



सीमा शुल्क आयुक्त का कार्यालय,  
नवीन सीमा शुल्क भवन, नया कांडला  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)  
Phone No: 02836-271468/469, Fax No. : 02836-271467.

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| A | फाइल संख्या/ File No.                    | S/10-03/Adj/ADC/SKO-V.V Ent/2019-20   |
| B | आदेश में मूल सं./ Order-in-Original No.  | KDL/ADC/AK/17/2019-20   |
| C | पारित कर्ता/ Passed by                   | SH. AJAY KUMAR,<br>ADDITIONAL COMMISSIONER  |
| D | आदेश की दिनांक/Date of order             | 26.09.2019  |
| E | जारी करने की दिनांक/Date of issue        | 26.09.2019  |
| F | एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date | DRI/AZU/GRU/SKO-V.V Ent/Int-09/2018 dated<br>26.03.2019   |
| G | नोटीसी/ पार्टी Noticee/Party             | <ol style="list-style-type: none"><li>1. Shri Hetram Goyal, Proprietor of M/s. V.V. Enterprises (IEC No. AGYPG7054L), B-9/85, 1<sup>st</sup> Floor, Sector-5, Rohini, Delhi - 110085).</li><li>2. Shri Virbhadra Rao Ila, Proprietor of M/s. Shree Sanari Shipping, P&amp;P Plaza, Plot No. 314, Ward 12B, LIC Street, Gandhidham, Kutch, Gujarat - 370201.</li><li>3. Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping, P&amp;P Plaza, Plot No. 314, Ward 12B, LIC Street, Gandhidham, Kutch, Gujarat - 370201.</li><li>4. Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, ICON Building, Office No. 109 &amp; 110, 1<sup>st</sup> Floor, Plot No. 327, Ward 12/B, Tagore Road, Gandhidham, Kutch, Gujarat - 370201.</li><li>5. Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Kandla Laboratory and presently posted at CRCL, New Delhi.</li><li>6. M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates.</li><li>7. M/s. Kite International FZE, P.O. Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates.</li><li>8. Shri Prakash of M/s. Kite International FZE, P.O. Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates.</li><li>9. Shri Ankit Tandan of M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates.</li></ol> |

1. यह अपील आदेश संबन्धित को नि प्रदान शुल्क:किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A (1) के अंतर्गत प्रपत्र सीए- 3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-  
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

"सीमा शुल्क आयुक्त (अपील), कांडला  
मंजिल वी 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009"  
"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA  
7<sup>th</sup> Floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad - 380 009."

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए ।  
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-  
Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by –
  - (i) उक्त अपील की एक प्रति और  
A copy of the appeal, and
  - (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 2/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।  
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), अधिनियम शुल्क सीमा और 1982, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।  
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।  
An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

**BRIEF FACTS OF THE CASE**

A specific intelligence was gathered by the officers of Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') that the goods, which are restricted for import, is being imported by some importers at Kandla Port and Mundra Port in the guise of "Industrial Composite Mixture Plus" (hereinafter also referred to as "ICMP" or "Subject goods" and as declared in Bill of Entry) or "Low Aromatic White Spirit" (hereinafter also referred to as "LAWS" or "Subject goods" and as declared in Bill of Entry) in violation of the Policy provisions.

1.1 Whereas pursuant to the specific intelligence available with DRI, inquiry was initiated by way of searches / visits by the officers of DRI at various premises and the brief details thereof are as under:

(a) Panchnama dated 29.08.2018 drawn at the office premises of M/s. Shree Sanari Shipping, P&P Plaza, Plot No. 314, Ward 12B, LIC Street, Gandhidham (**RUD No.1**), from where some incriminating documents were recovered.

During the search, copies of the documents/emails were taken. Printouts of WhatsApp chat of Shri Virbhadra Rao with one Shri M. Das were also taken and it was informed by Shri Virbhadra Rao that Shri M. Das handles his Customs clearance work. Laptop of Shri Virbhadra Rao was also taken for investigation purpose.

(b) Panchnama dated 29.08.2018 drawn at the office premises of M/s. MAT Shipping, located at ICON Building, Office No. 109 & 110, 1<sup>st</sup> Floor, Plot No. 327, Ward 12/B, Tagore Road, Gandhidham, Kutch, Gujarat – 370201 (**RUD No.2**), from where some incriminating documents were recovered.

During the search, copy of the outlook back up of the email ids being used by Shri Mritunjay Dasgupta was taken. On checking the mobile phones of Shri Mritunjay Dasgupta, Screen shots of some of relevant WhatsApp chats were also taken.

1.2 From the above searches, it has come to the notice that some importers were engaged in importing the ICMP / LAWS, which included M/s. V. V. Enterprises, Ground Floor, D-2/249, Nand Nagari, New Delhi-110093 (PAN No. AGYPG7054L & IEC No. AGYPG7054L) (Hereinafter also referred as "M/s. V. V. Enterprises). The details of the goods imported by M/s. V.V. Enterprises are given below at **Table-1** :

**TABLE-1**

| Sr. No.      | Name of the Importer   | Description of the Goods, as declared in the B/E | Bill of Entry No. & Date | No. of Containers (Qty in MTS) | Declared Assessable Value (in Rs.) |
|--------------|------------------------|--|--------------------------|--------------------------------|------------------------------------|
| 1.           | M/s. V. V. Enterprises | Industrial Composite mixture Plus                | 7755202 dated 23.08.2018 | 14 (253.02 MTS)                | 1,18,77,274/-                      |
| 2.           | M/s. V. V. Enterprises | Industrial Composite mixture Plus                | 7752740 dated 23.08.2018 | 20 (348.34 MTS)                | 1,63,51,790/-                      |
| <b>TOTAL</b> |                        |  |                          | <b>34 (601.36 MTS)</b>         | <b>2,82,29,064/-</b>               |

1.3 Further, it was revealed that an illegal gratification was passed on to the officers of the Customs Laboratory, Kandla, for the aforesaid consignment of imported goods for issuing the fabricated test report in order to avoid the material getting classified as SKO (Superior Kerosene Oil) falling under CTH No. 27101910, which is of restricted nature. Therefore, representative samples pertaining to seven bills of entry, including the B/E mentioned at **Table-1**, which were filed at Custom House Kandla, were drawn vide Panchnama dated 31.08.2018 (**RUD No.3**) at the premises of Central Warehousing Corporation (CWC), Container Freight Station (CFS), New Kandla, Kutch, Gujarat and such seven samples were forwarded to the CRCL, Delhi by DRI vide letter dated 15.09.2018 to ascertain the correct description of the imported goods intended for clearance with declaration as ICMP/LAWS.

1.4 Further to the above, as per the intelligence, since the test report in respect of samples drawn by Customs on 24.08.2018 for the consignment covered vide B/E No. 7755202, dated 23.08.2018 filed by M/s. V.V. Enterprises was manipulated, the second sample and remnant of the sample already tested were asked for by DRI from Customs vide letter dated 26.09.2018. On receipt of the duplicate samples from Customs vide letter dated 12.11.2018, the same were forwarded by DRI to the CRCL, New Delhi vide letter dated 24.12.2018 and the test results are still awaited.

Whereas on receipt of the remnants sample from Customs vide letter dtd. 25.01.2019, the same were forwarded by DRI to the CRCL, New Delhi vide letter dtd. 06.02.2019 and the same were returned by CRCL, New Delhi citing that the quantity is insufficient for re-testing.

1.5 Vide letter dated 28.09.2018 (**RUD No.4**), the Chemical Examiner (CRCL, New Delhi) after due testing of all seven samples drawn on 31.08.2018, including the sample pertaining to the B/E mentioned at Table-1 above, opined that those samples meet the requirements of SKO (Kerosene) as per **IS: 1459:1974**. The comparison of test reports issued by the CRCL, Delhi of the sample drawn by DRI on 31.08.2018 and the test report, which was issued by the Custom House Laboratory, Kandla in respect of aforesaid Bill of Entry with regard to the Final Boiling Point is provided below at **Table -2**:

**TABLE-2**

| Sr. No. | Bill of Entry No. & Date | Test Memo No. & Date by Custom House Kandla | Test Report by CH Kandla Laboratory & issuing date  | Test Memo No. & Date by DRI Gandhidham | Test Report by CRCL, New Delhi & issuing date  | Final Boiling point of the goods |               |
|---------|--------------------------|---|---|--|--|----------------------------------|---------------|
|         |                          |   |   |  |  | By CH Kandla Lab                 | By CRCL Delhi |
| 1       | 7755202/<br>23.08.18     | 1033664 dtd.<br>24.08.18                    | <b>Other than Light Oil / SBPS. The Distillation Range attained for the sample is not in agreement as per IS 1745:1978 for Low Aromatic Solvents (29.08.2018)</b> | 06/2018 dtd.<br>14.09.18               | <b>On the basis of parameter u/r sample meets the requirement of SKO (Kerosene) as per IS:1459:1974 (28.09.2018)</b> | 238                              | 250           |
| 2.      | 7752740/<br>23.08.18     | 1033663 dtd.<br>24.08.18                    | <b>Above reported parameter meets the requirement of</b>  | 05/2018 dtd.<br>14.09.18               | <b>On the basis of parameter u/r sample meets the</b>  | 250                              | 252           |

|  |  |  |   |  |   |  |  |
|--|--|--|---|--|---|--|--|
|  |  |  | <b>Kerosene as per IS 1459-1974 (Re-affirmed in 2001).<br/>12.09.2018</b> |  | <b>requirement of SKO(Kerosene)as per IS:1459:1974 (28.09.2018)</b> |  |  |
|--|--|--|---|--|---|--|--|

1.6 The above test reports of the CRCL, New Delhi confirmed that the goods imported under above mentioned Bs/E filed by M/s. V. V. Enterprises is SKO (Kerosene), which is liable for classification under CTH No. 27101910, but the same were attempted to be cleared from customs by mis-declaring its description as "Industrial Composite Mixture Plus" with wrong classification thereof under CTH 27101990. The total value (excluding duties of customs) covered under aforesaid Bills of Entry is Rs. 2,82,29,064/-, as declared in the Bills of Entry, but the market value of the said goods is Rs. 4.32 Crores approx. (as per website of IOCL-non subsidized price in metro in Oct., 2018).

1.7 Para 2.01 of the Foreign Trade Policy 2015-2020, which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, prescribed as follow:

*"(a) Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed by clicking on 'Downloads' at <http://dgft.gov.in>*

*(b) Further, there are some items which are 'free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force."*

1.8 As per the Schedule I of the Indian Trade Classification (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27, Import Policy for the Superior Kerosene Oil (SKO), as covered under Customs Tariff Heading and Tariff Item No. 27101910 is "State Trading Enterprises" with remarks that "Import subject to Para 2.11 of the Foreign Trade Policy and condition at Policy condition (2) below."

1.9 Para 2.20 of the Foreign Trade Policy 2015-2020, which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 specified as follow:

*(a) State Trading Enterprises (STEs) are governmental and nongovernmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.*

*(b) Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.*

(c) DGFT may, however, grant an authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs.

1.10 Further to the above, the Policy condition (2) prescribed at Schedule I of the ITC (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27 specified as follow:

*“(2) Import of SKO shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL, and IBP for all purposes with STC being nominated as State Trading Enterprises (STE) for supplies to Advance Licence Holders. Advance Licence Holders shall however, have the option to import SKO from the above mentioned STEs including STC.”*

1.11 The list of the State Trading Enterprises (STEs) for FTP purpose, as provided vide Appendix 2J of the Foreign Trade Policy 2015-2020 is as follow:

| <i>“S. NO.</i> | <i>STATE-TRADING ENTERPRISES</i>  |
|----------------|---|
| 1.             | <i>Food Corporation of India (FCI)</i>  |
| 2.             | <i>State Trading Corporation (STC)</i>  |
| 3.             | <i>Indian Oil corporation (IOC)</i>   |
| 4.             | <i>Bharat Petroleum Corporation Ltd. (BPCL)</i>                                   |
| 5.             | <i>Hindustan Petroleum Corporation Ltd. (HPCL)</i>                                |
| 6.             | <i>Oil and Natural Gas Corporation Ltd. (ONGC)</i>                                |
| 7.             | <i>Minerals and Metals Trading Corporation (MMTC)</i>                             |
| 8.             | <i>Indian Potash Ltd. (IPL)</i>   |
| 9.             | <i>National Dairy Development Board (NDDB)</i>                                    |
| 10.            | <i>National Cooperative Dairy Federation (NCDF)</i>                               |
| 11.            | <i>National Agriculture Cooperative Marketing Federation of India Ltd (NAFED)</i> |
| 12.            | <i>Projects and Equipment Cooperation of India Ltd.(PEC)</i>                      |
| 13.            | <i>Spices Trading Corporation Limited (STCL)</i>                                  |
| 14.            | <i>Central Warehousing Corporation (CWC)</i>                                      |

1.12 Further to the above, since the SKO in the total quantity in possession exceeding the specified quantity falls in the category of “Petroleum Class B” and the import, storage and handling of the products falling under “Petroleum Class B” are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). Import of SKO; in this case, if to be considered as classifiable as “Petroleum Class B”, then the Licence issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under “Petroleum Class B” and only such Petroleum is allowed to be imported by the importer, who are already in possession of Licence issued under the Petroleum Rules, 1976. Further for the storage of such “Petroleum Class B” products, statutory provisions have been made, which requires different manner of compliance, if such goods to be stored in Drums and to be stored in tanks. As per Notification No. 105-Cus dtd. 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962.

1.13 From the above facts, it is apparent that the goods, though being SKO falling under CTH No. 27101910, were mis-declared as ICMP, falling under CTH No. 27101990, by suppressing its correct description as SKO and that the condition stipulated for import through or by STE or against the Special authorisation issued by the DGFT, as per the Foreign Trade Policy 2015-2020, as well as conditions of compliance with the provisions of Petroleum Act, 1934 (30 of 1934), were not at all complied with by the importer M/s. V.V. Enterprises, in respect to the import of SKO made by them, which was sought clearance by them under the aforesaid B/E. Therefore, the said goods required to be treated as "Prohibited Goods" as defined under Section 2(33) of Customs Act, 1962 and accordingly import of such goods without due compliance with the Policy provisions may have to be categorized as "Smuggling" within the meaning of Section 2(39) of the Customs Act, 1962.

1.14 Considering the aforesaid violations of the Policy Provisions in respect of the goods covered vide aforesaid Bill of Entry, the goods pertaining to the same were placed under seizure vide Seizure Memo dtd:03.10.2018, which was served on the importer M/s. V.V. Enterprises. The goods so seized handed over for safe custody to the CWC CFS, Kandla under Supratnama dtd.03.10.2018.

2. Pursuant to the specific intelligence available with the DRI, further inquiry was conducted by way of search by the officers of DRI officer and Panchnama dated 25.09.2018 (**RUD No.5**) was drawn at the business premises of M/s. V.V. Enterprises situated at B-9/85, Sector – 5, Rohini, Delhi - 110085. The officers of DRI Delhi Zonal Unit had initially visited at Ground Floor, D-2/249, Nand Nagari, New Delhi – 110093, which is the address provided for IEC No. and also declared in the Bs/E. At the time of visit, it was found that one notice board was displayed at the main door of the premises located at Ground Floor, D-2/249, Nand Nagari, New Delhi – 110093, which indicated that the office premises of M/s. V. V. Enterprises was shifted to B-9/85, Sector – 5, Rohini, Delhi – 110085. Therefore, the officers proceeded towards B-9/85, Sector – 5, Rohini, Delhi – 110085 and conducted search at the new address. Some relevant documents of imports, made by M/s. V. V. Enterprises were found.

3. During the course of investigation, the following mobile phones, Laptop and Hard Disk, which were resumed from the respective persons, were taken to the Central Forensic Laboratory, DRI, Mumbai Zonal Unit, Ground Floor, UTI Building, 13, Sir Vithaldas Thackersey Marg, Opp. Patkar Hall, New Marine Lines, Mumbai-400020 for analysis of the data contained therein.

| Sr. No. | Details about the Device | Name of the Owner/Firm/Office                          | Date of recovery/ surrender |
|---------|--------------------------|--|-----------------------------|
| 1       | Hard Disk Toshiba        | Shri Mritunjay Dasgupta of M/s. MAT Shipping           | 29.08.2018                  |
| 2       | I-phone Mobile Phone     | Shri Iqbal Rahman Shaikh of M/s. Shree Sanari Shipping | 29.08.2018                  |
| 3       | Samsung Mobile Phone     | Shri Virbhadra Rao of M/s. Shree Sanari Shipping       | 29.08.2018                  |
| 4       | I-phone Mobile Phone     | Shri Mritunjay Dasgupta of M/s. MAT Shipping           | 29.08.2018                  |
| 5       | Laptop Lenovo            | Shri Virbhadra Rao of M/s. Shree Sanari Shipping       | 29.08.2018                  |

|   |                       |  |            |
|---|-----------------------|--|------------|
| 6 | Samsung Mobile Phone  | Shri Naval Kishor Pitti of M/s. Janpriya     | 04.10.2018 |
| 7 | One Plus Mobile Phone | Shri Mritunjay Dasgupta of M/s. MAT Shipping | 29.08.2018 |

In this regard, **Panchnamas dated 24.12.2018, 26.12.2018 & 27.12.2018 (RUD No.6)**, were also drawn in relation to data retrieval from the electronic devices like Hard Disk, Mobile phones and Laptop, which were resumed/voluntarily surrendered by the persons, as mentioned above. The data stored in some of the mobile phones/electronic devices could be retrieved and exported to the destination two external Hard Disc Drives. The data in those external Hard Discs being huge, it is under process of scanning and under examination.

Further in the course of investigation, mobile phone of Shri R. P. Meena was also resumed and the data from the same has yet to be retrieved and examined.

In the light of the same, department / DRI reserves the right to issue addendum / corrigendum to this notice or a new notice to bring new evidences to light, if felt necessary.

4. During the course of investigation of the case, statements of many persons under Section 108 of Customs Act, 1962, with respect to the import of the subject goods were also recorded. The brief of each of such statements are as follow:-

**4.1. Statement of Shri Mritunjay Dasgupta, Proprietor of M/s MAT Shipping, Gandhidham was recorded under Section 108 of the Customs Act, 1962 on 29.08.2018 (RUD No.7)**, wherein he inter-alia stated that :

- All the work relating to clearance of 'Industrial Composite Mixture Plus' are given to him by M/s. Shree Sanari Shipping, Gandhidham;
- All the documents like Bill of Lading, Invoice, Packing List, Certificate of Origin (sometimes provided), are being provided on his official email id (matshippingservices@gmail.com);
- After feeding the data in the format of Bill of Entry, the same were forwarded to email address of Shree Sanari Shipping (sss.kdl@gmail.com) for approval;
- After receiving approval from Shree Sanari on his email, the Bill of Entry were filed online;
- When the container arrives on the port, they approach the Customs officials for examination and sampling;
- After arrival of the Test Report from Kandla laboratory, they again approach to Customs for assessment;
- On assessment of Bill of Entry, the duty was being paid by the importer or Shree Sanari Shipping directly online;
- Then they receive Out of Charge from Dock Examination Superintendent of Customs and submit the same to the CWC CFS, Kandla and intimate the same to Shree Sanari Shipping;
- He was providing the customs clearance service to this type of cargo (ICMP, Low Aromatic White Spirit, Mineral Hydrocarbon Oil) since October 2017;



- He was getting the work related to importers M/s V. V. Enterprise, M/s Jay Mata Chintpurni Impex, M/s Jan Priya Energy, M/s G.R. Pahwa Enterprise and M/s Shree Sanari Shipping from M/s Shree Sanari Shipping, Gandhidham;
- He had handled total 390 containers till July, 2018;
- He was raising the bill of the agency charges in the name of M/s. Shree Sanari Shipping and they (Shree Sanari Shipping) were paying him his (MAT) charges in the ICICI bank account of M/s. MAT Shipping, Gandhidham;
- On submission of samples in Kandla Lab, he approach the Kandla laboratory and request them to issue the report at the earliest and also request the officer to take care of the final boiling point of the cargo and should be below 240 degree Celsius.
- The instructions regarding the final boiling point was conveyed to him by Shri Virbhadra Rao and Shri Iqbal of Shree Sanari Shipping and he was conveying the Lab officers to issue the Lab Test Report accordingly i.e. below 240 degree Celsius;
- This adjustment was made in the Lab Test Report, because if the final boiling of the material is more than 240 degree Celsius, its CTH will change and the item will fall under the restricted category;
- For adjusting the final boiling point figure in the test report, the amount of Rs. 40,000/- to Rs. 1,00,000/- was fixed, depending on number of containers per Bill of Entry to the Chemical Examiner of Kandla Laboratory;
- This payment were given to Chemical Examiner for mentioning false final boiling point which was other than the factual figure;
- This amount was provided to them by Virbhadra Rao of M/s. Shree Sanari Shipping through him in cash;
- During the search at his premises, some documents were retrieved from the WhatsApp chat available in his mobile phones and the print out of the same were taken and he had gone through the same.
- He voluntarily submitted two mobile phones for further investigation purpose.

4.2. **Further Statement of Shri Mritunjay Dasgupta, Proprietor of M/s MAT Shipping, Gandhidham was recorded under Section 108 of the Customs Act, 1962 on 04.10.2018 (RUD No.8)** wherein he inter-alia stated that :

- He got his customers M/s V. V. Enterprise, M/s Jay Mata Chintpurni Impex, M/s Janpriya Energy, M/s. Shagun Enterprises, M/s G. R. Pahwa Enterprise through Shri Iqbalbhai.
- He had obtained KYC details with bank attested signature verification letters and authority letter in favour M/s. MAT Shipping;
- Along with this, copies of documents viz. IEC, PAN card, GST Registration Certificate, Electricity Bill/Telephone Bill for address verification and Aadhar

Card/other identity proof of proprietors. He would produce copies of those documents, in respect of the aforesaid importers within two days;

- He did not have direct contact with the importers. He was used to contact them through email of M/s. Shree Sanari Shipping or through Shri Iqbalbhai;
- He had not met any of the above named importers till the case was booked by DRI;
- On being asked as to how he verified if the clients were working at the addresses, he stated that Shri Iqbal bhai told him that he (Iqbalbhai) knew the importers personally and knew that the those importers were working at the given addresses.
- He was shown photocopies of test reports issued by Central Revenues Control Laboratory, New Delhi, in respect of the consignments of "Industrial Composite Mixture Plus" and "Low Aromatic White Spirit" covered under seven bills of entry. Representative samples from those seven consignments were drawn by the officers of DRI as per the proceedings of Panchnama carried out in the premises of CWC Warehouse, Kandla on 31.08.2018 and he was also present during the proceedings of said Panchnama dtd.31.08.2018.
- He has gone through test reports issued by CRCL, New Delhi in respect of above consignments and in each of consignment, the test report confirmed the goods to be meeting requirement of SKO (Kerosene) as per IS 1459:1974 and the parameters tested by the laboratory and its results are also mentioned in each of the above Test Reports; that on being asked, he stated that these are findings of Customs Laboratory and believed the same would be correct.
- On being asked about amount given to the Chemical Examiner Kandla Lab, as stated by him in his earlier statement dated 29.08.2018, he stated that he used to meet Shri R. P. Meena, Chemical Examiner Kandla to get favourable test report;
- On being asked as to who used to take delivery of the import goods after clearance from Customs, he stated that he used to hand over Bill of Entry (Importer Copy) to Shri Iqbal Bhai or Shri Virbhadra Rao (Proprietor of M/s. Shree Sanari Shipping) or any other employee of M/s. Shree Sanari Shipping and then it is conveyed to  
Shri Iqbal bhai or Shri Virbhadra Rao;
- Then after he did not look after any work for importers including that of arranging delivery or transportation etc.

4.3. **Statement of Shri Virbhadra Rao, Proprietor of M/s Shree Sanari Shipping was recorded under Section 108 of the Customs Act, 1962 on 29.08.2018 (RUD No. 9)** wherein he, interalia, stated that:

- He is one of the importer of ICMP (Industrial Composite Mixture Plus) at Kandla port and also provide the handling service to other importers of ICMP i.e., M/s. V.V. Enterprise, Delhi; M/s. Jay Mata Chintpurni Impex, Delhi; M/s. Janpriya Energy, M/s. Shagun Enterprise, Rohini, New Delhi and M/s. G.R. Pahwa Enterprise, Punjab etc.;
- The documents for Customs clearance for the imported/export goods including ICMP were being provided to him by the aforesaid importers at his official email id i.e. sss.kdl@gmail.com.
- He was engaged in the business of import of ICMP since December, 2017;
- All the work relating to Customs clearance of ICMP was handled by the CHA M/s. MAT Shipping, Gandhidham;
- All the abovesaid importers of ICMP never directly contact to the abovesaid Custom House Clearing Agent for clearance;
- He was used to receive the import documents of ICMP i.e. Bill of Lading, Invoice, Packing List, Certificate of Origin (sometime provided) from the abovementioned importers, which he forwarded to the CHA – M/s. MAT Shipping, Gandhidham at his official email id : matshippingservices@gmail.com for clearance of ICMP;
- At the time of submission of documents, he had been informed telephonically by the above said importers that final boiling point of the ICMP more than 240 degree Celsius and for that they (M/s. Shree Sanari Shipping) have to manage with Chemical Examiner, CRCL, Kandla at any how to keep the final boiling point less than 240 degree Celsius in the test report and accordingly, he used to convey the same to the clearing agent;
- After that he was informed by the CHA that he had filed the Bill of Entry of the imported goods and he approached to the Customs official for examination and sampling;
- After submission of samples in Kandla Lab, on behalf of him ( Shri Virbhadra Rao) or importer, CHA approach to the Chemical Examiner of CRCL, Kandla to issue the report at the earliest and also request the Chemical Examiner to take care of the final boiling point of the cargo and it should be below 240 degree Celsius in any way;
- After dealing with Chemical Examiner, CRCL, Kandla, CHA informed him that Chemical Examiner of CRCL has been demanding Rs. 40,000/- to Rs. 1,00,000/- for issuing test report below 240 degree Celsius and he (Shri Virbhadra Rao) conveyed the same to the concerned importers of ICMP;

- That manipulation was made in the Lab Test Report because if the boiling point of material is more than 240 degree Celsius, its CTH will change and the item will fall under the restricted category;
- The amount for adjusting the final boiling point figure in the Test Report which was appx. between Rs. 40,000/- to Rs. 1,00,000/-, depending on number of containers per Bill of Entry, was given to him (Shri Virbhadr Rao) in cash by the concerned importers and he handed over those payments to Mr. Mritunjay Dasgupta, Proprietor of M/s. MAT Shipping to give the same to Chemical Examiner for mentioning manipulated final boiling point, which was other than the factual figure;
- After that, the Test Report with the final boiling point less than 240 degree Celsius was issued by Chemical Examiner, Kandla Laboratory, and then the CHA again approach to customs for assessment;
- On assessment of Bill of Entry, the duty was being paid by the importer or him (Virbhadr Rao) directly online;
- Then, CHA inform them about the Out of charge, which was issued by Dock Examination Superintendent (of Customs) and the same being submitted to CWC (Central Warehousing Corporation) CFS, Kandla.
- The CHA raised the bill for the Agency charges in the name of M/s. Shree Sanari Shipping and he was paying the CHA charges in his ICICI bank account;
- Upto August, 2018, he had handled approx. 500 containers of this cargo and out of the same, he imported approx. 60 containers on account of M/s. Shree Sanari Shipping;

4.4. **Statement of Shri Virbhadr Rao, Proprietor of M/s Shree Sanari Shipping was recorded under Section 108 of the Customs Act, 1962 on 03.10.2018 (RUD No. 10)** wherein he, interalia, stated that :

- They generally import Heavy Melting Scrap (HMS) from different gulf countries, Industrial Composite Mixture Plus, Light Viscosity Fuel Oil, Low Aromatic White Spirit from UAE from Jebel Ali port at Kandla Port;
- Their main customers are (1) M/s. G.K.N. Enterprises, KASEZ, (2) M/s. Janpriya Energy, Nagaur, Rajasthan and (3) M/s. Radhe Trade, Gandhidham;
- The rate is decided based on total import cost including all expenses plus profit margin;
- The rate of the product does not depend on specifications and as per his knowledge the specifications of ICMP/LAWS does not vary significantly;

- Sometimes, they receive the orders from the Customers along with the specification of a particular product; however, he declares the specifications to his buyers, if they require the same or not;
- He enquires from his overseas supplier regarding the specifications of the product and based on the requirements of their buyers, confirms the orders;
- Their main suppliers are (1) M/s. Kite International FZE, Sharjah, (2) M/s. Sunrise Petroleum FZC, Sharjah, (3) KTHBAN Al MRMOM Trade, Oman;
- CHA advises them regarding CTH of the product based on trends of clearance of similar items from the Kandla Port, as it was the responsibility of CHA to get the goods cleared after necessary customs procedures;
- CHA prepares the check list for Bill of Entry, however, they forward it to his (Virbhadrarao) mail for further verification or for any correction at his (Rao) side. He checks and sends the final check list to CHA for filing the Bills of Entry;
- The CHA prepares the check list and sends it to him (Rao) for approval; CHA gives all details of day-to-day progress of the clearance of the cargo to him;
- From October 2017, they have imported 66 flexi tanks of ICMP / LAWS till issuance of SCN;
- As per his knowledge, ICMP is used in the paint industry;
- The main characteristics of ICMP are density- 0.785- 0.795 gm/cc, Final boiling point- should be less than or equal to 240 degrees Celsius;
- The names of major suppliers of ICMP - (1) M/s Kite International FZE, Sharjah & (2) M/s Sunrise Petroleum FZE, Sharjah;
- Most of the time, he directly tries to finalize the deal on phone, but if required, he uses his friend Shri Iqbal Shaikh, who is a broker, having good contact with suppliers in Dubai;
- These products were further sold to the retail market directly without any further value addition or any other process;
- As per his knowledge, ICMP or LAWS are freely imported items;
- Freely importable items can be imported without any specific licence or terms and conditions and for import of restricted items, specific licenses or terms and conditions are required to be complied with;
- On being asked that in Customs Tariff Heading (CTH), there is no specific word like "Industrial Composite Mixture Plus" or "Low Aromatic White Spirit, then how do they classify it in CTH, to which he replied that as per the earlier trends at this

port and accordingly suggested by our CHA, they started using the term "Industrial Composite Mixture Plus" or "Low Aromatic White Spirit".

- The load port analysis reports were kept by them in their respective files, however the same were taken over by DRI during search of his office premises;
- He was shown his earlier statement dated 29.08.2018 and he agreed completely with it;
- On being asked the names of importers, who asked him (Rao) to manage Chemical Examiner of CRCL, Kandla for keeping the Boiling point below 240 degree Celsius, to which he stated the names as: M/s V. V Enterprises, New Delhi, M/s Jai Mata Chintpurni Impex, New Delhi, M/s G. R Pahwa Enterprises, Ludhiana, M/s Janpriya, Nagaur, Rajasthan, M/s Sagun Enterprises, New Delhi;
- On being asked the name of Chemical Examiner of CRCL, Kandla who has demanded money for keeping the Boiling point below 240 degree Celsius, to which he stated that Shri R. P. Meena, Chemical Examiner CRCL, Kandla had demanded the said amount per sample to keep the Final Boiling Point below 240 degree Celsius;
- He used to collect money from the abovesaid importers and give it to Shri Mirtunjay Dasgupta of CHA firm M/s. MAT Shipping, for giving the same to Shri R. P. Meena, Chemical Examiner CRCL, Kandla as per the deal
- He did not remember the exact figure, however from October, 2017 to issuance of SCN, he had given around Rs. 7 lakh to Rs. 8 lakh to Shri Mirtunjay Dasgupta for further handing over to Shri R. P. Meena, Chemical Examiner, CRCL, Kandla;
- He used to receive money in cash through representatives of importers and he further used to give cash to Shri Mirtunjay Dasgupta, CHA MAT Shipping, for handing over the same to Shri R. P. Meena, Chemical Examiner CRCL, Kandla as per deal.

**4.5. Statement of Shri Virbhadra Rao, Proprietor of M/s Shree Sanari Shipping was recorded under Section 108 of the Customs Act, 1962 on 04.10.2018 (RUD No. 11) wherein he, interalia, stated that :**

- For sale of the imported Industrial Composite Mixture Plus/Low Aromatic White Spirit, there are three main customers viz. M/s Janpriya Energy, Nagaur, Rajasthan, M/s Radhe Trade, Gandhidham and M/s GKN Enterprises, KASEZ, Gandhidham;
- He was contacting Shri Naval Pitti for the firms M/s Janpriya Energy, Nagaur, Rajasthan and M/s Radhe Trade, Gandhidham, as Nawal Pitti is Proprietor of M/s Janpriya Energy, Nagaur, Rajasthan and M/s Radhe Trade, Gandhidham is also

being handled by Shri Nawal Pitti as the said firm is registered in the name of his (Nawal Pitti) wife;

- Further he was contacting Shri Srinivas, Proprietor of M/s. GKN Enterprises, KASEZ, Gandhidham;
- He also sold the cargo on High sea sale basis, under Warehouse Bill of entry and Ex-CFS Kandla Sale where there was no need to appoint the transporter on his part.
- On being shown a Made Up File bearing number File-2 (marked Sr. No. 2 and MAT SHIPPING) which is containing printouts of WhatsApp chat (Page No. 1 to 11) (RUD No.12), he agreed that those WhatsApp chats had taken place between him and Shri Mirtunjay Dasgupta of CHA firm M/s. MAT Shipping in relation to clearance of ICMP/LAWS through Customs, Kandla and dealing of money for getting favourable test results through Chemical Examiner of CRCL, Kandla;
- In this WhatsApp Chat, they (himself and Mirtunjay Dasgupta) were discussing about the quantum of money to be given to the Chemical Examiner CRCL, Kandla in lieu of favourable test report;
- At the Word "NORMAL-RS. 40000/-" used in the chat means that Rs.40,000/- has to be given to the Chemical Examiner and the word "SPECIAL-RS. 100000/-" or "SPECIAL-RS. 125000/-" means that Rs. 1,00,000/- or Rs 1, 25,000/- as the case may be, has to be given to the Chemical Examiner CRCL, Kandla for manipulating test result in favour of importers i.e., to keep the Final Boiling Point of imported products (ICMP or LAWS) below 240 degree Celsius;
- On being asked about the WhatsApp chat on page No.10, wherein it is written "THIS TIME HE IS DEMANDING 2 PER SAMPLE", he explained that there Shri Mirtunjay Dasgupta was telling him (Rao) that Chemical Examiner of CRCL, Kandla was demanding Rs. 2 Lakh per sample for giving favourable test results of future samples;
- On being specifically asked about the name of such Chemical Examiner of CRCL, Kandla, he reiterated that the name of that Chemical Examiner is Shri R.P. Meena.

4.6. **Statement of Shri Iqbal Rahman Shaikh, Representative of M/s Shree Sanari Shipping was recorded under Section 108 of the Customs Act, 1962 on 29.08.2018 (RUD No.13) wherein he stated that :**

- He is the representative of M/s Shree Sanari Shipping and Proprietor of M/s Abrar Forwarder;
- His two sons Ashfaq Sheikh and Abrar Sheikh both were involved in the transport business of M/s. Abrar Forwarder;

- He looks after all the work relating to management, buying and selling along with Shri Virbhadr Rao in M/s Sanari Shipping and in absence of Shri Virbhadr Rao, he looks after all the work of M/s. Sanari Shipping;
- Various parties i.e. M/s Janpriya Energy, Nagaur, M/s. Radhe Trade, Gandhidham, M/s V. V Enterprises, Delhi, M/s G. R. Pahwa, Ludhiana, M/s. Vishal Impex, Delhi, M/s Jay Mata Chintpurni Impex, Delhi, etc. had appointed M/s. Sanari Shipping as handling agent for the Customs handling and Customs clearance of ICMP;
- He alongwith Shri Virbhadr Rao received all the documents like Bill of Lading, Invoice, Packing List, Certificate of Origin (sometime provided) on their official email id sss.kdl@gmail.com from various companies and provided the same to M/s. MAT Shipping on their official email id matshippingservices@gmail.com;
- M/s. MAT Shipping was responsible for all the work related to Custom handling and Customs clearance of ICMP;
- On assessment of Bill of Entry, the duty was paid either by the importer or by M/s. Shree Sanari Shipping directly online;
- The CHA Charges to M/s. MAT Shipping were paid by M/s. Shree Sanari Shipping;
- On behalf of Shri Virbhadr Rao, Shri Mritunjay Dasgupta was responsible for follow up of samples testing in Kandla Lab;
- Shri Virbhadr Rao instructs Shri Mritunjay Dasgupta to tie up with the Chemical examiner at Custom House Laboratory, Kandla to take care of the final boiling point of the cargo, declared as ICMP and to ensure that it should be below 240 degree Celsius;
- The adjustment was made in the Lab Test Report because if the boiling point of the cargo is more than 240 degree Celsius, its CTH would change and the items would fall under the restricted category;
- The amount for manipulation of final boiling point figure in the Test Report was fixed between Rs. 40,000/- to Rs. 1,00,000/- depending on number of the containers per Bill of Entry to Chemical Examiner of Kandla Laboratory;
- Those payments were given to Chemical Examiner for mentioning manipulated final boiling point, which was other than the actual final boiling point
- That amount was provided to them (Chemical Examiner, Kandla) through Shri Mritunjay Dasgupta, Proprietor of M/s. MAT Shipping by Virbhadr Rao of M/s. Shree Sanari Shipping;
- On being asked regarding the sample pertaining to the Bill of Entry No. 7730154 dtd. 21.08.2018 of M/s. Janpriya, he stated that the actual boiling point of the imported material declared as "Industrial Composite Mixture Plus (ICMP)" was appx. 260 degree Celsius and just not to show the material of restricted nature, Shri Virbhadr Rao instructed Shri Mritunjay Dasgupta to instruct the Chemical



Examiner to issue the Lab Test Report showing the boiling point below 240 degree Celsius;

- The amount for this purpose was fixed with Chemical examiner and it was decided to pay around Rs. 1 lakh per test report;
- Accordingly, he (Chemical Examiner) issued the Lab Test Report, which was uploaded online and showing the boiling point of 239 degree Celsius.
- He also submitted his mobile phone for further investigation.

4.7. **Statement of Shri Iqbal Rahman Shaikh, Representative of M/s Shree Sanari Shipping was recorded under Section 108 of the Customs Act, 1962 on 04.10.2018 (RUD No.14) wherein he stated that :**

- M/s. Shree Sanari Shipping was established in 2005 and it is the proprietorship firm;
- He looks after all the work of M/s. Shree Sanari Shipping;
- M/s. Shree Sanari Shipping generally import Heavy Melting Scrap (HMS) from different gulf countries, Industrial Composite Mixture Plus, Light Viscosity Fuel Oil, Low Aromatic White Spirit from UAE from Jebel Ali port at Kandla Port;
- Main customers of M/s. Shree Sanari Shipping are (1) M/s. G.K.N. Enterprises, KASEZ, (2) M/s. Janpriya Energy, Nagaur, Rajasthan and (3) M/s. Radhe Trade, Gandhidham;
- Normally M/s. Shree Sanari Shipping sell the product on High Sea Sale basis by adding 2% profit margin;
- The rate of the product does not depend on specifications;
- His main suppliers are (1) M/s. Kite International FZE, Sharjah, and (2) M/s. Sunrise Petroleum FZC, Sharjah;
- They contact the supplier and the supplier send them the Proforma Invoice on email id sss.kdl@gmail.com and on being agreed mutually, the rates were decided;
- The rates depend upon the price of Crude Oil in the international market;
- M/s. Shree Sanari Shipping used to place orders for Final Boiling Point to be below 240 and density to be 79;
- Normally, the CTH is mentioned on the Bill of Lading and CHA also advised them regarding CTH of the product based on the trends of clearance of similar item from the Kandla Port;
- CHA prepared the checklist for Bill of Entry and forward it by email for further verification or for any correction and Shri Virbhadra of M/s. Shree Sanari Shipping approves it;

- They had been importing ICMP from October 2017
- ICMP is used in paint industry;
- The main characteristics of ICMP is that the colour of ICMP is white, 210 degree at 90% recovery and final boiling point should be less than or equal to 240 degree;
- Most of the time, they directly try to finalize the deal on phone with suppliers in Dubai;
- The imported products do not further going through any process (like filtration, blending or other process) and they sell it ex-Kandla and customer arrange its own logistics and pick the goods from concerned CFS;
- ICMP or LAWS is freely imported items;
- On being asked that in Customs Tariff Heading (CTH), there is no specific word like "Industrial Composite Mixture Plus" or "Low Aromatic White Spirit, then how do they classify it in CTH, then he stated that as per the earlier trends at this port and accordingly suggested by their CHA, they started using the term Industrial Composite Mixture Plus" or "Low Aromatic White Spirit and classify it in CTH.
- The load port analysis reports were kept in their respective files and the same were taken over by DRI during search of M/s. Shree Sanari Shipping office premises;

He was shown his earlier statement dated 29.08.2018 and he agreed completely with it. Then after upon being asked, he stated that:

- On being asked about the names of Importers, who asked him to manage Chemical Examiner of CRCL, Kandla for keeping the Boiling point below 240 degree Celsius, he stated that no importer asked him about this, because these matters were being dealt by Shri Virbhadra Rao of M/s. Shree Sanari Shipping;
- He did not know the name of Chemical Examiner of CRCL, Kandla, who has demanded money for keeping the Final boiling point below 240 degree Celsius, because he had not dealt with it;
- They do not appoint any transporter for movement of goods and the delivery of the goods is direct from Kandla (ex-Kandla) to the concerned customers and the same is collected from Kandla Port / concerned CFS by their customers, by appointing their own Logistics.

**4.8. Statement of Shri Hetram Goyal, Proprietor of M/s. V. V. Enterprises, New Delhi was recorded under Section 108 of the Customs Act, 1962 on 03.10.2018 (RUD No.15) wherein he stated that :**

- His firm M/s. V. V. Enterprises was established in April, 2018 and the same is active as on date in the business of import; Prior to this, he was proprietor of M/s. Goyal Packers, which is engaged in the manufacturing of corrugated box and the same is still running under his proprietorship;

- His firm imports Industrial Composite Mixture Plus (in short "ICMP") and Low Aromatic White Spirit (in short "LAWS") from UAE at Kandla port;
- In respect of consignment of 14 Flexi containers arrived on 13.08.2018, the Bill of Entry was wrongly filed for ICMP, however, as per the respective Commercial Invoice No. JITE/CI/2018/1308-2, dated 13.08.2018 and Packing List, the product was LAWS.
- Some of his friends namely Shri Subhash Khanna, Prop. of M/s. Vishal Impex, Punjabi Bagh, New Delhi and Shri Tinku Agrawal, Proprietor of M/s. Shagun Enterprises, Rohini, New Delhi are in same business and they advised him to start import business of the said products i.e. Industrial Composite Mixture Plus and Low Aromatic White Spirit to gain good profit;
- The main customers of his firm M/s. V. V. Enterprises are
  - (1) M/s. Yash Corporation, Surat (Prop.: Shri Dimple),
  - (2) M/s. Ganesh Trading Co., Mumbai (Prop.: Shri Yashpal Tandan)
  - (3) M/s. Sunil Taneja Associates (Prop.: Shri Sunil Taneja)
  - (4) M/s. GKN Enterprises, Gandhidham (Prop.: Shri Srinivasan)
  - (5) M/s. Shagun Enterprises, Rohini, New Delhi (Prop.: Shri Tinku Agrawal)
- Every time, the import products remains same, having similar specifications, hence, the rates fixed with the customers do not vary depending on specifications of the material imported and supplied to them;
- He imports the products first and then he starts searching for customers, who are willing to purchase the said product from him;
- There were two suppliers from whom his firm M/s. V.V. Enterprises had imported the said products:
  - (i) M/s. Kite International FZE, P.O. Box: 42031, Hamriyah Free Zone, Sharjah, UAE (Name of contact person:- Shri Prakash) &
  - (ii) M/s. Millennium Lubricant FZE, P.O. Box: 39401, Al Ghail Industrial Area, RAS Al Khaimah, UAE (Name of contact person:- Shri Ankit Tandan);
- Initially, he made order telephonically for the products ICMP and/or LAWS having FBP (Final Boiling Point) in the range 240 to 260 degree Centigrade as suggested by his friends and thereafter, every time, he placed order for the same products on phone in similar manner;
- Their main CHA is M/s. MAT Shipping for importing the said goods at Kandla Port;
- He was knowing Shri Iqbal of Gandhidham to whom he asked to search any CHA for importing the said goods and Shri Iqbal & his partner Shri Bhadra ji (full name perhaps Shri Veerbhadra) of M/s. Shri Sanari Shipping, Gandhidham managed for arranging said CHA M/s. MAT Shipping;

- He had paid total around Rs.7,00,000/- for 20 containers (around Rs.35,000/- per container) to Shri Iqbal and his partner Shri Bhadra ji through RTGS for entire work of clearing the import consignments;
- Shri Iqbal and his partner Shri Bhadra ji manage further payment to CHA, Shipping Line etc.; Shri Bhadra ji sending them bills issued by Shipping Line etc.; the bifurcation of such charges and related documents thereof were not readily available with him; he would provide the set of such documents related to clearance of import consignments within a week time;
- He had sent documents for import to Shri Iqbal and his partner Shri Bhadra ji every time through email;
- For his first consignment, he had discussed for the classification of the said products with the said persons viz. Shri Subhash Khanna and Shri Tinku Agrawal, who were already in the same business and they were classifying the said products under CTH 27101990; He had also discussed with Shri Iqbal & his partner Shri Bhadra ji in this regard, and after discussion, he decided to classify the products under CTH 27101990; that for the subsequent consignments, all the work related to deciding CTH and filing of Bill of Entry was done by Shri Iqbal and his partner Shri Bhadra ji or by CHA;
- All the work related to import consignment including preparation of check list for Bill of Entry was done by Shri Iqbal and his partner Shri Bhadra ji or by the CHA; hence who prepares the check list that can be replied by Shri Iqbal and his partner Shri Bhadra ji; He was not aware about the check list prepared by CHA being sent for approval, as the CHA did not send him the check list anytime and in this respect also Shri Iqbal and Shri Bhadra ji can reply the same; Shri Iqbal and his partner Shri Bhadra ji informed him the progress of the clearance of the cargo every time;
- He had been importing cargo of ICMP since past 5-6 months only and these products were used in paint industry;
- He was not aware about the main characters and specifications of ICMP and LAWS; He had made orders for ICMP and/or LAWS having FBP (Final Boiling Point) in the range 240 to 260 degree Centigrade as suggested by his friends;
- M/s. Kite International, UAE and M/s. Millennium Lubricant, UAE are the main suppliers for these products; He did not know about any other major supplier; He was contacting the supplier directly; The imported products were not going through any process (like filtration, blending or other process);
- ICMP and LAWS are freely imported items;
- He had received the seizure Memo dtd.03.10.2018 in relation to seizure of goods imported vide B/E No. 7755202, dtd.23.08.2018 and 7752740, dtd.23.08.2018;

He was shown the test reports of the samples drawn from Container No. FFLU2003061 and VSBU2069332 under Panchnama dated 31.08.2018 filed vide Bill of Entry No. 7755202 dated 23.08.2018 and 7752740 dated 23.08.2018 respectively at Central Warehousing Corporation (CWC), CFS, New Kandla, issued by Central Revenue Control Laboratory (CRCL) vide C.No. 35/CUs/2018-19/CL-125 DRI dtd. 18/09/2018 dated 28.09.2018 and C.No. 35/CUs/2018-19/CL-124 DRI dtd. 18/09/2018 dated 28.09.2018 respectively. On being asked, he stated that :

- As per the test report of CRCL, the cargo imported by him in the name of his firm M/s. V.V. Enterprises, meet the requirement of parameters of Superior Kerosene Oil;
- He agreed that the Superior Kerosene Oil (SKO) is restricted and can only be imported through State Trading Enterprises (STEs);
- As per the test reports of CRCL, Delhi, he agreed that the goods imported by him in the name of his firm M/s. V.V. Enterprises are Superior Kerosene Oil, which is of restricted nature, whereas he had declared the same as ICMP and LAWS;

As per the test reports shown to him, he agreed that the description of the cargo was mis-declared for hiding the restricted nature.

**4.9. Statement of Shri Prabhat Mangal Verma, Assistant Chemical Examiner in Customs House Laboratory, Kandla was recorded under Section 108 of the Customs Act, 1962 on 01.11.2018 (RUD No.16) wherein he stated that :**

- Industrial Composite Mixture Plus (ICMP) and Low Aromatic White Spirit (LAWS) are normally categorized under Petroleum Hydrocarbons as per general practice and they may be used in paint, dry-clean or textile industry etc.;
- Since ICMP and LAWS are considered under the category 'Petroleum Hydrocarbon Solvent', the parameters fixed for 'Petroleum Hydrocarbon Solvent' as per IS (Indian Standard) 1745-1978, are kept in view while deciding whether the particular goods is ICMP/ LAWS, or not;
- Industrial Composite Mixture Plus (ICMP) and Low Aromatic White Spirit (LAWS) is found normally colourless or off white, its density range is around 0.78 to 0.795 gm/ml at 15 degree Celsius, Final Boiling Point is in range of 140 to 240 degree Celsius, Smoke Point- is normally not checked, Flash Point is 43 to 49 degree Celsius;
- The parameters of all the Petroleum Hydrocarbon Solvents are in almost nearby ranges however, as regards the SKO which is colourless in nature, the smoke point is normally above 18 mm, the Final Boiling Point for SKO is above 240 degree Celsius to 300 degree Celsius as per his knowledge and as per IS:1745-1978 and the Flash Point for kerosene is minimum 35 degree Celsius;
- For SKO, the Final Boiling Point is above 240 to 300 degree Celsius, whereas the same for ICMP/LAWS is around 148 to 240 degree Celsius;

- He does not issue Test Reports and only test and submit his observations before the Chemical Examiner Grade-I or Grade-II for issuing test report on the basis of his observations;
- He does not know Shri Mritunjay Dasgupta of Customs Broker firm M/s. MAT Shipping or Shri Virbhadra Rao Illa of M/s. Shree Sanari Shipping;
- He has not met anybody else regarding alteration/modification in any test reports related to ICMP / Low Aromatic White Spirit and nobody ever tried to put some influence upon him or tried to lure him by offering some monetary benefit;
- There is no such incident where Shri R.P. Meena or anybody else has instructed him to alter/modify the test results in respect of samples tested at Kandla Customs House Laboratory, Kandla

He was shown copy of test result dated 28.08.2018 in respect of Bill Of Entry No. 7730154 dated 21.08.2018 alongwith Test Memo No. 1033659 dtd. 24.08.2018/Live Consignment of Appraiser of Customs, Kandla and observation sheet/description issued by Customs House Laboratory, Kandla. On being asked, he stated that :

- His work is limited to testing of sample and putting up the observations only and in observation sheet, the Report portion totally pertains to the Chemical Examiner Grade-I or Grade-II or Joint Director, who are authorized to issue the test reports;
- In this case, as per direction of his senior Shri R.P. Meena, he put the observations in his own handwriting on the observation sheet and the other typed facts of report portion is a fix printed Proforma for report;
- Sometimes, the test report issuing officer himself writes/corrects the test report, or sometimes the same is written by Assistant Chemical Examiner or Chemical Assistant.

He was shown test reports No. C.No. 35/Cus /2018-2019/CL-127 DRI dtd. 18/09/2018 dated 28.09.2018 of Chemical Examiner Grade-II, CRCL, New Delhi in respect of Test Memo no. 08/2018-19 dated 14.09.2018 of DRI, Gandhidham w.r.t. second sample of goods covered under Bill of Entry No. 7730154 dated 21.08.2018 filed at CWC, CFS, New Kandla. He was asked to offer comments as to how the Final Boiling Point for second sample of same goods is reported as 252 degree Celsius and the goods of second sample have been decided as SKO by the CRCL, New Delhi. On being asked, he stated that :

- He had put up the correct observations to the best of his knowledge and the test reports were decided by concerned authority of his office and he cannot comment on the test result of CRCL, New Delhi.

He was also shown another set of documents related to sample testing pertaining to B/E No. 7752740 dated 23.08.2018 [Test Memo No. 1033663 dtd. 24.08.2018 of Appraiser of Customs, Kandla, Test Result dated 12.09.2018 of Customs House Laboratory, Kandla alongwith

observation sheet/description dated 10.09.2018 and another Test Memo No. 05/2018-19 dated 14.09.2018 of DRI, Gandhidham and test report C.No. 35/Cus /2018-2019/CL-124 DRI dtd. 18/09/2018 dated 28.09.2018 of Chemical Examiner Grade-II, CRCL, New Delhi]. He was asked to offer comments how the Final Boiling Point for this sample is reported as 250 degree Celsius by Customs House Laboratory, Kandla and 252 degree Celsius by CRCL, New Delhi which is in almost matching. He stated that:

- He had put up the correct observations to the best of his knowledge and the test reports were decided by concerned authority of his office and he cannot comment on the test result of CRCL, New Delhi.

**4.10. Statement of Ms. Sangeeta Gupta W/o Shri Dharmendra Sahu, Chemical Assistant in Custom House Laboratory, Kandla was recorded under Section 108 of the Customs Act, 1962 on 01.11.2018 (RUD No. 17) wherein she stated that:**

- The samples are received by the person (Lab Assistant) who registers samples; that these samples are allotted to different Chemical Assistants (CA for short) / Assistant Chemical Examiners (ACE for short) who test parameters of samples and the allotment is done by Joint director by marking initials of name of CA / ACE e.g., SG for my name; that after receiving sample from Lab Assistant, CA / ACE tests parameters of sample as per prevailing practice; that CA / ACE notes the observations of tested parameters in observation / findings sheet which is put up to concerned CE-I/CE-II for approval or further directions; that the approved findings are then written on back side of Test Samples by CA / ACE which is then approved and issued by CE-II/CE-I; that concerned CE-II/CE-I, who then forward these documents to registration / dispatch section; that a photocopy of observation sheet is kept in a separate file for records which submitted to the registration when the file becomes bulky or CA / ACE is transferred; No notings are recorded by different level of officers in relation to testing of a sample; that Allotment Register is maintained containing names of officers who have dealt with the testing of particular sample and the name of CA / ACE to whom samples are allotted are mentioned in this register and signature of CA / ACE are taken when sample is received by such CA / ACE;
- She had no any specific definition of Industrial Composite Mixture Plus (ICMP) or Low Aromatic White Spirit (LAWS);
- She had tested very few samples of ICMP or LAWS;
- The samples, which were received as ICMP or LAWS were mixture of petroleum solvents;
- She had tested such samples according the practice of testing being followed by Customs Laboratory, Kandla as per IS or Literature provided by the Chemical Examiner or Joint Director;

- Superior Kerosene Oil is a petroleum product having specified parameters in IS specification;
- She was not sure about parameters; CA / ACE test parameters as per practice or as per instructions of CE-II / CE-I;
- Conclusions for test reports are drawn by CE-II / CE-I;
- They record the reading of Final Boiling Point observed during testing and conclusions are drawn and decided by the CE-II / CE-I;
- As per the practice they are testing distillation range, flash point, density, initial boiling point, final boiling point for samples of ICMP / LAWS and similar parameters for SKO also and if any further testing is advised by CE-II/ CE-I the same is then done;
- She was not sure about the main characteristics / specifications of ICMP / LAWS and Test Reports are decided by CE-II / CE-I;
- She did not know about Shri Mritunjay Dasgupta of Customs Broker firm M/s. MAT Shipping or Shri Virbhadra Rao Illa of M/s. Shree Sanari Shipping and never met any of those two persons.

She was shown test report Lab No. 2397 dated 27.08.2018 (for BE No. 7755202 dated 23.08.2018) of Customs House Laboratory, Kandla along with observation sheet for said LAB No. 2397 dated 27.08.2018. On being asked she stated that:

- For testing Final Boiling Point (and for distillation range in general), 100 ML of sample is taken in 125 ML capacity flask. For testing distillation range, the sample in flask is heated and vapors are collected in liquid form in a measuring graduated cylinder. The vapors pass through the condenser of boiling point apparatus where vapors condense to liquid form and collected in cylinder. The measurement of temperature of sample and the amount of condensed sample liquid form collected in cylinder have to be noted simultaneously. For doing this help of available Lab Assistant is taken to observe liquid collected in measuring cylinder simultaneously with readings of temperature. Initial boiling is the temperature of sample when first drop of distilled sample reaches measuring cylinder. Final boiling point is the temperature of sample when drops stop coming out of apparatus to cylinder, indicating that whole sample has distilled. This testing procedure for distillation / boiling point is given in ASTM D86

She was also shown test reports C. No. 35/Cus/2018-19/CL-125 DRI dtd. 18/09/2018 dated 28.09.2018 of CRCL, New Delhi containing FBP of imported goods as 250 degree Celsius and asked to offer her comments on the correctness of the reports of CRCL, New Delhi and asked to explain as to why there was difference in test results of Kandla Customs House Laboratory, Kandla and CRCL, New Delhi for same sample. In reply she stated that,



- She can't say anything about test report of CRCL, New Delhi and she can say with surety that she has done testing of parameters correctly as per prescribed norms as stated by her above.

**4.11. Statement of Shri Rajendra Prasad Meena (Shri R.P. Meena), Chemical Examiner Gr-I in Customs House Laboratory, Kandla was recorded under Section 108 of the Customs Act, 1962 on 24.12.2018 (RUD No.17) wherein he stated that :**

- Industrial Composite Mixture Plus (ICMP) as well as Low Aromatic White Spirit (LAWS) are the Petroleum based solvent and are the trade name of the commodities; that used in paint industry, may be in Dry-cleaning industry;
- There is no technical literature available for Industrial Composite Mixture Plus (ICMP);
- As regards, the Low Aromatic White Spirit (LAWS), there is no specific literature for the same also in its specific name, but the Petroleum Hydrocarbon Solvent, there is specific IS standard 1745 available, in which there are different criteria to classify the said product as Low Aromatic Solvent or High Aromatic Solvent as the case may be.
- Since there is no such parameters for ICMP and LAWS and as per the queries, the parameters fixed for 'Petroleum Hydrocarbon Solvent' as per IS (Indian Standard) 1745-1978, are kept in view while deciding it;
- There are no specific prescribed parameters of ICMP/LAWS, however, they used to test the sample (for ICMP / LAWS) in their Lab in the light of IS (Indian Standard) 1745-1978; so, as he understood the nature of Industrial Composite Mixture Plus (ICMP) and Low Aromatic White Spirit (LAWS) are like petroleum hydrocarbon solvents and it is colorless; it's density range, distillation range, flash points are matching with Petroleum Hydrocarbon Solvent;
- Prior to the allocation of the Chapter 27 to him, also the import of LAWS being made at Kandla and the testing standards/parameters set out in the previous cases have been continued by him without any major change therein;
- So far ICMP is concerned, he was not aware about any previous imports in the said name and its previous standard of testing, but what he understood, the ICMP is also matching with the standards of LAWS hence, the parameters equal to the parameters for testing of LAWS are being maintained;
- The query being raised by the Custom Assessing officers are the same for ICMP and LAWS, which gave implied requirement of testing.
- SKO is also a Petroleum Hydrocarbon and the same is in almost nearby ranges of Solvent, although no specific parameters are provided for SKO as Solvent.

**4.12. Statement of Shri Rajendra Prasad Meena (Shri R.P. Meena), Chemical Examiner Gr-I in Customs House Laboratory, Kandla was recorded under Section 108 of the Customs Act, 1962 on 27.12.2018 (RUD No.18) wherein he stated that :**

- As per Condensed Chemical Dictionary, Kerosene is a water-white oil liquid, strong odour with Density 0.81 gm/ml, Boiling Range – 180-300 degree Celsius, Flash Point- 100-150 Fahrenheit (37.7-65.5 degree Celsius), auto ignition temperature – 444 Fahrenheit (228 degree Celsius). Combustion properties can be improved by a proprietary hydro-treating process involving a selective catalyst;
- As per US EPA, Kerosene is the substance in this category are complex petroleum derived substances have Boiling Range of approximately 302 to 554 degree Fahrenheit (150-290 degree Celsius) and a carbon range of approximately C9-C16. CAS (Chemical Abstracts Service) No. of Kerosene is 8008-20-6 and API Gravity is 41.8-44.9, Aromatic Content: 15.5-19.6 Vol %, Olefin Content: 1.3-2.5 Vol %, Saturated Content: 79-82 Vol %, Distillation in degree Fahrenheit: 10%-320-377 & Final- 468-538 (10%- 160-192 & Final- 242-281 in degree Celsius);
- The major components of the kerosene are branched and straight chain paraffins and naphthalenes (cycloparaffin), which normally account for 70% by volume. Aromatic hydrocarbons such as alkyl benzenes (single ring) and alkyl naphthalenes (double ring) do not normally exceed 20% by volume of kerosene. Olefins are usually not present at more than 5% by volume;
- As per BIS for Kerosene, the material shall consist of refined petroleum distillate; it shall be free from visible water, sediment and suspended matter. Inorganic Acidity – Nil; Distillation: a) Percent recovered below 200 degree Celsius, Min – 20 b) Final boiling point, degree Celsius, Max – 300; Flash Point, degree Celsius, Min – 35 ; Smoke Point, mm. Min - 18; Total Sulphur, percent by mass, Max – 0.25;
- The distillation range is a deciding parameter for petroleum hydrocarbons and ICMP, LAWS & SKO are petroleum hydrocarbons;
- For issuing test report of ICMP / LAWS, they check its Distillation range, Flash point and Density;
- There is no such requirement available to decide the sample as ICMP / LAWS, moreover, for Low Aromatic Solvent, Distillation range: Initial boiling point min. 145 degree Celsius and Final boiling point max. 205 degree Celsius; Flash Point: 35 degree Celsius; and Aromatic Content max. – 40%;
- For test report of SKO in Kandla Customs Laboratory, they check Inorganic Acidity, Distillation Range, Flash Point and Smoke Point and as per BIS, there is no specific minimum range of SKO in Final Boiling Point but maximum range of SKO in Final Boiling Point is clearly defined; so, in this manner, it was difficult to give test report; that in order to remove confusion, they started following the standards of US EPA (United States Environmental Protection Agency) with the

permission of the Joint Director in which the Final Boiling Point range is 468-538 degree Fahrenheit (242-281 in degree Celsius).

He was shown copy of test report dated 28.08.2018 in respect of Bill Of Entry No. 7730154 dated 21.08.2018 alongwith Test Memo 1033659 dtd. 24.08.2018 of Customs, Kandla and observation sheet /description issued by Office of Customs House Laboratory, Kandla and he carefully perused it and put his dated signature on it. On being asked, he stated that :

- As regards the process to decide the Final Boiling Point in respect of this particular sample, first of all the sample goods was taken in a distillation flask of 100 ml and then, it was heated slowly on a temperature starting from 80 degree Celsius. The temperature is increased thereafter and when the first drop was distilled, the temperature is noted as Initial Boiling Point, which was 150 degree Celsius for this particular sample. Thereafter, the temperature was increased gradually and the distilled quantity of sample goods was noted down at various intervals such as 10 ml, 20 ml and so on. When 95 ml and above quantity was distilled, the highest temperature point was noted as Final Boiling Point which was 239 degree Celsius in this case. But all this procedure was carried out by the Asstt. Chemical Examiner / Chemical Asstt.
- On being asked that on what basis, he had proposed that *"It is other than light oil/SBPS/ATF/HSD/LDO in respect of above shown test report. The Distillation range obtained for the sample is not in agreement as per IS: 1745-1978 for Low Aromatic Solvents."*, he stated that prior to him, this observation i.e., *"It is other than light oil/SBPS/ATF/HSD/LDO. The Distillation range obtained for the sample is not in agreement as per IS: 1745-1978 for Low Aromatic Solvents."* had been written in the test report at Customs House Kandla Laboratory since long and he had been continuing the same practice without any major change therein.
- They followed the ASTM D-86 method for conducting the test at Customs House Kandla Laboratory and gave the correct test report on the basis of observations to the best of his knowledge and cannot comment on that.
- He knew Shri Mritunjay Dasgupta (commonly known as "Dass") of M/s. MAT Shipping since June 2018 around as he severally visits the Custom House Kandla Laboratory, but did not know Shri Virbhadra Rao Illa of M/s. Shree Sanari Shipping;
- Shri Dass sometimes approach the Registration Section of Customs House Kandla Laboratory and sometimes to him for early release of test report;
- He has normal relations with Shri Mritunjay Dasgupta and has sometimes contacted Shri Dass regarding multi-vitamin tablets for self-consumption and other than this, he has never contacted Shri Dass for any other thing;

- He has neither met anybody regarding alteration/modification in any test reports related to ICMP / Low Aromatic White Spirit nor anybody ever tried to put some influence upon him or tried to lure him by offering some monetary benefit.
- He submitted his mobile phone for further investigation purpose.

4.13. **Statement of Shri Rajendra Prasad Meena (Shri R.P. Meena), Chemical Examiner Gr-I in Customs House Laboratory, Kandla was recorded under Section 108 of the Customs Act, 1962 on 28.01.2019 (RUD No.19)** wherein he was shown two sets of documents related to Test Reports by CH Kandla & CRCL, New Delhi and he carefully observed these two sets and put his signatures on the same and the details are as follow:

| Sr. No. | Bill of Entry No. & Date | Test Memo No. & Date by Kandla Customs | Test Report by CH Kandla Laboratory & issuing date | Test Memo No. & Date by DRI Gandhidham | Test Report by CRCL, New Delhi & issuing date | Final Boiling point of the goods |               |
|---------|--------------------------|--|--|--|---|----------------------------------|---------------|
|         |                          |  |  |  |   | By CH Kandla Lab                 | By CRCL Delhi |
| 1       | 7730154/<br>21.08.2018   | 1033659 dtd.<br>24.08.2018             | Other than SKO.<br>28.08.2018                      | 08/2018 dtd.<br>14.09.2018             | Meets the requirement of SKO.<br>28.09.2018   | 239                              | 252           |

On being asked to explain why there is difference in test results Customs House Laboratory, Kandla and CRCL, New Delhi for the same kind of goods and in his reply, he stated that:

- Both the tests had been performed by two different Asstt. Chemical Examiner/Chemical Asstt.;
- So far as his reports are concerned, he issued the test reports on the basis of the observation sheet / analysis, as provided to him by Asstt. Chemical Examiner / Chemical Asstt. after conducting the test on the goods and he gave the correct test report on the basis of observations and the same also had been verified by the Joint Director (JD), CH Kandla Laboratory;
- The CRCL might have some different and sophisticated instrument for conducting the test, which might result to change in the test report and he had no comments on it;
- There is no fix guideline or prescribed procedure or SOP (Standard Operating Procedures) was issued by CRCL Hqrs New Delhi for testing the goods. So, different practices were pursued by different laboratories for testing the goods on the basis of the technical literature available with them.

He was shown further three sets of documents related to Bill of Entry no. 4671812 dtd. 04.01.2018; 6621367 dtd. 01.06.2018 & 7575228 dtd. 09.08.2018 alongwith Test Memo 1022422 dtd. 04.01.2018, 1029126 dtd. 04.06.2018 & 1032964 dtd. 10.08.2018 respectively of Customs, Kandla and their observation sheet /description issued by Office of Customs House Laboratory, Kandla. On being asked that why there has been a change observed in the test report of the CH Kandla Laboratory issued for the similar type of goods which have imported before and after the investigation by DRI and in his reply, he stated that:

- He issued the test reports only on the basis of the analytical findings and observations and further cannot comment on this.
- He had no idea about Shri Virbhadr Rao and his firm, M/s. Shree Sanari, Gandhidham and no importer and no Custom Broker approached him regarding alteration/modification in Final Boiling Point in the test reports related to ICMP / Low Aromatic White Spirit.

He was shown the statements of Shri Mritunjay Dasgupta, Custom Broker & Proprietor of M/s. MAT Shipping, Gandhidham recorded on 29.08.2018 & 04.10.2018 and Shri Virbhadr Rao Illa, Proprietor of M/s. Shree Sanari Shipping, Gandhidham recorded on 29.08.2018, 03.10.2018 & 04.10.2018.

He was also shown the printouts of WhatsApp chat of Shri Virbhadr Rao Illa, Proprietor of M/s. Shree Sanari Shipping, Gandhidham. On being asked that whether he asked for considerations from Shri Mritunjay Dasgupta, Custom Broker for keeping the final boiling point of ICMP / LAWS below 240 degree centigrade and did not issue the factual test report of ICMP / LAWS imported by six importers, for whom Shri Mritunjay Dasgupta had filed the Bills of Entry and in his reply, he stated that:

- He did not ask any considerations from Shri Mritunjay Dasgupta for issuing the false test report of ICMP / LAWS;
- that on being asked about the WhatsApp chat of Shri Vir Bhadr Rao Illa, Proprietor of M/s. Shree Sanari Shipping, Gandhidham which indicates that there is a transaction of money container-wise for issuing favourable test reports, to which he stated that he cannot say about it as it is the chat between the importers and he had no idea about it;
- The Laboratory officer has no idea about the number of containers in a Bill of Entry; So, it might be the chat between the importers on their own level and it had no concern with him;
- He was not aware about the collection of the amounts from the importers in his name and he was not concerned with it.

On being asked about when the analytical findings were being placed before him showing that : "It is other than light oil/SBPS/SKO/ATF/HSD/LDO" in most of the cases, why to negate such characteristics of the goods, he had not considered it necessary to perform the testing of light oil as well as SBPS or SKO or ATF or HSD or LDO also and provided the report based on the method of testing provided for IS 1745-1978 only, was it solely with a view to favor the concerned importers and in his reply, he stated that:

- The findings of "It is other than light oil/SBPS/SKO/ATF/ HSD/LDO" is based on analytical findings and technical literature available in the office;
- As regards Light Oil and SBPS, they were usually following the parameters /conditions set out in the Chapter Note sub-heading note 4 of the Chapter 27 of the Customs Tariff;

- For SKO and ATF, they were usually following the testing parameters provided in the US EPA;
- As regards HSD and LDO, they were usually following the IS/ASTM parameters, so, in the cases with findings "It is other than light oil/SBPS/SKO/ ATF/ HSD/LDO", the specific testing method as stated above must have been followed;
- Those test reports were also being verified by the Joint Director and after his confirmation; the reports were being released in the system by the Joint Director; so it is not a case that he did a particular testing with a view to favor a particular importer.

5. From the above discussed facts and evidences, three persons, namely (1) Shri Virbhadrarao Illa, Proprietor of M/s. Shree Sanari Shipping, Gandhidham, (2) Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping, Gandhidham and (3) Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, Gandhidham were arrested on 05.10.2018 and they were produced before the Addl. Chief Judicial Magistrate, Gandhidham on 05.10.2018, who took them in judicial custody. All the three accused persons filed a common bail application in the Court of Addl. Chief Judicial Magistrate, Gandhidham, but the same was rejected vide Order dated 11.10.2018. Subsequent to this, they all filed common bail application vide Criminal Misc. Application No. 433/2018 before 2<sup>nd</sup> Additional Sessions Judge Court, Gandhidham but the said application was also rejected vide Order 25.10.2018 passed by the Sessions Court, Gandhidham. All three accused persons had, therefore, filed Criminal Misc. Applications No. 20896/2018, 20889/2018 and 20897/2018 separately in Hon'ble High Court of Gujarat. Pending their application before Hon'ble Gujarat High Court, they filed application for default bail before the Addl. Chief Judicial Magistrate, Gandhidham, who allowed the said application and all of them were allowed to be enlarged on default bail vide Order dtd. 05.12.2018. In this context, since they were already enlarged on bail, their applications became infructuous, hence vide Order dtd.06.12.2018, Hon'ble High Court of Gujarat ordered that their applications stood disposed of as having become infructuous.

6. M/s. V. V. Enterprises had filed the SCA No. 17834/2018, before the Hon'ble High Court of Gujarat. No notice in respect of these SCA was served on the DRI. However, M/s. V. V. Enterprises withdrew their SCA, which was allowed by the Hon'ble Court of Gujarat vide Order dated 28.11.2018.

7. Similarly, Shri Rajendra Prasad Meena (Shri R.P. Meena), Chemical Examiner Gr-I, Customs House Kandla Laboratory, Kandla (Presently posted at CRCL, New Delhi) also filed Anticipatory Bail Application vide Cri. Misc. Application No. 437/2018 u/s 438 of Cr.P.C in the 2<sup>nd</sup> Additional Sessions Court, Gandhidham, but the said application was rejected by Court vide Order dtd. 20.11.2018.

Hence, Shri R. P. Meena filed Criminal Misc Application for Anticipatory Bail in Hon'ble High Court of Gujarat vide No. 23059/2018, converted from Criminal Misc Application No.

38333/2018 and got interim relief from the Hon'ble Court vide Order dtd. 24.12.2018 that he may not be arrested till the returnable date and later on vide Order dtd. 25.01.2019 the said interim relief was extended till 12.02.2019 by the Hon'ble High Court of Gujarat; which further vide Order dtd. 12.02.2019 was extended till 28.02.2019 by the Hon'ble High Court of Gujarat. Vide Order dtd. 06.03.2019, the Hon'ble High Court of Gujarat allowed the application filed by Shri R. P. Meena for anticipatory bail on his executing a personal bond of Rs. 10,000/- with one surety of like amount of the following conditions:

- a. shall cooperate with the investigation and make himself available for interrogation whenever required;
- b. shall remain present at concerned Police Station / authority on 14.03.2019 between 11:00 a.m. and 200 p.m.;
- c. shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- d. shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- e. shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change his residence till the final disposal of the case till further orders;
- f. shall not leave India without the permission of the Sessions Court and if having passport shall deposit the same before the Trial Court within a week; and
- g. it would be open to the Investigating Officer to file an application for remand if he considers it proper and just and the learned Magistrate would decide it on merits;

8. Whereas on the representations made by the importers for permitting storage of the seized subject goods in bonded warehouse under Section 49 of the Customs Act, 1962, DRI conveyed to Customs Authorities to permit the importers, if deemed fit at their end vide letter dated 26.10.2018 under intimation to the respective importers, but till issuance of SCN no action appears to have been taken by any of the importers for the same.

9. From the above facts, it is apparent that the M/s. V. V. Enterprises had given a job of importing the goods on their behalf to Shri Iqbal Rahman Shaikh and Shri Virbhadra Rao of M/s. Shree Sanari Shipping, Gandhidham for arranging clearance of the goods. In this respect, for the goods imported as such, on behalf of M/s. V. V. Enterprises, M/s. Shree Sanari Shipping handed over the documents to Shri Mritunjay Dasgupta, Prop. of Customs Broker concern M/s. MAT Shipping for filing of Bill of Entry and to arrange clearance of the goods in any manner. On receipt of the documents, pertaining to the goods imported vide KITE/CI/2018/1308-2 dtd. 13.08.2018 of M/s. Kite International FZE, Sharjah, UAE, & EXPO/AUG 57 dtd. 14.08.2018 of M/s. Millennium Lubricant FZE, UAE, the Bills of Entry No. 7755202, dtd. 23.08.2018 & 7752740, dtd. 23.08.2018 respectively were filed by M/s. MAT Shipping, Customs Broker on behalf of M/s. V.V. Enterprises, Delhi and sought clearance of the goods described as (253.02 MT + 348.34 MT) 601.36 MTs Industrial Composite Mixture Plus. On importation, the consignments,

contained in 14 containers (vide B/E No. 7755202/23.08.2018) and 20 containers (vide B/E No. 7752740 dtd. 23.08.2018), were brought at CWC CFS, Kandla, where the Customs officer of Kandla Custom House drew samples of the goods on 24.08.2018 and forwarded the same to the Customs Laboratory, Kandla for testing vide Test Memo No. 1033664/24.08.2018 & 1033663/24.08.2018 respectively. The specific query made in respect of the same are to ascertain: "Nature, Composition, Description of Goods, Initial Boiling Point, Final Boiling Point, % of Vol (incl. losses) Distillation at 210c, Flash Point, Whether goods are ICMP or Light Oil/SBPS/HSD/SKO/ATF/LDO or otherwise.". As appears, on receipt of the samples in the Customs Laboratory at Kandla, the same were declared as tested vide Lab. No. 2397/27.08.2018 (in respect of B/E No. 7755202/23.08.2018) by Smt. Sangeetha Gupta, CA and 2396/27.08.2018 (in respect of B/E No. 7752740/23.08.2018) by Shri P.M. Verma, ACE. Accordingly, the test report issued by Customs House Kandla Laboratory is as:

| <b>Sr. No.</b> | <b>Bill of Entry No. &amp; Date</b> | <b>Test Memo No. &amp; Date by Custom House Kandla</b> | <b>Test Report by CH Kandla Laboratory &amp; issuing date</b>   |
|----------------|-------------------------------------|--|---|
| 1              | 7755202/<br>23.08.18                | 1033664 dtd.<br>24.08.18                               | <b>Other than Light Oil / SBPS. The Distillation Range attained for the sample is not in agreement as per IS 1745:1978 for Low Aromatic Solvents</b><br><br><b>(29.08.2018)</b> |
| 2.             | 7752740/<br>23.08.18                | 1033663 dtd.<br>24.08.18                               | <b>Above reported parameter meets the requirement of Kerosene as per IS 1459-1974 (Re-affirmed in 2001).</b><br><br><b>12.09.2018</b>   |

Here, it would be pertinent to mention that **had the consignment not taken up by DRI for investigation and sample (drawn under Panchnama dated 31.08.2018) not sent for re-testing to the CRCL, Delhi, then the importer would have cleared the consignment considering the aforesaid report in the case of Bill of Entry No. 7755202/23.08.2018 by keeping in the dark the Custom authorities regarding the manipulation in the test report.**

As per the clarification issued by Bureau of Indian Standards for BIS No: 1745: 2018 it has been clarified that:

1. *BIS through its technical Committees has published two separate Indian standards for, kerosene and Petroleum Hydrocarbon Solvents, namely IS 1459 : 2018 Kerosene - Specification (Third Revision) and IS 1745: 2018 Petroleum Hydrocarbon Solvents - Specification (Third Revision).*
2. *IS 1459 prescribes requirements and methods of sampling and test of Kerosene intended for use as an illuminant and as a fuel and IS 1745 prescribes the requirements and the methods of test for Petroleum Hydrocarbon Solvents generally used in solvent extraction of oils, rubber and paint industries, in the formulation of insecticides, for dry cleaning and for textile printing purposes.*



3. **The requirements specifically prescribed in IS 1459 for Kerosene only are a) Acidity, in organic; b) Burning quality; and c) Smoke point and that in IS 1745 Petroleum Hydrocarbon Solvents are a) Initial boiling point; b) Aromatic content; and c) Residue on evaporation.**

Looking to the above, the parameters of a) Acidity, in organic; b) Burning quality; and c) Smoke point were not at all tested/reported under the test report provided by the Customs Laboratory, Kandla, while categorically stating that it is not SKO. Without testing these parameters, Shri R. P. Meena, Chemical Examiner could not have made conclusion that it is not SKO (Kerosene). Shri R. P. Meena can not say that he made test limited to Low Aromatic Solvent in terms of IS: 1745-1978 only, as the test memo had specifically asked as to whether goods are ICMP or Light Oil/SBPS/HSD/SKO/ATF/LDO or otherwise. Thus, apparently the report, which was issued by Customs Laboratory, Kandla was with sole aim to suppress the correct characteristic of the sample tested.

9.1 Furthermore, after the initiation of the inquiry by DRI (i.e., 29.08.2018), the Custom House Kandla Laboratory started testing ICMP / LAWS in terms of IS 1459-1974 and consequently, the test report, in respect of Bill of Entry No. 7752740 dated 23.08.2018, **issued on 12.09.2018**, confirmed that *“above reported parameter meets the requirement of Kerosene as per IS 1459-7974 (Reaffirmed in 2001)”*, which confirms that the test-reports were being manipulated in the Customs Laboratory, Kandla and that practice would have been kept continued, had not the DRI started investigation in the matter.

9.2. Based on the intelligence, on 29.08.2018, the officer of DRI visited the offices of the Customs Broker M/s. MAT Shipping and the handling agent M/s. Shree Sanari Shipping at Gandhidham and also recorded the statement of Shri Mritunjay Dasgupta, Shri Virbhadra Rao Illa and Shri Iqbal Rahman Shaikh, in which it was admitted by them that the test reports were being manipulated to show Final Boiling Point below 240C, with a view to avoid Policy restrictions.

9.3. On 31.08.2018, in the presence of the representative of the Customs Broker M/s. MAT Shipping and the handling agent M/s. Shree Sanari Shipping, samples were drawn from the abovesaid consignments under Panchnama. The said samples were forwarded to the CRCL, New Delhi vide letter dtd.15.09.2018 for testing under Test Memo signed on 14.09.2018. Test result on the same were received from CRCL, New Delhi vide Test report No. C.No. 35/Cus/2018-2019/CL-125 DRI dtd. 18/09/2018 in respect of Bill of Entry No. 7755202/23.08.2018 describing as follows:

“The sample is in the form of clear colorless liquid. It is composed mineral hydrocarbon oil (more than 70% by weight) having following constants:

| Sl. No. | Characteristics                                  | Requirement of SKO as per IS 1459:1974 | Test Results |
|---------|--|--|--------------|
| 1.      | Acidity, Inorganic                               | Nil                                    | Nil          |
| 2.      | Distillation:                                    |  |              |
|         | A) Initial boiling point, degree C               | -                                      | 152          |
|         | B) Percentage recovered below 200 degree C, Min. | 20                                     | 83           |
|         | C) Final boiling point, degree C, Max.           | 300                                    | 250          |
|         | D) Dry Point, degree C                           | -                                      | 248          |
| 3.      | Flash Point (Abel), degree C, Min                | 35                                     | 44           |
| 4.      | Smoke Point, mm, Min.                            | 18                                     | 26           |
| 5.      | Density at 15degree C gm/cc                      | -                                      | 0.7903       |
| 6.      | Aromatic content, % by volume                    | -                                      | 16.5         |

On the basis of above parameters the sample u/r meets the requirements of SKO (Kerosene) as per IS: 1459:1974.”

Whereas the Test result received from CRCL, New Delhi vide Test report No. C.No. 35/Cus/2018-2019/CL-124 DRI dtd. 18/09/2018 in respect of Bill of Entry No. 7752740 dtd. 23.08.2018 describing as follows:

“The sample is in the form of clear colorless liquid. It is composed mineral hydrocarbon oil (more than 70% by weight) having following constants:

| Sl. No. | Characteristics                                  | Requirement of SKO as per IS 1459:1974 | Test Results |
|---------|--|--|--------------|
| 1.      | Acidity, Inorganic                               | Nil                                    | Nil          |
| 2.      | Distillation:                                    |  |              |
|         | A) Initial boiling point, degree C               | -                                      | 152          |
|         | B) Percentage recovered below 200 degree C, Min. | 20                                     | 84           |
|         | C) Final boiling point, degree C, Max.           | 300                                    | 252          |
|         | D) Dry Point, degree C                           | -                                      | 250          |
| 3.      | Flash Point (Abel), degree C, Min                | 35                                     | 44           |
| 4.      | Smoke Point, mm, Min.                            | 18                                     | 26           |
| 5.      | Density at 15degree C gm/cc                      | -                                      | 0.7924       |
| 6.      | Aromatic content, % by volume                    | -                                      | 17.0         |

On the basis of above parameters the sample u/r meets the requirements of SKO (Kerosene) as per IS: 1459:1974.”

9.4. Taking into consideration, the test reports issued by CRCL, New Delhi, it is clear that the goods, which has been imported by M/s. V. V. Enterprises vide Bs/E No. 7755202/23.08.2018 and 7752740 dtd. 23.08.2018 are not “Industrial Composite Mixture Plus” falling under CTH No. 27101990, as has been described in the respective Bs/E, but they are Superior Kerosene Oil (SKO), with its correct classification under CTH No. 27101910, and the item falling under said CTH No. 27101910 can be imported by STEs only and it has to be termed as prohibited goods, by virtue of the provisions of Para 2.01 and 2.20 of the Foreign Trade Policy 2015-2020 read with relevant Policy conditions provided in Tariff Item No. 27101910 in the ITC (HS) Classification of Imported goods 2015-2010, if the relevant conditions for its legal import were

not complied with by the concerned importer. In the instant case, it is apparent that the goods were not imported by or through STEs, but it has been negotiated directly by M/s. V. V. Enterprises with the foreign supplier through Shri Iqbal Rahman Shaikh of M/s. Shree Sanari Shipping, Gandhidham. It is also not a case of the importer that they were holding Advance Licence/Advance Authorisation or Special Licence issued by DGFT. In that case, the import of SKO by M/s. V. V. Enterprises has to be considered in violation of the provisions of Para 2.01 read with Para 2.20 of the Foreign Trade Policy 2015-2020 and consequently, the goods covered by B/E Nos. 7755202 dtd. 23.08.2018 and 7752740 dtd. 23.08.2018 shall be treated as "Prohibited goods" within the meaning of definition provided vide Section 2(33) of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) of the Customs Act, 1962. Irrespective of all these, it is apparent from the documents that the goods covered vide Invoice No. KITE/CI/2018/1308-2, dtd.13.08.2018 of M/s. Kite International FZE is described as "Low Aromatic White Spirit", which was incorrectly described as "Industrial Composite Mixture Plus" in the B/E No. 7755202, dtd.23.08.2018 filed by the Customs Broker on behalf of the importer, which has been admitted by the importer. Even after considering the description of the goods as LAWS, it does not make any significant change as the goods are found SKO, which is other than the description described in the B/E and also described in the Invoice and other documents. Thus, there is evident mis-declaration with sole aim to circumvent the restrictions imposed on its import under the Foreign Trade Policy.

9.5. Even in the context of the Notification No. 105-Cus dtd. 06.08.1938, the goods in respect of which the restricting provisions of the Petroleum Act, 1934 and the rules made thereunder are applicable and where the compliance with those provisions is required from the importer of such goods; if non-compliance is observed on the part of the importer, then the same may have to be treated as contravention of the deemed prohibition imposed on such goods in terms of Section 11 of the Customs Act, 1962. It is apparent from the facts aforementioned that since the SKO in the total quantity in possession exceeding the specified quantity falls in the category of "Petroleum Class B" and the import, storage and handling of the products falling under "Petroleum Class B" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). Import of SKO; further to this, if to be considered as classifiable as "Petroleum Class B", then the Licence issued under the Petroleum Rules, 1976 is mandatory for import of goods falling under "Petroleum Class B" and only such Petroleum is allowed to be imported which are already in possession of Licence issued under the Petroleum Rules, 1976. Further for the storage of such "Petroleum Class B" products, statutory provisions have been made, which requires different manner of compliance, if such goods to be stored in Drums and to be stored in tanks. As per Notification No. 105-Cus dtd. 06.08.1938, any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may have to be treated in deemed violation of the provisions of Section 11 of the Customs Act, 1962. Since the importer in the instant case has failed to follow such compliance, it is clear that they have also violated the provisions of Section 11 of the Customs Act, 1962, which makes such goods liable for confiscation under Section 111(d) and 111(p) of the Customs Act, 1962.

9.6. Looking to the facts, it is apparent that though having knowledge about the character of the goods under import, the importer M/s. V. V. Enterprises had in connivance with the Customs Broker Shri Mritunjay Dasgupta, Shri Virbhadra Rao Illa, Proprietor of Handling Agent concern M/s. Shree Sanari Shipping and Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping and in collusion with Shri R. P. Meena, Chemical Examiner, had attempted to clear the "prohibited goods" by willfully mis-declaring its description and correct CTH No. to the extent of managing and manipulating its correct test results. In terms of Section 46 of the Customs Act, 1962, the importer of any goods is required to declare correct details in the Bill of Entry being filed by them, and also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, the importer had filed Bill of Entry with incorrect particulars with sole aim to suppress the correct nature of Cargo, which was otherwise to be considered as prohibited goods, if its correct character is revealed. Therefore, the goods imported by the importer as such, is also liable for confiscation under Section 111(m) of the Customs Act, 1962.

9.7. It would be pertinent to mention here that the importer had in the instant case categorically stated that they were in requirement of the goods with FBP between 240 degree Celsius to 260 degree Celsius. Thus, they were well aware that the characteristic of the goods is of SKO, although the Bs/E were being filed by them mis-declaring the goods ICMP and for that reason they agreed with pre-determined aim for clearing the goods anyhow and for manipulating the test results. Thus, the commission and omission on their part in committing the offence involving the smuggling of Prohibited goods has made them liable for penalty under Section 112 (a) & (b) (i) and 114AA of the Customs Act, 1962.

9.8. The importer was served with various summons on 03.10.2018, 08.10.2018, 15.10.2018, 25.10.2018, 15.11.2018, 22.11.2018 and 27.11.2018 to appear before the investigating officer, but he avoided to make appearance and also avoided to provide the documents demanded from them. For this complaints vide Misc. Criminal Application No. 634/2019 has been filed before the Judicial Magistrate, Gandhidham under the provisions of Section 174, 175 & 176 of the Indian Penal Code, 1860 read with Section 108 of the Customs Act, 1962.

9.9. The importer had declared its address in the Bill of Entry as "Ground Floor, D-2/249, Nand Nagri, Delhi-110093", but it is observed that the importer had closed the said premises and shifted its business premises from said place to "B-9/85, Sector-5, Rohini, Delhi – 110085. It would be pertinent to mention here that in terms of Para 2.15 of the Handbook of Procedure notified by the DGFT in terms of Para 1.03 of the Foreign Trade Policy read with Section 5 of the Foreign Trade (Development and Regulation) Act, 1994, the IEC holder shall be responsible for updating the profile of the importer/exporter. By not providing the correct details and also by not updating the same, it is clear that the importer has failed to follow the statutory compliance to be made by him. This failure on the part of the applicant is with malafide intention to avoid reach of the enforcement authorities and also to avoid providing the information and documents, which he is supposed to provide to the investigating agency asking specifically about the same in the course of Section 108 of the Customs Act, 1962. As on date,

the profile of IEC No. shows the address as now "V. V. Enterprises, Ground Floor, D-2/249, Nand Nagri, Delhi – 110093". It would be pertinent to mention here that the importer were served with various summons on 03.10.2018, 08.10.2018, 15.10.2018, 25.10.2018, 15.11.2018, 22.11.2018 and 27.11.2018 but the importer had intentionally avoided to make appearance before the investigating officer and also avoided to provide the details, documents and information asked for from him in the course of investigation. Thus, his intention of misleading the investigation and suppressing the facts from the investigation in violation of Section 108 of the Customs Act, 1962 has rendered themselves liable for separate penalty under Section 117 of the Customs Act, 1962.

9.10. Considering the aforesaid violations of the Policy Provisions in respect of the goods covered vide aforesaid Bills of Entry, the goods pertaining to the same were placed under seizure vide Seizure Memo dtd.03.10.2018, which was served on the importer. The goods so seized handed over for safe custody to the CWC CFS, Kandla under Supratnama dtd.03.10.2018.

9.11. The import of SKO can be permitted through the STEs only and the exception provided are related to (1) The Advance Licence holders, through the STEs including STC, as per Policy condition -2 of the Chapter 27 of the ITC (HS) Schedule-1, and (2) The Authorisation holder, who were granted such authorisation by the DGFT in terms of Para 2.20 (c) of the Foreign Trade Policy. In the instant case, in the absence of compliance by the importer with any of the aforesaid statutory obligations, redemption of the goods cannot be allowed to the importers on payment of fine and penalties after re-classifying the goods and modifying the CTH No. thereof.

Even in the context of the provisions of the Petroleum Act, 1934 (30 of 1934) is since making the goods liable to confiscation, redemption of the goods to the importer can not be permitted in the absence of continuation of such non-compliance on the part of the importer.

10. It would be pertinent to mention here that the export of SKO falling under CTH No. 27101910 is although made "free" at of Sr. No. 114 of the Schedule 2 of the ITC (HS) Classification pertaining to Export Policy; the condition has been stipulated therein about obtaining NOC from the Ministry of Petroleum and Natural Gas. Hence, any request to permit re-export of the goods is supposed to be made with required NOC from the Ministry of Petroleum and Natural Gas, which may not be available to the importer in the instant case, as they have from the very first instance not followed the provisions of the Petroleum Act, 1934.

11. In the instant case, at the behest of the importers, the Customs Broker had illegally negotiated with the Chemical Examiner of the Customs Laboratory, Kandla to bring positive test results of the imported goods with sole intention to avoid the clause of prohibition getting extended to the goods imported by them with the test result as SKO and also paid illegal gratification to obtain favourable test results, as against the actual test results. The Chemical Examiner, who was supposed to provide the correct test result, had allowed himself to enter into a well-designed conspiracy to clear the Prohibited goods and accordingly provided the manipulated results, based on which the out of charge could have been wrongly obtained by the importer from the Customs officer in respect of B/E No. 7755202/23.08.18 in a fraudulent

manner, if DRI had not started the investigation. It is evident that the Chemical Examiner had not at all considered it necessary to conduct test for SKO in terms of IS 1459 : 2016 (Third Revision) for the samples pertaining to the B/E No. 7755202/23.08.2018 and limiting the test in respect of solvent in terms of IS 1745: 1978, though he made categorical observation that the goods were other than SKO, with sole aim to abet the importer in availing clearance of the goods, which were prohibited for import and join the well-designed conspiracy involving Shri Mritunjay Dasgupta, Shri Virbhadra Rao Illa, Shri Iqbal Rahman Shaikh and Shri Hetram Goyal. It is also evident from the fact that pursuant to the initiation of investigation by DRI on 28/29.08.2018, the subsequent test results for the sample of B/E No. 7752740 dtd. 23.08.2018 were issued by the Chemical Examiner describing the goods as SKO and after conducting the testing in terms of IS 1459: 2016 (Third Revision), which was otherwise avoided by the Chemical Examiner. Thus, the conspiracy made in this respect not made limited to mis-declaration of the description of the goods in the respective Bs/E, but it was extended upto manipulating the test-results in a well-designed manner.

### CONFISCATION OF SUBJECT GOODS

12. From the above facts, it is clear that the importer had imported the Superior Kerosene Oil (SKO) falling under CTH No. 27101910 in the guise of "Industrial Composite Mixture Plus" falling under CTH No. 27101990 from Kandla Port. The policy conditions stipulate that "import of SKO (Kerosene) is subject to Para 2.20 of Foreign Trade Policy and shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL and IBP for all purposes with STC being nominated as a State Trading Enterprise (STE) for supplies to Advance Licence holders. Advance Licence holders shall however, have the option to import SKO from the above mentioned STEs including STC". Further, the SKO stands classified as "Petroleum Class B" Thus, Goods became liable for confiscation under Section 111 (d), (m) and (p) of the Customs Act, 1962.

Accordingly, the subject goods mentioned at Table-3 below, imported by M/s. V. V. Enterprises, Delhi have been placed under seizure under reasonable belief vide Seizure Memo dated 03.10.2018 (**RUD No.26**) and the same goods have been handed over to M/s. Central Warehousing Corporation, CFS, Kandla for safe custody under Supratnama dated 03.10.2018 (**RUD No.27**).

TABLE-3

| Sl No. | Description of sample/ Goods declared as | Bill of Entry No. & Date | No. of Container/s (Qty in MTS) | Bill of Entry Assessable Value (in Rs.) |
|--------|--|--------------------------|---------------------------------|---|
| 1.     | Industrial Composite mixture Plus        | 7755202 dated 23.08.2018 | 14 (253.02 MTS)                 | 1,18,77,274/-                           |
| 2.     | Industrial Composite mixture Plus        | 7752740 dated 23.08.2018 | 20 (348.34 MTS)                 | 1,63,51,790/-                           |
| TOTAL  |  |                          | <b>34 (601.36 MTS)</b>          | <b>2,82,29,064/-</b>                    |

13. The subject goods imported into India, without providing correct information in the respective bills of entry, without properly classifying and in contraventions of various

provisions of the Customs Act, 1962, which render subject goods liable to confiscation as discussed below:-

- (i) The subject goods were imported and cleared, which are restricted in nature, in the guise of the import of ICMP / LAWS, thus rendering the goods liable to confiscation under Section 111(d) of the Customs Act, 1962;
- (ii) The correct information were not included in the Bs/E No. 7755202 dtd. 23.08.2018 and 7752740 dtd. 23.08.2018, thus rendering the goods liable to confiscation under Section 111(m) of the Customs Act, 1962; and
- (iii) The subject goods were imported in violation of the Provisions of Petroleum Act, 1934 and consequently violating the Notification No. 30 of 1934, which has deemed application under Section 11 of the Customs Act, 1962, thus rendering the goods liable to confiscation under Section 111(p) of the Customs Act, 1962.

***(The present Show Cause Notice covers only the issue of confiscation of the subject goods at Table-3 which have been imported by M/s. V. V. Enterprises, Delhi & were seized vide Seizure memo dated 03.10.2018 and for the rest five importers, Show Cause Notice are being issued separately.)***

13.1 Vide letter dtd. 06.03.2019, M/s. V. V. Enterprise made representation to the Commissioner of Customs, Kandla for allowing them the provisional release of the seized goods or as an alternative to allow them to re-export the same to their supplier.

#### **ROLES OF PERSONS INVOLVED**

**14. Shri Hetram Goyal, Proprietor of M/s. V.V. Enterprises, Delhi:**

Shri Hetram Goyal, Proprietor of M/s V. V. Enterprises has categorically stated that he placed orders to the suppliers telephonically for the products ICMP and/or LAWS having FBP in the range 240 to 260 degree Centigrade and appointed M/s. MAT Shipping, as Custom Broker, through Shri Iqbal and Shri Virbhadra of Shree Sanari Shipping, Gandhidham. As per test reports of CRCL, he agreed that the goods imported by him in the name of firm M/s. V. V. Enterprises were Superior Kerosene Oil, which is of restricted nature, whereas he has declared the same as ICMP. As per the test reports of the CRCL, he further agreed that the description of the cargo has been misdeclared for hiding the restricted nature. Moreover, he showed his agreement that the Superior Kerosene Oil (SKO) is restricted & can only be imported through State Trading Enterprises (STEs).

They imported 601.36 MTS SKO vide B/E No. 7752740 & 7755202 both dated 23.08.2018 having declared value of Rs. 2,82,29,064/- (market value Rs. 4.32 Crore approx. as per website of IOCL-non subsidized price in metro in Oct., 2018). Shri Virbhadra Rao of M/s. Shree Sanari Shipping facilitated this importer by way of manipulating test reports with the help of Shri Mritunjay Dasgupta, Proprietor of CHA firm M/s. MAT Shipping through Chemical Examiner at Kandla Laboratory in order to clear the consignment having restricted nature. The deal between Shri Virbhadra Rao Illa and Shri Mritunjay Dasgupta for getting the favourable test reports by way of paying illegal gratification to the Chemical Examiner is also confirmed

from the WhatsApp chat held between the duo and confirmed by Shri Virbhadr Rao Illa in his statements dated 03.10.2018 and 04.10.2018. As per the evidences and statement of Shri Virbhadr Rao Illa of M/s. Shree Sanari Shipping and Shri Mritunjay Dasgupta of CB firm M/s. MAT Shipping, it is clear that he was actively involved in the fraud to get monetary benefits. These deliberate acts of commission and omission on the part of Shri Hetram Goyal, Proprietor of M/s. V.V. Enterprises, Delhi have rendered the said quantity mentioned above at Table-3 in Para 14.1 liable to confiscation under provisions of Section 111 (d), 111 (m) and 111 (p) of the Customs Act, 1962 and had also made M/s. V. V. Enterprises liable to penalty as per provisions of Section 112 (a) and (b) (i) and Section 114AA of the Customs Act, 1962. Shri Hetram Goyal has deliberately avoided to appear in response to the summons issued to him under Section 108 of the Customs Act, 1962, not provided the details and documents being asked for from him and also not provided his correct business location, while recording of his statement, which being in violation of Section 108 of the Customs Act, 1962, he is liable for penalty under Section 117 of the Customs Act, 1962 for the same.

#### 14.1 **Shri Virbhadr Rao Illa, Proprietor of M/s. Shree Sanari Shipping, Gandhidham:**

Shri Virbhadr Rao Illa confirmed the facts stated by him in his statement dated 29.08.2018, 03.10.2018 & 04.10.2018 that Shri R. P. Meena, Chemical Examiner of CRCL Kandla was contacted by the CHA on behalf of importers and requested him to take care of final boiling point below 240 degree Celsius. He ( Shri Virbhadr Rao Illa) also confirmed that the CB informed him that Shri R. P. Meena, Chemical Examiner, CRCL Kandla has demanded Rs. 40,000/- to Rs. 1,00,000/- per sample to keep the Final Boiling Point below 240 degree Celsius. He admitted that he used to collect money from the importers and give it to Shri Mritunjay Dasgupta of CB firm M/s. MAT Shipping, for handing over the same to Shri R. P. Meena, Chemical Examiner CRCL, Kandla as per the deal; that from October, 2017 to till issuance of SCN, he have given cash around Rs. 7 lakh to Rs. 8 lakh to Shri Mirtunjay Dasgupta for further handing over to Shri R. P. Meena, Chemical Examiner, CRCL, Kandla.

Shri Virbhadr Rao was very much aware that the cargo imported in the name of ICMP or LAWS is actually of 'Restricted' category but he involved himself in paying illegal gratification to officers of Custom House Laboratory, Kandla. Shri Virbhadr Rao has also facilitated other importers by way of manipulating test reports through Chemical Examiner at Kandla Laboratory in order to clear the consignment having restricted nature. Shri Virbhadr Rao Illa stated the names of importers which included M/s. V. V. Enterprises on behalf of whom he got the test results manipulated by the Chemical Examiner through Shri Mritunjay Dasgupta, Proprietor of CB firm M/s. 'MAT Shipping. The deal between Shri Virbhadr Rao Illa and Shri Mritunjay Dasgupta for getting the favourable test reports by way of paying illegal gratification to the Chemical Examiner is also confirmed from the WhatsApp chat held between the duo and confirmed by Shri Virbhadr Rao Illa in his statements dated 03.10.2018 and 04.10.2018. By these deliberate acts and omissions, he also abetted the practice of illegal imports of restricted goods into India, actively engaged and facilitated practices which were in contravention of the provisions of Customs Act, 1962 as well as other Statutes. By these acts, Shri Virbhadr Rao Illa



has rendered himself liable to penalty under provisions of Section 112 (a) and (b) (i) and Section 114AA of Customs Act, 1962.

**14.2 Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping, Gandhidham:**

Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping has been instrumental in placing order with the supplier on behalf of M/s. V. V. Enterprises for the goods having final boiling point more than 240 degree centigrade, though he was aware that such goods were restricted for SKO in the guise of ICMP in view of the collusion and conspiracy they have made with Shri R. P. Meena, Chemical Examiner Customs House Laboratory, Kandla and Shri Mritunjay Dasgupta. He was fully aware about the fact regarding manipulation of test results by way of paying illegal gratification to the Chemical Examiner of CRCL, Kandla. By these deliberate acts and omissions, he also abetted the practice of illegal imports of restricted goods into India, facilitated practices which were in contravention of the provisions of Customs Act, 1962 and other statutes. By these acts, Shri Iqbal Rahman Shaikh has rendered himself liable to penalty under provisions of Section 112 (a) and (b) (i) and Section 114AA of Customs Act, 1962.

**14.3 Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping:**

Shri Mritunjay Dasgupta, Proprietor of M/s MAT Shipping who handles clearance activities of the entity in the capacity as the Custom Broker is responsible for having indulged in the conspiracy of illegal clearance of SKO, he had hatched with Shri Hetram Goyal, Shri Virbhadr Rao, Shri Iqbal Rahman Shaikh and Shri R. P. Meena with sole aim to smuggle into India the goods, which can be imported by or through STE or against specific compliance, without following any such preconditions for import thereof. Shri Mritunjay Dasgupta was very much aware that the cargo imported by M/s. V.V. Enterprises in the name of ICMP is of the category, which can be imported though or by STEs or against special license issued by DGFT as well as complying with the provisions of the Petroleum Act, 1934, which he intended to bypass. Thus, he involved himself in extending illegal gratification to Shri R. P. Meena, Chemical Examiner in the Custom House Laboratory, Kandla. It is evident from the statements and from the WhatsApp chat held between Shri Mritunjay Dasgupta and Shri Virbhadr Rao Illa about making payment towards illegal gratification to Shri R. P. Meena, Chemical Examiner. The commission and omission in the part of Shri Mritunjay Dasgupta who is a Licensed Customs Broker in violation of the obligations casted on such Licensed Customs Brokers in terms of Regulation 10 of the Customs Broker License Regulations, 2018. He was so much confident about such conspiracy that while filing the B/E No. 7755202, dtd.23.08.2018, on behalf of the importer, he described the goods as "ICMP", without caring for the description described in the Invoice and other documents as "LAWS" and he has no explanation for the same. By these deliberate acts and omissions, he also abetted the practice of illegal imports of restricted goods into India, facilitated practices which were in contravention of the provisions of Customs Act, 1962, the Customs Brokers Licensing Regulations, 2018 and other statutes. By these acts, Shri Mritunjay Dasgupta has rendered himself liable to penalty under provisions of Section 112 (a) and (b) (i) and Section 114AA of Customs Act, 1962..

**14.4 Shri R.P. Meena, Chemical Examiner Gr-I, Customs House Kandla Laboratory, Kandla, Kutch, Gujarat (Presently posted in CRCL, New Delhi):**

Shri R. P. Meena, Chemical Examiner-I in Custom House Laboratory, Kandla, being expert in the field of Chemical testing, is responsible to provide the Test Results with appropriate Test methods, but he had hatched a conspiracy with Shri Hetram Goyal, Shri Virbhadra Rao, Shri Iqbal Rahman Shaikh and Shri Mritunjay Dasgupta with sole aim to smuggle into India the goods, which can be imported by or through STE or against specific compliance, without following any such preconditions for import thereof. Shri R.P. Meena, Chemical Examiner-I in Custom House Laboratory, Kandla is one of the key person in this scam who manipulated the test results for the B/E No. 7755202 dtd. 23.08.2018 for favoring M/s. V.V. Enterprises by way of illegal gratification. It would also be pertinent to mention here that various summons were issued to him for joining the investigation, but he did not appear before the investigating officer and took the concocted ground of medical reasons for non-appearance. Later on, he appeared before the investigating officer on 24.12.2018, 27.12.2018 & 28.01.2019 only after getting interim relief from the Hon'ble High Court of Gujarat. He was fully aware if the final boiling point of the goods is more than 240 degree Celsius, then the same will get classified as other than the declared goods and its CTH will also change and the item will fall under the restricted category so, he deliberately manipulated the test results to show that the final boiling point of sample was below 240 degree, as per the deal, which was fixed between Shri Mritunjay Dasgupta of M/s. MAT Shipping and him in an overall conspiracy between five persons. Both Shri Mritunjay Dasgupta (Customs Broker), M/s. MAT Shipping and Shri Virbhadra Rao (Importer), M/s. Shree Sanari Shipping clearly admitted in their statements the name of the Shri R.P. Meena that they were paying Rs. 40,000/- to Rs. 1,00,000/-, depending on the number of containers per Bill of Entry to him. It is evident from the statement dated 03.10.2018 of Shri Virbhadra Rao that he (Shri Virbhadra Rao) was used to collect money from the abovesaid importers and give it to Shri Mritunjay Dasgupta of M/s. MAT Shipping for giving the same to Shri R.P. Meena, Chemical Examiner, Customs House Lab Kandla, as per deal. It would be pertinent to mention here that being expert in the field of chemical testing and aware about the technical complexity, he kept the testing method for ICMP limited to the extent of IS 1745:1978 and not at all followed the practice of IS 1459:1974. It is not a fact that he was not aware about such practice of testing to be followed with reference to IS 1459:1974 also, but he had avoided or ignored such practice to be followed in the case of the importer M/s. V. V. Enterprises, where he was to get illegal gratification. It would be important to note that without following the test method in terms of IS 1459:1974; he released the test report with categorical statement that the sample was not SKO, because he was well aware about the practice in Customs to allow clearance to the cargo on the basis of such opinion in the test report. Thus, on the basis of the test report, the out of charge could have been wrongly obtained by the importer from the Customs officer in respect of B/E No. 7755202 dtd. 23.08.2018 in a fraudulent manner, if DRI had not started the investigation.

Further, during the statement recorded on 04.10.2018, he (Virbhadra Rao) was shown a Made Up File containing printouts of WhatsApp chat (Page No. 1 to 11) for which he (Shri Virbhadra Rao Illa) stated that these WhatsApp chats had taken place between himself and Shri Mirtunjay Dasgupta of CB firm M/s. MAT Shipping in relation to clearance of ICMP/LAWS through Customs, Kandla and dealing of money for getting favorable test results through Chemical Examiner of CRCL, Kandla; that he added that in this WhatsApp Chat, they were discussing about the quantum of money to be given to the Chemical Examiner CRCL, Kandla in lieu of favorable test report; that he explained that at the Word "NORMAL-RS. 40000/-" used in the chat means that Rs.40,000/- has to be given to the Chemical Examiner and the word "SPECIAL-RS. 100000/-" or "SPECIAL-RS. 125000/-" means that Rs. 1,00,000/- or Rs. 1,25,000/- as the case may be, has to be given to the Chemical Examiner Customs Lab, Kandla for manipulating test result in favour of importers.

In the statement dated 04.10.2018 of Shri Mritunjay Dasgupta recorded under Section 108 of the Customs Act, 1962, he stated that he used to meet Shri R.P. Meena, Chemical Examiner, Kandla to get favourable test report. So, it is also very clear that the test report, issued from the Chemical Examiner, played a vital role for allowing out of charge to the SKO. He has knowingly indulged in the nefarious activities of smuggling in utmost defiance of law. For his acts of omission and commission, Shri R.P. Meena has rendered himself liable to penalty under Section 112 (a) & (b) (i) and Section 114AA of the Customs Act, 1962.

**14.5. M/s. Millennium Lubricant FZE, UAE and M/s. Kite International FZE, Sharjah, UAE:-**  
Being supplier of the goods facilitated the importer in importing the SKO in violation of the Policy provisions and also in contravention of the provisions of the Petroleum Act, 1934, by way of providing them the documents showing the goods as ICMP, though they had all reason to believe that the goods were SKO, as the final boiling point of such goods expected to be more than 240 degree. They did all these, upon being influenced by Shri Iqbal Rahinan Shaikh of M/s. Shree Sanari Shipping, who became a link between the importer M/s. V. V. Enterprises and themselves. The supplier provided the goods to M/s. V. V. Enterprises against credit, only upon being introduced by Shri Iqbal Rahman Shaikh and there was otherwise no direct contact of the importer with the supplier. By way of providing falsified documents, Shri Ankit Tandan of M/s. Millennium Lubricant FZE, UAE, M/s. Millennium Lubricant FZE, UAE and Shri Prakash of M/s. Kite International FZE, Sharjah, UAE and M/s. Kite International FZE, Sharjah, UAE have abetted the offence, which has been committed for contravention of the provisions of the Customs Act, 1962 as well as other statutes. For his acts of omission and commission, M/s. Millennium Lubricant FZE, UAE and M/s. Kite International FZE, Sharjah, UAE have rendered themselves liable to penalty under Section 112 (a) & (b) and Section 114AA of the Customs Act, 1962.

15. Therefore, Show Cause Notice No. DRI/AZU/GRU/SKO-V.V Ent/Int-09/2018 dated 26.03.2019 has been issued under Section 124 of the Customs Act, 1962 only for seizure portion in respect of goods imported by M/s. V. V. Enterprises, Delhi vide Bs/E No. 7755202 dtd. 23.08.2018 and 7752740 dtd. 23.08.2018, without prejudice to any other action that may be taken against the importer/beneficial owners or any other person whether named

hereinabove or not, under the provisions of the Customs Act, 1962 or under any other law for the time being in force. Since the matter is under further investigation, the department reserves its right to investigate and issue notices in respect of other aspects as well as other clearances, if any, as also to issue corrigendum/ addendum to the instant notice. The show cause notice for demand of duty and for past period will be issued separately.

15.1 Accordingly, based on the above findings SCN No. DRI/AZU/GRU/SKO-V.V Ent/Int-09/2018 dated 26.03.2019 answerable to the Additional Commissioner of Custom House, Kandla was issued by the Joint Director, Zonal Unit, Ahmedabad to the following under Section 124 of the Customs Act, 1962 only for seizure portion in respect of goods imported by M/s. V.V Enterprises, Delhi vide Bill of Entry No. 7755202 dtd. 23.08.2018 and 7752740 dtd. 23.08.2018:-

(a) Shri Hetram Goyal, Proprietor of M/s. V. V. Enterprises, B-9/85, 1<sup>st</sup> Floor, Sector-5, Rohini, Delhi - 110085 (IEC No. AGYPG7054L) as well as Shri Ankit Tandan of M/s. Millennium Lubricant FZE, UAE, and M/s. Millennium Lubricant FZE, UAE, as to why:-

- (i) the 348.34 MTs SKO, falling under CTH No. 27101910, with declared value of Rs. 1,63,51,790/-, having market value of Rs. 2.50 Crores approx. should not be confiscated under provisions of Section 111(d), 111(m) and 111(p) of the Customs Act, 1962;
- (ii) Penalty should not be imposed on each of them individually and separately under Section 112(a), (b) & (i), 114AA and 117 of the Customs Act, 1962.

(b) Shri Hetram Goyal, Proprietor of M/s. V. V. Enterprises, B-9/85, 1<sup>st</sup> Floor, Sector-5, Rohini, Delhi - 110085 (IEC No. AGYPG7054L) as well as Shri Prakash of M/s. Kite International FZE, Sharjah, UAE, and M/s. Kite International FZE, Sharjah, UAE, as to why:-

- (i) the 253.02 MTs SKO, falling under CTH No. 27101910, with declared value of Rs. 1,18,77,274/-, having market value of Rs. 1.82 Crores approx. should not be confiscated under provisions of Section 111(d), 111(m) and 111(p) of the Customs Act, 1962;
- (ii) Penalty should not be imposed on each of them individually and separately under Section 112(a)& (b) (i), 114AA and 117 of the Customs Act, 1962.

(c) (1) Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping, Gandhidham, (2) Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping, Gandhidham, (3) Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, Gandhidham (4) Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Laboratory Kandla (presently posted at CRCL, New Delhi) as to why penalty should not be imposed, for the reasons discussed above, on each of them individually and personally under Section 112(a) & (b) (i) and 114AA of the Customs Act, 1962.

### DEFENCE REPLY AND PERSONAL HEARING

16. Pursuant to the issuance of Show Cause Notices to the Noticees, they have filed their written submissions issued, concerned excerpts of which are as follows:-

16.1 On behalf of M/s. V.V. Enterprises Shri Surender Singh ,Advocate, vide his letter dated 30.04.2019 has given a representation for release of the seized goods imported by M/s. V.V. Enterprises under Bill of Entry No. 7755202 dated 23.08.2018 and BE No.7752740 dated 23.08.2018. Shri Surender Singh ,Advocate, in his above said letter has ,inter alia, submitted that they have imported the product "Low Aromatic White Spirit" / "Industrial Composite Mixture Plus" on many occasions but the product has never been questioned or nature of the product was never disputed. Hence, the SCN under reply is illegal and in violation of the principal of natural justice. They challenge the SCN on the following grounds:- (i) Patently incorrect approach for examination of the sample and failure to appreciate the vital facts qua the import – They have imported from the reputed companies who have also classified the goods under CTH 27101990. Products are tested by them before dispatch. Testing process (i.e. ASTM) by them may be different from the process adopted by CRCL, New Delhi. The process of ASTM is internationally accepted for identifying and testing of these products. Therefore, the disputed issue as to which report is to be relied upon and what has to be the better process of examination as ideally the testing methodology adopted by the exporting company should be testing methodology which should be used to test the product by CRCL, Delhi. Further, the market rate of LAWS / ICMP is much higher than SKO. Business of importing SKO is guise of LAWS / ICMP is not profitable. Hence, allegations are falls and the statements which were relied upon were given under pressure and threat. (ii) The Show Cause Notice is in nature of determination of guilt and not an open notice to show cause – Their firm has been implicated merely for the reason that M/s. Shree Sanari Shipping and M/s. MAT Shipping, who were handling their import, were involved in certain illegal activities in connivance with certain officers of Customs. Further, on the basis of the test report which is generated by adopting wrong and incorrect testing procedure. The allegations imputed upon them are without providing the report on the basis of which an adverse inference is drawn and the said imputation should have been stated in the SCN. Proper opportunity to reply in the matter was not given. The department had already decided them to be guilty and no proceedings to grant them a fair opportunity of show cause was given to them. Hence, the proceedings as stated to be initiated are patently illegal. (iii) Notice lacks the basic requirements of Show Cause Notice such as relevant sections under which the notice is issued and no information about propose penalty is specified - Customs Section under which the notice has been issued to them the is not specified in the SCN. The proposed penalty is also not specified. Further, no opportunity has been provided to show cause in terms of Section 110(1) read with Section 124 of the Customs Act, 1962. (iv) Sample were sent for testing to a Lab which is not equipped for testing of the sample – The samples of imported ICMP were sent to CRCL, Delhi who has given opinion that the said sample is Superior Kerosene Oil (SKO) and on the basis of the said report the imported

goods were seized. Whereas, CRCL, Delhi is not capable to test the sample. (v) Subsequent samples were cleared by the department which were dispatched by the same manufacturer with the similar report despite the testing of the said consignment. (vi) Show Cause Notice is barred by law and is improper as there was no suppression in the Bill of Entry – Report (issued under the process of ASTM) of the imported goods is attached with the Bill of Entry, which clearly specify the properties of the imported goods. Report given by the supplier and report given by the CRCL, Delhi are mostly overlapping and since the Lab was not competent to identify the goods, the same gives a incorrect and erroneous finding. (vii) Show Cause Notice is barred by law - The proceedings should have been initiated within 6 months from the date of seizure i.e. when the goods were impounded. SCN was not issued within said period from the date of seizure as provided under Section 110(2) of the Customs Act, 1962. They have cited the following judgments in favour of their reply: (a) Auto Creators Vs. Union of India - 2015(325)ELT 49 (b) Krampe Hydraulik (India) Vs. Union of India – 2003(6) AD(Delhi) 436 (c) Rajesh Arora Vs. Collector of Customs – 1998(1)AD(Delhi) 748.

Although, Shri Surendra Singh, Advocate filed above written reply on behalf of M/s. V.V. Enterprises, however, they have not submitted any Vakalatnama from M/s. V.V. Enterprises or any authorization from the party to appear on behalf of the party. Further the said letter dated 30.04.2019 is also not signed by Shri Surendra Singh, Advocate and does not have any receipt no. on the letter, hence the said written reply may not be taken into consideration.

16.2. Shri Hetram Goyal, Proprietor of M/s V.V Enterprises appeared for Personal Hearing on 20.06.2019 and submitted in his written submission that they have not imported any material or any restricted goods intentionally to ditch the Customs Authorities. He further stated that their materials/imported goods are overlapping the parameters of SKO. The IS standard of our imported goods does not qualify for the Smoke points.

16.3 Shri Iqbal Rehman Sheikh, Shri Virbhadrarao Illa and Shri Mritunjay Dasgupta appeared for Personal Hearing on 26.06.2019. Detail of the same is as under:

(a) Shri Iqbal Rehman Sheikh representative of M/s Shree Sanari Shipping, Gandhidham submitted written submission vide his letter dated 26.06.2019 wherein he, inter alia, submitted that he was looking after handling work of Shri Virbhadrarao of Shree Sanari Shipping whenever he is not available or busy with his social work. He further submitted that he is not involved in any illegal import of SKO as he had no prior knowledge or understanding with anyone for clearance or manage clearance of such type of cargo which is treated as restricted by Customs. He has never contacted anyone within or outside department for managing any type of Test report. Hence, he is not liable for penalty. The above facts have also been reiterated by him during his Personal Hearing.

(b) Shri Virbhadrarao Illa Proprietor of Shree Sanari Shipping, Gandhidham submitted written submission vide his letter dated 26.06.2019 wherein he submitted that he is running a business at Gandhidham. He was appointed by Shri Hetram Goyal, Proprietor of M/s V.V Enterprises, Delhi to handle his import shipments from UAE i.e (20X20') & (14X20') Containers in Flexi Bags of " Industrial Composite Mixture Plus" & "Low Aromatic White Spirit" vide BL#

TKDXBIXY1282 dated 15.08.2018 & BL# SHLAEC18000492 dated 13.08.2019 respectively. He mentioned that he was a handling agent of M/s V.V Enterprise, Delhi, the scope of work in Handling is that after receiving the Import related documents from M/s V.V Enterprise, the said documents were further handed over to CHA (MAT Shipping), Gandhidham after completing all required Custom procedures and Duty payment, the said CHA submit the Original Out of Charge Order to the concerned CFS for Delivery and inform him for delivery of the cargo verifying/approval of the checklist, correspondence with Shipper Container Line, for collection of Delivery Order from Shipping Line, reporting for Movement of Loaded Containers from Vessel to CFS, to arrange for De-stuffing of the cargo from Containers/Flexi Bags and pumping to Tankers, for all the said work he raised invoice for Handling & De-stuffing. He further submitted that he is not involved in any illegal import of SKO as he had no prior knowledge or understanding with anyone for clearance or manage clearance of such type of cargo which is treated as restricted by Customs. He has never contacted anyone within or outside department for managing any type of Test report. Hence, he is not liable for penalty. The above facts have also been reiterated by him during his Personal Hearing.

(c) Shri Mritunjay Dasgupta, Proprietor of M/s Mat Shipping submitted written submission vide his letter dated 26.06.2019 wherein he submitted that Shri Virbhadrarao and Shri Iqbal Rahman Shaikh are well known persons since last 25 years and are engaged in same shipping business, as they both have good contacts with Indian Importers, accordingly they proposed him for Custom Clearance of ICMP/LAWS as he is having the Custom Broker Licence. He collected market opinion and as per last three years import details, ICMP/LAWS were imported at Kandla/Mundra in huge quantity and so many importers and Custom Brokers are engaged in same commodity. They always used to handover/email him import consignment documents of ICMP/LAWS which are listed in OGL and freely importable. He used to take the documents and file the said documents in Customs after getting approval from their side for clearance of the goods/cargo as per Customs norms. After filing bill of entry of ICMP/LAWS as per customs procedure always he took first check examination for proper analysis of goods. As per procedure all samples were drawn by Preventive officer (DE) with Superintendent (DE) and sealed sample forwarded directly to CRCL, Kandla for testing. There is no involvement of any other persons for carrying out the sample drawn and forward procedure. He submitted that he never approached any person of CRCL Kandla for taking care of samples as he was submitting all reports online in EDI systems as per schedules testing method. He approached CRCL Kandla only for early submission of report in EDI system to avoid container detention and demurrage charges. He strictly followed all customs formalities to avoid indulging in the conspiracy of attempting of illegal clearance of SKO. After completion of proper Customs procedure, all original out of charge documents were submitted to the concerned CFS officials for taking delivery of import cargo/goods. He used to charge his Agency charges to Shree Sanari Shipping, Gandhidham as Shri Virbhadr Rao is an importer as well as a Handling agent. He further submitted that he had never taken any cash or extra charges from Shri Virbhadr Rao to make illegal gratification to anybody and is not involved with anyone for clearances or manage

clearances of such types of cargo which is treated as restricted by customs. He never contacted anyone within or outside department to manage any test report. Regarding Custom clearance of Import 14X20' Cont. vide Bill of Entry No. 7755202 dated 23.08.2018 and 20X20' Cont. vide Bill of Entry 7752740 dated 23.08.2018 of M/s V.V Enterprises, Delhi, the said Consignment was imported under OGL and the same were filed Home Consumption Bill of Entry with Kandla Custom for the Clearance. There is no involvement of him for deliberate acts and omissions in this shipment. Hence, he is not liable for penalty. The above facts have also been reiterated by him during his Personal Hearing.

16.4 Shri Ankit Tandon, Proprietor of M/s Millenium Lubricant FZE, UAE vide his written submission dated 25.06.2019 submitted that they are doing genuine business and having a company in UAE with no criminal involvement in any type of illegal activities. In UAE the testing of goods/products is as per American Society for Testing & Material (ASTM) Standard of Testing & Reporting Method, which is different process than the one adopted by the Chemical Examiner CRCL, New Delhi. He requested to waive his Personal hearing and to decide the matter on merits.

16.5 Shri Prakash Kumar Runiyar, Proprietor of M/s Kite International FZE, Sharjah , UAE vide his written submission dated 25.06.2019 submitted that they are doing genuine business and having a reputed firm/company in UAE with no criminal involvement in any type of illegal activities. In UAE the testing of goods/products is as per American Society for Testing & Material (ASTM) Standard of Testing & Reporting Method, which is different process than the one adopted by the Chemical Examiner CRCL, New Delhi. He requested to waive his Personal hearing and to decide the matter on merits.

16.6 Shri Rajendra Prasad Meena, Chemical Examiner, Gr-I appeared for Personal Hearing on 16.07.2019 and inter alia said that the allegations are not correct as in three cases the Test Reports issued by him are against the importers. In one case (Shagun Enterprises) no Test Report was issued and in one more case wherein two Bills of Entry are involved one of his report is against the importer. The Chemical Examiner Grade-I issues report with the approval of the Jt. Director after preparing the same on the basis of parameters reported by the Asstt. Chemical Examiner / Chemical Asstt. The case is based on the statements of Shri Iqbal Rehman Sheikh, Shri Virbhadrarao Illa and Shri Mritunjay Dasgupta. Therefore, he requested that the cross examination of these persons may be allowed. He further said that he is also submitting written submission dated 16.07.2019. He further stated that the contents of this PH Memo are same for all cases. The written submission for each case is separate.

16.5.1 Shri Rajendra Prasad Meena, Chemical Examiner, Gr-I submitted his written submission vide letter dated 16.07.2019 wherein he inter alia submitted as follows:-

- (i) At the outset he denied all the charges leveled against him in the instant SCN.
- (ii) He submitted that, it is a fact that in total six SCNs total seven consignments are covered. Out of the seven consignments, he did not receive or issue report in respect of one consignment i.e of M/s Shagun Enterprises. He knows nothing about the consignment of M/s



Shagun Enterprises. In respect of three test reports i.e. of M/s Shree Sanari Shipping, M/s Jai Mata Chintpurni and M/s V.V Enterprises (B/E No. 7752740), he said that he reported that the goods were Kerosene (SKO). These reports were in conformity with the test reports issued by CRCL and claim of DRI. In respect of one sample i.e. of M/s V.V Enterprises (B/E No. 7755202) he had reported that it was not Low Aromatic Solvent. This report was also against the claim/declaration of the importer. Further, in respect of one sample i.e. of M/s G.R Pahwa, he had reported that it was Light oil. He said that Light oil is not freely importable. This test report is also against the claim/declaration of the importer. The only test report issued by him which has been alleged to be different from the Test Report issued by CRCL is in case of M/s Janpriya Energy. He had reported that it is other than light oil/SBPS/ATF/SKO/HSD/LDO. He submitted that he had issued the Test report correctly on the basis of parameters reported by the officer who tested/analyzed the sample.

(iii) He submitted that the alleged test of all the six consignments except that of M/s Shagun Enterprises were not conducted by him and in fact conducted by his subordinates viz. Chemist/Asst Chemical Examiner and from the parameters derived on testing/analysis by them and reported to him, he issued the test reports. He further submitted that as per prevailing practice at Custom Lab at Kandla, all Test Reports are issued with the approval of the Joint Director, Customs Lab Kandla. Accordingly, these test reports were also issued with the approval of the Joint Director, Customs Lab at Kandla.

(iv) He submitted that his duties were to assist the Director (Revenue Laboratories) and Joint Director in day to day technical and administrative works and to issue the test reports under his signature and offer technical requirements as required. The duties of subordinate officers, like Assistant Chemical Examiners and Chemical Assistants, are to analyze the samples and Assistant Chemical Examiners are also duty bound to assist him. His subordinate officers used to analyze the samples received in the Custom House Laboratory at Kandla. They used to submit all the parameters and specifications found on analysis to him. He used to examine the same and put up to Joint Director for vetting of the same. After verification of the Test Report by the Joint Director, Custom House Laboratory at Kandla, he used to issue test reports. He did not play any direct role in analysis and any role in recording parameters/specification of product under analysis. He said that it is alleged that the Customs Broker had collected certain amounts from the other persons/importers for giving it to him to keep the Final Boiling Point under 240°C. But in view of the fact which is also on record in the form of statements of my subordinate officers, it is undisputed fact that the parameters/specifications were observed by such subordinate officers without any role or intervention by him. It is absolutely false that he had aided or abetted anybody in testing of changing or manipulating the parameters. The fact which is on record is that he had no role in testing and reporting parameters/specifications. He further submitted that most of the reports were issued by him against the claim/declarations of the importers rendering confiscation of the goods and imposition of penalties on importers. He said that the allegations are baseless, false and not supported by any evidence.

(v) He submitted a copy of literature of ASTM D-86 method in respect of difference between Test Report issued by him and CRCL, New Delhi. In para 13.1.1 of the said ASTM, it is stated that there may be difference between successive test results obtained by the same operator using the same apparatus under constant operating conditions on identical test material. For the range 135° to 260°, it has been reported that there may be difference of 3.33°. It is also reported therein that in one out of twenty cases, the difference may be even more. In Para 13.1.2 of the said ASTM, it is mentioned that difference between two single and independent test results, obtained by different operators working in different laboratories on identical test material may differ by 6.78° in the range of 135° to 260°. It is also reported therein that in one out of twenty cases, the difference may be even more. Since in this case the tests were conducted at different times at different places (Kandla and Delhi) by different operators on different instruments, there may be some difference in Parameters/specifications observed and reported. He further submitted that human error by the testing person in testing or observing at Delhi or at Kandla cannot be ruled out.

(vi) He lastly submitted that as per statements of the officers who had conducted the tests i.e. Assistant Chemical Examiner/Chemical Assistant have specifically stated that he had not given any direction to them and they had conducted tests and reported the parameters at their own. His duty was to study the parameters/specifications observed and reported by them and to issue test report. The test reports are invariably verified by the Joint Director, Customs Laboratory, Kandla. He had no role as alleged in testing or observing the parameters/specification of the sample.

16.5.2 Shri Rajendra Prasad Meena's request for cross examination was conceded and the same was held on 26.08.2019 in this office. Detail of the same is as under:-

**(a) Cross Examination by Shri Rajendra Prasad Meena to Shri Virbhadrarao Illa:-**

Que: Since when you know me?

Ans: I have never met you. I met you first time in the chamber of SIO during submission of Surety Bond in office of DRI, Gandhidham.

Que: Had you ever contacted me or talked telephonically for any purpose?

Ans: No

Que: Had I ever contacted you or talked telephonically for any purpose?

Ans: No

Que: Had you ever asked me for manipulation of any test report?

Ans: No

Que: Had you ever offered me any illegal gratification?

Ans: No

Que: Had I ever asked you for any gratification or any other favour?

Ans: No.

**(b) Cross Examination by Shri Rajendra Prasad Meena to Shri Mritunjay Dasgupta:**

Que: Since when you know me?

Ans: For last 27 months.

Que: Had I contacted you for any purpose other than for buying multi-vitamin tablets/health supplements?

Ans: No

Que: Had you ever asked me for manipulation of any test report?

Ans: No

Que: Had you ever offered me any illegal gratification?

Ans: No

Que: Had I ever asked you for any gratification or any other favour?

Ans: No.

Que: Whether all test reports issued by me (in respect of consignments wherein you were Customs Broker) are in favor of the importer?

Ans: No.

(d) Shri Iqbal rahman Sheikh did not appear for cross examination on the said date.

16.5.3 Further Examination of Shri Rajendra Prasad Meena was done by this office. The details of which are as follows:-

Que: Why Shri R.P Meena, Chemical Examiner Gr. I approached to the court for anticipatory bail, when nothing has been done?

Ans: Due to fear of arrest he approached the court.

Que: What was the fear and why?

Ans: No reply.

Que: Why Shri R.P Meena, Chemical Examiner Gr. I was not appeared before the DRI on summoning him on various occasions?

Ans: No reply.

Que: Are you aware about the Boiling point, what is it?

Ans: Any chemical which boils on that pointing temperature is known as boiling point.

Que: What is the difference between "Above 240 degree Celsius" and "Below 240 degree Celsius"?

Ans: The products which starts boiling below 240 degree Celsius comes under "Below 240 degree Celsius" and the products which start boiling above 240 degree Celsius comes "Above 240 degree Celsius".

### DISCUSSION AND FINDINGS

17. I have carefully gone through the case records, documents, relied upon documents under the Show Cause Notice, facts of the case and the submissions made by the importer and other co-noticees. All the noticees have submitted their written as well as oral submission. Before going into the merit and demerit of the case, it is pertinent to mention here that the Board (Principal Director General, Revenue Intelligence) vide Notification No.32/2019-Customs(N.T.)/CAA/DRI) dated 24.07.2019 has appointed the Additional Commissioner of

Customs, Kandla Custom House, Kutch for this case too as a Common Adjudicating Authority. However, the SCN No.DRI/AZU/GRU/SKO-V.V Ent/INT-09/2018 dated 26.03.2019 issued in this case is exclusively answerable to the Additional Commissioner of Customs, Custom House Kandla and accordingly the SCN is taken into consideration for adjudication.

17.1 I find that the following major issues are to be decided under the Show Cause Notice:-

- (a) Import of 601.36 MTs SKO, falling under CTH No. 27101910, having declared value of Rs. 2,82,29,064/- (market value of Rs. 4.32 Crore approx.) covered under Bill of Entry No. 7755202 dated 23.08.2018 and 7752740 dated 23.08.2018 mentioned in Table-I in the Show Cause Notice by mis-declaring as "Industrial Composite Mixture Plus" rendered liable for confiscation under section 111(d), 111(m) and 111(p) of the Customs Act, 1962;
- (b) Consequent penalties proposed under Section 112(a)& (b) (i), 114AA and 117 of the Customs Act, 1962.

17.2 Now, coming to the first issue that M/s. V.V Enterprises, B-9/85, 1<sup>st</sup> Floor, Sector-5, Rohini, Delhi-110085 (PAN No. AGYPG7054L & IEC No. AGYPG7054L) had filed Bill of Entry No. 7755202 dated 23.08.2018 for clearance of 253.02 MTs (14 containers) and 7752740 dated 23.08.2018 for clearance of 348.34 MTs (20 containers) of "Industrial Composite Mixture Plus" (ICMP). On verification of the test reports dated 29.08.2018 and 28.09.2018 issued by CRCL, Kandla and CRCL, New Delhi, respectively for Bill of entry No. 7755202 dated 23.08.2018, I find that CRCL, Kandla has confirmed that the sample is Other than Light Oil as per IS 1745:1978 whereas CRCL, New Delhi has confirmed that the sample meet the requirements of SKO (Kerosene) as per IS: 1459:1974. On verification of the test reports dated 12.09.2018 and 28.09.2018 issued by CRCL, Kandla and CRCL, New Delhi, respectively for Bill of entry No. 7752740 dated 23.08.2018, I find that CRCL, Kandla and CRCL, New Delhi has confirmed that the sample meet the requirements of SKO (Kerosene) as per IS: 1459:1974. Further, I find that the imported goods i.e. SKO (Kerosene), which is classifiable under CTH No. 27101910, but the same was attempted to be cleared from Customs by mis-declaring its description as "Industrial Composite Mixture Plus" with wrong classification under CTH 27101990. The total value (excluding duties of customs) covered under aforesaid Bill of Entry is Rs. 2,82,29,064/-, as declared in the Bill of Entry and the market value of the said goods is Rs. 4.32 Crores approx. (as per website of IOCL-non subsidized price in metro in Oct., 2018). Further, I find that, being a petroleum product, the SKO (Kerosene) is restricted for importation and clearance thereof as import of the same is allowed through *State Trading Enterprises (STEs) as provided under Foreign Trade Policy 2015-2020*.

17.3 I find that considering the aforesaid violations of the Policy Provisions in respect of the goods covered vide aforesaid Bill of Entries, the goods pertaining to the same were placed under seizure vide Seizure Memo dated 03.10.2018, which was served on the importer M/s. V.V Enterprises. The goods so seized handed over for safe custody to the CWC CFS, Kandla under Supratnama dated 03.10.2018.

17.4 I find that as per Para 2.20 of the Foreign Trade Policy 2015-2020, which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 specified as follow:-

- (a) *State Trading Enterprises (STEs) are governmental and nongovernmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.*
- (b) *Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.*
- (c) *DGFT may, however, grant an authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs.*

Further to the above, the Policy condition (2) prescribed at Schedule I of the ITC (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27 specified as follow:

*“(2) Import of SKO shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL, and IBP for all purposes with STC being nominated as State Trading Enterprises (STE) for supplies to Advance Licence Holders. Advance Licence Holders shall however, have the option to import SKO from the above mentioned STEs including STC.”*

I find that the importer in this case is neither an STE (State Trading Enterprises) nor has submitted any documents showing grant of such rights by the DGFT to import or export any of the goods notified for exclusive trading through STEs. The list of such STEs for FTP purpose is as provided under Appendix-2J of the Foreign Trade Policy 2015-2020.

17.5 Further, I find that the SKO falls in the category of “Petroleum Class B” and import, storage and handling of the same are governed by the provisions of the Petroleum Act, 1934 (30 of 1934). Licence under the Petroleum Rules, 1976 is mandatory for import of goods falling under “Petroleum Class B”. Any import made in contravention of the provisions of the Petroleum Act, 1934 (30 of 1934) may be treated as deemed violation of the provisions of Section 11 of the Customs Act, 1962.

17.6 I find that it is unequivocally proved that the importer has mis-declared the description and classification of imported goods as “Industrial Composite Mixture Plus” under CTH No. 27101990 instead of “SKO (Kerosene)” under CTH No. 27101910, by suppressing its correct description as SKO and that the condition stipulated for import through or by STE or against the Special authorization issued by the DGFT, as per the Foreign Trade Policy 2015-2020, as well as conditions of compliance with the provisions of Petroleum Act, 1934 (30 of 1934), were not at

all complied with by the importer M/s. V.V Enterprises, in respect to the import of SKO made by them, which was sought clearance by them under the aforesaid B/Es. Therefore, the said goods required to be treated as Prohibited Goods/Restricted goods in terms of Import Export Policy, 2015-2020. Therefore the imported goods are liable for confiscation under Section 111(d) and 111(p) of the Customs Act, 1962.

17.7 I find that as per provision of Section 46(4) of Customs Act, 1962, the importer while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall in support of such declaration, produce the proper officer the invoice, if any or any other documents relating to the imported goods. Further, as per Section 46(4A) of the Customs Act, 1962, the importer, who presents a Bill of Entry shall ensure the accuracy and completeness of the information given, the authenticity and validity of any document supporting it and compliance with the restriction or prohibition, if any related to the goods under this Act or any other law for the time being in force. However, in the instant case, the importer failed to provide the accurate and complete information about the goods and has imported Superior Kerosene Oil (SKO) in guise of Industrial Composite Mixture Plus (ICMP) with wrong classification thereof under CTH 27101990. Therefore, the goods imported by the importer as such, is also liable for confiscation under Section 111(m) of the Customs Act, 1962.

17.8 In view of the above, I find that the above said imported goods having total assessable value of **Rs. 2,82,29,064/-** are liable for confiscation under Section 111(d), 111(m) and 111(p) of the Customs Act, 1962.

18. Now I will go through the second issue related to the role of the persons involved in the entire episode and in a nexus to import the "Petroleum Products" which are restricted under Import Export Policy, in the guise of "Industrial Composite Mixture Plus" (ICMP) and I find that during the course of investigation, the mobile phones, Laptop and Hard Disk, which were resumed from the respective persons, were taken to the Central Forensic Laboratory, DRI, Mumbai Zonal Unit, for analysis of the data contained therein. Further, the data retrieved from the electronic devices like Hard Disk, Mobile phones and Laptop, which were resumed/voluntarily surrendered by the concerned persons were examined and investigated. Further, various statements of the persons, involved in the racket, were also recorded by the Investigating Agency. On the basis of documentary evidences and their statements the role of each persons are looked into for the purpose of Section 112, 114AA and 117 of the Customs Act, 1962.

#### **18.1. Role of Shri Hetram Goyal, Proprietor of M/s. V.V Enterprises, Delhi:-**

I find that Shri Hetram Goyal is a proprietor of M/s V.V Enterprises, Delhi and imported the said consignment of 601.36 MT of declared value of Rs. **2,82,29,064/-** vide Bill of Entry No. 7755202 dated 23.08.2018 and 7752740 dated 23.08.2018 and declared "Industrial Composite Mixture Plus" under CTH No. 27101990 instead of "SKO (Kerosene)" under CTH No. 27101910, which has been confirmed by CRCL, Delhi in their reports.

Shri Hetram Goyal in his statement recorded on 03.10.2018 under section 108 of the Customs Act, 1962 has showed his agreement with the test results as per test report dated 28.09.2018 of CRCL, New Delhi in respect of the sample drawn vide Bill of Entry no. 7755202 dated 23.08.2018 and 7752740 dated 23.08.2018 from the container no. FFLU2003061 and VSBU2069332 respectively under Panchnama dated 31.08.2018 at Central Warehousing Corporation (CWC), CFS, New Kandla and the cargo meets the requirement of the parameters of Superior Kerosene Oil (SKO). He also agreed that the Superior Kerosene Oil (SKO) is restricted item and can only be imported through State Trading Enterprises (STE) as per CTH and FTP.

Shri Virbhadra Rao of M/s. Shree Sanari Shipping facilitated Shri Hetram Goyal, Proprietor of M/s V.V Enterprises by way of manipulating test reports through Chemical Examiner at Kandla Laboratory in order to clear the consignment having restricted nature. Shri Virbhadra Rao Illa stated the names of importers including M/s. V.V Enterprises, on behalf of whom he got the test results manipulated by the Chemical Examiner through Shri Mrityunjaya Dasgupta, Proprietor of CHA firm M/s. MAT Shipping. The deal between Shri Virbhadra Rao Illa and Shri Mrityunjaya Dasgupta for getting the favourable test reports by way of paying illegal gratification to the Chemical Examiner is also confirmed from the WhatsApp chat held between the duo and confirmed by Shri Virbhadra Rao Illa in his statements dated 03.10.2018 and 04.10.2018. As per the evidences and statement of Shri Virbhadra Rao Illa of M/s. Shree Sanari Shipping and Shri Mritunjay Dasgupta of CB firm M/s. MAT Shipping, it is unequivocally proved that he was actively involved in the fraud to get monetary benefits.

These deliberate acts of commission and omission on the part of Shri Hetram Goyal, Proprietor of M/s. V.V Enterprises, Delhi, have rendered the said quantity mentioned above at Table-1 liable to confiscation under provisions of Section 111 (d), 111 (m) and 111 (p) of the Customs Act, 1962 and had also made M/s. V.V Enterprises, Delhi liable to penalty as per provisions of Section 112 (a) and (b) (i) and Section 114AA of the Customs Act, 1962. Further, Shri Hetram Goyal has deliberately avoided to appear in response to the summons issued to him under Section 108 of the Customs Act, 1962, not provided the details and documents being asked for from him, which being in violation of Section 108 of the Customs Act, 1962, he is liable for penalty under Section 117 of the Customs Act, 1962 for the same.

## **18.2. Role of Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping, Gandhidham:-**

I find that Shri Virbhadra Rao Illa is a proprietor of M/s Shree Sanari Shipping, Gandhidham played a role of handling agent for importer M/s V.V Enterprises, Delhi. From his statement recorded on 29.08.2018, 03.10.2018 and 04.10.2018 under section 108 of the Customs Act, 1962, it is unambiguously proved that he connived with Shri Hetram Goyal (Importer), Shri Mritunjay Dasgupta (Customs Broker) Proprietor of M/s MAT Shipping, Gandhidham for getting the favourable test reports by way of paying illegal gratification to the Chemical Examiner to the tune of Rs.40,000.00 to Rs.1,25,000.00, which is also confirmed from the WhatsApp chat held between him and Shri Mritunjay Dasgupta. He also confirmed, in his

statements, that since October, 2017 to till date, he has given cash around Rs. 7 lakh to Rs. 8 lakh to Shri Mirtunjay Dasgupta for further handing over to Shri R. P. Meena, Chemical Examiner, CRCL, Kandla to get favourable reports from him. Although, vide his letter dated 26.06.2019, which was submitted during personal hearing on 26.06.2019, he denied the charges of illegal gratification to anybody, however, the fact remains that, he accepted in his Statements dated 29.08.2018, 03.10.2018 and 04.10.2018, that he has paid Rs. 40,000.00 to Rs.1,25,000.00 to Shri Mritunjay Dasgupta for further handing over to Shri R.P .Meena, Chemical Examiner, Grade-1 to get favourable reports from him, hence denying the charges during personal hearing is nothing but after thought. Further, with regards to the statements of the noticees recorded under Section 108 of the Customs Act, 1962, I rely on the case of **Surjeet Singh Chhabra v. Union of India, 1997 (89) E.L.T. 646 (S.C.)**, wherein the Supreme Court has held that confessional statement made before Customs officer is an admission and binding since Customs officers are not police officers in terms of Section 25, Evidence Act, 1973. The Madras High Court in the case of **Assistant Collector of Customs v. Govindasamy Ragupathy, 1998 (98) E.L.T. 50 (Mad.)** held that confessional statement made under Sec. 108 of Customs Act, 1962 before Customs officers are to be regarded as voluntary. **It is settled legal proposition that statement recorded under section 108 of the Act is admissible unlike a statement recorded by a Police Officer.** Even noticees have not retracted/rebutted from their confessional statements. Hence, their admitted facts need not be required to be proved.

Shri Virbhadra Rao was very much aware that the cargo imported in the name of ICMP is actually of 'Restricted' category but he involved himself in paying illegal gratification to officers of Custom House Laboratory, Kandla. Shri Virbhadra Rao has also facilitated M/s. V.V Enterprises, Delhi with other importers by way of manipulating test reports through Chemical Examiner at Kandla Laboratory in order to clear the consignment having restricted nature. By these deliberate acts and omissions, he also abetted the practice of illegal imports of restricted goods into India, actively engaged and facilitated practices which were in contravention of the provisions of Customs Act, 1962 as well as other Statutes. By these acts, Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping, Gandhidham has rendered himself liable to penalty under provisions of Section 112 (a) & (b) (i) and Section 114AA of Customs Act, 1962.

### **18.3. Role of Shri Iqbal Rahman Shaikh Representative of M/s. Shree Sanari Shipping, Gandhidham:**

I find that Shri Iqbal Rahman Shaikh, representative of M/s Shree Sanari Shipping is actually an Instrumental in placing Orders with the supplier on behalf of M/s V.V Enterprise. He was also playing a role of a representative of M/s Shree Sanari Shipping. He was very much aware that the cargo imported in the name of ICMP is actually of 'Restricted' category but he abetted with Shri Virbhadra Rao Illa in paying illegal gratification to officers of Custom House Laboratory, Kandla. He also accepted in his statement dated 29.08.2018 and 04.10.2018 that for getting favourable reports from the Chemical Examiner of CRCL, Kandla, Shri Virbhadra Rao Illa and Shri Mritunjay Dasgupta, both were involved in paying illegal gratification to the tune of



Rs. 40,000.00 to Rs. 1,00,000.00. By these deliberate acts and omissions, he also abetted the practice of illegal imports of restricted goods into India, actively engaged and facilitated practices which were in contravention of the provisions of Customs Act, 1962 as well as other Statutes. By these acts, Shri Iqbal Rahman Shaikh, representative of Shree Sanari Shipping has rendered himself liable to penalty under provisions of Section 112 (a) & (b) (i) and Section 114AA of Customs Act, 1962.

**18.4. Role of Shri Mritunjay Dasgupta (Customs Broker) Proprietor of M/s. MAT Shipping:**

I find that Shri Mritunjay Dasgupta (Customs Broker) in his statements dated 29.8.2018 and 04.10.2018 categorically accepted that he used to approach the CRCL, Kandla laboratory and requested them to issue the report at the earliest with taking care of the final boiling point of the cargo and that should be below 240 degree Celsius. The instructions regarding the final boiling point was conveyed to him by Shri Virbhadr Rao and Shri Iqbal of M/s. Shree Sanari Shipping and in turn he was conveying the Lab officers to issue the Lab Test Report accordingly i.e. below 240 degree Celsius. This adjustment was made in the Lab Test Report, because if the final boiling of the material is more than 240 degree Celsius, its CTH will change and the item will fall under the restricted category. For adjusting the final boiling point figure in the test report, the amount of Rs. 40,000/- to Rs. 1,00,000/- was fixed, depending on number of containers per Bill of Entry to Shri R. P. Meena, Chemical Examiner of Kandla Laboratory. He had not met any of the above named importers till the case was booked by DRI. He was working for the importers on the directions of Shri Virbhadr Rao and Shri Iqbal of M/s. Shree Sanari Shipping. He stated that he used to meet Shri R. P. Meena, Chemical Examiner Kandla to get favourable test report. He perused the test reports issued by CRCL, New Delhi in respect of seven bills of entry filed by above said importers of ICMP (Industrial Composite Mixture Plus) at Kandla port and in each of consignment, the test report confirmed that the goods to be meeting requirement of SKO (Kerosene) as per IS 1459:1974. After customs clearance the work relating to delivery or transportation for importers was looked after by Shri Iqbal Bhai or Shri Virbhadr Rao (Proprietor of M/s. Shree Sanari Shipping) or any other employee of M/s. Shree Sanari Shipping. Although, Shri Mritunjay Dasgupta, Proprietor of M/s MAT Shipping vide his letter dated 26.06.2019 submitted that he never approached any person of CRCL Kandla for taking care of samples as he was submitting all reports online in EDI systems as per schedules testing method. He also contended that nowhere in the Whatsapp chat there is conversation about illegal gratification. He only chatted about his agency charges in his bank account. No illegal gratification can be asked to deposit in Bank. However, the facts remain that he accepted in his statement, under section 108 of the Customs Act, 1962, on 29.08.2018 and 04.10.2018, that Rs. 40,000.00 to Rs. 1,00,000.00 has been fixed for adjusting the final boiling point figure in test reports with Shri R.P.Meena, Chemical Examiner, Grade-1. Shri Virbhadr Rao Illa also confirmed in his statement that since October 2017 till the booking of the case by DRI, he has paid around 7 lakh to 8 lakh to him for onward payment to Shri R.P. Meena. I find that Shri

Mritunjay Dasgupta ,who is a Licensed Customs Broker, has abetted the practice of illegal imports of restricted goods into India. I find that his denial and retraction from the facts of illegal gratification for getting favourable test reports as admitted before DRI during investigation are afterthoughts and not found to be true and convincing. Further, with regards to the statements of the noticees recorded under Section 108 of the Customs Act, 1962, I rely on the case of *Surjeet Singh Chhabra v. Union of India, 1997 (89) E.L.T. 646 (S.C.)*, wherein the Supreme Court has held that confessional statement made before Customs officer is an admission and binding since Customs officers are not police officers in terms of Section 25, Evidence Act, 1973. The Madras High Court in the case of *Assistant Collector of Customs v. Govindasamy Ragupathy, 1998 (98) E.L.T. 50 (Mad.)* held that confessional statement made under Sec. 108 of Customs Act, 1962 before Customs officers are to be regarded as voluntary. **It is settled legal proposition that statement recorded under section 108 of the Act is admissible unlike a statement recorded by a Police Officer.**

Therefore, I find him involved in violation of the obligations casted on such Licensed Customs Brokers in terms of Regulation 10 of the Customs Broker License Regulations, 2018 and liable to penalty under provisions of Section 112 (a) & (b) (i) and Section 114AA of Customs Act, 1962.

**18.5. Role of Shri R.P. Meena, Chemical Examiner Gr-I, Customs House Kandla Laboratory, Kandla, Kutch, Gujarat (Presently posted in CRCL, New Delhi):**

I find that Shri Rajendra Prasad Meena (Shri R.P. Meena), Chemical Examiner Gr-I in Customs House Laboratory, Kandla (presently posted in CRCL, New Delhi) in his statements dated 24.12.2018, 27.12.2018 and 28.01.2019 stated that Industrial Composite Mixture Plus (ICMP) as well as Low Aromatic White Spirit (LAWS) are the Petroleum based solvent and are the trade name of the commodities. There is no technical literature available for Industrial Composite Mixture Plus (ICMP) and Low Aromatic White Spirit (LAWS). Since there is no parameters for ICMP and LAWS, hence, the parameters fixed for 'Petroleum Hydrocarbon Solvent' as per IS (Indian Standard) 1745-1978, are kept in view while deciding it. They used to test the sample (for ICMP / LAWS) in their Lab in the light of IS (Indian Standard) 1745-1978. Prior to the allocation of the Chapter 27 to him, also the import of LAWS being made at Kandla and the testing standards/parameters set out in the previous cases have been continued by him without any major change therein. So far as ICMP is concerned, he was not aware about any previous imports in the said name and its previous standard of testing, but what he understood, the ICMP is also matching with the standards of LAWS, and hence, the parameters equal to the parameters for testing of LAWS are being maintained. SKO is also a Petroleum Hydrocarbon and the same is in almost nearby ranges of Solvent, although no specific parameters are provided for SKO as Solvent.

Shri Meena, further stated that as per Condensed Chemical Dictionary, Kerosene is a water-white oil liquid, strong odour with Density 0.81 gm/ml, Boiling Range – 180-300 degree Celsius, Flash Point- 100-150 Fahrenheit (37.7-65.5 degree Celsius), auto ignition temperature –

444 Fahrenheit (228 degree Celsius). Combustion properties can be improved by a proprietary hydro-treating process involving a selective catalyst. As per US EPA, Kerosene is the substance in this category are complex petroleum derived substances have Boiling Range of approximately 302 to 554 degree Fahrenheit (150-290 degree Celsius) and a carbon range of approximately C9-C16. CAS (Chemical Abstracts Service) No. of Kerosene is 8008-20-6 and API Gravity is 41.8-44.9, Aromatic Content: 15.5-19.6 Vol %, Olefin Content: 1.3-2.5 Vol %, Saturated Content: 79-82 Vol %, Distillation in degree Fahrenheit: 10%- 320-377 & Final- 468-538 (10%- 160-192 & Final- 242-281 in degree Celsius). The major components of the kerosene are branched and straight chain paraffins and naphthalenes (cycloparaffin), which normally account for 70% by volume. Aromatic hydrocarbons such as alkyl benzenes (single ring) and alkyl naphthalenes (double ring) do not normally exceed 20% by volume of kerosene. Olefins are usually not present at more than 5% by volume. As per BIS for Kerosene, the material shall consist of refined petroleum distillate; it shall be free from visible water, sediment and suspended matter. Inorganic Acidity – Nil; Distillation: a) Percent recovered below 200 degree Celsius, Min – 20 b) Final boiling point, degree Celsius, Max – 300; Flash Point, degree Celsius, Min – 35 ; Smoke Point, mm. Min - 18; Total Sulphur, percent by mass, Max – 0.25. The distillation range is a deciding parameter for petroleum hydrocarbons and ICMP, LAWS & SKO are petroleum hydrocarbons. For issuing test report of ICMP / LAWS, they check its Distillation range, Flash point and Density. There is no such requirement available to decide the sample as ICMP / LAWS, moreover, for Low Aromatic Solvent, Distillation range: Initial boiling point min. 145 degree Celsius and Final boiling point max. 205 degree Celsius; Flash Point: 35 degree Celsius; and Aromatic Content max. – 40%. For test report of SKO in Kandla Customs Laboratory, they check Inorganic Acidity, Distillation Range, Flash Point and Smoke Point and as per BIS, there is no specific minimum range of SKO in Final Boiling Point but maximum range of SKO in Final Boiling Point is clearly defined; so, in this manner, it was difficult to give test report. In order to remove confusion, they started following the standards of US EPA (United States Environmental Protection Agency) with the permission of the Joint Director in which the Final Boiling Point range is 468-538 degree Fahrenheit (242-281 in degree Celsius).

18.5.1. I find that with reference to test report dated 28.08.2018 in respect of Bill Of Entry No. 7730154 dated 21.08.2018 along with Test Memo 1033659 dated 24.08.2018 of Customs, Kandla and observation sheet /description, Shri Meena stated that the process to decide the Final Boiling Point in respect of this particular sample, first of all the sample good was taken in a distillation flask of 100 ml and then, it was heated slowly on a temperature starting from 80 degree Celsius. The temperature is increased thereafter and when the first drop was distilled, the temperature is noted as Initial Boiling Point, which was 150 degree Celsius for this particular sample. Thereafter, the temperature was increased gradually and the distilled quantity of sample goods was noted down at various intervals such as 10 ml, 20 ml and so on. When 95 ml and above quantity was distilled, the highest temperature point was noted as Final Boiling Point which was 239 degree Celsius in this case. But all this procedure was carried out by the Asstt. Chemical Examiner / Chemical Asstt. He had proposed that *"It is other than light*

oil/SBPS/ATF/HSD/LDO" in respect of above shown test report. *The Distillation range obtained for the sample is not in agreement as per IS: 1745-1978 for Low Aromatic Solvents.*" Such observations were written in the test report at Customs House Kandla Laboratory since long, hence, he had been continuing the same practice without any major change therein. They followed the ASTM D-86 method for conducting the test at Customs House Kandla Laboratory and gave the correct test report on the basis of observations to the best of his knowledge. He knew Shri Mritunjay Dasgupta (commonly known as "Dass") of M/s. MAT Shipping since June 2018 around as he severally visits the Custom House Kandla Laboratory in connection with test report, but did not know Shri Virbhadra Rao Illa of M/s. Shree Sanari Shipping.

18.5.2. I find that there is difference between test results given by Customs House Laboratory, Kandla and CRCL, New Delhi for the same kind of goods. The same is given as under:-

| Sr. No. | Bill of Entry No. & Date | Test Memo No. & Date by Kandla Customs | Test Report by CH Kandla Laboratory & issuing date  | Test Memo No. & Date by DRI Gandhidham | Test Report by CRCL, New Delhi & issuing date   | Final Boiling point of the goods |               |
|---------|--------------------------|--|---|--|---|----------------------------------|---------------|
|         |                          |  |   |  |   | By CH Kandla Lab                 | By CRCL Delhi |
| 1.      | 7755202 dated 23.08.18   | 1033664 dtd. 24.08.2018                | Other than Light Oil/SBPS. The Distillation range attained for the sample is not in agreement as per IS 1745:1978 for Low Aromatic Solvents. (29.08.2018) | 06/2018 dtd. 14.09.18                  | On the basis of parameter u/r sample meets the requirement of SKO (Kerosene) as per IS:1459:1974 (28.09.2018) | 238                              | 250           |
| 2.      | 7752740 dated 23.08.2018 | 1033663 dated 24.08.2018               | Above reported parameter meets the requirement of Kerosene as per IS 1459-1974 (Re-affirmed in 2001) (12.09.2018)   | 05/2018 dated 14.09.2018               | On the basis of parameter u/r sample meets the requirement of SKO (Kerosene) as per IS:1459:1974 (28.09.2018) | 250                              | 252           |

Further, I find that for the difference in test reports Shri Meena clarified that both the tests had been performed by two different Asstt. Chemical Examiner/Chemical Asstt. He issued the test reports on the basis of the observation sheet / analysis, as provided to him by Asstt. Chemical Examiner / Chemical Asstt. after conducting the test on the goods and he gave the correct test report on the basis of observations and the same also had been verified by the Joint Director (JD), CH Kandla Laboratory. The CRCL might have some different and sophisticated instrument for conducting the test, which might result to change in the test report and he had no comments on it.

18.5.3. I find that there is a change in observations in test reports of the CH Kandla Laboratory issued for the similar type of goods which was imported before and after the investigation by DRI. For this difference, Shri Meena clarified that he issued the test reports only on the basis of the analytical findings and observations. He had no idea about Shri Virbhadra Rao and his firm, M/s. Shree Sanari, Gandhidham and no importer and no Custom

Broker approached him regarding alteration/modification in Final Boiling Point in the test reports related to ICMP / Low Aromatic White Spirit. I find that in the instant case the test report, in respect of Bill of Entry No. 7752740 dated 23.08.2018, issued on 12.09.2018, confirmed that "above reported parameter meets the requirement of Kerosene as per IS 1459-7974 (Reaffirmed in 2001)". However, the DRI initiated the inquiry from 29.08.2018. I find that the report issued on 12.09.2018 is only after the initiation of inquiry by the DRI and had the DRI not initiated the inquiry on 29.08.2018, the result might be the same as in various other Bills of entries.

18.5.4. I find that Shri R.P.Meena, Chemical Examiner-Gr-1, is well aware about the difference in Boiling points as accepted by him that if boiling point will be more than 240 degree, the results will be positive for SKO, hence he was keeping the range of Boiling point below 240 degree. I find that he hatched the conspiracy with Shri Virbhadra Rao Illa, Shri Iqbal Rahman Shaikh and Shri Mritunjay Dasgupta with sole aim to get illegal gratification from these persons. Shri Virbhadra Rao Illa, Shri Iqbal Rahman Shaikh and Shri Mritunjay Dasgupta, in their Statements recorded under Section 108 of the Customs Act, 1962, time to time, have accepted that they were paying Rs. 40,000.00 to Rs. 1,00,000.00, depending upon number of containers, to Shri R.P.Meena, C.E.Gr-1 for facilitation of the Test Reports in favour of them. The whats app conversations between Shri Virbhadra Rao Illa and Shri Mritunjya Dasgupta, CB also confirms the said transaction of illegal gratification as "NORMAL-RS.40,000/-, "SPECIAL-RS.1,00,000/-" and SPECIAL-RS.1,25,000/-"(as the case may be).

18.5.5. I find that Shri R.P.Meena, C.E, Gr-1 asked for cross examination of Shri Virbhadra Rao Illa, Shri Iqbal Rahman Shaikh and Shri Mritunjay Dasgupta, CB, which was allowed by me on 26.08.2019. Shri Virbhadra Rao Illa and Shri Mritunjay Dasgupta appeared for cross examination, but Shri Iqbal Rahman Shaikh did not appear for cross examination. The main focus of this cross examination was to discard the charges of illegal gratification therefore asked the same questions from Shri Virbhadra Rao Illa and Shri Mritunjay Dasgupta, where in both of them have said that they have not asked for manipulation of any Test report and never offered any illegal gratification. However, when examined by me on this cross examination that why Shri R.P.Meena CE, Gr-1 approached to the Court for anticipatory bail when nothing was done, he replied that due to fear of arrest he approached to the Court. Further when it was asked what was the fear?, he did not reply. He was further asked why you were not appeared before the DRI on summoning him on various occasions? He again did not reply. From this examination, it is seen that on the issue of running from DRI for statement, he does not have any explanation which prove him one of the part of the conspiracy of illegal importation in India of Prohibited/restricted goods by taking illegal gratification. Further, Shri Virbhadra Rao Illa, Shri Iqbal Rahman Shaikh and Shri Mritunjay Dasgupta, in their statements recorded under Section 108 of Customs Act, 1962, already confirmed that they were paying Rs. 40,000.00 to Rs.1,00,000.00 or some time Rs. 1,25,000.00, depending upon the containers, to Shri R.P.Meena, Chemical Examiner, Gr-1 for fevourable Test Reports. Further Shri Virbhadra Rao Illa, in his statement dated 03.10.2018, confirmed that from October 2017 to till the date of

statement he had given around Rs. 7 lakhs to Rs. 8 lakhs to Shri Mritunjay Dasgupta for further handing over to Shri R.P.Meena, Chemical Examiner, Gr-1, CRCL, Kandla. Further, with regards to the statements of the noticees recorded under Section 108 of the Customs Act, 1962, I rely on the case of **Surjeet Singh Chhabra v. Union of India, 1997 (89) E.L.T. 646 (S.C.)**, wherein the Supreme Court has held that confessional statement made before Customs officer is an admission and binding since Customs officers are not police officers in terms of Section 25, Evidence Act, 1973. The Madras High Court in the case of **Assistant Collector of Customs v. Govindasamy Ragupathy, 1998 (98) E.L.T. 50 (Mad.)** held that confessional statement made under Sec. 108 of Customs Act, 1962 before Customs officers are to be regarded as voluntary. **It is settled legal proposition that statement recorded under section 108 of the Act is admissible unlike a statement recorded by a Police Officer.**

In view of the above, it is clear that Shri R.P.Meena, Chemical Examiner, Grade-1, CRCL, Kandla (Presently posted to CRCL, Delhi) was knowingly indulged in the nefarious activities of smuggling in utmost defiance of law. For his acts of omission and commission, Shri R.P.Meena has rendered himself liable for penalty under Section 112 and section 114AA of the Customs Act, 1962.

#### **18.6 Role of Shri Ankit Tandon of M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates:**

I find that Shri Ankit Tandon of M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates were supplying the imported goods to M/s V.V Enterprises and other importers. They did not appear for Personal hearing on given time and date, however they requested to waive their Personal hearing and submitted a written reply dated 25.06.2019 wherein they submitted that they are doing genuine business and having a company in UAE with no criminal involvement in any type of illegal activities. In UAE the testing of goods/products is as per American Society for Testing & Material (ASTM) Standard of Testing & Reporting Method, which is different process than the one adopted by the Chemical Examiner CRCL, New Delhi.

I find that Shri Ankit Tandon of M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates, being supplier of the goods facilitated the importers in importing the SKO, which is a restricted good, in violation of policy provisions and also in contravention of the provisions of Petroleum Act, 1934 by way of providing them the documents showing the goods as ICMP to import SKO upon being influenced by Shri Iqbal Rahman Shaikh of M/s Shree Sanari Shipping, who was a link between the supplier and the importer. For their acts of omission and commission Shri Ankit Tandon of M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates has rendered themselves liable for penalty under Section 112 and 114AA of the Customs Act, 1962.

#### **18.7 Role of Shri Prakash of M/s. Kite International FZE, PO Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates:**

I find that Shri Prakash of M/s. Kite International FZE, PO Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates were supplying the imported goods to M/s V.V Enterprises and other importers. They did not appear for Personal hearing on given time and date, however they requested to waive their Personal hearing and submitted a written reply dated 25.06.2019 wherein they submitted that they are doing genuine business and having a reputed firm/company in UAE with no criminal involvement in any type of illegal activities. In UAE the testing of goods/products is as per American Society for Testing & Material (ASTM) Standard of Testing & Reporting Method, which is different process than the one adopted by the Chemical Examiner CRCL, New Delhi.

I find that Shri Prakash of M/s. Kite International FZE, PO Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates, being supplier of the goods facilitated the importers in importing the SKO, which is a restricted good, in violation of policy provisions and also in contravention of the provisions of Petroleum Act, 1934 by way of providing them the documents showing the goods as ICMP to import SKO upon being influenced by Shri Iqbal Rahman Shaikh of M/s Shree Sanari Shipping, who was a link between the supplier and the importer. For their acts of omission and commission Shri Prakash of M/s. Kite International FZE, PO Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates has rendered themselves liable for penalty under Section 112 and 114AA of the Customs Act, 1962.

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

**ORDER**

- (i) I reject the classification of the imported goods declared as "Industrial Composite Mixture Plus" under tariff item 27101990 of the Customs Tariff Act, 1975 in Bills of Entry No. 7755202 dated 23.08.2018 and 7752740 dated 23.08.2018 (mentioned in **TABLE-1**), filed by M/s. V.V Enterprises (Proprietor : Shri Hetram Goyal), B-9/85, 1<sup>st</sup> Floor, Sector-5, Rohini, Delhi-110085 and order to re-classify the imported goods viz. SKO (Superior Kerosene Oil) under CTH 27101910 of the Customs Tariff Act, 1975.
- (ii) I order for confiscation of the goods covered under Bill of Entry, mentioned in **TABLE-1** i.e 601.36 MTS of SKO at declared assessable value of Rs.2,82,29,064/- under Section 111 (d), 111(m) and 111 (p) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs.25,00,000.00 (Rupees Twenty five lakh only) in lieu of confiscation under Section 125 of the Customs Act 1962 for re-export purpose only.
- (iii) I also impose a penalty of Rs.6,00,000.00 (Rupees Lakh only) on M/s. V.V Enterprises (Proprietor : Shri Hetram Goyal), B-9/85, 1<sup>st</sup> Floor, Sector-5, Rohini, Delhi-110085 under Section 112 of the Customs Act, 1962.
- (iv) I also impose a penalty of Rs.3,00,000.00 (Rupees Three lakh only) on M/s. V.V Enterprises (Proprietor : Shri Hetram Goyal), B-9/85, 1<sup>st</sup> Floor, Sector-5, Rohini, Delhi-110085 under Section 114AA of the Customs Act, 1962.

- (v) I also impose a penalty of Rs.75,000.00(Rupees Seventy Five Thousand only) on M/s. V.V Enterprises (Proprietor : Shri Hetram Goyal), B-9/85, 1<sup>st</sup> Floor, Sector-5, Rohini, Delhi-110085 under Section 117 of the Customs Act, 1962.
- (vi) I also impose a penalty of Rs. 6,00,000.00 ( Rupees Six Lakh only ) Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping, P&P Plaza, Plot No. 314, Ward 12B, LIC Street, Gandhidham, under Section 112 of the Customs Act, 1962.
- (vii) I also impose a penalty of Rs. 3,00,000.00 (Rupees Three lakh only) on Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping, P&P Plaza, Plot No. 314, Ward 12B, LIC Street, Gandhidham, under Section 114AA of the Customs Act, 1962.
- (viii) I also impose a penalty of Rs. 3,00,000.00 (Rupees Three Lakh only ) on Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping, Gandhidham, under Section 112 of the Customs Act, 1962.
- (ix) I also impose a penalty of Rs.1,50,000.00 (Rupees One Lakh Fifty Thousand only ) on Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping, Gandhidham, under Section 114AA of the Customs Act, 1962.
- (x) I also impose a penalty of Rs.6,00,000.00 (Rupees Six Lakh only ) on Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, Gandhidham under Section 112 of the Customs Act, 1962.
- (xi) I also impose a penalty of Rs. 3,00,000.00 (Rupees Three Lakh only ) on Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, Gandhidham under Section 114AA of the Customs Act, 1962.
- (xii) I also impose a penalty of Rs. 6,00,000.00 (Rupees Lakh only) on Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Laboratory Kandla (presently posted at CRCL, New Delhi) under Section 112 of the Customs Act, 1962.
- (xiii) I also impose a penalty of Rs. 3,00,000.00 (Rupees Three Lakh only) on Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Laboratory Kandla (presently posted at CRCL, New Delhi) under Section 114AA of the Customs Act, 1962.
- (xiv) I also impose a penalty of Rs.6,00,000.00 (Rupees Six Lakh only) on Shri Ankit Tandon of M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates under Section 112 of the Customs Act, 1962.
- (xv) I also impose a penalty of Rs. 3,00,000.00 (Rupees Three Lakh only ) on Shri Ankit Tandon of M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates under Section 114AA of the Customs Act, 1962.
- (xvi) I also impose a penalty of Rs. 6,00,000.00 (Rupees Six lakh only ) on M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates under Section 112 of the Customs Act, 1962.
- (xvii) I also impose a penalty of Rs. 3,00,000.00(Rupees Three Lakh only) on M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates under Section 114AA of the Customs Act, 1962.



- (xviii) I also impose a penalty of Rs.6,00,000.00 (Rupees Six Lakh only ) on Shri Prakash of M/s. Kite International FZE, PO Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates under Section 112 of the Customs Act, 1962.
- (xix) I also impose a penalty of Rs.3,00,000.00 (Rupees Three Lakh only) on Shri Prakash of M/s. Kite International FZE, PO Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates under Section 114AA of the Customs Act, 1962.
- (xx) I also impose a penalty of Rs. 6,00,000.00(Rupees Six Lakh only) on M/s. Kite International FZE, PO Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates under Section 112 of the Customs Act, 1962.
- (xxi) I also impose a penalty of Rs. 3,00,000.00 (Rupees Three Lakh only) on M/s. Kite International FZE, PO Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates under Section 114AA of the Customs Act, 1962.
- (xxii) I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

20. The said order is issued without prejudice to any other action that may be taken against the Noticees under the provisions of the Customs Act, 1962 and/or the Rules made there under and/or any other law for the time being in force.

  
**(AJAY KUMAR)**  
Additional Commissioner,  
Custom House, Kandla

**F. No. S/10-03/Adj/ADC/SKO-V.V Ent/19-20**

Dated:26.09.2019

**BY SPEED POST A.D. /BY EMAIL**

**To:**

1. Shri Hetram Goyal, Proprietor of M/s. V.V. Enterprises (IEC No. AGYPG7054L), B-9/85, 1<sup>st</sup> Floor, Sector-5, Rohini, Delhi - 110085).
2. Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping, P&P Plaza, Plot No. 314, Ward 12B, LIC Street, Gandhidham, Kutch, Gujarat – 370201.
3. Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping, P&P Plaza, Plot No. 314, Ward 12B, LIC Street, Gandhidham, Kutch, Gujarat – 370201.
4. Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, ICON Building, Office No. 109 & 110, 1<sup>st</sup> Floor, Plot No. 327, Ward 12/B, Tagore Road, Gandhidham, Kutch, Gujarat – 370201.
5. Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Kandla Laboratory and presently posted at CRCL, New Delhi.
6. M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates.
7. M/s. Kite International FZE, P.O. Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates.

8. Shri Prakash of M/s. Kite International FZE, P.O. Box No. 42031, Hamriyah Free Zone, Sharjah, United Arab Emirates.
9. Shri Ankit Tandan of M/s. Millennium Lubricant FZE, PO Box No. 39401, Al Ghail Industrial Area, Ras Al Khaimah, United Arab Emirates.

**Copy to:**

1. The Pr. Commissioner of Custom House, Kandla.
2. The Additional/Joint Director, DRI, Zonal Unit, Ahmedabad.
3. The Deputy/Assistant Commissioner, Group-I, Custom House Kandla.
4. The Deputy/Assistant Commissioner (Disposal/RRA/TRC/EDI/CBLR), Custom House Kandla.
5. Guard file.