



सीमा शुल्क के आयुक्त का कार्यालय (निवारक), सीमा शुल्क भवन,
जामनगर - राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर001 361 - (गुजरात)

Office of the Commissioner of Customs (Preventive),
'SEEMA SHULK BHAVAN', Jamnagar - Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) - 361 001

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दस्तावेज़ पहचान संख्या/ Document Identification Number (DIN) - 20260264WV0000320938

1.	फ़ाइल क्रमांक/ File Number	CUS/5665/2024-Adjn.
2.	मूल आदेश क्रमांक/ Order-In-Original Number	JAM-CUSTM-PRV-COM-010-25-26
3.	आदेश पारित करने वाला प्राधिकारी/ Authority Passing the Order	धिरेंद्र लाल / Dhirendra Lal आयुक्त/ Commissioner, सीमा शुल्क निवारक(/ Customs (Preventive), जामनगर/ Jamnagar.
4.	आदेश की तिथि/ Date of Order	16.02.2026
5.	आदेश जारी करने की तिथि/ Date of issue of Order	16.02.2026
6.	कारण बताओ नोटिस संख्या और तारीख/ Show Cause Notice number and date	संख्या/ No.: DRI/AZU/JRU/25/2012 दिनांक / dated: 04-05-2012 [REMAND PROCEEDINGS AS PER GUJARAT HIGH COURT'S ORDER DATED 25.11.2025 IN SCA NO.11971 OF 2025 FILED AGAINST OIO NO. JAM-CUSTM-PRV-COM-012-24-25 dated 18.03.2025]
7.	नोटिस पाने वाले का नाम/ Name of the Noticee	मेसर्स मितेश इम्पेक्स, सीओ मेसर्स लवती फर्टिलाइजर एंड केमिकल्स प्राइवेट लिमिटेड/ प्लॉट नंबर 3261, जीआईडीसी फेज-II, दारेड, जामनगर-361004- पिछला पता]- प्लॉट नंबर 289-287,312 और 311, जीआईडीसी फेज-II, दारेड, जामनगर श्री प्रकाशचंद्र पनालाल लावटी, मेसर्स महालक्ष्मी एक्सट्रूशंस के पार्टनर, स्पेशल शेड नंबर 431, जीआईडीसी, फेज-I, शंकर टेकरी, उद्योगनगर, जामनगर-मेसर्स लावटी / फर्टिलाइजर एंड केमिकल्स प्राइवेट लिमिटेड, प्लॉट नंबर 3261, जीआईडीसी फेज- III, दारेड, जामनगर-361004 श्री रमेशचंद्र पनालाल लावटी, मेसर्स मितेश इम्पेक्स के पार्टनर, जामनगर, प्लॉट संख्या 287-289,311 और 312, जीआईडीसी, फेज-II, दारेड, जामनगर मेसर्स / लावटी फर्टिलाइजर एंड केमिकल्स प्राइवेट लिमिटेड, प्लॉट संख्या 3261, जीआईडीसी फेज-III, दारेड, जामनगर-361004 श्री नाथूलाल पनालाल लावटी, मेसर्स सीकोर्पोरेशन के मालिक .के., स्पेशल शेड नं.431, जीआईडीसी, फेज-I, शंकर टेकरी, उद्योगनगर, जामनगर मेसर्स लावटी / फर्टिलाइजर एंड केमिकल्स प्राइवेट लिमिटेड, प्लॉट नं.3261, जीआईडीसी फेज-III, दारेड, जामनगर-361004 M/s Mitesh Impex, C/o M/s. Lavti Fertilizer & Chemicals Pvt. Ltd., Plot No.3261, GIDC Phase-II, Dared, Jamnagar-361004 [previous address - Plot No.287-289,311 & 312, GIDC Phase-II, Dared, Jamnagar Shri Prakashchandra Panalal Lavti, Partner of M/ s. Mahalaxmi Extrusions, Special Shed No.431, GIDC, Phase-I, Shanker Tekri, Udyognagar, Jamnagar/ C/o M/s. Lavti Fertilizer & Chemicals Pvt. Ltd., Plot No.3261, GIDC Phase-III, Dared, Jamnagar-361004. Shri Rameshchandra Panalal Lavti, Partner of M/ s. Mitesh Impex, Jamnagar, Plot No.287- 289,311&312, GIDC, Phase-II, Dared, Jamnagar/ M/s. Lavti Fertilizer & Chemicals Pvt. Ltd., Plot No.3261, GIDC Phase-III, Dared, Jamnagar-361004. Shri Nathulal Panalal Lavti, Proprietor of M/ s. C.K. Corporation, Special Shed No.431, GIDC, Phase-I, Shanker Tekri, Udyognaga-r, Jamnagar/ C/o M/s. Lavti Fertilizer & Chemicals Pvt. Ltd., Plot No.3261, GIDC Phase-III, Dared,



	Jamnagar-361004.
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1. इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है।
The original copy of this order is provided free of cost to the person concerned.
2. इस मूल आदेश से व्यथित कोई भी व्यक्ति, सीमा शुल्क अधिनियम, 129 धारा की 1962A)(1)a, सीमा शुल्क नियम (अपील), 1982 के नियम 6(1) के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से तीन महीने के भीतर फॉर्म सीए 3-में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए 3-में अपील का प्रपत्र, चार प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। (हो प्रति प्रमाणित एक कम से कम से जिनमें)

<p>सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण, पश्चिम जोनल बेंच, दूसरी मंजिल, बहुमाली भवन असरवा, गिरधर नगर ब्रिज के पास, गिरधर नगर, अहमदाबाद, (गुजरात) - 380 004</p>	<p>Customs, Excise and Service Tax Appellate Tribunal (West Zonal Bench)</p> <p>2nd Floor, Bahumali Bhavan Asarwa, Near Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad (Gujarat) - 380 004</p>
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Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-3, within three months from the date of receipt of this order, under the provisions of Section 129A(1)(a) of the Customs Act, 1962, read with Rule 6(1) of the Customs (Appeals) Rules, 1982. The form of appeal in Form No. CA.-3 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

3. अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये) 0.50 पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची - I, मद 6 के तहत निर्धारित किया गया है।
The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
4. अपील के साथ 1962, अधिनियम शुल्क सीमा (की धारा) 129 A) की उप) धारा-6) के अंतर्गत किसी भी राष्ट्रीयकृत बैंक द्वारा न्यायाधिकरण की उक्त पीठ के सहायक रेजिस्ट्रार के पक्ष में रेखांकित बैंक ड्राफ्ट रु। -/5000 रु।, -/1000या रु। -/10,000 जैसा भी लागू हो जाना किया जारी लिए के शाखा स्थित पर स्थान ऐसे, है। स्थित पीठ उक्त पर जहां, चाहिए
The appeal should be accompanied with a cross demand draft in favour of the Assistant Registrar of the Bench of the Tribunal, on a branch of any Nationalized Bank located at a place where the bench is located for Rs. 1,000/- (in cases where the duty, interest, fine, or penalty demanded is Rs. 5 lakh or less), Rs. 5,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 5 lakhs but less than Rs. 50 lakhs) and Rs. 10,000/- (in cases where the duty, interest, fine, or penalty demanded is more than Rs. 50 lakhs) as applicable under Sub-Section (6) of the Section 129(A) of the Customs Act, 1962.
5. अपीलीय ज्ञापन के साथ शुल्क भुगतान शुल्क सीमा अन्यथा करे संलग्न भी सबूत का दंड अर्थ /जुर्माना / अधिनियम, 1962 की धारा 129 (E) के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।
Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 129 (E) of the Customs Act, 1962.
6. अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील) नियम, प्रक्रिया सिस्टेट और 1982 नियम (प्रोसीजर), है। हुआ पालन पूरा का नियमो सभी के 1982
While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
7. इस आदेश के खिलाफ अपील, सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5 के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।
An appeal, against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal, on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty alone is in dispute.



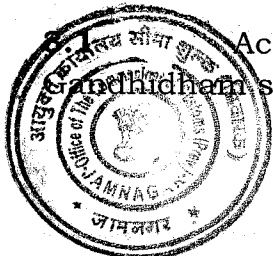
BRIEF FACTS OF THE CASE:

The present adjudication initiated as denovo proceedings in pursuance to the Order dated 25/11/2025 pronounced by Hon'ble High Court of Gujarat in the R/Special Civil Application No.11971 of 2025 filed by M/s. Mitesh Impex aggrieved against Order-In-Original bearing No. JAM-CUSTOM-PREV-COM-012-2024-25 dated 18.03.2025 passed by the Commissioner of Customs (Preventive), Jamnagar; wherein the Hon'ble Court has remanded the matter back to the Adjudicating Authority for fresh adjudication to pass appropriate order within a period of 12 weeks from the date of receipt of the order.

2. M/s. Mitesh Impex, Plot No.287-289,311&312, GIDC, Phase-II, Dared, Jamnagar is a 100% EOU having LOP No. KASEZ/100%EOU/II/148/ 2001-02 dated 23/25.10.2001 issued by the Development Commissioner, Kandla Special Economic Zone and is/was engaged in manufacturing of brass ingots/billets, parts and accessories from imported duty free Brass scrap under EOU scheme. The finished goods after being manufactured, are exported (Physical Export & Deemed Export) as well as cleared into DTA on payment of duty after obtaining permission from KASEZ. M/s. Mitesh Impex was holding Central Excise Registration No. AADFM2151MXMOO1, and they have also obtained warehousing License No. 06/ 2001-02 dated 25.02.2002 & 15/2003-04 dated 20.02.2004 from the Assistant Commissioner of Central Excise, Jamnagar for warehousing of duty free imported raw materials and to manufacture under bond under the provisions of Section 58 and 65 of the Customs Act, 1962. M/s Mitesh Impex had executed the General Bond in terms of Para 3 of the Notification No. 52/2003-Cus. dated 31.03.2003 in form B-17 for Rs. 1 Crores dated 25.02.2002 and Rs.4.60 Crores on 20.02.2004 before the Assistant Commissioner of Central Excise, Jamnagar, binding themselves jointly and severally to observe the various conditions in case of imported duty free goods.

3. An intelligence was received was by the DRI, Jamnagar that, M/s Mitesh Impex, who imports brass/ copper scrap at Nil rate of customs duty had been engaged in exporting brass items after regularly inflating the weight of the consignments in the export/ deemed- export documents by an approximate multiplication of nine times in their documents, with a view to wrongly claim fulfilment of their export obligation. They were also engaged in the clandestine removal and sale of the goods/ raw materials imported duty free or/and imported at concessional rate of duty in the domestic market. The Intelligence further indicated that the Brass ingots being exported by M/s Mitesh Impex, Jamnagar to different overseas Dubai based buyers, was imported by M/s Mahalaxmi Extrusion, Jamnagar, a DTA unit run by Shri Prakash Panalal Lavti, younger brother of Shri Rameshchandra Panalal Lavti, Partner of M/s Mitesh Impex, Jamnagar, at a substantially low value so as to evade the duty of customs. It was also gathered that all the transactions of behalf of M/s. Mahalaxmi Extrusions was being managed by Shri Rameshchandra P. Lavti, who was the mastermind in the Customs duty evasion. Intelligence also suggested that, all the export consignments of M/s Mitesh Impex, Jamnagar were destined to M/s Darpan General Trading LLC, Dubai on inflated value and misdeclared description and that Shri Ankit Dineshbhai Changani, Partner of M/s Darpan General Trading LLC, Dubai was a resident of Jamnagar, Gujarat, who regularly sat in the office of M/ s Amardeep Exports, Jamnagar, also a 100% EOU.

Acting on the above intelligence, the officers of DRI, Jamnagar & ~~an~~ searched the following premises:



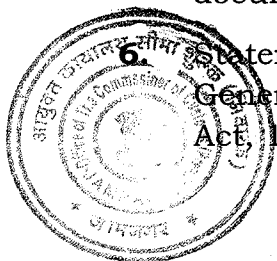
- (i) The factory premises of M/ s Mitesh Impex was searched on 08.02.2010 and relevant documents were withdrawn under Panchanama dated 08.02.2010.
- (ii) The factory premises of M/ s Mahlaxmi Extrusions located at Shankertekri, Udyognagar, Jamnagar was searched on 08.02.2010 and relevant documents were withdrawn under Panchnama dated 08.02.2010.
- (iii) The factory premises of M/ s Amardeep Exports, Jamnagar located at Plot No. 313 & 314, GIDC Phase-II, Dared, Jamnagar was searched on 08.02.2010 and relevant documents were withdrawn under Panchnama dated 08.02.2010.
- (iv) The residential premises of Shri Ankit Dineshbhai Changani located at Shri Ram Mandir Chowk, Gulab Nagar, Jamnagar was searched on 08.02.2010 and relevant documents were withdrawn under Panchnama dated 08.02.2010.

4. Statement of Shri Bhavesh Dharmshibhai Bhanushali, authorized signatory of M/s Mitesh Impex, Jamnagar was recorded under Section 108 of the Customs Act, 1962 on 18.02.2010; wherein he interalia stated that they manufactured Copper and Zinc based alloy ingots, brass sanitary fittings parts, building hardware, brass components a's per LOP (Letter of Permission). He further stated that on instruction of Shri Rameshbhai, partner of M/s. Mitesh Impex, Jamnagar, he prepared Export invoice, packing list, ARE-1 and other related documents. He further stated that Shri Rameshbhai signed the documents when he used to be available in the office and in his absence, he (Shri Bhavesh) himself used to sign the above documents.

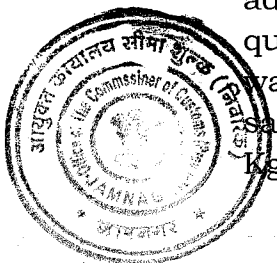
5. Statement of Shri Dineshbhai Bhimjibhai Changani, Partner of M/s. Amardeep Exports, was recorded under Section 108 of the Customs Act, 1962 on 09.02.2010 wherein he interalia stated that:

- he was one of the partners of M/s Amardeep Exports and the other partner was Shri Sandip Lakshumanbhai Talavia; that their factory was established in 2005 and it was a 100% EOU having Ce-1 Excise Registration No. AALFA3896 KXM001;
- he had no specific role in M/s. Darpan General Trading LLC, Dubai; that the said company was a partnership firm and his elder son Shri Ankit Dineshbhai Changani was one of the partners and the other partner was an UAE national whose name was not known to him;
- he did not remember exact number of consignments exported to M/s. Darpan General Trading LLC, Dubai but most of their export consignments were sent to them only; that Shri Ankit used to get orders from UAE and based on the same, he used to place orders to M/s. Amardeep Exports; that the deals were jointly organized by them;
- he was aware about recovery of file bearing page No. 01 to 171, CD-ROMs, one Laptop, one hard disk and one pen drive from his factory premises during search conducted by DRI officers on 08.02.2010 and the Panchnama was also drawn in his presence; that he was not aware that the above said documents and electronic gadgets belonged to his son Shri Ankit;

6. Statement of Shri Ankit Dineshbhai Changani, Partner of M/s. Darpan General Trading LLC, Dubai was recorded under section 108 of the Customs Act, 1962 on 12.02.2010 wherein he interalia stated that:



- he was Partner of M/s. Darpan General Trading LLC (DGTL), Dubai and having 49% stake and other partner was Shri Abdul Majeed Sheikh an UAE national having 51% stake; that M/s. Amardeep Export was being looked after by his father and he only sat in the factory premises to look after the work of DGTL in India;
- DGTL's main business was trading of various items of metals such as Brass building hardware, Brass electrical parts, Brass sanitary wares, auto parts, plastic pipes and parts used for electrical fittings etc.; that the company's business was looked after by Shri Abdul Majeed; that most of the above items were imported by DGTL from India and China; that DGTL also used to purchased imported items locally from different wholesalers of Dubai;
- Shri Abdul Majeed gave him direction to inquire and obtain competitive quotations for brass building hardware/ Sanitary wares etc. to be imported from India and he, thereafter inquired with the manufacturers in India, particularly M/s Amardeep Export, Jamnagar, if the items required were available with them, he tried to get the orders for Amardeep Export; that in other cases he inquired with different manufacturers of Jamnagar and obtained quotations for approval of Shri Abdul Majeed; that the terms and conditions for supply and payment were decided by Shri Abdul Majeed;
- he only looked after the purchases of Brass parts from Jamnagar on behalf of DGTL; that he personally visited the place of supplier for approval of samples after the quotations was approved by Shri Abdul Majeed and thereafter, the goods were exported by the supplier of their own and transportation was also arranged by the supplier;
- DGTL had imported around 30 consignments from M/s Amardeep Export, Jamnagar, around 10 consignments from Mitesh Impex, Jamnagar, around 8 consignments from M/s Haria Overseas, Jamnagar, around 5-6 consignments from Deep Recycling, Jamnagar, 04 consignments from Suraj Recycling, Jamnagar and one consignment from D&G, Jamnagar; that except for 3-4 consignments of Amardeep Exports, Jamnagar payment of all exporters from Jamnagar had been made by DGTL;
- the clearing work of imported goods at Dubai was attended by one Philippine lady, Ms Rose who was employee of DGTL; that the clearing forwarding agent was decided by Shri Abdul Majeed;
- he was shown Invoice No. MI/07 /09-10 dated 04.11.2009 and its packing list issued by Mitesh Impex, Jamnagar in favour of DGTL for export of Brass sanitary fittings and brass builder hardware for a total sum of USD 3,00,140.75; that he perused the said documents & put his signature on them and stated that the consignment under reference was consisting of the goods covered under 3 - 4 orders of DGTL and the quotations were directly obtained by Shri Abdul Majeed from M/s. Mitesh Impex after talking to Shri Rameshbhai Lavti of M/s Mitesh Impex; that he was not informed about the rates quoted by Mitesh Impex;
- as per the Invoice the total net quantity of above goods was 16.595 MT and accordingly, per Kg value of goods worked out to 18.086 USD; that he admitted that as per his opinion and practical experience the invoice value quoted under Invoice No. MI/07/09- 10 dated 04.11.2009 by Mitesh Impex was highly inflated; that as per Dubai brass market, value of various brass sanitary fittings and builder hardware maximum rate would be 8-9 USD per Kg;



- he had seen the Bill of Entry, invoice etc. of the subject consignment in the office of DGTL during his visit to Dubai during December-2009; that DGTL had produced invoice of USD 23423 in Dubai Customs for clearance of goods during second fortnight of November-2009; that since the value was extremely lower side, he enquired from concerned persons of his office and other sources at Dubai and came to know that there was approximately 3.500 MT of brass parts and remaining quantity was of some scrap;
- Shri Abdul Majeed only signed the documents and he was not authorized to sign the same and even the Bank account of DGTL was also being operated by Shri Abdul Majeed;
- he introduced Shri Abdul Majeed to Shri Rameshbhai Lavti of M/ s Mitesh Impex on mobile from Jamnagar approximately one and half year back; that he had gone to M/s Mitesh Impex for inquiry about their product for export to DGTL and on request of Shri Rameshbhai, he introduced him to Shri Abdul Majeed; that thereafter, Shri Rameshbhai visited Dubai somewhere during 2009 and met Shri Abdul Majeed personally in the office of DGTL; that after this meeting, the export shipments from M/s Mitesh Impex had considerably increased to DGTL;
- he stated that there was some confidential understanding between Shri Rameshbhai Lavti and Shri Abdul Majeed about export transactions of Mitesh Impex but he was not aware of other details;
- he further stated that in fact he was a name sake partner in DGTL; that Shri Abdul Majeed, main partner and administrator of DGTL, had offered him salary of 11000 AED (Arab Emirates Dirham) but Shri Abdul Majeed had not paid him salary and assured him to get it deposited in his account in Dubai;

7. Further statement of Shri Ankit Dineshbhai Changani, Partner of M/s Darpan General Trading LLC, Dubai was recorded under section 108 of the Customs Act, 1962 on 15.02.2010; wherein he interalia stated that:

- he had contacted Shri Abdul Majeed on his Mobile No. 0097154867121 on 13.02.2010 from a STD-PCO for documents but Shri Abdul Majeed refused to give any documents;
- he was shown copy of letter dated 05.05.2009 issued by M/s Remet Trading Zone FZE addressed to the foreign exchange Department, Axis Bank Jamnagar, which was recovered from the premises of M/s Amardeep Exports, Jamnagar during search conducted by DRI officers on 08.02.2010; wherein it was mentioned that they had sold material to M/s Mitesh Impex, Jamnagar under Invoice No. RTF/ 183/2007 dated 16.08.2007 for USD 85760 and requested to pay the amount to M/s DGTL, Dubai; that he was asked to explain how this letter was found in the premises of Amardeep Exports and why this letter was written; that after perusing the said letter, he put his signature on it and stated that he was unable to give any explanation in this regard;
- he was shown copy of letter dated 05.05.2009 issued by M/s Remet Trading Zone FZE addressed to the foreign exchange Department, Axis Bank Jamnagar, which was recovered from the premises of M/s Amardeep Exports, Jamnagar during search conducted by DRI officers on 08.02.2010, wherein it was mentioned that they had sold material to M/s. Mahalaxmi Extrusions, Jamnagar under Invoice No. RTF/219/2007 dated 01.11.2007, RTF/224/2007 dated 06.12.2007, RTF/225/2007 dated 06.12.2007,

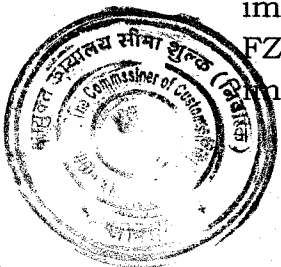


RTF /231 /2007 dated 24.12.2007, RTF/233/2007, total USD 704549.50 and requested to pay the amount to M/s DGTL, Dubai; that he was asked to explain how this letter was found in the premises of Amardeep Exports and why this letter was written; that after perusing the said letter, he put his signature on it and stated that he was unable to give any explanation in this regard;

- he was having stake of 49% in DGTL and he was unable to explain any thing in addition to the above; that he had tried to get copy of partnership deed from Shri Abdul Majeed but he did not provide the same; that he admitted that it was his responsibility to give proper answer to each question but he was not in position to explain the same;

8. Statement of Shri Prakashchandra Panalal Lavti, Partner of M/s Mahalaxmi Extrusions, was recorded under section 108 of the Customs Act, 1962 on 02.03.2010 wherein he interalia stated that:

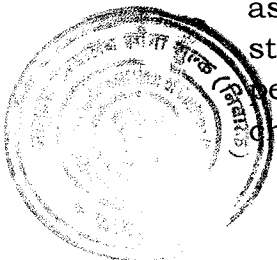
- M/s.Mahalaxmi Extrusions, Jamnagar was engaged in manufacturing brass rods, profiles, ingots, billets etc; that he was one of the partners and Shri Ashokkumar Pannalal Lavti was the other partner;
- the said unit had commenced smce 2004-05 at the existing address; that Shed no.431 was owned by M/s. Maheshwari Cast; wherein Shri Ashok Kumar Lavti was one of the partners; that the said plot had been given to them rent free on an agreement; that the unit was registered under the Central Excise and its registration no. AAKFM9741LXM001, IEC no. was 2404004441;
- he was overall in charge of the said firm and looking after all affairs of the firm including purchase, sales, production etc. and the other partner Shri Ashok Kumar did not involve actively in business transactions of their firm but he visited the office daily;
- their products were brass rods, billets, ingots, profiles and brass parts; that they used brass scrap as raw materials which were melted into furnace and brass billets were manufactured; that after that billets were cut into required sizes and then the same were processed through pre-heating and then billets were extruded and brass rods were derived; that these rods were pointed in pointing machine, then washed with water/ sulphuric acid (H2S04) and then the rods were drawn in draw-bench;
- they had sold brass scrap to M/s Mitesh Impex, Jamnagar on high sea sale basis and also purchased the brass scrap from them on high sea sale basis; that they had never sold brass ingots or any of their other products to M/s Mitesh Impex; that they had also not purchased any other goods except brass scrap from M/s. 'Mitesh Impex;
- Shri Rameshchandra Panalal Lavti of M/s Mitesh Impex, Jamnagar was his elder brother and the business deals of M/s Mahalaxmi Extrusions with M/s Mitesh Impex were negotiated by him with Shri Rameshbhai Lavti;
- they had purchased/imported brass ingots from M/s. Remet Trading FZE Ajman, however, he did not recollect the number of the consignments imported from them; that he placed Sales Contract to M/s Remet Trading FZE, Ajman and copies of these Sales Contract were placed in each of their import file; that they used to make payment as per their convenience;



- one Mr. Mobinbhai of Remet Trading F.Z.E. Ajman used to inform him about the sale of remelted brass ingots and he placed the orders with him (Mr. Mobinbhai) only; that he did not have Mr. Mobinbhai landline or mobile number as he only used to call him on their factory's landline number;
- he was explained that, it was evident from the import documents of M/s. Mahalaxmi Extrusions, submitted by him, that a number of consignments which were exported by M/s. Mitesh Impex, Jamnagar (EOU) were re-imported into India by M/s. Mahalaxmi Extrusions and asked his clarification in the matter. In this regard, he stated that they had imported the consignments from M/ s. Remet Trading FZE, Ajman and M/s A.R.A Trading LLC, Dubai and he was not aware as to how they (M/s Remet Trading FZE, & M/s A.R.A Trading LLC) exported the consignments which were exported by M/s Mitesh Impex, Jamnagar to them;
- he was shown a list of exports affected by M/ s. Mitesh Impex in favour of M/s. Remet Trading FZE and M/s A.R.A Trading LLC, Dubai and import of consignments by M/s. Mahalaxmi Extrusions from the same firms. The list included details of AREI no./ date, quantity of goods exported, assessable value of the same, description, container number, seal no. etc. of M/s. Mitesh Impex and B/ E no./ date, quantity/ description of imported goods, assessable value of the same, container no., seal no. etc. of M/ s. Mahalaxmi Extrusions. He was asked whether he agreed, that the quantity of the goods exported by M/s. Mitesh Impex was the same which had been re-imported by his firm, even the container numbers and seal nos. mentioned in the export documents of M/s. Mitesh Impex were the same in the import documents of M/s. Mahalaxmi Extrusions. He perused the above list containing Sr. No. 01 to 25 and also the documents mentioned therein in respective files and put his signature on them and stated that, he agreed with the same but was unable to comment on this as to how they (M/s. Remet Trading FZE & M/s A.R.A Trading LLC) exported the consignments which were exported by M/s Mitesh Impex, Jamnagar to them;
- he did not remember the name of concerned person of M/ s A.R.A. Trading LLC, Dubai.

9. Further statement of Shri Prakashchandra Panalal Lavti, Partner of M/s Mahalaxmi Extrusions, was recorded under section 108 of the Customs Act, 1962 on 08.03.2010, wherein he interalia stated that:

- his company was purchasing brass scrap from M/s. Siyaram Metals, Jamnagar, Darshan Brass, Jamnagar, Chirag Industries, Jamnagar etc locally; that his company had sold brass ingots and brass billets but he did not remember the name of buyers;
- he knew M/s C.K. Corporation and Shri Nathulal Panalal Lavti, his elder brother was the owner of the said firm; that they had financial relation with C.K. Corporation;
- he was shown a Bill of Exchange dated 01.05.2009 issued by M/s Darpan General Trading LLC, Dubai to M/s Mahalaxmi Extrusions, placed at page no. 35 of the Bills of Entry file No. 119970 dated 24.12.2007 and he was asked to explain how the said Bill of Exchange was received by him, he stated that he was not aware how this Bill of Exchange was received; that as per his memory the bill was not paid by their company, however, after checking the account, he would confirm;



- that his company had imported Brass re-melted ingots from M/s. Darpan General Trading, Dubai and payment of the import consignment had not been made till date.

10. Statement of Shri Rameshchandra Panalal Lavti, Partner of M/s Mitesh Impex, was recorded under Section 108 of the Customs Act, 1962 on 28.04.2010, wherein he interalia stated that:

- M/s Mitesh Impex was a partnership firm wherein; apart from him the other partner was his elder brother, Shri Nathulal P. Lavti, who was sleeping partner since 2001; that he was looking after all business affairs of the firm;
- M/s Mitesh Impex was engaged in manufacturing and export of articles of brass such as building hardware, sanitary fitting, electrical accessories and ingots etc.; that these articles were manufactured from imported brass scrap/copper scrap/Zinc scrap & Mixed Metal scrap; that they imported above raw materials duty free at Kandla/ Mundra port; that the finished products were manufactured according to the requirements of their customers and then exported from Mundra/ Kandla port;
- they imported raw materials from various countries of Europe, UK & Gulf; that the overseas suppliers used to contact him on phone and inform about availability of the scrap; that if the price quoted by the suppliers was agreeable to them, they placed order on phone and also entered into written agreement for such supply;
- their overseas customers used to contact him on phone and inform their requirement of their products and he informed them about the time required to manufacture and supply; that if the customer confirmed the order on phone or through Fax, they start manufacturing the ordered products; that he clarified that the price of the product to be exported was decided only at the time of dispatch of the goods due to high volatility in the metal market and position of demand and supply in the trade;
- they had so far exported the goods to China and UAE; that their main buyers were M/s Darpan General Trading LLC, Dubai, M/s Remet Trading FZE, Ajman and M/s A.R.A. Trading LLC, Dubai; that he talked to Shri Abdul Majeed for M/s Darpan General Trading LLC, Dubai, for M/s Remet Trading FZE, Ajman, he spoken to Shri Mobin bhai and for M/s. A.R.A. Trading LLC, Dubai, he had spoken with Shri Sabirbhai; that he is not aware as to whether these persons are owners or otherwise but he knows that the above said persons are looking after purchase, sales and finance of the said firms;
- they received the payments from the overseas buyers through the banking channels; that they executed orders against advance payment in most of the cases;
- he met Shri Sabirbhai and Shri Mobinbhai in Jamnagar, when they visited India approx. 6-7 years back; that he also met Shri Abdul Majeed on his visit to Dubai approximately one year back and they remain in touch over phone;
- M/s. Mahalaxmi Extrusions was being looked after by his younger brother, Shri Prakashbhai P. Lavti; that he used to purchase and sale brass scraps on high seas sale basis at some times according to the requirement;

It was shown, a file containing documents of exports covered under AREI No. 07 /EOU /MI/09-10 dated 04.11.2009 (Page No. 1 to 60) recovered from

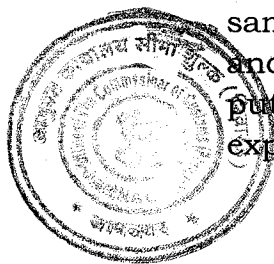


their premises under Panchanama dated 08.02.2010. It shows exports of "Brass sanitary fittings & Brass builder Hardare" totally weighing 16.595 MT (Net) showing invoice value of USD 300140.75 C&F, Dubai. He was asked to explain how he procured the order for the said consignment and how the deal was finalized by him, in reply he stated that the order was received on phone from Shri Abdul Majeed of M/s. Darpan General Trading LLC, Dubai and accordingly, the goods of their requirement were manufactured which were running items; that the price quoted in the invoice was finalized at the time of shipment of the said goods; that the payment was received in advance as per their practice;

- he was asked that according to the information available with DRI, M/s Darpan General Trading LLC, Dubai have declared value of USD 23423.81 on import at Dubai whereas the value declared by him at the port of export was USD 300140.75. On being asked to explain in this regard, he stated that he was not aware as to how M/s Darpan General Trading LLC, Dubai had declared lesser value; that he had raised invoice for USD 300140.75 only;
- he knew M/s C.K. Corporation, Jamnagar; that he borrowed money on loan with interest and also lent money on loan with interest to the said firm; that the contact person of the said firm was Shri Manish Nathulal Lavti.

11. Further statement of Shri Rameshchandra Panalal Lavti, Partner, M/s Mitesh Impex, was recorded under Section 108 of the Customs Act, 1962 on 26.05.2010 wherein he interalia stated that:

- M/s Mitesh Impex had imported only one consignment of brass scrap from M/s Darpan General Trading LLC, Dubai in the F.Y. 2009-10;
- he was shown Commercial Invoice No. DGT/455/2009 dated 23.09.2009 & Sales Contract No. DGT/09/281 dated 19.09.2010 of M/s. Darpan General Trading LLC, Dubai; that he had seen and signed the above said Commercial invoice & contract and confirmed that the above mentioned invoice & contract were received by them through courier directly from M/s. Darpan General Trading LLC, Dubai and the payment of the above said commercial invoice had been made to M / s Darpan General Trading LLC, Dubai on 26.04.2010;
- he knew Shri Ankit D. Changani; that Shri Ankit had visited their unit two times for inspection of export consignments meant to M/s Darpan General Trading; that Shri Abdul Majeed of M/s. Darpan General Trading informed him telephonically that Shri Ankit D. Changani would visit their unit for inspection of export consignments meant for Darpan General Trading; that he was not aware whether Shri Ankit D. Changani was partner of M/s Darpan General Trading or otherwise; that they had no business relation with Shri Ankit D. Changani;
- M/s Mitesh Impex had lent and borrowed money from M/s C.K. Corporation on interest@ 12% p.a.
- he was shown the statement containing the details of goods exported in containers by M/s Mitesh Impex, Jamnagar and the same containers with same seal Nos. had been imported by M/s Mahalaxmi Extrusions, Jamnagar and asked to explain the same. He perused the above said statement and put his signature on it and stated that it was found that the containers exported by Mitesh Impex had been imported by M/ s Mahalaxmi Extrusion;



that in this regard he further, stated that they had exported the consignments to the overseas buyer and also received payment of the same and thereafter what overseas buyer had done, he had nothing to say on that; that he clarified that M/s. Mitesh Impex, Jamnagar had no relation with M/s. Mahalaxmi Extrusion, Jamnagar.

12. Further statement of Shri Rameshchandra Panalal Lavti, Partner, M/s Mitesh Impex, was recorded under Section 108 of the Customs Act, 1962 on 11.06.2010; wherein he interalia stated that:

- M/s Mitesh Impex had exported consignments of Graded Brass, but at present he could not state the exact number of consignments; that he would submit the details of number of the export consignment of graded brass exported by them on 14.06.2010; that the graded brass was a kind of brass scrap having 100% brass of high copper content without any impurities and attachments; that it was true that the graded brass was 100% brass without containing any type of impurities and it was also true that graded brass was better in quality than brass scrap honey;
- he was being shown the statement of account of M/s Mitesh Impex of Axis Bank, Jamnagar, A/c No. 175010200001274 for the period between 01.04.2006 to 19.02.2010. From the above statement of account, it was evident that M/s Mitesh Impex had paid Rs.40,00,000/- on 31.05.2006 to M/s Mahalaxmi Extrusions. He was asked to explain the reasons for this payment; that he had seen and signed on all the pages of the above mentioned Bank statement and stated that since the payment was made in 2006, at present he was unable to explain the reason for this payment, however, after verifying their records, he would answer the reason for the said payment;
- he was shown the statement of account of M/s. Mitesh Impex of Axis Bank, Jamnagar, A/c No. 175010200001274 for the period between 01.04.2006 to 19.02.2010. From the above statement of Account, it was evident that the following payment had been made to M/s Mahalaxmi Extrusions by **M/s Mitesh Impex, Jamnagar.**

Sr.No.	Date of Payment	Amount in (RS)
01	06.07.2006	10,00,000 /-
02	07.07.2006	10,00,000 /-
03	29.11.2006	66,00,000 /-
04	06.12.2006	77,00,000 /-
05	06.03.2007	1,10,00,000 /-
06	05.04.2007	90,00,000 /-
07	13.04.2007	1,46,00,000 /-
08	25.04.2007	1,80,50,000 /-

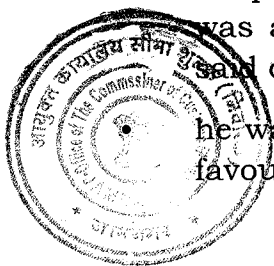
He was asked to explain the reason for above payments. He stated that since the above payments pertained to old period, he could not state the reasons for the above payments at present. However, he assured to provide the reasons for the above payments shortly.



13. Statement of Shri Sanjay Gandhi, Proprietor of M/s. Global Marine Agencies, Gandhidham, Custom House Agent was recorded under Section 108 of the Customs Act, 1962 on 16.09.2010 wherein he interalia stated that:

- he looked after the entire work of his company and he was the only authorized person to sign customs documents on behalf of his company, so all export and import documents filled by his company were signed by him; that he negotiated business dealing with different importer/ exporter on behalf of his company;
- his company was engaged in clearance of import consignments of M/s Mahalaxmi Extrusions, Jamnagar since last 06-07 years and Shri Prakashbhai Lavti was the concerned person M/s Mahalaxmi Extrusions, Jamnagar; that his company was also engaged in clearance of import/export consignments of M/s. Mitesh Impex, Jamnagar since last 05-06 years and Shri Rameshbhai Lavti was the concerned person in M/s Mitesh Impex, Jamnagar;
- he was shown Shipping Bill No.1143372 dated 18.02.2009 of Kandla, along with Invoice & Bill of lading of M/s Mitesh Impex, Jamnagar under which Container No.MLCU-2774036, Seal No.120882 containing Copper & Zinc base alloy Ingots (Brass) of 28.120 MT, having FOB value USD 172363.10 exported and cleared under his agency. He was also shown Bill of Entry No.134391 dated 03.04.2009 of GAPL Mundra, along with Invoice & Bill of lading of M/s. Mahalaxmi Extrusions, Jamnagar under which Container No.MLCU-2774036, Seal No.120882 containing Copper & Zinc base alloy Ingots (Brass) Remelted brass ingots of 28.120 MT, having C&F value USD 69114.50 imported and cleared under his agency. It is evident from the above that M/s Mitesh Impex, Jamnagar had exported the above said goods to M/ s Darpan General Trading Dubai declaring FOB Value USD 172363.10 and the same goods with same container No. & Seal No. imported by M/s Mahalaxmi Extrusions, Jamnagar from M/s Darpan General Trading Dubai by declaring C&F value USD 69114.50. He was asked whether he agreed to the above. He saw and signed the above said documents and stated that he agreed to the above;
- he was shown Shipping Bill No.1144594 dated 09.03.2009 of Kandla, along with Invoice & Bill of lading of M/s. Mitesh Impex, Jamnagar under which Container No.FCIU-2407818, Seal No.195813 containing Copper & Zinc base alloy Ingots(Brass) of 28.240 MT, having FOB value USD 172546.40 was exported and cleared under his agency. Further, he was also shown Bill of Entry No.134652 dated 13.04.2009 of GAPL Mundra, -along with Invoice & Bill of lading of M/s. Mahalaxmi Extrusions, Jamnagar under which Container No.FCIU-2407818, Seal No.195813 containing Copper & Zinc base alloy Ingots (Brass) re-melted brass ingots of 28.140 MT, having C&F value USD 69188.00 was imported and cleared under his agency. It is evident from the above that M/s Mitesh Impex, Jamnagar had exported the above said goods to M/s Darpan General Trading Dubai declaring FOB Value USD 172546.40 and the same goods with same container No. & Seal No. was imported by M/s Mahalaxmi Extrusions, Jamnagar from M/s Darpan General Trading Dubai by declaring C&F value USD 69188.00. He was asked whether he agreed to the above. He saw and signed the above said documents and stated that he agreed to the above;

he was shown a list of exports effected by M/ s Mitesh Impex, Jamnagar in favour of M/s. Remet Trading FZE and M/s. A.R.A. Trading LLC Dubai and



imports of goods by M/ s Mahalaxmi Extrusions from the same firms. The list included details of ARE-1 No. & date, Quantity of goods exported, assessable value of the same, description, container No., Seal No. of M/s Mitesh Impex, Jamnagar and Bill of Entry No. & date, quantity/ description of imported goods, assessable value of the same, container no., Seal No. of M/s Mahalaxmi Extrusions. He was asked that whether he agreed that the. goods exported by M/s Mitesh Impex, Jamnagar were re-imported by M/s Mahalaxmi Extrusions, Jamnagar, even the Container numbers and Seal Nos. mentioned in the export documents of M/ s Mitesh Impex were the same in M/s Mahalaxmi Extrusions. He saw the above list containing Sr. No. 01 to 25 & the documents mentioned therein in respective files and put his signature on the same and stated that since Container Numbers and Seal Numbers were same he agreed with the same;

- he was explained that M/s Mitesh Impex, Jamnagar was exporting the goods in containers on higher prices to different parties of Dubai which were re-imported by M/s Mahalaxmi Extrusions, Jamnagar on comparatively lower price from the same parties in same containers, even with same seal numbers and continuously evaded the Customs Duty and being Custom House Agents for both the parties his company had facilitated them. He was asked whether he agreed to the above. In reply, he stated that he had simply done the custom clearance and such thing had happened without his knowledge; that he never facilitated any of the above parties in any illegal manner;
- he was further asked whether he agreed that in view of lapses occurred on his part as Custom House Agent, the Govt. had lost huge revenue and for this misconduct his Custom House Agent License was liable for cancellation under Regulation 20 (c) of the Custom House Agents Licensing Regulations, 2004. In reply, he stated that the loss to the government revenue had been caused by M/s Mitesh Impex, Jamnagar and M/s Mahalaxmi Extrusions, Jamnagar and Shri Rameshbhai Lavti had played a vital role; that his company as Custom House Agents failed to notice the modus operandi adopted by Shri Rameshbhai Lavti, however, he accepted the lapse on his part as Custom House Agent;
- M/s Mahalaxmi Extrusions, Jamnagar was a sister concern of M/s Mitesh Impex, Jamnagar and both firms had been managed by the family member of Shri Rameshbhai Lavti; that all decisions related to the above firms were being taken by Shri Rameshchandra Lavti only; that in fact, Shri Rameshbhai Lavti had negotiated the deal for the clearance of imported consignment of M/s.Mahalaxmi Extrusions, Jamnagar.

14. Statement of Shri Manish Nathulal Lavti, authorized signatory of M/s C.K. Corporation, Jamnagar was recorded under Section 108 of the Customs Act, 1962 on 22.04.2010; wherein he interalia stated that:

- his father, Shri Nathulal Panalal Lavti had authorized him to look after the work related to M/s C.K. Corporation vide Power of attorney dated 13.03.2010 and in addition to the above, he had also authorized him to look after the work related to the above said firm vide letter dated 15.06.2003; that the office of M/ s C.K.Corporation was located at 431, GIDC, Udyognagar, Shanker Tekri, Jamnagar;

M/s C.K.Corporation, Jamnagar having PAN NO.AAIPL4963H; that M/s C.K.Corporation was engaged in lending and borrowing of money on interest



basis to the different firms and persons; that they charged and paid interest @ 12% p.a;

- he himself negotiated with the persons interested to take loan from M/s C.K. Corporation, and terms & condition of the loan was also decided by him only; that their main customers were M/s Siyaram Metal Udyog, Super Impex, Arpit Overseas, Indu Overseas Pvt Ltd, Mitesh Impex and Mahalaxmi Metal Corporation etc.;
- his father Shri Nathulal Lavti was the owner of M/s. Mahalaxmi Metal Corporation and he was the authorized signatory of the said firm; that the said firm was located at 431, GIDC, Udyognagar, Shanker Tekri, Jamnagar and was engaged in import and trading of brass scrap;
- all the documents related to M/s. Mahalaxmi Metal Corporation and M/s. C.K. Corporation were signed by his father Shri Nathulal Lavti.

15. Further statement of Shri Manish Nathulal Lavti, authorized signatory of M/ s C.K. Corporation, Jamnagar was recorded under section 108 of the Customs Act, 1962 on 14.05.2010; wherein he interalia stated that:

- he was shown the bank account of M/s. C.K. Corporation of Axis Bank, produced by him, which showed balance of Rs. 59,474/- on 17.05.2009; that as per said account they had taken Rs.1,84,00,000 /- from M/s. Mitesh Impex and the said entire amount was given by them to M/s. Mahalaxmi Extrusions on 18.05.2009; that he agreed to the above;
- he was further shown bank account of M/s. C.K. Corporation of Axis Bank, produced by him, which showed balance of Rs.891.10/- on 28.01.2008 and an amount of Rs.2,63,00,000/- was credited to said account by M/s. Mitesh Impex and they had given Rs.2,63,00,000/- on the same date to M/s. Mahalaxmi Extrusions; that after perusing the above bank account, he stated that the said transaction was true;
- he was further shown Axis bank account of M/s. C.K. Corporation produced by him, which showed balance of Rs.1,68,221/- on 24.10.2007 and an amount of Rs.69,00,000/- was taken by him on 5.10.2007 from M/s. Mitesh Impex and they had given Rs. 69,00,000/- on the same date to M/s. Mahalaxmi Extrusions; that after perusing the above bank account, he stated that the said transaction was true;
- he was further shown Axis bank account of M/s. C.K. Corporation produced by him, which showed balance of Rs.1,67,097.40 on 05.08.2007 and an amount of Rs. 1,10,00,000 /- was taken by him on 06.08.2007 from M/ s. Mitesh Impex and they had given the said amount on the same date to M/s. Mahalaxmi Extrusions; that after perusing the above bank account, he stated that the said transaction was true;
- he was explained that it appeared from the accounts of M/s. C.K. Corporation that approximately 90% of their financial transactions were with M/s. Mitesh Impex, M/s. Mahalaxmi Extrusions and M/s. Mahalaxmi Metal Corporation and was asked whether he agreed to the above. In reply, he stated that M/s. C.K. Corporation transacted business with many persons and firms and as such there was no idea of percentage of transactions with the above firms;

he was further explained that it appears from the accounts of M/s. C.K. Corporation that this firm was facilitating financial transactions of M/s.



Mitesh Impex and M/s. Mahalaxmi Extrusions, in reply, he stated that they had traded with all firms and persons in the same way;

- he was further asked whether he was aware that Shri Nathulal Lavati was partner of M/s. Mitesh Impex, he stated that he was not aware about this; that he was shown the statement dated 28.04.2010 of Shri Rameshchandra Lavti, wherein he stated that Shri Nathulal Lavti was partner of M/s. Mitesh Impex to this he stated that he was looking after M/s. C.K. Corporation and M/s. Mahalaxmi Metal Corporation, hence he had no idea whether Nathulal Pannalal was partner in any other firm or not;
- he was informed that Shri Nathulal Lavti was partner in M/s. Mitesh Impex and was also proprietor of M/s. C.K. Corporation and as a result, both these firms had internal relation, to which he stated that he handled C.K. Corporation and Mahalaxmi Metal Corporation and he had business relation with Mitesh Impex; that both these firms were separate.

16. Statement of Shri Suresh Gangdas Patel, Partner of M/ s Super Impex, Jamnagar was recorded under section 108 of the Customs Act, 1962 on 05.05.2010 wherein he interalia stated that he borrowed fund from M/s C.K. Corporation. On being asked he stated that he negotiated the deal with Shri Manish Nathulal Lavti through Shri Rameshbhai Lavti. On being asked he stated that M/s Mitesh Impex, M/s Mahalaxmi Extrusions, M/s C.K. Corporation and M/s Mahalaxmi Metal Corporation were the firms run by family members of Shri Rameshbhai Lavti and he was the final authority for taking decision related to all above mentioned firms.

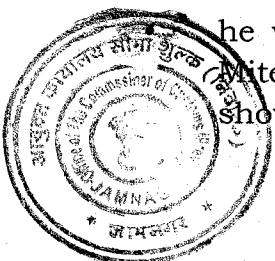
17. Statement of Shri Dineshbhai Bhimjibhai Changani, Partner of M/s Amardeep Exports, Jamnagar was recorded on 06.05.2010 under section 108 of the Customs Act, 1962, wherein he interalia stated that he knew M/s C.K. Corporation and he had borrowed and lent money from them. He further stated that he started dealing with M/s C.K. Corporation since April-2009 and prior to that they had no financial relations. On being asked he stated that he negotiated the deal with Shri Ramesh Lavti and Shri Manish Lavti for borrowing money from M/s C.K. Corporation. On being asked he stated that M/s Mitesh Impex, M/s Mahalaxmi Extrusions, M/s C.K. Corporation and M/s Mahalaxmi Metal Corporation are the firms run by family members of Shri Rameshbhai Lavti and he was the final authority for taking decision related to all above mentioned firms.

18. Statement of Shri Prahaladrai Indermal Jhanwar, Proprietor of M/s Arpit Overseas, Jamnagar was recorded on 04.05.2010 under Section 108 of the Customs Act, 1962 wherein he interalia stated that he borrowed money from M/ s C.K. Corporation for which he negotiated with Shri Manish Lavti.

19. Statement of Shri Anand Chandrakant Patel, Partner of M/s Golden Elephant Trading LLC, Dubai was recorded on 27.01.2011 under section 108 of the Customs Act, 1962, wherein he interalia stated that:

- he knew M/s Mitesh Impex, Jamnagar and it was managed by one Shri Rameshbhai Lavti; that his firm M/s Golden Elephant Trading LLC, Dubai had imported one consignment in 2008-09 from M/s Mitesh Impex, Jamnagar;

he was shown Invoice No. MI/04/08-09 dated 14.08.2008 issued by M/s Mitesh Impex, Jamnagar to M/s Golden Elephant Trading LLC, Dubai showing C&F value USD 1,21,670.00 and asked to provide proof of payment

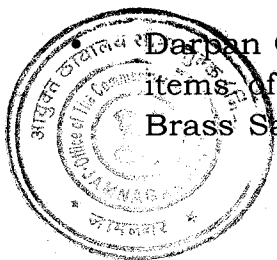


made to M/s Mitesh Impex, Jamnagar; that he had seen and signed the above said Invoice and stated that during May / June-2008, Shri Rameshbhai Lavti of M/ s Mitesh Impex, Jamnagar met him and told that that he (Rameshbhai) wanted to send a consignment of brass articles in the name of his firm M/s. Golden Elephant Trading LLC, Dubai; that then Shri Rameshbhai Lavti told him that he would only use the name of his firm M/ s Golden Elephant trading; that he (Rameshbhai) also proposed that he had only to manage the Custom's clearance at Dubai and the customs duty / expenses would be paid by him (Ramesh bhai);

- Shri Rameshbhai, further, advised that after Custom clearance, he had to hand over the goods to M / s Sapphire Marbles & Building material, LLC, Sharjah and he (Rameshbhai) offered him USD 1500 for this work; that Shri Rameshbhai also assured him that the payment of the above said consignment would be managed by him (Rameshbhai) only; that he accepted the proposal given by Shri Rameshbhai Lavti;
- the above said consignment was exported by M/ s Mitesh Impex, Jamnagar in the name of his firm M/s Golden Elephant LLC, Dubai; that he arranged the customs clearance at Dubai and handed over the material to M/s. Sapphire Marbles & Building material, LLC, Sharjah, that however, he had not made any payment to M/s. Mitesh Impex as the export goods were finally handed over to M/s. Sapphire Marble & Building Material, LLC, Sharjah;
- he was also shown the "Foreign Bills Transaction Advice" dated 09.02.2009 of Axis Bank, Jamnagar under which USD 121633.69 was shown remitted by M/s Golden Elephant Trading LLC, UAE to M/s Mitesh Impex, Jamnagar and asked to confirm whether the said amount was remitted by him; that he had seen and signed the above said document and denied having made any such payment to M/s. Mitesh Impex; that he further stated that no such payment was made by his firm and in proof of his claim, he produced the Statement of Account of M/s. Golden Elephant Trading, Dubai;
- he was also shown SWIFT message of Axis Bank, Message Output Reference: 2015 090209AXISINBBA1750503410928 showing the remittance of USD 1,21,633.69 from M/ s Golden Elephant LLC, Dubai to M/s Mitesh Impex, Jamnagar and asked to explain the same; that he saw and signed the above mentioned SWIFT message and stated that the above said remittance was not made by M/s Golden Elephant Trading, LLC, Dubai. It is evident from para 70: Remittance Information of the above SWIFT message that remittance had been done by someone on behalf of M/ s Golden Elephant Trading, LLC, Dubai, in this regard, he stated that payment to M/s Mitesh Impex was arranged by Asia Exchange Centre, Dubai as Ordering Customer through JP Morgan, which was evident from the swift message shown to him and he also stated that name of M/s. Golden Elephant Trading LLC, was wrongly used therein, which had no role in the said payment.

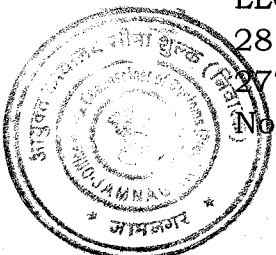
20. Further statement of Shri Ankit Dineshbhai Changani, Partner of M/ s Darpan General Trading LLC, Dubai was recorded under section 108 of the Customs Act, 1962 on 05.04.2011, wherein he interalia stated that:

Darpan General Trading LLC, Dubai's main business was trading of various items of metal such as Brass Building Hardware, Brass Electrical parts, Brass Sanitary ware, auto parts, plastic pipes and parts used for electrical



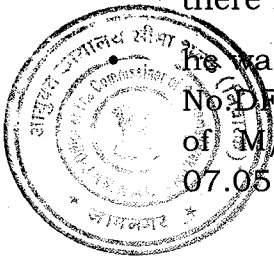
fittings etc.; that Darpan General Trading LLC, Dubai (DGTL) had not exported any brass scrap;

- he was shown Commercial Invoice No. DGT/455/2009 dated 23.09.2009 issued by M/s Darpan General Trading LLC, Dubai to Mitesh Impex, Jamnagar for Mix Brass Scrap having gross weight 27.860 MT and asked that in his earlier reply, he had stated that, Darpan General Trading LLC, Dubai was not engaged in export of brass scrap, hence he was asked to explain how the above invoice was issued. He saw and signed the above said Commercial Invoice and stated that M/s. Mitesh Impex, Jamnagar had exported 04 consignments of brass Sanitary fittings, having quantity of approx. 26 MT to M/s Darpan General Trading between April-2009 to August-2009. The above said goods were of inferior quality and could not be used as sanitary fittings. Further, similar export goods of M/ s Mitesh Impex, of around 1.5 MT was also lying with them, which were received by them in previous year. Therefore, the total brass sanitary fittings of around 27.500 MT was returned to M/s. Mitesh Impex as per request of Shri Ramesh Lavti, partner of M/ s Mitesh Impex and accordingly the Invoice No. DGT/455/2009 dated 23.09.2009 was raised for Mix Brass Scrap;
- he was asked, as he stated above that goods imported by M/s. Mitesh Impex, under the Invoice No. DGT/455/2009 dated 23.09.2009 were not Mix Brass Scrap but inferior quality brass Sanitary parts exported by M/s. Mitesh Impex to Darpan General Trading LLC, Dubai and could he explain how M/s Darpan General Trading LLC, was making advance payment for the inferior quality brass Sanitary parts, regularly. In reply, he stated that Shri Ramesh Lavti, Partner of M/s. Mitesh Impex, had made some arrangement with Shri Abdul Majeed, Partner of M/ s Darpan General Trading LLC and it was agreed between both of them that the goods exported by M/s. Mitesh Impex would be returned back to either M/s Mahalaxmi Extrusions, Jamnagar or M/s Mitesh Impex, Jamnagar as per instructions of Shri Ramesh Lavti. He further, stated that it was also agreed between them that Shri Ramesh Lavti would provide US dollar to M/s Darpan General Trading for making payment of the consignments exported by M/s Mitesh Impex, Jamnagar and Shri Ramesh Lavti would also make payment of certain amount per shipment to Shri Abdul Majeed as facilitation charge;
- he was asked to identify the signatures made on the commercial invoice No. DGT/455/2009 dated 23.09.2009 on behalf of M/s Darpan General Trading, Dubai; that he saw the said commercial invoice and stated that he had signed the above said Invoice on behalf of M/s Darpan General Trading, Dubai;
- he was also asked to clarify that in his earlier statement dated 12.02.2010, he had stated that all consignments of import and export of DGTL were signed by Shri Abdul Majeed and he was not authorized to sign the same, then how he had signed the commercial invoice No. DGT/455/2009 dated 23.09.2009 on behalf of M/s Darpan General Trading, Dubai. In reply, he stated that he had no comments to offer;
- he was shown Invoice No. MI/09/08-09 dated 17.02.2009 for USD 1,72,363.10 issued by M/s Mitesh Impex to M/s Darpan General Trading LLC, for export of 'Copper & Zinc Base Alloy Ingots (BRASS)' having quantity 28.210 MT. The said goods were stuffed in the Container No. MLCU-77403/6 & Seal No. 120882. He was also shown Commercial Invoice No. DGT/001/2009 dated 12.03.2009 for USD 69114.50 (C&F) issued by



M/s Darpan General Trading LLC, Dubai and Bill of Lading No.TALADS00495303 dated 20.03.2009 to M/s. Mahalaxmi Extrusions, Jamnagar. The said goods had been imported under Container No. MLCU-277403/6 & Seal No. 120882. He was asked to explain why M/s Darpan General Trading had sold the goods to M/s. Mahalaxmi Extrusions, Jamnagar at USD 69114.50 (C&F) which were purchased at USD 1,72,363.10 from M/s Mitesh Impex, Jamnagar. He saw and signed the above mentioned invoices and Bills of Lading and stated that since the payments were managed by Shri Ramesh Lavti, Partner of M/s Mitesh Impex, Jamnagar and their company M/s Darpan General Trading, LLC, Dubai was only gaining commission for facilitating Shri Ramesh Lavti; that since the Container No. & seal number exported by M/ s Mitesh Impex, Jamnagar and imported by M/s. Mahalaxmi Extrusions, Jamnagar were same, the goods which were exported by Mitesh Impex, Jamnagar was returned to them in as it is form by their company; that this was done as per instruction of Shri Ramesh Lavti;

- he was further, shown Invoice No. MI/11/08-09 dated 07.03.2009 for USD 1,72,546.40 issued by M/s Mitesh Impex to M/s Darpan General Trading LLC, for export of 'Copper & Zinc Base Alloy Ingots (BRASS)' having quantity 28.240 MT. The said goods were stuffed in the Container No. FCIU-240781/8 & Seal No. 195813. He was also shown Commercial Invoice No.DGT/002/2009 dated 23.03.2009 for USD 69188.00 (C&F) issued by M/ s Darpan General Trading LLC, Dubai and Bill of Lading No.TALADS00498346 dated 29.03.2009 to M/s Mahalaxmi Extrusions, Jamnagar. The said goods had been imported under Container No. FCIU-240781/ 8 & Seal No. 195813. He was asked to explain why M/s Darpan General Trading had sold the same goods to M/s Mahalaxmi Extrusions, Jamnagar at USD 69188.00 (C&F) which were purchased at USD 1,72,546.40 from M/s Mitesh Impex; that he had seen and signed the above mentioned invoices and Bills of Lading and stated that since the payments were managed by Shri Ramesh Lavti, Partner of M/s. Mitesh Impex and their company M/s Darpan General Trading, LLC, Dubai was only gaining commission for facilitating Shri Ramesh Lavti; that since the Container No. & seal number exported by M/ s Mitesh Impex and imported by M/s Mahalaxmi Extrusions are same, the goods which were exported by Mitesh Impex was returned to them in as it is form by their company; that this was also done as per instruction of Shri Ramesh Lavti;
- he was asked, as per the Ledger account data of M/s Mitesh Impex (indicated as Mitesh P & L A/ C) retrieved from the Laptop recovered under Panchanama dated 08.02.2010, as per Reference No. DFS-EE-2010-CF-31 dated 29.07.2010 (at Page No.57), showed that opening balance as on 01.04.2009 was 109076. He was asked to explain the nature of this account and currency in which the same is maintained. He saw and signed page no. 57 of the report No.DFS-EE-2010-CF-31 dated 29.07.2010 of Directorate of Forensic Science (DFS) and stated that this ledger account of M/s Mitesh Impex, Jamnagar maintained by M/s Darpan General Trading, LLC, Dubai and the currency was Dirham; that he further stated that as on 01.04.2009, there was an amount of Dirham 109076, to be paid to M/s Mitesh Impex;
- he was further shown and asked about the page no. 54 of the report No.DFS-EE-2010-CF-31 dated 29.07.2010, wherein opening balance amount of M/s Mitesh Impex, on 01.04.2009 was 109076 Dirham then on 07.05.2009 purchase of USD 400000 was shown and then on 10.05.2009,

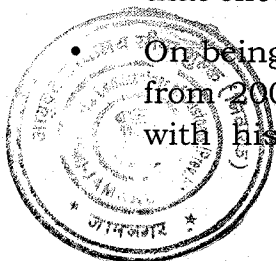


payment of USD 413876 was shown to M/s Mitesh Impex against Invoice No. MI/07-008-009- 011 / 08-09. He was asked to explain the above transaction of M/s. Darpan General Trading, LLC with M/s Mitesh Impex. He stated that USD 400000 was deposited to their company M/s Darpan General Trading, LLC, by M/s. Mitesh Impex to facilitate illegal payment back to them in India on account of exports of M/s Mitesh Impex vide Invoice Nos. MI/0.7 /08-09, MI/08/08-09 (full payment) and part payment for Invoice No. MI/09/08-09; that the above can be understood from the BRC reference No. C647849BBK051109 vide which payment of USD 413864.41 was remitted on 11.05.2009 to Axis Bank Account of M/s Mitesh Impex;

- he was asked to produce the evidence for support of his above claim that M/s Mitesh Impex paid USD 400000 in cash to M/s Darpan General Trading, LLC at Dubai. He stated that it can be seen on page 54 and 57 of the Ledger Account that the Opening Balance was 109076 Dirham as on 01.04.2009. Thereafter deposit of USD 400000, was made as payment against Invoice No. MI/07 /08-09 dated 26.10.2008 for USD 85659.54, MI/08/08-09 dated 05.02.2009 for USD 91568.30 and MI/09/08-09 dated 17.02.2009 for USD 172363.10. The account was already settled upto 01.04.2009 and the payment pertaining to transactions of financial year 2008-09 were made from account of 2009-10 and which clearly showed that the money was deposited by M/ s Mitesh Impex, Jamnagar was returned to them.

21. Statement of Shri Nathulal Panalal Lavti, Proprietor, of M/ s C.K.Corporation, Jamnagar was recorded on 04.10.2011 under Section 108 of the Customs Act, 1962 wherein he interalia stated that:

- He was proprietor of M/s. Mahalaxmi Metal Corporation, C.K. Corporation and Partner of M/s. Mitesh Impex. He further stated that in addition to the above he was also proprietor of a construction firm namely M/s. Mahalaxmi Developers;
- He further stated that he had suffered heart attack in 2002 and therefore he was not able work properly and he had given power of attorney in favor his son Shri Manish Nathulal Lavti on 13.03.2010 for M/s. C.K.Corporation;
- He further stated that Bank accounts of M/s C.K.Corporation and M/ s Mahalaxmi Metal Corporation were operated with his signature. However all the transactions are done by his son Manish;
- On being asked that he had given power of attorney in case C.K.Corporation stating the reason to due to heart problem he was not able to handle the work properly however in case of Mahalaxmi Developers he was doing the business of construction which was more tedious. Therefore it appears that with intention of non-cooperation he had given power of attorney in case of C.K. Corporation to his son. In reply he stated that construction business was looked after by his younger son;
- He further stated that Shri Manish Lavti was looking after the work related to M/s C.K.Corporation since 2004 and he had given him verbal order for that effect;
- On being asked that it appears from the transaction of M/ s C.K.Corporation from 2006 to 2010 that about 95% of financial transactions had been done with his brother's firm Mahalaxmi Extrusions and his own firm Mitesh

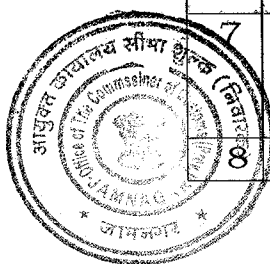


Impex, he stated that due to his ill health he had not done any transaction and therefore was not able to give any explanation in this regard;

- He further stated that even though he had given power of attorney to his son Shri Manish in case of M/s C. K. Corporation however he was responsible for any act of Shri Manish Lavti;
- On being asked that after perusing the transactions of M/s C.K. Corporation it appeared that C.K. Corporation had facilitated M/s Mitesh Impex and M/s Mahalaxmi Extrusions in evasion of customs duty of Rs. 8.00 crores(approx) with his consent however the same was being denied by him, he stated that C.K. Corporation was a finance company and had given authority to his son to handle the work of the firm; they had given amount to different borrowers and how the borrowers used the money was the responsibility of borrowers.

22. Further statement of Shri Rameshbhai Panalal Lavti, Partner, of M/s Mitesh Impex, Jamnagar was recorded on 09.12.2011 under section 108 of the Customs Act, 1962, wherein he interalia stated that the quantity of brass scrap consumed in the manufacture of the goods exported under above ARE-1s are as under:

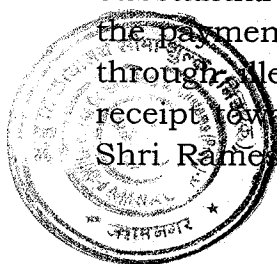
Sl. No	Invoice No. & Date	Description	Quantity of Export Goods (in MT)	Quantity of Brass scrap Consumed in the manufacturing of goods exported (in MT)
1	MI/ 04 / 08-09 dated 14.08.2008	Brass Sanitary Fittings	6.313	7.594
2	MI/05/08-09 dated 21.08.2008	Brass Sanitary Fittings	4.951	6.238
3	MI/07 /08-09 dated 26.10.2008	Brass Sanitary Fittings	3.776	4.757
4	MI/08/ 08-09 dated 05.02.2008	Brass Sanitary Fittings	6.973	8.785
5	MI/02/09-10 dated 01.05.2009	Brass Sanitary Fittings	1.825	2.299
6	MI/03/09-10 dated 03.05.2009	Brass Sanitary Fittings	6.999	8.818
7	MI/04/09-10 dated 29.06.2009	Brass Sanitary Fittings	10.246	12.909
8	MI/05/09-10	Brass	7.065	8.901



	dated 20.08.2009	Sani tary Fittings		
9	MI/07/09-10 dated 04.11.2009	Brass Sani tary Fittings	16.595	20.909
1 0	MI/08/09-10 dated 18.01.2010	Brass Sani tary Fittings	7.515	9.468

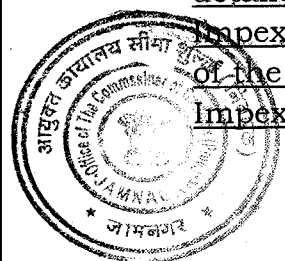
23. During the investigation, Shri Nathulal Panalal Lavti, Shri Manish Nathulal Lavti, Shri Rameshchandra Panalal Lavti and Shri Prakashchandra Panalal Lavti had applied for anticipatory bail in the Hon'ble Sessions Court, Jamnagar and the Hon'ble Sessions Judge, Jamnagar vide order dated 18.10.2011 had granted anticipatory bail.

24. In view of the above, it appeared that M/s. Mitesh Impex, Jamnagar had exported 27 containers of Copper & Zinc Base Alloy (Brass) weighing 818.500 MT valued at Rs.22,28,51,134/- (C&F) (Dubai) between the period of 24.07.2006 to 09.03.2009 to the different overseas buyers at Dubai. During scrutiny of documents and investigation it was revealed that M/s Mahaxmi Extrusions, Jamnagar had imported all the 27 containers exported by M/s Mitesh Impex showing description of the goods as re-melted Brass ingots weighing 818.5MT valued at Rs.17,59,44,364/- between the period of 18.09.2006 to 13.04.2009. After scrutiny of export documents of M/s. Mitesh Impex, Jamnagar and import documents submitted by M/s Mahalaxmi Extrusions, Jamnagar, it was established that the above said 27 containers containing Copper & Zinc Base Alloy (Brass) weighing 818.500 MT were exported to Dubai by M/s. Mitesh Impex, Jamnagar and the same containers bearing the same Nos. with same seal Nos. were imported by M/s Mahalaxmi Extrusions, Jamnagar from Dubai declaring the description of the commodity as Re-melted Brass Ingots. It also appeared that M/s Mitesh Impex showed exports of Brass Ingots, to the overseas parties at Dubai/ Ajman, which were later clandestinely and illicitly imported through their sister concern M/s Mahalaxmi Extrusions, Jamnagar at substantially suppressed value and by mis-declaring the descriptions of the goods. It was apparent from the above fact that the same containers which were exported by M/s Mitesh Impex under EOU scheme were brought into M/s Mahalaxmi Extrusions and into M/ s Mitesh Impex, with the same container number and seal number. It also appeared that M/s Mahalaxmi Extrusion showed payment of all such imports through the amounts provided to them by M/s Mitesh Impex through another sister concern M/s C.K.Corporation. To show the evidence of payment received towards the exports made by M/s. Mitesh Impex, they first sent the money through hawala channel to Dubai and then the same money was utilised for showing receipt of the export proceeds through banking channel for the exports made by them. Further, it also appeared that Shri Rameshchandra Panalal Lavti, Partner of M/s. Mitesh Impex, Jamnagar had made an arrangement with the overseas buyers of the above said 27 containers which were exported by him that the same would be imported by M/ s. Mahalaxmi Extrusions, Jamnagar in as it is condition, at substantial lower price. Shri Rameshchandra Panalal Lavti, arranged/managed the payments of their export consignments by sending funds to overseas buyers through illegal/ hawalla channels and subsequently the same was shown as receipt towards actual export proceeds of their exported consignments. Further, Shri Rameshchandra Panalal Lavti had managed to get the overseas buyers to



send their export consignments in as it is condition at substantially lower price in the name of M/ s Mahalaxmi Extrusion a unit of his real younger brother. This fact was also admitted by Shri Ankit D. Changani, Partner of M/s. Darpan General Trading, LLC, Dubai in his statement dtd.04.08.2011. Shri Rameshchandra Panalal Lavti, with connivance of Shri Prakashchandra Panalal Lavti, Partner of M/s.Mahalaxmi Extrusions cleared the above said containers from Mundra & Kandla Custom House at undervalued price. M/s. Mahalaxmi Extrusions had knowingly undervalued their above said consignments at the time of filing bills of entry at the concerned Custom Houses. Further Shri Rameshchandra Panalal Lavti also managed funds for payment of the consignments imported by M/s.Mahalaxmi Extrusion by way of providing the funds through one of their sister concern M/s. C.K. Corporation which was owned by Shri Nathulal Panalal Lavti elder brother of Shri Rameshchandra Panalal Lavti and one of the Partners of M/s. Mitesh Impex. (Fund flow statement as per Annexure-B to the SCN). The investigation also revealed that M/s Mahalaxmi Extrusions and M/s C.K. Corporation were functioning from the same premises. Further, it also appeared that Shri Rameshchandra Panalal Lavti had negotiated with the Custom House Agents M/ s Global Marine Agencies, Gandhidham for clearance of import consignments of M/s Mahalaxmi Extrusions.

25. In view of the above it transpired that M/s Mitesh Impex, Jamnagar had executed circular trading of their export consignments. M/s Mitesh Impex had imported raw material that was used in the manufacture of finished goods claimed to have been cleared for export but the same consignments were imported into India in the name of M/s Mahalaxmi Extrusion, a DTA unit. Scrutiny of the bills of entry of the imported goods revealed that M/s Mitex Impex had actually indulged in circular trading in the guise of genuine exports. The final products claimed to have been exported by them were re-imported at much lower declared value by another unit, which was working hand-in- glove with M/ s Mitesh Impex. Moreover, the so called sales proceeds received by them were actually only adjustment receipts and not genuine sales proceeds for the exported goods. Hence, the inputs used in manufacturing the said export goods cannot be said to have been used in accordance with the requirement of condition Para 1(a) of Notification No.52/2003-Cus dated 31.03.2003 and so the inputs used in the manufacturing of the so called export goods do not qualify for exemption to duty under Notification No.52/2003-Cus dated 31.03.2003 and hence the duty was rightly recoverable on such inputs in terms of the bond executed as per Para 1(3)(d) of the said notification and also in terms of Section 28(4) of the Customs Act,1962. Further the sale proceeds for the said export was also managed by Shri Rameshchandra Panalal Lavti, Partner of M/s Mitesh Impex through hawala/illegal channel, hence the same cannot be considered as bonafide export proceeds for ascertaining the Net Foreign Exchange earnings (NFE). Therefore they were also liable to pay the duty on the duty free raw materials consumed as per Para 3(d) (11) of the Notification No. 52/2003-Cus dated 31.03.2003. Therefore, 1325.97MT of imported brass scrap, valued at Rs.24,54,45,889 /- (as detailed in Annexure 'C' to the SCN) was not eligible for the exemption of duty available to an 100% EOU under Notification No. 52/2003-Customs dated 31.03.2003. The same was also liable for confiscation under Section 111 (o) of the Customs Act, 1962. Customs Duty amounting to Rs. 5,80,17,113/- (as detailed in Annexure 'C' to the SCN) was recoverable from M/s Mitesh Impex under proviso to Section 28(1) of the Customs Act, 1962 and/ or in terms of the B-17 bond read with Section 72 of the Customs Act, 1962. M/ s Mitesh Impex was also liable to pay interest at applicable rate on the duty evaded under



Section 28 (4) of the Customs Act, 1962. M/ s Mitesh Impex was also liable for penalty under Section 112/ 114A of the Customs Act, 1962.

26. It also appeared that M/s. Mitesh Impex had shown export of 16.595 MT of Brass Sanitary fittings/ Brass Builder Hardware valued at USD 300140.75(FOB) under Shipping Bill No.1158958 dated 05.11.2009 from Kandla. The above said consignment was removed from the unit under self removal procedure to M/s. Darpan General Trading LLC, Dubai. The said consignment was cleared without any physical examination by Customs. Further Shri Ankit Dineshbhai Changani, Partner of consignee M/s. Darpan General Trading LLC, Dubai also admitted in his statement that the consignment actually contained only 3.5 MT of brass scrap and the remaining was some other scrap and that the invoice value quoted by M/s. Mitesh Impex was highly inflated. In view of the above, it appeared that M/s Mitesh Impex had misdeclared the description, quantity and value of the above mentioned consignment. Hence the same was liable for confiscation under Section 113 (i) of the Customs Act, 1962 and M/ s Mitesh Impex was liable for penal action under Section 114(iii) of the Customs Act, 1962.

26.1 M/s Mitesh Impex had imported duty free raw material that was to be used in the manufacture of finished goods claimed to have been exported under the above mentioned Shipping Bill No. 1158958 dated 05.11.2009 from Kandla. In view of the declared quantity, 20.909 MT of brass scrap ought to have been used in manufacture of declared final product. However, as only 3.5 MT of brass sanitary fittings was contained in the export consignment, it appeared that only 4.41 MT of brass scrap was actually used and the remaining quantity of 16.499 MT valued at Rs 24,7,653/- was diverted/ sold in the open market and was not used for the purposes for which it was imported i.e. the production of finished goods which were exported out of India, thereby contravening the condition mentioned at Para No. 1 (a) of the notification No. 52/2003-Cus dated 31.03.2003 and condition No. 10 of the B-17 Bond. Therefore 16.499 MT of imported raw material, valued at Rs.24,07,653/- (as detailed in Annexure 'D' to the SCN), was not eligible for the exemption of duty available to an 100% EOU under Notification No.52/2003-Customs dated 31.03.2003 and the same was liable for confiscation under Section 111(o) of the Customs Act, 1962. Customs Duty amounting to Rs.5,04,187 /- (as detailed in Annexure 'D' to the SCN) was also recoverable from M/ s Mitesh Impex under proviso to Section 28(1), read with Section 72 of the Customs Act, 1962 along with interest at applicable rate under Section 28 (4) of the Customs Act, 1962. M/s Mitesh Impex was also liable for penal action under Section 112 / 114A of the Customs Act, 1962.

27. It also appeared that M/s Mitesh Impex had shown export of Brass Sanitary fittings weighing 6.313 MT valued at USD 121670.00 (C&F) under Shipping Bill No. 1131072 dated 18.08.2008 from Kandla. The said consignment was cleared under self removal procedure and was consigned to M/ s Golden Elephant Trading LLC, Dubai. Shri Anand Chandrakant Patel, Partner of M/ s Golden Elephant Trading LLC, Dubai had elaborately explained about the modus operandi adopted by Shri Rameshbhai Lavti of M/s Mitesh Impex, Jamnagar for using their name as consignee for the fake exports by Mitesh Impex in Para 19 above. From the same, it clearly transpired that M/s Mitesh Impex had shown export of Brass Sanitary fittings stated above from Kandla to M/ s Golden Elephant Trading LLC, Dubai without any monetary consideration and the name of the overseas buyer was used only to facilitate this illegal export because the payment of this consignment was managed by Shri Ramesh Panalal Lavti,



Partner of M/ s Mitesh Impex. It also appeared that the consignment exported had no commercial value and therefore the same was handed over to M/ s Sapphire Marbles & Building material, LLC, Sharjah only for disposal. Shri Ramesh Pananalal Lavti had executed the above export only to show positive value addition in their export proceeds to increase NFE of M/s Mitesh Impex. Therefore, it also appeared that the above said consignment was mis-declared in terms of description and value both. The payment of the above said consignment was also arranged by Shri Ramesh Pananalal Lavti on his own through hawala/illegal sources in contravention of Section 7 and 8 of Foreign Exchange Management Act, 1999. Therefore, the above said consignment weighing 6.313 MT valued at Rs.51,02,798/- was liable to confiscation under Section 113 (i) of the Customs Act, 1962 and M / s Mitesh Impex was liable for penal action under Section 114(iii) of the Customs Act, 1962.

28. It also appeared that M/s Mitesh Impex had shown export of the following consignments of Brass Sanitary Fittings & Brass Builder Hardware to M/s Darpan General Trading LLC, Dubai between the periods April-2009 to August-2009.

Sl. No	ARE-1 No. & Date	Description of Goods	Net Quantity (MT)	Shipping Bill No. & Date	Fob Value in Rs.	FOB value in USD
1.	02/EOU/MI/09-10 date 01.05.2009	Brass Sanitary Fittings	1.825	1147861 dated 02.05.2009	35,73,807	71980.00
2.	03/EOU/MI/09-10 date 03.05.2009	Brass Sanitary Fittings	6.999	1147942 dated 04.05.2009	51,43,082	103586.75
3.	04/EOU/MI/09-10 date 29.06.2009	Brass Sanitary Fittings/ Brass Builder Hardware	10.246	1151580 dated 30.06.2009	81,39,413	173179.00
4	05/EOU/MI/09-10 date 20.08.2009	Brass Sanitary Fittings	7.065	1154609 dated 20.08.2009	56,01,825	117193.02
	TOTAL		26.135		2,24,58,127	465938.77

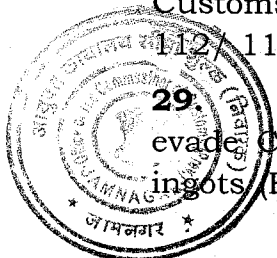
It also appeared that the above four consignment totally weighing 26.135 MT valued at Rs.2,24,58, 127/- were containing inferior quality goods and were not in position to be used as such. It also appeared that similar inferior quality Brass Parts weighing 1.725 Mt valued at Rs. 10,96,018/- (pro-rata value



in USD 22645), which was exported by M/s Mitesh Impex in the F.Y. 2008-09 was lying with M/ s Darpan General Trading LLC, Dubai. Therefore the total quantity of 27.860 MT of inferior Quality Brass parts were re-exported by M/s Darpan General Trading LLC, Dubai to M/s Mitesh Impex under Invoice No. DGT/455/2009 dated 23.09.2009. The same was imported and cleared under Bill of Entry No.311331 dated 06.10.2009. It also appeared that there was an understanding between Shri Rameshchandra Panalal Lavti and Darpan General Trading that the goods exported by M/s Mitesh Impex would be imported by either Mitesh Impex or M/s Mahalaxmi Extrusions. Further it was also agreed between them that Shri Ramesh Lavti would provide US dollar to M/s. Darpan General Trading for making payment of the consignments exported by M/s Mitesh Impex, Jamnagar. It was also agreed between them that Shri Ramesh Lavti would make payment of certain amount per shipment to Shri Abdul Majeed as facilitation charge. It also appears that as per above agreement and as per request of Shri Rameshchandra Panalal Lavti the invoice was raised for Mix Brass scrap and not as rejected goods. This fact was also admitted by Shri Ankit Dineshbhai Changani, Partner of M/s Darpan General Trading LLC. Dubai in his statement dated 05.04.2011. The export of inferior quality Brass parts were made by Mitesh Impex was a part of circular trading and achievement of NFE. The payments of the above mentioned 05 export co"nsignment were managed by Shri Rameshchandra Panalal Lavti by his own through hawala/illegal channel. In view of the above it appears that the above said 05 export consignment weighing 27.860 MT valued at Rs. 2,35,54, 145/- were misdeclared in respect of both value as well as description. Therefore, the same is liable to confiscation under Section 113 (i) of the Customs Act, 1962 and M/s Mitesh Impex is liable for penalty under Section 114(iii) of the Customs Act, 1962.

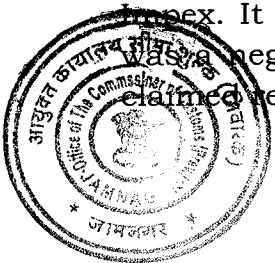
28.1 In view of the above, it is clear that M/s Mitesh Impex had executed circular trading with respect to the aforesaid 05 consignments and hence the clearance as exports to M/s Darpan General Trading LLC, was not genuine exports and hence the raw material, claimed to have been used in the manufacture of these finished goods, was not used for the purposes for which it was imported in accordance with the condition mentioned at Para No. 1 of the notification No.52/2003-Cus dated 31.03.2003 and condition No. 10 of the B-17 Bond. Moreover the payment of the above said export consignments of M/ s Mitesh Impex was managed by Shri Rameshchandra Panalal Lavti, Partner of M/s Mitesh Impex through hawala/ illegal channel and the payment received in Foreign Exchange cannot be treated as bonafide export proceeds. Therefore, 35.134 MT of imported raw material, valued at Rs.51,27,006/- (as detailed in Annexure 'E' to the SCN) used in the manufacture of finished goods which were exported to different overseas buyers and brought back into India as such circular trading, was not eligible for the exemption of duty available to an 100% EOU under Notification No. 52/2003-Customs dated 31.03.2003. Therefore, the same is liable for confiscation under Section 111(o) of the Customs Act, 1962. Customs Duty amounting to Rs.10,73,648/- (as detailed in Annexure 'E' to the SCN) is recoverable from M/ s Mitesh Impex under proviso to Section 28(1) of the Customs Act, 1962 read with Section 72 of the Customs Act, 1962. Along with interest at applicable rate on the duty evaded under Section 28 (4) of the Customs Act, 1962. M/s Mitesh Impex is also liable for penalty under Section 112/ 114A of the Customs Act, 1962.

29. Shri Rameschandra Panalal Lavti master minded the whole plan to evade Customs duty. He exported the goods showing "Copper Zinc base alloy ingots (Brass)" and managed to send funds to overseas buyers and received the



same through banking channel as if they were actual export proceeds. He also managed to get the above said 27 consignments returned by the overseas suppliers (buyers of M/ s Mitesh Impex), declaring the goods as "Remelted Brass Ingots" to M/s.Mahalaxmi Extrusions, Jamnagar at substantially lower price and mis-declared description. He also provided funds to M/s. Mahalaxmi Extrusions, Jamnagar through M/s. C.K. Corporation, Jamnagar for payment of import bills. Further, that Shri Rameshchandra Panalal Lavti had shown export of brass sanitary fittings to M/ s Darpan General Trading LLC, Dubai which were mis-declared and grossly overvalued and the payment of the export consignments were managed by him. In addition to the above one export consignment was consigned to M/ s Golden Elephant Trading LLC, Dubai, the payment of that consignment was arranged by Shri Rameshchandra Panalal Lavti. Therefore, Shri Rameschandra Panalal Lavti had facilitated M/s.Mahalaxmi Extrusions, Jamnagar in evasion of Customs duty of Rs. 5,95,94,948/-. He also abetted in mis-declaration of the above goods rendering the same liable to confiscation under Section 113(i) of Customs Act, 1962. By this act on the part of Shri Rameshchandra Panalal Lavti, he rendered himself liable for penal action under section 114(iii) of the Customs Act, 1962. Further, he also caused the scrap imported duty free under Notification No.52/2003-Cus. dated 31.03.20003, to be utilized in the manufacture of finished goods which were imported back at substantial lower price by adopting the mode of circular trading and also managed the payment of their export consignment showing the same as bonafide export proceeds in contravention of Section 7 and 8 of Foreign Exchange Management Act, 1999. It also appeared that since Shri Rameshchandra Panalal Lavti has executed circular trading therefore the duty free brass scrap utilized in the manufacture of the export goods were not eligible for the exemption of duty available to an 100% EOU under Notification No. 52/2003-Customs dated 31.03.2003. Therefore, the same was liable for confiscation under Section 111(o) of the Customs Act, 1962 and Shri Rameshchandra Panalal Lavti was also liable for penalty under Section 112(a) of the Customs Act. Shri Rameshchandra Panalal Lavti has also knowingly produce export/import invoices which were incorrect thereby rendering himself liable to penal action under Section 114AA of the Customs Act, 1962.

30. In view of the forgoing paras, it transpired that M/s Mitesh Impex had executed circular Trading and exported their consignments by inflating weight and value to achieve Net Foreign Exchange earning (NFE). Para 6.5 of Foreign Trade Policy 2009-14 prescribes that NFE Earnings shall be calculated cumulatively in block of five years, starting from commencement of production. Mitesh Impex commenced production in 2001-02 and therefore the first five years for NFE calculation would be 2001-02 to 2005-06. Between that period the total imports were USD 1,14,40,129.6 and total export proceeds realized were USD 1,23,43,600.00 with NFE positive 1.07% (As per Annexure-F to the SCN). However during next five years from Financial Year starting from 2006-07 to 2010-11 M/s Mitesh Impex has shown import value in USD 1,13,53,323.00 and export proceeds realized as USD 1,50,49,976.00- (As per Annexure-F to the SCN). However, during the period between 2006-07 to 2010-11 M/s Mitesh Impex have illegally and illicitly managed payment of export proceeds to the tune of USD 61,07,849.52 by way of executing circular trading and export on inflated weight and value. Therefore, it appears that the actual foreign exchange realized in USD is 89,42,126.48 only instead of USD 1,50,49,976/- as claimed by M/s. Mitesh Impex. It is therefore apparent that during period of 2006-07 to 2010-11 there was a negative NFE of USD 24,11,196.52 i.e. 21.24%. M/s Mitesh Impex, had claimed receipt of USD 15049976.00 as export proceeds against above



mentioned circular trading and included the same in achievement of NFE. In view of the above, it appears that the actual value of the genuine exports was USD 8942126.48. Therefore, only USD 8942126.48 may be counted for ascertainment of NFE as against USD 15049976.00. Further, it also appears that above mentioned export shipments (Circular Trading) were made on inflated value contravening Section 113(i) of the Customs Act, 1962 and therefore liable for confiscation under Section 113(i) of the Customs Act, 1962.

31. Shri Prakashchandra Panalal Lavti, Partner of M/s. Mahalaxmi Extrusion, Jamnagar had facilitated M/s Mitesh Impex, Jamnagar in execution of circular trading. Shri Prakashchandra Panalal Lavti was fully aware that the goods which were imported by his unit were the same goods which were earlier exported by M/s Mitesh Impex and the payment of import consignment was arranged by Mitesh Impex through C.K.Corporation. Therefore, Shri Prakashchandra Panalal Lavti has also rendered himself liable for penalty under the provisions of Section 112(a) and 114(iii) of the Customs Act, 1962.

32. Shri Nathulal Panalal Lavti, Proprietor of M/ s C.K. Corporation, Jamnagar had provided funds to M/s.Mahalaxmi Extrusions, Jamnagar for payment of import bills. Therefore, Shri Nathulal Panalal Lavti had facilitated M/s.Mitesh Impex, Jamnagar in evasion of Customs duty of Rs. 5,95,94,948/- by adopting the mode of circular trading. This act on the part of Shri Nathulal Panalal Lavti rendered him liable for penalty under section 112(a) and 114(iii) of the Customs Act, 1962.

33. Shri Sanjay Gandhi, proprietor of M/ s. Global Marine Agencies, Custom House Agent, had facilitated M/ s Mitesh Impex, Jamnagar for export of 27 containers which were imported by M/s. Mahalaxmi Extrusions with same container number and same seal number and thereby facilitated M/s Mitesh Impex in circular trading. Further, it also appeared that he had also facilitated M/ s Mitesh Impex in export of brass parts by mis-declaring the description and resorting to gross overvaluation. Shri Sanjay Gandhi had thereby facilitated M/ s Mitesh Impex, Jamnagar in evasion of Customs duty of Rs.5,95,94,948/-. He also abetted in mis-declaration and over valuation of export goods rendering the same liable to confiscation under section 113(i) of Customs Act, 1962. This act on the part of M/ sGlobal Marine Agencies, Gandhidham renders him liable for penalty under section 112 (a) and 114(iii) of the Customs Act, 1962.

34. Shri Ankit Dineshbhai Changni, Partner of M/s. Darpan General Trading LLC, Dubai had facilitated M/s. Mitesh Impex in executing bogus export and he had also facilitated M/s.Mitesh Impex, Jamnagar, in circular trading and hawala payment. This act/ omission on the part of Shri Ankit D. Changani had rendered him liable for penalty under Section 112(a) and 114(iii) of the Customs Act, 1962.

35. Shri Anand Chandrkant Patel, Partner of M/s. Golden Elephant Trading LLC, Dubai had facilitated M/ s. Mitesh Impex in executing bogus export. This act/omission on the part of Shri Anand Chandrkant Patel had rendered him liable for penalty under section 112(a) and 114(iii) of the Customs Act, 1962.

36. Hence, a Show Cause Notice bearing No. DRI/AZU/JRU/25/2012 dated 04-05-2012 was issued to M/s. Mitesh Impex, Jamnagar by the Additional Director General, Directorate of Revenue Intelligence, Ahmedabad, to show cause as to why:

(a) The Copper & Zinc base alloy Ingots(Brass) exported under 27 Shipping Bills weighing 818.5 MT and valued at Rs.22,28,51,134/- (as per



Annexure-A to the SCN) should not be confiscated under Section 113 (i) of the Customs Act, 1962 and redemption fine imposed in lieu of confiscation as the goods were not available for confiscation.

(b) The Brass Sanitary fittings/ Brass Builder Hardware weighing 16.595 valued at Rs.1,39,26,530/- exported under Shipping Bill No.1158958 dated 05.11.2009 (as per Para-26 of the SCN) should not be confiscated under Section 113(i) of the Customs Act,1962 and redemption fine imposed in lieu of confiscation as the goods were not available for confiscation.

(c) The Brass Sanitary fittings weighing 6.313 MT valued at 51,02,798/- exported under Shipping Bill No. 1131072 dated 18.08.2008 (as per Para-27 of the SCN) should not be confiscated under Section 113 (i) of the Customs Act,1962 and redemption fine imposed in lieu of confiscation as the goods were not available for confiscation.

(d) The Brass Sanitary fittings weighing 27.860 MT valued at Rs.2,35,54,145/- exported under five shipping Bills (as per Para- 28 of the SCN) should not be confiscated under Section 113(i) of the Customs Act, 1962 and redemption fine imposed in lieu of confiscation as the goods were not available for confiscation.

(e) Net Foreign Earnings (NFE) claimed as USD 15049976.00 against the export of five consignments mentioned at (a) above should not be restricted to USD 8942126.48 (as detailed in Annexure-F of the SCN)

(f) 1325.97 MT of imported brass scrap, valued at Rs.24,54,45,889 /- (as detailed in Annexure C of the SCN) should not be confiscated under Section 111(o) of the Customs Act, 1962 for violation of conditions of the Notification No.52/2003-Customs dated 31.03.2003 and redemption fine imposed in lieu of confiscation as the goods were not available for confiscation.

(g) 16.499 MT of imported brass scrap, valued at Rs.24, 07,653/- (as detailed in Annexure D of the SCN) should not be confiscated under Section 111(o) of the Customs Act,1962 for violation of conditions of the Notification No.52/2003-Customs dated 31.03.2003 and redemption fine imposed in lieu of confiscation as the goods were not available for confiscation.

(h) 35.134 MT of imported brass scrap, valued at Rs.51,27,006/- (as detailed in Annexure E to the SCN) should not be confiscated under Section 111(o) of the Customs Act,1962 for violation of conditions of the Notification No.52/2003-Customs dated 31.03.2003 and redemption fine imposed in lieu of confiscation as the goods were not available for confiscation.

(i) Customs Duty amounting to Rs.5,80,17,113/- (as detailed in the Annexure C to the SCN) should not be recovered with interest on 1325.97 MT of brass scrap mentioned at (f) above in terms of B-17 Bond executed by them read with Section 72 of the Customs Act,1962, and /or under Section 28 (4) of the Customs Act,1962 read with Section 28AA of the Customs Act, 1962.

(j) Customs Duty amounting to Rs.5,04,187/- (as detailed in the Annexure D to the SCN) should not be recovered with interest on 16.499 MT of brass scrap mentioned at (g) above in terms of B-17 Bond executed



by them read with Section 72 of the Customs Act,1962, and /or under Section 28 (4) of the Customs Act,1962 read with Section 28AA of the Customs Act,1962.

(k) Customs Duty amounting to Rs.10,73,648/- (as detailed in the Annexure E to the SCN) should not be recovered with interest on 35.134 MT of brass scrap mentioned at (h) above in terms of B-17 Bond executed by them read with Section 72 of the Customs Act,1962, and / or under Section 28 (4) of the Customs Act,1962 read with Section 28AA of the Customs Act,1962.

(l) Penalty should not be imposed on M/s. Mitesh Impex, Jamnagar under Section 112 (a), 114A and section 114(iii) of the Customs Act, 1962.

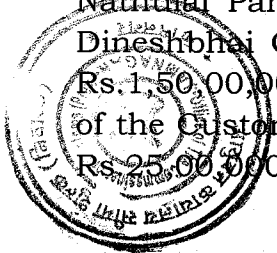
(m) Show Cause Notice was also issued to the following persons asking as to why penalty should not be imposed under Section 112(a) and 114(iii) of Customs Act, 1962 on:

1. Shri Prakashchandra Panalal Lavti, Partner of M/s. Mahalaxmi Extrusions, Jamnagar;
2. Shri Nathulal Panalal Lavti, Proprietor of M/s. C.K. Corporation, Jamnagar;
3. Shri Sanjay Gandhi, Proprietor of M/s. Global Marine Agencies, Gandhidham;
4. Shri Ankit Dineshbhai Changani, Partner of M/s. Darpan General Trading LLC, Dubai; and
5. Shri Anand Chanderkant Patel, Partner of M/s. Golden Elephant Trading LLC, Dubai.

(n) Shri Rameshchandra Panalal Lavti, Partner of M/ s.Mitesh Impex, was also asked to show cause as to why Penalty should not be imposed under Section 112(a), 114(iii) and 114 AA of the Customs Act, 1962.

ADJUDICATION OF SHOW CAUSE NOTICE:

37. Above show cause notice was adjudicated by the Commissioner of Central Excise, Rajkot vide Order-in-Original No. RAJ-EXCUS-000-COM-06-14-15 dated 28-05-2014, since the units involved in the present case being 100% EOU were falling under the jurisdiction of Central Excise Commissionerate, Rajkot at the material point of time. The Commissioner of Central Excise, Rajkot vide the said OIO refrained from imposition of redemption fine in lieu of confiscation of goods under Section 111(o)/ 113(i), as proposed in the show cause notice, since the goods were not available for confiscation. The OIO further ordered to restrict the NFE from USD 15049976 to USD 8942126.48, confirmed demand of Customs duty Rs.58017113/- on 1325.97 MT., Rs.5,04,187/- on 16.499 MT., Rs.10,73,648/- on 35.134 MT., in terms of B-17 Bond executed by the Noticee and/or under Section 28(4), along with applicable interest under section 28AA of the Customs Act, 1962. The OIO further ordered for penalty of Rs.5,95,94,948/- upon M/s. Mitesh Impex, Jamnagar, under section 114A, penalty of Rs.2,00,00,000/- upon Shri Rameshchandra Panalal Lavti, under section 114AA, Rs.25,00,000/- each upon Shri Prakash Panalal Lavti, Shri Nathulal Panalal Lavti, Shri Sanjay Gandhi, Rs.20,00,000/- upon Shri Ankit Dineshbhai Changani, Rs.5,00,000/- upon Shri Anand Chandrakant Patel and Rs.1,50,00,000/- upon Shri Rameshchandra Panalal Lavti, under section 112(a) of the Customs Act, 1962. Further, the OIO ordered for imposition of penalty of Rs.25,00,000/- each upon Shri Prakash Panalal Lavti, Shri Nathulal Panalal



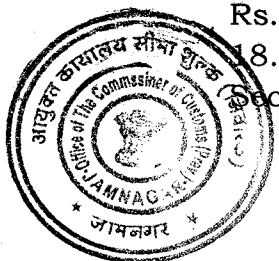
Lavti, Shri Sanjay Gandhi, Rs.20,00,000/- upon Shri Ankit Dineshbhai Changani, Rs.5,00,000/- upon Shri Anand Chandrakant Patel and Rs.2,00,00,000/- upon Shri Rameshchandra Panalal Lavti, under section 114(iii) of the Customs Act, 1962.

APPEAL BEFORE HON'BLE TRIBUNAL AND OUTCOME THEREOF:

38. Being aggrieved by the aforesaid Order-in-Order for rejecting their claim by the Adjudicating Authority for cross examination of the witnesses as envisaged under Section 138(B) of the Customs Act, 1962, the Noticee No.1 M/s. Mitesh Impex and other Noticees viz. Shri Prakash Panalal Lavti, Shri Rameshchandra Panalal Lavti, Shri Nathulal Panalal Lavti and Shri Anand C. Patel, filed Appeal No. 12442 to 12445 of 2014-DB & 13216 of 2014-DB before the Hon'ble CESTAT, WZB, Ahmedabad and as per CESTAT Final Order No. A/10489-10493/2023 dated 13-03-2023, the original OIO is set aside and appeals are allowed by way of remand to the Adjudicating Authority for fresh adjudication after granting the appellant due opportunity for cross examination. Meanwhile on account of promulgation of GST, the administrative jurisdiction of the EOUs has been assigned to the Customs formations and as the Noticees involved in the present case fall in the jurisdiction of the Customs (Preventive) Commissionerate, Jamnagar, the case was adjudicated by the Commissioner of Customs (Preventive) Commissionerate, Jamnagar ("the adjudicating authority").

38.1 During the remand proceedings in compliance of the Final Order No. A/10489-10493/2023 dated 13-03-2023 of Hon'ble CESTAT Ahmedabad, the Adjudicating Authority provided ample opportunities to the Noticee for the cross examination of six witnesses on 08.11.2024, 10.12.2024, 17.12.2024 and 04.02.2025. However, only three witnesses viz. (i) Sh. Prahaladrai Indermal Jhanwar on 08.11.2024; (ii) Sh. Suresh G. Patel on 04.02.2025 and (iii) Sh. Sanjay N. Gandhi on 04.02.2025 have attended the proceedings pertaining to the cross - examination, while the remaining three witnesses viz. Sh. Dinesh Changani, Sh. Ankit D. Changani & Sh. Anand C. Patel didn't appear for the cross-examination. The Adjudicating Authority after considering the records of the cross examination, written/oral submission made by the Noticee, other evidences available on records and relying upon various judicial pronouncements vide OIO No. JAM-CUSTOM-PRV-COM-012-24-25 dated 18.03.2025 had

- i Ordered that the Copper & Zinc base alloy Ingots(Brass) exported under 27 Shipping Bills weighing 818.5 MT and valued at Rs.22,28,51,134/ (as per Annexure-A to the SCN) were liable for confiscation under Section 113(i) of the Customs Act 1962. However, since same were not available for confiscation, having been already cleared, not imposed any redemption fine in lieu of such confiscation;
- ii. Ordered that the Brass Sanitary fittings/ Brass Builder Hardware weighing 16.595 MT. and valued at Rs.1,39,26,530/- exported under Shipping Bill No.1158958 dated 05.11.2009 (as per Para-26 of the SCN) were liable for confiscation under Section 113(i) of the Customs Act, 1962. However, since the same were not available for confiscation, having been already cleared, not imposed any redemption fine in lieu of such confiscation.
- iii. Ordered that the Brass Sanitary fittings weighing 6.313 MT valued at Rs.51,02,798/- exported under Shipping Bill No.1131072 dated 18.08.2008 (as per Para-27 of the SCN) were liable for confiscation under Section 113(i) of the Customs Act,1962. However, since the same were not



- available for confiscation, having been already cleared, not imposed any redemption fine in lieu of such confiscation.
- iv. Ordered that the Brass Sanitary fittings weighing 27.860 MT valued at Rs.2,35,54,145/- exported under five shipping Bills (as per Para-28 of the SCN) were liable for confiscation under Section 113(i) of the Customs Act,1962 . However, since the same were not available for confiscation, having been already cleared, not imposed any redemption fine in lieu of such confiscation.
 - v. Ordered to restrict the Net Foreign Earnings (NFE) claimed as USD 15049976.00 against the export of five consignment, to USD 8942126.48 (as detailed in Annexure-F of the SCN)
 - vi. Ordered that 1325.97 MT of imported brass scrap, valued at Rs.24,54,45,889/- (as detailed in Annexure C of the SCN) were liable for confiscation under Section 111(o) of the Customs Act,1962 for violation of conditions of the Notification No.52/2003-Customs dated 31.03.2003. However, since the same were not available for confiscation, having been already cleared, not imposed any redemption fine in lieu of such confiscation.
 - vii. Ordered that of 16.499 MT of imported brass scrap, valued at Rs.24,07,653/- (as detailed in Annexure D of the SCN) were liable for confiscation under Section 111(o) of the Customs Act, 1962, for violation of conditions of the Notification No.52/2003-Customs dated 31.03.2003. However, since the same were not available for confiscation, having been already cleared, not imposed any redemption fine in lieu of such confiscation.
 - viii. Ordered that of 35.134 MT of imported brass scrap, valued at Rs.51,27,006/- (as detailed in Annexure E to the SCN) were liable for confiscation under Section 111(o) of the Customs Act, 1962, for violation of conditions of the Notification No.52/2003-Customs dated 31.03.2003. However, since the same were not available for confiscation, having been already cleared, not imposed any redemption fine in lieu of such confiscation.
 - ix. Confirmed the demand of Customs Duty amounting to Rs.5,80,17,113/ (as detailed in the Annexure C to the SCN) leviable on 1325.97 MT of brass scrap, in terms of B-1 7 Bond executed by them read with Section 72 of the Customs Act,1962, and/ or under Section 28(4) of the Customs Act,1962, along with interest as applicable under Section 28AA of the Customs Act,1962.
 - x. Confirmed the demand of Customs Duty amounting to Rs.5,04,187 /- (as detailed in the Annexure D to the SCN) leviable on 16.499 MT of brass scrap, in terms of B-17 Bond executed by them read with Section 72 of the Customs Act, 1962, and/ or under Section 28(4) of the Customs Act,1962, along with interest as applicable under Section 28AA of the Customs Act, 1962.
- Confirmed the demand of Customs Duty amounting to Rs.10,73,648/- (as detailed in the Annexure E to the SCN) leviable on 35.134 MT of brass scrap, in terms of B-17 Bond executed by them read with Section 72 of the Customs Act,1962 and/ or under Section 28(4) of the Customs



Act,1962, along with interest as applicable under Section 28AA of the Customs Act,1962.

- xii. Imposed penalty of Rs.5,95,94,948/- (Rupees Five Crore Ninety Five lakhs Ninety Four Thousand Nine Hundred and Forty Eight Only) on M/s. Mitesh Impex, Jamnagar, under Section 114 A of the Customs Act 1962 plus penalty equal to the applicable interest under Section 28AA payable on the duty demanded and confirmed in (xi), (x) & (xi) herein above on M/s. Mitesh Impex, Jamnagar under Section 114A of the Customs Act, 1962, to be paid by/ recovered from the Noticee forthwith. However, it was further ordered that if the duty determined along with interest demanded in (xi),(x) & (xi) hereinabove, was paid within thirty days from the date of the communication of the order, the amount of penalty liable to be paid shall be twenty five per cent of the total duty demanded with interest, in terms of first proviso of section 114A of the Customs Act, 1962, provided that the benefit of reduced penalty under first proviso shall be available subject the condition that the amount of penalty imposed, also has to be paid within thirty days from the date of the communication of the order.
- xiii. Imposed penalty of Rs.2,00,00,000/- (Rupees Two Crores Only) on Shri Rameshchandra Panalal Lavti under Section 114 AA of the Customs Act 1962.
- xiv. Imposed penalties as mentioned below on each of the following persons, under Section 112(a) of the Customs Act, 1962.

Sl. No.	Name of the Noticee	Amount of Penalty (in Rupees)	
		In Figures	In words
1	Shri Prakash Panalal Lavti, Partner of M/s. Mahalaxmi Extrusions, Jamnagar.	25,00,000/-	Twenty five lakhs Only
2	Shri Nathulal Panalal Lavti, Proprietor of M/ s C. K. Corporation, Jamnagar.	25,00,000/-	Twenty five lakhs Only
3	Shri Sanjay Gandhi, Proprietor of M/s. Global Marine Agencies, Gandhidham.	25,00,000/-	Twenty five lakhs Only
4	Shri Ankit Dineshbhai Changani, Partner of M/ s Darpan General Trading LLC, Dubai.	20,00,000/-	Twenty Lakhs Only
5	Shri Anand Chandrakant Patel, Partner of M/s Golden Elephant Trading, LLC, Dubai.	5,00,000/-	Five Lakhs Only
6	Shri Rameshchandra Panalal Lavti, Partner of M/s Mitesh Impex, Jamnagar	1,50,00,000/-	One Crore Fifty Lakhs Only.



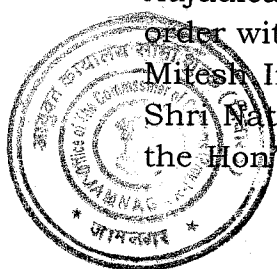
xv. Imposed penalties as mentioned below on each of the following persons, under Section 114(iii) of the Customs Act, 1962.

Sl. No.	Name of the Noticee	Amount of Penalty (in Rupees)	
		In Figures	In words
1	Shri Prakash Panalal Lavti, Partner of M/s. Mahalaxmi Extrusions, Jamnagar.	25,00,000 /-	Twenty five lakhs Only
2	Shri Nathulal Panalal Lavti, Proprietor of M/ s C. K. Corporation, Jamnagar.	25,00,000 /-	Twenty five lakhs Only
3	Shri Sanjay Gandhi, Proprietor of M/s. Global Marine Agencies, Gandhidham.	25,00,000 /-	Twenty five lakhs Only
4	Shri Ankit Dineshbhai Changani, Partner of M/ s Darpan General Trading LLC, Dubai.	20,00,000/-	Twenty Lakhs Only
5	Shri Anand Chandrakant Patel, Partner of M / s Golden Elephant Trading, LLC, Dubai.	5,00,000/-	Five Lakhs Only
6	Shri Rameshchandra Panalal Lavti, Partner of M/s Mitesh Impex, Jamnagar	2,00,00,000/-	Two Crores Only.

39. Subsequently, Corrigendum dated 22.05.2025 to the aforesaid OIO was issued; wherein the penalties imposed on persons at Sl No.3 Shri Sanjay Gandhi, Proprietor of M/s. Global Marine Agencies, Gandhidham and Sl. No.4 Shri Ankit Dineshbhai Changani, Partner of M/s.Darpan General Trading LLC, Dubai under Section 112 (a) of the Customs Act, 1962 and Section 114(iii) of the Customs Act, 1962 respectively was omitted, as Shri Sanjay Gandhi, Proprietor of M/s. Global Marine Agencies, Gandhidham and Shri Ankit Dineshbhai Changani, Partner of M/s.Darpan General Trading LLC, Dubai were not Appellants in the CESTAT Final Order No. A/10489-10493/2023 dated 13-03-2023.

CROSS EXAMINATION OF WITNESSES & PERSONAL HEARING:

40. Aggrieved by the aforesaid Order-In-Original bearing No. JAM-CUSTM-PREV-COM-012-2024-25 dated 18.03.2025, M/s.Mitesh Impex along with Sh. Rameshchandra Lavti (Partner of M/s. Mitesh Impex), Sh. Prakashchandra Pannalal Lavti and Sh. Nathulal Pannalal Lavti filed R/Special Civil Application No.11971 of 2025 before Hon'ble High Court of Gujarat which culminated in-to pronouncement of Order dated 25/11/2025 by Hon'ble High Court of Gujarat; wherein the Hon'ble Court remanded the matter back to the Adjudicating Authority for fresh adjudication with direction to pass appropriate order within a period of 12 weeks from the date of receipt of the order: Since M/s. Mitesh Impex , Shri Prakash Panalal Lavti, Shri Rameshchandra Panalal Lavti, Shri Nathulal Panalal Lavti only had filed the R/Special Civil Application before the Hon'ble High Court, the present remand proceedings are restricted to above



Noticees only and while the order w.r.t. to the other Noticees shall stand intact as confirmed by Order-In-Original bearing No. OIO-RAJ-EXCUS-OOO-COM-06-14-15 dated 28.05.2014 or Order-In-Original bearing No. JAM-CUSTM-PREV-COM-012-2024-25 dated 18.03.2025.

40.1 Following the direction of the Hon'ble High Court, a personal hearing in the matter was accorded on 23.12.2025. During the PH, Authorized Representative of the Noticee requested for cross-examination of remaining three witnesses viz. Sh. Dinesh Changani, Sh. Anand Chandrakant Patel and Sh. Ankit D. Changani. In view thereof, cross-examination of the aforesaid three witnesses was accorded on 13.01.2026 along with request to the Authorized Representative to co-ordinate with the witnesses. In response, Authorized Representative of the Noticee vide his Email dated 12.01.2026 intimated that, Sh. Dineshbhai and Sh. Ankitbhai both are out of town and requested for another date for cross-examination. Accordingly, another date for cross-examination was fixed on 22.01.2026. At that juncture, the Authorized Representative of the Noticee vide Email dated 17.01.2026 stated that he has to appear before Hon'ble High Court of Gujarat on 22.01.2026, therefore cross-examination may be postponed on 23.01.2026. Accordingly, the date for cross-examination was postponed on 23.01.2026. On 23.01.2026 none of three witnesses appeared for cross-examination. While, the Authorized Representative of the Noticee vide letter dated 23.01.2026 stated that as per their conversation with Sh. Ketulbhai (Son of Sh. Dineshbhai Changani), Sh. Ankitbhai and Sh. Dineshbhai will appear for cross-examination on 29.01.2026 and requested the date for cross-examination may be postponed to 29.01.2026. Accordingly, date for cross-examination was again re-fixed on 29.01.2026. Again, the Authorized Representative of the Noticee vide letter dated 28.01.2026 stated that, as per email received by them from Sh. Ketulbhai (Son of Sh. Dineshbhai Changani), Sh. Ankit is not present in India and is likely to return in the evening of January 30th and requested for re-fixation of date for cross-examination after 3rd February, 2026. In view thereof, a new date for cross-examination was fixed on 04.02.2026. Shri Dineshbhai Changani, Partner of M/s. Amardeep Exports, Jamnagar and Shri Ankit Dineshbhai Changani, Partner of M/s. Darpan General Trading LLC, recorded on 05-02-2026 appeared for cross examination on 05-02-2026 and they were cross-examined by Shri Paresh Sheth, Authorized Representative of M/s. Mitesh Impex and others. Despite several opportunities given Shri Anand Patel did not appear for cross examination nor has any reply been received from him till date. Following the cross-examination, the Authorized Representative submitted that he would file a written submission in the matter.

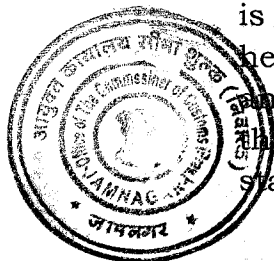
40.2 The Authorized Representative vide 05.02.2026 filed written submission on behalf of the above Noticee wherein he inter-lia submitted as under:-

- The re-adjudication proceedings are result of the order passed by Honorable Gujarat High Court dated 25-11-2025. Therefore, the direction or the observation made in such order is binding on the department.
- As per the Hon'ble High Court's observations it is crystal clear that the bare statement of the witnesses cannot be relied upon unless corroborative material is produced in support of such statement. Admittedly no supportive material is produced in support of statement of the witnesses.
- From our submission dated 28-03-2013 this Honorable Authority would be pleased to see that we had sought for cross examination of Shri Dinesh Changani, Shri Anand Patel, Shri Sanjay Gandhi, Shri Ankit Changani, Shri Suresh Gangdas, Shri Prahaladrai Indermal Jhanwar. Out of all these



witnesses three witnesses were present for cross examination and the rest were not presented for cross examination. However considering the presence of only three witnesses order was passed, which was challenged before the Honorable High Court and on remand by the Honorable High Court remaining three witnesses were called for on appointed date we had appeared before this learned Authority. Ultimately on 04-02-2026 Shri Ankit and Shri Dinesh had appeared and were examined. But still Shri Anand has not appeared and hence in view of the observation made by the Honorable High Court his statement cannot be relied.

- During the course of remand proceedings, as narrated here in above three witnesses had appeared and were examined. After examination we were directed to file submission, accordingly we had filed our submission vide letter dated 26-02-2025, with copy of statement given by the said witnesses during the course of Cross Examination.
- **In the said submission it was submitted that :** “ From the statement given by Shri Suresh and Shri Prahaladrai, during cross examination, it is clear that they have no business relations with M/s Mitesh Impex and the statement relied upon has no relevance and hence cannot be relied upon.
- While recording statement of Shri Sanjay Gandhi during cross examination it is accepted by him that he is not looking after day to day work. In response to the specific question related to the procedure followed by Dubai Customs department he has admitted that the procedure might be same. On specific question, when he was shown list of exports made by Mitesh Impex and imports made by M/s Mahalaxmi Extrusions whether the Customs department had produced any other documents then referred in question No. 5 & 6 his answer is that no documents pertaining to Customs clearance in Dubai were shown to me.
- Shri Sanjay on specific question whether as a part of procedure he would agree that all imports and exports route through the Customs department and only on verification of goods and documents the consignment allowed for imports exports? His answer was ‘Yes’.
- From the statement recorded it is clear that he was not looking after day to day affairs of either Export or Import and was not aware of the documents prepared since his staff was looking after the said work. In that case confirmation of so called list produced by the customs department while recording his statement cannot be relied upon and cannot be taken in to cognizance. In any case while making him agreed to the said list he was not allowed to see the documents pertaining to the customs clearance in Dubai and hence his statement on this count is not liable to be relied upon.
- From the show cause notice and the relevant documents it is also clear that the investigating officers has suppressed the documents produced by the importer in Dubai and export thereof to M/s Mahalaxmi Extrusions just to implicate the noticee. If the officers would have produced such documents then it would be seen that the noticee is not in fault but the said importer has manipulated the documents to get some benefits allowed under the provisions of Customs Act prevailing in Dubai.
- At this point of time we would like to refer statement of Shri Ankit, though as per the direction of the Honorable CESTAT any statement of Shri Ankit is not to be relied, but just to show their intention, in one of the statement he has accepted that he was partner on paper and was not looking after any financial transaction of the firm and in last statement he has informed that one Shri Ramesh had deposited some amount in their Bank. This statement is not only contrary to his own statement but is not supported



by any evidence which proves beyond doubt that the intention was to implicate the noticee and save their own skin for undue benefits availed by them from Customs Department in Dubai.

- In our earlier submission also we had drawn the attention of this Honorable Authority to the relevant facts and circumstances as also the relevant provisions and had also clarified that the noticee has not violated any provisions or conditions of the notification availed and hence no part of the demand is liable to be confirmed. Just to avoid duplication we are not reproducing our earlier submission but are forwarding the same for kind consideration of this Honorable Authority with a request to consider the same as part of the submission in present proceedings.
- At the cost of repetition we would like to draw your kind attention to the fact that the department has demanded duty on the ground that the noticee has violated the condition laid down under the exemption notification as claimed at the time of clearance of imported goods. However it is also accepted by the department that the goods exported had undergone manufacturing process and are also exported by the noticee. This fact is also clear from the allegation made for raising the demand. The department has alleged that the goods exported are re-imported by one M/s Mahalaxmi Extrusion. This admission of the department makes it clear that the conditions laid down under the respective notification are complied with.
- In any case none of the witnesses has ever stated that the noticee has not exported the goods and has violated the conditions prescribed under the respective notification. In our earlier submissions attention was drawn to the respective Provisions of Customs Law as was prevailing in Dubai and attention was drawn to the fact that as per the respective provisions prevailing in Dubai if the importer is re-exporting the goods then they were getting some rebate and therefore the exporter based in Dubai who has exported material to M/s Mahalaxmi Extrusion must have played some mischievous game and accordingly the allegation of the department cannot be sustained.
- Unfortunately the department has not put forth any documents to prove that some investigation was done at the recipient end, accordingly the allegation cannot be sustained. **In our earlier submission it was clarified that the noticee has exported material to X but the import made by M/s Mahalaxmi Extrusion is from Y then how could it be possible that the container number is same? However the department has not given any answer to the said query raised and hence it is once again requested that our said query may be answered and there after we may be allowed to file our further submission.**
- Under the circumstances it is requested that the remaining witnesses may please be called for cross-examination and also to clarify the query raised in this submission or the earlier submission and oblige.
- The department has not put forth any evidence to prove the allegation contained, except the statement, which would prove that the noticee has violated the conditions prescribed under the respective exemption notification and hence it is prayed that the proceedings initiated may please be dropped and oblige.
- We would also like to refer our earlier submission vide letter dated 21-09-2012 and 28-03-2013 and would request to consider the same as part of this submission and oblige.



- We once again request to allow us cross examination of the remaining witnesses and also to supply documents as is requested. “
- From the aforesaid submission it is clear that we had questioned the availability of the same serial number on the container imported by M/s Mahalaxmi Extrusion, but, unfortunately neither any evidence is produced by the department nor has clarified the query raised and hence, once again it is requested that the query raised may please be answered and thereafter we may be allowed to file our further submission. We may also clarify that we have not asked for such clarification in present proceedings but had asked for such clarification in the previous proceedings also and therefore our request may not be considered as the request to delay the adjudication proceedings.
- At this point of time, we would like to clarify that in view of the observation of the Honorable High Court to secure the presence of the witnesses, we have co-operated with the department to the best of our ability. In view of such efforts, we could pursue Shri Dineshbhai and Shri Ankitbhai to appear before this learned authority. However, we could not contact Shri Anand Patel and therefore, the said witness may be called for and we may be allowed to cross examine the said witness. We may clarify that we have not waive the cross examination of the said witness.
- Without prejudice to the above, in terms of the observation made by the honorable Gujarat High Court, remanding to matter back for De-novo adjudication, in Para 10 has categorically observed that Mear statement, without any supporting evidence cannot be relied. Admittedly, the statement of Shri Anand is not supported by any evidence and therefore, any observation or any statement given by him cannot be relied upon.
- **In our earlier submission we have drawn attention to the various facts of the case, but unfortunately none of the fact is consider while passing the order and therefore it is requested that our earlier submissions may also be considered as part of the submission in present De-Novo proceedings.**
- During the present De-novo proceedings Shri Dinesh and Shri Ankit were present for cross examination. It appears from the statement of both the witnesses that they have made statement without any corroborative evidence. Shri Dinesh, in his statement has stated that Shri Ramesh was the controlling authority for all the firms mentioned in his statement has admitted that he has no evidence in support of such statement. In other word his statement has no base and the department has also not produced any evidence to prove such statement.
- On 04-02-2026 Shri Ankit Dineshbhai Changani was present for the cross examination and during the course of examination he has admitted the fact of no supporting evidence for the statements made by him on 12-02-2010, 15-02-2010 and 05-04-2011.
- Before referring to the statement given by him during cross examination, we would like to refer portion of his statement recorded by the investigating officers on various dates as, referred herein above. In his statements in second para of the statement dated 12-02-2010, he has stated that he has 49% stack and the other partner Shri Masid an UAE National has 51% stack. In answer to question No. 1 has stated that he is partner of M/s. Darpan General Trading LLC, Dubai. In Answer to question no. 3 he has admitted that the companies business his looked after by Shri Abdul Majeed. In Answer to Question No. 5 he has admitted that all the terms and condition for supply and payment are decided by Shri Abdul Majeed. In



Answer to Question No. 9 he has admitted that all the customs formality are being followed on import / export of the consignment. In answer to question no. 1 of statement dated 15-02-2010 he has stated that for documents he contacted Shri Abdul Majeed on his mobile on 13-02-2010 but he refused to give any document. In answer to question no. 18 of his statement dated 12-02-2010, he has admitted the truth that he was only name shake partner and Shri Abdul Majeed, main partner and administrator of the DGTL had offered him salary of 11,000/- AED (Arab Emirate Dirham) but has not paid and has assured to get it deposited in his account in Dubai.

- Shri Ankit in his statements dated 05-04-2011 has stated that Shri Ramesh Lavti partner of the noticee had some arrangements with shri Abdul Majeed and their company was only gaining commission for facilitating Shri Ramesh Lavti as also that the payment was arranged by Shri Ramesh Lavti. In reply to Question no. 10 he has also stated that USD 4,00,000/- was deposited in their company by M/s. Mitesh Impex.
- However, while making statement before this learned authority during the course of cross examination he has stated that his share in partnership was 25% and has no evidence for is statement that Shri Rameshbhai has some agreement to facilitate the business of his company. He has also no evidence to prove that the amount of USD 4,00,000/- was deposited by M/s. Mitesh Impex. In view of the observation made by the Honorable Gujarat High Court in our case, unless the corporative the evidence is produced, bare statement cannot be relied upon.
- It seems that Shri Ankit has given contradictory statements. In his statement dated 12-02-2010 has stated that he was holding 49% stake in M/s. Darpan General Trading LLC, Dubai where as during the course of cross examination on 04-02-2026 he has stated that is share in the partnership is 25%. Admittedly, while making statements on 15-02-2010 he shown his disability to produce any document since the same was refused by Shri Abdul Majeed. During the course of cross examination on 04-02-2026 he admitted that he has not received any payment, in the form of profit from M/s. Darpan General Trading LLC, Dubai. He has also admitted that he has not received any payment to words salary as was promised by Shri Abdul Majeed.
- Now the question that arises is whether Shri Ankit Changani was really a partner of M/s. Darpan General Trading LLC, Dubai? This question arises because of the fact that he is not aware of his share in partnership. As stated by him Shri Abdul Majeed was only handing the business affairs of the company. He was offered salary by Shri Abdul Majeed. He had no control or role to play in the business affairs of the company. It was Shri Majeed who was finalizing the terms and condition of business as well as the payment. In his opinion, his firm was only gaining commission but has not produced any evidence to prove that the transaction of the noticee and M/s. Darpan General Trading LLC, Dubai was of principle and agent. On contacting Shri Abdul Majeed for documents required by the investigating officer it was refused by Shri Abdul Majeed. All this facts proves beyond doubt that Shri Ankit could not have been partner of M/s. Darpan General Trading LLC, Dubai.
- Unfortunately, the investigating officers has not looked in to the copy of partnership deed or has inquired from the Reserve Bank of India of such information given by him. In fact, the investigation conducted by the department is not correct and proper.

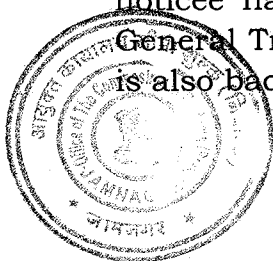


- During the course of cross examination Shri Ankit has admitted the fact that on import of the consignment M/s. Darpan General Trading LLC, Dubai was following the procedure prescribed under the Customs Act, prevailing in Dubai (UAE). In reply to specific question whether any of the consignment was cleared without following such procedure, in reply he has admitted that no consignment is cleared without following the procedure prescribed under the Customs Act, prevailing in Dubai.
- **Now again, the big question that arises is if all the consignment are cleared by M/s. Darpan General Trading LLC, Dubai by following the procedure prescribed under the Customs Act, prevailing in Dubai, then how can the container number remain same while exporting the consignment by M/s. Darpan General Trading LLC, Dubai. In other words, M/s. Darpan General Trading LLC, Dubai for taking benefits of refund has manipulated the container number.**
- The attention of this learned authority is specifically drawn to the fact that during the course of investigation in this officer of M/s. Amardeep Export, some electronic gadget has also certain documents in file bearing 1 to 171 pages was recovered. (Please see statement of Shri Dineshbhai dated 09/02/2010, Question 8 and 9 answer thereof.)
- On the basis of the documents retrieved from this gadgets, Shri Ankit was ask to clarify the entries but Shri Ankit avoided the clarification on some of the entries but on the transaction of M/s. Mitesh Impex has stated that the payment was made by M/s. Mitesh Impex. In fact, the accounts from which the department inquired and what replied by Shri Ankit does not belong to M/s. Darpan General Trading LLC, Dubai but some account maintained by Shri Ankit in his electronic gadgets. This fact is also established from the statement given by Shri Ankit during cross examination on 04-02-2026. Shri Ankit was specifically asked to clarify that who maintains the books of account of M/s. Darpan General Trading LLC, Dubai in reply it is stated that the books of account was maintained by Shri Abdul Majeed and not him. (Please refer question 17 of his statement dated 04/02/2026). Admittedly, in his statement dated 15-02-2010 he has accepted that no documents were provided to him by Shri Abdul Majeed.
- From the above submission it is clear that the so called ledger copy produced by Shri Ankit is not a part of books of account being maintained by M/s. Darpan General Trading LLC, Dubai. It is an admitted fact that the books of account of the said company were not maintained by Shri Ankit and had also no access to the said account. The details required by the investigating officers could not be produced by Shri Ankit since Shri Abdul Majeed had not provided the details. It is also admitted fact that the ledger copy produced by Shri Ankit was not obtained from any of the device maintained by M/s. Darpan General Trading LLC, Dubai but was produced from the electronic gadget maintained by Shri Ankit. The said electronic gadget is also not prove to have been linked with the device of M/s. Darpan General Trading LLC, Dubai and therefore, it cannot be said that ledger copy was reproduction of the books of account maintained by M/s. Darpan General Trading LLC, Dubai. It is also not the case of the department that such document full files the criteria laid down under the relevant provisions of the Customs Act, 1962 and therefore, no reliance can be placed on such documents. In any case, the partnership of Shri Ankit in M/s. Darpan General Trading LLC, Dubai is not proved by the department and therefore, none of the statement of Shri Ankit can be relied upon. In any case, the said statement in the so called capacity of partner of M/s.



Darpan General Trading LLC, Dubai is not supported by any corroborative evidence and therefore, as observed by the Honorable Gujarat High Court, remanding the matter, said statements are not reliable.

- Without prejudice to the above, department has relied on the statements of the person who was neither authorized nor was partner of M/s. Darpan General Trading LLC, Dubai and therefore, any statement, or any clarification given by Shri Ankit on the transaction with M/s. Darpan General Trading LLC, Dubai cannot be relied upon. In fact, while giving statement on 04-02-2026, during cross examination he has admitted that he was partner in the firm for the period 2006 to 2009 but has not received any payment from M/s. Darpan General Trading LLC, Dubai which proves beyond doubt that he is not partner of M/s. Darpan General Trading LLC, Dubai.
- Without prejudice to the above, the department has proposed to deny the benefit of exemption available under notification no. 52/2003 – CUS, dated 31-03-2003 as amended. From the above relevant para, it is seen that the noticee has complied with all the condition prescribed under the said notification. It is not the case of the department that the noticee has violated any of the condition prescribed under the said notification. It is also not the case of the department that the material imported by the noticee is not utilized in manufacturing of the relevant product and is not exported out of the country and therefore, it can never be said that the noticee is not eligible for exemption under said notification.
- The department has also proposed to restrict the NAV to USD 8942126.48 has against the USD of 15049976.00 without any base. During the course of the investigation, the investigating officer had inquired about the valuation of the goods exported from Shri Ankit, but admittedly, Shri Ankit is not an expert or the reliable person to value the goods. It is also an admitted fact that the statement of Shri Ankit are recorded in the year 2010 and 2011, whereas the consignment exported are much earlier as also the goods under consideration was not available for verification for the opinion of the expert. In absence of such opinion, the NFE proposed to be reduce or restricted is not valid and is void ab-initio.
- Without prejudice to the above, the department has proposed to restrict the NFE on the basis of the details mentioned an Annexure F of the show cause notice. Looking to the Annexure F, sheet 3, the said restriction is on the presumption that foreign exchange was managed by Mitesh however, no evidences are produced to prove that the foreign exchange was managed by Mitesh. Pursual to para 28 of the show cause notice it appear that the allegations are based on the statement of Shri Ankit, which is proved to have been misleading and of the person not authorized by M/s. Darpan General Trading LLC, Dubai. It is also proved beyond doubt that Shri Ankit is not an expert for opining the valuation of the Goods and his opinion on the Goods is nothing but the presumption and assumption.
- Your kind attention is now drawn to the fact that the statement of Shri Ankit is proved to have been based on presumption and assumption and is not corroborated with evidence. It is settled law, by now, that mere statement without any corroborative evidence cannot be considered as evidence. The department has not produced any evidence to prove that the noticee has deposited the amount in the bank account of M/s. Darpan General Trading LLC, Dubai. Therefore, the proposal for restricted for NAV is also bad in law and is liable to be declared as void ab-initio.



- Your kind attention is again drawn to our submission dated 28-03-2013 where by we have filed our submission in detailed and clarifying all the allegations contained in the show cause notice. In the said submission we have also clarified that the Goods imported by M/s. Mahalaxmi Extrusion where not only from M/s. Darpan General Trading LLC, Dubai but were also from the other parties, where the department has alleged that the container number matches with the container number used for export of Goods by the noticee. In the said submission, we had also drawn the kind attention of this learned authority to the time taken for export and import of the consignment by M/s. Mitesh Impax and by M/s. Mahalaxmi Extrusion. While confirming the show cause notice the previous learned adjudicating authority has not considered our earlier submission and therefore, it is requested that our earlier submission may also be taken into consideration while deciding the show cause notice.
- At the coast of repetition we once again clarify that we have not waived the cross examination of Shri Anand Patel and therefore, the said witness may please be called for the cross examination and obliged. In absence of such request, the statement of the said witness shall not be relied upon and should be discarded.

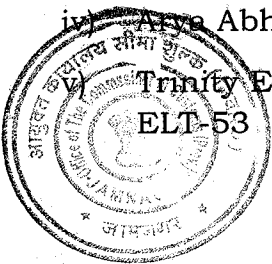
40.3 Since the Authorized Representative of the Noticee in his submission has also referred their submission at the time of earlier adjudication, the extracts of the same is as under:-

- The Noticee has vide their letter dated 26-02-2025 has submitted that, it can be seen from their earlier submissions dated 28-03-2013, they sought for cross examination of Shri Dinesh Changani, Shri Anand Patel, Shri Sanjay Gandhi, Shri Ankit Changani, Shri Suresh Gangdas Patel and Shri Prahaladrai Indermal Jhanwar, whereas out of the above witnesses only three witnesses viz. Shri Sanjay Gandhi, Shri Suresh Gangdas Patel and Shri Prahaladrai Indermal Jhanwar, remained present for the cross examination and the rest were not presented for cross examination; that in view of the observation and direction given by the Hon'ble CESTAT, the statement of Shri Dinesh Changani, Shri Anand Patel and Shri Ankit Changani cannot be relied upon in the De-novo proceedings and therefore, again requested to allow them cross examination of the remaining witnesses. The Noticee further submitted that during cross examination of Shri Suresh and Shri Prahaladrai, it is clear that they have no business relations with M/s. Mitesh Impex and the statement relied upon has no relevance and hence cannot be relied upon.
- The Noticee further submitted that Shri Sanjay Gandhi has during cross examination accepted that he is not looking after the day to day work; that in response to specific question related to the procedure followed by Dubai Customs department, he has admitted that the procedure might be same; that to the specific question as to when he was shown list of exports made by M/s. Mitesh Impex and imports made by M/s. Mahalaxmi Extrusions whether the Customs department had produced any other documents other than referred in Question No. 5 & 6, he stated that no documents pertaining to Customs clearance in Dubai were shown to him; that when asked as a part of procedure whether he would agree that all imports and exports route through the Customs department and only on verification of goods and documents the consignment allowed for imports/ exports, his reply was affirmative; that from the statement recorded during cross



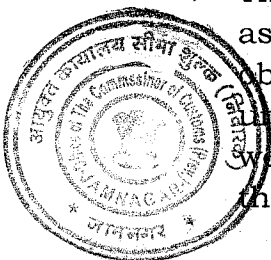
examination, it is clear that he was not looking after day to day affairs of either export or import and was not aware of the documents prepared since his staff was looking after the said work, in that case confirmation of so called list produced by the customs department while recording his statement cannot be relied upon and cannot be taken into cognizance; that in any case while making him agreed to the said list he was not allowed to see the documents pertaining to the Customs clearance in Dubai and hence his statement on this count is not reliable to be relied upon.

- The Noticee has further submitted that from the show cause notice and the relevant documents it is also clear that the investigating officers has suppressed the documents produced by the importer in Dubai and export thereof to M/s. Mahalaxmi Extrusions, just to implicate the Noticee; that if the officers would have produced such documents then it would be seen that the Noticee is not in fault but the said importer has manipulated the documents to get some benefits allowed under the provisions of Customs Act prevailing in Dubai. The Noticee, referring to Shri Ankit Changain's statement, has submitted that Shri Ankit Changani has accepted that he was partner on paper and was not looking after any financial transaction of the firm and in his last statement he has informed that one Shri Ramesh had deposited some amount in their bank; that this statement is not only contrary to his own statement, but not supported by any evidence which proves beyond doubt that the intention was to implicate the Noticee and save their own skin for undue benefits availed by them from Customs department in Dubai.
- The Noticee has further reiterated their earlier submissions dated 11-10-2012 and 28-03-2013 and requested for cross examination of the remaining witnesses.
- The Noticee in their earlier submissions dated 11-10-2012 and 28-03-2013 has submitted that the Show Cause Notice was bad in law and that the duty calculation reflected in various annexures was without base and was liable to be set aside. They also asked for copies of various documents which were considered as reliable and were part of Annexure- G. He also requested for cross examination of Shri Dinesh Changani, Shri Anand Patel, Shri Sanjay Gandhi, Shri Suresh Gangdas, Shri Prahaladrai Indermal Jhanwar and Shri Ankit Changani. The Noticee further alleged that the department's case was based upon statements of persons and no corroborative evidence was produced by the department. Since the statements were contrary to the actual facts of the case, he stated that cross examination was necessary. However their request for cross examination was rejected by the Adjudicating Authority and that non acceptance of their request was violation of the principles of natural justice and consequently the proceedings were liable to be dropped. They placed reliance upon the following case laws in support of their claim:
 - i) Rama Shyama Papers Ltd Vs Commr of C.Ex. Lucknow- 2004-168-ELT- 494
 - ii) Himla Hosiery Mfg. Dye. & Print Mills Vs CCE New Delhi - 2004-164-ELT 274
 - iii) Lakshman Exports Ltd Vs Collr. Of C. Ex. - 2002-143-ELT-21 SC
 - iv) Abhushan Bhandar Vs UOI - 2002 143-ELT-25 SC
 - v) Trinity Electric Syndicate Pvt Ltd Vs Commr Cus (Appeal) - Mum-2005- 179-ELT-53



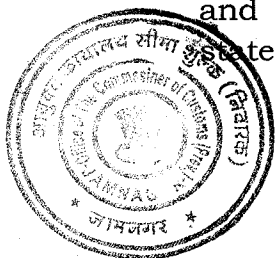
In addition to the above, they also placed reliance upon the observation of Hon'ble Supreme Court in the case of Kalra Glue Factory Vs Sales Tax Tribunal reported in 1987 (167) ITR 498.

- They further stated that the basis for the SCN is the allegation that the same goods which were exported by M/ s Mitesh Impex were imported by M/s Mahalaxmi Extrusion. However, in a number of cases, the foreign buyer and supplier are different person and the department had not produced any evidence to the effect that the foreign buyers and suppliers were either one and the same person or were connected with each other and hence concluding that the same material which was exported by M/s. Mitesh Impex was imported by M/ s Mahalaxmi Extrusion and that the same had been undervalued is bad in law and is liable to be set aside.
- That the department has failed to prove the allegation that the transactions of M/s Mahalaxmi Extrusion was financed by M/s Mitesh Impex., and that the finance obtained by M/s Mahalaxmi Extrusion from M/s C K Corporation was on principle to principle basis and that they had also paid the interest charged by the lender. They also referred to statements of Shri Suresh Gangdas Patel & Shri Dineshbhai Changani who admitted to having borrowed funds from M/s CK Corp.; that Shri Manishbhai, authorized signatory of M/s C K Corp. had also admitted that he was handling the business affairs of the firm and was trading with all firms at par and without any extra benefit. Hence undervaluation of goods cannot be alleged merely because some financial transactions were entered between M/s Mitesh Impex, M/s C K Coproration and M/s. Mahalaxmi Extrusion. They further added that there is no documentary evidence to prove the allegation that the same goods exported by M/ s Mitesh Impex was imported by M/ s Mahalaxmi Extrusion, since the description of export goods was 'Copper and zinc base Alloy Ingots (Brass)' whereas, the imported goods were re-melted Brass Ingots'.Hence the allegation by the department is not justified.
- They have given details about the export procedure, formalities, documents required etc. for the Customs clearance of the goods at the Dubai port. They further added that the concerned importers of M/s. Mitesh Impex had followed all the requisite procedures prescribed by the Dubai government but to get the benefit of refund of duty paid by them they manipulated some documents and had shown to the customs department that the goods imported are re-exported by them. That because of such manipulations by them, the investigating authority had concluded that the goods exported by M/ s Mitesh Impex were re-imported by them. That since the buyer of M/s Mitesh Impex and the supplier were different in certain cases, stating that the same goods had travelled back was misapprehension of facts and the same cannot be sustained.
- They further added that the statement of Shri Ankit Dineshbhai Changani clarified the fact that if imported goods were re-exported from Dubai, the amount of duty paid was refunded on production of import invoice and Bills of Entry and that the importers had manipulated the documents for their personal benefit.
- They also added that the SCN was based on presumptions and assumptions and was liable to be set aside. That in para 2 of the SCN some observations were made regarding M/s Mitesh Impex. That the same was unwarranted since M/s. Mitesh Impex and M/s. Mahalaxmi Extrusions were independent units. Further the goods exported by M/s Mitesh and those imported by M/s Mahalaxmi were different goods. That the value



declared by M/s Mahalaxmi Extrusion was enhanced by the department which was challenged by them and that it was not only Mahalaxmi Extrusion which was importing Ingots but other importers were also importing the same product and that comparable prices were available for the same product.

- They argued that the statement of Shri Dineshbhai Changani, partner of Amardeep Exports was not relevant to their case since they had not purchased any goods from Amardeep Exports and that the two transactions mentioned in the SCN was on principle to principle basis and that the department had not produced any evidence to prove that the said transaction was influenced by any other extra commercial consideration.
- It is further argued that the statement of Shri Ankit Changani, partner of Darpan General Trading LLC was not relevant since he had clarified in his statement that the business affairs of DGTL was looked after by Shri Abdul Majeed and he was only involved in obtaining and approving quotations. Hence reliance placed on statement of Ankit Changani was improper and unjustified.
- That the copy of letter dtd 5.5.2009 impounded from the premises of M/ s Amardeep Export was not relevant to the facts of the case as it was direction given by Remet Trading Zone to the bank for payment of goods sold to Mahalaxmi Extrusion. Since the said letter was not impounded from the premises of either M/s Mahalaxmi Extrusion or M/s Mitesh Impex, the same was not relevant to their case.
- They further added that Shri Rameshchandra partner of Mitesh Impex, in his statement clarified that they were receiving payment from their overseas buyers through banking channel and in most cases they were executing orders against advance payment only. That the goods were manufactured as per the requirement of the buyers and that they were borrowing money from M/s C. K. Corporation on loan basis. He also clarified that he had no knowledge as to how DGTL had declared lesser value that he had raised correct invoice and received payment accordingly. That the said statement does not lead to the conclusion that, M/s Mahalaxmi Extrusion had imported the same goods exported by M/s Mitesh Impex. That since Mahalaxmi Extrusion had no control over any other company they cannot be penalized for misdoing by any other company. That M/s Mahalaxmi Extrusion had sold some material on high seas basis to M/s Mitesh Impex hence the payment details cannot lead to the conclusion that Mahalaxmi Extrusion had imported the same material which was exported by M/ s Mitesh Impex.
- They submitted further that Shri Manish Nathulal Lavti, authorized signatory of M/ s C K Corporation had clarified that he was looking after the work of C K Corp. and that he himself negotiated with the customers. This proves beyond doubt that Shri Rameshbhai was not handling the work of M/s CK Copr. And any such allegation would be bad in law.
- That the statement of Shri Suresh Gangdas Patel and Shri Dinesh Changanani was contrary to the facts of the case and his statement that he had negotiated the deal with shri Manishbhai through shri Ramesh Lavti was without any base and was contrary to available facts. Further they also added that the statement of Shri Anand C. Patel of M/s Golden Elephant Trading LLC Dubai, that Shri Rameshbhai was to manage the clearance from Customs Dept of Dubai and payment of duty was without any base and was not supported by any documentary evidences. That the said statement proves that the importer of M/s Mitesh Impex along with the



exporter of M/s Mahalaxmi Extrusion had manipulated the documents with intention to avail undue benefit from the Dubai Govt. They further placed reliance upon the decision of Hon'ble Supreme Court in the case of CBI Vs V C Shukla & ors reported in 1998 (75) ECR 484 in support of their claim that without independent evidence, no charge can be sustained.

- They have further submitted that it has been stated by Shri Ankit Changani, partner of M/s Darpan General Trading LLC Dubai, in his statement that one consignment of goods exported by M/ s Mitesh Impex was of inferior quality and hence the same was returned as scrap only. He also added that all export import consignments were signed by Shri Abdul Majeed only hence they have alleged that unless his statement is recorded, the actual facts cannot be brought to light. Since no statement of Abdul Majeed is recorded, the allegations are not liable to be sustained. Further the importer had also followed all the customs formalities in Dubai and this fact was also not denied by any of the witnesses so merely because the container no or the seal number were same, it cannot be alleged that the same consignment was imported back and so the proceedings are liable to be dropped.
- They further contended that Shri Rameshbhai, partner of Mitesh Impex had in his statement, categorically denied all the allegations of the department and the said statement was not proved contrary by the department, therefore contravention of the provisions of the act cannot be alleged. Further the allegations of contravention of provisions of Foreign Trade (Development & Regulation) Act, 1992 was not supported by any basis hence the same is bad in law and is liable to be set aside.
- They have further alleged that the discussion of evidences in the SCN is actually mere presumption and assumption and does not hold good since the importers of Mitesh Impex had followed the requisite procedures prescribed by the govt. of Dubai. They also added that the 'Annexure-A' Clarifies that the gap between export from India and import to India is nearly two months and travelling of consignment to Dubai does not take this long period. Hence the question arises as to where the containers were lying and how the containers changed the shipping lines. Moreover in certain cases the importer to Dubai and the exporter from Dubai were different which proves that the case was not investigated properly and so the proceedings were liable to be dropped.
- They placed reliance upon the following case laws in support of their claim that statement cannot get higher evidentiary value than the contemporaneous records:-
 - i) Commr. Of Customs Prev, Ahmedabad Vs R P Inds & others - 1996 (16) RLT 88 (CEGAT- WRB)
 - ii) Telco Ltd & others V/ s CCE Jamshedpur, 2003 (59) RLT 1032 (CESTAT-Mum)
 - iii) Progressive Thermal Controls Pvt Ltd & Anr Vs CCE, Delhi - II - 2004 (112) ECR 410 (Trib.- DEL)
 - iv) Triveny Spinning Mills P Ltd Vs Commissioner of C. Ex. Ludhiana 2006 (210) ELT 220 (Trib. Del)

They have further submitted that M/s Mitesh Impex was a 100% EOU and all their consignments were exported with proper supervision and

certification by the concerned officers. Hence there is no doubt that they had followed the prescribed procedure at the time of export of the consignment. Hence the materials imported were duly accounted for and violation of provisions of Notf. 52/2003 cannot be alleged. Further it was not the case of the department that the party had not utilized the goods imported, hence there cannot be any demand of duty as proposed in the Annexure - C, D & E of the SCN. Further they have also submitted some of the copies of documents evidencing export of similar goods, hence the allegation of over valuation was not justified. Further there is also no allegation that they had received some extra consideration from the foreign buyers hence there is no force in the allegation of over valuation. They further added that the goods under consideration were properly verified and checked by the department and the items exported were as per the declaration and the same does not match with the items imported by M/s Mahalaxmi Extrusion. Moreover, the assessments were not challenged by the department and had attained finality, hence the proposition made for enhancement of value and the ground of over valuation is liable to be set aside. They placed reliance upon the decision of Hon. CESTAT in the case of Heena Metals Pvt Ltd reported in 2004 (166) ELT 509 wherein it was held that once imported goods were declared as scrap and allowed to be cleared by Customs Authority after due examination and following prescribed procedure of assessment, Adjudicating Commissioner had no jurisdiction to re- open the assessment. Hence following the same ratio, they requested to drop the proceedings. They also placed reliance on the decision of Hon'ble CESTAT in the case of Wipro Ltd Mac & Megha Agro Equipments (P) Ltd and M/s Micro Controls affirming the above stand. They also added that the decision of higher Appellate authority is binding on all lower authorities and placed reliance upon the decision of Hon'ble Supreme court in the case of Kamlakshi Finance Corporation Ltd reported in 1951 (55) ELT 433.

➤ They argued further that unless evidences are produced to prove financial flowback, or any consideration received by M/s Mahalaxmi Extrusion from M/s Mitesh Impex, the transaction value cannot be rejected. They reiterated that since department had not produced any evidence to prove that the goods exported by Mitesh Impex were re-imported by Mahalaxmi Extrusion, the allegation is liable to be set aside. They also reiterated that the department had not produced any evidence to prove that M/s Mitesh Impex had paid any extra consideration to M/s Mahalaxmi Extrusion. They placed reliance upon the decision of Hon CESTAT, Delhi in the case of .SEW- CURODRIVE (I) PVT LTD VS Commr. of Customs New Delhi reported in 2012 (284) ELT 294 wherein it is held that transaction value cannot be rejected unless financial flowback is proved by the department. They also placed reliance upon the following case laws in support of their claim that unless and until the criteria laid down under Sub rule 2 of Rule 4 of Customs Valuation Rules are proved to be attracted, the transaction value cannot be rejected :-

- i) Eicher Tractors Ltd - 2000 (122) ELT 321 (SC)
- ii) SS Impex Vs Commr of Customs, Kolkata - 2012 (286) ELT 401
- iii) Sew- Curodrive (I) Pvt Ltd Vs Commr of Customs New Delhi- 2012 (284) ELT 294
- iv) SRK Enterprises Vs Commr of Cus (Import) Nhava Sheva - 2012 (280) ELT 264



v) Deepak Bansal Vs Commr of Cen. Ex. Kanpur 2012 (279) ELT 66

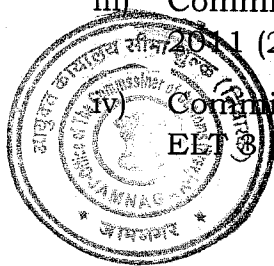
They further reiterated that the documents perataining to high seas sales basis between M/s Mahalaxmi Extrusion and M/s Mitesh Impex proves beyond doubt that the transactions between them are on principle to principle basis.

- That the country of origin specified in the goods imported by M/s Mahalaxmi Extrusion was different from the country of origin of the goods exported by M/s Mitesh Impex hence it can never be alleged that the goods exported by one was re imported by the other. Further they also argued that the department had merely relied upon certain statements to prove that there was a flow of extra commercial consideration and have not produced any evidences to prove the same and hence the allegations are liable to be set aside.
- They added further that the department had not been able to prove the allegation regarding the re import of the same goods exported and hence transaction value cannot be rejected. They also added that the burden to prove undervaluation was on the department and they placed reliance on the following decisions :-

- i) Shreeji Aluminium Pvt Ltd Vs Commr of Cen. Ex. Vapi - 2012 (282) ELT 324
- ii) Commr of Vus Vishakhapatnam Vs Aggarwal Inds Ltd - 2011 (272) ELT 641
- iii) Crystal Dot Scan Pvt Ltd Vs Commr of Cus & Cen. Ex. Hydrabad- 11- 2011 (263) ELT 401
- iv) Commissioner of Customs, Mumbai Vs J.D. Orgochem Ltd - 2008 (226) ELT 009
- v) Commissioner of Customs Calcutta Vs South India Television (P) Ltd- 2007 (214) ELT 003
- vi) Om Shiv Enterprises Vs Commissioner of Customs (Airport), Chennai- 2003 (160) ELT 202

- They also submitted that they had not suppressed any facts from the department hence the SCN was barred by limitation and was liable to be set aside. They placed reliance upon the CBEC Circular No 312/28/97 dated 22.04.1997 wherein it was clarified interalia that while invoking extended period of limitation, the department should ascertain positive misdeclaration on the part of the noticee and since department has not made any such efforts, the SCN is liable to be set aside. They also placed reliance upon the following decision to clarify that extended period cannot be invoked when department had knowledge of the activity:-

- i) Commr of C stoms, Amritsar Vs Jyoti Industries - 2007 (209) ELT 180
- ii) Glencore India Ltd. Vs Commr of Customs, Nhava Sheva - 2004 (1 70) ELT 309
- iii) Commissioner of C.Ex. & Customs, Vadodara - II Vs Orbit Fabrics Ltd - 2011 (264) ELT 53
- iv) Commissioner of Central Excise Vs. Damnet Chemicals Pvt Ltd- 2007 (216) ELT 3 (SC)



- v) Continental Foundation Jt. Venture Vs Commr. of Cen. Ex Chandigarh-I-2007 (216) ELT 177 (SC)
- vi) Daga Ayurvedic & Cosmetic Pvt Vs Commr. Of Central Excise, Surat - 2007 (214) ELT 255
- vii) SPK ImpexVs Commissioner of Customs (Chennai) 2007 (210) ELT 554
- viii) Aviat Health Care Pvt Ltd Vs Commr. of Customs & Cen. Ex., Belapur- 2008-TIOL-1924-CESTAT- Mum

They submitted that since the department was already aware about the facts mentioned in the SCN, the allegation of suppression of facts with intent to evade payment of duty is baseless and the notice is barred by limitation and needs to be set aside. Further since there was no deliberate attempt to evade payment of duty, penalty cannot be imposed. They placed reliance upon the following case laws :-

- i) Friends Wire Industries Vs Commr. Of Cen. Ex. Chandigarh - II - 2003 (156) ELT218(Tri. Del)
- ii) Sound Cast Founders & Engineers Vs Commr of Cen. Ex., Belgaum - 2002 (150) ELT 0082
- iii) BPL Sanyo Utilities & Appliances Vs Commr of Cen. Ex. Benglore - 2002 (149) ELT 1416

They added further that in view of the discussion in the case of Lakshmi Engineering Works Vs. CCE reported in 1989 (44) ELT 353 (T), a fact or information which was not in the knowledge of the person concerned at the relevant time cannot be termed as suppression of facts. Since the company had acted bonafide with full disclosure all along, and there was no evidence on record or allegation of a deliberate violation of the provisions of the statute, penalty could not be imposed. They placed reliance upon the following judicial pronouncements in their support:-

- i) Jamna Auto Inds Ltd Vs CCE Indore - 2001 (130) ELT 181
- ii) Unimac Corp. Vs CCE Kandla - 2001 (129) ELT 182
- iii) Veekay Gen Inds. Vs CCE Delhi - 2001 (129) ELT 57
- iv) Antifriction Bearings Vs CCE Vadodara- 1995 (79) ELT 158
- v) Appolo Tyre Vs Commr of Ce. Ex. Pune-2001 (134) ELT 679
- vi) Haryana State Elec. Vs Collr Ce. Ex- 1988 (37) ELT 81

They added further that no evidence was adduced by the department regarding liability to penalty under Section 112 and 114 of the Customs Act and in view of decision of Hon'ble Kerala High Court in the case of Kayakutty Vs Collector as reported in 1978 (2) ELT 1994, the burden of establishing the ingredients of the law lies on the department, and in the absence of the same no penalty can be imposed. They placed reliance upon the following case laws in support of the claim that the authorities have the discretion to levy lesser amount of penalty:-

- i) Commr. Of Cen. Ex. Ludhiana Vs Barnana Pipes - 2005 (179) ELT 74
- ii) Ramshay Inds Ltd Vs Commr of Ce. Ex. Kanpur- 2006 (200) ELT 437



They also added that unless the charges levied are specified or provisions are specified no penalty is liable to be imposed in view of the following decisions :-

- i) Amrit Foods Vs Commr of Cen Ex. UP, 2005 (190) ELT 433 (SC)
- ii) Shree Precauted Steel VS Commr of Cen. Ex. Pune - 2006 (203) ELT 506

They also submitted that since they had neither short levied or short paid the excise duty on components dispatched from their factory, interest was not leviable under Section 28 AA of the Customs Act.

- That no penalty was imposable on Shri Rameshbhai, Shri Prakashbhai and Shri Nathubhai since no evidence was produced to show how they had dealt with the goods in the manner as required under the law.
- That since the goods were duty paid the same were not liable to confiscation or penalty under Section 112 of the Customs Act. They also added that M/s Mitesh Impex had not cleared any goods either without payment of duty or without following the prescribed procedure, hence invoking provisions of section 112 was improper and unjustified. They also placed reliance upon the following case laws in their support:-

- i) Commr of Kolkata Vs Mahendra Patni - 2004 (164) ELT 259
- ii) MA Gopalkrishnan Vs CC (Airport) Mumbai - 2002 (52) RLT 1092
- iii) Ameya Clearing Agency Vs Cammi. Of customs (P)- 2003 (158) ELT 529
- iv) Kamdeep Marketing Vs Comm Of C. Ex. Indore- 2004 (63)RLT 41
- v) Anil Kumar Saxena Vs Commr of C.Ex Meerut- 2001(129)ELT 351
- vi) Sandeep Vs Commr of C. Ex. Raipur -2002 (53) RLT 673

- They stated further that the SCN proposed confiscation of the goods covered under the 27 shipping bills. However the goods were neither seized nor cleared on execution of bond, hence in view of the settled legal position, they were not liable for confiscation. They placed reliance upon the following case laws:-

- i) DEE KAY exports Vs Commr of Cus. New Delhi - 2012 (285) ELT 109
- ii) Bharat Forge Vs Commr. Of Cus,(exp) Nhava Sheva-2012 (284) ELT 280
- iii) Commr of Cus Hyderabad Vs Tallaja Impex- 2012 (279)ELT 433
- iv) Ganesh International Vs Comm of Cus. Mum.- 2012 (278) ELT 72
- v) S S Watch Inds Vs Comm of Cus. New Delhi-2011 (274) ELT 369
- vi) Shiv Kripa Ispat Vs Comrm of Cus. Vapi- 2009 (235) ELT 623

In view of their aforesaid submission, they requested to drop the proceedings of the SCN.

- Shri Sanjay Gandhi, Proprietor of M / s Global Marine Agencies filed their defense submission vide their letter dated 21.06.2013 wherein they interalia submitted that the said SCN did not contain any allegation regarding misdeclaration of description or value w.r.t. the goods imported by M.s Mitesh Impex, for which they were responsible as CHA. Hence the proposal to impose penalty on them under Section 112 (a) of the Customs Act was not sustainable in the eyes of law.

They further stated that during the course of investigation neither the partner nor the autho. Rep. of M/s Mitesh Impex had stated that M/s

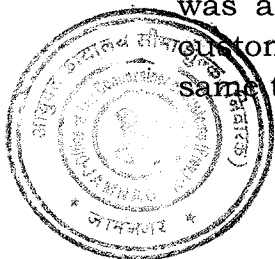


Global Marine Agency has any prior knowledge of the alleged offence of mis- declaration and over valuation. They also added that there was no allegation in the SCN that GMA had derived any undue monetary benefit by acting as the CHA of M/s Mitesh Impex hence the allegation regarding the abetment of M/s GMA was baseless and not sustainable in the eyes of law.

- That even assuming that the same goods exported by M/s Mitesh Impex was imported by M/s Mahalaxmi, does not render M/s GMA liable for penalty under section 112 (a) and/or 114(iii) of the Customs Act.
- That M/s Mahalaxmi who was claimed as the importer of goods exported by M/s Mitesh was not even named as the noticee for imposing penalty and on this ground also they were not liable to penal action.
- That all the 27 containers were cleared for export as well as import after due examination and nothing objectionable was noticed at that time and once the goods were permitted out of charge after due assessment, the charge of connivance against the CHA cannot be sustained. Hence penalty cannot be imposed under Section 112 (a) and/ or 114 (iii) of the Customs Act 1962.
- That they had merely acted as the CHA and prepared the shipping bills on behalf of M/ s Mitesh Impex on the basis of documents submitted by the exporter and smce there is no evidence suggestion their prior knowledge about the alleged mis-declaration, M/ s GMA is not liable to penalty under section 112(a) of the Customs Act. They placed reliance upon the following case laws:

- i) D. Ankineedu Chowdry Vs Commr. Of Cus Chennai- 2005 (182) ELT 206
- ii) Prime Forwarders Vs Commr of Cus Kandla - 2008(222) ELT 137
- iii) G M Enterprise Vs Ciommr of Cus Nhava Sheva- 2010 (256) ELT 796
- iv) SindhuCargo Service Vs Commr. Of Cus 2008(226) ELT282 Coimbatore
- v) Commr of Cus Tuticorin Vs Moriks shipping -2008 (227) ELT 577
- vi) Akanksaha Enter Vs Commr of cus Mum- 2006 (203) ELT 125
- vii) Vetri Impex Vs Commr Of cus Tuticorin - 2004 (172) ELT 347
- viii) Commr ofCus Kolkata Vs Mahendra Patni- 2004 (164) ELT 259
- ix) V. Esakia Pillai Vs Commr of Cus Chennai - 2001 (138) ELT 802

- Shri Anand Patel, Partner of M/ s Golden Elephant Trading LLC Dubai filed his written submission vide letter dated 21.06.2013; wherein he interalia denied all the charges leveled against him and stated that the SCN alleged that the consignment of Brass sanitary fittings exported by M/s. Mitesh Impex to them was mis- declared in terms of description and value. There was however no allegation of improper import into India of any goods and liability of such goods to confiscation under Section 111 of Customs Act 1962 and in the absence of such allegation the proposal to impose penalty under Section 112 (a) was not sustainable in the eyes of law.
- He added further that the proposal to impose penalty under Section 114 (iii) on the ground that the goods exported by M/s. Mitesh Impex to them, in Dubai was liable to confiscation under Section 113 of the Customs Act was also not sustainable since the alleged dealing i.e arranging for the Customs clearance of the said goods in Dubai and the handing over the same to M/s Sapphire Marbles & Building material, Sharjah had taken place



in Dubai. And it was outside the territorial waters of India and therefore beyond the scope of the Customs Act 1962, which extends to India as defined in Section 1(2) of the Customs Act 1962 and not beyond that. They placed reliance upon the decision of Hon. Tribunal in the case of C. K. Kunhammed, 1992 (62) ELT 146 (T), in support of their plea.

- He stated further that there was no allegation that the goods were not assessed or examined at the port of export under the provisions of the Central Excise Act or Customs Act. Hence the allegation that the goods exported by M/s Mitesh Impex to M/s Golden Elephant Trading LLC Dubai had no commercial value was contrary to the documentary evidence in the form of shipping bill etc filed by M/ s Mitesh Impex with custom authorities in India and clearing documents filed by M/s Golden Elephant Trading LLC with customs authorities at Dubai.
- Further he submitted that there was no evidence in the SCN showing that M/s Golden Elephant Trading LLC dealt with the goods covered under the shipping bills filed by M/s Mitesh Impex while the goods were in the territorial limits of India. Hence the parter was not liable to and proceedings under the Customs Act, 1962 for any irregularities by M/ s Mitesh Impex. Hence in view of the above submissions he stated that he was not liable for penalty under Section 112 (a) and 114 (iii) of the Customs Act 1962.

DISCUSSIONS AND FINDINGS:

41. I have carefully gone through the charges adduced in the Show Cause Notice dated 04-05-2012, perused the relied upon documents, the evidences placed on record, the all written submissions made by the Noticee from time to time, cross examination of the witnesses other evidences available on record. I find that the present proceedings are in pursuance of Hon'ble High Court of Gujarat's order pronounced on 25.11.2025 in R/Special Civil Application No. 11791 of 2025 filed by M/s. Mitesh Impex and Ors against OIO No. JAM-CUSTOM-PRV-COM-012-24-25 dated 18-03-2025 passed by this authority. The Hon'ble High Court vide above order has remanded the matter back to the Adjudicating Authority for fresh adjudication in light of the observations made in the order, with direction to pass apporpiate order within a period of 12 weeks from the date of receipt of the order. The relevant observations of the Hon'ble High Court are extracted below:

"9. The case of the respective parties' hinges on the provision of Section 138-B of the Act. We may refer to the provisions of Section 138-B of the Act, which are reproduced hereunder:

"138B. Relevancy of statements under certain circumstances — (1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or



(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]”

10. The caption of Section 138-B of the Act mandates consideration of the relevancy of the statements of witnesses under certain circumstances. Sub-sections (1) and (2) of Section 138-B stipulate that the statements which are made and signed by the persons before any Gazetted Officer during the course of inquiry or proceedings under the Act can be treated as relevant. As far as the provision of clause (b) is concerned, the same relates to the admissibility of the statements in evidence in the interest of justice, which are made by the witness, who is available during the course of inquiry or proceedings, and has offered for cross-examination. Thus, clause (b) envisages and introduces the element of cross-examination of the witness who has given the statement before the officer during the course of inquiry or proceedings. Unless an opportunity of cross-examination is given to the person (assessee) against whom the statement of such witness is proposed to be used, the same is inadmissible in evidence, since the denial or absence of cross-examination of the witness, and the admissibility of such statement in evidence will be in violation of the principles of natural justice and also against fair play and equity. However, clause (a) exposita a different approach. Clause (a) authorizes the officer to consider the relevancy of the statements of that witness, who under the circumstances narrated therein, is a person/witness, who cannot be produced or is unavailable for cross-examination. The language of clause (a) is akin to Section 32 of the Indian Evidence Act, 1872, (Now Section 26 of Bhartiya Sakshya Adhiniyam, 2023) which prescribes the evidentiary value of the statement of a witness who is not available to testify. However, the quintessential feature is that the statement of such witness can be treated as relevant only when the circumstances mentioned in clause (a) regarding the non-availability of the person/witness are established and a finding is recorded to the extent that it is impossible to secure the presence of the person. **At this stage, while attempting to secure the presence of such a witness, an opportunity is also required to be offered to the assessee for securing presence of the witness at his/her expense. The process of securing the witness should not be delayed as per the provision of clause (a), and effort should be made for a reasonable time, and the inquiry or the proceedings should not procrastinated beyond a reasonable time. In case all attempts have failed to secure the presence of the witness within a reasonable time, then a finding has to be recorded on this aspect.** After such a finding is recorded by the officer, the officer has to give an opportunity to the assessee to respond to the statement of such witness. The statement of such witness, recorded during the course of inquiry or proceedings, cannot be used against the assessee unless he is confronted with the statement and has been afforded full opportunity to deal with the same. The officer cannot blindly rely on the bare statement of the witness unless some corroborative material is produced to support such statement, and the assessee is offered an opportunity to rebut the same. The officer has



to record reasons, based upon the material placed before him, for arriving at a definite finding. In our opinion, in either of the scenarios envisaged in clause (a) or clause (b), the evidence has to pass the test of admissibility in the interest of justice.

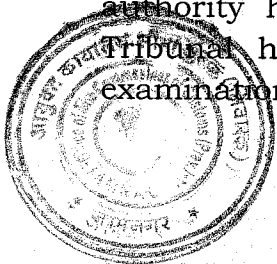
11. In the instant case, the respondent No.2, while passing the impugned order, was required to consider the evidence of three witnesses, who appeared in the proceedings and were cross-examined along with the statements of three other witnesses who did not come for cross-examination. The relevancy of the statements of three witnesses, who were not cross-examined, were required to be undertaken by adopting the course as narrated hereinabove. The Adjudicating Authority has to record the findings after weighing the evidence emerging from the statements of all the witnesses, and corroborative proof along with the defence of the assessee.

12. In the present case, it cannot be said that the respondent No.2 has violated the directions issued by the Tribunal, since the Tribunal had only remitted the matter for giving an opportunity of cross-examination of all six witnesses, however, since three witnesses failed to offer themselves for cross-examination by remaining absent despite having been granted opportunities to do so in the adjudicating process, the only correct approach for the respondent No.2 was to consider the evidence in the manner as declared by us.

13. Hence, the present writ petition merits acceptance. The impugned order dated 28.05.2014, is quashed and set aside. The matter is remanded back to the Adjudicating Authority i.e the respondent No.2 for fresh adjudication in light of the foregoing observations. Appropriate order shall be passed within a period of 12 weeks from the date of receipt of the order. Nothing is expressed by us on merits. All the rights and contentions of the respective parties are left open. Rule made absolute.”

42. Following the direction of the Hon'ble High Court, a personal hearing in the matter was held on 23.12.2025, 13.01.2026, 23.01.2026, 29.01.2026 and 04.02.2026. As per the requests made by the Authorized Representative of the Noticee on 23.12.2025, cross-examination of remaining three witnesses i.e., Shri Ankit Dineshbhai Changani, Partner of M/s. Darpan General Trading LLC, Shri Dineshbhai Changani, Partner of M/s. Amardeep Exports, Jamnagar and Shri Anand Chandrakant Patel, was again allowed and dates for cross examination and personal hearing were scheduled and re-scheduled as per the request made by the Authorized Representative of the Noticee and witnesses. Ultimately, Shri Ankit Dineshbhai Changani, Partner of M/s. Darpan General Trading LLC, Shri Dineshbhai Changani, Partner of M/s. Amardeep Exports, Jamnagar appeared for cross examination on 04.02.2026 and they were cross-examined by Shri Paresh Sheth, Adv. and Authorized Representative of the Noticees. Shri Anand Patel, did not appear for cross examination nor filed any request/ reply to this office in the matter.

43. I find that, the Hon'ble High Court in their order have noted that this authority had not violated the directions of the Hon'ble Tribunal, since the Tribunal had only remitted the matter for giving an opportunity of cross-examination of all six witnesses. I further find that Hon'ble High Court referring



the provisions of Section 138-B of the Act has ordered to pass an appropriate order keeping in mind the observations made in Para 10 and 11 of their order.

43.1 As per my understanding of the direction of Hon'ble High Court of Gujarat, first of all, I have to examine and weigh the evidenciary value of the records of cross-examination of three witnesses, who appeared for cross-examination keeping in mind the provisions of Section 138-B of the Customs Act, 1962, which provides as under:-

SECTION 138B. Relevancy of statements under certain circumstances. —

(1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court.]

In the present case, 5 out of 6 witnesses wanted to be cross examined by the Noticee have now already been cross examined. Shri Prahaladrai Indermal Jhanwar, Proprietor of M/s. Aript Overseas, Jamnagar, Shri Suresh Gangdas Patel, Partner of M/s. Super Impex, Jamnagar and Shri Sanjay N. Gandhi, Proprietor of M/s. Global Marine Agencies, Gandhidham have already been cross-examined at the time of earlier adjudication proceedings. Whereas, Shri Ankit Dineshbhai Changani, Partner of M/s. Darpan General Trading LLC and Shri Dineshbhai Changani, Partner of M/s. Amardeep Exports, Jamnagar have been cross-examined on 04.02.2026 during the current remand proceedings.

43.2 The contents of their cross-examination are as under:

(a) The contents of the cross-examination of Shri Prahaladrai Indermal Jhanwar, Proprietor of M/s. Aript Overseas, Jamnagar, recorded on 10-12-2024, are as under:

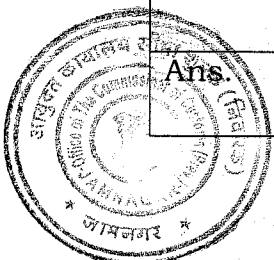
Q.-1	What is your name?
Ans.	Prahladrai Indermal Jhanwar
Q.2	Your statement was recorded on 04-05-2010. Do you remember the contents of your statement?
Ans.	Since the issue is as old as 15 years, I do not recollect
Q.3	Will you read your above said statement recorded by the DRI?
Ans.	Yes
Q.4	The Advocate has shown the statement of Shri Prahaladrai and asked him whether he understood?



Ans.	In reply he said yes.
Q.5	According to the Statement, you are the proprietor of M/s. Arpit Overseas, Jamnagar? Is it True?
Ans.	Yes, I am the proprietor of M/s. Arpit Overseas, Jamnagar.
Q.6	As per your statement you are engaged in trading of imported and indigenous brass scrap. Are you engaged in any other business other than trading of imported and indigenous brass scrap?
Ans.	No. I was into the business of trading of imported and indigenous brass scrap only.
Q.7	As per your statement you used to borrow money from M/s. C.K. Corporation? Is it true? Is there any business relation other than borrowing of money?
Ans.	Yes. I borrow money from M/s. C.K. Corporation. I have no other business relation with M/s. C.K. Corporation.
Q.8	Do you have any business or financial transactions with M/s. Mitesh Impex?
Ans.	NO. I have no business or financial transactions with M/s. Mitesh Impex.
Q.9	Whether you had any discussion with Shri Rameshbhai Pannalal Lavti, partner of M/s. Mitesh Impex with regard to borrowing of money from M/s. C.K. Corporation?
Ans.	No. I had no discussion with Shri Rameshbhai with regard to borrowing of money from M/s. C.K. Corporation, however I used to discuss with Shri Manish Nathulal Lavti of M/s. C.K. Corporation.
Q.10	Do you have any relation with M/s. Indu Overseas?
Ans.	No. I have no relation with M/s. Indu Overseas.
Q.11	Is there any other company named M/s. Indu Overseas, which you know about?
Ans.	No.

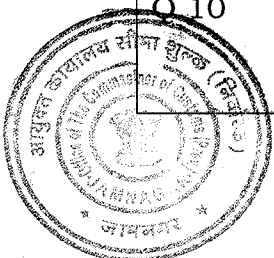
(b) The contents of the cross-examination of Shri Suresh Gangdas Patel, Partner of M/s. Super Impex, Jamnagar, recorded on 04-02-2024, are as under:

Q.-1	What is your full name?
Ans.	My full name is Suresh Gangdas Patel.
Q.2	What business was you engaged at the time of your statement recorded on 05.05.2010?
Ans.	I was into the business of manufacture of brass parts and my firm's name was Super Impex
Q.3	Whether you are the proprietor or partner of the said firm?
Ans.	I am the partner of the firm Super Impex.
Q.4	Did you have any business relation with M/s. Mitesh Impex
Ans.	No.
Q.5	In answer to Q.5 of statement dated 05.05.2010, you have stated that M/s. Mitesh Impex, M/s. Mahalaxmi Extrusion, M/s. C.K. Corporation and M/s. Mahalaxmi Metal Corporation are the firms run by family members of Shri Rameshbhai Pannalal Lavti and he is the final authority for taking decision related to all the above mentioned firm? How could you say?
Ans.	It is not correct. How could I have knowledge of the firms run by shri Rameshbhai Pannalal Lavti.



(c) The contents of the cross-examination of Shri Sanjay N. Gandhi, Proprietor of M/s. Global Marine Agencies, Gandhidham, recorded on 04-02-2024, are as under:

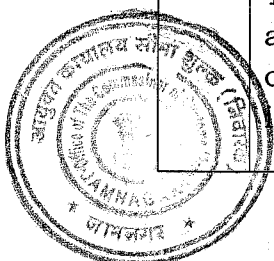
Q.-1	What is your full name?
Ans.	Sanjay Notandas Gandhi
Q.2	In your statement you have stated that you are proprietor of M/s. Global Marine Agencies, working as Custom House Clearing Agents? Is it true?
Ans.	Yes
Q.3	While working as CHA, yourself is visiting Customs House or you depute your staff for clearance procedure under Customs Act?
Ans.	As far as day to day activities are concerned, my staff looks after the work in Customs.
Q.4	Considering the answer to Q.No.2, you could not have chance to look after day to day paper work done by your staff for clearance of goods, either imports or exports?
Ans.	The documentations are done by the staff, I have no chance to look into the documents.
Q.5	Since you are working as CHA, you must be aware of the procedure of import or export in Customs area or the port, either in India or in Dubai.
Ans.	Yes, as far as procedure is concerned, I am aware of all the procedures as a CHA.
Q.6	As a CHA, please tell us whether any goods imported in Dubai could be exported to any other country, without indulgence of the Customs situated in Dubai?
Ans.	I don't know. The procedure might be same.
Q.7	In Q.No.5 & 6 of your statement dated 16-09-2010, it is stated that you were shown shipping bills along with invoices and Bills of Ladings of M/s. Mitesh Impex, simultaneously were shown invoice and Bill of Ladings of M/s. Malaxmi Extrusions, whether you were shown any other documents related to the Customs clearance in Dubai?
Ans.	No documents pertaining to Customs clearance in Dubai were shown to me.
Q.8	During your statement, you were shown list of exports affected by M/s. Mitesh Impex, Jamnagar to M/s. Remet Trading FZE and M/s. ARA Trading LLC, Dubai and import of goods by Mahalaxmi Extrusion from the said firms. Do you agree that the import made by M/s. Mahalaxmi Extrusion was not from M/s. Mitesh Impex?
Ans.	We have cleared the imported goods of M/s. Mahalaxmi Extrusion on the basis of documents received from M/s. Mahalaxmi Extrusion, which were of M/s. M/s. Remet Trading FZE and M/s. ARA Trading LLC, Dubai, as per the import documents.
Q.9	As a part of procedure for import and export, do you agree that the same routes through the Customs department and only on verification of goods and documents, the same are allowed either for import or for export?
Ans.	Yes.
Q.10	In reply to Q.No.10 of your statement, you have stated that M/s. Mahalaxmi Extrusion, Jamnagar is a sister concern of M/s. Mitesh Impex, Jamnagar and both the firms have been managed and controlled



	by Shri Rameshbhai. How could you make this statement whether you were having any evidence to that effect?
Ans.	I don't know whether M/s. Mahalaxmi Extrusion is a sister concern of M/s. Mitesh Impex. M/s. Mahalaxmi Extrusion was handled by Shri Prakash Lavti and Shri Mitesh Impex was handled by Shri Rameshbhai Lavti.

(d) The contents of the cross-examination of Shri Ankit Dineshbhai Changani, Partner of M/s. Darpan General Trading LLC, recorded on 05-02-2026, are as under:

Sl. No.	Questions	Answers
1	Dept. has recorded three statements under Section 108 of the Customs Act, 1962 on 12.02.2010, 15.02.2010 & 05.04.2011. Is it correct?	Yes
2	Have you gone through your statements?	I know the statements. However, if need be I will refer to the statements.
3	Are you partner in the firm, Darpan General Trading LLC, UAE?	Yes
4	Since how long you were partners in the said firm?	I was partner in the said firm from 2006 to 2009.
5	What was your share in the said partnership?	25%
6	In answer to Question 3, 4, 5 of your statement dated 12.02.2010, you have stated that the control of the business was with Shri Abdul Majeed and he decided the terms & conditions for supply and payment. Is it correct?	Yes
7	In answer to Question 9 of your statement dated 12.02.2010, you have stated that for customs clearance you were producing B/L, Certificate of Origin, Invoice of Supplier & packing list and on filing the said documents, the Bill of Entry was generated and after payment of assessed duty, clearance of goods were allowed by the Customs Dept. of UAE. Is it correct?	Yes
8	Had your firm has cleared any of the consignment without following such procedure?	No
9	In answer to Question 15 of your statement dated 12.02.2010, you have stated that you were not authorized to sign the documents pertaining to all consignments of import and export of your firm. Is it correct?	Yes



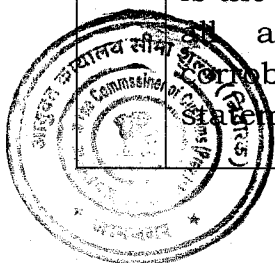
10	In answer to Question 18 of your statement dated 12.02.2010, you have stated that you were name shake partner in DGTL & Sh. Abdul Majeed was main partner and administrator of DGTL, who has offered salary of 11,000 AED. Please explain this answer.	Abdul Majeed was the main partner in the DGTL and my salary was fixed at 11,000 AED. My responsibility was to contact the brass part manufacturers and check the quality of the goods. Rest of the terms and conditions were finalised by Abdul Majeed.
11	Have you received any payment from DGTL in the form of profit?	No, I have not received any payment.
12	Have you produced your partnership deed before the Investigating Officers?	No
13	In answer to Question 16 of your statement dated 12.02.2010, you have stated that there was some confidential understanding between Sh. Rameshbhai Lavti and Sh. Abdul Majeed of export transaction of M/s. Mitesh Impex. Do you have copy of such confidential understanding or do you have any corroborative evidence for such understanding?	No
14	In answer to Question 4 of your statement dated 05.04.2011, you have stated that Sh. Ramesh Lavti had some arrangement with Sh. Abdul Majeed and it was agreed between both of them that the goods exported by Mitesh Impex would be returned to Mahalaxmi Extrusion, Jamnagar or Mitesh Impex. Further, it was also agreed that Sh. Ramesh Lavti will provide US Dollar to M/s. DGTL for making payment of the consignments exported by Mitesh Impex. Do you have any copy of such agreement or do you have any corroborative evidence of such agreement entered by Sh. Ramesh Lavti & Sh. Abdul Majeed?	No such specific documents/evidence available.
15	In answer to Question 7 of your statement dated 05.04:2011, you have stated that you have seen the invoice and bill of lading of the consignment mentioned in the said question and have also stated since the payments were managed by Sh. Ramesh Lavti and your company M/s. Darpan General Trading LLC, Dubai was only gaining commission for facilitating Sh. Ramesh Lavti. Do you have any corroborative evidence in support of your this statement?	No



16	In answer to Question 10 of your statement dated 05.04.2011, you have stated that USD 4,00,000 was deposited in DGTL by M/s.Mitesh Impex to facilitate illegal payment back to them in India on account of export of M/s.Mitesh Impex. Do you have any supporting/corroborative evidence other than the ledger account maintained by M/s.DGTL, in support of your this statement?	No
17	Who were maintaining the books of account of M/s. DGTL?	I was not maintaining the books of account but the same was being maintained by Abdul Majeed.
18	Were you attending your office at Dubai on daily basis?	Whenever I use to be in Dubai, I mostly attend the office.

(e) The contents of the cross-examination of Shri Dineshbhai Changani, Partner of M/s. Amardeep Exports, Jamnagar recorded on 05-02-2026, are as under:

Sl. No.	Questions	Answers
1	Dept. has recorded two statements under Section 108 of the Customs Act, 1962 on 09.02.2010 & 06.05.2010. Is it correct?	Yes
2	Have you gone through your statements?	I know the statements. However, if need be I will refer to the statements.
3	How old are you?	At present 68 years
4	In how many firms you are partner or proprietor? Please specify the names	At present I am not partner or proprietor in any firm.
5	When were you partner in M/s. Amardeep Export? Please clarify the duration.	I was partner in the firm, M/s. Amardeep Export up-to 2015.
6	In answer to Question No.5 of your statement dated 06.05.2010 you have stated that, M/s.Mitesh Impex, M/s. Mahalaxmi Extrusion, M/s. C.K. Corporation and M/s. Mahalaxmi Metal Corporation were run by the family members of Sh.Rameshbhai Panalal Lavti and he is the final authority for taking decision related to above four firms. Do you have any corroborative evidence in support of your this statement?	No

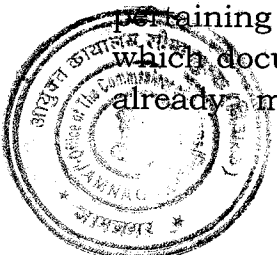


43.3 From the above records of the cross-examination of above 5 persons i.e Shri Prahaladrai Indermal Jhanwar, Proprietor of M/s. Aript Overseas, Jamnagar, Shri Suresh Gangdas Patel, Partner of M/s. Super Impex, Jamnagar and Shri Sanjay N. Gandhi, Proprietor of M/s. Global Marine Agencies, Gandhidham (during earlier adjudication proceedings) , Shri Ankit Dineshbhai Changani, Partner of M/s. Darpan General Trading LLC and Shri Dineshbhai Changani, Partner of M/s. Amardeep Exports, Jamnagar (during the current remand proceedings), it is evident that none of the witnesses have ever retracted from their statements recorded under Section 108 of the Customs Act, 1962. There are also no allegations on their part whatsoever of intimidation, duress, coercion, or use of force by the officers at the time of recording such statements. Accordingly, the statements are voluntary in nature and constitute crucial evidence in the present case.

43.4 The evidentiary value of statements recorded under Section 108 of the Customs Act, 1962 has been consistently upheld by various appellate authorities. Further, since these persons were duly offered for and subjected to cross-examination by the Authorized Representative of the Noticee, the requirements of Section 138B of the Customs Act, 1962 stand fully satisfied.

43.5 In my opinion the above cross examinations of Shri Prahaladrai Indermal Jhanwar, Proprietor of M/s. Aript Overseas, Jamnagar, Shri Suresh Gangdas Patel, Partner of M/s. Super Impex, Jamnagar have not brought out any new facts or revelations which may prove that the transactions undertaken by the Noticee were genuine. Further, the questions asked to the aforesaid witnesses during the cross-examination are of general nature and have no specific relevance in the instant case.

43.6 As regards, cross examination of Shri Sanjay N. Gandhi, Proprietor of M/s. Global Marine Agencies, Gandhidham, I find that in his statement dated 16.09.2010, he has categorically stated that, he is the only authorized person to sign customs document on behalf of his firm/company. Further, he himself produced the import and export documents of M/s. Mitesh Impex and import documents of M/s. Mahalaxmi Extrusions during the recording of his statements. Further, after going through the relevant shipping bills, bills of entry, invoices, bills of lading, etc shown to him, he has admitted to the fact that in respect of 27 consignments the goods exported by M/ s Mitesh Impex were re-imported by M/s Mahalaxmi Extrusions and the container numbers and seal numbers mentioned in the export documents of M/ s Mitesh Impex were the same as imported by M/s. Mahalaxmi Extrusions (Answers to question no. 5 to 7 of the statement refers). He also stated that Shri Prakashbhai Lavti and Shri Rameshbhai Lavti is the contact person in Mahalaxmi Extrusion and Mitesh Impex respectively. The above admission by the Proprietor of the firm who handled the export/import clearance of M/s. Mitesh Impex and M/s. Mahalaxmi Extrusion, backed by relevant shipping bills, bills of entry , bills of lading, invoices, list containing Sr. No. 1 to 25 has also been personally seen and signed by him is a crucial evidence corroborating the fact that the same goods which was exported by M/s. Mitesh Impex were imported by M/s. Mahalaxmi Extrusion in the same containers under the same seals. During the cross examination he only stated that no documents pertaining to Customs clearance were shown to him without exactly specifying which documents mentioned in the statements were not shown to him. Infact, as already mentioned he was already having all the export/import related

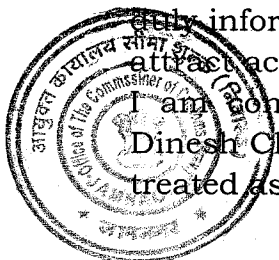


documents of M/s. Mitesh Impex and M/s. Mahalaxmi Extrusion. Thus, it is clear that during the cross examination, Shri Sanjay Gandhi also has not revealed any new facts or controverted the documents seen and signed by him during his statement, so as to prove the genuinity of Noticee's impugned transactions. Shri Sanjay Gandhi's denial as to whether M/s. Mahalaxmi Extrusion is a sister concern of M/s. Mitesh Impex also has no bearing on the current proceedings as it is an undisputed fact that Shri Prakash Lavti and Shri Rameshbhai Lavti are brothers. He also admitted that the loss to the government revenue incurred on account of M/s Mitesh Impex Jamnagar and M/s Mahalaxmi Extrusions, Jamnagar and both firms had been managed by the family member of Shri Rameshbhai Lavti; and that in fact Shri Rameshbhai Lavti had negotiated the deal for the clearance of imported consignment of M/ s Mahalaxmi Extrusions Jamnagar. It is also evident from the statement of Shri Sanjay Gandhi that he was being the proprietor of the firm M/s. Global Marine Agencies, negotiated business dealing with M/s. Mitesh Impex and M/s. Mahalaxi Extrusions through Shri Rameshchandra Lavti. These admissions by Shri Sanjay Gandhi in his statements has not been questioned during the cross examination. Therefore, in my opinion the statement of Shri Sanjay Gandhi is admissible as an evidence in terms of provisions of Section 138-B of the Customs Act, 1962 *supra*.

43.7 Moreover, I also find that, irrespective of the fact as if Sh. Sanjay Gandhi was handling the EXIM documents of both the Noticees as CHA or otherwise, his being proprietary concern he can't escape from his responsibility casted upon him as Customs Broker. It is also apparent on face that, the customs seal being one time tampered proof, therefore, the containers being imported by M/s. Mahalaxmi Extrusions which were earlier exported by M/s.Mitesh Impex should not have serial numbers as one and the same which were exported by M/s.Mitesh Impex, however, during examination of the containers imported by M/s. Mahalaxmi Extrusions, the seal numbers have found be one and the same, which itself clarifies that containers exported by M/s. Mitesh Impex were never been opened at Dubai Customs, which very well prove that there was some or other confidential understanding between the foreign suppliers and domestic importer and exporter to circumvent customs procedure to materialize the circular trading.

43.8 During the cross-examination of Shri Ankit Dineshbhai Changani, Partner of M/s. Darpan General Trading LLC and Shri Dineshbhai Changani, Partner of M/s. Amardeep Exports, Jamnagar, the Authorized Representative of the Noticee mainly sought corroborative documentary evidence in support of the answers given by them, which they stated was not available with them. However, on a careful perusal of the statements and the answers given by Shri Ankit Dineshbhai Changani, Partner of M/s. Darpan General Trading LLC and Shri Dineshbhai Changani, Partner of M/s. Amardeep Exports, Jamnagar, I find that most of the answers pertain to matters of common business knowledge and trade practices, for which documentary evidence is ordinarily neither generated nor maintained/recorded.

43.9 It is also noted that the statements were recorded after clearly explaining the provisions of Section 108 of the Customs Act, 1962, and the deponents were duly informed that furnishing false information or making false statements would attract action under the relevant penal provisions of the Act. In view of the above, I am convinced that the statements made by Shri Ankit Changani and Shri Dinesh Changani are truthful, voluntary, and reliable, and therefore deserve to be treated as vital evidence for examining the issues involved in the present case.

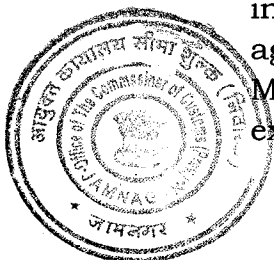


43.10 I find that Shri Ankit Changani, Partner of M/s. Darpan General Trading, Dubai, has admitted in his statement dated 12-02-2010 as under:

- ❖ The consignment of brass parts from M/s Mitesh Impex consigned to them was highly overvalued at USD 18.086 per KG, whereas the actual market value of such goods was around 8-9 USD per KG.
- ❖ He has also seen Bill of Entry, invoice etc of the subject consignment in the officer of the DGTL during his visit to Dubai in December-2009. Since the value was extremely lower side he enquired from the concerned persons of their office and other sources at Dubai and came to know that there was approximately 3.5 MT of brass parts and remaining quantity was of some scrap. He was in India when the above goods were cleared at Dubai.
- ❖ He had introduced Shri Abdul Majeed to Shri Rameshbhai Lavti of M/ s Mitesh Impex and thereafter Shri Rameshbhai Lavti had visited Dubai somewhere during 2009 and he met Shri Abdul Majeed personally in the office of DGTL. After this meeting, the export shipments of M/s. Mitesh Impex had considerably increased to DGTL.
- ❖ There was some confidential understanding between Shri Rameshbhai Lavti and Shri Abdul Majeed about export transactions of Mitesh Impex.

In his further statement dated 05.04.2011, Shri Ankit Changani has stated/ admitted as under :-

- ❖ He was shown Commercial Invoice No. DGT/455/2009 dated 23.09.2009 issued by M/s Darpan General Trading LLC, Dubai to Mitesh Impex, Jamnagar for Mix Brass Scrap having gross weight 27.860 MT and asked that in his earlier reply, he had stated that, Darpan General Trading LLC, Dubai was not engaged in export of brass scrap, hence he was asked to explain how the above invoice was issued. He saw and signed the above said Commercial Invoice and stated that M/s Mitesh Impex, Jamnagar had exported 04 consignments of brass Sanitary fittings, having quantity of approx. 26 MT to M/s Darpan General Trading between April-2009 to August-2009. The above said goods were of inferior quality and could not be used as sanitary fittings. Further, similar export goods of M/ s Mitesh Impex, of around 1.5 MT was also lying with them, which were received by them in previous year. Therefore, the total brass sanitary fittings of around 27.500 MT was returned to M/ s Mitesh Impex as per request of Shri Ramesh Lavti, partner of M/ s Mitesh Impex and accordingly the Invoice No. DGT/455/2009 dated 23.09.2009 was raised for Mix Brass Scrap;
- ❖ He was asked, as he stated above that goods imported by M/ s Mitesh Impex, under the Invoice No. DGT/455/2009 dated 23.09.2009 were not Mix Brass Scrap but inferior quality brass Sanitary parts exported by M/ s Mitesh Impex to Darpan General Trading LLC, Dubai and could he explain how M/s Darpan General Trading LLC, was making advance payment for the inferior quality brass Sanitary parts, regularly. In reply, he stated that Shri Ramesh Lavti, Partner of M/ s Mitesh Impex, had made some arrangement with Shri Abdul Majeed, Partner of M/ s Darpan General Trading LLC and it was agreed between both of them that the goods exported by M/ s Mitesh Impex would be returned back to either M/s Mahalaxmi Extrusions, Jamnagar or M/s Mitesh Impex, Jamnagar as per instructions of Shri Ramesh Lavti. He further, stated that it was also agreed between them that Shri Ramesh Lavti would provide US dollar to M/s Darpan General Trading for making payment of the consignments exported by M/s Mitesh Impex, Jamnagar and Shri Ramesh Lavti would



also make payment of certain amount per shipment to Shri Abdul Majeed as facilitation charge;

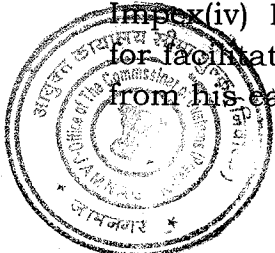
- ❖ He was asked to identify the signatures made on the commercial invoice No. DGT/455/2009 dated 23.09.2009 on behalf of M/s Darpan General Trading, Dubai; that he saw the said commercial invoice and stated that he had signed the above said Invoice on behalf of M/s Darpan General Trading, Dubai;
- ❖ He was also asked to clarify that in his earlier statement dated 12.02.2010, he had stated that all consignments of import and export of DGTL were signed by Shri Abdul Majeed and he was not authorized to sign the same, then how he had signed the commercial invoice No. DGT/455/2009 dated 23.09.2009 on behalf of M/s Darpan General Trading, Dubai. In reply, he stated that he had no comments to offer;
- ❖ He was shown Invoice No. MI/09/08-09 dated 17.02.2009 for USD 1,72,363.10 issued by M/s Mitesh Impex to M/s Darpan General Trading LLC, for export of 'Copper & Zinc Base Alloy Ingots (BRASS)' having quantity 28.210 MT. The said goods were stuffed in the Container No. MLCU-277403/6 & Seal No. 120882. He was also shown Commercial Invoice No.DGT/001/2009 dated 12.03.2009 for USD 69114.50 (C&F) issued by M/s Darpan General Trading LLC, Dubai and Bill of Lading No.TALADS00495303 dated 20.03.2009 to M/s Mahalaxmi Extrusions, Jamnagar. The said goods had been imported under Container No. MLCU-277403/6 & Seal No. 120882. He was asked to explain why M/s Darpan General Trading had sold the goods to M/s Mahalaxmi Extrusions, Jamnagar at USD 69114.50 (C&F) which were purchased at USD 1,72,363.10 from M/s Mitesh Impex, Jamnagar. He saw and signed the above mentioned invoices and Bills of Lading and stated that since the payments were managed by Shri Ramesh Lavti, Partner of M/s Mitesh Impex, Jamnagar and their company M/s Darpan General Trading, LLC, Dubai was only gaining commission for facilitating Shri Ramesh Lavti; that since the Container No. & seal number exported by M/ s Mitesh Impex, Jamnagar and imported by M/ s Mahalaxmi Extrusions, Jamnagar were same, the goods which were exported by Mitesh Impex, Jamnagar was returned to them in as it is form by their company; that this was done as per instruction of Shri Ramesh Lavti;
- ❖ He was further, shown Invoice No. MI/11/08-09 dated 07.03.2009 for USD 1,72,546.40 issued by M/s Mitesh Impex to M/s Darpan General Trading LLC, for export of 'Copper & Zinc Base Alloy Ingots (BRASS)' having quantity 28.240 MT. The said goods were stuffed in the Container No. FCIU-240781/8 & Seal No. 195813. He was also shown Commercial Invoice No.DGT/002/2009 dated 23.03.2009 for USD 69188.00 (C&F) issued by M/ s Darpan General Trading LLC, Dubai and Bill of Lading No.TALADS00498346 dated 29.03.2009 to M/s Mahalaxmi Extrusions, Jamnagar. The said goods had been imported under Container No. FCIU-240781/ 8 & Seal No. 195813. He was asked to explain why M/s Darpan General Trading had sold the same goods to M/s Mahalaxmi Extrusions, Jamnagar at USD 69188.00 (C&F) which were purchased at USD 1,72,546.40 from M/s Mitesh Impex; that he had seen and signed the above mentioned invoices and Bills of Lading and stated that since the payments were managed by Shri Ramesh Lavti, Partner of M/ s Mitesh Impex and their company M/s Darpan General Trading, LLC, Dubai was only gaining commission for facilitating Shri Ramesh Lavti; that since the Container No. & seal number exported by M/ s Mitesh Impex and imported



by M/s Mahalaxmi Extrusions are same, the goods which were exported by Mitesh Impex was returned to them in as it is form by their company; that this was also done as per instruction of Shri Ramesh Lavti;

- ❖ He was asked, as per the Ledger account data of M/s Mitesh Impex (indicated as Mitesh P & L A/ C) retrieved from the Laptop recovered under Panchanama dated 08.02.2010, as per Reference No. DFS-EE-2010-CF-31 dated 29.07.2010 (at Page No.57), showed that opening balance as on 01.04.2009 was 109076. He was asked to explain the nature of this account and currency in which the same is maintained. He saw and signed page no. 57 of the report No.DFS-EE-2010-CF-31 dated 29.07.2010 of Directorate of Forensic Science (DFS) and stated that this ledger account of M/s Mitesh Impex, Jamnagar maintained by M/s Darpan General Trading, LLC, Dubai and the currency was Dirham; that he further stated that as on 01.04.2009, there was an amount of Dirham 109076, to be paid to M/s Mitesh Impex;
- ❖ He was further shown and asked about the page no. 54 of the report No. DFS-EE-2010-CF-31 dated 29.07.2010, wherein opening balance amount of M/s Mitesh Impex, on 01.04.2009 was 109076 Dirham then on 07.05.2009 purchase of USD 400000 was shown and then on 10.05.2009, payment of USD 413876 was shown to M/s Mitesh Impex against Invoice No. MI/07-008-009- 011 / 08-09. He was asked to explain the above transaction of M/ s Darpan General Trading, LLC with M/s Mitesh Impex. He stated that USD 400000 was deposited to their company M/s Darpan General Trading, LLC, by M/s. Mitesh Impex to facilitate illegal payment back to them in India on account of exports of M/s Mitesh Impex vide Invoice Nos. MI/0.7 /08-09, MI/08/08-09 (full payment) and part payment for Invoice No. MI/09/08-09; that the above can be understood from the BRC reference No. C647849BBK051109 vide which payment of USD 413864.41 was remitted on 11.05.2009 to Axis Bank Account of M/s. Mitesh Impex;
- ❖ He was asked to produce the evidence for support of his above claim that M/s Mitesh Impex paid USD 400000 in cash to M/s Darpan General Trading, LLC at Dubai. He stated that it can be seen on page 54 and 57 of the Ledger Account that the Opening Balance was 109076 Dirham as on 01.04.2009. Thereafter deposit of USD 400000 was made as payment against Invoice No. MI/07 /08-09 dated 26.10.2008 for USD 85659.54, MI/08/08-09 dated 05.02.2009 for USD 91568.30 and MI/09/08-09 dated 17.02.2009 for USD 172363.10. The account was already settled upto 01.04.2009 and the payment pertaining to transactions of financial year 2008-09 were made from account of 2009-10 and which clearly showed that the money was deposited by M/ s Mitesh Impex, Jamnagar was returned to them.

43.11 During cross examination Shri Ankit Changani admitted that he was partner of the said firm M/ s Darpan General Trading, LLC. When asked whether he has documentary or corroborative evidences regarding his statement on (i) confidential understanding between Sh. Rameshbhai Lavti and Sh. Abdul Majeed of export transaction of M/s. Mitesh Impex, (ii) arrangement with Sh.Abdul Majeed that the goods exported by Mitesh Impex would be returned to Mahalaxmi Extrusion, Jamnagar or Mitesh Impex, (iii) Sh. Ramesh Lavti would provide US Dollar to M/s. DGTL for making payment of the consignments exported by Mitesh Impex (iv) M/s. Darpan General Trading LLC, Dubai was only gaining commission for facilitating Sh. Ramesh Lavti etc. he answered in negative but never retracted from his earlier submissions. I find that the above statements made by Shri Ankit

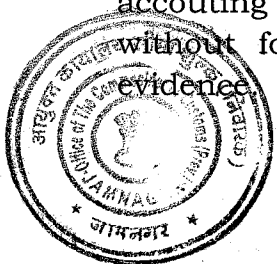


Changani clearly establish the fraudulent export of inferior quality of goods by M/s. Mitesh Impex at highly inflated value to DGTL and import of the same by M/s. Mahalaxmi Extrusion at deflated price and arrangement of funds by Sh. Rameshbhai Lavti to show payment for the above fraudulent transactions. It is obvious that the persons involved in such fraudulent business would never keep records / documents of such transactions as trail. Therefore, the inability of Shri Ankit Changani to furnish corroborative evidence of such dubious transactions would not vitiate the present proceedings. I also find that Shri Ankit Changani has not retracted from his statements; wherein amongst other thing he has also explained from the ledger account shown to him as to how the persons involved in such transactions were routing funds for such fraudulent transactions. Thus, these statements are duly corroborated. Accordingly, I find that the statements made by Shri Ankit Changani also are admissible as evidences in terms of provisions of Section 138B of the Act. Therefore, the submissions made by the Noticee in this regard are unsustainable.

43.12 In my opinion, whether Shri Ankit Changani was holding 49 % stake, 25 % stack or only name sake partner or just a salaried employee in M/s Darpan General Trading, LLC or whether he has received any payment from DGTL is of little revance in the subject matter. It is evident from the records including the statements made by various persons involved in the matter that Shri Ankit Changani was closely involved with affairs of M/s Darpan General Trading, LLC. Eventhough, Sh. Abdul Majeed may have been overall in charge of the firm but Shri Ankit Changani was privy to dealings between Shri Abdul majeed of DGTL and Shri Rameshbhai Lavti and he had also acted on behalf of the firm in placing orders to various manufacturers including the Noticee M/s. Mitesh Impex. Hence, the submissions made by the Noticee in this regard are irrelevant.

43.13 The Noticee in their submission quoting the answers given by Shri Ankit Changani has questioned that when all the consignments were cleared by M/s. Darpan General Trading, LLC, Dubai by following the procedure prescribed, then how can the container number remain same while exporting the consignment by M/ s Darpan General Trading, LLC and alleged that M/ s Darpan General Trading, LLC might have manipulated the container number for taking benefit of refund. I find that Noticee instead of proving their transactions as bonafide by producing credible evidence is trying to create a false narrative implicating M/s. Darpan General Trading, LLC for their fraudulent transactions. First of all, it is on record that the container numbers of goods exported by M/s. Mitesh Impex and imported by M/s. Mahalaxmi Extrusion were same and seals affixed on the containers were also intact. If the exports from M/s. DGTL were genuine then the goods should have been stuffed in containers from Dubai with their distinct numbers and seals. Also, the Noticee has not submitted any evidence that they have raised issue of such manipulation with M/s. DGTL or any competent authority of Dubai in this regard.

43.14 The Noticee has questioned the authenticity of the accounting records maintained in electronic gadgets of Shri Ankit Changani. The Noticee citing the cross examination of Shri Ankit Changani has also contended that the books of Account of M/s. DGTL were maintained by Shri Abdul Majeed, hence, the accouting records obtained from electronic gadgets of Shri Ankit Changani without following criteria prescribed in Customs Act are not admissible as



43.15 In this regard, I find that Shri Ankit Changani in his statements and cross examination has not denied the contents of such records. In fact, the authorized representative of the Noticee has not questioned Shri Ankit Changani regarding the authenticity of these records. It is also on record that the electronic gadgets laptops etc. were properly sealed during the Panchnama proceedings. These devices were opened following the proper procedure. Also, the Noticee has not elaborated which criteria were not fulfilled in seizure, opening and sealing of these Electronic gadgets. It is common understanding that a person indulging in fraudulent dealings would maintain their genuine accounting records and their illegitimate accounting records separately in different devices so that in case of detection by any Government agencies they can distance themselves from the illegitimate records. Therefore, if Shri Abdul Majeed was maintaining books of account of M/s. DGTL, it does not lead to the conclusion that Shri Ankit Changani was not maintaining the records of illegal transactions of the firm. Accordingly, the arguments made by the Noticee in this regard are not sustainable.

43.16 In view of the above, I find that cross examinations of all the above five witnesses have not resulted in any new facts or circumstances which may further the cause of the Noticee and disprove the allegations levelled against the Noticee. Also, none of the witnesses have retracted from their statements recorded under Section 108 of the Act and since all the statements have already passed through the rigors of cross examination they are admissible as evidence in terms of provisions of Section 138B of the Customs Act, 1962.

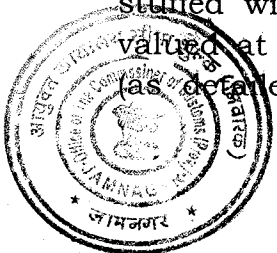
44. As regards, relevancy of statement of Shri Anand Patel, I find that several letters have been issued to him during the earlier adjudicating proceedings as well as present proceedings to appear for cross examination, but despite sincere efforts by the department he did not appear for cross examination nor any request/ reply from him is received by this authority till date.

44.1 The Noticee has also contended that they reserve their right to cross examine Shri Anand Patel and again requested this authority to grant another opportunity for the same.

44.2 However, going by the number of attempts made by the department to secure presence of Shri Anand Patel and utter silence from his part leads me to believe that all the eventualities mentioned in clause (a) of Section 138(B)(1) is possible in the case of Shri Anand Patel, hence it appears to be impossible to secure his presence without unreasonable delay and hence, his statement recorded under Section 108 of the Act is also required to be considered as an evidence in the present dispute. Moreover, the order in the present proceedings is required to be issued within 12 week's from receipt of Hon'ble High Court's order dated 25.11.2025.

45. I find that no new facts or evidences have surfaced which may have any bearing on the findings recorded during the course of earlier adjudication proceedings. Undisputedly, M/s Mitesh Impex, M/s. Mahalaxmi Extrusion and M/s C. K. Corporation are mangaged and run by Shri Rameshchandra Panalal Lavti, Shri Prakashchandra Panalal Lavti and Shri Manish Nathulal Lavti respectively, who are the blood brothers.

45.1 I find that M/s Mitesh Impex had exported 27 containers supposed to stuffed with 'Copper and zinc base alloy ingots(brass)' weighing 818.500 MT valued at Rs. 22,28,51,134/- between the period of 24.07.2006 to 09.03.2009 (as detailed in Annexure-A to the SCN). These containers bearing the same



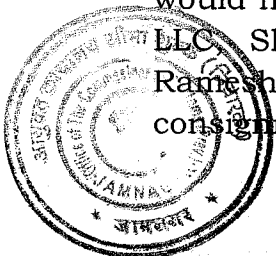
container numbers and seal numbers were subsequently imported into India by M/s. Mahalaxmi Extrusions describing the goods as 'Remelted Brass ingots' weighing 818.500 MT and valued at Rs 17,59,44,363.88. This fact has been explicitly recorded in Annexure- A to the Show Cause Notice.

45.2 Further, I observe that the detailed investigation by the DRI and evidences gathered and statements recorded during the investigations revealed that M/s Mitesh Impex and M/s Mahalaxmi Extrusion were intimately related to each other, as these units were owned by the brothers and there were several financial transactions between these units, which the Noticees failed to explain with any authentic documentary evidences and tried to avoid such questions.

45.3 I further find from the statements recorded under Section 108 that when the notices were asked to explain the details from the Statement of Accounts of M/ s Mitesh Impex, particularly when they were shown to Shri Rameshchandra Panalal Lavti, wherein huge amounts were paid to M/s. Mahalaxmi Extrusion, Shri Rameshchandra did not provide or explain details for these transactions. This non cooperation on his part strengthens the case of the department that these were unlawful transactions and part of the circular trading master minded by him to defraud the Government for his personal gain and misuse the 100 % EOU scheme. I also find that there are a number of oral evidences, which precisely point towards the modus operandi followed by the brothers for their ulterior motives.

46. The statements of Shri Ankit Changani, Partner of M/ s Darpan General Trading, Dubai and records of his cross examination discussed *supra* has proved that Shri Rameshchandra Lavti, Partner of M/s. Mitesh Impex had made arrangement with M/ s Darpan General Trading LLC and it was mutually agreed that the goods exported by M/ s Mitesh Impex would be returned to either M/s Mahalkaxmi Extrusions or M/s Miteshj Impex as per the instructions of Shri Rameshchandra Lavti, Partner of M/s. Mitesh Impex and for this facilitation/ arrangement by M/s. Darpan General Trading LLC in Dubai, Shri Rameshchandra Lavti would make payment of certain amount in USD as facilitation/commission charges. Thus, I find it evidently clear that M/s Darpan General Trading LLC was a conduit that facilitated Shri Rameshchandra Lavti to fraudulently export inferior quality goods and also to re-import the same consignments from the overseas firm either to his firm or to his younger brother's firm i.e., M/s. Mahalaxmi Extrusion.

46.1 I also find that Shri Anand Patel, Partner of M / s Golden Elephant Trading in Dubai, has also corroborated the above facts. As discussed above, his statement recorded under Section 108 of the Act is also required to be considered as an evidence in terms of provisions of Section 138B of the Act.(138B(1)(a)). He stated that his firm had also imported consignments from M/s Mitesh Impex to Dubai. He has admitted in his statement that Shri Rameshbhai Lavti of M/ s Mitesh Impex Jamnagar met him and told him that he wanted to send a consignment of brass articles in the name of his firm M/s Golden Elephant Trading LLC, Dubai and would only use the name of his firm, M/ s Golden Elephant trading and that he had only to manage the Custom's clearance at Dubai and the customs duty/ expenses would be paid by Shri Rameshbhai Lavti; that Shri Rameshbhai had further advised that after the customs clearance, he would have to hand over the goods to M/ s Sapphire Marbles & Building Material LLC, Sharjah and he offered him USD1500 for the said work; that Shri Rameshbhai Lavti also assured him that the payment of the aforesaid consignment would be managed by Rameshbhai himself; that payment to M/s



money. These facts has been corroborated by Shri Shri Ankit D Changani in his statements recorded under section 108 of the Customs Act, 1962.

48.1 I also find that statement dated 16.09.2010 of Shri Sanjay Gandhi, Proprietor of M/ s Global Marine Agencies, records of cross examination discussed above, further corroborate the Modus operandi of circular trading adopted by the Noticee to achieve fake NFE in discharge of their obligation under Notification No. 52/2003-Cus pertaining to the 100 % EOU scheme.

49. I observe that the noticees in their earlier submission have argued that since the foreign buyer and supplier are different in a number of cases, it cannot be concluded that the same goods which were exported by M/ s Mitesh Impex was reimported by M/s Mahalaxmi Extrusions and also that there was no documentary evidence to prove that the transactions of M/s Mahalaxmi was financed by M/s. Mitesh Impex and also that the description of the exported goods and imported goods were different. These arguments are not acceptable. From the statements of the various persons recorded under Section 108 of the Customs Act, 1962, it is evident that they failed to satisfactorily explain various financial transactions.

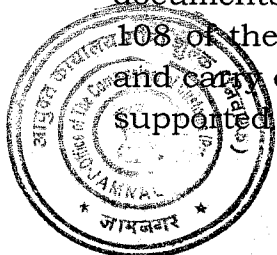
49.1 Further, they have admitted to the contents of the shipping bills, bills of entry, bills of lading, and invoices, which clearly establish the modus operandi of circular trading adopted by the inter-related firms, including the Noticee, with the intent to defraud government revenue. It is also pertinent to note that the statements recorded under Section 108 of the Customs Act, 1962 have neither been retracted at any stage nor has any complaint been made alleging coercion, duress, or intimidation at the time of recording such statements. Moreover, the statements recorded at different points of time consistently reveal the fraudulent methodology adopted by the Lavti brothers to misuse the 100% EOU Scheme for wrongful gain.

49.2 As already discussed, a statement recorded under Section 108 of the Customs Act, 1962 is in the nature of substantive evidence, and culpability of the concerned persons can be based on the same. The evidentiary value of such statements have been the subject matter of a large number of authoritative pronouncements of the Supreme Court and the High Courts, as under:

49.2.1 It has been held by the Hon'ble Supreme Court in the judgment in Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar - 1997 (96) E.L.T. 211 (S.C.)

"7. An attempt was made to contest the admissibility of the said statements in evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940, and K.I. Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 SCC 721."

49.2.2 In the present proceedings, the case is based on the statements of key persons recorded under Section 108 of the Customs Act, 1962, which are duly supported by corroborative evidence in the form of financial records reflecting substantial movement of funds from one firm to another without any plausible commercial justification, as well as export- and import-related documents. It is a settled position of law that statements recorded under Section 108 of the Customs Act, 1962 by a Customs Officer are admissible in evidence and carry evidentiary value, particularly when such statements are voluntary and supported by independent corroborative material on record.



49.2.3 I find that Hon'ble High Court of Madras in the case of Govindasamy Raghupati reported in 1998 (98) ELT 50 (Mad.) has categorically held that the admitted facts need not be proved. Similar view has been taken in the case of Commissioner of Central Excise, Mumbai-V V/s. Alex Industries reported at 2008 (230) ELT (Tri-Mumbai), M/s. Divine Solutions V/s. Commissioner of Central Excise, Coimbatore reported at 2006 (206) E.L.T. (Tri. (Chennai)). Further, in the case of M/s. Karori Engg. Works V/s. Commissioner Central Excise, Delhi reported at 2004 (168) E.L.T. 373 (Tri. Del.), Hon'ble CESTAT New Delhi, has held that "Evidence-Statement-Admission/Confession is a substantial piece of evidence which can be used against the maker."

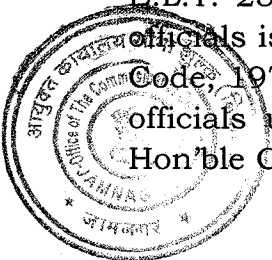
49.2.4 Hon'ble Tribunal in the case of Lark Chemicals Pvt. Ltd. Vs Commissioner of Customs, CSI Airport, Mumbai reported at 2014 (301) ELT 138 (Tri.-Mumbai) has also held that it is a settled law that admitted facts need not be proved and no further evidence was required.

49.2.5 Hon'ble Supreme Court in the case of Surjeet Singh Chhabra Vs UOI reported in 1997 (89) ELT 646 (SC) has also pronounced that confessional statement made before Customs officer under Section 108 of the Customs Act, 1962 though retracted is an admission and binding since Customs Officers are not Police Officers.

49.2.6 Hon'ble Supreme Court in the case of K.I. Pavunny Vs AC, Cochin reported at 1997 (90) ELT 241 (SC) has held that when the material evidence establish fraud against the revenue, white collar crimes committed under absolute secrecy shall not be exonerated from penal consequence of law. The Hon'ble Apex Court has discussed on this very point and observed that a question considered by three Judges bench in the instant case on a reference from the two Judges bench was whether the confessional statement of the appellant made to Customs Officers under Section 108 of the Customs Act, 1962 though retracted at a later stage, is admissible in evidence and could form basis for conviction and whether retracted confessional statement requires corroboration on material particularly from independent evidence? While considering the object of recording statements under Section 108 of the Customs Act, it has been observed -

"the object of the Act empowering Customs Officers to record the evidence under Section 108 is to collect information of the contravention of the provisions of the Act or concealment of the contraband or avoidance of the duty of excise so as to enable them to collect the evidence of the proof of contravention of the provisions of the Act so as to take proceedings for further action of confiscation of the contraband or imposition of the penalty under the Act etc." The Hon'ble Supreme Court also held that: "Even though the Customs officers have been invested with many of the powers which an officer in charge of a police station exercises while investigating a cognizable offence, they do not, thereby, become police officers within the meaning of Section 25 of the Evidence Act and so, the confessional statements made by the accused persons to Customs officials would be admissible in evidence against them."

49.2.7 In the case of Naresh J. Shukawani v. Union of India - 1996 (83) E.L.T. 258 (S.C.) it was observed that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973 and therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. It was further stated by the Hon'ble Court that if such a statement incriminates the accused, inculcating him



in the contravention of the provisions of the Customs Act, it can be considered as substantive evidence to connect the accused with the contravention of the provisions of this Act.

49.2.8 In the case Hazari Singh V/s. Union of India reported in 110 E.L.T. 406, and case of Surjeet Singh Chhabra V/s. Union of India & Others reported in 1997 (1) S.C.C. 508, wherein the Hon'ble Supreme Court has held that the confessional statement made before the Customs Officer even though retracted, is an admissible and binding on the person.

49.2.9 The Hon'ble Supreme Court in the case of Badaku Joti Savant Vs. State of Mysore [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)], laid down that statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.

49.2.10 In the case of Raj Kumar Karwal Vs. UOI & Others (1990) 2 SCC 409, the Hon'ble Court held that officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officers in the course of investigation of a person accused of an offence under the Act, is admissible in evidence against him. I find that when there are instant recoveries made under due procedure of law and the voluntary confessions are made right away, other corroborations should not matter. Moreover, the recoveries are not made out of fluke or chance; the breakthroughs of recoveries are a result of officers' diligence like: data analysis, vigilant approach, information processing and eventual unfolding of the circumstances all recorded properly. I find the recoveries from the Noticee's premises make the foundation of this case and not the 'preponderance of probability'.

49.2.11 In the case of P.B. NAIR C&F PVT. LTD. Versus COMMISSIONER OF CUSTOMS (GENERAL), MUMBAI [2015 (318) E.L.T. 437 (Tri. - Mumbai)] it was held that -

"Evidence - Statement - Retraction of - Confessional statement under Section 108 of Customs Act, 1962 - Proceedings under Section 108 ibid is a judicial proceeding and if any retraction of confession to be made, to be made before same authority who originally recorded the statement - Confessional statements never retracted before the authority before whom the statement was recorded, belated retractions of statements after about one and half years cannot take away the evidentiary value of original statement." Further, in para 5.5 of the case law cited, it has been held that "The proceedings under Section 108 of the Customs Act is a judicial proceeding and if any retraction of the confession has to be made, the same should be made before the same authority who originally recorded the statement."

49.2.12 In Zaki Ishrati v. Commissioner of Customs & Central Excise, Kanpur [2013 (291) E.L.T. 161 (All.)], the Hon'ble Allahabad High Court has held that subsequent retraction cannot take away the effect of the statement; if the retraction is not addressed to the officer to whom the statement was given.

49.2.13 In the case of ANIL AGARWAL, Versus COMMISSIONER OF CUSTOMS, AMRITSAR [2002 (141) E.L.T. 185 (Tri. - Del.)], it was held that -

"Statement, Confessional - Retraction - Evidentiary value of a confessional statement made on spot immediately after recovery of

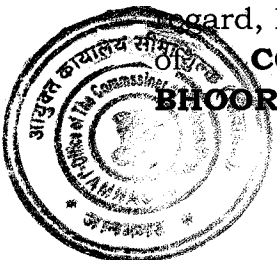


contraband goods not affected by its retraction subsequently during criminal proceedings - Section 108 of Customs Act, 1962. - The retraction of the confessional statement was made by him during the criminal proceedings later on, after availing the services of the Counsel as such, could safely be said to be an afterthought, motivated with the object to wriggle out of the criminal proceedings."

49.2.14 Placing reliance on the above case laws, I find that the confessional statement made in the present case, during inquiry under Section 108 of the Customs Act, 1962 have complete & admissible evidence and hold evidentiary value. I also find that Noticees in the present case have never retracted their statements given before the investigating Officer at any point of time till the time of adjudication of the case. Even five witnesses cross examined by the Noticee have not retracted from their statements. Inquiry under Section 108 is deemed to be judicial proceedings. The person summoned under this Section is bound to state the truth. It has been held that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. As discussed supra, the Hon'ble Courts in various judicial pronouncements have further strengthened the validity of this enabling provision and it has been affirmed that statement given before Customs officers is a material piece of evidence and can certainly be used as substantive evidence. Therefore, in view of the discussions in paras supra, I find that the statements are complete pieces of evidences and there is no force in any of the arguments put forward by the noticees, and the case laws cited by them, are not relevant since there is no conflict between the statements and available evidences. I also find that the financial statements relied upon has been amply corroborated with the statements of the Noticees and it is emerged that the Noticees failed to provide fair and legal justification for huge financial transactions made between the two firms viz. M/s. Mitesh Impex, Jamnagar and M/s. Mahalaxmi Extrusions, Jamnagar. I find that they have further placed reliance upon the decision in the case of Heena Metals Pvt ltd stating that once goods declared as scrap was allowed to be cleared after due examination, Adjudication Commissioner had no jurisdiction to re-open the assessment. However, it needs to be appreciated here, that the present case is not a case of routine reassessment by the jurisdictional adjudicating authority, but it is a case of offence case booked by an external investigating agency empowered to reopen all cases where there is adequate evidence to suggest the existence of well conceived fraud with a deliberate intention to evade payment of duty. Hence the cases relied upon by the noticees are not relevant in the present case. Moreover, I find that the evidences available on record prove beyond doubt that all the clandestine activities were carried out by the noticees deliberately with an intention to evade the payment of duty, defraud the Government revenue and to take undue benefits of the exemption notifications. Hence extended period is rightly invoked.

50. It has been consistently held by the Appellate Authorities, including the Hon'ble Supreme Court, that the Department is not required to prove its case with mathematical precision. In cases involving fraud, the persons concerned invariably attempt to conceal records of their fraudulent transactions and destroy evidence that may implicate them in proceedings initiated by Government agencies. Therefore, the charge can be established on the basis of preponderance of probability, supported by cogent and corroborative evidence on record. In this regard, I rely upon the land mark judgment of Hon'ble Supreme Court in the case

COLLECTOR OF CUSTOMS, MADRAS AND OTHERS Versus D. BHOOERMULL 1983 (13) E.L.T. 1546 (S.C) which has been consistently relied



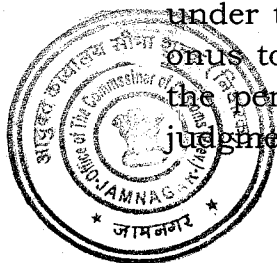
upon by various authorities in their judgments/ orders. :- The relevant observations of the Hon'ble Supreme Court are extracted below:-

30. *It cannot be disputed that in proceedings for imposing penalties under clause (8) of Section 167, to which Section 178A does not apply, the burden of proving that the goods are smuggled goods, is on the Department. This is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, or universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it-"all exactness is a fake". El Dorado of absolute Proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case.*

50.1 In view of the above mentioned facts and evidences, I find that M/s Mitesh Impex, Jamnagar had engaged themselves in circular trading i.e the inferior quality goods described as Copper and Zinc Base Alloy (brass) that was exported by M/s Mitesh Impex at highly inflated value which was subsequently imported by M/s Mahalaxmi Extrusions, Jamnagar in the same containers with the same seal nos. and highly deflated value of the goods as compared to the export price. This was deliberately done with an intention to show fake NFE to comply the provisions of Notification No. 52/2003-Customs governing the exemption from duty granted to 100 % EOU and defraud the government revenue and evade the payment of Customs duty.

50.2 I further find that M/s Mitesh Impex had exported the goods showing highly inflated value. As against the existing market price of USD 8-9 per Kg for various brass sanitary fittings and builder hardware in Dubai market, M/s Mitesh Impex had invoiced their consignments at USD 18.086 per kg. By following this modus operandi, they had managed to inflate their export proceeds and thereby achieve a positive NFE. Since M/ s Mitesh Impex instead of exporting the goods manufactured by them for which they were granted 100 % EOU status, had resorted to circular trading by showing fake exports to various overseas buyers, which cannot be considered as genuine exports in compliance of conditions of Notification No 52/2003-Cus dated 31.03.2003. The export proceeds were also managed by way of hawala transaction and other illegal means, and the exported goods were re-imported at lower declared value by another unit conniving with M/ s Mitesh Impex, therefore such remittances cannot be considered as genuine proceeds for the exported goods and the inputs used in manufacture of the export goods also cannot be considered to have been used in accordance with the requirement of condition Para 1(a) of Notification No 52/2003-Cus dated 31.03.2003.

50.3 Therefore, I find that the said inputs do not qualify for the exemption under the aforesaid exemption notification. It is a settled legal position that the onus to show the fulfilment of the conditions of exemption notifications is upon the person claiming such exemptions. In this regard I rely upon the following judgments of Hon'ble Supreme court.



(i) **COMMISSIONER OF CUS. (IMPORT), MUMBI Versus DILIP KUMAR & COMPANY 2018 (361) E.L.T. 577 (S.C.) wherein the Hon'ble Supreme Court have held as under:-**

52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in *Sun Export* case (supra) is not correct and all the decisions which took similar view as in *Sun Export* case (supra) stands overruled.

(ii) **MERIDIAN INDUSTRIES LTD. Versus COMMISSIONER OF CENTRAL EXCISE-2015 (325) E.L.T. 417 (S.C.), the Hon'ble Supreme Court at Para:- 13 of their judgment has observed as under:-**

13. The appellant is seeking the benefit of exemption Notification No. 8/97-C.E. Since it is an exemption notification, onus lies upon the appellant to show that its case falls within the four corners of this notification and is unambiguously covered by the provisions thereof. It is also to be borne in mind that such exemption notifications are to be given strict interpretation and, therefore, unless the assessee is able to make out a clear case in its favour, it is not entitled to claim the benefit thereof. Otherwise, if there is a doubt or two interpretations are possible, one which favours the Department is to be resorted to while construing an exemption notification.

In the present case, despite sufficient opportunity given to the Noticee, they failed to prove bonafide nature of their transactions as envisaged in Notification No 52/2003-Cus dated 31.03.2003 with credible documentary evidences. On the contrary, the department has satisfactorily established the modus operandi adopted by the Noticee in connivance with various firms/ persons to misuse the 100 % EOU scheme and claim illegitimate customs duty exemption.

Further, I find it evidently clear that Shri Rameshchandra Lavti, Partner of M/ s Mitesh Impex was the main person involved in the entire modus-operandi. He master minded the entire operation of exporting brass goods to overseas buyers and then re-importing the same consignments into M/s Mahalaxmi Extrusion, which was managed by his younger brother. He also arranged / managed the payments of their export consignments and also imports by M/s Mahalaxmi Extrusions. He used M/s C K Corporation, a finance firm, handled by his brother Shri Nathulal Lavti for this purpose. The statement of Shri Dinesh Changani also corroborated these facts when he revealed that all the three firms i.e Mitesh Impex, M/s Mahalaxmi Extrusions and M/s C K Corporation were basically controlled by one person Shri Rameshbhai Lavti, though on record his brothers were being shown as 'Partner' in the different firms. Further, I find that Shri Rameshchandra Panalal Lavti, Partner of M/s Mahalaxmi Extrusions, Jamnagar, Shri Nathulal Panalal Lavti, Proprietor of M/s C K Corporation, Jamnagar, Shri Sanjay Gandhi, Proprietor of M/s. Global Marine Agencies, Custom House



Agent, Shri Ankit Dineshbhai Changani, Partner of M/s Darpan General Trading LLC, Duibai and Shri Anand Chandrakant Patel, Partner of M/s Golden Elephant Trading LLC, Dubai, had all facilitated and connived with M/s Mitesh Impex, Jamnagar in executing the bogus exports and managing the hawala payments towards the exports proceeds.

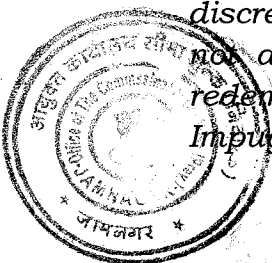
50.4 In view of the above findings, I hold that the exports made by M/s Mitesh Impex, Jamnagar, are not genuine as the illicitly exported goods were of inferior quality and overvalued. There has been a deliberate mis-declaration of the export consignments, as covered in the present show cause notice. Therefore, I find that in terms of provisions of Section 113(i) of the Customs Act, 1962, the following consignments exported improperly are liable to confiscation;

- (i) Copper & Zinc base alloy Ingots (Brass) exported under 27 Shipping bills weighing 818.5 MT and valued at Rs. 22,28,51,134/- (as per Annexure- A to the SCN);
- (ii) The Brass Sanitary fittings/ Brass Builder Hardware weighing 16.595 MT valued at Rs 1,39,26,530/- exported under Shipping Bill No 1158958 dated 05.11.2009 (as per para 26 of the SCN);
- (iii) The Brass Sanitary fittings weighing 6.313 MT valued at Rs 51,02,798/- exported under Shipping Bill No 1131072 dated 18.08.2008 (as per para 27 of the SCN) and
- (iv) The Brass Sanitary fittings weighing 27 .860 MT valued at Rs 2,35,54, 145/- exported under five Shipping Bills (as per para 28 of the SCN).

50.5 I also find that since the subject goods were not notified goods the provisions of Section 125 of the Customs Act, 1962 are applicable in the instant case. I place reliance in the case law of Commissioner of Customs Vs. Dinesh Chhajer, reported at 2014(300) E.L.T.498(Kar.), wherein Hon'ble High Court of Karnataka has held that when the confiscation of the goods is authorized under the Act and an order for confiscation is passed by the competent authority, it is open and such authority either to confiscate the goods and sell them or give to the owner of the goods or the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit, and I hold accordingly.

50.6 I find that though the goods were improperly exported without execution of Bond/ undertaking and can be held liable to confiscation under Section 113(i) of the Customs Act, 1962. However, I refrain from imposing any redemption fine, as the goods are not available since already exported. I rely on in the judgment rendered with regard to confiscation by the High Court of Judicature at Bombay, wherein the Hon'ble High Court in the case of COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Versus FINESSE CREATION INC. Customs Appeal No. 66 of 2009, decided on 25-8-2009 cited in 2009 (248) E.L.T. 122 (Bom.), has stated that,

"whether goods cleared and not available for seizure, liable to confiscation - Redemption fine arises when goods are available and are to be redeemed - No question of redemption of goods when goods not available - Customs authorities empowered to order confiscation with discretion to release them on payment of redemption fine - Confiscation not arises if goods are not available for confiscation and consequent redemption - Fine not imposable once goods cannot be redeemed - Impugned Tribunal order holding fine in lieu of confiscation not imposable"



when goods were not available, sustainable - Sections 111 and 125 of Customs Act, 1962. [paras 1, 5, 6]"

Further, the Hon'ble Supreme Court Bench, after condoning the delay dismissed the Petition for Special Leave to Appeal (Civil) No. CC 7373 of 2010 filed by Commissioner of Customs (Import) against the Judgment and Order dated 25-8-2009 in C.A No. 66 of 2009 of the High Court of Bombay as reported in 2009 (248) E.L.T. 122 (Bom.) held -

"The High Court vide its impugned order had distinguished the Apex Court decision in case of Weston Components Ltd. [2000 (115) E.L.T. 278 (S.C.)]. While holding that concept of redemption fine arises in the event the goods are available and are to be redeemed, and if goods are not available, there is no question of redemption of goods. The High Court held that since goods were cleared earlier, not available for confiscation nor consequently redemption, therefore, Tribunal was right in holding that fine in lieu of confiscation was not imposable."

50.7 I also place reliance on the following case laws in support of my above findings:

(a) In the case of Commissioner v. Indu Nissan Oxo Chemical Industries - 2015 (324) E.L.T. A30 (Guj.)], the Hon'ble High Court of Gujarat has held - "that the penalty in lieu of redemption fine was not imposable when the goods were not available for confiscation."

(b) in the case of MANGALORE REFINERY & PETROCHEMICALS LTD. Versus C.C., MANGALORE [2014 (313) E.L.T. 353 (Tri. - Bang.)], wherein it was held that - "Redemption fine - Imposition of - Confiscation - Imported goods when not available for confiscation, question of confiscating the goods does not arise as the provision for grant of option of redemption under Section 125 of Customs Act, 1962 will be rendered meaningless - Imposition of fine under Section 125 ibid not justified - Section 125 ibid."

(c) In the case of ELDER PHARMACEUTICALS Versus COMM. OF CUS. (IMPORT) JNCH, NHAVA SHEVA 2019 (370) E.L.T. 1380 (Tri. - Mumbai) it was held that - "4. It is seen that the adjudication order has recorded that the goods are not available for confiscation. In the absence of the goods and relying upon the decision of the Hon'ble Supreme Court in Weston Components Ltd. v. Commissioner of Customs, New Delhi [2000 (1) SCR 26 = 2000 (115) E.L.T. 278 (S.C.)] and of the Hon'ble Bombay High Court in Commissioner of Customs (Import), Mumbai v. Finesse Creation [2009 (248) E.L.T. 122 (Bom.)], we set aside the redemption fine. However, the goods being liable to confiscation, we uphold the penalty imposed on the appellant but at the same time allow option of payment of 25% of penalty as provided for in Section 28(5) of Customs Act, 1962."

(d) In the case of N.K. CHAUDHARI Versus COMMISSIONER OF CUSTOMS (EP), MUMBAI [2018 (363) E.L.T. 908 (Tri. - Mumbai)] it was held - "Confiscation and redemption fine - Non-availability of goods - In view of Larger Bench's decision in the case of Shiv Kripa Ispat [2009 (235) E.L.T. 623 (Tri.-LB.)], redemption fine not imposable when goods not available for confiscation - Accordingly, redemption fine set aside - Section 125 of Customs Act, 1962. [para 4]"

Further, in view of the discussions and findings in paras supra, I find Mitesh Impex have indulged in circular trading and have exported their



consignments on inflated weight and value to achieve positive Net Foreign Exchange Earnings as stipulated under the Foreign Trade Policy. It is observed that M/s Mitesh Impex had shown import of goods to the tune of USD 1,13,53,323.00 and export proceeds realized as USD 1,50,49,976.00 during the second block of five years starting from financial year 2006-07 to 2010-11. However, it is evidently clear that during the said period they had illegally and illicitly managed payment of export proceeds to the tune of USD 61,07,849.52 by indulging in circular trading discussed above, and resorted to export on inflated weight and value. Therefore, I hold that the actual foreign exchange realized during the period 2006-07 to 2010-11 is USD 89,42,126.48 instead of USD 1,50,49,976.00 as claimed by M/ s Mitesh Impex, resulting in negative NFE of 21.24%. Accordingly, I hold that the Net Foreign Earnings (NFE) claimed as USD 1,50,49,976.00 is required to be restricted to USD 89,42,126.48.

52. It is established fact that M/s Mitesh Impex had indulged in circular trading and fake exports to claim illegitimate duty benefit under 100 % EOU scheme. I find that Para 1(a) of Notif 52/2003- Cus specifies the type of goods which qualify for availment of exemption stipulated therein, when imported for the purpose. In the present case, I M/s Mitesh Impex have used the raw material imported availing the exemption under above mentioned notification, in the manufacture of the goods claimed to have been exported by them. However, the said export was fake and the same goods were again imported by another unit working hand-in-glove with M/s. Mitesh Impex. Hence, the exports made by M/s Mitesh Impex were not genuine and the export proceeds received by them was also not actual remittances but only money transferred through hawala and other illegitimate means. Therefore, the inputs used in the manufacture of said export goods cannot be said to have been used in accordance with the requirement of condition in Para 1(a) of Notif 52/2003-Cus and hence, the impugned goods do not qualify for the exemption to duty as stipulated therein. Therefore, I find that the duty is recoverable on such inputs in terms of the bond executed as per para 1(3)(d) of the said notification and also in terms of Section 28(4) of the Customs Act 1962. Further the duty free brass scrap imported under above mentioned notification, was not utilized for the intended purpose i.e., in manufacture and export of goods for which the Noticee was given the 100 % EOU status. Instead, the Noticee indulged in fraudulent export of inferior quality goods at highly inflated value which were again imported back by another firm of his brother, discussed at length in foregoing para, at substantially lower price by adopting circular trading and the payment towards export proceeds was also managed by them in contravention of Section 7 and 8 of the Foreign Exchange Management Act 1999. Therefore, the goods i.e., scrap imported availing the benefit of Notif 52/2003-Cus improperly, is liable for confiscation under Section 111(o) of Customs Act 1962. Accordingly I hold that the following consignments liable to confiscation Section 111(o) of Customs Act 1962;

- (i) 1325.97 MT of imported brass scrap, valued at Rs.24,54,45,889 /- (as detailed in Annexure C of the SCN)
- (ii) 16.499 MT of imported brass scrap, valued at Rs.24,07,653/- (as detailed in Annexure D of the SCN).
- (iii) 35.134 MT of imported brass scrap, valued at Rs.51,27,006/- (as detailed in Annexure E to the SCN).

I further find that since the subject goods were not notified goods but held liable for confiscation, provisions of Section 125 of the Customs Act, 1962 are applicable in the instant case. I place reliance in the case law of Commissioner of



Customs Vs. Dinesh Chhajer, reported at 2014(300) E.L.T.498(Kar.), wherein Hon'ble High Court of Karnataka has held that when the confiscation of the goods is authorized under the Act and an order for confiscation is passed by the competent authority, it is open and such authority either to confiscate the goods and sell them or give to the owner of the goods or the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit, and I hold accordingly.

52.1 However, I find that though the goods improperly imported, can be held liable to confiscation under Section 111(o) of the Customs Act, 1962, I refrain from imposing any redemption fine since the goods have already been cleared after importation and not available for confiscation. I rely on in the judgment rendered with regard to confiscation by the High Court of Judicature at Bombay, wherein the Hon'ble High Court in the case of COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Versus FINESSE CREATION INC. [2009 (248) E.L.T. 122 (Bom.)].

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(c) In the case of ELDER PHARMACEUTICALS Versus COMMR. OF CUS. (IMPORT) JNCH, NHAVA SHEVA 2019 (370) E.L.T. 1380 (Tri. - Mumbai) it was held that - "4. It is seen that the adjudication order has recorded that the goods are not available for confiscation. In the absence of the goods and relying upon the decision of the Hon'ble Supreme Court in Weston Components Ltd. v. Commissioner of Customs, New Delhi [2000 (1) SCR 26 = 2000 (115) E.L.T. 278 (S.C.)] and of the Hon'ble Bombay High Court in Commissioner of Customs (Import), Mumbai v. Finesse Creation [2009 (248) E.L.T. 122 (Bom.)], we set aside the redemption fine. However, the goods being liable to confiscation, we uphold the penalty imposed on the appellatant but at the same time allow option of payment of 25% of penalty as provided for in Section 28(5) of Customs Act, 1962."

(d) In the case of N.K. CHAUDHARI Versus COMMISSIONER OF CUSTOMS (EP), MUMBAI [2018 (363) E.L.T. 908 (Tri. - Mumbai)] it was held - "Confiscation and redemption fine - Non-availability of goods - In view of Larger Bench's decision in the case of Shiv Kripa Ispat [2009 (235) E.L.T. 623 (Tri.-LB.)], redemption fine not imposable when goods not available for confiscation - Accordingly, redemption fine set aside - Section 125 of Customs Act, 1962. [para 4]"

53. Further as already discussed in paras supra, M/s Mitesh Impex had only availed the benefit of exemption under Notification 52/2003-Cus on the inputs imported for manufacture of their export product. Since the exports made



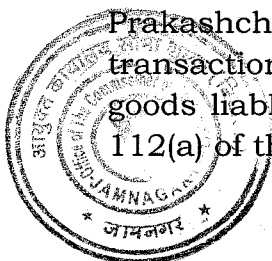
by them are not genuine, they have violated the conditions mentioned in the said notification. Therefore, I hold that the duty of customs is liable to be recovered on the inputs imported by them in terms of B-17 Bond executed by them read with Section 72 of the Customs Act, 1962, and/or under Section 28 (4) of the Customs Act, 1962 read with Section 28AA of the Customs Act, 1962, as detailed below:

- (a) Customs Duty amounting to Rs.5,80,17,113/- (as detailed in the Annexure C to the SCN) along with interest on 1325.97 MT of brass scrap mentioned above.
- (b) Customs Duty amounting to Rs.5,04,187 /- (as detailed in the Annexure D to the SCN) along with interest on 16.499 MT of brass scrap mentioned above.
- (c) Customs Duty amounting to Rs.10,73,648/- (as detailed in the Annexure E to the SCN) along with interest on 35.134 MT of brass scrap mentioned above.

54. I further find that M/s Mitesh Impex has indulged in circular trading with intent to show fake export and claim illegitimate exemption under Notif 52/2003-Cus by misusing the 100 % EOU schme. They have imported raw material availing benefit of exemption and misused the said inputs in contravention of the provisions contained in the said exemption notification. They have also managed payment for their export consignment through hawala/ illegal channels which cannot be considered as genuine export proceeds. Moreover, they have also managed to defraud the government by indulging in exorbitant overvaluation and mis-declaration of their products and thereby managing fake achievement of a positive NFE contravening the provisions contained in the Foreign Trade Policy. By these acts of commission and omission on the part of M/s. Mitesh Impex have rendered the imported raw material as well as exported finished goods liable for confiscation, and hence, I hold M/s. Mitesh Impex, Jamnagar liable to penalty under Section 114A of the Customs Act 1962. However in view of the proviso to Section 114A of the Customs Act 1962, where any penalty has been levied under section 114A, no penalty shall be levied under Section 112, I hold that M/s Mitesh Impex is liable to penalty only under Section 114 A of the Customs Act 1962 and penalty under Section 112 is rightly not invoked.

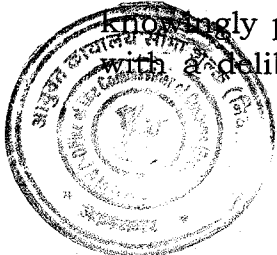
55. Penalty proposed on co-noticees under Section 112(a) and 114(iii) of the Customs Act 1962, are discussed as under:

55.1 Now, as regards the role of Shri Prakashchandra Lavti, the younger brother of Shri Rameshchandra Lavti and partner of M/ s Mahalaxmi Extrusions, in the entire modus operandi, I find that Shri Prakashchandra Lavti, in his statement dated 02.03.2010 has admitted that the goods imported by his firm, had same container numbers, with the same seal nos. and same quantity of goods as exported by M/ s Mitesh Impex, which had been re-imported by his firm M/s Mahalaxmi Extrusions. He had also admitted that the business deals of his firm were negotiated with Shri Rameshchandra Lavti, his elder brother. Thus, Shri Prakashchandra Lavti was fully aware of the actual transaction value of both the export and import of the same consignments, and was hand-in glove in such illegal transaction which resulted in short payment of duties of Customs. Shri Prakashchandra Lavti, being the importer, was involved in such dubious transactions. Therefore, his act of omission and commission has rendered the goods liable for confiscation and therefore he is liable for penalty under Section 112(a) of the Customs Act 1962.



55.2 Shri Nathulal Panalal Lavti, Proprietor of M/ s C K Corporation and also the Partner of M/s. Mitesh Impex and brother of Shri Rameshchandra Lavti, was involved in managing the finances for the fraudulent transactions as discussed above. He was involved in diversion of funds received from M/ s Mitesh Impex to M/s Mahalaxmi Extrusions on the same date. Being a partner of M/s Mitesh Impex and brother of Shri Rameshchadra Lavti, he was fully aware of the modus operandi adopted in this case and abetted in the fraud which resulted in evasion of Customs duty by acting as a conduit for providing funds to the importer M/ s Mahalaxmi Extrusions. Shri Nathulal Lavti grossly failed to explain the reasons for funds received by C.K. Corporation from Mitesh Impex and transferred to M/s. Mahalaxmi Extrusions on the same date. This act of omission and commission of Shri Nathulal Lavti, has rendered the goods liable for confiscation. Shri Nathulal Lavti, is therefore, liable for penalty under Section 112(a) and 114(iii) of the Customs Act 1962.

55.3 Now, considering the role of Shri Rameshchandra Lavti, Partner of M/ s Mitesh Impex, I find that he was the king pin in the entire operation. He has colluded with his brother Shri Prakash Lavti, Partner of M/ s Mahalaxmi Extrusions. This is evident from the statement dated 02.03.2010 of Shri Prakashchandra Lavti, wherein he has stated that Shri Rameshchandra Lavti was his eldest brother and the business deals of M/ s Mahalaxmi Extrusions and M/s Mitesh Impex were negotiated with him. He also colluded with Shri Ankit Changani, Partner of M/s "Darpan General Trading, Dubai which is evident from the statement dated 05.04.2011 of Shri Ankit Changani. that Shri Ramesh Lavti had convinced him and the other overseas firms i.e M/s Remet Trading, FZE, Ajman and M/s ARA Trading to send their export consignment in 'as it is condition' at a lower price/ value to M/s Mahalaxmi Extrusions for which they would be rewarded with a facilitation charge by Shri Rameshchandra Lavti, Partner of M/s. Mitesh Impex. It is also on record that Shri Rameshchandra P Lavti, in his statement dated 11.06.2010 did not explain the payment of Rs. 40,00,000/- made on 31.05.2006 to M/s Mahalaxmi Extrusions and further payments during the period 06.07.2006 to 25.04.2007, i.e. Payments as mentioned in Para 12 of the Show Cause Notice, which clearly indicates *mens rea* on his part and that both the firms were actively involved in the fraud. It is also evident from the records and statements that he was also colluding with Shri Nathulal lavti, another brother and owner of M / s C K Corporation, in managing the finances for both the firms. As per the statement of Shri Dineshbhai Changani Partner of M/ s Amardeep Exports, Shri Rameshchandra Lavti was actually controlling the affairs of M/s. C.K. Corporation. He also managed the services of the CHA M/s Global Marine Corporation in their fraudulent Exiim transactions. It is also a fact on record that he connived with overseas buyers to act according to his directions by paying them some facilitation charges. I find that when confronted with all the evidences, Shri Rameshchandra Lavti in his statement dated 04.08.2011 did not provide legal explanation on the evidences putforth to him. Hence, from all the available evidences on record, I am convinced that Shri Rameshchandra Lavti, Partner of M/ s Mitesh Impex has played the principal role in carrying out the circular trading by effecting fraudulent exports and colluding with M/ s Mahalaxmi Extrusions in evasion of Customs Duty. These acts of commission & omission on the part of Shri Rameshchandra Lavti renders him liable for penalty under Section 112(a) and 114(iii) of the Customs Act 1962. Further, I find that Shri Rameshchandra Lavti had knowingly produced false documents for export and import of his consignments with a deliberate intention to defraud the government. These acts on part had

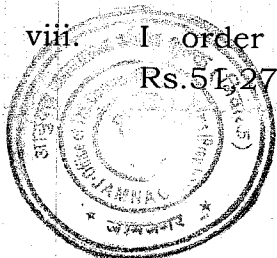


also rendered him liable to penalty under Section 114 AA of the Customs Act 1962.

56. Accordingly, I pass the following order:

ORDER

- i. I order that the Copper & Zinc base alloy Ingots(Brass) exported under 27 Shipping Bills weighing 818.5 MT and valued at Rs.22,28,51,134/- (as per Annexure-A to the SCN) are liable for confiscation under Section 113(i) of the Customs Act 1962. However, since same are not available for confiscation, having been already cleared, I do not impose any redemption fine in lieu of such confiscation.
- ii. I order that the Brass Sanitary fittings/ Brass Builder Hardware weighing 16.595 MT. and valued at Rs.1,39,26,530/- exported under Shipping Bill No.1158958 dated 05.11.2009 (as per Para-26 of the SCN) are liable for confiscation under Section 113(i) of the Customs Act, 1962. However, since the same are not available for confiscation, having been already cleared, I do not impose any redemption fine in lieu of such confiscation.
- iii. I order that the Brass Sanitary fittings weighing 6.313 MT valued at Rs.51,02,798/- exported under Shipping Bill No.1131072 dated 18.08.2008 (as per Para-27 of the SCN) are liable for confiscation under Section 113(i) of the Customs Act,1962. However, since the same are not available for confiscation, having been already cleared, I do not impose any redemption fine in lieu of such confiscation.
- iv. I order that the Brass Sanitary fittings weighing 27.860 MT valued at Rs.2,35,54,145/- exported under five shipping Bills (as per Para-28 of the SCN) are liable for confiscation under Section 113(i) of the Customs Act,1962 . However, since the same are not available for confiscation, having been already cleared, I do not impose any redemption fine in lieu of such confiscation.
- v. I order to restrict the Net Foreign Earnings (NFE) claimed as USD 15049976.00 against the export of five consignment, to USD 8942126.48 (as detailed in Annexure-F of the SCN)
- vi. I order that 1325.97 MT of imported brass scrap, valued at Rs.24,54,45,889/- (as detailed in Annexure C of the SCN) are liable for confiscation under Section 111(o) of the Customs Act,1962 for violation of conditions of the Notification No.52/2003-Customs dated 31.03.2003. However, since the same are not available for confiscation, having been already cleared, I do not impose any redemption fine in lieu of such confiscation.
- vii. I order that of 16.499 MT of imported brass scrap, valued at Rs.24,07,653/- (as detailed in Annexure D of the SCN) are liable for confiscation under Section 111(o) of the Customs Act, 1962, for violation of conditions of the Notification No.52/2003-Customs dated 31.03.2003. However, since the same are not available for confiscation, having been already cleared, I do not impose any redemption fine in lieu of such confiscation.
- viii. I order that of 35.134 MT of imported brass scrap, valued at Rs.54,27,006/- (as detailed in Annexure E to the SCN) are liable for



confiscation under Section 111(o) of the Customs Act, 1962, for violation of conditions of the Notification No.52/2003-Customs dated 31.03.2003. However, since the same are not available for confiscation, having been already cleared, I do not impose any redemption fine in lieu of such confiscation.

- ix. I confirm the demand of Customs Duty amounting to Rs.5,80,17,113/- (as detailed in the Annexure C to the SCN) leviable on 1325.97 MT of brass scrap, in terms of B-1 7 Bond executed by them read with Section 72 of the Customs Act,1962, and/ or under Section 28(4) of the Customs Act,1962, along with interest as applicable under Section 28AA of the Customs Act,1962.
- x. I confirm the demand of Customs Duty amounting to Rs.5,04,187 /- (as detailed in the Annexure D to the SCN) leviable on 16.499 MT of brass scrap, in terms of B-17 Bond executed by them read with Section 72 of the Customs Act, 1962, and/ or under Section 28(4) of the Customs Act,1962, along with interest as applicable under Section 28AA of the Customs Act, 1962.
- xi. I confirm the demand of Customs Duty amounting to Rs.10,73,648/- (as detailed in the Annexure E to the SCN) leviable on 35.134 MT of brass scrap, in terms of B-17 Bond executed by them read with Section 72 of the Customs Act,1962 and/ or under Section 28(4) of the Customs Act,1962, along with interest as applicable under Section 28AA of the Customs Act,1962.
- xii. I impose penalty of Rs.5,95,94,948/- (Rupees Five Crore Ninety Five lakhs Ninety Four Thousand Nine Hundred and Forty Eight Only) on M/s. Mitesh Impex, Jamnagar, under Section 114 A of the Customs Act 1962 plus penalty equal to the applicable interest under Section 28AA payable on the duty demanded and confirmed in (xi), (x) & (xi) hereinabove on M/s. Mitesh Impex, Jamnagar under Section 114A of the Customs Act, 1962, which should be paid by/ recovered from the Noticee forthwith. However, if the duty determined along with interest demanded in (xi),(x) & (xi) hereinabove, is paid within thirty days from the date of the communication of the order, the amount of penalty liable to be paid shall be twenty five per cent of the total duty demanded with interest, in terms of first proviso of section 114A of the Customs Act, 1962, provided that the benefit of reduced penalty under first proviso shall be available subject the condition that the amount of penalty imposed, also has to be paid within thirty days from the date of the communication of the order.
- xiii. I impose penalty of Rs.2,00,00,000 (Rupees Two Crores Only) on Shri Rameshchandra Panalal Lavti under Section 114 AA of the Customs Act 1962.
- xiv. I impose penalties as mentioned below on each of the following persons, under Section 112(a) of the Customs Act, 1962.

Sl. No.	Name of the Noticee	Amount of Penalty (in Rupees)	
		In Figures	In words
1	Shri Prakash Panalal Lavti, Partner of M/s. Mahalaxmi Extrusions, Jamnagar.	25,00,000/-	Twenty five lakhs Only
2	Shri Nathulal Panalal Lavti, Proprietor of M/ s C. K.	25,00,000/-	Twenty five lakhs Only



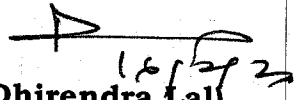
	Corporation, Jamnagar.		
3	Shri Rameshchandra Panalal Lavti, Partner of M/s Mitesh Impex, Jamnagar	1,50,00,000/-	One Crore Fifty Lakhs Only.

xv. I impose penalties as mentioned below on each of the following persons, under Section 114(iii) of the Customs Act, 1962.

Sl. No.	Name of the Noticee	Amount of Penalty (in Rupees)	
		In Figures	In words
1	Shri Prakash Panalal Lavti, Partner of M/s. Mahalaxmi Extrusions, Jamnagar.	25,00,000 /-	Twenty five lakhs Only
2	Shri Nathulal Panalal Lavti, Proprietor of M/ s C. K. Corporation, Jamnagar.	25,00,000 /-	Twenty five lakhs Only
3	Shri Rameshchandra Panalal Lavti, Partner of M/s Mitesh Impex, Jamnagar	2,00,00,000/-	Two Crores Only.

57. It is once again made clear that the present order is restricted to the allegations made against M/s. Mitesh Impex, Shri Prakash Panalal Lavti, Shri Rameshchandra Panalal Lavti, Shri Nathulal Panalal Lavti only, who had filed the R/Special Civil Application before the Hon'ble High Court. The order w.r.t. to the other Noticees shall stand intact as confirmed by Order-In-Original bearing No. OIO-RAJ-EXCUS-OOO-COM-06-14-15 dated 28.05.2014 or Order-In-Original bearing No. JAM-CUSTM-PREV-COM-012-2024-25 dated 18.03.2025 as the case may be.

58. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962, Rules/ Regulations framed thereunder or any other law for the time being in force.


 (Dhirendra Lal)
COMMISSIONER

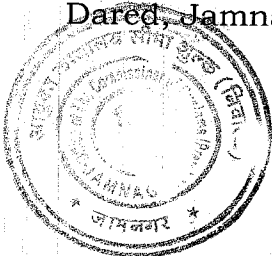
F. No. CUS/5665/2024-Adjn.

Date: 16.02.2026

By Regd. A.D. Post/ Hand delivery/E-mail:

To

1. M/s Mitesh Impex, Plot No.287-289,311&312, GIDC, Phase-II, Dared, Jamnagar/ Now M/s. Lavti Fertilizer & Chemicals Pvt. Ltd., Plot No.3261, GIDC Phase-III, Dared, Jamnagar-361004. [E-mail - lfcplindia@gmail.com]
2. Shri Prakashchandra Panalal Lavti, Partner of M/ s. Mahalaxmi Extrusions, Special Shed No.431, GIDC, Phase-I, Shanker Tekri, Udyognagar, Jamnagar/ C/o M/s. Lavti Fertilizer & Chemicals Pvt. Ltd., Plot No.3261, GIDC Phase-III, Dared, Jamnagar-361004. [E-mail - lfcplindia@gmail.com]



3. Shri Rameshchandra Panalal Lavti, Partner of M/ s. Mitesh Impex, Jamnagar, Plot No.287- 289,311&312, GIDC, Phase-II, Dared, Jamnagar/ M/s. Lavti Fertilizer & Chemicals Pvt. Ltd., Plot No.3261, GIDC Phase-III, Dared, Jamnagar-361004. [Email - lfcplindia@gmail.com]
4. Shri Nathulal Panalal Lavti, Proprietor of M/ s. C.K. Corporation, Special Shed No.431, GIDC, Phase-I, Shanker Tekri, Udyognagar, Jamnagar/ C/o M/s. Lavti Fertilizer & Chemicals Pvt. Ltd., Plot No.3261, GIDC Phase-III, Dared, Jamnagar-361004. [Email - lfcplindia@gmail.com]
5. Shri Sanjay Gandhi, Proprietor, M/ s. Global Marine Agencies, 207- 208, IInd flooi-, Rishabh Corner, Plot No.93, Sector-8, Gandhidham/ 03, Plot No.140, Ward 7-C, Gandhidham, Kutch-370201. [Email - sanjaygandhi@globalmarine.co.in]
6. Shri Ankit Dineshbhai Changani, "Shri RAJ" Opp. Ram Mandir, 1st_ Slope, Gulabnagar, Jamnagar-361002. [Email - ketul.changani@gmail.com]
7. Shri Anand Chandrakant Patel, 3-4, Siddarth Tenaments, Opposite Satya Sai School, Jamnagar-361008.

Copy submitted to:-

1. The Chief Commissioner, Customs Gujarat Zone, Ahmedabad.
2. The Additional Director General, DRI, AZU, Ahmedabad.
3. The Assistant Director, DRI, RU, Jamnagar.
4. The Assistant Commissioner, Customs Division, Jamnagar.
5. The Assistant Commissioner, Systems/ STF, Customs (Prev.), Jamnagar.
6. Guard File.

