

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A FILE NO. फ़ाइल संख्या	GEN/ADJ/ADC/474/2025-Adjn-O/o Pr Commr-Cus-Mundra
B OIO NO. आदेश संख्या	MCH/ADC/ZDC/475/2025-26
C PASSED BY जारीकर्ता	Dipak Zala, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुन्द्रा।
D DATE OF ORDER आदेश की तारीख	31.12.2025
E DATE OF ISSUE जारी करने की तिथि	31.12.2025
F SCN No. & Date कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/474/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 21.02.2025
G NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	i. M/s. Nakul Agro, (IEC: ABDPL7028F) ii. M/s. Paramount Sealinks Pvt. Ltd. iii. Shri Bharat Himmatlal Parmar, Branch Manager of M/s. Paramount Sealink Pvt iv. Shri Prashant Thakker (Popat)
H DIN/दस्तावेज़ पहचान संख्या	20251271MO0000111BED

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

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“सीमाशुल्क आयुक्त) अपील,
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA

HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

3. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870-के मद सं० 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

5. अपील ज्ञापन के साथ ड्यूटी /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982और सीमाशुल्क अधिनियम,1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

BRIEF FACTS OF THE CASE

M/s. Nakul Agro, (IEC: ABDPL7028F) (hereinafter referred to as the Importer”), having address as “G1-221-A, Mandore Industrial Area, Mandore, Jodhpur, Rajasthan-342001”, is indulged into illegal import of Watermelon Seeds (also known as Melon Seeds) at Mundra Port by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry.

1.1 Intelligence gathered by the Directorate of Revenue Intelligence (DRI), (hereinafter referred to as ‘DRI’) indicated that M/s. Nakul Agro is indulged into

illegal import of Watermelon Seeds (also known as Melon Seeds) by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. As per said notification “Import Policy of Melon Seeds is ‘Free’ with effect from 0st May 2024 up to 30th June 2024. Consignments with ‘shipped on board’ Bill of lading issued till 30th June 2024 shall be treated as ‘Free’ to import.”

2. Acting upon the intelligence, the containers covered under the Bill of Entry No. 5529894 dated 10.09.2024 filed by the importer M/s Nakul Agro at Mundra Custom House were tracked from the website of M/s Ocean Star line (star-liners.com/track-my-shipment/#listing-table) that there were major discrepancies between the details mentioned in BL of Lading No. OSLPZUMUN2993024 for BE No. 5529894 dated 10.09.2024 and the Cargo Manifest, the import consignment covered under Bill of Entry No. 5529894 dated 10.09.2024 filed by the importer M/s Nakul Agro lying in the CFS of M/s Mundhra CFS Pvt. Ltd., Mundra was put on hold for examination by officers of DRI. The goods covered under Bill of Entry No. 5529894 dated 10.09.2024 were examined by officers of DRI on 08.10.2024 and accordingly a panchnama dated 08.10.2024 was drawn at the CFS of M/s Mundhra CFS Pvt. Ltd., Mundra, in respect of the same.

3. During the investigation, a search was conducted at the office Premise of M/s Paramount Sealinks Pvt. Ltd. (General Agent working in India on behalf of M/s Ocean Star line) having office situated at ‘Office No. 14, 2nd Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201 under Panchnama dated 12.09.2024. During the Panchnama proceedings carried out at the said address, some e-mail correspondences relating to present investigation were resumed by the visiting officers of DRI on a reasonable belief that the same were required for DRI investigation.

3.1 Further, also a search was conducted at the office premise of M/s Unnati Cargo having office situated at Office no. 08, 1st Floor, Mundhra CFS, Mundra port, Mundra under Panchnama dated 14.09.2024. During the Panchnama proceedings carried out at the said address some documents relating to present investigation were resumed by the visiting officers of DRI for further investigation.

4. During the course of investigation, statements of concerned persons were recorded under Section 108 of the Customs Act, 1962 and some documents were collected as given below:

4.1 Statement of Shri **Bharat Himmatlal Parmar**, Branch Manager of M/s

Paramount Sealinks Pvt. Ltd., (Delivery Agent of Shipping Line i.e. M/s Ocean star line), having address as 'BOMGIM Building, 1st Floor, Plot No. 133, Sector-8, Gandhidham (Kutch) – 370201', was recorded under Section 108 of the Customs Act, 1962 on 23.12.2024 wherein he inter alia stated that he is working as Branch Manager of M/s Paramount Sealinks Pvt. Ltd. and M/s Ocean star line is their principle and M/s Paramount Sealinks Pvt. Ltd. has been handling all shipping related activities in India i.e. Export and Import at Mundra Port since long time on behalf of M/s Ocean star line. Further he stated that he generally received mail communication regarding consignments sent by M/s Oceanic Star Line, they sent him the details of arrival notice with containers details. Further, he stated that arrival of the consignment he looked after all clearance on behalf of Line to discharge the goods to his importers.

4.2 Statement of Shri **Madhu Sudan Lohiya, Partner** of M/s. Nakul Agro, was recorded under Section 108 of the Customs Act, 1962 on 03.10.2024 wherein he inter alia stated that From year 2007 to 2013-14 the construction of the factory and setting up of the machinery was done and in year 2014, he had started the firm M/s Nakul Agro that they process the watermelon seeds at their factory premises and then they sell the processed seeds in domestic market only. Further, he stated that he looks after all the business-related work of M/s Nakul Agro i.e. the work related to purchase and sales and import-export for M/s Nakul Agro. He submitted Invoice dated 25.06.2024, Packing list dated 25.06.2024, Bill of Lading No. OSLPZUMUN2993024 (Shipped on board date 30.06.2024), COO, Phytosanitary certificate, Fumigation certificate etc. related to 07 Containers No. GESU3418703, UETU2853133, CLHU3575309, MEDU2313136, GESU3044440, TDRU4047029 and PGTU2325829 related to Bill of Entry no. 5529894 dated 10.09.2024 which were supplied to him by his overseas supplier M/s Kokai Indo Foodstuff Trading LLC, Dubai, UAE. He also stated that he is well aware about the Notification No. 05/2023 dated 05.04.2024 issued by DGFT that if watermelons seeds had loaded or shipped on board before 30th June 2024 then it will be under 'Free' category, however if goods loaded on ship or shipped on board after 30th June 2024, then it will be under category of 'restricted'. On being shown the Cargo Manifest in respect of all 07 container nos. GESU3418703, UETU2853133, CLHU3575309, MEDU2313136, GESU3044440, TDRU4047029 and PGTU2325829 covered under B/L No. OSLPZUMUN2993024 dated 14.07.2024 which was resumed during search at M/s Paramount Sealinks Pvt. Ltd. on 12.09.2024, he stated that that while making the deal with Shri Prashant Thakker (Popat) (Broker of Ahmedabad based M/s Multigreen International,), he had clearly told him to send the goods i.e. watermelon seeds only if ship on board is before 30th June, otherwise don't send them. On being shown, email communication between M/s. Paramount Sealinks Pvt. Ltd. through email ID

impdocs@paramountsealink.com and M/s Eastern Shipping Co. ltd. through email ID tagwa@easternship.com (which was resumed under the Panchnama dated 12.09.2024 drawn at the premises of M/s. Paramount Sealinks Pvt. Ltd.) in which it has been sought for “*Kindly cross check again your previous BL and these BL Container number, Container number is same in both BLs so pls check and confirm which BL is wright*”, he stated that if he had known in advance that his present shipment was loaded after 30.06.2024. Further, upon reviewing the email conversation and related documents by the importer, he confirmed that manipulation of the shipping documents had indeed occurred. This review clearly indicates that the consignment in question was loaded after 30.06.2024 in respect of the said consignment covered under the Bill of Entry 5529894 dated 10.09.2024, as reflected in the discrepancies identified within the correspondence and supporting records.

4.3 Statement of Shri Vankar Bharatbhai Khengarbhai, senior executive (imports) of M/s Paramount Sealinks Pvt. Ltd, Gandhidham (RUD No. - 8);

During statement, Shri Vankar Bharatbhai were shown the two types of bill of Lading no. OSLPZUMUN2993024 dated 30.06.2024 & OSLSBL-961/24 dated 27.06.2024 and Cargo Manifest date 01.07.2024 (sailing date 14.07.2024), and on perusal of BLs and cargo manifest, he stated that the shipped-on-board date and vessel name have been altered in both BLs, and he confirmed that M/s Paramount Sealinks Pvt. Ltd. has received the said BLs from their principal M/s Ocean Star line.

During statement Shri Vankar Bharatbhai were shown the cargo manifest for Seven containers (GESU3418703, UETU2853133, CLHU3575309, MEDU2313136, GESU3044440, TDRU4047029 and PGTU2325829) under the same B/L No. OSLPZUMUN2993024, he stated that as per cargo manifest shows that the vessel Sunset X sailing date is 14.07.2024 and he confirmed that based on vessel sailing date, the correct shipped-on-board date is 14.07.2024, he further stated that someone has tampered the B/L documents, changed the shipped-on-board date from 14.07.2024 to 29.06.2024/26.06.2024.

4 . 4 Statement of Shri Prashant Thakker, Partner of M/s Multigreen International, Ahmedabad has been recorded on 19.11.2024-

During statement, Shri Prashant Thakker (Popat) stated that he looked after the work related to contracts with seller and buyers. M/s Multigreen International, specializing in the brokerage of season-based agricultural products. They connect local buyers in India with overseas suppliers, primarily from African countries like Sudan, Somalia, and Nigeria, to fulfill demand for

products like sesame seeds, watermelon seeds, pulses, and coriander.

Further, he stated that he negotiates product pricing, brokerage fees and other charges with Indian importers and the shipper for most products. For watermelon and coriander seeds, he charges brokerage from both the shipper and importer. He further stated that he had talked with overseas suppliers of watermelon seeds situated at Sudan.

During statement, Shri Prashant Thakker(Popat) were shown the two types of bill of Lading (including switch BL) no. OSLPZUMUN2993024 dated 30.06.2024 & OSLSBL-961/24 dated 27.06.2024 and cargo manifest date 01.07.2024 (sailing date 14.07.2024), and on perusal of BLs and cargo manifest, he stated that the shipped-on-board date and vessel name have been altered in both BLs, and he confirmed that based on related documents, the correct shipped-on-board date is 14.07.2024, he further stated that someone has tampered the B/L documents, changed the shipped-on-board date from 14.07.2024 to 29.06.2024/26.06.2024 .

4 . 5 Statement of Shri Chavda Dilipsinh, G-Card holder of M/s Unnati Cargo, recorded under Section 108 of the Customs Act, 1962, on 31.12.2024 wherein he inter alia stated that he has idea about the Notification No. 05/2023 dated 05.04.2024 issued by DGFT which stipulates that before 30.06.2024, the import of watermelon seeds is free and after 30.06.2024 the import of watermelon seeds is Restricted. On being shown Cargo Manifest in respect of all 07containers nos. GESU3418703, UETU2853133, CLHU3575309, MEDU2313136, GESU3044440, TDRU4047029 and PGTU2325829 covered under Bill of Lading No. OSLPZUMUN2993024/OSLSBL-961/24 and Bill of Entry No. 5529894 dated 10.09.2024 which are resumed during search at M/s Paramount Sealinks Pvt. Ltd., he stated that On perusal of said documents it appears that someone has manipulated with original documents and prepared the forged/fake documents and tried to show shipped on board date as before 30th June for getting the benefit of DGFT Notification No. 05/2023 dated 05.04.2024. However, he stated that if he had known in advance that the shipment was shipped on board after 30th June 2024, he would not have filed the Bill of Entry on behalf of the importer.

5. Evidences available on record during investigation:

5.1 During search at the premises of M/s Paramount Sealink Pvt. Ltd., the Cargo Manifest BL No. **OSLSBL-961/24 date 01.07.2024** was resumed, which shows that all the seven containers GESU3418703, UETU2853133, CLHU3575309, MEDU2313136, GESU3044440, TDRU4047029 and PGTU2325829 covered under Bill of Lading No.

OSLPZUMUN2993024/OSLSBL-961/24 Bill of Entry No.5529894 dated 10.09.2024 actually arrived at Port Sudan Terminal on 14.07.2024. As per Cargo manifest, the BL No. OSLSBL-961/24 & date is 01.07.2024 and also the vessel sailing date/shipped on board date is 14.07.2024. It shows that Bill of Lading No. **OSLPZUMUN2993024 dated 14.07.2024** showing 'Shipped on Board' date as 30.06.2024, which was submitted for filing IGM and Bill of Entry at Mundra Custom House were manipulated/forged to get the 'Restricted' goods cleared. The Notification No. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if 'watermelons seeds' have been loaded or shipped on board before 30th June 2024 then only it will be under 'Free' category.

5.2 Two types of Bills of Lading were found-

(i) Bill of Ladings available with Container Line- During search at the premises of M/s Paramount Sealink Pvt. Ltd. apart from the BL No. **OSLSBL-961/24** dated 27.06.2024 having shipped on board date 25.06.2024, one more Bill of Lading having same No. **OSLPZUMUN2993024** dated 14.07.2024 were found. As per email conversation it appears that the BL No. **OSLPZUMUN2993024 dated 14.07.2024** were received from Tagwa Badri, Marketing executive of M/s Eastern shipping Co. Ltd. Khartoum, Sudan on 14.07.2024 vide email ID impdocs@paramountsealink.com with subject of *OSL pre alert AL AHMED//24713 PORT SUDAN-MUNDRA TDR-2024-07-14*. In which Shipped on board date is 30.06.2024 and vessel name *AL AHMED* voyage number 24713 were mentioned.

Further one another email dated 21.07.2024 had been received by M/s Paramount Sealinks Pvt. Ltd. and as per email conversation it appears that the BL No. **OSLSBL-961/24** dated 27.06.2024 were received from TagwaBadri, Marketing executive of M/s Eastern shipping Co. Ltd. Khartoum, Sudan on 21.07.2024 vide email ID impdocs@paramountsealink.com with subject of *OSL pre alert AL AHMED//24713 PORT SUDAN-MUNDRA TDR-2024-07-14, in which shipped on board date is 25.06.2024 and also cargo manifest is attached with the said BL, in which BL no. OSLSBL-961/24* dated 01.07.2024 and vessel sailing date is 14.07.2024 are mentioned.

(ii) Importer produce Bill of Lading during statement and also submitted to Customs- During statement, Shri **Madhu Sudan Lohiya** had submitted the Bill of lading number **OSLSBL-961/24 dated 27.06.2024**. In which shipped on board date 25.06.2024, vessel name *Sunset X*, voyage number 2423 were mentioned. The same Bill of lading was submitted to Customs during filing of Bill of Entry by importer.

Further, the two types of Bills of Lading number (i) OSLSBL-961/24 dated 27.06.2024 (ii) OSLPZUMUN2993024 dated 14.07.2024 (reference no.

OSL-32227/24 are same in both BL) discussed above bear dates that are one is on or before June 30th and another is after 30th June and vessel name also different i.e. AL AHMED (Voyage no. 24713)& Sunset X(Voyage no. 2423); however, upon further investigation, it is clear that these dates , vessel name & Voyage number have been forged and accordingly prepared fabricate documents. It appears that in this case, M/s Ocean Star Line, M/s Paramount Sealinks Pvt. Ltd., Eastern Shipping Co. Ltd., Sudan, M/s Multigreen International, Ahmedabad, and the importer were found to be complicit in the creation of these fraudulent documents.

Further examination of the forged Bills of Lading, coupled with Cargo Manifest information, reveals that the "Shipped on Board" date for the containers covered under Bill of Entry 5529894 dated 10.09.2024 is recorded as July 14, 2024. This discrepancy indicates that the involved parties likely fabricated these documents with the intent to exploit a specific notification. The manipulation of dates, coupled with the deliberate forging of shipping documents, suggests that the primary objective was to circumvent regulatory requirements and gain an unjust advantage of Notification no. 05/2023 dated 05.04.2024.

This coordinated effort to create and present fabricated documentation not only violates legal and procedural norms but also undermines the integrity of the shipping and import/export process. Such actions, could lead to severe legal repercussions for all involved parties. Through intentional misrepresentation and manipulation of dates, they sought to facilitate the clearance of restricted cargo in violation of the established regulations.

6. Seizure:

During the investigation, it was observed as per Cargo Manifest and as per other evidences gathered during investigation that the imported goods i.e. Watermelon Seeds have been loaded on board after 30th June 2024 and hence are restricted goods as per Notification no. 05/2023 dated 05.04.2024 issued by the DGFT. Thus, it appears that the imported goods by M/s Nakul Agro, under Bill of Entry No. 5529894 dated 10.09.2024 filed at Mundra Custom House, appears to have been mis-declared in documents submitted to the Customs. Therefore, there being a reasonable belief that that the said goods are liable for confiscation under the provisions of Section 111 of the Customs Act, the same were placed under seizure under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 04.11.2024.

7 . Brief of investigation conducted and liability of imported goods for confiscation:

7.1 Investigation conducted by DRI has revealed that the containers covered under Bill of Entry No. 5529894 dated 10.09.2024, were shipped from Sudan port on 14.07.2024, well beyond the cut-off date of 30.06.2024 specified in DGFT Notification No. 05/2023 dated 05.04.2024. The Cargo Manifest confirms that the containers were received at the port on 14.07.2024, further corroborating the lapse in compliance with the notification's timeline. Moreover, email correspondences and other evidence clearly demonstrate that a forged Bill of Lading No. **OSLPZUMUN2993024/OSLSBL-961/24** was created, falsely reflecting the 'shipped on board' date as 30.06.2024 and 25.06.2024, instead of the actual date of 14.07.2024. This deliberate manipulation of shipping documents was aimed at unlawfully availing the benefits under the DGFT Notification No. 05/2023. The investigation indicates that the importer, in collusion with representatives of M/s Paramount Sealinks Pvt. Ltd., M/s Ocean star line, and TagwaBadri, Marketing executive of M/s Eastern shipping Co. Ltd. Sudan, orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted cargo. By doing so, the importer has failed to adhere to the conditions of DGFT Notification No. 05/2023, thereby violating the provisions of the Foreign Trade Policy 2023. During the investigation, it is evident that Shri Bharat Parmar, as the branch manager, was kept fully informed of all communications, as Shri Tagva Badri, the Marketing Executive at Eastern Shipping Co. Ltd., had sent him the forged documents via email. This constitutes a serious breach of regulatory compliance and evidences deliberate intent to mislead customs authorities.

7.2 The facts and evidence discussed above indicate that the Directorate General of Foreign Trade (DGFT), through Notification No. 05/2023 dated 05.04.2024, amended the import policy for Melon Seeds under CTH 12077090. As per the notification, the import of Melon Seeds was classified as 'Free' from 1st May 2024 to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import". It means that all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024. However, as established in the preceding paras, M/s. Nakul Agro, G1-221-A, Mandore Industrial Area, Mandore, Jodhpur, Rajasthan-342001, illegally imported Watermelon Seeds under Bill of Entry No. 5529894 dated 10.09.2024, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 14th July 2024 i.e. beyond the permissible date of 30th June 2024 using a forged Bill of Lading. Furthermore, it was revealed during the investigation that the importer deliberately withheld critical information from Customs Authorities, failing to

disclose that the goods were shipped on board after the specified date of 30th June 2024. This reflects intentional non-compliance with the DGFT Notification No. 05/2023. Hence, the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No.5529894 dated 10.09.2024 having total quantity **121.8** MTs and declared assessable value of **Rs. 2,04,90,334.83/-** imported by M/s. Nakul Agro are liable for confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962.

8. Roles of persons/firms involved:

8.1 Role of the importer M/s Nakul Agro (IEC No. ABDPL7028F) (Partner: Shri Madhu Sudan Lohiya):

Shri Madhu Sudan Lohiya is a Partner of M/s. Nakul Agro and being importer, he was well aware of the Import policy and Notification. M/s Nakul Agro had imported watermelon seeds covered under Bill of Entry No. 5529894 dated 10.09.2024 in by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry.

During statement, Shri Madhu Sudan Lohiya admitted to overseeing all business operations of M/s Nakul Agro, including purchase, sales, and import-export activities. Despite being fully aware of the said Notification, he failed to disclose the actual facts to the customs department. Instead, he attempted to facilitate the clearance of restricted cargo. Email correspondences further indicate that he sought to obtain forged dates from shipping line representatives in a manner that would mislead customs and enable the clearance of restricted cargo.

The total quantity of the said goods covered under the subject Bill of entry is **121.8** MTs having declared Assessable value of **Rs. 2,04,90,334.83/-**. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and therefore is liable to penalty under **Section 112 (a) and 112 (b)** of the Customs Act, 1962. By not uploading the original documents as mandated during filing of Bill of Entry, the importer has attempted to mislead the department thereby rendering

themselves liable to penalty under **Sec 114AA** of Customs Act, 1962.

8.2 Role of M/s Paramount Sealinks Pvt. Ltd. - working in India on behalf of M/s Ocean Star Line:

The facts and evidences gathered during the search, including Bill of Lading and email correspondences, provide clear and compelling proof that M/s Paramount Sealinks Pvt. Ltd., acting on behalf of M/s Ocean Star Line, engaged in deliberate collusion with representatives from M/s Ocean Star Line and Mr. Tagwa Badri, Marketing Executive of Eastern Shipping Co. Ltd., Sudan, to manipulate the dates on the Bill of Ladings (B/Ls). This deliberate manipulation was carried out to facilitate the clearance of restricted cargo in direct violation of established regulations, which govern the shipping and clearance of goods in India.

It is evident that, the manipulation of the B/Ls and related documents were done intentionally, altering the actual shipped-on-board dates and vessel details to mislead customs authorities and facilitate the release of cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by M/s Paramount Sealinks Pvt. Ltd. make them liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, their involvement in the creation of forged Bills of Lading constitutes a violation that renders them liable to penalties under **Section 114AA** of the Customs Act, 1962.

8.3 Role of Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd. (working in India on behalf of M/s Ocean Star Line)

Shri Bharat Himmatlal Parmar, as the Branch Manager of M/s Paramount Sealinks Pvt. Ltd., a container line agent, was well-versed in the Import policy and Notifications. In his statement, Shri Parmar admitted to overseeing all operations of M/s Paramount Sealinks Pvt. Ltd., including documentation related to import-export activities as a container line agent. The facts and evidence gathered during the investigation, including the Bill of Lading and email correspondences, provide clear and compelling proof that M/s Paramount Sealinks Pvt. Ltd., acting on behalf of M/s Ocean Star Line, deliberately colluded with representatives from M/s Ocean Star Line and Mr. Tagwa Badri, Marketing Executive of Eastern Shipping Co. Ltd., Sudan, to manipulate the dates on the Bill of Lading (B/L). This deliberate manipulation aimed to facilitate the clearance of restricted cargo, in direct violation of established regulations governing the shipping and clearance of goods in India.

During the investigation, it is clear that Shri Bharat Parmar, as the branch manager, was kept fully informed of all communications, as Shri Tagva Badri, the Marketing Executive at Eastern Shipping Co. Ltd., sent him the forged documents via email. These actions demonstrate a blatant disregard for regulatory compliance and a clear intent to mislead the authorities. The deliberate acts and omissions by Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd., make him liable for penalties under Section **112(b)** of the Customs Act, 1962.

8.4 Shri Prashant Thakker (Popat), Authorized representative of M/s Multigreen International, Ahmedabad.:

During investigation, Shri Prashant Thakker accepted that they used to import goods i.e. Watermelon seeds from Sudan. It was noticed that although Shri Prashant Thakker, was handling the import related work as a Broker and used to contact Sudanese suppliers in order to finalize the deal with the suppliers of the goods. He used to bargain with foreign suppliers and used to arrange the payment against the subject import goods to the Sudanese suppliers. During the investigation, it appears that Shri Prashant Thakker was constantly in touch with overseas suppliers as well as the container line (M/s Paramount Sealinks Pvt. Ltd. - working in India on behalf of M/s Ocean Star Line) and was involved in the fabrication of import documents. It also appears that Shri Prashant Thakker charged brokerage fees for these services and Shri Prashant Thakker had given instructions to the container line through the overseas supplier that even if the goods are shipped after 30th June 2024, the documents must be maintained before 30th June 2024, only then the goods will be cleared in India. It appears that Shri Prashant Thakker had given instructions to the container line through the overseas supplier that even if the goods are shipped after 30th June 2024, the documents must be maintained before 30th June 2024, only then the goods will be cleared in India. The facts and evidence gathered during investigation, clearly establish that Shri Prashant Thakker, acting as broker, deliberately colluded with representatives of container line to manipulate the actual dates on the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. It has also been established that Shri Prashant Thakker was in direct contact with container line and documents arranged forged dates from in a manner that would mislead customs and enable the clearance of restricted cargo. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by **Shri Prashant Thakker, Partner of M/s Multigreen International, Ahmedabad** make him liable for penalties under **Section 112(b)** of the Customs Act, 1962. Furthermore, his involvement in the creation of forged Bills of Lading a violation that renders him liable to penalties

under **Section 114AA** of the Customs Act, 1962.

9. Relevant Legal provisions:

9.1. Import of Watermelon seeds falling under HS Code 12077090 was made from “Free” to “Restricted” for vide Notification No. 05/2023 dated 05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry under Section 3 and Section 5 of the FT(D&R) Act, 1992 read with Paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP), 2023 as amended from time to time. The Import of watermelon seeds is subject to Policy condition No. 4 of Chapter 12 of the ITC (HS) Classification.

9.2 Whereas vide Notification No. 05/2023 dated 05.04.2024 issued by the Directorate General of Foreign Trade, Ministry of Commerce & Industry, it has been envisaged that “Import Policy of Melon Seeds is ‘Free’ with effect from 01st May 2024 up to 30th June 2024. Consignments with ‘shipped on board’ Bill of lading issued till 30th June 2024 shall be treated as ‘Free’ to import.” As a corollary, all consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on ‘Actual User’ basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024.

9.3 The other relevant policy provisions pertaining to the import of watermelon seeds along with relevant penalty provisions of the Customs Act, 1962 are as follows:

9.3.1 FTDR Act, 1992:

Section 3 of the FTDR Act, 1992: Powers to make provisions relating to imports and exports–

(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

(3) 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 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

Section 5 of the FTDR Act, 1992: Foreign Trade Policy—

The Central Government may, from time to time, formulate and announce, by notification in the Official Gazette, the foreign trade policy and may also, in like manner, amend that policy:

Provided that the Central Government may direct that, in respect of the Special Economic Zones, the foreign trade policy shall apply to the goods, services and technology with such exceptions, modifications and adaptations, as may be specified by it by notification in the Official Gazette.

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9.3.2 Foreign Trade Policy, 2023:

Para 1.02: Amendment to FTP

Central Government, in exercise of powers conferred by Section 3 and Section 5 of FT (D&R) Act, 1992, as amended from time to time, reserves the right to make any amendment to the FTP, by means of notification, in public interest.

Para 2.01: Policy regarding import /Exports of goods

(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. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at <https://dgft.gov.in>

(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.

10. Accordingly, Show cause Notice GEN/ADJ/ADC/474/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 21.02.2025 was issued to M/s. Nakul Agro, wherein they were called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why:

(a) The imported goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5529894 dated 10.09.2024 having total quantity **121.8 MTs** having declared Assessable value of **Rs. 2,04,90,334.83/-** should not be confiscated under Section 111(d), 111(m) and 111(o) of Customs Act, 1962.

(b) Penalty under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962 should not be imposed on **M/s. Nakul Agro.**

10.2 Vide SCN dated 21.02.2025, M/s Paramount Sealinks Pvt. Ltd. were called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why penalty should not be imposed on

M/s Paramount Sealinks Pvt. Ltd. under Section **112(b) & 114AA** of the Customs Act, 1962.

10.3 Further, vide SCN dated 21.02.2025, Shri Bharat Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd was called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why penalty should not be imposed on M/s Paramount Sealinks Pvt. Ltd. under Section **112(b)** of the Customs Act, 1962.

10.4 Furthermore, vide SCN dated 21.02.2025, Shri Prashant Thakker(Popat), Authorized Representative of M/s Multigreen was called upon to show cause in writing to the Additional/Joint Commissioner of Customs, Customs House, Mundra as to why penalty should not be imposed on him under Section **112(b) & 114AA** of the Customs Act, 1962.

11. Written Submission

11.1.1 M/s. Nakul Agro, (IEC: ABDPL7028F), submitted their reply dated 31.05.2025 and 06.06.2025, wherein they have, *inter alia*, submitted that:

11.1.1 M/s. Nakul at the very outset disowns the baseless allegations made against it on the following grounds which may please be considered without prejudice to one another and without admitting anything. M/s. Nakul before making legal submissions in the matter would like to submit that it was shocked and surprised to receive the impugned SCN as it clearly revealed from the investigation including duly highlighted paragraphs of the statements of proprietor of M/s. Nakul and partner of broker in para supra and infra that it was not aware about the loading of cargo after 30.06.2024. It had received Bills of Lading from its overseas supplier M/s Kokai Indo Foodstuff Trading LLC, Dubai, UAE and other documents through the broker M/s. Multigreen were showing the ship on board and loading of container on the vessel prior to 30.06.2024 and date of issue of Bills of Lading also prior to 30.06.2024, which are not in dispute at all. M/s. Nakul submits that it is admitted fact on record by way of exculpatory statements dated 03.10.2024 of the proprietor of it and statement dated 19.11.2024 of Mr. Prashant Popat, partner of M/s. Multigreen, who has acted as broker between it and foreign based supplier especially highlighted paragraphs supra and infra nowhere stating or referring name of M/s. Nakul and its broker M/s. Multigreen that they were not aware about the loading of the goods on board vessel if any after 30.06.2024.

11.1.2 Shri Madhu Sudan Lohiya, proprietor of M/s. Nakul in his statement dated 03.10.2024 recorded under Section 108 of the Custom Act, 1962 has *inter alia* deposed that noticee has never talked with any person of M/s. Eastern Shipping Co. Ltd., Sudan or M/s. Paramount Sealink Pvt. Ltd., Gandhidham, Gujarat;

On being shown the cargo manifest of all 7 containers pertaining to bills of lading which shows vessel sailing date is 14.07.2024 at port Sudan for comments he stated that while making deal with Mr. Prashant Thakkar, he had

clearly told him to send the goods i.e. watermelon seed only if ship on board is before 30th June, otherwise don't send them. he had also made the partial payment to him on 06 June 2024 as agreed telephonically. Since he had never been in possession of any alternate BL or cargo manifest, therefore as far as his understanding B/L No. OSLSBL-961/24 issued on 27.06.2024 is correct.

On being shown email communication dated 14/21/22/25.07.2024 between M/s. Paramount Sealink Pvt. Ltd. through email id impdocs@paramountsealink.com from M/s. Eastern Shipping Co. Ltd. through email id tagwa@easternship.com, he stated that he has no idea about this email communication and Shri Prashant Thakkar has been handling the email communication, if he had known in advance that his present shipment (total 7 containers) was loaded after 30.06.2024, he would never imported it.

On being shown two different shipped on board date i.e. 30.06.2024 and 25.06.2024 in respect of old BL-OSLPZUMUN2993024 and new BL-OSLSBL-961/24 respectively as well as different BL date for the same B/L No. OSLSBL-961/24 i.e 01.07.2024 on cargo manifest, he stated that shipped on board date has been manipulated from 30.06.2024 to 25.06.2024 in B/L documents by someone. But he assure that he had never talk to anyone and also not given directions in this regard for manipulation in documents. Hence he stated that the amendment in B/L documents have done neither by him nor as per his directions. Again he stated that while making the deal with Shri Prashant Thakkar, he had clearly told him to send the goods only if the cargo i.e. watermelon seeds ships on board before 30th June otherwise not to send them. He had also made payment to him on 06 June 2024 for the said 7 Containers.

He further stated that if he had known in advance that his present shipment (seven containers) was loaded after 30.06.2024, he would never have imported it.

11.1.3 M/s. Nakul further submits that during the course of recording of the said statement, copy of Commercial Invoice dated: 25.06.2024, Packing List dated: 25.06.2024, Bill of Lading No. OSLSBL-961/24 (Shipped on Board 27.06.2024) and COO etc related to 7 Containers were submitted. Thus, when all these documents loudly speak that all bears date prior to 30.06.2024 and even shipment of cargo also prior to 30.06.2024 and he was not directly or indirectly in contact with the shipping line at Sudan or even with shippers, the allegations are totally baseless.

Shri Prashant Thakkar, Partner of M/s. Multigreen in his statement dated 19.11.2024 recorded under Section 108 of the Custom Act, 1962 has inter alia deposed that they have instructed the seller of Sudan/Dubai that please send the watermelon seeds which had shipped on board date should be on or before 30.06.2024;

That they have made the agreements with overseas suppliers and Indian Importers after discussion with them;

That he has never talked with any person of M/s. Paramount Sealink Pvt. Ltd. Gandhidham / Dubai;

On being shown the cargo manifest related to the all 7 containers pertaining to the BL in which shipped-on board date is 25.06.2024 and vessel sailed date is 25.06.2024, however as per cargo manifest of the vessel Sunset X sailed on 14.07.2024, he inter alia deposed that after seeing the BL and cargo

manifest it appears that the shipped on board date should be 14.07.2024. Further, I state that I don't know who told container line for changing the date of shipped on board and Seller never told me about the same. Further I state that If I known in advance then never participate in these consignments as broker and never placed order of this consignments.

On being shown two different shipped on board date i.e. 30.06.2024 and 25.06.2024 in respect of BL-OSLPZUMUN2993024 and BL-OSLSBL-961 /24 respectively as well as different BL date for same B/L No.OSLSBL-961/24 i.e.01.07.2024 and sailing vessel on 14.07.2024 in Cargo Manifest for comments he inter alia deposed that shipped on board date has been manipulated from 30.06.2024 to 25.06.2024 in B/L documents by someone. However, it appears that the actual shipped on board date may be 14.07.2024. But he assures that he had never talk to anyone and also not given directions in this regard for manipulation in documents. Hence, he states that the amendment in B/L documents have done neither by him nor as per his directions.

On being shown the email communication dated 14/21/22/25.07.2024 between Paramount Sealink Pvt. Ltd. through email ID impdocs@paramountsealink.com from M/s Eastern Shipping Co. Ltd. through email ID tagwa@easternship.com (which was resumed during the search dated 12.09.2024 at premises of M/s. Paramount Sealink Pvt. Ltd., Gandhidham) he stated that he has no idea about this email communication. It appears that this conversation is regarding manipulation in BL and two BLs had been generated for same consignment and only one is right in both. The seller never told him about these manipulations.

Noticee submitted that statements of proprietor/ partner/director etc. of the importers and Shri Prashant Popat are completely exculpatory and it clearly reveals that it was not within their knowledge about the Bills of Lading received by them and submitted to Customs with Ship on Board date and Place of Issue Date prior to 30.06.2024 were not correct and other Bills of Ladings with Ship on Board Date and Place of Issue Date before and after 30.06.2024 or vice versa or after 30.06.2024 (Irrespective of fact that such BLs are relied upon by the investigation are unsigned and unstamped which have no evidential value at all) for the same shipments were issued by the shipping line as relied upon by the investigation. If any switch over of Bills of Lading etc. were not within their knowledge They had contracted with the suppliers of goods for the Shipping Bills for the date prior to 30.06.2024 or of date 30.06.2024. Even they had not contacted any one including foreign suppliers and/or shipping line or their local agents for two sets of shipping bills with different dates for the same consignments. There was no reason to doubt on the copy of Bills of Lading duly signed and stamped received by them with the dates prior to 30.06.2024 especially when they had specifically contracted / ensured with the suppliers that goods should be on board with shipping bill on board date prior to 30.06.2024 otherwise they will not accept the goods.

11.1.4 M/s. Nakul submits that it is admitted facts on record that during the course of search of premises under panchnama dated 12.09.2024 drawn at the premises of M/s. Paramount Sealink Pvt. Ltd., Gandhidham (local agent of M/s. Oceanic Star Line) including the surfing of the computers and emails printout running into Page 1 to 488, 1 to 472 and 1 to 394 (placed in 3 different files) nothing adverse, objectionable or involving it and its broker Mr. Prashant Thakkar (Popat) were found nor deposed by anyone involving them or deposing

that they were aware about delay in shipment beyond 30.06.2024 or change in BL etc.

Thus, on the basis of exculpatory statements of M/s. Nakul's proprietor, its broker's partner and all other documents it clearly reveals that neither M/s. Nakul nor its broker was aware about the dates of shipments of watermelon seeds were after 30.06.2024. It is not the case of the investigation that any one from M/s. Nakul or its broker were involved in manipulating / change in date of shipment if any by anyone shipper/shipping line so as to import goods which become restricted after 30.06.2024 due to loading after 30.06.2024. Looking to the date mentioned in the documents furnished through its overseas supplier no one can visualize or doubt about delay in shipment.

The Noticee further submitted that it is not the case of the investigation that any one from importers or Shri Prashant Papat were involved in manipulating / change in date of shipment if any by anyone shipper/shipping line so as to import goods which become restricted after 30.06.2024 due to loading after 30.06.2024 or bill of lading issue dates are after 30.06.2024. Looking to the documents including other documents uploaded with check list for Bills of Entry and also furnished by the importers during investigation no one can visualise or doubt about manipulation of Bills of Lading etc. if any. Since, Sudan is war affected country and goods are always transhipped through Jeddah delay in shipment so no one can doubt in delay in shipment as it is routine to receive goods late from Sudan.

Therefore, in view of the above no penalty is imposable upon M/s. Nakul under any of the provisions of Section 112(a), Section 112(b) and Section 114AA of the Customs Act, 1962, apart from the further grounds discussed herein under.

11.1.5 M/s. Nakul submits that thus on the basis of above it clearly reveals that allegations made against it at para 7.1 and 7.2 of the SCN that the investigation indicated that the importer, in collusion with representatives of Paramount Sea Links Pvt. Ltd., M/s Oceanic Star Line and Tagwa Badri, Marketing Executive of M/s. Eastern Shipping Co. Ltd., Sudan orchestrated the falsification of relevant dates on the Bill of Lading to facilitate the clearance of restricted cargo. By doing so, the importer has failed to adhere to the conditions of DGFT Notification No. 05/2023, thereby violating the provisions of the Foreign Trade Policy 2023. During the investigation, it is evident that Shri Bharat Parmar, as the branch Manager, was kept fully informed of all communications, as Shri Tagwa Badri, the marketing executive at M/s Eastern Shipping Co. Ltd., Sudan, had sent him the forged documents with e-mail, that the investigation conclusively proved that the goods were shipped on board on 14th July 2024 i.e. beyond the permissible date of 30th June 2024 using a forged Bill of Lading. Furthermore, it was revealed during the investigation that the importer deliberately withheld critical information from Customs Authorities, failing to disclose that the goods were shipped on board after the specified date of 30th June 2024. This reflects intentional non-compliance with the DGFT Notification No. 05/2023 are nothing but baselessly implicating M/s. Nakul which are contrary to oral as well as documentary evidences discussed in para supra.

11.1.6 M/s. Nakul submits that thus allegations made at para 7.2 of the SCN that hence, the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5529894 dated 10.09.2024 having total quantity 121.8 MTs and declared assessable value of Rs. 2,04,90,334.83

imported by M/s. Nakul are liable for confiscation under confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962.

11.1.7 M/s. Nakul without admitting anything further submits that in fact there is no violation of any of the provisions not to speak of Notification No. 05/2023- dated 05.04.2024 issued by DGFT as the said notification provides for issue of Bill of Lading issued till 30.06.2024. It is not matter of dispute that Bills of Lading were issued on 27.06.2024. The said notification nowhere provides that “Consignments with shipped on board” should be before 30.06.2024 but BL should be issued before 30.06.2024. In all cases switched BLs are relied upon and based for SCN.

As per international practice when Bill of Lading is issued with only one date i.e. date of creating and signing date but same is also considered as ship on board date. However, when Bill of Lading is with two dates – Ship on board date and place of issue date, such dates can be same or different also. Thus, as per the language used in the column Sr. No. (ii) – Revised Policy Condition – date of issue of bill of lading should be before 30.06.2024 and not date of consignments with shipped on board. If the intention of the central government to recognise the date of consignments on shipped on board till 30.06.2024 for free import, it would have differently worded by putting the word “and” between “Consignments with shipped on board” **and** “Bill of Lading issued till 30.06.2024 shall be treated as “Free to import”. Therefore, as per the language Bill of Lading issued date i.e. 30.06.2024 is to be considered for free import of watermelon. As per admitted facts on record in cases of the Bills of Lading whether original submitted by the importer or switched BLs relied upon by the investigation in all case BL dates are before 30.06.2024, so goods viz. watermelon imported by M/s. Nakul are “Free to Import” and not restricted.

11.1.8 M/s. Nakul without admitting anything further submits that even First Original Bill of Lading as received from its overseas supplier clearly show “Ship on Board Date – 25.06.2024.

Apart from the above **it is nowhere forth coming from the investigation that from where Bills of Lading - unsigned unstamped copies - BL SURRENDERED Copy** of BL No. OSLPZUMUN2993024 - place of issue date 17.07.2024 with Ship on Board Date 30.06.2024 by the Agent Eastern Shipping Company for the carrier Oceanic Star Line and **unsigned copies unstamped - VERIFY Copy** BL No. OSLSBL-961/24 – place of issue date 27.06.2024 with Ship on Board Date 25.06.2024 by the Gulf Gate Shipping Company Limited for the carrier Oceanic Star Line RUD No. 12 and 13 are recovered from where or in whose possession or who has produced the same.

It is nowhere forth coming on what basis all these unsigned copy of BLs can be relied upon over Original signed copy received through its overseas supplier. In absence of source of the same and its genuineness / authentication of issue by the shipping line, same cannot be relied upon over signed copy of the BL Copy received through its overseas supplier.

11.1.9 M/s. Nakul without admitting anything further submits that in case of two different First Original copy BL No. OSLSBL-961/24 – Place of issue Date 27.06.2024 with Ship on Board Date 25.06.2024 and another BL Surrendered copy with Place of issue Date 14.07.2024 with Ship on Board Date 30.06.2024 with Vessel Name – AL Ahmed. As stated in para supra since cargo was transhipped to Jeddah after loading from Sudan, BL definitely shows the name of original vessel which sailed from Sudan and in IGM name of the Vessel

which carries cargo from Jeddah to Mundra mention. M/s. Nakul further submits that the investigation for the date of loading of containers after 30.06.2024 has relied upon the document which is attached with the Import Manifest is not BL at all but unsigned unstamped paper details like BL No. OLSBL-961/24 dated 01.07.2024 with sailing date 14.07.2024 with vessel name SUNSET X cannot be considered as Bill of Lading at all. Therefore, in any case, date of loading which is mentioned in the Bills of Lading filed with BE cannot be disputed merely on the basis of some unauthenticated copy of BL.

11.1.10 M/s. Nakul in view of the above submits that goods viz. 121.8 MT Watermelon Seeds imported under one Bills of Entry dated 10.09.2024 are not liable to confiscation under the provisions of the Customs Act, 1962 not to speak of Section 111(d), Section 111(m) and Section 111(o) of the Customs Act, 1962. It is nowhere spelt out in the impugned SCN that how goods are liable to confiscation under the said 3 clauses (plus clause (f) of Section 111 in respect of two Containers). In any case it is not the case of the department that goods are prohibited (as per the SCN same is restricted), goods do not correspond in respect of value or in any particular with the entry made under the Customs Act (there was no mis-declaration at all as all entry made in both the Bills of Entry are as per the documents furnished with the Bills of Entry etc) and goods are prohibited in respect of import thereof under this act or any other law time being in force, in respect of which the condition is not observed (as per the SCN goods are restricted and not prohibited).

It was further submitted that it is nowhere spelt out in the impugned SCN that how goods are liable to confiscation under the said 4 clauses of Section 111 of the Customs Act, 1962. In any case it is not the case of the department that goods are prohibited (as per the SCN and impugned notification issued by the DGFT same is restricted), goods do not correspond in respect of value or in any particular with the entry made under the Customs Act (there was no mis-declaration at all as all entry made in both the Bills of Entry are as per the documents furnished with the Bills of Entry etc) and goods are prohibited in respect of import thereof under this act or any other law time being in force, in respect of which the condition is not observed (as per the SCN goods are restricted under the said notification issued under FTDR, 1992 and not prohibited under Section 11 of the Customs Act, 1962). It is also not the case for Containers for which only IGMs were filed by the person in charge of a vessel carrying imported goods or any other person as may be specified by the Central Government by Notification are required to be mentioned are not so mentioned, so in any case goods are not liable to confiscation under any of the said clause of Section 111(d), Section 111(m), Section 111(o) of the Customs Act, 1962

11.1.11 M/s. Nakul further submits that in view of the above goods are not restricted goods as BL is for the consignments with shipped on board Bill of Lading issued prior to 30.06.2024 but for the sake of argument it is presumed that as interpreted by the investigation that not only consignments with shipped on board also after 30.06.2024 and Bill of Lading issued till 30.06.2024 even in that case goods become "restricted goods" as per the said Notification No. 5/2023 dated 05.04.2024 issued by DGFT and not prohibited goods so goods cannot be liable to confiscation under Section 111(d) of the Customs Act, 1962.

The words "Prohibited Goods" are defined under Section 2(33) of the Customs Act, 1962 which reads as under:

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

M/s. Nakul further submits the words "Restricted Goods" are not defined under the Customs Act, 1962. As per amongst other following settled position of law "Prohibited Goods" and "Restricted Goods" are different and "Restricted Goods" cannot be absolutely confiscated but have to be provisionally released and also option to pay redemption fine have to be offered.

It was submitted that the goods imported are not prohibited goods under Notification issued under Section 11 of the Customs Act, 1962, so are not prohibited goods at all. Even goods are not prohibited goods under any other law time being force i.e. notification No. 5/2023 dated 05.04.2024 issued under Section 3 of the FTDRA, 1992 but same was restricted in the circumstances specified under the said notification.

It was further submitted that though the said Notification No. 5/2023 dated 05.04.2024 was issued under Section 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992 (Hereinafter referred to as FTDRA, 1992) as per sub-section (3) of Section 11 of the Customs Act, 1962, the said notification shall be executed under the provisions of that Act only if such prohibition or restriction is notified under the provisions of the Customs Act, 1962. Since, there is no notification issued under Section 11 of the Customs Act, 1962, the said notification dated 05.04.2024 cannot be executed even under the said Act i.e. FTDRA, 1992. Thus, goods cannot be considered as restricted goods under the said notification dated 05.04.2024 for the purpose of Customs Act, 1962 so question of considering the said goods as prohibited or restricted under the Customs Act, 1962 does not arise at all. Therefore, same are not liable to confiscation nor any penalty can be imposed upon any one including importers and Shri Prashant Popat.

It is further submitted that in absence of any specific provisions under the Customs Act, 1962 or FTDRA, 1992 authorising the proper officer of the Customs to adjudicate the case of violation of provisions of the FTDRA, 1992 or rules made thereunder or notification issued thereunder including the restricted goods under the said notification issued under Section 3 of the FTDRA, 1992. Only DGFT Officers are authorised under the said Act as proper officer to adjudicate the matter of goods liable to confiscation if any for under the said FTDRA, 1992 and notification issued thereunder. Thus, impugned SCNs issued by the Additional Commissioner, Customs is without jurisdiction and therefore, same are liable to be withdrawn.

Without prejudice to above your kind attention was invited towards following decisions on the subject:

COMMISSIONER OF CUSTOMS Versus ATUL AUTOMATIONS PVT. LTD. - 2019 (365) E.L.T. 465 (S.C.)

“9. *Unfortunately, both the Commissioner and the Tribunal did not advert to the provisions of the Foreign Trade Act. The High Court dealing with the same has aptly noticed that Section 11(8) and (9) read with Rule 17(2) of the Foreign Trade (Regulation) Rules, 1993 provides for confiscation of goods in the event of contravention of the Act, Rules or Orders but which may be released on payment of redemption charges equivalent to the market value of the goods. Section 3(3) of the Foreign Trade Act provides that any order of prohibition made under the Act shall apply mutatis mutandis as deemed to have been made under Section 11 of the Customs Act also. Section 18A of the Foreign Trade Act reads that it is in addition to and not in derogation of other laws. Section 125 of the Customs Act vests discretion in the authority to levy fine in lieu of confiscation. The MFDs were not prohibited but restricted items for import. A harmonious reading of the statutory provisions of the Foreign Trade Act and Section 125 of the Customs Act will therefore not detract from the redemption of such restricted goods imported without authorisation upon payment of the market value. There will exist a fundamental distinction between what is prohibited and what is restricted. We therefore, find no error with the conclusion of the Tribunal affirmed by the High Court that the respondent was entitled to redemption of the consignment on payment of the market price at the reassessed value by the Customs authorities with fine under Section 112(a) of the Customs Act, 1962.”*

SHREE BALAJI INDUSTRIES Versus ADDITIONAL/JOINT COMMISSIONER OF CUSTOMS - 2024 (387) E.L.T. 294 (P & H)

Provisional release of goods, documents, things - Watermelon seeds - Bill of Entry dated 24-11-2022 - Department detained goods alleging that 'Watermelon Seeds' were misdeclared as 'Roasted Seeds Kernels' - Department also denied provisional release on ground that they were prohibited goods - DGFT Notifications dated 26-4-2021 and 21-6-2022 amended import policy for Melon seeds classifiable under HS Code 1207 70 90 of Customs Tariff Act, 1975 - Before Notification dated 26-4-2021, import of Melon Seeds was free and thereafter they were treated to be as restricted - As per Notification dated 21-6-2022, Watermelon Seeds imported by 30-9-2022 were treated to be free provided Bill of Entry was filed by 31-10-2022 - By 3-5-2023, Plant and Quarantine Department's report had come in favour of importer - HELD : Intention of Notification dated 21-6-2022 was not to reject import of Watermelon Seeds already before Customs Authority for examination by 31-10-2022 on ground that they were restricted - Prior to Notification dated 26-4-2021, import of Watermelon Seeds was free and importers did not require permit for import - As per DGFT Notification dated 26-4-2021 read with Notification dated 21-6-2022, Watermelon Seeds were only restricted goods after 30-9-2022, and not prohibited goods, and for their import without valid permit, they could be provisionally released subject to final adjudication order - It was moreso as report of Plant and Quarantine Department was in favour of importer - Section 110A of Customs Act, 1962. [paras 17, 20, 23]

COMMISSIONER OF CUSTOMS, BENGALURU Versus SRI BANASHANKR TRADERS - 2024 (390) E.L.T. 42 (Tri. - Bang.)

Improper import - Confiscation - Used digital multifunctional machines - Importer claimed classification of goods under Tariff Item 8443 31 00 of Customs Tariff - Department claimed classification under Tariff Item 8443

31 00 *ibid.* - Adjudication Authority ordered an absolute confiscation but Commissioner (Appeals) allowed appeals without specifying amount of fine and penalty or remand to original authority for their determination - Department contended that goods were imported in violation of Customs Act, 1962 and other statutory provisions - Confiscation of used digital multifunctional machines was considered by various authorities, including Supreme Court in *Atul Automations Pvt. Ltd.* [2019 (365) E.L.T. 465 (S.C.)] and *Digital Express and S.R. Enterprise* [2021 (375) E.L.T. 643 (Kar.)] where it was held that they could not be absolutely confiscated even if imported in violation of statutory provisions, and in absence of evidence of profit margin, they could be redeemed on payment of fine of 10% of enhanced value and penalty of 5% of enhanced value - HELD : Issue was no more *res-integra* - There was no infirmity in allowing release of goods subject to payment of fine and penalty - Adjudicating Authority should release goods on payment of appropriate Customs duty on enhanced value, redemption fine and penalty - Section 111 read with Sections 112 and 125 of Customs Act, 1962. [paras 6, 7]

COMMR. OF CUS., LUDHIANA Versus B.E. OFFICE AUTOMATION PRODUCTS PVT. LTD. - 2020 (371) E.L.T. 592 (Tri. - Chan.)

Multi-Function Devices (MFD) - Used devices - Import of - Restricted but not prohibited - Issue already covered by decision of Supreme Court in Atul Automations Pvt. Ltd. [2019 (365) E.L.T. 465 (S.C.)] - Changes made in policy vide Notification No. 5/2015-2020, dated 7 May, 2019 not to make any impact - Goods cannot be absolutely confiscated - Redemption fine and penalty reduced to 10% and 5% of assessable value - Sections 111, 112 and 125 of Customs Act, 1962. [2019 (365) E.L.T. 465 (S.C.) followed]. [paras 6, 7, 8, 10]

Thus, since goods are restricted but not prohibited so same cannot be absolutely confiscated under Section 125 of the Customs Act, 1962 like prohibited goods so same cannot be confiscated under Section 111(d) of the Customs Act, 1962.

11.1.12 M/s. Nakul without admitting anything alternatively prays that in any case if your good office may order for confiscation of seized goods a lenient view may be taken while giving an option to pay fine in lieu of confiscation under Section 125 of the Customs Act, 1962. As submitted in para supra goods are not prohibited goods but restricted goods so as per language used in Section 125(1) of the Customs Act, 1962 i.e. "shall" it is mandatory on your part to give an option to pay in lieu of confiscation.

As provided under Section 125(2) of the Customs Act, 1962 it is ready to pay duty of the customs as assessed by it with the reasonable amount of fine as per the above settled position of law and penalty as discussed in para infra. M/s. Nakul further submits that in view of the above, goods are not liable to confiscation under any of the clause of Section 111 of the Customs Act, 1962 therefore, no penalty is imposable upon it under Section 112(a) and Section 112(b) of the Customs Act, 1962. M/s. Nakul further submits penalty under Section 112(a) of the Customs Act, 1962 can be imposed only when any person 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.

As discussed in detailed the investigation carried out by the DRI in para

supra it has not done or omitted to does any act in relation to the goods which act or omission would render such goods liable to confiscation nor abets the doing or omission of such an act, therefore, no penalty can be imposed upon it under Section 112(a) of the Customs Act, 1962.

M/s. Nakul further submits penalty under Section 112(b) of the Customs Act, 1962 can be imposed only when any person 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.

As discussed in detailed in para supra that the investigation carried out by the DRI that though it has purchased the goods but it does not know or has reason to believe that goods are liable to confiscation under Section 111, therefore, no penalty can be imposed upon it under Section 112(b) of the Customs Act, 1962.

M/s. Nakul without admitting anything further submits that as stated in para supra no penalty is imposable upon it but in any case a person can either be penalised in the situations stated in clause (a) or (b) of Section 112 but cannot be penalised under both the sub-clause in any of the situation as both governs different situations.

Penalty under clause (a) can be imposed upon a person when a person acts or omits in relation to goods which render such goods liable to confiscation under Section 111 of the Customs Act, 1962 or one may abets in doing such acts or omission which render goods liable to confiscation under Section 111 of the Customs Act, 1962;

Whereas penalty under clause (b) can be imposed upon a person dealing with the goods in any manner including the manner specified in the clause with knowledge or reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962.

Apart from that in either of the situation of clause (a) or (b), quantum of penalty can be as per any of the clause (i) to (v) of Section 112 which is not specified; thereby it is not put to the proper notice. So it is not in a position to defend the matter properly. As per settled position of law such notice is liable to be quashed and set aside.

In any case as submitted in para supra goods are not prohibited but restricted so no penalty can be imposed under Section 112(a)(i) or Section 112(b)(i) of the Customs Act, 1962.

So without admitting anything it is submitted that at the most penalty under Section 112(a)(ii) or Section 112(b)(ii) i.e. Rs. 5,000/- can be imposed as it is not the case of evasion of duty by M/s. Nakul as per the investigation and allegations made in the impugned SCN.

11.1.13 M/s. Nakul further submits that in view of the above no penalty is imposable upon it under Section 114AA of the Customs Act, 1962. A penalty under Section 114AA ibid can be imposed only when a person knowingly or intentionally makes, signs or uses or causes to be made, singed or used any declaration, statement or document which is false or incorrect in any material particular, in the transactions of any business for the purpose of this act, shall be liable to penalty.

It is not the case or allegation of the department that M/s. Nakul has 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 transactions of any business for the purpose of this act, so not penalty is imposable upon it under the said section irrespective of the fact that penalty under Section 114AA of the Customs Act, 1962 can be imposed upon a person only when there is export on paper without physical export of the goods so as to avail export incentives/benefits.

M/s. Nakul without admitting anything further submits that proposal to impose penalty under Section 114AA of the Customs Act, 1962 upon it is also without understanding the provisions as well as legislature intention to insert the said section. In view of the above submission no penalty is imposable upon it. Even otherwise said proposal is also devoid of merits. Plain reading of Section 114AA very much clears that it can be imposed only when somebody intentional use of false and incorrect material, which reads as under:

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

The first and foremost requirement to bring any person under domain of Section 114AA is that he must be **knowingly or intentionally** using the declaration, statement or document and such declaration, statement or document should be for transaction under provisions of Customs Act, 1962. M/s. Nakul most respectfully submits that none of the above element applies to it. As already discussed in para supra there was no declaration etc. of false or incorrect particular in any material. Hence question of imposing penalty under Section 114AA does not arise.

M/s. Nakul without admitting anything, as regards to proposal for imposition of penalty under Section 114AA of the Customs Act, 1962 would further like to draw your kind attention towards the fact that same can be imposed only in the situation of export on paper without physical export or involving fraudulent export and cannot be invoked for any alleged violation in import of goods.

For the above submission attention is further invited towards paragraph 62 to 66 of Standing Committee on Finance 27th Report - (2005-2006) – The Taxation Laws (Amendment) Bill, 2005.

Based on the same it is submitted that intention of legislature was to impose penalty under said Section 114AA only on exporters who were claiming export on paper and claiming illicit benefit of export incentives as is evident from following:

“Section 114 provides for penalty for improper exportation of goods. However, there have been instance where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of

material particulars and for giving false statements, declarations, etc for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114AA is proposed to be inserted after Section 114AA.”

Based on above, it is submitted that instant case is of import and not of export so in any case no penalty can be imposed under Section 114AA of the Customs Act, 1962.

11.1.14 M/s. Nakul last but not least most respectfully further request to your goodself that shipping lines and concern CFS may also be directed/recommended to waive the demurrage and detention charges as per Regulation 6(1)(l) Handling of Cargo in Customs Area Regulations, 2009 for **the seizure period of the goods on merit of the case.** M/s. Nakul, in view of the above and without admitting anything alternatively prays that in any case at least goods may be allowed to re-export that too without payment of any fine and penalty as per settled position of law.

In view of the above it was requested to drop the proceedings initiated under the impugned notice or goods may be provisionally released under Section 110A of the Customs Act, read with settled position of law pending adjudication as requested by the importers vide their letters or option to pay fine in lieu of confiscation with leniency may be offered with penalty of Rs. 5,000/- or allow re-export of the goods as requested above so to avoid any further complication and undue litigation with the foreign based exporters in the deal of import made by the importers.

11.2 M/s. Paramount Sealinks Pvt. Ltd submitted their reply dated 17.04.2025, wherein he had, *inter alia*, submitted that:

11.2.1 The Noticee submitted that the allegation in the subject case that Noticee No.2 has orchestrated this transaction to conceal true Shipped on Board date in the Bills of Lading so as enable M/s. Nakul Agro to import restricted goods (Watermelon Seeds) is incorrect on facts. Further, the levy of penalty under section 112(b) and 114AA of the Customs Act, 1962, on Noticee no.2 is also legally incorrect. We hereby submit our counter against each, and every allegation levelled against Noticee No.2 with respect to subject import transaction.

The Noticee submit that Noticee No.2 is not privy to the trade transactions between the Sudan exporter and the Indian importer and neither the Noticee No.2 is aware about the import Custom tariffs which is categorically looked upon by the importers of the respective goods. The Noticee No.2 is a liner agent who facilitate the movement of export/import for the exporters/ importers all over India. In the present case, the Noticee No.2 has acted as a facilitator to issue Delivery Orders pertaining to the import of the impugned goods. The Noticee No.2 principal sub-agent has provided their services to the exporters in Sudan and that Noticee No.2 does not have any role in the misdeclaration of the Shipped on Board dates in the Bills of Lading by the importer i.e. Noticee No.1. The Noticee No.1 denied their involvement in mis-declaration and submission of forged documents in the clearance of restricted goods, it is the Noticee No.1 who could only have benefited from the said mis-declaration.

In this regard, The Noticee would like to submit that demand of penalty under section 112(b) and 114AA under Customs Act, 1962 should not be raised

from Noticee No.2, since the mis-declaration and submission of the alleged forged documents, if they are indeed forged, can conceivably only have been done by M/s. Nakul Agro. Hence, the Noticee No. 2 has no role to play in this alleged clearance of restricted goods which has been actually committed by M/s. Nakul Agro.

11.2.2 Further, it is M/s. Nakul Agro who has benefitted from this wrong. M/s. Nakul Agro has done certain acts and abetted certain doings which has led to clearance of restricted goods. Hence, it is clear that M/s. Nakul Agro has submitted incorrect and manipulated documents to the customs by mis-declaring the Shipped on Board date in the Bills of Lading for the benefit of clearance of restricted goods. The Noticee would like to submit that the request for issuance of switch bills of lading was made by the shipper at the port of loading. However, the Noticee No.2 could not have been conceivably aware that the shipper and importer together in collusion to clear restricted goods had requested for issuance of switch Bills of Lading subject to the Notification no. 05/2023 dated 05.04.2024. Therefore, the allegation related to mis-declaration of Shipped on Board date in the Bills of Lading must be raised on M/s. Nakul Agro and further demand of penalty should be demanded from Noticee No.1 only. Without prejudice to the above, The Noticee would like to submit that, even though M/s. Nakul Agro has denied the mistake, it is apparent that if any misconduct was indeed perpetrated, then only M/s. Nakul Agro involvement in clearance of restricted goods can be established and therefore, the Noticee No.2 is not required to pay any penalty in this case.

There is no evidence against Noticee No.2 for orchestrating this transaction for enabling clearance of restricted goods at the end of M/s. M/s. Nakul Agro.

11.2.3 The Noticee would like to submit that no evidence has been put on table related to conspiracy or orchestrating by Noticee No.2 for this alleged crime. The Noticee No.2 is not a party to the alleged scheme of misrepresentation which has resulted in clearance of restricted goods by M/s. Nakul Agro.

The Section 1 of the Customs Act, 1962, was amended via Finance Act, 2018 and came into effect from 29th March, 2018, and by virtue of the amendment, the exporter based in Sudan and the importer in India are to be proceeded against the Act, and not the shipping companies who do not gain anything from the unlawful acts committed by the importer in India.

11.2.4 The Noticee No.2 principal sub-agent in Sudan is not conversant with the Custom laws of India, however it is the importer who has to be aware of such restrictions prior importing any material which is in contravention to the Indian Customs Act. As such the Noticee No.2 cannot be held liable to be penalized for the wrongful acts of the importer M/s. Nakul Agro. The Noticee would like to submit that the statements given by the employees of Noticee No.2 are exculpatory. The Noticee No.2 does not have any ill intention to this non-compliance. It is a matter of fact that the original 1st leg Bills of Lading were surrendered in Sudan basis which the 2nd leg Bills of Lading were released. The 2nd leg B/Ls are the switched Bills of Lading which were shared with Noticee No.2 by their principal sub-agent along with the pre-alerts and freight manifest to file the IGM at the discharge port. The procedure of issuance of switch bills of lading is a standard practice in the Maritime Industry. Even major shipping lines such as Maersk, CMA CGM, COSCO, etc, issue switch B/Ls on a case-to-case basis as per the International Shipping Laws which is

applicable to all shipping companies. It is a matter of fact that maritime law does not restrict shipping companies for issuance of switch Bill of Lading once the original Bill of Lading has been surrendered by the shipper at load port. Concerning the allegations levelled against Noticee No.2 by your office pertaining to the Switch Bills of Lading issued in the aforementioned shipments, a Switch Bill of Lading is simply the second set of Bill of Lading issued by the carrier or it's agent to substitute the Original Bills of Lading issued at the time of the shipment, even though it technically deals with the same cargo. To emphasize in detail, switch Bills of Lading are issued for replacement of certain details specified as below:

(a) the original bill names a discharge port which is subsequently changed (e.g. because the receiver has an option or the good are resold) and new bills are required naming the new discharge port:

(b) a seller of the goods in a chain of contracts does not wish the name of the original shipper to appear on the bill of lading, and so a new set is issued, sometimes naming the seller as the shipper. A variation on this is where party does not wish the true port of loading to be named on the bill;

(c) the first set of bills may be held up in the country of shipment, or the ship may arrive at the discharge port in advance of the first set of bills. A second set may therefore be issued in order to expedite payment, or to ensure that delivery can take place against an original bill;

(d) shipment of goods may originally have been in small parcels, and the buyer of those goods may require one bill of lading covering all of the parcels to facilitate his on sale. The converse may also happen i.e. one bill is issued for a bulk shipment which is then to be split.

Where switch bills are issued, the first set should be surrendered to the carrier in exchange for the new set. There is usually no objection to this practice. However, the switch bills may contain misrepresentations e.g., as to the true port of loading.

The above inference has been taken from the International Transport Intermediaries Club, Issuance of Switch Bill of Lading 2013,1.

Furthermore, International book Carriage of Goods by Sea Sixth Edition, Pg. No. 171 specifically states that :

5.7 Switch Bills

*In concluding the survey of the functions of bills of lading, brief mention must be made of the modern practice of issuing switch bills. Under this procedure, the original set of bills of lading under which the goods have been shipped is surrendered to the carrier, or his agents, in exchange for a new set of bills in which some of the details, such as those relating to the name and address of the shipper, **the date of issue of the bills** or the port of shipment, have been altered.*

Hereto annexed and marked as **Annexure - "C"** are the copies of the printed details of Switch Bills of Lading mentioned in the International book Carriage of Goods by Sea, Sixth Edition.

11.2.5 It is pertinent to note that the Noticee No.2 was not aware that the switch Bills of Lading were requested by the shipper for the purpose of clearance of restricted goods by Noticee No.1. The Noticee No.2 principal sub-

agent in Sudan shared only the second leg Bills of Lading with Noticee No.2 for import manifestation purpose, as the 1st leg Bills of Lading were already surrendered by the shipper in Sudan and hence the 1st leg Bill of Lading was considered as null and void. For all consignments exported from Sudan, it is outside the scope and authority of Noticee No.2 to inspect if the customs clearance is being done by the respective importers in India as per the prevailing customs laws. Consequently, on this ground it is submitted that Noticee No.2 is not liable for any penalty under Section 112(b) and 114AA of the Customs Act, 1962. Also, Noticee No.2 was not aware about the customs notification regarding restriction on import of Watermelon Seeds after 30.06.2024. As such, we submit that Noticee No.2 is not party to this violation and hence they should not be penalized under the provisions of Customs Act. The shipping line or their agents are not required to look into the authenticity of import documents provided by the importer to the Indian customs. This is operationally not possibly and legally also not required to be done as the customs clearance is not done by the shipping lines or their agents. This is the responsibility of exporter /importer to ensure the correctness of documents and declarations. The importer **M/s. Nakul Agro** has intentionally attempted to import watermelon seeds despite of being aware about the DGFT notification

Legal Provisions of section 112 (a) and under section 114AA of the Customs Act, 1962.

11.2.6 The foremost legal provisions are reproduced here:

[SECTION 112. *Penalty for improper importation of goods, etc.- Any person, -*

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

[SECTION 114AA. *Penalty for use of false and incorrect material. – If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]*

In view of the above legal provisions, we would like to submit that section 112 (a) is not applicable to Noticee No.2 since they have not done anything which will render the goods of M/s. Nakul Agro to be confiscated. The Noticee No.2 has acted in a bonafide manner in relation to port of discharge procedures for subject consignment. We have also provided detailed submission against the same in above paragraphs.

Further section 114AA is also not applicable as Noticee No. 2 has not contributed in any way relating to the clearance of subject consignment. The importer is solely responsible for attempting to clear restricted goods from the customs by filing the Bill of Entries.

In the present case, the department has failed to appreciate that the Noticee No.2 being an agent of a foreign principal cannot be held liable for mis-declaration of Shipped on Board date in the Bills of Lading which has been issued in Sudan. The onus shall, solely be attributed on the Importer only, in view of Section 147 of the Customs Act, 1962, Liability of Principal and agent:

" (1) *Where this Act requires anything to be done by the owner, importer or exporter of any goods, it may be done on his behalf by his agent.*

(2) *Any such thing done by an agent of the owner, importer or exporter of*

any goods shall, unless the contrary is proved, be deemed to have been done with the knowledge and consent of such owner, importer or exporter, so that in any proceedings under this Act, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself.

(3) When any person is expressly or impliedly authorised by the owner, importer or exporter of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, such person shall, without prejudice to the liability of the owner, importer or exporter of such goods for such purposes:

Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than any willful act, negligence or default of the agent, such duty shall not be recovered from the agent unless in the opinion of 1[Assistant Commissioner of Customs or Deputy Commissioner of Customs] the same cannot be recovered from the owner, importer or exporter. "

11.2.7 On a bare reading of Section 147 of the Customs Act, 1962 it can be safely construed that any violation of provisions of the Customs Act, 1962 carried out by an agent does not absolve the importer and it is deemed that such violation has been done with the knowledge and consent of such owner, importer or exporter and in any proceedings initiated, the owner, importer or exporter of the goods shall also be liable as if the thing had been done by himself and presumed to have been done with the knowledge and consent of such owner, importer or exporter, unless the contrary is proved.

In the present case nothing contrary has been adduced by the importer against the Noticee No.2 towards mis-declaration of Shipped on Board date in the bill of Lading as per Notification No. 05/2023 dated 05.04.2024. Therefore, no penalty is imposable on Noticee No.2.

a. Without prejudice to the above, the Noticee No.2 submits that considering the language of Section 114AA, the penalty under Section 114AA can be imposed on a natural person and not on a legal entity.

b. Without further prejudice to the above, the Noticee No.2 submits that the purpose of introduction of Section 114AA in the Customs Act, 1962 w.e.f. 13.07.2006 vide the Taxation Laws (Amendment) Act, 2006 was different i.e. to check frauds in export as evidenced by the observations of the Twenty Seventh Report of the Standing Committee on Finance (2005 – 06) in relation to the Taxation Laws (Amendment) Bill, 2005 as under:

"Clause 24 (Insertion of new section 114AA)

62. Clause 24 of the Bill reads as follows: After section 114A of the Customs Act, the following section shall be inserted, namely:

—
"114AA. Penalty for use of false and incorrect material.—
if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

c. The information furnished by the Ministry states as follows on the proposed provision:

"Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and

no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.”

d. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a ‘false statement’ etc. Questioned on these concerns, the Ministry in their reply stated as under:

“The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case.”

e. The Ministry also informed as under: *“The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes.”*

The Committee observe that owing to the increased instances of willful fraudulent usage of export promotion schemes, the provision for levying of penalty up to five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment.”

f. In this regard, we also rely upon the ratio of Hon’ble Order in the case of M/s Access World Wide Cargo reported as 2021 (8) TMI 640 - CESTAT BANGALORE wherein it was held, inter-alia, that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra). It was held, inter-alia, as under:

“6. Further, I find that the ingredients of Section 114AA of the Act is not applicable to the CHA and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited Supra). I also find that in the present case, the Department has failed to prove that there was a mala fide and wilful misrepresentation by the Customs Broker. It seems that the Commissioner (Appeals) has totally misunderstood the facts and has wrongly observed that the appellant (Customs Broker) and the exporter have been operating from the same premises and have an identical ICE Code which leads one to suspect the bona fides of the appellant. This finding of the Commissioner is factually incorrect and without any basis. Further, the Commissioner on the basis of these facts has wrongly come to the conclusion that the appellant is involved in the illegal export whereas the appellant is only a Customs Broker who has filed the shipping bills on the basis of the documents furnished by the exporter.

Therefore, in view of these facts, the imposition of penalty itself is not sustainable in law and therefore I set aside the imposition of penalty on the appellant by allowing the appeal of the appellant.”

- g. We refer to the Hon’ble CESTAT order in the case of M/s Interglobe Aviation Ltd reported as 021 (7) TMI 1027 - CESTAT BANGALORE wherein it was held, inter-alia, as under:

“20. The appellants also contended that the penalty under the Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally. The present case does not relate to export at all and even for imports, all the documents presented for imports were genuine and not forged and thus penalty is not imposable under Section 114AA of the Customs Act, 1962. We find that there is merit in the argument of the appellants. As the case is not of export, we find that no penalty under Section 114AA of the Customs Act, 1962 is imposable.”

- h. We also refer to the Hon’ble CESTAT order in the case of appeal filed by the department against M/s Sri Krishna Sounds & Lightings reported as 2018 (7) TMI 867 - CESTAT CHENNAI wherein it was held, inter-alia, as under:

“7. On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction. I do not find any merit in the appeal filed by the department and the same is dismissed. The cross-objection filed by respondent also stands dismissed.”

In view of the above, in the facts of the present case which relates to import of goods, penalty is not imposable on the Noticee No.2 under Section 114AA on the above ground as well.

- i. Without prejudice to the above, the Noticee No.2 submits that in the factual matrix of this case, there is no evidence that the Noticee No.2 had knowledge that the importer is trying to do

the clearance of restricted goods. Penalty under Section 114AA of the Customs Act, 1962 can be levied only if the person has knowledge and intention in commission and omission of the act. There is no evidence to show that the Noticee No.2 had any prior knowledge or intention to mis-declare the Shipped on board date in the Bills of Lading of the said goods. Therefore, the penalty under section 114AA cannot be imposed on Noticee No.2.

11.2.8 The Noticee No.2 is an agent of a foreign principal **OSL**. The Article III (8) of the Indian Carriage of Goods by Sea Act, 1925 discharges the carrier from any and / or all liabilities and / or losses , arising due to any act or omission of the Shipper or the owner of the goods.

Article III – Responsibilities and Liabilities.

(8). Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

11.2.9 On this ground alone, it is submitted that Noticee No.2 is not liable for any misdeclaration on the part of the shipper / consignee and neither have they attributed their support in import of **Watermelon Seeds** by intentionally mis-declaring the Shipped on Board date in the Bills of Lading.

No investigation has been conducted with the supplier in Sudan.

That Section 1 of the Customs Act, 1962 was amended vide Finance Act, 2018 and came into effect from 29th March, 2018 and by virtue of the amendment, the overseas suppliers (the exporter based abroad) can also be proceeded against the Act and it is essentially for the purpose of obtaining / gathering evidences of offences / contraventions by the overseas suppliers, the COIN officers (functioning under the administrative control of the department investigative agency DRI) have been posted. That despite armed with the personnel at its command, there is absolutely no evidence gathered and brought out to substantiate the allegations made in the impugned Notice. Concerning the allegations of misdeclaration of Shipped on Board date in the Bills of Lading, the department should have probed the matter with the overseas shipper in Sudan through the said COIN officers.

11.2.10 The Noticee No.2 is not under the obligation to examine the cargo and its loading date at any point of time. The Noticee No.2 being an agent of a Foreign Liner, is not in a position to verify the declaration given by the importer to the Indian customs regarding the assessable value, customs duty or any other documents. The terms and conditions as set out in the Bill of Lading supports the Noticee No.2 contention that the Bill of Lading shall be prima facie receipt by the carrier in apparent good order and condition. The IGM was filed based on the details provided in the Switch Bills of Lading issued by the Noticee No.2 principal sub-agent in Sudan. The Noticee No.2 had no scope to know about the act of the importer and hence it cannot be held that the Noticee No.2 had conscious knowledge of the mis-declaration of Shipped on Board date in the Bills of Lading. Thus, there is no question of suppression of facts by Noticee No.2.

The Hon'ble Tribunal in the case of **M/s. Trans Asian Shipping**

Services P Ltd reported as 2018 (363) E.L.T. 635 (Tri. - All.) has held that allegation of aiding and abetting cannot be upheld where IGM is filed on the basis of Bill of Lading. Relevant part of the order reads as under:- *As per facts on records, the appellant is a shipping line and was carrying the container on behalf of M/s. Ankit Metals. On the basis of a letter addressed by M/s. Ankit Metals, they applied for amendment in IGM stating that Aluminium Scrap "Tread" Weight 22.096 may be allowed to be amended to Aluminium Scrap "Tread" Weight 7.552 MT & Copper Berry/Clove Weight 14.544 MT. The said amendment was rejected by the Assistant Commissioner.*

Subsequently, the importer, M/s. Ankit Metals also addressed a number of letters to the Revenue for change in IGM based upon the communication received from the exporter. All the facts are not being adhered to, inasmuch as the same relates to imports by M/s. Ankit Metals. The only reason for imposing penalty upon the present appellant as recorded by the Commissioner is as under:

"12.13 *The shipping line had filed the IGM No. 2124032 dated 12-11-2015 on the basis of the bill of lading No. TALADS01912416 dated 10-11-2015. The bill of lading No. TALADS01912416 dated 10-11-2015 was produced before the Superintendent (SUB), ICD, Loni on 9-8-2016 wherein the description of the goods was mentioned as Aluminium scrap 'tread' 22.096 MT. The said B/L was issued on the strength of invoice no. Y15/141A dated 4-11-2015 of M/s. Ala International Metal Scrap TR LLC and NOC dated 4-11-2015 of M/s. Al Raha Trading Company and export declaration no. 201-02420065-15 dated 4-11-2015 all containing description of goods as Aluminium Scrap 'tread' 22.096 MT. As per statement dated 9-8-2016 of Shri Sandep Vishwanath A. of the shipping Line, the folio No. of the bill of lading was TAL1066058. The revised bill of lading having the same Sl. No. was issued from Dubai by Dubai Arobian Shipping Agency, LLC, the agent for the carrier. As per Shri Sandeep the revised bill of lading had reference no. TAL1157913 which was issued on 5-1-2016. It is pertinent to notice that request for amendment to the IGM was filed on 28-12-2015 by the shipping line. It thus shows that any B/L could be issued at free will at the behest of the importer/shipper. Having known that an application for amendment in the IGM was pending before the customs authorities since 28-12-2015, a final set of B/L was handed over to the shipper on 5-1-2016 without waiting for the outcome of their application for amendment. It has been contended by Shri Sandeep in his statement dated 9-8-2016 that B/L being a Line document, there was no need to seek approval from Customs for issue of the same. The argument is devoid of merit for the reason that statutory document viz. IGM is filed on the basis of bill of lading and therefore, it is imperative that sanctity of the documents i.e. bill of lading is maintained. Without checking the details of goods being carried and the supporting documents, the shipping line has issued the revised bill of lading without any check and balance and thus aided and abetted the importer in his nefarious design of importing the goods by misdeclaring the same with the intent to evade payment of Customs duty. The shipping line has knowingly made B/L which was false and incorrect in respect of material description of the goods with the view to use the same in the transaction of filing of IGM and clearance of goods for the purpose of Customs Act, 1962, and have thus rendered itself liable to penalty under Section 114AA of the Customs Act, 1962."*

As is seen from the above, the penalty stands imposed upon the appellant on the ground that they have aided and abetted the importer in his nefarious design to import the goods by misdeclaration. However, I find that there is no evidence on record to show that the appellant was a party to such misdeclaration. They simplicitor filed IGM on the basis of bill of lading and on subsequently, after getting an communication from the importer, they applied for

amendment of the same. In such a scenario, the allegation of the aiding and abetting cannot be upheld. Accordingly, the same is set aside and the appeal is allowed by setting aside the penalty imposed upon the appellant.”

In the present case, the 1st leg B/L issued to the shipper in Sudan and later surrendered and thereafter the 2nd Leg B/L was issued which was relied upon by the Noticee No.2 in India for filing the IGM. Thus, the Noticee No.2 cannot be held guilty for mis-declaration with regard to the correctness of the content of the IGM filed by Noticee No.2 as required under section 30(2) of the Customs Act, 1962 and hence no penalty should be imposed upon the Noticee No.2 under Section 114AA of the Customs Act, 1962.

11.2.11 The Noticee would like to place our reliance on the Singapore High Court ruling in the case of BNP Paribas v Bandung Shipping Pte Ltd., 2003 wherein the switch 12 Bills of Lading were issued altering the port of loading for consignment loaded from Batam, Indonesia and to be discharged at Kandla port, India. The details mentioned under the Facts paragraph no.2 are as under : *12 bills of lading were switched bills issued by Bandung in exchange for the original set, pursuant to an arrangement provided for in the voyage charterparty. The switched bills were issued for the same cargo as the original set, with some alteration in the details like date and load port.*

The above evidence the fact that the issuance of switch Bills of Lading is a general practice in the maritime industry and in the Switch Bills of Lading, the date, port of loading and the port of discharge can be altered as per the requirement of the suppliers. Hereto annexed and marked as **Annexure - “D”** is the judgement copy of the Singapore High Court ruling in the case of BNP Paribas v Bandung Shipping Pte Ltd., 2003.

11.2.12 The Noticee are relying upon the case of Wollongong Coal Limited vs. PCL (Shipping) Pte Ltd.,(2020) decided by the **New South Wales, Supreme Court**.

- a. In this case, the Plaintiff Wollongong Coal Ltd (WCL) is an Australian coal mining company and at that relevant time, it was a subsidiary of **Gujarat NRE Coke Limited (“Gujarat India”)**, an Indian metallurgical coke producing company.
- b. The defendant PCL (Shipping) Pte. Ltd. is a Singaporean Shipping Company who sub- chartered the vessel Illawar Fortune.
- c. WCL sold coal to its parent company Gujarat India.
- d. Gujarat India contracted with PCL to carry the cargo from Port Kembla, Australia to Mundra port, India.
- e. Gujarat India as voyage charterer was liable to pay the ocean freight to PCL (Shipping) Pte. Ltd.
- f. The cargo was shipped in August 2013 and Charterparty Bills of Lading (**Original Bills**) were signed by Shipowners, naming WCL as the Shipper. Therefore WCL was a party to the bill of lading contract with the Owners. PCL issued a freight invoice to Gujarat India for approximately US\$3.2 million

under the Voyage Charter.

- g. On 24 September 2013, WCL asked for the Original Bills to be “switched” and Switch Bills to be issued, naming New Alloys Trading Pte Ltd (New Alloys) as Shipper in place of WCL.
- h. PCL agreed to facilitate the switch. On 2 October 2013, when a representative from New Alloys delivered the Original Bills to PCL’s office, PCL marked each of the Original Bills ‘Null and Void’ on the Shipowner’s instructions and sent these marked bills to the Shipowner.
- i. On 3 October 2013, PCL sought a letter of indemnity (**LOI**) from Gujarat India that indemnified PCL against any loss arising from the issue of the Switch Bills and on 4 October 2013 Gujarat India provided the requested LOI.
- j. On 4 October 2013, PCL provided a corresponding LOI to Owners who then released the new Switch Bills to New Alloys.
- k. As the above events unfolded, Sub-charterer Gujarat India failed to pay USD 3.2 Million freight to Disponent Owners PCL, time charterers of the Vessel Illawarra Fortune. After taking assignment of Owner’s rights under the Bills of Lading, PCL tried to recover those sums from Shippers WCL. The Bills of Lading provided for “Freight payable as per Charter Party”, i.e. the voyage charterer. However, following WCL’s failure to pay part of freight costs, the Bills of Lading were marked “Null and Void” and substituted by switch bills identifying New Alloys as shippers. The effect of “Switching Bills of Lading” is that the original Bills of Lading contract is replaced by a new contract evidenced by the “switch bills of lading.”
- l. The Court held that because of the novation WCL’s liability under the Switch Bills of Lading was extinguished therefore neither the Owners nor PCL as their assignee could recover the freight and costs related to the voyage, given the prevalence of this practice in commercial shipping.
- m. The above judgement explicitly mentions the legitimacy of issuance of Switch Bills of Lading which is a common practice in the Shipping Industry and the same practice has also been adopted by Gujarat India to import coal from Australia to India which has been approved by the New South Wales Supreme Court to grant relief to Gujarat India and their subsidiary

company WCL.

Based on the above judgement, the Noticee No.2 has not committed any wrong by filing the IGM basis the Switch Bill of Lading as per the standard maritime practice. Therefore, any mis-declaration by the exporter / importer to customs department cannot be attributed to any fault and / or act and / or omission and / or willful suppression by Noticee No.2. Hereto annexed and marked as **Annexure - "E"** is the judgement copy of the New South Wales Supreme Court.

11.2.13 That further, Section 230 of the Indian Contract act, 1872 reads as below :

"230...Agent cannot personally enforce, nor be bound by contract on behalf of principal-

In the absence of any contract to that effect an agent cannot personally enforce contract entered into by him on behalf of his principal, nor is he personally bound by them."

That, if the principal personally initiates and concludes the contract with any party, acting in their own capacity without any representative, there is an assumption that the contract is made on behalf of someone else and no agent is involved. The Noticee No. 2 did not even negotiate the contract with the exporter/importer. The contract for shipment was entered into between Noticee No.2 principal sub-agent and the exporter as per the Bills of Lading. The Noticee No. 2 is an agent of a disclosed principal in a Foreign Country and hence in the absence of any contract to the contrary, the Noticee No.2 cannot be held liable on behalf of their principal sub-agent.

11.2.14 The Noticee would like to place our reliance on the Chennai CESTAT ruling in the case of M/s Chakiat Agencies vs Commissioner of Customs (Exports) 2023 TAXSCAN (CESTAT) 175 wherein the court observed as below:

"Be that as it may the appellant as a CHA cannot be expected to examine and ensure the nature of the goods in the consignment. There is no allegation or evidence to establish that the appellant had indulged in any overt act or played any role in any manner so as to assist the exporter in his attempt to export the goods. After appreciating the evidence and following the decision of the Tribunal in the above case, we are of the view that the penalty imposed on the appellants under section 114 of the Customs Act is not warranted.

In the current case as well, the Noticee No.2 being a Liner agent, is not expected to verify the details submitted to the Customs by the importer at the time of filing of the Bill of Entries. Thus, they have not played any role in the incorrect importation of the goods in the discussion.

b. That the **Principal bench of Delhi CESTAT in the case of PURUSHOTTAM KUMAR JAIN vs COMMISSIONER OF CUSTOMS (PREVENTIVE) JODHPUR 2022 TAXSCAN (CESTAT) 567** has observed that the agent deliberately and intentionally has not provided any such information which was false or incorrect. As such, the penalty under section 114AA of the Customs Act, 1962 is not imposable on the agent.

c. That the **Ludhiana CESTAT in the case of M/s M S Exim Services Vs Commissioner of Customs, Ludhiana 2021 (CESTAT) 14** has observed that the appellant had no mens rea and filed the documents being a bonafide facilitator and in view of the same no penalty was imposable upon the appellant Customs broker, therefore, the penalty imposed on the appellant

under Section 112 along with 114AA of the Customs Act, 1962, was set aside.

Therefore, in the instant case, the Noticee No.2 being a Liner agent is not responsible for the wrong declaration given by the importer to the customs at the time of filing the Bill of Entries.

11.2.15 (i) In the case of **V. Lakshmipathy vs. Commissioner of Customs -2003(153) E.L.T. 640T** (Tri-Delhi) in respect of invocation of penalty under Section 112 had held the existence of mens rea as an essential ingredient to invoke the same. This presupposition is non-existing in the present matter as show cause notice leads no evidence to indicate a guilty mind on part of the appellant.

(ii). In the case of **Mohd. Ilyas vs. Commissioner- 2018 (362) ELT A 218 SC the Honourable Apex Court** had held the penalty under Section 114AA, as not leviable (among other reasons) for no discussion being made as to the type of false /incorrect material. Similar is however the position in the present case.

(iii). Moreover, in the case of **Parag Domestic Appliances vs. Commissioner of Customs, Cochin 2018(360) ELT 547 (Tri-Bang)**, it was held that for subjecting one to penalty under Section 114AA, the existence of knowledge or intention on the part of such person while carrying out any or all of the necessary actions stated therein is a must. Without demonstrating such an existence of knowledge no such penalty is leviable. Also, it is necessary to discuss the nature of false and incorrect material made use of as held in a slew of cases.

(iv). In the case of **Codognotto Logistics India Pvt. Ltd. vs. Commissioner of Customs (2022) (SB) (Tri-Delhi)**, had held that in the absence of mens rea and no deliberate connivance in evading customs duty, penalty under Section 112 and Section 114AA is not leviable upon the appellants and the appeal was allowed.

(v). In the case of **Jeena and Company Versus Commissioner Of Customs, Bangalore [2021 (378) E.L.T. 528 (Tri. - /Bang.)]** Penalty on Customs House Agent (CHA) - No evidence to show that Agent had knowledge of wrongdoing of importer and colluded with importer to defraud Revenue - Not appropriate to punish CHA for filing document in good faith and on basis of documents supplied by importer - Penalty imposed set aside □ Section 112 of Customs Act, 1962. 12006 (200) E.L.T. 12 (Tribunal) relied on]. [paras 6, 7].

(vi). In the case of **Indian Acrylics Ltd. Versus Commissioner Of Customs, Kandla [2015 (325) E.L.T. 753 (Tri. - Ahmd.)]** Penalty on CHA - Penalty not imposable when CHA not involved in any manner in respect of manipulation of export documents No material on record showing appellant abetted the exporter for their gain - Penalty under Section 112(a) of Customs Act, 1962 not imposable. [para 14]

11.2.16 It is a settled position in law that penalty is not imposable where the Noticee has not acted contumaciously or in deliberate defiance of law. In support of this contention, reliance is placed on the law declared by the **Hon'ble Supreme Court in the case of Hindustan Steel Ltd 1978 (2) ELT J159 (SC)** wherein it was held that penalty shall not be imposed unless the conduct of a defaulter is found to be dishonest or contumacious. Reliance in this regard is also placed on the following binding judicial pronouncements which echo the settled principle that a penalty is not imposable where there is no dishonest conduct:

- i. In the case of **Akbar Badruddin Jiwani vs Collector of Customs, 1990 (047) ELT 0161 (S.C.)**, where the **Hon'ble Supreme Court** has held that –

57. *Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the Appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law.*

58. *In the present case, the Tribunal has itself specifically stated that the Appellant has acted on the basis of bona fide behalf that the goods were importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate Tribunal, the penalty and fine in lieu of confiscation require to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal.”*

11.2.17 That, the law which has been laid by various authorities for purposes of levying penalty is that the penalty under section 114AA can be levied only when mens-rea is established and when it is established that a person knowingly makes the false declaration or signs any such document. Before levying penalty 114AA Revenue has to establish mala fides which is of quintessence. In the instant case no malafide has been attributed to Noticee No.2. That penalty cannot be levied unless it is established that Noticee No.2 knew or had reason to believe that the goods were liable for confiscation under Section 111 of the Customs Act, 1962, and without establishing that Noticee No.2 has any mala fide motive or any motive to make abnormal gain. There is no evidence against Noticee No.2 to establish any overt act or *mens rea* to facilitate the commission of the said offence. The allegation that the Noticee No.2 has facilitated the attempt to enable the importer to import restricted goods in the subject transaction is without any factual and legal basis and therefore penalties under section 112(b) and section 114AA of the Customs Act, 1962 are not sustainable on Noticee No.2.

In view of the above judgement and facts of the case, there is no case of acting knowingly or intentionally on the part of the Noticee No.2 and hence, the penalties imposed upon the Noticee No.2 under section 112(b) and 114AA of the Customs Act, 1962, does not sustain in the eyes of law and accordingly the impugned show cause notice should be set aside.

11.2.18 The Noticee prayed that the Hon'ble Additional Commissioner of Customs, Mundra may be pleased to set aside the Show Cause Notice issued against M/s. Paramount Sealinks Pvt. Ltd.

11.3 Shri Prashant Popat submitted his reply dated 31.05.2025 and 06.06.2025, wherein he had, *inter alia*, submitted that:-

11.3.1 Prashant at the very outset disowns the baseless allegations made against him on the following grounds which may please be considered without prejudice to one another and without admitting anything. Prashant before making legal submissions in the matter would like to submit that he was shocked and surprised to receive the impugned SCN as it clearly revealed from the investigation including his statement dated: 19.11.2024 that On being asked he deposed that **he has never talked with any person of M/s. Eastern Shipping Co. Ltd., Sudan or M/s. Paramount Sealink Pvt. Ltd.,**

Gandhidham, Gujarat;

On being shown the cargo manifest of all 7 containers pertaining to bills of lading which shows vessel sailing date is 14.07.2024 at port Sudan for comments **he stated that while making deal with Mr. Prashant Thakkar, he had clearly told him to send the goods i.e. watermelon seed only if ship on board is before 30th June, otherwise don't send them. He had also made the partial payment to him on 06 June 2024 as agreed telephonically. Since he had never been in possession of any alternate BL or cargo manifest, therefore as far as his understanding B/L No. OSLSBL-961/24 issued on 27.06.2024 is correct.**

On being shown email communication dated 14/21/22/25.07.2024 between M/s. Paramount Sealink Pvt. Ltd. through email id impdocs@paramountsealink.com from M/s. Eastern Shipping Co. Ltd. through email id tagwa@easternship.com, he stated that he has no idea about this email communication and Shri Prashant Thakkar has been handling the email communication, **if he had known in advance that his present shipment (total 7 containers) was loaded after 30.06.2024, he would never imported it.**

On being shown two different shipped on board date i.e. 30.06.2024 and 25.06.2024 in respect of old BL-OSLPZUMUN2993024 and new BL-OSLSBL-961/24 respectively as well as different BL date for the same B/L No. OSLSBL-961/24 i.e 01.07.2024 on container tracking report, he stated that shipped on board date has been manipulated from 30.06.2024 to 25.06.2024 in B/L documents by someone. But he assure that he had never talk to anyone and also not given directions in this regard for manipulation in documents. Hence he stated that the amendment in B/L documents have done neither by him nor as per his directions. Again he stated that while making the deal with Shri Prashant Thakkar, he had clearly told him to send the goods only if the cargo i.e. watermelon seeds ships on board before 30th June otherwise not to send them. He had also made payment to him on 06 June 2024 for the said 7 Containers.

He further stated that if he had known in advance that his present shipment (seven containers) was loaded after 30.06.2024, he would never have imported it.

11.3.2 Prashant submits that as per the reply submitted by M/s. Nakul it is admitted fact on record by way of exculpatory statements dated 03.10.2024 of proprietor of M/s. Nakul and his statement dated 19.11.2024 especially highlighted paragraphs supra and infra, as well as emails which is recovered during the search conducted at the office premises of M/s. Paramount Sealink Pvt. Ltd. (Delivery Agent of Shipping Line i.e. M/s. Oceanic Star Line) wherein there is no email ids of him and M/s. Nakul etc nowhere stating or referring name of him and M/s. Nakul that they were not aware about the loading of the goods on board vessel if any after 30.06.2024. So not repeating all the submissions made by M/s. Nakul and request that same may be considered mutatis mutandis as part of this reply.

Noticee submitted that statements of proprietor/ partner/director etc. of the importers and Shri Prashant Popat are completely exculpatory and it clearly reveals that it was not within their knowledge about the Bills of Lading received by them and submitted to Customs with Ship on Board date and Place of Issue

Date prior to 30.06.2024 were not correct and other Bills of Ladings with Ship on Board Date and Place of Issue Date before and after 30.06.2024 or vice versa or after 30.06.2024 (Irrespective of fact that such BLs are relied upon by the investigation are unsigned and unstamped which have no evidential value at all) for the same shipments were issued by the shipping line as relied upon by the investigation. If any switch over of Bills of Lading etc. were not within their knowledge They had contracted with the suppliers of goods for the Shipping Bills for the date prior to 30.06.2024 or of date 30.06.2024. Even they had not contacted any one including foreign suppliers and/or shipping line or their local agents for two sets of shipping bills with different dates for the same consignments. There was no reason to doubt on the copy of Bills of Lading duly signed and stamped received by them with the dates prior to 30.06.2024 especially when they had specifically contracted / ensured with the suppliers that goods should be on board with shipping bill on board date prior to 30.06.2024 otherwise they will not accept the goods.

11.3.2 The Noticee further submitted that it is not the case of the investigation that any one from importers or Shri Prashant Popat were involved in manipulating / change in date of shipment if any by anyone shipper/shipping line so as to import goods which become restricted after 30.06.2024 due to loading after 30.06.2024 or bill of lading issue dates are after 30.06.2024. Looking to the documents including other documents uploaded with check list for Bills of Entry and also furnished by the importers during investigation no one can visualise or doubt about manipulation of Bills of Lading etc. if any. Since, Sudan is war affected country and goods are always transhipped through Jeddah delay in shipment so no one can doubt in delay in shipment as it is routine to receive goods late from Sudan.

Prashant in view of the above as well as detailed submissions made by M/s. Nakul submits that allegations made against him that he was constantly in touch with overseas suppliers as well as the container line (M/s Paramount Sealinks Pvt. Ltd. - working in India on behalf of M/s Ocean Star Line) and was involved in the fabrication of import documents. It also appears that Prashant charged brokerage fees for these services and Prashant had given instructions to the container line through the overseas supplier that even if the goods are shipped after 30th June 2024, the documents must be maintained before 30th June 2024, only then the goods will be cleared in India. It appears that Prashant had given instructions to the container line through the overseas supplier that even if the goods are shipped after 30th June 2024, the documents must be maintained before 30th June 2024; only then the goods will be cleared in India. The facts and evidence gathered during investigation, clearly establish that Prashant, acting as broker, deliberately colluded with representatives of container line to manipulate the actual dates on the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. It has also been established that Prashant was in direct contact with container line and documents arranged forged dates from in a manner that would mislead customs and enable the clearance of restricted cargo. These actions reflect a blatant disregard for regulatory compliance and an intent to mislead the authorities. The deliberate acts and omissions by Prashant, Partner of M/s Multigreen International, Ahmedabad make him liable for penalties under Section 112(b) of the Customs Act, 1962. Furthermore, his involvement in the creation of forged Bills of Lading a violation that renders him liable to penalties under Section 114AA of the Customs Act, 1962 are totally baseless and contrary to what revealed during the investigation.

11.3.3 Prashant further submits that in view of the above as well as submissions made by M/s. Nakul, goods are not liable to confiscation under any of the clause of Section 111 of the Customs Act, 1962 therefore, no penalty is imposable upon him under Section 112(b) of the Customs Act, 1962.

Prashant further submits penalty under Section 112(b) of the Customs Act, 1962 can be imposed only when any person 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.

As discussed in detailed in para supra as well as submissions made by M/s. Nakul that the investigation carried out by the DRI that though he being a broker has arranged deal between Dubai based supplier and M/s. Nakul for import of the goods but he does not know or has reason to believe that goods are liable to confiscation under Section 111, therefore, no penalty can be imposed upon him under Section 112(b) of the Customs Act, 1962.

Penalty under clause (b) can be imposed upon a person dealing with the goods in any manner including the manner specified in the clause with knowledge or reason to believe are liable to confiscation under Section 111 of the Customs Act, 1962.

Apart from that in the situation of clause (b), quantum of penalty can be as per any of the clause (i) to (v) of Section 112 which is not specified; thereby he is not put to the proper notice. So he is not in a position to defend the matter properly. As per settled position of law such notice is liable to be quashed and set aside.

In any case as submitted in para supra goods are not prohibited but restricted so no penalty can be imposed under Section 112(b)(i) of the Customs Act, 1962.

So without admitting anything it is submitted that at the most penalty under Section 112(b)(ii) i.e. Rs. 5,000/- can be imposed as it is not the case of evasion of duty by M/s. Nakul as per the investigation and allegations made in the impugned SCN.

11.3.4 Prashant further submits that in view of the above no penalty is imposable upon him under Section 114AA of the Customs Act, 1962. A penalty under Section 114AA ibid can be imposed only when 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 transactions of any business for the purpose of this act, shall be liable to penalty.

It is not the case or allegation of the department that Prashant has 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 transactions of any business for the purpose of this act, so not penalty is imposable upon him under the said section irrespective of the fact that penalty under Section 114AA of the Customs Act, 1962 can be imposed upon a person only when there is export on paper without physical export of the goods so as to avail export incentives/benefits.

11.3.5 Prashant without admitting anything further submits that

proposal to impose penalty under Section 114AA of the Customs Act, 1962 upon him is also without understanding the provisions as well as legislature intention to insert the said section. In view of the above submission no penalty is imposable upon him. Even otherwise said proposal is also devoid of merits. Plain reading of Section 114AA very much clears that it can be imposed only when somebody intentional use of false and incorrect material, which reads as under:

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

The first and foremost requirement to bring any person under domain of Section 114AA is that he must be **knowingly or intentionally** using the declaration, statement or document and such declaration, statement or document should be for transaction under provisions of Customs Act, 1962. Prashant most respectfully submits that none of the above element applies to it. As already discussed in para supra there was no declaration etc. of false or incorrect particular in any material. Hence question of imposing penalty under Section 114AA does not arise.

11.3.6 Prashant without admitting anything, as regards to proposal for imposition of penalty under Section 114AA of the Customs Act, 1962 would further like to draw your kind attention towards the fact that same can be imposed only in the situation of export on paper without physical export or involving fraudulent export and cannot be invoked for any alleged violation in import of goods.

For the above submission attention is further invited towards paragraph 62 to 66 of Standing Committee on Finance 27th Report - (2005-2006) – The Taxation Laws (Amendment) Bill, 2005.

Based on the same it is submitted that intention of legislature was to impose penalty under said Section 114AA only on exporters who were claiming export on paper and claiming illicit benefit of export incentives as is evident from following:

“Section 114 provides for penalty for improper exportation of goods. However, there have been instance where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114AA is proposed to be inserted after Section 114AA.”

Based on above, it is submitted that instant case is of import and not of

export so in any case no penalty can be imposed under Section 114AA of the Customs Act, 1962.

Prashant in view of the above as well as submissions made by M/s. Nakul requests to drop the proceedings initiated under the impugned notice.

11.3.7 Last but not least it was most respectfully further requested to your goodself that in view of the above shipping lines and concern CFS may also be directed/recommended to waive the demurrage and detention charges as per Regulation 6(1)(l) Handling of Cargo in Customs Area Regulations, 2009 for **the seizure period of the goods on merit of the case.**

In view of the above and without admitting anything alternatively it was prayed that in any case at least goods may be allowed to re-export that too without payment of any fine and penalty as per settled position of law. In view of the above it was requested to drop the proceedings initiated under the impugned notice or goods may be provisionally released under Section 110A of the Customs Act, read with settled position of law pending adjudication as requested by the importers vide their letters or option to pay fine in lieu of confiscation with leniency may be offered with penalty of Rs. 5,000/- or allow re-export of the goods as requested above so to avoid any further complication and undue litigation with the foreign based exporters in the deal of import made by the importers

Personal Hearing

12.1 Shri P.D. Rachchh, Advocate, appeared for personal hearing on 30.04.2025 in virtual mode on behalf of M/s. Nakul Agro and Shri Prashant Thakker(Popat), Authorized signatory of M/s. Multigreen International. He submitted that importer have applied for provisional release of seized goods as provided under Section 110A of the Customs Act, 1962. They are ready to furnish Bond supported by Security. He requested to release the seized goods as per the provisions of Section 110A ibid read with the settled position of law amongst other referred and relied upon by M/s. Siddhachal Agro Industries, Mahesana in its letter dated 17.03.2025 i.e. SIDHARTH VIJAY SHAH Versus UNION OF INDIA - 2021(375) E.L.T. 53 (Bom.) and ADDITIONAL DIRECTOR GENERAL (ADJUDICATION) Versus ITS MY NAME PVT. LTD. - 2021(375) (375) E.L.T.545 (Del.). He further submitted that reply to Showcause Notice will be submitted at the earliest. He requested to first decide on applications for provisional release of seized goods. It was also submitted that after decision on the requests for provisional release of seized goods in all subject case and submissions of reply to the SCNs, they wish to be heard in person in the mattes as no submission on merit was made.

Further, Shri P. D Rachchh, Advocate, appeared for personal hearing on 02.06.2025 in virtual mode on behalf of the M/s. Nakul Agro and Sh. Prashant Thakkar. He submitted that importer and Shri Prashant Popat have filed their reply to the SCN or will submit reply at an early date. He submitted that

importer have applied for provisional release of the seized goods viz. watermelon seeds as provided under Section 110A of the Customs Act, 1962 as same are not prohibited goods but restricted goods as per the impugned SCNs. They are ready to furnish Bond supported by Security. He requested to release the seized goods as per the provisions of Section 110A ibid read with settled position of law stated in application for provisional release made by importer as well as submission made at the time of hearing held on 30.04.2025. Further, Sh. Rachchh stated that as per Notification No. 5/2023 dated 05.04.2024 policy the goods are restricted' if imported with Ship on Board Bill of Lading dated 30.06.2024. In this case importer as per Bills of Lading submitted with the check list for the bills of entry and even for IGM where Bills of Entry are not filed are of the date prior to 30.06.2024, so goods are not liable to confiscation under any of the clause not to speak of Section 111(d), Section 111(m) and Section 111(o) of the Customs Act, 1962. Therefore, no penalty is imposable upon any one under Section 112(a), Section 112(b) and Section 114AA of the Customs Act, 1962. It was alternatively and without admitting anything further submitted that since goods are not prohibited but restricted as per the impugned SCN and according to your goods office same are liable to confiscation even in that case goods cannot be absolutely confiscated but confiscation if any have to be with an option to pay fine in lieu of confiscation that too with leniency as statements of proprietor/partners/director, Shri Prashant Popat and others exculpatory. Even penalty cannot be more than Rs. 5,000/- as per Section 112 of the Customs Act, 1962. Alternatively, it was requested that goods may be allowed to re-export without imposing any fine and penalty or with fine and penalty with leniency. In advertently, it was remained to submit that on behalf of importer summary of submission made at the time of hearing will be made within one week. However, same is enclosed with this PH sheet and may please be taken on record for importer and Shri Prashant Popat. It is also submitted that now importer and Shri Prashant Popat have filed their written submissions by email and also in hard copy in the impugned SCNs.

12.2 Advocate Ms. Deepti Upadhyay and Advocate Mr. Santosh Upadhyay appeared for personal hearing on 09.09.2025 in virtual mode on behalf of M/s. Paramount Sealinks Pvt. Ltd and re-iterated their submission dated 21.04.2025. They have stated that, as delivery agents, their role is strictly limited to filing the Import General Manifest (IGM), collecting documents from the importer or their representative, and issuing the delivery order. Paramount Sealinks' scope is confined to verifying the details submitted by the importer when filing the Bill of Entry with customs. As agents of the shipping company, their responsibilities are restricted, and therefore, they cannot be held liable for any penalties. Paramount principal's sub-agent has provided their services to

the exporters in Sudan and that Paramount does not have any role in the misdeclaration of the Shipped on Board dates in the Bill of Lading by the importer i.e. Noticee No. 1. They relied on certain case laws pertaining to switch bills of lading ruling by Singapore High Court and New south Wales Supreme Court, Australia which explicitly mentions that switch Bills of Lading are to be considered as legal document. Further they relied on section 230 of the Indian Contract Act which states that an agent cannot personally enforce, nor be bound by contract on behalf of the principal or principal's sub-agent. They are the shipping company agent in India and their scope is very limited and as such they can't be held liable for any penalties. They relied on the observations of the Twenty Seventh Report of the Standing Committee on Finance (2005 - 06) in relation to the Taxation Laws (Amendment) Bill, 2005 pertaining to penalty imposed under section 114 of The Customs Act, 1962. They relied on various judicial precedents along with the detailed observations of the Twenty Seventh Report of the Standing Committee on Finance (2005-06) in relation to the Taxation Laws (Amendment) Bill, 2005 pertaining imposed under section 114 of the Customs Act, 1962. Further, they requested to drop the proceedings against Paramount Sealinks Pvt. Ltd considering the prayers outlined in their written submissions.

12.3 Personal Hearing in the subject matter was granted to Shri Bharat Himmatlal Parmar, Branch manager of M/s. Paramount Sealink Pvt Ltd for dated 11.04.2025, 30.04.2025, 02.06.2025 and 09.09.2025, however Shri Bharat Himmatlal Parmar neither appeared for personal hearing nor submitted any documents/submission in the subject matter in reference of the Show Cause Notice dated 19.02.2025.

Discussion and Findings

13. I have carefully gone through the facts of the case, Show Cause Notice dated 21.02.2025 and the noticee's submissions both, in written and in person. I find that in the present case, principle of natural justice have been complied with and Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions, applicable laws/rules, and written submissions, documentary evidences available on record and judicial precedents.

14. I now proceed to decide the issues framed in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided at the stage of adjudication: -

(i) Whether the imported goods i.e. "Water Melon Seed" are liable for confiscation under section 111(d), 111(m) and 111(o) of the customs Act, 1962

or otherwise;

(ii) Whether the noticees are liable for penalty as proposed under the SCN or otherwise.

15. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, submissions, and circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements.

15.1 I find that M/s. **Nakul Agro** (Importer) imported Watermelon seed in seven containers under Bill of Entry no. 5529894 dated 10.09.2024 and Bill of Lading no. OLSBL-961/24 dated 27/06/2024. Based on intelligence gathered by DRI, Gandhidham that importer is indulged into illegal import of Watermelon Seeds (Melon Seeds) by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade and major discrepancies has been noticed in the details mentioned in Bill of Lading No. OLSBL-961/24 for BE No. 5529894 dated 10.09.2024, the investigation has been initiated by DRI. Accordingly, the proceedings of the examination were recorded under panchnama dated 08.10.2024 drawn at M/s. Mundhra CFS Pvt. Ltd., Mundra.

15.2.1 I found that during the course of investigation, two different bills of lading were found. The details are as under:-

Table-A

Bill of lading No.	OLSBL-961/24	OSLPZUMUN2993024
Vessel Name	SUNSET X	AL AHMED
Voyage No.	2423	24713
B/L issue date	27.06.2024	14.07.2024
Ship on board Date	25.06.2024	30.06.2024
Total no. of containers	7	7
B/L Issued by	Gulf Gate Shipping Company limited	Eastern Shipping Company

15.2.2 I observed that during the search at the premises of M/s. Paramount Sealink Pvt. Ltd. on dated 12.09.2024, above mentioned two different Bill of Lading OLSBL-961/24 dated 27.06.2024 and OSLPZUMUN2993024 dated 14.07.2024 having same booking ref no. OSL-32227/24 were found. Further, during the search the cargo manifest in respect of all 07 container nos. GESU3418703, UETU2853133, CLHU3575309, MEDU2313136, GESU3044440, TDRU4047029 and PGTU2325829 of B/L No. OLSBL-961/24 dated 27.06.2024 was also found.

Shipped on board date in the Bill of Lading OSLSBL-961/24 dated 27.06.2024 and OSLPZUMUN2993024 dated 14.07.2024 was declared as 25.06.2024 and 30.06.2024 respectively.

15.2.3 I observed that the Cargo Manifest in respect of all 07 container nos. GESU3418703, UETU2853133, CLHU3575309, MEDU2313136, GESU3044440, TDRU4047029 and PGTU2325829 of the subject Bill of Entry shows that goods under 07 containers were sailed on 14.07.2024 through vessel Sunset X with Voyage No. 2423.

15.2.4 I also find that the Cargo Manifest of BL no. OSLSBL-961/24 in respect of all 07 containers of the subject Bill of Entry shows that vessel SUNSET X having voyage no. 2423 sailed on 14.07.2024, Whereas on perusal of BL no. OSLSBL-961/24 dated 27.06.2024 received from Tagwa Badri, Marketing Executive, Eastern Shipping Co. Ltd., Sudan through mail (tagwa@easternship.com) dated 21.07.2024 with subject of *OSL pre alert AL AHMED//24713 PORT SUDAN-MUNDRA TDR-2024-07-14* shows that goods are shipped on board on 25.06.2024 with vessel SUNSET X having voyage no. 2423.

Accordingly, the contradictory facts demonstrate that the Bill of Lading (BL) was manipulated/forged to clear the restricted goods.

15.2.5 From the above, it is evident that the goods imported under Bill of Entry no. 5529894 dated 10.09.2024 were shipped from port Sudan via vessel Sunset X with voyage no. 2423 on 14.07.2024. Thus, it is evident that the shipment in question, carried by the Vessel Sunset X (Voyage No. 2423) from Port Sudan, was shipped after 30.06.2024.

It indicates that Bill of Lading nos. OSLSBL-961/24 dated 27.06.2024 and OSLPZUMUN2993024 dated 14.07.2024 were manipulated/forged by falsely indicating a 'Shipped On Board' date prior to June 30, 2024 in order to facilitate the clearance of 'Restricted' goods.

15.3 E-mail conversation:-

15.3.1 The e-mail conversation recovered during search conducted at the office Premise of M/s. Paramount Sealink Pvt. Ltd. under Panchnama dated 12.09.2024 indicated that various communications were made between officials of M/s Eastern Shipping Co. Ltd. and M/s. Paramount Sealink Pvt. Ltd. (Delivery Agent working in India on behalf of M/s Oceanic Star Line) to manipulate the Bill of Lading for clearance of subject goods covered under Bill of Entry no. 5529894 dated 10.09.2024.

15.3.2 Upon careful examination of email correspondence specifically the

messages sent and received by Mr. Tagwa Badri (Marketing executive, Eastern Shipping Co. Ltd. Sudan) to M/s. Paramount Shipping Pvt. Ltd. The relevant emails are as follows:-

- 14.07.2024 : OSL pre alert AL AHMED//24713 PORT SUDAN-MUNDRA TDR-2024-07-14, BL No. **OSLPZUMUN2993024 dated 14.07.2024** was received from Tagwa Badri, Marketing executive of M/s Eastern shipping Co. Ltd. Khartoum, Sudan vide email ID impdocs@paramountsealink.com in which Shipped on board date is mentioned as 30.06.2024 with vessel name AL AHMED and voyage number 24713.
- 21.07.2024:- Subject *OSL pre alert AL AHMED//24713 PORT SUDAN-MUNDRA TDR-2024-07-14*, switch BL No. **OSLSBL-961/24** dated 27.06.2024 was received from TagwaBadri, Marketing executive of M/s Eastern shipping Co. Ltd. Khartoum vide email ID impdocs@paramountsealink.com in which shipped on board date is 25.06.2024 with vessel name SUNSET X and voyage number 2423 and also **cargo manifest** of BL no. **OSLSBL-961/24** is attached.

On perusal of the email communication dated 14.07.2024, I find that vide email dated 14.07.2021, M/s Eastern Shipping Co. Ltd., Sudan forwarded Draft BL details including BL No. OSLPZUMUN2993024 dated 14.07.2024 to M/s Paramount Sealink Pvt. Ltd. under the subject "OSL PRE AL AHMED // 24713 PORT SUDAN-MUNDRA TDR-2024-07-14". The draft BL nos. OSLPZUMUN2993024 relating to the consignment were first informed on 14.07.2024 and vide subsequent email dated 21.07.2024, the earlier BL nos. OSLPZUMUN2993024 was switched by BL no. OSLSBL-961/24 and cargo manifest of BL no. OSLSBL-961/24 was also shared.

Further, on comparing the details of the cargo manifest of BL no. OSLSBL-961/24 and details of BL no. OSLSBL-961/24 received from Tagwa Badri through mail dated 21.07.2024 (to be read together with Table A), the above said details found different, hence, it is evident that details in Bills of lading have been manipulated/forged to facilitate the clearance of restricted goods by falsely claiming eligibility period as stipulated in Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

In view of above, I find that goods under Bill of Entry no. 5529894 dated 10.09.2024 shipped from Port Sudan on 14.07.2024, well beyond the prescribed cut-off of 30.06.2024.

15.4 I also find that during statement were recorded by DRI, the bills of

lading Nos. OSLPZUMUN2993024, BL No. OSLSBL-961/24 and cargo manifest of BL No. OSLSBL-961/24 obtained from the site of Oceanic group and e-mail conversations (as discussed above) were presented to (i) Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd (ii) Shri Madhu Sudan Lohiya, Partner of M/s. Nakul Agro, (iii) Shri Vankar Bharatbhai Khengarbhai, senior executive (imports) of M/s Paramount Sealinks Pvt. Ltd, (iv) Shri Prashant Thakker, Partner of M/s Multigreen International and v) Shri Chavda Dilipsinh, G-Card holder of M/s Unnati Cargo after analyzing they admitted in their statements that shipped on board date and Vessel details have been manipulated in Bills of Lading by the supplier in connivance with the shipping line in order to satisfy the conditions prescribed under Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

Ongoing through the entire documentary trail—including email correspondences, cargo manifest, and statements, I find that the BLs were manufactured subsequently to misrepresent the original shipping date and acted in concert to suppress the actual shipping details and submitted manipulated documents before Customs.

Accordingly, I find that the goods covered under Bill of Entry no. 5529894 dated 10.09.2024 were shipped on 14.07.2024, beyond the time limit prescribed under DGFT Notification No. 05/2023 i.e. 30.06.2024.

In view of above, it is established that details in Bill of lading no. OSLPZUMUN2993024 dated 14.07.2024 and OSLSBL-961/24 dated 27.06.2024 have been manipulated/forged in order to facilitate the clearance of restricted goods by falsely claiming eligibility period as stipulated in Notification No. 05/2023 dated 05.04.2024 issued by DGFT.

15.5 I consider statements of noticees as material evidence in this case. It is relevant here to refer to some landmark judicial pronouncements on the issue of acceptability and evidentiary value of statements recorded under provisions of section 108 of the Act.

i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**^[1] and in the case of **Percy Rustomji Basta**^[2] has held "*that the provisions of Section 108 are judicial provisions within which a statement has been read, correctly recorded and has been made without force or coercion. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence*".

ii. The Hon'ble Supreme Court in the case of **Badaku Jyoti Svant**^[3] has

decided that “statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct”.

iii. Hon'ble Punjab and Haryana High Court in the case of **Jagjit Singh**^[4] has decided that “It is settled law that Customs Officers were not police officers and the statements recorded under Section 108 of the Customs Act were not hit by Section 25 of the Evidence Act. The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in the matter of Ram Singh^[5], in which it is held that recovery of opium was from accused by officers of Narcotic Bureau. Accused made confession before said officers. Officers of Central Bureau of Narcotics were not police officers within the meaning of Section 25 and 26 of the Evidence Act and hence, confessions made before them were admissible in evidence”.

15.6 In view of the foregoing discussion, I find that the statements recorded by DRI under the provisions of Section 108 of the Act form reliable evidence in the case supporting the charge of mis-declaration of import documents and submission of forged/manipulated Bills of lading.

15.7 As per my detailed findings in para 15.2, 15.3 and 15.4 above, the impugned goods did not fulfill the condition outlined as per the provisions of notification no. 05/2023 dated 05.04.2024 issued by DGFT stipulates that if ‘watermelons seeds’ have been loaded or shipped on board before 30th June 2024 then only it will be under ‘Free’ category. However, evidence established that the importer intentionally submitted manipulated/forged Bills of Lading in a deliberate attempt to facilitate the customs clearance of restricted goods unlawfully.

15.8 I also find that it is a fact that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; ‘Self-Assessment’ has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either

through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

15.9 From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-declared and mis-classified the goods and evaded the payment of applicable duty. I find that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

15.10 I find that the Show Cause Notices propose confiscation of goods under the provisions of Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962. Provisions of Sections are re-produced herein below:

111. Confiscation of improperly imported goods, etc.- goods are liable for confiscation:-

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

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

(o) any goods exempted, subject to any condition, from duty or any prohibition in

respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

In view of the facts and evidence discussed above, I find that the Directorate General of Foreign Trade (DGFT), through Notification No. 05/2023 dated 05.04.2024, amended the import policy for Melon Seeds under CTH 12077090. As per the notification, the import of Melon Seeds was classified as 'Free' from 1st May 2024 to 30th June 2024. Consignments with 'shipped on board' Bill of lading issued till 30th June 2024 shall be treated as 'Free' to import". All consignments of Watermelon Seeds which have shipped on board before 01.07.2024 can be imported in India on 'Actual User' basis to processors of Melon Seeds having a valid FSSAI Manufacturing License in line FSSAI Order dated 15.03.2024. However, as established in the preceding paras, M/s. Nakul Agro, illegally imported Watermelon Seeds under Bill of Entry No. 5529894 dated 10.09.2024, in violation of Notification No. 05/2023. The investigation conclusively proved that the goods were shipped on board on 14th July 2024 i.e. beyond the permissible date of 30th June 2024 using a forged Bill of Lading. Furthermore, from the investigation carried out, I also find that the importer deliberately withheld critical information from Customs Authorities, failing to disclose that the goods were shipped on board after the specified date of 30th June 2024. This reflects intentional non-compliance with the DGFT Notification No. 05/2023 dated 05.04.2024, which rendered the subject goods prohibited, hence, contravened the provisions of Section 46 of the Customs Act, 1962. I find that Bills of lading provided were forged /manipulated to meet the requirement of notification no. 05/2023-Cus dated 05.04.2024. This coordinated effort to create and present fabricated documentation not only violates legal and procedural norms but also undermines the integrity of the shipping and import/export process. Through intentional misrepresentation and manipulation of dates, they sought to facilitate the clearance of restricted cargo in violation of the established regulations. This deliberate manipulation confirms malafide intention of noticee's. Hence, the goods declared as 'Watermelon Seeds' under CTH 12077090 covered under Bill of Entry No. 5529894 dated 10.09.2024 having total quantity 121.8 MTs and declared assessable value of Rs. 2,04,90,334.83/- imported by M/s. Nakul Agro are liable for confiscation. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962.

16. I find that the Show Cause Notices propose penalty on noticees under the provisions of Section 112(a), 112(b) and 114AA of the Customs Act, 1962.

Provisions of Sections are re-produced herein below:

SECTION 112 of the Customs Acts. Penalty for improper importation of goods, etc. - Any person, -

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

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

shall be liable, -

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

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

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

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

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

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or

incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

Roles and culpability of persons/firms involved:

16.1 Role and culpability of M/s. Nakul Agro:

M/s. Nakul Agro was well aware of the Import policy and Notification No. 05/2023 dated 5th April, 2024 issued by the DGFT. M/s. Nakul Agro had imported watermelon seeds covered under BL No. OSLSBL-961/24 dated 27.06.2024 of Bill of Entry no. 5529894 dated 10.09.2025, by way of violation of import policy mentioned in Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry. The total quantity of the said goods covered under the subject Bill of Entry is 121.8 MTs having Assessable value of Rs. 2,04,90,334.83/-. As per Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, the import of said goods with shipped on board dated after 30th June is under restricted category. The importer must comply with the conditions outlined in the said Notification. Further, the notification was issued for a definite period and it is the obligation of the firm utilizing that authorization to ensure that no condition of the Notification has been violated. The acts of commission and omission on the part of the importer rendered the subject goods liable to confiscation under Section 111(d), 111(m) and 111 (o) of the Customs Act, 1962 and therefore is liable to penalty under Section 112 (a) and 112 (b) of the Customs Act, 1962. I find that the evidences clearly indicating malafide intention on their part in respect of the imported goods warranting imposition of penalty under Section 112 (a) (i) as the fact of non-compliance of conditioned outlined in the Notification No. 05/2023-Cus dated 05.04.2024 issued by DGFT. Result is that proposal to impose penalty under Section 112 (a)(i) is correct and sustainable in law.

I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on M/s. Nakul Agro under Section 112(b) of the Customs Act, 1962.

I find that the SCN proposed imposition of penalty on the Importer under Section 114AA of the Customs Act, 1962. I find that in spite of well aware of import policy and conditioned outlined in the notification no. 05/2023-Cus dated 05.04.2024 issued by DGFT. Accordingly, I find that the importer M/s. Nakul Agro has knowingly and wilfully filed the bill of entry with forged Bills of Lading with the clear intention to import the restricted cargo in direct violation

of established regulations. As it is the obligation of the firm to ensure that proper and correct documents are maintained and as forged Bill of Lading was created which constitutes the violation. By manipulating and forging Bills of Lading in collusion with their supplier and shipping line and filing import documents which were false and incorrect in material particulars. Accordingly, it is evident that M/s. Nakul Agro **knowingly and intentionally made, signed, used and/or caused to be made, signed or used** import documents and related papers that were **false or incorrect in material particulars** for the purpose of illegally importing the subject goods. Therefore, I find that importer is also liable for **penal action under Section 114AA** of the Customs Act, 1962.

16.2 Role and culpability of M/s. Paramount Sealink Pvt. Ltd.:

The facts and evidence gathered during the search, including email correspondences, clearly establish that M/s Paramount Sealink Pvt. Ltd, acting on behalf of M/s Oceanic Star Line, deliberately colluded with representatives of M/s Oceanic Star Line and Shri. Tagwa Badri of Eastern Shipping Co. Ltd., Sudan, to manipulate the actual dates on the Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. These actions reflect a blatant disregard for regulatory compliance and intent to mislead the authorities.

I find that Shri Bharat Parmar and Shri Vankar Bharatbhai Khengarbhai, Paramount's Branch Manager and Senior Executive, admitted in statement under section 108 of the Customs Act, 1962 that the BLs were "**manipulated**" to alter the shipped-on-board date and vessel details to satisfy the DGFT conditions. The deliberate acts and omissions by M/s Paramount Sealink Pvt. Ltd. make them liable for penalties under **Section 112(b)** of the Customs Act, 1962.

It has also been revealed during the investigation that M/s. Paramount Sealink Pvt. Ltd knowingly and intentionally, made, signed, used and/or caused to be made, signed, or used import documents and related records that were false or incorrect in material particulars, with the clear intention to import the restricted cargo in direct violation of established regulations. By manipulating and forging Bills of Lading in collusion with their overseas part and forwarding the forged BLs which were false and incorrect in material particulars. Accordingly, it is evident that M/s. Paramount Sealink Pvt. Ltd **knowingly and intentionally made, signed, used and/or caused to be made, signed or used** import documents i.e. creation of forged Bills of Lading and related papers that were **false or incorrect in material particulars** for the purpose of illegally importing the subject goods. Therefore, I find that M/s. Paramount Sealink Pvt. Ltd is also liable for **penal action under Section 114AA** of the Customs Act,

1962.

16.3 Role and culpability of Shri Bharat Himmatlal Parmar, Branch Manager of M/s. Paramount Sealink Pvt. Ltd.:

Statement of Shri Bharat Himmatlal Parmar, Branch Manager of M/s Paramount Sealink Pvt. Ltd., recorded u/s 108 of the Customs Act, 1962 on 23.12.2024. In his statement, Shri Bharat Himmatlal Parmar admitted to looking after work related to export, import and accounts operations. The facts and evidences gathered during the search, including email correspondences, clearly establish that Shri Bharat Himmatlal Parmar, being the Branch Manager was made Cc to each and every mail conversations between their Principal Shipping Line (M/s. Oceanic Star Line) and overseas agents of their Principal Shipping Line (i.e. M/s. Eastern Shipping Co. Ltd., Sudan and M/s. Gulf Gate Shipping Co. Ltd., Jeddah). During investigation, it was revealed that he was fully aware about the manipulation of actual dates on Bill of Lading. This manipulation was intended to facilitate the clearance of restricted cargo in direct violation of established regulations. Despite being fully aware, he failed to disclose the actual facts to the customs department and in connivance with their principal shipping line and its overseas agents; he attempted to facilitate the clearance of restricted cargo. By engaging in the creation of forged Bills of Lading in collusion with shipper, broker and shipping line representatives, Shri Bharat Himmatlal Parmar not only mislead the customs department but also rendered himself liable to penalties under Section 112(b) of the Customs Act, 1962. In view of the above, I hold so.

16.4 Role and culpability of Shri Prashant Thakker(Popat):

I find that Shri Prashant Thakkar authorized person of M/s Multigreen international, in his statement recorded u/s 108 of the Customs Act, 1962 on dated 19.11.2024 admitted that that they used to import goods i.e. Watermelon seeds from Sudan. Shri Prashant Thakker, was handling the import related work as a Broker and used to contact Sudanese suppliers in order to finalize the deal with the suppliers of the goods. He used to bargain with foreign suppliers and used to arrange the payment against the subject import goods to the Sudanese suppliers. From the investigation carried out, I find that Shri Prashant Thakker was constantly in touch with overseas suppliers as well as the container line (M/s Paramount Sealinks Pvt. Ltd. - working in India on behalf of M/s Ocean Star Line) and was involved in the fabrication of import documents. I also find that Shri Prashant Thakker charged brokerage fees for these services and given instructions to the container line through the overseas supplier that even if the goods are shipped after 30th June 2024, the documents must be maintained before 30th June 2024, only then the goods will be cleared in India. The facts and evidence gathered during investigation,

clearly establish that Shri Prashant Thakker, acting as broker, deliberately colluded with representatives of container line to manipulate the actual dates on the Bill of Lading. I find that Shri Prashant Thakker is fully aware of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade, Ministry of Commerce & Industry, and failed to disclose the actual facts to the customs department. Shri Prashant Thakker attempted to mislead customs and enable the clearance of restricted cargo.

Accordingly, by engaging in the creation of forged Bills of Lading in collusion with overseas broker, shipper and shipping line representatives, Shri Prashant Thakker mislead the customs department and liable to penalties under Section 112(b) of the Customs Act, 1962.

I find that Shri Prashant Thakker, knowingly and intentionally, made, signed, used and/or caused to be made, signed, or used import documents and related records that were false or incorrect in material particulars, with the intention of facilitating the clearance of restricted cargo in direct violation of established regulations. Thereby violating the provisions of the Customs Act. Accordingly, by wilfully submitting or causing the submission of falsified documents i.e. forged Bills of Lading in connection with the import of goods, I hold that Shri Prashant Thakker is also liable for penalty under section 114AA of the Customs Act, 1962.

17. In view of the above facts of the case and findings on record, I pass the following order:-

ORDER

- i. I order to absolute confiscation of impugned goods i.e. **121.8 MTS "Watermelon Seed"** imported vide Bill of Entry no. 5529894 dated 10.09.2024 having value **Rs. 2,04,90,335/- (Two Crore Four Lakh Ninety Thousand Three Hundred and Thirty Five only)** under Section 111 (d), 111(m) & 111(o) of the Customs Act, 1962.
- ii. I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) on the importer M/s. Nakul Agro under Section 112 (a)(i) of the Customs Act, 1962.
- iii. I refrain from imposing penalty on the importer M/s. Nakul Agro under Section 112(b) of the Customs Act, 1962.
- iv. I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on the importer M/s. Nakul Agro under Section 114AA of the Customs Act, 1962.
- v. I impose penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on M/s Paramount Sealink Pvt. Ltd. under Section 112 (b) of the Customs Act, 1962.

- vi. I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) on M/s. Paramount Sealink Pvt. Ltd. under Section 114AA of the Customs Act, 1962.
- vii. I impose penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) on Sh. Bharat Parmar, Branch Manager of M/s Paramount Sealink Pvt. Ltd. Under section 112(b) of the Customs Act, 1962.
- viii. I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on Shri Prashant Thakkar (Popat) of M/s. Multigreen International under Section 112 (b) of the Customs Act, 1962.
- ix. I impose penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) on Shri Prashant Thakkar (Popat) of M/s. Multigreen International under Section 114AA of the Customs Act, 1962.

18. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

19. The Show Cause Notice bearing no. GEN/ADJ/ADC/474/2025-Adjn dated 21.02.2025 stands disposed in above terms.

Digitally signed by
Dipakbhai Chitambar
Date: 31-12-2025
13:41:59
 ADDITIONAL COMMISSIONER

ADC/JC-III-O/o Pr Commissioner-customs-mundra

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

List of Noticees



1. M/s. Nakul Agro, G1-221-A, Mandore Industrial Area, Mandore, Jodhpur, Rajasthan-342001(IEC No. ABDPL7028F). (email-nakullohiya123@gimail.com)
2. M/s Paramount Sealinks Pvt. Ltd., **Office No. 14, 2nd Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201.** (email-specialequipments@paramountsealink.com and brmgr@paramountsealink.com)
3. **Shri Bharat Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd.** situated at Office No. 14, 2nd Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-

370201 (email-brmgr@paramountsealink.com)

4. **Shri Prashant Thakker (Popat)**, Partner of M/s Multigreen International at **Fortune Business Hub, 919, 9th Floor, N/R Shell Petrol Pump, Science City Road, Thaltej, Ahmedabad, Gujarat 380060**. (email-multigreeninternational@gmail.com).

Copy to:

1. The Additional Director General, DRI, Ahmedabad
 2. The Additional Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch).
 3. The Deputy Commissioner of Customs(RRA/TRC), Mundra Customs House.
 4. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately)*.
 5. Guard File.
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	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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DIN: 20260271MO0000444BC0

Date: 10.02.2026

ADDENDUM TO ORDER IN ORIGINAL NO. MCH/ADC/ZDC/475/2025-26 dated 31.12.2025

Subject: Adjudication of Show Cause Notice no. GEN/ADJ/ADC/474/2025-Adjn-O/o Pr Commr-Cus Mundra dated 21.02.2025 issued to M/s. Nakul Agro, (IEC: ABDPL7028F)-, in the matter of illegal import of Watermelon Seeds by way of violation of Notification No. 05/2023 dated 5th April, 2024 issued by Directorate General of Foreign Trade.

This is in reference to the Order-in-Original no. MCH/ADC/ZDC/475/2025-26 dated 31.12.2025 in the subject matter, wherein the impugned goods i.e. Watermelon Seeds imported by the noticee were ordered to be confiscated absolutely.

2 . Being aggrieved by the above OIO dated 31.12.2025, the noticee filed civil application (amendment) in their special civil application no. **17988 of 2025** in the High Court of Gujarat, Ahmedabad. . The Hon'ble High Court, vide common oral order dated 29.01.2026 directed the respondent, i.e. the undersigned, to reconsider the matter in light of the judgement of the Hon'ble Punjab and Haryana High Court and pass appropriate orders and place the same on record by the next date of hearing. The relevant portion of the order dated 29.01.2026 is re-produced below for reference:

“4. While passing the order dated 17.12.2025, a statement was made before this Court that the auction of the goods, which was scheduled to be held tomorrow i.e. on 18.12.2025, is postponed and the same will be held on 15.01.2026. The matter was thereafter listed on 08.01.2026. In the order dated 08.01.2026, a statement of learned Senior Standing Counsel was recorded that auction will be conducted till 30.01.2026. Thus, during pendency of the writ petition, the respondents have proceeded further by passing order of confiscating the goods, which appears to be prohibited and not restricted.

5. Hence, we direct that till further orders are passed by this Court, no auction proceedings shall be held. We also further direct the respondent to reconsider the matter in light of the judgement of the Punjab and Haryana High Court and pass appropriate orders and place the same on record by the next date of hearing.”

3 . Further, I also note that the Hon'ble Punjab & Haryana High Court, in the case of **Shree Balaji Industries [2024 (387) E.L.T. 294 (P&H.)]**

vide order dated 06.06.2023, has directed to release the watermelon seeds. The relevant portion of that order is reproduced below for reference:

23. *In the present case, the Watermelon seeds are restricted goods but they cannot be treated as prohibited goods and in the absence of any permission/ authorization for DGFT, provisional release can be done as per the judgment of the Hon'ble Supreme Court passed in Commissioner of Customs's case (supra). Moreover, during the pendency of this writ petition, report from Plant and Quarantine Department has come in favour of the petitioner as regards Watermelon Seeds and in the case of Red Kidney Beans, they have been ordered to be released provisionally subject to conditions as per order dated 23.02.2023 (Annexure P-1). The order with the same conditions can be passed in this case as well as the Watermelon Seeds do not fall under the "prohibited" category and they fall under the "restricted" category as per notifications dated 26.04.2021 and 21.06.2022. The provisional release can be ordered subject to final decision taken by the Adjudicating Authority under Section 105 of the Customs Act, 1962.*

24. *Keeping in view the above observations, writ petition is allowed and order dated 23.02.2023 (Annexure P-1) is set aside qua Watermelon Seeds with direction to the respondent to pass provisional release order of Watermelon Seeds as per conditions imposed in the case of "Red Kidney Beans" under order dated 23.02.2023, within a period of one week."*

4. Imposition of Redemption Fine: Considering the above facts and in compliance of order dated 29.01.2026 of the Hon'ble High Court Gujarat, Ahmedabad, an option is hereby extended to the importer to redeem the goods on payment of redemption fine under the provisions of Section 125(1) of the Customs Act, 1962. Section 125 of the Customs Act, 1962 is reproduced below:

Section 125. Option to pay fine in lieu of confiscation.-

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."

(2).....

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

4 . 1 Without prejudice, I note that in the case of M/s. Shree Balaji Industries (supra), the adjudicating authority had imposed a redemption

fine of approximately 20% of the value of the goods while passing Order No. LDH-CUS-JC-RT-14-2024-25 dated 10.05.2024, that case involved watermelon seeds smuggled under the false declaration of beans. The issue here is related to the violation of the DGFT Notification governing the import of watermelon seeds by producing a forged Bill of Lading but goods were declared correctly as Watermelon seed only. In view of these considerations, I am of the opinion that imposing a 20% redemption fine would be disproportionate in nature. Accordingly, I restrict the redemption fine to approximately 10% of the value of the impugned goods.

5. Thus, I pass the following order:-

ORDER

(i) I order to confiscate the impugned goods i.e. 121.8 MTS "Watermelon Seed" imported vide Bill of Entry no. 5529894 dated 10.09.2024 having value Rs. 2,04,90,335/- (Two Crore Four Lakh Ninety Thousand Three Hundred and Thirty Five only) under Section 111 (d), 111(m) & 111(o) of the Customs Act, 1962. However, in suppression of para 17(i) of the OIO dated 31.12.2025, which ordered for absolute confiscation, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) under Section 125 (1) of Customs Act, 1962. Further, in terms of Section 125(3) of the Customs Act, 1962, the option for redemption of the subject goods shall be exercised within a period of one hundred and twenty days from the date of receipt of this order, failing which the said option shall become void, unless an appeal against this order is pending.

**Digitally signed by
Dipakbhai Zala
Date: 10-02-2026
16:50:52**
Zala Dipakbhai
Chimanbhai

ADDITIONAL COMMISSIONER

ADC/JC-III-O/o Pr Commissioner-customs-mundra

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

List of Noticees

1. M/s. Nakul Agro, G1-221-A, Mandore Industrial Area, Mandore, Jodhpur, Rajasthan-342001(IEC No. ABDPL7028F). (email-nakullohiya123@gmail.com)
2. M/s Paramount Sealinks Pvt. Ltd., Office No. 14, 2nd Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201. (email-specialequipments@paramountsealink.com and brmgr@paramountsealink.com)

3. Shri Bharat Parmar, Branch Manager of M/s Paramount Sealinks Pvt. Ltd. situated at Office No. 14, 2nd Floor, Aviskar Building, Plot No. 204, Ward 12-B, Gandhidham-370201 (email-brmgr@paramountsealink.com)
4. Shri Prashant Thakker (Popat), Partner of M/s Multigreen International at Fortune Business Hub, 919, 9th Floor, N/R Shell Petrol Pump, Science City Road, Thaltej, Ahmedabad, Gujarat 380060. (email-multigreeninternational@gmail.com).

Copy to:

1. The Additional Director General, DRI, Ahmedabad
2. The Additional Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch).
3. The Deputy Commissioner of Customs(RRA/TRC), Mundra Customs House.
4. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately).*
5. Guard File.