



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421**

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| A | File No. | VIII/48-26/Adj/ADC/MCH/2018-19 |
| B | Order-in-Original No. | MCH/ADC/AS/30/2019-20 |
| C | Passed by | Shri Amarjeet Singh Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra |
| D | Date of Order | 25.06.2019 |
| E | Date of Issue | 25.06.2019 |
| F | SCN NO. & Date | F. No. DRI/HQ-CI/50D/Int-14/Part-1/2017-CI dated 30.01.2019 |
| G | Noticee/Party/Importer / Exporter | 1. M/s. Garvit Industries, Plot No. M-19, Sector-3, DSIIDC, Bawana Industrial Area, Bawana, Delhi-110039 2. Shri Sanjeev Maggu, C/o Leo Cargo Services Pvt. Ltd., Resident of B-773, Sushant Lok Phase-1, Next to Sushant Lok Police Station, Gurgaon, Haryana 3. Shri Shubhash Kumar, Proprietor of M/s. Riders India, Public Bonded Warehouse (situated at Plot No. 1, Villagge-Jounapur, Chhattarpur, New Delhi), Resident of 1078, Street No. 71, Devaram Park, Trinagar, Delhi-110047 4. Shri Gurmeet Singh, Resident of C-5, Top Floor, Mahendru Enclave, New Delhi-110052 |

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

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

**“ सीमा शुल्क आयुक्त (अपील), कांडला
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपए का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

1. Subject:- SCN F. No. DRI/HQ-CI/50D/Int-14/Part-1/2017-CI dated 30.01.2019 issued to M/s. Garvit Industries, Plot No. M-19, Sector-3, DSIIDC, Bawana Industrial Area, Bawana, Delhi-110039 and Others

Brief facts of the case:

The officers of DRI, New Delhi (hereinafter also referred as "DRI") have carried out an investigation related to evasion of Customs Duty by the way of diverting the imported goods into Domestic Tariff Area from Public Bonded Warehouses M/s Riders India (located at Plot No-1, Jaunapur Village, Chhattarpur, New Delhi) and M/s Prime Time Express (located at Plot No-95, Poll no New Line, Bamnoli Village, Tehsil- Kapashera, New Delhi), wherein the imported goods were transferred to said two Public Bonded Warehouses by filing Bills of Entry for Warehousing under Section 59 of the Customs Act, 1962 and subsequently removed without payment of any Customs duty and diverted into the Domestic Tariff Areas, it was gathered that apart from the 4 importing firms, i.e. M/s Accturist Overseas (OPC) Pvt. Ltd., M/s Shree Shyam Enterprises, M/s Sparx Exports and M/s Horrens Exim, under consideration in the above mentioned case, there was one more firm by the name of M/s Garvit Industries, located at Plot no. M-19, Sector-3, DSIIDC, Bawana Industrial Area, Bawana, Delhi-110039 which had imported a consignment of Aluminium Foil and had transferred the same into the Public Bonded Warehouse M/s Riders India by filing a Warehouse Bill of Entry under Section 59 of the Customs Act, 1962.

2. The import data of the importer, M/s Garvit Industries, was analyzed and it was revealed that only one Warehouse Bill of Entry had been filed by the importer M/s Garvit Industries, i.e. Bill of Entry no. 2011629 dated 08.06.2017 at Mundra, Gujarat. To gather more information, a letter dated 18.08.2017 was sent to the Principal Commissioner of Customs, Mundra (RUD-1 of the SCN) requesting to forward the file docket pertaining to the said Warehouse Bill of Entry. Vide said letter, the details of the Public Bonded Warehouse in which the goods pertaining to said Warehouse Bill of Entry were transferred were also sought. The reply of the said letter dated 18.08.2017 was received from the Assistant Commissioner, Import, Custom House, Mundra vide letter number F. No. VIII/48-290/Misc/Import/GR-IV/MCH/17-18/3367 dated 23.08.2017 (RUD-2 of the SCN), wherein the file dockets pertaining to Warehouse Bill of Entry No. 2011629 dated 08.06.2017 filed by M/s Garvit Industries had been forwarded.
3. During the course of investigation of the case mentioned in Para 1 above, search had already been conducted on the Warehouse premises of the Public Bonded Warehouse M/s Riders India, situated at Plot No-1, Jaunapur Village, Chhattarpur, New Delhi vide Panchnama dated 14.07.2017 (RUD-3 of the SCN) and it was found that only 1250 Cartons of Cashew Nuts were found stored therein. Furthermore, no Ex-Bond Bill of Entry had been filed in respect of the Warehouse Bill of Entry No. 2011629 dated 08.06.2017 by M/s Garvit Industries. Thus it appeared that the goods pertaining to M/s Garvit Industries covered under the Warehouse Bill of Entry No. 2011629 dated 08.06.2017 had been diverted from the said Public Bonded Warehouse into the Domestic Tariff Area.

4. A search was conducted on 21.08.2017 by the officers of DRI at the factory premises of M/s Garvit Industries, located at Plot no. M-19, Sector-3, DSIIDC, Bawana Industrial Area, Bawana, Delhi-110039. A search report dated 21.08.2017 was made in the presence of two independent witnesses (RUD-4 of the SCN).

4.1 During the course of investigation, statement of Sh. Amit Kumar Jain was recorded under section 108 of the Customs Act, 1962 on 21.08.2017 (RUD-5 of the SCN) wherein, among other things, he stated that he had done his B.Com from Khalsa College of Delhi University and MBA from Hindu Institute of Management, Sonapat; that in the year 2015 he opened a firm M/s Garvit Industries at Plot No. M-19, Sector-3, DSIIDC, Bawana Industrial Area, Bawana in which he imports Paper cups manufacturing machines and sell the same to local buyers; that he had imported one consignment of Aluminium Foil covered under Bill of Entry no. 2011629 dated 08.06.2017 filed at Mundra SEZ Port; that he had booked the consignment with M/s Loftan Aluminium (Hong Kong) Ltd. in March 2017 but the consignment reached India in the month of June, 2017; that in the month of May, 2017 vide Notification No. 23/2017-Customs (ADD) dated 16.05.2017, Anti-Dumping Duty had been imposed in the import of Aluminium Foil from China; that as per said Notification, total Customs Duty for his consignment came out to be Rs. 33.48 lacs, which suddenly increased the Cost Price of the goods; that he talked to Sh. Sarthak Kansal, who introduced him to one Sh. Jaikumar (alias Jagga, and owner of M/s Decor & More), who further introduced him to a Customs Broker Sh. Sanjeev Maggu (mobile no. 9810146568) who told him that he (Sanjeev) would get filed a Warehouse Bill of Entry under Section 59 of the Customs Act, 1962 and said that the goods would first be stored in a warehouse and then sold to an exporter who will reexport the same; that Sh. Sanjeev Maggu told him that he would sell the imported goods to some exporter and in return pay him 40% portion of the applicable Customs duty which was about Rs. 10 Lacs; that Sh. Sanjeev Maggu told him to file warehouse Bill of Entry and store the goods in a Public Bonded Warehouse after which he will arrange for re-export of goods; that he agreed to the same and gave all the requisite documents to Sh. Sanjeev Maggu who got the Warehouse Bill of Entry no. 2011629 dated 08.06.2017 filed through M/s S.N. Shipping (Customs Broker) at Mundra SEZ Port; that Sh. Sanjeev Maggu also got his signatures on two triple duty bonds in respect of warehousing the said goods in two Public Bonded Warehouses, namely M/s Prime Time Express and M/s Riders India; that he enquired from Sh. Maggu as to why he was getting signatures on two triple duty bonds, to which he (Sanjeev) replied that both the above said warehouses were operated and controlled by him and that he (Sanjeev) would use only one of the bonds, as per the space availability in the said two warehouses; that till that day, he had not received any payment from Sh. Sanjeev Maggu despite repeated reminders; that for all his work, the contact person was Sh. Sanjeev Maggu and he did not contact anyone from M/s S. N. Shipping; that Sh. Sanjeev Maggu had directed him to call him through WhatsApp only.

4.1.1 He further stated that he had handed over all the import related documents of Aluminium Foil to Sh. Sanjeev Maggu, who had filed Warehouse Bill of Entry No. 2011629 dated 08.06.2017 at Mundra SEZ Port through Customs Broker M/s S.N. Shipping. He also

identified Sh. Sanjeev Maggu in the photograph shown to him during his statement. He was further shown a copy of Bond dated 12.06.2017 in respect of Warehouse Bill of Entry No. 2011629 dated 08.06.2017, in respect of which he put his dated signatures as a token of having seen the same and stated that initially the above said triple duty bond was prepared for depositing the imported goods in the Public Bonded Warehouse, M/s Riders India, Plot No. 1, Village Jaunapur, Chattarpur, New Delhi but later on Sh. Sanjeev Maggu prepared another triple duty bond for M/s Prime Time Express.

4.1.2 On being shown the copies of Panchnamas dated 14.07.2017 drawn at the premises of the Public Bonded Warehouses M/s Riders India and M/s Prime Time Express, he put his dated signatures on both the said Panchnamas and stated that he had handed over all the import related documents for Aluminium Foil to Sh. Sanjeev Maggu, who did all the paper work and got the goods cleared from Mundra Customs; that Sh. Sanjeev Maggu further told him that he (Sanjeev) had paid for Shipping Line's detention charges and demurrage charges of the Custodian at the time of clearance and promised him to pay Rs. 10 Lacs within 10 days of receipt of goods, which had not been delivered to him.

4.1.3 He further stated that in order to evade the Anti Dumping Duty of around 40%, he consented to get the clearance work done through Sh. Sanjeev Maggu and on perusal of the Panchnamas dated 14.07.2017 drawn at the two said Public Bonded Warehouses, he understood that Sh. Sanjeev Maggu never intended to store the goods in the said warehouses and re-export the same and wanted to sell the same in the domestic markets without payment of any applicable Customs duty. He accepted that being the IEC holder of M/s Garvit Industries who had imported the said goods, he was liable to pay all applicable duties alongwith interest and penalties and undertook to deposit the same and regretted that such a fraud was committed by Sh. Sanjeev Maggu in the name of his firm.

5. During the course of investigation; on perusal of the reply received from Mundra Port vide their letter dated 23.08.2017, a discrepancy was noticed regarding the names of the Warehouses, wherein it was seen that the name of the warehouse on the Consignment Bond as well as the Space Availability Certificate was M/s Riders India while the name of the warehouse mentioned on the Note-sheet of the file docket pertaining to Bill of Entry No. 2011629 dated 08.06.2017 and the Bond to Bond transfer application submitted by M/s S.N. Shipping, Faridabad was M/s Prime Time Express. A letter seeking clarification in respect of the said discrepancy was sent to the Principal Commissioner, Mundra on 22.08.2017 (RUD-6 of the SCN).

6. A letter dated 28.08.2017 addressed to the Additional Director General, DRI Headquarters from Sh. Amit Kumar Jain, proprietor of M/s Garvit Industries was received in this Directorate (RUD-7 of the SCN), wherein it was mentioned that M/s Garvit Industries had deposited the applicable Customs Duty, alongwith the applicable Anti-Dumping Duty and Interest alongwith Penalty (@ 15%) in respect of the Warehouse Bill of Entry No. 2011629 dated 08.06.2017. Copies of TR-6 challans (Challan Nos. 1169 dated 28.08.2017 and 3367 dated 28.08.2017) amounting to Rs. 39,27,585/-(inclusive of Interest and Penalty) were also enclosed in the said

letter dated 28.08.2017. Also vide same letter, Sh. Amit Kumar Jain requested for waiver of Show Cause Notice under Section 28(5) of the Customs Act, 1962.

7. Another letter dated 25.10.2017 addressed to the Senior Intelligence Officer, DRI Headquarters from Sh. Amit Kumar Jain, proprietor of M/s Garvit Industries was received in this Directorate (RUD-8 of the SCN), wherein it was mentioned that he had lied in his statement dated 21.08.2017 about not receiving the goods and that he had actually received the imported goods on 05.07.2017. He further submitted that upon receiving the summons from DRI, he got scared and thought that if he denied receiving the goods, no further enquiry would be done against him. But while filing his GST returns, he realized that he had already sold the said imported goods to various buyers and the same fact might come out in the open later on. He further submitted that he was bringing this to notice of the DRI so that the investigations being conducted by the DRI may not be hampered due to his mis-statement and also submitted copies of the Sales Invoices corresponding to the said imported Aluminium Foil. Sh. Amit Kumar Jain had also requested to state the same in a statement under section 108 also.

8. Statement of Sh. Amit Sudan Darade, Sales Executive, M/s Cargomar Pvt. Ltd., Mumbai was recorded on 30.10.2017 under section 108 of the Customs Act, 1962 (RUD-9 of the SCN). He stated that in respect M/s Garvit Industries, New Delhi, only one Bill of Entry numbered 2011629 dated 08.06.2017 had come across their company; that the port of import for said consignment was Mundra, Gujarat but their company did not provide Clearing and Forwarding services at Mundra; that one Sh. Himanshu Vinod Sharma, Manager, M/s Alltrans Logistics, Mundra Port was known to him and that he forwarded the request of the importer to Sh. Himanshu, who further forwarded the same to their Customs broker M/s S.N. Shipping, Gandhidham and got the consignment cleared through them.

8.1 He further stated that the proprietor of the firm M/s Garvit Industries was Sh. Amit Kumar Jain, who never approached them for clearance of goods covered under Bill of Entry No. 2011629 dated 08.06.2017 and neither did he (Amit Sudam Darade) ever contacted him (Amit Kumar Jain); that one person Sh. Gurmeet Singh (having mobile numbers 9811000204 and 8510069628) contacted him telephonically on 03.06.2017 and asked him to provide the list of documents needed for filing Warehouse Bill of Entry under Section 59 of the Customs Act, 1962; that he had personally met Sh. Gurmeet Singh in Mumbai where he (Gurmeet) had introduced himself as a Clearing and Forwarding Agent and informed that he worked in New Delhi; that on the request of Sh. Gurmeet, he provided him (Gurmeet) the list of documents needed for filing Warehouse Bill of Entry and also informed him (Gurmeet) that their company did not provide services in Mundra and that he (Gurmeet) should contact Sh. Himanshu Vinod Sharma; that all necessary documents were sent to Sh. Himanshu at Mundra port by Sh. Gurmeet Singh through courier to get the Warehouse Bill of Entry through M/s S.N. Shipping (License Holder of M/s Alltrans Logistics) filed; that after the Warehouse Bill of Entry was filed, Sh. Gurmeet Singh informed him through WhatsApp that the owner of these goods was Sh. Sanjeev

Maggu, C/o M/s Leo Cargo Services Pvt. Ltd., r/o B-773, Sushant Lok Phase 1, Next to Sushant Lok Police Station, Gurgaon and also told him to courier the original Bill of Entry and other original documents such as Invoice, Packing List, Certificate of Origin, etc at the residence premises of Sh. Sanjeev Maggu; that he also submitted a screenshot of the same WhatsApp conversation with Sh. Gurmeet Singh; that after filing of Warehouse Bill of Entry and clearance of goods, Sh. Gurmeet Singh provided Space Availability Certificate issued by Public Bonded Warehouse M/s Riders India along with a Triple Duty Bond filed by the importer for the Bond to Bond transfer of goods covered under said Bill of Entry.

8.2 On being asked about the financial transactions that took place during and after the clearance of goods covered under Bill of Entry No. 2011629 dated 08.06.2017, he stated that before the clearance of goods and filing of Warehouse Bill of Entry, Sh. Himanshu Vinod Sharma had informed him that a total sum of Rs. 83,000 (approx) were needed to be paid by the importer and the entire amount should be paid in advance; that he contacted Sh. Gurmeet Singh regarding the same and he (Gurmeet) told him that the entire amount would be paid by the importer M/s Garvit Industries and that the payment was made on 15.06.2017 in the account of M/s Alltrans Logistics through NEFT/ RTGS. He was also able to identify Sh. Gurmeet Singh in the photograph shown to him during his statement.

9. Statement of Sh. Amit Kumar Jain was recorded under section 108 of the Customs Act, 1962 on 10.11.2017 (RUD-10 of the SCN) wherein among other things, he stated that he had gone through his previous statement dated 21.08.2017 and put his dated signatures as a token of having seen the same; that in his statement dated 21.08.2017, he had accepted that it was his liability to pay the Customs Duty (including the applicable Anti Dumping Duty) alongwith interest and penalty and accordingly, he had fulfilled his obligations and deposited the Customs Duty (along with the applicable Anti-Dumping Duty) along with interest and penalty vide TR-6 Challans dated 26.08.2017.

9.1 On being shown and asked to explain the contents of his letter dated 25.10.2017, he stated that the contents of the said letter were true and he again accepted that he had lied in his previous statement dated 21.08.2017 about not receiving goods from Sh. Sanjeev Maggu and that Sh. Sanjeev Maggu would pay him around Rs. 10 Lacs after selling the same to an exporter who will in turn, re-export the same goods; that he was a law-abiding citizen and he had never done any un-lawful act in his entire life and so, when he received summons from DRI, he got scared and thought that if he denied receiving the said goods, no further enquiry would be done against him; that he had actually received the said goods on 05.07.2017 itself and the same were sold by him to various buyers in the local markets. He also stated that he had realized that he had made a terrible mistake by lying during his previous statement dated 21.08.2017 and undertook never to repeat such an act in the future.

9.2 On being asked to explain in detail how he had received the goods imported vide Bill of Entry No. 2011629 dated 08.06.2017 when the same were supposed to be transferred to the

Public Bonded Warehouse M/s Riders India, he stated that the delivery of the goods was arranged by Sh. Sanjeev Maggu; that Sh. Sanjeev Maggu contacted him on WhatsApp on 4th July and informed him that the goods had reached the Public Bonded Warehouse and that the same would easily be transported to his factory premises as he had arranged for the Advance License needed for re-export of goods; that Sh. Sanjeev Maggu demanded his share of Rs. 20.5 lacs before delivering the goods to his factory premises and told him to give the amount to Sh. Jai Kumar (alias Jagga); that he had no choice but to arrange for the money and hand over the money to Sh. Jai Kumar in order to receive the goods; that after receiving the money, Sh. Sanjeev Maggu arranged for the logistics and delivered the goods at his factory premises in Bawana Industrial Estate, Delhi on the night of the same day itself and instructed him (Amit) to unload the truck during the night only; that he got the goods unloaded and stored them in his factory premises; that he had talked to potential buyers beforehand who were interested in buying the said goods at a cheaper price and were eagerly waiting to receive the same; that he got most of them sold to one of the buyers M/s Bala Ji Enterprise, Narela and thereafter sold the entire lot by 18.07.2017 and received a total of Rs. 35 lacs for the said goods; that he once again requested to consider his earlier request of waiver of Show Cause Notice as he had already deposited my Duty liability along with interest and penalty.

10. Statement of Sh. Malkhan Singh Shekhawat, G-Card Holder of M/s S.N. Shipping was recorded on 13.11.2017 under section 108 of the Customs Act, 1962 (RUD-11 of the SCN). On being asked about the discrepancy regarding the mis-match in the name of the Public Bonded Warehouse mentioned in the Space Availability Certificate and that mentioned on the application for Bond to Bond transfer submitted to Assistant Commissioner Bond, Mundra Port, he stated that this was an error on the part of one of their employees who was given the responsibility to arrange for the format of the application for Bond to Bond transfer and that he (employee) had taken the required format from one of the CHAs present in Mundra port and copy-pasted the same without making any changes in the name of the Public Bonded Warehouse; that the mistake was due to ignorance and without any mala fide intentions; that all the formalities were completed in proper manner and the goods were transferred to the Public Bonded Warehouse M/s Riders India only; that he also submitted a copy of the Re-warehousing Certificate dated 29.06.2017 received from M/s Riders India; that the same query was also raised by the Customs Department at Mundra Port to which they had provided the same explanation through a letter; that the driver of the lorry who transported the goods at the premises of the Public Bonded Warehouse M/s Riders India also confirmed before unloading the said goods that there was a board of M/s Riders India placed on the entrance of the address provided to him.

10.1 On being asked about the clearance of goods imported by M/s Garvit Industries, he stated that they were engaged in clearance of goods imported by M/s Garvit Industries only once through M/s Cargomar Pvt. Ltd., Mumbai and had got filed one Warehouse Bill of Entry No. 2011629 dated 08.06.2017 for the said firm for the import of Non-lubricating Aluminium Foils; that Sh. Amit S Darade of M/s Cargomar Pvt. Ltd. had approached Sh. Himanshu Vinod Sharma, Manager in M/s. S.N. Shipping regarding the said consignment and that he (Malkhan) was asked

by Sh. Himanshu to handle the clearance of said goods; that he made the checklist of the necessary documents for Warehouse Bill of Entry, got the KYC of M/s Garvit Industries completed and completed all the formalities necessary at the Customs department; that all relevant documents such as Triple Duty Bond, Transit Insurance, Space Availability Certificate, etc were provided by M/s Cargomar Pvt. Ltd. who in turn had received the same from Sh. Gurmeet Singh; that all the payments in respect of clearance of goods covered under said Bill of Entry were made by M/s Cargomar Pvt. Ltd. in their account through RTGS/ NEFT. He further stated that he was provided contact number of Sh. Gurmeet Singh, i.e. 9811000204, by Sh. Amit S Darade of M/s Cargomar Pvt. Ltd., who had asked him to call Sh. Gurmeet Singh for delivery instructions; that after clearance of the said consignment, Sh. Gurmeet Singh instructed him to get the goods loaded on trucks and get the same delivered at the premises of Public Bonded Warehouse M/s Riders India situated at Plot No. 1, Jainapur Village, Chhatarpur, New Delhi; that he got the said goods delivered to the desired location through M/s Jai Karni Transport Co., Gandhidham; that the payment for transportation was made in 2 instances, Rs. 72,000/- through NEFT by M/s Garvit Industries as advance and Rs. 18,000/- through cash given to the truck driver by Sh. Gurmeet Singh after delivery of the goods.

10.2 On being asked whether he had met or contacted the proprietor of the firm M/s Garvit Industries, he stated that the proprietor of the firm was Sh. Amit Kumar Jain as per the KYC documents; that he never contacted Sh. Amit Jain for the clearance of the goods imported vide Bill of Entry No. 2011629 dated 08.06.2017 and all the work done by him (Malkhan) was based on their relations with M/s Cargomar Pvt. Ltd. and since he had contacted Sh. Gurmeet Singh for the delivery of the goods, he presumed that Sh. Gurmeet Singh was the representative of M/s Garvit Industries; that he had never personally met Sh. Gurmeet Singh.

11. During the course of investigation conducted in the case of evasion of Customs duty by diverting the goods stored in the Public Bonded Warehouses M/s Riders India and M/s Prime Time Express without payment of Customs duty, as mentioned in Para 1 above, the following points had come to the fore:

- (i) A group of people headed by Sh. Ramesh Wadhwa and Sh. Sanjeev Maggu constituted an organized racket to evade Customs duty by way of diverting the goods stored in Public Bonded Warehouses in the Domestic Tariff Area without payment of due duty.
- (ii) Four importing firms, in the name of M/s Accturists Overseas (OPC) Pvt. Ltd., M/s Sparx Exports, M/s Shree Shyam Enterprises, M/s Horrens Exim were opened by utilizing fake identities/ names of petty employees and IECs were obtained in the names of these firms.
- (iii) Two Public Bonded Warehouse Licenses were obtained in the names of two firms, M/s Riders India and M/s Prime Time Express, both of which were controlled by Sh. Sanjeev Maggu (as ascertained from the statements of several persons

concerned in the case).

(iv) The Public Bonded Warehouse licenses were obtained by submitting fake / forged documents, such as fake Solvency Certificates, etc. in front of the Customs authorities and all the mandatory obligations, as specified in the Warehouse (Custody and handling of Goods) Regulations, 2016, were also not fulfilled.

(v) Import of goods was started in the names of the above mentioned 4 importing firms and all the imported goods were warehoused in the above said two Public Bonded Warehouses by filing Warehouse Bills of Entry under Section 59 of the Customs Act, 1962.

(vi) After shifting the imported goods to the said two Public Bonded Warehouses, fake/ forged documents were created that showed the goods to be re-exported/ rewarehoused elsewhere. The goods removed from these Public Bonded Warehouses were diverted into the Domestic Tariff Area without payment of applicable Customs duty and at the same time, producing forged/fake re-export/re-warehousing documents evading Customs duty in the process.

12. The modus operandi mentioned in the above Para is the same as that utilized in relation to the clearance of goods covered under Warehouse Bill of Entry No. 2011629 dated 08.06.2017 filed by M/s Garvit Industries, wherein the imported goods were cleared by filing Warehouse Bill of Entry and the goods were shifted to the Public Bonded Warehouse M/s Riders India, controlled by Sh. Sanjeev Maggu. Thereafter, Sh. Sanjeev Maggu had arranged for the removal of goods from the said Public Bonded Warehouse without payment of applicable Customs Duty (including Anti Dumping Duty on Aluminium Foils) and the same goods were delivered at the factory premises of M/s Garvit Industries, as accepted by the Proprietor of the firm, Sh. Amit Kumar Jain in his statement dated 10.11.2017.

13. Statement of Sh. Dilip Suri, Branch Manager, Punjab National Bank, Kirti Nagar Branch was recorded under section 108 of the Customs Act, 1962 on 05.10.2017 (RUD-12 of the SCN) wherein, he stated that they maintain a Current Account (Number-0148002100427830) by the name M/s Riders India in their branch, which was opened on 11.08.2016; that after confirming with the Branch officers who were responsible for opening of accounts, he confirmed that Sh. Subhash Kumar was the person who visited their branch for opening the said Current Account; that the aggregate credits received in the said account since inception amounted to Rs. 7-7.5 Lacs only by way of Cash deposits and transfers/ remittances; that they have never issued any Solvency Certificate to M/s Riders India or its proprietor Sh. Subhash Kumar.

14. During the course of investigation, seven summonses were issued to Sh. Sanjeev Maggu but he did not appear before the summoning authority to give evidence. In response to one of the summons, Sh. Sanjeev Maggu vide letter dated 30.10.2017 (RUD-13 of the SCN), has

stated "no firm in the name and style of M/s Leo Cargo Services Pvt. Ltd, is existing or was existing at any point of time at this address and therefore request you to send the letters at the address of the company only, and further such letter shall not be received and will be subject to be torn and thrown as scrap." Thus it appeared that Sh. Sanjeev Maggu has utter disregard to the law of the land and has blatantly ignored his duties as a law abiding citizen, refused to cooperate with the authorities and also failed miserably to carry out his responsibilities as a Customs Broker and also managed to dupe the Customs Authorities on several occasions.

14.1 Criminal complaints were filed under section 200 of Criminal Procedure Code, 1973 and Section 174 of Indian Penal Code, 1860 against Sh. Sanjeev Maggu for non-compliance of summons issued under Section 108 of the customs Act, 1962. The matter is still pending before the Ld. Chief Metropolitan Magistrate, Patiala House Courts, New Delhi.

15. Statement of Sh. Amit Kumar Jain, Proprietor of M/s Garvit Industries was recorded under section 108 of the Customs Act, 1962 on 07.08.2018 (RUD-14) wherein, among other things, he put his dated signatures on his previous statement dated 10.11.2017 as a token of having seen the same and stated that the contents of the said statement were true and correct. On further being shown copies of the invoices submitted by him vide his letter dated 25.10.2017 and asked to comment on the veracity of the same, he put his dated signatures on the same as a token of having seen the same and confirmed that the Non Lubricating Aluminium Foil, as imported by him were actually sold to the firms mentioned in said invoices; that he also submitted his Bank statement for the period 20.04.2017 to 31.10.2017 and also submitted the Accounts Ledgers pertaining to the 5 firms whose names were mentioned on the said invoices which clearly showed that the payments were received only in respect of the sale of Aluminium Foils.

15.1 The quantity of Non Lubricating Aluminium Foil sold by M/s Garvit Industries totalled to around 18.3 MT however, the quantity of Non Lubricating Aluminium Foil imported by them was 22.68 MT. On being asked to provide the details regarding the remaining 4.3 MT of Aluminium Foil, he stated that the Bill of Entry for the said goods was filed on 08.06.2017 and that he received the goods in his factory premises in the first week of July, 2017; that due to the lapse of so much time, a large quantity of the said imported goods became un-usable due to Blackening and therefore, the quantity which was fit for use was sold to the buyers and the remaining quantity was unfit for further use and was disposed off as scrap and treated as loss to the company.

16. Statements of the following persons (buyers of Non Lubricating Aluminium Foil from M/s Garvit Industries) were also recorded under Section 108 of the Customs Act, 1962 on 07.08.2018 (collectively RUD-15 of the SCN):

- Sh. Trilok Chand, Proprietor of M/s Balaji Enterprises.
- Sh. Vineet Jain, Proprietor of M/s Arihant Enterprises.

- Sh. Vinod Kumar Jain, Proprietor of M/s Arihant Packaging Industries.
- Sh. Rakesh Goyal, Proprietor of M/s Shri Balaji Paper Mart.
- Sh. Prince Khurana, Partner in M/s Easy Packs.

16.1 In their statements, all the above said persons, among other things, put their dated signatures on the copies of their respective invoices provided by Sh. Amit Kumar Jain vide his letter dated 25.10.2017, raised by M/s Garvit Industries, pertaining to the purchase of Non Lubricating Aluminium Foil and stated that the goods mentioned in the said invoices were purchased by them in the names of their respective firms; that they came to know about Sh. Amit Kumar Jain, Proprietor of M/s Garvit Industries, from the market/ other sources and found out that he (Amit) was selling Aluminium Foils at marginally cheaper rates as compared to that prevalent in the market. They all stated that the payments for the purchase of the said goods were made through proper banking channels and also appended their respective bank account statements for the relevant period, showing their transactions with M/s Garvit Industries with their respective statements recorded under Section 108 of the Customs Act, 1962 on 07.08.2018.

17. On the basis of the investigations conducted, roles of different parties/ persons involved in the organized and systematic racket running this novel scheme of duty evasion can be summarized as under:

17.1 Role of Sh. Sanjeev Maggu:-

- (i) He got opened 4 firms in the names of petty employees and got issued IECs for the purpose of import of goods and also got issued Public Bonded Warehouse Licenses for 2 firms in the name of M/s Prime Time Express and M/s Riders India by submitting fake/ forged Solvency Certificates worth Rs. 2 Crores, which are mandatory for getting the Licenses for Public Bonded Warehouses.
- (ii) He represented himself as the representative of both the above said two Public Bonded Warehouses, i.e. M/s Riders India and M/s Prime Time Express in front of the Customs Officers of Bond Section of Air Cargo Export Commissionerate, New Delhi and managed to get all the consignments transferred to the said warehouses after filing of Warehouse Bills of Entry.
- (iii) He arranged for the imported goods to be transferred to the 2 Public Bonded Warehouses also controlled by him, and subsequently removed the goods from the said Public Bonded Warehouses and diverted the same into the local markets and at the same time, producing forged/ fake re-export/ re-warehousing documents to dupe the government exchequer of the applicable Customs Duty.
- (iv) He instructed Sh. Amit Kumar Jain, proprietor of M/s Garvit Industries to get the goods warehoused at Public Bonded Warehouse M/s Riders India by filing a Warehouse Bill of Entry, and arranged for the removal of said goods from the premises

of M/s Riders India and thereafter got the same delivered at the factory premises of M/s Garvit Industries, and received Rs. 20.5 Lacs from Sh. Amit Kumar Jain in the process.

(v) He preferred not to join the investigations despite various summonses been issued to him and has also refused to cooperate with the department on various occasions. He has also deliberately bought time to cause unnecessary delay in the conclusion of the investigations.

(vi) In view of the foregoing, it appeared that Sh. Sanjeev Maggu has rendered himself liable to penal action under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 for the acts of omissions and commissions as discussed herein.

17.2 Role of M/s Garvit Industries/ Sh. Amit Kumar Jain:- Sh. Amit Kumar Jain imported Non- Lubricating Aluminium Foils in the name of his Proprietorship firm M/s Garvit Industries, which attract Anti Dumping Duty (vide Notification No. 23/2017-Customs (ADD)). In order to evade the applicable Anti Dumping Duty, Sh. Amit Kumar Jain willingly approached Sh. Sanjeev Maggu and consciously became a part of the scheme to evade Customs Duty (including Anti Dumping Duty) by diverting the imported goods from the Public Bonded Warehouse M/s Riders India. After receiving the diverted goods, Sh. Amit Kumar Jain sold them to domestic buyers at cheaper rates as compared to the market prices. Sh. Amit Kumar Jain also lied during his statement by denying receiving the imported goods under consideration and accepted that he got scared and thought that if he denied receiving the goods, no further enquiry would be done against him. But while filing his GST returns, he realized that he had already sold the said imported goods to various buyers and the same fact might come out in the open later on. However, upon realizing his mistake, he voluntarily deposited the applicable Customs Duty alongwith Interest and Penalty (@ 15%), amounting to Rs. 39,27,585/-. He also requested to take a lenient view and also requested for waiver of Show Cause Notice under the provisions of Section 28(5) of the Customs Act, 1962. However, by willfully colluding with Sh. Sanjeev Maggu to evade applicable duty, it appeared that M/s Garvit Industries has rendered itself liable to penal action under Section 114A of the Customs Act, 1962 for the acts of omissions and commissions as discussed herein.

17.3 Role of Sh. Gurmeet Singh:- Sh. Gurmeet Singh was an accomplice of Sh. Sanjeev Maggu and was directly involved in the said scheme of duty evasion. Sh. Gurmeet Singh used to do all the leg work such as getting the relevant documents signed from the IEC holders, carrying out the banking related works, etc. Sh. Gurmeet Singh also used to arrange for logistics and storage for transporting the imported goods from the Public Bonded Warehouses and diverting them into local markets. He also contacted the Customs Brokers and arranged for getting the Warehouse Bill of Entry filed in the name of M/s Garvit Industries through the Customs Broker located in Gandhidham. He also received the goods at the premises of the Public Bonded Warehouse M/s Riders India when the same were shifted from Mundra. Sh. Gurmeet Singh also informed Sh. Amit Sudam Darade, Sales Executive of M/s Cargomar Pvt. Ltd. that the real

owner of the goods imported under Bill of Entry No. 2011629 dated 08.06.2017 was Sh. Sanjeev Maggu and instructed him to deliver all the relevant documents (in original) to the residence address of Sh. Sanjeev Maggu. Sh. Gurmeet Singh did not join the investigations despite various summonses. In view of the foregoing, it appeared that Sh. Gurmeet Singh has rendered himself liable to penal action under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 for the acts of omissions and commissions as discussed herein.

17.4 Role of Sh. Subhash Kumar:- Sh. Subhash Kumar was the proprietor of the Public Bonded Warehouse M/s Riders India. The said Public Bonded Warehouse was utilized for diversion of imported goods into Domestic Tariff Area without payment of Customs Duty. Sh. Subhash Kumar was not traceable during the investigations and remained absconding from all known addresses. Sh. Sanjeev Maggu and others were able to successfully execute their scheme of evasion of Customs Duty by way of diversion of warehoused goods. Sh. Subhash Kumar miserably failed to comply with the Warehousing Rules and Regulations and it was entirely his responsibility to adhere to all the Warehousing Rules and Regulations being the owner of the Public Bonded Warehouse and therefore, it appeared that Sh. Subhash Kumar has rendered himself liable to penal action under Section 112 (a), 112 (b) and 114AA of the Customs Act, 1962 read with Regulation 12 of Warehousing (Custody and Handling of Goods) Regulations, 2016 for the acts of omissions and commissions as discussed herein.

19. From the foregoing paras, it appeared that the said racket headed by Sh. Sanjeev Maggu was able to successfully divert the goods covered under Bill of Entry No. 2011629 dated 08.06.2017 pertaining to M/s Garvit Industries from the Public Bonded Warehouse M/s Riders India and deliver the same to the factory premises of M/s Garvit Industries without payment of applicable Customs duty (including Anti Dumping Duty), from where the said goods were sold to domestic buyers. This act had resulted in loss of Customs Duty (including Anti Dumping Duty) amounting to Rs. 33,00,033/- (Customs duty of Rs. 8,84,894/- and Anti Dumping Duty of Rs. 24,15,139/-) to the exchequer. However, Sh. Amit Kumar Jain, Proprietor of M/s Garvit Industries, has voluntarily deposited the entire Customs Duty (including Anti Dumping Duty) alongwith Interest @15 % per annum and Penalty @ 15% of duty vide Challan Nos. 1169 dated 28.08.2017 and 3367 dated 28.08.2017.

20. Now, therefore, the importer, M/s Garvit Industries, Plot no. M-19, Sector-3, DSIIDC, Bawana Industrial Area, Bawana, Delhi-110039 (holder of IEC No. 0516943324), is hereby called upon to Show Cause under F. No. DRI/HQ-CI/50D/Int-14/Part-I/2017-CI dated 30.01.2019 answerable to the Additional/Joint Commissioner of Customs, Mundra as to why:

- (i) The Customs duty on imported goods, i.e. Non-Lubricating Aluminium Foil, amounting to Rs.8,84,894/-(Rupees Eight Lacs Eighty Four Thousand Eight Hundred and Ninety Four only) should not be demanded from them under Section 28 of the Customs Act, 1962.
- (ii) The Anti Dumping Duty on imported goods, i.e. Non-Lubricating Aluminium Foil, amounting to Rs. 24,15,139/- (Rupees Twenty Four Lacs Fifteen Thousand One

- Hundred and Thirty Nine only) should not be demanded from them under Section 28 of the Customs Act, 1962.
- (iii) Interest should not be recovered from them in terms of Section 28AA of the Customs Act, 1962.
- (iv) Penalty should not be imposed upon them in terms of Section 114A of the Customs Act, 1962 for the acts of omissions and commissions committed by them as discussed above.
- (v) The Customs duty of Rs. 8,84,896/- (Rupees Eight Lacs Eighty Four Thousand Eight Hundred and Ninety Six only), already paid during the investigation should not be appropriated against the demand of duty raised above.
- (vi) The Anti Dumping Duty of Rs. 24,15,137/- (Rupees Twenty Four Lacs Fifteen Thousand One Hundred and Thirty Seven only), already paid during the investigation should not be appropriated against the demand of duty raised above.
- (vii) The Interest of Rs. 1,25,310/- (Rupees One Lac Twenty Five Thousand Three Hundred and Ten only), already paid during the investigation should not be appropriated against the Interest liable to be paid.
- (viii) The Penalty of Rs. 5,02,242/- (Rupees Five Lacs Two Thousand Two Hundred and Forty Two only), already paid during the investigation should not be appropriated against the Penalty to be imposed.

21. Now, therefore, Sh. Sanjeev Maggu, resident of B-773, B Block, Sushant Lok Phase I, Gurgaon is hereby called upon to show cause F. No. DRI/HQ-CI/50D/Int-14/Part-I/2017-CI dated 30.01.2019 answerable to the Additional/Joint Commissioner of Customs, Mundra as to why penalty should not be imposed upon him under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 for the acts of omissions and commissions committed by him as discussed herein.

22. Now, therefore, Sh. Gurmeet Singh, resident of C-5, Top Floor, Mahendru Enclave, New Delhi is hereby called upon to show cause F. No. DRI/HQ-CI/50D/Int-14/Part-I/2017-CI dated 30.01.2019 answerable to the Additional/Joint Commissioner of Customs, Mundra as to why penalty should not be imposed upon him under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 for the acts of omissions and commissions committed by him as discussed herein.

23. Now, therefore, Sh. Subhash Kumar, Proprietor of M/s Riders India, Public Bonded Warehouse, situated at Plot No 1, Village Jaunapur, Chhattarpur, New Delhi, and resident of 1078, Street No 71, Devaram park, Trinagar, Delhi is hereby called upon to show cause F. No. DRI/HQ-CI/50D/Int-14/Part-I/2017-CI dated 30.01.2019 answerable to the Additional/Joint Commissioner of Customs, Mundra as to why penalty should not be imposed upon him under Section 112(a), 112 (b) and 114AA of the Customs Act, 1962 for the acts of omissions and commissions committed by him as discussed herein.

Defence Reply:

24. Shri Amit Kumar Jain, Proprietor of M/s. Garvit Industries has submitted the following submission vide their letter dated nil, received on 12.02.2019 in response to SCN No. DRI/HQ-CI/50D/Int-14/Part-I/2017-CI dated 30.01.2019:

- (i) They accepted that, they had imported 22,673 Kgs of Non-lubricating Aluminium Foil from M/s. Loften Aluminium (Hong Kong) Ltd., RN-1401, 14/F World Commerce CTR Harbour City 7-11, Canton Rd, TSL, KL, Hong Kong vide Bill of Entry No. 2011629 dated 08.06.2017 filed for warehousing under Section 59 of the Customs Act, 1962 through an agent named Shri Sanjeev Maggu.
- (ii) They also admitted that, they had got those goods delivered in their godown premises without filling any Ex-bond Bill of Entry and without payment of any Customs Duty (including Anti-Dumping Duty as well), which was liable to be paid at the time of clearance from the Customs Bonded Warehouse.
- (iii) They also accepted that, the entire Customs Duty and Anti-Dumping Duty demanded vide the captioned SCN was liable to be paid by them and therefore, they accepted the demand of Customs duty of Rs. 8,84,894/- and they also accepted the demand of Anti-dumping duty of Rs. 24,15,139/-
- (iv) Further, they had admitted their mistake during the course of investigations being conducted by the DRI (Hqrs.), New Delhi and therefore, during the course of investigations they had paid the entire Customs duty & Anti-dumping duty along with applicable interest and penalty @ 15% of the differential duty, as per section 25(5) of the Customs Act, 1962.
- (v) In view of the above submission regarding the compliance under Section 25(5) of the Customs Act, 1962, they had requested to concluding the proceedings initiated under the subject SCN, in terms of Section 28(6) of the Customs Act, 1962.
- (vi) They have requested that, they do not wish to be heard in person in view of the facts. They fully agreed to the demand of Customs duty, Anti-dumping duty, interest and penalty raised in the subject SCN.
- (vii) They have also requested that the Hon'ble Board vide Circular No. 11/2016-Customs dated 15.03.2006, other person, who are co-noticees in the subject SCN for their acts of omission and commission other than demand of duty, would be benefitted by the demand closure in case where compliance of conditions mentioned in proviso to clause (i) of subsection (6) of Section 28 of the Customs Act, 1962 by the main noticee to whom the demand of duty has been issued has been fulfilled.
- (viii) They further submitted that, being the main noticee to whom the demand of duty have been issued, have complied with condition mentioned in proviso(i) of subsection (6) of Section 28 of the Customs Act, 1962 and therefore the proceeding against the co-noticees should be deemed to be concluded and there is no requirement of their personal hearing as well. Hence, they have requested the proceeding against their firm initiated vide subject SCN have been concluded under Section 28(6) of the Customs Act, 1962.

Personal Hearing:

25. Personal hearing fixed on 25.04.2019 and 30.05.2019 but no one appeared before the adjudicating authority. As per above submission made by Shri Amit Kumar Jain, Proprietor of M/s. Garvit Industries, no further personal hearing in the matter was fixed.

Discussion and Findings:

26. I have carefully gone through the records of the case, including the Show Cause Notice dated 30.01.2019 as well as written submission made by main noticee i.e., M/s. Garvit Industries. Hence, I proceed to decide the case on the basis of available records.

27. I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided:-

- (i) Whether the Customs duty on imported goods, i.e. Non-Lubricating Aluminium Foil, amounting to Rs.8,84,894/- is required to be demanded and recovered from M/s. Garvit Industries, along with applicable interest under Section 28 of the Customs Act, 1962.
- (ii) Whether the Anti Dumping Duty on imported goods, i.e. Non-Lubricating Aluminium Foil, amounting to Rs. 24,15,137/- is required to be demanded from M/s. Garvit Industries under Section 28 of the Customs Act, 1962.
- (iii) Whether Interest is required to be recovered from M/s. Garvit Industries in terms of Section 28AA of the Customs Act, 1962.
- (iv) Whether Penalty is required to be imposed upon M/s. Garvit Industries in terms of Section 114A of the Customs Act, 1962.
- (v) Whether the Customs duty of Rs. 8,84,896/-, Anti-Dumping duty of Rs. 24,15,137/-, Interest of Rs. 1,25,310/- and Penalty of Rs. 5,02,242/- are required to be appropriate which were already paid through TR-6 challan on 28.08.2017 by M/s. Garvit Industries during the investigation.
- (vi) Whether penalty is required to be imposed upon Shri Sanjeev Maggu, under Section 112(a), 112(b) and 114AA of the Customs Act, 1962.
- (vii) Whether penalty is required to be imposed upon Shri Gurmeet Singh, under Section 112(a), 112(b) and 114AA of the Customs Act, 1962.
- (viii) Whether penalty is required to be imposed upon Shri Subhash Kumar, under Section 112(a), 112(b) and 114AA of the Customs Act, 1962.

28. After having framed the main issues to be decided, now I proceed to deal with each of the issues individually, herein below.

29. On going through the case records and the SCN, I find that the fact of the case is that, the officers of DRI, New Delhi have carried out an investigation related to evasion of Customs Duty by the way of diverting the imported goods into Domestic Tariff Area from Public Bonded

Warehouses i.e., M/s Riders India (located at Plot No-1, Jaunapur Village, Chhattarpur, New Delhi) and M/s Prime Time Express (located at Plot No-95, Poll no New Line, Bamnoli Village, Tehsil- Kapashera, New Delhi), wherein the imported goods were transferred to said two Public Bonded Warehouses by filing Bills of Entry for Warehousing under Section 59 of the Customs Act, 1962 and subsequently removed without payment of any Customs duty and diverted into the Domestic Tariff Areas, it was gathered that apart from the 4 importing firms, i.e. M/s Accturist Overseas (OPC) Pvt. Ltd., M/s Shree Shyam Enterprises, M/s Sparx Exports and M/s Horrens Exim, under consideration in the above mentioned case, there was one more firm by the name of M/s Garvit Industries, located at Plot no. M-19, Sector-3, DSIIDC, Bawana Industrial Area, Bawana, Delhi-110039 which had imported a consignment of Aluminium Foil and had transferred the same into the Public Bonded Warehouse M/s Riders India by filing a Warehouse Bill of Entry under Section 59 of the Customs Act, 1962.

30. The import data of the importer, M/s Garvit Industries, was analyzed by the investigating agency (DRI) and it was revealed that only one Warehouse Bill of Entry had been filed by the importer M/s Garvit Industries, i.e. Bill of Entry no. 2011629 dated 08.06.2017 at Mundra, Gujarat.

31. During the course of investigation of the case, search had already been conducted by the DRI on the Warehouse premises of the Public Bonded Warehouse i.e., M/s Riders India, situated at Plot No-1, Jaunapur Village, Chhattarpur, New Delhi vide Panchnama dated 14.07.2017 and it was found that only 1250 Cartons of broken Cashew Nuts (having net weight of 20 Kg each, as mentioned on the said cartons) were found stored therein. Furthermore, no Ex-Bond Bill of Entry had been filed in respect of the Warehouse Bill of Entry No. 2011629 dated 08.06.2017 by M/s Garvit Industries. Thus, I find that the goods pertaining to M/s Garvit Industries covered under the Warehouse Bill of Entry No. 2011629 dated 08.06.2017 had been diverted from the above said Public Bonded Warehouse into the Domestic Tariff Area. Another search was conducted on 21.08.2017 by the officers of DRI at the factory premises of M/s Garvit Industries, located at Plot no. M-19, Sector-3, DSIIDC, Bawana Industrial Area, Bawana, Delhi-110039 but no goods or documents pertaining to any import had been found.

32. Statement of Shri Amit Kumar Jain, Proprietor of M/s. Garvit Industries was recorded on 21.08.2017, under section 108 of the Customs Act, 1962 wherein he *inter alia* stated that he had imported one consignment of Aluminium Foil covered under Bill of Entry no. 2011629 dated 08.06.2017 filed at Mundra SEZ Port. He had booked the said consignment with M/s Loftan Aluminium (Hong Kong) Ltd. in March 2017 but the consignment reached India in the month of June, 2017. Meanwhile, Notification No. 23/2017-Customs (ADD) dated 16.05.2017 issued by the Board and Anti Dumping Duty had been imposed in the import of Aluminium Foil from China. As per the said Notification, total Customs Duty for his consignment came out to be Rs. 33.48 lacs, which suddenly increased the Cost Price of the goods. After that he talked to Sh. Sarthak Kansal, who introduced him to one Sh. Jaikumar (alias Jagga, and owner of M/s Decor

& More), who further introduced him to a Customs Broker Sh. Sanjeev Maggu. Sanjeev Maggu told him that he would get filed a Warehouse Bill of Entry under Section 59 of the Customs Act, 1962 and said that the goods would first be stored in a warehouse and then sold to an exporter who will re-export the same. He agreed to the same and handed over all the import related documents of Aluminium Foil to Sh. Sanjeev Maggu, who had filed Warehouse Bill of Entry No. 2011629 dated 08.06.2017 at Mundra SEZ Port through Customs Broker M/s S.N. Shipping. Shri Sanjeev Maggu also got his signatures on two triple duty bonds in respect of warehousing the said goods in two Public Bonded Warehouses, namely M/s Prime Time Express and M/s Riders India. Both the above said warehouses were operated and controlled by Sanjeev Maggu. Shri Sanjeev Maggu told him that he would use only one of the bonds, as per the space availability in the said two warehouses. Sh. Sanjeev Maggu also told him that he would sell the imported goods to some exporter and in return pay him 40% portion of the applicable Customs duty which was about Rs. 10 Lacs but till that day, he had not received any payment from Sh. Sanjeev Maggu despite repeated reminders. He admitted that for all his work, the contact person was Sh. Sanjeev Maggu and he did not contact anyone from M/s. S. N. Shipping. He further admitted that, in order to evade the Anti-Dumping Duty of around 40%, he consented to get the clearance work done through Sh. Sanjeev Maggu but on perusal of the Panchnamas dated 14.07.2017 drawn at the two said Public Bonded Warehouses, he understood that Sh. Sanjeev Maggu never intended to store the goods in the said warehouses and re-export the same and wanted to sell the same in the domestic markets without payment of any applicable Customs duty. He accepted that the above said imported goods did not reach the destined public bonded warehouse, hence being the IEC holder of M/s Garvit Industries who had imported the said goods, he was liable to pay all applicable duties alongwith interest, penalties and undertook to deposit the same and regretted that such a fraud was committed by Sh. Sanjeev Maggu in the name of his firm.

33. On perusal of the Re-warehousing certificate dated 28.06.2017, Space Availability Certificate dated 09.06.2017 and NOC letter C. No. VIII(B) 40/1563/2017 dated 12.06.2017 issued by the Superintendent, Customs Bond Section, New Customs House, New Delhi, I find that the name of the warehouse was mentioned as M/s Riders India. However, the name of the warehouse mentioned on the Note-sheet of the file docket pertaining to Bill of Entry No. 2011629 dated 08.06.2017 and the Bond to Bond transfer application submitted by M/s. S.N. Shipping, Faridabad was M/s Prime Time Express.

34. During the course of investigation and later on as informed vide letter/challan dated 28.08.2017, M/s Garvit Industries had made payment in respect of Warehouse Bill of Entry No. 2011629 dated 08.06.2017 at Customs House, Mundra, as detailed below:

| TR-6 Challan No & Date | Duty Paid (Rs.) | Interest Paid (Rs.) | Ant—Dumping duty Paid (Rs.) | Penalty Paid (Rs.) | Total Amount Paid (In Rs.) |
|------------------------|-----------------|---------------------|-----------------------------|--------------------|----------------------------|
| 1169 Dtd. 28.08.2019 | 8,84,896/- | 1,25,310/- | 24,15,137/- | --- | 34,25,343/- |
| 3367 Dtd. 28.08.2017 | | | | 5,02,242/- | |
| Total | | | | | 39,27,585/- |

34.1 I find that Shri Amit Kumar Jain, Proprietor of M/s. Garvit Industries have accepted

that the above said imported goods did not reach the destined public bonded warehouse, hence being importer who had imported the said goods, he was liable to pay all applicable duties alongwith interest, penalties and accordingly, paid entire duty liability of Rs. 39,27,585/- (including ADD, Interest and penalty) liveable thereon as mentioned hereinabove is to be appropriated towards due duty, Anti-Dumping duty, interest and penalty.

35. Further, I find that, Shri Amit Kumar Jain, Proprietor of M/s. Garvit Industries itself admitted vide their letter dated 25.10.2017 that he had lied in his statement dated 21.08.2017 about not receiving the goods. But he had actually received the imported goods on 05.07.2017 and he had already sold the said imported goods to various buyers.

36. Statement of Sh. Amit Sudan Darade, Sales Executive, M/s Cargomar Pvt. Ltd., Mumbai was recorded on 30.10.2017 under section 108 of the Customs Act, 1962 wherein he *inter alia* stated that only one Bill of Entry numbered 2011629 dated 08.06.2017 of M/s Garvit Industries, New Delhi, had come across their company. The port of import for said consignment was Mundra, Gujarat but their company did not provide Clearing and Forwarding services at Mundra. Therefore, he forwarded the request of the importer to Sh. Himanshu Vinod Sharma, Manager, M/s Alltrans Logistics, Mundra Port, who further forwarded the same to their Customs broker M/s S.N. Shipping, Gandhidham and got the consignment cleared through them. He further stated that Shri Amit Kumar Jain, proprietor of M/s Garvit Industries never approached them for clearance of goods covered under Bill of Entry No. 2011629 dated 08.06.2017. One person Sh. Gurmeet Singh contacted him telephonically on 03.06.2017 and asked him to provide the list of documents needed for filing Warehouse Bill of Entry under Section 59 of the Customs Act, 1962. Accordingly, he had personally met Sh. Gurmeet Singh in Mumbai where Shri Gurmeet had introduced himself as a Clearing and Forwarding Agent and on the request of Sh. Gurmeet, he provided him the all necessary documents for filing Warehouse Bill of Entry and further, Shri Gurmeet sent the same to Sh. Himanshu at Mundra port for filling the Warehouse Bill of Entry through M/s S.N. Shipping (License Holder of M/s Alltrans Logistics). He further stated that Sh. Gurmeet Singh informed him through WhatsApp that the owner of these goods was Sh. Sanjeev Maggu, C/o M/s Leo Cargo Services Pvt. Ltd., Gurgaon and also told him to courier the original Bill of Entry and other original documents such as Invoice, Packing List, Certificate of Origin, etc at the residence premises of Sh. Sanjeev Maggu. After that filing of Warehouse Bill of Entry and clearance of goods, Sh. Gurmeet Singh provided Space Availability Certificate issued by Public Bonded Warehouse M/s Riders India along with a Triple Duty Bond filed by the importer for the Bond to Bond transfer of goods covered under said Bill of Entry. On being asked about the financial transactions that took place during and after the clearance of goods covered under Bill of Entry No. 2011629 dated 08.06.2017, he stated that before the clearance of goods and filing of Warehouse Bill of Entry, Sh. Himanshu Vinod Sharma had informed him that a total sum of Rs. 83,000 (approx) were needed to be paid by the importer and the entire amount should be paid in advance; that he contacted Sh. Gurmeet Singh regarding the same and he (Gurmeet) told him that the entire amount would be paid by the importer M/s Garvit Industries and that the payment was made on 15.06.2017 in the account of M/s Alltrans Logistics through NEFT/

RTGS.

37. Another Statement of Sh. Amit Kumar Jain was recorded on 10.11.2017 wherein he had accepted that it was his liability to pay the Customs Duty (including the applicable Anti Dumping Duty) alongwith interest and penalty and accordingly, he had fulfilled his obligations and deposited the Customs Duty (along with the applicable Anti-Dumping Duty) along with interest and penalty vide TR-6 Challans dated 26.08.2017 (details mentioned at para-34).

37.1 On being shown and asked to explain the contents of his letter dated 25.10.2017 under which he confessed that he had lied in his statement dated 21.08.2017 about not receiving the goods but he had actually received the imported goods on 05.07.2017 and he had already sold the said imported goods to various buyers in the local markets; that he was a law-abiding citizen and he had never done any un-lawful act in his entire life and so, when he received summons from DRI, he got scared and thought that if he denied receiving the said goods, no further enquiry would be done against him. He also stated that he had realized that he had made a terrible mistake by lying during his previous statement dated 21.08.2017 and undertook never to repeat such an act in the future.

37.2 On being asked regarding, how he had received the goods imported vide Bill of Entry No. 2011629 dated 08.06.2017 when the same were supposed to be transferred to the Public Bonded Warehouse M/s Riders India, he stated that the delivery of the goods was arranged by Sh. Sanjeev Maggu; that Sh. Sanjeev Maggu contacted him on WhatsApp on 4th July and informed him that the goods had reached the Public Bonded Warehouse and that the same would easily be transported to his factory premises as he had arranged for the Advance License needed for re-export of goods; that Sh. Sanjeev Maggu demanded his share of Rs. 20.5 lacs before delivering the goods to his factory premises and told him to give the amount to Sh. Jai Kumar (alias Jagga); that he had no choice but to arrange for the money and hand over the money to Sh. Jai Kumar in order to receive the goods; that after receiving the money, Sh. Sanjeev Maggu arranged for the logistics and delivered the goods at his factory premises in Bawana Industrial Estate, Delhi on the night of the same day itself and instructed him (Amit) to unload the truck during the night only; that he got the goods unloaded and stored them in his factory premises; that he had talked to potential buyers beforehand who were interested to buying the said goods at a cheaper price and were eagerly waiting to receive the same; that he got most of them sold to one of the buyers M/s Balaji Enterprise, Narela and thereafter sold the entire lot by 18.07.2017 and received a total of Rs. 35 lacs for the said goods; that he once again requested to consider his earlier request of waiver of Show Cause Notice as he had already deposited my Duty liability along with interest and penalty.

37.3 Further statement of Shri Amit Kumar Jain was recorded on 07.08.2018 under which he has submitted all invoices relating sale of imported goods i.e, Non Lubricating Aluminium Foil, Bank statement for the period 20.04.2017 to 31.10.2017 and also submitted the Accounts Ledgers pertaining to the 5 firms whose names were mentioned on the said invoices which clearly showed that the payments were received only in respect of the sale of Aluminium Foils.

37.4 I find that, the quantity of Non Lubricating Aluminium Foil sold by M/s Garvit Industries totalled to around 18.3 MT however, the quantity of Non Lubricating Aluminium Foil imported by them was 22.68 MT. Regarding the remaining 4.3 MT of Aluminium Foil, he admitted that the Bill of Entry for the said goods was filed on 08.06.2017 and that he received the goods in his factory premises in the first week of July, 2017; that due to the lapse of so much time, a large quantity of the said imported goods became un-usable due to Blackening and therefore, the quantity which was fit for use was sold to the buyers and the remaining quantity was unfit for further use and was disposed off as scrap and treated as loss to the company.

38. Statement of Sh. Malkhan Singh Shekhawat, G-Card Holder of M/s. S.N. Shipping was recorded on 13.11.2017 under section 108 of the Customs Act, 1962. On being asked about the discrepancy regarding the mis-match in the name of the Public Bonded Warehouse mentioned in the Space Availability Certificate and that mentioned on the application for Bond to Bond transfer submitted to Assistant Commissioner (Bond), Customs House, Mundra, he stated that this was an error on the part of one of their employees who was given the responsibility to arrange for the format of the application for Bond to Bond transfer and that he (employee) had taken the required format from one of the CHAs present in Mundra port and copy-pasted the same without making any changes in the name of the Public Bonded Warehouse; that the mistake was due to ignorance and without any mala fide intentions; that all the formalities were completed in proper manner and the goods were transferred to the Public Bonded Warehouse M/s Riders India only; that he also submitted a copy of the Re-warehousing Certificate dated 29.06.2017 received from M/s Riders India; that the same query was also raised by the Customs Department at Mundra Port to which they had provided the same explanation through a letter dated 13.11.2017.

38.1 Further, he stated that they were clearance of goods imported by M/s Garvit Industries only once through M/s Cargomar Pvt. Ltd., Mumbai and had got filed one Warehouse Bill of Entry No. 2011629 dated 08.06.2017 for the said firm for the import of Non-lubricating Aluminium Foils; that Sh. Amit S Darade of M/s Cargomar Pvt. Ltd. had approached Sh. Himanshu Vinod Sharma, Manager in M/s S.N. Shipping regarding the said consignment and that he (Malkhan) was asked by Sh. Himanshu to handle the clearance of said goods; that he made the checklist of the necessary documents for Warehouse Bill of Entry, got the KYC of M/s. Garvit Industries and completed all the necessary formalities at the Customs department; that all relevant documents such as Triple Duty Bond, Transit Insurance, Space Availability Certificate, etc. were provided by M/s Cargomar Pvt. Ltd. who in turn had received the same from Sh. Gurmeet Singh; that all the payments in respect of clearance of goods covered under said Bill of Entry were made by M/s Cargomar Pvt. Ltd. in their account through RTGS/ NEFT; that after clearance of the said consignment, Sh. Gurmeet Singh instructed him to get the goods loaded on trucks and delivered at the premises of Public Bonded Warehouse, M/s Riders India situated at Plot No. 1, Jainapur Village, Chhatarpur, New Delhi; that he got the said goods delivered to the desired location through M/s Jai Karni Transport Co., Gandhidham; that the payment for

transportation was made in 2 instances, Rs. 72,000/- through NEFT by M/s Garvit Industries as advance and Rs. 18,000/- through cash given to the truck driver by Sh. Gurmeet Singh after delivery of the goods. Further, he stated that he never contacted Sh. Amit Jain for the clearance of the goods imported vide Bill of Entry No. 2011629 dated 08.06.2017 and all the work done by him (Malkhan) was based on their relations with M/s Cargomar Pvt. Ltd. and since he had contacted Sh. Gurmeet Singh for the delivery of the goods, he presumed that Sh. Gurmeet Singh was the representative of M/s Garvit Industries but he had never personally met Sh. Gurmeet Singh.

39. Based on the aforesaid material evidence available on record, I find that a group of people headed by Sh. Ramesh Wadhwa and Sh. Sanjeev Maggu constituted an organized racket to evade Customs duty by way of diverting the goods stored in Public Bonded Warehouses i.e., M/s. Riders India and M/s. Prime Time Express in the Domestic Tariff Area without payment of duty. I also find that, four importing firms, in the name of M/s. Accturists Overseas (OPC) Pvt. Ltd., M/s. Sparx Exports, M/s. Shree Shyam Enterprises, M/s. Horrens Exim were opened by utilizing fake identities/ names of petty employees and IECs were obtained in the names of these firms. Two Public Bonded Warehouse Licenses were obtained in the names of two firms, M/s Riders India and M/s. Prime Time Express, both of which were controlled by Sh. Sanjeev Maggu and the same was established from the statements of several persons concerned in the case.

39.1 Further, statement of Shri Dilip Suri, Branch Manager, Punjab National Bank, Kirti Nagar Branch was recorded under section 108 of the Customs Act, 1962 on 05.10.2017 wherein he confirmed that they have never issued any Solvency Certificate to M/s Riders India or its proprietor Sh. Subhash Kumar. Hence, I find that the aforesaid Public Bonded Warehouse licenses were obtained by submitting fake/forged documents, such as fake Solvency Certificates, etc. in front of the Customs authorities and all the mandatory obligations, as specified in the Warehouse (Custody and handling of Goods) Regulations, 2016, were also not fulfilled.

39.2 I have seen that, there are seven summonses were issued to Shri Sanjeev Maggu but he did not appear before the DRI to give evidence. Therefore, I find that Shri Sanjeev Maggu has utter disregard to the law of the land and has blatantly ignored his duties as a law abiding citizen, refused to cooperate with the authorities and also failed miserably to carry out his responsibilities as a Customs Broker. For this kind of act, DRI has filed Criminal complaints against Shri Sanjeev Maggu under section 200 of Criminal Procedure Code, 1973 and Section 174 of Indian Penal Code, 1860 for non-compliance of summons issued under Section 108 of the customs Act, 1962. The matter is still pending before the Ld. Chief Metropolitan Magistrate, Patiala House Courts, New Delhi.

40. I find that statement of following Domestic buyers of Non Lubricating Aluminium Foil from M/s Garvit Industries were recorded under Section 108 of the Customs Act, 1962 on 07.08.2018.

- Sh. Trilok Chand, Proprietor of M/s Balaji Enterprises.
- Sh. Vineet Jain, Proprietor of M/s Arihant Enterprises.

- Sh. Vinod Kumar Jain, Proprietor of M/s Arihant Packaging Industries.
- Sh. Rakesh Goyal, Proprietor of M/s Shri Balaji Paper Mart.
- Sh. Prince Khurana, Partner in M/s Easy Packs.

40.1 I find that, all the above said buyers admitted under their statement that the goods mentioned in the said invoices were purchased by them in the names of their respective firms; that they came to know about Sh. Amit Kumar Jain, Proprietor of M/s Garvit Industries, from the market/ other sources and found out that he (Amit) was selling Aluminium Foils at marginally cheaper rates as compared to that prevalent in the market. They also admitted that the payments for the purchase of the said goods were made through proper banking channels and also appended their respective bank account statements for the relevant period, showing their transactions with M/s Garvit Industries.

41. On the basis of the investigations conducted by the DRI, as well as available documentary evidences, I find that Sh. Amit Kumar Jain imported Non- Lubricating Aluminium Foils in the name of his Proprietorship firm M/s Garvit Industries, which attract Anti Dumping Duty (vide Notification No. 23/2017-Customs (ADD)). In order to evade the applicable Anti Dumping Duty, Sh. Amit Kumar Jain willingly approached Sh. Sanjeev Maggu and consciously became a part of the scheme to evade Customs Duty (including Anti Dumping Duty) by diverting the imported goods from the Public Bonded Warehouse M/s. Riders India. After receiving the diverted goods, Shri Amit Kumar Jain sold them to domestic buyers at cheaper rates as compared to the market prices. Shri Amit Kumar Jain also lied during his first statement by denying receiving the imported goods under consideration but further he accepted that he got scared and thought that if he denied receiving the goods, no further enquiry would be done against him. But while filing his GST returns, he realized that he had already sold the said imported goods to various buyers and the same fact might come out in the open later on. However, upon realizing his mistake, he voluntarily deposited the applicable Customs Duty (including Anti-Dumping duty) alongwith Interest and Penalty (@ 15%), amounting to Rs. 39,27,585/- liveable thereon during the investigation as mentioned hereinabove. Hence, I find that the same is to be appropriated towards due duty, Anti-Dumping duty, interest and penalty.

41.1 Further, imposition of penalty has been proposed on Shri Sanjeev Maggu, Shri Gurmeet Singh and Shri Subhash Kumar, proprietor of M/s. Riders India under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 in the SCN. In this regard, I find that Hon'ble Board vide Circular No. 11/2016-Customs dated 15.03.2006 has been issued following clarification regarding *other persons* (co-noticees) used in sub section (6) of the Section 28 of the Customs Act, 1962:

Vide section 22 of the Taxation Laws (Amendment) Act, 2006 (29 of 2006) a provision was inserted in the Section 28 of the Customs Act, 1962 to provide for deemed conclusion of proceedings once the person to whom a demand of duty notice has been issued has paid all

dues. Subsequently vide Finance Act, 2011, section 28 was substituted with a new Section 28. The quantum of penalty amount to be paid under the said deemed conclusion proceedings was retained at 25% of the duty amount. However, vide Finance Act, 2015 the penalty payable under Section 28 was reduced to 15%.

(2) The provisions governing deemed conclusion of proceedings are stated in proviso to sub-section (2) and in clause (i) of sub-section (6) respectively of the present Section 28.

The text of the two provisions is reproduced below:

Proviso to sub-section (2)

"Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of subsection (1) shall be deemed to be concluded" Clause (i) of sub-section (6) "that the duty with interest and penalty has been paid in full, then, proceedings in respect of such person or other persons to whom the notice is served under subsection (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein"

(3) References have been received from the field as regards scope and interpretation of other persons in the above context.

(4) The matter has been examined in the Board. Provision of deemed conclusion of proceedings was introduced in the Section 28 so as to bring about closure to the cases where the dues to the Government could be realized without going through the process of adjudication on one hand and to cut the protracted Page 1/2 Indian Tax Solutions litigation which generally follows the adjudication on the other.

(5) The provision of deemed conclusion is contingent upon the person to whom a SCN has been issued under sub-section (1) or sub-section (4) paying up all the dues of duty, interest and penalty as the case may be. Only in such a circumstance of compliance, shall closure of proceedings against other persons come into effect. Therefore, as a corollary, other persons implies person(s) to whom no demand of duty is envisaged with notice served under sub-section (1) or sub-section (4) as the case may be. Other persons who happen to be co-noticees in the SCN for their acts of commission or omission other than demand of duty would be benefitted by the deemed closure in cases where the compliance of conditions mentioned in proviso to sub-section (2) or clause (i) of sub-section (6), as the case may be, by the main noticee to whom inter-alia a demand of duty has been issued has been fulfilled. Further, all such cases where proceedings reach closure stage under the provisions of Section 28, an order to the effect must be invariably issued by the concerned adjudicating authority.

(6) Section 28 primarily deals with the recovery of duty or erroneous refund. While introducing the facility of deemed conclusion, enabling provision was made for payment of

interest and/ or penalty. Therefore, all such SCNs or cases which involve duty, interest and/ or payment of penalty shall be covered by the above clarification. Further, it may be noted that the cases involving seizure of goods under Section 110 of the Customs Act, or cases where confiscation provisions under sections 111, 113, 115, 118, 119, 120 and 121 are invoked, would be out of purview of this Circular.

41.2 In view of the above clarification, I find that the main noticee i.e. M/s. Garvit Industries has already paid the applicable Customs Duty (including Anti-Dumping duty) alongwith Interest and Penalty (@ 15%), total amounting to Rs. 39,27,585/- during the investigation i.e., before the issuance of SCN as already discussed above. As the main noticee to whom inter-alia a demand of duty has been issued has been fulfilled, therefore, as per aforesaid Board Circular No. 11/2016-Customs dated 15.03.2016, Shri Sanjeev Maggu, Shri Gurmeet Singh and Shri Subhash Kumar, proprietor of M/s. Riders India who is co-noticees in the captioned SCN for their acts of commission or omission would be benefitted by the deemed closure in this case.

38.2 Customs Brokers Licensing Regulations, 2018 {(Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018} and in supersession of the Customs Brokers Licensing Regulations, 2013, published vide number G.S.R. 395 (E), dated the 21st June, 2013, except as respect things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby makes the following regulations, namely:-

11. Obligations of Customs Broker. - A Customs Broker shall –

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

38.3 In view of the above I find that, Customs Broker M/s. S. N. Shipping filed an application for Bond to Bond transfer submitted to Assistant Commissioner (Bond), Customs House, Mundra on 20.06.2017, wherein the name of the Public Bonded Warehouse mentioned as M/s. Prime Time Express, Plot No. 95, Poll no New Line, Bamnoli Village, Tehsil- Kapashera, New Delhi, however, the name of Public Bonded Warehouse in the Space Availability Certificate issued by the new Customs House, New Delhi was M/s. Riders India, Plot No-1, Jaunapur Village, Chhattarpur, New Delhi-110047. I also find that the said mis-declaration made in the application by M/s. S. N. Shipping was disclosed during the course of investigation carried out by the DRI only. Therefore, I find that M/s. S. N. Shipping has not fulfilled their obligations as mentioned above itself. For the said violation of the obligations, action should be taken by the Customs Broker Section, Customs House, Mundra under Customs Brokers Licensing Regulations, 2018.

39. (I) **Public Warehouse Licensing Regulations, 2016:**

Licensing of public warehouse.– (1) Upon an application being made to license a public warehouse, the Principal Commissioner of Customs or Commissioner of Customs, as the case

may be, may issue a licence to an applicant who, –

- (a) *is a citizen of India or is an entity incorporated or registered under any law for the time being in force*
- (b) *submits an undertaking to comply with such terms and conditions as may be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be;*
- (c) **furnishes a solvency certificate from a scheduled bank** *for a sum of two crore rupees*

(II) SECTION 71 of the Customs Act, 1962 provides that; - *Goods not to be taken out of warehouse except as provided by this Act. - No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or export, or for removal to another warehouse, or as otherwise provided by this Act.*

SECTION 7271 of the Customs Act, 1962 provides that;- *Goods improperly removed from warehouse, etc. –*

(1) *In any of the following cases, that is to say,-*

(a) *where any warehoused goods are removed from a warehouse in contravention of Section 71;*

(d) *where any warehoused goods in respect of which a bond has been executed under Section 59 and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer, the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of duty chargeable on account of such goods together with interest, fine and penalties payable in respect of such goods.*

(2) *If any owner fails to pay any amount demanded under sub-section (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may deem fit.*

SECTION 73A of the Customs Act, 1962 provides that;- *Custody and removal of warehoused goods. - (1) All warehoused goods shall remain in the custody of the person who has been granted a license under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.*

(2) *The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.*

(3) *Where any warehoused goods are removed in contravention of Section 71, the licensee shall be liable to pay duty, interest, fine, and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.*

(III) WAREHOUSE (CUSTODY AND HANDLING OF GOODS) REGULATIONS, 2016 –

8. Removal of warehoused goods for home consumption. —(1) *A licensee shall not allow goods to be removed from the warehouse for home consumption, unless the bond officer permits the removal of the goods.*

39.1 In view of the above provisions, I find that, Sh. Subhash Kumar was the proprietor of the Public Bonded Warehouse M/s. Riders India. The said Public Bonded Warehouse was utilized for diversion of imported goods into Domestic Tariff Area without payment of Customs Duty. Sh. Sanjeev Maggu and others were able to successfully execute their scheme of evasion of Customs Duty by way of diversion of warehoused goods. Sh. Subhash Kumar miserably failed to comply with the Warehousing Rules and Regulations and it was entirely his responsibility to adhere to all the Warehousing Rules and Regulations being the owner of the Public Bonded Warehouse. I also find that Shri Dilip Suri, Branch Manager, Punjab National Bank, Kirti Nagar Branch clearly admitted under his statement dated 05.10.2017 that they have never issued any Solvency Certificate to M/s Riders India or its proprietor Sh. Subhash Kumar. Hence, I find that the aforesaid Public Bonded Warehouse licenses were obtained by submitting fake/forged documents, such as fake Solvency Certificates, etc. in front of the Customs authorities and all the mandatory obligations, as specified in the Warehouse (Custody and handling of Goods) Regulations, 2016, were also not fulfilled. Therefore, it is requested to warehouse licence issuing authority to take strict action against the M/s Riders India, New Delhi or its proprietor Sh. Subhash Kumar for the above kinds of act.

42. In view of the forgoing discussions and findings, I pass the following order:-

::: ORDER :::

- (i) I hereby order to appropriate demand of Customs duty on imported goods, i.e. Non-Lubricating Aluminium Foil, amounting to Rs.8,84,894/- (Rupees Eight Lacs Eighty Four Thousand Eight Hundred and Ninety Four only) deposited by M/s. Garvit Industries during the investigation towards their aforesaid duty liability.
- (ii) I appropriate to Anti Dumping Duty on imported goods, i.e. Non-Lubricating Aluminium Foil, amounting of Rs. 24,15,139/- (Rupees Twenty Four Lacs Fifteen Thousand One Hundred and Thirty Nine only) deposited by M/s. Garvit Industries during the investigation, towards their Anti-Dumping duty liability.
- (iii) I order to appropriate the Interest on Customs duty of Rs. 1,25,310/- (Rupees One Lacs Twenty Five Thousand Three Hundred and Ten only), already paid during the investigation, towards their aforesaid interest liability.
- (iv) I order to appropriate the Penalty of Rs. 5,02,242/- (Rupees Five Lacs Two Thousand Two Hundred and Forty Two only), already paid during the investigation, towards their aforesaid penalty liability.
- (v) I drop the penalty imposed under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 on Shri Sanjeev Maggu, resident of B-773, B Block, Sushant Lok Phase I, Gurgaon, as per Board Circular No. 11/2016-Customs dated 15.03.2016.

(vi) I drop the penalty imposed under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 on Sh. Gurmeet Singh, resident of C-5, Top Floor, Mahendru Enclave, New Delhi, as per Board Circular No. 11/2016-Customs dated 15.03.2016.

(vii) I drop the penalty imposed under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 on Sh. Subhash Kumar, Proprietor of M/s Riders India, New Delhi, as per Board Circular No. 11/2016-Customs dated 15.03.2016.

43. This order is issued without prejudice to any action may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962 and/or other law for the time being in force in the Republic of India.


(Amarjeet Singh)
Additional Commissioner
Customs House, Mundra

F. No. VIII/48-26/Adj/ADC/MCH/2018-19

Date: 25.06.2019

To:-

- (1) M/s. Garvit Industries, Plot No. M-19, Sector-3, DSIIDC, Bawana Industrial Area, Bawana, Delhi-110039.
- (2) Shri Sanjeev Maggu, C/o Leo Cargo Services Pvt. Ltd., Resident of B-773, Sushant Lok Phase-1, Next to Sushant Lok Police Station, Gurgaon, Haryana.
- (3) Shri Gurmeet Singh, resident of C-5, Top Floor, Mahendru Enclave, New Delhi-110052.
- (4) Shri Shubhash Kumar, Proprietor of M/s. Riders India, Public Bonded Warehouse (situated at Plot No. 1, Villagge-Jounapur, Chhattarpur, New Delhi), Resident of 1078, Street No. 71, Devaram Park, Trinagar, Delhi-110047.

Copy to:

- (1) The Joint Director General, Directorate of Revenue Intelligence, Directorate of Revenue Intelligence, 7th Floor, D Block, I.P. Bhawan, I.P. Estate, New Delhi - 110002.
- (2) The Commissioner of Customs, Air Cargo Export, NCH, New Delhi-110037 (**for Para 39.1**)
- (3) The Deputy Commissioner (RRA), Customs House, Mundra.
- (4) The Deputy/Assistant Commissioner (Recovery), Customs House, Mundra.
- (5) The Deputy/Assistant Commissioner (Bond), Customs House, Mundra.
- (6) The Deputy/Assistant Commissioner (CB), Customs House, Mundra (**for Para 38.3**).
- (7) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- (8) Guard File

