


OIO No. KDL/ADC/DPB/05/2024-25 dated 29.05.2024  
DIN-20240571ML0000515594

	<b>OFFICE OF THE COMMISSIONER</b>  <b>CUSTOM HOUSE, KANDLA</b>  <b>NEAR BALAJI TEMPLE, NEW KANDLA</b>  <b>Phone : 02836-271468/469 Fax: 02836-271467</b>	
<b>DIN- 20240571ML0000515594</b>		
A	File No.	GEN/ADJ/ADC/710/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/DPB/05/2024-25
C	Passed by	Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	29.05.2024
E	Date of Issue	29.05.2024
F	SCN NO. & Date	GEN/ADJ/ADC/710/2024-Adjn-O/o Commr-Cus-Kandla dated 29.04.2024
G	Noticee / Party / Importer / Exporter	M/s. Shivay Enterprises, Gandhidham and others

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

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

2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 12 8A के अंतर्गत प्रपत्र सीए- 1-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त (अपील),  
वीं 7मंजिल, मृदुलटावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS),  
Having his office at 7<sup>th</sup> Floor, Mridul Tower, Behind Times of India,  
Ashram Road, Ahmedabad-380009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्न लिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

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(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के म द सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

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While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

**Brief facts of the case:**

Specific intelligence developed by the Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit (AZU) indicated that M/s. Shivay Enterprises, situated at Ward9/B, Plot No.2, Zala Joravarsinh, Bharat Nagar, Gandhidham were importing '*automotive diesel fuel*' through Kandla Special Economic Zone (KASEZ), Gandhidham, by mis-declaring the same as '*Base oil*'. Intelligence was also gathered that M/s. A.B.Warehousing, Shed No. 211-212, Plot No.72-A, Sector-I, Phase-I, KASEZ, Gandhidham had filed Bill of Entry No. 2008042 dated 12.08.2021 for clearance of 185.41 MTs of imported goods declared as 'base oil' valued at Rs. 1,01,09,035.27 in the name of M/s. Shivay Enterprise, Gandhidham, for clearance of the same to their DTA unit.

2 Acting on the said intelligence, a discreet watch was kept and 4 tankers, in which the imported goods mis-declared as 'base oil' was loaded, were intercepted by the officers of Customs and DRI, Gandhidham, and detained at KASEZ, Gandhidham under panchnama dated 12.08.2021 **[RUD-01]**. Simultaneous search operations were also conducted at the premises of M/s. A. B. Warehousing at KASEZ under panchnama dated 12/13.08.2021**[RUD-02]**. During the course of panchnama dated 13.08.2021**[RUD-03]** for drawal of representative samples from the 4 intercepted tankers, it was noticed that the consignment of 185.41 MTs of imported goods were loaded into 8 chemical tankers. Representative samples from the 4 intercepted chemical tankers were drawn under panchnama dated 13.08.2021. During the panchnama proceedings remaining 4 chemical tankers also reached KASEZ and in all 8 chemical tankers containing the imported goods were detained at KASEZ.

3 The premises of M/s. Shivay Enterprise, Ward9/B, Plot No.2, Zala Joravarsinh, Bharat Nagar, Gandhidham were searched and during the visit, it was found fake and no such firm existed at the said address. Further, search at another known address of M/s. Shivay Enterprise, situated at 2<sup>nd</sup> Floor, Office No. 3, Plot No. 436, Gandhidham 370 201 was conducted and during the visit, the same was also found fake one.

**4 DRAWAL OF SAMPLES & INITIAL TESTING:**

4.1 Representative samples from the intercepted tankers were drawn under panchnama dated 13.08.2021 and were sent for testing at Central Excise & Customs Laboratory at Vadodara on 23.08.2021 vide Test Memo No. 01/2021,

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02/2021, 03/2021 and 04/2021, all dated 23.08.2021, issued from F.No. DRI/AZU/GI-02/Enq-33(Int-10)/2021[RUD-04].The Chemical Examiner after due chemical analysis of the samples gave the report on 27.08.2021 [RUD-05].The test report given by the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara is as under:

***‘analysed parameters meets the requirement of Automotive Diesel fuel as per IS:1460-2017. It is other than Base Oil’.***

4.2 Thus, the information received by DRI was, prima-facie, confirmed and it appeared that the goods in the instant case had been imported by mis-declaration and in gross violation of restriction/prohibition imposed under the Policy notified vide Notification No. 36/2015-2020 dated 17/01/2017 issued under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 read with Para 2.01 of the Foreign Trade Policy, 2015-2020. Thus, it appeared that 185.41 MTs goods valued at **Rs. 1,01,09,035/- (Rupees One crore one lakh nine thousand and thirty five only)** for clearance to their DTA unit covered under Bill of Entry No. 2008042 dated 12.08.2021, filed by Shri Shabbir Rayma, Partner of M/s. A. B. Warehousing, KASEZ, Gandhidham has been grossly mis-declared as ‘Base Oil (27101971)-Others’. The above said goods after Customs clearance were loaded into chemical tankers for further storage at M/s. Shreeji Liquid Terminals Pvt. Ltd., Gandhidham in the Tankers bearing Registration Nos. (i) GJ-12-AY-2895, (ii) GJ-12-BT-0122, (iii) GJ-12-X-2974, (iii) GJ-12-AY-7766, (v) GJ-12-AY-9037, (vi) GJ-12-AU-7138, (vii) GJ-12-AU-7144 and (viii) GJ-12-X-1515. Hence, the goods imported by resorting to mis-declaration and the conveyance viz. the tankers used for transportation of the mis-declared imported goods were seized under the provisions of Section 110 & 115 of the Customs Act, 1962, vide ‘Seizure Memo dated 22.11.2021 issued from F. No. S/15-13/SIIB/2020-21 by the Superintendent of Customs, Custom House, Kandla[RUD-06].

## **5. TARIFF CLASSIFICATION OF BASE OIL & AUTOMOTIVE DIESEL FUEL AS PER IS 1460:**

5.1 As per Customs Tariff Act, ‘Base Oil’ is classifiable under chapter sub-heading 27101971 of the Customs Tariff attracting duties leviable thereunder while ‘Automotive Diesel Fuel as per IS:1460’ is classifiable under chapter sub-heading 27101944 of the Customs Tariff and attracts duties leviable thereunder. Thus, 185.41 MT goods valued at Rs. 1,01,09,035/-, covered

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under Bill of Entry No. 2008042 dated 12.08.2021, filed by Shri Shabbir Rayma, Partner of M/s. A. B. Warehousing, Gandhidham for clearance to their DTA unit has been grossly mis-declared as ‘Base Oil (27101971)-Others’.

6 **POLICY RESTRICTIONS:**

6.1 As per Schedule I - Import Policy ITC (HS), 2017, pertaining to Section V Chapter 27, ‘Automotive Diesel Fuel as per IS:1460’ covered under EXIM Code 27101944, is allowed to be imported only by the State Trading Enterprises. Further, the policy condition stipulate that import is allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P & NG’s Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before that date.

7 **FOLOW-UP SEARCHES:**

7.1 Various follow-up searches were conducted at the premises of buyers of M/s. Shivay Enterprises and other related persons/premises under which incriminating documents pertaining to import/supply of diesel, which was mis-declared as ‘Base Oil’, were resumed for further investigation.

**Follow-up searches were conducted at the premises of following buyers of M/s. Shivay Enterprises, Gandhidham:**

Sr. No.	Date	Name and Address of Premises
1	18.08.2021	M/s. Shreeji Liquid Storage Tank, Gandhidham
2	19.08.2021	M/s. AUM Corporate Pvt. Ltd., Gandhidham
3	28.09.2021	Kandla Special Economic Zone, Gandhidham
4	18.10.2021	M/s. Bansal Cargo Movers, Gandhidham
5	18.10.2021	M/s. Shree Shipping Services, Gandhidham
6	20.10.2021	M/s. ACT Logistics, Gandhidham
7	18.10.2021	M/s. Shiv Shipping and Logistics, Gandhidham
8	18.10.2021	M/s. Rishi Shipping, Gandhidham

8 **SEIZURE OF THE IMPORTED GOODS:**

8.1 Based on the investigations conducted, it appeared that the subject goods cleared vide Bill of Entry No. 2008042 dated 12.08.2021, filed in the

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name of M/s. Shivay Enterprises (IEC No. BWAPM5677C), Gandhidham Kutch, having declared quantity of 185.41 MT and declared Assessable Value **Rs. 1,01,09,035.27/-** were mis-declared. The said goods were smuggled into India by mis-declaring the same as 'Base-Oil'. In fact, the said goods, which were loaded in 08 Chemical Tankers bearing Registration No. (i) GJ-12-AY-2895, (ii) GJ-12-BT-0122, (iii) GJ-12-X-2974, (iv) GJ-12-AY-7766, (v) GJ-12-AY-9037, (vi) GJ-12-AU-7138, (vii) GJ-12-AU-7144 and (viii) GJ-12-X-1515 was 'Automotive Diesel Fuel as per IS:1460'. The said mis-declared goods were "prohibited goods" in nature and "smuggled goods" as defined under Section 2(33) of the Customs Act, 1962. Therefore, the same are liable to confiscation under Section 111(d), 111(f) & 111(m) of the Customs Act, 1962 and all these acts of omission and commission tantamount to "Smuggling" as defined under Section 2(33) of the Customs Act, 1962. Therefore, the said goods were placed under seizure vide Seizure Memo dated 22.10.2021 issued from F. No. S/15-13/SIIB/2020-21 by the Superintendent (SIIB), Customs House, Kandla. The goods were handed over to Shri Shabbir Rayma, Partner of M/s. A. B. Warehousing, KASEZ under Supratnama dated 03.09.2021.

**9 STATEMENTS OF KEY PERSONS WERE RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962. THE STATEMENTS ARE DISCUSSED IN BRIEF HEREUNDER:**

9.1 Statement dated 13.08.2021 **[RUD-07]** of Shri Shabbir Rayma, Partner of M/s. A.B. Warehousing, KASEZ, Gandhidham was recorded on 13.08.2021 wherein he inter alia stated that he is providing warehouse services in Kandla Special Economic Zone through their Partnership firm M/s. A. B. Warehousing, Shed No. 211-212, Plot No. 72-A, Sector-1, Phase-I, Kandla Special Economic Zone (KASEZ), Gandhidham in which he and Shri Shahnawaj Sheikh are partners; that M/s. Shivay Enterprises, Gandhidham was their only client and sometimes they do warehousing/storage for M/s. NG Impex for steel coils and sometimes for his firm M/s. Rayma Cargo Handling for storage of leggings; that he had provided copy of IEC certificate, GST REG-06 of M/s. Shivay Enterprises and PAN Card of Shri Meghji Maheshwari as KYC documents for M/s. Shivay Enterprises, Gandhidham; that M/s. AB Warehousing being custodian, file warehousing Bill of Entry as per provisions of SEZ Act/Rules and M/s. Shivay Enterprises has not issued any separate authority letter for this purpose; that he had met Shri Meghji Maheshwari, Proprietor of M/s. Shivay Enterprises in the month of April, 2021 in KASEZ. He gave the details of goods cleared from M/s. A B Warehousing on 12.08.2021, which are as under:

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Bill of Entry No. & Date	Description of goods declared	Importer Name	Vehicle No.
2008042 / 12.08.2021	Base Oil	M/s. Shivay Enterprises	GJ12AY2895
			GJ12BT0122
			GJ12X2974
			GJ12AY7766
			GJ12AU7138
			GJ12AU7144
			GJ12AY9037
			GJ12X1515

He further stated that the last consignment was cleared from M/s. A B Warehousing on 09.08.2021 or 10.08.2021;thatall the truck tankers mentioned in thepanchanamas were cleared from his warehouse on 12.08.2021.He confirmed the facts stated by Shri Ramesh S Rakhaiya and Ibrahim A Kotwal, truck tanker drivers, relating to his firm M/s. A B Warehousing in their statements dated 13.08.2021.

9.2 Shri Ramesh S Rakhaiya, Driver, in his statement dated 13.08.2021**[RUD-08]**confirmedthat on 12.08.2021 he had loaded the vehicle bearing Registration No. GJ-12-AY-2895 from M/s. A B Warehousing, KASEZ, Gandhidham and the same was to be unloaded at M/s. Shreeji Terminals, Kandla Port; that he did not know any person of firm M/s. Shivay Enterprises and M/s.A.B.Warehousing.

9.3 Shri Ibrahim A Kotwal, Driver, in his statement dated 13.08.2021 **[RUD-09]**stated thaton 12.08.2021 he had loaded his tanker truck at the premises of M/s. A B Warehousing which would be emptied at M/s.Shreeji Terminals, Kandla Port; that something like oil was loaded in his tanker truck and he did not know name of the goods;that he did not know about M/s. Shivay Enterprises; that he only knew that the goods loaded in his vehicle No. GJ-12-BT-0122 pertains to M/s. Shivay Enterprises; that he did not know any persons from M/s. A.B.Warehousing.

9.4 Shri Rajesh Kumar Pandey, Driver, in his statement dated 15.08.2021 **[RUD-10]**stated that on 12.08.2021 Shri Jaydeepbhai told him to go to KASEZ for loading of goods in tanker No. GJ-12-AY-9037of M/s. B.M. Roadlines; that he did not know which type of liquid cargo was loaded in the tanker but as per his experience its smell was like diesel.

9.5 Shri Uda Ram, Driver, in his statement dated 15.08.2021[**RUD-11**] stated that on 12.08.2021 Shri Jaydeepbhai had told him to go to KASEZ for loading of goods in tanker No. GJ-12-AY-7766.

9.6 Shri Jaydeep Kariya, Logistics-in-charge of M/s. B.M. Transport and M/s. B.M. Roadlines, Gandhidham in his statement dated 15.08.2021[**RUD-12**] interalia stated that they did work for M/s. Shivay Enterprises; that Shri Nirav Prajapati enquired him regarding local transport services for M/s. Shivay Enterprises from KASEZ to M/s. Shreeji Liquid Storage Terminals Pvt. Ltd., Kandla (Shreeji Terminals) for his imported cargo and they provided service to M/s. Shivay Enterprises in the month of May, 2021; that normally they provided services approx. four times in a month from May, 2021 onwards and normally 04 to 05 chemical tankers in a single time and regarding last consignment, he stated that Shri Nirav Prajapati called him on 11.08.2021 and informed that he required 08 chemical tankers for the movement of imported product declared as 'base oil' under the name of his firm M/s. Shivay Enterprises from KASEZ to Shreeji Terminals, Kandla, however, they did not have 08 chemical tankers to be provided for transportation, however, he agreed to spare 02 chemical tankers belonging to M/s. B. M. Transport, further he arranged one more chemical tanker bearing Reg. No. GJ12AY2895 from the market; that Shri Nirav Prajapati managed the remaining 05 chemical tankers from the market for transportation of the imported goods in the name of M/s. Shivay Enterprises, however, on his request, he agreed to provide the Lorry Receipt (LR) in respect of all the 08 vehicles under the name of their firm M/s. B. M. Transport and got margin money i.e. Rs. 20/- per MT for providing the Lorry Receipt in the name of M/s. B. M. Transport; that the two chemical tankers belonging to M/s. B. M. Transport bearing No. GJ12AY9037 and GJ12AY7766 were used for transportation of the imported goods in the name of M/s. Shivay Enterprises and both the chemical tankers were sent to KASEZ for loading the imported goods. He further stated that Shri Uda Ram was the driver of vehicle GJ12AY7766 which was used for loading purpose of the goods and transport the same to the premises of M/s. Shreeji Terminals, after loading of the chemical tanker his assistant (Khalasi) drove the chemical tanker and parked the vehicle at the parking lot near their office and ran away as he suspected that he was being followed by a vehicle; that Shri Uda Ram who was sitting in the Dhaba noticed the officers and as per the directions of the Customs Officers drove the loaded chemical tanker to KASEZ and parked the vehicle in the parking lot and handed over the keys of the chemical tanker to the Customs Officers at Custom House at KASEZ; that on 13.08.2021 he received a call from Shri Nirav Prajapati who enquired about their above chemical tanker and informed him to hand over the same to the officers at Custom House, KASEZ.

9.7 Shri Maheshwari Meghrajibhai Devshi, Proprietor of M/s. Shivay Enterprises, Gandhidham in his statement dated 15.08.2021[**RUD-13**] interalia stated that this



company's name was M/s. Shivay Enterprises of which new address was beside Oslo Godown and next to Vansh Hospital on rent; that Shri Nirav Prajapati who is living at Gandhidham was his partner, financier and doing all dealings.

9.8 Shri Maheshwari Meghrajibhai Devshi, Proprietor of M/s. Shivay Enterprises, Gandhidham in his statement dated 16.08.2021 **[RUD-14]** inter alia stated that the address mentioned in the IEC of M/s. Shivay Enterprise was wrong, wherein Plot No.2 was incorrectly mentioned instead of Plot No.3; that earlier they had rented Plot No.3 and they had prepared an agreement to it, but did not do any operations from there; that Plot No.3 is very near to his house; that the back portion is being used for residential purpose and the front portion is a commercial space/room; that around one month back they had shifted to a new premises with an agreement, however, he did not remember the exact location; that the address of M/s. Shivay Enterprise, 2nd floor, Plot No.436, Gandhidham-370201 seems to be the new address, which is near Oslo, next to Vansh Hospital; that he was totally unaware regarding M/s. Shiv Shipping & Logistics, Plot No.45, Shop No.101, Robinsons Commercial Centre, Gandhidham-370201; that he was an ordinary person living with his family in the residence built by his father; that he earned around Rs. 20,000-25,000 per month; that his son also earned around Rs. 25,000/- per month; that he also earned Rs.1000-2000 for the mid-day meal work; that he is also involved in part-time business of selling of old cars and used his friend's office for that purpose; that he possessed an Activa Scooter; that apart from his signature and address, he had no concern with M/s. Shivay Enterprises; that he had no passport and had not visited any foreign country; that he had also not travelled much beyond Gujarat; that on being asked how did he communicate with foreign suppliers for business, he admitted that apart from his signature and address, he had no concern with M/s. Shivay Enterprises and he had no knowledge of import/export business at all; that he was not at all concerned with any import/export business; that he had no idea about the yearly turnover of his Company and how did his business get affected during Corona period; that he had no investment in M/s. Shivay Enterprises and have no capacity of any such investment; that three years back (as on 16.08.2021) he met Shri Nirav Prajapati for the first time for some business purpose and about 5 months back he had inquired as he was very tensed; that he informed him that his wife was suffering from cancer and that he needed money for her treatment; that Shri Nirav Prajapati, then informed him that he wanted to start a business of importing base oil and that he would train him for this; that he also

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informed him that he was not required to do anything, but would need his adhaar card, residential proof etc. and he handed over the said documents to some ICICI bank official, his bank account No.025905503640 was at Bank Circle, Gandhidham and handed over the signed cheque book (all leaves) to Nirav Prajapati, which was with him, in addition, he used to periodically send the signed documents of his adhaar card/residential proof and other documents as asked by Shri Nirav Prajapati; that he also used to send the signed copy of rent agreement on periodical basis; that he was never shown the original rent agreement prepared by Shri Nirav Prajapati, his personal account was with Dena Bank (Bank Circle, Gandhidham) and after merger it is with Bank of Baroda and Account No. is 78200100026596; that he did not know anything about the goods received by M/s. Shivay Enterprises through Bill of Entry No.2008042 dated 12.08.2021; that he did not know about previously imported goods by M/s. Shivay Enterprises; that the payments must have been made through the cheques pre-signed by him; that Shri Shabbir Rayma, Partner of M/s. A. B. Warehousing, KASEZ had informed him regarding the seizure of goods pertaining to M/s. Shivay Enterprise; that Shri Shabbir Rayma was his neighbour; that he had signed the agreement of M/s. Shivay Enterprises and M/s. A B Warehousing and M/s. A B Warehousing belongs to Shri Shabbir Bhai; that he was not aware that the imported goods of M/s. Shivay Enterprises warehoused at M/s. A B Warehousing, KASEZ were being transferred to the storage tank of M/s. Shreeji Terminal, but he must have signed on the documents and KYC for the storage of goods at M/s. Shreeji Terminal; that he was not aware that who used to pay the Customs Duty and for the transfer and storage of goods to M/s. Shreeji Terminal; that he was not aware that which transporter was involved in the imported goods of M/s. Shivay Enterprise, warehoused at M/s. A B Warehousing, KASEZ to the transfer and storage of goods to M/s. Shreeji Terminal.

9.9 Shri Jayantibhai Choudhary, Employee of M/s. Om Corporates, Gandhidham in his statement dated 17.08.2021 **[RUD-15]** inter alia stated that he was working with Smt. Bharti Prajapati who is wife of Shri Nirav Prajapati and Partner of M/s. AUM Corporate; that Shri Nirav Prajapati have other companies namely (i) M/s. AUM Corporate, 2<sup>nd</sup> Floor, 66A, Opposite Metro Show Room and above Green Fiber, Gandhidham, (ii) M/s. Arihant Agro, DBZS 99, Agrsain Marg, Gandhidham, (iii) M/s. Arihant Logistics which is related to Shri Dashrathbhai Prajapati, Father of Shri Nirav Prajapati which address is behind Nakoda Temple, Adipur Road, Gandhidham, (iv) M/s. Shivay Enterprises which earlier address is not known to him however all work related to it is operated from

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2<sup>nd</sup>Floor, 66/A, above Green Fiber, Opposite Metro Show Room, Gandhidham;that he had given details/numbers of their vehicles to M/s. B.M.Roadlines/B.M. Transport so that they can make LR for their vehicle; that the details of vehicles which were used on the direction of Shri Nirav Prajapati on 12.08.2021 for transporting base oil from M/s. A.B. Warehousing, KASEZ, Gandhidham to storage terminal of M/s.Shreeji Terminals are as under:

<u><b>Vehicle No.</b></u>	<u><b>Driver Name</b></u>
GJ 12 BT 0122	Shri Ibrahim
GJ 12 X 2974	Shri BholaBhai
GJ 12 AU 7138	Shri Mahender Bhai
GJ 12 AU 7144	Shri Umed Bhai
GJ 12 X 1515	Shri Ram Najeer

He further stated that Shri Nirav Prajapati called him on his mobile and told to arrange one driver and told that driver tell his name as Bhola before DRI officer and to tell DRI officer that he drove chemical tanker on 12.08.2021; that thereafter he told driver Shri Viramdev Singhto introduce him as Bhola and asked him to prepare a story for transportation from KASEZ to Shreeji Terminals; that all incident happened in the office of Shri Jaydeep Kariya at M/s. B.M. Roadlines where Shri Jaydeep Kariya called other chemical tanker dirvers whose nameswere Shri Rameshbhai and Shri Ibrahimbhai; that he knew that to change fake name is an offence but he had done the same with the direction of Shri Nirav Prajapati.

9.10 Shri Mahendra Singh, Driver of M/s. AUM Corporates, Gandhidham in his statements dated 18.08.2021[**RUD-16**]interalia stated thathe was driving the vehicle GJ-12-AU-7138; that after getting direction he had gone to KASEZ where the vehicle was gate in by Shri Najeer from M/s. A. B. Warhousing; that thereafter he had gone to M/s. A. B. Warehousing where his tanker was loaded; that thereafter Shri Najeer directed him to park the vehicle out side KASEZ gate and informed him that the goods would unload at M/s. Shreeji Terminals at Kandla port; that he parked the vehicle in the parking outside the KASEZ where he got direction from Shri Najir that he should remain there till further direction; that at two o'clock on 13.08.2021 Shri Patelbhai came and told him that DRI officer intercepted the other vehicle so he remain there and if DRI officer asked anything then he did not take Jayanti's name and asked him

to delete all clerk's number of M/s.AUM Corporate/Arihant Logistics and further asked if DRI officer asked that the goods belong to whom he had to reply that this goods belong to Shri Megh Singh (Meghraj Mehashwari) and saved name of Shri Meghbhai's name in his mobile phone; that he had loaded two times the tanker GJ-12-AU-7138 at KASEZ and both time he had unloaded the goods at M/s. Shreeji Terminals.

9.11 Shri Ugam Lal, Driver of M/s AUM Corporates, Gandhidham in his statement dated 18.08.2021[**RUD-17**]interalia stated that on 12.08.2021 Shri Jayantibhai directed him to go for loading of cargo at KASEZ with vehicle GJ-12-AU-7144; that after getting direction he had gone to KASEZ where the vehicle was gate in by Shri Najeer from M/s A. B. Warehousing; that thereafter he had gone to M/s A. B. Warehousing where his tanker was loaded with the help of pump; that thereafter Shri Najeer directed him to park the vehicle out side KASEZ gate and informed him that the goods would unload at M/s Shreeji Terminals at Kandla port; that he knew this goods belongs to Shri Nirav Prajapati the owner of M/s AUM Corporate; that he parked the vehicle in the parking outside the KASEZ where he got direction from Shri Najir and Shri Patelbhai that he should remain there till further direction; that at 02 o'clock on 13.08.2021 Shri Patelbhai came and told him that DRI officer intercepted the other vehicle so he remain there and if DRI officer asked anything then he should not take Jayanti's name and asked him to delete all clerk's number of M/s AUM Corporate/Arihant Logistics and further asked if DRI officer asked that the goods belong to whom he had to reply that this goods belong to Shri Megh Singh (Meghraj Mehashwari) and saved name of Shri Meghbhai's name in his mobile phone; that he had loaded 3-4 times the tanker GJ-12-AU-7144 at KASEZ and all time he had unloaded the goods at M/s Shreeji Terminals; that LR handed over to him by the clerk of M/s AUM Corporate Shri Jayantibhai Patel, Shri Gautambhai, Shri Vikasbhai, Shri Arjunbhai, Shri Mahesh Patel etc. and all LR issued with the name of M/s Arihant Logistics; that he had no idea about the use of goods carried by him; that he was told that if any one asked about the goods he should reply that the tanker was loaded with paraffin; that he had gone 03 times with loaded tanker from M/s Shreeji Terminals to out of Gandhidham.

9.12 Shri Nirav Prajapati, Director of M/s AUM Corporate Pvt. Ltd., Gandhidham in his statement dated 23.08.2021[**RUD-18**]interalia stated that in the year 2018-19, he started trading of Vegetable Waste Oil in the name of M/s Aum Impex, Partnership firm wherein he and Shri Chirag Arvindkumar Khandor were equal

partners; that apart from local procurement, they had also imported goods described as Base Oil in the name of M/s. Aum Impex till October, 2020; that they had imported the goods declared as 'Base Oil' from Mundra (one consignment) and Kandla Port (four consignments) in the name of M/s. Aum Impex; that they constituted a firm namely M/s Aum Corporate Pvt. Ltd in the year 2019-20, a private limited company in the same premises where M/s. Aum Impex was functioning i.e. 66A, Above Green Fibre, Opp. Metro Showroom, Main Market, Gandhidham-370201; that Shri Chirag Arvindkumar Khandor and hewere the Directors of the said company;that after discontinuing imports in the name of M/s. Aum Impex, they started importing the goods declared as 'Base Oil' in the name of M/s. Aum Corporate Pvt. Ltd., since October, 2020; that till then, they had imported approximate 9 to 10 consignments of goods declared as 'Base oil' and total imported quantity would be around 1000 to 1100 MT; that they had imported the goods declared as 'Base Oil' from Mundra Port in the name of M/s. Aum Corporate Pvt. Ltd (9 consignments); that after clearance from the port, they directly bring this material to the storage terminal i.e. S. Poddar, Gandhidham & M/s Shreeji Terminal, Gandhidham.

He agreed with the facts narrated in the panchnama dated 19.08.2021, drawn at 66A, Above Green Fibre, Opp. Metro Showroom, Main Market, Gandhidham-370201. He further stated that apart from M/s. Aum Impex and M/s. Aum Corporate Pvt. Ltd., the other firms functioning from the above address are Arvind Kumar & Co., M/s. Shivay Enterprise, M/s. Arihant Agro Industries; that M/s. Shivay Enterprise is a Proprietorship firm in which Shri Maheshwari Meghrajbhai Devshi is the Proprietor; that he came into contact with Shri Meghrajbhai Devshi through Shri Shabbir Rayma of M/s. A.B. Warehousing; that Shri Meghrajbhai Devshi wanted some financial help for treatment of his cancer ailing wife; that hence, he suggested that Shri Meghrabhai Devshi open a firm in the name of M/s. Shivay Enterprises;that they entered into an agreement with the owner of the premises at Ward No.9/B, Plot No.2, Zala Joravarsinh Society, Bharat Nagar, Gandhidham; that this premises was taken on lease for just 2 months only and after that they shifted the activities of M/s. Shivay Enterprise to their above address at 66A, Above Green Fibre, Opp. Metro Showroom, Main Market Gandhidham-370201; that as Shri Meghrajbhai Devshi was not educated he helped him through his employees for signing various documents required for import of the product declared as 'Base Oil' in the name of M/s. Shivay Enterprises.

On being shown the statements dated 15.08.2021, 16.08.2021 and 17.08.2021 of Shri Meghrajbhai Devshi, he confirmed the facts stated therein as true and correct. He further stated that since the Customs assessment were done on faceless basis and at KASEZ the procedures were different, they preferred to import the product declared as "Base Oil" through M/s. A.B. Warehousing at KASEZ, who filed the Bill of Entry on behalf of M/s. Shivay Enterprise and cleared the imported consignment; that the Bill of Entry No. 2006653 dated 07.07.2021 was a Bill of Entry for Home Consumption (SEZ to DTA unit); that so far imported 21 consignments of imported goods in the name of M/s. Shivay Enterprise; that they contacted the overseas supplier M/s. Carbonex Overseas FCZ and M/s. Stanley Trading LLC, Dubai, for supply of the goods in the name of M/s. Shivay Enterprises; that they started importing the goods in the name of M/s. Shivay since April, 2021 to till then; that they contacted Shri Hasan in case of M/s. Carbonex Overseas and M/s. Stanley Trading LLC, Dubai; that the accounts of M/s. Shivay Enterprises are looked by their group concern; that they get finance for the import of goods in the name of M/s. Shivay Enterprise; that M/s. Shree Shipping, M/s. Rishi Shipping and M/s. Shiv Shipping and M/s. Bansal Cargo Movers were the buyers of the goods imported in the name of M/s. Shivay Enterprises; that Shri Vipul Thakkar was the person for M/s. Shree Shipping, Shri Shailesh Thakkar for M/s. Rishii Shipping, Shri Meghabhai Ahir for M/s. Shiv Shipping and Shri Vikas Bansal for M/s. Bansal Cargo Movers; that M/s. A.D. Mehta was the CHA for the clearance of the imported goods in the name of M/s. Shivay Enterprise; that the goods imported in the name of M/s. Shivay Enterprise were first brought into the KASEZ and warehoused at M/s A.B. Warehousing; that these goods declared as 'Base Oil' were packed in Flexi Bags of 20 MT each, the imported goods packed in Flexi tanks were pumped into the chemical tankers using a fighter jet pump; that from the warehouse of M/s. A.B. Warehousing the imported goods in chemical tankers were first transported to M/s Shreeji Terminals and stored in the designated tanks and then distributed from M/s Shreeji Terminals.

He agreed with the facts narrated in the panchnamas dated 12.08.2021, 12/13.08.2021 and 13.08.2021, drawn at KASEZ and at the premises of M/s A.B. Warehousing, KASEZ. He further stated that M/s. B.M. Roadlines/B.M. Transports provide the LR and chemical tankers for transportation of the goods imported which are declared as 'Base Oil' from KASEZ to M/s. Shreeji Terminals; that he contacted Shri Jaydeep at M/s. B.M. Roadlines for arranging of chemical tankers for transport of the imported goods through his employees

Shri Jayantilal Patel, Shri Satyam, Shri Dinesh etc. He confirmed the facts stated by Shri Jaydeep Kariya, Logistics Manager of M/s. B.M. Transports in his statement dated 15.08.2021. He confirmed the facts stated by Shri Jayanti Choudhary in his statement dated 17.08.2021. He further stated that they had purchased second hand chemical tankers for local transportation of their business activities in the name of Shri Jayanti Choudhary; that he had asked Shri Jayanti Choudhary to arrange for a driver and send him to DRI for giving the statement.

9.13 Shri Vikas Ratankumar Bansal, Partner of M/s Bansal Cargo Movers, Gandhidham in his statement dated 18.10.2021 **[RUD-19]** inter alia stated that they used to purchase the requirement of their fuel i.e. diesel from M/s. Agrawal Automobiles, IOCL distributor; that they had purchased fuel from M/s. Shivay Enterprise, Gandhidham, for the period from 28.05.2021 to 17.07.2021; that he was not aware of the Proprietor or Director of the firm M/s. Shivay Enterprise.

He confirmed the ledger account of M/s. Shivay Enterprise maintained by his firm M/s. Bansal Cargo Movers, which was recovered under panchnama dated 18.10.2021. On being asked he stated that the invoices, issued in the name of M/s. Shivay Enterprise, for the goods purchased by him from M/s. Shivay Enterprise, bear the description of the goods as 'BASE OIL'. On being shown the Invoice No. SE/17 dated 28.05.2021, issued by M/s. Shivay Enterprise, for 28,000 Ltr 'Base Oil Ltr' for total amount of Rs. 19,31,848.80 @ Rs. 68.99 or Rs. 69/- per litre approximately, he stated that they had made payment into the account of M/s. Shivay Enterprise through RTGS transfer; that they had emptied the said goods described as 'Base Oil' into their underground storage tank and dispensed for use in their trucks; that they had not traded the said goods supplied by M/s. Shivay Enterprise; that they checked the quality of the said goods by using a density meter and take a dip reading for the quantity of the said goods; that the density of diesel is 0.83 g/cm<sup>3</sup>; that the products supplied by M/s. Shivay Enterprise also matches the said measurement; that the said products supplied by M/s. Shivay Enterprise be termed as 'Diesel'; that he confirmed and stated that the goods sold to them were termed and sold to them as 'diesel' only; that one person named Shri Chirag Khandor came into contact with him during business dealings in September, 2020, who offered to sell him diesel in the name of various firms such as M/s. Aum Impex, M/s. Arihant Agro Industries, M/s. Arihant Petrochem Pvt. Ltd., M/s. Shivay Enterprise etc., during different periods from September, 2020 till July, 2021;

that he was regularly purchasing diesel from him in the name of the aforesaid companies during different periods and made payments through RTGS transactions; that apart from Shri Chirag Khandor his associate Shri Nirav Prajapati also contacted him for sale of diesel; as there was severe competition in the market, to cut their overhead expenses, he agreed to purchase diesel declared as base oil in the documents; that he always communicated with Shri Chirag Khandor by way of whatsapp chat and sometimes over whatsapp calls and normal calls.

During recording of his statement he took the print outs of whatsapp chat had with Shri Chirag Khandor during the period from 21 September, 2020 to 27 September, 2021. He stated that whatsapp chat messages with Shri Chirag Khandor were regarding diesel purchased from Shri Chirag Khandor and Shri Nirav Prajapati through their various firms, during different periods, payments thereof, discrepancies such as short shipment, adjustment of the short shipment in subsequent purchases, poor quality of goods supplied by them etc.

On being shown the copy of panchnama dated 13.08.2021 drawn at KASEZ, Gandhidham, he confirmed that representative samples were drawn from the four trucks intercepted by the officers of DRI under this panchnama. On being shown the Test Memo No. 04/2021 and its report given by the Central Excise & Customs Laboratory, Vadodara dated 27.08.2021 he stated that as per report the sample meets the requirement of 'Automotive Diesel Fuel'; that the description of the goods mentioned in the invoice describes the goods as 'Base Oil', but, Shri Chirag and Shri Nirav Prajapati had sold diesel only to their firm.

9.14 Shri Madev Naran Agadiya, Partner of M/s Shiv Shipping and Logistics, Gandhidham in his statement dated 19.10.2021 **[RUD-20]** inter alia stated that he was looking after work related to taking order of work, movement of vehicle, purchase of fuel for vehicle; that there are 112 vehicles in M/s Shiv Shipping and Logistics, Gandhidham and all were of Diesel Engine; that he purchased Diesel/Fuel for the company's vehicles from (i) M/s Reliance Industries, Jamnagar, (ii) M/s Shivay Enterprises, (iii) M/s AUM Impex, (iv) M/s Arihant Agro Industries, (v) M/s Arihant Petrochem, (vi) M/s D D Shah Petrochem Private Limited etc.; that since they got diesel at cheaper prices from market therefore they purchased the Diesel from M/s Shivay Enterprises, M/s AUM Impex, M/s Arihant Agro Industries, M/s Arihant Petrochem, M/s D D Shah Petrochem Private Limited; that he had no idea about the Proprietor/Director of M/s Shivay Enterprises; that Shri Nirav Prajapati had fixed price on behalf of



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M/s Shivay Enterprises; that they purchased fuel from M/s Shivay Enterprises after 01.04.2021; that M/s Shivay Enterprises issued the diesel invoice mentioning description as 'Base Oil' at approx. Rs. 69/- ltr; that they checked density of diesel with density metre; that the density of diesel should be 0.83 g/cm<sup>3</sup> which was equivalent to the density of diesel purchased by their company from M/s Shivay Enterprises, M/s AUM Impex, M/s Arihant Agro Industries, M/s Arihant Petrochem, M/s D D Shah Petrochem Private Limited which was sold to their company with the name 'Base Oil'; that on the invoice issued by M/s Shivay Enterprises, M/s AUM Impex, M/s Arihant Agro Industries, M/s Arihant Petrochem, M/s D D Shah Petrochem Private Limited condition "This Product will be used for the prescribed Legitimate purpose only and shall not be used or consumed for any other purpose including but not limited to edible oil, pharma applications or fuel adulteration" was mentioned for hiding the 'Diesel' with the name of 'Base Oil'; that the transport market was very competitive therefore they purchased fuel from M/s Shivay Enterprises on low rate; that density of the fuel received from M/s Shivay Enterprises was equivalent to diesel; that he spoke with Shri Nirav Prajapati and Shri Chirag Khandor regarding purchase of diesel both on phone and face to face; that according to the test report issued by the Chemical Examiner, Central Excise and Customs Laboratory, Vadodara, the goods were 'Automotive Diesel Fuel'; that the fuel sold by Shri Nirav Prajapati and Shri Chirag Khandor was diesel; that they used fuel for their 112 vehicles which were diesel engine.

9.15 Shri Pritesh Khandor, Authorised Signatory of M/s Shree Shipping Service, Gandhidham in his statement dated 19.10.2021 **[RUD-21]** inter alia stated that they had purchased the goods described as base oil which was used as a fuel for trucks/tankers from M/s. Aum Impex, Gandhidham, for the period from end of 2019 to 24.11.2020 and further, he purchased goods which was used as fuel for trucks/tankers from M/s. Arihant Agro Industries from 24.11.2020 till 30.06.2021 approx.; that he was not aware who was the Proprietor, Director or Manager of the firm M/s. Shivay Enterprise, but he knew that Shri Chiragbhai and Shri Nirav Prajapati were controlling the activities of that firm; that he knew Shri Nirav Prajapati through his business relations; that Shri Nirav Prajapati informed that the activities of M/s. Shivay Enterprise was also controlled by him and requested to transfer the funds in the name of M/s. Shivay Enterprise and hence they transferred the said amount through RTGS transfer.

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He was confronted with the documents, withdrawn from their premises under panchnama dated 18.10.2021. He was also confronted with the details of stock on hand maintained by M/s. Shree Shipping Service as below:

	Opening	Debit balance	Credit balance	Closing balance	Page No. of the documents
AUM IMPEX Diesel Stock A/C Kandla	3323557	2050000	1789363	3584194	394
AUM IMPEX Diesel Stock A/C	2442599	2050000	4153792	338807	394
AUM IMPEX Diesel Stock A/C Kandla	847776.00	23053000	23329228	571548.00	356
AUM IMPEX Diesel Stock A/C	597720.00	25388212.00	27451434	1465502	356
AUM IMPEX Diesel Stock A/C Kandla	562938	1264049.16	1264140	90.84	312

On perusal of the documents and above details, he stated that the above documents were received by mail from their Chartered Accountant employed in their firm;that the description shown therein was the stock position in respect of the opening balance, debit/credit and closing balance of diesel received from M/s. Aum Impexand that statement was prepared by his Chartered Accountant; that Shri Nirav Prajapati and Shri Chiragbhai Arindbhai Khandor were Partners of the firm M/s. Aum Impex and the activities of the other firms in the name of M/s. Arihant Agro Industries, M/s. Arihant Petrochem Pvt. Ltd., apart from M/s. Shivay Enterprise were also controlled by Shri Chiragbhai and Shri Nirav Prajapati because they had received goods from the said firms sold to their firm M/s. Shree Shipping Services.

He further stated that the said goods were used by their firm as fuel for their fleet of 176 trucks/tankers; that he had purchased goods from M/s.Aum Impex, M/s Arihant Agro Industries, M/s.Arihant Petrochem Pvt. Ltd., bear the description of the goods as BASE OIL, however, they had used the said goods as fuel for their fleet of trucks; that they had stored the said goods so received from the above firms in their own tankers into his firm and store the same in the two tankers installed in their premises and used the same according to their requirements.

On being shown invoice No. Aum/1535/20-21 dated 14.09.2020, issued by M/s. Aum Impex, wherein description of goods was shown as 'Base Oil Ltr Industrial Grade', quantity 20,000 Ltr., rate Rs. 41.00 per litre for total amount of Rs. 9,67,600/-, he stated that the description "Industrial Grade" was mentioned in the invoices issued by M/s. Aum Impex only to cover up the said goods described as 'Base Oil', however, he confirmed that the goods sold to them were used by their firm as fuel for trucks/tankers only; that he confirmed that the goods sold to them were imported goods; that he was aware that diesel can be purchased from IOCL/HPCL/BPCL/Reliance Industries/Essar petrol/diesel pumps only, however, as there was an opportunity to purchase imported goods at a lower price, they purchased the said goods from the above concerns controlled by Shri Chirag Bhai and Shri Nirav Prajapati; that as there was severe competition in the market, to cut their overhead expenses, they agreed to purchase the goods declared as base oil in the documents; that they always emptied the tankers dispatched by the above firms in their storage tank at Mithi Rohar, Near H.K. Godowns, Gandhidham; that they had not purchased any goods in the name of M/s. Shivay Enterprise.

On being shown the statement dated 23.08.2021 of Shri Nirav Prajapati, Director of M/s. Aum Corporate Pvt. Ltd., Gandhidham he stated that Shri Nirav Prajapati in his above statement has stated that their firm had financed for the import of the goods in the name of M/s. Shivay Enterprise, but, they had made payments for the supplies of the goods effected by the firms controlled by Shri Chirag Bhai and Shri Nirav Prajapati.

9.16 Shri Ashok C Thakkar, Partner of M/s ACT Logistics, Gandhidham in his statement dated 21.10.2021 **[RUD-22]** inter alia stated that they purchased Diesel/Fuel for company's vehicles from (i) M/s Reliance Industries, Jamnagar, (ii) M/s Shivay Enterprises, (iii) M/s Aum Impex, (iv) M/s Arihant Agro Industries, (v) M/s Arihant Petrochem, (vi) M/s D D Shah Petrochem Private Limited, (vii) M/s Aashapura Trading and Company etc.; that they were storing the diesel purchased from the above companies/firms; that diesel can be purchased only from IOCL/HPCL/BPCL/Reliance Industries/Essar etc. petrol pump, but, since they got diesel at cheap rates from the market therefore they purchased the Diesel from M/s Shivay Enterprises, M/s Aum Impex, M/s Arihant Agro Industries, M/s Arihant Petrochem, M/s D D Shah Petrochem Private Limited, and M/s Aashapura Trading and Company; that he had no idea about the

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Proprietor/Director of M/s Shivay Enterprises; that Shri Nirav Prajapati had fixed price on behalf of M/s Shivay Enterprises; that they purchased fuel from M/s Shivay Enterprises after 01.04.2021; that Shri Chirag Khandor had fixed price of diesel on behalf of M/s Aum Impex, M/s Arihant Agro Industries, M/s Arihant Petrochem, M/s DD Shah and Shri Arpit Mukesh Tanna had fixed price on behalf of M/s Aashapura Trading Company; that on the invoice issued by M/s Shivay Enterprises, M/s Om Impex, M/s Arihant Agro Industries, M/s Arihant Petrochem, M/s D D Shah Petrochem Private Limited, M/s Aashapura Trading Co. condition "This Product will be used for the prescribed Legitimate purpose only and shall not be used or consumed for any other purpose including but not limited to edible oil, pharma applications or fuel adulteration" was mentioned for hiding the 'Diesel' with the name of 'Base Oil'; that the transport market was very competitive therefore they purchased fuel from M/s Shivay Enterprises at low rate; that the density of the fuel received from M/s Shivay Enterprises was equivalent to diesel; that he spoke with Shri Nirav Prajapati and Shri Chirag Khandor regarding purchase of diesel both on phone and face to face; that the fuel sold by Shri Nirav Prajapati and Shri Chirag Khandor was diesel; that the density of diesel should be approx. 0.83 g/cm<sup>3</sup> and the density of the fuel they purchased from M/s Aum Impex, M/s Arihant Agro Industries, M/s Arihant Petrochem, M/s D D Shah Petrochem Private Limited, and M/s Aashapura Trading and Company was 0.80 g/cm<sup>3</sup> to 0.84 g/cm<sup>3</sup>; that the fuel sold by these firms was diesel which was sold to them by mentioning 'Base Oil'; that diesel ('Automotive Diesel Fuel') was sold to their company for utilisation in their trucks/vehicles.

9.17 Shri Manoj Mansukhani, Proprietor of M/s Rishi Shipping, Gandhidham in his statements dated 19.10.2021 [RUD-23] inter alia stated that in FY 2018-19 one person Shri Anand Joseph from M/s. A S Exim, Gandhidham approached them for the purchase of fuel named as "Base Oil"; that they had introduced "Base Oil" as substitute of diesel which can be used as diesel for diesel-powered equipment; that around starting of 2020 Shri Chirag Khandor and Shri Nirav Parjapati approached him and offered discounted price for the purchase of "Base Oil" of same quality as supplied by M/s. A S Exim, Gandhidham; that Shri Chirag had also introduced "Base Oil" as substitute of diesel which can be used as diesel for diesel-powered equipment; that they again took the trial of the diesel supplied by Shri Chirag and found it equally efficient with the diesel purchased from their other suppliers; that since Shri Chirag Khandor had offered better prices than Shri Anand Joseph they started purchasing the same from Shri Chirag Khandor on regular basis; that Shri

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Chirag Khandor had supplied fuel till last June-July, 2021 through many firms/companies i.e. M/s. Arihant Agro Industries, M/s. Aum Corporate Pvt. Ltd., M/s. Aum Impex and M/s. Shivay Enterprises etc.; that after June-July, 2021 they stopped purchasing fuel from Shri Chirag Khandor due to strictness of Gujarat Govt. on the use of BaseOil; that he used to contact with the supplier only in the initial stage for finalizing the price, quality of fuel etc. and once the negotiation was finalized in respect of the quality and price, Shri Shailesh L Thacker, Employee of M/s. Rishi Shipping used to handle all the activities in respect of the purchase of the fuel i.e. diesel and he used to be in touch with the supplier on day to day basis; that in respect of purchasing of fuel all the directions were given by him to Shri Shailesh L Thacker; M/s. RIL and M/s. Nayara Energy Ltd provide quality certificate along with each of the supply of fuel to M/s. Rishi Shipping; that in the very beginning in around 2019-20 he had sent the samples of fuel supplied by Shri Chirag Khandor to M/s. Geo Chem Lab., Kandla for testing of the quality and after satisfy with the quality supplied by Shri Chirag Khandor he had started purchasing fuel from him; that the fuel supplied by Shri Chirag was around Rs.25/- to Rs.27/- cheaper than the diesel supplied by other fuel suppliers such as M/s. RIL, M/s. IOCL etc. and was almost equally efficient; that he on behalf of M/s. Rishi Shipping used to arrange the transportation to get the fuel supply from M/s. RIL and Rishi Shipping bear the transportation charges for the same; that they used to receive all the diesel supplied to them at their above said allotted space at Kandla port; that Shri Harnek Singh, one of their employee used to handle all the activities at their above said refueling point at Kandla port, he used to receive the fuel supplied by the supplier, further refuel the equipment and maintained the stock; till May-June, 2021, their monthly requirement of diesel was 4 Lacs KL approx., out of 4 Lacs KL, they used to buy 1 Lac-1.2 Lacs KL from Shri Chirag, 1 Lac-1.2 Lacs KL from M/s. Nayara Energy Ltd and balance from M/s. RIL; that for supply of fuel from M/s. RIL, from M/s. A S Exim and any of the firm/company of Shri Chirag Khandor they used to pay against the supplier invoice; that they had paid to Shri Chirag Khandor two times in advance to book the fuel price for a specific quantity; that they used to store the fuel supplied by Shri Chirag through M/s. Arihant Agro Industries, M/s. Aum Corporate Pvt. Ltd., M/s. Aum Impex and M/s. Shivay Enterprises etc., and the fuel supplied by other supplier separately; that he did not know about the Director/Proprietor of M/s. Shivay Enterprise.

On being shown Tax Invoice No. SE/4 dated 10<sup>th</sup> May 21, issued by M/s. Shivay Enterprise to M/s Rishi Shipping, Gandhidham, withdrawn under

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Panchnama dated 18.10.2021 drawn at M/s. Rishi Shipping, Gandhidham, he perused the document and explained that in the said invoice the description of goods supplied is “Base Oil-Ltr. with a condition *“this product will be used for the prescribed legitimate purposes only and shall not be used or consumed for any other purpose including but not limited to edible oil, pharma applications or fuel adultration”*, HSN No. 271019, Qty 20000Ltr., Rate Rs. 64/- per liter, total amount Rs. 1510400/-; that Shri Harnek further mentioned the density of the fuel as 824.5.

On being shown ‘token slip No. 53’, issued by Shri Harnek Singh in his own handwriting wherein it was mentioned “Diesel purchased from Chirag Bhai” Invoice No. SE/4, density 0.8245 for GJ 12 X 2983, Qty 20000 Ltr., CF/GJ 12Z3780, he confirmed that the token slip No. 53 was issued in respect of the fuel supplied under Tax Invoice No. SE/4 dated 10<sup>th</sup> May 21 issued by M/s. Shivay Enterprise to Rishi Shipping, Gandhidham; that he confirmed that E-way bill No. 6612 9492 8159 dated 10.05.2021 was issued for supply of goods under Tax Invoice No. SE/4 dated 10.05.2021 from Shivay Enterprise to Rishi Shipping.

On being shown Tax Invoice No. 663 dated 04/11/20 issued by M/s. Arihant Agro Industries, Gandhidham to Rishi Shipping, Gandhidham for supply of “Base Oil- Industrial grade.” HSN No. 2710, Qty – 20000Ltr., Rate Rs. 49/- per liter, total amount Rs. 980000/-, he stated that his wife had endorsed the above said invoice for approval of the bill for payment; that the said bill had been received by Shri Harnek Singh; that Shri Harnek further mentioned the density of the fuel as 0.8308; that as per the description of the goods supplied to him vide above said invoice, it can’t it be used for Diesel powered engines; that because of the increase of the diesel prices and as they were not getting support from their customers for the revision of rates, they had started using this fuel as they know most of the cargo handling agents at ports were also using base oil as alternate to diesel.

He also confirmed ‘token slip No. 66’, issued by Shri Harnek Singh in his own handwriting wherein it was mentioned “Diesel purchased from Arihant Agro Industries” Invoice No. 6012 3507 1328, density 0.8308 for GJ 12 X 2983, Qty 20000 Ltr., CF/GJ 12X3015; that E-way bill No. 6012 3507 1328 dated 04.11.2020 was issued for supply of goods “HSN Code 2710, Product name & description: Base oil Industrial grade” under Tax Invoice No. 663- 04/11/2020 from M/s. Arihant Agro Industries To Rishi Shipping; that the above token slip

No. 66 was issued in respect of the fuel supplied under Tax Invoice No. 663 dated 4/11/2020; that they maintained the diesel register in which they maintain party wise stock of diesel purchased by M/s. Rishi Shipping; that M/s. Nayara Energy Ltd., Arihant Agro Industries, AUM Corporate, Kotak, Shivay, Meridian Enterprise etc. were the fuel suppliers for his company; that in the register the short names of the above suppliers are used i.e. Nayara, Arihant, Aum, Kotak, Shivay, Meridian Enterprise etc.

9.18 Shri Chirag Khandor, Proprietor of M/s Aum Corporate Private Ltd., Gandhidham in his statement dated 26.10.2021[RUD-24]interalia stated thathe had started his business career from M/s Arihant Agro Inds.,a Proprietorship firm,wherein he carry out trading business of Base Oil; that M/s Aum Corporate Pvt. Ltd., in which there are two Directors, one washe and the other wasShri Nirav Prajapati; that they are 50% partners in the profit and loss of the company; that the company was engaged in base oil trading and importing since March, 2021; that their foreign supplier was Chem Lub., Singapore and base oil was imported from PetroNass, Malaysia; that along with import, they also purchased goods from domestic market mostly from Gandhar Oil-Silvasa, Colombia-Silvasa, Bhuvi-Delhi, Hazal-Mumbai & Alka –Ahmedabad; that M/s Aum Impex is a Partnership firm, in which he and Shri Nirav Prajapati are equal partners; that in the year 2018-19, he started trading Vegetable Waste Oil; that M/s Om Impex, was a partnership firm, whose office is located above Green Fiber, 66A above Metro Showroom, Main Bazaar, Gandhidham-370201; that vegetable waste oil has always been sourced locally from Ruchi Soya and it was supplied only to IFFCO;that from the year 2019, besides vegetable waste oil, M/s Om Impex started trading of base oil which they used to get locally procured from MPCL, Delhi, Vijay Kumar and Ajay Kumar & Co; that M/s Arihant Petro Chem Pvt. Ltd., has two Directors, he and Shri Nirav Prajapati; thatthey are 50% partners in profit and loss in the company; that their customers were almost common in all the above four companies, which were as follows:

- 1.Bansal Transport Cargo Mover
2. Yana Impex, Gandhidham-Trader
- 3.Shree Shipping-Transporter
4. Bhagya Raj Impex,Trader
5. Rishi Shipping -Transporter
6. ACT Logistic -Transporter
- 7.Royal Refinery-Manufacture
- 8.Shiv Shipping, Transporter

9. K.C. Petro, Delhi- Trader

10. Mono Steel, Gandhidham

He further stated that they mainly used to buy imported goods 'base oil' from M/s Sunrise Petroleum, UAE, M/s Wardak FZC, UAE and M/s Abacus, M/s. Chemie DMCC, FZC, UAE, M/s Golden Sapphire, UAE, M/s Chemlub, Singapore etc.; that for M/s Aum Coporate, Aum Impex & M/s Arihant Agro they mainly purchased from M/s. Sunrise Petroleum, UAE wherein they approached/contacted Mr. Vivek Goyal, Director and then Mr. Atma Prakash, employee of M/s Sun Rise, Delhias well as Mr. Siddique who was in Chemlub, Singapore. M/s Sun Rise Petroleum, UAE is manufacturer and Chemlub, Singapore was trader; that they had paid through their ICICI bank account and the method of payment was TT (Telegraphic Transfer); that they started working with M/s. Shivay Enterprises as per the say of Shri Nirav Prajapati; that M/s. Shivay Enterprise was a Proprietorship firm, wherein Shri Maheshwari Megharajbhai Devashi was the owner; that he had never met Mr. Maheshwari Meghrajbhai Devashi; that agreed with the panchnama dated 19.08.2021, drawn at 66A, above Green Fiber, Metro Showroom, Main Bazaar, Gandhidham-370201; that the other companies operating at 66A, Above Green Fiber, Metro Showroom, Opposite Main Market, Gandhidham-370201 are M/s Aum Impex, M/s. Aum Corporate Pvt. Ltd., M/s Shivay Enterprise and M/s. Arihant Agro Industries; that as long as M/s. Shivay Enterprise was concerned he took care of the sales part of the imported goods; that after importing the goods, they sell it to various traders/transporters; that he took care of delivery of goods and recovery of payment from such buyers; that M/s Shivay Enterprises were importing from M/s Stanley, UAE, Manufacturer/Trader and Mr. Hassan was the contact person there; that he met him for the business purpose alongwith Shri Nirav Prajapati in Dubai; that they had so far imported 20 consignments (approximately) of imported goods in the name of M/s Shivay Enterprise; that for supply of goods in the name of M/s Shivay Enterprise they contacted foreign supplier M/s Carbonex Overseas FCZ and M/s Stanely Trading LLC, Dubai; that they started importing goods in the name of M/s Shivay Enterprises from April, 2021; that they received the payment from the clients of M/s Shivay Enterprise through telegraphic transfer; that the responsible persons of the above purchasing companies were Mr. Vipul Thakkar for M/s. Shree Shipping, Shri Shailesh Thakkar for M/s Rishi Shipping, Shri Meghabhai Ahir for M/s Shiv shipping and Shri Vikas Bansal for M/s. Bansal Cargo Movers.



On being shown the statements of Shri Meghrajibhai Devashi dated 15.08.2021, 16.08.2021 and 17.08.2021, he confirmed that the facts stated by him are true and correct; that the goods imported in the name of M/s Shivay Enterprise was first brought in KASEZ and warehousing was done at M/s A.B. Warehousing; that the goods, declared as 'Base Oil' were packed in flexi bags of 20 MT each; that the imported goods packed in flexi tank are pumped in chemical tanker using fighter jet pump; that from the warehouse of M/s A B warehousing, imported goods were first transported to M/s Shreeji Terminals through chemical tankers and stored in designated tanks and then further delivered from M/s Shreeji Terminals.

On being perused the Panchnamas dated 12.08.2021, 12/13.08.2021 and 13.08.2021, drawn at KASEZ and at the premises of M/s A.B. Warehousing, KASEZ, he confirmed the facts narrated in the Panchnamas to be true and correct; that the imported goods were in fact 'Automotive Diesel Fuel' but the quality of the said imported goods was not as pure as diesel sold by oil companies like IOCL, HPCL, BPCL, Nayara (ESSAR), M/s Reliance Industries Ltd (RIL); that the product was not base oil, so they imported the goods declared as 'Base Oil' and sold them to various buyers who were in the transport business such as (i) M/s Shree Shipping, Gandhidham, (ii) M/s Rishi Shipping, (iii) M/s Shiv Shipping, Gandhidham, (iv) M/s Bansal Cargo Movers, Gandhidham, (v) M/s ACT Logistics, Gandhidham and (vi) M/s Shri Ashapura Trading Company, Gandhidham etc.; that M/s Shree Ashapura Trading Company was a trading firm which bought imported goods from their firm and sells goods to various other transport companies on commission basis.

On being shown the printout of page 01 document taken from link [https://en.wikipedia.org/wiki/Base\\_oil](https://en.wikipedia.org/wiki/Base_oil), he fully agreed with that details and stated that according to the above documents, base oil was used to make products including lubricating grease, motor oil and metal processing liquids; that none of their buyers produce lubricating grease, motor oil or metal processing fluid; that the buyers of their imported goods were in the transportation business and they did not produce any of the above goods; that the imported goods declared as 'Base Oil' were used by their buyers who were in the business of transportation; that they had given the description of the goods as "Base Oil Ltr". with condition 'this product may be used only for prescribed legal purposes including adulteration of edible oil, pharma application or fuel but will be used for the above limited purpose only and will not be used for any other purpose' only for the sole purpose of protecting their

company; that the goods (20 consignments) previously imported by M/s Shivay Enterprise were also similar to the representative samples taken from the import consignment imported vide Bill of Entry No. 2008042 dated 12.08.2021; that the goods imported in the previous 3-4 consignments in the name of M/s Shivay Enterprise, some consignments were of Base Oil also; that all consignments declared as 'base oil' were procured from M/s Stanley Trading LLC, Dubai UAE/Carbonex Overseas FZCO, Workstation No. FZJ012W530, Jebel Ali Free Zone, Dubai (UAE) License No. 185994.

9.19 Shri Chirag Khandor, Proprietor of M/s Aum Corporate Private Ltd., Gandhidham in his statement dated 27.10.2021 **[RUD-25]** interalia agreed that according to the test report of the goods imported under Bill of Entry No.2008042 dated 12.08.2021 imported by M/s Shivay Enterprises was 'Automotive Diesel Fuel' and not 'Base Oil, which is actually imported by M/s IOCL, M/s BPCL, M/s HPCL, ESSAR, RIL etc. On being shown test reports dated 27.08.2021, issued by the Chemical Examiner, Central Excise and Customs Laboratory, Vadodra, he explained that as per test reports the goods are "IS:1460-2017, Automotive Diesel Fuel which was other than Base Oil"; that the supplier of the goods imported under Bill of Entry No. 2008042 dated 12.08.2021 and previous 3 to 4 consignments by M/s Shivay Enterprises were M/s Carbonex Overseas FZCO, Dubai and M/s Stanley Trading LLC, Dubai; that he had sold the imported diesel to M/s Rishi Shipping, M/s Bansal Caro etc.; that he negotiate the rate with Shri Manoj Mansukhani of Rishi Shipping; that for the supply of Automotive Diesel Fuel/Base Oil, Shri Nirav Prajapati spoke with Shri Sailesh of M/s Rishi Shipping.

On being perused a register submitted by Shri Manoj Mansukhani during his statement dated 19.10.2021, he stated that on the cover of register 'Diesel Register' is mentioned and after going through it he found it as diesel register; that according to the above register the suppliers of M/s Rishi Shipping are M/s Nayara, M/s Aum, M/s Kotak, M/s Aum Corporate, M/s Arihant Agro Industries, M/s Shivay M/s Maridin Enterprises, M/s Gayatri Petroleum etc.; that in the said register data of M/s Rishi Shipping's 'Diesel Purchase' in which in different columns date, bill/invoice no., rate, amount etc. is mentioned.

On being shown the invoices generated by M/s Aum Corporate, M/s Shivay Enterprises, M/s Aum Impex, M/s Arihant Agro Industries, withdrawn under panchnama dated 18.10.2021 drawn at the premises of M/s Rishi Shipping, he stated that M/s Rishi Shipping had maintained rate, quantity, amount etc. with

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respect to purchase of diesel from M/s Aum Corporate, M/s Shivay Enterprises, M/s Aum Impex, M/s Arihant Agro Industries.

He was shown Tax Invoice No. SE/4 dated 10<sup>th</sup> May 21 issued by M/s. Shivay Enterprise to Rishi Shipping, Gandhidham, withdrawn under panchnama dated 18.10.2021, showing product name & description: Base Oil- LTR & Base oil Industrial grade”; that in the said invoice the description of goods supplied is “Base Oil- Industrial grade” HSN No. 2710, Qty – 20000Ltr., Rate Rs. 64/- per liter, total amount Rs.15,10,400/-; that the density was 824.5; He was also shown hand written Token Slip No. 53 in which ‘diesel purchased from Chiragbhai’ is mentioned; that Invoice No. SE/4, GJ 12 X 2983, density 0.8245, Qty-20000 Ltr., CF/GJ 12Z3780 is also mentioned; that token slip No. 53 was for diesel while in invoice No. SE/4 description mentioned was ‘Base Oil’. He was also shown E-way Bill No. 661294928159 dated 10.05.2021 “HSN code 271019 commodity name and description: Tax Invoice No. SE/4, Base Oil- LTR’ mentioning that *“this product will be used for the prescribed legitimate purposes only and shall not be used or consumed for any other purpose including but not limited to edible oil, pharma applications or fuel adulteration”*. On being perused tax invoice No. 6653 dated 04.11.2020 issued by M/s Arihant Agro to M/s Rishi shipping in which HSN 2710, Qty-20000 Ltr, Rate Rs. 49/- ltr, total amount Rs. 9,80,000/-, he stated that the bill was given to Shri Harnek Singh who had signed with date as acknowledgement; that Shri Harnek Singh showed density 8.8308.

He was shown Panchnama dated 18.10.2021 drawn at the premises of (i) M/s Rishi Shipping, Gandhidham, (ii) M/s Shiv Shipping, Gandhidham, (iii) M/s Bansal Cargo Movers, Gandhidham and panchnamas dated 20.10.2021 drawn at the premises of (i) M/s Shree Shipping, Gandhidham and (ii) M/s Shree Aashapura Trading Company, Gandhidham. He was also shown (i) statement dated 18.10.2021 of Shri Vikash Bansal of M/s Bansal Cargo Movers, (ii) statement dated 19.10.2021 of Shri Pritesh Khandor of M/s Shree Shipping (iii) statement dated 19.10.2021 of Shri Mahadev Naran Agariya of M/s Shiv Shipping Logistics (iv) statement dated 19.10.2021 of Shri Manoj Mansukhani of M/s Rishi Shipping (v) statement dated 21.10.2021 of Shri Ashok C Thakkar of M/s ACT Logistics and (vi) statement dated 21.10.2021 of Shri Arpit Tanna of M/s Aashapura Trading Company in which all buyers had stated that they had bought diesel for their truck/tanker from M/s Arihant Agro, M/s Aum Impex, M/s Aum Corporate, M/s Shivay Enterprises. He also agreed with the facts of the seizure memo dated 22.10.2021.

9.20 Statement of Shri Nirav Prajapati, Director of M/s AUM Corporate Pvt. Ltd., Gandhidham was recorded on 26.10.2021 **[RUD-26]**. He was perused his statement dated 23.08.2021, statements dated 15.08.2021, 16.08.2021 & 17.08.2021 of Shri Meghraj Devshi, wherein he and Meghraj Devshi has stated about functioning of the importer firm M/s. Shivay Enterprise and statement dated 13.08.2021 of Shri Shabbir Rayma, Partner of M/s. A B Warehousing, Gandhidham. On perusal of the above statements he explained about M/s. Shivay Enterprise (IEC No. BWAPM5677C), Ward-9/B, Plot No.2, Zala Joravarsinh, Bharat Nagar, Gandhidham. He stated that Shri Shabbir Rayma was known to him through business circle who came to him with request to give business of imports through KASEZ where he has opened warehousing firm in the name of M/s. A B Warehousing; that he discussed with his business partner Shri Chirag Khandor regarding Shabbir's request; that accordingly, they asked Shabbir to arrange a person who will be ready to give KYC documents for opening a firm for monetary consideration; that Shri Shabbir introduced one person namely Shri Meghraj Devshi and Shri Maheshwari Meghraj Devshi was in need of money for treatment of his wife; that they took the KYC documents of Shri Meghraj Devshi and obtained Import Export Code (IEC) and GST Registration; that they had taken the lease of the said premises for just two months and later shifted the activities of M/s. Shivay Enterprise to their office at 66A, Above Green Fibre, Gandhidham; that as mentioned in above para, import firm in the name of M/s Shivay Enterprise with IEC No. BWAPM5677C & registered address as Ward-9/B, Plot No.2, Zala Joravarsinh, Bharat Nagar, Gandhidham was created by him and Shri Chirag Khandor for the purpose of import of goods i.e. Diesel (declared as Base Oil) at KASEZ, Kandla, wherein M/s. A. B. Warehousing, owned by Shri Shabbir Rayma filed both the Bill of Entry for Warehouse, as well as, Bill of Entry for home consumption (SEZ to DTA unit); that on being asked about the role of Shri Meghraj Devshi with reference to M/s. Shivay Enterprise he stated that Shri Meghraj Devshi was only a dummy person and all the activities of M/s. Shivay Enterprise were controlled and managed by him and Shri Chirag Khandor only; that as far as M/s. Shivay Enterprise was concerned he looked after import part of the goods and Shri Chirag Khandor looked after the sales and collection part of the imported goods; that after import of the goods, he arranged for the vehicles for transportation and storage of the said imported goods in rented storage tank at M/s. Shreeji Terminal, M/s. S. Poddar etc. and its further dispatch was mainly to the following buyers:

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- (i)** M/s. Shree Shipping Services situated at Kesar Arcade, Plot No. 51, Sector-08, Gandhidham,
- (ii)** M/s. Rishi Shipping, Plot No. 113-116, Ward No. 6, Industrial Area, Gandhidham - 370201,
- (iii)** M/s. Shiv Shipping & Logistics, Plot No.83, Sector11, Near Cargo Motors, Gandhidham,
- (iv)** M/s. Bansal Cargo Movers, 55/56, Kutch Arcade, Survey No.234/1, NH8, Gandhidam,
- (v)** M/s. ACT Logistics, Survey Plot No.153, Galpadar, Gandhidham and
- (vi)** M/s. Shree Ashapura Trading Company, Office No. 38, 1<sup>st</sup>Floor, Plot No. 7, Ward No.12A, Gandhidham etc.

He further stated that as they already had enough buyers i.e. the transporters who used their imported goods as fuel for their trucks/tankers, Shri Chirag Khandor liaise with them and look after the delivery of the goods and collection of the payment from such buyers; that the activities of each other are known to both of them; that Shri Chirag Khandor and himself are partners of M/s. Aum Impex, Plot No.52, Sector 1/A, Gandhidham and Directors of M/s. Aum Corporate Pvt. Ltd., BBZ S-66A, Above Green Fibre, Gandhidham; that apart from this Shri Chirag Khandor controls the activities of various other firms such as M/s. Arihant Agro Industries, 'Om Nivas', Sector9, D.B.Z.S99, Opp. BMCB Complex, Agrasen Marg, Gandhidham, M/s. Arihant Petrochem Pvt. Ltd., A-207, 2<sup>nd</sup> Floor, Plot No. FP-554, A Wing, Jai Hanuman Nagar, SRA CHS, Senapati Bapat Marg, Nr. Mhatre Penco, Opp. Kamgar Krida Kendra, Dadar (W), Mumbai -400028; that they had imported Base Oil in the name of M/s. Aum Impex and M/s. Aum Corporate Pvt. Ltd during the years 2020 & 2021 and the other firms M/s. Arihant Agro Industries, M/s. Arihant Petrochem Pvt. Ltd were trading firms wherein the imported goods declared as Base Oil were sold to various buyers mainly the aforesaid 06 transporters/transport brokers. M/s. Arihant Logistics was a transporter firm which was used for preparation of LR's; that the goods imported by M/s. Shivay Enterprise, M/s. Aum Impex, M/s. Aum Corporate Pvt. Ltd., M/s. Arihant Agro Industries & M/s. Arihant Petrochem Pvt. Ltd were in fact 'diesel' but the quality of the said imported goods was not as pure as the diesel sold by oil companies such as IOCL, HPCL, BPCL, Nayara (ESSAR), M/s. Reliance Industries Ltd (RIL) so they imported the said goods declared as 'base oil' but sold the same to various buyers who were into transportation business and need diesel for their trucks/vehicles; that M/s. Shree Ashapura Trading Company was a trading firm who buy the imported goods from their firms and sell the same to various other transport

companies for a commission; that as per the documents containing use of Base Oil through link [https://en.wikipedia.org/wiki/Base\\_oil](https://en.wikipedia.org/wiki/Base_oil) base oil is used to manufacture products including lubricating greases, motor oil and metal processing fluids; that the buyers of their imported goods were into transportation business and they were not manufacturing any of the above goods; that the diesel sold to them in the guise of base oil was used by their buyers for use as fuel in their tankers/trucks; that the imported goods declared as 'Base Oil' was actually diesel and it was used by their buyers who are into transportation business as fuel for their trucks/tankers as the case may be.

He was shown Tax Invoice bearing No. SE/87 dated 01.07.2021, resumed from the office premises of M/s. Shiv Shipping & Logistics, Plot No. 83, Sector-11, Gandhidham under panchnama dated 18.10.2021. On perusal of the same he stated that the said invoice was issued in the name of M/s. Shivay Enterprise issued to M/s. Shiv Shipping & Logistics, Gandhidham in respect of sale of 24,000 litres at the rate of Rs. 58/- per litre totally amounting to Rs. 16,42,560; that the description of the goods mentioned was "Base Oil Ltr., this Product will be used for the prescribed legitimate purposes only and shall not be used or consumed for any other purpose including but not limited to edible oil, pharma applications or fuel adulteration"; that he knew M/s. Shiv Shipping & Logistics, who was one of the buyers of Diesel (mis-declared as Base Oil) imported by their firms; that M/s. Shiv Shipping & Logistics were known to him and Shri Chirag Khandor; that with regard to the end use of the imported goods declared as 'Base Oil' in the import documents of M/s. Shivay Enterprise, he stated that the buyers of their goods were into transportation business who use the imported goods as fuel for their trucks/tankers; that they had given the above description of the goods as "Base Oil Ltr. This Product will be used for the prescribed legitimate purposes only and shall not be used or consumed for any other purpose including but not limited to edible oil, pharma applications or fuel adulteration" only with a view to safe guard their firm, as they knew that the product they sold was diesel and not base oil.

He further stated that they themselves financed for all the import of goods in the name of M/s. Shivay Enterprise and not by M/s. Shiv Shipping & Logistics, M/s. Shree Shipping Services, M/s. Bansal Cargo Movers or M/s. Rishi Shipping; that sometimes they used to receive advance payment from the aforesaid buyers which was a booking amount for supply of imported goods after DTA clearance; that payment towards CHA charges was transferred from



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ICICI bank account of M/s. Shivay Enterprise to M/s. A. D. Mehta by RTGS/NEFT transfer; that the said CHA expenses were borne by them only and not by the aforesaid transporters.

On being asked regarding payment to the overseas supplier, he stated that the overseas suppliers supplied the goods on credit basis and upon import and sale of the goods, they received payment through RTGS/NEFT transfer into the bank account of M/s. Shivay Enterprise and out of such sale proceeds they made overseas payment through TT to the seller; that these transactions were reflected in the bank statement of M/s. Shivay Enterprise.

He was shown test report bearing Nos. 01/2021, 02/2021, 03/2021 & 04/2021 all dated 27.08.2021, submitted by the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara in respect of samples drawn under panchnama dated 13.08.2021 from the goods declared as "Base oil" imported by M/s. Shivay Enterprise vide Bill of Entry No. 2008042 dated 12.08.2021, in which it is opined that **"Above analyzed parameters meets the requirements of Automotive Diesel Fuel as per IS:1460-2017. It is other than Base Oil"**. On being perused above reports, he stated that the above consignment was imported by M/s. Shivay Enterprise vide Bill of Entry No. 2008042 dated 12.08.2021. He accepted that these imported goods were not Base Oil as declared by M/s. Shivay Enterprise under Bill of Entry No. 2008042 dated 12.08.2021. He admitted that the goods imported by M/s. Shivay Enterprise vide Bill of Entry No. 2008042 dated 12.08.2021 were actually Automotive Diesel, however, it was substandard when compared to the diesel oil sold by IOCL, BPCL, HPCL, Nayara (ESSAR), RIL etc. He accepted that the goods were mis-declared by M/s. Shivay Enterprise, in fact, it was 'Automotive Diesel Fuel' which has been tested correctly as 'Automotive Diesel Fuel' by CRCL, Vadodara; that the same goods were imported in the previous 20 consignments imported in the name of M/s. Shivay Enterprise by him and Shri Chirag Khandor; that all the similar consignments declaring the goods as 'base oil' were imported from M/s. Carbonex Overseas FZCO, Workstation No. FZJ012W530, Jebel Ali free Zone, Dubai, (UAE) Licence No. 185994 and only one consignment from M/s. Stanley Trading LLC, Dubai UAE/Carbonex Overseas FZCO, Workstation No. FZJ012W530, Jebel Ali free Zone, Dubai, (UAE) Licence No. 185994; that generally he and Shri Chirag Khandor used to normal call or whatsapp call or message to one person namely Shri Hasan of their foreign supplier of diesel i.e. M/s. Stanley Trading LLC, Dubai UAE & M/s. Carbonex Overseas FZCO, Dubai, (UAE) to order import of

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diesel;that they didn't use to send any purchase order for the same; that M/s. Shivay Enterprise had made payment through Telegraphic Transfer to M/s. Stanley Trading LLC, Dubai UAE & M/s. Carbonex Overseas FZCO towards import of Automotive Diesel Fuel; thatrate of Diesel imported by M/s. Shivay Enterprise were around Rs. 55-60 per Kilogram, after addition of Cusotm Duty it was around Rs. 59-64 per Kilogram; that the average sale rate was around Rs. 65-70 par Kg; that the quantity of imported diesel was 185.41 MTs and assessable value was declared as Rs. 1,01,09,035/- in respect of diesel imported by M/s. Shivay Enterprise under Bill of Entry No. 2008042 dated 12.08.2021.

He was shown the valuation report dated 20.10.2021 provided by Shri Pankaj N. Udani, Chartered Engineer & Govt. Approved Valuer wherein the value of the diesel imported by M/s. Shivay Enterprise under Bill of Entry No. 2008042 dated 12.08.2021 was mentioned as Rs. 1,01,19,781/-.

He wasalso shown the following panchnamas:

Sr. No.	Name of the premises	Date of Panchnama
1	M/s. Rishi Shipping, Plot No. 113-116, Ward No. 6, Industrial Area, Gandhidham - 370201	18.10.2021
2	M/s. Shiv Shipping, Plot No.83, Sector11, Near Cargo Motors, Gandhidham	18.10.2021
3	M/s. Bansal Cargo Movers, 55/56, Kutch Arcade, Survey No.234/1, NH-8, Gandhidam	18.10.2021
4	M/s. Shree Shipping, Kesar Arcade, Plot No. 51, Sector08, Gandhidham	18.10.2021
5	M/s. ACT Logistics, Survey No.153, Galpadar, Gandhidham	20.10.2021
6	M/s. Shree Ashapura Trading Company, Office No. 38, 1 <sup>st</sup> Floor, Plot No. 7, Ward No.12A, Gandhidham	20.10.2021

On perusal of the above panchnamas, he stated that they had sold fuel i.e. diesel to M/s. Rishi Shipping; thatin respect of the sale to M/s. Rishi Shipping, Shri Chirag Khandor used to negotiate the price with Shri Manoj Mansukhani, Proprietor; that for regular supply of fuel to M/s. Rishi Shipping, he used to co-ordinate day to day with Shri Shailesh, an employee of M/s. Rishi Shipping; that M/s. Rishi Shipping made advance payments once or twice to them for booking price for a particular quantity of fuel.On being perused a register submitted by Shri Manoj Mansukhani, Proprietor of M/s. Rishi Shipping he observed that on the front cover of the said register it was mentioned "Diesel



Register”; that on perusal of the handwritten text on various pages, it appears that the said register was a month-wise Diesel Purchase stock register maintained by M/s. Rishi Shipping; that as per the said register Arihant, Nayara, Aum, Kotak, Aum Corporate, Arihant Agro Industries, Shivay, Meridian Enterprises, Gayatri Petroleum were the various suppliers of Diesel of M/s. Rishi Shipping; that the data recorded in various columns represent Date, Bill/Invoice No., Qty, Rate, Amount, No. etc. and it appears that the said data was recorded in respect of “bill wise diesel purchase” of M/s. Rishi Shipping.

He was shown various invoices issued by M/s. Aum Corporate, M/s. Shivay Enterprises, M/s. Aum Impex, M/s. Arihant Agro Industries, issued to M/s. Rishi Shipping, withdrawn under Panchnama dated 18.10.2021 drawn at the premises of M/s. Rishi Shipping. On perusal of the above invoices, he found that the data recorded in the “Diesel Register” maintained by M/s. Rishi Shipping matched with Date of Invoice, Bill/Invoice No., Qty of goods supplied, Rate, Amount etc. mentioned in the respective invoices issued by M/s. Aum Corporate, M/s. Shivay Enterprises, M/s. Aum Impex, M/s. Arihant Agro Industries to M/s. Rishi Shipping.

He was shown invoice No. SE/4 dated 10<sup>th</sup> May 21 issued by M/s. Shivay Enterprise to Rishi Shipping, Gandhidham, withdrawn under Panchnama dated 18.10.2021 drawn at premises of M/s. Rishi Shipping. He perused the same and explained that the said document is Tax Invoice No. SE/4 dated 10<sup>th</sup> May 21 issued by M/s. Shivay Enterprise to Rishi Shipping, Gandhidham; that in the said invoice the description of goods supplied is mentioned as “Base Oil-Ltr. this product will be used for the prescribed legitimate purposes only and shall not be used or consumed for any other purpose including but not limited to edible oil, pharma applications or fuel adulteration”, HSN No. 271019, Qty-20000 Ltr., Rate Rs. 64 per litre, Total Amount Rs. 15,10,400/-, the density of the fuel 824.5. On being shown a handwritten token slip No. 53, withdrawn under above said Panchnama, wherein it was mentioned “Diesel purchased from Chirag Bhai” Invoice No. SE/4, density 0.8245 for GJ 12 X 2983, Qty 20000 Ltr., CF/GJ 12Z3780, he agreed that the above said token slip No. 53 was issued in respect of the fuel supplied under Tax Invoice No. SE/4 dated 10<sup>th</sup> May 21 issued by M/s. Shivay Enterprise to Rishi Shipping, Gandhidham; that the token slip had been signed and stamped.

He was perused Tax Invoice No. 663 dated 04/11/20 issued by M/s. Arihant Agro Industries, Gandhidham to Rishi Shipping, Gandhidham, withdrawn

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under Panchnama dated 18.10.2021 drawn at the premises of M/s. Rishi Shipping, wherein the description of goods supplied was “Base Oil - Industrial grade” HSN No. 2710, Qty - 20,000 Ltr., Rate Rs. 49 per liter, Total amount Rs. 9,80,000/-, the density of the fuel 0.8308. He was also shown a ‘handwritten token slip No. 66’, wherein it was mentioned “Diesel purchased from Arihant Agro Industries” Invoice No. 6012 3507 1328, density 0.8308 for GJ 12 X 2983, Qty 20000 Ltr., CF/GJ 12X3015. He was also shown E-way Bill No. 6012 3507 1328 dated 04.11.2020 issued for supply of goods “HSN Code 2710, Product name & description: Base oil Industrial grade” under Tax Invoice No. 663 - 04/11/2020 from M/s. Arihant Agro Industries to M/s. Rishi Shipping. On being perused above documents, he agreed that the above said token slip No. 66 had been signed and stamped and was issued in respect of the fuel supply under Tax Invoice No. 663 dated 4/11/2020 issued by M/s. Arihant Agro Industries to Rishi Shipping, Gandhidham; that he and Shri Chirag Khandor supplied Diesel fuel by their firms viz. M/s. Aum Corporate, M/s. Shivay Enterprises, M/s. Aum Impex, M/s. Arihant Agro Industries to M/s. Rishi Shipping or various other buyers viz. M/s. Shree Shipping Services M/s. Shiv Shipping & Logistics, M/s. Bansal Cargo Movers, M/s. ACT Logistics, M/s. Shree Ashapura Trading Company; that the goods supplied were actually diesel and not Base oil as mentioned in the Tax Invoices.

He was shown the statements of following persons of their various buyers:

Sr. No.	Name of the person	Date of statement
1	Shri Vikas Ratankumar Bansal, Partner of M/s. Bansal Cargo Movers	18.10.2021
2	Shri Pritesh Khandor, Authorized Signatory of M/s. Shree Shipping Services	19.10.2021
3	Shri Mahadev Naran Agariya, Partner of M/s. Shiv Shipping & Logistics	19.10.2021
4	Shri Manoj Mansukhani, Proprietor of M/s. Rishi Shipping	19.10.2021
5	Shri Ashok C. Thakkar, Partner of M/s. ACT Logistics	21.10.2021
6	Shri Arpit Tanna, Proprietor of M/s. Ashapura Trading Company	21.10.2021

On being drawn his attention to the statements of the above buyers who had stated that the goods declared as ‘base oil’ purchased from their firms M/s. Aum Impex, M/s. Aum Corporate Pvt. Ltd., M/s. Arihant Agro Industries and M/s. Shivay Enterprise were actually ‘diesel oil’ or ‘fuel for trucks/tankers’ and that they had utilized the goods purchased from the above firms as fuel for

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their trucks/tankers only, he agreed to the facts stated therein as true and correct and stated that they sold the imported goods which was 'automotive diesel fuel' but mis-declared as 'base oil' to aforesaid transporters/commission agent for use as fuel for trucks/tankers of the aforesaid transporters.

He was perused Seizure Memo dated 22.10.2021 vide which the goods i.e. 'Automotive Diesel Fuel' having value of Rs. 1,01,09,035.27 imported by M/s. Shivay Enterprise under Bill of Entry No. 2008042 dated 12.08.2021 were seized alongwith the 08 chemical tankers (used for transportation of imported said Automotive diesel) totally valued at Rs. 56,00,184/-. On perusal of the seizure memo, he stated that as per his instructions his employee Shri Jayantibhai Patel arranged for the said 8 chemical tankers; that as per the Policy restrictions, M/s. Shivay Enterprise hadnot beengranted rights for import and marketing of transportation fuels in terms of Ministry of P & NG's Resolution; that M/s. Shivay Enterprise had not been granted rights for import and marketing of transportation fuels; that importing Automotive Diesel Fuel by M/s. Shivay Enterprise wasin violation of the import policy;that he and Shri Chirag Khandor were managing all the affairs of M/s. Shivay Enterprise and he admitted that they were having full knowledge about violation of import policy by importing restricted item i.e. 'Automotive Diesel Fuel'; that Shri Shabbir Rayma, Partner of M/s. A B Warehousing, KASEZ, Gandhidham hadknowledge that goods imported under Bills of Entry by them on behalf of M/s. Shivay Enterprise (including Bill of Entry No. 2008042 dated 12.08.2021) were 'Automotive Diesel Fuel'; that they didn't give any share of profit earned through import & trading of the said restricted goods i.e. 'Automotive Diesel Fuel', but as he was getting business due to the said modus operandi of importing 'Automotive Diesel Fuel', he agreed for import of said 'Automotive Diesel Fuel' and he had full knowledge of the same; that as per Section 112 of the Customs Act, 1962, he is liable for penalty under Section 112 of the Customs Act, 1962 as he dealt with import & trading of restricted item i.e. 'Automotive Diesel Fuel' imported by M/s. Shivay Enterprise under Bill of Entry No. 2008042 dated 12.08.2021 (which were seized vide seizure memo dated 22.10.2021) which was liable for confiscation as per Section 111 of the Customs Act, 1962.

9.21 Shri Nirav Prajapati, Director of M/s AUM Corporate Pvt. Ltd., Gandhidham in his statement dated 27.10.2021[**RUD-27**] interalia confirmed the facts stated in his statement dated 26.10.2021as true and correct. He further stated that he communicate with his buyers and sellers for procurement and sale of

automotive diesel fuel in the name of M/s. Shivay Enterprise through mobile communications and whatsapp chat messages/calls/voice note etc.; that automotive diesel fuel was declared as 'Base Oil' for the purpose of documentation; that he used his mobile phone of Apple make Model i12 mini and I-PHONE 12 Pro to communicate with his buyers and sellers through whatsapp chat in relation to the trading of the automotive diesel fuel imported in the name of M/s. Shivay Enterprise; that when he came to know about DRI's operation of searching premises of buyers of the M/s. Shivay Enterprises, the firm controlled by him, he was little afraid anticipating the chances of him getting caught by officer of DRI, for the purpose of enquiry of import of goods that were used as "automotive diesel fuel" by M/s. Shivay Enterprise's buyers; that he immediately formatted his iPhone 12 Mini, in which he used to communicate with his buyers and suppliers regarding sale and purchase transactions of goods "automotive diesel fuel"; that Mr. Deep Thakkar paid Rs. 10 lakhs in favour of M/s. Arihant Petrochem Ltd for supply of diesel; that entire operations of M/s. Shivay Enterprise viz. Import, documentation, storage, purchase, sales, financial transactions were looked by him and Mr. Chirag Khandor.

He further stated that Mr. Shabbir Ramya assisted them for the purpose of customs clearance from KASEZ, Gandhidham and further DTA sales documentation for the firm M/s. Shivay Enterprise; that M/s. Shivay Enterprise was not qualified for import of automotive diesel/HSD; that as per the policy only State Trading Enterprises (STEs) were allowed for the import of automotive diesel; that he and Shri Chirag Khandor had committed offence punishable under Indian Customs Act, 1962.

9.22 Shri Sabbir Rayma, Partner of M/s A.B. Warehousing, Gandhidham in his statement dated 01.02.2022 **[RUD-28]** inter alia stated that he was one of the partners in M/s A.B. Warehousing; that they had got Letter of Approval for Warehousing as well trading of goods which are not restricted i.e. readymade garments, solvents, stainless steel, base oil, food supplements etc. LOA was provided by the KASEZ Gandhidham authority to his uncle Shri Shahnawaj Sheikh in March 2021; that his role in the firm is to look after all business activities of the firm; that Shri Shahnawaj Sheikh was an inactive partner from the starting of the firm; that his clients were M/s N.G. Impex, M/s Artfransi International Pvt. Ltd., M/s RMC Enterprises, M/s Bhaumik Overseas, M/s S. S. Dry Fruits, M/s Shivay Enterprises, M/s Rayma Cargo Handling etc.; that the products imported by M/s N. G. Impex, M/s Artfransi International Pvt. Ltd

and M/s Bhaumik Overseas were Stainless Steel Coils, M/s S. S. Dry Fruits had imported cloves, M/s Rayma Cargo Handling had imported un-branded laggings, M/s Shivay Enterprises had imported Base Oil; that they were making agreements/contract with their clients; that filing of Bill of Entry was also work of his firm; that they were filing Bill of Entry on behalf of their clients, because no importer/exporter can directly file Bills of Entry or Shipping Bill; that in SEZ for filing of Bills of Entry or Shipping Bill they have to use his ID; that M/s. A. B. Warehousing being custodian, file warehousing Bill of Entry as per provisions of SEZ Act/Rules and their clients had not issued any separate authority letter for this purpose; that they were filing the Bill of Entry on behalf of M/s. Shivay Enterprise; that they had handled about 80% of the import of M/s Shvay Enterprises.

On being shown the visit note dated 13.08.2021 to the premises of M/s Shivay Enterprise, 2nd Floor, House No. 3, Plot No. 436, Gandhidham and visit note dated 13.08.2021 to the premises of M/s Shivay Enterprise, Ward 9/8, Plot No. 2, Zala Joravarsinh Society, Bharat Nagar, Gandhidham, he agreed that both the addresses were found fake.

He further stated that the 04 tankers bearing No. GJ 12AY9037, GJ12AU7 138, GJ12AU7 144 , GJ12X1515 were called back by him, which were loaded with the imported goods and parked outside KASEZ, on the direction of DRI officers; that Shri Jaydeep Kariya of M/s B. M. Transport had arranged for all 08 chemical tankers; that out of the said 08 chemical tankers 04 chemical tankers were already intercepted by DRI officers and accordingly, he called him for the whereabouts of the said other 04 chemical tankers and Shri Jaydeep informed that the said 04 chemical tankers loaded with imported goods were parked outside the KASEZ and accordingly he requested Shri Jaydeep Kariya to send the said 04 chemical tankers back to KASEZ; that the 04 chemical tankers bearing Reg. No. GJ12AY9037, GJ12AU7138, GJ12AU7144, GJ12X1515 also contains the same goods imported vide Bill of Entry No. 2008042 dated 12.08.2021 and were loaded at M/s. A.B.Warehousing, KASEZ; that the imported goods loaded into the 4 chemical tankers called back to KASEZ were intact and not offloaded/replaced during the intervening period; that there were total 10 flexi bags (flexi tank container) having quantity 185.41 Mts. imported vide Bill of Entry No. 2008042 dated 12.08.2021 valued at Rs. 1,01,09,035.27 which were loaded into 8 chemical tankers.

He further stated that for filing Bills of Entry and all document related to the import of goods a person came i.e. Shri Nirav Prajapati used to come at A. D. Mehta Office on behalf of M/s Shivay Enterprises whose Proprietor as per KYC given to him was Shri Meghraj Maheshwari; that he came to know about Shri Nirav Prajapati through business circle; that the clients used to arrange labourers itself; that he had contacted Shir Sandeep Maheshwari for payment purpose once; that he had received payment only one time form the account of M/s Shivay enterprises; that he was not aware that Shri Nirav Prajapati and Shri Chirag Khandor were doing all the business activities on behalf of Shri Meghraj Maheshwari Devsi Proprietor of M/s. Shivay Enterprise; that he never asked Shri Nirav Prajapati and Shri Chirag Khandor about more interest in supplying documents in respect of M/s. Shivay Enterprise.

On being shown the test report dated 27.08.2021 issued by the CRCL, Vadodara with respect to sample drawn under panchnama dated 13.08.2021, he stated that as per the test report shown to him the test report did not confirm as 'Base Oil' with respect to sample drawn under panchnama dated 13.08.2021; that as per the test of the goods imported vide Bill of Entry No. 2008042 dated 12.08.2021 are 'above analysed parameters meets the requirements of 'Automotive Diesel Fuel' as IS:1460-2017 it is other than Base Oil'; that he was aware that diesel is a cannalised item which cannot be imported and sold by any individual person/firm without obtaining proper licence for the same from the concerned authorities; that the diesel can be purchased from the IOCL/HPCL/BPCL/Reliance Industries/Essar Petrol/diesel pumps only; that according to the test report, Shri Nirav Prajapati and Shri Chirag Khandor were importing diesel by mis-declaring as 'Base Oil'; that he agreed that the goods imported under Bill of Entry No. 2008042 dated 12.08.2021 in his premises i.e. M/s A. B. Warehousing, KASEZ, Gandhidham were imported by mis-declaring it as 'Base Oil' by Shri Nirav Prajapati and Shri Chirag Khandor; that he agreed with the statement dated 26.10.2021 of Shri Nirav Prajapati in which he has admitted that end use of the goods imported by him by various transporter is as fuel/diesel for their trucks/tankers; that the goods imported were used by the end user as diesel for their trucks/tankers; that as a warehouse owner they were responsible for filing of Bill of Entry, storage of goods; that he did not check goods in his warehouse, that whether it was restricted or otherwise; that it was their responsibility to check the goods before import of goods in their warehouse, that whether it was restricted or otherwise; that they checked description of goods at the time of filing of Bills of Entry, that whether it is restricted or otherwise.

He was shown condition mentioned in sub-para (xv) of the Letter of Approval No. 44/2020-21 dated 24.03.2021, issued by the Joint Development Commissioner, Kandla Special Economic Zone, Gandhidham, which is as under:

'We shall not import second hand materials such as used / worn cloths, plastic scrap or any other second hand used goods. We may import or procure from the Domestic Tariff Area all the items required for our authorized operations under this approval, except restricted/prohibited. No harmful materials shall be allowed to bring inside the Zone. No second hand goods such as worn and used clothing, plastic scrap, prohibited canalized item and any other second hand used goods will be allowed to be stored in the said premises'.

He further stated that as per the test report issued by the CRCL, Vadodara, the goods imported vide Bill of Entry No. 2008042 dated 12.08.2021 were 'above analysed parameters meets the requirements of 'Automotive Diesel Fuel' as IS:1460-2017 it is other than Base Oil', which is a cannalised item which cannot be imported and sold by any individual person/firm without obtaining proper licence for the same from the concerned authorities; that the goods imported under Bill of Entry No. 2008042 dated 12.08.2021 did not fulfill the condition of Letter of Approval; that as per Customs Tariff Act, 'Base Oil' is classifiable under the chapter heading 2701971 of the Customs Tariff attracting duties leviable there under while Automotive Diesel Fuel is classifiable under the chapter heading 27101944 of the Custtoms Tariff and attracts duties leviable there under; that moreover as per Policy Restrictions in terms of Schedule I -Import Policy ITC (HS), 2017, pertaining to Section V Chapter 27, Automotive Diesel Fuel covered under EXIM Code 27101944, are allowed to be imported only by the State Trading Enterprises; that further the policy conditions stipulate that import is allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P & NG's Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before that date. He agreed that as per Section 112 of the Customs Act, 1962, with import & trading of restricted item i.e. Automotive Diesel Fuel imported by M/s. Shivay Enterprise under Bill of Entry No. 2008042 dated 12.08.2021, which was liable for confiscation as per Section 111 of the Customs Act, 1962 and liable for penalty under Section 112 of the Customs Act, 1962.

9.23 Shri Anand Mehta, Partner of M/s Mehta Consultancy, Gandhidham in his statement dated 04.03.2022[**RUD-29**] interalia stated that he is a Partner in Mehta Consultancy Service having office at 16, KASEZIA Bldg., Near Punjab National Bank, KASEZ, Gandhidham, which is rented one; that they are carrying consulting work for SEZ units/100% EOU units and DGFT licensing Work; that they mainly deal with the work of Advising/documentation/Filing work for setting up of SEZ unit and compliance of documents/correspondence on behalf of client on monthly basis as well as on shipment basis; that on behalf of their client they are filing documents viz. Import/DTA Bills of Entry/Shipping Bill/Bills of Export in SEZ Online system.

On being perused the Panchnama dated 12.08.2021 and 13.08.2022 drawn at Kandla Special Economic Zone, Gandhidham, he stated that they were looking after work related to M/s A.B. Warehousing, KASEZ, Gandhidham; that Shri Sabbir Raima, Partner of M/s A. B Warehousing came to him with Shri Nirav Prajapati and requested to look after work related to M/s Shivay Enterprises, Gandhidham; that since they were looking after work of M/s A.B. Warehousing, KASEZ, Gandhidham therefore they agreed to look after work related to M/s Shivay Enterprises; that he did not know the actual Director/Partner of the firm M/s Shivay Enterprises, Gandhidham; that they were looking after work related to transshipment of container from Mundra to KASEZ, Gandhidham, delivery order of container, filing of Bill of Entry, payment of customs duty, payment of shipping line charges, transportation charges, CFS charges, lift on and lift off charges of container, Insurance charges and stamp duty. On perusal of the bank statement of bank account No. 025905503640 with respect to M/s Shivay Enterprises, Gandhidham maintained by ICICI Bank, Gandhidham, he stated that the transaction of payment received from M/s Shivay Enterprises, Gandhidham to M/s AD Mehta Clearing Agency, Gandhidham between 23.12.2020 to 18.08.2021 was for payment of customs duty, shipping line charges transportation charges, CFS charges, lift on and lift off charges of container, Insurance charges, stamp duty and their firm consultancy fee; that they had received total Rs. 5,36,21,532/- from M/s Shivay Enterprise, Gandhidham between 28.04.2021 to 29.09.2021. On being asked about the procedure of filing of Bills of Entry he stated that all the work related to filing of Bill of Entry with respect to M/s Shivay Enterprise, Gandhidham, Shri Sabbir Raima, Partner of M/s A. B. Warehousing, KASEZ, Gandhidham provided them digital signature dongle and all the paper i.e. BL, Invoice, Packing List, BL etc. w.r.t. M/s Shivay Enterprises, Gandhidham were



provided by Shri Nirav Prajapati directly through Whasapp/email accordingly they file the Bill of Entry in sez online system.

9.24 Shri Manoj Mansukhani, Proprietor of M/s Rishi Shipping, Gandhidham in his statement dated 15.03.2022[RUD-30]on perusal of Panchnama dated 12.08.2021/13.08.2021 drawn at the premises of M/s. A. B. Warehousing, KASEZ, Gandhidham stated that the above panchnama was drawn in connection with mis-declaration of the imported goods by M/s. Shivay Enterprise, Gandhidham. On perusal of the test report dated 27/08/2021 issued by Chief Examiner, GR-II, Central Excise & Customs Laboratory, Vadodara, he stated that as per the above test report the Chemical Examiner, CRCL has opined that the representative samples meets the requirement of Automotive Diesel fuel as per IS:1460-2017 and that it is other than Base Oil. On perusal of the statement dated 23.08.2021 and 26.10.2021 of Shri Nirav Prajapatiand the statement dated 26.10.2021 of Shri Chirag Khandor he confirmed the facts stated by them and stated that in FY 2018-19 one person Anand Joseph from M/s. A S Exim, Gandhidham approached him for the purchase of fuel named as “Base Oil” and informed that they had introduced “Base Oil” as substitute of diesel which can be used as diesel for diesel-powered equipment; that initially they started using it in their few trucks on trial basis; that during the trial they found it equally efficient with the diesel purchased from their other suppliers such as M/s. RIL, M/s. Nayara Energy, etc., and they started purchasing fuel from M/s. A S Exim, Gandhidham on regular basis; that then around starting in the year 2020 Shri Chirag Khandor and Shri Nirav Parjapati approached him and offered discounted price for the purchase of “Base Oil” of same quality as supplied by M/s. A S Exim, Gandhidham; that Shri Chirag Khandor had also introduced “Base Oil” as substitute of diesel which can be used as diesel for diesel-powered equipment; that they again took the trial of the diesel supplied by Shri Chirag Khandor and found it equally efficient with the diesel purchased from their other suppliers as mentioned above, because Shri Chirag Khandor had offered better prices than Shri Anand Joseph, they started purchasing the same from Shri Chirag Khandor on regular basis; that Shri Chirag Khandor had supplied fuel till June-July, 2021 through many firms/companies i.e. M/s. Arihant Agro Industries, M/s. Aum Corporate Pvt. Ltd., M/s. Aum Impex and M/s. Shivay Enterprises etc.; that after June-July, 2021 he had stopped purchasing fuel from Shri Chirag Khandor due to strictness of Gujarat Govt. on the use of BaseOil; that he never met Shri Nirav Prajapati; that he met only Shri Chirag Khandor for fixing of price of BaseOil; that he had made advance payment to

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Shri Chirag Khandor in the name of M/s Shivay Enterprises four times to fix the price for certain quantity and on receipt of goods they had debited the quantity from the total booked quantity; that he used to contact with the supplier only in the initial stage for finalizing the price, quality of fuel etc.; that once the negotiation was finalized in respect of the quality and price, Shri Shailesh L Thacker, employee of M/s. Rishi Shipping used to handle all the activities in respect of purchase of the fuel i.e. diesel and he used to be in touch with the supplier on day to day basis; that in respect of purchase of fuel all the direction were given by him to Shri Shailesh L Thacker; that he had made advance payment to Shri Chirag Khandor four times in the name of M/s AUM Corporate Pvt. Ltd., Gandhidham on 30.05.2020 Rs. 58,10,000/- (20% advance payment for 700KL @ Rs.41.50/ltr), on 30.08.2020 Rs. 50,00,000/- (15% advance for 700 KL @ Rs.49/-) and to M/s Arihant Agro Industries, Gandhidham on 09.03.2021 & 23.03.2021 Rs. 50,00,000/- each total Rs. One crore for (15% advance for 700 KL @ 57/-) and to M/s Shivay Enterprises on 21.05.2021 Rs. 1.5 Crore (35% advance for 700 KL @61/-ltr); that Shri Harnek Singh, one of their employees used to handle all the activities at their above said refuelling point at Kandla port, he used to receive the fuel supplied by the supplier, further refuel the equipment and maintained the stock; that till May-June 2021, their monthly requirement of diesel was 4 Lacs KL approx., out of 4 Lacs KL, they used to buy 1 Lac-1.2 Lacs KL from Shri Chirag Khandor, 1 Lac - 1.2 Lacs KL from M/s. Nayara Energy Ltd and balance from M/s. RIL; that they used separate tanker lorry to store the fuel supplied by Shri Chirag Khandor and other fuel suppliers; that presently they are purchasing maximum fuel for their vehicle/equipment from local dealer of M/s. IOCL i.e. M/s. Gayatry Petroleum, Gandhidham.

9.25 Shri Maheshwari Meghrajibhai Devshi Proprietor of M/s Shivay Enterprises, Gandhidham in his statement dated 05.04.2022 **[RUD-31]** inter alia stated that he fully agreed with the contents of all his statements dated 15.08.2021, 16.08.2021 and 17.08.2021; that Shri Sandip Maheshwari is his son and he had no relation with his work. On being perused statement dated 26.10.2022 and 27.10.2022 of Shri Nirav Prajapati, he agreed with the contents; that Shri Nirav Prajapati had taken all documents from him for opening of Bank Account; that he had no idea about the goods imported under M/s Shivay Enterprises; that he agreed with the test report of CRCL in which they had opined the goods as 'Automotive Diesel Fuel'; that he had signed many documents for import of goods; that he knew that diesel can be imported by Indian Oil, Hindustan Oil etc.

9.26 Shri Maadev Naran Agadiya Partners of M/s Shiv Shipping and Logistics, Gandhidham in his statement dated 29.04.2022[**RUD-34**]wherein he interalia stated that he confirmed the contents of panchnama dated 18.10.2022 drawn at the premises of M/s Shiv Shipping and Logistics, Gandhidham; thathe agreed with his statement dated 19.10.2021. On being shown his retraction letter dated 25.10.2021,he stated that since he became ill during his statement dated 19.10.2021 therefore he could not understood very well and wrote retraction letter;that he completely agreed with the contents of his statement dated 19.10.2021 and denied the retraction letter. On being explained the Panchnama dated 13.08.2021 drawn at KASEZ, Gandhidham, test report issued by the Chemical Examiner, statement dated 23.08.2021 of Shri Nirav Prajapati, statement dated 26.10.2021 of Shri Chirag Khandor and stated that they never made advance payment for import done by M/s Shivay Enterprises, Gandhidham.

9.27 Shri Shailesh Laxmidas Thakkar Manager (Transport) of M/s Rishi Shipping, Gandhidham in his statement dated 04.05.2022[**RUD-33**] interalia stated thathe was working in M/s Rishi Shipping, Gandhidham from the year 1998; that he was looking after work related to transport maintenance work in the company; that in transport maintenance work he looked after spare parts, repairing of vehicles, to order diesel for vehicle; that the supplier provide them quotation and he informed the lowest price to his owner ShriManoj Manshukhani and when he get approval from the owner, he further ordered;that he inform to Shri Manoj Mansukhani about purchase,he finalise from whom to purchase diesel; that they were purchasing diesel/fuel from (i) M/s Reliance Industries, Jamnagar, (ii) M/s Shivay Enterprises, (iii) M/s Aum Impex, (iv) M/s Arihant Agro Industries and (v) M/s Arihant Petrochem etc.;that all the diesel/fuel purchased from these companies were used in their company's vehicle/barge which had diesel engine; that the description received from M/s Reliance Industries was 'Diesel' and the description on invoice received fromM/s Shivay Enterprises, M/s Aum Impex, M/s Arihant Agro Industries and M/s Arihant Petrochem was 'BaseOil'; that he did not know about the payment related to purchase of diesel;that the same was done by Shri Manoj Mansukhani; that he spoke with Shri Chirag Khandor for the purchase of fuel from M/s Shivay Enterprises, M/s Aum Impex, M/s Arihant Agro Industries and M/s Arihant Petrochem.

9.28 Shri Hannek Singh Saini Diesel In charge of M/s Rishi Shipping, Gandhidham in his statement dated 05.05.2022 **[RUD-34]** inter alia stated that in the year 2012-13 he joined in M/s Rishi Shipping, Gandhidham and since then he was working in this company; that he was the diesel in charge in M/s Rishi Shipping Company; that he was looking after work related to receiving and refuelling of diesel in equipment of the company; that there are 10 storage tankers which were placed at Kandla port for the purpose of receiving of fuel and refuelling of vehicle for the company; that he was reporting to Shri Sailesh Thakkar employee of M/s Rishi Shipping about the requirement of diesel/fuel; that he speak with Shri Manoj Mansukhbhai owner of the company and accordingly dispatch diesel/fuel which was unloaded in the storage tanker in his presence; that he did not know the main supplier of fuel i.e. diesel for the equipment used by M/s. Rishi Shipping group of companies; that he checks the quality of the fuel with hydrometer and temperature meter and after receiving density he stored it in separate tank; that in the year 2021 around six month they received two types of diesel density, first type was of around 80 to 83 density and that of second type (they had given name as 'new types of diesel') was 84 to 85; that at present only one type of diesel/fuel is received by M/s Rishi Shipping group of company of which density remains 80 to 83; that he has no idea about the payment, it is decided by Shri Manoj Mansukhbhai owner of company; that he did not know the owner of M/s Shivay Enterprises, Gandhidham; that about receipt of diesel/fuel and its storage, he always spoke with Shri Sailesh Thaker of their company; that he never spoke about payment related to diesel/fuel of company; that his work in the company was to receive and refuel the diesel/fuel for the equipment of M/s Rishi Shipping group and company.

9.29 Shri Vimalkumar Shyamsunder Poddar M/s S Poddar Overseas, Gandhidham in his statement dated 10.05.2022 **[RUD-35]** inter alia stated that he was an authorised signatory and decision making on behalf of M/s S. Poddar Overseas, Gandhidham; that M/s Shivay Enterprise, M/s Aum Corporate stopped to store in their storage tank since last July/August, 2021; that since they had bought the said premises from M/s Almac Enterprise therefore they got clients of M/s Almac Enterprise and continued with them on the existing rent/lease policy; that before the storage of cargo they make agreement with the clients; that they were dealing with Shri Nirav Prajapati who was dealing for the company M/s Arihant Petro, M/s Arihant Agro, M/s Aum Impex, M/s Aum Corporate; that they had provided 03 to 04 storage tanks to Shri Nirav Prajapati; that Shri Nirav Prajapati told them that they had to store cargo of M/s

Shivay Enterprises and accordingly they store the cargo of M/s Shivay Enterprises after making agreement; that he did not know the owner/director of above said companies; that they mostly dealt with Shri Nirav Prajapati, some times Shri Chirag Khandor came to their premises only for visit purpose and not for dealing; that Shri Nirav Prajapati was the customer of previous owner of premises therefore they were dealing with him from the date of possession of premises; that generally they faith on party's declaration however, when local police came to check whether it was baseoil or otherwise then they took sample and sent to Geo-Chem for teting purpose and as per Geo-Chem report it was baseoil.

9.30 Shri Murli Krishna, Vice President of M/s Shreeji Liquid Storage Terminals, Gandhidham in his statement dated 12.05.2022[**RUD-36**] interalia stated that in November 2018 he had joined with M/s Shreeji Liquid Storage Terminals Pvt Limited, Gandhidham as Vice president and since then he was working there and he looked after the Tank Farm and Marketing of the Terminal Facility; that M/s Shreeji Liquid Storage Terminals Pvt Limited, Gandhidham was involved in the Business of storage of liquid cargo in operation tank Terminal at Kandla Port; that they had stored product for M/s Shivay Enterprise for the period from 20.05.2021 to 31.08.2021 and at present they did not have product storage of M/s Shivay Enterprises, Gandhidham; that initially they had allotted one storage tank bearing No. 108 and later Shri Nirav Prajapati said that it was too large therefore demanded for small tank; that on his request they provided him storage tank No. 105; that he did not know the owner and director of M/s Shivay Enterprises, Gandhidham; Shri Nirav Prajapathi of Aum Enterprise approached them for the storage of the cargo of M/s Shivay Enterprises; that they provided to Shri Nirav Prajapati for storage of his cargo 02 or 03 as demanded by them; that Shri Nirav Prajapati was dealing on behalf of M/s Aum Corporate and M/s Shivay Enterprises and he had requested for 01 or 02 storage tanks and store cargo of his above companies separately; that he always store the cargo with name of 'BaseOil'.

9.31 Shri Vivek Kumar Ramchandani, Director of M/s B.M. Transport and M/s B.M. Roadlines, Gandhidham in his statement dated 17.05.2022[**RUD-37**] interalia stated that M/s B.M. Roadlines, Gandhidham and M/s B.M. Transport, Gandhidham were involved in providing logistic support to Government, PSUs and semi-government and private sector and the main work of the company was to provide only tanker on rent for liquid cargo like LPG, chemicals, petroleum products etc.; that he had provided transport to M/s Shivay

Enterprises, Gandhidham from approx. February or March, 2021; that he never directly dealt with M/s Shivay Enterprises, Gandhidham; that one of his employees Shri Jaydeep Karia told him about the dealing with M/s Shivay Enterprises, Gandhidham; that Shri Jaydeep Karia was the authorised person of M/s B.M. Roadlines, Gandhidham, M/s B.M. Transport, Gandhidham and he took decision on behalf of the company; that when DRI booked case against M/s Shivay Enterprises and their tankers were detained then Shri Jaydeep Karia informed him about the issue, then he asked who was the main person of M/s Shivay Enterprises, Gandhidham then Shri Jaydeep Karia informed him that Shri Nirav Prajapati was dealing on behalf of the company M/s Shivay Enterprises, Gandhidham; that he never met Shri Nirav Prajapati; that Shri Nirav Prajapati contacted their employee Shri Jaydeep Karia for hiring of tankers but since they had already full of business therefore Shri Jaydeep refused him to give tankers on hire; that their employee Shri Jaydeep Karia was dealing all the work of the company M/s B.M. Road Lines and M/s B. M. Transport, therefore he did not know the exact commodity loaded in their tanker on behalf of Shri Nirav Prajapati; that as per communication received from Shri Jaydeep they had given tankers for transportation of base-oil of Shri Nirav Prajapati; that he perused the panchnamas dated 12.08.2021 and 13.08.2021 drawn at Kandla SEZ, Gandhidham and stated that when DRI detained 08 tankers under above said Panchnama dated 12.08.2021 Shri Jaydeep Karia informed him around five days thereafter about detention of 08 tankers; that they had provided 02 tankers of their company and they had provided 06 tankers from market for which they got commission; that they are arranging approx. 20% tankers from market on commission base; that they received charges from Shri Nirav Prjapati through Cheque on behalf of M/s Shivay Enterprises; that they have to take charges from Shri Nirav Prjapati; that he knows Shri Chirag Khandoor, he met Shri Chirag Khandoor in local party at Gandhidham and earlier he never met Shri Nirav Prajapati therefore he did not know him; that he never gave any amount to Shri Nirav Prajapati or Shri Chirag Khandoor as investment or any other purpose; that he or his company had no connection with M/s Shivay Enterprise, except for providing of tankers on hire basis.

9.32 Shri Chandrakant Trikamji Thakkar, Partner of M/s Krishna Kripa Roadlines, Anjar in his statement dated 16.08.2022 **[RUD-38]** inter alia stated that they had bought diesel/fuel three times only from M/s Shivay Enterprises; that he knows that diesel is a canalized goods therefore it could not be imported by any person or company without license issued by DGFT and it can

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be purchased only IOCL/HPCL/BPCL/Reliance Industries/Essar petrol pump, however since they got opportunity to purchase at cheaper than market price therefore they had purchased it from M/s Shivay Enterprises, but they had purchased it from M/s Shivay Enterprises three timesonly; that he did not know the Properitor of M/s. Shivay Enterprises; that he had talked with Shri Nirav Prajapati regarding purchase of diesel from M/s Shivay Enterprises; that when his CA told him that purchase of diesel/fuel from M/s Shivay Enterprises was illegal therefore they stopped purchase of diesel from M/s Shivay Enterprises; that they purchase diesel three times only from M/s Shivay enterprises the details of which are as under:

Sr. No.	Invoice No. and Date	Quantity (ltr)	Amount (Rs.)
1	10 dated 09.07.2021	9000	488520
2	SE/104 dated 10.07.2021	9000	488520
3	SE/113 dated 13.07.2021	24000	1302720

He further stated that in the invoice issued by M/s shivay Enterprises they had mentioned“This Product will be used for the prescribed Legitimate purpose only and shall not be used or consumed for any other purpose including but not limited to edible oil, pharma applications or fuel adulteration”, only to hide ‘Diesel’; that the fuel sold to us by M/s Shivay entrprises was ‘diesel’only; that since there was severe competition in marker therefore they had taken it form M/s Shivay Entrprises to cut cost of fuel.

9.33 Shri Jayantibhai Shivjibhai Chad, Proprietor of M/s Dhruv Transport, Anjarin his statement dated 26.08.2022**[RUD-39]** interalia stated that they purchased diesel from M/s Nayara Energy Limited, Jamnagar, M/s IOCL, M/s BPCL, M/s Shivay Enterprises etc.; that they had bought three times only from M/s Shivay Enterprises; that he did not know the director/properitor of M/s Shivay Enterprises; that for the diesel purchase purposes from M/s Shivay Enterprises he always spoke with Shri Nirav Prajapati on his mobile; that since after using the diesel of M/s Shivay Enterprises some problem occurred in the engine of vehicle therefore they had further not bought the same form M/s Shivay Enterprises; that the details of purchase from M/s Shivay Enterprises are as below:

SR. NO.	INVOICE NO. AND DATE	QUANTITY (LTR)	AMOUNT (RS.)
1	SE/103 DATED 09.07.2021	15,000	814200
2	SE/105 DATED 10.07.2021	15,000	814200
3	SE/114 DATED 13.07.2021	24000	1302720

9.34 Shri Lalit K. Nathani, Partner of M/s Prachi Handling, Gandhidhamin his statement dated 05.09.2022**[RUD-40]** interalia stated that in 2014, he had started his transport business in the name of M/s Prachi Handling, a Partnership firm with his father i.e. Shri Kishan F. Nathani; that they had purchased diesel one time from M/s. Shivay Enterprise, Gandhidham on 02.07.2021; that one time his brother told him that Mr. Nirav Prajapati is the Proprietor or Director of the firm M/s. Shivay Enterprise; that he was aware that only IOCL/HPCL/BPCL/RELIANCE INDUSTRIES/ESSAR petrol/diesel pumps can buy diesel, yet since they got an opportunity to buy diesel at a lower price than the market, so fuel was taken not only from Nayara Energy Limited but also one time from M/s Shivay Enterprises; that their Company had bought diesel/fuel only one time from M/s. Shivay Enterprise because its fuel was causing damage to the engine of their vehicle, so they stopped purchasing the fuel/diesel from M/s. Shivay Enterprise; that the details of diesel/fuel bought by their Company from Shivay are given below:

Sr. No.	Invoice No. And Date	Quantity (Ltr)	Amount (Rs.)
1	SE/93 DATED 02.07.2021	14,000	854000

He further stated that they had made the payment in the account of M/s. Shivay Enterprise on 06.07.2021 and 07.07.2021 through RTGS transfer from their account; that on the invoice it was mentioned that “THIS PRODUCT WILL BE USED FOR THE PRESCRIBED LEGITIMATE PURPOSE ONLY AND SHALL NOT BE USED OR CONSUMED FOR ANY OTHER PURPOSE INCLUDING BUT NOT LIMITED TO EDIBLE OIL, PHARMA APPELATIONS OR FUEL ADULTRETION”, by M/s Shivay Enterprises was used as fuel for the truckonly;that since there was a lot of competition of pricing in the transport market, so on contacting them through M/s Shivay Enterprises, they purchased 'Diesel/fuel' to reduce the cost of fuel, which was in the name of 'Base Oil LTR' by M/s Shivay Enterprises.

9.35 Shri Hardik Ashokbhai Halani, Partner of M/s. Tashish Logistics LLP, Gandhidham and M/s Shivam Logistics, Anjarin his statement dated 09.09.2022**[RUD-41]** interalia stated thathe was decision making person on behalf of M/s. Tashish Logistics LLP and M/s Shivam Logistics; that both the above said companies were involved in the business of transportation mostly from Morbi to Kandla/Mundra and some times other cities of Gujarat and they were hardly taking transportation order for out of Gujarat; that he had bought



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diesel two times for M/s Shivam Logistics and one time for M/s Tashish Logistics LLP from M/s Shivay Enterprises; that he used to take all the decision in respect of purchasing fuel for the equipment used by M/s Shivam Logistics and M/s Tashish Logistics LLP; that due to the price difference they started to purchase diesel from M/s Shivay Enterprises, Gandhidham; that Shri Chirag Khandor came to him and asked to purchase diesel/fuel from him and accordingly they had taken one time for Tashish Logistics LLP and two times for M/s Shivam Logistics; that he did not know the proprietor of M/s Shivay Enterprises, he dealt with Shri Chirag Khandor for purchase of fuel/diesel from M/s Shivay Enterprises; that he did not know Shri Nirav Prajapati; that the fuel supplied by Shri Chirag was around Rs.25 to Rs.27 cheaper than the diesel supplied by other fuel suppliers such as M/s Gayatri Petroleum and almost equally efficient; that they had purchased only two times for M/s Shivam Logistics and only one time for M/s Tashish Logistics LLP, the details were as under:

Sr. No.	Invoice No. and Date	Quantity (ltr)	Amount (Rs.)
<b>Details of purchase for M/s Shivam Logistics</b>			
1	SE/8 Dated 21.05.2021	24000	13,31,040/-
2	SE/6 Dated 20.05.2021	20000	11,09,200/-
<b>Details of purchase for M/s Tashish Logistics LLP</b>			
3	SE/11 Dated 24.05.2021	24000	13,31,040/-

He further stated that in the above said invoice SE/8 dated 21.05.2021, SE/6 dated 20.05.2021 and SE/11 dated 24.05.2021 issued by M/s Shivay Enterprises the description of goods was mentioned as '*Base Oil-LTR' This Product Will Be Used For The Prescribed Legitimate Purpose Only and Shall Not Be Used Or Consumed For Any Other Purpose Including But Not Limited To Edible Oil, Pharma Applications Or Fuel Adulteration*';that the goods which were sold to them by M/s Shivay Enterprises were used as fuel for the trucks.

**10 RETRACTION STATEMENT:**

10.1 Shri Arpit Tanna, Proprietor of M/s Shree Ashapura Trading Co. vide his retraction letter/affidavit dated 22.10.2021 denied his statement dated 21.10.2021. Rebuttal of the same was sent by this office on 01.11.2021**(RUD-42)**.

10.2 Shri Madeva Naran Agariya, Partner of M/s Shiv Shipping, Gandhidham vide his retraction letter/affidavit dated 25.10.2022 denied his statement dated 19.10.2021.Rebuttal of the same was sent by this office on 01.11.2021(**RUD-43**).

**11 ISSUANCE OF SUMMONS U/S 108 OF THE CUSTOMS ACT, 1962 TO SHRI NIRAV PRAJAPATI, SHRI CHIRAG KHANDOR BOTH FROM M/S AUM CORPORATE, GANDHIDHAM, SHRI SHABBIR RAYMA, PARTHER OF M/S A.B. WAREHOUSING, KASEZ, GANDHIDHAM AND SHRI MAHESWARI MEGHRAJBHAI DEVSHI, PROPRIETOR OF M/S SHIVAY ENTERPRISES, GANDHIDHAM FOR RECORDING OF THEIR STATEMENTS:**

11.1 The following summons were issued to Shri Shabbir Rayma, Partner of M/s A.B. Warehousing, KASEZ, Gandhidham for his appearance at DRI, Zonal Unit, Ahmedabad and DRI office Gandhidham by post, email, personal service on the address/email id available with this office, asking him to appear before the Senior Intelligence Officer:

Name & Address of Persons to whom summons issued	Date of issue	Date for Appearance	Mode of delivery	Remarks
Shri Shabbir Rayma, Partner of M/s A.B. Warehousing, KASEZ, Gandhidham	26.10.2021	27.10.2021	By hand delivery	Failed to honour the summon
	27.10.2021	28.10.2021	By hand delivery	Failed to honour the summon
	05.11.2021	08.11.2021	By hand delivery	Failed to honour the summon
	12.11.2021	15.11.2021	By hand delivery	Failed to honour the summon
	23.11.2021	24.11.2021	By hand delivery	Failed to honour the summon
	11.12.2021	13.12.2021	By hand delivery	Failed to honour the summon
	21.12.2021	22.12.2021	By hand delivery	Failed to honour the summon

11.2 The following summons were issued to Shri Maheswari Meghrajbhai Devshi, Proptietor of M/s Shivay Enterprises, Gandhidham for his appearance at DRI, Zonal Unit, Ahmedabad and DRI office Gandhidham by post, email, personal service on the address/email id available with this office, asking him to appear before the Senior Intelligence Officer:

Name & Address of Persons	Date of issue	Date for	Mode of delivery	Remarks
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to whom summons issued		Appearance		
Shri Meghraj Maheshwary, Director of M/s Shivay Enterprise, Gandhidham	26.10.2021	27.10.2021	By Speed Post	Failed to honour the summon
	05.11.2021	08.11.2021	By Speed Post	Failed to honour the summon
	12.11.2021	15.11.2021	By Speed Post	Failed to honour the summon
	23.11.2021	24.11.2021	By Speed Post	Failed to honour the summon
	11.12.2021	13.12.2021	By hand delivery	Failed to honour the summon
	21.12.2021	22.12.2021	By hand delivery	Failed to honour the summon

11.3 The following summons were issued to the Director/Properietor/Partner of M/s Ganesh Roadlenes, Opp. Mittal Pipes, O.P. Jindal Marg, Industrial Area, Hisar, Haryana-125001 for his appearance at DRI, Zonal Unit, Ahmedabad and DRI office Gandhidham by post, email, personal service on the address/email id available with this office, asking him to appear before the Senior Intelligence Officer:

Name & Address of Persons to whom summons issued	Date of issue	Date for Appearance	Mode of delivery	Remarks
The Director/Properietor/Partner of M/s Ganesh Roadlenes, Opp. Mittal Pipes, O.P. Jindal Marg, Industrial Area, Hisar, Haryana-125001	08.08.2022	30.08.2022	By Speed Post	Failed to honour the summon
	30.08.2022	07.09.2022	By Speed Post	Failed to honour the summon
	07.09.2022	15.09.2022	By Speed Post	Failed to honour the summon

**12 FILING OF CRIMINAL COMPLAINT AGAINST SHRI SHABBIR RAYMA, PARTHER OF M/S A.B. WAREHOUSING, KASEZ, GANDHIDHAM AND SHRI MAHESWARI MEGHRAJBHAI DEVSHI, PROPRIETOR OF M/S SHIVAY ENTERPRISES, GANDHIDHAM:**

12.1 In spite of issuance of various Summons mentioned in Para No. 7.3 and 7.4 aboveShri Shabbir Rayma, Partner of M/s A.B. Warehousing, KASEZ, Gandhidham and Shri Maheswari Meghrajbhai Devshi, Proptietor of M/s Shivay Enterprises, Gandhidham did not appear for recording of statements thus, they failed to honor the summons issued under Section 108 of the Customs act, 1962.Therefore criminal complaints in the court of the Honourable Additional Chief Metropolitan Magistrate, Ahmedabad were filed against Shri Shabbir Rayma, Partner of M/s A.B. Warehousing, KASEZ, Gandhidham and Shri Maheswari Meghrajbhai Devshi, Proptietor of M/s

Shivay Enterprises, Gandhidham under section 174 and 175 of the Indian Penal Code, 1860.

### **13 ARREST OF SHRI NIRAVPRAJAPATI ANDSHRI CHIRAG KHANDOR:**

13.1 In view of the above, it appears that Shri Nirav Prajapati and Shri Chirag Khandor both from M/s Aum Corporate, have knowingly concerned themselves in an offence punishable under Section 135(1) of the Customs Act, 1962, as they had knowingly concerned themselves in dealing/carrying with 'Automotive Diesel Fuel as per IS 146902017'. During the panchnama proceedings dated 13.08.2021, it was found that the goods were mis-declared. The subject goods cleared vide Bill of Entry No. 2008042 dated 12.08.2021 filed in the name of M/s. Shivay Enterprises (IEC No. BWAPM5677C), Ward-9/B, Plot No.2, Zala Joravarsinh, BharatNagar, Gandhidham (Kutch), having declared quantity 185.41 MT and declared Assessable Value **Rs. 1,01,09,035.27/- (Rupees One Crore One Lakh, Nine Thousand, Thirty Five and Twenty Seven Paise Only)** were smuggled into India by mis-declaring the same as 'Base-Oil' and concerned themselves in carrying, removing, depositing, harboring, keeping, concealing of smuggled goods, which they knew and/or had reasons to believe were liable to confiscation under Section 111 of the Customs Act, 1962. Shri Nirav Prajapati and Shri Chirag Khandor admitted about the mis-declaration of the goods in the consignment imported under Bill of Entry No. 2008042 dated 12.08.2021 and admitted that the smuggled goods under the said BoE are liable to be seized and confiscated. Hence, Shri Nirav Prajapati and Shri Chirag Khandor were arrested on 27.10.2021 at Ahmedabad under the provisions of Section 104 of the Customs Act, 1962.

### **14 OVERSEAS INQUIRY:**

14.1 The Consul (Economic, Trade & Commerce), High Commission of India, Dubai, UAE was requested vide this office letter F.No. DRI/AZU/GI-02/Enq-33(INT-10)/2021 dated 08.09.2021 to obtain the export documents viz. Shipping Bill, Test Report, Bill of Lading, etc., and to obtain the profile of the overseas supplier firms, including the details with respect to manufacturing/trading activities, the commodities manufactured/traded by them and whether they deal in purchase/sale of base oil. Reminders to the Consul (Economic, Trade & Commerce), High Commission of India, Dubai, UAE was also sent on 27.01.2022 and 15.07.2022 to expedite the report in the matter. The reply is awaited. The outcome of the

overseas inquiry will be incorporated in the show cause notice in the form of addendum, if required.

## **15 RE-EXPORT OF SEIZED GOODS AND PROVISIONAL RELEASE OF 08 SEIZED TANKERS:**

15.1 M/s Shivay Enterprises, Gandhidham vide letters dated 04.02.2022 and 17.02.2022 submitted to the Commissioner of Customs, Kandla, requested to permit re-export of the seized goods on provisional basis in terms of provisions of the Customs Act, 1962. Further, the Deputy Commissioner (SIIB), Custom House, Kandla vide letter F. No. CUS/SIIB/FUP/27/2021-SIIB-O/o Commr-Cus-Kandla dated 31.03.2022 informed that the Competent Authority had ordered for provisional release of goods seized vide seizure memo dated 22.10.2021, for re-export only. Therefore the goods which were seized vide seizure memo dated 22.10.2021 by the Customs were allowed to be provisionally released under section 110A of the Customs Act, 1962, subject to execution of ITC Bond for full value of goods and 10% (ten percent) of revenue deposit/Bank Guarantee for re-export purpose only. The imported goods have been re-exported vide Shipping Bill No. 4005926 dated 12.04.2022.

## **16 EXTENSION OF TIME PERIOD FOR ISSUANCE OF SHOW CAUSE NOTICE:**

16.1 The DRI Ahmedabad Zonal Unit vide letter F.No. DRI/AZU/Enq-33(INT-10)/2021/Pt.I dated 17.01.2022[RUD-44] informed the Commissioner of Customs, Kandla that the subject case was under active investigation, and that in order to conduct in depth inquiry, to establish the conspiracy and to frame appropriate charges against the person(s) found to be actively involved in this case, further time was required to conclude the investigation in logical manner. Hence, it was requested to grant the extension of time for issuance of show cause notice in terms of Section 110 (2) read with Section 124 of the Customs Act 1962.

16.2 The Additional commissioner of Customs, Customs House, Kandla vide letter F.No. CUS/SIIB/INT/106/2021-SIIB-O/o-Commr-Cus-Kandla dated 09.02.2022[RUD-45] addressed to M/s. Shivay Enterprises (IEC No. BWAPM5677C), Ward9/B, Plot No. 2, Zala Joravarsingh, BharatNagar, Gandhidham-370201 informed that the Commissioner of Customs, Kandla has

granted extension of another six months for issuance of show cause notice in the instant case under clause (a) of Section 124 of the Customs Act, 1962.

## **17 SUMMARY OF EVIDENCES AND CHARGES:**

17.1 Whereas, from the inquiry conducted and the oral and material evidences gathered, it appeared that M/s. Shivay Enterprises, Gandhidham had filed Ware House Bill of Entry No.200804 dated 12.08.2021 for import of goods 'Automotive Diesel Fuel as per IS:1460' having Assessable Value Rs. 1,01,09,035.27 (Rupees One Crore One Lakh, Nine Thousand, Thirty Five and Twenty Seven Paisa Only) in guise of Base Oil. Thus, M/s. Shivay Enterprises, Gandhidham smuggled 'Automotive Diesel Fuel' into India by mis-declaring the same as 'Base Oil-others'.

17.2 Whereas it appears that the representative samples of the imported goods declared as Base Oil were drawn and sent for testing at Central Excise & Customs Laboratory, Vadodara. The Chemical Examiner after due testing of the samples gave the reports as under:

***'Above analysed parameters meets the requirement of Automotive Diesel fuel as per IS:1460-2017. It is other than Base Oil'.***

Thus, the test report of the samples of the imported goods suggest that the imported goods were other than base oil and the same have been found to conform to the specifications of '***Automotive Diesel fuel as per IS:1460-2017***'. Thus, it appeared that the sample conforms to the specifications of Bureau of Indian Standards IS:1460:2017 prescribed for 'Automotive Diesel Fuel'. Thus, it appears that the goods imported were Automotive Diesel Fuel and not Base Oil.

17.3 Shri Nirav Prajapati and Shri Chirag Khandor in their respective statements have inter-alia stated that they have sold automotive diesel fuel in the guise of base oil to their customers. Further, they also admitted that the description of goods and remarks viz. 'Base Oil Ltr' "This Product will be used for the prescribed Legitimate purpose only and shall not be used or consumed for any other purpose including but not limited to edible oil, pharma applications or fuel adulteration" mentioned in the invoices issued to the buyers of M/s Shivay Enterprises was only to hide the actual identity of the goods and to escape from the eyes of government authorities. They accepted that the

goods were 'diesel', though the quality of the same was inferior to the diesel of IOCL, HPCL, Reliance etc.

17.4 Whereas it appears that M/s Rishi Shipping, one of the buyers of the imported goods, imported by M/s Shivay Enterprises maintained diesel register, wherein they maintained party wise stock of diesel purchased by M/s. Rishi Shipping from various suppliers including M/s Shivay Enterprises.

17.5 From the bank statements of M/s Shivay Enterprises it is revealed that M/s. Shree Shipping Service, Kesar Arcade, Plot No. 51, Sector 8, Gandhidham Kutch, Gujarat had financed to M/s Shivay Enterprises for smuggling of 'Automotive Diesel Fuel'. Shri Pritesh Khandor, Authorised Signatory of M/s. Shree Shipping Service inter alia accepted that they had made RTGS transfers from their bank account to M/s Shivay Enterprises on loan basis.

17.6 The buyers of the goods in their statements have inter-alia stated that though the goods were described as 'base oil' in the invoices, in fact they had purchased diesel from M/s Shivay Enterprises. They further admitted that the goods purchased from M/s Shivay Enterprises were used as fuel for their tanker/trucks which had diesel engines. They also admitted that the diesel purchased from M/s Shivay Enterprises was available at cheaper price than the diesel purchased from IOCL, Reliance etc. and therefore they started using diesel purchased from M/s Shivay Enterprises as alternate to diesel.

## **18 MISDECLARATION AND MISCLASSIFICATION OF THE IMPORT GOODS:**

18.1 From the foregoing it appears that 'Automotive Diesel Fuel as per IS:1460' classifiable under CTH 2710 1944 had been imported by mis-declaring the description of goods as Base Oil, classifiable under CTH 2710 1971.

As discussed in detail in the foregoing paras, the samples of the import consignment were drawn and sent for testing to Central Excise & Customs Laboratory, Vadodara, who on testing the samples gave opinion that ***'Above analysed parameters meets the requirement of Automotive Diesel fuel as per IS:1460-2017. It is other than Base Oil'***. Thus, the goods imported by M/s Shivay Enterprises were Automotive Diesel Fuel, classifiable

under CTH 2710 1944 and not Base Oil, mis-declared by the importer in the import documents, which is classifiable under CTH 2710 1971.

18.2 As per Schedule I –Import Policy ITC (HS), 2017, pertaining to Section V Chapter 27, **Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460** can only be imported by state trading enterprises. Further, import of the said goods is subject to policy condition 5, which is reproduced below:

- (5) Import allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NG's Resolution No. P23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date.

18.3 Thus it appears that the Automotive Diesel Fuel as per IS-1460 covered under EXIM Code 27101944, is allowed to be imported only by the State Trading Enterprises. Further the policy conditions stipulate that import is allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P & NG's Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date.

Shri Nirav Prajapati and Shri Chirag Khandor knew that they can not import diesel by declaring it as diesel. Therefore, they imported diesel by mis-declaring it as base oil. Thus, they have violated the provisions of Foreign Trade Policy and Customs Act, 1962.

18.4 In terms of Para 2.20 of the Foreign Trade Policy 2015-2020, State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and/or import. M/s Shivay Enterprises, the instant importer has not advanced any evidence indicating that they qualify in terms of the above statutory provision for import of Automotive Diesel Fuel as per IS 1460. Thus the goods in the instant case appear to have been imported in gross violation of the Policy notified vide Notification No. 36/2015-2020 dated 17/01/2017 issued under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 read with Para 2.01 of the Foreign Trade Policy, 2015-2020.



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18.5 The Policy Conditions are also stipulated under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992. Further in terms of Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, 'All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly'.

18.6 Also, in terms of Section 2 (33) of the Customs Act, 1962 "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

22. Accordingly a Show Cause Notice bearing F.No. GEN/ADJ/ADC/710/2024-Adjn-O/o Commr-Cus-Kandla dated 26.04.2023 was issued as detailed below-

22.1 Shri Nirav Prajapati, Shri Chirag Khandor, Shri Shabbir Rayma and Shri Maheshwari Meghraj Devshiare hereby called upon to show cause to the Principal Commissioner/Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat as to why:-

- (i) The impugned goods cleared vide Bill of Entry No. 2008042 dated 12.08.2021 filed in the names of M/s. Shivay Enterprises (IEC No. BWAPM5677C), Ward-9/B, Plot No.2, Zala Joravarsinh, BharatNagar, Gandhidham (Kutch), having declared quantity 185.41 MT and declared Assessable Value **Rs. 1,01,09,035.27/- (Rupees One Crore One Lakh, Nine Thousand, Thirty Five and Twenty Seven Paisa Only)** were smuggled into India by mis-declaring the same as 'Base-Oil-others', seized during the panchnama dated 12.08.2021 as detailed in Annexure-A to this Show Cause Notice should not be classified under the Customs Tariff Heading 2710 1944 instead of declared Customs Tariff Heading 2710 1971;
- (ii) The impugned goods i.e. 'Automotive Diesel fuel as per IS 1460' having declared quantity 185.41 MT (Seized quantity 185.41 MT) having Assessable value of **Rs. 1,01,09,035.27/- (Rupees One Crore One Lakh, Nine Thousand, Thirty Five and Twenty Seven Paisa Only)** and mis-declared as Base Oil-others in the Bill of Entry No. 2008042 dated 12.08.2021, detained under panchnama dated 12.08.2018 and converted under seizure vide Seizure Memo dated 22.10.2021 issued vide F. No.

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S/15-13/SIIB/2020-21 by the Superintendent (SIIB) of Customs House, Kandla as detailed in Annexure-A to this Show Cause Notice should not be confiscated under the provisions of Section 111(d) 111(f) and (m) of the Customs Act, 1962;

- (iii) 08 Chemical Tanker bearing Regn. No. (i) GJ-12-AY-2895, (ii) GJ-12-BT-0122, (iii) GJ-12-X-2974, (iv) GJ-12-AY-7766, (v) GJ-12-AY-9037, (vi) GJ-12-AU-7138, (vii) GJ-12-AU-7144 and (viii) GJ-12-X-1515 which were loaded with 'Automotive Diesel Fuel' as per IS 1460 should not be confiscated under the provisions of Section 115 (2) of the Customs Act, 1962.

22.2 Shri Nirav Prajapati, Shri Chirag Khandor, Shri Shabbir Rayma and Shri Maheshwari Meghraj Devshi, are hereby called upon to show cause to the Principal Commissioner/ Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat as to why:-

- (i) Penalty should not be imposed on them under Section 112 (a) and (b) of the Customs Act, 1962;
- (ii) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962;
- (iii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;
- (iv) Penalty should not be imposed on Shri Shabbir Rayma and Shri Maheshwari Meghraj Devshi under Section 117 of the Customs Act, 1962.

22.3 Shri Vikas Ratankumar Bansal partner of M/s. Shree Shipping Service, Kesar Arcade, Plot No 51, Seetor-8, Gandhidham Kutch, Gujarat hereby called upon to show cause to the Principal Commissioner/ Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat as to why Penalty should not be imposed on him under Section 112 (a) of the Customs Act, 1962.

22.4 Now, therefore M/s A.B. Warehousing, KASEZ, Gandhidham, Plot No.576, Adinath-II, Office no. 3, Gandhidham, Gujarat and residence of 8,

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Ward-9AE, Gandhidham, Gujarat are hereby called upon to show cause, in writing, to the Principal Commissioner/ Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat, as to why penalty should not be imposed on them under Section 112 (a) and 112 (b) of the Customs Act, 1962.

22.5 Now, therefore M/s. Shree Shipping Service, Kesar Arcade, Plot No 51, Sector-8, Gandhidham Kutch, Gujarat are hereby called upon to show cause, in writing, to the Principal Commissioner/ Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat, as to why penalty should not be imposed on them under Section 112 (a) of the Customs Act, 1962.

22.6 The Director/Proprietor/Partner of M/s Ganesh Roadlines, Opp. Mittal Pipes, O.P. Jindal Marg, Industrial Area, Hisar, Haryana-125001 hereby called upon to show cause to the Principal Commissioner/ Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla, Dist-Kutch, Gujarat as to why Penalty should not be imposed on him under Section 117 of the Customs Act, 1962 for disnouring the summons issued under Customs Act, 1962;

**Written Submission:-**

23. M/s. Shivay Enterprises vide their letter dated 22.05.2024 requested for waiver of personal hearing in the matter and requested for relaxation and minimum penalty and further requested to adjust the same against the Bank Guarantee provided by them.

**Discussion and Findings:-**

24. I find that on the basis of information that the M/s. Shivay Enterprises, Gandhidham is importing automotive Diesel fuel by mis-declaring the same as Base Oil, the department initiated the inquiry.

25. From the inquiry conducted and the oral and material evidences gathered, it was found that M/s. Shivay Enterprises, Gandhidham had filed Ware House Bill of Entry No.200804 dated 12.08.2021 for import of goods 'Automotive Diesel Fuel as per IS:1460' having Assessable Value Rs. 1,01,09,035.27 (Rupees One Crore One Lakh, Nine Thousand, Thirty Five and Twenty Seven Paise Only) in guise of Base Oil. Thus, M/s. Shivay Enterprises,

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Gandhidhamsmuggled 'Automotive Diesel Fuel' into India by mis-declaring the same as 'BaseOil-others'.

26. In order to ascertain the correct nature, constituent and classification of the imported goods, the representative samples of the imported goods declared as Base Oil were drawn and sent for testing at Central Excise & Customs Laboratory, Vadodara. The Chemical Examiner after due testing of the samples found as under:

***'Above analysed parameters meets the requirement of Automotive Diesel fuel as per IS:1460-2017. It is other than Base Oil'.***

Thus, the test report of the samples of the imported goods clearly suggested that the imported goods were other than base oil and the same found to conform to the specifications of 'Automotive Diesel fuel as per IS:1460-2017'. Thus, it is apparent that the sample conforms to the specifications of Bureau of Indian Standards IS:1460:2017 prescribed for 'Automotive Diesel Fuel'. Thus, the goods imported were Automotive Diesel Fuel and not Base Oil as declared by them.

27. I further find admission of such mis-declaration in the statements of various persons involved. Shri Nirav Prajapati and Shri Chirag Khandor in their respective statements have inter-alia stated that they have sold automotive diesel fuel in the guise of base oil to their customers. Further, they also admitted that the description of goods and remarks viz. 'Base Oil Ltr' "This Product will be used for the prescribed Legitimate purpose only and shall not be used or consumed for any other purpose including but not limited to edible oil, pharma applications or fuel adulteration" mentioned in the invoices issued to the buyers of M/s Shivay Enterprises was only to hide the actual identity of the goods and to escape from the eyes of government authorities. They have categorically accepted that the goods were 'diesel', though the quality of the same was inferior to the diesel of IOCL, HPCL, Reliance etc.

28. I find that M/s Rishi Shipping, one of the buyers of the goods imported by M/s Shivay Enterprises, maintained diesel register, wherein they have maintained party wise stock of diesel purchased by M/s. Rishi Shipping from various suppliers including M/s Shivay Enterprises which clearly establishes

that M/s. Shivay Enterprise was engaged in importing diesel by mi-declaring the same as Base Oil.

29. I find that the buyers of the goods in their statements have inter-alia stated that though the goods were described as 'base oil' in the invoices, in fact they had purchased diesel from M/s Shivay Enterprises. They further admitted that the goods purchased from M/s Shivay Enterprises were used as fuel for their tanker/trucks which had diesel engines. They also admitted that the diesel purchased from M/s Shivay Enterprises was available at cheaper price than the diesel purchased from IOCL, Reliance etc. and therefore they started using diesel purchased from M/s Shivay Enterprises as alternate to diesel.

30. I find that 'Automotive Diesel Fuel as per IS:1460' is classifiable under CTH 2710 1944 and the same had been imported by mis-declaring the description of goods as Base Oil, classifiable under CTH 2710 1971.

31. As per Schedule I –Import Policy ITC (HS), 2017, pertaining to Section V Chapter 27, **Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460** can only be imported by state trading enterprises. Further, import of the said goods is subject to policy condition 5, which is reproduced below:

- (5) Import allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NG's Resolution No. P23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date.

32. Thus the Automotive Diesel Fuel as per IS-1460 covered under EXIM Code 27101944, is allowed to be imported only by the State Trading Enterprises. Further the policy conditions stipulate that import is allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P & NG's Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date.

33. Shri Nirav Prajapati and Shri Chirag Khandor were well aware of the fact that they were not allowed to import Diesel. Therefore, they imported Diesel by

mis-declaring it as Base oil. Thus, they have violated the provisions of Foreign Trade Policy and Customs Act, 1962.

34. In terms of Para 2.20 of the Foreign Trade Policy 2015-2020, State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and/or import. M/s Shivay Enterprises, the instant importer has not advanced any evidence indicating that they qualify in terms of the above statutory provision for import of Automotive Diesel Fuel as per IS 1460. Thus the goods in the instant case have been imported in gross violation of the Policy notified vide Notification No. 36/2015-2020 dated 17/01/2017 issued under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 read with Para 2.01 of the Foreign Trade Policy, 2015-2020.

35. The Policy Conditions are also stipulated under Section 3 of the Foreign Trade (Development and Regulation) Act, 1992. Further in terms of Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, 'All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly'.

36. In view of the above, I hold that the noticees have indulged in wilful mis-declaration of Automotive diesel Oil by declaring the same as Base Oil in order to evade the restriction/prohibition imposed vide Notification No. 36/2015-2020 dated 17.01.2017.

37. **CONFISCATION OF GOODS:-**

37.1 It is apparent that the importer and the SEZ unit have mis-declared the description and CTH of the imported goods. Further the goods were restricted in nature and were allowed to be imported by state trading enterprises only as discussed in the foregoing paras. Such acts on their part have rendered their goods liable for confiscation under the provisions of Section 111(d), 111(f) and 111(m) of the Customs Act, 1962. Further, in this regard, I rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai) wherein the Hon'ble Tribunal held that *when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not*-. This judgement of Hon'ble Tribunal has been upheld in Apex court in 2003 (ELT A309 (SC)).

37.2 I find that the goods were provisionally released and allowed for re-export. Therefore, it is apt to impose redemption fine under Section 125 of the Customs Act, 1962. In this regard, I rely on the judgement in the case of M/s. Weston Components Ltd. Vs Commissioner of Customs, New Delhi (supra), wherein the goods were released to the assessee on an application made by it and on the execution of a bond by the assessee and in those circumstances, the Hon'ble Apex Court held that the mere fact that the goods were released on the bond being executed would not take away the power of custom authority to levy redemption fine.

37.3 I further find that the above said goods after Customs clearance were loaded into chemical tankers for further storage at M/s. Shreeji Liquid Terminals Pvt. Ltd., Gandhidham in the Tankers bearing Registration Nos. (i) GJ-12-AY-2895, (ii) GJ-12-BT-0122, (iii) GJ-12-X-2974, (iv) GJ-12-AY-7766, (v) GJ-12-AY-9037, (vi) GJ-12-AU-7138, (vii) GJ-12-AU-7144 and (viii) GJ-12-X-1515. I find that the conveyance viz. the tankers used for transportation of the mis-declared imported goods were seized under the provisions of Section 115 of the Customs Act, 1962, vide 'Seizure Memo dated 22.11.2021 issued from F. No. S/15-13/SIIB/2020-21 by the Superintendent of Customs, Custom House, Kandla. It is clear that the chemical tankers have been used in the transportation of mis-declared imported goods rendering the same liable for confiscation under Section 115 of the Customs Act, 1962. However the tankers have also been released provisionally to the owner of such conveyance. Therefore, I find it apt to impose redemption fine under Section 115 of the Customs Act, 1962.

**Whether the subject goods are prohibited or restricted in nature:-**

38.1 The Central Government has the authority to issue notifications under Section 11 of the Customs Act, 1962, declaring the export or import of any items as forbidden. The prohibition can be unconditional or conditional. A notification under Section 11 can be issued for a variety of reasons, including maintaining India's security, preventing a shortage of goods in the country, conservation of foreign exchange, safeguarding balance of payments etc.

38.2 In order to understand the meaning of the terms 'Restriction' and 'Prohibition', it becomes essential on our part to first try and understand the literal meanings of the same. The Cambridge Dictionary, defines prohibition as "law or rule that officially stops something from being done, or the fact of not being allowed by official rules or laws" similarly, it defines restriction as "an

official limit set by law on something". Understandably, the peripheral understanding after reading the above definitions shows that the definition for the prohibition is strongly worded with no scope for an exception. In contrast, the definition for restriction is not strongly worded compared to prohibition and carries a scope for the exception.

38.3 Similarly, under the Customs Act, 1962, the definition for "prohibited goods" is strongly drafted with no scope of exception and carries a penalty in the form of confiscation of goods as per sections 111, 113, 112 & 124 of the act. However, on the other hand, sections 3 to 5 of the Foreign Trade (Development and Regulation) Act, 1992 are not so strongly worded and carry the scope of an exception in issuing a license for import and export of the restricted commodity. For example, the export of human skeletons is prohibited as per section 2 (33). In contrast, export of cattle which is restricted suitable as per the 'ITC- HC' list, is allowed against an export licence obtained under schedule II ITC(HS) Classification of Export and Import Items, 2018.

38.4 Moreover, the restriction and prohibition of goods are not just limited to the Customs act, 1962 and Notifications of DGFT. Import and export of some specified goods will also be restricted/prohibited under other laws such as Environment Protection Act, Wild Life Act, Indian Trade and Merchandise Marks Act, Arms Act, etc. The prohibition under these acts will also apply to the penal provisions of the Customs Act, rendering such goods liable for confiscation under section 111(d) of the Customs Act (for import) and 113 (d) of the Customs Act (for export)11.

38.5 The relief for the distinction and differentiation in treating restricted and prohibited goods lies in lieu of section 125 of the Customs Act, 1962. *Section 125 of the act makes a clear distinction between prohibited goods and other goods and obligates the release of other goods on payment of redemption of a fee. Similarly Section 112 makes a clear distinction between prohibited and dutiable goods.*

38.6 In this regard, I rely on the following judgements:-

- (i) *Shaik Md. Omer v. Collector of Customs AIR 1967 Cal*

It is the most highlighted case, which elaborates the meaning and the scope of the word 'prohibition' as per section 2 (33) of the act. In this case, the Hon'ble High Court of Calcutta observed that prohibition means every prohibition: and restriction is also a type of prohibition. The Court further explained that whenever there is a condition attached with the import or export of the good, then such goods are



labelled as 'restricted goods' and import or export of such goods can be permitted on account of the fulfilment of the necessary condition. *Shaik Md. Omer*

(ii) *Commissioner of Customs v. Atul Automation (P.) Ltd*

The Hon'ble Supreme Court, in this case, has underscored the difference between what is prohibited and what is restricted. The goods imported or exported without authorisation were found to be restricted goods. ***Restricted goods have the option of being redeemed and do not deserve the treatment of absolute confiscation, which could be applied only to prohibited goods.***

(iii) *Horizon Ferro Alloys (P.) Ltd. v. Union of India*

In this case, the difference between prohibited and restricted goods was made considering the tainted characteristics they hold.<sup>15</sup> It was observed that goods like fake currency, pornographic material, dead animal skin or body etc., are prohibited goods as per section 2 (33) of the act. *Moreover, in this case, it was also observed that merely exceeding the quantity restriction over restricted goods will not make them fall under the category of prohibited goods.* The Adjudication Authority can use its discretion according to section 125 to declare such goods as restricted goods.

In the instant case, the goods are not under the category of 'absolute prohibition'. The goods were restricted in nature, which is a type of prohibition only when certain conditions are not followed. In view of the above discussion and legal findings, I hold that the goods in question are restricted in nature and shall not be termed as prohibited.

**Penalties under Section 112, 114A and 114AA of the Customs Act, 1962:-**

39.1 In this regard, Section 112(a)(ii)/112(b)(ii) is applicable. I find that Section 112(a)(ii) or 112(b)(ii) mandates that in case of dutiable goods the importer/SEZ unit is liable to penalty not exceeding ten percent of the **duty sought to be evaded** or **five thousand rupees**, whichever is higher.

39.2 Further, I find that proviso to Section 112(a)(ii) or 112(b)(ii) mandates that if the duty determined under Section 28(8) alongwith interest under Section 28AA is paid within thirty days from the communication of order of the proper officer determining such duty, the amount of penalty shall reduce to twenty five percent of the penalty so determined. Therefore, it is apparent that the penalty under Section 112(a) or 112(b), in case of dutiable goods, depends upon the amount of duty determined/confirmed under the provision of Section 28(8) of the Customs Act, 1962.

39.3 However in the instant case the imported goods have been re-exported after the provisional release of the same. Therefore, the evasion of duty did not occur in the instant case. In this regard, the show cause notice is also not

alleging evasion of duties of Customs. It is a case of mis-declaration of automotive diesel oil by declaring the same as Base oil as the importer was not allowed to import Diesel and the goods being restricted/prohibited in nature were allowed to be imported by state trading enterprise only.

39.4 However, it is also clear that the importer/SEZ unit has mis-declared the goods in terms of description and CTH which has rendered the goods liable for confiscation, therefore, it is important to penalise, all the persons/firm concerned, with penalty of Rs. 5,000/- each provided in the provisions of Section 112(a)(ii)/112(b)(ii) of the Customs Act, 1962.

40. With regard to penalty under Section 114A of the Customs Act, 1962, I find that Section 114A attracts penalty for non/short payment of duty by way of collusion/willful mis-statement/fraud. However, as discussed in the foregoing paras, there is no non/short payment of duty in the instant case, therefore they are not liable for penalty under Section 114A of the Customs Act, 1962.

41. With regard to penalty under Section 114AA of the Customs Act, 1962, I find that the Shri Nirav Prajapati, Shri Chirag Khandor, Shri Shabbir Rayma and Shri Maheshwari Meghraj Devshi (importer/SEZ unit) has made a false statement and document while presenting the Bill of Entry by mis-declaring the goods in terms of quantity, value and duty foregone, rendering themselves liable for penalty under Section 114AA of the Customs Act, 1962. Rule 75 of the SEZ Rules, 2006 mandates that unless and otherwise specified in these rules, all inward or outward movements of the goods into or from SEZ by the Unit shall be based on self-declaration made by the Unit. While importing subject goods, the said SEZ unit was bound for true and correct declaration and assessment. The said SEZ unit was fully aware of specifications, characteristics, nature and description of the goods imported. Such act on their part has rendered them liable for penal action under Section 114AA of the Customs Act, 1962.

42. With regard to penalty under Section 117 of the Customs Act, 1962, I find that the said Section provides for penal provisions in contravention of the provisions of Act for which no express penalty is elsewhere provided for such contravention. In the instant matter, summons were issued to Shri Shabbir Rayma and Shri Maheshwari Meghraj Devshi and director/partner of M/s. Ganesh Roadlines however they dishonoured the summons by not appearing

before the customs authorities rendering themselves liable for penal actions under Section 117 of the Customs Act, 1962.

43. In this regard, it is pertinent to note that the goods have been re-exported and considering the same, a lenient view will be taken while imposing redemption fine and penalties upon all the noticees.

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

- (i) I reject the description and CTH of the impugned goods cleared vide Bill of Entry No. 2008042 dated 12.08.2021 filed in the names of M/s. Shivay Enterprises (IEC No. BWAPM5677C), Ward-9/B, Plot No.2, Zala Joravarsinh, BharatNagar, Gandhidhamm (Kutch), having declared quantity 185.41 MT and declared Assessable Value **Rs. 1,01,09,035.27/- (Rupees One Crore One Lakh, Nine Thousand, Thirty Five and Twenty Seven Paisa Only)** and order to classify the same under the Customs Tariff Heading 2710 1944 instead of declared Customs Tariff Heading 2710 1971;
- (ii) I order to confiscate the impugned goods i.e. 'Automotive Diesel fuel as per IS 1460' having declared quantity 185.41 MT (Seized quantity 185.41 MT) having Assessable value of **Rs. 1,01,09,035.27/- (Rupees One Crore One Lakh, Nine Thousand, Thirty Five and Twenty Seven Paisa Only)** under the provisions of Section 111(d) 111(f) and (m) of the Customs Act, 1962;  
Since the goods have been provisionally released and allowed for re-export, I impose redemption fine of Rs. 5,00,000/- (Rupees Five Lakhs only) under Section 125 of the Customs Act, 1962.
- (iii) I order to confiscate 08 Chemical Tanker bearing Regn. No. (i) GJ-12-AY-2895, (ii) GJ-12-BT-0122, (iii) GJ-12-X-2974, (iv) GJ-12-AY-7766, (v) GJ-12-AY-9037, (vi) GJ-12-AU-7138, (vii) GJ-12-AU-7144 and (viii) GJ-12-X-1515, having value of Rs. 56,00,184/- (as per RUD-6) which were loaded with 'Automotive Diesel Fuel' as per IS 1460 under the provisions of Section 115 (2) of the Customs Act, 1962. Since the goods have been provisionally released, I impose redemption fine of Rs. 3,00,000/- (Three lakhs only) under Section 115(2) of the Customs Act, 1962.
- (iv) I impose penalty of Rs. 5,000/- (Rupees Five thousands) each, separately and individually upon Shri Nirav Prajapati, Shri Chirag Khandor, Shri Shabbir Rayma and Shri Maheshwari Meghraj Devshi under Section 112(a) of the Customs Act, 1962;

- (v) I refrain from imposing penalty under Section 114A of the Customs Act, 1962;
- (vi) I impose penalty of Rs. 75,000/- (Rupees Seventy five thousands) each, separately and individually, upon Shri Nirav Prajapati, Shri Chirag Khandor, Shri Shabbir Rayma and Shri Maheshwari Meghraj Devshi under Section 114A of the Customs Act, 1962;
- (vii) I impose penalty of Rs. 50,000/- each, separately and individually upon Shri Shabbir Rayma and Shri Maheshwari Meghraj Devshi under Section 117 of the Customs Act, 1962.
- (viii) I impose penalty of Rs. 5,000/- under Section 112(a) upon Shri Vikas Ratankumar Bansal, partner of M/s. Shree Shipping Service, Kesar Arcade, Plot No 51, Sector-8, Gandhidham Kutch, Gujarat under Section 112 (a) of the Customs Act, 1962.
- (ix) I impose penalty of Rs. 5,000/- upon M/s A.B. Warehousing, KASEZ, Gandhidham, Plot No.576, Adinath-II, Office no. 3, Gandhidham, Gujarat and residence of 8, Ward-9AE, Gandhidham, Gujarat under Section 112 (a) of the Customs Act, 1962.
- (x) I impose penalty of Rs. 5,000/- on M/s. Shree Shipping Service, Kesar Arcade, Plot No 51, Sector-8, Gandhidham Kutch, Gujarat under Section 112 (a) of the Customs Act, 1962.
- (xi) I impose penalty of Rs. 50,000/- upon the Director/Proprietor/Partner of M/s Ganesh Roadlines, Opp. Mittal Pipes, O.P. Jindal Marg, Industrial Area, Hisar, Haryana-125001 under Section 117 of the Customs Act, 1962 for disnouring the summons issued under Customs Act, 1962.
- (xii) I order to enforce the below mentioned Bank Guarantees, provided by them as security for provisional release of the goods, for the recovery of redemption fines and penalties confirmed above from (i) to (xi).

OIO No. KDL/ADC/DPB/05/2024-25 dated 29.05.2024  
DIN-20240571ML0000515594

Name of the party	Bank Guarantee No. and Date	Amount (in Rs.)
M/s. Shivay Enterprises	0259NDDG00000723 dated 08.04.2022	10,11,000
Rudradutt Logistic	0037322BG0000008 dated 12.04.2022	74,326
Ramesh Savabhai Rakhaiya	0259NDDG00000923 dated 12.04.2022	1,20,126
Shree Shipping services	1336922BG0000001 dated 13.04.2022	57,753
Mayursinh KirtiSinh Jadeja	0037322BG0000009 dated 12.04.2022	74,326
Dashrathlal Mohanlal Prajapati	0037322BG0000006 dated 11.04.2022	34,818
Chirag Arvind Khandor	0037322BG0000007 dated 11.04.2022	38,167
B M Roadlines Pvt.Limited	0259NDDG00000823 dated 08.04.2022	1,60,503

44. This order is issued without prejudice to any other action that may be taken against the SEZ unit or any other person under the Customs Act, 1962 or any other law for the time being in force.

**(Dev Prakash Bamanavat)**  
Additional Commissioner  
Customs House, Kandla

F.No. GEN/ADJ/ADC/710/2024-Adjn-O/o Commr-Cus-Kandla  
DIN-20240571ML0000515594

To,

- (1) Shri Maheshwari Meghrajbhai Devshi, Proprietor of M/s Shivay Enterprises, Gandhidham, 2, Jhulelal Society, Bharat Nagar, Gandhidham, Gujarat - 370201.
- (2) Shri Shabbir Rayma, Partner of M/s A.B. Warehousing, KASEZ, Gandhidham, Plot No.576, Adinath-II, Office no. 3, Gandhidham, Gujarat and residence of 8, Ward-9AE, Gandhidham, Gujarat.
- (3) M/s A.B. Warehousing, KASEZ, Gandhidham, Plot No.576, Adinath-II, Office no. 3, Gandhidham, Gujarat and residence of 8, Ward-9AE, Gandhidham, Gujarat.
- (4) Shri Nirav Prajapati, Director of M/s. Aum Corporate Pvt. Ltd., 66A, above Green Fibre, Opp. Metro Showroom, Main Market, Gandhidham, Gujarat.

OIO No. KDL/ADC/DPB/05/2024-25 dated 29.05.2024  
DIN-20240571ML0000515594

- (5) Shri Chirag Khandor, , Director of M/s. Aum Corporate Pvt. Ltd., 66A, above Green Fibre, Opp. Metro Showroom, Main Market, Gandhidham, Gujarat.
- (6) Shri Pritesh Khandor, Authorised Signatory of M/s. Shree Shipping Service, Kesar Arcade, Plot No 51, Seetor-8, Gandhidham Kutch, Gujarat.
- (7) M/s. Shree Shipping Service, Kesar Arcade, Plot No 51, Seetor-8, Gandhidham Kutch, Gujarat.
- (8) The Director/Proprietor/Partner of M/s Ganesh Roadlines, Opp. Mittal Pipes, O.P. Jindal Marg, Industrial Area, Hisar, Haryana-125001.

**Copy to:-**

1. The Deputy Director, DRI, AZU, Ahmedabad.
2. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
3. The Deputy Commissioner, KASEZ, Gandhidham
4. The Superintendent, Review/TRC/EDI, Kandla Customs House, Kandla.
5. Guard File.