



F.No. GEN/ADJ/ADC/2376/2025-Adjn-O/o Commr-Cus-Kandla

Date :29-01-2026

**SHOW CAUSE NOTICE  
(ISSUED UNDER SECTION 124 OF THE CUSTOMS ACT, 1962)**

1. Whereas, M/s. Hazel Mercantile Ltd. (IEC No. 0396030441) (herein after referred to as '**M/s. HML**' or 'the importer' for the sake of brevity), Office No. 4, Plot No. 222, Ward-12B, Gandhidham-370201, Registered Office at 181, Ashoka Shopping Centre, 2<sup>nd</sup> Floor, G.T. Hospital Complex, L.T. Road, Mumbai-400001 having Corporate Office at 'Veritas House, 70 Mint Road, Fort, Mumbai-400001' are engaged in import/export/purchase/sale/trading of various petrochemicals, edible oils, metal, iron ore, polymers etc. including goods declared as 'Naphtha', (the subject goods). M/s. HML got the subject goods cleared at various ports of India.

2. Intelligence gathered by the Directorate of Revenue Intelligence (herein after referred to as "**DRI**") indicated that M/s. HML were importing 'Natural Gasoline Liquid (NGL)/Motor Gasoline/Special Boiling Point Spirit', in the guise of goods declared as 'Naphtha' classifying under CTH 27101229 of Customs Tariff. The intelligence further suggested that an import consignment having around 9600 MT of subject import goods in bulk was imported by M/s. HML at Kandla in vessel MT Arihant (IGM No. 2275863 dated 24.02.2021) and another vessel was already under investigation; that the actual product i.e. NGL /Motor Gasoline/ Special Boiling Point Spirit was a restricted item and could be imported through State Trading Enterprises (STEs) only in terms of Import policy Condition 5 of Chapter 27. Hence, in order to bypass the restrictions imposed on import of goods through STEs, the said importer have mis-declared the subject goods as "Naphtha" and mis-classified the same under CTH 27101229 of Customs Tariff.

3. Acting upon the intelligence, investigation was initiated by DRI in respect of the goods imported by M/s. HML at Kandla Port with the declared descriptions 'Naphtha'. The importer had filed following In Bond/Warehousing Bills of Entry in respect of subject goods imported by them per vessel MT Arihant (**RUD No. 1**): -

S.NO.	WH B/E NUMBER	B/E DATE	DECLARED ITEM DESCRIPTION	DECLARED CTH	BL No. & Date	QTY. (MT)	DECLARED ASSESSABLE VALUE (Rs.)	DECLARED PORT OF LOADING	DECLARED SHIPPER/SUPPLIER
1	3472215	07.04.2021	NAPHTHA	27101229	<b>01</b> dated 18.02.2021	3000	117027095	Sohar, Oman	M/s. Aureole Trading LLC, Dubai, UAE ( <b>as per BE</b> )
2			NAPHTHA	27101229	<b>02</b> dated 18.02.2021	2000	78018063.64	Sohar, Oman	M/s Delta Shipping & Trading LLC, P.O. Box No. 1473, PC322, Sohar, Al Falaz, Sultanate of Oman ( <b>as per BL</b> )
3			NAPHTHA	27101229	<b>03</b> dated 18.02.2021	2000	78018063.64	Sohar, Oman	

4			NAPHTHA	27101229	04 dated 18.02.2021	2621.3	102252814.44	Sohar, Oman	
<b>TOTAL</b>						<b>9621.3</b>	<b>375316037</b>		

**3.1** M/s. HML also imported subject goods declared as 'Naphtha' under CTH 27101229 per vessel MT Tuna in Feb., 2021. However, SCN F.No. GEN/ADJ/ADC/510/2023-Adjn O/o Commr-Cus-Kandla dated 28.03.2023 (CBIC DIN: 20230371ML000072877B) has already been issued for imports made vide vessel MT Tuna for 20110.77 MT of goods declared as 'Naphtha'.

#### **4. Drawl of samples by DRI and Test Reports:**

**4.1** Whereas, on importation of the said subject goods at Kandla port per vessel MT Arihant, representative sample was drawn from the same by the officer of DRI at 'Friend Salt Works & Allied Industries (FSWAI), Liquid Tank Terminal, Kandla' on 26.02.2021. The representative sample were drawn in triplicate and marked as A1, A2 and A3. Out of these three drawn samples on 26.02.2021, one sample A1 was sent by DRI for testing to CH Laboratory Kandla. The sample A1 was sent to the Custom House Laboratory, Kandla for testing vide Test Memo bearing no. 19/2021 dated 02.03.2021 (**RUD No. 2**). After necessary testing, the Chemical Examiner, Custom House Laboratory, Kandla had given their Test Report bearing no. DRI-104 dated 09.03.2021 and reported that the sample under reference is mixture of mineral hydrocarbon oil content more than 70% by weight flashing below 23 °C (Class-A, Petroleum Product) and mentioned therein the readings of test results as under (**RUD No. 3**):

- Density at 15<sup>o</sup>c: 0.7499 gm/ml
- Flash Point: Below 23 °C
- Initial Boiling Point: 92<sup>o</sup>C
- 05% (V/v) Recovered at: 111<sup>o</sup>C
- 10% (V/v) Recovered at: 118<sup>o</sup>C
- 50% (V/v) Recovered at: 132<sup>o</sup>C
- 90% (V/v) Recovered at: 154<sup>o</sup>C
- Final Boiling Point: 174 °C

Further it was opined that "Based on distillation range it is other than Natural Gasoline Liquid (NGL) & Motor Gasoline. Based on Density, Flash Point, Distillation Range, Initial Boiling Point, Final Boiling Point, Bromine Number it may be considered as Naphtha. However, for further opinion may be obtained from CRCL, New Delhi, if necessary."

**4.2** In their report dated 09.03.2021, the CH Laboratory, Kandla did not specify the category of "Naphtha", whether it was Light Naphtha, Heavy Naphtha or Full Range Naphtha, which are classified in terms of the Customs Tariff and ITC (HS) Classification in three different CTH viz. 27101221, 27101222 and 27101229 respectively. Further, in their report dtd. 09.03.2021 itself, the Custom House Laboratory, Kandla had themselves suggested to refer the matter to the CRCL, New Delhi for further queries. Accordingly, the remnant of the sample A1 which was already tested at CH Laboratory Kandla, was sent by DRI for re-testing to the CRCL, New Delhi vide Test Memo dated 15.04.2021. After necessary testing, Joint Director (NFSG), Central Revenues Control Laboratory, New Delhi opined vide report C.No. 27-Cus./C-08/2021-22 dated 01.06.2021 that "The sample is a light oil and

preparation and also meet the requirement of Special Boiling Point Spirit (SBPS)" and mentioned therein the readings of test results as under (**RUD No. 4**): -

- Flash Point: Less than 25 °C
- Ash (% by wt.): Nil
- Density at 15°C: 0.756 gm/ml
- Initial Boiling Point: 108°C
- Temperature (°C) at 5% Recovery: 119 °C
- Temperature (°C) at 10% Recovery: 123 °C
- Temperature (°C) at 50% Recovery: 138 °C
- Temperature (°C) at 90% Recovery: 155 °C
- Final Boiling Point: 172 °C
- Total Aromatics %: 15.35

**4.3** However, earlier vide letter dated 12.05.2021, DRI informed Custom House Kandla that vide Test Report dated 09.30.2021, Custom House Laboratory, Kandla has reported that the imported goods may be considered as Naphtha, hence the detention may not be continued and same may be released. However, since as a matter of abundant precaution, the representative samples for Bill of Entry No. 3472215 dated 07.04.2021 were sent to CRCL, New Delhi too and test report was awaited, it was requested that provisional assessment may be done and adequate security/surety etc. may be resorted. After receiving reports from CRCL, New Delhi wherein the goods were found to be SBPS, request was made by DRI to Commissioner of Customs, Kandla to put on hold the delivery of goods covered under Bill of Entry No. 3472215 dated 07.04.2021.

**4.4** Again, vide letter dated 04.06.2021 addressed to the Joint Director, CRCL, New Delhi (**RUD No. 5**), it was requested to provide clarification with respect to remnant sample forwarded and re-test thereon. Vide letter C.No. 27-Cus/C-08/2021-22 dated 07.06.2021, Joint Director (NFSG), CRCL, New Delhi (**RUD No. 6**) clarified that the sample contains higher carbon numbers than Natural Gas and satisfy SBPS condition in customs tariff.

**5.** Vide letter dated 09.06.2021 and 25.06.2021 issued by Additional Director, DRI Gandhidham RU (**RUD No. 7**), the Commissioner of Customs, CH Kandla was requested that provisions of Section 111 read with Section 110(1A) and 110(1B) of the Customs Act, 1962 are implemented by the 'Proper Officer' of the jurisdictional Customs, rather than by DRI Officer.

**6.** Whereas, in terms of Section V and Chapter 27 of the Schedule 1 pertaining to the Import Policy of the ITC (HS), only the specified State Trading Enterprises are permitted to import the goods falling under Tariff Item No. 27101290. As per Para 2.20 of Foreign Trade Policy 2015-20 as amended, any goods, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). Further, as per the Policy condition stipulated for Chapter 27, import of the goods falling under CTH No. 27101290, are allowed only through IOC subject to para 2.20 of the Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NG's Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL, & IBP, who have been marketing transportation fuels before this date. As the importer M/s. HML was not holding status as STE, hence the import of SBPS made by M/s. HML vide Bill of Entry No. 3472215 dated 07.04.2021, appears to be in

violation of the provisions of the Foreign Trade Policy 2015-20, as extended and for the same, the subject goods appeared to be liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 accordingly.

**7.** Since it appeared that the subject goods were mis-declared, mis-classified and imported contrary to the Import Policy provisions, there was reason to believe that the subject goods imported vide Bill of Entry No. 3472215 dated 07.04.2021 having declared quantity 9621.26 MT (Received Quantity at the installation 9704.504 MTS) and declared Assessable value **Rs. 37,53,16,037/-** (Rupees Thirty-Seven Crores Fifty-Three Lakh, Sixteen Thousand, Thirty Seven only), were liable for confiscation under the provisions of Section 111 of Customs Act, 1962, hence the subject goods then lying at the Liquid Storage Tank Terminal of M/s. Friends Salt Works & Allied Industries, Kandla (hereinafter referred to as "**FSWAI**"), were placed under seizure vide Seizure Memo dated 09.07.2021 under the provisions of Section 110(1) of the Customs Act, 1962 (**RUD No. 8**). The seized goods were handed over to the representative of M/s. FSWAI, Liquid Storage Tank Terminal, Kandla vide Supratnama dated 09.07.2021 for safe custody (**RUD No. 9**). Vide letter F.No. CUS/SIIB/INT/106/2021 dated 13.07.2021, DC (SIIB), CH Kandla informed DRI Gandhidham about seizure. (**RUD No. 10**)

## **8. Court order and other Test Reports:**

**8.1** Custom House Kandla directly sought opinion of CRCL, New Delhi, without bringing the same to the knowledge of DRI, vide their letter dtd. 13.07.2021 referring to the re-test report dated 01.06.2021 of CRCL, New Delhi and the other test reports of private laboratories produced by the importer. In reply to the same, the CRCL, New Delhi vide letter dated 19.07.2021 again confirmed that the sample under reference satisfy the condition of light oil and preparation based SBPS in all three lab reports i.e. Test Report dated 09.03.2021 of the Custom House Laboratory, Kandla, Test report dtd.15.04.2021 of IIP, Dehradun and Re-test report dated 01.06.2021 of CRCL, New Delhi. (**RUD No. 11**). Vide said letter dated 19.07.2021, CRCL, New Delhi submitted that difference was occurring due to PIONA Report, competent authority may ask for 2<sup>nd</sup> re-test as prescribed in CBIC Circular 30/2017-Cus dated 18.07.2017 issued vide F.No. 450/15/2017-Cus IV.

**8.2** During the meantime, M/s HML requested the Commissioner of Customs, Custom House Kandla vide letter dated 14.07.2021 for re-testing of the samples of the cargo imported vide 14.07.2021 (**RUD No. 12**). It is pertinent to mention that vide said letter, M/s HML had submitted that "as per condition stipulated in clause (e) of 30/2017 as mended by 43/2017 Customs can opt to draw a fresh sample from the said imported cargo if the remnant or second sample do not available in the sufficient quantity". However, in the same letter, M/s HML submitted that Investigating Authority has remnant or second sample. Despite, having the remnant as well as duplicate sample, a fresh set of samples were drawn by Custom House Kandla without the knowledge of DRI and in violation of Circular No. 30/2017 dated 18.07.2017.

**8.3** The fresh samples were drawn by the officer of Customs, Kandla and the same were sent by the Custom House, Kandla for testing to M/s. IIP Dehradun and also to the CRCL, New Delhi. The test reports of August, 2021 of IIP, Dehradun and test report dtd. 01.09.2021 of CRCL, New Delhi received in response to the same indicated that the subject goods were Heavy Naphtha'. It would be pertinent to mention here that M/s HML had declared the goods to be Full range naphtha by classifying the goods under CTH No. 27101229. The fresh samples as mentioned were neither drawn in the presence of DRI officer nor any prior or subsequent intimation/information of such sampling and testing

was made available by the Custom House Kandla to the DRI. Further, when second samples A2 and A3 as well as the remnant of remnant sample of Sample A1 from the samples drawn by the DRI on 26.02.2021, were already available with the DRI, about which the Customs House, Kandla was very much aware, the need of drawing fresh samples by the Customs, Kandla was not at all logical and correct. Further, as prescribed vide CBEC Circular No. 30/2017-Cus dated 18.07.2017, Re test should be made only on the remnants of the samples originally tested or on duplicate representative sealed samples in the custody of the Customs Hence, drawl of fresh samples and sending such re-drawn sample to the CRCL, New Delhi and M/s. IIP Dehradun appears to be in violation of the uniform practice prescribed. M/s HML has nowhere challenged that earlier drawn samples were not representative as prescribed in said circular, hence there was no question of drawl of fresh samples.

**8.4** Being aggrieved by the seizure dated 09.07.2021, the importer filed SCA No. 10541/2021 before Hon'ble Gujarat High Court. M/s HML submitted various test reports conducted by CSIR-Indian Institute of Petroleum, Dehradun and M/s TUV India Pvt. Ltd. M/s. HML in the said SCA and claimed that these Test Reports indicated the subject goods as Naphtha.

**8.5** The matter was represented by DRI before the Hon'ble Court regarding the test reports submitted by M/s HML provided by CSIR-Indian Institute of Petroleum, Dehradun and M/s. TUV India Pvt. Ltd. as the samples were drawn by M/s HML. The sample shown to have been drawn from the bonded tanks were without the presence of the Customs officer, and M/s HML had independently sent the sample, without supervision of revenue.

**8.6** Vide Order dated 17.02.2022, Hon'ble High Court of Gujarat made the following observation:

*"8. The picture that emerges as on date is and more particularly, considering the test reports that prima facie, the goods is Naphtha. At this stage, the writ applicant is only concerned with getting his goods released. We are of the view that since there are test reports indicating the goods to be Naphtha, let the goods be released at the earliest on the condition that the writ applicant shall furnish a fresh bond of the amount equivalent to the value of the goods. The bond shall be furnished to the respondent No.1 and upon furnishing such bond, the respondent No.1 shall permit the writ applicant to take delivery of the goods.*

*9. We clarify that if the DRI has any further doubts in the matter, it is always open for the DRI to proceed further with its inquiry in accordance with law. For the present, we are only concerned with the goods. Let the goods be released upon the writ applicant furnishing a bond of the amount equivalent to the value of the goods at the earliest. With the aforesaid, this writ application stands disposed of."*

**9.** During the course of investigation, searches were carried out at the office premises of M/s. HML and other related premises on 25.02.2021.

**9.1.** During the search carried out at the Corporate Office premises of M/s. HML situated at Veritas House, 70, Mint Road, Fort, Mumbai-400001, various incriminating documents, 01 Hard Disc Drive (WD S.No. WXA2AA03ZNT1) containing back up of emails & Tally data , 05 mobile phones of the following key persons, containing data relating to the business activities of M/s. HML and useful for investigation were resumed under Panchnama dated 25.02.2021 (**RUD No. 13**).

**9.2** During the course of search carried out at the Branch Office premises of M/s. HML

declared in the import documents, situated at Naitik Associate's Building, 1<sup>st</sup> Floor, Office No. 4, Plot No. 222, Ward -12B, Gandhidham (Kutch), various incriminating documents, printouts of emails, etc. relating to the business activities of M/s. HML and useful for investigation were resumed under Panchnama dated 25.02.2021 (**RUD No. 14**).

**9.3** At the Registered Office premises of M/s. HML declared in the IEC records, situated at 181, Ashoka Shopping Centre, 2<sup>nd</sup> Floor, GT Hospital Complex, Mumbai-400001, no document/file/record/computer relating to the business activities of M/s. HML was recovered during the search. The procedure of the search is incorporated in the Panchnama dated 25.02.2021 (**RUD No. 15**).

**9.4** During the course of search carried out at the Office premises of M/s. Hemjyot Agency, appointed Customs Broker of M/s. HML, situated at Shivram House, 2<sup>nd</sup> Floor, Plot No. 111, Sector-1/A, Gandhidham (Kutch), various incriminating documents, printouts of emails, Samsung Galaxy Note 9 SM make mobile phone of Shri Pramod Soneta, Partner of M/s. Hemjyot Agency relating to the business activities of M/s. HML and useful for investigation were resumed under Panchnama dated 25.02.2021 (**RUD No. 16**).

**10.** In the course of inquiry, the statements of various persons were recorded, as per the following details:

**10.1. Statement of Shri Satish Gaichor, Associate General Manager-Logistics of M/s. HML was recorded on 25.02.2021 (RUD No. 17).**

In his statement, Shri Satish Gaichor interalia stated that, he was working with M/s. HML as Associate General Manager-Logistics since January, 2017 and he was mainly looking after logistics related work and reporting his day-to-day official activities to Shri Nitin Kumar Didwania, Managing Director of M/s. HML; Shri Satish Gaichor further stated that he came to Gandhidham in connection with the clearance of import consignments of his company imported through vessel MT Tuna and another vessel viz. MT Arihant at Kandla Port. On being asked who was placing orders with the overseas suppliers/shippers/notify parties/agents for import of goods in M/s. HML, Shri Satish Gaichor stated that their Managing Director Shri Nitin Kumar Didwania and Marketing team consisting of Shri Minesh Shah, Director, Shri Saurabh Rajput, Shri Sreyas Choudhary were looking after overall activities relating to placing of orders to overseas suppliers, negotiation of rates, making payments etc. Shri Satish Gaichor further stated that M/s. HML have imported goods having declared description Naphtha through vessels viz. MT Aston I (26801 MT in the month of Nov., 2020), MT Tuna (20111 MT in the month of Feb., 2021) and MT Arihant (9621 MT in the month of Feb., 2021) at Kandla port. On being asked as to whether the said product was actually Naphtha, or otherwise, he stated that he could not comment in this regard as he was not belonging to chemical background and not aware about the actual chemical composition of the product. He told that they were in process to re-export the goods imported vide MT Tuna (20111 MT in the month of Feb., 2021) and MT Arihant (9621 MT in the month of Feb., 2021) at Kandla port. During the course of statement, the official email IDs of Shri Satish Gaichor were logged in by him and some printouts of email conversations were taken. Similarly, printouts of some of the Whatsapp chat conversations were also taken by him and produced to DRI investigating officer as the same were part of his official activities and pertaining to M/s. HML. As regards one of such printout of email conversations dated 23.02.2021, 09.17 PM between Shri Satish Gaichor and one Shri Ranganatha Reshamwala, a Ship broker, he was asked to comment upon remark 'Gasoline' mentioned in the Sr. No. 1 of Table in the said email. Shri Satish Gaichor stated that this email conversation was relating to last 10 port of calls of the vessel MT Trident Trinity which he was chartering for their shipment of declared goods Naphtha from Hamriyah, UAE to Thailand and this shipment was not meant for import to India. As regards one Whatsapp

Chat dated 11.02.2021 between Shri Satish Gaichor and Shri Nitin Kumar Didwania, Managing Director of M/s. HML, he stated that vide this Chat, he had asked their Managing Director regarding supply of Gasoline and Gasoil by M/s. HML as per requirement (specifications) from the buyers; that their Managing Director asked him for report/specifications. On being asked, Shri Satish Gaichor stated that it was not remembered to him whether any further development took place in this regard and whether the said party had supplied them the report/specifications of Gasoline and Gasoil. He added that the details of concerned buyer and said attached specifications, were also not readily remembered /available with him. In the Whatsapp printouts taken by Shri Satish Gaichor from his mobile phone, he told that some conversations were held by him with some brokers; that he did not have complete address, email Id of any of these brokers and assured to provide the same. He further stated that these brokers and Shri Ashok Desai had discussed with him through these Whatsapp chat messages regarding supply of Gasoline and Gasoil and last cargos etc. Shri Satish Gaichor voluntarily surrendered his mobile phone of Samsung make for investigation purpose which was switched off and sealed properly in his presence.

**10.2** Shri Satish Gaichor vide email dated 13.03.2021 (**RUD No. 18**) provided certain details/documents such as list of Directors of M/s. HML, details of some international buyers and details of brokers but failed to provide remaining details/documents i.e. specification/report regarding Gasoline which was discussed by Shri Satish Gaichor and Shri Nitin Kumar Didwania on Whatsapp conversations, status of testing at the time of re-export of goods imported by them per vessel MT Aston-I, etc.

**11.1** The data contained in electronic devices resumed/surrendered during investigation was forensically examined under Panchnama dated 08.03.2021 to 11.03.2021 at Cyber Forensic Laboratory, DRI Zonal Unit, Mumbai (**RUD No. 19**). The data extracted from the electronic devices was exported/stored to destination external Hard Disc Drives as detailed below: -

Sr. No.	Detail of resumed/surrendered electronic device	User/owner of electronic device	Detail of destination external Hard Disc Drive
1	Samsung galaxy S20 Plus	Shri Nitin Kumar Didwania	Toshiba make HDD Sr. No. 80GET0V2TRPG
2	One plus A 6010	Shri Sreyas S. Chaudhary	Toshiba make HDD Sr. No. 80GET0V2TRPG
3	One plus A 6000	Shri Minesh Shah	Toshiba make HDD Sr. No. 80GET0V2TRPG. Whatsapp data could not be extracted due to non-availability of appropriate software and non-support of security patch
4	Redmi Note 7	Shri Saurabh Rajput	Could not be done under this Panchnama. Mobile phone was re-sealed.
5	Iphone X	Shri Rajaram Shanbhag	Toshiba make HDD Sr. No. 80GET0V2TRPG
6	Hard Disc Drive	Containing backup of Tally data, emails etc. of corporate office of M/s. HML	Toshiba make HDD Sr. No. 80GET0URTRPG
7	Samsung SM	Shri Satish Gaichor	Toshiba make HDD Sr. No. 80GET0V2TRPG
8	Samsung Galaxy Note 9SM	Shri Pramod Soneta	Could not be done under this Panchnama. Mobile phone was re-sealed.

**11.2** On examination of data so extracted from the mobile phones of key persons viz. Shri Nitin Kumar Didwania and Shri Satish Gaichor, a number of evidences gathered which

suggest that the subject goods imported by M/s. HML were mis-declared with respect to material particulars such as nature of goods, country of origin, port of loading, name of shipper/supplier etc. Various Whatsapp chat conversations among key persons of importer company and other associates such as actual shipper/supplier/agents/representatives, shipping line representative, etc. were noticed who used to communicate mainly through Whatsapp chat conversations and a Whatsapp group namely '**Light Naphtha Ops**' which was formed to discuss the conspiracy of manipulation of material particulars in the import related documents as it appears.

**12.** In order to gather evidences and to record statement of Shri Nitin Kumar Didwania, Managing Director of M/s. HML, Summons dated 12.03.2021 was issued to him. In response, Shri Nitin Kumar Didwania vide email dated 15.03.2021 sought further date for appearance. Accordingly, another Summons dated 07.04.2021 was issued (**RUD No. 20 col'ly**). Statement of Shri Nitin Kumar Didwania was recorded on 12.04.2021 (**RUD No. 21**).

**12.1.** Shri Nitin Kumar Didwania in his statement inter alia stated that he was Managing Director of M/s. HML which was formed in 1995; that he was looking after overall supervision of entire activities of this company. Shri Nitin Kumar Didwania stated that he did not have any role and responsibility in M/s. Hazel Middle East FZE, UAE and M/s. Verasco FZE, UAE. On being asked, he stated that they had imported Naphtha (Full Range Naphtha) in vessel MT Tuna and MT Arihant during 2020-21. He further stated that as per the documents provided by the supplier, the country of Origin of goods imported in MT Tuna and MT Arihant was Oman; that the supplier of such goods was Aureole Trading LLC (UAE). He added that they were supplied the goods by the supplier stating that the goods were of Oman origin.

**12.2** On being asked whether he/his company/group companies had done any further manufacturing/processing on the goods purchased from the said manufacturer/producer/suppliers and if so what process were done, Shri Nitin Kumar Didwania stated that after importation of goods from the supplier, they brought the goods to their Tank storage terminal and processing plant of M/s. Verasco FZE, UAE, where they sometimes used to do blending of Light Naphtha and/or Heavy Naphtha and /or Full Range Naphtha for cost effectiveness and to meet the standard needed by the buyers but he claimed that the overall nature/specification/classification of the goods imported were not changed by such blending and the CTH remained same (that of the higher quantity goods) after blending.

**12.3** On being asked what was the difference in nature/specifications, uses and rates of Light Naphtha, Heavy Naphtha and Full Range Naphtha and whether the goods imported by them and declared as Light naphtha/Naphtha were extracted from the Natural Gas, Shri Nitin Kumar Didwania explained that the Heavy Naphtha was used usually for raw material of petrochemical production. He added that the Light Naphtha was usually used for manufacturing of polymers and Full Range Naphtha covered Heavy Naphtha and Light Naphtha both; that it was not fix which of the products i.e. Light Naphtha and Heavy Naphtha or Full Range Naphtha was costlier, sometimes Light Naphtha was costlier but sometimes the Heavy Naphtha /Full Range Naphtha was costlier. He further stated that the Final Boiling Point and Density was higher for Heavy Naphtha plus the PIONA (Paraffin, Iso-paraffin, Olefins, Naphthenes and Aromatics) configurations marginally different for Light Naphtha and Heavy Naphtha. He deposed that the Light Naphtha/Naphtha imported by his company seemed to be extracted from Natural Gas.

**12.4** Shri Nitin Kumar Didwania was shown statement dated 25.02.2021 of Shri Satish Gaichor, Associate General Manager-Logistics of M/s. HML. On being asked to comment

regarding correctness of facts stated by him, Shri Nitin Kumar Didwania stated that the facts relating to him/M/s. HML mentioned in the statement were true. As regards the Whatsapp Chat dated 11.02.2021 between Shri Satish Gaichor and Shri Nitin Kumar Didwania regarding supply of Gasoline and Gasoil by M/s. HML as per requirement (specifications) from the buyers, Shri Nitin Kumar Didwania stated that there are several business activities Shri Satish Gaichor was doing as he was looking after logistic work, and he (Shri Nitin Kumar Didwania) had asked the report like parameters of Gasoline/Naphtha which the buyers intended to buy/sell. On being further asked who were the buyers requested for supply of Gasoline in that case and from whom/where they/M/s. HML used to arrange Gasoline, Shri Nitin Kumar Didwania stated that neither Shri Satish Gaichor had told him, nor he was aware who was the buyer in that case; that they had not supplied Gasoline to any buyer.

**12.5** Shri Nitin Kumar Didwania was apprised that in his statement dated 25.02.2021, Shri Satish Gaichor explained that some brokers namely Shri Shyam Tiwari, CAFS (Coal & Freight Services), Ahmedabad, Shri Sreejith, Dubai, Nikhil of Braemer/La Mer, Renganath of Reshamwala, Dubai etc and Shri Ashok Desai, Head of Department-Logistics of M/s. HML had discussed with him regarding supply of Gasoline and Gasoil and last cargos etc. through Whatsapp chat messages.

**12.6** Shri Nitin Kumar Didwania was asked who was Vishal Goyal and what business relations were there between Shri Nitin Kumar Didwania/M/s. HML and Shri Vishal Goyal. He was also asked to provide complete details such as name, address, Mb. No., email Id of Shri Vishal Goyal and companies/firms owned by Shri Vishal Goyal as well as Qty.& description of goods sold/purchased through him etc. In response, Shri Nitin Kumar Didwania stated that Shri Vishal Goyal was their employee in M/s. Hazel Middle East FZE; that his mobile number was 971501766413 and email Id was vishal.g@groupeveritas.com.; that he would provide other details within two days as the same were not readily available with him; that since he was their employee, no goods were sold/purchased through Shri Vishal Goyal. Shri Nitin Kumar Didwania did not provide further details about Shri Vishal Goyal.

**12.7** Shri Nitin Kumar Didwania was shown Panchnamas dated 25.02.2021 drawn at their Gandhidham office premises, Regd. Office premises as well as corporate office premises at Mumbai in respect of search proceedings conducted by the officers of DRI and some documents/electronic devices including his Samsung make mobile phone were resumed in his presence. He was apprised that the data contained in the said mobile phone was extracted under Panchnama dated 08.03.2021 to 11.03.2021. The said Panchnamas were also shown to him for perusal as per which the data contained in his said mobile phone was extracted and exported/stored to external Hard Disc Drive bearing S/N 80GET0V2TRPG. Shri Nitin Kumar Didwania after seeing the data contained in the Hard Disc Drive bearing S/N 80GET0V2TRPG which included the data of his mobile phone which was resumed under Panchnama dated 25.02.2021, explained the selected content thereof and supplementary question thereto as under: -

Sr. No	Chat Details	Body /content of Chat	Supplementary Question and /or Comments/explanation of Shri Nitin Kumar Didwania
1.	Start Time: 18-07-2020 09:14:52(UTC+0) Last Activity: 25-02-2021 08:04:38(UTC+0)  Participants: 989127025761@s.whatsapp.net	989127401664@s.whatsapp.net created group "Light Naphtha ops"	Q:- Who created the said Whatsapp Group and please inform about the members of the said group alongwith their whereabouts?  Ans:- This group was created by Ms. Sabina of Trilliance Petrochemical Ltd., one of t

	<p>p.net Omid, 971501159789@s.whatsapp.net Alex Ab y. Hif, 989123377852@s.whatsapp.net Ali. Trilliance, 989127401664@s.whatsapp.net Saba.trilliance. Ali, 989035386365@s.whatsapp.net FJ, NitinDidwania</p> <p>System Message System Message Timestamp: 18-07-2020 09:14:52(UTC+0) Source App: WhatsApp</p>	<p>he group representative of suppliers.</p> <p>Other members /Participants of this WhatsApp group are as follow: - 989123377852@s.whatsapp.net Ali. Trilliance, 989127025761@s.whatsapp.net Omid and 989035386365@s.whatsapp.net FJ are other representatives of suppliers group. I am not aware about their full name and other whereabouts.</p> <p>971501159789@s.whatsapp.net Alex Ab y. Hif, and me are representative of our company.</p>	
2.	<p>From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 13:50:57(UTC+0) Source App: WhatsApp</p>	<p>for tuna, since AIS will be off. is it ok to do do x of oman without entering to sohar anchorage? i afraid vessel arrest order is circulated in all GCC countries</p>	<p>Q:- When MT Tuna did not reach Oman, why port of loading was mis-declared as Sohar, Oman for subject goods imported in vessel MT Tuna?</p> <p>Ans: - The Bills of Entry were filed by us as per the documents received from the supplier. We have just placed orders for supply of Naphtha. No benefit of country of origin was availed by us, and there is no revenue implication and hence there was no malafide intention on our part behind this.</p>
3.	<p>From: Nitin Didwania (owner) Timestamp: 31-01-2021 13:58:43(UTC+0) Source App: WhatsApp</p>	<p>Do we have Iraq doxs for this</p>	<p>Q: - What did you manage with Iraq documents? Please provide such documents.</p> <p>Ans: - I will ask the suppliers to provide such Iraqi documents if possible and will revert back accordingly within a week time.</p>
4.	<p>From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 13:59:30(UTC+0) Source App: WhatsApp</p>	<p>yes we have</p>	
5.	<p>From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 14:01:58(UTC+0) Source App: WhatsApp</p>	<p>shall we come with iraq dox to kandla?</p>	
6.	<p>From: Nitin Didwania (owner) Timestamp: 31-01-2021 16:01:21(UTC+0) Source App: WhatsApp</p>	<p>Yes. We will manage</p>	
7.	<p>From: Nitin Didwania (owner) Timestamp: 01-02-2021 09:17:45(UTC+0) Source App: WhatsApp</p>	<p>Saba, my logistic says that for tuna, we cannot do Iraq. We need to adport on bl to be either sohar, khorfakkan, or sharjah. I do not need other docs like coo etc.</p>	<p>Q: - It shows all acts of mis-declaration were done with your active consent and supervision. Why did you do so. Please comment.</p> <p>Ans: - The Bills of Entry were filed by us as per the documents received from the supplier. We have just placed orders for supply of Naphtha. No benefit of country of origin was availed by us, and there is no</p>

			<i>o revenue implication and hence there was no malafide intention on our part behind this.</i>
8.	From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 01-02-2021 11:15:21(UTC+0) Source App: WhatsApp	<i>And idont feel safe for entering into port limits of sohar</i>	<i>Q: - Why did you not provide the documents to Customs having correct material particulars?</i>
9.	From: Nitin Didwania (owner) Timestamp: 01-02-2021 11:34:38(UTC+0) Source App: WhatsApp	<i>Ais is manageable, but even in india they may ask for last port clearance.</i>	<i>Ans: - The Bills of Entry were filed by us as per the documents received from the supplier. We have just placed orders for supply of Naphtha. No benefit of country of origin was availed by us, and there is no revenue implication and hence there was no malafide intention on our part behind this. The import was legitimately done and the purchase was under LC from Indian bank.</i>
10.	From: Nitin Didwania (owner) Timestamp: 01-02-2021 11:35:33(UTC+0) Source App: WhatsApp	<i>Sts may be difficult... try. If nothing else works out, we will bring the cargo to India with Iraq and I will manage but that is the last option.</i>	
11.	From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 01-02-2021 11:53:49(UTC+0) Source App: WhatsApp	<i>We can still get sohar docs.</i>	
12.	From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 01-02-2021 11:54:10(UTC+0) Source App: WhatsApp	<i>Maybe we use last port clearance as iraq pc?</i>	
13.	From: Nitin Didwania (owner) Timestamp: 01-02-2021 11:55:27(UTC+0) Source App: WhatsApp	<i>Seems fine. This may work. Pls go ahead</i>	
14.	From: 989127025761@s.whatsapp.net Omid Timestamp: 03-02-2021 05:44:43(UTC+0) Source App: WhatsApp	<i>I'm preparing Sohar docs. Will share them with you once ready</i>	
15.	From: 989127025761@s.whatsapp.net Omid Timestamp: 03-02-2021 10:39:33(UTC+0) Source App: WhatsApp	<i>@971501159789 is it possible to change the name of the shipper? The guy who provides these docs in Sohar for us uses their company and issues docs usually and can later support those docs this way to be safe</i>	<i>Q: - Who was the guy and his company who used to provide you the documents having manipulated/incorrect material particulars?</i>  <i>Ans: - I am not aware. I will inquire with the sender of this message and will revert within a week time.</i>
16.	From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 03-02-2021 10:50:35(UTC+0) Source App: WhatsApp	<i>@989127025761 as discussed, we can use Delta shipping and trading LLC as the Shipper.</i>  <i>We did the same last time for Aston 1, which went to india</i>	<i>Q: - It appears that similar mal-practice of mis-declaration of material particulars was being done for subject goods imported in vessels MT Aston I, MT Tuna and MT Arihant? Please comment. What is the actual role of Delta shipping and trading LLC in the import made by you/your company in said three vessels viz. MT Aston I,</i>

17.	From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 03-02-2021 10:51:18(UTC+0) Source App: WhatsApp	Also as discussed, pls ask the Delta team only to change the shipper and balance all to remain same as per the DI provided	MT Tuna and MT Arihant?  Ans: - As stated above, it is possible that M/s. Aureole Trading LLC, UAE had arranged the said goods through M/s. Delta Shipping & Trading LLC, Sohar, Oman, accordingly, the Bills of Lading are containing shipper details as M/s. Delta Shipping & Trading LLC, Sohar, Oman
18.	From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 04-02-2021 10:25:03(UTC+0) Source App: WhatsApp	Attachments: # 1: chats\WhatsApp_Nature\attachments576\thumb_Tuna BL_02 (3000 MT) -1.jpg Body:	
19.	From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 04-02-2021 10:25:03(UTC+0) Source App: WhatsApp	1. HS CODE CHANGE D IN ALL OBLs. 2. LC DETAILSADDED IN 6 & 7	Q: - What was actual /original HS Code which was changed?  Ans: - The change was in the CTH of light Naphtha and Full Range Naphtha.

The relevant Whatsapp Chat files being voluminous were copied to CD/DVD (in two sets) and the same were placed in paper envelope duly signed by Shri Nitin Kumar Didwania and sealed in such a manner that the data contained in these CD/DVD cannot be tampered without breaking the seal/paper envelope. All such electronic evidences have **already been provided** to all noticees vide SCN F.No. GEN/ADJ/ADC/510/2023-Adjn O/o Commr-Cus-Kandla dated 28.03.2023 (CBIC DIN: 20230371ML000072877B).

**12.8** On being asked as to whether there was difference in the rate of Iraq/Iran origin goods and Oman origin goods, Shri Nitin Kumar Didwania stated that the prices of Iraq/Iran origin goods and Oman origin goods are decided as per Mean of Platts Arab Gulf and there was only difference in freight;

**12.9** Shri Nitin Kumar Didwania was shown various images/documents extracted from his mobile phone resumed under Panchnama dated 25.02.2021. On being asked, he explained the content of the images/documents as under: -

Page No. of made-up file containing the images/documents extracted from his mobile phone of Shri Nitin Kumar Didwania	Comments/explanation of Shri Nitin Kumar Didwania
1-131	It is term tender document issued by Ceylon Petroleum Corporation, Sri Lanka. We are not registered with them. Since it is Gasoline, we have not pursued with this.
133-145	We had made a presentation to BPCL for several business possibilities including discussion of Gasoline, however, nothing has been materialized as yet.
147-155	Proposals from international market/Pakistan State Oil Co. Ltd. regarding supply of Naphtha, Gasoline etc. and sample Analysis report.
157-165	Copy of cheques/payment particulars to M/s. Trio Energy DMCC.

167-177	Trade Licenses and other documents issued by Govt. of Dubai in respect of M/s. Aureole Trading LLC.
179-237	Documents relating to supply of goods from origin country in vessel MT Tuna and other vessels <b>(RUD No. 22)</b>
239-295	Printouts/screenshots of whatsapp chat conversations with suppliers and other associates <b>(RUD No. 23)</b>
297-307	Documents relating to market offers of Kerosene, Gasoline, Bituminetc. <b>(RUD No. 24)</b>
309-319	Internal-office discussion note regarding possibilities in business of Gasoline, Kerosene etc. <b>(RUD No. 25)</b>
321-343	Misc letter heads of parties, stamps impression etc. to prepare documents. These may have been sent on whatsapp. I will check and will revert back within a week time. <b>(RUD No. 26)</b>

**12.10** On being specifically asked as to whether M/s. HML were holding status as STE, Shri Nitin Kumar Didwania replied in negative saying 'no'. He was further apprised that it appeared that goods classifiable as 'Others' category i.e. 27101290 and accordingly, import thereof was restricted to STEs only.

**13.** Inquiries were made in this case with M/s. HML and concerned banks with respect to the product name mentioned in the Contracts/agreement entered by the importer with overseas suppliers and Letters of Credit and supporting documents relating to payment made to overseas suppliers for purchase of imported goods. It appears that though the contract made by M/s. HML with the declared supplier M/s. Aureole Trading LLC appears façade, the terms of said contract dtd.11.01.2021 was for supply of Light Naphtha, which was revised on 27.01.2021 as Naphtha only, without any specification and the similar contract dtd.04.02.2021 was made by them for supply of Naphtha without any specific range. It further appears that while opening the LC with the Punjab National Bank, the importer had made reference to revised contract dtd.27.01.2021, but HS Code of the product Naphtha was declared to be 27101221, which is assigned to Light Naphtha. Against this, the Invoices, B/L and other shipping documents pertaining to the consignment mentioned the HS Code of the goods supplied as 27101229, which relates to Full Range Naphtha.

From above, there appeared no consistent stand of M/s. HML in respect of product name and correct classification of the goods and they also failed to validate the documents presented by them with the declarations they had made in the respective Bills of Entry.

**1 4 .** During the course of investigation, Summons were issued to various persons which includes officials of M/s HML, representative of Overseas Associates of M/s. HML, etc. to gather evidence and to explain and clarify such evidences gathered during investigation. The outcome and status of Summons is as under: -

S. No.	Name of Person (Shri/Smt./Ms.)	Designation/ Company /connection with present case	Date of Summons issued	Date given for appearance	Outcome/status of Summons
1	Nitin Kumar Didwania	Managing Director, M/s. HML	08.12.2021, 29.12.2021, 10.01.2022, 12.01.2022	24.12.2021, 31.12.2021, 12.01.2022, 18.01.2022	Neither details/documents provided, nor appeared

2	Rajaram Shanbhag	M/s. HML	13.09.2021, 08.12.2021, 10.01.2022	30.09.2021, 16.12.2021, 13.01.2022	Neither details/documents provided, nor appeared
3	Minesh Shah	Director, M/s. HML	13.09.2021, 08.12.2021, 10.01.2022	29.09.2021, 17.12.2021, 13.01.2022	
4	Sreyas S. Choudhary	Sr. Vice President, M/s. HML	13.09.2021, 08.12.2021, 10.01.2022	27.09.2021, 20.12.2021, 11.01.2022	
5	Saurabh Rajput	Manager(Procurement)	13.12.2021, 10.01.2022	28.12.2021 (11 AM), 12.01.2022	Neither details/documents provided, nor appeared
6	Ashok Desai	Head of Department-Logistics	28.12.2021, 10.01.2022	08.01.2022 (4 PM), 17.01.2022	Neither details/documents provided, nor appeared

**15.** In above context, Criminal Complaints under Section 174,175,176 of Indian Penal Code, 1860 have been filed against following persons before Hon'ble Additional CJM Court, Gandhidham :-

- i. Shri Nitin Kumar Didwania (Cr. Complaint No. 6248 /2022)
- ii. Shri Rajaram Shanbhag (Cr. Complaint No. 6246/2022)
- iii. Shri Minesh Shah (Cr. Complaint No. 6245 /2022)
- iv. Shri Sreyash Chaudary (Cr. Complaint No. 6249/2022)
- v. Shri Saurabh Rajput (Cr. Complaint No. 6247 /2022)

**16. FROM MOBILE PHONE OF SHRI NITIN KUMAR DIDWANIA, MANAGING DIRECTOR, M/S. HML: -**

**16.1.** The illustrative Whatsapp Chat conversations retrieved from the mobile phone of Shri Nitin Kumar Didwania, Managing Director of M/s. HML has been covered in the abstract of his statement narrated above. There was discussion regarding supply /business of Gasoline in various documents /images recovered from his mobile phone. Also, there were Misc letter heads of parties, stamps impression etc. for which Shri Nitin Kumar Didwania in his statement dated 12.04.2021 stated that the same were to prepare documents and may have been sent on whatsapp. Despite issuance of further Summons, Shri Nitin Kumar Didwania avoided to provide any details/information/documents in this regard. This act of reluctance and non-cooperation on his part clearly indicates the aspect of manipulation of import documents.

**16.2.** It is revealed that in the Whatsapp group '**Light Naphtha Ops**', entire conspiracy of mis-declaration and manipulation of documents is discussed among the key persons including Shri Nitin Kumar Didwania, Managing Director of M/s. HML and their overseas associates. The illustrative chat messages of said Whatsapp group 'Light Naphtha Ops' appear to be pertaining to subject goods imported per vessel MT Tuna and MT Arihant are tabulated hereunder: -

Chat details	Body /Chat content
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 22-01-2021 07:09:13(UTC+0) Source App: WhatsApp	Also pls find below documentry instructions for 20 KT Kharg vessel mt Tuna
From: 971501159789@s.whatsapp.net	@989127025761 @989127401664 pls share the docs for Tuna and the shipment docs

<p>Alex Aby. Hif  Timestamp: 27-01-2021  05:59:57(UTC+0)  Source App: WhatsApp</p>	
<p>From:  971501159789@s.whatsapp.net  Alex Aby. Hif  Timestamp: 27-01-2021  06:00:09(UTC+0)  Source App: WhatsApp</p>	Pls aslo share the load port quality report
<p>From:  971501159789@s.whatsapp.net  Alex Aby. Hif  Timestamp: 28-01-2021  05:20:34(UTC+0)  Source App: WhatsApp</p>	@989127025761 pls advise on the status of MT Tuna
<p>From:  971501159789@s.whatsapp.net  Alex Aby. Hif  Timestamp: 28-01-2021  05:20:45(UTC+0)  Source App: WhatsApp</p>	Also the documentation for the same
<p>From: Nitin Didwania (owner)  Timestamp: 28-01-2021  06:36:07(UTC+0)  Source App: WhatsApp</p>	Omid, in the quality analysis, they have missed the oxygenates, can you pls try o get the same.
<p>From:  989127401664@s.whatsapp.net  Saba.trilliance. Ali  Timestamp: 28-01-2021  07:25:33(UTC+0)  Source App: WhatsApp</p>	Hi Mr Nitin, they have recently operational issue in Abadan and thsts why cargo is on deep discount. I had not experience of their heavy cargo before. But their light cargo has like 1000 ppm oxy. Better we test in india and see.
<p>From: Nitin Didwania (owner)  Timestamp: 29-01-2021  12:33:17(UTC+0)  Source App: WhatsApp</p>	Noted. Good. Only problem is that this cargo is high oxy, I could have blended partial cargo as the oxy of kharg was high.
<p>From:  971501159789@s.whatsapp.net  Alex Aby. Hif  Timestamp: 29-01-2021  12:39:45(UTC+0)  Source App: WhatsApp</p>	We need to do internal transfer documentation first
<p>From:  971501159789@s.whatsapp.net  Alex Aby. Hif  Timestamp: 29-01-2021  12:39:56(UTC+0)  Source App: WhatsApp</p>	In the name of Aureole
<p>From: Nitin Didwania (owner)  Timestamp: 30-01-2021  07:36:07(UTC+0)  Source App: WhatsApp</p>	Since the tuna is under problem, it is best that we take possession of our material as early as possible.
<p>From:  989127401664@s.whatsapp.net  Saba.trilliance. Ali  Timestamp: 31-01-2021  04:47:29(UTC+0)  Source App: WhatsApp</p>	Hi @971501159789 has tuna been accepted in kamdla?

From: Nitin Didwania (owner) Timestamp: 31-01-2021 07:59:01(UTC+0) Source App: WhatsApp	Tuna to kandla seems to be ok.
From: Nitin Didwania (owner) Timestamp: 31-01-2021 08:05:08(UTC+0) Source App: WhatsApp	Let me know if finally we are planning for tuna to come to India. We have sold some cargoes locally and arihant is further delayed.
From: Nitin Didwania (owner) Timestamp: 31-01-2021 08:05:41(UTC+0) Source App: WhatsApp	Also, do not forget to pressurise kharg for rebate because of off spec cargo to us.
From: Nitin Didwania (owner) Timestamp: 31-01-2021 08:12:25(UTC+0) Source App: WhatsApp	Since the delivery to jg summit and yncc is delayed..... we will have to sail out asap. Actually topping up is a practical and cost effective mechanism but we will not be able to justify delay and origin as well
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 09:15:40(UTC+0) Source App: WhatsApp	Shall we keep ais off till kandla?
From: Nitin Didwania (owner) Timestamp: 31-01-2021 09:47:00(UTC+0) Source App: WhatsApp	Yes pls
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 13:50:57(UTC+0) Source App: WhatsApp	for tuna, since AIS will be off. is it ok to do dox of oman without entering to sohar anchorage? i afraid vessel arrest order is circulated in all GCC countries
From: Nitin Didwania (owner) Timestamp: 31-01-2021 13:58:43(UTC+0) Source App: WhatsApp	Do we have Iraq doxs for this
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 13:59:30(UTC+0) Source App: WhatsApp	yes we have
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 31-01-2021 14:01:58(UTC+0) Source App: WhatsApp	shall we come with iraq dox to kandla?
From: Nitin Didwania (owner) Timestamp: 31-01-2021 16:01:21(UTC+0) Source App: WhatsApp	Yes. We will manage
From: Nitin Didwania (owner) Timestamp: 01-02-2021 09:17:45(UTC+0) Source App: WhatsApp	Saba, my logistic says that for tuna, we cannot do Iraq. We need loadport on bl to be either sohar, khorfakkan, or sharjah. I do not need other docs like coo etc.
From:	And idont feel safe for entering into port limits of sohar

989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 01-02-2021 11:15:21(UTC+0) Source App: WhatsApp	
From: Nitin Didwania (owner) Timestamp: 01-02-2021 11:34:38(UTC+0) Source App: WhatsApp	Ais is manageable, but even in india they may ask for last port clearance.
From: Nitin Didwania (owner) Timestamp: 01-02-2021 11:35:33(UTC+0) Source App: WhatsApp	Sts may be difficult.... try. If nothing else works out, we will bring the cargo to India with Iraq and I will mange but that is the last option.
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 01-02-2021 11:53:49(UTC+0) Source App: WhatsApp	We can still get sohar dox.
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 01-02-2021 11:54:10(UTC+0) Source App: WhatsApp	Maybe we use last port clearance as iraq pc?
From: Nitin Didwania (owner) Timestamp: 01-02-2021 11:55:27(UTC+0) Source App: WhatsApp	Seems fine. This may work. Pls go ahead
From: 989127025761@s.whatsapp.net Omid Timestamp: 03-02-2021 08:58:00(UTC+0) Source App: WhatsApp	Also please let me know if you are OK with the below timings for Tuna. NOR Sohar Jan 30th  48 hours of loading  Completion of loading Feb 2nd early AM hours
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 03-02-2021 09:32:40(UTC+0) Source App: WhatsApp	@989127025761 pls find attached the draft BL and DI for MT Tuna
From: 989127025761@s.whatsapp.net Omid Timestamp: 03-02-2021 10:39:33(UTC+0) Source App: WhatsApp	@971501159789 is it possible to change the name of the shipper? The guy who provides these docs in Sohar for us uses their company and issues docs usually and can later support those docs this way to be safe
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 03-02-2021 10:50:35(UTC+0) Source App: WhatsApp	@989127025761 as discussed we xan use Delta shipping and trading LLC as the Shipper. We did the same last time for Aston 1, which went to india
From: 971501159789@s.whatsapp.net Alex Aby. Hif Timestamp: 03-02-2021 10:51:18(UTC+0) Source App: WhatsApp	Also as discussed, pls ask the Delta team only to change the shipper and balance all to remain same as per the DI provided

From: Nitin Didwania (owner) Timestamp: 03-02-2021 14:22:52(UTC+0) Source App: WhatsApp	Saba, is it possible to get a typical of the balance light with the oxy and olefin.
From: 989127401664@s.whatsapp.net Saba.trilliance. Ali Timestamp: 04-02-2021 05:26:41(UTC+0) Source App: WhatsApp	They are using the light nap for blending of gasoline

On the basis of the chats, it appears that Shri Nitin Kumar Didwania, Managing Director of M/s HML in connivance with their associates manipulated the material particulars such country of origin, port of loading, shippers/suppliers details etc. in the import documents to be submitted with Customs authorities Kandla. From the chat conversations indicating blending/changing of parameters/specifications, it appears that these persons have altered/manipulated the nature of goods also and finally the subject goods imported at Kandla tested and found to be 'Special Boiling Point Spirit (SBPS)'. On the basis of above chats and documents discussed above that the subject goods were loaded from Basrah Iraq and were originated in Iraq whereas the same were mis-declared in the import documents submitted with Kandla Customs as loaded from Sohar, Oman and originated from Oman.

#### **17. FROM MOBILE PHONE OF SHRI SATISH GAICHOR, ASSOCIATE GENERAL MANAGER-LOGISTICS, M/S. HML: -**

##### **Chat No. 1789 with Shri Abby-Alex:-**

<b>Sr. No.</b>	<b>Chat Details</b>	<b>Body</b>
	From: 918291990409@s.whatsapp.net SG (owner) Timestamp: 30-01-2021 1:37:32 PM(UTC+0) Source App: WhatsApp	Body: <b>VV IMP:</b> 1. We need a full survey of quality with the oxygenates. Same has to be done on priority and reports to be shared on priority prior vessel sailing to Kandla. 2. WATER CONTENT ANALYSIS REPORT TO BE SEPARATELY INFORMED (NOT PART OF MAIN REPORT). 3. <b>All docs must mention "NAPHTHA" as product</b>

#### **18. Statement of Shri Bharat J. Goswami, Terminal Manager of M/s. FSWAI, Khar Rohar Road, Kandla, Kutch was recorded under Section 108 of the Customs Act, 1962 on 23.12.2021 (RUD No. 27).**

In his statement, Shri Bharat J. Goswami interalia stated that he was working as Terminal Manager in M/s. FSWAI, Khar Rohar Road, Kandla; that his firm was acting as public warehouse and their liquid terminal was declared as landing place under Section 8(a) of Customs Act, 1962 and appointed as 'Public Bonded Warehouse' under Section 57 of Customs Act, 1962. Shri Bharat J. Goswami stated that for warehousing of goods, the importers used to intimate them through email about arrival of vessel, description of goods and quantity and accordingly, they allot the tanks as per description of goods intimated by the importer; that no document showing description of the import goods was being submitted by the importers while requesting for warehousing of import goods; On being asked further, he stated that their firm started storage/warehousing for consignments of M/s. HML before his joining in FSWAI firm and he used to contact Shri Satish Gaichor of M/s. HML for business activities. He further stated that the intimation of arrival of vessels carrying import goods for M/s. HML with respect to three import consignments imported in

vessel MT Aston-I, MT Tuna and MT Arihant were given to them by the said importer vide email dated 02.11.2021, 04.02.2021 and 19.02.2021 respectively; that the said importer declared the description of import goods in those email as Naphtha (Light), Naphtha and Naphtha respectively. Shri Bharat J. Goswami further stated that they allotted them (M/s. HML) the tanks prescribed for Naphtha/Light Naphtha by the competent authority. He also provided Tank wise quantity received in their terminal with respect to MT Arihant as under:

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Name of the vessel	Goods declared by importer	Quantity declared by importer in email intimation (MT)	Quantity Actually received (MT)	Quantity Actually received (Ltr)	Tanks allotted
MT Arihant	Naphtha	9621.26	9704.504	13062665.3	319,531,533,538

On being asked further, he stated that all the tanks mentioned above were authorized/nominated by Naphtha License issued by District Magistrate, Kachchh-Bhuj. In this regard, he submitted copy of such Naphtha License and (Petroleum and Explosive Safety Organization (PESO) Licenses issued by Controller of Explosives, Vadodara to their firm, duly signed by him. On being asked, Shri Bharat J. Goswami stated that M/s. TUV India Pvt. Ltd. were surveyors appointed by M/s. HML for said three import consignments. He stated that any intimation of re-export was received by him/or his firm from M/s. HML; He stated that the warehoused goods pertaining to vessel MT Arihant, they had received Release Order dated 01.06.2021 from Customs and they already provided Out of Charged Warehousing Bill of Entry bearing no. 3472215 dated 07.04.2021 as well as some Ex-Bond Bills of Entry for domestic clearance; however, following the directions as per another letter dated 03.06.2021 of Assistant Commissioner (Bond) Customs, the delivery of such out of charged goods were stopped by them. On being asked further why they had accepted the goods imported by M/s. HML per said vessels which were other than that of mentioned in their Licenses issued by competent authority, Shri Bharat Goswami stated that they had accepted the goods on the basis of email received from the importer wherein they had declared the subject goods as Naphtha (Heavy/ Light/Full Range) instead of NGL/SBPS; that declaring the product as Naphtha (Heavy/ Light/Full Range) in the relevant documents was not the decision of his firm /terminal. He further added that in the documents provided by the importer and/or their appointed Customs Broker as later stage also, those documents were also containing product name as Naphtha (Full Range Naphtha)/Light Naphtha so they were not aware about the actual nature/description of the subject goods. On being asked whether his firm/terminal was authorized to store/warehouse goods such as NGL (NGL) and Special Boiling Point Spirit (SBPS) and if so what further cautions/arrangement were required to be made for storing warehousing such goods in their terminal, he stated that he was not aware about the same; that he would discuss with his management and would revert within 02 days but no further response was received from him.

**19. Statement of Shri Pramod Dharamshi Soneta, Partner of Customs Broker firm M/s. Hemjyot Agency, was recorded under Section 108 of the Customs Act, 1962 on 21.12.2021(RUD NO. 28).**

**19.1** In his statement, Shri Pramod Dharamshi Soneta interalia stated that he was looking after the overall supervision and control on the business activities of M/s Hemjyot Agency; Shri Pramod Soneta further stated that the vessel MT Arihant arrived at Kandla port on 24.02.2021 and the discharge permission for the goods were granted by officer of CH, Kandla vide Discharge Permission no. 1957 dated 22.02.2021; that the Warehouse Bill of Entry for the said consignment was filed on 07.04.2021; He explained that as per Section 46

of Customs Act, 1962, the Bill of Entry may be presented at any time not exceeding thirty days prior to the expected arrival of the vessel by which the goods had been shipped for importation into India; that due to same there was delay in filing of Warehousing Bill of Entry in respect of goods imported per vessel MT Arihant which attracted action under Section 48 of Customs Act, 1962. He further added that the importer M/s. HML requested the competent authority of Customs for waiver of action under Section 48 of Customs Act, 1962 and the same was accepted, however, a penalty of Rs. 4,05,000/- was imposed upon M/s. HML for delay in filing of Bill of Entry and the same was paid by the said importer on 25.05.2021. On being asked being a Customs Broker why he had not suggested the importer to file the Bill of Entry for goods importer per vessel MT Arihant within the stipulated time period, Shri Pramod Soneta stated that he had repeatedly requested Shri Nitin Kumar Didwania, Managing Director of M/s. HML to file the Bill of Entry but he (Shri Nitin Kumar Didwania) had given directions not to file the Bill of Entry until and unless he directed to do so; that on 30.03.2021, Shri Nitin Kumar Didwania asked him (Shri Pramod Soneta) to send check list and accordingly they (M/s. Hemjyot Agency) sent the same and on receipt of approval from the said importer, the warehousing Bill of Entry was filed. On being asked further to provide the reasons/reply /application made by M/s. HML in connection to waiver of action under Section 48 of Customs Act, 1962, he stated that he would check their record and provide the same within 03 days but he did not provide. On being asked why they had declared the subject goods imported by M/s. HML per said vessels as Naphtha/Light Naphtha instead of NGL/SBPS, Shri Pramod Soneta stated that while preparing the Check List for filing of Bill of Entry and Shipping Bill (in the case of re-export), they followed the description mentioned in the import documents provided by the said importer and also the directions of the importer who had approved the check list for filing of Bills of Entry be; that due to same declaring the product as Naphtha/Light Naphtha in the import documents was not the decision of his firm but it was decided by the importer.

**19.2.** During recording of his statement, Shri Pramod Soneta was shown copy of concerned pages of Customs Tariff for the year 2021 in respect of goods covered under Heading 'Light Oils and preparations' (271012). Under Head 'Naphtha', there are three entries i.e. (i) Light Naphtha (27101221), Heavy Naphtha (27101222) and Full Range Naphtha (27101229) and on being asked why no specific category of Naphtha was mentioned as description of goods by the importer/his firm in the concerned Bills of Entry pertaining to goods imported per vessel MT Tuna and MT Arihant, he stated that as per documents received by his Customs Broker firm from the importer, the description of goods was mentioned as only 'Naphtha' alongwith CTH for 'Full Range Naphtha' i.e. 27101229; that they accordingly prepared the check list and the same was approved by the importer. On being asked further about appropriate classification of goods NGL (NGL) and Special Boiling Point Spirit (SBPS), Shri Pramod Soneta stated that the same were appropriately classifiable under 'others' category of CTH 271012 i.e. 27101290 as per Customs Tariff.

**19.3.** Shri Pramod Soneta was shown the documents related to MT Arihant i.e. Load Inspection Report dated 25/26.01.2021 of M/s Keyhan Sanjesh Azma and other related documents such as Covering letter dated 25/26.01.2021 of said surveyor, Time Log, Certificate of quantity dated 26.01.2021, Certificates of Quality etc. which have been extracted from the mobile phone data of Shri Nitin Kumar Didwania, Managing Director and/or Shri Satish Gaichor, Associate General Manager-Logistics of M/s. HML After perusal of the same, he stated that he had come across those Chat messages mentioned in the statement of Shri Nitin Kumar Didwania and the following documents first time.

**19.4** On being asked further, he stated that from the content of those documents, the subject goods imported by M/s. HML in said vessel viz. MT Arihant were mis-declared in the import documents and Bills of Entry filed with Customs House, Kandla with respect to port/country of shipment, details of shipper etc.

**20. Statement of Shri Illa Giri Visweswarrao, Manager of M/s. Samudra Marine Services Pvt. Ltd., 123 & 124, Golden Arcade, Plot No. 142-143, Sector-8, Gandhidham, Kutch was recorded on 22.01.2022 (RUD No. 29).**

**20.1** In his statement, Shri Illa Giri Visweswarrao interalia stated that M/s. Samudra Marine Services Pvt. Ltd. was engaged in the business activities of clearance of import /export consignments acting as vessel agency and Customs Broker. He further stated that they did not enter any contract/agreement with the owner of the vessel and/or the receivers/importers/customs broker/terminal etc.; that they were not authorized to check the route of vessel and the owner/charterer of the vessel used to check the route of vessel. On being asked, he stated that he was not aware who was the actual shipper/supplier/consigner party of the 9621.26 MT cargo and who had booked the cargo in the said vessel and what documents were provided initially to the vessel owner by the overseas shipper/supplier/consigner party. He stated that as per the documents received by them from the owner/charterer/broker/agent, the port of loading of the cargo imported at Kandla per vessel MT Arihant was Sohar, Oman, however, he was not aware about the actual port of loading; that as per the last 10 port call record, the vessel MT Arihant remained at Sohar, Oman for the period 18.02.2021 to 19.02.2021. In this regard, on being asked whether it was possible that entire process of arrival, berthing, loading of 9621.26 MT bulk liquid cargo and departure of vessel completed within a day i.e. 18.02.2021 to 19.02.2021, he stated that it was not possible and hence, Sohar, Oman was not correct port of loading for the 9621.26 MT goods arrived at Kandla per vessel MT Arihant. On being asked whether the 9621.26 MT cargo imported at Kandla port per vessel MT Arihant was loaded from Iraq or Iran, Shri Illa Giri Visweswarrao stated that as per last port call record, the said vessel was at Basrah, Iraq during the period 24.01.2021 to 26.01.2021, but he was not aware whether the said cargo imported at Kandla port per vessel MT Arihant was loaded from Iraq or Iran. He was shown documents pertaining to MT Arihant for which he deposed that the agency work was attended by his company. He expressed that these three sets of documents were pertaining to same consignments; that as per these documents, the material particulars of subject import consignments were found by him as under:-

**MT Arihant:-**

	As per Bills of Lading no. 1 to 4 dated 18.02.2021 provided to him by the vessel owner/charterer or their agent/broker	As per documents (other than Bill of Lading) said to have been produced by importer alongwith concerned Bill of Entry	As per documents said to have been recovered during investigation (Load Inspection Report dated 25/26.01.2021 of M/s Keyhan Sanjesh Azma and other related documents such as Covering letter dated 25/26.01.2021 of said surveyor, Time Log, Certificate of quantity dated 26.01.2021, Certificates of Quality etc.)
Shipper/Supplier/Consignee	M/s. Delta Shipping and Trading LLC, Sohar, Oman	M/s. Aureole Trading LLC, Dubai, UAE	M/s National Iranian Oil Products Distribution Company
Port of Loading	Sohar, Oman	Sohar, Oman	Bandar Mahshahr, Iran
Country of Origin	Not mentioned	Oman	Iran
HS Code/CTH of Product	271011229	27101229	Not mentioned
Qty. (MT)	9621.26	9621.26	9621.26

**20.2.** On being asked to comment which one set of above documents was having correct material particulars, Shri Illa Giri Visweswarrao stated that his company had dealt with the Bills of Lading only and have filed the IGM only on the basis of Bills of Lading received from

the party, but looking to above mentioned documents, the said Bills of Lading received by their company from the owner/charterer/agent/broker of vessels and subsequently produced/filed by them with IGM to Customs, Kandla, did not contain correct material particulars. He further stated that from the content of the documents said to have been recovered during investigation, the subject goods imported by M/s. Hazel Mercantile Ltd. in said vessel viz. MT Arihant were mis-declared in the import documents and Bills of Entry field with Customs House, Kandla with respect to port/country of shipment, details of shipper etc. Shri Illa Giri Visweswarrao was shown copy of statement dated 12.04.2021 of Shri Nitin Kumar Didwania, Managing Director of M/s. Hazel Mercantile Ltd. and the content of illustrative Whatsapp chat conversations mentioned in the statement. On being asked, Shri Illa Giri Visweswarrao stated that he did not know any members of such chat conversations except Shri Nitin Kumar Didwania and he did not have any conversation with Shri Nitin Kumar Didwania; that he used to communicate with Shri Satish Gaichor, AGM-Logistics for official dealing with this importer.

Shri Illa Giri Visweswarrao stated that as an authorized career, they were responsible for collecting the correct and complete details of the cargo they were booking and after confirming correctness thereof also required to declare the same on all declarations and customs papers with their subscribing about correctness thereof; that in case any incorrect details are found they are supposed to inform the Customs department about such instances.

**21.** Inquiries were also carried out with the declared overseas suppliers of subject goods viz. M/s. Delta Shipping and Trading LLC, Oman and M/s. Aureole Trading LLC, UAE vide Summons mentioned above. These parties were requested to provide the complete set of their export documents such as invoices, packing list, Bills of Lading, Analysis Reports, Certificate of Origin alongwith Shipping Bills, Export declaration forms, Insurance Certificates, contract/agreements and other related documents pertaining to the goods exported by them per vessel MT Arihant during the year 2020-21. However, no response was received from these overseas entities.

**22.** Similarly, the overseas entity M/s. Jabal As Aswad, Iraq who appeared to be the actual supplier of subject goods on the basis of investigation, was also issued Summons. Other overseas parties/persons who were noticed during investigation as connected/associated to the subject import consignment were also issued Summons and asked to provide the details and documents relating to the supply of subject goods vide 03 vessels including MT Arihant but no reply/response received from either the declared suppliers, or the tentative actual suppliers of subject goods.

**23. Statement of Shri Satish Gaichor, Associate General Manager-Logistics of M/s. HML was recorded on 17.02.2022 (RUD No. 30).**

**23.1** In his statement, Shri Satish Gaichor interalia stated that he being Associate General Manager-Logistics of his company, used to look after logistics related work and report his day to day official activities to Shri Nitin Kumar Didwania, Managing Director (MD) of M/s. HML; that he was also supervising overall activities of their Gandhidham branch office for which the subject import consignment pertained. He was asked to provide the details of a buyer about whom he had whatsapp discussion on 11.02.2021 with Shri Nitin Kumar Didwania, Managing Director of M/s. HML, regarding supply of Gasoline and Gasoil by M/s. HML as per requirement (specifications) from the buyer. In this regard, Shri Satish Gaichor stated that he could not recall and gather the details of such buyer, and deliberately not provided the same. He also did not provide the specifications/report discussed in that said Whatsapp Chat conversation. As regards the conversations held on 29.12.2020 between him and Shri Ashok Desai, VP (Logistics) of M/s. HML, in which Shri Ashok Desai discussed about 35 KT Gasoline, was said to be relating to inquiry of freight outside India. On being

asked, Shri Satish Gaichor stated that he was not aware what was the end use of the subject product stating that the buyers could reply for what purpose they had purchased / used the product. On being asked as to whether their buyers were having license to purchase/sale/trading goods declared as Light Naphtha, he stated that the buyers could reply in this regard as such Licenses are required to be issued by the jurisdictional state authorities to the buyers only. Shri Satish Gaichor stated that he would check their records in this regard and revert within 03 days but he did not respond.

**23.2.** On being asked what was the country of origin, actual shipper/supplier, actual port of loading and correct description of goods imported by my company per vessel MT Arihant declaring the same as Naphtha, Shri Satish Gaichor stated that he was not aware as the supplier arranged the goods on CFR basis and the entire matter was being dealt with by Shri Nitin Kumar Didwania, MD of his company M/s. HML. Shri Satish Gaichor was also shown the data contained in his mobile phone which was extracted under Panchnama dated 08.03.2021 to 11.03.2021. After seeing the data, he deposed that this data included the data of his mobile phone which was surrendered by him during Statement dated 25.02.2021. He explained the specific Whatsapp Chats and documents recovered from his mobile phone as under:-

**Chat No. 1789 with Shri Abby-Alex:-**

<b>Chat Details</b>	<b>Body</b>	<b>My comment/submissions on the body/content of chat</b>
From: 918291990409@s.whatsapp.net SG (owner) Timestamp: 27-01-2021 12:49:27 PM(UTC+0) Source App: WhatsApp	<i>“Body: have u passed on this message for Arihant</i>	<i>“This was the direction/inquiry of our MD Shri Nitin Kumar Didwania regarding goods imported by us in vessel MT Arihant.</i>
From: 918291990409@s.whatsapp.net SG (owner) Timestamp: 27-01-2021 12:49:39 PM(UTC+0) Source App: WhatsApp	<i>Body: also please advice what is BL qty for Arihant</i>	
From: 971501159789@s.whatsapp.net HME - Abby Alex Timestamp: 27-01-2021 1:42:31 PM(UTC+0) Source App: WhatsApp	<i>Body: We are arranging Iraq docs for her, will arrive Sohar in 3 days then we will arrange Omani docs for kandla discharge</i>	<i>Mr. Alex Abby, our UAE counter part informed that they were arranging documents showing Iraq origin of subject goods and then documents showing Oman origin of goods were for Kandla discharge. I am not aware why the two types of documents i.e. Iraqi and Omani documents were prepared. Mr. Alex Abby or our MD Shri Nitin Kumar Didwania can explain about the</i>
From: 971501159789@s.whatsapp.net HME - Abby Alex Timestamp: 27-01-2021 1:42:51 PM(UTC+0) Source App: WhatsApp	<i>Body: Above message for Arihant docs</i>	

		same.
<p>From: 918291990409@s.whatsapp.net SG (owner) Timestamp: 30-01-2021 1:37:32 PM(UTC+0) Source App: WhatsApp</p>	<p>Body: VV IMP: 1. We need a full survey of quality with the oxygenates. Same has to be done on priority and reports to be shared on priority prior vessel sailing to Kandla. 2. WATER CONTENT ANALYSIS REPORT TO BE SEPARATELY INFORMED (NOT PART OF MAIN REPORT). 3. All docs must mention "NAPHTHA" as product</p>	<p>This direction was from Shri Nitin Kumar Didwania, MD of M/s. HML to analyze the specifications/ parameters of goods etc. in import related documents. I just forwarded the message received from Shri Nitin Kumar Didwania to concerned persons including Mr. Abby Alex. Our MD Shri Nitin Kumar Didwania can explain why he specifically directed that all docs must mention "NAPHTHA" as product.</p>
<p>From: 971501159789@s.whatsapp.net HME - Abby Alex Timestamp: 02-02-2021 5:18:14 AM(UTC+0) Source App: WhatsApp</p>	<p>Attachments: # 1: chats\WhatsApp Native\attachments1789\BILL OF LADING...pdf  (The sender sent Bill of Lading for MT Tuna containing port of loading as Basrah, Iraq)</p>	<p>Mr. Abby Alex sent Bill of Lading and other related documents pertaining to MT Tuna. This Bill of Lading and concerned Certificate of Origin contains Country of origin as Iraq and Port of Loading Basrah, Iraq for 20110.767 MT goods. The goods were the same which were imported to Kandla India per vessel MT Tuna. I am not aware the purpose of declaring the country of origin as Oman in the documents submitted with Customs House, Kandla. Our MD Shri Nitin Kumar Didwania can explain the reason for same.</p>
<p>From: 971501159789@s.whatsapp.net HME - Abby Alex Timestamp: 03-02-2021 8:58:41 AM(UTC+0) Source App: WhatsApp</p>	<p>Body: Also please let me know if you are OK with the below timings for Tuna.  NOR Sohar Jan 30th</p>	<p>I am not aware why did these timings were created though the vessel MT Tuna did not berth at Oman as per Whatsapp chat conversations. Our MD</p>



1	MT Arihant	Naphtha	27101229 (i.e. for Full Range Naphtha)	9621.26	9704.504	SBPS	27101290
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**24.2.** M/s. HML had imported 9621.26 MT goods in vessel MT Arihant declaring the same as Naphtha vide Bill of Entry No. 3472215 dated 07.04.2021 filed at Customs House, Kandla. They had not specified the category of Naphtha (Light, Heavy or Full Range) in the Bills of Entry but declared the classification of the same under CTH No. 27101229 which is linked with Full Range Naphtha. This anomaly in the description of subject goods was also noticed in the contract with so called supplier M/s. Aureole Trading LLC, Oman and Letter of Credit gathered during investigation as M/s. HML mentioned description of goods as Light Naphtha [CTH No. 27101221] also.

**24.3** DRI initiated a case of import of restricted/prohibited goods at Kandla Port by M/s Hazel Mercantile Ltd by drawing samples on 26.02.2021. Out of three initially drawn samples on 26.02.2021 (three representatives samples were drawn as A1, A2, A3), one sample A1 was sent by DRI for testing to CH Laboratory Kandla. Vide test report dated 09.03.2021, CH Laboratory Kandla indicated that "Based on density, flash point, distillation range, initial boiling point, final boiling point, bromine number, it may be considered as 'Naphtha', however for further opinion may be obtained from CRCL, New Delhi, if necessary." Apparently in their report the CH Laboratory, Kandla did not specify the category of "Naphtha", whether it was Light Naphtha, Heavy Naphtha or Full Range Naphtha, which are classified in terms of the Customs Tariff and ITC (HS) Classification in three different CTH viz. 27101221, 27101222 and 27101229 respectively. Further, in their report dtd.09.03.2021 itself, the Custom House Laboratory, Kandla had themselves suggested to refer the matter to the CRCL, New Delhi for further queries.

**24.4.** Accordingly, the remnant of the sample A1 which was already tested at CH Laboratory Kandla, was sent by DRI for re-testing to the CRCL, New Delhi vide Test Memo dated 15.04.2021, and vide re-test report dated 01.06.2021, the CRCL, New Delhi confirmed that the sample was of light oil and preparation and it was opined that the sample meets the requirement of Special Boiling Point Spirit (SBPS).

**24.5.** From the said re-test report and other corroborative evidences gathered by DRI during investigation, it appeared that the subject goods were mis-declared and illegally imported in violation of the Foreign Trade Policy provisions pertaining to the importation of goods, as the import of SBPS, which is classifiable under CTH No. 27101290, was restricted for importation by the STES only as per the ITC (HS) Classification as well as the Policy Condition No. 5 attached with Chapter 27. Therefore, the said consignment of goods, found to be BBPS, imported per MT Arihant was placed under seizure vide Seizure Memo dated 09.07.2021 by the officer of Customs, Kandla at the behest of DRI.

**24.6.** Being aggrieved by the seizure, the importer filed SCA No. 10541/2021 before Hon'ble Gujarat High Court. In the meantime, the importer made request for re-testing, for which they provided test report dtd. 10.03.2021 of M/s. TUV India Pvt. Ltd., which indicated the sample to meet the specifications of Naphtha, without providing specific category of Naphtha. They also provided Test report dtd. 15.04.2021 of IIP, Dehradun, which had indicated that the sample falls under the Heavy Naphtha Range. However, the authenticity and validity of drawl of those samples and its co-relation with the import consignment could not be established in clear terms, hence those test reports were considered as irrelevant by DRI.

**24.7.** Also in the meantime, CH, Kandla directly sought opinion of CRCL, New Delhi vide their letter dtd. 13.07.2021 referring to the re-test report dated 01.06.2021 of CRCL, New Delhi and the other test reports of private laboratories produced by the importer. In reply to the same, the CRCL, New Delhi vide letter dated 19.07.2021 again confirmed that the sample under reference satisfy the condition of light oil and preparation based SBPS in all

three lab reports i.e. Test Report dated 09.03.2021 of the Custom House Laboratory, Kandla, Test report dtd.15.04.2021 of IIP, Dehradun and Re-test report dated 01.06.2021 of CRCL, New Delhi.

**24.8.** However, fresh samples were drawn by the officer of Customs, Kandla and the same were sent by the Custom House, Kandla for testing to M/s. IIP. Dehradun and also to the CRCL, New Delhi. The test reports dtd. August, 2021 of IIP, Dehradun and test report dtd. 01.09.2021 of CRCL, New Delhi received in response to the same indicated that the subject goods were Heavy Naphtha'. It would be pertinent to mention here that the importer had declared the goods to be Full range naphtha by classifying the goods under CTH No. 27101229.

**24.9.** From the paras mentioned above, it was amply clear that for the samples that drawn in all by DRI on 26.02.2021, the CRCL New Delhi re-confirmed and approved the three test reports that the goods are Special Boiling Point Spirit (SBPS). Since the re-test report of CRCL, New Delhi and their further clarification confirmed that the sample drawn by DRI on 26.02.2021 is "Special Boiling Point Spirit (SBPS)". Further, fresh drawl of samples by Customs was in violation of Circular No. 30/2017-Cus dated 18.07.2017 as Re test should be made only on the remnants of the samples originally tested or on duplicate representative sealed samples in the custody of the Customs. **M/s HML has nowhere challenged that earlier drawn samples were not representative as prescribed in said circular, hence there was no question of drawl of fresh samples.**

**24.10.** In the context of facts and circumstances of the case, it was felt necessitated that, re-test should be got conducted on remnant sample in terms of CBIC Circular No. 30/2017-Cus dated 18.07.2017, as:

(i) The report of CRCL, Delhi dated 01.06.2021 was conclusive, clarifying and confirming the actual description of the goods as Special Boiling Point Spirit (SBPS). This was reaffirmed by the clarification of the CRCL, Delhi vide letter dtd.19.07.2021.

(ii) There is a large difference in the Olefin content, which was 22.59% for the remnant samples which got retested at CRCL, Delhi, by DRI, vis. a vis. 1.90% as reported by CRCL, Delhi & 0.59% reported by IIP Dehradun, for the samples drawn by Customs, Kandla. Accordingly, the remnant sample was sent to CRCL Delhi by DRI for retest. However. CRCL Delhi declined to conduct re-test of the remnant samples stating that they had already re-tested the sample twice in terms of Circular No. 30/2017-Cus dated 18.07.2017.

**24.11** Being aggrieved by the seizure dated 09.07.2021, the importer filed SCA No. 10541/2021 before Hon'ble Gujarat High Court. Vide Order dated 17.02.2022, Hon'ble High Court of Gujarat made the following observation:

*"8. The picture that emerges as on date is and more particularly, considering the test reports that prima facie, the goods is Naphtha. At this stage, the writ applicant is only concerned with getting his goods released. We are of the view that since there are test reports indicating the goods to be Naphtha, let the goods be released at the earliest on the condition that the writ applicant shall furnish a fresh bond of the amount equivalent to the value of the goods. The bond shall be furnished to the respondent No.1 and upon furnishing such bond, the respondent No.1 shall permit the writ applicant to take delivery of the goods.*

*9. We clarify that if the DRI has any further doubts in the matter, it is always open for the DRI to proceed further with its inquiry in accordance with law. For the present, we are only concerned with the goods. Let the goods be released upon the writ applicant furnishing a bond of the amount equivalent to the value of the goods at the earliest. With the aforesaid, this writ application stands disposed of."*

**In view of the foregoing discussion and in compliance with the order of the Hon'ble High Court, more particularly the observations made in Para 9, a thorough investigation has been conducted. Consequently, the present Show Cause Notice is being issued in accordance with law.**

**24.12.** The received quantity of subject goods is 9704.504 MTS Considering the market rate of SBPS at **Rs. 90.56 per litre** (the prevailing lowest rate of Motor Spirit in Delhi as on 07.04.2021, considering the quantity received in tanks in 'Litres' provided by Custodian as 13062.667 Kilo Litres), the market value of received quantity 9704.504 MTS i.e. subject goods is calculated as approximately **Rs. 118,29,55,124/-**. Whereas, M/s. HML has declared the assessable value in the Bills of Entry as Rs. 37,53,16,037/- only which is much lesser even after further value additions on account of customs duty, other taxes and other expenses.

**25. CLASSIFICATION OF SUBJECT IMPORT GOODS: -**

**25.1.** In Order to decide the appropriate classification of subject goods, the factual developments related to the statutory classification of various grades of Naphtha vis-à-vis SBPS in brief is herein below:

**25.2.** Vide Notification No. **36/2015-20, dtd. 17.01.2017**, the Central Government notified the ITC (HS) Classification of relevant period, under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, prescribing therein the scheme of classification of goods as well as the provisions relating to Import/Export of each of such items. In terms of said ITC (HS) Classification, 2017, the following are the relevant entries under Chapter 27 of Schedule I pertaining to the Import Policy:

Exim Code	Item Description	Policy	Policy conditions
2710	Petroleum Oils and Oils obtained from Bituminous minerals (Other than Crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals. These oils being the basis constituents of the preparations other than those containing biodiesel and other than waste oil		
271012	Light oils and Preparations:		
	Motor spirit		
2710 12 11 to 27101219		State Trading Enterprises	Import as per Policy condition (5)
27101220	NGL (NGL)	State Trading Enterprises	Import as per Policy condition (5)
27101290	Other	State Trading Enterprises	Import as per Policy condition (5)

**25.3.** From the above provisions of ITC (HS) Classification, it is apparent that there was no specific entry for goods described as "Naphtha" of different grades. There were no entries

for the different grades of solvents, Aviation Gasoline etc. Thus, Naphtha was then classifiable under other category i.e. 27101290. The goods found as "SBPS" falls under 'Other' i.e. 27101290 and import of said item is allowed through IOC subject to para 2.20 of the FTP, except for the companies, who have been granted rights for marketing of transportation fuels in terms of Ministry of P&G's Resolution No. P-23015/1/2001-MKT, dtd.08.03.2002 including HPCL, BPCL & IBP, who have been marketing transportation fuels before the date.

**25.4.** Vide Notification No. **41/2015-2020, dtd.05.12.2017**, the Central Government had notified the revised Foreign Trade Policy 2015-20 under the provisions of Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, which came into effect from 05.12.2017.

(a) In terms of Para 2.01 of the revised Foreign Trade Policy 2015-20, all imports should be free, unless regulated by way of "prohibition", "restriction" or "exclusive trading through State Trading Enterprises (STEs), as laid down in the ITC (HS) Classification.

(b) It was clearly stipulated in Para 2.01 of the FTP 2015-20 that there are some items, which are free for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

(c) In Para 2.02 of the FTP 2015-20, it was clarified that the ITC (HS) is aligned at 6-digit level with the international Harmonized System goods Nomenclature maintained by World Customs Organization. However, it was further clarified in said Para 2.02 of the FTP 2015-20 that India maintains national Harmonized System of goods at 8-digit level.

(d) It was also prescribed vide Para 2.02 of the FTP 2015-20 that the import/export policy for all goods are indicated against each item in ITC (HS).

(e) As provided vide Para 2.20 of the FTP 2015-20, any goods, import or export of which is governed through exclusive or special privilege granted to STEs may be imported or exported by the concerned STEs, as per the conditions specified in the ITC (HS). Although it was also provided in Para 2.20 of the FTP 2015-20 that the DGFT, may, grant an authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs.

**25.5.** Later on, w.e.f. 01.01.2020, the following changes were introduced in respect of the entries available in Chapter 27 of the Customs Tariff:

271012	--	Light Oils and Preparations
	--	Naphtha
	-	
27101221	--	Light Naphtha
	--	
27101222	--	Heavy Naphtha
	--	
27101229	--	Full Range Naphtha
	--	
	--	Solvent 60/80, solvent 50/120 and solvent 145/205 (petroleum hydrocarbon solvents) as specified under standard IS 1745:
	-	
27101231 to 27101239	--	
	--	
	--	Motor gasoline conforming to standard IS 2796, IS 17021 or IS 17076:
	-	
27101241 to 27101249	--	
	--	

27101250	-- -	Aviation Gasoline conforming to standard IS 1604
27101290	-- -	Other

**25.6.** Thus, pursuant to the above changes, the specific entries were provided for the goods of the categories of Naphtha, Solvent, Motor Gasoline and Aviation Gasoline, which were earlier classified under residuary entry of "Others", whereas the SBPS seemingly classifiable under the residuary entry of 27101290.

**25.7.** The Central Government vide Notification No. **38/2015-20, dtd. 01.01.2020** issued under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 2.01 of the FTP 2015-20, introduced following changes in respect of the entries available in Chapter 27 of the ITC (HS): -

Exim Code	Item Description	Policy	Policy conditions
271012	Light Oils and Preparations		
	Naphtha		
27101221	Light Naphtha	State Trading Enterprises	Import as per Policy condition (5) of Chapter 27
27101222	Heavy Naphtha	State Trading Enterprises	Import as per Policy condition (5) of Chapter 27
27101229	Full Range Naphtha	State Trading Enterprises	Import as per Policy condition (5) of Chapter 27
	Solvent 60/80, solvent 50/120 and solvent 145/205 (petroleum hydrocarbon solvents) as specified under standard IS 1745:		
27101231 to 27101239		State Trading Enterprises	Import as per Policy condition (5) of Chapter 27
	Motor gasoline confirming to standard IS 2796, IS 17021 or IS 17076:		
27101241 to 27101249		State Trading Enterprises	Import as per Policy condition (5) of Chapter 27
27101250	Aviation Gasoline conforming to standard IS 1604	State Trading Enterprises	Import as per Policy condition (5) of Chapter 27
27101290	Other	State Trading Enterprises	Import as per Policy condition (5) of Chapter 27

**In light of the above, it appears that Naphtha, by virtue of Policy condition (1) of the Chapter 27, became importable through STEs. Further, the commodities, which were falling under residuary entry of "Others" category were became classifiable with the specific entries provided.**

**25.8.** Therefore, it seems that the goods imported by M/s. HML by declaring the same as Naphtha (under CTH No. 27101229 i.e. for Full Range Naphtha) are actually SBPS and the same was appropriately classifiable under Customs Tariff Heading 27101290 of Customs Tariff. The classification of subject goods adopted by M/s. HML under the said CTH 27101229 is thus required to be rejected and the same are required to be re-classified under its appropriate CTH 27101290.

**25.9.** Whereas on the facts and evidences discussed above and keeping in view the related statutory provisions of Customs Act, 1962 and other regulations, it appears that M/s. HML have suppressed the actual transaction values and have declared lower value of the above-mentioned import consignment. The assessable value declared by M/s. HML is **not in consonance with the current market price of similar goods being sold in the Indian market.**

**26. CONFISCATION: -**

**26.1.** As narrated above, M/s. HML have imported the subject goods per vessel MT Arihant under gross mis-declaration and mis-classification by adopting fraud, collusions, mis-statement and suppression of facts. As apparent from the facts and evidences gathered during investigation that the subject goods were not having the correct description /CTH and value thereof as declared by M/s. HML in the Bills of Entry filed by them with Customs Authorities at Customs House, Kandla, and also the country of origin of the same was admittedly manipulated and mis-declared. The port of loading and details of shipper/supplier with respect to subject goods were also manipulated and mis-declared as evident from the Whatsapp Chat conversations held with key persons involved and other documents/evidences extracted from the mobile phones of Shri Nitin Kumar Didwania and Shri Satish Gaichor. The key persons of M/s. HML used to insist the overseas suppliers/agents to specifically mention the product name as 'Naphtha' in all documents. The key persons of M/s. HML and their other associates avoided their presence before investigating officers in spite of issuance of repeated Summons to them, hence the veracity of evidences gathered during investigation could not be explained and confronted to them. However, on the basis of content available in the evidences gathered during investigation, the following details have emerged with respect to the mis-declaration of material particulars of subject goods imported by M/s. HML per vessel MT Arihant: -

<b>Material particulars</b>	<b>Declared with Customs in the Bs/E and supporting documents</b>	<b>As per investigation</b>	<b>Evidences in support of outcome of investigation</b>
Description	Naphtha (No specific category Light or Heavy or Full Range, declared)	SBPS	CRCL, New Delhi vide letter dated 19.07.2021 has confirmed that the sample under reference satisfy the condition of light oil and preparation based SBPS in all three lab reports i.e. Test Report dated 09.03.2021 of the Custom House Laboratory, Kandla, Test report dtd.15.04.2021 of IIP, Dehradun and Re-test report dated 01.06.2021 of CRCL, New Delhi.
CTH	27101229 (i.e. for Full Range Naphtha)	27101290	Customs Tariff
Value	Rs. 37,53,16,037/- (declared assessable value)	Rs. 118,29,55,124/- (approximate market value)	

**26.2.** From above, it appears that the correct material particulars of the impugned goods were not made by M/s. HML in the Bill of Entry No. 3472215 dated 07.04.2021 filed by

them with Customs House, Kandla and thus the goods are liable to confiscation under **Section 111(m)** of the Customs Act, 1962.

**27. Violations of conditions of Foreign Trade Policy 2015-2020 read with Customs Act, 1962 and other allied Acts by way of import of prohibited goods: -**

**27.1.** Para 2.01 of the Foreign Trade Policy 2015-2020 which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, prescribed as follow:

*“(a) Exports and Imports shall be ‘Free’ except when regulated by way of ‘prohibition’, ‘restriction’ or ‘exclusive trading through State Trading Enterprises (STEs)’ as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports.....”*

*“(b) Further, there are some items which are ‘free’ for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.”*

**27.2.** As per prevailing import policy, the import of all the goods including the SBPS, which is classifiable under CTH 27101290 is restricted for import through the State Trading Enterprises only and governed as per Condition 5 of import policy. As per Para 2.20 of Foreign Trade Policy 2015-20 as extended, any goods, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). As per the Policy condition No. 5 stipulated for Chapter 27, import of the goods falling under CTH No. 27101290, are allowed through IOC subject to para 2.20 of the Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NG's Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL, & IBP who have been marketing transportation fuels before this date.

**27.3.** M/s. HML is admittedly not holding status as STE. Thus, facts in the matter are that the goods in the instant case have been imported in gross violation of the Import Policy notified vide Notification No: 36/2015-2020 dated 17/01/2017 issued under Section 5 of the Foreign Trade (Development & Regulation) Act 1992 read with Para 2.01 of the Foreign Trade Policy, 2015-2020. The Policy Conditions were also stipulated under Section 3 of the Foreign Trade (Development and Regulation) Act 1992. In terms of Section 3(3) of the Foreign Trade (Development and Regulation) Act 1992, all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly. Therefore, the said goods are required to be treated as “Prohibited Goods” as defined under Section 2(33) of Customs Act, 1962 and accordingly import of such goods without due compliance with the Policy provisions is required to be categorized as “Smuggling” within the meaning of Section 2(39) of the Customs Act, 1962.

**27.4.** From the above facts, it appears that the goods, though being SBPS falling under CTH No. 27101290, were mis-declared as Naphtha, under CTH No. 27101229 of Customs Tariff, by suppressing its correct description i.e. SBPS. The condition stipulated for import through or by IOC as per the Foreign Trade Policy, were not at all complied with by the importer M/s. HML, in respect to the import of SBPS made by them, which was sought clearance by them under the said Bill of Entry 3472215 dated 07.04.2021. Thus, there is evident mis-declaration with sole aim to circumvent the restrictions imposed on its import under the Foreign Trade Policy. The subject goods imported by M/s. HML per MT Arihant are thereby liable for confiscation under **Section 111(o)** of Customs Act, 1962.

**27.5.** Further, even in the context of the Notification No. 105-Cus dtd. 06.08.1938, the goods in respect of which the restricting provisions of the Petroleum Act, 1934 and the rules made thereunder are applicable and where the compliance with those provisions is required

from the importer of such goods; if non-compliance is observed on the part of the importer, then the same may have to be treated as contravention of the deemed prohibition imposed on such goods in terms of Section 11 of the Customs Act, 1962. Import of SBPS; further to this, if to be considered as classifiable as "Petroleum Class A", then the Licence issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class A" and only such Petroleum is allowed to be imported which are already in possession of Licence issued under the Petroleum Rules, 1976. As per Notification No. 105-Cus dtd. 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962. Since the importer in the instant case has failed to follow such compliance, it appears that they have also violated the provisions of Section 11 of the Customs Act, 1962, which makes such goods liable for confiscation under **Section 111(d) and 111(p)** of the Customs Act, 1962.

**27.6.** It also appears that by indulging into mis-declaration of the goods in the Bill of Entry 3472215 dated 07.04.2021 filed by M/s HML at Kandla Customs, they have violated the provisions of the Foreign Trade Policy 2015-2020 and have also committed the offence pertaining to the violation of the provisions of Section 11(1) and Section 11(2) of the Foreign Trade (Development and Regulation) Act, 1992, Rule 14 of the Foreign Trade (Regulation) Rules, 1993, where also the goods imported by M/s. HML are liable for confiscation under the provisions of Section 11(8) of the FTDR Act, 1992 and the goods may, therefore, be placed under seizure by the competent officer under the provisions of Rule 15(3) of the Foreign Trade (Regulation) Rules, 1993.

**27.7.** Thus, by indulging into mis-declaration and mis-classification of goods adopting fraud, manipulation of documents, suppression of facts, willful mis-statement, collusion etc., as evident from the illustrative WhatsApp Chat conversations of key persons of M/s HML, and the statement of Shri Nitin Kumar Didwania, they have not only violated the provisions of the Customs Act, 1962 but they have also violated other prohibitions pertaining to import of goods under the allied Acts like Petroleum Act, FTDR Act, 1992. The subject goods imported by M/s. HML per MT Arihant are therefore liable for confiscation under **Section 111(d), 111(m), 111(o) and 111(p)** of Customs Act, 1962.

## **28. Role and Culpability of M/s. HML: -**

**28.1.** As narrated in foregoing paras, it appears that M/s. HML has imported SBPS of Iraq Origin and mis-declared the same as Naphtha vide aforesaid Bill of Entry 3472215 dated 07.04.2021 filed by them at Customs House, Kandla. They had not declared the actual description of subject goods and also mis-classified the same under the CTH 27101229 i.e. for Full Range Naphtha in stead of correct CTH 27101290. M/s. HML submitted invoices, Certificate of Origin, Bills of Lading and other related documents having incorrect material particulars in connivance with the declared shipper/suppliers, shipping line etc. and manipulated the import documents with respect to nature /description of goods, country of origin, shipper, port of loading etc. The Whatsapp Chat conversations among key persons of M/s. HML including their Managing Directors, overseas associates etc. are evidently reflecting their deliberate and malafide intention of mis-declaration of import goods with respect to material particulars. The entire conspiracy was hatched to suppress the actual description of goods as SBPS being restricted item for import and prohibited in case of non-compliance of condition prescribed for import thereof, they were not entitled to import the same and thus they had illegally imported the same by means of fraud, collusion, willful mis-statement and suppression of facts in gross violation of import policy, provisions of Customs Act, 1962, Petroleum Act, 1934, FTDR Act, 1992 etc. Had the DRI not initiated the investigation, the gamut of illegal import of prohibited item would be continued.

**28.2.** As per Section 112(a), 112(b) and 114AA of Customs Act, 1962, it is provided that any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, shall be liable to penalty under Section 112(a) of Customs Act, 1962, or;

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111; shall be liable to penalty under Section 112(b) of Customs Act, 1962, or;

(c) If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty under Section 114AA of Customs Act, 1962.

**28.3.** The omission and commission on the part of M/s. HML i.e. misclassification and mis-declaration of subject goods by way of fraud, collusion, willful mis-statement and suppression of facts and illegal import of prohibited goods have rendered the subject imported goods SBPS (**Qty. of 9704.504 MT**) liable to confiscation under section **111(d), 111(m), 111(p) and 111(o)** of the Customs Act, 1962. Also, since M/s HML were knowingly dealing with such goods, accordingly they have rendered themselves liable to penalty under **Section 112 (a)** and **Section 112(b)** of the Customs Act, 1962. Since M/s. HML through their representative knowingly and intentionally made, signed or used Bills of Entry and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore they are also be liable to penalty under **Section 114AA** of the Customs Act, 1962. For various acts of non-cooperation and omission in furnishing data and records as summoned under Section 108 of Customs Act, 1962, as discussed hereinafter by its employees, M/s HML are liable to penalty under **Section 117** *ibid* too.

**29. Role and Culpability of Shri Nitin Kumar Didwania, Managing Director of M/s. HML: -**

**29.1.** Shri Nitin Kumar Didwania is Managing Director of M/s. HML and looking after overall supervision and control on the entire business operations of M/s. HML. He was very well aware about the characteristics, specification and classification of subject goods vis-a-vis provisions relating to Customs Act, other allied Acts and Import Policy. He had directly supervised all the matters related to the import in HML's dealings with the overseas suppliers and other associates and making documentation/submissions with Custom Authorities. From the facts and evidences gathered during investigation, it appears that he had played a pivotal role in the deliberate mis-declaration of the subject imported goods and had indulged in a well planned conspiracy with a malafide intention to import SBPS illegally by fraud, collusion, willful mis-statement, suppression of facts knowing very well that it would amount to violations as discussed above. He knowingly suppressed material facts regarding description and classification of the subject product and mis-declared & mis-classified the same as 'Naphtha'.

**29.2.** From the illustrative Whatsapp chats mentioned in foregoing paras, it appears that Shri Nitin Kumar Didwania was not only allowing manipulation of material particulars of subject import goods, but also encouraging other fraudsters saying he would manage the manipulated documents at Kandla port and would disclose the correct documents having Iraq origin of subject goods as a last option only. He was supervising the entire Whatsapp

group 'Light Naphtha ops' wherein other fraudsters were discussing and implementing the conspiracy. On being asked in his statement to explain the manipulation of material particulars in Bill of Entry another import documents, he simply tried to shift responsibility on the declared shipper/supplier stating that they file Bills of entry on the basis of document received from the supplier though the investigation revealed that the name of supplier was also manipulated. At one instance, he insisted his associates that they should bring the naphtha with name as raffinate or condensate for future, which indicates his clear and malafide mindset for manipulation of description of goods. Shri Nitin Kumar Didwania had deliberately suppressed the description of the product and mis-classified the same in statutory records with malafide intention of illegal import of prohibited and inadmissible goods by M/s HML. Thus, it appears that he deliberately allowed mis-representation, willful mis-statement and suppression of facts with malafide intention regarding nature and description of subject goods and mis-classification thereof which resulted in illegal import of SBPS in contravention of provisions of Customs Act, 1962, Petroleum Act, 1934 and FTP. He had assisted and abetted the import of SBPS which was prohibited in the absence of compliance of condition/s laid down under import policy. The above deliberate acts of commission and omission on his part has rendered the subject goods (SBPS) (**Qty. of 9704.504 MT**), covered under Bill of Entry No. 3472215 dated 07.04.2021, having total declared assessable value as **Rs. 37,53,16,037/-** and **Market Value of Rs. 118,29,55,124/-**, liable to confiscation under Section 111(d), (m), 111(p) and (o) of the Customs Act, 1962 and has also rendered him liable to penalty under **Section 112 (a)** and **Section 112(b)** of the Customs Act, 1962.

**29.3.** The Bill of Entry No. 3472215 dated 07.04.2021 for clearance of import goods were filed by M/s. HML with Customs, and declared with incorrect description and classification of the subject goods under the supervision & active guidance of Shri Nitin Kumar Didwania. They did not declare the particulars of subject goods in the Bill of Entry No. 3472215 dated 07.04.2021 correctly to cover-up the prohibited nature of the subject goods. Since M/s. HML through their representatives including Shri Nitin Kumar Didwania knowingly and intentionally made, signed or used or caused to be made signed, or used the Bills of Entry and other related import documents, which were false or incorrect, in material particular, for the purposes of illegal importation of goods, Shri Nitin Kumar Didwania shall also be liable to penalty under **Section 114AA** of the Customs Act, 1962.

**29.4.** Further, Shri Nitin Kumar Didwania was (by name) requested vide various Summons issued under Section 108 of Customs Act, 1962 as discussed above to provide various details and documents such as documents having actual and correct material particulars as discussed in the Whatsapp chat conversations as Iraqi documents, complete documents/specification with respect to discussion held between Shri Nitin Kumar Didwania and Shri Satish Gaichor for supply of Gasoline etc. which were required for investigation but the same were also not supplied by him. On the contrary, by suppressing and not disclosing the truth supported with related documents in respect of such deal/supply of Gasoline, he tried to mis-lead the investigation. It shows his non-cooperative attitude and these deliberate acts of commission and omission on his part render him liable to penalty under **Section 117** of the Customs Act, 1962 too.

### **30. Role and culpability of Shri Satish Gaichor, Associate General Manager (Logistics), M/s. HML: -**

**30.1.** Shri Satish Gaichor was working then as Associate General Manager (Logistics) of M/s. HML and looking after overall supervision on the logistics related operations of M/s. HML. He was also supervising overall activities of their Gandhidham branch office from where the subject import was made. From the Whatsapp chat conversations and other evidences gathered during investigation, it appears that he was very well aware about the characteristics, specification and classification of subject goods vis-a-vis provisions relating

to Customs Act, other allied Acts and Import Policy. From the facts and evidences gathered during investigation, it further appears that he had abetted the deliberate mis-declaration of the subject imported goods and was active associate of well hatched conspiracy with a malafide intention to import SBPS illegally by fraud, collusion, willful mis-statement, suppression of facts knowing very well that it would amount to violations as discussed above. Thus, he deliberately assisted in mis-representation, willful mis-statement and suppression of facts regarding nature and description of subject goods and mis-classification thereof which resulted in illegal import of SBPS in contravention of provisions of Customs Act, 1962, Petroleum Act, 1934 and FTP. He had assisted and abetted the import of SBPS which was prohibited in the absence of compliance of condition/s laid down under import policy. The above deliberate acts of commission and omission on his part has rendered the subject goods (SBPS) (**Qty. of 9704.504 MT**), covered under Bill of Entry No. 3472215 dated 07.04.2021, having total declared assessable value as **Rs. 37,53,16,037/-** and **Market Value of Rs. 118,29,55,124/-**, liable to confiscation under Section 111(d), (m), 111(p) and (o) of the Customs Act, 1962 and has also rendered him liable to penalty under **Section 112 (a)** and **Section 112(b)** of the Customs Act, 1962.

**30.2.** The Bills of Entry for clearance of import goods were filed by M/s. HML with Customs, and declared with incorrect description and classification of the subject goods for their Gandhidham branch which was under the supervision of Shri Satish Gaichor. They did not declare the particulars of subject goods in the Bills of Entry correctly to cover-up the prohibited nature of the subject goods. Since M/s. HML through their representatives including Shri Satish Gaichor knowingly and intentionally made, signed or used or caused to be made signed, or used the Bills of Entry and other related import documents, which were false or incorrect, in material particular, for the purposes of illegal importation of goods, Shri Satish Gaichor shall also be liable to penalty under **Section 114AA** of the Customs Act, 1962.

**30.3.** Further, Shri Satish Gaichor was (by name) requested vide various Summons issued under Section 108 of Customs Act, 1962 as discussed above to provide various details and documents such as specification/report regarding Gasoline which was discussed by Shri Satish Gaichor and Shri Nitin Kumar Didwania on Whatsapp conversations which were required for investigation but despite assuring in his statement, the same and many other required details/documents were also not supplied by him as narrated supra. On the contrary, by suppressing and not disclosing the truth supported with related documents in respect of such deal/supply of Gasoline, he tried to mis-lead the investigation. It shows his non-cooperative attitude and these deliberate acts of commission and omission on his part render him liable to penalty under **Section 117** of the Customs Act, 1962 too.

**31. Role and Culpability of Shri Minesh Shah, Director, Shri Sreyas Choudhary, Sr. Vice President (Marketing), Shri Rajaram Shanbhag, Shri Saurabh Rajput, Manager-Procurement, Shri Ashok Desai, then Logistics Head, etc.:-**

**31.1.** During the investigation Shri Minesh Shah, Director, Shri Sreyas Choudhary, Sr. Vice President (Marketing), Shri Saurabh Rajput, Manager-Procurement and Shri Ashok Desai, then Logistics Head were appearing. They were issued summons to get explained the facts relating to the case and to gather evidences from them but they did not appear and did not cooperate in the investigation and disobeyed the summons. For that they each are separately liable for penalty under **Section 117** of the Customs Act, 1962.

**32. Role and culpability of M/s. Samudra Marine Services Pvt. Ltd., Gandhidham (the vessel Agent for MT Arihant): -**

**32.1.** M/s. Samudra Marine Services Pvt. Ltd., Gandhidham have acted as vessel Agent for MT Arihant in which the subject goods were imported by M/s. HML at Kandla port. It

appears from the evidences gathered during investigation that the subject goods were originated in Iraq and were brought to India in vessel MT Arihant. Whereas, documentation having incorrect and manipulated material particulars were prepared declaring the port of loading as Sohar, Oman, the name of shipper /supplier M/s. Aureole Trading LLC, Dubai, UAE in the Commercial Invoice and M/s. Delta Shipping & Trading LLC, Oman in the corresponding Bills of Lading. M/s. Samudra Marine Services Pvt. Ltd., Gandhidham were asked vide Summons to provide documents/evidences such as such as export declaration forms/shipping bills/insurance documents submitted by the actual overseas suppliers with the respective overseas Customs Authorities etc. explaining the veracity of the matter such as documents having correct material particulars, actual route of transportation, port of loading, etc. but they have failed to provide the required documents. M/s. Samudra Marine Services Pvt. Ltd., being a authorized carrer registered with Customs authorities were supposed to make effort to check the correctness of material particulars in the Bills of Lading before filing IGM but it appears that they failed to do so. This casual approach on their part abetted the mis-declaration and illegal import of subject goods in violation of the Policy provisions. By way of assisting the conspirators, M/s. Samudra Marine Services Pvt. Ltd. have abetted the offence, which has been committed for contravention of the provisions of the Customs Act, 1962 and allied Acts and statutes. They have failed to make compliance of Summons issued to them by way of not providing the documents having actual /correct material particulars. The above deliberate acts of commission and omission on his part has rendered the subject goods (SBPS) (**Qty. of 9704.504 MT**), covered under Bill of Entry No. 3472215 dated 07.04.2021, having total declared assessable value as **Rs. 37,53,16,037/-** and **Market Value of Rs. 118,29,55,124/-**, liable to confiscation under Section 111(d), 111(m), 111(p) and 111(o) of the Customs Act, 1962 and has also rendered him liable to penalty under **Section 112(b)** of the Customs Act, 1962. For their deliberate acts of omission and commission, M/s. Samudra Marine Services Pvt. Ltd. have rendered themselves liable to penalty under **Section 112(b) and 117** of Customs Act, 1962.

**33. Role and culpability of M/s. Friends Salt Works & Allied Industries, Kandla (the custodian forgoods imported per MT Arihant): -**

**33.1.** M/s. FSWAI had stored the subject goods SBPS in their liquid storage terminal at Kandla though they were not authorized for storage of SBPS. After seizure of subject goods on 09.07.2021, a copy of Seizure Memo was given to M/s. FSWAI thereby they were made aware that the subject goods were SBPS. From above, it appears that M/s. FSWAI has abetted the offence of violation of provisions of Petroleum Act, 1934 readwith Petroleum Rules, 1976 and rendered the subject goods liable for confiscation under provisions of Customs Act, 1962. They failed to provide the details/documents required during investigation as assured by Shri Bharat J. Goswami in his statement. For their acts of omission and commission, M/s. Friends Salt Works & Allied Industries have rendered themselves liable to penalty under **112(b) and 117** of Customs Act, 1962.

**34. Role and culpability of Custom Broker M/s. Hemjyot Agency, Gandhidham and Shri Pramod Soneta, Partner of M/s. Hemjyot Agency: -**

**34.1.** M/s. Hemjyot Agency, Gandhidham was appointed Customs Broker of M/s. HML and they had filed the subject seven Bills of Entry alongwith other related documents such as Invoice, Certificate of Origin, Certificate of Quality, Bills of Lading etc. The name of shipper mentioned in the Bill of Lading was M/s. Delta Shipping and Trading LLC, Oman whereas, the same was mentioned as M/s. Aureole Trading LLC, Dubai in the Bill of Entry No. 3472215 dated 07.04.2021 filed by them. Further, the description of subject goods was declared as Naphtha in the Bills of Entry without specifying the category of Naphtha as to whether Light, Heavy or Full Range which are classifiable under separate CTHs. Whereas, the classification of the same was made under CTH 27101229 i.e. for Full Range Naphtha. On being asked about the basis of such classification, Shri Pramod Soneta, Partner of

Customs Broker firm M/s. Hemjyot Agency failed to submit any justifiable reason and stated that the classification was declared as per the import documents and directions and approval of check list by the importer. M/s. Hemjyot Agency have rendered the subject goods liable for confiscation and thereby M/s. Hemjyot Agency have thus rendered themselves liable to penalty under **Section 112(a)** of Customs Act, 1962. By mentioning vague description (without specifying the goods as per classifications under Customs Tariff) in the Bills of Entry filed by them on behalf of M/s. HML, M/s. Hemjyot Agency have misled the authorities and thereby rendered themselves liable to penalty under **Section 117** of Customs Act, 1962. Shri Parmod Soneta was admittedly looking after entire work relating to M/s. Hemjyot Agency and was responsible behind omission and commission committed by M/s. Hemjyot Agency in respect of proceeding for Customs Clearance of subject goods. In view of above, Shri Pramod Soneta has separately rendered the subject goods liable for confiscation and also rendered himself liable to penalty under **Section 112(b)** and **Section 117** of Customs Act, 1962.

**35. Now, therefore, M/s. Hazel Mercantile Ltd. (IEC No. 396030441), Office No. 4, Plot No. 222, Ward-12B, Gandhidham-370201, registered office at 181, Ashoka Shopping Centre, 2<sup>nd</sup> Floor, G.T. Hospital Complex, L.T. Road, Mumbai-400001 having Corporate office at Veritas House, 70 Mint Road, Fort, Mumbai-400001** may be called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla (Kutch)-Gujarat, within 30 (thirty) days from the receipt of the show cause notice as to why:-

**a.** The description and classification of the subject imported goods (NGL) mis-declared as Naphtha under CTH 27101229 covered under Bill of Entry No. 3472215 dated 07.04.2021 mentioned above, should not be rejected and the said goods should not be described as SBPS and re-classified under CTH 27101290.

**b.** The assessable value of subject goods declared as **Rs. 37,53,16,037/-** in the Bill of Entry 3472215 dated 07.04.2021 should not be rejected and the same should not be considered according to the market value i.e. **approximate Rs. 118,29,55,124/-**.

**c.** The subject imported goods (SBPS)(Qty. of 9704.504 MTS), falling under CTH No. 27101290, which was mis-declared as Naphtha under CTH 27101229, having total declared assessable value of **Rs. 37,53,16,037/- (approximate market value of Rs. 118,29,55,124/-)** should not be held liable to confiscation under Section 111(d), 111(m), 111(p) and 111(o) of the Customs Act, 1962.

**d.** Penalty should not be imposed on them under Sections 112 (a), 112(b), 114AA and 117 of the Customs Act, 1962, for the reasons discussed above.

**36.** Now therefore, **the following further persons/companies/firms/concerns as appearing in Column 2 of the following table, may be individually and separately** called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Kandla, Near Balaji Temple, Kandla (Kutch)-Gujarat (India), within 30 days from the receipt of the show cause notice as to why Penalty should not be imposed on each of them individually under below mentioned penal provisions, respectively under the Customs Act, 1962 (as appearing at Column 3 to 6):

S. No.	Name (S/Shri/Ms/Smt/ M/s)	Penal provisions under Customs Act, 1962			
		(3)	(4)	(5)	(6)
1	Shri Nitin Didwania	112(a)	112(b)	114AA	117

2	Shri Satish Gaichor	112(a)	112(b)	114AA	117
3	Shri Minesh Shah				117
4	Shri Sreyas Choudhary				117
5	Shri Rajaram Shanbhag				117
6	Shri Saurabh Rajput				117
7	Shri Ashok Desai				117
8	M/s. Samudra Marine Services Pvt. Ltd., Gandhidham		112(b)		117
9	M/s Friends Salt Works & Allied Industries		112(b)		117
10	M/s Hemjyot Agency		112(b)		117
11	Shri Pramod Soneta		112(b)		117

**37.** The documents/articles as listed at Annexure-R are relied upon and are enclosed with this Investigation Report and where not enclosed with this Investigation Report will be made available for inspection on demand made in writing.

**(Vishwajeet Singh)**  
**Commissioner (in-situ),**  
**Customs Kandla**

**By Speed Post/Regd. Post/E-mail/Hand Delivery**

**List of Notices:**

1. M/s Hazel Mercantile Ltd., Veritas House, 70 Mint Road, Fort, Mumbai – 400001
2. Shri Nitin Didwania, Managing Director, M/s Hazel Mercantile Ltd., Veritas House, 70 Mint Road, Fort, Mumbai – 400001
3. Shri Satish Gaichor, Associate General Manager, M/s Hazel Mercantile Ltd., Veritas House, 70 Mint Road, Fort, Mumbai – 400001
4. Shri Minesh Shah, Director, M/s Hazel Mercantile Ltd., Veritas House, 70 Mint Road, Fort, Mumbai – 400001
5. Shri Sreyas Choudhary, Vice President (Marketing), M/s Hazel Mercantile Ltd., Veritas House, 70 Mint Road, Fort, Mumbai – 400001
6. Shri Rajaram Shanbhag, M/s Hazel Mercantile Ltd., Veritas House, 70 Mint Road, Fort, Mumbai – 400001
7. Shri Saurabh Rajput, Manager (Procurement), M/s Hazel Mercantile Ltd., Veritas House, 70 Mint Road, Fort, Mumbai – 400001
8. Shri Ashok Desai, Logistics Head, M/s Hazel Mercantile Ltd., Veritas House, 70 Mint Road, Fort, Mumbai – 400001
9. M/s Samudra Marine Services Pvt. Ltd., 105-106, Golden Arcade, Plot No. 141-142, Sector - 8 Gandhidham - Kutch, Gujarat - 370201.
10. M/s Friends Salt Works & Allied Industries, “Maitri Bhavan”, 18, Sector-8, P.O. Box No. 106, Gandhidham (Kutch) – 370201
11. M/s. Hemjyot Agency, 201/A, Lilashah Nagar, Opp. Adarsh Kanya Vidyaly, Ward-12-C, Gandhidham, Kachchh Gujarat – 370201

12. Shri Pramod Soneta, Partner of M/s. Hemjyot Agency, 201/A, Lilashah Nagar, Opp. Adarsh Kanya Vidyaly, Ward-12-C, Gandhidham, Kachchh Gujarat – 370201