summons were issued to record the statements of the authorized persons, however Shri Umang Garg did not appear before investigating officer. Some of the Summons were returned undelivered to the DRI office. The details of the Summons are as under;

Sr. No.	Date of Summons	Date for appearance	Status	Remark
1	07.06.2023	14.06.2023	No response received	<b>RUD No.10</b>
2	04.07.2023	17.07.2023	No response received	
3	04.08.2023	09.08.2023	No response received	
4	04.09.2023	12.09.2023	No response received	
5	03.10.2023	11.10.2023	Returned undelivered	
6	20.10.2023	27.10.2023	Returned undelivered	
7	15.11.2023		Statement of Shri Prashant Nayak was recorded on 15.11.2023	

From the above, it appears that no responsible person was earlier deliberately and intentionally responding to the Summons issued by the DRI, however ultimately a statement of Shri Prashant Nayak was recorded on 15.11.2023, wherein he specifically admitted that Shri Umang Garg of M/s. Umang Impex India Pvt. Ltd. was handling all the import related conversations with overseas supplier as well as with the Customs Broker.

**8.4.** On going through the IEC status of M/s. Umang Impex India Pvt. Ltd., it appears that some Shri Ramakanta Patra was also one of the Directors in the company including Shri Prashant Nayak. However, as submitted by Shri Prashant Nayak, all the business activities of the company were being handled by him alongwith Shri Umang Garg. The company was established in the name of Shri Umang Garg and Shri Umang Garg alongwith Shri

Prashant Kumar Nayak both were handling the business activities of the company.

**9. Main Legal Provisions relating to the case:**

9.1 Sub-section (4) of Section 46 of the Customs Act, 1962, specifies that, the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods.

**9.2 Section 17. Assessment of duty. –**

- (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85 self-assess the duty, if any, leviable on such goods.
- (2) The proper officer may Verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary, Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.
- (3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.
- (4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment, is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

- (5) Where any re-assessment done under sub-section (4) is contrary to the selfassessment, done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment, in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

### **9.3 Section 28DA of Customs Act 1962.**

#### **Procedure regarding claim of preferential rate of duty. –**

- (1) An importer making claim for preferential rate of duty , in terms of any trade agreement, shall –
- (i) make a declaration that goods qualify as originating goods for preferential rate of duty under such agreement;
  - (ii) possess sufficient information as regards the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the rules of origin in the trade agreement, are satisfied;
  - (iii) furnish such information in such manner as may be provided by rules;
  - (iv) exercise reasonable care as to the accuracy and truthfulness of the information furnished.
- (2) The fact that the importer has submitted a certificate of origin issued by an Issuing Authority shall not absolve the importer of the responsibility to exercise reasonable care.
- (3) Where the proper officer has reasons to believe that country of origin criteria has not been met, he may require the importer to furnish further information, consistent with the trade agreement, in such manner as may be provided by rules.
- (4) Where importer fails to provide the requisite information for any reason, the proper officer may-
- (i) cause further verification consistent with the trade agreement in such manner as may be provided by rules;

(ii) pending verification, temporarily suspend the preferential tariff treatment to such goods:

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal commissioner of customs or the commissioner of customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

(5) Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

(6) Upon temporary suspension of preferential tariff treatment, the proper officer shall inform the Issuing Authority of reasons for suspension of preferential tariff treatment, and seek specific information as may be necessary to determine the origin of goods within such time and in such manner as may be provided by rules.

(7) Where, subsequently, the Issuing Authority or exporter or producer, as the case may be, furnishes the specific information within the specified time, the proper officer may, on being satisfied with the information furnished, restore the preferential tariff treatment.

(8) Where the Issuing Authority or exporter or producer, as the case may be, does not furnish information within the specified time or the information furnished by him is not found satisfactory, the proper officer shall disallow the preferential tariff treatment for reasons to be recorded in writing:

Provided that in case of receipt of incomplete or non-specific information, the proper officer may send another request to the Issuing Authority stating specifically the shortcoming in the information

furnished by such authority, in such circumstances and in such manner as may be provided by rules.

(9) Unless otherwise specified in the trade agreement, any request for verification shall be sent within a period of five years from the date of claim of preferential rate of duty by an importer.

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-

- (i) the tariff item is not eligible for preferential tariff treatment;
- (ii) complete description of goods is not contained in the certificate of origin;
- (iii) any alteration in the certificate of origin is not authenticated by the Issuing Authority;
- (iv) the certificate of origin is produced after the period of its expiry, and in all such cases, the certificate of origin shall be marked as "INAPPLICABLE".

#### **9.4. Section 111 in the Customs Act, 1962 Confiscation of improperly imported goods, etc.—**

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

(a)....

(o)

(P).....

(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.

#### **9.5. Section 112 in the Customs Act, 1962 Penalty for improper importation of goods etc.-**

Any person,—

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

[\(b\)](#) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or



purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,—

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

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;

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

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

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

#### **9.6 Section 28(4) of the Customs Act, 1962 –Recovery of duties not levied or short-levied or erroneously refunded-**

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

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

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

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

#### **9.7 Section 28AA. Interest on delayed payment of duty.**

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

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

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

### **9.8 Section 114A in the Customs Act, 1962**

Penalty for short-levy or non-levy of duty in certain cases. —

Where the duty has not been levied or has not been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined:

**Provided** that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined:

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

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

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

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

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

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President\*;

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

## **9.9 Section 114AA in the Customs Act, 1962**

### **Penalty for use of false and incorrect material.—**

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

## **10. Obligation under self-assessment –**

The subject Bill of Entry as mentioned in above Table to this IR, filed by the importer, wherein they had declared the description, classification of goods and country of Origin, were self-assessed by them. However, as per test reports of the goods and description of goods mentioned in COO, invoice, packing list it is established that the importer of goods in question had not

fulfilled the origin criteria in terms of Rules of Origin. Further, Shri Prashant Kumar Nayak director of M/s. Umang Impex India Pvt. Ltd., has submitted that he has not imported Vinyl Acetate Copolymer during his statement dated 15.11.2023.

The Test Report of the representative samples of the subject goods clearly show that the goods do not contain Vinyl Acetate which is also admitted by Shri Prashant Kumar Nayak therefore, it appears that the goods mentioned in COO having description of the goods as Vinyl Acetate Copolymer as submitted by the importer is not pertaining to the subject goods of M/s. Umang Impex India Pvt. Ltd. covered under subject Bill of Entry. Hence, the preferential tariff treatment to the imports of vinyl Acetate Copolymer claimed by the Importer is liable for rejection in terms of Section 28DA (10) of the Customs Act, 1962.

The Finance Act, 2011 has introduced "Self-Assessment" under the Customs Act, 1962 w.e.f. from 08.04.2011. Section 17 of the said Act provides for self-assessment of Duty on import and export of the goods by the Importer or exporter himself by filing of Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the Importer or exporter to ensure that he declares the correct classification, applicable rate of Duty, value, benefit or exemption Notification claimed, if any in respect of the imported/ exported goods while presenting Bill of Entry or Shipping Bill. Section 28DA of Customs Act, 1962 was introduced vide Finance Bill 2020 wherein importer making claim of preferential rate of Duty, in terms of any trade agreement shall possess sufficient information as regards to origin criteria. Therefore, by not self-assessing the subject goods properly, it appears that the importer wilfully evaded Customs Duty on the impugned goods. In the present case, the importer has wrongly availed the benefit of exemption Notification No. 46/2011 dated 01.06.2011 wherein imported goods had not fulfilled the origin criteria. The Importer appears to have indulged in suppression of facts', with intent to evade the payment of applicable Customs Duties.

Therefore, it appears that the Importer knowingly and deliberately availed the exemption Notification on the goods manufactured by M/s. Erawan Poly Co. Ltd., Thailand. It appears to be indicative of their mensrea. Moreover, the importer appears to have suppressed the said facts from the Customs authorities and also wilfully availed the exemption Notification No. 46/2011-Cus dated 01.06.2011, as amended during filing of the Bill of Entry at Mundra port and thereby caused evasion of Customs Duty. Accordingly, it appears that provisions of Section 28(4) of the Customs Act, 1962 are invokable in this case. For the same reasons, the Importer also appears liable to penalty under Section 114A of the Customs Act, 1962.

**11. Mis-declaration, Mis-classification and liability to confiscation of the goods:-**

As mentioned in the forgoing paras, M/s. Umang Impex India Pvt. Ltd. imported goods covered under Bill of Entry No. 4468293 dated 02.02.2023 and claimed the Customs Duty exemption against Country of Origin (COO) Certificate in terms of Notification No.46/2011-Cus dated 01.06.2011, as amended. Hence, the goods imported under B/E 4468293 dated 02.02.2023 having assessable value of Rs. 11137083 - (Rupees one crore eleven lakh thirty seven thousand eighty three only) are found mis-declared in terms of description and classification thereof. The import goods were declared as PVC Clathrate (Vinyl Acetate Co-polymers) whereas the Test reports clearly indicated that the goods were not containing Vinyl Acetate.

Further on going through the copy of Bill of Lading No. GOSUBKK80261695 dated 07.01.2023, it was noticed that the classification of the subject goods was 'HS Code 390410' which was different from 39043090 as declared by the importer. Also, as mentioned above, the Test Reports of the representative samples specifically denied the presence of Vinyl Acetate in the subject goods which was mentioned in the COO submitted by the importer. These facts indicate that the goods not only mis-declared in respect of its description but also mis-classified.

The Test Reports of the subject goods clearly mention that '*It is composed of mainly Polyvinyl Chloride (PVC) and inorganic material. % Ash=4.24 % by wt. It does not answer the test for Vinyl Acetate.*' The subject goods was containing 'Inorganic material between 3-4.5 % by wt'. Therefore, the subject goods appropriately are described as Other Polyvinyl Chloride mixed with other substances i.e. inorganic material and accordingly be covered under HS Code 39042100. The reports indicate that the goods was containing inorganic material i.e. Ash. Therefore, it appears that the subject goods falls under HS Code 39042100 (Other Polyvinyl Chloride mixed with other substances i.e. Non-plasticized) and attract Customs duty @ 7.5%.

The above facts indicate that the Certificate of Origin submitted by M/s. Umang Impex India Pvt. Ltd. do not contain complete and actual description of the goods which have actually been imported. Also, the importer could not submit satisfactory reasons for the said difference in the description and Classification of the goods. It appears that the importer and their Customs Broker have intentionally mis-declared the description as well as the classification of the goods. Further neither the importer nor the Customs Broker could satisfactory reply/give documentary evidence for mentioning the description of the goods as 'PVC Clathrate'. The said act and commission and omission on the part of the importer and the Customs Broker rendered the subject goods liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act,1962.

## **12. Demand of Customs Duty and liability to penalties: -**

**12.1.** During investigation conducted in this matter, it is clear that the subject goods do not conform the actual description and classification as mentioned by the importer. The description i.e. PVC Clathrate (Vinyl Acetate Copolymer and CTH 39043090). The reports indicate that the goods contained inorganic material i.e. Ash. Therefore, it appears that the subject goods falls under HS Code 39042100 (Other Polyvinyl Chloride mixed with other substances i.e. Non-plasticized). As per the facts revealed during



investigation the subject goods may appropriately be described as '*Other Polyvinyl Chloride mixed with other substances i.e. inorganic material*' and accordingly be covered under HS Code 39042100. Also, the Certificate of Origin of the goods submitted by M/s. Umang Impex India Pvt. Ltd. does not contain complete description of the goods as per Section 28DA for claiming the benefit of Customs Duty as per Notification Nos. 46/2011-Cus dated 01.06.2011.

**12.2.** As appears from the Test Reports provided by the laboratory, the subject goods contain inorganic material Ash content having 3 to 5%. As per import data of the similar goods i.e. PVC blended with other substance falling under same HS code i.e. 39042100 of the goods, it appears that the assessable value of the said goods is approx. 0.7 USD per KG which is similar as declared by the importer for the subject consignment. Therefore, the assessable value of Rs. 1,11,37,083/- declared by the importer appears to be the appropriate assessable for subject goods i.e. Other Poly Vinyl Chloride mixed with other substances (i.e. Non-plasticised-39042100). Hence, the same may be considered as appropriate assessable for the subject goods for demand of Customs duty.

**12.3.** Accordingly, it appears that the benefit claimed by M/s. Umang Impex India Pvt. Ltd. under Notification Nos. 46/2011-Cus dated 01.06.2011 while filing Bill of Entry No. 4468293 dated 02.02.2023 consisted of 10 Containers having total quantity 185 MTs for the subject import consignment is illegal and the same is required to be denied. Also, subject goods falling under HS Code 39042100 having assessable Value of Rs. 1,11,37,083/- attract Customs duty @ 7.5% alongwith with appropriate SWS and IGST. The importer declared nil Customs Duty at the time of filing Bill of Entry. Therefore, **Rs. 30,88,870/- (Rs. Thirty Lakhs Eighty Eight Thousands, Eight Hundred and Seventy only)** including other SWS and IGST as given in Annexure-A. Therefore, the Customs duty of **Rs. 30,88,870/- including SWS and IGST** is required to be demanded under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest and penalty as given in **Annexure-A** to this Investigation Report.

The duty calculation is reproduced hereunder;

B/ E No. & Date	Declared description of the goods in the Bill of Entry	Description of the goods mentioned in the CO & Bill of Lading	Declared classification of the goods in the Bill of Entry	Declared Assessable Value of the goods (in Rs.)	Declared IGST (in Rs.)	Appropriate description of the goods	Appropriate classification of the goods	Appropriate Customs Duty (in Rs.) @ 7.5 %	Appropriate Customs Duty (in Rs.) @ 10 %	Applicable IGST (in Rs.)	Total duty to be paid (BCD +SWS +IGST)
446 829 3 dated 02.02.2023	PVC Chloride (Vinyl Acetate Copolymer)	Vinyl Acetate Copolymer	390 430 90	11 13 70 83	20 04 67 5	Other Poly Vinyl Chloride mixed with other substances (i.e. Non-plasticised)	3904 2100	83 52 81	83 52 8	21700 61	3088 870

**12.4.** Also, the act of omission and commission on the part of M/s. Umang Impex India Pvt. Ltd. and the Customs Broker M/s Rishi Kiran Logistics Pvt. Ltd. rendered themselves liable for penalty under **Section 112(a) and 112(b) of the Customs Act, 1962.**

**12.5.** Also, as discussed above, it appears that M/s. Umang Impex India Pvt. Ltd. and M/s Rishi Kiran Logistics Pvt. Ltd. have submitted the documents which do not contain the true facts and material particulars of

the subject goods. It appears that the importer and the Customs Broker have deliberately submitted the incorrect documents/details. Accordingly, M/s. Umang Impex India Pvt. Ltd., India Pvt. Ltd. and M/s Rishi Kiran Logistics Pvt. Ltd. also rendered themselves liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

### **13. Role and culpability on the importer/person/firm involved: -**

#### **13.1. Role of the importer M/s. Umang Impex India Pvt. Ltd., Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi: -\_\_**

Shri Prashant Kumar Nayak was the Director of M/s. Umang Impex India Pvt. Ltd. During his statement he admitted that they forwarded the documents to their Customs Broker without any verification of description and classification. He was not able to submit the satisfactory documents/details on the basis of which they have decided to mention the description and classification of the subject goods. They failed to submit the reason of difference in description of the subject goods mentioned in the Certificate of Origin and that mentioned in the Bill of Entry. During his statement Shri Prashant Kumar Nayak also admitted that the Test Reports of the representative samples denied the presence of Vinyl Acetate in the subject imported goods. These facts indicate that the subject goods are different from the goods as mentioned in the Certificate of Origin. Shri Prashant Nayak also failed to submit the satisfactory reason for difference in the Classification mentioned in the corresponding Bill of lading (i.e. HS Code 390410) whereas they have mentioned the same as 39043090 in the other import documents.

In his statement dated 15.11.2023, Shri Prashant Kumar Nayak has made several noteworthy assertions regarding the importation of Vinyl Acetate Copolymer. Initially, he contends that he did not import this specific product, casting doubt on the accuracy of the goods description associated with his importation. Additionally, he admits to a lapse in due diligence by acknowledging that he did not properly scrutinize the country of origin

during the importation process, particularly in relation to the goods specified as vinyl acetate copolymer.

However, amidst these admissions, Shri Prashant Kumar Nayak takes responsibility for an apparent error in judgment, conceding that he wrongfully availed the benefits accorded by Notification no. 46/2011 dated 01.06.2011. This admission of responsibility is a critical aspect of his statement, as it acknowledges a breach of compliance with the relevant regulations and signals a willingness to rectify the situation.

M/s. Umang Impex India Pvt. Ltd., is responsible for ensuring compliance with customs regulations and accurately declaring the nature, quantity, and classification of imported goods. However, in this particular case, the importer has deviated from ethical practices by taking advantage of Notification no. 46/2011 dated 01.06.20211 through deliberate misdeclaration and misclassification of the goods. Shri Prashant Kumar Nayak director of M/s. Umang Impex India Pvt. Ltd., played a crucial role in maintaining the integrity of international trade by adhering to established regulations and contributing to transparent and lawful commerce. When an importer engages in mis-declaration and mis-classification, it not only compromises the accuracy of customs documentation but also raises concerns about the legality and fairness of their trade practices.

The omission and commission of mis-declaration and mis-statement on part of M/s. Umang Impex India Pvt. Ltd. rendered the subject goods having total quantity 185 MTs covered under Bill of Entry No. 4468293 dated 02.02.2023 with assessable Value of **Rs. 1,11,37,083/-** imported through 10 Containers liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 and also rendered themselves liable to penalty under **Section 112(a)** and **112(b)** of the Customs Act, 1962.

M/s. Umang Impex India Pvt. Ltd., availed the undue benefits of Notification no. 46/2011 dated 01.06.2011 by way of mis-declaration and mis-statements, the importer not only jeopardizes their own standing but also

undermines the credibility of the entire importation process. Also, M/s. Umang Impex India Pvt. Ltd., was knowingly connived in importing, purchasing/selling and dealing with the offending goods. Shri Prashant Kumar Nayak by way of submitting documents having incorrect material particulars causes to be made signed and used the declaration and documents which were having false or incorrect material particulars, rendered M/s. Umang Impex India Pvt. Ltd., also liable to penalty under **Section 114AA of the Customs Act, 1962.**

**13.2. Role of Shri Prashant Kumar Nayak Director of M/s. Umang Impex India Pvt. Ltd. Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi:-**

Shri Prashant Kumar Nayak was one of the Directors of M/s. Umang Impex India Pvt. Ltd. During his statement Shri Prashant Kumar Nayak admitted that he and Shri Umang Garg another active person in the company forwarded the documents to their Customs Broker without any verification of description and classification. He was not able to submit satisfactory documents/details on the basis of which they decided to mention the description and classification of the subject goods. He failed to submit the reason of difference in description of the subject goods in the Certificate of Origin and what he has mentioned in the Bill of Entry. During his statement Shri Prashant Kumar Nayak also admitted that the Test Reports of the representative samples denied the presence of Vinyl Acetate in the subject import goods. These facts indicate that the subject goods were different from the goods as mentioned in the Certificate of Origin. M/s. Umang Impex India Pvt. Ltd. also failed to submit the satisfactory reason for difference in the Classification mentioned in the corresponding Bill of lading (i.e. HS Code 390410) whereas they have mentioned the same as 39043090 in the other import documents.

In his statement dated 15.11.2023, Shri Prashant Kumar Nayak has made several noteworthy assertions regarding the importation of Vinyl Acetate Copolymer. Initially, he contends that he did not import this specific product, casting doubt on the accuracy of the goods description associated

with his importation. Additionally, he admits to a lapse in due diligence by acknowledging that he did not properly scrutinize the country of origin during the importation process, particularly in relation to the goods specified as vinyl acetate copolymer. However, amidst these admissions, Shri Prashant Kumar Nayak takes responsibility for an apparent error in judgment, conceding that he wrongfully availed themselves of the benefits accorded by Notification no. 46/2011 dated 01.06.2011. This admission of responsibility is a critical aspect of his statement, as it acknowledges a breach of compliance with the relevant regulations and signals a willingness to rectify the situation.

Shri Prashant Kumar Nayak of M/s. Umang Impex India Pvt. Ltd, was responsible for ensuring compliance with customs regulations and accurately declaring the nature, quantity, and classification of imported goods. However, in this particular case, Shri Prashant Kumar Nayak has deviated from ethical practices by taking advantage of Notification no. 46/2011 dated 01.06.20211 through deliberate mis-declaration and misclassification of the goods. When an importer engages in mis-declaration and mis-classification, it not only compromised the accuracy of customs documentation but also raises concerns about the legality and fairness of their trade practices.

The omission and commission of mis-declaration and mis-statement on the part of Shri Prashant Kumar Nayak rendered the subject goods having total quantity 185 MTs covered under Bill of Entry No. 4468293 dated 02.02.2023 assessable Value of **Rs. 1,11,37,083/-** imported through 10 Containers liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act,1962 and also rendered himself liable to penalty under **Section 112(a) and 112(b) of the Customs Act, 1962.**

Also, during investigation, various Summons were issued to record the statement of the Director or authorised active person, however Shri Prashant Nayak initially did not appear before investigating officer. Some of

the Summons was returned undelivered to the DRI office. The details of the Summons are as under;

Sr. No.	Date of Summons	Date for appearance	Remark
1	07.06.2023	14.06.2023	No response received
2	04.07.2023	17.07.2023	No response received
3	04.08.2023	09.08.2023	No response received
4	04.09.2023	12.09.2023	No response received
5	03.10.2023	11.10.2023	Returned undelivered
6	20.10.2023	27.10.2023	Returned undelivered
7	15.11.2023		Statement of Shri Prashant Nayak was recorded on 15.11.2023

From the above, it appears that no responsible person was earlier deliberately and intentionally responding to the Summons issued by the DRI, however ultimately a statement of Shri Prashant Nayak was recorded on 15.11.2023, wherein he specifically admitted that Shri Umang Garg of M/s. Umang Impex India Pvt. Ltd. was handling all the import related conversations with overseas supplier as well as with the Customs Broker. It appears that initially Shri Prashant Kumar Nayak deliberately avoided his presence and did not co-operate with the investigation. Therefore, Shri Prashant Nayak also rendered himself penalty under **Section 117 of the Customs Act, 1962.**

Shri Prashant Kumar Nayak as the Director key participant in the supply chain, is expected to act responsibly and in accordance with the established rules and regulations. By exploiting Notification no. 46/2011 dated 01.06.2011 for illegal benefits, the importer not only jeopardizes his own standing but also undermines the credibility of the entire importation process. Also, Shri Prashant Kumar Nayak was knowingly connived in importing, purchasing/selling and dealing with the offending goods. Shri

Prashant Kumar Nayak by way of submitting documents having incorrect material particulars causes to be made signed and used the declaration and documents which were having false or incorrect material particulars, rendered themselves also, separately liable to penalty under **Section 114AA of the Customs Act, 1962.**

**13.3. Role of Shri Umang Garg, key person of M/s. Umang Impex India Pvt. Ltd., Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi, and beneficial owner of the subject goods:-**

Shri Umang Garg was the key person of M/s. Umang Impex India Pvt. Ltd. and beneficial owner of the subject goods. During his statement Shri Prashant Kumar Nayak admitted he used to forward the documents to the Customs Broker without any verification of description and classification. He was not able to submit the satisfactory documents/details on the basis of which they have decided to mention the description and classification of the subject goods. They failed to submit the reason of difference in description of the subject goods in the Certificate of Origin and they have mentioned in the Bill of Entry. During investigation, it is revealed that Shri Umang Garg also indulged in all the business activities of M/s. Umang Impex India Pvt. Ltd. Shri Umang Garg used to contact the Customs Broker Ms/. Rishin Kiran Logistics Pvt. Ltd. for arranging the clearance form Mundra Port. Shri Prashant Kumar Nayak also admitted that the Test Reports of the representative samples denied the presence of Vinyl Acetate in the subject import goods. These facts indicate that the subject goods are different from the goods as mentioned in the Certificate of Origin. M/s. Umang Impex India Pvt. Ltd. also failed to submit the satisfactory reason for difference in the Classification mentioned in the corresponding Bill of lading (i.e. HS Code 390410) whereas they have mentioned the same as 39043090 in the other import documents.

In his statement dated 15.11.2023, Shri Prashant Kumar Nayak has made several noteworthy assertions regarding the importation of Vinyl Acetate Copolymer. Initially, he contends that he did not import this specific



product, casting doubt on the accuracy of the goods description associated with his importation. Additionally, he admits to a lapse in due diligence by acknowledging that he did not properly scrutinize the country of origin during the importation process, particularly in relation to the goods specified as vinyl acetate copolymer. However, amidst these admissions, Shri Prashant Kumar Nayak takes responsibility for an apparent error in judgment, conceding that he wrongfully availed themselves of the benefits accorded by Notification no. 46/2011 dated 01.06.2011. This admission of responsibility is a critical aspect of his statement, as it acknowledges a breach of compliance with the relevant regulations and signals a willingness to rectify the situation.

Shri Umang Garg, the key person of M/s. Umang Impex India Pvt. Ltd, was responsible for ensuring compliance with customs regulations and accurately declaring the nature, quantity, and classification of imported goods. However, in this particular case, Shri Umang Garg has indulged into through deliberate mis-declaration and misclassification of the goods. He played a crucial role in the evasion of Customs duty by way of taking undue benefits of the exemption notification. When an importer engages in mis-declaration and mis-classification, it not only compromised the accuracy of customs documentation but also raises concerns about the legality and fairness of their trade practices.

The omission and commission of mis-declaration and mis-statement on the part of Shri Umang Garg, rendered the subject goods having total quantity 185 MTs covered under Bill of Entry No. 4468293 dated 02.02.2023 assessable Value of **Rs. 1,11,37,083/-** imported through 10 Containers rendered the goods liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 and also rendered himself liable to penalty under **Section 112(a) and 112(b) of the Customs Act, 1962.**

Shri Umang Garg was the key person in the company and a beneficial owner. As stated by Shri Prashant Nayak, Director of M/s. Umang Impex India Pvt. Ltd., he was handling all conversations with overseas supplier of

the subject goods. Shri Umang Garg also used to contact the Customs Broker M/s. Rishi Kiran Logistics Pvt. Ltd. and submitted all the relevant documents for clearance of the subject goods. During investigation, various Summons were issued to record the statement of the authorized persons, however he did not appear before investigating officer. Some of the Summons was returned undelivered to the DRI office. The details of the Summons are as under;

Sr. No.	Date of Summons	Date for appearance	Remark
1	07.06.2023	14.06.2023	No response received
2	04.07.2023	17.07.2023	No response received
3	04.08.2023	09.08.2023	No response received
4	04.09.2023	12.09.2023	No response received
5	03.10.2023	11.10.2023	Returned undelivered
6	20.10.2023	27.10.2023	Returned undelivered
7	15.11.2023		Statement of Shri Prashant Nayak was recorded on 15.11.2023

From the above, it appears that no responsible person including Shri Umang Garg was earlier intentionally responding to the Summons issued by the DRI, however ultimately a statement of Shri Prahsant Nayak was arranged to be recorded on 15.11.2023, wherein he specifically admitted that Shri Umang Garg of M/s. Umang Impex India Pvt. Ltd. was handling all the import related conversations with overseas supplier as well as with the Customs Broker. It appears that initially Shri Umang Garg deliberately avoided his presence and did not co-operate with the investigation. Therefore, Shri Umang Garg also rendered himself penalty under **Section 117 of the Customs Act, 1962.**

Shri Umang Garg as key participant in the supply chain, is expected to act responsibly and in accordance with the established rules and regulations. By exploiting Notification no. 46/2011 dated 01.06.2011 for illegal benefits,

the importer not only jeopardizes their own standing but also undermines the credibility of the entire importation process. Also, Shri Umang Garg was knowingly connived in importing, purchasing/selling and dealing with the offending goods. Shri Umang Garg by way of submitting documents having incorrect material particulars causes to be made signed and used the declaration and documents which were having false or incorrect material particulars, rendered themselves also, separately liable to penalty under **Section 114AA of the Customs Act, 1962.**

#### **13.4. Role of Customs Broker M/s. Rishi Kiran Logistics Pvt. Ltd.**

The role played by M/s. Rishi Kiran Logistics Pvt. Ltd., as a Customs House Agent, in facilitating the improper utilization of benefits under Notification No. 46/2011 dated 01.06.2011 is of significant concern. Customs House Agents serve as intermediaries between importers and customs authorities, entrusted with the responsibility of ensuring compliance with all regulatory norms. However, in the instance, M/s. Rishi Kiran Logistics Pvt. Ltd. has deviated from this crucial role by actively supporting the importer in obtaining wrongful benefits through the misapplication of Notification No. 46/2011 dated 01.06.2011 and thereby abetted the importer for to take undue benefit of duty exemptions.

In his statement of Shri Shanu Gupta, the Customs House Agent (CHA) acknowledges the creation of a new description based on the documents provided by the importer. He further asserts that he did not seek clarification from the importer regarding the disparities in the descriptions, specifically related to vinyl acetate copolymer, as mentioned in the Country of origin documents and not in invoices and packing lists. This admission points to a critical lapse in due diligence on the part of the CHA.

As a Customs House Agent, the responsibility extends beyond merely processing the provided documents; it includes ensuring the accuracy and consistency of the information presented. Failing to seek clarification on discrepancies in product descriptions, especially when tied to the country of

origin, undermines the agent's role in maintaining the integrity of customs declarations.

In his statement of Shri Shanu Gupta, Proprietor of M/s Rishi Kiran Logistics Pvt. Ltd., it appears that the Customs House Agent was engaged in the creation of a new description by amalgamating various invoices, packing lists, and country of origin information, which was not reflected in the Customs Tariff, to get benefit of Notification of 46/2011 dated 01.06.2011. As a Customs House Agent, the individual is entrusted with the responsibility of ensuring accurate and truthful documentation for import processes. However, the admission of creating a composite description, presumably to gain benefits related to the country of origin, reflects a clear departure from ethical standards. Manipulating information in this manner not only compromises the integrity of customs declarations but also undermines the transparency and fairness of the entire importation process.

The involvement of M/s. Rishi Kiran Logistics Pvt. Ltd. in facilitating the improper utilization of benefits under Notification no. 46/2011 dated 01.06.2011 is a matter of concern and raises questions about the integrity of the importation process. It appears that M/s Rishi Kiran Logistics Pvt. Ltd. has collaborated with the importer in taking advantage of the notification no. 46/2011 dated 01.06.2011 by way of mis declaration of descriptions. This collaboration implies a level of complicity in the misappropriation of trade-related benefits, indicating a breach of ethical and legal standards within the importation framework. Addressing this collaboration is essential not only for rectifying the specific instance at hand but also for deterring similar unethical practices in the future by M/s Rishi Kiran Logistics Pvt. Ltd., thus upholding the integrity of trade regulations and promoting a level playing field for all participants.

The collaboration of M/s Rishi Kiran Logistics Pvt. Ltd., in aiding the importer's actions is a blatant violation of the ethical standards expected from a Customs House Agent. Their involvement not only compromises the accuracy and legitimacy of customs declarations but also undermines the

very foundation of fair-trade practices. As a consequence of their actions, penalties should be imposed on M/s Rishi Kiran Logistics Pvt. Ltd., to deter such malpractices in the future. The penalty imposed should reflect the severity of their role in the wrongful utilization of Country of Origin with Notification No. 46/2011 dated 01.06.2011, serving as a deterrent to both M/s. Rishi Kiran Logistics Pvt. Ltd., and other Customs House Agents who might be tempted to engage in similar unethical practices.

M/s. Rishi Kiran Logistics Pvt. Ltd. handled the subject import consignments of M/s. Umang Impex India Pvt. Ltd. in such a casual manner that they did not even bothered to seek the reasons of difference of the classification of the goods mentioned in the corresponding Bill of Lading and other documents. The omission and commission of mis-declaration and mis-statement on part of M/s. Rishi Kiran Logistics Pvt. Ltd. abetted the importer and was also concerned with the offending goods having total quantity 185 MTs covered under Bill of Entry No. 4468293 dated 02.02.2023 and assessable Value of **Rs. 1,11,37,083/-** imported through 10 Containers which he knew were liable to confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 and also rendered themselves liable to penalty under **Section 112 (a) and 112 (b)** of the Customs Act, 1962.

It appears that M/s. Rishi Kiran Logistics Pvt. Ltd., has knowingly and intentionally made/signed/used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention. M/s. Rishi Kiran Logistics Pvt. Ltd., is also liable to penalty under **Section 114AA of the Customs Act, 1962.**

#### **14. Provisional Release under Bank Guarantee-**

The importer had applied for provisional release vide letter dated 19.04.2023 (**RUD No. 11**) of the goods and their request was accepted by the Commissioner of Mundra Customs house and he got the goods released on

provisional basis. Customs House Mundra had issued a letter vide F. No. CUS/APR/BE/MISC/720/2023-Gr 2-O/o Pr Commr-Cus-Mundra dated 19.06.2023, (**RUD-12**) under which the following condition was applied for provisional release of the goods covered under Bill of Entry No. 4468293 dated 02.02.2023-

- (i) *Taking bond of full assessable value and **BG (No. 0155NDDG00008824 dated 22.06.2023 amended on 28.06.2023)** equivalent to Rs. 15,00,000/- (Rupees Fifteen Lakh only).*

**15.** Now therefore, **M/s. UMANG IMPEX INDIA PVT. LTD** (IEC No. AACC8848F), may be called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra, having his office situated at 'Port User Building (PUB), Mundra Port' within 30 days from the receipt of the Show Cause Notice as to why: -

- (i) The declared description i.e. PVC Clathrate (Vinyl Acetate Copolymer) and declared classification HS Code 39043090 of the subject goods covered under Bill of Entry No. 4468293 dated 02.02.2023 should not be rejected and the same not be classified under its appropriate classification 39042100 of the Customs Tariff Act, 1975.
- (ii) The exemption benefit of Notification No.46/2011-Cus dated 01.06.2011, as amended, availed by the importer against the goods imported under Bills of Entry No. 4468293 dated 02.02.2023 at Mundra Port, should not be disallowed in terms of Section 28DA (10) of the Customs Act, 1962.
- (iii) The import consignment covered under Bill of Entry No. 4468293 dated 02.02.2023 having assessable value of Rs. 1,11,37,083/- (Rupees one crore eleven lakh thirty seven thousand eighty three only) should not be held liable for confiscation under Section 111(f), 111(l), 111(m) and 111(q) of the Customs Act, 1962 of the Customs Act, 1962. Since the subject goods have already been released

provisionally, why the Redemption Fine in lieu of confiscation should not be imposed under Section 125 of the Customs Act, 1962;

- (iv) Total Customs Duty amounting to **Rs. 30,88,870/- (Rs. Thirty Lakhs Eighty Eight Thousands, Eight Hundred and Seventy only)** including other SWS and IGST **as given in Annexure-A**, should not be demanded and recovered under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28 AA of the Customs Act, 1962.
- (v) Any duty/penalty/interest, if paid by the importer, should not be appropriated against the said amount mentioned at para (iv) above and the remaining amount should not be recovered from the Bank Guarantee submitted by the importer and the rest should not be demanded from the importer.
- (vi) Penalty should not be imposed on the Importer under Section 114A of the Customs Act, 1962.
- (vii) Penalty under Section 112(a) and 112(b) of the Customs Act, 1962 should not be imposed.
- (viii) Penalty under Section 14AA of the Customs Act, 1962 should not be imposed.

**15.1.** Now therefore, **Shri Prashant Kumar Nayak** Director of M/s. Umang Impex India Pvt. Ltd. Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi, may separately, be called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra, having his office situated at 'Port User Building (PUB), Mundra Port' within 30 days from the receipt of the Show Cause Notice as to why:-

- (i) Penalty under Section 112(a) and 112(b) of the Customs Act, 1962 should not be imposed.

- (ii) Penalty under Section 14AA of the Customs Act, 1962 should not be imposed.
- (iii) Penalty under Section 117 of the Customs Act, 1962 should not be imposed.

**15.2.** Now therefore, **Shri Umang Garg**, the key person of M/s. Umang Impex India Pvt. Ltd. Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi and beneficial owner of the goods, may be called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra, having his office situated at 'Port User Building (PUB), Mundra Port' within 30 days from the receipt of the Show Cause Notice as to why:-

- (i) Penalty under Section 112(a) and 112(b) of the Customs Act, 1962 should not be imposed.
- (ii) Penalty under Section 14AA of the Customs Act, 1962 should not be imposed.
- (iii) Penalty under Section 117 of the Customs Act, 1962 should not be imposed.

**15.2.** Now therefore, **M/s. Rishi Kiran Logistics Pvt. Ltd.**, may be called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra, having his office situated at 'Port User Building (PUB), Mundra Port' within 30 days from the receipt of the Show Cause Notice as to why: -

- (i) Penalty under Section 112(a) and 112(b) of the Customs Act, 1962 should not be imposed.
- (ii) Penalty under Section 14AA of the Customs Act, 1962 should not be imposed.

**21.** This show cause notice is being issued under Section 28(4) of the Customs Act, 1962 without prejudice to any other action that may be taken in respect of the impugned goods and/or the persons/company mentioned



in the notice, under the provisions of the Customs Act, 1962 and/or any other law for the time being in force.

**22.** This aforesaid noticee(s) are directed to submit their written replies within the stipulated time of 30 days from the date of receipt of this notice. In their replies they should clearly state whether they wish to be heard in person or not. If no cause is shown within the stipulated time or within such other time as may be provided by the adjudicating authority on a request being made in that regard, or, if they do not appear when the case is posted for hearing, the case will be decided ex-parte on the basis of evidences available on record without making any further reference to them.

**23.** This show cause notice is issued only in respect of issues discussed in the show cause notice and the goods mentioned against the bill of entries, as detailed in Annexure- A.

**24.** The documents/articles as listed at Annexure-R are relied upon and are enclosed with this show cause notice, and where not enclosed with this Notice will be made available for inspection on demand made in writing.

**25.** This show cause notice is being issued without prejudice to any other action that may be taken against the noticee(s) to this show cause notice or any other person(s) whether mentioned herein above or not under the Customs Act, 1962 or any other law for the time being in force in India. The department reserves the right to add, amend, modify or delete any part or portion of this notice any such addition, amendment, modification or deletion if made shall be deemed to be part and parcel of this notice but prior to adjudication thereof.

**26.** The noticees have an option to make an application under Section 127(B) of the Customs Act, 1962 prior to adjudication of this notice, to the Settlement Commission to have the case settled, in such form and in such manner, as specified in the Rules.

**27.** The documents/electronics non-relied in the notice, if any, may be collected from Directorate of Revenue Intelligence, Regional Unit Gandhidham within 30 days of receipt of the notice.

Additional Commissioner of Custom,  
Custom House, Mundra.

Encl: Annexure- R & A

**List of Noticees:-**

**To**

1. **M/S. UMANG IMPEX INDIA PVT. LTD**, Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi ([email-umangimpexindiapvtltd@gmail.com](mailto:umangimpexindiapvtltd@gmail.com) )
2. **Shri Prashant Kumar Nayak**, Directors of M/s. Umang Impex India Pvt. Ltd. Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi (Email-umangimpexindiapvtltd@gmail.com ).
3. **Shri Umang Garg, key person and beneficial owner of M/s. Umang Impex India** Pvt. Ltd. Ground Floor, G-960, DSIIDC industrial Area, Narela, Delhi ([Email-umangimpexindiapvtltd@gmail.com](mailto:Email-umangimpexindiapvtltd@gmail.com) ).
4. **M/s Rishikiran Logistics Pvt. Ltd.**, Customs Broker, Kiran House, Plot No. 8, Sector-8, Opp. Post Office, Gandhidham, Kutch-370201([email-Docs.cont@thekirangroup.com](mailto:email-Docs.cont@thekirangroup.com), [SDG@thekirangroup.com](mailto:SDG@thekirangroup.com) ).

**Copy to:- for information and necessary action, if any.**

1. The Additional Director, Directorate of Revenue Intelligence, Gandhidham Regional Unit.
2. Guard File.

