



प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद
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फा. सं./VIII/10-06/Commr./O&A/2023-24

आदेशकीतारीख/Date of Order :28.03.2024

जारीकरनेकीतारीख/Date of Issue : 28.03.2024

द्वारापारित :-
Passed by :-

शिवकुमारशर्मा, प्रधानआयुक्त
Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-37-2023-24 dtd
28.03.2024 in the case of **M/s SKA Cashew Processing LLP** (IEC-
2416902318), Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi.

- जिसव्यक्ति(यों) कोयहप्रतिभेजीजातीहै, उसेव्यक्तिगतप्रयोगकेलिएनिःशुल्कप्रदानकीजातीहै।
 - This copy is granted free of charge for private use of the person(s) to whom it is sent.
 - इसआदेशसेअसंतुष्टकोईभीव्यक्तिइसआदेशकीप्राप्तिसेतीनमाहकेभीतरसीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरण, अहमदाबादपीठकोइसआदेशकेविरुद्धअपीलकरसकताहै।अपीलसहायकरजिस्ट्रार, सीमाशुल्क, उत्पादशुल्कएवंसेवाकरअपीलीयन्यायाधिकरण, दुसरीमंज़िल, बहुमालीभवन, गिरिधरनगरपुलकेबाजुमे, गिरिधरनगर, असारवा, अहमदाबाद-380 004 कोसम्बोधितहोनीचाहिए।
 - Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.
 - उक्तअपीलप्रारूपसं. सी.ए.3 मेंदाखिलकीजानीचाहिए।उसपरसीमाशुल्क (अपील) नियमावली, 1982 केनियम3केउपनियम(2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपीलको चारप्रतियोंमें दाखिल किया जाए तथाजिसआदेशकेविरुद्धअपीलकीगईहो,

उसकीभीउतनीहीप्रतियाँसंलग्नकीजाएँ

(उनमेंसेकमसेकमएकप्रतिप्रमाणितहोनीचाहिए)।अपीलसेसम्बंधितसभीदस्तावेजभीचारप्रतियोंमें अग्रेषितकिएजानेचाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपीलजिसमेंतथ्योंकाविवरणएवंअपीलकेआधारशामिलहैं, चारप्रतियोंमें दाखिलकी जाएगी तथा उसके साथ जिसआदेशकेविरुद्धअपीलकीगईहो, उसकीभीउतनीहीप्रतियाँसंलग्नकीजाएंगी (उनमेंसे कमसेकम एक प्रमाणित प्रतिहोगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5.

अपीलकाप्रपत्रअंग्रेजीअथवाहिन्दीमेंहोगाएवंइसेसंक्षिप्तएवंकिसीतर्कअथवाविवरणकेबिनाअपीलकेकारणोंकेस्पष्टशीर्षकेअंतर्गततैयारकरनाचाहिएएवंऐसेकारणोंकोक्रमानुसारक्रमांकितकरना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रियसीमाशुल्कअधिनियम, 1962 की धारा 129

केउपबन्धोंकेअंतर्गतनिर्धारितफीसजिसस्थानपरपीठस्थितहै, वहांकेकिसीभीराष्ट्रीयकृतबैंककीशाखासेन्यायाधिकरणकीपीठकेसहायकरजिस्ट्रारकेनामपररेखांकितमाँगड्राफ्टकेजरिएअदाकीजाएगीतथायहमाँगड्राफ्टअपीलकेप्रपत्रकेसाथसंलग्नकियाजाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इसआदेशकेविरुद्धसीमाशुल्क, उत्पादशुल्कएवंसेवाकरअपीलीयन्यायाधिकरणमेंशुल्कके 7.5% जहांशुल्क

अथवाशुल्कएवंजुरमानाकाविवादहैअथवाजुरमानाजहांशीर्षजुरमानाकेबारेमेविवादहैउसकाभुक्तानकरकेअपीलकीजाशकतीहै।

7. An appeal against this order shall lie before the Tribunal 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”.

8. न्यायालयशुल्कअधिनियम, 1870 केअंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेशकी प्रतिपरउपयुक्तन्यायालयशुल्कटिकटलगाहोनाचाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. VIII/10-06/Commr./O&A/2023-24 dated 07.06.2023 issued by the Commissioner of Customs, Ahmedabad to M/s. SKA Cashew Processing LLP (IEC-2416902318), Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi

BRIEF FACTS OF THE CASE:

M/s SKA Cashew Processing LLP (IEC-2416902318)(hereinafter referred to as the 'Importer' or 'the Noticee' for the sake of brevity), Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi is engaged in the import of Cashew Nuts.

2. M/s SKA Cashew Processing LLP had filed a Bill of Entry No. 4556442 dated 08.02.2023 for import of 18.08 MT Raw Cashew Nut at ICD Sabarmati (Khodiyar). However, during examination of the consignment (Container CRSU1201710) by Customs, undeclared Betel Nuts were found in some jute bags in addition to Raw Cashew Nuts declared in the Bill of Entry. Therefore, the container was placed under detention vide Detention Memo dated 16.02.2023 issued under F.No.VIII/48-07/ICD/SKA/2023 for detailed examination.

3. The detailed examination of the consignment was carried out vide Panchnama dated 17.02.2023 in presence of Shri Harbhajan Singh, G Card Holder of the concerned CHA M/s. Jayant & Company. During the examination, 15.3221 MT(Gross)/15.040 Mt(Net) of Areca Nut (Betel Nut) were found concealed in guise of Raw cashew Nut along with 3.1225 MT (Gross)/3.040 MT(Net) of Raw Cashew Nut. Representative samples were also withdrawn from the consignment.

4. Accordingly, the said consignment [15.040 MT of Areca Nut valued at Rs 1,13,16,784/- (**value taken as per Notification No.07/2023 dated 31.01.2023**) and 3.040 MT of Cashew Nut valued at Rs 3,55,837/- was seized vide Seizure Memo dated 17.02.2023 under Section 110(1) of the Customs Act, 1962 under the reasonable belief that the same were liable for confiscation under Section 111 of the Customs Act, 1962. The representative samples so drawn were sent to CRCL, Vadodara for testing vide Test Memo No. 225 dated 17.02.2023.

5. As a follow up, the premises of the Importer located at 14, Dharti Siddhi Industrial Estate, Survey No. 124/P2, Navlakhi Road, Pipaliya Char Rasta, Pipaliya, Morbi was searched under Panchnama dated 20.02.2023. During the search, it was noticed that the said premises was being used by the said Importer to store various goods, purchased from domestic market for export purposes. During the search, Shri Amitbhai B. Kapoor, Partner of the Firm, informed that for the aforesaid import consignment, Shri Alkeshbhai Navodiya, their other partner was knowing about the same. He also informed that Shri Alkeshbhai was out of the Country(to Tanzania) for business purpose. However, he deposed that Shri Alkeshbhai had informed him that in the subject consignment, along with declared item Raw Cashew Nut, Betel Nut (Areca Nut) has also been imported without declaring the same; that they were ready to pay the respective Duty/Fine/Penalty. He further handed over a Cheque for Rs.20 Lakhs along with Challan for paying a part of the said Duty arising out of the said mis-declaration in import. During the search proceedings, nothing related to the said mis-declaration in import was found.

6. Simultaneously, the premises of the CHA M/s. Jayant & Company., 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad was searched under Panchnama proceeding dated 20.02.2023. During the search proceedings nothing related to the said mis-declaration in import was found.

7. A statement dated 28.02.2023 of Shri Amitbhai B. Kapoor, Partner of the Importer was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia acknowledged the Panchnama dated 17.02.2023 drawn at Inland Container Depot, Sabarmati (Khodiyar) wherein detailed examination of imported goods covered under Bill of Entry No. 4556442 dated 08.02.2023 was carried out by the Customs Officers in presence of Shri Harbhajan Singh, G Card Holder of the concerned CHA M/s. Jayant & Company. On being asked he stated that M/s. SKA Cashew Processing LLP was engaged in the export of food items, house hold goods, sanitary goods, Toiletries, etc. They purchased these goods from domestic market and exported them to various African Countries. M/s. SKA Cashew Processing LLP was a limited liability Firm having him, Shri Alkeshbhai and Shri Subhash Bipinchandra Kapoor as equal partners. Shri Alkeshbhai mainly looked after export marketing while Shri Subhash looked after receipt and dispatch of goods at their factory Godown.

7.1 On being asked he stated that earlier, they used to process Raw cashew Nut in their factory located at 14, Dharti Siddhi Industrial Estate, Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi, during 2017-18. However, looking to the handsome margin in exports, they switched over to exports and stopped Cashew processing. However, they thought of reviving Cashew processing in their factory since they were having the Cashew processing machinery. Accordingly, they placed order for import of Raw Cashew Nut and imported the same under Bill of Entry No. 4556442 dated 08.02.2023 through ICD Khodiyar. However, he came to know that Areca Nut (Betel Nut) in substantial quantity had been found in the container concealed in guise of Raw Cashew Nut. He didn't know about the same as the said import/overseas sales/purchase was being handled by Shri Alkeshbhai, another Partner of the Firm. He (Alkeshbhai) was the right person who could provide relevant information regarding the said import consignment covered under Bill of Entry No. 4556442 dated 08.02.2023; that he had nothing more to say with regard to the said import consignment covered under Bill of Entry No. 4556442 dated 08.02.2023.

8. A statement dated 10.03.2023 of Shri Alkesh A. Navodiya, Partner of the Importer was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia acknowledged the Panchnama dated 17.02.2023 drawn at Inland Container Depot, Sabarmati (Khodiyar) wherein detailed examination of imported goods covered under Bill of Entry No. 4556442 dated 08.02.2023 was carried out by the Customs Officer in presence of Shri Harbhajan Singh, G Card Holder of the concerned CHA M/s. Jayant & Company. On being asked he stated that M/s. SKA Cashew Processing LLP was engaged in export of food items, house hold goods, sanitary goods, toiletries, etc. They purchased these goods from domestic market and exported them to various African Countries. M/s. SKA Cashew Processing LLP was a limited liability Firm having him, Shri Amitbhai B. Kapoor and Shri Subhash Bipinchandra Kapoor as equal partners. Shri Amitbhai mainly looked after domestic purchase while Shri Subhash looked after receipt and dispatch of goods at their factory Godown.

8.1 On being asked he stated that earlier, they used to process Raw Cashew Nut in their factory located at 14, Dharti Siddhi Industrial Estate, Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi during 2017-18. However, looking to the handsome margin in exports, they switched over to exports and stopped Cashew processing. However, they thought of reviving Cashew processing in their Factory since they were having the Cashew processing machinery. Accordingly, they placed order for import of Raw Cashew Nut and imported the same under Bill of Entry No. 4556442 dated 08.02.2023 through ICD Khodiyar. However, he came to know that Areca Nut (Betel Nut) in substantial quantity has been found in the container concealed in guise of Raw Cashew Nut.

8.2 On being asked he stated that as mentioned hereinabove, they were in need of Raw Cashew for further processing at their Factory. Therefore, they decided to import the Raw Cashew from Indonesia as Raw Cashew over there were cheap as well as import from Indonesia attracted concessional rate of Basic Custom Duty @ 0% due to AIFTA Benefit(Sr.No.57 of Notification No. 46/2011-Customs dated 01.06.2011). For the said purpose, they placed Purchase Order No. SKAEPO 154 dated 07.11.2022 with M/s.CV Sumatera Medan Group, JL Pancing V Lingk III, Besar Medan Labuhan, Sumatera Utara, Indonesia for import of 18 MT Raw Cashew Nut. He submitted the copy of said Purchase Order.

8.3 On being further asked he stated that during one Food Fare in Dubai/UAE in year 2018/2019, one Mr Andy came in his contact. He introduced himself as a trader in various goods including Cashew Nuts. He remained in contact over phone/whatsapp. At the time of recording the statement, he(Alkesh) was not having relevant whatsapp chat with him as he had changed his mobile phone recently and after changing his phone he didn't take back-up of his whatsapp.

8.4 On being specifically asked with regard to the Areca Nut found concealed under the guise of Raw Cashew Nut in the import consignment covered under Bill of Entry No. 4556442 dated 08.02.2023, he again stated that all they wanted to import was only Raw Cashew Nut and never tried or wanted to import Areca Nut. He didn't know why they sent Areca Nut along with Raw Cashew Nut. He had taken up the said matter with the said overseas supplier via email dated 06.03.2023 from their(importer's) email id export@skaproprocessing.com to their (overseas supplier's) email id smgexim23@gmail.com . For the said email they received their reply wherein they stated that they have sent Areca Nut instead of Cashew Nut erroneously and asked them(Importer) to send back the said consignment so that they (overseas supplier) send a correct consignment. He submitted the printout of the said two email messages.

8.5 Further he wanted to submit that they had initiated action against the said overseas supplier through their Bank by asking the Bank to recall TT (Telegraphic Transfer) of the remittance sent for the said import and the Bank had informed that they had taken up the matter with the corresponding overseas Bank. He submitted the email exchanges with the Bank.

8.6 He wanted to further state that they had already paid Rs 20 Lakhs as differential Duty for the said mis-declared imports vide TR-6 Challan No. SKA/01. However, since they never desired nor ordered import of Areca Nut, hence they didn't want the said import consignment covered under Bill of Entry No. 4556442 dated 08.02.2023. The overseas supplier had already confirmed that they would replace the same with correct goods. He didn't want to say anything more in this matter.

9. A statement dated 03.04.2023 of Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company., CHA, concerned in the instant matter, was recorded under Section 108 of the Customs Act, 1962 wherein he interalia acknowledged correctness of the Panchnama dated 17.02.2023 drawn at Inland Container Depot, Sabarmati (Khodiyar) wherein detailed examination of imported goods covered under Bill of Entry No. 4556442 dated 08.02.2023 was carried out by the Customs Officer in his presence.

9.1 He also acknowledged correctness of Panchnama dated 20.02.2023 drawn at M/s. Jayant & Company., 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad, carried out in his presence.

9.2 On being asked he stated that they sometimes carry out fumigation work for export goods for companies of Morbi such as M/s. Vermora, M/s Fivestar, M/s. Harihar food, etc. in the name of M/s. Sukhar Exim Pvt. Ltd. (in which he was one of the Directors). He met Shri Alkesh A. Navodiya and Shri Amitbhai B Kapoor, both Partners of M/s. SKA Cashew Processing LLP around 8-9 months ago. During interaction, they told him that they were engaged in processing of Raw Cashew in their Factory at Morbi. He informed them about their CHA Firm M/s. Jayant & Company. They then told him (Harbhajan) that whenever they require any Customs clearance related work at Ahmedabad, they would give the same to their CHA firm M/s. Jayant & Co.

9.3 On being asked he stated that around 1st Feb'2023, Shri Alkeshbhai Navodiya, Partner of M/s. SKA Cashew Processing LLP contacted him and asked to clear their import consignment of Raw Cashew at ICD Khodiyar. He called for import related documents and KYC documents. After verifying the said documents he (Harbhajan) filed Bill of Entry No.4556442 dated 08.02.2023, for import of Raw Cashew as per invoice, etc. documents provided by Shri Alkeshbhai. However, during the examination of the subject cargo (container CRSU1201710) undeclared Betel Nuts were found in some jute bags in addition to Raw Cashew Nut declared in the Bill of Entry. During detailed examination under Panchnama dated 17.02.2023, 15.3221 MT(Gross)/15.040 Mt(Net) of Areca Nut(Betel Nut) were found concealed in guise of Raw Cashew Nut along with 3.1225 MT(Gross)/3.040 MT(Net) of Raw Cashew Nut. He was not aware about the said concealment of Areca Nut in guise of Raw Cashew. If he could have any such hint from them he would not have taken up CHA clearance for the subject import consignment.

9.4 After Areca Nut (Betel Nut) were found concealed in guise of Raw Cashew Nut, he asked Shri Alkeshbhai Navodiya, Partner of M/s. SKA Cashew Processing LLP, why they did the said mis-declaration, they said that even they did not know about the same and speculated that the same might be due to some human error on the part of the said overseas supplier.

9.5 On being asked he stated that he didn't have any H-card Holder for their Ahmedabad office and all Customs related work for import/export clearances at Ahmedabad for their Company was being handled by him only. On being asked, he further stated that none of the Partners of M/s Jayant & Company, were concerned with the said import consignment. In fact, they didn't interfere in the import/export clearances work carried out by their Ahmedabad office. M/s. Jayant & Company was a partnership firm wherein Shri Mukesh V. Patel and Shri Vinay Tripathi were the two partners and its Headquarters was located at Grain Market, Satta Bazar, Jamnagar. M/s Jayant & Company's Ahmedabad office was being looked after by him whereas its Mundra office was being looked after by Shri Vinay Tripathi.

10. A statement dated 13.04.2023 of Shri Mukesh Vithaldas Patel, F-Card holder of M/s Jayant & Company, CHA, concerned in the instant matter, was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia stated that M/s. Jayant & Company was a Partnership Firm wherein he and Shri Vinay Tripathi were two partners; that M/s. Jayant & Company was engaged in Customs Clearance in Ahmedabad & Mundra. Shri Harbhajan Singh Bansal, G-Card holder in M/s. Jayant & Company, looks after Customs Clearance work in Ahmedabad for their Firm. His responsibilities include collecting KYC documents of exporters/importers, verifying them and filing proper documents for exports/imports. M/s. Jayant & Company's Ahmedabad office was being looked after by Shri Harbhajan Singh Bansal whereas its Mundra office was being looked after by Shri Vinay Tripathi.

10.1 On being asked he stated that he had been informed about the seizure of Areca Nut concealed in the consignment of Raw Cashew Nut covered under Bill of Entry No. 4556442 dated 08.02.2023 by Shri Harbhajan Singh Bansal, G-Card holder in M/s. Jayant & Company. After he came to know about the same, he enquired from Shri Harbhajan Singh Bansal if he followed the due procedure while taking up the subject import clearance work. Shri Harbhajan Singh Bansal, G-Card holder in M/s. Jayant & Company, informed him that he had followed due procedure while taking up the subject import clearance work i.e. he obtained the KYC of the Importer which could be seen from the presence of the Importer at their said business premises. He further informed him(Shri Mukesh) that after obtaining the following KYC documents from the Importer he verified them online and found them to be genuine:-

1. Aadhar Card (965226961973) of Shri Amitbhai B. Kapoor, Partner of M/s. SKA Cashew Processing LLP.
2. Pan Card (CNQPK1995R) of Shri Amitbhai B. Kapoor, Partner of M/s. SKA Cashew Processing LLP.
3. Customer Data Input Form/Registration.
4. GST Registration Certificate No.24ADAFS0114J1ZK.
5. IEC Code-2416902318.
6. KYC norms(Self Declaration)
7. Declaration & Authority Letter under Circular No. 17 & 39/2011 from the Importer authorising M/s. Jayant & Company as CHA for the subject import.
8. KYC as per Circular No 9/2010-Customs dated 08.04.2010
9. Pan Card (ADAFS0114J) of M/s. SKA Cashew Processing LLP.

11. Further statement dated 17.04.2023 of Shri Alkesh A. Navodiya, Partner of the Importer was recorded under Section 108 of the Customs Act, 1962 wherein he acknowledged his earlier statement dated 10.03.2023 to be correct. *In the said statement dated 10.03.2023 he had stated that they have initiated action against the said overseas supplier through their Bank by asking the bank to recall TT (Telegraphic Transfer) of the remittance sent for the said import and the Bank had informed that they have taken up the matter with the corresponding overseas Bank. Also he has submitted the email exchanges with the Bank to that effect.* On being asked regarding the furtherance of that email exchanges with the Bank he stated that they have not received any correspondence from the Bank nor do they seem to have taken any action with regard to the recalling of TT (Telegraphic Transfer) of the remittance sent for the said import.

11.1 On being specifically asked if they have any other evidence which supports their claim that the Areca Nut found concealed under the guise of Raw Cashew Nut in the import consignment covered under Bill of Entry No. 4556442 dated 08.02.2023 were not ordered by them, he stated that apart from the Purchase Order for import of Raw Cashew Nuts, they(Importer) didn't have any such evidence.

12. Samples of the impugned goods were sent to CRCL Vadodara for testing vide Test Memo No. 225 dtd 17.02.2023. CRCL Vadodara, vide their Test report No.RCL/AH/IMP/4321/3.3.2023[DVC/B.E.N.4556442/8.2.2023] dated 10.03.2023 has submitted test report for the impugned goods as under:-

- i. Raw Cashew Nut:-The sample is in the form of brownish raw material Cashew Nut free from insect & mould.
- ii. Arecanut:-The sample is in the form of whole betelnuts having insects & mould infested nuts = 20.3% by wt. It is not fit for human consumption.

13. The import of Raw Cashew Nut classifiable under Customs Tariff Heading No.08013100 attracts 0% Basic Customs Duty when imported into India from Indonesia(ASEAN) by virtue of Notification No.46/2011-Customs dated 01.06.2011 along with 12% IGST (i.e. Total Duty @ 7.89%). However, the import of Areca Nuts classifiable under Customs Tariff Heading No.08028010 attracts 100% Basic Customs Duty (BCD) along with SWS @10% of BCD and 5% IGST (i.e. total @ 115.5% Duty) on the tariff value of USD 9093 per Metric Ton.

14. The Importer had obtained License Number 10017021002612 dated 13.08.2022 valid upto 31.08.2023 from Food Safety and Standards Authority of India, (fssai) to commence or carry on food business. As per Non-Form C Annexure of the License Shri Amit Bipinchandra Kapoor, Partner of the Importer was the Person responsible for complying with the conditions of the License.

15. In view of the facts gathered during the course of the enquiry, as discussed in foregoing paras, it revealed that M/s. SKA Cashew Processing LLP, had imported the consignment containing15.04 MTs of Areca Nut(Betel Nut) classifiable under Customs Tariff Heading No.08028010, import of which attracts 100% Basic Customs Duty(BCD) along with SWS @10% of BCD and 5% IGST (total 115.5% Duty), by mis-declaring as Raw Cashew Nuts and concealing them in 3.04 MTs of Raw Cashew Nut classifiable under Customs Tariff Heading No.08013100 attracting 0% Basic Customs Duty when imported into India from Indonesia(ASEAN) by virtue of Notification No.46/2011-Customs dated 01.06.2011 along with 12% IGST. The said mis-declaration in their import documents and concealment of Areca Nuts in Raw Cashew Nuts had been done by the Importer, knowingly, deliberately and willfully, with an intent to evade higher Customs Duty i.e. approx @115.5 % (BCD + SWS + IGST) leviable on the import of Areca Nut (Customs Tariff Heading No.08028010) instead of the Duty leviable on Raw Cashew Nuts (Customs Tariff Heading No.08013100) @ approx 7.89%. In this way they have evaded Customs Duty amounting to Rs.1,36,79,425/-, on the import of consignment seized vide Panchnama dated 17.02.2023 and Seizure Memo dated 17.02.2023 containing 15.04 MT of Areca Nuts having assessable value of Rs.1,13,16,784/- concealed in 3.04 MTs of Raw Cashew Nuts vide Bill of Entry No.4556442 dated 08.02.2023, as detailed in the following table by concealing them in the guise of Raw Cashew Nuts:-

TABLE-T1

Areca Nuts

Wt in MTs	Tariff Value in view of Notfn. No 7/2023 - Customs (N.T.) dtd 31.01.2023	Total Value USD	Total Value in INR	BCD @ 100%	SWS on BCD @ 10%	IGST @ 5%	Total Duty applicable in INR
15.04	9093 USD per MT	136758.72	1,13,16,784/-	1,13,16,784/-	11,31,678/-	11,88,262/-	1,36,36,725/-
Raw Cashew Nuts							
Weight in MTs	Value as declared	Total Value USD	Total Value in INR	BCD @ 0%	SWS on BCD @ 10%	IGST @ 12%	Total Duty applicable in INR
3.04	1414.52	4300.1408	3,55,837/-	00.0	0.00	42,700/-	42,700/-
Total duty Payable			1,16,72,621/-	1,13,16,784/-	11,31,678/-	12,30,962/-	1,36,79,425/-
Duty already paid at the time of Filing Bill of Entry						2,53,955/-	2,53,955/-
Duty already paid during investigation				20,00,000/-			20,00,000/-
Differential Duty to be paid				93,16,784/-	11,31,678/-	9,77,007/-	1,14,25,469/-
• • • Exchange Rate USD= 82.75 INR applicable on 08.02.2023							

Contraventions of Law & Liability:-

16. From the facts discussed in the foregoing paras and material evidences available on record, it transpires that the Importer had imported Areca Nut (Betel Nut) concealed under Raw Cashew Nut by declaring the same as Raw Cashew Nut, thereby, resorting to mis-declaration of the actual description of the goods concealed in comparably small quantity of declared goods in the invoices and the documents filed before the Customs Authority at the time of imports, with an intent to evade higher Customs Duty leviable thereon. In the instant case, the Importer had furnished wrong declarations, statement & documents to the Customs while filing of Bill of Entry thereby suppressing the actual description of the goods imported by them, with an intention to evade higher Customs Duty leviable thereon. Further the said mis-declaration and concealment is clearly evident from examination of the goods under Panchnama dated 17.02.2023 and has been categorically admitted by Shri Alkesh A.Navodiya, Partner of the Importer, in his statements dated 10.03.2023 and 17.04.2023, recorded under Section 108 of the Customs Act, 1962, which is duly corroborated with the laboratory test reports issued by the Chemical Examiner, Customs and Central Excise Laboratory, Vadodara, vide test reports dated 10.03.2023. Thus, the declared description (Raw Cashew Nuts) and classification (Customs Tariff Heading No.08013100) in respect of the said imported consignments of 15.04 MTs of Areca Nuts found concealed in 3.04 MT of Raw Cashew Nuts (Classifiable under Customs Tariff Heading No.08013100) needs to be re-classified under Customs Tariff Heading No.08028010. Thus, it appears that the Importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they had intentionally mis-declared the description of their imported goods viz. Areca Nuts as Raw Cashew Nuts.

17. In view of the above it revealed that the seized goods viz. 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Tariff Value) found concealed in guise of declared Raw Cashew Nuts liable for confiscation under Section 111(i), Section 111(m) and Section 111(o) of the Customs Act, 1962. Further the seized goods viz. 3.04 MT of Raw Cashew Nuts classifiable under Customs Tariff Heading No.08013100, valued at Rs 3,55,837/- along with their packages (i.e. 226 Bags : 188 bags used for Areca Nuts and 38 Bags used for Raw Cashew Nuts) used for concealing Areca Nuts are liable for confiscation under Section 118(a) and Section 119 of the Customs Act, 1962.

18. From the above, it revealed that the Importer, in connivance with the overseas supplier had willfully mis-declared the description of Areca Nuts before the Customs Authority at the time of import with a view to evading the applicable Customs Duty. The correct description and classification of the Imported goods (Areca Nut) was also suppressed at the time of filing of Bills of Entry by presenting an invoice with a different description of the goods. Thus, it appeared that the applicable Customs Duty liability had not been discharged by the Importer by way of willful misstatement/ mis-declaration and suppression of facts and therefore, the applicable Customs Duty amounting to Rs.1,36,79,425/- (Rupees One Crore Thirty Six Lakhs Seventy Nine Thousand Four Hundred and Twenty Five only) as detailed in Table-T1 above is liable to be recovered by invoking the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Duty amounting to Rs.22,53,955/- already paid (as detailed in Table 'T1' above) is liable to be appropriated against the Duty liable to be paid by them for the said evasion. The said acts of omission and commission on the part of the Importer have rendered themselves liable for penal action under the provisions of Section 114A/112(a) of the Customs Act, 1962.

19. Further, as per the Central Revenues Control Laboratory, Vadodara's test report, the seized goods viz. 15.04 MTs of Areca Nuts classifiable under Customs

Tariff Heading No.08028010 valued at Rs.1,13,16,784/-(Tariff Value) found concealed in guise of declared Raw Cashew Nuts in the subject import consignment has been found containing insects & mould infested nuts (= 20.3% by wt.) and not fit for human consumption. Hence the same is liable to be termed as "Unsafe Foods" as defined in Section 3 (1)(zz) of the Food Safety and Standards Act, 2006. Therefore, the said import had been done in contravention of the provisions of Section 25 of the Food Safety and Standards Act, 2006 and therefore are prohibited goods. Import of food items is permitted subject to fulfilment of conditions of Food Import Regulations 2021 read with Foods Safety Act 2006. If the conditions are not met, the said goods are liable to confiscation as per Section 111 (o) of the Customs Act, 1962. Therefore, the seized goods viz. 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No. 08028010, valued at Rs.1,13,16,784/- (Tariff Value) found concealed in guise of declared Raw Cashew Nuts in the subject import consignment are liable to confiscation under Section 111 (o) of the Customs Act, 1962.

20. Shri Alkesh A. Navodiya, Partner of the Importer, as admitted by him in his statements dated 10.03.2023 and 17.04.2023, was actively involved in the import of the subject consignment in as much as he negotiated with the said overseas supplier for the said imports, resulting in importation of 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/-(Tariff Value) found concealed in guise of declared Raw Cashew Nuts. Being in-charge of the imports and their documentation, it appears that he was responsible for the said mis-declaration and concealment of 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Tariff Value) found concealed in guise of declared Raw Cashew Nuts in order to evade higher Customs Duty leviable on the imports of Areca Nuts. Furthermore, he also tried to mis-lead the inquiry by saying that he intended to import only Raw Cashew Nut and that the said overseas supplier erroneously sent 15.04 MTs of Areca Nuts given the fact that the quantum of Areca Nuts found was 5 times the quantum of the Declared Raw Cashew Nut. Thus, Shri Alkesh A. Navodiya, Partner of the Importer, had acquired possession of or concerned himself in carrying, removing, depositing, harbouring, keeping, concealing, selling the impugned goods seized vide Panchnama and Seizure Memo both dated 17.02.2023 which he had known or had reasons to believe were liable to confiscation under Section 111(i), Section 111(m) and Section 111(o) of the Customs Act, 1962. For the above mentioned acts of commission and omission on the part of Shri Alkesh A. Navodiya, Partner of M/s. SKA Cashew Processing LLP, Morbi, he has rendered himself liable for penal action under the provisions of Section 112 (b) of the Customs Act, 1962. Further being in-charge of the imports and their documentation, it appears that Shri Alkesh A. Navodiya, Partner of the Importer, submitted documents mis-declaring the imported goods. Thus, he has rendered himself liable for penalty under Section 114AA of the Customs Act, 1962.

21. Shri Amitbhai B. Kapoor, Partner of the Importer, was the Person responsible for complying with the conditions of License Numbered 10017021002612 dated 13.08.2022 obtained from Food Safety and Standards Authority of India, (fssai) according to which import of food items is permitted subject to fulfilment of conditions of Food Import Regulations 2021 read with Foods Safety Act 2006. However, the imported 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Tariff Value) found concealed in guise of declared Raw Cashew Nuts have been found as "Unsafe Foods" as defined in Section 3 (1)(zz) of the Food Safety and Standards Act, 2006. Therefore, the said import had been done in contravention of the provisions of Section 25 of the Food Safety and Standards Act, 2006. Thus Shri Amitbhai B. Kapoor, had acquired possession of or concerned himself in carrying, removing, depositing, harbouring, keeping,

concealing, selling the impugned goods seized vide Panchnama and Seizure Memo both dated 17.02.2023 which he had known or had reasons to believe were liable to confiscation under Section 111(i), Section 111(m) and Section 111(o) of the Customs Act, 1962. For the above mentioned acts of omission and commission on the part of Shri Amitbhai B. Kapoor, Partner of M/s. SKA Cashew Processing LLP, Morbi, he has rendered himself liable for penal action under the provisions of Section 112 (b) of the Customs Act, 1962.

22. Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company (Customs Broker), who admittedly involved himself in filing of subject Bill of Entry resulting in importation of undeclared 15.3221 MT(Gross)/15.040 Mt (Net) of Areca Nut(Betel Nut) were found concealed in guise of Raw cashew Nut along with 3.1225 MT(Gross)/3.040 MT(Net) of Raw Cashew Nut. He was responsible for ascertaining genuineness of the Importer and goods being imported by the Importer. Thus, he failed to fulfil the obligation of a Customs Broker as envisaged under Regulation 10 of the Customs Brokers Licensing Regulations, 2018 in as much as he failed to ascertain the genuineness of the subject imported goods resulting into importation of mis-declared 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Tariff Value) found concealed in guise of declared Raw Cashew Nuts. Thus, Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company, had acquired possession of or concerned himself in carrying, removing, depositing, harbouring, keeping, concealing, selling the impugned goods seized vide Panchnama and Seizure Memo both dated 17.02.2023 which he had known or had reasons to believe were liable to confiscation under Section 111(i), Section 111(m) and Section 111(o) of the Customs Act, 1962. For the above mentioned acts of commission and omission on the part of Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company, he has rendered himself liable for penal action under the provisions of Section 112 (b) of the Customs Act, 1962.

23. Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company (Customs Broker), failed to supervise their G-Card Holder Shri Harbhajan Singh Bansal resulting in involvement of Shri Harbhajan Singh Bansal in filing of subject Bill of Entry resulting in importation of undeclared 15.3221 MT(Gross)/15.040 Mt(Net) of Areca Nut(Betel Nut) which were found concealed in guise of Raw cashew Nut along with 3.1225 MT(Gross)/3.040 MT(Net) of Raw Cashew Nut. He was responsible in exercising such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment as envisaged in Regulation 13(12) of the Customs Brokers Licensing Regulations, 2018 read with Regulation 10 of the said Regulations. Thus, Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company (Customs Broker), had acquired possession of or concerned himself in carrying, removing, depositing, harbouring, keeping, concealing, selling the impugned goods seized vide Panchnama and Seizure Memo both dated 17.02.2023 which he had known or had reasons to believe were liable to confiscation under Section 111(i), Section 111(m) and Section 111(o) of the Customs Act, 1962. For the above mentioned acts of commission and omission on the part of Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company (Customs Broker), he has rendered himself liable for penal action under the provisions of Section 112 (b) of the Customs Act, 1962.

24. In view of the above Show Cause Notice No. VIII/10-06/Commr./O&A/2023-24 dated 07.06.2023 was issued to M/s. SKA Cashew Processing LLP (IEC-2416902318), Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi, calling upon them to show cause in writing to the Commissioner

of Customs, Ahmedabad having his office at 1stFloor, Customs House, Near Akashwani Bhavan, Navrangpura, Ahmedabad-380 009, as to why:-

- (i) The goods viz. 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Rupees One Crore Thirteen Lakhs Sixteen Thousand Seven Hundred and Eighty Four only) (Tariff Value) seized vide Panchnama and Seizure Memo both dated 17.02.2023, should not be confiscated under the provisions of Section 111(i), Section 111(m) and Section 111(o) of the Customs Act, 1962;
- (ii) The goods viz. 3.04 MT of Raw Cashew Nuts classifiable under Customs Tariff Heading No.08013100, valued at Rs.3,55,837/- (Rupees Three Lakhs Fifty Five Thousand Eight Hundred and Thirty Seven only) along with their packages(i.e. 226 Bags : 188 bags used for Areca Nuts and 38 Bags used for Raw Cashew Nuts) seized vide Panchnama and Seizure Memo both dated 17.02.2023, should not be confiscated under the provisions of Section 111(i), Section 111(m), Section 118(a) and Section 119 of the Customs Act, 1962;
- (iii) The differential duty of Customs amounting to Rs.1,36,79,425/-(Rupees One Crore Thirty Six Lakhs Seventy Nine Thousand Four Hundred and Twenty Five only) as detailed in Table-T1 above, should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962;
- (iv) Interest should not be charged and recovered from them under Section 28AA of the Customs Act, 1962 on the Duty demanded at (iii) above;
- (v) Duty amounting to Rs.22,53,955/- (Rs.2,53,955/- + Rs.20,00,000/-) (Rupees Twenty Two Lakhs Fifty Three Thousand Nine Hundred and Fifty Five Only) already paid by them, as discussed above, should not be appropriated against the Duty demanded at (iii) hereinabove;
- (vi) Penalty should not be imposed upon them under the provisions of Section 114A of the Customs Act, 1962;
- (vii) Penalty should not be imposed upon them under the provisions of Section 112(a) of the Customs Act, 1962.

25. Vide the aforementioned Show Cause Notice, Shri Alkesh A. Navodiya, Partner of M/s. SKA Cashew Processing LLP, (IEC-2416902318), Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi was called upon to show cause in writing to the Commissioner of Customs, Ahmedabad having his office at 1stFloor, Customs House, Near Akashwani Bhavan, Navrangpura, Ahmedabad-380 009, as to why :-

- (a) Penalty should not be imposed upon him under the provisions of Section 112(b) of the Customs Act, 1962.
- (b) Penalty should not be imposed upon him under the provisions of Section 114AA of the Customs Act, 1962.

26. Vide the aforementioned Show Cause Notice, Shri Amitbhai B. Kapoor, Partner of M/s. SKA Cashew Processing LLP, Morbi, (IEC-2416902318), Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi was called upon to show cause in writing to the Commissioner of Customs, Ahmedabad, as to why Penalty should not be imposed upon him under the provisions of Section 112(b) of the Customs Act, 1962

27. Vide the aforementioned Show Cause Notice, Shri Harbhajan Singh

Bansal, G-Card holder of M/s. Jayant & Company, 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad-380004 was called upon to show cause in writing to the Commissioner of Customs, Ahmedabad having his office at 1st Floor, Customs House, Near Akashwani Bhavan, Navrangpura, Ahmedabad-380009, as to why Penalty should not be imposed upon him under the provisions of Section 112(b) of the Customs Act, 1962

28. Vide the aforementioned Show Cause Notice, Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company (Customs Broker), 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad-380004 was called upon to show cause in writing to the Commissioner of Customs, Ahmedabad as to why Penalty should not be imposed upon him under the provisions of Section 112(b) of the Customs Act, 1962

Submission by the noticees:

29. The Importer M/s. SKA Cashew Processing LLP (hereinafter referred to as "the Noticee"), having IEC No. 2416902318 at Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi, and their partners Shri. Alkesh A. Navodiya and Shri. Amitbhai B. Kapoor filed common reply to Show Cause Notice vide their letter date 10.08.2023 wherein they interalia stated as under:

29.1 That the Importer is a partnership firm and engaged in import and export of various goods including fast moving consumer products. The importer placed an order to M/s. CV. Sumatera Medan Group for supply of 18 M.T. at a price of USD 1405 per M.T. in the month of November, 2022. The Consignments of raw Cashew Nut were shipped from Indonesia on 25.12.2022. The Customs Broker viz. M/s. Jayant & Co. filed the Bill of Entry No. 4556542 dated 08.02.2023 by declaring the goods as raw Cashew Nut. Based on the intelligence, the Ld. Superintendent inspected the containers and found to be 180 Jute Bags of Areca nut and 38 Jute Bags of raw Cashew Nuts. The officer drew Panchnama on 17.02.2023 at the ICD Khodiyar and seized the consignment under seizure memo dated 17.02.2023 on the premise that the goods are liable for confiscation under Section 111 of the Customs Act, 1962;

29.2 That both the Partners in their statements expressly deposed that the Importer had placed an order for supply of raw cashew nuts, but the supplier shipped the mix consignments of betel nuts and raw cashew nuts and as the importer had already paid value of the goods to the supplier, the importer initiated action for recovery of the money from the supplier; that subsequently, the importer filed a letter addressed to the Ld. Deputy Commissioner of Customs, Gandhinagar for relinquishment of title of the imported goods seized vide Seizure Memo dated 17.02.2023; that the importer in the letter stated that he had never ordered for supply of areca nuts/betel nuts and therefore, they did not own the title over the imported goods. Accordingly, vide letter dated 17.05.2023 the Noticee relinquished title over the goods in terms of provisions of Section 23 of the Act; that the importer is not at all interested in clearance of the disputed goods and therefore, requested to refund the customs duty paid at the time of import by the CHA on behalf of the importer as well as the amount of Rs. 20 lakhs deposited through Cheque bearing No. 001362 dated 20.02.2023 drawn in favor of the Commissioner of Customs at Ahmedabad.

29.3 THAT GOODS ARE NOT LIABLE FOR CONFISCATION WHEN THE TITLE OF THE IMPORTED GOODS ARE RELINQUISHED: They interalia submitted that Section 111(i) provides that any dutiable or prohibited goods found concealed in any manner are liable to confiscation and according to Concise Oxford Dictionary 'conceal' means to hide completely or carefully, to keep secret,

to disguise or to keep from telling. In the context of dictionary meaning referred to above, the act of concealing is hiding or to obscure from view and in the present case, as per the Panchnama dated 17.02.2022, betel nuts were kept in a jute bag along with the jute bags containing raw cashews and it is not the case of the Department that the jute bags containing betel nuts was hidden or kept in a concealing manner, there is nothing to show that the goods were concealed in the sense that they were so packed or hidden with the object of obscuring them from view; that the Department also alleges that confiscation under Section 111(m) and (o) without appreciating the fact that the importer had never placed an order for betel nuts and it is only on investigation that the importer realized that betel nuts had been supplied by the supplier erroneously and as soon as the importer came to know about it, they informed the supplier about the same and supplier vide its email accepted the mix up and requested to send the cargo back; that the importer, vide its letter dated 17.05.2023 relinquished its title over the goods seized under Seizure Memo dated 17.02.2023 under Section 23 of the Act which states that the owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of goods in a warehouse under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon; that the imported goods have not been cleared for home consumption. Therefore, as per Section 23, the Noticee has rightly relinquished its title over the goods. Once the importer has relinquished its title over the imported goods, the importer is not concerned with the disputed goods.

29.4 That the Department also proposed recovery of differential duty of Rs. 1,36,79,425/- in the captioned SCN; that the Department has failed to consider that the importer had no knowledge about the import of betel nuts; that It is well settled law that when the importer relinquishes the title of imported goods, no duty can be imposed and placed the reliance upon the decision of the Hon'ble Kolkata Tribunal in the case of Indian Charge Chrome Ltd. v Commr. Of C. Ex. &Cus, BBSR-I reported in 2001 (132) ELT 300 (Tri.-Kolkata), the decision of the Hon'ble Bangalore Tribunal in the case of CK Enterprises v Commr. Of Customs, Mumbai reported in 2010 (262) ELT 307 (Tri.-Mumbai), the decision of the Hon'ble Mumbai Tribunal in the case of Commissioner of C. Ex. &Cus., Nagpur versus Ankit Pulps & Boards Pvt. Ltd. reported in 2007 (209) E.L.T. 135 (Tri. - Mumbai) ; that Sub-section (2) of Section 23 deals with a case where the goods is neither lost nor destroyed but the said goods is of no use to the importer and in such a case, the importer has the option of relinquishing his title to the goods and thereupon he shall not be liable to pay duty thereon and once such a relinquishment of title to the goods is made by the importer, then the said goods become the property of the Department and as a consequence of which no duty is payable by the importer;

29.5 that as far as confiscation under Section 118(a) and 119 are concerned, Section 118(a) states that where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation; that the importer has relinquished its title over the goods, as the supplier by mistake has supplied wrong product, the imported goods are not liable for confiscation and when the jute bags containing betel nuts are not liable for confiscation, the question of confiscation of raw cashews does not arise; that in terms of Section 119, the importer submitted that concealment under Section 119 requires that the goods were kept in such a manner so as to conceal the visibility of seized goods; that as per the Panchnama dated 17.02.2023, the jute bags containing betel nuts were not concealed. The Department has not brought any evidence to show that the jute bag containing betel nuts was concealed or kept in a manner with the object of obscuring them from view and in absence of concealment of goods, confiscation under Section 119 is not liable; they placed reliance upon the decision in the case of Mazda

Chemicals v Commissioner of Customs (Prev), Ahmedabad reported in 1996 (88) E.L.T. 767 (Tribunal) and the decision in the case of United States Lines Agency versus Commissioner of Cus. (P), Mumbai reported in 1998 (101) E.L.T. 602 (Tribunal); that the Department has alleged in the SCN that Shri. Alkesh A. Navodiya, Partner of the importer has admitted mis-declaration in his statement at Para 16 of the captioned SCN which is contrary to the statement of Shri. Alkesh A. Navodiya; that clearly shows that the Department has proposed confiscation and penalty with a pre-conceived notion to hold the importer liable and there is nothing in the statement given by the Partners of the importer which shows that the importer was aware about the alleged mis declaration.

29.6 NO RESPONSIBILITY OF THE IMPORTER IN WRONG SUPPLY MADE BY SUPPLIER: that importer in the present case ought not be held liable when the supplier made mistake in supplying wrong shipment of goods because as soon as the importer came to know that along with raw cashews, betel nuts have also been supplied, the importer took the matter with the supplier vide email dated 06.03.2023 and supplier replied to the importer's email and accepted its mistake; that supplier accepted that there was mix up and requested the importer to send back the cargo; that the importer, in its power took all the measure and even relinquished its title over the goods before order for home consumption was passed which shows the bonafide of the importer and no mala fide intention can be attributed against the Noticee in the present case; they placed reliance upon the decision in the case of (i) Jalanchand Mangilal versus Collector of Customs, reported in 2000 (123) E.L.T. 575 (Tribunal) (ii) Aniketa Krishna International versus Commissioner of Customs, Jaipur reported in 2012 (280) E.L.T. 131 (Tri. - Del.) (iii) Malhotra Rubbers Ltd. versus Commissioner of Cus. (ICD), TKD, New Delhi reported in 2007 (213) E.L.T. 420 (Tri. - Del.); that therefore, in the absence of any cogent reasons to show that the importer with an intent to mis declare has contravened provisions of the Act, no confiscation and penalty can be levied; that even otherwise, the importer cannot be held liable for a mistake committed by the supplier.

29.7 PENALTY UNDER SECTION 112 OUGHT NOT TO BE IMPOSED UPON THE IMPORTER: That it is settled law that for imposition of penalty under Section 112 of the Act mens-rea has to be established about the wrongful act and in the present case, the Department has not brought forward any shred of evidence to show that the importer was aware about the alleged mis declaration or has in connivance with the supplier, imported betel Nuts; they placed reliance on the decisions of Commissioner of Customs (Import) V/s. Trinetra Impex Pvt. Ltd 2020 (372) ELT 332 (Del) Suresh Rajaram Newagi v/s Commissioner of Cus 2008 (228) E.L.T 211.; that in absence of mens-rea and any documentary evidence, the Department ought not to impose penalty upon the Noticee under Section 112(a) of the Act; that it is well settled that when the importer has relinquished the title over the goods, no penalty can be imposed under Section 112 of the Act; they placed reliance on the decisions in the case of Nalakath Spices Trading Co. versus Commissioner of Customs, Cochin reported in 2007 (213) E.L.T. 283 (Tri. - Bang.) and Commissioner of Customs, ICD, TKD, New Delhi versus Sewa Ram & Bros. reported in 2003 (151) E.L.T. 344 (Tri. - Del.).

29.8 PENALTY UNDER SECTION 114A IS NOT IMPOSABLE: that the Section 114A can be invoked only where the duty has not been levied due to misstatement of fact or such similar event and in the present case, the Department has not produced any evidence to show misstatement of fact by the importer; that as per Section 114A, the first test of collusion, etc., has to be established and only then could the penalty be imposed and any collusion or any wilful mis-statement or suppression of facts having not been established by the Department, the penalty under Section 114A of the Act ought not to be imposed and therefore, no penalty can be levied upon the Noticee; they further stated

that penalty cannot be imposed on partners in a case where partnership firm is penalized as held by the Hon'ble Gujarat High Court in the case of Pravin N. Shah Vs CESTAT 2014 (305) ELT 480 (Guj) and C.C.Ex Vs Jay Prakash Motwani 2010 (258) ELT 204 (Guj); that when the imported goods are not liable for confiscation, no interest can be demanded.

30. Defence Reply submitted by Shri. Mukesh Vithaldas Patel, Partner of M/s Jayant & Company:

30.1 Shri. Mukesh Vithaldas Patel, Partner of M/s Jayant & Company in his reply dated 08.02.2023 submitted that M/s Jayant & Company (hereinafter referred to as "CHA firm") is engaged in Custom Clearance in Ahmedabad & Mundra, having office at 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad; that he along with Shri. Vinay Tripathi are the Partners in the CHA firm and he is a F-Card holder and looks after the administrative work of the CHA firm from its headquarters situated in Jamnagar, Gujarat; that Shri. Harbhajan Singh Bansal is a G-Card holder in the CHA firm and his responsibility includes collecting KYC documents of the exporter/importers, verifying them and filing of proper documents; that Shri. Harbhajan Singh Bansal, met Shri. Alkesh A Navodiya and Shri. Amitbhai B Kapoor, Partner of M/s SKA Cashew Processing LLP who were engaged in the processing of Raw Cashews in their factory at Morbi; that Shri. Harbhajan Singh Bansal informed about the work being carried out by the CHA firm; that the importer contacted Shri. Harbhajan Singh Bansal and asked to clear their import consignment of Raw Cashew at ICD Khodiyar; that, as per the procedure, Shri. Harbhajan Singh Bansal called for import related documents and KYC documents and the importer submitted a copy of import documents such as Bill of Lading, Commercial invoice, Declaration from the Supplier and Country of Origin Certificate according to which the CHA firm prepared a checklist. After verifying the same, Shri. Harbhajan Singh Bansal filed the Bill of Entry No. 4556542 dated 08.02.2023 by declaring the goods as Raw Cashew Nut as per the documents provided by the importer; that the Customs Officer searched at the premise of the importer and the CHA firm on 20.02.2023 whereby nothing incriminating was found; Shri Harbhajan Singh Bansal, G-Card holder in M/s Jayant & Company, looks after Customs Clearance work in Ahmedabad for their firm and his responsibilities include to collect KYC documents of exporters/importers, verify them, filing proper documents for exports/imports ; that Shri Harbhajan Singh Bansal, G-Card holder had collected the KYC documents viz. Aadhar Card (965226961973) of Shri Amitbhai B Kapoor, Partner of M/s. SKA Cashew Processing LLP., Pan Card (CNQPK1995R) of Shri Amitbhai B Kapoor, Partner of M/s SKA Cashew Processing LLP, Customer Data Input Form/Registration, GST Registration Certificate (no 24ADAFS0114J1ZK), IEC Code-2416902318, KYC norms (Self Declaration), Declaration & Authority Letter under Circular No. 17 & 39/2011 from the importer authorising M/s Jayant & Company as CHA for the subject import, KYC as per Circular No 9/2010-Customs dated 08.04.2010, Pan Card (ADAFS0114J) of M/s SKA Cashew Processing LLP; that after verifying the KYC documents Shri. Harbhajan Singh Bansal has undertaken CHA work for the importer; that the CHA firm is not liable to check the genuineness of the goods to be imported by the importer; that the CHA firm prepares the Bill of Entry as per the documents submitted by the importer and CHA firm is not an inspector to check the genuineness of the transaction; that it is merely a processing agent of documents with respect to clearance of goods through the Customs House either himself or through his authorized personnel, therefore, Shri. Harbhajan Singh Bansal has duly undertaken the procedure prescribed under Regulation 10 of the CBLR; that the allegation that he has not supervised Shri. Harbhajan Singh Bansal is baseless as Shri Harbhajan Singh Bansal has not violated any provisions of the Act and CBLR and therefore, the allegation in captioned SCN is misplaced and without

any documentary evidence; that they placed reliance on the decision of Hon'ble Delhi in the case of Trinity International Forwarders Vs Commissioner of Customs - Appeal No. 54942 of 2023; that in the present case, they were not party to the agreement entered between the exporter and the importer and Bill of Entry was filed based on the documents provided to them.

30.2 PENALTY UNDER SECTION 112(b) OUGHT NOT TO BE IMPOSED: that Section 112(b) states that penalty is imposable when a 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 and therefore, in order that a person is penalized under the above provision, it has to be established that he acquired possession of or was 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 knew or had reason to believe, were liable to confiscation under Section 111 of the Act; that under Section 112(b), the penalty is provided for persons who deal with the goods knowing that or having reason to believe that they are liable for confiscation; that they referred to Section 107 of Indian Penal Code, 1862 and stated that in any case, the intention to instigate or conspire or aid the offender to commit an illegal act/omission is utmost important and in present case, they have neither instigated the importer nor has conspired with the importer for alleged offence; that in fact, as soon as Shri. Harbhajan Singh Bansal realised that the imported consignment has substantial quantity of Betel Nuts, Shri. Harbhajan Singh Bansal contacted the importer and asked about the same and the importer informed that due to the mistake of the supplier, they received substantial amount of Betel Nuts along with Raw Cashew Nuts; that the imported goods have not been cleared for home consumption and as per Section 23 of the Act, the importer relinquished its title over the goods; that it is not the case of the Department that they have abetted the importer in mis-declaration of the imported goods and only allegation is that Shri. Harbhajan Singh Bansal has failed to ascertain the genuineness of the importer and the imported goods, and they have failed to supervise Shri. Harbhajan Singh Bansal and therefore, Department has wrongly proposed to invoke penalty under Section 112(b) of the Act when there is no allegation of abetment; that even otherwise, they had no knowledge about the alleged mis declaration; that they placed reliance on Commissioner of Customs (Import) V/s. Trinetra Impex Pvt. Ltd 2020 (372) ELT 332 (Del), Suresh Rajaram Newagi v/s Commissioner of Cus 2008 (228) E.L.T 211; that in absence of mens-rea and any documentary evidence, the Department ought not to impose penalty upon the Noticee under Section 112(b) the Act and placed reliance upon the following decisions:

- a) Nazir-Ur-Rahman versus Commissioner of Customs, Mumbai reported in 2004 (174) E.L.T. 493 (Tri. - Mumbai);
- b) Shankeshwar Metal Corporation versus Commr. of Cus. (Imports), Mumbai reported in 2014 (312) E.L.T. 344 (T);
- c) S.M. Dave versus Commissioner of Customs, Kandla reported in 2009 (247) E.L.T. 437 (Tri. - Ahmd.)

31. Shri. Harbhajan Singh Bansal G-Card Holder of M/s. Jayant & Company filed their defence reply vide letter dated 10.08.2023 wherein he inter alia stated as under:

31.1 Shri. Harbhajan Singh Bansal G-Card Holder of M/s. Jayant & Company referred to Rule 10 of the CBLR and stated that upon perusal of the Regulation 10 of the CBLR, it is clear that the Custom Broker does not have obligation to ascertain the genuineness of the goods imported and the Custom Broker is required to ascertain genuineness of the importer and correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number

(GSTIN), identity and functioning of the client at the declared address by using reliable, independent, authentic documents, data or information; that as per his statement as well as statement of Shri. Mukesh Vithaldas Patel dated 03.04.2023 and 13.04.2023 respectively, they had requested all the import documents along with KYC documents of the importer and verified the same online and found them to be genuine; that as per statement of Shri. Mukesh Vithalbhai Patel, he had requested a copy of Aadhar card and Pan card of the Partner Shri. Amitbhai B Kapoor of the importer firm, Customer Data Input Form/Registration, GST Registration certificate, IEC Code, KYC norms, Declaration and Authority Letter and Pan card of the importer firm and after duly verifying the same, he had undertaken CHA work for the importer; that the allegation that the Noticee has violated Regulation 10 of the CBLR by failing to undertake the obligation of ascertaining genuineness of the importer and imported goods is baseless as much as the Department has not produced any evidence to show that the Noticee has not fulfilled its obligation; that even otherwise, the CHA firm is not liable to check the genuineness of the goods to be imported by the importer; that the CHA firm prepares the Bill of Entry as per the documents submitted by the importer, the CHA firm is not an inspector to check the genuineness of the transaction that he is merely a processing agent of documents with respect to clearance of goods through the Customs House either himself or through his authorized personnel and placed the reliance upon the decision in case of Kunal Travels (Cargo) v CC (I & G), IGI, Airport, New Delhi reported in 2017 (354) E.L.T. 447 (Del) and M/s Diamond Shipping Agencies Pvt. Ltd v Commissioner of Customs, Tiruchirappalli reported in 2017-TIOL-4151-CESTAT-MAD.

31.2 PENALTY UNDER SECTION 112(b) OUGHT NOT TO BE IMPOSED: that Section 112(b) states that penalty is imposable when a 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 and therefore, in order that a person is penalized under the above provision, it has to be established that he acquired possession of or was 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 knew or had reason to believe, were liable to confiscation under Section 111 of the Act; that under Section 112(b), the penalty is provided for persons who deal with the goods knowing that or having reason to believe that they are liable for confiscation; that they referred to Section 107 of Indian Penal Code, 1862 and stated that in any case, the intention to instigate or conspire or aid the offender to commit an illegal act/omission is utmost important and in present case, they have neither instigated the importer nor has conspired with the importer for alleged offence; that in fact, as soon as Shri. Harbhajan Singh Bansal realized that the imported consignment has substantial quantity of Betel Nuts, Shri. Harbhajan Singh Bansal contacted the importer and asked about the same and the importer informed that due to the mistake of the supplier, they received substantial amount of Betel Nuts along with Raw Cashew Nuts; that the imported goods have not been cleared for home consumption and as per Section 23 of the Act, the importer relinquished its title over the goods; that it is not the case of the Department that they have abetted the importer in mis-declaration of the imported goods and only allegation is that Shri. Harbhajan Singh Bansal has failed to ascertain the genuineness of the importer and the imported goods, and they have failed to supervise Shri. Harbhajan Singh Bansal and therefore, Department has wrongly proposed to invoke penalty under Section 112(b) of the Act when there is no allegation of abetment; that even otherwise, they had no knowledge about the alleged mis declaration; that they placed the reliance on Commissioner of Customs (Import) V/s. Trinetra Impex Pvt. Ltd 2020 (372) ELT 332 (Del), Suresh Rajaram Newagi v/s Commissioner of Cus 2008 (228) E.L.T 211; that in absence of mens-rea and any documentary evidence, the

Department ought not to impose penalty upon the Noticee under Section 112(b) of the Act and placed reliance upon the following decisions:

- a) Nazir-Ur-Rahman versus Commissioner of Customs, Mumbai reported in 2004 (174) E.L.T. 493 (Tri. - Mumbai);
- b) Shankeshwar Metal Corporation versus Commr. of Cus. (Imports), Mumbai reported in 2014 (312) E.L.T. 344 (T);
- c) S.M. Dave versus Commissioner of Customs, Kandla reported in 2009 (247) E.L.T. 437 (Tri. - Ahmd.)

32. Personal Hearing:

Personal Hearing in the matter was fixed on 16.02.2024. However, the Advocate of the Noticees requested for fixing next date on 27.02.2024. Accordingly, next date of Personal Hearing was fixed on 27.02.2024. The Personal Hearing on 27.02.2024 was attended by Ms. Sweta Garge, Advocate for all the Noticees. During the course of Personal Hearing, the Advocate for the Noticees reiterated the contents of written submission dated 18.08.2023 filed in respect of all the Noticees.

Discussion and findings:

33. I have carefully gone through the relevant records, the written submissions made by all the Noticees as well as the arguments and discussions made by the Advocate of the Noticees during the course of personal hearing held on 27.02.2024.

33.1 The issues for consideration before me in the present SCN are as under:-

- (i) Whether the goods viz. 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Rupees One Crore, Thirteen Lakh, Sixteen Thousand, Seven Hundred and Eighty Four only) (Tariff Value) seized vide Panchnama and Seizure Memo both dated 17.02.2023, are liable to confiscation under the provisions of Section 111(i), Section 111(m) and Section 111(o) of the Customs Act, 1962?
- (ii) Whether the goods viz. 3.04 MT of Raw Cashew Nuts classifiable under Customs Tariff Heading No.08013100, valued at Rs.3,55,837/- (Rupees Three Lakh, Fifty Five Thousand, Eight Hundred and Thirty Seven only) along with their packages(i.e. 226 Bags : 188 bags used for Areca Nuts and 38 Bags used for Raw Cashew Nuts) seized vide Panchnama and Seizure Memo both dated 17.02.2023, are liable to confiscation under the provisions of Section 111(i), Section 111(m), Section 118(a) and Section 119 of the Customs Act, 1962?
- (iii) Whether the differential duty of Customs amounting to Rs.1,36,79,425/- (Rupees One Crore, Thirty Six Lakh, Seventy Nine Thousand, Four Hundred and Twenty Five only) as detailed in Table-T1 of the SCN, should be demanded and recovered from M/s. SKA Cashew Processing LLP, Morbi under Section 28 (4) of the Customs Act, 1962?
- (iv) Whether interest should be charged and recovered from M/s. SKA Cashew Processing LLP, Morbi under Section 28AA of the Customs Act, 1962 on the Duty demanded at (iii) above?
- (v) Whether, the Duty amounting to Rs.22,53,955/- (Rs.2,53,955/- + Rs.20,00,000/-) (Rupees Twenty Two Lakh, Fifty Three Thousand, Nine Hundred and Fifty Five Only) already paid by M/s. SKA Cashew Processing LLP, Morbi should be appropriated against the Duty demand of Rs.1,36,79,425/-?

(vi) Whether, penalty should be imposed upon M/s. SKA Cashew Processing LLP, Morbi under the provisions of Section 114A of the Customs Act, 1962?

(vii) Whether, penalty should be imposed upon M/s. SKA Cashew Processing LLP, Morbi under the provisions of Section 112(a) of the Customs Act, 1962?

(viii) Whether, Penalty on Shri Alkesh A. Navodiya, Partner of M/s. SKA Cashew Processing LLP, Morbi should be imposed under Section 112(b) of the Customs Act, 1962?

(ix) Whether, penalty on Shri Alkesh A. Navodiya, Partner of M/s. SKA Cashew Processing LLP, Morbi should be imposed under Section 114AA of the Customs Act, 1962?

(x) Whether penalty on Shri Amitbhai B. Kapoor, Partner of M/s. SKA Cashew Processing LLP, Morbi should be imposed under Section 112(b) of the Customs Act, 1962?

(xi) Whether penalty on Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company, 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad-380004 should be imposed under Section 112(b) of the Customs Act, 1962?

(xii) Whether penalty on Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company (Customs Broker), 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad-380004 should be imposed under Section 112(b) of the Customs Act, 1962?

34. Whether the goods viz. 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Rupees One Crore, Thirteen Lakh, Sixteen Thousand, Seven Hundred and Eighty Four only) (Tariff Value) seized vide Panchnama and Seizure Memo both dated 17.02.2023, are liable to confiscation under the provisions of Section 111(i), Section 111(m) and Section 111(o) of the Customs Act, 1962?

34.1 I find that the importer had filed Bill of Entry No. 4556442 dated 08.02.2023 for import of 18.08 MT Raw Cashew Nut in Container No. CRSU1201710 at ICD Sabarmati (Khodiyar) through the Custom House Broker M/s. Jayant & Co claiming the benefit of Sr. No. 57 of Notification No. 46/2011-Customs dated 01.06.2011. The importer had declared the name of overseas supplier as M/s. CV Sumatera Medan Group, JL Pancing V Lingk III, Besar Medan Labuhan, Sumatera Utara, Indonesia. The importer had submitted Commercial Invoice No. 008/INV-SMG/XII/2022 dated 21.12.2022, Packing List bearing Number 008/PL-SMG/XII/2022 dated 21.12.2022 and Certificate of Country of Origin bearing Reference No. as 1001823/MDN/2022.

34.2 I find that during the examination of the consignment (Container CRSU1201710) by Customs, undeclared Betel Nuts were found in some jute bags in addition to Raw Cashew Nuts declared in the Bill of Entry. Therefore, the container was placed under detention vide Detention Memo dated 16.02.2023 issued under F.No. VIII/48-07/ICD/SKA/2023 for detailed examination. Further, detailed examination was carried out under Panchnama dated 17.02.2023 in presence of Shri Harbhajan Singh, G Card Holder of the concerned CHA M/s. Jayant & Company. During the examination, 15.3221 MT(Gross)/15.040 Mt(Net) of Areca Nut (Betel Nut) were found concealed in guise of Raw cashew Nut along with 3.1225 MT (Gross)/3.040 MT(Net) of Raw Cashew Nut. Representative samples were also withdrawn from the consignment. Therefore, the said

consignment [15.040 MT of Areca Nut valued at Rs 1,13,16,784/- (value taken as per Notification No.07/2023 dated 31.01.2023) and 3.040 MT of Cashew Nut valued at Rs 3,55,837/- was placed under seizure vide Seizure Memo dated 17.02.2023 under Section 110(1) of the Customs Act, 1962 under the reasonable belief that the same were liable for confiscation under Section 111 of the Customs Act, 1962. Further, the representative samples of Raw Cashew Nuts and Areca nut drawn were sent to CRCL, Vadodara for testing vide Test Memo No. 225 dated 17.02.2023. The CRCL Vadodara, vide their Test Result No. RCL/AH/IMP/4321/03.03.2023 in respect of 'Areca nut' has reported that "the sample in the form of whole betel nuts having insect and mould infested nuts is 20.3% by wt. and it is not fit for human consumption.

34.3 I find that the Show Cause Notice proposes to hold the Areca nuts liable for confiscation under Section 111(i), Section 111(m) and Section 111(o) of the Customs Act, 1962.

34.4 Section 111 (i) is for "any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof". I find that the importer had declared total 226 Bags of 'Raw Cashew Nut' in Bill of Entry No. 4556442 dated 08.02.2023. During the detailed examination of the goods in presence of Panchas on 17.02.2023, it was observed that 'Areca Nuts' as well as declared goods viz. "Raw Cashew Nut' were packed in jute bags and total 226 bags were found. Further, on examination, it was found that in 188 jute bags, undeclared goods viz. 'Areca Nut' were found and in remaining 38 jute bags, declared goods viz. 'Raw Cashew Nut' were found. Thus, I find that undeclared goods found concealed under jute bags is liable for confiscation under Section 111 (i) of the Customs Act, 1962.

34.5 Section 111(m) is for "[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]". I find that it is an undisputed fact that during the examination of the imported goods under Panchnama dated 17.02.2023, 188 jute bags containing undeclared 'Areca Nut' were found stuffed in jute bags. The importer had filed Bill of Entry for import of 'Raw Cashew Nut' whereas 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- were found. Therefore, I find that 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- is liable for confiscation under Section 111(m) of the Customs Act, 1962.

34.6 Section 111 (o) is for "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". I find that the CRCL, Vadodara, vide their Test Result No. RCL/AH/IMP/4321/03.03.2023 in respect of 'Areca nut' has reported that "the sample in the form of whole betel nuts having insect and mould infested nuts is 20.3% by wt. and not fit for human consumption. Hence the same is liable to be termed as "**Unsafe Foods**" as defined in Section 3 (1)(zz) of the Food Safety and Standards Act, 2006. Therefore, the said import had been done in contravention of the provisions of Section 25 of the Food Safety and Standards Act, 2006. Section 2(33) of the Customs Act, 1962 defines the word, "prohibited goods" which 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.

Thus, I find that 'Areca Nut' which are found unfit for human consumption is prohibited goods. Import of food items is permitted subject to fulfilment of conditions of Food Import Regulations 2021 read with Food Safety and Standards Act, 2006. I find that the importer, by importing unsafe goods not fit for human consumption has rendered the goods liable for confiscation under Section 111(o) of the Customs Act, 1962.

34.7 I find that, CRCL Vadodara, vide Test Memo No RCL/AH/IMP/4321/03.03.2023 in respect of 'Areca nut' have given Test Result No. RCL/AH/IMP/4321/03.03.2023 in respect of 'Areca nut' wherein it has been reported that "the sample in the form of whole betel nuts having insect and mould infested nuts is 20.3% by wt. and not fit for human consumption. Thus, the Areca nut which were imported by the importer was unsafe for human consumption." I find that, the preamble of "Food Safety and Standard Act, 2006" says that "An Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale **and import**, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto". It is pertinent to refer the relevant provisions regarding "Unsafe food" and Import Provisions enacted under the Food Safety and Standards Act, 2006 in context of the imported 'Areca Nut' found insect and mould infested.

Food Safety and Standards Act, 2006:

Section 3 (1) (zz): "unsafe food" means an article of food whose nature, substance or quality is so affected as to render it injurious to health :—

(i)....

(ii)....

(iii)....

(iv)....

(v)....

(vi)....

(vii)....

(viii)....

(ix) by the article having been infected or infested with worms, weevils, or insects; or

Section 25: All imports of articles of food to be subject to this Act.:

(1) No person shall import into India –

(i) any unsafe or misbranded or sub-standard food or food containing extraneous matter;

(ii) any article of food for the import of which a licence is required under any Act or rules or regulations, except in accordance with the conditions of the licence; and

(iii) any article of food in contravention of any other provision of this Act or of any rule or regulation made thereunder or any other Act.

34.8 In view of the above provisions of Food Safety and Standards Act, 2006, I find that importer by importing the 'betel nuts (Areca Nuts) having insect and mould infested have contravened the provisions by importing unsafe foods for human consumption. Such unsafe food is prohibited for import in India. Further, Section 2 (33) of the Customs Act, 1962 defines "Prohibited goods" according to which '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". Thus, I find that the import of unsafe foods is prohibited for import in India. Further, I find that 'Areca Nuts' is highly sensitive commodity having higher rate of duty of 115% approx involving BCD, SWS and IGST involved and it has huge demand in Gutka manufacturing industries irrespective of its quality. Thus, I find that the importer with clear intent to evade the payment of customs duty on Areca Nut have imported by mis declaring the goods as Raw Cashew Nuts and accordingly 15.04 MTs having value of Rs.1,13,16,784/- (Rupees One Crore, Thirteen Lakh, Sixteen Thousand, Seven Hundred and Eighty Four only) (Tariff Value) seized vide Panchnama and Seizure Memo both dated 17.02.2023, is liable for absolute confiscation.

35. Whether the goods viz. 3.04 MT of Raw Cashew Nuts classifiable under Customs Tariff Heading No.08013100, valued at Rs.3,55,837/- (Rupees Three Lakh, Fifty Five Thousand, Eight Hundred and Thirty Seven only) along with their packages(i.e. 226 Bags: 188 bags used for Areca Nuts and 38 Bags used for Raw Cashew Nuts) seized vide Panchnama and Seizure Memo both dated 17.02.2023, are liable to confiscation under the provisions of Section 111(m), Section 118(a) and Section 119 of the Customs Act, 1962?

35.1 I find that Section 111(m) of the Customs Act, 1962 is applicable where any goods do not correspond in respect of value or in any other particular] with the entry made under the Customs Act, 1962. The importer had filed Bill of Entry No.4556442 dated 08.02.2023 for clearance of 18.08MT of 'Raw Cashew Nut' under Notification No. 46/2011- Customs dated 01.06.2011 without payment of Basic Customs Duty whereas during the examination under Panchnama dated 17.02.2023, it was revealed that out of total 18.08MT of 'Raw Cashew Nut' declared to be stuffed in 226 Bags, only 3.04 MT of "Raw Cashew Nut" stuffed in 38 bags was found and in remaining, quantity of 15.04 MT stuffed in 188 bags, un declared 'Areca Nuts' were found. Thus, the said goods did not correspond in respect of its description, weight and value and therefore, 3.04 MT of "Raw Cashew Nut" is liable for confiscation.

35.2 I find that the importer had declared 18.08 MT of 'Raw Cashew Nut' stuffed /packed in total 226 Bags in Bill of Entry No. 4556442 dated 08.02.2023 whereas on detailed examination under Panchnama dated 17.02.2023, only 3.04 MT of "Raw Cashew Nut" stuffed in 38 bags were found and 15.04 MT of 'Areca Nut' were found stuffed in 188 bags. Section 118(a) of the Customs Act, 1962 reads as under:

Section 118 : Confiscation of packages and their contents. — (a) Where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation.

It is an undisputed fact that out of total 18.08 MT of declared "Raw Cashew Nut" in Bill of Entry No. 4556442 dated 08.02.2023, only small quantity of 3.04 MT of "Raw Cashew Nut" were found stuffed in 38 bags. Therefore, I find that the importer with clear intent to evade the payment of Customs Duty on 'Areca Nut' have declared the imported goods as 'Raw Cashew Nut'. Thus, I find that 3.04 MT of Raw Cashew Nuts classifiable under Customs Tariff Heading No.08013100, valued at Rs.3,55,837/- (Rupees Three Lakh, Fifty Five Thousand, Eight Hundred and Thirty Seven only) along with their packages(i.e. 226 Bags: 188 bags used for Areca Nuts and 38 Bags used for Raw Cashew Nuts) seized vide seizure memo dated 17.02.2023, are liable for confiscation under Section 118(a) of the Customs Act, 1962.

35.3 I find that in the Show Cause Notice, 3.04 MT of Raw Cashew Nuts classifiable under Customs Tariff Heading No.08013100, valued at Rs.3,55,837/- is also proposed for confiscation under Section 119 of the Customs Act, 1962. Section 119 of the Customs Act, 1962 read as under:

"Section 119: Confiscation of goods used for concealing smuggled goods.— Any goods used for concealing smuggled goods shall also be liable to confiscation."

I find that it is an undisputed fact that out of total 18.08 MT of declared "Raw Cashew Nut" in 226 Bags in Bill of Entry No. 4556442 dated 08.02.2023, only small quantity of 3.04 MT of "Raw Cashew Nut" were found stuffed in 38 bags and in remaining 188 Bags, 15.04 MT of 'Areca Nuts' were found. Thus, I find that 3.04 MT of Raw Cashew Nuts classifiable under Customs Tariff Heading No.08013100, valued at Rs.3,55,837 were used as concealment of 15.04 MT of 'Areca Nuts' in 188 Bags classifiable under Heading Item No.08028010, valued at Rs.1,13,16,784/- which were found concealed and therefore, I find that 3.04 MT of Raw Cashew Nuts classifiable under Customs Tariff Heading No.08013100, valued at Rs.3,55,837/- (Rupees Three Lakh, Fifty Five Thousand, Eight Hundred and Thirty Seven only) along with their packages (i.e. 226 Bags: 188 bags used for Areca Nuts and 38 Bags used for Raw Cashew Nuts) seized vide Panchnama dated 17.02.2023 is liable for confiscation under Section 119 of the Customs Act, 1962.

35.4 I find that the importer has contended that the Areca Nuts were not concealed and referred the definition of 'conceal' mentioned in Concise Oxford Dictionary and stated that according to Concise Oxford Dictionary 'conceal' means to hide completely or carefully, to keep secret, to disguise or to keep from telling and in the present case, as per the Panchnama dated 17.02.2022, betel nuts were kept in a jute bag along with the jute bags containing raw cashews and it is not the case of the Department that the jute bags containing betel nuts was hidden or kept in a concealing manner, there is nothing to show that the goods were concealed in the sense that they were so packed or hidden with the object of obscuring them from view. Further, in this regard, they relied upon on the decision in the case of Mazda Chemicals v Commissioner of Customs (Prev.), Ahmedabad reported in 1996 (88) E.L.T. 767 (Tribunal) as well as the decision in the case of United States Lines Agency versus Commissioner of Cus. (P), Mumbai reported in 1998 (101) E.L.T. 602 (Tribunal) I find that this argument is not tenable, as the importer has not disputed that 'Areca Nut' were found in jute bags and same was not declared in their Bill of Entry and further, declared 'Raw Cashew Nut' and un-declared 'Areca Nut' were found in jute bags. Thus, I find that in guise of 'Raw Cashew Nut' the importer had imported the 'Areca Nut' concealed in jute bags.

35.5 Further, I find that ratio in case of Mazda Chemicals v Commissioner of Customs (Prev.), Ahmedabad reported in 1996 (88) E.L.T. 767 (Tribunal) as well as the case of United States Lines Agency versus Commissioner of Cus. (P),

Mumbai reported in 1998 (101) E.L.T. 602 (Tribunal) are not applicable to the present case. Ratio in the case of Mazda Chemicals v Commissioner of Customs (Prev.), Ahmedabad reported in 1996 (88) E.L.T. 767 (Tribunal) relied upon by the importer is not applicable as in the said case, gunny bags and the packages containing contraband goods were separate and the contraband were not concealed in these bags containing soda ash whereas in the present case total 226 bags of 'Raw Cashew Nut' were declared by the importer and out of these 226 bags, in 188 bags mis-declared goods viz. 'Areca Nut' were found. Thus the facts are totally different and therefore ratio of said decision is not applicable. Further the ratio of decision in the case of United States Lines Agency versus Commissioner of Cus. (P), Mumbai reported in 1998 (101) E.L.T. 602 (Tribunal) relied upon by the importer is not applicable to the present case as in that case, the adjudicating authority had ordered for confiscation of the containers under Sections 118 & 119 of the Act. Tribunal held that Section 118 provides for liability to confiscation of "packages" in which goods liable to confiscation are imported and containers in which these "packages" were kept would not be "packages" whereas in present case, there is no dispute about the fact that mis declared 'Areca Nuts' as well as 'Raw Cashew Nuts' were found in jute bags.

Thus, in view of the above, the case laws relied upon by the importer is not helpful to them. I place reliance upon the decision of Hon'ble Tribunal, Bombay in the case of Ashoka Traders Vs. Collector of Customs reported in 1989 (41) ELT 134 (Tribunal) wherein it has been held as under:

"9. The next issue to be considered is whether Sec. 119 could be invoked in the case of 41 bales wrapped in black wrapper in respect of which the goods imported are as per description in the documents. According to the Concise Oxford Dictionary 'conceal' means - to hide completely or carefully - to keep secret - to disguise - to keep from telling. Under Sec. 119 of the Customs Act the object used for concealing is liable for confiscation. In a case like this where 2 identical lots one without contraband and another with contraband have been imported, the object of importing the other lot is to disguise the contraband to get it passed. In such a situation it cannot be envisaged that only the materials which have been physically used for covering contraband or hiding them are sought to be covered under Sec. 119. In the context of dictionary meaning referred to above, the items which have been brought simultaneously along with the contraband goods to disguise and camouflage the contraband are also covered by the term 'concealment'. Even without going into this aspect, this lot is liable for confiscation under Sec. 111(d) of the Customs Act. In view of our findings that the lot with the additional markings 'L/C' is the one sought to be cleared under the B/E, the other lot for which a B/E has not been filed and no licence produced is liable for confiscation under Sec. 111(d) of the Customs Act. We, therefore, uphold the Collector's order of confiscation of both the lots."

35.6 I find that importer has taken stand that they are not at fault as the overseas supplier had by mistake shipped the 'Areca Nut' instead of 'Raw Cashew Nut' and submitted the copy of E mail dated 06.03.2023 received from overseas supplier M/s. CV Sumatera Medan Group and further stated that there is no responsibility of the importer in wrong supply made by the supplier. I find that this plea is nothing but an afterthought. I find that Commercial Invoice is prepared by overseas supplier on 21.12.2022, The imported goods stuffed in Container No. CRSU1201710 has been Shipped on Board on 25.12.2022 as reported in Bill of Lading No. MAX/SUB/0332/2223 dated 25.12.2002 and Bill of Entry No.4556442 dated 08.02.2023 had been filed by CHA M/s. Jayant & Co and detailed examination of the imported goods were carried out under Panchnama on 17.02.2023 and only after the mis-declaration was found by the Revenue, the importer submitted E mail dtd. 06.03.2023 of overseas supplier.

Thus, I find that after more than two months and that too, on the detection by the Department, the importer sent a mail to overseas supplier and in response, the overseas supplier stated that it happened erroneously due to lack of knowledge of loading persons. Thus, it is nothing but an afterthought. Further, the overseas supplier in that E mail dated 06.03.2003, had informed the importer to send back the cargo, however, the importer neither returned the goods nor have submitted any further correspondence with overseas supplier regarding return of goods or any compensation/ refund of money produced by the Importer. I also find that importer had also submitted the copy of E mail dated 02.03.2023 sent to HDFC Bank for recalling the payment of import consignment. From the perusal of said E mail dated 02.03.2023, it is observed that the HDFC bank had specifically stated to the importer that "Fund recall depending upon overseas bank confirmation as well as customer confirmation from overseas party. So, requested to be in contact with overseas party to refund against advance payment sent by you." I find that except the aforesaid E mail, no evidence showing their bonafide and further efforts made to either get the refund or to return the goods have been produced by the importer. Thus, I find that their claim that they had not ordered for 'Areca Nut' is nothing but an afterthought.

35.7 I find that ratio of decision of Hon'ble Delhi High Court in the case of Suren International Ltd Vs. Commr. of Customs reported in 2007 (207) ELT 653 (Del) is squarely applicable to this case. In the said decision, it has been held as under:

"11. The Tribunal has analyzed and appreciated the facts in detail and we may only quote Para 10 of the order of the Tribunal for the present. During the investigation and adjudication proceedings the appellant M/s. Suren International Limited and their suppliers had also put up a defence that discrepancy in the goods is the result of wrong supply, and that the goods were not intended for M/s. Suren International Limited. Reliance was also placed on some purported fax and other correspondence between the parties. The Commissioner rejected this explanation after detailed discussion as is to be seen in Paras 170 and 171 of the impugned order. It is his finding that the method of concealment of mis-declared goods i.e. scrap being packed in the front of the container and valuable goods being kept hidden behind the scrap under declaration of weights, and other factors point only to deliberate concealment of the goods with intention to smuggle. He has also stated as to why the correspondence placed is not acceptable. During the hearing before us, specific reliance was placed on the purported fax dated 10th August, 2001 from the supplier M/s. SMC Industry Singapore; cancellation of order under letter dated 6th August, 2001 etc. We are of the opinion that the evidence on record fully supports the Commissioner's finding regarding concealment and not the explanation that the goods were wrongly sent. The examination of the consignments fully establishes that huge quantities of undeclared prime metal were being concealed in the consignments declared as scrap. We are accordingly, of the opinion that order of confiscation and imposition of penalty passed against M/s. Suren International Ltd., and M/s. Gaurav Exim are fully justified. We also do not find any justification to interfere with the quantum of redemption fines and penalties imposed as they cannot be considered disproportionate or excessive, given the value of the offending goods, premeditated nature of the offence, and the amount of duty sought to be evaded?"

35.8 I find that ratio of decision of Hon'ble Delhi Tribunal rendered in the case of Pawan Goel Vs. Commissioner of Customs, New Delhi reported in 2001 (135) ELT 425 (Tri. Del) is also squarely applicable to the present case. In the said case it has been held inter alia as under:

"11. As far as goods imported by M/s. Venus Metals Bhandar is concerned, it is

not disputed by them that the copper scrap was found in addition to Aluminium Scrap. They have tried to explain the same by submitting a Fax Message from the foreign supplier according to which the container meant for Pakistan had been sent to India by mistake. We observe that the mistake was pointed out only after the detection made by the Customs official and not by the foreign supplier on his own. We, therefore, find no reason to interfere with the findings of the learned Adjudicating Authority that the description of goods was mis-declared by M/s. Venus Metals Bhandar."

35.9 I find that importer has stated that they have relinquished the title of the goods seized vide seizure memo dated 17.02.2023 and submitted a copy of their letter dated 17.02.2023 relinquishing the title of the seized goods and stated that as per Section 23, the importer has rightly relinquished its title over the goods and once the importer has relinquished its title over the imported goods, the importer is not concerned with the disputed goods. I find that it would be worth to mention the provision of Section 23 of the Customs Act, 1962 which read as under:

"SECTION 23: Remission of duty on lost, destroyed or abandoned goods:-

(1) [Without prejudice to the provisions of section 13, where it is shown] to the satisfaction of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] that any imported goods have been lost [(otherwise than as a result of pilferage)] or destroyed, at any time before clearance for home consumption, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall remit the duty on such goods.

[(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon :]

[Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]"

Thus, proviso to Section 23 (2) specifically says that owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under the Customs Act, 1962 or any other law for the time being in force. I find that there is no dispute that importer had filed Bill of Entry 4556442 dated 08.02.2023 declaring 18.08 MT of 'Raw Cashew Nut' stuffed /packed in total 226 Bags whereas on detailed examination under Panchnama dated 17.02.2023 only 3.04 MT of " Raw Cashew Nut' stuffed in 38 bags were found and 15.04 MT of 'Areca Nut' were found stuffed in 188 bags. Thus, the importer had mis-declared the goods with clear intent to evade the payment of Customs Duty on 'Areca Nut' imported in guise of ' Raw Cashew Nut' and committed an offence by contravening the provision of Customs Act, 1962. Further, the sample of 'Areca Nut' was drawn and CRCL, Vadodara, vide Test Result No. RCL/AH/IMP/4321/03.03.2023 in respect of 'Areca nut' has reported that " the sample in the form of whole betel nuts having insect and mould infested nuts is 20.3% by wt. and not fit for human consumption. Hence the same is liable to be termed as "Unsafe Foods" as defined in Section 3 (1)(zz) of the Food Safety and Standards Act, 2006. Therefore, the said import had been done in contravention of the provisions of Section 25 of the Food Safety and Standards Act, 2006. Section 2(33) defines the word, "prohibited goods" which 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 compiled with. Thus, I find that 'Areca Nut' which are found unfit for human consumption is prohibited goods. Import of food items is permitted subject to fulfilment of conditions of Food Import Regulations 2021 read with Foods Safety and Standards Act, 2006. Thus, I find that importer cannot be allowed to relinquish the title on the goods imported vide Bill of Entry 4556442 dated 08.02.2023.

35.10 Further, I find that ratio of decision of Hon'ble Allahabad Tribunal rendered in case of Commissioner of Customs, Noida Vs. Prateek Traders reported in 2018 (363) ELT224 (Tri. All) is squarely applicable in the present case. In the said, decision, it has been held interalia as under:

"6. Having considered the rival contentions and on perusal of the said letter dated 2-9-2012 filed by respondent before the Customs Authorities, I am satisfied that as provided under sub-section (2) of Section 23 of the Customs Act, 1962, the law did not allow respondent to relinquish his title to said goods since the said goods were found to be mis-declared. Further, the goods brought into were prohibited, since they did not have environmental clearance for importation of the same and, therefore, the goods had violated the provisions of Section 11 of Customs Act, 1962. Therefore, I accept the grounds of appeal submitted by Revenue. In view of 2nd proviso to sub-section (1) of Section 26A of the Customs Act, 1962, the said refund was not admissible to the respondent. Therefore, I do not find impugned Order-in-Appeal to be sustainable in law."

35.11 As 15.04 MT of 'Areca Nuts' is held liable for absolute confiscation, Redemption fine is required to be imposed only on 3.04 MT of 'Raw Cashew Nut' alongwith 226 Bags found liable for confiscation under Section 111 of the Customs Act, 1962. I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to imposed in lieu of confiscation in respect of the imported goods. Section 125 (1) of the Customs Act, 1962 reads as under:-

"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 [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..."

35.12 In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of the confiscation of imported goods viz. 3.04 MT of Raw Cashew Nuts classifiable under Customs Tariff Heading No.08013100, valued at Rs.3,55,837/- (Rupees Three Lakh, Fifty Five Thousand, Eight Hundred and Thirty Seven only) along with their packages (i.e. 226 Bags : 188 bags used for Areca Nuts and 38 Bags used for Raw Cashew Nuts) seized vide Panchnama and Seizure Memo both dated 17.02.2023

36. Whether the differential duty of Customs amounting to Rs.1,36,79,425/-(Rupees One Crore, Thirty Six Lakh, Seventy Nine Thousand, Four Hundred and Twenty Five only) as detailed in Table-T1 of SCN, should be demanded and recovered from M/s. SKA Cashew Processing LLP, , Morbi under Section 28 (4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, on the Duty demand of

Rs.1,36,79,425/-? Further whether the Duty amounting to Rs.22,53,955/- (Rs.2,53,955/- + Rs.20,00,000/-) (Rupees Twenty Two Lakh, Fifty Three Thousand, Nine Hundred and Fifty Five Only) already paid by M/s. SKA Cashew Processing LLP, Morbi should be appropriated against the Duty demand of Rs.1,36,79,425/-?

36.1 I find that the importer had filed Bill of Entry No. 4556442 dated 08.02.2023 for import of 18.08 MT Raw Cashew Nut in Container No.CRSU1201710 at ICD Sabarmati (Khodiyar) through the Custom House Broker M/s. Jayant & Co claiming the benefit of Sr. No. 57 of Notification No. 46/2011- Customs dated 01.06.2011. The importer had declared the name of overseas supplier as M/s. CV Sumatera Medan Group, JL Pancing V Lingk III, Besar Medan Labuhan, Sumatera Utara, Indonesia. I find that during the detailed examination carried out under Panchnama dated 17.02.2023 in presence of Shri Harbhajan Singh, G Card Holder of the concerned CHA M/s. Jayant & Company, 15.040 MT of Areca Nut (Betel Nut) were found concealed in guise of Raw cashew Nut along with 3.040 MT of Raw Cashew Nut. I find that the importer has declared the assessable value of 18.08 MT of " Raw Cashew Nut" as Rs. 2116290.63 claiming the benefit of Notification No.46/2011- Customs dated 01.06.2011, whereas, as per the Tariff Value Notification No. 7/2023-Cus. (N.T.), dated 31-1-2023, Tariff Value for 'Areca Nut' falling under Customs Tariff Heading No. 080280 was Rs.9093 USD per MT. Thus, total assessable value of mis declared quantity of 15.04 MT of 'Areca Nut' was Rs. 1,13,16,784/- and applicable rate of various duties were Basic Customs Duty @100% , and Social Welfare Surcharge (SWS) on BCD @10% and IGST @5%. Thus, Basic Customs Duty of Rs. 1,13,16,784/-, Social Welfare Surcharge (SWS) of Rs. 11,31,678/- and IGST of Rs. 11,88,262/- were involved. There is no dispute that importer has not paid the said Basic Customs Duty, Social Welfare Surcharge (SWS) and IGST on the 15.04 MT of 'Areca Nut' found mis-declared in Bill of Entry No. 4556442 dated 08.02.2023. Therefore, I find that Customs Duty liability had not been discharged by the Importer by way of willful misstatement/ mis-declaration and suppression of facts and therefore, the applicable Customs Duty amounting to Rs.1,36,36,725/-(Rupees One Crore, Thirty Six Lakh, Thirty Six Thousand, Seven Hundred and Twenty Five only) as detailed in Table-T1 of the SCN is liable to be recovered by invoking the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Further, I find that out of total 18.08 MT of imported goods, only 3.04 MT of 'Raw Cashew Nut' were found and further this 'Raw Cashew Nut' were sought to be cleared claiming the benefit of Notification No. 46/2011- Customs dated 01.06.2011 wherein the Basic Customs Duty is exempted and only IGST @ 12% was applicable. Thus, I find that with clear intent to evade the payment of Customs duty, appellant had mis-declared the goods as " Raw Cashew Nut". Further, importer is also liable for payment of total Customs duty of Rs. 42,700 on 3.04 MT having the assessable value of Rs. 3,55,837/- of 'Raw Cashew Nut' imported.

36.2 I find that Commercial Invoice is prepared by overseas supplier on 21.12.2022, The imported goods stuffed in Container No. CRSU1201710 has been Shipped on Board on 25.12.2022 as reported in Bill of Lading No. MAX/SUB/0332/2223 dated 25.12.2002 and Bill of Entry No.4556442 dated 08.02.2023 has been filed on 08.02.2023 by CHA M/s. Jayant & Co and detailed examination of the imported goods were carried out under Panchnama on 17.02.2023 and only after the mis-declaration found by the Revenue, the importer submitted E mail dtd.06.03.2023 of overseas supplier. Thus, I find that after more than two months and that too after detection by the Department, the importer sent a mail to overseas supplier and in response, the overseas supplier stated that due to mistake, and it happened erroneously due to lack of knowledge of loading persons. Thus, it is nothing but an afterthought. Further,

the overseas supplier had informed the importer to send back the cargo, however, the importer neither returned the goods nor have submitted any further correspondence with overseas supplier regarding return of goods or any compensation/ refund of money. I also find that importer had also submitted the copy of E mail dated 02.03.2023 sent to HDFC Bank for recall of the payment of import consignment. From the perusal of said E mail dated 02.03.2023, it is observed that the HDFC bank has specifically stated to the importer that "Fund recall depending upon oversea bank confirmation as well as customer confirmation from oversea party. So, requested to be in contact with overseas party to refund against advance payment sent by you. I find that except the aforesaid E mail dtd. 02.03.2023 no evidence showing their bonafide and further efforts made to either get the refund or to return the goods have been produced by the importer. Thus, I find that importer with clear intent to evade the payment of Customs Duty on 'Areca Nut' have imported the goods and mis declared the same as 'Raw Cashew Nut'. Therefore, Customs Duty is rightly demanded under Section 28 (4) of the Customs Act, 1962.

36.3 I find that importer has submitted copy of Purchase Order No. SKAEPO 154 dated 07.11.2022 with M/s.CV Sumatera Medan Group, JL Pancing V Lingk III, Besar Medan Labuhan, Sumatera Utara, Indonesia for import of 18 MT Raw Cashew Nut alongwith copy of Commercial Invoice No. 008/INV-SMG/XII/2022 dated 21.12.2022, copy of Packing list Number 008/INV-SMG/XII/2022 dated 21.12.2022, copy of Bill of Lading No. MAX/SUB/0332/2223 dated 25.12.2023 etc. The Copy of Commercial Invoice No. 008/INV-SMG/XII/2022 dated 21.12.2022, copy of Packing list Number 008/INV-SMG/XII/2022 dated 21.12.2022 are unsigned by the overseas supplier. Further, on perusal of the Purchase Order No. SKAEPO 154 dated 07.11.2022 with M/s.CV Sumatera Medan Group, JL Pancing V Lingk III, Besar Medan Labuhan, Sumatera Utara, Indonesia for import of 18 MT Raw Cashew Nut, it is observed that importer has specifically ordered for 18 MT of " Raw Cashew Nuts, HS Code 08013100 in 225 Bags and Price USD/MT CNF Visakhapatnam. Thus, I find that importer had quoted the Price CNF Visakhapatnam whereas the imported goods arrived at Mundra Port and Bill of Entry was filed at ICD, Khodiyar. I find that the distance between Visakhapatnam situated in Andhra Pradesh and Mundra situated in Gujarat is approx. 2113 Nautical Miles and there is considerable difference in Freight for Mundra and Visakhapatnam from the loading port Surabaya, Indonesia. Thus, I find that to colour their transaction as genuine, importer has prepared the Purchase Order.

36.4 Further, I find afore said discussion and circumstantial evidence having come to record, Customs is not required to prove its case with mathematical precision to a demonstrable degree. I place reliance on the decision of Hon'ble Chennai Tribunal rendered in case of T. Manivannan Vs. Commissioner of Customs, Tuticorin reported in 2017 (348) ELT513 (Tri. Chennai) wherein it is interalia stated as under:

"8. Cogent, credible and circumstantial evidence as aforesaid having come to record, Customs is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and absolute proof being unattainable, the law, accepts for it, probability as a working substitute in jurisprudence and prosecution is not required to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered since it is extremely difficult, if not absolutely impossible for the prosecution to prove facts which are especially within

the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

8.3 The standard of proof in a civil case is preponderance of probabilities. In a civil case there is no burden cast on any party similar to the one in a criminal proceeding. Following the ratio laid down in *CIT v. Durga Prasad More* - 82 ITR 540, 545-47 (SC) it may be said that Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or a Tribunal. Therefore, the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities. Human minds may differ as to reliability of a piece of evidence. But in that sphere the decision of the final fact finding Authority is made conclusive by law. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. A fact is said to be proved when the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. The Court applies this test for finding whether a fact in issue can be said to be proved.

8.4 When fraud surfaces, that unravels all. Revenue's stand is fortified from the Apex Court judgment in the case of *UOI v. Jain Shudh Vanaspati Ltd.* - 1996 (86) E.L.T. 460 (S.C.). So also fraud nullifies everything as held by Apex Court in *CC v. Candid Enterprises* - 2001 (130) E.L.T. 404 (S.C.) and in the case of *Delhi Development Authority v. Skipper Construction Company (P) Ltd.* - AIR 1996 (SC) 2005. Escapement of offending goods from notice of Customs from the godown of Alexander was result of fraud committed against Revenue. The frauds committed by the perpetrators of the offence were in close connivance. The Apex Court in the case of *S.P. Chengalavaraya Naidu v. Jagannath* - AIR 1994 SC 853 and in the case of *Ram Preeti Yadav v. UP Board of High School and Intermediate Education* - AIR 2003 SC 4268 has held that no Court in this land will allow a person to keep an advantage which he obtained by fraud.

8.5 When the material evidence established fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated from penal consequence of law following Apex Court judgment in the case of *K.I. Pavunny v. AC, Cochin* - 1997 (90) E.L.T. 241 (S.C.). Various technicalities raised by appellant in the course of appeal hearing did not matter when substance of the matter weighed heavily for determination of the issues involved.

8.6 An act of fraud on Revenue is always viewed seriously. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It has been held by Apex Court in the case of *Commissioner of Customs, Kandla v. Essar Oil Ltd.* - 2004 (172) E.L.T. 433 (S.C.) that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the deceived. Undue advantage obtained by the deceiver, will almost always call loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Changalvaraya Naidu v. Jagannath* [1994 (1) SCC 1].)

36.5 The importer has contended that they have relinquished the tile of imported goods and therefore, no duty can be demanded and placed the reliance upon the

decision of the Hon'ble Kolkata Tribunal in the case of Indian Charge Chrome Ltd. v Commr. Of C. Ex. &Cus, BBSR-I reported in 2001 (132) ELT 300 (Tri.-Kolkata), the decision of the Hon'ble Bangalore Tribunal in the case of CK Enterprises v Commr. Of Customs, Mumbai reported in 2010 (262) ELT 307 (Tri.-Mumbai), the decision of the Hon'ble Mumbai Tribunal in the case of Commissioner of C. Ex. &Cus., Nagpur versus Ankit Pulps & Boards Pvt. Ltd. reported in 2007 (209) E.L.T. 135 (Tri. - Mumbai) and further stated that Sub-section (2) of Section 23 deals with a case where the goods is neither lost nor destroyed but the said goods is of no use to the importer and in such a case, the importer has the option of relinquishing his title to the goods and thereupon he shall not be liable to pay duty thereon and once such a relinquishment of title to the goods is made by the importer, then the said goods become the property of the Department and as a consequence of which no duty is payable by the importer. In this regard, I find that importer is referring to old Section 23 (2) of the Customs Act, 1962. Proviso to Section 23 (2) has been inserted vide Section 58 of the Finance Act, 2006 (21 of 2006) which specifically stipulate that "[Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]". There is no dispute that 'Areca Nut' were found in imported goods which was not declared by the importer and thus they have committed an offence under the Customs Act, 1962. Further, the Areca Nuts were found not fit for human consumption and therefore, the same is prohibited goods and thus importer has also contravened the provisions of Section 25 of the Food Safety and Standards Act, 2006

The ratio of the decision of Hon'ble Kolkata Tribunal in the case of Indian Charge Chrome Ltd. v Commr. Of C. Ex. &Cus, BBSR-I reported in 2001 (132) ELT 300 (Tri.-Kolkata) relied upon by the importer is not applicable to present case as in that case, the goods was found defective and therefore defective goods were deposited back with Customs and title of goods relinquished by importer whereas in the present case, the importer has mis-declared the goods and imported 'Areca Nut' in guise of 'Raw Cashew Nuts'.

Further, ratio of the decision Hon'ble Mumbai Tribunal in case of CK Enterprises v Commr. Of Customs, Mumbai reported in 2010 (262) ELT 307 (Tri.-Mumbai) relied upon by the importer is also not helpful as in the said case, foreign suppliers shipped a consignment said to be containing total 1935 pcs. (in 144 cartons) of Bearings of total weight 6000 kgs. (gross) whereas in the examination, the goods were found to be other than what were described in the import documents and the goods were actually found to be weighing 1804 kgs. and further, the goods were completely worthless, whereas in present case, it is undisputed fact that out of total 18.08 MT of 'Raw Cashew Nut' declared in Bill of Entry, total 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- were found mis-declared in 188 bags.

Further, ratio of the decision of Hon'ble Mumbai Tribunal in the case of Commissioner of C. Ex. &Cus., Nagpur versus Ankit Pulps & Boards Pvt. Ltd. reported in 2007 (209) E.L.T. 135 (Tri. - Mumbai) is not applicable to the present case as in the said case, Proviso to Section 23 (2) "[Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]" inserted vide Section 58 of the Finance Act, 2006 (21 of 2006) has not been considered. Therefore, the ratio of the said decision is not applicable to the present case.

36.6 I place reliance on the decision of Hon'ble Delhi Tribunal rendered in case of Bird Retail Pvt. Ltd. Vs. Commissioner of Customs (Import), New Delhi wherein it has been held inter alia as under:

"26. In view of entire above discussion, we find that appellant have mis-declared their import consignment and what they have imported were Segway product classifiable under Customs Tariff Heading 8711 90 91 in completely knocked down condition. We, therefore, uphold the findings of the impugned order-in-original classifying the import consignments under 8711 90 91. We also find no reason to interfere with the order-in-original with regard to demand of Customs duty under Section 28(4) of the Customs Act, 1962 by invoking the extended time proviso as we find that the appellant have been fully aware as to what is being imported by them and they have consciously mis-declared their product as CKD parts of electrically operated two wheelers of captive use classifying the same under chapter sub-heading 8714 99 90. As discussed in preceding paragraphs it is come out very categorically that what has been imported by the appellant was Segway product in the CKD condition which required to be classified under Chapter sub-heading 8711 90 91. This attempt of mis-declaration was consciously done to evade customs duty by availing concessional rate of the duty. Notification No. 12/2012-Cus., dated 17-3-2012. In view of this, we uphold the correlating finding of the order-in-original with regard to confiscation of the mis-declared goods under Section 111 (m) of the Customs Act, 1962 as well as imposition of the penalties on the appellant No. 1 as per the provision of Sections 114A and 114AA of the Customs Act, 1962 as well as the demand of the interest under the provisions of the Customs Act under Section 28AA."

Thus, in view of the aforesaid discussion, I find that differential duty of Customs amounting to Rs.1,36,79,425/- (Rupees One Crore, Thirty Six Lakh, Seventy Nine Thousand, Four Hundred and Twenty Five only) as detailed in Table-T1 of SCN, should be demanded and recovered from M/s. SKA Cashew Processing LLP, , Morbi under Section 28 (4) of the Customs Act, 1962.

36.7 The importer has contended that no interest is sustainable when Duty demand is not sustainable. They have placed reliance on a few judgements to support their contention. In this regard, I find that the demand raised vide the present Show Cause Notice is very much sustainable and recoverable under the provisions of Section 28(4) of the Customs Act, 1962 as discussed in the foregoing paras and since Duty is recoverable under the provisions of Section 28(4), it naturally follows that the same is required to be recovered alongwith interest under the provisions of Section 28AA of the Customs Act, 1962. Therefore, the contention of the importer is not tenable. For this reason, ratio of the judgements referred by them is also not applicable in the present case.

36.8 Further, I find that the Importer has paid the Duty amounting to Rs.22,53,955/- (Rs.2,53,955/- + Rs.20,00,000/-) (Rupees Twenty Two Lakh, Fifty Three Thousand, Nine Hundred and Fifty Five Only) during the investigation. I find that as the Duty Rs.1,36,79,425/- is required to be demanded and recovered from the importer, I find that said amount of Rs.22,53,955/- paid is required be appropriated against the Duty demand Rs.1,36,79,425/-.

36.9 I find that importer has stated that they have relinquished the title of the imported goods and therefore, duty paid during the investigation is required to be refunded. In this regard, I find that importer is not allowed to relinquish the title of the goods as per proviso to Section 23 (2) of the Customs Act, 1962, and therefore, the importer is not eligible for refund of duty paid. It is pertinent to mention the Provisions of Refund laid down in Section 26A of the Customs Act, 1962.

SECTION [26A. Refund of import duty in certain cases. —

(1) Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if—

(a) the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods :

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) the importer does not claim drawback under any other provision of this Act; and

(d) (i) the goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer,

in such manner as may be prescribed and within a period not exceeding thirty days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47 :

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the [Principal Commissioner of Customs or Commissioner of Customs] for a period not exceeding three months:

Provided further that nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

I find that, it is not a disputed fact that out of total 18.08 MT of declared "Raw Cashew Nut" in Bill of Entry No. 4556442 dated 08.02.2023, only small quantity of 3.04 MT of "Raw Cashew Nut" were found stuffed in 38 bags. Therefore, I find that the importer with clear intent to evade the payment of Customs Duty on 'Areca Nut' have declared the imported goods as 'Raw Cashew Nut'. Therefore, in view of the above, I find that the importer has committed an offence and therefore as per second Proviso the Section 26A (1) of the Customs, 1962, the duty of Rs.22,53,955/- paid by importer cannot be refunded. Further, to sustain my view, I rely on the decision of Hon'ble Allahabad Tribunal rendered in case of Commissioner of Customs, Noida Vs. Prateek Traders reported in 2018 (363) ELT 224 (Tri. All) wherein it has been held as under:

"6. Having considered the rival contentions and on perusal of the said letter dated 2-9-2012 filed by respondent before the Customs Authorities, I am satisfied that as provided under sub-section (2) of Section 23 of the Customs Act, 1962, the law did not allow respondent to relinquish his title to said goods since the said goods were found to be mis-declared. Further, the goods brought into were prohibited, since they did not have environmental clearance for importation of the same and, therefore, the goods had violated the provisions of Section 11 of Customs Act, 1962. Therefore, I accept the grounds of appeal submitted by Revenue. In view of 2nd proviso to sub-section (1) of Section 26A of the Customs Act, 1962, the said refund was not admissible to the respondent. Therefore, I do not find impugned Order-in-Appeal to be sustainable in law."

37. Whether, penalty should be imposed upon M/s. SKA Cashew Processing LLP, Morbi under the provisions of Section 114A/112 (a) of the Customs Act, 1962?

37.1 The Show Cause Notice proposes penalty under the provisions of Section 112(a), and Section 114A of the Customs Act, 1962 on M/s. SKA Cashew Processing LLP, Morbi. The Penalty under Section 114A can be imposed only if the Duty demanded under Section 28 ibid by alleging willful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in foregoing paras, M/s. SKA Cashew Processing LLP, Morbi have imported 15.04MT of 'Areca Nut' in guise of 18.08 MT declared as "Raw Cashew Nut" as imported goods in Bill of Entry No. 4556442/08.02.2023 with an intention to avoid the higher Duty liability on "Areca Nut" that would have accrued to them if they had correctly declared the same. I have already held that the differential Customs Duty of Rs.1,36,79,425/- (Rupees One Crore, Thirty Six Lakh, Seventy Nine Thousand, Four Hundred and Twenty Five only) is confirmed and liable to be recovered from M/s. SKA Cashew Processing LLP, Morbi under Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A ibid is directly linked to Section 28(4) ibid, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon M/s. SKA Cashew Processing LLP, Morbi.

37.2 The Show Cause Notice also proposes imposition of penalty under Section 112(a) of the Customs Act, 1962 on M/s. SKA Cashew Processing LLP, Morbi. In this regard it is to mention that the fifth proviso to section 114A of the Customs Act, 1962 provides that penalty under Section 112 shall not be levied if penalty under Section 114A of the Customs Act, 1962 has been imposed and the same reads as under:

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

In the instant case, I have already found that M/s. SKA Cashew Processing LLP, Morbi is liable to penalty under Section 114A of the Customs Act, 1962 and therefore, penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

37.3 I find that the importer has contested that Section 114A can be invoked only where the duty has not been levied due to mis statement of facts or such similar event and in present case, department has not produced any evidence to show misstatement of the fact by the importer. I find that this contention is not tenable as there is no dispute that the 15.04 MT of 'Areca Nut' were found mis declared in total 18.08 MT of 'Raw Cashew' declared in Bill of Entry No.4556442/08.02.2023. I find that Commercial Invoice is prepared by overseas supplier on 21.12.2022, imported goods stuffed in Container No. CRSU1201710 has been Shipped on Board on 25.12.2022 as reported in Bill of Lading No. MAX/SUB/0332/2223 dated 25.12.2002 and Bill of Entry No.4556442 dated 08.02.2023 has been filed on 08.02.2023 by CHA M/s. Jayant & Co and detailed examination of the imported goods were carried out under Panchnama on 17.02.2023 and only after the mis-declaration was found by the Revenue, the importer submitted E mail dtd. 06.03.2023 to overseas supplier. Thus, I find that after more than two months and that too on the detection by the Department, the importer sent a mail to overseas supplier and in response, the overseas supplier stated that due to mistake, it happened erroneously due to lack of knowledge of loading persons. Thus, it is nothing but an afterthought. Further, the overseas supplier had informed the importer to send back the cargo, however, the importer neither returned the goods nor have submitted any further correspondence with overseas supplier regarding

return of goods or any compensation/ refund of money. I also find that importer had also submitted the copy of E mail dated 02.03.2023 sent to HDFC Bank for recall of the payment of import consignment. From the perusal of said E mail dated 02.03.2023, it is observed that the HDFC bank has specifically stated to the importer that "Fund recall depending upon overseas bank confirmation as well as customer confirmation from overseas party. So, requested to be in contact with overseas party to refund against advance payment sent by you. I find that except the aforesaid E mail 02.03.2023, no evidence showing their bonafide and further efforts made to either get the refund or to return the goods have been produced by the importer. Thus, I find that with clear intent to evade the payment of Customs Duty on 'Areca Nut', the importer misdeclared the goods as 'Raw Cashew Nut' in Bill of Entry No. 4556442/08.02.2023 and therefore, I find that importer is liable for penalty under Section 114A of the Customs Act, 1962.

37.4 I find that importer has contested that the Department has not produced any evidence to show misstatement of facts by the importer. In this regard, I would like to place reliance on the decision of Hon'ble Delhi Tribunal rendered in case of Sriyash Woollen Mills (Pvt.) Ltd Vs. Collector of Customs reported in 1990 (46) ELT 190 (Tribunal) wherein it has been held as under:

"10. We have heard both the sides and have gone through the facts and circumstances of the case. The facts are not disputed by both the sides. As per indents and invoices, the appellant had placed order for wool waste 28 bales and viscose staple fibre 48 bales and on examination out of 28 bales, 7 bales were found of wool waste and 21 bales of poly fibre and out of 48 bales, 14 bales were found of viscose staple fibre and 34 bales of poly fibre. The Additional Collector on internal page 13 of his order in the case of M/s. Sriyansh Woollen Mills had observed as under :-

"It is a fact, as contended by the counsel for the notices, that Panchnama does not give any indication that 21 bales of wool waste and viscose staple fibre were stacked to camouflage the remaining bales of polyester fibre. Going by the mode of stuffing of similar goods in containers as detected recently by the department in other cases, it might have been plausible to hold that in the present case also 21 bales of wool waste and polyester staple fibre were stacked in front of 55 bales of polyester fibre in the containers in such a manner that bales of polyester fibre would not be visible from outside. However, in the absence of any such mention in the Panchnama or any other corroborative evidence, it is difficult to conclude at this stage that the contention of the DRI in this respect is established. From the records also it is observed that the containers were not destuffed in the presence of the importers. On the other hand, as per panchnamas, the containers were first de-stuffed and then the bales examined."

Similar were the observations in the case of M/s. Khazan Industries Pvt. Ltd. Top para from internal page 12 of the order is reproduced below :-

"It is a fact, as contended by the counsel for the notices, that Panchnama does not give any indication that 9 bales of wool waste were stacked to camouflage the remaining 31 bales of polyester and acrylic fibre. Going by the mode of stuffing of similar goods in containers as detected recently by the Department in other cases, it may be plausible to hold that in the present case also, 9 bales of wool waste were stacked in front of 31 bales of polyester and acrylic fibre in the container in such a manner that bales of polyester and acrylic fibre would not be visible from outside. However, in the absence of any such mention in the Panchnama or any other corroborative evidence, it is difficult to conclude at this stage that the contention of DRI in this respect is established. On the other hand, as per Panchnama, the container was first de-stuffed and then the bales were examined."

From the records also, it is observed that the containers were not de-stuffed in the presence of the importers."

A simple perusal of the findings of the Additional Collector which have been reproduced above will clearly reveal that the arrangement of the bales was such that intention cannot be attributed to the mala fide conduct of the importers. It is also not disputed that in both the matters no bill of entry was filed. In terms of the provisions of Section 30 of the Customs Act, 1962, the person-in-charge of a conveyance carrying imported goods shall, within twenty-four hours after arrival thereof at a customs station, deliver to the proper officer, in the case of a vessel or aircraft, an import manifest, and in the case of a vehicle, an import report, in the prescribed form and in terms of the provisions of Section 32 of the Customs Act, it is provided that imported goods are not to be unloaded unless mentioned in import manifest or import report. Section 32 of the Customs Act, 1962 is reproduced below: -

"32. Imported goods not to be unloaded unless mentioned in import manifest or import report - No imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station."

A simple perusal of Section 32 will show that no imported goods could be unloaded at a customs station unless they are specified in the import manifest for being unloaded at the customs station. This Section relates for preventing the unauthorised landing of goods. The filing of the import manifest is the obligation of the person in charge of the conveyance carrying imported goods. Therefore, the appellants cannot be indicted for rendering the goods liable to confiscation under Section iii(f).

We agree with the appellants herein that there is no direct evidence available against them which would indicate their culpability in wrongful importation of the goods. Nevertheless, there are certain circumstances which go against the appellants' innocence. Firstly, the appellants' plea that the suppliers have wrongly sent the goods and they themselves have been cheated is not borne out by the subsequent action taken by the appellants against the suppliers. Apart from writing letters to the suppliers, which alone have been brought forth on record by the appellants, no subsequent legal action has been taken by the appellants against the suppliers to prove their bona fides. It is yet another coincidental circumstance that the two different suppliers who sent the goods committed the mistake of sending them wrongly in identical manner i.e. polyester fibre being sent partly in lieu of wool waste by one supplier and again polyester fibre being sent by the other supplier partly in lieu of viscose staple fibre (see last but one question and answer in Ajit Kumar's statement dated 24-11-1985). Further it is also evident from the statement of Ajit Kumar Jain that the deal was struck by him directly with the suppliers although for the sake of formality, indenter was brought in.

It is well settled, as rightly pointed out by the learned SDR, in the Supreme Court's judgment in D. Bhoormul's case mentioned supra that in the clandestine activities like smuggling, department cannot be expected to prove the charge to the guilt or beyond all reasonable doubt. Guilt of an accused can be found on preponderance of probabilities. In view of this discussion, we hold that the appellants are liable to penalty under Section 112. The adjudicating authority has invoked the provisions of Section 111(f) of the Customs Act, 1962. Section 111(f) is reproduced below: -

"111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation :

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned."

A simple reading of Section 111(f) will show that the penalty under Section 111(f) is to be imposed on the person who has filed the manifest under Section 30 of the Customs Act, 1962. The person in charge of the ship has not been made a party and no proceedings have been initiated against him. Under Section 111(f) no penalty can be imposed on the importer. In terms of the provisions of Section 111(d) of the Customs Act, 1962, any goods which are imported or attempted to be imported or are brought within the Indian Customs water for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for time being in force, the goods are liable to confiscation and in terms of the provisions of Section 112(a), penalty is leviable for improper importation of goods etc. on 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. **In the matter before us, it is not disputed that the appellant had placed order for 28 bales of wool waste and 48 bales of viscose staple fibre and out of 28 bales of wool waste, 7 bales were of wool waste and 21 bales of polyester fibre and out of 48 bales of viscose staple, 14 bales were staple fibre and 34 bales were of polyester fibre. The rate of duty on polyester fibre was 145% + 9/kg + 40% + Rs. 45/kg + 15% as against the rate of nil/100% + 40% + Rs.37.50/kg. + 15% applicable on wool waste/viscose staple fibre.** The Additional Collector in his order has mentioned that duty difference in the case of M/s. Sriyansh Woollen Mills is Rs. 16 lakhs and the duty difference in the case of M/s. KSiazan Industries Pvt. Ltd. was around Rs. 14 lakhs. Undoubtedly, the importation of polyester fibre bales is unauthorised and the appellant is not the actual user. The learned Additional Collector has observed that the appellant is the actual user only of woollen waste acrylic fibre / and viscose fibre and polyester fibre was not used by the appellant. Accordingly, we agree with his conclusions that the importation of polyester fibre was unauthorised and liable to confiscation under Section 111(d) of the Customs Act, 1962. During the course of arguments, Shri Harbans Singh, the learned advocate for the appellants had mentioned that the importation was made in the year 1985 and the appellant is incurring a demurrage of Rs. 3500/- per week. The demurrage for three years will approximately work out to Rs. 5,46,000/-. In the case of M/s. Muddeereswara Mining Industries Co., Bangalore v. Collector of Customs, Bangalore, in appeal No. C/3531/87-A, order No. 197/88-A dated 9-3-1988 reported in 1989 (39) E.L.T. 630 (Tribunal) the Tribunal had reduced the redemption fine from Rs. 5,00,000/- to Rs. 25,000/- on the ground that the machine on its importation had remained under detention for well over a year incurring port demurrage. Para 8 from the said judgment is reproduced below:

"8. Since the goods are liable to confiscation, the appellants were liable to a penalty under Section 112 as well. The impugned order imposing fine in lieu of confiscation and penalty is legally quite in order. However, considering the fact that the machine, on its importation, has remained under detention for well over a year, incurring port demurrage, we feel that some reduction in fine and penalty is called for. Considering all facts and circumstances, including the higher amount of depreciation allowed by us, we reduce the redemption fine from Rs. 5 lakhs to Rs. 25,000/- (Rupees twenty five thousand only) and the penalty from Rs. 2 lakhs to Rs. 10,000/- (Rupees ten thousand only)."

Similar view was taken by the Tribunal in other matters, M/s. Delhi Plastics v. Collector of Customs, Delhi, 1988 (36) E.L.T. 360 (Tribunal) = 1988 (12) ETR 144 (Tribunal) appeal No. C/3139 to 3143/87-A, order Nos. 137-141/88-A dated 11-2-

1988. Some demurrage would have been unavoidable. Fine in lieu of confiscation reduced. *M/s. Mirah Dekor, New Delhi v. Collector of Customs, New Delhi*, 1988 (35) E.L.T. 357 (Tribunal) appeal No. C/2902/87-A, order No. 195/88-A dated 10-3-1988. Goods remained under detention. Demurrage Rs. 85,000/-. Fine in lieu of confiscation reduced from Rs. 1,00,000/- to Rs. 50,000/-. *M/s. Godson Knitwear v. Collector of Customs, New Delhi*, appeal No. C/3742/87-A, order No. 229/88-A dated 7-4-1988. Goods under detention. No mala fides were established. Fine in lieu of confiscation of Rs. 2.5 lakhs reduced to Rs. 1000/-. Keeping in view the earlier judgments of the Tribunal cited above and the fact that the goods are under detention for the last three years, the appellant must have incurred a demurrage of about Rs. 5,46,000/-. we feel that the ends of justice require that personal penalties and fine in lieu of confiscation should be reduced. Accordingly, in the case of *M/s. Sriyansh Woollen Mills Pvt. Ltd.*, we reduce the penalty under Section 112 of the Customs Act, 1962 from Rs. 4 lakhs to rupees one lakh and the fine in lieu of confiscation from Rs. 3,50,000/- to Rs. 87,500/- and in the case of *M/s. KJiazan Industries Pvt. Ltd.*, we reduce the penalty from Rs. 3,50,000/- to Rs. 87,500/- and fine in lieu of confiscation from Rs. 1,10,000/- to Rs. 27,500/-. The revenue authorities are directed to give consequential effect to this order. Except for this modification in the order, the appeals are otherwise rejected."

37.5 I find that importer has contested that as they have relinquished the title over the goods, they should not be penalized. I find that this argument is not tenable as importer is not allowed to relinquish the title of the goods as per proviso to Section 23 (2) of the Customs Act, 1962. Further, I place reliance on the decision of Hon'ble Bangalore Tribunal rendered in the case of Commissioner of Customs, Cochin Vs. Enkay Textiles reported in 2009 (234) ELT 340 (Tri. Bang.) wherein it has been held inter alia as under:

"5. On a very careful consideration of the issue, we find that there is great substance in the Revenue's contentions. There is very clear evidence that the importer had mis-declared the value and description of the goods. So, even, if he had later relinquished the title to the goods, he cannot escape the penal liability. Therefore, the decision of the Commissioner (Appeals) to set aside the penalty is not correct. In our view, the Original Order needs to be restored. Therefore, we set aside the impugned order and restore the Order of the Addl. Commissioner, which imposed penalty on the respondents. Thus, we allow the Revenue's appeal in the above manner."

38. Whether, Penalty on Shri Alkesh A. Navodiya, Partner of M/s. SKA Cashew Processing LLP, Morbi should be imposed under Section 112(b) of the Customs Act, 1962?

38.1 I find that M/s. SKA Cashew Processing LLP, Morbi is Limited Liability Partnership firm having two Partners namely Shri Alkesh A. Navodiya and Shri Amitbhai B. Kapoor. The said both the partners have contested that penalty cannot be imposed on partners in a case partnership firm is penalized and cited the relevant decision. I find that both the partners have contravened the provisions of law enforceable in India and therefore, partners who are in-charge of its business or are responsible for the conduct of the same, cannot escape liability, unless it is proved by them that the contravention took place without their knowledge or they exercised all due diligence to prevent such contravention. I have already held that imported goods are liable for confiscation under the provisions of Section 111 of the Customs Act, 1962 and therefore, penalty is required to be imposed on partners for their act and omission as discussed in foregoing paras. To sustain my findings, I rely on the decision of Hon'ble Supreme Court rendered in the case of *Agarwal Trading Corporation v. Assistant Collector* reported in 1983 (13) E.L.T. 1467 (S.C.) the ratio of which is squarely applicable to present case. In the said case, it has been held as under:

"7. The second contention that because the firm is not a legal entity, it cannot be a person within the meaning of Section 8 of the Foreign Exchange Regulation Act or of Section 167(3), (8) and (37) of the Sea Customs Act, is equally untenable. There is of course, no definition of 'person' in either of these Acts but the definition in Section 2(42) of the General Clauses Act, 1897, or Section 2(3) of the Act of 1868 would be applicable to the said Acts in both of which 'person' has been defined as including any company or association or body of individuals whether incorporated or not. It is of course contended that this definition does not apply to a firm which is not a natural person and has no legal existence, as such clauses (3), (8) and (37) of Section 167 of the Sea Customs Act are inapplicable to the appellant firm. In our view, the explanation to Section 23C clearly negatives this contention. In that a company for the purposes in that section is defined to mean any body corporate and includes a firm or other association of individuals and a Director in relation to a firm means a partner in the firm. **The High Court was clearly right in holding that once it is found that there has been a contravention of any of the provisions of the Foreign Exchange Regulation Act read with Sea Customs Act by a firm, the partners of it who are in-charge of its business or are responsible for the conduct of the same, cannot escape liability, unless it is proved by them that the contravention took place without their knowledge or they exercised all due diligence to prevent such contravention.**"

38.2 Further, I find that ratio of the decision of Hon'ble High Court of Madras rendered in the case of *N. Chittaranjan v. Commissioner* — 2017 (350) E.L.T. 78 (Mad.) is squarely applicable to present case. In the said case, it has been held as under:

"8. The question of law raised in this appeal has already been answered in the abovesaid two judgments rendered by a Division Bench as well as Full Bench of Bombay High Court. In 2011 (272) E.L.T. 513 (Bom.) (DB), it has been held that for the purpose of imposing penalty, the adjudicating authority under Customs Act, 1962 may in an appropriate case impose a penalty both upon a partnership Firm as well as on the partners and whether the facts and circumstances of a case warrant imposition of penalty both on the Firm and its partners should be decided on the facts of each case. A perusal of the order-in-original dated 22-11-2010 would indicate that the factual finding has been recorded as to the evasion of law and after giving fair and reasonable opportunity to the concerned parties only, imposition of penalty was done. As rightly pointed out by the learned Standing Counsel appearing for the respondents, what was canvassed before the Appellate authority as well as the CESTAT was only with regard to the quantum of penalty and taking note of the said submission, it has been reduced.

9. In the considered opinion of the Court, in the light of the above cited judgments, penalty on the partner as well as the partnership Firm can be simultaneously imposed and of course, imposition of penalty both on the Firm and its partners, depends upon the facts of each case."

38.3 Further, to sustain my findings with regard to penalty on partners, I find that ratio of the decision of Hon'ble High Court of Bombay rendered in the case of *Amritlakshmi Machine Works v. Commissioner* reported in 2016 (335) E.L.T. 225 (Bom.) is squarely applicable. In the said case, it has been held as under:

"90. In regard to the main issue relating to the levy of simultaneous penalties a useful reference can also be made to a decision of the Division Bench of Kerala High Court in "India Sea Foods v. Collector of Customs and Central Excise, Cochin" reported in "1984 (16) E.L.T. 243 (DB)" (Writ Appeal No. 321 of 1975, dated 25

May, 1978). In dealing with the case of imposition of penalty on the firm as well as the managing partners it was held to be legal and valid. The Division Bench has made the following observations :-

"We do not see, and are unable to understand, why the firm and the partners thereof cannot both be adjudged guilty of contravention, or be subjected to a penalty, under the provisions of the Act. It is possible to find, as in this case, the firm guilty of an act or omission which renders the goods liable to confiscation, and at the same time to find the partners thereof guilty of abetment in the doing or omission of such act. It seems possible again to find the legal entity of a partnership liable for the act or contravention, and at the same time to hold the human agency through which it acts, also responsible for the same."

91. As regards the issue of application of Section 135(i)(a) of the Act to adjudication proceedings under Section 112(a) of the Act and more particularly to the partnership firm and its partners, pertinently, neither of the parties have urged that Section 135 can be read while applying Section 112(a) of the Act. Moreover as noted in paragraph 47(viii) above, the appellants have urged to the contrary. I am of the opinion that the legislature in its wisdom has worded Section 112(a) to include the firm and its partners as persons who would be liable for penalty to be levied, depending on the facts of the case. As noted above a conjoint reading of the provisions as contained in Chapter XIV shows that simultaneous penalty can be imposed on the firm and its partners, where the authorities on materials available to them are clear of the direct or indirect involvement of the partners in contravening the provisions of the Act. It is not in every case, penalty is required to be imposed simultaneously on the firm and its partners. It would obviously depend on facts and circumstances of each case. Before an order imposing a penalty is made, the authority is required to adopt a procedure as contemplated in the provisions wherein full opportunity can be availed by the person to prove that a penalty need not be imposed under Section 112(a) of the Act. The principle of mens rea is not attracted under Section 112(a) of the Act to impose penalty on those who can be said to abet the contravention. Section 112(a) is an independent provision. Section 135(i) (a) is a provision dealing with a criminal offence and thus, cannot have a relevance in penalty proceedings adopted under Section 112(a) of the Act, as the essential ingredient in respect of a criminal offence is mens rea. This is how Section 135(i)(a) specifically refers to a prior knowledge. Reading Section 135(i)(a) even remotely in the implementation of Section 112(a) would result into a legal absurdity and a violence to the provisions of Section 112(a) and defeat the clear intention of the legislature, as it would amount to incorporating a foreign ingredient or something which the legislature never intended. In the entire scheme of Chapter XIV of the Act which deals with "Confiscation of Goods and Conveyances and Imposition of Penalties", in the matter of imposing of penalties, the legislature has clearly left it to the wisdom of the executing agencies of course subject to the appropriate safeguards, and evaluation. In my opinion, a judicial interpretation which would further the intention of the legislature is to be adopted, if so, then an interpretation to read Section 135(i)(a) in Section 112(a) can never be contemplated as these are independent provisions having different objects. The former speaks of a criminal offence requiring the offence to be proved beyond reasonable doubt and the latter deals with a monetary penalty, to be imposed in departmental adjudication proceedings.

92. The sequel to the above discussion is that the first question is required to be answered in the affirmative, that is simultaneous penalties can be imposed on the firm and the partners under the Act and more particularly under Section 112(a) of the Act. However as the Act itself stipulates, the same would be subject to the parties proving that the contravention has taken place without their knowledge or despite exercise of all due diligence to prevent such contravention.

93. *As regards the second question, the decision of the Division Bench of this Court in "Textoplast Industries v. Additional Commissioner of Customs" reported in 2011 (272) E.L.T. 513 (Bom.) lays down the correct law in holding that it is permissible to impose penalty separately on partnership firm and the partners in adjudication proceedings under the Customs Act."*

38.4 I find that Shri Alkesh A. Navodiya, Partner of the Importer, as admitted in his statements dated 10.03.2023 and 17.04.2023, was actively involved in the import of the subject consignment in as much as he negotiated with the said overseas supplier for the said imports, resulting in importation of 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Tariff Value) imports and their documentation and therefore he was responsible for the said mis-declaration and concealment of 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Tariff Value) found concealed in guise of declared Raw Cashew Nuts in order to evade higher Customs Duty leviable on the imports of Areca Nuts. Further, I find that he also tried to mis lead the inquiry by saying that he intended to import only Raw Cashew Nut and that the said overseas supplier erroneously sent 15.04 MTs of Areca Nuts given the fact that the quantum of Areca Nuts found was 5 times the quantum of the Declared Raw Cashew Nut. I find that Shri Alkesh A. Navodiya has negotiated with the said overseas supplier for the said imports. Further, during his statement dated 10.03.2023, he has stated that during one Food Fare in Dubai/UAE in year 2018/2019, one Mr. Andy came in his contact and he remained in contact over phone/whatsapp and he stated that he had recently changed his mobile phone and he had not taken back up of his whatsapp. Thus, I find that Alkesh A. Navodiya tried to mis- lead the investigation. Further, he stated that by mistake, overseas supplier sent Areca Nut. I find that this plea is nothing but an afterthought. I find that Commercial Invoice is prepared by oversea supplier on 21.12.2022, The imported goods stuffed in Container No. CRSU1201710 has been Shipped on Board on 25.12.2022 as reported in Bill of Lading No. MAX/SUB/0332/2223 dated 25.12.2002 and Bill of Entry No.4556442 dated 08.02.2023 had been filed on 08.02.2023 by CHA M/s. Jayant & Co and detailed examination of the imported goods were carried out under Panchnama on 17.02.2023 and only after the mis-declaration found by the Revenue, the importer submitted E mail dtd. 06.03.2023 of overseas supplier. Thus, I find that after more than two months and that too, after detection by the Department, the importer sent a mail to overseas supplier and in response, the overseas supplier stated that it happened erroneously due to lack of knowledge of loading persons. Thus, it is nothing but an afterthought. Further, the overseas supplier in that E mail dated 06.03.2003, had informed the importer to send back the cargo, however, the importer neither returned the goods nor have submitted any further correspondence with oversea supplier regarding return of goods or any compensation/ refund of money. I also find that importer had also submitted the copy of E mail dated 02.03.2023 sent to HDFC Bank for recalling the payment of import consignment. From the perusal of said E mail dated 02.03.2023, it is observed that the HDFC bank had specifically stated to the importer that "Fund recall depending upon overseas bank confirmation as well as customer confirmation from overseas party. So, requested to be in contact with oversea party to refund against advance payment sent by you." I find that except the aforesaid E mail no evidence showing their bonafide and further efforts made to either get the refund or to return the goods have been produced by the importer. Further, I have already discussed at **para 37.4 that in the clandestine activities like smuggling, department cannot be expected to prove the charge to the guilt or beyond all reasonable doubt. Guilt of an accused can be found on preponderance of probabilities. Thus, I find that by the act of Shri Alkesh A. Navodiya, Partner of M/s. SKA Cashew Processing LLP, Morbi, imported goods vide Bill of Entry No. 4556442/08.02.2023 is held liable for confiscation under Section 111 of the**

Customs Act, 1962 and accordingly, he is liable for penalty under Section 112 (b)(i) of the Customs Act, 1962.

As already discussed in foregoing paras that the mis declared imported goods viz. 'Areca Nut' is prohibited goods in terms of the provisions of Section 3 (1)(zz) and Section 25 of Food Safety and Standards Act, 2006 read with Section 2(33) of the Customs Act, 1962, therefore, Shri Alkesh A. Navodiya, is liable for penalty under Section 112 (b)(i) of the Customs Act, 1962.

39. Whether, Penalty on Shri Alkesh A. Navodiya, Partner of M/s. SKA Cashew Processing LLP, Morbi should be imposed under Section 114AA of the Customs Act, 1962?

39.1 I find that Shri Alkesh A. Navodiya, Partner of M/s. SKA Cashew Processing LLP, Morbi has dealt with import of 'Areca Nut' in guise of 'Raw Cashew Nut'. I find that Shri Alkesh A. Navodiya, Partner of the Importer, as admitted in his statements dated 10.03.2023 and 17.04.2023, was actively involved in the import of the subject consignment in as much as he negotiated with the said overseas supplier for the said imports, resulting in importation of 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs1,13,16,784/- (Tariff Value) imports and their documentation and therefore he was responsible for the said mis-declaration and concealment of 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Tariff Value) found concealed in guise of declared Raw Cashew Nuts in order to evade higher Customs Duty leviable on the imports of Areca Nuts. I find that importer has submitted copy of Purchase Order No. SKAEPO 154 dated 07.11.2022 with M/s.CV Sumatera Medan Group, JL Pancing V Lingk III, Besar Medan Labuhan, Sumatera Utara, Indonesia for import of 18 MT Raw Cashew Nut alongwith copy of Commercial Invoice No. 008/INV-SMG/XII/2022 dated 21.12.2022, copy of Packing list Number 008/INV-SMG/XII/2022 dated 21.12.2022, copy of Bill of Lading No. MAX/SUB/0332/2223 dated 25.12.2023 etc. The Copy of Commercial Invoice No. 008/INV-SMG/XII/2022 dated 21.12.2022, copy of Packing list Number 008/INV-SMG/XII/2022 dated 21.12.2022 are unsigned by the overseas supplier. Further, on perusal of the Purchase Order No. SKAEPO 154 dated 07.11.2022 with M/s.CV Sumatera Medan Group, JL Pancing V Lingk III, Besar Medan Labuhan, Sumatera Utara, Indonesia for import of 18 MT Raw Cashew Nut, it is observed that importer has specifically ordered for 18 MT of " Raw Cashew Nuts, HS Code 08013100 in 225 Bags and Price USD/MT CNF Visakhapatnam. Thus, I find that the importer had quoted the Price CNF Visakhapatnam whereas the imported goods arrived at Mundra Port and Bill of Entry was filed at ICD, Khodiyar. I find that the distance between Visakhapatnam situated in Andhra Pradesh and Mundra situated in Gujarat is approx. 2113 Nautical Miles and there is considerable difference of Freight for Mundra and Visakhapatnam from the loading port Surabaya, Indonesia. Thus, I find that to colour their transaction as genuine, importer has prepared the Purchase Order. Further, I find that Shri Alkesh A. Navodiya has negotiated with the said overseas supplier for the said imports. Further, during his statement dated 10.03.2023, he has stated that during one Food Fare in Dubai/UAE in year 2018/2019, one Mr. Andy came in his contact and he remained in contact over phone/whatsapp and he stated that he had recently changed his mobile phone and he had not taken back up of his whatsapp. Thus, I find that inspite of having the knowledge of actual goods imported by them, with clear intent to evade the payment of Customs Duty, mis declared the goods. These acts of commission and omissions on the part of Shri Alkesh A. Navodiya have rendered the subject Import Goods liable to confiscation under Section 111 of the Customs Act, 1962 and Shri Alkesh A. Navodiya is liable to penalty under Section 114AA of the Customs Act, 1962. Further, I rely on the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New

Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it is held that "Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority".

40. Whether penalty on Shri Amitbhai B. Kapoor, Partner of M/s. SKA Cashew Processing LLP, Morbi should be imposed under Section 112(b) of the Customs Act, 1962?

40.1 I find that Shri Amitbhai B. Kapoor, Partner of the Importer, was the Person responsible for complying with the conditions of License Number 10017021002612 dated 13.08.2022 obtained from Food Safety and Standards Authority of India, (fssai) according to which import of food items is permitted subject to fulfilment of conditions of Food Import Regulations 2021 read with Foods Safety and Standards Act 2006. However, the imported 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Tariff Value) found concealed in guise of declared Raw Cashew Nuts have been found as "Unsafe Foods" as defined in Section 3 (1)(zz) of the Food Safety and Standards Act, 2006. I find that the CRCL, Vadodara, vide their Test Result No. RCL/AH/IMP/4321/03.03.2023 in respect of 'Areca nut' has reported that "the sample in the form of whole betel nuts having insect and mould infested nuts is 20.3% by wt. and not fit for human consumption. Hence the same is liable to be termed as "Unsafe Foods" as defined in Section 3 (1)(zz) of the Food Safety and Standards Act, 2006. Therefore, the said import had been done in contravention of the provisions of Section 25 of the Food Safety and Standards Act, 2006. Section 2(33) of the Customs Act, 1962 defines the word, "prohibited goods" which 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. Thus, I find that 'Areca Nut' which are found unfit for human consumption is prohibited goods. Thus, I find that acts of commission and omissions on the part of Shri Amitbhai B. Kapoor have rendered the subject Import Goods liable to confiscation under Section 111(o) of the Customs Act, 1962 and Shri Amitbhai B. Kapoor is liable to penalty under Section 112 (b)(i) of the Customs Act, 1962.

As already discussed in foregoing paras that the mis declared imported goods viz. 'Areca Nut' is prohibited goods in terms of the provisions of Section 3 (1)(zz) and Section 25 of Food Safety and Standards Act, 2006 read with Section 2(33) of the Customs Act, 1962, therefore, Shri Amitbhai B. Kapoor is liable for penalty under Section 112 (b)(i) of the Customs Act, 1962.

41. Whether penalty on Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company, 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad-380004 should be imposed under Section 112(b) of the Customs Act, 1962?

41.1 I find that Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company (Customs Broker), admittedly involved himself in filing of subject Bill of Entry resulting in importation of undeclared 15.3221 MT(Gross)/15.040 Mt (Net) of Areca Nut(Betel Nut) were found concealed in guise of Raw cashew Nut along with 3.1225 MT(Gross)/3.040 MT(Net) of Raw Cashew Nut. He was responsible for ascertaining genuineness of the Importer and goods being imported by the Importer. Thus, he failed to fulfill the obligation of a Customs Broker as envisaged under Regulation 10 of the Customs Brokers Licensing Regulations, 2018 in as much as he failed to ascertain the genuineness of the subject imported goods resulting into importation of mis-declared 15.04 MTs of Areca

Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Tariff Value) found concealed in guise of declared Raw Cashew Nuts. Thus, I find that acts of commission and omissions on the part of Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company have rendered the subject Import Goods liable to confiscation under Section 111 of the Customs Act, 1962 and therefore, Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company is liable to penalty under Section 112 (b)(i) of the Customs Act, 1962

As already discussed in foregoing paras that the mis declared imported goods viz. 'Areca Nut' is prohibited goods in terms of the provisions of Section 3 (1)(zz) and Section 25 of Food Safety and Standards Act, 2006 read with Section 2(33) of the Customs Act, 1962, therefore, Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company is liable for penalty under Section 112 (b)(i) of the Customs Act, 1962.

42. Whether penalty on Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company (Customs Broker), 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad-380004 should be imposed under Section 112(b) of the Customs Act, 1962?

42.1 Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company (Customs Broker), failed to supervise their G-Card Holder Shri Harbhajan Singh Bansal resulting in involvement of Shri Harbhajan Singh Bansal in filing of subject Bill of Entry resulting in importation of undeclared 15.3221 MT(Gross)/15.040 Mt(Net) of Areca Nut(Betel Nut) which were found concealed in guise of Raw cashew Nut along with 3.1225 MT(Gross)/3.040 MT(Net) of Raw Cashew Nut. He was responsible in exercising such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment as envisaged in Regulation 13(12) of the Customs Brokers Licensing Regulations, 2018 read with Regulation 10 of the said Regulations. Thus, I find that acts of commission and omissions on the part of Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company have rendered the subject imported goods liable to confiscation under Section 111 of the Customs Act, 1962 and therefore, Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company is liable to penalty under Section 112 (b) (i) of the Customs Act, 1962.

As already discussed in foregoing paras that the mis declared imported goods viz. 'Areca Nut' is prohibited goods in terms of the provisions of Section 3 (1)(zz) and Section 25 of Food Safety and Standards Act, 2006 read with Section 2(33) of the Customs Act, 1962, therefore, Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company is liable for penalty under Section 112 (b)(i) of the Customs Act, 1962.

43. In view of my findings in the foregoing paras, I pass the following order-

:: ORDER ::

(i) I order for absolute confiscation of goods viz. 15.04 MTs of Areca Nuts classifiable under Customs Tariff Heading No.08028010, valued at Rs.1,13,16,784/- (Rupees One Crore, Thirteen Lakh, Sixteen Thousand, Seven Hundred and Eighty Four only) (Tariff Value) seized vide Panchnama and Seizure Memo both dated 17.02.2023, under the provisions of Section 111(i), Section 111(m) and Section 111(o) of the Customs Act, 1962.

(ii) I order for confiscation of goods viz. 3.04 MT of Raw Cashew Nuts classifiable under Customs Tariff Heading No.08013100, valued at Rs.3,55,837/- (Rupees Three Lakh, Fifty Five Thousand, Eight Hundred and Thirty Seven only) along with their packages(i.e. 226 Bags : 188 bags used for Areca Nuts and 38 Bags used for Raw Cashew Nuts) seized vide Panchnama and Seizure Memo both dated 17.02.2023, under the Provisions of Section 111(i), Section 111(m), Section 118(a) and Section 119 of the Customs Act, 1962. However, I give M/s. SKA Cashew Processing LLP, Morbi the option to redeem the above goods under Section 125 of the Customs Act, 1962, on payment of redemption fine of Rs.75,000/- (Rs. Seventy Five Thousand only).

(iii) I confirm the demand of Duty of Customs amounting to Rs.1,36,79,425/- (Rupees One Crore, Thirty Six Lakh, Seventy Nine Thousand, Four Hundred and Twenty Five only) as detailed in Table-T1 of the Show Cause Notice in terms of the provisions of Section 28(4) of the Customs Act, 1962.

(iv) I order to appropriate the amount of Rs.22,53,955/- (Rs.2,53,955/- + Rs.20,00,000/-) (Rupees Twenty Two Lakh, Fifty Three Thousand, Nine Hundred and Fifty Five Only) already paid by M/s. SKA Cashew Processing LLP, Morbi and order to adjust the same towards the duty liability of Rs.1,36,79,425/- confirmed at (iii) above.

(v) I order to charge and recover interest from M/s. SKA Cashew Processing LLP, Morbi, on the confirmed Duty at (iii) above under Section 28AA of the Customs Act, 1962.

(vi) I impose penalty of Rs.1,36,79,425/- (Rupees One Crore, Thirty Six Lakh, Seventy Nine Thousand, Four Hundred and Twenty Five only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (iii) above under Section 114A of the Customs Act, 1962 on M/s. SKA Cashew Processing LLP, Morbi. However, as per proviso to Section 114A of the Customs Act, 1962, if the duty and interest as confirmed above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per the first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within said period of 30 days.

(vii) I refrain from imposing penalty on M/s. SKA Cashew Processing LLP, Morbi under Section 112 (a) of the Customs Act, 1962 in view of the discussions at para 37.2 supra.

(viii) I impose a penalty of Rs.50,00,000/- (Rs. Fifty Lakh only) under Section 112 (b)(i) of Customs Act, 1962 on Shri Alkesh A.Navodiya, Partner of M/s. SKA Cashew Processing LLP, Morbi.

(ix) I impose a penalty of Rs.25,00,000/- (Rs. Twenty Five Lakh only) under Section 114AA of the Customs Act, 1962 on Shri Alkesh A. Navodiya, Partner of M/s. SKA Cashew Processing LLP, Morbi.

(x) I impose a penalty of Rs.50,00,000/- (Rs. Fifty Lakh only) under Section 112 (b) (i) of Customs Act, 1962 on Shri Amitbhai B. Kapoor, Partner of M/s. SKA Cashew Processing LLP, Morbi.

(xi) I impose penalty of Rs.5,00,000/- (Rs. Five Lakh only) under Section 112 (b) (i) of the Customs Act, 1962 on Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company, 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad-380004.

(xii) I impose penalty of Rs.5,00,000/- (Rs. Five Lakh only) under Section 112 (b)(i) of the Customs Act, 1962 on Shri Mukesh Vithaldas Patel, Partner and F-

Card holder of M/s. Jayant & Company (Customs Broker), 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad-380004.

44. This order is issued without prejudice to any other action that may be taken under the 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.

45. The Show Cause Notice VIII/10-06/Commr./O&A/2023-24 dated 07.06.2023 is disposed off in above terms.


(Shiv Kumar Sharma)
Principal Commissioner

DIN:20240371MN0000999C36

F.No. VIII/10-06/Commr./O&A/2023-24

Dated:28.03.2024

BY SPEED POST:

To,

1. **M/s. SKA Cashew Processing LLP**, Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi.
2. **Shri Alkesh A.Navodiya, Partner of M/s SKA Cashew Processing LLP**, Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi.
3. **Shri Amitbhai B. Kapoor, Partner of M/s. SKA Cashew Processing LLP**, Morbi, Partner of M/s SKA Cashew Processing LLP,, Survey No. 124/P2, Pipaliya Char Rasta, Pipaliya, Morbi.
4. **Shri Harbhajan Singh Bansal, G-Card holder of M/s. Jayant & Company**, 308, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad-380004.
5. **Shri Mukesh Vithaldas Patel, Partner and F-Card holder of M/s. Jayant & Company**, B Block, Sumel-9 Building, Dudheswar Road, Shahpur, Ahmedabad-380004.

Copy to :

- (i) The Pr. Chief Commissioner of Customs, Gujarat Zone, Ahmedabad for information please.
- (ii) The Additional Commissioner of Customs (TRC), Ahmedabad for information please.
- (iii) The Deputy Commissioner of Customs, ICD, Khodiyar, Ahmedabad for records, for information, further necessary action with regard to the disposal of the seized goods and information sharing with Food Safety and Standards Authority of India, (fssai).
- (iv) The Assistant Commissioner of Customs(Prev.), HQ, Ahmedabad for information please.
- (v) The System In-Charge, Customs, HQ., Ahmedabad in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
- (vi) Guard File.