

BRIEF FACTS OF THE CASE.

M/s. Sanjay Chemicals (India) Private Limited (IEC No. 0301006695), 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai had filed Warehouse Bills of Entry No. 283310 dated 08.04.2009 and No. 295765 dated 24.06.2009 with Custom House Kandla, through their appointed CHA M/s. ACT Shipping Limited, Kandla, for warehousing 525 MT and 315 MT of Acetone imported per vessel MT Bow Saga and MT Bow Star, respectively. The said imported quantity of 525 MT and 315 MT of Acetone were got cleared for home consumption by filing Ex bond Bills of Entry in the name of various parties including M/s. Sanjay Chemicals (India) Private Limited. The details of the said clearances are as under:-

TABLE-1
Details of clearance of Acetone for Home Consumption by various Parties

Sr No.	Warehouse Bill of Entry No.	Date	Quantity of Acetone Imported and warehoused (in MT)	Ex Bond Bill of Entry No	Date	Quantity of Acetone cleared (in MT)	Name of the Ex Bond Importer M/s.
1	2	3	4	5	6	7	8
A	283310	08.04.09	525				
1				309979	25.09.2009	48.00	Pioneer Chemical Industries
2				303249	12.08.2009	9.00	Satish Chemical India Pvt. Ltd
3				292336	03.06.2009	32.00	Satish Chemical India Pvt. Ltd
				Sub Total		41.00	
4				298952	14.07.2009	30.00	Pon Pure Chem (P) Ltd
5				298446	10.07.2009	33.00	Pon Pure Chem (P) Ltd
6				297390	02.07.2009	33.00	Pon Pure Chem (P) Ltd
				Sub Total		96.00	
7				297185	02.07.2009	48.00	Mody Chem, Ahmedabad
8				296397	29.06.2009	30.00	Mody Enterprises, Ahmedabad
9				290220	21.05.2009	50.00	Mody Enterprises, Ahmedabad
				Sub Total		80.00	
10				295454	23.06.2009	16.00	Solvochem, Patiala
11				296224	26.06.2009	16.00	Solvochem, Patiala
12				294307	16.06.2009	32.00	Solvochem, Patiala
13				287693	05.05.2009	32.00	Solvochem, Patiala
				Sub Total		96.00	
14				288986	13.05.2009	100.00	Sanjay Chemicals (I) Pvt. Ltd
15				287692	05.05.2009	16.00	Brij Lal Jain & Sons
B	295765	24.06.09	315				
16				298954	14.07.2009	48.00	Sanjay Chemicals
17				300795	27.07.2009	48.00	Sanjay Chemicals (I) Pvt. Ltd
				Sub Total		96.00	
18				298226	08.07.2009	16.00	Brij Lal Jain & Sons
19				301514	31.07.2009	100.00	Nector Lifesciences Ltd
20				301871	03.08.2009	20.00	India Glycols Ltd
21				302554	07.08.2009	23.00	Satish Chemical India Pvt. Ltd

22				309508	22.09.2009	60.00	IOL Chemicals & Pharmaceuticals Ltd
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2. In Warehouse Bill of Entry No. 283310 dated 08.04.2009, the port of loading was declared as Rauma and in Warehouse Bill of Entry No. 295765 dated 24.06.2009 the port of loading was declared as Kazan. Country of Origin in both the Warehouse Bills of Entry was declared as Russia and Country of consignment was not declared and left blank in both the above mentioned Warehouse Bills of Entry and in respective ex-bond Bills of Entry.

3. Intelligence gathered by the officers of Directorate of Revenue Intelligence indicated that some consignments including above said two consignments of Acetone were exported from Finland, a country in European Union, but the importers mis-declared/ suppressed the country of export/ consignment in the Bills of Entry filed before the Customs Authorities at Kandla port, to evade antidumping duty leviable @ US \$ 277.85 per MT, on import of Acetone falling under tariff item 2914 11 00 of the First Schedule to the Customs Tariff Act, 1975, originating in, or exported from European Union in terms of the Notification No. 33/2008 – Cus dated 11/03/2008. Sr. No.20.

4. Reference was made to the First Secretary (Trade), Embassy of India at Moscow, Russia for verification of the said intelligence and to ascertain the details of actual transactions of the subject goods, at Russia and Finland. After due verification, through the Government of Russia and the Government of Finland, the First Secretary (Trade), Embassy of India at Moscow, Russia informed that the said consignments of Acetone were manufactured in Russia and supplied to various parties in Finland. Further, from Finland the same were subsequently exported to India. Following documents were also supplied to DRI:

4.1 Letter No. MOS/Trade/5-I/2/2009/A-313 dated 04/02/2010 issued by the First Secretary (Trade), Embassy of India, Moscow enclosing therewith letter No. 07-153/0548 dated 01/02/2010 issued by Deputy Head of Central Enforcement Department FCS, Russia, addendum No. 15 to the contract No. 752/00203335/80078 dated 07/07/2008 (both in Russian language along with its free English translation) and copies of invoices raised by M/s. Kazanorgsintez SC Russia to M/s. Nordica Re (Finland) Oy, Finland.

4.2 Letter No. MOS/Trade/5-I/2/2009/A-314 dated 22/02/2010 issued by the First Secretary (Trade), Embassy of India, Moscow enclosing therewith

letter No. 07/153/0937 dated 12/02/2010 issued by the Head of Central Enforcement Department FCS, Russia (in Russian language along with its free English translation) stating that OOO Samaraorgsintez, Russia had not made any direct deliveries of Acetone to India and that according to the **contract between them and French company "ECORD Sarl"** Acetone was dispatched to Finland, port Mussalo.

4.3 Letter No. MOS/Trade/5-I/2/2009/A-337 dated 03/05/2010 issued by the First Secretary (Trade), Embassy of India, Moscow enclosing therewith letter No. 9010/576/09 dated 26/03/2010, issued by the Sr. Customs Officer, Tulli, National Board of Customs, Intelligence and Investigation Unit, Finland along with replies to certain questions and documents evidencing receipt of Acetone at Finland from Russia, **in the name of Finnish parties.**

4.4 Letter No. MOS/Trade/5-I/2/2009/A-340 dated 24.05.2010 issued by the First Secretary (Trade), Embassy of India, Moscow enclosing therewith letter No. 07-153/3615 dated 14.05.2010 issued by the Deputy Head of Central Enforcement Department, FCS. Vide the said letter, a copy of contract No. 752/00203335/80078 dated 7.7.2008 concluded between Open Joint-Stock company "Kajanorgsintez" and a Finnish company "Nordika Re Oy" was supplied. Based on this contract Closed Joint Stock Company "Royal Bank of Scotland" (128009, Mosco, Bolshaya, Nikitskaya, 17 bld. 1) opened an operation ID No. 08090020/ 2594/ 0000/1/ 0 on 29.09.2008. The letter further stated that subsequent to moving its business to LLC International Commercial Bank "Avers" Open Joint Stock Company "Kajanorgsintez" had opened an operation ID No. 09080007/ 0415/ 0000/ 1/ 0 against the said contract on 10.08.2009 and as of that day LLC "Samaraorgsintez" had not made any direct supply to Indian buyers. From this letter, it is clear that both the Russian parties have not sold consignments of Acetone to subject Indian buyers including M/s. Sanjay Chemicals (India) Private Limited.

5. Above mentioned documents clearly revealed that Russian manufacturers M/s. Kazanorgsintez and M/s. Samaraorgsintez had supplied Acetone to Finland in the names of various parties of European Union and from European Union the subject consignments of Acetone, as detailed above, were sold to various importers in India, including M/s. Sanjay Chemicals (India) Private Limited. To

collect import documents and evidences, following premises were searched by the officers of DRI during the course of investigation:

5.1 Office premises of M/s. Meteor Pvt. Ltd. were searched on 21/04/2010 and 7 files containing documents pertaining to import of Acetone at Kandla per vessel MT Bow Star and MT Bow Saga, were recovered and withdrawn under Panchnama dated 21/04/2010.

5.2 Office premises of M/s. ACT Shipping Ltd. were searched on 21/04/2010 and 5 files containing documents pertaining to import of Acetone at Kandla per vessel MT Bow Star and MT Bow Saga, were recovered and withdrawn under Panchnama dated 21/04/2010.

5.3 Office premises of M/s. Sanjay Chemicals (India) Private Limited situated at 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai-9 were also searched and one file containing documents pertaining to import of Acetone at Kandla per vessel MT Bow Star and MT Bow Saga, was recovered and withdrawn under Panchnama dated 21/04/2010.

6. The documents recovered from the above mentioned search operations indicated that five importers, including M/s. Sanjay Chemicals (India) Private Limited had imported consignments of Acetone per vessels MT Bow Saga and MT Bow Star. It was supplied to them by a Switzerland based trader M/s. Kolmar Group Ag, during February 2009 and June 2009. These deals were finalized through M/s. Meteor Pvt. Ltd., Mumbai, representative of M/s. Kolmar Group Ag in India. The import documents recovered were found portraying import of the said consignments from Russia and transshipment at Finland. Remarks to indicate transport at Finland were found on the Bills of Lading, invoices and other import documents to evade antidumping duty by misleading the Customs Authorities in India. The details of subject imports made at Kandla Port by different Importers were as under:

TABLE-2

Sr No	Vessel Name MT	Warehouse Bill of Entry No	Date	Importer M/s	Quantity of Acetone (MT)
1	Bow Saga	283006	6-Apr-09	Ketul chem Pvt Ltd.,	523.96
2	Bow Saga	283310	8-Apr-09	Sanjay Chemicals Limited	525
3	Bow Star	295765	24-Jun-09	Sanjay Chemicals Limited	315

4	Bow Saga	283227	8-Apr-09	Prasol Chemicals Ltd	210
5	Bow Star	295794	24-Jun-09	Prasol Chemicals Ltd	157.593
6	Bow star	293813	12-Jun-09	Apra Enterprises	367.5
7	Bow Star	295753	24-Jun-09	Akin Enterprises	110

(This notice covers the imports by M/s. Sanjay Chemicals (India) Private Limited only. In respect of other importers, notices are being issued separately.)

7. During the investigation, statements of following persons were also recorded:-

7.1 Statement of **Shri Thomas Varghese**, Senior Executive of **M/s. ACT Shipping Ltd.**, situated at Room No. 206, 207, Seva Sadan No. 2, New Kandla, was recorded under Section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, DRI, Gandhidham on 09/06/2010 wherein he, interalia, stated that:-

- He was looking after all office work pertaining to clearance of import cargo. He was holding Customs 'H' card.
- For certain importers, they had attended the Customs clearance work pertaining to Acetone imported in vessels MT Bow Saga and MT Bow Star during 2009 at Kandla. In respect of vessel MT Bow Saga he had filed Warehouse Bill of Entry No. 283227 dated 8/4/2009 in the name of M/s. Prasol Chemicals, Mumbai for warehousing of 210 MT Acetone and also filed WH Bill of Entry No. 283310 dated 08/04/2009 in the name of M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai for warehousing 525 MT Acetone. Subsequently, the same were cleared under various Ex-Bond Bills of Entry in the name of various parties.
- In respect of Acetone imported per vessel MT Bow Star he had filed Warehouse Bill of Entry No. 295794 dated 24/06/2009 in the name of M/s. Prasol Chemicals Ltd. for warehousing 157.593 MT Acetone. The same was cleared under various Ex-Bond Bills of Entry.
- In WH Bill of Entry No. 283227 dated 8/4/2009 and in WH Bill of Entry No. 295794 dated 24/06/2009 they had declared the country of origin as "Finland" on the basis of documents supplied by the importers. Later, on the basis of Certificate of Origin produced by the importers, they got the said Bills of Entry amended mentioning the country of origin as Russia.
- From the documents submitted by the importers of above consignments of Acetone, it appeared that the said consignments were exported from Russia to Finland by train and then from Finland to India by sea route. Such remarks were found on Bills of Lading, Invoice, etc. As per these documents, the supplier was M/s. Kolmar Group AG, Switzerland. The importers had also supplied him copies of Rail Receipts evidencing that the said consignments of Acetone were sent from Russia to Finland by rail. He had submitted those Rail Receipts to Customs at Kandla. The same were in Russian language and at that time he could not get translated copies of the same.

He was shown copy of a letter bearing No. 07-153/0548 dated 01/02/2010, issued by Russian Authorities and addressed to the First Secretary (Trade), Embassy of India at Moscow. The letter was in Russian Language. He was also shown a translated copy of the said letter.

- In the said letter the Russian Authorities have informed that their data base had not reflected any direct exports of Acetone from Russian company M/s. JSC Kazanorgsintez to Indian buyers and in general to India during 01/01/2005 to 15/12/2009. It further stated that during the said period M/s. JSC Kazanorgsintez delivered Acetone to Finland for a number of companies for instance M/s. Nordica Re (Finland) Oy, where final port of delivery was Rauma, Finland.

He was shown a copy of letter in Russian language along with its English translation bearing No. 07-153/0937 dated 12/02/2010. The same was issued by the Head of Central Enforcement Department, FCS, Russia and addressed to the First Secretary (Trade), Embassy of India at Moscow.

- The letter stated that OOO Samaraorgsintez had not made any direct deliveries of Acetone to India and that according to contract between OOO Samaraorgsintez and French company ECORD Sarl No. 04/09-n dated 20/01/2009, Acetone was dispatched to Finland, Port Mussalo.

He was shown a copy of document in Russian language along with its English translation which is Addendum No. 15 to the contract No. 752/00203335/80078 dated 07/07/2008.

- The same was in respect of further supply of Acetone to Indian buyers by M/s. JSC Kazanorgsintez by rail from Russia to Finland. In the addendum, name of buyer has been mentioned as Nordica Re (Finland) Oy and name of the seller has been mentioned as JSC Kazanorgsintez, Russia.

He was shown some invoices in Russian language, wherein some words were in English language.

- The said invoices were issued by foreign trading firm of M/s. Kazanorgsintez SC to Nordica Re (Finland) Oy on 05/01/2009, 09/01/2009 and 12/01/2009.

He was shown a letter No. 9010/S/576/09 dated 26/03/2010, issued by TULLI, National Board of Customs, Intelligence and Investigation Unit, Finland and addressed to the Embassy of India at Moscow.

- The said letter and its enclosure stated that according to the documents, the consigner was Kazanorgsintez, Russia and the consignees were warehousing companies of Finland and the goods holders were Nordica Re (Finland) Oy and Ste. Escord SARL.
- After seeing the above mentioned documents, it could be said that the subject consignments of Acetone were exported from Russia to Finland and further the same was re-exported from Finland to India. Therefore, for Indian importers the "Country of Export" was Finland. Therefore, in the light of Notification No. 33/2008 dated 11/03/2008, antidumping duty @ US \$ 277.85 per MT was attracted on the said consignments of Acetone.

7.2 Further statement of Shri Thomas Varghese, Senior Executive of M/s. ACT Shipping Ltd., situated at Room No. 206, 207, Seva Sadan No. 2, New Kandla, was recorded under Section 108 of the Customs Act, 1962,

before Sr. Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 01/08/2011. He interalia deposed that:

- In respect of Acetone imported in vessels MT Bow Saga and Bow Star, he had filed following Warehouse Bills of Entry:

Sl. No.	Vessel	WH B/E No & Date	Importer	Qty (in MT)
1	Bow Saga	283227 dated 8/4/2009	M/s. Prasol Chemicals, Mumbai	210
2	Bow Saga	283310 dated 08/04/2009	M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai	525
3	Bow Star	295765 dated 24/06/2009	M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai	315
4	Bow Star	295794 dated 24/06/2009	M/s. Prasol Chemicals, Mumbai	157.593
5	Bow Star	295753 dated 24/06/2009	M/s. Akin Chemicals Pvt. Ltd.	110

- The Ex-bond Bills of Entry, in respect of the above mentioned Warehouse Bills of Entry, were also filed by them.

He was shown statement of Shri Sanjay Parmar recorded on 20/07/2011 before the Assistant Director of DRI, Gandhidham (K):

- He confirmed the telephonic talk with *Shri Sanjay Parmar of M/s Sanjay Chemicals (I) Pvt Ltd.*, with him that he they could arrange for chain of documents then antidumping duty would not be attracted. He reported about the talks to Shri T. V. Sujan.
- After recording of his previous statement, he had brought the actual picture to the notice of their Director Shri T V Sujan.

He was shown photocopies of the WH Bills of Entry mentioned in above table and Ex-bond Bills of Entry filed against the same.

- The Country of consignment was not declared / left blank in all the subject Bills of Entry by mistake.
- Though the subject goods were produced in Russia and originally exported from there, but for Indian importers the "Country of Export" was Finland.
- Declaration of country of consignment in the said Bills of Entry would have affected the assessment in those Bills of Entry in respect of levy of antidumping duty in the light of Notification No. 33/2008 – Cus dated 11/03/2008.
- He was not able to recollect, after around two years, as to how the same mistake (not declaring country of consignment) was repeated in each of 05 Bills of Entry.
- It (not declaring country of consignment in Bill of Entry) amounted to mis-declaration of country of consignment.

7.3 Statement of Shri T. V. Sujan, Director of M/s. ACT Shipping Ltd., situated at Room No. 206, 207, Seva Sadan No. 2, New Kandla, was recorded under Section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 13/01/2012. He was shown the statements given by Shri Thomas Varghese

of M/s. ACT Shipping Ltd. recorded on 09/06/2010 and on 01/08/2011. He was also shown statements given by Shri Varghese Mathew on 10/06/2010 and on 21/06/2011 before recording of his statements. He, inter alia, stated that:

- The WH Bills of Entry stated by Shri Thomas Varghese in his statement recorded on 01/08/2011 and various Ex-Bond Bills of Entry against the same were filed by them for imported Acetone.
- Shri Thomas Varghese did report to him about the talks between him (Shri Thomas Varghese) and Shri Sanjay Parmar of M/s. Sanjay Chemicals (I) Pvt. Ltd. And that if the importer could arrange for chain documents then antidumping duty would not be attracted.
- In the subject Bills of Entry leaving "country of consignment" blank might be a clerical error.
- Declaration of country of consignment in the subject Bills of Entry would have seriously affected assessment of these Bills of Entry in respect of levy of antidumping duty in the light of Notification No. 33/2008 – Cus dated 11/03/2008, *and added that* it was a clerical error on the part of his staff as he was not directly dealing with the documentation.
- Mr Thomas Varghese and his assistants used to deal with documentation, filing of B/E etc

In respect of statement by Shri Varghese Mathew of M/s. Meteor Pvt. Ltd. on 10.06.2010 that ".....said clearing agents advised us that transshipment would not attract antidumping duty, however, Kolmar would have to provide the following documents:

1. *The Certificate of origin issued by Russian Federation.*
2. *All documents including Bills of lading showing the means of transport and route from Russia to Kandla, including rail transport",*

he stated that:

- He gave the said advice and since Russia was a landlocked country, the advice given in his opinion was correct provided they followed it properly.
- The said advice was given around one month before the arrival of the consignment.
- Translated copies of the rails receipts were not produced before customs. Only the documents received from the importers were produced before the Customs Authorities by the concerned staff.

7.4 Statement of Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd., 72, Jolly Maker Chambers No. 2, Nariman Point, Mumbai, were recorded under Section 108 of the Customs Act, 1962, before the Assistant Director, DRI, Gandhidham on 10/06/2010 wherein he, inter alia, stated that:-

- He was working as Branch Manager in M/s. Meteor Pvt. Ltd. since 2004/ 2005. M/s. Meteor Pvt. Ltd. was representative of M/s. Kolmar Group Ag, Zug, Switzerland in India and acting as indenting agent. He was doing trading and follow up of business matter for and on behalf of M/s. Kolmar in India.

- Acetone was imported through them at Kandla by (1) M/s. Sanjay Chemicals (I) Pvt. Ltd., (2) M/s. Ketul Chem Pvt. Ltd., (3) M/s. Prasol Chemicals Ltd., (4) M/s. Prasol Chemicals Limited and (5) M/s. Apra Enterprises, during 2009 per vessel MT Bow Saga and MT Bow Star. During February 2009, M/s. Kolmar Group Ag, Zug, informed Meteor Private Limited that they were having Acetone of Russian origin for selling and asked Meteor to find customers for the same. Meteor, in turn, checked with various Indian customers over telephone and then went back to M/s. Kolmar with the said customers price ideas. M/s. Kolmar also told Meteor that as the region of producer of the said Acetone was landlocked, the material would be transshipped at Finland. All these initial discussions were made over telephone only and therefore they did not have anything in black and white. Since M/s. Kolmar told Meteor that the material would be transshipped at Finland, Meteor informed the same to the customers. He and Shri Shiv Shanker, on behalf of M/s. Meteor, checked with the clearing agents at Kandla and Mumbai. Said clearing agents advised that transshipment would not attract antidumping duty, however, Kolmar would have to provide the following documents (1) The Certificate of origin issued by Russian Federation and (2) All documents including Bills of lading showing the means of transport and route from Russia to Kandla, including rail transport.
- Based on above, the above mentioned customers agreed to purchase the material. Once the price and payments terms were agreed by the customers, M/s. Meteor sent a sale confirmation for and on behalf of M/s. Kolmar Group Ag, Zug, Switzerland. Thereafter M/s. Kolmar Group Ag directly issued the detailed contract to the respective customers. Then Kolmar nominated the vessel and Meteor forwarded the same to the respective customers. The customers accepted the vessel nomination. The customers then established the L/C directly on M/s. Kolmar Group Ag, Zug. The original shipping documents were sent by M/s. Kolmar to the respective customers through the respective banks.
- In Mumbai he and Shri Shiv Shankar contacted Shri Jayant Lapsiya of M/s. U. M. Khona & Company and at Kandla they contacted Shri T. V. Sujan of M/s. ACT Shipping Ltd. When they informed the customers that the material would be transshipped at Finland, the customers enquired as to whether transshipment country would be interpreted as country of export. To check the same they had contacted the said CHAs. With the knowledge of the Indian customers, they requested M/s. Kolmar for inserting the wordings in documents indicating that the goods were transshipped at Finland and therefore, M/s. Kolmar inserted wordings showing that the said consignments were sent to Finland from Russia by train and then loaded at Kotka/ Rauma ports in Finland, which were further transshipped.
- He was not aware as to when and in whose name the said consignments were sent to Finland.

He was shown page No. 51 of file number ISB 974, taken over by DRI under Panchnama from his office. It was a print out of e-mail sent by Mirela Domenig to them on 17/02/2009.

- The corrections made in the wordings in the above mentioned print out for showing the same on import documents, were in his own handwriting and it was made on the advice of the customers but he could not recollect name of that customer. The corrections suggested

by the above mentioned customers were made under the impression that the material was transshipped at Finland.

- It was true that after that amendment it was informed to Kolmar vide e-mail dated 17/02/2009 time 6.07 pm (print out lying at page No. 53 of the said file).

He was shown page No. 51 of file number ISB 974, taken over by DRI under Panchnama from their office. It was a print out of e-mail sent by Mr. Vishal Somani of M/s. Akin Chemicals to them on 19/02/2009 time 1.04 pm. The said mail was in respect of wordings to be written on Bills of Lading.

- The said mail was in reply to their mail dated 19/02/2009 time 11.04 am, vide which they had sent draft B/L to customers for approval. Vide the said reply the customers had shown their doubt as to whether they will get clean chit from customs for the same.
- He was aware of the fact that import of Acetone when the country of export was Finland attracted antidumping duty under Notification No. 33/2008.

He was shown page No. 39 of file number ISB 974, taken over by DRI under Panchnama from their office. It was a print out of e-mail sent by them to Mr. Bob Raber on 16/02/2009 time 5.36 pm. This mail was in respect of levy of antidumping duty.

- Mr. Bob Raber was a trader (an employee) in Kolmar who handled Acetone. After discussing with the clearing agents, he had informed Mr. Bob Raber the gist of the discussions with the clearing agents and the response of the customers. He had also informed him that in the event of levy of antidumping duty because of transshipment at Europe, it was to be borne by M/s. Kolmar. It was written on the instance of the above mentioned customers. Bob Raber did not reply the same and he did not follow up the matter with him.

7.5 Further statement of Shri Varghese Mathew, Branch Manager of **M/s. Meteor Pvt. Ltd.**, 72, Jolly Maker Chambers No. 2, Nariman Point, Mumbai, were recorded under Section 108 of the Customs Act, 1962, before the Assistant Director, Directorate of Revenue Intelligence, Gandhidham on 21/06/2011. Before recording his statement he was shown his previous statement dated 10.06.2010 the correctness of which he again confirmed. He, inter alia, stated that:

- He knew (1) M/s. Sanjay Chemicals (I) Pvt. Ltd., (2) M/s. Ketul Chem Pvt. Ltd., (3) M/s. Prasol Chemicals Ltd., (4) M/s. Akin Chemicals Pvt. Ltd. and (5) M/s. Apra Enterprises since at least last four years.
- Shri Sanjay Parmar of M/s. Sanjay Chemicals (I) Pvt. Ltd., Shri Hashmukh Shah of M/s. Ketul Chem Pvt. Ltd., Shri Gaurang Parikh of M/s. Prasol Chemicals Ltd., Shri Rajesh Tapuriah of M/s. Akin Chemicals Pvt. Ltd. and Shri Viraj Bajarria of M/s. Apra Enterprises used to remain in contact with Meteor for the above imports.

He was shown copies of Rail Receipts lying at page number 217 to 251 in file number ISB 1002, which was taken over by the officers of DRI from the office of M/s. Meteor Pvt. Ltd., Mumbai, under Panchnama dated 21/04/2010, during search operation.

- As those documents were in Russian language, he could not read names of supplier and receiver.

- As there were many dates mentioned in the Rail Receipts, he was not able to ascertain the date of issuance.
- The negotiations for the first consignment initiated on 17/02/2009 or one/ two days before it. In respect of second consignment the negotiation commenced on 18/05/2009 or one/ two days before it.
- The date of loading from Russia could not be made out from the said Rail Receipts. However, the dates mentioned in the above discussed Rail Receipt were not matching with the dates of negotiations between Meteor and the importers.

On being asked as to whether the above facts that subject consignments of Acetone were supplied from Russia to Finland in the name of parties other than above importers and that also much before commencement of negotiations with the importers, reveal that from Russia the subject consignments were not dispatched in the name of above Indian importers ? He stated that

- Said fact could be answered only by Kolmar.

He was shown letter No. 07-153/0548 dated 01/02/2010 issued by S. V. Typin, Deputy Head of Central Enforcement Department, FCS, Russia along with its free English translation and enclosures.

- The said letter stated that the data has not reflected any direct exports of acetone from Russian Company JSC "Kazanorgsintez" to Indian buyers and in general to India from 01/01/2005 to 15/12/2009 and that during the said period JSC "Kazanorgsintez" delivered acetone to Finland for a number of companies for instance, "Nordica Re (Finland) Oy" where final port of delivery was Rauma, Finland.
- The said letter also states that the certificate of origin No. 9049000020 dated 01/04/2009 was issued on the basis of addendum to contract No. 752/00203335/80078 dated 07/07/2008 between JSC "Kazanorgsintez" and "Nordica Re (Finland) Oy" and 12 invoices against said contract.
- The copies of invoices enclosed with the said letter were in Russian so he was not able to verify the documents. However, he could read the wording Kazanorgsintez and Nordica Re (Finland) Oy.

He was shown copy of a letter No. 07-153/0937 dated 12/02/2010 issued by Mr. A.V. Ivanov, Head of Central Enforcement Department, Russia and its free English Translation.

- The said letter states that OOO "Samaraorgsintez" has not made any direct deliveries of acetone to India and that according to the contract between OOO "Samaraorgsintez" and French company "ECORD Sari" No. 04/09-n dated 20/01/2009, acetone was dispatched to Finland port Mussalo.
- M/s Meteor Pvt. Ltd. was the local representative of Kolmar in India.

He was shown page No. 39 of file number ISB 974 which was taken over by the officers of DRI from the office of M/s. Meteor Pvt. Ltd., Mumbai, under Panchnama dated 21/04/2010, during search operation.

- M/s. Kolamar informed that the consignment would be transhipped at Finland and they informed the same to the importers. The importers in turn enquired with them as to whether that transshipment will be interpreted as Country of Export. Therefore, they checked with the clearing agents and one of the trustees of Mumbai Port. The gist of the discussion was forwarded to Kolmar by

the e-mail dated 16.02.2009. I also informed the same to the importers telephonically.

- He had sent the said mail to Mr. Bob Raber who was the trader (employee) in Kolmar.

He was shown page No. 51 of file number ISB 974 which was taken over by the officers of DRI from the office of M/s. Meteor Pvt. Ltd., Mumbai, under Panchnama dated 21/04/2010, during search operation.

- All the above mentioned importers were contacted by him in respect of wordings to be written on Bills of Lading. He did not remember names of persons and details but he remembered that he had sent the same, among others, to Mr. Viraj Bajaria of Apra and Mr. Vishal Somani of Akin.
- As stated above, Kolmar informed Meteor that the Acetone would be transshipped in Finland, they (Meteor) in turn told all the above mentioned customers (importers) about the transshipment at Finland. They (Importers) in turn enquired whether the transshipment would be construed as country of export. In that respect they (Meteor) checked with one of the trustee of Mumbai port and the clearing agents at Mumbai and Kandla.
- When the clearing Agents told us that in transshipment the entire routing has to be mentioned in the documents, they informed the same to Kolmar. Kolmar made that sentence to be mentioned. After confirming from Mr. Viraj Bajaria (Apra), Mr. Vishal Somani (Akin) and other importers/ CHAs, he verbally informed Kolmar about confirmation of the importers. Details of talks with CHAs had already been stated in his previous statement.

On being asked to clarify that the Rail Receipts showed the dates which are not matching with the indenting and supply of the subject consignments and the same also showed names of parties other than subject importers, could it then be considered as "transshipment", he stated that

- At the time of conclusion of the deal Meteor was not having copies of Rail Receipts. The same were provided later.

7.6 Statement of Shri Sanjay Vijayraj Parmar, Director of M/s. Sanjay Chemicals (India) Pvt. Ltd., Mumbai were recorded under Section 108 of the Customs Act, 1962, before the Assistant Director, Directorate of Revenue Intelligence, Gandhidham on 20/07/2011, wherein he, interalia, stated that:

- He was Director in the above said company since last 10 years. Other Directors in the said company were (1) Shri Vijayraj M. Parmar (his father), (2) Shri Dilip Vijayraj Parmar (his elder brother) and (3) Shri Manoj Vijayraj Parmar (his elder bother). He was looking after work pertaining to import, marketing etc. of bulk division. The said company was engaged in import/ indigenous procurement of various chemicals and petrochemicals like Toluene, Acetone, THF, Acetonitrile, Normal Butanol, Butyl Acetate, Normal Butanol etc. They did not have any manufacturing unit, they were traders.
- He knew M/s. Meteor Pvt. Ltd. since year 2000. They were representatives of M/s. Kolmar Group AG, Switzerland and dealing in chemicals.

- For M/s. Sanjay Chemicals (India) Pvt. Ltd., he used to deal with Shri Mathew Varghese of M/s. Meteor Pvt. Ltd., Mumbai.
- Following quantity of Acetone was imported by M/s. Sanjay Chemicals (India) Pvt. Ltd. per vessel MT Bow Star and Bow Saga during year 2009 at Kandla and Mumbai.

Port	Qty per MT Bow Saga	Qty per MT Bow Star
Kandla	525	315
Mumbai	00	00

- They knew M/s. Meteor Pvt. Ltd., Mumbai since long time and whenever any cargo in which they (M/s. Meteor Pvt. Ltd.,) were dealing was available, they used to contact them (M/s. Sanjay Chemicals (India) Private Limited). In the subject imports also M/s. Meteor Pvt. Ltd. had contacted. M/s. Meteor Pvt. Ltd. had told that Acetone would be shipped from Russia. Price of the same was negotiated as per prevailing market for material not attracting antidumping duty.
- He was aware that the Acetone originated in/ exported from Russia did not attract antidumping duty and of the fact that the Acetone originated in/ exported from European Union attracted antidumping duty. He also knew and M/s. Meteor also informed that since **there was no port in Russia, the ports of adjoining countries were being utilized for export of Russian goods**. M/s. Meteor informed that the same was to be supplied from Russia to Finland by train and then from Finland it was to be shipped on vessel.
- On receipt of goods at Kandla, they (M/s. Sanjay Chemicals (India) Private Limited) asked them to provide chain documents to establish that the consignments were originated in and exported from Russia. They provided country of origin certificate and documents showing rail movement of the consignments, which were supplied to customs through their (M/s. Sanjay Chemicals (India) Private Limited) CHA M/s. ACT Infraport Limited.

He was shown a letter dated 30/03/2009 issued by them and addressed to Development Credit Bank Ltd., requesting for certain amendments in LC. The said letter is lying at page No. 107 of the file recovered by DRI from their (M/s. Sanjay Chemicals (India) Private Limited) office on 21/04/2010.

- M/s. Meteor Pvt. Ltd., informed that there was no port in Russia, they were exporting the said consignments of Acetone from Finland and that they had to submit the documents in bank and it was one kind of discrepancy. Therefore, on their request they (M/s. Sanjay Chemicals (India) Private Limited) asked bank to change name of load port from "any Russian port" to "any port in Finland", he stated that.
- For him the actual load port of the imported goods was Russia.
- On being asked specifically if load port was Russia then why did they requested bank for amendment of the same as Finland, he stated that since they (M/s. Sanjay Chemicals (India) Private Limited) were importing at CIF basis, they were not concerned with load port etc. they were concerned with certificate of origin only.
- On being asked if the goods attracted antidumping duty when imported from certain countries, would they be concerned about load port etc he stated that they would be concerned about load port but in the instant case they were informed that the goods were Russian goods. Further, they had telephonically obtained advice of Shri Thomas, Manager in their CHA firm and he informed that if they (M/s.

Sanjay Chemicals (India) Private Limited) could arrange for chain of documents then antidumping duty would not be attracted. On mobile phone conferencing, said talks were held with Shri Mathew Varghese of Meteor also.

- On being asked as to who suggested insertion of the wordings showing rail movement of the goods in import documents like B/L etc, he stated that they asked them for chain documents and insertion of the said wordings was a part of the same.
- Mr Thomas did not ask him for insertion of any particular wordings in import documents. It was their decision to insert all the wordings for the entire set of documents presented. The entire wordings were consulted by M/s. Meteor Pvt. Ltd. with reputed CHAs of India for depicting that this material is from Russia and only transshipped in Finland. On the basis of this they just asked if it was ok, which, they (M/s. Sanjay Chemicals (India) Private Limited) approved.

He was shown copies of Rail Receipts lying at page number 217 to 251 in file number ISB 1002, which was taken over by the officers of DRI from the office of M/s. Meteor Pvt. Ltd., Mumbai, under Panchnama dated 21/04/2010, during search operation.

- The date "06.03.2009" mentioned in some of the Rail Receipts did not match with period of import of subject Acetone in any of the above mentioned two vessels. It was not informed to Customs. They submitted the same to Customs through CHA.
- They had not supplied translation of the rail receipts to customs and they were not asked for the same.
- On being further asked specifically for what purpose you submitted such documents to Customs, which even you could not read and understand, he stated that this was a part of the chain document.

He was shown a letter in Russian language and its free English translation which has been issued by the Head of Central Enforcement Department, FCS to the First Secretary (Trade), Embassy of India, Moscow. The letter No. s 07-153/0937 dated 12.02.2010.

- On being asked specifically, he stated that the said letter states that OOO "Samaraorgsintez" has not made any direct deliveries of acetone to India and that acetone was dispatched by them to Finland to French company "Ecord Sari".

He was shown a letter in Russian language and its free English translation which has been issued by the Head of Central Enforcement Department, FCS to the First Secretary (Trade), Embassy of India, Moscow. The letter No. 07-153/0548 dated 01.02.2010.

- The said letter stated that database had not reflected any direct exports of acetone from Russian company JSC "Kazanorgsintez" to Indian buyers listed in column 4 Annexure 1 and in general to India from 01.01.2005 to 15.12.2009 and that during that period JSC "Kazanorgsintez" delivered acetone to Finland for a number of companies, for instance, "Nordica Re (Finland) Oy where final port was Rauma, Finland.
- Bs/L showed name of shipper as Kazanorgintez JSC but Bill of Entry showed name of supplier as Kolmar Group AG. Their (M/s. Sanjay Chemicals (India) Private Limited) supplier was Kolmar but material was shipped by Kazanorgsintez SC, Russia.
- They had never contacted/ contracted/ corresponded with Kazanorgintez JSC.

- They had not asked Kolmar for insertion of name of Kazanorgintez SC. It was done by Kolmar. They did not object to or enquired about it. The imported goods were sold to M/s. Sanjay Chemicals (India) Pvt. Ltd. by M/s. Kolmar Gropup AG.
- M/s Kolmar Group AG could not sell the said cargo to M/s. Sanjay Chemicals (India) Pvt. Ltd. without purchasing the same from M/s. Nordica Re or any other party to whom Nordica Re might have sold the same.
- On being asked specifically as to how in the absence of source of procurement could they correlate certificate of origin etc. with the imported cargo, he stated that in the absence of source of procurement it could not be correlated but the documents supplied by Kolmar to them showed country of origin of the same as Russia.
- On being asked he stated that once the cargo was sold by Russian producer to a party for delivery to Finland and then the cargo was again sold from Finland to them it can not be considered as transshipment.
- On being asked specifically as to why country of consignment was not declared by them in warehouse BE No. 283310 dated 08/04/2009 and 295765 dated 24/06/2009 he stated that the answer for the same can be given by their CHA M/s. ACT Infraport Ltd.
- They were aware that when there are wordings in relevant antidumping Notification "originated in or exported from", the declaration of country of consignment makes great difference on assessment.

7.7 Further statement of **Shri Sanjay Vijayraj Parmar**, Director of **M/s. Sanjay Chemicals (India) Pvt. Ltd.**, Mumbai was recorded under Section 108 of the Customs Act, 1962, before the Deputy Director, Directorate of Revenue Intelligence, Gandhidham on 04/04/2012. He interalia deposed that:

- The evidence shown to him reveal that 'country of export' in the subject import of 525 + 315 = 840 MT of Acetone at Kandla per MT Bow Saga and Bow Star was Finland.
- Anti-dumping duty was leviable under Notification No. 33/2008-Cus., dated 11-3-2008 on Acetone originated in any country and exported from European Union.
- They have not paid anti-dumping duty on 840 MT of Acetone imported by them during year 2009 at Kandla per MT Bow Saga and Bow Star. They shall pay the same in respect of clearances made by them at the earliest and also pursue with other parties who cleared part quantity on Ex-Bond basis. He added that they will reserve their rights available at the stages of adjudication / appeals.

7.8 Since out of the total 840 MT (525 MT per vessel MT Bow Saga and 315 MT per vessel MT Bow Star) only 196 MT was cleared for home consumption by M/s. Sanjay Chemicals (India) Private Limited themselves and remaining 644 MT of Acetone were cleared for home consumption under Ex bond Bills of Entry in the name of various other Parties, the

statements of these Ex bond Importers were also recorded and are appended below.

(a) Statement of **Shri Anil Dahiya**, son of Late Shri Richhpal Singh Dahiya, working as Logistics Incharge in **M/s. Brij Lal Jain & Sons**, C-19A, Shivaji Park, Punjabi Bagh, New Delhi, was recorded under section 108 of the Customs Act, 1962, before the Deputy Director, Directorate of Revenue Intelligence, Gandhidham on 07.06.2012 wherein, he interalia, stated that :

- The company was engaged in the trading of Chemicals and Solvents whose Proprietor was Shri Diwanchand Jain
- The Acetone was imported by M/s. Sanjay Chemicals(India) Pvt. Ltd., Mumbai and purchased through Bond Transfer, which were imported during March – June 2009, arrived at Kandla Port per vessel MT Bow Saga and MT Bow Star.
- The Acetone procured arrived per MT Bow Saga from M/s. Sanjay Chemicals (I) Pvt.Ltd., Mumbai, through market broker of chemicals, Shri Pankaj Sayar and another consignment of Acetone procured per MT Bow Star from M/s. Sanjay Chemicals (I) Pvt.Ltd., Mumbai through the market broker of chemicals Shri Atul Gandhi having offices at Mumbai.
- In respect of consignment of Acetone imported per MT Bow Saga the goods was cleared through M/s. ACT Shipping Ltd., the transaction was through Bond Transfer Sales. The goods cleared vide Ex-Bond Bills of Entry No.287692 dtd.05.05.2009 – 16MTs. They procured the material through Invoice No. R0032A dated 11.04.2009 which was issued by M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai.
- In respect of consignment of Acetone imported per MT Bow Star the goods was cleared through M/s. ACT Shipping Ltd. The transaction was through Bond Transfer Sales. The goods cleared vide Ex-Bond Bills of Entry No. 298226 dtd.05.05.2009–16MTs. We procured the material through Invoice No.R00136 dated 01.07.2009 which was issued by M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai.

He submitted photocopies of the documents related to the both the purchases of the consignment.

- The Overseas Supplier of Acetone as per the Bond Transfer records was M/s. Kolmar Group AG, Switzerland.
- They did not know the details of the manufacturer of the above said consignment and there was no mention of name in the documents provided to us by M/s. Sanjay Chemicals (I) Pvt. Ltd.
- Country of Origin as per Ex-Bond Bills of Entry and Bills of Lading was Russia.
- Country of export of the said consignments of Acetone as per the Bills of Lading was Russia as the cargo had arrived via rail from Kazan, Russia to Rauma, Finland.
- Documents pertaining to that transportation were not provided to them by M/s. Sanjay Chemicals (I) Pvt. Ltd. nor they had asked for the same.

- It was their duty to ensure truthfulness of the documents specially when there is anti dumping duty on Acetone when imported from EU but trusting the documents provided to them, they did not ask for any further details.
- The port of shipment of the said consignments of Acetone as per the Bills of Lading, was Rauma, Finland.
- On being asked to explain as to how the port of shipment can be situated in Finland when they were stating the name of country of export as Russia, he replied that that was only as per the Bill of Lading.
- As per the Bill of Lading, the goods were transported from Russia to India, the goods were loaded from Kazan, Russia by Rail to Rauma, Finland and further it was loaded on MT Smeraldo on 26.02.2009 and transshipped on to MT Bow Saga at Rotterdam
- As per the Bill of Lading, the goods was transported from Russia to India, the goods were from Kazan, Russia by Rail to Rauma, Finland and further it was loaded on MT Heinrich Essberger on 10.05.2009 and transshipped on to MT Bow Star at Rotterdam.
- He did not know that on which dates said consignments of Acetone were transported from Russia to Finland by Rail as it was not mentioned in either of the Bills of Lading.
- The country of consignment was not mentioned in the Bills of Entry, it was due to the lapse on their part / on the part of the CHA.
- He agreed that when antidumping duty was there on any product, the declaration of country of consignment had vital importance.

He was shown Invoices issued by KAZANORGSINTEZ bearing No.2037762-1 dated 26/02/2009 raised by the supplier of above consignment, there was reference of LC having date "090324" pertaining to MT Bow Saga and in the invoice No. 2039497-1 dated 10/05/2009 raised by the supplier of above consignment, there is reference of LC having date "090529" pertaining to MT Bow Star.

- They had not noticed it at that time that how there was reference of the LC in the invoice, which was not opened by the date of invoice.

He was shown free English translation of Addendum No 15 to the contract No 752/00203335/80078-dated 07.07.08.

- On being asked about the supplier and the buyer according to the addendum, he replied that KAZANORGSINTEZ of Russia was the seller and NORDICA RE (Finland) OY was the buyer.
- On being asked that If any Russian Company sold the goods to a Finnish company and after procuring goods from such buyer it was exported to any Indian company, he replied that in that event country of export was Finland.

He was shown, print out of Notification No. 33/2008 Dt.11/3/2008. Serial No 20 of the notification clearly says that Anti Dumping Duty @ 277.85 USD/ MT was leviable for Acetone having country of origin as any country other than subject countries and country of export was European Union.

- It will attract antidumping duty.

He was shown report received from First Secretary (Trade), Embassy of India, Moscow No.07-153/0548 dated 01.02.2012, which states "Data Base has not reflected any direct exports of Acetone from Russian Company JSC KAZANORGSINTEZ SC, RUSSIA to Indian Buyers during 01.01.2005 to 15.12.2009. However, during the said period JSC KAZANORGSINTEZ SC,

RUSSIA delivered Acetone to Finland for a number of companies like Nordica Re, Finland, where the final port of delivery was Rauma, Finland”.

- The goods were exported from Russia to Finland and then the same goods were exported from Finland to India.

He was shown letter dated 04.02.2010 issued by the First Secretary (Trade), Embassy of India at Moscow, which states "It may please be seen there that none of the invoices have been raised in the name of any Indian buyer. The certificate of origin was obtained after the supplies have been affected and after entering into a contract that regularized the supplies in the name of Indian buyers retrospectively”.

- It appeared that certificate of origin was obtained from Russian authorities but the invoices of the subject goods were raised in the names of Finnish parties. He also stated that he will discuss the issue with his Owner and ask for early payment of antidumping duty.

(b) Statement of Shri Rajeev Sharma, son of Shri S.C. Sharma, working as Joint Manager(Purchase) in M/s. India Glycols Limited, Plot No.2B, Sector-126, Noida was recorded under section 108 of the Customs Act, 1962, before the Deputy Director, Directorate of Revenue Intelligence, Gandhidham on 19.06.2012 wherein, he interalia stated that

- He was working in the said company since 2005. The company was Public Limited Company and was engaged in the manufacturing of MEG/Speciality Chemicals. Its Chairman and Managing Director was Shri U.S.Bhartia.
- The Acetone was purchased under Bond Transfer from M/s.Traxpo Enterprises Pvt. Ltd, Kolkatta whose owner is Shri S.K.Tapuriah which was imported during February 2009 which arrived at Kandla Port per vessel MT Bow Star.
- They had contacted M/s. Traxpo Enterprises Pvt.Ltd, Kolkatta by issuing Purchase Order No.4500002544 dated 17.07.2009 for 20 MT Acetone and procured Acetone of MT Bow Star.

He submitted photocopy of the documents related to that purchase.

- The goods were cleared vide Ex-Bond Bill of Entry No. 301871 dtd.05.05.2009 for 16MT of consignment of Acetone imported per MT Bow Star which was procured through Invoice No.HS/020/09-10 dated 14.7.2009 issued by M/s.Traxpo Enterprises Pvt.Ltd., Kolkatta.
- The Overseas Supplier as per the Bond Transfer records was M/s. Kolmar Group AG, Switzerland, for the said consignment of Acetone.
- They did not know the details of the manufacturer of the above said consignment of Acetone
- Name of the manufacturer of Acetone was not been provided by M/s.Traxpo Enterprises Pvt. Ltd, Kolkatta.
- As per the Ex-Bond Bill of Entry, the Country of Origin is Russia for the said consignment of Acetone.

He was shown copy of the Bill of Lading No.3001 dtd.10.05.2009 and Invoice No. 2039497-1 dated 10/05/2009 pertaining to Ex-Bond Bill of Entry No. 301871 dtd.05.05.2009.

- As per the Bills of Lading, the country of export of the said consignment of Acetone was Russia as the cargo had arrived via rail from Kazan, Russia to Rauma, Finland.
- They had not been provided any documents pertaining to that transportation nor Bill of Lading(B/L) or Commercial Invoice.
- They had asked for the documents from M/s.Traxpo Enterprises Pvt.Ltd, Kolkatta, but the document was not shared with them due to his fear of losing business.
- On being asked that whether it was not their duty to ensure truthfulness of the documents specially when there is anti dumping duty on Acetone when imported from European Union, he stated that the Purchase Order was in Rupee payment terms and as per terms it was clearly mentioned that the purchase price was inclusive of Anti-dumping duty and Customs Duty and Cess. CVD was to be paid extra at actual. They paid the Customs Duty and CVD but the component of Customs Duty and Cess was deducted from their bill. So if there was any antidumping duty, it was supposed to be paid by their supplier M/s.Traxpo Enterprises Pvt.Ltd., Kolkatta.

He had been shown Invoice and B/L issued by KAZANORGSINTEZ.

- As the documents were not parted with them by their Supplier, they were not aware of the Country of Origin on Bill of Lading, and the port of shipment of the said consignments of Acetone. However, they had come to know during the statement that the port of shipment is Rauma, Finland when he was shown Invoice and Bill of Lading.
- On being asked to explain that how the port of shipment can be situated in Finland when he are stating the name of country of export as Russia, he stated that he had no knowledge about it, as the Bill of Lading and Invoice had been seen by him that day only.
- As per the Bill of Lading shown to him, the subject goods were loaded from Kazan, Russia by Rail to Rauma, Finland and further it was loaded on MT Heinrich Essberger on 10.05.2009 and transshipped on to MT Bow Star at Rotterdam.
- He did not knew on which dates the said consignment of Acetone was transported from Russia to Finland by Rail as the same was not mentioned in the Bill of Lading shown to him.
- The country of consignment was not mentioned in the above mentioned Bill of Entry, it was lapse on the part of the CHA.
- He was aware that when antidumping duty was there on any product, the declaration of country of consignment had vital importance.
- On being asked about the invoice No.2039497-1 dated 10/05/2009 raised by the supplier of above consignment, there was reference of LC having date "090529" pertaining to MT Bow Star, that how there was reference of the LC in the invoice, which was not opened by the date of invoice, that they have not been provided the copy of Invoice and Bill of Lading, hence no knowledge about the same.

He was shown free English translation of Addendum No 15 to the contract No 752/00203335/80078 dated 07.07.08.

- KAZANORGSINTEZ of Russia was the seller and NORDICA RE (Finland) OY was the buyer.

On being asked, that if any Russian Company sold the goods to Finnish company and after procuring goods from such buyer it was exported to any

Indian company, then what should be the country of export, he replied that, in such event, the country of export would be Finland.

He was shown a print out of Notification No.33/2008 Dt.11/03/2008 wherein Serial No 20 of the notification clearly says that Anti Dumping Duty @ 277.85 USD/ MT is leviable for Acetone having country of origin as any country other than subject countries and country of export is European Union.

- It will attract antidumping duty.

He was shown a report received from First Secretary (Trade), Embassy of India, Moscow No.07-153/0548 dated 01.02.2010, which states "Data Base has not reflected any direct exports of Acetone from Russian Company JSC KAZANORGSINTEZ SC, RUSSIA to Indian Buyers during 01.01.2005 to 15.12.2009. However, during the said period JSC KAZANORGSINTEZ SC, RUSSIA delivered Acetone to Finland for a number of companies like Nordica Re, Finland, where the final port of delivery was Rauma, Finland".

- He was shocked to know the facts, that the material was moved from Finland directly into India and the Supplier evaded Anti-Dumping Duty by showing Certificate of Origin as Russia, but since they were not shared the above facts by their Supplier M/s.Traxpo Enterprises Pvt. Ltd., they were not aware of above facts. It seems that the goods were exported from Russia to Finland and then the same goods were exported from Finland to India.

He was shown letter dated 04.02.2010 issued by the First Secretary(Trade), Embassy of India at Moscow, which states "It may please be seen there that none of the invoices have been raised in the name of any Indian buyer. The certificate of origin was obtained after the supplies have been affected and after entering into a contract that regularized the supplies in the name of Indian buyers retrospectively".

- They understand that the material moved from Finland directly into India and the Supplier M/s.Traxpo Enterprises Pvt. Ltd., evaded Anti-Dumping Duty by showing Certificate of Origin as Russia, but since we were not shared the above facts by our Supplier, we were not aware of above facts till today i.e.19.6.2012. We will take up the matter with the Supplier for this kind of trade, which is unlawful.

(c) Statement of Shri Harish Dania, Deputy Manager (Transportation/Purchase) in M/s. IOL Chemicals & Pharmaceuticals Ltd. was recorded under section 108 of the Customs Act, 1962, before the Deputy Director, Directorate of Revenue Intelligence, Gandhidham on 18.6.2012 wherein, he interalia, stated that

- He was working as Deputy Manager of Transportation/Purchase in M/s. IOL Chemicals and Pharmaceuticals Ltd since 2004. He was authorised Representative in M/s.IOL Chemicals and Pharmaceuticals Ltd., 85, Industrial Area-A, Ludhiana. The said company was engaged in manufacturing of Acetic Acid, Ethyl Acetate and Acetic Anhydride, the company was Public Limited Company and its Chairman and Managing Director was Shri Varinder Gupta.
- The Acetone was purchased under Bond Transfer from M/s.Traxpo Enterprises Pvt. Ltd, Kolkatta whose owner was Shri S.K.Tapuriah which was imported during February 2009 which arrived at Kandla Port per vessel MT Bow Star.

- They had issued purchase order to M/s. Traxpo Enterprises Pvt.Ltd, Kolkatta on the basis of rates quoted, for purchase of Acetone of MT Bow Star.
- They had filed Bill of Entry No.309508 dtd.22.09.2009 in respect of Acetone import per MT Bow Star for 60 MT. They had procured the material from M/s.Traxpo Enterprises Pvt.Ltd., Kolkata vide Invoice No.HS/019/09-10 dated 14.07.2009 also submitted photocopy of the documents related to that purchase.
- The Overseas Supplier as per the Bond Transfer records was M/s.Kolmar Group AG, Switzerland, for the above said consignment of Acetone.
- They did not know the details of the manufacturer of the above said consignment of Acetone.
- There was no mention of name of the manufacturer of Acetone in the documents provided to you by M/s.Traxpo Enterprises Pvt.Ltd., Kolkatta as they have not been provided the documents of Manufacturer of Acetone.
- As per the Ex-Bond Bill of Entry the Country of Origin of the said consignment of Acetone was Russia.
- The Country of Export of the consignment of Acetone was not known, as M/s.Traxpo Enterprises Pvt. Ltd, Kolkatta had not provided them the copy of Bill of Lading, Invoice or any document related to the country of export of the consignment.

He was shown the Bill of Lading No.3001 dtd.10.05.2009 and Invoice No. 2039497-1 dated 10/05/2009 pertaining to the Ex-Bond Bill of Entry.

- As per the Bill of Lading No.3001 the country of export of said consignment was Russia as the cargo has arrived via rail from Kazan, Russia to Rauma, Finland.
- Documents pertaining to above transportation were not provided, as they were not given the copy of Bill of Lading, hence he was not aware of the same.
- It was their duty to ensure truthfulness of the documents when there was anti dumping duty on Acetone when imported from European Union but trusting the documents provided to them, they did not ask for any further details.
- As per the Bill of Lading shown to him, the port of shipment of the said consignment of Acetone was Rauma, Finland.
- On being asked to explain, that how the port of shipment can be situated in Finland when he was stating the name of country of export as Russia, he stated that he had stated that as per the Bill of Lading.
- As per the Bill of Lading, the goods were transported from Russia to India, loaded from Kazan, Russia by Rail to Rauma, Finland and further it was loaded on MT Heinrich Essberger on 10.05.2009 and transshipped on to MT Bow Star at Rotterdam.
- He did not know on which dates said consignments of Acetone were transported from Russia to Finland by Rail as the same was not mentioned in the Bill of Lading shown to him.
- The country of consignment was not declared in the above-mentioned Bill of Entry, it was lapse on the part of CHA, as the CHA had not asked for any other documents.

- He agreed and was aware that when antidumping duty was there on any product, the declaration of country of consignment had vital importance, but based on trust of the documents provided to them by M/s.Traxpo Enterprises Pvt.Ltd, Kolkatta, they did not ask for any further details.
- On being asked about the invoice No.2039497-1 dated 10/05/2009 raised by the supplier of above consignment, there was reference of LC having date "090529" pertaining to MT Bow Star, that how there was reference of the LC in the invoice, which was not opened by the date of invoice, that they have not been provided by M/s.Traxpo Enterprises Pvt.Ltd, Kolkatta, They were not aware of the same. However, he stated that the Invoice could have been made after the issuance of L/C.

He was shown free English translation of Addendum No 15 to the contract No 752/00203335/80078-dated 07.07.08.

- KAZANORGSINTEZ of Russia was the seller and NORDICA RE (Finland) OY was the buyer.
- In the event when Russian Company sold the goods to a Finnish company and after procuring goods from such buyer it was exported to any Indian company then country of export was Finland.

He was shown a print out of Notification No.33/2008 Dt.11/03/2008 at Serial No.20 of the notification clearly says that Anti Dumping Duty @ 277.85 USD/ MT is leviable for Acetone having country of origin as any country other than subject countries and country of export was European Union.

- It will attract antidumping duty.

He was shown a report received from First Secretary (Trade), Embassy of India, Moscow No.07-153/0548 dated 01.02.2012, which states "Data Base has not reflected any direct exports of Acetone from Russian Company JSC KAZANORGSINTEZ SC, RUSSIA to Indian Buyers during 01.01.2005 to 15.12.2009. However, during the said period JSC KAZANORGSINTEZ SC, RUSSIA delivered Acetone to Finland for a number of companies like Nordica Re, Finland, where the final port of delivery was Rauma, Finland".

- As per the documents shown, the goods were exported from Russia to Finland and then the same goods were exported from Finland to India.

He was shown letter dated 04.02.2010 issued by the First Secretary (Trade), Embassy of India at Moscow, which states "It may please be seen there that none of the invoices have been raised in the name of any Indian buyer. The certificate of origin was obtained after the supplies have been affected and after entering into a contract that regularized the supplies in the name of Indian buyers retrospectively".

- It appears that certificate of origin was obtained from Russian authorities but the invoices of the subject goods were raised in the names of Finnish parties. He added, that he will put up this issue with the Company's Board and discuss for payment of antidumping duty.

(d) Statement of **Shri Biren Girish Sitwala**, Authorized Branch Representative of **M/s. Mody Chem, Ahmedabad** was recorded under section 108 of the Customs Act, 1962, before the Senior Intelligence

Officer, Directorate of Revenue Intelligence, Gandhidham on 10.07.2012 wherein, he interalia, stated that

- He was working as Authorized Branch Representative since 2008, in M/s. Mody Chem, Ahmedabad. It was a Proprietorship firm and was engaged in trading of chemicals.
- The Acetone was purchased under Bond Transfer from M/s. Sanjay Chemicals (India) Pvt. Ltd. whose owner is Shri Sanjay V. Parmar was it was imported during May 2009 which arrived at Kandla Port per vessel MT Bow Saga.
- The goods were procured by Shri Haresh A. Mody, from M/s. Sanjay Chemicals (India) Pvt. Ltd. on verbal orders through trade broker Shri Shashikant Sayar & Bros vide Tax Invoice no.G0085 dated 07.05.2009.
- The consignment of 48 MT of Acetone imported per MT Bow Saga cleared vide Ex-Bond Bill of Entry No.297185 dtd.02.07.2009.
- The Overseas Supplier as per the Bill of Entry and Invoice was M/s.Kolmar Group AG, Switzerland, for the Acetone consignment.
- They did not know the details of the manufacturer of the consignment but the Country of Origin was Russia.
- There was no mention of name of the manufacturer of Acetone in the documents provided by M/s. Sanjay Chemicals (I) Pvt.Ltd.,
- As per the Ex-Bond Bill of Entry the Country of Origin was Russia for the said consignment of Acetone

He was shown the Bill of Lading No.2401 dtd.26.02.2009 and Invoice No. 2037762-1 dated 26/02/2009 pertaining to Ex-Bond Bill of Entry No. 297185 dtd.02.07.2009 .

- As per the Bill of Lading, the country of export of said consignment was Russia as the cargo has arrived via rail from Kazan, Russia to Rauma, Finland.
- They were not provided any documents pertaining to that transportation nor Bill of Lading or Commercial Invoice and they have not asked for the documents from M/s.Sanjay Chemicals (I) Pvt.Ltd.
- On being asked that was not their duty to ensure truthfulness of the documents specially when there was anti dumping duty on Acetone when imported from European Union, he stated that the Purchase was through routine verbal orders which include Basic Duty and CVD to be paid by them and there had been no such written agreement between them and M/s.Sanjay Chemicals (I) Pvt. Ltd and they were not aware of anti-dumping duty.
- The port of shipment of the above said consignment was Rauma, Finland.
- On being asked to explain, that how the port of shipment can be situated in Finland when he was stating the name of country of export as Russia, he stated that the said cargo had been loaded by Railway from Kazan, Russia to Rauma, Finland and loaded on to MT Bow Saga for further shipment to Kandla, India.
- As per the Bill of Lading, the cargo were loaded from Kazan, Russia by Rail to Rauma, Finland and further it was loaded on MT Smeraldo on 26.02.2009 and transshipped on to MT Bow Saga in Rotterdam for further shipment to India,

- He did not know that on which dates said consignments of Acetone were transported from Russia to Finland by rail as the same was not mentioned in the Bill of Lading.
- The country of consignment was not declared in the above mentioned Bill of Entry.
- As per advice by original Importer, the CHA cleared the said goods and then they only received the copy of Bill of Entry after the goods were cleared and duty was paid, hence it was not possible to ask for mentioning of Country of Consignment.
- They were aware that when antidumping duty was there on any product, the declaration of country of consignment had vital importance.

He was shown Invoice issued by KAZANORGSINTEZ.

- On being asked about the invoice No. 2037762-1 dated 26/02/2009 raised by the supplier of above consignment, there was reference of LC having date "090324" pertaining to MT Bow Saga. How there was reference of the LC in the invoice, which was not opened by the date of invoice, he replied that the Contract was between M/s. Sanjay Chemicals (I) Pvt. Ltd and M/s. Kolmar AG, they were not aware of the said deal.

He was shown free English translation of Addendum No 15 to the contract No 752/00203335/80078 dated 07.07.08.

- KAZANORGSINTEZ of Russia was the seller and NORDICA RE (Finland) OY was the buyer.
- On being asked that, if any Russian Company sold the goods to a Finnish company and after procuring goods from such buyer it was exported to any Indian company, then what should be the country of export, he replied that as per the documents shown to him, the country of export/shipment was Finland.

He was shown a print out of Notification No 33/2008 Dt.11/03/2008. Serial No 20 of the notification clearly says that Anti Dumping Duty @ 277.85 USD/ MT was leviable for Acetone having country of origin as any country other than subject countries and country of export is European Union.

- It will attract antidumping duty, and they will pay the Anti-dumping duty on 80 MT of Acetone.

He was shown a report received from First Secretary (Trade), Embassy of India, Moscow No.07-153/0548 dated 01.02.2010, which states "Data Base has not reflected any direct exports of Acetone from Russian Company JSC KAZANORGSINTEZ SC, RUSSIA to Indian Buyers during 01.01.2005 to 15.12.2009. However, during the said period JSC KAZANORGSINTEZ SC, RUSSIA delivered Acetone to Finland for a number of companies like Nordica Re, Finland, where the final port of delivery was Rauma, Finland".

- It was very much surprising to see all of these fact and figures, they were not part of those facts and figure and same was not shared with them, but they would like to add that they have been kept in dark about the said deal.

He was shown letter dated 04.02.2010 issued by the First Secretary(Trade), Embassy of India at Moscow, which states "It may please be seen there that none of the invoices have been raised in the name of any Indian buyer. The certificate of origin was obtained after the supplies have been affected and after entering into a contract that regularized the supplies in the name of Indian buyers retrospectively".

- They would abide by the law, and pay the Anti-Dumping Duty, he would put up the matter before Shri Haresh A. Mody, proprietor.

(e) Statement of **Shri Biren Girish Sitwala**, Branch Manager in **M/s. Mody Enterprise, Ahmedabad**, Block No.738/E-1, Tulsi Avenue, NH-8, Aslali, Ahmedabad was recorded under section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 10.07.2012 wherein, he interalia, stated that:

- M/s. Mody Enterprise, Ahmedabad was proprietorship firm and its proprietor was Shri Amresh A. Mody. Their head office was situated at 201, Victory Park 'A' Wing, Chadavarkar Lane, Above Indrani Sarees, Borivali (W), Mumbai-92. The said firm was engaged in trading of chemicals.
- The Acetone was purchased under Bond Transfer from M/s. Sanjay Chemicals (India) Pvt. Ltd. whose owner is Shri Sanjay V. Parmar. It was imported during May 2009 which arrived at Kandla Port per vessel MT Bow Saga
- The goods were procured by Shri Amresh A. Mody, from M/s. Sanjay Chemicals (India) Pvt. Ltd. on verbal orders through trade broker Shri Shashikant Sayar & Bros vide Tax Invoice no.G0085 dated 07.05.2009.
- 50 MT and 30 MT of Acetone was cleared vide Ex-Bond Bills of Entry No. 296397 dtd.29.6.2009 and 290220 dtd.21.5.2009 respectively.
- The Overseas Supplier as per the Bills of Entry and Invoice was M/s.Kolmar Group AG, Switzerland, for the above said consignment of Acetone.
- They did not know the details of the manufacturer of the above said consignment but the Country of Origin was Russia.
- There was no mention of name of the manufacturer of Acetone in the documents provided to them by M/s. Sanjay Chemicals (India) Pvt.Ltd.
- As per the Ex-Bond Bill of Entry the Country of Origin of the said consignment of Acetone was Russia.

He had been shown the Bill of Lading No.2401 dtd.26.02.2009 and Invoice No. 2037762-1 dated 26/02/2009 pertaining to Ex-Bond Bills of Entry No. 296397 dtd.29.06.2009 and 290220 dtd.21.05.2009.

- As per the Bill of Lading, the country of export of said consignment of Acetone was Russia as the cargo has arrived via rail from Kazan, Russia to Rauma, Finland but no documents pertaining to that transportation were provided and nor they had asked from M/s.Sanjay Chemicals (India) Pvt. Ltd.
- On being asked about the duty to ensure truthfulness of the documents specially when there was anti dumping duty on Acetone when imported from European Union, he replied that the Purchase was through routine verbal orders which include Basic Duty and CVD to be paid by them and there has been no such written agreement between them and M/s.Sanjay Chemicals (I) Pvt. Ltd. As they were not aware of the Anti-Dumping Duty, they did not ask for any documents.

- As per the documents shown to him, the port of shipment of above consignment was Rauma, Finland.
- On being asked to explain as to how the port of shipment can be situated in Finland when they are stating the name of country of export as Russia he replied that as the said cargo had been loaded by Rail from Kazan, Russia to Rauma Finland and loaded on to MT Bow Saga for further shipment to Kandla, India.
- As per the Bill of Lading, the cargo were loaded from Kazan, Russia by Rail to Rauma, Finland and further it was loaded on MT Smeraldo on 26.02.2009 and transshipped on to MT Bow Saga in Rotterdam for further shipment to India,
- He did not know that on which dates said consignments of Acetone were transported from Russia to Finland by rail as the same was not mentioned in the Bill of Lading.
- The country of consignment was not declared in the above mentioned Bill of Entry.
- As per advise by original Importer, the CHA cleared the said goods and then they only received the copy of Bill of Entry after the goods were cleared and duty was paid, hence it was not possible to ask for mentioning of Country of Consignment.
- They were aware that when antidumping duty was there on any product, the declaration of country of consignment had vital importance.

He had been shown Invoices issued by KAZANORGSINTEZ.

- On being asked about the invoice No. 2037762-1 dated 26/02/2009 raised by the supplier of above consignment, there was reference of LC having date "090324" pertaining to MT Bow Saga. How there was reference of the LC in the invoice, which was not opened by the date of invoice, he replied that the Contract was between M/s.Sanjay Chemicals (I) Pvt. Ltd and M/s.Kolmar AG, they were not aware of the said deal.

He had been shown free English translation of Addendum No 15 to the contract No 752/00203335/80078 dated 07.07.08.

- KAZANORGSINTEZ of Russia was the seller and NORDICA RE (Finland) OY was the buyer.
- On being asked that, If any Russian Company sold the goods to a Finnish company and after procuring goods from such buyer it was exported to any Indian company, then what should be the country of export, he replied that as per the documents shown to him, the country of export/shipment was Finland.

He had been shown print out of Notification No 33/2008 Dt.11/03/2008. Serial No 20 of the notification which states that Anti Dumping Duty @ 277.85 USD/ MT is leviable for Acetone having country of origin as any country other than subject countries and country of export is European Union.

- It will attract antidumping duty, and they will pay the Anti-dumping duty on 80 MT of Acetone.

He had been shown a report received from First Secretary (Trade), Embassy of India, Moscow No.07-153/0548 dated 01.02.2010, which states "Data Base has not reflected any direct exports of Acetone from Russian Company JSC KAZANORGSINTEZ SC, RUSSIA to Indian Buyers during 01.01.2005 to 15.12.2009. However, during the said period JSC KAZANORGSINTEZ SC,

RUSSIA delivered Acetone to Finland for a number of companies like Nordica Re, Finland, where the final port of delivery was Rauma, Finland”.

- It was very much surprising to see all of those fact and figures, he added that they were not part of those facts and figures and same was not shared with us, but had been kept in dark about the said deal.

He had been shown letter dated 04.02.2010 issued by the First Secretary (Trade), Embassy of India at Moscow, which states "It may please be seen there that none of the invoices have been raised in the name of any Indian buyer. The certificate of origin was obtained after the supplies have been affected and after entering into a contract that regularized the supplies in the name of Indian buyers retrospectively”.

- They will abide by the law, and pay the Anti-Dumping Duty, he will put up the matter before Shri Amresh A. Mody the prop.of the said company and having good past track records they will pay the amount.

(f) Statement of Shri Chetan Gulati, son of Shri Late Shri Rajinder Lal Gulati, aged 38 years working as Sr. Manager of Raw material Purchases, in M/s. Nectar Life Sciences Limited, SCO-38-39, Sector 9D, Chandigarh was recorded under section 108 of the Customs Act, 1962, before the Deputy Director, Directorate of Revenue Intelligence, Gandhidham on 21.06.2012 wherein, he interalia, stated that:

- He was working as Sr. Manager of Raw Material Purchases, in M/s. Nectar Life Sciences Limited since 2005. The company was engaged in manufacturing of bulk drugs like Cefixime Trihydrate, Cefdoxime Proxetil, Cefuroxime Axetil, etc. The company is Public Limited Company and its CEO and Director was Shri Dinesh Dua.
- The Acetone was purchased under Bond Transfer from M/s.Sanjay Chemicals (India) Pvt. Ltd. whose owner is Shri Sanjay V.Parmar which was imported during May 2009 which arrived at Kandla Port per vessel MT Bow Star.
- The Acetone have been procured from M/s. Sanjay Chemicals (India) Pvt. Ltd. by issuance of Purchase Order No.NLL/RM/U02/106/ 2009-10 dated 23.07.2009 for 100 MT Acetone and goods cleared vide Ex-Bond Bills of Entry No. 301514 dtd.31.07.2009-100MTs
- The Overseas Supplier as per the Bond Transfer records was M/s.Kolmar Group AG, Switzerland, for the above said consignments of Acetone.
- He did not know the details of the manufacturer of Acetone of the above said consignment but the Country of Origin is Russia as per Ex-Bond Bill of Entry.
- They have not been provided the documents of Manufacturer of Acetone by M/s. Sanjay Chemicals (India) Pvt.Ltd.

He had been shown and provided the copy of the Bill of Lading No.3001 dtd.10.05.2009 and Invoice No. 2039497-1 dated 10/05/2009 pertaining to Ex-Bond Bill of Entry No. 301514 dtd.31.07.2009.

- As per the Bill of Lading, the country of export of said consignment of Acetone was Russia as the cargo has arrived via rail from Kazan, Russia to Rauma, Finland.

- They have not been provided any documents pertaining to that transportation nor Bill of Lading or Commercial Invoice neither the same has been asked for from M/s Sanjay Chemicals (India) Pvt.Ltd.
- On being asked whether it was not their duty to ensure truthfulness of the documents specially when there was anti dumping duty on Acetone when imported from European Union he replied that the Purchase Order was inclusive of Anti- Dumping Duty, Basic Customs Duty and Cess, hence it was on the part of M/s.Sanjay Chemicals (India) Pvt. Ltd. to pay the amount of Anti-dumping duty, so they did not ask for any documents.
- As per the documents shown to him, the port of shipment was Rauma, Finland.
- On being asked to explain how the port of shipment can be situated in Finland when they were stating the name of country of export as Russia, he told that he had no knowledge about it, as the Bill of Lading and Invoice has been shown that day only.
- As per the Bill of Lading shown to him, the goods were transported from Russia to India and the cargo were loaded from Kazan, Russia by Rail to Rauma, Finland and further it was loaded on MT Heinrich Essberger on 10.05.2009 and transshipped on to MT Bow Star in Rotterdam for further shipment to India.
- He did not know the dates for the said consignments of Acetone transported from Russia to Finland by Rail as it was not mentioned in the Bill of Lading.
- The country of consignment was not declared in the above mentioned Bill of Entry and it was lapse on the part of CHA as they only receive the copy of Bill of Entry after the goods are cleared and duty is paid.
- They were aware that when antidumping duty was there on any product, the declaration of country of consignment had vital importance.
- On being asked that the invoice No. 2039497-1 dated 10/05/2009 raised by the supplier of above consignment, there was reference of LC having date "090529" pertaining to MT Bow Star, how there was reference of the LC in the invoice, which was not opened by the date of invoice, he replied that as they have not been provided the copy of Invoice and Bill of Lading, hence no knowledge about them.

He had been shown free English translation of Addendum No 15 to the contract No 752/00203335/80078 dated 07.07.08.

- KAZANORGSINTEZ of Russia was the seller and NORDICA RE (Finland) OY was the buyer.
- On being asked that if any Russian Company sold the goods to a Finnish company and after procuring goods from such buyer the same exported to any Indian company, then what should be the country of export, he replied that in such event, Country of export would be Finland.

He had been shown a print out of Notification No.33/2008 Dt.11/03/2008. Serial No 20 of the notification, which states that Anti Dumping Duty @ 277.85 USD/ MT was leviable for Acetone having country of origin as any country other than subject countries and country of export is European Union. He stated that

- It will attract antidumping duty, and they will pay the Anti-dumping duty on 100 MT of Acetone.

He had been shown a report received from First Secretary (Trade), Embassy of India, Moscow No.07-153/0548 dated 01.02.2010, which states "Data Base has not reflected any direct exports of Acetone from Russian Company JSC KAZANORGSINTEZ SC, RUSSIA to Indian Buyers during 01.01.2005 to 15.12.2009. However, during the said period JSC KAZANORGSINTEZ SC, RUSSIA delivered Acetone to Finland for a number of companies like Nordica Re, Finland, where the final port of delivery was Rauma, Finland".

- It was very much surprising to see all of those facts and figures, they were not part of those facts and figures and same was not shared with them.

He had been shown letter dated 04.02.2010 issued by the First Secretary(Trade), Embassy of India at Moscow, which states "It may please be seen there that none of the invoices have been raised in the name of any Indian buyer. The certificate of origin was obtained after the supplies have been affected and after entering into a contract that regularized the supplies in the name of Indian buyers retrospectively".

- They will abide by the law, and pay the Anti-Dumping Duty and will put up the matter before the Board of Directors and being a reputed and having good past track records they will pay the amount within 30 days.

(g) Statement of Shri Gopal Rameshbhai Bhatt, working as Logistics Incharge in M/s. Pioneer Chemical Industries was recorded under section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 06.06.2012, wherein, he interalia, stated that:

- M/s. Pioneer Chemical Industries was having its branch office at Office No.205, 2nd Floor, Shakti Avenue, Plot No.578, 12-C, Gandhidham-370201 and main office was situated in Mumbai at 119, 'B' Wing, Gokul Arcade, Swami Nityanand Road, Garware Chowk, Vile Parle(E), Mumbai-400057. The firm was partnership firm and its partners were Shri Vijay Shantilal Shah and Smt.Daksha P.Shah and it was engaged in trading of Chemicals and Solvents.
- The Acetone was purchased under Bond Transfer from M/s. Overseas Polymers Pvt. Ltd., Mumbai and goods were imported by M/s. Sanjay Chemicals (India) Pvt. Ltd. during February 2009 which arrived at Kandla Port per vessel MT Bow Saga
- They did not procure directly from M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai. They had procured Acetone from M/s. Overseas Polymers Pvt. Ltd., Mumbai through the market broker for chemicals Shri Sanjay Bhavishi having office at Mumbai.
- The goods cleared vide Ex-Bond Bill of Entry No.309979 dtd.25.9.2009-48 MTs which was procured from M/s.Overseas Polymers Pvt. Ltd., Mumbai through Invoice No. GJ/ACE/B/2009/0210 dated 18.09.2009.
- As per the Bond Transfer records the Overseas Supplier was M/s.Kolmar Group AG, Switzerland, for the above said consignment of Acetone.
- They did not knew the details of the manufacturer of the said consignment of Acetone and it was not provided also

- The said consignment of Acetone was originated from Russia as per the Ex-Bond Bill of Entry and Bill of Lading.
- As per the Bill of Lading, the country of export of said consignment of Acetone was Russia as the cargo had arrived via rail from Kazan, Russia to Rauma, Finland.
- Documents pertaining to that transportation were not provided to them neither it was asked for.
- On being asked about was it not their duty to ensure truthfulness of the documents specially when there was anti dumping duty on Acetone when imported from EU, he replied that It was their duty but trusting the documents provided to them, they did not ask for any further details.
- As per the Bill of Lading the port of shipment of the said consignment of Acetone is Rauma, Finland.
- On being asked to explain that how the port of shipment can be situated in Finland when he was stating the name of country of export as Russia, he replied that that was only as per the Bill of Lading.
- As per the Bill of Lading, the subject goods were loaded from Kazan, Russia by Rail to Rauma, Finland and further it was loaded on to MT Smeraldo on 26.02.2009 and transshipped on to MT Bow Saga at Rotterdam and by this way the goods were transported from Russia to India.
- He did not knew the dates on which the said consignment of Acetone were transported from Russia to Finland by Rail as the same was not mentioned in the Bill of Lading.
- The country of consignment was not declared in the above mentioned Bills of Entry and the same was lapse on their part / on the part of CHA.
- Not mentioning country of consignment in Bills of Entry was a lapse on their part and on the part of CHA.
- They were aware that when antidumping duty is there on any product, the declaration of country of consignment had vital importance.
- They failed to notice at the time of filing Bill of Entry that in the invoice No. 2037762-1 dated 26/02/2009 raised by the supplier of above consignment, there was reference of LC having date "090324" which was not opened by the date of invoice.

He submitted copy of Invoice and other documents related to subject consignment. He was shown Invoices issued by KAZANORGSINTEZ. He was shown free English translation of Addendum No 15 to the contract No 752/00203335/80078 dated 07.07.08. He stated that

- KAZANORGSINTEZ of Russia is seller of the goods and NORDIKA RE (Finland) OY is the buyer.
- If any Russian Company sold the goods to a Finnish company and after procuring goods from such buyer it is exported to any Indian company, then in such event country of export is Finland.

He was shown a print out of Notification No 33/2008 Dt.11/03/2008. Serial No 20 of the notification clearly says that Anti Dumping Duty @ 277.85 USD/ MT is leviable for Acetone having country of origin as any country other than subject countries and country of export is European Union. He stated that

- It will attract antidumping duty.

He was shown a report received from First Secretary (Trade), Embassy of India, Moscow, which states "Data Base has not reflected any direct exports of Acetone from Russian Company JSC KAZANORGSINTEZ SC, RUSSIA to Indian Buyers during 01.01.2005 to 15.12.2009. However, during the said period JSC KAZANORGSINTEZ SC, RUSSIA delivered Acetone to Finland for a number of companies like Nordica Re, Finland, where the final port of delivery was Rauma, Finland". He stated that

- The goods were exported from Russia to Finland and then again the same were exported from Finland to India.

He was shown letter dated 04.02.2010 issued by the First Secretary (Trade), Embassy of India at Moscow, which states "It may please be seen there that none of the invoices have been raised in the name of any Indian buyer. The certificate of origin was obtained after the supplies have been affected and after entering into a contract that regularized the supplies in the name of Indian buyers retrospectively".

- It appears that certificate of origin was obtained from Russian authorities but the invoices of the subject goods were raised in the names of Finnish parties. He would discuss the issue with his Owner and ask for early payment of antidumping duty.

(h) Statement of Shri Rajeev Kumar Garg, son of Shri Jagannath Garg, aged 31 years working as Director, in M/s. Satish Chemical India Pvt.Ltd, 1st floor, 2885A/215, Vishram Nagar was recorded under section 108 of the Customs Act, 1962, before the Deputy Director, Directorate of Revenue Intelligence, Gandhidham on 23.07.2012 wherein, he interalia, stated that

- They were engaged in the business of trading of Chemicals. Firm started by his brother in 1992 was converted to Pvt. Ltd Company since 2006. Their office is at 1st floor, 2885A/215, Vishram Nagar, Tri Nagar, New Delhi-35.
- The Acetone imported during April 2009 and June 2009 which arrived at Kandla Port per vessel MT Bow Saga and MT Bow Star was purchased under Bond Transfer from M/s. Sanjay Chemicals (India) Pvt. Ltd. whose owner is Shri Sanjay V.Parmar (09821319002).
- The goods were procured from M/s. Sanjay Chemicals (India) Pvt. Ltd. on verbal orders by himself through trade broker Shri Sanjay Vora (09821125212) and Shri Pankaj Sayar (09820134233) through the Retail Invoice no.R00067 dated 11.05.2009 for 32 MT from Vsl MT Bow Saga, through the Retail Invoice no.R0180C dated 28.07.2009 for 23 MT from Vsl MT Bow Star and through the Retail Invoice No.R0180D dated 28.07.2009 for 9 MT from Vsl MT Saga. He submitted photocopy of Purchase order.
- The goods cleared vide Ex-Bond Bills of Entry No. 292336 dtd.03.06.2009-32MTs (Bow Saga), 302554 dtd.07.08.2009-23MTs (Bow Star) and 303249 dtd.12.08.2009 -9MTs (Bow Saga). He submitted photocopy of the documents related to the purchase.
- The Overseas Supplier as per the Bill of Entry is M/s.Kolmar Group AG, Switzerland, for the above said consignment of Acetone.
- They did not know the details of the manufacturer of the above said consignment.

- There was no mention of name of the manufacturer in the documents provided to them by M/s. Sanjay Chemicals (India) Pvt. Ltd. They have not been provided with documents of Manufacturer of Acetone.
- As per the Ex-Bond Bills of Entry the Country of Origin is Russia.

He was shown the Bill of Lading No.2401 dtd.26.02.2009 and Invoice No. 2037762-1 dated 26/02/2009 pertaining to Ex-Bond Bills of Entry No. 292336 dtd.03.06.2009-32MTs (Bow Saga) and 303249 dtd.12.08.2009-9MTs Bow Saga and 302554 dtd.07.08.2009-23MTs (Bow Star) which have been provided by M/s. Sanjay Chemicals.

- As per the Bill of Lading, the country of export of said consignment is Russia as the cargo has arrived via rail from Kazan, Russia to Rauma, Finland
- They have not been provided with any documents pertaining to that transportation nor Bill of Lading nor Commercial Invoice. They had also not asked M/s Sanjay Chemicals (India) Pvt. Ltd to provide the same in the said consignment.
- On being asked whether it was not their duty to ensure truthfulness of the documents specially when there is anti dumping duty on Acetone when imported from European Union, he stated that the Purchase was through routine verbal orders which included Price (Rate + Customs Duty) plus CVD to be paid by them. There has been no such written agreement between them and M/s. Sanjay Chemicals (I) Pvt. Ltd. They were not aware of the Anti-Dumping Duty. So they did not ask for any documents.
- As per the documents shown to me, the port of shipment is Rauma, Finland.
- On being asked to explain as to how the port of shipment could be situated in Finland when they were stating the name of country of export as Russia, he stated that he could not know.
- On being asked as to how the goods were transported from Russia to India which arrived per MT Bow Saga and MT Bow Star, he stated that as per the Bill of Lading, the cargo were loaded from Kazan, Russia by Rail to Rauma, Finland and further it was loaded on to MT Smeraldo on 26.02.2009 and transshipped on to MT Bow Saga in Rotterdam for further shipment to India and in second case the cargo were loaded from Kazan, Russia by Rail to Rauma, Finland and further it was loaded on to MT Heinrich Essberger on 10.05.2009 and transshipped on to MT Bow Star in Rotterdam for further shipment to India.
- He did not know on which dates the said consignments of Acetone were transported from Russia to Finland by Rail as the same was not mentioned in the Bills of Lading.
- The country of consignment was not declared in the above mentioned Bills of Entry and he did not know as to why it was not mentioned in Bills of Entry.
- He was aware that when antidumping duty is there on any product, the declaration of country of consignment has vital importance.
- On being asked specifically that in the invoice No. 2037762-1 dated 26/02/2009 raised by the supplier of above consignment, there was reference of LC having dated "090324" pertaining to MT Bow Saga and in the invoice No.2039497-1 dated 10/05/2009 raised by the supplier of above consignment, there was reference of LC having date "090529" pertaining to MT Bow Star which were opened much later,

he replied that the Contract was between M/s. Sanjay Chemicals (I) Pvt. Ltd and M/s. Kolmar AG, and they were not aware of the said deal.

He was shown Invoices issued by KAZANORGSINTEZ. On seeing it he stated

- The said invoices were in Russian Language, but some part was in English Language, so he could say that the said invoices were issued by OAO KAZANORGSINTEZ RUSSIA to "NORDICA RE(Finland) OY" on various dates of January of 2009.

He was shown free English translation of Addendum No 15 to the contract No 752/00203335/80078 dated 07.07.08. He stated that

- KAZANORGSINTEZ of Russia was the seller and NORDICA RE (Finland) OY was the buyer of the goods.
- On being asked that if any Russian Company sold the goods to a Finnish company and after procuring goods from such buyer it is exported to any Indian company, then what should be the country of export, he replied that as per the documents shown to him, the country of export/shipment was Finland.

He was shown a print out of Notification No.33/2008 Dt.11/03/2008. Serial No 20 of the notification clearly says that Anti Dumping Duty @ 277.85 USD/ MT is leviable for Acetone having country of origin as any country other than subject countries and country of export is European Union. He stated that

- The Anti Dumping Duty was applicable on them but they will follow as per other buyers and they will talk to Shri Sanjaybhai of M/s.Sanjay Chemicals India Pvt. Ltd about the matter.

He was shown a report received from First Secretary (Trade), Embassy of India, Moscow No.07-153/0548 dated 01.02.2010, which states "Data Base has not reflected any direct exports of Acetone from Russian Company JSC KAZANORGSINTEZ SC, RUSSIA to Indian Buyers during 01.01.2005 to 15.12.2009. However, during the said period JSC KAZANORGSINTEZ SC, RUSSIA delivered Acetone to Finland for a number of companies like Nordica Re, Finland, where the final port of delivery was Rauma, Finland". He stated that:

- They were not part of the said facts and figures and same were not shared with them. Hence they are not concerned with it. After Show Cause Notice we would decide whether to go for appeal or to pay the duty.

He was shown letter dated 04.02.2010 issued by the First Secretary (Trade), Embassy of India at Moscow, which states "It may please be seen there that none of the invoices have been raised in the name of any Indian buyer. The certificate of origin was obtained after the supplies have been affected and after entering into a contract that regularized the supplies in the name of Indian buyers retrospectively". He stated that:

- They were not part of the said facts and figures and same were not shared with them. Hence not concerned with it but they would abide by the law.

(i) Statement of Shri Akhilesh Kumar, son of Shri Shyam Lal, aged 34 years working as Liasion Officer, in M/s. Solvochem, R-301-302, 3rd Floor, Dua Complex, 24-Veer Savarkar Block, Vikas Marg, Delhi-110092 was recorded under section 108 of the Customs Act, 1962, before the Deputy

Director, Directorate of Revenue Intelligence, Gandhidham on 23.07.2012, wherein, he interalia, stated that:

- M/s. Solvochem was a partnership firm. The partners are Shri Biswajit Ghosh(09811058627) and Shri Rajesh Gupta(09811060747). The company was doing the trading business of Chemicals and Solvents. Their head office was at Delhi at R-301-302, 3rd Floor, Dua Complex, 24-Veer Savarkar Block, Vikas Marg, Delhi-110.
- The Acetone was imported during May 2009 which arrived at Kandla Port per vessel MT Bow Saga and it was purchased under Bond Transfer from M/s. Sanjay Chemicals (India) Pvt. Ltd. whose owner was Shri Sanjay V. Parmar (09821319002).
- On being asked as to who contacted M/s. Sanjay Chemicals (India) Pvt. Ltd. for procuring said consignment of Acetone he stated that in total they had procured 96 MT of Acetone through M/s.Sanjay Chemicals (I) Pvt. Ltd., out of that above Shri Biswajit Ghosh partner of the firm placed orders for 16 MT against Purchase Order No.SOL/063 dtd.17.06.2009 and the other remaining quantity i.e.80MT against Purchase Order No.SOL/002 dtd.1.4.2009(32 MT) and SOL/059 dtd.10.6.2009(48 MT) ordered by Shri Rajesh Gupta other partner of the firm. These orders were placed through Broker Shri Pankaj Sayar (09820134233). He was aware of these transactions and submitted photocopy of Purchase order and Retail Invoices.
- On being asked about details Bills of Entry he stated that 16 MT Acetone was cleared vide Ex-Bond Bills of Entry No. 295454 dtd.23.06.2009, BE No 296224 dtd.26.06.2009 field for another 16 MT, and 294307 dtd.16.06.2009 for 32MT, and 287693 dtd.05.05.2009 for remaining 32MT.
- The Overseas Supplier as per the Bills of Entry and Invoice was M/s.Kolmar Group AG, Switzerland, for the above said consignment of Acetone.
- They did not know the details of the manufacturer of the above said consignment but the Country of Origin is Russia.
- They have not been provided the documents of Manufacturer of Acetone.
- As per the Ex-Bond Bills of Entry the Country of Origin is Russia.

He was shown the Bill of Lading No.2401 dtd.26.02.2009 and Invoice No. 2037762-1 dated 26/02/2009 pertaining to Ex-Bond Bills of Entry No. 295454 dtd.23.06.2009, 296224 dtd. 26.06.2009, 294307 dtd 16.06.2009, and 287693 dtd.05.05.2009. He stated that

- As per the Bill of Lading, the country of export of said consignment is Russia as the cargo has arrived via rail from Kazan, Russia to Rauma, Finland.
- They had not been provided any documents pertaining to transportation by rail nor had they asked M/s Sanjay Chemicals (India) Pvt. Ltd to provide the same.
- On being asked if they had ensured truthfulness of the documents specially when there is anti dumping duty on Acetone when imported from European Union, he stated that the Purchase was through routine verbal orders which included Basic Duty and CVD to be paid by them and there has been no such written agreement between

them and M/s. Sanjay Chemicals (I) Pvt. Ltd. They were not aware of the Anti-Dumping Duty. So they did not ask for any documents.

- As per documents the port of shipment of the above said consignment was Rauma, Finland.
- On being asked to explain as to how the port of shipment can be situated in Finland when you they were stating the name of country of export as Russia, he stated that he did not know but the said cargo has been loaded by Railway from Kazan, Russia to Rauma Finland and loaded on to MT Bow Saga for further shipment to Kandla, India
- He did not know the dates on which the said consignments of Acetone were transported from Russia to Finland by Rail as the same was not mentioned in the Bill of Lading.
- Country of consignment was not declared in the above mentioned Bills of Entry.
- On being asked the reason of not declaring the country of consignment he stated that as per advise by original Importer, the CHA cleared the said goods and then they only received the copy of Bill of Entry after the goods were cleared and duty was paid, hence it was not possible for them to ask for mentioning of Country of Consignment.
- They were aware that when antidumping duty is there on any product, the declaration of country of consignment has vital importance.
- On being asked as to how in the invoice No. 2037762-1 dated 26/02/2009 raised by the supplier of above consignment, there was reference of LC having date "090324" pertaining to MT Bow Saga which was not opened by the date of invoice, he stated that the subject Contract was between M/s. Sanjay Chemicals (I) Pvt. Ltd and M/s. Kolmar AG, and they were not aware of the said deal.

He was shown Invoices issued by KAZANORGSINTEZ.

- On being asked as to on which dates and to whom the said invoices were issued, he stated that the Invoices were in Russian Language, but some part was in English Language, so he could say the said Invoices were issued by OAO KAZANORGSINTEZ RUSSIA to "NORDICA RE(Finland) OY" in various dates of January of 2009.

He was shown free English translation of Addendum No 15 to the contract No 752/00203335/80078 dated 07.07.08. He stated that

- As per the Addendum KAZANORGSINTEZ of Russia was seller and NORDICA RE (Finland) OY was the buyer. On being asked if any Russian Company sold the goods to a Finnish company and after procuring goods from such buyer it is exported to any Indian company, then what should be the country of export, he replied that as per the documents shown to him, the country of export/shipment was Finland.

He was shown a print out of Notification No 33/2008 Dt.11/03/2008. Serial No 20 of the notification clearly says that Anti Dumping Duty @ 277.85 USD/ MT is leviable for Acetone having country of origin as any country other than subject countries and country of export is European Union. He stated that

- It will attract antidumping duty as per the documents shown to him and he would narrate the same to his Boss and pursue them to pay the Anti-dumping duty on 96 MT of Acetone.

He was shown a report received from First Secretary (Trade), Embassy of India, Moscow No.07-153/0548 dated 01.02.2010, which states "Data Base has not reflected any direct exports of Acetone from Russian Company JSC KAZANORGSINTEZ SC, RUSSIA to Indian Buyers during 01.01.2005 to 15.12.2009. However, during the said period JSC KAZANORGSINTEZ SC, RUSSIA delivered Acetone to Finland for a number of companies like Nordica Re, Finland, where the final port of delivery was Rauma, Finland". He stated that

- It was very much surprising to see all of these facts and figures and they were not part of these facts and figures and same was not shared with them, but they would like to add that they have been kept in dark about the said deal.

He was shown letter dated 04.02.2010 issued by the First Secretary(Trade), Embassy of India at Moscow, which states *"It may please be seen there that none of the invoices have been raised in the name of any Indian buyer. The certificate of origin was obtained after the supplies have been affected and after entering into a contract that regularized the supplies in the name of Indian buyers retrospectively". He stated that*

- He would put up the matter before his Bosses, i.e. Shri Biswajit Ghosh and Shri Rajesh Gupta, partners of the said company and pursue them to pay the Anti Dumping Duty.

(j) Statement of Shri Subramaniam Mahadevan, aged 45 years working as Regional Manager in M/s. Pon Pure Chem (P) Ltd. having its branch office at Plot No.341, 2nd Floor, Sector-1A, Gandhidham was recorded under section 108 of the Customs Act, 1962, before the Senior Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 05.06.2012, wherein, he interalia, stated that

- He was working as Regional Manager in the above said company since 1996. The said firm was engaged in trading of Chemicals and Solvents. He was attending work in Ahmedabad based Regional Office of the company which is situated at 59, Mahalaya Bungalows, Sola Road, SG Highway, Ahmedabad – 380 060.
- The Acetone imported in February 2009, which arrived at Kandla Port per vessel MT Bow Saga was imported by M/s. Sanjay Chemicals (India) Pvt. Ltd., Mumbai. They procured Acetone from M/s. Sanjay Chemicals through the market broker for chemicals Shri Sanjay Bhavishi having office at Mumbai.
- The goods were got cleared through M/s. ACT Shipping Ltd. The transaction was through Bond Transfer Sales. The goods cleared vide Ex-Bond Bills of Entry No. 298446 dated 10.07.2009 – 33 MT, 297390 dated 02.07.2009 – 33 MT, and 298952 dated 14.07.2009 – 30 MT. They procured the material through Tax Invoice No.G00155 dtd.12.06.2009 issued by M/s. Sanjay Chemicals. He submitted a photocopy of the above documents.
- The Overseas Supplier as per the Bond Transfer records was M/s. Kolmar Group AG, Switzerland, for the above said consignments of Acetone.
- They did not know the details of the manufacturer of the above said consignment.

- There is no mention of name of the manufacturer in the documents provided to them by M/s. Sanjay Chemicals (I) Pvt. Ltd. as per the Warehouse Bill of Entry and Bill of Lading the Country of Origin was Russia.
- As per the Bill of Lading the country of export of the said consignment of Acetone was Russia and Loading Port was Rauma, Finland.
- They were not provided any documents pertaining to transportation nor they asked for the same from M/s Sanjay Chemicals (I) Pvt Ltd.,
- It was their duty to ensure truthfulness of the documents specially when there is anti dumping duty on Acetone when imported from EU, but trusting the documents provided to them they did not ask for any further details.
- As per the Bill of Lading the port of shipment of the said consignment of Acetone was Rauma, Finland.
- On being asked to explain as to how the port of shipment can be situated in Finland when they were stating the name of country of export as Russia, he stated that he had stated that only as per the Bill of Lading.
- On being asked as to how the goods were transported from Russia to India he stated that as per the Bill of Lading, the subject goods were loaded from Kazan, Russia by Rail to Rauma, Finland and further loaded on MT Smeraldo on 26.02.2009 and transshipped on to MT Bow Saga at Rotterdam
- On being asked as to when the said consignments of Acetone were transported from Russia to Finland by Rail, he stated that he did not know as the same was not mentioned in the Bill of Lading.
- Country of Consignment was not declared in the above mentioned Bills of Entry it was a lapse on their part and on the part of CHA.
- They were aware that when antidumping duty is there on any product, the declaration of country of consignment had vital importance.
- On being asked as to how in the invoice No. 2037762-1 dated 26/02/2009 raised by the supplier of above consignment, there was reference of LC having date "090324" which was not opened by the date of invoice, he stated that he had not noticed that at the material time.

He was shown Invoices issued by KAZANORGSINTEZ.

On being asked he stated that the said Invoices were in Russian Language, but some part was in English Language, so he could say the said invoices were issued by OAO KAZANORGSINTEZ RUSSIA to "TELKO OY RAUMA" in various dates of January and February 2009.

He was shown free English translation of Addendum No 15 to the contract No 752/00203335/80078 dated 07.07.08. He stated that

- According to the addendum KAZANORGSINTEZ of Russia was seller and NORDIKA RE (Finland) OY was the buyer.
- On being asked as to what should be the country of export if any Russian Company sold the goods to a Finnish company and after procuring goods from such buyer it is exported to any Indian company he stated in such event country of export was Finland.

He was shown a print out of Notification No 33/2008 Dt.11/03/2008. Serial No 20 of the notification clearly says that Anti Dumping Duty @ 277.85

USD/ MT is leviable for Acetone having country of origin as any country other than subject countries and country of export is European Union. He stated that

- The subject consignment would attract antidumping duty.

He was shown a report received from First Secretary (Trade), Embassy of India, Moscow, which states "Data Base has not reflected any direct exports of Acetone from Russian Company JSC KAZANORGSINTEZ SC, RUSSIA to Indian Buyers during 01.01.2005 to 15.12.2009. However, during the said period JSC KAZANORGSINTEZ SC, RUSSIA delivered Acetone to Finland for a number of companies like Nordica Re, Finland, where the final port of delivery was Rauma, Finland". He stated that

- The goods were exported from Russia to Finland and then again the same were exported from Finland to India.

He was shown letter dated 04.02.2010 issued by the First Secretary (Trade), Embassy of India at Moscow, which states "It may please be seen there that none of the invoices have been raised in the name of any Indian buyer. The certificate of origin was obtained after the supplies have been affected and after entering into a contract that regularized the supplies in the name of Indian buyers retrospectively". He stated that

- It appeared that certificate of origin was obtained from Russian authorities but the invoices of the subject goods were raised in the names of Finnish parties. He would discuss the issue with the management and ask for early payment of antidumping duty.

8. Scrutiny of the documents received from the First Secretary (Trade), Embassy of India at Moscow, as discussed above, clearly revealed that the subject consignments of Acetone were manufactured at Russia and supplied to Finland in the names of various parties of European Union. The said consignments of Acetone were sold to India from Finland. Thus, country of export for the importers in India is Finland, a country in European Union. The said documents indicated the transactions as detailed below:

8.1 Vide letter No. 07-153/0548 dated 01/02/2010, the Deputy Head of Central Enforcement Department, FCS, Russia has clearly stated that the data base has not reflected any direct exports of Acetone from Russian company JSC Kazanorgsintez to Indian buyers in general to India during 01/01/2005 to 15/12/2009. It is further stated in the said letter that during the said period JSC Kazanorgsintez delivered Acetone to Finland for a number of companies, for instance, "Nordica Re (Finland) Oy" where final port of delivery was Rauma, Finland.

8.2 The addendum No. 15 dated 25/02/2009 to the Contract No. 752/00203335/80078 dated 07/07/2008 between JSC Kazanorgsintez, Russia and Nordica Re (Finland) Oy, Finland clearly shows name of seller as JSC Kazanorgsintez, Russia and name of buyer as Nordica Re (Finland) Oy,

Finland. Therefore, it is amply clear that JSC Kazanorgsintez, Russia sold Acetone to Nordica Re (Finland) Oy, Finland and not to any Indian buyer.

8.3 The copies of invoices bearing No. 213623B dated 12/01/2009, 214292 & 214292A both dated 09/01/2009, also indicate name of supplier as Kazanorgsintez SC, Russia and name of buyer as Nordica Re (Finland) Oy, Finland and thus confirms that Kazanorgsintez, Russia sold Acetone to Nordica Re (Finland) Oy, Finland and not to any Indian buyer.

8.4 In respect of other manufacturer OOO Samaraorgsintez, the Head of Central Enforcement Department, FCS, Russia has informed vide letter No. 07-153/0937 dated 12.02.2010 that they have also not made any direct supply of Acetone to India, however, Acetone was dispatched to Finland in the name of a French company "ECORD Sari".

8.5 In response to enquiries in respect of subject consignments of Acetone, TULLI, National Board of Customs, Intelligence and Investigation Unit, Helsinki, Finland informed vide letter No. 9010/S/576/09 dated 26/03/2010 that the company Oiltanking Sonmarin informed them that the Acetone was sold to Europe through a chain of store from where it was sold further. Therefore, it is evident that the subject consignments of Acetone were exported to India from European Union only.

8.6 The Appendix 4 of the letter No. 9010/S/576/09 dated 26/03/2010 of TULLI, National Board of Customs, Intelligence and Investigation Unit, Helsinki, Finland states that Nordica Re (Finland) Oy was the consigner and holder of Acetone stored in Rauma and Ste. Ecord Sari was the customer who sold the goods to Kolmar Group Ag. It clearly indicates that the goods were exported from Russia to Finland and that transaction concluded there. Further, the said goods were sold from European Union to the buyers of India, as separate and other transaction. Therefore, for import into India, the country of export of the subject goods is only Finland (European Union) and not Russia.

8.7 The copies of Rail Receipts in Russian language, produced by the importers before the Customs Authorities also indicate name of buyer as "Telco Oy" and not the names of Indian buyers/ their supplier Kolmar Group Ag.

9. The importer had submitted before the Customs authorities, certificates issued by the Chamber of Commerce and Industry, Republic of Tatarstan of the Russian Federation mentioning the country of origin of the impugned goods as Russia. Further, their import documents contain wordings portraying that the impugned goods were supplied from Russia by rail to Finland to make the separate transactions look like transshipment. It is evident from the documents received from the First Secretary (Trade), Embassy of India at Moscow that the transaction between the parties of Russia and European Union was of sale and not transshipment. The Russian parties raised invoices in the names of parties in Finland and not in the names of Indian importers. Reports of Russian authorities clearly state that no consignment of Acetone was exported from Russia to India during the subject period. The report of Finnish authorities also clearly states that the impugned goods were imported into Finland by the parties of European Union which were subsequently sold to Indian buyers. Sale of Acetone from Finland to Indian buyers is clearly a separate transaction other than that between the Russian manufacturers and parties in European Union. Therefore, country of export of the subject goods for the importers in India is clearly Finland, a country in European Union.

10. M/s. Sanjay Chemicals (India) Private Limited had undergone contracts for purchase of Acetone from M/s. Kolmar Group Ag, Switzerland. Contract No. 2009311 dated 18.02.2009 is in respect of 525 MT of Acetone covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and Contract No 2009868 dated 20.05.2009 is in respect of 315 MT Acetone covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010. Both these contracts were made with M/s. Kolmar Group Ag, of Switzerland. As per the contracts, M/s. Sanjay Chemicals (India) Private Limited was the buyer of the goods and M/s. Kolmar Group Ag, Switzerland was the seller of the goods. As per the respective Letters of Credit executed later on, M/s. Kolmar Group Ag was the beneficiary. The contracts do not show M/s. Kolmar Group Ag as agent/ consignment agent/ commission agent of M/s. Kazanorgsintez, Russia or OOO Samaraorgsintez, Russia or any other Russian manufacturer of Acetone. However, by putting names of M/s. Kazanorgsintez, Russia or OOO Samaraorgsintez, Russia in the Bills of Lading as shipper, it was attempted to show that the goods were being exported to India from Russia.

10.2 In subject two consignments, the commercial invoices were issued on 26.02.2009 and 10.05.2009 i.e. on the day the respective goods were shipped for export. The goods imported per vessel MT Bow Saga were sold on 26.02.2009 the day on which goods were loaded for export to India and till that day, were under the control and ownership of the seller M/s. Kolmar Group Ag and lying at Kotka/ Rauma in Finland. Hence the goods had moved from Russia to European Union before signing of the contract and sale of goods by M/s. Kolmar Group Ag, Switzerland to M/s. Sanjay Chemicals (India) Private Limited i.e., as a consequence to the impugned sale of Acetone by Russian party OOO Samaraorgsintez, Russia to European parties. However, movement of goods from European Union (Finland) to India was the consequence of the sale by M/s. Kolmar Group Ag to M/s. Sanjay Chemicals (India) Private Limited.

10.3 During search conducted at the office premises of M/s. Meteor Pvt. Ltd., various documents and e-mail correspondence were recovered and withdrawn. Vide one of the e-mails available in the recovered files, issued by M/s. Kolmar Group Ag, Switzerland on 13.02.2009 (9:59 PM) a draft Certificate of Country of Origin was forwarded to the Importers through M/s. Meteor Pvt. Ltd. The forwarding message of the e-mail stated *"Further to your fax regarding the anti-dumping duties ex European Countries, please be advised we should also be able to provide a FORM A certificate of Origin, as you may well see in the attached certificate, it will be issued in the Russian Federation (Chamber of Russian Commerce) and it will show ex- Russia for transshipment Kotka / Rotterdam"*. Reply of the said e-mail was sent by M/s. Meteor Pvt. Ltd., vide e-mail dated 16 February 2009. This e-mail was sent to Kolmar Group Ag and others by M/s. Meteor Pvt. Ltd. In the said e-mail they have stated that they have enquired from one of the trustees of Mumbai port who has informed, after discussion with an Assistant Commissioner of Customs of Mumbai, that antidumping duty is not applicable if certificate of origin is issued by Russian Federation and documents show means of transport from Russia to Kandla. It further states that antidumping duty is applicable if B/L shows European port as port of loading and certificate of origin is issued by European community. The e-mail further states that after obtaining said advice, they discussed it with the customers and that the customers agreed with it. M/s. Sanjay Chemicals (India) Private Limited was also one of the customers in this deal. In his statement, Shri Varghese Mathew of M/s. Meteor Pvt. Ltd. has also stated that importers had enquired as to whether that transshipment would be interpreted as Country of Export and that he

checked with the clearing agents and one of the trustees of Mumbai Port. Shri Thomas Varghese, Senior Executive of M/s. ACT Shipping Ltd (CHA) has also specifically stated in his statement dated 01.08.2011 that he had telephonic talk with *Shri Sanjay Parmar of M/s Sanjay Chemicals (I) Pvt Ltd.*, that if they could arrange for chain of documents then antidumping duty would not be attracted. He also reported about the talks to Shri T. V. Sujan, the Director of M/s. ACT Shipping Ltd.. Shri T. V. Sujan has accepted the same in his statement dated 13.01.2012 also. Still further, Shri Sanjay Vijayraj Parmar has stated in his statement dated 20.07.2012 that they had telephonically obtained advice of Shri Thomas, Manager in their CHA firm and he informed that if they (M/s. Sanjay Chemicals (India) Private Limited) could arrange for chain of documents then antidumping duty would not be attracted. He further stated that said talks were also held with Shri Mathew Varghese of Meteor on mobile phone conferencing. Thereafter certain wordings were inserted in invoice, Bills of Lading etc. to show transshipment in Finland and to portray country of export as Russia. The documents viz. e-mail exchanges, recovered during searches clearly show that such wordings were finalized after a series of refinements in consultation with the importers, CHA M/s. ACT Shipping Ltd. In his statement, Shri Varghese Mathew of M/s. Meteor Pvt. Ltd. has specifically stated that all the importers (*M/s. Sanjay Chemicals (I) Pvt. Ltd., M/s. Ketul Chem Pvt. Ltd., M/s. Prasol Chemicals Ltd., M/s. Akin Chemicals Pvt. Ltd. and M/s. Apra Enterprises*) were contacted in this regard. From these facts it is amply clear that the importers had taken up the matter with the supplier through M/s. Meteor Pvt. Ltd. in respect of country of export and levy of antidumping duty and actively indulged in manipulation in import documents to portray country of export as Russia.

10.4 In both the above mentioned contracts, proposed terms/wordings of Letter of Credit were embedded between "Quote" and "Unquote" and were to be integral part of contracts. In both the contracts, the seller and beneficiary was M/s. Kolmar Group Ag. As per Para 12 of the Contracts the title and Risk was agreed to pass from seller (i.e. M/s. Kolmar Group Ag, Switzerland) to Buyer (M/s. Sanjay Chemicals (India) Private Limited) at Load Port as the material passes the incoming flange of seller's vessel. In the Letter of Credit No. IMLC 04309000086 opened on 24.03.2009, initially, the Port of Loading (44E) was "any Russian Port". This was amended by M/s. Sanjay Chemicals (India) Private Limited vide their application reference No. SCIPL/220/08-09 dated 30.03.2009 to "any Port in Finland". Therefore the Port of loading was well established and

specifically known to the Importer M/s. Sanjay Chemicals (India) Private Limited well before the actual Import took place. Even the exact point of transfer of title and risk of the goods was specified in the contracts as inner flange of seller's vessel at Load Port (*i.e.*, in Finland). The terms of payment/ Delivery were CIF Kandla (*i.e.* *insurance was to be borne by seller*). The Non negotiable copy of the certificate of insurance along with other documents was received with the other documents by M/s. Sanjay Chemicals (India) Private Limited, through M/s. Meteor Pvt. Ltd., vide e-mail dated 31.03.2009(7:43 PM) and forwarded to them vide email dated 01.04.2009 (3:41 PM). The said certificate (Policy) of insurance bearing No. KOL 1465 (in respect to Import of 525 MT of Acetone) speaks about 525 MT of Acetone being shipped from Rauma (Finland) to Kandla (India) and covered risk "from shore tank at Load Port to Shore tank at Discharge Port". Had the goods under impugned contractual obligation been coming from Russia and were to be merely transshipped at Rauma/ Kotka, the insurance would have been taken covering risk from origin/ supply point in Russia to Discharge point in India. The certificates of insurance along with other documents were received by the importer before filing of the respective Bills of Entry. **This fact also showed that the importer was aware that the goods were already lying in Finland and therefore Country of Consignment of these goods was Finland but they deliberately did not declare it in the Bills of Entry and attempted to conceal this fact. Moreover, the importer also indulged in manipulation in respect of getting inserted wordings, in import documents, showing transshipment in Finland.**

10.5 In addition to above, vessel nomination, mail exchanges between M/s. Kolmar Group Ag and M/s. Sanjay Chemicals (India) Private Limited, through M/s. Meteor Pvt. Ltd., reveal that the goods were already lying in Finland (European Union) and were to be exported from there. In case of first consignment, on 17.02.2009 (7:18 PM) M/s. Meteor Pvt. Ltd., on behalf of M/s. Kolmar Group Ag, Switzerland, confirmed the sale of 500 MT Acetone to M/s. Sanjay Chemicals (India) Private Limited, by email and on the next day i.e. 18.02.2009 by another mail (1202 PM) vessel nomination received from M/s. Kolmar Group Ag was informed to M/s. Sanjay Chemicals (India) Private Limited by M/s. Meteor Pvt. Ltd. The wordings of the said vessel nomination were "*We are forwarding herewith the vessel nomination received from Kolmar related to the above shipment (500 MT Acetone). There are two vessels involved in this shipment MT SMERALDO is for shipping from Kotka or Rauma, Finland to Rotterdam and*

MT Bow Saga for loading from Rotterdam to India". While there are exhaustive details of movement of goods starting from Kotka/ Rauma (Finland) including involvement of more than one vessel and transshipment at Rotterdam in the vessel nomination itself but there is not a single mention of chain of movement of goods prior to Kotka/ Rauma. These facts showed that the subject goods were already lying in Finland and were to be exported from Finland. Apart from the same, contracts, Letters of Credit and vessel nomination do not mention export to India from Russia. The wordings inserted in invoice, Bills of Lading etc. to show transshipment in Finland, is clearly an after thought. The documents recovered during searches and also discussed at Para 10.3 above clearly show that such wordings were finalized after a series of refinements in consultation with M/s. Sanjay Chemicals (India) Private Limited, CHA M/s. ACT Shipping Ltd., M/s. Meteor Pvt. Ltd. and were inserted in documents to portray country of export as Russia. Thus, it is evident that the importer was well aware of the fact that the goods were being exported from European Union and not from Russia.

10.6 Having knowledge of all these facts, the importer through CHA M/s. ACT Shipping Ltd., filed Warehouse Bills of Entry No. 283310 dated 08.04.2009 and 295765 dated 24.06.2009 without levying Anti-dumping duty and left the country of consignment field blank in both the Bills of Entry. Therefore, the fact that the country of export/ consignment of goods covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and No. 295765 dated 24.06.2009, as European Union was suppressed by M/s. Sanjay Chemicals (India) Private Limited, as well as by their CHA M/s. ACT Shipping Ltd. This act on the part of M/s. Sanjay Chemicals (India) Private Limited and M/s. ACT Shipping Ltd. clearly amounts to mis-declaration of country of consignment / export. Shri Thomas Varghese, Senior Executive, M/s. ACT Shipping Ltd. also admitted in his statement dated 01.08.2011 that in the instant case the country of export of impugned goods was Finland. Shri T. V. Sujan, Director of M/s. ACT Shipping Ltd. also admitted in his statement dated 13.01.2012 that declaration of country of consignment in the subject Bills of Entry would have seriously affected assessment of these Bills of Entry in respect of levy of antidumping duty in the light of Notification No. 33/2008 – Cus dated 11/03/2008. Their contention that the country of consignment was not declared by mistake is not acceptable since the same field of "country of consignment" was left blank in three Bills of Entry B/E Nos. 283227 dated 8/4/2009, 295794 dated 24/06/2009 and 295753 dated 24/06/2009 of other importers and Bill of

Entry No. 283310 dated 08.04.2009 and No. 295765 dated 24.06.2010 of M/s. Sanjay Chemicals (India) Private Limited. Further M/s. ACT Shipping Ltd. had mentioned the country of consignment as Finland in Job No. 0018445 (print date 02.04.2009) prepared for filing Bill of Entry in respect of 525 MT of Acetone imported per vessel MT Bow Saga which is available at page No. 365 of File recovered from the premises of M/s. Sanjay Chemicals (India) Private Limited under Panchanama dated 21.04.2009. It clearly shows that CHA M/s. ACT Shipping Ltd. had not left the field of country of consignment blank by mistake but, mindful of consequences, they had deliberately deleted it from the ICEGATE Job / Checklist prepared for the subject consignments. It, therefore, becomes amply clear that Importer M/s. Sanjay Chemicals (India) Private Limited, CHA M/s. ACT Shipping Ltd., and M/s. Meteor Pvt. Ltd., have knowingly and intentionally suppressed the fact of country of export of impugned goods imported per vessels MT Bow Saga and MT Bow Star in connivance of each other and mis-stated the country of consignment by leaving the said field blank in both the Bills of Entry i.e. Warehouse Bill of Entry No. 283310 dated 08.04.2009 and No. 295765 dated 24.06.2010 filed at Custom House Kandla.

10.7 Supplier of the impugned consignments was M/s. Kolmar Group Ag. However, in Bills of Lading and certificates of origin submitted to the Customs Authorities at Kandla, the name of supplier has been mentioned as M/s. Kazanorgsintez, Russia instead of M/s. Kolmar Group Ag. In other documents viz. packing list and analysis reports and Commercial Invoices, following wordings were inserted: *"Cargo has been loaded by Railway from Kazan, Russia to Rauma, Finland and loaded onto MT Heinrich Essberger on 10/05/2009 and transshipped onto Bow Star in Rotterdam for further shipment to Mumbai, India"*. It clearly appears that these wordings were inserted to portray that the goods were being exported from Russia. Thus, the documents presented before the Customs Authorities at Kandla Port were manipulated documents which were got prepared in active consultation and connivance of M/s. Sanjay Chemicals (India) Private Limited supplier, M/s. Kolmar Group Ag, Switzerland and M/s. Meteor Pvt. Ltd., Mumbai with the intention of evading anti-dumping duty leviable at the rate of USD 277.85 Per MT.

10.8 Bills of Lading contained references of LCs which were executed much later. Bill of Lading No. 2401 dated 26.02.2009 (*place and date of issue are specifically declared as RAUMA, 26th February 2009 in BL*)

shows date of issuance as 26.02.2009 and it contains reference of LC opened on 24.03.2009 i.e. almost a month later. Similarly Bill of Lading No 3001 dated 10.05.2009 (*place and date of issue are specifically declared as RAUMA, 10th May 2009 in BL*) shows date of issuance as 10.05.2009 and it contains reference of LC issued on 29.05.2009 i.e. 19 days later. This could have been possible only if the documents viz. Commercial Invoice and Bills of Lading purported to be issued on the date of loading of the goods were actually re-manufactured later for inserting purposefully prepared wordings regarding clause of transportation of goods from Russia to European Union to show country of export as Russia. This is also substantiated by the fact that in respect of both the vessels MT Bow Saga and MT Bow Star the Bills of Lading were not available with the importer or his agents for taking delivery/ unloading of the goods and in both cases M/s. Sanjay Chemicals (India) Private Limited, had given Backing Letters of Indemnity in favour of M/s. Kolmar Group Ag, Switzerland. If this had happened once it could be attributed to some peculiar circumstance created at the material time but this happened in case of both the vessels and in respect of all seven consignments (listed at TABLE-2 above) imported in vessel MT Bow Saga and MT Bow Star. The importer executed Backing Letter of Indemnity (BOI for short) specifying M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) as supplier (instead M/s. Kolmar Group Ag, Switzerland) and Kolmar was portrayed as consignee/ Notify Party. The BOI in both cases was addressed to M/s. Kolmar Group Ag, Switzerland and the wordings read:-

*"the above cargo was shipped on the above ship (Bow Saga) by **KAZANORGSINTEZ SC 420051, BELOMORSKAYA 101 KAZAN, RT, RUSSIA** and consigned To the order of Development Credit Bank Limited*"

The Importer M/s. Sanjay Chemicals (India) Private Limited was purchasing the subject goods from M/s. Kolmar Group Ag, Switzerland. They had made contract with M/s. Kolmar Group Ag, Switzerland only. Shri Shri Sanjay Vijayraj Parmar has himself very categorically admitted in his statement dated 20.07.2011 that the imported goods were sold to M/s. Sanjay Chemicals (India) Pvt. Ltd. by M/s. Kolmar Group AG; that they had never contacted/ contracted/ corresponded with Kazanorgintez JSC. He further added that they had not asked Kolmar for insertion of this (Kazanorgintez) name in B/L, that was done by Kolmar. However from the wordings of the above mentioned BOI the obvious inference is that M/s. Sanjay Chemicals (India) Private Limited is informing seller of the goods M/s. Kolmar Group

Ag, Switzerland that the goods have been shipped by **KAZANORGSINTEZ SC 420051, BELOMORSKAYA 101 KAZAN, RT, RUSSIA.** This is quite contrary to what is stated by Shri Sanjay Vijayraj Parmar in his statement before DRI. Later on, Bills of Lading were re-manufactured on these lines which portrayed M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) as supplier and Development Credit Bank Ltd and M/s. Sanjay Chemicals (India) Private Limited as Notify Party and scanned / mailed copies of said **signed** BL were received by M/s. Sanjay Chemicals (India) Private Limited through M/s. Meteor Pvt. Ltd., Mumbai via email dated 08.04.2009 (10:05:49 AM) . Since by that time, details of Letters of Credit were available, the same were also mentioned in the Bills of Lading prepared in active connivance of M/s. Kolmar Group Ag, Switzerland, Importer M/s. Sanjay Chemicals (India) Private Limited and M/s. Meteor Pvt. Limited.

10.09 Further, the Bills of Lading in both the imports were Charter Party Bills of Lading. Charter party Bills of Lading are issued on the basis of Charter Party (Contract) between the supplier of the goods and owner of the vessel. In all the Bills of Lading the charter party / contract of affreightment is mentioned between M/s. Kolmar Group Ag, Switzerland and Odfjell Tankers As. Contrary to the Norms of Charter Party Bills of Lading, "M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) was portrayed as supplier. M/s. Sanjay Chemicals (India) Private Limited were aware of these things and actively connived with M/s. Kolmar Group Ag, Switzerland and M/s. Meteor Pvt. Ltd., Mumbai in manufacturing Bills of Lading and other import documents in falsely showing **KAZANORGSINTEZ SC 420051, BELOMORSKAYA 101 KAZAN, RT, RUSSIA** as Shipper and that the goods were imported directly from Russia and the Country of Consignment was suppressed in both the Bills of Entry by leaving the said field blank in collusion with CHA M/s. ACT Shipping Ltd.

11. Following legal provisions were attracted in this case:

CUSTOMS ACT

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

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

(a) *collusion; or*

(b) any wilful mis-statement; or

(c) suppression of facts,

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

SECTION 28AA. Interest on delayed payment of duty

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

SECTION 28AB. Interest on delayed payment of duty in special cases. –

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub- (2), or has paid the duty under sub- (2B), of 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub- (2), or sub- (2B), of 28, till the date of payment of such duty (This section existed prior to 08.04.2011):

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

(m) 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;

SECTION 112. Penalty for improper importation of goods, etc. – Any person, –

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

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

(i) 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.

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

SECTION 114AA. 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.

CUSTOMS TARIFF ACT

9A.(1) Where any article is exported by an exporter or producer from any country or territory (hereafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

.....

Notification No. 33/2008 – Cus dated 11/03/2008

Anti-dumping duty on Acetone, originating in, or exported from EU, Chinese Taipei, Singapore, South Africa and USA

Whereas, in the matter of import of Acetone (hereinafter referred to as the subject goods), falling under tariff item 2914 11 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from, European Union, Chinese Taipei, Singapore, South Africa and the United States of America (hereinafter referred to as the subject countries) and imported into India, the designated authority vide its preliminary findings No. 14/4/2006-DGAD dated the 25th April, 2007, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 25th April, 2007, had come to the conclusion that -

(a) the subject goods had been exported to India from the subject countries below its normal value;

(b) the domestic industry had suffered material injury;

(c) the injury had been caused by the dumped imports from subject countries;

and had recommended imposition of provisional anti-dumping duty on the imports of subject goods, originating in or exported from, the subject countries;

And whereas, on the basis of the aforesaid findings of the designated authority, the Central Government had imposed provisional anti-dumping duty on the subject goods vide notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 77/2007-CUSTOMS, dated the 19th June, 2007, published in the Gazette of India vide number G.S.R. 436(E), dated the 19th June, 2007;

And whereas, the designated authority in its final findings vide notification No. 14/4/2006-DGAD, dated the 4th January, 2008, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 4th January, 2008, has come to the conclusion that -

(a) the subject goods have been exported to India from the subject countries below its normal value;

(b) the domestic industry has suffered material injury;

(c) the injury has been caused by the dumped imports from subject countries;

and has recommended the imposition of definitive anti-dumping duty on imports of the subject goods originating in or exported from the subject countries;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, 1975 (51 of 1975), read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, on the basis of the aforesaid final findings of the designated authority, hereby imposes on the goods, the description of which is specified in column (3) of the Table below, falling under tariff item of the First Schedule to the said Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), and exported from the countries as specified in the corresponding entry in column (5), and produced by the producers as specified in the corresponding entry in column (6), and exported by the exporters as specified in the corresponding entry in column (7), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (8), in the currency as specified in the corresponding entry in column (10) and per unit of measurement as specified in the corresponding entry in column (9) of the said Table.

Table

Sl. No.	Tariff Item	Description of Goods	Country of origin	Country of export	Producer	Exporter	Amount	Unit of Measurement	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
20	2914	Acetone	Any country	European	Any	Any	277.85	MT	USD

	11 00		y other than subjec t countr ies	Union					
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2. The anti-dumping duty imposed under this notification shall be levied with effect from the date of imposition of the provisional anti-dumping duty, that is, the 19th June, 2007, and shall be payable in Indian currency.

12. Demand of Antidumping duty and interest thereon.

12.1 It was evident from reports received from Russian and Finnish Authorities vide Letters No. MOS/Trade/5-I/2/2009/A-313 dated 04/02/2010, No. MOS/Trade/5-I/2/2009/A-314 dated 22/02/2010, No. MOS/Trade/5-I/2/2009/A-337 dated 03/05/2010 and No. MOS/Trade/5-I/2/2009/A-340 dated 24.05.2010 of the First Secretary (Trade), Embassy of India, Moscow. that the subject Russian originated goods were exported from Finland to India. Therefore, the import of subject consignments at Kandla were squarely covered under Serial Number 20 of the Notification No. 33/2008 and antidumping duty @ US \$ 277.85 per MT is clearly attracted. The first consignment of 525 MT of Acetone imported and cleared for warehousing vide Warehouse Bill of Entry No. 283310 dated 08.04.2009 was cleared for home consumption by different parties including M/s. Sanjay Chemicals (India) Private Limited themselves in lots of small quantities vide Bills of Entry mentioned at Sr No. 1 to 15 of Table- 1 above. Similarly the second consignment of 315 MT of Acetone imported and cleared for warehousing vide Warehouse Bill of Entry No. 295765 dated 24.06.2009 was cleared for home consumption under Bills of Entry mentioned at Sr No. 16 to 22 of the Table-1 above. In all these Bills of Entry i.e. two Warehouse Bill of Entry No. 283310 dated 08.04.2009 and No. 295765 dated 24.06.2009 filed by M/s. Sanjay Chemicals (India) Private Limited and 22 Ex Bond Bills of Entry, filed by respective Ex bond purchasers / importers including M/s. Sanjay Chemicals (India) Private Limited, the Country of Export of the subject goods was suppressed by the CHA M/s. ACT Shipping Ltd., and respective Ex bond importers by leaving the Country of Consignment field blank in these Bills of Entry and evading payment of antidumping duty at appropriate rate aggregating to **Rs. 1,16,53,654/-** as detailed in **Annexure-II**. As discussed above, various documents and mail correspondences showed that M/s. Sanjay Chemicals (India) Private Limited were aware of actual country of export. In order to

portray country of export as Russia, import documents were manipulated by inserting wordings carefully prepared in connivance of M/s. Kolmar Group Ag, Switzerland, M/s. Meteor Pvt. Ltd., and CHA M/s. ACT Shipping Ltd. Shri Varghese Mathew had also stated clearly in his statement dated 21.06.2011 that those wordings were finalized in consultation with all the importers and specifically Shri Sanjay Vijayraj Parmar Director of M/s. Sanjay Chemicals (India) Private Limited and then got inserted in the import documents. With intention to evade antidumping duty, the country of consignment was deliberately not declared in the subject Bills of Entry. This act amounts to suppression and mis-stating of material facts and thus, extended period of demand as provided under Section 28(4) of the Customs Act, 1962 were clearly attracted. Therefore, the antidumping duty totally amounting to **Rs.1,16,53,654/-** (as detailed in **annexure-II**) were liable to be demanded and recovered jointly from M/s. Sanjay Chemicals (India) Private Limited and respective Ex Bond importers who have got the goods cleared for Home Consumption by filing Ex Bond Bills of Entry as per the provision of Section 28(4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA, *erstwhile Section 28AB*, of the Customs Act, 1962. Further the same CHA M/s. ACT Shipping Ltd., filed Ex Bond Bill of Entry as listed at Sr No. 1 to 22 of column No 1 in Table-1 above on behalf of respective Ex Bond importers mis-stated the Country of Export of the subject goods by leaving the Country of Consignment field blank in all these Ex Bond Bills of Entry and therefore provisions of Section 28(4) of the Customs Act, 1962 were liable to be invoked for recovery of Anti-Dumping duty non levied and not paid on these respective consignments cleared for home consumption by various Ex-Bond Importer listed in Table-1 above.

12. Confiscation of goods

12.1 Accordingly, as stipulated in the Notification No. 33/2008-Cus dated 11/03/2008, antidumping duty on Acetone originated in any country and exported from European Union were leviable at the rate of US \$ 277.85 per MT (Sr. No. 20 in the table in the Notification). In the instant case, even if the country of origin is Russia, antidumping duty were leviable on the said consignments of Acetone because its country of export were Finland, a country in European Union. It was amply clear from the above discussed evidences in form of statements, mail correspondences and reports received

from Russian and Finnish Authorities (discussed in Para 8 above) that the consignments of Acetone were being exported from Russia to Finland (European Union) from time to time. Impugned two consignments of 525 MT and 315 MT of Acetone were exported from Finland to India. In the Warehouse Bill of Entry No. 283310 dated 08.04.2009 and No. 295765 dated 24.06.2009, the fact of country of Export of the impugned goods were knowingly suppressed and mis-stated with intention of evading levy of anti-dumping duty by M/s. Sanjay Chemicals (India) Private Limited as well as by all the Ex Bond importers of said warehoused Acetone and CHA M/s. ACT Shipping Ltd. by leaving "Country of Consignment" field blank in the said Bills of Entry. The above act of suppression/ mis-declaration of material fact, rendered the impugned consignments of 840 MT of Acetone (*525 Acetone covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and 315 MT Acetone covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010*) liable to confiscation under the provision of Section 111 (m) of the Customs Act, 1962, though the same were not available for confiscation.

Roles played by different parties/persons ;

13. Role of M/s. Sanjay Chemicals (India) Private Limited and Shri Sanjay Vijayraj Parmar of M/s. Sanjay Chemicals (India) Private Limited

13.1 M/s. Sanjay Chemicals (India) Private Limited imported the impugned 840 MT of Acetone from M/s. Kolmar Group Ag, Switzerland and filed Warehouse Bill of Entry No. 283310 dated 08.04.2009 for 525 MT Acetone imported per MT Bow Saga and 295765 dated 24.06.2010 for 315 MT Acetone imported per MT Bow Star, before Customs Kandla, through CHA M/s. ACT Shipping Ltd. The consignment of 525 MT of said warehoused goods was cleared for home consumption vide 15 Ex-Bond Bills of Entry listed in Column No. 5 of Table 1 at Sr No. 1 to 15 by the importers as mentioned in the said Table. The second consignment of 315 MT was cleared for home consumption vide 7 separate Ex-bond Bills of Entry listed in Column No. 5 of Table 1 at Sr No. 16 to 22 by the importers mentioned in the said Table. The impugned 840 MT of Acetone originated in Russia and exported from Kotka/ Rauma ports of Finland (European Union) to India did not match with material particulars declared in the above said two Warehouse Bills of Entry and twenty two Ex-bond Bills of Entry inasmuch as the country of consignment field in all Bills of Entry was left blank to evade

levy of anti-dumping duty @ USD 277.85/ MT leviable as per Notification No 33/2008-Cus dated 11.03.2008.

13.2 Shri Sanjay Vijayraj Parmar had attended the subject import for M/s. Sanjay Chemicals (India) Private Limited. He had executed contracts No. 2009311 dated 18.02.2009 and 2009868 dated 20.05.2009 with M/s. Kolmar Group Ag. As per the contracts and LCs, the title and the risk was to pass to M/s Sanjay Chemicals (India) Private Limited at Kotka/Rauma (Finland). Certificate of insurance also covered risk of goods from Rauma/ Kotka to Kandla. These evidences also show that the goods were to be exported from Rauma/ Kotka of Finland (European Union) and not from Russia. Further, sale was finalized on 17.02.2009 and the vessel nomination was received immediately on next day, which, rules out any possibility of export from Russia at the material time. Loading of goods to vessels (on 26.02.2009 and 10.05.2009) immediately upon effecting of sale (on 26.02.2009 and 10.05.2009) also show that the impugned consignments were lying at Finland at the time of finalizing deals / signing of contracts. These documents were received by M/s. Sanjay Chemicals (India) Private Limited before seeking clearance of the goods. This clearly shows that the importer was aware that the country of export was Finland and that there was no relation of subject contractual obligations with previous movement of goods from Russia to European Union, which had already taken place as consequence of other Contracts / Sales. The rail receipts about the transport of subject goods from Russia show dates prior to dates on which the importer entered into subject contracts with M/s. Kolmar Group Ag, Switzerland. M/s Sanjay Chemicals (India) Private Limited has stated in his statement that "he was aware that the Acetone originated in/ exported from Russia did not attract antidumping duty and of the fact that the Acetone originated in/ exported from European Union attracted antidumping duty". Therefore M/s Sanjay Chemicals (India) Private Limited were fully aware of the fact that Acetone originated or exported from European Union attracted Anti-dumping duty. Even then, during the recording of the statement when asked specifically if they were concerned about the port of loading of the goods, Shri Sanjay Parmar stated that in the instant case they were informed by M/s. Kolmar Group Ag, Switzerland that subject goods were of Russian origin. Even Russian goods when exported from European Union attracted Anti-dumping duty as per Notification No. 33/2008-Cus dated 11.03.2008. He attempted to mislead the investigation by falsely stating that there was no port in Russia and thus goods had to be transported / transshipped to a Port in Finland by Train. He put forth the same facts in

reply when asked as to why the clause 44 E of LC dated 24.03.2009 pertaining to Port of Loading was amended from "any Russian Port" to "any port in Finland" when the port of loading as per their belief was Russia. The fact that the relevant clause of the LC was amended from "any Russian port" to "any port in Finland" coupled with the facts that vessel was nominated immediately on confirmation of sale of the goods on i.e. 18.02.2009, proves beyond doubt that they were fully aware that the subject goods were lying in Finland at the time of deal for purchase of the subject goods and were to be loaded / exported from there. The movement of the goods from Russian to Finland was not caused by the Sale Contract between M/s. Kolmar Group Ag, Switzerland and M/s Sanjay Chemicals (India) Private Limited. The subject goods had already been purchased and transported to Finland much before the same were sold to M/s Sanjay Chemicals (India) Private Limited. This was evident from the rail receipts pertaining to said transportation, which though in Russian Language, carry dates in English. When the above discussed facts are seen in light of the another fact that the goods were sold to M/s Sanjay Chemicals (India) Private Limited but as per Bills of Lading the supplier of the goods was M/s. Kazanorgsintez, Russia, there remains no doubt that M/s Sanjay Chemicals (India) Private Limited were fully aware of the actual picture that the export took place from European Union and not from Russia. All these facts were evident from Sale Contract, Letter of Credit, Application for amendment in LC, Bill of Lading etc.

13.2.1 Despite knowing these facts, they engaged themselves in preparing incorrect/ false documents, as discussed above, in connivance with M/s. Meteor Pvt. Ltd., and M/s. ACT Shipping Ltd., by getting inserted the wording showing transshipment, in documents viz. invoice, Bills of Lading etc. to portray country of export as Russia. Further, in connivance with CHA M/s. ACT Shipping Ltd., country of export was mis-stated/ suppressed in the Bill of Entry by leaving the country of consignment field blank.

13.3 In his statement recorded under Section 108 of the Customs Act, 1962, Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd. admitted that the wordings portraying that the subject consignments of Acetone were exported from Russia to India, were mentioned on the body of respective Bills of Lading, invoices etc. on the advice of the importers. He specifically stated of talking to Shri Sanjay V Parmar of M/s Sanjay Chemicals (India) Private Limited. In the Backing Letters of Indemnity

executed to M/s. Kolmar Group Ag, Switzerland for taking delivery of goods without B/Ls, they mis-stated name of the supplier as "OOO "SAMARAORGSINTEZ" RUSSIA / M/s. Kazanorgsintez, Russia" instead of actual supplier (M/s. Kolmar Group Ag) and aided in creating incorrect and false Bills of Lading.

13.4 It was amply clear from the above discussed evidences that the consignments of Acetone were being exported from Russia to Finland (European Union) from time to time. Impugned two consignments of 525 MT and 315 MT of Acetone were exported from Finland to India. In the Warehouse Bills of Entry No. 283310 dated 08.04.2009 and 295765 dated 24.06.2009, the country of export was deliberately not declared to evade anti-dumping duty. The above act of suppression/ mis-statement of material fact has rendered the impugned consignments of total 840 MT of Acetone (525 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and 315 MT covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009), having total assessable value of **Rs. 3,08,89,745/-**, (as per Ex Bond Bills of Entry)/- liable to confiscation under the provision of Section 111 (m) of the Customs Act, 1962, and also rendered **M/s Sanjay Chemicals (India) Private Limited**, Mumbai and **Shri Sanjay V Parmar** liable to penalty under Section 112(a) of the Customs Act, 1962.

13.5 The above stated suppression / mis-statement of country of consignment in the Warehousing as well as ex-bond Bills of Entry filed under Section 46 and Section 68 of Customs Act, 1962 respectively before Customs Kandla, with intention to evade Anti-dumping duty aggregating to **Rs 1,16,53,654/-** as per **Annexure II** have attracted application of the provisions of Section 28 (4) of Customs Act, 1962 for recovery of the duty and have rendered **M/s Sanjay Chemicals (India) Private Limited**, Mumbai liable for Penalty under the provisions of Section 114A of Customs Act, 1962.

13.6 In his statement recorded under Section 108 of the Customs Act, 1962, Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd. admitted that the wordings portraying that the subject consignments of Acetone were exported from Russia to India, were mentioned on the body of respective Bills of Lading, invoices etc. on the advice of all the importers. M/s Sanjay Chemicals (India) Private Limited was also one of these importers. He specifically mentioned name of Shri Sanjay Parmar in this respect. Shri Sanjay V Parmar, Director of M/s Sanjay Chemicals (India)

Private Limited, Mumbai attended the subject imports. As discussed above, it was evident that he was aware of the fact and even approved insertion of certain specified wordings in the import documents to portray that the goods were being exported from Russia. Thus, it was evident that **Shri Sanjay V Parmar** has indulged himself in causing preparation of false/incorrect documents viz. Commercial Invoices, Bills of Lading and used the same in warehousing and clearance of the subject goods. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

14. Role of CHA M/s. ACT Shipping Ltd.,

14.1 Both the above mentioned Warehouse Bill of Entry No. 283310 dated 08.04.2009 and 295765 dated 24.06.2009 and 22 Ex Bond Bills of Entry were filed by CHA M/s. ACT Shipping Ltd. on behalf of M/s Sanjay Chemicals (India) Private Limited and other Ex Bond importers as listed in Table-1 above. Shri Thomas Varghese, Senior Executive of M/s. ACT Shipping Ltd. has attended the subject import. Shri T. V. Sujan is Director of M/s. ACT Shipping Limited. As discussed above it was evident that he was in touch with the M/s Sanjay Chemicals (India) Private Limited and M/s. Meteor Pvt. Ltd., even before the sale contracts were signed by the importers. In his statement recorded under Section 108 of the Customs Act, 1962, Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd. admitted that he had discussed about insertion of wordings in import documents to portray that the subject consignments of Acetone were exported from Russia to India, with Shri T. V. Sujan of CHA firm M/s. ACT Shipping Ltd. Shri T. V. Sujan has also admitted in his statement recorded under Section 108 of the Customs Act, 1962, of having discussed it with Shri Varghese Mathew of M/s. Meteor Pvt. Ltd. Shri Thomas Varghese of M/s. ACT Shipping Ltd., has admitted in his statement recorded under Section 108 of the Customs Act, in respect of subject goods, that:

"Though the subject goods were produced in Russia and originally exported from there, but for Indian importers the "Country of Export" is Finland.

And

"Declaration of country of consignment in the said Bills of Entry would have affected the assessment in those Bills of Entry in respect of levy of antidumping duty in the light of Notification No. 33/2008 – Cus dated 11/03/2008".

14.2 Shri Thomas Varghese had talked to M/s. Sanjay Chemicals (I) Pvt. Ltd. about arrangement of chain documents to show country of export as Russia. He has stated in his statement dated 01/08/2011 as *"The version*

of telephonic talk of Shri Sanjay Parmar of M/s Sanjay Chemicals (I) Pvt Ltd., with him that if they could arrange for chain documents then antidumping duty would not be attracted was true. He reported about the talks to Shri T. V. Sujan”.

14.3 In respect of leaving the Country of Consignment field blank in the Bills of Entry, he has stated that it remained blank by mistake. He was aware that both the fields i.e., pertaining to “Country of Origin” and “Country of Consignment” in the Bills of Entry were equally important since the goods of Russian origin attracted Anti-dumping duty under Notification No. 33/2008-Cus dated 11.03.2008 if said goods were exported from European Union. Shri Varghese Mathew of M/s. Meteor Pvt. Ltd. and Shri T V Sujan of M/s. ACT Shipping Ltd., in their respective statements, have admitted that they had discussed **about insertion of wordings in import documents to portray that the subject consignments of Acetone were exported from Russia to India. From this fact it was clearly evident that M/s. ACT Shipping Ltd. were conscious about country of consignment/ export of the impugned goods.** In the light of these facts it was not possible that they did the same mistake repeatedly in twenty four Bills of Entry (2 WH + 22 Ex-bond) filed in respect of 840 MT of Acetone for M/s Sanjay Chemicals (India) Private Limited others. Further, as discussed at Para 10.6 above, M/s. ACT Shipping Ltd. had mentioned the country of consignment as Finland in Job No. 0018445 (print date 02.04.2009 prepared for filing Bill of Entry in respect of 525 MT of Acetone imported per vessel MT Bow Saga which is available at page No. 365 of file recovered from the premises of M/s. Sanjay Chemicals (India) Private Limited under Panchanama dated 21.04.2009. It clearly shows that CHA M/s. ACT Shipping Ltd. had not left the field of country of consignment blank by mistake but, they had deliberately deleted it from the ICEGATE Job / Checklist prepared for the subject consignments. Thus, it was evident from the above discussed facts that with an intention to evade payment of antidumping duty, M/s. ACT Shipping Ltd., along with M/s Sanjay Chemicals (India) Private Limited and M/s. Meteor Pvt. Ltd., Mumbai diligently and knowingly hatched a conspiracy to suppress the actual country of export.

14.4 The above stated omissions and commissions on the part of **Shri T. V. Sujan, Shri Thomas Varghese and M/s. ACT Shipping Ltd.** have rendered the impugned 840 MT of Acetone liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962, and they have rendered themselves liable to penalty under Section 112(a) of Customs Act,

1962. The above act on the part of M/s. ACT Shipping Ltd also attracts action under the provisions of the Custom House Agents Licensing Regulations, 2004.

14.5 Further, though **Shri Thomas Varghese and Shri T. V. Sujan** were having knowledge of the facts, they deliberately aided the importer and M/s. Meteor Pvt. Ltd. in causing to make the false / incorrect documents viz. Commercial Invoices, Bills of Lading by suggesting to insert wording of transportation clause and also used those false and incorrect documents in filing Bills of Entry for warehousing and clearance of the subject goods. By this act they have rendered themselves liable for penalty under Section 114 AA of the Customs Act, 1962.

15. Role of M/s. Meteor Pvt. Ltd.,

15.1 Shri Varghese Mathew was Branch Manager in M/s. Meteor Pvt. Ltd. He has attended the subject imports. M/s. Meteor Pvt. Ltd. has played role of facilitator and mediator in getting prepared the Certificates of Origin which formed the basis of mis-statement of country of export in all the Warehouse Bills of Entry mentioned in Table-2 above. They facilitated exchange of proposed documents to be submitted to the Indian Customs between, M/s. Kolmar Group Ag and the importers including M/s Sanjay Chemicals (India) Private Limited, via e-mails, faxes etc., in deciding the format and contents of the Country of Origin Certificates and finalizing wordings for inserting in the import documents to falsely portray country of export as Russia. Initially M/s. Kolmar Group Ag, vide email dated 13.02.2009 (9:59 PM) forwarded the draft Certificate of Origin which they (M/s. Kolmar Group Ag) intended to forward to the importers. The forwarding of the e-mail stated "Further to your fax regarding the anti-dumping duties ex European Countries, please be advised we should also be able to provide a FORM A certificate of Origin, as you may well see in the attached certificate, it will be issued in the Russian Federation (Chamber of Russian Commerce) and it will show ex- Russia for transshipment Kotka / Rotterdam". The Certificate in FORM A bearing reference **No NL 800700603 A 787844 issued in Russian Federation** showed name of exporter as "OOO SAMARAORGSINTEZ" 446203, NOVKUIBYSHEVSK, SAMARA REGION RUSSIA. The Declaration by the exporter at Sr No 12 of the Certificate read "The undersigned hereby declares that the above details and statements are correct; that the goods were produced in **RUSSIAN FEDERATION** and that they comply with the origin requirements specified

for those goods in the generalized system of preference for goods exported to NETHERLANDS (importing Country)". The producing country i.e. Russia and country to which goods were exported i.e. Netherlands are clearly shown, differentiated from other wordings, in Upper case letter and bigger font over dotted lines as is done in usual FORM A. Further below the 'NETHERLANDS', is also written in brackets "Importing country". The said certificate was dated 20.08.2008. Therefore, it was clear that the impugned goods were already imported to European Union (Netherlands) and that, from there, the goods were to be further sold and exported to India. The said Certificate was dated 20.08.2008. However, M/s. Meteor Pvt. Ltd., were not concerned about the complying with Rules / procedures and consulted the importers, CHAs and other persons for finding ways of evading the anti-dumping duty applicable on exports of Acetone from European Union. After the consultations, M/s. Meteor Pvt. Ltd. reverted back to M/s. Kolmar Group Ag and suggested "alia that all the documents including Bill of Lading has to show the means of transport and route from Russia to Kandla. This included the rail transport as well". They also suggested the exact wordings which were to be inserted in the false and incorrect documents to be prepared for the impugned consignments. Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd., has admitted in his statement dated 10/06/2010 that with the knowledge of the Indian customers, they requested M/s. Kolmar for inserting the wordings in import documents, indicating that the said goods were transshipped at Finland and therefore, M/s. Kolmar inserted wordings showing that the said consignments were sent to Finland from Russia by train and then loaded at Kotka/ Rauma ports in Finland, and further transshipped for export to India. He has also admitted that they had obtained advice of various persons in the matter and accordingly M/s. Meteor Pvt. Ltd. were aware of the fact that without inserting the said wordings in the import documents like Bills of Lading, invoices etc., the cargo would attract antidumping duty. Thus, it was evident that Shri Varghese Mathew and M/s. Meteor Pvt. Ltd. actively abetted in mis-declaration of country of export as "Russia". This act on the part of **Shri Varghese Mathew and M/s. Meteor Pvt. Ltd.** has rendered the said consignment of 840 MT of Acetone, having Assessable value of **Rs. 3,08,89,745/-** (as per Ex Bond Bills of Entry) liable to confiscation and have rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

15.2 Further, having knowledge of facts, Shri Varghese Mathew aided in causing to make the false / incorrect documents viz Commercial Invoices, Bills of Lading by suggesting to insert wording of transportation clause and facilitated the use of the false and incorrect documents in warehousing and clearance of the subject goods and thus **Shri Varghese Mathew** has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962.

16. Role of Ex Bond Importers:

16.1 Role of M/s. Brij Lal Jain & Sons:

M/s. Brij Lal Jain & Sons purchased 32 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods through Invoice No. R0032A dated 11.04.2009 and R00136 dated 01.07.2009 issued by M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 287692 dated 05.05.2009 and 298226 dated 08.07.2009. Like the Warehouse Bill of Entry, they did not declare country of consignment in the Ex Bond Bill of Entry also. Shri Anil Dahiya, working as Logistics Incharge in M/s. Brij Lal Jain & Sons has stated in his statement that the Overseas Supplier of Acetone as per the Bond Transfer records was M/s. Kolmar Group AG and Country of Export of the said consignments of Acetone as per the Bills of Lading was Russia as the cargo had arrived via rail from Kazan, Russia to Rauma, Finland. He also stated that they were not provided documents pertaining to transport of the goods from Russia to Finland and manufacturer of the goods and that they even did not try to obtain these documents from M/s Sanjay Chemicals (India) Private Limited. Despite this they authorized filling of Bill of Entry, suppressing the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. had complete knowledge of the country of consignment; they initially declared it correctly in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to deliberate suppression of material facts / mis-stating of facts and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 was clearly attracted and therefore **M/s Brij Lal & Sons** were liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **M/s. Brij Lal Jain & Sons** and **Shri Anil Dahiya** has rendered the 32 MT of Acetone cleared for

home consumption under Ex Bond Bills of Entry No. 287692 dtd.05.05.2009 and 298226 dated 08.07.2009, having total assessable value of **Rs. 11,89,164/-** liable to confiscation under Section 111 (m) of the Customs Act, 1962, and rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Moreover, Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia *and not* M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents in as much as they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, **M/s. Brij Lal Jain & Sons** authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it was evident that **Shri Anil Dahiya** used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

16.2 Role played of M/s. India Glycols Limited:

M/s. India Glycols Limited purchased 20 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited through M/s. Traxpo Enterprises Pvt.Ltd, Kolkata. They purchased the goods vide Invoice No. HS/020/09-10 dated 14.7.2009 issued by M/s. Traxpo Enterprises Pvt. Ltd., and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 301871 dated 03.08.2009. Like the Warehouse Bill of Entry, they did not declare country of consignment in the Ex Bond Bill of Entry also. Shri S. C. Sharma, working as Joint Manager (Purchase) in M/s. India Glycols Limited has stated in his statement that the Overseas Supplier of Acetone was M/s. Kolmar Group AG, Switzerland a company falling in European Union. In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export was equally vital as the Country of Origin, to decide the levy of Anti-dumping duty. Despite this they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. had knowledge of actual country of consignment. They initially declared it

correctly in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act on part of CHA M/s. ACT Shipping Ltd., and M/s India Glycols Limited amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 was clearly attracted and therefore **M/s. India Glycols Limited** are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **Shri S. C. Sharma** and **M/s. India Glycols Limited** has rendered the 20 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. 301871 dated 03.08.2009, having total assessable value of **Rs. 7,85,203/-**, liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, and also rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Moreover, Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia *and not* M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 10.05.2009 had the reference of LC which was opened much later i.e. on 29.05.2009. Therefore it was evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents in as much as they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, Shri S. C. Sharma of M/s. India Glycols Limited authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it was evident that Shri S. C. Sharma and M/s. India Glycols Limited have used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on the part of **Shri S. C. Sharma** has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

16.3 Role of M/s. IOL Chemicals and Pharmaceuticals Ltd:

M/s. IOL Chemicals and Pharmaceuticals Ltd purchased 60 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited through M/s. Traxpo Enterprises Pvt. Ltd, Kolkata. They purchased the goods vide Invoice No. HS/019/09-10 dated 14.07.2009 issued by M/s. Traxpo Enterprises Pvt. Ltd., and got cleared the same for home

consumption vide Ex-Bond Bills of Entry No. 309508 dated 22.09.2009. Similar to Warehouse Bill of Entry they also did not declare country of consignment in the Ex Bond Bill of Entry. Shri Harish Dania, working as Deputy Manager Transportation / purchase in M/s. IOL Chemicals and Pharmaceuticals Ltd has stated in his statement that the Overseas Supplier of Acetone was M/s. Kolmar Group AG, Switzerland (a company falling in European Union). In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export was equally vital as the Country of Origin of the goods for deciding the levy or non levy of Anti-dumping duty. Despite this they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. had knowledge of actual country of consignment. They initially declared it correctly in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act on part of CHA M/s. ACT Shipping Ltd., and M/s. IOL Chemicals and Pharmaceuticals Ltd amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 was clearly attracted and hence **M/s. IOL Chemicals and Pharmaceuticals Ltd.** are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **Shri Harish Dania and M/s. IOL Chemicals and Pharmaceuticals Ltd** has rendered the 60 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. 309508 dated 22.09.2009, having total assessable value of **Rs. 23,55,608/-**, liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, and rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Moreover, Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia and not M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 10.05.2009 had the reference of LC which was opened much later i.e. on 29.05.2009. Therefore it was evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents in as much as they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, M/s. IOL Chemicals and Pharmaceuticals Ltd authorized filing of Ex Bond Bills of Entry on the basis of said documents.

Thus, it is evident that **Shri Harish Dania** of M/s. IOL Chemicals and Pharmaceuticals Ltd used false/ incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable to penalty under Section 114 AA of the Customs Act, 1962 also.

16.4 Role of M/s. Mody Chem, Ahmedabad:

M/s. Mody Chem, Ahmedabad purchased 48 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods through Invoice No. G0085 dated 07.05.2009 issued by M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 297185 dated 02.07.2009. Similar to Warehouse Bill of Entry they did not declare country of consignment in the Ex Bond Bill of Entry. Shri Biren Girish Sitwala working as Authorized Branch Representative in M/s. Mody Chem, Ahmedabad has stated in his statement that the Overseas Supplier of Acetone was M/s. Kolmar Group AG. In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export was equally vital as the Country of Origin of the goods for deciding the levy of Anti-dumping duty. Despite this they authorized filling of Bill of Entry, suppressing the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Despite this they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. were aware of the country of consignment of the goods. They initially declared it correctly in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 was obviously attracted and therefore M/s. Mody Chem, Ahmedabad are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **M/s. Mody Chem, Ahmedabad and Shri Biren Girish Sitwala** have rendered the 48 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. **297185 dated 02.07.2009**, having total assessable value of **Rs. 17,19,956/-** liable to confiscation Section 111 (m) of the Customs Act, 1962, and also rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Moreover, Bills of Lading of the said consignments Port of Loading was mentioned as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia *which was different from* M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Therefore it was quite evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, M/s. Mody Chem, Ahmedabad authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it is evident that **Shri Biren Girish Sitwala** have used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable to penalty under Section 114 AA of the Customs Act, 1962 also.

16.5 Role of M/s. Mody Enterprises, Ahmedabad

M/s. Mody Enterprises, Ahmedabad purchased 80 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods through Invoice No. G0085 dated 07.05.2009 issued by M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai and got cleared the same for home consumption vide two Ex-Bond Bills of Entry No. 290220 dated 21.05.2009 (for clearance of 30 MT Acetone) and 296397 dated 29.06.2009 (for clearance of 50 MT Acetone). Similar to Warehouse Bill of Entry they did not declare country of consignment in the Ex Bond Bill of Entry. Shri Biren Girish Sitwala working as Authorized Branch Representative in M/s. Mody Enterprises, Ahmedabad has stated in his statement that the overseas Supplier of Acetone was M/s. Kolmar Group AG. In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export was equally vital as the Country of Origin of the goods for deciding the levy or non levy of Anti-dumping duty. Despite this, they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above their authorized agent M/s. ACT Shipping Ltd. were aware of the country of consignment of the goods. They initially declared it correctly in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to suppression of material facts

/ mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is attracted and therefore, **M/s. Mody Enterprises, Ahmedabad** are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **M/s. Mody Enterprises, Ahmedabad** and **Shri Biren Girish Sitwala** has rendered the 80 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. 290220 dated 21.05.2009 (30 MT) and 296397 dated 29.06.2009(50 MT), having total assessable value of **Rs. 28,66,593/-** liable to confiscation under the provision of Section 111 (m) of the Customs Act, 1962, and themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Moreover, Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which was different from M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Therefore it was quite evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, **Shri Biren Girish Sitwala** of M/s. Mody Enterprises, Ahmedabad authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it was evident that **Shri Biren Girish Sitwala** used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

16.6 Role of M/s. Nectar Life Sciences Limited

M/s. Nectar Life Sciences Limited purchased 100 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods vide purchase order No. NLL/RM/U02/106/ 2009-10 dated 23.07.2009 and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 301514 dated 31.07.2009. Similar to Warehouse Bill of Entry they also did not declare country of consignment in the Ex Bond Bill of Entry. Shri Chetan Gulati working as Sr. Manager of Raw material Purchases in M/s. Nectar Life Sciences Limited has stated in his statement that the Overseas Supplier of Acetone as per Bond Transfer Records was

M/s. Kolmar Group AG, Switzerland (a company falling in European Union). In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export was equally vital as the Country of Origin of the goods for deciding the levy or non levy of Anti-dumping duty. Despite this they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. had complete knowledge of the country of consignment; they initially declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act on part of CHA M/s. ACT Shipping Ltd., and M/s. Nectar Life Sciences Limited amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 was clearly attracted and hence **M/s. Nectar Life Sciences Limited** are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **M/s. Nectar Life Sciences Limited** and **Shri Chetan Gulati** has rendered the said 100 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. 301514 dated 31.07.2009, having total assessable value of **Rs. 38,49,033/-**, liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, and also rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Moreover, Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which was different M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 10.05.2009 had the reference of LC which was opened much later i.e. on 29.05.2009. Therefore it is evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents in as much as they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, Shri Chetan Gulati and M/s. Nectar Life Sciences Limited authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it is evident that **Shri Chetan Gulati** has used false/ incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable to penalty under Section 114 AA of the Customs Act, 1962 also.

16.7 Role of M/s. Pioneer Chemical Industries:

M/s. Pioneer Chemical Industries purchased 48 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited through M/s. Overseas Polymers Pvt. Ltd. They purchased the goods vide Invoice No. GJ/ACE/B/2009/ 0210 dated 18.09.2009 issued by M/s. Overseas Polymers Pvt. Ltd., and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 309979 dated 25.09.2009. Similar to Warehouse Bill of Entry they did not declare country of consignment in the Ex Bond Bill of Entry. Shri Gopal Rameshbhai Bhatt, working as Logistics Incharge in M/s. Pioneer Chemical Industries has stated in his statement that the overseas supplier of Acetone was M/s. Kolmar Group AG, Switzerland (a country in European Union). In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export was equally vital. Despite this, they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. were aware of the actual country of consignment of the goods; they initially declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 was obviously attracted and therefore M/s. Pioneer Chemical Industries are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **Shri Gopal Rameshbhai Bhatt and M/s. Pioneer Chemical Industries** rendered the 48 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. 309979 dated 25.09.2009, having total assessable value of **Rs.17,54,355/-**, liable to confiscation under the provision of Section 111 (m) of the Customs Act, 1962, and themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Moreover, Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which was different from M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Therefore it was quite evident that despite

being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, M/s. Pioneer Chemical Industries authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it is evident that **Shri Gopal Rameshbhai Bhatt** has used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

16.8 Role of M/s. Satish Chemical India Pvt. Ltd:

M/s. Satish Chemical India Pvt. Ltd purchased 64 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods vide Retail Invoice No.R00067 dated 11.05.2009 (32 MT Acetone, imported per MT Bow Saga), R0180C dated 28.07.2009 (23 MT Acetone imported per MT Bow Star) and R0180D dated 28.07.2009 (9 MT Acetone imported per MT Bow Saga) and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 292336 dated 03.06.2009, 303249 dated 12.08.2009 and 302554 dated 07.08.2009 respectively. Similar to Warehouse Bill of Entry they also did not declare country of consignment in these Ex Bond Bills of Entry. Shri Rajeev Kumar Garg, working as Director in M/s. Satish Chemical India Pvt. Ltd has stated in his statement that the Overseas Supplier of Acetone as per Warehouse Bill of Entry was M/s. Kolmar Group AG, Switzerland (a country in European Union). In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export was equally vital for deciding levy of Anti-dumping duty. Despite this, they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. were aware of the country of consignment of the goods. They initially declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is attracted and therefore, **M/s. Satish Chemical India Pvt. Ltd** are liable to be penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by

Shri Rajeev Kumar Garg and M/s. Satish Chemical India Pvt. Ltd.

have rendered the 64 MT of Acetone cleared for home consumption under Ex Bond Bills of Entry No. 292336 dated 03.06.2009, 302554 dated 07.08.2009 and 303249 dated 12.08.2009, having total assessable value of **Rs. 23,54,407/-**, liable to confiscation under the provision of Section 111 (m) of the Customs Act, 1962, and themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Moreover, Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which was different from M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading, Commercial Invoice and other import documents purported to be issued on 26.02.2009 / 10.05.2012 had the reference of LCs which was opened much later i.e. on 24.03.2009/29.05.2009. Therefore, it was evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice etc were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, Shri Rajeev Kumar Garg and M/s. Satish Chemical India Pvt. Ltd authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it becomes evident that **Shri Rajeev Kumar Garg** has used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

16.9 Role of M/s. Solvochem, Delhi

M/s. Solvochem, Delhi purchased 96 MT of Acetone, imported per vessel MT Bow Saga, on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods vide Purchase Order No. SOL/063 dated 17.06.2009 (16 MT) No. SOL/002 dated 01.04.2009 (32 MT) and SOL/059 dated 10.06.2009 (48 MT) and got cleared the same for home consumption vide 04 Ex-Bond Bills of Entry No. 295454 dated 23.06.2009 (16 MT), 296224 dated 26.06.2009 (16 MT), 294307 dated 16.06.2009 (32 MT) and 287693 dated 05.05.2009 (32 MT). Similar to Warehouse Bill of Entry they did not declare country of consignment in these Ex Bond Bills of Entry. Shri Akhilesh Kumar working as Liaison Officer in M/s. Solvochem, Delhi has stated in his statement that as per Warehouse Bill of Entry and Invoice, the overseas supplier of Acetone was M/s. Kolmar Group AG. In respect of a commodity which attracts Anti-Dumping Duty, declaration of

the Country of Export was equally important as declaration of the Country of Origin of the goods for deciding the levy of Anti-dumping duty. Despite this, they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bills of Entry. Further, as discussed at above, their authorized agent M/s. ACT Shipping Ltd. were fully aware of the actual country of consignment of the goods; they initially declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehouse Bill of Entry. This act on part of **M/s Solvochem, Delhi** and their agents M/s. ACT Shipping Ltd., amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is attracted and hence **M/s. Solvochem, Delhi** are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **M/s. Solvochem, Delhi** and **Shri Akhilesh Kumar** has rendered the 96 MT of Acetone cleared for home consumption under Ex Bond Bills of Entry No. 295454 dated 23.06.2009 (16 MT), 296224 dated 26.06.2009 (16 MT), 294307 dated 16.06.2009 (32 MT) and 287693 dated 05.05.2009 (32 MT), having total assessable value of **Rs. 34,39,912/-**, liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, and themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Moreover, Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which was different from M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading, Commercial Invoice and other Import documents purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Therefore, it was quite evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice etc were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, **Shri Akhilesh Kumar and M/s. Solvochem, Delhi** authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, **Shri Akhilesh Kumar** has used false/ incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on their part has rendered them liable for penalty under Section 114 AA of the Customs Act, 1962 also.

16.10 Role of M/s. Pon Pure Chem (P) Ltd.

M/s. Pon Pure Chem (P) Ltd. purchased 96 MT of Acetone, imported per vessel MT Bow Saga, on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods vide Tax Invoice No.G00155 dated 12.06.2009 issued by M/s. Sanjay Chemicals and got cleared the same for home consumption vide 03 separate Ex-Bond Bills of Entry No. 298952 dated 14.07.2009 (30 MT), 298446 dated 10.07.2009 (33 MT) and 297390 dated 02.07.2009 (33 MT). Similar to Warehouse Bill of Entry, they did not declare country of consignment in these Ex Bond Bills of Entry. Shri Subramaniam Mahadevan, working as Regional Manager in M/s. Pon Pure Chem (P) Ltd. has stated in his statement that the overseas supplier of Acetone as per Warehouse Bill of Entry and Invoice was M/s. Kolmar Group AG. In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export was equally important as declaration of the Country of Origin of the goods for deciding the levy or non levy of Anti-dumping duty. Despite this, they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bills of Entry. Further, as discussed, above their authorized agent M/s. ACT Shipping Ltd. were fully aware of the country of consignment of the goods; they initially declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehouse Bill of Entry. This act on part of M/s. Pon Pure Chem (P) Ltd. and their agents M/s. ACT Shipping Ltd., amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is liable to invoked and hence M/s. Pon Pure Chem (P) Ltd. is liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **M/s. Pon Pure Chem (P) Ltd. and Shri Subramaniam Mahadevan** has rendered the 96 MT of Acetone cleared for home consumption under Ex Bond Bills of Entry No. 298952 dated 14.07.2009 (30 MT), 298446 dated 10.07.2009 (33 MT) and 297390 dated 02.07.2009 (33 MT), having total assessable value of **Rs. 34,39,912/-**, liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, and themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Moreover, Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods

was M/s. KAZANORGSINTEZ SC of Russia which was different from M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading, Commercial Invoice and other import documents purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Therefore, it is quite evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice etc were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, Shri Subramaniam Mahadevan of M/s. Pon Pure Chem (P) Ltd. authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it becomes evident that **Shri Subramaniam Mahadevan** has used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable to penalty under Section 114 AA of the Customs Act, 1962 also.

17 In view of the above, a Show Cause Notice bearing F.No.DRI/AZU/GRU/30/2013 dated 31.03.2013, was issued, answerable to the Commissioner of Customs, Kandla, were issued to the following noticee ;

17.1 M/s. Brij Lal Jain and Sons, C-19A, Ist Floor, Shivaji Park, Punjabi Bagh, New Delhi and **M/s Sanjay Chemicals (India) Private Limited**, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai were jointly and severally, proposing for :-

- (i) Confiscation of the 32 MT of Acetone (16 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 287692 dated 05.05.2009 plus 16 MT covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 298226 dated 08.07.2009) having aggregate assessable value **Rs. 11,89,164/-**, under Section 111(m) of the Customs Act, 1962.
- (ii) Demanding Antidumping duty aggregating to Rs. 4,40,337/- (Rupees four lakhs, forty thousand three hundred thirty seven only) on 32 MT of Acetone (16 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 287692 dated 05.05.2009 plus 16 MT covered under Warehouse Bill of Entry No.

295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 298226 dated 08.07.2009) as detailed in Annexure-II to the notice, from them under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry.

- (iii) the imposition of penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above.
- (iv) the imposition of penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above,

17.2 M/s. India Glycols Limited, 10, Plot No. 2-B, Sector 126, Noida and **M/s Sanjay Chemicals (India) Private Limited** were jointly and severally, proposing for :

- (i) Confiscation of the 20 MT of Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 301871 dated 03.08.2009), having aggregate assessable value Rs. 7,85,203/- under Section 111(m) of the Customs Act, 1962.
- (ii) Demanding the Antidumping duty aggregating to Rs. 2,66,180/- (Rupees two lakhs sixty six thousands one hundred eighty only) on 20 MT of Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 301871 dated 03.08.2009) as detailed in Annexure-II to the notice under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry.
- (iii) the imposition of penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above.
- (iv) the imposition of Penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above

17.3 M/s. IOL Chemicals and Pharmaceuticals Ltd., 1, Head Office 85, Industrial Area, Ludhiana and **M/s Sanjay Chemicals (India) Private Limited** were jointly and severally, proposing for ;

- (i) Confiscation of the 60 MT of Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 309508 dated 22.09.2009) having aggregate assessable value Rs. 23,55,608/- under Section 111(m) of the Customs Act, 1962.
- (ii) Demanding the Antidumping duty aggregating to Rs.7,98,541/- (Rupees seven lakhs ninety eight thousands five hundred forty one only) on 60 MT of Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 309508 dated 22.09.2009) as detailed in Annexure-II to the notice, under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry.
- (iii) the imposition of penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above.
- (iv) the imposition of penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above

17.4 M/s. Mody Chem, 2, B/6, Security Estate, Nr Kashiram Textile, Isanpur, Narol, Ahmedabad and M/s Sanjay Chemicals (India) Private Limited were jointly and severally, proposing for ;

- (i) confiscation of the 48 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 297185 dated 02.07.2009) having aggregate assessable value Rs. 17,19,956/- under Section 111(m) of the Customs Act, 1962.
- (ii) Demanding the Antidumping duty aggregating to Rs. 6,82,177/- (Rupees six lakhs eighty two thousands one hundred seventy seven only) on 48 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 297185 dated 02.07.2009) as detailed in Annexure-II to this notice, under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA

(erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry,

- (iii) the imposition of penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above.
- (iv) the imposition of penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above

17.5 M/s. Mody Enterprises, 3, Tulsi Avenue, Block No 738/E-1, N.H.8, Dascroi, Aslali, District Ahmedabad and **M/s Sanjay Chemicals (India) Private Limited** were jointly and severally, proposing for ;

- (i) the confiscation of the 80 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bills of Entry No. 296397 dated 29.06.2009 (30 MT) and 290220 dated 21.05.2009 (50 MT)) having aggregate assessable value **Rs. 28,66,593/-** under Section 111(m) of the Customs Act, 1962.
- (ii) Demanding the Antidumping duty aggregating to **Rs.11,36,962/-** (Rupees eleven lakhs thirty six thousands nine hundred sixty two only) on 80 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bills of Entry No. 296397 dated 29.06.2009 (30 MT) and 290220 dated 21.05.2009 (50 MT)) as detailed in Annexure-II to this notice, under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry.
- (iii) the imposition of penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above.
- (iv) the imposition of the penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above

17.6 M/s. Nectar Life Sciences Limited, 15, Unit II, Village Saipura, Tehsil Derabassi, Dist Mohali (Punjab) and **M/s Sanjay Chemicals (India) Private Limited** were jointly and severally, proposing for ;

- (i) the confiscation of the 100 MT of Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 301514

dated 31.07.2009) having aggregate assessable value Rs. **38,49,033/-**, under Section 111(m) of the Customs Act, 1962.

- (ii) Demanding the Antidumping duty aggregating to **Rs.13,30,902/-** (Rupees thirteen lakhs thirty thousands nine hundred two only) on 100 MT of Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 301514 dated 31.07.2009) as detailed in Annexure-II to this notice, under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry.
- (iii) the imposition of the penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above.
- (iv) the imposition of the penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above

17.7 M/s. Pioneer Chemical Industries, 3, Shop No 7, Jai Ambe Chambers, Plot No 2, 8, Ward No.7, Sector 9, Nr Hardik Hotel, Gandhidham and **M/s Sanjay Chemicals (India) Private Limited** were jointly and severally, proposing for ;

- (i) the confiscation of the 48 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 309979 dated 25.09.2009) having aggregate assessable value Rs. 17,54,355/- should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962.
- (ii) Demanding the Antidumping duty aggregating to Rs. **6,82,177/- (Rupees six lakhs eighty two thousands one hundred seventy seven only)** on 48 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 309979 dated 25.09.2009) as detailed in Annexure-II to this notice, under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA(erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry.
- (iii) the imposition of penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above.

- (iv) the imposition of the penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above

17.8 M/s. Satish Chemical India Pvt. Ltd, 2, Khasara No. 64/22/2, Village Mundaka, Delhi and **M/s Sanjay Chemicals (India) Private Limited** were jointly and severally, proposing for ;

- (i) the confiscation of the 64 MT of Acetone (41 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 292336 dated 03.06.2009 (32 MT) & 303249 dated 12.08.2009 (9 MT) plus 23 MT Acetone covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 302554 dated 07.08.2009) having aggregate assessable value **Rs. 23,54,407/-** under Section 111(m) of the Customs Act, 1962.
- (ii) Demanding the Antidumping duty aggregating to **Rs. 8,88,800/-** (Rupees eight lakhs eighty eight thousands eight hundred only) on 64 MT of Acetone (41 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 292336 dated 03.06.2009 (32 MT) & 303249 dated 12.08.2009 (9 MT) plus 23 MT Acetone covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 302554 dated 07.08.2009) as detailed in Annexure-II to this notice, under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry.
- (iii) the imposition of the penalty under under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above,
- (iv) the imposition of the penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above,

17.9 M/s. Solvochem, R-301/302, 3rd Floor, Dua complex, 24, Veer Savarkar Block, Vikas Marg, New Delhi and **M/s Sanjay Chemicals (India) Private Limited** were jointly and severally, proposing for ;

- (i) the confiscation of the 96 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 287693 dated 05.05.2009 (32 MT), 294307 dated 16.06.2009 (32 MT), 295454 dated 23.06.2009 (16 MT) and 296224 dated 26.06.2009 (16 MT)) having aggregate assessable value **Rs. 34,39,912/-** under Section 111(m) of the Customs Act, 1962.
- (ii) Demanding the Antidumping duty aggregating to **Rs. 13,64,355/-** (Rupees thirteen lakhs sixty four thousands three hundred fifty five only) on 96 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 287693 dated 05.05.2009 (32 MT), 294307 dated 16.06.2009 (32 MT), 295454 dated 23.06.2009 (16 MT) and 296224 dated 26.06.2009 (16 MT)) as detailed in Annexure-II to this notice, under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry.
- (iii) the imposition of the Penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above.
- (iv) the imposition of the penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above

17.10 M/s. Pon Pure Chem (P) Ltd., 23, Plot No. 14, 15 & 16, Sector 1 A, Room 5, 1st Floor Popular Plaza, Gandhidham and **M/s Sanjay Chemicals (India) Private Limited** were jointly and severally, proposing for ;

- (i) the confiscation of 96 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 297390 dated 02.07.2009 (33 MT), 298446 dated 10.07.2009 (33 MT) and 298952 dated 14.07.2009 (30 MT)) having aggregate assessable value **Rs. 34,39,912/-** under Section 111(m) of the Customs Act, 1962.
- (ii) Demanding the Antidumping duty aggregating to Rs. **13,64,355/-** (Rupees thirteen lakhs sixty four thousands three hundred fifty five only) on 96 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption

vide Ex-Bond Bill of Entry No. 297390 dated 02.07.2009 (33 MT), 298446 dated 10.07.2009 (33 MT) and 298952 dated 14.07.2009 (30 MT)) as detailed in Annexure-II to this notice, under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry.

- (iii) the imposition of the penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above.
- (iv) the imposition of the penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above.

17.11 M/s Sanjay Chemicals (India) Private Limited, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai for ;

- (i) the confiscation of 196 MT of Acetone (100 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 288986 dated 13.05.2009, 96 MT covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009 and cleared for home consumption vide Ex-Bond Bills of Entry No. 298954 dated 14.07.2009 (48 MT) and 300795 dated 27.07.2009 (48 MT)) having aggregate assessable value **Rs. 71,35,602/-** under Section 111(m) of the Customs Act, 1962.
- (ii) Demanding the Antidumping duty aggregating to Rs. 26,98,868/- (Rupees Twenty Six Lakhs Ninety Eight Thousands Eight Hundred Sixty Eight only) on 196 MT of Acetone (100 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 288986 dated 13.05.2009, 96 MT covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009 and cleared for home consumption vide Ex-Bond Bills of Entry No. 298954 dated 14.07.2009 (48 MT) and 300795 dated 27.07.2009 (48 MT)) as detailed in Annexure-II to this notice, under Section 28 (4) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry.
- (iii) the imposition of the penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above.

- (iv) the imposition of the penalty under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above

17.12 Shri Sanjay V Parmar, Director of M/s Sanjay Chemicals (India) Private Limited, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai for ;

- (i) the imposition of the Penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above;
- (ii) the imposition of the Penalty under Section 114AA of the Customs Act, 1962 for the acts and omissions discussed above.

17.13 Shri Anil Dahiya of M/s. Brij Lal Jain & Sons, **Shri S. C. Sharma** of M/s. India Glycols Limited, **Shri Harish Dania** of M/s. IOL Chemicals and Pharmaceuticals Ltd, **Shri Biren Girish Sitwala** of both M/s. Mody Chem and M/s. Mody Enterprises, Ahmedabad, **Shri Chetan Gulati** of M/s. Nectar Life Sciences Limited, **Shri Gopal Rameshbhai Bhatt** of M/s. Pioneer Chemical Industries, **Shri Rajeev Kumar Garg** of M/s. Satish Chemical India Pvt. Ltd., **Shri Akhilesh Kumar** of M/s. Solvochem, Delhi, and **Shri Subramaniam Mahadevan** of M/s. Pon Pure Chem (P) Ltd., were called for ;

- (i) the imposition of the Penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above;
- (ii) the imposition of the Penalty under Section 114AA of the Customs Act, 1962 for the acts and omissions discussed above.

17.14 M/s. Meteor Pvt. Ltd., 72, Jolly Maker Chamber No. 2, Nariman Point, Mumbai – 21, was called the imposition of the Penalty under Section 112(a) of Customs Act, 1962 for the reasons given in the foregoing Para.

17.15 Shri Varghese Mathew, Branch Manager, M/s. Meteor Pvt. Ltd., 72, Jolly Maker Chamber No. 2, Nariman Point, Mumbai – 21, was called for ;

- (i) the imposition of the Penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above;
- (ii) the imposition of the Penalty under Section 114AA of the Customs Act, 1962 for the acts and omissions discussed above.

17.16 M/s. ACT Shipping Ltd., Room No. 206-207, Seva Sadan No.2, New Kandla was called for the imposition of the Penalty under Section 112(a) of Customs Act, 1962.

17.17 Shri T. V. Sujan, Director of M/s. ACT Shipping Ltd., Room No. 206-207, Seva Sadan No.2, New Kandla) was called for ;

- (i) the imposition of the Penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above;
- (ii) the imposition of the Penalty under Section 114AA of the Customs Act, 1962 for the acts and omissions discussed above.

17.18 Shri Thomas Varghese, Senior Executive of M/s. ACT Shipping Ltd., Room No. 206-207, Seva Sadan No.2, New Kandla was called for ;

- (i) the imposition of the Penalty under Section 112(a) of the Customs Act, 1962 for the acts and omissions discussed above;
- (ii) the imposition of the Penalty under Section 114AA of the Customs Act, 1962 for the acts and omissions discussed above.

18. PERSONAL HEARING AND DEFENCE REPLIES

18.1 The personal hearing was fixed on 20.01.2014 on which Shri T.V. Sujan, Director of M/S ACT Shipping Ltd appeared in respect of the Noticee at Sr. No. 5 6 and 7. They re-iterated to their written submission dated 12.09.2013 and requested to file further submissions by 24.01.2014 and urged to drop the allegations made in the show cause notice. Accordingly, they furnished further submission dated 24.01.2014.

18.2 On request letter dated 08.01.2014 of M/S India Glycols Ltd, the personal hearing were fixed on 21.01.2014. Shri V.P. Garg, Vice President of M/S India Glycols Ltd, appeared on behalf of noticee no. 9 and 19 on 21.01.2014 (i.e. Shree Rajiv Sharma, ex-employee of the Company), who filed their written submission dated 17.01.2014 and urged to drop the allegations made in the show cause notice.

18.3 In respect of the other noticees, they have waited the personal hearing and have requested to decide the case on the basis of the written submissions filed and on the basis of merits of the case.

19. Written defence reply/submissions filed and also made on during PH

- 19.1 M/s. Sanjay Chemicals (India) Private Limited, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai and Shri Sanjay Vijayraj Parmar, Director of M/s. Sanjay Chemicals (India) Private Limited, (noticee no. 1 and 2).

The noticee filed reply vide their letter dated 27.05.2013. Further, in reply to letter dated 27.12.2013 of the personal hearing, the noticee vide their letter dated 06.01.2014, sent copy of their reply letter dated 27.05.2013 and requested to decide the matter on this basis and they do not want the personal hearing.

The noticee in their above defence reply letter dated 27.05.2013, inter alia other matter, stated that ;

- (i) that the foreign supplier M/S Kolmar Group AG, represented to them through their representative M/S Meteor Private Limited and that Russia is a Land Locked country, the Acetone of Russian origin would be dispatched from Russia by rail and transshipped at Finland for onward transport to India ;
- (ii) that invoice raised by the foreign supplier on them and packing list stated that the goods had been loaded by railway from Russia to Finland where the same were loaded on to M.T Sameraldo in case of 525 MT and on to MT Heinrich Essberger in case of 315 MT and transshipped onto Bow Saga at Rottordam in first case and on to Bow Star in Rotterdam in the second case for further shipment to India. That the same is mentioned in Bill of Lading and Certificate of Origin received from foreign supplier Kolmar Group Ag, and submitted the copies of the same.
- (iii) that they have filed warehouse Bill of Entry No. 283310 dated 8.4.2009 of 525 MT Acetone and Bill of Entry No. 295765 dated 24.6.2009 of 315 MT, based on the documents received from foreign supplier and declared the country of Origin Russia and Port of loading Rauma. That they had cleared for home consumption of 196 MT under Ex-bond B/E themselves and remaining qty were sold to 10 other parties under Ex-Bond bill of entries for the home consumption.
- (iv) That demand is time barred as the show cause notice is served upon them in April, 2013 and six months were already over after period of 2009; that that they were not aware of the alledged transaction between the Russian producer and Finland party ; that bill of lading showed the Russian producer as a shipper ; That they had entered in to contract with Kolmar Group Ag and the letter of credit was issued in

their favour ; that email correspondence does not establish any willful mis-statement or suppression of facts ; that there are no any question willful misstatement or suppression of facts involved on their part in the present case.

- (v) That Shri Sanjay V. Parmar, in his statement dated 20.7.2011 stated that foreign supplier representing in India had the Acetone of Russian origin would be dispatched from Russia by rail and transshipped at Finland for onward transport to India. That the same facts was also stated by Shri Vaghese Mathew, Branch Manager of M/s Meter Pvt Ltd, representative of foreign supplier in India.
- (vi) That the wording of movement from Russia were clearly incorporated in the bill of lading, packing list, country of origin and hence the allegation of incorporation of wording of movement from Russia were after thought is incorrect because the mention of the said fact will show correct position.
- (vii) That there were no mis-declaration with regard to leaving the country of export as blank and all the documents such as invoice, packing list, bill of lading, copies of rail receipts were duly submitted with the Customs and if the country of consignment was so important, the proper officer of the Customs would not have allowed the clearance without mention of the same; that the DRI is interpreting these facts in a manner different from the way the proper office of the customs who allowed clearance interpreting the same on above documents hence there is no any malafide intention on their part or on the part of CHA;
- (viii) that allegation of non mention of export from Russia in the contract and letter of credit is irrelevant when the import document such as invoice, packing list, bill of lading and certificate of origin clearly mentioning the facts that the goods were transported from Russia to Finland by rail and thereafter transshipped on to a vessel at Finland for onward movement to India.
- (ix) As regards the incorporation of wordings of movement of goods from Russia to Finland and transshipment at Finland, it was clearly agreed at outset that the goods would be supplied ex-Russia and transshipped at Finland and therefore the Indian representative of the supplier insisted that wording of the Bill of Lading etc should correctly reflect this true position.
- (x) that in similar case, the Additional Commissioner in OIO No. KDL/ADC/Binoy/174/GR-II/2011 dated 31.1.2011, have held that the

evidence on record does not indicate that either importer or the intending agents at any time were aware or had any knowledge of the transaction between Russian producer and inland parties and that the based on records provided by the supplier, the importers believed that the goods were initially transported by rail from Russia and there was transshipment at Finland and accordingly there is no suppression of facts or manipulation of documents on the part of importers and hence invocation of larger period is not applicable.

- (xi) That the Russian manufacturer JSC, Kazanogsintez had supplied the goods to a party in Finland namely Nordica Re (Finland) Oy who had warehoused the said goods in Finland and from there released the same to Kolmar Group Ag who in turn supplied the same to them and therefore the goods were exported from Finland is incorrect. That the SCN overlooked that facts that the National Board and Customs, Finland itself stated that the party at Finland have been entered as goods in T1 warehouse. That as per European Customs Code, the movement from non community goods from T1 warehouse does not constitute export from Finland. That the goods were only in transit via Finland and were not customs cleared in to Finland/EU. Therefore, the said goods can not be said to be exported from Finland.
- (xii) They have relied upon the case law of M/s Shubham Marketing Services Pvt Ltd v/s CC 2007 (209) ELT 303 and M/s Century Laminating Company Ltd v/s CC 2009(240)ELT 423.

That in view of the above facts, the demand for the differential duty against the seller when the goods cleared by the buyer and duty paid by the buyer, is not sustainable and accordingly the goods not liable for confiscation under section 111(m). Also when demand is not sustainable the penalty can not be imposable under section 114A/112(a).

The noticee contended that from the above facts, no penalty proposed upon the Director under section 114AA can be imposed and drop the SCN proceedings.

- 19.2 M/s. Meteor Pvt. Ltd., 72, Jolly Maker Chamber No. 2, Nariman Point, Mumbai – 21 and Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd., (noticee no.3 and 4),

The noticee filed reply vide their letter dated 27.05.2013 and letter dated 21.5.2013. Further, in reply to letter dated 27.12.2013 of the personal hearing, the noticee vide their letters dated 16.01.2014, send

the copy of their earlier reply letter dated 27.05.2013 and 21.5.2013 requested to decide the matter on this basis and they do not want the personal hearing. Shri Varghese Mathew, Branch Manager, vide

The noticee`s above reply letters dated 21.5.2013 and 27.05.2013 by and large same, in-teralia other matter, states that ;

- (i) Shri Varghese Mathew, is working as a Branch Manager of their Company. That this reply is furnished on behalf of both i.e Company as well as for their Branch Manager, Mr Varghese Mathew.
- (ii) That they were carrying business as a representatives in India for Kolmar Group Ag of Switzerland i.e. foreign supplier in present SCN. On behalf of foreign supplier, we locate on their behalf the prospective buyers in India for the goods which the foreign supplier is interested in selling to buyers in India. That once terms of the transaction are finalized, the foreign supplier issue contract in favour of Indian buyer. In February, 2009, the foreign supplier asked us to find out buyers in India for "Acetone" of Russian origin. That after locating prospective buyers in India for "Acetone" of Russian Origin, we reverted to foreign supplier and it was represented by foreign supplier to us that Acetone to be supplied would be one which manufactured in Russia and which would be originate and transported fro Russia by rail and further that that since Russia is landlocked country, the goods would be transshipped at Finland for onward transport to India. That Acetone exported from European Union attracted anti-dumping duty, they had made inquiry with two Customs House Agents at Kandla and Mumbai to ascertain whether, if as represented by foreign supplier, the Acetone originating and transported from Russia by rail is transshipped at Finland, there would be any anti-dumping duty on account of fact that Finland is a country in the European Union. That we were told by the said Customs House Agents that mere transshipment at a country in European Union would not attract anti-dumping duty if the goods are loaded at and transported from Russia and the fact of transshipment at Finland should be clearly mentioned in the import documents including Bill of Lading. That this advice were given by the Customs House Agent at Mumbai after inquiry with an Assistant Commissioner of Customs, Mumbai. That accordingly email dated 16.2.2009 have referred import of Acetone **ex-Russia** if the gods are transported from Russia and transshipped at Europe is reflected in Bill of Lading, there would we no anti-dumping duty. That in email we had made clear that if any anti-

dumping duty is levied because of the **transshipment at Europe**, the same would have to be born by the foreign supplier. Accordingly, the Bill of Lading showed Acetone from Russia to Kotka and Rauma to Kandla via Rottordam which were read as under ;

" Cargo has been loaded by railway from Novokuibyshevsk, Russia to Kotka/Raums, Finland for shipment on to M/T TBN for shipment to Rottordam and further transshipment there on to MT TBN Kandla, India".

The said facts also shows by e mail dated 17.2.2009.

That subsequent to aforesaid correspondence, the foreign supplier supplied the Acetone to Indian buyer to whom the present show cause notice has been issued. That e mail dated 13.2.2009 was a specimen/example relating to some other shipments which had nothing to with present import.

19.3 M/s. ACT Shipping Ltd., Room No. 206-207, Seva Sadan No.2, New Kandla, Shri T. V. Sujan, Director of M/s. ACT Shipping Ltd., and Shri Thomas Varghese, Sr. Executive of M/s. ACT Shipping Ltd., (noticee no. 5,6 & 7),

M/S ACT Shipping Ltd(CHA) and Shri T. V. Sujan, Director of M/S Act Shipping Ltd, Mr Thomas Varghese, Sr. Executive of M/S Act filed their reply vide their letter dated 12.09.2013 through their Advocate Shri Jaydeep C Patel, Advocate, filed the written reply. They also filed further submission dated 24.01.2014, as stated at the time of personal hearing made on 20.01.2014. In the above replies letters dated 12.09.2013 and 24.01.2014, have, interalia, submitted that

(i) As a CHA, they had filed the two warehouse Bill of Entries i.e. No. 283310 dated 8.4.2009 and 295765 dated 24.6.2009 in respect of the import of Acetone at Kandla per vessel M.T. Bow Saga" and "Bow Star" which was imported by them from Kolmar Group Ag, bases on the import documents such as Bill of Lading, Invoice, Packing List received by the importer from foreign supplier. That the goods have been loaded by Railway from Russia to Rauma, Finland where the same were loaded on to M.T. "Smeraldo" and M.T. "Heinrich Essberger" for transport on to MT "Bow Saga" and "Bow Star" at Rottordem for further shipment to Kandla. They have filed Warehouse Bill of Entry and Ex-Bond Bill of Entry after scrutiny of the documents and country of origin and country of export since the goods

attracted the Anti-dumping duty if originated in or exported from European Union.

(ii) they have filed the Bills of Entry before the Customs Authorities on the basis of the documents provided to them by the importers. That they have done very diligently.

(iii) As regard to the advise given by them to the importer as mandated under Regulation 13(d) of the CHALR 2004. That at the time of giving advice, it was clearly told to the importer that they should follow it properly as seen from the extract of the statement given below to DRI on 13.01.2012 ;

Statement Page (1) & (2),

Quote.

"Said clearing agents advised that transshipment would not attract antidumping duty, however, Kolmar would have to provide the following documents,

(1) The Certificate of origin issued by Russian Federation and

(2) All documents including Bills of lading showing the means of transport and route from Russia to Kandla, including rail transport".

(iv) That Russia was a landlocked country, the advise given by them was correct.

(v) That not only they advised to the importer but also the clearing agent at Mumbai Shri Jayant Lapasia of M/S U M Khona & Co also given the same advise after due consultation with Mumbai Customs as stated by Shri Verghese Mathew of M/S Meteor Pvt Ltd in his statement dated 10.6.2010. Further it is also evidence from e mail dated 16.2.2009 sent by Mr Vagheshe Mathew to Mr Bob Rober in this regrd.

(vi) Therefore, as a CHA they have given the correct advise and if importer have not followed their advise, they can not be held responsible for their inability to follow the procedure.

(vii) They relied upon the case law (i) Prime Forwarders v/s CC 2008 (222) ELT 137 (ii) World Cargo Movers v/s CC 2002 (139) ELT 408 and (iii) Ashok Jaiswar v/s CC 2006 (200) ELT 122, wherein it is held that when the

CHA acts based on the documents provided by the importer and filed Bill of Entry based on such document without having any knowledge of any alleged illegality/mis-declaration, the question of imposition of penalty on CHA does not arise.

(viii) That entire demand of duty is time barred as the Bills of Entry were filed in 2009 and the SCN is issued on 31.3.2013.

(ix) That the warehouse Bill of Entry was finally assessed after accounting the goods as per Section 72 of the Customs Act, 1962 and the relevant records are with Bond Department.

(x) That as per the movement of the goods from Kazan/Russia to Rauma/Finland, at Rauma, the goods were warehoused under T-1 status and as per EU Council Regulation (EEC) No. 2913/92, the goods were divided to two category (a) Non-Community goods and (b) Community goods. That the goods were warehoused at Finland as Non-community goods and not sold to any body in Finland through the nominated agents/distributors such as M/S Nordica Re (Finland) and Ste. Ecord SARL and/or warehoused through help of warehouse owner Telko Oy and Oiltanking Sonmarine Qy. That the Certificate of warehousing dated 31.5.2010 for 1053.560 MT , 11.6.2010 for 1048.956 MT and certificate dated 11.6.2010 for 950.093 MT which were with endorsement of Rauma Customs stating that ;

"Product delivered in transit via Finland by rtcs* from Russia for further shipment by vessel. It is hereby certified that the goods stated above were non customs cleared in to Finland/EU but were stored at Telco Oy customs storage and shipped at T1 status. * Rail Tank Cars."

(xi) From the above, it was clear that the goods were never a part of European Union(EU) i.e Finland. Finland was used as a transit point as Kazan in Russia was a landlocked province/country.

(xii) That M/S Meteor India Pvt Ltd, Mumbai informed their principals i.e. M/S Kolmar Group Ag at Switzerland about investigation initiated by DRI and to find out legal aspect of the issue. That in this contact M/S Kolmar Group Ag appointed M/S Ernst and Young Oy Finland to advise them the legal position, for which, they have issued a certificate dated 20.8.2010, which clearly establish that Acetone in Question has not been exported from

European Union to India. That there is case of cross border movement of goods for further transshipment to a third country, a producer/trader appoint an agent at transshipment point who in turn, handle every thing in his name on behalf of the producer/trader. In this type of transaction, there may be several entities involved. However, since the cargo has not been cleared in to European Union(EU), in this case, Finland, the cargo can not be said to have been originated and/or exported from Finland, and as such, anti-dumping duty is not leviable.

(xiii) Further, It is a common practice international Trade to import goods in to country and store the same in Customs bonded Warehouse. The goods stored in the bonded warehouse can not be said to have crossed customs frontiers, and are deemed have been kept outside Customs Frontier of the Country. They have relied upon the case law of Hotel Ashoka v/s Asst. Commissioner of Commercial Tax in Civil Appeal No. 2560 of 2010 and also reported in 2012(276) E.L.T. 433(S.C.) and stated that Anti-dumping duty is not applicable.

(xiv) That they do not had any knowledge of the fact that Russian manufacturer had supplied the goods to parties in Finland who had warehoused the said goods in Finland and from there released to Kolmar Group Ag who in turn supplied the same to the said Indian importer.

(xv) They also relied upon the OIO No. KDL/ADC/BINOY/174/GR-II/2011 dated 31.1.2011 wherein penalty proceedings against CHA were dropped and the OIO No. KDL/ADC/SS/1534/GR-II/2013 dated 28.11.2013 passed by the Additional Commissioner of Customs, C.H. Kandla wherein no penalty proposed in the SCN against M/S ACT Shipping Ltd, Shri T.V Sujan, Director and Shri Thomas Varghese, Senior Executive, were considered/imposed.

(xvi) That the Section 114AA has been inserted in the Customs Act, 1962(by S 27 of the Taxation Laws(Amendment) Act, 2006 (29 of 2006) w.e.f 13.7.2006) for the purpose to punish those people who avail export benefit without exporting anything which is not in the case here.

(xvii) That in absence of any such knowledge on them and having filed the Bills of Entry in accordance with the import documents furnished to them by

the importer, no penalty can be imposed upon them as proposed under section 112(a) or section 114AA of the Customs Act, 1962.

19.4 M/s. India Glycols Ltd., 10, Plot No. 2-B, Sector 126, Noida and Shri Rajeev Sharma, (noticee no. 9 and 19),

- (i) The noticee filed the reply letter dated 21.01.2014, wherein interalia other matter, stated that; that the Acetone was purchased by them on bond transfer basis from M/S Traxpro Enterprises Ltd, Kolkatta; that they have purchased the above Acetone, imported by M/S Sanjay Chemicals, as per purchase order dated 17.7.2009 wherein the price was settled at Rs. 42.50 per kgs inclusive of cost of material , storage, basis customs duty, education cess and antidumping duty(except CVD) and they have filed the ex-bond bills of entries as per the directions of the supplier; that particulars of the manufacturer were not supplied by M/S Traxpro Enterprises Pvt Ltd from they have purchased the same; that as per B/L, the country of export of the consignment was Russia as cargo has been arrived via. Rail from Kazan to Russia to Finland; that the noticee were not provided any documents pertaining to the transportation nor B/L or commercial invoice; that the documents were not shared by the supplier; that there is no collusion, mis-statement on their part ; that the CHA of the importer and for them are the same and failed to disclose the country of the shipment/consignment in warehouse B/E as well as in ex-bond B/E.
- (ii) that the goods are not liable for confiscation and relied on the case law of Kabul Textiles v/s Commissioner of Central Excise Goa, 2004(174)ELT 470(Tri-Mum),
- (iii) that the goods are not liable for confiscation and consequently the penalty proposed under Section 112(a) is not applicable and relied upon the case laws of Vudhya Mahadik v/s Commissioner of Customs 2002(145) ELT 204 (Tri-Mum),
- (iv) that there is no fraud, collusion or willful mis-statement or suppression of the facts in the present case. The CHA was in knowledge of actual import consignment but not themselves. That the penalty proposed under section 114A is not applicable,
- (v) that there is no fraud, collusion or willful mis-statement or suppression of the facts in the present case and hence the demand raised beyond 6 months. i.e extended period can not be invoked and relies the case laws of Collector of Central Excise, Hyderabad v/s Champher Grugs

and Liniments, 1989 (40) ELT 276 (SC) and other subsequent case laws on similar case,

- (vi) As discussed above, the penalty proposed under section 112(a) and 114AA is not applicable,
- (vii) M/s. India Glycols Limited, in para 16 of their reply dated 17.01.2014, have represented that they have paid the anti-dumping duty of Rs. 2,66,180/- with interest thereon of Rs. 1,87,356/- totaling Rs. 4,53,536/- and produced the copy of TR-6 No. 1636 dated 4.12.2013. The said fact of payment was verified from Cashier, C.K. Kandla under this office letter of even no dated 10.02.2014, who made endorsement on 17.2.2014 on the said Challan that "Original Credit verified with cash record and found correct".

19.5 The other various noticees i.e. noticee M/s. Brij Lal Jain and Sons, Shri Anil Dahiya of M/s. Brij Lal Jain & Sons, (noticee no. 8 and 18) vide their letter dated 31.8.2013, M/s. IOL Chemicals & Pharmaceuticals Ltd., and Shri Harish Dania of M/s. IOL Chemicals and Pharmaceuticals Ltd, (noticee no. 10 and 20) vide their letter dated 20.1.2014, M/s. Mody Chem, and Shri Biren Girish Sitwala of both M/s. Mody Chem and M/s. Mody Enterprises (Sr. No. 11 and 21) M/s. Mody Enterprises, Ahmedabad, (noticee no. 12) vide their letters dated 23.12.2013, M/s. Pioneer Chemical Industries, and Shri Gopal Rameshbhai Bhatt of M/s. Pioneer Chemical Industries, Gandhidham (noticee no. 14 and 23) vide their letter dated 31.8.2013 and 16.1.2014, M/s. Pon Pure Chem (P) Ltd., and Shri Subramaniam Mahadevan of M/s. Pon Pure Chem (P) Ltd., (noticee no. 17 and 26) vide their letter dated 31.8.2013, M/s. Satish Chemical India Pvt. Ltd., and Shri Rajeev Kumar Garg of M/s. Satish Chemical India Pvt. Ltd., (noticee no. 15 and 24) vide their letter dated 31.8.2013, M/s. Solvochem, and Shri Akhilesh Kumar of M/s. Solvochem, Delhi, 3, PNB Road Main Bazar, Zirakhpur, District Patiala, Punjab (noticee no. 16 and 25) vide their letter dated 31.8.2013, in pursuance of letter dated 27.12.2013 fixing hearing on 20.01.2014, have filed their reply through their Advocate Shri Anil Balani. Shri Balani, Advocate, again sent a letter dated 20.1.2014 waived the personal hearing against the above noticee and stated that their clients have already filed written replies and that their client have purchases Acetone from M/S Sanjay Chemicals I) Ltd on high seal sale basis and to drop the demand on the basis of their submissions.

Shri Balani, Advocate, while filing reply on behalf of above noticee, interalia other matter, stated that;

(i) that their clients are ex-bond importers; that the order for the import was placed by M/S Sanjay Chemicals ; that they were original importers of the goods who filed the Warehouse (in to bond) Bill of Entry, that the import in India was arranged by M/ Sanjay Chemicals, that their client only purchased the goods from M/S Sanjay Chemicals and filed Ex-Bond Bill of Entries for removal of goods, that their clients were not involved in any activity prior there to, that my clients have acted bonafide, in good faith and in normal course of their business, that the details/particulars in Ex-Bond Bill of Entries were made as given in warehouse bill of entry by M/S Sanjay Chemicals, that the country of consignment were left blank in the Warehousing Bill of Entry, the same was also left blank in the Ex-Bond Bills of Entries.

(ii) That the Ex-Bond Bills of Entries were of 2009 while the show cause notice was issued on 31.3.2013, much after expiry of normal period of limitation i.e. six months under section 28, as it stood at the relevant time. Therefore demand against my clients is barred by time and hit by limitation.

(iii) That the SCN alleges the knowledge of the country of consignment but no where the notice alleged that ACT imparted this knowledge to my clients. Thus there was no deliberate suppression on part of my clients with any intention to evade payment of the Anti-dumping duty.

(iv) That the SCN alleges the connivance between Kolmar Ag, Meteor and ACT Shipping etc. for evasion of Anti-dumping duty, but there is no allegation of connivance against my clients. That the clients are bona fide purchase of the goods in normal course of trade. That just because of they filed Ex-Bond Bills of Entries for taking of the delivery of the goods purchased by them, liability of the Anti-dumping duty should not be fastened upon their clients..

That for the aforesaid reasons, interest under section 28AA or section 28AB is also not recoverable from my clients.

(v) That the sub-section(4) of section 28 was inserted w.e.f. 16.09.2011 while bill of entry was dated 2.7.2009 and like wise section 28AA is also not applicable in this case as it was inserted by Act 8 of 2011.

(vi) That their client did not commit any act rendering the goods liable for confiscation under section 111(m) and consequently they are not liable for penalty under section 112(a). That the goods are not liable for confiscation under section 111(m) as their client did not mis-declared description, qty, value, country of origin of the goods. That non declaration of the country of consignment in the Ex-Bond Bill of Entry can never lead to charge of mis-declaration. That the assessment was already finalized and completed in the Bill of Entry of warehouse. That Ex-Bond Bill of Entry did not in any manner result in evasion of Anti-dumping duty.

(vii) That there is no short levy or non levy of duty for reason of collusion or any willful mis-statement or suppression of facts by their clients, they are also not liable for penalty under section 114A.

(viii) That their client i.e importer came to know about the discrepancy i.e. Invoice dated 26.2.2009 refers to a subsequent letter of credit dated 24.3.2009 only when the DRI recorded their statement; that they were not provided the copy of said invoice or bill of lading and that the invoice was subject contract between M/S Sanjay Chemicals and Kolmar Ag and their clients became aware about it for the first time when investigating agency pointed out the said lacuna. That the statement recorded was spontaneous without taking any legal advice. That it is not a after thought. That their clients authorized filing of Ex-Bond Bill of Entry despite being aware that invoice was incorrect is false, baseless and unsubstantiated. That section 114AA can only be invoked if the false documents is knowingly used. That their client explained their innocence on the spot. Therefore, assuming that invoice is incorrect, it was not used knowingly by their client and therefore, penalty can not be imposed upon their client under section 114AA.

(ix) That their client given to understand that M/S Sanjay Chemicals have filed detailed reply to the above show cause notice and submitted that Anti-dumping duty is not leviable and they adopt and re-iterate relevant submission made by M/S Sanjay Chemicals.

(x) Accordingly, Advocate pleaded to drop the charges levelled in the show cause notice and they want the personal hearing in the matter. However later on the PH were waived by them.

19.6 M/s. Nectar Life Sciences Limited, and Shri Chetan Gulati of M/S Nector Life Sciences Ltd, 15, Unit II, Village Saipura, Tehsil Derabassi, Dist Mohali (Punjab) (noticee no. 13 and 22),

The notice filed their written reply through their Advocate Shri G. S. Bangoo, under their letter dated 11.06.2013, interalia other matter, that ;

(i) That they are engaged in the manufacture of bulk drug. That they have purchased the 100 MT of imported Acetone on bond transfer basis from M/S Sanjay Chemicals (India) Pvt Ltd vide purchase order No. NLL/RM/UOZ/106/2009-0 dated 23.7.2009 and filed Ex-Bond Bill of Entry no 301514 dated 31.7.2009 and got is cleared after payment of the appropriate customs duty assessed by the proper officer at the port of import. That with regard to non declaration of country of consignment in Ex-Bond Bill of Entry, the same were filed on the basis of the particulars as given in the warehousing Bill of Entry No. 95765 dated 24.6.2009 filed by M/S Sanjay Chemicals(India) Pvt Ltd. therefore there is no lapse or fault attributed to them. That Shri Sanjay Vijay Raj Parmar of M/S Sanjay Chemicals in his statement dated 20.01.2011 stated that since there is no port in Russia, the port of adjoining country were being utilized for the purpose of export of Russian goods. That the consignment was to be shipped from Russia to Finland by train and then from Finland (Rauma/Kotka) it was to be transshipped on vessel.

(ii) That in given facts, the Hon`ble Tribunal in the following case held that country of shipment can not be treated as country of origin and no Anti-dumping duty under Notification No. 79/2002-Cus dated (similar to Noti. No. 33/2008-Cus dated is payable on the goods being of Russian Origin. Case Laws (i) Subham Marketing Service Pvt Ltd v/s CC 2007 (209) ELT 303 (Tri) (ii) County Laminating Co Ltd v/s CC 2009 (240) ELT 423 (Tri).

(iii) They also contended that the location of the supplier i.e M/S Kolmar Group Ag, Switzerland, or opening of letter of credit and the foreign exchange remitted from India to Germany can not be made basis for the charge of anti-dumping duty and referred the case law of Lloyds Steel Industries v/s CCE 2005 (189) ELT 159 (Tri.). that their purchase order No. nll/rm/uo2/106/2009-10 was inclusive of all duties, cesses and even anti-dumping duty and relied upon two case laws (i) DSM Anti Infective India Ltd v/s CC 2009 (246)ELT 648(Tri) and (ii) Ludhiana Steel Ltd v/s CC 2013 (290) ELT 681(Tri).

(iv) That the entire demand is of period beyond one year and time barred.

(v) That there is no suppression of facts or mis-statement on their part and therefore anti-dumping duty can not be demanded and the goods are not liable for confiscation under section 111(m). That M/S ACT Ltd had never disclosed/intimated the facts of country of export of the consignment to them and therefore penalty can not be imposed under section 112(a) /114A.

(vi) The noticee in para of their reply letter dated 11.06.2013, contended that the anti-dumping duty of Rs. 13,30,902/- already deposited by them on 12.07.2012 and enclosed the copy of TR-6 No. 795 dated 12.07.2012. The said fact of payment was verified from Cashier, C.K. Kandla under this office letter of even no dated 10.02.2014, who made endorsement on 17.2.2014 on the said Challan that "Original Credit verified with cash record and found correct".

20. DISCUSSION AND FINDING:

20.1 I have carefully gone through the records of the case, including the Show Cause Notice dated 31.03.2013, the written as well as the oral submissions made by all the noticees during the course of the personal hearings.

21.1 In this case, I find that the whole issue relates to the question regarding which country is to be considered as the Country of Export in respect of the imported impugned goods, i.e. whether it is Russia or Finland. The other issues, i.e. levy of anti-dumping duty, confiscation of the imported impugned goods, imposition of penalty etc. as proposed in the Show Cause Notice are consequential issues arising out of the main issue. In view of the above, the main issue before me for decision is whether the Acetone imported has been exported **from Russia through Finland or originated from Russia but were finally exported to India from Finland, for the purpose of deciding the question regarding the applicability of the Anti-Dumping Duty (ADD) under Notification No. 33/2008-Cus dated 11/03/2008.**

21.2 I find that in this case, the sale of the impugned goods was finalized on 17.02.2009, and the vessel nomination was received

immediately on the next day, which rules out any possibility of export from Russia at the material time. Loading of goods to vessels (on 26.02.2009 and 10.05.2009) immediately upon effecting of sale (on 26.02.2009 and 10.05.2009) also show that the impugned consignments were lying at Finland at the time of finalizing deals / signing of contracts. These documents were received by M/s. Sanjay Chemicals (India) Private Limited before seeking clearance of the goods. This clearly shows that the importer was aware that the country of export was Finland and that there was no relation of subject contractual obligations with previous movement of goods from Russia to European Union, which had already taken place as a consequence of other Contracts / Sales.

I also find that Shri Varghese Mathew, Branch Manager of M/S Meteor Pvt Ltd, Mumbai (representing M/S Kolamr Group Ag in India) in his further statement dated 21.6.2011 on being asked to clarify whether the Rail Receipts showed the dates which are not matching with the indenting and supply of the subject consignments and the same also showed names of parties other than subject importers, could it then be considered as transshipment, has categorically stated that at the time of conclusion of the deal, M/s. Meteor was not having copies of Rail Receipts and that the same were provided later.

(ii) I further find that the DRI had inquired with the First Secretary (Trade), Embassy of India, Moscow, who vide their letter No. MOS/Trade/5-I/2/2009/A-313 dated 04/02/2010, had clearly reported that none of the invoices have been raised in the name of any Indian buyer; that the certificate of origin was obtained after the supplies have been effected and after entering in to a contract to regularize the supplies in the name of Indian buyers retrospectively (evident from the addendum No. 15 to contract contract No. 752/00203335/80078 dated 07/07/2008 and the document to get certificate of origin); that the Ocean Bill of lading (instead of multi-modal transport bill of lading) has been submitted to the Customs. In the above letter 4.2.2010, they had also enclosed copy of letter No. 07-153/0548 dated 01/02/2010 issued by Deputy Head of Central Enforcement Department FCS, Russia containing the addendum No. 15 to the contract No. 752/00203335/80078 dated 07/07/2008 (both in Russian language along with its free English translation) and copies of invoices raised by M/s. Kazanorgsintez SC Russia to M/s. Nordica Re (Finland) Oy, Finland. In this letter dated 1.2.2010, wherein it has been clarified that there were no any direct export of Acetone from Russian company JSC "Kazanorgsintez" to

Indian buyers in Column 4 of Annexure 1 and in general to India from 01.01.2005 to 15.12.2009. However, during the said period, JSC "Kazanorgsintez" delivered Acetone to Finland for a number co companies, for instance, "Nordica Re (Finland) Oy" where final port of delivery was Rauma, Finland.

I have also gone through the letter No. MOS/Trade/5-I/2/2009/A-314 dated 22/02/2010 issued by the First Secretary (Trade), Embassy of India, Moscow. In this letter dated 22.2.2010, they had enclosed letter No. 07/153/0937 dated 12/02/2010 issued by the Head of Central Enforcement Department FCS, Russia (in Russian language along with its free English translation) stating that "OOO Samaraorgsintez", Russia had not made any direct deliveries of Acetone to India and that according to the **contract between them and French company "ECORD Sarl"** Acetone was dispatched to Finland, port Mussalo.

I find from the letter No. MOS/Trade/5-I/2/2009/A-337 dated 03/05/2010 issued by the First Secretary (Trade), Embassy of India, Moscow enclosing therewith letter No. 9010/576/09 dated 26/03/2010, issued by the Sr. Customs Officer, Tulli, National Board of Customs, Intelligence and Investigation Unit, Finland along with replies to certain questions and documents evidencing receipt of Acetone at Finland from Russia, **in the name of Finnish parties.**

I find from letter No. MOS/Trade/5-I/2/2009/A-340 dated 24.05.2010 issued by the First Secretary (Trade), Embassy of India, Moscow enclosing therewith letter No. 07-153/3615 dated 14.05.2010 issued by the Deputy Head of Central Enforcement Department, FCS. Vide the said letter, a copy of contract No. 752/00203335/80078 dated 7.7.2008 concluded between Open Joint-Stock company "Kajanorgsintez" and a Finnish company "Nordika Re Oy" was supplied. Based on this contract Closed Joint Stock Company "Royal Bank of Scotland" (128009, Mosco, Bolshaya, Nikitskaya, 17 bld. 1) opened an operation ID No. 08090020/2594/ 0000/1/ 0 on 29.09.2008. The letter further stated that subsequent to moving its business to LLC International Commercial Bank "Avers" Open Joint Stock Company "Kajanorgsintez" had opened an operation ID No. 09080007/ 0415/ 0000/ 1/ 0 against the said contract on 10.08.2009 and as of that day LLC "Samaraorgsintez" had not made any direct supply to Indian buyers. From this letter, it is clear that both the Russian parties have

not sold consignments of Acetone to subject Indian buyers including M/s. Sanjay Chemicals (India) Private Limited.

Accordingly, from the above mentioned documents and overseas investigation reports, it clearly proves that Russian manufacturers M/s. Kazanorgsintez and M/s. Samaraorgsintez had supplied Acetone to Finland in the name of various parties of European Union and from European Union the subject consignments of Acetone were sold to various importers in India, including M/s. Sanjay Chemicals (India) Private Limited.

(iii) I find that Bills of Lading contained references of LCs which were executed much later. Bill of Lading No. 2401 dated 26.02.2009 (*place and date of issue are specifically declared as RAUMA, 26th February 2009 in BL*) shows date of issuance as 26.02.2009 and it contains reference of LC opened on 24.03.2009 i.e. almost a month later. Similarly Bill of Lading No 3001 dated 10.05.2009 (*place and date of issue are specifically declared as RAUMA, 10th May 2009 in BL*) shows date of issuance as 10.05.2009 and it contains reference of LC issued on 29.05.2009 i.e. 19 days later. This could have been possible only if the documents viz. Commercial Invoice and Bills of Lading purported to be issued on the date of loading of the goods were actually re-manufactured later for inserting purposefully prepared wordings regarding clause of transportation of goods from Russia to European Union to show country of export as Russia. This is also substantiated by the fact that in respect of both the vessels MT Bow Saga and MT Bow Star the Bills of Lading were not available with the importer or his agents for taking delivery/ unloading of the goods and in both cases M/s. Sanjay Chemicals (India) Private Limited, had given Backing Letters of Indemnity in favour of M/s. Kolmar Group Ag, Switzerland. If this had happened once it could be attributed to some peculiar circumstance created at the material time but this happened in case of both the vessels and in respect of all seven consignments (listed at TABLE-2 above) imported in vessel MT Bow Saga and MT Bow Star. The importer executed Backing Letter of Indemnity (BOI for short) specifying M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) as supplier (instead M/s. Kolmar Group Ag, Switzerland) and Kolmar was portrayed as consignee/ Notify Party. The BOI in both cases was addressed to M/s. Kolmar Group Ag, Switzerland and the wordings read:-

*"the above cargo was shipped on the above ship (Bow Saga) by **KAZANORGSINTEZ SC 420051, BELOMORSKAYA 101 KAZAN, RT, RUSSIA** and consigned To the order of Development Credit Bank Limited*"

I find that importer M/s. Sanjay Chemicals (India) Private Limited had purchased the subject goods from M/s. Kolmar Group Ag, Switzerland. They had made contract with M/s. Kolmar Group Ag, Switzerland only. Shri Sanjay Vijayraj Parmar has himself very categorically admitted in his statement dated 20.07.2011 that the imported goods were sold to M/s. Sanjay Chemicals (India) Pvt. Ltd. by M/s. Kolmar Group AG. I find that they had never contacted/ contracted/ corresponded with Kazanorgintez JSC. However from the wordings of the above mentioned BOI the obvious inference was that M/s. Sanjay Chemicals (India) Private Limited and is informing seller of the goods M/s. Kolmar Group Ag, Switzerland that the goods have been shipped by **KAZANORGSINTEZ SC 420051, BELOMORSKAYA 101 KAZAN, RT, RUSSIA.** This is quite contrary to what is stated by Shri Sanjay Vijayraj Parmar in his statement before DRI. Later on, Bills of Lading were re-manufactured on these lines which portrayed M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) as supplier and Development Credit Bank Ltd and M/s. Sanjay Chemicals (India) Private Limited as Notify Party and scanned / mailed copies of said **signed** B/L were received by M/s. Sanjay Chemicals (India) Private Limited through M/s. Meteor Pvt. Ltd., Mumbai via email dated 08.04.2009 (10:05:49 AM). Since by that time, details of Letters of Credit were available, the same were also mentioned in the Bills of Lading prepared in active connivance of M/s. Kolmar Group Ag, Switzerland, Importer M/s. Sanjay Chemicals (India) Private Limited and M/s. Meteor Pvt. Limited.

I find that, the Bills of Lading in both the imports were Charter Party Bills of Lading. Charter party Bills of Lading are issued on the basis of Charter Party (Contract) between the supplier of the goods and owner of the vessel. In all the Bills of Lading the charter party / contract of affreightment is mentioned between M/s. Kolmar Group Ag, Switzerland and Odfjell Tankers As. Contrary to the Norms of Charter Party Bills of Lading, "M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) was portrayed as supplier instead of actual supplier M/S Kolmar Group Ag and aided in creating incorrect and false Bills of Lading. M/s. Sanjay Chemicals (India) Private Limited were aware of these things and actively connived with M/s. Kolmar Group Ag, Switzerland and M/s. Meteor Pvt. Ltd., Mumbai in manufacturing Bills of Lading and other import documents in falsely

showing **KAZANORGSINTEZ SC 420051, BELOMORSKAYA 101 KAZAN, RT, RUSSIA** as Shipper and that the goods were imported directly from Russia and the Country of Consignment was suppressed in both the Bills of Entry by leaving the said field blank in collusion with CHA M/s. ACT Shipping Ltd.

(iv) I find that the country of consignment is a vital information and the same are statutorily required to be filled as prescribed in Form 23 i.e. Bill of Entry for Warehousing and Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962. I find that the details in all W/H B/E and Ex-Bond B/E filed by all the noticee through their Customs House Agent, M/S ACT Shipping Ltd, in the column "Country of Consignment (if different) and Code" have intentionally not filled and left blank. This inaction clearly showed their intention to evade above levy of anti-dumping duty @ USD 277.85 MT leviable as per Notification No 33/2008-Cus dated 11.03.2008.

(v) I find that the House Agent, M/S ACT Shipping Ltd, were well aware that the goods were exported/shipped from Finland and even though the column "Country of Consignment" as required to be filled in all warehouse Bills of Entry/Ex-bond Bill of Entry under the present case but intentionally left blank on behalf of all importers. I find that initially they declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehouse Bill of Entry. They have also wrongly advised M/S Meter Pvt Ltd / M/S Sanjay Chemicals (I) Pvt Ltd for the insertion of wordings in the B/L, invoice, etc., showing transshipment, to portray the country of export as Russia instead of Finland.

(vi) I find that Notification No. 33/2008-Cus dated 11.3.2008, Sr. No. 20, clearly attracts Anti-dumping duty in the present case when the country of consignment (export) was Finland, in a European Union.

(vii) I find that the above such acts of non filling the country of consignment in the W/H Bills of Entry and Ex-Bond Bills of Entries and insertion of special wording in the Bill of Lading, Country of Origin, L/C etc., clearly leads to suppression of facts and willful mis-statement, with intent to evade payment of Anti-dumping duty on the part of the importers, CHA,

supplier Intenders, and goods are liable for confiscation and the extended period is applicable to the present case of demand of Anti dumping duty along with applicable interest.

(viii) In support of the suppression of the facts and mis-statement of the facts and for extension of time limit over one year for the above demand , I reply on the following case law of Hon`ble Supreme Court in case of (i) Gravier and Weil(India) Ltd v/s CCEx 1974 (74) ELT 481 (S.C.) (ii) Tamilnadu Housing Board v/s Collector 1974 (74) ELT 9 (S.C.) (iii) Rainbow Industries v/s CCE 1994 (74) ELT 3 (S.C.). and (iv) M.K. Kotecha v/s CCE 2005 (179) ELT 261 (S.C.)

Confiscation and Imposition of penalty.

22.1 I find from the evidences and overseas investigation reports received that the consignments of Acetone were being exported from Russia to Finland (European Union) from time to time. The impugned two consignments of 525 MT and 315 MT of Acetone were exported from Finland to India. In the Warehouse Bills of Entry No. 283310 dated 08.04.2009 and 295765 dated 24.06.2009, the country of export was deliberately not declared to evade anti-dumping duty, as discussed above. The above act of suppression/ mis-statement of material fact has rendered the impugned consignments of total 840 MT of Acetone (525 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and 315 MT covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009), having total assessable value of **Rs. 3,08,89,745/-**, (as per Ex Bond Bills of Entry)/- liable to confiscation under the provision of Section 111 (m) of the Customs Act, 1962, and has also rendered **M/s Sanjay Chemicals (India) Private Limited**, Mumbai and **Shri Sanjay V Parmar** liable to penalty under Section 112(a) of the Customs Act, 1962.

22.2 The above stated suppression / mis-statement of country of consignment in the Warehousing as well as ex-bond Bills of Entry filed under Section 46 and Section 68 of Customs Act, 1962 respectively before Customs Kandla, with intention to evade Anti-dumping duty aggregating to **Rs 1,16,53,654/-** as per **Annexure II** have attracted application of the provisions of Section 28 (4) of Customs Act, 1962 for recovery of the duty and have rendered **M/s Sanjay Chemicals (India) Private Limited**, Mumbai liable for Penalty under the provisions of Section 114A of Customs Act, 1962.

22.3 I find that in statement recorded under Section 108 of the Customs Act, 1962, Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd. admitted that the wordings portraying that the subject consignments of Acetone were exported from Russia to India, were mentioned on the body of respective Bills of Lading, invoices etc. on the advice of all the importers. M/s Sanjay Chemicals (India) Private Limited was also one of these importers. He specifically mentioned name of Shri Sanjay Parmar in this respect. Shri Sanjay V Parmar, Director of M/s Sanjay Chemicals (India) Private Limited, Mumbai attended the subject imports. As discussed above, it was evident that he was aware of the fact and even approved insertion of certain specified wordings in the import documents to portray that the goods were being exported from Russia. Thus, it was evident that **Shri Sanjay V Parmar** has indulged himself in causing preparation of false/incorrect documents viz. Commercial Invoices, Bills of Lading and used the same in warehousing and clearance of the subject goods. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

22.4 Similarly in respect of all the Ex-Bond importers I find that they had purchased Acetone (as mentioned in Table-1 of para.1) on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited or Initially by M/s Sanjay Chemicals who subsequently sold to other persons who in turn sold to the said ex-bond importer. However, like the Warehouse Bill of Entry, they did not declare country of consignment in the Ex Bond Bill of Entry also. Various employee/Director (noticee) working in the said Company have stated in their statement that the Overseas Supplier of Acetone as per the Bond Transfer records was M/s. Kolmar Group AG and Country of Export of the said consignments of Acetone as per the Bills of Lading was Russia as the cargo had arrived via rail from Kazan, Russia to Rauma, Finland. They stated that they were not provided documents pertaining to transport of the goods from Russia to Finland and manufacturer of the goods and that they even did not try to obtain these documents from M/s Sanjay Chemicals (India) Private Limited. Despite this they authorized filling of Bill of Entry, suppressing the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. had complete knowledge of the country of consignment. They initially declared it correctly in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to

deliberate suppression of material facts / mis-stating of facts and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 was clearly attracted and therefore all the Ex-Bonder importers were liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by all the Ex-Bonder importers and their employee/Director has rendered the Acetone cleared for home consumption under various Ex Bond Bills of Entry mentioned in Table-1 of para.1 total assessable value mentioned against each entry of table liable to confiscation under Section 111 (m) of the Customs Act, 1962, and rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

22.5 Moreover, Bills of Lading of the said consignments mention Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia *and not* M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents in as much as they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue. All ex-bond importers authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it was evident that employee/Director of the said ex-bond importers used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable for penalty under Section 112(a) and 114 AA of the Customs Act, 1962 also. However, I find that since all these are employee of Ex-Bond importers, it will not be justifiable to impose heavy penalties on them.

22.6 Similarly, for the aforesaid suppression of facts, the M/S Meteor Pvt Ltd and CHA M/S ACT Shipping Ltd are liable for penalty under Section 112(a) of the Customs Act, 1962.

22.7 Shri Varghese Mather, Branch Manager of M/S Meter Pvt Ltd, Shri T. V. Sujan, Director and Shri Thomas Varghese, Sr. Executive of CHA M/S ACT Shipping Ltd, have knowingly suppressed the facts of the country of origin as Finland and this willful mis statement aided/tried to portray it to be

of Russia. The aforesaid act on their part rendered themselves liable for penalty under Section 114A and 114AA of the Customs Act, 1962.

22.8 However, while imposing penalties on M/s.Meteor, Shri Varghese Mathew, M/s.ACT Shipping, Shri T.V. Sujan and Shri Thomas Varghese, I have kept in mind that there is no evidence against them to suggest that by their acts any personal gain has accrued to them and their role was ultimately limited to facilitating only.

23. Findings on the roles played by each noticee;

23.1 Findings in respect of M/s. Sanjay Chemicals (India) Private Limited and Shri Sanjay Vijayraj Parmar of M/s. Sanjay Chemicals (India) Private Limited

23.1.1 As seen from the records/investigation reports, the transaction in this case can be summarized as under :



23.1.2 I find that the statement was recorded u/s 108 on 20.7.2011 and further statement on 04.04.2012. The same reveals that Shri Sanjay V. Parmar was a Director of M/s. Sanjay Chemicals (India) Private Limited. They have imported the impugned 840 MT of Acetone from M/s. Kolmar Group Ag, Switzerland and filed Warehouse Bill of Entry No. 283310 dated 08.04.2009 for 525 MT Acetone imported per MT Bow Saga and 295765 dated 24.06.2009 for 315 MT Acetone imported per MT Bow Star, before Customs Kandla, through CHA M/s. ACT Shipping Ltd. The consignment of 525 MT of said warehoused goods was cleared for home consumption vide 15 Ex-Bond Bills of Entry listed in Column No. 5 of Table 1 at Sr No. 1 to 15 by the importers as mentioned in the said Table. The second consignment

of 315 MT was cleared for home consumption vide 7 separate Ex-bond Bills of Entry listed in Column No. 5 of Table 1 at Sr No. 16 to 22 by the importers mentioned in the said Table. The impugned 840 MT of Acetone originated in Russia and exported from Kotka/ Rauma ports of Finland (European Union) to India did not match with material particulars declared in the above said two Warehouse Bills of Entry and twenty two Ex-bond Bills of Entry inasmuch as the country of consignment field in all Bills of Entry were left blank. The country of consignment is a vital information and the same are required to be filled as prescribed in Form 23 i.e Bill of Entry for Warehousing and Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962. I find that the all W/H B/E and Ex-Bond B/E filed by all the noticee through their Customs House Agent, M/S ACT Shipping Ltd, the column "Country of Consignment (if different) and Code" have intentionally not filled and left blank. This inaction clearly showed their intention to evade above levy of anti-dumping duty @ USD 277.85 MT leviable as per Notification No 33/2008-Cus dated 11.03.2008.

23.1.3 I find that Shri Sanjay Vijayraj Parmar had attended the subject import for M/s. Sanjay Chemicals (India) Private Limited. He had executed contracts No. 2009311 dated 18.02.2009 and 2009855 dated 20.05.2009 with M/s. Kolmar Group Ag. As per the contracts and LCs, the title and the risk was to pass to M/s Sanjay Chemicals (India) Private Limited at Kotka/ Rauma (Finland). Certificate of insurance also covered risk of goods from Rauma/ Kotka to Kandla. These evidences also show that the goods were to be exported from Rauma/ Kotka of Finland (European Union) and not from Russia. Further, sale was finalized on 17.02.2009 and the vessel nomination was received immediately on next day, which, rules out any possibility of export from Russia at the material time. Loading of goods to vessels (on 26.02.2009 and 10.05.2009) immediately upon effecting of sale (on 26.02.2009 and 10.05.2009) also show that the impugned consignments were lying at Finland at the time of finalizing deals / signing of contracts. These documents were received by M/s. Sanjay Chemicals (India) Private Limited before seeking clearance of the goods. This clearly shows that the importer was aware that the country of export was Finland and that there was no relation of subject contractual obligations with previous movement of goods from Russia to European Union, which had already taken place as consequence of other Contracts / Sales. The rail receipts about the transport of subject goods from Russia show dates prior

to dates on which the importer entered into subject contracts with M/s. Kolmar Group Ag, Switzerland. M/s Sanjay Chemicals (India) Private Limited has stated in his statement that "he was aware that the Acetone originated in/ exported from Russia did not attract antidumping duty and of the fact that the Acetone originated in/ exported from European Union attracted antidumping duty". Therefore M/s Sanjay Chemicals (India) Private Limited were fully aware of the fact that Acetone originated or exported from European Union attracted Anti-dumping duty. Even then, during the recording of the statement when asked specifically if they were concerned about the port of loading of the goods, Shri Sanjay Parmar stated that in the instant case they were informed by M/s. Kolmar Group Ag, Switzerland that subject goods were of Russian origin. Even Russian goods when exported from European Union attracted Anti-dumping duty as per Notification No. 33/2008-Cus dated 11.03.2008. I find that he attempted to mislead the investigation by falsely stating that there was no port in Russia and thus goods had to be transported / transshipped to a Port in Finland by Train. He put forth the same facts in reply when asked as to why the clause 44 E of LC dated 24.03.2009 pertaining to Port of Loading was amended from "any Russian Port" to "any port in Finland" when the port of loading as per their belief was Russia. The fact that the relevant clause of the LC was amended from "any Russian port" to "any port in Finland" coupled with the facts that vessel was nominated immediately on confirmation of sale of the goods on i.e. 18.02.2009, proves beyond doubt that they were fully aware that the subject goods were lying in Finland at the time of deal for purchase of the subject goods and were to be loaded / exported from there. The movement of the goods from Russian to Finland was not caused by the Sale Contract between M/s. Kolmar Group Ag, Switzerland and M/s Sanjay Chemicals (India) Private Limited. The subject goods had already been purchased and transported to Finland much before the same were sold to M/s Sanjay Chemicals (India) Private Limited. This could be evident from the rail receipts pertaining to said transportation, which though in Russian Language, carry dates in English. When the above discussed facts are seen in light of the another fact that the goods were sold to M/s Sanjay Chemicals (India) Private Limited but as per Bills of Lading the supplier of the goods was M/s. Kazanorgsintez, Russia, there remains no doubt that M/s Sanjay Chemicals (India) Private Limited were fully aware of the actual picture that the export took place from European Union and not from Russia. All these facts are evident from Sale Contract,

Letter of Credit, Application for amendment in LC, Bill of Lading, Backing Letter of Indemnity (BOI for short) executed etc.

23.1.4 I find that despite knowing these facts, they engaged themselves in preparing incorrect/ false documents, as discussed above, in connivance with M/s. Meteor Pvt. Ltd., and M/s. ACT Shipping Ltd., by getting inserted the wording showing transshipment, in documents viz. invoice, Bills of Lading etc. to portray country of export as Russia. Further, in connivance with CHA M/s. ACT Shipping Ltd., country of export was mis-stated/ suppressed in the Bill of Entry by leaving the country of consignment field blank.

23.1.5 I find that Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd in his statement recorded under Section 108 of the Customs Act, 1962, admitted that the wordings portraying that the subject consignments of Acetone were exported from Russia to India, were mentioned on the body of respective Bills of Lading, invoices etc. on the advice of the importers. He specifically stated of talking to Shri Sanjay V Parmar of M/s Sanjay Chemicals (India) Private Limited. I find that in the Backing Letters of Indemnity executed to M/s. Kolmar Group Ag, Switzerland for taking delivery of goods without B/Ls, they mis-stated name of the supplier/Cargo shipped on above ship by as "KAZANORGSINTEZ SC 42001, BELOMORSKAYA 101 ,KAZAN, RT, RUSSIA / M/s. KAZANORGINTEZ J.S.C. BELOMORKSAJA, 101, 42001,KAZAN, Russia" instead of actual supplier (M/s. Kolmar Group Ag) and aided in creating incorrect and false Bills of Lading.

23.1.6 I find that it was amply clear from the above discussed evidences that the consignments of Acetone were being exported from Russia to Finland (European Union) from time to time. Impugned two consignments of 525 MT and 315 MT of Acetone were exported from Finland to India. In the Warehouse Bills of Entry No. 283310 dated 08.04.2009 and 295765 dated 24.06.2009, the country of export was deliberately not declared to evade anti-dumping duty. The above act of suppression/ mis-statement of material fact had rendered the impugned consignments of total 840 MT of Acetone (525 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and 315 MT covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009), having total assessable value of **Rs. 3,08,89,745/-**, (as per Ex Bond Bills of Entry)/- liable to confiscation under the provision of Section 111 (m) of the Customs Act, 1962, and also

rendered **M/s Sanjay Chemicals (India) Private Limited**, Mumbai and **Shri Sanjay V Parmar** liable to penalty under Section 112(a) of the Customs Act, 1962.

23.1.7 The above stated suppression / mis-statement of country of consignment in the Warehousing as well as ex-bond Bills of Entry filed under Section 46 and Section 68 of Customs Act, 1962 before Customs Kandla, with intention to evade Anti-dumping duty aggregating to **Rs 1,16,53,654/-** as per **Annexure II** have attracted application of the provisions of Section 28 (4) of Customs Act, 1962 for recovery of the duty and have rendered **M/s Sanjay Chemicals (India) Private Limited**, Mumbai liable for Penalty under the provisions of Section 114A of Customs Act, 1962.

23.1.8 I find that Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd, in his statement dated 10.6.2010 recorded under Section 108 of the Customs Act, 1962 admitted that the wordings portraying that the subject consignments of Acetone were exported from Russia to India, were mentioned on the body of respective Bills of Lading, invoices etc. on the advice of all the importers. M/s Sanjay Chemicals (India) Private Limited was also one of these importers. He specifically mentioned name of Shri Sanjay Parmar in this respect. Shri Sanjay V Parmar, Director of M/s Sanjay Chemicals (India) Private Limited, Mumbai attended the subject imports. As discussed above, it is evident that he was aware of the fact and even approved insertion of certain specified wordings in the import documents to portray that the goods were being exported from Russia. Thus, it is evident that **Shri Sanjay V Parmar** has indulged himself in causing preparation of false/ incorrect documents viz. Commercial Invoices, Bills of Lading and used the same in warehousing and clearance of the subject goods. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

23.2 Findings in respect of CHA M/s. ACT Shipping Ltd, Shri T. V. Sujan, Director and Shri Thomas Varghese Senior Executive of M/s. ACT Shipping Ltd.,

23.2.1 The statement of Shri Thomas Verghese, Senior Executive of CHA M/S ACT Shipping Ltd were recorded under section 108 on 9.6.2010 and further statement on 1.8.2011. The statement of Shri T.V. Sujan, Director of CHA M/S ACT Shipping Ltd, was recorded u/s 108 on 13.1.2012.

The same reveals that both the above mentioned Warehouse Bill of Entry No. 283310 dated 08.04.2009 and 295765 dated 24.06.2009 and 22 Ex Bond Bills of Entry were filed by CHA M/s. ACT Shipping Ltd. on behalf of M/s Sanjay Chemicals (India) Private Limited and other Ex Bond importers as listed in Table-1 above. Shri Thomas Varghese, Senior Executive of M/s. ACT Shipping Ltd. has attended the subject import. Shri T. V. Sujan was Director of M/s. ACT Shipping Limited. As discussed above it is evident that he was in touch with the M/s Sanjay Chemicals (India) Private Limited and M/s. Meteor Pvt. Ltd., even before the sale contracts were signed by the importers. In his statement recorded under Section 108 of the Customs Act, 1962, Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd. admitted that he had discussed about insertion of wordings in import documents to portray that the subject consignments of Acetone were exported from Russia to India, with Shri T. V. Sujan of CHA firm M/s. ACT Shipping Ltd. Shri T. V. Sujan has also admitted in his statement recorded under Section 108 of the Customs Act, 1962, of having discussed it with Shri Varghese Mathew of M/s. Meteor Pvt. Ltd. Shri Thomas Varghese of M/s. ACT Shipping Ltd., has admitted in his statement recorded under Section 108 of the Customs Act, in respect of subject goods, that:

"Though the subject goods were produced in Russia and originally exported from there, but for Indian importers the "Country of Export" is Finland.

And

"Declaration of country of consignment in the said Bills of Entry would have affected the assessment in those Bills of Entry in respect of levy of antidumping duty in the light of Notification No. 33/2008 – Cus dated 11/03/2008".

23.2.2 I find that Shri Thomas Varghese had talked to M/s. Sanjay Chemicals (I) Pvt. Ltd. about arrangement of chain documents to show country of export as Russia. He has stated in his statement dated 01/08/2011 as *"The version of telephonic talk of Shri Sanjay Parmar of M/s Sanjay Chemicals (I) Pvt Ltd., with him that if they could arrange for chain documents then antidumping duty would not be attracted was true. He reported about the talks to Shri T. V. Sujan".*

The country of consignment is a vital information and the same are required to be filled as prescribed in Form 23 i.e Bill of Entry for Warehousing and Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962. I find that the all W/H B/E and Ex-Bond B/E filed by all the noticee through their Customs House Agent, M/S ACT Shipping Ltd, the column "Country of Consignment

(if different) and Code” have intentionally not filled and left blank. This inaction clearly showed their intention to evade above levy of anti-dumping duty @ USD 277.85 MT leviable as per Notification No 33/2008-Cus dated 11.03.2008.

With regard to leaving the Country of Consignment field blank in the Bills of Entry, he stated that it remained blank by mistake. Such statutory obligation on them can not be waived as mistake. He was aware that both the fields i.e., pertaining to “Country of Origin” and “Country of Consignment” in the Bills of Entry were equally important since the goods of Russian origin attracted Anti-dumping duty under Notification No. 33/2008-Cus dated 11.03.2008 if said goods were exported from European Union. Shri Varghese Mathew of M/s. Meteor Pvt. Ltd. and Shri T V Sujana of M/s. ACT Shipping Ltd., in their respective statements, have admitted that they had discussed **about insertion of wordings in import documents to portray that the subject consignments of Acetone were exported from Russia to India. From this fact it is clearly evident that M/s. ACT Shipping Ltd. were conscious about country of consignment/export of the impugned goods.** In the light of these facts it was not possible that they did the same mistake repeatedly in twenty four Bills of Entry (2 WH + 22 Ex-bond) filed in respect of 840 MT of Acetone for M/s Sanjay Chemicals (India) Private Limited others. Further, as discussed at Para 10.6 above, M/s. ACT Shipping Ltd. had mentioned the country of consignment as Finland in Job No. 0018445 (print date 02.04.2009) prepared for filing Bill of Entry in respect of 525 MT of Acetone imported per vessel MT Bow Saga which is available at page No. 365 of file recovered from the premises of M/s. Sanjay Chemicals (India) Private Limited under Panchanama dated 21.04.2009. It clearly shows that CHA M/s. ACT Shipping Ltd. had not left the filling of country of consignment blank by mistake but, they had deliberately deleted it from the ICEGATE Job / Checklist prepared for the subject consignments. Thus, it is evident from the above discussed facts that with an intention to evade payment of antidumping duty, M/s. ACT Shipping Ltd., along with M/s Sanjay Chemicals (India) Private Limited and M/s. Meteor Pvt. Ltd., Mumbai diligently and knowingly hatched a conspiracy to suppress the actual country of export.

The above stated omissions and commissions on the part of **Shri T. V. Sujana, Shri Thomas Varghese and M/s. ACT Shipping Ltd.** have rendered the impugned 840 MT of Acetone liable to confiscation under the

provisions of Section 111(m) of the Customs Act, 1962, and they have rendered themselves liable to penalty under Section 112(a) of Customs Act, 1962. The above act on the part of M/s. ACT Shipping Ltd also attracts action under the provisions of the Custom House Agents Licensing Regulations, 2004.

I find that Shri Thomas Varghese, Senior Executive of CHA M/S ACT Shipping Ltd, in his statement dated 1.8.2011, in replies to Question deposed that "that country of consignment was left blank by mistake". "that though the subject goods were produced in Russia and originally exported from there. But for Indian importers the "Country of Export" is Finland". "that in case of country of Export is Finland, it would affect assessment of Anti-dumping duty". "that the keeping the country of consignment blank, it would amount mis-declaration" "that he had informed the actual picture to Shri T.V.Sujan after recording of his previous statement" .

I find that Shri T. V. Sujan, Director, CHA M/S ACT Shipping Ltd, in his statement dated 13.1.2012, in reply to question "he confirmed that the WH B/E and Ex-Bond B/E were filed by Shri Thomas Varghese as stated in his statement dated 1.8.2011", "that Shri Vaghese had reported him about talks made by him between Shri Sanjay Parmar of M/S Sanjay Chemicals(I) Pvt Ltd that if the importer arrange chain documents". "that the country of consignment in all the W/H B/E and Ex-Bond B/E, the "Country of Consignment" left blank was a clerical error". "he had advised that transshipment would not attract antidumping duty, however, Kolmar would have to provide the following documents,

(1) The Certificate of origin issued by Russian Federation and

(2) All documents including Bills of lading showing the means of transport and route from Russia to Kandla, including rail transport",

"that above advice was given around one month before arrival of consignment", "that rail receipt before the Customs by the concerned staff as received from importers and without any translation in unknown language.

From the above, I find that though **Shri Thomas Varghese and Shri T. V. Sujan** were having knowledge of the facts, they deliberately aided the importer and M/s. Meteor Pvt. Ltd. in causing to make the false / incorrect documents viz. Commercial Invoices, Bills of Lading by suggesting

to insert wording of transportation clause and also used those false and incorrect documents in filing Bills of Entry for warehousing and clearance of the subject goods. By this act they have rendered themselves liable for penalty under Section 114 AA of the Customs Act, 1962.

23.3 Findings in respect of Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd.

I find that the statement Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd. was recorded u/s 108 on 10.6.2010 and further statement on 21.06.2011. The same reveals that Shri Varghese Mathew was Branch Manager in M/s. Meteor Pvt. Ltd. He has attended the subject imports. M/s. Meteor Pvt. Ltd. has played role of facilitator and mediator in getting prepared the Certificates of Origin which formed the basis of mis-statement of country of export in all the Warehouse Bills of Entry mentioned in Table-2 above. They facilitated exchange of proposed documents to be submitted to the Indian Customs between, M/s. Kolmar Group Ag and the importers including M/s Sanjay Chemicals (India) Private Limited, via e-mails, faxes etc., in deciding the format and contents of the Country of Origin Certificates and finalizing wordings for inserting in the import documents to falsely portray country of export as Russia. Initially M/s. Kolmar Group Ag, vide email dated 13.02.2009 (9:59 PM) forwarded the draft Certificate of Origin which they (M/s. Kolmar Group Ag) intended to forward to the importers. The forwarding of the e-mail stated "Further to your fax regarding the anti-dumping duties ex European Countries, please be advised we should also be able to provide a FORM A certificate of Origin, as you may well see in the attached certificate, it will be issued in the Russian Federation (Chamber of Russian Commerce) and it will show ex-Russia for transshipment Kotka / Rotterdam". The Certificate in FORM A bearing reference **No NL 800700603 A 787844 issued in Russian Federation** showed name of exporter as "OOO SAMARAORGSINTEZ" 446203, NOVKUIBYSHEVSK, SAMARA REGION RUSSIA. The Declaration by the exporter at Sr No 12 of the Certificate read "The undersigned hereby declares that the above details and statements are correct; that the goods were produced in **RUSSIAN FEDERATION** and that they comply with the origin requirements specified for those goods in the generalized system of preference for goods exported to NETHERLANDS (importing Country)". The producing country i.e. Russia and country to which goods were exported i.e. Netherlands are clearly shown, differentiated from other wordings, in Upper case letter and bigger font over dotted lines as is done in usual FORM A.

Further below the 'NETHERLANDS', is also written in brackets "Importing country". The said certificate was dated 20.08.2008. Therefore, it was clear that the impugned goods were already imported to European Union (Netherlands) and that, from there, the goods were to be further sold and exported to India. The said Certificate was dated 20.08.2008. However, M/s. Meteor Pvt. Ltd., were not concerned about the complying with Rules / procedures and consulted the importers, CHAs and other persons for finding ways of evading the anti-dumping duty applicable on exports of Acetone from European Union. After the consultations, M/s. Meteor Pvt. Ltd. reverted back to M/s. Kolmar Group Ag and suggested that all the documents including Bill of Lading has to show the means of transport and route from Russia to Kandla. This included the rail transport as well". They also suggested the exact wordings which were to be inserted in the false and incorrect documents to be prepared for the impugned consignments. Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd., has admitted in his statement dated 10/06/2010 that with the knowledge of the Indian customers, they requested M/s. Kolmar for inserting the wordings in import documents, indicating that the said goods were transshipped at Finland and therefore, M/s. Kolmar inserted wordings showing that the said consignments were sent to Finland from Russia by train and then loaded at Kotka/ Rauma ports in Finland, and further transshipped for export to India. He has also admitted that they had obtained advice of various persons in the matter and accordingly M/s. Meteor Pvt. Ltd. were aware of the fact that without inserting the said wordings in the import documents like Bills of Lading, invoices etc., the cargo would attract antidumping duty. Thus, it is evident that Shri Varghese Mathew and M/s. Meteor Pvt. Ltd. actively abetted in mis-declaration of country of export as "Russia". This act on the part of **Shri Varghese Mathew and M/s. Meteor Pvt. Ltd.** has rendered the said consignment of 840 MT of Acetone, having Assessable value of **Rs. 3,08,89,745/-** (as per Ex Bond Bills of Entry) liable to confiscation and have rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Further, I find that in spite of having knowledge of facts, Shri Varghese Mathew aided in causing to make the false / incorrect documents viz Commercial Invoices, Bills of Lading by suggesting to insert wording of transportation clause and facilitated the use of the false and incorrect documents in warehousing and clearance of the subject goods and thus **Shri Varghese Mathew** has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962.

23.4 Findings in respect of 10 Ex Bond Importers :

i.e (1)M/s. Brij Lal Jain and Sons, (2) M/s. India Glycols Ltd., (3) M/s. IOL Chemicals & Pharmaceuticals Ltd., (4) M/s. Mody Chem, (5) M/s. Mody Enterprises, (6) M/s. Nectar Life Sciences Limited (7) M/s. Pioneer Chemical Industries (8) M/s. Satish Chemical India Pvt. Ltd., (9) M/s. Solvochem, (10) M/s. Pon Pure Chem (P) Ltd.,

(i) I find that the above Ex-Bond importers have purchased the imported Acetone on high sea sale basis directly under invoice issued by M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai and/or by subsequent sale from M/S Overseas Polymers Pvt Ltd and M/S Traxpro Enterprises Pvt and got cleared the same for home consumption vide various Ex-Bond Bills of Entry No, as mentioned in the TABLE-1 in para 1 of the show cause notice. Like the Warehouse Bill of Entry, they did not declare country of consignment in the Ex Bond Bill of Entry also. I find that the Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962 and is required to be filled with complete details by the Ex-Bond importers. I find that the details in all Ex-Bond B/E filed by all the noticee through their Customs House Agent, M/S ACT Shipping Ltd, in the column "Country of Consignment (if different) and Code" have intentionally not filled and left blank. This inaction clearly showed their intention to evade above levy of anti-dumping duty @ USD 277.85 MT leviable as per Notification No 33/2008-Cus dated 11.03.2008. I find that the various employees/in-charge of the above ex-bond importers had stated in their statements that the Overseas Supplier of Acetone as per the Bond Transfer records was M/s. Kolmar Group AG and Country of Export of the said consignments of Acetone as per the Bills of Lading was Russia as the cargo had arrived via rail from Kazan, Russia to Rauma, Finland. They also stated that they were not provided documents pertaining to transport of the goods from Russia to Finland and manufacturer of the said goods and that they even did not try to obtain these documents from M/s Sanjay Chemicals (India) Private Limited or others i.e. their seller subsequent to importer M/S Sanjay Chemicals (India) Pvt Ltd. Despite this they authorized filling of Bill of Entry, suppressing the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. had complete knowledge of the country of consignment; they initially declared it correctly in the ICEGATE Job No.

0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to deliberate suppression of material facts / mis-stating of facts and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is clearly attracted and therefore all the Ex-Bond importers are liable to penalty under Section 114A of the Customs Act, 1962. I find that the Ex-bond importer had not asked for any documents/detail with regard to "Country of consignment(Export) which was statutorily required to be filled by them. Further, the above act of suppression / mis-declaration of material facts by **the above said Ex-bond importers** have rendered the Acetone cleared for home consumption under various Ex Bond Bills of Entries, mentioned in the TABLE-1 of Para of the show cause notice, having total assessable value against each importer as mentioned in Annexure-II to the show cause notice, liable to confiscation under Section 111 (m) of the Customs Act, 1962, and rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

(ii) Moreover, I find that the Bills of Lading No. 2401 dated 26.2.2009 and 3001 dated 10.5.2009 of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia *and not* M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading No 2401 for 525 MT Acetone purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Similarly the Bill of Lading No 3001 for 315 MT Acetone purported to be issued on 10.05.2009 had the reference of LC which was opened almost a month later i.e. on 29.05.2009. Despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoices were incorrect / false documents in as much as they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, the above Ex-bond importers authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it is evident that they used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on their part have rendered them self liable for penalty under Section 114 A of the Customs Act, 1962 also.

(iii) As regard to imposition of the penalty under Section 112(a) and Section 114A, there is proviso in Section 114A that where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114. In view of the such provision, I find it appropriate to impose

the penalty under section 114A only or the aforesaid acts of the ex-bond importers.

23.5 Findings in respect of employee/in-charges of 10 Ex Bond Importers.

23.5.1 Findings I respect of Shri Anil Dahiya of M/s. Brij Lal Jain and Sons

I find that the statement of Shri Anil Dahiya logistic incharge of M/s. Brij Lal Jain, was recorded u/s 108 on 7.6.2012. The same reveals that the Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia *and not* M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents in as much as they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, **M/s. Brij Lal Jain & Sons** authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it was evident that **Shri Anil Dahiya** used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

23.5.2 Findings I respect Shri Rajeev. S. Sharma of M/s. India Glycols Limited:

I find that the statement of Shri Rajeev. S. Sharma, Joint Manager (Purchase) of M/s. India Glycols Limited was recorded u/s 108 on 19.6.2012. The same reveals that M/s. India Glycols Limited purchased 20 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited through M/s. Traxpo Enterprises Pvt.Ltd, Kolkata. They purchased the goods vide Invoice No. HS/020/09-10 dated 14.7.2009 issued by M/s. Traxpo Enterprises Pvt. Ltd., and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 301871 dated 03.08.2009. Like the Warehouse Bill of Entry, they did not declare country of consignment in the Ex Bond Bill of Entry also. Shri S. C. Sharma, working

as Joint Manager (Purchase) in M/s. India Glycols Limited has stated in his statement that the Overseas Supplier of Acetone was M/s. Kolmar Group AG, Switzerland a company falling in European Union. In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export is equally vital as the Country of Origin, to decide the levy of Anti-dumping duty. Despite this they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. had knowledge of actual country of consignment. They initially declared it correctly in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act on part of CHA M/s. ACT Shipping Ltd., and M/s India Glycols Limited amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is clearly attracted and therefore **M/s. India Glycols Limited** are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **Shri Rajeev. S. Sharma** and **M/s. India Glycols Limited** have rendered the 20 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. 301871 dated 03.08.2009, having total assessable value of **Rs. 7,85,203/-**, liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, and also rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Further, I find that the Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia *and not* M/s. Kolmar Group Ag, Switzerland. The Bill of Lading purported to be issued on 10.05.2009 had the reference of LC which was opened much later i.e. on 29.05.2009. Therefore it is evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents in as much as they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, Shri Rajeev. C. Sharma of M/s. India Glycols Limited authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it is evident that Shri R. S. Sharma and M/s. India Glycols Limited have used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This

act on the part of **Shri R. S. Sharma** has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

23.5.3 Findings against Shri Harish Dania of M/s. IOL Chemicals and Pharmaceuticals Ltd:

I find that the statement of Shri Harish Dania, Deputy Manager(Transportation/Purchase) of M/s. IOL Chemicals and Pharmaceuticals Ltd was recorded u/s 108 on 18.6.2012. The same reveals that M/s. IOL Chemicals and Pharmaceuticals Ltd, purchased 60 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited through M/s. Traxpo Enterprises Pvt. Ltd, Kolkata. They purchased the goods vide Invoice No. HS/019/09-10 dated 14.07.2009 issued by M/s. Traxpo Enterprises Pvt. Ltd., and got clearance of the same for home consumption vide Ex-Bond Bills of Entry No. 309508 dated 22.09.2009. Similar to Warehouse Bill of Entry they also did not declare country of consignment in the Ex Bond Bill of Entry. Shri Harish Dania, working as Deputy Manager Transportation / purchase in M/s. IOL Chemicals and Pharmaceuticals Ltd has stated in his statement that the Overseas Supplier of Acetone was M/s. Kolmar Group AG, Switzerland (a company falling in European Union). In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export is equally vital as the Country of Origin of the goods for deciding the levy or non levy of Anti-dumping duty. Despite this they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. had knowledge of actual country of consignment. They initially declared it correctly in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act on part of CHA M/s. ACT Shipping Ltd., and M/s. IOL Chemicals and Pharmaceuticals Ltd amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is clearly attracted and hence **M/s. IOL Chemicals and Pharmaceuticals Ltd.** are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **Shri Harish Dania and M/s. IOL Chemicals and Pharmaceuticals Ltd** has rendered the 60 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. 309508 dated 22.09.2009, having total assessable value of **Rs. 23,55,608/-**, liable to confiscation under the provisions of Section 111 (m)

of the Customs Act, 1962, and rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Further I find that the Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia and not M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 10.05.2009 had the reference of LC which was opened much later i.e. on 29.05.2009. Therefore it is evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents in as much as they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, M/s. IOL Chemicals and Pharmaceuticals Ltd authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it is evident that **Shri Harish Dania** of M/s. IOL Chemicals and Pharmaceuticals Ltd used false/ incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable to penalty under Section 114 AA of the Customs Act, 1962 also.

23.5.4 Findings in respect of Shri Biren Girish Sitwala of M/s. Mody Chem, Ahmedabad:

I find that the statement of Shri Biren Girish Sitwala Authorized Branch Representative of M/s. Mody Chem, Ahmedabad was recorded u/s 108 on 10.7.2012. The same reveal that M/s. Mody Chem, Ahmedabad purchased 48 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods through Invoice No. G0085 dated 07.05.2009 issued by M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 297185 dated 02.07.2009. Similar to Warehouse Bill of Entry they did not declare country of consignment in the Ex Bond Bill of Entry. Shri Biren Girish Sitwala working as Authorized Branch Representative in M/s. Mody Chem, Ahmedabad has stated in his statement that the Overseas Supplier of Acetone was M/s. Kolmar Group AG. In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export is equally vital as the Country of Origin of the goods for deciding the levy of Anti-dumping duty. Despite this they authorized filling of Bill of Entry, suppressing the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Despite this they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving

the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. were aware of the country of consignment of the goods. They initially declared it correctly in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is obviously attracted and therefore M/s. Mody Chem, Ahmedabad are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **M/s. Mody Chem, Ahmedabad and Shri Biren Girish Sitwala** have rendered the 48 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. **297185 dated 02.07.2009**, having total assessable value of **Rs. 17,19,956/-** liable to confiscation Section 111 (m) of the Customs Act, 1962, and also rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Further I find that the Bills of Lading of the said consignments Port of Loading was mentioned as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia *which was different from* M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Therefore it is quite evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, M/s. Mody Chem, Ahmedabad authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it is evident that **Shri Biren Girish Sitwala** have used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable to penalty under Section 114 AA of the Customs Act, 1962 also.

23.5.5 Findings in respect of Shri Biren Girish Sitwala of M/s. Mody Enterprises, Ahmedabad.

I find that the statement of Shri Biren Girish Sitwala Authorized Branch Representative of M/s. Mody Enterprise, Ahmedabad was recorded u/s 108 on 10.7.2012. The same reveal that M/s. Mody Enterprises, Ahmedabad purchased 80 MT of Acetone on Bond Transfer basis from M/s

Sanjay Chemicals (India) Private Limited. They purchased the goods through Invoice No. G0085 dated 07.05.2009 issued by M/s. Sanjay Chemicals (I) Pvt. Ltd., Mumbai and got cleared the same for home consumption vide two Ex-Bond Bills of Entry No. 290220 dated 21.05.2009 (for clearance of 30 MT Acetone) and 296397 dated 29.06.2009 (for clearance of 50 MT Acetone). Similar to Warehouse Bill of Entry they did not declare country of consignment in the Ex Bond Bill of Entry. Shri Biren Girish Sitwala working as Authorized Branch Representative in M/s. Mody Enterprises, Ahmedabad has stated in his statement that the overseas Supplier of Acetone was M/s. Kolmar Group AG. In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export is equally vital as the Country of Origin of the goods for deciding the levy or non levy of Anti-dumping duty. Despite this, they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above their authorized agent M/s. ACT Shipping Ltd. were aware of the country of consignment of the goods. They initially declared it correctly in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is attracted and therefore, **M/s. Mody Enterprises, Ahmedabad** are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **M/s. Mody Enterprises, Ahmedabad** and **Shri Biren Girish Sitwala** has rendered the 80 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. 290220 dated 21.05.2009 (30 MT) and 296397 dated 29.06.2009(50 MT), having total assessable value of **Rs. 28,66,593/-** liable to confiscation under the provision of Section 111 (m) of the Customs Act, 1962, and themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Further, I find that the Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which was different from M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Therefore it is quite evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents, in as

much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, **Shri Biren Girish Sitwala** of M/s. Mody Enterprises, Ahmedabad authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it is evident that **Shri Biren Girish Sitwala** used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

23.5.6 Findings in respect of Shri Rajinder Lal Gulati, Sr. Manager of Raw Material purchase of M/s. Nectar Life Sciences Limited

I find that the statement of Shri Rajinder Lal Gulati, Sr. Manager of Raw Material purchase of M/s. Nectar Life Sciences Limited was recorded u/s 108 on 21.6.2012. The same reveal that M/s. Nectar Life Sciences Limited purchased 100 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods vide purchase order No. NLL/RM/U02/106/ 2009-10 dated 23.07.2009 and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 301514 dated 31.07.2009. Similar to Warehouse Bill of Entry they also did not declare country of consignment in the Ex Bond Bill of Entry. Shri Chetan Gulati working as Sr. Manager of Raw material Purchases in M/s. Nectar Life Sciences Limited has stated in his statement that the Overseas Supplier of Acetone as per Bond Transfer Records was M/s. Kolmar Group AG, Switzerland (a company falling in European Union). In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export is equally vital as the Country of Origin of the goods for deciding the levy or non levy of Anti-dumping duty. Despite this they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. had complete knowledge of the country of consignment; they initially declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act on part of CHA M/s. ACT Shipping Ltd., and M/s. Nectar Life Sciences Limited amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is clearly attracted and hence **M/s. Nectar Life Sciences Limited** are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of

material facts by **M/s. Nectar Life Sciences Limited** and **Shri Chetan Gulati** has rendered the said 100 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. 301514 dated 31.07.2009, having total assessable value of **Rs. 38,49,033/-**, liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, and also rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Further, I find that the Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which is different M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 10.05.2009 had the reference of LC which was opened much later i.e. on 29.05.2009. Therefore it is evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents in as much as they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, Shri Chetan Gulati and M/s. Nectar Life Sciences Limited authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it is evident that **Shri Chetan Gulati** has used false/ incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable to penalty under Section 114 AA of the Customs Act, 1962 also.

23.5.7 Findings in respect of Shri Gopal Rameshbhai Bhatt, of M/s. Pioneer Chemical Industries:

I find that the statement of Shri Gopal Rameshbhai Bhatt, Logistics Incharge of M/s. Pioneer Chemical Industries was recorded u/s 108 on 06.6.2012. The same reveal that M/s. Pioneer Chemical Industries purchased 48 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited through M/s. Overseas Polymers Pvt. Ltd. They purchased the goods vide Invoice No. GJ/ACE/B/2009/ 0210 dated 18.09.2009 issued by M/s. Overseas Polymers Pvt. Ltd., and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 309979 dated 25.09.2009. Similar to Warehouse Bill of Entry they did not declare country of consignment in the Ex Bond Bill of Entry. Shri Gopal Rameshbhai Bhatt, working as Logistics Incharge in M/s. Pioneer Chemical Industries has stated in his statement that the overseas supplier of Acetone was M/s. Kolmar Group AG, Switzerland (a country in European Union). In respect of

a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export is equally vital. Despite this, they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. were aware of the actual country of consignment of the goods; they initially declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is obviously attracted and therefore M/s. Pioneer Chemical Industries are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **Shri Gopal Rameshbhai Bhatt and M/s. Pioneer Chemical Industries** rendered the 48 MT of Acetone cleared for home consumption under Ex Bond Bill of Entry No. 309979 dated 25.09.2009, having total assessable value of **Rs.17,54,355/-**, liable to confiscation under the provision of Section 111 (m) of the Customs Act, 1962, and themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Further I find that the Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which was different from M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Therefore it is quite evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, M/s. Pioneer Chemical Industries authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it is evident that **Shri Gopal Rameshbhai Bhatt** has used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

23.5.8 Evidences in respect of Shri Rajeev Kumar Garg, Director of M/s. Satish Chemical India Pvt. Ltd:

I find that the statement of Shri Rajeev Kumar Garg, Director of M/s. Satish Chemical India Pvt. Ltd was recorded u/s 108 on 23.7.2012. The same reveal that M/s. Satish Chemical India Pvt. Ltd purchased 64 MT of Acetone on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods vide Retail Invoice No.R00067 dated 11.05.2009 (32 MT Acetone, imported per MT Bow Saga), R0180C dated 28.07.2009 (23 MT Acetone imported per MT Bow Star) and R0180D dated 28.07.2009 (9 MT Acetone imported per MT Bow Saga) and got cleared the same for home consumption vide Ex-Bond Bills of Entry No. 292336 dated 03.06.2009, 303249 dated 12.08.2009 and 302554 dated 07.08.2009 respectively. Similar to Warehouse Bill of Entry they also did not declare country of consignment in these Ex Bond Bills of Entry. Shri Rajeev Kumar Garg, working as Director in M/s. Satish Chemical India Pvt. Ltd has stated in his statement that the Overseas Supplier of Acetone as per Warehouse Bill of Entry was M/s. Kolmar Group AG, Switzerland (a country in European Union). In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export is equally vital for deciding levy of Anti-dumping duty. Despite this, they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bill of Entry. Further, as discussed above, their authorized agent M/s. ACT Shipping Ltd. were aware of the country of consignment of the goods. They initially declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehoused Bill of Entry. This act amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is attracted and therefore, **M/s. Satish Chemical India Pvt. Ltd** are liable to be penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **Shri Rajeev Kumar Garg and M/s. Satish Chemical India Pvt. Ltd.** have rendered the 64 MT of Acetone cleared for home consumption under Ex Bond Bills of Entry No. 292336 dated 03.06.2009, 302554 dated 07.08.2009 and 303249 dated 12.08.2009, having total assessable value of **Rs. 23,54,407/-**, liable to confiscation under the provision of Section 111 (m) of the Customs Act, 1962, and themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Further I find that the Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the

supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which was different from M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading, Commercial Invoice and other import documents purported to be issued on 26.02.2009 / 10.05.2012 had the reference of LCs which was opened much later i.e. on 24.03.2009/29.05.2009. Therefore, it is evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice etc were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, Shri Rajeev Kumar Garg and M/s. Satish Chemical India Pvt. Ltd authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it becomes evident that **Shri Rajeev Kumar Garg** has used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable for penalty under Section 114 AA of the Customs Act, 1962 also.

23.5.9 Findings in respect of Shri Akhilesh Kumar of M/s. Solvochem, Delhi

I find that the statement of Shri Akhilesh Kumar Liaison Officer of M/s. Solvochem, Delhi was recorded u/s 108 on 23.7.2012. The same reveal that M/s. Solvochem, Delhi purchased 96 MT of Acetone, imported per vessel MT Bow Saga, on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods vide Purchase Order No. SOL/063 dated 17.06.2009 (16 MT) No. SOL/002 dated 01.04.2009 (32 MT) and SOL/059 dated 10.06.2009 (48 MT) and got cleared the same for home consumption vide 04 Ex-Bond Bills of Entry No. 295454 dated 23.06.2009 (16 MT), 296224 dated 26.06.2009 (16 MT), 294307 dated 16.06.2009 (32 MT) and 287693 dated 05.05.2009 (32 MT). Similar to Warehouse Bill of Entry they did not declare country of consignment in these Ex Bond Bills of Entry. Shri Akhilesh Kumar working as Liaison Officer in M/s. Solvochem, Delhi has stated in his statement that as per Warehouse Bill of Entry and Invoice, the overseas supplier of Acetone was M/s. Kolmar Group AG. In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export is equally important as declaration of the Country of Origin of the goods for deciding the levy of Anti-dumping duty. Despite this, they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bills of Entry. Further, as discussed at above, their authorized agent M/s. ACT Shipping Ltd. were fully aware of the actual

country of consignment of the goods; they initially declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehouse Bill of Entry. This act on part of M/s **Solvochem, Delhi** and their agents M/s. ACT Shipping Ltd., amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is attracted and hence **M/s. Solvochem, Delhi** are liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **M/s. Solvochem, Delhi** and **Shri Akhilesh Kumar** has rendered the 96 MT of Acetone cleared for home consumption under Ex Bond Bills of Entry No. 295454 dated 23.06.2009 (16 MT), 296224 dated 26.06.2009 (16 MT), 294307 dated 16.06.2009 (32 MT) and 287693 dated 05.05.2009 (32 MT), having total assessable value of **Rs. 34,39,912/-**, liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, and themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Further, I find that the Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which was different from M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading, Commercial Invoice and other Import documents purported to be issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Therefore, it is quite evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice etc were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, **Shri Akhilesh Kumar and M/s. Solvochem, Delhi** authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, **Shri Akhilesh Kumar** has used false/ incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on their part has rendered them liable for penalty under Section 114 AA of the Customs Act, 1962 also.

23.5.10 Findings against Shri Subramaniam Mahadevan of M/s. Pon Pure Chem (P) Ltd.

I find that the statement of Shri Subramaniam Mahadevan, of M/s. Pon Pure Chem (P) Ltd. was recorded u/s 108 on 05.6.2012. The same

reveal that M/s. Pon Pure Chem (P) Ltd. purchased 96 MT of Acetone, imported per vessel MT Bow Saga, on Bond Transfer basis from M/s Sanjay Chemicals (India) Private Limited. They purchased the goods vide Tax Invoice No.G00155 dated 12.06.2009 issued by M/s. Sanjay Chemicals and got cleared the same for home consumption vide 03 separate Ex-Bond Bills of Entry No. 298952 dated 14.07.2009 (30 MT), 298446 dated 10.07.2009 (33 MT) and 297390 dated 02.07.2009 (33 MT). Similar to Warehouse Bill of Entry, they did not declare country of consignment in these Ex Bond Bills of Entry. Shri Subramaniam Mahadevan, working as Regional Manager in M/s. Pon Pure Chem (P) Ltd, in his statement that the overseas supplier of Acetone as per Warehouse Bill of Entry and Invoice was M/s. Kolmar Group AG. In respect of a commodity which attracts Anti-Dumping Duty, declaration of the Country of Export is equally important as declaration of the Country of Origin of the goods for deciding the levy or non levy of Anti-dumping duty. Despite this, they authorized filling of Bill of Entry, mis-stating the Country of Consignment by leaving the said field blank in the Ex Bond Bills of Entry. Further, as discussed, above their authorized agent M/s. ACT Shipping Ltd. were fully aware of the country of consignment of the goods; they initially declared it correctly as Finland in the ICEGATE Job No. 0018445 but deliberately deleted it before submitting the same in EDI system for generation of Warehouse Bill of Entry. This act on part of M/s. Pon Pure Chem (P) Ltd. and their agents M/s. ACT Shipping Ltd., amounts to suppression of material facts / mis-stating of facts, and thus, extended period for recovery of duty as provided under Section 28(4) of the Customs Act, 1962 is liable to invoked and hence M/s. Pon Pure Chem (P) Ltd. is liable to penalty under Section 114A of the Customs Act, 1962. Further, the above act of suppression / mis-declaration of material facts by **M/s. Pon Pure Chem (P) Ltd. and Shri Subramaniam Mahadevan** has rendered the 96 MT of Acetone cleared for home consumption under Ex Bond Bills of Entry No. 298952 dated 14.07.2009 (30 MT), 298446 dated 10.07.2009 (33 MT) and 297390 dated 02.07.2009 (33 MT), having total assessable value of **Rs. 34,39,912/-**, liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962, and themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

Further I find that the Bills of Lading of the said consignments mentioned Port of Loading as Rauma, Finland. As per Bills of Lading the supplier of the goods was M/s. KAZANORGSINTEZ SC of Russia which was different from M/s. Kolmar Group Ag, Switzerland. Further, the Bill of Lading, Commercial Invoice and other import documents purported to be

issued on 26.02.2009 had the reference of LC which was opened almost a month later i.e. on 24.03.2009. Therefore, it is quite evident that despite being aware of the fact that the documents viz. Bill of Lading and Commercial Invoice etc were incorrect / false documents, in as much as, they had details of supplier / seller contrary to each other and had references of LCs which were opened much after their date of issue, Shri Subramaniam Mahadevan of M/s. Pon Pure Chem (P) Ltd. authorized filing of Ex Bond Bills of Entry on the basis of said documents. Thus, it becomes evident that **Shri Subramaniam Mahadevan** has used false / incorrect documents viz. Commercial Invoices, Bills of Lading in clearance of the subject goods for home consumption. This act on his part has rendered himself liable to penalty under Section 114 AA of the Customs Act, 1962 also.

24. Discussion on the defense submissions.

24.1 M/s. Sanjay Chemicals (India) Private Limited, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai and Shri Sanjay Vijayraj Parmar, Director of M/s. Sanjay Chemicals (India) Private Limited, (noticee no. 1 and 2).

The noticee filed reply vide their letter dated 27.05.2013. in-teralia other matter, stated that ;

- (i) Submissions that the foreign supplier M/S Kolmar Group AG, represented to them through their representative M/S Meteor Private Limited and that Russia is a Land Locked country, the Acetone of Russian origin would be dispatched from Russia by rail and transshipped at Finland for onward transport to India ;

With regard to above submissions of noticee that the Russia was a Land Locked country and the Acetone was manufactured at Russian and were transhipped to Finland in the name of various parties of European Union, I find that the said Acetone was sold to India from Finland by M/S Kolmar Group Ag to the noticee, as seen from the records, the sale was finalized on 17.2.2009 and 20.5.2009 and vessel nomination was received immediately upon effecting sale (i.e. on 26.2.2009 and 10.5.2009). The overseas investigation report also showed that the impugned Acetone manufactured/supplied by the Russian Company not supplied/sold directly to any Indian buyers. No any contract, invoice for sale, L/C, were raised by Russian Company

with Indian Buyers in respect of above imports. Therefore, it can not be termed as onward dispatched from Russia by rail and transshipped at Finland and also when the time of contract, the goods was already lying at Finland.

- (ii) Submission that invoice raised by the foreign supplier on them and packing list dated 10.5.2009 stated that the goods had been loaded by railway from Russia to Finland where the same were loaded on to M.T Sameraldo in case of 525 MT and on to MT Heinrich Essberger in case of 315 MT and transshipped onto Bow Saga at Rottordam in first case and on to Bow Star in Rotterdam in the second case for further shipment to India. That the same is mentioned in Bill of Lading and Certificate of Origin received from foreign supplier Kolmar Group Ag, and submitted the copies of the same.

As discussed in above (ii) at the time of deal, the goods were already lying at Finland. I find that Bill of Lading No. 2401 dated 26.02.2009 (*place and date of issue are specifically declared as RAUMA, 26th February 2009 in BL*) shows date of issuance as 26.02.2009 and it contains reference of LC opened on 24.03.2009 i.e. almost a month later. Similarly Bill of Lading No 3001 dated 10.05.2009 (*place and date of issue are specifically declared as RAUMA, 10th May 2009 in BL*) shows date of issuance as 10.05.2009 and it contains reference of LC issued on 29.05.2009 i.e. 19 days later. This could have been possible only if the documents viz. Commercial Invoice and Bills of Lading purported to be issued on the date of loading of the goods were actually re-manufactured later for inserting purposefully prepared wordings regarding clause of transportation of goods from Russia to European Union to show country of export as Russia.

- (iii) Sbmission that demand is time barred as the show cause notice is served upon them in April, 2013 and six months were already over after period of 2009; that that they were not aware of the alledged transaction between the Russian producer and Finland party ; that bill of lading showed the Russian producer as a shipper ; That they had entered in to contract with Kolmar Group Ag and the letter of credit was issued in their favour ; that email correspondence does not establish any willful mis-statement or suppression of facts ; that there are no any question willful misstatement or suppression of facts involved on their part in the present case.

I find that the noticee portrayed M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) as supplier and Development Credit Bank Ltd, and M/s. Sanjay Chemicals (India) Private Limited as Notify Party as noticed from the scanned / mailed copies of said **signed** BL which were received by M/s. Sanjay Chemicals (India) Private Limited through M/s. Meteor Pvt. Ltd., Mumbai via email dated 08.04.2009 (10:05:49 AM). Because of by that time, details of Letters of Credit were available, the same were also mentioned in the Bills of Lading prepared in active connivance of M/s. Kolmar Group Ag, Switzerland, Importer M/s. Sanjay Chemicals (India) Private Limited and M/s. Meteor Pvt. Limited. As discussed above I find that the Commercial Invoice and Bills of Lading purported to be issued on the date of loading of the goods were actually re-manufactured later for inserting purposefully prepared wordings regarding clause of transportation of goods from Russia to European Union to show country of export as Russia. Thus there is clear cut willful misstatement or suppression of facts involved on their part in the present case

Further, the Bills of Lading in both the imports were Charter Party Bills of Lading. Charter party Bills of Lading are issued on the basis of Charter Party (Contract) between the supplier of the goods and owner of the vessel. In all the Bills of Lading the charter party / contract of affreightment were mentioned between M/s. Kolmar Group Ag, Switzerland and Odfjell Tankers. In spite , M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) was portrayed as supplier which is contrary to the Norms of Charter Party Bills of Lading. M/s. Sanjay Chemicals (India) Private Limited were aware of these things and actively connived with M/s. Kolmar Group Ag, Switzerland and M/s. Meteor Pvt. Ltd., Mumbai in manufacturing Bills of Lading and other import documents in falsely showing **KAZANORGSIONTEZ SC 420051, BELOMORSKAYA 101 KAZAN, RT, RUSSIA** as Shipper and that the goods were imported directly from Russia and the Country of Consignment was suppressed in both the Bills of Entry by leaving the said field blank in collusion with CHA M/s. ACT Shipping Ltd.

I find that the country of consignment is a vital information and the same are required to be filled/declared as prescribed in Form 23 i.e Bill of Entry for Warehousing and Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976

issued under Section 157 read with Section 46 of the Customs Act, 1962. I find that the all W/H B/E and Ex-Bond B/E filed by the noticee through their Customs House Agent, M/S ACT Shipping Ltd, the column "Country of Consignment (if different) and Code" have intentionally not filled and left blank. This inaction clearly showed their willful misstatement with intention to evade above levy of anti-dumping duty @ USD 277.85 MT leviable as per Notification No 33/2008-Cus dated 11.03.2008.

I find that Bills of Lading contained references of LCs which were executed much later. For example the Bill of Lading No. 2401 dated 26.02.2009 (*place and date of issue are specifically declared as RAUMA, 26th February 2009 in BL*) shows date of issuance as 26.02.2009 and it contains reference of LC opened on 24.03.2009 i.e. almost a month later. Similarly Bill of Lading No 3001 dated 10.05.2009 (*place and date of issue are specifically declared as RAUMA, 10th May 2009 in BL*) shows date of issuance as 10.05.2009 and it contains reference of LC issued on 29.05.2009 i.e. 19 days later. This could have been possible only if the documents viz. Commercial Invoice and Bills of Lading purported to be issued on the date of loading of the goods were actually re-manufactured later for inserting purposefully prepared wordings regarding clause of transportation of goods from Russia to European Union to show country of export as Russia. This is also substantiated by the fact that in respect of both the vessels MT Bow Saga and MT Bow Star the Bills of Lading were not available with the importer or his agents for taking delivery/ unloading of the goods and in both cases M/s. Sanjay Chemicals (India) Private Limited, had given Backing Letters of Indemnity in favour of M/s. Kolmar Group Ag, Switzerland. If this had happened once it could be attributed to some peculiar circumstance created at the material time but this happened in case of both the vessels and in respect of all seven consignments (listed at TABLE-2 above) imported in vessel MT Bow Saga and MT Bow Star. The importer executed Backing Letter of Indemnity (BOI for short) specifying M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) as supplier (instead M/s. Kolmar Group Ag, Switzerland) and Kolmar was portrayed as consignee/ Notify Party. The BOI in both cases was addressed to M/s. Kolmar Group Ag, Switzerland and the wordings read:-

*"the above cargo was shipped on the above ship (Bow Saga) by **KAZANORGSINTEZ SC 420051, BELOMORSKAYA 101 KAZAN, RT, RUSSIA** and consigned To the order of Development Credit Bank Limited"*

I find that importer M/s. Sanjay Chemicals (India) Private Limited had purchased the subject goods from M/s. Kolmar Group Ag, Switzerland. They had made contract with M/s. Kolmar Group Ag, Switzerland only. Shri Shri Sanjay Vijayraj Parmar has himself very categorically admitted in his statement dated 20.07.2011 that the imported goods were sold to M/s. Sanjay Chemicals (India) Pvt. Ltd. by M/s. Kolmar Group AG. I find that they had never contacted/ contracted/ corresponded with Kazanorgintez JSC. However from the wordings of the above mentioned BOI the obvious inference was that M/s. Sanjay Chemicals (India) Private Limited and is informing seller of the goods M/s. Kolmar Group Ag, Switzerland that the goods have been shipped by **KAZANORGSINTEZ SC 420051, BELOMORSKAYA 101 KAZAN, RT, RUSSIA.** This is quite contrary to what is stated by Shri Sanjay Vijayraj Parmar in his statement before DRI. Later on, Bills of Lading were re-manufactured on these lines which portrayed M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) as supplier and Development Credit Bank Ltd and M/s. Sanjay Chemicals (India) Private Limited as Notify Party and scanned / mailed copies of said **signed** B/L were received by M/s. Sanjay Chemicals (India) Private Limited through M/s. Meteor Pvt. Ltd., Mumbai via email dated 08.04.2009 (10:05:49 AM). Since by that time, details of Letters of Credit were available, the same were also mentioned in the Bills of Lading prepared in active connivance of M/s. Kolmar Group Ag, Switzerland, Importer M/s. Sanjay Chemicals (India) Private Limited and M/s. Meteor Pvt. Limited.

From the above facts of suppression of facts and willful mis-statement, the show cause notice served upon them in April, 2013 even after six months period of 2009 is proper as the same is rightly issued invoking extended period of demand under section 28(4) on account of such willful mis statement and suppression of facts in the present case. The contention that they had entered in to contract with Kolmar Group Ag and the letter of credit was issued in their favour but nowhere the mention of any contract/communication with Russian supplier claimed as "Shipper" in B/L is shown. I find that the email correspondence clearly establish any willful mis-statement or suppression of their part

in the present case. Mere facts that the bill of lading showed the Russian producer as a shipper can not change the material facts of goods lying at Finland at the time of contract. The noticee were clearly aware of the alledged transaction between the Russian producer and Finland party

- (iv) Submission that the wording of movement from Russia were clearly incorporated in the bill of lading, packing list, country of origin and hence the allegation of incorporation of wording of movement from Russia were after thought is incorrect because the mention of the said fact will show correct position.

As discussed in the facts mentioned in above para, the noticee have purposefully inserted the wording of movement from Russia and hence contention of noticee that in the bill of lading, packing list, country of origin the wording of movement from Russia were clearly incorporated have no legal force.

Submission that there were no mis-declaration with regard to leaving the country of export and all the documents such as invoice, packing list, bill of lading, copies of rail receipts were duly submitted with the Customs and if the country of consignment was so important, the proper officer of the Customs would not have allowed the clearance without mention of the same; that the DRI is interpreting these facts in a manner different from the way the proper office of the customs who allowed clearance interpreting the same on above documents hence what ever mistake were on the part of CHA.

I find that the country of consignment was very important and statutorily required to be filled which was intentionally left blank. The so called contention of noticee that the proper officer of the Customs would not have allowed the clearance without mention of the same hence there are no malafide the part of noticee is not correct and the DRI have correctly investigated the case and raised demand.

- (v) Submission that allegation of non mention of export from Russia in the contract and letter of credit is irrelevant when the import document such as invoice, packing list, bill of lading and certificate of origin clearly mentioning the facts that the goods were transported from Russia to Finland by rail and thereafter transshipped on to a vessel at Finland for onward movement to India.

In this regard I find that the Anti-dumping duty were required to be paid in case of the Country of Consignment(Export) was European

Union. Therefore the submission that non mention of export from Russia in the contract and letter of credit is relevant not proper, especially when the re-manufactured import document such as invoice, packing list, bill of lading and certificate of origin mentioning the facts that the goods were transported from Russia to Finland by rail and thereafter transshipped on to a vessel at Finland for onward movement to India were showed to defraud the payment of the Anti-dumping duty.

- (vi) Submission that in similar case, the Additional Commissioner in OIO No. KDL/ADC/Binoy/174/GR-II/2011 dated 31.1.2011, have held that the evidence on record does not indicate that either importer or the intending agents at any time were aware or had any knowledge of the transaction between Russian producer and inland parties and that the based on records provided by the supplier, the importers believed that the goods were initially transported by rail from Russia and there was transshipment at Finland and accordingly there is no suppression of facts or manipulation of documents on the part of importers and hence invocation of larger period is not applicable.

I find that in present case, as discussed in detail above, there are sufficient evidence on record to indicate that the importer or the intending agents at that time of import were aware or having knowledge of the transaction between Russian producer and Finland based on records provided by the supplier/ importers. From the records obtained during the investigations clearly establishes fact of suppression or manipulation of documents on the part of importers and hence invocation of larger period is applicable. The facts of the earlier similar case decided by the Additional Commissioner in OIO No. KDL/ADC/Binoy/174/GR-II/2011 dated 31.1.2011 can not be made applicable as subsequent to this OIO, in another OIO No. KDL/ADC/SS/1562/GR-II/2013 dated 29.11.2013, who relied on the similar earlier OIO dated 31.1.2011, the Department have preferred an appeal with the Commissioner (Appeal), Kandla on 03.03.2014 against the dropping the charges against CHA/Director of CHA.

- (vii) Submission that the Russian manufacturer JSC, Kazanogsintez had supplied the goods to a party in Finland namely Nordica Re (Finland) Oy who had warehoused the said goods in Finland and from there released the same to Kolmar Group Ag who in turn supplied the same to them and therefore the goods were exported from Finland is

incorrect. That the SCN overlooked that facts that the National Board and Customs, Finland itself stated that the party at Finland have been entered as goods in T1 warehouse. That as per European Customs Code, the movement from non community goods from T1 warehouse does not constitute export from Finland. That the goods were only in transit via Finland and were not customs cleared in to Finland/EU. Therefore, the said goods can not be said to be exported from Finland.

As seen from the overseas investigation reports, there are no evidence that the Russian manufacturer JSC, Kazanogsintez had sold the goods to any Indian buyers and which in turn were the supplied Indian buyers. Also no any Indian buyers (noticee) submitted any proof of having any contract/sale agreement/payment made etc. with the Russian suppliers. Also from the reports of overseas investigation agency, it clearly shows that the goods were sold to a party in Finland namely Nordica Re (Finland) Oy, who had warehoused the said goods in Finland. Similarly no evidence of any contract/sale is produced by the noticee that the said receipt by Nordica Re (Finland) Oy were, on behalf of Indian importer or Kolmar Group Ag, who after receipt of the same at Finland released the same to Kolmar Group Ag and then claimed to have supplied the same to Indian buyer. Also noticee had not furnished any evidence for the said chain except insertion portraying of wording in B/L, invoice etc. In view of the above, the contention that the National Board and Customs, Finland stated that the party at Finland have been entered as goods in T1 warehouse and as per European Customs Code, the movement from non community goods from T1 warehouse does not constitute export from Finland, etc., which were law prevailing in European Union, have no relevancy when the goods were already arrived in Finland before entering in to contracts for the subject import goods. Therefore, it is clear that the goods were exported from Finland.

- (viii) They have relied upon the case law of M/s Shubham Marketing Services Pvt Ltd v/s CC 2007 (209) ELT 303 and M/s Century Laminating Company Ltd v/s CC 2009(240)ELT 423.

I find that at the time of deal, the goods were already lying at Finland. I find that Bill of Lading No. 2401 dated 26.02.2009 (*place and date of issue are specifically declared as RAUMA, 26th February 2009 in BL*) shows date of issuance as 26.02.2009 and it contains reference of LC opened on 24.03.2009 i.e. almost a month later. Similarly Bill of

Lading No 3001 dated 10.05.2009 (*place and date of issue are specifically declared as RAUMA, 10th May 2009 in BL*) shows date of issuance as 10.05.2009 and it contains reference of LC issued on 29.05.2009 *i.e.* 19 days later. This could have been possible only if the documents viz. Commercial Invoice and Bills of Lading purported to be issued on the date of loading of the goods were actually re-manufactured later for inserting purposefully prepared wordings regarding clause of transportation of goods from Russia to European Union to show country of export as Russia. This also proves from The fact that the relevant clause of the LC was amended from "any Russian port" to "any port in Finland" coupled with the facts that vessel was nominated immediately on confirmation of sale of the goods on *i.e.* 18.02.2009, and thus they were fully aware that the subject goods were lying in Finland at the time of deal for purchase of the subject goods and were to be loaded / exported from there *i.e.* Finland. The movement of the goods from Russian to Finland was not caused by the Sale Contract between M/s. Kolmar Group Ag, Switzerland and M/s Sanjay Chemicals (India) Private Limited. The subject goods had already been purchased and transported to Finland much before the same were sold to M/s Sanjay Chemicals (India) Private Limited. This was evident from the rail receipts pertaining to said transportation, which though in Russian Language, carry dates in English.

The facts of the in present case clearly established that goods were already transshipped from Russia to Finland before entering in to contract by the noticee with Kolmar Group Ag . The Russian Company send/sold the goods in the name of Nordica Re (Finland) Oy, a Company in Finland. Also there is no evidence that the Indian importer had entered in to contract or any sale invoice raised by the Russian manufactured or Nordica Re (Finland) Oy, and Ste. Escord SARAL, a Company of Finland to whom goods were supplied/sold. Accordingly, the country of export was Finland. Therefore, the facts in the present case and the case laws referred above by the noticee are different and can not be applicable in present case.

- (x) Submission that penalty under Section 112(a)/114A/114AA is not applicable.

From the above facts, I find that the Director of the noticee Company were having full knowledge of the country of export was

Finland but intentionally not declared the same in the Bills of Entries filed by them through their CHA M/S ACT Shipping Ltd. Therefore, I hold that the penalty is liable to be imposed upon them under section on them under Section 112(a) and under 114A/114AA upon the Director of the Company.

24.2 M/s. Meteor Pvt. Ltd., 72, Jolly Maker Chamber No. 2, Nariman Point, Mumbai – 21 and Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd., (noticee no.3 and 4),

The noticee filed reply vide their letter dated 21.05.2013 and letter dated 22.7.2013. Further, in reply to letter dated 27.12.2013 of the personal hearing, the noticee vide their letters dated 16.01.2014, send the copy of their earlier reply letter dated 21.05.2013 and 22.7.2013 requested to decide the matter on this basis and they do not want the personal hearing.

The noticee filed reply letters dated 21.5.2013 and 27.05.2013. Shri Varghese Mathew, Branch Manager of company sent reply dated 27.5.2013. By and large, both replies are similar, in-teralia other matter, states that ;

(i) Submission that they were carrying business as a representatives in India for Kolmar Group Ag of Switzerland i.e foreign supplier in present SCN. On behalf of foreign supplier, they locate on their behalf the prospective buyers in India for the goods which the foreign supplier is interested in selling to buyers in India. That once terms of the transaction are finalized, the foreign supplier issue contract in favour of Indian buyer. In February, 2009, the foreign supplier asked us to find out buyers in India for "Acetone" of Russian origin. That after locating prospective buyers in India for "Acetone" of Russian Origin, we reverted to foreign supplier and it was represented by foreign supplier to us that Acetone to be supplied would be one which manufactured in Russia and which would be originate and transported fro Russia by rail and further that that since Russia is landlocked country, the goods would be transshipped at Finland for onward transport to India. That Acetone exported from European Union attracted anti-dumping duty, they had made inquiry with two Customs House Agents at Kandla and Mumbai to ascertain whether, if as represented by foreign supplier, the Acetone originating and

transported from Russia by rail is transshipped at Finland, there would be any anti-dumping duty on account of fact that Finland was a country in the European Union. That we were told by the said Customs House Agents that mere transshipment at a country in European Union would not attract anti-dumping duty if the goods are loaded at and transported from Russia and the fact of transshipment at Finland should be clearly mentioned in the import documents including Bill of Lading. That this advice were given by the Customs House Agent at Mumbai after inquiry with an Assistant Commissioner of Customs, Mumbai. That accordingly email dated 16.2.2009 have referred import of Acetone **ex-Russia** if the goods are transported from Russia and transshipped at Europe is reflected in Bill of Lading, there would be no anti-dumping duty. That in email they had made clear that if any anti-dumping duty is levied because of the **transshipment at Europe**, the same would have to be born by the foreign supplier. Accordingly, the Bill of Lading showed Acetone from Russia to Kotka and Rauma to Kandla via Rottordam which were read as under ;

" Cargo has been loaded by railway from Novokuibyshevsk, Russia to Kotka/Rauma, Finland for shipment on to M/T TBN for shipment to Rottordam and further transshipment there on to MT TBN Kandla, India". The said facts also shows by e mail dated 17.2.2009.

That subsequent to aforesaid correspondence, the foreign supplier supplied the Acetone to Indian buyer to whom the present show cause notice has been issued. That e mail dated 13.2.2009 was a specimen/example relating to some other shipments which had nothing to with present import.

In the above contention of noticee, I find that the noticee were carrying business as a representatives in India for Kolmar Group Ag of Switzerland i.e foreign supplier in present case. On behalf of foreign supplier, they locate the prospective buyers in India for the goods which the foreign supplier is interested in selling in India. Once terms of the transaction are finalized, the foreign supplier issue contract in favour of Indian buyer. In February, 2009, the foreign supplier asked them to find out buyers in India for "Acetone" of Russian origin. Thereafter locating prospective buyers in India for "Acetone" of Russian Origin, they reverted to foreign supplier and it was represented by foreign supplier to us that Acetone to be supplied would be one which manufactured in Russia and which would be originate and transported from Russia by rail and further that that since Russia is landlocked country, the goods would be transshipped at

Finland for onward transport to India. The noticee were clearly knowing the facts that Acetone exported from European Union would attract anti-dumping duty. Therefore, they had made inquiry with two Customs House Agents at Kandla and Mumbai to ascertain whether, if as represented by foreign supplier, the Acetone originating and transported from Russia by rail is transshipped at Finland, there would be any anti-dumping duty on account of fact that Finland is a country in the European Union. They were told by the said Customs House Agents that mere transshipment at a country in European Union would not attract anti-dumping duty if the goods are loaded at and transported from Russia and the fact of transshipment at Finland should be clearly mentioned in the import documents including Bill of Lading. This advice were given by the Customs House Agent at Mumbai after inquiry with an Assistant Commissioner of Customs, Mumbai. One of the Customs House Agent was M/S ACT Shipping Ltd, Kandla. As regard to inquiry with Assistant Commissioner, no name of such Customs Officer were given.

Further I find from the statement dated 10.6.2010 and 21.6.2011 of Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd., wherein he, interalia, stated that:-

In Mumbai he and Shri Shiv Shankar contacted Shri Jayant Lapsiya of M/s. U. M. Khona & Company and at Kandla they contacted Shri T. V. Sujan of M/s. ACT Shipping Ltd. With the knowledge of the Indian customers, they requested M/s. Kolmar for inserting the wordings in documents indicating that the goods were transshipped at Finland and therefore, M/s. Kolmar inserted wordings showing that the said consignments were sent to Finland from Russia by train and then loaded at Kotka/ Rauma ports in Finland, which were further transshipped.

He was not aware as to when and in whose name the said consignments were sent to Finland.

When he was shown page No. 51 of file number ISB 974, taken over by DRI under Panchnama from his office. It was a print out of e-mail sent by Mirela Domenig to them on 17/02/2009.

- The corrections made in the wordings in the above mentioned print out for showing the same on import documents, were in his own handwriting and it was made on the advice of the customers but he could not recollect name of that customer. The corrections suggested by the above mentioned customers were made under the impression that the material was transshipped at Finland.

- It was true that after that amendment it was informed to Kolmar vide e-mail dated 17/02/2009 time 6.07 pm (print out lying at page No. 53 of the said file).

When he was shown page No. 51 of file number ISB 974, taken over by DRI under Panchnama from their office. It was a print out of e-mail sent by Mr. Vishal Somani of M/s. Akin Chemicals to them on 19/02/2009 time 1.04 pm. The said mail was in respect of wordings to be written on Bills of Lading.

- The said mail was in reply to their mail dated 19/02/2009 time 11.04 am, vide which they had sent draft B/L to customers for approval. Vide the said reply the customers had shown their doubt as to whether they will get clean chit from customs for the same.
- He was aware of the fact that import of Acetone when the country of export was Finland attracted antidumping duty under Notification No. 33/2008.

When he was shown page No. 39 of file number ISB 974, taken over by DRI under Panchnama from their office. It was a print out of e-mail sent by them to Mr. Bob Raber on 16/02/2009 time 5.36 pm. This mail was in respect of levy of antidumping duty.

- Mr. Bob Raber was a trader (an employee) in Kolmar who handled Acetone. After discussing with the clearing agents, he had informed Mr. Bob Raber the gist of the discussions with the clearing agents and the response of the customers. He had also informed him that in the event of levy of antidumping duty because of transshipment at Europe, it was to be borne by M/s. Kolmar. It was written on the instance of the above mentioned customers. Bob Raber did not reply the same and he did not follow up the matter with him.

When he was shown copies of Rail Receipts lying at page number 217 to 251 in file number ISB 1002, which was taken over by the officers of DRI from the office of M/s. Meteor Pvt. Ltd., Mumbai, under Panchnama dated 21/04/2010, during search operation.

- As those documents were in Russian language, he could not read names of supplier and receiver.
- As there were many dates mentioned in the Rail Receipts, he was not able to ascertain the date of issuance.

- The negotiations for the first consignment initiated on 17/02/2009 or one/ two days before it. In respect of second consignment the negotiation commenced on 18/05/2009 or one/ two days before it.
- The date of loading from Russia could not be made out from the said Rail Receipts. However, the dates mentioned in the above discussed Rail Receipt were not matching with the dates of negotiations between Meteor and the importers.

When he was shown letter No. 07-153/0548 dated 01/02/2010 issued by S. V. Typin, Deputy Head of Central Enforcement Department, FCS, Russia along with its free English translation and enclosures.

- The said letter stated that the data has not reflected any direct exports of acetone from Russian Company JSC "Kazanorgsintez" to Indian buyers and in general to India from 01/01/2005 to 15/12/2009 and that during the said period JSC "Kazanorgsintez" delivered acetone to Finland for a number of companies for instance, "Nordica Re (Finland) Oy" where final port of delivery was Rauma, Finland.
- The said letter also states that the certificate of origin No. 9049000020 dated 01/04/2009 was issued on the basis of addendum to contract No. 752/00203335/80078 dated 07/07/2008 between JSC "Kazanorgsintez" and "Nordica Re (Finland) Oy" and 12 invoices against said contract.
- The copies of invoices enclosed with the said letter were in Russian so he was not able to verify the documents. However, he could read the wording Kazanorgsintez and Nordica Re (Finland) Oy.

When he was shown copy of a letter No. 07-153/0937 dated 12/02/2010 issued by Mr. A.V. Ivanov, Head of Central Enforcement Department, Russia and its free English Translation.

- The said letter states that OOO "Samaraorgsintez" has not made any direct deliveries of acetone to India and that according to the contract between OOO "Samaraorgsintez" and French company "ECORD Sari" No. 04/09-n dated 20/01/2009, acetone was dispatched to Finland port Mussalo.
- M/s Meteor Pvt. Ltd. was the local representative of Kolmar in India.

When he was shown page No. 39 of file number ISB 974 which was taken over by the officers of DRI from the office of M/s. Meteor Pvt. Ltd., Mumbai, under Panchnama dated 21/04/2010, during search operation.

- M/s. Kolamar informed that the consignment would be transshipped at Finland and they informed the same to the importers. The importers in turn enquired with them as to whether that transshipment will be interpreted as Country of Export. Therefore, they checked with the clearing agents and one of the trustees of Mumbai Port. The gist of the discussion was forwarded to Kolmar by the e-mail dated 16.02.2009. I also informed the same to the importers telephonically.
- He had sent the said mail to Mr. Bob Raber who was the trader (employee) in Kolmar.

On being asked to clarify that the Rail Receipts showed the dates which are not matching with the indenting and supply of the subject consignments and the same also showed names of parties other than subject importers, could it then be considered as "transshipment", he stated that

- At the time of conclusion of the deal Meteor was not having copies of Rail Receipts. The same were provided later.

I find that above replies clearly established the involvement of the Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd. as well as M/s. Meteor Pvt. Ltd. for the above conspiracy of the evasion of the Anti-dumping duty by way of showing the same as Russian origin and transmission to Finland and then sending the same to India instead of the same being exported from Finland. Therefore, their above submission to drop the charges are not sustainable.

24.3 M/s. ACT Shipping Ltd., Room No. 206-207, Seva Sadan No.2, New Kandla, Shri T. V. Sujan, Director of M/s. ACT Shipping Ltd., and Shri Thomas Varghese, Sr. Executive of M/s. ACT Shipping Ltd., (noticee no. 5,6 & 7),

M/S ACT Shipping Ltd(CHA) and Shri T. V. Sujan, Director of M/S Act Shipping Ltd, Mr Thomas Varghese, Sr. Executive of M/S Act filed their reply (noticee No.) vide their letter dated 12.09.2013 through their Advocate Shri Jaydeep C Patel, Advocate, filed the written reply. They also filed further submission dated 24.01.2014, as stated at the time of personal hearing made on 20.01.2014. In the above replies letters dated 12.09.2013 and 24.01.2014, interalia other matter, stated ;

(i) Submission that as a CHA, they have filed the two warehouse Bill of Entries i.e. No. 283310 dated 8.4.2009 and 295765 dated 24.6.2009 in respect of the import of Acetone at Kandla per vessel M.T. "Bow Saga" and "Bow Star" which was imported by them from Kolmar Group Ag, bases on the import documents such as Bill of Lading, Invoice, Packing List received by the importer from foreign supplier. That the goods have been loaded by Railway from Russia to Rauma, Finland where the same were loaded on to M.T. "Smeraldo" and M.T. "Heinrich Essberger" for transport on to MT "Bow Saga" and "Bow Star" at Rottordem for further shipment to Kandla. They have filed Warehouse Bill of Entry and Ex-Bond Bill of Entry after scrutiny of the documents and country of origin and country of export since the goods attracted the Anti-dumping duty if originated in or exported from European Union.

I find that the above contention of the noticee are not tenable because, as a CHA, while filing the W/H B/E and Ex-Bond B/E, the country of consignment is a vital information and the same are required to be filled as statutorily prescribed in Form 23 i.e Bill of Entry for Warehousing and Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962. I find that the all W/H B/E and Ex-Bond B/E filed by all the noticee through their Customs House Agent, M/S ACT Shipping Ltd, the column "Country of Consignment (if different) and Code" have intentionally not filled and left blank. This inaction clearly showed their intention to evade above levy of anti-dumping duty @ USD 277.85 MT leviable as per Notification No 33/2008-Cus dated 11.03.2008.

I also find that in their reply with regard to leaving the Country of Consignment field blank in the Bills of Entry, it remained blank by mistake. I find that the noticee were aware that both the fields i.e., pertaining to "Country of Origin" and "Country of Consignment" in the Bills of Entry were equally important since even though the goods of Russian origin, if said goods were exported from European Union, attracted Anti-dumping duty under Notification No. 33/2008-Cus dated 11.03.2008, under Sr. No. 20.

I also find from the documents recovered from M/s. ACT Shipping Ltd. they had mentioned the country of consignment as Finland in Job No. 0018445 (print date 02.04.2009 prepared for filing Bill of Entry in respect of 525 MT of Acetone imported per vessel MT Bow Saga which are available at

page No. 365 of file recovered from the premises of M/s. Sanjay Chemicals (India) Private Limited under Panchanama dated 21.04.2009. It clearly shows that CHA M/s. ACT Shipping Ltd. had not left the field of country of consignment blank by mistake but, they had deliberately deleted it from the ICEGATE Job / Checklist prepared for the subject consignments. Thus, it is evident from the above discussed facts that same were done with an intention to evade payment of antidumping duty, M/s. ACT Shipping Ltd. in collusion with M/s Sanjay Chemicals (India) Private Limited and M/s. Meteor Pvt. Ltd., Mumbai, diligently and knowingly hatched a conspiracy to suppress the actual country of export.

Thus the defense contention of the above noticee that they have filed Warehouse Bill of Entry and Ex-Bond Bill of Entry on the basis of documents provided to them by the importers and after scrutiny of the documents especially in respect of country of origin and country of export is not correct.

(ii) With regard to their submission on the advise given by them to the importer as mandated under Regulation 13(d) of the CHALR 2004. They submitted hat at the time of giving advice, it was clearly told to the importer that they should follow it properly as seen from the extract of the statement given below to DRI on 13.01.2012 ;

Statement Page (1) & (2),

Quote.

"Said clearing agents advised that transshipment would not attract antidumping duty, however, Kolmar would have to provide the following documents,

(1) The Certificate of origin issued by Russian Federation and

(2) All documents including Bills of lading showing the means of transport and route from Russia to Kandla, including rail transport".

Unquote.

In this regard I find that, as discussed in pre-para, there were number of discrepancy i.e.(i) showing L/C no in the Bill of Lading which were not opened at the time of date of preparation of the said Bill of Ladings,(ii) mention of shipper as a Russian Company when there were no any evidences about any contract/deal by Russian Company with Indian importers., etc., they have not properly advised the importers, on whose

behalf filed the Bills of Entry filed by them, with regard to the correct declaration of "Country of Export" , "Country of Consignment(if different) and code" or to bring in to the notice of Dy/Assistant Commissioner, as required under Regulation 13(d) .

(iii) Submission that Russia was a landlocked country, the advise given by them was correct.

I find that even the Russia was land locked country, when the goods already arrived at Finland on the date of contract and also as revealed from the statements recorded. I also find that there were no any evidences about any contract/deal by Russian Company with Indian importers, Thus, it can not be said that advise given by the CHA was correct.

(iv) Submission that not only they advised to the importer but also the clearing agent at Mumbai Shri Jayant Lapasia of M/S U M Khona & Co also given the same advise after due consultation with Mumbai Customs as stated by Shri Verghese Mathew of M/S Meteor Pvt Ltd in his statement dated 10.6.2010. Further it is also evidence from e mail dated 16.2.2009 sent by Mr Vagheshe Mathew to Mr Bob Rober.

The above arguments of the noticee that not only they advised to the importer but also the clearing agent at Mumbai Shri Jayant Lapasia of M/S U M Khona & Co also given the same advise after due consultation with Mumbai Customs is not acceptable. As a CHA, they are required to make correct declaration while filing Bills of Entries. Therefore, the above defence is not tenable.

(v) They relied upon the case law (i) Prime Forwarders v/s CC 2008 (222) ELT 137 (ii) World Cargo Movers v/s CC 2002 (139) ELT 408 and (iii) Ashok Jaiswar v/s CC 2006 (200) ELT 122, wherein it is held that when the CHA acts based on the documents provided by the importer and filed Bill of Entry based on such document without having any knowledge of any alleged illegality/mis-declaration, the question of imposition of penalty on CHA does not arise.

I find that the above case laws i.e. (i) Prime Forwarders v/s CC 2008 (222) ELT 137 relates to mis declaration of description "Brass Scrap"

instead of actual found to be "Ferro- Titanium" which is not issue in the present case (ii) World Cargo Movers v/s CC 2002 (139) ELT 408, is of over invoicing of the export goods for which the Shipping Bill were filed based on the records received and (iii) in case Ashok Jaiswar v/s CC 2006 (200) ELT 122, the same relates to export declaration signed by the CHA wherein the fraud in drawback claim was made and in such cases the penalty on CHA was waived. However, in the present case, the CHA/Director/employee have wrongly advised the importers in respect of insertion of the wordings in import documents so as to show that the goods were exported from Russia to Rauma in transit for onward transmission to India when the goods were already arrived at Rauma, Finland. Thus instead of country of export/consignment were "Finland", they tries to show it from Russia in order to evade the payment of the Anti-dumping duty. Also in all the B/E filed by them on behalf of the importers, the column "Country of Consignment" have intentionally left blank so as to avoid attraction of the Anti-Dumping duty. Accordingly, these case laws cited above can not be made applicable in present case.

(vi) Submission that the SCN overlooked that facts that the National Board and Customs, Finland itself stated that the party at Finland have been entered as goods in T1 warehouse. That as per European Customs Code, the movement from non community goods from T1 warehouse does not constitute export from Finland. That the goods were only in transit via Finland and were not customs cleared in to Finland/EU. Therefore, the said goods can not be said to be exported from Finland.

I find that the noticee had not furnished any evidence/documents for the said chain, except insertion of wording in B/L, invoice etc.,. In view of the above, the contention that the National Board and Customs, Finland stated that the goods at Finland have been entered as goods in T1 warehouse and as per European Customs Code, the movement from non community goods from T1 warehouse does not constitute export from Finland, etc., which were law prevailing in European Union, have no relevancy when the goods were already arrived in Finland before entering in to contracts for the subject import goods. Also the documents do not showed that goods storage in the Tank at Finland were in the name of Kolmar Group Ag/Noticee. Therefore, it is clear that the goods were exported from Finland.

(vii) Submission that entire demand of duty is time barred as the Bills of Entry were filed in 2009 and the SCN is issued on 31.3.2013.

As discussed about the re-manufacture of import documents and insertion of country of export as Russia instead of Finland. This is prove from the fact that the Bills of Lading were re-manufactured on these lines later on for inserting purpose fully prepared wording regarding clause of transportation of goods from Russia to European Union to show country of export as Russia and thus portrayed M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) as supplier and Development Credit Bank Ltd, and M/s. Sanjay Chemicals (India) Private Limited as Notify Party. I find from the scanned / mailed copies of said **signed** BL which were received by M/s. Sanjay Chemicals (India) Private Limited through M/s. Meteor Pvt. Ltd., Mumbai via email dated 08.04.2009 (10:05:49 AM). I find that by that time, details of Letters of Credit were available, the same were also mentioned in the Bills of Lading prepared in active connivance of M/s. Kolmar Group Ag, Switzerland, Importer M/s. Sanjay Chemicals (India) Private Limited and M/s. Meteor Pvt. Limited.

Further, the Bills of Lading in both the imports were Charter Party Bills of Lading. Charter party Bills of Lading are issued on the basis of Charter Party (Contract) between the supplier of the goods and owner of the vessel. In all the Bills of Lading the charter party / contract of affreightment were mentioned between M/s. Kolmar Group Ag, Switzerland and Odfjell Tankers. In spite, M/s. Kazanorgsintez, Russia (or OOO Samaraorgsintez, Russia) was portrayed as supplier which is contrary to the Norms of Charter Party Bills of Lading. M/s. Sanjay Chemicals (India) Private Limited were aware of these things and actively connived with M/s. Kolmar Group Ag, Switzerland and M/s. Meteor Pvt. Ltd., Mumbai in manufacturing Bills of Lading and other import documents in falsely showing **KAZANORGSIINTEZ SC 420051, BELOMORSKAYA 101 KAZAN, RT, RUSSIA** as Shipper and that the goods were imported directly from Russia and the Country of Consignment was suppressed in both the Bills of Entry by leaving the said field blank in collusion with CHA M/s. ACT Shipping Ltd.

I find that the country of consignment is a vital information and the same are required to be filled as prescribed in Form 23 i.e Bill of Entry for Warehousing and Form 24 i.e. Bill of Entry for Ex-bond clearance,

prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962. I find that the all W/H B/E and Ex-Bond B/E filed by the noticee through their Customs House Agent, M/S ACT Shipping Ltd, the column "Country of Consignment (if different) and Code" have intentionally not filled and left blank. This inaction clearly showed their willful mis-statement with intention to evade above levy of anti-dumping duty @ USD 277.85 MT leviable as per Notification No 33/2008-Cus dated 11.03.2008.

The contention that they had entered in to contract with Kolmar Group Ag and the letter of credit was issued in their favour but I find that nowhere the mention of any contract/communication with Russian supplier claimed as "Shipper" in B/L. I find that the email correspondence clearly establish any willful mis-statement or suppression of their part in the present case. Mere facts that the bill of lading showed the Russian producer as a shipper can not change the material facts of goods lying at Finland at the time of contract. The noticee were clearly aware of the alledged transaction between the Russian producer and Finland party. Therefore, show cause notice dated 31.3.2013 served upon them in April, 2013, even after six months period of 2009, is proper as the same is issued invoking extended period of demand under section 28(4) on account of willful mis statement and suppression of above facts in this case.

(viii) That the warehouse Bill of Entry was finally assessed after accounting the goods as per Section 72 of the Customs Act, 1962 and the relevant records are with Bond Department.

When the investigation showed that the country of export was "Finland" and when the column "Country of consignment" intentionally left blank in order to avoid the payment of the Anti-dumping duty, the arguments of the noticee that the warehouse Bill of Entry was finally assessed by the officer can not absolve them from such failure. I find that the department have taken action of recovery by virtue of issue of the show cause notice in the present case. Thus present argument is irrelevant.

(ix) Submission that as per the movement of the goods from Kazan/Russia to Rauma/Finland, at Rauma, the goods were warehoused under T-1 status and as per EU Council Regulation (EEC) No. 2913/92, the goods were divided to two category (a) Non-Community goods and (b)

Community goods. That the goods were warehoused at Finland as Non-community goods and not sold to any body in Finland through the nominated agents/distributors such as M/S Nordica Re (Finland) and Ste. Ecord SARL and/or warehoused through help of warehouse owner Telco Oy and Oiltanking Sonmarine Qy. That the Certificate of warehousing dated 31.5.2010 for 1053.560 MT , 11.6.2010 for 1048.956 MT and certificate dated 11.6.2010 for 950.093 MT which were with endorsement of Rauma Customs stating that ;

"Product delivered in transit via Finland by rtcs* from Russia for further shipment by vessel. It is hereby certified that the goods stated above were non customs cleared in to Finland/EU but were stored at Telco Oy customs storage and shipped at T1 status. * Rail Tank Cars."

In this regard, I find from the overseas investigation reports, there are no evidence that the Russian manufacturer JSC, Kazanogsintez had sold the goods to any Indian buyers and which in turn were the supplied the goods to a party in Finland namely Nordica Re (Finland) Oy, who had warehoused the said goods in Finland. Similarly no evidence of any contract/sale is produced by the noticee that the said receipt by Nordica Re (Finland) Oy on behalf of Indian importer or Kolmar Group Ag, who after receipt of the same at Finland released it to Kolmar Group Ag who claimed to have supplied the same to Indian buyer. Also noticee had not furnished any evidence for the said chain except insertion of wording in B/L, invoice etc. In view of the above, the contention that the National Board and Customs, Finland stated that the party at Finland have entered as goods in T1 warehouse and as per European Customs Code, the movement from non community goods from T1 warehouse does not constitute export from Finland, etc., which were law prevailing in European Union, have no relevancy when the goods were already arrived in Finland before entering in to contracts for the subject import goods. Therefore, it is clear that the goods were exported from Finland.

(x) Submission that the goods were never a part of European Union(EU) i.e Finland. Finland was used as a transit point as Kazan in Russia was a landlocked province/country.

As seen from the records and investigation, the goods were already arrived at Finland a part of European Union. I find that the goods were already

arrived and sold to European Company by the Russian Company at the time of entering in to contract. Thus, there can not be said to be goods in transit or in land locked country.

(xi) Submission that M/S Meteor India Pvt Ltd, Mumbai informed their principals i.e. M/S Kolmar Group Ag at Switzerland about investigation initiated by DRI and to find out legal aspect of the issue. That in this contact M/S Kolmar Group Ag appointed M/S Ernst and Young Oy Finland to advise them the legal position, for which, they have issued a certificate dated 20.8.2010, which clearly establish that Acetone in Question has not been exported from European Union to India. That there is case of cross border movement of goods for further transshipment to a third country, a producer/trader appoint an agent at transshipment point who in turn, handle every thing in his name on behalf of the producer/trader. Tin this type of transaction, there may be several entities involved. However, since the cargo has not been cleared in to European Union(EU), in this case, Finland, the cargo can not be said to have been originated and/or exported from Finland, and as such, anti-dumping duty is not leviable.

I find from the records and investigation, the Russian Company send/sold the goods in the name of Nordica Re (Finland) Oy, a Company in Finland and Ste. Escord SARAL, a Company of Finland. Also there is no evidence that the Indian importer had entered in to contract or any sale invoice raised by the Russian manufacturer or Nordica Re (Finland) Oy, and/or Ste. Escord SARAL, a Company of Finland. Therefore,. the goods were a part of European Union, Finland because the goods were already arrived and sold to European Company by the Russian Company. Thus the cargo were cleared in to European Union(EU), in this case, Finland and therefore such a certificate dated 20.8.2010 of M/S Ernst and Young Oy Finland issued on advise by M/S Kolmar Group Ag can not change the factual and legal position of the case.

(xii) Submission that It is a common practice international Trade to import goods in to country and store the same in Customs bonded Warehouse. The goods stored in the bonded warehouse can not be said to have crossed customs frontiers, and are deemed have been kept outside Customs Frontier of the Country. They have relied upon the case law of Hotel Ashoka v/s Asst. Commissioner of Commercial Tax in Civil Appeal No. 2560

of 2010 and also reported in 2012(276) E.L.T. 433(S.C.) and stated that Anti-dumping duty is not applicable.

I find that even though there being a common practice international Trade to import goods in to country and store the same in Customs bonded Warehouse, the present warehoused not belong to importer noticee as at a material time of warehousing. The Russian Company send/sold the goods in the name of Nordica Re (Finland) Oy, a Company in Finland and Ste. Escord SARAL, a Company of Finland. Also there is no evidence that the Indian importer had entered in to contract or any sale invoice raised by the Russian manufacturer or Nordica Re (Finland) Oy, and/or Ste. Escord SARAL, a Company of Finland. Thus the argument that the goods stored in the bonded warehouse can not be said to have crossed customs frontiers, and are deemed have been kept outside Customs Frontier of the Country is irrelevant in the present case. As regard to the case law of Hotel Ashoka v/s Asst. Commissioner of Commercial 2012(276) E.L.T. 433(S.C.), the same relates to sales tax on the imported goods sold by the duty free shop. The facts in present case and this case law referred are different and can not be made applicable.

(xiii) Submission that they do not had any knowledge of the fact that Russian manufacturer had supplied the goods to parties in Finland who had warehoused the said goods in Finland and from there released to Kolmar Group Ag who in turn supplied the same to the said Indian importer.

As per the statement dated 10.6.2010 of Shri Varghese Mathew of M/S Meteor Pvt Ltd, the Clearing agent advised them of that the transshipment would not attract anti-dumping duty. Thus it is very clear that they were having knowledge of the fact that Russian manufacturer had supplied the goods to parties in Finland who had warehoused the said goods in Finland and from there the goods were released to Kolmar Group Ag who in turn supplied the same to the said Indian importer.

(xiv) Submission of relying upon the OIO No. KDL/ADC/BINOY/174/GR-II/2011 dated 31.1.2011 wherein penalty proceedings against CHA were dropped and the OIO No. KDL/ADC/SS/1534/GR-II/2013 dated 28.11.2013 passed by the Additional Commissioner of Customs, C.H. Kandla wherein no penalty proposed in the SCN against M/S ACT Shipping Ltd, Shri T.V Sujan,

Director and Shri Thomas Varghese, Senior Executive, were considered/imposed.

The facts of the earlier similar case decided by the Additional Commissioner in OIO No. KDL/ADC/Binoy/174/GR-II/2011 dated 31.1.2011 can not be made applicable as subsequent to this OIO, in another OIO No. KDL/ADC/SS/1562/GR-II/2013 dated 29.11.2013, who relied on the similar earlier OIO dated 31.1.2011, the Department have preferred an appeal with the Commissioner (Appeal), Kandla on 03.03.2014 for the dropping the charges against CHA/Director of CHA.

(xv) Submission that the Section 114AA has been inserted in the Customs Act, 1962(by S 27 of the Taxation Laws(Amendment) Act, 2006 (29 of 2006) w.e.f 13.7.2006) for the purpose to punish those people who avail export benefit without exporting anything which is not in the case here.

From the above facts, I find that the Director of the noticee Company were having full knowledge of the country of export were Finland but intentionally not declared the same in the Bills of Entries filed by them through their CHA M/S ACT Shipping Ltd. They also wrongly advised for the wordings to show as the goods supplied from Russian to Rauma, Finland in transit for supplied to Indian buyer in all the import documents to portray the country of export/consignment were not Finland. The email correspondence and LC amendment application also supports this prior knowledge. Therefore, I hold that the they are liable for penalty under section on them under Section 112(a) and under 114A as a importer/indenter and under Section 114AA upon the Director/Executive of the noticee Company.

(xvi) Submission that in absence of any such knowledge on them and having filed the Bills of Entry in accordance with the import documents furnished to them by the importer, no penalty can be imposed upon them as proposed under section 112(a) or section 114AA of the Customs Act, 1962.

I find that in present case, as discussed in detail above, there are sufficient evidence on record to indicate that the CHA, importer or the

intending agents were aware or having knowledge of the transaction between Russian producer and purchaser at Finland. From the records obtained during the investigations clearly establishes fact of suppression or manipulation of documents, non mentioning of "country of consignment" in all B/E filed by them on behalf of importers as a their CHA. I find that, in the present case, the noticee wrongly advised the importers in respect of insertion of the wordings in import documents so as to show that the goods were exported from Russia to Rauma in transit for onward transmission to India even though the goods were already arrived at Rauma, Finland. Thus instead of declaring country of export/consignment as "Finland", they tries to show it from Russia in order to evade the payment of the Anti-dumping duty. Also in all the B/E filed by them on behalf of the importers, the column "Country of Consignment" have intentionally left blank so as to escape from the Anti-Dumping duty. Therefore, penalty is rightly liable to be imposed upon them under section 112(a) or section 114AA of the Customs Act, 1962

24.4 M/s. India Glycols Ltd., 10, Plot No. 2-B, Sector 126, Noida and Shri Rajeev Sharma, (noticee no. 9 and 19),

(i) Submission of the noticee under their reply letter dated 21.01.2014, wherein interalia other matter, stated that; that the Acetone was purchased by them on bond transfer basis from M/S Traxpro Enterprises Ltd, Kolkatta; that they have purchased the above Acetone, imported by M/S Sanjay Chemicals, as per purchase order dated 17.7.2009 wherein the price was settled at Rs. 42.50 per kgs inclusive of cost of material , storage, basis customs duty, education cess and antidumping duty(except CVD) and they have filed the ex-bond bills of entries as per the directions of the supplier; that particulars of the manufacturer were not supplied by M/S Traxpro Enterprises Pvt Ltd from they have purchased the same; that as per B/L, the country of export of the consignment was Russia as cargo has been arrived via. Rail from Kazan to Russia to Finland; that the noticee were not provided any documents pertaining to the transportation nor B/L or commercial invoice; that the documents were not shared by the supplier; that there is no collusion, mis-statement on their part ; that the CHA of the importer and for them are the same and failed to disclose the country of the shipment/consignment in warehouse B/E as well as in ex-bond B/E.

I find that the country of consignment was a vital information and the same were required to be filled by the noticee through their CHA in Form 24

i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962. I find that the noticee while filing the Ex Bond Bills of Entry for the purchase of goods, have not asked from the in to bond seller owner of the imported goods to provide the country of the consignment of the goods especially when the Anti-dumping duty were existed in respected of the import of Acetone wherein the country of export/consignment was Finland. It was their duty to ask for the documents so as to ascertain the said facts and then file the Ex-Bond Bills of Entry. Thus, there is clear facts of mis-statement/suppression of facts on their part.

(iii) Submission that the goods are not liable for confiscation and relying on the case law of Kabul Textiles v/s Commissioner of Central Excise Goa, 2004(174)ELT 470(Tri-Mum),

As discussed above, when there is clear facts of mis-statement/suppression of facts of the country of consignment in the Ex-Bond Bills of Entry on the part of noticee, such non declaration of the country of consignment" the goods are liable for confiscation. The facts in the present case and the facts mentioned of case law of Kabul Textiles v/s Commissioner of Central Excise Goa, 2004(174)ELT 470(Tri-Mum), are different and can not be applied.

(iv) Submission that the goods are not liable for confiscation and consequently the penalty proposed under Section 112(a) is not applicable and relied upon the case laws of Vudhya Mahadik v/s Commissioner of Customs 2002(145) ELT 204 (Tri-Mum),

As discussed in above para, there were suppression of facts and therefore the goods are liable for confiscation and consequently they were liable for penalty under Section 112(a) of the Customs, 1962. Since in the present case is not of simple mistake but having wilful mis-statement and suppression of facts the goods are liable for confiscation and consequently liable for penalty. Thus case laws of Vudhya Mahadik v/s Commissioner of Customs 2002(145) ELT 204 (Tri-Mum), is not applicable as in present case.

(v) Submission that there is no fraud, collusion or willful mis-statement or suppression of the facts in the present case. The CHA was in knowledge of actual import consignment but not themselves. That the penalty proposed under section 114A is not applicable,

As discussed above, the noticee were required to ask for the documents/to obtain the details about the country of consignment (export) before filing ex-bond Bills of Entry. Thus, there is willful mis-statement or suppression of the facts with respect of "Country of Consignment" in the present case on the part of importer. Therefore they are liable for penalty under section 114A.

(vi) Submission that there is no fraud, collusion or willful mis-statement or suppression of the facts in the present case and hence the demand raised beyond 6 months. i.e. extended period can not be invoked and relies the case laws of Collector of Central Excise, Hyderabad v/s Champher Grugs and Liniments, 1989 (40) ELT 276 (SC) and other subsequent case laws on similar case,

As discussed above, when there is clear facts of willful mis-statement/suppression of facts of the country of consignment in the Ex-Bond Bills of Entry on the part of noticee, For the aforesaid act of mis-declaration, non declaration of the country of consignment" the extended period can be invoked and the goods are liable for confiscation. Therefore, the extended period is rightly invoked for the present demand beyond 6 months. The above failure on the part of the noticee to declare "country of Consignment" in the Bills of Entry filed by them through their CHA and hence extended period can be invoked and the case laws of Collector of Central Excise, Hyderabad v/s Champher Grugs and Liniments, 1989 (40) ELT 276 (SC) is not applicable. Also other subsequent case laws on similar cases can not be made applicable in the present case.

(vii) Submission that the penalty proposed under section 112(a) and 114AA is not applicable,

As discussed above, there are willful mis-statement or suppression of the facts with respect of "Country of Consignment" in the present case on

the part of importer. Therefore they are liable for penalty under section 112(a) and 114AA.

(viii) M/s. India Glycols Limited, in para 16 of their reply dated 17.01.2014, have represented that they have paid the anti-dumping duty of Rs. 2,66,180/- with interest thereon of Rs. 1,87,356/- totaling Rs. 4,53,536/- and produced the copy of TR-6 No. 1636 dated 4.12.2013. I find that when I hold that the Anti-dumping duty on the imported goods is liable to paid, the above said payment is also liable to be appropriated against their such duty liability.

24.6 The other various noticees i.e. noticee M/s. Brij Lal Jain and Sons, Shri Anil Dahiya of M/s. Brij Lal Jain & Sons, (noticee no. 8 and 18) vide their letter dated 31.8.2013, M/s. IOL Chemicals & Pharmaceuticals Ltd., and Shri Harish Dania of M/s. IOL Chemicals and Pharmaceuticals Ltd, (noticee no. 10 and 20) vide their letter dated 20.1.2014, M/s. Mody Chem, and Shri Biren Girish Sitwala of both M/s. Mody Chem and M/s. Mody Enterprises (Sr. No. 11 and 21) M/s. Mody Enterprises, Ahmedabad, (noticee no. 12) vide their letters dated 23.12.2013, M/s. Pioneer Chemical Industries, and Shri Gopal Rameshbhai Bhatt of M/s. Pioneer Chemical Industries, Gandhidham (noticee no. 14 and 23) vide their letter dated 31.8.2013 and 16.1.2014, M/s. Pon Pure Chem (P) Ltd., and Shri Subramaniam Mahadevan of M/s. Pon Pure Chem (P) Ltd., (noticee no. 17 and 26) vide their letter dated 31.8.2013, M/s. Satish Chemical India Pvt. Ltd., and Shri Rajeev Kumar Garg of M/s. Satish Chemical India Pvt. Ltd., (noticee no. 15 and 24) vide their letter dated 31.8.2013, M/s. Solvochem, and Shri Akhilesh Kumar of M/s. Solvochem, Delhi, 3, PNB Road Main Bazar, Zirakhpur, District Patiala, Punjab (noticee no. 16 and 25) vide their letter dated 31.8.2013, in pursuance of letter dated 27.12.2013 fixing hearing on 20.01.2014, have filed their reply through their Advocate Shri Anil Balani. Shri Balani, Advocate, again sent a letter dated 20.1.2014 waived the personal hearing against the above noticee and stated that their clients have already filed written replies and that their client have purchases Acetone from M/S Sanjay Chemicals I) Ltd on high seal sale basis and to drop the demand on the basis of their submissions. Shri Balani, Advocate, while filing reply on behalf of above noticee, interalia other matter, stated that;

(i) Submission that their clients are ex-bond importers; that the order for the import was placed by M/S Sanjay Chemicals ; that they were original importers of the goods who filed the Warehouse (in to bond) Bill of Entry, that the import in India was arranged by M/ Sanjay Chemicals, that their client only purchased the goods from M/S Sanjay Chemicals and filed Ex-Bond Bill of Entries for removal of goods, that their clients were not involved in any activity prior there to, that my clients have acted bonafide, in good faith and in normal course of their business, that the details/particulars in Ex-Bond Bill of Entries were made as given in warehouse bill of entry by M/S Sanjay Chemicals, that the country of consignment were left blank in the Warehousing Bill of Entry, hence the same was also left blank in the Ex-Bond Bills of Entries.

I find that the country of the consignment(export) is important for the purpose of the levying Anti-dumping duty. I find that as per Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962 the column " country of consignment(if different) and code" is statutorily prescribed and to be filled invariable by the ex-bond importers. I find that the all Ex-Bond B/E filed by the noticee through their Customs House Agent, M/S ACT Shipping Ltd, the column "Country of Consignment (if different) and Code" have intentionally not filled and left blank. I find that it were their duty to demand the documents and to fill the such column in Ex-Bond Bills of Entries which is not done by any of such ex-bond importers. This inaction clearly showed willful mis-statement with intention on their part with intent to evade above levy of anti-dumping duty @ USD 277.85 MT leviable as per Notification No 33/2008-Cus dated 11.03.2008.

(ii) Submission that the Ex-Bond Bills of Entries were of 2009 while the show cause notice was issued on 31.3.2013, much after expiry of normal period of limitation i.e. six months under section 28, as it stood at the relevant time. Therefore demand against my clients is barred by time and hit by limitation.

As discussed above, when there is clear facts of willful mis-statement/suppression of facts of the country of consignment in the Ex-Bond Bills of Entry on the part of noticee, For the aforesaid act of mis-declaration, non declaration of the country of consignment" the goods are

liable for confiscation. Accordingly the extended period is rightly invoked for the present demand beyond 6 months. There are clear failure on the part of the noticee to declare " country of Consignment" in the Bills of Entry filed by them through their CHA. Therefore demand against the Ex-bond importers were not barred by time and hit by limitation.

(iii) Submission that the SCN alleges the knowledge of the country of consignment but no where the notice alleged that ACT imparted this knowledge to my clients. Thus there was no deliberate suppression on part of my clients with any intention to evade payment of the Anti-dumping duty.

I find that as per Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962 the column " country of consignment" is statutorily prescribed and to be filled invariably by the ex-bond importers. I find that the said ex-bond importer had never asked for documents or sought the details from the in to bond importer from whom they purchased the goods. Therefore, the ex-bond importers can not cast their liability on the CHA. From records and statement recorded, there was deliberate suppression on part of ex-bond importers with an intention to evade payment of the Anti-dumping duty.

(iv) Submission that the SCN alleges the connivance between Kolmar Ag, Meteor and ACT Shipping etc. for evasion of Anti-dumping duty, but there is allegation of connivance against their clients. That the clients are bona fide purchase of the goods in normal course of trade. That just because of they filed Ex-Bond Bills of Entries for taking of the delivery of the goods purchased by them, liability of the Anti-dumping duty should not be fastened upon their clients..

That for the aforesaid reasons, interest under section 28AA or section 28AB is also not recoverable from my clients.

I find that as per Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962 the column " country of consignment" is prescribed and to be filled invariable by the ex-bond importers. I find that even though the ex-bonder importers were bona

fide purchase of the goods in normal course of trade, they were required to ask for/demand the documents relating to the country of the export(consignment) especially when the "Acetone" exported from European Union attracted the Anti-dumping duty. The argument that just because of they filed Ex-Bond Bills of Entries for taking of the delivery of the goods purchased by them, and hence the duty liability of the Anti-dumping duty should not be fastened upon them is not tenable.

From records and statement recorded, there was deliberate suppression on part of ex-bond importers with any intention to evade payment of the Anti-dumping duty. I find that for taking of the delivery of the goods purchased by them, liability of the Anti-dumping duty is fastened upon them. I find that the ex-bond importers can not cast their statutorily liability on the CHA. Thus, for the aforesaid reasons, they are liable for Anti-dumping duty along with interest under section 28AA or section 28AB is also recoverable jointly and severally from them as ex-bond importers.

(v) Submission that the sub-section (4) of section 28 was inserted w.e.f. 16.09.2011 while bill of entry was dated 2.7.2009 and like wise section 28AA is also not applicable in this case as it was inserted by Act 8 of 2011.

I find that earlier to 16.9.2011, the similar provision were already existed under Proviso to Section 28 for the invocation of extended period of five years in case of suppression of facts/willful mis statement. Similarly the earstwhile provision of section 28AA/28AB were also covered the present provision of Section 28AA. Therefore, there is no lacuna in relying of the above current provisions even after 16.9.2011.

(vi) Submission that their client did not commit any act rendering the goods liable for confiscation under section 111(m) and consequently they are not liable for penalty under section 112(a). That the goods are not liable for confiscation under section 111(m) as their client did not mis-declared description, qty, value, country of origin of the goods. That non declaration of the country of consignment in the Ex-Bond Bill of Entry can never lead to charge of mis-declaration. That the assessment was already finalized and completed in the Bill of Entry of warehouse. That Ex-Bond Bill of Entry did not in any manner result in evasion of Anti-dumping duty.

As discussed the role of the ex-bond importers in above(iv), the goods were liable for confiscation under section 111(m) as they mis-declared description, country of origin/consignment of the goods. The non declaration of the country of consignment in the Ex-Bond Bill of Entry, which was a statutory obligation on them, leads to charge of mis-declaration. Therefore, the ex-bond importers can not take plea that the assessment was already finalized and completed in the Bill of Entry of warehouse, and thus the Ex-Bond Bill of Entry did not in any manner result in evasion of Anti-dumping duty. They are also equally bound to declare the correct country of consignment.

(vii) Submission that there is no short levy or non levy of duty for reason of collusion or any willful mis-statement or suppression of facts by my clients, they are also not liable for penalty under section 114A.

As discussed above, there is clear cut case of short levy or non levy of duty for reason of collusion or any willful mis-statement or suppression of facts by the ex-bond importers and they are also not liable for penalty under section 114A

(viii) Submission that their client i.e statements of above importer recorded by DRI and after such statement their client came to know about the discrepancy i.e. Invoice dated 26.-2.2009 referred to a subsequent letter of credit dated 24.3.2009, as they were not provided the copy of said invoice or bill of lading and that the invoice was subject contract between M/S Sanjay Chemicals and Kolmar Ag and their clients became aware about it for the first time when investigating agency pointed out the said lacuna. That the statement recorded was spontaneous without taking any legal advice. That it is not a after thought. That their clients authorized filing of Ex-Bond Bill of Entry despite being aware that invoice was incorrect is false, baseless and unsubstantiated. That section 114AA can only be invoked if false documents is knowingly used. That their client explained their innocence on the spot. Therefore, assuming that invoice is incorrect, it was not used knowingly by their client and therefore, penalty can not be imposed upon their client under section 114AA.

I find that as per Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under

Section 157 read with Section 46 of the Customs Act, 1962 the column "country of consignment" is prescribed and to be filled invariably by the ex-bond importers. Therefore, the ex-bond importers (Director/employee) can not cast their liability on the warehouse importer or CHA. From records and statement recorded, there was deliberate suppression on part of ex-bond importers not demanding any import documents showing the country of consignment(export) or asking any such question before permitting to file the ex-bond Bills of Entries. Thus, there are willful mis statement/suppression of facts on their part with any intention to evade payment of the Anti-dumping duty. Therefore, I hold that the ex-bond importers/ Director/employees are liable to penalty upon them under Section 112(a) and under 114A/114AA of the Customs Act, 1962.

(ix) Submission that their client given to understand that M/S Sanjay Chemicals have filed detailed reply to the above show cause notice and submitted that Anti-dumping duty is not leviable and they adopt and re-iterate relevant submission made by M/S Sanjay Chemicals.

I find that their statutory duty/obligation cast upon the ex-bond importers to declare the "country of consignment" can not be shifted on M/S Sanjay Chemicals on the pretext that have filed detailed reply to the above show cause notice and pleading that Anti-dumping duty is not leviable from them.

24.7 M/s. Nectar Life Sciences Limited, and Shri Chetan Gulati of M/S Nector Life Sciences Ltd, 15, Unit II, Village Saipura, Tehsil Derabassi, Dist Mohali (Punjab) (noticee no. 13 and 22),

The notice filed their written reply through their Advocate Shri G. S. Bangoo, under their letter dated 11.06.2013, interalia other matter, that ;

(i) Submission that they are engaged in the manufacture of bulk drug. That they have purchased the 100 MT of imported Acetone on bond transfer basis from M/S Sanjay Chemicals (India) Pvt Ltd vide purchase order No. NLL/RM/UOZ/106/2009-0 dated 23.7.2009 and filed Ex-Bond Bill of Entry no 301514 dated 31.7.2009 and got is cleared after payment of the appropriate customs duty assessed by the proper officer at the port of import. That with regard to non declaration of country of consignment in

Ex-Bond Bill of Entry, the same were filed on the basis of the particulars as given in the warehousing Bill of Entry No. 95765 dated 24.6.2009 filed by M/S Sanjay Chemicals(India) Pvt Ltd. therefore there is no lapse or fault attributed to them. That Shri Sanjay Vijay Raj Parmar of M/S Sanjay Chemicals in his statement dated 20.01.2011 stated that since there is no port in Russia, the port of adjoining country were being utilized for the purpose of export of Russian goods. That the consignment was to be shipped from Russia to Finland by train and then from Finland (Rauma/Kotka) it was to be transshipped on vessel.

In the above argument, I find that as per Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962 the column "country of consignment" is statutorily prescribed and requires to be filled invariable by the ex-bond importer(noticee). Therefore, the ex-bond importers (noticee) can not cast their statutory obligation on the CHA. Their argument that there is no port in Russia, the port of adjoining country were being utilized for the purpose of export of Russian goods or that the consignment was to be shipped from Russia to Finland by train and then from Finland (Rauma/Kotka) it was to be transshipped on vessel, have no legal force when it was their statutory obligation to declare the country of consignment in the Ex-Bond B/E. The noticee never asked for the documents to the person from whom they purchased the goods about the country of export of the goods. From records and statement recorded, there was deliberate suppression on part of ex-bond importers with any intention to evade payment of the Anti-dumping duty. I find that for taking of the delivery of the goods purchased by them, liability of the Anti-dumping duty is fastened upon them. I find that for the aforesaid reasons, the Anti-dumping duty along with interest under section 28AA or section 28AB is liable to be recovered from the ex-bond importer.

(ii) Submission that in given facts, the Hon`ble Tribunal in the following case held that country of shipment can not be treated as country of origin and no Anti-dumping duty under Notification No. 79/2002-Cus dated (similar to Noti. No. 33/2008-Cus dated is payable on the goods being of Russian Origin. Case Laws (i) Subham Marketing Service Pvt Ltd v/s CC 2007 (209) ELT 303 (Tri) (ii) County Laminating Co Ltd v/s CC 2009 (240) ELT 423 (Tri).

I find that the Bill of Lading No. 2401 dated 26.02.2009 (*place and date of issue are specifically declared as RAUMA, 26th February 2009 in BL*) shows date of issuance as 26.02.2009 and it contains reference of LC opened on 24.03.2009 i.e. almost a month later. Similarly Bill of Lading No 3001 dated 10.05.2009 (*place and date of issue are specifically declared as RAUMA, 10th May 2009 in BL*) shows date of issuance as 10.05.2009 and it contains reference of LC issued on 29.05.2009 i.e. 19 days later. This could have been possible only if the documents viz. Commercial Invoice and Bills of Lading purported to be issued on the date of loading of the goods were actually re-manufactured later for inserting purposefully prepared wordings regarding clause of transportation of goods from Russia to European Union to show country of export as Russia. This also proves from The fact that the relevant clause of the LC was amended from "any Russian port" to "any port in Finland" coupled with the facts that vessel was nominated immediately on confirmation of sale of the goods on i.e. 18.02.2009, and thus they were fully aware that the subject goods were lying in Finland at the time of deal for purchase of the subject goods and were to be loaded / exported from there. The movement of the goods from Russian to Finland was not caused by the Sale Contract between M/s. Kolmar Group Ag, Switzerland and M/s Sanjay Chemicals (India) Private Limited. The subject goods were already been purchased and transported to Finland much before the same were sold to M/s Sanjay Chemicals (India) Private Limited. This was evident from the rail receipts pertaining to said transportation, which though in Russian Language, carry dates in English.

The facts of the case clearly established that goods were already transshipped from Russia to Finland before entering in to contract by the Indian importer with Kolmar Group Ag . The Russian Company send/sold the goods in the name of Nordica Re (Finland) Oy, a Company in Finland. Also there is no evidence that the Indian importer had entered in to contract or any sale invoice raised by the Russian manufactured or Nordica Re (Finland) Oy, and Ste. Escord SARAL, a Company of Finland to whom goods were supplied/sold. Accordingly, the country of export was Finland. Therefore, the facts in the present case and the case referred above by the noticee can not be applicable in present case.

(iii) Submission that the location of the supplier i.e M/S Kolmar Group Ag, Switzerland, or opening of letter of credit and the foreign exchange remitted from India to Germany can not be made basis for the charge of anti-dumping duty and referred the case law of Lloyds Steel Industries v/s CCE

2005 (189) ELT 159 (Tri.). that their purchase order No. nll/rm/uo2/106/2009-10 was inclusive of all duties, cesses and even anti-dumping duty and relied upon two case laws (i) DSM Anti Infractive India Ltd v/s CC 2009 (246)ELT 648(Tri) and (ii) Ludhiana Steel Ltd v/s CC 2013 (290) ELT 681(Tri).

In this regard, I find that in both the above mentioned contracts, proposed terms/ wordings of Letter of Credit were embedded between "Quote" and "Unquote" and were to be integral part of contracts. In both the contracts, the seller and beneficiary was M/s. Kolmar Group Ag. As per Para 12 of the Contracts the title and Risk was agreed to pass from seller (i.e. M/s. Kolmar Group Ag, Switzerland) to Buyer (M/s. Sanjay Chemicals (India) Private Limited) at Load Port as the material passes the incoming flange of seller's vessel. In the Letter of Credit No. IMLC 04309000086 opened on 24.03.2009, initially, the Port of Loading (44E) was "any Russian Port". This was amended by M/s. Sanjay Chemicals (India) Private Limited vide their application reference No. SCIPL/220/08-09 dated 30.03.2009 to "any Port in Finland". Therefore the Port of loading was well established and specifically known to the Importer M/s. Sanjay Chemicals (India) Private Limited well before the actual Import took place. Even the exact point of transfer of title and risk of the goods was specified in the contracts as inner flange of seller's vessel at Load Port (i.e., in Finland). The terms of payment/ Delivery were CIF Kandla (i.e. *insurance was to be borne by seller*). The Non negotiable copy of the certificate of insurance along with other documents was received with the other documents by M/s. Sanjay Chemicals (India) Private Limited, through M/s. Meteor Pvt. Ltd., vide e-mail dated 31.03.2009(7:43 PM) and forwarded to them vide email dated 01.04.2009 (3:41 PM). The said certificate (Policy) of insurance bearing No. KOL 1465 (in respect to Import of 525 MT of Acetone) speaks about 525 MT of Acetone being shipped from Rauma (Finland) to Kandla (India) and covered risk "from shore tank at Load Port to Shore tank at Discharge Port". Had the goods under impugned contractual obligation been coming from Russia and were to be merely transshipped at Rauma/ Kotka, the insurance would have been taken covering risk from origin/ supply point in Russia to Discharge point in India. The certificates of insurance along with other documents were received by the importer before filing of the respective Bills of Entry. **This fact also showed that the importer was aware that the goods were already lying in Finland and therefore Country of Consignment of these goods was Finland but they deliberately did**

not declare it in the Bills of Entry and attempted to conceal this fact. Moreover, the importer also indulged in manipulation in respect of getting inserted wordings, in import documents, showing transshipment in Finland.

As seen from letter No. 07-153/0548 dated 01/02/2010, the Deputy Head of Central Enforcement Department, FCS, Russia has clearly stated that the data base has not reflected any direct exports of Acetone from Russian company JSC Kazanorgsintez to Indian buyers in general to India during 01/01/2005 to 15/12/2009. It is further stated in the said letter that during the said period JSC Kazanorgsintez delivered Acetone to Finland for a number of companies, for instance, "Nordica Re (Finland) Oy" where final port of delivery was Rauma, Finland.

The addendum No. 15 dated 25/02/2009 to the Contract No. 752/00203335/80078 dated 07/07/2008 between JSC Kazanorgsintez, Russia and Nordica Re (Finland) Oy, Finland clearly shows name of seller as JSC Kazanorgsintez, Russia and name of buyer as Nordica Re (Finland) Oy, Finland. Therefore, it is amply clear that JSC Kazanorgsintez, Russia sold Acetone to Nordica Re (Finland) Oy, Finland and not to any Indian buyer.

The copies of invoices bearing No. 213623B dated 12/01/2009, 214292 & 214292A both dated 09/01/2009, also indicate name of supplier as Kazanorgsintez SC, Russia and name of buyer as Nordica Re (Finland) Oy, Finland and thus confirms that Kazanorgsintez, Russia sold Acetone to Nordica Re (Finland) Oy, Finland and not to any Indian buyer.

In respect of other manufacturer OOO Samaraorgsintez, the Head of Central Enforcement Department, FCS, Russia has informed vide letter No. 07-153/0937 dated 12.02.2010 that they have also not made any direct supply of Acetone to India, however, Acetone was dispatched to Finland in the name of a French company "ECORD Sari".

From the above facts, contention of noticee that the location of the supplier i.e M/S Kolmar Group Ag, Switzerland, or opening of letter of credit and the foreign exchange remitted from India to Germany can not be made basis for the charge of anti-dumping duty is not tenable. I find that there are difference in the facts of the present case and the facts mentioned in the case law of Lloyds Steel Industries v/s CCE 2005 (189) ELT 159 (Tri.)

cited by the noticee and hence not applicable and so called excuse that their purchase order No. nll/rm/uo2/106/2009-10 was inclusive of all duties, cesses and even anti-dumping duty is not tenable. Similarly facts in the present case and facts in case laws of DSM Anti Infective India Ltd v/s CC 2009 (246)ELT 648(Tri) are different as in the present case there are willful mis-statement/suppression of facts i.e. intentionally non declaration of the country of consignment(export) in the Ex-Bond Bills of Entry. Therefore the extended period can be invoked. Similarly when the larger period is rightly invoked and the case law of Ludhiana Steel Ltd v/s CC 2013 (290) ELT 681(Tri) is not applicable.

(iv) Submission that there is no suppression of facts or mis-statement on their part and demand is time barred therefore anti-dumping duty can not be demanded and the goods are not liable for confiscation under section 111(m). That M/S ACT Ltd had never disclosed/intimated the facts of country of export of the consignment to them and therefore penalty can not be imposed under section 112(a) 114A.

As discussed in above para, there is suppression of facts or willful mis-statement on the part of noticee and demand is not time barred. Accordingly, the anti-dumping duty rightly demanded and for the aforesaid suppression of facts and willful mis-statement with regard to country of consignment(export) the goods are liable for confiscation under section 111(m). I find that It was their duty to ask for the documents stating the country of consignment while purchasing the goods. Also the same were their statutory obligation to declare the country of consignment in the Ex-bond Bills of entry filed by them through their CHA which is not done so far. Therefore, they never plead for this failure that M/S ACT Ltd had never disclosed/intimated the facts of country of export of the consignment to them. Accordingly they are liable for penalty under section 112(a) 114A.

(v) The noticee in para of their reply letter dated 11.06.2013, contended that the anti-dumping duty of Rs. 13,30,902/- already deposited by them on 12.07.2012 and enclosed the copy of TR-6 No. 795 dated 12.07.2012. The said fact of payment was verified from Cashier, C.K. Kandla under this office letter of even no dated 10.02.2014, who made endorsement on 17.2.2014 on the said Challan that "Original Credit verified with cash record and found correct".

I hold that the noticee liable for the anti-dumping duty of Rs. 13,30,902/- along with interest, the duty of Rs. 13,30,902/- deposited by them under protest on 12.07.2012 vide TR-6 No. 795 dated 12.07.2012 is ordered for the appropriation against the demand confirmed and the protest lodged is hereby vacated for the reasons discussed herein above.

25.1 In nutshell, all of them knew that there was no transshipment at Finland and as such efforts were made by them to prepare the documents accordingly to be presented to Customs so as to conceal the real facts. In view of such documents presented before them, there was no scope left before the assessing officers to question the country of export.

25.2 The issue of time-bar has been raised in defence. I find that the importers are bound by bond executed by them for warehousing to comply with the demand of duty etc hence the limitation as being emphasized by them is not applicable till the warehousing bond executed by them is not redeemed to them.

25.3 In view of the above facts, I am of the considered view that there were suppression of facts or willful misstatement with regard to the country of export as "Finland" in above case with reference to goods wherein the extended period u/s 28(4) for the present demand rightly invoked and the goods "Acetone" falling under Customs Tariff Item No. 29141100, imported by the M/S Sanjay Chemicals(India) Ltd and cleared for warehouse under the two warehouse Bills of Entries which were subsequently cleared for home consumption under various Ex-Bond Bills of Entries by different noticee, as mentioned in Table-1 to the para 1 of the show cause notice, including M/S Sanjay Chemicals (India) Pvt Ltd, attracts the levy of the anti-dumping duty @ US \$ 277.85 PMT under the Sr. No. 20 of the Notification No. 33/2008-Customs dated 11.03.2008 along with interest and therefore the goods are liable for confiscation for aforesaid violations i.e. non payment of anti-dumping duty.

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25.4 The country of consignment is a vital information and the same are required to be filled as prescribed in Form 23 i.e Bill of Entry for Warehousing and in Form 24 i.e. Bill of Entry for Ex-bond clearance, prescribed under Bill of Entry (Forms) Regulations, 1976 issued under Section 157 read with Section 46 of the Customs Act, 1962 the "Country of Consignment (if different) and Code". I find that the details in all W/H B/E

and Ex-Bond B/E filed by all the noticee through their Customs House Agent, M/S ACT Shipping Ltd, in the column "Country of Consignment (if different) and Code" have intentionally not filled and left blank. Further, I find that M/s. Sanjay Chemicals India Pvt Ltd and Ex-Bond importers have made themselves liable to penalty under Section 112(a) as well as under Section 114A of the Customs Act, 1962.

However, since I propose penalty under Section 114A of the Customs Act, 1962, I do not impose any penalty on them under Section 112(a) of the Customs Act, 1962 as provided in proviso to Section 114A.

26. In view of the forgoing discussions and findings, I pass the following order:-

ORDER

26.1 (A) I order for confiscation of 32 MT of imported Acetone (16 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 287692 dated 05.05.2009 plus 16 MT covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 298226 dated 08.07.2009) having aggregate assessable value **Rs. 11,89,164/-**, under Section 111(m) of the Customs Act, 1962. However, since the impugned goods are have been already cleared and are not available for confiscation, I refrain from imposing any redemption fine in lieu of the confiscation.

(B) I determine and confirm the Antidumping duty payable as Rs. 4,40,337/- (Rupees four lakhs, forty thousand three hundred thirty seven only) on 32 MT of Acetone (16 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 287692 dated 05.05.2009 plus 16 MT covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 298226 dated 08.07.2009) as detailed in Annexure-II to the notice by **M/s. Brij Lal Jain and Sons**, C-19A, Ist Floor, Shivaji Park, Punjabi Bagh, New Delhi and **M/s Sanjay Chemicals (India) Private Limited**, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai, jointly and severally under Section 28 (8) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with

interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry and order for recovery of the same.

(C) I impose the penalty of **Rs. 4,40,337/- (Rupees four lakhs, forty thousand three hundred thirty seven only)** each on **M/s. Brij Lal Jain and Sons**, C-19A, Ist Floor, Shivaji Park, Punjabi Bagh, New Delhi and **M/s Sanjay Chemicals (India) Private Limited**, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai, under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above,

26.2 (A) I order for confiscation of 20 MT of imported Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 301871 dated 03.08.2009), having aggregate assessable value Rs. 7,85,203/- under Section 111(m) of the Customs Act, 1962. However, since the impugned goods have been already cleared and are not available for confiscation, I refrain from imposing any redemption fine in lieu of the confiscation,.

(B) I determine and confirm the Antidumping duty payable as Rs. 2,66,180/- (Rupees two lakhs sixty six thousands one hundred eighty only) on 20 MT of Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 301871 dated 03.08.2009) as detailed in Annexure-II to the notice by **M/s. India Glycols Limited**, 10, Plot No. 2-B, Sector 126, Noida and **M/s Sanjay Chemicals (India) Private Limited**, jointly and severally, under Section 28 (8) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry and order for recovery of the same.

(C) I impose a penalty of **Rs. 2,66,180/- (Rupees two lakhs sixty six thousands one hundred eighty only)** each on **M/s. India Glycols Limited**, 10, Plot No. 2-B, Sector 126, Noida and **M/s Sanjay Chemicals (India) Private Limited** under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above,

(D) The anti-dumping duty of Rs. 2,66,180/- plus interest thereon of Rs. 1,87,356/- totaling Rs. 4,53,536/- paid by **M/s. India Glycols Limited**, vide TR-6 No. 1636 dated 4.12.2013, is hereby ordered to be appropriated against the above confirmed dut/interest.

26.3 (A) I order for confiscation of 60 MT of imported Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 309508 dated 22.09.2009) having aggregate assessable value Rs. 23,55,608/- under Section 111(m) of the Customs Act, 1962. However, since the impugned goods have already been cleared and are not available for confiscation, I refrain from imposing any redemption fine in lieu of the confiscation,

(B) I determine and confirm the Antidumping duty payable as Rs.7,98,541/- (Rupees seven lakhs ninety eight thousands five hundred forty one only) on 60 MT of Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 309508 dated 22.09.2009) as detailed in Annexure-II to the notice, by **M/s. IOL Chemicals and Pharmaceuticals Ltd.**, 1, Head Office 85, Industrial Area, Ludhiana and **M/s Sanjay Chemicals (India) Private Limited**, jointly and severally, under Section 28 (8) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry and order for recovery of the same.

(C) I impose a penalty of **Rs.7,98,541/- (Rupees seven lakhs ninety eight thousands five hundred forty one only)** each on **M/s. IOL Chemicals and Pharmaceuticals Ltd.**, 1, Head Office 85, Industrial Area, Ludhiana and **M/s Sanjay Chemicals (India) Private Limited** under Section 114A of the Customs Act, 1962, for the acts and omissions discussed above.

26.4 (A) I order for confiscation of 48 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 297185 dated 02.07.2009) having aggregate assessable value Rs. 17,19,956/- under Section 111(m) of the Customs Act, 1962. However, since the impugned goods have already been cleared and are not available for confiscation, I refrain from imposing any redemption fine in lieu of the confiscation.

(B) I determine and confirm the Antidumping duty payable as Rs. 6,82,177/- (Rupees six lakhs eighty two thousands one hundred seventy seven only) on 48 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 297185 dated 02.07.2009) as detailed in Annexure-II to this notice **by M/s. Mody Chem, 2, B/6, Security Estate, Nr Kashiram Textile, Isanpur, Narol, Ahmedabad and M/s Sanjay Chemicals (India) Private Limited**, jointly and severally, under Section 28 (8) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry, and order for recovery of the same.

(C) I impose a penalty of **Rs.6,82,177/- (Rupees six lakhs eighty two thousands one hundred seventy seven only)** each on **M/s. Mody Chem, 2, B/6, Security Estate, Nr Kashiram Textile, Isanpur, Narol, Ahmedabad and M/s Sanjay Chemicals (India) Private Limited** under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above,

26.5 (A) I order for confiscation of 80 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bills of Entry No. 296397 dated 29.06.2009 (30 MT) and 290220 dated 21.05.2009 (50 MT)) having aggregate assessable value **Rs. 28,66,593/-** under Section 111(m) of the Customs Act, 1962. However, since the impugned goods have already been cleared and are not available for confiscation I refrain from imposing any redemption fine in lieu of the confiscation.

(B) I determine and confirm the Antidumping duty payable as **Rs.11,36,962/-** (Rupees eleven lakhs thirty six thousands nine hundred sixty two only) on 80 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bills of Entry No. 296397 dated 29.06.2009 (30 MT) and 290220 dated 21.05.2009 (50 MT)) as detailed in Annexure-II to this notice by **M/s. Mody Enterprises, 3, Tulsi Avenue, Block No 738/E-1, N.H.8, Dascroi, Aslali, District Ahmedabad and M/s Sanjay Chemicals (India) Private Limited**, jointly and severally, under Section 28 (8) of

the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry and order for recovery of the same.

(C) I impose a penalty of **Rs.11,36,962/- (Rupees eleven lakhs thirty six thousands nine hundred sixty two only)** each on **M/s. Mody Enterprises**, 3, Tulsi Avenue, Block No 738/E-1, N.H.8, Dascroi, Aslali, District Ahmedabad and **M/s Sanjay Chemicals (India) Private Limited** under Section 114A of the Customs Act, 1962, for the acts and omissions discussed above,

26.6 (A) I order for confiscation of 100 MT of Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 301514 dated 31.07.2009) having aggregate assessable value Rs. **38,49,033/-**, under Section 111(m) of the Customs Act, 1962. However, since the impugned goods have already been cleared and are not available for confiscation, I refrain from imposing any redemption fine in lieu of the confiscation.

(B) I determine and confirm the Antidumping duty payable as **Rs.13,30,902/-** (Rupees thirteen lakhs thirty thousands nine hundred two only) on 100 MT of Acetone (covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 301514 dated 31.07.2009) as detailed in Annexure-II to this notice, by **M/s. Nectar Life Sciences Limited**, 15, Unit II, Village Saipura, Tehsil Derabassi, Dist Mohali (Punjab) and **M/s Sanjay Chemicals (India) Private Limited** jointly and severally under Section 28 (8) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry, and order for recovery of the same.

(C) I impose the penalty of **Rs.13,30,902/- (Rupees thirteen lakhs thirty thousands nine hundred two only)** each on **M/s. Nectar Life Sciences Limited**, 15, Unit II, Village Saipura, Tehsil Derabassi, Dist Mohali (Punjab) and **M/s Sanjay Chemicals (India) Private Limited**,

under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above,

(D) The anti-dumping duty of Rs. 13,30,902/- paid under protest by **M/s. Nectar Lifesciences Limited**, vide TR-6 No. 795 dated 12.07.2012, is hereby ordered to be appropriated against the above confirmed demand and the protest is hereby vacated.

26.7 (A) I order for confiscation of 48 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 309979 dated 25.09.2009) having aggregate assessable value Rs. 17,54,355/- should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962. However, since the impugned goods have already been cleared and are not available for confiscation, I refrain from imposing any redemption fine in lieu of the confiscation.

(B) I determine and confirm the Antidumping duty payable as **Rs.6,82,177/- (Rupees six lakhs eighty two thousands one hundred seventy seven only)** on 48 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-bond Bill of Entry No. 309979 dated 25.09.2009) as detailed in Annexure-II to this notice by **M/s. Pioneer Chemical Industries**, 3, Shop No 7, Jai Ambe Chambers, Plot No 2, 8, Ward No.7, Sector 9, Nr Hardik Hotel, Gandhidham and **M/s Sanjay Chemicals (India) Private Limited**, jointly and severally, under Section 28 (8) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA(erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry, and order for recovery of the same.

(C) I impose a penalty of **Rs.6,82,177/- (Rupees six lakhs eighty two thousands one hundred seventy seven only)** each on **M/s. Pioneer Chemical Industries**, 3, Shop No 7, Jai Ambe Chambers, Plot No 2, 8, Ward No.7, Sector 9, Nr Hardik Hotel, Gandhidham and **M/s Sanjay Chemicals (India) Private Limited** under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above,

26.8 (A) I order for confiscation of 64 MT of Acetone (41 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 292336 dated 03.06.2009 (32

MT) & 303249 dated 12.08.2009 (9 MT) plus 23 MT Acetone covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 302554 dated 07.08.2009) having aggregate assessable value **Rs. 23,54,407/-** under Section 111(m) of the Customs Act, 1962. However, I refrain from imposing any redemption fine in lieu of the confiscation, since the impugned goods having been already cleared and are not available for confiscation,

(B) I determine and confirm the Antidumping duty payable as **Rs. 8,88,800/- (Rupees eight lakhs eighty eight thousands eight hundred only)** on 64 MT of Acetone (41 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 292336 dated 03.06.2009 (32 MT) & 303249 dated 12.08.2009 (9 MT) plus 23 MT Acetone covered under Warehouse Bill of Entry No. 295765 dated 24.06.2010 and cleared for home consumption vide Ex-bond Bill of Entry No. 302554 dated 07.08.2009) as detailed in Annexure-II to this notice by **M/s. Satish Chemical India Pvt. Ltd**, 2, Khasara No. 64/22/2, Village Mundaka, Delhi and **M/s Sanjay Chemicals (India) Private Limited** jointly and severally, under Section 28 (8) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry, and order for recovery of the Anti-Dumping duty so determined.

(C) I impose the penalty of **Rs. 8,88,800/- (Rupees eight lakhs eighty eight thousands eight hundred only)** each on **M/s. Satish Chemical India Pvt. Ltd**, 2, Khasara No. 64/22/2, Village Mundaka, Delhi and **M/s Sanjay Chemicals (India) Private Limited** under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above,

26.9 (A) I order for confiscation of 96 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 287693 dated 05.05.2009 (32 MT), 294307 dated 16.06.2009 (32 MT), 295454 dated 23.06.2009 (16 MT) and 296224 dated 26.06.2009 (16 MT)) having aggregate assessable value **Rs. 34,39,912/-** under Section 111(m) of the Customs Act, 1962. However, since the impugned goods having been already cleared and are not available for confiscation I refrain from imposing any redemption fine in lieu of the confiscation.

(B) I determine and confirm the Antidumping duty payable as **Rs. 13,64,355/- (Rupees thirteen lakhs sixty four thousands three hundred fifty five only)** on 96 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 287693 dated 05.05.2009 (32 MT), 294307 dated 16.06.2009 (32 MT), 295454 dated 23.06.2009 (16 MT) and 296224 dated 26.06.2009 (16 MT)) as detailed in Annexure-II to this notice by **M/s. Solvochem**, R-301/302, 3rd Floor, Dua complex, 24, Veer Savarkar Block, Vikas Marg, New Delhi and **M/s Sanjay Chemicals (India) Private Limited**, jointly and severally, under Section 28 (8) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry, and order for recovery of the same.

(C) I impose the penalty of **Rs. 13,64,355/- (Rupees thirteen lakhs sixty four thousands three hundred fifty five only)** each on **M/s. Solvochem**, R-301/302, 3rd Floor, Dua complex, 24, Veer Savarkar Block, Vikas Marg, New Delhi and **M/s Sanjay Chemicals (India) Private Limited** under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above.

26.10(A) I order for confiscation of 96 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 297390 dated 02.07.2009 (33 MT), 298446 dated 10.07.2009 (33 MT) and 298952 dated 14.07.2009 (30 MT)) having aggregate assessable value **Rs. 34,39,912/-**, under Section 111(m) of the Customs Act, 1962. However, , since the impugned goods have already been cleared and are not available for confiscation, I refrain from imposing any redemption fine in lieu of the confiscation.

(B) I determine and confirm the Antidumping duty payable as **Rs. 13,64,355/- (Rupees thirteen lakhs sixty four thousands three hundred fifty five only)** on 96 MT of Acetone (covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 297390 dated 02.07.2009 (33 MT), 298446 dated 10.07.2009 (33 MT) and 298952 dated 14.07.2009 (30 MT)) as detailed in Annexure-II to this notice, by **M/s. Pon Pure Chem (P) Ltd.**, 23, Plot No. 14, 15 & 16, Sector 1 A, Room 5, 1st Floor Popular

Plaza, Gandhidham and **M/s Sanjay Chemicals (India) Private Limited jointly and severally** under Section 28 (8) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA (erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry and order for recovery of the same.

(C) I impose the penalty of **Rs. 13,64,355/- (Rupees thirteen lakhs sixty four thousands three hundred fifty five only)** each on **M/s. Pon Pure Chem (P) Ltd.**, 23, Plot No. 14, 15 & 16, Sector 1 A, Room 5, 1st Floor Popular Plaza, Gandhidham and **M/s Sanjay Chemicals (India) Private**, under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above,

26.11(A) I order for confiscation of 196 MT of Acetone (100 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 288986 dated 13.05.2009, 96 MT covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009 and cleared for home consumption vide Ex-Bond Bills of Entry No. 298954 dated 14.07.2009 (48 MT) and 300795 dated 27.07.2009 (48 MT)) having aggregate assessable value **Rs. 71,35,602/-** under Section 111(m) of the Customs Act, 1962. However, I refrain from imposing any redemption fine in lieu of the confiscation, since the impugned goods having been already cleared and are not available for confiscation,

(B) I determine and confirm the Antidumping duty payable as **Rs. 26,98,868/- (Rupees Twenty Six Lakhs Ninety Eight Thousands Eight Hundred Sixty Eight only)** on 196 MT of Acetone (100 MT covered under Warehouse Bill of Entry No. 283310 dated 08.04.2009 and cleared for home consumption vide Ex-Bond Bill of Entry No. 288986 dated 13.05.2009, 96 MT covered under Warehouse Bill of Entry No. 295765 dated 24.06.2009 and cleared for home consumption vide Ex-Bond Bills of Entry No. 298954 dated 14.07.2009 (48 MT) and 300795 dated 27.07.2009 (48 MT)) as detailed in Annexure-II to this notice, by **M/s Sanjay Chemicals (India) Private Limited**, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai, under Section 28 (8) of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, 1975 read with Notification No. 33/2008-Cus dated 11/03/2008, along with interest under Section 28 AA

(erstwhile Section 28AB), of the Customs Act, 1962, by re-assessing these Bills of Entry, and order for recovery of the same.

(C) I impose a penalty of **Rs. 26,98,868/- (Rupees Twenty Six Lakhs Ninety Eight Thousands Eight Hundred Sixty Eight only)** on **M/s Sanjay Chemicals (India) Private Limited**, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai under Section 114A of the Customs Act, 1962 for the acts and omissions discussed above,

26.12 I impose the Penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs Only)** on **M/s. Meteor Pvt. Ltd.**, 72, Jolly Maker Chamber No. 2, Nariman Point, Mumbai – 21, under Section 112(a) of Customs Act, 1962 for the reasons given in the foregoing Para.

26.13 I impose the penalty of **Rs.15,00,000/- (Rupees Fifteen Lakhs Only)** on **M/s. ACT Shipping Ltd.**, Room No. 206-207, Seva Sadan No.2, New Kandla under Section 112(a) of Customs Act, 1962 for the reasons given in the foregoing Para.

26.14 I order the penalty on the following persons of the various importer companies for the reasons given in the foregoing Para ;

Sr. No.	Name of person S/Shri	Penalty under section 112(a) of Customs Act, 1962	Penalty under section 114AA of the Customs Act, 1962
1	Shri Sanjay V Parmar , Director of M/s Sanjay Chemicals (India) Private Limited,	Rs.15,00,000/- (Rupees Fifteen Lakhs Only)	Rs.15,00,000/- (Rupees Fifteen Lakhs Only)
2	Shri Varghese Mathew , Branch Manager, M/s. Meteor Pvt. Ltd.,	Rs.15,00,000/- (Rupees Fifteen Lakhs Only)	Rs.15,00,000/- (Rupees Fifteen Lakhs Only)
3	Shri T. V. Sujan , Director of M/s. ACT Shipping Ltd.,	Rs.5,00,000/- (Rupees Five Lakhs Only)	Rs.5,00,000/- (Rupees Five Lakhs Only)
4	Shri Thomas Varghese , Senior Executive of M/s. ACT Shipping Ltd.,	Rs.1,00,000/- (Rupees One Lakh Only)	Rs.1,00,000/- (Rupees One Lakh Only)
5	Shri Harish Dania, Dy. Manager (Transportation/ Purchase of M/s. IOL Chemicals and Pharmaceuticals Ltd	Rs.50,000/- (Rupees Fifty Thousand Only)	Rs.50,000/- (Rupees Fifty Thousand Only)

6	Shri Biren Girish Sitwala, Branch Manager of both M/s. Mody Chem and M/s. Mody Enterprises,	Rs.50,000/- (Rupees Fifty Thousand Only)	Rs.50,000/- (Rupees Fifty Thousand Only)
7	Shri Chetan Gulati, Sr. Manager (Raw Material Purchase) of M/s. Nectar Life Sciences Limited	Rs.50,000/- (Rupees Fifty Thousand Only)	Rs.50,000/- (Rupees Fifty Thousand Only)
8	Shri Gopal Rameshbhai Bhatt, Logistic Incharge of M/s. Pioneer Chemical Industries	Rs.50,000/- (Rupees Fifty Thousand Only)	Rs.50,000/- (Rupees Fifty Thousand Only)
9	Shri Rajeev Kumar Garg, Director of M/s. Satish Chemical India Pvt. Ltd.	Rs.50,000/- (Rupees Fifty Thousand Only)	Rs.50,000/- (Rupees Fifty Thousand Only)
10	Shri Akhilesh Kumar, Laison Officer of M/s. Solvochem, Delhi	Rs.50,000/- (Rupees Fifty Thousand Only)	Rs.50,000/- (Rupees Fifty Thousand Only)
11	Shri Subramaniam Mahadevan, Regional Manager of M/s. Pon Pure Chem (P) Ltd	Rs.50,000/- (Rupees Fifty Thousand Only)	Rs.50,000/- (Rupees Fifty Thousand Only)
12	Shri Anil Dahiya, Logistic Incharge of M/s. Brij Lal Jain & Sons	Rs.50,000/- (Rupees Fifty Thousand Only)	Rs.50,000/- (Rupees Fifty Thousand Only)
11	Shri Rajeev S. Sharma, Joint Manager (Purchase) of M/s. India Glycols Ltd.	Rs.50,000/- (Rupees Fifty Thousand Only)	Rs.50,000/- (Rupees Fifty Thousand Only)

(K. L. GOYAL)
COMMISSIONERBY REGD. POST A.D.
F.No. S/10-03/Adj/2013-14

Dated:29.05.2014

To,

1. M/s. Sanjay Chemicals (India) Private Limited, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai
2. Shri Sanjay Vijayraj Parmar, Director of M/s. Sanjay Chemicals (India) Private Limited, 507, Matru Chhaya, 378/380, Narshi Natha Street, Mumbai.
3. M/s. Meteor Pvt. Ltd., 72, Jolly Maker Chamber No. 2, Nariman Point, Mumbai – 21.
4. Shri Varghese Mathew, Branch Manager of M/s. Meteor Pvt. Ltd., 72, Jolly Maker Chamber No. 2, Nariman Point, Mumbai – 21.
5. M/s. ACT Shipping Ltd., Room No. 206-207, Seva Sadan No.2, New Kandla.
6. Shri T. V. Sujan, Director of M/s. ACT Shipping Ltd., Room No. 206-207, Seva Sadan No.2, New Kandla.
7. Shri Thomas Varghese, Sr. Executive of M/s. ACT Shipping Ltd., Room No. 206-207, Seva Sadan No.2, New Kandla.
8. M/s. Brij Lal Jain and Sons, C-19A, Ist Floor, Shivaji Park, Punjabi Bagh, New Delhi

9. M/s. India Glycols Ltd., 10, Plot No. 2-B, Sector 126, Noida.
10. M/s. IOL Chemicals & Pharmaceuticals Ltd., 1, Head Office 85, Industrial Area, Ludhiana
11. M/s. Mody Chem, Ahmedabad, 2, B/6, Security Estate, Nr Kashiram Textile, Isanpur, Narol, Ahmedabad
12. M/s. Mody Enterprises, Ahmedabad, 3, Tulsi Avenue, Block No 738/E-1, N.H.8, Dascroi, Aslali, District Ahmedabad
13. M/s. Nectar Life Sciences Limited, 15, Unit II, Village Saipura, Tehsil Derabassi, Dist Mohali (Punjab)
14. M/s. Pioneer Chemical Industries, 3, Shop No 7, Jai Ambe Chambers, Plot No 2, 8, Ward No.7, Sector 9, Nr Hardik Hotel, Gandhidham
15. M/s. Satish Chemical India Pvt. Ltd., 2, Khasara No. 64/22/2, Village Mundaka, Delhi
16. M/s. Solvochem, 3, PNB Road Main Bazar, Zirakhpur, District Patiala, Punjab (2nd Address R-301/302, 3rd Floor, Dua complex, 24, Veer Savarkar Block, Vikas Marg, New Delhi)
17. M/s. Pon Pure Chem (P) Ltd., 23, Plot No. 14, 15 & 16, Sector 1 A, Room 5, 1st Floor Popular Plaza, Gandhidham
18. Shri Anil Dahiya of M/s. Brij Lal Jain & Sons, C-19A, Ist Floor, Shivaji Park, Punjabi Bagh, New Delhi
19. Shri Rajeev S. Sharma of M/s. India Glycols Limited, 10, Plot No. 2-B, Sector 126, Noida.
20. Shri Harish Dania of M/s. IOL Chemicals and Pharmaceuticals Ltd, 1, Head Office 85, Industrial Area, Ludhiana.
21. Shri Biren Girish Sitwala of both M/s. Mody Chem and M/s. Mody Enterprises, Block No.738 /E-1, Tulsi Avenue, NH-8, Aslali, Ahmedabad
22. Shri Chetan Gulati of M/s. Nectar Life Sciences Limited, 15, Unit II, Village Saipura, Tehsil Derabassi, Dist Mohali (Punjab).
23. Shri Gopal Rameshbhai Bhatt of M/s. Pioneer Chemical Industries, 3, Shop No 7, Jai Ambe Chambers, Plot No 2, 8, Ward No.7, Sector 9, Nr Hardik Hotel, Gandhidham.
24. Shri Rajeev Kumar Garg of M/s. Satish Chemical India Pvt. Ltd., 2, Khasara No. 64/22/2, Village Mundaka, Delhi.
25. Shri Akhilesh Kumar of M/s. Solvochem, Delhi, 3, PNB Road Main Bazar, Zirakhpur, District Patiala, Punjab.
26. Shri Subramaniam Mahadevan of M/s. Pon Pure Chem (P) Ltd., 23, Plot No. 14, 15 & 16, Sector 1 A, Room 5, 1st Floor Popular Plaza, Gandhidham

Copy to :

1. The Chief Commissioner of Customs, Gujarat Zone, Customs House, Navrangpura, Ahmedabad for information along with the copy of the show cause notice.
2. The Additional Director General, DRI, AZU, Ahmedabad.
3. Deputy/Assistant Commissioner, GR-I, Kandla,
4. The Deputy/Assistant Commissioner (Recovery), Customs House, Kandla,
5. Guard file.