



सीमा शुल्क आयुक्त का कार्यालय, एनएस-III
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-III
केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,
न्हावा शेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA-400707

File No: S/10-132/2024-25/Commr/NS-III/Gr.IV/CAC/JNCH Date : 11.09.2025
SCN No: 1076(I)/2024-25/Commr./Gr.IV/ NS-III /CAC/JNCH dated 12.09.2024.

DIN	: 20250978NX00008808D2
आदेश की तिथि Date of Order	: 11.09.2025
जारी किए जाने की तिथि Date of Issue	: 11.09.2025
आदेश सं. Order No.	: 192/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 1922025-26 /Commr./NS-III /CAC/JNCH
पारितकर्ता Passed by	श्री विजय रिशी SH. VIJAY RISI : आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावा शेवा Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम Name of Party/ Noticee	मेसर्स प्रोफर इन्फॉर्मेशन सिस्टम्स इंडिया प्राइवेट लिमिटेड M/S. Proffer Information Systems India Pvt. Ltd

मूलआदेश

ORDER-IN-ORIGINAL

- इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।
The copy of this order in original is granted free of charge for the use of the person to whom it is issued.
- इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच, ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व, मुंबई- ४०० ००९ को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।
Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.
- अपील दाखिल करने संबंधी मुख्य मुद्दे:-
Main points in relation to filing an appeal:-

फॉर्म Form	: फॉर्म नं. सीए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए)
	Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)
समय सीमा Time Limit	: इस आदेश की सूचना की तारीख से ३ महीने के भीतर
	Within 3 months from the date of communication of this order.
फीस Fee	: (क) एक हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है। (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये- जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है। (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh (ग) दस हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है। (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतान की रीति Mode of Payment	: क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो। A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य General	: विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए। For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उस में माँगे गये शुल्क अथवा उद्गृहीत शास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

F.no. S/10-132/2024-25/Commr./Gr.IV/NS-III/CAC/JNCH

BRIEF FACTS OF THE CASE

A show cause notice no. 1076(I)/2024-25/Commr./Gr.IV/ NS-III /CAC/JNCH dated 12.09.2024 was issued to M/s. Proffer Information Systems India Private Limited, Office address – FF-38, House No.425 Pvt. Shop no. 1, Near Tikonika Park, LA Delhi Factory address– 64, HSIDC, Samalkha Industrial Area, Samalkha, Panipat, Haryana– 132101 having IEC- AAHCP6233G. On preliminary analysis of data, as retrieved through EDI System available with the department, of imports effected by it was gathered that the said M/s Proffer Information Systems India Private Limited was engaged in imports of Aluminium Foil – 0.006MMX 910MM & Flat rolled stainless steel coil, width less than 600 mm (Grade –J3, Finish-2B), from Nhava Sheva (INNSA1) port, **under advance license (scheme -03)** under CTH – 76071190 & 72209090, however no exports, as envisaged under the Foreign Trade Policy, under the Advance Authorization Scheme, corresponding with the volumes of exports could be noticed during preliminary scrutiny of data under reference.

2. Detailed analysis of data revealed that the importer M/s Proffer Information Systems India Private Limited, had imported **7,69,336 Kgs** of Aluminium Foil and Flat rolled stainless steel coil valued @ **Rs. 14,07,97,162/-** (including both the commodities) through 27 Bills of entries. The importer has obtained Advance licenses having Nos. 0511018011 dtd. 27.03.2023, 0511018968 dtd. 24.05.2023 & 0511020274 dtd.07.08.2023 by the DGFT, Delhi and the imports as referred, were affected under the Advance licenses, as above.

3. On scrutiny of the said advance licenses following was noticed –

Table I

Sl. No.	Name of the Importer with address	License no. & date	Importable items	Exportable items
1	M/s Proffer Information Systems India Private Limited	0511018011 dtd.27.03.2023	Aluminium Foil Qty 305000 Kgs	Aluminium Foil Board
2		0511018968 dtd.24.11.2023	Flat rolled products of stainless steel – Qty 8,15,000 Kgs.	Table kitchen and other household articles
3.		0511020274 dtd.07.08.2023	Aluminium Foil Qty 305000 Kgs	Aluminium Foil Board

4. Export data of M/s Proffer Information Systems India Private Limited, as retrieved through EDI System available with the department was analyzed and it was noticed that no exports were ever made by the said M/s Proffer Information Systems India Private Limited.

5.1 Further on scrutiny of GSTIN data/details of M/s Proffer Information Systems India Private Limited, one ikarnama (agreement deed) was found to be executed between Sri Boota Singh & Shri Harish Batra, director of M/s Proffer Information Systems India Private Limited, for hiring an area of 40 X 50 Sq ft, by M/s Proffer Information Systems India

Private Limited from said Boota Singh for storing the plastic granules. Sh. Boota Singh is the owner of Singh Engineers and the said premises was shown as Principal place of business of M/s Proffer Information Systems India Private Limited in their GSTIN details.

5.2 A preliminary reconnaissance of the said address did not indicate any manufacturing activity taking place in the premises. The results of the reconnaissance as well as the fact that no exports had been made by the license holder till date raised the suspicion that M/s Proffer Information Systems India Private Limited may not be involved in any manufacturing activity and may be availing the benefit of advance license wrongfully; and that the imported goods were being clandestinely removed before reaching principal (declared) place of business.

6. Accordingly, an investigation was initiated against M/s Proffer Information Systems India Private Limited and searches were conducted on **13.09.2023** at the following locations of M/s PROFFER INFORMATION SYSTEMS INDIA PRIVATE LIMITED as detailed hereunder –

Sl. No.	Locations	Results	Remarks
1.	64, Grand Trunk Road, RP Textile, HSIIDC Industrial Estate, Samalkha, Panipat, Harayana – 132101 (Principal place of Business)	No imported goods i.e. aluminium foil & Flat rolled products of stainless steel of a width less than 600 MM were found in the factory premises. No machinery or manufacturing activities were noticed.	The factory belongs to Sh. Boota Singh.
2.	Office address – FF-38, House No.425 Pvt Shop no. 1, Near Tikonika Park, LA Delhi	No office was found in the name of M/s Proffer Information Systems India Private Limited, One pan shop is situated.	In and around no one knows about M/s Proffer Information Systems India Private Limited.
3.	59, Upper Ground, Flat No. A-1 Ghoda Mohalla, Aya Nagar Delhi – 110047 (Other IEC address)	No office was found in the name of M/s Proffer Information Systems India Private Limited, One small house is situated.	In and around no one knows about M/s Proffer Information Systems India Private Limited.
4.	B-280, Deendayal Puram, Takrohi, Indira Nagar, Lucknow (UP) – 226016 (Director house address)	Only a dilapidated house was situated. One electrician was found who had no relation with Shri Harish Batra.	Statement of the said person was recorded.

7. Whereas a search was carried out at 64, Grand Trunk Road, RP Textile, HSIIDC Industrial Estate, Samalkha, Panipat, Haryana, 132101, the Principal place of Business of M/s Proffer Information Systems India Private Limited, as declared in their GSTIN registration, owned by Shri Boota Singh and rented to M/s Proffer Information Systems India Private Limited. A Summon dated 13.09.2023 was issued to said Shri Boota Singh, the owner of that premises and his statement was recorded on 13.09.2023 under section 108 of the Customs Act, 1962 wherein he inter-alia stated that -
- His name is Boota Singh, aged about 61 yrs, residing at DD 319, Ward No. 4, Chand Colony, Samalkha, Panipat and the factory address is 64, HSIIDC, Samalkha Panipat. He used to do the work of generator repair in his factory.
 - He had met Shri Harish Batra, Director of M/s Proffer Information Systems India Private Limited, only once. Shri Harish Batra hired 2000 sq. ft area from his factory for storing plastic granules and paid rent for two months only. Neither any manufacturing activities took place nor any imported goods were ever brought by Shri Harish Batra at the said premises. Mr. Batra made deed (rent agreement) for GST registration and told him that a machine would come for installation but no machine reached at his premises.
8. From the above follow-ups, it appeared that M/s Proffer Information Systems India Private Limited had imported the goods under advance licenses but not fulfilled the conditions of Advance Authorizations, as issued to them i.e. activity for manufacturing and export of finished goods, etc.

9.1 On further analysis it was found that the importer had imported 05 (five) live consignments from Nhava Sheva and the goods were lying at the port of import. The details of the above said 5 bills of entry are as under:-

Sr. No.	Name of the Port	Live Bill of Entry No.	Bill of Entry Date	Assessable Value (in Rs.)	Imported Items
1	INNSA1	7659297	03-09-23	4794753.91	Aluminium Foil - 0.006MMX 970MM
2	INNSA1	7722418	07-09-23	5730003.08	Aluminium Foil - 0.006MMX1000MM
3	INNSA1	7722010	07-09-23	5955942.22	Aluminium Foil - 0.006MMX1245MM
4	INNSA1	7781840	11-09-23	4797611.34	Aluminium Foil - 0.006MMX 970MM
5	INNSA1	7774340	11-09-23	4858203.28	Aluminium Foil - 0.006MMX 970MM

9.2 As preliminary investigations indicated that the goods previously imported by M/s Proffer Information Systems India Private Limited appeared to have been diverted in domestic market without any export of goods, the goods as imported vide above referred Bills of Entry, filed at Nhava Sheva port were put on hold for examination. The goods, as imported and put on hold were examined by the DRI officers on 15.09.2023, following the due procedures and were found in accordance with the Bills of Entry filed by the importer.

9.3 It was observed the importer has earlier imported goods vide 20 past bills of entry, the details of which are as follows:-

SR NO.	BOE NO.	DATE	BL NO	PKGS	NO OF CONTAIN ERS	DESCRIPTION	LICENCE NO	QTY IN KGS	INV VALUE USD	TOTAL DUTY SAVED INR
1	5710632	27.04.2023	SWNLCHNSA23030400	86	2 X 20	ALUMINIUM FOIL	511018011	38455.5	140362.58	2535098
2	5710941	27.04.2023	SWNLCHNSA2303435	87	2 X 20	ALUMINIUM FOIL	511018011	36925.2	134776.99	2434824
3	6468099	18.06.2023	COAU8034501110	22	3 X 20	STEEL COILS	511018968	79746	110448.21	2594936
4	6468196	18.06.2023	COAU8034501120	16	2 X 20	STEEL COILS	511018968	54860	75981.1	1785145.3
5	6502039	20.06.2023	MSALCHNSA23050689	88	2 X 20	ALUMINIUM FOIL	511018011	37158.6	135628.89	2447170.3
6	6502098	20.06.2023	EPIRCHNNB0238028	17	2 X 20	STEEL COILS	511018968	53910	74395.8	1747899.3
7	6502145	20.06.2023	LDBTAONSA230532	16	2 X 20	STEEL COILS	511018968	54380	75316.31	1769526.1
8	6519151	21.06.2023	ASCLTAONSA2300693	9	1 X 20	STEEL COILS	511018968	27090	37519.65	881508.9
9	6805887	10.07.2023	EPIRCHNNB0239426	30	4 X 20	STEEL COILS	511018968	107398	149283.22	3515795
10	6805915	10.07.2023	EPIRCHNNB0239254	24	3 X 20	STEEL COILS	511018968	81440	113201.609	2666030.6
11	6805952	10.07.2023	15481TAONSA	25	3 X 20	STEEL COILS	511018968	81160	112812.4	2656864.7
12	7228417	06.08.2023	QGD0319006B	39	1 X 20	ALUMINIUM FOIL	511018011	20002	65606.56	1582031.3
13	7228504	06.08.2023	QGD0319006A	37	1 X 20	ALUMINIUM FOIL	511018011	19555	64140.4	1546676.4
14	7442359	20.08.2023	EGLV140301396210	28	1 X 20	ALUMINIUM FOIL	511018011	18724	57857.16	1373243.1
15	7442436	20.08.2023	EGLV140301305583	35	1 X 20	ALUMINIUM FOIL	511018011	19417	63687.76	1541272.5
16	7550124	26.08.2023	EGLV140301496010	36	1 X 20	ALUMINIUM FOIL	511018011	21173	69447.44	1680659.4
17	7550540	26.08.2023	EGLV140301496087	36	1 X 20	ALUMINIUM FOIL	511018011	20408	66938.24	1619935.7
18	7550978	26.08.2023	KMTCSHAL009487	29	1 X 20	ALUMINIUM FOIL	511018011	21215.5	67889.6	1642958.9
19	7572634	28.08.2023	SNKO020230711979	26	1 X 20	ALUMINIUM FOIL	511018011	18972	60710.4	1469219.1
20	7659193	03.09.2023	EGLV140301501170	29	1 X 20	ALUMINIUM FOIL	511020274	20163	62303.67	1507777

Whereas on 16.09.2023, an enquiry was made regarding transportation of the goods, as imported by M/s Proffer Information Systems India Private Limited, from Nhava Sheva to Panipat. It was found that goods were carried and transported by M/s. Kanhaiya Roadways, Ashok Nagar, Thane, Mumbai – 400608. **On enquiry it was gathered that the goods imported vide above mentioned past Bills of entry were transported from Nhava Sheva to Kundali Sonipat instead of Panipat.** Further it was gathered that the said goods were unloaded at the premises of the factory of Apple Printpack, Kundli Sonipat. In this connection a location map was received from M/s. Kanhaiya Roadways through their Driver that confirms the same.

9.4 The information was gathered that the goods imported by the importer in past bills of entry were transported by M/s Kanhaiya Roadways. Accordingly, a voluntary statement of Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways, for Delhi area office situated at 319, Apsara Complex, Delhi UP Border, Ghaziabad (UP) was recorded on 19.09.2023, under Section 108 of the Customs Act, 1962, at DRI Noida office wherein he inter-alia stated that -

- M/s. Kanhaiya Roadways is a proprietorship firm and owner of the firm is Shri Kanhaiya Ram Mohan Mishra. Their office is situated at Ashok Nagar, Building No. 11, Flat No. 101/102/103, Thane, Mumbai and second address is Office No.3, Heera Apartment, Ground Floor, Balkum Pada No. 1 Thane, Mumbai – 400608.
- He is looking after the work of loading and unloading of the vehicles of M/s. Kanhaiya Roadways in and around Delhi.
- His transport has carried the goods of M/s Proffer Information Systems India Private Limited from Nhava Sheva to Samalkha Panipat but unloaded such goods at Sonipat, Noida & Delhi instead of Panipat. The goods were unloaded at Apple Printpack Pvt. Ltd, Sonipat, J-25, Sector 63, Vidya Chemical/Polymer Noida and Wazirpur, near Goyal Dharam Kanta, Delhi.**
- The person who deals with the unloading of the goods at different places is Neeraj on behalf of M/s Proffer Information Systems India Private Limited, having mobile nos. 9315001055 & 9329607601. The person who deals with the same on behalf of Apple Printpack Pvt. Ltd has mobile no.9053011053.**

e. No goods were unloaded at Samalkha, Panipat.

10. During the examination of the goods imported vide aforementioned Bills of Entry, as referred at para 09, it was gathered that two other containers imported by **M/s Proffer Information Systems India Pvt. Ltd.** vide live B/Es nos. 7551182 dated. 26.08.2023 & 7572566 dated. 28.08.2023 were at the port and accordingly the SIIB, JNCH, Mumbai was requested for examination of said goods vide DRI/LZU letter dated 22.09.2023.

a. The following B/Es were examined by the officers of SIIB, JNCH and the examination report of goods, was duly forwarded by Deputy Commissioner of Customs, SIIB, JNCH, Mumbai, annexing therein Panchanama dated 06.10.2023, reporting therein that during examination, no concealment were found.

Sl. No.	Name of the port	B/Es no. & Date	Assessable Value (In Rs.)	Imported items
1	INNSA1	7551182/26.08.2023	59,38,433.95	Aluminium Foil 0.006MMX00915MM
2	-do-	7572566/28.08.2023	32,74,180.18	Aluminium Foil 0.006MMX01245MM

11.1 On the basis of statements of Shri Raghunandan Mishra (employee of Kanhaiya Roadways), the premises of the Apple Printpack Pvt. Ltd, Kundali, Sonipat was searched under search warrant issued by the DD, DRI, Noida on 20.09.2023. A systematic search was conducted under Panchanama proceedings. Whereas 15 (fifteen) wooden boxes imported from China **containing goods i.e. Aluminium Foils** were found in their premises similar to the goods held at Nhava Sheva Port. The said goods were detained for further examination and handed over to the owner of the Apple Printpack Pvt. Ltd, Kundali, Sonipat through Supurdaginama.

11.2 During the course of investigations, statement of one of the director of M/s. Apple Printpack Pvt Ltd, Shri Shyam Bansal was recorded under Section 108 of the Customs Act, 1962 on **20.09.2023** wherein he stated inter-alia that –

- The company has four directors – (a) Vinay Bansal (b) Bimal Bansal (c) Shyam Bansal and their father (d) Trilok Chandra Bansal and is situated at 102-103, HSIIDC, Sector-53, Phase-V, Kundali, Sonipat, Haryana. The company is in the business of manufacturing of carton boxes and in laminating.
- They have purchased the imported Aluminium foil from **M/s. Sparsh Industries Private limited (Foil Division), Akbarpur, Kanpur Dehat, (UP) & Kuber Import House, Bakoli, Delhi - 110036** and submitted invoices for the same.
- He did not deal with any business with M/s Proffer Information Systems India Private Limited as well as with the director named Harish Batra.
- He accepted that the mobile no. 9053011053 has been issued by him and is being used by his employee.**

12. On the basis of statements of Shri Raghunandan Mishra (employee of Kanhaiya Roadways), the premises of M/s. Vidya Polymer J-25, Sector 63, Noida was also searched on 20.09.2023, through panchanama proceedings. No imported goods were found in their premises but Aluminium foils were found in **plain boxes**. The search

was conducted on 20.09.2023 under search warrant issued by the DD, DRI, Noida. This company also submitted the purchase invoice of M/s. Sparsh Industries Private limited (Foil Division), Akbarpur, Kanpur Dehat, (UP) & Kuber Import House, Bakoli, Delhi – 110036 and Singhania Alu-foil Containers Mfg Co. Haryana.

13. For further enquiry, search was conducted on 27.09.2023 at the premises of M/s. Sparsh Industries Private Limited (Foil Division), Kanpur Dehat. Statement of DGM Production (Foil) Shri Satayjit Singh as well the Liaison Officer Shri Ajay Kapoor of said factory were recorded under Section 108 of the Customs Act, 1962 wherein they stated inter-alia that –
 - a. M/s. Sparsh Industries Private Limited (Foil Division), Kanpur Dehat is a manufacturing unit of Aluminium Foil.
 - b. The unit is manufacturing the aluminium foil (5.5 to 7.00 micron) by gauging from raw material of aluminium foil having 240 to 260 micron.
 - c. They never imported aluminium foil below 75 micron.
 - d. They have sold aluminium foil to Apple Printpack Pvt. Limited, Kundali Sonipat of 06 micron which was manufactured from their own unit not imported products.
14. In response to the summon dtd. 16.09.2023, the manager of CHA company Real Logistics, Shri Anand Chandrakant Nikam, appeared on 04.10.2023. The statement was recorded u/s 108 of CA, 1962, wherein he stated inter-alia that –
 - a. **He never met in person with the director Harish Batra of M/s. Proffer Information Systems India Private Limited. The said company was introduced by one of his client Shri Prashant Nayak (Mob no. 6000820002), director of Umang Impex.**
 - b. He had filed 27 B/Es for the company M/s. Proffer Information Systems India Private Limited. Out of that, 21 (08 B/E for steel coil & 12 B/E for aluminium foil) have cleared and 07 B/E are in hold.
 - c. All the imported goods were delivered to Kanhaiya Transport for further carrying through delivery challan.
 - d. M/s. New growth Petrochem India Private Limited (IEC – AAICN5732F), M/s. Rishab Overseas (IEC – 0515004774) & M/s. Umang Impex India (P) Ltd., are the parties that have done High Seas Sale Agreement with M/s PROFFER INFORMATION SYSTEMS INDIA PRIVATE LIMITED.
 - e. He further submitted the detail of each B/Es along with the duty detail are as follows
–

SR NO.	BOE NO.	DATE	BL NO	PKGS	NO OF CONTAIN ERS	DESCRIPTION	LICENCE NO	QTY IN KGS	INV VALUE USD	TOTAL DUTY SAVED INR
1	5710632	27.04.2023	SWNLCHNSA23030400	86	2 X 20	ALUMINIUM FOIL	511018011	38455.5	140362.58	2535098
2	5710941	27.04.2023	SWNLCHNSA2303435	87	2 X 20	ALUMINIUM FOIL	511018011	36925.2	134776.99	2434824
3	6468099	18.06.2023	COAU8034501110	22	3 X 20	STEEL COILS	511018968	79746	110448.21	2594936
4	6468196	18.06.2023	COAU8034501120	16	2 X 20	STEEL COILS	511018968	54860	75981.1	1785145.3
5	6502039	20.06.2023	MSALCHNSA23050689	88	2 X 20	ALUMINIUM FOIL	511018011	37158.6	135628.89	2447170.3
6	6502098	20.06.2023	EPIRCHNNB0238028	17	2 X 20	STEEL COILS	511018968	53910	74395.8	1747899.3
7	6502145	20.06.2023	LDBTAONSA230532	16	2 X 20	STEEL COILS	511018968	54380	75316.31	1769526.1
8	6519151	21.06.2023	ASCLTAONSA2300693	9	1 X 20	STEEL COILS	511018968	27090	37519.65	881508.9
9	6805887	10.07.2023	EPIRCHNNB0239426	30	4 X 20	STEEL COILS	511018968	107398	149283.22	3515795
10	6805915	10.07.2023	EPIRCHNNB0239254	24	3 X 20	STEEL COILS	511018968	81440	113201.609	2666030.6
11	6805952	10.07.2023	15481TAONSA	25	3 X 20	STEEL COILS	511018968	81160	112812.4	2656864.7
12	7228417	06.08.2023	QGD0319006B	39	1 X 20	ALUMINIUM FOIL	511018011	20002	65606.56	1582031.3
13	7228504	06.08.2023	QGD0319006A	37	1 X 20	ALUMINIUM FOIL	511018011	19555	64140.4	1546676.1
14	7442359	20.08.2023	EGLV140301396210	28	1 X 20	ALUMINIUM FOIL	511018011	18724	57857.16	1373243.1
15	7442436	20.08.2023	EGLV140301305583	35	1 X 20	ALUMINIUM FOIL	511018011	19417	63687.76	1541272.5
16	7550124	26.08.2023	EGLV140301496010	36	1 X 20	ALUMINIUM FOIL	511018011	21173	69447.44	1680659.4
17	7550540	26.08.2023	EGLV140301496087	36	1 X 20	ALUMINIUM FOIL	511018011	20408	66938.24	1619935.7
18	7550978	26.08.2023	KMTCSHAL009487	29	1 X 20	ALUMINIUM FOIL	511018011	21215.5	67889.6	1642958.9
19	7572634	28.08.2023	SNK0020230711979	26	1 X 20	ALUMINIUM FOIL	511018011	18972	60710.4	1469219.1
20	7659193	03.09.2023	EGLV140301501170	29	1 X 20	ALUMINIUM FOIL	511020274	20163	62303.67	1507777

SR NO.	BOE NO.	DATE	BL NO	PKGS	NO OF CONTAIN ERS	DESCRIPTION	LICENCE NO	QTY IN KGS	INV VALUE USD	TOTAL DUTY SAVED INR	REMARK
1	7572566	28.08.2023	SNK0020230711982	27	1 X 20	ALUMINIUM FOIL	511018011/511020274	19565	62608	1515142	DRI HOLD
2	7659297	03.09.2023	EGLV140301501162	32	1 X 20	ALUMINIUM FOIL	511020274	18132	56027.88	1329824.9	DRI HOLD
3	7722010	07.07.2023	SSLSHGTCJ6800	30	1 X 20	ALUMINIUM FOIL	511020274	21318	68217.6	1651880.7	DRI HOLD
4	7722418	07.09.2023	SSLSHGTCJ6801	36	1 X 20	ALUMINIUM FOIL	511020274	20509.3	65629.76	1589216.3	DRI HOLD
5	7774340	11.09.2023	KMTCTAO7002551	33	1 X 20	ALUMINIUM FOIL	511020274	18361	56735.49	1347422.6	DRI HOLD
6	7781840	11.09.2023	KMTCTAO7001553	32	1 X 20	ALUMINIUM FOIL	511020274	18132	56027.88	1330617.6	DRI HOLD
7	7551182	26.08.2023	KMTCSHAL009487A	40	1 X 20	ALUMINIUM FOIL	511018011	21268	68057.6	1647024.5	DRI HOLD

15. Shri Kanhaiya Mishra of M/s. Kanhaiya Transport has appeared on 05.10.2023 the statement was recorded u/s 108 of CA,1962 - wherein he stated inter-alia that –

- He did not know about M/s. Proffer Information Systems India Private Limited directly. The owner of M/s. Umang Impex had contacted Kanhaiya Transport for doing the work of M/s. Proffer Information Systems India Private Limited. The mobile no. of the owner of the Umang Impex is 9999923943.**
- He used to get direction from Umang Impex to carry the goods of M/s. Proffer Information Systems India Private Limited and sometimes one employee named Shri Ankur (Mob no. 9560143134) of M/s. Umang Impex.**
- He further stated that such imported goods of M/s Proffer Information Systems India Private Limited were never unloaded at Samalkha Panipat. All goods were unloaded at different places viz. Kundli, Sonipat at the premises of M/s. Apple Printpack Pvt. Ltd, Noida J-25 at the premises of Vidya Polymer and different areas of Delhi and Kota also.
- All e-way bills were generated by Umang Impex and then sent to him through WhatsApp and consequently he sent it to his drivers.
- He confessed his fault for not unloading of the imported goods at the declared premises of e-way bill.

16. For further follow-up summons were issued to the following persons involved in the case, the details are –

Sl. No.	Name of the person	Summon issued on	Appearance date	Remarks
	Shri. Ankur Bansal	25.09.2023, 06.10.2023,		

1	Director of M/s Vidya Polymer Pvt. Ltd.	17.10.2023, 10.11.2023, 08.01.2024	12.01.2024	
2	Director M/s Kuber Import House	6.10.2023, 26.10.2023, 6.11.2023, 7.11.2023, 29.12.2023	6.12.2023	
3	Shri. Umang Garg Ex Director of M/s Umang Impex India Pvt. Ltd.	6.10.2023, 16.10.2023, 23.10.2023, 10.11.2023, 14.12.2023, 04.07.2024	Not appeared	A complaint has been filed to the Hon'ble Court for non appearance on 25.07.2024
4	Shri. Prashant Kumar Nayak Director of M/s Umang Impex India Pvt. Ltd.	6.10.2023	16.10.2023	
5	Shri. Shyam Sundar Bansal Director of M/s Apple Printpack Pvt. Ltd.	17.10.2023, 23.10.2023, 10.11.2023	20.11.2023	
6	Director, M/s. Proffer Information Systems India Private Limited	25.10.2023, 16.9.2023, 4.10.2023, 10.11.2023	Not appeared.	
7	Shri. Vinay Bansal Director of M/s Apple Printpack Pvt. Ltd.	26.09.2023, 20.11.2023, 8.12.2023, 18.12.2023	26.12.2023 & 27.12.2023	
8	Shri. Kanhaiya Mishra, M/s Kanhaiya Roadways	8.12.2023	18.12.2023	
9	Shri. Puneet Gola Director of M/s Umang Impex India Pvt. Ltd.	28.12.2023		
10	Shri. Prashant Nayak Director of M/s Umang Impex India Pvt. Ltd.	28.12.2023		
11	Shri. Ramanand Goel Director of M/s Vidya Polymer Pvt. Ltd.	28.12.2023		
12	Ms. Kanika Garg Director of M/s Umang Impex India Pvt. Ltd.	28.12.2023		

13	Shri. Harish Batra Director of M/s Proffer Information Systems India Pvt. Ltd.	2.01.2024	2.01.2024	
14	Shri. Piyush Gupta M/s Risabh Overseas	1.02.2024	8.02.2024	

17. In the meantime, the advocate of M/s Proffer Information Systems India Private Limited submitted the following demand draft against the duty involved on such duty free imports under Advance Authorization and non-fulfilment of advance licenses, issued from RBL Bank, Pitampura Branch, the details are –

Sl. No.	Demand draft no and date	Amount	In favour of
1	559841 dtd.03.10.2023	50,00,000/-	Commissioner of Customs Nhava Sheva
2	559842 dtd.03.10.2023	50,00,000/-	-do-
3	559844 dtd.03.10.2023	1,01,43,000/-	-do-
4	559847 dtd.06.10.2023	1,90,69,422/-	-do-
	Total	3,92,12,422/-	

The said demand drafts were deposited to the cash section of JNCH, Mumbai **which was acknowledged by the cash section of JNCH Mumbai as Sl. No. 198 dated 18.10.2023.**

18.1 For further follow up, the premises of M/s. Value Pack Corporation, B-78, Wajeerpur Industrial Area, Delhi was searched on the basis of SW issued by the competent Authority. A systematic search was conducted under Panchanama proceedings in the presence of the Accountant of the company. No incriminating goods were found during the time of search as affected. Some documents were resumed for further investigation.

18.2 During the course of investigations, statement of the Accountant of M/s. Value Pack Corporation, Sunil Luthra S/o (L) Shri Shyam Lal was recorded under section 108 of the Customs Act, 1962 wherein he stated inter-alia that –

- He has been engaged as Accountant of the company by Shri Ankur Bansal director of Vidya Polymer to look after the day to day work of M/s. Value Pack Corporation. The directors of the Value Pack Corporation are Ankit Bansal (brother of Ankur Bansal) and Sandhya Bansal. Registered office of M/s Vidya Polymers Pvt. Ltd. is on the first floor of this building located at B-78, Wajeerpur Industrial Area, New Delhi. He did not have access of the records of Vidya Polymer. The records of Vidya Polymer were maintained at Noida Office.
- M/s. Value Pack Corporation is engaged in manufacture of pouch rolls of guthka/pan masala. They purchased LDPE granules, poly films; aluminum foils etc from sister company i.e. Vidya Polymer Private Limited.
- In their stock, 1065 kg of aluminum foil are available in their factory and same were purchased from M/s. Vidya Polymers Private Limited.

19. Shri Prashant Kumar Nayak, one of the Directors of M/s Umang Impex appeared on

16.10.2023 in compliance of summon issued on 06.10.2023, his statement was recorded u/s 108 of CA,1962 - wherein he stated inter-alia that –

- a. His name is Prashant Kumar Nayak, age 44, residing at RZ C-2 Block, H. No.2, Mahaveer Enclave, Palam Gaon, South (W), Delhi – 110045 and submitted the copy of Aadhar bearing no.706435775922. He couldn't appear on 09.10.2023 due to his father's illness and appeared on 16.10.2023.
 - b. He is working in the office of M/s. Umang Impex India Private Limited since 2018 and takes care of staff and office. Over a period of time of joining at Umang Impex, he started taking the orders for supply of resin from different vendors and supplied it and in turn earned of Rs.1 lacs to 1.25 lacs for each such supply, the resin was purchased from M/s. Umang Impex India Private Limited. Thereafter he purchased the company M/s. Umang Impex on 1st April, 2023. Now the company is supervised by him, Puneet Gola and Ramakant Patra.
 - c. **On being shown the deed of high sea sale dated 20.04.2023 between the director of M/s. Proffer Information Systems India Private Limited and the director of M/s. Umang Impex India Private Limited, he denied of having knowledge of anything about this deed and that the signatures on this deed is also not of him. He further replied that he did not know any Harish Batra. He further identified the signature as as put on the deed and replied that this signature was of Shri Umang Garg (Ex director of M/s. Umang Impex). He further stated that the detail about this deed may be asked from Shri Umang Garg. All the works of this company was being done by Shri Umang Garg (Ex director of M/s. Umang Impex) and he was the director only. Mobile nos. of Shri Umang Garg are 9999999378 & 9999923943.**
 - d. **Shri Umang Garg was the Ex-director of M/s. Umang Impex India Private Limited residing at MP Enclave, Pitampura North West Delhi – 110034. His Aadhar no. 20534479475. He is looking after all the works of M/s. Umang Impex India Private Limited.**
 - e. **He was in contact with the CHA i.e. M/s. Real Logistics Shipping Agency. He further replied that this company has two other directors named Shri Puneet Gola and Rama Kant Patra. The ex-directors of the company were Ms. Kanika Garg and Umang Garg.**
 - f. He did not know about High sea sale.
 - g. Shri Neeraj was looking after the godown work of the company i.e loading and unloading of the goods on the direction of Umang Garg. He did not have the mobile no. of Neeraj.
 - h. He did not know about M/s. Kanhaiya Roadways, Umang Garg may be asked.
 - i. He had received the summon in the name of Umang Garg issued under section 108 of the Customs Act, 1962 for appearance on 20.10.2023.
20. On being summoned vide summon dated 16.10.2023 for his appearance before the investigating team on 20.10.2023 Shri Umang Garg replied vide his letter dated 19.10.2023 that he could not appear for investigation due to some unavoidable circumstances. He was further summoned on 6.10.2023, 16.10.2023, but he did not appear and never honoured the summons so issued.

21. For further enquiry of demand drafts having nos. 559841 dated 03.10.2023, 559842 dated 03.10.2023, 559844 dated 03.10.2023 and 559847 dated 06.10.2023, as deposited by the representative of M/s Proffer Information Systems India Private Limited, a statement was asked from the Branch Manager, RBL Bank, Lucknow vide letter dated 01.11.2023. The Bank has submitted the statement for the period 01.04.2023 to 01.11.2023 to DRI/LZU on 02.11.2023. On scrutiny, it was observed that M/s. Umang Impex India Private Limited has deposited Rs. 7, 78, 02,705/- and withdrew Rs. 47,93,50,000/- from the said account during the given period. It has further been seen that the deposited duty amount of Rs. 3,92,12,422/- has been credited into the account of M/s. Proffer Information Systems India Private Limited by M/s. Umang Impex India Private Limited. The relevant entry into the account are shown here –

03-Oct-2023	DD FAVORING NHAVA SHEVA DEMAND DRAFTS AND PA	119	03-Oct-2023	5,000,000.00		5,126,206.97Cr
03-Oct-2023	DD FAVOURING NHAVA SHEVA DEMAND DRAFTS AND PA	120	03-Oct-2023	5,000,000.00		126,206.97Cr
03-Oct-2023	RTGS/ICICH23276553152/UMANG IMPEX INDIA PRIVATE LI		03-Oct-2023		4,826,750.00	4,952,956.97Cr
03-Oct-2023	RTGS/ICICH23276553287/UMANG IMPEX INDIA PRIVATE LI		03-Oct-2023		2,173,250.00	7,126,206.97Cr
03-Oct-2023	IMPS 327619708846 FROM UMANG IMPEX INDIA PR		03-Oct-2023		25,000.00	7,151,206.97Cr
03-Oct-2023	RTGS/ICICH23276554746/UMANG IMPEX INDIA PRIVATE LI		03-Oct-2023		3,000,000.00	10,151,206.97Cr
03-Oct-2023	DD FAVORING NHAVA SHEVA Demand Drafts and Pa	122	03-Oct-2023	10,143,000.00		8,206.97Cr
06-Oct-2023	RTGS/ICICH23279504988/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,788,440.00	4,796,646.97Cr
06-Oct-2023	RTGS/ICICH23279504939/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,680,960.00	9,477,606.97Cr
06-Oct-2023	RTGS/ICICH23279505107/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,715,930.00	14,193,536.97Cr
06-Oct-2023	RTGS/ICICH23279505056/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,914,670.00	19,108,206.97Cr
DATE	TRANSACTION DETAILS	CHQ.NO.	VALUE DATE	WITHDRAWAL AMT	DEPOSIT AMT	BALANCE AMT
06-Oct-2023	DD FAVORING NHAVA SHEVA Demand Drafts and Pa	121	06-Oct-2023	19,069,422.00		38,784.97Cr
09-Oct-2023	RTGS/ICICH23282512922/UMANG IMPEX INDIA PRIVATE LI		09-Oct-2023		2,000,000.00	2,038,784.97Cr

From the above, it appeared that the account of M/s. Proffer Information Systems India Private Limited was solely dealt by Shri Umang Garg the ex- director of M/s. Umang Impex India Private Limited instead of on paper director named Shri Harish Batra.

22. Shri Shyam Sunder Bansal S/o Shri Trilok Chandra Bansal one of the directors of M/s. Apple Printpack Pvt. Ltd appeared on 20.11.2023. His statement was recorded u/s 108 of CA,1962 - wherein he stated inter-alia that –
- His name is Shyam Sunder Bansal S/o Shri Trilok Chandra Bansal having Aadhar No. 819558912008 residing at E-4/25, Model Town-2, Dr Mukharjee Nagar, S.O. North West Delhi – 110009. He is one of the director of M/s. Apple Printpack Pvt. Ltd, add – 102-103, HSIIDC, Sector-53, Phase-5, Kundali Haryana – 131028. He agreed with his earlier statement dated 20.09.2023.
 - On being shown the statement dated 27.09.2023 of Shri Satayjit Singh, DGM (Foil Division) of M/s. Sparsh Industries (P) Ltd, Kanpur (UP), he showed his incompetence to comment on the statement as the Foil purchase and sell from M/s. Sparsh Industries (P) Ltd. was being dealt by his elder brother Shri Vinay Bansal.
 - The purchase and sale of Aluminium Foil between M/s. Apple Printpack Pvt. and M/s Kuber Import House was also dealt by his elder brother Shri Vinay Bansal. He

- did not know any person named Umang Garg.
- d. He acknowledged and received the summon issued under section 108 of the Customs Act, 1962 in the name of Shri Vinay Bansal for appearance on 29.11.2023.
- e. He is looking after the company work as one of the Director since inception of the company. The company M/s. Apple Printpack Pvt. has two other branches (i) J-3143, DSIDC, Bhargid Industrial Area, Narela Delhi (ii) 347/07, Alipur Nati, Narela Road, Delhi and manufacturing P.P. Woven sacks bag, LD Bags, Jute Bags etc. All the directors of this company have equal holdings i.e. 25%.
23. The director of M/s. Proffer Information Systems India Private Limited was requested to deposit the remaining duty along with other dues against the said licenses and co-operate in the investigation vide DRI/LZU letter dated 22.11.2023. But he did not respond.
24. Whereas in response to summon dated 07.11.2023 Shri Deepak Chhabra S/o Shri Anand Prakash R/o 217, 1st Floor, Ashok Vihar, New Delhi, Director of M/s Kuber Import House appeared on 06.12.2023, his statement was recorded under section 108 of Customs Act, 1962, wherein he inter-alia stated that –
- a. His Company's name is Kuber Import House situated at KH- 20/8 13, 12 Vill: Bakoli, New Delhi which deals in import of paper and aluminium foil. His mobile No. is 9560777777. He had not appeared on earlier summons as he was not feeling well.
- b. He started his company in 2021 and took GST Registration on 27.06.2023. His IEC Code is AKBPC2594C.
- c. He knew M/s Apple Print Pack Pvt. Ltd. and had sold the aluminium foil to the company and raised the invoices. The Aluminium foils which he had sold to M/s Apple Print Pack Pvt. Ltd were imported from Ding Heng Materials Co. Ltd. Thailand.
- d. For such business with M/s Apple Print Pack Pvt. Ltd, he dealt with Shri Vinay Bansal and received the payment in the company i.e. Kuber Import House account.
- e. He did not know Harish Batra, the director of M/s. Proffer Information Systems India Private Limited.
- f. He knew the company Vidya Polymer Private Limited and sold some goods to the company and submitted the ledger for the same.
- g. He knew the company Umang Impex India Private Limited and sold some goods to the company and submitted the ledger for the same. Mr. Ankur Bansal, the director of Vidya Polymer has introduced him with Umang Garg, of Umang Impex India Pvt Ltd.
25. Whereas in response to DRI/LZU summon dated 08.12.2023 Shri Kanhaiya Ram Mohan Mishra, Flat no. 101,102, Ashok Nagar, Co-op HSG Society, Dadlani Road, Balkam Thane (W), having Aadhar No.407547250540 proprietor of M/s. Kanhaiya Transport appeared before the investigating team on 18.12.2023, his statement was recorded u/s 108 of CA, 1962 - wherein he inter-alia stated that –
- a. All the imported goods by M/s. Proffer Information Systems India Private Limited were carried by them and some goods were delivered at Kota (Rajasthan), the details of the vehicle are- RJ -27 GB 2587 mob no. 9983813281, RJ 02 GA 9665 driver mob no. 8306868013, RJ 27 GD 0322 Driver mob no. 7357228924. The driver of the vehicle RJ 02GA 9665 had informed that the goods were unloaded at Bamasa Mandi,

Kesar Dharam Kanta near Birla Cement Company Godown but unable to recall the actual factory name where goods were unloaded.

- b. Some imported goods were unloaded at Delhi at Shiv Murty compound, near Palam Grand Hotel opposite Bharat Petrol Pump (Ganga dharm kanta) Vokli Delhi.
- c. The stainless steel imported by M/s. Proffer Information Systems India Private Limited was unloaded near Goyal Dharam Kanta, Wazirpur Industrial Area. The unloaded goods were taken by different vendors by their own vehicle.

26.1 Whereas in response to summon dated 08.12.2023, Shri Vinay Bansal S/o Shri T. C. Bansal E-4/25, Model Town –II Delhi -9, having Aadhar No.962957608882, one of the Directors of M/s Apple Printpack Pvt. Ltd. appeared on 26.12.2023 before the investigating team, his statement was recorded u/s 108 of CA,1962 - wherein he inter-alia stated that –

- a. He is one of the directors of the company M/s. Apple Printpack Pvt. Ltd situated at 102,103, Phase-V, Sector-53, Kundali Haryana dealings with the day to day work and mainly used to purchase the raw materials.
- b. On being asked about the aluminium foil imported from China and the fifteen (15) wooden boxes which were detained on 20.09.2023 at their premises, he replied that “in fifteen boxes – none of the box belongs to M/s. Sparsh Industries Private Limited which was stated wrongly on 20.09.2023. The second invoice which was issued to us by Kuber Import House is correct. Out of 15 (fifteen), it contains a box relates to Kuber Import House.”
- c. **On being shown the statement dated 27.09.2023 of Shri Satyajit Singh DGM (Foil Division) M/s Sparsh Industries Pvt. Ltd. & statement dated 06.12.2023 of Shri Deepak Chhabra of M/s. Kuber Import House, he agreed with the statement of Shri Satyajit Singh DGM (Foil Division) and reiterated that “the goods 15 (fifteen) boxes, origin from China not relates to M/s. Sparsh Industries Private Limited.**
- d. He did know about Harish Batra of M/s. Proffer Information Systems India Private Limited, as well as Shri Umang Garg of M/s. Umang Impex (P) Ltd.
- e. He further submitted that the imported aluminium foils of Chinese origin at their premises were purchased from (i). Tania Polyfilms Pvt. Limited (ii) Futuristic Marketing Solutions (iii) Ultimate packaging solutions (iv) K Square Metal Trading (P) Limited. (v) Mamta Impex (vi) Singhania Alu Foil Container Manufacturing Co. (vii) Premium Corporation (P) Limited and submitted the relevant invoices.
- f. He accepted that the mobile no.9053011053 which was used to make a call by the transporter for unloading the goods was issued in the name of their company and given to the GS-4 Security services company’s work. Further accepted that “it may be possible goods are rejected or returned due to inferior quality by us”. He further denied unloading any foils of Chinese origin. He requested to take some rest and to appear on next day and accordingly allowed.

26.2 He further appeared on 27.12.2023 and agreed with the statement dated 26.12.2023.

- a. **He assured to provide the details of the mobile no. 9053011053 regarding use of such number and about calls. He is one of the directors of the company to look after the Guard activities and work.**
- b. **He further replied that when the goods used to reach the factory premises a**

sample is taken and if found correct then the goods entered the factory premises and if found not fit, goods are returned. No sample testing records are kept in the factory premises.

Seizure memo of the detained goods issued vide DIN number 202312DDZ80000449804, against their company was acknowledged by him.

27. Whereas it was gathered that one person namely Shri Harish Batra, S/o Shri Amarnath Batra is residing in and around Paharganj area Delhi. On the basis of such input a team was rushed to Delhi, the said person was identified and taken to DRI Regional Unit, Noida with his consent for recording statement. The statement was recorded u/s 108 of CA,1962, wherein he inter-alia stated that –

- a. His name is Harish Batra @ Rishi Batra residing at 1C Paharganj Delhi. He is actual dweller of Lucknow. The address of Lucknow is B 280, Deendayal Puram, Takrohi, Indira Nagar, Lucknow – 226016. He is younger one of three brothers. His elder brother is working in a private company in Lucknow and lives in Takrohi area. He is living in Delhi since 2008 in and around Paharganj and earns his living by doing temporary work here and there. He went to Lucknow on 17th July 2022 on death of his mother. His mobile no. 9871078897 which is issued on the name of one Ajit Nagar and registered in the bank.
- b. **He opened his bank account in State Bank of India in the month of December, 2023 through CSC and deposited Rs.6000/-.**
- c. **Once, on the request of one of his friend namely Mumtaz, he went to Pitampura (Delhi) and opened an account into the bank at Pitampura and in-turn Mumtaz has paid him Rs.2500/- and told that there would be no problem. He did not know any company in the name and style of M/s. Proffer Information Systems India Private Limited.**
- d. **He did not know Umang Garg or the company M/s. Umang Impex India Private Limited.**

28. Therefore, on a reasonable belief that the items i.e. Aluminium Foil imported vide live Bills of Entry No. 7551182 dated 26.08.2023, 7572566 dated 28.08.2023, 7659297 dated 03.09.2023, 7722418 dated 07.09.2023, 7722010 dated 07.09.2023, 7781840 dated 11.09.2023 and 7774340 dated 11.09.2023, appeared to be liable for confiscation under section 111 (o) of the Customs Act,1962, with respect to violation of the condition of advance license, the same were seized under section 110 of the Customs Act, 1962 and communicated to the concerned vide DRI/LZU letter of even no. 2266-2274 dated 01.12.2023.

29. Whereas in response to DRI/LZU summon dated 08.01.2024 Shri Ankur Bansal S/o Shri Dharam Pal Bansal R/o 92, Sandesh Vihar, Pitampura, Delhi – 110034, director of M/s Vidya Polymer Pvt. Ltd. situated at J-25, Sector-63, Noida UP having Aadhar No.790287905865 appeared before the investigating team on 12.01.2024, his statement was recorded u/s 108 of CA,1962, wherein he inter-alia stated that –

- a. He started his own business of manufacturing of flexible packaging material under the name of Vidya Polymer Pvt. Ltd in the year 2008. The manufacturing activity of the company is in Noida and office in Delhi. His company is involved in the manufacturing of Flexible packaging material using various raw materials like Polymer films, metalized polyester films, LDPE granules, paper, aluminium foil, inks adhesive and other related raw materials. Such raw materials are procured from various suppliers viz. Reliance Industries Limited, Jindal Polyfilms Limited, U-flex limited, Chanpur paper enterprises, Sparsh industries Limited. The printed flexible packaging material is supplied to various FMCG Companies like Haldiram Snacks Pvt Ltd., Gopal Snacks Pvt Ltd. The other director of the company is Shri Ramananda Goel.
- b. He is also the director of various companies namely Vidya Global Foods Pvt. Ltd, Vidya P U Foam Pvt Ltd., Greenquest Pach Solutions Pvt. Ltd., Advance Films Pvt Ltd., Greenquest Alu foil Pvt Ltd., Vidya Food Packaging pvt Ltd., Shree Ram Mega Food Park Private Limited and VSD Capital Pvt. Ltd.
- c. He did not know about the company M/s. Proffer Information Systems India Pvt Ltd.
- d. He has no knowledge about M/s Umang Impex and no business dealings.
- e. He knew Mr Umang Garg/Kanika Garg for last 08 months. His sister Ms. Kanika Garg got married to son of his father's friend a few months back. After their alliance Mr Umang Garg got in contact with him.
- f. He knew Risabh Overseas. He had few business dealings.
- g. He did not know M/s. New Growth Petrochem Pvt Ltd or no business dealings.
- h. He did not know M/s. Kanhaiya Roadways and was not able to recall any business dealings i.e. movement of goods inward or outward.
- i. **On being shown the statement dated 05.10.2023 of Shri Raghunandan of M/s. Kanhaiya Roadways and he replied that "After going through the statement I would like to submit that currently I am not in a position to confirm whether such vehicle no's as shown to me had been offloaded at M/s Vidya Polymer Pvt Ltd., Noida. I will check the records in my office and submit my reply later".**
- j. **He knew M/s. Kuber Import House and his owner Mr Deepak Chabbra for the last 04 years.**
- k. **He accepted that he introduced Mr Deepak Chabbra to Mr. Umang Garg in their one family function.**
- l. **He knew M/s. Apple Printpack Pvt. Ltd which has similar line of business like his company. However he did not know the company's owner personally nor had any business dealings with him.**
- m. He did not know M/s Real Logistics Shipping Agencies Mumbai.

30. Whereas, a letter regarding No Objection for disposal of seized goods was communicated to the Additional Commissioner of Customs (NS-V), JNCH, Nhava Sheva, Maharashtra – 400707 vide DRI/LZU letter of even no.168 dated 02.02.2024.

31. Whereas in response to summon dated 01.02.2024, Shri Piyush Gupta S/o Shri B. K. Gupta R/o C-96, South Extension-II, New Delhi – 110049, having Aadhar No.603606040239, prop. Of M/s Risabh Overseas appeared before the investigating team on 08.02.2024, his statement was recorded u/s 108 of CA,1962 - wherein he inter-alia stated that –

- a. He started his own business in the year 2016 as firm named Rishab Overseas having IEC 0515004774.
 - b. **He imports aluminium foil and sells it locally. He started High-sea-sale on specific request of one of his client Shri Umang Garg of M/s. Umang Impex India Pvt. Ltd., and submitted all the documents.**
 - c. **He knew Shri Umang Garg through one of his family friend. He met him in January 2023. On request of Shri Umang he agreed to do high-sea-sales. He did his first high-sea-sale with Umang on 28.07.2023. He knew that the director of M/s Umang Impex is Shri Umang Garg.**
 - d. He did not know the person Shri Prashant Nayak and Puneet Gola and had never spoken to them. His all dealings were done with Shri Umang Garg.
 - e. **He had done total 12 (twelve) high-sea-sales (twelve containers) to Umang Impex India Pvt. Ltd.**
 - f. **He did not know about the company M/s. Proffer Information Systems India Pvt Ltd**
 - g. **He knew the company M/s. Apple Printpack Pvt Ltd., and one of the directors Mr. Vinay Bansal**
 - h. He had not done any other high-sea-sale except with M/s. Umang Impex India Private Limited.
 - i. He did not know any person in the name of Harish Batra.
-
31. Further an extension of time period for issuance of Show Cause Notice for another six months, under the provisions of Section 110 (2) of the Customs Act, 1962 was sought from the Commissioner of Customs (NS-IV) vide DRI/LZU letter dated 06.03.2024. Accordingly extension of time limit for issuance of Show Cause Notice u/s 124 to M/s. Proffer Information Systems Private Limited has been accorded by the Commissioner of Customs, NS-III, JNCH for another six months upto 12.09.2024 vide letter F. No. CUS/1384/2024/Gr.IV/NS-III/JNCH dated 11.03.2024.
 32. Whereas in compliance of search authorisation issued by the Assistant Director, DRI, LZU vide DIN No. 202407DDZ8000000EBE2 dated 04.07.2024, the residential premises of Shri Umang Garg, i.e. B-155, MP Enclave, Pitampura North West Delhi – 110034 was searched on 04.07.2024 under panchnama proceedings in presence of his mother, however nothing incriminating was found or recovered from the searched premises. The Xerox copy of driving license of Shri Umang Garg was taken for further proceedings. Mr. Umang Garg was not present at his residing address at the time of search by the DRI officers, accordingly a summon was issued for his appearance on 12.07.2024 which was acknowledged by his advocate, but he did not turn up on the said date.
 33. Many Summonses have been issued to Shri Umang Garg S/o Sri Surinder Garg, B-155, MP Enclave, Pitampura, North West Delhi – 110034 but he never turned up or honoured any of the summons so issued. Accordingly, an application under Section 208 & 210 of the BNS, 2023 has been filed before the Hon'ble Court of Special Chief Judicial Magistrate (Economic Offence), Lucknow with a prayer to take the cognizance of non-compliance of Summons and for initiation of legal action as deemed fit.
 34. The conditions of the advance licenses issued to M/s. Proffer Information Systems India Private Limited are hereunder –

At para-6 – The exempt goods imported against this Authorisation shall only be utilised in accordance with the provisions of Paragraph 4.12 and Paragraph 4.16 of the Foreign Trade Policy and other provisions and the relevant Customs Notification 21/2023 dated 01.04.23 (for physical exports), 22/2023 dated 01.04.23 (for deemed exports), 24/2023 dated 01.04.23 (for advance Authorisations for prohibited goods) and 23/2023 (for Annual Advance Authorisation) as the case may be as amended from time to time.

35 LEGAL PROVISIONS

35.1 Provisions under the Customs Act, 1962

2(39) -

(A) Section 28- Recoveries of duties not levied or short-levied or erroneously refunded.

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

(a) the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been 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) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,—

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

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

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest.

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty has not been levied or has been short-levied 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 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.

(5) Where any duty has not been levied or has been short-levied or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to twenty-five per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion—

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (5).

(7) In computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section, (8) —

(a) within six months from the date of notice in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice in respect of cases falling under sub-section (4).

(10) Where an order determining the duty is passed by the proper officer under this section, the person liable to pay the said duty shall pay the amount so determined along with the interest due on such amount whether or not the amount of interest is specified separately.

Explanation— For the purposes of this section, “relevant date” means,—

(a) in a case where duty is not levied, 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;

- (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.'*

(B) SECTION 28AA: Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(D) Section 111: Confiscation of Improperly Imported Goods, etc. -

The following goods brought from a place outside India shall be liable to confiscation:-

- (a) --
- (b) --

(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;

(E) Section 112: Penalty for improper importation of goods, etc. —

Any person, -

- (a) *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- (b) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*
shall be liable, -

(i) ---

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

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

[(iii) ----

(iv) ----

(v) ----

(F) Section 114A of the Customs Act 1962 stipulates that “Penalty for short-levy or non-levy of duty in certain cases. -Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28

shall also be liable to pay a penalty equal to the duty or interest so determined”

(G) Section 114AA of the Customs Act 1962 stipulates that “If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods”.

(H) Section 124 of the Customs Act – Issue of show cause notice before confiscation of goods etc.

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –

- a. *is given a notice in [writing with the prior approval of the officer of customs not below the rank of [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
- b. *is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
- c. *is given a reasonable opportunity of being heard in the matter;*
PROVIDED that in such manner as may be prescribed.

36. In view of the above it appeared that the goods i.e. Aluminium Foils and Stainless steel imported against the licenses 0511018011 dated 27.03.2023, 0511020274 dated 07.08.2023 and 0511018968 dated 24.11.2023 had been diverted in domestic market intentionally without any payment of duty and non-fulfilling the conditions as stipulated in the condition sheets of such advance licenses.

37. Further it appeared that the company M/s. Proffer Information Systems India Pvt. Ltd is a dummy / shell company and created by Shri Umang Garg in the name of a person Shri Harish Batra as the director who is living in and around Paharganj area Delhi, even many times in a temporary Ran Basera. For this act of commission and omission a gang of syndicate appeared to be involved at each stage thereby the government revenue may be de-frauded. Therefore, such persons involved in de-frauding the ex-chequer have rendered themselves liable for penal action under section 114/112 of the Customs Act, 1962.
38. During the course of investigation, it was found that 07 (seven) containers were lying at the CFS and therefore, all (07) seven containers had been seized under section 110 of the Customs Act, 1962. In view of the aforementioned discussions all such containers appeared to be liable for confiscation under section 111 (o) of the Customs Act, 1962 and the goods appeared to be covered under the definition of **smuggled goods** as per section 2(39) of the Customs Act, 1962.
39. During the course of investigation, 15 (fifteen) wooden boxes of imported aluminium foil which appeared to be imported against such advance licenses were found lying at the premises of M/s. Apple Printpack Pvt. Ltd. at Kundli Haryana and had been seized under section 110 of the Customs Act, 1962. As the directors of the company i.e. M/s Apple Printpack Pvt. Ltd. were unable to justify the legality of such imports it appeared that the said seized goods are covered under the definition of “smuggled

goods” as per Section 2(39) of Customs Act, 1962 and are also liable for confiscation under section 111(o) of the Customs Act, 1962.

40. ROLE PLAYED BY THE FOLLOWINGS:

(i). M/s. Proffer Information Systems India Pvt Ltd., - This company has been created by Sri Umang Garg the then director of M/s. Umang Impex India Pvt. Limited having director Shri Harish Batra and **Peter**. It appeared that Shri Harish Batra is the acting director of this company for name sake only. All the work is dealt with by Shri Umang Garg on behalf of Shri Harish Batra. The Bank account of this company is being looked after by Shri Umang Garg. The import made by the company against the advance license appeared to have wrongfully and wilfully been diverted to the domestic market in order to evade payment of Customs Duty. Hence, on account of the omission and commission, as set out herein, it appeared that M/s. Proffer Information Systems India Pvt. Ltd is liable for penalty under section 112 (a) and or 112 (b), 114A and 114AA of the Customs Act, 1962.

(ii). Shri Umang Garg (then director of M/s. Umang Impex India Pvt. Limited):

Shri Umang Garg appeared to be the main mastermind behind the diversion of the imported goods, which were imported against advance licenses and wilfully diverted into domestic market thereby to evade the Customs duty. He is the main person who deals with the transporter to receive the goods. He is the main person who sends e-way bill to the transporter's driver. On his direction, the imported goods were diverted into different locations, except the declared principal place of business. He made the agreement of High-sea-sale with M/s Proffer Information Systems India Pvt. Ltd, on behalf of Umang Impex India Pvt. Ltd. The CHA also stated that it was Shri Umang Garg of M/s Umang Impex India Pvt. Ltd who had introduced the company M/s Proffer Information Systems India Pvt. Ltd., to them and advised to do the clearing work. The 1st high-sea-sale made with M/s Risabh Overseas was by him. The proprietor of M/s. Risabh Overseas has clearly stated that the Shri Umang Garg is the sole person who deals with the business of Ms. Umang Impex India Pvt. Limited. Therefore Shri Umang Garg appeared liable for penalty under section 112 (a) and or 112 (b), 114A and 114AA of the Customs Act, 1962.

(iii). Shri Kanhaiya Ram Mohan Mishra proprietor of M/s. Kanhaiya Roadways:

Shri Kanhaiya Ram Mohan Mishra, Flat no.101, 102, Ashok Nagar, Co-op HSG Society, Dadlani Road, Balkam Thane (W) is the sole proprietor of M/s Kanhaiya Roadways, which had carried all the imported goods of M/s. Proffer Information Systems India Pvt. Limited and delivered such goods on different places i.e. in Delhi, Noida, Kundali (Haryana), Kota (Rajasthan), except the principal place of business i.e. Samalkha, Panipat (Haryana). Shri Kanhaiya Mishra also accepted his fault and stated that he had done such work in greed of money. He had not provided the GPS locations of the trucks where the goods had been unloaded. It appeared that he was concerned in carrying the imported goods which he knew to be liable to confiscation under section 111 of the Customs Act, 1962. Shri Kanhaiya Ram Mohan Mishra therefore appeared liable for penalty under section 112 (a) and or 112 (b).

(iv). Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways for Delhi area office situated at 319, Apsara Complex, Delhi UP Border, Ghaziabad (UP).

Shri Raghunandan Mishra is the employee of M/s Kanhaiya Roadways and looking after the unloading of the goods which are carried by the trucks of M/s Kanhaiya Roadways in and around Delhi. He has discussed with the director of M/s. Apple Printpack Pvt. Ltd as well as Umang Garg for unloading of the goods and accordingly unloaded such imported goods in the premises as per their direction except principal place of business i.e. Samalkha Panipat, even though he knew that the e-way bill was issued for principal place of business. It appeared that he was involved in assisting the illegal activity and in dealing with goods which he knew to be liable to confiscation under section 111 of the Customs Act, 1962. Shri Raghunandan Mishra therefore appeared liable for penalty under section 112 (a) and or 112 (b).

(v). Shri Shyam Sunder Bansal director of M/s. Apple Printpack Pvt. Ltd.

During investigation it appeared that the diverted goods were unloaded by the transporter in the premises of M/s. Apple Printpack Pvt. Limited and for unloading such goods the transporter has stated that the person who deals the same on behalf of Apple Printpack Pvt. Ltd has mobile no. 9053011053. He accepted that the mobile no. 9053011053 has been issued by him and being used by his employee. Shri Shyam Sunder Bansal could not justify the legality of imported goods which were lying in their premises. He appeared to have acquired possession of and is concerned in purchasing goods which he knew were liable to confiscation under section 111 of the Customs Act, 1962. Shri Shyam Sunder Bansal therefore appeared liable for penalty under section 112 (a) and or 112 (b).

(vi). Shri Vinay Bansal director of M/s. Apple Printpack Pvt. Ltd.

Shri Vinay Bansal S/o Shri T. C. Bansal, E-4/25, Model Town –II Delhi -9 is one of the directors of M/s. Apple Printpack Pvt. Limited. During investigation it appeared that the diverted goods were unloaded by the transporter in the premises of M/s. Apple Printpack Pvt. Limited and for unloading such goods the transporter has stated that the person who deals the same on behalf of Apple Printpack Pvt. Ltd has mobile no.9053011053. He accepted that the mobile no. 9053011053 has been issued by their company and being used by his employee. Shri Vinay Bansal could not justify the legality of imported goods which were lying in their premises. He appeared to have acquired possession of and is concerned in purchasing goods which he knew were liable to confiscation under section 111 of the Customs Act, 1962. Shri Vinay Bansal is liable for penalty under section 112 (a) and or 112 (b).

(vii). Shri Ankur Bansal ,director of M/s Vidya Polymer Pvt. Ltd.

During investigation it appeared that the diverted goods were unloaded by the transporter in the premises of M/s. Vidya Polymer Pvt. Limited situated at J-25, Sector-63, Noida UP. The transporter has submitted the detail of the vehicles to which the diverted goods were unloaded at the premises of M/s. Vidya Polymer. The statement was shown to Shri Ankur Bansal and asked the proper reply but he could not answer in proper way. Till date he could not justify properly. He appeared to have acquired possession of and is concerned in purchasing goods which he knew were liable to confiscation under section 111 of the Customs Act, 1962. Shri Shyam Sunder Bansal is liable for penalty under section 112 (a) and or 112 (b).

The investigations for diversion of imported goods in domestic markets that are imported under the advance licenses are underway and the SCN shall be issued in due course.

41. Therefore, M/s. Proffer Information Systems India Pvt. Ltd, Office address – FF-38, House No. 425, Pvt. Shop no. 1, Near Tikonika Park, LA Delhi Factory address – 64, HSIDC, Samalakha Industrial Area, Samalakha, Panipat, Haryana – 132101, having IEC- AAHCP6233G, were called upon to show cause in writing to the Principal Commissioner/ Commissioner of Customs, NS-III, JNCH, Nhava-Sheva, Dist: Raigarh, Maharashtra within 30 (Thirty) days from the date of receipt of this notice, as to why: -
 - a. The goods detailed in Annexure-A to this notice having assessable value of **Rs.3,53,49,127/-(Rupees Three Crores Fifty-Three Lakhs Forty-Nine Thousand One Hundred Twenty Seven only)**, detained vide detention memo dated 15.09.2023 and further seized vide seizure memo dated 01.12.2023 should not be confiscated under Section 111(o) of the Customs Act, 1962.
 - b. The goods detailed in Seizure Memo dated 27.12.2023, Annexure B- to this notice having assessable value of **Rs.33,00,000/- (Rupees Thirty Three Lakhs)**, seized vide seizure memo dated 27.12.2023, should not be confiscated under Section 111(o) of the Customs Act, 1962;
 - c. Penalty should not be imposed on them in terms of Section 112(a) and/or 112(b), 114A and 114AA of the Customs Act, 1962.

44.2 Therefore, the persons –

1. **Shri Umang Garg (then director of M/s. Umang Impex India Pvt Limited), MP Enclave, Pitampura North West Delhi – 110034,**
2. **Shri Kanhaiya Ram Mohan Mishra Flat no.101,102, Ashok Nagar, Co-op HSG Society, Dadlani Road, Balkam Thane (W),**
3. **Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways for Delhi area office situated at 319, Apsara Complex, Delhi UP Border, Ghaziabad (UP),**
4. **Shri Shyam Sunder Bansal Director of M/s. Apple Printpack Pvt. Ltd. 102,103, Phase-V, Sector-53, Kundali Haryana,**
5. **Shri Vinay Bansal Director of M/s. Apple Printpack Pvt. Ltd. 102,103, Phase-V, Sector-53, Kundali Haryana,**
6. **Shri Ankur Bansal, Director of M/s Vidya Polymer Pvt. Ltd. J-25, Sector-63, Noida UP.**

Were called upon to show cause in writing to the Principal Commissioner/ Commissioner of Customs, NS-III, JNCH, Nhava-Sheva, Dist: Raigarh, Maharashtra within 30 (Thirty) days from the date of receipt of this notice, as to why penalty should not be imposed on them under Section 112 (a) and/or 112(b) of the Customs Act, 1962, as applicable, for acts of omissions, as brought out in this Show Cause Notice.

Written Submission

45.1 Noticee no. 02 shri Umang Garg submitted the following:-

- In the normal course of business, Noticee No. 2 lawfully imported goods, specifically Aluminum Foil and Steel Coils, during the months of April, June, July, and August 2023. These goods fall under the category of freely importable goods as per Open General License (OGL) provisions.
- While the imported goods were still in transit by sea, M/s Proffer Information Systems India Pvt. Ltd. (Noticee No. 1), through its director Mr. Harish Batra, approached Noticee No. 2 with an offer to purchase the goods on a high seas sale basis.
- Noticee No. 1 M/s Proffer Information Systems India Pvt. Ltd. proposed to take over the importation and customs clearance of the goods in its own name, stating that it possessed Advance Licenses and intended to utilize the goods for export compliance under the provisions of the said licenses.
- In light of this proposal, Noticee No. 2, i.e. Shri Umang Garg upon evaluation of the business terms, found the offer reasonable and agreed to proceed with the transaction. As a result, high seas sale agreements were executed between Noticee No. 1 and Noticee No. 2 for the concerned shipments.
- In furtherance of the high seas sale agreement, Noticee No. 1 M/s Proffer Information Systems India Pvt. Ltd. filed bills of entry for customs clearance of the goods at the respective ports.
- **Since Noticee No. 1 was availing benefits under the Advance License scheme, the customs duty on the imported goods was exempted, subject to the condition that the goods would be used in the final export products in compliance with the terms of the Advance License.**
- Subsequently, the Directorate of Revenue Intelligence (DRI), Lucknow, initiated an investigation based on allegations that the goods imported under the Advance License scheme and cleared duty-free were diverted into the open market instead of being used for export purposes.
- As part of the investigation, DRI conducted searches at multiple locations and recorded various statements.
- **It was alleged by the DRI that Noticee No. 2 had established Noticee No. 1 as a front company and was in control of its bank accounts, thereby facilitating the alleged duty evasion.**
- The DRI alleged that this modus operandi had been previously used for duty-free imports, wherein goods were cleared without duty under the Advance License scheme and subsequently diverted to the local market.
- It was claimed that the total customs duty evaded through this alleged practice amounted to 3,92,12,422.00 in past transactions involving Proffer.
- During the course of the investigation, goods at Nhava Sheva port, for which five bills of entry had been filed by Noticee No. 1, were put on hold by the authorities.

- **The DRI further alleged that previous imports were not delivered to the declared business premises in Panipat but were instead diverted to Kundli, Sonipat in violation of the Advance License conditions.**
- **The allegations made by the DRI are based on the statements inter alia recorded from the transport service providers, specifically:**

Mr. Kanhaiya Ram Mohan Mishra, Proprietor of M/s Kanhaiya Roadways

Mr. Raghunandan Mishra, Employee of M/s Kanhaiya Roadways

- These individuals allegedly provided statements suggesting that the imported goods were delivered to locations other than those specified in the import documents.
- In the course of the investigation, Noticee No. 1 voluntarily deposited an amount of ₹3,92,12,422.00 with the DRI, purportedly towards the alleged customs duty forgone on past imports claimed to have been diverted.
- **It is important to clarify that this amount was provided by Noticee No. 2 Shri Umang Garg to Noticee No. 1 M/s Proffer Information System Pvt Ltd. as there was business transaction between the said two entities as part of the business transaction and without any intent to evade duty.**
- Noticee No. 2 categorically denies any involvement in the alleged diversion of goods or any violation of customs laws.
- Noticee No. 2 had no control over the operations of Noticee No. 1, which is a separate legal entity with its own management.
- Noticee No. 1 is a private limited company with Mr. Harish Batra as its director. It is inexplicable why Mr. Batra has stated that he has no knowledge of Mr. Umang Garg, M/s Umang Impex India Pvt. Ltd., or even M/s Proffer Information Systems India Pvt. Ltd., despite documented business dealings between Noticee No. 1 and Noticee No. 2.
- Given the conflicting statements and the importance of clarifying the facts, Noticee No. 2 requests the cross-examination of Mr. Harish Batra, Director of M/s Proffer Information Systems India Pvt. Ltd.
- This is a crucial aspect of the matter, as despite clear business transactions between Noticee No. 1 and Noticee No. 2, Mr. Harish Batra has denied any association, raising serious concerns about the credibility of his statements.
- This is a crucial aspect of the matter, as despite clear business transactions between Noticee No. 1 and Noticee No. 2, Mr. Harish Batra has denied any association, raising serious concerns about the credibility of his statements.
- Additionally, transporter employee Mr. Raghunandan Mishra has confirmed that the E-way bill was generated by the owner of M/s Proffer Information namely Mr. Harish Batra, further substantiating the necessity of cross-examination.
- Noticee No. 2 reaffirms that it has not engaged in any alleged diversion of goods. It has not participated in or facilitated any evasion of customs duty. It has acted in good faith by importing the goods and selling them through legally executed high seas sale agreements.
- The present submission is being made on an interim basis, and Noticee

No. 2 reserves the right to file a final submission after the cross-examination of Mr. Harish Batra is conducted.

- **It is respectfully requested that the cross-examination of Mr. Harish Batra be permitted. A further hearing may be granted post-cross-examination, allowing Noticee No. 2 to file a final submission addressing all allegations comprehensively.**

45.2 Noticee no. 03 Shri Kanhaiya Ram Mohan Mishra submitted the following vide his submission dated 24.02.2025 and 23.03.2025:-

- That he is in the transport business from the last 15 years.
- Noticee had earlier worked with M/s Proffer Information Systems India Pvt Ltd and payment of Rs. 13,54,025/- is pending with M/s Proffer Information Systems India Pvt Ltd.
- They have no concern with M/s Proffer Information Systems India Pvt Ltd other than the amount pending with them.
- The Noticee is a law abiding citizen and not related to M/s Proffer Information Systems India Pvt Ltd.
- The noticee has taken online payment for the services provided to M/s Proffer Information Systems India Pvt Ltd.
- Noticee has not done any mistake in the current matter and requested no action may be taken against the noticee.
- The Noticee submits that he has not done or omitted to do any act, which would render the goods liable to confiscation. In the normal course of business, he has carried out activity of transportation of goods in a routine manner and he has not done any act which has rendered the goods liable to confiscation. For imposition of penalty, some positive evidence against the Noticee is required, which is absent in the present proceedings, hence, the penalty imposed under Section 112(a) and 112(b) of the Customs Act, 1962 is not sustainable.
- The Noticee submits that there is no direct or indirect evidence to allege that he was involved in any kind of aiding and abetting in evading duty in any manner. The Noticee has delivered the goods at a place instructed by the Importer or his representative and none of the acts of the Noticee are called for confiscation of goods, penalty under Section 112(a) and 112(b) of the Customs Act, 1962 is not sustainable in the absence of evidence.
- The Noticee submits that the Hon'ble Apex Court in the case of Shri Ram & another v. State of UP — AIR 1975 SC 175 has held that in order to constitute abetment, the abettor must be shown to have intentionally aided the commission of the crime. In the present case no evidence has been brought on record to show that the Noticee had intentionally aided or abetted the commission of any offence, if any. Hence, in the absence of positive evidence, the penalty under Section 112 (a) and/ or 112(b) of the Customs Act, 1962 is not sustainable.
- The Noticee submits that in the matter of Liladhar Pasoo Forwarders Pvt. Ltd. reported in 2000 (122) E.L.T. 737 (Tribunal), the Hon'ble Tribunal held that for imposition of penalty under Section 112 of the Customs Act, 1962 some degree of knowledge of contravention of law on the part of abettor must be shown. In the present proceedings, there is nothing on record to show that Noticee was knowing about wrongdoings by the

Importer or anyone, hence, proposal of imposition of penalty under Section 112(a) and or 112(b) of the Customs Act, 1962 is not sustainable.

- The Noticee submits that burden is on the Department to establish that he was having knowledge of diversion of imported goods to a place other than the Registered office. The Noticee has delivered the goods in the normal course of business to a place instructed by the Owner and/ or their Representative and there is no knowledge about diversion of goods on his part, as it was done in the routine course of business of transporting the goods. The Noticee further submits that the burden of knowledge is not discharged by the Customs Department about the knowledge of the Noticee about diversion of goods and in the absence of the same, imposition of penalty under Section 112 (a) and / or 112 (b) of the Customs Act, 1962 is not sustainable.
- The Noticee submits that penalty is ordinarily levied or proposed for some contumacious conduct or for a deliberate violation of the provisions of the particular statute as held in the PRATIBHA PROCESSORS reported in 1996 (88) E.L.T. 12 (S.C.). In the impugned proceedings, there is nothing on record to arrive at a conclusion that Noticee's conduct was contumacious or for a deliberate violation of statute, hence, proposal to impose penalty under Section 112(a) and or 112(b) of the Customs Act, 1962 is not sustainable in law.
- The Noticee submits that for imposition of penalty, presence of mens-rea is a mandatory requirement and in the absence of which imposition of penalty is unjustified in the instant proceedings none of the acts were backed up with any ulterior motive or malafide intention. In this regard to substantiate their say the Noticee would like to rely on the decisions of KAMAL KAPOOR - (5) STR 251 (H.C.), HINDUSTAN STEEL LIMITED 1978(2) ELT (J-159)(S.C.), AKBAR BADRUDDIN JIWANI 1990(47) ELT 161(S.C.) and TAMILNADU HOUSING BOARD 1994(74) ELT 9(S.C.).
- The Noticee craves to leave, add, alter, modify, withdraw, amend all or any of the submissions made here in above and also craves to rely on various judicial decisions applicable to the case. The Noticee reserves the right to place on record documents, information, things etc., as and when produced during the course of hearing.
- Further vide email dated 10.09.2025, the legal representative of the noticee, submitted that the written submission dated 24.02.2025 and 23.03.2025 are the arguments on behalf of the noticee.

45.3 Noticee no. 04, Shri Raghunandan Mishra, the employee of M/s Kanhaiya Roadways vide his written submission dt. 23.03.2025 submitted the following:-

- The Noticee submits that he has acted in a capacity of an employee within the course of his employment and he has not done or omitted to do any act, which would render the goods liable to confiscation. In the normal course of business, he has carried out activity of transportation of goods in a routine manner and he has not done any act which has rendered the goods liable to confiscation. For imposition of penalty, some positive evidence against the Noticee is required, which is absent in the present proceedings, hence, the penalty imposed under Section 112 (a) and 112(b) of the Customs Act, 1962 is not sustainable.
- The Noticee submits that there is no direct or indirect evidence to allege that he was involved in any kind of aiding and abetting in evading duty

in any manner. The Noticee has delivered the goods at a place instructed by the Importer or his representative and none of the acts of the Noticee are called for confiscation of goods, penalty under Section 112(a) and 112(b) of the Customs Act, 1962 is not sustainable in the absence of evidence.

- The Noticee submits that the Hon'ble Apex Court in the case of Shri Ram & another v. State of UP — AIR 1975 SC 175 has held that in order to constitute abetment, the abettor must be shown to have intentionally aided the commission of the crime. In the present case no evidence has been brought on record to show that the Noticee had intentionally aided or abetted the commission of any offence, if any. Hence, in the absence of positive evidence, the penalty under Section 112 (a) and/ or 112(b) of the Customs Act, 1962 is not sustainable.
- The Noticee submits that in the matter of Liladhar Pasoo Forwarders Pvt. Ltd. reported in 2000 (122) E.L.T. 737 (Tribunal), the Hon'ble Tribunal held that for imposition of penalty under Section 112 of the Customs Act, 1962 some degree of knowledge of contravention of law on the part of abettor must be shown. In the present proceedings, there is nothing on record to show that Noticee was knowing about wrongdoings by the Importer or anyone, hence, proposal of imposition of penalty under Section 112(a) and or 112(b) of the Customs Act, 1962 is not sustainable.
- The Noticee submits that burden is on the Department to establish that he was having knowledge of diversion of imported goods to a place other than the Registered office. The Noticee has delivered the goods in the normal course of business to a place instructed by the Owner and/ or their Representative and there is no knowledge about diversion of goods on his part, as it was done in the routine course of business of transporting the goods. The Noticee further submits that the burden of knowledge is not discharged by the Customs Department about the knowledge of the Noticee about diversion of goods and in the absence of the same, imposition of penalty under Section 112 (a) and / or 112 (b) of the Customs Act, 1962 is not sustainable.
- The Noticee submits that penalty is ordinarily levied or proposed for some contumacious conduct or for a deliberate violation of the provisions of the particular statute as held in the PRATIBHA PROCESSORS reported in 1996 (88) E.L.T. 12 (S.C.). In the impugned proceedings, there is nothing on record to arrive at a conclusion that Noticee's conduct was contumacious or for a deliberate violation of statute, hence, proposal to impose penalty under Section 112(a) and or 112(b) of the Customs Act, 1962 is not sustainable in law.
- The Noticee submits that for imposition of penalty, presence of mens-rea is a mandatory requirement and in the absence of which imposition of penalty is unjustified in the instant proceedings none of the acts were backed up with any ulterior motive or malafide intention. In this regard to substantiate their say the Noticee would like to rely on the decisions of KAMAL KAPOOR - (5) STR 251 (H.C.), HINDUSTAN STEEL LIMITED 1978(2) ELT (J-159)(S.C.), AKBAR BADRUDDIN JIWANI 1990(47) ELT 161(S.C.) and TAMILNADU HOUSING BOARD 1994(74) ELT 9(S.C.).
- Further vide email dated 10.09.2025, the legal representative of the noticee, submitted that the written submission dated 23.03.2025 is the

argument on behalf of the noticee.

Personal Hearing

46. All the noticees were given personal hearing opportunities as follows:-

Sr.No	Date of PH	Noticees Attended
1	25.02.2025	Adv. of Noticee no.03 Shri Kanhaiya Ram Mohan Mishra appeared in front of erstwhile AA and reiterated the submission made by him. No one appeared on behalf of noticee no. – 1,2,4,5,6 & 7
2	21.03.2025	Advocate on behalf of Noticee no. 05 & 06 Shyam Sunder Bansal and Vinay Bansal Director of M/s. Apple Printpack Pvt. Ltd, appeared in front of erstwhile Adjudicating Authority and stated that he will file vakalatnama and submission within 04 days however vakalatnama and no Submission has been received till date. Advocate on behalf of Noticee no. 02, Shri Umang Garg appeared before the erstwhile adjudicating authority and reiterated the written submission dated 20.03.2025. No one appeared on behalf of noticee no. – 1 & 7
3	04.08.2025	No one appeared on behalf of noticee no. 1,2,3,4,5,6 & 7 in front of the Current Adjudicating authority.
4	19.08.2025	No one appeared on behalf of noticee no. 1,2,3,4,5,6 & 7 in front of the Current Adjudicating authority.

DISCUSSION AND FINDINGS:

47. I have carefully gone through the Show Cause Notice, material on record and facts of the case, as well as written submission made by the noticees. Accordingly, I proceed to decide the case on merit.

Principle of natural justice

47.1 Before going into the merits of the case, I find that in the instant case, in compliance of the provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, personal hearing in this matter had been granted to the Noticees on 25.02.2025, 21.03.2025, 04.08.2025 and 19.08.2025 as detailed above.

I thus find that the principle of natural justice has been followed and I can proceed ahead with the adjudication process. I also refer to the following case laws on this aspect-

- Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]
- Modipon Ltd. Vs. CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]

48. Framing of issues

Pursuant to a meticulous examination of the Show Cause Notice and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication:

- a. **As to whether there is fraudulent arrangement between M/s Proffer Information Systems India Private Limited and Shri Umang Garg (the then director of M/s. Umang Impex India Pvt Limited) in misuse the provisions of Advance Authorisation of FTP, to evade applicable Customs Duty by way of diversion of conditionally exempted goods in the market.**
- b. **As to whether the goods detailed in Annexure-A having assessable value of Rs.3,53,49,127/-(Rupees Three Crores Fifty Three Lakhs Forty Nine Thousand One Hundred Twenty Seven only), detained vide detention memo dated 15.09.2023 and further seized vide seizure memo dated 01.12.2023 and goods detailed in Seizure Memo dated 27.12.2023, Annexure B- having assessable value of Rs.33,00,000/- (Rupees Thirty Three Lakhs), seized vide seizure memo dated 27.12.2023, should be confiscated under Section 111(o) of the Customs Act, 1962;**
- c. **As to whether Penalty should be imposed on M/s Proffer Information Systems India Private Limited in terms of Section 112(a) and/or 112(b), 114A and 114AA of the Customs Act, 1962.**
- d. **As to whether penalty under Section 112 (a) and/or 112(b) of the Customs Act, 1962, as applicable, for improper importation of impugned goods, to be imposed on Shri Umang Garg (the then director of M/s. Umang Impex India Pvt Limited), Shri Kanhaiya Ram Mohan Mishra, Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways, Shri Shyam Sunder Bansal Director of M/s. Apple Printpack Pvt. Ltd., Shri Vinay Bansal Director of M/s. Apple Printpack Pvt. Ltd. And shri Ankur Bansal, Director of M/s Vidya Polymer Pvt. Ltd.**

A. Now I take up the first question as to whether there is fraudulent arrangement between M/s Proffer Information Systems India Private Limited and Shri Umang Garg (the then director of M/s. Umang Impex India Pvt Limited) in misuse the provisions of Advance Authorisation of FTP, to evade applicable Customs Duty by way of diversion of conditionally exempted goods in the market.

49. . I observe that the M/s Proffer Information Systems India Ltd. above mentioned Bills of entry were filed with availing Customs Duty exemption benefit of advance authorization issued by DGFT in terms of para 4.12 and 4.16 of FTP read with Customs Duty exemption Notification no. 18/2015 dt 01.04.2015 and 21/2023 dt 01.04.2023.

Relevant part of notification no. 18/2015 dated 01.04.2015 is reproduced below:-

G.S.R. 254 (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance

Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to the following conditions, namely:-

(viii) that the **export obligation** as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation. Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.05 (c)(ii) of the Foreign Trade Policy;

(ix) **that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;**

(x) that the said authorisation shall not be transferred and **the said materials shall not be transferred or sold**; Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work. Provided further that, no such transfer for purposes of job work shall be effected to the units located in areas eligible for area based exemptions from the levy of excise duty in terms of notification Nos. 32/1999-Central Excise dated 08.07.1999, 33/1999-Central Excise dated 08.07.1999, 39/2001- Central Excise dated 31.07.2001, 56/2002- Central Excise dated 14.11.2002, 57/2002- Central Excise dated 14.11.2002, 49/2003- Central Excise dated 10.06.2003, 50/2003- Central Excise dated 10.06.2003, 56/2003- Central Excise dated 25.06.2003, 71/03- Central Excise dated 09.09.2003, 8/2004- Central Excise dated 21.01.2004 and 20/2007- Central Excise dated 25.04.2007

Relevant part of notification no. 21/2023 dated 01.04.2023 is reproduced below:-

“G.S.R.(E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, **hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon** which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act, subject to the following conditions, namely.....

x. that the **export obligation** as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation: Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of

paragraph 4.05(c)(ii) of the Foreign Trade Policy; Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and service tax compensation cess leviable thereon under sub-section(7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports or by making domestic supplies mentioned at serial numbers 1,2 and 3 of the Table contained in notification No. 48/2017-Central Tax, dated the 18thOctober, 2017 published,videnumber G.S.R 1305(E), dated the 18thOctober, 2017;

*(xi) that the **importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs**, as the case may be, within a period of sixty days of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow*

*(xii) that the said authorisation shall not be transferred and **the said materials shall not be transferred or sold**.Providedthat the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant goods and services tax provisionspermitting transfer of materials for job work”*

The relevant advance authorization issued by DGFT in terms of para 4.12 and 4.16 of FTP is reproduced below:-

“4.12 Accounting of Input

Wherever SION permits use of either (a) a generic input or (b) alternative input, unless the name of the specific input together with quantity [which has been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, within quantity specified and match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly with the name/description endorsed in the shipping bill.

(ii) In addition, if in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such group of inputs. Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in shipping bills.

(iii.)At the time of discharge of export obligation (issue of EODC) or at the time of redemption, Regional Authority shall allow only those inputs which have been specifically indicated in the shipping bill together with quantity.

(iv)The above provisions will also be applicable for supplies to SEZs and supplies made under Deemed exports. Details as given above will have to be indicated in the relevant Bill of Export, ARE-3, Central Excise certified Invoice / import document / Tax Invoice for export prescribed under the GST rules.

4.16 Actual User Condition for Advance Authorisation

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.

ii. In case where CENVAT/input tax credit facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against such Advance

Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer). For this, the Authorisation holder shall produce a certificate from Chartered Accountant at the time of filing application for Export Obligation Discharge Certificate to Regional Authority concerned. An AEO having valid certificate has the option to produce self declaration to this effect.

iii. Waste / Scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

In view of the above provisions I observe that the noticee no. 01 was liable to export finished goods namely Aluminium Foil Board and table kitchen & other household articles in lieu of conditionally exempted imported goods vide Advance licenses having Nos. 0511018011 dtd. 27.03.2023, 0511018968 dtd. 24.05.2023 & 0511020274 dtd. 07.08.2023 by the DGFT in terms of para 4.12 and 4.16 of FTP read with Customs Duty exemption Notification no. 18/2015 dt 01.04.2015 and 21/2023 dt 01.04.2023 as detailed in table I above.

49.1 I observe that intelligence was gathered by DRI, LZU that M/s Proffer Information Systems India Private Limited is engaged in imports of Aluminium Foil – 0.006MMX 910MM & Flat rolled stainless steel coil, width less than 600 mm (Grade –J3, Finish-2B), from Nhava Sheva (INNSA1) port, under advance license (scheme -03) under CTH – 76071190 & 72209090, however no exports, as envisaged under the Foreign Trade Policy, under the Advance Authorization Scheme, corresponding with the volumes of imports could be noticed during preliminary scrutiny of data under reference.

49.2 I further observe that the importer M/s Proffer Information Systems India Private Limited, has till date imported **7,69,336 Kgs** of Aluminium Foil and Flat rolled stainless steel coil valued @ **Rs. 14,07,97,162/-** (including both the commodities) through 20 Bills of entry. The importer has been issued Advance licenses having Nos. 0511018011 dtd. 27.03.2023, 0511018968 dtd. 24.05.2023 & 0511020274 dtd. 07.08.2023 by the DGFT, Delhi and the imports as referred, were affected under the Advance licenses, as above.

I observe that the following advance licenses have been scrutinized:-

Sl. No.	Name of the Importer with address	License no. & date	Importable items as per subject Advance Authorization	Exportable items as per subject Advance Authorization
1	M/s Proffer Information Systems India Private Limited	0511018011 dtd.27.03.2023	Aluminium Foil Qty 305000 Kgs	Aluminium Foil Board
2		0511018968 dtd.24.11.2023	Flat rolled products of stainless steel – Qty 8,15,000 Kgs.	Table kitchen and other household articles
3.		0511020274 dtd.07.08.2023	Aluminium Foil Qty 305000 Kgs	Aluminium Foil Board

49.3 I further observe that during the course of investigations, searches were conducted on **13.09.2023** at the following locations of M/s PROFFER INFORMATION SYSTEMS INDIA PRIVATE LIMITED:-

Sl.			

No.	Locations	Results	Remarks
1.	64, Grand Trunk Road, RP Textile, HSIIDC Industrial Estate, Samalkha, Panipat, Harayana – 132101 (Principal place of Business)	No imported goods i.e. aluminium foil & Flat rolled products of stainless steel of a width less than 600 MM were found in the factory premises. No machinery or manufacturing activities were noticed.	The factory belongs to one Boota Singh.
2.	Office address – FF-38, House No.425 Pvt Shop no. 1, Near Tikonika Park, LA Delhi	No office was found in the name of M/s Proffer Information Systems India Private Limited, One pan shop is situated.	In and around no one knows about M/s Proffer Information Systems India Private Limited.
3.	59, Upper Ground, Flat No. A-1 Ghoda Mohalla, Aya Nagar Delhi – 110047 (Other IEC address)	No office was found in the name of M/s Proffer Information Systems India Private Limited, One small house is situated.	In and around no one knows about M/s Proffer Information Systems India Private Limited.
4.	B-280, Deendayal Puram, Takrohi, Indira Nagar, Lucknow (UP) – 226016 (Director house address)	Only a dilapidated house was situated. One electrician was found who had no relation with Shri Harish Batra.	Statement of the said person was recorded.

49.4 I find that searches were conducted at the addresses of the M/s Proffer Information Systems India Private Limited. At the principal place of business the owner of the property was found who has rented the said premises to M/s Proffer Information Systems India Private Limited, however I find that no employee or any person related to M/s Proffer Information Systems India Private Limited was found at the premises. I also find that Office address, other IEC address and address of the director were bogus, which clearly establishes the existence of M/s Proffer Information Systems India Private Limited only on papers.

49.5 I further observe that 07 (Seven) live Bills of Entry of M/s. Proffer Information Systems India Pvt. Ltd. Was filed at Nhava Sheva and the goods were lying at the port of import. The details of the above said 07 bills of entry are as under:-

Sr. No.	Name of the Port	Bill of Entry No.	Bill of Entry Date	Assessable Value (in Rs.)	Imported Items
1	INNSA1	7551182	26.08.2023	59,38,433.95	Aluminium Foil 0.006MMX00915MM
2	INNSA1	7572566	28.08.2023	32,74,180.18	Aluminium Foil 0.006MMX01245MM

3	INNSA1	7659297	03-09-23	4794753.91	Aluminium Foil - 0.006MMX 970MM
4	INNSA1	7722418	07-09-23	5730003.08	Aluminium Foil - 0.006MMX1000MM
5	INNSA1	7722010	07-09-23	5955942.22	Aluminium Foil - 0.006MMX1245MM
6	INNSA1	7781840	11-09-23	4797611.34	Aluminium Foil - 0.006MMX 970MM
7	INNSA1	7774340	11-09-23	4858203.28	Aluminium Foil - 0.006MMX 970MM

49.6 I observe that the goods imported vide above mentioned 7 live bills of entry were seized vide seizure memo dated 01.12.2023(Annexure A) w.r.t. 07 Live Bills of Entry and goods seized vide seizure memo dated 27.12.2023 at the premises of M/s. Apple Printpack Pvt. Ltd. (Annexure B).

Annexure A

SEIZURE MEMO
(Under Section 110 of the Customs Act, 1962)
PARTICULARS OF THE SEIZED GOODS

1.		Date of Seizure:		01.12.2023		
2.		Details of goods Seized				
Bill of Entry No and Date	Description as per bill of Entry	Quantity (IN KG)	Assessable Value of goods (in INR)	Place of Seizure	Name of person(s)/Entity firm to whom the goods detained belongs	Offence:
7551182 dtd. 26.08.2023	Aluminium Foil	21268	59,38,434	CWC Impex Park CFS, Dronagiri Node, Opp. MSWC CFS, Nhava Sheva, Navi Mumbai, Raigad	M/s. Proffer Information Systems India Pvt. Ltd. IEC – AAHCP6233G	Diversion of Goods Imported under Advance License
7572566 dtd. 28.08.2023	Aluminium Foil	11726.2	32,74,180	M/s Seabird Marine Service Pvt. Ltd., Plot No, 70-81, 106B-106C, Sector-I, Dronagiri, Taluka- Uran, Raigad, Navi Mumbai- 400707		
7659297 dtd. 03.09.2023	Aluminium Foil	18132	47,94,754	J. M. Baxi Ports and Logistics Pvt. Ltd. (Formerly United Liner Agencies of India Pvt. Ltd., Raigad - 400707		
7722418 dtd. 07.09.2023	Aluminium Foil	20509.3	57,30,003	Ashte Logistics Pvt. Ltd., Panvel-Rasayani Road, Panvel, Raigad, MH- 410206		
7722010 dtd. 07.09.2023	Aluminium Foil	21318	59,55,942			
7781840 dtd. 11.09.2023	Aluminium Foil	18,132	47,97,611	CWC Impex Park CFS, Dronagiri Node, Opp. MSWC CFS, Nhava Sheva, Navi Mumbai, Raigad		
7774340 dtd. 11.09.2023	Aluminium Foil	18,361	48,58,203			

3. Facts /Ground of Seizure: -

- a) During the investigation of import of Aluminium Foil by M/s. Proffer Information Systems India Pvt. Ltd (IEC - AAHCP6233G) under Advance Authorization Scheme, it was found that the said importer was non-existent at the registered premises. It appeared that the said importer is fake/dummy importer and has attempted to evade duty by importing duty free goods. Acting upon intelligence, container nos. FCIU6524643, SEGU2464484, EITU0430875, pertaining to M/s. Proffer Information Systems India Pvt. Ltd (IEC - AAHCP6233G) were examined for sampling on 15.09.2023 at M/s CWC Impex Park Ltd., Dronagiri Node, Opposite MSWC CFS, Nhava Sheva, Raigad and at J. M. Baxi Ports and Logistics Pvt. Ltd, Maharashtra - 400707 by the officer of the DRI, Zonal Unit Lucknow in the presence of of CHA's representative of importers, Shri. Ashish Tiwari, Dy. Manager-Operations, JMBPLL, independent witness and Shri Amit Kumar (Examiner) and Shri Ashish Kr. Jindal (Examiner) Customs, Mumbai for drawing of the samples from the said containers. Further container nos. CAIU6112268 and SIKU3029626 pertaining to M/s. Proffer Information Systems India Pvt. Ltd (IEC - AAHCP6233G) were examined for sampling on 15.09.2023 at Ashte Logistics Pvt.

Ltd., at Panvel, Raigad by the officer of the DRI, Zonal Unit Lucknow in the presence of of CHA's representative of importers, Shri. Kalpesh Patil, Yard In-charge, Ashte Logistics Pvt. Ltd, independent witness and Shri Laxminarayan G. Patil

drawing of the samples from the said containers.

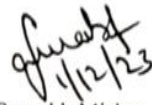
- b) Further, goods imported M/s. Proffer Information Systems India Pvt. Ltd (IEC - AAHCP6233G) having container No. No. SKLU1502896 vide BE No. 7572566 dated 28.08.2023 lying at M/s Seabird Marine Service Pvt. Ltd., Plot No, 70-81, 106B-106C, Sector-1, Dronagiri, Taluka- Uran, Raigad, Navi Mumbai-400707 were examined by Shri Gaurav Agarwal (Examiner), Shri Jamal Siddiqui in the presence of of CHA's representative of importers and independent witness for drawing of samples from the said container vide Panchnama dated 6.10.2023. And also goods imported by the said party in container TRHU3356653 vide BE No. 7551182 dtd. 26.08.2023 lying at M/s CWC Impex Park Ltd., Dronagiri Node, Opposite MSWC CFS, Nhava Sheva, Raigad were examined by Shri Abhishek Raj (Examiner) and Shri Ravish Kumar (Superintendent) in the presence of of CHA's representative of importers and independent witness for drawing of samples from the said container vide Panchnama dated 5.10.2023.

Therefore, on reasonable belief that the items imported i.e Aluminium Foil vide Bills of Entry No-- 7551182 dtd. 26.08.2023, 7572566 dtd. 28.08.2023, 7659297 dtd. 03.09.2023, 7722418 dtd. 07.09.2023, 7722010 dtd. 07.09.2023, 7781840 dtd. 11.09.2023 and 7774340 dtd. 11.09.2023 as mentioned in the chart above with respective Assesable Value are liable for confiscation under Section 111(o) of the Customs Act, 1962. I, Saurabh Mishra, Intelligence Officer, Directorate of Revenue Intelligence, Zonal Unit Lucknow, in exercise of power vested under me under Section 110 of the Customs Act. 1963 hereby seize the goods as mentioned above.


Saurabh Mishra
Intelligence Officer
DRI, Zonal Unit Lucknow

F No DRI/LZU/CI-26/Int-27/F/2023/2270
Copy to,

1. M/s. Proffer Information Systems India Pvt. Ltd., FF-38, House No.-425 Pvt Shop No. 1, Near Tikonika Park, Laxmi Nagar, Delhi.
2. The ADG. DRI. Lucknow Zonal Unit for information please.
3. O/o The Commissioner of Customs (NS-V), SIIB, JNPT, Nhava Sheva, Raigad-400707
4. The Custodian, M/s CWC Impex Park Ltd., Dronagiri Node, Opposite MSWC CFS, Nhava Sheva, Raigad - 400707.
- ✓ 5. The Custodian, J. M. Baxi Ports and Logistics Pvt. Ltd, Maharashtra - 400707
6. The Custodian, Ashte Logistics Pvt. Ltd., at Panvel, Raigad-400707
7. The Custodian, M/s Seabird Marine Service Pvt. Ltd., Plot No, 70-81, 106B-106C, Sector-1, Dronagiri, Taluka- Uran, Raigad, Navi Mumbai-400707
8. Notice Board.
9. Guard File.


Saurabh Mishra

Intelligence Officer
DRI, Zonal Unit Lucknow

Annexure B

DIN - 2023/2 DDZ80000443804

(799)

SEIZURE MEMO
(Under Section 110 of the Customs Act, 1962)
PARTICULARS OF THE SEIZED GOODS

1.	Place of Seizure:	M/s. Apple Print Pack Pvt. Ltd., 102 & 103, Phase-V, Sec-53, HSIIDC, Kundli, Haryana-131028			
2.	Date of Seizure:	27.12.2023			
3.	Details of goods Seized				
Case No	Description as per bill of Entry	No. Of Packages	Assessable Value of goods (in INR)	Name of person(s)/Entity firm to whom the goods detained belongs	Offence:
Case No. N33107, N33101, N33106, N33103, N33089, N33079, N33029, N33085, N33083, N33094, N33082, N33838, N33026, N33416, N33027	Imported Aluminium Foil	15 boxes	Rs. 33 Lakhs (approx)	M/s. Apple Print Pack Pvt. Ltd., 102 & 103, Phase-V, Sec-53, HSIIDC, Kundli, Haryana-131028	Diversion of goods imported under Advance License.

4. **Facts /Ground of Seizure: -**

a) An intelligence was developed that M/s Proffer Information Systems India Pvt. Ltd. (IEC No.-AAHCP6233G) have imported the goods i.e. Aluminium Foil / Stainless steel (CTH 76071170/72209090) under Advance License and the same were diverted and sold to domestic market. During investigation, it appears that some consignments of aluminum foil were sold M/s. Apple Print Pack Pvt. Ltd and thereby defrauding the Government of India. On preliminary enquiry the said goods were detained at the factory premises of M/s Apple Print Pack Pvt. Ltd following due procedures.

b) Therefore, on reasonable belief that the items imported having assessable value Rs. 33 Lakhs (approx) is liable for confiscation under Section 111(m) of the Customs Act, 1962. I, Saurabh Mishra, Intelligence Officer, Directorate of Revenue Intelligence, Zonal Unit Lucknow, in exercise of power vested under me under Section 110 of the Customs Act, 1962 hereby seize the goods as mentioned above.

Saurabh Mishra
Intelligence Officer
DRI, Zonal Unit Lucknow

Copy to,

1. M/s. Apple Print Pack Pvt. Ltd., 102 & 103, Phase-V, Sec-53, HSIIDC, Kundli, Haryana-131028.
2. The Commissioner (SIIB), Nhava Sheva, Mumbai.
3. The ADG, DRI, Lucknow Zonal Unit for information please.
4. Notice Board.
5. Guard File.

2403

Saurabh Mishra
27/12/2023

I observe that investigation has brought out various evidences clearly establishing

the fraudulent arrangement between M/s Proffer Information Systems India Private Limited and Shri Umang Garg (the then director of M/s. Umang Impex India Pvt Limited) are as follows:-

Shri Umang Garg Played the key role using High Sales agreement mechanism.

49.8 I observe that, as per statement of the manager of CHA company Real Logistics, Shri Anand Chandrakant Nikam, recorded on 04.10.2023 under section 108 of the Customs Act 1962, wherein he stated inter-alia that –

- a. **He never met in person with the director Harish Batra of M/s. Proffer Information Systems India Private Limited. The said company was introduced by one of his client Shri Prashant Nayak (Mob no. 6000820002), director of Umang Impex.**
- b. **M/s. New growth Petrochem India Private Limited (IEC – AAICN5732F), M/s. Rishab Overseas (IEC – 0515004774) & M/s. Umang Impex India (P) Ltd., are the parties that have done High Seas Sale Agreement with M/s PROFFER INFORMATION SYSTEMS INDIA PRIVATE LIMITED.**

49.9 I further observe that Shri Prashant Kumar Nayak, one of the Directors of M/s Umang Impex was recorded on 16.10.2023 under section 108 of the Customs Act, 1962 wherein he stated inter-alia that –

(j) **On being shown the deed of high sea sale dated 20.04.2023 between the director of M/s. Proffer Information Systems India Private Limited and the director of M/s. Umang Impex India Private Limited, he denied of having knowledge of anything about this deed and that the signatures on this deed is also not of him. He further replied that he did not know any Harish Batra. He further identified the signature as put on the deed and replied that this signature was of Shri Umang Garg (Ex director of M/s. Umang Impex). He further stated that the detail about this deed may be asked from Shri Umang Garg. All the works of this company was being done by Shri Umang Garg (Ex director of M/s. Umang Impex) and he was the director only. Mobile nos. of Shri Umang Garg are 9999999378 & 9999923943.**

49.10 I further observe that as per statement of Shri Piyush Gupta, prop. Of M/s Risabh Overseas recorded on 08.02.2024 under section 108 of the Customs Act 1962 - wherein he inter-alia stated that –

(j) **He imports aluminium foil and sells it locally. He started High-sea-sale on specific request of one of his client Shri Umang Garg of M/s. Umang Impex India Pvt. Ltd., and submitted all the documents.**

(k) **He knew Shri Umang Garg through one of his family friend. He met him in January 2023. On request of Shri Umang he agreed to do high-sea-sales. He did his first high-sea-sale with Umang on 28.07.2023. He knew that the director of M/s Umang Impex is Shri Umang Garg.**

49.11 I find that the Legal position about the importance and validity of statements rendered under Section 108 of the Customs Act, 1962 is well settled. It has been held by various judicial fora that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon'ble Courts in

various judicial pronouncements, have further strengthened the validity of this enabling provision. It has been affirmed that the statement given before the Customs officers is a material piece of evidence and certainly can be used as substantive evidence, among others, as held in the following cases:

- i. *Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd.* reported in 2000 (120) E.L.T. 280 (S.C.) : Statement recorded by a Customs Officer under Section 108 is a valid evidence
- ii. In 1996 (83) E.L.T. 258 (S.C.) in the case of *Shri Naresh J. Sukawani v. Union of India* : “ 4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act.”
- iii. It was held that statement recorded by the Customs officials can certainly be used against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of *In Gulam Hussain Shaikh Chougule v. S. Reynolds* (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.)
- iv. *State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru*, 2005 (122) DLT 194 (SC): Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. “Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law.” (Vide Taylors’s Treatise on the Law of Evidence, VI. I).
- v. There is no law which forbids acceptance of voluntary and true admissional statement if the same is later retracted on bald assertion of threat and coercion as held by Hon’ble Supreme Court in the case of *K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin*, (1997) 3 SCC 721.
- vi. Hon’ble Supreme Court in the case of *Kanhailal Vs. UOI*, 2008 (1) Scale 165 observed: “ *The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava’s case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act.*”
- vii. **Hon’ble High Court of Mumbai in FERA Appeal No 44 OF 2007 in the case of KANTILAL M JHALA Vs UNION OF INDIA vide judgment dated: October 5, 2007 (reported in 2007-TIOL-613-HC-MUM-FEMA) held that “Confessional statement corroborated by the seized documents, admissible even if retracted”.**
- viii. The Apex Court in the case *Hazari Singh V/s. Union of India* reported in 110 E.L.T. 406, and case of *Surjeet Singh Chhabra V/s. Union of India & Others* reported in 1997 (1) S.C.C. 508 has held that the confessional statement made before the Customs Officer even though retracted, is an admission and binding on the person.- ”
- ix. The Hon’ble Supreme Court in the case of *Badaku Joti Savant Vs. State of Mysore* [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)] laid down that statement to a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.
- x. In the case of *Bhana Khalpa Bhai Patel Vs. Asstt. Collr. of Customs, Bulsar* [1997 (96) E.L.T. 211 (SC)], the Hon’ble Apex Court at Para 7 of the judgment held that :-“ *It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant*

Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721.”

- xi. In the case of *Raj Kumar Karwal Vs. UOI & Others* (1990) 2 SCC 409, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.*
- xii. Hon. Supreme Court's decisions in the case of *Romesh Chandra Mehta Vs. the State of West Bengal* (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940. The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence
- xiii. *Jagjit Singh vs State Of Punjab And Another*, Hon'ble Punjab and Haryana High Court in Crl. Appeal No.S-2482-SB of 2009 Date of Decision: October 03, 2013 held that : *The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.*

49.12 In view of the above referred consistent judicial pronouncements, the importance of statements rendered under Section 108 of the Customs Act, 1962 during the case is quite imperative. **I find that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value.**

49.13 **I find that from the above statement evidences it has been clearly established that Shri Umang Garg was the key individual orchestrating and facilitating all High Seas Sales (HSS) transactions on behalf of M/s Proffer Information Systems India Pvt. Ltd. Therefore it has been an undisputed fact that Shri Umang Garg played a central and active role in organizing and executing the High Seas Sales of the consignments imported by M/s Proffer Information Systems India Pvt. Ltd.**

Financial flow

49.14 I observe that the demand drafts having Nos. 559841 dated 03.10.2023, 559842 dated 03.10.2023, 559844 dated 03.10.2023 and 559847 dated 06.10.2023 has been deposited by the advocates/lawyers of M/s Proffer Information Systems India Private Limited. Further I observe that during the course of investigation, it was found that the deposited duty amount of Rs. 3,92,12,422/- has been credited into the account of M/s. Proffer Information Systems India Private Limited by M/s. Umang Impex India Private Limited. The relevant entry into the account are shown here –

03-Oct-2023	DD FAVORING NHAVA SHEVA DEMAND DRAFTS AND PA	119	03-Oct-2023	5,000,000.00		5,126,206.97Cr
03-Oct-2023	DD FAVOURING NHAVA SHEVA DEMAND DRAFTS AND PA	120	03-Oct-2023	5,000,000.00		126,206.97Cr
03-Oct-2023	RTGS/ICICH23276553152/UMANG IMPEX INDIA PRIVATE LI		03-Oct-2023		4,826,750.00	4,952,956.97Cr
03-Oct-2023	RTGS/ICICH23276553287/UMANG IMPEX INDIA PRIVATE LI		03-Oct-2023		2,173,250.00	7,126,206.97Cr
03-Oct-2023	IMPS 327619708846 FROM UMANG IMPEX INDIA PR		03-Oct-2023		25,000.00	7,151,206.97Cr
03-Oct-2023	RTGS/ICICH23276554746/UMANG IMPEX INDIA PRIVATE LI		03-Oct-2023		3,000,000.00	10,151,206.97Cr
03-Oct-2023	DD FAVORING NHAVA SHEVA Demand Drafts and Pa	122	03-Oct-2023	10,143,000.00		8,206.97Cr
06-Oct-2023	RTGS/ICICH23279504988/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,788,440.00	4,796,646.97Cr
06-Oct-2023	RTGS/ICICH23279504939/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,680,960.00	9,477,606.97Cr
06-Oct-2023	RTGS/ICICH23279505107/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,715,930.00	14,193,536.97Cr
06-Oct-2023	RTGS/ICICH23279505056/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,914,670.00	19,108,206.97Cr
DATE	TRANSACTION DETAILS	CHQ.NO.	VALUE DATE	WITHDRAWAL AMT	DEPOSIT AMT	BALANCE AMT
06-Oct-2023	DD FAVORING NHAVA SHEVA Demand Drafts and Pa	121	06-Oct-2023	19,069,422.00		38,784.97Cr
09-Oct-2023	RTGS/ICICH23282512922/UMANG IMPEX INDIA PRIVATE LI		09-Oct-2023		2,000,000.00	2,038,784.97Cr

49.15 In view of above, I observe that it is has been proven by the investigation that the account of M/s. Proffer Information Systems India Private Limited was solely dealt by Shri Umang Garg the ex- director of M/s. Umang Impex India Private Limited instead of actual director named Shri Harish Batra.

No manufacturing activity at the Principal Place of Business of M/s Proffer Information Systems India Pvt. Ltd, hence no export was possible.

49.16 I observe that searches were conducted on 13.09.2023 at the following locations of M/s PROFFER INFORMATION SYSTEMS INDIA PRIVATE LIMITED as detailed hereunder –

Sl. No.	Locations	Results	Remarks
1.	64, Grand Trunk Road, RP Textile, HSIIDC Industrial Estate, Samalkha, Panipat, Harayana 1 3 2 1 0 1 (Principal place of Business)	No imported goods i.e. aluminium foil & Flat rolled products of stainless steel of a width less than 600 MM were found in the factory premises. No machinery or manufacturing activities were noticed.	The factory belongs to one Boota Singh.
2.	Office address – FF-38, House No.425 Pvt Shop no. 1, Near Tikonika Park, LA Delhi	No office was found in the name of M/s Proffer Information Systems India Private Limited, One pan shop is situated.	In and around no one knows about M/s Proffer Information Systems India Private Limited.
3.	59, Upper Ground, Flat No. A-1 Ghoda Mohalla, Aya Nagar Delhi – 110047 (Other IEC address)	No office was found in the name of M/s Proffer Information Systems India Private Limited, One small house is situated.	In and around no one knows about M/s Proffer Information Systems India Private Limited.
	B-280, Deendayal Puram,		

4.	Takrohi, Indira Nagar, Lucknow (UP) – 2 2 6 0 1 6 (Director house address)	Only a dilapidated house was situated. One electrician was found who had no relation with Shri Harish Batra.	Statement of the said person was recorded.
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49.17 I find that as per searches conducted vide panchanama dated 13.09.2023, no imported goods were found in the premises of M/s Proffer Information Systems India Pvt. Ltd. Further, I find that no machinery or manufacturing activities was done in the above-mentioned principal place of business of M/s Proffer Information Systems India Pvt. Ltd.

49.18 I observe that Shri Boota Singh (owner of the rented premise/Principal Place of Business) in his statement recorded on 13.09.2023 under section 108 of the Customs Act, 1962 stated that:- **He had met Shri Harish Batra, Director of M/s Proffer Information Systems India Private Limited, only once; that Shri Harish Batra hired 2000 sq. ft area from his factory for storing plastic granules and paid rent for two months only; that neither any manufacturing activities took place nor any imported goods were ever brought by Shri Harish Batra at the said premises; that Shri Batra made deed (rent agreement) for GST registration and told him that a machine would come for installation but no machine reached at his premises.**

49.19 I find that from the statement of Shri Boota Singh it has been clearly established that neither any manufacturing activity ever took place nor were any imported goods brought by Shri Harish Batra, Director of M/s Proffer Information Systems India Pvt. Ltd., to the declared premises. The premises owner, Shri Boota Singh, confirmed that Shri Harish Batra had merely executed a rent agreement for the purpose of obtaining GST registration and had informed him that a machine would be delivered for installation; however, no such machine ever arrived, and no business or manufacturing activity was observed at the location. This clearly indicates that the premises were falsely declared as a manufacturing unit to facilitate misuse of advance authorizations.

No export made as per the conditions of the Advance licence (scheme-03)

49.20 I find that EDI system data revealed that **no exports** were made by M/s Proffer Information Systems India Private Limited, since its inception to till date. There is no dispute in the fact that Customs Department has a well-established EDI system which is a digital platform in which all the imports and exports transaction are transacted, therefore all such import and export data, Shipping Bills wise and Bills of entry wise are available as per the declaration by the Importer and Exporter is available.

Diversion of goods imported vide past 20 Bills of Entry:

49.21 I further observe that statement of Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways, was recorded under section 108 of the Customs Act, 1962 wherein he inter-alia stated that –

- He is looking after the work of loading and unloading of the vehicles of M/s. Kanhaiya Roadways in and around Delhi.
- **His transport has carried the goods of M/s Proffer Information Systems India Private Limited from Nhava Sheva to Samalkha Panipat but unloaded such goods at Sonipat, Noida & Delhi instead of Panipat. The goods were unloaded at Apple Printpack Pvt. Ltd, Sonipat, J-25, Sector 63, Vidya Chemical/Polymer Noida and Wazirpur, near Goyal Dharam Kanta, Delhi.**
- **The person who deals with the unloading of the goods at different places is Neeraj on behalf of M/s Proffer Information Systems India Private Limited, having mobile nos. 9315001055 & 9329607601. The person who deals with the same on behalf of Apple Printpack Pvt. Ltd has mobile no.9053011053.**
- No goods were unloaded at Samalkha, Panipat.

49.22 I find that as per the statement of Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways, is responsible for supervising the loading and unloading operations of M/s. Kanhaiya Roadways in and around Delhi facilitated the transportation of goods imported by past Bills of entry belonging to M/s. Proffer Information Systems India Private Limited from Nhava Sheva, which were supposed to be delivered at Samalkha, Panipat. However, the imported goods were not delivered at the intended destination; instead, they were unloaded at multiple unauthorized locations, namely Apple Printpack Pvt. Ltd., Sonipat; J-25, Sector 63, Noida (Vidya Chemical/Polymer); and Wazirpur, near Goyal Dharam Kanta, Delhi. The unloading was carried out by Neeraj, acting on behalf of M/s. Proffer Information Systems India Pvt. Ltd., and another individual representing Apple Printpack Pvt. Ltd. No goods were delivered at the designated location in Samalkha, Panipat, clearly indicating that the goods were diverted and sold in the domestic market.

49.23 I further observe that on the basis of statements of Shri Raghunandan Mishra (employee of Kanhaiya Roadways), the premises of the Apple Printpack Pvt. Ltd, Kundali, Sonipat was searched under panchanam dated 20.09.2023 wherein 15 (fifteen) wooden boxes imported from China containing goods i.e. Aluminium Foils were found, which were similar to the goods held at Nhava Sheva Port. The said goods were detained for further examination and handed over to the owner of the Apple Printpack Pvt. Ltd, Kundali, Sonipat through Supurdaginama. Thereafter the same were seized vide seizure memo dated 27.12.2023.

49.24 I observe that statement of one of the director of M/s. Apple Printpack Pvt Ltd, Shri Shyam Bansal was recorded under Section 108 of the Customs Act, 1962 on 20.09.2023 wherein he stated inter-alia that –

- The company has four directors – (a) Vinay Bansal (b) Bimal Bansal (c) Shyam Bansal and their father (d) Trilok Chandra Bansal and is situated at 102-103, HSIIDC, Sector-53, Phase-V, Kundali, Sonipat, Haryana. The company is in the business of manufacturing of carton boxes and in laminating.
- They have purchased the imported Aluminium foil from M/s. Sparsh Industries Private limited (Foil Division), Akbarpur, Kanpur Dehat, (UP) & Kuber Import House, Bakoli, Delhi - 110036 and submitted invoices for the same.
- He did not deal with any business with M/s Proffer Information Systems India Private Limited as well as with the director named Harish Batra.
- **He accepted that the mobile no. 9053011053 has been issued by him and is being**

used by his employee.

49.25 I find that Shri Shyam Bansal director of M/s. Apple Printpack Pvt Ltd in his statement has confirmed that mobile no. 9053011053 belongs to their employee. Further, as per statement of Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways, **the person who dealt with the unloading of the goods belonging to M/s Proffer Information Systems India Private Limited, at M/s. Apple Printpack Pvt. Ltd has mobile no.9053011053.** This, clearly indicates that the goods imported by past bills of entry by M/s Proffer Information Systems India Private Limited are diverted and directly delivered to the factory premises of **M/s. Apple Printpack Pvt. Ltd** . It has been clearly established that M/s. Apple Printpack Pvt Ltd is one of the domestic buyer of the goods imported by M/s Proffer Information Systems India Private Limited under Advance Authorisation.

49.26 I observe that statement of Shri Kanhaiya Mishra of M/s. Kanhaiya Transport was recorded on 05.10.2023 under section 108 of the Customs Act, 1962- wherein he stated inter-alia that –

- a. He did not know about M/s. Proffer Information Systems India Private Limited directly. **The owner of M/s. Umang Impex had contacted Kanhaiya Transport for doing the work of M/s. Proffer Information Systems India Private Limited. The mobile no. of the owner of the Umang Impex is 9999923943.**
- b. He used to get direction from Umang Impex to carry the goods of M/s. Proffer Information Systems India Private Limited and sometimes one employee named Shri Ankur (Mob no. 9560143134) of M/s. Umang Impex.
- c. He further stated that such imported goods of M/s Proffer Information Systems India Private Limited were never unloaded at Samalkha Panipat. All goods were unloaded at different places viz. Kundli, Sonipat at the premises of M/s. Apple Printpack Pvt. Ltd, Noida J-25 at the premises of Vidya Polymer and different areas of Delhi and Kota also.
- d. All e-way bills were generated by Umang Impex and then sent to him through WhatsApp and consequently he sent it to his drivers.
- e. **He confessed his fault for not unloading of the imported goods at the declared premises of e-way bill.**

49.27 I find that as per the above statement, it has been established that the individual overseeing loading and unloading operations for M/s. Kanhaiya Roadways was not directly in contact with M/s. Proffer Information Systems India Private Limited. Instead, he was approached by the Sh. Umang Garg, the then owner of M/s. Umang Impex (Mob. No. 9999923943), who coordinated the transportation work on behalf of M/s. Proffer. Directions for transporting the goods imported vide past of bills of entry were received from Umang Impex and, at times, from its employee Shri Ankur (Mob. No. 9560143134). The goods, which were imported by M/s. Proffer, were never delivered to the intended location at Samalkha, Panipat as per the e-way bills. Instead, they were unloaded at various unauthorized locations including M/s. Apple Printpack Pvt. Ltd. at Kundli, Sonipat; Vidya Polymer at J-25, Sector 63, Noida; and at different locations in Delhi and Kota. All e-way bills were generated by Umang Impex and sent to him via WhatsApp, which he then forwarded to his drivers. He has admitted his fault for not ensuring that the goods were unloaded at the locations declared in the respective e-way bills, resulting in a clear deviation from the mandated delivery terms.

49.28 I find that statement of Shri Shyam Sunder Bansal one of the directors of M/s. Apple Printpack Pvt. Ltd appeared on 20.11.2023. His statement was recorded u/s 108 of CA,1962 - wherein he stated inter-alia that –

- a. His name is Shyam Sunder Bansal S/o Shri Trilok Chandra Bansal having Aadhar No. 819558912008 residing at E-4/25, Model Town-2, Dr Mukharjee Nagar, S.O. North West Delhi – 110009. He is one of the director of M/s. Apple Printpack Pvt. Ltd, add – 102-103, HSIIDC, Sector-53, Phase-5, Kundali Haryana – 131028. He agreed with his earlier statement dated 20.09.2023.
- b. **On being shown the statement dated 27.09.2023 of Shri Satayjit Singh, DGM (Foil Division) of M/s. Sparsh Industries (P) Ltd, Kanpur (UP), he showed his incompetence to comment on the statement as the Foil purchase and sell from M/s. Sparsh Industries (P) Ltd. was being dealt by his elder brother Shri Vinay Bansal.**
- c. **The purchase and sale of Aluminium Foil between M/s. Apple Printpack Pvt. and M/s Kuber Import House was also dealt by his elder brother Shri Vinay Bansal. He did not know any person named Umang Garg.**
- d. He acknowledged and received the summon issued under section 108 of the Customs Act,1962 in the name of Shri Vinay Bansal for appearance on 29.11.2023.
- e. He is looking after the company work as one of the Director since inception of the company. The company M/s. Apple Printpack Pvt. has two other branches (i) J-3143, DSIDC, Bhargid Industrial Area, Narela Delhi (ii) 347/07, Alipur Nati, Narela Road, Delhi and manufacturing P.P. Woven sacks bag, LD Bags, Jute Bags etc. All the directors of this company have equal holdings i.e. 25%.

49.29 I find that Shri Shyam Sunder Bansal director of M/s. Apple Printpack Pvt. Ltd has confirmed the accuracy of his earlier statement dated 20.09.2023. Upon being presented with the statement dated 27.09.2023 of Shri Satayjit Singh, DGM (Foil Division) of M/s. Sparsh Industries Pvt. Ltd., Kanpur (UP), he expressed his inability to comment, stating that all dealings related to foil purchases and sales with Sparsh Industries and also those with M/s. Kuber Import House were handled exclusively by his elder brother, Shri Vinay Bansal. He denied any acquaintance with an individual named Umang Garg. Shri Shyam Sunder Bansal acknowledged receipt of the summons issued under Section 108 of the Customs Act, 1962, in the name of Shri Vinay Bansal for appearance on 29.11.2023. He also stated that he has been actively involved in the management of the company since its inception. M/s. Apple Printpack Pvt. Ltd. has two additional branches located at (i) J-3143, DSIDC, Bhorgarh Industrial Area, Narela, Delhi and (ii) 347/07, Alipur Nati, Narela Road, Delhi, and is engaged in the manufacturing of P.P. Woven sacks bags, LD bags, Jute bags, etc. The company is jointly held by its directors, each holding an equal 25% stake.

49.30 I observe that in response to summon dated 08.12.2023, Shri Vinay Bansal one of the Directors of M/s Apple Printpack Pvt. Ltd. appeared on 26.12.2023 before the investigating team, his statement was recorded u/s 108 of CA,1962 - wherein he inter-alia stated that –

- a. He is one of the directors of the company M/s. Apple Printpack Pvt. Ltd situated at 102,103, Phase-V, Sector-53, Kundali Haryana dealings with the day to day work and mainly used to purchase the raw materials.

- b. **On being asked about the aluminium foil imported from China and the fifteen (15) wooden boxes which were detained on 20.09.2023 at their premises, he replied that “in fifteen boxes – none of the box belongs to M/s. Sparsh Industries Private Limited which was stated wrongly on 20.09.2023. The second invoice which was issued to us by Kuber Import House is correct. Out of 15 (fifteen), it contains a box relates to Kuber Import House.”**
- c. **On being shown the statement dated 27.09.2023 of Shri Satyajit Singh DGM (Foil Division) M/s Sparsh Industries Pvt. Ltd. & statement dated 06.12.2023 of Shri Deepak Chhabra of M/s. Kuber Import House, he agreed with the statement of Shri Satyajit Singh DGM (Foil Division) and reiterated that “the goods 15 (fifteen) boxes, origin from China not relates to M/s. Sparsh Industries Private Limited.**
- d. He did know about Harish Batra of M/s. Proffer Information Systems India Private Limited, as well as Shri Umang Garg of M/s. Umang Impex (P) Ltd.
- e. He further submitted that the imported aluminium foils of Chinese origin at their premises were purchased from (i). Tania Polyfilms Pvt. Limited (ii) Futuristic Marketing Solutions (iii) Ultimate packaging solutions (iv) K Square Metal Trading (P) Limited. (v) Mamta Impex (vi) Singhania Alu Foil Container Manufacturing Co. (vii) Premium Corporation (P) Limited and submitted the relevant invoices.
- f. **He accepted that the mobile no.9053011053 which was used to make a call by the transporter for unloading the goods was issued in the name of their company and given to the GS-4 Security services company’s work. Further accepted that “it may be possible goods are rejected or returned due to inferior quality by us”. He further denied unloading any foils of Chinese origin. He requested to take some rest and to appear on next day and accordingly allowed.**

49.31 I find that Shri Shyam Sunder Bansal, Director of M/s. Apple Printpack Pvt. Ltd., clarified that the 15 wooden boxes detained at the company’s premises on 20.09.2023, containing aluminium foil of Chinese origin, did not belong to M/s. Sparsh Industries Pvt. Ltd., contrary to what was initially stated on 20.09.2023. He admitted that the earlier reference to M/s. Sparsh Industries Pvt. Ltd. was incorrect and affirmed that the second invoice issued by M/s. Kuber Import House was accurate, stating that only one box out of the 15 pertained to Kuber Import House. Upon being shown the statements of Shri Satyajit Singh, DGM (Foil Division) of M/s. Sparsh Industries Pvt. Ltd. dated 27.09.2023, and Shri Deepak Chhabra of M/s. Kuber Import House dated 06.12.2023, Shri Bansal agreed with Shri Satyajit Singh’s version and reiterated that none of the 15 boxes were related to M/s. Sparsh Industries Pvt. Ltd. Furthermore, he submitted that the imported aluminium foils of Chinese origin found at their premises were procured from (i) Tania Polyfilms Pvt. Ltd., (ii) Futuristic Marketing Solutions, (iii) Ultimate Packaging Solutions, (iv) K Square Metal Trading Pvt. Ltd., (v) Mamta Impex, (vi) Singhania Alu Foil Container Manufacturing Co., and (vii) Premium Corporation Pvt. Ltd.

49.32 I find that statement of Shri Ankur Bansal, Director of M/s Vidya Polymers was recorded on 08.01.2024 under section 108 of the Customs Act, 1962 wherein he interalia stated that :-

- a. He did not know about the company M/s. Proffer Information Systems India Pvt Ltd.
- b. He has no knowledge about M/s Umang Impex and no business dealings.
- c. He knew Mr Umang Garg/Kanika Garg for last 08 months. His sister Ms. Kanika Garg got married to son of his father’s friend a few months back. After their alliance

Mr Umang Garg got in contact with him.

- d. He knew Risabh Overseas. He had few business dealings.
- e. He did not know M/s. New Growth Petrochem Pvt Ltd or no business dealings.
- f. He did not know M/s. Kanhaiya Roadways and was not able to recall any business dealings i.e. movement of goods inward or outward.
- g. On being shown the statement dated 05.10.2023 of Shri Raghunandan of M/s. Kanhaiya Roadways and he replied that "After going through the statement I would like to submit that currently I am not in a position to confirm whether such vehicle no's as shown to me had been offloaded at M/s Vidya Polymer Pvt Ltd., Noida. I will check the records in my office and submit my reply later".
- h. He knew M/s. Kuber Import House and his owner Mr Deepak Chabbra for the last 04 years.
- i. He accepted that he introduced Mr Deepak Chabbra to Mr. Umang Garg in their one family function.
- j. He knew M/s. Apple Printpack Pvt. Ltd which has similar line of business like his company. However he did not know the company's owner personally nor had any business dealings with him.
- k. He did not know M/s Real Logistics Shipping Agencies Mumbai.

49.33 I reiterate my findings at para 49.11 & 49.12 wherein the legality of statement recorded under section 108 of the Customs Act 1962 is valid. **I find that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value.**

49.34 I observe that as per all the above multiple evidences produced by the DRI, the noticee no. 01 i.e. M/s Proffer Information Systems India Private Limited, has not exported any goods which they are supposed to make in order to avail the benefit of advance authorization issued by DGFT as detailed in para 3 Table I above, in terms of para 4.12 and 4.16 of FTP read with Customs Duty exemption Notification no. 18/2015 dt 01.04.2015 and 21/2023 dt 01.04.2023.

49.35 I further observe that it is never the claim of M/s. Proffer Information Systems India Pvt. Ltd. or Shri Umang Garg or any other relevant person involved in this case that the subject goods conditionally exempted were actually used for export after manufacturing activity or any other export activity. There is no dispute about the fact that Noticee no. 01 has made no exports whatsoever.

49.36 I further observe this is an undisputed fact that no manufacturing activity was being done at the principal place of business of M/s. Proffer Information Systems India Pvt. Ltd. at 64, Grand Trunk Road, RP Textile, HSIIDC Industrial Estate, Samalkha, Panipat, Harayana – 132101.

49.37 I further observe that the imported goods never reached the declared Principle Place of Business and were directly diverted in the domestic market for financial gain by misusing advance authorization issued by DGFT in terms of para 4.12 and 4.16 of FTP read with Customs Duty exemption Notification no. 18/2015 dt 01.04.2015 and 21/2023 dt 01.04.2023.

49.38 In view of the above, I find that the Noticee has imported the conditionally exempted

goods namely Aluminum foil and steel coil vide past 20 Bills of entry and 7 live Bills of entry, however Noticee never had any intention or never actually complied with the essential condition of DGFT in terms of para 4.12 and 4.16 of FTP read with Customs Duty exemption Notification no. 18/2015 dt 01.04.2015 and 21/2023 dt 01.04.2023 by way of exporting the goods declared in the license namely Aluminium Boards and Table Kitchen & other house hold items. Rather they diverted the conditionally exempted imported goods in the domestic market in order to unduly enrich themselves.

49.39 I find that the investigation has brought out plethora of evidences wherein it has been clearly established that this **fraudulent arrangement was between M/s Proffer Information Systems India Private Limited and Shri Umang Garg (then director of M/s. Umang Impex India Pvt Limited) for misuse of the provisions of advance license scheme (03) to evade applicable Customs Duty.**

49.40 I rely on the judgement of **Supreme Court Of India Civil Appellate Jurisdiction Civil Appeal No. 3327 Of 2007 in the case of COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI ...APPELLANT(S) VERSUS M/S. DILIP KUMAR AND COMPANY & ORS. ...RESPONDENT(S).** The relevant part of the judgement is reproduced below:-

“ 52.To sum up, we answer the reference holding as under

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.”

I further observe that applying the ratio of the above judgment to the present case, it is undisputed fact that the noticee has **failed to discharge the burden** of proving eligibility under the Advance License Scheme. The fraudulent intent and misuse of the scheme further disentitle the noticee involved from claiming any benefit under the exemption notification.

B. As to whether the goods detailed in Annexure-A having assessable value of Rs.3,53,49,127/-(Rupees Three Crores Fifty Three Lakhs Forty Nine Thousand One Hundred Twenty Seven only), detained vide detention memo dated 15.09.2023 and further seized vide seizure memo dated 01.12.2023 and goods detailed in Seizure Memo dated 27.12.2023, Annexure B- having assessable value of Rs.33,00,000/-(Rupees Thirty Three Lakhs), seized vide seizure memo dated 27.12.2023, should be confiscated under Section 111(o) of the Customs Act, 1962;

50.1 I reiterate my finding at Para 49 above.

50.2 Legal Provisions:

“111. Confiscation of improperly imported goods, etc.

“(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;”

Relevant part of notification no. 18/2015 dated 01.04.2015 is reproduced below:-

*G.S.R. 254 (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, **hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy** (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to the following conditions, namely:-*

*(viii) that the **export obligation** as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation. Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.05 (c)(ii) of the Foreign Trade Policy;*

*(ix) that the **importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs**, as the case may be, within a period of sixty days of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;*

*(x) that the said authorisation shall not be transferred and **the said materials shall not be transferred or sold**; Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work. Provided further that, no such transfer for purposes of job work shall be effected to the units located in areas eligible for area based exemptions from the levy of excise duty in terms of notification Nos. 32/1999-Central Excise dated 08.07.1999, 33/1999-Central Excise dated 08.07.1999, 39/2001- Central Excise dated 31.07.2001, 56/2002- Central Excise dated 14.11.2002, 57/2002- Central Excise dated 14.11.2002, 49/2003- Central Excise dated 10.06.2003, 50/2003- Central Excise dated 10.06.2003, 56/2003- Central Excise dated 25.06.2003, 71/03- Central Excise dated 09.09.2003, 8/2004- Central Excise dated 21.01.2004 and 20/2007- Central Excise dated 25.04.2007*

Relevant part of notification no. 21/2023 dated 01.04.2023 is reproduced below:-

*“G.S.R.(E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, **hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy** (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in*

the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty,leviable thereon under sub-sections(1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act, subject to the following conditions, namely.....

*x. that the **export obligation** as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation:Providedthat an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.05(c)(ii) of the Foreign Trade Policy; Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and service tax compensation cess leviable thereon under sub-section(7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports or by making domestic supplies mentioned at serial numbers 1,2 and 3 of the Table contained in notification No. 48/2017-Central Tax, dated the 18thOctober, 2017 published,videnumber G.S.R 1305(E), dated the 18thOctober, 2017;*

*(xi) that the **importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs**, as the case may be, within a period of sixty days of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow*

*(xii) that the said authorisation shall not be transferred and **the said materials shall not be transferred or sold**:Providedthat the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant goods and services tax provisionspermitting transfer of materials for job work”*

The relevant advance authorization issued by DGFT in terms of para 4.12 and 4.16 of FTP is reproduced below:-

“4.12 Accounting of Input

Wherever SION permits use of either (a) a generic input or (b) alternative input, unless the name of the specific input together with quantity [which has been used in manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, within quantity specified and match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/description of the input used (or to be used) in the Authorisation must match exactly with the name/description endorsed in the shipping bill.

(ii) In addition, if in any SION, a single quantity has been indicated against a number of inputs (more than one input), then quantities of such inputs to be permitted for import shall be in proportion to the quantity of these inputs actually used/consumed in production, within overall quantity against such group of inputs. Proportion of these inputs actually used/consumed in production of export product shall be clearly indicated in shipping bills.

(iii.)At the time of discharge of export obligation (issue of EODC) or at the time of

redemption, Regional Authority shall allow only those inputs which have been specifically indicated in the shipping bill together with quantity.

(iv) The above provisions will also be applicable for supplies to SEZs and supplies made under Deemed exports. Details as given above will have to be indicated in the relevant Bill of Export, ARE-3, Central Excise certified Invoice / import document / Tax Invoice for export prescribed under the GST rules.

4.16 Actual User Condition for Advance Authorisation

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.

ii. In case where CENVAT/input tax credit facility on input has been availed for the exported goods, even after completion of export obligation, the goods imported against such Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer). For this, the Authorisation holder shall produce a certificate from Chartered Accountant at the time of filing application for Export Obligation Discharge Certificate to Regional Authority concerned. An AEO having valid certificate has the option to produce self declaration to this effect.

iii. Waste / Scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

50.2 In view of above I find that the Director of M/s. Proffer Information Systems India Pvt. Ltd., Sh. Harish Batra, in connivance with Sh. Umang Garg, (ex-director of M/s. Umang Enterprises), mis-use advance authorizations issued by DGFT in terms of para 4.12 and 4.16 of FTP read with Customs Duty exemption Notification no. 18/2015 dt 01.04.2015 and 21/2023 dt 01.04.2023, in order to evade legible Customs Duty and diverted the goods meant for production of export goods, directly to domestic market. It was never the intention of Director of M/s. Proffer Information Systems India Pvt. Ltd., Sh. Harish Batra and of Sh. Umang Garg, (ex-director of M/s. Umang Impex India Ltd.), or any other person involved in the case, to do any manufacturing activin on the imported goods for export purpose or anything related to export activity. That, goods were diverted to domestic market/ buyers namely M/s. Apple Printpack Pvt Ltd., M/s. Vidya Polymers Pvt. Ltd. Sh. Umang Garg, executed High Sea Sales agreement on behalf of M/s. Proffer Information Systems India Pvt. Ltd., arranged transportation of the impugned imported goods from Customs at Nhava Sheva to domestic Market/ buy, issued fake e-way bills to facilitate the same. Sh. Umang Garg also arranged Customs Broker for the import of goods by M/s. Proffer Information Systems India Pvt. Ltd., He also operated the account of M/s. Proffer Information Systems India Pvt. Ltd., and paid for interim Customs Duty paid vide Demand Drafts of Rs. 3,92,12,422/- dated 03.10.2023 & 06.10.2023.

I also find that, Sh. Kanhaiya Ram Mohan Mishra (Prop of M/s. Kanhaiya Roadways) & Sh. Raghunandan Mishra (employee of M/s. Kanhaiya Roadways), abetted in the diversion of goods. They knowingly carried/diverted and delivered goods at Delhi, Noida, other than the place as destined in e-Way Bills. They coordinated with Sh. Umang Garg and the representatives of M/s. Apple Printpack and M/s. Vidya Polymers, for the delivery of the impugned goods (Annexure-B).

M/s. Apple Printpack and M/s. Vidya Polymers, in collusion with Sh. Umang Garg, purchased and possessed the impugned goods. They took the delivery of the goods from Sh. Raghunandan Mishra (employee of M/s. Kanhaiya Roadways), even though as per E-Way Bills (issued by Sh. Umang Garg), goods were destined for Panipat (Samalkha).

50.3 In view of the above, goods seized vide seizure memo dated 01.12.2023 having assessable value of **Rs.3,53,49,127/- (Rupees Three Crores Fifty-Three Lakhs Forty-Nine Thousand One Hundred Twenty-Seven only)** and goods seized vide seizure memo 27.12.2023 having assessable value of Rs. **Rs.33,00,000/- (Rupees Thirty-Three Lakhs)** should be held liable for confiscation under section 111(o) of the Customs Act, 1962.

C. As to whether Penalty should be imposed on M/s Proffer Information Systems India Private Limited in terms of Section 112(a) and/or 112(b), 114A and 114AA of the Customs Act, 1962.

51. I reiterate my findings from paras 49 for the question of penalty also as the same appears mutatis mutandis to this also.

51.1 I find that the SCN has proposed penalty under section 112(a)/112(b) and 114 A of the Customs Act, 1962. The same are reproduced below:-

Section 112: *Penalty for improper importation of goods, etc. — Any person, -*
 (a) *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
 (b) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*
shall be liable, -
 (i) ---
 [(ii) *in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :*
Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]
 [(iii) ----
 (iv) ----
 (v) ----

Section 114A *of the Customs Act 1962 stipulates that “Penalty for short-levy or non-levy of duty in certain cases. -Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined”*

51.2 I find that as per the statement of Shri Harish Batra recorded under section 108 of the Customs Act, 1962 wherein he admitted to having opened a bank account at the Pitampura branch on the direction of an individual named Mumtaz, in return for monetary consideration. He further accepted that Mumtaz assured him that there would be no consequences for opening the said account.

51.3 However I further observe that Shri Boota Singh (owner of the rented premise/Principal Place of Business of M/s Proffer Information Systems India Ltd.) in his statement recorded on 13.09.2023 under section 108 of the Customs Act, 1962 has admitted that he **had met Shri Harish Batra, Director of M/s Proffer Information Systems India Private Limited and Shri Harish Batra made deed (rent agreement) for GST registration and told him that a machine would come for installation however no machine reached at his premises. This further corroborates the fact that Shri Harish Batra was well aware of the incident of things related to the malafadi business activity of M/s Proffer Information Systems India Private Limited and related diversion of goods and undue enrichment by way of misusing** advance authorization issued by DGFT in terms of para 4.12 and 4.16 of FTP read with Customs Duty exemption Notification no. 18/2015 dt 01.04.2015 and 21/2023 dt 01.04.2023.

51.4 In view of above, it is clearly established that Shri Harish Batra willfully misstated the facts for obtaining DGFT advance authorization license as there was no Bonafide intention whatsoever at any stage to utilize the imported goods in the manufacturing and export of Aluminum Boards and Table kitchen & other articles. Therefore, he is liable for penalty under Section 114A of the Customs Act, 1962, for willfully assisting in the commission of customs duty evasion.

51.5 It is a settled law that fraud and justice never dwell together (Fraus et Jus nunquam cohabitant). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” there are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

*“31. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].*

32. “Fraud” and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi reported in 2014(307)ELT 160(Tri. Del). In Samsung

case, Hon'ble Tribunal held as under.

"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: S.P. Chengalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC 1 : AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to

safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."

51.6 Since I will be imposing penalty on the importer under Section 114A, I shall refrain from imposing Penalty under Section 112(a) of the Act on the importer, M/s. Proffer Information Systems India Pvt. Ltd, in terms of the fifth proviso to Section 114A of the Act *ibid*

51.7 Furthermore, I find that Penal Action under Section 114 AA of the Customs Act has also been proposed on M/s. Proffer Information Systems India Pvt. Ltd. **The relevant provision of the Section 114AA of the Custom Act, 1962 is as under:-**

114AA Penalty for use of false and incorrect material –

I again reiterate my findings from paras 49 for the question of penalty also as the same appears *mutatis mutandis* to this also.

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

51.7.1 I note that, The Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

28. As far as the penalty under Section 114AA is concerned, it is imposable if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. We find that the appellant has misdeclared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.

51.7.2 There are several judicial decisions in which penalty on Companies under section 114AA of the Customs Act, 1962 has been upheld. Following decisions are relied upon on the issue,-

- i. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
- ii. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)
- iii. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

51.7.3 As observed in above paras, in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. The Importer M/s. Proffer Information Systems India Pvt. Ltd cleared the imported goods by knowingly and intentionally resorting to misuse of advance license, false and incorrect declaration, statement etc. Therefore, I hold that the Importer M/s. Proffer Information Systems India Pvt. Ltd is liable for imposition of penalty under Section 114AA ibid.

D. As to whether penalty under Section 112 (a) and/or 112(b) of the Customs Act, 1962, as applicable, for acts of omissions to be imposed on Shri Umang Garg (then director of M/s. Umang Impex India Pvt Limited), Shri Kanhaiya Ram Mohan Mishra, Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways, Shri Shyam Sunder Bansal Director of M/s. Apple Printpack Pvt. Ltd., Shri Vinay Bansal Director of M/s. Apple Printpack Pvt. Ltd. And shri Ankur Bansal, Director of M/s Vidya Polymer Pvt. Ltd.

52. I reiterate my findings at para 49 above. I observe that SCN has proposed penalty under Section 112 (a) and/or 112(b) on Shri Umang Garg (then director of M/s. Umang Impex India Pvt Limited), Shri Kanhaiya Ram Mohan Mishra, Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways, Shri Shyam Sunder Bansal Director of M/s. Apple Printpack Pvt. Ltd., Shri Vinay Bansal Director of M/s. Apple Printpack Pvt. Ltd. And shri Ankur Bansal, Director of M/s Vidya Polymer Pvt. Ltd.

Role Played by Shri Umang Garg (then director of M/s. Umang Impex India Pvt. Limited):

52.1 I observe that, as per statement of the manager of CHA company Real Logistics, Shri Anand Chandrakant Nikam, recorded on 04.10.2023 under section 108 of the Customs Act 1962, wherein he stated inter-alia that –

- c. **He never met in person with the director Harish Batra of M/s. Proffer Information Systems India Private Limited. The said company was introduced by one of his client Shri Prashant Nayak (Mob no. 6000820002), director of Umang Impex.**
- d. **M/s. New growth Petrochem India Private Limited (IEC – AAICN5732F), M/s. Rishab Overseas (IEC – 0515004774) & M/s. Umang Impex India (P) Ltd., are the parties that have done High Seas Sale Agreement with M/s PROFFER INFORMATION SYSTEMS INDIA PRIVATE LIMITED.**

52.2 I further observe that Shri Prashant Kumar Nayak, one of the Directors of M/s Umang Impex was recorded on 16.10.2023 under section 108 of the Customs Act, 1962 wherein he stated inter-alia that –

(k) **On being shown the deed of high sea sale dated 20.04.2023 between the director of M/s. Proffer Information Systems India Private Limited and the director of M/s. Umang Impex India Private Limited, he denied of having knowledge of anything about this deed and that the signatures on this deed is also not of him. He further replied that he did not know any Harish Batra. He further identified**

the signature as put on the deed and replied that this signature was of Shri Umang Garg (Ex director of M/s. Umang Impex). He further stated that the detail about this deed may be asked from Shri Umang Garg. All the works of this company was being done by Shri Umang Garg (Ex director of M/s. Umang Impex) and he was the director only. Mobile nos. of Shri Umang Garg are 9999999378 & 9999923943.

52.3I further observe that as per statement of Shri Piyush Gupta, prop. Of M/s Risabh Overseas recorded on 08.02.2024 under section 108 of the Customs Act 1962 - wherein he inter-alia stated that –

(l) He imports aluminium foil and sells it locally. He started High-sea-sale on specific request of one of his client Shri Umang Garg of M/s. Umang Impex India Pvt. Ltd., and submitted all the documents.

(m) He knew Shri Umang Garg through one of his family friend. He met him in January 2023. On request of Shri Umang he agreed to do high-sea-sales. He did his first high-sea-sale with Umang on 28.07.2023. He knew that the director of M/s Umang Impex is Shri Umang Garg.

52.4 I reiterate my findings at para 49.11 & 49.12 wherein the legality of statement recorded under section 108 of the Customs Act 1962 is valid. **I find that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value.**

52.5 I find that from the above statements it has been clearly established that Shri Umang Garg was the key individual orchestrating and facilitating all High Seas Sales (HSS) transactions on behalf of M/s Proffer Information Systems India Pvt. Ltd. Therefore it has been an undisputed fact that Shri Umang Garg played a central and active role in organizing and executing the High Seas Sales of the consignments imported by M/s Proffer Information Systems India Pvt. Ltd.

Financial flow

52.6 I observe that the demand drafts having Nos. 559841 dated 03.10.2023, 559842 dated 03.10.2023, 559844 dated 03.10.2023 and 559847 dated 06.10.2023 has been deposited by the advocates/lawyers of M/s Proffer Information Systems India Private Limited. Further I observe that during the course of investigation, it was found that the deposited duty amount of Rs. 3,92,12,422/- has been credited into the account of M/s. Proffer Information Systems India Private Limited by M/s. Umang Impex India Private Limited. The relevant entry into the account are shown here –

03-Oct-2023	DD FAVORING NHAVA SHEVA DEMAND DRAFTS AND PA	119	03-Oct-2023	5,000,000.00		5,126,206.97Cr
03-Oct-2023	DD FAVOURING NHAVA SHEVA DEMAND DRAFTS AND PA	120	03-Oct-2023	5,000,000.00		126,206.97Cr
03-Oct-2023	RTGS/ICICH23276553152/UMANG IMPEX INDIA PRIVATE LI		03-Oct-2023		4,826,750.00	4,952,956.97Cr
03-Oct-2023	RTGS/ICICH23276553287/UMANG IMPEX INDIA PRIVATE LI		03-Oct-2023		2,173,250.00	7,126,206.97Cr
03-Oct-2023	IMPS 327619708846 FROM UMANG IMPEX INDIA PR		03-Oct-2023		25,000.00	7,151,206.97Cr
03-Oct-2023	RTGS/ICICH23276554746/UMANG IMPEX INDIA PRIVATE LI		03-Oct-2023		3,000,000.00	10,151,206.97Cr
03-Oct-2023	DD FAVORING NHAVA SHEVA Demand Drafts and Pa	122	03-Oct-2023	10,143,000.00		8,206.97Cr
06-Oct-2023	RTGS/ICICH23279504988/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,788,440.00	4,796,646.97Cr
06-Oct-2023	RTGS/ICICH23279504939/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,680,960.00	9,477,606.97Cr
06-Oct-2023	RTGS/ICICH23279505107/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,715,930.00	14,193,536.97Cr
06-Oct-2023	RTGS/ICICH23279505056/UMANG IMPEX INDIA PRIVATE LI		06-Oct-2023		4,914,670.00	19,108,206.97Cr
DATE	TRANSACTION DETAILS	CHQ.NO.	VALUE DATE	WITHDRAWAL AMT	DEPOSIT AMT	BALANCE AMT
06-Oct-2023	DD FAVORING NHAVA SHEVA Demand Drafts and Pa	121	06-Oct-2023	19,069,422.00		38,784.97Cr
09-Oct-2023	RTGS/ICICH23282512922/UMANG IMPEX INDIA PRIVATE LI		09-Oct-2023		2,000,000.00	2,038,784.97Cr

52.7 From the above, it is evident that M/s. Proffer Information Systems India Private Limited and Shri Umang Garg the ex- director of M/s. Umang Impex India Private Limited **has made this fraudulent arrangement for with M/s Proffer Information System Pvt ltd to evade applicable Customs Duty.**

52.8 I further find that as per statement of Shri Kanhaiya Mishra, owner of M/s. Kanhaiya Transport stated that he had no direct knowledge of M/s. Proffer Information Systems India Private Limited. The transportation work related to M/s. Proffer was arranged through the owner of M/s. Umang Impex, who acted as an intermediary. Shri Kanhaiya Mishra further confirmed that he received all directions regarding the transportation of goods from M/s. Umang Impex. All e-way bills required for the movement of goods were generated by Umang Impex and sent to him via WhatsApp, which he then forwarded to his drivers to execute the deliveries.

52.9 I find that Shri Umang Garg made the agreement of High-sea-sale with M/s Proffer Information Systems India Pvt. Ltd, on behalf of M/s Umang Impex India Pvt. Ltd and the CHA also stated that it was Shri Umang Garg of M/s Umang Impex India Pvt. Ltd who had introduced the company M/s Proffer Information Systems India Pvt. Ltd., to them and advised to do the clearing work. The 1st high-sea-sale made with M/s Risabh Overseas was by him. The proprietor of M/s. Risabh Overseas has clearly stated that the Shri Umang Garg is the sole person who deals with the business of Ms. Umang Impex India Pvt. Limited.

52.10 I find that from the statements of various persons and investigations it has been established that that Shri Umang Garg is the main mastermind behind the diversion of the imported goods, which were imported against advance licenses and wilfully diverted into domestic market thereby to evade the Customs duty. Further, with the acts of omission and commission on part of **Shri Umang Garg (then director of M/s. Umang Impex India Pvt. Limited)** has rendered himself liable to penal action in terms of Section 112 (a) of the Customs Act, 1962 on account of violation of the condition of the said advance licenses and diversion of the goods in the local market.

Since I am imposing penalty under section 112(a), therefore I refrain from imposing penalty under section 112(b) of the act.

Role Played by Shri Kanhaiya Ram Mohan Mishra proprietor of M/s. Kanhaiya Roadways:

52.11 I find that Shri Kanhaiya Ram Mohan Mishra, Flat no.101, 102, Ashok Nagar, Co-op HSG Society, Dadlani Road, Balkam Thane (W) is the sole proprietor of M/s Kanhaiya Roadways, which had carried all the imported goods of M/s. Proffer Information Systems India Pvt. Limited from Nhava Sheva and delivered such goods on different places i.e. in Delhi, Noida, Kundali (Haryana), Kota (Rajasthan), except the principal place of business i.e. Samalkha, Panipat (Haryana). Shri Kanhaiya Mishra also accepted his fault and stated that he had done such work in greed of money. He had not provided the GPS locations of the trucks where the goods had been unloaded. Thus, it is apparent that he was concerned in carrying the imported goods which he knew to be liable to confiscation under section 111 (o) of the Customs Act, 1962. Further, with the acts of omission and commission on part of Shri Kanhaiya Ram Mohan Mishra has rendered himself liable to penal action in terms of Section 112 (b) of the Customs Act, 1962 on account of carrying the imported goods, to different places i.e. in Delhi, Noida, Kundali (Haryana), Kota (Rajasthan), except the principal place of business i.e. Samalkha, Panipat (Haryana), as declared premises on the e-way Bill.

52.12 Since I am imposing penalty under section 112(b), therefore I refrain from imposing penalty under section 112(a) of the act.

Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways for Delhi area office situated at 319, Apsara Complex, Delhi UP Border, Ghaziabad (UP).

53.1 I find that Shri Raghunandan Mishra is the employee of M/s Kanhaiya Roadways and looking after the loading & unloading of the goods which are carried by the trucks of M/s Kanhaiya Roadways in and around Delhi. He has discussed with the director of M/s. Apple Printpack Pvt. Ltd as well as Umang Garg for unloading of the goods and accordingly unloaded such imported goods in the premises as per their direction except principal place of business i.e. Samalkha Panipat, even though he knew that the e-way bill was issued for principal place of business. Thus, it is apparent that he was involved in assisting the illegal activity and in dealing with goods which he knew to be liable to confiscation under section 111(o) of the Customs Act, 1962. Further, with the acts of omission and commission on part of Shri Raghunandan Mishra has rendered himself liable to penal action in terms of Section 112 (b) of the Customs Act, 1962 on account of carrying the imported goods, to different places i.e. in Delhi, Noida, Kundali (Haryana), Kota (Rajasthan), except the principal place of business i.e. Samalkha, Panipat (Haryana), as declared premises on the e-way Bill.

53.1.1 Since I am imposing penalty under section 112(b), therefore I refrain from imposing penalty under section 112(a) of the act.

Shri Shyam Sunder Bansal director of M/s. Apple Printpack Pvt. Ltd.

54.1 I find that during the course of investigations it was revealed that that the diverted goods were unloaded by the transporter in the premises of M/s. Apple Printpack Pvt. Limited and for unloading such goods the transporter has stated that the person who deals the same on behalf of Apple Printpack Pvt. Ltd has mobile no. 9053011053. He accepted that the mobile no. 9053011053 has been issued by him and being used by his employee. Shri Shyam Sunder Bansal could not justify the legality of imported goods which were lying in their premises. Thus, it is apparent that he has acquired possession of and is concerned in purchasing goods which he knew were liable to confiscation under section 111(o) of the Customs Act, 1962. Further, with the acts of omission and commission on part of Shri Shyam Sunder Bansal has rendered himself liable to penal action in terms of Section 112 (b) of the Customs Act, 1962 on account of acquiring possession and purchasing of impugned goods which he knew or has reason to believe are liable to confiscation under section 111,

54.1.1 Since I am imposing penalty under section 112(b), therefore I refrain from imposing penalty under section 112(a) of the act.

Shri Vinay Bansal director of M/s. Apple Printpack Pvt. Ltd.

55.1 I find that Shri Vinay Bansal S/o Shri T. C. Bansal, E-4/25, Model Town –II Delhi-9 is one of the directors of M/s. Apple Printpack Pvt. Limited. During investigation it was revealed that the diverted goods were unloaded by the transporter in the premises of M/s. Apple Printpack Pvt. Limited and for unloading such goods the transporter has stated that the person who deals the same on behalf of Apple Printpack Pvt. Ltd has mobile no.9053011053. He accepted that the mobile no. 9053011053 has been issued by their company and being used by his employee. Shri Vinay Bansal could not justify the legality of imported goods which were lying in their premises. Thus it is apparent that he has acquired possession of and is concerned in purchasing goods which he knew were liable to confiscation under section 111(o) of the Customs Act, 1962. Further, with the acts of omission and commission on part of Shri Vinay Bansal has rendered himself liable to penal action in terms of Section 112 (b) of the Customs Act, 1962 on account of acquiring possession and purchasing of impugned goods which he knew or has reason to believe are liable to confiscation under section 111,

55.1.1 Since I am imposing penalty under section 112(b), therefore I refrain from imposing penalty under section 112(a) of the act.

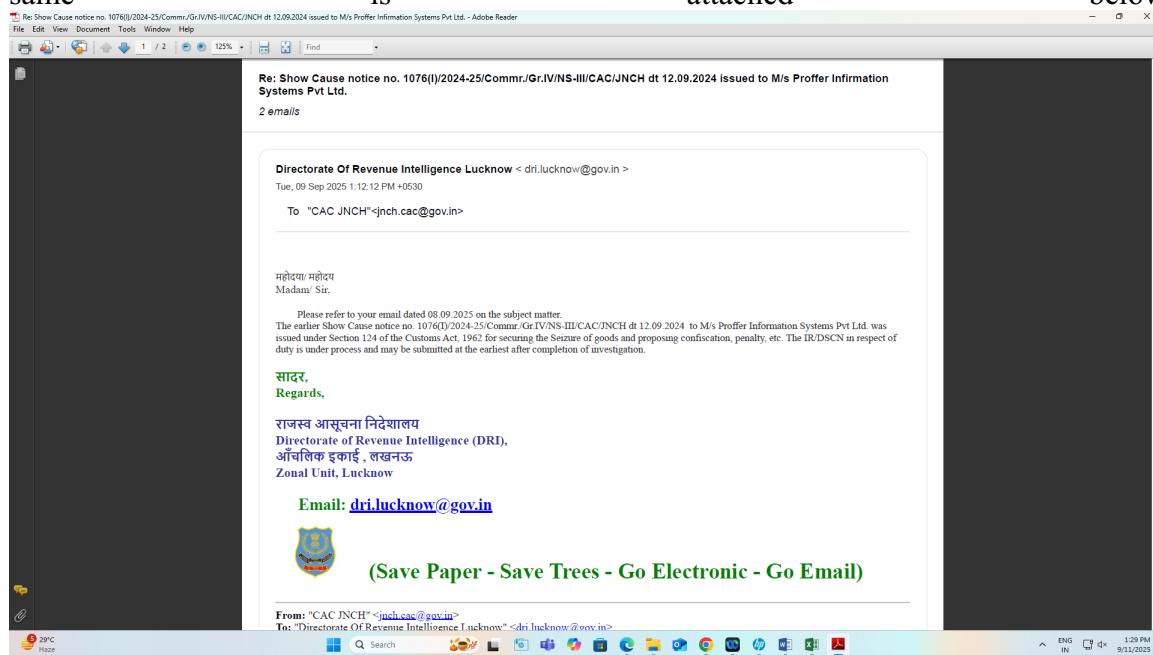
Shri Ankur Bansal, director of M/s Vidya Polymer Pvt. Ltd.

56.1 I find that during the course of investigation it was revealed that the diverted goods were unloaded by the transporter in the premises of M/s. Vidya Polymer Pvt. Limited situated at J-25, Sector-63, Noida UP. The transporter has submitted the detail of the vehicles to which the diverted goods were unloaded at the premises of M/s. Vidya Polymer. The statement was shown to Shri Ankur Bansal and asked the proper reply but he could not answer in proper way. Till date he could not justify properly. Thus, it is apparent that he has acquired possession of and is concerned in purchasing goods which he knew were liable to confiscation under section 111(o) of the Customs Act, 1962 Further, with the acts of omission and commission on part of Shri Shyam Sunder Bansal has rendered himself liable to penal action in terms of Section 112 (b) of the Customs Act, 1962 on account of

acquiring possession and purchasing of impugned goods which he knew or has reason to believe are liable to confiscation under section 111,

56.1.1 Since I am imposing penalty under section 112(b), therefore I refrain from imposing penalty under section 112(a) of the act.

57. I observe that as per seizure memo (Annexure A) dated 01.12.2023 the value of the seized goods is **Rs. 3,53,49,127/- (Rupees Three Crores Fifty-Three Lakhs Forty-Nine Thousand One Hundred Twenty-Seven only)** and as per para 15(e) of the Show Cause Notice the total duty saved by the noticee in the live 07 Bills of entry was **Rs. 1,04,11,129/- (Rs. One crore four thousand eleven thousand one hundred twenty-nine only) /-.** I further observe that as per seizure memo (Annexure B) dated 27.12.2023 the value of the seized goods is **Rs.33,00,000/- (Rupees Thirty-Three Lakhs)**, therefore the duty saved by the noticee on the said goods is Rs 9,71,926/- (Rs. Nine lakh Seventy one thousand nine hundred and twenty six only) /-. Further as per para 43(vii) of the Show cause notice, DRI is conducting the investigations for diversion of imported goods in domestic markets that are imported under the advance licenses and they will issue the SCN for the same in due course. Further as a precautionary measure vide email it has been confirmed from DRI, Lucknow Zonal Unit that the current show cause notice is for securing the seizure of goods and proposing confiscation, penalty etc. The IR/DSCN with respect to duty is under process and same will be issued after completion of the Show cause notice. The screen shot of the same is attached below:-



58. In view of the above I pass the following order.

Order

- a. I confiscate the impugned goods having Assessable value of **Rs. 3,53,49,127/- (Rupees Three Crores Fifty-Three Lakhs Forty-Nine Thousand One Hundred Twenty-Seven only)**, seized vide seizure memo dated 01.12.2023 (Annexure-A) under Section 111(o) of the Customs Act, 1962. However, I impose a redemption fine of **Rs 1,00,00,000/- (Rupees One Crore only)** on M/s. Proffer Information

Systems India Pvt. Ltd in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

- b. I confiscate the impugned goods having Assessable value of **Rs.33,00,000/- (Rupees Thirty-Three Lakhs)**, seized vide seizure memo dated 27.12.2023 (Annexure-B) under Section 111(o) of the Customs Act, 1962 . However, I impose a redemption fine of **Rs 10,00,000/- (Rupees Ten lakhs only)** on M/s. Proffer Information Systems India Pvt. Ltd in lieu of confiscation under Section 125(1) of the Customs Act, 1962.
- c. I impose a penalty equivalent to differential duty of **Rs 1,04,11,129/-(Rs. One crore four thousand eleven thousand one hundred twenty nine only)** on the seized vide seizure memo dated 01.12.2023 (Annexure-A) along with the applicable interest thereon under section 28 (AA), on M/s. Proffer Information Systems India Pvt under Section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

- d. I impose a penalty equivalent to differential duty of **Rs 9,71,926/- (Rs. Nine lakh Seventy one thousand nine hundred and twenty six only)** seized vide seizure memo dated 27.12.2023 (Annexure-B) along with the applicable interest thereon under section 28 (AA), on M/s. Proffer Information Systems India Pvt under Section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

- e. I impose a penalty of **Rs. 40,00,000/- (Rupees Forty lakhs only)** on M/s. Proffer Information Systems India Pvt under Section 114 AA of the Customs Act, 1962.
- f. I impose a penalty of **Rs. 11,38,000/- (Rupees Eleven lakh thirty eight thousand only)** on Shri Umang Garg (then director of M/s. Umang Impex India Pvt Limited), under Section 112(a)(ii) of the Customs Act, 1962.
- g. I impose a penalty of **Rs. 2,27,000/- (Rupees Two lakh twenty-seven thousand only)** on Shri Kanhaiya Ram Mohan Mishra, under Section 112(b)(ii) of the Customs Act, 1962.
- h. I impose a penalty of **Rs. 2,27,000/- (Rupees Two lakh twenty-seven thousand only)** on Shri Raghunandan Mishra, under Section 112(b)(ii) of the Customs Act, 1962.
- i. I impose a penalty of **Rs. 5,70,000/- (Rupees Five lakh seventy thousand only)** on Shri Shyam Sunder Bansal, under Section 112(b)(ii) of the Customs Act, 1962.
- j. I impose a penalty of **Rs. 5,70,000/- (Rupees Five lakh seventy thousand only)** on Shri Vinay Bansal, under Section 112(b)(ii) of the Customs Act, 1962.
- k. I impose a penalty of **Rs. 5,70,000/- (Rupees Five lakh seventy thousand only)** on Ankur Bansal, under Section 112(b)(ii) of the Customs Act, 1962.

**Digitally signed by
Vijay Risi
Date: 11-09-2025
17:04:24**

**(VIJAY RISI)
COMMISSIONER OF CUSTOMS
NS-III, JNCH**

To,

1. **M/s Proffer Information Systems India Pvt. Ltd,
FF-38, House No. 425, Pvt. Shop no. 1, Near Tikonika Park,
LA Delhi Factory address – 64, HSIDC, Samalakha Industrial Area,
Samalakha, Panipat, Haryana – 132101**
2. **Shri Umang Garg (then director of M/s. Umang Impex India Pvt Limited) MP Enclave,
Pitampura North West Delhi – 110034,**
3. **Shri Kanhaiya Ram Mohan Mishra Flat no.101,102, Ashok Nagar, Co-op HSG Society, Dadlani
Road, Balkam Thane (W),**
4. **Shri Raghunandan Mishra, the employee of M/s. Kanhaiya Roadways for Delhi area office situated
at 319, Apsara Complex, Delhi UP Border, Ghaziabad (UP),**
5. **Shri Shyam Sunder Bansal Director of M/s. Apple Printpack Pvt. Ltd.102,103, Phase-V, Sector-
53, Kundali Haryana,**
6. **Shri Vinay Bansal Director of M/s. Apple Printpack Pvt. Ltd. 102,103, Phase-V, Sector-53,
Kundali Haryana,**
7. **Shri Ankur Bansal, Director of M/s Vidya Polymer Pvt. Ltd.J-25, Sector-63, Noida UP.**

Copy to:

1. The Assistant Director, DRI, Lukhnow Zonal Unit.
2. AC/DC, Group – IV, JNCH.
3. The Asstt / Dy. Commissioner of Customs, SIIB (Import), JNCH, Nhava Sheva - to
upload the OIO in DIGIT.
4. AC/DC, Chief Commissioner's Office, JNCH
5. AC/DC, Centralized Revenue Recovery Cell, JNCH
6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
7. Office Copy.