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CESTAT Allahabad Quashed Penalties in Dry Dates Import Case Over Mis-Declared Origin



This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

In a significant ruling, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Allahabad, has quashed penalties imposed on several appellants, including M/s Shakti Traders and Appellant, in a high-profile case involving the import of dry dates. The case revolved around allegations of mis-declaration of the country of origin to evade higher customs duties. The Tribunal's decision, delivered on August 30, 2024, highlights the importance of evidence-based adjudication and adherence to procedural fairness.

Background of the Case

The case stemmed from imports of dry dates by three entities: M/s Raghunath Laxminarayan, M/s B.N. International, and M/s Shakti Traders. The Directorate of Revenue Intelligence (DRI) alleged that the importers, in connivance with Appellant, mis-declared the country of origin as the UAE instead of Pakistan to evade the 200% customs duty imposed on Pakistani-origin goods under Notification No. 05/2019-Cus dated February 16, 2019. The goods were classified under a lower-duty tariff heading, attracting only 20% duty.

The DRI relied on several pieces of evidence, including:

1. A report from M/s Atul Rajasthan Date Palms Limited (ARDPL) suggesting the goods were of "Indian Subcontinent" origin.

2. Statements from related parties recorded under Section 108 of the Customs Act, 1962.
3. Alleged non-compliance with Food Safety and Standards (Packing and Labelling) Regulations, 2011.
4. Export declarations obtained from the shipping line, which mentioned "PK" (Pakistan) as the country of origin.

Based on these findings, the Commissioner of Customs (Preventive), Lucknow, ordered the confiscation of goods and imposed hefty penalties on the importers and Shri Kush Agarwal.

Key Observations by the Tribunal

1. **Certificate of Origin:** The Tribunal emphasized that the Certificate of Origin issued by the Ajman Chamber of Commerce, UAE, was a critical document. The adjudicating authority failed to verify its authenticity with the issuing authority in the UAE. The Tribunal noted that under Rule 6 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, any doubts regarding the certificate's genuineness should have been resolved through proper verification with the UAE authorities. Without such verification, the certificate could not be dismissed.
2. **Expert Opinion:** The Tribunal rejected the reliance on the ARDPL report, which was based solely on visual inspection and lacked scientific analysis. It observed that determining the country of origin is a complex matter that cannot be decided through mere physical examination.
3. **Statements and Cross-Examination:** The Tribunal highlighted that the statements recorded under Section 108 of the Customs Act were not corroborated by independent evidence. Moreover, the appellants were not given an opportunity to cross-examine the individuals who made these statements, violating principles of natural justice.
4. **Non-Compliance with FSSAI Regulations:** The Tribunal found no merit in the allegation of non-compliance with FSSAI regulations. The imported goods had been cleared by the FSSAI, which issued a "No Objection Certificate" after inspection.
5. **Export Declarations:** The Tribunal dismissed the reliance on export declarations obtained from the shipping line, noting discrepancies in the documents and the lack of authentication from Dubai Customs.
6. **Role of Appellant:** The Tribunal found no credible evidence to prove that Appellant masterminded the alleged mis-declaration. It noted that even if the documents were manipulated in the UAE, any legal action would fall under the jurisdiction of UAE authorities.

Tribunal's Decision

The Tribunal concluded that the allegations of mis-declaration and evasion of customs duty were not substantiated by credible evidence. It quashed the penalties imposed on the appellants and set aside the confiscation orders. The appeals were allowed in favor of the importers and Shri Kush Agarwal.

Implications of the Ruling

1. **Reinforcement of Procedural Fairness:** The ruling underscores the importance of adhering to procedural fairness, including the right to cross-examine witnesses and the need for evidence-based adjudication.
2. **Significance of Certificates of Origin:** The decision highlights the weightage that must be given to Certificates of Origin issued by competent authorities. Any doubts about their authenticity must be resolved through proper verification.
3. **Limitations of Expert Opinions:** The Tribunal's rejection of the ARDPL report serves as a reminder that expert opinions must be backed by scientific analysis and reasoning to hold evidentiary value.

4. **Clarity on FSSAI Compliance:** The ruling clarifies that the FSSAI is the sole authority to determine compliance with food safety regulations, and its clearance cannot be overridden by customs authorities.

Conclusion

The CESTAT's decision in this case is a landmark ruling that reinforces the principles of natural justice and evidence-based adjudication. It serves as a reminder to enforcement agencies to conduct thorough investigations and adhere to procedural requirements before initiating punitive actions. For importers and exporters, the ruling underscores the importance of maintaining proper documentation and ensuring compliance with applicable laws. This case will undoubtedly serve as a precedent in similar disputes in the future.

Source: CESTAT Allahabad

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

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70199 of 2021

(Arising out of Order-in-Original No.06 to 08/Commr/ 2020-21 dated 19.03.2021 of the Commissioner Customs (Preventive), Lucknow)

M/s Shakti Traders,
(Sahebganj, Gorakhpur)

.....Appellant

VERSUS

Commissioner of Customs (Pre), LucknowRespondent
(Kendriya Bhawan, Sector-H, Aliganj, Lucknow)

With

- I. Customs Appeal No.70227 of 2021 (Shri Vikas Kumar Gupta),**
- II. Customs Appeal No.70228 of 2021 (Shri Aakash Kumar Gupta),**

APPEARANCE:

Request for adjournment, for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

DATE OF HEARING : 28 August, 2024

AND

- III. Customs Appeal No.70270 of 2021 (Shri Kush Agarwal, Director)**
- IV. Customs Appeal No.70271 of 2021 (Shri Kush Agarwal, Director)**
- V. Customs Appeal No.70272 of 2021 (Shri Kush Agarwal, Director)**

APPEARANCE:

Shri Kamaljeet Singh, Advocate for the Appellants
Shri Santosh Kumar, Authorised Representative for the Respondent

DATE OF HEARING : 03 May, 2024

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NOs.70548-70553/2024

DATE OF PRONOUNCEMENT : 30 August, 2024

SANJIV SRIVASTAVA:

These appeals are directed against Order-in-Original No.06 to 08/Commr/ 2020-21 dated 19.03.2021 of the Commissioner Customs (Preventive) Lucknow by the impugned order following has been held:

"ORDER**(1) DRI /LZU/CI/26/INT-14/RL/2019/DATED
28.09.2020 IN RESPECT OF M/S RAGHUNATH
LAXMINARAYAN, KANPUR & OTHERS :-**

- i) *I order for confiscation of the seized goods valued at Rs. 51,45,857/- covered under aforesaid 03 Bills of Entry No. 4904698 dated 14.09.2019, No.4908226 dated 16.09.2019 and No 4908143 dated 16.09.2019 under Section-111(m) of the Customs Act, 1962. As the said goods had already been auctioned and the amount of Rs 73,13,133/- (Rupees seventy three lakhs thirteen thousands one hundred thirty three only) was realised as sale proceed, I order to appropriate the same under Section 126 of the Act ibid;*
- ii) *I impose a penalty of Rs. 12,00,000/- (Rupees twelve lakhs) on M/s Raghunath Laxminarayan,51/27-A, Ramganj, Kanpur, under Section 112 (b) of the Customs Act, 1962;*
- iii) *I impose a penalty of Rs.50,00,000/- (Rupees fifty lakhs) on Shri Saurabh Maheshwari, Authorised Representative, M/s Raghunath Laxminarayan, House No. 30, Anandpuri, Kanpur, under Section 114 AA of the Customs Act, 1962;*
- iv) *I impose a penalty of Rs.50,00,000/- (Rupees fifty lakhs) under Section 114AA and Rs. 12,00,000/- (Rupees twelve lakhs) under Section 112 (b) of the Customs Act 1962 on Shri Kush Agarwal, Director, M/s*

*Padam Parmeshwari Ventures Pvt. Ltd., D-122,
Bulandshahar Road Industrial Area, Ghaziabad.*

**(2) DRI/LZU/CI/26/INT-14/bN/2019 DATED 28.09.2020
IN RESPECT OF M/S B.N.INTERNATIONAL, KANPUR &
OTHERS**

- i) I order for confiscation of the seized goods valued at Rs. 50,91,475/- covered under aforesaid 04 Bills of Entry 4911036 dated 16.09.19, No. 4916107 dt. 16.09.19, No.4919107 dated 16.09.19 and No. 5026770 dated 24.09.2019 (Job No. 4794276 dt 23.09.2019), under Section- 111(m) of the Customs Act, 1962 as discussed above.*
- ii) I impose a penalty of Rs 50,00,000/- (Rupees fifty lakhs) on Shri Brijendra Narayan Rai, Prop. M/s B.N. International Kanpur, U.P. under Section 114 AA and Rs 12,00,000/- (Rupees twelve lakhs), under Section 112 (b) of the Customs Act 1962. After the imposition of penalty on Shri B.N.Rai, being the Proprietor of the firm, I do not impose any penalty on the proprietorship firm M/s B.N. International Kanpur, U.P; innnn nntod-19-03-2021 54*
- iii) I impose a penalty of Rs. 50,00,000/- (Rupees fifty lakhs) under Section 114AA and Rs 12,00,000/- (Rupees twelve lakhs) under Section 112 (b) of the Customs Act 1962 on Shri Kush Agarwal, Director, M/s Padam Parmeshwari Ventures Pvt. Ltd., D-122, Bulandshahar Road Industrial Area, Ghaziabad;*

**(3) DRI/IZU/CI/26/INT-14/2019/ Shakti Traders ,
DATED 28.09.2020 IN RESPECT OF M/S SHAKTI
TRADERS GORAKHPUR & OTHERS**

- i) I order for confiscation of the seized goods valued at Rs.63,77,246/-covered under aforesaid Bill of Entry 4895246 dated 13.09.2019 under Section-111(m) of the Customs Act, 1962 as discussed above.*

- ii) *I impose a penalty of Rs. 15,00,000/- (Rupees fifteen lakhs) on M/s Shakti Traders, Sahebganj, Gorakhpur , under Section 112 (b) of the Customs Act, 1962;*
- iii) *I impose a penalty of Rs. 60,00,000/- (Rupees sixty lakhs) under Section 111 114AA and Rs 15,00,000/- (Rupees fifteen lakhs) under Section 112 (b) of the Customs Act 1962 on Shri Vikas Kumar Gupta of M/s Shakti Traders, Sahebganj, Gorakhpur, of the Customs Act,1962;*
- iv) *I impose a penalty of Rs. 60,00,000/- ([Rupees sixty lakhs) under Section iv 114AA and Rs 15,00,000/- (Rupees fifteen lakhs) under Section 112 (b) of the Customs Act 1962 on Shri Akash Kumar Gupta of M/s Shakti Traders, Sahebganj, Gorakhpur;*
- v) *I impose a penalty of Rs. 60,00,000/- (Rupees sixty lakhs) under Section 114AA and Rs 15,00,000/- (Rupees fifteen lakhs), under Section 112 (b) of the Customs Act 1962 on Shri Kush Agarwal, Director, M/s Padam Parmeshwari Ventures Pvt. Ltd., D-122, Bulandshahar Road Industrial Area, Ghaziabad.*

(4) *ORDER IN RESPECT OF SEIZED DRY DATES OF M/S B.N.INTERNATIONAL KANPUR & M/S SHAKTI TRADERAS, GORAKHPUR :- As the total seized dry dates i.e 2,47,500 kgs (1,10,000 Kgs of M/s B.N. International , Kanpur and 1,37,500 kgs of M/s Shakti Traderas, Gorakhpur) had already been e-auctioned and a total consolidated amount of Rs 1,95,77,555/- (Rupees one crore ninety five lakhs seventy seven thousands five hundred and fifty five only) was realised as sale proceed, I order for appropriation of the same, proportionately ,in respect of both these Noticees, under Section 126 of the Act *ibid*;*

1.2 Early hearing applications filed by Appellant Shri Kush Agarwal in three appeals filed by him i.e Appeal No C/70270, 70271 & 70272/2021 have been allowed vide Miscellaneous Order No 70061 to 70063/2021 dated 18.11.2021.

1.3 It has been informed by the registry Note 17.01.2022 that against the same order in original, three more appeals namely C/70199/2021, C/70227/2021 and C/70228/2021 and vide order sheet dated 25.01.2022, bench directed as follows:

"3. Keeping in view the said submissions and to avoid the multiplicity of decisions, registry is directed to do the needful and list all the 6 (six) appeals before the next division bench in the month of March, 2022."

1.3 Thus all the 6 (six) appeals filed against the same order in original have been tagged together and listed for hearing. As no other appeal has been filed or brought to our notice either by the appellants, respondents or registry, we are limiting ourselves to the case against these appellants only.

2.1 The office of Directorate of Revenue Intelligence, Lucknow Zonal Unit received specific intelligence that some importers namely M/s Raghunath Laxminarayan, Ramganj, Kanpur, M/s B.N. International, Kanpur & M/s Shakti Traders, Sahebganj, Gorakhpur have connived with some overseas persons and imported Pakistan origin Dry dates, through Bills of Entry filed at ICD Panki, Kanpur, evading Customs duty by mis-declaring the country of origin of the said goods.

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

2.3 On the basis of above said specific intelligence, an enquiry on the above subject was initiated. The examination of the containers were conducted on 01.10.2019 & 03.10.2019 of M/s Raghunath Laxminarayan, Ramganj, Kanpur) 28.09.2019 and

04.10.2019 of M/s B.N. International, Mall Road, Kanpur)
27.09.2019, 28.09.2019 & 30.09.2019 M/s Shakti Traders,
Sahebganj, Gorakhpur) respectively.

2.4 To ascertain the country/ area of origin with respect to the aforesaid import consignments of Dry dates in all containers pertaining to these three importers an independent opinion has been sought from M/s Atul Rajasthan Date Palms Limited (ARDPL), Rajkiya Paudh Shala, Chopasani, Jodhpur by sending representative samples , who vide letter dated 11.10. 19 (M/s Raghunath Laxminarayan Kanpur), dated 16.10.19 (M/s B.N. International, Kanpur) &.16.10.2019 (M/s Shakti Traders, Gorakhpur) forwarded identical reports in respect of samples of all three importers that on the basis of physical examination, the said goods are of "INDIAN SUB CONTINENT". Politically, the Indian subcontinent includes all or part of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, whereas UAE is the part of Arabian Peninsula .

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

2.6 During the course of investigation, statements under Section 108 of the Customs Act, 1962 of various person including, Shri Saurabh Maheshwari Authorised representative of M/s Raghunath Laxminarayan, Kanpur, Shri B.N.Rai ,Prop.

M/s B.N. International , Kanpur , Shri Vikas Kumar Gupta & Shri Akash Gupta of M/s Shakti Traders. All of them admitted that the Dry dates lying at ICD, Panki, Kanpur were of Pakistan origin, which were supplied by Shri Kush Agarwal of M/s GVO Global FZC by re-routing the same through Dubai, UAE ; that Shri Kush Agarwal managed & arranged all the import documents, especially the Certificate of Origin (COO) issued by the concerned UAE authorities relating to the said import consignments of Dry dates of Pakistan origin.

2.7 Therefore, on reasonable belief that

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

2.7 After completion of investigations Show Cause Notices were issued to the importers and concerned as detailed in table below

Sl. No.	SCN No.	Party	Bills of Entry No. & Date	Amount of imported goods (Rs.)	Duty (Rs.)
1	DRI/LZU/CI/26/INT-14/RL/2019/10215 dated 28.09.2020	(i)M/s Raghunath Laxminarayan,	4904698 dated 14.09.2019	51,45,857	1,42,84,899

		Ramganj, Kanpur, (ii) Shri Saurabh Maheshwari, Kanpur. (ii) Shri Kush Agarwal, Ghaziabad	4908226 dated 16.09.2019 and 4908143 dated 16.09.2019		
2	DRI/LZU/C1/26/IN-14/BN/2 019 dated 28.09.20	(i) M/S B.N. International. Mall Road, Kanpur (ii) Shri Bijendra Narayan Rai (iii) Shri Kush Agarwal	4911036 dated 16.09.19, 4916107 dt 16.09.19 4919107 dated 16.09.19 and 4794276 dt 23.09.2019	50,91,475	1,41,33,935
3	DRI/LZU/C1/26/IN-14/BN/2019/ dated 28.09.20	(i) M/s Shakti Traders Traders, Sahebganj. Gorakhpur (ii) Shri Vikas Kumar Gupta, Authorised Representative of M/S Shakti Traders (iii) Sri Akash Kumar Gupta, Sahebganj Gorakhpur (iv) Shri Kush Agarwal, Ghaziabad	4895246 Dated 13.09.2019	63,77,246	1,77,03,235

The three importers & Shri Saurabh Maheshwari, Shri Bijendra Narayan Rai, Akash Gupta , Vikas Gupta & Shri Kush Agarwal were required to show cause as to why:-

- (i) Seized Dry dates of three importers as detailed in Table (A) should not be confiscated under Section 111(m) of the Customs Act, 1962?
- (ii) Penalty should not be imposed upon M/s Raghunath Laxminarayan, Ramganj, Kanpur, M/s B.N.International, Kanpur & M/s Shakti Traders Gorakhpur under Section 112 (a) and/or 112(b) of the Customs Act 1962?
- (iii) Penalty should not be imposed upon Shri Saurabh Maheshwari, M/S Raghunath Laxminarayan, Ramganj, Kanpur under Section 114 AA of the Customs Act 1962?
- (iv) Penalty should not be impose upon , Shri Bijendra Narayan Rai, Vikas Gupta & Akash Kumar Gupta under Section 112 (a) & /or 112(b) and 114AA of the Customs Act 1962?
- (v) Penalty should not be imposed upon Shri Kush Agarwal under Section 112 (a) and/or 112(b) and 114AA (in all three SCNs separately)?
- (vi) In case the Competent Authority wants to redeem the impugned goods under Section 125 of the Customs Act, 1962, duty should not be demanded by the Competent Authority from them alongwith the redemption fine as decided?

2.7 The show cause notices have been adjudicated as per the impugned order.

2.8 Aggrieved appellants have filed these appeals. As observed earlier no appeals have been filed by M/s Raghunath Laxminarayan, Ramganj, Kanpur, Shri Saurabh Maheshwari, Kanpur, M/S B.N. International. Mall Road, Kanpur, Shri Bijendra Narayan Rai. In absence of any appeal by these persons the impugned order to the extent it is against these persons acquires finality.

3.1 When the matter was listed on 03.05.2024, we heard Shri Kamaljeet Singh Advocate for the appellant in appeal No C/70270, 70271 and 70272/2021. Counsel for appellant in other three appeals sought adjournment.

3.2 Counsel for Appellant in appeal No C/70199/2021, C/70227/2021 and C/70228/2021 Shri Shubham Agarwal,

Advocate sought adjournments repeatedly when the matter was listed 10.03.2022, 04.04.2024, 03.05.2024, 21.05.2024, 03.06.2024 and 28.08.2024. The manner in which repeated adjournments have been sought it appeared that appellants in these appeals were not interested in appearing before the Tribunal for arguing their case. Accordingly, on 28.08.2024 bench observed-

"The matter arising out of the same impugned order is already heard on 03.05.2024 and orders were reserved.

2. Request for adjournment filed by the learned Counsel is rejected. We have heard the learned Authorized Representative appearing for the respondent. Order reserved."

In view of the decision of the Hon'ble Supreme Court in case of Rishi Nandan Pandit [1999 (114) E.L.T. 779 (S.C.)] observing as follows, these appeals are not being dismissed for non prosecution in terms of Rule 20 of CESTAT Procedure Rules, 1982 but are being considered on merits on the basis of records available:

"4. When the Counsel engaged by the appellants in a criminal appeal does not turn up there is no obligation for the Court of Appeal to wait for him or even to adjourn the case awaiting his presence. The earlier view of a two Judge Bench of this Court in Ram Naresh Yadav and Ors. v. State of Bihar - AIR 1987 SC 1500, that in such a situation the Court could only dismiss the appeal for default, has been held erroneous by a three Judge Bench of this Court in Bani Singh and Ors. v. State of U.P. - 1996 (4) SCC 720. A.M. Ahmadi, CJ, speaking for the Bench, has stated the legal position thus :

"The law clearly expects the appellate Court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial Court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to

satisfying itself that the reasoning and findings recorded by the trial Court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav case (AIR 1987 SC 1500) that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution”.

3.3 We have heard Shri Santosh Kumar, Authorized Representative for the revenue.

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

- These three appeals have been filed by his client against above referred order-in- original wherein the importers are :-
 - M/s. Raghunath Laxminarayan
 - M/s.B.N. International.
 - M/s. Shakti Traders.
- the dispute in the present case is regarding the country of origin of the dry dates exported by the appellant and imported by the above three importers.
- the goods are duly supported/covered by "country of origin certificate issued by the Ajman Chamber of Commerce which is the competent designated authority of the Govt. of UAE for issuing 'country of origin' certificates. The said certificate of country of origin is bar coded, yet its authenticity has not been verified by the Department.
- Since the 'country of origin' certificate has been issued by the competent designated authority of the Govt. of UAE, its genuineness cannot be doubted.

- there is no allegation in the show cause notice or finding in the impugned order that 'certificate of origin' is not genuine. No enquiry has been made by the Revenue from the Ajman Chamber of Commerce, UAE or from the Govt. of UAE to ascertain whether or not the 'certificate of origin' is genuine. In the absence of any enquiry, the allegation that the goods (dry dates) have not originated in UAE is not sustainable
- No reliance can be placed on the so-called expert opinion given by M/s. Atul Rajasthan Date Palms Ltd., Jodhpur for reasons as follows:
 - they have not mentioned in their test report "whether they have a lab to test country of origin of dates".
 - they have not mentioned what tests were done by them to ascertain country of origin.
 - they have given only on basis of physical appearance. The opinion was given within one day from date of receipt of letter of DRI by them.
 - they are not accredited by the Govt, to carry out any tests on food items. The FSSAI has notified 183 NABL Accredited Laboratories as mentioned in M.F. (D.R.) Instruction no. 1/2020-Cus dated 12.02.2020 where the Customs Department can get testing of food products done. The name of M/S. Atul Rajasthan Date Palms Ltd. is not in this list of 183 NABL Accredited Laboratories.
- the expert who has given opinion regarding country of origin was not produced for cross-examination. In view of the above factors, no reliance can be placed on the expert opinion obtained from M/s. Atul Rajasthan Date Palms Ltd,

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

3.6 Learned authorized representative reiterates the findings recorded in the impugned order.

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

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

"A. The aftermath of Pulwama

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

The goods in question namely dry dates otherwise attracted duty at rate of 30% if imported from any place other than *Islamic Republic of Pakistan* whereas as per the notification dated 16.02.2019 when imported from Pakistan attracted duty at rate of 200%. On the basis of intelligence to the effect that in order to avoid the higher rate of duty on these goods importers started routing the said goods though of Pakistan origin from various countries in Middle East, by declaring the goods to be of that origin, investigations and enquiries were undertaken by the revenue authority and all the consignment pending clearance were detained and seized under reasonable belief that the country of origin certificate have been manipulated to claim the benefit of lower rate of duty. Subsequently the show cause notices as detailed earlier have been issued to the importers and other concerned which are subject matter of these appeals. As indicated earlier we are in present case concerned with the order in original by which the goods imported by the three importers namely M/s. Raghunath Laxminarayan, M/s.B.N. International and M/s. Shakti Traders have been confiscated. Penalty have been imposed on the importers and other concerned with the said imported goods, including Shri Kush Agarwal, who is said to have exported the said goods from UAE.

4.3 As out of the three importers appeal have been filed only by one importer namely M/s Shakti Tarders we are referring to the portion of impugned order which is in respect of the said importer and the same is reproduced below:

"14. The following defence Replies were submitted by the parties in reference to their respective Show Cause Notices.

- 1. SCN NO:- DRI/LZU/CI/26/IN-14/RL/2019/10215 dated 28.09.2020 M/s Raghunath Laxminarayan, Kanpur through their Shri S. A. Khan submitted a reply dated 18.02.2021 (during last opportunity of Personal Hearing) alongwith its enclosures.*
- 2. SCN No. :-DRI/LZU/CI/26/IN-14/BN/2019 dated 28.09.2020 Shri B. N. Rai, Prop M/s B. N. International*

Kanpur, appeared for virtual hearing on 23.12.2020 and presented the version on behalf of him and his firm (both Noticees).

3. SCN NO:- DRI/LZU/CI/26/INT-14/SHAKTI RADERS/2019 DT, 28.09.2020:- M/s Shakti Traders, Sahebganj, Gorakhpur, Shri Akash Gupta & Shri Vikas Gupta, through their authorized counsel Shri Raghvendra Pratap Singh submitted a reply dated 02.01.2021.

Shri Kush Agarwal is common Noticee in all three Show Cause Notices, but neither he nor any one on his behalf appeared during all opportunities of Personal Hearings. However, later on his counsel Shri Kushal Miglani, submitted his defense replies in respect of all three Show Cause Notices.

In this connection it is submitted that the major points of defence reply received on behalf of the noticees, are discussed excessively in the discussion & findings, where submissions of every noticee have been dealt separately while discussing their roles in the case, therefore, the same are not dealt here.

DISCUSSION & FINDINGS:-

15.

16. I observe that the main dispute in the respective cases revolves around the classification of the impugned goods. I observe that the importers had allegedly attempted to evade higher rate of Customs duty by mis-declaring the country of origin of the said Pakistan origin Dry dates as United Arab Emirates in the bills of entry, classifying them under CTH 0808041030 where Customs duty is @ 20% instead of its correct CTH 98060000, attracting Customs duty @ 200% as contended by the department. Besides it, confiscation of the impugned goods, imposition of penalty on Noticees under various Sections of the Customs Act

1962 , proposed in the subject Show Cause Notices, shall also be discussed

17. EVIDENCES EMERGED DURING THE INVESTIGATION:-I find that the allegations of allegedly attempt to evade higher rate of Customs duty by mis-declaring the country of origin of the said Pakistan origin Dry dates as United Arab Emirates by these importers with the help of the alleged master mind Shri Kush Agarwal is mainly based on the following tangible and corroborative evidences emerged during the investigation, done by the DRI:-

(I) REPORT OF M/S ATUL RAJASTHAN DATE PALMS LIMITED:

I find that to ascertain the country/area of origin with respect to the aforesaid import consignments of Dry dates pertaining to M/s Raghunath Laxminarayan, Kanpur, M/s B.N.International, Kanpur and M/s Shakti Traders, Gorakhpur was sought from M/s Atul Rajasthan Date an independent opinion Palms Limited (ARDPL), Rajkiya Paudh Shala, Chopasani, Jodhpur by sending them three representative samples of seized dry dates of these three importers. I observe that M/s Atul Rajasthan Date Palms Limited is a subsidiary company of Atul Limited with 26% shareholding of Rajasthan Horticulture Development Society, Government of Rajasthan. They have the expertise in tissue culture raised date palms and also have a tissue culture laboratory for Date Palms at Jodhpur. Representative sample drawn from the said import consignments of Dry dates was sent to M/s Atul Rajasthan Date Palms Limited for examination. M/s Atul Rajasthan Date Palms Limited vide letter dated 11.10.2019, in respect of all three samples of these importers reported that on the basis of physical examination, the said goods is of "INDIAN SUBCONTINENT". In this regard it is evident that politically, the Indian subcontinent includes all or part of Bangladesh,

Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, whereas UAE is the part of Arabian Peninsula consisting of the countries - Yemen, Oman, Qatar, Bahrain, Kuwait, Saudi Arabia and the United Arab Emirates. Hence the documents filed by the petitioner before the customs authorities stating that the said dry dates imported by them are of UAE origin appeared false.

(II) STATEMENTS OF RELATED PERSONS INCLUDING THE IMPORTERS, ALL RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT 1962:-

I find that all the importers in these three cases, and other related persons like Shri Anil Agarwal, Shri Chandan Chaudhary , Shri Manoj Bansal etc, in their respective statements, all recorded under Section 108 of Customs Act 1962, before the Officers of DRI, have categorically exposed the modus operendi adopted by them in this case for the import of dry dates in connivance with Shri Kush Agarwal , that has already been discussed in this order. However the main points of their statements are being discussed as under:-

(a) SCN NO.:-DRI /LZU/CI/26/INT-14/RL/2019/10215 DATED 28.09.2020 - SHRI SAURABH MAHESHWARI OF M/S RAGHUNATH LAXMINARAYAN (STATEMENT DATED 18.10.2019) :-

Shri Maheshwari stated that Shri Sunil Khanna of Venkat Traders Kanpur, who had also imported Dry dates told him about Shri Kush Agarwal that thereafter he had a conversation with Shri Kush Agarwal, who revealed him that they were supplying Pakistan origin Dry dates to India by re-routing the same through UAE, but all the concerned import documents have been got prepared in the name of UAE ; that regarding certificate of origin Sh. Kush Agarwal informed that he would arrange the same issued from UAD itself for smooth importation of the said goods, because as per the documents these Dry dates would

appear as of UAE origin and the actual Pakistani supplier of these Dry dates would not come into picture, as already been done in respect of previous supply of Pakistan origin dry dates to other Indian importers made by him Shri Agarwal) , that finding this scheme cheaper, he agreed for the importation of the said Dry dates of Pakistani origin by following the same modus operandi ; that the said 04 containers of Dry dates have been imported from the firm of Shri Kush Agarwal i.e. M/s GVO Global FZC, UAE by adopting the same modus-operandi and all the required documents including Certificate of Origin for the said import consignments have been arranged but Shri Kush Agarwal, who supplied the said goods on credit basis ; that he did not find any difference between the Dry dates imported by them through Shri Kush Agarwal and the dry dates earlier imported from Pakistan by their firm ; that he is in agreement with the report of M/s Atul Rajasthan Date Palms Limited, Jodhpur dated 11.10.2019 that the imported Dry dates are of Indian sub-continent origin.

(b) SCN No. :-DRI/LZU/CI/26/IN-14/BN/2019 dated 28.09.2020, SHRI BIJENDRA NARAYAN RAI , (STATEMENT DATED 12.10.2019)

I observe that Shri Rai stated that he visited Dubai in the year 2018 for business purpose, where his client Shri Sayyadji introduced him to his brother Shri Saajid and another person Shri Kush Agarwal , who was the owner of the firm M/ S GVO Global FZC, UAE ; that he came to know that Dry dates had been imported into India from Pakistan in the past, but it is closed now due to imposition of 200% of Customs duty but , import of Dry dates in India was taking place in unlawful manner; that Shri Kush Agarwal assured him that though Dry dates had been procured by him from Pakistan, but all the import documents including C00 (certificate of origin) relating to the import consignments of said Dry dates would be issued from UAE

and there would be no problem in customs clearances of the said goods and the said goods would be supplied on credit basis ; that on being satisfied, he finalised the import of one container of Dry dates through ICD Panki, Kanpur in August 2019,; that encouraged by this deal , he (Shri Raj Kulkarni Shri Kush Agarwal to supply four more containers of Dry dates, which arrived at ICD Panki, Kanpur in the month of September 2019; that apart from that, one card was also tagged on each bag containing details viz. name of his firm , Ms B N International, name of M/ S GVO Global, FSSAI no. of his firm, quantity of goods etc. These cards were found either stitched or stapled on the bags ; that he found a marking of month & year of production & expiry' on the bags. Apart from that, one card was also found stapled on each bag containing details viz. name of his firm M/s B N International, name of M/S GVO Global, FSSAI no. of his firm, quantity of goods etc. This time, such cards were neither stitched nor pasted on the bags ; that in the earlier import consignment of Dry dates in one container,

some of these cards were found stapled on the bags. In the subsequent import consignments of Dry dates in four containers, such cards were found stapled on all the bags. This kind of stapled cards can only be treated as labels which can be separated anyway and accordingly, the same is against Food Safety and Standards [Packing and Labelling) Regulation, 2011 [point no. 2.2.1 (4) of Chapter 2 issued by FSSAI: that on comparing all such Dry dates, he does not find any difference between Dry dates imported from Pakistan and Dry dates imported by his firm from Dubai, UAE.

(c) SCN NO.:- DRI/LZU/CI/26/INT-14/SHAKTI TRADERS/2019 DT. 28.09.2020:-

(i) SHRI VIKAS KUMAR GUPTA (STATEMENT DATED 04.10.2019) that thereafter, their firm, M/s Shakti Traders had imported three containers of Dry dates in the month of

July'2019 under Bill of Entry no. 4218360 dated 25.07.19 and imported two containers of Dry dates in the month of August'2019 from M/s GVO Global FZC (UAE) through ICD, Dadri ; that in the month of July'2019, Sh. Kush Agarwal contacted him telephonically from Dubai & told him that he was engaged in the business of Dry dates in Dubai and he would fully arrange the supply of Dry dates from Dubai, if he (Vikas) so desired and that documents related to the said import of Pakistan origin Dry dates shall be arranged; that thereafter, he received the said goods in three containers on 05.08.2019 at Gorakhpur. Similarly he received the said goods in two containers on 21.08.2019 directly at Gorakhpur; that after receiving the said imported goods from ICD, Dadri, he felt that the transportation cost would be less on importing the said goods through ICD, Panki due to shorter distance and, thereafter, he came to know about M/s Oneworld Shipping India Pvt. Limited and contacted Sadab Khan on phone for CHA related work regarding import clearance of the goods. Subsequently, he contacted Kush Agarwal on phone and asked him to supply the goods. After receiving the import related documents through Courier, he forwarded the said documents to Sadab Khan along with his IEC, AADHAAR card, FSSAI certificate etc.; that however, the goods could not be cleared as the same were held up for checking;

(ii) SHRI VIKAS KUMAR GUPTA (STATEMENT DATED 10.10.2019) stated that Shri Pradeep , Prop. of M/ S New Lal Shahbaj Traders, Pakistan provided him the contact no. of Chandan CHA, of M/ S SS MOMMY International Pvt. Ltd., NOIDA and also asked him to restart import of Dry dates, supply of which would be managed by Shri Kush Agarwal, the Owner of M/s GVO Global, UAE and its import documents would be provided by Shri Agarwal; that he imported 05 containers of Dry dates through ICD, Dadri from M/ S GVO Global, UAE and thereafter, he again placed orders to Kush Agarwal for the import of Dry dates in

another 05 containers through ICD Panki, Kanpur; that on 20.09,2019, he received a call from CHA Sadab informing him that the cards containing details related to exporter, importer, PSSAI no., quantity etc. are found to be stapled on the packaging bags of Dry dates contained in 05 containers at ICD Panki, Kanpur, which is against the provisions of FSSAI So, next day on 21.09.19, he contacted Kush in this regard to which he responded that there is no problem in it.; that after looking at the samples of Dry dates drawn from 5 nos. of containers of Dry dates imported by his firm M/S Shakti Traders from M/ S GVO Global through ICD Panki, Kanpur, he does not find any difference between the said sample of Dry dates and Dry dates earlier imported by them from Pakistan.

(iii) SHRI AKASH KUMAR GUPTA (STATEMENT DATED 10.10-2019) that Since Pakistani traders devised another route for supply of their Dry dates through Dubai and also, lured them with supply of the said Dry dates on credit and assured that all the documentation in respect of the said Dry dates would be in the name of a Dubai based firm ie. M/S GVO Global and the country of origin of such Dry dates would be of Dubai and a certificate in this regard will also be provided , hence they agreed to import Dry dates of Pakistan origin Via Dubai; that they imported Dry dates in 05 containers through ICD, Dadri in the month of July 19 through Pakistani supplier of Dry dates; that Pradeep and Kush Agarwal, the owner of GVO Global FZC had connived together to devise a plan for supply of Dry date of Pakistan origin and Pradeep had given details of a person namely, Chandan for clearance of the said goods & thereafter, he (Akash) had made detailed discussion with his elder his brother, Shri Vikas Gupta told him that first Pradeep Ji would supply Dry dates of Pakistan origin from Pakistan to Dubai, which in turn would be supplied to India by Shri Kush Agarwal through his firm M/s GVO Global FZC and Shri Kush Agarwal will provide all the import

documents to them through Chander and in this wau, they would import Dry dates of Pakistan origin into India via Dubai; that the supply of Dry dates of Pakistan origin, imported by their firm M/S Shakti Traders) in 05 containers in July'19, was first managed by the Pakistani supplier of Dry dates, Shri Pradeep Ji in connivance with Shri Kush Agarwal from Pakistan to Dubai and then Shri Kush Agarwal exported this Dry dates of Pakistan origin to India through his firm M/S GVO Global FZC ; that subsequent consignments of Dry dates of Pakistan origin in 05 nos. of containers, which are held up at ICD Panki for verification, also got re-routed through Dubai by Pradeep ji in with Shri Kush Agarwal through his firm M/S GVO Global FZC in similar manner; that there is no difference between the samples of Dry dates drawn from 05 nos. of containers of Dry dates imported by their firm M/S Shakti Traders from M/ S GVO Global FZC through ICD Panki and Dry dates imported by them from Pakistan earlier.

(iv) SHRI MANOJ KUMAR BANSAL (STATEMENT DT. 19.11.19) stated that they purchased Dry dates from different parties of Lucknow, Gorahpur, Delhi and Ghaziabad including M/S Shakti Traders, Gorakhpur; that they purchased 7500 Kgs of Dry dates from M/S Shakti Traders, Gorakhpur in the month of Aug'2019; that in the conversation recorded therein was between him and Shri Akash Gupta, he was exploring the prospects of importing Dry dates and during this process, he came to know that the import of Pakistan origin Dry dates from Pakistan had stopped due to imposition of 200% of Customs duty on Pakistan origin Dry dates; that on getting the information with regard to import of Dry dates by M/S Shakti Tradres, Gorakhpur from UAE, he had the aforesaid conversation with Shri Akash Gupta; that during this conversation, Shri Akash Gupta accepted that the Dry dates imported by them through UAE, is not the produce of UAE, The said goods were being supplied by the Pakistani supplier into India by

managing its supplu (first importing the said goods from Pakistan into Dubai and then re-routing to India) as huge quantity of Dry dates is now accumulated in Pakistan and they (Pakistani supplier) have to sell the said goods.

(v) SHRI CHANDAN CHAUDHARY (STATEMENT DATED 16.10.2019) stated that their firm started the import clearance work of Dry dates in the month of May 2019 for M/ S Goodwill Traders, which they got through \$hri Anil Agawal of M/S K V Metal Industries, Gautam Budh Nagar ; that apart from this, their firm had also undertaken the import clearance work in respect of M/s Padam Parmeshwari Ventures Put. Ltd. , M/s Omega Packwell Pvt. Ltd. M/s Navarshi Overseas, M/s Shakti Traders, M/s Suresh Kumar & sons, M/s Venkat Traders, M/s Jai Baba Traders & M/s Varun Traders,; that it came to his knowledge that. though Dry dates were of Pakistan origin but on the basis of documents, imports of the said Dry dates had been shown as supplied from UAE and Shri Manoranjan Singh had connived with Shri Anil Agarwal in execution of this work.

(vi) SHRI ANIL KUMAR AGARWAL, MANAGER, S PADAM PARMESHWARI VENTURES PVT. LTD.GHAZIABAD (STATEMENT DATED 04.112019) stated that Shri Kush Agarwal (his niece, bhanja)and his wife Smt, Sonali Agarwal are the Directors of the firm, There is another firm namely -M/ S Golden valley overseas situated at D-122, Bulandshahar Industrial Area Ghaziabad wherein Smt. Vijaya Rani Agarwal (mother of Shri Kush Agarwal) has 50% Partnership and remaining 50% Partnership is with Shri Rohit Talwar & Shri Lakshya Talwar ; that Shri Kush Agatwal looks after all the work related to the said firm on behalf of his mother; that Shri Kush Agarwal went to Dubai in Feb'2019 and established a firm namely, M/S GVO Global there in April-May'2019; that Shri Kush Agamal either himself or through him had also given directions to Shri

Manoranjan Singh and Shri Chandan Chaudhary of M/S SS Mommy International for the customs clearance of the imported Dry dates ; that he also looked after the import related work of M/ S Shakti Traders, Gorakhpur; and some other firms for the import clearances of Dry dates supplied by M/S GVO Global, UAE.

vii) SHRI ANIL KUMAR AGARWAL (STATEMENT DATED 06.12.2019) stated that he was very well aware that Dry dates imported by M/S Padam Parmeshwati Ventures Put, Ltd.in 08 nos. of containers in the months of June 19 & August' 19 from M/ S GVO Global FZC, UAE was of Pakistan origin ; that before this import, Shri Kush Agarwal discussed the matter with him and told that he has devised a modus operandi for importing Dry dates of Pakistan origin into India by re-routing the said goods through Dubai, UAE & also revealed that he would manage 'Certificate of origin' of the said Dry dates of Pakistan origin issued by the UAE authority and accordingly, the said Dry dates procured from Pakistan would be treated as produce of UAE; that thereafter, Shri Kush Agarwal got prepared all the import documents including Certificate of origin in Dubai, UAE in respect of the said 08 (eight) nos. of containers of Dry dates of Pakistan origin and sent the same to him through courier at the address i.e. D-122, Bulandshahar Road Industrial Area, Ghaziabad, which he provided to CHA firm, M/S SS Mommy International (Pvt..) Ltd. Ghaziabad for custom clearance; that he was in contact with Shri Manoranjan Singh and Shri Chandan Chaudhary of M/s SS Mommy International (Pvt..) Ltd. since December' 2018 and had also provided the import documents pertaining to other importers viz.M/s Shakti Traders, Gorakhpur; and other firms with respect to import consignments of Dry dates of Pakistan origin re-routed through UAE into India to M/s SS Mommy International (Pvt..) Ltd., Ghaziabad for customs clearance, which he received from Shri Kush Agaiwal; that his firm had earlier

imported Dry dates from Pakistan in the year 2017-18 and he did not find any difference in the two consignments of Dry dates.

(III) INVESTIGATION FROM THE PURCHASERS OF IMPORTED DRY DATES FROM THE NOTICEES:-

During the investigation it was revealed from the purchasers of dry dates from the notices as in his statement dated 01.11.2019 Shri Rajaram Agarwal, prop, M/ s Preeti traders Lucknow admitted and Shri Anoop Jhamtani, PROP. Vasudev Parmanand & Sons in his statement dated 14.11.2019 both stated that they had imported dry dates from Pakistan earlier but stopped the same from February 2019 ; that they had purchased dry dats from M/s B.N. International, Kanpur for the first time in August 2019 and found no difference between the dates imported by them from Pakistan and dry dates purchased from M/s B.N. International. Similarly Shri Sachin Agarwal, Proprietor, M/s Amamath Sachin Kumar, Subhash Marg, Lucknow in his, statement on 07.10.2019 stated that he is aware of the fact that earlier import of Dry dates was mainly from Pakistan but after increase of duty in February 19, import of Dry dates from Pakistan declined that there is no difference between Dry Dates purchased by them prior to February 19 and Dru Dates purchased from M/s Shakti Traders. Shri Aiay Keshari, Proprietor of M/s Rajaram Kesarwani, Varanasi, another Purchaser of dry dates from M/s Shakti Tarders, Sahebganj, Gorakhpur, , in his statement dated 11.112019 stated that they had imported Dry dates earlier from Pakistan but now it is stopped since Februrar 2019 and they had purchased Dry dates from M/s Shaktj Traderst Gorakhpur for the first time in of August 2019.

IV) TELEPHONIC CONVERSATION ABOUT THE ORIGIN OF IMPORTED DRY DATES :-

I find that in his statement Shri Vikas Kumar Gupra of M/s Shakti Traders admitted that he heard carefully two audio files extracted from his mobile and he put on/appended his signature on the printout of this conversation in token of his agreement ; that these audio files were sent to his phone by his brother Shri Akash Gupta through whatsapp; that in the said printout, the first person is Shri Manoj Bansal, who runs a shop, in the name of Bansal' brothers at Ismailpur, Gorakhpur and the second person is his younger brother, Shri Akash Gupta ; that in the said conversation, it is admitted that Dry dates imported by them is not of UAE origin and the same were supplied from Pakistan.This conversation was also confirmed by Shri Akash Kumar Gupta in his own statement dated 10.10.2019, and by Shri Manoj Bansal in his statement dated 19.11.2019, both recorded under Section 108 of the Customs Act 1962.

(V) CONTRAVENTION OF THE PROVISINS OF THE FOOD SAFETY AND STANDARDS (PACKING AND LABELLING) REGULATION, 2011 ISSUED BY FSSAI :-

I find that as per the records a major discrepancy was detected by the investigating officer during the course of examination, as each bag of the said 04 containers was found stapled with a slip which contained details of exporter & importer, gross weight, net weight, country of origin, IEC no. and FSSAI No. of importer. This slip was easily separable from such packaging bags in clear violation of the point no. 2.2.1 (4) of Chapter 2 of, which provides that "Label in pre-packaged foods shall be applied in such a manner that they will not become separated from the container.

(VI) INVESTIGATION IN RESPECT OF FZ TRANSIT OUT CUSTOMS DECLARATIONS :-

I observe that on being requested the shipping line of the importer i.e. M/s Mexicon Shipping Agencies, submitted copy of Export (Customs) Declarations. On going through

the above Export (Customs) Declarations, it is noticed that these are FZ Transit Out Customs Declarations which were filed with Dubai Customs, Federal Customs Authority, UAE for transit of containers containing Dry dates . The perusal of the same revealed a fact that in column no. 24 of the Export (Customs) Declaration dated 25.08.2019, the Origin is mentioned as 'AE' whereas in column no. 24 of the Export (Customs) Declaration, the Origin is mentioned as PK. Further in column no. 48 of both the declarations there is a remark as Not for Local release'

Further, 'Declaration and Clearance procedure' of Dubai Customs is available on website add. [https://www.dubaicustoms.gov.ae/en/Procedures/Customs Declaration/Pages /FreeZones.aspx](https://www.dubaicustoms.gov.ae/en/Procedures/Customs%20Declaration/Pages/FreeZones.aspx). This procedure describes the provisions relating to "Goods in Transit" as under: Goods in transit :- "Imported goods from outside the country for the interest of a foreign importer addressed in his name or the name of a licensed agent carrier by a competent authority on the importer's behalf, The goods shall only be registered since transiting the territories of the country to a final destination. A deposit amount equivalent to the total value of goods shall be collected to ensure exit of goods outside the country within 30 days from the transactional processing date.' Customer guide of Dubai Customs, Dubai is available on website- https://www.dubaicustoms.gov.ae/en/Publications/Publications/Customer_Guide_Booklet_EN.pdf. Para 15.12 of this Customer guide describes "Transit" provisions as under:

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

cleared under Transit Regime for various transit movements-

Transit (ROW to ROW)

FZ Transit In -

FZ Transit Out -

FZ Transit In from GCC and other Emirates FZ and GCC Local Market -

FZ Transit between Dubai based FZ.

FZ Transit Out' is defined under Para 15.12.3 as under:

15.12.3. FZ Transit Out

"Export of goods stored in the free zone to the rest of the world is cleared on this declaration against deposits which is refunded on production of proof of export. Even if the goods are exported directly from the free zone without paying any deposits, the exporter must submit the proof of export failing which customs will charge a penalty of %61 0 of the value of goods.

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

Therefore, filing of FZ Transit Out declaration with Dubai Customs in respect of Container covered under impugned Bills of Entry filed by these importers at ICD Panki, Kanpur clearly indicates that the goods i.e. Dry dates stuffed in the said containers were originated from a country other than

United Arab Emirates (UAE) in contrary to Country of origin (COO) filed by the said importer claiming therein the country of origin as UAE. This also corroborates the statement of various importers , recorded under Section 108 of the Customs Act 1962 that Dry dates supplied by M/s GVO Global FZC, UAE was of Pakistan origin (i.e. a country other than United Arab Emirates).

*Further, in one of the FZ Transit Out Customs Declarations filed with Dubai Customs, Federal Customs Authority, UAE, the Origin is found mentioned as PK'. On going through the website of International Organization for Standardization i.e.iso.org, it is noticed that "PK" is the ISO alpha-2 code of Pakistan. The ISO country codes are internationally recognized codes that designate every country and most of the dependent areas a two-letter combination or a three-letter combination. It is like an acronym that stands for a country or a State. Hence, the said FZ Transit Out Customs Declaration filed with Dubai Customs at the time of transit of the said consignments of the impugned goods i.e. Dry dates for its subsequent export to Indian importer clearly indicates that the impugned goods i.e. Dry dates has the country of origin as Pakistan. I find that as per the import statistics/data available and as stated by all representatives of the importers in their respective statements it came to light that all of .them were engaged in importation of Dry dates from Pakistan since long ; that the import of Dry-dates from Pakistan had been stopped since Feb'19 after increase of Customs duty rate by the Govt. of India on the imports from Pakistan. ; that as per the available records, they had started looking for a way to import Dry dates of Pakistan origin at reasonable price after the increase of Customs duty rate to 200% by the Govt. of India on the import of Dry dates from Pakistan and when they came to know about the aforesaid modus-operandi as devised by Shri Kush Agarwal, they immediately adopted the same for the import of Pakistan origin Dry dates. **(VII) FAILURE***

TO COMPLY WITH THE ONUS PLACED ON HIM FOR SELF- ASSESSMENT:-

I would like to draw the attention towards Section 17(1) of the Customs Act, 1962 reproduced as under:-

"Assessment of duty : (1) An importer entering any imported goods under Section 46, or an exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods."

In this connection, I observe that the importers had failed to comply with the onus placed on him relating to self-assessment and has not correctly declared the classification and exemption notification in respect of the impugned goods as discussed in the preceding paras. Thus, I find that the same was a deliberate attempt on the part of the respective importers to evade Customs Duty by misclassification and availing exemption Notfn. Not applicable on the subject goods.

Further, reliance is also placed on the ratio of judgement passed by the Apex Court in case of CC vs D. Bhoormull 1983(13)ELT 1546(SC), wherein it was held, that:-

"Department is not required to prove its case with mathematical precision, but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of facts in the issue.....prosecution is not obliged to prove as part of its primary burden the facts which are especially within the knowledge of accused. Since smuggling is done secretly, it is impossible for preventive department to unravel every link of the process.It is for him(accused)to explain or establish those facts within his peculiar knowledge , failing which the prosecution will be entitled to take advantage of the presumption of facts arising against him, in discharging its burden of proof.Deptt. Would be deemed to have dischrgeits burden

(of proof) if it adduces so much evidence , circumstantial or direct , as is sufficient to raise a presumption in its favour with regard to the existence of fact sought to be proved." read along with the ratio of judgement passed by the Apex Court in case of Commissioner of Central Excise Madras Vs. Systems and Components (P) Ltd. reported in 2004(165)ELT 136 (SC), wherein it was held that What is admitted need not to be proved.'

WHETHER THE IMPUGNED GOODS ARE LIABLE TO CONFISCATION UNDER SECTION 111 OF THE CUSTOMS ACT, 1962:-

18. As regards proposed confiscation of seized goods covered by various Bills of entry imported by respective importers I would like to first reproduce the relevant statutory provisions of the Customs Act, 1962, hereunder: -

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

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer; 3[(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.] Now, I am taking up the issue as to

whether the impugned goods in the subject cases are liable to confiscation or not?

19. I observe that the goods in question have been proposed for confiscation under Section 111(m) of the Customs Act, 1962 which have been reproduced in the preceding paras. Hence the seizure of the aforesaid imported dry dates was based on the reasonable belief that the petitioner mis-declared the country of origin of the imported dry dates and the packing of the imported dry dates is not as per the provisions of Food Safety Regulations. Moreover Shri Saurabh Maheshwari, Shri B.N.Rai, Shri Akash Gupta & Shri Vikas Kumar Gupta in their respective statements , under Section 108 of the Customs Act, 1962, clearly admitted that the consignments of dry dates imported by them at ICD, Kanpur against which Bills of Entry are filed by declaring Country of Origin as "United Arab Emirates" are actually of Pakistan origin. The test report of the independent authority, declaring the dry dates imported by the petitioner of Indian Sub-Continent Origin was also perused by them. Thus the reasonable belief on the basis of which the above said seizure of the various containers of dry dates imported by the Noticees later on proved true. Hence the seizure of the dry dates imported by the Noticees effected by DRI is in accordance to the provisions of Customs Act, 1962 and hence as per law

20. also find that as per records ,out of these three impugned Show Cause Notices, in respect of M/ s Raghunath Laxminarayan, Kanpur,U.P. , through his Counsel's letter dated 15.11.2019 requested for provisional release of seized dry dates , mentioned in three bills of entry out of four. The order for provisional release of seized goods was issued by the then Additional Commissioner, vide order dated 21.02.2020 with conditions 1. Execution of full value of Bond Rs 51,45,857/- & 2. Furnishing bank

guarantee or security deposit of Rs 1,02,91,714/-. However, the counsel vide his letter dated 17.06.2020 informed that they are not willing for the provisional release of the dry dates. I also find that in the other two cases i.e. M/s B.N. International Kanpur, U.P. (Prop Shri Bijendra Narayan Rai) and M/s Shakti Traders , Gorakhpur, no request letter for provisional release of seized dry dates was received in this office. In the meantime it has been gathered that due to the perishable nature of the seized goods and no party did turn up for provisional release of the said goods, the same were sold by way of auction , as detailed below :-

S.NO.	SCN NO & DATE	NAME OF THE PARTY	AMOUNT REALISED AFTER AUCTION OF SEIZED DRY DATES
01	DRI /LZU/CI/26/INT-14/RL/2019/10215 dated 28.09.2020	M/s Raghunath Laxminarayan, Ramganj, Kanpur	Rs 73,13,133/-
02	DRI/LZU/CI/26/IN-14/BN/2019 dated 28.09.2020	M/s B.N. International, Mall Road, Kanpur	Rs 1,95,77,555 /- Consolidated
03	DRI/LZU/CI/26/IN-14/BN/2019/ Shakti Traders dated 28.09.2020	M/s Shakti Traders, Sahebganj, Gorakhpur	

21. I also conclude that all three importers had contravened the provisions of Section 12 & 17 of the Customs Act read with Notf No 05/2019-Cus dated 16.02.2019 by attempting to evade payment of higher rate of Customs duty @200% imposed by the said notification on Pakistan origin goods, by mis-declaring Country of Origin' of the impugned goods as UAE and same were imported by wrongly classified under CTH 0808041030 instead of its correct CTH 98060000 as discussed in the preceding paras, Further the provisions of Food Safety and Standards (Packing and Labelling) Regulation, 2011 were also violated by the importers in as much as the instructions relating to labeling of packaging of the said goods were not followed as also discussed above, thus, relying on the above mentioned

judgements and the reasons discussed above, I find the impugned goods in the subject cases are liable for confiscation under Section 111(m) of the Customs Act, 1962.

DISCUSSION ON ALLEGATION OF NOTICEES REGARDING USE OF DURESS, COERCION AND THREAT BY OFFICERS OF DRI IN RECORDING OF STATEMENTS :-

22. I find that Shri Anil Kumar Agarwal vide letter dated 07.12.2019 has submitted his retraction from his statement dated 06.12.2019. I find that it is very much on records that an enquiry has been ordered in the matter appointing the Deputy Director, DRI, LZU, Lucknow as the enquiry officer. During the course of enquiry, the allegations levelled by Shri Anil Kumar Agarwal were found incorrect and outcome of the enquiry has also been communicated to Shri Agarwal vide this office letter dated 22.01.2020. I also find that some other Noticees have also retracted from their earlier statements, all recorded under Section 108 of the Customs Act 1962, especially in their written submission.

23. I also find that it has been pleaded by the Noticee that the statement dated 18.10.2019 of Shri Saurabh Maheshwari was taken under duress and threats of arrest and detention. In this regard, I observe that Shri Shyam Sunder Maheshwari, Proprietor M/s Raghunath Laxminarayan, Kanpur, in his statement dated 26.09.2019 revealed that his younger son Shri Saurabh Maheshwari is looking after his business presently. Shri Shyam Sunder Maheshwari, vide letter dated 17.10.2019 authorised his son Shri Saurabh Maheshwari to answer the queries w.r.t. summons dated 14.10.2019 by attesting signature of Shri Saurabh Maheshwari. In his statement dated 18.10.2019 Shri Saurabh Maheshwari himself presented the said letter dated 17.10.2019 authorising him to answer the queries of

the department and also stated the same in his statement dated 18.10.2019 Further it is pertinent to mention that during his statement dated 27.01.2020, Shri Shyam Sunder Maheshwari, perused the statement dated 18.10.2019 tendered by Shri Saurabh Maheshwari and as a token of agreement with the said statement he also appended his dated signature thereon. Also in his statement dated 27.01.2020 Shri Shyam Sunder Maheshwari, divulged that he is 66 yrs old and due to age as well as health problems he is not actively involved in the day to day working of the firm and therefore his son Shri Saurabh Maheshwari looks after the business and used to take all the important decisions related to firm. He also stated that he has no role in the import of said dry dates and all the decisions and discussions regarding the import of said dry dated were held by Shri Saurabh Maheshwari.

24. Therefore the allegation that the statement dated 18.10.2019 of Shri Saurabh Maheshwari was taken under duress and threats of arrest and detention is totally false. Shri Saurabh Maheshwari, himself in his statement recorded under section 108 of Customs Act, 1962 has stated that the voluntary statement given by him is without any duress or coercion or harm. It is also worth to mention that neither Shri Saurabh Maheshwari nor Shri Shyam Sunder Maheshwari filed retraction from his statements tendered. Now the Noticees, after more than sixteen months has come up with new purported story which deserves to be rejected

This invites my attention to the findings in the case of Gulam Hussain v. S. Reynolds (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.) wherein the Hon'ble Supreme Court has held:

"The ban contained in section 25 of the Evidence Act is an absolute ban. But it must be remembered that there is no ban in regard to the confession made to any person other

than a police officer, except when such confession was made while he is in police custody. The inculpatory statement made by any person under Section 108 is to non-police personnel and hence it has no tinge of inadmissibility in evidence if it was made when the person concerned was not then in police custody. Nonetheless the caution contained in law is that such a statement should be scrutinised by the court in the same manner as confession made by an accused person to any non- police personnel.

25. Scrutiny of records to cross check the genuineness of statements of Noticee's recorded under section 108 of the Act reveals that:

(i) In the instant case, the Noticees have not only simply retracted the confessional statements but also failed to support it with any corroborative evidence;

(ii) Further, their retraction attracts the case of KTMS Mohammed vs UOI AIR 1992 SC 1831, wherein the Apex Court has held that merely because a statement is retracted, it cannot be recorded as involuntary or unlawfully obtained. It is for the maker of the statement who alleges inducement, threat, promises etc. to establish his allegations of inducement, threat etc. against the officer who recorded the statement;

(iii) That in most of the cases, the theory of retraction by the co-noticees has first time surfaced in their respective 'defence submissions; that none of the noticees or the persons whose statements tendered u/s 108 of the Act and relied upon in the instant matter have retracted their statements or brought to the light to the investigating agency or adjudicating authority that their statements were forcefully recorded under duress at the first available opportunity; that the noticees are alleging duress, coercion and threat in their defence submissions but nothing to substantiate these allegations have been adduced by them.

(iv) All the Noticees were free and had enough time to contemplate & furnish their retraction but it came in existence after a lapse of much time in the form of their defence replies &; Such a big time span, especially in light of availability of ample opportunity with them makes me infer that their retraction is nothing but an afterthought floated to save their skin from the clutches of law;

(v) Besides these facts, in the case of Surjeet Singh Chhabravs UOI 1997 AIR SCW 2507, the Hon'ble Supreme Court has held that a confession made before Customs Officer is binding even if retracted later.

26. In respect of corroborative evidences, on perusal of records I observe that besides the confessional statements of co-noticees and other persons i.e. (all recorded u/s 108 of the Customs Act, 1962) clearly establishing the role played by the noticees, there are sufficient material & cogent evidences which have been vividly discussed in the preceding paras containing therein the roles played by various noticees.

27. Therefore, placing reliance to above findings, I observe that the noticees are relying on the baseless plea of harassment and thereby retracting their statements which are an afterthought for protecting their skin from the action that might be taken by the department in the subject case and further I also observe that investigation in the case had resulted into emergence of many effective corroborative cogent vidences in support of the establishment of the act of smuggling in the subject case. Therefore, I find that the above mentioned submission of the noticee are an afterthought and an attempt to dissuade the proceedings that might be taken against them in the subject case.

THE LEGALITY OF THE STATEMENTS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT 1962 IN THIS CASE :

28. I observe that some noticees have raised the point of legality of the statements recorded by the officers, therefore, I would like to proceed to discuss the legality of the statements drawn in this case under Section 108 of the Customs Act 1962. In this regard, it is pertinent to mention that the statements recorded under Section 108 of the Customs Act, 1962 are very vital and can be used as evidence in any Court of Law. In connection to the same reliance is placed on following judgements:

In the case of Naresh J. Sukhawani Vs. Union of India' - 1995 (11) TMI 106 - SUPREME COURT OF INDIA, the Supreme Court held that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. It is a material piece of evidence collected by Customs Officials under Section 108 of the Customs Act, 1962.

Moreover, in 'Commissioner of Customs V. Ghanshyam Gupta' - 2010 (3) TMI 1067 - PATNA HIGH COURT, the Division Bench of Patna High Court held that there is no doubt about the legal position that the statements in the scheme of the Act are admissible evidence in terms of Section 108 of the Act.

29. In the light of above, and applying the ratio of judgements, I conclude that the confessions of the said Noticees made before the DRI Officers while tendering their statements u/s 108 of the Customs Act, 1962, stand undiluted and are admissible as evidence.

DISCUSSION ON THE DEFENCE REPLIES OF THE NOTICEES:-

30. I find that the Noticees have submitted their replies, detailed as under :-

1. SCN NO;-DRI/LZU/CI/26/INT-14/RL/2019/10215 dated 28.09.2020:-

M/s Raghunath Laxminarayan, Kanpur through their authorized counsel Shri S. A. Khan submitted a reply dated 18.02.2021 (during last opportunity of Personal Hearing) alongwith its enclosures

2. SCN No.:-DRI/LZU/CI/26/IN-14/BN/2019 dated 28.09.2020

Shri B. N. Rai, Prop M/s B. N. International Kanpur, appeared for virtual hearing on 23.12.2020 on behalf of him and his firm (both Noticees) and presented his version.

3. SCN NO:- DRI/LZU/CI/26/INT-14/SHAKTI TRADERS/2019 DT. 28.09.2020:

M/s Shakti Traders, Sahebganj, Gorakhpur, Shri Akash Gupta & Shri Vikas Gupta, through their authorized counsel Shri Raghvendra Pratap Singh & submitted a reply dated 02.01.2021.

Shri Kush Agarwal is common Noticee in all three Show Cause Notices, but no one appeared on behalf of Shri Kush Agarwal during all opportunities of Personal Hearings. However, his counsel Shri Kushal Miglani, submitted his defence replies in respect of all three Show Cause Notices Further, the major points of the all the defence replies are reproduced and discussed as under:-

1. M/S RAGHUNATH LAXMINARAYAN AGARWAL IN R/O SCN NO.:-DRI /Lzu/CI/26/INT-14/RL/2019/10215:

(iv). WHEN WRIT PETITION PENDING, ADJUDICATION OF THE CASE IS PREMATURE:- he Noticee has stated that Writ Petition No. 11283 M /B of 2020 challenging the seizure made by 1.0. of DRI in the instant case is still pending, in which Commissioner , Customs (P) Lucknow is Respondent No. 2. The Senior Standing Counsel has filed Counter Affidavit on 28.01.2021 on behalf of DRI and Customs authorities including this Ld. Authority also in which he has categorically stated in Para 5 that "Further enquiry regarding the genuineness of the Certificate of Origin

submitted by the petitioner at ICD Kanpur for clearance of the goods is underway.

Since this Ld. Authority has himself filed affidavit before the Hon'ble High Court of Allahabad through Shri Deepak Seth, Sr. Standing Counsel [Ref: Para 5 of Counter Affidavit filed on 28.01.2021] stating therein that verification of 'Certificate of Origin' is still underway the adjudication of the case is premature and deserves to be kept in abeyance till completion of the enquiry.

DISCUSSION & CONCLUSION:-

In respect of the counsel's plea that adjudication/issuance of impugned Show cause notice is pre-mature , I find that as per the records , there is no iota of doubt that the impugned Show Cause Notice, along with other two notices on identical issue has been issued only after completing all the investigation regarding the 'Certificate of Origin' of the seized dry dates. In this regard ,attention is also invited towards Para 'D.6 of the impugned show cause notice dated 28.09.2020 , wherein investigation made by DRI in respect of Export (Customs) Declarations, declaration and clearance procedure of Dubai Customs and FZ Transit Out have been mentioned in detail that clearly substantiate that the impugned dry dates had the country of origin as ' Pakistan'. Besides the report from an independent agency M/s Atul Rajasthan Dates Palms Limited, Jodhpur, a subsidiary company of Atul Limited with 26% shareholding of Rajasthan Horticulture Development Society, Government of Rajasthan and also having the expertise in tissue culture raised date palms and also have a tissue culture laboratory for Date Palms confirmed that the seized dry dates reported that on the basis of physical examination, the said goods is of INDIAN SUBCONTINENT" Regarding the point ,raised by the counsel of Noticee that the Senior Standing Counsel's remark in the Counter Affidavit on 28.01.2021, I find that it is on the record that

the comments in respect of applicant's writ petition no. 11283 M/B of 2020 were forwarded to the. Senior Standing Counsel on 07.08.2020 in the light of facts/evidences available at that particular time. So it appeared that the counsel has deliberately ignored these development in the case , which took place thereafter

Therefore ,I do not find any force in this plea of the counsel of the Noticee and it appeared to be nothing but a tactics adopted by the Counsel to further delay the proceedings, thus not acceptable

(v). ...

2. REPLY DATED 13.01.2021 OF SHRI KUSH AGARWAL IN R/O SCN NO:-DRI [LZU/CI/26/INT-14/RL/2019/10215, SCN NO:-DRI /LZU/CI/26/IN-14/BN/2019 & SCN NO:- DRI/LZU/CI/26/INT-14/SHAKTI TRADERS/2019 ALL DATED 28.09.2020.

From the perusal of all three replies submitted by Shri Kushal Miglani, the Counsel of Shri Kush Agarwal, in respect of all three Show Cause Notices, I find that the points raised and language of all three replies are exactly the same. Though the role of Shri Kush Agarwal has also been discussed in the preceding paras and also later on in this order , during discussion on role of Noticees, I proceed on discussing the common points raised in the all three identical replies:-

(i) THE IMPUGNED DRY DATES HAD BEEN EXPORTED BY M/S. GVO GLOBAL FZC, UAE, AFTER OBTAINING REQUISITE PERMISSIONS &, COMPLETION OF FORMALITIES:- *M/s. GVO Global FZC, UAE, is a duly incorporated distinct legal entity registered in accordance with UAE laws having all the requisite permissions / licenses for effecting import and export of commodities in UAE as also to export from 'Free Zone' warehouses; that the subject 'dry-dates' were purchased by them from the 'Free Zone Warehouse' after following strict procedure from*

competent Governmental Authorities viz., Ajman Chamber of Commerce regulated by Ajman Government in U.A.E. , affiliated by International Chamber of Commerce (ICC) that the consignment was duly cleared and supported by Invoice & Packing List Certificate of origin (issued by Ajman Chamber of commerce), Fumigation Certificate and Phytosanitary Certificate by UAE Government ; that in U.A.E. all material is stored in warehouses owned by various logistic companies and the local agents show the required material and if it is found as per the specific demand indicated by the purchaser, the material is purchased without having regard to the buying source of the seller, it being a Free Zone'; that thereafter the material is exported after obtaining requisite permissions, completion of formalities in this regard ; once the Goods are stored in the warehouse in the Free Zone' in JAEi.c. after being unloaded from the Shipping Vessel, the same loses the significance of its' original source ; that the 'Certificate of Origin' is the conclusive proof being unquestionable document issued by Ajman Chamber of Commerce and it places on record sufficient proof of origin being issued by the internationally recognised chamber; that the International Chamber of Commerce (ICC) for the purposes of harmonising procedures' used for issuance of Certificates of Origin (COs) by Chambers of Commerce worldwide, ICC World Chambers Federation (WCF) has established a universal set of procedures for issuing and attesting COs by chambers and those accepted procedures have been completely disregarded in issuance of the SCN under reply; That they have got nothing to do with the subject imports in India, the purpose or the channel used by the importer ; that the role of exporter gets over the moment, the export formalities are complete and the goods left Jebel Ali port with all the requisite papers related to customs clearance from the Government authorities of UAE; that no fault can be found with the exporter as

regards any act done or declaration furnished by the importer or his custom clearing agent.

DISCUSSION AND CONCLUSION:-

I observe that the counsel of Shri Kush Agarwal has tried to shift the onus on the importers by stating that role of exporter gets over the moment, the very moments export formalities are complete and the goods left Jebel Ali port. But this plea of the Counsel is contrary to the basic principles of Export-import, which are obligatory for both the concerned parties i.e importer and exporter. The investigation has exposed a nexus comprising of both importers and Shri Agarwal by gathering various cogent and tangible evidences in the form of manipulation in customs declaration, report from an independent agency, statements of concerned persons etc. For example , in respect of Export (Customs) Declarations, filed with Dubai Customs, Federal Customs Authority, UAE, the perusal of one of the said declarations revealed. that in column no. 24 of the Export (Customs) Declaration dated 25.08.2019, the Origin is mentioned as AE' whereas in column no. 24 of the Export (Customs) Declaration, the Origin is mentioned as 'PK'. Further in column no. 48 of both the declarations there is a remark as Not for Local release'

Further, 'Declaration and Clearance procedure' of Dubai Customs describes the Goods in transit as : "Imported goods from outside the country for the interest of a foreign importer addressed in his name or the name of a licensed agent carrier by a competent authority on the importer's behalf. The goods shall only be registered since transiting the territories of the country to a final destination.

Customer guide of Dubai Customs, Dubai describes "Transit" provisions as under:

15.12. Transit "Goods destined to elsewhere in the rest of the world but landing in Dubai may be moved to the destination under transit procedure. Normally

customs clear such transit movements against payment of deposits or under guarantees and may take additional guarantees if necessary. Following Declaration Types are required to be cleared under Transit Regime for various transit movements-

'FZ Transit Out' is defined under Para 15.12.3: "Export of goods stored in the free zone to the rest of the world is cleared on this declaration against deposits which is refunded on production of proof of export. Even if the goods are exported directly from the free zone without paying any deposits, the exporter must submit the proof of export failing which customs will charge a penalty of %10 of the value of goods."

Considering the above customs procedures pertaining to Dubai Customs (UAE), regarding export of goods out of free zones, it appeared that FZ Transit Out declaration is applicable in those cases only, where a Free Zone Company (i.e. FZ Company) imports goods from a third country for its subsequent export to another country. The said provisions imply that the containers in respect of which FZ Transit Out declarations have been filed, originate from a third country and thereafter, move to the place of transit i.e. Dubai from where the containers finally move to the destination country Therefore filing of 'FZ Transit Out' declaration with Dubai Customs in respect of Container covered under impugned Bills of Entry filed by these importers at ICD Panki, Kanpur clearly indicates that the goods i.e. Dry dates stuffed in the said containers were originated from a country other than United Arab Emirates (UAE) in contrary to Country of origin (COO) filed by the said importer claiming therein the country of origin as UAE.

Further, in the instant cases, I find that in one of the FZ Transit Out Customs Declarations filed with Dubai Customs, Federal Customs Authority, UAE, the Origin is found mentioned as PK'. As per website of International

Organization for Standardization i.e.iso.org, "PK" is the ISO alpha-2 code of Pakistan. The ISO country codes are internationally recognized codes that designate every country and most of the dependent areas a two-letter combination or a three-letter combination. It is like an acronym that stands for a country or a State.

(ii) PICK & CHOOSE POLICY OF DEPARTMENT:- The Counsel has raised the point that , in the SCN no. DRI F. No. DRI/NRU/CI-26/INT-0/Enq-572019 /9456 - 9462 dated 29.06.2020 issued in case of M/s. Jai Baba Traders and four others., the exporter has not been made a Noticee, which shows bias of the department against the noticee,(Kush Agarwal), who has been pestered without any legal justification.

DISCUSSION AND CONCLUSION :- In this regard, I find that as the SCN no. DRI F. No. DRI/NRU/CI-26/INT-0/ Enq-572019/9456 - 9462 dated 29.06.2020 is not pending before me for adjudication because of the jurisdiction issue, thus offering any comment regarding the query raised by the Counsel does not appear proper. However, it would not be out of context to mention that the facts and circumstances of every case may differ from the another one depending upon the availability of evidences against certain person/firm and role played by him

(iii) BEING EXPORTER, HAD NO ROLE IN SUBMISSION OF DECLARATION FILED BY IMPORTERS AND PROVISIONS OF SECTION 112 & 114 DO NOT APPLY ON HIM:- The Noticee has argued that the noticee shifted to United Arab Emirates much prior to the time when the notification enhancing the duty on dry-dates came to be published. The trading firm established was in accordance with the rules and regulations prevalent in UAE. No fault can be found in business transactions between two contracting parties, unless and until there is material evidence of delinquent conduct on their part and motive

cannot be attributed without existence of any overt act. As has been shown in preceding paragraphs the importer in the present case has paid much more amount of duty than any of the contemporaneous import by any other party; That although, the noticee had no role in the declaration submitted by all three importers with Indian Customs since acted only as an exporter based in a foreign country. It would be fruitful to refer to that these provisions of Section(s) 112 and 114 of the Customs Act, 1962 do not apply to him, being exporter based in foreign country; The observations of the Ld. Appellate Tribunal in the case of Narendra Lodaya vs. Commissioner of Customs, Nava Sheva are quite relevant and are reproduced hereunder;

"The importer, and the importer alone, creates the relationship of obligation upon and by making the prescribed declaration. Likewise, the goods landed in India are to be made available by or on behalf of the importer for any verification to ascertain the conformity of the declaration under Section 46 of the Customs Act, 1962. The responsibility and obligation of the persons concerned in relation to clearance of the goods commences with the filing of the bill of entry under Section 46. All the transactions preceding such filing would fall outside the ambit of any obligation under the Customs Act, 1962. Further, the obligations and the penalties, if any, adjudged for contravention of the obligations will revolve exclusively around the contents of the bill of entry or in relation to production of the goods for completion of the assessment.

The appellant is situated outside the country. The appellant has not filed the bill of entry nor subscribed to the veracity of its contents. The appellant is not concerned with the production of goods for verification. In these circumstances, the scope of creating an obligation under the Customs Act, 1962 for the appellant does not appear to have any legal basis where issue of an invoice, which, for

any reason, has been rejected in the process of assessment, may not be easily susceptible for initiating penal proceedings under Section 112 of the Customs Act 1962; the scope for action for participation in negotiation leading to issue of invoice is non-existent. Otherwise shippers/ consignors based outside the country would also have to be made noticees and be subject to the same penal provisions as the importers themselves in each and every proceedings. Contemplation of such a jurisdiction caricaturises the customs enforcement. The situation of the appellant is not much different from that of shippers/ consignors of the goods.

Accordingly, the imposition of penalty on the appellant for an alleged act that has nothing to do with the obligation devolving on imports under Section 46 and Section 47 of the Customs Act, 1962 may not be proper. Lack of jurisdiction that precludes the appellant from approaching the Settlement Commission is a clear indication that the provisions of Section 112 were not intended to cover persons who are not concerned with the goods after its landing in India.

DISCUSSION AND CONCLUSION:- *In this regard, the noticee' plea that he had shifted to United Arab Emirates much prior to the time when the notification enhancing the duty on dry-dates was issued does not make any difference to the case. I also find that the Noticee has also stated that there is no material evidence of delinquent conduct on their part and also no ulterior motive in the case. In this regard I find that it has been established in the investigation that Shri Kush Agarwal was the main person involved in the whole web of import under taken by this syndicate consisting of Shri Agarwal and the importers and as the owner of M/s GVO Global FZC, UAE, Shri Kush Agarwal was the brainchild behind this re- routing of the said impugned i.e. 'Dry dates of Pakistan origin' through UAE in all three*

cases . Initially he contacted various Indian importers, who had stopped importing dry dates from Pakistan after enhancement in the import duty to 200% and encouraged them to import the same Pakistan origin dry dates from his firm & by supplying the said goods on credit basis. It has also been substantially established that he was not only engaged in supplying the said impugned goods i.e Dry dates of Pakistan origin' to the Indian importers through his firm i.e. M/S GVO Global FZC, UAE, but also managed & arranged all the import documents especially the concocted Certificate of origin (COO) issued by the concerned UAE authorities relating to the said import consignments of Dry dates of Pakistan origin. Besides the plea of the Noticee that being exporter based in foreign country, penalty under Section 112 & of the customs Act 1962 can not be imposed on him, is also not acceptable as Shri Agarawal is an Indian citizen , having a full- fledged office operating at Noida. There all provision of any law of the land are squarely applicable on him and any violation of the same attracts penal action against him. I also find that facts and circumstances of the case cited by the Noticee is entirely different from the instant case.

(iv) SUBMISSION ON MERITS:- The Noticee has argued that there is no plausible reason or material to attribute ill-motive or culpable mind to the noticee. As a matter of fact he undoubtedly believed and so maintains that the country of origin was UAE and nothing else. It is an accepted position of Customs in countries throughout the world that many a times; the goods are kept in the warehouse as 'trans-shipment' intended to be exported again awaiting good offering of price. In such eventuality, it is quite legal for the purchaser of the material to export the material to its customer in another country. It is inherent in import-export business practice in the usual course of business and nothing amiss can be imputed either to the exporter or importer in such a case since it is based on mutual contract

between parties and very well within the framework of international trade practices as also ratified by the International Chamber of Commerce (ICC); that there is no material to infer any conspiracy, meeting of mind between parties to evade higher amount of duty. Pertinently, the role of answering noticee no.3 gets over once the material has been loaded from the port of Jebel Ali'. In so far the 'meeting of mind' and 'collusive bidding' the Department has failed to adhere to the established principle which governs this aspect and the basic requirements before it could be inferred that there was a meeting of mind. The law in this regard is explicitly clear; that aware of the misuse of the law of conspiracy Woodroffe & Amir Ali in Law of Evidence, 16th Edition, Page 576 stated:-

"The wide range of evidence in conspiracy cases has led judges to insist upon careful scrutiny of the evidence. Fitzgerald, J., in Irish State Trials of 1867 said: "The law of conspiracy is a branch of our jurisprudence to be narrowly watched, to be jealously guarded and never to be pressed beyond its true limits..

To conclude, the crime of conspiracy afford supports for the proposition that criminal law is an instrument of Government. The opportunity which the vagueness of this crime can offered to governmental operation has been recognized by an independent judiciary. It creates a genuine fear in all minds So Prof. Sayre writes : "A doctrine vague in its outline and uncertain in its fundamental nature as criminal conspiracy lends no strength or glory to law : it is a veritable quicksand of shifting opinion an ill-considered thought.

That the Show-cause Notice under reply is beset with conjectures and surmises rather than proper investigation & collation of substantive material material/evidence and appreciation of the facts & circumstances unearthed / revealed during the protracted investigation which was

biased, partisan and tainted, and is a result of jumping on perfunctory half-baked conclusions un-permitted by law because the limited extent of appreciation discernible from the material gathered or reflected in the SCN is contrary to the well-established principles governing the finding of a prima facie case for the purpose of seizure and initiating proceedings.

DISCUSSION AND CONCLUSION :- I find the counsel has contested that as a regular practice, the goods are kept in the warehouse as 'trans-shipment intended to be exported again & it is quite legal for the purchaser of the material to export the material to its customer in another country, based on mutual contract between parties and very well within the framework of international trade practices of the International Chamber of Commerce (ICC); ; that the role of noticee no.3 gets over once the material has been loaded from the port of Jebel Ali'. In this regard , I find that a detailed discussion in this subject has already been made by me in the preceding para while discussing the first point of the Counsel and I do not find it necessary to reiterate the same here.

I also find that the Counsel of the Noticee has claimed that that there is no material to infer any conspiracy, meeting of mind between parties to evade higher amount of duty. In this regard I would like to quote the meeting of Shri Kush Agarwal with importers, when they (importers) visited UAE, as categorically stated in the Statements of Shri B.N.Rai and Shri Saurabh Maheshwari, recorded under Section 108 of the Customs Act 1962. In these statements they also informed about their regular telephonic conversation with Agrawal on relation to the import of impugned dry dates.

*3. M/S B N INTERNATIONAL IN R/O SCN NO.
DRI/LZU/CI/26/IN-14/BN/2019*

*Shri Brijendra Narain Rai, Noticee No 2, and proprietor of
M/s B.N. International, Mall Road Kanpur (Noticee No. 01)*

appeared for virtual Hearing for him and his firm as well on 23.12.2020. During the personal hearing, Shri Rai stated that he established this firm M/s B.N. International, Mall Road, Kanpur in 2018 to export vegetables; that he visited Dubai to sort-out some business /cargo related problems of vegetable export, where he came into contact with Shri Kush Agarwal; that after his return to India, Shri Kush Agarwal contacted him telephonically and offered him to import dry dates on credit basis, on which he consented and started importing dry dates (geRT), but faced this problem; that he joined this business of import of dry dates due allurement of profit and for growth of his business; that he is not in touch with Shri Kush Agarwal for a long time that his (Shri Rai's) refusal for payment of the impugned consignment may be the reason for the same; that he does not know much about Shri Kush Agarwal, but someone told me that Shri Kush Agarwal resides at Ghaziabad;

DISCUSSION AND CONCLUSION :- After the confession of Shri B,N. Rai that he got himself involved in this malpractice due to the allurement of profit and for growth of his business, there is no further scope of discussion.

4. AKASH KUMAR GUPTA, VIKAS KUMAR GUPTA AND SHAKTI TRADER THROUGH SHRI RAGHVENDRA PRATAP SINGH IN RESPECT OF SCN NO .:- DRI/LZU/CI/26/INT-14/SHAKTI TRADERS/2019 ALL DATED 28.09.2020.

On behalf of the afore said three noticees, Shri Raghuvendra Pratap Singh submitted defense reply dated 02.01.2021, wherein it is submitted that they have imported the said 'dry dates' with valid documents and they possess all the legal documents related to the consignment; that the charge framed by DRI officers in SCN that the goods have been smuggled, is wrong; that the DRI officers recorded their statement forcibly, we refute the same and not agree

what they have recorded; that the dry dates has been imported from UAE not from Pakistan

DISCUSSION AND CONCLUSION:- I find that though they have claimed that the import of the said dry dates was done with valid records, but did not produce any evidence in support of their claim. The confessional statements of Shri Akash Kumar Gupta and Shri Vikas kumar Gupta, never retracted till this submission duly supported with other cogent evidences and corroborative ones had clearly exposed this unholy alliance of Noticees. The allegation of use of duress, coercion and threat by officers of DRI in recording of statements had already been discussed in the preceding para in detail and I do not find it necessary to reiterate the same here.

PENALTY ON THE NOTICEES:-

31.1. I find that penalties have been proposed on all Noticees of three Show Cause Notices, detailed as under :-

S.NO	SCN NO & DATE	NOTICEES	SECTION UNDER WHICH PENALTY PROPOSED
01.	DRI /LZU/CI/26/INT-14/RL/2019/10215 dated 28.09.20	(i)M/s Raghunath Laxminarayan, Ramganj, Kanpur	112(a) and/or 112(b)
		(ii) Shri Saurabh Maheshwari, Kanpur.	114 AA
		(ii) Shri Kush Agarwal, Ghaziabad	112(a) and/or 112(b)& 114 AA
02.	DRI/LZU/CI/26/IN-14/BN/2019 dated 28.09.20	(i) M/s B.N. International, Mall Road, Kanpur	112(a) and/or 112(b)
		(ii) Shri Bijendra Narayan Rai	114 AA
		(iii) Shri Kush Agarwal, Ghaziabad	112(a) and or 112(b)& 114 AA

03.	DRI/LZU/CI/26/INT-14/BN/2019/ Shakti Traders dated 28.09.20	(i) M/s Shakti Traders, Gorakhpur	112(a) and/or 112(b)
		(ii) Shri Vikas Kumar Gupta, Gorakhpur	112(a) and/or 112(b)& 114 AA
		(iii) Sri Akash Kumar Gupta Gorakhpur	112(a) and/or 112(b)& 114 AA
		(iv) Shri Kush Agarwal, Ghaziabad	112(a) and/or 112(b)& 114 AA

31.2 I find that in the impugned three Show Cause Notices penalty under Section 114 AA has been proposed against Shri Saurabh Maheshwari of M/s Raghunath Laxminarayan, Ramganj, Kanpur, (SCN NO.DRI LZU/CI/26/INT 14/RL/2019/10215 dated 28.09.2020) Shri B.N. Rai, Kanpur (SCN No:- DRI/LZU/CI/26/IN-14/BN/2019 dated 28.09.2020) and on Shri Vikas Kumar Gupta, Gorakhpur & Sri Akash Kumar Gupta, (SCN No;-DRI/LZU/CI/26/INT-14/BN/2019/ Shakti Traders dated 28.09.2020) & against Shri Kush Agarwal in all three Show Cause Notices.

In this context, before discussing the penalization on the noticees under this section, I am reiterating the Section 114AA of the Act as under:-

[Section 114AA of the Customs Act, 1962 is reproduced as under:-

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

31.3 I also find that in the impugned three Show Cause Notices penalty under Section 112 (a) and/or (b) has been .proposed against M/s Raghunath (SCN No.DRI/LZU/

CI/26/INT- Laxminarayan, Ramganj, Kanpur 14/RL/2019/10215 dated 28.09.2020) Shri Bijendra Narayan Rai (SCN No:- DRI/LZU/CI/26/IN-14/BN/2019 dated 28.09.2020) M/s Shakti Traders, Shri Vikas Kumar Gupta, Gorakhpur & Sri Akash Kumar Gupta, (SCN No;- DRI/LZU/CI/26/INT-14/BN/2019/ Shakti Traders dated 28.09.2020) & against Shri Kush Agarwal in all three Show Cause, Notices.

a) Whether penalty is imposable under Section 112(a) & (b) of the Customs Act, 1962:-

On this point, I observe that the investigating agency has framed two separate charges one proposing therein imposition of the penalty simultaneously under sections 112(a) and or 112 (b) of the Customs Act, 1962 on the above mentioned noticees for their involvement in the case. I believe that the penalty under Section 112(a) and 112 (b) should be imposed on the basis of extent of involvement and role of each noticee in the current episode. For the sake of convenience and utilization of time, I am clubbing both the proposed charging paras for imposition of penalty on the noticees. I am replicating the Section 112 of the Customs Act, 1962 again for discussion of an important issue-

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

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

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty SO determined;]

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (ii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;]

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 1[not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

On perusal of the sub-section (a) and (b) of the Section 12, it appeared that sub-section (a) is imposed in the cases

of omission or commission or abetment while sub-section (b) is imposed in cases of carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing of goods liable to confiscation Section 11 of the Customs Act, 1962

Now I proceed to discuss the individual roles of every Noticee to decide the imposition of penal action against them.

ROLE OF THE NOTICEES:-

32. In view of the discussion above and from the investigation conducted, it appeared that the whole activity of import of Dry dates of Pakistan origin was carried out under a well-planned strategy, in which S/ Shri Kush Agarwal, Saurabh Maheshwari, B.N.Raj, Vikas Kumar Gupta & Akash Kumar Gupta have played active roles in importing the said dry dates by submitting false declaration for their respective firms, and showing the country of origin as UAE instead of Pakistan in their respective Certificate Of Origin submitted before the Department It appeared that the following persons have had specific roles for their respective firms in the whole operation of smuggling of Dry dates:

(i) SHRI SAURABH MAHESHWARI:

(ii) SHRI BRIJENDRA NARAYAN RAI:-

(iii) SHRI KUSH AGARWAL:-

a) KINGPIN: I find that it has been established in the investigation that Shri Kush Agarwal has been alleged to be the main person involved in the whole web of import undertaken by this syndicate and as the owner of M/s GVO Global FZC, UAE was the brainchild behind this re-routing of the said impugned i.e. 'Dry dates of Pakistan origin' through UAE in all three cases . He is not only engaged in supplying the said impugned goods i.e 'Dry dates of Pakistan origin' to the Indian importers through his firm i.e.

M/S GVO Global FZC, UAE, but also managed & arranged all the import documents, especially the concocted Certificate of origin (COO) issued by the concerned UAE authorities relating to the said import consignments of Dry dates of Pakistan origin. He also encouraged Indian importer to import the said impugned goods by supplying the said goods on credit basis. It, therefore, appeared that he is the mastermind behind this modus operandi

b) REPEATED OFFENDER:- I also find that it has been established during investigation that his role was not confined to one case, but in a very systematic manner, he made contact with various importers of India and persuaded them to indulge in this unholy nexus and also assured them to make all manipulations in the records related to dry dates of Pakistan origin, showing them as of UAE origin.

c) TOTAL NON-COOPERATION:- I also notice that Shri Kush Agarwal failed to appear on any of the dates fixed for appearance during investigation and even during the process of adjudication. Thus, it therefore is quite evident that he has tried to escape investigation and appeared to have adopted the delay delaying tactics by not cooperating in the investigation. Further, if he was innocent he would have cooperated with the investigating agency and would have presented his case of non-involvement in the subject case. On the contrary, he always tried to run away from the authorities and attempted to manipulate & deviate the investigation

d) ROLE EMERGED AS PER THE STATEMENTS OF RELATED PERSONS:- Role of Shri Kush Agarwal emerged during the investigation & mention of him in the statements of other noticees /concerned persons :-

(i) SHRI ANIL AGARWAL, THE MANAGER OF M/S PADAM PARMESHWARI VENTURES PVT. LTD., GHAZIABAD:- In his statement dated 06.12.2019 stated that he was very well aware that Dry dates imported by

M/S Padam Parmeshwati Ventures Pvt.Ltd.in 08 nos. of containers in the months of June' 19 & August 19 from M/S GVO Global FZC, UAE was of Pakistan origin ; that before this import, Shri Kush Agatwal discussed the matter with him and told that he has devised a modus operandi for importing Dry dates of Pakistan origin into India by re-routing the said goods through Dubai, UAE & also revealed that he would manage Certificate of origin' of the said Dry dates of Pakistan origin issued by the UAE authority and accordingly, the said Dry dates procured from Pakistan would be treated as produce of UAE ; that thereafter, Shri Kush Agarwal got prepared all the import documents including Certificate of origin in Dubai, UAE in respect of the said 08 (eight) nos. of containers of Dry dates of Pakistan origin.

(ii) SHRI SAURABH MAHESHWARI PROP. OF M/S RAGHUNATH LAXMINARAYAN, KANPUR :- In his statement dated 18.10.2019 stated that he received a call on his mobile no. from Kush Agarwal from Dubai who told him that he (Kush) was engaged in the business of Dry dates in Dubai and he would ully arrange the supply of Dry dates from Dubai Kush Agarwal further told him that he does not need to take any pain regarding documents related to the said import of Pakistan origin Dry dates.

(iii) SHRI BIJENDRA NARAYAN RAI, PROP, OF M/S B.N.INTERATIONAL, KANPUR:- In his statement dated 26.09.2019 stated that he visited Dubai for search of new market, where during a meeting with other traders , he met Shri Kush Agarwal of M/S GVO Global of Ajman, UAE, who assured to supply dry dates on credit ; that initially, he had imported one container of Dry dates from Shri Kush Agarwal on credit, which was sold in the market very easily ; Further, four containers of Dry dates were also moved during this period, hence, no payment has been made by him with respect to said imports of Dry dates ; that Dry dates to be imported vide said invoices are of UAE origin,

as stated by his supplier and in this regard, he handed over all the relevant documents like invoices, Packing lists, Bills of Lading and Certificates of Origin issued by Ajman Chamber, UAE to his CHA for customs clearances.

In his another statement dated 12.10.2019 stated that that he visited Dubai in the year 2018 for business purpose, where his client Shri Sayyadji introduced him to Shri Kush Agarwal, the owner of M/S GVO Global FZC, UAE ; that Shri Kush Agarwal assured him that though Dry dates had been procured by him from Pakistan, but all the import documents including COO (certificate of origin) relating to the import consignments of said Dry dates would be issued from UAE and there would be no problem in customs clearances of the said goods and the said goods would be supplied on credit basis.

(iv) SHRI VIKAS KUMAR GUPTA:- In his statement dated 04.10.2019 stated that that he had a talk with Shri Kush Agarwal, who revealed him that they were supplying Pakistan origin Dry dates to India by re-routing the same through UAE, but all the concerned import documents have been got prepared in the name of UAE ; that regarding certificate of origin, Sh.Kush Agarwal informed that he would arrange the same issued from UAE itself for smooth importation of the said goods, because as per the documents these Dry dates would appear as of UAE origin and the actual Pakistani supplier of these Dry dates would not come into picture, as already been done in respect of previous supply of Pakistan origin dry dates to other Indian importers made by him (Shri Agarwal)

In the light of above discussion, I conclude that Shri Kush Agarwal is also liable to penal action under the provisions of the Customs Act, 1962. (4) SHRI VIKAS KUMAR GUPTA , OF M/S SHAKTI TRADERS, GORAKHPUR:-I also observe that being the importer of the said impugned goods i.e. 'Dry dates of Pakistan origin', has played an active role in importing the said goods at lower rate of Customs duty for

his firm M/s Shakti Traders, Gorakhpur , by mis-declaring the 'Country of origin' of the said goods as "UAE" in the said concocted Certificate of origin (COO) in connivance with Shri Kush Agarwal, the owner of M/S GVO Global FZC, UAE and supplier of the said impugned goods. He was very well aware that the impugned goods to be imported are of Pakistan origin and its re-routing through UAE. Therefore, he is liable to penalty under the provisions of the Customs Act, 1962 . He is also liable to penalty under Section 114AA of the Customs Act, 1962 in as much as he knowingly & intentionally has submitted the concocted import documents before the Customs Authority for assessment with the intention to evade payment of higher rate of Customs duty.

(5) SHRI AKASH KUMAR GUPTA OF M/S SHAKTI TRADERS, GORAKHPUR: *I also observe that Shri Akash Kumar Gupta ,being the importer of the said impugned goods i.e. 'Dry origin', has also played an active role in importing the said goods at lower rate Of Customs duty for his firm M/s Shakti Traders, Gorakhpur , by mis- declaring the Country of origin' of the said goods as UAE in the said concocted Certificate of origin (COO) in connivance with Shri Kush Agarwal, the owner of M/s GVO Global FZC, UAE and supplier of the said impugned goods. He along with his elder brother, Shri Vikas Kumar Gupta was very well aware that the impugned goods to be imported are of Pakistan origin and its re-routing through UAE . He, in fact, discussed this matter with Shri Manoj Bansal from Gorakhpur as evident from 02 audio files, extracted from his brother's phone, wherein he categorically admitted that the said import consignments Of Dry dates are not a produce Of UAE and are being supplied to them after importing the same from Pakistan, He also confessed in the conversation that they are satisfied with the Said import as this import of Dry dates Of Pakistani Origin is rerouted through Dubai and they have not imported the said goods*

directly from Pakistan. Therefore, he is liable to penalty under the provisions of Section of the Customs Act, 1962.

WHETHER PENALTY CAN BE IMPOSED ON BOTH THE FIRM & IT'S PROPRIETOR IN A PROPRIETORSHIP FIRM :-

33.

FINAL CONCLUSION ON THE PENALTIES ON THE NOTICEES :-

The individual role of Shri Saurabh Maheshwari, (SCN No. DRI /LZU/CI/26/INT-14/RL/2019/10215 dated 28.09.2020) Shri Bijendra Narayan Rai (SCN No:- DRI/LZU/CI/26/IN-14/BN/2019 dated 28.09.2020) Shri Vikas Kumar Gupta, & Sri Akash Kumar Gupta, (SCN No;-DRI/LZU/CI/26/INT-14/BN/2019/ Shakti Traders dated 28.09.2020) & Shri Kush Agarwal (in all three Show Cause Notices) have been discussed in detail in the preceding paras of this order that how the impugned goods i.e. Dry dates of Pakistan origin were attempted to be imported by the said three importers i.e. M/s Raghunath Laxminarayan, Kanpur, Shri B.N. International, Kanpur & M/s Shakti Traders, Sahebganj, Gorakhpur, through ICD, Panki, Kanpur with the active support of Shri Kush Agarwal in all three cases, by mis-declaring country of origin as UAE of the said impugned goods with the intention to evade payment of higher rate of Customs duty @ 200% imposed vide Notification No. 05/2019-Cus dated 16.02.2019 on Pakistan origin goods. Thus it is obvious that all the above- mentioned persons/firms knowingly and intentionally submitted false declaration, showing the Country of Origin of these impugned goods as UAE, instead of Pakistan with the active connivance of Shri Kush Agarwal as discussed in detail in this Order. It also evident that Shri Saurabh Maheshwari , Shri B.N.Rai, Shri Vikas Kumar Gupta, & Sri Akash Kumar Gupta knowingly and intentionally made, signed/ used, false and incorrect. declarations, / document during the

import of import of the impugned dry dates . Thus, I conclude that by this act, they have rendered themselves for penal action under Section 114 AA of the Customs Act 1962.

34. Moreover, I find imposition of both these sections 112(a) and 112 (b) of the Act ibid simultaneously shall be a little illogical and imprudent, as both these sections possess different gravity. Section 112(a) is imposed in the cases where offence committed by one is light in nature, whereas 112(b) is imposed where offence is grave in nature. I find that the impugned goods i.e. Dry dates of Pakistan origin were attempted to be imported by the said three importers i.e. M/s Raghunath Laxminarayan, Kanpur (SCN No.DRI LZU/CI/26/INT- 14/RL/2019/10215 dated 28.09.2020), Shri B.N. International, Kanpur (SCN No:- DRI/LZU/CI/26/IN-14/BN/2019 dated 28.09.2020)& M/s Shakti Traders , Gorakhpur through Shri Vikas Kumar Gupta, Gorakhpur & Sri Akash Kumar Gupta, (SCN No;- DRI/LZU/CI/26/INT-14/BN/2019/ Shakti Traders dated 28.09.2020) & Shri Kush Agarwal (in all three Show Cause Notices) through ICD Panki, Kanpur, by mis-declaring country of origin as UAE of the said impugned goods with the intention to evade payment of higher rate of Customs duty Accordingly, I find that it is well established fact that a syndicate involving all three firms & persons were actively involved in the subject case and have played their respective roles in respect of goods liable to confiscation Section 11 of the Customs Act, 1962. Further the offence being of grave nature which have been duly discussed by me infer me to render that they are liable to penal action under Section 112 (b) of the Customs Act, 1962.”

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

- (i) Sample examination report given by M/s Atul Rajasthan Date Palms Limited.

- (ii) Statements of certain related unrelated persons with the imports made.
- (iii) Non compliance with FSSAI Regulations, 2011
- (iv) FZ Transit Out Customs declarations which were filed with Dubai Customs, Federal Customs Authority, UAE for transit of containers containing Dry Dates and obtained from the Shipping Lines.

4.5 Before we further take up the matter for discussion we are constrained on plain reading of the impugned order that the same has been passed with a pre conceived mind, without application of judicial mind to the facts and law in the matter. Impugned order records in respect of an affidavit filed by the revenue in case of M/s Raghunath Laxminarayan Agarwal, in writ petition No 11283 M/B of 20202 challenging the seizure made (still pending in High Court) stating as follows:

"5. Further enquiry regarding genuiness of the Certificate of Origin submitted by the petitioner at ICD Kanpur for clearance of is underway."

Without waiting for the outcome of enquiry which was being made by the revenue same authority proceeds to adjudicate the case. Further no explanation has been given in respect of such enquiry. Even the show cause notices are dated 28.09.2020 and the in counter affidavit filed on 28.01.2021 certain enquiries being made in respect of "Certificate of Origin" has been mentioned. In our view either revenue was itself not sure of sufficiency of evidences or was misleading the Hon'ble High Court by way of this submission. The enquiry that we can contemplate could have been made only with the certificate of origin issuing authority UAE as per Rule 6 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020. However if any such enquiry was being made the outcome of the said enquiry should have been part of the impugned order, for the reason that the only case is in respect of the said Certificate of Country of Origin.

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

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

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

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

"8. Considered. It is clear from the factual narrative that, the certificate of origin in the present instance was issued by the designated authority i.e 'Ministry of International Trade and Industry (MITI) Malaysia' which is competent authority to issue such certificate under ASEAN FTA (AIFTA) mentioning the Regional Value content (RVC) to be much higher than stipulated 35% i.e. 47%. The Free Trade Agreement stands incorporated in the Customs Tariff vide Notification No. 46/2011-Cust., dated 01.06.2011 available to impugned product i.e. Natural Cocoa Power originating from Malaysia. The differential duty of Rs. 6,44,233/- was demanded by the department, denying benefit on the

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

Unlike, the course of action adopted in respect of other importers who made imports in the Year-2014, the department has not even attempted to do verification with Government of Malaysia and has proceeded in the instant case, on the basis of following assumptions and presumptions without rebuttal of the documentary evidence procured and produced by the appellant:-

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

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

9. In view of the forgoing, in the present case in the face of certificate of origin having been produced and no

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

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

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

4.7 We do not find any merits in the reliance placed by the adjudicating examination report given by M/s Atul Rajasthan Date Palms Limited, as the same is based on the experience of the person signing the said report without stating any reasons. In the case of Ram Prakash [2003 (161) ELT882(T)] following has been observed

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

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

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

8. *Apart from the fact that there is no evidence on record to show that the foreign origin of the goods, I also note that the betel nuts are neither notified under Chapter IV of the Customs Act nor under Section 123 of the Act. As such, the onus to prove that the same have been smuggled lies very heavily upon the Revenue and is required to be discharged by producing sufficient positive and tangible evidence. The Revenue in the present case apart from relying upon so called expert opinion as regards the foreign origin of the goods have not produced any evidence to establish the smuggled nature of the goods. It is not the case of the Revenue that betel nuts of foreign origin are not legally imported into India and the same are not available in the open market. As such, in the absence of any evidence to show that betel nuts in question were actually smuggled, the confiscation of the same cannot be upheld."*

4.9 Similarly the expert opinion taken from ADRF in respect of import of Betel Nuts has been rejected by the Hon'ble High court of Patna, Allahabad and Meghalaya. The relevant excerpts are reproduced below:

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

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

contemptuous in nature as it is likely to cause harassment to the traders, by not following the judgment of the Court.

13. *This Court also finds from Annexure-P/12 that it is a reply of the Directorate of Arecanut & Spices Development, Government of India which clearly provides that no laboratory test have been standardized for tracing the country of origin.*

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

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

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

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

"4. *The Division Bench of the Tribunal recorded the finding that the confiscated betel nut is non-notified goods and therefore, burden to prove the fact of smuggling lies on the*

department and same has not been discharged. In this regard, the department relied upon the certificate issued by the Arecanut Research and Development Foundation, Mangalore to show that the confiscated goods/betel nuts are of foreign origin. However, the Tribunal refused to consider this certificate on the ground that the said Institution is not accredited and hence the report was not relied on. The Tribunal in this regard relied on the decision of the Patna High Court reported in 2020 (371) E.L.T. 353 (Pat.)."

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

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

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

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

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

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

"17. On the issue of country of origin, we find that in all documents viz., invoice, country of origin certificate, phytosanitary certificate etc. country of origin of dry dates in present case was shown UAE. Slips tagged with bags of dry dates were showing country of origin of the goods

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

Rule 6. Verification request .-

1. The proper officer may, during the course of customs clearance or thereafter, request for verification of certificate of origin from Verification Authority where:

a. there is a doubt regarding genuineness or authenticity of the certificate of origin for reasons such as mismatch of signatures or seal when compared with specimens of seals and signatures received from the exporting country in terms of the trade agreement;

b. there is reason to believe that the country of origin criterion stated in the certificate of origin has not been met or the claim of preferential rate of duty made by importer is invalid; or

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

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

2. Where information received in terms of sub-rule (1) is incomplete or nonspecific, request for additional information or verification visit may be made to the Verification Authority, in such manner as provided in the Rules of Origin of the specific trade agreement, under which the importer has sought preferential tariff treatment.

3. When a verification request is made in terms of this rule, the following timeline for furnishing the response shall be brought to the notice of the Verification Authority while sending the request:

a. timeline as prescribed in the respective trade agreement; or

b. in absence of such timeline in the agreement, sixty days from the request having been communicated.

4. *Where verification in terms of clause (a) or (b) of sub-rule (1) is initiated during the course of customs clearance of imported goods,*
 - a. *The preferential tariff treatment of such goods may be suspended till conclusion of the verification;*
 - b. *The verification Authority shall be informed of reasons for suspension of preferential tariff treatment while making request of verification; and*
 - c. *The proper officer may, on the request of the importer, provisionally assess and clear the goods, subject to importer furnishing a security amount equal to the difference between the duty provisionally assessed under section 18 of the Act and the preferential duty claimed.*
5. *All requests for verification under this rule shall be made through a nodal office as designated by the Board.*
6. *Where the information requested in this rule is received within the prescribed timeline, the proper officer shall conclude the verification within forty five days of receipt of the information, or within such extended period as the Principal Commissioner of Customs or the Commissioner of Customs may allow: Provided that where a timeline to finalize verification is prescribed in the respective Rules of Origin, the proper officer shall finalize the verification within such timeline.*
7. *The proper officer may deny claim of preferential rate of duty without further verification where:*
 - a. *The verification Authority fails to respond to verification request within prescribed timelines;*

- b. The verification Authority does not provide the requested information in the manner as provided in this rule read with the Rules of Origin; or*
- c. The information and documents furnished by the Verification Authority and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.*

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

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

"9. A valid certificate has been issued and the said certificate, even as on date, has not been withdrawn or cancelled for any alleged violation of the condition by the appellant. Unless the said certificate is cancelled, the Customs Authorities cannot impose customs duty. The seizure of the equipment is only a consequential act that would follow the cancellation of the certificate issued in favour of the Appellant. So long as the certificate is not cancelled, the respondents could not, in our opinion, have initiated seizure proceedings in the case on hand.

Petitioner-appellant was sent only a questionnaire and the said questionnaire has been answered by the appellant herein. No further action has been taken by the respondents. The Director General of Health Services has also not issued any cancellation of certificate as on date. In these circumstances, we are clearly of the view that without withdrawing or cancelling the certificate already issued, the present seizure cannot stand. Therefore we hold that the seizure effected by the respondents is not in accordance with law. The impugned order of the learned Single Judge, in these circumstances, requires to be set aside and accordingly the same is set aside."

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

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

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

Regulations, 2017, the Authorized FSSAI officer shall reject the consignment not complying with the provisions of Labeling and Packaging Regulations, 2011 at the visual inspection and no sample shall be drawn from the consignment. Similarly, under Regulation 9(1) of FSSAI (Import) Regulations, 2017, it has been again provided that the Authorized Officer of FSSAI shall ensure compliance with the Food Safety and Standards (Labeling and Packaging) Regulations, 2015 in respect of imported food items. It shows that proper officer for pointing out noncompliance of FSSAI Regulations, 2011 of an imported food item is Authorized Officer of the FSSAI. In the present case, the consignment of dry dates was referred to FSSAI for ensuring compliance of FSSAI Act and Rules and Regulations made thereunder. The FSSAI Authorized Officer inspected the consignment and found that the FSSAI Regulations, 2011 was complied with, then, drew the sample and finally issued "No Objection Certificate" vide NOC No.NOC20190005632 dated 30.09.2019. It is certified in the NOC as:-

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

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

FSSAI is the Authority to clear food items relating to compliance of the FSSAI Regulations.

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

20. In the present case, confiscation of goods has been ordered under section 111(m) of the Act, 1962 on the ground that country of origin of goods has been mis-declared. Dry dates imported, in the instant case, were ordered by the Adjudicating Authority to be of origin of Pakistan. From the records we find that dry dates were shipped by the exporter at Jebel Ali port in UAE, in invoice country of origin was shown as UAE and certificate of country of origin was also with the consignment where country of origin was declared to be UAE. During physical examination of goods, it was found that the country of origin was described as UAE on the packages. Allegation of mis-declaration of country of origin is, therefore, based on assumption and presumption only without any tangible

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

the bill of entry as per invoice and other documents does prove mis-declaration by the importer if goods are found different. In the case of Wings Electronics vs. Commissioner of Customs, Mumbai [2006 (205) E.L.T. 1146 (Tri.-Mum.)] the Tribunal has held that "the assessments made cannot be reopened now for valuation by taking the shelter of misdeclaration of country of origin as USA when goods were marked as Australia, subsequent to the clearance by the proper officer having assessed & cleared the goods after examination & not having taken cognizance of the said mis-declaration of country of origin. There was & is no mis-declaration of the import. Proceedings of confiscation & duty demands therefore cannot be upheld & are to be set aside." The decision has also been upheld by the Hon"ble Supreme Court as per report [2015 (323) E.L.T. 450 (S.C.)]. The Apex Court has observed that Tribunal setting aside confiscation and redemption fine on the ground that declarations regarding country of origin were to be made by supplier/exporter and that assessment once finalized cannot be re-opened for valuation in guise of mis-declaration of country of origin. In view of above judicial decisions, it is abundantly clear that declaration made in the bill of entry as per invoice and other import document cannot be treated as mis-declaration when there is no proof of involvement of the importer. It is further submitted that there is also no violation of the provisions of the FSSAI Regulation, 2011. Hence, the goods i.e., dry dates were not liable to confiscation under Section 111(m) of the Act, 1962.

21. We find that enquiry against the Appellants was initiated on the basis of intelligence that some unscrupulous importers started importing of dry dates of Pakistan origin by re-routing the same through Dubai and by mis-declaring country of origin subsequent to hike in rate of customs duty on the import of goods of Pakistan origin or from Pakistan to 200% vide Notification

No.05/19-Cus dated 16.02.2019 and due to which import of goods from Pakistan who happened to be a major exporter of dry dates to Indian market was stopped as the same became unviable. The Appellants started import of dry dates of UAE origin from Dubai based M/s GVO Global FZC, after increase in rate of customs duty on the import of dry dates of Pakistan origin, under sale contracts executed between the Appellants and M/s GVO Global. The goods i.e., dry dates were supplied under cover of import documents including country of origin certificate issued by the approved Competent Authority of the exporting country, phytosanitary certificate etc. In all said documents country of origin was declared as UAE. Dry dates were cleared after final assessments of BEs, physical examination and after NOC from FSSAI Authorities regarding compliance of FSSAI Act/Rules/Regulations. Dry dates imported under bill of entry No.4981646 dated 20.09.2019 at ICD Dadri was seized and were confiscated on the basis of three evidences namely, (i). expert opinion obtained from Atul Rajasthan Date Palm Ltd., (ii). Export Declaration which was obtained from the shipping line and (iii). statements of Chandan Chaudhary and Anil Kumar Agarwal which were indicating, as per the Adjudicating Authority, that the said goods were of Pakistan origin but the same was mis-declared to be of the origin of UAE. It is found that on the aspect of country of origin of dry dates imported by the Appellants, opinion given by ARDPL, Jodhpur is as follows:- "On opening and upon physical examination the above representative samples, based upon my experience, my opinion regarding country/ area of origin is Indian subcontinent". ARDPL is engaged in production and marketing of tissue culture raised date palm plants with the aim to enhance the economy and ecology of the arid regions of India as per details available on its website www.ardp.co.in. It is not any scientific laboratory having expertise in identification of origin of dry

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

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

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

of the Hon“ble Supreme Court in the case of East Punjab Traders [1997 (89) E.L.T. 11 (S.C.)] where it has been held that in case documents are not obtained from the respective customs formation, reliance cannot be placed on such documents. In view of the above, we find reliance on the said document to prove country of origin by the Original Authority is not proper.

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

24. The Adjudicating Authority has placed reliance on the statement of Shri Chandan Chaudhary, Manager, M/s SS Mommy International Pvt. Ltd., a clearing and forwarding agency to prove the allegation of mis-declaration of

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

25. Statement of Shri Anil Kumar Agarwal Manager, M/s Padam Parmeshwari Ventures Pvt. Ghaziabad, where Shri Kush Agarwal, owner of M/s GVO Global FZC UAE, is one of directors was also relied upon by the Adjudicating Authority on the contention that he is nephew of Shri Kush Agarwal. It is an undoubted fact that Shri Anil Kumar Agarwal has no locus standi in the business of supplier company i.e., GVO Global. From his statement, it is evident that he was directed by Shri Kush Agarwal at times to deliver letters received from GVO Global to importers who purchased goods from the company of Shri Kush Agarwal. There is no evidence in any form like electronic chat, documents etc. from which it can be proved that Shri Anil Agarwal was involved in decision making activities of GVO Global FZC. He has not accepted in his statement that he discussed and convinced Indian importers to purchase goods from GVO Global, which were of actually Pakistan origin. It is settled law that statement of any person

cannot be basis for proving an offence if it is not supported by any other cogent evidence. In the case of UOI Vs. Kisan Ratan Singh [2020 (372) E.L.T. 714 (Bom.)], Hon“ble High Court has held that various Courts have kept all these things in mind and come to a conclusion that in the absence of any corroboration by an independent and reliable witness, a statement recorded under Section 108 in isolation could not be relied upon. In the case of Piyush Kumar Jain Vs. UOI [2022 (382) E.L.T. 184 (ALL)], Hon“ble Court has observed as mere statement cannot be sole basis for penalty. Similarly in the case of Commissioner of Service Tax, Mumbai-V Vs. Jasper International [2019 (22) G.S.T.L. 29 (Tri.-Mum.)], the Tribunal has held that no liability can be fastened merely on the basis of statements recorded during investigation if the same is not supported by documentary evidence. Thus, reliance of Original Authority on the above statements is legally not maintainable.

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

evidence. The statement is part of the evidence only if it is voluntary and free from any sort of pressure. In the case of Francis Stanly @ Stalin vs. Intelligence Officer, Narcotic Control Bureau, Thiruvanthapuram [2006 (13) SCALE 386], Apex Court has emphasized that confession only if found to be voluntary and free from pressure, can be accepted. The Hon“ble Apex Court in Vinod Solanki Vs. U.I.O. [2009 (233) E.L.T. 157 (S.C.)] again cautioned in using the retracted statement. The relevant para is as follow:-

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

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

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

28. As regards imposition of penalty on Shri Yogesh Gupta under Section 114AA of the Act, 1962, we find that penalty on a person under said Section can be imposed when such

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

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

Agrawal and Shri Anil Agrawal cannot be sustained and are accordingly set aside."

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

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

5.1 Appeals are allowed.

(Pronounced in open court on- 30 August, 2024)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)