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.

A	फ़ाइल संख्या/ File No.	S/10-05/Adj/ADC/SKO-Sanari/2019-20
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/14/2019-20
C	पारित कर्ता/ Passed by	SH. AJAY KUMAR, ADDITIONAL COMMISSIONER
D	आदेश की दिनाँक/Date of order	18.09.2019
E	जारी करने की दिनाँक/Date of issue	18.09.2019
F	एस॰सी॰एन॰ सं॰एवं दिनाँक/ SCN No. & Date	DRI/AZU/GRU/Sanari Petro/INT-06/20/2018 dated 28.03.2019
G	नोटीसी/ पार्टी Noticee/Party	1. 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. 2. 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. 3. Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, ICON Building, Office No. 109 & 110, 1st Floor, Plot No. 327, Ward 12/B, Tagore Road, Gandhidham, Kutch, Gujarat – 370201. 4. Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Kandla Laboratory and presently posted at CRCL, New Delhi. 5. Shri Manish of M/s. Sunrise Petroleum FZC, P. O. Box 42553, Sharjah, UAE. 6. Shri Vivek Goel of M/s. Sunrise Petroleum FZC, P. O. Box 42553, Sharjah, UAE. 7. M/s. Sunrise Petroleum FZC, P. O. Box 42553, Sharjah, UAE.

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 वीं 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
7th 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 ड्यूटि/ 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 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 Mritunjay Dasgupta were also taken and it was informed by Shri Virbhadra Rao that Shri Mritunjay Dasgupta 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, 1st 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 including M/s. Shree Sanari Shipping, Suit No. 101, P&P Plaza, Plot No. 314, Ward No. 12B, LIC Street, Gandhidham, Kutch -370201 (PAN No. AACPI2815D & IEC No. 3705001370) (Hereinafter also referred to as "M/s. Sanari) were engaged in importing the ICMP / LAWS. It was also came to the notice that M/s. Sanari were acting as Handling agent on behalf of other five importers for arranging clearance of the goods. The details of the goods imported by M/s. Sanari are given below at **Table-1**:-

TABLE-1

Sr. No.	Name and Address of 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. Shree Sanari Shipping	"Industrial Composite mixture Plus"	7749179 dated 23.08.2018	21 (373.84 MTS)	1,73,36,987/-

1.3 Further, it was revealed that an illegal gratification was passed on to the officers of the Customs Laboratory, Kandla for the aforesaid consignments 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 filed at Custom House Kandla, including the B/E filed on behalf of M/s. Sanari, 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 dtd.15.09.2018 to ascertain the correct description of the imported goods intended for clearance with declaration as ICMP/LAWS.

1.4 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 Bills 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	*7749179/ 23.08.18*	*1033660 dtd. 24.08.18*	***Above reported parameter meets the requirement of Kerosene as per IS 1459-1974 (Re-affirmed in 2001).*** *Meets the requirement of Kerosene* ***(30.08.2018)***	*09/2018 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)***	*258*	*252*

1.5 The above test reports of the CRCL, New Delhi confirmed that the goods imported under above mentioned B/E filed by M/s. Sanari 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 Bill of Entry is Rs. 1,73,36,987/-, as declared in the Bill of Entry, but the market value of the said goods is Rs. 2.69 Crores approx. (as per website of IOCL-non subsidized price in metro in Oct., 2018).

1.6 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."*

1.7 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."*

1.8 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.*

1.9 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."*

1.10 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:-

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

1.11 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.

1.12 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. Sanari, 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.

1.13 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. Sanari. The goods so seized handed over for safe custody to the CWC CFS, Kandla under Supratnama dated 03.10.2018.

1.14 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.5)**, 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.

1.15 During the investigation, statements of following persons were recorded under Section 108 of Customs Act, 1962:-

1.15.1 **Statement of Shri Mritunjay Dasgupta Proprietor of M/s MAT Shipping, Gandhidham was recorded on 29.08.2018 (RUD No.6)**, 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 Janpriya , 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.

1.15.2 **Further Statement of Shri Mritunjay Dasgupta Proprietor of M/s MAT Shipping, Gandhidham was recorded on 04.10.2018 (RUD No.7)** wherein he inter-alia stated that:-

- He got his customers M/s V. V. Enterprise, M/s Jay Mata Chintpurni Impex, M/s Janpriya, 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.

1.15.3 **Statement of Shri Virbhadra Rao Proprietor of M/s Shree Sanari Shipping was recorded on 29.08.2018 (RUD No. 8) 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, 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 Virbhadra 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 (Virbhadra 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;

1.15.4 **Statement of Shri Virbhadra Rao, Proprietor of M/s Shree Sanari Shipping was recorded on 03.10.2018 (RUD No. 9) 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, 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 particulars product; however, he declare the specifications to his buyers, if they require the same or not;
- He enquire from his overseas supplier regarding the specifications of the product and based on requirement of their buyers, confirm 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 advise them regarding CTH of the product based on trends of clearance of similar item from the Kandla Port, as it was the responsibility of CHA to get the goods cleared after necessary customs procedure;
- CHA prepare the check list for Bill of Entry, however, they forward it to his (Virbhadra Rao) mail for further verification or for any correction at his (Rao) side. He check and send the final check list to CHA for filing the Bills of Entry;
- The CHA prepares the check list and send it to him (Rao) for approval; CHA give 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 date;
- As per his knowledge, ICMP is used in paint industry;
- The main characteristics of ICMP are density- 0.785- 0.795 gm/cc, Final boiling point- should be less than equal to 240 degree Celsius;
- The name 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 try 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 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 till date, 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.

1.15.5 **Statement of Shri Virbhadra Rao, Proprietor of M/s Shree Sanari Shipping was recorded on 04.10.2018 (RUD No. 10) 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, Nagaur, Rajasthan, M/s Radhe Trade, Gandhidham and M/s GKN Enterprises, KASEZ, Gandhidham;
- Further he was contacting Shri Sriniwas, 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.11)**, 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.

1.15.6 **Statement of Shri Iqbal Rahman Shaikh, Representative of M/s Shree Sanari Shipping was recorded on 29.08.2018 (RUD No.12) 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 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 Virbhadra Rao in M/s Sanari Shipping and in absence of Shri Virbhadra Rao, he looks after all the work of M/s. Sanari Shipping;
- Various parties i.e. M/s Janpriya, 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 Virbhadra 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 Virbhadra Rao, Shri Mritunjay Dasgupta was responsible for follow up of samples testing in Kandla Lab;
- Shri Virbhadra 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 Virbhadra Rao of M/s. Shree Sanari Shipping;
- He also submitted his mobile phone for further investigation.

1.15.7 **Statement of Shri Iqbal Rahman Shaikh, Representative of M/s Shree Sanari Shipping was recorded on 04.10.2018 (RUD No.13) 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, 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.

1.15.8 **Statement of Shri Ram Chandra, Assistant Chemical Examiner in Custom House Laboratory, Kandla was recorded on 01.11.2018 (RUD No. 14) wherein he stated that:-**

- Joint Director of Customs House Laboratory, Kandla allots the testing of samples to them on random basis and after testing of the samples, the observations were put up before the Chapter wise In-charge as mentioned above.
- Chapter Heading wise allocation of testing of samples was not done there in his grade i.e. Assistant Chemical Examiner in Custom House Laboratory, Kandla;
- Industrial Composite Mixture Plus (ICMP) and Low Aromatic White Spirit (LAWS) are not specifically mentioned in any popular and relevant book such as ASTM (American Society for Testing and Materials which is an international standards organization) and IS (Indian Standard) etc. that he has read so far, however, the same is available on internet and as per general practice the same is considered to be covered under petroleum hydrocarbon solvents. This specific name ICMP/LAWS may have been declared by the importers as the samples received in

Customs House Laboratory, Kandla were already containing such names; that the ICMP and LAWS are used in paint industry.

- They check its parameters in the category 'Petroleum Hydrocarbon Solvent' as per ASTM (American Society for Testing and Materials) and IS (Indian Standard) and the Chapter In-charge decides the final test results accordingly.
- As per ASTM and IS, the nature of petroleum hydrocarbon solvents like Industrial Composite Mixture Plus (ICMP) and Low Aromatic White Spirit (LAWS) is normally colourless or light yellow, its density lies between 0.7 to 0.8 gm/ml, Final Boiling Point is in range of 56 to 240 degree Celsius, Smoke Point is below 18 mm, Flash Point is 42 to 44 degree Celsius, however, all these parameters depend upon the nature of sample goods.
- As per IS, the Final Boiling Point for SKO is maximum 300 degree Celsius, Smoke point is minimum 18 mm, Flash Point is minimum 30 degree Celsius and its distilled volume is minimum 20% at 200 degree Celsius; that the Final Boiling Point for SKO is mentioned in IS as 300 degree Celsius, however, the Final Boiling Point for ICMP/LAWS is around 150 to 240 degree Celsius;
- While testing of sample of ICMP/LAWS as per ASTM and IS, they keep in mind the parameters of petroleum hydrocarbon solvent; that the Test Report is issued by his senior officers i.e. Chapter In-charge (Chemical Examiner Grade-I or Chemical Examiner Grade-II);
- They keep in mind similar parameters for SKO also.

1.15.9 **Statement of Shri Rajendra Prasad Meena (Shri R.P. Meena), Chemical Examiner Gr-I in Customs House Laboratory, Kandla was recorded on 24.12.2018 (RUD No.15) 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.

1.15.10 **Statement of Shri Rajendra Prasad Meena (Shri R.P. Meena), Chemical Examiner Gr-I in Customs House Laboratory, Kandla was recorded on 27.12.2018 (RUD No.16) 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.

1.15.11 **Statement of Shri Rajendra Prasad Meena (Shri R.P. Meena), Chemical Examiner Gr-I in Customs House Laboratory, Kandla was recorded on 28.01.2019 (RUD No.17)** 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/ 21.08.2018*	*1033659 dtd. 24.08.2018*	*Other than SKO. 28.08.2018*	*08/2018 dtd. 14.09.2018*	*Meets the requirement of SKO. 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 along with 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 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.

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 Virbhadra 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 Virbhadra 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 Bhadrarao 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.

2. Based on the facts and evidences discussed above, 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 2nd 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.

2.1 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 437/2018 u/s 438 of Cr.P.C in the 2nd 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 was extended further vide Order dtd. 12.02.2019 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.

3. 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 the date of issuance of SCN date 28.03.2019 no action was taken by any of the importers.

3.1 Vide letter dtd. 07.02.2019, M/s. Sanari requested to allow them to re-export the goods to the same supplier, who supplied them the goods. However, they had not provided any documents like consent letter of the supplier, copies of communication/correspondence they had made with the supplier or its representative and communication/correspondence they had received from such supplier or its representative. In fact, this implied that the supplier has also given implied confirmation about the goods being SKO.

4. From the above facts, it is apparent that M/s. Shree Sanari Shipping, Gandhidham was arranging clearance of the goods, not only for self but also for other importers, through Shri Mritunjay Dasgupta Proprietor of M/s. MAT Shipping, Gandhidham. On receipt of the documents, pertaining to the goods imported vide SUN/EXP/7725/2018 dtd. 16.08.2018 of M/s. Sunrise Petroleum FZC, Sharjah, UAE, the Bill of Entry No. 7749179 dtd. 23.08.2018 was filed by M/s. MAT Shipping, Customs Broker on behalf of M/s. Shree Sanari Shipping, Gandhidham and sought clearance of the goods described as 373.84 MTs Industrial Composite Mixture Plus. On importation, the consignments, contained in 21 containers (of 20 feet), was 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. 1033660/24.08.2018. 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.". On receipt of the samples in the Customs Laboratory at Kandla, the same was declared as tested vide Lab. No. 2395/27.08.2018 by Shri Ram Chandra, ACE. And, the test report issued by Customs House Kandla Laboratory is as under:-

Sr. No.	***Bill of Entry No. & Date***	***Test Memo No. & Date by Custom House Kandla***	***Test Report by CH Kandla Laboratory & issuing date***
1	*7749179 / 23.08.18*	*1033660 dtd. 24.08.18*	***Above reported parameter meets the requirement of Kerosene as per IS 1459-1974 (Re-affirmed in 2001).*** ***(30.08.2018)***

Accordingly, the same test result as such was uploaded in the system.

Here, it would be pertinent to mention that had not the consignment put on hold by DRI for testing and sample (drawn under Panchnama dated 31.08.2018) not sent for re-testing to CRCL, Delhi, then, the importer would have cleared the consignment by manipulating the test

report and keeping in the dark the Custom authorities regarding the manipulation in test report.

Because same incidence has happened earlier in the past where the Customs officer permitted out of charge to the consignment covered vide B/E No. 7730154 dtd. 21.08.2018 (filed by M/s. Jan Priya Energy, Rajasthan), being unaware of the manipulated test result.

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 take 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.

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. 7749179 dated 23.08.2018, **issued on 30.08.2018**, 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 DRI started investigation in the matter.

4.1 Based on the intelligence, on 29.08.2018, the officer of DRI visited the offices of the Customs Broker M/s. MAT Shipping and 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 240 degree celsius, with a view to avoid Policy restrictions.

4.2 On 31.08.2018 in the presence of the representative of the Customs Broker M/s. MAT Shipping and 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 was received from CRCL, New Delhi vide Test report No. C.No. 35/Cus/2018-2019/CL-128 DRI dtd. 18/09/2018 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	-	**146**
	B) Percentage recovered below 200 degree C, Min.	20	**73**
	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	**24**
5.	Density at 15degree C gm/cc	-	**0.7885**
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."

4.3 Taking into consideration, the test reports issued by CRCL, New Delhi, it appears that the goods, which has been imported by M/s. Sanari is not "Industrial Composite Mixture Plus" falling under CTH No. 27101990, as has been described in the B/E, but it is 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. Sanari 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. Sanari 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. 7749179 dated 23.08.2018 may 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.

4.4 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 appears 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.

4.5 Looking to the facts, it is apparent that though having knowledge about the character of the goods under import, Shri Virbhadra Rao Illa Proprietor of M/s. Shree Sanari Shipping had in connivance with Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping, Customs Broker Shri Mritunjay Dasgupta 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.

4.6 The importer was well aware that the characteristic of the goods is of SKO, although the B/E was 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.

4.7 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. The goods so seized handed over for safe custody to the CWC CFS, Kandla under Supratnama dtd.03.10.2018.

5. 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.

5.1 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.

5.2 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 intended to allow himself to enter into a well-designed conspiracy to clear the Prohibited goods and to provide the manipulated results, based on which the out of charge could have been wrongly obtained by the importer from the Customs officer in fraudulent manner, if DRI had not started the investigation in the instant case. Though he was compelled to make categorical observation that the goods were SKO, but his intention was otherwise 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 Iqbal Rahman Shaikh and Shri Virbhadra Rao Illa.

CONFISCATION OF SUBJECT GOODS

6. 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" 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. Shree Sanari Shipping, Gandhidham have been placed under seizure under reasonable belief vide Seizure Memo dated 03.10.2018 **(RUD No. 18)** 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.19).**

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	7749179 dated 23.08.2018	21 (373.84 MTS)	1,73,36,987/-

6.1 The subject goods imported into India, without providing correct information in the bill of entry, without properly classifying and 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 informations were not included in the bill of entry no. B/E No. 7749179 dtd. 23.08.2018, thus rendering the goods liable to confiscation under Section 111(m) of the Customs Act, 1962.

(iii) The subject goods were imported in violation of the Provisions of Petroleum 1934 and consequently violating the Notification no. 30 of 1934, which is 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.

ROLES OF PERSONS INVOLVED

7. **Shri Virbhadra Rao Illa Proprietor of M/s. Shree Sanari Shipping, Gandhidham**:

Shri Virbhadra Rao Illa imported 373.84 MTs SKO vide Bill of Entry No. 7749179 dated 23.08.2018 having declared value of Rs. 1,73,36,987/- (market value Rs. 2.69 Crore approx. as per website of IOCL-non subsidized price in metro in Oct., 2018). He 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 CB on behalf of importers and

requested him to take care of final boiling point below 240 degree Celsius. He (Shri Virbhadra 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 date, 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 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 other importers by way of manipulating test reports 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 Virbhadra 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 Virbhadra Rao Illa, being Proprietor of M/s. Shree Sanari Shipping, Gandhidham has rendered himself liable to penalty under provisions of Section 112 (a) & (b) (i) and Section114AA of Customs Act, 1962.

7.1 **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. Shree Sanari as well as other importers 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) & (b) (i) and Section114AA of Customs Act, 62.

7.2 **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 attempting illegal clearance of SKO, he had hatched with Shri Virbhadra 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 pre-conditions for import thereof. Shri Mritunjay Dasgupta was very much aware that the cargo imported by M/s. Shree Sanari Shipping 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 Virbhadra Rao Illa about making payment towards illegal gratification to Shri R. P. Meena, Chemical Examiner. Had not the DRI initiated investigation, they would have managed to obtain manipulated test results to clear the restricted goods SKO. 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. 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) & (b) (i) and Section114AA of Customs Act, 1962..

7.3 **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 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 favoring the importers 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 used to manipulate 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.

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 provide money (and also collected from the other importers also) 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, till he was compelled to do adopt correct testing method pursuant to initiation of investigation by DRI. 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, 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 manipulated test report, the out of charge could have been wrongly obtained by the importer from the Customs officer in fraudulent manner, if DRI had not started the investigation in the instant case. As in the earlier case, being mis-guided by the manipulated reports from the chemical Examiner, the Customs officer granted out of charge to the consignment of SKO imported by M/s. Janpriya vide B/E NO. 7730154 dated 21.08.2018 with wrong description as ICMP.

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.

7.4 **Shri Manish of M/s. Sunrise Petroleum FZC, 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 Rahman Shaikh of M/s. Shree Sanari Shipping, who became a link between the importer and themselves. The supplier provided the goods to M/s. Shree Sanari Shipping against credit, only upon being introduced by Shri Iqbal Rahman Shaikh. By way of providing falsified documents, Shri Manish and Shri Vivek Goel of M/s. Sunrise Petroleum FZC has abetted the offence, which has been committed for contravention of the provisions of the Customs Act, 1962 as well as other statutes. If the version of the importer is considered, the supplier also agreed in implied manner about the characteristics of the goods as SKO and for that they agreed to allow re-export of the goods in their favour. For their acts of omission and commission, Shri Manish and Shri Vivek Goel of M/s. Sunrise Petroleum FZC has rendered themselves liable to penalty under Section 112 (a) & (b) (i) and Section 114AA of the Customs Act, 1962.

7.5 **Shri Vivek Goel of M/s. Sunrise Petroleum FZC, 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 Rahman Shaikh of M/s. Shree Sanari Shipping, who became a link between the importer and themselves. The supplier provided the goods to M/s. Shree Sanari Shipping against credit, only upon being introduced by Shri Iqbal Rahman Shaikh. By way of providing falsified documents, Shri Manish and Shri Vivek Goel of M/s. Sunrise Petroleum FZC has abetted the offence, which has been committed for contravention of the provisions of the Customs Act, 1962 as well as other statutes. If the version of the importer is considered, the supplier also agreed in implied manner about the characteristics of the goods as SKO and for that they agreed to allow re-export of the goods in their favour. For their acts of omission and commission, Shri Manish and Shri Vivek Goel of M/s. Sunrise Petroleum FZC has rendered themselves liable to penalty under Section 112 (a) & (b) (i) and Section 114AA of the Customs Act, 1962

8. Therefore, show cause notice No.DRI/AZU/GRU/Sanari-Petro/INT-06/20/2018 dated 28.03.2019 has been issued under Section 124 of the Customs Act, 1962 only for seizure portion in respect of goods imported by M/s. Shree Sanari Shipping, Gandhidham vide Bill of Entry No. 7749179 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.

8.1 Accordingly, based on the above findings a SCN No.DRI/AZU/GRU/Sanari Petro/INT-06/20/2018 dated 28.03.2019 answerable to the Additional Commissioner of Customs, 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 seizer portion in respect of goods imported by M/s. Shree Sanari Shipping, Gandhidham vide Bill of Entry No.7749179 dated 23.08.2018 :-

(a) Shri Virbhadra Rao Illa, Proprietor of M/s. Shree Sanari Shipping, P&P Plaza, Plot No. 314, Ward 12B, LIC Street, Gandhidham, as well as Shri Manish of M/s. Sunrise Petroleum FZC, Sharjah (UAE), Shri Vivek Goel of M/s. Sunrise Petroleum FZC, Sharjah (UAE) and M/s. Sunrise Petroleum FZC, Sharjah (UAE), as to why:-

(i) the 373.84 MTs SKO, falling under CTH No. 27101910, with declared value of Rs. 1,73,36,987/-, having market value of Rs. 2.69 Crore 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 Iqbal Rahman Shaikh Representative of M/s. Shree Sanari Shipping, Gandhidham, (2) Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, Gandhidham (3) 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

9. 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:-

9.1 On behalf of M/s. Shree sanari Shipping, 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. Shree Sanari Shipping under Bill of Entry No. 7749179 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 seizer as provided under Section 110(2) of the Customs Act, 1962. They have cited the following judgments in favour of their reply: (a)

Auto Creaters 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 Shree Sinari Shipping, however, they have not submitted any Vakalatnama from M/s. M/s Shree Sinari Shipping 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.

9.2 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 Virbhadra Rao 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 and in month of August 2018, he had imported (21X20') Container in Flexi Bag of " Industrial Composite Mixture Plus" from Sunrise Petroleum, FZC, Sharjah, UAE vide BL No# SHLAEC18000491 dtd 16.08.2018 of Sea Hawk Lines Pvt Ltd, Gandhidham and filed through (CHA) MAT Shipping, Gandhidham, warehouse Bill of Entry No.7749179 dated 23.08.2018, the said containers were loaded from Jebel Ali Port (UAE) to Kandla International Container Terminal and same shifted to CWC CFS, Kandla. He has been living since last 45 years in Gandhidham with his family and doing business since last 15 years only of OGL category Cargo/Products listed by Govt of India, Ministry of Commerce & Industry, but never got involved in any illegal or smuggling activities. As per reliable sources and as per Online Data and with Custom records ICMP/LAWS were imported since last 3 to 4 years at every sea port of India as well as at Mundra & Kandla Sea Port in huge quantity and so many Importers & Custom Brokers were engaged in same cargo which is listed in OGL and freely importable and the same cargo was imported by him in 21X20' Container stuffed in Flexi bags of "Industrial Composite Mixture Plus". He further submitted that he was aware that Shri Mritunjay Dasgupta of MAT Shipping, Gandhidham always strictly followed all Customs formalities, in the said import consignment the Warehouse Bill of Entry has been filed and as per Custom procedure First Check Examination had been followed for proper classification and analysis and to ensure that any mistake from the Supplier is corrected and proper Custom Duty is Paid and No restriction goods are unknowingly cleared. Regarding import of 21X20' Cont vide Bill of Entry No. 7749179

dated 23.08.2018, he submitted that he had purchased/imported the said cargo from Shri Vivek Goel & Shri Manish of M/s Sunrise Petroleum FZC, Sharjah which is a reputed firm company in UAE having no criminal involvement in any type of illegal activities. He further submitted that he is not involved in any illegal import of SKO as he had no knowledge or understanding with anyone for clearance of such type of cargo which is treated as restricted by Customs. He never contacted anyone within or outside department for managing any type of test report, he has done all payment transaction through bank and has never done any transaction in cash nor ever approached Shri Mritunjay Dasgupta for making any illegal gratification. Hence, he is not liable for penalty. Further, vide letter dated 07.02.2019 he has requested for re-export of the said containers to the same supplier in UAE. Further during his Personal Hearing on 26.06.2019, he reiterated the same facts and further said that some of the parameters of SKO are overlapping with his product, however there is no parameter of smoke point for his product under BIS. Finally, he requested for lenient view in imposition of penalty as they have already incurred heavy demurrage and detention.

(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. I used to charge my Agency charges to Shree Sanari Shipping, Gandhidham as Shri Virbhadra 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 Virbhadra 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 21X20' Cont vide Bill of Entry No. 7749179 dated 23.08.2018 of Shree Sanari Shipping, Gandhidham, the said Consignment was imported under OGL and the same is filed Warehouse 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. He further said in his Personal hearing 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. There was no reason to approach the office of the CRCL or Customs.

9.3 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.

9.3.1 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 denies all the charges leveled against him in the instant SCN.

(ii) In this case, he issued test report against the claim of importer. Therefore, allegation of manipulating any test report to favour the importer does not arise. As his test report was against the importer, there cannot be any allegation of extending any favour to the importer. The imported goods were declared as Industrial Composite Mixture Plus. Sample was drawn received under Test Memo no. 1033660 dated 24.08.2018. It was tested/analyzed by Shri Ramchandra, Assistant Chemical Examiner who reported the parameters observed by him. On the basis of such parameters, he issued Test Report (Lab report No. 2395 dated 27.08.2019). In that test report, he specifically mentioned "above reported parameters meet the requirement of kerosene as per IS 1459-1974 (reaffirmed in 2001)". Hence, his report in this case is against the declaration of importer and in conformity with the allegations of mis-declaration made by DRI against the importer.

(iii) He further submitted that on the basis of analysis of his subordinate officer and as approved by his superior officer (Joint Director), he issued the test report. He had reported that the sample was kerosene (means SKO) and he reported it in view of IS 1959-1974 (reaffirmed in

2001). The allegations leveled in para 14.4 of the impugned SCN that he released the test report with categorical statement that the sample was not SKO are absolutely contrary to the factual position. Hence, these charges are liable to be dropped.

(iv) Though he is not concerned in any manner in the present SCN as the test report issued by him is in line with the report of CRCL but as the impugned SCN discuss illegal gratification on the basis of statements of Shri Mritunjay Das Gupta, Shri Virbhadrarao Ila and Shri Iqbal Rahman Shaikh and whatsapp chats amongst them, he requested to grant him opportunity to cross examine these persons as provided under section 138B of Customs Act, 1962. For seeking permission for cross examination, he also quoted the Tribunal's decision 2015-TIOL-1520-CESTAT-AHM in the case of M/s. Dhakad Metal Corporation. He lastly submitted that except statements and whatsapp chat amongst the above three persons, no evidence of alleged illegal gratification has been given in the Show Cause Notice. He submitted that he reserve his right to file further submissions if required after such cross-examination.

9.3.2 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 Ila:-**

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.

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

9.3.3 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".

9.4 Vide letter dated 13.07.2019, Shri R.K Tomar, Advocate, Bombay High Court submitted Vakalatnamas under which he has been engaged as Legal counsel by M/s Sunrise Petroleum FZC, Sharjah, UAE, Shri Vivek Goel and Shri Manish both of M/s Sunrise Petroleum FZC, Sharjah, UAE. Vide letter dated 16.07.2019, Shri R.K Tomar mentioned that M/s Sunrise Petroleum is a company beyond the jurisdiction of Indian Customs Act, 1962 and other two noticees Shri Vivek Goel and Shri Manish are its officers and sought clarification as to under which provisions of law above named persons have been made parties in the case.

9.4.1 This office vide letter dated 02.08.2019 addressed to Shri R. K Tomar quoted Section 1 of the Customs Act, 1962 wherein it is mentioned that it extends to the whole of India and it applies also to any offence or contravention there under committed outside India by any person.

9.5 Shri R.K Tomar Advocate for M/s. Sunrise Petroleum FZC, Sharjah, UAE, Shri Vivek Goel and Shri Manish both of M/s Sunrise Petroleum FZC, Sharjah, UAE gave a written submission dated 19.08.2019 wherein he submitted that jurisdiction of Indian Customs Act, 1962 upon business entities in other countries was provided vide the Finance Act, 2018, which provisions

were available at the time of initiation of investigations. Despite the jurisdiction (though not admitted) under the provisions of the Customs Act, 1962 on the Noticees, the Revenue has not exercised the powers to investigate the role of the Noticees, the same cannot be invoked only to implicate the Noticees as an afterthought. The noticees have not been investigated in respect of the present proceedings and they have not been provided the opportunity during investigation to clear the mis-conceptions entertained by the revenue. He submitted that M/s Sunrise Petroleum FZC has supplied the said goods as ICMP based on the trade practices prevalent in the international trade of UAE, Sharjah. The noticee has not traded in SKO, they have bought ICMP from international markets and supplied the same to the Indian buyers. There could be difference in testing methods in India and UAE resulting in the said goods being named in India as SKO, which cannot be blamed on the noticees. He further submitted that since M/s Sunrise Petroleum FZC, Sharjah (UAE) is incorporated abroad, the Indian laws including the Customs Act, 1962 does not apply to them. He has relied on the order of the Hon'ble CESTAT, Ahmedabad in the matter of Advance Exports vs. Commissioner of Customs, Kandla reported vide 2007 (218) E.L.T 39 (Tri.-Ahmd). The relevant part of the same is as:

> *"Apart from above, we find that imposition of penalty on M/s G.A International and Shri Rajesh Adani, partner of M/s G.A International is not in accordance with law as much as M/s G.A International is admittedly a company operating from Dubai and the Customs Act has no application in foreign land".*

He further submitted that the Revenue has not conducted any investigations to bring out the role of the Noticees warranting imposition of penalty under the Indian Customs Act, 1962. In absence of any investigation, the allegations are only fig of imaginations and purely assumptions and presumptions. Penal proceedings under any law cannot stand only on the basis of allegations, assumptions and presumptions as the same are illegal and against the principles of natural justice. He has relied on the order of Hon'ble CESTAT, Kolkata in the matter of Ram Naresh Chaurasiya Vs. Commissioner of Customs (Prev.), Patna reported vide 2019 (365) E.L.T 940 (Tri.-Kolkata). The relevant part of the same is as:-

> *"Gold Bars-Smuggling-Evidence- Two Gold bars recovered from the residential premises owned by the appellant's father not having any foreign marking-No further investigation being made by the Department thereafter, no evidence adduced by Department to prove that the said two gold bars were smuggled. Therefore, presumption regarding smuggled nature of seized gold under Section 123 of Customs Act, 1962 not invocable-Seized gold neither legally confiscable under Section 111(b) ibid nor any penalty could be imposed on the appellant".*

He has further submitted that the penalty under Section 112(a), 114AA and 117 of Customs Act, 1962 is not imposable as:

(i) Section 112(a) of Customs Act, 1962 will be applicable for improper importation of goods for their liability to confiscation under Section 111 of the Customs Act, 1962. Section 111 of Customs Act, 1962 states that "The following goods brought from a place outside India shall be liable to confiscation". He has said that the Noticees have not brought said goods from a place outside India into India. Therefore, noticees are not covered under provisions of Section 111 of Customs Act, 1962 and no penalty under section 112(a) can be imposed on them.

(ii) Regarding imposition of penalty under Section 114AA, he has submitted that the provisions of law will apply to a person who knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any particular. The noticees have neither intentionally made, signed or used any declaration, statement or document which is false or incorrect nor intentionally caused to be made, signed or used, any declaration, statement or document which is false or incorrect in any particular. The allegations that the noticees provided importers in India with the false/forged documents is not only preposterous but also patently false. He submitted that neither any Indian Policy (purportedly the Foreign Trade Policy under the FTDR Act, 1992 and Rules made there under) nor the provisions of Petroleum Act, 1934 apply to any territory beyond India, therefore there cannot be any violation of the same by a business entity registered/incorporated outside India and operating from a place beyond the territory of India.

(iii) Regarding imposition of penalty under Section 117 of Customs Act, 1962, he has submitted that the Revenue has to specifically mention the contravention(s) of the Customs Act, 1962 or any abetment of any such contravention or failure to comply with any provision of the Customs Act, 1962.However, the Revenue has failed to mention any contravention of the Customs Act, 1962 which are not covered under the Sections 112 and 114AA of the Customs Act, 1962 which could attract provisions of Section 117 of the Customs Act, 1962.

He lastly submitted that the Noticees are not the importers of the said goods into India and since, the penalty is proposed to be imposed in respect of the import of said goods, the Noticees cannot be visited with imposition of any penalty under any provisions of law as they have not violated any law in respect of the import of the same into India.

DISCUSSION AND FINDINGS

10. 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/Sanari Petro/INT-06/20/2018 dated 28.03.2019 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.

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

(a) Import of 373.84 MTs SKO, falling under CTH No. 27101910, having declared value of Rs. 1,73,36,987/- (market value of Rs. 2.69 Crore approx.) covered under Bill of Entry No. 7749179 dated 23.08.2018 mentioned in Table-A 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.

10.2 Now, coming to the first issue that M/s. Sanari Shipping (IEC No. 3705001370) had filed Bill of Entry No. 7749179 dated 23.08.2018 for clearance of 373.84 MTs (21 containers) of "Industrial Composite Mixture Plus" (ICMP). On verification of the test reports dated 30.08.2018 and 28.09.2018 issued by CRCL, Kandla and CRCL, New Delhi ,respectively, I find that both reports have 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. 1,73,36,987/-, as declared in the Bill of Entry and the market value of the said goods is Rs. 2.69 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.

10.3 I find that 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 dated 03.10.2018, which was served on the importer M/s. Shree Sanari. The goods so seized handed over for safe custody to the CWC CFS, Kandla under Supratnama dated 03.10.2018.

10.4 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.

10.5 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.

10.6 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. Shree Sanari, 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/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.

10.7 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.

10.8 In view of the above, I find that the above said imported goods having total assessable value of **Rs. 1,73,36,987/-** are liable for confiscation under Section 111(d), 111(m) and 111(p) of the Customs Act, 1962.

11. 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.

11.1 **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 and imported the said consignment of 373.84 MT of declared value of Rs. 1,73,36,987.00 vide Bill of Entry No. 7749179 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, Kandla as well as CRCL, Delhi in their reports. He, not only importing the goods for his own, but also playing a role of handling agent for other importers such as M/s V.V. Enterprise, M/s Jay Mata Chintpurni Impex, M/s Janpriya , M/s G.R. Pahwa Enterprise, M/s Shagun Enterprises etc. He, in his statement recorded on 29.08.2018, 03.10.2018 and 04.10.2018 under section 108 of the Customs Act, 1962 connived with 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 fevourable 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, Gread-1 to get fevourable 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 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, being Proprietor of M/s. Shree Sanari Shipping, Gandhidham has rendered himself liable to penalty under provisions of Section 112 (a) & (b) (i) and Section114AA of Customs Act, 1962.

11.2 **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 Sanari Shipping and other importers such as M/s V.V. Enterprise, M/s Jay Mata Chintpurni Impex, M/s Janpriya, M/s G.R. Pahwa Enterprise, M/s Shagun Enterprises etc. 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 abated with Shri Virbhdra 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 fevourable reports from the Chemical Examiner of CRCL, Kandla, Shri Virbhdra Rao Illa and Shri Mritunjay Dasgupta, both were involved in paying illegal gratification to the tune of Rs. 40,000.00 to Rs. 1,25,000.00. 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 Section114AA of Customs Act, 1962.

11.3 **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 Virbhadra 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 Virbhadra 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 Virbhadra 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, Gread-1. Shri Virbhadra 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 Section114AA of Customs Act, 1962.

11.4 **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 28.01.209 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).

11.4.1 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.

11.4.2 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	*7730154/ 21.08.2018*	*1033659 dtd. 24.08.2018*	*Other than SKO. 28.08.2018*	*08/2018 dtd. 14.09.2018*	*Meets the requirement of SKO. 28.09.2018*	*239*	*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.

11.4.3. 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. 7749179 dated 23.08.2018, issued on 30.08.2018, 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 30.08.2018 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.

11.4.4 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 Virbhdra 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 fevour 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.1,12,000/-"(as the case may be).

11.4.5 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 aroud Rs. 7 lakhs to Rs. 8 lakhs to Shri Mritunjay Dasgupta for frther 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 Section112 and section 114AA of the Customs Act, 1962.

11.5 **Role of Shri Manish and Shri Vivek Goel of M/s. Sunrise Petroleum FZC, Sharjah (UAE):**

I find that Shri Manish and Shri Vivek Goel of M/s Sunrise Petroleum FZC, Sharjah, UAE were supplying the imported goods to M/s Shree Sanari Shipping and other importers. They did not appear for Personal hearing on given time and date, however Shri R.K Tomar, Advocate, Bombay High Court vide his written submission dated 19.08.2019 denied the allegation made out in SCN. Further vide his letter dated 21.08.2019 he prayed on behalf of the Noticee that the matter may be decided on the basis of the reply of the SCN. I find that Shri R.K Tomar, Advocate for Shri Manish and Shri Vivek Goel of M/s. Sunrise Petroleum FZC, Sharjah (UAE) and M/s. Sunrise Petroleum FZC, Sharjah (UAE) has submitted in his reply that since M/s Sunrise Petroleum FZC, Sharjah (UAE) is incorporated abroad, the Indian laws including the Customs Act, 1962 does not apply to them. He has relied upon the order of the Hon'ble CESTAT, Ahmedabad in the matter of Advance Exports vs. Commissioner of Customs, Kandla reported in [2007 (218) E.L.T 39 (Tri.-Ahmd)]. However, I find that the citations given by Shri R.K Tomar is not applicable in this case, for non applicability of Indian Laws on firms incorporated abroad in view of prevailing Section 1 of Customs Act, 1962 (As amended by Finance Act, 2018) wherein it is explicitly mentioned that it extends to the whole of India [and, save as otherwise provided in this Act, it applies also to any offence or contravention there under committed outside India by any person.] Therefore, the question of non-applicability of Customs Act, 1962 (as amended time to time) for the suppliers, does not arise and they are also liable to be penalized under Customs Act, 1962.

I find that Shri Manish and Shri Vivek Goel, 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 Sanary Shipping, who was a link between the supplier and the importers. For their acts of omission and commission Shri Manish and Shri Vivek Goel of M/s Sunrise Petroleum FZC has rendered themselves liable for penalty under Section 112 and 114AA of the Customs Act, 1962.

12. 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. 7749179 dated 23.08.2018 (mentioned in **TABLE-1)**, filed by M/s. Shree Sanari Shipping, P&P Plaza, Plot No. 314, Ward 12B, LIC Street, Gandhidham 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 373.84 MTS of SKO at declared assessable value of Rs.1,73,36,987/- 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. 15,00,000.00 (Rupees Fifteen 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. 4,00,000.00 (Rupees Four 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 112 of the Customs Act, 1962.

(iv) I also impose a penalty of Rs. 2,00,000.00 (Rupees Two 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.

(v) I also impose a penalty of Rs.,2,00,000.00(Rupees Two lakh only) on Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping, Gandhidham, under Section 112 of the Customs Act, 1962.

(vi) I also impose a penalty of Rs. 1,00,000.00 (Rupees One lakh only) on Shri Iqbal Rahman Shaikh, Representative of M/s. Shree Sanari Shipping, Gandhidham, under Section 114AA of the Customs Act, 1962.

(vii) I also impose a penalty of Rs. 4,00,000.00 (Rupees Four Lakh only) on Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, Gandhidham under Section 112of the Customs Act, 1962.

(viii) I also impose a penalty of Rs.2,00,000.00 (Rupees Two lakh only) on Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, Gandhidham under Section 114AA of the Customs Act, 1962.

(ix) I also impose a penalty of Rs.4,00,000.00 (Rupees Four 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.

(x) I also impose a penalty of Rs.2,00,000.00(Rupees Two 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.

(xi) I also impose a penalty of Rs.4,00,000.00(Rupees Four Lakh only) on each Shri Manish and Shri Vivek Goel of M/s. Sunrise Petroleum FZC, Sharjah (UAE) and M/s. Sunrise Petroleum FZC, Sharjah (UAE) under Section 112 of the Customs Act, 1962.

(xii) I also impose a penalty of Rs.2,00,000.00 (Rupees Two Lakh only) on each Shri Manish and Shri Vivek Goel of M/s. Sunrise Petroleum FZC, Sharjah (UAE) and M/s. Sunrise Petroleum FZC, Sharjah (UAE) under Section 114AA of the Customs Act, 1962.

(xiii) I also impose a penalty of Rs.4,00,000.00 (Rupees Four Lakh only) M/s. Sunrise Petroleum FZC, Sharjah (UAE) under Section 112 of the Customs Act, 1962.

(xiv) I also impose a penalty of Rs.2,00,000.00 (Rupees Two Lakh only) M/s. Sunrise Petroleum FZC, Sharjah (UAE) under Section 114AA of the Customs Act, 1962.

(xv) I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

13. The said order is issued without prejudice to any other action that may be taken against the Noticee 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/10-05/Adj/ADC/SKO-Sanari/19-20 **Dated: 18.09.2019**

To:

1. 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.
2. 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.
3. Shri Mritunjay Dasgupta (Customs Broker), Proprietor of M/s. MAT Shipping, ICON Building, Office No. 109 & 110, 1st Floor, Plot No. 327, Ward 12/B, Tagore Road, Gandhidham, Kutch, Gujarat – 370201.
4. Shri R.P. Meena, Chemical Examiner Gr-I, Custom House Kandla Laboratory and presently posted at CRCL, New Delhi.
5. Shri Manish of M/s. Sunrise Petroleum FZC, P. O. Box 42553, Sharjah, UAE.
6. Shri Vivek Goel of M/s. Sunrise Petroleum FZC, P. O. Box 42553, Sharjah, UAE.
7. M/s. Sunrise Petroleum FZC, P. O. Box 42553, Sharjah, UAE

Copy to:

1. The Principal Commissioner of Customs, Kandla.
2. The Joint Director, DRI, Unit No. 15, Magnet Corporate Park, S.G Highway, Thaltej, Ahmedabad.
3. The Deputy Commissioner of Customs, Group-I, Custom House, Kandla.
4. The Deputy/Assistant Commissioner (Disposal/RRA/TRC/EDI/CBLR) Custom House Kandla.
5. Guard File