

	<p>सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62, Email-adj-mundra@gov.in</p>	<p>3265 to 3270 75 Azadi Ka Amrit Mahotsav</p>
A. File No.	: GEN/ADJ/COMM/36/2023-Adjn-O/o Pr. Commr- Cus- Mundra	
B. Order-in-Original No.	: MUN-CUSTM-000-COM-019-24-25	
C. Passed by	: K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order and Date of passing of Order	: 05.08.2024. 05 .08.2024.	
E. SCN No. & Date	<p>(i) GEN/ADJ/COMM/36/2023-Adj dated 03.04.2023 issued to M/s A.M. Vinyl Private Limited and others by the Commissioner of Customs, Mundra.</p> <p>(ii) VIII/ICD/TKD/6AG/GR.2G/A.M. Vinyl/2198/2021/3751 dated 18.02.2022 issued by Asstt. Commissioner of Customs, Gr.2G, ICD Import, TKD, New Delhi.</p> <p>(iii) VIII(B)40/ICD Patli/A M Vinyl/DRI-Inv./158/2021-22/719 dated 22.02.2022 issued by Dy. Commissioner of Customs, ICD Patli, Gurugram.</p> <p>(iv) VIII/Cus/763/SCN/A.M.Vinyl/ICD/SNP/2021-22 dated 25.03.2022 issued by Deputy Commissioner of Customs, ICD Sonapat.</p> <p>(v) 261/2021-22/A.K.T./AC/ACC(Import) dtd 29.03.2022 issued by Assistant Commissioner (EPMC & Licensing), ACC Import, New Custom House, New Delhi.</p> <p>(vi) 04/PC/N/CUS-2022-23 dated 20.07.2022 issued by Pr. Commissioner of Customs, Noida Customs Commissionerate.</p> <p>(vii) VIII (Cus) /ICD /JTP/11/A.M. Vinyl/SCN/2023/ dated 19.01.2023 issued by Assistant Commissioner of Customs, ICD Jhattipur, Panipat, Haryana</p> <p>(viii) 566/2021-22/DMC/NS-II/JNCH dated 22.12.2021 issued by Joint Commissioner of Customs, DMC, JNCH</p>	
F. Noticee(s) / Party / Importer	: M/s A.M. Vinyl Private Limited, A-104, Bhiwadi Industrial Area, Phase-I RIICO Chowk, Bhiwadi Rajasthan-301019 and Others.	
G. DIN	: 20240871M00000621846	

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

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

o/c

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित टिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

BRIEF FACTS OF THE CASE

An Intelligence was developed by the Officers of Directorate of Revenue Intelligence, Noida Regional Unit, Noida; UP (hereinafter referred to as 'DRI') that M/s **A.M. Vinyl Private Limited, A-104, Bhiwadi Industrial Area, Phase-I RIICO Chowk, Bhiwadi Rajasthan**, having IEC No. **0504076728** and registered address at 323, 3rd Floor, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019 (hereinafter referred to '**M/s AM Vinyl Pvt. Ltd' or 'Importer'**'), have misused the Advance Authorization scheme and contravened the provisions of Customs Notification No. 18/2015-Customs dated 01.04.2015, as amended, as they imported PVC Resin, DOP, TiO₂ and Release Paper, etc. without payment of duty of Customs under said Customs notifications and diverted the duty free material instead of using it in manufacturing of export products.

2. Upon analysis of import & export data, it emerged that **M/s. A M Vinyl Pvt. Ltd**, have imported PVC Resin and other items e.g. Release Paper, TiO₂, DOP, etc. without payment of customs duty under Advance Authorization Scheme since the year 2012 and have made some exports as well, however it has not made any exports under Advance Authorisation Scheme since May 2018. It was also gathered that M/s. A M Vinyl Pvt. Ltd continued to make imports under Advance Authorisation Scheme even after fire incident in their manufacturing unit happened on 03.09.2018 at Bhiwadi, Rajasthan. M/s. A M Vinyl Pvt. Ltd has availed benefit of Notification No. 18/2015-Cus dated 01.04.2015, as amended, and did not pay any Customs duty on such input materials at the time of import on condition that such goods shall be used in manufacture of export goods. It has emerged that M/s A M Vinyl Pvt. Ltd did not fulfill their export obligation. It also emerged that the M/s A M Vinyl Pvt. Ltd despite having failed to complete export obligation (EO) did not pay the duty forgone amount as stipulated under the policy and the subject Customs Notifications.

3. DRI Officers visited factory premises of M/s A.M. Vinyl Pvt. Ltd situated at A-104, RIICO Industrial Area, PHASE-I RIICO Chowk, Bhiwadi Rajasthan on 08.08.2019. The factory was found closed, only one guard was available. On being asked the guard informed that he had joined 3-4 days before and had no idea about the owners. He further informed that factory was closed due to a fire incident previous year. On the request of officers, the security Guard opened the main gate of the factory. The officers took a round of the factory alongwith security Guard. No stock of PVC resin was found. The plant and machinery were also found non-operational.

3.1 Search was also attempted at the registered office of M/s A.M. Vinyl Pvt. Ltd. situated at 323, 3rd floor, Hemkunt Chambers, 89, Nehru Place, New Delhi. During the visit it was found that the premise was locked. Shri Saurabh Kapoor, owner of the premises was contacted telephonically after obtaining his mobile number from the Maintenance office. Shri Saurabh Kapoor informed the officers that Rent Agreement was made with M/s A M Vinyl Pvt. Ltd on 04.08.2018 through a person named Mr. Jagdish on behalf of M/s A M Vinyl Pvt. Ltd for a period of three years (01.08.2018 to 31.07.2021) on a monthly rent of Rs. 28000/-, and the company left the premises 3-4 months ago without paying rent.

3.2 Efforts were also made to search at the residential address of Directors mentioned on IEC printout taken from DGFT website i.e. S-222, Greater Kailash-I, New Delhi-110048, however, the premises was found locked and the Director was not found residing at this address. On being enquired from the neighbours, it was informed that the said family used to reside there in past and had shifted to some other place in Delhi. Efforts were also made to search at another address i.e. S-357, Greater Kailash-I, New Delhi-110048 found mentioned on letter head of M/s A M Vinyl Pvt. Ltd. This address was also visited by DRI officers on 19.08.2019, however

this premises was also found locked. On being enquired from neighbours it was informed that the family has shifted to some other place.

4. CORRESPONDENCE WITH THE OFFICE OF ADDITIONAL DGFT, CLA, NEW DELHI.

Information downloaded from the website of the DGFT reflected that A M Vinyl Pvt. Ltd has obtained following categories of Authorisation/Scripts during the period 22.08.2012 to 24.04.2019.

S.No.	Category of Authorisation/Scripts	Period of issue	No. of Authorisations/Scripts issued
1	Advance Authorisation	22/08/2012 to 24/04/2019	54
2	Zero Duty EPCG Scheme	22/12/2016 to 22/06/2017	4
3	Focus Product Scheme	17/09/2015 to 17/02/2017	8
4	Merchandise Export from India Scheme (MEIS)	24/08/2017 to 13/06/2018	4

5. The information downloaded from the DGFT website reflected that only three Advance Authorisations i.e. 0510332282 dated 22.08.2012, 0510343814 dated 21.01.2013 and 0510391445 dated 01.10.2014 have been redeemed. Neither the factory premises nor the declared office address of M/s A M Vinyl Pvt. Ltd was found functional. No document whatsoever was recovered from any of the premises. Therefore, correspondence was made with the office of Addl. DGFT, CLA, New Delhi in order to ascertain total number of Advance Authorisations issued to the company and EODC status in respect of them. The office of the Addl. DGFT, CLA, New Delhi vide their letter F.No. 05/02/001/0060/AM-20/CLA/ECA/368050 dated 24.09.2019 provided copies of 11 Advance Authorisations alongwith documents. Vide letter F.No. 05/02/001/0060/AM-20/CLA/ECA/1374432 dated 05.11.2019 copies of another 33 Advance Authorisations were provided by DGFT, New Delhi. No copy of EODC was received from their office. Further, DGFT vide their letter F.No. 05/02/001/0060/AM-20/CLA/ECA/1406987 dated 24.02.2021 provided copies of another 24 Authorisations which includes 10 Advance Authorisations, 7 Focus Product Scheme, 4 MEIS and 3 EPCG. List of the 54 Advance Authorizations received from DGFT, Delhi is as below:-

S.No. of List Downloaded from DGFT Website	Advance Autho. No.	Received alongwith DGFT Letter dated	S.No. of List Downloaded from DGFT Website	Advance Autho. No.	Received alongwith DGFT Letter dated
1	510332282	24.09.2019	28	510406559	24.09.2019
2	510338030	05.11.2019	29	510406560	24.09.2019
3	510343813	24.09.2019	30	510406595	05.11.2019
4	510343814	05.11.2019	31	510406597	05.11.2019
5	510351899	24.09.2019	32	510406599	05.11.2019
6	510351900	24.09.2019	33	510406821	05.11.2019
7	510351898	05.11.2019	34	510406823	05.11.2019
8	510355639	05.11.2019	35	510406824	05.11.2019
9	510371565	05.11.2019	36	510407043	05.11.2019
10	510379632	05.11.2019	37	510407044	05.11.2019
11	510382675	24.09.2019	38	510407045	05.11.2019
12	510387984	24.09.2019	39	510407373	05.11.2019
13	510391445	05.11.2019	40	510407375	05.11.2019
14	510391977	05.11.2019	41	510407374	05.11.2019

15	510392943	24.02.2021	42	510408028	05.11.2019
16	510393243	24.09.2019	43	510408029	05.11.2019
17	510395966	24.02.2021	44	510408030	05.11.2019
18	510398728	24.02.2021	45	510408178	05.11.2019
19	510401230	24.02.2021	46	510408179	05.11.2019
20	510403206	24.02.2021	47	510408177	05.11.2019
21	510405598	24.02.2021	48	510408291	05.11.2019
22	510405599	24.02.2021	49	510408292	05.11.2019
23	510405777	24.02.2021	50	510408293	05.11.2019
24	510405778	24.02.2021	51	510410168	05.11.2019
25	510405779	24.02.2021	52	510410349	05.11.2019
26	510405808	24.09.2019	53	510410350	05.11.2019
27	510406557	24.09.2019	54	510410351	05.11.2019

6. Documents were also sought from the Addl. Commissioner, Customs (import), ICD-Tughlakabad, New Delhi vide letter dated 16.08.2019. Further letters were also written to Specified Officers of Arshiya FTWZ, Panvel Mumbai and APSEZ, Mundra on 18.11.2019 and 21.07.2020 to provide copies of Bills of Entries, if any, by M/s A M Vinyl Pvt. Ltd at their FTWZs.

7. Documents were called upon from the CHAs namely M/s Skyking (I)Tours & Travels, M/s Venkatesh Agencies, M/s Hemjyot Agency, M/s OSR Forwarders, M/s Graas Logistics India, M/s Rajeshwaree Shipping & Logistics, M/s Unicorn World Logistics, M/s Adept Logistics, M/s Allwin Shipping Services, M/s Chetan Ruhela, M/s Rakesh Kumar, M/s S K Freight Movers and M/s Skyking(I) Cargo Agents.

STATEMENTS OF CHAs:-

8. Statement of **Shri Yogesh Malhotra**, Proprietor of M/s Unicorn World Logistics who provided CHA services for import of two consignments vide Bills of Entry No. 5380303 dated 27.02.2018 and 6027001 dated 18.04.2018, was recorded on 08.03.2021 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- He has handled two import consignments of M/s A.M. Vinyl Private Limited imported at ICD Tughalakabad, Delhi in 2018. Both the consignments were cleared under Advance Authorisation Scheme.
- He got the work of M/s A.M. Vinyl Private Limited through High Sea Sale Supplier M/s Swastik Interchem Private Limited, F-19, First Floor, Kanishka Plaza, LSC Complex, Bhera Enclave, Paschim Vihar, New Delhi through its Director Shri Kamal Chand Sethia.
- The KYC documents of M/s A.M. Vinyl Private Limited were given to him by office assistant of M/s Swastic Interchem Pvt. Ltd. He did not know any person from M/s A.M. Vinyl Private Limited
- He arranged the transportation of imported goods of M/s A.M. Vinyl Private Limited and assigned the work of transportation to M/s O.K. Transport Co., ICD-Tughalakabad, New Delhi.
- Both the imported consignments of M/s A.M. Vinyl Private Limited were delivered at 85/21, Ground Floor, Mundka Udyog Nagar Industrial Area Road No. 7 New Delhi.
- The directions for delivering the imported goods at 85/21, ground floor, Mundka Udyog Nagar Industrial Area Road No. 7 New Delhi were given to him by Shri Kamal Chand Sethia.

- The Bilty submitted by transporter clearly mentions that the goods were transported to Mundka alongwith bill of entry number and container number.

9. Statement of **Shri Hardik Mehta**, Import Manager of M/s Venkatesh Agencies who provided CHA services for import of 12 consignments of PVC Resin at Mundra Port and Nhava Sheva, Mumbai during 2018 and 2019, was recorded on 10.03.2021 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- He has handled twelve (12) import consignments of M/s A.M. Vinyl Private Limited in 2018 and 2019.
- He got CHA work of M/s A.M. Vinyl Private Limited through Mr. Vishal Yadav, Partner of M/s OSR Forwarders.
- He never met any person from M/s A.M. Vinyl Private Limited.
- Mr. Vishal Yadav decided the payment terms related to clearance of imported goods of M/s A.M. Vinyl Private Limited. He communicated with Mr. Vishal Yadav on his e-mail id's osroverseas@gmail.com and immppvc2018@gmail.com.
- M/s Caravan Roadways and M/s Kanhaiya Roadways transported the material cleared by him.

10. Statement of **Shri Sanjay Sharma**, Authorised Representative of M/s Adept Logistics and M/s Allwin Shipping Services, who provided CHA services for import of release paper in 2016 (two BE by Allwin) and 2017 (five BE by Adept) was recorded on 08.03.2021 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- He has handled five (5) import consignments of M/s A.M. Vinyl Private Limited imported at ICD Tughalakabad, Delhi in 2017.
- He got CHA work of M/s A.M. Vinyl Private Limited through Mr. Ankur Jain owner of M/s Devji Traders. M/s Devji Traders was the HSS supplier in all the consignments imported by M/s A. M. Vinyl Pvt. Ltd.
- The KYC documents of M/s A.M. Vinyl Private Limited were given to him by one person sent by Mr. Ankur Jain. He did not know any person from M/s A.M. Vinyl Private Limited
- He arranged the transportation of imported goods of M/s A.M. Vinyl Private Limited and assigned the work of transportation to M/s Ashish Roadlines and M/s Shri Radha Logistics.
- All the goods imported by M/s A. M. Vinyl Private Limited were delivered at the godown of M/s Devji Traders situated at Khera Kalan, Delhi.
- Mr. Ankur Jain gave him directions to deliver the imported goods of M/s A.M. Vinyl Private Limited at godown of M/s Devji Traders as Mr. Ankur told him that the imported goods belonged to him and due to some reasons he is importing the said goods through M/s A.M. Vinyl Private Limited.
- He never met nor had any conversation with any person from M/s A.M. Vinyl Private Limited
- Allwin Shipping services have provided CHA services for two bills of entry; material imported by both BEs was unloaded in godowns of M/s Devji Traders at Khera Kalan, New Delhi.

11. Statement of **Shri Asgar Hussain**, G- Card Holder of M/s Chetan Ruhela, who provided CHA services for import under five Bills of Entry in 2016, was recorded on

09.03.2021 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- He has handled Five (5) import consignments of M/s A.M. Vinyl Private Limited imported at ICD Tughalakabad, Delhi in 2016.
- He got CHA work of M/s A.M. Vinyl Private Limited through Mr. Suresh Kumar Gupta Proprietor of M/s Maruti Overseas the HSS supplier in some consignments imported by M/s A. M. Vinyl Pvt. Ltd.
- Mr. Suresh Kumar Gupta informed him that the imported goods belonged to him but due to some reason he is importing the same through M/s A.M. Vinyl Pvt. Ltd.
- Shri Suresh Gupta introduced him to Ashok Chopra telephonically.
- One container under BE No. 5768979 dated 25.06.2016 and four containers under BE No. 7107747 were delivered at Bhiwadi while rest of the goods imported by M/s A M Vinyl were delivered to M/s Maruti Overseas at Mundka, Delhi.
- He submitted the invoices and debit notes for transportation charges & MISC charges. The debit notes issued for transportation of imported goods clearly mention that the imported goods were delivered "Local Delhi". Sample Scan of debit note is appended below :-

MIDAS LOGISTICS																										
427 BRD FLOOR RAR B-1 COMMUNITY CENTER JANAKPURI NEW DELHI-110058 EMAIL-MIDASLOG@GMAIL.COM PH-011-45634300																										
DEBIT NOTE																										
D.NOTE No : D-101698 D DEBIT IN : 172 Dec-16	A M VINYL PVT LTD A-104 BHIWADI INDUSTRIAL AREA RICO CHOWK BHIWADI RAJASTHAN																									
BOX NO : 7821948 Dt-14/12/2016 NO OF CNTR : 00x20ft S/LINE : GOLD STAR LINE SUPPLIER : INTERPOLYMER CORPORATION PORT SUB : ICD TKD ORIGIN : KOREA QTY : 96 MTs GEN.DISC : DOP	ASS VALUE : 6459863.00 TOTAL DUTY : NIL Duty Against Lic : 1707229.00 LC NO : D006/LC442121/16 BL NO : GOSUSEL895710																									
<table border="1"> <thead> <tr> <th>Sr No</th> <th>Charge Description</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Transportation (Del TKD To Delhi Local)</td> <td>(Rs.5000x06)</td> </tr> <tr> <td>2</td> <td>Transportation (Delhi Local To Dadri)</td> <td>(Rs.3500x06)</td> </tr> <tr> <td>3</td> <td>National Green tax (Receipts Attached)</td> <td>(Rs.1300x06)</td> </tr> <tr> <td>4</td> <td>Empty Cntr off-Loading (Receipts Attached)</td> <td>(Rs.300x06)</td> </tr> </tbody> </table>	Sr No	Charge Description	Amount	1	Transportation (Del TKD To Delhi Local)	(Rs.5000x06)	2	Transportation (Delhi Local To Dadri)	(Rs.3500x06)	3	National Green tax (Receipts Attached)	(Rs.1300x06)	4	Empty Cntr off-Loading (Receipts Attached)	(Rs.300x06)	<table border="1"> <tbody> <tr> <td>Paid By party</td> <td></td> </tr> <tr> <td>Custom Duty Against Licence -1707229/-</td> <td></td> </tr> <tr> <td>Shipping Line-473743/-</td> <td></td> </tr> <tr> <td>Midas Logistics</td> <td></td> </tr> <tr> <td>Off-loading-Dadri</td> <td></td> </tr> </tbody> </table>	Paid By party		Custom Duty Against Licence -1707229/-		Shipping Line-473743/-		Midas Logistics		Off-loading-Dadri	
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Shipping Line-473743/-																										
Midas Logistics																										
Off-loading-Dadri																										
RUPEES : Sixty Thousand Six Hundred	60600.00																									
FOR MIDAS LOGISTICS																										
AUTH.SIGN																										

- He also submitted the copies of the Bilty/GR of M/s Jeet Cargo Movers who transported the goods of M/s A.M. Vinyl Private Limited. The bilty clearly mentions the Bill of Entry no. & date, the container number and it also mention that the goods were transported from ICD TKD to Local Delhi.
- Sample of scanned Bills of M/s Jeet Cargo Movers are appended below :-

Subject To Delhi Jurisdiction

Jeet Cargo Movers

Transporters & Fleet Owners,
Specialists on Overdimension Cargo, Platform Trucks Trailors for Containers 20ft. & 40ft.

2964 427 Rajindera Arihant Tower, B-1, Community Center
Janak Puri, New Delhi-110058

9212788965
9958075470

G.R. No. _____ Date 20/10/2016
From ICD TKD To Delhi and back to ICD _____ Value As per bill
B/E No. 700730 Date 12/10/2016 Invoice No. _____ Date _____
Consignor M/s Ch. J. S. Rukhda
Consignee M/s A.M. Vignid
Vehicle No. HR 30N 7202 Driver _____
Container No. (1) NYKU-3923 04/20 Seal No. _____

No. of Pkgs	Nature of Goods (Sold To Contain)	Weight
ITEM	<u>polymethyl chloride</u>	Freight To Be Billed at Delhi To
(For Export-Import Only)		Freight Collect Be
		Freight Rs. to Be Billed
		Less Adv Rs. Bills at New Delhi
		Balance Rs.

C.S.T. No./TIN No. _____

Goods booked at owners risk. Contents of container not known.
Carrier Not responsible for leakage breakage, count & weight

for Jeet Cargo Movers
Authorised Signatory

Subject To Delhi Jurisdiction

Jeet Cargo Movers

Transporters & Fleet Owners,
Specialists on Overdimension Cargo, Platform Trucks Trailors for Containers 20ft. & 40ft.

2850 427 Rajindera Arihant Tower, B-1, Community Center
Janak Puri, New Delhi-110058

9212788965
9958075470

G.R. No. _____ Date 20/10/2016
From ICD TKD To Delhi and back to ICD _____ Value As per bill
B/E No. 642750 Date 12/10/2016 Invoice No. _____ Date _____
Consignor M/s Ch. J. S. Rukhda
Consignee M/s A.M. Vignid
Vehicle No. HR 30N 7202 Driver _____
Container No. (1) NYKU-3923 04/20 Seal No. _____

No. of Pkgs	Nature of Goods (Sold To Contain)	Weight
ITEM	<u>polymethyl chloride</u>	Freight To Be Billed at Delhi To
(For Export-Import Only)		Freight Collect Be
		Freight Rs. to Be Billed
		Less Adv Rs. Bills at New Delhi
		Balance Rs.

C.S.T. No./TIN No. _____

Goods booked at owners risk. Contents of container not known.
Carrier Not responsible for leakage breakage, count & weight

for Jeet Cargo Movers
Authorised Signatory

12. Statement of **Shri Pramod Soneta**, Partner of M/s Hemjyot Agency, who provided CHA services for import vide 24 Bills of Entry at Mundra port during 2018 and 2019, was recorded on 17.03.2021 under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that:

- He has handled Twenty Four (24) import consignments of M/s A.M. Vinyl Private Limited.
- He got CHA work of M/s A.M. Vinyl Private Limited through either Mr. Krishna Bansal or Mr. Parth Dodeja from M/s Salasar Impex Pvt. Ltd. the High Sea sale supplier in some consignments imported by M/s A. M. Vinyl Ltd.
- The KYC documents of M/s A.M. Vinyl Private Limited were also provided to him by M/s Salasar Impex Ltd.
- The import documents were provided to him by the primary importers i.e. M/s Salasar Impex Ltd., M/s GRD Industries etc.
- M/s Kanhaiya Roadways, M/s Caravan Roadways and its group companies transported the imported material from port.

13. **Shri Vishal Yadav**, G-Card of CHA M/s Skyking (I) Tour & Travels and Proprietor of CHA M/s OSR Forwarders in his statement dated 31.03.2021 recorded under Section 108 of the Customs Act, 1962, inter-alia stated that;

- He was providing CHA services to M/s A M Vinyl since 2012 to 2019. He was introduced to Shri Ashok Chopra (Director) of M/s A M Vinyl through one client Shri Sandeep Agrawal of M/s Sandeep Chemicals, Tri Nagar, New Delhi. Shri Sandeep Agrawal introduced him to Shri Ashok Chopra and asked him to provide CHA services to M/s A M Vinyl, Bhiwadi. Shri Himanshu Chopra son of Shri Ashok Chopra joined his parental business in 2016-17 and since then Himanshu Chopra use to look after all the import work of M/s A M Vinyl. He used to contact Himanshu regarding all the import related work.
- Sometimes he used to receive calls from Shri Atul Chopra (Brother) of Shri Himanshu Chopra to know the status of imported goods;
- The KYC documents of M/s A M Vinyl was sent to him by Shri Ashok Chopra (Director) through their runner boy.
- Shri Ashok Chopra used to send him documents of import shipments during 2012-2016 and after joining of Himanshu Chopra in 2016-17, Himanshu used to send him documents related to import shipments.
- He used to arrange transportation for the shipments of M/s A M Vinyl cleared from ICD Tughalakabad and ICD Sonapat. The transportation from Mundra was arranged by M/s A M Vinyl itself.
- Mostly the imported goods of M/s A M Vinyl were unloaded at their factory located at A-104, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan, but during the year 2018-19 some goods were also delivered at godown of M/s Salasar Impex Limited situated at Khera Kalan, New Delhi.
- The goods delivered at Godown of M/s Salasar Impex Limited were cleared by M/s A M Vinyl under Advance Authorisation Scheme.
- He was directed by Shri Himanshu Chopra to deliver the goods of M/s A M Vinyl to godown of M/s Salasar Impex Limited.
- He was informed by Himanshu Chopra that when the goods reach Khera Kalan, the truck driver should contact Parth Dodeja on his mobile and Parth Dodeja will take delivery of the imported goods. Parth Dodeja used tell the drivers about the time and location where the goods to be delivered.
- The transporters used to raise bills to them and they raise bills to M/s A M Vinyl for transportation of goods.
- There are two more companies of Shri Himanshu Chopra namely M/s Benexi Vinyl Pvt. Ltd and M/s Jammu Udyog who have imported goods under Advance Authorisation Scheme.

14. Statements of representatives/Proprietors of CHAs firms namely Shri Rakesh Kumar of M/s Rakesh Kumar, Shri Sanjay Kumar of M/s Skyking (I) Cargo Agents and Shri Satish Kumar Khanna of M/s S.K. Freight Movers, who provided CHA services for export clearances were recorded on 10.03.2021 and 12.03.2021. Shri Rakesh Kumar and Shri Satish Kumar Khanna stated that they got export clearance work of M/s A M Vinyl through Shri Sanjay Mahajan of M/s Paramount Logistic Systems; Mr Mahajan negotiated with them for clearance charges and provided them KYC documents of M/s A M Vinyl; export goods were received in factory sealed containers. Shri Sanjay Kumar stated that he got export clearance work of M/s A M Vinyl from Shri Himanshu Chopra; Mr. Himanshu Chopra provided him the KYC documents alongwith authority letter; he has also contacted with Mr. Ashok Chopra and Mr. Atul Chopra, however Mr. Himanshu Chopra was in contact with him for routine work; all the export consignments of this company were received in factory sealed condition.

STATEMENT OF OTHER PERSONS:-

15. Shri Ankur Jain, Proprietor of M/s Devji Traders in his statement dated 20.07.2021 recorded under Section 108 of the Customs Act, 1962, inter-alia stated that;

- He established this firm in 2010. He has sold release paper to M/s A M Vinyl Pvt. Ltd in 2016 and 2017 on High sea sale basis and local sale.
- He has sold 92968KG PVC Resin to M/s A M Vinyl Pvt. Ltd on High Sea Sale basis imported under 4 Bills of Entry.
- On being shown the statement of Shri Sanjay Sharma of Adept Logistics, he stated that he has not purchased any imported material from M/s A M Vinyl Pvt. Ltd. Material imported by M/s A M Vinyl Pvt. Ltd at ICD Tkd, Delhi under four BEs 8788583/06.03.2017, 9357945/18.04.2017, 9903622/31.05.2017, 2073454/13.06.2017 (HSS by Devji Traders) and one more BE No. 9924689/01.06.2017 was unloaded at his godowns for storage for few days on the request of Shri Himanshu Chopra Director of M/s A M Vinyl Pvt. Ltd. Shri Himanshu told him that some repair work was undergoing in his factory of M/s A M Vinyl Pvt. Ltd and he doesn't have storage space.
- This material was picked up in part consignments on the instructions of Shri Himanshu Chopra.
- He has never arranged transportation for Shri Himanshu Chopra. He introduced CHA M/s Adept Logistics to M/s A M Vinyl Pvt. Ltd.

16. Shri Krishan Kumar Bansal, Director of M/s Salasar Impex Limited in his statement dated 22.07.2021 recorded under Section 108 of the Customs Act, 1962, inter-alia stated that;

- He and Mr. Parth Dodeja (Director) manages the company. Remaining three directors are for only company compliances being a Public Limited company. He looks after day-to-day and financial matters of company and Mr. Parth Dodeja looks after loading and unloading of material at warehouses as well as at ports.
- They have sold PVC Resin and DOP to M/s A M Vinyl few times on High Sea Sale basis and sometimes on local sale basis.
- Mr. Atul Chopra and Mr. Himanshu Chopra have visited their office many times together. They used to contact Himanshu Chopra telephonically for business. Sometimes Atul Chopra has also talked with them.

17. Statement of Shri Kamal Chand Sethia, Director M/s Swastik Interchem Pvt. Ltd., F-19, 1st Floor, Kanishka Plaza, LSC Complex, Bhera Enclave, Paschim Vihar, Delhi-110087, was recorded on 23.08.2021 under Section 108 of the Customs Act, 1962. Name of Shri Kamal Chand Sethia emerged during statement of Sh. Yogesh Malhotra, proprietor of CHA firm M/s Unicorn World Logistics. Shri Kamal Chand Sethia in his statement stated that;

- M/s Swastik Interchem Pvt. Ltd, was incorporated in 2012 which was in business of trading of chemicals. There are two Directors in the company. The name of the other Director is Shri Deepak Grover. They started importing chemicals since last four years, before that they used to do local trading mainly from Gujarat.
- There is only one office of M/s Swastik Interchem Pvt. Ltd. at F-19, 1st Floor, Kanishka Plaza, LSC Complex, Bhera Enclave, Paschim Vihar, Delhi-110087 and one godown situated at 85/21, Ground Floor, Mundka Udyog Nagar, Industrial Area, Road No. 7, Delhi-110041.
- They have only sold one import consignment on High Sea Sale basis to M/s A.M. Vinyl Pvt. Ltd., A-104, Phase-1, RIICO Industrial Area, Bhiwadi, Rajasthan which was imported vide Bill Of Lading No. KMTCTAO3291292 dated 18/03/2018.
- He received a call from Sh. Ashok Chopra in around 2014-15. He (Ashok) got his number through a reference and told him that he (Ashok) is into manufacturing of Rexine and he(Ashok) required some raw materials from him. He (Kamal) asked his staff to do company verification and after being fully satisfied he started business with M/s A.M. Vinyl Pvt. Ltd. They used to sell Pigments, Titanium Dioxide etc. to A.M. Vinyl Pvt. Ltd. One day Sh. Ashok Chopra came to his office and informed him that he (Ashok) has a big export order for which he requires raw materials in bulk and for the same he (Ashok) asked him to sell goods on High Sea Sale basis. He (Ashok) also provided him a Post Dated Cheque for the payment of the goods but the same was dishonored by the Bank due to insufficient funds in the account of M/s A.M. Vinyl Pvt. Ltd. After that he (Kamal) has taken legal action against M/s A.M. Vinyl Pvt. Ltd.
- Apart from Sh. Ashok Chopra, he also know his(Ashok) two sons i.e. Sh. Himanshu Chopra and Sh. Atul Chopra of M/s A.M. Vinyl Pvt. Ltd with whom he has interacted for business purpose.
- He does not have any contact number of Sh. Atul Chopra as he never had any telephonic conversation with him. He only met him(Atul) once at Leela Hotel, New Delhi when he(Atul) came there alongwith his brother Sh. Himanshu Chopra.
- Yes, he introduced M/s A.M. Vinyl Pvt. Ltd. to M/s Unicorn World Logistics.
- The payments for the local goods sold to M/s A.M. Vinyl Pvt. Ltd. were received in their ICICI Bank, Meera Bagh Branch. The payment in respect of goods sold on High Sea Sale basis is still pending.
- On being shown statement dated 08/03/2021 of Sh. Yogesh Malhotra, proprietor of M/s Unicorn World Logistics, wherein he(Yogesh) stated that the goods sold by M/s Swastik Interchem to M/s A.M. Vinyl Pvt. Ltd. were delivered at his (Kamal) godown situated at 85/21, Ground Floor, Mundka Udyog Nagar, Industrial Area, Road No. 7, Delhi-110041, he stated that the goods were not delivered to their godown or any location related to M/s Swastik Interchem Pvt. Ltd. he(Kamal) doesn't know why the CHA, M/s Unicorn World Logistics has stated that the goods were delivered at his godown.
- No, they have never purchased any goods from M/s A.M. Vinyl Pvt. Ltd.
- On being asked who arranged the transport of the goods sold by him to M/s A.M. Vinyl Pvt. Ltd. on High Sea Sale basis, he stated that the transportation of the goods was arranged by the CHA M/s Unicorn World Logistics.

18. Statement of Shri Suresh Gupta, Prop/Partner of M/s Maruti Overseas, 80, Shahzada Bagh Extension, Old Rohtak Road, Delhi-110005, was recorded

on 26.08.2021 under Section 108 of the Customs Act, 1962. Name of Shri Suresh Gupta emerged during statement of Mr. Asgar Hussain of CHA firm M/s Chetan Ruhela. Shri Suresh Gupta, in his statement stated that;

- M/s Maruti Overseas is a proprietor ship firm established in 2015 by him. In this firm he is engaged in trading of polymers e.g. PVC Resin, PVC Paste Resin, EVA and DOP. They procure these goods from international as well as from domestic manufacturers.
- 99% Out of the total import orders placed are imported in name of this firm only on payment of full duty without claiming any exemption or using any license.
- Yes, he knows Shri Ashok Chopra of M/s A.M. Vinyl Pvt. Ltd. Somewhere in the year 2016, Shri Ashok Chopra came to his office and informed him that he(Ashok) is having a factory in Bhiwadi wherein they manufacture PVC Leather Cloth. He(Ashok) informed that they require PVC Paste for manufacture of PVC Leather Cloth. After negotiations they started sale of PVC Paste to M/s A.M. Vinyl Pvt. Ltd. in the year 2015. He has sold PVC Paste to M/s A.M. Vinyl Pvt. Ltd. This PVC Paste was imported by his firm on payment of duty. After 31.03.2017 he has not undertaken any business transactions with M/s A.M. Vinyl Pvt. Ltd. It may be seen from his ledger that he has received all the payments through cheque/RTGS.
- Yes his firm has made High Sea sale to M/s A M Vinyl Pvt. Ltd vide High Sea Sales agreement dated 24.08.2016. He has sold 56 MT PVC Paste to M/s A.M. Vinyl Pvt. Ltd. He made one more High Sea Sales to M/s A.M. Vinyl Pvt. Ltd. vide High Sea Sales agreement dated 05.10.2016.
- He knows one Mr. Hussain of M/s Midas Logistics. He is not aware whether he (Hussain) was also working for M/s Chetan Ruhela.
- On being asked when he was importing in his firm and selling the goods thereafter then why did he make these high sea sales to M/s A.M. Vinyl Pvt. Ltd., in reply he stated that the prices of PVC Resin and other polymers are highly volatile. As stated earlier he imports 99% of material in the name of his firm, however, sometimes when a downfall is anticipated, the consignment is sold on high sea sales basis. These two consignments were sold by him on high sea sales basis in anticipation of downfall in international market.
- On being asked whether he introduced Shri Asgar Hussain to Shri Ashok Chopra, he replied No.
- M/s Maruti Overseas has not purchased any material from M/s A.M. Vinyl Pvt. Ltd.
- On being asked, whether the material sold on high sea sales basis to M/s A.M. Vinyl Pvt. Ltd. was unloaded in godown of M/s Maruti Overseas, at Mundka, Delhi, he stated No, Never.
- On being shown the statement of Shri Asgar Hussain dated 09.03.2021 tendered under Section 108 of the Customs Act 1962, wherein he has stated that containers imported under BOE Number 5768969 dated 25.06.2016 filled by M/s A.M. Vinyl Pvt. Ltd. were delivered to Mundka Godown of M/s Maruti Overseas, he stated that Mr. Asgar Hussain has made a false statement. None of the containers covered under this BOE was delivered to M/s Maruti Overseas at Mundka Delhi.

STATEMENTS OF TRANSPORTERS:-

19. Shri Kanhaiya Mishra, Proprietor of M/s Kanhaiya Roadways in his statement recorded on 23.02.2021, inter-alia stated that;

- He has provided transportation services to M/s A M Vinyl Pvt. Ltd in 2018 and 2019.

- They have not unloaded any material in factory premises of M/s A M Vinyl Pvt. Ltd at Bhiwadi. He used to tell the name and contact number of drivers to one person named Parth Dodeja. When the material reached at Bhiwadi, Parth Dodeja used to tell the drivers about location at which the material was to be unloaded. Shri Parth Dodeja used to provide documents for transportation of material from Bhiwadi to other places like, Balaji Dharamkanta, Mundka, Shri Ram Dharamkanta, Khera Kalan, Delhi. Upon reaching the location, on the instructions of Parth Dodeja, the material was unloaded at M/s Salasar Impex;
- He knows Parth Dodeja since last 5-6 years as he used to transport material of M/s Salasar Impex. Parth Dodeja contacted him for transportation of material imported by M/s A M Vinyl Pvt. Ltd and finalized the rates for transportation.
- He doesn't know any person of M/s A M Vinyl Pvt. Ltd.
- Shri Parth Dodeja used to talk to him in respect of loading of material imported by M/s A M Vinyl Pvt. Ltd and inform him the name of CHA from whom he has to take documents

20. Shri Ramesh Kumar, Manager and Authorised Signatory of M/s Caravan Roadways and M/s Vishwahind Logistics Ltd in his statement dated 05.07.2021 inter-alia stated that;

- the work related to transportation of goods of M/s A.M. Vinyl Pvt. Ltd. was provided to them by one person Shri Parth Dodeja, Director of M/s Salasar Impex Pvt. Ltd.
- He never had any conversation with any person related to M/s A.M. Vinyl Pvt. Ltd.
- The documents required for transport of goods of M/s A.M. Vinyl Pvt. Ltd were provided to them by Shri Parth Dodeja only through Whatsapp.
- The Bills raised by M/s Vishwahind Logistics Ltd. to M/s A.M. Vinyl Pvt. Ltd clearly mention Party's name and address as M/s Salasar Impex Pvt. Ltd., Plot No. 893/1 & 2, Swarn Park, New Line Mundka, New Delhi and also mentions the name of consignee and consignor as M/s A.M. Vinyl Pvt. Ltd and M/s Hemjyot Agency respectively.
- They loaded the material from Mundra port, unloaded some of this material in Bhiwadi factory and remaining material was used to be transferred to other trucks at a nearby Dharamkanta on instructions of Parth Dodeja.
- The bills raised in lieu of transportation of goods of M/s A.M. Vinyl Pvt. Ltd were handed over to Shri Parth Dodeja at M/s Salasar Impex Pvt. Ltd, 2838-A/209, Vishram Nagar, Trinagar, New Delhi.
- The Payments with respect to goods transported by M/s Vishwahind Logistics Ltd. were made by some other companies and the information about the same was provided to them by Shri Parth Dodeja that how much amount has been credited in the account of M/s Vishwahind Logistics Ltd and through which company.

21. Shri Rajeev Gupta, Director of M/s Caravan Roadways Ltd. and M/s Vishwahind Logistics Ltd. in his statement recorded on 19.07.2021, inter-alia stated that;

- The Bills raised by M/s Vishwahind Logistics Ltd. to M/s A.M. Vinyl Pvt. Ltd clearly mention Party's name and address as M/s Salasar Impex Pvt. Ltd since the order for transportation was provided by Shri Parth Dodeja of M/s Salasar Impex Pvt. Ltd.
- Shri Parth Dodeja used to inform telephonically when and how much payment in lieu of transportation of goods of M/s A.M. Vinyl Pvt. Ltd will be credited in our account through which company.

22. SUMMONS ISSUED TO A M VINYL AND ITS DIRECTORS

S.No.	Summons issued to	Summons issuance date	Appearance date	Remarks
1	Director/Authorised signatory of A M Vinyl Pvt. Ltd	24.11.2020 03.03.2021 15.04.2021 29.06.2021 07.07.2021	07.12.2020 11.03.2021 23.04.2021 05.07.2021 19.07.2021	Returned undelivered by postal authorities
2	Shri Himanshu Chopra	03.03.2021 15.04.2021 29.06.2021 07.07.2021	11.03.2021 28.04.2021 05.07.2021 19.07.2021	Returned undelivered by postal authorities
3	Shri Atul Chopra	03.03.2021 15.04.2021	11.03.2021 28.04.2021	Returned undelivered by postal authorities

As tabulated above, repeated summons were issued to the company and its Directors, however, nobody appeared in compliance thereof. Neither any reply was submitted by any one of them despite service of Summons through e-mail.

EXPORTS MADE BY M/S A.M. VINYL PVT. LTD. UNDER ADVANCE AUTHORISATION SCHEME

23. From the documents provided by the CHAs, it has emerged that M/s A.M. Vinyl Pvt. Ltd has made exports during the period from 2012 to 2018 under Advance Authorisation Scheme. Documents received from the office of the DGFT revealed that M/s A M Vinyl Pvt. Ltd has claimed 100% export obligation fulfillment in respect of following 15 Advance authorizations. Status of these Advance Authorisations were checked from www.eodc.online and the same is mentioned in column 4 below :-

S.No.	Advance Authorisation No.	Date	Status as per DGFT website/documents received from DGFT office
1	2	3	4
1	0510332282	22.08.2012	Redeemed
2	0510338030	01.11.2012	SCN issued on 17.05.2016
3	0510343813	21.01.2013	SCN issued on 17.05.2016
4	0510343814	21.01.2013	Redeemed
5	0510351898	14.04.2013	Deficiency letter issued on 20.03.2018, 24.05.2018, 26.06.2018 and 21.01.2019
6	0510351899	17.04.2013	Deficiency letter issued on 20.03.2018, 25.05.2018 and 03.07.2018
7	0510351900	17.04.2013	Deficiency letter issued on 30.03.2017
8	0510355639	30.05.2013	Deficiency letter issued on 09.05.2017
9	0510371565	22.11.2013	Deficiency letter issued on 20.03.2018, 25.05.2018, 09.07.2018, 21.01.2019 and 12.02.2019
10	0510379632	17.02.2014	Deficiency letter issued on 02.09.2019
11	0510382675	25.04.2014	Deficiency letter issued on 28.05.2019
12	0510387984	02.06.2014	Deficiency letter issued on 21.01.2019
13	0510391445	01.10.2014	Redeemed, EODC granted on 18.01.2019
14	0510391977	13.11.2014	Deficiency letter issued on 20.03.2019, 25.05.2018 and 21.01.2019
15	0510393243	16.02.2015	Deficiency letter issued on 04.02.2019

Since, the DGFT had already redeemed three Advance Authorisations, issued Show Cause Notice in two Advance Authorisations and deficiency letter in ten Advance Authorisations, imports made under these 15 Advance Authorisations under Notification Nos. 96/2009-Cus dated 11.09.2009 are not being considered in this notice.

IMPORTS MADE BY M/S A.M. VINYL PVT. LTD. UNDER ADVANCE AUTHORISATION SCHEME AND DUTY INVOLVED THERE UPON(EXCLUDING 15 AUTHORISATIONS AS ABOVE)

24. Though the DGFT provided copies of 54 Advance Authorisations as mentioned in Para -4 above, documents provided by the CHAs and import data obtained from EDI System, it emerged that M/s A M Vinyl Pvt. Ltd has made imports under 57 Advance Authorisations, out of which it claimed export fulfillment under 15 Advance Authorisations as mentioned in Para-23 above. Reconciliation of Advance Authorisations numbers mentioned on import documents and Advance Authorisation numbers mentioned in the list downloaded from DGFT website revealed that this list does not include 10 Advance Authorisations under which M/s A M Vinyl Pvt. Ltd has made imports. List of these Advance Authorisations is as below:-

S.No.	Advance Autho. No.	S.No.	Advance Autho. No.
1	510403455	6	510405545
2	510403459	7	510406567
3	510404363	8	510406924
4	510404819	9	510496596
5	510405169	10	1019013507

The import data also revealed that M/s A M Vinyl Pvt. Ltd. has not made imports under following 7 Advance Authorisations, mentioned in list downloaded from DGFT:-

S.No.	Advance Autho. No.	S.No.	Advance Autho. No.
1	0510392943	5	0510408292
2	0510407373	6	0510410349
3	0510408179	7	0510410351
4	0510408291		

25. Based upon the documents provided by the CHAs, Customs and DGFT, it has emerged that M/s A.M. Vinyl Pvt. Ltd. has made following imports under 42 Advance Authorisation Scheme, excluding 15 authorizations wherein M/s A M Vinyl Pvt. Ltd has claimed 100% export Obligation fulfillment and the DGFT has either issued EODC or deficiency letter/SCN. For the sake of clarity, the import data has been assorted portwise:-

S. No	Advance Autho. No.	BE No.	BE Date	Goods Imported	Qty	Unit	Assessable Value	Duty Forgone	Port of Import
1	510406597	2674062	02.04.2019	PVC RESIN	255.00	MTS	16279200	5223174	INBDM6
2	510408029	2314451	06.03.2019	PVC RESIN	257.50	MTS	15759000	6367491	INBDM6
3	510408029	2314450	06.03.2019	PVC RESIN	257.50	MTS	15759000	6367491	INBDM6
4	510410350	3545932	06.06.2019	PVC RESIN	510.00	MTS	31387823	10144956	INBDM6
5	510408177	2761541	08.04.2019	PVC RESIN	525.00	MTS	35144999	9747465	INBDM6
6	510407043	2838435	15.04.2019	DOP	96.00	MTS	8126650	2253926	INBDM6
7	510406559 510406824 510407375 510408028	2893700	18.04.2019	PVC RESIN	180.25	MTS	10985614	5232476	INBDM6

	5104082 93								
8	5104068 23 5104101 68	2889212	18.04.201 9	PVC RESIN	182.00	MTS	10936041	5239946	INBDM6
9	5104101 68	2916620	20.04.201 9	PVC RESIN	182.00	MTS	10781917	5227402	INBDM6
10	5104065 97 5104101 68	2917263	20.04.201 9	PVC RESIN	180.25	MTS	11027770	5274065	INBDM6
11	5104101 68	2957827	23.04.201 9	PVC RESIN	390.00	MTS	22980672	10367400	INBDM6
12	5104073 74 5104080 30	3350086	23.05.201 9	PVC RESIN	170.00	MTS	10885950	3499066	INBDM6
13	5104080 30	2592306	27.03.201 9	PVC RESIN	85.00	MTS	5791433	2036290	INBDM6
14	5104080 30	2592229	27.03.201 9	PVC RESIN	85.00	MTS	5791433	2036290	INBDM6
15	5104080 30	2592532	27.03.201 9	PVC RESIN	257.50	MTS	15321250	6190616	INBDM6
16	5104081 78	2596069	27.03.201 9	PVC RESIN	170.00	MTS	11349030	4007726	INBDM6
				TOTAL	3783	MTS	23830778 2	8921578 0	
17	5103959 66	7036356	10.10.201 6	RELEAS E PAPER	6080	SQM	352843	103880	INDEL4
				TOTAL	6080	SQM	352843	103880	
19	5104073 75	8388812	09.10.201 8	PVC RESIN	100.00	MTS	7046119	2728887	INDWN6
20	5104065 99	6742906	11.06.201 8	PVC RESIN	257.50	MTS	15824873	6270671	INDWN6
21	5104068 21	8029898	13.09.201 8	PVC RESIN	257.50	MTS	17930997	6985147	INDWN6
22	5104068 21	8029955	13.09.201 8	PVC RESIN	257.50	MTS	17930997	6985147	INDWN6
23	5104065 59	6515537	24.05.201 8	PVC RESIN	257.50	MTS	16011459	6344606	INDWN6
24	5104065 59	6515451	24.05.201 8	PVC RESIN	154.50	MTS	9606876	3806764	INDWN6
				TOTAL	1284.5	MTS	84351321	3312122 2	
25	5104065 59	6516526	24.05.201 8	PVC RESIN	153.00	MTS	10602182	3357204	INLON6
26	5104034 55	2637962	28.07.201 7	PVC RESIN	154.50	MTS	8475054	3382944	INLON6
				TOTAL	307.50	MTS	19077236	6740148	
27	5104070 44	2815546	12.04.201 9	PVC RESIN	520.00	MTS	28916480	13273077	INMUN1
28	5104101 68	2892218	18.04.201 9	PVC RESIN	312.00	MTS	17519985	8011023	INMUN1
29	5104080 29	9896872	02.02.201 9	PVC RESIN	24.75	MTS	1593554	685262	INMUN1
30	5104080 29	2282801	04.03.201 9	PVC RESIN	154.50	MTS	10109146	4745942	INMUN1
31	5104080 29	2282803	04.03.201 9	PVC RESIN	154.50	MTS	10109146	4745942	INMUN1
32	5104080 29	9950681	06.02.201 9	PVC RESIN	156.00	MTS	9512466	4602033	INMUN1
33	5104065 95	6692802	06.06.201 8	PVC RESIN	510.00	MTS	34786796	11037040	INMUN1

34	5104065 95	6692665	06.06.201 8	PVC RESIN	206.00	MTS	13386157	5235713	INMUN1
35	5104068 21	7932156	06.09.201 8	PVC RESIN	260.00	MTS	18101491	7709396	INMUN1
36	5104068 21	7931674	06.09.201 8	PVC RESIN	260.00	MTS	18101491	7709396	INMUN1
37	5104069 24	7097809	07.05.201 8	PVC RESIN	520.00	MTS	33071813	14399086	INMUN1
38	5104070 43	7545907	08.07.201 8	PVC RESIN	546.00	MTS	33122633	14686425	INMUN1
39	5104080 29	2392349	12.03.201 9	PVC RESIN	156.00	MTS	9425521	4547958	INMUN1
40	5104068 24	7205516	13.07.201 8	PVC RESIN	260.00	MTS	15619352	6968028	INMUN1
41	5104068 24	7209036	13.07.201 8	PVC RESIN	260.00	MTS	15619352	6968028	INMUN1
42	5104073 74	2428595	15.03.201 9	PVC RESIN	156.00	MTS	10472801	4838421	INMUN1
43	5104073 74	2428598	15.03.201 9	PVC RESIN	208.00	MTS	13963735	6451228	INMUN1
44	5104080 30	2462035	18.03.201 9	PVC RESIN	77.25	MTS	4869125	2308050	INMUN1
45	5104080 30	2460827	18.03.201 9	PVC RESIN	77.25	MTS	4869125	2308050	INMUN1
46	5104068 23	8118206	19.09.201 8	PVC RESIN	520.00	MTS	33048610	14653603	INMUN1
47	5104068 23 5104068 24 5104070 43	8128314	20.09.201 8	PVC RESIN	439.00	MTS	33048610	12371022	INMUN1
48	5104068 23	7314076	21.07.201 8	PVC RESIN	260.00	MTS	17415048	4830064	INMUN1
49	5104068 23	7313928	21.07.201 8	PVC RESIN	260.00	MTS	15596942	6958031	INMUN1
50	5104081 78	2534896	22.03.201 9	PVC RESIN	257.50	MTS	15535748	6250107	INMUN1
51	5104065 57	6513891	24.05.201 8	PVC RESIN	257.50	MTS	16011459	6344606	INMUN1
52	5104065 57	6515083	24.05.201 8	PVC RESIN	257.50	MTS	16011459	6344606	INMUN1
53	5104065 57	6519238	24.05.201 8	PVC RESIN	360.50	MTS	22416043	8882449	INMUN1
54	5104965 96	6981891	27.06.201 8	PVC RESIN	257.50	MTS	16878677	6587542	INMUN1
55	5104070 43	7410185	28.07.201 8	PVC RESIN	315.00	MTS	22581632	6263015	INMUN1
56	5104065 57	6586799	29.05.201 8	PVC RESIN	257.50	MTS	16011459	6344606	INMUN1
57	5104065 60	6586642	29.05.201 8	PVC RESIN	257.50	MTS	16011459	6344606	INMUN1
58	5104065 60	6586425	29.05.201 8	PVC RESIN	309.00	MTS	19213751	7613528	INMUN1
59	5104065 60	6586135	29.05.201 8	PVC RESIN	206.00	MTS	12809167	5075685	INMUN1
60	5104065 60	6586753	29.05.201 8	PVC RESIN	257.50	MTS	16011459	6344606	INMUN1
61	5104065 60	6586546	29.05.201 8	PVC RESIN	257.50	MTS	16011459	6344606	INMUN1
62	5104065 67	6586753	29.05.201 8	PVC RESIN	257.50	MTS	16011459	6344606	INMUN1
63	5104070 43	7444223	31.07.201 8	PVC RESIN	162.00	MTS	11896680	4920216	INMUN1
64	5104081 78	2534930	22.03.201 9	PVC RESIN	257.50	MTS	15535748	6250107	INMUN1
				TOTAL	10224.7 5	MTS	65122703 8	2662977 09	

65	5104032 06	4611810	29.01.201 7	PVC RESIN	36.2 9	MTS	2172069	588967	INNSA1
66	5104073 75	8342668	05.10.201 8	PVC RESIN	199. 68	MTS	13902398	3855830	INNSA1
				TOTAL	235 .97	MTS	16074467	4444797	
67	5103987 28	9113162	31.03.201 7	PVC RESIN	44.8 0	MTS	3504638	926214	INPTL6
				TOTAL			3504638	926214	
68	5104081 77	3007281	26.04.201 9	PVC RESIN	515. 00	MTS	32125716	12814788	INSTT6
				TOTAL			32125716	1281478 8	
69	5104065 97	2668783	01.04.201 9	PVC RESIN	170.00	MTS	10710000	3442480	INTKD6
70	5104065 97	2671418	02.04.201 9	PVC RESIN	170.00	MTS	10710000	3442510	INTKD6
71	5104080 28	9517185	04.01.201 9	PVC RESIN	148.50	MTS	9790186	2715308	INTKD6
72	5104080 28	9920393	04.02.201 9	PVC RESIN	255.00	MTS	16690357	5957882	INTKD6
73	5104068 21	8308172	04.10.201 8	PVC RESIN	148.50	MTS	10773611	2988061	INTKD6
74	5104073 75	8313649	04.10.201 8	PVC RESIN	49.50	MTS	3591204	996020	INTKD6
75	5104073 75	8306202	04.10.201 8	PVC RESIN	148.50	MTS	10773611	2988061	INTKD6
76	5104051 69 5104055 45	5448415	05.03.201 8	PVC RESIN	206.00	MTS	12472261	4925670	INTKD6
77	1019013 507	9564857	05.05.201 7	PVC RESIN	17.60	MTS	1006403	77745	INTKD6
78	5104065 95	7097784	05.07.201 8	PVC RESIN	25.00	MTS	1716237	655382	INTKD6
79	5104073 75	8332747	05.10.201 8	PVC RESIN	49.50	MTS	3658455	1014672	INTKD6
80	5104073 75	8333440	05.10.201 8	PVC RESIN	99.00	MTS	7316910	2029345	INTKD6
81	5104065 60	7955076	07.09.201 8	PVC RESIN	80.00	MTS	7844106	2391275	INTKD6
82	5104080 28	9987196	08.02.201 9	PVC RESIN	85.00	MTS	6010680	1912044	INTKD6
83	5104055 98 5104055 99 5104057 79 5104058 08	5495064	08.03.201 8	PVC RESIN	206.00	MTS	12472261	4925670	INTKD6
84	5104055 98 5104058 08	5495253	08.03.201 8	PVC RESIN	154.50	MTS	9354196	3694252	INTKD6
85	5104055 98 5104058 08	5495212	08.03.201 8	PVC RESIN	154.50	MTS	9354196	3694253	INTKD6
86	5104055 98 5104058 08	5495620	08.03.201 8	PVC RESIN	154.50	MTS	9614613	3766479	INTKD6
87	5104055 98	5495805	08.03.201 8	PVC RESIN	154.50	MTS	9354196	3694253	INTKD6

	5104058 08								
88	5104055 98 5104058 08	5500404	08.03.201 8	PVC RESIN	154.50	MTS	9614613	3261967	INTKD6
89	5104055 99 5104057 77 5104057 78	5495718	08.03.201 8	PVC RESIN	206.00	MTS	12472261	4925670	INTKD6
90	5104055 99 5104057 77 5104057 79	5494970	08.03.201 8	PVC RESIN	154.60	MTS	9365492	3698714	INTKD6
91	5104055 99 5104057 78	5494887	08.03.201 8	PVC RESIN	206.00	MTS	12819484	5021971	INTKD6
92	5104080 28	9576365	09.01.201 9	PVC RESIN	99.00	MTS	6526791	1810205	INTKD6
93	5104080 28	9576494	09.01.201 9	PVC RESIN	255.00	MTS	16655293	5932492	INTKD6
94	5104070 45	7572296	09.08.201 8	PVC RESIN	222.75	MTS	14949294	4146186	INTKD6
95	5104073 75	8380236	09.10.201 8	PVC RESIN	49.50	MTS	3658455	1014672	INTKD6
96	5104082 93	2014042	11.02.201 9	PVC RESIN	255.00	MTS	16982555	6049060	INTKD6
97	5104068 23	2798776	11.04.201 9	PVC RESIN	255.00	MTS	16508143	5858506	INTKD6
98	5104073 74	2383094	12.03.201 9	PVC RESIN	495.00	MTS	33351094	9249925	INTKD6
99	5104073 74	2384004	12.03.201 9	PVC RESIN	255.00	MTS	16969817	6015117	INTKD6
10 0	5104065 97	6792745	14.06.201 8	PVC RESIN	148.50	MTS	9813355	2821734	INTKD6
10 1	5104065 97	6792842	14.06.201 8	PVC RESIN	148.50	MTS	9813355	2821734	INTKD6
10 2	5104065 97	6792644	14.06.201 8	PVC RESIN	99.00	MTS	6542237	1814489	INTKD6
10 3	5104032 06	5238049	16.02.201 8	PVC RESIN	154.50	MTS	9177301	3624391	INTKD6
10 4	5104065 57	8084780	17.09.201 8	PVC RESIN	50.00	MTS	3922053	1520107	INTKD6
10 5	5104082 93	2092438	18.02.201 9	PVC RESIN	255.00	MTS	17268778	6128444	INTKD6
10 6	5104080 30 5104082 93	2895274	18.04.201 9	PVC RESIN	255.00	MTS	16508143	5858506	INTKD6
10 7	5104082 93	2142562	21.02.201 9	PVC RESIN	154.50	MTS	10000401	4733315	INTKD6
10 8	5104082 93	2154579	22.02.201 9	PVC RESIN	154.50	MTS	9910928	4690966	INTKD6
10 9	5104082 93	2155111	22.02.201 9	PVC RESIN	206.00	MTS	13214570	6254621	INTKD6
11 0	5104080 30	2522535	22.03.201 9	PVC RESIN	255.00	MTS	16279200	5223174	INTKD6
11 1	5104070 45	7323519	23.07.201 8	PVC RESIN	247.50	MTS	16696614	4630805	INTKD6
11 2	5104070 45	7325495	23.07.201 8	PVC RESIN	247.50	MTS	16696614	4630805	INTKD6
11 3	5104065 59	6515662	24.05.201 8	PVC RESIN	51.50	MTS	3202292	1268921	INTKD6

11 4	5104080 28	9797721	25.01.201 9	PVC RESIN	49.50	MTS	3302327	915900	INTKD6
11 5	5104070 45	7356512	25.07.201 8	PVC RESIN	247.50	MTS	16696614	4630805	INTKD6
11 6	5104034 59 5104048 19 5104055 45	6153448	27.04.201 8	PVC RESIN	50.70	MTS	3063004	1213727	INTKD6
11 7	5104034 59	4167309	27.11.201 7	PVC RESIN	148.50	MTS	9430313	2557076	INTKD6
11 8	5104080 28	9815121	28.01.201 9	PVC RESIN	255.00	MTS	16948673	6029526	INTKD6
11 9	5104034 55 5104043 63	3789335	28.10.201 7	PVC RESIN	123.75	MTS	7428695	2014328	INTKD6
12 0	5104070 45	7441048	31.07.201 8	PVC RESIN	25.00	MTS	1954368	749417	INTKD6
12 1	5103959 66	6070784	21.07.201 6	PVC RESIN	42.00	MTS	3334523	881256	INTKD6
12 2	5103959 66	6317610	10.08.201 6	PVC RESIN	42.00	MTS	3341835	883188	INTKD6
12 3	5103959 66	7107747	17.10.201 6	PVC RESIN	56.00	MTS	4186218	1106344	INTKD6
12 4	5103959 66	7108730	17.10.201 6	PVC RESIN	42.00	MTS	3139663	829758	INTKD6
12 5	5103959 66	6612790	05.09.201 6	PVC RESIN	56.00	MTS	4113094	1087019	INTKD6
12 6	5103959 66	5768969	25.06.201 6	PVC RESIN	50.00	MTS	3539621	935459	INTKD6
12 7	5103987 28	9178910	05.04.201 7	PVC RESIN	18.95	MTS	1025031	415841	INTKD6
12 8	5103987 28	9178850	05.04.201 7	PVC RESIN	23.64	MTS	1278720	518759	INTKD6
12 9	5103987 28	9561940	04.05.201 7	PVC RESIN	18.14	MTS	1062669	418231	INTKD6
13 0	5103959 66	4029688	25.01.201 6	PVC PLASTIC IZER	21.14	MTS	1284630	339505	INTKD6
				TOTAL (A)	8780.27	MTS	57726261 4	1938439 98	
13 1	5104057 79 5104057 77	6027001	18.04.201 8	TITANIU M DIOXID E	9.40	MTS	7877788	1249921	INTKD6
13 2	5104032 06 5104055 99	5380303	27.02.201 8	TITANIU M DIOXID E	18.80	MTS	3290620	1019434	INTKD6
13 3	5104101 68 5104101 68	2691570	03.04.201 9	TITANIU M DIOXID E	20.00	MTS	3405780	1019745	INTKD6
				TOTAL(48.2	MTS	14574188	3289100	
				B)					
13 4	5103987 28	7821943	14.12.201 6	DOP	96.00	MTS	6459863	1707229	INTKD6
				TOTAL(96	MTS	6459863	1707229	
				C)					
13 5	5103959 66	8788583	06.03.201 7	RELEAS E PAPER	144140	SQM	5321182	1574447	INTKD6

13 6	5103959 66	9357945	18.04.201 7	RELEAS E PAPER	77477	SQM	5060757	1497392	INTKD6
13 7	5103959 66	6715658	14.09.201 6	RELEAS E PAPER	3256	SQM	6463743	1259218	INTKD6
13 8	5103959 66	7640769	29.11.201 6	RELEAS E PAPER	154559	SQM	5565499	1646736	INTKD6
13 9	5104012 30	9924689	01.06.201 7	RELEAS E PAPER	79040	SQM	3716915	1094294	INTKD6
14 0	5104012 30	2073454	13.06.201 7	RELEAS E PAPER	131377	SQM	5286219	2126762	INTKD6
14 1	5104012 30	9903622	31.05.201 7	RELEAS E PAPER	149226	SQM	5932062	1746458	INTKD6
				TOTAL(D)	739075	SQM	37346377	1094530 7	
				A+B+C+ D			63564304 2	2097856 34	
				GRAND TOTAL			16806640 83	6234501 72	

26. Notification No. 18/2015-Cus dated 01.04.2015 have inbuilt condition that in case of non fulfillment of export obligation "the importer" has to pay back the duty alongwith the interest. The Section 28(4) of the Customs Act, 1962 provides for recovery of duty not paid by the importer by way of collusion, willful mis-statement and suppression of facts. However, Section 28(4) of the Customs Act, 1962 provides for recovery in cases within five years. Thus it appears that in this case, apart from inbuilt provisions of demand/recovery provided in the exemption notification, provisions of Section 28 (4) are also applicable for the Bills of Entry which are less than five years old on the date of this notice. The following duty-free imports have been made by M/s A M Vinyl Pvt. Ltd from **Mundra Port (INMUN1)** under Advance Authorisation Scheme, against which duty is recoverable by the Customs at this port The details of duty forgone are as under: -

S. No.	Import item	Quantity	Assessable Value (in INR)	Duty Forgone (in INR)
1	PVC Resin	10224.75 MT	651227038	266297709

27. In view of above a show cause notice F.No. **GEN/ADJ/COMM/36/2023-Adj dated 03.04.2023 issued to M/s A.M. Vinyl Private Limited and others (whose role were identified during investigation) by the Commissioner of Customs, Mundra** wherein they were called upon to show cause to the Commissioner of Customs, Customs House, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat- 370421, as to why:

- Diverted 10224.75MT PVC Resin having assessable value of **Rs.65,12,27,038/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under Notification No. 18/2015-Customs 01.04.2015;
- Duty of Customs amounting to **Rs. 26,62,97,709/-** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use, should not be

demanded and recovered from them under Notification No. 18/2015-Customs 01.04.2015 read with Section 28(4) of the Customs Act, 1962;

- c) Interest under provision of Notification Number 18/2015-Cus 01.04.2015 should not be demanded and recovered from them for such delayed payment/non-payment of duty of Customs;
- d) Penalty should not be imposed upon M/s **A.M. Vinyl Private Limited** under Section 112(a) and/or 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras;
- e) Penalty should not be imposed upon M/s **A.M. Vinyl Private Limited** under Section 114A of the Customs Act, 1962 for the reasons stated in forgoing paras.
- f) Penalty should not be imposed upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a) and/or 112(b), 114AA of the Customs Act, 1962 for the reasons stated in forgoing paras.
- g) Penalty should not be imposed upon **Shri Atul Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a) of the Customs Act, 1962 for the reasons stated in forgoing paras
- h) Penalty should not be imposed upon **Shri Ashok Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962 for the reasons stated in forgoing paras
- i) Penalty should not be imposed upon **Shri Parth Dodeja**, Director of M/s Salasar Impex Limited, under Section 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras
- j) Penalty should not be imposed upon **Shri Ankur Jain**, Director of M/s. Devji Traders, under Section 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras

28. The investigation carried out by the DRI also revealed that **M/s A.M. Vinyl Private Limited, A-104, Bhiwadi Industrial Area, Phase-I RIICO Chowk, Bhiwadi Rajasthan** had also imported PVC Resin and other goods through other Ports/Inland Container depots and they had diverted the same into the local market instead of manufacturing of export goods in their licensed premises in contravention to the Scheme of Advance Authorisation. The details of port-wise import are tabulated below: -

S.No.	Import item	Quantity	Assessable Value (in INR)	Duty Forgone (in INR)	Port of Import
1	PVC Resin/ DOP	3783.00 MT	238307782	89215780	INBDM6
2	Release paper	6080 SQM	352843	103880	INDEL4
3	PVC Resin	1284.50 MT	84351321	33121222	INDWN6
4	PVC Resin	307.50 MT	19077236	6740148	INLON6
5	PVC Resin	235.97 MT	16074467	4444797	INNSA1
6	PVC Resin	44.80 MT	3504638	926214	INPTL6
7	PVC Resin	515.00 MT	32125716	12814788	INSTT6
8	PVC Resin	8780.27 MT	577262614	193843998	INTKD6
	TiO2	48.20 MT	14574188	3289100	
	DOP	96.00 MT	6459863	1707229	
	Release paper	739075 SQM	37346377	10945307	

28.1. Therefore, seven other show cause notices were issued to M/s A.M. Vinyl Private Limited by the jurisdictional customs authority, where the import of effected, for recovery of customs duty under the provisions of Section 28(4) of Customs Act, 1962. Later, the said seven Show Cause Notice were made answerable to **Principal Commissioner of Customs, Custom House, Mundra Port, Kutch, Gujarat-370421** vide Corrigendum issued by the issuing authority in terms of Notification No. 28/2022-Cus(NT) dated 31.03.2022 and 29/2022-Cus(NT) dated 31.03.2022. The details of show cause notices are as under: -

S. N.	SCN No. & Date	Issued By	Name of Port	Total Duty Demand
1	VIII/ICD/TKD/6AG/GR.2G /A.M. Vinyl/2198/2021/3751 dated 18.02.2022	Asstt. Commissioner of Customs, Gr.2G, ICD Import, TKD, New Delhi	ICD TKD / INTKD6	20,97,85,634
2	VIII(B)40/ICD Patli/A M Vinyl/DRI-Inv./158/2021-22/719 dated 22.02.2022	Dy. Commissioner of Customs, ICD Patli, Gurugram.	ICD Patli / INPTL6	9,26,214
3	VIII/Cus/763/SCN/A.M.Vi nyl/ICD/SNP/2022-23 dated 25.03.2022	Deputy Commissioner of Customs, ICD Sonapat	ICD Ginnaur, Sonipat / INBDM6	8,92,15,780
4	261/2021-22/A.K.T./AC/ACC(Import) dtd 29.03.2022	Assistant Commissioner (EPMC & Licensing), ACC Import	ACC Import, NCH Delhi / INDEL4	1,03,880
5	04/PC/N/CUS-2022-23 dated 20.07.2022	Pr. Commissioner of Customs, Noida Customs Commissionerate	CFS Startrack / INSTT6 & ICD Loni / INLON6	1,95,54,936
6	VIII (Cus) /ICD /JTP/11/A.M. Vinyl/SCN/2023/ dated 19.01.2023	Assistant Commissioner of Customs, ICD Jhattipur, Panipat, Haryana	ICD Jhattipur / INDWN6	3,31,21,222
7	566/2021-22/DMC/NS-II/JNCH dated 22.12.2021	Joint Commissioner of Customs, DMC, JNCH	Nhava Sheva Custom House / INNSA1	44,44,797

28.2. The above show cause notices proposes; confiscation of goods for violation of Section 111(o) of the Customs Act, 1962; demand duty of Customs; and imposition of penalties on the various person. The details of proposals of show cause notices are as under: -

Sr. No.	SCN No. & Date	Total Demand of Duty(Rs.)	Value of Goods liable for confiscation(Rs.)	Penalty on M/s A.M. Vinyl Private Limited	Penalty on Shri Himanshu Chopra, Director of M/s A.M. Vinyl Pvt. Ltd.	Penalty on Shri Atul Chopra, Director of M/s A.M. Vinyl Pvt. Ltd.	Penalty on Shri Ashok Chopra, Director of M/s A.M. Vinyl Private Limited	Penalty on Shri Parth Dodeja, Director of M/s Salasar Impex Limited	Penalty on Shri Ankur Jain, Director of M/s. Devji Traders

1	VIII/ICD/TKD/6A G/GR.2G/A.M. Vinyl/2198/2021/ 3751 dated 18.02.2022 issued by Asstt. Commissioner of Customs, Gr.2G, ICD Import, TKD, New Delhi	20,97,85,634	63,56,43,0 42	Section 112(a)(II), Section 114A	Section 112(a)(II) , Section 114AA	Section 112(a)(II)	Section 114AA	Section 112(b)(II)	Section 112(b)(II)
2	VIII(B)40/ICD Patli/A M Vinyl/DRI- Inv./158/2021- 22/719 dated 22.02.2022 issued by Dy. Commissioner of Customs, ICD Patli, Gurugram.	9,26,214	3,50,4638	Section 112(a) and/or 11 2(b), Section 114A	Section 112(a) and/or 112(b), Section 114AA	Section 112(a)	Section 114AA	Section 112(b)	-
3	VIII/Cus/763/SCN /A.M.Vinyl/ICD/S NP/2022-23 dated 25.03.2022 issued by Deputy Commissioner of Customs, ICD Sonapat	8,92,15,780	23, 83,07,782	Section 112(a) and/or 11 2(b), Section 114A	Section 112(a) and/or 112(b), Section 114AA	Section 112(a)	Section 114AA	Section 112(b)	-
4	261/2021- 22/A.K.T./AC/AC C(Import) dtd 29.03.2022 issued by Assistant Commissioner (EPMC & Licensing), ACC Import, New Custom House, New Delhi	1,03,880	352843	Section 112(a) and/or 11 2(b), Section 114A	Section 112(a) and/or 112(b), Section 114AA	Section 112(a)	Section 114AA	Section 112(b)	-
5	04/PC/N/CUS- 2022-23 dated 20.07.2022 issued by Pr. Commissioner of Customs, Noida Customs Commissionerate	1.95,54,936	5,12,02,95 2	Section 112(a) and/or 11 2(b), Section 114A	Section 112(a) and/or 112(b), Section 114AA	Section 112(a)	Section 114AA	Section 112(b)	-
6	VIII (Cus) /ICD /JTP/11/A.M. Vinyl/SCN/2023/ dated 19.01.2023 issued by Assistant Commissioner of Customs, ICD Jhattipur, Panipat, Haryana	3,31,21,222	8,43,51,32 1	Section 112(a) and/or 11 2(b), Section 114A	Section 112(a) and/or 112(b), Section 114AA	Section 112(a)	Section 114AA	Section 112(b)	-
7	566/2021- 22/DMC/NS- II/JNCH dated 22.12.2021 issued by Joint Commissioner of Customs, DMC, JNCH	44,44,797	1,60,74,46 7	Section 112(a) and/or 11 2(b), Section 114A	Section 112(a) and/or 11 2(b), Section 114AA	Section 112(a)	Section 114AA	-	-

WRITTEN SUBMISSION

29. Shri Ankur Jain, Proprietor of M/s. Devji Traders filed written submission dated 05.10.2023, wherein they interalia stated as under:-

29.1. The Noticee has sold four consignments of release papers to M/s A. M. Vinyl Pvt. Ltd on High Sea Sale basis which were imported by them through Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017 and 2073454 dated 13.06.2017.

(i) It is on record that the Noticee had sold four consignments of Release Paper to M/s A. M. Vinyl Pvt Ltd. on High Sea Sale agreements during 2017 and M/s A. M. Vinyl Pvt. Ltd had imported the said goods, i.e., release paper mentioned in those High Sea Sale agreements vide the following Bills of Entry. It clearly indicated that M/s A. M. Vinyl Pvt. Ltd was the real owner of those goods. Thus, it is incorrect to say that the Noticee was the owner of imported goods and those goods were kept/utilized/sold by them. The copy of the High Sale agreements are enclosed as Annexure-1;

Sr No	Date of High Sea	Description of goods	Quantity in Kg	Bill of lading No.	Bill of Entry No. & date
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	Sale Agreement				
1	23.02.2017	Release Paper	23,659	0198591 dated 03.02.2017	8788583 dated 06.03.2017
2	28.03.2017	Release Paper	22,757	0199572 dated 10.03.2017	9357945 dated 18.04.2017
3	17.05.2017	Release Paper	24,870	L2-0712203034 dated 03.05.2017	9903622 dated 31.05.2017
4	19.05.2017	Release Paper	21,682	TFG2017000335(3) dated 05.05.2017	2073454 dated 13.06.2017

(ii) Further, it is also on record that the Noticee had issued invoices for the sale of above consignments to M/s A. M. Vinyl Pvt. Ltd on High Sea Sale basis. It is pertinent to mention that payments of sale of all these consignments have also been received by the Noticee from M/s A. M. Vinyl Pvt. Ltd. which is reflected/mentioned in the books of account of the Noticee. It also proved that M/s A. M. Vinyl Pvt Ltd was the actual owner of the above goods and the Noticee was neither the owner of the said imported goods nor the said goods were utilized/further sold by them. It is pertinent to mention that there is no evidence in the entire SCN to indicate that the imported goods were utilized or further sold by the Noticee:

Sr. No.	Date of HSS Agreement	Description of goods	Quantity in Kg	Invoice No. & Date of Noticee	Amount of Invoice (Rs.)	Status of payment
1	23.02.2017	Release Paper	23,659	2670 dated 23.02.2017	52,81,963.80	Received
2	28.03.2017	Release Paper	22,757	2747 dated 28.03.2017	49,97,367.20	Received
3	17.05.2017	Release Paper	24,870	R-84 dated 18.05.2017	56,67,667.32	Received
4	19.05.2017	Release Paper	21,682	R-90 dated 23.05.2017	51,22,644.26	Received

29.2. There is no evidence on record to suggest that the Noticee had re-purchased the above goods from M/s A. M. Vinyl Pvt. Ltd. which were sold by them on High Sea Sale basis and used or sold those goods to some other party.

(i) There is no evidence in the entire show cause notice that the M/s A. M. Vinyl Pvt. Ltd. had re-sold the above said four consignments of release paper to the Noticee which were sold by the Noticee to M/s A. M. Vinyl Pvt. Ltd. on High Sea Sale basis. The value of the release paper sold by the Noticee on High Sea Sale basis through above said four consignments is more than Rs. 2 crores. It is unimaginable that the Noticee can utilize or sell goods worth more than Rs. 2 crores without making payments to M/s A. M. Vinyl Pvt. Ltd. There is no such evidence of payment of the above amount by the Noticee to M/s A. M. Vinyl Pvt. Ltd. in the entire show cause notice. The evidences discussed in the above paras clearly indicate that the Noticee had sold all the four consignments to M/s A. M. Vinyl Pvt. Ltd. on High Sea Sale basis and had received payments of those consignments from M/s A. M. Vinyl Pvt. Ltd. through banking channel which are reflected in the books of account of the Noticee. Therefore, the allegation of the department has no force.

29.3. The five consignments, imported by M/s A. M. Vinyl Pvt. Ltd. through Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017, 2073454 dated 13.06.2017 and 9924689 dated

01.06.2017 were kept in the godown of the Noticee for few days on the request of the importer.

(i) It is on record that four consignments were sold by the Noticee to M/s A. M. Vinyl Pvt. Ltd. on High Sea Sale basis which were imported by M/s A. M. Vinyl Pvt. Ltd. through Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017 and 2073454 dated 13.06.2017. Mr. Himanshu Chopra of M/s A. M. Vinyl Pvt. Ltd. informed the Noticee that their factory was under repair, therefore, they do not have space to keep these consignments and requested the Noticee to keep these consignments for some time. Hence, on the request of the importer, these consignments were kept at the Khera Kalan godown of the Noticee for few days after its import and the said goods were lifted by M/s A.M.Vinyl PVM. Ltd. as per their requirement and availability of the space with them. Same was the case with the goods imported by M/s A. M. Vinyl Pvt. Ltd. through Bill of Entry No. 9924689 dated 01.06.2017. Though the goods imported vide the Bill of Entry No. 9924689 dated 01.06.2017 were not sold by the Noticee on High Sea Sale basis to the M/s A. M. Vinyl Pvt. Ltd. but on the request of Mr. Himanshu Chopra of M/s A.M.Vinyl Pvt. Ltd., those goods were also kept at the godown of the Noticee for few days and the same were lifted by M/s A.M.Vinyl Pvt. Ltd. as per their requirements.

(ii) The above facts were also disclosed by the Noticee to the department at the time of investigation during recording of his statement dated 20.07.2021. There is no evidence on record in the entire show cause notice to indicate that the goods imported vide above five Bills of Entry were either utilized or further sold by the Noticee. There is no evidence on record in the entire show cause notice to indicate that the facts stated by the Noticee about lifting of the imported consignments from the godown of the Noticee by M/s A. M. Vinyl Pvt. Ltd. after few days of its import were incorrect. The ledger account of M/s A.M. Vinyl Pvt. Ltd. for the period from 2016-17 to 2018-19 also indicates that no goods were purchased by the Noticee from M/s A.M.Vinyl Pvt. Ltd. during that period. It also proves the contention of the Noticee that the imported goods were kept at the godown of the Noticee only for few days after their import and, thereafter, the same were lifted by Mr. Himanshu Chopra as per their requirements,

29.4. The Noticee was not aware that M/s A. M. Vinyl Pvt. Ltd. has imported goods through Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017, 2073454 dated 13.06.2017 and 9924689 dated 01.06.2017 under Advance Authorisation by taking benefit of Notification No. 18/2015-Cus dated 01.04.2015.

(i) There is no evidence in the entire show cause notice that the Noticee was aware about the fact that M/s A. M. Vinyl Pvt. Ltd. had imported goods through Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017, 2073454 dated 13.06.2017 and 9924689 dated 01.06.2017, under Advance Authorisation by taking benefit of Notification No. 18/2015-Cus dated 01.04.2015. The Noticee had sold four consignments to M/s A. M. Vinyl Pvt Ltd on High Sea Sale basis which were subsequently imported by M/s A.M.Vinyl Pvt. Ltd. vide Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017 and 2073454 dated 13.06.2017. Thus, the Noticee was not aware that the said consignments were imported under Advance Authorisation by taking benefit of Notification No. 18/2015-Cus dated 01.04.2015.

(ii) M/s A. M. Vinyl Pvt. Ltd. did not provide copy of the above Bills of Entry at the time of keeping the imported goods in the godown of the Noticee, There is no evidence in the show cause notice that the copy of the bills of entry were also supplied to the Noticee by M/s A. M. Vinyl Pvt. Ltd. when the imported goods were kept / delivered at the godown of the Noticee. In fact, M/s A. M. Vinyl Pvt. Ltd. had given copy of the above Bills of Entry to Noticee after several months of the import when the same were insisted by the Noticee for submission to their bank. Same was the case with the

Goods imported vide Bill of Entry No 9924689 dated 01.06.2017. The Noticee was not aware that the said goods were imported under Advance Authorisation by taking benefit of Notification No. 18/2015-Cus dated 01.04.2015 as the copy of the said Bill of Entry was neither provided to the Noticee when the said goods were kept at the godown of the Noticee nor it was subsequently given to the Noticee.

(iii) Thus, the Noticee was completely unaware that the goods kept by them in their godown for few days were imported under Advance Authorisation by taking benefit of Notification No. 18/2015-Cus dated 01.04.2015 vide Bill of Entry No. 9924689 dated 01.06.2017. There is no evidence in the entire show cause notice that copy of above five Bills of Entry were with the Noticee at the time of keeping the above goods in his godown or he was aware that those goods were imported under Advance Authorisation by taking benefit of Notification No. 18/2015-Cus dated 01.04.2015. Thus, the allegations against the Noticee are baseless.

29.5. The Show Cause Noticee has not been issued by the proper officer and thus liable to be quashed.

(A) The present show cause notice has been issued for holding the goods valued of Rs, 63,56,43,042/- liable for confiscation under section 111 (0) of the Customs Act, 1962, for demanding and recovery of the Customs duty amounting to Rs, 20,97,85,634/ under Notification No. 18/2015-Customs dated 01.04.2015 read with section 28(4) of the customs Act, 1962 in respect of the Bills of Entry for the period from June, 2016 to April, 2019.

Section 28 (4) of the Customs Act, 1962 states as under;

"Where any duty has not been levied or not paid or has been short levied or short paid or erroneously refunded, or interest payable has not been paid, part paid or erroneously refunded, by reasons of, -

- (a) Collusion; or
- (b) Any willful mis-statement; or
- (c) Suppression of facts,

By the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice".

(B) In the present show cause notice duty of customs amounting to Rs. 20,97,85,634/ has been demanded under Notification No. 18/2015- Customs dated 01.04.2015 read with Section 28(4) of the Customs Act, 1962. The proper officer under Section 28(4) of the Customs Act, 1962 for demanding the above said amount is Commissioner of Customs/ Pr. Commissioner of Customs. But the present show cause notice has been issued by Assistant Commissioner of Customs and is answerable to Deputy/Assistant Commissioner of Customs (Gr.2G), Tughalakabad, Delhi, who is junior to the Pr. Commissioner of Customs/ Commissioner of Customs and, thus, is not competent to issue the above show cause notice. In view of the above this show cause notice is liable to be quashed.

29.6. The statement dated 08.03.2021 of Sh. Sanjay Sharma, Customs Broker for M/s A.M.Vinyl Pvt. Ltd. cannot be relied as the same is full of contradictions.

(i) Statement of Sh. Sanjay Sharma was recorded on 08.03.2021 in which he, inter alia, stated that he had been working as Customs Broker with one or two parties on the license of Adopt Logistics and had provided CHA services to M/s A. M. Vinyl Pvt.

Ltd., Bhiwadi in the import of five consignments which were sold by Sh. Ankur Jain of M/s Devji Traders on High Sea Sale basis to M/s A.M. Vinyl Pvt. Ltd.; that he got the work of M/s A.M. Vinyl Pvt. Ltd. through Sh. Ankur Jain; that he had sent his person to Bhiwadi to verify the factory premises of M/s A.M. Vinyl Pvt Ltd. and who confirmed the existence of the said factory; that he did not know any person of M/s A.M. Vinyl Pvt. Ltd.; that he had received payments for their charges from M/s A.M. Vinyl Pvt. Ltd. through cheques.

(ii) As per Regulation 10 of the Customs Brokers Licensing Regulations, 2018 a Customs Broker shall-

(a) obtain an authorization from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker

(b) verify correctness of Importer Exporter Code (IEC) number, Goods and Service Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

(iii) Thus, Sh. Sanjay Sharma as per above Regulation 10 was duty bound to perform the above functions/ full fil above obligations before acting as a Customs Broker for the importer which he must have done. It is also reflected in his above statement dated 08.03.2021 in which he has categorically admitted that he had sent his person to Bhiwadi to verify the factory premises of M/s A.M. Vinyl Pvt. Ltd. and who confirmed the existence of the said factory and that he had received payments for their charges from M/s A.M. Vinyl Pvt. Ltd. through cheques. These facts clearly show that he knew M/s A.M. Vinyl Pvt. Ltd. very well and was also in touch with them, otherwise, how he could have received various payments through cheques from M/s A.M. Vinyl Pvt. Ltd. Further, as per Regulation 10 also, he had to verify correctness of Importer Exporter Code (IEC) number, Goods and Service Tax Identification Number (GSTIN), identification of his client and functioning of his client at the declared address which he had admitted to have done. Thus, the contention of Sh. Sanjay Sharma that he did not know any body in M/s A. M. Vinyl Pvt. Ltd. is incorrect. This also indicates that his statement dated 04.03.2021 is self-contradictory and, hence, cannot be relied. It is also requested that cross examination of Sh. Sanjay Sharma may be allowed to ascertain the above facts. In the absence of cross examination his statement should not be considered as an evidence. Reliance is placed on the decision of Hon'ble Delhi High Court in the case of Additional Director General (Adjudication) Versus Its My Name Pvt. Ltd., reported as 2021 (375) E.L.T. 545 (Del.), wherein Hon'ble Delhi High Court held that statements, though admissible in evidence, acquire relevance only when they are, in fact, admitted in evidence, by the adjudicating authority and, if the affected assessee so chooses, tested by cross-examination.

29.7. Duty foregone on the Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017, 2073454 dated 13.06.2017 and 9924689 dated 01.06.2017 has been wrongly calculated as Rs. 92,98,571/- in para 43 of the SCN.

(A) It has been alleged in para 43 of the Show Cause Notice that the Noticee has acquired possession of duty free material valued at Rs. 3,17,80,878/- imported vide Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017, 2073454 dated 13.06.2017 and 9924689 dated 01.06.2017 which were liable to confiscation under the provisions of the Customs Act, 1962 and on which duty of Rs. 92,98,571/- was saved under Advance Authorisation Scheme and, thus, the Noticee was liable for penalty under Section 112(b) of the Act, *ibid*. Assuming but not admitting the above allegations to be true, it is incorrect to say that on the above goods, duty of Rs. 92,98,571/- was saved under Advance Authorisation. As per para 44 of the said Show Cause Notice (Table-A Sr. No. 73, 74, 77 to 79), duty foregone

on the above said five Bills of Entry comes to Rs. 80,39,353/- instead of Rs. 92,98,571/- as mentioned in para 43 of the SCN.

Further the rate of duty as per Bills of Entry was BCD 10%, CVD, 12.5%, Customs Education Cess-2%, Customs Sec & Higher Education Cess-1% and Addl duty-4%. As per above duty structure, assuming but not admitting allegation of the department to be true, the duty forgone in case of Bill of Entry No. 2073454 dated 13.06.2017 (having assessable value as Rs. 52,86,219/-) comes to Rs. 15,56,262/ while in para 44 on page 55 of the SCN it has been wrongly mentioned as Rs. 21,26,762/-. Similarly, the duty forgone in case of Bill of Entry No. 9924689 dated 01.06.2017 (having assessable value as Rs. 37,16,915/-) comes to Rs. 6,31,876/ while in para 44 on page 55 of the SCN it has been wrongly mentioned as Rs. 10,94,294/- (Since the goods falling under 48115190 of Japanese origin are exempted vide Notification No. 69/2011 dated 29.7.2011 (Sr. No. 357 and in this case the as per Bill of Entry the goods are imported from Japan and there is no evidence in the SCN that the goods are not of Japanese origin) the duty forgone on the above five Bills of Entry comes to Rs. 70,06,435/- instead of Rs. 92,98,571/- as mentioned in the SCN.

Sr. No.	Bill of Entry No. & Date	Assessable Value	Duty foregone as per Table A of the SCN (In Rs.)	Actual duty foregone
1	8788583 dated 06.03.2017	53,21,182/-	15,74,447/-	15,74,447/-
2	9357945 dated 18.04.2017	50,60,757/-	14,97,392/-	14,97,392/-
3	9924689 dated 01.06.2017	37,16,915/-	10,94,294/-	6,31,876/-
4	2073454 dated 13.06.2017	52,86,219/-	21,26,762/-	15,56,262/-
5	9903622 dated 31.05.2017	59,32,062/-	17,46,458/-	17,46,458/-
	Total		80,39,353/-	70,06,435/-

*Wrongly mentioned as Rs.92,98,571/- as mentioned in para 43 of the SCN

29.8. The Noticee was under obligation to sell Release Paper to M/s A. M. Vinyl Pvt. Ltd.

The Noticee is a distributor of M/s FAVINI S. r. l. Italy and has a distribution agreement dated 01.12.2016 with them, for the import and sale of Release Paper to Indian customers. The Schedule C (Customers) of the said agreement contained names of customer to whom the Noticee could sale goods. The said Schedule contained the name of M/s A. M. Vinyl Pvt. Ltd also. Thus M/s A. M. Vinyl Pvt. Ltd

was not a stranger to the Noticee and he was under obligation to sell the Release Paper imported from M/s FAVINI S. r. 1. Italy to M/s A. M. Vinyl Pvt. Ltd in case of demand.

29.9. Penalty not imposable under Sections 112 (b) (ii) of the Customs Act, 1962

A. The SCN also seeks to impose penalty on the Noticee under Sections 112 (b) (ii) of the Customs Act, 1962.

B. As per Section 112 (b) (ii) of the Customs Act, 1962 any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 shall be liable, in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees whichever is higher:

C. From the above it is quite clear that penalty under section 112 (b) (ii) could be imposed only in the case when the Noticee knows or has reasons to believe that the goods of which he acquired possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing are liable to confiscation under section 111, in the case of dutiable goods, other than prohibited goods. In the present case related to the Noticee, the goods involved were Release Paper which is dutiable and not prohibited goods. Thus, prior knowledge or reason to belief that the impugned goods were liable to confiscation under the provisions of Act, ibid is a must and is a pre-condition for imposing penalty under section 112 (b) (ii) of the Customs Act, 1962. But, in the entire Show cause Notice, there is no evidence to prove or suggest that the Noticee had prior knowledge or reason to belief that the release paper imported by M/s A. M. Vinyl Pvt Ltd vide Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017, 2073454 dated 13.06.2017 and 9924689 dated 01.06.2017, and kept by him for few days in his godown, were liable to confiscation. There is no evidence in the entire Show Cause Notice to suggest that the Noticee was even aware of the fact that the goods kept by him for few days were imported by M/s A. M. Vinyl Pvt. Ltd under Advance Authorisation Scheme or the importer has no intention to export the goods to be manufactured from these imported goods.

D. Further, it is on record that the Noticee had sold four consignments to M/s A. M. Vinyl Pvt. Ltd on High Sea Sale basis which were imported by M/s A. M. Vinyl Pvt. Ltd through Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017 and 2073454 dated 13.06.2017. It is also on record that Mr. Himanshu Chopra of M/s A. M. Vinyl Pvt. Ltd. informed the Noticee that their factory was under repair, therefore, they do not have space to keep these consignments and requested Noticee to keep these consignments for some time. Hence, on the request of the importer these consignments were kept at the Khara Kalan godown of the Noticee for few days after its import and the said goods were lifted by M/s A.M.Vinyl Pvt. Ltd. as per their requirement and availability of the space with them. Same was the case with the goods imported by M/s A. M. Vinyl Pvt. Ltd through Bill of Entry No. 9924689 dated 01.06.2017. Though the goods imported vide the Bill of Entry No. 9924689 dated 01.06.2017 were not sold on High Sea Sale basis to the M/s A. M. Vinyl Pvt. Ltd, but on the request of Mr. Himanshu Chopra of M/s A.M.Vinyl Pvt. Ltd., those goods were also kept at the godown of the Noticee for few days and the same were lifted by M/s A.M.Vinyl Pvt. Ltd. as per their requirements.

E. The above facts were also disclosed by the Noticee to the department at the time of investigation during recording of his statement dated 20.07.2021. There is no evidence on record in the entire show cause notice to indicate that the goods imported vide above five Bills of Entry were either utilized or further sold by the Noticee. There is no evidence on record in the entire show cause notice to indicate that the facts

stated by the Noticee about lifting of the imported consignments from the godown of the Noticee by M/s A. M. Vinyl Pvt. Ltd after few days of its import were incorrect. The ledger account of M/s A.M. Vinyl Pvt. Ltd for the period from 2016-17 to 2018-19 also indicate that no goods were purchased by the Noticee from M/s A.M.Vinyl Pvt. Ltd during that period. It also proves the contention of the Noticee that the imported goods were kept at the godown of the Noticee only for few days after their import and, thereafter, the same were lifted by Mr. Himanshu Chopra as per their requirements. It is pertinent to mention that copy of the above Bills of Entry were never provided to the Noticee by M/s A. M. Vinyl Pvt. Ltd. along with the goods while the same were being kept at the godown of the Noticee on the request of Sh. Himanshu Chopra of M/s A. M. Vinyl Pvt. Ltd. for few days. In fact, the Noticee had received copy of the Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017 and 2073454 dated 13.06.2017 (filed by M/s A. M. Vinyl Pvt Ltd. in respect of High Sea Sale made by the Noticee) after few months of the import when the same were required by the Noticee for submitting to the banks.

F. All the documentary evidences like High Sea Sale agreements executed between Noticee and M/s A. M. Vinyl Pvt. Ltd., Sale invoices raised by the Noticee to M/s A. M. Vinyl Pvt. Ltd. for the sale of those goods, Ledger accounts of the Noticee in respect of M/s A. M. Vinyl Pvt. Ltd. clearly indicate that the Noticee had sold above goods to M/s A. M. Vinyl Pvt. Ltd. on High Sea Sale basis and payments of the same had been received by the Noticee through banking channel which are reflected in the books of accounts of the Noticee. It is pertinent to mention that the release paper /goods imported by M/s A. M. Vinyl Pvt. Ltd. vide Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017, 2073454 dated 13.06.2017 and 9924689 dated 01.06.2017 were kept at the godown of the Noticee for few days after import on the request of Mr. Himanshu Chopra of M/s A. M. Vinyl Pvt. Ltd. who had informed the Noticee that their factory was under repair, therefore, they do not have space to keep these consignments and requested Noticee to keep these consignments for some time. Hence, on the request of the importer these consignments were kept at the Khera Kalan godown of the Noticee for few days after its import and the said goods were lifted by M/s A.M.VinylPvt. Ltd. as per their requirement and availability of the space with them.

G. Thus, it is incorrect to say that the Noticee had acquired possession of or was in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with goods imported by M/s A. M. Vinyl Pvt. Ltd. vide Bills of Entry No. 8788583 dated 06.03.2017, 9357945 dated 18.04.2017, 9903622 dated 31.05.2017, 2073454 dated 13.06.2017 and 9924689 dated 01.06.2017 which he knows or has reason to believe are liable to confiscation under section 111 of the Customs Act, 1962. Thus, no penalty is leviable on the Noticee under Section 112 (b) (ii) of the Customs Act, 1962. Hence the proceeding against the Noticee is liable to be dropped.

PERSONAL HEARING

30. Following the principles of natural justice and the provisions laid down in Customs Act, 1962, opportunity of personal hearing in the case was given to the noticees and personal hearing in the matter was fixed on 30.05.2024, 25.06.2024 and 24.07.2024.

30.1. 1st Personal hearing on 30.05.2024: - None of the noticee appeared to attend the PH

30.2. 2nd Personal hearing on 25.06.2024: - None of the noticee appeared to attend the PH

30.2. 3rd Personal hearing on 24.07.2024: -

Shri Rajnish Kumar Varma, Advocate appeared in the personal hearing on behalf of Shri Ankur Jain, Director of M/s. Devji Traders. He stated that they have sold the goods covered under only four Bills of Entry to M/s. A.M. Vinyl Private Limited which pertains to Tughlakabad ICD, therefore penalty proposes under the Show Cause Notices other than Tughlakabad is not appropriate. He reiterated the written submissions and requested to drop the penal proceedings initiated against his client

DISCUSSION AND FINDINGS

31. M/s A.M. Vinyl Private Limited, A-104, Bhiwadi Industrial Area, Phase-I RIICO Chowk, Bhiwadi Rajasthan, having IEC No. 0504076728 and registered address at 323, 3rd Floor, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019 have imported PVC Resin, DOP, TiO₂ and Release Paper, etc. through different ports/ICD viz. Mundra Port, ICD Tughlakabad, New Delhi, ICD Patli, ICD Ginnaur, Sonapat, Air Cargo Complex-New Delhi, CFS Startrack, ICD Loni, ICD Jhattipur and Nhava Sheva. Acting upon an intelligence, regarding misuse of Advance Authorisation Scheme, an investigation was initiated by DRI, Regional unit NOIDA, UP. The said investigation culminated to the issuance of **eight Show Cause Notices** to the importer and other persons by the jurisdictional Customs Authorities. After publication of **Notification No. 29/2022-Customs (NT) dated 31.03.2022**, Commissioner of Customs, Customs House, Mundra, is the proper authority to adjudicate the above SCNs, being highest amount of duty involved at Mundra Port. Accordingly, the **seven other Show Cause Notices** issued by other Customs Authorities have been made answerable to me.

➤ **The details of the eight Show Cause Notices which are to be adjudicated in the present order, are as under:**

- (i) F.No. GEN/ADJ/COMM/36/2023-Adj dated 03.04.2023 issued to M/s A.M. Vinyl Private Limited and others by the Commissioner of Customs, Mundra.
- (ii) VIII/ICD/TKD/6AG/GR.2G/A.M. Vinyl/2198/2021/3751 dated 18.02.2022 issued by Asstt. Commissioner of Customs, Gr.2G, ICD Import, TKD, New Delhi.
- (iii) VIII(B)40/ICD Patli/A M Vinyl/DRI-Inv./158/2021-22/719 dated 22.02.2022 issued by Dy. Commissioner of Customs, ICD Patli, Gurugram.
- (iv) VIII/Cus/763/SCN/A.M.Vinyl/ICD/SNP/2021-22 dated 25.03.2022 issued by Deputy Commissioner of Customs, ICD Sonapat.
- (v) 261/2021-22/A.K.T./AC/ACC(Import) dtd 29.03.2022 issued by Assistant Commissioner (EPMC & Licensing), ACC Import, New Custom House, New Delhi
- (vi) 04/PC/N/CUS-2022-23 dated 20.07.2022 issued by Pr. Commissioner of Customs, Noida Customs Commissionerate.
- (vii) VIII (Cus) /ICD /JTP/11/A.M. Vinyl/SCN/2023/ dated 19.01.2023 issued by Assistant Commissioner of Customs, ICD Jhattipur, Panipat, Haryana
- (viii) 566/2021-22/DMC/NS-II/JNCH dated 22.12.2021 issued by Joint Commissioner of Customs, DMC, JNCH

32. I observe that all above eight show because notices have been issued by invoking the provisions of Section 28(4) of the Customs Act, 1962, whereas Section 28(9) of the Customs Act prescribed a time limit of one year to determine the duty from date of issuing of show cause notices. Therefore, it is imperative to firstly examine whether the adjudication proceedings of the said show cause notices are within the time limit prescribed in Section 28(9) *ibid*. I find that case was kept in call

book in terms of Instruction no.04/2021-Customs dated 17.03.2021/ DO Letter-Circular F. No. 334/1/2012-TRU dated 01.06.2012 and the same was intimated to the noticees vide letter dated 24.04.2023. The case has been retrieved from the call book on **07.08.2023** hence the time limit to adjudicate the instant case will govern under the provisions of Section 28(9A) of Customs Act, 1962 and Section 28(9) of Customs Act. Therefore, I find that in the present proceedings of Adjudication, all the Show Cause Notices are within the limit in terms of Section 28(9A) and Section 28(9) of the Customs Act, 1962.

33. Shri Ankur Jain, Director of M/s. Devji Traders in his written submission dated 05.01.2023 has questioned the authority of Deputy/Assistant Commissioner of Customs (Gr.2G), Tughalakabad, Delhi under Section 28(4) of Customs Act, 1962 who had issued show cause notice in respect of import affected at ICD, Tughalakabad, Delhi. I have examined the above contention of Shri Ankur Jain, I find that Hon'ble Supreme Court of vide order dated 09.03.2021 in Civil Appeal No. 1827 of 2018 in the case of M/s. Canon India Private Ltd. Vs. Commissioner of Customs has ruled that an officer(or his higher officer or his successor or any other officer who has been assigned the function of assessment) who had assessed the Bills of Entry is the proper officer to issue the Show Cause Notice under the provisions of Section 28(4) of Customs Act, 1962. Further, the CBIC vide letter F.No. 450/72/2021-Cus IV dated 16.04.2021 had issued a letter to the Principal Additional Director General, DRI New Delhi, which stated as under:-

"2. The matter has been examined in light of the clarifications received from your office vide letter dated 15.04.2021. Since there is a possibility of multiple interpretations, the matter needs to be examined further in consultation with the Ministry of Law and Justice.

*3. However, since DRI has indicated that several cases may be barred by the limitation of time at an early date, as a matter of abundant pre-caution, **the SCNs may be got issued by Deputy Commissioner/Assistant Commissioner of the concerned port of Import and be made answerable to them**, pending further It may also be mentioned in this context that further action in respect of the said SCNs will be governed by Board's Instruction 04/2021- Customs dated 17/3/2021".*

33.1. In view of Order of Hon'ble Apex case in case of M/s. Canon India Private Ltd. Vs. Commissioner of Customs and CBIC letter dated 16.04.2021, I find that the Deputy/Assistant Commissioner of Customs (Gr.2G), Tughalakabad, Delhi was the proper officer to issue Show Cause Notice under Section 28(4) of Customs Act, 1962 and the contention of Shri Ankur Jain does not sustain.

34. Now, I proceed to examine the charges of the case, I have carefully gone through the Show Cause Notices, the relied upon documents, legal provisions and the records available before me. The issues before me to decide are as under:

- a) Whether the subject goods i.e. of PVC Resin imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended, are liable for confiscation under Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under the said notification;
- b) Whether the Duty of Customs payable on the goods in respect of which export obligation could not be fulfilled is liable to be demanded and recovered under Notification No. 18/2015-Customs 01.04.2015 read with Section 28(4) of the Customs Act, 1962;

- c) Whether the Bank Guarantee is to be encashed, if any, submitted for the above imports and appropriate the proceeds against duty demanded;
- d) Whether the interest under provision of Notification Number 18/2015-Cus 01.04.2015 is recoverable from them for such delayed payment/non-payment of duty of Customs on the offending goods;
- e) Whether the Penalty is imposable upon various persons under **Section 112, Section 112(b), Section 114A and Section 114AA of the Customs Act, 1962** as proposed vide impugned SCNs

35. After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. The foremost issue before me to decide in this case as to whether duty of Customs payable on the goods in respect of which export obligation could not be fulfilled is liable to be demanded and recovered under Notification No. 18/2015-Customs 01.04.2015 read with Section 28(4) of the Customs Act, 1962.

36. I find that M/s **A.M. Vinyl Private Limited, A-104, Bhiwadi Industrial Area, Phase-I RIICO Chowk, Bhiwadi Rajasthan**, having IEC No. **0504076728** and registered address at 323, 3rd Floor, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019 have imported PVC Resin, DOP, TiO₂ and Release Paper, etc. under Advance Authorization Scheme without payment of duty of Customs under Customs notifications no. 96/2009-Cus dated 11.09.2009 & 18/2015-Cus dt. 01.04.2015 effective in material time since the year 2012.

36.1. An intelligence gathered by the DRI indicated that the importer have diverted the duty free material instead of using it in manufacturing of export. Accordingly, investigation was initiated by DRI, NOIDA Regional Unit, Noida against M/s **A.M. Vinyl Private Limited** for misuse of the Advance Authorization scheme and contravention of said provisions of Customs Notifications. During the course of investigation, search at factory premises of M/s A.M. Vinyl Pvt. Ltd situated at A-104, RIICO Industrial Area, PHASE-I RIICO Chowk, Bhiwadi Rajasthan was conducted by DRI officers on 08.08.2019. The factory was found closed and only one guard was available in the premises. On being asked the security guard informed that he had joined 3-4 days before and had no idea about the owners. He further informed that factory was closed due to a fire incident previous year. On the request of officers, the security Guard opened the main gate of the factory. The officers took a round of the factory alongwith security Guard. No stock of PVC resin was found. The plant and machinery were also found non-operational. The officers took some photographs of the premises and machinery. Few of photographs are attached in the show cause notice. As the factory premise was closed and no documents were recovered, searches were also attempted at the registered office of M/s A.M. Vinyl Pvt. Ltd. situated at 323, 3rd floor, Hemkunt Chambers, 89, Nehru Place, New Delhi and residential addresses of Directors mentioned on IEC printout taken from DGFT website. All the premises were found locked and on being enquired it transpired that they have shifted to some other place and no document was recovered from any of the premises.

36.2. In order to ascertain the total number of Advance authorisations issued to A.M. Vinyl Private Limited, information downloaded from the website of the DGFT reflected that the importer has obtained 54 Advance Authorisations for the period 22.08.2012 to 24.04.2019. Further, to know the actual number Advance Authorisation issued to the importer and EODC status thereof, correspondence was made with the office of Addl. DGFT, CLA, New Delhi. The office of the Addl. DGFT, CLA, New Delhi vide their letter dated 24.09.2019, 05.11.2019 and 24.02.2021 provided copies of 54 Advance Authorisations along with documents. Simultaneously, statement of responsible

persons of CHAs who had cleared the imported goods at Ports/ICDs were recorded under the provisions of Section 108 of Customs Act, 1962 and documents were called upon from the CHAs namely M/s Skyking (I) Tours & Travels, M/s Venkatesh Agencies, M/s Hemjyot Agency, M/s OSR Forwarders, M/s Graas Logistics India, M/s Rajeshwaree Shipping & Logistics, M/s Unicorn World Logistics, M/s Adept Logistics, M/s Allwin Shipping Services, M/s Chetan Ruhela, M/s Rakesh Kumar, M/s S K Freight Movers and M/s Skyking(I) Cargo Agents. From the documents provided by the CHAs, it emerged that M/s A.M. Vinyl Pvt. Ltd has made exports during the period from 2012 to 2018 under Advance Authorisation Scheme. Documents received from the office of the DGFT revealed that M/s A M Vinyl Pvt. Ltd has claimed 100% export obligation fulfillment in respect of following 15 Advance authorizations. Status of these Advance Authorisations were checked from www.eodc.online. The DGFT had already redeemed three Advance Authorisations, issued Show Cause Notice in two Advance Authorisations and deficiency letter in ten Advance Authorisations, imports made under these 15 Advance Authorisations under Notification Nos. 96/2009-Cus dated 11.09.2009 was considered in the notice.

33.6.2.1. Though the DGFT provided copies of 54 Advance Authorisations, documents provided by the CHAs and import data obtained from EDI System, it emerged that M/s A M Vinyl Pvt. Ltd has made imports under 57 Advance Authorisations, out of which it claimed export fulfillment under 15 Advance Authorisations. **Thus, M/s A.M. Vinyl Pvt. Ltd. has not made any export against 42 Advance Authorisations and duty foregone amount in respect of import made against 42 Advance Authorisations is Rs. 62,34,50,172/-.** Thus there is default in fulfillment of export obligation under 42 Advance Authorisations. Port wise duty foregone on imports made by M/s A.M. Vinyl Pvt. Ltd. under these 42 Advance Authorisations works out to be as under:-

S.No.	Import item	Quantity	Assessable Value (in INR)	Duty Forgone (in INR)	Port of Import
1	PVC Resin/ DOP	3783.00 MT	238307782	89215780	INBDM6
2	Release paper	6080 SQM	352843	103880	INDEL4
3	PVC Resin	1284.50 MT	84351321	33121222	INDWN6
4	PVC Resin	307.50 MT	19077236	6740148	INLON6
5	PVC Resin	10224.75 MT	651227038	266297709	INMUN1
6	PVC Resin	235.97 MT	16074467	4444797	INNNA1
7	PVC Resin	44.80 MT	3504638	926214	INPTL6
8	PVC Resin	515.00 MT	32125716	12814788	INSTT6
9	PVC Resin	8780.27 MT	577262614	193843998	INTKD6
	TiO2	48.20 MT	14574188	3289100	
	DOP	96.00 MT	6459863	1707229	
	Release paper	739075 SQM	37346377	10945307	
TOTAL			1680664083	623450172	

36.7. I find that M/s A M Vinyl Pvt. Ltd has imported the goods under 42 Advance Authorisations and availed benefit of Notification No. 18/2015-Cus dated 01.04.2015, as amended, and did not pay any Customs duty on such input materials at the time of importation on condition that such goods shall be used in manufacture of export goods. Advance Authorisation Scheme is implemented by DGFT under the Foreign Trade Policy. Advance Authorisation Scheme allows duty free import of inputs, which are physically incorporated in an export product. In addition to any inputs, packaging material, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, is also be allowed. The quantity of inputs allowed for a given product is based on specific norms defined for that export product, which considers the wastage generated in the manufacturing process. DGFT provides a sector-wise list of Standard Input-Output Norms (SION) under which the exporters may choose to apply.

Alternatively, exporters may apply for their own ad-hoc norms in cases where the SION does not suit the exporter. Advance Authorization covers manufacturer exporters or merchant exporters tied to supporting manufacturer(s). **The conditions attached to imports under advance authorisation scheme and Notification No. 18/2015-Cus dated 01.04.2015 are as under:-**

- **Para 4.16 of the Foreign Trade Policy 2015-20 stipulates that;**
 - (i) Advance Authorisation and/ or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.
- **Para 4.21 of the Hand Book of Procedure 2015-20 stipulates that;** Every Advance Authorisation holder shall maintain a true and proper account of consumption and utilization of duty free imported/ domestically procured inputs against each authorisation as prescribed in Appendix 4-I. This record in Appendix 4-I format, duly verified and certified by the jurisdictional Excise Authority, shall be submitted to the concerned Regional Authority at the time of filing application for redemption / bond waiver. Regional Authority shall compare the details of Appendix 4-I, with that of the inputs allowed in the authorisation, before allowing redemption or bond waiver against individual authorization. Such records shall be preserved for a period of at least three years from the date of redemption.
- The Condition Sheet attached with the Advance Authorisations issued by the DGFT have following conditions amongst others:
 - i) **condition No. 6:-** The exempt goods imported against this authorisation shall only be utilized in accordance with the provisions of paragraph 4.16 of the Foreign Trade Policy 2015-20 and other provisions and the relevant Customs Notification [Custom Notification No. 18/2015 dated 01.04.2015 (for physical exports), 21/2015 dated 01.04.2015 (for deemed exports), 22/2015 dated 01.04.2015 (for advance authorizations for prohibited goods) and 20/2015 (for annual advance authorizations) as the case may be], as amended from time to time.
 - ii) **condition No. 7:-** The authorisation holder shall abide by the instructions contained in paragraph 4.21 of the HBP, (2015-2020), as the case may be, for maintenance of a true and proper account of consumption and utilization of inputs and furnish returns to the concerned Regional Authority as per the provisions of FTP and the procedure laid there under.
 - iii) **condition No. 10:-** the authorisation holder to comply with the provisions of paragraph 4.10 and paragraph 4.35 of Handbook of Procedure, 2015-2020, as amended from time to time, with regard to transfer of any material from one unit of the authorisation holder to any other unit of the authorisation holder included in IEC or to the supporting manufacturer/jobber.
- Condition No. (x) of the Notification No. 18/2015-Customs dated 01.04.2015 stipulates that **"the said authorisation shall not be transferred and the said materials shall not be transferred or sold"**. Further the condition no. (iv) of the Notification No. 18/2015-Customs dated 01.04.2015 stipulates that, **"the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;"**

36.8. I find that it is a settled proposition of laws that the beneficiary has to abide by any condition and have to fulfill all the conditions in cases where they are availing the tax exemption. In the present case, the importer did not fulfil the compulsory condition to export the goods against the import has made them liable to pay the duty along with interest and they have executed the bond under the provision of Section 143 of the Customs Act, 1962 for payment of duty in case of non-fulfillment of export obligation. I place my reliance on judgement of Hon'ble Apex Court in case of COMMISSIONER OF CUSTOMS, HYDERABAD V/s. PENNAR INDUSTRIES LTD.[2015 (322) E.L.T. 402 (S.C.)] wherein the Apex Court has held as under:-

12. It would mean that not only the raw material imported (in respect of which exemption from duty is sought) is to be utilised in the manner mentioned, namely, for manufacture of specified products by the importer/assessee itself, this very material has to be utilised in discharge of export obligation. It, thus, becomes abundantly clear that as per this notification, in order to avail the exemption from import duty, it is necessary to make export of the product manufactured from that very raw material which is imported. This condition is admittedly not fulfilled by the assessee as there is no export of the goods from the raw material so utilised. Instead, export is of the product manufactured from other material, that too through third party. Therefore, in stricto sensu, the mandate of the said Notification has not been fulfilled by the assessee.

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19. Since the conditions of the exemption notification are not fulfilled and the law requires strict compliance of the exemption notification, the assessee becomes liable to pay the import duty which was payable, but for the benefit of exemption Notification No. 30/1997, which was obtained by the assessee.

36.8.1. I further place my reliance on judgment of Hon'ble Apex Court in case of COMMISSIONER OF C. EX., NEW DELHI V/s. HARI CHAND SHRI GOPAL [2010 (260) E.L.T. 3 (S.C.)] wherein the Apex Court has held as under:-

22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave - (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption.

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24. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. **Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important.** Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential.

36.9. I find that the spirit of the Advance Authorisation Scheme and Customs Notification no. 18/2015 dated 01.04.2015 is to provide raw material to the manufacturer exporters at globally prevailing price, to give them adequate time (which can be further extended by the DGFT) to manufacture and export goods and in case the manufacturer exporter is somehow not able to export goods, he may pay back the duty with interest. However, no concession has been provided in actual user condition and the duty free goods can be used for manufacture of export goods by third party subject to the condition that manufacturer has provided its name on Authorisation. Thus the scheme and notification has taken care of exporter manufacturer as well another importer who may like to import goods for domestic market as in case of failure to export, levy of duty and interest on duty free goods would make their price at par with that of other importer who has paid duty at the time of import. This notification is a piece of beneficial legislation aimed to reduce cost of manufacturing of domestic manufacturer exporters and to make their products competitive in International Market so that the country and the Manufacturer Exporter both are benefitted, however, by way of misuse of this notification and breach of trust placed

by the Government in manufacturer exporters, these importers have not only caused loss to the exchequer but also pushed the genuine trader importers (who import these goods on payment of duty) out of market by supplying these goods without invoice and may be at a slight lower price as they did not incur the burden of any duty or tax. I find that in the instant case the importers have orchestrated an organized and systemic conspiracy to evade duty of Customs under the garb of import of PVC resin under the Notification No. 18/2015-Customs dated 01.04.2015.

36.9.1. In this connection, I observe that the burden to prove the eligibility of exemption notification is on importer; and that the exemption notifications are subject to strict interpretation. I place reliance upon following relevant legal pronouncements:

- Hon'ble Supreme Court in the case of **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai [2009(234) ELT-389(SC)]** held that the burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense.
- Hon'ble Supreme Court in the case of **Krishi Upaj Mandi Samiti v/s. CCE reported in 2022 (58) GSTL 129 (SC)** held that law of the issue of interpretation of taxing statute has been laid down in catena of decisions that plain language capable of defined meaning used in a provision has to be preferred and strict interpretation has to be adopted except in cases of ambiguity in statutory provisions.
- Hon'ble Supreme Court in the case of **Uttam Industries V/s. CCE reported in 2011 (265) ELT 14(SC)** held that it is well settled law that exemption notification should be construed strictly and exemption notification is subject to strict interpretation by reading it literally.

36.10. On visit by DRI Officers at factory premises on 08.09.2019, the unit was found closed and alone security guard present in the factory informed that factory was closed due to a fire incident since previous year. Albeit, the factory was non-operational, the Importer continued to obtain Advance Authorization from DGFT and imported the goods against them. It shows that the sole intention of the importer was to procure duty free PVC Resin and other items to divert it in the domestic market. From the fact and evidences placed before me, I find that **M/s A.M. Vinyl Private Limited** had imported duty free PVC Resin, other items e.g. Release Paper, TiO₂, DOP, etc. under 42 Advance Authorisations and diverted the duty free material instead of using it in manufacturing of export products in contravention of Advance Authorization scheme and notification No. 18/2015-Customs dated 01.04.2015, as amended. These imports have taken place under Customs Notification No. 18/2015-Cus dated 01.04.2015. Notification No. 18/2015 have inbuilt provision of payment by the importer in cases of default. The notifications require that, **"the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;"** The importer did not make any exports under these Advance Authorisations, they are liable to pay the Customs Duty on such goods which were imported from different port/ICDs. The quantum of duty which is liable to be recovered under the provisions of Section 28(4) of the Customs Act, 1962 from the importer is hereby determined as per following table under the provisions of Section 28(8) of Customs Act, 1962: -

S.N o.	Import item	Quantity	Assessable Value (in INR)	Duty Recoverable (in INR)	Port of Import
1	PVC Resin/ DOP	3783.00 MT	238307782	89215780	INBDM6
2	Release paper	6080 SQM	352843	103880	INDEL4
3	PVC Resin	1284.50 MT	84351321	33121222	INDWN6
4	PVC Resin	307.50 MT	19077236	6740148	INLON6
5	PVC Resin	10224.75 MT	651227038	266297709	INMUN1
6	PVC Resin	235.97 MT	16074467	4444797	INNSA1
7	PVC Resin	44.80 MT	3504638	926214	INPTL6
8	PVC Resin	515.00 MT	32125716	12814788	INSTT6
9	PVC Resin	8780.27 MT	577262614	193843998	INTKD6
	TiO2	48.20 MT	14574188	3289100	
	DOP	96.00 MT	6459863	1707229	
	Release paper	739075 SQM	37346377	10945307	
TOT AL			1680664083	623450172	

Applicability of extended period under section 28(4) of the Customs Act, 1962

37. I find that the demand in the present show cause notice has been raised under the provisions of Section 28(4), therefore, it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

“28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts.”

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

The term “relevant date” For the purpose of Section 28 ibid, has been defined in Explanation 1, as under:

Explanation 1 . - *For the purposes of this section, “relevant date” means,—*

(a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

37.1. I find that with the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was the obligatory on the part of the importer to declare the correct and true declaration. **M/s A.M. Vinyl Private Limited** have filed Bills of Entry at EDI ports/ICDs claiming exemption from whole of the duty under Notification No. 18/2015-Cus dated 01.04.2015 meaning thereby that the material so cleared by them would be used only for manufacturing of export goods in their licensed premises, however, no manufacturing facility was found at the addresses mentioned on Advance Authorisation or IEC. Thus, there was repeated collusion, willful misstatement and suppression of facts which led to non-levy and non-payment of duty. I find that by not disclosing the true and correct facts to the proper officer, at the time of clearance of imported goods, the importer appears to have indulged in mis-declaration by way of suppression of facts. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, in as much as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. **Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011** cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self- assessment, is required to ensure that he declared the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. As the importer has deliberately evaded the Customs Duty by suppressing material facts, extended period of demand of duty as laid down under Section 28(4) of the Customs Act, 1962 is clearly attracted in the instant case. I find that the Importer has breached the trust reposed on him after introducing of self-assessment. I hold that there is no flaw in invoking Section 28(4) of Customs Act, 1962 to demand the duty in the present case.

38. CONFISCATION OF THE GOODS UNDER SECTION 111(o) OF THE CUSTOMS ACT, 1962:

(i). I find that it is alleged in the SCN that the goods imported by M/s. A.M. Vinyl through different ports/ICDs are liable for confiscation under Section 111(o) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(o) of the Customs Act, 1962 are reproduced below: -

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

.....

.....

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

.....
.....
.....

(ii). On plain reading of the above provisions of the Section 111(o) of the Customs Act, 1962 it is clear that subject to any condition, if any goods, exempted from duty or any prohibition in respect of import, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, shall be liable to confiscation. As discussed in the foregoing paras, it is evident the Importers have deliberately the imported goods only to divert the same in domestic market with a malafide intention to evade duty. In light of these acts of mis-using of Advance Authorisation scheme, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(o) of Customs Act, 1962. I hold so.

(iii). As the impugned goods are found to be liable for confiscation under Section 111(o) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 ibid reads as under: -

"Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."

(iv) A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings. I place reliance on the judgment of Hon'ble Apex Court in the case of Weston Components Ltd. Vs. Commr. of Customs, New Delhi (2000 (115) E.L.T.278(S.C.) wherein the Hon'ble Apex Court has held as under:

"It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine".

(v) I find that the condition no. (iv) of the Notification No. 18/2015-Customs dated 01.04.2015 stipulates that, "the importer at the time of clearance of the imported materials **executes a bond with such surety or security** and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;". M/s. A.M. Vinyl have imported the goods under the scheme of Advance Authorization and the said goods have been cleared by proper officer against a Bond which was a statutory requirement under the conditions of Notification No. 18/2015-Cus dated 01.04.2015, therefore, I find that redemption fine under Section 125 of Customs Act, 1962 is liable to be imposed in lieu of confiscation on such goods.

39. IMPOSITION OF PENALTY ON M/S. A.M. VINYL PRIVATE LIMITED, ITS DIRECTORS AND OTHER PERSONS.

I find that the investigation carried out by the DRI corroborated by irrefutable evidences make it evidently clear, that in the instance aforementioned importers imported duty free PVC resin, Release Paper, TiO₂, DOP, etc. meant for using in manufacturing of export goods, nonetheless, they diverted these duty free goods in domestic market, in order to evade the payment of duty of Customs. Therefore, the instant case is a well-organized and systematic evasion of customs duty by a group of persons under the garb of import under Customs **Notification no. 18/2015 dated 01.04.2015**. The facts emerged in investigation and violations of Customs law made by M/s A.M. Vinyl Pvt. Ltd and concerned persons liable for penal action under Customs act, 1962.

39.1. ROLE AND CULPABILITY OF M/S A.M. VINYL PRIVATE LIMITED:

I find that **M/s A.M. Vinyl Private Limited**, imported duty free goods viz. PVC Resin by way of availing **Notification No. 18/2015-Cus dated 01.04.2015** and did not fulfilled the mandatory conditions of said notification. During the investigation it revealed that instead of declared purpose such goods were diverted/sold in domestic area. Such acts of omissions and commissions have rendered the goods imported under the name of these companies liable for confiscation under Section 111(o) of the Customs Act, 1962, Thus, **M/s A.M. Vinyl Private Limited**, are liable for penalty under **Section 112(a)(ii) of the Customs Act, 1962**.

Further, I find that in the foregoing paras Customs duty on the imported good have been determined under the provisions of Section 28(8) and Section 28(4) of Customs Act, 1962 as there was repeated collusion, willful misstatement and suppression of facts. Therefore, I find that **M/s A.M. Vinyl Private Limited** are liable for penalty under **Section 114A of the Customs Act, 1962**.

However, I observe that as per 5th proviso of **Section 114A**, penalties under **section 112 and 114A** are mutually exclusive. When penalty under **Section 114A of the Customs Act, 1962** is imposed, penalty under **Section 112 of the Customs Act, 1962** is not imposable. Therefore, I refrain from imposing penalty upon **M/s A.M. Vinyl Private Limited** under **Section 112 of the Customs Act, 1962**.

39.2 ROLE AND CULPABILITY OF SHRI HIMANSHU CHOPRA, Atul Chopra and Shri Ashok Chopra, Directors of M/s A.M. Vinyl Private Limited:

39.2.1 I find from the statements of CHAs, Transporters wherein they have explicitly brought to light the fact that Shri Himanshu Chopra and Shri Atul Chopra Directors of M/s A.M. Vinyl Pvt. Ltd, were responsible for clearing and forwarding of imported exempted goods and their acts of omission and commission have rendered the goods liable for confiscation under Section 111(o) of the Customs Act, 1962. Thus, Shri Himanshu Chopra and Shri Atul Chopra, Directors of M/s A.M. Vinyl Pvt. Ltd are liable for penalty under Section 112(a)(ii) of the Customs Act, 1962. Shri Himanshu Chopra also appears to be liable for penalty under Section 112 (b)(ii) of the Customs Act, 1962 as he acquired possession and was concerned in carrying, depositing, keeping goods which he knew and has reason to believe were liable to confiscation under Section 111(o) of the Customs Act, 1962 as the duty free goods were transported on his instructions and unloaded at the places other than the declared place. Further, I observe that penalty under Section 112(a) and Section 112(b) of Customs Act, 1962 cannot be imposed simultaneously as the same person cannot be penalized twice for same offence, I will take cognizance of the same while imposing the penalty.

39.2.2. As regards imposing of penalty on **Shri Himanshu Chopra** under the provisions of Section 114AA of Customs Act, 1962, I find that Shri Himanshu Chopra, Director of M/s A M Vinyl Pvt. Ltd knowingly or intentionally made, signed, and used declarations, statements or documents before the DGFT, Delhi and Customs which

were false or incorrect to the extent that M/s A.M. Vinyl Pvt. Ltd did not use the entire duty-free material in manufacture of export products as they undertaken to do before the DGFT and Customs. Bills of entry were filed under Notification No. 18/2015-Cus dated 01.04.2015 declaring that the goods will be brought to the premises declared on Advance Authorisations/Bills of entry and used in manufacture of the export goods, however, these duty-free goods were diverted. From the Statements of CHAs and forwarder, it has emerged that Shri Himanshu Chopra was instrumental in planning and documentation for imports by these companies and for these act he has made himself liable for penalty under the provisions of Section 114AA of Customs Act, 1962. Further, I find support from the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that **"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority"**.

39.3. Shri Ashok Chopra, Director of M/s A M Vinyl Pvt. Ltd knowingly or intentionally made, signed, and used declarations, statements or documents before the DGFT, Delhi and Customs which were false or incorrect to the extent that M/s A.M. Vinyl did not use the entire duty-free material in manufacture of export products as they undertaken to do before the DGFT and Customs. Bills of entry were filed under Notification No. 18/2015-Cus dated 01.04.2015 declaring that the goods will be brought to the premises declared on Advance Authorisations/Bills of entry and used in manufacture of the export goods, however, these duty-free goods were diverted. From the documents (Applications for Advance Authorisations, undertaking) received from DGFT, it has emerged that Shri Ashok Chopra was instrumental in planning and documentation for obtaining Advance Authorisations from DGFT and subsequent imports by this company. Thus, Shri Ashok Chopra appears liable for penalty under Section 114AA of the Customs Act, 1962. Further, I find support from the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that **"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority"**.

39.3. ROLE AND CULPABILITY OF SHRI PARTH DODEJA, DIRECTOR OF M/S SALASAR IMPEX LIMITED.

I find that the statements of CHAs viz. Shri Pramod Soneta, Shri Vishal Yadav and transporters namely Shri Kanhaiya Mishra, Prop. of M/s. Kanahiya Roadways, Ramesh Kumar, Manger and authorized signatory of M/s. Caravan Roadways, Shri Rajeev Gupta, Director of M/s. Caravan Roadways and M/s. Vishwahind Logistics Ltd., explicitly bring to light the fact that Shri Parth Dodeja, Director of M/s Salasar Impex Limited was actively engaged in the helping and planning of the scheme of evasion of Duty in the instant case. From the statement of transporters, it emerges that he was well aware with the truth that the factory was not operational and no manufacturing activity was being carried out at that place. He acquired possession and was concerned in carrying, depositing, keeping goods which he knew and had reason to believe were liable to confiscation as the duty free goods were transported on his instructions and unloaded at places other than the declared place. His acts have rendered the goods liable for confiscation under Section 111(o) of the Customs Act, 1962. Thus, Shri Parth Dodeja is liable for penalty under Section 112(b)(ii) of the Customs Act, 1962

39.4. ROLE AND CULPABILITY OF SHRI ANKUR JAIN, PROPRIETOR OF M/S. DEVJI TRADERS

39.4. I have gone through the allegation levelled against Shri Ankur Jain, Proprietor of M/S. Devji Traders in show cause notices and submissions filed by him. The show

cause notices propose penalty on Shri Ankur Jain under Section 112(b) of Customs Act, 1962 for storing of goods imported under 05 Bills of Entry through Tughlakabad ICD. I find that M/S. DEVJI TRADERS is a proprietorship firm owned by Shri Ankur Jain. M/S. Devji Traders is a distributor of M/s FAVINI S. r. 1. Italy and has a distribution agreement dated 01.12.2016 with them, for the import and sale of Release Paper to Indian customers. They have sold goods covered under 04 Bills of Entry of Tughlakabad ICD under High Sea sale agreement and stored the goods of said 04 BEs and one another BE (total 05 BE) in his godowns for few days ostensibly on the request of Shri Himanshu Chopra, Director of M/s. A. M. Vinyl Pvt. Ltd. I observe from the case records that the M/s. A. M. Vinyl Pvt. Ltd have imported subject goods under 141 Bills of Entry from different ports/ICD, whereas, SHRI ANKUR JAIN have sold the goods covered under 04 Bills of Entry under High Seal Sale and stored goods of 05 Bills of Entry of Tughlakabad only. **Therefore, penalty proposed in show cause notices issued against him other than pertaining to Tughlakabad ICD is straight away not sustainable.**

39.4.1. As regards imposition of penalty under Section 112(b) on Shri Ankur Jain in respect of good stored in his godown imported under 05 Bills of Entry through Tughlakabad ICD, I find that Shri Sanjay Sharma, Authorised representative of M/s Adept Logistics and M/s Allwin Shipping Services, who provided CHA services for import of release paper in 2016 (two BE by Allwin) and 2017(five BE by Adept) on 08.03.2021, has stated that he got CHA work of M/s A.M. Vinyl Private Limited through Mr. Ankur Jain owner of M/s Devji Traders and M/s Devji Traders was the HSS supplier in all the consignments imported by M/s A. M. Vinyl Pvt. Ltd. Mr. Ankur Jain was well aware that the goods stored in his godowns were imported after taking the benefit of Advance Authorization scheme. The above facts in which M/s Devji was the original importer and then went to store the imported goods in their godown and had also arranged the CHA for clearance- all go to clearly show that Shri Ankur Jain was concerned in carrying, depositing, keeping goods i.e. duty free release paper as above, which he knew and has reason to believe were liable to confiscation as these duty free goods were unloaded and stored at his godown instead of place declared on Advance Authorisations. It is therefore reasonable to conclude that he had a role in making the goods liable confiscation under Section 111(o) of the Customs Act, 1962, individually or jointly with concerned person of M/s. A.M. Vinyl Pvt. Ltd. **Thus, Shri Ankur Jain is liable for penalty under Section 112(b)(ii) of the Customs Act, 1962.**

39.4.2. I find that actual amount of duty forgone involved in the said 05 BE is Rs. 80,39,353/- instead of Rs. 92,98,571/- mentioned in para -43 of SCN dt. 17.02.2022 of ICD Tughlakabad. I will take the cognizance of the same while imposing penalty under Section 112(b)(ii) of Customs Act, 1962. Further, the submission of Shri Ankur Jain to seek benefit of country of origin in terms of notification no. 69/2011 dt. 29.07.2011 is devoid of merits as only importer can claim the benefit of duty under said notification and the benefit can be granted only if they suffice requirement of conditionalities under the CAROTAR Rules, 2020.

40. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

:ORDER:

(A) IN RESPECT OF F.NO. GEN/ADJ/COMM/36/2023-ADJ DATED 03.04.2023 ISSUED TO M/S A.M. VINYL PRIVATE LIMITED AND OTHERS BY THE COMMISSIONER OF CUSTOMS, MUNDRA

- i) I order to confiscate the subject goods 10224.75 MTs PVC Resin having assessable value of **Rs.65,12,27,038/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended under the provisions of Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under Notification No. 18/2015-Customs 01.04.2015. However, I give M/s **A.M. Vinyl Private Limited** to redeem the impugned confiscated goods on payment of redemption fine of **Rs. 10,00,00,000/- (Rs. Ten Crore Only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.

- ii) I confirm the demand of Duty of Customs amounting to **Rs. 26,62,97,709/- (Rs. Twenty Six Crore Sixty Two Lakh Ninety Seven Thousand Seven Hundred and Nine only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use and order to recover the same from **M/s A.M. Vinyl Private Limited** under the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with interest at appropriate rate under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962.
- iii) I impose a penalty of **Rs. 26,62,97,709/- (Rs. Twenty Six Crore Sixty Two Lakh Ninety Seven Thousand Seven Hundred and Nine only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon **M/s A.M. Vinyl Private Limited** under Section 114A of the Customs Act, 1962.
- iv) I refrain from imposition of any penalty on **M/s A.M. Vinyl Private Limited** under Section 112(a) and/or 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras;
- v) I impose a penalty of **Rs. 2,00,00,000/- (Rs. Two Crore Only)** upon **Shri Himanshu Chopra**, Director of **M/s A.M. Vinyl Private Limited**, under Section 112(a)(ii) of Customs Act, 1962; however I refrain from imposition of any penalty on him under the provisions of Section 112(b), of Customs Act, 1962 for the reasons stated in forgoing paras.
- vi) I impose a penalty of **Rs.50,00,000/- (Rs. Fifty Lakh only)** upon **Shri Himanshu Chopra**, Director of **M/s A.M. Vinyl Private Limited**, under Section 114AA of the Customs Act, 1962.
- vii) I impose a penalty of **Rs.2,00,00,000/- (Rs. Two Crore only)** upon **Shri Atul Chopra**, Director of **M/s A.M. Vinyl Private Limited**, under Section 112(a)(ii) of the Customs Act, 1962.
- viii) I impose a penalty of **Rs.50,00,000/- (Rs. Fifty Lakh only)** upon **Shri Ashok Chopra**, Director of **M/s A.M. Vinyl Private Limited**, under Section 114AA of the Customs Act, 1962.
- ix) I impose a penalty of **Rs. 50,00,000/- (Rs. Fifty Lakh only)** upon **Shri Parth Dodeja**, Director of **M/s Salasar Impex Limited**, under Section 112(b)(ii) of the Customs Act, 1962.
- x) I refrain from imposition of any penalty upon **Shri Ankur Jain**, Director of **M/s. Devji Traders**, under Section 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras

(B) IN RESPECT OF VIII/ICD/TKD/6AG/GR.2G/A.M. Vinyl/2198/2021/3751 dated 18.02.2022 issued by Asstt. Commissioner of Customs, Gr.2G, ICD Import, TKD, New Delhi

- (i) I order to confiscate the subject goods i.e. PVC Resin/TIO2/DOP/Release Paper having assessable value of **Rs.63,56,43,042/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended under the provisions of Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under Notification No. 18/2015-Customs 01.04.2015. However, I give **M/s A.M. Vinyl Private Limited** to redeem the impugned confiscated goods on payment of redemption fine of **Rs. 10,00,00,000/- (Rs. Ten Crore only)** in lieu of confiscation under Section 125 of the Customs Act, 1962
- (ii) I confirm the demand of Duty of Customs amounting to **Rs. 20,97,85,634/- (Rs. Twenty Crore Ninety Seven Lakh Eighty Five Thousand Six Hundred and Thirty Four only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use and order to recover the same from **M/s A.M. Vinyl Private Limited**

under the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with interest at appropriate rate under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962

- (iii) I impose a penalty of **Rs. 20,97,85,634/- (Rs. Twenty Crore Ninety Seven Lakh Eighty Five Thousand Six Hundred and Thirty Four only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon **M/s A.M. Vinyl Private Limited** under Section 114A of the Customs Act, 1962.
- (iv) I refrain from imposition of any penalty on **M/s A.M. Vinyl Private Limited** under Section 112(a)(ii) of the Customs Act, 1962 for the reasons stated in forgoing paras.
- (v) I impose a penalty of **Rs. 2,00,00,000/- (Rs. Two Crore only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of Customs Act, 1962.
- (vi) I impose a penalty of **Rs.50,00,000/- (Rs. Fifty Lakh only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.
- (vii) I impose a penalty of **Rs. 2,00,00,000/- (Rs. Two Crore only)** upon **Shri Atul Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose a penalty of **Rs.50,00,000/- (Rs. Fifty Lakh only)** upon **Shri Ashok Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.
- (ix) I impose a penalty of **Rs.50,00,000/- (Rs. Fifty Lakh only)** upon **Shri Parth Dodeja**, Director of M/s Salasar Impex Limited, under Section 112(b)(ii) of the Customs Act, 1962.
- (x) I impose a penalty of **Rs. 7,50,000/- (Rs. Seven Lakh Fifty Thousand only)** upon **Shri Ankur Jain**, Proprietor of M/s. Devji Traders, under Section 112(b)(ii) of the Customs Act, 1962.

(C) IN RESPECT OF SCN No. VIII(B)40/ICD Patli/A M Vinyl/DRI-Inv./158/2021-22/719 dated 22.02.2022 issued by Dy. Commissioner of Customs, ICD Patli, Gurugram.

- (i) I order to confiscate the subject goods i.e. 44.80 MT PVC Resin having assessable value of **Rs.35,04,638/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended under the provisions of Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under Notification No. 18/2015-Customs 01.04.2015. However, I give M/s **A.M. Vinyl Private Limited** to redeem the impugned confiscated goods on payment of redemption fine of **Rs.5,00,000/- (Rs. Five Lakh only)** in lieu of confiscation under Section 125 of the Customs Act, 1962
- (ii) I confirm the demand of duty of Customs amounting to **Rs. 9,26,214/- (Rs. Nine Lakh Twenty Six Thousand Two Hundred and Fourteen only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use and order to recover the same from M/s **A.M. Vinyl Private Limited** under the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with interest at appropriate rate under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962.
- (iii) I impose a penalty of **Rs. 9,26,214/- (Rs. Nine Lakh Twenty Six Thousand Two Hundred and Fourteen only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon **M/s A.M. Vinyl Private Limited** under Section 114A of the Customs Act, 1962.

- (iv) I refrain from imposition of any penalty on M/s **A.M. Vinyl Private Limited** under Section 112(a)(ii) of the Customs Act, 1962 for the reasons stated in forgoing paras.
- (v) I impose a penalty of **Rs. 80,000/- (Rs. Eighty Thousand only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of Customs Act, 1962; however I refrain from imposition of any penalty on him under the provisions of Section 112(b), of Customs Act, 1962 for the reasons stated in forgoing paras
- (vi) I impose a penalty of **Rs. 50,000/- (Rs. Fifty Thousand only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.
- (vii) I impose a penalty of **Rs. 80,000/- (Rs. Eighty Thousand only)** upon **Shri Atul Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose a penalty of **Rs. 50,000/- (Rs. Fifty Thousand only)** upon **Shri Ashok Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.
- (ix) I impose a penalty of **Rs. 50,000/- (Rs. Fifty Thousand only)** upon **Shri Parth Dodeja**, Director of M/s Salasar Impex Limited, under Section 112(b)(ii) of the Customs Act, 1962.
- (D) IN RESPECT OF VIII/Cus/763/SCN/A.M.Vinyl/ICD/SNP/2021-22 dated 25.03.2022 issued by Deputy Commissioner of Customs, ICD Sonapat.**
- (i) I order to confiscate the subject goods i.e. 3783 MTs PVC/DOP Resin having assessable value of **Rs.23,83,07,782/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended under the provisions of Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under Notification No. 18/2015-Customs 01.04.2015. However, I give M/s **A.M. Vinyl Private Limited** to redeem the impugned confiscated goods on payment of redemption fine of **Rs. 3,00,00,000/- (Rs. Three Crore Only)** in lieu of confiscation under Section 125 of the Customs Act, 1962
- (ii) I confirm the demand of Duty of Customs amounting to **Rs. 8,92,15,780/- (Rs. Eight Crore Ninety Two Lakh Fifteen Thousand Seven Hundred and Eighty only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use and order to recover the same from M/s **A.M. Vinyl Private Limited** under the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with interest at appropriate rate under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962
- (iii) I impose a penalty of **Rs. 8,92,15,780/- (Rs. Eight Crore Ninety Two Lakh Fifteen Thousand Seven Hundred and Eighty only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon M/s **A.M. Vinyl Private Limited** under Section 114A of the Customs Act, 1962.
- (iv) I refrain from imposition of any penalty on M/s **A.M. Vinyl Private Limited** under Section 112(a) and/or 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras;
- (v) I impose a penalty of **Rs. 70,00,000/- (Rs. Seventy Lakh only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of Customs Act, 1962; however I refrain from imposition of any penalty on him under the provisions of Section 112(b), of Customs Act, 1962 for the reasons stated in forgoing paras.
- (vi) I impose a penalty of **Rs. 20,00,000/- (Rs. Twenty Lakh only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.

- (vii) I impose a penalty of **Rs. 70,00,000/- (Rs. Seventy Lakh only)** upon **Shri Atul Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose a penalty of **Rs. 20,00,000/- (Rs. Twenty Lakh only)** upon **Shri Ashok Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.
- (ix) I impose a penalty of **Rs. 25,00,000/- (Rs. Twenty Five Lakh only)** upon **Shri Parth Dodeja**, Director of M/s Salasar Impex Limited, under Section 112(b)(ii) of the Customs Act, 1962.
- (x) I refrain from imposition of any penalty upon **Shri Ankur Jain**, Director of M/s. Devji Traders, under Section 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras.

(E) IN RESPECT OF SHOW CAUSE NOTICE NO. 261/2021-22/A.K.T./AC/ACC(IMPORT) DTD 29.03.2022 ISSUED BY ASSISTANT COMMISSIONER (EPMC & LICENSING), ACC IMPORT, NEW CUSTOM HOUSE, NEW DELHI

- (i) I order to confiscate the subject goods i.e. 12160 SQM of release paper having assessable value of **Rs.3,52,843/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended under the provisions of Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under Notification No. 18/2015-Customs 01.04.2015. However, I give M/s **A.M. Vinyl Private Limited** to redeem the impugned confiscated goods on payment of redemption fine of **Rs. 50,000/- (Rs. Fifty Thousand only)** in lieu of confiscation under Section 125 of the Customs Act, 1962
- (ii) I confirm the demand of Duty of Customs amounting to **Rs. 1,03,880/- (Rs. One Lakh Three Thousand Eight Hundred and Eighty only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use and order to recover the same from M/s **A.M. Vinyl Private Limited** under the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with interest at appropriate rate under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962.
- (iii) I impose a penalty of **Rs. 1,03,880/- (Rs. One Lakh Three Thousand Eight Hundred and Eighty only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon M/s **A.M. Vinyl Private Limited** under Section 114A of the Customs Act, 1962.
- (iv) I refrain from imposition of any penalty on M/s **A.M. Vinyl Private Limited** under Section 112(a) and/or 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras;
- (v) I impose a penalty of **Rs.10,000/- (Rs. Ten Thousand only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of Customs Act, 1962; however I refrain from imposition of any penalty on him under the provisions of Section 112(b), of Customs Act, 1962 for the reasons stated in forgoing paras.
- (vi) I impose a penalty of **Rs. 5,000/- (Rs. Five Thousand only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.
- (vii) I impose a penalty of **Rs.10,000/- (Rs. Ten Thousand only)** upon **Shri Atul Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose a penalty of **Rs. 5,000/- (Rs. Five Thousand only)** upon **Shri Ashok Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.

- (ix) I impose a penalty of **Rs.10,000/- (Rs. Ten Thousand only)** upon **Shri Parth Dodeja**, Director of M/s Salasar Impex Limited, under Section 112(b)(ii) of the Customs Act, 1962.

(F) IN RESPECT OF SHOW CAUSE NOTICE 04/PC/N/CUS-2022-23 dated 20.07.2022 issued by Pr. Commissioner of Customs, Noida Customs Commissionerate

- (i) I order to confiscate the subject goods i.e. 515.00 MTs PVC Resin having assessable value of **Rs.5,12,02,952/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended under the provisions of Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under Notification No. 18/2015-Customs 01.04.2015. However, I give M/s **A.M. Vinyl Private Limited** to redeem the impugned confiscated goods on payment of redemption fine of **Rs. 75,00,000/- (Rs. Seventy Five Lakh only)** in lieu of confiscation under Section 125 of the Customs Act, 1962
- (ii) I confirm the demand of Duty of Customs amounting to **Rs. 1,95,54,936/- (Rs. One Crore Ninety Five Lakh Fifty Four Thousand Nine Hundred and Thirty Six only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use and order to recover the same from M/s **A.M. Vinyl Private Limited** under the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with interest at appropriate rate under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962
- (iii) I impose a penalty of **Rs. Rs. 1,95,54,936/- (Rs. One Crore Ninety Five Lakh Fifty Four Thousand Nine Hundred and Thirty Six only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon M/s **A.M. Vinyl Private Limited** under Section 114A of the Customs Act, 1962.
- (iv) I refrain from imposition of any penalty on M/s **A.M. Vinyl Private Limited** under Section 112(a) and/or 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras;
- (v) I impose a penalty of **Rs. 15,00,000/- (Rs. Fifteen Lakh only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of Customs Act, 1962; however I refrain from imposition of any penalty on him under the provisions of Section 112(b), of Customs Act, 1962 for the reasons stated in forgoing paras.
- (vi) I impose a penalty of **Rs. 5,00,000/- (Rs. Five Lakh only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.
- (vii) I impose a penalty of **Rs. 15,00,000/- (Rs. Fifteen Lakh only)** upon **Shri Atul Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose a penalty of **Rs. 5,00,000/- (Rs. Five Lakh only)** upon **Shri Ashok Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.
- (ix) I impose a penalty of **Rs. 5,00,000/- (Rs. Five Lakh only)** upon **Shri Parth Dodeja**, Director of M/s Salasar Impex Limited, under Section 112(b)(ii) of the Customs Act, 1962.

(G) IN RESPECT OF SHOW CAUSE NOTICE VIII (Cus) /ICD /JTP/11/A.M. Vinyl/SCN/2023/ dated 19.01.2023 issued by Assistant Commissioner of Customs, ICD Jhattipur, Panipat, Haryana.

- (i) I order to confiscate the subject goods 1284.50 MTs PVC Resin having assessable value of **Rs.8,43,51,321/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended under the provisions of Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under

Notification No. 18/2015-Customs 01.04.2015. However, I give M/s **A.M. Vinyl Private Limited** to redeem the impugned confiscated goods on payment of redemption fine of **Rs.1,00,00,000/- (Rs. One Crore only)** in lieu of confiscation under Section 125 of the Customs Act, 1962

- (ii) I confirm the demand of Duty of Customs amounting to **Rs. 3,31,21,222/- (Rs. Three Crore Thirty One Lakh Twenty One Thousand Two Hundred and Twenty Two only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use and order to recover the same from M/s **A.M. Vinyl Private Limited** under the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with interest at appropriate rate under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962
- (iii) I impose a penalty of **Rs. Rs. 3,31,21,222/- (Rs. Three Crore Thirty One Lakh Twenty One Thousand Two Hundred and Twenty Two only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon M/s **A.M. Vinyl Private Limited** under Section 114A of the Customs Act, 1962.
- (iv) I refrain from imposition of any penalty on M/s **A.M. Vinyl Private Limited** under Section 112(a) and/or 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras;
- (v) I impose a penalty of **Rs.30,00,000/- (Rs. Thirty Lakh only)** upon **Shri Himanshu Chopra**, Director of M/s **A.M. Vinyl Private Limited**, under Section 112(a)(ii) of Customs Act, 1962; however I refrain from imposition of any penalty on him under the provisions of Section 112(b), of Customs Act, 1962 for the reasons stated in forgoing paras.
- (vi) I impose a penalty of **Rs. 5,00,000/- (Rs. Five Lakh only)** upon **Shri Himanshu Chopra**, Director of M/s **A.M. Vinyl Private Limited**, under Section 114AA of the Customs Act, 1962.
- (vii) I impose a penalty of **Rs.30,00,000/- (Rs. Thirty Lakh only)** upon **Shri Atul Chopra**, Director of M/s **A.M. Vinyl Private Limited**, under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose a penalty of **Rs. 5,00,000/- (Rs. Five Lakh only)** upon **Shri Ashok Chopra**, Director of M/s **A.M. Vinyl Private Limited**, under Section 114AA of the Customs Act, 1962.
- (ix) I impose a penalty of **Rs. 5,00,000/- (Rs. Five Lakh only)** upon **Shri Parth Dodeja**, Director of M/s **Salasar Impex Limited**, under Section 112(b)(ii) of the Customs Act, 1962.

(H) IN RESPECT OF SHOW CAUSE NOTICE 566/2021-22/DMC/NS-II/JNCH dated 22.12.2021 issued by Joint Commissioner of Customs, DMC, JNCH.

- (i) I order to confiscate the subject goods i.e. 235.97 MTs PVC Resin having assessable value of **Rs.1,60,74,467/-** imported duty free under Notification No.18/2015-Cus 01.04.2015, as amended under the provisions of Section 111(o) of the Customs Act, 1962, for violation of the conditions laid down under Notification No. 18/2015-Customs 01.04.2015. However, I give M/s **A.M. Vinyl Private Limited** to redeem the impugned confiscated goods on payment of redemption fine of **Rs. 20,00,000/- (Rs. Twenty Lakh only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.
- (ii) I confirm the demand of Duty of Customs amounting to **Rs. 44,44,797/- (Rs. Forty Four Lakh Forty Four Thousand Seven Hundred and Ninety Seven only)** payable on the goods in respect of which export obligation could not be fulfilled and which may have been sold/diverted for other use and order to recover the same from M/s **A.M. Vinyl Private Limited** under the provisions

of Section 28(8) read with Section 28(4) of the Customs Act, 1962, along with interest at appropriate rate under provision of Notification Number 18/2015-Cus 01.04.2015 read with Section 28AA of the Customs Act, 1962

- (iii) I impose a penalty of **Rs. 44,44,797/- (Rs. Forty Four Lakh Forty Four Thousand Seven Hundred and Ninety Seven only)** plus penalty equal to interest payable on demand of duty confirmed at (ii) above upon **M/s A.M. Vinyl Private Limited** under Section 114A of the Customs Act, 1962.
- (iv) I refrain from imposition of any penalty on **M/s A.M. Vinyl Private Limited** under Section 112(a) and/or 112(b) of the Customs Act, 1962 for the reasons stated in forgoing paras;
- (v) I impose a penalty of **Rs. 4,00,000/- (Rs. Four Lakh only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of Customs Act, 1962; however I refrain from imposition of any penalty on him under the provisions of Section 112(b), of Customs Act, 1962 for the reasons stated in forgoing paras.
- (vi) I impose a penalty of **Rs. 1,00,000/- (Rs. One Lakh only)** upon **Shri Himanshu Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.
- (vii) I impose a penalty of **Rs. 4,00,000/- (Rs. Four Lakh only)** upon **Shri Atul Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 112(a)(ii) of the Customs Act, 1962.
- (viii) I impose a penalty of **Rs. 1,00,000/- (Rs. One Lakh only)** upon **Shri Ashok Chopra**, Director of M/s A.M. Vinyl Private Limited, under Section 114AA of the Customs Act, 1962.

41. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

o/c

(K. Engineer)

Principal Commissioner of Customs
Custom House Mundra.

Date: 05.08.2024.

DIN: 20240871MO0000621846

F.No. GEN/ADJ/COMM/36/2023-Adjn
By RPAD/Hand Delivery/Email/Speed Post

3265 to 3270

To,

1. M/s A.M. Vinyl Private Limited,
A-104, Bhiwadi Industrial Area,
Phase-I RIICO Chowk, Bhiwadi Rajasthan-301019
2. Shri Himanshu Chopra, Director of M/s A.M. Vinyl Private Limited,
S-222, Greater Kailash-I, New Delhi-110048
3. Shri Atul Chopra, Director of M/s A.M. Vinyl Private Limited,
S-222, Greater Kailash-I, New Delhi-110048
4. Shri Ashok Chopra, Director of M/s A.M. Vinyl Private Limited,
S-222, Greater Kailash-I, New Delhi-110048

5. Shri Parth Dodeja, Director of M/s Salasar Impex Limited
DSM-321, DLF Towers, Najafgarh Road,
Industrial Area, New Delhi-110015
6. Shri Ankur Jain, Director of M/s. Devji Traders,
4309-10/5 Jai Mata Market, Tri Nagar, Delhi-110035

Copy to:

- 1) The Chief Commissioner of Customs, CCO, Ahmedabad.
- 2) The Additional Director General, DRI, Lucknow Zonal Unit, 2/31, Vishal Khand, Gomati Nagar, Lucknow for information.
- 3) The Additional DGFT, Udyog Bhawan, H-wing, Gate No-02, Maulana Azad Road, New Delhi -110011 for information and necessary action.
- 4) The Deputy Director, Directorate of Revenue Intelligence (DRI), Noida Regional Unit, G-10, Sector-63, Noida, UP-201301
- 5) The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra.
- 6) The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- 7) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 8) Notice Board.
- 9) Guard File.