

**સિમા યુલ્ક આયુક્ત કા કચેરી,**
નવન સિમા યુલ્ક વવન, ન્યા કા.ડિા I
OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.

| | | |
|---|------------------------|--|
| A | File No. | S/10-11/Adj/2011-12 S/10-44/Adj/2013-14 |
| B | Order-in-Original No. | KDL/COMMR/PVRR/03/2015-16 |
| C | Passed by | SHRI P.V.R. REDDY Commissioner of Customs, Kandla. |
| D | Date of order | 27.05.2015 |
| E | Date of issue | 27.05.2015 |
| F | SCN No. & Date | S/10-11/Adj/2011-12 dated 02.06.2011 S/10-44/Adj/2013-14 dated 24.07.2013 |
| G | Noticee/Party/Exporter | M/s. Elite Impex, C-13, Al Fatima Apartment, Sarkhej Road, Maktampura, Ahmedabad and others. |

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

**“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,
O-20, Meghaninagar, New Mental Hospital Compound, Ahmedabad-380 016.”**

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

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

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

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

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

BRIEF FACTS OF THE CASE :

1. M/s. Elite Impex situated at C-13, AI Fatima Apartment, Sarkhej Road, Maktampura, Ahmedabad (hereinafter referred to as the said Importer), were engaged in the Import of Areca-nut, falling under CTH 08029090 of the Customs Tariff Act, 1975, by availing benefit of ISFTA Notification No. 26/2000-Cus, dated 01.03.2000 as amended and clearing such imported goods at NIL rate of duty. 'In case of normal import i.e. without availment of benefit of any scheme, Areca-nut attracts Basic Customs Duty @ 100% + Special Additional Duty @ 4% (SAD) (hereinafter referred to as Custom duty).

2. Information received by the officers of Directorate of Revenue Intelligence, Gandhidham (hereinafter referred to as DRI officers) indicated that the said Importer had mis-declared Country of Origin of Areca-nut at the time of importation so as to avail benefit of ISFTA Notification and to clear such imported goods at NIL rate of duty. Information further indicated that the said Importer had mis-declared the Country of Origin in import document as '**Sri Lanka**' though it was Singapore / Indonesia etc. Accordingly, the DRI officers kept watch and found that M/s. Elite Impex, Ahmedabad had filed Bills of Entry ,through their appointed Custom House Agent, M/s. P.C. India Shipping Agency, Gandhidham (hereinafter referred as "CHA"), for clearance of total 12 containers containing cargo declared as 'Arecanut (Betel nuts) (Not for Human Consumption). They further found that the said importer had claimed the benefit of ISFTA Notification by mis-declaring the Country of Origin in the import documents as '**Sri Lanka**', and sought clearance of such containers at NIL rate of Basic Customs Duty.

TABLE -1

Description of the Goods: 'Arecanut' (Betel nuts) (Not for Human Consumption)

| Sr. No. | Bill of Entry No. and Date | Value (Rs.) | Qty of goods | CTH | No. of containers (in MT) (all 20' in size) |
|----------------|-----------------------------------|--------------------|---------------------|------------|--|
| 1 | 2381355 dated 01.12.2010 | 2721814 | 72.000 | 08029090 | 4 |
| 2 | 2381484 dated 01.12.2010 | 2184634 | 57.790 | -- do -- | 4 |
| 3 | 2381492 dated 01.12.2010 | 2177441 | 57.600 | -- do -- | 4 |
| | Total | 7083889 | 187.39 | | 12 |

3. The DRI Officers examined imported goods contained in above mentioned 12 containers. A search of the CHA firm M/s. P.C. India was carried out under Panchnama dated 07.12.2010 whereby certain incriminating documents including two sets of Bills of Lading for each consignment were recovered. Similarly two sets of Bills of Lading for each consignment were also recovered from Shipping Agent's office. These sets of Bills of Lading clearly showed that the Country of Origin of Areca-nut imported by the said importer was in fact Indonesia / Singapore and it was not Sri Lankan as declared by the said importer. Since the said importer had deliberately mis-declared Country of

Origin to wrongly avail benefit of ISFTA notification, Area-nut imported by the said importer vide above mentioned 12 containers were placed under Seizure vide Panchnama dated 04.01.2011 pending further investigation.

4. Meanwhile 20 more containers of Areca-nut, imported by the said importer, had arrived at Kandla Port, and the said importer had filed total five Bills of Entry for the said 20 containers before the Customs authorities by declaring the description of such goods as Arecanut (Betel nuts) (Not for Human Consumption), and Country of Origin as **Sri Lanka**. The Master Bills of Lading recovered in relation to these goods clearly indicated that they were loaded from the ports of Indonesia / Singapore / Malaysia. Hence, it appeared that M/s. Elite Impex had deliberately mis-declared Country of Origin as Sri Lanka in import documents so as to take undue benefit of ISFTA notification. Thus, such goods, as detailed in Table-2 below, were also placed under Seizure vide Panchnama dated 01.02.2011 pending further investigation.

TABLE-2

Description of the Goods: 'Arecanut (Betel nuts) (Not for Human Consumption)

| Sr. No. | Bill of Entry No and date | Value (Rs.) | Qty. of goods (In MT) | CTH | No. of containers (all 20' in size) |
|---------|---------------------------|-----------------|-----------------------|------------|-------------------------------------|
| 1 | 2573548 dated 12.01.2011 | 2546775 | 72.00 | 08029090 4 | 4 |
| 2 | 2573527 dated 12.01.11 | 2546775 | 72.00 | -- do -- | 4 |
| 3 | 2573569 dated 12.01.11 | 1037788 | 29.24 | -- do -- | 2 |
| 4 | 2573577 dated 12.01.11 | 2919997 | 82.43 | -- do -- | 5 |
| 5 | 2573514 dated 12.01.11 | 3183469 | 90.00 | -- do -- | 5 |
| | Total | 12234804 | 345.67 | | 20 |

5. The scrutiny of documents recovered from the office of the said CHA revealed that M/s. Elite Impex, Ahmedabad had imported some consignments in the past also declaring the description of goods as 'Arecanut (Betel nuts) (Not for Human Consumption), through Kandla Port and cleared the same @ nil rate of duty by declaring the goods as Sri Lanka Origin, but in fact the Country of Origin of such imported Areca-nut was of other than **Sri Lanka**. Details of the said Bills of Entry are mentioned in Table - 3.

TABLE - 3

Description of the Goods: 'Arecanut (Betel nuts) (Not for Human Consumption)

| Sr. No. | Bill of Entry No. and date | Value (Rs.) | Qty of goods (MT) | CTH | No. containers (all 20' in size) |
|---------|----------------------------|-----------------|-------------------|----------|----------------------------------|
| 1 | 2243486 dated 11.10.2010 | 2555159 | 72.00 | 08029090 | 4 |
| 2 | 2276233 dated 22.10.10 | 2555159 | 72.00 | -- do -- | 4 |
| 3 | 3477 dated 15.10.10 | 2555160 | 72.00 | -- do -- | 4 |
| 4 | 310 dated 13.08.10 | 2600988 | 72.00 | -- do -- | 4 |
| 5 | 2243664 dated 11.10.10 | 2240150 | 62.86 | -- do -- | 4 |
| 6 | 2243469 dated 11.10.10 | 2555159 | 72.00 | -- do -- | 4 |
| 7 | 2627 dated 15.09.10 | 2724918 | 72.00 | -- do -- | 4 |
| 8 | 2274440 dated 22.10.10 | 2325455 | 63.20 | -- do -- | 4 |
| 9 | 2539 dated 14.09.10 | 2724918 | 72.00 | -- do -- | 4 |
| 10 | 2626 dated 15.09.10 | 2724918 | 72.00 | -- do -- | 4 |
| | Total | 25561984 | 702.06 | | |

6. During investigation, two sets of 18 Bills of Lading were recovered from the office of CHA, Shipping Line/ Container Line/ Forwarders, involved in import of said consignments. M/s. Ever Green Shipping Agencies (India) Pvt. Ltd. submitted such two sets of Bills of Lading vide their letter dated NIL, and M/s. Trans Asian Shipping Services (P) Ltd. submitted two sets of Bills of Lading vide their letter dated NIL. Import General Manifests in respect of all the goods were also recovered and scrutinized and it was found that port of loading was mis-declared as LKCMB (i.e. Colombo, Sri Lanka). Other documents recovered from the above were also scrutinized and found that the goods were actually imported either from Indonesia/Malaysia/ Singapore, but the importer had mis-declared the Country of Origin as Sri Lankan in the import documents in order to wrongly avail the benefit of ISFTA exemption and thereby to evade payment of Customs duty @100 % + SAD leviable thereon. For example Master Bills of Lading No. EGLV 080000245753 that Port of Loading of such imported goods was shown as Jakarta, Indonesia whereas HBL No. CMB/KAN/0132 was showing Port of Loading as Colombo, **Sri Lanka**. Both the Bills of Lading were related to consignment imported vide Container Nos. EMCU 3297883, EMCU 3386070, FCIU 3259588, TGHU0197638, and attempted to clear the same @ nil rate of customs duty vide Bill of Entry No.2381355, dated 01.12.2010, by mis-declaring Country of Origin therein as **Sri Lanka**. After scrutiny of 18 Master Bills of Lading recovered, it was found that actually the goods were imported from the countries other than **Sri Lanka**, and that the Country of Origin was deliberately mis-declared as Sri Lanka in the import documents, to avail undue benefit of ISFTA Notification No. 26/2000-Cus dated 01.03.2000. The detail of these 18 Bills of Lading are mentioned in Table-4.

TABLE-4
Details of Bills of Lading

| Sr. No. | Bill of Entry No. and date | Quantity | Container No. & Seal No. | Master B/L No. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA |
|---------|----------------------------|----------|---|--|---|
| 1 | 2381355/ 01.12.10 | 72.000 | EMCU-3297883 & 5500 EMCU-3386070 & 7200 FCIU-3259588 & 5270 TGHU-0197638 & 5020 | 080000245753 JAKARTA, INDONESIA | CMB/KND/132 SRI LANKA |
| 2 | 2381484/ 01.12.10 | 57.790 | TEXU-J993116 & 021525 TLXU-2008241 & 021524 FSCU-3481700 & 021553 FCIU-2026848 & 021523 | TALTLS00766340 SINGAPORE | CMB/KND/129 SRI LANKA |
| 3 | 2381492/ 01.12.10 | 57.600 | FCIU-2206161 & 021558 CRXU-2476123 & 021552 CRXU-1090218 & 021505 CAXU-6207405 & 021504 | TALTLS 00768356 SINGAPORE SRI LANKA | CMB/KND/127 01.12.10 SRI LANKA |
| 4 | 2573548/ 12.01.11 | 72.000 | BSIU-2233014 & 8360 UESU-2375724 & 8490 EGHU- 3048309 & 5370 EISU-3647074 & 7000 | 080000247268 12.01.11 JAKARTA, INDONESIA | CMB/KND/141 SRI LANKA |
| 5 | 2573527/ 12.01.11 | 72.00 | BSIU-2219886 & 5950 DFSU- 2153553 & 5990 MECU-3725791 & 6010 GVCU2055904 & 5820 | EGLV 080000254078 JAKARTA, INDONESIA | CMB/KND/1394 SRI LANKA |
| 6 | 2573569/ 12.01.11 | 29.24 | CAXU-3152762 & 021331 INBU-3675096 & 021336 | TALTLS00774856 SINGAPORE | CMBIKND/1102 SRI LANKA |
| 7 | 2573577/ 12.01.11 | 82.430 | CRSU-1203441 & 02134, TGHU-0041809 & 021348 JAYU-1070222 & 021349 GESU-3614368 & 021344 FBLU-3053558 & 021358 | TALTLS00770918 SINGAPORE | CMBIKND/1103 SRI LANKA |

| | | | | | |
|----|----------------------|----------------|---|--|---------------------------------------|
| 8 | 2573514/ 12.01.11 | 90 | FCIU-3177638 & 021359 TLXU-2001545 & 021357 FCIU-2708848 & 021360 CAIU-2207914 & 021300 CAXU-2628622 & 021294 | TALTLS00770932 SINGAPORE | CMBIKND/1104 SRI LANKA |
| 9 | 310/ 13.08.10 | 72.00 | TEXU-3961361 & 365398 ILSU-2002894 & 365399 GESU-3680056 & 365400 SCZU-6204493 & 365401 | MAX/BLW/1112/KAN/ 6/10 BELWAN INDONESIA | CMB/KND/040 SRI LANKA |
| 10 | 2539/ 14.09.10 | 72.00 | GESU-3617120 & 003518 TLXU-2007414 & 003520 SCZU-7913277 & 003517 TTNU-2920053 & 003519 | TALJBW 00738216 BELWAN INDONESIA | CMB/KND/047 SRI LANKA |
| 11 | 2626/ 15.09.10 | 72.00 | CAXU-6637237 & 003570 CRXU-3461914 & 003569 SCZU-7826383 & 003568 TLXU-2004117 & 003571 | TALJBW 00739759 BELWAN INDONESIA | CMB/KND/063 SRI LANKA |
| 12 | 2627/ 15.09.10 | 72.00 | CAXU-3383817 & 003535 CAXU-2834460 & 003536 GESU-3614516 & 003533 JAYU-1030678 & 003534 | TALJBW 00738234 BELWAN INDONESIA | CMB/KND/052 SRI LANKA |
| 13 | 2243664/ 11.10.10 | 62.86 | CRXU-1778582 & 607966 CRXU-1792960 & 607967 GESU-2395820 & 607968 TTNU-3353925 & 607965 | CAR/KND/21-01585-1 JAKARTA INDONESIA | CMB/KND/096 SRI LANKA |
| 14 | 2243469/ 11.10.10 | 72.00 | EGHU-3072223 & 5919 FCIU-3560040 & 5939 TGHU-3181213 & 5909 TGHU-3642850 & 5929 | EGLV 080000254078 JAKARTA, INDONESIA | CMB/KND/079 SRI LANKA |
| 15 | 2243486/ 11.10.10 | 72.00 | CRXU-1694671 & 003072 CRXU-2427535 & 003075 IPXU-3576197 & 003074 TLXU-3003753 & 003073 | TALJBW 00747630 JAKARTA INDONESIA | CMB/KND/088 SRI LANKA |
| 16 | 3477/ 15.10.10 | 72.00 | MSKU-7844499 & 0876511 MSKU-4295245 & 0876869 PONU-2113845 & 0876941 TTNU-3029074 & 0876604 | 552093940 PENANG MALAYSIA | 552093940 SRI LANKA |
| 17 | 2276233/ 22.10.10 | 72.00 | CRXU-1573129 & 001978 CAIU-2274701 & 001979 GESU-2167244 & 001959 TTNU-3297666 & 001968 | TALTLS00750752 JAKARTA SINGAPORE | CMBIKND/075 SRI LANKA |
| 18 | 2274440/ 22.10.10 | 63.20 | CAXU-2099107 & 26970 CAXU-2245027 & 26944 EMKU-1100593 & 26906 EMKU-1310240 & 26907 | ELSLINMUN0028 SINGAPORE | SWT/ESLSINMUN0028 SRI LANKA |
| | Total | 1235.12 | | | |

As stated above, two sets of Bills of Lading i.e. one Master Bill of Lading and another HBL, in respect of above mentioned 18 Bills of Entry, were recovered by the DRI officers. From scrutiny of such sets of Bills of Lading it was revealed that Container numbers and Seal numbers mentioned in Master Bills of lading and House Bills of lading were same.

7. During the course of investigation statements of following persons were recorded:

7.1 Statement of Shri Raju Chand, Power of Attorney of M/s. P.C. India Shipping Agency, Gandhidham, Custom House Agent, was recorded on 23.12.2010, wherein he had, inter alia, deposed that Shri Nassar Adambhai Ajmeri and Shri Sarfaraj Pathan had contacted him for clearance of the goods; that he met them in Customs House, Kandla, and being a CHA they approached him for the clearance of the consignment; that he received the import documents through Courier. Some time it was brought by Sarfaraz and Nassar personally; that only 4% SAD was paid from M/s. Elite Impex Ahmedabad, it was received through Cheque; that he cleared more than 10 consignments for Areca nut for M/s. Elite Impex Ahmedabad; that all the consignment as said above were cleared under SAPTA Notification No. 26/2000

Gus., dated 01.03.2000, without payment of duty. Only 4% SAD was paid. The total quantity cleared was approx. 700 M.T.

He was then shown the two set of Bills of lading recovered from his office vide Panchnama dated 07.12.2010, wherein Original B/L (Master B/L) showed that the goods were loaded from Indonesia and Singapore, and House B/L showed that the goods were of Sri Lanka origin. After seeing the documents he said that it was correct that the goods were loaded from other than Sri Lanka Port as per Bills of Lading shown to him. But he also clarified that Bill of Lading showing load port; that other than Sri Lanka was never forwarded to him by importer, and documents filed before customs were based on IGM and documents received from Importer; that the Bill of lading showing the load port was only in possession of Importer and Shipping line and it was not in his knowledge, it came in his knowledge only after search was conducted in his office; that after enquiry with staff he came to know this the said B/L was forwarded by shipping line at the time of giving Delivery order. He again clarified that the IGM was filed by Shipping line and IGM showed load port as Sri Lanka and Bill of Lading No. mentioned in IGM was matched with the B/L submitted by importer to him, so it was never noticed by him or his staff, the customs authority had also never objected the matter due to this reason perhaps. It was also not interrupted the clearances from EDI system; that he further said that the Shipping line were having both sets of B/L and they knew that the goods were loaded from other than **Sri Lanka**, however they filed the IGM on basis of House Bills of Lading instead of Master B/L; that the shipping lines had mentioned Port of Loading as Sri Lanka, Colombo instead of Jakarta / Singapore at the time of filling of IGM; that he accepted that Areca-nut imported by the said importer were not covered under SAPTA Notification No. 26/2000-Cus, dated 01.03.2000; that he had to pay Basic Customs Duty @100%; that the differential Duty Payable would be 104%.

7.2. Statement of Shri Nasser Adambhai Ajmeri, Proprietor of M/s. Elite Impex, Ahmedabad, was recorded on 28.12.2010, wherein he interalia deposed that he was the proprietor of M/s. Elite Impex of Ahmedabad; that he imported areca nut vide B/E Nos. 2381355, 2381484, 2381492 all dated 01.12.2010; that he sold the imported areca nut to one Mehboob bhai of M/s. Raj International Mumbai; that he placed order on M/s. Exim Management of Sri Lanka, but he did not know from where the goods were supplied; that the contact person of M/s. Exim Management Sri Lanka was Anand Raj Anand, his friend Sarfraj Pathan was contacting Anand Raj Anand; that the payment was pending to foreign supplier for the areca nut imported vide above said three Bills of Entry; that in past M/s. Elite Impex had imported approx. 40 Containers of areca nut; that all the goods were imported through M/s. Exim Management, **Sri Lanka**, but he did not know from where the goods were supplied; that all matters were discussed by Sarfraj Pathan with Foreign

supplier; that all goods imported in 40 containers were sold to Mehboob bhai of M/s. Raj International, Mumbai and transportation was arranged by Sarfraj; that all documents sent by overseas supplier were received by him through courier; that he was not aware whether the basic Customs duty was to be paid or not for areca nut imported and cleared by M/s. Elite Impex in past; that all the consignment imported by him, the order was placed on request of Mehboob bhai of Raj International Mumbai; that he was aware that the goods imported from Sri Lanka were exempted from Customs duty; that after seeing two sets of Bill of Lading he accepted that the areca-nut imported by M/s. Elite Impex was of other than Sri Lanka origin so it attracted full rate of Customs duty which was not deposited by him; that the goods i.e. areca-nut imported in name of M/s. Elite Impex he had no role and whole work was looked after by Sarfraj and he was getting Rs 2/- per Kg. against the utilization of IEC.

7.3 Statement of Shri Shri Sarfaraj S. Pathan, was recorded on 18.04.2011, wherein he interalia deposed that he was the manager in M/s Elite Impex Ahmedabad since last one year; that the proprietor of the firm was Shri Naseer only; that he was working on commission basis in the firm; that he was handling all import related work in the firm like negotiation with the foreign supplier and purchaser in India, arrangement of transportation; that he was not partner of M/s. Elite Impex, Ahmedabad; that M/s. Elite Impex Ahmedabad imported approx 72 containers of Betel Nut, one container of clove and one container of Fabrics; that M/s. Elite Impex, Ahmedabad imported approx. 72 Containers of Betel nut; that the value of the betel nut was approx 622 USD PMT; that the order was given to Sri Lanka Supplier and the Country of Origin certificate supplied by supplier was showing the goods as Sri Lanka Origin; that Anand Raj Samuel was supplier of the goods and his contact No. was 0094755260054 and his address was 82/5, Pieris Road, Mount Lavinia, **Sri Lanka**; that he talked to him for supply of the Arecanut and clove in name of M/s. Elite Impex Ahmedabad of Sri Lanka Origin; that the goods imported and cleared in past from customs Kandla by M/s. Elite Impex Ahmedabad were sold to Mehboob Bhai of Mumbai as per statement of Shri Naseer dated 28.12.2010; that Shri Mehboob Bhai was his main buyer in India and he was living in Mumbai; that his firm's name was Raj International; he produced the details of sales made by M/s. Elite Impex Ahmedabad to M/s. Raj International Mumbai; that M/s. Elite Impex Ahmedabad sold the Arecanut to M/s. Raj International Mumbai @ Rs. 38.50/-Per Kg., that M/s. Raj International was trader and was selling the Areca-nut to other small traders; that he was aware that the goods imported from Sri Lanka were exempted from Customs Basic duty as per SAPTA Notification No. 26/2000-Cus dated 01.03.2000; that he was shown the two set of Bills of lading recovered from his CHA office M/s. P.C. India Shipping Agency, Gandhidham, under Panchnama dated 07.12.2010, wherein Original BIL (Master B/L) showed that the goods were loaded from Indonesia and Singapore, and House BIL showed that the goods were of Sri Lanka origin; that

after seeing the documents he said it is correct that the goods were loaded from other than Sri Lanka Port as per the Bills of Lading shown to him; that he added that M/s. Elite Impex Ahmedabad given order to M/s. Exim management to supply the goods of Sri Lanka origin, but supplier has cheated them and supplied the goods other than Sri Lanka origin which attracted the customs duty and the benefit of SAPTA Notification No. 26/2000-Cus dated 01.03.2000 would not be available; that he further said that because of the reason they stopped the payment to foreign supplier against the goods supplied by them; that he denied that he was giving Rs 2/- per kg to Shri Naseer against the utilization of IEC; that he Was receiving import documents directly from the foreign supplier by post.

7.4 Statement of Shri Jeetu Harikishan Chandnani, Branch Manager of M/s Trans Asian Shipping Services (P) Limited, was recorded on 05.05.2011, wherein he interalia deposed that they as Shipping Line had filed the IGM for import cargo before customs; that the IGM was filed on the basis of Master Bill of Lading or on the basis of HBL, when the consignee requests for filing IGM on the basis of HBL in writing; that generally they file the documents on basis of B/Ls released by the Port Of Loading but they also file IGM on basis of HBL as per request of Consignee / Forwarder of Consignee; that he produced all the copies of IGM filed for M/s. Elite Impex, Ahmedabad; that IGM was filed either on the basis of Master Bill of Lading or on the basis of HBL, provided the consignee requests for filing IGM on the basis of HBL in writing; that if the IGM is to be filed as per HBL, they insists to surrender the Master Bill of lading with us. Forwarders of Elite Impex M/s. SCL Logistics and M/s. APG Logistics approached with House B/L copies requesting to file the IGM as per House B/L; that he was asked why he had shown the Port of loading as Colombo Sri Lanka in IGM filed before Customs Kandla for M/s. Elite Impex; that however the two sets of Bills of lading recovered from his office, wherein Original B/L (Master B/L) shows that the goods is loaded from Indonesia / Singapore, why he had filed the IGM showing the Port of loading as Colombo Sri Lanka instead of Indonesia or Singapore as per case; that they filed IGM based on HBL, when there is a request in this regard from their consignee in writing; that the name and details of the actual shipper and the ultimate consignee will be reflected only in HBL and the ultimate Consignee has to file relative Bill (s) of Entry; that to facilitate the ultimate consignee to clear the shipment without much hurdles, they file IGM based on HBL on their request; that in this case respective forwarders of Consignee have requested them to file the IGM on basis of House B/L in writing and thereby they as Shipping Line have filed the IGM as per the Consignee's Forwarder's written request made to them; that copies of those written requests of respective forwarders of Consignee were presented by him; that in all the shipments in issue, they filed IGMs on the basis of HBL, as per the request of the consignee. Since the port of loading was erroneously stated in the HBL as Colombo instead of Singapore, they incorporated the Port of loading

as Colombo in IGM without cross checking the same with the Master Bill of Lading; that the mistake was unintentional and only due to over sight and has to be treated only as an inadvertent mistake; that different persons and representatives of SCL Logistics Delhi, APG Logistics Gandhidham and IIC Container Line ltd Mumbai, were speaking to him for forwarding documents and sent him written requests for filing IGM on basis of House B/L instead of Master B/L; that the name and designation of the persons are not available with him; that usually they accepts the request to file IGM on the basis of HBL and files the same as per the HBL, where parties details are different and all other details remain the same, subject to obtaining HBL and written request for filing IGM on the basis of HBL; that in this particular case they filed IGMs on the basis of HBL, as per the request of the consignee; that since the port of loading was erroneously stated in the HBL as Colombo instead of Indonesia / Singapore, they incorporated the Port of loading as Colombo in IGM without cross checking the same with the Master Bill of lading; that the mistake was unintentional and only due to over sight and has to be treated only as an inadvertent mistake; that the same was man made error and unintentional; that hence, it was not a mis-declaration but only a clerical error.

7.5 Statement of Shri Joy N Philip, Branch Manager of M/s. Relay Shipping Agency Limited, recorded on 11.05.2011, wherein he interalia deposed that role of Relay Shipping as feeder operator carry the lines box from transshipment port to Kandla (Pipavav to Kandla); that he as feeder operator collect the IGM details duly declared by the container lines, same consolidated and filed in Custom on behalf of the line; that the IGM is filed on the basis of declaration provided by the line; that he don't know who was Elite Impex, as the IGM filed for B/L No. 5520 93940 which was the related SCL Logistics (India) Pvt. Ltd. which was filed on the basis of declaration provided by the container line; that the description of goods was shown as Betel Nut / Areca Nut in the IGM that filed by them.

7.6 Statement of Shri Sabu Verghese, the General Manager of M/s. Opal Shipping Agencies (India) Pvt. Ltd., Gandhidham, was recorded on 11.05.2011, wherein he inter alia deposed that role of Shipping Line is to release the Delivery Order for goods imported in respective containers to the Consignee on presentation of necessary documents which include Bill of lading and other relevant documents; that he as Shipping Line had filed the IGM for import cargo before customs; that the IGM was filed on the basis of Master Bill of lading or on the basis of HBL; that generally they file the documents on basis of B/L's released by the Port of loading but they also file IGM on basis of HBL as per request of Consignee / Forwarder of Consignee; then he produced all the copies of IGM filed for M/s. Elite Impex, Ahmedabad; that IGM was filed either on the basis of Master Bill of lading or on the basis of HBL; when that he was asked why he had shown the Port of loading as Colombo Sri Lanka on IGM filed

before Customs Kandla for M/s. Elite Impex, however the two set of Bills of lading recovered from his office, wherein Original B/L (Master B/L) shows that the goods was loaded from Singapore, why he had filed the IGM showing the Port of loading as Colombo Sri Lanka instead of Singapore then he replied that they filed IGM based on HBL; that the name and details of the actual shipper and the ultimate consignee will be reflected only in HBL and the ultimate Consignee' has to file relative Bill (s) of Entry; that to facilitate the ultimate consignee to clear the shipment without much hurdles, they filed IGM based on HBL; that he had considered the request of forwarder and filed the IGM on HBL and shown POL Sri Lanka instead of Singapore, was it not mis-declaration on documents filed before Customs, on this he replied that Usually they accepts the request to file IGM on the basis of HBL and files the same as per the HBL; that in this particular case they filed IGMs on the basis of HBL, as per the verbal request of the consignee; that since the port of loading was erroneously stated in the HBL as Colombo instead of Singapore, they incorporated the Port of loading as Colombo in IBM without cross checking the same with the Master Bill of lading. The Mistake was unintentional and only due to over sight and has to be treated only as an inadvertent Mistake. The same was man made error and unintentional; that hence it was not a mis-declaration but only a clerical error.

7.7 Statement of Shri Siddharth Shukla, General Manager of M/s Seaways Shipping and Logistics Limited of Gandhidham, was recorded, on 13.05.2011 , wherein he interalia deposed that the cargo was booked by various shipping lines at the port of loading; that these shipping lines contact the load port agent for a slot on seaways vessel; that the IGM was received from various shipping line and submitted before customs, he clarified that the details provided by Container line / shipping line was collected and submitted before customs by the vessel agent only; that the IGM was filed on the basis of the details received from the shipping line in the form of xml; that file via e-mail; that he submitted the e-mails received from shipping lines; that they filed IGM on the basis of xml, file received from shipping line and inform to Shipping line only, they do not contact to Importer or the shipper; that they have not received any documents from M/s. Elite Impex for filing IGM; that they received the IGM from Evergreen Trans Asia Container line for filing the IGM in case of M/s. Elite Impex; that he further clarified that the cargo was booked by either Evergreen or Trans Asia Container line the B/L was issued by them and at no time Seaways shipping was in contact with the shipper or consignee.

7.8 Statement of Shri Sudhakar Chikati, Import Executive, M/s Ever Green Shipping Agency (India) Pvt. Limited, Gandhidham, was recorded on 13.05.2011 , wherein he interalia deposed that role of Shipping Line was to release the Delivery Order for goods imported in respective containers to the Consignee on presentation of necessary documents which include Bill of Lading

and other relevant documents; that he as container line, Shipping Line had filed the IGM for import cargo before customs through Seaways; that the IGM was filed on the basis of Master Bill of Lading or on the basis of HBL, when the consignee requests for filing IGM on the basis of HBL in writing; that generally they file the documents on basis of B/L's released by the Port Of Loading but they also filed IGM on basis of HBL as per request of Consignee / Forwarder of Consignee; that they informed the IGM Number to the forwarders in respect of IGM filed for M/s. Elite Impex; that he produced all the copies of IGM filed for M/s. Elite Impex, Ahmedabad; that IGM was filed either on the basis of Master Bill of Lading or on the basis of HBL, provided the consignee requests for filing IGM on the basis of HBL in writing. Whereas if the IGM was to be filed as per HBL, they insists to surrender the Master Bill of Lading with them. Forwarders of Elite Impex M/s. SCL Logistics and M/s.APG Logistics approached with House B/L copies requesting to file the IGM as per House BIL; that he was asked why he had shown the Port of Loading as Colombo Sri Lanka on IGM filed before Customs Kandla for M/s. Elite Impex; that however the two sets of Bills of lading recovered from his office, wherein Original B/L (Master B/L) shows that the goods was loaded from Indonesia, Why they had filed the IGM showing the Port of loading as Colombo Sri Lanka instead of Indonesia then he replied that they file IGM based on HBL, the name and details of the actual shipper and the ultimate consignee will be reflected only in HBL and the ultimate Consignee has to file relative Bill (s) of Entry; that to facilitate the ultimate consignee to clear the shipment without much hurdles, they filed IGM based on HBL, as per the Consignee's Forwarders' written request made to them. Copies of those written requests of respective forwarders of Consignee were also produced; that in all the shipments in issue, they filed IGMs on the basis of HBL, as per the request of the consignee's forwarder; that since the port of loading was erroneously stated in the HBL as Colombo instead of Belwan Indonesia, he incorporated the Port of Loading as Colombo in IGM without cross checking the same with the Master Bill of Lading; that the mistake was unintentional and only due to over sight and has to be treated only as an inadvertent mistake; that different persons and representatives of SCL Logistics Delhi, APG Logistics Gandhidham were speaking to them for forwarding documents and sent their office written requests for filing IGM on basis of House B/L instead of Master B/L. Copies of those written requests have been presented but the name and designation of the persons were not available with him.

On being asked why they have considered the request of forwarder and filed the IGM on HBL and shown POL Sri Lanka instead of Belwan Indonesia was it not mis- declaration on documents filed before Customs, on this he replied that usually they accepts the request to file IGM on the basis of HBL and files the same as per the HBL; that in this particular case they filed IGMs on the basis of HBL, as per the verbal request of the consignee; that since the

port of loading was erroneously stated in the HBL as Colombo instead' of Belwan Indonesia, they incorporated the Port of Loading as Colombo in IGM without cross checking the same with the Master Bill of Lading; that the mistake was unintentional and only due to over sight and has to be treated only as an inadvertent mistake; that the same was manmade error and unintentional.

8. **Relevant legal provisions:**

8.1 **Notification No. 26/2000-Cus.**

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 goods of the description specified in column (3) of the Table hereto annexed and falling under the Chapter, heading No. or sub-heading No. of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), specified in the corresponding entry in column (2) of the said Table, from so much of that portion of the applied rate of duty of customs as is specified in the corresponding entry in column (4) of the said Table, subject to the following conditions, namely-

(1) the importer proves to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be in accordance with the Customs Tariff (Determination of Origin under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000 published with the notification of the Government of the India in the Ministry of Finance (Department of Revenue) No. 19/2000·Customs (N.T), dated the 1st March, 2000 that the goods in respect of which the benefit of this exemption is claimed are of the origin of **Sri Lanka**;

(2)

(3)

(4)

Explanation: For the purpose of this notification-

A. "applied rate of duty" means the standard rate of duty specified in the First

Schedule to the Customs Tariff Act, 1975 (51 of 1975),

| Sr. No. | Chapter, heading No or Sub-heading No. | Description of goods | Portion of the applied duty |
|---------|---|----------------------|-----------------------------|
| (1) | (2) | (3) | (4) |
| | List-1 | | |
| | List -2 | | |
| | List-3 | | |
| | List-4 | | |
| | List-5 All goods other than goods mentioned in lists 1,2,3 and 4 goods listed in the Annexure appended to this notification. | | 50% |

8.2 Notification No. 43/2003 - Customs dated 18.03.2003

In exercise of the Powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 ~5~ of 1962), the Central Government, being satisfied that it is necessary In the public Interest so to do, hereby makes the following further amendment in the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue) No. 26/2000-Customs dated the 1st March, 2000, namely:-

In the said notification, in the Table, in List 5, for the entry in column (4), the entry "100%" shall be substituted.

8.3 Notification No 19/2000-Customs (N.T) dated 01.03.2000

In exercise of the Powers conferred by sub-section (1) of section 5 of the Customs Tariff Act, 1975 (51 of 1975), the Central Government hereby makes the following rules, namely-

1. Short title and commencement. - (1) These rules may be called the Customs Tariff (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Application. - These rules shall apply to goods consigned from the territory of either of the Contracting Parties

3. Determination of Origin .- No product shall be deemed to be the produce or manufacture of either country unless the conditions specified in these rules are complied with in relation to such products, to the satisfaction of the appropriate Authority.

4. Claim at the time of importation - The importer of the product shall, at the time of importation –

(a) make a claim that the products are the produce or manufacture of the country from which they are imported and such products are eligible for preferential treatment under the India- Sri Lanka Free Trade Agreement, (hereinafter referred to as the Agreement), and

(b) produce the evidence specified in these rules.

Explanation.- For the purposes of this notification, 'Preferential treatment' in relation to any product means the exemption granted under the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.26/2000- Customs dated 1st March, 2000 and includes preferential concessions.

5. Originating products .- Products covered by the Agreement imported into the territory of any signatory party to the Agreement (hereinafter

referred to as the Contracting Party) from another Contracting Party which are consigned directly within the meaning of rule 9, shall be eligible for Preferential Concessions if they conform to the origin requirement under anyone of the following conditions:

- (a) products wholly produced or obtained in the territory of the exporting Contracting Party as defined in rule 6; or
- (b) products not wholly produced or obtained in the territory of the exporting Contracting Party, provided that the said products are eligible under rule 7 or rule 8.

6. Wholly produced or obtained. - Within the meaning of condition (a) of rule 5, the following shall be considered as wholly produced or obtained in the territory of the exporting Contracting Party, namely :-

- (a) raw or mineral products, including mineral fuels, lubricants and related materials as well as mineral or metal ores, extracting from its soil, its water or its sea bed;
- (b) vegetable products, including agricultural and forestry products, harvested there;
- (c) animals
- (d) products obtained
- (e) products obtained
- (f) products of sea fishing and other marine products from the high seas by its vessels;
- (g) products processed and/or made on board its factory ships exclusively from products referred to in clause (f);
- (h) used articles collected there, fit only for the recovery of raw materials;
- (i) waste and scrap resulting from manufacturing operations conducted there;
- (j) products extracted from the seabed or below seabed which is situated outside its territorial waters, provided that it has exclusive exploitation rights;
- (k) goods produced there exclusively from the products referred to in clauses (a) to (k),

Explanation: For the purposes of this notification-

(A) -----

B) -----

Not wholly produced or obtained.-

- (a) Within the meaning of condition (b) of rule 5, products worked on or processed as a result of which the total value of the materials, parts or produce originating from countries other than the Contracting Parties or of undetermined origin used does not exceed sixty five per cent. of the f.o.b. value of the products produced or obtained and the final process of manufacture is performed within the territory of the exporting

Contracting Party shall be eligible for Preferential treatment, subject to the provisions of clauses (b), (c), (d) and (e) of this rule and rule 8.

(b) Non-originating materials shall be considered to be sufficiently worked or processed when the product obtained is classified in a heading, at the fifth digit level, of the Harmonised Commodity Description and Coding System different from those in which all the non-originating materials used in its manufacture are classified.

(c) In order to determine whether a product originates in the territory of a Contracting Party, it shall not be necessary to establish Whether the Power and fuel, plant and equipment, and machines and tools used to obtain such products originate in third countries or not.

(d) The following shall in any event be considered as insufficient working or processing to confer the status of originating products, whether or not there is a change of heading, namely:-

(1) Operations to ensure the preservation of products in good condition during transport and storage (ventilation, spreading out , drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations).

(2) Simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making-up of sets of articles), washing, painting, cutting up.

(3) (i) changes of packing and breaking up and assembly of consignments,

(iii) simple slicing, cutting and re-packing or placing in bottles, flasks, bags, boxes, fixing on cards or boards, etc., and all other simple packing operations.

(4) The affixing of marks, labels or other like distinguishing signs on products or their packaging.

(5) Simple mixing of products, whether or not of different kinds, where one or more components of the mixture do not meet the conditions laid down in these rules to enable them to be considered as originating products.

(6) Simple assembly of parts of products to constitute a complete product, a combination of two or more operations specified in (a) to (f).

(7) Slaughter of animals.

(e) The value of the non-originating materials parts or produce shall be:

(I) the c.i.f. value at the time of importation of the materials, parts of produce where this can be proven; or '

(ii) the earliest ascertainable price paid for the materials, parts or produce of undetermined origin in the territory of the Contracting Parties where the working or processing takes place.

8. Cumulative rules of origin:- In respect of a product, which complies with the origin requirements provided in condition (b) of rule 5 and is exported by any Contracting Party and which has used material, parts or

products originating in the territory of the other Contracting Party, the value addition in the territory of the exporting Contracting Party shall be not less than twenty five per cent. of the f.o.b. value of the product under export subject to the condition that the aggregate value addition in the territories of the Contracting Parties is not less than thirty five percent of the FOB value of the product under export.

Explanation- Cumulation as implied by Rule 8 means that only goods which have acquired originating status in the territory of one Contracting Party may be taken into account when used as inputs for a finished product eligible for Preferential Concession in the territory of the other Contracting Party.

9. Direct consignment:- The following shall be considered to be directly consigned from the exporting country to the importing country, namely:-

(a) if the products are transported without passing through the territory of any country other than the countries of the Contracting Parties.

(b) the products whose transport involves transit through one or more intermediate countries with or without transshipment or temporary storage in such countries:

Provided that -

- (i) the transit entry is justified for geographical reason or by considerations, related exclusively to transport requirements;
- (ii) the products have not entered into trade or consumption there;
- and (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

10. Treatment of Packing:- When determining, the origin of products, packing should be considered as forming a whole with the product it contains. However, packing may be treated separately if the national legislation so requires.

11. Certificates of origin .- Products eligible for a Certificate of origin in the form annexed shall support Preferential treatment issued by an authority designated by the Government of the exporting country and notified to the other country 'in accordance with the certification procedures to be devised and approved by both the Contracting Parties.

12. Prohibitions:- Either country may prohibit importation of products containing any inputs originating from States with which it does not have economic and commercial relations.

13. Co-operation between contracting parties.-

(1) The Contracting Parties will do their best to co-operate in order to specify origin of inputs in the Certificate of origin.

(2) The Contracting Parties will take measures necessary address, to investigate and, where appropriate, to take legal and or administrative action to prevent circumvention of this Agreement through false

declaration concerning country of origin or falsification of original documents.

(3) Both the Contracting Parties will co-operate fully, consistent with their domestic laws and procedures, in instances of circumvention or alleged circumvention of the agreement to address problems arising from circumvention including facilitation of joint plant visits and contacts by representatives of both Contracting Parties upon request and on a case-by-case basis.

(4) If either Party believes that the rules of origin are being circumvented, it may request consultation to address the matter or matters concerned with a view to seeking a mutually satisfactory solution. Each party will hold such consultations promptly.

14. Review- These rules may be reviewed as and when necessary upon request of either Contracting Party and may be open to such modifications as may be agreed upon.

Format of Country of Origin Certificate as given in the notification

| | | | | | |
|---|----------------------------------|--|---|------------------------------------|---------------------------------|
| 1. Goods consigned from (Exporter's Business Name, Address, Country) | | | Reference No. IND- SRI LANKAFREE TRADE AGREEMENT (ISFTA) (combined declaration and certificate) issued in -----Country (See notes overleaf) | | |
| 2. Goods consigned to (Consignee's Name, Address, Country) | | | 4. For official use | | |
| 3. Means of transport and Route (as far as known) | | | | | |
| 5. Tariff Item number | 6. Marks and numbers of packages | 7. Number and kind of packages; description of goods | 8. Origin criterion (see Notes overleaf | 9. Gross freight or other quantity | 10. Number and date of invoice. |
| 11. Declaration by the Exporter. The undersigned hereby declares that the above details and statements are correct, That all the goods were produced in (Country) And that they comply with the origin requirements specified for those goods in ISFTA for goods exported to (Importing Country) Place and date, signature of the authorized signatory. | | | 12. Certificate; It is hereby certified; on the basis of control carried out that the declaration by the exporter is correct. Place and date, signature and stamp of certifying authority. | | |

1. General Conditions to qualify for preference, products must:
 - a. fall within a description of products eligible for concessions in the country of destination under this agreement;
 - b. comply with 18 FTA Rules of Origin. Each Article in a consignment must qualify separately in its own right; and
 - c. comply with the consignment conditions specified by the 18 FTA Rules of Origin. In general, products must be consigned directly within the meaning of Rule 9 hereof from the country of exportation to the country of destination.

I. Entries to be made in Box 8

Preference products must be wholly produced or obtained in the exporting Contracting Party in accordance with Rule 6 of the ISFTA Rules of Origin, or

where not wholly produced or obtained in the exporting Contracting Party must be eligible under rule 7 or 8.

- a. Products wholly produced or obtained enter the letter 'A' in box 8.
- b. Products not wholly produced or obtained: the entry in box 8 should be as follows:

1. -----
2. -----,---

8.3. **Section 2(39) of the Customs Act 1962:**

Definition of smuggling: "Smuggling", in relation to any goods, means any act or omission, which will render such goods liable to confiscation under section 111 or section 113;

8.4 **Section 30 of the Customs Act 1962:**

Delivery of import manifests or import report. - (1) The person-in-charge of - (i) a vessel; or (ii) an aircraft; or (iii) a vehicle, carrying imported goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an import manifest prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in the prescribed form and if the import manifest or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this subsection, who caused such delay, shall be liable to a penalty not exceeding fifty thousand rupees.

(2) The person delivering the import manifest or import report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented.

8.5 **SECTION 46 of the Customs Act 1962. Entry of goods on importation.**

(1) The importer of any goods, other than goods intended for transit or , transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of

customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a Bill of Entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) A bill of entry under sub-section (1) may be presented at any time after the delivery of the import manifest or import report as the case may be:

Provided that the Commissioner of Customs may in any special circumstances permit a bill of entry to be presented before the delivery of such report:

Provided further that a bill of entry may be presented even before the delivery of such manifest if the vessel or the aircraft by which the goods have been shipped for importation into India is expected to arrive within thirty days from the date of such presentation.

(4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

8.6 Section 110 of the Customs Act 1962:

Seizure of goods, documents and things. - (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods and order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer.

8.7 Section 111(m) of the Customs Act 1962:

Confiscation of improperly imported goods: The following goods brought from a place outside India shall be liable to confiscation: - Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

8.8 Section 111(0) of the Customs Act 1962:

Confiscation of improperly imported goods: The following goods brought from a place outside India shall be liable to confiscation:- 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;

8.9 Section 114AA of the Customs Act 1962:

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

8.10 Section 117 of the Customs Act 1962:

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

8.11 Section 112 of the Customs Act 1962:

Penalty for improper importation of goods, etc. - Any person, -

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

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

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

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

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

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

8.12 Section 11 of the Foreign Trade (Development Regulation) Act, 1992.

(1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the Export and Import Policy for the time being in force.

(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and in such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.

(4) A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue and the Importer-Exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.

(5) Where any contravention of any provision of this Act or 'any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.

(6) The goods or the conveyance confiscated under sub-section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

8.13 Rule 11 of the Foreign Trade (Development & Regulation) Rules 1993

On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act,

1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

From the above discussions and investigations it was revealed that:

9. M/s. Elite Impex Ahmedabad, situated at C-13, Al Fatima Appartment Sarkhej Road, Maktampura, Ahmedabad are engaged in the import of the goods falling under Chapter 08 of the Customs Tariff Act, 1975. In total they have imported 72 containers of Arecanut at Kandla Port declaring them to be of Sri Lankan Origin whereas the actual Country of Origin of the said goods was Other than Sri Lanka i.e. Indonesia, Malaysia and Singapore. The details of the import of Arecanut by M/s. Elite Impex at Kandla port are given in the tables below:

9.1 Table-5 showing details of Import in 12 containers and seized by DRI vide Panchnama dated 04.01.2011:

| Sr. No. | Bill of Entry No. & Date | Name of Importer M/s. | Qty. of goods (in MT) | Declared Description of Goods | CTH | No. of containers (all 20' in size) | Value |
|---------|---------------------------|-----------------------|-----------------------|--|----------|-------------------------------------|---------|
| 1 | 2381355 dated 01.12.2010 | Elite Impex Ahmedabad | 72.000 | "Arecanut (Betel nuts) (Not for Human consumption) | 08029090 | 4 | 2721814 |
| 2 | 2381484/ dated 01.12.2010 | -do- | 57.790 | -do- | -do- | 4 | 2184634 |
| 3 | 2381492 / 01.12.2010 | -do- | 57.600 | -do- | -do- | 4 | 2177441 |
| | | Total | 187.39 | | | | |

9.2 Table-6 showing details of Import in 20 containers and seized by DRI vide Panchnama dated 01 02 2011

| Sr. No. | Bill of Entry No. & Date | Name of Importer M/s. | Qty. of goods (in MT) | Declared Description of Goods | CTH | No. of containers (all 20' in size) | Value |
|---------|--------------------------|-----------------------|-----------------------|--|----------|-------------------------------------|---------|
| 1 | 2573548 dated 12.01.2011 | Elite Impex Ahmedabad | 72.00 | "Arecanut (Betel nuts) (Not for Human consumption) | 08029090 | 4 | 2546775 |
| 2 | 2573527 dated 12.01.2011 | -do- | 72.00 | -do- | -do- | 4 | 2546775 |
| 3 | 2573569 dated 12.01.2011 | -do- | 29.24 | -do- | -do- | 2 | 1037788 |
| 4 | 2573577 dated 12.01.2011 | -do- | 82.43 | -do- | -do- | 5 | 2919997 |
| 5 | 2573514 dated 12.01.2011 | -do- | 90.00 | -do- | | 5 | 3183469 |
| | | Total | 345.67 | | | | |

9.3 Table-7 showing details of Import in 40 containers already cleared on provisional assessment by M/s Elite Impex on the basis of provisional duty Bond

| Sr. No. | Bill of Entry No. & Date | Name of Importer M/s. | Qty. of goods (in MT) | Declared Description of Goods | CTH | No. of containers (all 20' in size) | Remarks | Value |
|---------|--------------------------|-----------------------|-----------------------|--|----------|-------------------------------------|---------|---------|
| 1 | 223486 dated 11.10.2010 | Elite Impex Ahmedabad | 72.00 | "Arecanut (Betel nuts) (Not for Human consumption) | 08029090 | 4 | 4 | 2555159 |
| 2 | 2276233 dated 22.10.2010 | -do- | 72.00 | -do- | -do- | 4 | -do- | 2555159 |
| 3 | 3477 dated 15.10.2010 | -do- | 72.00 | -do- | -do- | 4 | -do- | 2555160 |
| 4 | 310 dated 13.08.2010 | -do- | 72.00 | -do- | -do- | 4 | -do- | 2600988 |
| 5 | 2243469 dated 11.10.2010 | -do- | 62.86 | -do- | -do- | 4 | -do- | 2240150 |
| 6 | 2243664 dated 11.10.2010 | -do- | 72.00 | -do- | -do- | 4 | -do- | 2555159 |
| 7 | 2627 dated 15.09.2010 | -do- | 72.00 | -do- | -do- | 4 | -do- | 2724918 |
| 8 | 2274440 dated 22.10.2010 | -do- | 63.20 | -do- | -do- | 4 | -do- | 2325455 |
| 9 | 2539 dated 14.09.2010 | -do- | 72.00 | -do- | -do- | 4 | -do- | 2724918 |
| 10 | 2626 dated 15.09.2010 | -do- | 72.00 | -do- | -do- | 4 | -do- | 2724918 |
| | | Total | 702.06 | | | | | |

10. Investigation revealed that all the goods mentioned in the tables above were declared to be of Sri Lankan Origin. Scrutiny of documents recovered from office of the CHA, Shipping line, Container line and forwarders involved in import of consignment shows that the goods were actually imported either from Indonesia/Malaysia/Singapore, and the goods imported by M/s Elite Impex were of other than Sri Lankan Origin, but the importer had mis-declared the Country of origin as Sri Lanka to evade Basic Customs duty @ 100%+ SAD thereon before Kandla Customs. Total 18 Master Bills of lading were recovered and after scrutiny it was found that the actual goods was imported from the countries other than Sri Lanka and intentionally the country of origin was mis-declared as Sri Lanka to take undue benefit of ISFTA Notification No. 26/2000 dated 01.03.2000.

10.1 Every import consignment will have a Master Bill of Lading and a HBL can be issued by the shipping line when required. In some cases Master Bill of Lading will not have the name of the ultimate consignee. As the ultimate consignee is required to file the Bill of Entry in the importing country, his name should appear on the Bill of Lading. To facilitate the ultimate consignee, the HBL is issued with the name of ultimate consignee. In such cases Shipping Line file IGM based on HBL, when there is a request in this regard from their consignee in writing. The name and details of the actual shipper and the ultimate consignee will be reflected only in HBL and the ultimate Consignee has to file relative Bill (s) of Entry. So to facilitate the ultimate consignee to clear the shipment without much hurdles, Shipping Line file IGM based on HBL. In this practice of issuance of HBL only name of consignee in the Master Bill of Lading

is replaced with the name of ultimate consignee and all other relevant particulars remain same.

10.2 In the instant case the modus operandi adopted by the importer M/s. Elite Impex was to misuse this trade practice. While issuance of HBL they got the Port of Loading Changed and in all the House Bills of Ladings port of Loading was mentioned as Colombo, Sri Lanka. M/s. Elite Impex, the importer has presented HBL before the Customs authorities to show that the goods were of Sri Lankan Origin whereas the corresponding Master Bill of Lading (which was not produced before the Customs Authorities) clearly shows that the goods were of other than Sri Lankan Origin. M/s. Elite Impex has planned this fraud by misusing the trade practice of issuance of House Bills of Lading and by hiding Master Bills of Lading from the Customs Authorities. The table below shows the Bill of entry wise detail of Master Bill of Lading as well as HBL issued for that Master Bill of Lading:

TABLE-8

| Sr. No. | Bill of Entry No and date | Qty. (in MT) | Container No. & Seal No. | Master B/L No. & Actual Port of Lading | House B/L No. Port of Loading as showing as Colombo, SRI LANKA | Actual Country of Origin as per Master Bill of Lading mentioned in Column No.5 |
|---------|---------------------------|--------------|---|--|--|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 1 | 2381355/ 01.12.10 | 72.000 | EMCU-3297883 & 5500 EMCU-3386070 & 7200 FCIU-3259588 & 52700 TGHU-0197638 & 5020. | 080000245753 JAKARTA INDONESIA | MB/KND/132 SRI LANKA | INDONESIA |
| 2 | 2381484/ 01.12.10 | 57.790 | TEXU-3993116 & 021525, TLXU-2008241 & 021524, FSCU3481700 & 021553 FCIU-2026848 & 021523 | TALTLS 00766340 SINGAPORE | CMB/KND/129 SRI LANKA | SINGAPORE |
| 3 | 2381492/ 01.12.10 | 57.600 | FCIU-2206161 & 021558 CRXU-2476123 & 021552 CRXU-1090218 & 021505 CAXU-6207405 & 021504. | TALTLS 00768356 SINGAPOR | CMB/KND/127 SRI LANKA | SINGAPORE |
| 4 | 2573548/ 12.01.11 | 72.000 | BSIU 2233014 & 8360 UESU 2375724 & 8490 EGHU 304309 & 5370 EISU 3647074 & 7000 | 080000247268 JAKARTA INDONESIA | CMB/KND/141 SRI LANKA | SINGAPORE |
| 5 | 2573527/ 12.01.11 | 72.000 | BSIU-2219886 & 5950 DFSU -2153553 & 5990 MECU 3725791 & 6010 GVCU 2055904 & 5820 | EGLV 080000254078 | CMB/KND/394 SRI LANKA | INDONESIA |
| 6 | 2573569/ 12.01.11 | 29.240 | CAXU 3152762 & 021331 INBU 3675096 & 021336 | TALTLS0077485 6 SINGAPRE | CMB/KND/1102 SRI LANKA | SINGAPORE |
| 7 | 2573577/ 12.01.11 | 82.430 | CRSU1203441 & 021347, TGHU0041809 & 021348, JAYU 1070222 & 021349 GESU 3614368 & 021344 FBLU 3053558 & 021358 | TALTLS0077091 8 SINGAPRE | CMB/KND/1103 SRI LANKA | SINGAPORE |
| 8 | 2573514/ 12.01.11 | 90 | FCIU 3177638 & 021359, TLXU 2001545 & 021357, FCIU 2708848 & 021360 CAIU 2207914 & 021300 CAXU 2628622 & 021294 | TALTLS0077093 2 SINGAPRE | CMB/KND/1104 SRI LANKA | SINGAPORE |
| 9 | 310/ 13.8.10 | 72.00 | TEXU3961361 & 365398, ILSU 2002894 & 365399, GESU 3680056 & 365400 SCZU 6204493 & 365401 | MAX/BLW/1112 / KAN/6/10 BELWAN INDONESIA | CMB/KND/040 SRI LANKA | INDONESIA |
| 10 | 2539/ 14.09.10 | 72.00 | GESU 3617120 & 003518, TLXU2007414 & 003520, SCZU 7913277 & 003517 TTNU 2920053 & 003519 | TALJBW 00738216 BELWAN INDONESIA | CMB/KND/047 SRI LANKA | INDONESIA |

| | | | | | | |
|----|----------------------|-------|--|--|------------------------------------|-----------|
| 11 | 2626/ 15.06.10 | 72.00 | CAXU 6637237 & 003570 CRXU 3461914 & 003569 SCZU 7826383 & 003568 TLXU 2004117 & 003571 | TALJBW 00739759 BELWAN INDONESIA | CMB/KND/063 SRI LANKA | INDONESIA |
| 12 | 2627 15.06.10 | 72.00 | CAXU 3383817 & 003535 CAXU 2834460 & 003536 GESU 3614516 & 003533 JAYU 1030678 & 003534 | TALJBW 00738234 BELWAN INDONESIA | CMB/KND/052 SRI LANKA | INDONESIA |
| 13 | 2243664/ 11.10.10 | 62.86 | CRXU 1778582 & 607966 CRXU 1792960 & 607967 GESU 2395820 & 607968 TTNU 3353925 & 607965 | CAR/KND/21- 01585-1 JAKARTA INDONESIA | CMB/KND/096 SRI LANKA | INDONESIA |
| 14 | 2243469/ 11.10.10 | 72.00 | EGHU 3072223 & 5919 FCIU 3560040 & 5939 TGHU 3181213 & 5909 TGHU 3642850 & 5929 | EGLV 08000012841 BELWAN INDONESIA | CMB/KND/079 SRI LANKA | INDONESIA |
| 15 | 2243486/ 11.10.10 | 72.00 | CRXU 1694671 & 003072 CRXU 2427535 & 003075 IPXU 3576197 & 003074 TLXU 3003753 & 003073 | TALJBW 00747630 JAKARTA INDONESIA | CMB/KND/088 SRI LANKA | INDONESIA |
| 16 | 3477/ 15.10.10 | 72.00 | MSKU7844499 & 0876511 MSKU4295245 & 0876869 PONU2113845 & 0876941 TTNU3029074 & 0876604 | 552093940 PENANG MALAYSIA | 552093940 MALAYSIA | MALAYSIA |
| 17 | 2276233/ 22.10.10 | 72.00 | CRXU1573129 & 001978 CAIU2274701 & 001979 GESU 2167244 & 001959 TTNU 3297666 & 001968 | TALJTS 00750752 JAKARTA INDONESIA | CMB/KND/075 SRI LANKA | INDONESIA |
| 18 | 2274440/ 22.10.10 | 63.20 | CAXU 2099107 & 26970, CAXU 2245027 & 26944, EMKU 1100593 & 26906, EMKU 1310240 & 26907 | ESLSINMUN002 8 SINGAPORE | SWT/ESLSINMUN 0028 SRI LANKA | SINGAPORE |

10.3 From the table above it can be seen that the container numbers and Seal numbers mentioned in the Master Bill of Lading and HBL were same. Whereas in respect of Bills of Entry mentioned at Serial No.1 to 3, 9 to 14 and 16 to 18 of the table above (total 12), the importer has produced Country of Origin Certificates from Sri Lanka (For remaining 6 Bills of Entry no country of Origin Certificate was produced). The column number 3 of these certificates show the means of transport and Route from Colombo, Sri Lanka to Kandla, India, per sea freight. The containers were loaded on to the ships at the ports of Indonesia/Singapore/ Malaysia and the Master Bills of Lading showing the container number, seal number and port of loading as mentioned in table above were issued. These master Bills of Lading were surrendered to Shipping lines and a HBL for each Master Bill of Lading showing the same container and seal number were issued. This means that if the goods had originated from Sri Lanka, they could not have been carried in the same containers with same seal originating from Indonesia/Singapore/Malaysia. Therefore the Country of Origin certificates presented before the Customs in India were not correct and were presented with an intention to evade payment of Basic Customs Duty and SAD thereon.

10.4 Notification No. 26/2000-Cus dated 01.03.2000 provides for exemption from Customs duty in respect of the goods mentioned therein. For availing exemption the importer has to prove that the goods imported by him are of Sri Lanka Origin in accordance with the Customs Tariff (Determination of Origin under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000 published with the notification of the Government of the India in the Ministry of Finance (Department of Revenue) No. 19/2000-Customs (N.T), dated the 1st March,

2000. The relevant extract of Customs Tariff (Department of Origin under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000 published with the notification of the Government of the India in the Ministry of Finance (Department of Revenue) No. 19/2000-Customs (N.T), dated the 1st March, 2000 are mentioned at Para 08.02 of this notice.

10.5 Rule 2 of the same defines the scope of application of these rules as "These rules shall apply to goods consigned from the territory of either of the Contracting Parties", In the instant case the contracting parties are India and Sri Lanka and therefore the benefit admissible under these rules is limited to the goods consigned from Sri Lanka to India and vice-versa. From the discussion in various paras of this notice it is evident the goods in question are consigned from Indonesia/Singapore/Malaysia and have reached India in the same containers with same seal numbers as mentioned in the table no. 8 and discussed in various paras of this notice. It is evident that the goods were not from Sri Lanka and were not consigned from Sri Lanka. Therefore the benefit of Notification no. 26/2000-Customs dated 01.03.2000 was not admissible to the subject goods as these goods were not covered by the Customs Tariff (Department of Origin under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000.

10.6 Further Rule 5 of the said rules provides that Products covered by the Agreement imported into the territory of any signatory party to the Agreement from another Contracting Party which are consigned directly within the meaning of rule 9, shall be eligible for Preferential Concessions, Rule 9 is reproduced below:-

10.7 **Direct consignment-** The following shall be considered to be directly consigned from the exporting country to the importing country, namely-

- (a) if the products are transported without passing through the territory of any country other than the countries of the Contracting Parties.
- (b) the products whose transport involves transit through one or more intermediate countries with or without transshipment or temporary storage in such countries:

Provided that-

- (i) the transit entry is justified for geographical reason or by considerations related exclusively to transport requirements;
- (ii) the products have not entered into trade or consumption there; and
- (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

10.8 From the above text of rule 9 it is evident that for the goods qualifying for benefit under these rules, they must had been directly consigned

from Sri Lanka to India. In the instant case the subject goods were consigned from Indonesia/Singapore/Malaysia and the same goods in the same containers with same seal number had reached India. Therefore the subject goods were not eligible for the benefit of Notification no. 26/2000-Customs dated 01.03.2000 as these goods were not covered by the Customs Tariff (Determination of Origin under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000.

10.9 Further General conditions specified with these rules also clearly lay that the products must be consigned directly within the meaning of Rule 9. The relevant test of these general conditions are given below:-

General Conditions

To qualify for preference, products must:

- a. fall within a description of products eligible for concessions in the country of destination under this agreement;
- b. comply with ISFTA Rules of Origin. Each Article in a consignment must qualify separately in its own right; and
- c. comply with the consignment conditions specified by the ISFTA Rules of Origin. In general, products must be consigned directly within the meaning of Rule 9 hereof from the country of exportation to the country of destination,

0.10 From the above it is evident that the subject good do not comply with even general conditions laid down under the Customs Tariff (Determination of Origin under the Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000 and therefore can not be eligible for any benefit under these rules and Notification No. 26/2000-cus dated 01/03/2000.

11. In the Column 6 of the table 8 supra HBL number and port of loading is mentioned. The port of loading mentioned in the House Bills of Lading is Colombo, Sri Lanka which is not correct as the corresponding Master Bills of Lading mentioned in the column no. 5 of the table above clearly show the port of loading other than Colombo, Sri Lanka. Therefore the House Bills of Lading mentioned in the column no. 6 of the table above are incorrect. M/s. Elite Impex had presented these House Bills of Lading before the Customs and suppressed the Master Bills of Lading, which clearly show the Country of Origin & Port of Loading other than Sri Lanka. On the basis of House Bills of lading they mis-declared Port of. Loading I Country of Origin as Sri Lanka. The Commodity Arecanut is dutiable @ 100% and 4%SAD if it is imported from a country other than Sri Lanka. If Arecanut is imported from Sri Lanka, benefit of

ISFTA Notification No. 26/2000-Cus dated 01.03.2000 is admissible which provides for NIL rate of Basic Customs Duty on the goods imported from Sri Lanka. In this case M/s. Elite Impex knowingly and intentionally mis-declared Port of Loading / Country of Origin as Sri Lanka with an intention to evade the payment of Basic Customs Duty of 100% + SAD thereon. The table below shows the differential duty on the Arecanut imported by M/s. Elite Impex mis-declaring them as of Sri Lankan Origin:

Table- 9

| Sr. No. | B/E No. & Date | Assessable Value in Rs. | Total duty payable @ 108% in Rs. | Duty paid @4% SAD Rs. | Differential duty to be paid | Remarks. |
|---------|------------------|-------------------------|----------------------------------|-----------------------|------------------------------|--|
| 1 | 310/13.08.10 | 2600988 | 2809067 | 104039 | 2705028 | Already cleared, provisionally on provisional duty bond. |
| 2 | 2539/14.09.10 | 2724918 | 2942911 | 108997 | 2833914 | |
| 3 | 2626/15.09.10 | 2724918 | 2942911 | 108997 | 2833914 | |
| 4 | 2627/15.09.10 | 2724918 | 2942911 | 108997 | 2833914 | |
| 5 | 2243664/11.10.10 | 2240150 | 2419362 | 89606 | 2329756 | |
| 6 | 2243469/11.10.10 | 2555159 | 2759572 | 102206 | 2657366 | |
| 7 | 2243486/11.10.10 | 2555159 | 2759572 | 102206 | 2657366 | |
| 8 | 3477/15.10.10 | 2555160 | 2759573 | 102207 | 2657366 | |
| 9 | 2276233/22.10.10 | 2555159 | 2759572 | 102206 | 2418473 | |
| 10 | 2274440/22.10.10 | 2325455 | 2511491 | 93018 | 2351636 | |
| 11 | 2381492/01.12.10 | 2177441 | 2351636 | NIL | 2939559 | Seized |
| 12 | 2381355/01.12.10 | 2721814 | 2939559 | NIL | 2359405 | |
| 13 | 2381484/01.12.10 | 2184634 | 2359405 | NIL | 1120811 | |
| 14 | 2573569/12.01.11 | 1037788 | 1120811 | NIL | 2750518 | |
| 15 | 2573548/12.01.11 | 2546775 | 2750518 | NIL | 2750518 | |
| 16 | 2573527/12.10.11 | 2546775 | 2750518 | NIL | 2750518 | |
| 17 | 2573514/12.01.11 | 3183469 | 3438148 | NIL | 3438148 | |
| 18 | 2573577/12.01.11 | 2919997 | 3153597 | NIL | 3153597 | |
| | | 44880677 | | | 47448655 | |

12. From the column 6 of the table above, it is evident that M/s. Elite Impex has attempted to play fraud on the Government exchequer to the tune of at least Rs. 4.74 crores. In respect of Bills of Entry mentioned at Serial no. 1 to 10 of the table above, they have already cleared the goods on payment of 4% SAD only and evaded duty to the tune of Rs. 2,65,84,463/-.

Filing of Import General Manifests:-

13. M/s. Elite Impex had filed 18 Bills of entry in all. Total 18 Bills of lading are involved in these 18 Bills of Entry. These 18 Bills of Lading are covered by 8 Import General Manifest filed by various shipping lines / shipping line agents. The details of such IGMs are given in the table below:

Table- 10

| Sr. No. | Bill of Entry No. and date | Assessable value (Rs.) | Master B/L No. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed by | Port of Loading declared in IGM. |
|---------|----------------------------|------------------------|---|--|----------------------|-----------------------|--------------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1 | 2381355/01.12.10 | 2721814 | 080000245753 JAKRTA INDONESIA | CMK/KND/132 SRI LANKA | 2003058/ 27.11.10 | Evergreen/ Seaways | IDKJT (i.e. Jakarta Indonesia |
| 2 | 2381484/01.12.10 | 2184634 | TALTLS 00766340 SINGAPORE | CMK/KND/129 SRI LANKA | 2003058/ 27.11.10 | Trans Asia | SRI LANKA |
| 3 | 2381492/01.12.10 | 2177441 | TALTLS 00768356 SINGAPORE | CMK/KND/127 SRI LANKA | 2003058/ 27.11.10 | Trans Asia | SRI LANKA |
| 4 | 2573548/12.01.11 | 2546775 | 080000247268 JAKRTA INDONESIA | CMK/KND/141 SRI LANKA | 2003058/ 27.11.10 | Evergreen/ Seaways | IDKJT (i.e. Jakarta Indonesia |
| 5 | 2573527/12.01.11 | 2546775 | EGLV 080000254078 JAKRTA INDONESIA | CMK/KND/394 SRI LANKA | 2003499/ 6.12.10 | Evergreen/ Seaways | IDKJT (i.e. Jakarta Indonesia |
| 6 | 2573569/12.01.11 | 1037788 | TALTLS 00774856 SINGAPORE | CMK/KND/1102 SRI LANKA | 2003499/ 6.12.10 | Trans Asia | SRI LANKA |

| | | | | | | | |
|----|----------------------|---------|--|---------------------------|----------------------|-----------------------|--------------|
| 7 | 2573577/ 12.01.11 | 2919997 | TALTLS 00770918 SINGAPORE | CMK/KND/1103 SRI LANKA | 2003499/ 6.12.10 | Trans Asia | SRI LANKA |
| 8 | 2573514/ 12.01.11 | 3183469 | TALTLS 00770932 SINGAPORE | CMK/KND/1104 SRI LANKA | 2003499/ 6.12.10 | Trans Asia | SRI LANKA |
| 9 | 310/ 13.08.10 | 2600988 | MAX/BLW/1112 /KAN/6/10 BELWAN INDONESIA | CMK/KND/040 SRI LANKA | 10298/ 28.07.10 | Evergreen/ Seaways | SRI LANKA |
| 10 | 2539/ 14.09.10 | 2724918 | TALJBW 00738216 BELWAN INDONESIA | CMK/KND/047 SRI LANKA | 15559/ 14.09.10 | Trans Asia | SRI LANKA |
| 11 | 2626/ 15.09.10 | 2724918 | TALJBW 00739759 BELWAN INDONESIA | CMK/KND/063 SRI LANKA | 15559/ 14.09.10 | Trans Asia | SRI LANKA |
| 12 | 2627/ 15.09.10 | 2724918 | TALJBW 00738234 BELWAN INDONESIA | CMK/KND/052 SRI LANKA | 15559/ 14.09.10 | Trans Asia | SRI LANKA |
| 13 | 2243664/ 11.10.10 | 2240150 | CAR/KND/21- 01585-1 JAKARTA INDONESIA | CMK/KND/096 SRI LANKA | 2001139/ 30.09.10 | Evergreen/ Seaways | SRI LANKA |
| 14 | 2243469/ 11.10.10 | 2555159 | EGLV 084000012841 BELWAN INDONESIA | CMK/KND/079 SRI LANKA | 2001139/ 30.09.10 | Evergreen/ Seaways | SRI LANKA |
| 15 | 2243486/ 11.10.10 | 2555159 | TALJBW 00747630 JAKRTA INDONESIA | CMK/KND/088 SRI LANKA | 2001139/ 30.09.10 | Trans Asia | SRI LANKA |
| 16 | 3477/ 15.10.10 | 2555160 | 552093940 PENANG MALAYSIA | 552093940 SRI LANKA | 199999/ 16.09.10 | Relay Shipping | <u>AEJEA</u> |
| 17 | 2276233/ 22.10.10 | 2555159 | TALJTS 00750752 JAKRTA INDONESIA | CMB/KND/075 | 2001441/ 12.10.10 | Trans Asia | SRI LANKA |
| 18 | 2274440/ 22.10.10 | 2325455 | ESLSINMUN0028 SINGAPORE | SWT/ESLSINM UN0028 | 2001558/ 15.10.10 | Opal Shipping | SRI LANKA |

14. Column no. 4 of the table shows the Master Bills of lading numbers and actual port of loading of the goods covered in the respective Bill of Entry mentioned in the column no. 2 of the table above. These Master Bills of lading were recovered from the office of the CHA and the Shipping Lines/ Shipping line Agents. From the said column number 4 of the table above it is evident that port of loading of all the 18 Bills of Entry is other than Colombo, Sri Lanka, which clearly reveals that the Country of origin of these goods is other than Sri Lanka in terms of Customs Tariff (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000. Column No.5 shows the HBL Number with declared port of loading. The port of loading mentioned in the House Bills of Lading is Colombo, Sri Lanka which is not correct as the corresponding Master Bills of Lading mentioned in the column no. 4 of the table above' clearly show the port of loading other than Colombo, Sri Lanka. Therefore the House Bills of Lading mentioned in the column no. 5 of the table above are incorrect. From column number 8 of the above table it is evident that in some Import General Manifest Port of Loading is declared same as mentioned in Master Bill of lading (i.e. Bills of Entry at Serial No.1, 4 and 5 of the table above) but in the remaining 15 cases Port of Loading is mis-declared in the Import General Manifest as Sri Lanka/AEJEA, in spite of the fact that in none of the Master Bills of Lading port of loading is Sri Lanka/AEJEA. This mis-declaration of port of lading in the IGM has facilitated the importer to mis-declare the Country of Origin as Sri Lanka in the Bills of Entry.

15. Role of different persons involved in the case:

15.1 Role of Shri Nasser Adambhai Ajmeri, the proprietor of M/s. Elite Impex of Ahmedabad:

15.1.1 M/s. Elite Impex, Ahmedabad is a proprietary firm of Shri Nasser Adambhai Ajmeri. M/s. Elite Impex has played a fraud on' government exchequer to the tune of Rs.4.74 crores. Shri Nasser Adambhai Ajmeri with his manager Shri Sarfaraj S Pathan has planned this activity of import of Arecanut from the countries other than Sri Lanka and arranged the documents to show them as of Sri Lankan Origin to evade payment of 100% Basic Custom Duty+ SAD thereon. He appointed CHA, he has given the documents to the CHA, he was directing their CHA to file the Bills of Entry showing the goods of Sri Lankan Origin, he has arranged the transportation of the goods, he has also managed to get HBLs issued with mention of Colombo, Sri Lanka as Port of Loading, He through forwarder instructed the Shipping line to issue HBL showing the goods of Sri Lankan Origin in spite of their being of other than Sri Lankan Origin, he got shipping line instructed by their forwarders to file the IGMs based on House Bills of lading, he got the port of loading declared as Colombo in the IGMs. The Master Bills of Lading showing port of loading Jakarta/Singapore were recovered from the office of his Custom House Agent M/s. P.C. India Shipping Agency, Gandhidham which clearly establishes that he has planned all this to avail undue benefit of ISFTA Notification No. 26/2000-Cus dated 01.03.2000 with an intention to evade payment of 100% Basic Customs Duty and SAD thereon. If Arecanut is imported from Sri Lanka, benefit of ISFTA Notification No. 26/2000 dated 01/03/2000 is admissible which provides for NIL rate of Basic Customs Duty on the goods imported from Sri Lanka. In this case M/s. Elite Impex knowingly and intentionally has mis-declared Port of Loading & Country of Origin as Sri Lanka with an intention to evade the payment of Basic Customs Duty of 100%+ SAD thereon and evaded duty totally amounting to Rs. 4,74,48,655/under the above mentioned 18 Bills of Entry. Therefore, the said amount of Rs. 4,74,48,655/- is recoverable from them. As they have played a fraud on the exchequer by deliberately mis-declaring the actual country of origin of the subject goods extended period of demand as provided under proviso to Section 28(1) of the Customs Act, 1962 is applicable in this case. Further, above omission and commissions on the part of Shri Nasser Adambhai Ajmeri the proprietor of M/s. Elite Impex of Ahmedabad has rendered the goods covered in at serial No.1 to 10 of the Table AAA, (which are already cleared on provisional assessment and provisional duty bond is filed with the Customs) liable for confiscation under Section 111 (m) and 111 (o) read with section 11(5) of the Foreign Trade (Development & Regulation) Act 1992 and Rule 11 of the Foreign Trade (Development & Regulation) Rules 1993. He has also rendered the goods covered in the Bills of Entry mentioned at Serial no. 11 to 18 of the Table No. AAA (Which were Seized by DRI) liable for confiscation under Section 111 (m) and 111 (o), read with section 11(5) of the

Foreign Trade (Development & Regulation) Act 1992 and Rule 11 of the Foreign Trade (Development & Regulation) Rules 1993 for reasons mentioned above. He has also rendered himself and M/s. Elite Impex Liable for Penalty under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

15.2 Role of Shri Sarfarajkhan Pathan the Manager of Elite Impex of Ahmedabad-

15.2.1 Shri Sarfaraj S. Pathan is the manager of M/s. Elite Impex. He was actively involved in this import of Arecanut. He has formulated the whole deal. He was in touch with CHA, He has given the documents to the CHA for filling Bills of Entry declaring the goods of Sri Lankan Origin, inspite of the fact that the goods were of other than Sri Lankan Origin. He was handling all import related work in the firm like negotiation with the foreign supplier and purchaser in India. Shri Nasser Adambhai Ajmeri in his statement has stated that Shri Sarfaraj Khan Pathan was in touch with foreign suppliers; he also stated that regarding payment of 4% SAD only Sarfaraj Khan Pathan can tell something and he was not aware. He was involved in the sale and transportation of these goods in India. He was actively involved in this import of Arecanut from the countries other than Sri Lanka and he managed to get House Bills of Lading issued showing the goods of Sri Lankan origin & showing that the same were loaded from Sri Lanka with an intention to evade payment of 100% Basic Customs Duty and SAD thereon. He was actively involved in making all the arrangements of mis-declaring the Country of Origin of the goods. These commissions and omissions on the part of Shri Sarfaraj Khan Pathan has rendered him liable for penalty under sections 112(a) and 114AA of the Customs Act, 1962.

15.3 Role of Shri Raju Chand, Power of attorney of M/s. P.C. India Shipping Agency, Gandhidham-

15.3.1 During search of office premises of M/s. P. C. India Shipping Agency, Gandhidham, the officers of DRI recovered incriminating documents including 13 House Bills of Lading with respective 13 Master Bills of Lading. The House Bills of Lading were containing names of ports of loading as Colombo, Sri Lanka but respective Master Bills of Lading reflected names of ports of loading other than Sri Lankan ports. This fact was also admitted by Shri Raju Chand in his statement. The details of such Bills of Lading is mentioned in the table below:

Table-11

| Sr. No. | Bill of Entry No. and date | Assessable value (Rs.) | Master B/L No. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed by | Country declared in IGM |
|---------|----------------------------|------------------------|---|--|----------------------|-----------------------|-------------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1 | 2381355/ 01.12.10 | 2721814 | 080000245753 JAKARTA INDONESIA | CMB/KND/132 SRI LANKA | 2003058/ 27.11.10 | Evergreen/ Seaways | IDKJT (i.e. Jakarta Indonesia |

| | | | | | | | |
|----|----------------------|---------|--|------------------------------------|----------------------|-----------------------|---------------------------------------|
| 2 | 2381484/ 01.12.10 | 2184634 | TALTLS 00766340 SINGAPORE | CMB/KND/129 SRI LANKA | 2003058/ 27.11.10 | Trans Asia | SRI LANKA |
| 3 | 2381492/ 01.12.10 | 2177441 | TALTLS 00766340 SINGAPORE | CMB/KND/127 SRI LANKA | 2003058/ 27.11.10 | Trans Asia | SRI LANKA |
| 4 | 310/ 13.08.10 | 2600988 | MAX/BLW/1112/ KAN/6/10 BELWAN INDONESIA | CMB/KND/40 SRI LANKA | 10298/ 28.07.10 | Evergreen/ Seaways | SRI LANKA |
| 5 | 2539/ 14.09.10 | 2724918 | TALJBW 00738234 BELWAN INDONESIA | CMB/KND/047 SRI LANKA | 15559/ 14.09.10 | Trans Asia | SRI LANKA |
| 6 | 2626/ 15.09.10 | 2724918 | TALJBW 007397759 BELWAN INDONESIA | CMB/KND/063 SRI LANKA | 15559/ 14.09.10 | Trans Asia | SRI LANKA |
| 7 | 2627/ 15.09.10 | 2724918 | TALJBW 00738234 BELWAN INDONESIA | CMB/KND/052 SRI LANKA | 15559/ 14.09.10 | Trans Asia | SRI LANKA |
| 8 | 2243664/ 11.10.10 | 2240150 | CAR/KND/21-01585- 1 JAKARTA INDONESIA | CMB/KND/096 SRI LANKA | 2001139/ 30.09.10 | Evergreen/ Seaways | SRI LANKA |
| 9 | 2243469/ 11.10.10 | 2555159 | EGLV 08400012841 BELWAN INDONESIA | CMB/KND/079 SRI LANKA | 2001139/ 30.09.10 | Evergreen/ Seaways | SRI LANKA |
| 10 | 2243486/ 11.10.10 | 2555159 | TALJBW 00747630 JAKARTA INDONESIA | CMB/KND/088 SRI LANKA | 2001139/ 30.09.10 | Trans Asia | SRI LANKA |
| 11 | 3477/ 15.10.10 | 2555160 | 55209394 PENANG MALAYSIA | 552093940 SRI LANKA | 199999/ 16.09.10 | <u>Relay Shipping</u> | <u>AEJEA</u> |
| 12 | 2276233/ 22.10.10 | 2555159 | TALJTS 00750752 JAKARTA INDONESIA | CMB/KND/075 SRI LANKA | 2001441/ 12.10.10 | Trans Asia | SRI LANKA |
| 13 | 2274440/ 22.10.10 | 2325455 | ESLSINMUN0028 SINGAPORE | SWT/ESLSINM UN0028 SRI LANKA | 2001558/ 15.10.10 | Opal Shipping | SRI LANKA |
| 14 | 2573548/ 12.01.11 | 2546775 | 080000247268 JAKARTA INDONESIA | CMB/KND/141 SRI LANKA | 2003058/27 11.10 | EVERGREEN/ SEAWAYS | IDJKT (i.e. Jakarta, Indonesia) |
| 15 | 2573527/ 12.01.11 | 2546775 | EGLV 080000254078 JAKARTA INDONESIA | CMB/KND/394 SRI LANKA | 2003058/27 12.10 | EVERGREEN/ SEAWAYS | IDJKT (i.e. Jakarta, Indonesia) |
| 16 | 2573569/ 12.01.11 | 1037788 | TALTLS007748 56 SINGAPORE | CMB/KND/1102 SRI LANKA | 2003058/27 12.10 | TRANS ASIA | SRI LANKA |

15.3.2 All the Master Bills of lading and House Bills of Lading mentioned in the column no. 4 and 5 respectively were recovered from the office of M/s. P. C. India Shipping Agency, Gandhidham. From the Master Bills of Lading mentioned at column number 4 of the table above, it is evident that the actual port of loading of the goods covered in the Bills of Entry mentioned at column no 2 of the table above was other than Sri Lanka, but M/s. P. C. India Shipping Agency, Gandhidham, who were in possession of Master Bills of Lading and aware of the actual port of Loading, filed Bills of Entry mentioned at column No.2 of the table above mis-declaring the Country of origin Sri Lanka and produced before the Customs incorrect House Bills of Lading mentioned in the column no. 5 of the table above and suppressed the Master Bills of Lading, which were in his possession, from the Customs. This has facilitated the importer in evasion of payment of Basic Customs Duty of 100% + 4% SAD.

15.3.3 Further the table below shows the details of the Import General Manifest in which Port of Loading was declared as IDJKT (i.e. Jakarta, Indonesia):

Table-12

| Sr. No. | Bill of Entry No. and date | Assessable value (Rs.) | Master B/LNo. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed by | Country declared in IGM |
|---------|----------------------------|------------------------|--|--|----------------------|------------------------|--------------------------------------|
| 1 | 2381355/01.12.10 | 2721814 | 080000245753 JAKARTA, INDONESIA | CMB/KND/132 SRI LANKA | 2003058/ 27.11.10 | Evergreen / Seaways | IDJKT (i.e. Jakarta Indonesia) |
| 2 | 2573548/ 12.01.11 | 2546775 | 080000247268 JAKARTA, INDONESIA | CMB/KND/141 SRI LANKA | 2003058/ 27.11.10 | Evergreen / Seaways | IDJKT (i.e. Jakarta Indonesia) |
| 3 | 2573527/ 12.01.11 | 2546775 | 0800002540078 JAKARTA, INDONESIA | CMB/KND/394 SRI LANKA | 2003499/ 06.12.10 | Evergreen / Seaways | IDJKT (i.e. Jakarta Indonesia) |

15.3.4 From the table above it is evident that in all the 3 Bills of Entry mentioned at column No.2, the port of loading was declared as Jakarta, Indonesia. Even in the case of these Bills of Entry M/s. P. C. India Shipping Agency, Gandhidham, has while filing Bills of Entry declared Country of Origin as Sri Lanka, which has resulted in evasion of payment Basic Customs Duty and applicable SAD thereon.

15.3.5 From the above it evident that M/s. P. C. India Shipping Agency, Gandhidham were very well aware that all the goods covered in 18 Bills of Entry filed by them on behalf M/s. Elite Impex, were of other than Sri Lankan origin and they connived with the importer and mis-declared the Country of Origin of the goods as Sri Lanka with an intention of facilitating the importer in evasion of payment of Basic Customs Duty and SAD thereon. Therefore, M/s. P. C. India Shipping Agency, Gandhidham, has connived with M/s. Elite Impex in mis-declaring the Country of Origin as Sri Lanka& port of loading as Sri Lankan port with an intention to facilitate the evasion of payment of Basic Customs Duty of 100% + SAD thereon. The mis-declaration of Country of Origin on the basis of incorrect House Bills of Lading and suppression of Master Bills of Ladings from Customs has facilitated M/s. Elite Impex in evasion of payment of Basic Customs Duty of 100% + SAD thereon and rendered the goods liable for confiscation under section 111(m) and 111 (0) of the Customs Act, 1962. This act on the part of M/s. P. C. India Shipping Agency, Gandhidham clearly amounts to abetment to the importer in mis-declaration of Country of Origin in the Bills of Entry mentioned at column number 2 of the table No.9 of this notice. The above acts of omission and commission on the part of Shri Raju Chand, Power of attorney of M/s. P.C. India Shipping Agency, Gandhidham and M/s. P.C. India Shipping Agency, Gandhidham; has rendered them liable to penalty under sections 112(a) and 114AA of the Customs Act, 1962.

15.3.6 Further, M/s. P.C. India Shipping Agency, Gandhidham are given Custom House Agent license and they are under obligations as given in Regulation 13 of Custom House Agents Licensing Regulation, 2004. The relevant extract of Custom House Agents Licensing Regulation, 2004 is as follows:

Obligations of Customs House Agent-

A Customs House Agent shall-

(d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(n) ensure that he discharges his duties as Customs House Agent with utmost speed and efficiency and without avoidable delay.

15.3.7 From the omissions and commissions as discussed above it is evident that M/s. P. C. India Shipping Agency, Gandhidham has not only failed in advising their client M/s. Elite Impex that they should comply with requirements of declaring correct particulars before the department, but also connived with the) import in mis-declaring correct Country of Origin of the goods and suppressed the documents showing correct port of loading. Also they failed in exercising the due diligence to ascertain the correctness of the information in relation to the Country of Origin.

15.4 Role of M/s. Trans Asian Shipping Services (P) Ltd of Gandhidham-

15.4.1 M/s Trans Asian Shipping Services (P) Ltd. has filled the Import General Manifest for the goods imported by M/s. Elite Impex. The details of such import along with IGM No. is given in the table below-

Table-13

| Sr. No. | Bill of Entry No & Date | Assessable Value (Rs.) | Master B/L No. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed | Port of loading declared in IGM |
|---------|-------------------------|------------------------|--|--|-----------------------|---------------|---------------------------------|
| 1 | 2381484/1.12.10 | 2184634 | TALTLS 00766340 SINGAPORE | CMB/KND/129 SRI LANKA | 2003058 / 27.11.10 | TRANS ASIA | Colombo, Sri Lanka |
| 2 | 2381492/01.12.10 | 2177441 | TALTLS 00768356 SINGAPORE | CMB/KND/127 SRI LANKA | 2003058 / 27.11.10 | TRANS ASIA | Colombo, Sri Lanka |
| 3 | 2573569/12.01.11 | 1037788 | TALTLS 00774856 SINGAPORE | CMB/KND/1102 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 4 | 2573577/12.01.11 | 2919997 | TALTLS 00770918 SINGAPORE | CMB/KND/1103 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 5 | 2573514/12.01.11 | 3183469 | TALTLS 00770932 SINGAPORE | CMB/KND/1104 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 6 | 2539/14.09.10 | 2724918 | TLJBW 00738216 BELWAN INDONESIA | CMB/KND/047 SRI LANKA | 15559/ 14.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 7 | 2626/15.09.10 | 2724918 | TLJBW 00739759 BELWAN INDONESIA | CMB/KND/063 SRI LANKA | 15559/ 14.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 8 | 2627/15.09.10 | 2724918 | TLJBW 00738234 BELWAN INDONESIA | CMB/KND/052 SRI LANKA | 15559/ 14.09.10 | TRANS ASIA | Colombo, Sri Lanka |

| | | | | | | | |
|----|----------------------|-----------------|---|--------------------------|----------------------|---------------|-----------------------|
| 9 | 2243486/ 11.10.10 | 2555159 | TLJBW 00747630 JAKARTA INDONESIA | CMB/KND/088 SRI LANKA | 2001139/ 30.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 10 | 2276233/ 22.10.10 | 2555159 | TLJBW 00750752 JAKARTA INDONESIA | CMB/KND/075 SRI LANKA | 2001441/ 12.10.10 | TRANS ASIA | Colombo, Sri Lanka |
| | Total | 24788401 | | | | | |

15.4.2 All the Master Bills of lading and House Bills of Lading mentioned in the column no. 4 and 5 respectively were recovered from the office of M/s. Trans Asian Shipping Services (P) Ltd of Gandhidham. From the Master Bills of Lading mentioned at column number 4 of the table above, it is evident that the actual port of loading of the goods covered in the Bills of Entry mentioned at column no 2 of the table above was other than Sri Lanka, but M/s. Trans Asian Shipping Services (P) Ltd of Gandhidham, who were in possession of Master Bills of Lading and aware of the actual port of Loading, filed Import General manifest mis-declaring the port of loading as Colombo, Sri Lanka on the basis of incorrect House Bills of Lading mentioned in the column no. 5 of the table above. This has facilitated the importer to file the Bills of Entry with mis-declaration of Country Origin as Sri Lanka. Therefore, M/s. Trans Asian Shipping Services (P) Ltd of Gandhidham, has connived with M/s. Elite Impex in mis-declaring the Country of Origin as Sri Lanka with an intention to facilitate the evasion of payment of Basic Customs Duty of 100%+ SAD thereon. The mis-declaration of port of loading on the basis of incorrect House Bills of Lading has facilitated M/s. Elite Impex in evasion of payment of Basic Customs Duty of 100% + SAD thereon and rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962. This act on the part of M/s. Trans Asian Shipping Services (P) Ltd of Gandhidham clearly amounts to abetment to the importer in mis-declaration of Country of Origin in the Bills of Entry mentioned at column number 2 of the table above. The above acts of omission and commission on the part of M/s. Trans Asian Shipping Services (P) Ltd of Gandhidham, has rendered themselves liable to penalty under sections 112(a) and 114AA of the Customs Act, 1962.

15.5 Role of Ever Green Shipping Agency (India) Pvt. Limited, Gandhidham

15.5.1 M/s. Ever Green Shipping Agency (India) Pvt. Limited of Gandhidham has filed the Import General Manifest through M/s. Seaways Shipping for the goods imported by M/s. Elite Impex. The details of such imports along with IGM No. is given in the table below:-

Table-14

| Sr. No. | Bill of Entry No & Date | Assessable Value (Rs.) | Master B/L No. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed | Port of loading declared in IGM |
|---------|-------------------------|-------------------------|---|--|------------------|-----------|---------------------------------|
|---------|-------------------------|-------------------------|---|--|------------------|-----------|---------------------------------|

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|----------------------|---------|--|--------------------------|----------------------|------------------------|--------------------------------------|
| 1 | 2381355/ 01.12.10 | 2721814 | 080000245753 JAKARTA INDONESIA | CMB/KND/132 SRI LANKA | 2003058/ 27.11.10 | Evergreen / Seaways | IDJKT (i.e. Jakarta Indonesia) |
| 2 | 2573548/ 01.12.11 | 2546775 | 080000247268 JAKARTA INDONESIA | CMB/KND/141 SRI LANKA | 2003058/ 27.11.10 | Evergreen / Seaways | IDJKT (i.e. Jakarta Indonesia) |
| 3 | 2573527/ 01.12.11 | 2546775 | EGLV 080000254078 JAKARTA INDONESIA | CMB/KND/394 SRI LANKA | 2003499/ 06.12.10 | Evergreen / Seaways | IDJKT (i.e. Jakarta Indonesia) |
| 4 | 310/ 13.08.10 | 2600988 | MAX/BLW/1112/ KAN/6/10 BELWAN INDONESIA | CMB/KND/040 SRI LANKA | 10298/ 28.07.10 | Evergreen / Seaways | Colombo Sri Lanka |
| 5 | 2243664/ 11.10.10 | 2240150 | CAR/KND/21-01585- 1 JAKARTA, INDONESIA | CMB/KND/096 SRI LANKA | 2001139/ 30.09.10 | Evergreen / Seaways | Colombo Sri Lanka |
| 6 | 2243469/ 11.10.10 | 2555159 | EGLV 084000012841 BELWAN INDONESIA | CMB/KND/079 SRI LANKA | 2001139/ 30.09.10 | Evergreen / Seaways | Colombo Sri Lanka |

15.5.2 All the Master Bills of lading and House Bills of Lading mentioned in the column no. 4 and 5 respectively were recovered from the office of M/s. Ever Green Shipping Agency (India) Pvt. Limited of Gandhidham. From the Master Bills of Lading mentioned at column number 4 of the table above, it is evident that the actual port of lading of the goods covered in the Bills of Entry mentioned at column no. 2 of the table above was other than Sri Lanka. M/s. Ever Green Shipping Agency (India) Pvt. Limited of Gandhidham has filled Import General Manifests through M/s. Seaways Shipping and for the Bills of Entry at serial no. 1 to 3 in the table above they have mentioned the port of loading as IDJKT (i.e. Indonesia, Jakarta) and this declaration in the IGM is in line with Master Bills of Lading available with them and therefore perfectly all right. This shows that M/s. Ever Green Shipping Agency (India) Pvt. Limited of Gandhidham were fully aware that what is the actual port of loading and what is the importance of the Master Bills of Lading. But while filing IGM through M/s. Seaways Shipping in respect of Bills of Lading and Bills of Entry mentioned at serial no. 4, 5 and 6 of the table above they declared port of loading "Sri Lanka" inspite of the fact that the Master Bills Lading available with them shows the actual port of loading as Indonesia. They have declared port of loading as Colombo, Sri Lanka on the basis of incorrect House Bills of Lading mentioned in the column no. 5 of the table above. M/s. Ever Green Shipping Agency (India) Pvt. Limited of Gandhidham, who were in possession of Master Bills of Lading and aware of the actual port of Lading, filed .Import General manifest through M/s. Seaways Shipping mis-declaring the port of loading as Colombo, Sri Lanka. This has facilitated the importer to file the Bills of Entry (mentioned at SI. No.4, 5 and 6 of the table above) with declaration of Country Origin as Sri Lanka. Therefore, M/s. Ever Green Shipping Agency (India) Pvt. Limited of Gandhidham, has connived with M/s. Elite Impex in mis-declaring the Country of Origin as Sri Lanka of the goods covered in the Bills of Entry mentioned in column number 2 of the table above with an intention to facilitate the evasion of payment of Basic Customs Duty of 100% + SAD thereon and rendered the goods liable for confiscation under section 111(m) and 111 (o) of the Customs Act, 1962. This act on the part of M/s. Ever Green Shipping

Agency (India) Pvt. Limited of Gandhidham clearly amounts to abetment to the importer in mis-declaration of Country of Origin in the Bills of Entry mentioned at SI. 4, 5 and 6 in column number 2 of the table above. The above acts of omission and commission on the part of M/s. Ever Green Shipping Agency (India) Pvt. Limited of Gandhidham, has rendered themselves liable to penalty under sections 112(a) and 114AA of the Customs Act, 1962.

15.6 Role of M/s. Opal Shipping Agencies (India) Pvt. Ltd. of Gandhidham-

15.6.1 M/s. Opal Shipping Agencies (India) Pvt. Ltd has filled the Import General Manifest for the goods imported by M/s. Elite Impex, The details of such import along with IGM No. is given in the table below:

Table-15

| Sr. No. | Bill of Entry No & Date | Assessable Value (Rs.) | Master B/LNo. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed | Port loading declared in IGM |
|---------|-------------------------|------------------------|--|--|----------------------|------------------|------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1 | 2274440/ 22.10.10 | 2325455 | ESLSINMUN0028 SINGAPORE | SWT/ESLS INUM0028 SRI LANKA | 2001558/ 15.10.10 | Opal Shipping | Sri Lanka |
| | Total | 2325455 | | | | | |

15.6.2 The Master Bill of lading and HBL mentioned in the column no. 4 and 5 respectively was recovered from the office of M/s. Opal Shipping Agencies (India) Pvt. Ltd of Gandhidham. From the Master Bill of Lading mentioned at column number 4 of the table above, it is evident that the actual port of lading of the goods covered in the Bill of Entry mentioned at column no 2 of the table above was other than Sri Lanka, but M/s. Opal Shipping Agencies (India) Pvt. Ltd of Gandhidham, who were in possession of Master Bill of Lading and aware of the actual port of Lading filed Import General Manifest mis-declaring the port of loading as Colombo, Sri Lanka, on the basis of incorrect HBL mentioned in the column no.5 of the table above. This has facilitated the importer to file the Bill of Entry with declaration of County Origin as **Sri Lanka**. Therefore, M/s. Opal Shipping Agencies (India) Pvt. Ltd. Of Gandhidham, has connived with M/s. Elite Impex in mis-declaring the Country of Origin (Sri Lanka) of the goods covered in the Bill of Entry mentioned in column number 2 of the table above with an intention to facilitate the evasion of payment of Basic Customs Duty of 100% + SAD hereon and rendered the goods liable for confiscation under section 111(m) and 111 (o) of the customs Act, 1962. This act on the part of M/s. Opal Shipping Agencies (India) Pvt. Ltd. Of Gandhidham clearly amounts to abetment to the importer in mis-declaration of Country of Origin in the Bills of Entry mentioned in column number 2 of the table above. The above acts of omission and commission on the part of M/s. Opal Shipping Agencies (India) Pvt. Ltd. Of Gandhidham, has rendered themselves liable to penalty under section 112 (a) and 114AA of the Customs Act, 1962.

15.7 Role of M/s. Seaways Shipping of Gandhidham-

15.7.1 M/s. Seaways Shipping of Gandhidham has filed following Import General Manifest for the goods imported by M/s. Elite Impex:

Table-16

| Sr. No. | Bill of Entry No & Date | Assessable Value (Rs.) | Master B/L No. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed | Port of loading declared in IGM |
|---------|-------------------------|------------------------|--|--|----------------------|------------------------|-----------------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1 | 2381355/ 01.12.10 | 2721814 | 080000245753 JAKARTA INDONESIA | CMB/KND/132 SRI LANKA | 2003058/ 27.11.10 | Evergreen / Seaways | IDJKT (i.e. Jakarta Indonesia) |
| 2 | 2573548/ 01.12.11 | 2546775 | 080000247268 JAKARTA INDONESIA | CMB/KND/141 SRI LANKA | 2003058/ 27.11.10 | Evergreen / Seaways | IDJKT (i.e. Jakarta Indonesia) |
| 3 | 2573527/ 01.12.11 | 2546775 | EGLV 080000254078 JAKARTA INDONESIA | CMB/KND/394 SRI LANKA | 2003499/ 06.12.10 | Evergreen / Seaways | IDJKT (i.e. Jakarta Indonesia) |
| 4 | 310/ 13.08.10 | 2600988 | MAX/BLW/1112 / KAN/6/10 BELWAN INDONESIA | CMB/KND/040 SRI LANKA | 10298/ 28.07.10 | Evergreen / Seaways | Colombo Sri Lanka |
| 5 | 2243664/ 11.10.10 | 2240150 | CAR/KND/21- 01585-1 JAKARTA, INDONESIA | CMB/KND/096 SRI LANKA | 2001139/ 30.09.10 | Evergreen / Seaways | Colombo Sri Lanka |
| 6 | 2243469/ 11.10.10 | 2555159 | EGLV 084000012841 BELWAN INDONESIA | CMB/KND/079 SRI LANKA | 2001139/ 30.09.10 | Evergreen / Seaways | Colombo Sri Lanka |

15.7.2 In his statement recorded on 13/05/2011, Shri Siddharth Shukla, General Manager of M/s. Seaways Shipping and Logistic Limited has stated that the subject IGMs were filed by them on the basis of the details received from the Shipping Lines in the form of xml files via e-mails. He also submitted print outs of subject e-mails which reflected that the details were forwarded to them by M/s. Ever Green Shipping Agency India Pvt. Ltd. Thus, it is evident that they had filed the above mentioned six IGMs, falsely containing name of port of loading other than Sri Lanka. Further, it also appears that they have deliberately not collected any of the documents including Master Bills of Lading which contained actual names of ports of loading. Section 30 (2) of the Customs Act, 1962 casts responsibility of filing IGMs with true declarations, on the person who files the same. However, in collusion with shipping lines, M/s. Seaways Shipping and Logistic Limited deliberately mis-declared ports of loading in these IGMs and facilitated M/s. Elite Impex in clearing the same by evading payment of appropriate duty on the subject goods. Thus, for the said act of abetment, they have rendered themselves liable to penalty under Section 112(a) and 114AA of the Customs Act, 1962.

16. As mentioned earlier, goods in 32 containers covered under 8 Bills of Entry mentioned at Sl. No. 11 to 18 at column no. 2 of the table No.9 of this Notice were placed under seizure by DRI. Thereafter importer sought provisional release from Commissioner of Customs, Kandla. After receipt of NOC from DRI, the Commissioner of Customs, Kandla on 25.02.2011, directed that the goods may be released provisionally subject to-

(I) Payment of full Customs Duty; (ii) Execution of PO Bond for full Value of goods; and (iii) Bank Guarantee of RS.3,00,00,000/- (Rs. Three Crore).

16.1 Aggrieved by the above said conditions, the importer moved a Special Civil Application No. 2526 of 2011 in the Hon'ble High Court of Gujarat, Ahmedabad. Hon'ble High Court of Gujarat has passed an order in the same which is as follows:

1. 20 containers of the petitioner covered under seizure Panchnama dated 01.2.2011 shall be released provisionally on petitioner paying full import duty,
2. 12 containers of the petitioner covered under seizure Panchnama dated 04.01.2011 shall be released on petitioner paying full import duty and giving bond for full amount of value of goods including 25% bank guarantee as provided in the circular No: 686/2/2003 dated 02.01.2003.

16.2 Consequent to the above order of the Hon'ble High Court of Gujarat M/s. Elite Impex had cleared the goods paying full duty @108%. The detail of such clearance is given in the table below:

Table-17

| Sr. No. | B/E No. & Date | Assessable Value (Rs.) | Total duty payable @ 108% in Rs. | Duty paid |
|---------|------------------|------------------------|----------------------------------|-----------------|
| 1 | 2381492/01.12.10 | 2177441 | 2351636 | 2351636 |
| 2 | 2381355/01.12.10 | 2721814 | 2939559 | 2939559 |
| 3 | 2381484/01.12.10 | 2184634 | 2358405 | 2359405 |
| 4 | 2573569/12.01.11 | 1037788 | 1120811 | 1120811 |
| 5 | 2573548/12.01.11 | 2546775 | 2750518 | 2750518 |
| 6 | 2573527/12.01.11 | 2546775 | 2750518 | 2750518 |
| 7 | 2573514/12.01.11 | 3183469 | 3438148 | 3438148 |
| 8 | 2573577/12.01.11 | 2919997 | 3153597 | 3153597 |
| | Total | 19318693 | 20864192 | 20864192 |

16.3 However, the goods already cleared vide Bills of Entry mentioned at Serial No. 01 to 10 of the Table no. 9 have a duty liability of Rs. 2,76,06,942/-, out of which Rs.10,22,479/- is paid as 4% SAD and Rs. 2,65,84,4631/-, was to be recovered at the time of issuance of this Show cause notice.

17. In this matter a Show cause notice No. S/10-11/Adj/2011-12 dated 02.06.2011 was issued by the then Commissioner of Customs, Custom House, Kandla to M/s Elite Impex, Ahmedabad; Shri Sarfarajkhan Pathan, Manager of M/s Elite Impex, Ahmedabad; M/s P.C. India Shipping Agency, Gandhidham; Shri Raju Chand, Power of Attorney, M/s P.C. India Shipping Agency, Gandhidham; M/s Trans Asian Shipping Services (P) Ltd., Gandhidham; M/s Ever Green Shipping (India) Pvt. Ltd., Gandhidham; M/s Opal Shipping Agencies (India) Pvt. Ltd., Gandhidham and M/s Seaways Shipping, Gandhidham, wherein they were called upon to show cause to the Commissioner of Customs Kandla as to why:

1. The country of origin declared in the 18 Bills of Entry should not be changed to Indonesia / Singapore / Malaysia against respective Bill of Entry and the said Bills of Entry should not be finally assessed accordingly.
2. The benefit of Notification No. 26/2000-Cus-Cus dated 01.03.2000, as amended, should not be denied and the relevant Bills of Entry should not be finally assessed accordingly.
3. The Areca Nuts weighing 533.06 MT having assessable value of Rs. 1,93,18,693/- seized on 04.1.2011 and 01.02.2011 at CFS of AV Joshi & CO, should not be confiscated under Section 111 (m) and 111 (o) of the Customs Act 1962 read with Section 11(5) of the Foreign Trade (Development & Regulation) Act 1992. Since the said goods have been released provisionally to the importer why fine in lieu of confiscation of such goods should not be imposed upon them under Section 125 of the Customs Act, 1962.
4. The Customs Duty amounting to, Rs. 2,08,64,192/- should not be demanded and recovered from them under proviso to Section 28(1) of the Customs Act, 1962 and an amount of Rs. 2,08,64,192/- already paid by them should not be adjusted and appropriated towards the said duty liability.
5. Interest under Section 28AB of the Customs Act, 1962, in respect of duty liability of Rs. 2,08,64,192/-, should not be demanded and recovered from them at the proper rate.
6. The Areca-nut weighing at 702.06 MT, having declared assessable value as Rs. 2,55,61,982/-, which were not physically available for seizure, should not be confiscated under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962. Since, the same are not physically available for confiscation, why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962.
7. The Customs Duty amounting to Rs. 2,76,06,942/- (including Rs. 10,22,479/-, already paid as SAD and outstanding amount of Rs. 2,65,84,463/-) should not be demanded and recovered from them under proviso to Section 28(1) of the Customs Act, 1962 and an amount of Rs. 10,22,479/- already paid by them should not be adjusted and appropriated towards the said duty liability.
8. Interest under Section 28AB of the Customs Act 1962 in respect of differential duty liability amounting to Rs. 2,65,84,463, should not be demanded and recovered from them at the prescribed rate
9. Penalty under Sections 112(a), 114A and 114AA of the Customs Act 1962 should not be imposed upon them for the acts on their part as discussed above.

18. Further, vide the above referred Show cause notice Shri Sarfaraj Pathan, the Manager of M/s Elite Impex of Ahmedabad, was also called upon to show cause to the Commissioner of Customs Kandla as to why penalty under Sections 112(a) and 114AA of the Customs Act 1962 should not be imposed upon him for the acts on his part as discussed above.

19. Shri Raju Chand, Power of attorney of M/s. P.C. India Shipping Agency, Gandhidham and M/s. P.C. India Shipping Agency of Gandhidham, was / were also called upon to show cause to the Commissioner of Customs Kandla, vide the above referred Show cause notice, as to why:

1. Penalty under the Sections 112(a) and 114AA of the Customs Act 1962 should not be imposed upon them for the acts on their part as discussed above.
2. Action should not be taken under Regulation 20 of the Customs House Agents Licensing Regulations, 2004.

20. M/s. Trans Asian Shipping Services (P) Ltd., Gandhidham, were also called upon to show cause to the Commissioner of Customs Kandla, vide the above referred Show cause notice, as to why, penalty under the Sections 112(a) and 114AA of the Customs Act 1962 should not be imposed upon them for the acts on their part as discussed above.

21. M/s Ever Green Shipping Agency (India) Pvt. Limited of Gandhidham, were also called upon to show cause to the Commissioner of Customs Kandla, vide the above referred Show cause notice, as to why, penalty under the Sections 112(a) and 114AA of the Customs Act 1962 should not be imposed upon them for the acts on their part as discussed above.

22. M/s Opal Shipping Agencies (India) Pvt. Ltd., Gandhidham, were also called upon to show cause to the Commissioner of Customs Kandla, vide the above referred Show cause notice, as to why, penalty under the Sections 112(a) and 114AA of the Customs Act 1962 should not be imposed upon them for the acts on their part as discussed above.

23. M/s Seaways Shipping of Gandhidham, were also called upon to show cause to the Commissioner of Customs Kandla, vide the above referred Show cause notice, as to why, penalty under the Sections 112(a) and 114AA of the Customs Act 1962 should not be imposed upon them for the acts on their part as discussed above.

24. Further investigation was also carried out in the matter and during the course of such investigation, statements of the following persons were recorded:

24.1 Ms. Sheeja, Branch Manager of M/s APG Logistics Pvt. Ltd., Gandhidham dated 21.12.2012-

24.1.1 Her statement was recorded in connection with clearance of Arecanut (Betel Nut) at Kandla which were cleared by her company under House Bill of Lading Nos. CMB/KND/132, CMB/KND/129, CMB/KND/127, CMB/KND/141, CMB/KND/394, CMB/KND/1102, CMB/KND/1103, CMB/KND/096 AND CMB/KND/1104. In her statement she stated that they have handled 09 consignments of Arecanut (Betel Nut) imported by M/s Elite Impex, Ahmedabad.

24.1.2 On being asked about the above referred 09 House Bills of Lading, she stated that their Gandhidham branch office is having a contract with the freight forwarders M/s Lynx Shipping Lines Pvt. Ltd., Chennai and Director of the said forwarders is the contact person; on instructions via e-mail with enclosures of House Bills of Lading and Master Bills of Lading, they gave NOC letter to the container lines by enclosing House Bills of Lading and Master Bills of Lading on behalf of M/s Lynx Shipping Pvt. Ltd.; that the NOC is issued to container lines only after receiving payment i.e. Delivery Order charges from the CHA; that the Delivery Order charges collected from CHA M/s P.C. India, part payment is retained as Handling Charges of Rs. 750/- and the remaining amount of the Delivery charges are remitted to M/s Lynx Shipping Lines Pvt. Ltd., Chennai.

24.1.3 On being shown the e-mails from GopiLynx@gmail.com dated 29.11.2010, 08.10 PM and issued e-mail issued from APG Logistics-KND-Sheeja.SSheeja@apgLogistics.com dated 30.11.2010, 05.19 PM, wherein she forwarded the same and requested tassgroup.com to "file manifest as per HBL", she stated that instructions received from M/s Lynx Shipping Pvt. Ltd., they used to forward the same to the container line with the same instructions; that the above mails have been sent by her to Shri Vijay Maheshwari, a documentation staff at TASS Group (Transasia Container Line); the e-mails dated 17.08.2010, received from Shri Gopi, Director – M/s Lynx Shipping vide which it was asked to file House Bills of Lading in the IGMs and also M/s Lynx were planning to load shipments from Singapore, Jakarta, Malaysia, Dubai and switching the Bills of Lading at Colombo and had asked to file manifest as port of loading as Colombo, she then submitted all the e-mail correspondence related to these shipments with Shri Gopi.

24.1.4 On being asked for her comments on the change of Country of Origin in House Bills of Lading she stated that she was instructed to file House Bills of Lading and submitted e-mails dated 17.08.2010 of Shri Gopi, in which she had planned to load shipments from Singapore, Jakarta, Malaysia, Dubai

and switching the Bills of Lading at Colombo and has asked to file manifest as port of loading as Colombo; that port of loading in House Bills of Lading cannot be different from Port of Loading in Master Bills of Lading; that she had reported the same to Shri Gopi but he had sent mail to Shri Rajesh stating that they would be switching Bills of Lading at Colombo, hence asked to file House Bills of Lading.

24.1.5 On showing the statements of Shri Sudhakar Chikati, Import Executive of M/s Ever Green Shipping Agency (I) Pvt. Ltd. Dated 13.05.2011 and Shri Jeetu Chandani, Branch Manager of M/s Trans Asian Shipping Services (P) Ltd., Gandhidham dated 05.05.2011, she stated that as per the instructions given by Shri Gopi, they were instructing the shipping companies to file manifest with House Bills of Lading and Master Bills of Lading; that she did not compare the House Bills of Lading and Master Bills of Lading, before forwarding the same to shipping lines for filing manifest, but she traced out a mistake in one of the Bills of Lading and asked Shri Gopi about it and Shri Gopi confirmed that Bills of Lading were to be switched at Colombo.

**24.2 Shri Umesh Bhatt, Director of M/s SCL Logistics (I) Pvt. Ltd.,
New Delhi dated 20.12.2012-**

24.2.1 He stated that he was looking after the work of sales in company management; that they are acting agents in India for various freight forwarders i.e. M/s Pt. Tunas Samudra Kumia, Indonesia, M/s Tandem Global Logistics, Malaysia; that they have handled about 8 consignments pertaining to M/s Elite Impex, Ahmedabad; that they got this business from Colombo agent M/s Lynx Shipping Lines, Colombo, contact person Ali Ganthi, e-mail address Lynxshipping@sltnet.lk and they organized booking from Indonesia and Malaysia to India on behalf of M/s Lynx Shipping Line, Colombo; that M/s Lynx provided the exporter details at Indonesia and Malaysia and then they asked their Indonesia and Malaysia agent to contact the exporter and release the Delivery Order to the exporter; that exporter stuffed the cargo and done the clearance at their end, then loaded containers were handed over to the shipping lines, who moved the same to Kandla port; that they billed the ocean freight to M/s Lynx and when they paid freight to them they released NOC to the consignee i.e. importer M/s Elite Impex, Ahmedabad; that the first House Bills of Lading issued by their Indonesia & Malaysia agent and second House Bills of Lading issued by M/s Lynx after switching; that they received most of the payments from M/s Lynx Shipping, Colombo, by telegraphic transfer and some amount they have paid them through Indian representative M/s Lynx Shipping Line Pvt. Ltd., Chennai.

24.2.2 On showing the e-mail from impdoc@SCLLogistics.com dated 28.09.2010, 3.54PM & 10.05PM, 21.09.2010, 5.10PM; 20.08.2010, 5.20PM;

12.08.2010, 1.33PM; 15.07.2010, 3.39PM and 15.07.2010, 1.47PM, wherein documentation staff had insisted to tassgroup.com to “file IGM as per HBL”, he stated that those mails were sent by their documentation staff Shri Jitendra Kumar on his instructions; that they are acting as a freight forwarder and in the column for consignee in the Master Bills of Lading, they always mentions the name of their company as consignee and the actual name of the consignee is not mentioned in the body of Bills of Lading and that is the reason they produced the House Bills of Lading and Master Bills of Lading to the main shipping line i.e. Trans Asia Shipping Services Pvt. Ltd., to file the IGM in actual consignee name i.e. M/s Elite Impex, Ahmedabad; that they cannot mention the consignee name on the body of the Master Bills of Lading because the freight is involved with their Colombo agent; that they produced to the tassgroup all these shipments Master Bills of Lading and House Bills of Lading which were issued by M/s Lynx Shipping Line, Colombo to file the IGM before vessel’s arrival and IGM filed by tassgroup and he had no idea why they have changed the Country of Origin in the IGM column from Indonesia to Sri Lanka; that the port of loading in the House Bills of Lading cannot be different from port of loading in Master Bills of Lading; that they have not asked M/s Lynx Shipping Line, for apparent irregularity of changing port of loading in switching Bills of Lading; that they have not enquired the change of port of loading while switching Bills of Lading.

24.2.3 On being shown the statements of Shri Sudhakar Chikati dated 13.05.2011 and Shri Jeetu Chandani dated 05.05.2011, he stated that they informed them to file the manifest against House Bills of Lading because the complete name of the consignee is mentioned over there and other details must be remaining same as per the Master Bills of Lading; that they were not aware of the mistake in place of loading and therefore as matter of routine they instructed shipping line to file IGM on the basis of House Bills of Lading; that the Master Bills of Lading were also sent to the shipping lines; that Shri Sarfaraj khan of M/s Elite Impex contacted their office when the shipments arrived at Kandla port to take delivery; that they informed him about the arrival of the consignment when he paid the local charges and then they released the NOC to him to take Delivery Order from the shipping line.

24.3 Shri Sabu Varghese, General Manager- M/s Opal Shipping Agencies (I) Pvt. Ltd., Agents of M/s Emkay Lines Pvt. Ltd., Pakistan dated 14.03.2013-

24.3.1 He stated that the container line M/s Emkay Lines Pvt. Ltd., Karachi, Pakistan appointed them as their agents; that they remained agents

from 2008 to 2011 for Kandla, Mundra and Ahmedabad only; that he handled only one consignment of M/s Elite Impex; that House Bills of Lading SWT/WSLSIMUN0028 was issued by Emkay Lines Pvt. Ltd., Dubai and being the agent of Emkay Lines Pvt. Ltd., Pakistan, they filed the manifest as per House Bills of Lading; that the House Bills of Lading was received by them from CHA M/s P.C. India Shipping Agency, Gandhidham; that to facilitate the ultimate consignee to clear the shipment without much hurdles they filed IGM based on House Bills of Lading; that they were not aware of switching of House Bills of Lading showing port of loading as Colombo for the House Bills of Lading issued from Dubai.

24.4 *Shri Gopala Krishnan, Director of M/s Lynx Shipping Lines Pvt. Ltd., Chennai dated 21.01.2013-*

24.4.1 He stated that he and his wife were the directors of the company; that his brother Shri Senthilkumar was also a director of the company, but he resigned two months back; that his e-mail ids are gopi@Lynxshipping.com & gopiLynx@gmail.com; that his company used to attend the work of freight forwarding by sea; that they are also a container line agent of Lynx Container Line, Colombo; that he is looking after the marketing and management of the company; that he is doing the forwarding business for the port of Chennai, Tuticorin and Bangalore only; that Shri Mohamed Ali Ganthi is the proprietor of M/s Lynx Shipping Lines, Colombo and he knew him since 2005; that Shri Ganthi is an Sri Lankan and started his business around 2006; that he used the same name for his company also; that they forwarded nine consignments of Arecanut (Betel Nut) of M/s Elite Impex, Ahmedabad on the instructions of Shri Ganthi to M/s APG Logistics Pvt. Ltd., Chennai who are also having branch office at Kandla; that he was aware of other few consignments of Arecanut (Betel Nut) of M/s Elite Impex, whose House Bills of Lading was issued by M/s Lynx Shipping Lines, Colombo to some forwarders based at Delhi; that Shri Ganthi had directly forwarded the House Bills of Lading to the forwarder at Delhi for the few consignments of Arecanut (Betel Nut) of M/s Elite Impex; that the switched House Bills of Lading was given to him by Shri Ganthi as M/s SCL Logistics (I) Pvt. Ltd., Delhi had charged more money from M/s Elite Impex; that Shri Ganthi asked if he could handle the forwarding for Kandla / Mundra; that as he knew Shri Rajesh of M/s APG Logistics (I) Pvt. Ltd., who was having branch office at Kandla and Mundra, he enquired about the same and on his agreement he asked Shri Rajesh to mail the confirmation and he re-produced the telephonic talk in mail; that he did not know why M/s SCL Logistics (I) Pvt. Ltd., Delhi were charging high rate for switching House Bills of Lading at Colombo from M/s Elite Impex; that Shri Ganthi informed him that M/s SCL Logistics (I) Pvt., was fully aware of switching of House Bills of Lading at Colombo and for that reason may be M/s SCL Logistics were charging higher rate to M/s Elite Impex; that he got

Master Bills of Lading and House Bills of Lading from M/s Lynx Shipping Lines, Colombo, Lynxshipping@sltnet.lk and he forwarded the same to M/s APG Logistics Pvt. Ltd., Kandla / Mundra for filing manifest by House Bills of Lading and the Delivery Order was issued by M/s APG Logistics at Kandla; that payment was collected by M/s APG Logistics from the consignee M/s Elite Impex of their CHA and they did not receive payment from Lynx Shipping; that M/s APG Logistics Pvt. Ltd. Collected the charges from M/s Elite Impex or their CHA@ Rs. 3500/- and remitted them Rs. 2750/- by cheque and kept the remaining Rs. 750/- per House Bills of Lading.

24.4.2 On being shown the e-mails submitted by Ms. Sheeja – gopiLynx@gmail.com dated 17.10.2010, 12.48PM, 1.24PM, 1.36PM & 14.38PM and APG Logistics-KND_Sheeja.S.sheeja@aplLogistics.com, he stated that he was given Shri Ganthi that manifest should be filed with House Bills of Lading which were switched at Colombo i.e. the port of loading shown as 'Colombo, Sri Lanka; that change of port of loading in House Bills of Lading is not prescribed in the procedure for switching of Bills of Lading; that he did not receive extra payment / consideration for it; that he was aware that it was illegal to mis-declare port and country of loading; that a person Ruchira used to handle documents at M/s Lynx Shipping Lines, Colombo, had signed the House Bills of Lading - CMB/KND/040, CMB/KND/047, CMB/KND/052, CMB/KND/079, CMB/KND/088, CMB/KND/083 & CMB/KND/075 which were forwarded to M/s SCL Logistics, Colombo and CMB/KND/132, CMB/KND/129, CMB/KND/127, CMB/KND/141, CMB/KND/394, CMB/KND/1102, CMB/KND/1103, CMB/KND/096 AND CMB/KND/1104 forwarded by him to M/s APG Logistics Pvt. Ltd., in the name of M/s Lynx Shipping Lines, Colombo; that he called up Shri Ganthi and enquired about the apparent irregularity in switching Bills of Lading, Shri Ganthi replied that to maintain secrecy of supplier's name and port of loading / country of origin / place, they were switching the Bills of Lading, Shri Ganthi also said that they had received such instructions from one Rameshbhai from Dubai; that he instructed the shipping lines to file IGM on the basis of incorrect House Bills of Lading, as he had received instructions from M/s Lynx Shipping Line, Colombo.

24.4.3 On being shown statement of Ms. Sheeja dated 21.12.2012 he stated that as per his knowledge her statement is true and correct except that Shri Rajesh, Director – M/s APG Logistics Pvt. Ltd., was well aware that switched House Bills of Lading showing port of loading as Colombo was issued from the first consignment itself.

24.4.4 On being shown statement of Shri. Umesh Bhatt dated 21.12.2012 he stated that as per debit note for freight amount received from Shri Ganthi to pay to M/s SCL Logistics and he paid Rs. 2,50,000/-.

24.4.5 On being shown statement of Shri Ganthi Mohamed Ali, MD – M/s 4S International Pvt. Ltd. and M/s Lynx Shipping Lines, Colombo dated 11.11.2011 & 16.11.2011 he stated that he did not know about trading activities of Shri Ganthi but as per his knowledge his statement of issuance of switch House Bills of Lading, showing port of loading as Colombo is true but he did not share with him (Gopi) the amount he took for the same.

24.5 Shri Mohamed Ali Ganthi, was recorded on 14.11.2011-

24.5.1 During the statement he was shown an e-mail from anant.sharma@alkamiholding.com to shekhawat083@gmail.com with an attachment, wherein the following entries under the column 'payment on behalf of Ashok' is mentioned :

| Date | Particulars | Amount of AED | In USD |
|---|-----------------------|---------------|-----------|
| 9 th Oct.10 | Cash Ali-Shrilanka | 5285.00 | 1448.00 |
| 18 th Oct.10 | Cash-ali-shrilanka | 41654.00 | 11352.96 |
| 20 th Oct.10 | TT-Betelnut | 222203.52 | 60480.00 |
| 25 th Oct.10 | TT-Ali-Betelnut | 447052.32 | 121680.00 |
| 27 th Oct.10 | Cash-ali-shrilanka | 26572.00 | 7280.00 |
| 4 th Nov.10 | Cash-ali-shrilanka | 56320.00 | 15430.00 |
| 22 nd Nov.10 | Cash-ali-shrilanka | 63490.00 | 17518.00 |
| 29 th Nov.10 | TT-Ali | 108878.99 | 29635.00 |
| that he was shown page No. 43 (RUD No. 26) of similar entries as shown below: | | | |
| 18 th Dec.10 | Payment given Ali | | |
| | \$ 31000 @ 3.65 | 113150.00 | 31000.00 |
| that he was shown page No. 45 (RUD No. 27) of similar entries as shown below: | | | |
| 2 nd May 10 | Cash given to Aman | | |
| | Ref. Ali | 29656.00 | 8125.00 |
| 15 th May 10 | Cash given to Riyaz | | |
| | Ref. Ali | 24718.00 | 6772.00 |
| 20 th May 10 | Cash Riyaz - Ref. Ali | | |
| | Betelnut shipping | 24535.00 | 6687.00 |
| 21 st Jun 10 | Cash Ali for Betelnut | | |
| | USD 6525 | 23816.00 | 6525.00 |
| 1 st Jul 10 | Betelnut shipping Ali | 31320.85 | 8525.00 |
| 10 th Jul 10 | Shipping Betelnut Ali | 33306.00 | 9077.68 |
| 19 th Jul 10 | Shipping Betelnut Ali | 33525.25 | 9125.00 |
| that he was shown page No. 47 (RUD No. 28) of similar entries as shown below: | | | |
| 5 th Aug. 10 | Cash Ali Betelnut | 33525.25 | 9125.00 |
| 23 rd Aug. 10 | Cash Ali Betelnut | 69824.37 | 19005.00 |
| 2 nd Sep. 10 | Cash Ali | 7348.00 | 2000.00 |
| 7 th Sept. 10 | Cash Ali | 74045.80 | 20154.00 |

24.5.2 After seeing the above Shri Ganthi stated that the above amounts were received by him through hawala channels from Dubai; that the payments

were made by one Shri Ramzan of Dubai; that Shri Ramzan introduced Shri Sarfarz Khan; that Shri Ramzan asked him to issue 'switch Bills of Lading' for the containers coming from Indonesia for transshipment to Kandla port; that some vessels ply from Indonesia to Sri Lanka; that the containers intended for Kandla port were received in Sri Lanka and their shipping company M/s Lynx issued a 'switch Bills of Lading' for the same containers from Sri Lanka to Kandla port; that the amount received were for the freight charges and handling charges at Sri Lanka port which were received in cash sent by Shri Ramzan; that approximately 2000 to 3000 USD was charged for transshipment which included issued 'switch Bills of Lading', freight charges and other handling charges at Sri Lanka; that in case of huge amount shown in the account, sometimes after unloading of the container in Sri Lanka port which arrived from Indonesia, the next vessel to Kandla port took about 2 to 3 weeks time and due to the delay he had to pay heavy demurrage charges as well.

24.5.3 In his further statement dated 16.11.2011, Shri Ganthi reiterated his earlier statement dated 14.11.2011.

24.6 Shri Sarfaraz Khan Pathan was recorded on 15.11.2011-

24.6.1 In his statement he inter alia stated that the statement of Shri Ganthi dated 14.11.2011 is correct; that he know a person Shri Ali Ganthi a Sri Lankan citizen, who was introduced by one Shri Ramzan of Dubai, when he was in Sri Lanka for the imports of Betel Nuts through Sri Lanka; that Shri Ramzan told him that Shri Ali was very capable person and will help him out in the documentation part from Sri Lanka.

24.6.2 On being shown the print outs of e-mail dated 27.08.2011 sent by Shri Anant Sharma from anant.sharma@alkamiholding.com to Shri Dharamveer Shekhawat at shekhawat083@gmail.com and another e-mail with the title 'Ashok Account.xls129K' in the main page of the e-mail message dated 27.08.2011, with its attachment, he identified the details of payments made by him as well as Shri Ashok Panchariya towards import of Betel Nuts from Indonesia; that the payment particulars were in respect of various firms from which Betel Nuts were imported from Indonesia by routing the same through Sri Lanka for availing ISFTA benefits; that he identified various entries of the sheets as showing transfer of money to Shri Ali Ganthi of Sri Lanka, which is re-produced below:

| Sl. No. | Date | Particular | Amount (in USD) |
|---------|------------|--|-----------------|
| 1 | 16.03.2010 | T Singapore for Betelnut cash to Ahmed for Ali | 46080 |
| 2 | 05.08.2010 | Cash-Ali-Betelnut | 9125 |
| 3 | 23.08.2010 | Cash-Ali-Betelnut | 19005 |
| 4 | 02.09.2010 | Cash Ali | 2000 |
| 5 | 07.09.2010 | Cash Ali | 20154 |
| 6 | 18.05.2010 | Consignment-Colombo | 15105 |
| 7 | 20.05.2010 | Cash-Riyaz ref Ali-Betelnut | 6687 |
| 9 | 21.06.2010 | Cash-Ali for Betelnut | 6525 |

| | | | |
|----|------------|-------------------------|--------|
| 10 | 01.07.2010 | Betelnut-Shipping-Ali | 8525 |
| 11 | 10.07.2010 | Shipping- Betelnut -Ali | 9078 |
| 12 | 19.07.2010 | Shipping- Betelnut -Ali | 9125 |
| 13 | 18.12.2010 | Payment given Ali | 31000 |
| 14 | 09.10.2010 | Cash-Ali-Sri Lanka | 1448 |
| 15 | 18.10.2010 | Cash-Ali-Sri Lanka | 11353 |
| 16 | 25.10.2010 | TT-ali-Betelnut | 121680 |
| 17 | 27.10.2010 | Cash-Ali-Sri Lanka | 7280 |
| 18 | 04.11.2010 | Cash-Ali-Sri Lanka | 15430 |
| 19 | 22.11.2010 | Cash-Ali-Sri Lanka | 17518 |
| 20 | 29.11.2010 | TT-ALI | 29635 |

24.6.3 The above payments were made to Shri Ali Ganthi for doing switch Bills of Lading and freight from Sri Lanka for the imports made from Indonesia to Sri Lanka and from Sri Lanka to India.

24.7 **Shri Sarfarazkhan dated 17.11.2011**

24.7.1 He reiterated the facts narrated by him in his earlier statement dated 15.11.2011, he also added that the amount appearing in the earlier mentioned statement are of remittances made by him and Shri Ashok Panchariya to the Indonesian / Singapore suppliers; that till date they have imported Betel Nuts of M/s Elite Impex & M/s S.V. Enterprises, both of Ahmedabad; that total amount remitted was 2106461 US \$ from 22.10.2009 to 05.01.2011; that the said amount were remitted by them from Dubai where Shri Ashok Panchariya was having a firm in the name of M/s Vintage FZE & Others; that M/s Elite Impex was a dummy firm and it was controlled by him and Shri Ashok Panchariya and thus they made payment for the import of Betel Nuts imported in the name of M/s Elite Impex; that as per mutual agreement with Shri Naseer Adambhai Ajmeri - proprietor of M/s Elite Impex, they mis-used the IEC of M/s Elite Impex of financial consideration; that although on paper Shri Ashok Panchariya was neither a partner nor proprietor of both the said firms i.e. M/s Elite Impex & M/s S.V. Enterprise, he was also an equal beneficiary of those imports and investments in both those firms were made by both of them.

24.8 **Shri Ashok Panchariya dated 08.12.2011-**

24.8.1 He stated that he had arranged for making payment from SEIL and / or M/s Vintage directly to the Indonesian suppliers of Betel Nuts in respect of M/s S.V. Enterprises, as claimed by Shri Sarfaraz khan but he did not know about M/s. Elite Impex.

25 Role of Forwarders in the filing of Import General Manifests :

25.1 M/s Elite Impex had filed total 18 Bills of entry against total 18 Bills of lading and total 8 Import General Manifests filed by various shipping lines / shipping line agents. The details of such IGMs are given in the table below:

| Sr. No. | Bill of Entry No & Date | Assessable Value (Rs.) | Master B/L No. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed | Port of loading declared in IGM |
|---------|-------------------------|------------------------|---|--|------------------|-----------|---------------------------------|
|---------|-------------------------|------------------------|---|--|------------------|-----------|---------------------------------|

| | | | | | | | |
|----|----------------------|---------|---|----------------------------------|-----------------------|------------------------|--------------------------------------|
| 1 | 2381355/ 01.12.10 | 2721814 | 080000245753 JAKARTA INDONESIA | CMB/KND/132 SRI LANKA | 2003058 / 27.11.10 | EVERGREEN / SEAWAYS | IDJKT (i.e. Jakarta Indonesia) |
| 2 | 2381484/ 1.12.10 | 2184634 | TALTLS 00766340 SINGAPORE | CMB/KND/129 SRI LANKA | 2003058 / 27.11.10 | TRANS ASIA | Colombo, Sri Lanka |
| 3 | 2381492/ 01.12.10 | 2177441 | TALTLS 00768356 SINGAPORE | CMB/KND/127 SRI LANKA | 2003058 / 27.11.10 | TRANS ASIA | Colombo, Sri Lanka |
| 4 | 2573548/ 12.01.11 | 2546775 | 080000247268 JAKARTA INDONESIA | CMB/KND/141 SRI LANKA | 2003058/ 27.11.10 | EVERGREEN / SEAWAYS | IDJKT (i.e. Jakarta Indonesia) |
| 5 | 2573527/ 12.01.11 | 2546775 | 080000254078 JAKARTA INDONESIA | CMB/KND/394 SRI LANKA | 2003499/ 06.12.10 | EVERGREEN / SEAWAYS | IDJKT (i.e. Jakarta Indonesia) |
| 6 | 2573569/ 12.01.11 | 1037788 | TALTLS 00774856 SINGAPORE | CMB/KND/1102 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 7 | 2573577/ 12.01.11 | 2919997 | TALTLS 00770918 SINGAPORE | CMB/KND/1103 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 8 | 2573514/ 12.01.11 | 3183469 | TALTLS 00770932 SINGAPORE | CMB/KND/1104 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 9 | 310 / 13.08.10 | 2600988 | MAX/BLW/1112/ KAN/6/10 BELWAN INDONESIA | CMB/KND/040 SRI LANKA | 10298/ 28.07.10 | EVERGREEN / SEAWAYS | Colombo, Sri Lanka |
| 10 | 2539/ 14.09.10 | 2724918 | TLJBW 00738216 BELWAN INDONESIA | CMB/KND/047 SRI LANKA | 15559/ 14.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 11 | 2626/ 15.09.10 | 2724918 | TLJBW 00739759 BELWAN INDONESIA | CMB/KND/063 SRI LANKA | 15559/ 14.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 12 | 2627/ 15.09.10 | 2724918 | TLJBW 00738234 BELWAN INDONESIA | CMB/KND/052 SRI LANKA | 15559/ 14.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 13 | 2243664/ 11.10.10 | 2240150 | CAR/KND/21- 01585-1 JAKARTA INDONESIA | CMB/KND/096 SRI LANKA | 2001139/ 30.09.10 | EVERGREEN / SEAWAYS | Colombo, Sri Lanka |
| 14 | 2243469/ 11.10.10 | 2555159 | EGLV 084000012841 BELWAN INDONESIA | CMB/KND/079 SRI LANKA | 2001139/ 30.09.10 | EVERGREEN / SEAWAYS | Colombo, Sri Lanka |
| 15 | 2243486/ 11.10.10 | 2555159 | TLJBW 00747630 JAKARTA INDONESIA | CMB/KND/088 SRI LANKA | 2001139/ 30.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 16 | 3477/ 15.10.10 | 2555160 | 552093940 PENANG MALAYSIA | 552093940 SRI LANKA | 199999/ 16.09.10 | RELAY SHIPPING | ARJEA |
| 17 | 2276233/ 22.10.10 | 2555159 | TLJBW 00750752 JAKARTA INDONESIA | CMB/KND/075 SRI LANKA | 2001441/ 12.10.10 | TRANS ASIA | Colombo, Sri Lanka |
| 18 | 2274440/ 22.10.10 | 2325455 | ESLSINMUN 0028 SINGAPORE | SWT/ESLSINM UN 0028 SRI LANKA | 2001558/ 15.10.10 | OPAL SHIPPING | Colombo, Sri Lanka |

25.2 Column no. 4 of the table shows the Master B/L numbers and actual port of loading of the goods covered in the respective Bills of Entry mentioned in the column no. 2 of the table above. These Master Bills of lading were recovered from the office of the CHA and the Shipping lines / Shipping line Agents. From the said column number 4 of the table above, it evident that port of loading of all the 18 Bills of Entry is other than Colombo, Sri Lanka, which clearly reveals that the Country of origin of these goods is other than Sri Lanka in terms of Customs Tariff (Determination of Origin of Goods under the Free Trade Agreement between the Democratic Socialistic Republic of Sri Lanka and the Republic of India) Rules, 2000. Column NO.5 shows the House B/L numbers with declared port of loading. The port of loading mentioned in the House Bills of Lading is "Colombo, Sri Lanka" which is not correct as the corresponding Master Bills of Lading mentioned in the column no. 4 of the table above clearly show the port of loading other than Colombo, Sri Lanka. Therefore, the House Bills of Lading mentioned in the column no. 5 of the table

above are incorrect. From column number 8 of the above table it is evident that in some Import General Manifests, the Port of Loading is declared as mentioned in Master Bill of lading (i.e. Bills of Entry at Serial No.1, 4 and 5 of the table above) but in the remaining 15 cases, the Port of Loading has been mis-declared in respective Import General Manifests, as Sri Lanka IAEJEA, in spite of the fact that in none of the Master Bills of Lading, port of loading is Sri Lanka I AEJEA. This mis-declaration of port of lading in the IGM has facilitated the Importer in mis-declaration of Country of Origin as Sri Lanka in the Bills of Entry

25.3 From the statements of the Ms. Sheeja, Branch Manager of M/s APG Logistics Pvt. Ltd., Shri Umesh Bhatt, Director of M/s. SCL Logistics (India) Private Limited, Shri Sabu Varghese, General Manager of Opal Shipping Agencies (I) Pvt. Ltd. and Shri Gopala Krishnan, Director of M/s Lynx Shipping Lines Private Limited, Chennai, it is evident that all of them were aware of the fact that changing port of loading while switching the Bill of Lading is not permissible as per procedure. All of them were aware that by filing IGM on the basis of HBL, the port of loading of the goods was being mis-declared. None of them have made any effort to rectify the mis-declaration of port of loading by way of filing IGM on the basis of HBL and on the contrary they issued the directions to the concerned shipping lines to file IGMs on the basis of House Bills of lading in which the ports of loading were mis-declared, as detailed in the table above. Thus the IGMs were filed with false information in respect of the Ports of Loading, which enabled the importer in filing Bills of Entry with false declaration in respect of Country of Origin and Port of loading for evasion of duty to the tune of Rs. 474.49 Lacs. The above omission and commission on the part of above named forwarders is clearly an act of abatement to the importer in evasion of duty.

26. Role of various persons after further investigation:

26.1 Ms. Sheeja of M/s APG Logistics Pvt. Ltd.

26.1.1 Statement of Ms. Sheeja of M/s APG Logistics Pvt. Ltd. was recorded in relation to the import of Arecanut (Betel nuts) at Kandla covered under HBL Nos. CMB/KND/132, CMB/KND/129, CMB/KND/127, CMB/KND/141, CMB/KND/394, CMB/KND/1102, CMB/KND/1103, CMB/KND/096 and CMB/KND/1104, by M/s Elite Impex, Ahmedabad. M/s APG Logistics Pvt. Ltd have handled 09 consignments of M/s Elite Impex, Ahmedabad of import of Arecanut (Betel nut). The details of such imports are given the table below:

| Sr. No. | Bill of Entry No & Date | Assessable Value (Rs.) | Master B/L No. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed | Port of loading declared in IGM |
|---------|-------------------------|------------------------|---|--|------------------|-----------|---------------------------------|
|---------|-------------------------|------------------------|---|--|------------------|-----------|---------------------------------|

| | | | | | | | |
|---|----------------------|---------|---|---------------------------|-----------------------|------------------------|--------------------------------------|
| 1 | 2381355/ 01.12.10 | 2721814 | 080000245753 JAKARTA INDONESIA | CMB/KND/132 SRI LANKA | 2003058 / 27.11.10 | EVERGREEN / SEAWAYS | IDJKT (i.e. Jakarta Indonesia) |
| 2 | 2381484/ 1.12.10 | 2184634 | TALTLS 00766340 SINGAPORE | CMB/KND/129 SRI LANKA | 2003058 / 27.11.10 | TRANS ASIA | Colombo, Sri Lanka |
| 3 | 2381492/ 01.12.10 | 2177441 | TALTLS 00768356 SINGAPORE | CMB/KND/127 SRI LANKA | 2003058 / 27.11.10 | TRANS ASIA | Colombo, Sri Lanka |
| 4 | 2573548/ 12.01.11 | 2546775 | 080000247268 JAKARTA INDONESIA | CMB/KND/141 SRI LANKA | 2003058/ 27.11.10 | EVERGREEN / SEAWAYS | IDJKT (i.e. Jakarta Indonesia) |
| 5 | 2573527/ 12.01.11 | 2546775 | 080000254078 JAKARTA INDONESIA | CMB/KND/394 SRI LANKA | 2003499/ 06.12.10 | EVERGREEN / SEAWAYS | IDJKT (i.e. Jakarta Indonesia) |
| 6 | 2573569/ 12.01.11 | 1037788 | TALTLS 00774856 SINGAPORE | CMB/KND/1102 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 7 | 2573577/ 12.01.11 | 2919997 | TALTLS 00770918 SINGAPORE | CMB/KND/1103 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 8 | 2573514/ 12.01.11 | 3183469 | TALTLS 00770932 SINGAPORE | CMB/KND/1104 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 9 | 2243664/ 11.10.10 | 2240150 | CAR/KND/21- 01585-1 JAKARTA INDONESIA | CMB/KND/096 SRI LANKA | 2001139/ 30.09.10 | EVERGREEN / SEAWAYS | Colombo, Sri Lanka |

26.1.2 M/s APG Logistics Pvt. Ltd. had a contract with the freight forwarder M/s Lynx Shipping Lines Private Limited. They received instructions from M/s Lynx Shipping Lines Private Limited via e-mail from email id GopiLynx@gmail.com on November 29, 2010, 8.10pm and M/s APG Logistics Pvt. Ltd. forwarded the email from APG Logistics-Kblfi-Sheeja.S sheeja@apgLogistics.com at date November 30, 2010 5.19 pm wherein Ms. Sheeja of M/s APG Logistics Pvt. Ltd. also requested to tassgroup.com to "file manifest as per HBL". She stated in her statement that they were forwarding the instructions received from M/s Lynx Shipping Lines Pvt. Ltd. to the container line. Shri Gopi of M/s Lynx Shipping Lines Pvt. Ltd. had asked them for filing of IGM as per file House B/L and also stated that M/s Lynx were planning to load shipments from Singapore, Jakarta, Malaysia, Dubai and switching the B/L at Colombo and had asked to file manifest showing port of loading as Colombo. From the mail correspondence between M/s Lynx Shipping Lines Pvt. Ltd and M/s APG Logistics Pvt. Ltd. it is evident that both of them were aware of the fact that the Ports of Loading of the goods was other than Colombo and in the switched HBL the same was mentioned as 'Colombo'. In spite of bringing the false declaration in the House Bills of Lading to the notice of Customs authorities, Ms. Sheeja of M/s APG Logistics Pvt. Ltd. has instructed the Shipping lines to file manifest with House B/L and Master B/L. From the statement of Ms. Sheeja of M/s APG Logistics Pvt. Ltd., it is evident that she was fully aware that the switched House Bills of Ladings have false declaration of Ports of Loading. The above omission and commission on the part of M/s Sheeja has resulted in the wrong declaration of Port of Loading in IGMs and has also facilitated the mis-declaration of Country of Origin in the respective Bills of Entry. This has rendered the goods covered in the Bills of Entry mentioned in the table 12 of this Show cause notice liable for confiscation under Section 111(m) of the Customs Act, 1962 and has also rendered Ms. Sheeja and M/s APG Logistics Pvt. Ltd. liable for penalty under section

112(a) *ibid.* The act of knowingly using the documents containing false information has rendered Ms. Sheeja of M/s APG Logistics Pvt. Ltd. liable for penalty under section 114AA of the Customs Act, 1962.

26.2 Shri Umesh Bhatt, Director of M/s SCL Logistics (I) Pvt. Ltd.

26.2.1 Statement of Shri Umesh Bhatt of M/s SCL Logistics (India) Private Limited was recorded in the matter of import of Arecanut (Betelnuts) at Kandla covered in the HBL Nos. CMB/KND/040, CMB/KND/047, CMB/KND/063, CMB/KND/052, CMB/KND/079, CMB/KND/088, CMB/KI\ID/083 and CMB/KND/075, by M/s Elite Impex, Ahmedabad. M/s SCL Logistics (India) Private Limited handled eight consignments pertaining to M/s Elite Impex, Ahmedabad. The details of such consignments are given in the table below:

| Sr. No. | Bill of Entry No & Date | Assessable Value (Rs.) | Master B/L No. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed | Port of loading declared in IGM |
|---------|-------------------------|------------------------|---|--|----------------------|------------------------|---------------------------------|
| 1 | 310 / 13.08.10 | 2600988 | MAX/BLW/1112/ KAN/6/10 BELWAN INDONESIA | CMB/KND/040 SRI LANKA | 10298/ 28.07.10 | EVERGREEN / SEAWAYS | Colombo, Sri Lanka |
| 2 | 2539/ 14.09.10 | 2724918 | TLJBW 00738216 BELWAN INDONESIA | CMB/KND/047 SRI LANKA | 15559/ 14.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 3 | 2626/ 15.09.10 | 2724918 | TLJBW 00739759 BELWAN INDONESIA | CMB/KND/063 SRI LANKA | 15559/ 14.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 4 | 2627/ 15.09.10 | 2724918 | TLJBW 00738234 BELWAN INDONESIA | CMB/KND/052 SRI LANKA | 15559/ 14.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 5 | 2243469/ 11.10.10 | 2555159 | EGLV 084000012841 BELWAN INDONESIA | CMB/KND/079 SRI LANKA | 2001139/ 30.09.10 | EVERGREEN / SEAWAYS | Colombo, Sri Lanka |
| 6 | 2243486/ 11.10.10 | 2555159 | TLJBW 00747630 JAKARTA INDONESIA | CMB/KND/088 SRI LANKA | 2001139/ 30.09.10 | TRANS ASIA | Colombo, Sri Lanka |
| 7 | 2276233/ 22.10.10 | 2555159 | TLJBW 00750752 JAKARTA INDONESIA | CMB/KND/075 SRI LANKA | 2001441/ 12.10.10 | TRANS ASIA | Colombo, Sri Lanka |
| 8 | 2274440/ 22.10.10 | 2325455 | ESLSINMUN 0028 SINGAPORE | SWT/ESLSINM UN 0028 SRI LANKA | 2001558/ 15.10.10 | OPAL SHIPPING | Colombo, Sri Lanka |

26.2.2 They got the business from Colombo based agent M/s Lynx Shipping Lines and they organized the booking from Indonesia and Malaysia to India on behalf of M/s Lynx Shipping Line, Colombo. The first BIL was issued by their (M/s SCL Logistics (India) Private Limited) Malaysia and Indonesia agent and 2nd House BILs issued by M/s Lynx Shipping after switching (switching means in the first house BIL the consignee is treated as shipper/exporter) in the second switch house B/L). M/s SCL Logistics sent the emails from email IMPDOC impdoc@SCLLogistics.com at date September 28, 2010 3.54pm, 1.05pm, September 21,2010, 5.10pm, August 20,2010 5.20 pm, August 12, 2010, 1.33pm, July 15, 2010, 3.39pm, and July 15, 2010 1.47pm, wherein their documentation staff had insisted to tassgroup.com to "file IGM as per HBL". They were fully aware of the fact that the ports of loading of the goods were other than Colombo, Sri Lanka, but they insisted upon the shipping line to file IGM as per House Bills of Lading in which the ports of loading were mis-

declared as Colombo. They were fully aware of the procedure that the port of loading in House B/L cannot be different from Port of Loading in Master B/L. It is evident that they were aware of the fraudulent activities as they never asked M/s Lynx Shipping Line, about changing in name of port of loading in the switched B/Ls. The above omission and commission on the part of M/s SCL Logistics (India) Private Limited has resulted in the wrong declaration of Port of Loading in IGMs and has also facilitated the mis-declaration of Country of Origin in the respective Bills of Entry. This has rendered the goods covered in the Bills of Entry mentioned in the table 13 of this Show cause notice liable for confiscation under Section 111(m) of the Customs Act, 1962 and has also rendered Shri Umesh Bhatt and M/s SCL Logistics (India) Private Limited liable for penalty under section 112(a) and 112(b) ibid. The act of knowingly using the documents containing false information has rendered Shri Umesh Bhatt of M/s SCL Logistics (India) Private Limited liable for penalty under section 114AA of the Customs Act, 1962.

26.3 Shri Sabu Varghese, General Manager of M/s Opal Shipping Agencies (I) Pvt. Ltd.

26.3.1 M/s Opal Shipping Agencies (I) Pvt. Ltd., has handled one consignment of Arecanut (betel nut) of M/s Elite Impex, Ahmedabad covered under the HBL No. SWT/ESLSINMUN0028 dated 01.10.2010. They are forwarder as well as Shipping line agent in respect of the goods covered in the above said Bill of Lading. They filed the IGM on the basis of HBL in which port of loading was mis-declared as Colombo. This has resulted in mis-declaration of Country of Origin in the corresponding Bill of Entry No. 2274440 dated 22.10.10.

26.4 Shri Gopala Krishnan, Director of M/s Lynx Shipping Lines Private Limited, Chennai:

26.4.1 Statement of Shri Gopala Krishnan, Director in M/s Lynx Shipping Lines Pvt. Ltd., Chennai, was recorded in relation to the import of Arecanut (Betelnuts) at Kandla covered under HBL Nos. CMB/KND/132, CMB/KND/129, CMB/KND/127, CMB/KND/141, CMB/KND/394, CMB/KND/1102, CMB/KND/1103, CMB/KND/096 and CMB/KND/1104, by M.s Elite Impex, Ahmedabad. M/s Lynx Shipping Lines Pvt. Ltd., have handled 09 consignments of M/s Elite Impex, Ahmedabad of import of Arecanut (Betel nut). The details of such imports are given the table below:

| Sr. No. | Bill of Entry No & Date | Assessable Value (Rs.) | Master B/L No. & Actual Port of Loading | House B/L No. & Port of Loading showing as SRI LANKA | IGM No. and date | IGM Filed | Port of loading declared in IGM |
|---------|-------------------------|------------------------|---|--|-----------------------|------------------------|--------------------------------------|
| 1 | 2381355/ 01.12.10 | 2721814 | 080000245753 JAKARTA INDONESIA | CMB/KND/132 SRI LANKA | 2003058 / 27.11.10 | EVERGREEN / SEAWAYS | IDJKT (i.e. Jakarta Indonesia) |
| 2 | 2381484/ 1.12.10 | 2184634 | TALTLS 00766340 SINGAPORE | CMB/KND/129 SRI LANKA | 2003058 / 27.11.10 | TRANS ASIA | Colombo, Sri Lanka |
| 3 | 2381492/ 01.12.10 | 2177441 | TALTLS 00768356 SINGAPORE | CMB/KND/127 SRI LANKA | 2003058 / 27.11.10 | TRANS ASIA | Colombo, Sri Lanka |

| | | | | | | | |
|---|----------------------|---------|---|---------------------------|----------------------|------------------------|--------------------------------------|
| 4 | 2573548/ 12.01.11 | 2546775 | 080000247268 JAKARTA INDONESIA | CMB/KND/141 SRI LANKA | 2003058/ 27.11.10 | EVERGREEN / SEAWAYS | IDJKT (i.e. Jakarta Indonesia) |
| 5 | 2573527/ 12.01.11 | 2546775 | 080000254078 JAKARTA INDONESIA | CMB/KND/394 SRI LANKA | 2003499/ 06.12.10 | EVERGREEN / SEAWAYS | IDJKT (i.e. Jakarta Indonesia) |
| 6 | 2573569/ 12.01.11 | 1037788 | TALTLS 00774856 SINGAPORE | CMB/KND/1102 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 7 | 2573577/ 12.01.11 | 2919997 | TALTLS 00770918 SINGAPORE | CMB/KND/1103 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 8 | 2573514/ 12.01.11 | 3183469 | TALTLS 00770932 SINGAPORE | CMB/KND/1104 SRI LANKA | 2003499/ 06.12.10 | TRANS ASIA | Colombo, Sri Lanka |
| 9 | 2243664/ 11.10.10 | 2240150 | CAR/KND/21- 01585-1 JAKARTA INDONESIA | CMB/KND/096 SRI LANKA | 2001139/ 30.09.10 | EVERGREEN / SEAWAYS | Colombo, Sri Lanka |

26.4.2 Shri Gopi forwarded documents of nine consignments of Arecanut (betel nut) of M/s Elite Impex, Ahmedabad on the instructions of Shri Mohamed Ali Ganthi of M/s Lynx Shipping Lines, Colombo to M/s APG Logistics Pvt. Ltd., Chennai who are having branch office at Kandla. Shri Gopi was fully aware of the fact that Bills of lading were switched at Colombo. He was also aware of the fact that in case of other consignments in which forwarding was done by some other forwarders, switching of BIL was done at Colombo. In respect of all the 9 consignments tabulated above, M/s Lynx Shipping Lines Private Limited got the Master BILs and House BILs from M/s Lynx Shipping Lines, Colombo, (lynxshipping@sltnet.lk) and forwarded the same to M/s APG Logistics Pvt. Ltd, Kandla / Mundra for filing of IGM on the basis House Bills of Lading (agreement between M/s Lynx Shipping Lines, Colombo and M/s Lynx Shipping Line Private Limited, Chennai) and the Delivery Order was issued by M/s APG Logistics at Kandla. Shri Gopala Krishnan, Director of M/s Lynx Shipping Lines Private Limited, has sent mails to M/s APG Logistics Pvt. Ltd. In one of the mails he stated "also pls note will plan to load shipments from Singapore, Jakarta, Malaysia, Dubai all the shipments will make switch B/L from Colombo if you possible to file manifest as port of loading Colombo". He stated that he had issued those instructions on the basis of instructions of Shri Mohamed Ali Ganthi, Prop. of M/s Lynx Shipping Line, Colombo that manifest should be filed with HBL which was switched at Colombo i.e. the Port of Loading shown as Colombo, Sri Lanka. Shri Gopala Krishnan was very well aware of the fact that the change of Port of Loading in House B/L is not prescribed in the procedure for switching of B/Ls. He was also aware that it was illegal to Mis-declare port and country of loading. He not only attended the nine consignments tabulated above but also facilitated other consignments by receiving and paying various charges to other forwarder. From the above it is evident that Shri Gopala Krishnan was fully aware of the fact of switching of Bills of lading at Colombo. He was also aware of the fact while switching the Bills of lading the port of loading is also changed to Colombo in the switched Bills of lading which is not allowed in the procedure. He issued the directions to M/s APG Logistics Pvt. Ltd. to get the IBM filed on the basis of House Bills of Lading in which port of loading was mis-declared as Colombo. The above omission and commission on the part of Shri Gopala Krishnan and M/s Lynx Shipping Lines Private Limited,

Chennai has resulted in the false declaration of Port of Loading in IGMs and which in turn also facilitated the importer in mis-declaration of Country of Origin in the respective Bills of Entry. This has rendered the goods covered in the Bills of Entry mentioned in the table 14 of this Show cause notice liable for confiscation under Section 111(m) of the Customs Act, 1962 and has also rendered Shri Gopala Krishnan and M/s Lynx Shipping Lines Private Limited, Chennai liable for penalty under section 112(a). The act of knowingly using the documents containing false information has rendered Shri Gopala Krishnan of M/s Lynx Shipping Lines Private Limited, Chennai liable for penalty under section 114AA of the Customs Act, 1962.

26.5 *Shri Mohammed Ali Ganthi, Sri Lankan national and owner of M/s. Lynx Shipping, Colombo*

26.5.1 Shri Mohammed Ali Ganthi had inter-alia stated in his statements narrated above that he issued Switch BIL for the containers received from Indonesia / Singapore into Sri Lank and further trans-shipped to Kandla Port showing the port of loading as Colombo, Sri Lanka and port of destination as Kandla Port for the betel nuts imported into India in the name of M/s. Elite Impex. Thus, Shri Mohammed Ali Ganthi was well aware that change of Port of loading in the Switch B/L is not prescribed and was illegal to mis-declare port and country of loading. The above omission and commission on the part of Shri Mohammed Ali Ganthi of M/s. Lynx Shipping has resulted in the false declaration of Port of Loading and which in turn facilitated the importer in mis-declaration of Country of origin in the Bills of Entry with an willful intent to falsely claim the benefits of exemption provided under Notification No. 26/2000-Cus-Cus. dated 1.3.2000. This has rendered the betel nuts imported by M/s. Elite Impex in the respective Bills of entry mentioned supra liable for confiscation under Section 111(m) and (o) of the Customs Act, 1962. Thus, Shri Mohammed Ali Ganthi, though knowing fully well that the betel nuts were not of origin of Sri Lanka, had abetted and aided Shri Ashok Panchariya and Shri Sarfarazkhan Pathan in procuring betel nuts in the name of M/s Elite Impex by supplying documents showing that the betel nuts were of origin of Sri Lanka based on which M/s.Elite Impex wrongly claimed the benefits of exemption of Notification No. 26/2000-Cus-Cus. dated 1.3.2000 and thereby rendering himself liable for penalty under Section 112 (a) of Customs Act, 1962.

26.6 *Shri Ashok Panchariya of Ahmedabad*

26.6.1 Shri Ashok Panchariya, though not on records of M/s. Elite Impex have actively and knowingly involved himself in the import of betel nuts by M/s. Elite Impex. Though Shri Ashok Panchariya had denied his role in the import of betel nuts in the name of M/s. Elite Impex but the evidences on record clearly prove that he, in collusion with Shri Sarfaraz khan Pathan and the overseas suppliers, as well as, in the capacity of Managing Director of

M/s. Vintage FZE, Dubai, who have made the differential value of the betel nuts from Dubai to the overseas suppliers, have evaded Customs duty by resorting to deliberate mis-declaration and willful suppression of the fact of import of betel nuts from Indonesia / Singapore while arranging for the documents showing the country of origin of the betel nuts imported by M/s. Elite Impex as that of Sri Lanka with a view to pay lower customs duty. The entire scheme of evading customs duty right from procurement of betel nuts from the overseas suppliers, routing of the betel nuts of Indonesian / Singapore origin through M/s. Exim Management at Sri Lanka, as well as payment of the differential amount to the respective overseas sellers through his firm at Dubai, were all orchestrated and organized by Shri Ashok Panchariya. He had consciously and deliberately dealt with the goods thereof which he knew and had reasons to believe were liable for confiscation under the provisions of Section 111(m), and (o) of the Customs Act, 1962. Shri Ashok Panchariya by his above acts of omission and commission rendered himself liable for penal action under the provisions of Section 112 (a) of Customs Act, 1962.

27. Based upon the above discussed further investigation another Show cause notice F. No. S/10-44/Adjn/2013-14 dated 24.07.2013, was issued by the then Commissioner of Customs, Custom House, Kandla, to following companies / persons involved in the instant case, asking them as to why penalty under section 112 (a) of Customs Act, 1962, should not be imposed upon them:

1. M/s APG Logistics Pvt. Ltd.
2. M/s SCL Logistics (India) Pvt. Ltd.
3. M/s Lynx Shipping Line Pvt. Ltd., Chennai.
4. Ms. Sheeja of M/s APG Logistics Pvt. Ltd.
5. Shri Umesh Bhatt of M/s SCL Logistics (India) Pvt. Ltd.
6. Shri Gopala Krishnan, Director – M/s Lynx Shipping Lines Pvt. Ltd., Chennai.
7. Shri Mohameed Ali Ganthi of M/s Lynx Shipping, Colombo.
8. Shri Ashok Panchariya of Ahmedabad.

28. DEFENCE REPLY

28.1 The reply to the Show cause notice F. No. S/10-11/Adj/2011-12 dated 02.06.2011, filed by the noticees is appended one by one.

28.2 *M/s Elite Impex (Not. No. 1)-*

28.2.1 The noticee filed a reply to the Show Cause Notice dated 18.07.2012, wherein it is mentioned that their advocate, Shri Nirav Shah, has filed a preliminary reply and vide a letter dated 25.05.2012, they had requested for copies of RUDs, which remains to be supplied. They further stated without studying the relied upon documents, no cogent and relevant submission can be made; that copies of relied upon documents are absolutely necessary so that

their counsel can make appropriate submission in the matter; that non-supply of relied upon documents is a violable of the principles of natural justice; that in the absence of such documents, it cannot be said they have been given adequate opportunity to defend them vis-a-vis the allegations made in the subject notice; that copies of relied upon documents may be supplied to them and they may be given sufficient time to prepare their defence based on such documents, they then narrated the charges levied against them in the Show cause notice.

28.2.2 The noticee further stated that allegation in the Show Cause Notice do not anyway establish their complicity in the manner, nor can be established that they had mis-declared the goods in question or made any mis-classification in various Bills of Entry, which is under CH 08029090, which is the correct classification for Areca Nuts i.e. Betel Nuts and description made in the respective Bills of Entry is 'SPLIT ARECA NUT (INDUSTRIAL GRAD BETEL NUTS (NOT FOR HUMAN CONSUMPTION)); that the Show cause notice does not disclose any evidence or report of a laboratory that the goods do correspond to such description, thus such an allegation is factually not correct and does not stand the scrutiny of the documents.

28.2.3 It was further stated that they have mis-declared the country of origin 'Sri Lanka' whereas the goods are said to of Indonesian / Malaysian / Singapore origin; that this allegation is out of investigations carried by DRI, Gandhidham; that they had entered into contract with the Sri Lankan supplier M/s EXIM Management bearing No. ST/EX/EI/040/2020 dated 29.06.2010 for supply of 1500 MTs of Split Areca Nut (Betel Nut) Industrial Grade (Not for human consumption); that the contract very clearly stipulates that goods would be of Sri Lankan origin and the port of shipment would be Sri Lanka and port of delivery would be Kandla, Mundra; that the contract was finalized after successful negotiations during the visits of their Manager Shri Sarfaraz S Pathan, in March and June, 2010; that the supplier supplied goods to them in accordance with the terms of this contract and also furnished Certificate of Origin from Sri Lankan Chamber of Commerce; that the contract and certificate of origin are on the records of the department, which may be verified before the case is adjudicated; that on investigation DRI found that country of origin as reflected in the Master Bill of Lading as Indonesian / Malaysian / Singapore and the same was changed to Sri Lanka in the HBL; that the DRI said to have these two sets of Bills of Lading from the premises of shipping lines; that the representatives of shipping lines stated that they normally filed IGM on the basis of Master Bill of Lading HBL when the consignee requests to file IGM on the basis of HBL in writing. They then narrated the facts of the case in regard to filing IGM and from the same it is established that they have not made any fraudulent changes in the Bill of Lading.

28.2.4 In the same reply it was submitted that in good faith and based on contract with M/s Exim Management and on the basis of the documents given to their CHA, they filed the Bills of Entry, claiming exemption under Notification No. 26/2000-Cus and it appears that conspiracy has been done between the Sri Lankan supplier and the shipping line and also reiterated earlier submission; that they have not contravened any of the provisions of the act and mis-declaration was due to fraud by foreign supplier, therefore, they are not liable to any penalty and goods are not liable to confiscation.

28.2.5 The noticee further submitted that they entered into contract with the Sri Lankan supplier for supply of 1500 MTs Betel Nuts and due to financial difficulties asked for 180 day's credit limit, but as the same was not acceptable to the supplier they furnished a corporate guarantee from City Gate Trade FJD, Dubai; that the supplier supplied with all the required documents and under bonafide belief they filed the Bills of Entry, which were assessed and goods were allowed to be cleared at the time of earlier imports; that as per condition I of the Notification No. 26/2000-Cus, the importers have to prove that goods are of Sri Lankan origin and they produced a certificate of origin and based on the same they have claimed the exemption; that the assessing authority does not have Power to change the certificate of origin; that the certificate of origin can be challenged only after initiating procedure as prescribed under rule 13 of Determination of Origin Rules, 2000 and as the same has not been complied, the proposal to change the country of origin be dropped; that no demand of customs duty can be raised pending final assessment of Bills of Entry; that the proposal to finalise the Bills of Entry and to recover duty in the Show Cause Notice is not sustainable and such imposition of interest does not arise.

28.2.6 In regard to confiscation they submitted that under Section 111 (o) of Customs Act, 1962, if any goods are exempted (subject to any condition) and there is any violation then the goods are liable for confiscation, but in this case the same is not applicable and thus the imported goods are not liable to seizure; that there is no intent to evade duty; that as the goods are not available for confiscation, no fine can be imposed.

28.2.7 In regard to penalty they argued that as the provisions of Section 111(o) of Customs Act, 1962 cannot be invoked, no penalty under Section 112(a) of Customs Act, 1962 can be imposed.

28.3 Shri Sarfaraj Pathan, Manager – M/s *Elite Impex (Not. No. 2)*-

28.3.1 The noticee through his advocate filed his reply to the Show cause notice vide a written submission dated 08.09.2011, which is filed as a common reply alongwith noticee no. 1 i.e. M/s Elite Impex and the contents of the reply

is common as the reply filed by noticee no. 1 vide their written submission to the Show Cause Notice dated 18.07.2012.

28.3.2 It was observed that the same has been issued for mis-declaration of country of origin in the goods imported by their clients. Their clients had imported Betel Nut falling under CTH 08029090 of the Customs Tariff Act and had availed benefit of Notification No. 26/2000-Cus dated 1/3/2000 and had cleared the goods at Nil rate of duty. It is the case of the department that the aforesaid goods declared to be of Sri Lankan origin is not of Sri Lankan origin. Hence, the goods are not eligible for exemption under ISFTA notification. The aforesaid view of the department is based on master bill of lading received from the premises of custom house agent. Accordingly, the department has proposed to deny the exemption availed by them on imported Betel Nuts.

28.3.3 As stated that their clients were regularly importing various agro products as permissible under the law. In their normal course of business, the Proprietor came in touch with a local purchaser of Betel Nuts. The said person owned a firm called Raj International who was traders. They wish to procure a substantially large amount of Betel Nuts i.e.1500 M. Tons approximately. As the contracted amount was very huge, the Proprietor himself was not in a position to handle the entire consignment. He, therefore, contacted his friend, Shri Sarfaraz Khan Pathan, co-noticee, for executing this order, obtaining materials, etc. Sarfaraz Khan Pathan actually went to Sri Lanka on two occasions in March 2010 and June 2010, for negotiating the purchase of Betel Nuts. In course of the negotiations with one Exim Management, he also finalised the financial terms on reconfirmation with Mr. Nasser, the Proprietor. Various terms of supply and payment were negotiated with the supplier. They wanted the supply to be made at 180 days' credit limit. The supplier was not ready to give such kind of credit. At that stage during the negotiation, it was agreed in between the parties to give a corporate guarantee to the supplier of the goods. As per the specific requirement of supplier, the entire transaction was executed by obtaining a corporate guarantee from a reputed Dubai firm in the name of City Gate Trade FJD. It is in light of the aforesaid that a sales contract was executed on 29th June.

28.3.4 As the aforesaid would demonstrate beyond a doubt that the contract was executed for import of Betel Nuts of 1500 M.T. approximately of Sri Lankan origin; that the aforesaid contracted quantity was supplied on different dates by the Sri Lankan supplier. On each of these dates, various bills of entries were filed for clearance of the goods. The goods were claimed to be of Sri Lankan origin as per the contract. As a matter of fact for each of these consignments, the Sri Lankan party supplied certificate of origin called ISFTA certificate with regard to the consignments for claiming exemption under the SAARC agreement. All other necessary documents were supplied. All the bills

of entries were at the relevant point of time thus assessed to concessional rate of duty under Notification No. 26/2000-Cus dated 1/3/2000. Even at this stage, granting concessional rate of duty to Betel Nuts.

28.3.5 Accordingly, various such consignments were cleared. Accordingly in the normal course of business, received a consignment of 32 containers of Betel Nuts, totally weighing 535 MTs approximately. The same was also supplied under the very same contract. As per requirements, accordingly filed three bills of entry for 12 containers. To the surprise of the Noticee, on the aforesaid bills of entries being filed, instead of clearing the same, they received letter dated 13/10/2010 from the department. It appears that on or around the time the aforesaid bills of entries were filed, an investigation was conducted by the DRI with regard to other imports. The case of the present notice pertains to very small quantity as compared to the other investigation. A case was sought to be made out by the department that the imports being made are not of Sri Lankan origin but are of Indonesian origin. This was communicated to the present noticee. They informed the department that they are not aware of all these facts and have no control over Sri Lankan supplier. On their part, they have made it quite clear that the goods are bound to be of Sri Lankan origin. The supplier has also sent them certificate of origin from the Chambers of Commerce along with all other necessary documents. It is made sure that they only placed orders for goods of Sri Lankan origin and the price of Sri Lankan goods and other goods are the same. No benefit as the rates of Betel Nuts are based upon international trading. Now instead of clearing these consignments of 12 containers, the Commissioner of Customs issued letter dated 15/12/2010 to them demanding duty for the past clearance. A letter dated 16/12/2010 was submitted making a clear breast of all facts. They prayed that quick clearance of goods may be granted. They again addressed letter dated 20/12/2010 praying for de-stuffing of the containers as they were undergoing unnecessarily container charges of demurrage. On the said same letter itself de-stuffing order was passed by the Additional Director of DRI and de-stuffing was allowed. Vide a letter received on 23/12/2010 from the department saying that as an investigation is going on, the clearance cannot be allowed. A letter was written dated 27/12/2010 stating that they are relying upon their foreign supplier. They stated that they have not done anything wrong. They addressed another letter dated 27/12/2010. In the said letter, they asked for clarification from the department as to how they could file the bill of entries with regard to the remaining 20 containers so that they may not be at the receiving end. There was no clarification forthcoming from the department. They were not told as to how the remaining 20 containers must be cleared. They again addressed letter dated 3/1/2011 praying for provisional assessment for the old remaining 12 containers and again asking advice as to how they should clear the remaining 20 containers. This letter was faxed to the department. To their surprise, on 4/1/2011, the department seized their 12 containers. The department under the same Panchnama also drew the samples. The goods in question weighing

187.390 M. Tons alleged to be valued at RS.7383890/- were seized also on the ground that they have wrongly claimed exemption on the ground that the country of origin was Sri Lanka.

28.3.6 Therefore, the fact that the department seized the goods and in further light of the fact that the Noticee' purchaser was pressing for delivery of the goods, and in light of the fact that there was no clarification forthcoming from the department, they had no option but to clear the remaining goods of 20 containers at any cost. However, in order to avoid any issue, they took a business decision to pay full duty and to adjudicate the matter later on. Thus without prejudice to their rights, they wished to file fresh bill of entries for 20 containers without claiming any exempt whatsoever. They addressed their letter dated 10/2/2011 to the Assistant Commissioner referring to their letter dated 5/1/2011 explaining under which the circumstances they were filing fresh bills of entries. They again wrote another letter of the same date, referring to Panchnama dated 4/1/2011 asking for provisional release of the goods that were seized. To put the issue beyond any doubt, they issued written instructions to the CHA also vide their letter dated 10/1/2011, giving him specific instructions, as clarified above.

28.3.7 In light of the aforesaid, they filed five further bills of entries for the remaining 20 containers. The bill of entry goes into the computer section of the department. If there are any details which are not stated, the bill of entry will not be accepted. The importer was now faced with a catch-22 situation as to how to clear the goods. They had to write the country of origin on the bill of entry. The country of origin has to be supplied by the supplier. The supplier had issued certificates of origin showing Sri Lankan origin. The assessee had checked with the department that in such circumstances, they are prepared to pay full duty, how the goods be cleared by telling the department that he is not claiming any exemption and as per the documents supplied, the goods are of Sri Lankan origin. Accordingly, the aforesaid bills of entries were filed.

28.3.8 Now despite of the fact that the notice took all care to inform all aspects to the department and did not even claim any exemption, even these consignments were seized under Panchnama dated 1/2/2011 on the wrong premises that the importer had sought to avail benefit of ISFTA notification. It is submitted that this seizure was ex-facie erroneous as there is no concessional rate of duty claimed and the alleged belief of claiming ISFTA notification exemption as made out in the Panchnama is ex-facie wrong and under no circumstances justified.

28.3.9 Despite the fact that this seizure was ex-facie wrong to the knowledge of the Noticee, they needed the goods immediately. They, therefore, addressed their letter dated 2/2/2011, saying that the seizure is ex-facie wrong but they need the goods immediately. They, therefore, requested that

provisional release may be done. As even these goods were not being released provisionally, the Petitioner addressed letter dated 14/2/11 immediately asking for clearance of the goods and provisional release. The department still did not order clearance of the goods. The assessee, therefore, addressed letter dated 21/2/11 again making the same request.

28.3.10 The order of provisional release not only requires them to pay full duty but also sought bank guarantee of Rs.3.00 crores. The total value of the imported goods under both the said bills of entries under seizure is Rs.1.7 crores approximately. Normally PD Bond that is required to be given is 25% of the value of the goods. This is the set pattern being followed continuously from years. Despite this, they were required to give bank guarantee of Rs.3.00 crores and also pay full duty and this is again being done despite the fact that the seizure of 20 containers valued at more than Rs.1 crores is on the face of it illegal. It is pertinent to note that as per the latest RBI circulars, in tax matters, bank guarantees are not to be given by banks unless 100% deposit of money is made. In other words, they were required to pay Rs.7 crores in all to clear the aforesaid consignments. It is in such circumstances leading to such inequitable results that they had filed the petition before the Hon'ble High Court of Gujarat. The Hon'ble Court allowed clearance of 20 containers seized vide panchnama dated 1/2/2011, on payment of full duty and other 12 containers seized vide panchnama dated 4.1.2011 on payment of full duty alongwith giving bond for full amount of value of goods and 25% as bank guarantee.

28.3.11 At the very outset, they submit that it is settled position of law that action of imposition of penalty and confiscation can only be taken if there is intent to evade duty. This is settled by various decisions, including the decision of the Hon'ble Supreme Court in the case of Hindustan Steel. The facts of this case, as mentioned in this reply demonstrate beyond any doubt that it was always the intention of the present importer to import goods of Sri Lankan origin. The contract was for import of goods of Sri Lankan origin. The foreign supplier, who has absolutely no connection with them, has supplied certificate of origin of Sri Lankan origin issued by the Chamber of Commerce there. The supplier has also supplied his own packing list. In such circumstances, the present noticee have no reason whatsoever goods in question are of Sri Lankan origin. In such circumstances, it can under no circumstances be said that they had any intent to evade duty or make any false claim.

28.3.12 They have no benefit whether the goods are of Sri Lankan or Indonesian or from any other place. The price of Betel Nut is internationally controlled and there is no difference in the price of such Betel nuts whether purchased from Sri Lanka or elsewhere. They thus do not stand to gain in any view of the matter whether the good are coming from Sri Lanka or elsewhere.

However, they have tried their best to accordingly make sure that the goods which come to them are of Sri Lankan origin to claim SAARC benefit. In such circumstances, it can hardly be construed that they had any illicit intent to evade duty.

28.3.13 They had entered into an agreement for supply of Sri Lankan origin goods only. The supplier had given all required documents as well as certificate showing country of origin. It was specifically mentioned by Sri Lankan authorities that the Betel Nut supplied are of Sri Lankan origin. Hence there was nothing in the documents to disbelieve the country of origin certificate and accordingly they have bonafide filed the bills of entries showing country of origin as Sri Lanka and claiming exemption under the notification. Even at the time of assessment, the customs authorities have seen the certificate and they have also not disputed the same. The goods were finally assessed and cleared by the customs authorities at the time of earlier imports. In the circumstances, it is submitted that not only my client, but the customs authorities also approved the country of origin certificate. Hence, there was nothing to disbelieve the country of origin certificates. They had ordered for Betel Nut of Sri Lankan origin and had taken suffice care that the supplier should send the goods of Sri Lankan origin only. The supplier had certified that the goods are of Sri Lankan origin. The Sri Lankan authority had also certified the goods to be of Sri Lankan origin. The customs authorities at the time of import had verified the said certificates and had found the same to be correct. In the circumstances, they have taken utmost care on their part and had absolutely no reason to doubt the contents of these certificates and accordingly genuinely claimed the benefit of notification.

28.3.14 Looking to the provisions of notification, it is submitted that as per condition 1 of the Notification No. 26/2000-Cus the importers have to prove to the satisfaction of customs authorities that goods in respect of which benefit of this notification is claimed are of the origin of Sri Lanka. For the purpose, the importer has to produce a certificate of origin at the time of imports for the satisfaction of customs authorities. In the present case, they has always produced certificate of origin at the time of imports. Further, it is nowhere disputed that the certificate of origin is not genuine or obtained fraudulently. Even there is no proposal in the Show Cause Notice to consider the certificate as false. Hence, it is proved beyond doubt that certificates were issued by the Sri Lankan authority mentioning country of origin as Sri Lanka.

28.3.15 It is also submitted that the noticee is importing only Betel Nuts from Sri Lanka under the present contract and have availed the certificates from the supplier which were produced before the Customs authorities. However, the customs authorities at the Port received such certificates from various importers day in and out and they are well aware of the authorities who

can issue such certificates. They receive such certificate on daily basis from various importers. On this factual basis also, it is proved beyond doubt that the certificates were genuine and were accepted by the customs authorities at the time of imports.

28.3.16 Now, as per notification No.19/2000, the determination of origin is to be done by appropriate authority designated by the Govt. of exporting country. If such authority certifies that the goods are of Sri Lankan origin, then, the importer has fulfilled the condition no.1 prescribed under Notification No. 26/2000-Cus. Hence it is submitted that the importer has proved beyond doubt that the goods are of Sri Lankan origin and complied with the condition of satisfying the customs authorities. In such circumstances, benefit of notification shall be granted to the importer.

28.3.17 Even the authority issuing certificates have verified the goods and then have granted certificates. These certificates are not disputed by the department on any point of time. Even in the Show Cause Notice, no proposal is made to disbelieve the certificate. It is further submitted that as per Customs Tariff (Determination of origin of goods under free trade agreement between D.S.R. of Sri Lanka and the Republic of India) Rules 2000, the determination is to be done by appropriate authority of exporting country and the importer has to make a claim that the products are produce of the country from which they are imported. They have to further make a claim that products are eligible for preferential treatment and have to produce evidence specified in these rules. The noticee has made such claim as prescribed under the rules and has also produced certificate of origin which is the only evidence specified in the aforesaid rules. Hence, it is submitted that the importer has fulfilled the terms and conditions of the notification and hence it is submitted that the benefit of notification can not be denied. Again, with reference to rule 5, it is submitted that the Betel nuts are covered by rule 5 (a) of the aforesaid rules. It is also mentioned in the certificate of origin as produce of Sri Lanka. Further the consignment is directly received from the port of Sri Lanka. Hence, as per rule 9 also the consignments are received directly from the exporting country to the importing country. Hence, even the conditions of rule 9 are also satisfied, as far as the present imports are concerned.

28.3.18 Rule 11 of the aforesaid rules prescribe that products eligible for certificate of origin shall support preferential treatment issued by an authority designated by the Govt. of exporting country and which is also notified to other countries in accordance with certification procedure. Now as per rule 13 (2) the contracting parties will take measures necessary to take legal or administrative action to prevent circumvention of this agreement through false declaration concerning country of origin or falsification of origin of documents. Sub-rule 3 further prescribes that in the instances of circumvention or alleged

circumvention of the agreement, both parties will cooperate fully for facilitation of joint plant visits and contacts by representatives of both parties and upon request and on case by case basis. Sub rule (4) further prescribes if either party believes that the rules of origin are circumvented it may request consultation to address the matter or matters concerned with a view to seeking mutually satisfactory solution and each party will hold such consultations promptly. Now in the present case, no such action is proposed or taken by any of the parties. Hence, it can be presumed that the certificates of origin are correctly issued by the appropriate authority of the exporting country. Hence also, they have correctly claimed the benefit of Notification No. 26/2000-Cus. It is also submitted that the goods have been received directly from Sri Lankan ports under proper packing and after following proper procedure of export. They have taken utmost care at the time of making contract with the supplier as well as at the time of receipt of goods that the goods imported should have been of Sri Lankan origin. In the circumstances, it was the bonafide belief on the part of them that the goods are of Sri Lankan origin. Now if in peculiar circumstances of the present case, if the foreign supplier has done some wrong or has furnished wrong evidences, they should not be penalized for the act of other parties on which he has no control. As far as this is concerned, he had taken utmost care at the time of entering into a contract with the supplier. Hence on the ground of bonafide belief also, the demand for earlier consignments of 702.06 MTs as mentioned in table 3 is barred by limitation.

28.3.19 It is also submitted that the consignments, as mentioned in Table 3 of the SHOW CAUSE NOTICE, were finally assessed at the time of imports. No appeals against the aforesaid assessment orders have been preferred before Commissioner of Customs (Appeal). As held by the Hon'ble Supreme Court in the case of M/s. Priya Blue Industries if the assessment orders are not challenged by way of preferring appeal, then, those orders become final and no notice can be issued against the aforesaid orders. In the present case also, the goods were finally assessed at the time of imports and no appeal is preferred against the assessment orders. Hence also, notice proposing demand against the aforesaid imports is clearly barred by limitation and even not sustainable in law. It is also submitted that even otherwise, the Betel nuts attract 30% rate of duty under Notification No.21/2002 dated 1/3/2002 imported from any country. They submit that even in case the benefit of ISFTA notification is not admissible to them, the goods should be assessed to duty @ 30% as provided under notification no.21/2002 dated 1/3/2002. It is further submitted that the assessing authority does not have Power to change the certificate of origin. The certificate of origin can be challenged only after initiating procedure as prescribed under rule 13 of the Determination of Origin Rules, 2000. As this procedure prescribed under the rules have not been complied with, the proposal to change the country of origin may please be dropped. It is also submitted that proposal is made in the Show Cause Notice to confiscate goods

imported and seized on 1/2/2011. In this regard, it is submitted that the notice had sought advice from the customs department prior to filing of bill of entry regarding procedure to clear the goods. The noticee had not even claimed the benefit of ISFTA notification. The noticee was compelled to enter country of origin due to filling procedure in computer at the time of imports. However, he has not availed any benefit of exemption notification. In the circumstances, the proposal to confiscate their goods imported as mentioned in Table 2 of the Show Cause Notice is clearly required to be dropped in the interest of justice.

28.3.20 Further, proposal is also made to confiscate goods as mentioned in Table 3 of the Show Cause Notice and as the same are cleared and physically not available for confiscation, the proposal is made to impose fine in lieu of confiscation. In this regard, it is submitted that it is well settled law that when goods are cleared and are not available for confiscation, no fine in lieu of confiscation can be imposed. Further, it is submitted that it was a bonafide belief on the part of the notice in claiming of benefit. Even the customs authority at time of imports had not raised any objection against claiming of benefit. Hence also, goods cannot be confiscated and no fine can be imposed in lieu of confiscation. Further, it is submitted that they were totally unaware of the fact that the goods are not of Sri Lankan origin and have acted bonafidely. They have taken utmost care which a normal businessman would take while entering into agreement with foreign supplier. In the circumstances, even if it is proved that the foreign supplier had done some wrong, or had supplied wrong evidence, they should not be penalized under various sections of the Customs Act.

28.4 *Shri Raju Chand, Power of Attorney – M/s P.C. India Shipping Agency (Not. No. 3) and M/s P.C. India Shipping Agency (Not. No. 4)-*

28.4.1 Both the above noticees vide separate written submission both dated 05.07.2012, filed similar replies individually and to save time as well as energy, the gist of replies filed by them is discussed at the forthcoming paras.

28.4.2 They submitted that on the basis of investigation in the present case they both were made noticees, alleging that they were aware of mis-declaration and had thus connived & abetted the evasion rendering the goods liable for confiscation. The instant Show cause notice proposed to- (i) impose penalty under Section 112(a) and 114 AA of the Customs Act, 1962; and (ii) action to be taken under Regulation 20 of CHALR, 2004; that they were prohibited under Regulation 21 of CHALR, 2004 from transacting business as CHA at CH, Kandla & Mundra vide an order issued from F. No. S/7-61/CHA/2000 dated 12.07.2011; that the copy of the above order was forwarded to Customs, Nasik being the parent license issuing authority for action under CHALR, 2004. They submitted the brief procedure of filing IGM,

issue of B/L, Noting of Bill of Entry, issuance of DO etc. They further discussed the brief facts of the instant case. They then gave an account of their representation with this office and DRI.

28.4.3 The noticees submitted that they had requested the Assistant Commissioner, Group I, CH, Kandla for provisional assessment of 18 Bills of Entry, subjected in the instant case of import of Betel Nuts, pending verification of certificate of country of origin vide a letter dated 13.08.2010, by doing so they had their obligation under Regulation 13(d) of CHALR, 2004; that as they had raised doubt about the certificate of country of origin, the imported Betel Nuts were not cleared provisionally after execution of bond and BG; that the request letter of verification proves that there was no intention to clear the goods in violation of statutory provision and claim exemption; that as the goods are provisionally cleared, no penal action can be initiated and relied upon the following judgment:

Mangalore Refinery V/s CC [2002 (145) ELT 689]

Godrej Foods Ltd. V/s CCE [2005 (115) ELT 403]

Kavin Infotech V/s CC [2007 (216) ELT 435]

28.4.4 The noticees further submitted that IGM under Section 30 of Customs Act, 1962 is filed by the shipping line, in which the details of B/L are reflecting; that they have no access or reach or role in filing the details for the purpose of IGM, which lies with shipping line; that the load port of the subject goods as Sri Lanka have been filed by various shipping lines who dealt with the goods; that the shipping line were the custodian of the documents such as B/L and IGM. They then gave comparison between Master Bill of Lading and HBL, in the instant case, wherein the Forwarder who is shown as Consignee in the master Bill of Lading request Shipping Line to file IGM on the basis of HBL. The HBL contains entire details including ultimate Importer or Consignee as well as the name of the Vessel which carries the goods Colombo to Kandla. The Shipping Line also insists to Forwarder to surrender the master Bill of Lading to them. Thus the Shipping Line prepared and filed IGM on the basis of HBL. The same has been confirmed by the officials of Shipping Line whose statements have been recorded under Section 108 of CA 1962; that the shipping line failed to direct forwarder to make correction in a HBL; that they had no knowledge that load port is other than Colombo and Shri Raju Chand in his statement dated 23.12.2010, had clearly stated that he had no knowledge of any mis-declared, rather he had explained the recovery of the MBL from his office; that the persons whose statements recorded by the DRI, have neither given any statements against the CHA nor they have implicated CHA by stating that the CHA was aware of the load port or had knowledge about the load port; that even the Importer and his manager Shri Sarfaraj S Pathan, Sr Manager of Elite Impex, never stated that CHA was aware of load port or CHA connived with the importer; that admission by the Shipping Line, who filed the IGM and

Load Port mentioned wrongly by them and further they never alleged that they had knowledge or they conspired, which displays that they had no role in declaring the Load Port as Sri Lanka; that they had filed the BE on the basis of documents provided by the Importer and they merely discharged the statutory obligations entrusted upon us by the CHALR, 2004 and filed the Bill of Entry on the basis of above documents, which was accepted by the EDI System of the Customs Department.

28.4.5 In regard to the recovery of MBL from their office premises, wherein the load port was other than Colombo they stated that they filed the BE on the basis of documents HBL, Invoice, Packing List, Certificate of Origin, Phytosanitary Certificate etc. provided by the Importer; that the Forwarder prepared HBL which contained all details including ultimate Importer in whose name BE is filed; that the original MBL was surrendered by the Forwarder to Shipping Line and the HBL was issued by the Forwarder. IGM are filed on the basis of HBL. The same was given by the Importer and the same was filed with the Customs with Bills of Entry to clear the goods; that the MBL recovered from their office was obtained by their staff at much later date than filing of B/E. It was not available with them at the time of filing B/E. further, there were discrepancy in MBL & HBL, hence their lower staff could not connect the consignments and did not find it relevant to bring it to the knowledge of senior employees; that MBL is not required for clearance when IGM is filed on the basis of HBL and as CHA they are not required to preserve the MBL .

28.4.6 M/s PC India Shipping Agency further stated that they started CHA agency in the year of 2001 and there was never any incidence which attracted penal or disciplinary action against them. They have their branches at different ports of India; that they had been awarded "CERTIFICATE OF EXCELLENCE" by Container Corporation of India Ltd in the year 2009-10 for having achieved largest volumes as CHA -Imports in terms of TEUs at CFS Gandhidham. In regard to penalty they argued that they as CHA acted on basis of the documents given to them and there is nothing to show that they were aware of Importer wrongly claiming exemption with intention to evade the Customs Duties. Therefore, in absence of any evidence to the contrary, proving their involvement or knowledge about mis-declaration, penalty not imposable on CHA and quoted the following judgments-

HS Cox & Co. Pvt. Ltd. V/s CC (E), Mumbai [2009 (246) ELT 621 (Tri.-Mumbai)]

Success Engineering V/s CC, Kandla [2007 (215) ELT 220 (Tri.-Ahmd)]

Revannath Gabaji Gawade V/s CC (EP), Mumbai [2007 (211) ELT 432 (Tri.-Mumbai)]

Shree Shyam Overseas V/s VV, Lucknow [2005 (179) ELT 102 (Tri.-Del.)]

28.5 *M/s Trans Asian Shipping Services (P) Ltd. (Not. No. 5)-*

28.5.1 The noticee filed their reply to the Show Cause Notice vide a letter dated 25.06.2011, wherein they stated that as per the Customs Act 1962, the

incorrect entry of load port in Import General Manifest is not a serious mistake and the primary document with regard to SAPTA scheme is the Certificate of origin, in which this respondent / addressee as carrier has no role and/or participation at all; that for constituting the offense of abatement any of the following ingredients to be there such as: approval, encouragement, support, urging or help to commit an offense; that none of the said basic ingredients alleged against them in the subject Show cause notice, so in the absence of vital pleading and only on the basis of mere allegation, the abatement as alleged will not stand; that no where it is stated that the details in Import General Manifest will be considered for computation of Customs Duty, so even if there is an error in Import General Manifest, that has nothing to do with the entries in computation of Customs Duty. There is unique procedure for all types Import General Manifest, whereas the procedure for filing Bill of Entry for different shipments under different schemes are different. The benefit under the duty exception scheme can be availed only if the procedures for such importation of cargo is complied by the Importer/ consignee; that there is no room for any element of fraud in evasion of import duty from the side of the carrier. It is crystal clear that the shipper along with his Agents have committed fraud to evade the applicable Basic Customs Duty, in which they as Carrier has no role and/or participation. Moreover there is no case that they as Carrier has benefited or has tried to get benefited by the alleged fraud committed by the shipper and their Agents; that the knowledge about the incorrectness of the statement /declaration /document made by the maker is clearly and specifically alleged to attract the benefit of this section. It is undisputed fact that there is no specific pleading against them in the subject Show cause notice. Hence in the absence of the said vital ingredient, no relief can be sought against them on the basis of Section 144AA of the Customs Act 1962; that have submitted their statement clearly stating that the Import General Manifest in the impugned shipments are filed on the basis of the HBL as per the written request of the consignee. The name and details of the actual shipper and actual/ultimate consignee will be reflected only in HBL and the actual / ultimate consignee has to file relative Bills of entry. In order to facilitate the actual/ultimate consignee to clear the shipment without much hurdles, they filed the Import General Manifest on the basis of HBL. The Port of Loading was erroneously mentioned as Colombo, Sri Lanka in the said HBL and hence they also incorporated the Port of Loading as Colombo in Import General Manifest without checking the same with Master Bill of Lading. The Mistake was unintentional and only due to over sight and the same has to be treated only as an inadvertent Mistake.

28.5.2 It was further submitted that they have made a request for permission to carryout amendment in Import General Manifest as the same is only a minor amendment as per Customs Circular 13/2005 dated 11th March 2005, but the same was not allowed yet; that they are filing Import General

Manifest for all import shipments without getting into details of the duty exemption schemes and/or benefits if any related to such import shipments, as they are not parted with such information by the importer/consignee or their Agents; that they are not at all benefited from any such benefits if any availed by the importer / consignee, so in the impugned shipments, this respondent/addressee filed the Import General Manifest without getting any details about the duty exemption schemes. So benefit under SAPTA Scheme if any to the Importer/ Consignee is not at all relevant to them as the Carrier, for filing Import General Manifest; that they are not at all liable to be penalized under Sections 112(a) and 144AA of the Customs Act 1962 and they had co operated with the Authorities in the subject matter and has provided the documents and details asked for.

28.7 *M/s Seaways Shipping & Logistics Ltd. (Not. No. 7)-*

28.8.1 The noticee vide their reply to the Show Cause Notice dated 29.07.2011, wherein they stated that there is no statement by anybody else or allegation by Customs explicitly or by suggestion, mentioning that they have colluded with anybody to or persuaded anybody to mention SRI LANKA as the Origin of the Container in place of its actual Origin which is INDONESIA. If any Mistake has been committed, as alleged, it must have done by the Liners who are independently registered and are independently responsible for their acts of omissions or commissions. In addition such act has been committed much before the goods came to Kandla i.e. in Sri Lanka itself. There is no Law, nor Regulation, nor instruction directing them to check the correctness of the documents filed by Independent Customs Registered Bodies; that they are not involved in any of the Mistakes committed by others and they have not done any omissions or commissions pertaining to the work which is to be done by us as per Law.

28.8.2 In regard to penalty they stated that the provision of penalty as given in Section 112(a) is based on the cardinal principles of jurisprudence that penalty cannot be imposed without conscious acts of omissions or commissions, even negligence does not call for penalty; that penalty can be imposed only if there is conscious knowledge of the nature of the goods and not for hiring out, booking containers in normal course of business and quoted the following judgments-

Nopaji Lakhmaji Charitable Trust V/s CC, Kandla [2010 (252) ELT 72]

MJ Joshy V/s CC, (Export-Seaport), Chennai [2009 (245) ELT 440 (Tri.-Chennai)]

28.8.3 They further stated the charges of the Show cause notice are not applicable to us. They have done their job fairly, sincerely, correctly and conscientiously. No motive can be attributed to us. No act of omission or

commission has been cited by the investigation officer or the main players in this case namely the shipping lines or consignees.

28.9 *M/s Ever Green Shipping Agency (I) Pvt. Ltd. (Not. No. 8)-*

28.9.1 In their reply to the Show Cause Notice, the noticee vide a letter dated 27.06.2011 stated that they are filing the manifest as per the BL data received from the port of loading; that forwarded has requested to file the manifest as per the HBL and same is being filed showing port of loading as Colombo; that the manifestation per HBL with different port of loading was unintentional and only due to oversight and has to be treated only as an inadvertent Mistake.

28.10 The reply to the Show Cause Notice F. No. S/10-44/Adj/2013-14 dated 24.07.2013, filed by the noticees is appended one by one.

28.11 *M/s APG Logistics Pvt. Ltd. (Noticee No. 1) and Ms. Sheeja, Branch Manager, M/s APG Logistics Pvt. Ltd. (Noticee No. 4)*

28.11.1 Both the noticee no. 1 and noticee no. 4, has filed similar written submission to the Show Cause Notice, to save time and energy both the replies are merged and discussed in the forthcoming paras.

28.11.2 The noticee vide their written submission stated that they have not filed any Bill of Entry or Bills of Lading in any manner; that a separate case was booked earlier against the importer i.e. M/s. Elite Impex and a separate proceedings vide Show Cause Notice No. S/10-11/Adj/2011-12 dated 02.06.2011, is already going on. Now on the same set of facts, now they have been issued this present notice on 24-7-2013, i.e. after a lapse of more than two years since the original notice to the original importer was issued; that this Show Cause Notice dated 24-7-2013 which is issued only to impose penalties on the co-noticees of the original noticee in the Show Cause Notice dated 02.06.2011, is hit by limitation as time barred and is illegal and bad in law. The Show cause notice is therefore, liable to be withdrawn and dropped, and is not at all sustainable; that that the original importer M/s. Elite Impex, Ahmedabad had approached the Hon'ble Gujarat High Court for release of the seized containers imported under the above mentioned Bills of lading. The Hon'ble High Court had directed M/s. Elite Impex to clear the goods on payment of duty in respect of 20 containers and on bond and bank guarantee in respect of 12 containers, covering the entire duty liability but for the exemption under Notification 26/2000-Cus dated 1-3-2000; that the goods cleared vide respective bills of entry are duty paid in full without claiming any benefits of exemption; that since the goods i.e. betel nut have been allowed to be cleared

on payment of full duties, the same would not be rendered liable to confiscation.

28.11.3 It is also stated that it is alleged in the impugned notice that they were aware of the fact that by filing IGM on the basis of HBL, the port of loading of the goods was being mis-declared, they did not make any effort to rectify the mis-declaration of port of loading by way of filling IGM on the basis of HBL and it was also alleged that on the contrary, issued directions to the concerned shipping lines to file IGM on the basis of House Bills of lading as declared, which enabled the importer in filing Bills of Entry with false declaration in respect of Country of Origin and Port of loading which resulted in evasion of duty; that that with regard to the 9 House Bills of Lading, we were having a contract with the freight forwarder M/s. Lynx Shipping Lines Private Limited, Chennai for forwarding of documents on their behalf. On receiving instructions via e-mail with enclosures of House BIL and Master BIL, we used to provide NOC letters to the Container Lines, alongwith the House B/Ls and Master B/Ls on behalf of M/s. Lynx Shipping Lines Private Limited, Chennai. We have never acted on their own nor to any of their benefits, but have only forwarded the information received by us to the Shipping lines as a routine matter. We had issued the NOC e-mail letter to the Container/Shipping Lines only after receiving payments i.e. DO (Delivery Order) Charges from the CHA. The Delivery Order Charges which we received from the CHA M/s. P.C India, after issuance of NOC with enclosure of both House BL and Master BL to the Shipping Line, only a part amount of Rs. 750/-per container, was retained by us as Handling charges, and the remaining amount which are Delivery Charges are remitted / transferred to M/s. Lynx Shipping Lines Pvt. Ltd., Chennai.

28.11.4 They further submit we had only forwarded the instructions as received from M/s. Lynx Shipping Lines Pvt. Ltd to the container lines. In doing so, we have never dealt with any of the goods in question, nor we have prepared any documents so as to enable the importers to evade duty. Their role was only limited to the conveyance of an email message which was received from one person and sent to another person. We were also not concerned with the imported goods in any manner other than forwarding the message for filing of BL with country of origin as such which was mentioned in the BLs sent to us by M/s. Lynx Shipping Lines Pvt. Ltd. We have therefore acted in a bonafide manner, and we have also not changed any of the description or any other details on their own; that that the e-mails forwarded by their Gandhidham office to the TASS Group (Transasia Container Line) was the same emails, as received from Shri Gopi, Director of Lynx Shipping, vide which Shri Gopi had asked to file House B/L as per the IGMs and also M/s. Lynx Shipping were planning to load shipments from Singapore, Jakarta, Malaysia, Dubai and switching the B/L at Colombo and asked to file manifest as port of loading as Colombo. Their Branch Manager at Gandhidham, Ms Sheeja, had acted only on

such instructions and submitted all the correspondences and documents related to the above referred shipments available with us, to the inquiry officers and have fully cooperated with the inquiry. Her role is no more than that of a postman, who has just passed on the message. In fact, her voluntary statement has only helped the Customs Department in their case against M/s. Elite Impex; that on tracing a Mistake in one B/L and on informing to Shri Gopi of M/s. Lynx Shipping about it, and Shri Gopi has confirmed that B/L were to be switched at Colombo, and based on Shri Gopi's indulgence the shipping lines had declared the country of origin as Sri Lanka. Therefore, neither their company nor their Branch Manager Ms. Sheeja, had any say in declaring or changing the description of the Country of Origin, in any manner, and also we were not at all involved in any of the documentation part other than passing on the messages as received from M/s. Lynx Shipping; that have not filed any bills of entry or prepared any the BLs mentioned above, against which the goods were cleared availing exemption benefits. We are also not the importers, nor the Importers' agents. Therefore, we also never stood to gain anything out of any mis-declaration alleged against us. It is also pertinent to note that the NOC given by us is only an internal document between the clearing agents, and is not any such document which is required for either importation of goods, or for claiming any exemption of customs duty. Therefore, it cannot be said that by giving NOC or by forwarding emails, we had any intention to help M/s. Elite Impex to evade customs duty.

28.11.5 It is further submitted that since we have not dealt with any imported goods, which we believed or even knew that such goods were liable for confiscation. Therefore, the proposals for imposing penalties on us under Section 112 (a) of the Customs Act, 1962 is not at all sustainable and is liable to be set aside in full and quoted the following judgment-

American Eyclight Pvt Ltd V/s CC (Imports) [2013 (290) ELT 720 (Tri.-Mum)]

Pasura Life SCLences Pvt Ltd V/s CC [2013 (292) ELT 461 (Tri.-Bang)]

Pradeep Khanna V/s CC (I&G) [2010 (255) ELT 464 (Tri-Del)]

Elite Impex V/s Union of India [2011 (268) ELT 76 (Guj)]

28.12 *M/s SCL Logistics (India) Pvt. Ltd. (Noticee No. 2) and Shri Umesh Bhatt, Director – M/s SCL Logistics (India) Pvt. Ltd. (Noticee No. 5)*

28.12.1 In their written submission to the Show Cause Notice, noticee no. 2 and 5 has filed similar reply vide separate letters both dated 20.09.2013 and to save time as well as energy both the replies are merged and discussed in forthcoming paras.

28.12.2 In the written reply to the Show Cause Notice dated 20.09.2013, the noticee denied each and every allegation leveled in the Show Cause Notice. They stated that being freight forwarder they has simply acted to facilitate the transportation of goods from different locations i.e. Indonesia, Singapore etc to

final destination at Kandla port. After getting the business from his agent at Sri Lanka i.e. M/s Lynx, Sri-Lanka, the Noticee arranged the space in shipping lines, procured the containers, requested the exporters to load the goods in respective container and handover to the shipping line. Accordingly shipping line prepared the MBL showing the shipper to be the agent of forwarder at that end and showing the Noticee as consignee and also showing the port of discharge at Kandla. This was issued in accordance with the common practice prevalent in the international trade keeping in view the freight to be recovered from their sub agent M/s Lynx shipping line Colombo as per the agreement entered between us. Noticee would like to discuss in detail the documentation i.e. MBL, HBL etc in respect of shipments covered under HBLs Nos. CNM/KND/040, /047, /063, /052, /079, /088, /083/075 by M/ Elite Impex, Ahmedabad, which were handled by Noticee; that Noticee was never involved in issuance of HBLs as above. It is observed that M/s Elite Impex, Ahmedabad has placed orders with M/s Exim Management, Sri Lanka, who procured the goods from different locations like Indonesia and Singapore etc and moved the goods in connivance with M/s Lynx Sri Lanka from different foreign ports to Kandla and it was M/s Lynx Sri Lanka and M/s Exim Management Sri Lanka who generated documents like HBLs etc. in Sri Lanka during the period when goods were in transit at Colombo port. The Noticee was not involved at all with the actual goods and any documents generated in between at Sri-Lankan port.

28.12.3 The noticee admitted that they got the business of freight forwarding from their agents M/s Lynx Shipping Lines Colombo, Sri Lanka who was a business partner as per agreement dated 24.07.2010. After getting business from M/s Lynx the Noticee approached their agents at Jakarta, Singapore to contact the actual exporters, get the goods stuffed in containers already acquired by Noticee from shipping lines, and handover such loaded containers to shipping lines. The only motive and interest of the Noticee in whole bargain was to earn commission in the freight to be recovered from M/s Lynx Shipping line Colombo. Accordingly Noticee has communicated with different shipping lines such as Evergreen, Transasia, Merck etc and such communications was in the form of e-mails; that they have requested the shipping lines to file the IGMs with Customs at Kandla on the basis of HBLs which has allegedly facilitated importers to mis-declare the country of origin of goods and which has further made the goods liable to confiscation under section 111(m) of the Customs Act, 1962 which is totally denied on facts and circumstances of the case and role played by the Noticee in the matter; that the said violation of section 111(m) was done by importer i.e. M/s Elite and their agent namely Ashok Pancharia, Sarfraj Khan Pathan and Shri. Mohd. Ali Ganthi of M/s Lynx Shipping Colombo etc.; that they has never met and communicated with the importer and its agents namely Sarfraj Khan, Ashok Pancharia and Sh. Naseer Ajemri who were instrumental in importing the goods from Indonesia / Singapore and arranging the remittance on hawala

basis. The above said person has directly communicated with Mohd. Ali Ganthi who issued switch Bill of lading showing port of loading as Colombo whereas the master bill of lading was indicating the port of loading Indonesia / Singapore, was actually involved in transporting or transshipping the goods from Colombo to Kandla. These people only were instrumental in getting the bogus country of origin certificate etc on the basis of which benefit of IFSA Notification was claimed by the importer. The Noticee was only involved in booking the goods from Singapore / Indonesia for which Master Bill of Lading and first HBL was issued by their principal forwarder i.e. P.T. Tunass Jakarta, Tendem Global Malaysia etc wherein the port of loading has been categorically mentioned as port of Indonesia / Malaysia and these MBL and HBL was forwarded to the M/s Lynx shipping Colombo who issued the second HBL for the purpose of transshipment of the said goods from one vessel to another vessel from Colombo to Kandla. It is also mentioned herewith that shipping line who filed the IGM at Kandla Customs was also provided MBL issued by their own Indonesia / Malaysia office and on the basis of manifest received from their own office from load port i.e. Indonesia / Malaysia and second HBL issued by M/s Lynx Colombo for the purpose of filing IGM in accordance with law. However as per the request of importer M/s Elite Impex and to enable the clear the consignment the shipping lines were advised to file IGM as per second HBL. Thus it is shipping line only who acted as per the request of actual consignee / importer whereas MBL was with them which was issued by their own office at Indonesia / Malaysia for doing the needful. It is also fact that the Noticee was simply involved in his freight forwarding of the goods shipped from Indonesia / Malaysia to Kandla for which freight amount was charged to M/s Lynx Colombo as he has provided the name of original exporter from Indonesia / Malaysia for whom the goods were to be transported from Indonesia / Malaysia to Kandla. As is evident from the statement of some of the persons that it was Mohd. Ali Ganthi of M/s Lynx Colombo who issued switch BL as per the request of importer and their related person to enable them to claim the benefit of IPISA Notification, on the commercial consideration paid to him by importer and his associates; that from statements it is evident that department has wrongly alleged that Noticee and others were aware of the fact that changing port of loading while the Bill of Lading is not permissible as per procedure. It is also wrong to allege that Noticee was also aware that by filing IGM on the basis of HBL, port of loading of the goods was being mis-declared and no efforts were made to rectify the mis-declaration of port of loading and accordingly enabled the importer in filing Bill of Entry with false declaration in respect of country of origin and port of loading for evasion of duty. It was also alleged that above omission and commission on the part of forwarder is clearly an act of abetment to the importer in evasion of duty. In this regard Noticee submits that not a single acts and omission of the Noticee is attributable and which amount to an act of abetment to the importer in evasion of duty. It is also submitted herewith that the Noticee has never met / communicated with the dummy importer or

their associate who are only responsible for availing the benefit of IPSA Notification on the basis of forged country of origin got issued by them from the supplier and it was M/s Lynx only who issued the switch HBL on the request of said supplier / importer and their associates, thus the charge of abetment cannot be alleged against the Noticee. They cited the following judgments in support of their defence-

State of Goa V/s Colfax Laboratories Ltd. [2003 (158) E.L.T. 18 (S.C.)]
CC, MUMBAI V/s M. VASI REPORTED [2003(151) ELT 312(Tri.-Mum)]
Liladhar Pasoo Forwarders Pvt. Ltd. V/s CC, Mumbai [2000 (122) E.L.T. 737 (Tribunal)]
Syndicate Shipping Services (P) Ltd. V/s CC (Imports), Chennai [2004 (171) E.L.T. 72 (Tribunal Chennai)]
Syndicate Shipping Services (P) Ltd. V/s CC (Imports), Chennai [2004 (171) E.L.T. 72 (Tribunal Chennai)]

28.12.4 In regard to penalty under Section 112(a) of Customs Act, 1962, the noticee stated that they not committed a single act and omission which has rendered the goods liable for confiscation under Section 111(m) of Customs Act, 1962, thus penalty under Section 112(a) cannot be imposed on them and quoted the following judgments:

SIJ Electronics Comp. Tech. Pvt. Ltd. V/s CC, Kochi [2001 (129) ELT 528 (Tri.-Bang.)]
Chaudhary International V/s CC, Bombay [1999 (109) ELT 371 (Tri.)]
Air Freight Ltd. V/s CC (Airport), Mumbai [2004 (172) ELT 229 (Tri.-Mum.)]
Hindustan Steel Ltd. V/s State of Orissa [1972 (83) ITR 26 (SC)]; [1978 (2) ELT J159 (SC)]
Johnson & Johnson Ltd. V/s CCE, Bombay [1995 (78) ELT 193 (Tr.)]
Akbar Badruddin Jiwani V/s CC [1990 (47) ELT 161 (SC)]
Hindustan Steel Ltd. V/s State of Orissa [1978 (2) ELT J159 (SC)]

28.13 *M/s Lynx Shipping Lines Pvt. Ltd. (Noticee No. 3) and Shri Gopala Krishnan, Director - M/s Lynx Shipping Lines Pvt. Ltd. (Noticee No. 6)*

28.13.1 In their reply to Show cause notice the noticees through their consultant dated 13.09.2014, submitted that it is not the case that their clients filed any manifest. Their clients simply sent documents. It was for APG Logistics (I) P. Ltd., Kandla to file manifest with the customs in the manner allowed by the law. The email was at best a request (based on the requirement of the shipper in Colombo) which APG Logistics (I) P. Ltd., Kandla complied with as per prevalent practice. There is nothing in the Show cause notice to show complicity of their clients with any knowledge or intention for any evasion whatsoever; that APG Logistics (I) P. Ltd., Kandla was free to decline their client's request. There is nothing on record to show APG Logistics (I) P. Ltd., Kandla were in any manner obliged to their clients; that The awareness of their clients to there being two bills of lading (as the Show cause notice puts it, one switch bill of lading at Colombo) does not and cannot lead to their culpability. In the business of forwarding, their clients acted only as messengers in forwarding the documents from the shipper. They had not statutory role. Nor did they have any vested interest in such documentation by taking any money

or benefit for that purpose. It is a case where the documentation already done by someone was forwarded by their clients to APG Logistics (I) P. Ltd., Kandla with a request to file, if possible, to file manifest as port of loading Colombo; that There is no meaning in saying that their clients were very well aware of the fact that the change of Port of Loading in House B/L is not prescribed in the procedure for switching of B/Ls. First of all no authority is cited to show what exactly is the procedure under the law for switching of B/Ls. Facts on record as stated in the Show cause notice are merely that their clients forwarded documents to APG Logistics (I) P. Ltd., Kandla with a request to file, if possible, to file manifest as port of loading Colombo. Even the Show cause notice does not allege that there was any inducement to do so given by their client to APG Logistics (I) P. Ltd., Kandla or that their client received any inducement to have it done so; that There is no evidence cited to say that their clients issued the directions to M/s. APG Logistics Pvt. Ltd. to get the IGM filed on the basis of House Bills of Lading in which port of loading was mis-declared as Colombo. As stated in the Show cause notice itself their clients forwarded documents to APG Logistics (I) P. Ltd., Kandla with a request to file, if possible, to file manifest as port of loading Colombo. By no stretch of imagination, this stated position can be interpreted to be direction to APG Logistics (I) P. Ltd., Kandla.

28.13.2 It is further submitted that their clients "not only attended the nine consignments tabulated above but also facilitated other consignments by receiving and paying various charges to other forwarder". As explained in (a) above, their clients did not attend to consignments but only forwarded documents. This is what is evidenced in the Show cause notice itself. Receiving and paying various charges to other forwarder is very normal practice of forwarding business. This is tacit admission in the Show cause notice that there was nothing more than normal business transactions of forwarding business as far as their clients are concerned. Their clients are thus unnecessarily brought into the present proceedings; that requesting another forwarder to, if possible, to file manifest as port of loading Colombo is no omission or commission. The request could have very well failed. As stated above, the other forwarder was in no manner obliged to accede to the request. There is no inducement paid or received even as per the Show cause notice. Only normal forwarding transactions are indicated even in the Show cause notice; that the question of their clients doing anything or omitting to do anything to render goods liable to confiscation does not arise at all. As explained above, their clients did not handle or deal with any goods that can be said to be rendered liable to confiscation under section 111. Therefore, no penalty for rendering goods liable to confiscation or dealing with goods liable to confiscation can arise against their clients. Their clients have not caused any false or incorrect document, as what they suggested to the other forwarder was only a request if it was possible to do so.

28.14 *Shri Ashok Panchariya (Noticee No. 7)*

28.14.1 The noticee filed his reply to the Show Cause Notice vide a letter dated 11.09.2013 and denied all the allegations made against him in the subject Show Cause Notice, he also denies that he is liable to any penalty under Section 112 (a) of the Customs Act, 1962; that he has been implicated in the present matter based on statement of employee of the importer, thereafter the present Show Cause Notice has been issued to various parties including the Noticee proposing to impose penalty under Section 112 (a) on the ground that they were also a party to such mis-declaration in the importation of the goods; that in para 23 of the Show Cause Notice, penalty is proposed to be imposed on the Noticee for its acts of omission and commission under Section 112 (a) of the Customs Act, 1962; that from the plain reading of proviso to Section 112(a) it appears that for imposition of penalty under Section 112(a) of the customs act the pre-requisite condition that the goods should be liable to confiscation. Whereas, in the present case the Show Cause Notice does not proposes for confiscation of the imported goods under Section 111 of the Customs Act, 1962, therefore the allegation against Noticee will not make him liable to penalty under Section 112 (a) of the Customs Act, 1962.

28.14.2 The Noticee further submitted that inasmuch as the provisions of Section 111 has not been invoked for the purposes of confiscating the imported goods no penalty at all can be imposed on the Noticee under the provisions of Section 112 (a) of the said Act; that a penalty under Section 112 of the Customs Act in absence of proposal for confiscation is unheard of in law though such penalty could be imposed on a person who is found to have rendered the imported goods liable to confiscation under Section 111 of the Act. The Noticee in this regard placed reliance on the judgment of Hon'ble CESTAT in case of PRAVEEN KUMAR DALMIA Versus COMMISSIONER OF CUSTOMS, MADRAS reported in 2003 (152) E.L.T. 65 (Tri. Bang.) wherein it has been held that in absence of proposal for confiscation of imported goods in the Show cause notice, penalty cannot be imposed under Section 112(a) of Customs Act, 1962; that provisions of Section 112 are very specific as the penalty is imposable only when the goods are liable for confiscation under Section 111 of the Customs Act. As the goods are not liable for confiscation under Section 111 in the present matter, penalty cannot be imposed under Section, this was the view held by the appellate authority in the following cases:

MAERSK INDIA LTD. V/s COMM. OF CUSTOMS, SHEVA [2001 (129) ELT 444 (Tri. -Mum.)]
K.K. MANUFACTURING CO. V/s COMM. OF CUSTOMS, BOMBAY [1997 (91) ELT 635 (Tri.)].
MUNILAL MEHRA V/s COMM. OF CUSTOMS (ADJ.), MUMBAI [2008 (226) ELT 102 (Tri. -Mum.)]

28.14.3 He also stated that while he is not in any way involved in the clearances of imported goods and has not in any way dealt with the imported goods, for which he had a reason to believe that his act of omission and commission can make the goods liable for confiscation; that there is nothing tangible on record apart from statement of co-accused to show that the Noticee was in anyway involved in any of the alleged conspiracy; that since there is no affirmative evidence against the Noticee, imposition of personal penalty upon him on the basis of un-corroborative statements of the co-accused is neither justified nor warranted.

28.14.4 The case of the department against the Noticee is based on statement of co-accused that the Noticee has acted as a front man for the importer, by making payment to foreign supplier on behalf of the importer; and that the Noticee had aided and abetted to the importer. Whereas from the statement of the employee & proprietor of the importer and statement of other persons, it can be seen that none of them has uttered a single word about the role of the Noticee. It can further be seen that Mr. Sarfarazkhan Pathan in his statement dated 17.11.2011 first time said that the Noticee was equally involved in the importation of the goods., therefore in such a situation no penalty can be imposed on the Noticee; that from the statements of various persons except the employee of the importer who first time in his statement dated 17.11.2011 submitted contrary against the Noticee, it can further be seen from the Show cause notice that he has not physically dealt with the imported goods and quoted a judgment - *Godrej Boyce & Mig. Co. Ltd v/s CCE, Mumbai [2002 (148) E.L.T. 161]* holding that the expression "in any other manner dealing with any goods" must relate to physical contact with the goods is relevant; that in this case, the Noticee has not physically dealt with any goods and therefore, penalty cannot be imposed upon him under Section 112(a) in the light of the above decision; that only if goods are liable to confiscation under Sec. 111 of the Customs Act, 1962, the question of imposition of penalty arises, subject to satisfaction of other conditions under the provisions of Sec. 112; that for imposing any penalty under Section 112 there has to be a nexus to the confiscability of the imported goods. In order that a person is penalised under the above provision, it has to be established that he, 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. However, in the present case there is no proposal for confiscation of the imported goods, therefore no penalty can be imposed on him; that no physical act of the Noticee in relation to the goods in question has been brought out to justify the proposal for penalty. The expression "in any other manner dealing with" has to be understood ejusdem generis with the preceding words/expressions in the clause in terms of the Apex Court's ruling in *Thakur Amar Singhji v. State of Rajasthan [AIR 1955 SC 504]*. The Court held thus :

"the true scope of the rule of '*ejusdem generis*' is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by the general words which follow." According to the above doctrine, the meaning of the expression "in any other manner of dealing with" should be understood in a sense similar or comparable to how the preceding words viz. carrying, removing, depositing etc. are understood. In other words, "any other manner of dealing" with the goods is also some physical manner of dealing with the goods. In the impugned Show Cause Notice, there is no proposal that the Noticee physically dealt with the goods in question, nor was any allegation to this effect raised against him in the relevant Show cause notice. Therefore, the provisions of Section 112(a) were not applicable to the case; that he is accused of connivance with importer, however, the department failed to produce any cogent evidence against the Noticee that as to which act of commission or omission of the Noticee had rendered the goods confiscable, in such an event penalty cannot be imposed on the Noticee under Section 112(a) of the Customs Act, 1962 and quoted a judgment - P.S. BEDI & COMPANY V/s CC, NEW DELHI reported in 2001 (133) E.L.T. 86 (Tri. Del.).

28.14.5 In his reply to the Show Cause Notice the noticee further stated that relevant and extenuating factors in regard to the case of the Noticee are that even according to his statement he has specifically mentioned that he does not know anything about the importer; that the Department has not enquired into the role of the Noticee from the importer and significantly there is also no evidence that the Noticee helped in any manner whatsoever in import. Hence, the Noticee cannot be visited with a penalty under Section 112(a) of the Customs Act; that there is no allegation/evidence/finding that the Noticee was in any manner directly or indirectly involved in the import; that it is not the Department's case that the Noticee had any role in placing the order, arranging the shipment etc.; that the Noticee did not commit any act, which rendered them liable to confiscation, therefore no penalty is imposable on the Noticee and relied upon the following judgments: Akbar Badruddin Jiwani v/s Collector of Customs [1990 (47) E.L.T. 161 (S.C.)] and P.K. Abraham v. CC, Mumbai [1999 (114) E.L.T. 480 (Tri)]

28.14.6 It was further argued that to impose penalty under Section 112 of the Customs Act, 1962 '*mens rea*' s required to be established; that it is axiomatic that the proceedings relating to levy of penalty are criminal and penal in character and according to criminal jurisprudence, the requisite mens rea must be proved before imposition of penalty; that since in the instant case, there is no finding that the goods were either smuggled goods or were acquired by the Noticee knowing them or having reason to believe that they were liable to confiscation under Section 111 of the Customs Act, 1962, therefore, no penalty can be imposed and quoted the following judgment : MERCK SPARES, DELHI V/s COLLECTOR OF CENTRAL EXCISE & CUSTOMS, NEW DELHI [1983 (13) E.L.T. 1261];

Shama Engine Valves Ltd. Bombay v/s Collector of Customs, Bombay [1984 (18) E.L.T. 533] and Madhusudan Gordhandas & Co. v/s Collector of Customs, Bombay [1987 (29) E.L.T. 904]

wherein it has been held that in imposing penalty the requisite mens rea has to be established. It has also been observed in Hindustan Steel Ltd. v. State of Orissa -1978 (2) E.L.T. (J 159) (S.C.) =1970 (1) SCR 753 by the Hon'ble Supreme Court that "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute." Therefore, on a careful consideration and perusal of the cited judgment, it can be seen that in terms of the Section 112(a) "any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods for confiscation under Section 111 or abets the doing or omission of such an act is liable for penalty", in terms of the Bombay High Court judgment rendered in the case of TOMC Ltd. & another, the expression abetment has been analysed and it has been clearly held that a person is said to abet when such person instigates or participates in commission of an offence. In this present case, the Revenue has failed to establish that the Noticee has abetted and has instigated or participated in the commission of an offence. The Noticee is innocent in the matter.

28.14.7 The Noticee further submitted that the allegation leveled against him in the Show cause notice was merely based on statement of a person who was made a party in earlier Show cause notice issued to firm and its employee for alleged mis-declaration in importation of the goods to avail undue benefit of duty exemption provided under Notification No. 26/2000 Customs as amended dated 1.3.2000 to the goods if imported from Sri Lanka. Therefore, in view of the statement of a co-accused in the proceeding who is employee of the importer firm, vide his statement dated 18.4.2011 has deposed that they have placed order to supply goods of Sri Lanka origin, whereas the goods supplied to them were other than Sri Lanka origin, thus, the foreign supplier by not supplying them the goods so desired by them had cheated them. However, in his further statement he deposed that the Noticee was equally involved in the importation, without any tangible evidence to corroborate the role of the Noticee, his statement cannot be relied against the Noticee to invite any penal action against the Noticee. The Noticee submitted that the Noticee's premises were visited and put to search by the officers of DRI, but no incriminating details were found to establish role of the Noticee in the importation of goods. The Noticee further submits that merely recovery of certain details from the laptop of the Noticee, which were used by the accountant i.e. Shri Dharmveer Singh Shekhawat of the Noticee, who (the accountant) was also working for the

co-accused Mr. Sarfarazkhan Pathan, it cannot be presumed that the details so found from the laptop used by accountant belongs to the Noticee, in absence of any statement of accountant along with any corroborative and tangible evidence to connect the said details/documents with the Noticee is legally not tenable; that the proposal to impose penalty on the Noticee has been made even without recording his further statement after recording of statement of co-accused on 17.11.2011 and affording him a chance to explain about the facts narrated by co-accused to fasten/drag the Noticee in the proceeding. In that view of the case no penalty can be imposed on the Noticee.

18.14.8 It was further argued that the department has failed to produce any document pertaining to acquisition / possession / transportation of the imported goods. For follow of action, search was conducted at the premises of the Noticee but nothing incriminating could be recovered. The Noticee submits that there is no iota of evidence against the Noticee except the statement of Shri Sarfarazkhan Pathan, the penalty cannot be imposed on the sole testimony of the co-accused without any independent corroboration. The Noticee in this regard relies on the following decisions:

Narayan Das v/s CC, Patna [2004 (178) E.L.T. 554 (Tri. Kolkata)]
Punam Chand Bhotra v/s CC [1993 (63) E.L.T. 237 (Tri. Kol)]
Ram Lal Kataria &Anr. v/s CCE, Patna [1991 (53) E.L.T. 33 (Tri. -Kol.)]
Chander Shekhar, New Delhi [1982 (10) E.L.T. 82 (C.B.E.C.), New Delhi]
J. Singh v/s CC, New Delhi [1996 (83) E.L.T. 175 (TBL), NICC, New Delhi]
Hari Charan Kurmi v. State of Bihar (Evidence Act, 1872) [AIR 1964 SC 1184]
Pradhan Singh v/s CC, Chandigarh [1983 (12) E.L.T. 650 (CEGAT, NRB, New Delhi)]
Harron Haji Adullah v/s State of Maharashtra [ECR-C, Cus 568 (S.C.) = AIR1968 SC 832].

28.14.9 The Noticee further submitted that only evidence against the Noticee is the statement of Shri Sarfarazkhan Pathan. There is no independent corroboration of this evidence. The Noticee, when contacted, had denied about this fact at the first instance itself. In such circumstances, the Noticee cannot be found guilty only on the uncorroborated testimony of Shri Sarfarazkhan Pathan. Hence, statement of co-accused not to be relied on to implicate the Noticee especially when not corroborated by any independent evidence. The Noticee in this regard placed reliance on the judgment of Hon'ble Tribunal in case of PUNAM CHAND BHOTRA V/s COLLECTOR OF CUSTOMS reported in 1993 (63) E.L.T. 237 (Tribunal); that it is now a settled proposition that the confession of a co-accused alone is not sufficient to prove the guilt of the other co-accused; that there must be some independent corroboration of the same; that as held by the Supreme Court in the case reported in AIR 1985 SC 866, that though the statement of the co-accused can be relied on against the other accused, that alone is not sufficient to come to the conclusion that the other accused is guilty. But, the statement of the co-accused may also be taken into consideration along with the other evidence. But, in this case, there is no other evidence to connect the accused with the imported goods in question except the confessional statement of co-accused Shri Sarfarazkhan Pathan which is an unreliable one; that the statement of Shri Sarfarazkahn Pathan is not sufficient

to pin the liability on the Noticee; that the statement of a co-accused cannot be the sole criterion for finding the Noticee guilty in absence of corroboration by any other independent evidence; that the statement of Shri Sarfarazkhan Pathan Shri is an unreliable statement and the fact that Shri Sarfarazkhan Pathan is a man of no means and the Noticee is having sufficient means to do the business, are not spelt out in the Show cause notice, and therefore, relying on such circumstances to find the Noticee guilty is not in accordance with law. In support of their contention the Noticee relied on the following decisions:

Tarsem Lal Maglani [1987 (30) E.L.T. 797]
Seshmal M. Jain [1987 (27) E.L.T. 504 (Tribunal)]
Shrishail Nageshi Parev V/s State of Maharashtra [AIR 1985 (SC) 866]

28.14 *Shri Mohammad Ali Ganthi (Noticee No. 8)*

28.14.1 No written reply to the Show cause notice has been filed by Shri Mohammad Ali Ganthi (Noticee No. 8), till date.

29 Personal hearing for Show Cause Notice No. 1:

29.1 Personal hearing in regard to the Show Cause Notice F. No. S/10-11/Adj/2011-12 dated 02.06.2011, was granted on 18.05.2012, which was attended by Shri Leroy Mathew & Vinod Karwani of M/s Trans Asian Shipping Services (P) Ltd. (Noticee No. 5) and reiterated the defence reply furnished by them vide a letter dated 25.06.2011. They were directed to furnish the brief explanation over the subject of issuance of B/L and shipping procedure within one week. The personal hearing was also attended by Shri Sudhakar Chikati, Executive of M/s Evergreen Shipping Agency (India) Pvt. Ltd. (Noticee No. 8) and reiterated the submission made in the written reply dated 27.06.2011. Shri Siddharth Shukla, General Manager, M/s Seaways Shipping & Logistics Ltd. (Noticee No. 7) also appeared for personal hearing and reiterated the written submission dated 01.07.2011. He further added that M/s Seaways Shipping & Logistics Ltd. was only the vessel agent and had not booked any cargo in the above matter; that they were never in contact with the shipper consignee or the forwarder. None of the remaining noticees appeared for personal hearing.

29.2 Another date of personal hearing was granted on 28.05.2012, which was attended by Shri Sabu Varghese of M/s Opal Shipping Agencies (P) Ltd. (Noticee No. 6) and reiterated the written reply dated 01.07.2011, he was asked to furnish the procedure relating to change of B/L, particularly when the original B/L was surrendered, how the surrender of B/L was accepted and how the goods were released with the change in port of loading. He assured to furnish the same within 07 days.

29.3 Next date of personal hearing was granted on 20.06.2012, which was not attended by any of the remaining noticees. Next date of personal hearing was fixed on 05.07.2012, which was attended by Shri Raju Chand (Noticee No. 3) and his advocates, wherein it was submitted that the noticee is innocent as he had filed the Bill of Entry on the basis of HBL, phyto sanitary certificate, certificate of origin etc. supplied to him by the importer and requested to drop the proceedings. Shri Parmanand Chand, Partner of M/s PC India Shipping Agency (Noticee No. 4) and advocates of the noticee appeared for personal hearing and submitted the noticee is innocent as they had filed the Bill of Entry on the basis of HBL, phyto sanitary certificate, certificate of origin etc. supplied to them by the importer. It was further pleaded that noticee was not aware about the MBL recovered from their office by the DRI as the said MBL was attached with letters issued by the forwarders to the shipping lines for delivery of the goods and the said letter were handed over to their peon for handing over to the shipping liners. However, the peon used to take photocopies of the said letters alongwith its enclosures including bills and used to keep in their file before handing over to the shipping liner which were recovered by DRI from their office during the search and these bills were for the purpose of tax audits. All papers were found systematically filed with proves that they had no role in evasion of duty, otherwise they would have removed it. They only came to know about the MBL s after the search was conducted by DRI at their office and requested to drop the proceedings

29.4 Another personal hearing was granted on 19.07.2012, but none of the remaining noticees appeared.

30 Personal hearing for Show Cause Notice No. 2:

30.1 Personal hearing in regard to the Show Cause Notice F. No. S/10-44/Adj/2013-14 dated 24.07.2013, was granted on 07.08.2014, which was attended by Shri KS Rathore, Manager Marketing appeared for M/s SCL Logistics India Pvt. Ltd. (Noticee No. 2) and Shri Umesh Bhatt, Director - M/s SCL Logistics India Pvt. Ltd. (Noticee No. 2) and reiterated the written submission dated 20.09.2013 of both the noticees. He further submitted a written brief wherein all the submission made in the written submission is repeated.

30.2 On 07.08.2014 itself, Shri Harshad Patel, Advocate appeared for Shri Ashok Panchariya (noticee no. 7) and reiterated written submission dated 11.09.2013. He also submitted a written brief, which contains more or less the same submission as in the submission made vide a letter dated 11.09.2013 and also produced copies of citation – 2008 (223) ELT 619 (Tri.-Del); 1999 (110) ELT 400 (SC) & 2010 (260) ELT 180 (Del.).

30.3 Another personal hearing was granted on 24.02.2015, which was attended by Shri R. Suramanya, Advocate for M/s APG Logistics Pvt. Ltd. (noticee no. 1) & Ms. Sheeja, Branch Manager, M/s APG Logistics Pvt. Ltd. (noticee no. 4) and stated that the notice is time barred as original Show cause notice was issued to M/s Elite Impex in 2011 and on the very same set of facts another notice was issued in 2013 to other noticees. He reiterated the submission made in their reply to the Show cause notice and stated that there is no connivance on their part and there is no case to impose any penalty.

30.4 None of the remaining noticees appeared on the dates granted for personal hearing.

31 Discussion and findings:

31.1 I have gone the facts of the case discussed in both Show Cause Notices issued F. No. S/10-11/Adj/2011-12 dated 02.06.2011 and S/10-44/Adj./2013-14 dated 24.07.2013 and evidences available on records.

31.2 I find that the second Show cause notice issued from F. No. S/10-44/Adj./2013-14 dated 24.07.2013, is a result of further investigation in continuation to first Show cause notice issued from F. No. S/10-44/Adj./2013-14 dated 24.07.2013, I take both the Show cause notices together for the purpose of adjudication in the instant case.

31.3 On going through both the Show cause notices and evidences available on record, I proceed to adjudicate the instant case issue-wise.

32 Country of origin:

32.1 On going through the records of the instant case and evidences available on records, I find that the investigation has proved that the country of origin of the impugned imported goods i.e. Arecanut (Betel Nuts) is not Sri Lanka, as declared and claimed by various agencies involved in the import of the said impugned goods. One of the major evidence, discussed in the Show Cause Notice issued from F. No. S/10-11/Adj/2011-12 dated 02.06.2011, in regard to country of origin of the said imported goods is proved to be of other than Sri Lanka, is Master Bill of Lading No. EGLV 080000245753, which shows that port of loading of such imported goods as Jakarta, Indonesia.

32.2 During the course of investigation copies of MBLs were also recovered and on matching the same with HBLs issued for filing the import clearance documents with Customs Kandla, it is revealed that Container Number & Seal Number mentioned in MBL and HBL are same, which is

accepted by the CHA, importer and others involved in the import of impugned goods i.e. Arecanut (Betel Nuts), in their respective statements.

32.3 The country of origin of the impugned imported goods, in the instant case, is not Sri Lanka is unearthed on recovery of above MBLs and the same is corroborated by a number of noticees in their statements. Thus, there is no iota of doubt that the goods imported in the instant case i.e. Arecanut (Betel Nuts) is not of Sri Lankan origin and all the declarations made at the time of clearance of the said goods on landing at Kandla port are incorrect / misleading, in other words it is proved beyond doubt that the country of origin is being mis-declared by the concerned agencies, involved in the import of the said goods.

32.4 During the course of investigation, I find that the importer i.e. M/s Elite Impex has submitted the copies of agreement M/s EXIM Management bearing No. ST/EX/EI/040/2020 dated 29.06.2010 alongwith copies of Certificate of Origin from Sri Lankan Chamber of Commerce and claimed that the goods imported by them, which are bone of contention in the instant case, are of Sri Lankan origin. But on investigating the case it is proved that the impugned imported goods are not of Sri Lankan origin and the agreement between M/s Elite Impex and M/s EXIM Management as well as Certificate of Origin from Sri Lankan Chamber of Commerce, furnished by the importer fails to stand the test of correctness, as it is proved that the same are not related to the impugned imported goods.

32.5 I also find that the IGM and Bills of Entry filed for the clearance of impugned imported goods i.e. Arecanut (Betel Nuts) are filed on the basis of different HBL, which shows the Port of Loading as Colombo but the HBL is prepared on the basis of MBL (recovered during the course of investigation) and one of the MBL (discussed at para 6 of this order) shows the Port of Loading as Jakarta, Indonesia, similarly, other MBLs also shows the Port of Loading other than Colombo. Thus, it is observed that the IGM and Bills of Entry filed for the clearance of impugned imported goods i.e. Arecanut (Betel Nuts), on the basis of HBL by mis-declaring the country of origin as Sri Lanka, in other words all the documents filed for the clearance of impugned imported goods i.e. Arecanut (Betel Nuts) are filed incorrectly ignoring the MBL only to evade payment of duty and as such violated the provisions of Customs laws.

32.6 Further, from investigation it is also proved that the impugned imported goods i.e. Arecanut (Betel Nuts) are first loaded from Indonesia / Malaysia / Singapore and then on the way to Kandla, the same were diverted to Colombo, Sri Lanka and re-loaded, wherein creating false proof that the goods imported at Kandla are originally loaded from Colombo, Sri Lanka with an ulterior motive to create an impression that impugned imported goods are of Sri

Lankan origin, with an intent to claim benefit under Notification No. 26/2000-Cus dated 01.03.2000, so as to evade customs duty.

32.7 On going through the evidences available on records of the instant case it is seen that although the certificate of origin and the contract with M/s EXIM Management, as claimed by the noticee in their reply to the Show Cause Notice, is on the record but on investigation it is proved that the goods shipped under the above contract of M/s Exim Management, were not originated and actually loaded from Sri Lanka, instead it is proved that the goods in question are shipped from Indonesian / Malaysian / Singapore, which is corroborated by Shri Sarfaraz Khan, Manager of the noticee firm in reply to a question in his statement dated 18.04.2011, the excerpts of the relevant part of the statement is re-produced –

“Q. Now you have shown the Two set of Bills of lading recovered from their CHA office M/s P.C. India under Panchnama dated 07.12.2010 and Shipping lines offices, wherein Original B/L (Master B/L) shows that the goods is loaded from Indonesia and Singapore means other than Srilanka origin, and House B/L shows the goods is of Srilanka origin. What do you want to say.”

“A. After seeing the Bills of Lading I signed on both sets, it is correct the goods are loaded from Other than Sri Lanka, but as I said earlier M/s Elite Impex Ahmedabad given order to M/s Exim Management to supply the goods of Sri Lanka origin, but supplier has cheated us and supplied the goods other than Sri Lanka origin which attract the customs duty and the benefit of Notification No. 26/2000 dated 01.03.2000 will not be available. Here I want to clarify because of the reason said above they stopped the payment of foreign supplier against the goods supplied by him.”

32.8 Thus, it is amply evident that the noticee or the Manager of the noticee firm is well known that the imported goods landed at Kandla and cleared by them are not of Sri Lankan origin, inspite of this they applied for Notification No. 26/2000-cus dated 01.03.2000, with an intent to evade customs duty and has also succeeded in doing so. Thus, it is proved beyond doubt that the noticee has willingly mis-declared the origin of imported goods, so as to claim benefit of Notification No. 26/2000 dated 01.03.2000 and evaded customs duty to the tune of duty demanded in the instant Show Cause Notice.

32.9 The noticee in their reply to the Show Cause Notice contended about proposal of change or certificate of country of origin in the Show Cause Notice but on going through the records of the instant case it is found that there is no proposal of change or certificate of country of origin in the Show Cause Notice, as it is proved in investigation that the certificate of origin furnished by the noticee no. 1 is patently wrong as the Master Bill of Lading,

unearthed during the course of investigation proved that the impugned imported goods i.e. Betel Nuts are of Malaysian / Indonesian / Singapore origin. Thus, the contention of the noticee that proposal to change country of origin by following procedure as prescribed under Rule 13 of Determination of Origin Rules, 2000, is totally mis-placed.

33 Benefit of ISFTA Notification No. 26/2000-Cus dated 01.03.2000:

33.1 On going through the records of the instant case, it is observed that the importer has claimed benefit of ISFTA Notification No. 26/2000-Cus dated 01.03.2000, by declaring the country of origin of imported goods i.e. Arecanut (Betel Nuts) as Sri Lanka and sought clearance of the impugned goods at NIL rate of BCD.

33.2 Notification No. 26/2000-Cus dated 01.03.2000 provides for exemption from BCD in respect of the goods mentioned therein. For availing exemption the importer has to prove that the goods imported by him are of Sri Lankan origin in accordance with the Customs Tariff (Determination of Origin under the Free Trade Agreement between Democratic Socialist Republic of Sri Lanka and the Republic of India) Rules, 2000, published with the Notification No. 19/2000-Cus (NT) dated 01.03.2000.

33.3 As discussed at para 32 of this order, it is proved beyond doubt that the impugned goods imported at Kandla i.e. Arecanut (Betel Nuts) is not of Sri Lankan origin, thus, the benefit of ISFTA Notification No. 26/2000-Cus dated 01.03.2000, is not available to the importer.

33.4 I also find that the manager of M/s Elite Impex Shri Sarfaraj S. Pathan stated in his statement dated 18.04.2011 that the impugned goods i.e. Arecanut (Betel Nuts) imported by M/s Elite Impex is loaded from other than Sri Lanka port. In the same statement he also accepted that the Arecanut imported by M/s Elite Impex was of other than Sri Lanka origin. Thus, in light of the confession / admission of the main conspirator i.e. Shri Sarfaraj S. Pathan, Manager of M/s Elite Impex regarding mis-declaration of country of origin of the imported Arecanut (Betel Nuts), I find that admissions in a statement made before Customs Officer are permissible as acceptable evidences under Section 108 of the Customs Act, 1962. To reach on this decision I tend to rely on a judgment of Hon'ble Supreme Court of India in the case of Anil Kumar Gokuladas Kandar V/s Commission [2007 (215) ELT A48 (SC)]. It is also a settled legal position that what has been admitted need not be proved. I rely upon a decision of Hon'ble High Court of Madras in the case Govindaswamy Raghupathy [1998 (98) ELT 50 (Mad)].

33.5 The confession of Shri Sarfaraj S. Pathan, Manager of M/s Elite Impex, is also corroborated by other noticees too, in their respective statements. Thus, it is amply proved that the Arecanut (Betel Nuts) imported, in the instant case is neither actually loaded from Sri Lanka nor the said goods are of Sri Lankan origin.

33.6 I therefore hold that the allegations leveled in the Show Cause Notice issued from F. No. S/10-11/Adj/2011-12 dated 02.06.2011, in regard to country of origin of impugned goods imported at Kandla is not Sri Lanka is correct and hence, I hold that the benefit under Notification No. 26/2000-Cus. dated 01.03.2000, is wrongly claimed by the importer i.e. M/s Elite Impex and is not available to them and is liable to be rejected.

33.7 Further, the noticee vide their written reply to the Show cause notice, filed vide a letter dated 18.07.2012 has tried to content that the instant case is pertaining to classification and description. But on going through the facts of the case I find that the issue involved in the instant Show Cause Notice is not the classification or description, as being wrongly interpreted by the noticee in their reply, instead the issue in this case is mis-use of benefit of Notification No. 26/2000-Cus dated 01.03.2000. As alleged in the Show cause noticee, the noticee changed the country of origin of the imported Betel Nuts from Indonesia / Malaysia / Singapore, from where the goods in question were actually imported, to Sri Lanka, it is proved beyond doubt that the impugned imported goods i.e. Arecanut (Betel Nuts) were actually loaded from Indonesia / Malaysia / Singapore and not from Sri Lanka, which also proves that the country of origin of the goods in question are definitely not from Sri Lanka.

34 Demand of BCD:

34.1 From the foregoing paras of this order, it is evident that the impugned goods i.e. Arecanut (Betel Nuts) imported by M/s Elite Impex, is not of Sri Lankan origin and thus, the benefit of ISFTA Notification No. 26/2000-Cus dated 01.03.2000, is not available to the importer.

34.2 As the benefit of ISFTA Notification No. 26/2000-Cus dated 01.03.2000, is not available to the importer, I hold that all the consignments imported and cleared by M/s Elite Impex, prior to issuance of Show Cause Notice from F. No. S/10-11/Adj/2011-12 dated 02.06.2011, by claiming benefit of ISFTA Notification No. 26/2000-Cus dated 01.03.2000 is totally illegal and thus they have evaded the duty by clearing the impugned goods at NIL rate of Basic Customs duty.

34.3 During the course of investigation it is proved that the importer i.e. M/s Elite Impex cleared the impugned imported goods i.e. Arecanut (Betel

Nuts) by claiming ISFTA Notification No. 26/2000-Cus dated 01.03.2000, without fulfilling the conditions laid down in the said notification and as such they had knowingly / willfully evaded BCD of 100%, as applicable on import of the subjected goods at the material period of time, by way of mis-declaration.

34.4 Thus, I hold that the BCD calculated and demanded in the Show Cause Notice F. No. S/10-11/Adj/2011-12 dated 02.06.2011, is correct and the same has to be recovered from the importer i.e. M/s Elite Impex, under proviso to Section 28 (1) of the Customs Act, 1962.

35 Demand of interest on the customs duty demanded:

35.1 As I already held in the para 34 of this order that the customs duty demanded in the impugned Show Cause Notice is correct, the interest, on the customs duty, so demanded, is to be recovered under section 28 AA (erstwhile Section 28 AB) of the Customs Act, 1962.

35.2 As per Section 28 AB of the Customs Act, 1962, if any person is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest.

36 Confiscation of imported goods:

36.1 From the above discussion it is amply proved that majority of the impugned imported goods i.e. Arecanut (Betel Nuts) imported by M/s Elite Impex at Kandla and cleared the same in violation of rules made thereunder, without payment of customs duty by availing unjust benefit of Notification No. 26/2000-Cus dated 01.03.2000, is liable for confiscation under Section 111(m) of the Customs Act, 1962.

36.2 It is also proved from the above discussion that the impugned imported goods i.e. Arecanut (Betel Nuts) imported in 32 containers by M/s Elite Impex at Kandla are only provisionally released against bond, are liable for confiscation under Section 111(m) of the Customs Act, 1962. Similarly, clearances of 40 containers as listed at Sr. No. 1 to 10 TABLE – 7 of the Show Cause Notice were also assessed only on provisional basis and they are also liable for confiscation under Section 111 (m) of the Customs Act, 1962.

37 Penalty on the importer:

37.1 From the above discussion it is proved beyond doubt that the importer i.e. M/s Elite Impex, has mis-declared the country of origin and port of loading of the impugned imported goods i.e. Arecanut (Betel Nuts) in order to mis-use the benefit of Notification No. 26/2000-Cus dated 01.03.2000

and cleared the said goods knowingly without payment of applicable customs duty in the past and also attempted to clear the Arecanut which came in 32 containers which were seized.

37.2 I also find that the noticee in their written reply dated 18.07.2012, as discussed in the portion of '**defence reply**', to Show Cause Notice stated that they had not been supplied with the RUDs, is incorrect as RUDs had been supplied alongwith Show cause notice & its Annexure, which is on record in the face of two acknowledgements for receipt of Show Cause Notice and its RUDs, both dated 30.06.2011 from Shri Fainaz N Ajmeri on behalf of M/s Elite Impex and from Shri Pathan Shahrukh Sarfaraz Khan, on behalf of Shri Sarfaraj Khan, manager of M/s Elite Impex. Thus, it is clear that the noticee has tried to divert the attention of adjudicating authority in reaching to a just and proper decision, in the instant case.

37.3 Further, the contention of the noticee that they were in bonafide belief that the goods imported and landed at Kandla are of Sri Lankan origin, as they are having faith on the foreign supplier as they had entered into agreement with the supplier, is not at all acceptable, in as much as they were having prior knowledge of the switching over of HBL from MBL by changing the port of landing from Indonesia / Malaysia / Singapore to Sri Lanka. I also find that they had connived with the Sri Lankan middle man to change the port of landing as Sri Lanka although they were knowing that the offending goods are loaded from Indonesia / Malaysia / Singapore. Now claiming ignorance in regard to country of origin of offending goods of other than Sri Lankan origin cannot buy them immunity from punishment, as it is proved and confessed by all the persons involved in the nexus of the case that load port of the offending goods is changed to Sri Lanka by a deep rooted plan and with active connivance of many co-noticees.

37.4 Thus, in view of above discussion, I hold that the importer i.e. M/s Elite Impex is actively and knowingly involved in evasion of duty over a period of time and hence is liable to be penalized under Section 112(a) and Section 114 A of the Customs Act, 1962.

38 Penalty on other noticees:

38.1 *Shri Sarfaraj S. Pathan, Manager of M/s Elite Impex:*

38.1.1 I have carefully gone through the facts of the instant case and written reply filed by the noticee to the Show cause notice and observed that the reply filed by the noticee and his company & noticee no. 1 i.e. M/s Elite Impex and as discussed / held by me in the in the section 'Penalty on the importer' that the importer is liable to be penalized under Section 114A of the Customs Act, 1962. In case of Shri Sarfaraj S Pathan, who was the Manager of the

importer firm i.e. M/s Elite Impex, as discussed in foregone paras it is amply proved that the importer has manipulated the required documents with the help of other noticees and has connived with the concerned person / companies / firms, to change the country of origin from Indonesia / Malaysia / Singapore to Sri Lanka, with an ulterior motive to evade customs duty by claiming exemption benefit under Notification No. 26/2000-Cus dated 01.03.2000 and in all the wrongful activity of the importer in the instant case is master-minded by Shri Sarfaraj S Pathan, which is punishable under the customs law. He is the kingpin in the whole case who has handled the entire work which led to defrauding the huge amount of government revenue.

38.1.2 Further, the noticee in his written reply to Show cause notice has contested the imposition of penalty and confiscation, as well as allegation of change in country of origin. Ongoing through the records of the case and statements of various persons, it is found that the issue of country of origin is settled, as it is proved beyond that the impugned goods are not actually loaded from Sri Lanka and thus, the country of origin of the said goods is other than Sri Lanka. As it is proved that the impugned goods are other than Sri Lankan origin, the said goods are held liable for confiscation, thus, imposition of penalty is automatically attracted in the instant case. The judgment of Hon'ble Supreme Court in the case of Hindustan Steel quoted by him also says that penalty is attracted if the offending goods are held liable for confiscation.

38.1.3 It is also proved beyond doubt that although the importer had agreement for supplier of Arecanut (Betel Nuts) of Sri Lankan origin, it is only to create an alibi in order to avoid penal consequences, if caught. The offending goods landed at Kandla in the instant case are clearly shipped from the ports of Indonesia , Singapore and Malaysia and hence the same cannot be held as of Sri Lankan origin.

38.1.4 The contention raised at para 28.3.16 of this order, in regard to certification of the goods under Notification No. 19/2000-Cus dated 01.03.2000 is concerned, I find that the contention of the noticee is devoid of any merit, as although the noticee has tried to take the cover of certification in regard to origin of goods from exporting countries, they had failed to prove the authenticity of the same, as the same were neither requested to be forwarded to the certificating authority for genuineness of the same nor the same were requested to be tested by them, for authenticating their contention. Thus, the noticee's contention is nothing but a vague move to undermine the factual position of the case.

38.1.5 I therefore find that although Shri Sarfaraj Khan Pathan, has tried his best to put up the defense on most invalid grounds, he is defeated by his own confessions made in the statements given by him during the course of investigation. Further, on investigation it has been proved that he has played

very vital role on behalf of the importer and masterminded to change the country of origin of the offending goods and mis-declared the same as of Sri Lankan origin to the customs at the time of clearance of the said goods and by doing so defrauded the department by wrongly mis-using the benefit of Notification No. 26/2000-Cus dated 01.03.2000, with an intent to clear the offending goods on payment of NIL BCD, in fact he had succeeded in clearance of majority of such imported Arecanut (Betel Nuts), by way of mis-declaration and fraud. But for the investigation conducted by DRI the case of evasion of customs duty by M/s Elite Impex might have not been unearthed.

38.1.6 Thus, Shri Sarfaraj S Pathan has caused the impugned imported goods i.e. Arecanut (Betel Nuts) liable for confiscation and by his above discussed acts of omission and commission he has made himself liable to penal action under Section 114 AA of Customs Act, 1962.

38.2 Shri Raju Chand, Power of Attorney Holder of M/s PC India Shipping Agency (noticee no. 3) and M/s PC India Shipping Agency (noticee no. 4)

38.2.1 Both the noticees filed similar written reply to the Show cause notice and have also reiterated their written submission at the time of personal hearing, which is discussed at para 28.4 and 29.3 of this order.

38.2.2 In their reply to the Show Cause Notice the noticees stated that they had requested the Asstt. Commr. Gr.-I, CH, Kandla to clear the impugned imported goods provisionally, pending verification of country of origin certificate on 13.08.2010. On verification of the claim of the noticees, it is observed that they had in fact submitted the above referred request.

38.2.3 The contention of the noticees that the IGM is filed by the shipping line on the basis of various documents including B/L and they had no Reach or role in filing IGM, which I find correct. In regard to the answer / clarification of the noticee regarding recovery of MBL from their premises, I find that the clarification given by them that it was received by their peon and they were not aware of the MBLs appears to be only an after thought and hence not tenable.

38.2.4 From the evidences available on record of the instant case, I find that the contention of the noticees that they had filed the Bills of Entry on the basis of documents provided by the importer is correct, as the general practice is followed by them.

38.2.5 The noticee's statement that none of the persons whose statements were recorded by DRI, including the importer and manager of importer, implicated them of having knowledge of change of port of loading.

The same is verified with the statements recorded in the instant case during the course of investigation and found to be correct.

38.2.6 It is also observed from the records of the instant case that after issuance of Show Cause Notice from F. No. S/10-11/Adj/2011-12 dated 02.06.2011, on the basis of investigation carried out by the DRI in the instant case, an order was issued by the then Commissioner of Customs, Custom House, Kandla from F. No. S/7-61/CHA/2000 dated 12.07.2011 wherein the CHA firm i.e. M/s PC India Shipping Agency were prohibited from transacting business at Custom House, Kandla & Mundra under Regulation 21 of CHALR, 2004. It is also observed that the above order was referred to Commissioner of Customs & Central Excise, Nasik being the parent license issuing authority for initiating necessary action under CHALR, 2004. An inquiry was conducted by Shri S.B. Akashi, Deputy Commissioner, Central Excise & Customs, Nasik for the following charges:

1. **Charge No. 1** – *the CHA shall advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy / Assistant Commissioner of Customs.*
2. **Charge No. 2** – *the CHA shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage.*
3. **Charge No. 3** – *a CHA shall verify antecedent, correctness of IEC No., identity of his client at the declared address by using reliable, independent, authentic documents, data or information.*

38.2.7 The Inquiry Officer in his Inquiry Report dated gave his report on all the three charges which are as below:

1. **Charge No. 1** – *the Bills of Entry are prepared & filed on the basis of HBL, wherein the country of origin is mentioned as Sri Lanka. The CHA vide a letter dated 13.08.2010 requested Assistant Commissioner, Customs, Kandla to assess the Bills of Entry provisionally subject to country of origin verification and the Bills of Entry were assessed provisionally. Charge No. 1 is not sustainable against CHA.*
2. **Charge No. 2** – *Same as Charge No. 2, charges not substantiated against CHA.*
3. **Charge No. 3** – *CHA has adhered with all the instructions and charge is not substantiated against CHA.*

38.2.8 In regard to the plea of the noticees that as there were discrepancy in MBL and HBL, their lower employees did not bring the MBL to the notice of senior employees, is not acceptable, as the recovery of MBL from their premises shows that the same was in their possession and not knowing the existence of the same in their office is only an after thought and hence cannot be accepted. Further, when the MBL was recovered from their premises, the company or noticee no. 4 cannot take the plea of ignorance to escape from their involvement. In any case when they came to know the existence of MBL at their premises, they should have informed the Customs in regard to the change of

port of loading, enabling the department to initiate preventive measures or they should have coaxed the importer to correct the declaration made by them by declaring the correct port of loading. I also find that there is nothing contra to prove that the plea of the noticee is incorrect and it is a fact that they were not the main player of the fraud. They may not have played major role in the fraud but the fact remains that they have failed in their duty as CHA in their obligations and played their role in evasion of duty by not bringing the fact of change of port of loading in HBL inspite of change from MBL and they cannot escape the penal action and I rely on the following judgments-

- Assistant Collector of Central Excise, Madras V/s Nagappa Chettiar [1979 (4) ELT (J 179) (Mad.)]
- Mudra Offset V/s Commissioner of Customs, Bangalore [2004 (175) ELT 470 (Tri.-Bang.)]

I also observe that they were careless in attending to the documentation work relating to the said import and they failed to take reasonable care expected of a CHA and hence they are liable to penalty under Section 112 (a) of the Customs Act, 1962. However, looking into all the facts of the case I hold that they deserve leniency.

38.3 M/s Trans Asian Shipping Services P. Ltd. (Noticee No. 5)

38.3.1 On going through the records of the case and written submission filed by the noticee vide a letter dated 25.06.2011, I find that they filed the IGM for the impugned imported cargo i.e. Arecanut (Betel Nuts) on the basis of HBL. It is also observed that although the MBL was available with the noticee they filed the IGM on the basis of HBL, wherein the port of loading was shown as Colombo, Sri Lanka, which was also accepted by them in their written reply.

38.3.2 In their written reply the noticee they stated that they have filed IGM without checking MBL and the mistake was unintentional and due to oversight, which may be treated only as an inadvertent mistake, which cannot be accepted as, they in their written reply itself has accepted that the IGM was filed by them on the basis of HBL on the request of consignee. It is evident that they simply ignored to facilitate the fraud contemplated by the importer at the time filing of IGM and I find that they played dubious role in the entire case, by showing wrong port of loading, which was the main reason why the fraud was perpetrated. Therefore, I hold them liable to be penalized under Section 112(a) of the Customs Act, 1962.

38.4 M/s Opal Shipping Agencies (I) Pvt. Ltd. (Noticee No. 6)-

38.4.1 From the facts of the case, it is evident that the noticee have filed IGM without checking MBL. It is also evident that they simply ignored to facilitate the fraud contemplated by the importer at the time filing of IGM and I

find that they played dubious role in the entire case, by showing wrong port of loading i.e. Colombo, Sri Lanka, which was the main reason why the fraud was perpetrated. Therefore, I hold them liable to be penalized under Section 112(a) of the Customs Act, 1962.

38.5 M/s Seaways Shipping & Logistics Ltd. (Noticee No. 7)-

38.5.1 On going through records of the case and written submission dated 29.07.2011 by the noticee, I find that their plea for any mistake / irregularities committed by others they cannot be penalized, not acceptable as it is crystal clear that they filed the IGM on the basis of HBL, by declaring origin of container Sri Lanka instead of Indonesia, although they were in possession of MBL.

38.5.2 I also find the plea of the noticee that negligence does not call for penalty, quite amusing, as from investigation it is proved beyond doubt that they have deliberately ignored MBL and filed the IGM on the basis of HBL, which was the main reason why the fraud was perpetrated. Therefore, I hold them liable for penalty under Section 112(a) of the Customs Act, 1962.

38.6 M/s Ever Green Shipping Agency (I) Pvt. Ltd. (Noticee No. 8)-

38.6.1 I have gone through the written reply of the noticee dated 27.06.2011, wherein they stated that the forwarded has requested to file the IGM as per HBL and different port of loading was unintentional and due to oversight, which has be treated only as an inadvertent mistake. The plea of the noticee is not acceptable as they have deliberately ignored MBL and filed the IGM on the basis of HBL, which was the main reason why the fraud was perpetrated. Therefore, I held them liable to be penalized under Section 112(a) of the Customs Act, 1962.

38.7 M/s APG Logistics Pvt. Ltd. (Noticee No. 1) and Ms. Sheeja, Branch Manager of M/s APG Logistics Pvt. Ltd. (Noticee No. 4)-

38.7.1 The submission of the noticee that they are not liable for penal action acted as an agent to M/s Lynx Shipping Lines Pvt. Ltd., Chennai and they forwarded the information received by them to shipping lines, by enclosing MBL and HBL, for which they received a part payment of Rs. 750/- per container, lacks any merit . Although they were knowing the change of port of loading in HBL, they had failed to instruct the shipping lines to file the IGM on the basis of MBL which facilitated the evasion of duty .

38.7.2 They have also accepted that they were knowing that the BL will be switched at Colombo and port of loading will be changed, but they didn't

bother to inform the authorities concerned of the same, they also failed to alert the shipping line of the act of Shri Gopi of M/s Lynx Shipping Lines Pvt. Ltd., Chennai, by way of which they indulged themselves in the fraud committed in the instant case and thus, made the impugned imported goods i.e. Arecanut (Betel Nuts) cleared without payment of duty and caused revenue loss to the exchequer.

38.7.3 I therefore hold that M/s APG Logistics P. Ltd. is liable for penal action under Section 112 (a) of the Customs Act, 1962.

38.7.4 As for the penal action against Ms. Sheeja, Branch Manager of M/s APG Logistics P. Ltd., I find that she has not done anything on her own and she was only acting on behalf of her company and on the instructions of the higher authorities of the company.

38.7.5 Therefore, I hold that no penalty is imposable on the employee Ms. Sheeja as she has no role in manipulation of the said Bills of Lading and she has no knowledge of any wrong doing. She is the person who actually noticed the discrepancy and brought it to the notice of Shri Gopi and Shri Gopi confirmed that Bills of Lading were to be switched at Colombo. From the above, I find that she had no role in mis-declaration of Country of Origin.

38.7.6 As she has acted in a bonafide manner and no monetary benefit was accrued to her there is no case to impose any penalty in view of the following judgments :

- ZU Alvi V/s CCE, Bhopal [2000 (117) ELT 69 (Tribunal)]
- Commissioner of Customs V/s SK Shah [2009 (245) ELT 48 (Guj.)]
- Commissioner of Customs V/s SK Shah [2010 (255) ELT A50 (SC)]
- Malu Sleepers (P) Ltd. V/s Commissioner of C. Ex., Bangalore [2010 (161) ELT 441 (Tri. – Bang.)]
- Commissioner of Central Excise V/s Amin Chandrakant Bhailalbai [2010 (258) ELT 36 (Guj.)]

38.8 M/s SCL Logistics (India) Pvt. Ltd. (Noticee No. 2) and Shri Umesh Bhatt, Director – M/s SCL Logistics (India) Pvt. Ltd. (Noticee No. 5)-

38.8.1 From the records of the instant case it is evident that they were fully aware of the fact that the ports of loading of the goods were other than Colombo, Sri Lanka, but they insisted upon the shipping line to file IGM as per House Bills of Lading in which the ports of loading were mis-declared as Colombo. They were fully aware of the procedure that the port of loading in House B/L cannot be different from Port of Loading in Master B/L. It is evident that they were aware of the fraudulent activities as they never asked M/s Lynx Shipping Line, about changing in name of port of loading in the switched B/Ls.

38.8.2 The above omission and commission on the part of M/s SCL Logistics (India) Private Limited has resulted in the wrong declaration of Port of Loading in IGMs and has also facilitated the mis-declaration of Country of Origin in the respective Bills of Entry.

38.8.3 From the above it is clear that Shri Umesh Bhatt, Director of M/s SCL Logistics (India) Pvt. Ltd., has actively played a role in the entire fraud and thus, I hold that M/s SCL Logistics (India) Pvt. Ltd. is liable to be penalized under Section 112(a) of the Customs Act, 1962 and Shri Umesh Bhatt, Director of M/s SCL Logistics (India) Pvt. Ltd., is liable to be penalized under Section 114AA of the Customs Act, 1962.

38.9 M/s Lynx Shipping Lines P. Ltd. (Noticee No. 3) and Shri Gopala Krishnan, Director of M/s Lynx Shipping Lines P. Ltd.-

38.9.1 From the records of the case it is observed that Shri Gopi was fully aware of the fact that B/Ls were switched at Colombo. He also got the MBLs and HBLs from M/s Lynx Shipping Lines, Colombo and forwarded the same to M/s APG Logistics Pvt. Ltd, Kandla for filing of IGM on the basis HBL, on the basis of instructions of Shri Mohamed Ali Ganthi, Proprietor of M/s Lynx Shipping Line, Colombo that manifest should be filed with HBL which was switched at Colombo i.e. the Port of Loading shown as Colombo, Sri Lanka.

38.9.2 It is a fact that Shri Gopala Krishnan was very well aware of the fact that the change of Port of Loading in House B/L is not prescribed in the procedure for switching of B/Ls and he was also aware that it was illegal to mis-declare port and country of loading. He was also aware of the fact while switching the B/L the port of loading is also changed to Colombo in the switched B/Ls which is not allowed in the procedure.

38.9.3 The above omission and commission on the part of Shri Gopala Krishnan and M/s Lynx Shipping Lines Private Limited, Chennai has resulted in the false declaration of Port of Loading in IGMs and which in turn also facilitated the importer in mis-declaration of Country of Origin in the respective Bills of Entry. This has rendered M/s Lynx Shipping Lines Private Limited, Chennai liable for penalty under section 112(a). The act of knowingly using the documents containing false information has rendered Shri Gopala Krishnan of M/s Lynx Shipping Lines Private Limited, Chennai liable for penalty under section 114AA of the Customs Act, 1962.

38.10 *Shri Ashok Panchariya (Noticee No. 9)-*

38.10.1 From the facts of the case discussed above it is seen that the role of Shri Ashok Panchariya, is not all seen in the alleged activities of M/s. Elite Impex when the first Show Cause Notice was issued . Neither Shri Naseer or Shri Sarfraj Khan Pathan had implicated Shri Ashok Panchariya. Though the money was sent by Shri Ramzan for the said transactions, there was no investigation conducted in this regard. I do not find much evidence against Shri Ashok Panchariya except that some payments were apparently made from his companies based at Dubai and these transactions were not properly investigated by DRI to establish his complicity in the case. Only on further investigation of the case after issuance of main Show Cause Notice Shri Sarfraj Khan in his statements dated 15.11.2011 & 17.11.2011, first time mentioned the name of Shri Ashok Pancharia as a partner in his business and he made certain payments towards the imports. Barring that there is no other evidence against Shri Ashok Panchariya. He had denied his role in the import of betel nuts in the name of M/s. Elite Impex and the evidences on record also are not very conclusive to establish the collusion with Shri Sarfarazkhan Pathan in the alleged imports of M/s Elite Impex. However it is a fact in the capacity of Managing Director of M/s. Vintage FZE, Dubai, he had made payments for the differential value of the betel nuts from Dubai to the overseas suppliers, and the transactions between him and M/s Elite Impex have not been explained properly which raises doubts about his role in the said imports. In any case he has some role either as a partner or financier though not clearly coming out of the evidences available on record. He was not implicated by any one in their statements and he appears to have not played any active role in the alleged imports. Though his role is not very forthcoming but he is not above suspicion in the said imports which led to evasion of Customs duty by resorting to deliberate mis-declaration of Country Of Origin of import of betel nuts from Indonesia / Malaysia / Singapore while arranging for the documents showing the country of origin of the betel nuts imported by M/s. Elite Impex as that of Sri Lanka with a view to evade payment of customs duty.

38.10.2 Shri Ashok Panchariya had consciously and deliberately dealt with the goods thereof which he knew and had reasons to believe were liable for confiscation under the provisions of Section 111(m), and (o) of the Customs Act, 1962. Shri Ashok Panchariya by his above acts of omission and commission rendered himself liable for penal action under the provisions of Section 112 (a) of Customs Act, 1962.

38.11 *Shri Mohammed Ali Ganthi (Noticee No. 8)*

38.11.1 Shri Mohammed Ali Ganthi issued Switch B/L for the containers received from Indonesia / Singapore into Sri Lanka and further trans-shipped

to Kandla Port showing the port of loading as Colombo, Sri Lanka for the impugned imported goods i.e. Arecanut (Betel Nuts), imported into India in the name of M/s. Elite Impex.

38.11.2 The above act of Shri Mohammed Ali Ganthi has resulted in the false declaration of Port of Loading and which in turn facilitated the importer in mis-declaration of Country of origin in the Bills of Entry with willful intent to falsely claim the benefits of exemption provided under Notification No. 26/2000-Cus-Cus. dated 01.03.2000.

38.11.3 Thus, Shri Mohammed Ali Ganthi, though knowing well that the betel nuts were not of origin of Sri Lanka, had abetted and aided M/s Elite Impex in procuring betel nuts by supplying documents showing that the betel nuts were of origin of Sri Lanka based on which wrong claim of exemption benefits of Notification No. 26/2000-Cus-Cus. dated 01.03.2000, was availed and thereby rendered himself liable for penalty under Section 112 (a) of Customs Act, 1962.

39 In view of the forgoing discussions and findings, I pass the following order:

ORDER

1. I reject the certificates of Country Of Origin as of Srilanka for all the 18 Bills of Entry (as mentioned at column no. 7 of Table-8 of the Show cause notice), filed by M/s Elite Impex and hold that the the goods are of non Sri Lankan origin.
2. I deny the benefit of Notification No. 26/2000-Cus. dated 01.03.2000 for all the above mentioned 18 Bills of Entry and order final assessment of the same, accordingly, filed by M/s Elite Impex.
3. I order confiscation of Arecanut (Betel Nuts) weighing 533.06 MTs having assessable value of Rs. 1,93,18,693/- seized on 04.01.2011 and 01.02.2011 under Section 111(m) of the Customs Act, 1962, imported by M/s Elite Impex. The said goods were provisionally released and on payment of full rate of duty. In view of the above I order confiscation of the same and impose redemption fine of Rs. 40,00,000/- (Rupees Forty Lakhs only), in lieu of confiscation as the goods have been released provisionally, in terms of Section 125 of Customs Act, 1962.
4. I confirm the customs duty of Rs. 2,08,64,192 (Rupees Two Crores Eight Lakhs Sixty Four Thousand One Hundred and Ninety Two only) under the proviso to Section 28(1) of the Customs Act, 1962, in

respect of Bills of Entry mentioned at Sr. No. 11 to 18 of TABLE-9 of the Show cause notice, filed by M/s Elite Impex.

5. I order to appropriate the amount of Rs. 2,08,64,192/- (Rupees Two Crores Eight Lakhs Sixty Four Thousand One Hundred and Ninety Two only), already paid by M/s Elite Impex and to be adjusted towards the duty liability of Rs. 2,08,64,192/-, confirmed at 4 above.
6. I order to recover interest under Section 28 AA of the Customs Act, 1962 (erstwhile Section 28 AB) on the confirmed customs duty of Rs. 2,08,64,192/-, at applicable rate of interest, from M/s Elite Impex.
7. I order confiscation of Arecanut (Betel Nuts) weighing 702.06 MTs having assessable value of Rs. 2,55,61,982/-, as detailed in TABLE-3 of the Show cause notice under Section 111(m) of the Customs Act, 1962, imported by M/s Elite Impex. Since, the said goods were assessed and cleared on provisional basis, I order confiscation of the same and impose redemption fine of Rs. 50,00,000/- (Rupees Fifty Lakhs only), in lieu of confiscation as the assessments were only provisional, in terms of Section 125 of Customs Act, 1962.
8. I confirm the customs duty of Rs. 2,76,06,942/- (Rupees Two Crores Seventy Six Lakhs Six Thousand Nine Hundred and Forty Two only), under the proviso to Section 28(1) of the Customs Act, 1962, in respect of Bills of Entry mentioned at Sr. No. 01 to 10 of TABLE-9 of the Show cause notice, filed by M/s Elite Impex.
9. I order to appropriate the amount of Rs. 10,22,479/- (Rupees Ten Lakhs Twenty Two Thousand Four Hundred and Seventy Nine only), already paid by M/s Elite Impex and to be adjusted towards the duty liability of Rs. 2,76,06,942/-, confirmed at 8 above and to recover the remaining duty amount of Rs. 2,65,84,463/-.
10. I order to recover interest under Section 28 AA of the Customs Act, 1962 (erstwhile Section 28 AB) on the confirmed customs duty of Rs. 2,65,84,463/-, at applicable rate of interest, from M/s Elite Impex.
11. I impose a penalty of Rs. 4,84,71,134/- (Rupees Four Crores Eighty Four Lakhs Seventy One Thousand One Hundred and Thirty Four only) under Section 114A of the Customs Act, 1962 on M/s Elite Impex, **provided** that the 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 the communication of this order, the amount of penalty liable to be paid by M/s Elite Impex,

under this section shall be twenty-five per cent of the duty and interest. As I have imposed mandatory penalty under Section 114 A of the Customs Act, 1962, no separate penalty is imposable under Section 112 (a) of the Customs Act, 1962, in view of the fifth proviso to Section 114 A of the Customs Act, 1962.

12. I impose a penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs only) under Section 114AA of the Customs Act, 1962 on Shri Sarfaraj Pathan, Manager of M/s Elite Impex.
13. I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on M/s PC India Shipping Agency, CHA and Rs. 1,00,000/- (Rs. One Lakh only) on Shri Raju Chand, Power of Attorney of M/s PC India Shipping Agency, under Section 112(a) of the Customs Act, 1962.
14. I impose a penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 114AA of the Customs Act, 1962 on Shri Raju Chand, Power of Attorney of M/s PC India Shipping Agency.
15. As no irregularities have been found in the activities of M/s PC India Shipping Agency, CHA by the Inquiry Officer i.e. Deputy Commissioner, Central Excise & Customs, Nasik, I refrain from taking any further action on them under Regulation 20 of the Customs House Agents Licensing Regulations, 2004.
16. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) under Section 112(a) of the Customs Act, 1962 on M/s Trans Asian Shipping Services (P) Ltd.
17. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) under Section 112(a) of the Customs Act, 1962 on M/s Ever Green Shipping Agency (India) Pvt. Ltd.
18. I impose a penalty of Rs. 1,00,000 (Rupees One Lakh only) under Section 112(a) of the Customs Act, 1962 on M/s Opal Shipping Agencies (India) Pvt. Ltd.
19. I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) under Section 112(a) of the Customs Act, 1962 on M/s Seaways Shipping.
20. I impose a penalty of Rs.2,00,000/- (Rupees Two Lakhs only) under Section 112(a) of the Customs Act, 1962 on M/s APG Logistics (India) Pvt. Ltd.

21. I impose a penalty of Rs.2,00,000/- (Rupees Two Lakhs only) under Section 112(a) of the Customs Act, 1962 on M/s SCL Logistics (India) Pvt. Ltd.
22. I impose a penalty of Rs.3,00,000/- (Rupees Three Lakhs only) under Section 112(a) of the Customs Act, 1962 on M/s Lynx Shipping Lines Pvt. Ltd.
23. I refrain from imposing any penalty on Ms. Sheeja, Branch Manager of M/s APG Logistics Pvt. Ltd.
24. I impose a penalty of Rs.1,00,000/- (Rupees One Lakh only) under Section 114AA of the Customs Act, 1962 on Shri Umesh Bhatt, Director of M/s SCL Logistics (India) Pvt. Ltd.
25. I impose a penalty of Rs.2,00,000/- (Rupees Two Lakhs only) under Section 114AA of the Customs Act, 1962 on Shri Gopala Krishnan, Director of M/s Lynx Shipping Lines Pvt. Ltd.
26. I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) under Section 112 (a) of the Customs Act, 1962 on Shri Mohammed Ali Ganthi of M/s Lynx Shipping, Colombo.
27. I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs only) under Section 112 (a) of the Customs Act, 1962 on Shri Ashok Panchariya.

(P.V.R. REDDY)
PRINCIPAL COMMISSIONER

By Registered post A.D.

Date : 27.05.2015

To,

1. M/s Elite Impex
C-13, Fatima Apartment, Sarkhej Road
Maktampura, Ahmedabad.
2. Shri Sarfaraj Pathan
Manager – M/s Elite Impex
10/11, AAmir Park Society
Opp. Samir Vihar Society, Sarkhej Road
Juhapura, Ahmedabad.
3. M/s PC India Shipping Agency
303-304, Gokul Park, 2nd Floor
Ward 12/B, Plot No. 356
Nr. Axis Bank, Gandhidham.
4. Shri Raju Chand
Power of Attorney - M/s PC India Shipping Agency
303-304, Gokul Park, 2nd Floor
Ward 12/B, Plot No. 356
Nr. Axis Bank, Gandhidham.
5. M/s Trans Asian Shipping Services (P) Ltd.
215-218, 2nd Floor, Mani Complex
Plot No. 84, Sector 8, Gandhidham.

6. M/s Ever Green Shipping Agency (India) Pvt. Ltd.
203, 2nd Floor, Arihant Complex
Plot No. 341, Ward 12/B
Gandhidham.
7. M/s Opal Shipping Agencies (India) Pvt. Ltd.
207, 2nd Floor, Plot No. 84
Mani Complex, Sector 8
Gandhidham.
8. M/s Seaways Shipping
2nd Floor, Plot No. 351, Ward 12/B
Tagore Road, Above Cargo Honda Showroom
Gandhidham.
9. M/s APG Logistics (India) Pvt. Ltd.
Suit No. 3, Plot No. 84
Mani Complex, Sector 8
Gandhidham.
10. M/s SCL Logistics (India) Pvt. Ltd.
B-138, Ground Floor
Mohd. Pur, Bhikaji Cama Place, New Delhi – 66.
11. M/s Lynx Shipping Lines Pvt. Ltd.
68/96, Moore Street, Parrys
Chennai.
12. Ms. Sheeja
Branch Manager - M/s APG Logistics (India) Pvt. Ltd.
Suit No. 3, Plot No. 84
Mani Complex, Sector 8
Gandhidham.
13. Shri Umesh Bhatt
Director - M/s SCL Logistics (India) Pvt. Ltd.
B-138, Ground Floor
Mohd. Pur, Bhikaji Cama Place, New Delhi – 66.
14. Shri Gopala Krishnan
Director - M/s Lynx Shipping Lines Pvt. Ltd.
68/96, Moore Street, Parrys
Chennai.
15. Shri Mohammed Ali Ganthi
M/s Lynx Shipping Lines
Colombo # 146/S/2
Pearl Park Shopping Complex
Market Junction, Negombo Road
Wattala, SRI LANKA.
And
House No. 454, Lane No. 16
Sabastiyam Road
Wattala, SRI LANKA.
16. Shri Ashok Panchariya
704, Shajanand Shopping Centre
Shahibaug, Ahmedabad.
And
Residence – No. 4, Virundavan Bunglow Part-I
Opp. Shridhar Farm
Thaltej Sheelaj Road
Ahmedabad.

Copy to:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad, with copies of SCNs, for doing the necessary at your end please.
2. The Additional Director General, DRI, Zonal Unit, Ahmedabad.
3. The Asstt. / Deputy Commissioner (Recovery / Group - I), Custom House, Kandla.
4. Guard file.