

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

(E-HEARING)

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70502 of 2022

(Arising out of Order-in-Original No.13/PR.COMMR./NOIDA-CUS/2022-23 dated 29.07.2022 passed by Principal Commissioner of Customs, Noida)

Shri Kush Agarwal, Director

.....Appellant

(Manager & Authorized Representative,
M/s Padam Parmeshwari Venture Pvt. Ltd.,
D-122, Bulandshahar Industrial Area)

VERSUS

Pr. Commissioner of Customs, Noida

....Respondent

(Commissionerate, Noida)

WITH

- i) Manoranjan Kumar (Customs Appeal No.70503 of 2022);**
- ii) Chandan Chaudhary (Customs Appeal No.70504 of 2022);**
- iii) Anil Agarwal (Customs Appeal No.70505 of 2022);**
- iv) Pratul Khanna (Customs Appeal No.70506 of 2022);**
&
- v) Pankaj Khanna (Customs Appeal No.70507 of 2022)**

(Arising out of Order-in-Original No.13/PR.COMMR./NOIDA-CUS/2022-23 dated 29.07.2022 passed by Principal Commissioner of Customs, Noida)

APPEARANCE:

Shri Kamal Jeet Singh, Advocate for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER NO.70627-70632 /2025

DATE OF HEARING : 17.07.2025
DATE OF DECISION : 09.09.2025

SANJIV SRIVASTAVA:

These appeals are directed against Order-in-Original No.13/Pr. Commr/NOIDA-Cus/2022-23 dated 29.07.2022 of the Principal Commissioner Customs, ICD Dadri, Noida. By the impugned order following has been held:

"ORDER

- (i) I reject country of origin as UAE and re-determine country of origin as Pakistan for the purpose of levy of duty*
- (ii) I hereby order for confiscation of Seized Chopped (Dry) dates totally valued at Rs. 66,15,494/- (Rupees Sixty Six Lakhs Fifteen Thousand Four Hundred and Ninety Four Only) under Section 111 (m) of the Customs Act, 1962 for mis-declaring the description of the goods in respect of country of origin and for violation of Food Safety, and Standards (Packing and Labelling) Regulation, 2011. Since the goods are not available for confiscation and disposed by auction sale. I order to impose Redemption Fine of Rs 3,00 000/. (Rupees Three Lakh only) under section 125 (1) of the Customs Act, 1962*
- (iii) I impose a penalty of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) under the provisions of Section 112 (a) and/ 112 (b) of the Customs Act, 1962 upon M/s. Venkat Traders 54/34 Nayaganj, Kanpur-208001 (Noticee no 1) (through its proprietor Noticee no 2).*
- (iv) I impose a penalty of Rs.2,00,000/- (Rupees two lakhs only) under provisions of Section 112 (a) and/ 112(b) of the Customs Act, 1962 and a penalty of Rs.1,00,000/- (Rupees one lakh only) under the provisions of Section 114AA of the Customs Act, 1962 upon Shri Pratul Khanna. Proprietor of M/s. Venkat Traders 54/34 Nayaganj, Kanpur-208001. (Noticee no. 2)*
- (v) I impose a penalty of Rs.2,00,000/- (Rupees two lakhs only) under provisions of Section 112 (a) and/ 112(b) of the Customs Act, 1962 and a penalty of Rs.1,00,000/- (Rupees*

one lakh only) under the provisions of Section 114AA of the Customs Act, 1962 upon Shri Pankaj Khanna, Caretaker of M/s. Venkat Traders 54/34 Nayaganj, Kanpur-208001 (Noticee no 3)

(vi) I impose a penalty of Rs.1,00,000/- (Rupees one lakh only) under the provisions of Section 12(a) and/(b) of the Customs Act, 1962 upon Shri Chandan Choudhary, Import Manager, M/s SS MOMMY International Pvt. Ltd. Greater Noida (Noticee no 4). I do not impose any penalty under Section 114AA of the Customs Act, 1962 ibid

(vii) I impose a penalty of Rs.1,00,000/- (Rupees one lakh only) under the provisions of Section 12(a) and/(b) of the Customs Act, 1962 Shri Manoranjan Kumar, Marketing Manager, Ms SS MOMMY International Pvt. Ltd Greater Noida (Noticee no.5). I do not impose any penalty under Section 114AA of the Customs Act, 1962 ibid

(viii) I impose a penalty of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) under the provisions of Section 112(a) and/(b) of the Customs Act, 1962 and a penalty of Rs 1,00,000/- (Rupees One Lakh only) under the provisions of Section 14AA of the Customs Act, 1962 separately upon Shri Kush Agarwal. D-122, Bulandshahar Road Industrial Area Ghaziabad (Noticee no.6)

(ix) I impose a penalty of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) under the provisions of Section 112(a) and/(b) of the Customs Act, 1962 and a penalty of Rs 1,00,000/- (Rupees One Lakh only) under the provisions of Section 14AA of the Customs Act, 1962 separately upon Shri Anil Agarwal. D-122, Bulandshahar Road Industrial Area Ghaziabad (Noticee no.7)

1.2 Against the impugned order appeals have been filed by Shri Kush Agarwal (Appellant 1 – Noticee 6), Shri Manoranjan Kumar (Appellant 2 – Noticee 5), Shri Chandan Chaudhary (Appellant 3 – Noticee 4), Shri Anil Agarwal (Appellant 4 – Noticee 7), Shri Pratul Khanna (Appellant 5 – Noticee 2 and

Proprietor of Noticee 1) and Shri Pankaj Khanna (Appellant 6 – Noticee 3)

2.1 The office of Directorate of Revenue Intelligence, Lucknow Zonal Unit received specific intelligence that some importers namely M/s Navarshi Overseas, 30/05, Tiwari Gali, Rawat Para, Agra, have connived with some overseas persons and imported Pakistan origin Dry dates, through Bills of Entry filed at ICD Dadri, evading Customs duty by mis-declaring the country of origin of the said goods.

2.2 A Customs duty @ 200% was imposed on all goods originating or exported from the Islamic Republic of Pakistan, vide Notification No. 05/2019-Cus dated 16.02.2019, and as per the said Notification, the said item has to be classified under CTH 98060000. These importers have thus attempted to evade higher rate of Customs duty by mis-declaring country of origin of the said Pakistan origin Dry dates as UAE and classifying them under CTH 0808041030, where Customs duty is @ 20% instead of its correct CTH 98060000, attracting Customs duty @ 200%.

2.3 On the basis of above said specific intelligence, an enquiry on the above subject was initiated, and goods imported under Bill of Entry No 5036474 dated 24.09.2019 were put on hold for examination. The B/E was filed in the name of M/s. Venkat Traders 54/34 Nayaganj, Kanpur-208001 for import clearance of Dry Chopped dates in Four Containers bearing number TSAU5600139, GESU6075341, GESU6374255 & GESU5912130 along with other relevant documents including Commercial invoice no. GVO/ EXP/ 073 dated 01.09.2019, Bill of Lading MAX/DXB/0937/1920 dated 08.09.2019 issued by the Shipping Line M/s Maxicon Container Line Pte Ltd., Singapore and Certificate of Origin No 477218/9/19/123007 dated 01.09.2019 issued by Ajman Chamber UAE.

2.4 The examination of the containers were conducted on 11.10.2019 in the presence of two independent witnesses. The examination report recorded as follows:

S No	Container No	B/E No and Date	Examination Report
1	TSAU5600139, GESU6075341, GESU6374255 & GESU5912130	5036474 dated 24.09.2019	Total 2240 bags of Dry dates (Quantity 112 MT Assessable Value Rs 66,15,494/-) were found in two containers. Each bag in all the containers was simply tagged with a slip containing details of exporter & Importer details, gross weight, net weight, GSTIN No, IEC and FSSAI No.

2.5 To ascertain the country/ area of origin with respect to the aforesaid import consignments of Dry dates in all containers pertaining to these three importers an independent opinion has been sought from M/s Atul Rajasthan Date Palms Limited (ARDPL), Rajkiya Paudh Shala, Chopasani, Jodhpur by sending representative samples , who vide letter dated 16.10.2019 forwarded report in respect of samples, stating that on the basis of physical examination, the said goods are of "INDIAN SUB CONTINENT".

2.6 Point no. 2.2.1 (4) of Chapter 2 of the Food Safety and Standards (Packing and Labeling) Regulation 2011 issued by FSSAI provides that "Label in pre-packaged foods shall be applied in such a manner that they will not become separated from the container.' During the course of examination, it was noticed that each bag in both containers was tagged with a slip containing details of exporter & importer gross weight, net weight country of origin and FSSAI No., which can easily be separated from such packaging bags. Hence, it was found that the provisions of Food Safety and Standards (Packing and Labeling) Regulation, 2011 were not followed properly on the packaging bags of the said goods.

2.7 During the course of investigation, statements under Section 108 of the Customs Act, 1962 of various person including, Shri Pankaj Khanna, elder brother of Shri Pratul Khanna Proprietor M/s Venkat Traders was recorded on 03.10.2019. He admitted that the Dry dates lying at ICD, Dadri were of Pakistan origin, which were supplied by Shri Kush Agarwal of M/s GVO Global FZC by re-routing the same through Dubai, UAE; that Shri Kush Agarwal managed & arranged all the import documents, especially the Certificate of Origin (COO)

issued by the concerned UAE authorities relating to the said import consignments of Dry dates of Pakistan origin.

2.8 Therefore, on reasonable belief that

- the impugned goods i.e. Dry dates of Pakistan origin were attempted to be imported, by mis-declaring country of origin as UAE of the said impugned goods with the intention to evade payment of higher rate of Customs duty @ 200% as per Notification No. 05/2019-Cus dated 16.02.2019;
- there was also a non-compliance of Food Safety and Standards (Packing and Labelling) Regulation, 2011 with respect to the said import consignments of Dry dates,
- the said goods were found liable for confiscation under Section 111 of the Customs Act, 1962 and accordingly, the impugned goods was seized under Section 110 of the Customs Act, 1962.

2.9 After completion of investigations Show Cause Notices were issued to the importers and concerned persons:

A. Importer and its proprietor and caretaker were called upon to show cause as to why:

- (i) Seized Dry dates totally valued at Rs. 66,15,494/- (Rupees Sixty Six Lakhs Fifteen Thousand Four Hundred and Ninety Four Only) should not be confiscated under Section 111 (m) of the Customs Act, 1962 for mis-declaring the description of the goods in respect of country of origin and for violation of Food Safety and Standards (Packing and Labeling Regulation, 2011 with respect to the aforesaid import consignments as discussed in the show cause notice
- (ii) Penalty should not be imposed upon them i.e. Noticee no.1 (through its proprietor Noticee no. 2) U/s 112 (a) and/or 112 (b) for the reasons discussed in the show cause notice

- (iii) Penalty should not be imposed upon Shri Pankaj Khanna (Noticee no.3) and Shri Pratul Khanna (Noticee no 2) under Section 114AA of the Customs Act, 1962 for giving false "country of origin" certificate of dry dates in order to wrongly avail the benefit of lower Customs Duty and thus, cause a loss to exchequer.

B. Noticee no.4 to 7 were required to show cause as to why Penalty should not be imposed upon him under Section 112(a) and/or (b) of the Customs Act, 1962 and Section 114AA *ibid*, for the reasons discussed in the show cause notice.

2.10 The show cause notices have been adjudicated as per the impugned order referred in para 1 above.

2.11 Aggrieved appellants have filed these appeals.

3.1 We have heard Shri Kamaljeet Singh Advocate for the appellants and Shri Santosh Kumar, Authorized representative for the revenue.

3.2 Arguing for his client, Shri Kamaljeet Singh, submitted that:

- the dispute in the present case is regarding the country of origin of the dry dates exported by the appellant and imported by the above three importers.
- the goods are duly supported/covered by "country of origin certificate issued by the Ajman Chamber of Commerce which is the competent designated authority of the Govt. of UAE for issuing 'country of origin' certificates. The said certificate of country of origin is bar coded, yet its authenticity has not been verified by the Department.
- Since the 'country of origin' certificate has been issued by the competent designated authority of the Govt. of UAE, its genuineness cannot be doubted.
- there is no allegation in the show cause notice or finding in the impugned order that 'certificate of origin' is not genuine. No enquiry has been made by

the Revenue from the Ajman Chamber of Commerce, UAE or from the Govt. of UAE to ascertain whether or not the 'certificate of origin' is genuine. In the absence of any enquiry, the allegation that the goods (dry dates) have not originated in UAE is not sustainable

- No reliance can be placed on the so-called expert opinion given by M/s. Atul Rajasthan Date Palms Ltd., Jodhpur for reasons as follows:
 - they have not mentioned in their test report “whether they have a lab to test country of origin of dates”.
 - they have not mentioned what tests were done by them to ascertain country of origin.
 - they have given only on basis of physical appearance. The opinion was given within one day from date of receipt of letter of DRI by them.
 - they are not accredited by the Govt, to carry out any tests on food items. The FSSAI has notified 183 NABL Accredited Laboratories as mentioned in M.F. (D.R.) Instruction no. 1/2020-Cus dated 12.02.2020 where the Customs Department can get testing of food products done. The name of M/S. Atul Rajasthan Date Palms Ltd. is not in this list of 183 NABL Accredited Laboratories.
- the expert who has given opinion regarding country of origin was not produced for cross-examination. In view of the above factors, no reliance can be placed on the expert opinion obtained from M/s. Atul Rajasthan Date Palms Ltd,
- Impugned order in 'Discussions and Conclusion' part of the states that in the Export (Customs) Declaration dated 25.08.2019, in column 24, the country of origin is mentioned as 'PK'. This factually

in incorrect. The document relied upon in the show cause notice is dated 20.08.2019 and not 25.08.2019 (RUD 48 Refer page 30 of show cause notice). In Column 24 of this document i.e. Export (Customs) Declaration only mentions the words 'AE' which stand for 'not for local sale' i.e. the goods are export goods. The words 'PK' are not mentioned in column 24 of this declaration or in any other part of this Declaration. Hence the finding in the impugned order is not sustainable

3.3 Authorized representative reiterates the findings recorded in the impugned order.

4.1 WE have considered the impugned order along with the submissions made in the appeal and during the course of arguments.

4.2 Before we proceed to consider the issue we would record the background in which the above notices have been issued culminating into the impugned order. This background has been recorded by the Hon'ble Supreme Court in the case G S Chatha Rice Mills [2020 (374) E.L.T. 289 (S.C.)]

"A. The aftermath of Pulwama

2. *A terrorist attack took place at Pulwama on 14 February, 2019. On 16 February, 2019, the Union Government issued a notification under Section 8A of the Customs Tariff Act, 1975. The notification introduced a tariff entry by which all goods originating in or exported from the Islamic Republic of Pakistan were subjected to an enhanced customs duty of 200%. The precise time at which the notification was uploaded on the e-Gazette was 20:46:58 hours."*

The goods in question namely dry dates otherwise attracted duty at rate of 30% if imported from any place other than *Islamic Republic of Pakistan* whereas as per the notification dated 16.02.2019 when imported from Pakistan attracted duty at rate of 200%. On the basis of intelligence to the effect that in order

to avoid the higher rate of duty on these goods importers started routing the said goods though of Pakistan origin from various countries in Middle East, by declaring the goods to be of that origin, investigations and enquiries were undertaken by the revenue authority and all the consignment pending clearance were detained and seized under reasonable belief that the country of origin certificate have been manipulated to claim the benefit of lower rate of duty. Subsequently the show cause notices as detailed earlier have been issued to the importers and other concerned which are subject matter of these appeals. As indicated earlier we are in present case concerned with the order in original by which the goods imported by M/s Navarshi Overseas (Noticee 1) and its proprietor Shri Neeraj Kumar (Noticee 2) have been confiscated and allowed to released against redemption fine of Rs 1,00,000/-. Penalty have been imposed on the importers and other concerned with the said imported goods, including Shri Kush Agarwal, who is said to have exported the said goods from UAE.

4.3 Findings recorded in the impugned order against the appellants are reproduced below:

6.1 I have carefully considered the Show Cause Notice, facts of the case and written as well as oral submissions made by the noticees. I find that the following issues need to be decided in this case-

(i) Whether there is a mis-declaration regarding the description of the goods in respect of country of origin and also violation of Food Safety and Standards (Packing and Labelling) Regulation, 2011 with respect to the aforesaid import consignments of Chopped Dry Dates?

(ii) Whether confiscation and penalty can be imposed in this case?"

6.2 Now I discuss the above issues to arrive at my findings.

6.3.1 In the show cause notice it has been mainly alleged that Chopped Dry dates loaded in four containers bearing number TSAU5600139, GESU6075341, GESU6374255 Gz GESU5912130 vide Bill of Entry No. 5036474 dated 24.09.2019 imported by Ms Venkat Traders 54/34 Nayaganj, Kanpur- 208001, U.P. before ICD, Dadri were misdeclared as U.A. E Origin which on investigation were found to be of Pakistani Origin. Further it has also been alleged that the said consignment also violated FSSAI regulations.

6.3.2 The allegations are based on the ground that independent opinion was sought from M/s. Atul Rajasthan Date Palms Limited (ARDP), Rajkiya Paudh Shala, Chopasani, Jodhpur-34200. M/s Atul Raiasthan Date Palms Limited is a subsidiary company of M/s Atul Ltd with 26% shareholding of Rajasthan Horticulture Development Society, Government of Rajasthan. They have the expertise in tissue culture raised date palms and also have a tissue culture laboratory for Date Palms at Jodhpur. The representative samples drawn from the said import consignments of (Dry) Chopped dates were sent to M/s Atul Rajasthan Date Palms Limited for examination. M/s Atul Rajasthan Date Palms Limited vide letter dated 16.10. 2019 reported that on the basis of physical examination, it is opined that the said (Dry) Chopped dates is of "INDIAN SUBCONTINENT"

6.3.3 The show cause notice states that geographically, Indian Subcontinent is the peninsular region in south-central Asia delineated by the Himalayas in the north, the Hindu Kush in the west, and the Arakanese in the east. Politically, the Indian subcontinent includes all or part of Bangladesh, Bhutan India, Maldives, Nepal. Pakistan and Sri Lanka. But UAE is the part of Arabian Peninsula consisting of the countries - Yemen, Oman, Qatar, Bahrain, Kuwait, Saudi Arabia and the United Arab

Emirates. Therefore, the said report of M/s Atul Rajasthan Date Palms Limited clearly indicates that the said consignments of Dry dates are clearly not of UAE origin as claimed in the "Certificate of origin" filed by M/s Venkat Traders along with import documents. Instead, the said report categorically indicates that the said consignments of Dry dates are of Pakistan origin

6.3.4 That during the course of investigation, the shipping line of the importer i.e. M/s. Mexicon Shipping Agencies, New Delhi was requested vide this office letter dated 11.11.2019 to provide Export Declaration Form and other relevant documents filed by the supplier of dry dates pertaining to Bill of Lading No MAX/DXB/0937/192C dated 08.09.2019 (corresponding to Bill of Entry no. 5036474 dated 24.09 2019 imported by M/s Venkat Traders). In response to this, M/s Mexicon Shipping Agencies vide e-mail dated 14.11.2019 submitted copy of Export (Customs) Declaration, received from their Dubai agents.

6.3.5 On going through the said Export (Customs) Declaration, it is noticed that this is a FZ Transit Out Customs Declaration filed on 05.09.2019 with Dubai Customs, Federal Customs Authority, UAE for transit of 04 containers (TSAU5600139, GESU6075341, GESU6374255 & GESU5912130 containing 2240 bags of dry dates (total qty 113120 kgs). In column no. 24 of this Export (Customs) Declaration, the Origin is mentioned as 'PK' and in column no. 48. there is a remark as 'Not for Local release.

6.3.6 'Declaration and Clearance procedure'- of Dubai Customs is available on website add [https://www.dubaicustoms.gov.ae/en/Procedures/Customs Declaration/Pages/FreeZones.aspx](https://www.dubaicustoms.gov.ae/en/Procedures/Customs%20Declaration/Pages/FreeZones.aspx). This procedure is found to describe the provisions relating to 'Goods in Transit' as under:

Imported goods from outside the country for the interest of a foreign importer addressed in his name or the name of a licensed agent carrier by a competent authority on the importer's behalf. The goods shall only be registered since transiting the territories of the country to a final destination. A deposit amount equivalent to the total value of goods shall be collected to ensure exit of goods outside the country within 30 days from the transactional processing date."

6.3.7 Customer guide of Dubai Customs, Dubai is available on website: https://www.dubaicustoms.gov.ae/en/Publications/Publications/Customer_Guide_Booklet,-EN.pdf. Para 15.12 of this Customer guide describes "Transit" provisions as under:

15.12. Transit

"Goods destined to elsewhere in the rest of the world but landing in Dubai may be moved the destination under transit procedure. Normally customs clear such transit movements to against payment of deposits or under guarantees and may take additional guarantees if necessary. Following Declaration Types, are required to be cleared under Transit Regime for various transit movements-

Transit (ROW to ROW)-

FZ Transit In-

FZ Transit Out –

FZ Transit in from Gee and other Emirates FZ and Gee Local Market-

FZ- Transit between Dubai based FZ."

"FZ Transit Out is defined under Para 15.12.3 as under.

15.12.3. FZ Transit Out

"Export of goods stored in the free zone to the rest of the world is cleared on this declaration against deposits which is refunded on production of proof of export. Even if the goods are exported directly from the free zone without paying any deposits, the exporter must submit the proof of export failing which customs will charge a penalty of 10% of the value of goods."

6.3.8 Considering the above customs procedures pertaining to Dubai Customs (UAE), regarding export of goods out of free zones, it appeared that FZ Transit Out declaration is applicable in those cases only, where a Free Zone Company (i.e. FZ Company) imports goods from a third country for its subsequent export to another country. The said provisions imply that the containers in respect of which FZ Transit Out declarations have been filed, originate from a third country and thereafter, move to the place of transit i.e. Dubai from where the containers finally move to the destination country.

6.3.9 Further, in the FZ Transit Out Customs Declarations filed with Dubai Customs, Federal Customs Authority, UAE on 05.09.2019, the Origin is found mentioned as 'PK'. On going through the website of International Organization for Standardization i.e. www.iso.org it is noticed that "PK" is the ISO alpha-2 code of Pakistan. The ISO country codes are internationally recognized codes that designate every country and most of the dependent areas a two-letter combination or a three-letter combination. It is like an acronym that stands for a country or a State. Hence, the said FZ Transit Out Customs Declaration filed on 05.09.2019 with Dubai Customs at the time of transit of the said consignments of the Dry dates for its subsequent export to Indian importer i.e. M/s. Venkat Traders clearly indicates that the impugned goods i.e. Dry dates has the country of origin as Pakistan.

6.3.10 Therefore filing of 'FZ Transit Out" declaration with Dubai Customs on 05.09.2019 in respect of Container nos. CRSU9348890 & GESU5990261 covered under Bill of Entry No. 5036474 dated 24.09.2019 filed by the importer - M/s. Venkat Traders at ICD Dadri clearly indicated that the goods i.e. Dry dates stuffed in the said containers were originated from Pakistan. It also corroborated statements of Shri Pratul Khanna, Pankaj Khanna, Chandan Chaudhary, Manoranjan Kumar, Anil Kumar Agarwal recorded under Section 108 of Customs Act 1962 during the investigation that Pakistan Origin dry dates were being imported into India via UAE on the basis of concocted "Certificate of Origin" in order to evade higher rate of Customs Duty @200% levied vide Notification No. 05/2019-Cus dated 16.02.2019.

6.3.11 Most of the noticees in their defence reply have contested the allegations on the ground that an opinion of unidentified/unreliable private company's authorized signatory- without credentials' based only on physical examination & experience and not on any scientific methodology stating that the country /area of origin is Indian Subcontinent is non-admissible

6.3.12 M/s. Atul Rajasthan Date Palms Limited (ARDP), Rajkiya Paudh Shala, Chopasani, Jodhpur- 34200 is a subsidiary company of Ms Atul Ltd with 26% shareholding of Rajasthan Horticulture Development Society, Government of Rajasthan. They have the expertise in tissue culture raised date palms and also have a tissue culture laboratory for Date Palms at Jodhpur.

6.3.13 Thus the contention of the noticee that allegations in the show cause notice are based on an opinion of unidentified / unreliable 'private company's authorized signatory is not tenable

6.4.1 It has further been contended that the department has repeatedly and for inexplicable reasons.

have chosen private parties instead of reliable and available channels of the Government, to rely on coerced replies/ inputs from private parties to charging the noticees with complete knowledge that these cannot hold water in the imminent judicial scrutiny. The department deliberately called/procured inputs from private entities like M/s. Mexicon Shipping, Nehru Place, Delhi as Agents for Maxicon Container Line PTE Ltd. (Singapore)' who vide e-mail dated 14.11.2019 submitted copy of Export (Customs) Declaration. Whereas all the necessary and relevant information was available with them (submitted by the importer and issued by Governmental agencies) which was verifiable through Government channels. But for unknown reasons the available channels were not used, and instead favorable inputs were procured from private parties.

6.4.2 That the 'Certificate of Origin' issued by 'Ajman Chamber of Commerce' is an unquestionable document obtained by exporter based in UAE. It is sufficient proof of origin being issued by the chamber after inspecting the material and verifying all the documents. That the noticee also satisfied itself based on documents furnished by exporter which were issued by governmental agencies and there was no occasion to doubt that once it was examined and certified by UAE government. In any case, the importer has no control whatsoever over the certification process of foreign authorities besides the fact of the certificate issued by internationally recognized agency i.e. 'Ajman Chamber of Commerce' in accordance with international trade policy.

6.4.3 Thus the noticee has questioned about procuring the FZ Transit Out Customs Declarations filed with Dubai Customs, Federal Customs Authority, UAE by the exporter at Dubai from the Shipping Line.

6.4.4 *However I notice that in "FZ Transit Out Customs Declarations filed with Dubai Customs Federal Customs Authority, UAE on 05.09.2019, in the "Origin" column 'PK' is found mentioned. The said declaration which has been fled with a Govt Agency i.e. Dubai Customs by the exporter himself cannot be termed as inadmissible evidence.*

6.4.5 *On going through the website of International Organization for Standardization i.e. www.iso.org it is noticed that "PK" is the ISO alpha-2 code of Pakistan. The ISO country codes are internationally recognized codes that designate every country and most of the dependent areas a two-letter combination or a three-letter combination. It is like an acronym that stands for a country or a State. This fact has not been contested by the noticees in their submissions.*

6.4.6 *Hence the said FZ Transit Out Customs Declaration, filed on 05.09.2019 with Dubai Customs at the time of transit of the said consignments of the Dry dates for its subsequent export to Indian importer i.e. Ms. Venkat Traders clearly indicates that the impugned goods i.e. Dry dates has the country of origin as Pakistan. It is a fact that the said declaration has been filed with a govt. agency and it cannot be set aside merely on the ground that the same has been provided by a private agency.*

6.4.7 *I find that allegation made by the department that goods are of Pakistan origin and not of UAE origin is based on expert opinion, corroborated by the FZ Transit Out Export Declaration and also supported by statements of various persons who are very much concerned with this particular transaction of import as discussed in preceding paras. In case of Collector of Customs, Madras Vs D Bhoormull reported in [1983 (13) ELT 1546 (SC)] Hon'ble Apex Court held that department would be deemed to have discharged its burden, if adduces so much evidence,*

circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to existence of the fact sought to be proved. One of them is that the prosecution or the department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth and as Prof. Brett felicitously put it-"all exactness is a fake". The law does not require the prosecution prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as probabilities of the case. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered to use the words of Lord Mansfield in Blatch v. Archar (1774) 1 Cowp 63 at p. 65 "According to the proof which it was in the power of one side to prove and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden. The department in the present case, had produced three evidences in support of claim that goods are of Pakistan origin viz (i) expert report on origin of Dry Dates (ii) F2 export declaration showing country of origin as Pk- a code for Pakistan. (iii) admission by concerned persons in the import transaction that goods are of Pakistan origin. Now burden shift on party to prove that evidence produced are not correct.

6.5.1 *Another contention of the noticee is that coerced and inadmissible statements of Shri Anil Agarwal on dated 04.11.2019 & 06.12.2019 allegedly recorded u/s 108 Customs Act by the officers have been relied upon which was duly retracted by him.*

6.5.2 I find that Shri Anil Kumar Agarwal vide letter dated 07.12.2019 had submitted his retraction from his statement dated 06.12.2019. Therefore an enquiry was ordered in the matter and Deputy Director, DRI, LZU. Lucknow was appointed as the Enquiry Officer. During the course of enquiry, the allegations leveled by Shri Anil Kumar Agarwal were found incorrect and outcome of the enquiry had also been communicated to Shri Anil Kumar Agarwal vide DRI office letter dated 20.01.2020. The allegation of mis-declaration is strengthened by the submissions made by Shri Chandan Chaudhary who in his statement dated 16.10.2019 stated that it came to his knowledge that though Dry dates were of Pakistan origin, but on the basis of documents, imports of the said Dry dates had been shown as supplied from UAE. Therefore the contention of the noticee that the show cause relies upon retracted statement of Shri Anil Kumar Agarwal does not hold well Further, the allegation of mis-declaration of country of origin was proven based not only on statements but also corroborated by documentary evidence including Customs Export Declaration Form submitted for the imported goods. Hence, the noticee's contention appears to be after thoughts and hence not tenable In view of above I hold that country of origin of said dry dates is Pakistan

6.5.3 The allegation of mis-declaration is strengthened by the submissions made by Shri Chandan Chaudhary and Shri Anil Kumar Agarwal. Shri Chandan Chaudhary in his statement dated 16.10.2019 stated that it came to his knowledge that though Dry dates were of Pakistan origin but on the basis of documents. imports of the said Dry dates had been shown as supplied from UAE. Further Shri Anil Kumar Agarwal in his statement dated 06.12.2019 stated that he was aware of the preparation of the said concocted import documents with respect to the import

consignments of Dry dates of Pakistan origin re-routed into India through Dubai, UAE.

6.6.1 Another allegation is that during the course of examination, it was found that each bag in both containers was tagged with a slip containing details of exporter & importer, gross weight, net weight, country of origin and FSSAI No. which can easily be separated from such packaging bags. No marking was found on other side of bags.

6.6.2 That Point no. 2.2.1(4) of Chapter 2 of the Food Safety and Standards (Packing and Labeling) Regulation, 2011 issued by FSSAI provides that "Label in pre-packaged foods shall be applied in such a manner that they will not become separated from the container."

6.6.3 Hence it appeared that the provisions of Food Safety and Standards (Packing and Labeling) Regulation, 2011 were not followed properly on the packaging of bags of the said goods.

6.6.4 The noticee in their defence reply has submitted that the slip containing details of goods as per FSSAI were found duly attached with the bags. Whether they can be easily separated is a hypothetical question as they had not been found separated. In any case, had there been a violation under FSSAI, then FSSAI authorities would have booked a case for the same.

6.6.5 In the present case, examination revealed that each bag in all containers was tagged with a slip containing details of exporter & importer, gross weight, net weight, country of origin, shelf life and FSSAI No. which can easily be separated detached from such packaging bags.

6.6.6 I find that the Dry dates were packed in bags and also meant for human consumption. This fact cannot be denied. When any food item is intended for human consumption, rules framed in Food Safety and Standards

(Packing and Labeling) Regulations, 2011 have to be followed with zero tolerance for unsafe food items. In the present case, Dry dates imported are intended for the purpose of human consumption, whether whole or chopped. Hence, FSSAI regulations, without any doubt, are applicable here.

6.6.7 Thus I find that the allegation of violation of provisions of FSSAI Regulations regarding packing of the goods is legally sustainable.

6.6.8 The importer has imported "Dry Dates" by mis-declaring country of origin as UAE. In fact, the goods are of Pakistan origin. The Government of India vide Notification No. 05/2019-Customs dated 16.02 2019 specified levy of customs duty @ 200% on "All goods originating in or exported from the Islamic Republic of Pakistan". By virtue of the said Notification, all goods originated from Pakistan attract duty @200%. Therefore, the duty so calculated on the imported goods of the impugned BOE worked out as Rs.1,32,30,988/-

6.7.1 In view of the above I find that Chopped Dry dates loaded in four containers bearing number TSAU5600139 GESU6075341. GESU6374255 & GESU5912130 vide Bill of Entry No. 5036474 dated 24.09.2019 imported by M/s Venkat Traders, 54/34 Nayaganj, Kanpur-208001, U.P. before ICD, Dadri were misdeclared as U.A.E Origin instead of Pakistani Origin.

6.7.2 Further, I find that the importer has not declared the correct country of origin of the goods and also violated provisions of Food Safety and Standards (Packing and labeling) Regulations, 2011. Section 111(m) of the Customs Act, 1962 reads as "any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, goods are liable to confiscation". Section 46 of the Customs Act lays down the provision that the importer of any goods, other than goods

intended for transit or transshipment shall make an entry thereof, by presenting to the proper officer a Bill of Entry for home consumption or warehousing Section 46 (4A) reads as under:

The importer who presents a bill of entry shall ensure the following, namely:

- (a) The accuracy and completeness of the information given therein:*
- (b) The authenticity and- validity of any document supporting it; and*
- (c) Compliance with the restriction or prohibition, if any relating to the goods under this Act or under any other law for the time being in force.*

Therefore, Section 111(m) read with Section 46 of the Customs Act provides for confiscation of the improperly imported goods where its value or any other particulars do not correspond with entry made under this Act. I find that to avoid payment of higher rate of duty, the said importer has mis- declared the country of origin and also not imported in accordance with the provisions of Food Safety and Standards (Packing and labeling) Regulations, 2011. Therefore. imported goods are liable to confiscation.

6.7.3 Section 111(m) of the Customs Act, 1962 reads as "any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, goods are liable to confiscation". The term "other particulars with the entry made" is wide and comprehensive and covers a situation when the goods do not correspond with declaration of country of origin in BOE and invoice and imported in violation of provisions of Food Safety and Standards (Packing and labeling) Regulations, 2011. In view of this. I do not find any force in said contention of the noticee that goods are not liable for confiscation

6.7.4 *In view of this, I hold that said goods having value of Rs.66,15,494/- were imported by mis-declaring the Country of Origin which has rendered them liable to confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.*

6.8.1 *Now I discuss the issue of involvement of M/s Venkat Traders and its Proprietor Shri Pratul Khanna. In the SCN it has been alleged that Ms Venkat Traders and its Proprietor Shri Pratul Khanna were actively involved in the mis-declaration of Country of Origin of the Dry Dates imported by them.*

6.8.2 *It has been alleged that M/s. Venkat Traders deliberately imported the said consignment of Pakistan origin dry dates into India however as soon as they became aware that such modus operandi adopted by other importers for importing Pakistan origin dry dates by mis-declaring country of origin is busted by DRI Mumbai, they decided to quit importing such consignment of dry dates in order to save themselves from the action of law and likely consequences*

6.8.3 *It appeared that M/s Venkat Traders, through Pankaj Khanna had connived illegally importing Dry dates of Pakistan origin into India by re-routing it via UAE by the firm namely M/s GVO Global FZC, UAE, owned by Shri Kush Agarwal, who is managing not only re-routing of Pakistani origin Dry dates through UAE but also managed fake Certificate of Origin to facilitate import and also with Chandan Chaudhary of M/s SS Mommy International Pvt. Ltd. for filing the import documents and customs clearance of the said dry dates*

6.8.4 *In view of the above, it has been alleged that Ms Venkat Traders had contravened the provisions of Sections 12 & 17 of the Customs Act. 1962 read with Notification No. OS/2019-Cus dated 16.02.2019 in as much as they attempted to evade payment of higher rate of Customs*

duty @ 200% levied vide Notification No OS/2019-Cus dated 16.02.2019 on Pakistan-origin goods, by mis-declaring 'Country of origin' of the said goods as "UAE" in the said concocted Certificate of origin (COO). Further, the provisions of Food Safety and Standards (Packing and Labeling) Regulation, 2011 were also contravened by the party as discussed in the foregoing paras. For the said violations, the seized Dry dates covered under Bill of Entry No. 5036474 dated 24.09.19 in Containers No. TSAU5600139 GESU6075341. GESU6374255 & CESU5912130 (declared assessable value Rs. 66,15,494/-) are liable to confiscation under Section 111 (m) of the Customs Act, 1962.

6.8.5 That by mis-declaring the country of origin of the Pakistan origin Dry dates imported by them the importer Ms Venkat Traders sought to evade customs duty amounting to Rs 1,83,64,611/- (Rupees One Crore Eighty Three Lakhs Sixty Four Thousand Six Hundred Eleven only).

6.8.6 I find that the said Bill of Entry has been filed under the provisions of Section 46 of the Customs Act, 1962. As per said provisions of said section the importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods. The said importer has presented respective invoice which mentions country of origin of goods as UAE. In support, the said importer has presented Country of Origin certificate which was not found as a valid certificate. Contrary, country of origin was found as Pakistan and by virtue of that Basic Customs duty leviable is 200% as against Basic Customs duty self assessed @20%. I, therefore, find that the importer has attempted to mis-declare country of origin of the said

goods with sole intention to avoid payment of higher rate of duty. Moreover. I also find that said importer i.e. Noticee 1 has imported said goods in violation of provisions of Food Safety and Standards (Packing and labeling) Regulations, 2011. In view of above, I find that importer deliberately and knowingly attempted to mis-declare country of origin of the goods with sole intention to evade duty. I find that the acts of omission and commission of the said importer M/s Venkat Traders, in relation to goods imported vide Bill of Entry No 5036474 dated 24.09.19 have rendered the said goods liable to confiscation under Section 111 (m).

6.8.9 Thus I find that the Seized Chopped (Dry) dates totally valued at Rs.66,15,494/- (Rupees Sixty Six Lakhs Fifteen Thousand Four Hundred and Ninety Four Only) are liable for confiscation under Section 111 (m) of the Customs Act, 1962 for mis-declaring the description of the goods in respect of country of origin and for violation of Food Safety and Standards (Packing and Labeling) Regulation, 2011 with respect to the aforesaid import consignments as discussed hereinabove

6.8.10 Hence I hold that M s Venkat Traders (through its proprietor Noticee no.2) is liable for penalty under Section 112 (a) and 112 (b), 114AA of the Customs Act, 1962 in as much as they mis-declared the description of the goods in respect of country of origin and for violation of Food Safety and Standards (Packing and Labeling) Regulation 2011 which rendered the aforesaid import consignments liable for confiscation

6.9.1 Now I discuss role of the co-noticees in the instant case. Shri Pratul Khanna (Noticee no.2) is the proprietor of M/s Venkat Traders, Kanpur.

6.9.2 Shri Pratul Khanna (Noticee no.2) is the proprietor of M/s Venkat Traders, Kanpur. It has been alleged that he was aware that M/s. Venkat Traders imported Dry dates

from M/s GVO Global FZO UAE with Customs clearance done by Ms. SS Mommy international Pvt. Ltd. For giving genuine look to illegal import of Dry dates he not only signed the contract between M/s. Venkat Traders and M/s GVO Global FZC (UAE) but also signed documents related to Customs clearance of the imported dry dates under the guidance of his brother Pankaj Khanna

6.9.3 Bill of Entry No 5036474 dated 24 09.19 in respect of four Containers No TSAU5600139 GESU6075341 GESU6374255 & GESU5912130 was filed on behalf of M/s. Venkat traders with declared assessable value Rs 66,15,494/- before the Customs authority at ICD Dadri. With the concocted import documents issued from the concerned UAE authorities, especially the Certificate of origin (COO) with respect to the said consignment of Dry dates of Pakistan origin he attempted to evade payment of higher rate of Customs duty @ 200% imposed vide Notification No.05/2019-Cus dated 16.02.2019 on Pakistan origin goods by mis-declaring 'Country of origin' of the said goods as 'UAE' in the said concocted Certificate of origin (COO).

6.9.4 In his defence reply he has submitted hat Shri Pratul Khanna had refused to accept delivery of the dry dates at the behest of Shri Kush Agarwal and Shri Anil Agarwal is evidence in itself to validate statement of Shri Pankaj Khanna. However he has not provided any proof in support of his contention. He has also questioned the reliability of report of M/s Atul Rajasthan Palm Ltd. The said points have already been discussed in the foregoing paras

6.9.5 It is a fact that he not only signed the contract between M/s. Venkat Traders and M/s. GVO Global FZC (UAE) but also signed documents related to Customs clearance of the imported dry dates under the guidance of his brother Pankaj Khanna. On investigation the said

consignment has been found to be of Pakistan origin. Thus, he aided and abetted Kush Agarwal to import the consignment of Dry dates of Pakistan origin vide Bill of Entry No. 5036474 dated 24.09.2019 and thus attempted to evade payment of higher rate of Customs duty @ 200% imposed vide Notification No. 05/2019-Cus dated 16.02.2019 on Pakistan origin goods by mis-declaring 'Country of origin' of the said goods as "UAE" in the said concocted Certificate of origin (COO)

6.9.6 Therefore Shri Pratul Khanna is liable to penalty under Section 112(a) and/or (b) of the Customs Act, 1962 for omission and commissions on his part which have rendered the goods liable for confiscation as discussed hereinabove

6.9.7 I find that he is also liable to penalty under Section 114AA of the Customs Act, 1962 in as much as he knowingly & intentionally submitted the concocted import documents including fake country of origin certificate before the Customs Authority to assessment at lower rate of duty and causing loss to the Go Exchequer.

6.10.1 Shri Pankaj Khanna (Noticee no 3) is the caretaker M/s Venkat Traders, Kanpur It has been alleged that on previous occasions also, he was involved in import of Pakistan origin dry dates into India via UAE by mis-declaring the country of origin on the basis of concocted Certificate of Origin in connivance with Anil Agarwal, Kush Agarwal, Chandan Chaudhary and Manoranjan Kumar.

6.10.2 In his defence reply he has submitted that he had refused to accept delivery of the dry dates at the behest of Shri Kush Agarwal and Shri Anil Agarwal is evidence in itself to validate statement of Shri Pankaj Khanna. However he has not provided any proof in support of his contention. He has also questioned the reliability of report of M/s Atul Rajasthan Palm Ltd. The said points have already been discussed in the foregoing paras.

6.10.3 *In fact he was an active person in control of M/s Venkat Traders, Kanpur. It has been alleged that on this occasion too, he in connivance with Kush Agarwal, Anil Agarwal, Chandan Chaudhary managed to effect High seas sale, of two containers of dry dates to Ms. Navarshi Oversea. To effect instant High seas sale he was in close contact with Chandan Chaudhary and Kush Agarwal, which is evident from the whatsapp chat between him and Chandan Chaudhary.*

6.10.4 *In his statement Shri Pankaj Khanna stated that "consignment imported in the last week of August 2019 was of inferior quality, thus, he requested Kush Agarwal to revoke the contract but despite his request Kush Agarwal kept on exporting dry dates from UAE and Chandan Chaudhary kept on filing Bills of Entry on the IEC of M/s. Venkat Traders.*

6.10.5 *His averments are found to be false in light of the fact that Ms. Venkat Traders continuously engaged in importing dry dates in the month of September 2019 vide Bills of Entry dated 03-09-2019, 04-09-2019, 06-09-2019 and 07-09-2019. Further, the payment was regularly made from the Bank account of M/s. Venkat Traders to Chandan Chaudhary & M/s. SS Mommy International Private Limited during the month of September 2019, which is evident from the Summary of the transactions reflected in the Account statement of M/s. Venkat Traders submitted by the Branch Operation Manager. Karur Vyasa Bank Limited vide e-mail dated 19.08.2020. This factual position has not been refuted by him.*

6 10.6 *Shri Pankaj Khanna in his statement dated 13.12.2019 had categorically admitted that he has no documentary evidence regarding his request to, Kush Agarwal for revocation of contract. Further, he took no legal action against Chandan Chaudhary for so called*

misuse of IEC of M/s. Venkat Traders for illegal import of dry dates.

6.10.7 Further, in his statement dated 13.12.2019 Shri Pankaj Khanna categorically admitted that he came to know in September 2019 that DRI Mumbai had registered a case of illegal import of Pakistani origin dry dates re-routed through UAE into India. Thus, the allegation in the show cause notice that in order to cover his connivance in the illegal import of dry dates and to come out with clean hands Pankaj Khanna cooked in the show cause narrated false story is supported by the evidences

6.10.8 The above allegations have not been refuted by him in his defence reply. Thus, the allegation that he aided and abetted Kush Agarwal to import the consignment of Dry dates of Pakistan origin vide Bill of Entry No. Bill of Entry No. 5036474 dated 24.09.2019 and provided assistance to evade payment of higher rate of Customs duty @ 200%% imposed vide Notification No. 05/2019-Cus dated 16.02.2019 on Pakistan origin goods by M/s-declaring 'Country of origin' of the said goods as "UAE" in the said concocted Certificate of origin (COO) stands against him.

6.10.9 Therefore, Shri Pankaj Khanna is liable to penalty under Section 112(a) and/ (b) of the Customs Act. 1962 for omission and commissions on his part which have rendered the goods liable for confiscation as discussed hereinabove

6.10.10 I find that he is also liable to penalty under Section 114AA of the Customs Act, 1962 in as much as he knowingly & intentionally submitted the concocted import documents including fake country of origin certificate before the Customs Authority for assessment at lower rate of duty and causing loss to the Govt. Exchequer.

6.11.1 Shri Chandan Chaudhary (Noticee no. 4) is Import Manager of M/s SS Mommy International Pvt. Ltd.

Greater Noida (Noticee no.5). It has been alleged that he also appeared to be actively involved in illegal import of Dry dates by filing the Bill of Entry No. 5036474 dated 24.09.2019 pertaining to import of Dry dates of Pakistan origin in two containers containing 112 MT of Dry dates at ICD, Dadri re-routed into India via UAE.

6.11.2 Shri Chandan Chaudhary in his statement dated 30.09.2019 has categorically stated that Bill of Entry No. 5036474 dated 24.09.2019 was filed by him on the directions and on the basis of documents provided by Shri Anil Agarwal, Shri Manoranjan Kumar in his statement dated 06.12.2019 has stated that Shri Anil Kumar Agarwal had provided the requisite import documents with respect to import consignments of Dry dates to Shri Chandan Chaudhary in respect of the M/s Venkat traders and other importers. In addition to this Shri Ashok Kalra, Customs Broker in his statement dated 07.02.2020 has also stated that Shri Manoranjan Kumar along with Shri Chandan Chaudhary had carried out the documentation work relating to the import clearances of Dry dates for various importers. For the import clearances of Dry dates, Shri Anil Kumar Agarwal of Ms Padam Parmeshwari Venture Pvt. Ltd. approached Sari Manoranjan Kumar and he had also provided the relevant import documents to Shri Chandan Chaudhary. Thus, it is evident that Shree Chandan Chaudhary was receiving import documents and filed Bill of Entry.

6.11.3 In his statement dated 30.09.2019 Shri Chandan Chaudhary stated that on the directions of Shri Anil Agar.vai he filed Bill of Entry no. 5036474 dated 24.09.2019 on the IEC of M/s Venkat traders for import of said Dry dates. Apart from this Shri Anil Kumar Agarwal in his statement dated 04.11.2019 has also stated that he was in contact with Shri Manoranjan Singh and Shri Chandan Chaudhary of M/s SS Mommy International (Pvt.)

Ltd. and he had also provided the import documents pertaining to various importers

6.11.4 In his statement dated 16.10.2019 Shri Chandan Chaudhary stated that it came to his knowledge that though Dry dates were of Pakistan origin but on the basis of documents, imports of the said Dry dates had been shown as supplied from UAE and Shri Manoranjan Singh had aided with Shri Anil Agarwal in execution of this work. He also got confirmed on this when one of their Dry dates importer i.e. N/s Jai Baba Traders had forwarded photos of two newspaper news through Whatsapp regarding case booked by DRI, Mumbai in respect of import of Dry dates

6.11.5 The above facts indicate his involvement of Shri Chandan Chaudhary, Import Manager of M/s S. S. Mommy International Pvt. Limited in import of impugned consignments which have been held liable for confiscation. Hence, I find that Shri Chandan Chaudhary is liable to penalty under Section 112(a) and/ (b) of the Customs Act, 1962 for his act of omission and commission leading to filing of Bill of Entry and confiscation of goods as held above.

6.11.6 However, Shri Chandan Chaudhary is an employee and acted for the CHA. It has been held in several cases that personal penalty cannot be imposed on employees as he was merely following directions. 2007 (211) ELT 460 (Trib); 2009 (241) ELT 467 (Trib), 2007 (213) ELT 710 (Trib) Therefore, he is liable to a token penalty under Section 112(a),(b) of the Customs Act, 1962

6.11.7 I find that he has submitted the import documents received from Shri Anil Agarwal to the Customs Authority for assessment and he acted as per duty and responsibility of an employee of CHA/CB. Therefore, I hold that he is not liable to a penalty under Section 114AA of the Customs Act, 1962. There is no evidence in the entire

show cause notice to prove that he alongwith Shri Manoranjan Kumar was instrumental in aiding and abetting the importer to mis-declare the country of origin of dry dates or use any false and incorrect material viz. Declaration, statement or document. Thus, a lenient view is warranted while imposing penalty under Section 112 ibid

6.12.1 Shri Manoranjan Kumar (Noticee no. 5) is Marketing Manager of M/s. SS Mommy International Pvt. Ltd, Greater Noida. He in his statement dated 06.12.2019 stated that he looks after all the affairs of the firm i.e. M/s SS Mommy International Pvt. Ltd. and customers first contact him to get the import clearance services. Thereafter, he directs Shri Chandan Choudhary, Import Manager of the firm to procure import documents from the customers for its submission to the Customs authority for import clearances of the goods. Shri Ashok Kalra, CHA in his statement dated 07.02.2020 has also stated that all the work related to M/s SS Mommy International (Pvt.) Ltd. is looked after by Shri Manoranjan Kumar & his staff, Shri Ashok Kalra further added that Shri Manoranjan Kumar managed to procure import clearance work of Dry dates and he along with Shri Chandan Choudhary carried out the documentation work relating to the import clearances of Dry dates.

6.12.2 Apart from this. Shri Anil Kumar Agarwal in his statement dated 04.11.2019 has also stated that he was in touch with Shri Manoranjan (Kumar) Singh and Shri Chandan Chaudhary of M/s SS Mommy International (Pvt.) Ltd. and he had also provided the import documents pertaining to various importers. Further, Chandan Chaudhary in his statement dated 16.10.19 stated that for the first time import of dry dates Shri Anil Agarwal contacted Shri Manoranjan and accordingly documents pertaining to import clearance used to be sent by Anil

Agarwal over the e-mail of firm M/s. SS Mommy International.

6.12.3 In his defence reply Shri Manoranjan Kumar vehemently denied the allegations leveled against him. He has also questioned the reliability of report of M/s Atul Rajasthan Palm Ltd. The said points have already been discussed in the foregoing paras.

6.12.4 In his statement dated 16.10.2019 Shri Chandan Chaudhary stated that it came to his knowledge that though Dry dates were of Pakistan origin but on the basis of documents, imports of the said Dry dates had been shown as supplied from UAE and Shri Manoranjan Singh had assisted Shri Anil Agarwal in execution of this work. But evidence exists for only filing Bill of Entry and nothing more against Shri Manoranjan.

6.12.5 Thus from the above Shri Manoranjan Kumar was involved in filing of Bill of Entry of the impugned goods which were held liable for confiscation. Accordingly, I find that Shri Manoranjan Kumar is liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962.

6.12.6 I do not find any evidence that Shri Manoranjan Kumar used incorrect, false material or knowingly or intentionally signed any document. Hon'ble Tribunal in the case of Rajan Arora 2017 (352) ELT 37 (Trib-Del) held that clear evidence is necessary to arrive at the conclusion that CHA by their specific acts or omission of any act, abetted illegal importation of offending goods. Penalty imposed on grounds that appellants had filed bills of entry without getting required documents - mere filing of bill of entry without knowledge or a role in importation of cargo not sufficient for penalty.

6.12.7 Hon'ble Tribunal in the case of New Amar Goods Carriers 2012 (276) ELT 389 (T-Del) held that in absence of evidence regarding knowledge of appellant about the contents of cargo, penalty cannot be imposed.

Hon'ble Tribunal in the case of Lohia Travels & Cargo 2015 (330) ELT 689 (T) held that when there is no evidence to establish that the appellant had prior knowledge of the goods imported and also when there is no evidence to establish any wrongful intent on the part of appellant then there is no reason to impose penalty on CHA. Therefore, I do not impose any penalty on Shri Manoranjan Kumar under Section 114AA of the Customs Act, 1962 as he had no prior knowledge or wrongful intent. Nor he used or made any false documents himself

6.12.8 *The noticee Shri Manoranjan Kumar contended that the Department has not brought any tangible evidence on record to contradict his statement dated 06.12.2019. It is settled law that on the basis of assumption and presumption, show cause notice cannot be issued and in support he relied upon Hon'ble Supreme Court decision in case of Oudh Sugar Mills Ltd. Vs. U.O.1, 1978 (2) ELT J172 (S C), Hon'ble Madras High Court judgment in case of C C (Import) Vs Flemingo (DFS) Pvt. Ltd. 2010 (251) ELT 348 (Mad), the decision in case of P.D Manjrekar Vs. Commissioner of Customs . 2007 (78) RLT 769; the decision in case of Nimesh Suchde Vs. CCE. 2907 (209) ELT 276; the decision in case of Sushil Malik Vs. CC, New Delhi, 2006 (195) ELT 285. I find that Shri Chandan Chaudhary in his statement dated 16.10.19 stated that for the first time import of dry dates Anil Agarwal contacted Shri Manoranjan and accordingly documents pertaining to import clearance used to be sent by Anil Agarwal over the e-mail of firm M/s. SS Mommy International. Thus, CHA has filed Bill of Entry on the basis of documents provided. As discussed above, filing of Bill of Entry on the strength of documents received from importer and without any evidence of intent to abet the wrong illegal import, calls for a lenient view while deciding penalty under Section 112(a),(b) of the Customs Act, 1962*

6.13.1 *Shri Kush Agarwal (Noticee no.6) is the owner of Ms. GVO Global FZC. UAE. It has been alleged that he appeared to be the mastermind in re-routing of the said impugned goods i.e. 'Dry dates of Pakistan origin' through UAE He appeared to be the person who is supplying 'Dry dates of Pakistan origin' through his firm i.e.MS GVO Global FZC. UAE to the Indian importers and he managed arranged all the import documents, especially the certificate of origin (COO) issued by the concerned UAE authorities relating to import of said Dry dates of Pakistan origin*

6.13.2 *He has contested the allegations on the ground that an opinion of unidentified/ unreliable private company's based only on physical examination & experience and not on any scientific methodology stating that the country area of origin is Indian Subcontinent is non-admissible. That the said consignment of dates is covered by a certificate of origin issued by the Ajman Chamber of Commerce which is the competent authority to issue 'certificate of origin' and is regulated by the Govt. of UAE. Once certificate of origin has been issued by the competent designated authority of the Govt of the exporting country, No scope for any doubt can exist. That the slip containing details of goods as per FSSAI were found duly attached with the bags. Whether they can be easily separated is a hypothetical question as they had not been found separated. In any case, had there been a violation under FSSAI, then FSSAI authorities would have booked a case for the same. That no reliance can be placed on the said statement of Sh. Chandan Chaudhary as it is not based on any evidence on record and is merely hearsay evidence.*

6.13.3 *That though in his statements Sh. Pankaj Khanna has stated that based on his experience, he can say that there is no difference between the dry dates*

imported from Pakistan prior to Feb 2019 and the dry dates imported from M/s GVO Global FZC, Dubai. However, no adverse inference can be drawn on the basis of statement of Sh. Pankaj Khanna as though being an importer of dry dates, he has no expertise to state what the country of production of the dates might be. That it is pertinent to mention note that in his statement, he has not stated that the noticee had told him that he would be routing dates of Pakistan Origin through UAE.

6.13.4 *I find that Shri Pankaj Khanna in his statement dated 04.10.2019 had deposed that after the hike in duty on import from Pakistan importing Dry dates from Pakistan became absolutely unviable. He managed to contact Mr. Kush Agarwal, who reportedly was looking for traders of Dry dates in Delhi and other areas. In a meeting held in office i.e. D-122, Bulandshahar Industrial Area, Ghaziabad, Shri Kush Agarwal informed him that he has started a business of export of Dry dates from UAE to India and to this effect he will also provide 'Certificate of Origin' of such Dry dates to be of UAE origin. Shri Kush Agarwal explained him the scheme that such import of dry dates is already undertaken by a Uttar Pradesh based firm M/s Goodwill Traders and encouraged him (Pankaj Khanna) to import dry dates in similar manner from his firm (M/s GVO Global FZC. UAE). Accordingly, a contract was signed to this effect between M/s. Venkat Traders and Ms. GVO Global FZC, Dubai (UAE)*

6.13.5 *I find that the above averments Shri Pankaj Khanna in his statement have not been denied by Shri Kush Agarwal. Further, the allegation regarding country of origin have already been discussed in the preceding paras.*

6.13.6 *It is also pertinent to mention that despite many summons. Shri Kush Agarwal failed to appear on any of the dates fixed for appearance. It therefore appears that*

he tried to escape investigation and did not cooperate in Departmental proceedings.

6.13.7 Therefore, I find the allegation true that Shri Kush Agarwal was the key person in designing and executing such modus operandi and accordingly, he is liable to penalty under Section 112(a) and/or (b) of the Customs Act, 1962 for omission and commissions on his part as discussed above which have rendered the goods liable for confiscation.

6.14.8 I find that Shri Kush Agarwal is also liable to penalty under Section 114AA of the Customs Act, 1962 in as much as he knowingly & intentionally connived with Shri Pankaj Khanna of M/s Venkat Traders to effect High seas sale of the subject consignment of Dry dates and was instrumental in arranging, managing & providing the concocted import documents including Country of origin Certificate for its submission before the Customs Authority for assessment with the intention to evade payment of higher rate of Customs duty

6.15.1 Shri Anil Kumar Agarwal (Noticee no.7) is Manager & Authorised representative M/s Padam Parmeshwari Ventures Pvt. Ltd. D-122. Bulandshahar Industrial Area, Ghaziabad. He was found to be assisting Shri Kush Agarwal as he himself provided the said import documents to Shri Chandan Choudhary, Import Manager of M/s SS Mommy International Pvt. Ltd. for import clearances of the said impugned goods, which were received by him from Shri Kush Agarwal, the owner of Ms GVO Global FZC. UAE

6.15.2 In his statement dated 04.11.2019 he has admitted that on the directions of Shri Kush Agarwal he looked after the import related work of M/s Venkat Traders, Kanpur and other importers for the import clearances of Dry dates supplied by M/s GVO Global, UAE

6.15.3 *Shri Chandan Choudhary in his statement dated 30.09. 2019 has categorically stated that Bill of Entry No. 5036474 dated 24.09.2019 was filed by him on the directions and on the basis of documents provided by Shri Anil Agarwal.*

6.15.4 *Further Shri Anil Agarwal is found to be very well aware that the said Dry dates are of Pakistan origin as Shri Kush Agarwal the mastermind behind this illegal import had already explained to him the whole modus operandi of re-routing the said impugned goods through UAE and its final import to India.*

6.15.5 *He in his statement dated 06.12.2019 has stated that he was aware of the preparation of the said concocted import documents with respect to the import consignments of Dry dates of Pakistan origin re-routed into India through Dubai, UAE. Thus he was aware that the country of origin of said Dry dates was Pakistan*

6.15.6 *Shri Anil Kumar Agarwal vide letter dated 07.12.2019 had submitted his retraction from his statement dated 06.12.2019. Therefore, an enquiry was ordered in the matter and Deputy Director, DRI, LZU. Lucknow was appointed as the Enquiry Officer. During the course of enquiry, the allegations leveled by Shri Anil Kumar Agarwal were found incorrect and outcome of the enquiry had also been communicated to Shri Anil Kumar Agarwal vide DRI office letter dated 20.01.2020*

6.15.7 *He in his defence reply has assailed the show cause notice on the ground that DRI is not proper officer to issue show cause notice in view of the judgement of Apex Court in the case of Canon India Pvt. Ltd. He has also contested imposition of penalty on the ground that he was not aware of any 'modus operand' to re-route the dry dates. He has submitted that he is merely an employee and he stands to gain nothing from any import export*

6.15.8 *Regarding the non-maintainability of the show cause the contention of the noticee is not tenable since the instant show cause notice is under Section 124 and not under Section 28. Further his involvement in the impugned transaction is proved as discussed in the foregoing paras.*

6.15.9 *Therefore, I find the allegation true that Shri Anil Agarwal was assisting Shri Kush Agarwal as he himself provided the said import documents to Shri Chandan Choudhary, Import Manager of M/s SS Mommy International Pvt. Ltd. for import clearances of the said impugned goods, which were received by him from Shri Kush Agarwal, the owner of M/s GVO Global FZC UAE. Thus he is liable to penalty under Section 112(a) and/ (b) of the Customs Act, 1962 for omission and commissions on his part as discussed above which have rendered the goods liable for confiscation*

6.15.10 *I find that Shri Anil Agarwal is also liable to penalty under Section 114AA of the Customs Act, 1962 in as much as he knowingly & intentionally connived with Shri Kush Agarwal and had been instrumental in arranging and providing the concocted import documents including fake country of origin certificate to M/s Mommy International Pvt. Ltd. for its submission before the Customs Authority for assessment with the intention to evade payment of higher rate of Customs duty*

6.16.1 *I find that Noticees have contended that the show cause notice under reference issued by the Addl. Director, DRI merits to be set aside as per judgments of various courts in cases of Cannon India Pvt. Ltd. V. CC 2021 (376) ELT 3 (SC) and others* 6.16.2 *In this regard,*
.....

6.17.1 *Shri Kush Agarwal (Noticee 6) has requested for cross-examination of the expert who has tendered the opinion regarding the origin of the dry dates so as to ascertain from him how he has arrived at the conclusion*

that the dates are of Pakistani origin. He has also requested for cross- examination of Shri Chandan Chaudhary.

6.17.2 I have considered the request of the noticee seeking cross-examination of other person/ co- noticees. sympathetically and find it untenable and unacceptable in view of the special facts and circumstances of the case, which are discussed in the preceding paras and for the below mentioned reasons

6.17.3 The opinion regarding origin of the dry dates has been given by-M/s. Atul Rajasthan Date Palms Limited (ARDP), Rajkiya Paudh Shala, Chopasani, Jodhpur-34200. Ms. Atul Rajasthan Date Palms Limited is a subsidiary company of M/s Atul Ltd with 26% shareholding of Rajasthan Horticulture Development Society, Government of Rajasthan. They have the expertise in tissue culture raised date palms and also have a tissue culture laboratory for Date Palms at Jodhpur. Thus the contention of the noticee that allegations in the show cause notice are based on an opinion of unidentified/ unreliable "private company's authorized signatory is not tenable. Hence there is no justification for cross- examination of the concerned person M/s. Atul Rajasthan Date Palms Limited by the noticee.

6.17.4 From the records and facts of the case as narrated above, it is evident that each noticee is integrally involved in the case and played his role in mis-declaration of the country of origin of the goods for the sake of earning easy & quick money; and their statements are also in accordance with each other as far as the material facts of the case are concerned. In such a situation, no cross-examination is really required. The lack of justification of cross-examination also finds support from the following case laws

6.17.5 *In the case law of Collector of Customs Vs Kanungo & Co. 1983(13) ELT1486 (SC), it has been held that Natural Justice is not violated if the person giving information is not allowed cross- examination*

6.17.6 *In the case of Tapan Kumar Biswas Vs UOI and others - 1998 (63) ECR 546, It was held by the Hon'ble Calcutta High Court that a proceedee is not entitled to cross-examine the witnesses*

6.17.7 *In the case of Calicut Rubber Co. Vs Collector of Central Excise. Cochin 1996-(81) E.L.T. 320 (Tribunal) it was held that the cross-examination of accused persons was not necessary when their statements were not false and the case against them had been made on the basis of their own statements. The relevant portion of the judgment is as follows;*

"However, if there was any coercion or fraud by the officials then the appellants could have immediately reconciled from the statements on the very next day. In the reply to the show cause notice, the appellants themselves have contended that they do not suggest that the department had intentionally foisted a false case against them. Therefore, when there is no allegation of false case having been made out against them and that there is no individual resilement by the witnesses at the earliest point of time, therefore, we have to come to the conclusion that the statements given by the witnesses are voluntary. As regards the plea of denial of opportunity to cross-examine the witnesses, it has to be stated that the appellants are the accused persons and their statements are not held to be false and that the case against them is on the basis of their own statement and hence the question of calling them for cross-examination does not arise."

6.17.8 *In the case of Jagdish Shanker Trivedi versus Commissioner of Customs, Kanpur reported under 2006 (194) E.L.T. 290 (Tri. - Del) (para 9).), it was held that denial of cross-examination of co- noticee / accused does not result in violation of natural justice and cannot be insisted on as matter of right by them . Otherwise each of accused can claim right against testimonial compulsion under Article 20(3) of Constitution of India and thereby by their joint effort bring about failure of natural justice*

6.17.9 *In view of above and the facts of the case. cross-examination of the persons/ co-noticees involved in the case will serve no purpose of justice. It will be an exercise in futility and the intent on the part of all noticees seem to delay as well as to derail the adjudication proceedings. Therefore, reject the request of the noticee to cross examine the other co-noticees*

6.18.1 *Further I find that Chopped Dry dates loaded four containers bearing number TSAU5600139. GESU6075341 GESU6374255 & GESU5912130 were sold vide Auction Ref. No MSTCINRO/Noida Customs Commissionerate "3/Container Depot/20-21:5935 dated 14.07.2020 conducted by MSTC Ltd. They are not available physically for confiscation.*

6.18.2 *There are divergent views of Hon'ble Courts and Tribunals on the issue whether goods can be confiscated and redemption fine imposed if goods are not available for confiscation and even bond has not been executed for clearance release provisionally.*

6.18.3 *I find that Hon'ble Calcutta High Court in 1980(006) ELT 0038 (Cal) held that "liability to confiscate" is relevant and as soon as an attempt is made for illegal import or export, an offence is committed Hence, both confiscation and redemption fine in lieu of confiscation are legally tenable*

6.18.4 *Hon'ble High Court of Madras in 2017(347; ELT 603 (Mad) also held that for the purpose of confiscation of goods. their physical availability is not required. Similar view was taken in 2014(309)ELT 641(Kar) Thus I find that goods are not physically available and have been auctioned already. In such a situation. I take the view of imposition of a token redemption fine in lieu of confiscation*

6.19 *In view of the discussions above, I hold that:*

- (i) Seized Chopped (Dry) dates totally valued at Rs.66,15.494/- (Rupees Sixty Six Lakhs Fifteen Thousand Four Hundred and Ninety Four Only) are liable for confiscation under Section 111(m) of the Customs Act. 1962 for mis-declaring the description of the goods in respect of country of origin and for violation of Food Safety and Standards (Packing and Labelling) Regulation, 2011.*
- (ii) Penalty is imposable under Section 112(a) and 112(b) on M/s Venkat Traders (through its proprietor Shri Pratul Khanna), Shri Pratul Khanna, Proprietor of M/s Venkat Traders, Shri Pankaj Khanna Caretaker of M/s Venkat Traders. Shri Chandan Choudhary, import Manager, Ms SS MOMMY International Pvt. Ltd., Shri Manorian Kumar, Marketing Manager, Ms SS MOMMY International Pvt. Ltd. Shri Kush Agarwal and Shri Anil Agarwal for their active participation in mis-declaration of imported Chopped (Dry) dates rendering the said good liable for confiscation.*
- (iii) Penalty is imposable upon Shri Pratul Khanna, Shri Pankaj Khanna, Shri Kush Agarwal and Shri Anil Agarwal under Section 114AA of the Customs Act, 1962 for submitting false "country of origin" certificate of dry dates in order to wrongly avail the benefit of lower Customs Duty and thus causing a loss to exchequer. No Penalty is imposable upon Shri*

*Chandan Choudhary and Shri Manoranjan Kumar
under Section 114AA ibid.*

4.4 We find that the entire case of the revenue rests on the following evidences:

- (i) Sample examination report given by M/s Atul Rajasthan Date Palms Limited.
- (ii) Statements of certain related/ unrelated persons with the imports made.
- (iii) Non compliance with FSSAI Regulations, 2011
- (iv) FZ Transit Out Customs declarations which were filed with Dubai Customs, Federal Customs Authority, UAE for transit of containers containing Dry Dates and obtained from the Shipping Lines.

4.5 The case has been made out against the appellants is with regards to concocted Certificate of Origin, certifying that the impugned goods sought to cleared on the Bill of Entry No 5036474 dated 24.09.2019 at ICD Dadri. It is observed that no enquiries were made with the authority issuing the said certificate of origin, though the enquiry that we can contemplate could have been made only with the certificate of origin issuing authority UAE as per Rule 6 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. If any such enquiry made the outcome of the said enquiry should have been part of the impugned order, for the reason that the only case is in respect of the validity and correctness said Certificate of Country of Origin.

4.6 Certificate of Origin of the shipments is accompanied by following documents where in origin is being decided by UAE Government authorities:

- (a) PHYTO SANITARY CERTIFICATE: issued by Ministry of Climate Change & Environment UAE wherein the ministry has verified the origin as UAE the same certificate is duly barcoded
- (b) FUMIGATION CERTIFICATE: issued by pesticide company which is duly approved by Ministry of Agriculture UAE

wherein in each Fumigation certificate they have specifically mentioned origin as UAE.

The Adjudicating authorities straightway rejected the Country of Origin without even taking note of the evidences in available on the record in form of Phyto Sanitary Certificate and Fumigation Certificate. If the certificate was to be rejected the same should have been done in consultation with the Certificate issuing authority. Thus, the Custom Authorities under Custom Act, 1962, have no jurisdiction to challenge the documents issued by the Government Authorities of the other Country as has been held in the following cases:

- Pradip Polyfils Pvt. Ltd. [2001(173) E.L.T. 3 (BOM.)]
- Khanna Paper Mills Ltd. [2011(273) E.L.T 149 (Trib.-Del.)]
- S. Chandra Sekhran [2011 (132) E.L.T 751 (Trib-Chennai)]
- Titan Medical Systems Pvt. Ltd. [2003 (151) E.L.T 254 (S.C)]
- Symphony International [Final Order No A/10194/2024 dated 23.01.2024}

"8. Considered. It is clear from the factual narrative that, the certificate of origin in the present instance was issued by the designated authority i.e 'Ministry of International Trade and Industry (MITI) Malaysia' which is competent authority to issue such certificate under ASEAN FTA (AIFTA) mentioning the Regional Value content (RVC) to be much higher than stipulated 35% i.e. 47%. The Free Trade Agreement stands incorporated in the Customs Tariff vide Notification No. 46/2011-Cust., dated 01.06.2011 available to impugned product i.e. Natural Cocoa Power originating from Malaysia. The differential duty of Rs. 6,44,233/- was demanded by the department, denying benefit on the ground that in another investigation taken up by DRI in respect of certificate of origin pertaining to another party in the year 2014, Cocoa Beans were suspected to be derived from Ghana and not Malaysia by that importer. The matter was taken up by director (ICD) of CBEC, New Delhi with the High Commissioner of Malaysia in Delhi vide

letter F. No. 456/12/2013-Customs-V dated 10.01.2014 for verification. The party involved in that case of the year 2014, was M/s. Morde Foods Pvt. Ltd., and the exporters were two Malaysian companies. In response to the letter of Director (ICD), CBIC, New Delhi, the Ministry of International Traders Industry (MITI) vide letter dated 18.03.2014 informed CBEC that they had conducted internal investigation by visiting two factories of M/s. J B Cocoa and M/s. Guan Chong Cocoa who were suppliers in that case and both had confirmed that value addition of 35% was obtained at theirs. However, company did not provide cost data due to data privacy and since the Board was of the opinion that under AIFTA cost data cannot be denied, therefore, in the present case in the Year-2018, since impugned goods have been supplied by M/s. Guan Chong Cocoa as manufacturer, the proceedings for denial of exemption despite claim of 47% value addition have been initiated even without attempting to verify the documentary evidence by way of the Certificate of Origin by the designated authority issued under the agreement. We find that this is nothing but attempt to make case on the basis of assumptions and presumptions even without as much as verification having been attempted to be made by the authorities. The same is therefore, not maintainable. Department has been provided a documentary evidence by way of a stipulated certificate from the designated authority under the agreement. On production of such agreement which is in the nature of the documentary evidence, the onus to prove fakeness of its content or otherwise clearly shifts on the department. Unlike, the course of action adopted in respect of other importers who made imports in the Year-2014, the department has not even attempted to do verification with Government of Malaysia and has proceeded in the instant case, on the basis of following assumptions and

presumptions without rebuttal of the documentary evidence procured and produced by the appellant:-

- *That in absence of cost data in relation to imports in 2014, the certificate duly verified by the Malaysian authority was presumed to be genuine even in this case, one of the party being same. Despite much higher claim of 47% CV claim by the appellant in this instance, four years later.*
- *It was also presumed that Malaysian authorities will not be able to get cost data on the manufacturing unit and will simply agree to the percentage on the basis of their own verification of 47%.*
- *That there is no need of any verification and old verification or lack of it holds goods in the Year 2018 also.*
- *That the onus of getting the contents of certificate verified has shifted from Government to Government basis (G to G) to (G to I) basis i.e. Government to importer basis.*

8.1 Case law relied upon by the department in the matter of M/s. SURYA LIGHT Vs. COMMISSIONER OF CUSTOMS, BANGALOR as reported in 2008 (226) E.L.T 74 (Tri. – Bangalore) and 2007 (217) E.L.T. 437 reported in ALFA TRADERS Versus COMMISSIONER OF CUSTOMS, COCHIN are clearly distinguishable, as in case of former invoice was faked and in the latter judicial notice of no production in country of origin of the relevant agricultural product was taken and percentage of value addition in concerned country was never in dispute.

9. In view of the forgoing, in the present case in the face of certificate of origin having been produced and no verification process having been conducted before issuance of show cause notice, the demand of duty cannot be sustained. We also find that the appellant has correctly relied from the decision of M/s. R.S INDUSTRIES (ROLLING MILLS) LTD. Versus COMMISSIONER OF C.EX., JAIPUT-I as

report in 2018 (359) E.L.T. 698 (Tri. - De.) to emphasize that the certificate issued by the competent authority of exporting country is to be given weightage. Similarly, the decision of Hemang Resources Ltd V/S Commissioner of Customs (Prev.) Jamnagar of this bench as reported in 2022 (381) ELT 404 (Tri. Ahmed.) is squarely applicable, which made incumbent upon department to discharge burden to get verification done from concerned Government. Therefore, in absence of such burden having been discharged or even having been attempted till such belated stage, the show cause notice cannot be sustained. Similarly, the decision of this bench in the matter of Alfakrina Exports V/s. Commissioner of Customs, Mundra vide Final Order No. A/11759/2023 dated 23.08.2023 which has relied upon various decisions of High Courts and Supreme Courts in holding that without check of authenticity of the Certificate of Origin issued by Malay Chamber of Commerce Malaysia, Certificate of Origin and consequent benefit cannot be denied, equally holds good in the present instance."

- Shirazee Traders [Final Order No. A/12060/2023 dated 15.09.2023]

"4.1 We find that to displace the certificate of origin issued by the Malaysian authority, which is in the nature of documentary evidence, the verification process by the Customs Authorities of India reference to issuing authorities to do a retroactive check is required. In the present instance no such request for verification report in respect of the appellant has been brought on record. We find that this fails to comply with the requirement of the Annexure-III (ibid) of the relevant free trade agreement."

4.7 I do not find any merits in the reliance placed by the adjudicating examination report given by M/s Atul Rajasthan Date Palms Limited, as the same is based on the experience of the person signing the said report without stating any reasons.

In the case of Ram Prakash [2003 (161) ELT882(T)] following has been observed

"7. The opinion given by Shri Jai Prakash Gupta that the impugned scrap is of foreign origin is not acceptable for the simple reason that he has tendered his opinion without mentioning the reasons to arrive at such a conclusion. The learned Counsel for the appellants had rightly contended that he is not an expert as he has never imported copper scrap. He had himself deposed in his cross-examination that it is difficult to give a definite criteria of assessing imported copper scrap; it can only be assessed by a person dealing in this trade. ..."

4.8 Determining Country of origin of any goods is a complex matter and it cannot be decided by way of visual inspection of goods only. In the case of Krishna Das [2014(303) ELT 548 (T)] following has been observed:

"7. Apart from so called expert opinion of Shri Anand Agarwal, there is virtually no evidence on record to reflect that betel nut in question were of foreign origin. The appellants have taken a categorical stand that betel nuts are grown in abundance in Jalpaiguri and Coochbehar in West Bengal and in the entire States of Assam, Arunachal Pradesh, Meghalaya, Tripura, Manipur, etc. Admittedly the consignment was booked from Guwahati to Delhi. The appellants have rightly contended that distance between Guwahati to Delhi is around 2000 kms whereas distance from Nepal to Delhi-I 1500 kms. As such nobody would smuggle the goods from Nepal boarder to Guwahati which is around 900 kms away and then transport the goods from Guwahati to Delhi after crossing State barriers at places in between.

8. Apart from the fact that there is no evidence on record to show that the foreign origin of the goods, I also note that the betel nuts are neither notified under Chapter IV of the Customs Act nor under Section 123 of the Act. As such, the onus to prove that the same have been smuggled lies very

heavily upon the Revenue and is required to be discharged by producing sufficient positive and tangible evidence. The Revenue in the present case apart from relying upon so called expert opinion as regards the foreign origin of the goods have not produced any evidence to establish the smuggled nature of the goods. It is not the case of the Revenue that betel nuts of foreign origin are not legally imported into India and the same are not available in the open market. As such, in the absence of any evidence to show that betel nuts in question were actually smuggled, the confiscation of the same cannot be upheld."

4.9 The expert opinion taken from M/s Atul Rajasthan Date Palms Limite (ARDP) could not be relied upon as valid piece of evidence. Similar the expert opinion taken from ARDF in respect of import of Betel Nuts has been rejected by the Hon'ble High court of Patna, Allahabad and Meghalaya. The relevant excerpts are reproduced below:

Ayesha Exports [2020 (371) E.L.T. 353 (Pat.)]

12. *Having heard Learned Senior Counsel for the petitioner and Learned Additional Solicitor General of India, this Court is of the considered opinion that once the Learned Coordinate Bench of this Court has held that in absence of there being any material to show that M/s. Arecanut Research & Development Foundation, Mangalore is an accredited laboratory by competent authority under the Act and Rules, it's report cannot have a consequence of fastening of any legal liability and 'No legal liability can flow from the report of such an institution' the respondent authorities were not justified in again relying upon the ARDF Mangalore's report to justify the seizure in question. In fact such an attempt of the respondent authorities would be contemptuous in nature as it is likely to cause harassment to the traders, by not following the judgment of the Court.*

13. *This Court also finds from Annexure-P/12 that it is a reply of the Directorate of Arecanut & Spices Development,*

Government of India which clearly provides that no laboratory test have been standardized for tracing the country of origin.

Maa Gauri Traders [2019 (368) E.L.T. 913 (All.)]

"15. Applying the principles enshrined in the aforesaid decisions to the facts of the case at hand, it is apparent that the CESTAT after considering all the material on record including the orders passed by the authorities below, have given a concurrent finding of fact that the Revenue could not establish the foreign origin of the betel nuts. The documents produced by the respondents indicated that the goods in question were purchased from local markets, and in support of the purchases they produced the market receipts which has not been doubted by the Revenue Authorities themselves at any stage of the proceedings. The report of the ARDF has also been held to be not reliable inasmuch as it could not be shown with any degree of certainty that the origin of the betel nuts could be established by testing in a laboratory, as is clear by the answer to the RTI query given by Directorate of Arecanut and Spice Development, Ministry of Agriculture and Farmers Welfare, Government of Kerala."

MAA KAMAKHYA TRADER [2024 (389) E.L.T. 185 (All.)]

26. Third, no material has been shown to us to reach conclusion different from that reached by the Meghalaya High Court in C.C. (Preventive), NER Region, Shillong [2022 (382) E.L.T. 592] wherein it was observed as below :-

"4. The Division Bench of the Tribunal recorded the finding that the confiscated betel nut is non-notified goods and therefore, burden to prove the fact of smuggling lies on the department and same has not been discharged. In this regard, the department relied upon the certificate issued by the Arecanut Research and Development Foundation, Mangalore to show that the confiscated goods/betel nuts are

of foreign origin. However, the Tribunal refused to consider this certificate on the ground that the said Institution is not accredited and hence the report was not relied on. The Tribunal in this regard relied on the decision of the Patna High Court reported in 2020 (371) E.L.T. 353 (Pat.)."

Therefore, we are not inclined to give any undue credence to the report of ARDF than it may otherwise deserve.

Thus we are not in position to accord any evidentiary value to this report of M/s Atul Rajasthan Date Palms Limited

4.10 Similarly the reliance placed on the uncorroborated statements without even allowing the cross examination could not be accepted as discharge of burden of proof in the present case to hold that these goods were not of UAE origin. Reliance is placed on the decisions in following cases:

- Vinod Salonika [2009(233) ELT 157(SC)]
- Vishnu & Co. PVT. Ltd. [2016 (332) ELT 793 (Delhi.)]
- Shree Nakoda Ispat Ltd. [2017 (348) ELT 313(Tri. Delhi)]
- Tarachand Naresh Chand [2017 (355) ELT 495(Trib. Delhi.)]

As this issue has been considered in detail by division bench in Final Order referred in next paragraph we need not further elaborate here.

4.11 The similar case in of importation of Dry Dates relying on the same evidences have been considered by us in case of Omega Packwell [Final Order No 70331-70336/2024 dated 07.06.2024] and following was observed:

"17. On the issue of country of origin, we find that in all documents viz., invoice, country of origin certificate, phytosanitary certificate etc. country of origin of dry dates in present case was shown UAE. Slips tagged with bags of dry dates were showing country of origin of the goods UAE. No enquiry was conducted by the Department to prove that country of origin certificate duly issued by the Competent Authority of the exporting country was fake. As per the country of origin certificate, the same was issued

by Ajman Chamber of commerce after verification of goods. At Sl.No.12 of the certificate, it has been certified by the Competent Authority of Ajman Chamber of Commerce, UAE that evidences produced before them satisfy that the said goods originate in the country shown in the certificate which is UAE in the present case. It shows that the said certificate was issued after proper verification of origin of goods. Authenticity of the said certificate was never challenged by way of any enquiry from the exporting country. We further notice that phyotsanitary certificate which was issued by National Plant Protection Organization of exporting country also indicates country of origin UAE. No evidence was brought out to infer that country of origin shown in the said phytosanitary certificate was incorrect. Bags of dry dates were found, during physical verification, carrying slips on which country of origin was mentioned as UAE. Mere suspicion is not enough to discard aforesaid documents. Rule 6 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 provide as under:

Rule 6. Verification request .-

- 1. The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from Verification Authority where:*
 - a. there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement;*
 - b. there is reason to believe that the country of origin criterion stated in the certificate of origin has not been met or the claim of*

preferential rate of duty made by importer is invalid; or

- c. verification is being undertaken on random basis, as a measure of due diligence to verify whether the goods meet the origin criteria as claimed:*

Provided that a verification request in terms of clause (b) may be made only where the importer fails to provide the requisite information sought under rule 5 by the prescribed due date or the information provided by importer is found to be insufficient. Such a request shall seek specific information from the Verification Authority as may be necessary to determine the origin of goods.

- 2. Where information received in terms of sub-rule (1) is incomplete or nonspecific, request for additional information or verification visit may be made to the Verification Authority, in such manner as provided in the Rules of Origin of the specific trade agreement, under which the importer has sought preferential tariff treatment.*
- 3. When a verification request is made in terms of this rule, the following timeline for furnishing the response shall be brought to the notice of the Verification Authority while sending the request:*
 - a. timeline as prescribed in the respective trade agreement; or*
 - b. in absence of such timeline in the agreement, sixty days from the request having been communicated.*
- 4. Where verification in terms of clause (a) or (b) of sub-rule (1) is initiated during the course of customs clearance of imported goods,*

- a. *The preferential tariff treatment of such goods may be suspended till conclusion of the verification;*
 - b. *The verification Authority shall be informed of reasons for suspension of preferential tariff treatment while making request of verification; and*
 - c. *The proper officer may, on the request of the importer, provisionally assess and clear the goods, subject to importer furnishing a security amount equal to the difference between the duty provisionally assessed under section 18 of the Act and the preferential duty claimed.*
5. *All requests for verification under this rule shall be made through a nodal office as designated by the Board.*
6. *Where the information requested in this rule is received within the prescribed timeline, the proper officer shall conclude the verification within forty five days of receipt of the information, or within such extended period as the Principal Commissioner of Customs or the Commissioner of Customs may allow: Provided that where a timeline to finalize verification is prescribed in the respective Rules of Origin, the proper officer shall finalize the verification within such timeline.*
7. *The proper officer may deny claim of preferential rate of duty without further verification where:*
 - a. *The verification Authority fails to respond to verification request within prescribed timelines;*
 - b. *The verification Authority does not provide the requested information in the manner as provided in this rule read with the Rules of Origin; or*

- c. *The information and documents furnished by the Verification Authority and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.*

Nothing has been placed on record by which it can be said any verification request has been made by the custom authorities with concerned authorities in UAE to verify the genuineness and correctness of the Certificate of Origin issued by them. In view of the above concrete proofs regarding country of origin, we hold that said goods were of UAE origin.

We find that in the case of Challissari Kirana Merchant (supra), the Hon'ble Kerala High Court has held that for determination of country of origin due weightage should be given on the country of origin certificate in case of any suspicion. In the case of Yellamma Da Sappa vs. Commissioner of Customs, Bangalore [2000 (120) E.L.T. 67 (Kar.)], the Hon'ble Karnataka High Court has observed as follows:-

"9. A valid certificate has been issued and the said certificate, even as on date, has not been withdrawn or cancelled for any alleged violation of the condition by the appellant. Unless the said certificate is cancelled, the Customs Authorities cannot impose customs duty. The seizure of the equipment is only a consequential act that would follow the cancellation of the certificate issued in favour of the Appellant. So long as the certificate is not cancelled, the respondents could not, in our opinion, have initiated seizure proceedings in the case on hand. Petitioner-appellant was sent only a questionnaire and the said questionnaire has been answered by the appellant herein. No further action has been taken by the respondents. The Director General of Health Services

has also not issued any cancellation of certificate as on date. In these circumstances, we are clearly of the view that without withdrawing or cancelling the certificate already issued, the present seizure cannot stand. Therefore we hold that the seizure effected by the respondents is not in accordance with law. The impugned order of the learned Single Judge, in these circumstances, requires to be set aside and accordingly the same is set aside."

The Tribunal in the case of Alfakrina Exports vide Final Order No.11759/2023 dated 23.08.2023(Tri – Ahmd) on the issue of non-acceptability of Country of Origin Certificate for deciding origin of goods held that the Certificate of country of origin cannot be discarded without checking its authenticity and benefit if any cannot be denied.

In view of the above settled legal position, we hold that goods, in question, were of UAE origin and confiscation of goods on the ground of mis-declaration of country of origin is not sustainable.

18. The Adjudicating Authority has also held that noncompliance of FSSAI Regulations, 2011 in respect of dry dates imported by the Appellants established as slips tagged with bags showing mandatory particulars were not securely affixed. Circular No.9/2015-Cus dated 31.03.2015 issued by CBIC provides that out of charge order by Customs would be given only after receipt of Release Order from FSSAI [para-3(v) of the Circular]. We find that import of food articles is regulated as per provisions of FSSAI (Import) Regulations, 2017. In accordance with the provisions of Regulation 6(10) of FSSAI (Import) Regulations, 2017, the Authorized FSSAI officer shall reject the consignment not complying with the provisions of Labeling and Packaging Regulations, 2011 at the visual inspection and no sample shall be drawn from the

consignment. Similarly, under Regulation 9(1) of FSSAI (Import) Regulations, 2017, it has been again provided that the Authorized Officer of FSSAI shall ensure compliance with the Food Safety and Standards (Labeling and Packaging) Regulations, 2011 in respect of imported food items. It shows that proper officer for pointing out noncompliance of FSSAI Regulations, 2011 of an imported food item is Authorized Officer of the FSSAI. In the present case, the consignment of dry dates was referred to FSSAI for ensuring compliance of FSSAI Act and Rules and Regulations made thereunder. The FSSAI Authorized Officer inspected the consignment and found that the FSSAI Regulations, 2011 was complied with, then, drew the sample and finally issued "No Objection Certificate" vide NOC No.NOC20190005632 dated 30.09.2019. It is certified in the NOC as:-

"This office has no objection if the product mentioned above is released from this port as the result of the inspection /analysis shows that the sample conform to the specification under the FSSAI Act and rules and regulations."

From the above it is established that the proper agency, i.e., FSSAI was fully satisfied with the compliance of the FSSAI Regulations, 2011 in respect of dry dates imported under the said bill of entry. The allegation of the DRI regarding noncompliance of the FSSAI Regulations, 2011 is, therefore, baseless and devoid of facts and the order for confirmation of non-compliance of said Regulation does not hold valid. In the case of Unlimited Nutrition Pvt. Ltd. vs. Commissioner of Customs [2016 (334) E.L.T. 255 (Del.)], it has been observed by the Hon'ble Delhi High Court that FSSAI is the Authority to clear food items relating to compliance of the FSSAI Regulations.

19. It is further observed that the goods imported under the said bill of entry were physically examined by the

Inspector (Exam. Shed) and Superintendent (Exam. Shed) before allowing the clearance and the same were found proper. As per para-1 of chapter-3 of the Customs Manual, it is responsibility of the Examining Officer to check import cargo to confirm the nature of goods, valuation and other aspects for ensuring the compliance of restriction. As per para 4.3 of chapter 8 of the Customs Manual, customs during examination shall exercise „general checks“ and if products are not found to be satisfying requirements, clearance will not be allowed. In para 4.4 of chapter 8 of the Manual, „General check“ includes verification of product to ensure compliance of labeling requirement also. Examining officers did not express any discrepancy regarding non-compliance of the FSSAI Regulations, 2011. It proves beyond doubt that there was no non-compliance of the FSSAI Regulations, 2011 in the present case. The confiscation order on account of non-compliance of FSSAI Regulations, 2011 is, therefore, invalid.

20. In the present case, confiscation of goods has been ordered under section 111(m) of the Act, 1962 on the ground that country of origin of goods has been mis-declared. Dry dates imported, in the instant case, were ordered by the Adjudicating Authority to be of origin of Pakistan. From the records we find that dry dates were shipped by the exporter at Jebel Ali port in UAE, in invoice country of origin was shown as UAE and certificate of country of origin was also with the consignment where country of origin was declared to be UAE. During physical examination of goods, it was found that the country of origin was described as UAE on the packages. Allegation of mis-declaration of country of origin is, therefore, based on assumption and presumption only without any tangible evidence. There is also no evidence to show that the Appellant was involved in any manner to mis-declare the country of origin. The bill of entry was filed as per invoice, packaging list and certificate of country of origin, declaring

therein country of origin UAE provided by the supplier. There was no mala fide on the part of the importer. The importer has declared country of origin as was informed by the overseas supplier in import documents. The import of dry dates is neither prohibited under the Act, 1962 nor under the Foreign Trade Policy. It has already been settled in series of judicial decisions that if the importer files bill of entry on the basis of information provided in invoice and other documents, charge of misdeclaration does not survive. In this context, reliance is placed on the decision of the Tribunal in the case of Agarwal Industrial Corporation Ltd. vs. Commissioner of Customs, Mangalore [2020 (373) E.L.T. 280 (Tri.-Bang.)] where it has been observed that "Mis-declaration of country of origin - Confiscation, redemption fine and penalty - Bitumen shipments loaded in Iran imported through Karwar Port but UAE declared as country of origin - Bitumen not prohibited goods either under the Act, 1962 or Foreign Trade Policy or any other law in force at time of importation of goods - Importer filing bill of entry on basis of documents supplied to him by supplier based at UAE - No document produced by Revenue on record to show involvement of importer in any way in said mis-declaration country". In the case of Dharam Steels Services Pvt. Ltd. vs. C.C. (Import), Nhava Sheva [2013 (297) E.L.T. 291 (Tri.-Mum.)], the Tribunal has held that declaration made in bill of entry as per invoice and packing list of overseas supplier does not show any mis-declaration by the importer and goods are not liable to confiscation. The Tribunal in the case of Penshibao Wang P. Ltd. vs. Commissioner of Customs (Seaport-Import), Chennai [2016 (338) E.L.T. 597 (Tri.-Chennai)] has observed that declaration made in the bill of entry as per invoice and other documents does prove mis-declaration by the importer if goods are found different. In the case of Wings Electronics vs. Commissioner of Customs, Mumbai [2006

(205) E.L.T. 1146 (Tri.-Mum.)] the Tribunal has held that "the assessments made cannot be reopened now for valuation by taking the shelter of misdeclaration of country of origin as USA when goods were marked as Australia, subsequent to the clearance by the proper officer having assessed & cleared the goods after examination & not having taken cognizance of the said mis-declaration of country of origin. There was & is no mis-declaration of the import. Proceedings of confiscation & duty demands therefore cannot be upheld & are to be set aside." The decision has also been upheld by the Hon'ble Supreme Court as per report [2015 (323) E.L.T. 450 (S.C.)]. The Apex Court has observed that Tribunal setting aside confiscation and redemption fine on the ground that declarations regarding country of origin were to be made by supplier/exporter and that assessment once finalized cannot be re-opened for valuation in guise of mis-declaration of country of origin. In view of above judicial decisions, it is abundantly clear that declaration made in the bill of entry as per invoice and other import document cannot be treated as mis-declaration when there is no proof of involvement of the importer. It is further submitted that there is also no violation of the provisions of the FSSAI Regulation, 2011. Hence, the goods i.e., dry dates were not liable to confiscation under Section 111(m) of the Act, 1962.

21. We find that enquiry against the Appellants was initiated on the basis of intelligence that some unscrupulous importers started importing of dry dates of Pakistan origin by re-routing the same through Dubai and by mis-declaring country of origin subsequent to hike in rate of customs duty on the import of goods of Pakistan origin or from Pakistan to 200% vide Notification No.05/19-Cus dated 16.02.2019 and due to which import of goods from Pakistan who happened to be a major exporter of dry dates to Indian market was stopped as the

same became unviable. The Appellants started import of dry dates of UAE origin from Dubai based M/s GVO Global FZC, after increase in rate of customs duty on the import of dry dates of Pakistan origin, under sale contracts executed between the Appellants and M/s GVO Global. The goods i.e., dry dates were supplied under cover of import documents including country of origin certificate issued by the approved Competent Authority of the exporting country, phytosanitary certificate etc. In all said documents country of origin was declared as UAE. Dry dates were cleared after final assessments of BEs, physical examination and after NOC from FSSAI Authorities regarding compliance of FSSAI Act/Rules/Regulations. Dry dates imported under bill of entry No.4981646 dated 20.09.2019 at ICD Dadri was seized and were confiscated on the basis of three evidences namely, (i). expert opinion obtained from Atul Rajasthan Date Palm Ltd., (ii). Export Declaration which was obtained from the shipping line and (iii). statements of Chandan Chaudhary and Anil Kumar Agarwal which were indicating, as per the Adjudicating Authority, that the said goods were of Pakistan origin but the same was mis-declared to be of the origin of UAE. It is found that on the aspect of country of origin of dry dates imported by the Appellants, opinion given by ARDPL, Jodhpur is as follows:- "On opening and upon physical examination the above representative samples, based upon my experience, my opinion regarding country/ area of origin is Indian subcontinent". ARDPL is engaged in production and marketing of tissue culture raised date palm plants with the aim to enhance the economy and ecology of the arid regions of India as per details available on its website www.ardp.co.in. It is not any scientific laboratory having expertise in identification of origin of dry dates. It is further noticed that experience and qualification of the person inspecting sample was not disclosed. In absence of such declaration, it is very difficult

to recognize him as an expert. The opinion has been issued only on the basis of visual inspection without carrying out any chemical analysis. Differences between dry dates of UAE origin and of other areas have not been discussed. As per the provisions Section 45 of the Indian Evidence Act, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identify handwriting or finger impression, the opinion upon these points of persons especially skilled in such foreign law, science, or art in questions as to identify of handwriting or finger impressions are relevant facts. A fact is something cognizable by he senses such as sight or hearing, whereas opinion involves a mental operation. Country of origin of any goods is a complex matter and it cannot be decided by way of visual inspection of goods only. "In the case of Swastic Mechatronics Pvt. Ltd. [2014(314) ELT 373(T)] Hon"ble CESTAT has held that the visual examination of goods cannot be considered as expert opinion." "In the case of Krishna Das [2014(303) ELT584(T)] it has been observed by CESTAT that the Country of Origin of goods cannot be decided on the basis of expert opinion given merely by visual inspection." "The Tribunal in the case of Ram Prakash [2003(161) ELT882(T)] has ruled that the opinion given without indicating reason for arriving at particular conclusion cannot be accepted" In the present case, the expert opinion obtained by the department does not indicate that the goods in question were of Pakistan origin. It is simply gives opinion that they are of Indian Sub-continent is an imaginary geographical and political demarcation. It has no definite boundary. It is only a loose concept consisting of nearby area of India, Bhutan, Nepal, Bangladesh, Sri Lanka, Maldives, Pakistan and Afghanistan. The report is quite vague and it cannot be presumed that the goods in question are of Pakistan origin. The said expert opinion thus should not have been relied upon. We further find support from the decision of the

Tribunal in the case of Orbital Enterprises vs. Collector of Customs [1990 (46) E.L.T. 71 (Tri.-Cal.)] where it has been categorically held on the basis of Supreme Court decision (AIR 1959SC488) that opinion based on inspection only without any chemical examination has no evidentiary value for determination of country of origin. In view of the above, findings of Original Authority to declare dry dates of not UAE origin on the basis of said opinion is not sustainable.

22. The Original Authority placed heavy reliance on the Export Declaration which was received from the shipping line which was engaged in sea transportation of said dry dates from Dubai to India. In the said Export Declaration country of origin was shown "PK" which is short form of Pakistan as per the Department. Export Declaration is filed by the exporter with customs of exporting country. The said document was not procured from the customs Dubai but obtained from shipping line. How the said document is maintained by the shipping line depends upon the shipping line as it was their internal document. It is further observed that in the said document C & F value was declared to USD 44247/- while in the invoice it was USD64827/-. Consignee and consignor names were also mentioned incorrectly. It was an unsigned photocopy of document. The Export Declaration submitted in this case, reflects figures which do not match with other documents and also does not reflect name of shipping line. Hence this document which is full of errors cannot be considered to be an evidence to prove country of origin. In the case of Commissioner of Customs (Imports), Mumbai vs. Ganpati Overseas [2023 (386) E.L.T. 802 (S.C.)], the Apex Court has held that unattested photocopy would not have any evidentiary value. We also find support from the decision of the Hon"ble Supreme Court in the case of East Punjab Traders [1997 (89) E.L.T. 11 (S.C.)] where it has been held that in case documents are not obtained from the

respective customs formation, reliance cannot be placed on such documents. In view of the above, we find reliance on the said document to prove country of origin by the Original Authority is not proper.

23. We further find that Adjudicating Authority has referred expression „FZ Transit Out“ mentioned in the Export Declaration received from shipping line to prove that the goods were imported from third country to Dubai for export to India. In para-15.1.2.3 of Customer Guide of Dubai customs which is relied upon document in this case, procedure for export of goods stored in Free Zone of Dubai is provided. Free Zone companies would file „FZ Transit Out“ declaration for export of goods stored in their company. It is not provided that only goods which are imported from third country can be exported by declaring "FZ Transit Out". All goods irrespective procured by way of import or by way of local procurement are exported on terms "FZ Transit Out" if such goods are stored in Free Zone. It is provided that Free Zone companies can procure goods from local market and can store them at Free Zone for export. Such locally procured goods stored in Free Zone would also be exported declaring „FZ Transit Out“ declaration in Export Declaration. In the present case, dry dates were procured from local market of Dubai by M/s GVO Global FZC UAE, a Free Zone company, and stored at Free Zone for export to Indian buyers as is evident from country of origin certificate. We, therefore of the view that on the basis of the said declaration, it cannot be inferred that said goods were originated in third country.

24. The Adjudicating Authority has placed reliance on the statement of Shri Chandan Chaudhary, Manager, M/s SS Mommy International Pvt. Ltd., a clearing and forwarding agency to prove the allegation of mis-declaration of country of origin of dry dates. We find from the statement of Shri Chandah Chaudhary that it is based on the discussion among staff that goods imported by the

Appellants were of Pakistan origin. It is evident that his statement about country of origin was based on hearsay without any evidence. In the case of Laxmi Narayan Udyog (P) Ltd. vs. Commissioner of Customs (Prev.), Kolkata [2017 (348) E.L.T. 496 (Tri.-Kol.)], the Tribunal has held that hearsay evidence cannot be accepted as reliable evidence for deciding issue against the Appellant. The similar view has also been taken by the Tribunal in the case of Chandreswar Prasad vs. Commissioner of Customs, Patna [2016 (340) E.L.T. 590 (Tri.- Kol.)] where it has been held that statements on hearsay basis without any authenticity cannot be a valid evidence. The conclusion drawn by the Adjudicating Authority on the basis of the said statement is not supported by legal provisions. Hence, it has no evidentiary value.

25. Statement of Shri Anil Kumar Agarwal Manager, M/s Padam Parmeshwari Ventures Pvt. Ghaziabad, where Shri Kush Agarwal, owner of M/s GVO Global FZC UAE, is one of directors was also relied upon by the Adjudicating Authority on the contention that he is nephew of Shri Kush Agarwal. It is an undoubted fact that Shri Anil Kumar Agarwal has no locus standi in the business of supplier company i.e., GVO Global. From his statement, it is evident that he was directed by Shri Kush Agarwal at times to deliver letters received from GVO Global to importers who purchased goods from the company of Shri Kush Agarwal. There is no evidence in any form like electronic chat, documents etc. from which it can be proved that Shri Anil Agarwal was involved in decision making activities of GVO Global FZC. He has not accepted in his statement that he discussed and convinced Indian importers to purchase goods from GVO Global, which were of actually Pakistan origin. It is settled law that statement of any person cannot be basis for proving an offence if it is not supported by any other cogent evidence. In the case of UOI Vs. Kisan Ratan Singh [2020 (372) E.L.T. 714 (Bom.)], Hon“ble High

Court has held that various Courts have kept all these things in mind and come to a conclusion that in the absence of any corroboration by an independent and reliable witness, a statement recorded under Section 108 in isolation could not be relied upon. In the case of Piyush Kumar Jain Vs. UOI [2022 (382) E.L.T. 184 (ALL)], Hon“ble Court has observed as mere statement cannot be sole basis for penalty. Similarly in the case of Commissioner of Service Tax, Mumbai-V Vs. Jasper International [2019 (22) G.S.T.L. 29 (Tri.-Mum.)], the Tribunal has held that no liability can be fastened merely on the basis of statements recorded during investigation if the same is not supported by documentary evidence. Thus, reliance of Original Authority on the above statements is legally not maintainable.

26. We further find that statement of Shri Anil Kumar Agarwal was immediately retracted by him. As per the retraction, he was threatened and was told that he would not be allowed to go out of office till he would write as per dictation of the officers. It was further stated that the whole statement was written by him as dictated by the officers to save himself from mental torture. The cardinal principle of acceptance of a statement as evidence is the statement has to be voluntary and it should be true. The retraction of Shri Anil Kumar Agarwal was rebutted by the team of Inquiry Officer without stating any cogent reason. During the investigation the statement is recorded with the help of Section 108 of the Act, 1962 and if the same is retracted later on then it cannot be used against the maker of the statement if the same is not rebutted by the Department. The Hon“ble Supreme Court in the matter of Mohtesham Mohd. Ismail [2007 (220) E.L.T. 3 (S.C.)] held that even confession of an accused is not a substantive evidence. The statement is part of the evidence only if it is voluntary and free from any sort of pressure. In the case of Francis Stanly @ Stalin vs. Intelligence Officer, Narcotic

Control Bureau, Thiruvanthapuram [2006 (13) SCALE 386], Apex Court has emphasized that confession only if found to be voluntary and free from pressure, can be accepted. The Hon“ble Apex Court in Vinod Solanki Vs. U.I.O. [2009 (233) E.L.T. 157 (S.C.)] again cautioned in using the retracted statement. The relevant para is as follow:-

"22. It is a trite law that evidences brought on record by way of confession which stood retracted must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon. We are not oblivious of some decisions of this Court wherein reliance has been placed for supporting such contention but we must also notice that in some of the cases retracted confession has been used as a piece of corroborative evidence and not as the evidence on the basis whereof alone a judgment of conviction and sentence has been recorded."

In view of the above facts and settled legal position it is crystal clear that retracted statement cannot be used to prove any offence.

27. The Adjudicating Authority has imposed penalty on M/s Omega Packwell Pvt. Ltd., under Section 112(a) of the Act, 1962. Penalty under the said Section is imposable on a person when he is involved in any action which makes goods liable to confiscation. In the present case, goods were not liable to confiscation as discussed in foregoing paras. Hence, no penalty is imposable on M/s Omega Packwell Pvt. Ltd.

28. As regards imposition of penalty on Shri Yogesh Gupta under Section 114AA of the Act, 1962, we find that penalty on a person under said Section can be imposed when such person intentionally makes false declaration before the Customs. It is observed that Yogesh Gupta declared country of origin on the basis of documents supplied by the overseas

supplier. There was no manipulation by him to mis-declare country of origin. No evidence was pointed out by the Adjudicating Authority to prove any involvement of Shri Yogesh Gupta in any false declaration. Hence, no penalty under Section 114AA is imposable upon him. In the case of Sree Ayyanar Spinning & Weaving Mills Commissioner Customs, Tuticorin [2019 (370) E.L.T. 1681 (Tri.-Chennai)], the Tribunal has held as :- "10. Viewed from any angle, it is but obvious that the Adjudicating Authority has been injudicious and peremptory in imposition of the impugned penalty under Section 114AA ibid, since, unless it is proved that the person to be penalized has knowingly or intentionally implicated himself in use of false and incorrect materials, there can be no justification for penalty under this Section. This requirement of factual finding itself is not there and nor has it been answered satisfactorily either in the show cause notice or in the orders of the lower authorities and hence, I do not have any hesitation in setting aside the same."

29. Similarly in the case of Ismail Ibrahim vs. Commissioner of Customs, Bangalore [2019 (370) E.L.T. 1321 (Tri.-Bang.)], the Tribunal has observed that the penalty under Section 114AA can only be imposed if the person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. Shri Gupta has not made intentionally any false sign or declaration, incorrect statements or declarations to attract penalty under Section 114AA of the Act. Therefore, penalty imposed under Section 114AA of the Act, 1962 on him is liable to be quashed. Similarly, penalty imposed upon Shri Manoranjan Kumar, Shri Chandan Choudhary, Shri Kush Agrawal and Shri Anil Agrawal cannot be sustained and are accordingly set aside."

4.12 We also note that for holding that impugned goods were of Pakistan origin certain export declarations filed at Dubai customs

which were obtained from the Shipping Lines have also been relied. Appellants have questioned the validity and reliance on these documents as evidence which have been obtained from third party and not from the person making the declaration or the Government Authority to whom such declaration was made. We do not find anything on records to show that even a effort was made by the revenue authorities to obtain the copy of said declarations from the Customs Authority at Dubai, to whom the same was made. We find that Delhi Bench has in the case of Abha Power & Steel Pvt. Ltd. [Final Order No. 52708-52709/2018 dated 27.07.2018 in Excise Appeal No.E/50824 & 50858/2018-EX [DB]] observed as follows:

"With respect to the remaining part of the levy, we find that the case of Revenue is based upon the statement of the representative of M/s. Monu Steels i.e. the third party evidence. The law i.e. as to whether the third party records can be adopted as an evidence for arriving at the findings of clandestine removal, in the absence of any corroborative evidence, is well established. Reference can be made to Hon'ble Allahabad High Court decision in the case of Continental Cement Company Vs. Union of India – 2014 (309) ELT 411 (All.) as also Tribunal's decision in the case of Raipur Forging Pvt. Ltd. Vs. CCE, Raipur-I – 2016 (335) ELT 297 (Tri.-Del.), CCE & ST, Raipur Vs. P.D. Industries Pvt. Ltd. – 2016 (340) ELT 249 (Tri.-Del.) and CCE & ST, Ludhiana Vs. Anand Founders & Engineers – 2016 (331) ELT 340 (P&H)."

4.13 In case of Shree Krishna Laxami Steel Udyog Private Limited [Final Order No.77826-77827/2024 dated 13.12.2024 in Excise Appeal No.70300 & 70301 of 2013] Kolkata Bench observed as follows:

"(c) Whether the investigation done is not proper and having lacuna and as any suppliers/buyers/transporters or any documents, which could have been visited easily from

the name and address and available on record, the demand can be raised against the appellants or not ?

10. We further take note of the fact that in this case, although the Revenue was having every documents which were recovered from the possession of Shri Sati Ram to allege clandestine manufacture and removal of goods, but the investigation did not bother to corroborate the evidence by way of verifying the veracity of the documents from supplier of the raw materials, buyer of the finished goods, transporter or commission agent etc. or other, whose details were available in those documents.

11. In that circumstances, we hold that whole of the investigation is faulty and on the basis of the faulty investigation, it cannot be alleged that the appellants were engaged in the activities of clandestine manufacture and clearance of excisable goods."

4.14 Thus we are not in position to uphold the order in relation to the liability to confiscation under Section 111 (m) of Customs Act, 1962, and the penalties imposed under Section 112 (a) and (b) *ibid*.

4.15 Further penalties have been imposed on the appellants under Section 112 (a) and/ (b). Is that possible, both the sections operate in different realm. Penalty under Section 112 (a) can be imposed, even when there is no intent (*mensrea*) of the person in committing the act of commission or omission leading confiscation of goods in terms of Section 111 of Customs Act, 1962. Section 112 (b) requires intent (*mensrea*) to be established. In case of Hughes Network Systems India Ltd. [2024 (388) E.L.T. 594 (Del.)] Hon'ble Delhi High Court has observed as under:

"27. Section 112 (a) of the Customs Act lays down that any person who in relation to any goods inter alia does any act which would render such goods liable for confiscation is liable to penalty. Section 112(b) stipulates that any person who inter alia acquires possession of any goods or is in any

way concerned in carrying, removing, depositing, harbouring or deals with any goods which he knows or has reason to believe are liable for confiscation under Section 111 of the Customs Act, is liable to a penalty. The penalty stipulated is not exceeding the value of good or rupees five thousand whichever is greater.

28. Section 112 (a) of Customs Act also applies on a strict liability concept. It does not require any mens rea. Section 112 (a) of the Customs Act may be contrasted with the provisions of section 112 (b) of the Customs Act. It is clear that for Section 112 (a) to be applicable, no mens rea is required whereas for Section 112 (b) to be applicable mens rea or knowledge is required. The expression used in Section 112(b) is "dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111". Section 112(b) imposes an obligation on the authorities to establish mensrea and/or knowledge.

29. In the case of the appellants, Section 112 (a) of Customs Act has been applied which really is in the nature of absolute liability. Section 112 (a) of the Customs Act read with Section 111 clearly shows that the goods were liable to confiscation and for redemption thereof fine was to be imposed and further penalty liable to be imposed on the appellants.

30. Reference may also be held to provisions of Section 114 (AA) of the Customs Act which reads as under:

"114AA. Penalty for use of false and incorrect material. If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

31. Section 114AA provides for penalty for use of false and incorrect material. Knowing and intentional use of false or

incorrect material makes a person liable to penalty not exceeding five times the value of goods.

32. When section 112 (a) (i) of the Customs Act is contrasted with Section 114 AA it further establishes that where mens rea is established for use of false and incorrect material, the penalty could be five times the value of the goods. On the other hand penalty for improper importation of goods under section 112 (a) is not to exceed the value of the goods.

33. In the instant case, had the authorities applied Section 114AA, the penalty could have been upto five times the value of the Goods.

34. Reference may also be held to section 125 of the Customs Act which provides for option to pay fine in lieu of confiscation and stipulates that the fine shall not exceed the market value of the goods confiscated less duty chargeable thereon.

4.16 Interestingly penalties have been imposed in the impugned order on Shri Kush Agarwal, alleging that he has masterminded the entire operation by re-routing the consignments of dry date from Pakistan through UAE by manipulating the "Certificate of Origin". However as we have earlier observed that there is no credible evidence produced to show that the "Certificate of Origin" issue by the designated authorities in UAE was manipulated, in fact no enquiries have been made in this regard from the authorities in UAE. We also note that nothing has been placed on record to show that he has by his act of omission and commission contravened any provision of Customs Act, 1962. He has supplied the goods – dry dates, for being imported into India by the said importers in normal course of business. Even if it is assumed and admitted that he has manipulated the documents to declare country of origin as UAE, then also the offence which has been committed in UAE, action would lie against him under the law of that country.

4.17 In the present case penalty has been on the Appellant 1, 4, 5 & 6 under Section 114AA, without establishing the fraud in

respect of the said concocted Certificate of Origin by way of proper enquiries with the certificate issuing authorities as have been provided by Rule 6 of Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. We do not find any merits in the imposition of such penalties.

4.18 In view of the discussions as above we do not find any merits in the impugned order to the extent it is relation to the appellants before us.

5.1 Appeals are allowed.

(Pronounced in open court on 09.09.2025)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Sd/-
(ANGAD PRASAD)
MEMBER (JUDICIAL)

Nihal