



**OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS,  
HAZIRA PORT, HAZIRA BYPASS ROAD, SURAT- 394270**  
CUSTOM HOUSE, ADANI HAZIRA PORT, HAZIRA BY-PASS ROAD,  
सीमा शुल्क भवन, अदानी हजीरा पोर्ट, हजीरा बाई-पास रोड  
CHORIYASHI AT & POST HAZIRA - 394270.  
चोरासी पोर्ट-हजीरा-३९४२७०  
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**PREAMBLE**

A	फाइल संख्या / File No.	:	GEN/ADJ/ADC/1254/2025-AH-PORT-HZR-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस नं. और तारीख/Show Cause Notice no. and date	:	F.No. RIL/Inv/Hazira/Export/2022-Part-IV dated 14.10.2024
C	मुल आदेश संख्या / Order-In-Original No.	:	<b>04/ADC/SRV/HAZIRA (EXPORT)/2025-26</b>
D	द्वारा पारित आदेश /ORDER PASSED BY	:	<b>SHREE RAM VISHNOI</b> Additional Commissioner of Customs Hazira Port
E	आदेश तिथि / Date of Order	:	<b>08.08.2025</b>
F	जारी करने की तारीख /Date of Issue	:	<b>08.08.2025</b>
G	DIN Number	:	20250871MN0000212062
H	नोटिस-प्राप्तकर्ता का नाम औरपता /Name and Address of Noticee	:	<p>1. <b>M/S. RELIANCE INDUSTRIES LTD., (IEC NO. 0388066415)</b>, SURVEY NO. 9/1/1/1, SILVASSA-NAROLI MAIN ROAD, OPP. ATHAL WEIGH BRIDGE, SILVASSA 396230</p> <p><b>M/S. RELIANCE INDUSTRIES LTD.</b> (UT OF DADRA &amp; NAGAR HAVELI AND DAMAN &amp; DIU), RO: 3RD FLOOR, MAKERS CHAMBER IV, 222, NARIMAN POINT, MUMBAI-400021</p> <p>2. <b>SHRI PRASANNA VASANT MUNJE</b>, VICE PRESIDENT-SCM (SUPPLY CHAIN MANAGEMENT) OF M/S. RELIANCE INDUSTRIES LIMITED, SURVEY NO. 9/1/1/1, SILVASSA-NAROLI MAIN ROAD, OPP. ATHAL WEIGH BRIDGE, SILVASSA 396230</p> <p><b>SHRI PRASANNA VASANT MUNJE</b>, RO: 3RD FLOOR, MAKERS CHAMBER IV, 222, NARIMAN POINT, MUMBAI-400021</p> <p>3. <b>M/S. SOHAM LOGISTICS PRIVATE LIMITED</b>, 36, TIRUPATI ROW HOUSE, MORA VILLAGE, HAZIRA, TALUKA- CHAURASI, DIST- SURAT PIN-394510</p> <p>4. <b>M/S. HERMES TRANSPORT SOLUTION</b>, TRANSPORTER, OFFICE NO. 6, PLOT NO. 113/114, VISHNU NAGAR SOCIETY, ICHCHHAPOR-3, SURAT, GUJARAT PIN-394510</p> <p>5. <b>M/S. MSC AGENCY (INDIA) PVT. LTD.</b>, 210-213, MARVELLA BUSINESS HUB, OPP. PAL RTO OFFICE, PAL- HAZIRA ROAD, SURAT-395009</p> <p>6. <b>M/S. SEABRIDGE MARINE AGENCIES PRIVATE LIMITED</b> (AGENT OF M/S HMM SHIPPING INDIA PRIVATE LIMITED) AT HAZIRA, 301, 4TH FLOOR,</p>

	<p>MILESTONE FIESTA, NEAR MADHUBAN CIRCLE, ADAJAN, SURAT- 395009</p> <p>7. <b>MOHMAD YASHIR S/O MOHMAD NASIR KURESHI</b>, VILLAGE MARIADIR, THANA DUMANGANJ, DISTRICT PRAYAGRAJ (UP)</p> <p>8. <b>NILESH YADAV</b> WRONG NAME HOLDER SUDHIRKUMAR GAYAPRASAD SING, VILL. SHIVCHARANPURVA POST NYOTL TALUKA THANA RUDOLL, DIST AYODHYA (UP)</p> <p>9. <b>SANDIPGIRI</b> S/O DHIRAJGIRI GOSWAMI, TEKARAWALA FALIYU, VARSOLA VILLAGE, T-NADIYAD DISTRICT KHEDA ORIGINAL NATIVE SUKHPARGAM, IN SUKHNAH MAHADEV TEMPLE, TALUKA JASDAN DISTRICT RAJKOT</p> <p>10. <b>MUKESHBHAI SHANTILALJI DOSHI</b>, JAIN BY CASTEH/804, RIXIVIHAR TOWNSHIP, ASTIK PARTY PLOT, PARWATPATIA SURAT CITY ORIGINAL NATIVE VILLAGE PRATAPGADH, GOPALGANJ MAHOLLOW, OPP. CHANDRAPRABHU JAIN TEMPLE, T AND D. PRATAPGADH (RAJASTHAN)</p> <p>11. <b>NARESHBHAI BABUBHAI BHINGRALIA</b>, HOUSE NO.0/1104, SUMERU SKY, MOTA VARACHHA, NEAR S.B.CIRCLE, SURAT CITY ORIGINAL NATIVE VILLAGE DHOLA, T-UMRADA D-BHAVNAGAR</p> <p>12. <b>KEYUR JAYANTIBHAI PATEL</b>, B/204, VERONA RESIDENCY, HAREKRUSHNA CAMPUS, VRAJ CHOWK, SARTHANA JAKATNAKA SURAT CITY; ORIGINAL NATIVE: VILLAGE GOVINDPURA, TALUKA KADI DISTRICT MAHESANA AND TATA NAGAR SOCIETY, MEGHNAI NAGAR AHMEDABAD</p> <p>13. <b>MOHMAD YAKUB KHURSHID PATHAN</b>, 7/1228, Varsi TEKARA, HODI BUNGALOW, NEAR GUJARATI SCHOOL, SAYEDPURA, SURAT CITY ORIGINAL NATIVE VILLAGE BAGNAGAR, TALUKA DISTRICT BASTI (UP)</p> <p>14. <b>VIJAY BHUPATBHAI GOHIL</b>, C/101, ASHWAMEGH VILA APARTMENT, YOGI CHOWK, SURAT CITY ORIGINAL NATIVE VILLAGE KUMBHANGAM, TALUKA MAHUWA DISTRICT BHAVNAGAR</p> <p>15. <b>MOHMAD ALI HUSAINBHAI NAKHUDA</b>, 5/132 LIMDA OLI STREET, RANDER, BHESAN, SURAT CITY</p> <p>16. <b>MOHSIN IMTIYAZ MALEK</b>, 73, GREEN PARK, JAHANGIRPURA, BHESAN, SURAT CITY</p> <p>17. <b>SAHIB MOHMAD JALIL</b>, 585, HIMMAT NAGAR ZUPADPATTI, SALT PLANT ROAD, NEAR VIDHYALANKAR, MUMBAI-400037</p> <p>18. <b>JUNED AHMED JUBER AHMED</b>, SHIVARA HENCY PARJI MADHANTA PRATAPGADH 230402</p>
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	<p>19. <b>MOHAMMAD SHARUKKHAN MOHAMMAD LIYAKATALIKHAN</b>, CHANDNI NAGAR, S. M. ROAD, NEAR SHARDA MOBILE SHOP, MUMBAI 400037</p> <p>20. <b>SURAJKUMAR SURENDRAKUMAR GAUD</b>, SANDORA, HARIHARGANJ, RANI GANJ, PRATAPGADH 230304</p> <p>21. <b>RAHUL</b> NAME PERSON (CAME TO BREAK THE SEAL OF THE CONTAINER WHOSE FULL NAME IS NOT KNOWN), SHIVARA HENCY PARJI MADHANTA PRATAPGADH 230402</p>
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1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

2. इस आदेश से अपने को व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद- 380009 के यहाँ अपील कर सकता है। इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, 1962 के अंतर्गत फार्मस सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोट की स्टाम्प लगा होना चाहिए।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeal), Rules, 1962. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.

3. अपील के साथ निम्नलिखित चीजें संलग्न जाएं।

3. The following documents must be enclosed alongwith the appeal.

(क) अपील की प्रति, तथा (a) A copy of the appeal and

(ख) आदेश यह प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोट फी स्टाम्प लगा हो।

(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

4. अपीलीय ज्ञापन के साथ शुल्क भुगतान / जुर्माना / अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।

5. Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 129 of the Customs Act, 1962.

6. अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क (अपील) नियम, 1982 और सिस्टेट प्रक्रिया (प्रोसीजर) नियम, 1982 के सभी नियमों का पूरा पालन हुआ है।

7. While submitting the Appeal, the Customs (Appeals) Rules, 1982 should be adhered to in all respects.

8. इस आदेश के खिलाफ आयुक्त (अपील) के समक्ष अपील करते समय, शुल्क या शुल्क और जुर्माना विवाद या दंड में हैं, जहाँ अकेले दंड विवाद में है, जहाँ विवाद या दंड, में मांग की हैं उस विवाद की रकम के 7.5% के भुगतान करना होगा।

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

#### **BRIEF FACTS OF THE CASE:-**

**M/S. RELIANCE INDUSTRIES LIMITED**, Survey No. 9/1/1/1, Silvassa-Naroli Main Road, Opp. Athal Weigh Bridge, Silvassa (UT of Dadra & Nagar Haveli and Daman & Diu), 396230 (IEC No 0388066415) (here-in-after referred to as "the Exporter" or "M/s RIL") having registered office at 3<sup>rd</sup> floor, Makers Chamber IV, 222, Nariman Point, Mumbai-400021, India is a regular exporter and is exporting different products from different locations of their group from Hazira Port, Hazira.

**2.** The exporter had filed shipping Bill No. 6171932 dated 15.12.2022, through CHA M/s Soham Logistics Pvt. Ltd., (container no. TGCU5002704) for the export of Polyester Texturized Yarn (GRY 0075/034/1 TX NIM 1 SD) under Customs invoice no. A822002118 dated 14.12.2022 having declared Gross weight of 23359.855 Kgs, Net Weight of 21844.500 Kgs, CIF Value USD \$ 30363.86 (F.O.B. value Rs. 2324633.61) and No. of packages as 640 Cartons. The container was selected by the EDI RMS system for examination of the packages Nos. 21, 46, 74, 85, 114, 137, 143, 163, 185, 192, 225, 287, 375, 421, 481, 523, 537, 567, 600 & 624. Examination of the container No. TGCU5002704/40 ft was carried out in presence of Shri Vinod Kumar Mishra, CHA-G card holder of M/s Soham Logistics Pvt. Ltd. on 17.12.2022. During the examination of the above said container, RFID/e-seal seal bearing no. iTEK02117581 and shipping line seal no. FX22353488 were found placed on the container. Thereafter, both the seals were cut down. During cutting the seals, it was observed that the above said e-seals were glued. On opening of the gates of the container, it was found that the container is stuffed with 02 heaps of old bags of cement containing bajri/balu/mitti at the entrance and back end of the container.

**3.** The Exporter vide letter dated 17.12.2022 submitted that they had come to know that container no. TGCU5002704, which was stuffed at their Silvassa plant had been examined by the Customs at Hazira port and in the said container, cargo was missing and it was having soil or some other things. They further enclosed list of 96 containers stuffed at their Silvassa plant, which were lying at Hazira Port and requested the same to be re-opened for examination. On their request, the goods of identical description in Shipping Bills of the same exporter stuffed in other 77 containers which were lying at the terminal were called for in the yard for examination and were examined on 19.12.2022, 20.12.2022 and on 21-22.12.2022 under proper panchnama.

#### **4. EXAMINATION OF THE CONTAINERS:**

**4.1** Thereafter, examination of four containers (details as per Examination Report dated 19.12.2022) were carried out on 19.12.2022 in the presence of the officers of the Customs, representatives of CHA, representative of the exporter and representative of the custodian of Hazira Port, Hazira. During the examination, respective RFID/e-seals and Shipping line seals were found placed on the container. The declared goods in the respective Shipping Bills was Polyester Texturized Yarn/ Polyester Filament Yarn. Thereafter, both the seals were cut down and the gates of the containers were opened. After opening of the gates, all the containers were tallied and marks, no. and description was matched with the declaration. The containers were found to be stuffed with goods as declared in respective Shipping Bills i.e., Polyester Texturized Yarn/ Polyester

Filament Yarn. Thereafter, containers were sealed with Customs Seal in the presence of all the representatives.

**4.2** Further, examination of 71 containers (details as per Examination Report dated 20.12.2022) were carried on 20.12.2022 in the presence of the officers of the Customs, representatives of CHA, representative of the exporter and representative of the Hazira Port, Hazira. The declared goods in the respective Shipping Bills was Polyester Texturized Yarn/ Polyester Filament Yarn. During the examination, both the Customs Seal and Shipping Line seal of each container were cut one by one and the gates of the containers were opened. After opening of the gates, all the containers except 4 containers were found in order in respect of the goods declaration, marks, no. and description. Out of 71 containers, 67 containers were found to be stuffed with goods as declared in the respective Shipping Bills i.e., Polyester Texturized Yarn/ Polyester Filament Yarn. However, in the four containers, as detailed below, old bags containing bajri/sand was found.

Sr No	Shipping Bill No	Shipping Bill Date	Description of the goods declared as per the documents	F.O.B Value (In RS.)	Container no.	Actual goods found
1	6071108	11.12.2022	Polyester/Texturized Yarn	2224546.88	MSDU5549117	Bajri/Sand in gunny bags
2	6105950	13.12.2022	Polyester/Texturized Yarn	2545275.52	MSMU8595365	Bajri/Sand in gunny bags
3	6129161	13.12.2022	Polyester/Texturized Yarn	2432009.97	TGBU7940595	Bajri/Sand in gunny bags
4	6194666	16.12.2022	Polyester/Texturized Yarn	3082798.10	MSMU5705448	Bajri/Sand in gunny bags

After examination, all the Containers were sealed with the Customs Seal in the presence of all the representatives and panchas.

**4.3** A Panchnama dated 21-22.12.2022 was drawn at Adani Hazira Port Pvt. Ltd., Hazira, Surat for examinations of the containers of M/s. RIL. During the Panchnama proceedings, a total of 78 containers were examined. The 78 containers are inclusive of 76 containers examined also under examination report 17.12.2022, 19.12.2022 and 20.12.2022. During the Panchnama proceedings, 71 containers were found to be stuffed with declared goods i.e., Polyester Texturized Yarn/Polyester Filament Yarn, the details of which is mentioned in Annexure-'A' attached to the above mentioned Panchnama. However, **in 07 containers**, old bags were found containing Bajri/Sand (46.28 MTs), the details of which is mentioned in Annexure-'B' attached to the above mentioned Panchnama dated 21-22.12.2022. During the Panchnama proceedings, samples were drawn from seven containers, wherein mis-declared goods have been found. The mis-declared goods i.e. "Bajri/Sand" as found in the above mentioned seven containers were detained under the provisions of Customs Act, 1962 and were handed over to the Yard Supervisor, Adani Hazira Port Pvt. Ltd, Hazira, Surat for safe custody under Supratnama dated 22.12.2022 with direction not to dispose off, remove or part with or

otherwise deal with the above said detained goods in any manner without the prior written permission of the Deputy Commissioner of Customs (Export), Adani Hazira Port. The above mentioned mis-declared goods i.e., "Bajri/Sand" as found in the above mentioned seven containers and as detained under the provisions of Customs Act, 1962 was seized vide Seizure Memo dated 29.12.2022. The value of the seized goods was ascertained to be Rs. 46280/- (Rupees Forty Six Thousand Two Hundred and Eighty) at the rate of Re. 1/- per Kg. The details of the said 07 containers (*found misdeclared during the panchnama proceedings dated 21/22.12.2022, including 4 containers enlisted above and first container examined on 17.12.2022*) are as under:

Sr. No.	Shipping Bill Bo.	Date	Container No.	FOB Value Rs.	No. of bags found	Remarks
1	6171932	15.12.23	TGCU5002704	2324633.61	190	Found old bags containing Bajri/Sand
2	6071108	11.12.22	MSDU5549117	2224546.88	158	
3	6105950	13.12.22	MSMU8595365	2545275.52	171	
4	6129161	13.12.22	TGBU7940595	2432009.97	155	
5	6194666	16.12.22	MSMU5705448	3082798.10	201	
6	6100416	12.12.22	MSMU4471710	2108195.40	128	
7	6129167	13.12.22	MSMU7439347	2432009.97	179	

**4.4** All the seven samples drawn vide Panchnama dated 21-22.12.2022 were sent to CRCL, Vadodara vide letter Test Memo dated 27.12.2022 to ascertain as under:-

Sample No	Shipping Bill No/Date	Description of goods	Container no.	Purpose of the test
A-1	6171932 dated 15.12.2022	Appears to be Bajri/Sand	TGCU5002704	1. To ascertain whether the sample is Bajri/Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand 4. To suggest the CTH of the sample
B-1	6071108 dated 11.12.2022	Appears to be Bajri/Sand	MSDU5549117	1. To ascertain whether the sample is Bajri/Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand 4. To suggest the CTH of the sample
C-1	6105950 dated 13.12.2022	Appears to be Bajri/Sand	MSMU8595365	1. To ascertain whether the sample is Bajri/Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand 4. To suggest the CTH of the sample

D--1	6129161 dated 13.12.2022	Appears to be Bajri/Sand	TGBU79405 95	1. To ascertain whether the sample is Bajri/Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand 4. To suggest the CTH of the sample
E-1	6194666 dated 16.12.2022	Appears to be Bajri/Sand	MSMU57054 48	1. To ascertain whether the sample is Bajri/Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand 4. To suggest the CTH of the sample
F-1	6100416 dated 12.12.2022	Appears to be Bajri/Sand	MSMU44717 10	1. To ascertain whether the sample is Bajri/Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand 4. To suggest the CTH of the sample
G-1	6129167 dated 13.12.2022	Appears to be Bajri/Sand		1. To ascertain whether the sample is Bajri/Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand 4. To suggest the CTH of the sample

**4.5** The Chemical Examiner, Gr-II, CRCL, Vadodara submitted his report, dated 11.01.2023, which is as under:-

Sample No	Report submitted by CRCL
A-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of aluminium, calcium & Iron. It is other than sand.
B-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of aluminium, calcium & Iron. It is other than sand.
C-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of aluminium, calcium & Iron. It is other than sand.
D-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of aluminium, calcium & Iron. It is other than sand.
E-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of aluminium, calcium & Iron. It is other than sand.
F-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of aluminium, calcium & Iron. It is other than sand.

G-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of aluminium, calcium & Iron. It is other than sand.
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## 5. **INVESTIGATION PROCEEDINGS:-**

**5.1** Vide E-mail dated 21.12.2022, Shipping Lines i.e., (i) M/s. MSC Agency (I) Pvt. Ltd, (ii) M/s. Hyundai Merchant Marine and (iii) M/s CMA were informed that an inquiry had been initiated against the exporter and some container had already sailed from Hazira port and were requested to track the above containers and alight at nearest Indian port under intimation to Hazira Customs. Vide the above said e-mail, a list of 16 containers were attached, the details as under:-

MSMU8255508	MSMU8803936	MSMU7073812	TLLU8728719
MSDU8689257	MSMU8001503	TRHU5144550	TRHU7692240
CAAU5119305	TGBU9876448	MSMU8478630	KOCU5198256
CAIU7634457	MSMU6580685	CMAU5029146	CMAU4649097

**5.2** Vide email dated 22.12.2022, Hazira Customs informed Mundra Customs that MSC Shipping had traced five (05) containers and all were held at Mundra Port. The details of the Containers are as under:-

MSMU8255508	MSMU8803936	MSMU7073812
TLLU8728719	MSMU8001503	

**5.3** It was further informed to Mundra Customs that M/s. CMA Shipping line had also traced two (02) containers and were held at Mundra port, the details of which are as under:-

CMAU4649097	CMAU5029146
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**5.4** During tracking, it came to know that 7 containers may be off board at Mundra Port. Hence, vide email dated 21.12.2022, Mundra Customs was requested to hold the containers. Mundra Customs was further requested for examination of above mentioned 07 containers held at Mundra Port under Panchnama in the presence of CHA of M/s. RIL.

**5.5** M/s. Hyundai Merchant Marine informed vide mail dated 22.12.2022 that Container No. KOCU5198256 was loaded from Kattupalli to BRNVT, Navegantes, Brazil on the vessel MV Hyundai privilege on 20.12.2022 and that container was on transit to final destination. It was further informed by them that this container would reach BRNVT, Navegantes, Brazil on 14.01.2023.

**5.6** Vide e-mail dated 23.12.2022, M/s. MSC Agency (India) Private Limited informed that 05 containers as mentioned hereinabove, had been put on hold by SIIB, Mundra. It was further informed by them that below mentioned 08 containers had already gone out of country and requested for further instructions.

MSDU8689257	TRHU5144550	CAAU5119305	MSMU8478630
TGBU9876448	TRHU7692240	CAIU7634457	MSMU6580685

## 6. **CONTAINERS AT MUNDRA**

**6.1** The 07 containers which were held at Mundra port were examined under Panchnama dated 24.12.2022 at EXIM Yard, Adani Port & SEZ, Mundra by SIIB, Customs House Mundra in the presence of representative of M/s. RIL. During the Panchnama proceedings, it was noticed that RFID seals affixed on two Containers i.e., CMAU5029146 and CMAU4649097 were damaged; that the RFID seals on these containers were tampered and glued; that nut used in the socket for line seal was tampered; that during examination of Container Nos. MSMU8255508, MSMU8803936, MSMU7073812, TLLU8728719 and MSMU8001503, the goods found was declared goods i.e., "Polyester Yarn"; that during examination in Containers Nos. CMAU5029146 and CMAU4649097, the goods found was sand like material packed in PP bags; that samples have been drawn from the Container Nos. CMAU5029146 and CMAU4649097. The mis-declared goods were seized vide Seizure Memo 02.01.2023 issued from F.No. S/20-08/Misc Group A/SIIB/CHM/21-22 as they were liable for confiscation under Section 113(h), (i) and (ia) of the Customs Act, 1962. The details of the said two containers are as under:

Sr. No.	Shipping Bill Bo.	Date	Container No.	FOB Value Rs.	No. of bags found	Remarks
1	6054406	10.12.22	CMAU5029146	2247680.51	-	Found old bags containing Bajri/Sand
2	6054435	10.12.22	CMAU4649097	2249643.04	-	

**6.2** The SIIB, Customs, Mundra forwarded the Test Memo and report of CRCL, Mundra and the details which are as under:-

Two samples drawn under Panchnama dated 24.12.2022 were sent to the CRCL, Mundra vide Test Memo dated 02.01.2023 to ascertain as under:-

Seri al No	Shipping Bill No/Date	Description of goods as per Shipping Bill	Purpose of the test
1	6054406 dated 10.12.2022	Polyester Textured Yarn GRY 0330/072/2 CM LIM 1 SD	1. Nature 2. Description & 3. Composition
2.	6054435	Polyester Textured Yarn GRY 0330/072/2 CM LIM 1 SD	1. Nature 2. Description & 3. Composition.

**6.3** The Chemical Examiner, Gr-II, CRCL, Mundra submitted his report, which is as under:-

Test Memo No	Report submitted by CRCL
335 dated 02.01.2023	The sample as received is in the form of brownish-black granules of irregular shapes and sizes with coarse powder. It is mainly composed of silicates of aluminium together with small amount of iron and calcium having following composition. Moisture Content = 0.12 by wt. Loss on Ignition= 5.54 % by wt. % Silica Content ( as SiO <sub>2</sub> )= 83.20 by wt.

336 dated 02.01.2023	The sample as received is in the form of brownish-black granules of irregular shapes and sizes with coarse powder. It is mainly composed of silicates of aluminium together with small amount of iron and calcium having following composition. Moisture Content = 0.14 by wt. Loss on Ignition= 3.82 % by wt. % Silica Content ( as SiO <sub>2</sub> )= 82.13% by wt.
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## 7. CONTAINERS WHICH HAD LEFT INDIAN TERRITORY

**7.1** Vide letter dated 23.12.2023 issued by the Deputy Commissioner of Customs, Hazira port, Surat (i) M/s MSC Agency ( India) Private Limited and (ii) M/s. Hyundai Merchant Marine were requested to recall the below mentioned 09 containers back to Hazira Port for examination, which have left the Indian territory:

Sr. No.	SB No.	DATE OF SB	CONTAINER NO.	VESSEL NAME	COUNTR Y	PORT OF DISPATCH
1	6129281	13.12.2022	TRHU5144550	MSC LETIZIA	BE	ANTWERPEN
2	5731714	26.11.2022	TRHU7692240	MSC MELISSA	TR	AMBARLI
3	5756883	27.11.2022	CAAU5119305	MSC MELISSA	TR	GEMLIK
4	5761362	28.11.2022	TGBU9876448	MSC MELISSA	TR	ISKENDERUM
5	5761359	28.11.2022	MSMU8478630	MSC MELISSA	TR	ISKENDERUM
6	5924402	04.12.2022	CAIU7634457	MSC LISBON	TR	KUMPORT
7	5924437	04.12.2022	MSMU6580685	MSC LISBON	TR	KUMPORT
8	6105968	13.12.2022	MSDU8689257	MSC LETIZIA	PE	CALLAO
9	5900326	03.12.2022	KOCU5198256	HYUNDAI HONG KONG	BR	NAVEGANTES

**7.2** Further, M/s RIL has submit vide their letter Ref No. 01/2023 dated 17.01.2023 that after coming to know the incident of theft, they had initiated for 100% examination to ascertain not a single container to be delivered abroad wherein there was possibility of theft and hence they were tracking their in-transit containers also by way of taking weight at transhipment port or at destination port. They further submitted that during the weighment of the containers the following two containers were found short in weight:

SR. NO.	SB NO.	DATE OF SB	CONTAINER NO.	FPD VGM Wt Kg	Diff. in weight (kg)
1	5843945	30.11.2022	MEDU7684206	28790.47	17600 11190.47
2	5844379	30.11.2022	MSMU7281354	28930.47	17700 11230.47

**7.3** Thereafter vide letter dated 20.01.2023 issued by the Deputy Commissioner of Customs, Hazira port, Surat M/s MSC Agency ( India) Private Limited was further requested to bring back two additional containers i.e., MEDU7684206 & MSMU 7281354, back to loading port of M/s. RIL and Again Vide letter dated 14.02.2023 issued by the Deputy Commissioner of Customs, Hazira port, Surat (i) M/s MSC Agency ( India) Private Limited and (ii) M/s. Hyundai Merchant Marine were requested to update the current status of the movement of containers. Further, vide letter dated 27.03.2023 issued by the Deputy Commissioner of Customs, Hazira port, Surat M/s MSC Agency ( India) Private Limited was requested to inform the date on which the containers reached the destination port (port of dispatch) and to submit the Customs related

documents and other proof of reaching the containers on the destination port. In addition, vide letter dated 27.03.2023 issued by the Deputy Commissioner of Customs, Hazira port, Surat M/s Hyundai Merchant marine was also requested to inform the date on which the container reached the destination port ( port of dispatch) and to submit the Customs related documents and other proof of reaching the containers on the destination port.

**7.4** Further, M/s RIL has submit vide their letter Ref No. RIL/DS/2022-23/EXP/03-1 dated 06.03.2023 that they had gathered from the police investigation that the theft started from 21.11.2022 and hence, another 6 containers were required to be brought back for examination due to found short in weight. They submitted that finally 9 containers (one container, MSMU6580685, out of 96 containers initially requested for examination + 2 containers mentioned in their letter dated 17.01.2023 + 6 additional containers) are required to be called back which are detailed below:

SR. NO.	SB NO.	DATE OF SB	CARRIER NO.	POL Weight Kg	FPD VGM Wt (kg)	Diff. in weight (kg)
1	5843945	30.11.2022	MEDU7684206	28790.47	17600	11190.47
2	5844379	30.11.2022	MSMU7281354	28930.47	17700	11230.47
3	5924437	04.12.2022	MSMU6580685			
4	5973611	06.12.2022	MRSU4808781			
5	5971589	06.12.2022	MRSU5188936			
6	5870593	01.12.2022	GCXU5587763			
7	5924397	04.12.2022	MEDU7839735			
8	5815511	30.11.2022	MSMU6422859			
9	5819373	30.11.2022	MSDU7890225			

## 8. EXAMINATION OF ABOVE CONTAINERS

**8.1** Out of these 9 containers, 3 containers were examined under the panchnama dated 18.03.2023. A Panchnama dated 18.03.2023 was drawn at Adani Hazira Port Pvt. Ltd., Hazira, Surat for examinations of three containers of M/s. RIL, which have been returned back to loading port i.e, Hazira port and had been exported by M/s RIL. During the Panchnama proceedings, all the containers were weighed on the weigh bridge located inside the Adani CFS Yard and it was noticed that weights of the containers as declared in the Shipping Bill is not matching; that seals affixed were tampered; that goods declared in all the three Shipping Bills was 'Polyester Texturized Yarn'; that out of three containers examined under above mentioned Panchnama dated 18.03.2023, in two containers the material found was sand and in one container the goods was found short; that the samples were drawn from all the three containers; that all the goods found in the container was seized under Seizure Memo dated 18.03.2023; that the total seizure value of the goods was ascertained to be Rs. 14,33,627/-; that the seized goods were handed over to Shift Supervisor, Adani Hazira Port Ltd., Hazira vide Supratnama dated 18.03.2023. The details of the Panchnama dated 18.03.2023 can be tabulated as below:-

Sr. No	Shipping Bill No/Date/ Container No.	Description of goods declared in Shipping Bills	Description of goods found during examination	Weight of goods declared in SB (Net Weight)	Weight of goods found during examination	Market Value of mis-declared goods liable for

						confiscation (in Rs.)
1	5973611/06.12.2022 / MRSU4808781	Polyester Texturized Yarn (GRJ/0075/036/1/ DX NIM/I/SD).	Apparently "sand".	24,397.85 KG	7,680 KG	7,680/-
2	5971589/06.12.2022 / MRSU5188936	-do-	-do-	24,409.32 KG	7,060 KG	7,060/-
3	5870593/01.12.2022 / GCXU5587763	-do-	75D/36F SD DD BLACK NIM (SHADE: BLACK 100% POLYESTER DTY/IST	24,410.55 KG	12,550 KG	14,18,887/-
TOTAL					<b>14,33,627/-</b>	

**8.2** All the three samples as drawn vide Panchnama dated 18.03.2023 were sent to CRCL, Vadodara vide letter/Test Memo dated 24.03.2023 to ascertain as under:-

Sample No	Shipping Bill No/Date	Description of goods	Container no.	Purpose of the test
A-1	5973611 dated 06.12.2022	Appears to be Sand	MRSU4808781	1. To ascertain whether the sample is Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand 4. To suggest the CTH of the sample
B-1	5971589 dated 06.12.2022	Appears to be Sand	MRSU5188936	1. To ascertain whether the sample is Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand 4. To suggest the CTH of the sample
C-1	5870593 dated 01.12.2022	75D/36F SD DD BLACK NIM (SHADE: BLACK 100% POLYESTER DTY/IST	GCXU5587763	1. To ascertain whether the sample is 75D/36F SD DD BLACK NIM (SHADE: BLACK or otherwise 2. To ascertain whether the sample is dyed or otherwise

**8.3** Reminder letters dated 25.04.2023 and 09.05.2023 were issued to CRCL, Vadodara to provide the report called for at the earliest. The Chemical Examiner, Gr-II, CRCL, Vadodara vide mail submitted their report, which is as under:-

Sample No	Report submitted by CRCL
A-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of calcium, aluminium & Iron. Silica Content = 72.0%
B-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of calcium, aluminium & Iron. Silica Content = 71.1%
C-1	The sample as received is in the form of black coloured multifilament yarn of assorted length. It is wholly composed of dyed texturized polyester filament yarn.

## 9. EXAMINATION AT HAZIRA PORT

**9.1** Further, another 6 containers were received back for examination. Examination of these 6 containers was carried out under the panchnama dated 20.04.2023. A Panchnama dated 20.04.2023 was drawn at Adani Hazira Port Pvt. Ltd., Hazira, Surat for examinations of six containers of M/s. RIL, which have been returned back to loading port i.e, Hazira port and had been exported by M/s RIL. The details of the containers are as under:-

MSMU6580685	MEDU7839735	MSMU6422859
MSDU7890225	MEDU7684206	MSMU5844379

**9.2** During the Panchnama proceedings, all the containers were weighed on the weigh bridge located inside the Adani CFS Yard and it was noticed that weights of the containers as declared in the Shipping Bill is not matching; that Shipping Bills were produced by the G-Card holder of CHA; that seals affixed were tampered; that goods declared in all the six Shipping Bills was 'Polyester Texturized Yarn'; that out of six containers examined under above mentioned Panchnama dated 20.04.2023, in two containers the material found was sand and in four containers the goods were found short; that the samples were drawn from all the six containers; that all the goods found in the containers were seized under Seizure Memo dated 20.04.2023; that the total seizure value of the goods was ascertained to be Rs. 65,42,805/-; that the seized goods were handed over to the Sr. Officer, Adani Hazira Port Ltd., Hazira vide Supratnama dated 20.04.2023. The observations made under Panchnama dated 20.04.2023 can be tabulated as under:-

Sr. No .	Shipping Bill No/Date/ Container No.	Description of goods declared in Shipping Bills	Description of goods found during examination	Weight of goods declared in Shippin g Bills (Net Weight)	Weight of goods found during exami nation	Market Value of mis-declared goods liable for confiscation (in Rs.)
1	5924437 dated 04-12- 2022 (Container- MSMU65806 85)	Polyester Textured Yarn (GRJ/0075/036/ 1/DX NIM/I/SD).	Apparently "sand".	24,016 KG	7,930 KG	7,930/-
2	5924397 dated 04-12- 2022 (Container- MEDU78397 35)	-do-	-do-	23,829. 73 KG	6,960 KG	6,960/-
3	5815511 dated 30-11- 2022 (Container- MSMU64228 59)	Polyester Textured Yarn (GRJ/0100/048/ 1/TX HIM/I/SD).	DEN/FIL:100 /48 POLY TEX HIM (SHADE: SD 100% POLYESTER DTY TWIST)	24,393. 88 KG	15,110 KG	16,74,134/-
4	5819373 dated 30-11- 2022 (Container- MSDU78902 25)	Polyester Textured Yarn (GRJ/0150/048/ 1/DX NIM/I/SD).	DEN/FIL:150 /48 SD DD BLACK NIM (SHADE: BLACK 100% POLYESTER TWIST)	24,420. 00 KG	15,400 KG	17,87,981/-
5	5843945 dated 30-11- 2022	Polyester Textured Yarn	DEN/FIL:75/ 36 SD RW HIM (SHADE:	23,529. 00 KG	13,770 KG	15,30,952/-

	(Container- MEDU76842 06)	(GRJ/0075/036/ 1/TX HIM/I/SD).	SD 100% POLYESTER DTY TWIST)			
6	5844379 dated 30-11- 2022 (Container- MSMU72813 54)	--- DO ---	--- DO ---	23,529. 00 KG	13,840 KG	15,34,848/-
TOTAL						65,42,805/-

**9.3** All the six samples drawn vide Panchnama dated 20.04.2023 was sent to CRCL, Vadodara vide letter dated 25.04.2023 to ascertain as under:-

Sam ple No	Shipping Bill No/Date	Description of goods	Container no.	Purpose of the test
A-1	5844379 dated 30- 11-2022	Polyester Textured Yarn (GRJ/0075/03 6/1/TX HIM/I/SD).	MSMU72813 54	1. To ascertain whether the sample is Polyester Textured Yarn (GRJ/0075/036/1/TX HIM/I/SD).or otherwise 2. To ascertain whether the sample is grey or dyed 3. To suggest the CTH of the sample.
A-2	5815511 dated 30.11.202 2	Polyester Textured Yarn (GRJ/0100/04 8/1/TX HIM/I/SD)	MSMU 6422859	1. To ascertain whether the sample is Polyester Textured Yarn (GRJ/0075/036/1/TX HIM/I/SD).or otherwise 2. To ascertain whether the sample is grey or dyed 3. To suggest the CTH of the sample.
A-3	5819373 dated 30.11.202 2	Polyester Textured Yarn (GRJ/0150/04 8/1/DX NIM/I/SD)	MSDU78902 25	1. To ascertain whether the sample is Polyester Textured Yarn (GRJ/0075/036/1/TX HIM/I/SD).or otherwise 2. To ascertain whether the sample is grey or dyed 3. To suggest the CTH of the sample.
A-4	5843945 dated 30.11.202 2	Polyester Textured Yarn (GRJ/0075/03 6/1/TX HIM/I/SD).	MEDU76842 06	1. To ascertain whether the sample is Polyester Textured Yarn (GRJ/0075/036/1/TX HIM/I/SD).or otherwise 2. To ascertain whether the sample is grey or dyed 3. To suggest the CTH of the sample.
A-5	5924397 dated 04.12.202 2	Appears to be “sand”	MEDU78397 35	1. To ascertain whether the sample is Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand 4. To suggest the CTH of the sample
A-6	5924437 dated 04.12.202 2	Appears to be “sand”	MSMU 6580685	1. To ascertain whether the sample is Sand or otherwise 2. Chemical analysis report of the sample 3. To ascertain whether it is river sand

				4. To suggest the CTH of the sample
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**9.4** A reminder letter dated 09.05.2023 was issued to CRCL, Vadodara to provide the report called for at the earliest. The Chemical Examiner, Gr-II, CRCL, Vadodara, vide mail submitted their report, which is as under:-

Sample No	Report submitted by CRCL
A-1	The sample as received is in the form of white multifilament yarn of assorted length. It is wholly composed of texturized polyester filament yarn.
A-2	The sample as received is in the form of white multifilament yarn of assorted length. It is wholly composed of texturized polyester filament yarn.
A-3	The sample as received is in the form of black coloured multifilament yarn of assorted length. It is wholly composed of dyed texturized polyester filament yarn.
A-4	The sample as received is in the form of white multifilament yarn of assorted length. It is wholly composed of texturized polyester filament yarn.
A-5	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of calcium, aluminium & Iron. Silica Content = 71.6%
A-6	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of calcium, aluminium & Iron. Silica Content = 72.4%

## 10. CONTAINERS DELIVERD TO BUYER

**10.1** M/s Seabridge Marine vide their letter dated 26.04.2023 submitted i) Bill of Entry Copy ii) VGM Copy iii) Cargo Inspection Report and iv) Movement report from port to warehouse for the container No. KOCU5198256. This container was delivered to the overseas buyer. The overseas buyer i.e. M/s Prime Trading, Brazil vide their Notice Letter through M/s RIL submitted that the goods sent in the Container No. KOCU5198256 was received short in the quantity of 316 boxes weighing 11534 kgs. The said container was exported under Shipping Bill No. 5900326 dated 03.12.2022. The total quantity was 21524.500 kgs, claiming Drawback Rs. 56,651/-, RoDTEP Rs. 64574/- & IGST refund of Rs. 3,42,239/-. The quantity under the said shipping bill was exported short in the quantity of 11534 kgs.

**10.2** Remaining 8 containers out of 9 containers which had been delivered to the overseas buyers were reported by the overseas buyers as the goods received by them as per declared by the exporter.

## 11. COMPLAINT WITH POLICE

**11.1** The Exporter vide their letter dated 27.12.2022 addressed to the Additional Commissioner of Customs, Adani Port, Hazira submitted that they had filed Police complaint as soon as the incident came to their notice; that police have cracked the theft case by way of arresting Driver; that the police has recovered PTY for approx. 9-10 containers in one village area of Surat City; that they have attached the police FIR and also some local paper cuttings; that they have attached the list of containers and other particulars wherein they have noticed that factory sealed containers are not having the export product; that they undertook that they would not claim any Duty Drawback, RoDTEP or IGST Rebate and if DBK is transmitted, they will pay back the amount along with the interest; that they will keep informed to GST Department and also will pay appropriate duty on payable date; that they will strengthen the system to avoid such incidence in future; that similar theft was happened during transit from Dahej/Bharuch to Adani Port, Hazira and police has issued press note; that that department has co-operated the exporter who was not at fault.

**11.2** The Exporter vide their letter dated 06.03.2023 addressed to the Additional Commissioner of Customs, Adani port, Hazira submitted that during investigation jurisdictional police has seized the goods as well arrested the driver and some more culprits who were involved in this theft process; Police department has released the goods after court order which they have initially seized: that out of list of 96 containers submitted vide their letter dated 17.12.2022, 16 Containers have already sailed from Adani port; out of 16 containers, 7 containers were verified at Mundra Port by Customs, wherein 5 containers were found ok and were permitted for export; out of 09 containers which have sailed outside India, in 8 Containers their customers have received and given confirmation on full receipt/shortage of empty containers; in 1 container, which was in transit, they have received weightment report having less weight and hence they have directed Shipping line to bring back the container; that they had identified 08 more containers and had informed shipping lines to bring back the containers (details as per annexure-C to their above said letter); that in their letter dated 17.07.2023, they have intimated about only two containers and due to oversight has not mentioned regarding balance 6 containers; that two containers examined by Turkey Customs were in transit; that they are committed to payback the DBK amount along with interest after confirmation of quantity/full loss; that they will not claim IGST and in case IGST Refund has been granted, the same will be deposited back.

**11.3** Further, M/s RIL vide their letter Ref. No. Customs/Hazira/07 dated 25.05.2023 submitted certified copy of Police Chargesheet filed by the Police in the theft case. Further M/s RIL vide their letter Ref. No. RIL/DS/2022-23/exp/06-06 dated 06.06.203 submitted copy of English version of the chargesheet. As per the chargesheet, the police had recovered Polyester Texturized Yarn in the quantity of 4123 cartons valued at Rs. 1,77,73,472/- & 2444 cartons valued at Rs. 1,07,31,158/- during the investigation. As per the Chargesheet, the police has established that the goods were theft during the transit and they have framed the charges against the persons who were involved in the theft.

**12.** A Summons dated 30.12.2022 under Section 108 of the Customs Act, 1962 was issued to Shri Manish Mishra, F-Card holder of M/s. Soham Logistics Private Limited to appear on 04.01.2023 to produce documents and to record his statement. Shri Manish Mishra, F-Card holder of M/s. Soham Logistics Private Limited appeared on 04.01.2023 and recorded his statement under Section 108 of the Customs Act, 1962, wherein he inter alia stated:-

- that M/s Soham Logistics Pvt. Ltd (CHA) was incorporated in the year 2003: that the Head office of the said company is at 501,Elite Square, 5th Floor, 274 Perin Nariman Street Fort Mumbai-400001 and presently the Directors are Shri Paras R. Shah, Shri Rohit Vinayak Shah and Smt. Minal Rohit Shah: that Surat branch of M/s Soham Logistics Pvt. Ltd (CHA) was established in the year 2013 as a CHA firm and working since then;
- that he looks after overall work for Surat branch of the said company viz operations, client interaction, documentation with Customs department, co-ordination with transporters and shipping lines etc;
- that CHA licence of M/s Soham Logistics Pvt. Ltd, Surat is valid up to 28.09.2028: that they approach the importer/exporter for Customs clearance of their goods from various ports in Gujarat and Mumbai viz Hazira, JNPT etc: that they take authorization letters from importers/exporters before filing documents for the clearance of the goods with Customs department: that as per new policy of Government, they had started to maintain the KYC form of their clients: that they had verified the premises of their client M/s Reliance Industries Limited; that in export they mainly deal with polyester yarns, tyres, Polyethylene and Polypropylene etc and in import they mainly deal with PP etc: that their CHA (Agency) Charges ranges from Rs.850 to Rs.1500 for export consignments for 20'/40' container depending upon the parties and number of consignments; that the above said charges do not include C&F charges and Customs duties: that the major importer/exporter firms for whom they had done the CHA work are M/s Reliance Industries Limited, M/s Welspun India, M/s Wolkem India Limited, M/s ATC Tires, M/s PCBL Limited etc;
- that on being asked specifically regarding Custom clearance work of M/s Reliance Industries Ltd, Silvassa and M/s Reliance Industries Limited, Athal (IEC - 0388066415), he stated that they are doing the Customs Clearance work of M/s Reliance Industries Ltd., since 2013 at Adani Port, Hazira, and from Mundra, ICD TUMB, ICD Ankleshwar, ICD Baroda and JNPT on the basis of authorization letter and the KYC documents submitted by M/S. RELIANCE INDUSTRIES LIMITED: that he submitted copy of KYC documents like IEC Copy, GST Registration copy and PAN Card of M/s. RELIANCE INDUSTRIES LIMITED certified by him: that he submitted copy of self sealing permission given to M/s Reliance Industries Limited, Silvassa and Athal;
- that he fully agrees with the Examination Report dated 17.12.2022, Examination Report dated 19.12.2022 and Examination Report dated 20.12.2022 and certify its correctness: that he was present during examination done at 19.12.2022 and 20.12.2022: that he fully agrees with the Panchnama dated 21-22/12.2022

drawn at Adani Hazira Port Pvt. Ltd, Hazira, Surat along with Annexure-A, Annexure-B and photographs: that he was present during the Panchnama: that in the container Nos TGCU5002704, MSDU5549117, MSMU8595365, TGBU7940595, MSMU5705448, MSMU4471710 and MSMU7439347, wherein the goods found was Bajri/Sand instead of declared goods i.e., Polyester Texturised Yarn: that he agrees with the Panchnama dated 24.12.2022 drawn at EXIM Yard, Adani Ports & SEZ, Mundra (Kutch); that in the container Nos CMAU 4649097 and CMAU 5029146, the goods found was Sand like material instead of declared goods i.e., Polyester Texturised Yarn: that he verified the Shipping bill Nos. 6171932 dated 15.12.2022, 6071108 dated 11.12.2022, 6105950 dated 13.12.2022, 6129161 dated 13.12.2022, 6194666 dated 16.12.2022, 6100416 dated 12.12.2022, 6129167 dated 13.12.2022, 6054406 dated 10.12.2022 and 6054435 dated 10.12.2022 presented by their company before the Custom Authorities for export clearance: that for Shipping Bill No 6171932 dated 15.12.2022, Let Export Order was not issued and hence Shipping Bill was not generated: that he verified the Annexure-A prepared on the basis of documents:

- that on being asked the procedure of preparing checklist for Shipping Bill, he stated that after stuffing of the container, digitally signed documents by M/s. Reliance Industries Limited are available on their portal; that they download the details of the same and file the checklist; that the checklist is prepared through their software U-soft; that on being asked of how to transmit data in i-TEK RFID e-seal, he stated that once the Shipping Bill number is generated in Icegate, they transmit the same to M/S. RELIANCE INDUSTRIES LIMITED's System and from M/S. RELIANCE INDUSTRIES LIMITED's System, the data is transmitted to i-TEK portal;
- that On being asked, he stated that they are generally not coordinating with the transporter regarding shipment; that on being asked, he stated that transport related documents are handed over to them by the drivers or supervisors of the transporter; that on being asked about the supervisor of M/s. Hermes Transport Solution, he stated that Shri Brajesh Mishra is the manager of M/s. Hermes Transport Solution and they interact him (Shri Brajesh Mishra) and he further stated that his mobile no is 9974994066; that on being asked, whether they were aware that trailers carrying containers were tracked through VTS, he stated that they were not aware about the VTS tracking of the trailers; that on being asked, he stated that neither M/s. RELIANCE INDUSTRIES LIMITED nor any of the transporters including M/s. Hermes Transport Solution has informed them about the VTS;
- that on being asked, whether they had filed VGM with the Shipping line, he stated that VGM has been filed for all the containers; that on being asked to explain VGM, he stated that VGM is Verified Gross Mass and further stated that M/s. RELIANCE INDUSTRIES LIMITED has automated the process of filing VGM and are directly transmitting data to the Shipping Lines and in case VGM is not automatically transferred, on intimation from Shipping Line they( M/s. Soham Logistics) are passing out the information to them (Shipping Lines); that on being

further asked, he stated that the VGM also contains Gross mass of the container; that he produced the self certified copies of VGM in respect of containers Nos TGCU5002704, MSDU5549117, MSMU8595365, TGBU7940595, MSMU5705448, MSMU4471710, MSMU7439347, CMAU 4649097 and CMAU 5029146; that on being asked about the difference in weight of the nine containers, he stated that they do not physically check/verify weight of the containers as they are factory stuffed under self-supervision; that on being further asked about the Bajri/sand found in the containers, he stated that they do not know how Bajri/sand was found in the containers instead of the declared goods.

**13.** A Summons dated 29.12.2022 under Section 108 of the Customs Act, 1962 was issued to M/s. Reliance Industries Limited to appear on 03.01.2023 to produce documents and to record statement. Shri Prasanna Vasant Munje, Vice-President-SCM (Supply Chain Management) of M/s. RIL appeared on 03.01.2023 and recorded his statement under Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that he looks after the total export process comprising of pre-shipment, physical movement of goods, Shipment and Port- Shipment documentation; that all the export documentation of all the plants situated in India are done by his team at Mumbai Office; that plant dispatch are looked after by the individual plants; that documents are prepared in SAP system: that at their Silvassa plant, they are manufacturing Polyester Texturized Yarn and Fully Drawn Yarn and sell them as per orders in domestic market and are also clearing them as per export orders: that their Athal location is a Depot and also has got self-sealing permission; that goods are dispatched from Athal location both for domestic clearance as well as Export;
- that on being asked about the complete process carried out for export orders, he stated that contractual terms are finalized between product marketing and prospective buyer based on which contract is issued by the Reliance Industries in the name of the buyer: that as per the contract terms financial instruments (letter of credit/part or full advance) is made available by the buyer details are in line with the initially issued contracts: that upon receipt of financial instruments, details are updated in SAP by pre-shipment processing team whereby the order is rendered ready for execution: that thereafter, Marketing advises logistics team for execution of the order based on material availability schedule: that logistics processes the order and procures delivery order from the Shipping Line for requisite number and type of containers ensuring best service for the destination: that the delivery order is forwarded to the transporters for empty pick up and reporting at the plant: that the containers reported at the plant are taken in by the warehouse for stuffing and generation of documents for dispatch: that clearing House Agent (CHA) files the Shipping Bill based on GST Invoice sent to them electronically: that the Shipping Bill number once received is updated by the CHA through the portal and gets populated in Reliance SAP System: that RFID Seal association and updation to the Customs server happens through the Service provider website i-TEK: that thereafter, Containers reported at the port

and are getted in to the nominated vessel slots: that Shipping Bills are submitted to LEO by the CHA and once LEO is granted, Shipping Bill print is taken by the CHA and a copy is handed over to Shipping Line Surveyor for inclusion of containers in load list: that he will produce the self-certified copies of the self-sealing permission for both Silvassa Plant and Athal Depo within a week:

- that he had carefully gone through the examination reports dated 17.12.2022, 19.12.2022 and 20.12.2022 and agreed with the above mentioned conduction of examination done and its contents : that he agreed with the facts mentioned in the Panchnama dated 21-22/12.2022 drawn at Adani Hazira Port Pvt. Ltd, Hazira along with Annexure-A, Annexure-B and photographs: that in the container Nos TGCU5002704, MSDU5549117, MSMU8595365, TGBU7940595, MSMU5705448, MSMU4471710 and MSMU7439347 the goods found was Bajri/Sand instead of declared goods i.e., Polyester Texturised Yarn: that the RFID seals on the above mentioned containers were found to be glued on cutting and nuts were also suspected to be replaced: that he fully agreed with the facts mentioned in the Panchnama dated 24.12.2022 drawn at EXIM Yard, Adani Ports & SEZ, Mundra (Kutch): that in the container Nos CMAU 4649097 and CMAU 5029146, the goods found was Sand like material instead of declared goods i.e., Polyester Texturised Yarn: that they have engaged M/s Soham Logistics Pvt Ltd and M/s Bhatia Shipping Pvt Ltd as CHA for Customs related work at Adani Port, Hazira: that he verified the correctness of the documents and the contents mentioned therein of the check list, Invoice cum packing list and self-sealing certificate of Shipping bill Nos. 6171932 dated 15.12.2022, 6071108 dated 11.12.2022, 6105950 dated 13.12.2022, 6129161 dated 13.12.2022, 6194666 dated 16.12.2022, 6100416 dated 12.12.2022, 6129167 dated 13.12.2022, 6054406 dated 10.12.2022 and 6054435 dated 10.12.2022 produced by M/s Soham Logistics Pvt Ltd, CHA before the Custom Authorities for export clearance : that he produced eight Shipping Bills and stated that for Shipping Bill No 6171932 dated 15.12.2022, Let Export Order was not issued and hence Shipping Bill was not generated:
- that he verified correctness of Annexure-A of his statement dated 03.01.2023: that for the 09 shipping Bills mentioned above the goods are carried out by M/s. Hermes Transport Solutions: that the transportation charges paid to M/s. Hermes Transport Solutions from Silvassa to Adani Port is around Rs. 22,000/- to 25,000/- per consignment; that on being asked to peruse Circular No 26/2017- Customs dated 01.07.2017 and 36/2017 dated 28.08.2017 issued by Central Board of Excise and Customs and state that as per the above circulars certain data in RFID seal like IEC No, Shipping Bill Number, Shipping Bill date, e-seal number, Date of sealing, time of sealing, destination Customs station for export, container no & Trailer-Truck no is required to be filled and state that whether the data are being fed, he stated that upon generation of GST invoice and printing, the container wise/ GST invoice wise dispatch data is transferred to the Clearing House agent electronically and appeared in their portal: that this data already captures the trailer no., container no., Liner Seal as well as RFID

Seal No., date of sealing, Customs station- Load port and disport: that the clearing house agent then uploads this data through their documentation package into ICEGATE for filing Shipping Bill: that upon receipt of the Shipping Bill No., the same is uploaded by the CHA in their portal, which flows to Reliance's SAP system: that based on the details updated, the data flows through (Application Programming Interface) API to the RFID service provider's portal, and thereon to Customs server: that RFID service provider to M/s Reliance Industries Ltd is I-Tek, who is authorised by the Customs for providing service: that they have filled up the data in the system: that in the mentioned nine containers, wherein sand/ bajri or item other than PTY has been found instead of their export goods, viz. PTY/ FDY, our cargo has been stolen by the miscreants en-route to Port at unspecified place, after the said cargo was duly dispatched with supporting documents from their mentioned Place of stuffing: that the movement was in normal course, as also the transporter whose service was used was from the empaneled lot:

- that the theft done by the miscreants has come as a shock and all possible steps are being taken by M/s Reliance Industries Limited to make good on the export regulations in vogue as also the compliance standards, while also holding the interest of the overseas customers:
- that M/s Hermes Transport Solutions have also filed a First Information Report (FIR) with local police at Hazira Police Station on 18.12.2022 against unknown persons responsible for such theft; that he produced a copy of the above said FIR filed at Hazira Police station: that Police investigations are going on and one person who is driver of one of the vehicles carrying goods from Silvassa to Adani Hazira Port has been arrested and also majority of the stolen goods i.e., about eight container loads worth have been recovered by the police: that the goods are found from Abhva Village in an open area: that as per the contractual agreement with the empanelled transporters, the responsibility of transporting the goods comes along with the responsibility to maintain the integrity of the goods entrusted to them for transportation and any damage or loss to the same is recoverable from the said transporter and that is why FIR has been filed by the transporter: that from the sticker on each carton of PTY, they have ascertained that the goods recovered by the Police are the same goods which had been dispatched from their Silvassa Plant and Athal Depot: that the Consignments were being tracked for reporting at Port with reference to average cycle time:
- that tracking are done through Vechile tracking system (VTS): that VTS is web based service which tracks the movement of the vehicle fitted with VTS instrument and advises delay or stoppages on route by the vehicle being tracked: that the responsibility of tracking lies with the respective transporter: that the ownership of Vehicle Nos. GJ15AT4433, GJ16AV1109, GJ16AV1230 and GJ15AT4491 is of M/s Hermes Transport Solutions:
- that on being asked to provide tracking details of vehicle nos GJ15AT4433, GJ16AV1109, GJ16AV1230 and GJ15AT4491, for the period 01.12.2022 to 21.12.2022, he stated that, he will Co-ordinate with the transporter M/s Hermes

Transport Solutions and persons of M/s Reliance Industries Limited looking after transportation and will revert back within a week to 10 days time:

- that they have stopped payment of around Rs. 1.25 crores transporter M/s Hermes Transport Solutions and no further business is allocated to the transporter; that on being asked, why it should not be inferred that they had sent sand/bajri in the containers to fraudulently avail export related benefits like Drawback, RODTEP, IGST, etc, he stated that they had only dispatched PTY in line with the export documents and the incentive was claimed as per the prescribed law: that this fact is well established by the Police investigation; that on being asked to state that whether it is not correct to say that if tracking would have been done properly, the theft of goods as per your version would have averted, he stated that police investigation shows that the theft happened on regular route of transportation from Silvassa to Hazira: that he will come back after getting all the facts.

**14.** As Shri Prasanna Vasant Munje, Vice-President-SCM (Supply Chain Management) of M/s. Reliance Industries Limited in his statement dated 03.01.2023 has stated that M/s Hermes Transport Solutions have filed a First Information Report (FIR) with local police at Hazira Police Station on 18.12.2022 against unknown persons responsible for theft, a letter dated 05.01.2023 was issued to the Police Inspector, Hazira Police Station, Surat by the Deputy Commissioner of customs, Adani Hazira Port, Hazira requesting to provide Inquiry report/current status of the enquiry along with the quantity of goods recovered and location from where the goods were recovered. The Police Inspector, Hazira Police Station vide his letter dated 06.01.2023 informed that the investigation in this particular case has been transferred to Crime branch, Surat by the order of the police Commissioner.

**15.** A Summons dated 05.01.2023 under Section 108 of the Customs Act, 1962 was issued to Shri Jagdish Singh of M/s Hermes Transport Solutions to appear on 11.01.2023 to produce documents & tracking details of the vehicles and to record statement. Shri Jagdish Singh vide e-mail dated 10.01.2023 informed that he could not appear on 11.01.2023 due to his illness and sought extension for 1 day. Accordingly, a Summons dated 11.01.2023 under Section 108 of the Customs Act, 1962 was issued to Shri Jagdish Singh to appear on 13.01.2023. Shri Jagdish Amarnath Singh of M/s. Hermes Transport Solutions LLP appeared on 13.01.2023 and recorded his statement under Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that M/s Hermes Transport Solution LLP is a transport company and was started in the month of February, 2018 and its head office is at 9, Onlooker Building, 14 Sir P.M. Road, Fort, Mumbai-400001; that M/s Hermes Transport Solution LLP has one branch office at Hazira; that Hazira Office is looked after by his manager Shri Brijesh Mishra; that the company has six employees in Hazira Office; that M/s Hermes Transport Solution LLP has no vehicle of its own and he further stated that he had another transport company in the name of M/s. Seaking Shipping and Container Transport Co. P. Ltd; that M/s. Seaking Shipping and Container Transport Co. P. Ltd also functions from 9, Onlooker Building, 14 Sir P.M. Road, Fort, Mumbai-400001 and he and his wife Smt. Rekha Jagdish Singh

are the directors and the said company was started in 1993; that M/s Hermes Transport Solution LLP on getting orders, hire vehicles from other transporters, mainly from M/s. Seaking Shipping and Container Transport Co. P. Ltd and fulfill the orders; that M/s. Seaking Shipping and Container Transport Co. P. Ltd owns 110 trailers; that on being asked the reason of starting M/s Hermes Transport Solution LLP, when M/s. Seaking Shipping and Container Transport Co. P. Ltd was doing the same business, he stated that M/s Hermes Transport Solution LLP is solely providing services to M/s. Reliance Industries Limited and since M/s. Reliance Industries Limited insisted GST bills of reverse charge, they had to start M/s Hermes Transport Solution LLP; that M/s Hermes Transport Solution is operating current bank accounts from HDFC BANK, Santacruz having account No. 50200031486575; that his personal saving bank account is in HDFC BANK, Santacruz having account No.50100170020710; that on being asked about the complete process of transportation from taking order to consignment delivery, he stated that normally representatives from M/s. Reliance Industries Limited telephonically confirms the availability of trailers and after confirmation, they give the delivery order through e-mail; that thereafter they collect the container from the empty container yard and then place the container to the respective destinations from where the containers are to be loaded; that after loading of the container, they move to the port from where containers are to be exported; that they do not deal in the import containers of M/s. Reliance Industries Limited; that from Hazira Plant to Hazira port, the freight charge collected is between Rs. 7870 / - to Rs. 9600/- and from Silvassa to Hazira port, the charges are between Rs. 18490/- to 20315/- depending upon the size of the container; that on being asked about the contract for transportation done by them with M/s Reliance Industries Limited, he produced the self-certified Long Term rate contract effected between M/s Hermes Transport Solution LLP and M/s. Reliance Industries Limited ; that the contract is of only two pages and no other contract had been made; that M/s. Reliance Industries Limited had not given him the signed copy of the contract; that many persons deal with them from M/s. Reliance Industries Limited; that documents like e-way bill, packing list, invoice and other export related documents are handed over to drivers by M/s. Reliance Industries Limited and they (transporter) prepare only reporting letter, which the driver of the trailer hand over to the security gate of M/s. Reliance Industries Limited; that on being asked about the tracking system installed on the vehicles, he stated that out of 110 trailers owned by M/s. Seaking Shipping and Container Transport Co. P. Ltd, 90 are GPS enabled and are tracked through Vechile tracking system (VTS); that VTS is web based service which tracks the movement of the vehicle fitted with VTS instrument; that M/s Loconav company has installed VTS on their vehicles with brand name loconav and Annual Maintenance of the VTS instrument are also with the same company; that on being asked about the persons handling the VTS tracking system,

- he stated that in Mumbai Office, it is looked after by Shri Deepak Singh and in Hazira Office, the same is looked after by Shri Brijesh Mishra; that no extra

charge is taken for GPS enabled vehicles; that on being asked, why the 20 vehicles are not GPS enabled, he stated that vehicles which are running between Silvassa to Hazira port and Hazira to Hazira port are not GPS enabled due to short transit time;

- that on being asked to explain whether there is any system for tracking vehicles where there is short transit time according to him or in 20 vehicles which are not GPS enabled as mentioned above, he stated that they do tracking through phone calls with driver; that he perused the Examination Report dated 17.12.2022, Examination Report dated 19.12.2022 and Examination Report dated 20.12.2022 and agreed with the above mentioned examination reports; that he agreed with the Panchnama dated 21-22/12.2022 drawn at Adani Hazira Port Pvt. Ltd, Hazira, Surat-394270 for examination of containers of M/s. Reliance Industries Ltd along with Annexure-A, Annexure-B and photographs; that he agreed with Panchnama dated 24.12.2022 drawn at EXIM Yard, Adani Ports & SEZ, Mundra (Kutch); that container Nos TGCU 5002704,MSDU 5549117,MSMU 8595365,TGBU 7940595,MSMU 5705448,MSMU 4471710, MSMU 7439347, CMAU 4649097 and CMAU 5029146 in which Sand/Bajri was found during examination/panchnama proceedings at Hazira and Mundra Customs was carried by M/s. Hermes Transport Solutions from M/s. Reliance Industries Limited, Naroli, Silvassa and Depot of M/s Reliance Industries Limited, Athal, Silvassa to Adani Port, Hazira; that Vehicle NOs GJ16AV1109 & GJ16AV1230 are owned by M/s Seaking Shipping and Container Transport Co. P. Ltd and Vehicle no GJ15AT4433 & GJ15AT4491 are owned by M/s. Oasis Container Movers; that M/s. Oasis Container Movers is owned by Shri Harish Amarnath Singh, who is his brother, however, all the works related to M/s. Oasis Container Movers is looked after by him; that on being asked to produce the complete details as regards carrying of the above mentioned containers, he stated that, the container movements are as per table mentioned below;

Sr no	Container No	Trailer No	Date and Time on which trailer left Hazira port with empty container	Date and Time on which trailer reached Naroli Plant/Athal Depot of M/s Reliance Industries Ltd.	Date and time on which trailer left Naroli Plant/Athal Depot of M/s Reliance Industries Ltd. for Hazira port	Date and Time on which trailer reached Hazira port
01	TGCU 5002704	GJ15AT44 33	13.12.2022/ 22:00 HRS	14.12.2022/09:0 0 HRS	14.12.2022/ 17:00 HRS	15.12.2022/ 09:00 HRS
02	MSDU 5549117	GJ15AT44 91	09.12.2022/ 23:00 Hrs	10.12.2022/09:0 0 Hrs	10.12.2022/ 17:30 HRS	11.12.2022/ 09:00 HRS
03	MSMU 8595365	GJ15AT44 33	11.12.2022/ 22:00 HRS	12.12.2022/09:0 0 HRS	12.12.2022/ 17:00 HRS	13.12.2022/ 09:00 HRS
04	TGBU 7940595	GJ16AV11 09	12.12.2022/ 22:00 HRS	13.12.2022/09:0 0 HRS	13.12.2022/ 17:00 HRS	14.12.2022/ 09:00 HRS
05	MSMU 5705448	GJ16AV12 30	14.12.2022/ 22:00 HRS	15.12.2022/09:0 0 HRS	15.12.2022/ 17:30 HRS	16.12.2022/ 09:00 HRS
06	MSMU 4471710	GJ16AV11 09	10.12.2022/ 22:00 HRS	11.12.2022/09:0 0 HRS	11.12.2022/ 17:30 HRS	12.12.2022/ 09:00 HRS
07	MSMU 7439347	GJ15AT44 91	12.12.2022/ 22:00 HRS	13.12.2022/09:0 0 HRS	13.12.2022/ 17:00 HRS	14.12.2022/ 09:00 HRS

08	CMAU 4649097	GJ15AT44 33	08.12.2022/ 22:00 HRS	09.12.2022/09:0 0 HRS	09.12.2022/ 17:00 HRS	10.12.2022/ 09:30 HRS
09	CMAU 5029146	GJ16AV12 30	08.12.2022/ 22:00 HRS	09.12.2022/09:0 0 HRS	09.12.2022/ 17:00 HRS	10.12.2022/ 09:30 HRS

- that these are approximate time and exact time is not available with them; that on being further asked about the documentary evidence of the above timings, he stated that they maintain a daily report in excel format in the computer installed in their office and data have been taken from there; that he will submit the daily report of all the vehicles wherein goods have been transported from Naroli Plant/Athal Depot of M/s Reliance Industries Limited to Hazira Port by M/s. Hermes Transport Solutions within a week time; that on being asked about the drivers of the above trailers, he stated that the driver's details are as per table below mentioned;

Sr no	Container No	Trailer No	Driver's name	Date of appointment of the Driver
01	TGCU 5002704	GJ15AT4433	Shri Mohd. Yasir Qureshi	24.11.2022
02	MSDU 5549117	GJ15AT4491	Shri Mohd. Shahrook Khan	24.11.2022
03	MSMU 8595365	GJ15AT4433	Shri Mohd. Yasir Qureshi	
04	TGBU 7940595	GJ16AV1109	Shri Suraj Kumar Gaur	24.11.2022
05	MSMU 5705448	GJ16AV1230	Shri Junaid Ali	24.11.2022
06	MSMU 4471710	GJ16AV1109	Shri Suraj Kumar Gaur	
07	MSMU 7439347	GJ15AT4491	Shri Mohd. Shahrook Khan	
08	CMAU 4649097	GJ15AT4433	Shri Mohd. Yasir Qureshi	
09	CMAU 5029146	GJ16AV1230	Shri Junaid Ali	

- that on being asked about the toll naka receipts, he stated that he will submit the ICICI fastag receipt for all the toll nakas for all the above mentioned vehicles within a week time; that on being asked to state about the Policy of their company as regards appointment of drivers, he stated that they employ drivers after reference of other drivers and after verifying their driving license on m-parivahan app and take copy of their Aadhar card or PAN card, if available; that on being asked, whether police verification of the drivers were done, he stated that no police verification had been done; that he will submit the documents of all the above mentioned drivers within a week time; that in the above mentioned nine containers, wherein sand/ bajri has been found instead of export goods, viz. PTY/ FDY and which was transported by their company M/s. Hermes Transport Solution LLP, the goods had been stolen in the route to Port; that their employee who is looking after Hazira unit of M/s Hermes Transport Solutions LLP has filed a First Information Report (FIR) with local police at Hazira Police Station on 18.12.2022 against unknown persons responsible for such theft; that on being asked, when he came to know that instead of declared goods bajri/sand has been found in the container, he stated that at approx. 16.00 Hrs on 17.12.2022 his employee Shri Brijesh Mishra got a call from Shri Shambhu Borhade, who is an employee of CHA firm, M/s. Soham Logistics Pvt. Ltd and informed about the

incident; that he produced a copy of the above said FIR filed at Hazira Police station;

- that Police investigations are going on and one of the drivers have been arrested and also majority of the stolen goods i.e., about eight container loads worth have been recovered by the police; that on being asked about the place from where goods were recovered by the Police, he stated that the goods were found from Abhva Village/Pandersara/Sayan/Valenja/Puna Gam; that he further stated that the investigation has been transferred from Hazira Police station to Crime Branch, Surat; that presently the goods are lying at Hazira Police station and it will be released through Court; that on being asked the present whereabouts of the drivers (i) Shri Mohd. Yasir Qureshi, (ii) Shri Mohd. Shahrook Khan, (iii) Shri Suraj Kumar Gaur & (iv) Shri Junaid Ali, he stated that Shri Mohd. Yasir Qureshi has been arrested by the police, however, his present location is not known to him; that other drivers are absconding and their present whereabouts are not known to him and he further stated that police are trying to catch them; that he perused statement of Shri Prasanna Vasant Munje Vice President-SCM (Supply Chain Management) of M/s. Reliance Industries Limited recorded under Section 108 of Customs Act, 1962 agreed with his statement to the portion he has stated about his company M/s. Hermes Transport solution and about him; that on being asked, whether it the responsibility of M/s Hermes Transport Solutions LLP to safely deliver the container to Port and also to track the container, he stated that it was their responsibility to safely deliver the container to Port and also to track the container; that as the consignment was of short distance and tracking device was not installed, such incident happened;
- that theft has been done by the drivers; that on being asked why M/s. Hermes Transport Solutions have filed an FIR with the police, when the goods belongs to M/s. Reliance Industries Ltd, he stated that as per the contractual agreement, he stated that since they were the transporter and it was their responsibility to carry the goods safely to port, they have filed FIR with the police as soon as they knew the incident; that their insurance policy is restricted to motor vehicle accident and theft is not covered in the same; that he will produce the copy of Insurance within a week time; that on being asked, how they ascertained that recovered goods from the Police are the same goods that was to be exported, he stated that the goods were identified by representatives of M/s. Reliance Industries after matching with their packing list; that he could not identify the goods as he was not present during stuffing of the goods and he could not say that recovered goods are those goods which are supposedly stolen. Shri Jagdish Amarnath Singh of M/s. Hermes Transport Solutions LLP produced Daily Report from 30.11.2022 to 17.12.2022 and fastag details of vehicle Nos. GJ16AV1109, GJ16AV1230, GJ15AT4433 & GJ15AT4491 for the period 30.11.2022 to 18.01.2022. He also produced the copies of driving licences of drivers (i) Shri Mohd. Yasir Qureshi, (ii) Shri Mohd. Shahrook Khan, (iii) Shri Suraj Kumar Gaur & (iv) Shri Junaid Ali.

**16.** A Summons dated 11.01.2023 under Section 108 of the Customs Act, 1962 was issued to Shri Brijesh Mishra, Manager of M/s Hermes Transport Solutions LLP to appear on 16.01.2023 to produce documents and to record statement. Shri Brijeshbhai Surajlal Mishra, Manager of M/s. Hermes Transport Solutions LLP, Hazira appeared on 16.01.2023 and recorded his statement under Section 108 of the Customs Act, 1962, wherein he inter alia stated:

- that M/s Hermes Transport Solution LLP is a transport company and its head office is at 9, Onlooker Building, 14 Sir P.M. Road, Fort, Mumbai-400001; that M/s Hermes Transport Solution LLP has one branch office at Hazira; that on being asked about the complete process of transportation from taking order to consignment delivery, he stated that normally representatives from M/s. Reliance Industries Limited telephonically confirms the availability of trailers and after confirmation, they give the delivery order through e-mail; that thereafter they collect the container from the empty container yard and then place the container to the respective destinations from where the containers are to be loaded; that he further stated that after loading of the container, they move to the port from where containers are to be exported; that all the charges of transportation are handled by their Head Office, Mumbai and he had no idea about this; that on being asked about the tracking system installed on the vehicles, he stated that out of 110 trailers owned by M/s. Sea King Shipping and Container Transport Co. P. Ltd, 90 are GPS enabled and are tracked through Vehicle tracking system (VTS); that on being asked about the persons handling the VTS tracking system, he stated that in Hazira Office, the same is looked after by him and his staff present in Ichchhapor office; that on being asked, why the 20 vehicles are not GPS enabled, he stated that vehicles which are running between Silvassa to Hazira port and Hazira to Hazira port are not GPS enabled due to short transit time; that on being asked to explain, whether there is any system for tracking vehicles where there is short transit time according to him or in 20 vehicles which are not GPS enables as mentioned above, he stated that they do tracking through phone calls with driver;
- that he perused the Examination Report dated 17.12.2022, Examination Report dated 19.12.2022 and Examination Report dated 20.12.2022 and agreed with the same; that he perused Panchnama dated 21-22/12.2022 drawn at Adani Hazira Port Pvt. Ltd, Hazira, Surat-394270 for examination of containers of M/s. Reliance Industries Ltd along with Annexure-A, Annexure-B and agreed with the same; that he perused Panchnama dated 24.12.2022 drawn at EXIM Yard, Adani Ports & SEZ, Mundra (Kutch) and agreed with the same; that container Nos TGCU 5002704,MSDU 5549117,MSMU 8595365,TGBU 7940595,MSMU 5705448,MSMU 4471710, MSMU 7439347, CMAU 4649097 and CMAU 5029146 in which Sand/Bajri was found during examination/panchnama proceedings at Hazira and Mundra Customs was carried by M/s. Hermes Transport Solutions from M/s. Reliance Industries Limited, Naroli, Silvassa and Depot of M/s Reliance Industries Limited, Athal, Silvassa to Adani Port, Hazira; that Vehicle Nos GJ16AV1109 & GJ16AV1230 are owned by M/s Seaking Shipping and

Container Transport Co. P. Ltd and Vehicle no GJ15AT4433 & GJ15AT4491 are owned by M/s. Oasis Container Movers; that in the mentioned nine containers, wherein sand/ bajri has been found instead of export goods, viz. PTY/ FDY and which was transported by their company M/s. Hermes Transport Solution LLP, the goods had been stolen in the route to Port;

➤ that he on behalf of his company has filed First Information Report (FIR) with local police at Hazira Police Station on 18.12.2022 against unknown persons responsible for such theft; that on being asked, when do he came to know that instead of declared goods bajri/sand has been found in the container, he stated that at approx. 16.00 Hrs on 17.12.2022 he got a call from Shri Shambhu Borhade, who is an employee of CHA firm, M/s. Soham Logistics Pvt. Ltd and he informed about the incident; that he produced a copy of the above said FIR filed at Hazira Police station; that Police investigations are going on and one of the drivers had been arrested; that on being asked, why had he filed FIR instead of M/s Reliance Industries Limited to whom goods belonged, he stated that he was asked by his director Shri Jagdish Singh to file an FIR with Hazira Police station on behalf of M/s Hermes Transport Solutions; that on being asked, how he ascertained that recovered goods from the Police are the same goods that was to be exported, he stated that the goods were identified by representatives of M/s. Reliance Industries after matching with their packing list; that he could not identify the goods as he was not present during stuffing of the goods and he could not say that recovered goods are those goods which are supposedly stolen.

**17.** The Test Report of samples (07 samples having marked as A-1, B-1, C-1, D-1, E-1, F-1 & F-1) drawn during Panchnama dated 21-22/12/2022 for the containers wherein mis-declared goods were found (details as per Annexure-B to the Panchnama dated 21-22/12/2022) and sent to CRCL vide letter dated 27.12.2022 were received separately for each samples sent. The test report for all the samples are same and reads as – “***The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica togetherwith small amount of oxides of alumunium, calcium & Iron. It is other than sand.***”

## **18. SUMMONS TO THE DRIVERS**

**18.1** Summons under Section 108 of the Customs Act, 1962 dated 21.01.2023, 31.01.2023 and 14.02.2023 were issued to Shri Suraj Kumar Gaur, Driver of the trailer, which carried goods from Silvassa to Hazira Port), however, he did not appear for recording of his statement.

**18.2** Summons under Section 108 of the Customs Act, 1962 dated 21.01.2023, 31.01.2023 and 14.02.2023 were issued to Shri Junaid Ahmed, Driver of the trailer, which carried goods from Silvassa to Hazira Port), however, he did not appear for recording of his statement.

**18.3** Summons under Section 108 of the Customs Act, 1962 dated 21.01.2023 and 31.01.2023 were issued to Shri Mohammad Yasir, Driver of the trailer, which carried

goods from Silvassa to Hazira Port), however, he did not appear for recording of his statement.

**18.4** Summons under Section 108 of the Customs Act, 1962 dated 21.01.2023, 31.01.2023 and 14.02.2023 were issued to Shri Mohammad Sharook Khan (Driver of the trailer, which carried goods from Silvassa to Hazira Port), however, he did not appear for recording of his statement.

**19.** During the investigation, it was gathered that one of the drivers Shri Mohammad Yasir Mohammad Nasir had been arrested by the Police and is presently lodged in Lajpore Central jail. An application dated 04.02.2023 was made before the Hon'ble Judicial Magistrate First Class, Municipal Court at Surat to allow officers to record statement of Shri Mohammad Yasir Mohammad Nasir in the Lajpore Central jail. The Hon'ble Judicial Magistrate First Class, Municipal Court at Surat vide his order dated 06.02.2023 allowed to record the statement of the accused on 06.02.2023 and if not completed on 06.02.2023 on 07.02.2023 and ordered Jailor of the Lajpore Jail to make necessary arrangement of recording of the statement. Accordingly, Statement of Shri Mohammad Yasir Mohammad Nasir Qureshi, Driver of M/s. Hermes Transport Solution LLP was recorded under Section 108 of Customs Act, 1962 in the Lajpore Central Jail, Sachin, Surat on 07.02.2023 wherein he stated:

- that he is driver by profession and presently working with M/s Hermes Transport Solutions;
- that he perused the Examination Report dated 17.12.2022, Examination Report dated 19.12.2022 and Examination Report dated 20.12.2022 and agreed with the same; that he perused Panchnama dated 21-22/12.2022 drawn at Adani Hazira Port Pvt. Ltd, Hazira, Surat-394270 for examination of containers of M/s. Reliance Industries Ltd along with Annexure-A, Annexure-B and agreed with the same; that he perused Panchnama dated 24.12.2022 drawn at EXIM Yard, Adani Ports & SEZ, Mundra (Kutch) and agreed with the same; that in container Nos TGU 5002704, MSDU 5549117, MSMU 8595365, TGBU 7940595, MSMU 5705448, MSMU 4471710, MSMU 7439347, CMAU 4649097 and CMAU 5029146 Sand/Bajri was found during examination/panchnama proceedings at Hazira and Mundra Customs; that he perused statement dated 13.01.2023 of Shri Jagdish Amarnath Singh, Director of M/s Hermes Transport Solutions LLP and agreed with the facts stated about him;
- that he was driver of the trailer No GJ15AT4433 through which container Nos. TGU 5002704, MSMU 8595365, and CMAU 4649097 was carried from Silvassa to Adani Port; that all the above mentioned three containers he had loaded from Narol plant of M/s Reliance Industries Limited; that for container no TGU 5002704, he has started in the morning of 15.12.2022 and reached late night at Adani Port; that for container no MSMU 8595365 he has started in the morning of 13.12.2022 and reached late night at Adani Port; for container no CMAU 4649097, he has started in the Noon of 09.12.2022 and reached Adani in the morning of 10.12.2022; that he did not remember the exact time; that no other person was present in the vehicle; that he perused the details of four vehicles

provided by Shri Jagdish Singh in his statement dated 13.01.2023 and further stated that the details are correct for vehicle no GJ15AT4433, as he was the driver of the said vehicle; that he perused fast tag details of vehicle no GJ15AT4433 and stated that the details are correct for vehicle no GJ15AT4433, as he was the driver of the said vehicle; that it takes 10 to 12 hours from Naroli Plant to Adani Hazira port; that as the condition of the vehicle was not good and he had to stop for refreshment it took so much time; that he used to stop at Shital Hotel, Chikli and Bhatia Toll Plaza;

- that all the three containers that he drove through his trailer, he stopped them at a godown near Magdalla Bridge on Sachin Hazira Road on the instructions of Sudhir Singh; that at this place seal placed on container was broken and polyester yarn that was loaded in the container was replaced by Sand/Soil; that he was present there when the goods were replaced; that labours were engaged for replacing the goods; that other than he and Sudhir Singh, near about ten labours were present at the site; that he did not recognize the labours present there; that he knows Sri Sudhir Singh for the last five months and he (Sri Sudhir Singh) arranged his job in Hermes Transport Solution; that he neither knew about the residence or office address of Sudhir Singh nor he remembered his phone number; that for replacing goods in the container, it took two to three hours; that the place where the goods were replaced is adjacent to highway; that he had committed crime in the greed of money; that he was promised Rs. 1,00,000/- for each container, however, till date he got only Rs. 1,00,000/-, which he deposited in the bank account of a person known to him; that Sri Sudhir Singh has given him the money;
- that other than three containers mentioned above, he had not placed any container on the site where the goods were replaced; that other than him three more drivers had did the same act of replacing the goods; that their names are Shri Mohammad Sharook Khan, Shri Junaid Ali and Shri Suraj Kumar Gaud;
- that he did not know their address and also did not remember their phone numbers; that he was not aware that for how much containers the goods were replaced by above mentioned three drivers, however, Sri Sudhir Singh used to instruct them and he has arranged jobs for them in M/s. Hermes Transport Solutions; that Shri Sudhir Singh was known to Shri Subhash, who was maintenance supervisor of M/s. Hermes Transport Solution and also he looked after the appointment of drivers.

**20.** Vide letter dated 17.01.2023, the Additional Commissioner of Customs, Hazira port, Hazira informed the Additional Commissioner, Central GST & Customs, Daman Commissionerate about the case and requested him to examine the matter as per the provisions of CGST Act, 2017 and the rules made thereunder and for examination of the eligibility of Input Tax credit. The Deputy Commissioner (AE), CGST & CE, Daman forwarded the above said letter to the Deputy Commissioner, VAT & GST Department, Silvassa, UT of DNH & DD vide his letter dated 20.01.2023 to take necessary action as M/s. Reliance Industries Limited is under the administrative control of UTGST, DD & DNH.

**21.** A further Summons under Section 108 of the Customs Act, 1962 dated 25.02.2023 was issued to the Exporter M/s Reliance Industries Ltd. for appearance on 06.03.2023. However, the Exporter vide request letter dated 06.03.2023 requested for extension of time to appear. Accordingly, a Summons dated 06.03.2023 was issued to the Exporter for appearance on 16.03.2023. However, again vide letter dated 16.03.2023, the Exporter requested to re-schedule the appearance for 20.03.2023. Thereafter, a Summons dated 16.03.2023 was issued to the Exporter for appearance on 20.03.2023.

## **22. SUMMONS TO THE EXPORTER**

**22.1** In response to Summons dated 16.03.2023, Shri Prasanna Vasant Munje, Vide President-SCM (Supply Chain Management) of M/s. Reliance Industries Limited appeared to record his statement on 20.03.2023 under Section 108 of the Customs Act, 1962. During his statement he interalia stated that:

- he had perused statements of (i) Shri Jagdish Amarnath Singh, Director of M/s. Hermes Transport Solution LLP recorded on 13.01.2023 , (ii) Shri Manish Chandra Mishra, F- card holder of M/s Soham Logistics Pvt. Ltd (CHA) recorded on 04.01.2023 and (iii) Statement of Shri Brijeshbhai Surajlal Mishra, Manager of M/s. Hermes Transport Solution LLP, Hazira recorded on 16.01.2023, all under Section 108 of Customs Act, 1962;
- that he agreed with the above mentioned three statements to the portion stated about M/s. Reliance Industries Limited; that he perused his earlier statement dated 03.01.2023 and agreed with the same; that M/s Reliance Industries Limited have given contract to M/s Kwik Supply Chain Pvt. Ltd. to shortlist transportation vendors based on their market intelligence as regards the current optimum rate levels and the vendors' capability to accept the job and deliver as per M/s Reliance Industries Limited's requirement; that all the contracts are being made between M/s Kwik Supply Chain Pvt. Ltd and the actual transporters; that he produced a copy of the above said agreement dated 31.03.2022 between M/s Kwik Supply Chain Pvt. Ltd and M/s Hermes Transport Solutions LLP, which is valid upto 31.03.2023; that he produced agreement between M/s Reliance Industries Limited and M/s. Qwik Supply Chain Private Limited dated 01.04.2021, which is valid upto 31.03.2024; that transit time between Silvassa Plant/Athal Depot to Adani Hazira Port is around 10 to 12 hours; that as per page 16 of the agreement between M/s Kwik Supply Chain Pvt. Ltd and M/s Hermes Transport Solutions LLP under Control and enforcement heading –“ All vehicles should have an operational speedometer and if fitted with VTS should grant access to Company unified platform approved vendor for tracking, if not provided with VTS should ensure compliance to Company specified vehicle tracking system.”; that the tracking done is on the basis of the exception report generated by the tracking system and since the vehicles through which containers in which sand was found/ goods found in shortage did not have tracking, the same did not appear in the exception report and were not tracked/ followed up for timely reporting at the Port, other than manual tracking by the transporter; that on being asked as to what is an

exception report, he stated that the report generated by the tracking system wherein the vehicles being tracked either remain stationary during transit beyond a certain period and/ or the vehicles take more time than the average time required for reaching a destination from the origin point; that the movement was entirely in line with their normal export cycle, with the goods stuffed in the containers correctly declared on the pertinent documents, and did not have any reason to raise any doubts; that had the miscreants not pilfered the export cargo during the transit from the origin to Adani Hazira Port, these containers would have been a part of normal export only;

- that on being asked to refer statement of Shri Jagdish Amarnath Singh, Director of M/s. Hermes Transport Solution LLP recorded on 13.01.2023, wherein he had produced the self-certified Long Term rate contract effected between M/s Hermes Transport Solution LLP and M/s. Qwik Supply Chain Pvt. Ltd., however mentioned in his statement that the said contract was between M/s Hermes Transport Solutions LLP and M/s Reliance Industries Limited, and had further stated that the contract is of only two pages and no other contract has been made and he further stated that M/s. Reliance Industries Limited has not given him the signed copy of the contract and requested to comment on his statement and produce the signed copy of the contract, he stated that the said contract was indeed between M/s Hermes Transport Solutions and M/s Qwik Supply Chain Pvt. Ltd, and mention of M/s Reliance Industries Limited as a party to this contract was an inadvertent mistake on Shri Jagdish Amarnath Singh's part; that owing to the COVID-19 restrictions in place at the time of issuance of the said contract, there was no permission to attend the office, hence the communication was being carried out on phones and e-mail, with scans of important documents being received and stored on e-mail itself and hence Shri Jagdish Amarnath Singh did not receive a signed copy of the said contract then; that on being asked to further state that whether any contract has been made between M/s. Reliance Industries Limited and M/s. Hermes Transport Solutions LLP, he stated that other than the mentioned contract between M/s Qwik Supply Chain Pvt. Ltd. and M/s Hermes Transport Solutions, no other contract exists as on date; that he is very much tired and requested to continue statement on the next date.

**22.2** A Summons dated 20.03.2023 under Section 108 of the Customs Act, 1962 was issued to M/s. Reliance Industries Limited to appear on 21.03.2023. In response to Summons dated 20.03.2023, Shri Prasanna Vasant Munje, Vide President-SCM (Supply Chain Management) of M/s. Reliance Industries Limited appeared to record his statement on 21.03.2023 under Section 108 of the Customs Act, 1962. During his statement, he interalia stated that:

- he perused his statement dated 03.01.2023 and 20.03.2023 and agreed with the same; that he agreed with (i) Daily report for the month of November-2022, (ii) Daily report from 30.11.2022 to 17.12.2022 and (iii) Trip Details of 4 vehicles from 30.11.2022 to 16.12.2022 produced by M/s. Hermes Transport Solutions LLP and certified its correctness; that he agreed with the statements of (i) Shri

Jagdish Amarnath Singh, Director of M/s. Hermes Transport Solution LLP recorded on 13.01.2023 and (ii) Shri Manish Chandra Mishra, F- card holder of M/s Soham Logistics Pvt. Ltd (CHA) recorded on 04.01.2023 under Section 108 of Customs Act, 1962;

- that he agreed with the statement of Shri Jagdish Amarnath Singh, Director of M/s. Hermes Transport Solution LLP that vehicles which were running between Silvassa to Hazira port and Hazira to Hazira port were not VTS enabled; that on being asked to state the measures taken by them to ensure safety of goods in transit, he stated that the contractual terms under Pt. 7.1- Indemnity, Point 1.18 of Annexure-1 (PMT) as also the clauses under 'Control and Enforcement' under Annexure -1 (PTB) as per the contract between M/s Qwik Supply Chain Pvt. Ltd. and M/s Hermes Transport Solutions are being thoroughly adhered to, without any deviation; that goods once loaded on the vehicle shall be at the sole risk and complete responsibility of the road truck operator;
- that on being asked to state that what action has been taken by them against the transporter for non-complying the conditions, he stated that while their outstanding payments have been kept on hold, further business allocations have also been suspended, till the time the current matter does not get resolved; that on being asked to state why FIR has been filed by transporter, instead of M/s. Reliance Industries Limited, he stated that as per Para 7.1 & 8.4 of the contract between M/s Qwik Supply Chain Pvt. Ltd. and M/s Hermes Transport Solutions LLP-

*7.1 – Goods once loaded on the vehicle shall be at the sole risk and complete responsibility of the Road Truck Operator; and*

*8.4- For any damage above Rs. 10,000, the responsibility of lodging an FIR and survey of the goods damaged in transit lies with the concerned Road Truck Operator;*

- that on being asked as to what measures have been taken/ guidelines have been issued by M/s Reliance Industries Limited for safe transportation of their goods after this incident in pursuance of their letter dated 27.12.2022, wherein it is mentioned that their team of logistics and export coordinator has visited Silvassa site and Adani port to strengthen the system to avoid such incidence in future, he stated that-

1. VTS for owned fleet has been made compulsory for all empaneled transporters;
2. Weighment of the containers at the Port has been initiated without any exceptions;
3. Transport owners' meet arranged, to advise the measures being implemented, attended by all empaneled transporters as also seniors from M/s Reliance Industries Limited; that he submitted copy of Shipping Bills Nos. 5843945 dated 30.11.2022, 5844379 dated 30.11.2022, 5973611 dated 06.12.2022, 5971589 dated 06.12.2022, 5870593 dated 01.12.2022, 5924437 dated 04.12.2022, 5924397 dated 04.12.2022, 5815511 dated 30.11.2022 and 5819373 dated 30.11.2022 along with check list and GST invoice and Invoice cum Packing List;

that he submitted the number of the trailers and name of the transporter who has carried these containers, as below:-

Sr. No.	Shipping Bill No.	Transporter	Trailer No.
1	5843945	Hermes Transport Solutions	GJ16AV1109
2	5844379	Hermes Transport Solutions	GJ15AT4433
3	5973611	Hermes Transport Solutions	GJ15AT4433
4	5971589	Hermes Transport Solutions	GJ16AV1230
5	5870593	Hermes Transport Solutions	GJ16AV1230
6	5924437	Hermes Transport Solutions	GJ15AT4491
7	5924397	Hermes Transport Solutions	GJ15AT4433
8	5815511	Hermes Transport Solutions	GJ16AV1230
9	5819373	Hermes Transport Solutions	GJ15AT4491

- that he submitted examination report of Turkish Customs for container NOS MEDU 7684206 and MSMU 7281354 ; that on being asked that in letter dated 06.03.2023, M/s Reliance Industries Limited have mentioned that as regards 08 containers (Appendix-B), Customer has received the goods and has given confirmation on full receipt/shortage or empty containers and asked whether this means that 08 containers have been delivered full container load (actual quantity sent) and the consignee has received all the goods, he stated that in case of S/B No. 5900326- container no. KOCU5198256, 316 cartons have been delivered short and in other 7 containers have been delivered to customers, and no shortages have been informed by the buyers to them; that on being asked to submit the payment details from the buyers, he submitted the payment details; that in respect of S/B No. 5900326 dated 03.12.2022, full payment has been received and as regards shortage quantity, the same will be claimed by the buyer from the Insurance Company; that on being asked to submit the details of the date on which goods has been received by the respective buyers in respect of 8 containers as mentioned above, he stated that he will submit the details within a week time;
- that on being asked to produce Customs related documents of respective countries (countries where goods have been delivered) in respect of above mentioned 08 containers, he stated that he will co-ordinate with his colleagues in International marketing to get the said details within a week time; that VGM is Verified Gross Mass and contains Gross mass of the container; that M/s. Reliance Industries Limited has automated the process of filing VGM and are directly transmitting data to the Shipping Lines ; that In case VGM is not automatically transferred, on intimation from Shipping Line they are passing out the information to them; that he agreed with the statement of Shri Manish Chandra Mishra, F- card holder of M/s Soham Logistics Pvt. Ltd (CHA) that VGM has been filed for all the containers and M/s. RELIANCE INDUSTRIES LIMITED has automated the process of filing VGM and are directly transmitting data to the Shipping Lines;

➤ that on being asked whether he agreed that M/s. Reliance Industries Limited has failed to comply the conditions of SOLAS ( Safety of Life at Sea) guidelines, he stated that upon weighing the stuffed container at the Plant, system generated VGM gets triggered to the concerned Shipping Lines, capturing the exact weight of the cargo + container, as per the VGM requirement; that in this case also, the VGM was accordingly sent and since the miscreants pilfered the cargo en route to Port, the actual weight of the containers differed from the declared VGM, which was beyond any compliance management, and hence may not be seen as M/s Reliance Industries Limited's failure to comply; that he agreed with the Panchnama dated 18.03.2023 along with Annexure-A and weightment slips attached with the Panchnama drawn at Adani Port, Hazira ; that out of 03 containers examined, in 02 containers sand like material have been found and in 01 container instead of declared quantity of 24410.550 Kgs of Polyester Texturised Yarn, 12550 Kgs of yarn has been found; that on being asked that in Shipping Bill No 5870593 dated 01.12.2022, the goods declared in the invoice is Polyester Textured Yarn, however, when the containers were examined under Panchnama, the goods mentioned on the cartons were 75D/36F SD DD BLACK NIM( SHADE: BLACK 100% POLYESTER DTY/IST), he stated that the goods are Polyester Texturised Yarn, while the details as mentioned on the carton are for the particular grade/ item of the said Polyester Texturised Yarn.

### **23. SUMMONS TO THE SHIPPING LINES**

**23.1** A Summons dated 05.04.2023 under Section 108 of the Customs Act, 1962 was issued to M/s. MSC Agency (India) Private Limited to appear on 12.04.2023. In response to Summons dated 05.04.2023, Shri S. K. Pramod Kumar, port captain of M/s. MSC Agency( India) Pvt. Ltd. appeared to record his statement on 12.04.2023 under Section 108 of the Customs Act, 1962. During his statement, he inter-alia stated that M/s. MSC Agency (India) Pvt. Ltd at Hazira is an agent for Shipping line i.e., M/s. MSC ( Mediterranean Shipping Company) and undertake various works like marketing/vessel operations, etc. on their behalf; that the exporters/importers deal with their company i.e., M/s. MSC Agency ( India) Pvt. Ltd and they are responsible for carrying of their goods and they collect charges from the exporter/importer; that M/s. MSC Agency (India) Pvt. Ltd is responsible for all Customs and port related works; that they received letter F.No. CUS/ECFS/MISC/330/2022-AH-PORT-HZR-CUS-COMMRTE-AHMEDABAD DATED 23.12.2022 issued by the Deputy Commissioner, Customs, Hazira port, Surat addressed to M/s. MSC Agency (India) Private limited, Surat on mail on 23.12.2022 itself; that vide the above mentioned letter M/s. MSC Agency (India) Private limited was requested by the Deputy Commissioner of Customs, Hazira Port, Surat to recall 08 containers as mentioned below and which pertains to M/s. MSC Agency (India) Private limited back to Hazira port, India for examination, which have left the Indian Territory:

Sr. No.	SB NO.	DATE OF SB	CONTAINER NO.	VESSEL NAME	COUNTRY	PORT OF DISPATCH
1	6129281	13.12.2022	TRHU5144550	MSC LETIZIA	BE	ANTWERPEN

2	5731714	26.11.2022	TRHU7692240	MSC MELISSA	TR	AMBARLI
3	5756883	27.11.2022	CAAU5119305	MSC MELISSA	TR	GEMLIK
4	5761362	28.11.2022	TGBU9876448	MSC MELISSA	TR	ISKENDERUM
5	5761359	28.11.2022	MSMU8478630	MSC MELISSA	TR	ISKENDERUM
6	5924402	04.12.2022	CAIU7634457	MSC LISBON	TR	KUMPORT
7	5924437	04.12.2022	MSMU6580685	MSC LISBON	TR	KUMPORT
8	6105968	13.12.2022	MSDU8689257	MSC LETIZIA	PE	CALLAO

- That the date of reaching containers on destination port is as under:-

SR. NO.	CONTAINER NO.	COUNTRY	PORT OF DISPATCH	Date on which Container reached destination port (Port of Dispatch)
1	TRHU5144550	BE	ANTWERPEN	17.01.2023
2	TRHU7692240	TR	AMBARLI	30.12.2023
3	CAAU5119305	TR	GEMLIK	02.01.2023
4	TGBU9876448	TR	ISKENDERUM	21.12.2022
5	MSMU8478630	TR	ISKENDERUM	21.12.2022
6	CAIU7634457	TR	KUMPORT	31.01.2023
7	MSMU6580685	TR	KUMPORT	In transit-Estimated time of arrival at Hazira Port is around 18.04.2023.
8	MSDU8689257	PE	CALLAO	14.02.2023

- that vide their mail dated 03.04.2023, they have wrongly mentioned that Container No. TRHU5144550 was delivered at final destination on 08.03.2023, however, the correct date of delivery is 17.01.2023; that that they are tracking the containers through their internal website of M/s. MSC and the date of delivery is mentioned on the basis of tracking; that they do not check the weight of the containers and they rely on the declaration given by the exporter/importer in the VGM; that they have received first mail from Customs on 21.12.2022, wherein they were informed that an enquiry has been initiated against an exporter and they were requested from the Customs department to track the containers and alight at the nearest Indian port; that in furtherance of mail dated 21.01.2022, the Deputy Commissioner of Customs, Hazira vide letter dated 23.12.2022, requested them to recall 09 containers at Hazira Port which have left the Indian territory for examination; that on being asked, why have they not recalled 07 containers(TRHU5144550, TRHU7692240, CAAU5119305, TGBU9876448, MSMU8478630, CAIU7634457 and MSDU8689257), despite e-mail and letters from the Customs Department, he stated that out of the 07 containers, 02 containers ( TGBU9876448 and MSMU8478630) have already been delivered to the consignee and 02 containers ( CAAU 5119305 and TRHU7692240) have discharged at transhipment port at Tekirdag (Turkey) on 24.12.2022; that on being asked to peruse his e-mail dated 03.04.2022 and my above reply, wherein they have mentioned cargo delivered date at final destination/ Date on which Container reached destination port ( Port of Dispatch) as under:-

SR. NO.	CONTAINER NO.	Date on which Container reached destination port (Port of Dispatch)
1	TRHU5144550	17.01.2023/08.03.2023
2	TRHU7692240	30.12.2023

3	CAAU5119305	02.01.2023
4	TGBU9876448	21.12.2022
5	MSMU8478630	21.12.2022
6	CAIU7634457	31.01.2023
7	MSDU8689257	14.02.2023

➤ and state the reason for stating that two containers have been delivered before receipt of mail dated 21.12.2022, he stated that in his mail dated 03.04.2022, he had mentioned –‘ cargo delivered date at final destination’ and in his above reply he had mentioned –‘ Date on which Container reached destination port (Port of Dispatch)’ which is the date on which they had received the empty container from the consignee and not the date on which containers have reached the destination port; that 02 containers (CAAU 5119305 and TRHU7692240) which have been discharged at transhipment port at Tekirdag (Turkey) on 24.12.2022 has been further loaded in MSC Ship for final destination; that the dates on which containers reached destination port is as under:-

SR. NO.	CONTAINER NO.	COUNTRY	PORT OF DISPATCH	Date on which Container reached destination port (Port of Dispatch)
1	TRHU5144550	BE	ANTWERPEN	14.01.2023
2	TRHU7692240	TR	AMBARLI	29.12.2022
3	CAAU5119305	TR	GEMLIK	29.12.2022
4	TGBU9876448	TR	ISKENDERUM	17.12.2022
5	MSMU8478630	TR	ISKENDERUM	17.12.2022
6	CAIU7634457	TR	KUMPORT	27.01.2023
7	MSDU8689257	PE	CALLAO	09.02.2023

that on being asked, why had they not recalled 05 containers (TRHU5144550, TRHU7692240, CAAU5119305, CAIU7634457 and MSDU8689257), despite e-mail and letters from the Customs Department, he stated that he would have to consult his higher authorities and further requested to take statement on any further date.

**23.2** Further Summons dated 13.04.2023 under Section 108 of the Customs Act, 1962 was issued to M/s. MSC Agency (India) Private Limited to appear on 17.04.2023. In response to Summons dated 13.04.2023, Shri S. K. Pramod Kumar, port captain of M/s. MSC Agency( India) Pvt. Ltd. appeared to record his statement on 17.04.2023 under Section 108 of the Customs Act, 1962. During his statement, he inter-alia stated that:

➤ he perused his earlier statement dated 12.04.2023 and agreed with the same; that he produced the tracking details of containers Nos. CAIU7634457, MSDU8689257, TRHU7692240, CAAU5119305, TRHU5144550, TGBU9876448 and MSMU8478630; that he produced Customs document of discharge port in respect of container Nos. CAAU5119305, TRHU7692240, MSDU8689257 and TRHU5144550; that customs document documenting respect of other containers will be produced within 10 days; that on being asked that during his statement dated 12.04.2023, he had been asked that why they had not recalled 05 containers ( TRHU5144550, TRHU7692240, CAAU5119305, CAIU7634457 and MSDU8689257), despite e-mail and letters from the Customs Department, to which he had stated that he would consult his higher authorities before reply;

that he had consulted Shri Shaju Raphel, vice president ( documentation) and other colleagues;

- that in respect of container Nos. CAAU5119305 & TRHU7692240, they were already discharged at the transhipment port and thereafter could not be held back because of Customs formalities at destination port; that on being asked that in his statement dated 12.04.2023, he had stated that container Nos. CAAU5119305 & TRHU7692240 have discharged at transhipment port on 24.12.2022 and Customs has informed them vide mail dated 21.12.2022 and letter dated 23.12.2022, he stated that due to the customs Declaration process, these containers were continued to transport to final destination port; that on transhipment port i.e., TEKIRDAG (Turkey), holding of containers was not possible because the Customs registration has already been done for the planned vessel; that on being asked, why containers Nos. TRHU5144550, CAIU7634457 and MSDU8689257 were not brought to load port and also to state whether it was not possible to bring container Nos. CAAU5119305 & TRHU7692240 from the final port of destination, he stated that as mentioned in his earlier statement dated 12.04.2023, they had further taken the matter with their overseas counterpart and received customs/terminal clearance documents and as submitted by the respective consignee at the destination for 04 containers CAAU5119305, TRHU7692240, MSDU8689547 and TRHU5144550 the containers were cleared by the consignee and the cargo has been found as per the Shipping Bills and Bill of Lading;
- that he produced the documents; that that they had taken the Customs directions seriously and had immediately taken up the same with their Principals and various transhipment and Port of Discharge for holding the containers and further feasibility for back to town containers; that these containers were beyond the territorial of Indian Customs and were in different transhipment ports outside India and Customs declarations were made to Customs of different countries and the containers were continued for final destination; that meanwhile, the Shipper M/s. Reliance Industries limited has placed similar instructions regarding the back to town containers to MSC and to the consignee at the discharge port, to release the cargo to the consignee at the completion of Customs process and based on Bill of Lading submitted on their claim of Cargo; that since the shipper M/s. Reliance Industries Limited was also on constant touch with Customs for various containers being called back, they were under the assumptions i.e., instructions coming from the shipper were after due consultation from the Customs and the consignee at the port of discharge; that they reiterate that they were in full compliance with the instructions from the Indian Customs and nowhere intentionally made any attempt to disobey the Customs instructions; that due to obligation of local regulations, along with mixed instructions of Shipper on these containers along with customs clearance of documents at transhipment and destinations, the containers were cleared and hence could not be called back; that they humbly request to accept their explanation and submissions on these containers.

**23.3** A Summons dated 05.04.2023 under Section 108 of the Customs Act, 1962 was issued to M/s. Hyundai Merchant Marine to appear on 13.04.2023. Further Summons was issued dated 13.04.2023 to M/s. Hyundai Merchant Marine to appear on 18.04.2023. In response to Summons dated 13.04.2023, Shri Bharat Dayabhai Baldaniya Deputy Manager of M/s. Seabridge Marine Agencies Private Limited (Agent of HMM Shipping India Private limited) at Hazira appeared to record his statement on 18.04.2023 under Section 108 of the Customs Act, 1962. During his statement, he inter-alia stated that he works as deputy manager for Hazira Port and his responsibilities is to look after all the operational work at Adani Hazira port like loading and unloading of containers/ship requirements, etc; that M/s. Seabridge Marine Agencies Private Limited is shipping agent for Shipping Lines and looks after all the works on their behalf; that the exporters/importers deal with their company i.e., M/s. Seabridge Marine Agencies Private Limited and they are responsible for carrying of their goods and they collect charges; that in case of M/s. Reliance Industries Limited, all the dealings related to freight and other charges are done by M/s HMM Shipping India Private limited, Mumbai and they (M/s. Seabridge Marine Agencies Private Limited) look after only documentation part at the port and they do not charge anything from M/s HMM Shipping India Private limited for the works related to M/s. Reliance Industries Limited; that M/s. Seabridge Marine Agencies Private Limited is responsible for all Customs and port related works; that he perused letter F.No. CUS/ECFS/MISC/330/2022-AH-PORT-HZR-CUS-COMMRTE-AHMEDABAD DATED 23.12.2022 issued by the Deputy Commissioner, Customs, Hazira port, Surat addressed to M/s. Hyundai Merchant Marine, Hazira port, Surat and stated that the above said letter was received on mail on 23.12.2022 itself by them; that vide the above mentioned letter M/s. Hyundai Merchant Marine was requested by the Deputy Commissioner of Customs, Hazira Port, Surat to recall container as mentioned below and which pertains to M/s. Hyundai Merchant Marine back to Hazira port, India for examination, which have left the Indian Territory.

SR. NO.	SB NO.	DATE OF SB	CONTAINER NO.	VESSEL NAME	COUNTRY	PORT OF DISPATCH
1	5900326	03.12.2022	KOCU5198256	HYUNDAI HONG KONG	BR	NAVEGANTES

- that the containers No. KOCU5198256 reached the destination port ( port of dispatch) i.e., NAVEGANTES( BRAZIL) on 15.01.2023; that they had called for the proof of delivery of containers from their respective offices at discharge port and they will submit the same within 10 days; that on being asked that on what basis, they have mentioned the date of delivery at port of discharge, he stated that they had received a mail from M/s Hyundai HMM Shipping India Private limited about the delivery of the above said container; that he produced the copy of the e-mail; that they do not check the weight of the containers and they rely on the declaration given by the exporter/importer in the VGM; that he certified the correspondences made on mail with M/s. Seabridge Marine Agencies Private Limited ( Agent of M/s. HMM Shipping India Private limited) with the Customs Department; that they had received first mail from Customs on 21.12.2022,

wherein they were informed that an enquiry has been initiated against an exporter and they were requested from the Customs department to track the containers and alight at the nearest Indian port; that in furtherance of mail dated 21.01.2022, the Deputy Commissioner of Customs, Hazira vide letter dated 23.12.2022, requested them to recall 01 container at Hazira Port which have left the Indian territory for examination; that on being asked, why they had not recalled containers No. KOCU5198256 despite e-mail and letter from the Customs Department, he stated that the above mentioned container was sailed from Hazira Port on 06.12.2022 reached Kattupalli port( Chennai) on 15.12.2022 and further transhipped to NAVEGANTES( BRAZIL) from Kattupallai on 20.12.2022 on vessel MV Hyundai Privilege; that on receipt of mail dated 21.12.2022 from Customs, he had forwarded the mail to M/s HMM Shipping India Private limited and they were further in consultation with the exporter M/s. Reliance Industries Limited and M/s. HMM Shipping India Private limited also forwarded the mail to their Port of Discharge agent at Brazil; that due to some communication gap, the container was delivered to the consignee and the container could not be brought back.

**24.** Vide letter dated 16.03.2023, the Exporter requested to grant permission to move two containers i.e., CMAU5029146 & CMAU4649097 by road from Adani EXIM Yard, Mundra to Adani CFS, Hazira, which were examined by Mundra Customs vide Panchnama dated 24.12.2022. The request was made as Adani Exim Yard, Mundra has shown their inability to store the seized goods. Again, vide letter dated 24.04.2023, the Exporter submitted that they had identified a domestic container and requested to allow them to transfer the seized material at Mundra Customs from containers Nos. CMAU5029146 & CMAU4649097 to the domestic container under Customs supervision.

**25.** A Summons dated 09.05.2023 under Section 108 of the Customs Act, 1962 was issued to Shri Jagdish Singh, Director of M/s. Hermes Transport Solutions to appear on 16.05.2023 to give statement and produce documents. In response to Summons dated 09.05.2023, Shri Shri Jagdish Singh appeared to record his statement on 16.05.2023 under Section 108 of the Customs Act, 1962. During his statement, he interalia stated that he perused his earlier statement dated 13.01.2023 and agreed with the same; that facts mentioned about him and his company remains unchanged; that he perused Panchnamas dated 18.03.2023 and 20.04.2023, both drawn at Adani Hazira Port Pvt. Ltd, Hazira and agreed with the same; that as per the above mentioned Panchnamas, the result of verification of the containers can be tabulated as below:-

sr no	CONTAINER NO	DECLARED NET WEIGHT (IN KGS)	Actual Net Weight Found during examination (In KGS)	Observation during examination	No.of bags/carton During examination
1	MSMU6422859	24393.880	15110	Goods found shortage in the container.	426 cartons
2	MSDU7890225	24420.000	15400	Goods found shortage in the container.	440 Cartons

3	MEDU7684206	23529.000	13770	Goods found shortage in the container.	393 Cartons
4	MSMU7281354	23529.000	13840	Goods found shortage in the container.	394 Cartons
5	GCXU5587763	24410.550	12550	Goods found shortage in the container.	359 cartons
6	MEDU7839735	23829.730	6960	Sand like Material	145 Bags
7	MSMU6580685	24016.000	7930	Sand like Material	159 Bags
8	MRSU5188936	24409.320	7060	Apparently Sand	152 Bags
9	MRSU4808781	24397.850	7680	Apparently Sand	159 Bags

➤ that on being asked to produce the complete details as regards carrying of the below mentioned 09 containers, he stated that, the container movements are as per table mentioned below:-

Sr no	Container No	Trailer No	Date on which trailer left Hazira port with empty container	Date and Time on which trailer reached Naroli Plant/Athal Depot of M/s Reliance Industries Ltd.	Date and time on which trailer left Naroli Plant/Athal Depot of M/s Reliance Industries Ltd. for Hazira port	Date and Time on which trailer reached Hazira port
01	MSMU6422859	GJ16AV1230	28.11.2022	29.11.2022/ 17.53 Hrs	29.11.2022/ 20.55 Hrs	30.11.2022/ 17.25 Hrs
02	MSDU7890225	GJ15AT4491	28.11.2022	29.11.2022/ 19.55 Hrs	30.11.2022/ 14.05 Hrs	30.11.2022/ 21.09 Hrs
03	MEDU7684206	GJ16AV1109	29.11.2022	30.11.2022/ 18.46 Hrs	30.11.2022/ 23.47 Hrs	01.12.2022/ 18.58 Hrs
04	MSMU7281354	GJ15AT4433	29.11.2022	30.11.2022/ 20.34 Hrs	30.11.2022/ 23.47 Hrs	01.12.2022/ 19.04 hrs
05	GCXU5587763	GJ16AV1230	01.12.2022	01.12.2022/ 16.30 Hrs	01.12.2022/ 20.03 Hrs	02.12.2022/ 15.20 Hrs
06	MEDU7839735	GJ15AT4433	25.11.2022	27.11.2022/ 07.38 Hrs	27.11.2022/ 17.53 Hrs	28.11.2022/ 11.02 hrs
07	MSMU6580685	GJ15AT4491	02.12.2022	04.12.2022/ 15.21 Hrs	04.12.2022/ 19.52 Hrs	05.12.2022/ 21.57 Hrs
08	MRSU5188936	GJ16AV1230	05.12.2022	06.12.2022/ 16.34 Hrs	06.12.2022/ 20.05 Hrs	07.12.2022/ 18.19 Hrs
09	MRSU4808781	GJ15AT4433	05.12.2022	06.12.2022/ 18.40 Hrs	06.12.2022/ 20.45 Hrs	07.12.2022/ 18.20 hrs

➤ that on being asked about the tracking system installed on vehicles No. GJ16AV1109, GJ16AV1230 GJ15AT4433 & GJ15AT4491, he stated that GPS was not installed in the above mentioned 04 Vehicles; that the fact of non-installment of GPS System in the above said four vehicles was also stated in his statement dated 13.01.2023; that the above mentioned containers were tracked through phone calls; that on being asked about the drivers of the above trailers, he stated that the driver's details are as per table below mentioned:-

Sr no	Container No	Trailer No	Driver's name (Shri)	Date of appointment of the Driver
01	MSMU6422859	GJ16AV1230	Junaid Ahmed	25.11.2022
02	MSDU7890225	GJ15AT4491	Mohammad Shahrook Khan	23.11.2022
03	MEDU7684206	GJ16AV1109	Suraj K Gaur	23.11.2022
04	MSMU7281354	GJ15AT4433	Mohammad Yasir	01.11.2022
05	GCXU5587763	GJ16AV1230	Junaid Ahmed	25.11.2022
06	MEDU7839735	GJ15AT4433	Mohammad Yasir	01.11.2022
07	MSMU6580685	GJ15AT4491	Mohammad Shahrook Khan	23.11.2022
08	MRSU5188936	GJ16AV1230	Junaid Ahmed	25.11.2022

09	MRSU4808781	GJ15AT4433	Mohammad Yasir	01.11.2022
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- that on being asked about the present whereabouts of the drivers, he stated that he is not aware about the present whereabouts of the above mentioned drivers; that he had already submitted the driving licenses of above mentioned drivers and other documents which the drivers have submitted at the time of their appointment; that no police verification was done of the above mentioned drivers before or after their appointment; that he perused the statement dated 07.02.2023 of Shri Mohammad Yasir Mohammad Nasir Qureshi recorded in the Lajpore Central jail and stated that he did not want to comment on his statement;
- that he peruse statements of Shri Prasanna Vasant Munje, Vice president-SCM (Supply Chain Management) dated 20.03.2023 and 21.03.2023 and agreed with both the statements; that on being asked that in his statement dated 13.01.2023, he had produce the self-certified Long Term rate contract effected between M/s Hermes Transport Solution LLP and M/s. Reliance Industries Limited and had stated that the contract is of only two pages and no other contract has been made and also that M/s. Reliance Industries Limited has not given him the signed copy of the contract, however, Shri Prasanna Vasant Munje in his statement dated 20.03.2023 has stated that the said contract was between M/s Hermes Transport Solutions and M/s Qwik Supply Chain Pvt. Ltd, and mention of M/s Reliance Industries Limited as a party to this contract was an inadvertent mistake on Shri Jagadish Amarnath Singh's part and also owing to the COVID-19 restrictions in place at the time of issuance of the said contract, there was no permission to attend the office, hence the communication was being carried out on phones and e-mail, with scans of important documents being received and stored on e-mail itself and hence Shri Jagadish Amarnath Singh did not receive a signed copy of the said contract then;
- that it was further stated by Shri Prasanna Vasant Munje that no contract has been made between M/s. Reliance Industries Limited and M/s. Hermes Transport Solutions LLP and that other than the mentioned contract between M/s Qwik Supply Chain Pvt. Ltd. and M/s Hermes Solutions, no other contract exists as on date and on being asked to comment on his statement, he stated that he fully agree with his ( Shri Prasanna Munje) statement; that on being asked that why he mis-stated the facts in his statement dated 13.01.2023, he stated that they consider M/s Qwik Supply Chain Pvt. Ltd as a part of M/s. Reliance Industries Limited and hence facts were misinterpreted on his part;
- that on being asked about the present status of First Information Report (FIR) filed by M/s. Hermes Transport Solutions with local police at Hazira Police Station on 18.12.2022, he stated that Crime Branch has filed the charge sheet in the Court; that he is not having the copy of Charge sheet nor he knew in which court the charge sheet has been filed; that he produced produce daily report for the period 01.11.2022 to 29.11.2022 duly signed by him; that he had already produced daily report for the period 30.11.2022 to 17.12.2022 in his earlier statement; that he submitted the print out of ICICI fastag receipt for all the toll nakas for all the above mentioned 09 vehicles duly signed by him for the period

November & December-2022; that other than the dates mentioned in the print out of ICICI fastag receipt, there was no movement of the goods and the vehicles were lying idle.

**26.** A Summons dated 26.04.2023 under Section 108 of the Customs Act, 1962 was issued to M/s. Reliance Industries Limited to appear on 02.05.2023. However, M/s. Reliance Industries Limited vide their letter dated 02.05.2023 requested to re-schedule the date. Another Summons dated 17.05.2023 was issued to M/s. Reliance Industries Limited to appear on 23.05.2023. However, M/s. Reliance Industries Limited vide their letter dated 22.05.2023 requested to re-schedule the date for 26.05.2023. Thereafter, Summons dated 23.05.2023 under Section 108 of the Customs Act, 1962 was issued to M/s. Reliance Industries Limited to appear on 26.05.2023. In response to Summons dated 13.04.2023, **Shri Prasanna Vasant Munje, Vice President-SCM (Supply Chain Management) of M/s. Reliance Industries Limited** appeared to record his statement on 26.05.2023 under Section 108 of the Customs Act, 1962. During his statement, he inter-alia stated that he had perused his earlier statements dated 03.01.2023, 20.03.2023 and 21.03.2023 and agreed with the same; that he perused Panchnama dated 20.04.2023 drawn at Adani Hazira Port Pvt. Ltd, Hazira, Surat for examination of six containers of M/s. Reliance Industries Ltd along with Annexures and agreed with the contents of the Panchnama; that details of the Panchnama is as under:-

Sr. No.	Shipping Bill No/Date/ Container No.	Description of goods declared in Shipping Bills	Description of goods found during examination	Weight of goods declared in Shipping Bills (Net Weight)	Weight of goods found during examination	Market Value of mis-declared goods liable for confiscation (in Rs.)
1	5924437 dated 04-12-2022 (Container- MSMU6580685)	Polyester Textured Yarn (GRJ/0075/036/1/DX NIM/I/SD).	Apparently "sand".	24,016 KG	7,930 KG	7,930/-
2	5924397 dated 04-12-2022 (Container- MEDU7839735)	-do-	-do-	23,829.73 KG	6,960 KG	6,960/-
3	5815511 dated 30-11-2022 (Container- MSMU6422859)	Polyester Textured Yarn (GRJ/0100/048/1/TX NIM/I/SD).	DEN/FIL:100/48 POLY TEX HIM (SHADE: SD 100% POLYESTER DTY TWIST)	24,393.88 KG	15,110 KG	16,74,134/-
4	5819373 dated 30-11-2022 (Container- MSDU7890225)	Polyester Textured Yarn (GRJ/0150/048/1/DX NIM/I/SD).	DEN/FIL:150/48 SD DD BLACK NIM (SHADE: BLACK 100% POLYESTER TWIST)	24,420.00 KG	15,400 KG	17,87,981/-
5	5843945 dated 30-11-2022 (Container- MEDU7684206)	Polyester Textured Yarn (GRJ/0075/036/1/TX NIM/I/SD).	DEN/FIL:75/36 SD RW HIM (SHADE: SD 100% POLYESTER DTY TWIST)	23,529.00 KG	13,770 KG	15,30,952/-
6	5844379 dated 30-11-2022	--- DO ---	--- DO ---	23,529.00 KG	13,840 KG	15,34,848/-

(Container- MSMU728135 4)					
TOTAL					65,42,805/-

➤ that he perused (i) statements dated 12.04.2023 and 17.04.2023 of Shri S. K. Pramod Kumar, port captain of M/s. MSC Agency (India) Pvt. Ltd and (ii) statement dated 18.04.2023 of Shri Bharat Dayabhai Baldaniya, Deputy Manager of M/s. Seabridge Marine Agencies Private Limited (Agent of M/s. HMM Shipping India Private Limited) and agreed with the same; that he perused statement dated 16.05.2023 of Shri Jagdish Amarnath Singh, Detector of M/s. Hermes Transport Solutions LLP and agreed with the same; that he perused statements dated 07.02.2023 of Shri Mohammad Yasir Mohammad Nasir Qureshi recorded in Lajpore Central Jail, Sachin, Surat and stated that since he was not aware of the facts, he did not want to comment on his statement; that he perused Test Memos A-1, B-1, C-1, D-1, E-1, F-1 & G-1 all dated 23.12.2022 through which samples drawn under Panchnama dated 21-22.12.2022 at Hazira have been sent to Central Revenues Control Laboratory (CRCL), Vadodara and the test report of the respective samples on the back side of the Test Memos by the Chemical Examiner, GR-II, CRCL, Vadodara and stated that the test report for Test Memos A-1, C-1, D-1, E-1, F-1 & G-1 is that –“The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of aluminum, calcium & Iron. It is other than sand” that he further stated that as regards Test Memo B-1, the Test Report is as under–“The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of oxides of aluminum, calcium & Iron. It is other than sand”; that he agreed with the test reports; that he perused Test Memos 335 dated 02.01.2023 and 336 dated 02.01.2023 through which samples drawn under Panchnama dated 24.12.2022 at Mundra have been sent to Central Revenues Control Laboratory (CRCL), Kandla and the test reports of the respective samples by the Chemical Examiner, GR-II, CRCL, Kandla agree with the test reports; that the test report is as under:-

Test Memo No	Report submitted by CRCL
335 dated 02.01.2023	The sample as received is in the form of brownish-black granules of irregular shapes and sizes with coarse powder. It is mainly composed of silicates of aluminium together with small amount of iron and calcium having following composition. Moisture Content = 0.12 by wt. Loss on Ignition= 5.54 % by wt. % Silica Content ( as SiO <sub>2</sub> )= 83.20 by wt.
336 dated 02.01.2023	The sample as received is in the form of brownish-black granules of irregular shapes and sizes with coarse powder. It is mainly composed of silicates of aluminium together with small amount of iron and calcium having following composition. Moisture Content = 0.14 by wt. Loss on Ignition= 3.82 % by wt. % Silica Content ( as SiO <sub>2</sub> )= 82.13% by wt.

➤ that he perused copy of Test Memos A-1, B-1 and C-1 all dated 24.03.2023 through which samples drawn under Panchnama dated 18.03.2023 at Hazira have been sent to Central Revenues Control Laboratory (CRCL), Vadodara and the test report of the respective samples of the Test Memos by the Chemical

Examiner, GR-II, CRCL, Vadodara and stated that the test report for the all the three samples is as under:-

Sample No	Report submitted by CRCL
A-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of calcium, aluminium & Iron. Silica Content = 72.0%
B-1	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of calcium, aluminium & Iron. Silica Content = 71.1%
C-1	The sample as received is in the form of black coloured multifilament yarn of assorted length. It is wholly composed of dyed texturized polyester filament yarn.

➢ that he agreed with the Test Report for the samples as mentioned in Test Memo for the samples A-1 and A-2. I further state that he did not agree with the Test Report for the sample C-1; that it is not dyed texturized polyester filament yarn, but, dope dyed texturized polyester filament yarn; that on being asked to state the difference between Dyed Yarn and Dope Dyed Yarn, he stated that dyeing process is carried out for produced yarn by subjecting the yarn to the dyeing process, while Dope Dyeing involves introducing the dye from master batch during the production of the yarn itself in Polymerisation of the polyester; that they are also not claiming Drawback on this product at the rate specified for dyed yarn, which is at the higher rate; that he perused copy of Test Memos A-1, A-2, A-3, A-4, A-5 and A-6 all dated 25.04.2023 through which samples drawn under Panchnama dated 20.04.2023 at Hazira have been sent to Central Revenues Control Laboratory (CRCL), Vadodara and the test report of the respective samples of the Test Memos by the Chemical Examiner, GR-II, CRCL, Vadodara and stated that the test report for the all the three samples is as under:-

Sample No	Report submitted by CRCL
A-1	The sample as received is in the form of white multifilament yarn of assorted length. It is wholly composed of texturized polyester filament yarn.
A-2	The sample as received is in the form of white multifilament yarn of assorted length. It is wholly composed of texturized polyester filament yarn.
A-3	The sample as received is in the form of black coloured multifilament yarn of assorted length. It is wholly composed of dyed texturized polyester filament yarn.
A-4	The sample as received is in the form of white multifilament yarn of assorted length. It is wholly composed of texturized polyester filament yarn.
A-5	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of calcium, aluminium & Iron. Silica Content = 71.6%
A-6	The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of calcium, aluminium & Iron. Silica Content = 72.4%

➢ that he agreed with the Test Report for the samples as mentioned in Test Memo for the samples A-1, A-2, A-4, A-5 & A-6; that he did not agree with the Test

Report for the sample A-3; that it is not dyed texturized polyester filament yarn, but, dope dyed texturized polyester filament yarn; that he had already submitted letter to send sample of dope dyed texturized polyester filament for clarification; that on being asked whether M/s. Reliance Industries Limited have reversed the IGST involved and other export related benefits like RoDTEP and Drawback on the 18 containers, wherein goods have been found either short or the mis-declared goods, he stated that

- (i) Out of 18 Shipping Bills, scroll have been generated for 08 Shipping Bills for IGST Refund and that they have paid the IGST Refund amount of Rs. 2874020/- along with interest of Rs. 138219/- vide ARN- AD2603230009379 Dated 28.03.2023 and AD260523000014V dated 02.05.2023; that they submitted the copies Form GST DRC-03 along with statement containing all the details; that for rest of the 10 shipping bills, the refund has not been granted to them.
- (ii) Out of 18 Shipping Bills, scroll have been generated for 11 Shipping Bills for Drawback; that they have paid the Drawback amount of Rs. 627931/- along with interest of Rs. 1900/- vide TR-6 Challan No. 1968 and 1969 both dated 06.02.2023; that they submitted the copies TR-6 challans along with statement containing all the details; that they will submit the original copies of TR-6 challans within a week; that for rest of the 07 Shipping Bills, scroll has not been generated.
- (iii) Out of 18 Shipping Bills, scroll have been generated for 11 Shipping Bills for RoDTEP amounting to Rs. 745621/-; that they will pay the entire amount of Rs. 745621/- along with interest within a week and will submit the details and original copy of TR-6 Challan; that for rest of the 07 Shipping Bills, scroll has not been generated; that on being asked to refer his statement dated 21.03.2023, wherein he has stated that he will submit (i) the details of the date on which goods has been received by the respective buyers in respect of 8 containers and further (ii) he will produce Customs related documents of respective countries (countries where goods have been delivered) in respect of 08 containers, within a week time, he state that I will submit the details within a week time; that on being asked to submit the details, wherein short remittance or no remittance has been received against export wherein short goods or no goods has been received by the buyers, he stated that no such case is there and if such case is noticed for past consignments, he will let the department know.

## **27. SUBMISSION BY THE EXPORTER**

**27.1** M/s Reliance Industries Ltd. vide letter no. Customs/Hazira/10 dated 06.06.2023 requested for provisional release of the goods seized under panchnama dated 21/22.12.22, 18.03.23 & 20.04.23. Accordingly, the said seized goods were provisionally released vide letter bearing F.No. CUS/ECFS/MISC/330/2022/AH-PORT-HZR-CUS-COMMRTE-AHMEDABAD dated 14.06.2023 on execution of Bond for value of Rs. 93,46,448/- backed by bank guarantee of 10%. The bond was accepted on 13.06.2023.

**27.2** A letter bearing F.No. CUS/ECFS/MISC/330/2022-AH-PORT-HZR-CUS-COMMRTE-AHMEDABAD dated 29.05.2024 was written to M/s RIL for payment of proportionate amount of Drawback & RoDTEP in respect of short shipment of 11534 kgs in Container No. KOCU5198256 exported under SB No. 5900326 dated 03.12.2022. In response, M/s RIL vide their letter dated 04.07.2024 submitted that they have paid the amount of Rs. 30,357/- of Drawback vide Challan no. 507 Dated 21.06.2024 and further submitted that they had not received RoDTEP and IGST against this Shipping Bill and given undertaking to pay the amount, if they receive in future. Further, they inter-alia submitted as under:

“...

14. *In the circumstances, theft of the yarn had occurred in respect of the following containers:*

- a) *7 containers as per Panchnama dated 21/22-12-2022 drawn at Hazira Port,*
- b) *2 containers as per Panchnama dated 24-12-2022 drawn at Mundra Port,*
- c) *3 containers which had already sailed and were brought back to India and examined under Panchnama dated 18-3-2022 drawn at Hazira Port,*
- d) *6 containers which had already sailed and were brought back to India and examined under Panchnama dated 20-4-2023 drawn at Hazira Port and*
- e) *Container No. KOCU5198256 pertaining to Shipping Bill No.5900326 dated 3-12-2022, which had already sailed from India, but which could not be brought back to India as delivery of the same had already been taken by the foreign buyer and in respect of which the foreign buyer by e-mail dated 30-1-2023, informed that there was shortage of 316 Boxes.*

15. *By our letter dated 23-5-2023 addressed to the Superintendent, Customs, Hazira, we provided Certified copy of the Chargesheet filed by Police in Court, in respect of the aforesaid theft of our Yarn. Copies of the said letter dated 23-5-2023 and Charge sheet are enclosed herewith.*

16. *By our letter dated 6-6-2023, addressed to the Additional Commissioner of Customs, Hazira, we provided English translation of the Chargesheet along with the Chargesheet in Gujarati. Further, we provided details of return and payment back of the Drawback, RoDtep benefit and IGST refund with interest, wherever received in respect of the 18 containers referred to in clauses (a) to (d) of Para 14 above. It was also pointed out that the Insurance company had accepted our insurance claim in respect of the theft of the Yarn from the said 18 containers. Copy of the said letter dated 6-6-2023, with its enclosures, is enclosed herewith.*

17. *As regards the shortage of 316 Boxes in Container No. KOCU5198256 pertaining to Shipping Bill No.5900326 dated 3-12-2022, which was informed to us by the foreign buyer and about which we ourselves intimated the customs by our letter dated 6-3-2023, we have, on 21-6-2024, returned and paid back the Drawback amount with interest. Copy of Challan of such payment is enclosed herewith. We*

have not availed any RoDtep benefit or IGST refund in respect of this Shipping Bill. We undertake to refund the same to the department in case receipt in future.

18. It would be evident from the Charge Sheet filed by Police, that theft of the Yarn from the said Containers and its substitution with Bajri/worthless material, was committed by the Driver of the Transport vehicle viz. Mohmad Yashir Kureshi and his accomplices, who were arrested by the Police. The said theft was committed while the goods were in transit from our Silvassa Plant/ depot to Hazira Port. Police have also been able to recover part quantity of the stolen yarn from a village in Surat. The Insurance Company has also accepted our insurance claim in respect of the theft of the Yarn.
19. The above facts clearly establish that we have been victims of the said theft committed by the said Driver and his accomplices and accordingly we cannot be held responsible for the Bajri/worthless material and/or shortage of Yarn being found in the said 19 containers. We place reliance on the following judgments, in which it is laid down that where the goods as declared in the Shipping Bill were stuffed in the export containers and where in course of transit/ transport to the port, the contents of the containers were stolen/ substituted without the exporter's knowledge and the exporter is a victim of such theft, the exporter cannot be held liable and responsible for the same:
  - a) *Nanda Incorporated v CC – 2018 (363) ELT 673*
  - b) *CCE v GMR Industries Ltd - 2016 (340) ELT 721*
  - c) *Maheshwari Rocks (I) P. Ltd v CC - 2010 (262) ELT 574*
  - d) *Suttati Enterprises v CC – Order dated 18-7-2022*
  - e) *CC v Ram Avtar Singh Chauhan -2010 (262) ELT 446.*

Copies of the aforesaid judgments are enclosed for ready reference.

20. Considering that we have paid up with interest, all Duty benefits received by us in respect of the goods which were subject of theft and further considering that there has been no collusion, willful mis-statement or suppression of facts on our part and on the contrary we have been victims of theft, the present case clearly falls within the terms of Section 28 (1) (b) of the Customs Act 1962, and therefore, in terms of Section 28 (2) of the said Act, it is requested to treat the matter has concluded and closed. Further, since we have paid up with interest, all Duty benefits and the matter stands concluded under Section 28 (2), it is requested that Bank Guarantees and Bonds furnished by us be cancelled and returned to us.”

## **28. RESPONSIBILITY OF THE EXPORTER IN SELF-SEALING PERMISSION**

**28.1** M/s. Reliance Industries Limited, Survey No. 9/1/1/1, Silvassa-Naroli Main Road, Opp. Athal Weigh Bridge, Silvassa was granted one time self-sealing permission by the Office of the Commissioner of Customs, Ahmedabad for stuffing of containerized cargo subject to compliance to the procedure laid down under CBEC's Customs Manual and Instructions issued by the Board vide Circular No. 26/2017-Customs dated 01.07.2017, 36/2017-Customs dated 28.08.2017 & Facility Note No. 28/2017/CUS/AHD dated 08.09.2017 and amendment thereof issued in the subject matter from time to time. Self-Sealing permission was also granted to Silvassa Plant of M/s Reliance Industries Limited by the JNCH Customs vide F.No. S/6-Gen-Self Sealing-2014/2020-21 EXP-FSP

dated 27.06.2017 and renewed from time to time with condition to strict adherence to provisions and directions given in all Board's Circular with respect to e-sealing/Trade Notices/Public Notices issued from time to time by the Department.

**28.2** Implementation of electronic sealing for containers by exporters under self-sealing procedure has been prescribed by circular 26/2017-Cus dated 1.01.2017, 36/2017-Cus, dated 28.08.2017 and 37/2017-Cus dated 20.09.2017. The revised procedure of the CBEC vide Circular No. 41/2017-Customs dated 30 October 2017 has been notified and the said procedure was finally implemented from 8<sup>th</sup> November 2017. As per the above said notifications, Containers are to be stuffed at factory premises or warehouses under self-sealing procedure. For the sake of uniformity and ease of doing business, CBIC Board has decided to simplify the procedure relating to factory stuffing hitherto carried out under the supervision of the Central Excise officers. It is the endeavour of the Board to create a trust based environment where compliance in accordance with the extant laws is ensured by strengthening Risk Management System and Intelligence setup of the department. Accordingly, Board has decided to lay down a simplified procedure for stuffing and sealing of export goods in containers.

28.3. It therefore, appeared that M/s RIL had to ensure safe transportation and safe delivery of the goods upto the Customs Area after self sealing the container which they had failed to do so. Hence, they had contravened the conditions of the Self Sealing Permission as well as mishandled the goods to be exported/ exported. For this act, M/s RIL was sole responsible.

## **29. IMPROPER EXPORT:**

**29.1** The inquiry conducted, as discussed in the foregoing paras revealed that M/s RIL by way of wilful mis-statement, mis-representation and suppression of facts as regards mis-declaration of goods, presented the subject goods for export before the designated authority of Customs with an intent to avail fraudulent benefit of Drawback and RoDTEP. It, therefore, appeared that M/s RIL had indulged in fraudulent export of goods by mis-declaring the actual goods so exported which squarely falls within the ambit of 'illegal export' as defined in section 11H (a) of the Customs Act, 1962 in as much as the same was done in contravention of various provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules 1993 and Foreign Trade Policy.

**29.2** The goods, mis-declared as Polyester Texturized Yarn/ Polyester Filament Yarn, have been exported to various countries via Shipping Bills by way of willful mis-statement and suppression of facts with an intent to avail fraudulent benefit of Drawback and RoDTEP, whereas Rule 14(2) of Foreign Trade (Regulation) Rules, 1993 clearly prohibits for employing any corrupt or fraudulent practice for the purpose of exporting any goods for obtaining any license. Therefore, the said goods appear to be 'illegal export' goods as defined in Section 11H (a) of the Customs Act, 1962 and are liable for confiscation in terms of Section 113(i), 113(ja)& 113(k) of the Customs Act, 1962. The above mentioned acts of commission and omission on the part of M/s RIL

have rendered the goods exported by resorting to mis-declaration of goods, liable for confiscation under the provisions of Section 113(i), 113(ja) & 113(k) of the Customs Act, 1962 and have rendered M/s RIL liable for penalty under Section 114 ibid. The relevant provisions of the said sections are as under:

**29.2.1 SECTION 113: *Confiscation of goods attempted to be improperly exported, etc.* -**

*The following export goods shall be liable to confiscation: -*

*(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;*

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*(ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this act or any other law for the time being in force;*

*(k) any goods cleared for exportation \*\*\* which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;*

**29.2.2 SECTION 114. *Penalty for attempt to export goods improperly, etc.* -**

*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 113, or abets the doing or omission of such an act, shall be liable -*

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;*

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

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

***(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.***

**30. INELIGIBLE INCENTIVES**

**30.1** Under Drawback and RoDTEP scheme, a percentage of realized FOB value of eligible exports are provided as Drawback and RoDTEP duty credit scrips. Drawback is received by the exporter in cash and RoDTEP scrips can be transferred or used for payment of a number of duties / taxes including the customs / excise duty / service

tax. It appeared that M/s RIL have availed Drawback and the RoDTEP duty scrips mentioned in paras above, by mis-declaring the goods.

**30.2** From the above, it is evident that goods exported and attempted to be exported by M/s RIL were found either mis-declared or not physically exported. Therefore, the aforesaid goods, seized vide various Seizure Memos and mis-declared by them are liable for confiscation as per the Section 113(i), 113(ja) & 113(k) of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 and the excess Drawback claimed for the said export goods are liable to be denied and recovered from them under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 alongwith the interest as applicable under Section 75A of the Customs Act, 1962. Further, Penalty is required to be imposed on them under Section 114(iii) of the Customs Act, 1962 availed fraudulently and by misrepresentation, should not be denied and recovered from them under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 alongwith the interest as applicable under Section 75A of the Customs Act, 1962,

**30.3** Further, it appears that M/s RIL have utilized the RoDTEP scrips for the goods imported by them. Since, the duty scrips (RoDTEP) have been obtained fraudulently and by wilfully mis-stating the classification of the subject goods in the shipping bills filed before the Customs authorities, the amount of duty credit, so availed and utilised by debiting the MEIS scrips by the buyers of the scrips, is deemed to never have been exempted or debited to the extent of their ineligibility. In event of the RoDTEP scrips being found to be illegitimate / void in part, having been fraudulently obtained to the extent wrongfully claimed/availed, the excess payments of duties debited by using such RoDTEP scrips would become payable, such payable amounts being considered to be unpaid and liable to be recovered from M/s RIL under **Section 28AAA** along with applicable interest under **Section 28AA** of the Customs Act, 1962. The relevant legal provisions are as under:

**30.4.1. SECTION 28AAA. Recovery of duties in certain cases. —**

(1) *Where an instrument issued to a person has been obtained by him by means of*

—

- (a) *collusion; or*
- (b) *wilful misstatement; or*
- (c) *suppression of facts,*

*for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued:*

*Provided that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.*

- (2) *Where the duty becomes recoverable in accordance with the provisions of sub-section (1), the person from whom such duty is to be recovered, shall, in addition to such duty, be liable to pay interest at the rate fixed by the Central Government under section 28AA and the amount of such interest shall be calculated for the period beginning from the date of utilisation of the instrument till the date of recovery of such duty.*
- (3) *For the purposes of recovery under sub-section (2), the proper officer shall serve notice on the person to whom the instrument was issued requiring him to show cause, within a period of thirty days from the date of receipt of the notice, as to why the amount specified in the notice (excluding the interest) should not be recovered from him, and after giving that person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty or interest or both to be recovered from such person, not being in excess of the amount specified in the notice, and pass order to recover the amount of duty or interest or both and the person to whom the instrument was issued shall repay the amount so specified in the notice within a period of thirty days from the date of receipt of the said order, along with the interest due on such amount, whether or not the amount of interest is specified separately.*
- (4) *Where an order determining the duty has been passed under section 28, no order to recover that duty shall be passed under this section.*
- (5) *Where the person referred to in sub-section (3) fails to repay the amount within the period of thirty days specified therein, it shall be recovered in the manner laid down in sub-section (1) of section 142.*

#### **30.4.2. SECTION 28AA. Interest on delayed payment of duty. —**

- (1) *Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section 2, whether such payment is made voluntarily or after determination of the duty under that section.*
- (2) *Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.*
- (3) *Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—*

(a) *the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and*

(b) *such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.*

### **31. MIS-DECLARATION:**

**31.1** Vide Finance Act, 2011, "Self-Assessment" has been introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the responsibility of the importer or exporter to ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, M/s RIL appeared to have deliberately contravened or caused the contravention of the above said provisions with an intention to wrongfully avail the Drawback benefit & RoDTEP benefit by mis-declaring their goods.

**31.2** Since M/s RIL has violated or caused the violation of the provisions of Section 17, 46 and 50 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under **Section 117** of Customs Act, 1962 which read as under:

#### ***Penalties for contravention, etc., not expressly mentioned -***

*Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.*

**31.3** Whereas from the foregoing paras it also appeared that M/s RIL has intentionally and willfully made declarations, statements and documents etc., which are false and incorrect in nature. This act of mis-declaration by M/s RIL during the transactions of their business has made them liable for penalty under Section 114AA of Customs Act. Section 114AA of the Customs Act, 1962 reads as under:

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

Also, in so far as they knowingly or intentionally caused mis-declaration in Customs documents which were used by importers in the import of goods by way of citing ineligible scrips / licences and utilizing credit thereon, M/s RIL would also be liable for penalty under Section 114AA with regard to imported goods also.

**31.4** It appeared that M/s RIL has availed Drawback and obtained RoDTEP duty credit scrips fraudulently by willfully mis-stating the classification of the subject goods in the shipping bills filed before the Customs authority. This act of M/s RIL has rendered them liable for penalty under **Section 114AB** of the Customs Act, 1962, which reads as under:

**31.4.1 SECTION 114AB. *Penalty for obtaining instrument by fraud, etc.* —**

*Where any person has obtained any instrument by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilized by such person or any other person for discharging duty, the person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.*

**32. PERSONAL PENALTY:**

**32.1** It appeared that Shri Prasanna Vasant Munje, Vice President-SCM of M/s. RIL was responsible for the total export process comprising of pre-shipment, physical movement of goods, Shipment and Port- Shipment documentation of M/s RIL and also responsible for the export and Customs related work undertaken by the said company. It appeared that he admitted in his various statements that all the export documentation of all the plants situated in India are done by his team at Mumbai Office and that plant dispatch were looked after by the individual plants. He has also admitted in his statements that the goods exported and attempted to export were not the goods as declared by them in their documents and either the goods were Sand/Bajri or no goods were in the containers. He admitted that he had wrongly availed the Drawback and RoDTEP benefit and he was voluntarily ready to repay the wrongly availed Drawback & RoDTEP benefits. Subsequently they have paid the Drawback & RoDTEP availed wrongly by them. It appeared that being Vice-President of company Shri Munje was aware about the facts of mis-declaration of the goods exported and attempted to export and was responsible for this unlawful activities. By this act,

**32.1.1** Shri Munje had knowingly and intentionally made or caused to be made documents which were false or incorrect in material particulars in the export of goods and contravened the Customs Act, 1962 as stated in paras supra. Therefore, Shri Munje has rendered himself liable for penalty under **Section 114AA** of the Customs Act, 1962.

**32.1.2** It further appeared that Shri Munje, Vice-President of M/s. RIL had consciously and deliberately dealt with the goods which he knew or had reasons to believe were liable to confiscation under the provisions of Section 113(k) of the Customs Act, 1962 in respect of exported goods. He also played an important role in availing undue exemption provided under Drawback & RodTEP Scheme read with Notification No. 24/2015-Customs, 08.04.2015, and such acts and omissions on the part of Shri Munje have rendered him liable for penalty under **Section 114 and 114AA** of the Customs Act, 1962 against the export goods. Shri Munje had played key role for obtaining Drawback & RoDTEP duty credit scrips fraudulently by willfully mis-stating the classification of the subject goods in the shipping bills filed before the Customs

authority. This act of Shri Munjehas rendered him liable for penalty under **Section 114AB** of the Customs Act, 1962. Since Shri Munje has also violated the provisions of Section 17, 46 and 50 of the Customs Act, 1962 which was his duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, he shall also be liable to penalty under **Section 117** of the Customs Act, 1962.

**32.2** It further appeared that M/s Soham Logistics Pvt. Ltd., CHA of the exporter had consciously and deliberately dealt with the goods which he knew or had reasons to believe were liable to confiscation under the provisions of Section 113(k) of the Customs Act, 1962 in respect of exported goods and they also played an important role in abetting to avail undue benefits provided under Drawback & RoDTEP Scheme read with Notification No. 24/2015-Customs, 08.04.2015, and such acts and omissions on the part of M/s Soham Logistics Pvt. Ltd. have rendered him liable for penalty under **Section 114 and 114AA** of the Customs Act, 1962 against the export goods. M/s Soham Logistics Pvt. Ltd. had played key role for abetting to obtain Drawback & RoDTEP duty credit scrips fraudulently by willfully mis-stating the classification of the subject goods in the shipping bills filed before the Customs authority. This act of M/s Soham Logistics Pvt. Ltd. has rendered themselves liable for penalty under **Section 114AB** of the Customs Act, 1962. Since M/s Soham Logistics Pvt. Ltd. has also violated the provisions of Section 17, 46 and 50 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, he shall also be liable to penalty under **Section 117** of the Customs Act, 1962.

**32.3** It further appeared that M/s. MSC Agency (India) Pvt. Ltd., 210-213, Marvella Business Hub, Opp. Pal RTO Office, Pal- Hazira Road, Surat-395009, Gujarat, Shipping Line, had been requested by the department during the investigation to recall the containers but M/s MSC Agency (India) Pvt. Ltd. deliberately not co-operated to the investigation. Shri S.K. Pramod Kumar, Port Captain of M/s. MSC Agency ( India) Pvt. Ltd at Hazira, in his statements dated 12.04.2023 & 17.04.2023, admitted that they had wrongly submitted to the investigation that the containers had reached at the destination whereas the containers were then in transit. Hence, by this act of omission and commission, M/s. MSC Agency (India) Pvt. Ltd. have abetted in availing fraudulent drawback as well as RoDTEP and also failed to comply with the provisions of the Customs Act, 1962. This act of M/s. MSC Agency (India) Pvt. Ltd. has rendered themselves liable for penalty under **Section 117** of the Customs Act, 1962.

**32.4** It further appeared that M/s. Seabridge Marine Agencies Private Limited (Agent of M/s HMM Shipping India Private limited) at Hazira, 301, 4<sup>th</sup> Floor, Milestone Fiesta, Near Madhuban Circle, Adajan, Surat- 395009, Gujarat, had been requested by the department during the investigation to recall the containers which were sailed to M/s HMM Shipping India Private limited but M/s. Seabridge Marine Agencies Private Limited (Agent of M/s HMM Shipping India Private limited) deliberately not co-operated to the investigation. Shri Bharat Dayabhai Baldaniya, Deputy Manager of M/s. Seabridge Marine Agencies Private Limited, in his statement dated 18.04.2023, admitted that they had wrongly submitted to the investigation that the container had reached at the

destination whereas the container was then in transit. Hence, by this act of omission and commission, M/s. Seabridge Marine Agencies Private Limited have abetted in availing fraudulent drawback as well as RoDTEP and also failed to comply with the provisions of the Customs Act, 1962. This act of M/s. Seabridge Marine Agencies Private Limited has rendered themselves liable for penalty under **Section 117** of the Customs Act, 1962.

**32.5** Further, as per the chargesheet filed by the Gujarat Police in the instant matter, the following persons have dealt with the goods and were involved in theft of the goods:

- (i) Mohmad Yashir S/o Mohmad Nasir Kureshi,  
Village Mariadir, Thana Dumanganj, District Prayagraj (UP)
- (ii) Nilesh Yadav wrong name holder Sudhirkumar Gayaprasad Sing  
Vill. Shivcharanpurva Post Nyotl Taluka Thana Rudoll, Dist Ayodhya (UP)
- (iii) Sandipgiri S/o Dhirajgiri Goswami  
Tekarawala Faliyu, Varsola Village, T-Nadiyad District Kheda Original native Sukhpargam, In Sukhnath Mahadev temple, Taluka Jasdan District Rajkot
- (iv) Mukeshbhai Shantilalji Doshi, Jain by caste  
H/804, Rixivihar Township, Astik Party plot, Parwatpatia Surat City Original native village Pratapgadh, Gopalganj Mahollow, Opp. Chandraprabhu Jain Temple, T and D. Pratapgadh (Rajasthan)
- (v) Nareshbhai Babubhai Bhingralia  
House No.0/1104, Sumeru Sky, Mota Varachha, Near S.B.Circle, Surat City Original native village Dhola, T-Umrada D-Bhavnagar
- (vi) Keyur Jayantibhai Patel  
B/204<Verona residency, Harekrushna Campus, Vraj Chowk, Sarthana Jakatnaka Surat City Original native village Govindpura, Taluka Kadi District Mahesana and Tata Nagar Society, Meghanai Nagar Ahemdabad
- (vii) Mohmad Yakub Khurshid Pathan  
7/1228, Varsi Tekara, Hodi Bungalow, Near Gujarati School, Sayedpura, Surat City Original native village Bagnagar, Taluka District Basti (UP)
- (viii) Vijay Bhupatbhai Gohil  
C/101, Ashwamegh Vila Apartment, Yogi Chowk, Surat City Original native village Kumbhangam, Taluka Mahuwa District Bhavnagar
- (ix) Mohmad Ali Husainbhai Nakhuda  
5/132 Limda Oli Street, Rander, Bhesan, Surat City
- (x) Mohsin Imtiyaz Malek  
73, Green Park, Jahangirpura, Bhesan, Surat City
- (xi) Sahib Mohmad Jalil  
585, Himmat Nagar Zupadpatti, Salt Plant Road, Near Vidhyalankar, Mumbai-400037
- (xii) Juned Ahemad Juber Ahemad  
Shivara Hency Parji Madhanta Pratapgadh 230402
- (xiii) Mohmad Sharukkhan Mohmad Liyakatalikhan  
Chandni Nagar, S. M. Road, Near Sharda Mobile Shop, Mumbai 400037
- (xiv) Surajkumar Surendrakumar Gaud

Sandora, Hariharganj, Rani Ganj, Pratapgarh 230304

(xv) Rahul name person came to break the seal of the container whose full name is not known, Shivara Hency Parji Madhanta Pratapgarh 230402.

**31.5.1** The above said persons had consciously and deliberately dealt with the goods which they knew or had reasons to believe were liable to confiscation under the provisions of Section 113(k) of the Customs Act, 1962 in respect of exported goods. Such acts and omissions on the part of the abovementioned persons have rendered him liable for penalty under **Section 114 and 114AA** of the Customs Act, 1962 against the export goods. They had abetted for obtaining Drawback & RoDTEP duty credit scrips fraudulently by willfully mis-stating the classification of the subject goods in the shipping bills filed before the Customs authority. This act has rendered them liable for penalty under **Section 114AB** of the Customs Act, 1962. Since Shri Munje has also violated the provisions of Section 17, 46 and 50 of the Customs Act, 1962 which was his duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, he shall also be liable to penalty under **Section 117** of the Customs Act, 1962.

### **33. CONFISCATION OF THE EXPORT GOODS:**

**33.1** As elaborated in above paras, it appears that M/s RIL was aware that the goods being exported by them was misdeclared as Polyester Texturized Yarn/ Polyester Filament Yarn. By misdeclaring the goods with an intention to avail wrongful Drawback & RoDTEP benefit, M/s RIL has violated the provisions of Customs Act as stated in above paragraphs and has rendered the goods liable for confiscation under the provisions of Section 113(i), 113(ja) & 113(k) of the Customs Act, 1962.

**33.2** It appears that the exported goods had been wilfully mis-declared in the shipping bills and respective export documents with intention to avail undue benefit of Drawback and RoDTEP Scheme, the said goods having total declared FOB Value of **Rs. 4,97,48,635/- (Rupees Four Crores Ninety Seven Lakhs Forty Eight Thousand Six Hundred Thirty Five only)** have been rendered liable to confiscation under Section 113(i), 113(ja) & 113(k) of the Customs Act, 1962 and M/s RIL is liable for penalty under Section 114(iii), 114AA and 117 ibid as has been discussed above. However, such goods are no longer available.

**33.3** Therefore, the ineligible / wrongly availed DRAWBACK amount to the tune of **Rs. 6,58,288/- (Rupees Six Lakh Fifty Eight Thousand Two Hundred Eighty Eight only)**, is required to be recovered from M/s RIL under Rule 16 of the Drawback Rules, Section 28AAA of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962 as discussed in para supra.

**33.4** Therefore, the ineligible / wrongly availed RoDTEP Scrip amount and subsequently utilized by them, to the tune of **Rs. 7,45,620/- (Rupees Seven Lakh Forty Five Thousand Six Hundred Twenty only)**, is required to be recovered from M/s RIL under Section 28AAA of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962 as discussed in para supra.

### **34. PAYMENT DURING INVESTIGATION:**

**34.1** During the course of investigation M/s RIL has voluntarily paid **Rs. 6,58,288/- (Rupees Six Lakh Fifty Eight Thousand Two Hundred Eighty Eight only)** of ineligible Drawback amount availed on export of mis-declaring the goods during the period from November 2022 to December 2022 through Demand Draft/Challans. This payment made by M/s RIL is liable to be appropriated against the undue benefits availed by them under Drawback Scheme:

**34.2** During the course of investigation M/s RIL has voluntarily paid **Rs. 7,45,620/- (Rupees Seven Lakh Forty Five Thousand Six Hundred Twenty only)** of ineligible RoDTEP amount availed on export of mis-declared goods during the period from November 2022 to December 2022 through Demand Draft/Challans. This payment made by M/s RIL is liable to be appropriated against the undue benefits availed by them under RoDTEP:

**35.** Thereafter, a show cause notice bearing F. No. RIL/Inv/Hazira/Export/2022-Part-IV dated 14.10.2024 was issued by the Additional Commissioner of Customs, Adani Hazira Port, as to why:

- (i) The goods totally valued at **Rs. 4,97,48,635/- (Rupees Four Crores Ninety Seven Lakhs Forty Eight Thousand Six Hundred Thirty Five only)** for M/s. Reliance Industries Ltd., should not be held liable for confiscation under Section 113(k) of the Customs Act, 1962. As the goods are not physically available, Redemption Fine in lieu of confiscation should not be imposed upon them in lieu of confiscation under Section 113(i), 113(ja) & 113(k) of the Customs Act, 1962.
- (ii) The Duty Drawback amount aggregating to **Rs. 6,58,288/- (Rupees Six Lakh Fifty Eight Thousand Two Hundred Eighty Eight only)**, wrongly availed by M/s. Reliance Industries Ltd. by mis-declaring the goods and by not exporting actual goods as declared, should not be demanded and recovered from them under Rule 17 of the Customs and Central Excise Duties Drawback Rules, 2017 read with Section 28AAA of the Customs Act, 1962 along with interest in terms of Section 75A read with Section 28AA of the Customs Act, 1962 and the amount of **Rs. 6,58,288/- (Rupees Six Lakh Fifty Eight Thousand Two Hundred Eighty Eight only)** along with applicable interest paid by them should not be appropriated against the demand above.
- (iii) The duty payable amount aggregating to **Rs. 7,45,620/- (Rupees Seven Lakh Forty Five Thousand Six Hundred Twenty only)**, relatable to ineligible/wrongly availed RoDTEP amount utilized against imports, should not be demanded and recovered from M/s. Reliance Industries Ltd. under Section 28AAA of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 and the amount of **Rs. 7,45,620/- (Rupees Seven Lakh Forty Five Thousand Six Hundred Twenty only)** already paid by them should not be appropriated against the demand above.

- (iv) Penalty should not be imposed upon M/s. Reliance Industries Ltd. under Sections 114 & 114AA of the Customs Act, 1962, for the offence committed by them as detailed above.
- (v) Penalty should not be imposed on M/s. Reliance Industries Ltd. under Section 114AB and 117 of the Customs Act, 1962 for fraudulent availment of instruments.
- (vi) Penalty should not be imposed upon **Shri Prasanna Vasant Munje, Vice President-SCM (Supply Chain Management) of M/s. Reliance Industries Limited** under Section 114, 114AA, 114AB and Section 117 of the Customs Act, 1962 for contraventions pertaining to export of mis-declared goods/ attempt to export misdeclared goods/ Draback / RoDTEP Scrips and for failing to proper monitoring of movement of goods from to factory premise to port.
- (vii) Penalty should not be imposed upon **M/s Soham Logistics Private Limited**, CHA under Section 114, 114AA, 114AB and Section 117 of the Customs Act, 1962 for contraventions pertaining to export of mis-declared goods/ attempt to export mis-declared goods/ Drawback / RoDTEP Scrips.
- (viii) Penalty should not be imposed upon **M/s. Hermes Transport Solution**, Transporter, under Section 114AA, 114AB and Section 117 of the Customs Act, 1962 for contraventions pertaining to export of mis-declared goods/ attempt to export mis-declared goods/ Drawback / RoDTEP Scrips and for failing to proper monitoring of movement of goods from to factory premise to port.
- (ix) Penalty should not be imposed upon **M/s. MSC Agency (India) Pvt. Ltd.**, 210-213, Marvella Business Hub, Opp. Pal RTO Office, Pal- Hazira Road, Surat-395009 under Section 117 of the Customs Act, 1962.
- (x) Penalty should not be imposed upon **M/s. Seabridge Marine Agencies Private Limited** (Agent of M/s HMM Shipping India Private limited) at Hazira, 301, 4<sup>th</sup> Floor, Milestone Fiesta, Near Madhuban Circle, Adajan, Surat- 395009, Gujarat under Section 117 of the Customs Act, 1962.

**35.1** Vide above show cause notice bearing F. No. RIL/Inv/Hazira/Export/2022-Part-IV dated 14.10.2024 issued by the Additional Commissioner of Customs, Adani Hazira Port, following persons were called upon as to why Penalty should not be imposed upon them separately under Section 114AA, 114AB and Section 117 of the Customs Act, 1962 with respect to contraventions pertaining to export of mis-declared goods/ attempt to export mis-declared goods/fraudulent Drawback & RoDTEP Scrips-

- (a) Mohmad Yashir S/o Mohmad Nasir Kureshi, Village Mariadir, Thana Dumanganj, District Prayagraj (UP)

(b) Nilesh Yadav wrong name holder Sudhirkumar Gayaprasad Sing, Vill. Shivcharanpurva Post Nyotl Taluka Thana Rudoll, DistAyodhya (UP)

(c) Sandipgiri S/o Dhirajgiri Goswami, Tekarawala Faliyu, Varsola Village,T-Nadiyad District Kheda Original native Sukhpargam, In Sukhnath Mahadev temple, Taluka Jasdan District Rajkot

(d) Mukeshbhai Shantilalji Doshi, Jain by caste, H/804, Rixivihar Township, Astik Party plot, Parwatpatia Surat City Original native village Pratapgadh, Gopalganj Mahollow, Opp. Chandraprabhu Jain Temple, T and D. Pratapgadh (Rajasthan)

(e) Nareshbhai Babubhai Bhingralia, House No.0/1104, Sumeru Sky, Mota Varachha, Near S.B.Circle, Surat City Original native village Dhola,T-Umrada D-Bhavnagar

(f) Keyur Jayantibhai Patel, B/204<Verona residency, Harekrushna Campus,Vraj Chowk, Sarthana Jakatnaka Surat City Original native village Govindpura, Taluka Kadi District Mahesana and Tata Nagar Society, Meghanai Nagar Ahemdabad

(g) Mohmad Yakub Khurshid Pathan, 7/1228,Varsi Tekara,Hodi Bungalow,Near Gujarati School, Sayedpura, Surat City Original native village Bagnagar, Taluka District Basti (UP)

(h) Vijay Bhupatbhai Gohil, C/101, Ashwamegh Vila Apartment, Yogi Chowk, Surat City Original native village Kumbhangam, Taluka Mahuwa District Bhavnagar

(i) Mohmad Ali Husainbhai Nakhuda, 5/132 Limda Oli Street, Rander, Bhesan, Surat City

(j) Mohsin Imtiyaz Malek, 73, Green Park, Jahangirpura, Bhesan, Surat City

(k) Sahib Mohmad Jalil, 585, Himmat Nagar Zupadpatti, Salt Plant Road, Near Vidhyalankar, Mumbai-400037

(l) Juned Ahemad Juber Ahemad, Shivara Hency Parji Madhanta Pratapgadh 230402

(m) Mohmad SHarukkhan Mohmad Liyakatalikhan, Chandni Nagar, S. M. Road, Near Sharda Mobile Shop, Mumbai 400037

(n) Surajkumar Surendrakumar Gaud, Sandora, Hariharganj, Rani Ganj, Pratapgadh 230304

(o) Rahul name person came to break the seal of the container whose full name is not known, Shivara Hency Parji Madhanta Pratapgadh 230402.

**DEFENSE SUBMISSIONS AND PERSONAL HEARINGS:**

**36.** M/s. Reliance Industries Ltd., submitted their reply to the Show Cause Notice vide their letter dated 03.03.2025 interalia they stated that:-

- They emphatically submit that the Show Cause Notice is without jurisdiction and the contentions raised in the Show cause notice and the action proposed by the Show Cause Notice, apart from being thoroughly misconceived, are totally untenable in law as herein after explained.

- They are one of the leading manufacturer-exporters of “Polyester Texturized Yarn” (PTY) in India and their export turnover of the said goods in the last three years is as follows:

Financial Year	FOB Value of total physical exports in USD
2022-23	9,16,31,99,289
2023-24	7,05,86,57,553
2024-25 (Till Jan)	5,13,15,13,361

- Accordingly, they earn substantial foreign exchange for the country through their said exports.
- In respect of such exports undertaken by us, They follow the procedure of Self-Sealing of the export containers with RFID (Radio Frequency Identification) Seals as provided in CBIC Circulars Nos. 26/2017-CUS dated 1-7-2017, 36/2017-CUS dated 28-8-2017, 37/2017-CUS dated 20-9-2017 and 41/2017-CUS dated 30-10-2017. As stated in the said Circulars, RFID Seals are high Security tamper-proof Seals conforming to international ISO standards, which enhance cargo security during transportation to Ports and ICD as well as during holding time. The said Circulars provide that the integrity of the RFID Seal would be verified by the Customs Officer at the Port/ICD using the reader- scanners which are connected to the Data Retrieval System of the ISO-certified Vendor of the RFID Seals. The Circulars further provide that if upon such verification by the Customs officer at the Port/ ICD, the RFID Seal is found to be tampered with, the goods shall be subjected to examination. Copies of Self-Sealing Permissions dated 14-6-2017 for the factory and dated 4-4-2022 for the depot were annexed as Annexure "A" collectively.
- In December 2022, they had filed Shipping Bill No.6171932 dated 15-12-2022 for export of Polyester Texturized Yarn in Container No. TGCU5002704, which, after stuffing at their Silvassa Plant, was transported by Hemes Transport Solution LLP to Hazira Port. After the said container was gated in at Hazira Port on 16-12-2022, at the time of examination of the said goods by Customs, it was found that there had been theft of the Yarn contained in the said Container and the Yarn had been substituted with Old Bags containing worthless material.
- Accordingly, by their letter dated 17-12-2022 addressed to the Deputy Commissioner of Customs, Hazira, They provided the entire list of Containers which were then lying at Hazira Port and in respect of which They had filed Shipping Bills, and requested customs to examine all the containers so as to ascertain whether there was similar theft in respect of such other containers then lying at Hazira Port. A copy of the said letter dated 17-12-2022 were annexed as Annexure "B".
- Pursuant to their said request, on 21-12-2022 and 22-12-2022, Customs opened and examined the Containers which were then lying at Hazira Port and upon such examination, it was found that in case of 7 out of total 78 containers (including the container referred to above in which theft was first detected), there had been theft of the Yarn which had been substituted with Old Bags containing

worthless material. A copy of the Panchnama dated 21/22-12-2022 recording the finding of substituted Old Bags containing worthless material in 7 containers were annexed as Annexure "C".

- Apart from the containers lying at Hazira Port, 7 other containers for which Shipping Bills had been filed in December 2022, had already moved to Mundra Port for onward transshipment and were still lying at Mundra Port. They requested the Shipping Company to keep the said containers on hold at Mundra Port and by their letter dated 22-12-2022, they requested Mundra Customs to carry out examination of the contents of the said 7 containers. A copy of the said letter dated 22-12-2022 were annexed as Annexure "D".
- Further by letter dated 23-12-2022, the Deputy Commissioner of Customs, Hazira, requested the Shipping Company to recall 9 containers mentioned in the said letter, which had already left Hazira and Mundra ports, and to bring them back to India. A copy of the said letter dated 23-12-2022 were annexed as Annexure "E".
- The 7 containers which were still lying at Mundra Port, as mentioned in Para 7 above, were thereafter opened and examined by Mundra Customs under Panchnama dated 24-12-2022, when it was found that out of 7 containers, there was substitution of the PTY with worthless material in two containers. It was noticed that the Seals affixed on the said two containers were damaged and tampered with. A copy of the said Panchnama dated 24-12-2022, were annexed as Annexure "F".
- Soon after the detection of the theft of the yarn from the said containers and substitution of the yarn with worthless material, the said Transporter's Manager, lodged complaint with the Police and upon investigation by the Police, it was found that the theft of the yarn and its substitution with worthless material had been committed by the Driver of the Transport vehicle and his accomplices, who were arrested by the Police and the Police were able to recover part quantity of the Stolen Yarn from a village in Surat. By their letter dated 27-12-2022, they informed the Additional Commissioner of Customs, Hazira of the filing of the said Police complaint, arrest of the said Driver for theft of the yarn and its substitution with worthless material and recovery of part quantity of the stolen yarn by the Police. By the said letter dated 27-12-2022, they undertook not to avail of any Duty Drawback, RoDTEP benefit or IGST refund in respect of the stolen yarn and to return such benefits, if already received. Copy of their said letter dated 27-12-2022 were annexed as Annexure "G".
- By their letter dated 6-3-2023, they informed the Additional Commissioner of Customs, Hazira, that it was learnt from the Police that the theft of the yarn from and its substitution with worthless material in the containers, while in transit from their Silvassa Plant/ depot to Hazira Port, by the said Driver and his accomplices had started from 21-11-2022. Accordingly, they provided details of the containers transported from 21-11-2022 onwards and the corresponding shipping Bills, which had already sailed from India. It was further informed that in respect of such containers, which has already left India, They had requested

the Shipping Line to undertake in-transit weighment and bring back to India, all such containers in which variation in weights was noticed.

- Container No. KOCU5198256 pertaining to Shipping Bill No.5900326 dated 3-12-2022, which had already sailed from India, could not be brought back to India as delivery of the same had already been taken by the foreign buyer. They were informed by the foreign buyer by e-mail dated 30-1-2023, that in the said container, there was shortage of 316 Boxes. By their said letter dated 6-3-2023, they themselves, informed the Customs of the said shortage of 316 Boxes found by the foreign buyer and provided copy of the said e-mail dated 30-1-2023. Copy of the said letter dated 6-3-2023 is hereto annexed as Annexure "H".
- Out of the containers which had already sailed from India, 3 containers in which weight difference was noticed by the Shipping Line, were brought back to Hazira Port and opened and examined under Panchnama dated 18-3-2023. In two containers the Yarn had been completely substituted with worthless material and in one container there was theft of partial quantity of yarn. Copy of the said Panchnama dated 18-3-2023 is hereto annexed as Annexure "I".
- Further 6 containers which had already sailed from India, were brought back to Hazira Port and opened and examined under Panchnama dated 20-4-2023, when it was found that in two containers the Yarn had been completely substituted with worthless material and in four containers there was theft of partial quantity of yarn. Copy of the said Panchnama dated 20-4-2023 is hereto annexed as Annexure "J".
- In the circumstances, theft of the yarn had occurred in respect of the following containers:
  - a) 7 containers as per Panchnama dated 21/22-12-2022 drawn at Hazira Port,
  - b) 2 containers as per Panchnama dated 24-12-2022 drawn at Mundra Port,
  - c) 3 containers which had already sailed and were brought back to India and examined under Panchnama dated 18-3-2022 drawn at Hazira Port,
  - d) 6 containers which had already sailed and were brought back to India and examined under Panchnama dated 20-4-2023 drawn at Hazira Port and
  - e) Container No. KOCU5198256 pertaining to Shipping Bill No.5900326 dated 3-12-2022, which had already sailed from India, but which could not be brought back to India as delivery of the same had already been taken by the foreign buyer and in respect of which the foreign buyer by e-mail dated 30-1-2023, informed that there was shortage of 316 Boxes.
- By their letter dated 23-5-2023 addressed to the Superintendent, Customs, Hazira, They provided Certified copy of the Chargesheet filed by Police in Court, in respect of the aforesaid theft of their Yarn. Copies of the said letter dated 23-5-2023 and Charge sheet were annexed as Annexure "K".
- By their letter dated 6-6-2023, addressed to the Additional Commissioner of Customs, Hazira, They provided English translation of the Chargesheet along with the Chargesheet in Gujarati. Further, They provided details of return and payment back of the Drawback, RoDTEP benefit and IGST refund with interest, wherever received in respect of the 18 containers referred to in clauses (a) to (d)

of Para 16 above. It was also pointed out that the Insurance Company had accepted their insurance claim in respect of the theft of the Yarn from the said 18 containers. Copy of the said letter dated 6-6-2023, with its enclosures, is hereto annexed as Annexure "L".

- As regards the shortage of 316 Boxes in Container No. KOCU5198256 pertaining to Shipping Bill No.5900326 dated 3-12-2022, which was informed to us by the foreign buyer and about which They themselves intimated the customs by their letter dated 6-3-2023, They paid back on 21-6-2024, the Drawback received in respect thereof with interest. They had not received RODTEP benefit and IGST refund in respect of the same. Copy of their letter dated 4-7-2024 addressed to the Assistant Commissioner informing him about the facts as stated herein above and about such payment is hereto annexed as Annexure "M" and Copy of Challan of the said payment is hereto annexed as Annexure "N".
- The Customs, inter alia, recorded the following statements:
  - a) Statements dated 3-1-2023, 20-3-2023, 21-3-2023 and 26-5-2023 of their Vice President (Supply Chain Management), Mr. Prasanna Vasant Munje: in which he has inter alia stated that in the containers in which worthless material was found instead of Yarn, there has been theft of the Yarn by miscreants en route to the Port after the cargo was duly dispatched with supporting documents from their mentioned place of stuffing. He stated that the said theft has come as a shock to us and all possible steps are being taken by them to comply with the export regulations and compliance standards, He further stated that the Hermes Transport Solutions have filed FIR with the police and the driver of the vehicle has been arrested by police and majority of the stolen goods have been recovered by police. He has stated that the responsibility of transporting the goods safely is that of the said Transporter and that in view of the theft, they have stopped payment of around Rs.1.25 crores to the said Transporter and no further business is allocated to the said transporter. He did not agree with the suggestion that the worthless material was sent by them in the containers to fraudulently claim export benefits such as Drawback, RODTEP and IGST and maintained that they had only dispatched PTY in line with export documents and claimed the incentives as per law. He has stated that the movement was entirely in line with normal export cycle, with goods stuffed in the containers correctly declared on the pertinent documents and that he did not have any reason to raise any doubts. He stated that the IGST refund had been received in case of 8 Shipping Bills and Drawback had been received in case of 11 Shipping Bills and the amounts of IGST refund and Drawback received had been paid back with interest. RODTEP benefit received in case of 11 Shipping Bills will also be paid back with interest.
  - b) Statement dated 4-1-2023 of Manish Mishra, F-Card Holder of Soham Logistics P. Ltd, who had acted as Customs Broker in respect of the exports: in which he has inter alia, stated that they do not know how the worthless material was found in the containers instead of the Yarn,
  - c) Statements dated 13-1-2023 and 16-5-2023 of Jagdish Singh of Hermes Transport Solutions LLP in which, he inter alia, stated that the goods had been

stolen by their drivers en route to the Port, for which, his employee has filed FIR with Police and that Police have arrested one of the drivers and recovered majority of the stolen goods. He stated that as transporter, it was their responsibility to safely deliver the container to the Port and to track the container.

d) Statement dated 16-1-2023 of Brijesh Mishra, employee of Hermes Transport Solutions LLP, in which, he has inter alia, stated that he came to know about the theft on 17-12-2022, when he received call from employee of the Customs Broker and thereafter on 18-12-2022 he filed FIR with the Police.

e) Statement dated 7-2-2023 of Driver Mohammad Yasir Mohammad Nasir Quershi, who was arrested by Police: in which he inter alia stated that en route to the Port, he stopped the trailer at a godown near Magdalla Bridge on Sachin Hazira road (adjacent to the highway) and the seals of the containers were broken and the yarn was replaced with Soil. This was done on the instructions of one Sudhir Singh, who had arranged his job with Hermes Transport Solution. He was promised monetary consideration by Sudhir Singh and he had received part of such consideration. Apart from him, three other drivers named by him had committed the same act of replacing the goods on instructions of Sudhir Singh.

- The above facts clearly establish that they have been victims of the said theft committed by the said Drivers of the vehicles. Further, wherever the export benefits of IGST Refund, Drawback and RODTEP had been received by them in respect of the goods which were stolen and substituted with mud/ soil en route to the Port, They have paid back the said benefits with interest.
- In spite of the aforesaid undisputed facts, they have been issued the present Show Cause Notice.
- Contentions in the Show Cause Notice: The facts as set out herein above, which establish that they have been victims of the theft committed by the Drivers of the vehicles who substituted the Yarn in the containers with worthless material i.e mud/ soil, have been accepted and are not disputed in the Show Cause Notice. The Show Cause Notice also accepts and does not dispute that wherever the export benefits of IGST Refund, Drawback and RODTEP had been received by them in respect of the goods which were stolen and substituted with mud/ soil en route to the Port, They have paid back the said benefits with interest. Yet, the Show Cause Notice has proposed action against them for confiscation of the goods, imposition of fine and penalties and recovery of the Drawback and RODTEP benefits by raising the following contentions, which to say the least, are *ex facie* bizarre and completely untenable in law:
  - a) That they, by way of willful mis-statement, mis-representation and suppression of facts as regards misdeclaration of goods, presented the subject goods for export before customs with intent to avail fraudulent benefit of Drawback and RoDTEP !!!! (Para 29.1 of Show Cause Notice),
  - b) That They have indulged in fraudulent export of goods by mis-declaring the actual goods so exported (Para 29.1 of Show Cause Notice),
  - c) That the goods, mis-declared as Polyester Texturized Yarn/ Polyester Filament Yarn have been exported to various countries by way of willful mis-statement and

suppression of facts with intent to avail fraudulent benefit of Drawback and RoDTEP (Para 29.2 of the Show cause notice).

- d) That They have availed Drawback and RODTEP by mis-declaring the goods (Para 30.2 of the Show Cause Notice)
- e) That They have contravened the conditions of Self-Sealing permission and mishandled the goods to be exported/ exported, for which They are solely responsible (Para 28.3 of the Show Cause Notice)
- By raising the aforesaid contentions of willful mis-statement, mis-representation, suppression of facts, misdeclaration of goods and intent to avail fraudulent benefit of Drawback and RODTEP, which themselves are totally baseless and contrary to the undisputed fact of theft of which They have been the victims, the Show Cause Notice has proposed the following actions:
  - a) Confiscation of the goods under Section 113 (i), (ja) and (k) of the Customs Act 1962 on the premise that They allegedly indulged in fraudulent export which is prohibited by Rule 14 (2) of Foreign Trade (Regulation) Rules 1993 and which constitutes "illegal export" under Section 11H (a) of the Customs Act 1962,
  - b) Imposition of redemption fine on the ground that the goods are not available for confiscation,
  - c) Imposition of penalty under Section 114 of the Customs Act 1962 on the premise that the goods are liable to confiscation under Section 113 (i), (ja) and (k) of the said Act,
  - d) Recovery of Drawback under Rule 17 of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 along with interest under Section 75A of the Customs Act 1962,
  - e) Recovery of RoDTEP benefit under Section 28AAA of the Customs Act 1962 along with interest under Section 28AA of the said Act and
  - f) Imposition of penalty under Section 114AA, 114AB and 117 of the Customs Act 1962.
- They submit that the aforesaid contentions raised in the Show Cause Notice and the aforesaid action proposed by the Show Cause Notice are totally unsustainable in law as herein after explained.

#### SUBMISSIONS:

- Show Cause Notice demanding Drawback under Rule 17 of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 and RODTEP benefit under Section 28AAA of the Customs Act 1962 are without jurisdiction as admittedly no Drawback or RODTEP benefit is outstanding and remaining unpaid on the date of the issue of the Show Cause Notice: At the outset They submit that it is undisputed that in respect of the goods which were the subject-matter of theft enroute to the Port of export, on becoming aware of the theft, They have paid up, with interest, the Drawback and RoDTEP benefits received on such goods. Accordingly, on the date of issue of the Show cause notice, no amount of Drawback or RoDTEP benefit is outstanding and unpaid. Consequently, the issuance of the Show Cause Notice for recovery of Drawback and RODTEP

benefits, which admittedly are not outstanding is totally without jurisdiction. The Show Cause Notice is liable to be discharged and dropped on this ground itself.

- Soon after the detection of the theft of the yarn from the containers and substitution of the yarn with worthless material, the Transporter's Manager, lodged complaint with the Police and by their letter dated 27-12-2022, They informed the Additional Commissioner of Customs, Hazira of the filing of the said Police complaint, arrest of the Driver for theft of the yarn and its substitution with worthless material and recovery of part quantity of the stolen yarn by the Police. By the said letter dated 27-12- 2022, They undertook not to avail of any Duty Drawback, RoDTEP benefit or IGST refund in respect of the stolen yarn and to return such benefits, if already received.
- Further, by their letter dated 6-6-2023, addressed to the Additional Commissioner of Customs, Hazira, They provided details of return and payment back of the Drawback, RoDTEP benefit and IGST refund with interest, wherever received in respect of 18 containers and by their letter dated 4-7-2024 addressed to the Assistant Commissioner, They informed that regards the shortage of 316 Boxes in Container No. KOCU5198256 pertaining to Shipping Bill No.5900326 dated 3-12-2022, They had paid back on 21-6-2024, the Drawback received in respect thereof with interest and that They had not received RoDTEP benefit and IGST refund in respect of the same.
- The aforesaid facts of their having paid back with interest the Drawback and the RoDTEP benefits are not disputed in the Show Cause Notice and are duly accepted in the Show Cause Notice, which in Annexure B, also gives the particulars of the Challans under which the said amounts have been paid by us.
- Since no Drawback amount in respect of the goods, which were subject matter of theft, remained unpaid and outstanding on the date of issuance of the Show Cause Notice, the issuance of the Show Cause Notice for recovery of the Drawback under Rule 17 of the Customs, Central Excise Duties and Service Tax Drawback Rules 1995, is without jurisdiction. The said Rule 17 provides that where any amount of drawback has been paid erroneously or in excess to the claimant, the claimant shall, on demand by the proper officer of customs, repay the same and if the claimant fails to repay the same, it shall be recovered in the manner provided in Section 142 (1) of the Customs Act 1962. In the instant case, they have repaid the drawback amount with interest, even before any demand was raised by the proper officer of customs and consequently the question of demand and recovery of the same from them does not arise. Consequently, the present Show Cause Notice issued for demand and recovery of drawback is totally without jurisdiction.
- Similarly, since no RoDTEP benefit availed in respect of the goods which were subject matter of the theft, remained unpaid and outstanding on the date of issuance of the Show Cause Notice, the issuance of the Show Cause Notice for recovery of the RoDTEP benefit under Section 28AAA of the Customs Act 1962, is without jurisdiction. The very fact that Section 28AAA (3) provides for issuance of Show Cause Notice calling upon the person to whom the RoDTEP was issued,

to show cause against recovery of the duty, pre-supposes that the RoDTEP duty benefit is not repaid by such person and remains outstanding and unpaid. Since in the present case, They had already repaid the RoDTEP benefit, the question of issuance of Show Cause Notice for its recovery does not arise. Consequently, the present Show Cause Notice issued for recovery of RoDTEP benefit is totally without jurisdiction. This submission is without prejudice to the submission herein after made, that in any event, Section 28AAA has no application whatever to the present case.

- In support of the aforesaid submissions, that when no amounts remain unpaid and outstanding, the issuance of Show Cause Notice, itself, is without jurisdiction, They place reliance on the decision of the Hon'ble Tribunal in the case of Mehta Intertrade Steels P. Ltd v CCE-2023 (11) TMI 162-CESTAT-MUMBAI, in which, in Para 10, it is held as follows:

*"10. It is on record that the credit of 14,55,597 had been reversed well before issue of notice. There was, thus, no cause to initiate proceedings under rule 14 of CENVAT Credit Rules, 2004; it would appear that absurdity of 'appropriating' credit already reversed, and not restorable without prior approval from jurisdictional central excise authorities, does not seem have occurred to the adjudicating authority as an exercise in futility. In the light of this legal position, the notice itself was void ab initio and, thereby, the penalty." (Emphasis supplied)*

As laid down by the Hon'ble Tribunal, when the credit stands reversed before issuance of Notice, there is no cause to initiate proceedings for recovery and any Notice issued in such case is itself void ab- initio.

- The aforesaid principle laid down in the said decision of the Hon'ble Tribunal finds statutory recognition in Section 28 (1) (b) of the Customs Act 1962, which provides that where the duty stands paid before issuance of Show Cause Notice, no Notice shall be issued for recovery. The said principle laid down by the Hon'ble Tribunal, which is also embodied in Section 28 (1) (b), applies by analogy to the present case as well. Therefore, applying the said principle laid down by the Hon'ble Tribunal in the aforesaid decision to the present case, the Show Cause Notice issued in the present case, is itself void ab-initio.
- Without prejudice to the aforesaid submissions, in any event, Section 28AAA of the Customs Act 1962, even otherwise, has no application whatever to the present case.
- The said Section 28AAA applies in a case where any Instrument (Duty Credit Scrip) has been obtained by a person by means of collusion or wilful mis-statement or suppression of facts and such instrument (Duty Credit Scrip) has been utilised by a person other than the person to whom it was issued. Therefore, for Section 28AAA to apply, the following two conditions are required to be satisfied:
  - a) That the duty credit scrip should have been obtained by a person by means of collusion or wilful mis-statement or suppression of facts and
  - b) That it should have been utilized by a person other than the person to whom it was issued.

If any one of the said two conditions is not satisfied, Section 28AAA can have no application. In the present case, neither of the said two conditions is satisfied.

- It would be abuse of language to contend that where the goods stuffed in the containers for export have been stolen enroute and substituted with Mud/Soil and they have been victims of the theft, they are guilty of collusion or willful mis-statement or suppression of facts. The contention of willful mis-statement or suppression of facts against them has been made in the Show Cause Notice in the most irresponsible manner. When the Show Cause Notice itself accepts that the goods were stolen from the containers enroute to the Port by the drivers of the vehicles and upon becoming aware of the same They promptly undertook not to avail the RoDTEP benefits and to surrender and pay back the same wherever received, it is inexplicable as to how the Show Cause Notice could attribute and impute willful mis-statement or suppression of facts to us. Therefore, the very first requirement of Section 28AAA is not satisfied and Section 29AAA, therefore, has no application.
- The second requirement of Section 28AAA that the Duty Credit Scrip should have been utilized by a person other than the person to whom it was issued is also not satisfied. The RODTEP scrips in question which were issued to them were utilized by them only and not by some other person. For this reason also, Section 28AAA has no application.
- The admitted and undisputed facts set out in the Show Cause Notice, as per which, They were victims of theft and as per which, the goods consigned to the Port, were enroute, stolen and substituted with worthless material by the drivers of the vehicles, do not point to or warrant the assertions made in the Show Cause notice of fraud, collusion, willful mis-statement or suppression of facts on their part in applying for RoDTEP. It is not the case in the Show Cause Notice that when they applied for RoDTEP They were aware of the theft of the goods. On the contrary, it is undisputed that on becoming aware of the theft, by their letter dated 27-12-2022 addressed to the Additional Commissioner, They undertook not to avail of any Duty Drawback, RoDTEP benefit or IGST refund in respect of the stolen yarn and to return such benefits, if already received. It therefore, cannot be said that the RoDTEP benefits issued in respect of the stolen goods were obtained by them by fraud, collusion, willful mis-statement or suppression of facts. Consequently, Section 114AB of the Customs Act 1962 has no application and no penalty can be imposed on them under Section 114AB.
- Contention that the stolen Yarn valued at Rs.4,97,48,635/- is liable to confiscation under Section-113 (i) (ja) and (k) of the Customs Act 1962 is totally unsustainable in law:

The undisputed and admitted facts as set out in the Show Cause Notice and which are also evident from the Charge Sheet filed by Police, are that theft of the Yarn from the Containers enroute to the Port and its substitution with Soil/ mud, was committed by the Drivers of the Transport vehicles and their accomplices, who were arrested by the Police. The said theft was committed while the goods were in transit from their Silvassa Plant/ depot to Hazira Port.

- Accordingly, they have been victims of the said theft committed by the Drivers and their accomplices and they cannot be held responsible for the Mud/soil and/or shortage of Yarn being found in the 19 containers. The stolen yarn cannot be held liable to confiscation under Section 113 (i) (ja) and (k) of the Customs Act 1962. The goods which are liable to confiscation under Section 113 (i), (ja) and (k) are the worthless material i.e. mud/soil which were substituted for the yarn in the Containers by the Drivers and their accomplices without their knowledge or involvement. They have not committed any act or omission in respect of the said Mud/soil which is liable to confiscation and they cannot be penalized for the same under Sections 114, 114AA and 117 of the Customs Act 1962. They place reliance on the following judgments, in which it is laid down that where the goods as declared in the Shipping Bill were stuffed in the export containers and where in the course of transit/ transport to the port, the contents of the containers were stolen/ substituted without the exporter's knowledge and the exporter is a victim of such theft, the exporter cannot be held liable and responsible for the same:
  - a) *Nanda Incorporated v CC- 2018 (363) ELT 673*
  - b) *CCE v GMR Industries Ltd - 2016 (340) ELT 721*
  - c) *Maheshwari Rocks (I) P. Ltd v CC - 2010 (262) ELT 574*
  - d) *Suttati Enterprises v CC- Order dated 18-7-2022*
  - e) *CC v Ram Avtar Singh Chauhan -2010 (262) ELT 446*The said decisions squarely apply in the present case, since admittedly and undisputedly, in the present case, the goods as declared in the Shipping Bill were stuffed in the export containers which were sealed with RFID Seals and in course of transit/ transport to the port, the contents of the containers were stolen/ substituted without their knowledge or involvement and They are victims of such theft. Therefore, as laid down in the aforesaid judgments, the yarn which was stolen, cannot be held liable to confiscation under Section 113 of the Customs Act 1962 and they cannot be held liable to penalty under Sections 114, 114AA and 17 of the Customs Act 1962.
- The Show Cause Notice contends that the Yarn valued at Rs.4,97,48.635/-, which was stolen enroute to the Port, is liable to confiscation under Section 113 (i), (ja) and (k) of the Customs Act 1962 on the premise that They allegedly indulged in willful mis-statement, mis-representation and suppression of facts, misdeclaration of goods and fraudulent export which is prohibited by Rule 14 (2) of Foreign Trade (Regulation) Rules 1993 and which constitutes "illegal export" under Section 11H (a) of the Customs Act 1962.
- They submit that firstly, the said Section 113 (i), (ja) and (k) cannot apply to the stolen yarn and can apply only to the Mud/soil which was substituted in the containers enroute to the port in place of the stolen yarn by the Drivers of the vehicles and their accomplices. Secondly, in any event, the assertions of willful mis-statement, mis-representation and suppression of facts, misdeclaration of goods and fraudulent export made against them in Paras 29.1 to 30.3 of the Show Cause Notice are at total variance with and do not flow from the facts set out in Paras 1 to 28 of the Show Cause Notice.

- The said Section 113 (i), (ja) and (k) applies to the actual goods which were presented for export to customs, which in this case, were not the stolen yarn, but the Mud/soil which was substituted in the containers enroute to the port in place of the stolen yarn by the Drivers of the vehicles and their accomplices. Therefore, the contention that the stolen yarn, which never reached the Port, is liable to confiscation under Section 113 (i), (ja) and (k) is totally untenable in law. As regards the mud/soil which is liable to confiscation under Section 113 (i), (ja) and (k), They have not committed any act or omission in respect of the said Mud/soil, which rendered the same liable to confiscation and therefore They cannot be penalized for the same under Sections 114,114AA and 117 of the Customs Act 1962.
- They submit that the assertions of willful mis-statement, mis-representation and suppression of facts, misdeclaration of goods and fraudulent export made against them in Paras 29.1 to 30.3 of the Show Cause Notice are at total variance with and do not flow from the facts set out in Paras 1 to 28 of the Show Cause Notice. There is not a single fact appearing in Paras 1 to 28 of the Show Cause Notice, which points to, or warrants the assertion of, willful mis-statement, mis-representation and suppression of facts, misdeclaration of goods and fraudulent export made against them in Paras 29.1 to 30.3 of the Show Cause Notice. Consequently, the contentions of They being liable to penalty based on such unwarranted assertions must necessarily fail.
- The contention in the Show Cause Notice that they have acted contrary to Regulation 14 (2) of Foreign Trade (Regulation) Rules 1993 is totally preposterous. The said Regulation 14 (2) provides that no person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence, certificate, scrip or any instrument bestowing financial or fiscal benefits or importing or exporting any goods or services or technology or goods connected with such services or technology. To contend that a person who has admittedly been a victim of theft, is guilty of corrupt or fraudulent practice, defies reason and sanity and displays complete lack of sense of responsibility which should be associated with exercise of statutory powers. It is totally inappropriate and unacceptable to make such wild and reckless allegations with a view to mulct a victim of theft with drastic and penal action under the Customs Act 1962.
- Further, the reference to and reliance upon Section 11H (a) of the Customs Act 1962, in the Show Cause Notice, to contend that they are guilty of "illegal export" as defined therein is totally misconceived. Firstly, Chapter IV-B of the Customs Act 1962 and Section 11H (a) which appeared under the said Chapter IV-B apply to goods which are specified under Section 11-1 by the Central Government by Notification in the Official Gazette. It is not the case in the Show Cause Notice that either the Yarn which was stolen or the Mud/soil which was substituted by the thieves in the Containers for the Yarn, are goods specified by Notification under Section 11-1. Accordingly, Section 11-H has no application. Secondly, in event, when admittedly and undisputedly, in the present case, the goods as declared in the Shipping Bill were stuffed in the export containers sealed with

RFID Seals and in course of transit/ transport to the port, the contents of the containers were stolen/ substituted without their knowledge or involvement and They are victims of such theft, it cannot be said that They have exported the goods in contravention of the law or that They are responsible for the same. As laid down in the decisions referred to herein above, the victim of the theft of the actual goods meant for export, cannot be held responsible.

- Contention in the Show Cause Notice that They had intent to avail fraudulent benefit of Drawback and RODTEP is ex-facie false and contrary to the admitted and undisputed facts:

They submit that the contention in the Show cause notice that they had intent to avail fraudulent export benefits of Drawback and RODTEP is ex-facie false and contrary to the admitted and undisputed facts.

- They submit that the assertions of intent to avail fraudulent export benefits, made against them in Paras 29.1 to 30.3 of the Show Cause Notice are at total variance with and do not flow from the facts set out in Paras 1 to 28 of the Show Cause Notice. There is not a single fact appearing in Paras 1 to 28 of the Show Cause Notice, which points to, or warrants the assertion of, intent on their part to avail fraudulent export benefits. On the contrary, the facts appearing in Paras 1 to 28 of the Show Cause Notice are clearly that They were victims of the theft and the theft was without their knowledge and involvement.
- Considering their volume of exports as set out in Para 3 above, which run to several crores of Rupees, it would be totally absurd to even suggest that They would indulge in fraudulent export to claim the measly amounts of Drawback of Rs. 6,58,288/- and RoDTEP of Rs.7,45,620, which are a pittance compared to their huge volumes of exports.
- Contention that They have contravened the conditions of Self-Sealing permission and mishandled the goods to be exported/ exported is totally baseless and untenable:

It is contended in Para 28.3 of the Show Cause Notice that They have contravened the conditions of Self-sealing permission and mishandled the goods to be exported. The said contention is totally baseless and untenable.

- The said Para 28.3 of the Show Cause Notice has failed to specify the particular condition of the Self-sealing permission, which according to the Show Cause notice They have allegedly contravened. They emphatically submit that they have fully complied with the conditions of Self-sealing permission and they have not contravened any of the conditions of the Self-sealing permission.
- The condition in the Self-Sealing Permission that they must use tamper-proof electronic seals only is duly fulfilled by them since undisputedly They had used RFID Seals, which as per the CBIC Circulars Nos. 26/2017-CUS dated 1-7-2017, 36/2017-CUS dated 28-8-2017, 37/2017-CUS dated 20-9-2017 and 41/2017-CUS dated 30-10-2017, are high integrity Tamper-proof seals conforming to international ISO standards. All other conditions specified in the Self-Sealing permission have also been complied with.

- As stated in the said CBIC Circulars, the said RFID seals enhance cargo security during transportation to Ports and ICD as well as during holding time. The said Circulars provide that the integrity of the RFID Seal would be verified by the Customs Officer at the Port/ICD using the reader- scanners which are connected to the Data Retrieval System of the ISO-certified Vendor of the RFID Seals. The Circulars further provide that if upon such verification by the Customs officer at the Port/ICD, the RFID Seal is found to be tampered with, the goods shall be subjected to examination. It is important to emphasize that in respect of none of the containers, the Customs officer at the Port, upon verification of the RFID Seal by using the reader-scanner, reported and informed that the seals were tampered with. They had therefore, no occasion to suspect that there was theft of the goods enroute to the Port and they accordingly believed that the Containers had reached the Port with the export goods intact. Yet, the Show cause notice is seeking to place the blame on them by wrongly contending that they have not complied with the conditions of the Self-sealing permission and that too, without specifying which condition has alleged been contravened by us.
- It was only when Shipping Bill No.6171932 dated 15-12-2022 was selected for examination by the ICEGATE system and the goods covered by the said Shipping Bill were examined that the theft in respect of the said Shipping bill was detected. Immediately, upon such detection of theft, by their letter dated 17-12-2022 addressed to the Deputy Commissioner of Customs, Hazira, They themselves provided the entire list of Containers which were then lying at Hazira Port and in respect of which They had filed Shipping Bills, and requested customs to examine all the containers so as to ascertain whether there was similar theft in respect of such other containers then lying at Hazira Port. Further, in respect of 7 other containers for which Shipping Bills had been filed in December 2022 and which had already moved to Mundra Port for onward transshipment and were still lying at Mundra Port, They requested the Shipping Company to keep the said containers on hold at Mundra Port and by their letter dated 22-12-2022, They requested Mundra Customs to carry out examination of the contents of the said 7 containers. This clearly shows their bona fides and there is no question of their having contravened any condition of Self-sealing permission.
- In any event since the goods proposed to be held liable to confiscation are not available for confiscation, no redemption fine can be imposed:  
The Show Cause Notice proposes imposition of redemption fine on the ground that the goods proposed to be held liable to confiscation are not physically available. This is clearly contrary to the law laid down by the Hon'ble Tribunal and Hon'ble High Court and upheld by the Hon'ble Supreme Court in the following decisions, to the effect that redemption fine cannot be imposed where goods are not available for confiscation:
  - Shiv Kripa lspat P. Ltd v CC- 2009 (235) ELT 623-Tri-LB Upheld in Commissioner v Shiva Kripa lspat P. Ltd. 2015 (318) ELT A259 (Bom)
  - CC v Finesse Creation Inc - 2009 (248) ELT 122 (Born) Upheld in 2010 (255) ELT A120 (SC).

- Commissioner v Sudarshan Cargo P. Ltd 2010 (258) ELT 197 (Bom)
- Chinku Exports v CC 1999 (112) ELT 400 Upheld in Commissioner v Chinku Exports 2005 (184) ELT A36 (SC) Commissioner of Customs v Air India Ltd. 2023 (386) E.L.T. 236 (Bom.).

No penalty is imposable on them-

- In view of the submissions made herein above in Paras 38 to 54, no penalty is imposable on them under Sections 114, 117, 114AA and 114AB of the Customs Act 1962. Moreover, Section 114AA applies to a person who, knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business for the purposes of the Customs Act 1962. It is submitted that no such false or incorrect declaration, statement or document has been knowingly or intentionally made, signed or used or caused to be made signed or used by us. The admitted and undisputed fact is that They were victims of theft and the yarn in the containers was, enroute to the Port, stolen and substituted with Mud/soil without their knowledge or involvement by the Drivers of the vehicles their accomplices. Section 114AA therefore cannot apply to us.
- In the circumstances, the Show Cause Notice against them is unsustainable in law and is liable to be discharged and dropped and they request for a personal hearing in the matter.

**37.** Shri Prasanna Vasant Munje, Vice President-SCM (Supply Chain Management) of M/s. Reliance Industries Limited, filed reply to Show Cause Notice vide his letter dated 28.03.2025 and stated that:-

- He was employed as Vice President (Supply Chain Management).
- It is contended in the Show Cause Notice that Yarn valued at Rs.4,97,48,635/-, which was cleared by RIL from its factory/ depot for export and which admittedly was stolen *en route* to the Port and substituted with Soil/mud, by the Drivers of the Transport vehicles and their accomplices, is liable to confiscation and that he appeared to have consciously and deliberately dealt with the said goods, which he knew or had reason to believe were liable to confiscation under Section 113 (k) of the Customs Act 1962.
- The Notice contends that being Vice President (Supply Chain Management) of RIL, he was responsible for the total export process comprising pre-shipment, physical movement of goods, shipment and post-shipment documentation of RIL and also responsible for the export and customs related work undertaken by RIL. It is contended that RIL had wrongly availed Drawback and RoDTEP benefits in respect of the said export goods which were stolen *en route* to the Port and that being the Vice-President of RIL, he was aware of the mis-declaration of the export goods.
- Based on the aforesaid contentions contained in Paras 32.1.1 and 32.1.2, the Show Cause Notice has proposed imposition of penalty on him under Sections 114, 114AA, 114 AB and 117 of the Customs Act 1962.

- He submitted that the said contentions raised against him in the Notice and the action proposed against him in the Notice are totally unsustainable in law as herein after explained.
- At the outset, he submitted that RIL has submitted a detailed Reply dated 3rd March 2025 to the Show Cause Notice, by which it is explained that:
  - a) The contention in the Show Cause Notice that the stolen yarn valued at Rs.4,97,48,635/- is liable to confiscation under Section 113 (i) (ja) and (k) of the Customs Act 1962, is totally unsustainable in law,
  - b) The contention in the Show Cause Notice that there was intent to avail fraudulent benefit of Drawback and RODTEP in respect of the stolen yarn, is ex-facie false and contrary to the admitted and undisputed facts,
  - c) The assertions of intent to avail fraudulent export benefits, made in Paras 29.1 to 30.3 of the Show Cause Notice are at total variance with and do not flow from the facts set out in Paras 1 to 28 of the Show Cause Notice. There is not a single fact appearing in Paras 1 to 28 of the Show Cause Notice, which points to, or warrants the assertion of, intent to avail fraudulent export benefits. On the contrary, the facts appearing in Paras 1 to 28 of the Show Cause Notice are clearly that RIL was victim of the theft and the theft was without knowledge and involvement of RIL and its employees,
  - d) The contention that there was contravention of the conditions of Self-Sealing permission and mishandling of the goods to be exported/ exported is totally baseless and untenable as RIL had fully complied with the conditions of Self-sealing permission by using RFID Seals, which as per the CBIC Circulars Nos. 26/2017-CUS dated 1-7-2017, 36/2017-CUS dated 28-8-2017, 37/2017-CUS dated 20-9-2017 and 41/2017-CUS dated 30-10-2017, are high integrity Tamper-proof seals conforming to international ISO standards,
  - e) that it is undisputed that in respect of the goods which were the subject- matter of theft enroute to the Port of export, on becoming aware of the theft, RIL paid up, with interest, the Drawback and RODTEP benefits received on such goods. Accordingly, on the date of issue of the Show cause notice, no amount of Drawback or RODTEP benefit is outstanding and unpaid. Consequently, the issuance of the Show Cause Notice for recovery of Drawback and RODTEP benefits, which admittedly are not outstanding is totally without jurisdiction,
  - f) that Section 28AAA of the Customs Act 1962, has no application whatever to the present case.
- He adopted and reiterate the submissions made by RIL in reply to the Show Cause Notice as part of this reply to the Show Cause Notice being filed by him.
- His Statements dated 3-1-2023, 20-3-2023, 21-3-2023 and 26-5-2023 recorded by the department are totally exculpatory and there is no admission/ confession of any wrong doing on my part, nor is there any evidence cited in the Show Cause Notice which even remotely suggests any wrong doing on my part. In his said statements, he have stated that in the containers in which worthless material was found instead of Yarn, there has been theft of the Yarn by miscreants enroute to the Port after the cargo was duly dispatched with supporting documents

from their mentioned place of stuffing. he has stated that the said theft has come as a shock to them and all possible steps are being taken by RIL to comply with the export regulations and compliance standards, he has further stated that the Hermes Transport Solutions have filed FIR with the police and the driver of the vehicle has been arrested by police and majority of the stolen goods have been recovered by police. he has stated that the responsibility of transporting the goods safely is that of the said Transporter and that in view of the theft, RIL has stopped payment of around Rs.1.25 crores to the said Transporter and no further business is allocated to the said transporter. In his statements, he did not agree with the suggestion that the worthless material was sent by RIL in the containers to fraudulently claim export benefits such as Drawback, RODTEP and IGST and maintained that RIL had only dispatched PTY in line with export documents and claimed the incentives as per law. he have stated that the movement was entirely in line with normal export cycle, with goods stuffed in the containers correctly declared on the pertinent documents and that he did not have any reason to raise any doubts. he have stated that the IGST refund had been received in case of 8 Shipping Bills and Drawback had been received in case of 11 Shipping Bills and the amounts of IGST refund and Drawback received had been paid back with interest. he has stated RODTEP benefit received in case of 11 Shipping Bills will also be paid back with interest.

- The undisputed and admitted facts as set out in the Show Cause Notice and which are also evident from the Charge Sheet filed by Police, are that theft of the Yarn from the Containers enroute to the Port and its substitution with Soil/ mud, was committed by the Drivers of the Transport vehicles and their accomplices, who were arrested by the Police. The said theft was committed while the goods were in transit from RIL's Silvassa Plant/ depot to Hazira Port.
- Accordingly, when RIL has been victim of the said theft committed by the Drivers and their accomplices, neither RIL nor I, as Vice-President of RIL, can be held responsible for the Mud/soil and/or shortage of Yarn being found in the 19 containers. The stolen yarn cannot be held liable to confiscation under Section 113 (i) (ja) and (k) of the Customs Act 1962. The goods which are liable to confiscation under Section 113 (i) (ja) and (k) are the worthless material i.e. mud/soil which were substituted for the yarn in the Containers by the Drivers and their accomplices without there being any knowledge or involvement on the part of RIL or on my part as Vice President of RIL. They have not committed any act or omission in respect of the said Mud/soil which is liable to confiscation and they cannot be penalized for the same under Sections 114, 114AA and 117 of the Customs Act 1962. Reliance is placed on the following judgments, in which it is laid down that where the goods as declared in the Shipping Bill were stuffed in the export containers and where in course of transit/ transport to the port, the contents of the containers were stolen/ substituted without the exporter's knowledge and the exporter is a victim of such theft, the exporter cannot be held liable and responsible for the same:
  - a) Nanda Incorporated v CC-2018 (363) ELT 673

- b) CCE v GMR Industries Ltd - 2016 (340) ELT 721
- c) Maheshwari Rocks (I) P. Ltd v CC - 2010 (262) ELT 574
- d) Suttati Enterprises v CC- Order dated 18-7-2022
- e) CC v Ram Avtar Singh Chauhan -2010 (262) ELT 446.

The said decisions squarely apply in the present case, since admittedly and undisputedly, in the present case, the goods as declared in the Shipping Bill were stuffed in the export containers which were sealed with RFID Seals and in course of transit/ transport to the port, the contents of the containers were stolen/ substituted without knowledge or involvement in the part of RIL or on my part as Vice President of RIL and They are victims of such theft. Therefore, as laid down in the aforesaid judgments, the yarn which was stolen, cannot be held liable to confiscation under Section 113 of the Customs Act 1962. Consequently, he cannot be held liable to penalty under Sections 114, 114AA and 17 of the Customs Act 1962.

- When the stolen yarn is itself not liable to confiscation, it cannot be said that he have consciously and deliberately dealt with the said goods, which he knew or had reason to believe were liable to confiscation under Section 113 (k) of the Customs Act 1962. Consequently, no penalty can be imposed on him under Sections 114, 114AA and 17 of the Customs Act 1962.
- The contention that being Vice President (Supply Chain Management) of RIL, he was responsible for the total export process including physical movement of goods, does not in any way justify imposition of penalty on me. RIL have fully complied with the conditions of Self- sealing permission by using tamper-proof electronic seals, which as per the CBIC Circulars Nos. 26/2017-CUS dated 1-7-2017, 36/2017-CUS dated 28-8-2017, 37/2017-CUS dated 20-9-2017 and 41/2017-CUS dated 30-10-2017, are high integrity Tamper-proof seals conforming to international ISO standards. Accordingly, it cannot be said that as Vice President of RIL, there was any lapse on his part with regard to the physical movement of the goods for export.
- As stated in the said CBIC Circulars, the said RFID seals enhance cargo security during transportation to Ports and ICD as well as during holding time. The said Circulars provide that the integrity of the RFID Seal would be verified by the Customs Officer at the Port/ICD using the reader-scanners which are connected to the Daja Retrieval System of the ISO-certified Vendor of the RFID Seals. The Circulars further provide that if upon such verification by the Customs officer at the Port/ ICD, the RFID Seal is found to be tampered with, the goods shall be subjected to examination. It is important to emphasize that in respect of none of the containers, the Customs officer at the Port, upon verification of the RFID Seal by using the reader-scanner, reported and informed that the seals were tampered with. he had therefore, no occasion to suspect that there was theft of the goods enroute to the Port and accordingly believed that the Containers had reached the Port with the export goods intact.
- He submitted that the contention in the Show cause notice that RIL had intent to avail fraudulent export benefits of Drawback and RODTEP and that he as Vice-

President of RIL was aware of the same, is *ex-facie* false and contrary to the admitted and undisputed facts.

- He submitted that the assertions of intent to avail fraudulent export benefits, made in Paras 29.1 to 30.3 of the Show Cause Notice are at total variance with and do not flow from the facts set out in Paras 1 to 28 of the Show Cause Notice. There is not a single fact appearing in Paras 1 to 28 of the Show Cause Notice, which points to, or warrants the assertion of, intent to avail fraudulent export benefits. On the contrary, the facts appearing in Paras 1 to 28 of the Show Cause Notice are clearly that RIL was victim of the theft and the theft was without any knowledge and involvement on the part of RIL or on my part.
- Considering that volume of exports of RIL run to several crores of Rupees, it would be totally absurd to even suggest that They would indulge in fraudulent export to claim the measly amounts of Drawback of Rs.6,58,288/- and RODTEP of Rs.7,45,620/- which are a pittance compared to the huge volumes of exports of RIL.
- Further, as explained in the reply of RIL, Section 28AAA of the Customs Act 1962 has no application in the present case and consequently, question of imposition of penalty on him under Section 114AB of the said Act. Without prejudice to this submission, in any event, Section 114AB applies to the person to whom the instrument is issued and the RoDTEP instrument is not issued to him and for that reason also, Section 114AB has no application to me.
- Further, Section 114AA applies to a person who, knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business for the purposes of the Customs Act 1962. It is submitted that no such false or incorrect declaration, statement or document has been knowingly or intentionally made, signed or used or caused to be made signed or used by me. The admitted and undisputed fact is that RIL was victim of theft and the yarn in the containers was, enroute to the Port, stolen and substituted with Mud/soil without my knowledge or involvement by the Drivers of the vehicles their accomplices. Section 114AA therefore cannot apply to me.
- In the circumstances, the Show Cause Notice against him is liable to be discharged and dropped and requested for a personal hearing in the matter.

**38. M/s. MSC Agency (India) Pvt. Ltd.**, filed reply to Show Cause Notice vide their letter dated 14.02.2025 and stated that:-

- At the outset, the Noticee denies all the allegations levelled against them in the captioned notice. Nothing contained in the captioned notice shall be deemed to be admitted by the Noticee, even if not specifically dealt with hereinafter except to the extent admitted herein.
- Brief facts and background:

The Noticee is a company incorporated under the Companies Act, 1956 and is an agent of MSC Mediterranean Shipping Company S.A. which is global shipping company registered under the laws of Switzerland having its office at 12-14,

Chemin Rieu, 1208, Geneva, Switzerland ("MSC S.A.") is engaged in liner shipping services as a carrier offering transportation of containerised cargo at various international locations including the Indian sub-continent inter alia engaged in the business of providing shipping services to and from India.

- In the usual course of business, the Noticee had offered its services to Reliance Industries Limited to export goods in containers declared as "Polyester Texturized Yarn".
- By an email dated 21.12.2022, the Noticee was informed that an inquiry had been initiated against Reliance Industries Limited as the Exporter and some containers had already sailed from Hazira port. The Noticee was requested to track the above containers and discharge at nearest Indian port under intimation to Hazira Customs. Vide the above said e-mail, a list of 16 containers was intimated to the Noticee.
- By a letter dated 23.12.2022, the Noticee was informed that 7 out of the 16 containers had been discharged at Mundra port and was directed to recall the remaining 9 containers back to Hazira port for examination. Of these, the 8 belonged to the Noticee whereas 1 container belonged to Hyundai Merchant Marine; since the Noticee is not concerned with Container No.9\*, no submissions in regard thereto are being made. Details of the containers is tabulated hereinbelow:

<b>Sr. No.</b>	<b>SB No.</b>	<b>Date of SB</b>	<b>Container No.</b>	<b>Vessel Name</b>	<b>Country</b>	<b>Port of Dispatch</b>
1	6129281	13.12.2022	TRHU5144550	MSC LETIZIA	BE	Antwerpen
2	5731714	26.11.2022	TRHU7692240	MSC MELISSA	TR	Ambarli
3	5756883	27.11.2022	CAAU5119305	MSC MELISSA	TR	Gemilk
4	5761362	28.11.2022	TGBU9876448	MSC MELISSA	TR	Iskenderum
5	5761359	28.11.2022	MSMU8478630	MSC MELISSA	TR	Iskenderum
6	5924402	04.12.2022	CAIU7634457	MSC LISBON	TR	Kumport
7	5924437	04.12.2022	MSMU6580685	MSC LISBON	TR	Kumport
8	6105968	13.12.2022	MSDU8689257	MSC LETIZIA	PE	Callao
*9	5900326	03.12.2022	KOCU5198256	HYUNDAI HONGKONG	BR	Navegantes

- By letter dated 20.01.2023, the Noticee was directed to bring back the following 2 containers to the load port at Hazira:

<b>Sr. No.</b>	<b>Date</b>	<b>Shipping Bill No.</b>	<b>Container No.</b>
1	30.11.2022	5843945	MEDU7684206
		5844379	MSMU7281354

- By letter dated 14.02.2023, the Noticee was called upon to update the current status of movement of the containers.
- By an email dated 16.02.2023, the Noticee submitted that out of 10 units of the Noticee, 6 units (as marked in yellow) were discharged at their destination and

taken out by their respective consignee. As per declaration received from the said consignees, the cargo was found as per the loading details from Hazira. Copies of the declarations received from the Consignees were also attached to the email annexed as Exhibit A.

<b>Sr. No.</b>	<b>SB No.</b>	<b>Date of SB</b>	<b>Container No.</b>	<b>Vessel Name</b>	<b>Country</b>	<b>Port of Dispatch</b>
1	6129281	13.12.2022	TRHU5144550	MSC LETIZIA	BE	Antwerpen
2	5731714	26.11.2022	TRHU7692240	MSC MELISSA	TR	Ambarli
3	5756883	27.11.2022	CAAU5119305	MSC MELISSA	TR	Gemilk
4	5761362	28.11.2022	TGBU9876448	MSC MELISSA	TR	Iskenderum
5	5761359	28.11.2022	MSMU8478630	MSC MELISSA	TR	Iskenderum
6	5924402	04.12.2022	CAIU7634457	MSC LISBON	TR	Kumport
7	5924437	04.12.2022	MSMU6580685	MSC LISBON	TR	Kumport
8	6105968	13.12.2022	MSDU8689257	MSC LETIZIA	PE	Callao

- By a letter dated 06.03.2023, the Noticee submitted that Container No. MSMU6580685 was in transit to India.
- By a letter dated 27.03.2023, the Noticee was called upon to inform the office of the Additional Commissioner of Customs, Hazira Port, the date on which the containers mentioned in the letter dated 23.12.2022 had reached the destination port (port of dispatch) and also to submit the Customs related documents and other proof of reaching the containers on the destination port. The letter further stated that the exporter vide letter dated 06.03.2023 had submitted to the customs office that the container No. MSMU6580685 (mentioned at Sr. No. 7) was in transit to India and remaining containers mentioned in the list have already been delivered to their customer.
- By an email dated 03.04.2023, the Noticee responded to the letter dated 27.03.2023 and provided details.
- Investigations were initiated against the Noticee and Summons dated 05.04.2023 and 13.04.2023 came to be issued to the Noticee. The Summons stated that the attendance of the Noticee was required in connection with mis-declaration of goods to be exported.
- Accordingly, statements of the Port Manager of the Noticee, Mr. S. K. Pramod Kumar came to be recorded on 12.04.2023 and 17.04.2023 under Section 108 of the Customs Act, 1962 whereat the Noticee submitted that:
  - (i) The Noticee is an Agent for the shipping line, MSC (Mediterranean Shipping Company) and undertake various works like marketing/vessel operations, etc, on their behalf
  - (ii) The exporters/importers deal with the Noticee i.e., MSC Agency (India) Pvt. Ltd. and they are responsible for carrying of their goods and collecting charges from the exporter/importer
  - (iii) The Noticee is responsible for all Customs and port related works
  - (iv) The Noticee received letter dated 23.12.2022 issued by the Deputy Commissioner, Customs, Hazira port, Surat addressed to the Noticee whereby the Noticee was requested by the Deputy Commissioner of Customs, Hazira Port, Surat to recall 08 containers back to Hazira port, India for examination, which have left the Indian territory.

(v) The Noticee's email dated 03.04.2023 wrongly mentioned that Container No. TRHU5144550 was delivered at destination on 08.03.2023 whereas the correct date of delivery was 17.01.2023.

(vi) The reason for the inability to recall 2 containers viz. TGBU9876448 and MSMU8478630 -was that by the time the email dated 23.12.2022 was received, they had already been offloaded at the destination port in Turkey. Insofar as the balance 5 containers are concerned, the same could not be returned as they were in different transhipment ports and under the jurisdiction of the respective customs authorities of those countries, the necessary customs declarations / documents having been filed.

(vii) It was further submitted that the consignees of all the 7 containers had given declarations that the contents of the containers had been found intact and in line with the documents. Annexed hereto and marked as Exhibit "B1 to B7" are copies of the said declarations.

- The investigations have culminated in the issuance of the captioned show cause notice whereby the Exporter has been called upon to show cause why duty drawback wrongly availed by the Exporter by mis-declaring the goods should not be recovered alongwith interest and penalty. The show cause notice reveals that some of the containers exported by the Exporter with goods declared to be "polyester texturized yarn" had been mis-declared and infact contained bajri/balu/mitti (sand/soil).

- Allegations in the Show Cause Notice:

It is the case of the Revenue that the Noticee had been requested during the investigation to recall the containers but the Noticee had deliberately not co-operated with the investigation. It is alleged that Shri S.K. Pramod Kumar, Port Captain of the Noticee, in his statements dated 12.04.2023 & 17.04.2023, had admitted that they had wrongly submitted to the investigation that the containers had reached at the destination whereas the containers were then in transit. Hence, by this act of omission and commission, the Noticee has abetted in availing fraudulent drawback as well as RoDTEP and also failed to comply with the provisions of Customs Act, 1962 rendering the Noticee liable to penalty.

- The Show Cause Notice therefore calls upon the Noticee to show cause why penalty should not be imposed under Section 117 of the Customs Act, 1962.

- Grounds:

The grounds urged hereinbelow are urged without prejudice to each other:

- It is submitted that the Noticee stands to gain nothing from the misdeclaration. There is nothing on record to state that the Noticee received any gains, financial or otherwise, from the alleged abetment of mis-declaration.
- It is submitted that the Noticee has cooperated fully at all points in time and the periodical updates and responses submitted by the Noticee are testimony to the same. Even the officer of the Noticee has turned up to answer the summons every time, he was summoned to record his statement.
- It is submitted that there is not an iota of evidence brought out in the show cause notice that the Noticee wilfully and fraudulently abetted the Exporter to make

wrongful gains. The charge of abetment is a serious one undermining the integrity of the Noticee and in the absence of any corroborating proof, it is nothing but a bald allegation.

- The Show Cause Notice does not state which specific provision of the said Act has been violated by the Noticee. The allegations in the Show Cause Notice are unfounded and petty. When there is no specific contravention of the Act which has been violated by the Noticee, penalty under Section 117 is not sustainable as held by the Hon'ble Tribunal in Regl. Mgr., Central Warehousing Corpn. Vs. C.C. (Port-Imports), Chennai - 2012 (285) E.L.T. 249.
- It is submitted that the containers in question are Merchant packed containers; the cargo therein was stuffed and sealed by the Shipper and only then handed over to the Shipping Line at the Port of Loading. Moreover, the containers were loaded onto vessels only after customs Out-of-Charge order was given by the Customs Authorities at the Port of Loading i.e. Hazira. The Noticee has acted bona fide in discharge of its contractual and statutory obligations.
- It is important to note that on the front of the said B/L it is clearly stipulated that "IN ACCEPTING THIS BILL OF LADING THE MERCHANT (you) EXPRESSLY ACCEPTS AND AGREES TO ALL THE TERMS AND CONDITIONS, WHETHER PRINTED, STAMPED OR OTHERWISE INCORPORATED ON THIS SIDE AND ON THE REVERSE SIDE OF THIS BILL OF LADING AND THE TERMS AND CONDITIONS OF THE CARRIER'S APPLICABLE TARIFF AS IF THEY WERE ALL SIGNED BY THE MERCHANT." Further, on the reverse of the said B/L, "Merchant" under Clause 1 is defined as – "includes the Shipper, Consignee, holder of this Bill of Lading, the receiver of the Goods and any Person owning, entitled to or claiming the possession of the Goods or of this Bill of Lading or anyone acting on behalf of this Person."
- It is pertinent to note that the Bill of Lading evidences the same as the Shipment is FCL/FCL –SHIPPER'S LOAD, STOW AND COUNT, a specimen copy of the Bill of Lading annexed as " Exhibit "C" - The said Bill of Lading expressly states "PARTICULARS FURNISHED BY THE SHIPPER - NOT CHECKED BY CARRIER - CARRIER NOT RESPONSIBLE (see clause 14)" .
- Clause 14 of the Standard Terms and Conditions of Bill of Lading lays down the merchant (Exporter's) responsibility –Exhibit D. The relevant sub clause is reproduced hereunder for ease of reference:

*14.2 No representation is made by the Carrier as to the weight, contents, measure, quantity, quality, description, condition, temperature, marks, numbers or value of the Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.*

- As can be seen, the entire onus of the veracity of the declaration is on the merchant/ Exporter. The Noticee relies wholly on the undertaking of the Exporter before accepting cargo on board. When the Noticee had no knowledge of the contents of the containers, the question of the Noticee abetting the Exporter in mis-declaring the goods does not arise. The Noticee has relied on the declaration

made by the Exporter and the Out-of-Charge order from the Customs Authorities before loading the containers onto the vessel.

- Reliance is placed on the judgment of the Hon'ble Tribunal in *Boria Ram v. Commissioner* — 2017 (354) E.L.T. 661 wherein it was held that any lapse in performance of duty can, at the most, be considered as inefficiency which will not lead to any charge of abetment or connivance, thus attracting the penal action.
- The Hon'ble Tribunal further observed that dereliction of duty cannot be held to be punishable act in the Customs Act. There is neither any allegation much less any evidence on record that such dereliction of duty is on account of culpable mind. There is no statement of either person to show that the Noticee was aware of the discrepancy in the consignment. As such, in the absence of any evidence to reflect upon the Noticee's role to play in the alleged misdeclaration imposition of penalty on the charge of abetment is not justified.
- In *CC, New Delhi v. Hargovind Export* - 2003 (158) E.L.T. 496 (Tri.-Del.), the Hon'ble tribunal held that even in cases where there was dereliction of duty, highlighting the same was not sufficient for imposition of penalty unless it was brought on record to show the knowledge of, and the abetment was benefit to the benefit of the abettor. In the instant case, there is no evidence on record to show that the Noticee undertook any activity, the commission or omission of which rendered the goods liable to confiscation. In the absence of such a positive evidence, the benefit of doubt has to be given and therefore, a penalty under the Customs Act, 1962 cannot be imposed.
- As has been made clear by the Noticee, 2 of the 5 containers had already been delivered by the time the email dated 23.12.2022 had been received from the Customs Authorities. At no point in time was the Noticee in a position to recall the containers that had already crossed the Indian territorial waters. There is nothing on record to show that the Noticee deliberately refused to recall the containers in order to abet the Exporter in mis-declaring the export goods.
- Insofar as mentioning the wrong date of delivery of Container No. TRHU5144550 as 08.03.2023 instead of 17.01.2023, the same can at best be classified as error due to oversight which oversight was brought to the notice of the Customs Authorities by the Noticee on its own accord.
- Without prejudice to the aforesaid, at the time the email dated 23.12.2022 was received, the containers had already crossed the territorial waters of India and were therefore beyond the jurisdiction of the Customs authorities.
- Where it was possible to do, the Noticee did recall the container as in the case of Container No. MSMU6580685. The remaining containers were either already discharged at the destination port or had already entered international waters / foreign customs areas at the time the instructions to recall the same were received. The remaining containers could not be recalled for reasons beyond the control of the Noticee.
- Further, the fact that carriage of the containers by the Noticee is governed by a contract of carriage means that the Noticee is obliged to release the containers to the Consignee upon presentation of the original Bill of Lading once the goods are

in international waters or have entered the customs area of the destination port. Failure to deliver the goods would attract claims for damages/penalties and the Noticee would fall foul of international shipping laws including conventions such as the Hague-Visby Rules and the Hamburg Rules.

- For Container No. MSMU6580685 which was recalled as it was within the Indian customs area, neither the Shipper (Exporter) nor the Consignee could hold the Noticee responsible for failure to deliver the same as the Noticee was bound to obey instructions from the Indian Authorities. However, insofar as the balance containers are concerned, since the jurisdiction of the Customs authorities did not extend to international waters, receipt of recall instructions from Customs Authorities would not be a valid excuse for failure to deliver as per the Shipper's instructions inviting claims for damages from the Shipper (Exporter) and/or the Consignee.
- The allegation of failure to cooperate in the investigation and abetment of the Exporter is vague, unsubstantiated and without any basis. They requested for personal hearing in the matter.

**39. M/s. Hermes Transport Solution,** Transporter filed reply to Show Cause Notice vide their letter dated 27.12.2024 and stated that:-

- They are in receipt of SCN dated 14-10-2024 on 08.11.2024 asking them to reply to allegations levelled in para 36.3. The Noticee No 04 is Transporter and not related with export goods in any manner except for transportation from Factory to Hazira Port as per contract with Exporter M/s RIL. The allegations levelled with regard to attempt to export mis- declared goods and failing to monitor of movement of goods does not fall under the definition of act of commission or omission for the purpose of imposition of penalty under Customs Act 1962.
- The core issue involved in this case relates to the theft committed by the accused persons while the containers were in transit from Factory at Silvassa to Hazira Port. Since the complaint was lodged with local police station at Hazira Surat and thereafter the case was transferred to the Crime Branch of Surat Police and they have investigated the case and filed the charge sheet in competent court; there is no issue/ allegation against the Noticee No. 04. The whole exercise is devoid of application of mind and law.
- However They are submitting the reply to above SCN as under :-

Brief Facts :-

This SCN relates to the fraudulent exports of in the 09 containers which were recalled at Hazira Port for examination and found to contain Sand etc instead of declared description. The Exporter M/s RIL informed the customs that a police complaint has been filed regarding the theft of goods in container while being transported to Hazira Port. The Police had arrested the Driver recovered the stolen goods. The Charge sheet has been filed against the accused. The Exporter have also stated that they will not claim drawback on such goods.

- The case has been investigated by Customs and the statement of the noticee has been recorded u/s 108 of Customs Act 1962.

- The Modus operandi of the syndicate involved and arrested was to commit theft while the containers are in transit to the Hazira Port from the factory premises by parking the vehicles on the designated route and cutting the tamperproof RFID seal, removing and replacing the export goods with sand and then gluing the tamperproof RFID seal. The statement of the main noticee and other persons including CHA was recorded u/s 108 of Customs Act 1962.
- The customs investigated the case and met the arrested accused in Lajpore Central jail by obtaining orders from the Hon. Judicial Magistrate- (RUD 58} and recorded the statement of the arrested driver u/s 108 of Customs Act 1962- (RUD 59} who did not state any "collusion" on the part of the Noticee No.4 and stated that he was following the instructions and orders of One Sudhir Singh who was also arrested, it is perplexing to note that the statement of Sudhir Singh is not made available with the SCN.
- In para 36.3 it has been asked as to why penalty u/s 114AA, 114AB and Section 117 of Customs Act 1962 should not be imposed for transporting the containers.
- The Role of the Noticee No. 4 is only Transportation of goods. The copy of the contract is on record. The allegations relates to failing to monitor the movement of goods from factory to port is not correct as the transit time details and Toll exit entry details have been provided -RUD 51. It has been explained during the course of the statements that the movement from Silvassa to Hazira is a local movement the vehicles are monitored by phone calls and as all the vehicles reached the port premises in a reasonable transit time no doubts arose as regards to pilferage in containers and theft of goods.
- Reply to the Proposal of imposition of penalty u/s 114 AA & 114AB of Customs Act 1962 is submitted as under:-
- The penalty u/s 114AA & 114AB of Customs Act 1962 can be imposed on the Exporter and any person related with goods knowingly or intentionally make, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this act, shall be liable to pay penalty not exceeding the five times value of the goods. There is no allegation of fraud, collusion, wilful! mis- statement or suppression of facts etc.
- It is on record that :-
  - They are in no way related with goods exported except as Transporter.
  - This is a case of theft and the guilty persons were arrested by Police and no "collusion" has been brought to the notice of investigating police authorities.
  - They are not related with Customs Act 1962 for the purpose of signing any declaration or documents.
  - The investigation does not show any evidence relating to the act of commission or omission, collusion, etc relating to the improper exports.
- The allegation that the noticee No. 4 failed to monitor the transit of the export containers/ goods is without any evidence and basis. It has been explained during the course of the statements that the movement from Silvassa to Hazira

is a local movement the vehicles are monitored by phone calls and as all the vehicles reached the port premises in a reasonable transit time no doubts arose as regards to pilferage in containers and theft of goods all details of Exit and Entry have been provided by them -RUD 51. This act does not fall in the category of aiding/ abetting improper export of goods.

- For act of commission and omission if any, persons cannot be penalized by alleging failure to monitor the movement of goods. It is only when the Transporter is personally involved in theft in any manner that he can be imposed a penalty.
- All the consignments exported in containers were affixed with tamperproof RFID seal and are supposed to be duly examined by the Proper Officer before clearance. By making the Transporter as Noticee in this case amounts to harassment.
- They are Transporters and have been working for more than 25 years and have a clean track record. There is no act of omission or commission committed by the Noticee in this case knowingly. There is no mens rea; or any profit or any evidence of collusion. It is for the investigation to bring on record the evidence relating to any improper act committed.
- There is no public purpose served by making the Transporter as Noticee only on the ground of not monitoring the movement by GPS installed on vehicles. It is a wasteful exercise in adjudication and litigation. As a authorized transporter They have fully cooperated with the Customs and Police officials in furnishing all the required information for the purpose of investigation in a timely manner.
- Improper inference is drawn by the investigation:- The case has been investigated by SIIB in detail and all the facts are available on record. There is no denying the fact that there occurred theft in 09 containers and the accused had admitted their role before the Police and Customs. A theft is a Law and order problem and falls under the jurisdiction of local police. The local police had taken cognizance of the complaint filed. The facts of this case have been manipulated to show that the 'offence' has been committed by the Exporter by mis- declaration and the goods are liable for confiscation. Truth is that there is theft in transit of goods from Factory to Port and not the mis- declaration.
- The Charge Sheet has been filed in the competent court against them. The Exporter has admitted the fact that while transit of containers; a theft took place and the containers were recalled and re-examined. These containers contained soil/ sand etc of no commercial value. There is no application of provisions of Customs Act 1962 on the Transporter while the goods are in transit from Factory to Port.
- The monitoring of movement of the containers is done both by the Exporter as well as Transporter through transit times and since the containers arrived in a reasonable transit time no suspicious activity was seen. All the containers are sealed with tamper proof RFID seal and the same is checked at the port of shipment.
- There is no revenue loss to the Government as the Exporter had deposited the amount of Rs 6,58,288/- for ineligible duty drawback.

- The Government policy is to promote the export and trust based assessment and clearance is done. The Role of Customs is facilitation of export goods and solving the problem if any. The act of issue of SCN is process of harassment and litigation.
- The Exporter is an established exporter and is having credentials. It cannot infer that the Exporter will be attempting to export the goods by way mis-declaration etc. Let there be some application of mind to the facts and circumstances and not just allegations to be leveled mechanically with oblique motive.
- Prayer:- They request that the impugned SCN may be dropped as un-substantiation and untenable. They request for personal hearing in this matter if the reply is not admitted to submit oral and written submissions. It is requested that since the matter is pending for long time, the matter may be expedited and closed at an early stage with application of judicial mind.

**40. M/s Soham Logistics Private Limited**, CHA filed reply to Show Cause Notice vide their letter dated 02.05.2025 and stated that:-

- They refer to the above-mentioned Show Cause Notice served on them and by which They have been called upon to show cause as to why penalty should not be imposed on them under Sections 114, 114AA, 114AB and 117 of the Customs Act 1962 in respect of alleged contraventions pertaining to export of goods by Reliance Industries Limited (hereinafter "RIL"), for whom They had acted as Customs Broker.
- It is contended in the Show Cause Notice that Yarn valued at Rs.4,97,48,635/-, which was stuffed by RIL from its factory/ depot for export and which admittedly was stolen *en route* to the Port and substituted with Soil/ mud, by the Drivers of the Transport vehicles and their accomplices, is liable to confiscation under Section 113(k) of the Customs Act 1962. Against us, the Show Cause Notice in Para 32.2 contends that it appeared that They have consciously and deliberately dealt with the said goods, which They knew or had reason to believe were liable to confiscation under Section 113 (k) of the Customs Act 1962.
- It is further contended that they played an important role in abetting RIL to fraudulently avail undue benefits provided under Drawback and RodTEP Scheme by misclassification of the export goods in the Shipping Bills and further they have violated Sections 17, 46 and 50 of the Customs Act 1962, which were required to comply with.
- Based on the aforesaid contentions contained in Paras 32.2, the Show Cause Notice has proposed imposition of penalty on them under Sections 114, 114AA, 114 AB and 117 of the Customs Act 1962.
- They submit that the said contentions raised against them in the Show Cause Notice and the action proposed against them in the Notice are totally unsustainable in law as herein after explained.
- At the outset, They submit that the contention that They knew or had reason to believe that the Polyester Texturized Yarn to be exported by RIL, for which They had filed the Shipping Bills and which were stolen *en route* to the Port, were liable to confiscation under Section 113 (k) of the Customs Act 1962 is not supported

by any evidence whatsoever. Further to this, they would like to state that they are handling custom clearance of shipments of RIL thru Adani Hazira Port since 2013 and have never been accused of any wrongdoing. As part of the standard process, they are relying on the documents provided by RIL (which are duly signed by their representative) and the said documents are being presented by them to Customs for custom clearance.

- There is absolutely no evidence whatever to establish that when they filed the Shipping Bills, They had knowledge that the Polyester Texturized Yarn will be stolen *en route* to the Port and will be substituted with some worthless material. In his Statement dated 4-1-2023, their employee and F-Card Holder, Manish Mishra, who looked after the work of filing the Shipping Bills, has categorically stated that they did not know how the worthless material was found in the containers instead of the Polyester Texturized Yarn declared in the Shipping Bills. There is no statement or evidence which implicates them and which establishes that they knew or had reason to believe at the time of filing of the Shipping Bills that the Yarn will be stolen *en route* from the containers and would be substituted with worthless material.
- As a Customs Broker, They filed the Shipping Bills on the basis of the export documents provided to them by the exporter, RIL and the description of goods given therein. Since these are factory stuffed containers, they have no occasion to see the goods that are stuffed in the containers and sealed in the premises of the exporter, RIL. Since they have no occasion to see the contents of the Containers which are directly dispatched by the exporter, RIL to the Port thru their nominated transporter, the question of their having any knowledge or reason to believe that the containers contained soil/ mud instead of the declared Polyester Texturized Yarn does not arise.
- They place reliance on the decision of the Hon'ble Tribunal in the case of Prime Forwarders v CC – 2008 (222) ELT 137, in which it is held that where the CHA has acted on the basis of documents provided to them by their client, and there is no evidence to show that the CHA was aware of the contents of the containers being other than those described in the documents, there can be no justification for imposition of penalty on the CHA.
- Accordingly, the proposal to impose penalties on them under Sections 114, 114AA, 114AB and 117 on the erroneous premise that They knew or had reason to believe that the Polyester Texturized Yarn to be exported by RIL, was liable to confiscation under Section 113 (k) of the Customs Act 1962, is totally unsustainable in law.
- Without prejudice to the aforesaid submission of absence of knowledge on their part, They submit that in the first place, it cannot even be said that the Polyester Texturized Yarn to be exported by RIL, for which They had filed the Shipping Bills and which were stolen en route to the Port, were liable to confiscation under Section 113 (k) of the Customs Act 1962. The undisputed and admitted facts as set out in the Show Cause Notice and which are also evident from the Charge Sheet filed by Police, are that theft of the Yarn from the Containers enroute to the

Port and its substitution with Soil/ mud, was committed by the Drivers of the Transport vehicles and their accomplices, who were arrested by the Police. The said theft was committed while the goods were in transit from RIL's Silvassa Plant/ depot to Hazira Port.

- Additionally, they clarify that the police also have not found any involvement of them in the theft of the goods.
- The admitted and undisputed position which appeared from the Show Cause Notice is that the goods as declared in the Shipping Bill were stuffed in the export containers in RIL's premises and the same were sealed with RFID Seals and in course of transit/ transport to the port, the contents of the containers were stolen/ substituted without knowledge or involvement of any of their employees. Therefore, the yarn which was stolen, cannot be held liable to confiscation under Section 113 of the Customs Act 1962 and they cannot be held liable to penalty under Sections 114, 114AA and 117 of the Customs Act 1962.
- The contention that they played an important role in abetting RIL to fraudulently avail undue benefits provided under Drawback and RodTEP Scheme by misclassification of the export goods in the Shipping Bills, is also totally misconceived and untenable in law.
- As submitted herein above, as Customs Broker, They filed the Shipping Bills with claim for Drawback and RodTEP benefits, based on the export documents provided to them by the exporter, RIL, wherein the description of the goods was given as Polyester Texturized Yarn. Accordingly, based on such export documents, the description and classification of the goods was mentioned as that of Polyester Texturized Yarn in the Shipping Bills. When, neither RIL nor we, had knowledge at the time of filing of the Shipping Bills, that the yarn will be stolen from the containers en route to the Port and will be substituted with mud/soil, it cannot be said that by filing the Shipping Bills under claim for Drawback and RodTEP, giving the description and classification of Polyester Texturized Yarn, They had abetted any fraudulent claim for Drawback and RodTEP by misclassification of the goods. Consequently, no penalty can be imposed on them under Sections 114AA, 114AB and 117 of the Customs Act 1962.
- The assertions of intent to avail fraudulent export benefits, made in Paras 29.1 to 30.3 of the Show Cause Notice are at total variance with and do not flow from the facts set out in Paras 1 to 28 of the Show Cause Notice. There is not a single fact appearing in Paras 1 to 28 of the Show Cause Notice, which points to, or warrants the assertion of, intent to avail fraudulent export benefits. On the contrary, the facts appearing in Paras 1 to 28 of the Show Cause Notice clearly establishes that the declared goods after being stuffed in the containers in the premises of RIL, were en route to the Port, stolen and substituted with mud/soil, without knowledge or involvement of RIL or that of any of their employees. Consequently, no penalty can be imposed on us.
- Without prejudice to the aforesaid submissions, even otherwise, Section 114AB of the Customs Act 1962 cannot apply to us. The said Section 114AB provides for imposition of penalty on the person to whom the instrument (RodTEP Scrip

/ Drawback) was issued. The RoDTEP instrument / Drawback was not issued to them and therefore, in any case, Section 114AB cannot apply to us.

- Further, Section 114AA applies to a person who, knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business for the purposes of the Customs Act 1962. It is submitted that no such false or incorrect declaration, statement or document has been knowingly or intentionally made, signed or used or caused to be made signed or used by us. The admitted and undisputed fact is that the yarn in the containers was, enroute to the Port, stolen and substituted with Mud/soil without their knowledge or involvement, by the Drivers of the vehicles and their accomplices. Section 114AA therefore cannot apply to us.
- The further contention that they have violated Sections 17, 46 and 50 of the Customs Act 1962, which were required to comply with, is totally misconceived and untenable in law. The Show Cause Notice does not spell out in what manner they have violated the said Sections 17, 46 and 50.
- Section 17 requires the exporter to self-assess the duty if any leviable on the export goods. Apart from the fact that it applies to the exporter and not to the Customs Broker, there is no duty leviable on the export goods in the present case. Question of their having violated Section 17 simply does not arise.
- Section 46 also has no application whatsoever. The said Section applies to an importer of goods. The present case is of export and not of import.
- Section 50 applies to the exporter of any goods and not to the Customs Broker.
- In any event, when They as Customs Broker, filed the shipping Bills for yarn based on the export documents provided to them by the exporter and without any knowledge of the fact that the yarn en route to the Port was stolen and substituted with mud/soil, it cannot be said that They have violated any of the provisions of the Customs Act 1962. Consequently, no penalty can be imposed on them under Section 117 of the said Act.
- In the circumstances, the Show Cause Notice against them is liable to be discharged and dropped and Your Honour is requested so to do.
- They keep our right open to make additional submission before hearing
- They request for a personal hearing in the matter.

**41.** Representative of **M/s. Seabridge Marine Agencies Private Limited** (Agent of M/s HMM Shipping India Private limited) filed reply to Show Cause Notice vide their letter dated 29.11.2024 and stated that:-

- At the outset, their Client states that they are the agents of M/s. Hyundai Merchant Marine Shipping India Private Limited, Mumbai (HMM) and had acted only as agents of HMM at the Port of Hazira, which fact is also admitted in the Show Cause Notice under reply. Further, the relevant Bill of lading dated 07.12.2022 has also been issued by HMM.
- Their Client states that 1 (one) fully stuffed and sealed 40 foot container bearing No. KOCU 519825 (hereinafter referred to as the said container) was entrusted to HMM by Reliance Industries Limited (RIL) for being carried from the Port of

Hazira to the Port of Navegantes, Brazil. Prior to the entrustment of the said container, the cargo stated to be 627 cartons of Polyester Textured Yarn and said to weigh 22,960.435 kgs was stated to be stuffed by the shipper RIL, at their premises. Since the stuffing of the cargo was done at the premises of the shipper, a Bill of Lading dated 07.12.2022 BOMM16607702 was issued by HMM to RIL, which had a clause "Shipper's Load, Count, Sealed & Weight S.T.C." (Said to contain). Being a sealed container, HMM was not aware of the quality, quantity, weight, value etc of the cargo stuffed in the said container and the Bill of Lading was issued on the basis of "PARTICULARS FURNISHED BY SHIPPER". The said container was carried by the Vessel, M.V. Hyundai Privilege, which Vessel, after sailing from Hazira, had called at the Port of Kaatupalli, en route to the Port of Discharge, and arrived at the Discharge Port in Brazil, on 15.01.2023. The cargo in the said container was moved to the warehouse and was taken delivery of by the consignee on 16.01.2023.

- Much after the Vessel had sailed out from Hazira, HMM had received 2 (two) letters, one dated 21.12.2022 and the other dated 23.12.2022, by which they were informed by the Deputy Commissioner of Customs that the shipment of a large quantity in a number of FCL containers shipped by RIL through various container lines including the one container shipped through HMM was under investigation and that the container lines should ensure the return of the containers to the Port of Origin, namely, Hazira. By the time the said communications were received by HMM, the said container was already out of the Indian waters. However, since the shipment was undertaken only by HMM, their Client had duly informed HMM about the notice received from the Assistant Commissioner of Customs and that necessary action should be initiated/taken by HMM on the basis of the instructions received from the Customs Department. Their Client later came to know that in respect of the various shipments made by RIL, during the movement of the various consignments from the factory premises of RIL to the container terminal at the Hazira Port, owing to the fraudulent conduct of the truck drivers, part of the cargo stuffed in the containers had been stuffed with Bajri/Sand, without the knowledge of RIL or the container lines concerned. It is also clear from the common Show Cause Notice dated 14.10.2024 issued to various parties including their Client that RIL, had, on the shipment of the cargo, availed of certain benefits under the Duty Drawback Scheme and the RoDTEP Scheme but a part of the cargo although stated to have been shipped, had not reached the Port of Discharge either due to pilferage or due to shortage. However, it is seen that RIL had refunded the amounts claimed by way of duty drawback as well as the benefits under the RoDTEP duty credit scrips.
- While their Client or their principals, HMM are not concerned with the allegations made against RIL, in the Show Cause Notice addressed to their Client, it has been alleged that their Client had wrongly submitted to the investigating agency that the container entrusted to HMM had reached the destination even while the said container was then in transit and that by such act of omission and commission, their Client has allegedly abetted RIL availing fraudulent drawback as well as

RoDTEP and thereby failing to comply with the provisions of the Customs Act, rendering them liable for penalty under Section 117 of the Customs Act.

- In this regard, their Client states that they are only the agents of HMM. Even HMM, as the container line, is not aware of the nature of the cargo or of the value or the quantity of cargo stuffed in the container, as would be evident from the Bill of Lading issued by HMM and that both HMM and their Client are wholly unaware of either the substitution of the cargo of polyester textured yarn with sand or about the shortage of 316 cartons out of 627 cartons. The only allegation against HMM and consequently on their Client is that there is an alleged misstatement regarding the whereabouts of the container in the letters dated 21.12.2022, 23.12.2022 and 09.01.2023. Immediately upon receipt of the said letters from the Customs Department, HMM had intimated the agent at the Port of Discharge about HMM being put on notice by the Indian Customs Department. Notwithstanding the same, a part of the cargo has been taken delivery of by the consignee, who, have also confirmed the availability of only 311 cartons at the Port of Discharge with the balance 316 cartons not being available. Upon the matter being taken up by the Mumbai office of HMM with the agents at the Port of Discharge, they were informed that the container in question could be reshipped to an Indian Port only by the consignee in Brazil, however which neither HMM nor their Client had any control. In any event, reshipment of the container would not have made any material impact on the investigation being carried out by the Customs Department in Hazira, especially when the consignee based on a survey conducted at the port of destination, had confirmed that there was a shortage of 311 cartons. Further, what is also relevant is the fact that even on the basis of the Show Cause Notice, RIL had refunded to the department all the benefits that they had availed of with regard to the cargo which was not received by the consignees, especially since, RIL themselves have been the victims on account of the theft committed by the driver and his accomplices during the movement of the containers from the premises of RIL to the container terminal at Hazira and for the shortages of yarn allegedly found in 19 containers, including the one container shipped through HMM. Therefore, it cannot be said that by allegedly making a false statement with regard to the fact of the container still being in transit or had reached the port of discharge, would be of any consequence. Therefore, it cannot be said that either HMM or their Client had contravened any provisions of the Customs Act or had abated any such contravention, exposing them to a penalty under Section 117 of the Customs Act. Further, it is also submitted that the levy of penalty under the provisions of the Customs Act is quasi criminal in nature and in the absence of any allegation in the Show Cause Notice that HMM and their Client had knowingly and intentionally done something to enable RIL to contravene the provisions of the Act, the question of imposing a penalty on their Client would not arise. The Show Cause Notice is not sustainable against HMM and their Client and the imposition of penalty under Section 117 of the Customs Act and/or any other provision thereof would not be attracted.

- Their Client therefore pray that the proceedings contemplated under the Show Cause Notice be dropped against them. Their Client would request the Adjudicating Authority to grant them a personal hearing before the adjudication of the matter.

**42.** Opportunities to be heard in person were provided to all the notices following the Principle of Natural Justice.

**42.1** Shri S. K. Pramod Kumar and Shri Sushanth Murthy, Advocate, Authorized representative of M/s. MSC Agency (India) Pvt. Ltd., attended online personal hearing on 13.06.2025 and reiterated the submission made in the defence reply dated 14.02.2025. Further, vide the email dated 16.06.2025, M/s. MSC Agency (India) Pvt. Ltd. submitted a Time line chart for movement of Goods and Correspondences received from Customs Authorities, which is as under-

Ctr No	Gated in	S/Bill	S/Bill Date	LEO	Loading VESSEL NAME	Vessel Sail date	Letter Received
MSDU8689257	13-12-22	6105968	13-12-22	14-12-22	MSC LETIZIA IP250A	18-12-22	21-12-22
TRHU5144550	14-12-22	6129281	13-12-22	14-12-22	MSC LETIZIA IP250A	18-12-22	21-12-22
CAAU5119305	28-11-22	5756883	27-11-22	28-11-22	MSC MELISSA IX246A	01-12-22	21-12-22
MSMU8478630	28-11-22	5761359	28-11-22	28-11-22	MSC MELISSA IX246A	01-12-22	21-12-22
TGBU9876448	28-11-22	5761362	28-11-22	28-11-22	MSC MELISSA IX246A	01-12-22	21-12-22
TRHU7692240	26-11-22	5731714	26-11-22	28-11-22	MSC MELISSA IX246A	01-Dec-22	21-12-22
CAIU7634457	06-12-22	5924402	04-12-22	06-12-22	MSC LISBON IP249A	11-12-22	21-12-22
MSMU6580685	05-12-22	5924437	04-12-22	06-12-22	MSC LISBON IP249A	11-12-22	21-12-22

**42.2** Further, Shri Jaydeep Patel and Ms. Shilpa Balani, Advocate, Authorized representative of **M/s. Reliance Industries Limited.**, **Shri Prasanna Vasant Munje**, Vice President-SCM (Supply Chain Management) of M/s. Reliance Industries Limited and **M/s Soham Logistics Private Limited**, attended personal hearing on 10.07.2025 and reiterated their earlier written submission and additionally submit another written submission dated 10.07.2025, in which they submitted that they are the victims of theft and as soon as they knew about the incidence, they immediately intimated the same to the Deputy Commissioner, Hazira Port and co-operated in investigation. They further submitted that they requested to examine all the containers lying at Hazira, Mundra and those which had sailed and called back. They also submitted that they either not availed or repaid the drawback, and other govt. incentives such as RODTEP, IGST etc. voluntarily along with interest. They submitted that the police investigation also found that the actual culprits were drivers and their accomplices and the noticees have no role in the alleged misappropriation of export goods. They also submit that the CB files Shipping Bills based on documents provide by the exporter and the CB has not knowledge of the theft of the goods on the way to the port. There is also no involvement of the CB in the theft. Therefore, the question of the CB having abetted any mis-declaration does not arise. In view of above, they submitted that the penalties on the noticees are not justified and they submit several case laws in their support. They

request to drop the proceedings initiated by the said SCN. Further, the details of their additional submission dated 10.07.2025 is as under-

- They write to formally apprise their office of the actions undertaken by Reliance Industries Limited (RIL) in response to the unfortunate incident involving the theft of export containers. The following is a summary of the steps taken to ensure transparency, regulatory compliance, and cooperation with the concerned authorities:
- Immediate Co-operation and Intimation to Deputy Commissioner, Hazira- On the following day of the incident, RIL promptly informed the Deputy Commissioner (DC) Hazira, providing comprehensive details including the list of containers at Hazira Port, the status of shipping bills, and a formal request for examination of all affected containers.
- Communication with Shipping Line and Mundra Port Authorities- RIL instructed the shipping line to place a hold on the containers in transhipment at Mundra Port and submitted a formal request to Mundra Port authorities for container examination.
- Intimation to Additional Deputy Commissioner, Hazira- RIL informed the Additional Deputy Commissioner regarding the filing of a police complaint and initiated recovery proceedings. A self-declaration was submitted confirming that no claims were made for Drawback (DBK), RoDTEP, or IGST refund. Where refunds had already been received, RIL committed to repaying the amounts with applicable interest. Detailed records of container movements were provided, and the shipping line was requested to return the containers to India for in-transit weighment and verification.
- Police Investigation and Current Status- Due to the gravity of the crime and its cross-border implications, the case was transferred to the Surat City Crime Branch. The theft, which commenced on November 21, 2022, was found to be a premeditated act involving individuals with prior criminal records. All accused have been apprehended, and the case is currently at the notice stage.
- Shortage Report and Intimation to DC- One container could not be repatriated to India. RIL obtained confirmation from customer and reported a shortage of 316 bags to the Deputy Commissioner. (Refer Annexure-D; SCN reply para- 13)
- Submission of Charge Sheet- The charge sheet, along with an English translation, has been submitted to the relevant authorities.
- Victim Status and Evidence of Theft- Reliance Industries Limited (RIL) is the aggrieved party in this matter. The charge sheet unequivocally establishes that the driver, acting with criminal intent, substituted the original POY (Partially Oriented Yarn) material with non-valuable goods during transit to the port. This deliberate act of theft has been substantiated through investigation and documented evidence, confirming RIL's status as the victim in this case.
- Voluntary Repayment and Regulatory Compliance- Prior to the issuance of the Show Cause Notice (SCN), RIL voluntarily repaid the amounts received under Drawback, RoDTEP, and IGST, along with applicable interest. This action was

formally communicated to the concerned department. summary of repayment with interest are tabulated as below:-

Particulars	Amount (Rs.)	Interest (Rs.)	Total (Rs.)	Dt of pmt.	Letter ref
DBK	30,375	6,575	36,950	19-Jun-24	19-Jun-24
RoDTEP	7,45,620	-	7,45,620	06-Jun-23	06-Jun-23
DBK	6,27,931	2,304	6,30,235	09-Feb-23	06-Jun-23
IGST	10,75,039	33,400	11,08,439	28-Mar-23	06-Jun-23
IGST	17,98,981	1,04,819	19,03,800	02-May-23	06-Jun-23
<b>GT</b>	<b>42,77,946</b>	<b>1,47,098</b>	<b>44,25,044</b>		

- Insurance claim Settlement:- The insurance company has acknowledged and settled RIL's claim in respect of the theft of yarn from the 18 affected containers.
- Commitment to National Vision and Ethical Business Practices- Reliance exported valued Rs.2,99,832 crore in FY 2023-24, making a significant contribution to India's economic growth and aligning with the national vision of Viksit Bharat @2047. RIL consistently upholds the highest standards of trust, integrity, and regulatory compliance in all its operations. The recent incident represents a serious breach of their core values, and accordingly, they have discontinued their engagement with the logistics partner involved.
- RIL remains unwavering in its commitment to ethical business practices and long-term national development. As one of India's largest corporate taxpayers and the leading contributor of indirect taxes in the private sector, RIL contributed Rs.1,86,440 crore to the national exchequer in FY 2023-24, reinforcing its role as a key stakeholder in the country's progress .
- They remain committed to full cooperation with your office and all relevant authorities to ensure the matter is resolved with due diligence and transparency. They also submitted following judgments:
  - Shiv Kripa ispat P. Ltd. v CC – 2009 (235) ELT 623
  - CC v Finesse Creation Inc – 2009 (248) ELT 122 (Bom)
  - Commr. V Sudarshan Cargo P. Ltd. 2010 (258) ELT 197 (Bom)
  - Chinku Exports v CC 1999 (112) ELT 400
  - Commr. Of Customs v Air India Ltd 2023 (386) ELT 236 (Bom)

**42.3** Further, Shri Jagdish Singh, representative of M/s. Hermes Transport Solution, Transporter, attended online personal hearing on 10.07.2025 and reiterated the submission made in the defence reply dated 27.12.2024. He submitted that responsibility for the safety and security of the goods was as per contract with the Company and they trusted drivers with the same who broke their faith in the matter. He submitted that when they knew about the incidence, they were prompt in tracing the culprits and helped the police in investigation. He also submitted that neither Reliance nor they were aware about the theft of goods and have no role in the matter. Further, he submitted that the penalties on them are not justified and he requested to drop the proceedings initiated by the said SCN.

**42.4** Further, Shri Lakhankumar R. Laddha, CA, Authorized representative of noticee Shri Vijay Bhupatbhai Gohil, attended online personal hearing on 10.07.2025. He submitted that the noticee purchased the said theft goods as the goods were available

on a very low price. He did not have any invoice for the goods. He also submitted that the noticee had paid the purchase price in cash and not through any banking channel. He further submitted that the noticee has returned all the goods during investigation in the original condition and requested for a lenient approach in the matter.

**42.5** Further, Shri T. Poornam, Advocate, Authorized representative of M/s. Seabridge Marine Agencies Private Limited (Agent of M/s HMM Shipping India Private limited), attended online personal hearing on 18.07.2025 and reiterated the submission made in the defence reply dated 29.11.2024. He submitted that stuffing of goods and loading into the container was responsibility of the transporter and their client are responsible for the transit of cargo only after the port and not for the transit from Exporter's premise to the port. He submitted that merely a mis-statement by them, regarding whereabouts of the container does not violate any of the Customs Provisions. He further submitted that being FCL duly sealed, they were not aware about the contents of the container being exported and cannot be held responsible for abetment or mis-declaration of the exported goods. Further, he submitted that the penalties on them are not justified and requested to drop the proceedings initiated by the said SCN and also submitted copies of judgements which they intend to rely upon.

**42.6** Further, Shri Jatin R. Surati, Advocate, Authorized representative of noticee Shri Nareshbhai Babubhai Bhingralia, attended online personal hearing on 28.07.2025. He submitted that the noticee was not involved in respect of purchase of the said theft goods as the said goods were found from premises of another person. Further, they submitted their additional reply vide email dated 31.07.2025, the details of their additional submission is as under-

- Explanation Regarding The Pressed Charged: Reply Regarding Alleged Violation under Section 113 of the Customs Act-

It is respectfully submitted that the allegations against Mr. Nareshbhai Babubhai Bhingralia under Section 113 of the Customs Act are baseless and without any supporting evidence.

- As per the records and investigation, the disputed goods alleged to be involved in wrongful export or misplacement were seized by police officers at Maruti Industries, Khata No. 27 and 28, First Floor, via punchanama dated 06/01/2023.
- In light of the above and in the interests of justice, it is prayed that all charges under Sections 114AA, 114AB, and 117 be dismissed at the earliest.
- Request for Fair Investigation :

In light of the evidence presented and the relevant provisions of the Customs Act, 1969, They respectfully request a thorough and unbiased investigation into the matter. They urge the authorities to consider Mr. Nareshbhai Babubhai Bhingralia's lack of intent and involvement as demonstrated by the evidence provided. Furthermore, They request that a proper investigation be conducted regarding the yarn mix-up incident involving the luggage, including the roles of the other co-accused individuals, to ensure that responsibility is accurately attributed.

- In fact :- Mr. Nareshbhai Babubhai Bhingralia is a reputed citizen with no prior criminal history who has been wrongfully implicated in this case. It is submitted that the police have unjustly detained Mr. Nareshbhai Babubhai Bhingralia without any substantive evidence.
- The disputed goods were seized by the police as per the punchanama dated 06/01/2023 at 7:00 AM, at Maruti Industries, Khata No. 27 and 28, First Floor. According to the police Charge sheet, these goods were alleged to have been stolen and fraudulently misplaced by Moh. Ali Husainbhai Nakhuda and Sandeep Giri in violation of the Customs Act. Importantly, no recovery or discovery of any disputed goods was made from the custody or possession of Mr. Nareshbhai Babubhai Bhingralia.
- Mr. Nareshbhai Babubhai Bhingralia has been implicated solely based on statements of the accused persons; no single document or piece of evidence has been produced by the police officers to demonstrate his involvement.
- Previously, Mr. Nareshbhai Babubhai Bhingralia was conducting yarn business at Plot No. 1, Block No. 33, At Post Palod, Mangrol, Surat, since 2021. Since 2025, he has been operating his business from the Ground Floor, Plot No. 154, Varsha Society, Vibhag-1, Matawadi Road, Varachha, Surat. He is a reputable merchant of yarns, engaged only in legitimate business transactions involving legally purchased goods.
- Despite this, the police have filed a charge sheet against Mr. Nareshbhai Babubhai Bhingralia without any evidentiary basis. He has neither purchased any such disputed goods nor is he acquainted with any person involved.
- The police investigation has not produced any evidence that Mr. Nareshbhai Babubhai Bhingralia knowingly or intentionally committed any act attracting penalty under Section 114AA.
- Mere suspicion or baseless allegation without documentary or material proof is insufficient to sustain the charge or impose penalty under this section.
- Therefore, the charge under Section 114AA is vehemently denied and is liable to be dismissed.
- Section 114AB - Penalty for Obtaining Instrument by Fraud, etc.

The accused denies having obtained any fraudulent instrument, document, or any financial gain, directly or indirectly, connected to the alleged transaction.

- No recovery of any such fraudulent instrument or document has been made from Mr. Nareshbhai Babubhai Bhingralia's custody during investigation.
- The prosecution has not discharged its burden to prove that Mr. Nareshbhai Babubhai Bhingralia used any fraudulent means to obtain customs clearance or evade duty as alleged.
- Hence, the charge under Section 114AB is strongly denied and is unsustainable in law.
- Section 117 - Penalties for Contravention Not Otherwise Provided

Mr. Nareshbhai Babubhai Bhingralia states that he has been wrongfully implicated solely based on an uncorroborated statement of a co-accused, without any independent evidence or recovery of disputed goods or documents tied to him.

- The law requires corroboration of statements made by co-accused before imposing penal liability; in the absence of such corroboration, reliance on such statements alone is legally impermissible.

- Consequently, the charge under Section 117, which is a residuary penal provision for contraventions not otherwise covered, is baseless and should be quashed.

- General Submissions-

No evidence produced by the investigation links Mr. Nareshbhai Babubhai Bhingralia to the alleged offences.

- The prosecution has failed to prove the charges beyond reasonable doubt as mandated by law.

- Penal provisions under the Customs Act cannot be invoked merely on suspicion or unsubstantiated accusations.

- This seizure was conducted without the presence or knowledge of Mr. Nareshbhai Babubhai Bhingralia.

- It is crucial to highlight that Mr. Nareshbhai Babubhai Bhingralia neither had possession or control over the seized goods. Further, no recovery or discovery was made from his custody or premises. Therefore, there is no material evidence linking him to any attempt to export or unlawfully move goods as contemplated under Section 113.

- The facts disclose that the FIR itself identifies other individuals, namely Moh. Ali Husainbhai Nakhuda and Sandeep Giri, as persons who fraudulently misplaced or attempted unlawful export of goods. Mr. Nareshbhai Babubhai Bhingralia involvement appeared to be predicated solely on statements by co-accused persons, which remain uncorroborated by independent evidence.

- Mr. Nareshbhai Babubhai Bhingralia has been engaged in lawful business of yam since 2021 and has shifted his business location in 2025. There is no record or transaction implicating him in any illegal export activity. He has purchased only legally procured goods and conducted legitimate business dealings.

- Section 113 penalizes only those goods which are attempted to be exported in violation of legal requirements or through unauthorized means. Given that Mr. Nareshbhai Babubhai Bhingralia was not in possession of any such goods nor involved in any manner, the invocation of Section 113 against him is without foundation.

- Further, as per the police investigation and records, proper procedural safeguards such as presence during seizure, proper documentation of evidence, and photographic proof of goods or place of seizure were not adhered to, thereby casting further doubt on any link to Mr. Nareshbhai Babubhai Bhingralia.

- Considering the above, it is evident that there is no *prima facie* case against Mr. Nareshbhai Babubhai Bhingralia under Section 113 of the Customs Act. He has been wrongly implicated, and the charges should be dismissed or quashed.

- Section 114AA- Penalty for Use of False and Incorrect Material

It is respectfully submitted that Mr. Nareshbhai Babubhai Bhingralia was not involved in making, signing, using, or causing the use of any false or incorrect

declarations, statements, or documents in relation to the alleged customs transaction.

- His detention appeared to be based purely on suspicion, which is insufficient to warrant such action.
- The recovery of the disputed goods was conducted in the presence of the punch but without the presence or knowledge of Mr. Nareshbhai Babubhai Bhingralia. He was not aware of the particulars listed in the punchanama. Relevant documents are submitted along with this reply in a separate list. Upon examination, it is evident that the police have neither captured photographs of the goods or recovery location nor submitted any documentation pertaining to the place of recovery.
- These facts clearly establish that Mr. Nareshbhai Babubhai Bhingralia has no involvement in the misplacement of goods under the Customs Act.
- In light of the above, the honourable court has granted bail to Mr. Nareshbhai Babubhai Bhingralia before the filing of the charge sheet.
- Prayer:- In light of the above, it is humbly prayed that the authorities drop all proceedings against Mr. Nareshbhai Babubhai Bhingralia under Section 113, 114AA, 114AB and 117 of the Customs Act, as no evidence implicates him in any offence under this provision.

**42.6** Further, Personal hearings were fixed on 11/12/13.06.2025, 10.07.2025, 18.07.2025 and 28.07.2025 in respect of noticees nos. 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20 and 21, but no one appeared for personal hearing on their behalf.

#### **DISCUSSION AND FINDINGS:-**

**43.** I have carefully gone through the Show Cause Notice, oral submissions made by the Noticees during the course of Personal Hearing as well as the written submissions made by them. I find that a few of the noticee have failed to appear for Personal Hearing as well as submit any written submission, inspite of being given opportunity to appear in person several times as detailed in forgoing para for defending their case. Under such circumstance, there is no option left for me but to proceed with the adjudication proceedings ex-parte in terms of merit of the case.

**44.** With regard to proceeding to decide the case ex-parte in respect of, support is drawn from the following case laws:

**44.1** Hon'ble High Court of Kerala in the case of **UNITED OIL MILLS VS. COLLECTOR OF CUSTOMS & C.EX. COCHIN REPORTED IN 2000 (124) ELT 53 (KER.)** has held that:

*“19. No doubt hearing includes written submissions and personal hearing as well but the principle of Audi Alteram Partem does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no*

*violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.*

*21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See *Union of India and Another v. M/s. Jesus Sales Corporation* [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].”*

**44.2** Hon'ble Tribunal of Mumbai in the case of **SUMIT WOOL PROCESSORS V. CC, NHAVA SHEVA REPORTED IN 2014 (312) E.L.T. 401 (TRI. - MUMBAI)** has observed as under:

*“8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard.”*

**44.3** Hon'ble Supreme Court in the case of **JETHMAL VS. UNION OF INDIA REPORTED IN 1999 (110) ELT 379 (S.C.)** has held as under:

*"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well-known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."*

**44.4** Hon'ble Delhi Tribunal in the case of **COMMISSIONER OF C.EX. VS. PEE IRON & STEEL CO. (P) LTD. REPORTED IN AS 2012 (286) E.L.T. 79 (TRI. - DEL)** [upheld by Hon'ble Punjab & Haryana High Court reported in **2015 (316) E.L.T. A118 (P&H.)**] has observed that:

*"9. Notice to the respondent has been received back undelivered with the report that address is not correct. No other address of the respondent is available on record, therefore, the respondent cannot be served with the notice without undue delay and expense. Accordingly, we are constrained to proceed ex parte order against the respondent."*

**45.** I find that in the instant case, the chronological sequence of events are as under:-

- A. During the examination of the Container No. TGCU5002704 carrying "Polyester Texturised Yarn" ("PTY") under Shipping Bill No. 6171932 dated 15.12.2022, it was found that there was 02 heaps of old bags containing Bajri/balu/mitti in place of the yarn at the entrance and back end of the container.
- B. In further investigation, it was revealed that the exporter M/s. RIL stuffed 96 Containers at their plant at Silvassa for export the export goods as declared PTY, out of which 18 containers got cleared from Hazira Port and 78 others were lying at Hazira Port. Out of those in total 18 containers, the goods were found 'Bajri/balu/sand' different from the declared goods i.e. PTY. It was also revealed by the exporter 01 container delivered to their buyer had short quantity of export goods.
- C. The testing of sample taken from the substitute goods from the CRCL, Vadodara and Mundra revealed that:

*"The sample is in the form of brownish & blackish coarse powder & small lumps. It is mainly composed of silica together with small amount of oxides of calcium, aluminium & Iron".*

- D. The said containers were exported under self-sealing permission by the exporter and the said container had tempered seals which were glued. On the behest of the exporter, the Transporter M/s. Hermes Transport Solution filed the police FIR ("First Information Report") for "**theft of yarn**" from the containers against the drivers of the trailer carrying the said containers.
- E. The police investigation revealed that the drivers with the help of their accomplices stole the export goods and replaced it with worthless material i.e. bajri/sand/mitti etc. and they also recovered partial stolen goods and arrested a few persons associated with this alleged crime.
- F. The Show Cause Notice proposed that M/s RIL appeared to have deliberately contravened or caused the contravention of the Customs provisions with an intention to wrongfully avail the Drawback benefit & RoDTEP benefit by mis-declaring their goods. Therefore, the drawback and RODTEP amount were proposed to be recovered from the exporter M/s. RIL.
- G. It is also proposed that the export goods as well as the substitute goods i.e. bajri/sand etc. placed in the containers, which were seized, to confiscate the same under Section 113 of the Customs Act, 1962 vide the Show Cause Notice.
- H. The penalties under Section 114, 114AA, 114AB and 117 of the Customs Act, 1962 are proposed on the exporter and their authorised representative, the CHA, the transporter, the shipping lines, and on the persons charged in their investigation.

**45.1** In view of the above, the issues for consideration before me are as under:-

- a. Whether the exporter has deliberately mis-declared the export goods with an intention to wrongfully avail the Drawback benefit & RoDTEP benefit? And whether the drawback and RODTEP amount alongwith interest are recoverable from the exporter?
- b. Whether the goods valued at Rs. 4,97,48,635/- (Rupees Four Crores Ninety Seven Lakhs Forty Eight Thousand Six Hundred Thirty Five only) of M/s. Reliance Industries Ltd are liable for confiscation under section 113 of the Customs Act, 1962?
- c. Whether the penalties under Section 114, 114AA, 114AB and 117 of the Customs Act, 1962 are imposable on the exporter and their authorised representative, the CHA, the transporter, the shipping lines, and on the persons charged in their investigation?

**46. First I proceed to decide whether the exporter has deliberately mis-declared the export goods with an intention to wrongfully avail the Drawback benefit & RoDTEP benefit? And whether the drawback and RODTEP amount alongwith interest are recoverable from the exporter?**

**46.1** I find that the exporter M/s. Reliance Industries Limited had exported the export goods under self-sealing of the export containers with RFID Seals as per CBIC Circulars Nos. 26/2017-Customs dated 01.07.2017, 36/2017-Customs dattd 28.08.2017, 37/2017-Customs dated 20.09.2017 and 41/2017-Customs dated 30.10.2017.

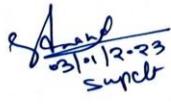
*“vii. The exporter shall seal the container with the tamper proof electronic-seal of standard specification. The electronic seal should have a unique number which should be declared in the Shipping Bill.*

....

*ix. All consignments in self-sealed containers shall be subject to risk based criteria and intelligence, if any, for examination / inspection at the port of export. At the port/ICD as the case may be, the customs officer would verify the integrity of the electronic seals to check for tampering if any enroute. The Risk Management System (RMS) is being suitably revamped to improvise the interdiction/ examination norms. However, random or intelligence based selection of such containers for examination/ scanning would continue.”*

I find that Shri Prasanna Vasant Muje, Vice President (SCM), M/s. RIL had stated in his statement recorded under Section 108 of the Customs Act, 1962 on 03.01.2023 that:-

to them electronically. The Shipping Bill number once received is updated by the CHA through the portal and gets populated in Reliance SAP System. RFID Seal association and updation to the Customs server happens through the Service provider website i-TEK. Thereafter, Containers reported at the port and are getted in to the nominated vessel slots. Shipping Bills are submitted to LEO by the CHA. Once LEO is granted, Shipping Bill print is taken by the CHA and a copy is handed over to Shipping Line Surveyor for inclusion of containers in load list.



21.12.23  
Supar



03.01.2023

I further find that Shri Manish Mishra, M/s. Soham Logistics had stated in his statement recorded under Section 108 of the Customs Act, 1962 04.01.2023 that:-

On being asked the procedure of preparing checklist for Shipping Bill, I state that after stuffing of the container, digitally signed documents by M/s. Reliance Industries Limited are available on our portal. We download the details of the same and file the checklist. The checklist is prepared through our software U-soft. On being asked of how to transmit data in i-TEK RFID e-seal, I state that once the Shipping Bill number is generated in Icegate, we transmit the same to M/S. RELIANCE INDUSTRIES LIMITED's System. From M/S. RELIANCE INDUSTRIES LIMITED System the data is transmitted to i-TEK portal.

I find nothing contrary to the above from the records and hold that M/s. RIL have been following the procedure as prescribed vide above said circulars for self sealing of containers.

**46.2** I find that the exporter has contented the Show Cause Notice about the allegation that M/s. RIL had to ensure safe transportation and safe delivery of the goods upto the Customs Area after self sealing the container, which they failed to do. In this connection, I find that Shri Prasanna Vasant Muje and Shri Jagdish Singh, Director, M/s. Hermes Transport Solutions LLP had stated in their statements dated 04.01.2023 & 20.03.2023 and 13.01.2023 respectively that:

On being asked why the transporter M/s. Hermes Transport Solutions have filed an FIR with the police, when the goods belongs to M/s. Reliance Industries Ltd, I state that as per the contractual agreement with the empaneled transporters, the responsibility of transporting the goods comes along with the responsibility to maintain the integrity of the goods entrusted to them for transportation and any damage or loss to the same is recoverable from the said transporter and that is why FIR has been filed by the transporter.

On being asked to provide a copy of agreement between M/s Kwik Supply Chain Pvt. Ltd and M/s Hermes Transport Solutions LLP, I state that I hereby produce a copy of the above said agreement dated 31.03.2022 between M/s Kwik Supply Chain Pvt. Ltd and M/s Hermes Transport Solutions LLP, which is valid upto 31.03.2023. I put my dated signature on the first and last page of the above said agreement. I also produce dated signature on the first and last page of the above said agreement. I also produce dated signature on the first and last page of the above said agreement.

On being asked about the contract for transportation done by you with M/s Reliance Industries Limited, I state that I hereby produce the self-certified Long Term rate contract effected between M/s Hermes Transport Solution LLP and M/s. Reliance Industries Limited. On being further asked, I state that the contract is of only two pages and no other contract has been made. On being

I find that from the above that M/s Reliance Industries Limited have given **contract** to M/s Kwik Supply Chain Pvt. Ltd. to shortlist transportation vendors based on their market intelligence as regards the current optimum rate levels and the vendors' capability to accept the job and deliver as per M/s Reliance Industries Limited's requirement and all the contracts are being made between M/s Kwik Supply Chain Pvt. Ltd and the actual transporters. I find that M/s. RIL had entered into contract with M/s. Hermes Transport Solutions LLP for safe transportation and safe delivery of the cargo from their premises to Hazira Port. I find that from the gate of the Silvassa Plant upto the Port of exportation i.e. Hazira Port, the safety of the cargo as per contract rests with the transporter as per contract and once, the RFID e-seal is affixed on the container and the same has left the gates of the plant, the transporter is responsible for the safety of the cargo. I find that the same fact has been accepted by Shri Jagdish Singh in his

statements and further as per their contractual obligation, they had filed FIR with the local police for the alleged theft of the export goods from the containers.

**46.3** I find that the exporter M/s. RIL has also contended that there was no wilful mis-statement/ mis-declaration or suppression of facts in this case as they are the victims of the theft of their export goods. In this connection, I find that Shri Jagdish Singh of M/s. Hermes Transport Solutions LLP stated that their employee Shri Brijesh Mishra, who was looking after Hazira Unit of their firm lodged an FIR with the Local Police for the theft from the containers against the unknown persons.

**46.3.1** I also find from the statement of Shri Mohammad Yasir Mohammad Nasir Qureshi, Driver of M/s. Hermes Transport Solution LLP recorded under Section 108 of Customs Act, 1962 in the Lajpor Central Jail, Sachin, Surat on 07.02.2023 that:

आप साहब के आगे पूछने पर मैं यह बताता हूँ कि ऊपर लिखे तीनों ही कंटेनर रिलायंस इंडस्ट्रीज़ लिमिटेड के नरोली प्लांट सिलवासा से निकालने के बाद श्री सुधीर सिंह, के कहने पर मैं कंटेनर को सचिन हजीरा रोड पर मगदाला ब्रिज के पास गोडाउन पर लगता था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि इस जगह पर कंटेनर में लगा हुआ सील तोड़ा गया था और उसमे भरा हुआ पॉलिएस्टर टेक्सट्रॉइज़ यार्न निकालकर उसमे बालू / मिट्टी भरा गया था।

आप साहब के यह पूछने पर कि मुझे कैसे मालूम है कि कंटेनर के सील तोड़कर उसमे से पॉलिएस्टर टेक्सट्रॉइज़ यार्न निकाल कर उसमे बालू / मिट्टी भरा गया था मैं यह बताता हूँ कि जब सामान बदला जा रहा था, तब मैं वहाँ मौजूद था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि सामान को मजदूरों द्वारा निकाला जाता था तथा मजदूरों के द्वारा ही अंदर डाला जाता था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि वहाँ पर मैं श्री सुधीर सिंह तथा लगभग दस के आसपास मजदूर मौजूद थे। उन मजदूरों को मैं पहचानता नहीं हूँ। श्री सुधीर सिंह के बारे में पूछने पर मैं यह बताता हूँ कि मैं श्री सुधीर सिंह को मैं लगभग 5 महीने से जनता हूँ तथा उन्होंने ही मेरी नौकरी हरमस ट्रांसपोर्ट सोलुसन्स में लगावाई थी। श्री सुधीर सिंह से मेरा परिचय मेरे मित्र महफूज के मित्र श्री शाहरुख रहवासी जिल्ला प्रतापगढ़, उत्तर प्रदेश जो की ड्राइवर की नौकरी करता है, ने करवाया। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि श्री सुधीर सिंह के घर या ऑफिस के पता मुझे मालूम नहीं है तथा उनके फोन नंबर भी मुझे अभी याद नहीं है। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि कंटेनर में माल बदलने में लगभग दो से तीन घंटे लगते थे। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि जिस जगह पर

I find that Shri Yasir accepted that he was involved in the conspiracy of theft from the containers along with Sudhir Singh, who was the mastermind.

**46.3.2** I find that, during the investigation the police have arrested a few persons including the drivers of the trailers which were carrying the said containers. They further, recovered a part of stolen material from a few places near Surat. In the Chargesheet dated 16.03.2025, the police mentioned that it was a criminal conspiracy of three persons named 1) Shri Niles Yadav alias Sudhirumar Gayaprasad Singh Rajput, 2) Mohmad Ali Husainbhai Nakhuda and 3) Mohsin Imtiyaz Malek to steal the yarn from the containers of the exporter M/s. RIL. Some excerpts of the Chargesheet are as under:

The facts of the crime is such that, Nilesh Yadav alias Sudhirkumar Gayaprasad Singh Rajput by caste has in concurred with co-accused Mohmadali Husainbhai Nakhuda and Mohsin Imtiyaz Malek and made a criminal conspiracy, the Yarn goods of Reliance Industries Company used to go through transport at Port and therefore in complainant's Harmes Transport Solution LLP Transport as a part of conspiracy have kept the drivers on service and obtained confidence and trust of Transport Manager and in trip going for Reliance Company Yarn goods, as the arrested accused driver Mohmad Yasir Kureshi and other persons, brought the truck at the open godown taken on hire by Sudhirkumar Sing near Abhva Village moje Village Vesu Block No. 274/2. As a part of conspiracy co-accused Mohmadali Husainbhai Nakhuda and Mohsin Imtiyaz Malek have made arrangement of labour and sand for loading and unloading of good and brought Rahul name person to break the seal and broke the seal of the container and offloaded the said container filled with Polyester Textured Yarn Cartoon and have replaced it with same weight cement bags with sand in the container and again sealed it and sent the containers to port. Driver Mohmad Yasir Mohmad Nasir Kureshi in truck no. GJ15AT 4433 filled with Polyester Textured Yarn (PTY) received from Silvassa Reliance Industries limited in 32 big pallet (20 cartoons in one pallet) wherein total 640 cartoon having weight 23,359.855 KG having its total value Rs.27,30,877/- offloaded the container at Adani Hazira port and on checking the said container Instead of cartoon Sand bags were found

Mohsin Malik came at Tea Shop. There, all three accused made a criminal conspiracy to misappropriate yarn from the company's container and to obtain economic benefit and Reliance Company's filled Yarn Containers coming out from the godown arrives on Port and from there loaded in ship and goes out of India and this container on ship by sea way reaches in respective country within 3 to 4 months and on port weight of the container is also not done. Therefore, from such container goods are removed and about 10 to 15 tones sand filled bags are kept and weight can be adjusted and after reaching the goods in respective country and after opening the container it is known that the goods are not there or half there and on sand bags are there and after knowing it respective company files claim. Therefore during

Sudhirkumar Singh has as a part of conspiracy informed that if any driver is caught then they have to give wrong name of Sudhirkumar Sing as Nilesh Yadav therefore Mohmad Yashir Mohmad Nasir at a relevant time given name of co-accused as Nilesh Yadav in complaint his name is declared as an accused. PSI T.K.Devmurari, Hajira POLICE STATION has the said accused Sudhirkumar Singh in connivance with co-accused made criminal conspiracy and his accomplice drivers kept on service in complainant's transport company and from reliance Industries limited at Selvassa instead of taking loaded Textured Polyester Yarn cartons through Harmesh Transport's truck at Adani Port brought it at godown taken on rent at Abhava Chokdi on Highway at Vesu by accused Sudhirkumar Singh, There, co-accused Ali Nakhuda and Mohsin Malek has made arrangement of Sand quantity and bought the labors and to break the seals of the company affixed on the container called Rahel name person and through him break the seals and offloaded yarn cartoons and in its place cement bags filled sand were kept it in container again affixed the seals and taking the

**46.3.3** I further find that a part of the stolen goods have been recovered by the police from various places:-

Yarn goods ,and have shown the said place it is situated at on National Highway No.8 going Surat to Ahmedabad District Sub District Mangrol Moje Village Pipodara RS No. 466 Old Block No.462/ 2 and New Block No. 502 NA land where godown is situated and panchnama of it is made in presence of Panchs and in crime Polyester Yarn thread big 4 Bobin, one bobbin about 6 KG therefore weight of 4 Bobin comes to 24 KG and value of 1 KG is about RS.100/- i.e. 24 KG total value Rs.2400/-) are taken in possession and on making investigation about the said

and investigation is made and as mentioned in Table-B serial No.(2) in container No. MSMU5705448 different cartoons sent of Polyester Textured Yarn 75 pieces and in serial No.(3) in container NO. MSMU8595365 different cartoons sent of Polyester Textured Yarn 353 pieces and in Serial No.(4) container No. TGBU7940595 different cartoons sent of Polyester Textured Yarn 760 pieces and in serial No.(6) in container No. MSMU4471710 different cartoons sent of Polyester Textured Yarn 176 pieces and in serial no.(7) in container No. MSMU7439347 different cartoons sent of Polyester Textured Yarn 756 pieces and in serial no.(16) container No. MSMU6580685 different cartoons sent of Polyester Textured Yarn 759 pieces and in serial no.(17) container No. MSMU6580685 different cartoons sent of Polyester Textured Yarn 552 pieces and in serial no.(18) container No. MSMU6580685 different cartoons sent of Polyester Textured Yarn 8 pieces and in serial no.(19) container No. MSMU6580685 different cartoons sent of Polyester Textured Yarn 375 pieces making a total Polyester Textured Yarn Cartoons 3814 pieces having its total value of Rs.1,86,83,244/- muddamal is taken in possession.

**46.3.4** I find that in the chargesheet, it was clearly brought out by the police that the theft was carried out by the conspirators by the help of drivers and the stolen goods were sold. I find that in the chargesheet, it comes clearly that M/s. Reliance Industries Ltd were victims of criminal conspiracy of theft and came to know about the same only when the goods of the container TGCU5002704 were examined by the Customs Officers at Hazira Port.

**46.3.5** I find that M/s. RIL through their prompt actions in stopping containers from leaving territories of India, constant communication with Shipping Lines, buyers and Port Authorities and co-operation during the investigation by the Customs Officers as well as the Police Officers, leave little doubt about their role in the declaration of export goods.

**46.3.6** I find that M/s. Reliance Industries Ltd. have submitted letter dated 27.12.2022 wherein they undertook that they would not claim any duty drawback, RODTEP and IGST Rebate for the containers where the export goods were stolen. They further undertook vide letter dated 03.03.2023 that:

**In all such cases we are committed to payback the DBK amount along with interest after confirmation of quantity / full loss. As far as IGST is concern, all clearances were made under IGST payment, and we will not claim IGST refund (If IGST refund will be granted the same will be deposited back to the jurisdiction, this undertaking we have already given.)**

**46.4** I further find that the drawback alongwith interest have to be repaid, which has been claimed erroneously as per Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017, alongwith interest as per Section 75A of the Customs Act, 1962.

***“Rule 17. Repayment of erroneous or excess payment of drawback and interest. -***

*Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the*

*claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 (52 of 1962)..”*

**“Section 75A. Interest on drawback. -**

*(1) Where any drawback payable to a claimant under section 74 or section 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback:*

*(2) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.”*

**46.4.1** Further, I find that M/s. RIL have utilized the RoDTEP scrips for the goods imported by them and as the duty scrips (RoDTEP) have been obtained erroneously, the amount of duty credit, so availed and utilised deemed to never have been exempted or debited to the extent of their ineligibility. In event of the RoDTEP scrips being found to be illegitimate / void in part, to the extent wrongfully claimed/availed, the excess payments of duties debited by using such RoDTEP scrips would become payable, such payable amounts being considered to be unpaid and liable to be recovered from M/s RIL along with applicable interest.

**46.4.2** I find that the exporter has not disputed the repayment of drawback, IGST refund and RoDTEP incentives availed by them, and already paid the same as under:

Head	Payment Amount	Details
Drawback	3,00,084/- (inc. Interest) 3,30,151/- (inc. Interest) 36,932/- (inc. Interest)	1968 dated 09.02.2023 1969 dated 09.02.2023 507 dated 21.06.2024
IGST	1108439/- (inc. Interest) 1903800/- (inc. Interest)	DRC-03 dated 28.03.2023 DRC-03 dated 02.05.2023
RoDTEP	7,45,620/- (inc. Interest)	571 dated 07.06.2023

**46.5 Whether there are any elements of wilful mis-statement, mis-representation and suppression of facts?**

**46.5.1** I find that M/s. RIL have contended that inspite the reversal of benefits, they have been charged with Section 28AAA of the Customs Act, 1962 and relied upon the case of Mehta Intertrade Steels P. Ltd v CCE-2023 (11) TMI 162-CESTAT-MUMBAI. I find that the Show cause notice proposed that *M/s. RIL had by way of wilful mis-statement, mis-representation and suppression of facts as regards mis-declaration of*

goods, presented the subject goods for export before the designated authority of Customs with an intent to avail fraudulent benefit of Drawback and RoDTEP. However, I find that this proposal is contrary to facts established by the police investigation. I find that M/s. RIL was victim of the theft carried out with a criminal conspiracy hatched by Shri Sudhir Singh with two other persons.

Thus in this crime all the accused involved as stated in column no.11 and 12 have as a part of criminal conspiracy remaining in contact with each other knowing that Reliance Company yarn goods are going on port through transport an din said transport as a part of conspiracy keeping the driver on service and developing trust and faith in the truck going for Reliance Company Yarn goods trip have keep accomplices on service as a driver and brought the truck at open godown kept in rental basis by Sudhirkumar Sing at moje village Abhwa near Vesu blockno.274/2. As a part of conspiracy other co-accused to load and unload the goods made arrangements of labor and bringing seal breaker and broken container's seal and unloaded yarn cartons from it and filled sand bags of the said weight and gain sealed it and sent the container on port and Reliance Industries company limited's Polyester textured Yarn cartons 18668 having value of Rs.9,53,77,045.26/- muddamal were sent on port for sending outside India through transport in the container which paisee total 12 container 5162 cartoon are received by party as per order and total 9 containers were returned to India. On arriving this total 9 containers on port 4872 cartons having value of Rs.2,25,70,461/- goods checked in container and thereafter out of it how much goods are misappropriated the information will be obtained. In this crime the accused have as a part of conspiracy kept godown on rental basis, shop and from their factory sheds total 6567 cartons having value of Rs.2,81,04,630/- muddamal are taken in possession as per details of panchnama and other 2067 cartoon value Rs.90,89,125/- yarn goods taken with malafide intention and all the accused have with an intention to obtain profit have committed offence u/s 407,413,120(b),114.

**46.5.2** I find that during the police investigation Shri Yashir, driver was arrested and he in his statement recorded on 07.02.2023 under Section 108 of the Customs Act, 1962 stated that *he came in contact with Shri Sudhir Singh and knew him for the last five months and Shri Sudhir Singh arranged his job in Hermes Transport Solution LLP. He further stated that he stopped the trailer carrying export containers at a godown near Magdalla Bridge on Sachin Hazira Road on the instructions of Sudhir Singh and at this place seal placed on container was broken and polyester yarn that was loaded in the container was replaced by Sand/Soil by the labours already present there.*

**46.5.3** I find the knowledge of the incidence, came to M/s. RIL when one of their container was examined during random check as per RMS at Hazira Port. I also find that they came forward on their own for co-operation in the investigation and it is an undisputed fact in the show cause notice that they paid all the ineligible incentives including Drawback, RoDTEP and IGST amount on their own with interest. I rely on the case of **REID & TAYLOR VERSUS COMMISSIONER OF CENTRAL EXCISE, MYSORE REPORTED AT 2007 (220) ELT 509 (TRI-BANG.)** wherein it was held that:

*"2. I have heard both the sides in the matter. Without going into the plea of the learned Counsel seeking remission of duty, I am proceeding on the basis of demand made by the Department for recovery of duty on the stolen fabrics. The Department has invoked larger period under the provisions of Section 11A of the Act. The question is as to whether the demand is hit by time bar? When the goods were lost by theft, the appellants immediately informed the Department on 20th October 2000 itself.*

***Simultaneously in December 2000, the application for remission of duty had been filed. These facts have not been denied by both the authorities. Therefore it is difficult to believe that there is a suppression of facts.***

3. The learned DR submits that the date of rejection of application for remission of duty, i.e. on 23-5-2001 to be taken as the date of an offence case against the assessee. I am not in a position to accept this plea and the grounds for confirmation of demand. The fact of theft was intimated to the Department and the appellants had also filed an application for remission of duty on stolen fabrics. The Department should have immediately on receipt of the information of theft issued a show cause notice. All the facts were known to the Department. There is no suppression of facts in the matter. The demand is hit by time bar. The appeal is allowed by setting aside the demand, with consequential relief if any."

*[Emphasis supplied]*

**46.5.4** In light of the above, I find from the records and submissions that the department being fully aware about the facts of the case and timely compliance at the part of M/s. RIL, ingredients of wilful mis-statement, fraud or suppression are not established against the exporter in the present case, as they have voluntarily repaid all the dues to the Revenue and co-operated in the investigation, hence I hold that though Duty Drawback, RoDTEP and IGST amount availed by them on the said exports and having been repaid, has to be appropriated. However I find that Section 28AAA is invocable only in case "Where an instrument issued to a person has been obtained by him by means of -(a) collusion; or (b) wilful mis-statement; or (c) suppression of facts," However, as discussed in foregoing paras, I hold that the same is not established.

**46.5.5** I further reproduce Section 28(1) & 28(2) as below:

*"Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. -*

*(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for **any reason other than** the reasons of collusion or any willful mis-statement or suppression of facts,-*

...

*(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,-*

*(i) **his own ascertainment of such duty;** or*

*(ii) the duty ascertained by the proper officer,*

*the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.*

*Provided ...*

*(2) ...*

*Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.*

**46.5.6** I find that the exporter has made self ascertainment of the liabilities and paid the same along with interest under Section 28AA, therefore, I hold that although the duties of drawback, RoDTEP and IGST Refund are recoverable under Section 28, and the same is repaid as per Section 28(2) of the Customs Act, 1962. Therefore, I hold that due to non-establishment of fraud/collusion/wilful mis-statement/suppression of facts, Section 28AAA cannot be invoked.

**47. Now, I decide whether the goods valued at Rs. 4,97,48,635/- (Rupees Four Crores Ninety Seven Lakhs Forty Eight Thousand Six Hundred Thirty Five only) of M/s. Reliance Industries Ltd are liable for confiscation under section 113 of the Customs Act, 1962.**

**47.1** I find that in the Show Cause Notice, it is alleged that the goods Rs. 4,97,48,635/- (Rupees Four Crores Ninety Seven Lakhs Forty Eight Thousand Six Hundred Thirty Five only) of M/s. Reliance Industries Ltd are liable for confiscation under Section 113(i), 113(ja) and 113(k) of the Customs Act, 1962. I reproduce above Sections as under:

*SECTION 113. Confiscation of goods attempted to be improperly exported, etc. -*

*The following export goods shall be liable to confiscation:-*

*(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;*

*...*

*(ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;*

*...*

*(k) any goods cleared for exportation which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent*

*or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;”*

**47.1.1** From the foregoing paras, I find that export goods in the subject containers have been substituted partially with the worthless material viz. Sand/Balu/mitti etc., however I find in the foregoing paras that the same had been done by theft from the containers enroute to the Hazira Port by the drivers and their accomplices. I further find that the Police investigation clearly brought out the the exporter is victim of theft and there is no wilful attempt, negligence or default at the end of the exporter to mis-declare the export goods or avail any wrong benefit of Customs duty, therefore, ingredients of Section 113(k) for confiscation of the goods cannot be invoked in absence of *any wilful act, negligence or default of the exporter, his agent or employee*. I rely on the case of **DURGADATTA MISHRA VERSUS COMMISSIONER OF CUSTOMS (EXPORT), MUMBAI reported at 2007 (214) ELT 356 (TRI. MUMBAI)** wherein it was held that:

*“18. In view of above, we hold that the import under the licenses have been correctly made and the goods are covered by the licenses and entitled to exemption under Notification No. 31/97, dated 1-4-1997 and there has been no mis-declaration in respect of the export goods already exported and therefore those goods cannot be held liable to confiscation.”*

*[Emphasis Supplied]*

**47.1.2** I further find that the export goods have been substituted partially with the sand/balu/mitti etc. which were seized vide Seizure memos dated 29.12.2022, 02.01.2023, 18.03.2023 and 20.04.2023, total quantity 91370 Kgs and valued at Rs. 91370/-. I also find that the exporter have not contravened any provisions of the Customs Act and other acts and they were themselves victims of the theft, therefore the goods cannot be confiscated under Section 113(ja) except for the worthless material viz. Sand/Balu/mitti etc. I rely on the case of **BIOCON INDIA (PVT.) LTD. Versus ADDITIONAL COLLR. OF CUS, MUZAFFARPUR reported at 1994 (70) ELT 688 (TRIBUNAL)** wherein it was held that:

*“27. We further note that although the show cause notice makes a reference to Section 113 and Section of the Customs Act, no case has been made out with reference to Section 113 of Customs Act, 1962 in the show cause notice and **there is no evidence to show that the appellants were making an attempt to illegally export the goods** to Nepal. On the contrary, from the submissions made before us by the Ld. Counsel (and not contradicted by the Departmental Representatives), it is abundantly clear that the goods had been presented to the Customs Authorities at the Customs check-post alongwith the relevant documents and therefore, it cannot be called an attempt to export the goods illegally by any stretch of imagination and the charges under the Customs Act and allied laws are also misconceived and the order of the Additional Collector is incorrect. In fact, the entire proceedings is bad in law ab initio.”*

*[Emphasis Supplied]*

**47.1.3** I further find As per Section 113(i), that if goods brought for exportation do not correspond to the entries will be liable for confiscation. Therefore, I find that sand/balu/mitti etc. which were seized vide Seizure memos dated 29.12.2022, 02.01.2023, 18.03.2023 and 20.04.2023, total quantity 91370 Kgs and valued at Rs. 91370/- is liable for confiscation. I, however, find that the partial export goods i.e. PTY, which were not substituted and found as per declaration in the Shipping Bills, except the quantity, is not liable for confiscation.

**47.1.4** I find that M/s Reliance Industries Ltd vide letter no. Customs/Hazira/10 dated 06.06.2023 requested for provisional release of the goods seized under panchnama dated 21/22.12.22, 18.03.23 & 20.04.23. I find that the Dy. Commissioner of Customs, Hazira Port vide his letter bearing F.No. CUS/ECFS/MISC/330/2022/AH-PORT-HZR-CUS-COMMRTE-AHMEDABAD dated 14.06.2023, released the said seized goods provisionally on execution of Bond for value of Rs. 93,46,448/- backed by bank guarantee of 10%. However, I find that M/s. RIL had stated that they had nothing to do with the said sand/balu/mitti etc and did not take delivery of the same, therefore, I hold that the provisionally released PTY i.e. export goods valued at Rs. 92,55,078/- is liable to be released finally by the proper officer by vacating the bond and mitti/sand/balu etc. valued at Rs. 91370/- is liable for absolute confiscation.

**48. Now I decide whether the penalties under Section 114, 114AA, 114AB and 117 of the Customs Act, 1962 are imposable on the exporter and their authorised representative, the CHA, the transporter, the shipping lines, and on the persons charged in their investigation.**

**48.1 M/s. Reliance Industries Ltd. – The Exporter**

**48.1.1** I find from the foregoing paras, that the exporter has neither deliberately mis-declared the export goods, nor they concerned themselves with the theft and substitution of the export goods. I also find that they immediately co-operated and intimated to the departmental officers regarding their export in the said consignment, containers' details and also requested for examination of all affected containers and Detailed records of container movements were provided. They further communicated the shipping lines and Mundra Port Authorities to hold the containers which were under Transshipment and to request for examination of the said containers, further requested to return the containers to India for in-transit weighment and verification. I find that they undertook to not claim or repay Drawback (DBK), RoDTEP, or IGST refund with applicable interest and I find that they did repay the same. I find the insurance company has also settled their claim for theft, which establishes that there were no malafides at the exporter's end.

**48.1.2** I also find that the police investigation concluded that the theft was a premeditated act involving individuals with prior criminal records. All accused have been apprehended, and the case is currently at the notice stage. I find that M/s. Reliance Industries Limited (RIL) is the aggrieved party in this matter, as the charge sheet states

that the drivers, acting with criminal intent, substituted the material with non-valuable goods during transit to the port.

**48.1.3 Penalty under Section 114 the Customs Act, 1962:** I find that the penalties under Section 114 of the Customs Act, 1962, have been proposed in the Show Cause Notice on the exporter M/s. RIL.

*“Section 114. Penalty for attempt to export goods improperly, etc. -*

*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 113, or abets the doing or omission of such an act, shall be liable, -*

...

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

**48.1.4** I find from the foregoing paras, that the export goods have not been found liable for confiscation under Section 113 of the Customs Act, 1962 except the worthless material sand/balu/mitti etc. Also, I find that M/s. RIL neither did any act in relation to the said material nor concerned themselves in anyway. I find that the said material was substituted during the theft of their export goods from the container enroute to the port by the drivers and their accomplices as per the Police investigation. Therefore, I hold that they are **not** liable for penalty under Section 114 of the Customs Act, 1962. I rely on the case of **A.K. SAHA VERSUS COMMISSIONER OF CUSTOMS (P), CALCUTTA REPORTED AT 2001 (136) E.L.T. 303 (TRI. - KOLKATA)** wherein it was held that:

*“8. I have considered the submissions of both the sides. The appellants have taken a categorical stand before the Commissioner that their vehicle in question was stolen before the same was intercepted by the Customs authorities. In support of their above submission they have referred to the Police diary lodged by the driver of the truck on the date of interception itself and as per the timings shown on records, the same is prior to the time of interception. The Commissioner has neither got verified the said Police complaint from the Police station nor made any comments upon the same, but has simply dismissed the complaint as a formula adopted by the appellants to shield the truth. This finding has been arrived by him on the ground that the appellants failed to disclose the residential address of their driver who has not turned up in response to the summons issued to them. The ld. consultant has rightly argued that this factor by itself cannot attribute to the knowledge and involvement of the appellants in question. Permanent address of the driver was available with the department inasmuch as the same was written in the driving licence. No enquiries were conducted by the department to find out his whereabouts. I agree with the ld. consultant that suspicion, loose circumstances and conjectures do not make legally admissible evidence and suspicion, however grave, cannot*

take the place of proof. The department has not shown that the Police complaint lodged by the driver was not true reflection of facts but was a concocted one. **As such I hold that the appellants were not involved in the transportation of the contraband in question. As the involvement of the appellants or their driver or their agent has not been proved in using the vehicle for transportation of smuggled items, the confiscability of the vehicle is also not called for. In view of this, I set aside the impugned order in so far as the same confiscates the truck belonging to the appellants and imposes penalties upon them.** Appeals are thus allowed with consequential relief to the appellants.”

I also place my reliance on the judgment in the cases as quoted by the exporter in their submission viz.

- a) *Nanda Incorporated v CC-2018 (363) ELT 673*
- b) *CCE v GMR Industries Ltd - 2016 (340) ELT 721*
- c) *Maheshwari Rocks (I) P. Ltd v CC - 2010 (262) ELT 574*
- d) *Suttati Enterprises v CC- Order dated 18-7-2022*
- e) *CC v Ram Avtar Singh Chauhan -2010 (262) ELT 446.*

**48.1.5 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on M/s. RIL under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

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

**48.1.6** I find that M/s. RIL have not declared anything wrong or mis-statement in their Shipping Bills or other documents and as per foregoing paras, have no role in the substitution of the export goods and are the victims of the theft, therefore, they are not liable for penalty under Section 114AA of the Customs Act, 1962. I rely on the case of **M/S. CHINKU EXPORTS VERSUS COMMISSIONER OF CUSTOMS, CALCUTTA REPORTED AT 1999 (112) E.L.T. 400 (TRIBUNAL).**

**48.1.7 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on M/s. RIL under Section 114AB of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

SECTION 114AB. *Penalty for obtaining instrument by fraud, etc. —*

*Where any person has obtained any instrument by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilized by such person or any other person for discharging duty, the person to*

*whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.*

**48.1.8** I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. Therefore I hold that they are **not** liable for penalty under Section 114AB of the Customs Act, 1962.

**48.1.9 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on M/s. RIL under Section 117 of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

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

**48.1.10** I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. Futher, the police investigation establish that they had not contravened any other allied act in the present case. Therefore I hold that they are **not** liable for penalty under Section 117 of the Customs Act, 1962.

## **48.2 Shri Prasanna Vasant Munje, Vice President-SCM of M/s. RIL**

**48.2.1** I find that Shri Prasanna Vasant Munje, Vice President-SCM of M/s. RILwas responsible for the total export process comprising of pre-shipment, physical movement of goods, Shipment and Port- Shipment documentation of M/s RIL and also responsible for the export and Customs related work undertaken by the said company. I find from the foregoing paras, that the exporter has neither deliberately mis-declared the export goods, nor they concerned themselves with the theft and substitution of the export goods.

**48.2.2** I also find that in the police investigation and chargesheet, Shri Munje had no role and not been accused of any malafiance. I also find that the Company of Shri Munje, M/s. Reliance Industries Limited (RIL) is the aggrieved party in this matter, as the charge sheet states that the drivers, acting with criminal intent, substituted the material with non-valuable goods during transit to the port.

**48.2.3 Penalty under Section 114 the Customs Act, 1962:** I find that the penalties under Section 114 of the Customs Act, 1962, have been proposed in the Show Cause Notice on Shri Munje. However, I find from the foregoing paras, that the export goods have not been found liable for confiscation under Section 113 of the Customs Act, 1962

except the worthless material sand/balu/mitti etc. Also, I find that Shri Prasanna Munje neither did any act in relation to the said material nor concerned himself in anyway to the theft. I find that the said material was substituted during the theft of their export goods from the container enroute to the port by the drivers and their accomplices as per the Police investigation. Therefore, I hold that Shri Munje is **not** liable for penalty under Section 114 of the Customs Act, 1962. I also place my reliance on the judgment in the cases as quoted by him in his submission.

**48.2.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Munje under Section 114AA of the Customs Act, 1962. I find that Section 114AA applies to a person *who, knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business for the purposes of the Customs Act 1962.* I find that M/s. RIL is victim of theft and the yarn in the containers was, enroute to the Port, stolen and substituted with Mud/soil by the Drivers of the vehicles their accomplices, **without knowledge or involvement of Shri Munje.** I find that Shri Munje had not declared anything wrong or mis-statement in their Shipping Bills or other documents and as per foregoing paras, have no role in the substitution of the export goods and his company is the victims of the theft, therefore, Shri Munje is **not** liable for penalty under Section 114AA of the Customs Act, 1962.

**48.2.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Munje under Section 114AB of the Customs Act, 1962. I find that Shri Munje during his statements, admitted that they had wrongly availed the Drawback and RoDTEP benefit and he was voluntarily ready to repay the wrongly availed Drawback & RoDTEP benefits. I find from the foregoing paras that subsequently M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. Therefore I hold that Shri Munje is **not** liable for penalty under Section 114AB of the Customs Act, 1962.

**48.2.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Munje under Section 117 of the Customs Act, 1962. I find from the statements of Shri Munje that the responsibility of transporting the goods safely is that of the said Transporter and that in view of the theft, RIL has stopped payment of around Rs.1.25 crores to the said Transporter and no further business is allocated to the said transporter. I find that Shri Munje co-operated in the investigation to the departmental officers and undertook to not claim ineligible duty drawback, RoDTEP etc. I also find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. Futher, the police investigation establish that Shri Munje had not contravened any other allied act in the present case. Therefore I hold that Shri Munje is **not** liable for penalty under Section 117 of the Customs Act, 1962.

#### **48.3 M/s Soham Logistics Private Limited, CHA**

**48.3.1** I find that M/s. Soham Logistics Private Limited are doing the Customs Clearance work of M/s Reliance Industries Ltd., since 2013 at Adani Port, Hazira, and from Mundra, ICD TUMB, ICD Ankleshwar, ICD Baroda and JNPT on the basis of authorization letter and the KYC documents submitted by M/S. Reliance Industries Limited. I find from the statement of Shri Manish Mishra, F-Card holder of M/s. Soham Logistics Private Limited, that the data in e-Seal is transmitted once the Shipping Bill number is generated in Icegate and the data is transmitted to M/s. Reliance Industries Limited's System and from M/s. Reliance Industries Limited's System, the data is transmitted to i-TEK portal. I also find that they are generally not coordinating with the transporter regarding shipment and the transport related documents are handed over to them by the drivers or supervisors of the transporter.

**48.3.2** I find that the CHA contended that as part of the standard process, they relied on the documents provided by M/s. RIL duly signed by their representative and the said documents are being presented by them to Customs for custom clearance. I find that the Customs Broker M/s. Soham Logistics Private Limited had no occasion to see the contents of the Containers, as the containers were self sealed at the facatory premises of the exporter M/s. RIL and the CHA's responsibility started when he received containers at hazira Port from the drivers of the trailers carrying the said containers. In view of the above, I find that the question of having knowledge about the containers containing sand/mud/balu/mitti etc. does not arise.

**48.3.3** I find from the foregoing paras, that the exporter has neither deliberately mis-declared the export goods, nor they concerned themselves with the theft and substitution of the export goods. Therefore, I find that the CHA cannot be linked to such mis-declaration in view of judgment of the Hon'ble Tribunal in the case of *PRIME FORWARDERS V CC reported at 2008 (222) ELT 137*, in which it is held that *where the CHA has acted on the basis of documents provided to them by their client, and there is no evidence to show that the CHA was aware of the contents of the containers being other than those described in the documents, there can be no justification for imposition of penalty on the CHA.*

**48.3.4** I also find that in the police investigation and chargesheet, the CHA or any employee of the CHA had no role and not been accused of any malafiance. I also find that the charge sheet states that the drivers, acting with criminal intent, substituted the material with non-valuable goods during transit to the port. Therefore, I find that the CHA who received the container at the port in the self sealed condition, though it was tampered (glued) cannot be held responsible.

**48.3.5 Penalty under Section 114 the Customs Act, 1962:** I find that the penalties under Section 114 of the Customs Act, 1962, have been proposed in the Show Cause Notice on M/s. Soham Logistics Pvt. Ltd. (CHA). However, I find from the foregoing paras, that the export goods have not been found liable for confiscation under Section 113 of the Customs Act, 1962 except the worthless material sand/balu/mitti etc. Also, I find that the CHA neither did any act in relation to the said material nor concerned himself in anyway to the theft. I find that the said material was substituted during the

theft of their export goods from the container enroute to the port by the drivers and their accomplices as per the Police investigation. Therefore, I hold that the CHA i.e. M/s. Soham Logistics Pvt. Ltd. are **not** liable for penalty under Section 114 of the Customs Act, 1962.

**48.3.6 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on M/s. Soham Logistics Pvt. Ltd. under Section 114AA of the Customs Act, 1962. I find that Section 114AA applies to a person *who, knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business for the purposes of the Customs Act 1962.* I find that M/s. RIL is victim of theft and the yarn in the containers was, enroute to the Port, stolen and substituted with Mud/soil by the Drivers of the vehicles their accomplices, **without knowledge or involvement of the CHA.** I find that the CHA had not declared anything wrong or mis-statement in their Shipping Bills as the same were filed based on the documents provided by the exporter and as per foregoing paras, have no role in the substitution of the export goods. Therefore, M/s. Soham Logistics Pvt. Ltd. are **not** liable for penalty under Section 114AA of the Customs Act, 1962.

**48.3.7 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on M/s. Soham Logistics Pvt. Ltd. under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. Therefore I hold that M/s. Soham Logistics Pvt. Ltd. are **not** liable for penalty under Section 114AB of the Customs Act, 1962.

**48.3.8 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on M/s. Soham Logistics Pvt. Ltd. under Section 117 of the Customs Act, 1962. I find that the CHA as per Rules (CBLR), completed their obligation of verification of the exporter, further filed all the Shipping Bills on the basis of documents as provided by M/s. RIL duly signed by their representatives. I also find that the police investigation establish that M/s. Soham Logistics Pvt. Ltd. had not contravened any other allied act in the present case. Therefore I hold that M/s. Soham Logistics Pvt. Ltd. are **not** liable for penalty under Section 117 of the Customs Act, 1962.

#### **48.4 M/s. Hermes Transport Solution LLP, Transporter**

**48.4.1** I find that M/s. Hermes Transport Solution LLP is a Transport Company and is solely providing services to M/s. Reliance Industries Limited, they have no vehicle of its own and on getting orders, hire vehicles from other transporters, mainly from M/s. Seaking Shipping and Container Transport Co. P. Ltd (a sister concern where Shri Jagdish Singh and his wife are directors) and fulfill the orders.

**48.4.2** I find that M/s Reliance Industries Limited have given **contract** to M/s Kwik Supply Chain Pvt. Ltd. to shortlist transportation vendors based on their market intelligence as regards the current optimum rate levels and the vendors' capability to

accept the job and deliver as per M/s Reliance Industries Limited's requirement and all the contracts are being made between M/s Kwik Supply Chain Pvt. Ltd and the actual transporters. I find that M/s. RIL had entered into contract with M/s. Hermes Transport Solutions LLP for safe transportation and safe delivery of the cargo from their premises to Hazira Port. I also find that it was their responsibility for the safety and security of the goods as per contract with the Company.

**48.4.3** I futher find that they have not installed VTS system in the trailers moving from Silvassa to Hazira Port due to short transit time, however they were tracking the same on phone calls. In the present case, no suspicion arised, since the containers arrived in a reasonable transit time with all the containers sealed with tamper proof RFID seals.

**48.4.4** I find that the transporter submitted that, they trusted drivers with the responsibility for the safety and security of the goods, who broke their faith in the matter. I also find from the statement of the arrested driver Shri Mohmad Yasir, that the transporter had no collusion in the matter and was following the instructions and orders of One Sudhir Singh who was also arrested.

**48.4.5** I also find that when they knew about the incidence, their employee Shree Brijesh Mishra was prompt and filed a First Information Report (FIR) with the local police and they also helped in tracing the culprits and helped the police in investigation. I also find that the case was transferred to the Crime Branch of Surat Police and they have investigated the case and filed the charge sheet in competent court in which there was no allegation/charge/accusation on the transporter.

**48.4.6** I find from the foregoing paras, that the exporter has neither deliberately mis-declared the export goods, nor they concerned themselves with the theft and substitution of the export goods. I also find that in the police investigation and chargesheet, the transporter or any employee of the transpoter had not been accused of any malafiance. I also find that the charge sheet states that the drivers, acting with criminal intent, substituted the material with non-valuable goods during transit to the port.

**48.4.7 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on the transporter under Section 114AA of the Customs Act, 1962. I find that Section 114AA applies to a person *who, knowingly or intentionally makes, signs or uses or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business for the purposes of the Customs Act 1962.* I find that M/s. RIL is victim of theft and the yarn in the containers was, enroute to the Port, stolen and substituted with Mud/soil by the Drivers of the vehicles their accomplices, **without knowledge or involvement of the transporter.** I find that the transporter had not declared or signed any document in relation to the export of the cargo. Therefore, M/s. Hermes Transport Solution LLP are not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.4.8 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on M/s. Hermes Transport Solution LLP under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. Therefore I hold that M/s. Hermes Transport Solution LLP are **not** liable for penalty under Section 114AB of the Customs Act, 1962.

**48.4.9 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on M/s. Hermes Transport Solution LLP under Section 117 of the Customs Act, 1962. I find that the transpoter have not concerned themselves with any kind of violation of the Customs Act and rules. I find that infact they were the victims of a criminal conspiracy and their drivers breached their trust.

The facts of the crime is such that, Nilesh Yadav alias Sudhirkumar Gayaprasad Singh Rajput by caste has in concurred with co-accused Mohmadali Husainbhai Nakhuda and Mohsin Imtiyaz Malek and made a criminal conspiracy, the Yarn goods of Reliance Industries Company used to go through transport at Port and therefore in complainant's Harmes Transport Solution LLP Transport as a part of conspiracy have kept the drivers on service and obtained confidence and trust of Transport Manager and in trip going for Reliance Company Yarn goods, as the arrested accused driver Mohmad Yasir Kureshi and other persons, brought the truck at the open godown taken on hire by Sudhirkumar Sing near Abhva' Village moje Village Vesu Block No. 274/2. As a part of conspiracy co-accused Mohmadali Husainbhai Nakhuda and Mohsin Imtiyaz Malek have made arrangement of labour and sand for loading and unloading of good and brought Rahul name person to break the seal and broke the seal of the container and offloaded the said container filled with Polyester Textured Yarn Cartoon and have replaced it with same weight cement bags with sand in the container and again sealed it and sent the containers to port. Driver

I find that they were deceived by their drivers and when they came to know about the theft, they co-operated the Police in their investigation and helped in arrest of key accused. I also find that the police investigation establish that M/s. Hermes Transport Solution LLP had not contravened any other allied act. Therefore I hold that M/s. Hermes Transport Solution LLP are **not** liable for penalty under Section 117 of the Customs Act, 1962.

#### **48.5 M/s. MSC Agency (India) Pvt. Ltd.**

**48.5.1** I find that M/s. MSC Agency (India) Pvt. Ltd. are providing shipping services to and fro India and had offered its services to Reliance Industries Limited to export goods in containers declared as "Polyester Texturized Yarn". I find that they had been requested by the department during the investigation to recall the containers during the investigation. I also find that Shri S.K. Pramod Kumar, Port Captain of M/s. MSC Agency ( India) Pvt. Ltd at Hazira, in his statements dated 12.04.2023 & 17.04.2023, admitted that they had wrongly submitted to the investigation that the containers had reached at the destination whereas the containers were then in transit.

**48.5.2** I find that they contended that they had cooperated fully at all points in time by submitting periodical updates and responses and they are not in any way related

to connivance or mi-declaration. I find that the containers in question were Merchant packed containers; the cargo therein was stuffed and sealed by the Shipper and only then handed over to the Shipping Line at the Port of Loading and the Noticee has acted bona fide in discharge of its contractual and statutory obligations. I find that they had no occasion to see the contents of the Containers, as the containers were self sealed at the facatory premises of the exporter M/s. RIL. In view of the above, I find that the question of having knowledge by M/s. MSC about the containers containing sand/mud/balu/mitti etc. does not arise.

**48.5.3** I find from the foregoing paras, that the exporter has neither deliberately mis-declared the export goods, nor they concerned themselves with the theft and substitution of the export goods. I also find that in the police investigation and chargesheet, neither M/s. MSC nor any employee of them had any role and accused of any malafiance. I also find that the charge sheet states that the drivers, acting with criminal intent, substituted the material with non-valuable goods during transit to the port. I find from the foregoing paras, that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. Therefore, I find that M/s. MSC neither did anything nor concerned themselves in relation to mis-declaration and theft or wrong availment of the incentives on the exports.

**48.5.4 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on M/s. MSC Agency (India) Pvt. Ltd. under Section 117 of the Customs Act, 1962. I find that as per their submission, they had taken the Customs directions seriously and had immediately taken up the same with their Principals and various transhipment and Port of Discharge for holding the containers and further feasibility for back to town containers. I also find that some of those containers were beyond the territorial of Indian Customs and it might happen that the Noticee were not in a position to recall the containers that had already crossed the Indian territorial waters. I further find that failure to provide correct status and delay in recall do not amount to contravention of the Customs Act, 1962 or any allied acts in absence of any malafide intention. I rely on the case of *CC, NEW DELHI V. HARGOVIND EXPORT reported at 2003 (158) E.L.T. 496 (TRI.-DEL.)*. Therefore, I hold that M/s. MSC Agency (India) Pvt. Ltd. are **not** liable for penalty under Section 117 of the Customs Act, 1962.

#### **48.6 M/s. Seabridge Marine Agencies Private Limited (Agent of M/s HMM Shipping India Private limited)**

**48.6.1** I find that M/s. Seabridge Marine Agencies Private Limited are the agents of M/s. Hyundai Merchant Marine Shipping India Private Limited, Mumbai (HMM) and had acted only as agents of HMM at the Port of Hazira. They are providing services to Reliance Industries Limited to export goods in containers declared as "Polyester Texturized Yarn". I find that they had been requested by the department during the investigation to recall the containers during the investigation. I also find that they had

wrongly submitted to the investigation that the containers had reached at the destination whereas the containers were then in transit.

**48.6.2** I find that stuffing of goods and loading into the container was responsibility of the transporter and M/s. Seabridge are responsible for the transit of cargo only after the port and not for the transit from Exporter's premise to the port. I find that they contended that merely a mis-statement by them, regarding whereabouts of the container does not violate any of the Customs Provisions and being FCL duly sealed, they were not aware about the contents of the container being exported and cannot be held responsible for abetment or mis-declaration of the exported goods. I find that the containers in question were Merchant packed containers; the cargo therein was stuffed and sealed by the Shipper and only then handed over to the Shipping Line at the Port of Loading and the Noticee has acted bona fide in discharge of its contractual and statutory obligations. I find that they had no occasion to see the contents of the Containers, as the containers were self sealed at the facatory premises of the exporter M/s. RIL. In view of the above, I find that the question of having knowledge by M/s. MSC about the containers containing sand/mud/balu/mitti etc. does not arise.

**48.6.3** I find from the foregoing paras, that the exporter has neither deliberately mis-declared the export goods, nor they concerned themselves with the theft and substitution of the export goods. I also find that in the police investigation and chargesheet, neither M/s. Seabridge nor any employee of them had any role and accused of any malafiance. I also find that the charge sheet states that the drivers, acting with criminal intent, substituted the material with non-valuable goods during transit to the port. I find from the foregoing paras, that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. Therefore, I find that M/s. Seabridge neither did anything nor concerned themselves in relation to mis-declaration and theft or wrong availment of the incentives on the exports.

**48.6.4 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on M/s. Seabridge under Section 117 of the Customs Act, 1962. I find that as per their submission, some of the containers were beyond the territorial of Indian Customs and it might happen that the Noticee were not in a position to recall the containers that had already crossed the Indian territorial waters. I further find that failure to provide correct status and delay in recall do not amount to contravention of the Customs Act, 1962 or any allied acts in absence of any malafide intention. I rely on the case of CC, New Delhi v. Hargovind Export (Supra). Therefore, I hold that M/s. Seabridge Marine Agencies Private Limited (Agent of M/s HMM Shipping India Private limited) are **not** liable for penalty under Section 117 of the Customs Act, 1962.

**48.7 Shri Mohmad Yashir s/o Mohmad Nasir Kureshi, Village Mariadir, Thana Dumanganj, District Prayagraj (UP)**

**48.7.1** I find that Shri Mohmad Yashir is a driver by profession, who was working with M/s Hermes Transport Solutions LLP and was driver of the trailer No GJ15AT4433

through which container Nos. TGCU 5002704, MSMU 8595365, and CMAU 4649097 was carried from Silvassa RIL Plant to Adani Hazira Port. I find that he was accused of the theft carried out from the export containers of M/s. RIL from the beginning. He was arrested by the Police on the complaint filed by Shri Brijesh Mishra, employee of M/s. Hermes Transport Solutions LLP in connection to the theft from the export containers pertaining to M/s. RIL and was lodged in Lajpore Central jail.

**48.7.2** I find that Shri Yashir in his statement recorded on 07.02.2023 under Section 108 of the Customs Act, 1962 stated that he came in contact with Shri Sudhir Singh and knew him for the last five months and Shri Sudhir Singh arranged his job in Hermes Transport Solution LLP. He further stated that he stopped the trailer carrying export containers at a godown near Magdalla Bridge on Sachin Hazira Road on the instructions of Sudhir Singh and at this place seal placed on container was broken and polyester yarn that was loaded in the container was replaced by Sand/Soil by the labours already present there. I find that he admitted that he had committed crime in the greed of money and he was promised Rs. 1,00,000/- for each container.

आप साहब के आगे पूछने पर मैं यह बताता हूँ कि ऊपर लिखे तीनों ही कंटेनर रिलायंस इंडस्ट्रीज लिमिटेड के नरोली प्लांट सिलवासा से निकालने के बाद श्री सुधीर सिंह, के कहने पर मैं कंटेनर को सचिन हजीरा रोड पर मरदाल्ला ब्रिज के पास गोडाउन पर लाता था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि इस जगह पर कंटेनर में लगा हुआ सील तोड़ा गया था और उसमे भरा हुआ पॉलिएस्टर टेक्सट्रॉइज़ यार्न निकालकर उसमे बालू / मिट्टी भरा गया था।

आप साहब के यह पूछने पर कि मुझे कैसे मालूम है कि कंटेनर के सील तोड़कर उसमे से पॉलिएस्टर टेक्सट्रॉइज़ यार्न निकाल कर उसमे बालू / मिट्टी भरा गया था मैं यह बताता हूँ कि जब सामान बदला जा रहा था, तब मैं वहाँ मौजूद था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि सामान को मजदूरों द्वारा निकाला जाता था तथा मजदूरों के द्वारा ही अंदर डाला जाता था। - आप साहब के आगे पूछने पर मैं यह बताता हूँ कि वहाँ

**48.7.3** I find that M/s. RIL had entered into contract with M/s. Hermes Transport Solutions LLP for safe transportation and safe delivery of the cargo from their premises to Hazira Port. I also find that it was their responsibility for the safety and security of the goods as per contract with the Company. I find that the transporter trusted drivers including Shri Yashir with the responsibility for the safety and security of the goods, who broke their faith in the matter. I also find from the statement of the arrested driver Shri Mohmad Yashir was following the instructions and orders of One Sudhir Singh who was also arrested.

**48.7.4** I also find that Shree Brijesh Mishra, employee of M/s. Hermes filed a First Information Report (FIR) with the local police and the case was transferred to the Crime Branch of Surat Police and they have investigated the case and arrested Shri Yashir. I find that the police mentioned in their chargesheet on the role of Shri yashir as under:

the container and have misappropriated it and to obtain economic benefit have made criminal conspiracy and as a part of the said conspiracy Sudhirkumar singh have his accomplice drivers to provide service in Transport Company and to remove goods from the container, to keep godown on rental basis and the accused Mohmad Ali Nakhuda and Mohsin Malek for loading and unloading goods from the container have made arrangement of labors and to sale the misappropriated goods in market and to fill sand in the place of goods have decided to play the said role. The co-accused Sudhirkumar Singh as a part of the conspiracy have decided to give Accused Mohmad Yashir Mohmad Nasir and otherpersons drivers for one trip half container goods 1.25 lakhs and for full container Rs:2.50 lakhs and bought Reliance Company container and engaged them in Harmesh transport in service and for offloading the goods from the container near Palsana to Hajira going Highway at Village Vesu witness Bhikhubhai Maganbhai Patel's ownership godown taken on rental basis. Accused Mohmad Yashir Mohmad Nasir has in Truck No. GJ 15 AT 4433 from Reliance Industries Limited Company a Silvassa Polyester textured Yarn boxes cartoon filled four containers through Harmesh Transport truck instead of taking it at Adanai port have brought at co-accused Sudhirkumar Singhs rented godown at Abhva Chokdi near Highway. There co-accused have made arrangement of labor and sand for loading and unloading of good and break the seal of the container and vacated the said container filled with Polyester Textured Yarn Cartoon and have filled it with same weight cement bags with sand in the container and again sealed it and send the containers on port by driver Mohmad Yashir Mohmad Nasir .Except this as informed by co-accused Sudhirkumar Singh from Silvassa Reliance Industries Limited's Polyester Textured Yarn filled cartons were taken to Pipodara Village godown and from the container yarn's cartons were misappropriated. Accused Mohmad Yashir Mohmad Nasir has for offloading half goods from container have decided to take 1.25 lakhs and for vacating entire goods 2.50 lakhs and against it have obtained economic benefit of one lakh and played criminal role..

**48.7.5** I find from the foregoing paras, Shri Yashir concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port. The present status of case is at the notice stage:

#### MUNICIPAL COURT, SURAT

Case Details							
Case Type	Filing Number	Filing Date	Registration Number	Registration Date	CNR Number		
CC - CRIMINAL CASE	1740/2023	16-03-2023	1740/2023	16-03-2023	GJSR170017652023		
Case Status							
First Hearing Date	Next Hearing Date	Case Status	Stage of Case	Court Number and Judge			
23-March-2023	04-September-2025	Pending	PROCESS TO ACCUSED	1-JUDICIAL MAGISTRATE, FIRST CLASS (MUNI.)			
Petitioner and Advocate							
1) Government of Gujarat Advocate - APP							
Respondent and Advocate							
1) MOHAMAD YASHIR MOHAMAD NASHIR KURESHI 2) NILESH YADAV ALIAS SUHDIRKUMAR GAYAPRASAD SING 3) SANDIPGIRI DHIRAJGIRI GOSVAMI 4) MUKESHBHAI SHANTILAL DOSHI 5) NARESHBHAI BABUBHAI BHINGRADIYA 6) KEYUR JENTIBHAI PATEL 7) MOHAMAD YAKUB KHRSHID PATHA 8) VIJAYBHAI BHUPATBHAI GOHIL							

**48.7.6 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Yashir under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.7.7 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Yashir is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.7.8 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Yashir under Section 117 of the Customs Act, 1962. I find that Shri Yashir concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port. I find that he acted under a criminal conspiracy and breached the trust of his employer M/s. Hermes. I find from the police investigation that Shri Yashir had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Mohmad Yashir is liable for penalty under Section 117 of the Customs Act, 1962.

**48.8 Nilesh Yadav Wrong Name Holder Sudhirkumar Gayaprasad Sing, Vill. Shivcharanpurva Post Nyotl Taluka Rudoll, Dist Ayodhya (UP)**

**48.8.1** I find that Shri Nilesh Yadav alias Sudhir Sing is a trader and holding a criminal history/past:

<u>CRIMINAL HISTORY</u>	
a)	Bharuch C-Division POLICE STATION II CR No.176/2016 U?S 279 of IP{C and Section 177,184, of MV Act.
b)	Dahej POLICE STATION I CR No.40/2018 u/s 407,120(b).
c)	Dahej POLICE STATION I CR No. 49/2018 U/s 407of IPC.
d)	Pandesara POLICE STATION I CR No.148/2018 U/s 406,407,408,114 of IPC.
e)	Pandesara POLICE STATION I CR No. 165/2018 U/s 406,407,408,114 of IPC.
f)	Kosamba POLICE STATION FIR No.11214021200651 U/s 379,407,120(b) of IPC.
g)	Dahej Marine POLICE STATION FIR No.11199035200030 u/s 407 of IPC.
h)	Dahej Marine POLICE STATION FIR No.11199035210045 u/s 407,114 of IPC.
i)	Dahej PASA/0002/2021 section 2( c ) of PASA Act arrest procedure is done.

He with the help of two co-conspirators Shri Nakhuda and Shri Malek made a criminal conspiracy to steal the yarn from the containers of M/s. RIL. I find that for this purpose, he through his contacts in M/s Hermes Transport Solutions LLP, placed some drivers who transported the export containers from Silvassa RIL Plant to Adani Hazira Port. I find that Shri Sudhir rented some godowns/plots for emptying containers and substituting the export goods with Sand/soil etc. I find that he was accused of the theft carried out from the export containers of M/s. RIL from the beginning. He was arrested by the Police on the complaint filed by Shri Brijesh Mishra, employee of M/s. Hermes Transport Solutions LLP in connection to the theft from the export containers pertaining to M/s. RIL and was lodged in Lajpore Central jail.

**48.8.2** I find that Shri Yashir in his statement recorded on 07.02.2023 under Section 108 of the Customs Act, 1962 stated that he came in contact with Shri Sudhir Singh and Shri Sudhir is mastermind behind this criminal conspiracy.

आप साहब के आगे पूछने पर मैं यह बताता हूँ कि ऊपर लिखे तीनों ही कंटेनर रिलायंस इंडस्ट्रीज लिमिटेड के नरोटी प्लांट सिलवासा से निकालने के बाद श्री सुधीर सिंह, के कहने पर मैं कंटेनर को सचिन हजीरा रोड पर मगदाल्ला ब्रिज के पास गोडाउन पर लगता था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि इस जगह पर कंटेनर में लगा हुआ सील तोड़ा गया था और उसमे भरा हुआ पॉलिएस्टर टेक्सट्रॉइज़ यार्न निकालकर उसमे बालू / मिट्टी भरा गया था।

आप साहब के यह पूछने पर कि मुझे कैसे मालूम है कि कंटेनर के सील तोड़कर उसमे से पॉलिएस्टर टेक्सट्रॉइज़ यार्न निकाल कर उसमे बालू / मिट्टी भरा गया था मैं यह बताता हूँ कि जब सामान बदला जा रहा था, तब मैं वहाँ मौजूद था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि सामान को मजदूरों द्वारा निकाला जाता था तथा मजदूरों के द्वारा ही अंदर डाला जाता था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि वहाँ

**48.8.3** I also find that Shree Brijesh Mishra, employee of M/s. Hermes filed a First Information Report (FIR) with the local police and the case was transferred to the Crime Branch of Surat Police and they have investigated the case and arrested Shri Sudhir. I find that the police mentioned in their chargesheet on the role of Shri Sudhir as under:

(2) Role of Accused Sudhirkumar Gayaprasad Sing by caste Rajput in crime :

Above accused is involved in the crime since beginning and was holding wrong name as Nilesh Yadav which is declared in the complaint. The Accused is holding criminal history. Accused Sudhirkumar Gayaprasad Sing and co-accused (1) Mohmad Ali Nakhuda (2) Mohsin Intiyaz Malek were in Bharuch jail custody and came in contact with each other. After releasing from Jail at Surat City contacted each other and gathered at Rander area and made criminal conspiracy of removal of Reliance Company's yarn goods from container and to misappropriate it and obtain economic benefit and accused Sudhirkumar Singh has have his accomplice drivers to provide service in Transport Company and

goods from the container, to keep godown on rental basis and the accused Mohmad Ali Nakhuda and Mohsin Malek for loading and unloading goods from the container have made arrangement of labors and to sale the misappropriated goods in market and to fill sand in the place of goods have decided to play the said role. The co-accused Sudhirkumar Singh as a part of the conspiracy have decided to give Accused Mohmad Yashir Mohmad Nasir an dotherpersons drivers for one trip half container goods 1.25 lakhs and for full container Rs. 2.50 lakhs and bought Reliance Company container and arranged them in Harmesh transport in service and for vacating the goods from the container near Palsana to Hajira going Highway at Village Vesu witness Bhikhubhai Maganbhai Patel's ownership godown taken on rental basis. Accused Mohmad Yashir Mohmad Nasir has in Truck No. GJ 15 AT 4433 from Reliance Industries Limited Company a Silvassa Polyester textured Yarn boxes cartoon filled four containers through Harmesh Transport truck instead of taking it at Adanai port have brought it at co-accused Sudhirkumar Singh's rented godown at Abhva Chokdi near Highway. There co-accused have made arrangement of labor and sand for loading and unloading of good and break the seal of the container and vacated the said container filled with Polyester Textured Yarn Cartoon and have filled it with same weight cement bags with sand in the container and again sealed it and send the containers on port. Rahul who came to break seal used to be paid money for breaking and joining seals for one truck container. Thereafter for selling the said obtained Reliance Industries goods above three accused have contacted this offence co-accused Sandipgiri Goswami and informed above facts and to hide yarn goods and for selling it in market godown is require, so co-accused Sandipgiri Goswami through accused Mukesh Doshi in Dindoli area showed shop No. 8 and 24 at Dindoli, Pavillion Plaza shopping centre and taken the said shop on rental basis wherein present accused Sudhirkumar Singh has through tempo driver Pareshbhai Ranchodhbhai Rathwa, Sumanbhai Jitarabhai Bagadia and Vineshbhai Nanla Tomar have rented tempo at different time have filled misappropriated yarn goods carton and send it in shop No. 8 and 24 in Pavillion Plaza Shopping Centre and co-accused Sandipgiri has hidden the said goods and Sandipgiri has informed to sell the same to his known merchants and he has sold to different merchants about 1350 cartons sold it and co-accused Mukeshbhai Doshi informed to sell it in known merchant and share profits in equal portion and co-accused Mukeshbhai Doshi has sold it to merchant of Vapi Inspite of doing Bhagayshree Fashion name business or readymade clothes from his GST bill from Sandipgiri Goswami about 400 yarn cartons are sold and Surat's Yakub named persons about 265 yarn cartons are sold and its payment is received through bank and in cash and the said payment is obtained by Accused Sudhirkumar Gayaprasad Singh and co-accused (1) Mohmad Alihussain

**48.8.4** I find from the foregoing paras, Shri Sudhir concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port. I also find that Shri Sudhir sold the said stolen goods to several persons.

**48.8.5 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Sudhir under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.8.6 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Sudhir is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.8.7 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Sudhir under Section 117 of the Customs Act, 1962. I find that Shri Sudhir concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port and further sold the said stolen goods to several persons for getting illegal gratification. I find that he acted under a criminal conspiracy. I find from the police investigation that Shri Sudhir had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Sudhir Sing is liable for penalty under Section 117 of the Customs Act, 1962.

**48.9 Sandipgiri S/O Dhirajgiri Goswami, Tekarawala Faliyu, Varsola Village, T-Nadiyad District Kheda Original Native Sukhpargam, In Sukhnath Mahadev Temple, Taluka Jasdan District Rajkot**

**48.9.1** I find that Shri Sandipgiri is a vehicle agent and holding a criminal history/past:

CRIMINAL HISTORY	
a)	Umara POLICE STATION I CR No. 470/2011 u/s 302,120(b),182 and section 135 of GP Act.Dahej POLICE STATION I CR No.40/2018 u/s 407,120(b).
b)	Dahej Marine POLICE STATION District Bharuch POLICE STATION CR No.FIR No.1119903520304 u/s 407,420,120(b),114 of IPC.

I find from the police investigation that after release from the jail, he came in contact with Shri Sudhir Singh and agreed on a criminal conspiracy to steal the yarn from the containers of M/s. RIL and sell it in the market for making illegal gratifications. I find that Shri Nakhuda contacated him after the theft for hiding and selling stolen goods and he rented some shops for storing the stolen goods and shifted the material from the godowns to the shops in several tempos. I find that he also used to collect payment in

cash for the sold stolen goods. He was arrested by the Police in connection to the theft from the export containers pertaining to M/s. RIL.

**48.9.2** I find that the police mentioned in their chargesheet on the role of Shri Sandipgiri as under:

(3) Role of accused Sandipgiri Dhirajgiri Goswami in crime :

Accused Sandipgiri Dhirajgiri Goswami is having criminal history. Accused Sandipgiri S/o Dhirajgiri Goswami was in Jail in Bharuch during that time Sudhirkumar Gayaprasad Singh and co-accused Mohsin Imtiyaz Malek came in contact with each other. After release of the accused Sandipgiri S/o Dhirajgiri Goswami from the Jail was in contact with Sudhirkumar Sing and called him at Ghoddod Road to meet. There co-accused Sudhirkumar Sing has stated that Accused Sudhirkumar informed Sandipgiri Dhirajgiri Goswami that earlier in Ankleshwar respective company's container goods were misappropriated in the same manner other big work has come and we will work together then we will get huge benefit and therefore accused Sandipgiri Dhirajgiri Goswami gave consent and above three accused to give an end to the said work, in the beginning some money will require and discussed to give equal contribution and therefore Sandipgiri Dhirajgiri Goswami refused as there was no money with him. Thereafter, after 8 days accused Sudhirkumar sing again contacted and again gather on Ghoddod road and accused Sudhirkumar Sing bought Mohmad AliNakhuda and Mohsin Malek with him and introduced Mohmadali Nakhuda with Sandipgiri Dhirajgiri Goswami that they have started business in partnership. Our drivers are kept on service in Harmesh transport bringing goods from Reliance Company container and to unload the goods from container near

Abhva Chokdi on the Highway road going Palsana to Hajira taken godown on rent and containers filled with Polyester Textured yarn box cartons instead of taking it at Adani Port bought it in Godown and on its place in cement bags filled sand and kept it in container and again affixed seal and sent the container at Hajira Adanai Port and the Reliance Industries Limited company's misappropriated goods is require to be sold and will you take it, this Sandipgiri Dhirajgiri Goswami refused to take goods but informed that if I will be benefitted I will make it sold in market and I will take Rs.05 commission per KG. So all three accused agreed to it. Thereafter in October/November 2022, Mohmadli Nakhuda contacted Sandipgiri Dhirajgiri Goswami and informed him about huge quantity of yarn obtained in Abhava Chokdi in Godown. To hide this yarn goods and for selling it in market godown is require such talk was made so Sandipgiri Dhirajgiri Goswami informed to make arrangement for godown. Mukesh Doshi who is known to Sandipgiri Dhirajgiri Goswami was informed to make search of shop to hide yarn goods without bill, the accused Mukeshbhai Doshi show shop No. 8 and 24 at Dindoli, Pavillion Plaza as he is running Shop In the name of Bhagyashri Fashion at Pavilion Plaza and Sandipgiri Dhirajgiri Goswami liked it, for one shop Rs.10000/- deposit and monthly Rs. 5000/- rent is decided and for two shop deposit Rs.20000/- and monthly rent Rs. 5000/- given to accused Mukeshbhai Doshi. Sandipgiri Dhirajgiri Goswami informed about keeping this shops on rental basis to co-accused Mohmad Ali Nakhuda and he through different tempo sent at different time Reliance Industries misappropriated goods yarn Cartoon in card box and Sandipgiri Dhirajgiri Goswami Ide it in rented shop which pailee Sandipgiri Goswami's possession shop No. 8 and 24 yarn carton 294 pieces having value of Rs.10,89,514/- muddamal is taken in possession for panchnama details. Also during investigation accused Vijay Bhupatbhai Gohil sold illegally Reliance Industries misappropriated goods yarn carton 242 pieces having market value of RS.11 lakhs without making bill for Rs.5,76,000/- and obtained cash payment and through the accused Vijay Gohil have developed relation co-accused Keyur Jentibhai Patel sold illegally Reliance Industries misappropriated goods yarn carton 100 pieces having market value of RS.4.5 lakhs without making bill for Rs.2,80,000/- and obtained cash payment. Except this, to accused Nareshbhai Babubhai Bhingradia sold illegally Reliance Industries misappropriated goods yarn carton 1019 pieces having market value of RS.43 lakhs without making bill for Rs.27,50,000/- and obtained cash payment. In the office of Sandipgiri Goswami co accused Mukeshbhai Doshi used to come and he asked about yarn goods, he informed that, setting goods have come. From Reliance Industries Limited Company container Yarn filled cartoon are removed and on its place filling sand and sent the container in port and everywhere setting is done. For one Kg.Rs.75/- the buyer of this yarn goods If in your knowledge then inform and whatever profit is derived will be shared in equal

proportion. So Accused Mukeshbhai Doshi agreed and contacted Jalalkhan Iqbalkhan doing Yarn business in the name of National traders at Vapi in the name of his Bhagayashri Fashion Name on date 9.12.2022 and on date 16.12.2022 made two separate GST bills in the name of National traders and sold 400 Polyester texture Yarn cartons along with GST for Rs.11,82,720/- and obtained it through his Bhagayashri Fashion Bank Account and as told by accused Sandipgiri Goswami co-accused Mohmadali Nakhuda's bank account paid Rs.5,00,000/- and co-accused Mohmad Yakub Khurid Pathan has sold Reliance Industries Limited Co's yarn cartoon 265 pieces having its market value Rs.12.5 lakhs without making bill illegally in Rs.7,50,000/- and obtained cash payment by Sandipgiri Goswami. Above yarn cartoon were sent to co-accused at different time and in different tempo at that time accused Sandipgiri Goswami has given respective yarn goods along with him co-accused Mohmad Ali Nakhuda and Mohsin Malek used to go together and used to obtain payment in cash. Thus accused Sandipgiri S/o Dhirajgiri Goswami has for obtaining economic benefit inspite of knowing that Yarn Cartoons of Reliance Industries limited are obtained by way of cheating as informed by co-accused to hide yarn goods taken shops on rental basis about 2720 cartoons called for and as stated above have sold it in cheat rate compare to market value without bill and have played criminal role.

From the accused Sandipgiri Goswami possession shop/Godown container No. MSMU8595365's cartoon 54 pieces, Container No. MRSU5188936 cartoons 78 pieces, Container No. GCXU5587763 cartoon 2 pieces, Container No. MRSU48088781 cartoon 24 pieces and Container No. MRMU4471710 cartoon 136 pieces making a total yarn cartoons 294 pieces having value Rs.10,89,514/- muddamal is taken in possession.

**48.9.3** I find from the foregoing paras, Shri Sandipgiri concerned himself with the theft and acting with criminal intent, transported and sold the stolen goods. I also find that Shri Sandipgiri also received payment in cash for the sold stolen goods.

**48.9.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Sandipgiri under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is **not** liable for penalty under Section 114AA of the Customs Act, 1962.

**48.9.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Sandipgiri is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is **not** liable for penalty under Section 114AB of the Customs Act, 1962.

**48.9.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Sandipgiri under Section 117 of the Customs Act, 1962. I find that Shri Sandipgiri concerned himself with the theft and acting with criminal intent, transported and sold the stolen goods and further sold the said stolen goods to several persons for getting illegal gratification. I find that he acted under a criminal conspiracy. I find from the police investigation that Shri Sandipgiri had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Sandipgiri **is** liable for penalty under Section 117 of the Customs Act, 1962.

**48.10 Mukeshbhai Shantilalji Doshi, Jain By Casteh/804, Rixivihar Township, Astik Party Plot, Parwatpatia Surat City Original Native Village Pratapgadh, Gopalganj Mahollow, Opp. Chandraprabhu Jain Temple, T And D. Pratapgadh (Rajasthan)**

**48.10.1** I find that Shri Mukeshbhai is doing readymade garment business in the name of M/s. Bhagyashri Fashion. I find from the police investigation that he came in contact with Shri Sandipgiri and agreed on a criminal conspiracy to sell the yarn stolen from M/s. RIL export containers for making illegal gratifications. I find that Shri Sandipgiri contacted him after the theft for hiding and selling stolen goods and shifted the material from the godowns to the shops in several tempos. I find that Shri Mukeshbhai sold the said goods under GST bills to M/s. National Traders raised by his firm M/s. Bhagyashri Fashion. He was arrested by the Police in connection to the theft from the export containers pertaining to M/s. RIL.

**48.10.2** I find that the police mentioned in their chargesheet on the role of Shri Mukeshbhai as under:

(4) **Role of accused Mukeshbhai Shantilalji by caste Jain in crime:**  
Present accused Mukeshbhai Shantilalji Doshi shop No. 124 Pavilion Plaza, B/h Mark Point, Karadva Road, Dindoli is doing ready made garments business with name of Bhagyashri Fashion. This offence co-accused have as a part of conspiracy removed Reliance Company's yarn goods from the container and have misappropriated it and to obtain economic benefit have made criminal conspiracy and as a part of the said conspiracy Sudhir Kumar Singh have his accomplice drivers to provide service in Transport Company and to remove goods from the

Accused Mukeshbhai Doshi went to meet Sandipgiri Goswami in shop No. 8 and 24 and on asking about yarn cartoon he informed that, cutting goods have come. From Reliance Industries Limited Company container Yarn filled cartoon are removed and on its place filling sand and sent the container in port and everywhere setting is done. For one Kg. Rs.75/- the buyer of this yarn goods if in your knowledge then inform and whatever profit is derived will be shared in equal proportion and accused Mukeshbhai Doshi to hide goods are obtained by cheating from his Bhagyashri Fashion name on date 9.12.2022 and on date 16.12.2022 made two separate GST bills in the name of National traders and sold 400 Polyester texture Yarn cartoons along with GST for Rs.11,82,720/- and obtained it through his Bhagyashri Fashion Bank Account and as told by accused Sandipgiri Goswami co-accused Mohmadali Nakhuda's bank account paid Rs.5,00,000/- Except this co-accused Mohmad Yakub Khurid Pathan has given his introduction to Accused Mukesh Doshi as Rajeshbhai and talked about yarn goods to be sold on cheap rate and called him to meet at his office and in Reliance Industries Limited Co.'s card box shown yarn goods filled and co-accused Mohmad yakub liked the yarn goods and for one KG Rs.81/- has sold Reliance Industries Limited Co.'s yarn cartoon 265 pieces having its market value Rs.12.5 lakhs without making bill illegally in Rs.7,50,000/- and obtained cash payment by accused Mukesh Doshi and have played criminal role. Thus accused Mukeshbhai S. Doshi inspite of knowing that this yarn goods is obtained by way of cheating and fraud in his firm Bhagyashri Fashion name made GST bills and with an intention to obtain profit without bill have sold it and has played criminal role.

Accused Mukeshbhai S. Doshi has arranged to provide to the accused Sandipgiri Goswami shop on rental basis and to obtain economic benefit through his firm bill and without bill total 665 yarn cartoons sold for Rs.19,32,720/- and given Rs. 5 lakhs to

**48.10.3** I find from the foregoing paras, Shri Mukeshbhai concerned himself with the theft and acting with criminal intent, sold the stolen goods on his own name. I also find that Shri Mukeshbhai also handed some payment in cash for the sold stolen goods to the key conspirators.

**48.10.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Mukeshbhai under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.10.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Mukeshbhai is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.10.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Mukeshbhai under Section 117 of the Customs Act, 1962. I find that Shri Mukeshbhai concerned himself with the theft and acting with criminal intent, stored and sold the stolen goods and further sold the said stolen goods to several persons for getting illegal gratification on his firm's name. I find that he acted under a criminal conspiracy. I find from the police investigation that Shri Mukeshbhai had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Mukeshbhai is liable for penalty under Section 117 of the Customs Act, 1962.

**48.11 Nareshbhai Babubhai Bhingralia, House No.0/1104, Sumeru Sky, Mota Varachha, Near S.B.Circle, Surat City Original Native Village Dhola, T-Umrada D-Bhavnagar**

**48.11.1** I find that Shri Nareshbhai Bhingralia is doing textile business of making clothes from yarn at Pipodara in Astha Industries in account No. 102,103,104 in the name of Sneha Creation. I find from the police investigation that he came in contact with Shri Sandipgiri, who informed him that some goods are without bill and is to be sold at cheaper rate compare to market rate and shown reliance Industries Limited's yarn. I find that since the goods were made available at cheaper rate compare to market, therefore after negotiation Shri Nareshbhai Babubhai Bhingralia, inspite of knowing that this yarn goods was obtained by way of cheating and fraud, agreed to purchase the same without bill. He was arrested by the Police in connection to the theft from the export containers pertaining to M/s. RIL.

**48.11.2** I find that the police mentioned in their chargesheet on the role of Shri Nareshbhai as under:

(5) Role of accused Nareshbhai Babubhai Bhingralia in crime :

Accused Nareshbhai Babubhai Bhingralia is doing textile business of making clothes from yarn at Pipodara in Astha Industries in account No. 102,103,104 in the name of Sneha Creation. Accused came in contact with co-accused Sandipgiri Goswami and went to meet at Dindoli PavillionPlaza Shopping center and at that time Sandipgiri Goswami informed him that the goods are without bill and is to be sold at cheaper rate compare to market rate and shown reliance Industries Limited yarn and was liked by him and since the goods were made available at cheaper rate compare to market and his shed was closed and was to be started therefore after negotiation co-accused informed to sale it @of 81 per KG and in market the goods are available @of 90 to 110 and therefore accused Nareshbhai Babubhai Bhingralia inspite of knowing that this yarn goods is obtained by way of cheating and fraud and is illegal agreed to purchase the same without bill and informed to send it at Astha Industries in account No. 102,103,104, so co-accused Sandipgiri Goswami with the help of other co-accused have hidden the yarn good of reliance Industries in his Dindoli godown out of it as informed by present accused at different time through the tempo sent 1019 cartoons filled with yarn in card boxes. This yarn's market value is Rs.43 lakhs and for its payment accused Nareshbhai Babubhai Bhingralia has paid to the accused Sandipgiri Goswami Rs.27,50,000/- which is found during investigation. Thus, accused Nareshbhai Babubhai Bhingralia inspite of knowing that yarn goods is obtained by way of cheating and fraud with an intention to obtain profit from co-accused without bill purchased yarn goods and played criminal role.

Accused Nareshbhai Babubhai Bhingralia from other co-accused inspite of knowing that Reliance Industries Limited company's Yarn cartoon are obtained by way of cheating and illegally for obtaining economic benefit without bill container No. GCXU5587763 108 cartoons, Container No. MRSU4808781 86 cartoons, Container No. MRSU5188936 42 cartoons, Container No. MSMU4471710 125 cartoons, Container No. MEDU7839735 12 cartoons, Container No. CMAU4649097 640 cartoons and sticker of the container is rubbed number cannot be read such 6 cartoons making a total 1019 yarn cartoons having market value about 43 lakhs have purchased for Rs.27,50,000/- From his possession this crime Polyester Textured Yarn total 1019 cartoons are found and taken in possession.

**48.11.3** I find from the foregoing paras, Shri Nareshbhai concerned himself with the theft as he purchased the stolen goods without bill/invoice and in cash. I find that he submitted that he was not involved in respect of purchase of the said theft goods as the said goods were found from premises of another person, however presented no concrete evidence in support of his claim. Therefore, I hold that the same is an afterthought and reject the contention of Shri Nareshbhai.

**48.11.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Nareshbhai under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.11.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Nareshbhai is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.11.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Nareshbhai under Section 117 of the Customs Act, 1962. I find that Shri Nareshbhai concerned himself with the theft as he purchased the stolen goods without invoice and in cash. I find that he has clearly violated IT and GST acts by making transaction in cash and without invoice. I find from the police investigation that Shri Nareshbhai has been charged under IPC and other acts. Therefore I hold that Shri Nareshbhai Bhingralia **is** liable for penalty under Section 117 of the Customs Act, 1962.

**48.12 Keyur Jayantibhai Patel, B/204, Verona Residency, Harekrushna Campus, Vraj Chowk, Sarthana Jakatnaka Surat City; Original Native: Village Govindpura, Taluka Kadi District Mahesana And Tata Nagar Society, Meghanai Nagar Ahmedabad**

**48.12.1** I find that Shri Keyur Patel is doing business on the name of Shriji Fashion for fabric manufacturing. I find from the police investigation that he came in contact with Shri Sandipgiri, who informed him that some goods are without bill and is to be sold at cheaper rate compare to market rate and shown reliance Industries Limited's yarn. I find that since the goods were made available at cheaper rate compare to market, therefore after negotiation Shri Keyur, inspite of knowing that this yarn goods was obtained by way of cheating and fraud, agreed to purchase the same without bill. He was arrested by the Police in connection to the theft from the export containers pertaining to M/s. RIL.

**48.12.2** I find that the police mentioned in their chargesheet on the role of Shri Keyur as under:

(7) Accused Keyur Jentibhai Patel's role in the crime :

Accused Keyur Jentibhai Patel is doing business at Saroli Town ship in B/42 in the name of Shriji Fashion of fabric manufacturing. Through the accused Vijay Gohil, introduction of Keyur Jentibhai Patel was done with Sandipgiri Goswami. He has shown Reliance Industries L.co. yarn goods and informed to give @ of 85 per KG without bill inspite of knowing that this yarn goods is obtained by way of cheating and fraud and is illegal agreed to purchase the same without bill and order for 100 yarn cartoon. Accordingly co-accused Sandipgiri Goswami has hidden the goods in the godown of at Dindoli out of it as informed by accused Keyur Jentibhai Patel through tempo in Reliance Industries llmited company's card box yarn filled cartoons 100

were sent. This yarn goods market value Rs.4.5 lakhs and against its payment present accused paid Rs.2,80,000/- to present accused in cash which is found during investigation. Thus accused Keyur Jentibhai Patel inspite of knowing that yarn goods is obtained by way of cheating and fraud with an intention to obtain profit from co-accused without bill purchased yarn goods and played criminal role.

The accused Keyur Jentibhai Patel has from other co-accused inspite of knowing that Reliance Industries Limited company's Yarn cartoon are obtained by way of cheating and illegally for obtaining economic benefit without bill container No. MRSU4808781,100 cartoons, market value Rs.4.5 lakhs and against its payment present accused paid Rs.2,80,000/- to present accused. From his possession this crime Polyester Textured Yarn total 100 cartoons are found and taken in possession.

**48.12.3** I find from the foregoing paras, Shri Keyur concerned himself with the theft as he purchased the stolen goods without bill/invoice and in cash.

**48.12.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Keyur under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.12.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Keyur is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.12.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Keyur under Section 117 of the Customs Act, 1962. I find that Shri Keyur concerned himself with the theft as he purchased the stolen goods without invoice and in cash. I find that he has clearly violated IT and GST acts by making transaction in cash and without invoice. I find from the police investigation that Shri Keyur has been charged under IPC and other acts. Therefore I hold that Shri Keyur Patel is liable for penalty under Section 117 of the Customs Act, 1962.

**48.13 Mohmad Yakub Khurshid Pathan, 7/1228, Varsi Tekara, Hodi Bungalow, Near Gujarati School, Sayedpura, Surat City Original Native Village Bagnagar, Taluka District Basti (UP)**

**48.13.1** I find that Shri Mohmad Yakub Khurshid Pathan is doing business on the name of S. Y. Trading for selling and purchasing of yarn. I find from the police investigation that he came in contact with Shri Pathan, who informed him that some goods are without bill and is to be sold at cheaper rate compare to market rate and shown reliance Industries Limited's yarn. I find that since the goods were made available at cheaper rate compare to market, therefore after negotiation Shri Pathan, inspite of knowing that this yarn goods was obtained by way of cheating and fraud, agreed to purchase the same without bill. He was arrested by the Police in connection to the theft from the export containers pertaining to M/s. RIL.

**48.13.2** I find that the police mentioned in their chargesheet on the role of Shri Pathan as under:

**(6) Role of accused Mohmad Yakub Khurshid Pathan in crime :**

The accused Mohmad Yakub Khurshid Pathan is doing business of buying and selling of yarn at House No. 7/1228 on ground floor in the name of S.Y.Trading. Co-accused Mukesh S.Doshi has given his introduction as Rajeshbhai and talk about requirement of yarn goods, accused Mohmad Yakub Khurshid Pathan has shown willingness to purchase yarn goods and were at Mukesh Doshi's office at Dindoli, Pavillion Plaza, first floor and therein card box of Reliance Industries company yarn goods were filled and it was liked by the accused and agreed to purchase it @ of 81 per KG and therefore accused inspite of knowing that this yarn goods is obtained by way of cheating and fraud and is illegal agreed to purchase the same without bill and order for 265 yarn cartoon. Accordingly co-accused Mukeshbhai Doshi has hidden the goods in the godown of Sandip Gir Goswami at Dindoli out of it as informed by accused Mohmad Yakub Khurshid Pathan through tempo in Reliance Industries limited company's card box yarn filled cartoons 265 were sent. This yarn goods market value Rs.12.5 lakhs and against its payment present accused paid Rs.7,50,000/- to present accused in cash which is found during investigation. Thus accused Mohmad Yakub Khurshid Pathan inspite of knowing that yarn goods is obtained by way of cheating and fraud with an intention to obtain profit from co-accused without bill purchased yarn goods and played criminal role.

The accused Mohmad Yakub Khurshid Pathan has from other co-accused inspite of knowing that Reliance Industries Limited company's Yarn cartoon are obtained by way of cheating and illegally for obtaining economic benefit without bill container No. MRSU4808781,63 cartoons, Container No. MRSU5188936, 06 cartoons, Container No. MRSU8595365,194 cartoons, and sticker of the container is rubbed number cannot be read such 2 cartoons making a total 265 yarn cartoons having market value about 12.5 lakhs have purchased for Rs.7,50,000/-. From his possession this crime Polyester Textured Yarn total 265 cartoons are found and taken in possession.

**48.13.3** I find from the foregoing paras, Shri Pathan concerned himself with the theft as he purchased the stolen goods without bill/invoice and in cash.

**48.13.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Pathan under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.13.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Pathan is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.13.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Keyur under Section 117 of the Customs Act, 1962. I find that Shri Pathan concerned himself with the theft as he purchased the stolen goods without invoice and in cash. I find that he has clearly

violated IT and GST acts by making transaction in cash and without invoice. I find from the police investigation that Shri Pathan has been charged under IPC and other acts. Therefore I hold that Shri Pathan is liable for penalty under Section 117 of the Customs Act, 1962.

**48.14 Vijay Bhupatbhai Gohil, C/101, Ashwamegh Vila Apartment, Yogi Chowk, Surat City Original Native Village Kumbhangam, Taluka Mahuwa District Bhavnagar**

**48.14.1** I find that Shri Vijay Bhupatbhai Gohil is doing textile business on the name of Narangi Dyyeing of dying of clothes. I find from the police investigation that he came in contact with Shri Sandipgiri, who informed him that some goods are without bill and is to be sold at cheaper rate compare to market rate and shown reliance Industries Limited's yarn. I find that since the goods were made available at cheaper rate compare to market, therefore after negotiation Shri Gohil, inspite of knowing that this yarn goods was obtained by way of cheating and fraud, agreed to purchase the same without bill. He was arrested by the Police in connection to the theft from the export containers pertaining to M/s. RIL.

**48.14.2** I find that the police mentioned in their chargesheet on the role of Shri Gohil as under:

**(8) Role of accused Vijaybhai Bhupatbhai Gohil in crime:**

Accused Vijaybhai Bhupatbhai Gohil is running shed at Saroli Rajpurohit Godown, Near Bharat cancer Hospital in the name of Narangi Dyyeing doing work of dying of clothes. Elder brother of accused Vijaybhai Bhupatbhai Gohil is running tailor shop at Ashwinikumar Road and at Saroli Hariom Industrial Shed No.78,third floor in the name of Lillima fabrics wherein machines making clothes from Yarn are running accused Vijaybhai Bhupatbhai Gohil also looks after the said work. Accused Vijaybhai Bhupatbhai Gohil's elder biological brother Mukeshbhai Bhupatbhai Gohil's tailor shop and near to it in Someshwar Mahadev temple co-accused Sandipgiri Goswami's brother Hirenghi Goswami is providing services as priest through him accused Vijaybhai Bhupatbhai Gohil came in contact with Sandipgiri Goswami. Sandipgiri Goswami contacted accused Vijaybhai Bhupatbhai Gohil and offered to sale yarn if require at a cheaper rate compare to market rate for Rs.72/- per KG on cash payment, accused Vijaybhai Bhupatbhai Gohil informed that they are using 75-36 yarn goods and if this goods are available then place order for 8 tones goods.SO on date 22.12.2022 co-accused Sandipgiri Goswami has through different tempo total 212 yarn cartoon boxes as informed by Vijaybhai Bhupatbhai Gohil sent at Saroli Hariom Industrial Shed No.78 and Vijaybhai Bhupatbhai Gohil paid cash Rs.5,10,000/- to co-accused Sandipgiri Goswami and on next day again 30 cartoons sent by Sandipgiri Goswami and Vijaybhai Bhupatbhai Gohil paid Rs.66000/- cash which is found during investigation. Thus accused Vijaybhai Bhupatbhai Gohil inspite of knowing that yarn goods is obtained by way of cheating and fraud with an intention to obtain profit from co-accused without bill purchased yarn goods and played criminal role.

The accused Vijaybhai Bhupatbhai Gohil has from other co-accused inspite of knowing that Reliance Industries Limited company's Yarn cartoon are obtained by way of cheating and illegally for obtaining economic benefit without bill container No. MRSU4808781,11 cartoons, Container No. MSMU4471710,114, Container no.MRSU5188936 cartoons 17 making a total of 242 Yarn cartoons having market value Rs.11 lakhs and against its payment present accused paid Rs.5,76,000/- to present accused. From his possession this crime Polyester Textured Yarn total 242 cartoons are found and taken in possession.

**48.14.3** I find from the foregoing paras, Shri Gohil concerned himself with the theft as he purchased the stolen goods without bill/invoice and in cash. I find that he also admitted that he purchased the said theft goods as the goods were available on a very low price and he did not have any invoice for the goods. I also find that he admitted that he had paid the purchase price in cash and not through any banking channel and has returned all the goods during investigation in the original condition.

**48.14.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Gohil under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.14.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Gohil is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.14.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Gohil under Section 117 of the Customs Act, 1962. I find that Shri Gohil concerned himself with the theft as he purchased the stolen goods without invoice and in cash. I find that he has clearly violated IT and GST acts by making transaction in cash and without invoice. I find from the police investigation that Shri Gohil has been charged under IPC and other acts. Therefore I hold that Shri Vijay Bhupatbhai Gohil is liable for penalty under Section 117 of the Customs Act, 1962.

**48.15 Mohmad Ali Husainbhai Nakhuda, 5/132 Limda Oli Street, Rander, Bhesan, Surat City**

**48.15.1** I find that Shri Mohmad Ali Nakhuda was co-conspirator in a criminal conspiracy to steal the yarn from the containers of M/s. RIL. I find that for this purpose, Shri Sudhir Sing through his contacts in M/s Hermes Transport Solutions LLP, placed some drivers who transported the export containers from Silvassa RIL Plant to Adani Hazira Port. I find that Shri Nakhuda along with other accomplices rented some godowns/plots for emptying containers and substituting the export goods with Sand/soil etc. I find that he was named in the theft carried out from the export containers of M/s. RIL from the investigation by the police. I find that the police mentioned in their chargesheet on the role of Shri Nakhuda as under:

(2) Role of Accused Sudhirkumar Gayaprasad Sing by caste Rajput in crime :

Above accused is involved in the crime since beginning and was holding wrong name as Nilesh Yadav which is declared in the complaint. The Accused is holding criminal history. Accused Sudhirkumar Gayaprasad Sing and co-accused (1) Mohmad Ali Nakhuda (2) Mohsin Imtiyaz Malek were in Bharuch jail custody and came in contact with each other. After releasing from Jail at Surat City contacted each other and gathered at Rander area and made criminal conspiracy of removal of Reliance Company's yarn goods from container and to misappropriate it and obtain economic benefit and accused Sudhirkumar singh has have his accomplice drivers to provide service in Transport Company and

**48.15.2** I find from the foregoing paras, Shri Nakhuda concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port. I also find that Shri Nakhuda sold the said stolen goods to several persons. I find that Shri Malek was not arrested as on date of Chargesheet. The

**48.15.3 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Nakhuda under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.15.4 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Nakhuda is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.15.5 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Nakhuda under Section 117 of the Customs Act, 1962. I find that Shri Nakhuda concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port and further sold the said stolen goods to several persons for getting illegal gratification. I find that he acted under a criminal conspiracy. I find from the police investigation that Shri Nakhuda had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Mohmad Ali Nakhuda is liable for penalty under Section 117 of the Customs Act, 1962.

**48.16 Mohsin Imtiyaz Malek, 73, Green Park, Jahangirpura, Bhesan, Surat City**

**48.16.1** I find that Shri Mohsin Malek was co-conspirator in a criminal conspiracy to steal the yarn from the containers of M/s. RIL. I find that for this purpose, Shri Sudhir Sing through his contacts in M/s Hermes Transport Solutions LLP, placed some drivers who transported the export containers from Silvassa RIL Plant to Adani Hazira Port. I find that Shri Malek along with other accomplices rented some godowns/plots for emptying containers and substituting the export goods with Sand/soil etc. I find that he was named in the theft carried out from the export containers of M/s. RIL from the

investigatin by the police. I find that the police mentioned in their chargesheet on the role of Shri Malek as under:

(2) Role of Accused Sudhirkumar Gayaprasad Sing by caste Rajput in crime :

Above accused is involved in the crime since beginning and was holding wrong name as Nilesh Yadav which is declared in the complaint. The Accused is holding criminal history. Accused Sudhirkumar Gayaprasad Sing and co-accused (1) Mohmad Ali Nakhuda (2) Mohsin Imtiyaz Malek were inBharuch jail custody and came in contact with each other. After releasing from Jail at Surat City contacted each other and gathered at Rander area and made criminal conspiracy of removal of Reliance Company's yarn goods from container and to misappropriate it and obtain economic benefit and accused Sudhirkumar singh has have his accomplice drivers to provide service in Transport Company and

**48.16.2** I find from the foregoing paras, Shri Malek concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port. I also find that Shri Malek sold the said stolen goods to several persons. I find tht Shri Malek was not arrested as on date of Chargesheet.

**48.16.3 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Malek under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.16.4 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Malek is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.16.5 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Malekunder Section 117 of the Customs Act, 1962. I find that Shri Malek concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port and further sold the said stolen goods to several persons for getting illegal gratification. I find that he acted under a criminal conspiracy. I find from the police investigation that Shri Malek had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Mohsin Malek is liable for penalty under Section 117 of the Customs Act, 1962.

**48.17 Sahib Mohmad Jalil, 585, Himmat Nagar Zupadpatti, Salt Plant Road, Near Vidhyalankar, Mumbai-400037**

**48.17.1** I find that Shri Sahib Jalil is a driver by profession, who was working with M/s Hermes Transport Solutions LLP and was driver of the trailer No GJ15AT4433 through which containers were carried from Silvassa RIL Plant to Adani Hazira Port. I

find from the chargesheet that Shri Jalil came in contact with Shri Sudhir Singh and Shri Sudhir Singh arranged his job in Hermes Transport Solution LLP. He further stated that he also stopped the trailer carrying export containers at a godown on the way to Hazira Port on the instructions of Sudhir Singh and at this place seal placed on container was broken and polyester yarn that was loaded in the container was replaced by Sand/Soil by the labours.

send them there. So Sudhirsing Rajput at different time sent (1) Mohmad Yashir s/o Mohmad Nasir Kureshi (2) Sahib Mohmad Jalil (3) Juned Ahemad Juber Ahemad (4) Mohmad Sharukhkhhan Mohmad Liyakatalikhan (5) Surajkumar Surendrakumar Gaud and in complainant's Harmesh transport their ID Proofs are verified and accused (1) Mohmad Yashir s/o Mohmad Nasir Kureshi Truck No.GJ-15-AT-4433(2) Sahib Mohmad Jalil Truck No. GJ-15 -AT-4433(3) Juned Ahemad Juber Ahemad Truck No.GJ-16-AV-1230 (4) Mohmad Sharukhkhhan Mohmad Liyakatalikhan truckNo.GJ-15-At-4491 (5) Surajkumar Surendrakumar Gaud truck no. Gj-15-AV-1109 were kept as driver on service. This driver's trailers goes to Silvassa in Reliance Industries Limited's plant and loading Yarn goods in container and

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Round seal of  
Judi. Mag. First  
Class, Huz. Court, Surat.

bring it at Shipyard and drivers informed Sudhirsing about yarn cartons in container and he informed it to Ali Nakhuda and Mohsin @ Guddu and started searching Godown and Magdalla Sachin Highway in village Abhva-Vesu sim touching the highway one open place is selected and from the sunny working in its compound contacting owner of the land Bhikhhabhai Maganbhai Patel mobile No. 9974773521 and informed him that he is holding trading license and for trading

**48.17.2** I find that M/s. RIL had entered into contract with M/s. Hermes Transport Solutions LLP for safe transportation and safe delivery of the cargo from their premises to Hazira Port. I also find that it was their responsibility for the safety and security of the goods as per contract with the Company. I find that the transporter trusted drivers including Shri Jalil with the responsibility for the safety and security of the goods, who broke their faith in the matter. I also find from the statement of the other arrested driver that Shri Jalil was also following the instructions and orders of Sudhir Singh who was also arrested. Shri Jalil was absconding till the date of chargesheet and also did not turn up for personal hearings before me.

**48.17.3** I also find that the police mentioned in their chargesheet on the role of Shri Jalil as under:

1) Name : Sahib Mohmad Jalil	
2) Name of Father :	
3) Date of Birth:	
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 <div style="border: 1px solid black; border-radius: 50%; padding: 5px; text-align: center;">         Round seal of Judi. Regd. First Class, Mumbai Court, Surt.       </div>	
4) Caste: 5) Nationality: Indian 6) Passport No. Date of issuance of Passport- 7) Religion: Muslim. 8) Sc/ST or not? 9) Occupation: Driver 10) Address: 585, Himmat Nagar Zupadpatti, Salt Plant Road, Near Vidhyalankar, Mumbai-400037. 11) Temporary Accused no. 12) Doubt proved-if so.Y/N 13) Status of the accused/Released on police bail/released on court bail. In Court custody/ <u>Accused not arrested</u> . 14) Acts and Sections: 407,413,120(b),114 of IPC 15) Reasons for not framing charge sheet and other noticeable details.	
<p style="text-align: center;">The said accused is not found till date on making investigation diligently and meticulously and is absconding and is yet to be arrested in this crime and he be arrested and against him to file supplementary charge sheet note is made.</p>	

I find from the foregoing paras, Shri Jalil concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port.

**48.17.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Jalil under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.17.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Jalil is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.17.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Jalil under Section 117 of the Customs Act, 1962. I find that Shri Jalil concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port. I find that he acted under a criminal conspiracy and breached the trust of his employer M/s. Hermes. I find from the police investigation that Shri Jalil had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Sahib Jalil is liable for penalty under Section 117 of the Customs Act, 1962.

**48.18 Juned Ahemad Juber Ahemad, Shivara Hency Parji Madhanta Pratapgadh 230402**

**48.18.1** I find that Shri Juned Ahemad is a driver by profession, who was working with M/s Hermes Transport Solutions LLP and was driver of the trailer No GJ16AV1230 through which containers were carried from Silvassa RIL Plant to Adani Hazira Port. I find that Shri Yashir in his statement recorded on 07.02.2023 under Section 108 of the Customs Act, 1962 stated that Shri Juned came in contact with Shri Sudhir Singh and Shri Sudhir Singh arranged his job in Hermes Transport Solution LLP. He further stated that he also stopped the trailer carrying export containers at a godown on the way to Hazira Port on the instructions of Sudhir Singh and at this place seal placed on container was broken and polyester yarn that was loaded in the container was replaced by Sand/Soil by the labours.

आप साहब के आगे पूछने पर मैं यह बताता हूँ कि इन तीनों कंटेनर के अलावा मने आर कंसा कंटेनर का सामान नहीं बदली किया था या और कोई कंटेनर उस जगह पर नहीं ले गया था, जिसके सामान बदला गया था। आप साहब के पूछने पर मैं यह बताता हूँ कि मेरे अलावा तीन ड्राईवर और ये जिन्होंने यह काम किया था, मतलब उस जगह पर कंटेनर ले गए थे जहां सामान बदला गया था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि उनके नाम श्री मोहम्मद सारूख खान, श्री जुनैद अली तथा श्री सूरज कुमार गौड हैं। इन तीनों का पता मुझे मालूम नहीं है लेकिन ये तीनों से अक्सर मैं मिलता रहता था। इन तीनों के मोबाइल नंबर मुझे याद नहीं है। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि इन तीनोंने कितने कंटेनर का माल बदली किया था ये मुझे पता नहीं है, लेकिन ये तीनों भी ये काम श्री सुधीर सिंह के कहने पर करते थे। इन तीनों को भी श्री सुधीर सिंह ने ही हरमस ट्रांसपोर्ट सोलुसन्स में ड्राईवर तरीके रखवाया था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि श्री सुधीर सिंह की जान

**48.18.2** I find that M/s. RIL had entered into contract with M/s. Hermes Transport Solutions LLP for safe transportation and safe delivery of the cargo from their premises to Hazira Port. I also find that it was their responsibility for the safety and security of the goods as per contract with the Company. I find that the transporter trusted drivers including Shri Juned with the responsibility for the safety and security of the goods, who broke their faith in the matter. I also find from the statement of the other arrested driver that Shri Juned was also following the instructions and orders of Sudhir Singh who was also arrested. Shri Juned was absconding till the date of chargesheet and also did not turn up for personal hearings before me.

**48.18.3** I also find that the police mentioned in their chargesheet on the role of Shri Juned as under:

- 1) Name : Juned Ahemad Juber Ahemad
- 2) Name of Father :
- 3) Date of Birth:
- 4) Caste:
- 5) Nationality: Indian
- 6) Passport No. Date of Issuance of Passport-
- 7) Religion: Muslim.
- 8) SC/ST or not?
- 9) Occupation: Driver
- 10) Address: Shivara Hency Parji Madhanta Pratapgadh 230402.
- 11) Temporary Accused no.
- 12) Doubt proved-if so.Y/N
- 13) Status of the accused/Released on police bail/released on court bail. In Court custody/Accused not arrested.
- 14) Acts and Sections: 407,413,120(b),114 of IPC
- 15) Reasons for not framing charge sheet and other noticeable details.

The said accused is not found till date on making investigation diligently and meticulously and is absconding and is yet to be arrested in this crime and he be arrested and against him to file supplementary charge sheet note is made.

I find from the foregoing paras, Shri Juned concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port.

**48.18.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Juned under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.18.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Juned is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.18.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Juned under Section 117 of the Customs Act, 1962. I find that Shri Juned concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port. I find that he acted under a criminal conspiracy and breached the trust of his employer M/s. Hermes. I find from the police investigation that Shri Juned had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Juned Ahemad is liable for penalty under Section 117 of the Customs Act, 1962.

**48.19 Mohmad Sharukkhan Mohmad Liyakatalikhan, Chandni Nagar, S. M. Road, Near Sharda Mobile Shop, Mumbai 400037**

**48.19.1** I find that Shri Mohmad Sharukkhan is a driver by profession, who was working with M/s Hermes Transport Solutions LLP and was driver of the trailer No GJ15AT4491 through which containers were carried from Silvassa RIL Plant to Adani Hazira Port. I find that Shri Yashir in his statement recorded on 07.02.2023 under Section 108 of the Customs Act, 1962 stated that Shri Sharuk came in contact with Shri Sudhir Singh and Shri Sudhir Singh arranged his job in Hermes Transport Solution LLP. He further stated that he also stopped the trailer carrying export containers at a godown on the way to Hazira Port on the instructions of Sudhir Singh and at this place seal placed on container was broken and polyester yarn that was loaded in the container was replaced by Sand/Soil by the labours.

आप साहब के आगे पूछने पर मैं यह बताता हूँ कि इन तीनों कंटेनर के अलावा मने आर 1क्सा कटनर का सामान नहीं बदली किया था या और कोई कंटेनर उस जगह पर नहीं ले गया था,जिसके सामान बदला गया था।आप साहब के पूछने पर मैं यह बताता हूँ कि मेरे अलावा तीन ड्राइवर और थे जिन्होने यह काम किया था,मतलब उस जगह पर कंटेनर ले गए थे जहां सामान बदला गया था।आप साहब के आगे पूछने पर मैं यह बताता हूँ कि उनके नाम श्री मोहम्मद सारूक खान, श्री जुनैद अली तथा श्री सूरज कुमार गौड़ है।इन तीनों का पता मुझे मालूम नहीं है लेकिन ये तीनों से अक्सर मैं मिलता रहता था।इन तीनों के मोबाइल नंबर मुझे याद नहीं है।आप साहब के आगे पूछने पर मैं यह बताता हूँ कि इन तीनोंने कितने कंटेनर का माल बदली किया था ये मुझे पता नहीं है,लेकिन ये तीनों भी ये काम श्री सुधीर सिंह के कहने पर करते थे।इन तीनों को भी श्री सुधीर सिंह ने ही हरमस ट्रांसपोर्ट सोलुसन्स में ड्राइवर तरीके रखवाया था।आप साहब के आगे पूछने पर मैं यह बताता हूँ कि श्री सुधीर सिंह की जान

**48.19.2** I find that M/s. RIL had entered into contract with M/s. Hermes Transport Solutions LLP for safe transportation and safe delivery of the cargo from their premises to Hazira Port. I also find that it was their responsibility for the safety and security of the goods as per contract with the Company. I find that the transporter trusted drivers including Shri Sharuk with the responsibility for the safety and security of the goods, who broke their faith in the matter. I also find from the statement of the other arrested driver that Shri Sharuk was also following the instructions and orders of Sudhir Singh who was also arrested. Shri Sharuk was absconding till the date of chargesheet and also did not turn up for personal hearings before me.

**48.19.3** I also find that the police mentioned in their chargesheet on the role of Shri Sharuk as under:

- 1) Name : Mohmad Sharukh Khan Mohmad Liyakatal Khan
- 2) Name of Father :
- 3) Date of Birth:
- 4) Caste:
- 5) Nationality: Indian
- 6) Passport No. Date of Issuance of Passport-
- 7) Religion: Muslim.
- 8) SC/ST or not?
- 9) Occupation: Driver
- 10) Address: Chandni Nagar, S.M.Road, Near Sharda Mobile Shop, Mumbai 400037.
- 11) Temporary Accused no.
- 12) Doubt proved-if so.Y/N
- 13) Status of the accused/Released on police bail/released on court bail. In Court custody/Accused not arrested.
- 14) Acts and Sections: 407,413,120(b),114 of IPC
- 15) Reasons for not framing charge sheet and other noticeable details.

The said accused is not found till date on making investigation diligently and meticulously and is absconding and is yet to be arrested in this crime and he be arrested and against him to file supplementary charge

I find from the foregoing paras, Shri Sharuk concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port.

**48.19.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Sharuk under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.19.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same

as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Sharuk is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is **not** liable for penalty under Section 114AB of the Customs Act, 1962.

**48.19.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Sharuk under Section 117 of the Customs Act, 1962. I find that Shri Sharuk concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port. I find that he acted under a criminal conspiracy and breached the trust of his employer M/s. Hermes. I find from the police investigation that Shri Sharuk had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Mohmad Sharukkhan **is** liable for penalty under Section 117 of the Customs Act, 1962.

**48.20 Surajkumar Surendrakumar Gaud, Sandora, Hariharganj, Rani Ganj, Pratapgadh 230304**

**48.20.1** I find that Shri Surajkumar Gaud is a driver by profession, who was working with M/s Hermes Transport Solutions LLP and was driver of the trailer No GJ15AT4491 through which containers were carried from Silvassa RIL Plant to Adani Hazira Port. I find that Shri Yashir in his statement recorded on 07.02.2023 under Section 108 of the Customs Act, 1962 stated that Shri Suraj came in contact with Shri Sudhir Singh and Shri Sudhir Singh arranged his job in Hermes Transport Solution LLP. He further stated that he also stopped the trailer carrying export containers at a godown on the way to Hazira Port on the instructions of Sudhir Singh and at this place seal placed on container was broken and polyester yarn that was loaded in the container was replaced by Sand/Soil by the labours.

आप साहब के आगे पूछने पर मैं यह बताता हूँ कि इन तीनों कंटेनर के अलावा मैंने और किसी कंटेनर का सामान नहीं बदली किया था या और कोई कंटेनर उस जगह पर नहीं ले गया था, जिसके सामान बदला गया था। आप साहब के पूछने पर मैं यह बताता हूँ कि मेरे अलावा तीन ड्राईवर और थे जिन्होंने यह काम किया था, मतलब उस जगह पर कंटेनर ले गए थे जहां सामान बदला गया था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि उनके नाम श्री मोहम्मद सारूक खान, श्री जुनैद अली तथा श्री सूरज कुमार गौड़ हैं। इन तीनों का पता मुझे मालूम नहीं है लेकिन ये तीनों से अक्सर मैं मिलता रहता था। इन तीनों के मोबाइल नंबर मुझे याद नहीं है। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि इन तीनोंने कितने कंटेनर का माल बदली किया था ये मुझे पता नहीं है, लेकिन ये तीनों भी ये काम श्री सुधीर सिंह के कहने पर करते थे। इन तीनों को भी श्री सुधीर सिंह ने ही हरमस ट्रांसपोर्ट सोलुसन्स में ड्राईवर तरीके रखवाया था। आप साहब के आगे पूछने पर मैं यह बताता हूँ कि श्री सुधीर सिंह की जान

**48.20.2** I find that M/s. RIL had entered into contract with M/s. Hermes Transport Solutions LLP for safe transportation and safe delivery of the cargo from their premises to Hazira Port. I also find that it was their responsibility for the safety and security of the goods as per contract with the Company. I find that the transporter trusted drivers including Shri Suraj with the responsibility for the safety and security of the goods, who broke their faith in the matter. I also find from the statement of the other arrested driver that Shri Suraj was also following the instructions and orders of Sudhir Singh who was also arrested. Shri Suraj was absconding till the date of chargesheet and also did not turn up for personal hearings before me.

**48.20.3** I also find that the police mentioned in their chargesheet on the role of Shri Suraj as under:

<u>Accused No.06</u>	
1) Name :	Surajkumar Surendrakumar Gaud.
2) Name of Father :	
3) Date of Birth:	
4) Caste:	
5) Nationality:	Indian
6) Passport No.	Date of Issuance of Passport-
7) Religion:	Hindu.
8) SC/ST or not?	
9) Occupation:	Driver
10) Address:	Sandora, Hariharganj, Rani Ganj, Pratapgadh 230304.
11) Temporary Accused no.	
12) Doubt proved-if so.Y/N	
13) Status of the accused/Released on police bail/released on court bail. In Court custody/ <u>Accused not arrested</u> .	
14) Acts and Sections:	407,413,120(b),114 of IPC

I find from the foregoing paras, Shri Suraj concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port.

**48.20.4 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Suraj under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.20.5 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Suraj is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.20.6 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Suraj under Section 117 of the Customs Act, 1962. I find that Shri Suraj concerned himself with the theft and acting with criminal intent, the material with non-valuable goods during transit to the port. I find that he acted under a criminal conspiracy and breached the trust of his employer M/s. Hermes. I find from the police investigation that Shri Suraj had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Surajkumar Gaud is liable for penalty under Section 117 of the Customs Act, 1962.

**48.21 Rahul Named Person (Came to Break the Seal of the container whose full name is not known), Shivara Hency Parji Madhanta Pratapgadh 230402**

**48.21.1** I find that Shri Rahul is a driver by profession. I find that Shri Yashir in his statement recorded on 07.02.2023 under Section 108 of the Customs Act, 1962 stated that at a godown on the way to Hazira Port on the instructions of Sudhir Singh

e- seal placed on container was broken and polyester yarn that was loaded in the container was replaced by Sand/Soil by the labours. I find that the police chargesheet mentions the name of the seal breaker as Rahul.

Sudhirkumar Sing near Abhva' Village moje Village Vesu Block No. 274/2. As a part of conspiracy co-accused Mohmadali Husainbhai Nakhuda and Mohsin Imtiyaz Malek have made arrangement of labour and sand for loading and unloading of good and brought Rahul name person to break the seal and broke the seal of the container and offloaded the said container filled with Polyester Textured Yarn Cartoon and have replaced it with same weight cement bags with sand in the container and again sealed it and sent the containers to port. Driver Mohmad Yasir Mohmad Nasir Kureshi in truck no. GJ15AT 4433 filled

**48.21.2** I also find that the police mentioned his role in their chargesheet as a seal breaker and concerning himself from criminal conspiracy of theft.

<u>Accused No.07</u>
<p>1) Name: Rahul name person came to break the seal of the container whose full name is not known.          2) Name of Father :          3) Date of Birth:          4) Caste:          5) Nationality: Indian          6) Passport No. Date of issuance of Passport-          7) Religion: Hindu.          8) SC/ST or not?          9) Occupation: Driver          10) Address: Shivar Hency Parji Madhanta Pratapgadh 230402.          11) Temporary Accused no.          12) Doubt proved-if so.Y/N          13) Status of the accused/Released on police bail/released on court bail. In Court custody/<u>Accused not arrested</u>.          14) Acts and Sections: 407,413,120(b),114 of IPC          15) Reasons for not framing charge sheet and other noticeable details.</p> <p>The said accused Is not found till date on making investigation diligently and meticulously and is absconding and is yet to be arrested in this crime and he be arrested and against him to file supplementary charge sheet note is made.</p>

I find that Shri Rahul was not arrested till the filing of the Chargesheet. I find that Shri Rahul concerned himself with the theft and acting with criminal intent, substituted the material with non-valuable goods during transit to the port.

**48.21.3 Penalty under Section 114AA of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Rahul under Section 114AA of the Customs Act, 1962. I find that he had not declared or signed any document in relation to the export of the cargo. Therefore, he is not liable for penalty under Section 114AA of the Customs Act, 1962.

**48.21.4 Penalty under Section 114AB of the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on him under Section 114AB of the Customs Act, 1962. I find from the foregoing paras that M/s. RIL have not availed the Duty Drawback, RoDTEP benefits by fraud or mis-statement, and reversed the same as soon as they knew the irregularity in the export containers on the context of theft. I find that Shri Rahul is not related to M/s. RIL in availment of Duty Drawback, RoDTEP benefits. Therefore I hold that he is not liable for penalty under Section 114AB of the Customs Act, 1962.

**48.21.5 Penalty under Section 117 the Customs Act, 1962:** I also find that the Show Cause Notice proposes to impose penalty on Shri Rahul under Section 117 of the Customs Act, 1962. I find that Shri Rahul concerned himself with the theft from the constainer by breaking the seal and acting with criminal intent, substituted the material with non-valuable goods during transit to the port. I find that he acted under a criminal

conspiracy and the police investigation indicated that Shri Rahul had committed theft and has been charged under IPC and other acts. Therefore I hold that Shri Rahul **is** liable for penalty under Section 117 of the Customs Act, 1962.

**49.** I hold that the ratio of case laws not discussed in above paras and submitted by the noticees is not squarely on the circumstances of the present case.

**50.** In view of the above, I pass the following order:

**ORDER**

- (i) I do not confiscate and order release of the goods as per Annexure-A to the Show Cause Notice, valued at total FOB of Rs. 4,97,48,635/- (Rupees Four Crores Ninety Seven Lakhs Forty Eight Thousand Six Hundred Thirty Five only) pertaining to M/S. RELIANCE INDUSTRIES LTD.; however I order **absolute confiscation of Sand/Bajri/Mitti** etc. valued at Rs. 91370/- and quantity 91370 KGs, seized vide various Seizure Memos dated 29.12.2022, 02.01.2023, 18.03.2023 and 20.04.2023 under Section 113(i) and 113(ja) of the Customs Act, 1962;
- (ii) I confirm the demand of the Duty Drawback amount aggregating to **Rs. 6,58,288/- (Rupees Six Lakh Fifty Eight Thousand Two Hundred Eighty Eight only)** (inclusive of interest) availed by M/S. RELIANCE INDUSTRIES LTD., and order to recover the same from them under Rule 17 of the Customs and Central Excise Duties Drawback Rules, 2017 along with interest in terms of Section 75A read with Section 28AA of the Customs Act, 1962. I order to appropriate the amount of **Rs. 6,58,288/- (Rupees Six Lakh Fifty Eight Thousand Two Hundred Eighty Eight only)** (inclusive of interest) paid by them against the demand above;
- (iii) I confirm the demand of RODTEP benefit aggregating to **Rs. 7,45,620/- (Rupees Seven Lakh Forty Five Thousand Six Hundred Twenty only)** (inclusive of interest), and order to recover the same from M/s. Reliance Industries Ltd. under Section 28 along with interest in terms of Section 28AA of the Customs Act, 1962. I order to appropriate the amount of **Rs. 7,45,620/- (Rupees Seven Lakh Forty Five Thousand Six Hundred Twenty only)** (inclusive of interest) already paid by them against the demand above;
- (iv) I do not impose any Penalty on M/s. Reliance Industries Ltd. under Sections 114, 114AA, 114AB and 117 of the Customs Act, 1962, as discussed in foregoing paras;

(v) I do not impose any Penalty on **Shri Prasanna Vasant Munje, Vice President-SCM (Supply Chain Management) of M/s. Reliance Industries Limited** under Sections 114, 114AA, 114AB and 117 of the Customs Act, 1962, as discussed in foreging paras;

(vi) I do not impose any Penalty on **M/s Soham Logistics Private Limited**, CHA under Sections 114, 114AA, 114AB and 117 of the Customs Act, 1962, as discussed in foreging paras;

(vii) I do not impose any Penalty on **M/s. Hermes Transport Solution LLP**, Transporter under Sections 114AA, 114AB and 117 of the Customs Act, 1962, as discussed in foreging paras;

(viii) I do not impose any Penalty on **M/s. MSC Agency (India) Pvt. Ltd.**, 210-213, Marvella Business Hub, Opp. Pal RTO Office, Pal- Hazira Road, Surat-395009 under Sections 117 of the Customs Act, 1962, as discussed in foreging paras;

(ix) I do not impose any Penalty on **M/s. Seabridge Marine Agencies Private Limited** (Agent of M/s HMM Shipping India Private limited) at Hazira, 301, 4<sup>th</sup> Floor, Milestone Fiesta, Near Madhuban Circle, Adajan, Surat- 395009, under Sections 117 of the Customs Act, 1962, as discussed in foreging paras;

(x) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on MOHMAD YASHIR S/O MOHMAD NASIR KURESHI, VILLAGE MARIADIR, THANA DUMANGANJ, DISTRICT PRAYAGRAJ (UP) under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xi) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on NILESH YADAV WRONG NAME HOLDER SUDHIRKUMAR GAYAPRASAD SING, VILL. SHIVCHARANPURVA POST NYOTL TALUKA THANA RUDOLL, DIST AYODHYA (UP) under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xii) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on SANDIPGIRI S/O DHIRAJGIRI GOSWAMI, TEKARAWALA FALIYU, VARSOLA VILLAGE,T-NADIYAD DISTRICT KHEDA ORIGINAL NATIVE SUKHPARGAM, IN SUKHNAKH MAHADEV TEMPLE, TALUKA JASDAN DISTRICT

RAJKOT under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xiii) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on MUKESHBHAI SHANTILALJI DOSHI, JAIN BY CASTE, H/804, RIXIVIHAR TOWNSHIP, ASTIK PARTY PLOT, PARWATPATIA SURAT CITY ORIGINAL NATIVE VILLAGE PRATAPGADH, GOPALGANJ MAHOLLOW, OPP. CHANDRAPRABHU JAIN TEMPLE, T AND D. PRATAPGADH (RAJASTHAN) under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xiv) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on NARESHBHAI BABUBHAI BHINGRALIA, HOUSE NO.0/1104, SUMERU SKY, MOTA VARACHHA, NEAR S.B.CIRCLE, SURAT CITY ORIGINAL NATIVE VILLAGE DHOLA,T-UMRADA D-BHAVNAGAR under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xv) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on KEYUR JAYANTIBHAI PATEL, B/204, VERONA RESIDENCY, HAREKRUSHNA CAMPUS,VRAJ CHOWK, SARTHANA JAKATNAKA SURAT CITY; ORIGINAL NATIVE: VILLAGE GOVINDPURA, TALUKA KADI DISTRICT MAHESANA AND TATA NAGAR SOCIETY, MEGHANAI NAGAR AHMEDABAD under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xvi) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on MOHMAD YAKUB KHURSHID PATHAN, 7/1228,VARSI TEKARA,HODI BUNGALOW,NEAR GUJARATI SCHOOL, SAYEDPURA, SURAT CITY ORIGINAL NATIVE VILLAGE BAGNAGAR, TALUKA DISTRICT BASTI (UP) under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xvii) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on VIJAY BHUPATBHAI GOHIL, C/101, ASHWAMEGH VILA APARTMENT, YOGI CHOWK, SURAT CITY ORIGINAL NATIVE VILLAGE KUMBHANGAM, TALUKA MAHUWA DISTRICT BHAVNAGAR under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xviii) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on MOHMAD ALI HUSAINBHAI NAKHUDA, 5/132 LIMDA OLI STREET, RANDER, BHESAN, SURAT CITY under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xix) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on MOHSIN IMTIYAZ MALEK, 73, GREEN PARK, JAHANGIRPURA, BHESAN, SURAT CITY under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xx) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on SAHIB MOHMAD JALIL, 585, HIMMAT NAGAR ZUPADPATTI, SALT PLANT ROAD, NEAR VIDHYALANKAR, MUMBAI-400037 under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xxi) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on JUNED AHEMAD JUBER AHEMAD, SHIVARA HENCY PARJI MADHANTA PRATAPGADH 230402 under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xxii) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on MOHMAD SHARUKKHAN MOHMAD LIYAKATALIKHAN, CHANDNI NAGAR, S. M. ROAD, NEAR SHARDA MOBILE SHOP, MUMBAI 400037 under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foreging paras;

(xxiii) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on SURAJKUMAR SURENDRAKUMAR GAUD, SANDORA, HARIHARGANJ, RANI GANJ, PRATAPGADH 230304 under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foregoing paras;

(xxiv) I impose a penalty of Rs. **4,00,000/- (Rupees Four Lakh Only)** on RAHUL NAMED PERSON ( WHO CAME TO BREAK THE SEAL OF THE CONTAINER WHOSE FULL NAME IS NOT KNOWN), SHIVARA HENCY PARJI MADHANTA PRATAPGADH 230402 under Section 117 of the Customs Act, 1962. However, I do not impose any Penalty under Sections 114AA and 114AB of the Customs Act, 1962, as discussed in foregoing paras.

**51.** The Show Cause Notice F. No. RIL/Inv/Hazira/Export/2022-Part-IV dated 14.10.2024 is disposed of in above terms.

**(SHREE RAM VISHNOI)**  
Additional Commissioner of Customs  
Hazira Port, Surat

**DIN: 20250871MN0000212062**

**F. No.** GEN/ADJ/ADC/1254/2025-AH-PORT-HZR-CUS-COMMRTE-AHMEDABAD dtd. **08.08.2025**

BY RPAD/E-mail/ notice board/ Speed Post

**To,**

**1. M/S. RELIANCE INDUSTRIES LTD.,**  
SURVEY NO. 9/1/1/1, SILVASSA-NAROLI MAIN ROAD,  
OPP. ATHAL WEIGH BRIDGE,  
SILVASSA 396230

**M/S. RELIANCE INDUSTRIES LTD.**  
(UT OF DADRA & NAGAR HAVELI AND DAMAN & DIU),  
RO: 3RD FLOOR, MAKERS CHAMBER IV, 222,  
NARIMAN POINT, MUMBAI-400021

**2. SHRI PRASANNA VASANT MUNJE,**  
VICE PRESIDENT-SCM (SUPPLY CHAIN MANAGEMENT)  
OF M/S. RELIANCE INDUSTRIES LIMITED,  
SURVEY NO. 9/1/1/1, SILVASSA-NAROLI MAIN ROAD,  
OPP. ATHAL WEIGH BRIDGE, SILVASSA 396230

**SHRI PRASANNA VASANT MUNJE,**  
RO: 3RD FLOOR, MAKERS CHAMBER IV, 222,  
NARIMAN POINT, MUMBAI-400021

**3. M/S. SOHAM LOGISTICS PRIVATE LIMITED,**  
36, TIRUPATI ROW HOUSE, MORA VILLAGE,  
HAZIRA, TALUKA- CHAURASI, DIST- SURAT PIN-394510

**4. M/S. HERMES TRANSPORT SOLUTION,**  
TRANSPORTER, OFFICE NO. 6, PLOT NO. 113/114,  
VISHNU NAGAR SOCIETY, ICHCHHAPOR-3, SURAT,  
GUJARAT PIN-394510

**5. M/S. MSC AGENCY (INDIA) PVT. LTD.,**  
210-213, MARVELLA BUSINESS HUB,  
OPP. PAL RTO OFFICE, PAL- HAZIRA ROAD,  
SURAT-395009

**6. M/S. SEABRIDGE MARINE AGENCIES PRIVATE LIMITED**  
(AGENT OF M/S HMM SHIPPING INDIA PRIVATE LIMITED)  
AT HAZIRA, 301, 4TH FLOOR, MILESTONE FIESTA,  
NEAR MADHUBAN CIRCLE, ADAJAN, SURAT- 395009

**7. MOHMAD YASHIR S/O MOHMAD NASIR KURESHI,**  
VILLAGE MARIADIR, THANA DUMANGANJ,  
DISTRICT PRAYAGRAJ (UP)

**8. NILESH YADAV**  
WRONG NAME HOLDER SUDHIRKUMAR GAYAPRASAD SING,  
VILL. SHIVCHARANPURVA POST NYOTL  
TALUKA THANA RUDOLL, DIST AYODHYA (UP)

**9. SANDIPGIRI** S/O DHIRAJGIRI GOSWAMI,  
TEKARAWALA FALIYU, VARSOLA VILLAGE,  
T-NADIYAD DISTRICT KHEDA  
[ORIGINAL NATIVE SUKHPARGAM,  
IN SUKHNAKH MAHADEV TEMPLE,  
TALUKA JASDAN DISTRICT RAJKOT]

**10. MUKESHBHAI SHANTILALJI DOSHI,**  
H/804, RIXIVIAR TOWNSHIP, ASTIK PARTY PLOT,  
PARWATPATIA SURAT CITY  
[ORIGINAL NATIVE VILLAGE PRATAPGADH,  
GOPALGANJ MAHOLLOW, OPP. CHANDRAPRABHU JAIN TEMPLE,  
T AND D. PRATAPGADH (RAJASTHAN)]

**11. NARESHBHAI BABUBHAI BHINGRALIA,**  
HOUSE NO.0/1104, SUMERU SKY,  
MOTA VARACHHA, NEAR S.B.CIRCLE, SURAT CITY  
[ORIGINAL NATIVE VILLAGE DHOLA,  
T-UMRADA D-BHAVNAGAR]

**12. KEYUR JAYANTIBHAI PATEL,**  
B/204, VERONA RESIDENCY,  
HAREKRUSHNA CAMPUS, VRAJ CHOWK,  
SARTHANA JAKATNAKA SURAT CITY  
[ORIGINAL NATIVE: VILLAGE GOVINDPURA,  
TALUKA KADI DISTRICT MAHESANA AND  
TATA NAGAR SOCIETY, MEGHNAI NAGAR  
AHEMDABAD]

**13. MOHMAD YAKUB KHURSHID PATHAN,**  
7/1228, Varsi TEKARA, HODI BUNGALOW,  
NEAR GUJARATI SCHOOL, SAYEDPURA, SURAT CITY  
[ORIGINAL NATIVE VILLAGE BAGNAGAR,  
TALUKA DISTRICT BASTI (UP)]

14. **VIJAY BHUPATBHAI GOHIL**,  
C/101, ASHWAMEGH VILA APARTMENT,  
YOGI CHOWK, SURAT CITY  
[ORIGINAL NATIVE VILLAGE KUMBHANGAM,  
TALUKA MAHUWA DISTRICT BHAVNAGAR]

15. **MOHMAD ALI HUSAINBHAI NAKHUDA**,  
5/132 LIMDA OLI STREET, RANDER,  
BHESAN, SURAT CITY

16. **MOHSIN IMTIYAZ MALEK**,  
73, GREEN PARK, JAHANGIRPURA,  
BHESAN, SURAT CITY

17. **SAHIB MOHMAD JALIL**,  
585, HIMMAT NAGAR ZUPADPATTI,  
SALT PLANT ROAD, NEAR VIDHYALANKAR,  
MUMBAI-400037

18. **JUNED AHEMAD JUBER AHEMAD**,  
SHIVARA HENCY PARJI MADHANTA  
PRATAPGADH 230402

19. **MOHMAD SHARUKKHAN MOHMAD LIYAKATALIKHAN**,  
CHANDNI NAGAR, S. M. ROAD, NEAR SHARDA MOBILE SHOP,  
MUMBAI 400037

20. **SURAJKUMAR SURENDRAKUMAR GAUD**,  
SANDORA, HARIHARGANJ, RANI GANJ,  
PRATAPGADH 230304

21. **RAHUL NAME PERSON**  
(FULL NAME IS NOT KNOWN),  
SHIVARA HENCY PARJI MADHANTA  
PRATAPGADH 230402

**Copy to:**

- 1) The Principal Commissioner of Customs, Customs Ahmedabad. (Kind Attention: RRA Section).
- 2) The Assistant Commissioner of Customs (Export), Adani Hazira Port, Hazira, Surat.
- 3) The Deputy/Assistant Commissioner, HQ Systems, Customs Ahmedabad, for uploading on the official website.
- 4) Guard File.