

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

**1. Customs Appeal No. 60251 of 2022**

[Arising out of Order-in-Original No. COMMR/VG/LDH/CUSTOMS/02/2022 dated 30.04.2022 passed by the Commissioner of Customs, Ludhiana]

**M/s Secon Logistics Private Limited**

House No.169, New G K Estate, Mundian Kalan,  
Chandigarh Road, Ludhiana, Punjab-141015

**.....Appellant**

*VERSUS*

**Commissioner of Customs, Ludhiana**

Customs House, G T Road, Sahnewal,  
Sahnewal Khurd, Punjab-141120

**.....Respondent**

**WITH**

- 2. Customs Appeal No. 60252 of 2022 [Jatinder Kumar]**
- 3. Customs Appeal No. 60213 of 2022 [Suraj Salaria]**
- 4. Customs Appeal No. 60232 of 2022 [Saurabh Kumar, Superintendent (Customs)]**
- 5. Customs Appeal No. 60261 of 2022 [Yashpal Goyal, Proprietor of M/s Goyal Steel Industries]**
- 6. Customs Appeal No. 60262 of 2022 [Rajan Arora, M/s Sark Enterprises]**
- 7. Customs Appeal No. 60263 of 2022 [Love Sharma]**
- 8. Customs Appeal No. 60264 of 2022 [Sunil Kumar, Proprietor of M/s KVR Enterprises]**

[Arising out of Order-in-Original No. COMMR/VG/LDH/CUSTOMS/02/2022 dated 30.04.2022 passed by the Commissioner of Customs, Ludhiana]

**APPEARANCE:**

1. Shri Saurabh Kapoor, Ms. Muskaan Gupta, Ms. Muskan Chauhan and Ms. Tanya Kumar, Advocates for the Appellants in Sl. No. 1 & 2.
2. Shri Sudhir Malhotra, Advocate for the Appellant in Sl. No.3
3. Shri R.K. Hasija and Shri Shivang Puri, Advocates for Appellant in Sl. No.4.

4. Shri Gaurav Prakash, Advocate for the Appellants in Sl. No.5,6,7 & 8

- Shri Anurag Kumar, Authorized Representative for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 61771-61778/2025**

DATE OF HEARING: 07.10.2025

DATE OF DECISION: 17.12.2025

**P. ANJANI KUMAR:**

The following Appellants challenge the impugned Order in Original, dated 30.04.2022, passed by the Commissioner of Customs, Ludhiana

Appeal No All of 2022	Appellant	Remarks	Penalty imposed in Rs/ under Section
60213	Suraj Salaria	Inspector of Customs	50,000/117
60232	Saurabh Kumar	Superintendent of Customs	Do
60251	Secon Logistics Pvt Ltd	The Custom Broker	20,00,000/ 112 1,80,00,019/114AA
60252	Jatinder Kumar	Director of the Custom Broker	60,00,535/ 114A 1,80,00,019/114AA
60261	Yashpal Goyal	Proprietor, M/s Goyal Steel Industries	4,00,000/117
60262	Rajan Arora	Partner cum H-Card holder in M/s Sark Enterprises	Do

60263	Love Sharma	Authorised Signatory of M/s Goyal Steel Industries	Do
60264	Sunil Kumar	Proprietor, M/s KVR Enterprises	Do

2. Brief facts of the case are that an intelligence received by DRI, Ludhiana indicted that dry dates were being imported mis-declaring the same as Light Melting scrap. A watch was kept. Meanwhile, a bill of entry No. 2086929, dated 23.12.2020, for import of Light Melting Scrap in 05 containers, showing the importer as M/s Goyal Steel Industries, who are said to have purchased on High Seas Sale basis from M/s Raghav Alloys & Metal, Khanna and showing the supplier to be M/s SAMA AL Jazeera Auto Used Spare Parts TR. LLC, UAE; Customs duty of Rs. 594672/- had been paid on 26.12.2020; the goods were already examined by the Customs Inspector Shri Suraj Salaria in the in presence of Superintendent Shri Saurabh Kumar and Shri Baljinder Singh, representative of CHA and was given out of charge. Another Bill of Entry No. 2103144, dated 24.12.2020, showing import of Light Melting Scrap in 05 containers, from the same supplier was also filed.

DRI officers examined 2 out of 5 containers covered by the B/E No. 2086929 dated 23.12.2020 and other 8 containers on dated 12/13.01.2021; it was found that containers were stuffed with dry dates, packed in white bags, each bag weighing approximately 48-50 Kg.

2.1. Searches were conducted at various premises of the concerned persons and statements of various persons were recorded. On completion of the investigation, officers came to the following conclusions.

- M/s. Goyal Steel Industries, the IEC holder and M/s. Raghav Alloys the High Sea Seller were found to be non-existent at declared addresses; none of these consignees of the imported goods ever got in contact with the Shipping Line M/s MSC Agency (India) Pvt Ltd;
- All the containers were stuffed with dry dates(chohara) and there was no shred of scrap as declared; the imported goods were thus mis declared as Light Melting Scrap of Chapter; Customs Seals of all the containers were intact even though 5 containers were said to have been examined by the officers; Examination report, put in the EDI system, by Shri Suraj Salaria, Inspector and Shri Saurabh Kumar, Superintendent, was bogus.
- Shri Yashpal Goyal, Proprietor of M/s Goyal Steel Industries, in whose name Bill of entry was filed, denied that he had any knowledge of the import and he was not concerned in any manner; Neither the High Sea seller i.e. M/s Raghav Alloys and Metals nor the importer i.e. M/s Goyal Steel Industries ever got in contact with the Shipping Line M/s MSC Agency (India) Pvt Ltd;
- Shri Yaspal Goyal, Proprietor of M/s Goyal Steel Industries and Shri Manish Kumar, Proprietor, M/s Raghav Alloys & Metals denied having appended signatures on the High Sea

sales documents, Form A etc' Forensic laboratories have confirmed that the signatures appended on the High Sea Sales documents, Form-A were of Shri Yaspal Goyal, Proprietor of M/s Goyal Steel Industries and Shri Manish Kumar, Proprietor, M/s Raghav Alloys & Metal.

- Shri Jatinder Kumar managed the import of the mis declared cargo; M/s Secon Logistics Pvt Ltd, the Customs Broker, filed Bills of Entry No. 2086929 dated 23.12.2020 and No. 2103144 dated 24.12.2020; they are well versed about the regulations of Customs Broker Licensing Rules, 2018 as required to before filing any of the consignments. Shri Jatinder Kumar admitted that he never met Shri Yashpal Goyal, proprietor of importer firm M/s Goyal Steel Industries; that he received authorisation in Form 'A', through one Shri Love Sharma, but he did not know whereabouts of Love Sharma; that the work order for seal cutting and customs examination was not signed by him or any one from his broker firm; that his broking firm were in direct touch with the Shipping Line to expedite the cargo.
- Shri Bodhraj Sharma, Manager of the Custodian Hind Terminal Private Ltd affirmed that the work order for seal cutting and Customs Examination was not signed by the Customs Inspector or Customs Broker; port handling charges of the containers were given by another Customs Broker i.e. M/s Sark Enterprises, Delhi through its IDBI bank Account.
- All Payments for Customs duty, Shipping Line charges, port handling charges etc payment were made by Shri Rajan Arora

either through Sark Enterprises or Sark Cargo Services LLP; Shri Rajan Arora stated that he did not know Yash Pal or Manish Kumar or Jatinder Kumar and all payments were made by him on instructions from one Sunil Kumar, Proprietor, M/s KVR Enterprises, Ludhiana, who supplied him with necessary details viz. Bill of Entry No., IEC and port code required for the payment of the duty.

- Shri Love Sharma stated that all details concerning imports of goods which he passed on to Sunil Kumar, proprietor of M/s. KVR Enterprises, were provided to him by Shri Jatinder Kumar; that he knew Shri Yash Pal Goyal, Proprietor of M/s Goyal Steel Industries; he got signed the High Seas Sale Agreement and Form-A on the instructions of Jatinder Kumar and handed them back to Jatinder Kumar; that he brought to the notice of Shri Yash pal Goyal the fact that dry dates had been imported in guise of Light Melting Scrap after DRI booked the case; that he denied knowing Jatinder Kumar or Sunil Kumar or Manish Kumar or Rajan Arora.
- Shri Sunil Kumar confessed that he was paid an amount of Rs 10,00,000, in his firm M/s KVR Enterprises Bank Account no 259815450855 on 08.12.2020, through RTGS by M/s Secon Logistics Pvt Ltd; that on the request made by Jatinder Kumar, he had directed Shri Rajan Arora of M/s. Sark Enterprises to make payments to Shipping lines since he owed to Rs. 10,00,000/- to Shri Jatinder Kumar as an adjustment as per details provided by Love Sharma on confirmation with Jatinder Kumar.

2.2. M/s Goyal Steel Industries filed a writ Petition CWP No.20282 of 2021 in the Hon'ble Punjab & Haryana High Court; it was disposed of by the Hon'ble Court vide order dated 05.10.2021; in compliance of the Hon'ble High Court order, Shri Yashpal Goyal, was asked to appear for hearing on 20.10.2021, vide letter dated 07.10.2021; He did not appear in person or through any authorised representative; Shri Saurabh Kapoor, advocate, sent an email on the day of hearing i.e. 20.10.2021, enclosing Vakalatnama, signed by one Shri Love Sharma, as per authority letter dated 22.10.2020 of M/s Goyal Steel Industries. Shri Jatinder Kumar was arrested on 22.01.2021 and finally granted bail vide order dated 25.03.2021. Shri Jatinder Kumar filed CWP No. 20282 of 2021 in the Hon'ble High Court of Punjab & Haryana at Chandigarh, who vide order dated 05.10.2021, framed three issues and directed the Additional Director General, Directorate of Revenue Intelligence, Ludhiana to decide all those three issues by passing a speaking order in accordance with law; accordingly, a Speaking Order, dated 20.10.2021, was issued by the Additional Director General, Directorate of Revenue Intelligence.

2.3. It appeared to the Revenue that impugned goods were mis-declared as Light Melting Scrap whereas the goods were Dry Dates; the value declared thereof cannot be adapted to different goods and thus, the value is also mis declared; it appeared that the goods are rendered liable for confiscation. Further, as no Plant Quarantine clearance was obtained, it further appeared that the imported dry dates are liable for confiscation, having been imported in violation of conditions specified in Plant Quarantine (Regulation of Import in to

India) Order, 2003. It also appeared that all the persons involved are liable for penalty under the Provisions of Customs Act, 1962. As the investigation was in progress and as Show Cause Notice could not be issued within Six Months, the time period for issuing the Notice was extended vide letter dated 24.06.2021; On completion of the Investigation impugned Show Cause Notice, dated 10.11.2021, was issued as follows.

(i). Shri Jatinder Kumar was called upon to show cause as to why imported dry dates, should not be classified under CTH 08041030 and be valued at Rs 1,80,00,019/ and should not be held liable to confiscation under Section 111 (d), Section 111 (l) and Section 111 (m) of the Customs Act, 1962; as to why differential Customs Duty amounting to Rs. 60,00,535/, should not be demanded and recovered from him read under Section 28(4) Customs Act, 1962, along with applicable interest, in case they are released on payment of fine under Section 125(2) of the Customs Act, 1962; penalty should not be imposed upon him under Section 114A and Section 114AA of the Customs Act, 1962.

(ii). Customs Broker M/s Secon Logistics Pvt Ltd was called upon to show cause why penalty should not be imposed on them under Section 112 and Section 114AA of the Customs Act, 1962.

(iii). Shri Yashpal Goyal, Proprietor of M/s Goyal Steel Industries; Shri Love Sharma; Shri Sunil Kumar, proprietor, M/s KVR Enterprises; Shri Rajan Arora, Partner cum H-Card holder in M/s Sark Enterprises; Shri Saurabh Kumar, Superintendent of Customs and Shri Suraj Salaria, Inspector of Customs were called upon to show cause as to

why penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

2.4. The proposals in the Show Cause Notice were confirmed by the impugned order. Learned Commissioner re-determined the classification of the impugned goods under CTH 08041030 and value at Rs 1,80,00,019; confiscated the impugned goods and imposed penalties on different persons as shown in the Table above.

**Submissions on behalf of Shri Jatinder Kumar and M/s Secon Logistics Pvt Ltd (Appeals Nos. 60251 & 60252 of 2022)**

3. Shri Saurabh Kapoor, learned counsel, appearing for Shri Jatinder Kumar and M/s Secon Logistics Pvt Ltd (Appeals Nos. 60251 & 60252 of 2022), submits that M/s Secon Logistics Pvt Ltd is a Customs Broker and Shri Jatinder Kumar is the Director of the Company, looking after the day to day activities on behalf of the Appellant Company; during the course of business, the Appellant received documents, like Invoice, Packing List Bills of Lading, High Sea Sales Agreement as well as Original Copies of Authorization , from the Importer M/s Goyal Steel Industries through their Authorized Representative Shri Love Sharma, for customs clearance work in respect of clearance of "Light Melting Scrap"; importers of "Light Melting Scrap" need to register themselves with the Director General of Foreign Trade ( DGFT), on "Steel Importing Monitoring System", giving all particulars, for each and every import, before filling of the Bill of Entry and clearance, in terms of Notification No. 17/2015-2020 dated 05.09.2019; the said registration can only be done with the help of an OTP received on the Phone Number of the Importer; he submits the relevant Page of the Module and submits that in respect

of goods imported by M/s Goyal Industries registration was done with the help of the Digital Signatures and in respect of imports made by M/s Raghav Industries, the same was done with the help of OTP received on their registered Mobile Numbers.

4. He submits that the Appellant as Customs Broker had filed the Bills of Entry, Nos. "2086929 dated 23.12.2020 and 2103144 dated 24.12.2020, on the strength of the documents supplied by Shri Love Sharma after completion of the process of mandatory registration of the imports on the portal of ICD-HTPL, Ludhiana; all the import documents were uploaded on the E Sanchit Portal. He submits that Classification and Valuation on the basis of the description and other particulars mentioned on the Import Documents; the imported goods were accompanied by Pre Inspection Agency", duly authorized in terms of Para 2.5 of the Handbook of Procedures Foreign Trade Policy 2015-2020; goods imported were duly examined by the Pre Inspection Agency, who certified that the same comprised of Light Melting Scrap; photographs were uploaded on the Website of Director General Foreign Trade (DGFT); after filling the Bills of Entry, goods were registered at the port of ICD-HTPL and were presented before the Customs for Physical Examination; it is the duty of the officer of the Customs to inspect and examine the consignments imported by the Importers and permit clearance only after due verification; it is pertinent to note that the goods stuffed in the containers are duly sealed with the Bottle seals put on the said containers.

5. Learned Counsel submits that in terms of the Customs Broker Regulations, the appellant Customs Broker is required to ensure that

the declaration filed at the time of import of any goods is made in accordance with the provisions of the Customs Act, 1962, Rules made thereunder and other legal provisions as applicable; the Light Melting Scrap imported by the Importer was freely importable and as such no occasion to doubt the contravention of any provisions arises; more so, the seals were intact and thus, there was no occasion to doubt the contents of the said container and report the same to the Customs; goods were not physically examined by the Officers who had not even broken the Seals; examination report was entered on EDI Portal and thereafter permitted clearance of goods to the Importer; since he was not physically present at the Port, he had instructed his staff to arrange for transportation and loading of the containers to be dispatched to the importer premises.

6. Learned Counsel submits that only on examination by DRI officers, it was found that the goods imported and declared as "Light Melting Scrap" were actually found to be "Dry Dates"; it is pertinent to note that the Seizure Memo as executed by the Officers of DRI was addressed to the Importer M/s Goyal Steel Industries and not to the Appellant or its Director; search of the premises of the Appellant did not result in finding anything incriminating against the Appellant pertaining to the alleged imports of Dry Dates in the garb of Light Melting Scrap; when summons were issued, appellant requested for some time as the importer was not in touch with them; in his statement the appellant stated that he was not aware about the contents of the goods having been imported and about mis-declaration; work order for seal cutting was not assigned to them as

CHA; despite the fact that Appellant CHA as well as its Director, had no role to play in the alleged offence, he was arrested. He submits that DRI took contradictory stand while opposing his bail on different occasions; during the course of pendency of Bail Application before the Learned Trial Court, the DRI Officers took a categorical stand that both the importers were found to be non-existent; however, DRI opposed the petition filed by Shri Raghav Garg of M/s Raghav Alloys & Metals, for anticipatory bail; however, he was neither arrested nor made a Noticee.

7. Learned Counsel submits further that the entire case is made on the basis of contradictory statements; Shri Yashpal Goyal stated initially that he had knowledge regarding import of Scrap and that he signed the documents; however, at a later stage he changed his version later, perhaps as dictated by the DRI Officers; DRI Officers had taken a stand that the firm floated by Shri Manish Kumar did not exist and that he had left India and shifted to Canada; initially, DRI chose not to record statement of any person including the Importer, their Authorized representative in the month of January 2020; Shri Love Sharma, in his statement dated 26.02.2021, in reply to Question 10, admitted that he got the documents for import of Light Melting Scrap signed by Shri Yashpal Goyal; this establishes the fact that the entire documentation originated from and was executed by the importer; Appellant's role was confined merely to filing the Bills of Entry as a Customs Broker.

8. Learned Counsel submits further that the respondent erred in placing reliance on the statement of Shri Yashpal Goyal, as he was

changing his stand; in his statement dated 19.03.2021, he replied (in reply to Question No. 30) he was aware that his IEC No. AKOPP3397B was used for import of consignment comprising of Light Melting Scrap, that he gave (in reply to question No. 7) that he had given their KYC details to Shri Love Sharma, whom he knew for 06-07 Years and that he signed documents like High Sea Sales Agreement, Form A, in the presence of Shri Love Sharma; Shri Yashpal Goyal has subsequently denied of having signed the documents shown to him in statement dated 26.03.2021; the belated denial shows his inconsistent conduct; however, he has nowhere stated that the Shri Jatinder Kumar or his employees has appended the signatures; therefore, the appellants cannot be charged with forgery; it is a matter of record that M/s Goyal Steel Industries later filed CWP No. 20282 of 2021, before the Hon'ble High Court of Punjab and Haryana, seeking provisional release and even prayed for permission to re-export the same; respondent did not file any reply to the contentions raised by the Importer before Hon'ble High Court; the affirmative claim of title to the consignment renders the denial on 26.03.2021, false and unreliable; Shri Manoj Verma, Senior General Manager of M/s MSC Mediterranean Shipping Company, stated that the containers for import of Light Melting Scrap were booked by M/s AEGON Shipping LLC, Dubai on behalf of the Shipper M/s Sama Al Jazeera Auto Used Spare Parts TR. LLC, Dubai; it transpires that booking of the containers for transshipment was done by the Foreign Exporter and that M/s Raghav Alloys & Metals was in existence.

9. Learned Counsel submits in addition that Shri Rajan Arora, Partner cum H Card holder of M/s Sark Enterprises Delhi, stated on 23.02.2021 & 24.02.2021 that he had deposited the Customs Duty as well as other charges, upon instructions from Shri Sunil Kumar Proprietor, M/s KRV Enterprises; Shri Sunil Kumar stated on 24.02.2021 that the payment of Customs Duty as well as Shipping Charges were made as per instructions from Shri Love Sharma.

10. Learned Counsel submits also that the Respondent Department has foisted the case of import of dry dates mis declared as LMS, on the Appellant solely on the ground that Shri Jatinder Kumar was in charge of and in control of goods imported vide B/e 2086929 dated 22.12.2020 and 21023144 dated 24.12.2020; that the IEC of M/s Goyal Steel Industries and M/s Raghav Alloys was misused by the said Appellant and that the Customs Duty as well as other charges were paid by the Appellant. He submits that the Customs Department as well as DRI doubted, the authenticity of import documents, at no point; DRI has failed to conduct any overseas enquiry in respect of import documents; goods were duly inspected by the Pre Inspection Agency who also uploaded the Inspection report along with the photographs and videos on the site of DGFT; no action was initiated against the Pre Inspecting Agency; DRI completely ignored the fact that the Metallic Scrap the Importer has to register in terms of Notification No. 17/2015-2020 dated 05.09.2019, using the digital signatures as well as automated SMS on the registered Mobile Numbers sent to M/s Goyal Steel Industries as well as M/s Raghav

Alloys; it cannot be presumed that the Importers did not possess any knowledge regarding the import of mis declared goods.

11. Learned Counsel submits that DRI failed to conduct any overseas enquiry from the country of Export in respect of the imported goods, even though they had plenty of time from the date of seizure on 25/26.12.2020 and issue of the Show Cause Notice on 10.11.2021; Show Cause Notice and the Impugned Order are liable to be quashed as DRI failed to appreciate the fact that M/s Goel Steel Industries had claimed the title of the goods, vide letter/representation dated 07.02.2021 & 09.02.2021, and requested for provisional release of goods as well as de stuffing of the cargo; the department did not even contest the CWP No. 20282 of 2021 filed by M/s Goyal Steel Industries claiming right and title over the imported mis-declared goods; further the importer had pleaded before the Adjudicating Authority claiming ownership and requested for release of imported goods, as noted in Para 9 of the impugned order.

12. Learned Counsel submits that it was perverse on the part of DRI to conclude that the appellant has forged the signatures on HSS agreement; the forensic report indicated only that the signatures were not of the importers; it never said that the signatures are of the appellants; at no point in time the sample signatures of the Appellant were forwarded to the Forensic Laboratory; DRI has failed to conduct any investigation in respect of purchase of "Stamp Paper" used for the purposes of entering into HSS Agreement to ascertain who purchased the same and whose signature was appended in the

register maintained with the Stamp Vendor; DRI did not ascertain the signatures attested before Notary Public; in the absence of substantive enquiry, it is not correct to hold the appellants responsible; moreover, the respondent denied the request of the Appellant for grant of Cross Examination as per Section 138 B of the Customs Act, 1962; the appellant had no role in the mis-declaration of the goods; subsequent statement by M/s Goel Steel Industries cannot be relied upon being self-contradictory and inconsistent. He relies on Suraj Mal AIR 1979 SC 1408; JKS AIR TRAVELS 2016 (331) ELT 173 (Mad.); Anil Kumar Shaw 2002 (140) ELT 263 (Tri. - Kolkata); Roshiban N.R. 2018 (364) ELT 594 (Tri. - Bang; Prem Narayan Doulatram Verma (41) ELT 116 (Tribunal).

13. Learned Counsel submits that the impugned order is liable to be set aside on the ground that it gives contradictory findings; the first part of the Order alleges that both the importing firms namely M/s Goyal Steel Industries as well as M/s Raghav Alloys & Metals were found to be Non Existent, as indicated in the Order, dated 08.02.2021, passed by Shri Atul Kasana, Learned Additional Session Judge; while opposing the bail application of the Proprietor of M/s Raghav Alloys & Metals, DRI had stated that Shri Manish Kumar was instrumental in purchase of Dry Dates and his firm was found to be non-existent.

14. Learned Counsel submits that later statement by Shri Yashpal Goyal the Importer, that he was not aware of import of "Light Melting Scrap", by Shri Love Sharma, is factually incorrect; M/s Goyal

Industries had applied to Punjab Pollution Control Board. for necessary authorization which was granted on 09.01.2020; Adjudicating Authority has failed to consider this fact and the fact that the Importer M/s Goyal Steel Industries, vide Authorization dated 22.10.2020, authorized Shri Love Sharma to import metal scrap in the name of his firm.; neither the investigating Agency nor the adjudicating authority, confronted the Importer with all such documents like Authorization issued in favour of Shri Love Sharma, application for Registration with DGFT, application for NOC by PCB, representation or provisional release etc; Appellant's specific request for cross examination of all such persons whose statements were relied upon, was rejected. Such statements cannot be relied upon as held in Andaman Timber Industries 2017 (50) STR 93 (SC); Flavel International 016 (332) E.L.T. 416 (Del.); Parmarth Iron Pvt. Ltd.; 2010 (260) E.L.T. 514 (All.) and Ambika International 2016 SCC, Online P&H 4559.

15. Learned Counsel submits further that the Impugned Order passed by the Learned Adjudicating Authority is liable to be struck down on the sole ground that the order extending time limit for issuance of Show Cause Notice under section 110 (2) of the Customs Act, 1962 has not been issued by the Adjudicating Authority i.e. the Commissioner of Customs; on the contrary the same has been issued by Additional Director General, Directorate of Revenue Intelligence, Ludhiana Zonal Unit, Ludhiana, who is not the proper officer in terms of Section 110 (2) of the Customs Act, 1962; the power to extend time for issuance of Show Cause Notice u/s 110 (2) vests with the

Commissioner of Customs, thus the instant Show Cause Notice is barred by limitation and consequential proceedings are liable to be dropped on this sole ground itself. He further submits that the order dated 24.06.2021 having been issued by ADG, DRI, Ludhiana does not bear any DIN Number; in the absence of the said DIN the said order extending time limit for further 6 months is invalid; CBEC Circular dated 05.11.2019 mandates that all orders/communication be issued with respective DIN; in terms of Para 4 of the said Circular, order dated 24.06.2021 extending time for issuance of Show Cause Notice is rendered as invalid being issued without any DIN; no reasons for not mentioning DIN were mentioned.

**Submissions on behalf of S/Shri**

**(i). Yashpal Goyal (C/60261 /2022)**

**(ii). Love Sharma(C/60263/2022)**

**(iii). Rajan Arora (C/ 60262 / 2022),**

**(iv). Sunil Kumar(C/60264/2022)**

16. Shri Rahul Raheja, assisted by Gaurav Prakash, advocate for the above four appellants, submit that the allegation against Shri Yashpal Goyal was that he had knowingly given his IEC details to Shri Love Sharma for the purpose of import; Shri Yashpal Goyal is the sole proprietor of M/s Goyal Steel Industries engaged in the business of import and trading of Iron Scrap having been allotted IEC AKOPP3397B; they had authorized Sh. Love Sharma for import of two consignments "Light Melting Scrap" from Dubai (UAE); since Shri Love Sharma did not possess necessary

import permission in his name including clearances from "Pollution Control Board" as well as "Importer Exporter Code",; he requested Shri Yashpal Goyal permission to use details of his firm to import two consignments of "Light Melting Scrap"; Respondent failed to appreciate that Mr. Love Sharma has duly indemnified the Appellant by way of Authority letter dated 22.10.2020; it is not the case that the investigating agency or the Respondent has disputed the contents of the said Authority letter dated 22.10.2020; lending of IEC is not a violation under Customs Act, 1962, as held in Proprietor, Carmel Exports and Imports v. CC, Cochin 2012 (26) ELT 505 and in Hamid Fahim Ansari v. CC Imports, Nava Sheva: 2009 (241) ELT 168; the word "beneficiary owner" has been duly incorporated in Sec 2(26) of the Customs Act, 1962, vide Finance Act, 2017. allegation against Shri Rajan Arora was that he has paid customs duty payment, Shipping Line payment, port handling payment upon instruction from Sunil Kumar, prop. of M/s KVR Enterprises, Ludhiana; allegation against Shri Love Sharma was that he abetted Jatinder Kumar by making available the IEC documents of M/ Goyal Steel Industries and the allegation against Shri Sunil Kumar was that he instructed Rajan Arora to pay customs duty, Shipping Line charges and port handling charges payment despite the fact that he is not the importer.

17. Learned advocate submits also that the show cause notice proposed penalty under Section 117 of the Customs Act, 1962 on the allegation of aiding and abetting Jatinder Kumar and not for any contravention on the part of Appellants; the word "abetment" is used for an activity done with intent to participate in misdeeds with pre-

knowledge and presupposition of undue benefit likely to arise by the alleged activity; there is no evidence adduced in the show cause notice showing that the Appellant acted intentionally with pre-knowledge and with presupposed benefit to be obtained from Jatinder Kumar; there is no such allegation in the show cause notice. He submits that Hon'ble Supreme Court, in case of Shri Ram Vs State of U.P. AIR 1975 SC 175, held that in order to constitute abetment, the abetter must be shown to have intentionally aided the commission of crime; Hon'ble High Court of Bombay applied the above judgment in the case of Amrit Lakshmi Machine Works 016 SCC Online Bom 66) while deciding imposition of penalty under Section 112(a) of the Customs Act.

18. Learned advocate submits further that the show cause notice merely makes allegation of abetment without even discussing as to how the Appellants abetted the contravention; appellants acted in Bonafide belief. Hence, no penalty is imposable on the Appellant. He relies on Akbar Badrudin Giwani (1990) 2 SCC 203; Hindustan Steel Ltd (1969) 2 SCC 627; Sumeet Industries Ltd 2003 SCC Online CESTAT 978; Godrej Soaps Ltd 2004 SCC Online CESTAT 2821; Asian Paints (India) Ltd 2003 SCC Online CESTAT 1941.

19. Learned advocate submits that the impugned order is contrary to the facts and attendant provisions of law and if permitted to stand would result in grave miscarriage of justice; the impugned order is vitiated by non-application of mind as the learned Respondent has failed to apply his independent mind to the vital facts of the case and attendant provisions of law and hence the order is liable to be set

aside. That the impugned order is a quasi-judicial order and it must be supported with cogent reasoning and if the same is absent then it is liable to set aside. He relies on State of Orissa Vs Chandra Nandi (2019) 4 SCC 357, wherein Hon'ble Apex Court has held that every order passed by judicial, quasi-judicial, tribunal or any competent authority, which decides the disputes between the parties must be supported by a cogent reasoning.

20. Learned advocate submits that the Respondent erred as no show cause has been issued within the period of six months as per section 110(2) and section 124 of the Act; legislature in its wisdom has categorically laid down that if no notice is given within the stipulated time, then the seized goods shall be released as held in *Ambalal Morarji Soni* 1971 SCC Online Guj 10; in the present case the ADG,DRI, who is not the competent authority, extended the time period vide letter/order dated 24.06.2021; neither the letter/order dated 24.06.2021 and nor the email bear Document Identification Number (DIN) ; hence the order shall be deemed to have not been issued in terms of CBEC Circulars No. 37/2019 dated 05th November, 2019 and Circular No. 43/2019-Customs dated 23.12.2019; the present case Show cause notice has been issued on 10.11.2021 i.e. after 11 months of detention and 9 months after passing of formal seizure memo dated 18.02.2021; thus, no show cause has been issued within the period of six months and therefore, goods are liable for unconditional release and the Appellants are entitled for consequential relief. He relies on the following cases.

- *Chaganlal Gainmull v. CCE* 1990 Supp SCC 527
- *Iqbal Hussain v. UOI* 2017 SCC Online Del 7460

- *Kore Koncepts v. CC* 2013 SCC Online Del 6553
- *Jatin Ahuja v. UOI* 2012 SCC Online Del 4628
- *Vipin Chanana v. DRI* 2013 SCC Online Del 473
- *Jatinder Kumar Sachdeva v. UOI*, 2016 SCC Online Del 6235
- *E.S.I. Limited v. UOI*, 2002 SCC Online Cal 241
- *S.J. Fabrics Pvt Ltd. v. UOI* 2011 SCC Online Cal 1077

21. Learned advocate submits that penalty has been erroneously imposed under Section 117 of the Customs Act, 1962; there is no allegation in the Show cause Notice that the appellants **either** had previous knowledge that dry dates were being imported in the name of Light Melting Scrap **or** that they had mens rea; on the contrary it accepts that one of the appellants Shri Yashpal Goyal was not aware of the same; penalty cannot be imposed if there is no *mens rea*. He relies on *Shivaji Sahebrao Bobade & Anr* 1973 AIR 2622, 1974 SCR (1) 489; *Nanda Incorporated* 2017 (11) TMI 252 - CESTAT CHENNAI; *M/s. D.S. Cargo Service* 2009 (247) ELT 769 (Tri.) and *Neptunes Cargo Movers Pvt Ltd* 2009 (246) ELT 621 (Tri. Mumbai) and 2007 (219) ELT 673 (Tri.). He submits that apart from statements no incriminating documents or other corroborated evidence has been relied upon in order to support, which itself is bad in the eyes of law as held in *Rawf Re-Rollers*, 2015 (317) ELT 499 (T). it was held in *Nazir-Ur-Rahman* 2004 (174) ELT 493 (CESTAT); *Oceanic Shipping Agency* 1996(82) ELT 57; *Panorama Electronics* 2001(130) ELT 877 (CEGAT) and *Rupesh Bhai R Zaveri* (2007) 217 ELT 386 (CESTAT), that if there is no evidence that the person knew or had reason to believe that goods are liable to confiscation, penalty cannot be imposed.

22. Learned advocate submits that the Appellants have neither placed any order on the foreign supplier nor are the the owner of the said goods; even if the goods are liable for confiscation under Section 111(d) of the Act, no penalty can be imposed on the Appellants, as they are not, in any way, connected with the shipment; penalty is not be imposable on the Appellants also for the reason that the department has not proved that the action of the Appellants has rendered the goods liable for confiscation; the appellants are not the owners and have no title in the subject goods and hence, penalty is not imposable; further, the penalty imposed on appellant is in the nature of a personal penalty; quantum of penalty imposed upon the appellant is too excessive and does not have mandate of law and cannot be recovered, either from the appellant, or from any other person; Hon'ble Supreme Court has considered the nature of penalty levied under various provisions of the Customs Act in the decision in Union of India v. Mustafa & Najibai Trading Co 1998 (101) E.L.T. 529 (S.C.); there is plethora of judicial rulings in which it has been held that the amount of penalty imposed should be reasonable. He relies on

- *Basudev Das Vs Union of India 2011 (272) ELT 668 (Gau.)*
- *K. Baluchamy Vs Commissioner of Customs, Trichy 2007 (212) ELT 202 (Tri. Chennai)*
- *K.K. Saidalavi Vs Commissioner of Customs, Trichy 2006 (199) ELT 813 (Tri. Chennai)*
- *K.P. Abdul Majeed Vs Commissioner of Customs & C.Ex. Cochin 2000(123) ELT (960) (Tribunal)*

- *CCE, Goa v. Kabul Textiles (LLC) - 2006 (206) E.L.T. 1173 (Bom.) affirmed by the Apex Court in 2007 (218) E.L.T. A122 (S.C.)*
- *Arya International v. CC, Kandla - 2010 (258) E.L.T. 441 (Tri.-Ahmd.)*
- *Royal Impex v. CC, Chennai - 2007 (211) E.L.T. 71 (Tri. - Chennai)*
- *Amba Woollen Mills vs. CCE, Bombay - 1998 (99) E.L.T. 353 (T)*
- *CCE v. Freight Systems (P) Ltd. - 2012 (286) E.L.T. 231 (T).*
- *Garima Trade Services Ltd. v. CC, Visakhapatnam - 2002 (146) E.L.T. 150 (T),*
- *Nalakath Spices Trading Co. v. CC, Cochin - 2007 (213) E.L.T. 283 (T)*
- *CC, New Delhi v. Sewa Ram & Bros. - 2003 (151) E.L.T. 344 (T)*

23. Learned advocate submits that dry dates are not prohibited goods and are freely importable; thus the appellant is entitled to redeem the goods in terms of Section 125 of the Customs Act; it was only due to the mistake on the part of the foreign supplier, dry dates were dispatched instead of light metal scrap; Dry dates are not prohibited goods as alleged and is freely importable; it was held in *Mukherjee & Alliances (India) Private Limited 2019 SCC Online CESTAT 8999*, wherein Hon'ble CESTAT, relying upon *Gopal Saha 2016 SCC Online Cal 663* that the goods in question cannot be termed as 'prohibited goods' merely for mis-declaration in the Bills of Entry, for the purpose of imposing penalty under Section 112; even if we assume without admitting that Appellant has acted illegally for monetary gains, then also as per Section 125 of the Customs Act

1962, he is eligible to redeem the dry dated after payment of applicable duty and customs dues. He relies on

- *Commissioner of Customs Vs Deluxe Exports 2001(137) E.L.T. 1336(Tri. -Mumbai);*
- *1993 (67) E.L.T. 1000 (GOI) in the case of Kamlesh Kumar v. Collector of Customs;*
- *1994 (73) E.L.T. 240 (GOI) in the case of Jaspal Singh Banty v. Collector of Customs;*
- *1994 (73) E.L.T. 425 (CEGAT) in the case of V.P. Hameed v. Collector of Customs*

24. Learned advocate submits that the impugned order erred in determination of value the impugned goods; department has not given any justification and have contravened provisions of law and have adopted Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 straight, without exhausting the Rules 3-9 of CVR as specified; the revenue did not deliberately conduct any market inquiry properly; data relied upon in the show cause notice cannot be accepted as no copy of the Bill of Entry was supplied; evidence relied upon is merely Screen Shot of the EDI system; in order to evaluate the data relied upon it is necessary to consider the Value declared, Quantity of goods imported as well as the Country of origin of the said goods, which can only be evaluated once the copy of the Bill of Entry No. 9966498 Dated 15.12.2020 along with its import documents are supplied to the Appellant; in the absence of the supply of the Copies of the Bills of Entries along with the import documents, the said data cannot be relied upon as held in the case of Prayas Woolen (P) Ltd 2016 (332) ELT 376 (Tri-Mum); Dujodwala

Products Ltd 2009 (235) ELT 266 (Tri-Mumbai); Hewlett Packard (I) Pvt Ltd 2006 (204) ELT 585 (Tri-Bang); Dwarakadas G. Kanjani 2001 (137) ELT 967 (Tri-Chennai) and Poly glass Acrylic Mfg. Co. Pvt Ltd 2015 (322) E.L.T. 794 (S.C.).

25. Learned Counsel submits that the cases relied upon in the impugned order are not applicable as the Respondent has failed to consider that each and every case is different from each other; it was held in Sri Kumar Agency 2008 (232) E.L.T. 577 (S.C.) that each case is different and a single point can separate them.

**Submissions on behalf of Saurabh Kumar, Superintendent of Customs.**

26. Shri R K Hasija, assisted by Shri Shivang Puri, learned counsel, submits on behalf of Shri Saurabh Kumar (Appeal No. C/60232/2022) that it was alleged that the appellant displayed dereliction of duty in granting "Out of Charge" (OOC) to goods covered under Bill of Entry dated 23.12.2020 without verifying the truthfulness of the importer's declaration; due to a high backlog of work, including additional assignments of Faceless Appraisalment and Truant Customs, the Appellant relied on the Inspector's examination report recorded in the EDI system for clearance of goods. He submits that the clearance of B/E No. 2086929 filed on 23.12.2020 by M/s Goyal Steels Limited, Ludhiana, was delayed due to a holiday (Christmas 25.12.2020) and payment glitches in the ICEGATE Portal; importer requested for urgent clearance on 26.12.2020, Saturday at 7 PM; as per CBIC's National Trade Facilitation Action Plan 2017-20, clearance beyond 48

hours was against prescribed timelines; in addition, there was a direction, dated 21.12.2020, by the Commissioner to expedite clearance processes to avoid delays; there were compelling circumstances which led to pressure for clearance i.e. ongoing maintenance of the EDI System (25-27 Dec 2020) resulting in frequent disruptions and difficulties in logging into the system, the farmer protests (Oct-Nov 2020) and severe labour shortage; the Custodian (ICD Hind Terminal) failed to present the containers in time for examination, affecting timely clearance; as there were no container scanners, there were automated alerts on discrepancies in the imported goods.

27. Learned Counsel submits that the Inspector conducted physical examination and recorded the report in the EDI system.; the Appellant did not accompany the Inspector due to workload constraints; he relied on the Inspector's electronic report, which stated that the goods matched the declaration; the remark "in the presence of Superintendent" was a copy-paste entry from previous reports, not reflecting actual presence; the goods remained in the bonded Customs area and had not been released; DRI officials intervened and stopped all processing including further verification by Customs staff; had any misdeclaration been detected post-clearance, sufficient safeguards existed to revoke the OOC order and conduct a review.

28. Learned Counsel submits that the Impugned Order wrongly assumes that the Appellant was present during cargo examination based on a report submitted by the Inspector on the EDI System; such averment in the report is nothing, but the cyclostyled format

using previous reports to save time; the Appellant had no reason to doubt the Inspector's report; no instruction designates the Superintendent as the sole proper officer for examination; both the Superintendent and Inspector are independently responsible; there is no evidence to suggest or prove the presence of the Appellant during the examination of five containers; statements given by the Inspector, and CHA do not mention the Appellant's presence during the examination.

29. Learned Counsel submits that there was no Customs alerts or modus operandi circulars about mis-declaration of dry dates; therefore, Inspector was deputed to conduct the examination, and his report confirmed the goods matched the declaration; the Appellant had no reason to doubt its accuracy and thus issued the OCC; there is no evidence that the appellant had prior knowledge or that he colluded in the alleged mis-declaration; the Impugned Order holds that there was no abatement or involvement of the Appellant; the conclusion in the Impugned Order is based on mere presumption rather than on evidence; appellant was aware that impugned goods were prohibited; as there is no contravention of Section 47(1), penalty under Section 117 is legally unsustainable; without prejudice to above, even if a contravention of Section 47(1) were assumed, the Appellant is fully protected under Section 155(1) of the Act; the OCC order was issued in good faith, based on the Inspector's examination report; the Appellant had no reason to doubt the accuracy of this report; thus, the Appellant is immune from legal proceedings under Section 155(1).

30. Learned Counsel submits further that under Section 155(2), prior written notice must be given to a customs official at least one month before initiating proceedings, and no proceedings can be initiated beyond three months from the cause of action; in the present case, the mandatory notice was issued nine months after the cause of action, rendering the proceedings null and void; he relies upon:

- *Rajeev Kumar Agarwal vs. Commissioner* [2007 (217) ELT 392 (Tri-Bang)]
- *Ashok Kumar Singh vs. State of West Bengal* [2016 (338) ELT 255 (Cal)]
- *P.N. Ram vs. CCE, Kanpur* [2008 (225) ELT 294 (Tri-Del)]
- *CC, BANGALORE vs. M. NAUSHAD* [2007 (210) E.L.T. 464 (Tri. - Bang.)]
- *A.P. SALES V/s CC, HYDERABAD* [2006 (198) E.L.T. 309 (Tri. - Bang.)]

31. Learned Counsel submits also that the Commissioner wrongly relied on *Golla Rama Rao vs. Union of India* [2000 (124) ELT 112 (Mad.)], as that judgment actually upheld the limitation bar under Section 40(2) of the Central Excise Act, which is analogous to Section 155; further, the Supreme Court's order dated 23.03.2020 extending limitation due to COVID-19 does not apply to the issuance of show cause notices under Section 155(2); CBIC Circular No. 157/13/2021-GST dated 20.07.2021 clarifies that the extension applies only to judicial/quasi-judicial proceedings like appeals and petitions not to the issuance of notices under GST laws which should also apply to *Mutatis Mutandis* to customs as well; the Impugned Order holds that there is dereliction of duty on the part of the Appellant as he has not performed the duty as per the Customs' law and procedure; however,

the Respondent has not specified the procedure that was allegedly not followed. He submits that failure to perform the duty of scrutinizing/ examining the document is dereliction of duty at best and does not warrant the imposition of penalties under the Customs Act as held in the following.

- *P.N. Ram v. CCE, Kanpur [2008 (225) ELT 294 (Tri-Del)]*;
- *Pawan Kumar Singh v. CCE (Adjudication), New Delhi [(2017) 357 ELT 186 (Tri.-All.)]*;
- *D.R. Ahuja v. CC, Amritsar [(2010) 250 ELT 386 (Tri.-Del.)]*
- *Dinabandhu Nayak v. CCE., Kolkata-III [2016 (343) E.L.T. 967 (Tri. - Kolkata)]*;

**Submissions on behalf of Suraj Salaria (Appeal No. C/60213/2022)**

32. Sudhir Malhotra, learned counsel for the appellants, submits that M/s Goyal Steel Industries, Ludhiana filed Bill of Entry No.2086929 dated 23.12.2020 and 2103144 date 24.12.2020 through Customs Broker (CB) M/s Secon Logistics Pvt Ltd., Ludhiana for clearance of light melting scrap falling under CTH 7204 4900; each bill of entry was having 5x40' containers; the goods covered under bill of entry no. 2086929 date 23.12.2020 was shown to have been purchased on high sea sales basis from M/s Raghav Alloys and Metals, Khanna; the appellant gave examination report in respect of 5 containers covered against bill of entry No. 2086929 dt. 23.12.2020 in the compelling circumstances of time bound clearance working in a bona fide manner; there was neither any mens-rea nor any mala fide nor any alleged illegal gratification; no duty was paid against bill of entry no. 2103144 dt. 24.12.2020 and the containers were not opened, not examined and not given out of charge. He submits that the Learned Adjudicating Authority has imposed penalty under section 117 of

Customs Act, 1962; the impugned order, admits that there was no abatement on part of the appellant and it was dereliction of duty.

33. Learned counsel for the appellants submits that the Adjudication Authority failed to appreciate that for dereliction of duty the penal provisions under Customs Act are not attractable; as there was no abatement on the part of appellant and as the bona fides of appellant are also not disputed, Adjudicating Authority erred in not extending the protection of section 155 of Customs Act, 1962. He submits without prejudice to above that the notice under section 155(2) of Customs Act was served on appellant vide letter F. No. DRI/LDZU/856/ (INT-02)/(ENQ-1)/2020/1429 – 1431 dt. 21.09.2021 by ADG, DRI for the alleged offence dt. 26/27.12.2020; Adjudicating Authority failed to appreciate that the notice under section 155(2) of the Customs Act has been issued beyond limitation period of three months from the accrual of cause of action. It was held in *MI Khan 2000 (120) ELT 542 (T)*, *Sushma 2022 (379) ELT 376 (T)* *Rajiv Kumar Aggarwal – 2007-TIOL-1736-CESTAT-BANG* and *Vijender Singh & Others* final order No. 60567-60568/2021 dt. 25.03.2021 in Appeal No. C/60042-43/2020, that protection against initiation of adjudication proceedings for imposition of penalty available to Customs Officer under Section 155 of Customs Act.; further Commissioner (Appeals), Customs & Central Excise, Chandigarh in similar case vide Order-in-Appeal No. 115-117/Cus/Ldh/2009 dated 27.09.2010 set aside the order-in-original imposing penalty on customs officers on the ground that proceedings initiated hit by time limitation under section 155 (2) of Customs Act.

34. Learned counsel for the appellants submits that the Adjudicating Authority erred in holding that time limit to issue notice under Section 155(2) is covered by the exemption given during Covid Pandemic and in relying upon decision of Hon'ble High Court of Madras in case of Golla Rama Rao Vs. UOI - 2000 (124) ELT 112 (Mad); statutory provisions requiring issuance of notice were not relaxed due to covid pandemic as per CBIC Circular No. 157/13/2021-GST dated 20.07.2021; the reliance on the case of Golla Rama Rao (supra) is incorrect as in the instant case Adjudicating Authority admitted that there was no abatement on the part of appellant; there was no *mala fide* intension, no *mens rea* and no allegation of any unlawful consideration.

#### **Submissions on behalf of Revenue**

35. Shri Anurag Kumar, Learned authorised Representative, for the Revenue, reiterates the findings of the impugned order and submits that the goods were mis declared as Light Melting Scrap; imported dry dates did not have any Plant Quarantine clearance and were, thereby, prohibited under Section 2(33) of the Customs Act, having been smuggled in violation of following condition specified in clause 10(2) of Plant Quarantine (Regulation of Import into India) Order, 2003; Schedule-V, VI and VII stipulates that the goods falling under these schedules shall be accompanied by an original Phytosanitary Certificate issued by the authorized officer at country of origin or Phytosanitary Certificate for re-export issued by the country of re-export along with attested copy of phytosanitary certificate from country of origin, as the case may be, with

the additional declarations being free from pests mentioned under Schedule-V and VI of this order or that the pests as specified do not occur in the country or state of origin; for both the reasons the goods are rendered liable for confiscation.

36. Learned Authorised representative submits on the Competency of ADG, DRI, to issue order extending the time period under Section 110(2) of the Customs Act, 1962 that ADG,DRI is competent authority under Section 110(2) of the Customs Act, 1962; Hon'ble Supreme Court in Review Petition no 400 of 2021 (in Civil Appeal No 1827 of 2018) held that the officers of the Directorate of Revenue Intelligence have already been appointed as officers of Customs; vide Notification 17/2002-Cus (N.T) dated 07.03.2002 issued under the provisions of the section 4 of the Customs Act, 1962, Central Government has inter-alia, appointed the Additional Director General, Directorate General of Revenue Intelligence to be the Commissioner of Customs for the whole of India. Further, by this Notification, the Central Government has appointed Additional Directors, or Joint Directors, of Directorate of Revenue Intelligence posted at Headquarters and Zonal/Regional units as the Additional Commissioners or Joint Commissioners of Customs; and also that the Deputy Directors, or Assistant Directors, of Directorate of Revenue Intelligence posted at Headquarters and Zonal/Regional units have been appointed as the Deputy Commissioners or Assistant Commissioners of Customs for the whole of India.

37. Learned authorised Representative submits on the issue of absence of Document Identification Number (DIN) that the circumstances for non-issuance of DIN have not been recorded in the

official file; however, the period pertains to the second wave of COVID 19 when the situation in the entire country was grim; the purpose of DIN was to ensure transparency in the indirect tax administration, to provide the recipients a digital facility to ascertain the genuineness of the communication; in the instant case the communication to the recipient was made by a mail of the Directorate and was also dispatched through speed post; this leaves no room regarding the authenticity of the communication; further, the petitioner did not care to verify the authenticity of the communication either; Hon'ble Supreme Court, vide an interim order dated 03-01-2024, while dealing with the case of CIT Vs Brandis Mauritius Hollings Ltd, indicated that the Court is to examine the matter further.

**Rebuttal of the submissions made on behalf of M/s Jatinder Kumar (Appeal No. C/60252/2022)**

38. Learned authorised Representative in rebuttal of the submissions made on behalf of M/s Jatinder Kumar (Appeal No. C/60252/2022) submits that M/s Secon Logistics Pvt Ltd was the Customs Broker who filed the bills of entry; their Director, Jatinder Kumar, was well versed about the regulations of Customs Broker Licensing Rules, 2018; investigations conducted by DRI, the High Sea seller M/s. Raghav Alloys and the importer ie M/s Goyal Steel industries, were found to be non-existent at declared addresses; while none of these consignees of the imported goods ever got in contact with the Shipping Line M/s MSC Agency (India) Pvt Ltd; it was Jatinder Kumar and his CB firm that were in direct touch with the Shipping Line for import of goods from Dubai; Shri Manish Kumar in his statement stated that he has not signed any HSS documents; examination

report confirmed that the signatures on the documents were made by different person and not Manish Kumar and of Shri Yashpal Goyal; Shri Love Sharma stated that he had asked Sunil Kumar of M/s EVR Enterprises for sending Rs. 10,00,000/- he owed to M/s Secon Logistics, on the directions of Jatinder Kumar; Shri Jatinder Kumar was aware that as CHA he could not deposit Customs duty, so he deliberately used this route; he gave 10 lakhs to Shri Sunil Kumar, of KVR Enterprises, covering it up as for purchase of fabric for manufacture / purchase of fabric etc for T-Shirts. Shri Sunil Kumar transferred the amount to Shri Rajan Arora of M/s Sark Enterprises, who made all payments related to Customs Duty, Port Handling Charges and other charges, through the account of M/s Sark Enterprises; Forensic report confirms that the HSS documents were not signed by Shri Yashpal Goel or Raghav Enterprises; the documents were submitted by Shri Jatinder Kumar; hence, the shadow of doubt of forgery is cast on Shri Jatinder Kumar; Shri Jatinder Kumar has also admitted that he had never met Yash Pal, proprietor of importer firm M/s Goyal Steel Industries nor had physically verified its functioning at the declared address; Form 'A', an authorisation from the importer, was handed over to him, not by Shri Yash Pal Goyal but by one Love Sharma (Love Sharma) but he did not know whereabouts of Love Sharma; Jatinder Kumar stated that M/s Raghav Alloys & Metals, the high seas seller of 05 containers to M/s Goyal Steel Industries, was in the name of none other than Manish Kumar, who worked for him on commission of Rs.200 to Rs.500 for arranging clients, collection of payments, etc; on being asked to produce record relating to his dealing, he stated that he had

not maintained any correspondence or any other record relating to transactions with importer i.e. M/s Goyal Steel Industries as a Customs Broker.

39. Learned authorised Representative submits that the averments advanced by the Counsel for the appellants on the issue of SIMS registration, Cross-Examination of Exports are an afterthought and not required in view of the strong evidence against them; Cross Examination of co-Noticees is not required as held be Hon'ble Kerala High Court in the case of NS Mahesh 2016(331) ELT: 402(Ker). He submits as regards the appellant's submission that relied upon documents were not supplied to him is incorrect; High Seas Contract has already been supplied to the appellant with the Show cause Notice; in view of the undeniable facts as above, the submissions of Shri Jatin Kumar are not acceptable; this case involves specific facts including forgery, mis-declaration, collusion of Customs officers, unbroken chain of financial transaction leading to the appellant and forensic analysis of signatures and documents; therefore, the cases relied upon are not applicable; penalties under Section 112 & 114A and 114AA have been rightly imposed.

**Rebuttal of the submissions made on behalf of Yashpal Goyal  
(Appeal No. C/60261/2022)**

40. Learned authorised Representative submits that Shri Yashpal Goyal, who had stopped operating from B 22 3245/2, Chet Singh Nagar, Ludhiana, after lockdown was imposed in March' 2020; hence he could not be located earlier; Shri Yashpal Goyal agreed that Love Sharma, who was son of his close friend Late Shri Avdesh Sharma,

informed him that he was importing a consignment of scrap for which his signatures were required; he was not promised any commission ; the fact that dry dates had been imported in guise of Light Melting Scrap was brought to his knowledge by Love Sharma after DRI booked the case; he denied knowing Jatinder Kumar or Sunil Kumar or Manish Kumar or Rajan Arora; he had signed such papers but the signatures appearing on the High Seas Sale Agreement and Form-A submitted to Indian Customs by Jatinder Kumar in respect of goods imported vide Bill of Entry No. 2086929 dated 23.12.2020, were not his.

41. Learned authorised Representative submits that though Shri Yashpal Goyal was not aware of the fact that dry dates were being attempted to be illegally imported in guise of Light Melting Scrap for which his IEC was being used by Jatinder Kumar; he had knowingly given his IEC details to Shri Love Sharma for the purpose of import and was also aware that a consignment was being imported using his IEC; bills of entry No. 2086929 dated 23.12.2020 and No. 2103144 dated 24.12.2020 were filed under his company name; yet Shri Yashpal Goyal took no steps to ensure that only genuine imports were made.; he further filed a writ Petition CWP No.20282 of 2021 in the Hon'ble Punjab & Haryana High Court; in compliance of the Hon'ble High Court order, dated 05.10.2021, he was asked to appear for hearing on 20.10.2021 before passing Speaking Order; he did not appear for hearing nor submitted any Vakalatnama granting authority to any Advocate to cause appearance on his behalf; however, Advocate Shri Saurabh Kapoor sent an email on the day of hearing

i.e. 20.10.2021, enclosing there with a Vakalatnama from one Shri Love Sharma along with an authority letter dated 22.10.2020 of M/s Goyal Steel Industries, vide which Shri Love Sharma was authorized by Shri Yashpal Goyal to do all acts on his behalf for the purpose of import & Clearance of goods at the port of Ludhiana; Shri Love Sharma is not reflected as importer in any Customs documents i.e. High Seas Sale Invoice, High Seas Sale Agreement (AP 542595), Declaration Forms; no payments pertaining to the Customs duty, the port handling charges and Shipping line charges were made by him and thirdly no email correspondence with the Shipping Line, Customs, Port authorities has been made by him.

42. Learned authorised Representative submits that though Shri Yashpal Goyal did not accept the ownership of the impugned goods, he was asking for the provisional release of the goods; it means that there was some interest/ benefit attached to it while making such request before the authority; his seeking of the copies/ details of Bill of entry taken for valuation purpose/ redetermination of value and submission that valuation was wrongly arrived at is immaterial, as the valuation of the goods was not for the purpose of charging duty; however, value has been correctly done by following the customs Valuation Rules 2007; duty involved in the case will only suffice the purpose of quantifying the quantum of penalty; his request for re-export was rightly not acceded as the import goods are prohibited and have been imported illegally; though Shri Yashpal Goyal denied having signed the High sea sales paper, Form -I etc, he has made his

IEC code available to be used by Shri Jatinder; it means the appellant was agreeing on some account with the user.

**Rebuttal of the submissions made on behalf of Sunil Kumar (Appeal No. C/60264/2022)**

43. Learned authorised Representative submits that Shri Sunil Kumar provided the details viz. Bill of Entry No., IEC and port code for the payment of the Customs duty amounting to Rs 5,94,672/- against the Bill of Entry No. 2086929 dated 23.12.2020 to Shri Rajan Arora; these details were provided to Sunil Kumar by Shri Love Sharma, who asked him to pay the Customs duty amounting to Rs 5,95,000/- against the Bill of Entry No. 2086929 dated 23.12.2020 as it was told that an amount of Rs 10,00,000/- was outstanding amount that he owed to Shri Jatinder Kumar; he also requested Shri Rajan Arora, Partner cum H-Card holder in M/s Sark Enterprises to also pay the Shipping Line charges amounting to Rs 5,29,613.50 & Rs 8,850 and HTPL port handling charges of Rs 80,942; against the goods imported vide Bill of Entry No. 2086929 dated 23.12.2020. he credited the amount to M/s Sark Enterprises instead of returning the same to account of M/s Secon Logistics Pvt Ltd; it is evident from the statement of Shri Sunil Kumar that he was also equal partner in importing/ handling the import of the impugned goods as he was having prior knowledge about the mis-declared goods by agreeing to get involved in the payment chain and appeared instrumental in getting the payments made in respect of import.

**Rebuttal of the submissions made on behalf of Shri Love Sharma (Appeal No. C/60263/2022)**

44. Learned authorised Representative submits that Shri Yashpal Goyal, proprietor of M/s Goyal Steel Industries gave his IEC details to Shri Love Sharma for the purpose of import; Two bills of entry were filed in the name of M/s Goyal Industries; yet Shri Yashpal Goyal and Shri Love Sharma took no steps to ensure that only genuine imports were made; Shri Yashpal Goyal authorised Shri Love Sharma to further give Vakalatnama to advocate to appear before authorities as per directions of Hon'ble Punjab & Haryana High Court ; authority letter dated 22.10.2020 of M/s Goyal Steel Industries authorised Shri Love Sharma to do all acts on his behalf for the purpose of import & Clearance of goods at the port of Ludhiana; the name of Love Sharma is not reflected as importer in any Customs documents i.e. High Seas Sale Invoice, High Seas Sale Agreement (AP 542595), Declaration Forms; Shri Love Sharma accepted that he is an importer dealing in the import and trading of "Ferrous Scrap" and had imported various consignments of "Heavy Melting Scrap" ; substantial evasion by misdeclaration, is corroborated by statements of co-Noticees, independent evidence, customs records, physical examination reports, and forensic findings, which rendered the goods liable for confiscation under Section 111 of the Customs Act; he abetted Jatinder Kumar by making available IEC documents, of M/s Goyal Steel Industries, which were misused by Shri Jatinder Kumar for the purpose of smuggling dry dates; he also worked as a conduit to Jatinder Kumar in passing on instructions for payment of Customs duty, Shipping Line charges, port charges etc; Shri Love Sharm failed to exercise due diligence and instead facilitated the fraudulent import based on falsified documents; despite the fact that IEC was in the

name of Shri Goyal Industries, being authorized, Shri Love Sharma stepped into the shoes of the importer; penalty under Section 117 is rightly imposed on Shri Love Sharma.

**Rebuttal of the submissions made on behalf of Shri Rajan Arora (Appeal No. C/60262/2022)**

45. Learned authorised Representative submits that Shri Rajan Arora did not file any reply to the Show Cause Notice; he did not turn up for personal hearing; as accepted by him on 23.02.2021 and 24.02.2021, he facilitated payment of the Customs duty, Shipping Line charges and port handling charges, against the Bill of Entry No. 2086929 dated 23.12.2020 on 26.12.2020, through his IDBI Bank Delhi, as per details provided by one Shri Sunil Kumar, Proprietor of M/s KVR Enterprises; he made payments on behalf of M/s Goyal Steel Industries by himself or through Sark Enterprises or Sark Cargo Services LLP without knowing Shri Yash Pal or Shri Manish Kumar or Shri Jatinder Kumar; though he stated that the same were to be reimbursed to him at a later stage, he agreed to have involved in the vicious payments chain; therefore, Penalty is rightly invoked under Section 117 of the Customs Act,1962.

**Rebuttal of the submissions made on behalf of Shri Suraj Salaria and Shri Saurabh Kumar (Appeals No. C/60213, 60232/2022)**

46. Learned authorised Representative submits that Shri Suraj Salaria, in his statement on 28.12.2020, confessed that neither any seal was cut nor containers were opened; yet he filed a report in the EDI system that imported goods were found to be Light Melting Scrap; Shri Saurabh Kumar stated that he believed the report of his

subordinate and had no reasons to doubt the same; both of them blamed it on the heavy pressure of work; there is dereliction of duty on the part of the appellants that have not performed the duty as per the procedure and examination report was put in EDI system even before examination or cutting the seals of the Containers. Both appellants averred that notice under Section 155 of the Act was not issued in time, that at the time of the cause of action, Covid pandemic was at its peak; issue of time bar is not applicable in the subject case as held in Golla Rama Rao 000(124) ELT 112 (Mad); Hon'ble Supreme Court held in the case of Bhagavan Barik AIR 1987 SC 1265 that *a thing shall be deemed to be done in good faith where it is in fact done honestly whether negligently or not; the question of good faith is one of fact; the concerned person should show that the belief impugned in the statement had a rational basis and not just a simple belief and therefore, simple or actual belief is not enough.* He submits that putting in EDI the remark, that Examination *conducted in front of Superintendent & CHA*, even without completing examination, by the Inspector an endorsement of the same by the Superintendent, shows that the actions of the appellants were not under any rational belief. He also relies on Hon'ble Supreme Court's decision in the case of Manilal Dhiklal AIR 1964 SC 1983 and submits that the appellant did not complete the examination despite of alert issued; the appellants were not complying with Law and Procedures; therefore, protection under Section 155 is not applicable. thus, Shri Suraj Salaria, Inspector and Superintendent Shri Saurabh Kumar are found liable for penalty under Section 117 of the Customs Act, 1962.

47. Heard both sides and perused the records of the case. The brief issues that are required to be considered in this case are as follows:

(i) Whether ADG, DRI is competent to issue and order extending the time period for issuance of show cause notice in terms of Section 110(2) of the Customs Act, 1962.

(ii) Whether such notice issued by ADG, DRI becomes invalid due to the non-mentioning of Document Identification Number (DIN).

(iii) Who is to be considered as an importer in the impugned case? Whether the appellant-customs broker i.e M/s Secon Logistics/ its Director Shri Jatinder Kumar or M/s Goyal Steel Industries.

(iv) Whether imposition of penalties on different firms/ persons involved is justified in the facts and circumstances of the case.

48. Coming to the issue at Sl. No.(i) above, we find that all the appellants herein have advanced the plea that ADG, DRI issued a letter/ order dated 24.06.2021 to extend the time limit for issuance of show cause notice under the provisions of Section 110(2) and that ADG, DRI is not a competent officer to issue the required extension in terms of Section 110 of the Customs Act, 1962 and that only adjudicating authority can grant such extension. We find that it will be useful to have a look at the relevant provisions of the Statute in this regard which are as follows:

SECTION 110(2). Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a

further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.

49. We find that Notification No. 17/2002-Customs (N.T.) dated 07.03.2002 issued by the Central Government, superseded Notification No. 19/90-Customs (N.T.) dated 26.04.1990. Vide the said notification ADGs, ADDs/JDs and DDs/ADs of the DRI were appointed as the Commissioners of Customs, AC/JC of Customs and DC/AC of Customs respectively, for the territorial jurisdiction of the whole of India. We also note that Notification No. 17/2002-Customs (N.T.) dated 07.03.2002 was further amended vide Notification No. 82/2014-Customs (N.T.) dated 16.09.2014, issued by the Board, with effect from 15.10.2014., where for the words "Commissioner of Customs", the words "Principal Commissioner of Customs or Commissioner of Customs" were substituted; and for the words "Additional Director General", the words "Principal Additional Director General or Additional Director General" were substituted. We find that the effect of the above notifications is that the Additional Director General, Directorate General of Revenue Intelligence posted at Headquarters and Zonal/regional unit has been appointed as Commissioner of Customs by the Central Government. We are of the considered opinion that the ADG-DRI is empowered to extend the time for issuance of SCN under Section 110 (2).

50. We find that Tribunal upheld this position in the case of Vikas Ecotech Ltd. [2019 (369) E.L.T. 1158 (Tri. - Del.)]. The Bench finds that:

**6.** It is the fact that in this case a seizure of the imported goods has been affected vide seizure Memo No. DRI/HQ/C-I/50D/INT/2018, dated 13-1-2018 at Nhava Sheva after their detention vide the detention Memo No. DRI, F.NO. DRI-1/HQ/CI/50D/INT/4/2018, dated 19-1-2018. In this regard our attention was drawn by the Ld. AR towards the Public Notice No. 2/2005, dated 5-8-2005 issued by this Tribunal. Wherein it has been held as under;

“The Hon’ble President has been pleased to order as follows:

The various Zonal Benches of this Tribunal have been established to deal with the cases arising from the areas over which such Zonal Benches have jurisdiction. While the Principal Bench, New Delhi has jurisdiction all over India, the administrative orders enabling the filing of the matters falling within the jurisdiction of any of the Zonal Benches in the Principal Bench have not proved to be conducive to efficient administration since, often matters are filed in the Principal Bench at the stage of interim relief and waiver of deposits and later transfers of such matters are sought to the Zonal Benches in which they ought to have been filed.

On reconsideration of the matter and in supersession of all the existing orders, it is hereby ordered that the cases arising within the jurisdiction of the Zonal Benches will be filed and heard before the respective Zonal Benches.”

**7.** Following the public notice (supra), in this case the appropriate jurisdiction for filing appeal will be Zonal Bench, Mumbai, where the cause of action has arisen as the impugned order is passed by the Commissioner, Nhava Sheva-III Port in the state of Maharashtra. The appellant contention that the importer is Delhi based and the searches have been conducted in their offices at Delhi by DRI is of no consequence, as it is only follow up searches after the goods were seized at Nhava Sheva. No seizure has been affected within New Delhi, giving cause to appeal before Delhi Bench of Tribunal. The show Cause notice has been issued for the extension of time for issuing of the show cause notices in respect of goods seized at Nhava Sheva Mumbai, and therefore, it will be the jurisdiction of Mumbai Bench to

deal with the appeal filed against the Order passed by the Commissioner in the instant case.

**8.** As far as the issue of SCN for extension of time by the DRI (HQ) Delhi is considered, it is seen that the DRI Officer have been conferred with the power of Customs Officer under Section 4 of the Customs Act and hence they are competent to issue SCN, on that ground of having conferred all India jurisdiction. As far as the order of Hon'ble Calcutta High Court in case of *Navneet Kumar v. Union of India & Others* in W.P. No. 3336(w) of 2018 is concerned, the same stand modified by the order of Division Bench in the matter of *Director General of Revenue Intelligence v. Navneet Kumar*, MAT 844 of 2018 within CAN 7965 of 2018, wherein the operation of the order of Ld. Single Judge has been modified as under;

"Appreciating the above *prima facie* case made out by the appellant no effect will be given to any finding in the impugned order that would divest the Directorate of Revenue Officer of power to function as Customs Officer or to investigate the case and issue and adjudicate Show Cause Notice for concentration of relevant law."

**9.** We, therefore, hold that SCN has been issued correctly by the DRI, and is not without jurisdiction.

51. We further find that vide Notification 17/2002-Cus (N.T) dated 07.03.2002 issued under the provisions of the section 4 of the Customs Act, 1962, Central Government has inter-alia, appointed the Additional Director General, Directorate General of Revenue Intelligence to be the Commissioner of Customs for the whole of India. Further, by this Notification, the Central Government has appointed Additional Directors, or Joint Directors, of Directorate of Revenue Intelligence posted at Headquarters and Zonal/Regional units as the Additional Commissioners or Joint Commissioners of Customs; and also that the Deputy Directors, or Assistant Directors, of Directorate of Revenue Intelligence posted at Headquarters and Zonal/Regional units have been appointed as the Deputy

Commissioners or Assistant Commissioners of Customs for the whole of India.

52. We find that the above position was put forth before the Hon'ble High Court of Chhattisgarh in the case of Deputy Director, Directorate of Revenue Intelligence (DRI), Chhattisgarh Vs Vijay Baid @ Vicky - 2025 (392) E.L.T. 603 (Chhattisgarh) and the Hon'ble High Court has accepted the submissions. It was submitted as follows:

The DRI officers are customs officers, and DRI itself is not a separate department but is a Directorate functioning under the administrative control of the Central Board of Indirect Taxes and Customs (erstwhile Central Board of Excise and Customs). DRI officers have always been appointed as the officers of Customs under Section 4(1) of the Act. This has been done through a series of Notifications issued by the Central Government (till 11-5-2002, and by the Board afterward) right from 1-2-1963 to 16-9-2014. The relevant Notifications in chronological order, are as under :

(i) Notification No. 37/F. No. 4/1/63-CAR., dated 1-2-1963, issued by the Central Government, vide which the Director, Directorate of Revenue Intelligence was appointed as Collector of Customs;

(ii) Notification No. 38/F. No. 4/1/63-CAR., dated 1-2-1963, issued by Central Government, vide which all officers of the Directorate of Revenue Intelligence were appointed as officers of Customs;

(iii) Notification No. 186/F. No. 437/3/79-Cus. IV, dated 4-8-1981, issued by Central Government, vide which different classes of officers of DRI, were appointed as Collectors, Deputy Collectors and Assistant Collectors of Customs with respect to defined territorial jurisdictions;

(iv) Notification 7-7-1997 issued No. by 31/1997-Cus. (N.T.), dated the Central Government, superseded Notification No. 38/63, dated 1-2-1963. Vide the Notification dated 31/1997, dated 7-7-1997, in Point No. 04 it is explicitly mentioned that all officers of Directorate of Revenue Intelligence officers are officers of Customs, the same is reproduced as under :-

"Supersession of the Notification No. 38/63-Cus. - Appointment of Custom Officers. In exercise of the powers conferred by sub-section (1) of section 4 of the



meaning thereby that the order should be a speaking order passed after affording opportunity to the concerned parties to defend themselves in the interest of natural justice. Tribunal held in the case of Vaibhav Textiles - 2001 (132) E.L.T. 678 (Tri. - Del.) as follows:

8. The bare perusal of the proviso to Section 110(2) of the Customs Act shows that extension of time for serving show cause notice to the importer/owner for confiscation of the goods can be allowed only on sufficient cause. This proviso contemplates some sort of enquiry. Therefore, the Commissioner is expected not to pass extension order mechanically or as a matter of routine, but only on being satisfied that there existed facts which indicated that investigation could not be completed for bona fide reasons within the stipulated time. In the absence of extension of time, the importer/owner of the goods becomes entitled to release of the goods immediately under sub-section (2) of Section 110 of the Customs Act. Therefore, discretion under proviso to this sub-section for extending time for issuing show cause notice has to be exercised by the Commissioner judiciously after examining the material placed before him as his order extending the time would be affecting adversely the valuable right of the importer/owner of the goods who becomes entitled to receive back the goods if no notice within the stipulated period of six months from the date of seizure of the goods had been served on him.

9. The Apex Court in Assistant Collector of Customs & Superintendent, Preventive Service Customs, Calcutta and Others v. Charan Das Malhotra (supra) has draw a fine distinction between judicial and administrative functions of the Customs Officers under the Customs Act as under: -

“The dividing line between judicial and administrative functions is thin and gradually evaporating and the functions performed by those doing judicial and administrative functions have the same object, namely, to do justice and deciding the question fairly and justly where the rights of citizens are affected to their prejudice. In the former case, there would be express rules of procedure but the object of these rules is only to enable or facilitate to decide fairly and justly.”

That was also a case where seizure of the goods was made under Section 110 of the Customs Act and the arose as to whether the extension of time could be allowed by the Commissioner in routine without

applying his mind and without hearing the owner of the goods. The Apex Court while drawing distinction between the judicial and the administrative functions of the Customs Officers was pleased to observe as under:-

“Since the power of extension was quasi-judicial and required judicial approach and would deprive the person from whom the goods are seized of the right to have the goods restored to him on the expiry of six months from the date of seizure, the opportunity of being heard must be given before passing an order in both the cases.”

The Apex Court further also observed that, “if the investigation could not be completed for bona fide reasons within the time laid down in Section 110(2) of the Customs Act and the extension of period became necessary the burden of proof is clearly on the Customs officer applying for extension and not on the person from whom the goods are seized. No extension of time for retention of seized goods could be granted without sufficient cause and without opportunity of being heard to the person whose goods were seized.”

10. Similarly, the Calcutta High Court in *Kantilal Somchand Shah & Another (supra)* in an identical case of seizure of the goods under Section 110(2) of the Customs Act had observed as under :



“The quasi-judicial authorities exercising statutory powers, cannot act contrary to the law nor can they take advantage of their own illegality. The court further observed that since the provisions of Section 110(2) of the Customs Act are mandatory, therefore, the goods retained unlawfully cannot be confiscated without contravening the mandatory provisions of the section. A show cause notice for confiscation of the goods had to be given to the owner within six months which cannot be extended without giving opportunity of being heard to the owner failing which the goods are liable to be returned to him. ”

11. The Tribunal also in a similar case of seizure of the goods under Section 110(2) of the Customs Act where extension of period was also sought under proviso to that section had held that an order passed under proviso to Section 110(2) of the Customs Act for extension of time for issuance of the show cause notice in respect of the seized goods is appealable under the provisions of clause (1) (a) of Section 129A *ibid*.

12. The observations of the Apex Court in anti-dumping case (*Designated Authority v. Haldor Topsoe*) *supra*, wherein investigation is required to be completed within one year, that extension of such a period is only administrative decision-based exigency of the case, are

in fact not all applicable to the present case. The power of the designated authority in an anti-dumping matter to extend the period for completion of investigation cannot be equated with that of the Commissioner under proviso to sub-section 110(2) of the Customs Act as the power by the latter has to be exercised judiciously on examination of material placed before him. There is no question of his subjective satisfaction because he has to determine that the cause shown before him warranted extension of time. The Commissioner has no power to allow the extension of time on the expiry of initial period of six months for serving show cause notice for the confiscation of the goods on the owner without affording opportunity of hearing to the person from whose custody the goods were seized, as observed in the above referred case by the Apex Court.

54. The letter/ communication dated 24.06.2021 is extracted below:

ANNEXURE 8 226	
 राजस्व-असूचना निदेशालय सुविमान-असूचना इकाई 213, राजी बासनी रोड, लुधियाना। (Ludhiana)	Directorate Of Revenue Intelligence Ludhiana Zonal Unit 213, Raji Basani Road, Civil Lines, Ludhiana.
Email - dril-luh-pb@aic.in      ☎0161-2430197	
F.No. DR/ILDZU/856/ (INT-02)/ENQ-17/2020/ 7/6      Dated .06.2021	
DIN:	
To Sh. Jatinder Kumar, 'F' Card Holder and Director, M/s Secon Logistics Private Limited, H. No. 169, New G K Estate, Mundian Kalan, Chandigarh Road, Ludhiana. (E-mail id: seconlogistics1@gmail.com, gaurav_6656@yahoo.com)	
<b>Subject: Extension of last date for service of Show Cause Notice Under Section 110(2) Of Customs Act, 1962- reg.</b>	
Gentleman,	
With reference to the subject cited above, it is informed that in view of Covid-19 pandemic which has resulted in longer time than usual in finishing up pending enquiries, the Show Cause Notice in respect of seized Dry dates imported vide Bills of Entry No. 2086929 dated 23.12.2020 and No. 2103144 dated 24.12.2020 seized at ICD, HTPL, Kila Raipur (INQRHG) shall be issued by 25.12.2021 as per provisions of Section 110(2) of the Customs Act, 1962.	
24/6/21  Nitin Saini (Additional Director General)	
Copy to:-	
1. Shri Yashpal Goyal, Proprietor, M/s Goyal Steel Industries, B 22 3245/2, Chet Singh Nagar, Ludhiana residing at Flat No. A3-31, Army Flats, Urban Estate, Phase-3, Dugri, Basani Avenue, Ludhiana-141013 for information please (Email ID: goyal6063@gmail.com).	
Nitin Saini (Additional Director General)	

55. On going through the above letter/ communication, it is clear that it is neither speaking nor a well-reasoned order. The only reason spelt out was that the delay occurred due to ongoing Pandemic. Taking into account the fact that the entire investigation till the issue of final show cause notice occurring during the currency of the Pandemic, the reason put forth for extending the period does not

appear to be substantiated. Moreover, we find, on-going through the show cause notice, that no worthwhile investigation, which could have a serious bearing on the case, appears to have been conducted after the issuance of the extension.

56. Now, we turn our attention to the second issue raised by the appellants that is about the non-mentioning of DIN in the said order extending the time period for issuance of show cause notice under Section 110. We find that the appellants submit that Customs Act, 1962 is a special statute and special powers are given to the Customs/D.R.I. officials; that the Central Board of Indirect Taxes and Customs (CBIC), in order to increase transparency and accountability in the administration as well as during investigation, vide Circular No. 37/2019 dated 05th November, 2019, have introduced a system for electronic (digital) generation of a Document Identification Number (DIN); as per the Circular, pre-generation of Document Identification Number (DIN) was mandatory before issuance of any communication. They submit that it was also clarified that if DIN is not generated, subjected to exceptions, then the said documents issued without DIN shall be treated as invalid and shall be deemed to have never been issued; it was further specified, vide Circular No. 43/2019-Customs, that the DIN is mandatory for all search authorizations, summons, arrest memos, inspection notices etc.

57. We find that Circular No.37/2019 stipulates at Paras 3,4 & 5 as follows:

3. Whereas DIN is a mandatory requirement, in exceptional circumstances communications may be

issued without an auto generated DIN. However, this exception is to be made only after recording the reasons in writing in the concerned file. Also, such communication shall expressly state that it has been issued without a DIN. The exigent situations in which a communication may be issued without the electronically generated DIN are as follows:-

(i) when there are technical difficulties in generating the electronic DIN, or

(ii) when communication regarding investigation/enquiry, verification etc. is required to issue at short notice or in urgent situations and the authorized officer is outside the office in the discharge of his official duties.

4. The Board also directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in para 3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. Any communication issued without an electronically generated DIN in the exigencies mentioned in paras 3 above shall be regularized within 15 working days of its issuance, by:

(i) obtaining the post facto approval of the immediate superior officer as regards the justification of issuing the communication without the electronically generated DIN;

(ii) mandatorily electronically generating the DIN after post facto approval; and

(iii) printing the electronically generated pro-forma bearing the DIN and filing it in the concerned file.

58. We find that the above order does not mention DIN. It also does not cite any reasons for not mentioning the same due to exceptional circumstances, if any, that existed. This Bench having called for the original file of the DRI and upon scrutiny, could not find any reasons given to that effect. We find that the directions given by CBEC, now CBIC, are mandatory for the field officers and the same have to be complied. We further find that the officers are required to perform as per the law and procedure laid down. We particularly note that in this regard the circulars issued by CBIC make it categorically

clear that any orders, communications, notices etc. issued without the DIN are to be treated to be invalid. The circulars also provide that in case the DIN is not mentioned, the circumstances under which it was not done need to be mentioned and the DIN may be created and communicated in some special cases within 15 days of the said communication. We find that not only the circumstances under which DIN was not mentioned in the communication are recorded nor the DIN was supplied within 15 days of the issuance of the communication. We find that these instructions are general in nature and prescribe the administrative procedure to be followed by officers to bring in the transparency in their working. These are not binding in Quasi-Judicial proceedings. We find that there is no such provision in Section 110 so as to hold that the proceedings are vitiated. Therefore, we are of the considered opinion that the contravention of the same and non-mentioning of DIN in itself does not nullify the order issued, as there is no express provision in the Law.

59. Now, we take up the issue on merits as to whether who is the importer in the impugned case; whether Secon Logistics, the custom broker – appellant or M/s Goyal Steel Industries, the IEC holder. We find that the impugned order holds that Shri Jatinder Kumar was in charge of and in control of goods imported vide Bills of Entry No. 2086929 dated 23.12.2020 and No. 2103144 dated 24.12.2020; IEC AKOPP3397B of M/s Goyal Steel Industries and IEC ARDPK9716F of M/s Raghav Alloys and Metals was misused by him for the purpose of smuggling dry dates in guise of Light Melting Scarp by forging the necessary documents like High Seas Sale Agreement (AP 542595),

Form-A, Declaration Form and High Seas Sale Invoice; he also made arrangements for payment of Customs duty, Shipping Line, port handling charges etc; therefore, in terms of provisions of Section 2 (3A) & Section 2 (26) of the Customs Act, 1962 Jatinder Kumar is the beneficial owner and importer of the goods.

60. We find that the impugned order confirms that M/s Secon Logistics, the Customs Broker and their Director, Shri Jatinder Kumar was the importer; Shri Jatinder Kumar masterminded the import of dry dates in the guise of Heavy Melting Scrap; he managed to get the IEC of M/s Goyal Industries through Shri Love Sharma; arranged for payment of Customs duties, freight charges and port charges etc through unconnected people and liaised with the shipping lines. We find that the evidence put forth by the investigation is in the form of statements by the co-accused and the emails and the forensic report that the High Sea Sale papers were not signed by Shri Yashpal Goyal.

56. In their defence the appellants submit the following.

- entire case is made on the basis of contradictory statements by Shri Yashpal Goyal of M/s Goyal Steel Industries;
- Shri Yashpal stated initially on 19.03.2021 that he had knowledge regarding import of Scrap and that he signed the documents; however, in his statement dated 26.03.2021, changed his version later;
- DRI Officers did not record statement of any person including the Importer, their Authorized representative immediately on detection of the fraud till January 2020, though they were IEC Holders;

- Shri Love Sharma, in his statement dated 26.02.2021, admitted that the he got the documents for import of Light Melting Scrap signed by Shri Yashpal Goyal; this establishes the fact that the entire documentation originated from and was executed by the importer;
- Shri Yashpal Goyal/ M/s Goyal Industries filed Writ Petitions, No. 20282 of 2021 and No. 2103144 dated 24.12.2020, before the Hon'ble Punjab & Haryana High Court, claiming ownership of the impugned goods and requesting for provisional release of the same; it is surprising that the DRI did not even file a counter to the petition; DRI did not even verify as to who purchased the stamp papers for the High Sea Sales agreement from which Notary; any such enquiry with the Notary could have easily revealed who purchased them as the Notary is supposed to maintain a Register for this purpose.
- even after the issuance of Show Cause Notice, Shri Yashpal Goyal/ M/s Goyal Industries, vide written reply, requested for release of the goods, ostensibly to buy peace, and raised objections on the valuation of the goods.
- though Shri Yashpal Goyal denied that the signatures appended on the import documents and HSS documents, he did not confirm that the same were forged by Shri Jatinder Kumar; Similarly, forensic laboratory reports say that signatures appended on the import documents and HSS documents are not of Shri Yashpal Goyal, they did not confirm that they are of Shri Jatinder Kumar;

- Shri Manoj Verma, Senior General Manager of M/s MSC Mediterranean Shipping Company, stated that the containers for import of Light Melting Scrap were booked by M/s AEGON Shipping LLC, Dubai on behalf of the Shipper M/s Sama Al Jazeera Auto Used Spare Parts TR. LLC, Dubai;
- Investigation concluded that M/s Raghav Alloys & Metals was not in existence, contrary to the evidence available and without conducting further investigation.
- the allegation as alleged in the Show Cause Notice for making payments in respect of Customs Duty and/or any other charges by the Noticee are factually in correct in so far the Customs Duty as well as other charges were paid by M/s Sark Enterprises, New Delhi where the Authorized representative has categorically admitted that the said payments were made on the directions of Shri Sunil Kumar Proprietor of M/s KVR Enterprises and Shri Jatinder Kumar was not even known to him.
- The Adjudicating Authority acknowledges and records while discussing the Role of Shri Yashpal Goyal that he was ready and willing to get the goods cleared upon payment of appropriate Customs Duty, Redemption Fine as adjudicated upon in terms of the provisions of Customs Act, 1962, in order to buy peace and settle the case and buy peace and avoid further multiple litigation.
- The impugned Show Cause Notice was based on the statement of various persons, including Shri Yashpal Goyal and Shri Love Sharma, who on the one hand claimed the title of goods and on

the other have given contrary statement against Shri Jatinder Kumar; as the stand taken was contradictory, it was required to allow cross examination of the Co-Noticees, particularly, Shri Love Sharma, in terms of Section 138 B of the Customs Act, 1962 the cross examination of the witness whose statement has been recorded has to be granted.

- Importers of "Light Melting Scrap" need to register themselves with the Director General of Foreign Trade ( DGFT), on "Steel Importing Monitoring System", giving all particulars, for each and every import, before filling of the Bill of Entry and clearance, in terms of Notification No. 17/2015-2020 dated 05.09.2019; the said registration can only be done with the help of an OTP received on the Phone Number of the Importer; in respect of goods imported by M/s Goyal Industries registration was done with the help of the Digital Signatures and in respect of imports made by M/s Raghav Industries, the same was done with the help of OTP received on their registered Mobile Numbers.

61. We find on going through the records of the case that the anomalies/ inadequacies/questions, arising as above, are neither addressed nor answered either by the investigation or the impugned order. We find that the investigation and the impugned order come to the conclusion that M/s Secon Logistics/ Shri Jatin Kumar is the beneficial importer. We find that Section 2(26) defines importer as follows.

***Sec 2 (26) –importer-*** in relation to any goods at any time between their importation and the time when

*they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer;*

**Sec 2(3A) –beneficial owner** means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.

62. We find that it is required to analyze the facts of the case vis-a-vis the definition as above. The impugned order holds that M/s Secon Logistics/ Shri Jatinder Kumar was the beneficial owner. Though, the word "owner" is not defined in Customs Act, beneficial owner is defined to be a person who exercises effective control over the goods being imported or exported. We find that other than alleging, though, on the basis of statements recorded, that the said appellants had managed to get documents for import; customs duty payment through another customs broker and liaised with the shipping agents regarding the consignment in question, it is not evidenced as to how the appellants were exercising effective control over the goods. It is not the case of the Department that the appellants have paid for the consignment to the foreign exporter; arranged for shipping from overseas port to ICD, Ludhiana, arranged for trucks for removal of goods after the customs clearance. In fact, we find that the investigation could not identify as to who placed the order on the foreign exporter and as to who made the payment and the mode of payment thereof.

63. We are of the considered opinion that unless the pecuniary involvement of the appellants is established in the impugned import, allegation of being a beneficial owner cannot be sustained just

because of the allegation that they have managed documents, managed payments towards duty and were in correspondence with the shipping agents. Coming to the allegation of managing the documents, the allegation is on the basis of retracted statements of Shri Yashpal Goyal and the report of the forensic laboratory that the signatures available on the documents were not of Shri Yashpal Goyal. Neither did Shri Yashpal Goyal said that the appellant – customs broker has forged the documents nor the forensic reports indicated that the signatures were of the appellant customs broker. We find that the investigation was happy to the extent of proving that the signatures were not of Shri Yashpal Goyal and did not make any efforts to conclusively prove that the signatures were of the appellant – customs broker or any of his employees. Thus, the allegation of forging/ managing documents by the appellant – customs broker is but an empty assertion. It is on record that Shri Yashpal Goyal stated that he has signed the import documents on the request of Shri Love Sharma for import of steel melting scraps. Shri Love Sharma has also confirmed that he has handed over the said documents to the appellant – customs broker, though, Shri Yashpal Goyal has changed his version subsequently. Shri Manish Kumar, Proprietor, M/s Raghav Alloys & Steels stated that he handed over the High Seas Sale agreement in respect of the Bill of Entry No. 2086929 dated 23.12.2020.

63.1. Coming to the issue of payments on account of customs duty, port handling charges, custodian charges etc., it is alleged that the appellant – customs broker has managed payments through M/s Sark Enterprises. The versions of different persons involved differ in the

matter. Shri Rajan Arora, Partner of M/s Sark Enterprises, stated on 23.02.2021, that he has paid the Customs duty amounting to Rs. 5,94,672/- as per the request of Shri Sunil Kumar, Proprietor of M/s KVR Enterprises, Ludhiana. We find that the role of Shri Sunil Kumar has not been investigated thoroughly and the reason as to why he made payments for the impugned import through M/s Sark Enterprises is not well established and the investigation ended with questioning the concerned as to why they did not refund Rs. 10 Lakhs to the appellant – customs broker and as to why they made payments in respect of the impugned goods. We find that the impugned order comes to the conclusion that since the appellant paid duty, he must be regarded as the importer, as per Section 47 (2) of the Customs Act, 1962. Shri Rajan Arora accepted that the payments were made through M/s Sark Enterprises or Sark Cargo Services LLP on instructions from Sunil Kumar, Proprietor, M/s KVR Enterprises, Ludhiana. If the ownership of the goods is to be decided by the reason that the duty was paid, there is no reason as to why M/s Sark Enterprises could also have been regarded as the importer.

63.2. Coming to the allegation that M/s Secon Logistics/ Shri Jatinder Kumar were in touch with the shipping agent, regarding the imported consignments, through their official/ personal mail and this establishes the control that the appellant – customs broker exercised on the imported goods, we have gone through the e-mails and find that the gist of the E-mails were to ask/inform 'Please file IGM HTPL(INQR H6) subject B/L' and ' Please find below payment details against subject shipments' .The said e-mails appear to be the routine e-mails exchanged by any customer broker for the clearance of goods

and as such, they do not constitute any incriminating information against the appellant – customs broker.

63.3. The appellant – customs broker submitted that they did not sign the request letter for out of charge of the consignment imported vide Bill of Entry No. 2086929 dated 23.12.2020. We further find that Bodhraj Sharma, Senior Manager of the Custodian Hind Terminal Private Limited, stated on 27.01.2021 that the due procedures had not been followed as the goods in question were given Out of Charge. We find that no action was proposed against the custodian for the violation inasmuch as they also did not inform the concerned authorities the fact that the customs' seals in respect of the goods as above were intact and were not broken, though, they have noticed the same.

63.4. We further find that the M/s Secon Logistics and Shri Jatinder Kumar submit that the importers of "Light Melting Scrap" need to register themselves with the Director General of Foreign Trade ( DGFT), on "Steel Importing Monitoring System", giving all particulars, for each and every import, before filling of the Bill of Entry and clearance, in terms of Notification No. 17/2015-2020 dated 05.09.2019; the said registration can only be done with the help of an OTP received on the Phone Number of the Importer; in respect of goods imported by M/s Goyal Industries registration was done with the help of the Digital Signatures and in respect of imports made by M/s Raghav Industries, the same was done with the help of OTP received on their registered Mobile Numbers. They also submit that similarly, the importers of steel scrap are required to obtain clearance

from Pollution Control Board (PCB). We find that the Investigation, at the end of DGFT or PCB, which could have thrown light on as to who were the real importers, was not done.

63.5. Shri Secon Logistics/Shri Jatinder Kumar submit that they have not been accorded permission to cross-examine the co-Noticees i.e. Shri Love Sharma, Shri Yashpal Goyal, Shri Sunil Kumar, Shri Rajan Arora, Shri Saurabh Kumar, Superintendent of Customs and Shri Suraj Salaria Inspector of Customs & experts of FSL, Mohali and IAFL Mohali. They submit that such refusal is in violation of principles of Natural Justice. We find that the investigation relies heavily on the statements of other co-accused in the instant case. We find that though the statements given, by various persons involved, were contradictory/ conflicting, the investigation did not question them again to get clarification or they have not recorded joint statements, cross-positioning one another. Therefore, it was imperative on the part of the adjudicating authority that an opportunity to cross-examination should have been given to the appellant – customs broker. We find that Hon'ble High Courts, in the cases of J & K Cigarettes Vs Collector of Central Excise – 2009-SCC-Online-Del-2645; Basudev Garg Vs Commissioner of Customs -2013-SCC-Online-Del-1447; Ambika International Vs UOI – 2016-SCC-Online-P&H-4559 & Flevel International – 2016 (332) ELT 416 (Del.), held that principles of natural justice are violated in not granting the cross-examination of witnesses.

63.6. Further, we find that not only the cross-examination was not allowed before considering the statements, given under section 108 of the Customs Act, for arriving at the conclusion, the procedure contemplated under section 138B of the Customs has not been followed. Such statements could not have been relied upon as the procedure contemplated under section 138B of the Customs Act was not followed. This is what was held by the Tribunal in M/s. Surya Wires Pvt Ltd. vs. Principal Commissioner, CGST, Raipur (Excise Appeal No. 51148 of 2020 decided on 01.04.2025). The Tribunal examined the provisions of sections 108 and 138B of the Customs Act as also the provisions of sections 14 and 9D of the Central Excise Act, 1944 and observed as follows:

“21. It would be seen section 14 of the Central Excise Act and section 108 of the Customs Act enable the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under these provisions. It is these statements which are referred to either in section 9D of the Central Excise Act or in section 138B of the Customs Act. A bare perusal of sub-section (1) of these two sections makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act or sub-section (2) of section 138B of the Customs Act, the provisions of sub-

section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain.”

.....

“28. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the

precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence.

63.7. In view of the above, we find that the allegation of having effective control, against M/s Secon Logistics/ Shri Jatinder Kumar has not been substantiated and therefore, the charge of them being beneficial owner cannot be upheld. It is not proved conclusively that M/s Secon Logistics/ Shri Jatinder Kumar have forged the documents as the investigations stopped at proving that the signatures on the documents in question were not of Shri Yashpal Goyal and did not proceed further to find out as to who signed them and as to whether Shri Jatinder Kumar forged/signed them. Therefore, the penalties imposed under Sections 112, 114A and 114AA on M/s Secon Logistics/ Shri Jatinder Kumar cannot be upheld. However, we find that the role of Shri Jatinder Kumar/ M/s Secon Logistics in the import of dry dates mis-declared as light melting scrap cannot be ignored at least as far as allowing the payment of duty for one of the impugned consignments through some other broker i.e. M/s Sark Enterprises instead of asking the importer to pay or pay themselves as agents and for not maintaining proper records of the importer, who is claimed to have entrusted the work relating to customs clearance to them. However, as no other penalty is proposed or imposed on them, we cannot go beyond the four corners of the Show

Cause Notice. We find that the impugned order is not sustainable as far as M/s Secon Logistics/ Shri Jatinder Kumar are concerned.

64. We find, more importantly, that the investigation conveniently ignored the first part of the definition of the importer which holds that the importer means "any person holding himself out to be the importer". It is interesting to note that even though Shri Yashpal Goyal/ M/s Goyal Steel Industries have claimed ownership of the goods, such claim was neither negated nor considered either by the investigation or by the impugned order. It is further intriguing to note that for about two to three months after the fraud was detected by DRI, the person/ firm whose IEC was used and in whose name the imports were made were not questioned and their initial claim that they have supplied the IEC details, Form-A etc. to Shri Love Sharma and relied upon heavily their later version and the fact that the documents were not signed by Shri Yashpal Goyal. It is on record that Shri Yashpal Goyal/ M/s Goyal Steel Industries/ Shri Love Sharma have approached the Hon'ble Punjab & Haryan High Court with two Writ Petitions No. 20282 of 2021 and No. 2103144 dated 24.12.2020 claimed ownership of the goods and requested for permission to re-export the impugned goods. It is on record that DRI did not oppose the petitions before the Hon'ble High Court. However, in terms of the directions given by the Hon'ble High Court a speaking order dated 20.10.2021 was issued to M/s Goyal Steel Industries replying firstly that DRI has jurisdiction to investigate the case, secondly, that the investigation is under progress; M/s Raghav Alloys, the High Seas Seller does not exist as the Proprietor Shri Manish

Kumar was only an employee of the appellant – customs broker and thirdly that the impugned goods are prohibited for violation of Plant Quarantine Order, 2003.

64.1. We also find that M/s Goyal Steel Industries Ltd. have also written letters dated 29.01.2021 & 07.02.2021 requesting the Commissioner to accord provisional release of the goods in terms of Section 110A of the Customs Act, 1962. The impugned order records the submission that the non-clearance of the imported alleged mis declared goods are subject to Ground Rent and Demurrage Charges, which are legally recoverable from the Noticee since the Bill of Entry has been filed in the name of the Noticee; the Adjudicating Authority may proceed to compute the applicable Customs Duty in order to avoid recurring demurrage and detention charges for which the appropriate authorities shall take legal action of recovery; further, in the alternative the goods may be permitted to be re-exported back to its Country of Origin. We find that the impugned order does not reject the claim of the appellants to be the owner of the imported goods. We are of the considered opinion that the claim of Shri Yashpal Goyal/ M/s Goyal Steel Industries could not have been rejected by the adjudicating authority in view of the definition of the word "Importer". We further find that the Learned authorised Representative submits that though Shri Yashpal Goyal did not accept the ownership of the impugned goods, he was asking for the provisional release of the goods; it means that there was some interest/ benefit attached to it while making such request before the authority; his seeking of the copies/ details of Bill of entry taken for

valuation purpose/ redetermination of value, and submission that valuation was wrongly arrived at is immaterial, as the valuation of the goods was not for the purpose of charging duty. This shows that the department accepts that Shri Yashpal Goyal/M/s Goyal Steel Industries had some interest in the consignment.

64.2. It is not understood as to why the Revenue proceeded to allege and confirm that M/s Secon Logistics/ Shri Jatinder Kumar was the beneficial owner instead of treating Shri Yashpal Goyal/ M/s Goyal Steel Industries as the importers, more so, when they have claimed to be importers not once but twice and also before the Hon'ble High Court in a sworn affidavit. We find that as the show cause notice does not allege that Shri Yashpal Goyal/ M/s Goyal Steel Industries are the importers, we cannot go beyond the Show Cause Notice and hold that Shri Yashpal Goyal/ M/s Goyal Steel Industries are the importers. We find that having permitted the use of their IEC number and having given import documents like Form-A and for the reasons discussed above and in the impugned order, the appellants have rendered themselves to penalty under Section 117 of the Customs Act, 1962 as proposed in the show cause notice.

65. As regards the other appellants i.e. Yashpal Goyal (C/60261/2022), Love Sharma (C/60263/2022), Rajan Arora (C/ 60262 / 2022), Sunil Kumar(C/60264/2022) we find that the charge against all the appellants is that they have abetted the fraud allegedly committed M/s Secon Logistics/Shri Jatinder Kumar as follows.

- Shri Yashpal Goyal had knowingly given his IEC details to Shri Love Sharma for the purpose of import and had authorized Shri

Love Sharma for import of two consignments "Light Melting Scrap" from Dubai (UAE) by way of Authority letter dated 22.10.2020

- Shri Rajan Arora paid customs duty, Shipping Line charges and port handling charges upon instruction from Sunil Kumar, proprietor of M/s KVR Enterprises.
- Shri Love Sharma made available the IEC documents of M/ Goyal Steel Industries
- Shri Sunil Kumar was that he instructed Rajan Arora to pay Shipping Line charges and port handling charges despite the fact that he is not the importer.

65.1. The defence of the appellants is as follows

- lending of IEC by M/s Yashpal Goyal, is not a violation under Customs Act, 1962, as held in Proprietor, Carmel Exports and Imports v. CC, Cochin 2012 (26) ELT 505 and in Hamid Fahim Ansari v. CC Imports, Nava Sheva: 2009 (241) ELT 168;
- show cause has not been issued within the period of six months as per section 110(2) and section 124 of the Act; ADG DRI is not competent to order extension;
- the word "abetment" is used for an activity done with intent to participate in misdeeds with pre-knowledge and presupposition of undue benefit likely to arise by the alleged activity; in order to constitute abetment, the abetter must be shown to have intentionally aided the commission of crime; the show cause notice merely makes allegation of abetment without even discussing as to how the Appellants abetted the contravention; there is no evidence adduced in the show cause notice showing

that the Appellants acted intentionally with pre-knowledge and with presupposed benefit to be obtained from Jatinder Kumar;

- there is no allegation in the Show cause Notice that the appellants **either** had previous knowledge that dry dates were being imported in the name of Light Melting Scrap **or** that they had mens rea;
- dry dates are not prohibited goods and are freely importable; thus the appellant is entitled to redeem the goods in terms of Section 125 of the Customs Act; dry dates were dispatched instead of light metal scrap only due to the mistake on the part of the foreign supplier;
- impugned order erred in determination of value the impugned goods; department has not given any justification and have contravened provisions of law and have adopted Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 straight, without exhausting the Rules 3-9 of CVR as specified;
- copy of the Bill of Entry No. 9966498 Dated 15.12.2020, relied upon for re-determination of value along with its import documents are not supplied to the Appellant and hence can not be relied upon.

65.2. We find that the main defence of the appellants is that they had no knowledge of the fact that dry dates were to be imported in the guise of Light Melting scrap; the investigation does not prove the presence of *mens rea* and it was not shown that the appellants had received any financial benefit out of their actions. We find that it is

not the case of the appellants that they had no role to play in the fraud that has been committed; they submit that they had no *mens rea*. The appellants mainly rely on decisions where it was held that *mens rea* is required for imposing penalty under Sections 112, 114A, 114AA of the Customs Act, 1962. We find that the cases are not comparable as the facts are not comparable. The appellants themselves rely on the case of Sri Kumar Agency 2008 (232) ELT 577 (SC) wherein it was held that each case is different and a single point can separate them. Relying on the same case, we find that the issue in the instant case is about the imposition of penalty under Section 117 of the Customs, Act 1962, which provides for penalty in cases where express penalty is not provided. In view of the discussion above, we have already discussed as to how Shri Yashpal Goyal abetted the fraud that has occurred in importing dry dates in the guise of Light Melting Scrap, by knowingly allowing their IEC to be used; in giving authorisation to Shri Love Sharma; in misleading the investigation by inconsistent statements etc. We also find that other appellants Love Sharma, Rajan Arora and Sunil Kumar have also rendered themselves liable to pay penalty. However, we need to keep in mind that the penalty must be commensurate with the role played.

66. Coming to the other appellants Shri Suraj Salaria (Appeal No. C/60213/2022) and Shri Saurabh Kumar (Appeal No. C/60232/2022), the Inspector and the Superintendent, respectively, we find that the allegation is that they have shown dereliction of duty in examining the goods without breaking open the seals and giving out of charge. We find that while the Inspector blames the same on Rush of work

the Superintendent says he acted on good faith in not verifying the report given by the Inspector in the EDI system. In their defence both the officers submit that the Adjudicating Authority admitted that there was no abetment on the part of appellant; there was no *mala fide* intension; no *mens rea* and no allegation of any unlawful consideration. They submit that even if it is accepted for the sake of argument that there is dereliction of duty, it doesn't constitute an offence under customs Act, 1962. They further submit that as there is no contravention of Section 47(1), penalty under Section 117 is legally unsustainable; without prejudice to above, even if a contravention of Section 47(1) were assumed, the Appellant is fully protected under Section 155(1) of the Act; the OCC order was issued in good faith; as there were no alerts issued either in respect of the importer or the cargo, they had no reason to doubt the declaration and acted on good faith; they are eligible for immunity under Section 155(1); under Section 155(2), prior written notice must be given to a customs official at least one month before initiating proceedings, and no proceedings can be initiated beyond three months from the cause of action; in the present case, the mandatory notice was issued nine months after the cause of action, rendering the proceedings null and void.

66.1. We find that the Adjudicating Authority finds that *Further, as regards the abetment or involvement of the officer, there appears nothing on record in the statement of the other Noticees, as such this aspect is ruled out, however there is dereliction of duty on the part of the Officer that he has not performed the duty as per the procedure and examination report was put in EDI system even before*

*examination or cutting the seals of the Containers and that Since, the Officer has not performed his duty in prescribed manner which has resulted in the subject case.* The Adjudicating Authority however concludes that the officers are found liable for penalty under Section 117 of the Act. We find that there is a force in the submissions of the officers. On the one hand the Adjudicating Authority finds that there is no abetment on the part of the officers and on the other hand confirms penalty on the officers. We are in agreement with the submissions of the officers that even if dereliction of duty is found the same doesn't constitute offence under Customs Act though the department is free to take any other action under relevant Rules.

66.2. We further find, as submitted by the appellants that the notice under Section 155(2) of the Customs Act has been issued beyond limitation period of three months from the accrual of cause of action. The reason advanced by the Adjudicating authority that the time limit was not applicable due to the Corona Pandemic at that time. We find that the *Suo moto* extension of time limit by Hon'ble Supreme Court applies to appeals etc under various Acts and not to the action that is required to be taken by the Officers as per Law. We find that it was held in the cases relied upon by the appellants that protection against initiation of adjudication proceedings for imposition of penalty available to Customs Officer under Section 155 of Customs Act and that limitation under section 155 (2) of Customs Act is applicable. Therefore, we find that the impugned order is not sustainable as far as the penalty imposed on Shri Suraj Salaria (Appeal No. C/60213/2022) and Shri Saurabh Kumar (Appeal No. C/60232/2022), the Inspector and the Superintendent, is concerned.

67. Coming to the issue of confiscation of the goods, we find that containers stuffed with dry dates had been imported against IEC AKOPP3397B, by mis-declaring the imported goods to be Light Melting Scrap, supplied by M/s Sama AL Jazeera Auto Used Spare Parts TR LLC, Dubai; they were sought to be cleared vide Bills of Entry i.e. BE No. 2086929 dated 23.12.2020 and No. 2103144 dated 24.12.2020. filed through and by Customs Broker M/s Secon Logistics Pvt Ltd. As the goods are mis-declared, they are liable for confiscation. We also find that the imported dry dates had violated the provisions of Para 10(2) of CHAPTER III Plant Quarantine (Regulation of Import into India) Order, 2003 and for that reason the goods are deemed to be prohibited. Therefore, we find that the confiscation as ordered by the adjudicating authority is legally sustainable.

68. In view of the discussion as above, we uphold the confiscation of the goods sought to be cleared vide Bills of Entry No. 2086929 dated 23.12.2020 and No. 2103144 dated 24.12.2020. In respect of the different appeals, we pass the following order, modifying the impugned order to the extent indicated.

(i). Appeal No. C/60251/2022 filed by M/s Secon Logistics Pvt Ltd and Appeal No. C/60252/2022 filed by Shri Jatinder Kumar are allowed.

(ii). Appeal No. C/60213/2022 filed by Shri Suraj Salaria and Appeal No. C/60232/2022 filed by Shri Saurabh Kumar are allowed.

(iii). In respect of Appeal No. C/60261/2022, Penalty imposed on Shri Yashpal Goyal Proprietor, M/s Goyal Steel Industries, under Section 117 of the Customs Act, 1962, is reduced to Rs 25,000 (Rupees Twenty-Five Thousand Only)

(iv). In respect of Appeal No. C/60263/2022, Penalty imposed on Shri Love Sharma, under Section 117 of the Customs Act, 1962, is reduced to Rs 10, 000 (Rupees Ten Thousand Only)

(v). In respect of Appeal No. C/60262/2022, Penalty imposed on Shri Rajan Arora, Partner cum H-Card holder in M/s Sark Enterprises, under Section 117 of the Customs Act, 1962, is reduced to Rs 5,000 (Rupees Five Thousand Only)

(vi). In respect of Appeal No. C/60264/20022, Penalty imposed on Shri Sunil Kumar, proprietor, M/s KVR Enterprises, under Section 117 of the Customs Act, 1962, is reduced to Rs 5,000 (Rupees Five Thousand Only)

(Order pronounced in the open court on 17/12/2025)

**(S. S. GARG)**  
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**  
**MEMBER (TECHNICAL)**