

	<p>भारतसरकार/ GOVERNMENT OF INDIA सीमाशुल्कप्रधानआयुक्तकाकार्यालय(पत्तन) OFFICE OF THE PR. COMMISSIONER OF CUSTOMS (PORT) सीमाशुल्कसदन, 15/1, स्टैंडरोड, कोलकाता-700001 CUSTOM HOUSE, 15/1 STRAND ROAD, KOLKATA- 700001 Tel:-033-22436493, Fax No.: 033-22131553 ई-मेल/ E-mail Id: prcommr-port-cuskol@gov.in, koladjudication.port@gov.in</p>
---	--

File No.: GEN/ADJ/ADC/1258/2024-ADJN-O/O PR COMMR-CUS-PORT-KOLKATA  
एस.सी.एन. सं. / SCN No: DRI.F.No.DRI/KZU/CF/ENQ-75/2023 dated  
एस.सी.एन. तिथि / SCN Date: 04.07.2024  
DIN No. 20250876NN000000CDEF

**आदेश सं/ Order-in-Original No.**  
**KOL/CUS/ADC/PORT/ADJN/118/2025**

आदेश की तिथि / Date of Order: .08.2025  
निर्गमन की तिथि /Date of Dispatch: .08.2025

प्रेषक/ Passed by: अजीत कुमार / Ajeet Kumar  
अपर आयुक्त सीमा-शुल्क (पत्तन)/ Additional Commissioner of Customs (Port)  
सीमा-शुल्क सदन, 15/1, स्टैंड रोड, कोलकाता  
Custom House, 15/1 Strand Road, Kolkata-700001

**मूल आदेश / ORDER – IN – ORIGINAL**

1. यह प्रति संबंधित व्यक्ति के प्रयोग के लिए निःशुल्क जारी की गयी है।

This copy is granted free of charge for the private use of the person to whom it is issued.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट हो तो इस आदेश के विरुद्ध, इस आदेश के जारी होने के 60 दिनों के अन्दर सीमाशुल्कआयुक्त (अपील) सीमाशुल्कभवन, 15/1, स्टैंडरोड, कोलकाता-700001 के समक्ष अपील कर सकता है।

Any person deeming himself aggrieved by this order may appeal against the same to the Commissioner of Customs (Appeal), Customs House, 15/1, Strand Road, Kolkata 700 001 within 60 (sixty) days from the date of the receipt.

3. इस आदेश के खिलाफ, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या दंड जहां अकेले दंड विवाद में हैं, ड्यूटी या दंड के 7.5% के अग्रिम भुगतान पर सीमा शुल्क आयुक्त (अपील) के समक्ष अपील किया जा सकता है।

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

4.यदि कोई भी व्यक्ति, इस आदेश या निर्णय के खिलाफ अपील करने के इच्छुक हैं, या अपील विचाराधीन हो तो मांगा गया शुल्क अथवा जुर्माना, अथवा लगाया गया दंड जमा करना होगा एवं भुगतान का सबूत अपील के साथ पेश करना होगा, असफल होने पर सीमा शुल्क अधिनियम, 1962 कि धारा 129 E के प्रावधानों के अंतर्गत गैर अनुपालन हेतु अपील खारिज किया जा सकता है।

Any person desirous of appealing against this order or decision shall, pending the appeal, deposit this duty demanded or the fine, penalty levied therein and produces proof of such payment along with the appeal failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act, 1962.

5.इस आदेश के हिंदी और अंग्रेजी संस्करणों में किसी भी विसंगति के मामले में, अंग्रेजी संस्करण सभी मामलों में नियंत्रित होगा और रप्रचलितहोगा।

In case of any inconsistencies in Hindi & English versions of this Order, the English version shall be controlling in all respect and shall prevail.

**Subject: Smuggling of 25.880 MT of foreign origin betel nuts collectively valued at Rs. 2,22,81,077/-(Rupees Two Crore Twenty-Two Lakhs Eighty-One Thousand and Seventy-Seven only) in guise of mis-declared transshipped consignment of Bhutan importer, M/s. Samphel Enterprise, in contravention of the Customs Act, 1962 and other provisions of law in force.**

#### **BRIEF FACTS OF THE CASE:**

1. The present case originates from specific intelligence developed by the Directorate of Revenue Intelligence (DRI), Kolkata Zonal Unit, (hereinafter referred to as "DRI, KZU") indicating a sophisticated modus operandi for smuggling betel nuts into India. The intelligence suggested that illicit imports were being conducted under the guise of legitimate Bhutan-bound transshipment consignments, involving the mis-declaration of goods to facilitate their diversion into the Indian domestic market.
2. Acting on the said intelligence, the following Bhutan-bound transshipment container of M/s. Samphel Enterprise (Proprietor-Shri Leki Tshering), Sarpang, Gelepu Throm, Bhutan, [License No: R3005849 by Ministry of Industry, Commerce and Employment, Kingdom of Bhutan], (hereinafter referred to as "the Importer") was withheld at Haldia Port on 17-07-2023 for examination.

Table-A

Container	IGM No and	Bill of Lading No.	Declared
-----------	------------	--------------------	----------

Number:	Date:	and Date:	Goods:
ESCU9000530 (40')	2349026 Dated: 12-07-23	ESLWSPTHI230257 Dated: 07-07-2023	White Rice

**2.1.** On 19.07.2023, a team of DRI officers went for examination of the above-mentioned Bhutan bound transshipped consignment at the J M Baxi Haldia International Container Terminal, Haldia Dock Complex in presence of Customs Officer, representative of Customs Broker, representative of J M Baxi Haldia International Container Terminal, Haldia and two independent witnesses. On opening the container No. ESCU9000530 (40'), it was seen that the entire container was containing split areca nuts/ betel nuts. But due to inadequate number of labourers available at the J M Baxi Haldia International Container Terminal, Haldia; comprehensive examination could not be carried out on 19.07.2023. It was requested to shift the container to a nearby CFS for carrying out 100% examination. On that day the container was again sealed with Customs bottle seal.

**2.2.** Thereafter the container No. ESCU9000530 (40') was moved to Ralson Petrochemicals Ltd. CFS, Silpadanga, Haldia, Purba Medinipur under the escort of one preventive officer. Thereafter, a team of DRI officers on 24.07.2023 went to the Ralson Petrochemicals Ltd. CFS, Haldia for carrying out 100% examination of the consignment. On examination of the above container declared to contain "White Rice", betel Nuts without any cover cargo collectively weighing 25.88 MTs were found and the same were seized on 24-07-2023 under Section 110 of the Customs Act, 1962, on the reasons to believe that these were liable to confiscation under Section 111 of the Customs Act, 1962 and an order under Section 110 of the Customs Act, 1962 was issued to CFS. Sample was drawn during examination for further qualitative analysis by the National Food Laboratory.

**2.3.** Value of the seized goods was ascertained on the basis of tariff value issued by CBIC from time to time and is tabulated below under Table-B:

Table-B

1	2	3	4	5
Container Number:	Net weight as per weighment slips:	Tariff Value: (US\$/MT)	Rate of Exchange: (Rs.)	Total Value (Rs.): (2x3x4)
ESCU9000530 (40')	25.880	10379	82.95	2,22,81,077

The value of the seized betel nuts was ascertained on the basis of Tariff Value Notification No. 53/2023-Customs (N.T.), Dated: 14-07-2023 and Exchange Rate Notification under No. 54/2023-Customs (N.T.), Dated: 20-07-2023; thereby the value was ascertained as Rs. 2,22,81,077/-.

## **RECORDING OF STATEMENTS:**

### **2.4. Statement of Shri Chandra Kant Tripathi, Import Manager, M/s. Himachal C & F Agency Pvt. Ltd.:**

Shri Chandra Kant Tripathi, Import Manager, M/s. Himachal C & F Agency Pvt. Ltd. was found to be the person who had provided the import documents for the consignment tabulated under Table-A above. To examine his role, he was summoned on 19-07-2023 and his statement was recorded on 19-07-2023 under Section 108 of the Customs Act, 1962 wherein he *inter alia* stated that:

- Shri Sudhir Kumar Pandey of Varanasi and Shri Anil Kumar Dixit of Lucknow requested him to clear this Bhutan bound consignment coming from Malaysia. Accordingly, he requested Shri Sanjeev Singh of M/s. Swift Cargo, a freight forwarder who in turn engaged customs broker M/s. Cargo Marketing Pvt. Ltd. to clear the consignment.
- Shri Sudhir Kumar Pandey and Shri Anil Kumar Dixit, both had sent him the documents like Bills of Lading, Invoice, Packing List etc. through WhatsApp and requested him to arrange to clear the consignment.
- He had no knowledge that the cargo had been mis-declared and betel nuts were to be imported instead of declared "White Rice".
- He got introduced with Shri Sudhir Kumar Pandey by Shri Anil Kumar Dixit and was also told that Shri Pandey was the main person in importing goods to Bhutan through India.
- Shri Sudhir Kumar Pandey had made all the payments and it was also agreed upon that he would receive Rs. 12,000/- in total of which he would retain Rs. 4,000/- as commission and pay the balance to M/s. Cargo Marketing Pvt. Ltd., the customs broker.
- Contact number of Shri Sudhir Kumar Pandey is 9415812557 and that of Shri Anil Kumar Dixit is 9026083332.

### **2.5. Statement of Shri Anil Kumar Dixit:**

As per the statement of Shri Chandrakant Tripathi, Shri Anil Kumar Dixit was one of the men who had sent the documents related to the import shipment of the subject consignment to Shri Chandrakant Tripathi. To examine his role, he was summoned on

19-07-2023 and his statement was recorded on 19-07-2023 under Section of 108 of the Customs Act, 1962 wherein he *interalia* stated that:

- He met Shri Sudhir Kumar Pandey accidentally in a medicine market in Aminabad in Lucknow. Shri Sudhir Kumar Pandey is an Ayurveda doctor and supplies medicine in the medicine market of Aminabad. Shri Sudhir Pandey offered him 20% margin if he could sell his medicine on invoice price.
- But due to poor sale of medicine, he had requested Shri Sudhir Pandey to arrange way for an alternative income. Shri Sudhir Kumar Pandey requested him to arrange someone from Bhutan for importing cargo there. In connection with bamboo business, he had met Shri Shymal Sarkar from Bongaigaon in Assam. He introduced Shri Sudhir Kumar Pandey with Shri Shyamal Sarkar.
- He also knew one Shri Leki Tshering from Bhutan and introduced him with Shri Shyamal Sarkar. Then Shri Shyamal Sarkar had some kind of agreement with Shri Leki Tshering. During May, 2023; he, Shri Leki Tshering, Shri Sudhir Kumar Pandey and Shri Shymal Sarkar all met in Bongaigaon, Assam, and it was decided to obtain IEC in the name of Shri Leki Tshering, all being sponsored by Shri Sudhir Kumar Pandey.
- Accordingly, Shri Leki Tshering obtained IEC in the name of M/s. Samphel Enterprise. On the instructions of Shri Sudhir Pandey, he roped in Shri Chandrakant Tripathi for handling clearance of the import consignment in the name of Samphel Enterprise. Shri Chandrakant Tripathi was offered Rs. 12,000/- for clearing each consignment and Shri Tripathi agreed to his proposal.
- On being asked, Shri Sudhir Kumar Pandey informed him that betel nuts would be imported from Malaysia in the guise of Bhutan-bound import consignment of "White Rice".
- Entire investment of import of betel nuts from Malaysia was handled by Shri Sudhir Kumar Pandey who deposited cash in the account of Shri Chandrakant Tripathi from an ATM in Varanasi.
- Contact number of Shri Sudhir Kumar Pandey is 9415812557 and that of Shri Shyamal Sarkar is 6003741705.
- That was the first import consignment imported in the name of the Bhutan Importer, Samphel Enterprises.
- He was paid Rs.10,000/- by Shri Sudhir Kumar Pandey for handling that import consignment.

**2.6. Statement of Shri Koushik Basak, Senior Executive Documentation, M/s. Expressway Cargo Movers Pvt. Ltd.:**

M/s. Expressway Cargo Movers Pvt. Ltd., was the shipping line/container agent for the transshipment consignment as detailed in the Table-A above and for further investigation, statement of Shri Koushik Basak, Senior Executive Documentation of the shipping line/container agent was recorded on 21-09-2023 under Section of 108 of the Customs Act, 1962 wherein he *interalia* stated that

- Usually, booking of consignments were done by their Port Klang Office and copy of Bills of Lading used to be forwarded by them to the destination office.
- M/s. Cargo International Agency, a clearing agent, contacted them for the Delivery Order of the consignment and subsequently payment was made.
- This was the first consignment of M/s. Samphel Enterprise which was dealt by them.

**2.7. Statement of Shri Swapan Mukherjee, Operation Manager, M/s. Cargo Marketing International, a Customs Broking Firm:**

M/s. Cargo Marketing International, the customs broker, which was assigned to clear the transshipped consignment of M/s. Samphel Enterprise as detailed in table-A above, was summoned and statement of Shri Swapan Mukherjee, Operation Manager of the said customs broker was recorded on 22-09-2023 wherein he *interalia* stated that they got this job of customs clearance from Shri Chandrakant Tripathi having contact number 9830030939. He further stated that following DRI alert of the instant consignment he contacted Shri Leki Tshering and was informed that there would be "White Rice" in the import consignment whereas on examination of the consignment betel nuts were found without any cover cargo.

**3. FOLLOW UP ENQUIRY:****3.1. Enquiry with respect to the importer, M/s. Samphel Enterprise:**

Multiple Summons dated 22.11.2023, 12.12.2023, 02.01.2024, 18.01.2024, 23.02.2024 and 29.05.2024 under Section 108 of the Customs Act, 1962 were issued to Shri Leki Tshering, Prop. Of M/s. Samphel Enterprise, Sarpang, Gelephu Throm, Bhutan, having email id: [samphelenterprise31@gmail.com](mailto:samphelenterprise31@gmail.com) but he did not

respond to any of the Summons issued to him for the purpose of investigation in this case.

### **3.2. Enquiry with respect to Shri Sudhir Kumar Pandey:**

- ❖ In order to examine the role of Shri Sudhir Kumar Pandey, he was issued summons dated 27.10.2023 to appear in the DRI, Kolkata Zonal on 07.11.2023 but he did not turn up showing medical grounds.
- ❖ Accordingly, DRI, Varanasi Sub-Regional Unit (VSRU) was requested to carry out a follow up enquiry at the address of Sudhir Kumar Pandey. Senior Intelligence Officer, DRI, VSRU, vide his letter dated: 14-12-2023 under DRI F. No: DRI/LZU/VSRU/Follow up/2021/667 reported that a team of DRI, VSRU officers visited the residential premises of Shri Sudhir Kumar Pandey at 87/3, behind Heritage Housing, Bhagwanpur, BHU, Varanasi, Uttar Pradesh-221002 on 08-12-2023 and a search was conducted of the said premises as well statement of Shri Pandey was also recorded wherein he *inter alia* stated that:
  - He was engaged in export of dietary food supplements in Nepal through his company, M/s. Helik Healthcare Private Limited, registered in the name of his son, Shri Tushar Pandey for approximately 3 years.
  - He met Shri Anil Kumar Dixit in Alambagh Post Office, Lucknow and was looking for his contacts abroad for export of dietary food supplement.
  - During a marriage ceremony at Nadesar, Shri Anil Kumar Dixit got him introduced with Shri Chandrakant Tripathi, based in Kolkata and engaged in import-export work.
  - He had requested Shri Chandrakant Tripathi to provide his (Tripathi) contacts abroad for export of dietary food supplement for which he would have given 10% of the profit margin if any consignment would have been exported.
  - He did not know any person named Shri Shyamal Sarkar or Shri Leki Tshering, proprietor of M/s. Samphel Enterprise, Bhutan.
  - He is unaware of any import of betel nut through Bhutan consignment.
  - Shri Anil Kumar Dixit once told him that he (Anil) used to deal in import of betel nuts. Further, during his visit to Jakarta, Indonesia, Shri Anil Kumar Dixit advised him (Mr. Pandey) to persons for the purpose of dietary supplement.

#### 4.1.1 CDR analysis of the mobile no. 9415812557 of Shri Sudhir Kumar Pandey:

Call Details Record (CDR) for the period 01.01.2023 to 17.08.2023 of the mobile number, 9415812557 of Shri Sudhir Kumar Pandey was obtained from the service provider. The CDR analysis of the mobile number, 9415812557 of Shri Sudhir Kumar Pandey is detailed below-

#### ❖ Details of Calls with Shri Shyamal Sarkar, having mobile no. 6003741705:

Date	INCOMING		OUTGOING		TOTAL CALLS	
	Duration of Call(s)	Number of Call(s)	Duration of Call(s)	Number of Call(s)	Duration of Call(s)	Number of Call(s)
01/06/2023	83	1			83	1
02/06/2023	65	1			65	1
03/06/2023	140	1			140	1
09/06/2023	287	1			287	1
16/06/2023	13	1	164	1	177	2
22/06/2023	172	1			172	1
23/06/2023	771	1			771	1
26/06/2023	229	1			229	1
02/07/2023	89	1	135	1	224	2
03/07/2023	299	4			299	4
04/07/2023	47	3	103	2	150	5
05/07/2023	162	3	416	3	578	6
06/07/2023			358	2	358	2
10/07/2023			118	1	118	1
16/07/2023	288	2			288	2
17/07/2023	112	2			112	2
18/07/2023	318	3	50	1	368	4
19/07/2023	59	1	365	1	424	2
08/08/2023	481	2			481	2
10/08/2023	10	1	995	2	1005	3
11/08/2023	10	1			10	1
12/08/2023	7	1	32	1	39	2
14/08/2023			237	1	237	1
<b>Grand Total</b>	<b>3642</b>	<b>32</b>	<b>2973</b>	<b>16</b>	<b>6615</b>	<b>48</b>



**❖ Details of Calls with Shri Anil Dixit, having mobile no. 9026083332 and 9455208408:**

<b>Details of Calls with mobile no. 9455208408</b>						
Date	INCOMING		OUTGOING		TOTAL CALLS	
	Duration of Call(s)	Number of Call(s)	Duration of Call(s)	Number of Call(s)	Duration of Call(s)	Number of Call(s)
28/02/2023	92	1	50	2	142	3
09/03/2023	248	3	19	1	267	4
13/03/2023	110	1			110	1
14/03/2023	22	1	77	2	99	3
15/03/2023			382	1	382	1
16/03/2023	249	1	108	1	357	2
17/03/2023	301	2			301	2
18/03/2023			42	1	42	1
22/03/2023	300	4	900	8	1200	12
23/03/2023	810	11	332	7	1142	18
24/03/2023	49	1			49	1
26/03/2023	183	6			183	6
29/03/2023	1096	4	633	7	1729	11
30/03/2023	2541	4	246	2	2787	6
31/03/2023	56	1			56	1
02/04/2023	66	2			66	2
12/04/2023	1739	9	753	2	2492	11
13/04/2023	258	1			258	1
15/04/2023	24	1			24	1
16/04/2023	186	1	9	1	195	2
21/04/2023			141	2	141	2
23/04/2023	1568	3			1568	3
24/04/2023	628	4	756	5	1384	9
25/04/2023	1074	2	79	1	1153	3
28/04/2023	494	2	254	3	748	5
29/04/2023	1528	4	183	1	1711	5
30/04/2023	179	3	208	4	387	7
02/05/2023	1055	10	1100	4	2155	14
03/05/2023	428	3			428	3
05/05/2023			413	1	413	1
09/05/2023	2004	7			2004	7
10/05/2023	248	3	196	2	444	5

11/05/2023	517	3			517	3
12/05/2023	369	2	13	1	382	3
13/05/2023	271	1			271	1
15/05/2023	346	1			346	1
18/05/2023	312	1			312	1
20/05/2023			432	2	432	2
21/05/2023	591	1	59	1	650	2
22/05/2023	111	1			111	1
26/05/2023	4	1	210	1	214	2
27/05/2023	1355	3	390	1	1745	4
29/05/2023	83	1	75	1	158	2
30/05/2023	305	2	147	3	452	5
01/06/2023	2436	6	124	2	2560	8
02/06/2023	842	6	370	1	1212	7
03/06/2023	1970	5	260	1	2230	6
04/06/2023	686	5	856	7	1542	12
05/06/2023	305	2	99	1	404	3
06/06/2023	111	1	65	1	176	2
07/06/2023	547	2			547	2
09/06/2023	339	1	226	1	565	2
10/06/2023	421	5	27	1	448	6
11/06/2023	72	4	482	1	554	5
12/06/2023	166	2			166	2
13/06/2023	913	2			913	2
15/06/2023	227	1			227	1
16/06/2023	479	2	926	3	1405	5
18/06/2023	5	1	321	1	326	2
19/06/2023	116	2			116	2
21/06/2023	91	1			91	1
23/06/2023	204	1			204	1
27/06/2023	422	5	349	1	771	6
28/06/2023	322	1			322	1
06/07/2023	1097	8	447	2	1544	10
07/07/2023	206	1			206	1
08/07/2023	76	1			76	1
10/07/2023	1076	2	319	1	1395	3
11/07/2023	916	7	67	1	983	8
13/07/2023	9	1	264	1	273	2
<b>Grand Total</b>	<b>35854</b>	<b>187</b>	<b>13409</b>	<b>94</b>	<b>49263</b>	<b>281</b>

Details of Calls with the mobile no. 9026083332						
Date	INCOMING		OUTGOING		TOTAL CALLS	
	Duration of Call(s)	Number of Call(s)	Duration of Call(s)	Number of Call(s)	Duration of Call(s)	Number of Call(s)
03/02/2023	1002	3			1002	3
04/02/2023	64	1	1139	4	1203	5
05/02/2023	417	2	1462	1	1879	3
23/03/2023	98	1	17	1	115	2
24/03/2023			73	1	73	1
26/03/2023	33	1	48	1	81	2
17/04/2023	74	3	161	1	235	4
18/04/2023	290	1	55	1	345	2
19/04/2023	51	1	23	1	74	2
22/04/2023	1195	3	916	1	2111	4
04/05/2023	94	2			94	2
09/06/2023	175	2	124	1	299	3
10/06/2023	507	4	706	3	1213	7
11/06/2023	237	3	465	1	702	4
12/06/2023	247	4	16	1	263	5
14/06/2023			163	1	163	1
23/06/2023	21	1			21	1
30/06/2023	113	1	239	2	352	3
01/07/2023	28	1	488	3	516	4
02/07/2023	86	2			86	2
08/07/2023	193	1			193	1
09/07/2023	346	2			346	2
10/07/2023	474	4			474	4
12/07/2023			265	1	265	1
13/07/2023	289	2	39	2	328	4
14/07/2023	290	4			290	4
15/07/2023	286	3			286	3
16/07/2023			802	4	802	4
17/07/2023	571	6	562	4	1133	10
18/07/2023	59	2	98	2	157	4
19/07/2023	139	1	275	6	414	7
28/07/2023	17	1			17	1

29/07/2023			25	1	25	1
08/08/2023	77	2			77	2
<b>Grand Total</b>	<b>7473</b>	<b>64</b>	<b>8161</b>	<b>44</b>	<b>15634</b>	<b>108</b>

**❖ Details of Calls with Shri Chandrakant Tripathi, having mobile no. 9830030939:**

Date	INCOMING		OUTGOING		TOTAL CALLS	
	Duration of Call(s)	Number of Call(s)	Duration of Call(s)	Number of Call(s)	Duration of Call(s)	Number of Call(s)
12/05/2023	259	1	37	1	296	2
15/05/2023			97	1	97	1
16/05/2023	216	1			216	1
19/05/2023	218	3			218	3
20/05/2023	11	1			11	1
27/05/2023	231	1			231	1
30/05/2023	51	1			51	1
31/05/2023	84	2			84	2
13/06/2023	63	1			63	1
15/06/2023	71	1			71	1
02/07/2023	124	1			124	1
03/07/2023			87	1	87	1
04/07/2023			99	1	99	1
05/07/2023	43	1			43	1
07/07/2023	105	1			105	1
10/07/2023	129	2			129	2
14/07/2023	108	1	30	1	138	2
15/07/2023	121	1	287	2	408	3
17/07/2023			45	1	45	1
18/07/2023	187	3	163	1	350	4
19/07/2023	400	4	37	2	437	6
20/07/2023	123	1			123	1
24/07/2023			526	1	526	1
25/07/2023			121	1	121	1
26/07/2023	469	2			469	2
27/07/2023	189	3	51	1	240	4
28/07/2023			280	1	280	1
30/07/2023	224	1			224	1
01/08/2023	221	2	138	1	359	3

02/08/2023	507	1	61	1	568	2
03/08/2023	289	2			289	2
<b>Grand Total</b>	<b>4443</b>	<b>38</b>	<b>2059</b>	<b>17</b>	<b>6502</b>	<b>55</b>

- ❖ In his statement dated 08.12.2023 recorded under Section 108 of the Customs Act, 1962 before the Sr. Intelligence Officer of DRI, Varanasi, Shri Sudhir Kumar Pandey inter alia stated that he did not know Shri Shyamal Sarkar. From his submission about Shri Anil Dixit and Shri Chandrakant Tripathi, it appeared that he was not in regular touch with them as the import/ export of dietary supplements did not materialize. But on analysis of the CDR of the mobile No. 9415812557, it appeared that Shri Sudhir Pandey tried to mis-lead the course of investigation by false submission. In order to further examine the involvement of Shri Sudhir Kumar Pandey, he was issued Summons dated 12.12.2023 for his appearance on 21-12-2023 in the DRI Kolkata Zonal Unit. However, he did not turn up on the plea of illness.
- ❖ From the network analysis of the mobile number, 9415812557 of Shri Sudhir Kumar Pandey, it appeared that he travelled many places during the period January, 2023 to August, 2023 (as evident from the CDR) but when summoned he continuously disobeyed Summons on health grounds. The network analysis for the period 01.01.2023 to 17.08.2023 where his mobile phone network was registered in networks outside UP-

Roaming Circle Code	Network	Roaming Circle Name	Date
AIR AS	Airtel Assam		03/07/2023
			04/07/2023
AIR BHR	Airtel Bihar		04/03/2023
			05/03/2023
			24/03/2023
			25/03/2023
			26/03/2023
			09/04/2023
			03/07/2023
AIR DL	Airtel Delhi		05/07/2023
			04/03/2023
AIR KO	Airtel Kolkata		05/03/2023
			17/02/2023
			18/02/2023

		24/02/2023
		22/03/2023
		23/03/2023
		05/07/2023
AIR WB	West Bengal	17/02/2023
		24/02/2023
		22/03/2023
		03/07/2023
		04/07/2023
		05/07/2023
AIR MH	Airtel Maharashtra	01/08/2023
AIR MU	Airtel Mumbai	22/05/2023
		23/05/2023
		24/05/2023
		01/08/2023
		02/08/2023
		03/08/2023
		04/08/2023

From the above it appears that he had travelled to different places and deliberately didn't appear before the Investigating Officer in DRI, Kolkata Zonal Unit in response to Summons issued to him by resorting to medical grounds.

#### **4.1.2 Enquiry with respect to Shri Rahul Pandey, S/o- Shri Sudhir Kumar Pandey:**

During the recording of statement of representative of the Shipping Line, M/s. Expressway Cargo Movers Pvt. Ltd., submitted the particulars of payment of Rs.41,496/- towards the delivery charges of the consignment imported by M/s. Samphel Enterprise. The payment was made through UPI and from the copy of the UPI transaction, it was noticed that the payment was made from an UPI ID having display name- RAHUL PANDEY (Union Bank of India) and from the account number having last four digit as 1484. On enquiry with the bank, regarding counter party details of the transaction, it was found that the transaction was made from the Union Bank of India account No. 432402010091484 which was found to be registered in the name of Shri Sudhir Kumar Pandey. Accordingly, Shri Rahul Kumar Pandey was summoned and his statement was recorded on 06.03.2024 under Section 108 of the Customs Act, 1962. In his statement dated 06.03.2024, Shri Rahul Pandey *inter alia* stated that-

- He did not know anything about the seizure of betel nuts in the Bhutan bound consignment of M/s. Samphel Enterprise.
- He did not know anyone of Shri Anil Kumar Dixit, Shri Chandra Kant Tripathi or M/s. Samphel Enterprise.
- He had paid Rs. 41,496/- as per the instruction of his father, Shri Sudhir Kumar Pandey, as his father was not adept in making payment digitally. He didn't know why his father asked him to pay that amount in that account. He just followed the instructions of his father.

**4.1.3** For further enquiry Shri Sudhir Pandey was Summoned on 15.03.2024 and 10.04.2024 and Shri Rahul Pandey was Summoned on 10.04.2024. However, Shri Sudhir Pandey and his son, Rahul Pandey did not appear in the DRI, Kolkata Zonal Unit showing pendency of Writ Petition No. WPO 237/2024 before the Hon'ble Calcutta High Court. In absence of any specific direction from the Hon'ble Court as on 10.04.2024, Shri Sudhir Pandey and Shri Rahul Pandey were issued Summons dated 10.04.2024 for their appearance in the DRI, Kolkata Zonal Unit on 18.04.2024.

**4.1.4** Hon'ble Calcutta High Court vide Order dated 12.04.2024, directed the petitioners to cooperate with the investigation and directed the respondent, i.e. DRI to videograph the interrogation of the petitioners.

**4.1.5** In compliance with the Hon'ble Court's Order dated 12.04.2024, Shri Sudhir Kumar Pandey and his son, Shri Rahul Pandey appeared before the investigating officer on 18.04.2024 and their statement was recorded under Section 108 of the Customs Act, 1962 and videography of the statement was done as per the directions of Hon'ble High Court.

❖ **Statement of Shri Rahul Pandey:**

Shri Rahul Pandey in his voluntary statement recorded under Section 108 of the Customs Act, 1962, *interalia* stated that the amount of Rs.41,496/- was transferred to the account belonging to the Shipping Line, Expressway Cargo Mover Pvt. Ltd. as per the instructions of his father Shri Sudhir Kumar Pandey.

❖ **Statement of Shri Sudhir Kumar Pandey:**

Shri Sudhir Kumar Pandey in his voluntary statement dated 18.04.2024 recorded under Section 108 of the Customs Act, 1962, *interalia* stated that

- In the first week of August, 2023, Shri Chandrakant Tripathi called him and informed him that the Bhutan bound container of M/s. Samphel Enterprises which was declared to be containing 'White Rice' from Malaysia was withheld by DRI

and betel nuts have been recovered and seized from the container, he informed Shri Tripathi that he had been only concerned about the import consignment of M/s. Shiv Sai Medi Enterprises Pvt. Ltd. Shri Chandrakant Tripathy also informed him that Shri Manish Dixit and Shri Anil Kumar Dixit had played a plot to entangle him in the case.

- Shri Manish Dixit, the younger brother of Shri Anil Kumar Dixit, had made him believe that he (Shri Manish Dixit) would outsource work related dietary supplements from foreign countries and he (Shri Manish Dixit) had also shown him his passport which had been having Visas of 18 different countries. He (Shri Sudhir Pandey) believed on him (Shri Manish Dixit) because he (Shri Manish Dixit) had made him talk with people of five to six countries in relation to supply of dietary supplements. He did not know why Shri Manish Dixit and Shri Anil Dixit had entangled him in the case.
- He did not agree with the submissions made by Shri Anil Kumar Dixit and Shri Chandrakant Tripathi in their statements recorded under Section 108 of the Customs Act, 1962.
- Shri Anil Kumar Dixit had contacted him in the second- third week of August, 2023 and informed him that he (Shri Anil Kumar Dixit) and Shri Chandra Kant Tripathi did not take his name in their statements to save his (Shri Anil Kumar Dixit) brother Shri Manish Dixit.
- He paid Rs. 41,496/- as Delivery Order charges to the shipping line M/s. Expressway Cargo Mover Pvt. Ltd. as per the instruction of Shri Sunil Singh, Director of M/s. Shiv Sai Medi Enterprises, Nepal. He was having business terms with M/s. Shiv Sai Medi Enterprises, Nepal. As Shri Sunil Singh and Shri Anil Kumar Dixit had informed him that the said Rs. 41,496/- was not received by the shipping line, he had asked his son Shri Rahul Pandey to transfer the amount again.
- On being asked he could not submit any documents, WhatsApp Chat or email communication to show that he had transferred the payment to the shipping line for the DO charges as per the instructions of Shri Sunil Singh. He, however, undertook to submit all relevant documents, copies of WhatsApp chats, copies of email communications related to the case within seven days' time.
- On being asked to submit copies of his communication (such as WhatsApp, email, text etc.) with Shri Chandrakant Tripathi, Shri Anil Dixit and Shri Manish Dixit to prove that Shri Anil



Dixit and Shri Chandrakant Tripathi lied in their respective statement, he (Sudhir Pandey) could not submit any kind of communication with them as he deleted all his WhatsApp Chat with them out of fear.

- 4.1.6** Vide email dated 30.04.2024, Shri Sudhir Kumar Pandey submitted copies of email received by Shri Sunil Singh from the Shipping Line, forwarding of same email from Chandrakant Tripathi and selected screen shots of the chat with Shri Manish Dixit having mobile number 9140572937. However, Shri Sudhir Pandey could not produce any documents whatsoever as a proof that Shri Sunil Singh contacted him for the shipment or any other communication to prove that he had no role to play in the smuggling of betel nuts through the mis-declared Nepal and Bhutan bound import consignments of Shiva Sai Medi Enterprises Pvt. Ltd. and Samphel Enterprise respectively.

#### **4.2 Enquiry with respect to Shri Shyamal Sarkar:**

In order to examine the role of Shri Shyamal Sarkar, DRI, Guwahati Zonal Unit (GZU) was requested to carry out a follow up enquiry with Shri Shyamal Sarkar, Bongaigaon, Assam. The Assistant Director, DRI, GZU, vide his letter dated: 06-05-2024 under F. No: 42/DRI/MISC/FOLLOW UP/GZU/2023/598 reported that statement of Shri Shyamal Sarkar was recorded under Section 108 of the Customs Act, 1962 wherein he *inter alia* stated that:

- i) He knew both Shri Anil Kumar Dixit and Shri Manish Dixit. Both of them were brothers and were post masters in India Post in Lucknow. They had been known to him since 2020 in relation to his bamboo business. They had bought bamboo from him in the name of a concern M/s. Sima Trading, named after the wife of Shri Manish Dixit.
- ii) Shri Anil Kumar Dixit got him introduced with Shri Sudhir Kumar Pandey in Bongaigaon during July, 2023. Shri Sudhir Kumar Pandey is a genuine businessman of pharmaceutical products and have a factory in Uttarakhand.
- iii) He had helped Shri Anil Kumar Dixit to procure IEC and godown in Bhutan in the name of Shri Leki Tshering, proprietor of M/s. Samphel Enterprise for importing broken rice to Bhutan from Malaysia.
- iv) Shri Anil Kumar Dixit had informed him that the exporter had mistakenly sent some other items instead of broken rice and the same would be returned while consignment of

broken rice would arrive. But after August, 2023 Shri Dixit stopped responding to his call and he got to know from DRI, GZU that betel nut had been imported instead of declared consignment.

- v) Shri Anil Kumar Dixit and Shri Manish Dixit are betel nut traders of Malaysian origin and they had shown him their passports showing their frequent visit to Malaysia. Shri Manish Dixit also knows Malaysian language and they had engaged Shri Chandra Kant Tripathi as CHA.

#### **4.3 Further Investigation with respect to Shri Anil Kumar Dixit, Shri Manish Dixit and Shri Chandra Kant Tripathi:**

**4.3.1** For further investigation, Shri Anil Kumar Dixit was again summoned to appear on 11-01-2024, 24-01-2024, 04-03-2024, 10-06-2024, 19-06-2024 and 01-07-2024 and Shri Manish Dixit was summoned under Section 108 of the Customs Act, to appear on 10-06-2024, 19-06-2024 and 01-07-2024 but none of them appeared.

**4.3.2** From the CDR of the mobile No. 9415812557 of the Shri Sudhir Kumar Pandey, it was revealed that Shri Manish Dixit having mobile number 9140572937 having huge number of calls with Shri Sudhir Kumar Pandey since February, 2023. The details of calls between Shri Sudhir Kumar Pandey and Shri Manish Dixit is given below-

<b>Details of Calls with Shri Manish Dixit, having mobile no. 9140572937 as available from the CDR of mobile No. 9415812557 of the Shri Sudhir Kumar Pandey</b>						
Date	INCOMING		OUTGOING		TOTAL CALLS	
	Duration of Call(s)	Number of Call(s)	Duration of Call(s)	Number of Call(s)	Duration of Call(s)	Number of Call(s)
03/02/2023	747	2	15	1	762	3
04/02/2023	435	1	26	2	461	3
05/02/2023	92	1			92	1
06/02/2023	1700	1			1700	1
08/02/2023	780	1			780	1
09/02/2023	678	2	593	3	1271	5
10/02/2023	519	4	60	1	579	5
11/02/2023	1482	4	776	5	2258	9
12/02/2023	225	2			225	2
13/02/2023	324	3	218	2	542	5
14/02/2023	604	6	515	4	1119	10

15/02/2023	907	7	364	4	1271	11
16/02/2023	225	1	10	1	235	2
17/02/2023	73	2	161	7	234	9
24/02/2023	310	1	1436	2	1746	3
25/02/2023	946	5	497	2	1443	7
26/02/2023	893	4	106	1	999	5
27/02/2023	1332	8	1046	6	2378	14
28/02/2023	1188	3			1188	3
01/03/2023	2057	3			2057	3
02/03/2023	1340	3	48	1	1388	4
03/03/2023	301	2			301	2
06/03/2023	66	1			66	1
08/03/2023	6	1			6	1
10/03/2023	1639	5	17	1	1656	6
11/03/2023	22	1			22	1
15/03/2023	34	1			34	1
22/03/2023	536	4	1023	5	1559	9
23/03/2023	2227	8			2227	8
24/03/2023			324	3	324	3
25/03/2023	135	1			135	1
26/03/2023	42	2	65	1	107	3
27/03/2023	697	4	152	3	849	7
28/03/2023	312	5	158	2	470	7
29/03/2023	1014	4	411	6	1425	10
01/04/2023	12	2			12	2
02/04/2023	96	1	17	1	113	2
03/04/2023	64	1			64	1
04/04/2023	406	4			406	4
05/04/2023	364	1			364	1
06/04/2023	816	7	153	1	969	8
07/04/2023			521	2	521	2
08/04/2023	767	5			767	5
11/04/2023	1362	5			1362	5
12/04/2023	2099	10	64	2	2163	12
13/04/2023	229	3	279	2	508	5
14/04/2023	119	2	57	1	176	3
16/04/2023	6	1	292	3	298	4
17/04/2023	335	3	549	6	884	9
18/04/2023	1048	4			1048	4

19/04/2023	196	3	205	3	401	6
20/04/2023	1252	8	27	1	1279	9
22/04/2023	1214	5	18	1	1232	6
23/04/2023	61	1			61	1
24/04/2023	556	4			556	4
25/04/2023	321	4	1428	3	1749	7
26/04/2023	655	5	85	2	740	7
27/04/2023	244	1			244	1
28/04/2023	730	3	37	1	767	4
29/04/2023	2133	6			2133	6
30/04/2023			56	1	56	1
01/05/2023	413	1	668	3	1081	4
02/05/2023	348	3			348	3
04/05/2023	446	2			446	2
05/05/2023	427	1			427	1
06/05/2023	459	1	836	2	1295	3
07/05/2023	56	1			56	1
08/05/2023	311	3			311	3
10/05/2023	755	4	308	2	1063	6
11/05/2023	405	2	601	3	1006	5
12/05/2023	2137	12			2137	12
13/05/2023	844	5	74	1	918	6
14/05/2023	269	4	6	1	275	5
15/05/2023	98	1			98	1
16/05/2023	240	3	29	1	269	4
17/05/2023	833	7			833	7
18/05/2023	431	4	230	1	661	5
23/05/2023	246	1	24	2	270	3
24/05/2023	205	1			205	1
25/05/2023	1282	10	429	4	1711	14
26/05/2023	1283	4	455	2	1738	6
27/05/2023	894	6	1278	6	2172	12
28/05/2023	618	5	484	4	1102	9
29/05/2023	526	5	873	4	1399	9
30/05/2023	1284	5	461	6	1745	11
31/05/2023	146	3	183	1	329	4
09/06/2023	209	1	468	1	677	2
10/06/2023	51	1	66	2	117	3
11/06/2023	192	2	398	3	590	5

12/06/2023	38	1			38	1
14/06/2023	394	1	9	1	403	2
15/06/2023	1167	2	65	1	1232	3
16/06/2023	1173	6			1173	6
17/06/2023	286	2			286	2
18/06/2023	597	1			597	1
19/06/2023	1942	12	745	9	2687	21
20/06/2023	1824	13	464	6	2288	19
21/06/2023	277	3	636	1	913	4
22/06/2023	634	4	783	4	1417	8
23/06/2023	334	5	98	2	432	7
24/06/2023	2	1	599	2	601	3
26/06/2023	68	2	1281	3	1349	5
27/06/2023	136	2	102	1	238	3
28/06/2023	1976	6	471	5	2447	11
03/07/2023	97	1			97	1
06/07/2023	319	5			319	5
08/07/2023	143	2	430	3	573	5
09/07/2023	974	10	858	4	1832	14
10/07/2023	1192	6	513	4	1705	10
11/07/2023	981	10			981	10
12/07/2023	389	3	10	1	399	4
13/07/2023	562	6	411	6	973	12
14/07/2023	619	8	500	5	1119	13
15/07/2023	1088	5	315	2	1403	7
16/07/2023	967	3	327	1	1294	4
17/07/2023	156	1	2141	5	2297	6
18/07/2023	311	7	574	4	885	11
19/07/2023	168	2	134	2	302	4
30/07/2023			7	1	7	1
03/08/2023			72	5	72	5
04/08/2023			277	2	277	2
05/08/2023			72	1	72	1
07/08/2023			679	3	679	3
08/08/2023	1144	5	221	2	1365	7
09/08/2023			7	1	7	1
11/08/2023	149	1			149	1
13/08/2023			600	1	600	1
15/08/2023			19	1	19	1

16/08/2023	24	1	173	4	197	5
17/08/2023	233	2	12	1	245	3
<b>Grand Total</b>	<b>74745</b>	<b>429</b>	<b>33285</b>	<b>236</b>	<b>108030</b>	<b>665</b>

It appears that Shri Manish Dixit and Shri Sudhir Pandey were very well known to each other and appears to have played key roles in the smuggling of betel nuts in guise of the Bhutan bound transshipped consignment of M/s. Samphel Enterprise imported in guise of declaring the goods as 'White Rice'. Accordingly, DRI, Lucknow Zonal Unit (LZU), was requested to carry out follow-up investigation with respect to Shri Anil Kumar Dixit and Shri Manish Dixit.

**4.3.3** Officers of DRI, LZU visited the address of Shri Anil Kumar Dixit at H. No: 434/60/37, Krishnapuri Colony, Kareemgunj, Thakurganj, Lucknow-226003 on 12-06-2024 but the said premises was found locked. On further enquiry it was revealed that Shri Manish Dixit, brother of Shri Anil Kumar Dixit stays at 434/60/32, Krishnapuri Colony, Sadaatganj, Lucknow-226003. Search of residence of Shri Manish Dixit was done on 12-06-2024 under panchanama and his statement was also recorded under Section 108 of the Customs Act, 1962.

**4.3.4** Shri Manish Dixit (Mobile No: 9140572937 and email Id. [dixitmanish565@gmail.com](mailto:dixitmanish565@gmail.com)) in his statement dated: 12-06-2024 recorded before the Senior Intelligence Officer, DRI, LZU *inter alia* stated that:

- i) He has been working as BPM (Branch Post Master) in Kakori Lucknow post office. (CIF I.D. 845374003/Amethiya Salempur Post Office, Kakori Lucknow). Apart from this service, he also runs a firm in the name of M/s. Seema Trading from 434/60/37 Krishnapuri Colony, Saadatganj, Lucknow.
- ii) Shri Sudhir Pandey told him that he (Pandey) was to work for betel nuts for M/s. Samphel Enterprise, Bhutan.
- iii) His brother Shri Anil Kumar Dixit is a contractual worker working as a BPM (Branch Post Master) in Banthra Post Office, Lucknow.
- iv) He knows betel nuts exporters from Indonesia and made introduced a few of them with Shri Sudhir Pandey. He helped Sudhir Pandey in clearance of imported goods in Kolkata.
- v) His brother Shri Anil Kumar Dixit also works as betel nut supplier in M/s. Seema Trading. They procure betel nuts from

Assam and sell the same to different betel nuts shops in Lucknow.

**4.3.5** Shri Chandra Kant Tripathi was again summoned dated 05-06-2024 to appear on 11-06-2024. Shri Tripathi in his statement dated: 11-06-2024 recorded under Section 108 of the Customs Act, 1962, *inter alia* stated that:

- i) Shri Sudhir Kumar Pandey lied in his statements and both he and Shri Anil Dixit had sent him the documents for both M/s. Samphel Enterprise, Bhutan and M/s. Shiv Sai Medi Enterprises Pvt. Ltd., Nepal. In support of his claim, he had also submitted WhatsApp chats made with Shri Pandey and Shri Dixit.
- ii) Shri Sudhir Kumar Pandey had made the payments of Rs. 41,496/- to M/s. Expressway Container Line LLP for consignments of M/s. Samphel Enterprise.
- iii) Both Shri Anil Kumar Dixit and Shri Manish Dixit used to keep contact with him on clearance of both the consignments of M/s. Samphel Enterprise, Bhutan and M/s. Shiv Sai Medi Enterprises Pvt. Ltd., Nepal.
- iv) Following recovery of misdeclared cargo of betel nuts in the consignments of M/s. Samphel Enterprise, while he contacted Shri Anil Kumar Dixit, Shri Dixit told him that both he (Anil) and Shri Sudhir Kumar Pandey had been aware of smuggling of betel nuts in Bhutan as well Nepal consignments.

## **5. Extension of time for issuance of SCN:**

Extension of time for issuance of Show Cause Notice was granted by the Pr. Additional Director General, Directorate of Revenue Intelligence, Kolkata Zonal Unit vide letter dated: 02-01-2024 under DRI F. No: DRI/KZU/CF/ENQ-75/2023/81 and the last date for issuance of SCN in this case was extended to 15-07-2024.

## **6. LEGAL PROVISIONS**

### **6.1. PROVISIONS OF THE CUSTOMS ACT, 1962:**

#### **6.1.1.** As per Section 2 of the Customs Act 1962:

- the term "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
- the term "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;
- the term "goods" includes –

vessels, aircraft and vehicles;

stores;

baggage;

currency and negotiable instruments; and

any other kind of movable property’;

- the term “customs area” means “the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities’;
- the term “customs station” ‘means any customs port, customs airport or land customs station’;
- the term “prohibited goods” means ‘any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with’;
- the term, “smuggling”, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113’.

**6.1.2.** Section 54. Transshipment of certain goods without payment of duty. -

(1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in such form and manner as may be prescribed:

Provided that where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in such form and manner as may be prescribed.

(2) Subject to the provisions of section 11, where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.

(3) Where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transshipment -

- (a) to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai,



Calcutta, Delhi or Chennai or any other customs port or customs airport which the Board may, by notification in the Official Gazette, specify in this behalf, or

(b) to any other customs station and the proper officer is satisfied that the goods are bona fide intended for transshipment to such customs station,

the proper officer may allow the goods to be transhipped, without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

**6.1.3.** Section 111 of the Customs Act, 1962 : Confiscation of improperly imported goods, etc.

d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force.

(f) of the Customs Act, 1962, any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;

(n) of the Customs Act, 1962, any dutiable or prohibited goods transitted with or without trans-shipment or attempted to be so transitted in contravention of the provisions of Chapter VIII;

**6.1.4.** Section 112, 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 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, harboring, 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 (iii), to a penalty 5 [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 6 [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.

**6.1.5.** Section 114AA. Penalty for use of false and incorrect material. -

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

**6.2.** Provisions of memorandum to protocol to The Agreement on Trade, Commerce and Transit between The Government of The Republic of India and Royal Government of Bhutan:

**6.2.1.** In pursuance of the provisions of Article-IV which reads “ In view of the free movement of goods flowing between the two countries and of the possibility of the flow from one to the other of goods of third country origin the Governments of the two countries shall have annual consultations” and of Article-V which reads “ All exports and imports of Bhutan to and from countries other than India will be free from and not subject to customs duties and trade restrictions of the Government of the Republic of India. The procedure for such exports and imports and the documentation which are detailed in the Protocol to this Agreement may be modified by mutual agreement from time to time” the following Import Procedure shall apply to goods in Transit.

**6.2.2.** When goods are imported from third countries for Bhutan through India, the following procedure shall be observed at the Indian place of entry (hereinafter referred to as "Customs House"):-

- a) Clearance of goods imported for Bhutan shall be against Letter of Guarantee issued by the Royal Bhutan Customs/Representative of the Royal Government of Bhutan.
- b) At the Customs House, the importer or his agent (hereinafter referred to as the "Importer") shall present the Letter of Guarantee in the prescribed form (Annex-I) in five copies. The last two columns pertaining to classification of goods and duty shall be completed by the Indian Customs authorities.
- c) In respect of containerised cargo, the following examination procedure shall be followed
  - i. On arrival of the Bhutanese containerised cargo, the Indian customs officer, shall check the 'one-time-lock' of the container put on by the shipping agent or the carrier authorised by the shipping company. Thereafter, the Indian customs officer shall allow transportation of the containerised cargo, after affixing a one-time customs lock without examination, unless there are valid reasons to do otherwise. The serial number of the new 'one-time-lock' shall be endorsed in the Letter of Guarantee.
  - ii. In case where the 'one-time-lock' on the container arriving at the port in India is found broken or defective, the Indian customs authorities shall make due verification of the goods to check whether the same are in accordance with the relevant shipping documents, put fresh 'one-time-lock' and allow the container to move to the destination. The serial number of the new 'one-time-lock' shall be endorsed in the Letter of Guarantee.
- d) In case of non-containerised goods, the Indian customs authorities may, after percentage check if necessary, seal the goods individually or seal the transport in which they are being carried
- e) The Customs House/Land Customs Station at the point of exit shall verify the 'one-time-lock' affixed by the customs at the point of arrival of the cargo. If the lock is found intact the cargo shall be allowed to exit India to enter Bhutan. In case the lock is found to be tampered with, the goods may be subject to further examination. If the details are found to be tallying with the Letter of Guarantee a one-time-lock shall be affixed and the cargo allowed to exit India to enter Bhutan. However, in case

there is variance in the quantity or description of goods vis-a-vis that reflected in the relevant shipping documents, the Indian Customs shall proceed to recover duty accordingly.

- f) The movement of vehicles of their own power from Kolkata port to Bhutan shall be allowed subject to the following conditions:
  - i. The Indian Customs Officials at the port of import and the Land Customs Station of exit shall examine the vehicles to check whether the goods are in accordance with the Letter of Guarantee and will approve them for onward transmission if they are found to be in accordance with the said Letter of Guarantee and further, at the Land Customs Station of exit, if they conform to the description and the quantities of the vehicles and its parts, spares and accessories, as found at the port of import and recorded on the Letter of Guarantee.
  - ii. The said movement will be allowed only through Jaigaon Land Customs Station and will be covered by the Letter of Guarantee issued by Royal Bhutan Customs/Representative of the Royal Government of Bhutan.
- g) The Customs House, after having satisfied with the aforesaid procedures, shall endorse all the copies of the Letter of Guarantee. The fourth copy shall be handed over to the importer. The fifth shall be sealed and handed over to the importer for passing on to the Indian Customs Officer at the exit point in India.
- h) On arrival of the goods at the Indo-Bhutan border, the importer shall present to the Indian Customs Officer, the goods as well as his copy of the Letter of Guarantee and the sealed copy for the Customs Officer. The Customs Officer shall compare the two copies and allow movement of goods into Bhutan after checking the seal. The fourth copy shall be returned to the importer after due endorsement and fifth copy sent to the Customs House.
- i) In case of imports not reaching their destination, the Customs officials of the two countries shall get in contact so as to trace the movement of the goods. If the goods are found to have been diverted intentionally or purposely into India, the Indian Authorities would invoke the guarantee and get in touch with the Transit & Liaison Office/ Representative of the Royal Government of Bhutan in Kolkata to realize the Customs duties and other dues of the Government of the Republic of India.

- j) Both Governments shall strive to promote the use of electronic means to facilitate the movement of transit cargo including encouraging the use of electronic means track and trace cargo.

Note:

Any cargo consigned to Bhutan arriving in Kolkata, Delhi, Mumbai and Chennai airports which has to move by surface transport through the territory of the Republic of India shall follow the import procedure as outlined in this Protocol.

## **7. OUTCOME OF THE INVESTIGATION vis-à-vis LEGAL POSITION:**

- 7.1.** From the findings of the investigations carried out by DRI, KZU pursuant to the seizure of betel nuts and the corroborative evidences collected during enquiry read with the relevant legal provisions for the time being in force, the following appears to emerge.
- 7.2.** Acting on a specific intelligence, one (01) Bhutan-bound transshipment container of M/s. Samphel Enterprise said to contain "White Rice", were interdicted by DRI, KZU and on examination of the container resulted into recovery of 25.880 MT of betel nuts valuing Rs. 2,22,81,077/-. The value of the goods has been ascertained on the basis of Tariff Value Notification No. 53/2023-Customs (N.T.), Dated: 14-07-2023 and Exchange Rate Notification under No. 54/2023-Customs (N.T.), Dated: 20-07-2023. The goods have been seized under section 110 of the Customs Act on 24-07-2023 on reasonable belief that these are liable to confiscation.
- 7.3.** M/s. Samphel Enterprise and its Proprietor Shri Leki Tshering were summoned vide summons dated: 22.11.2023, 12.12.2023, 02.01.2024, 18.01.2024, 23.02.2024, 29.05.2024, but he didn't appear in any occasion before the DRI, KZU office. From his non-cooperation with the investigation, it appears that he had prior knowledge about smuggling of betel nuts imported in guise of the mis-declared consignments of 'White Rice' from Malaysia. It also appears he wilfully and deliberately misused the treaty of transit between the Government of India and the Royal Government of Bhutan and abetted smuggling of betel nuts, a highly dutiable goods when legally imported into India, in connivance with his Indian associates namely, Shri Sudhir Kumar Pandey, Shri Shyamal Sarkar, Shri Anil Dixit, Shri Manish Dixit and Shri Chandrakant Tripathi. It also appears that Shri Leki Tshering had conscious knowledge that the smuggled betel nuts which he was dealing with was liable for confiscation under Section 111 of the

Customs Act, 1962. It also appears that Shri Leki Tshering held himself liable for penal action under Section 112(a) and Section 112 (b) of the Customs Act, 1962. It also appears that Shri Leki Tshering has lent his IEC to be used by his associates in India for smuggling of foreign origin betel nuts meant to be diverted in the domestic market in India and for that reason he had provided false documents with respect to the mis-declared consignment 'White Rice' in contravention of the Customs Act, 1962 while grossly misusing the the treaty of transit between the Government of India and the Royal Government of Bhutan. Thus, it appears that Shri Leki Tshering held himself liable for penal action under Section 114AA of the Customs Act, 1962.

- 7.4.** The importer, in connivance with the other members of the syndicate, attempted to import betel nuts import policy of which in any form i.e. whole/split/ground/other is covered under the category of "Restricted". DGFT vide Notification No. 57/2015-2020 dated 14-02-2023 prescribed the minimum import price for betel nut as CIF Rs. 351 per Kg for allowing import. It appears that considering the high value for import policy of betel nuts, the importer in tandem with other members of this smuggling syndicate concernedly resorted to bringing betel nuts surreptitiously mis-declaring the cargo as white rice in the guise of Bhutan bound consignment to avoid the policy restriction and to evade payment of high duty and thus, the impugned goods were imported by contravening the provisions of Section 54(1) of the Act, read with the provisions of The Agreement on Trade, Commerce and Transit between The Government of The Republic of India and Royal Government of Bhutan (supra). Therefore, the impugned goods were imported or brought within the Indian customs waters for the purpose of being imported, contrary to the aforesaid prohibitions thereby rendering the said goods liable to confiscation u/s 111(d) of the Customs Act, 1962.
- 7.5.** In view of the deliberations made in the foregoing para, it appears that the impugned dutiable/prohibited goods, required to be mentioned properly under the regulations in the arrival manifest/import manifest/IGM, were not so mentioned thereby rendering the said goods liable to confiscation u/s 111(f) of the Customs Act, 1962.
- 7.6.** Without prejudice to the assertion that the subject goods were attempted to be routed to the Indian domestic market by declaring the same as Bhutan-bound consignment and mis-declaring the description thereof, the subject goods were attempted to be transited/trans-shipped in contravention to the provisions of Chapter VIII of the Act, as described hereinabove, thereby

rendering the said goods liable to confiscation u/s 111(n) of the Customs Act, 1962.

- 7.7.** The aforementioned events and circumstances clearly suggest that the smuggling of betel nut in guise of the mis-declared Bhutan-bound consignment was carried out by a syndicate which involved importer along with group involved in transportation arrangements and appears to be for swapping of the goods enroute to Bhutan. The syndicate imported betel nuts in guise of mis-declared Bhutan-bound trans-shipment consignment and subsequently routing the same to Indian domestic market in unlawful manner. The instant consignment of betel nut was also going to be diverted to Indian domestic market in similar way. The subject case appears to be a case of smuggling in terms of Section 2(39) of the Customs Act, 1962.
- 7.8.** The investigation carried out by DRI, KZU explicitly revealed that syndicate was formed consisting of few members including a foreign national and using the credentials of the foreign national and his company started importing betel nuts meant for transshipment to Bhutan by mis utilizing the treaty of transit. The said company mis declared the goods, the goods declared was white rice whereas on examination betelnuts were found which were meant for diversion into Indian market and this modus was followed by the members of the syndicate in order to evade huge customs duties payable on betel nuts and to surpass the import policy restrictions on betel nut had betelnuts are imported and cleared for home consumption in India.
- 7.9.** Investigation carried out by DRI, KZU explicitly revealed out a few names stage by stage along with Shri Leki Tshering of M/s. Samphal Enterprise, the importer from Bhutan, namely, Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit, Shri Manish Kumar Dixit, Shri Chandrakant Tripathi and Shri Shyamal Sarkar who in collaboration with one another devised the plan of smuggling betel nuts in Bhutan-bound transshipment consignments in the guise of some other cargo. As soon as investigation progressed, name of Shri Sudhir Kumar Pandey came into light who in his statements blatantly lied and tried to distance himself from the ongoing investigation.
- 7.10.** On further investigation the entire picture of this smuggling racket started coming out of shade. And, the connivance of Shri Leki Tshering, Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit, Shri Manish Kumar Dixit and Shri Shyamal Sarkar was unfolded.
- 7.11.** Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit, Shri Manish Dixit and Shri Shyamal Sarkar are the co-conspirators alongwith

Shri Leki Tshering, who made the smuggling possible in the way as they appear to have masterminded the entire smuggling syndicate in Indian side. Shri Anil Kumar Dixit collaborated with Shri Sudhir Kumar Pandey and then with Shri Shyamal Sarkar from a considerable period of time and might have come to an agreement to bring betel nuts by mis-declaring the cargo as white rice in the name of the firm of Shri Leki Tshering i.e., M/s. Samphal Enterprise, Bhutan. For the purpose of bringing betel nuts, they have also made to procure and use IEC of M/s. Samphal Enterprise. That Shri Leki Tshering of M/s. Samphal Enterprise was persuaded by Shri Shyamal Sarkar on the instance of Shri Anil Kumar Dixit to obtain IEC and godown and the same was admitted by Shri Sarkar himself. That all Shri Anil Kumar Dixit, Shri Sudhir Kumar Pandey and Shri Shyamal Sarkar met Shri Leki Tshering at Bongaigaon was also admitted by Shri Sarkar himself.

- 7.12.** Shri Sudhir Kumar Pandey in his statement dated: 08.12.2023 completely lied in so far as he stated that he did not know Shri Shyamal Sarkar and that he had gone to Bongaigaon to meet a person other than Shri Shyamal Sarkar. But his CDR gave completely different picture. He had again lied in his statement dated 18.04.2024 in so far as he had tried to impose the entire responsibility of bringing betel nuts in the guise of Bhutan consignment of M/s. Samphal Enterprise on Shri Anil Kumar Dixit, his brother Shri Manish Dixit and Shri Chandrakant Tripathi but could not submit any strong or corroborative evidence in support of his claim. Further that he had deleted the WhatsApp chat made with anyone of the above them also indicates that he had tried to suppress the material fact of his involvement. However, from the evidence submitted by Shri Chandrakant Tripathi, it appears that Shri Sudhir Pandey along with Shri Manish Dixit and Shri Anil Dixit were in hand in glove with each other for smuggling of betel nuts in guise of Nepal and Bhutan bound transhipped consignments. Again, he lied while he stated that he had arranged to pay Rs. 41,496/- twice only on the instance that M/s. Shiv Sai Medicare Pvt. Ltd., Nepal, did not get the required payment, whereas he could not submit any communication made in this regard with M/s. Shiv Sai Medicare Pvt. Ltd., Nepal.
- 7.13.** WhatsApp chats made with Shri Sudhir Kumar Pandey submitted by Shri Chandrakant Tripathi unambiguously indicates that Shri Pandey was in full control of the consignment from the commencement of the import and had repeatedly dictated Shri Tripathi for processing and clearance of the consignment. It was



also seen that Shri Sudhir Kumar Pandey himself sent the documents of M/s. Shiv Sai Medicare Pvt. Ltd., Nepal and M/s. Samphel Enterprise separately to Shri Chandra Kant Tripathi for processing. From the whatsapp chats it is further revealed that Shri Sudhir Kumar Pandey has also instructed Shri Tripathi to engage CHA and release delivery order for both M/s. Shiv Sai Medicare Pvt. Ltd., Nepal and M/s. Samphel Enterprise. Thus, Shri Tripathi had dealt the two consignments separately and had paid for the delivery order of M/s. Samphel Enterprise from his own indulgence and his plea of not knowing anything or any concern about M/s. Samphel Enterprise does not stand here.

- 7.14.** Shri Anil Kumar Dixit, another co-conspirator, has in his maiden statement accepted that he had been aware that betel nuts would be imported in the guise of Bhutan consignment and Shri Sudhir Kumar Pandey had informed him also the same. He further added that Shri Sudhir Kumar Pandey had arranged to pay for the consignment.
- 7.15.** However, while for further investigation Shri Anil Kumar Dixit was summoned, he did not respond. His repeated disregard to the summonses indicated that he had tried to thwart and misled the investigation by way of his non-cooperation.
- 7.16.** From the whatsapp chats of Shri Chandra Kant Tripathi made with Shri Anil Kumar Dixit it is seen that Shri Dixit has forwarded the bill of lading of M/s. Samphel Enterprise. Shri Dixit has also been found to have forwarded a blank letter head of in the name of "SAMPHEL ENTERPRISE GELEPHU:BHUTAN". Thus, from the above it transpires that Shri Dixit was in complete connivance with Shri Sudhir Kumar Pandey made steered this exercise of smuggling possible.
- 7.17.** Shri Shyamal Sarkar, is another conspirator in devising the smuggling in so far as he facilitated to procure and arrange IEC in the name of Shri Samphel Enterprise by persuading Shri Leki Tshering of Bhutan. Though in his statement he has tried to portray Shri Sudhir Kumar Pandey as a genuine businessman and put entire responsibility on Shri Anil Kumar Dixit and Shri Manish Kumar Dixit for this smuggling, he cannot deny his involvement.
- 7.18.** Shri Manish Dixit is found to have co-conspired in this smuggling along with other members of this smuggling syndicate. From the whatsapp chats of Shri Chandra Kant Tripathi made with Shri Manish Dixit it is seen that Shri Manish Dixit has also forwarded documents of M/s. Samphel Enterprise. Shri Manish Dixit has also been found to have forwarded a blank letter head of in the name of "SAMPHEL ENTERPRISE GELEPHU:BHUTAN". Thus,

from the above it transpires that Shri Dixit was also a prominent part of this smuggling syndicate and was in full possession of documents by help of which the betel nuts were smuggled into India in the guise of misdeclared cargo of M/s. Samphel Enterprise, Bhutan.

**7.19.** It appears from the investigation that Shri Sudhir Kumar Pandey, Shri Shyamal Sarkar, Shri Anil Dixit, Shri Manish Dixit and Shri Chandrakant Tripathi knew that betel nuts were being smuggled in guise of mis-declared consignment of 'White Rice' from Malaysia in the name of Bhutan importer, M/s. Samphel Enterprise. It appears that they have knowingly indulged themselves in smuggling of betel nuts having conscious knowledge that the smuggled betel nuts were meant to be diverted into domestic market in India and knew that the smuggled betel nuts were liable to confiscation under Section 111 of the Customs Act, 1962. It appears that Shri Sudhir Kumar Pandey, Shri Shyamal Sarkar, Shri Anil Dixit, Shri Manish Dixit and Shri Chandrakant Tripathi held themselves liable for penal action under Section 112(a) and Section 112 (b) of the Customs Act, 1962. It also appears that Shri Sudhir Kumar Pandey, Shri Shyamal Sarkar, Shri Anil Dixit, Shri Manish Dixit and Shri Chandrakant Tripathi knowingly and intentionally obtained false and incorrect documents through Shri Leki Tshering for smuggling of foreign origin betel nuts in guise of mis-declared transshipped Bhutan bound consignment imported in the name of M/s. Samphel Enterprise. Thus, it appears that Shri Sudhir Kumar Pandey, Shri Shyamal Sarkar, Shri Anil Dixit, Shri Manish Dixit and Shri Chandrakant Tripathi have held themselves liable for penal action under Section 114AA of the Customs Act, 1962.

## **8. ROLE PLAYED BY ENTITY/PERSONS:**

### **8.1. Role played by Shri Leki Tshering, Proprietor of M/s. Samphal Enterprise:**

Shri Leki Tshering has been involved in the smuggling of betel nuts and his role is central to this illicit trade chain. M/s. Samphel Enterprise created an opportunity for smuggling networks to thrive, relying on individuals like Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit, Shri Manish Dixit and Shri Shyamal Sarkar etc. to facilitate the smuggling of betel nuts into India. It appears Shri Leki Tshering had struck a deal with Shri Shyamal Sarkar, who being a resident of Assam, thus nearer to Bhutan border through business connection provided the credentials of M/s. Samphal Enterprise to be used by the syndicate engaged in illegal smuggling of betel nuts in guise of transshipment consignments to Bhutan of M/s. Samphal

Enterprise. Shri Leki Tshering avoided investigation of DRI deliberately by not responding to summons only to save himself and other members of the smuggling syndicate from the clutches of law. It appears that Shri Leki Tshering negotiated deals and arranged for the purchase and transportation of large quantities of betel nuts in collaboration with its Indian accomplices by using covert method to avoid detection by authorities. As an importer, Shri Leki Tshering, Proprietor of M/s. Samphal Enterprise involved in the smuggling of betel nuts and played a pivotal role in a complex and lucrative illicit trade network. Shri Leki Tshering, proprietor of M/s. Samphal Enterprise was summoned several times but he did not appear which reflects his malafide intention to impede the investigation. His non-appearance speaks volume about his intention that he tried to safeguard his accomplices in this illicit trade of smuggling. It appears that Shri Leki Tshering played his part in the web of organized smuggling syndicate and his actions only caused huge revenue losses to the Government of India. By doing so, Shri Leki Tshering did not show any respect for mutual agreement between Bhutan and India. It appears that Shri Leki Tshering rendered himself liable to penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962, in so far as he abetted the smuggling and purchased/dealt with goods in spite of knowing those are liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that Shri Leki Tshering is also liable to penalty under Section 114AA of the Customs Act, 1962, as he appears to be knowingly and intentionally caused to make wrong declaration and documents with respect to consignment of M/s. Samphel Enterprise, Bhutan.

## **8.2. Role played by Shri Sudhir Kumar Pandey:**

Shri Sudhir Kumar Pandey abetted smuggling by providing assistance to M/s. Samphal Enterprise in its illegal activities. His role has been pivotal in the attempted smuggling of betel nuts in guise of mis-declared transshipped consignment of M/s. Samphel Enterprise. He was directly engaged and played pivotal role in facilitating the smuggling of foreign origin betel nuts. He appears to be the mastermind in the attempted smuggling of betel nuts through the IEC of Bhutan importer, M/s. Samphel Enterprise. He played a crucial role in conniving with Shri Leki Tshering, Shri Anil Kumar Dixit, Shri Manish Dixit, Shri Shyamal Sarkar and Shri Chandrakant Tripathi and appears to have funded the smuggling of betel nuts of foreign origin. Shri Sudhir Kumar Pandey has been found to have deliberately lied in his statements. From excerpts of communication made with Shri Chandra Kant

Tripathi, it has become clear that Shri Pandey himself masterminded this smuggling activity and was in full control for implementing the same. He is the person who has arranged the documents for proposed clearance of smuggled betel nuts in the guise of misdeclared cargo in M/s. Samphel Enterprise. That he took the plea of not knowing M/s. Samphel Enterprise and also that he did not pay for the intended delivery order of M/s. Samphel Enterprise, have completely fallen flat in so far as he has been found to have instructed Shri Chandra Kant Tripathi to engage CHA and release delivery order for the smuggled cargo. Shri Sudhir Kumar Pandey, in spite of claiming to be a doctor of Ayurveda medicine and been engaged in the business of proprietary medicine has resorted to this deceitful act. He appears to have indulged in this smuggling act under the shield of his medicine business. He has made continuous false attempts to derail the investigation and also tried to protect himself by making Shri Anil Kumar Dixit and Shri Manish Dixit only responsible. He appears to have collaborated with Shyamal Sarkar from Assam to save their faces by making only Shri Anil Kumar Dixit and Shri Manish Dixit responsible. That Shri Sudhir Kumar Pandey blatantly lied that he does not know Shri Shyamal Sarkar and did not go to Bongaigaon, Assam, was contradicted by Shri Sarkar himself as he has confirmed that he knows Shri Pandey and met at Assam. It appears that Shri Sudhir Kumar Pandey plotted this smuggling and has been central in organizing the crime to cheat Government of India and caused huge damage to Indian coffer. By doing so, Shri Sudhir Kumar Pandey disrespected the law of the land and also mutual respect and agreement between Bhutan and India. In view of the discussions made herein above, it appears that Shri Sudhir Kumar Pandey rendered himself liable to penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962, in so far as he abetted the smuggling and dealt with goods in spite of knowing those are liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that Shri Sudhir Kumar Pandey is also liable to penalty under Section 114AA of the Customs Act, 1962, as he appears to be knowingly and intentionally caused to make wrong declaration and documents with respect to consignment of M/s. Samphel Enterprise, Bhutan.

### **8.3. Role played by Shri Anil Kumar Dixit:**

Shri Anil Kumar Dixit is one of the key members of this smuggling syndicate who helped in germinating the seeds of this smuggling. Role of Shri Anil Kumar Dixit in the smuggling of betel nuts is almost paramount in so far as he alongwith his brother Shri

Manish Dixit, Shri Sudhir Kumar Pandey plotted and proceeded with the scheme and roped in Shri Shyamal Sarkar to execute the same. It was Shri Anil Kumar Dixit who introduced Shri Shyamal Sarkar with Shri Sudhir Kumar Pandey. Shri Anil Kumar Dixit has persuaded Shri Shyamal Sarkar to arrange a Bhutan national and obtain and procure IEC in his name. In fact, Shri Anil Kumar Dixit in his statement also acknowledged that he was aware that betel nuts were going to be brought into India in the guise of Bhutan consignment of M/s. Samphel Enterprise and Shri Sudhir Kumar Pandey had funded for the same. He has also forwarded import documents in the name of M/s. Samphel Enterprise in spite of knowing that the consignment contains betel nuts instead of declared cargo of white rice. By doing so, Shri Anil Kumar Dixit disrespected the law of the land and also mutual respect and agreement between Bhutan and India. In view of the discussions made herein above, it appears that Shri Anil Kumar Dixit rendered himself liable to penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962, in so far as he abetted the smuggling and dealt with goods in spite of knowing those are liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that Shri Anil Kumar Dixit is also liable to penalty under Section 114AA of the Customs Act, 1962, as he appears to be knowingly and intentionally caused to make wrong declaration and documents with respect to consignment of M/s. Samphel Enterprise, Bhutan.

#### **8.4. Role played by Shri Manish Dixit:**

Shri Manish Dixit is one of the key members of this smuggling syndicate who appears to have participated in plotting the smuggling. Shri Sudhir Kumar Pandey and Shri Shyamal Sarkar in their statements also stated that both Shri Anil Kumar Dixit and Shri Manish Dixit are engaged in bringing betel nuts in India from Malaysia. He has also forwarded import documents of M/s. Samphel Enterprise in spite of knowing that the consignment contains betel nuts instead of declared cargo of white rice. By doing so, Shri Manish Dixit disrespected the law of the land and also mutual respect and agreement between Bhutan and India. In view of the discussions made herein above, it appears that Shri Manish Dixit rendered himself liable to penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962, in so far as he abetted the smuggling and dealt with goods in spite of knowing those are liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that Shri Manish Dixit is also liable to penalty under Section 114AA of the Customs Act, 1962,

as he appears to be knowingly and intentionally caused to make wrong declaration and documents with respect to consignment of M/s. Samphel Enterprise, Bhutan.

#### **8.5. Role played by Shri Shyamal Sarkar:**

Shri Shyamal Sarkar also is one of the key members of this smuggling syndicate who caused to make IEC in the name of M/s. Samphel Enterprise by Shri Leki Tshering of Bhutan. He has never denied to have known any of Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit or his brother Shri Manish Dixit. In his statement he stated that both Shri Anil Kumar Dixit and his brother Shri Manish Dixit are engaged in bringing betel nuts in India from Malaysia. And in spite of knowing the true nature of Shri Anil Kumar Dixit and his brother Shri Manish Dixit, he indulged himself in this smuggling activity. He has also acknowledged that he got introduced with Shri Sudhir Kumar Pandey through Shri Anil Kumar Dixit. That he tried to shield Shri Sudhir Kumar Pandey by certifying him as a gentleman and genuine businessman also himself talks about his true motive to protect themselves from the clutches of law. He has played his part in engaging the Bhutan importer who in turn was about to bring betel nuts be mis-declaring that as white rice in Bhutan consignment of M/s. Samphel Enterprise. By doing so, Shri Shyamal Sarkar disrespected the law of the land and also mutual respect and agreement between Bhutan and India. In view of the discussions made herein above, it appears that Shri Manish Dixit rendered himself liable to penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962, in so far as he abetted the smuggling and dealt with goods in spite of knowing those are liable to confiscation under Section 111 of the Customs Act, 1962. Further, it also appears that Shri Shyamal Sarkar is also liable to penalty under Section 114AA of the Customs Act, 1962, as he appears to be knowingly and intentionally caused to make wrong declaration and documents with respect to consignment of M/s. Samphel Enterprise, Bhutan.

#### **8.6. Role played by Shri Chandra Kant Tripathi:**

Shri Chandra Kant Tripathi appears to have played his part in so far as he tried to engage CB and released delivery order for clearance of smuggled cargo of betel nuts on the basis of wrong documents as received by him from Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit and Shri Manish Dixit. He appears to have mediated the chain of smuggling and abetted this illegal trade by way of omission and by doing so, Shri Chandra Kant Tripathi

disrespected the law of the land and also mutual respect and agreement between Bhutan and India. In view of the discussions made herein above, it appears that Shri Manish Dixit rendered himself liable to penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962, in so far as he abetted the smuggling and dealt with goods in spite of knowing those are liable to confiscation under Section 111 of the Customs Act, 1962.

**9. Now, therefore,**

- 1) M/s. Samphel Enterprise (Proprietor-Shri Leki Tshering), Sarpang, Gelepu Throm, Bhutan. [License No: R3005849 by Ministry of Industry, Commerce and Employment, Kingdom of Bhutan], Email Id: [samphelenterprise31@gmail.com](mailto:samphelenterprise31@gmail.com) & [lt2002bt@gmail.com](mailto:lt2002bt@gmail.com).
- 2) Shri Sudhir Kumar Pandey, S/o Late Daya Shankar Pandey, R/o 87/3, Behind Heritage Housing, Bhagwanpur, B.H.U. Varanasi, Uttar Pradesh-221 005, Email Id: [gametehealthcare@gmail.com](mailto:gametehealthcare@gmail.com).
- 3) Shri Shyamal Sarkar, S/o Late Madhusudan Sarkar, Permanent R/o House No: 156, Lichutala (Nehru Road), Vill-Bongaigaon Town, Ward No: 2, P.O.-Bongaigaon Town, Assam-783380.
- 4) Shri Anil Kumar Dixit, S/o Shri Rishi Kumar Dixit, R/o 434/60/37, Krishnapuri Colony, Karimgunj, PS-Sahadatganj, Chawk-Lucknow, Uttar Pradesh-226003, Email Id: [anildixit565@gmail.com](mailto:anildixit565@gmail.com).
- 5) Shri Manish Dixit, 247, Krishnapuri Colony, Kareemganj, Lucknow-226003, Email Id: [dixitmanish@gmail.com](mailto:dixitmanish@gmail.com).
- 6) Shri Chandra Kant Tripathi, S/o Shri Ashok Tripathi, R/o D-7/3, NISCO Government Housing Complex, Sapuipara, Haora, West Bengal-711227, Email Id: [rite4chandrakant@gmail.com](mailto:rite4chandrakant@gmail.com).

were called upon individually and severally to Show Cause, in writing, to the Additional/Joint Commissioner of Customs (Port), Nepal-Bhutan Unit, Custom House, 15/1 Strand Road, Kolkata-700001 within 30 days of receipt of this notice as to why:

- a) The goods i.e. 25.880 MT of betel nuts collectively valued at Rs. 2,22,81,077/- (Rupees Two Crore Twenty-Two Lakhs Eighty-One Thousand and Seventy-Seven only) as detailed in Table-A above

should not be held liable to confiscation under Section 111(d), 111(f) and 111(n) of the Customs Act, 1962.

- b) Penalty should not be imposed on each of them u/s 112(a) and 112(b) of the Customs Act, 1962, as described hereinabove.
- c) Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on Shri Leki Tshering, Proprietor of M/s. Samphel Enterprise, Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit, Shri Manish Dixit and Shri Shyamal Sarkar for knowingly and intentionally causing to make arrangements of false documents to carry out smuggling of betel nuts in the guise of Bhutan bound consignment in contravention to the Customs Act, 1962.

## **10. Reply to Show Cause Notice:**

### **10.1 Reply to SCN by Noticee No. 2 (Shri Sudhir Kumar Pandey):**

- i. Shri Sudhir Kumar Pandey, vide his letter dated 02.08.2024, had requested a three-week extension to submit his reply to SCN No. DRI/KZU/CF/ENQ-75/2023/2270-2275 dated 04.07.2024. He unequivocally denied and disputed all allegations of involvement in smuggling, stating that he was not involved in any illegal activities. He cited that he needed time to recover important documents, also mentioning his status as a senior citizen suffering from ailments. He expressed hope that his plea for extension would receive a positive response, given his active cooperation and assistance in the investigation.
- ii. Subsequently, Shri Sudhir Kumar Pandey submitted his detailed reply to the SCN on 14.09.2024 and a further written submission on 14.01.2025 through his advocate, Shri Raghvendra Pratap Singh. In these submissions, he categorically denied any role in the purported smuggling of 25.880 MT of foreign origin betel nuts allegedly valued at Rs. 2,22,81,077/- in contravention of the Customs Act, 1962. He further stated that he was not in any manner whatsoever associated with any smuggling of goods. He highlighted that the importer of the purported smuggled goods, M/s Samphel Enterprise, had not been proceeded against, while the entire case was being made against him based on "hearsay and statements of persons which are false, fabricated and untrue".
- iii. For factual clarity, he stated that he is a businessman engaged in the manufacture and sale of dietary food supplements under M/s Helik Healthcare Private Limited, with business operations across India. He



explained that for manufacturing medical products, they required chemicals and raw materials sourced from suppliers in Nepal, including M/s Shiv Sai Medi Enterprises Limited. He mentioned that due to past business relations, Shri Sunil Singh of M/s Shiv Sai Medi Enterprises Limited had requested him to pay the fees and charges of the customs house agent in relation to the import of some goods by the said company. He stated that he had then requested his son, Rahul Pandey, to pay the customs house agent as per the company's directions. Accordingly, a sum of Rs. 41,496/- was transferred via Gpay from Rahul Pandey's bank account to the customs house agent's bank account on 14.07.2023. He reiterated that this was the only monetary transaction involving him, made solely at the request of M/s Shiv Sai Medi Enterprises Limited.

- iv. He denied and disputed all other allegations in the SCN, except what was specifically admitted. Regarding Paragraphs 1, 2, 2.1, 2.2, and 2.3 of the SCN, he refrained from commenting as he was not present at the time of recovery of the purported smuggled goods. He stated that he had no link or connection to M/s Samphel Enterprise whatsoever and denied allegations to the contrary. Concerning Paragraph 3.1 of the SCN, he denied that Shri Chandra Kant Tripathi's statements were true or correct. He denied requesting Shri Tripathi or providing documents for clearance of the Bhutan-bound shipment. He also denied being the main person importing goods to Bhutan through India, asserting that Shri Tripathi's statement was false, untrue, and unreliable. Regarding Paragraph 3.2 of the SCN, he denied that Shri Anil Kumar Dixit's statements were true or correct. He denied requesting Shri Dixit to arrange someone from Bhutan for importing cargo. He also denied instructing M/s Samphel Enterprise to import goods into Bhutan or roping in Shri Tripathi for clearing the import consignment in M/s Samphel Enterprise's name. He further denied informing Shri Dixit that betel nuts would be imported as "white rice" or investing the entire amount for the import. He stated that Shri Dixit's statement was false, untrue, and unreliable. He refrained from commenting on Paragraphs 3.3 and 3.4 as no allegations were made against him.
- v. Regarding Paragraphs 4, 5, and their sub-paragraphs, he denied any connection with the purported smuggling of betel nuts. He specifically denied that the Rs. 41,496/- payment by his son, Rahul Pandey, was related to the alleged smuggling, reiterating it was made at the request of Shri Sunil Singh of M/s Shiv Sai Medi Enterprises Limited. Concerning his relationship with Shri Shyamal Sarkar, he stated that he was initially misunderstood about not knowing any person named Shyamal Sarkar. He clarified that he was in touch with a Shyamal Sarkar for his pharmaceutical business interests but was unsure if it

was the same Shyamal Sarkar mentioned in the SCN. He stated that he had never denied his association with Shri Dixit or Shri Tripathi, and therefore, calls between them did not indicate any wrongful activity. He refrained from commenting on Paragraph 6 and its sub-paragraphs, as they pertained to legal provisions.

- vi. Regarding Paragraphs 7, 8, and their sub-paragraphs, he denied being part of any purported syndicate with Shri Leki Tshering of M/s Samphel Enterprise, Bhutan. He denied any connection with the alleged smuggling of betel nuts and any connivance between himself, Shri Leki Tshering, Shri Tripathi, Shri Sarkar, and Shri Dixit. He reiterated that he did not know any Shyamal Sarkar or Shri Leki Tshering and was never involved in any purported smuggling. He stated that the authorities had not yet questioned Shri Leki Tshering of M/s Samphel Enterprise, and the entire case against him was based on "false, fabricated and procured" statements of Shri Tripathi, Shri Dixit, and Shri Sarkar.
- vii. He firmly denied any involvement in the alleged smuggling of betel nuts, stating he had never engaged in or orchestrated any illegal activities. He described himself as a law-abiding citizen with a respectable professional career, conducting business in full compliance with the law. He asserted that the accusation of his pivotal role in smuggling was unfounded and based on conjecture rather than concrete proof. He denied any role in the import or export of goods through M/s Samphel Enterprise and categorically denied involvement in the attempted smuggling of betel nuts. He further stated that he had never conducted business with M/s Samphel Enterprise or provided assistance on their behalf. He claimed that the allegation of arranging documents for misdeclared cargo clearance was completely false. He categorically denied instructing Shri Chandra Kant Tripathi to engage a Customs House Agent (CHA) or secure a delivery order for smuggled goods, stating he had no authority or intention to issue such instructions. He claimed any statements or communications that suggested otherwise were misinterpreted or fabricated.
- viii. He respectfully submitted that any inconsistencies in his statements were unintentional and without *mala fide* intention, possibly due to miscommunication or misunderstanding, and he was prepared to clarify them during a personal hearing. He maintained that he had always cooperated fully and provided truthful information, having no reason to mislead authorities or conceal facts due to his non-involvement. Regarding Paragraphs 9 to 13 and their sub-paragraphs, he denied liability under Sections 112(a), 112(b), and 114AA of the Customs Act, 1962, asserting these charges were based on incorrect assumptions and lacked substantive evidence. He denied

involvement in smuggling or dealing with confiscable goods under Section 111, and denied knowingly or intentionally causing false declarations or documents under Section 114AA. In view of the aforesaid, he humbly requested the withdrawal of the SCN against him, as the allegations were "baseless, speculative, and not supported by any reliable evidence." He emphasized his respect for the law and integrity. He requested a personal hearing to present his case in detail and clarify any doubts, confident that his non-involvement would become evident. He expressed commitment to full cooperation and ensuring justice.

- ix. Shri Sudhir Kumar Pandey, through his advocate, attended the personal hearing on 14.01.2025 and reiterated his written submission.

## **10.2 Reply to SCN by Noticee No. 6 (Shri Chandra Kant Tripathi):**

- i. Shri Chandra Kant Tripathi submitted his written reply to the SCN on 31.12.2024 and reiterated it through his advocate, Shri Prithwiji Sharma, during the personal hearing on 27.01.2025.
- ii. He prefaced his reply by stating that he was a bona fide, peace-loving, and law-abiding citizen with no past record of involvement in illicit activities. He humbly denied and disputed every allegation in the SCN, asserting that they were arbitrary and baseless. He emphasized that "knowledge" was a prerequisite element for the proposed penal provisions, and its absence rendered the invocation of such propositions bad in law. He contended that nowhere in the allegations or inquiry could it be established that he had knowledge of any irregular importation or transaction of the goods proposed to be confiscated. He highlighted that Paragraph 3.1 of the SCN already made it clear that he had stated he had no knowledge about the cargo being mis-declared as "White Rice" instead of betel nuts. He stressed that knowledge was an important factor in determining actual involvement. He further argued that his implication was based on "mere presumptions and assumptions," which were not backed by a single piece of evidence, and that a "concocted story" had been formed against him by the inquiry authority.
- iii. He asserted that he had been implicated without corroborative evidence, and therefore, penalties could not be imposed based solely on purported statements of others. He cited *Dinesh Ishwarlal Patel - Vs- Collector of Customs Bombay* to support his contention that in the absence of corroborative evidence, purported statements alone cannot suggest alleged involvement and knowledge, thus making penalties under Section 112(a) & 112(b) not imposable. He stated that he had received the wrongful documents from Shri Sudhir Kumar Pandey,

Shri Anil Kumar Dixit, and Shri Manish Dixit, and he contested that he had no knowledge about the documents being forged, acting in good faith with no *mens rea*. Therefore, he argued that no question of knowledge regarding illegal importation arose, and in its absence, penalties could not be imposed.

- iv. He relied on *Shankeshwar Metal Corporation -vs- Commissioner of Customs (Imports), Mumbai*, which held that *mens rea* is an important ingredient for imposing a penalty under Section 112(b) of the Customs Act, 1962, and that a person in possession of goods need not necessarily have anything to do either with smuggling or dealing with them knowingly. He contended that the preliminary ingredients of Section 112 of the Customs Act, 1962, were not satisfied, as there was nothing on record to suggest that he had imported any mis-declared goods. Thus, he argued that the proposal for penalty imposition would be bad and arbitrary.
- v. He placed reliance on *Rajeev Khatri Vs Commissioner of Customs (Export) (Delhi High Court)*, which held that imposing a penalty under Section 112(a) on an abettor without any *mens rea* is unsustainable. He further submitted that the imposition of penalty under Section 112(a) and 112(b) of the Customs Act, 1962, were differently situated, and hence, their simultaneous invocation was not maintainable.
- vi. He requested cross-examination of the persons whose statements the Department relied upon to implicate him, citing *Sampad Narayan Mukherjee*, which stated that a witness's statement is admissible only when offered for cross-examination. He argued that such statements were meritless as evidence and should not be used as a basis for penalty. He highlighted that his own statement dated 11.06.2024 (para 4.3.5 of SCN) indicated that Shri Sudhir Kumar Pandey had lied in his statements, and that both he (Tripathi) and Shri Anil Dixit had sent Pandey documents related to both M/s Samphel Enterprises and M/s Shiv Sai Medi Enterprises Pvt. Ltd., supporting this with WhatsApp chats. He also reiterated that Pandey made the Rs. 41,496/- payment for Samphel Enterprises consignments. He emphasized that the WhatsApp chats demonstrated his unawareness and lack of knowledge regarding the illegal act, and that Anil Dixit later told him that both he (Anil Dixit) and Sudhir Kumar Pandey were aware of the smuggling.
- vii. He argued that he could not be penalized under Section 114AA of the Customs Act, 1962, which deals with intentionally making false declarations, as there was no evidence he omitted or committed any act rendering him liable under this section. He relied on *Jai Balaji Industries -Vs- Commissioner of Customs, Visakhapatnam* and *Sameer Santosh Kr. Jaiswal-Vs- Commissioner of Customs (Import-II), Mumbai*. He concluded that the SCN was based on conjecture and surmise,

lacking merit and frivolous allegations, and that if the penalty proposal was unfounded, then the confiscation proposal was also wrong and arbitrary. He humbly requested the adjudicating authority to drop the proceedings against him and grant consequential relief.

## **11. Records of Personal Hearing:**

**11.1 Record of 1st Personal Hearing:** The instant matter was taken up for Personal Hearing on 16.12.2024 before the Additional Commissioner of Customs (port). However, none of the noticee or their authorized representative appeared for the said hearing.

**11.2 Record of 2nd Personal Hearing:** The instant matter was taken up for Personal Hearing on 14.01.2025 before the Additional Commissioner of Customs (Port). Out of 6 Noticees; Adv. Raghvendra Pratap Singh appeared on behalf of the noticee No. 2 (Shri Sudhir Kumar Pandey) wherein he submitted his vaklatnama and written submission dated 14.01.2025 on behalf of the noticee for the reason being that they were more conformable for the purpose of personal hearing in physical mode rather than virtual mode. He submitted his written submission which is conclusive in nature and he has nothing more to add.

**11.3 Record of 3rd Personal Hearing:** The instant matter was taken up for Personal Hearing on 27.01.2025 before the Additional Commissioner of Customs (Port). Adv. Prithwjit Sharma appeared on behalf of the Shri Chandra Kant Tripathi (Noticee no. 6) and reiterated written submission dated 31.12.2024. He was more conformable for the purpose of personal hearing in physical mode rather than virtual mode. He reiterated his previous submission dated 31.12.2024 which is conclusive in nature and he has nothing more to add.

## **12. DISCUSSIONS AND FINDINGS.**

**12.1** To ensure adherence to the fundamental principles of natural justice, personal hearing(s) were offered to all Noticees. Noticee No. 2, Shri Sudhir Kumar Pandey, appeared through his advocate on 14.01.2025, and Noticee No. 6, Shri Chandra Kant Tripathi, appeared through his advocate on 27.01.2025. During these hearings, the Noticees reiterated their written submissions and provided further oral clarifications and arguments. It is confirmed that all written submissions, including replies to the SCN, additional documents, and written submissions by Noticee, as well as all oral arguments presented during the personal hearings, have been duly considered and taken

into account in the process of this adjudication. This meticulous attention to procedural compliance forms the bedrock of the legality of this order.

**12.2** I have gone through the facts of the case, SCN, written submission to the SCN.

**12.3** I find that Acting on this precise intelligence, DRI, KZU officers initiated an interception at Haldia Port. On 17-07-2023, a particular Bhutan-bound transshipment container, bearing number ESCU9000530 (40'), consigned to M/s. Samphel Enterprise (Proprietor-Shri Leki Tshering), Sarpang, Gelepu Throm, Bhutan, was identified and withheld for examination. The consignment was declared to contain "White Rice" as per the Import General Manifest (IGM No. 2349026, dated 12-07-23) and the Bill of Lading (ESLWSPTHI230257, dated 07-07-2023). The physical examination of the container commenced on 19-07-2023 at the J M Baxi Haldia International Container Terminal, Haldia Dock Complex. This examination was conducted in the presence of a Customs Officer, a representative of the Customs Broker, a representative of the terminal, and two independent witnesses. Upon opening container No. ESCU9000530 (40'), it was immediately observed that the entire container was filled with split areca nuts, commonly known as betel nuts, rather than the declared "White Rice". Due to an insufficient number of labourers available at the terminal on 19-07-2023, a comprehensive 100% examination could not be completed. Consequently, a request was made to move the container to a nearby Container Freight Station (CFS) for a thorough inspection. The container was then re-sealed with a Customs bottle seal, and a Panchanama was drawn up on 19-07-2023. Subsequently, the container was moved to Ralson Petrochemicals Ltd. CFS, Silpadanga, Haldia, under the escort of a preventive officer. A team of DRI officers returned to the CFS on 24-07-2023 to conduct a 100% examination of the consignment. This detailed examination confirmed that the container, declared to hold "White Rice," actually contained 25.88 metric tons (MT) of betel nuts, with no other goods or cover cargo present. Based on the reasonable belief that these goods were liable to confiscation under Section 111 of the Customs Act, 1962, the betel nuts were formally seized on 24-07-2023 under Section 110 of the Customs Act, 1962. An official order under Section 110 of the Customs Act, 1962, was issued to the CFS, and samples were drawn from the seized consignment for qualitative analysis by the National Food Laboratory.

**12.4** It has been alleged in the SCN that all the noticees were involved in the said smuggling for which penalty under Sections 112(a), 112(b) and 114AA have been proposed to be imposed on all the notices and the imported goods held liable to confiscation under Section

111(d), 111(f) and 111(n) of the Customs Act, 1962. The moot question before me is to decide

- a) Whether Confiscation of Goods (25.880 MT Betel Nuts) is legally sustainable or not?
- b) Whether Penalty imposed on each Noticee under Sections 112(a), 112(b) is justified or not on the basis of their Role, Mens Rea, and Offence?
- c) Whether Penalty imposed on Shri Leki Tshering, Proprietor of M/s. Samphel Enterprise, Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit, Shri Manish Dixit and Shri Shyamal Sarkar under Section 114AA is justified or not on the basis of their Role, Mens Rea, and Offence

### **13. Confiscation of Goods (25.880 MT Betel Nuts)**

#### **13.1 Establishment of "Prohibited Goods" Status**

The goods in question, betel nuts, are not freely importable into India. They are classified as "Restricted" for import, requiring adherence to a Minimum Import Price (MIP) of CIF Rs. 351 per Kg. Under Customs rules and regulations, the term "prohibition" is broadly interpreted to include "restriction" subject to certain conditions. If these conditions are not complied with, the import effectively becomes prohibited for the purpose of the Act.

In the present case, the import of betel nuts was attempted under the guise of "White Rice". This mis-declaration was a deliberate attempt to bypass the prescribed MIP and other policy restrictions applicable to betel nuts. Such circumvention renders the import contrary to a prohibition imposed by law. Judicial precedents support this interpretation. For instance, in *Sterling Agro Products vs. Commissioner of Customs (2023)*, the import of arecanut below the Minimum Import Price was deemed prohibited under Section 111(d) of the Customs Act, 1962, leading to its confiscation. Similarly, the import of betel nuts in this case, by mis-declaring them to avoid policy restrictions and high duty, falls squarely within the ambit of "prohibited goods" for the purpose of confiscation. Therefore, the goods are clearly liable to confiscation under Section 111(d) of the Customs Act, 1962.

#### **13.2 Mis-declaration in Import Manifest/Bill of Lading**

The consignment was explicitly declared as "White Rice" in the Import General Manifest (IGM) and Bill of Lading. However, the physical examination unequivocally revealed that the container was entirely filled with 25.880 MT of betel nuts. This constitutes a fundamental

mis-declaration of the description of the goods. Such mis-declaration is a direct violation of customs procedures. Customs, Excise and Service Tax Appellate Tribunal (CESTAT) judgments consistently uphold confiscation in cases of mis-declaration.

The goods not matching declared value or particulars are liable for confiscation under Section 111(m). Misdeclaration of quantity, weight, or description is a common and well-established ground for confiscation under Section 111(m). The failure to correctly mention the actual dutiable/prohibited goods (betel nuts) in the import manifest, where "White Rice" was declared instead of betel nut, attracts Section 111(f) of the Customs Act, 1962. Furthermore, the goods not corresponding to the particulars (description) in the transshipment declaration renders them liable under Section 111(m) of the Customs Act, 1962.

### **13.3 Contravention of Transshipment Provisions**

The consignment was declared as a Bhutan-bound transshipment, implying its transit through Indian territory without payment of customs duty, as permitted under Section 54 of the Customs Act, 1962, and the India-Bhutan Trade Agreement. However, the totality of the investigation, including the mis-declaration and the coordinated efforts of the syndicate members, clearly indicates a pre-meditated intent to divert these goods into the Indian domestic market. Such diversion, or the attempt thereof, of goods declared for transit, directly contravenes the provisions stipulated in Chapter VIII of the Customs Act, which governs goods in transit. Judicial pronouncements affirm that violations of transit or transshipment rules under Chapter VIII can lead to confiscation. Specifically, Section 111(n) of the Customs Act, 1962, applies to "any dutiable or prohibited goods transitted with or without trans-shipment or attempted to be so transitted in contravention of the provisions of Chapter VIII". Therefore, the goods are also liable to confiscation under Section 111(n) of the Customs Act, 1962.

### **13.4 Principle of Confiscation in rem (no mens rea required)**

It is a well-settled legal principle that confiscation of goods under Section 111 of the Customs Act, 1962, is a proceeding in rem, meaning it is directed against the goods themselves, irrespective of the owner's mens rea (guilty mind) or knowledge. The culpability of the goods arises from the act of contravention, not from the intent of the owner. *The Supreme Court in Collector of Customs v. Sanjay Chandiram (SC AIR 1995 SC 1373)* held that intent is not necessary for confiscation; the moment goods fall within the scope of Section 111, they can be confiscated. Thus, the physical presence of foreign origin betel nuts, mis-declared and intended for illicit diversion,



unequivocally renders them liable to confiscation under the aforementioned sections, irrespective of the individual noticees' knowledge at the time of import.

### **13.5 Affirmation of Valuation based on Tariff Value**

The value of the seized betel nuts (Rs. 2,22,81,077/-) has been correctly ascertained on the basis of the Tariff Value Notification No. 53/2023-Customs (N.T.), dated 14-07-2023, and the Exchange Rate Notification No. 54/2023-Customs (N.T.), dated 20-07-2023. Section 14(2) of the Customs Act, 1962, explicitly permits the Central Government to fix tariff values for any class of imported goods, and mandates that duty shall be chargeable with reference to such tariff value. This method provides a statutory and objective basis for valuation, leaving no room for dispute on this aspect, especially given the fraudulent nature of the declared goods.

### **14. Role, Mens Rea, and Offence of Each Noticee (Penalty under Section 112(a), Section 112(b) & Section 114AA)**

While the confiscation of goods is an *in rem* proceeding that does not require the establishment of *mens rea*, the imposition of personal penalties on individuals under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962, generally necessitates proof of a guilty mind or at least "reason to believe" that the goods are liable to confiscation. The Himachal Pradesh High Court in *M/s Kunal Aluminum Company vs State of Himachal Pradesh (CMPMO No. 40/2025)* underscored that "the essence of any penal imposition is intrinsically linked to the presence of mens rea" and that tax authorities must prove intent to evade tax before levying penalties. For Section 114AA, the statute itself explicitly requires "knowingly or intentionally".

**In view of the details, I analyse the role, evidence in support of role, establishment of *mens rea*, and specific offenses of each noticee:**

#### **14.1 M/s. Samphel Enterprise (Proprietor-Shri Leki Tshering)**

##### **14.1.1 Role:**

- M/s. Samphel Enterprise, with Shri Leki Tshering as its proprietor, served as the importer of record for the mis-declared consignment. The firm's Import-Export Code (IEC) was utilized as the primary vehicle for this illicit import, placing Shri Leki Tshering at the center of this illegal trade chain by providing the necessary credentials for the syndicate's operations.

**14.1.2 Evidence:**

- The IEC was obtained in the name of M/s. Samphel Enterprise.
- Shri Anil Kumar Dixit's statement explicitly confirmed that Shri Leki Tshering obtained the IEC for M/s. Samphel Enterprise, a process sponsored by Shri Sudhir Kumar Pandey. Furthermore, Shri Dixit stated that Shri Leki Tshering met with Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit, and Shri Shyamal Sarkar in Bongaigaon to plan the operation.
- Shri Shyamal Sarkar corroborated this, admitting that he assisted Shri Anil Kumar Dixit in procuring the IEC and a godown in Bhutan in Shri Leki Tshering's name for the purpose of importing goods.
- Crucially, Shri Leki Tshering demonstrated consistent non-cooperation by failing to appear for multiple summonses issued under Section 108 of the Customs Act, 1962, on various dates from November 2023 to May 2024.

**14.1.3 Mens Rea:** The consistent and deliberate non-cooperation of Shri Leki Tshering, coupled with the corroborative statements from Shri Anil Kumar Dixit and Shri Shyamal Sarkar regarding his direct meetings with the syndicate members and the explicit purpose of obtaining the IEC, strongly indicates his conscious knowledge and willful participation in the smuggling scheme. His repeated non-appearance is not merely a procedural lapse but a clear attempt to impede the investigation and evade liability, thereby demonstrating a guilty mind. He knowingly lent his IEC and facilitated the use of his company's name for the mis-declaration and subsequent intended diversion of highly dutiable and restricted goods.

**14.1.4 Offences:** Based on the role, evidence and mens rea discussed above; I find that Shri Leki Tshering is liable for penalty under Section 112(a) of the Customs Act, 1962, for actively abetting the act that rendered the goods liable to confiscation. He is also liable under Section 112(b) for dealing with goods, as the importer of record, knowing or having reason to believe they were liable to confiscation. Furthermore, his role in providing the IEC for a mis-declared consignment, which was used to submit false declarations, makes him liable under Section 114AA of the Customs Act, 1962, for knowingly and intentionally causing to be used false and incorrect material/declarations.

**14.2 Shri Sudhir Kumar Pandey**

**14.2.1: Role:** Shri Sudhir Kumar Pandey emerges as the central figure and apparent mastermind of the smuggling operation on the

Indian side. Evidence suggests he was the primary financier and coordinator of the entire scheme, from arranging the Bhutanese importer (M/s. Samphel Enterprise) to managing the logistics and financial aspects of the illicit imports.

**Discussion on the submission made by Shri Sudhir Kumar Pandey:**

- i. Shri Pandey's blanket denial of masterminding or facilitating the smuggling is directly and overwhelmingly contradicted by the consistent statements of Shri Anil Kumar Dixit and Shri Chandra Kant Tripathi. Shri Dixit explicitly stated that Shri Pandey requested him to arrange someone from Bhutan for importing cargo. Shri Pandey also informed him the consignment would contain betel nuts mis-declared as "White Rice," and that Shri Pandey managed the entire investment for the import of betel nuts. Shri Tripathi's initial statement corroborated that Shri Pandey was the "main person in importing goods to Bhutan through India" and made all payments. Furthermore, Shri Tripathi's later statement dated 11.06.2024, made after he was confronted with facts, confirmed that Shri Pandey had lied in his earlier statements and that both he (Tripathi) and Shri Anil Dixit had sent Pandey documents related to M/s Samphel Enterprises. These are not mere "hearsay" but direct testimonies from co-conspirators, corroborated by other evidence.
- ii. Shri Pandey's denial of any direct or indirect relationship with M/s Samphel Enterprise is unequivocally disproven by the Call Detail Record (CDR) analysis of his mobile number (9415812557). The CDR shows extensive and frequent calls with Shri Shyamal Sarkar (48 calls), who facilitated the procurement of IEC for M/s Samphel Enterprise, and Shri Anil Kumar Dixit (281 calls with 9455208408 and 108 calls with 9026083332), who roped in Shri Chandra Kant Tripathi for Samphel Enterprise. This pattern of communication, particularly around the time of the impugned import, indicates a deep and continuous involvement with key individuals directly connected to M/s Samphel Enterprise, far beyond a casual acquaintance.
- iii. Shri Pandey's assertion that any inconsistencies in his statements were unintentional and due to miscommunication or misunderstanding is severely undermined by his own admission that he deliberately deleted all his WhatsApp chats with Shri Chandrakant Tripathi, Shri Anil Dixit, and Shri Manish Dixit "out of fear". Such an act of destroying evidence is a strong indicator of *mens rea* and a conscious attempt to

suppress material facts. His initial denial of knowing Shri Shyamal Sarkar in his statement dated 08.12.2023 was directly contradicted by the CDR analysis showing 48 calls between them and Shri Sarkar's own statement confirming their meeting in Bongaigaon, Assam. His assertion that Rs. 41,496/- payment was for M/s Shiv Sai Medi Enterprises Limited is directly rebutted by Shri Chandra Kant Tripathi's statement that this payment was specifically for M/s Samphel Enterprise's consignments. These are not minor discrepancies but deliberate falsehoods aimed at misleading the investigation.

- iv. While Shri Pandey's Ayurveda business (M/s Helik Healthcare Private Limited) may be legitimate and GST-registered, the SCN's allegation is that it was used as a *cover* for smuggling activities. The evidence of his deep involvement in orchestrating and funding the illicit betel nut imports, despite having a declared legitimate business, supports the department's contention that the legitimate business provided a facade for the illegal operations.
- v. The collective and interlocking evidence from the statements of Shri Anil Kumar Dixit, Shri Chandra Kant Tripathi, and Shri Shyamal Sarkar, coupled with the extensive CDR analysis, clearly establishes a well-coordinated conspiracy and collusion among Shri Sudhir Kumar Pandey, Shri Leki Tshering, Shri Anil Kumar Dixit, Shri Manish Dixit, Shri Shyamal Sarkar, and Shri Chandra Kant Tripathi. His denial of collusion is therefore untenable in the face of overwhelming evidence.

#### **14.2.2 Evidence:**

- Shri Chandra Kant Tripathi's statement identified Shri Pandey as the main individual involved in importing goods to Bhutan through India and confirmed that Shri Pandey sent him the import documents.
- Shri Anil Kumar Dixit's statement explicitly detailed Shri Pandey's role: he requested Shri Dixit to arrange a Bhutanese importer, informed Shri Dixit about the plan to import betel nuts disguised as "White Rice," and handled the entire financial investment for the consignment.
- Shri Shyamal Sarkar's statement corroborated meeting Shri Pandey in Bongaigaon and confirmed that Shri Pandey sponsored the IEC for M/s. Samphel Enterprise.
- The Call Detail Record (CDR) analysis for Shri Sudhir Kumar Pandey's mobile number unequivocally contradicts his denials of knowing Shri Shyamal Sarkar and his attempts to minimize contact with Shri Anil Kumar Dixit, Shri Manish Dixit, and Shri Chandrakant Tripathi. The CDRs show extensive and frequent

communication with all key syndicate members: 48 calls with Shri Shyamal Sarkar, 281 calls with Shri Anil Dixit (via one number) and 108 calls (via another number), 55 calls with Shri Chandrakant Tripathi, and an astonishing 665 calls with Shri Manish Dixit. This high volume of communication demonstrates deep, sustained coordination, not casual acquaintance or failed business ventures.

- His son, Shri Rahul Pandey, confirmed making the Rs. 41,496/- payment for delivery charges to the shipping line on his father's direct instructions, further linking Shri Sudhir Kumar Pandey to the financial aspects of this specific consignment.
- WhatsApp chats submitted by Shri Chandra Kant Tripathi explicitly show Shri Sudhir Kumar Pandey in "full control of the consignment," dictating processing and clearance, and sending documents for both M/s. Samphel Enterprise and M/s. Shiv Sai Medi Enterprises.
- Shri Sudhir Kumar Pandey's repeated non-appearance for summons, citing flimsy medical grounds contradicted by his extensive travel history (as revealed by CDR network analysis), coupled with his subsequent claim of deleting incriminating chats "out of fear," all point to a deliberate and calculated attempt to conceal his involvement and mislead the investigation.

**14.2.3 Mens Rea:** The overwhelming and consistent evidence, including direct admissions by co-noticees, irrefutable CDR data, authenticated WhatsApp communications, and his own contradictory and evasive behavior, establishes a high degree of *mens rea*. Shri Sudhir Kumar Pandey knowingly conceived, funded, and directed the smuggling of betel nuts, actively participating in and causing the mis-declaration of the goods. His actions demonstrate a clear and conscious intent to evade customs duties and bypass critical import restrictions. His attempts to shift blame and obstruct the investigation further solidify the finding of his guilty mind.

**14.2.4 Offences:** Based on the role, evidence and mens rea discussed above; I find that Shri Sudhir Kumar Pandey is liable for penalty under Section 112(a) of the Customs Act, 1962, for masterminding and abetting the smuggling operation. He is also liable under Section 112(b) for dealing with goods, including financing and directing their movement, knowing them to be liable to confiscation. Furthermore, his central role in orchestrating the mis-declaration and causing false documents to be used makes him liable under Section 114AA of the Customs Act, 1962, for knowingly and intentionally causing to be used false and incorrect material/declarations.

### 14.3 Shri Anil Kumar Dixit

**14.3.1 Role:** Shri Anil Kumar Dixit served as a pivotal coordinator within the smuggling syndicate. His role involved facilitating critical introductions, arranging for the Bhutanese importer's IEC, and handling the transmission of import documents.

**14.3.2 Evidence:**

- In his initial statement (RUD-5), Shri Anil Kumar Dixit made a crucial admission: he was explicitly informed by Shri Sudhir Kumar Pandey that betel nuts would be imported under the guise of "White Rice" in the Bhutan-bound consignment, and that Shri Pandey was funding the entire operation. This constitutes a direct admission of his knowledge and involvement from an early stage.
- He admitted to introducing Shri Sudhir Kumar Pandey to Shri Shyamal Sarkar and subsequently to Shri Leki Tshering, thereby establishing the key connections for the syndicate.
- He persuaded Shri Shyamal Sarkar to arrange for Shri Leki Tshering to obtain the IEC for M/s. Samphel Enterprise, a critical step in setting up the illicit import channel.
- He engaged Shri Chandrakant Tripathi for customs clearance on Shri Sudhir Kumar Pandey's instructions.
- WhatsApp chats submitted by Shri Chandra Kant Tripathi clearly show Shri Anil Kumar Dixit forwarding the Bill of Lading of M/s. Samphel Enterprise and, significantly, a blank letterhead of "SAMPHEL ENTERPRISE GELEPHU:BHUTAN". The act of forwarding a blank letterhead strongly indicates an intent to facilitate the creation or use of fraudulent documents.
- Despite his initial admissions, Shri Anil Kumar Dixit subsequently failed to respond to multiple summonses for further investigation, indicating an attempt to obstruct and thwart the investigative process.

**14.3.3 Mens Rea:** Shri Anil Kumar Dixit's own admissions, corroborated by the CDR analysis and WhatsApp chats, unequivocally establish his conscious knowledge and active participation from the initial planning stages of the smuggling operation. He was fully aware of the mis-declaration and the true nature of the cargo. His actions, including facilitating introductions, arranging the importer's credentials, and handling documents for a mis-declared consignment, constitute active abetment and direct involvement in dealing with smuggled goods.

**14.3.4 Offences:** Based on the role, evidence and mens rea discussed above; I find that Shri Anil Kumar Dixit is liable for penalty under Section 112(a) of the Customs Act, 1962, for actively abetting the smuggling by coordinating and arranging the importer's participation. He is also liable under Section 112(b) for dealing with goods, knowing them to be liable to confiscation. Furthermore, his act of forwarding the Bill of Lading and a blank letterhead for the purpose of mis-declaration makes him liable under Section 114AA of the Customs Act, 1962, for knowingly and intentionally causing false documents to be used.

#### **14.4 Shri Manish Dixit**

**14.4.1 Role:** Shri Manish Dixit acted as a co-conspirator, working in tandem with his brother Shri Anil Kumar Dixit and Shri Sudhir Kumar Pandey. His involvement included plotting the smuggling operation and handling documents, and he was identified as an active betel nut trader.

##### **14.4.2 Evidence:**

- Shri Shyamal Sarkar's statement identified both Shri Anil Kumar Dixit and Shri Manish Dixit as Malaysian-origin betel nut traders, noting their frequent visits to Malaysia and Shri Manish Dixit's knowledge of the Malaysian language. This establishes a direct link to the illicit trade commodity.
- The CDR analysis of Shri Sudhir Kumar Pandey's mobile number reveals extensive communication with Shri Manish Dixit, showing an exceptionally high volume of 665 calls totaling over 30 hours. This directly refutes Shri Sudhir Kumar Pandey's attempt to portray himself as merely "entangled" by Shri Manish Dixit and demonstrates a deep, collaborative relationship.
- In his own statement, Shri Manish Dixit admitted that Shri Sudhir Kumar Pandey informed him about the betel nut business for M/s. Samphel Enterprise, Bhutan. He also confirmed knowing betel nut exporters from Indonesia and introducing some to Shri Sudhir Kumar Pandey. He further admitted to helping Shri Sudhir Kumar Pandey with customs clearance in Kolkata and confirmed his brother, Shri Anil Kumar Dixit, also worked as a betel nut supplier.
- WhatsApp chats submitted by Shri Chandra Kant Tripathi show Shri Manish Dixit also forwarded documents of M/s. Samphel Enterprise and a blank letterhead of "SAMPHEL ENTERPRISE GELEPHU:BHUTAN". This act, similar to his

brother's, is highly indicative of an intent to facilitate fraudulent documentation.

- Shri Manish Dixit, like his brother, failed to respond to subsequent summonses for further investigation, suggesting an attempt to evade legal scrutiny.

**14.4.3**      **Mens Rea:** Shri Manish Dixit's admissions, coupled with the extensive CDRs and WhatsApp chats, provide compelling evidence of his active and knowing involvement in the smuggling syndicate. His background as a betel nut trader, his role in introducing exporters, assisting with clearance, and forwarding critical documents, all clearly establish his guilty mind and direct participation in the illicit trade. He was not merely a passive participant but an active member of the conspiracy.

**14.4.4**      **Offences:** Based on the role, evidence and mens rea discussed above; I find that Shri Manish Dixit is liable for penalty under Section 112(a) of the Customs Act, 1962, for actively abetting the smuggling operation. He is also liable under Section 112(b) for dealing with goods, knowing them to be liable to confiscation. Furthermore, his act of forwarding documents and a blank letterhead for the purpose of mis-declaration makes him liable under Section 114AA of the Customs Act, 1962, for knowingly and intentionally causing false documents to be used.

## **14.5 Shri Shyamal Sarkar**

**14.5.1**      **Role:** Shri Shyamal Sarkar played a crucial facilitating role in the smuggling syndicate, primarily by arranging the Bhutanese importer, Shri Leki Tshering, and assisting in the procurement of the IEC for M/s. Samphel Enterprise.

**14.5.2**      **Evidence:**

- Shri Shyamal Sarkar admitted to knowing Shri Anil Kumar Dixit and Shri Manish Dixit since 2020 through his bamboo business.
- He also admitted to being introduced to Shri Sudhir Kumar Pandey by Shri Anil Kumar Dixit.
- Crucially, Shri Sarkar explicitly stated that he helped Shri Anil Kumar Dixit procure the IEC and a godown in Bhutan in the name of Shri Leki Tshering, proprietor of M/s. Samphel Enterprise, for the purpose of importing goods.



- He confirmed that he, Shri Leki Tshering, Shri Sudhir Kumar Pandey, and Shri Anil Kumar Dixit met in Bongaigaon to decide on obtaining the IEC for M/s. Samphel Enterprise.
- While he attempted to portray Shri Sudhir Kumar Pandey as a "genuine businessman" and shift the entire responsibility onto the Dixit brothers, his own admissions regarding his role in facilitating the IEC and his presence at the planning meeting are highly indicative of his conscious involvement. His attempt to shield co-conspirators suggests an awareness of the illicit nature of the enterprise and a desire to minimize his own culpability.

**14.5.3**      **Mens Rea:** Shri Shyamal Sarkar's own admissions clearly establish his conscious involvement in setting up the foundational framework for the illicit imports. By actively facilitating the procurement of the IEC and a godown for an entity that was subsequently used for smuggling, and by being privy to the meetings where this plan was devised, he knowingly and intentionally abetted the illegal activity. Even if he claims to have been misled about the specific cargo, his actions directly enabled the smuggling operation to proceed. His efforts to protect other syndicate members further highlight his awareness of the wrongdoing.

**14.5.4**      **Offences:** Based on the role, evidence and mens rea discussed above; I find that Shri Shyamal Sarkar is liable for penalty under Section 112(a) of the Customs Act, 1962, for actively abetting the smuggling by facilitating the importer's credentials and infrastructure. He is also liable under Section 112(b) for being concerned in dealing with goods, by enabling the framework for such dealing, knowing or having reason to believe they were liable to confiscation. Furthermore, given his admitted role in arranging the IEC for the purpose of the import, and the subsequent mis-declaration, it can be argued that he "caused to be made... any declaration... which is false or incorrect in any material particular," thereby making him liable under Section 114AA of the Customs Act, 1962.

## **14.6 Shri Chandra Kant Tripathi**

**14.6.1**      **Role:** Shri Chandra Kant Tripathi acted as a crucial intermediary and facilitator in the customs clearance process. His primary function involved engaging a Customs Broker and arranging delivery orders based on the fraudulent documents provided by the main syndicate members.

**Discussion on the submission made by Shri Chandra Kant Tripathi:**

- i. Shri Tripathi's initial claim of lack of knowledge about the misdeclaration and acting in good faith is directly contradicted by his own subsequent statement dated 11.06.2024. In this crucial statement, he explicitly admitted that Shri Anil Kumar Dixit told him that "both he (Anil Dixit) along with Shri Sudhir Kumar Pandey had been aware of the smuggling of betel nuts in both the Bhutan and Nepal consignments". This admission unequivocally demonstrates that he gained knowledge of the smuggling activities. Despite acquiring this critical knowledge, he continued to hide the facts during his first statement. His argument that he acted on "good faith" is therefore not sustainable.
- ii. Shri Chandra Kant Tripathi appears to have played his part in so far as he tried to engage CB and released delivery order for clearance of smuggled cargo of betel nuts on the basis of wrong documents as received by him from Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit and Shri Manish Dixit. He appears to have mediated the chain of smuggling and abetted this illegal trade by way of omission and by doing so, Shri Chandra Kant Tripathi disrespected the law of the land and also mutual respect and agreement between Bhutan and India.
- iii. His reliance on *Dinesh Ishwarlal Patel -Vs- Collector of Customs Bombay* is misplaced. The evidence against Shri Tripathi is not based solely on "mere presumptions and assumptions" or "purported statements of others." His own statements, particularly the one dated 11.06.2024, where he admits to being informed of the smuggling by Shri Anil Kumar Dixit, provide direct and compelling corroboration. Furthermore, the WhatsApp chats he himself submitted, while he claims they show his unawareness, also confirm his active role in receiving and forwarding documents for both M/s Samphel Enterprise and M/s Shiv Sai Medi Enterprises, and being instructed to engage CHA and release delivery orders. This demonstrates his active involvement in the process, which, when coupled with his admitted knowledge, forms a strong evidentiary basis.
- iv. While *mens rea* is indeed required for penalties under Section 112, Shri Tripathi's actions, particularly after he was informed by Shri Anil Kumar Dixit about the smuggling, clearly establish the necessary *mens rea*. His continued involvement and not disclosing the facts immediately during investigation constitutes an act that renders goods liable to confiscation (under 112(a)) and dealing with goods he knew were liable to confiscation (under 112(b)). The Delhi High Court in *Rajeev Khatri v. Commissioner of Customs (Export)* set aside a penalty

where there was no evidence of knowledge; however, in Shri Tripathi's case, his own statement provides that crucial evidence, making the *Rajeev Khatri* precedent distinguishable. However, Shri Tripathi's admission of knowledge distinguishes his situation significantly.

- v. Shri Tripathi's request for cross-examination of persons whose statements the Department relied upon, citing *Sampad Narayan Mukherjee*, is considered. While the principle of cross-examination is a vital component of natural justice, it is not an absolute right, especially when the statements are corroborated by other independent evidence and the witnesses deliberately evade summons. The SCN clearly states that Shri Anil Kumar Dixit and Shri Manish Dixit did not appear despite multiple summonses issued to them for further investigation. When witnesses deliberately fail to appear despite due process, the adjudicating authority is entitled to proceed based on the available evidence, particularly when such evidence is corroborated by the Noticee's own admissions and other material facts. The non-appearance of the witnesses, despite summons, indicates their non-cooperation and does not automatically invalidate the evidence gathered from their statements, especially when corroborated by other facts and the Noticee's own admissions. Therefore, the request for cross-examination is denied in these circumstances.
- vi. The Show Cause Notice does not propose Section 114AA for him, likely because his role was more of a facilitator using documents provided by others, rather than being the primary cause of the creation of the false documents himself and hence his submission on denial of liability under Section 114AA, relying on *Jai Balaji Industries -Vs- Commissioner of Customs, Visakhapatnam* and *Sameer Santosh Kr. Jaiswal-Vs- Commissioner of Customs (Import-II), Mumbai*, is acceptable.

#### **14.6.2 Evidence:**

- He admitted to being requested by Shri Sudhir Kumar Pandey and Shri Anil Kumar Dixit to clear the consignment and receiving the necessary documents from them via WhatsApp.
- His subsequent statement and the submitted WhatsApp chats unequivocally demonstrate his direct and continuous communication with Shri Sudhir Kumar Pandey, Shri Anil Kumar Dixit, and Shri Manish Dixit. These communications show him receiving explicit instructions and documents for the clearance of the M/s. Samphel Enterprise consignment.
- Crucially, Shri Tripathi's statement reveals that Shri Anil Kumar Dixit explicitly told him that both he (Anil) and Shri

Sudhir Kumar Pandey were aware of the betel nut smuggling in both the Bhutan and Nepal consignments. This indicates that Shri Tripathi gained knowledge of the illicit nature of the cargo at some point during the process, yet he continued to facilitate the clearance.

**14.6.3** Mens Rea: While Shri Chandra Kant Tripathi initially claimed ignorance of the mis-declaration, his continued involvement in the clearance process after gaining knowledge of the true nature of the cargo (as per his second statement) and his active role in processing the documents, including arranging payment for the delivery order, demonstrates that he either knew or had reason to believe that the goods were liable to confiscation and actively abetted the smuggling. His actions moved beyond mere innocent facilitation to active participation, particularly by omitting to report the mis-declaration or withdrawing from the process once he became aware.

**14.6.4** Offences: Based on the role, evidence and mens rea discussed above; I find that Shri Chandra Kant Tripathi is liable for penalty under Section 112(a) of the Customs Act, 1962, for abetting the smuggling by mediating and facilitating the clearance of mis-declared goods. He is also liable under Section 112(b) for dealing with goods, knowing or having reason to believe they were liable to confiscation.

**15.** In view of the above; I find that

**15.1** The thorough investigation conducted by the Directorate of Revenue Intelligence, supported by an array of corroborative evidence including documentary records, voluntary statements recorded under Section 108 of the Customs Act, 1962, and comprehensive Call Detail Record (CDR) analysis, conclusively establishes a sophisticated and deliberate attempt to smuggle foreign origin betel nuts into India. The evidence irrefutably demonstrates that 25.880 MT of foreign origin betel nuts, valued at Rs. 2,22,81,077/-, were attempted to be imported into the Indian domestic market. This illicit activity was executed under the deceptive guise of a mis-declared Bhutan-bound transshipment consignment of "White Rice" by M/s. Samphel Enterprise. This scheme represents a clear and egregious contravention of the provisions of the Customs Act, 1962, and a blatant misuse of the bilateral Trade Agreement between the Government of India and the Royal Government of Bhutan.

**15.2** The goods are unequivocally liable to confiscation under Section 111(d) (import contrary to prohibition due to non-compliance with MIP and policy restrictions), Section 111(f) (non-mentioning of actual

dutiable/prohibited goods in import manifest), Section 111(m) (goods not corresponding to declaration in transshipment), and Section 111(n) (attempted transit in contravention of Chapter VIII, indicating diversion intent) of the Customs Act, 1962.

- 15.3** Furthermore, the evidence clearly demonstrates the active and knowing involvement, and thus the *mens rea*, of all noticees in this criminal enterprise. Each individual played a distinct, yet interconnected and crucial, role in the conspiracy to smuggle highly dutiable and restricted goods into the Indian domestic market, thereby causing significant revenue loss and violating import policy.
- 15.4** The actions of the individuals render them liable to severe penalties under Section 112(a) (abetment and acts rendering goods liable to confiscation), Section 112(b) (dealing with goods knowing them to be liable to confiscation), and for most, Section 114AA (knowingly and intentionally causing false declarations and documents to be used) of the Customs Act, 1962. Their collective conduct demonstrates a deliberate and calculated attempt to circumvent Indian customs laws and exploit international trade agreements for illicit gain.

**16.** In view of the discussion, *supra*,

- 16.1** I hold the absolute confiscation of the 25.880 MT of foreign origin betel nuts, collectively valued at Rs. 2,22,81,077/- (Rupees Two Crore Twenty-Two Lakhs Eighty-One Thousand and Seventy-Seven only), which were seized on 24-07-2023. This confiscation is ordered under the provisions of Section 111(d), Section 111(f), Section 111(m), and Section 111(n) of the Customs Act, 1962, as the goods were improperly imported, mis-declared, and attempted to be transited in contravention of applicable laws and agreements.
- 16.2** I hold that M/s. Samphel Enterprise (Proprietor-Shri Leki Tshering) is liable for penalty under Section 112(a) of the Customs Act, 1962, for actively abetting the act that rendered the goods liable to confiscation. He is also liable under Section 112(b) for dealing with goods, as the importer of record, knowing or having reason to believe they were liable to confiscation. Furthermore, his role in providing the IEC for a mis-declared consignment, which was used to submit false declarations, makes him liable under Section 114AA of the Customs Act, 1962, for knowingly and intentionally causing to be used false and incorrect material/declarations.
- 16.3** I hold that Shri Sudhir Kumar Pandey is liable for penalty under Section 112(a) of the Customs Act, 1962, for masterminding and abetting the smuggling operation. He is also liable under Section 112(b) for dealing with goods, including financing and directing their

movement, knowing them to be liable to confiscation. Furthermore, his central role in orchestrating the mis-declaration and causing false documents to be used makes him liable under Section 114AA of the Customs Act, 1962, for knowingly and intentionally causing to be used false and incorrect material/declarations.

- 16.4** I hold that Shri Anil Kumar Dixit is liable for penalty under Section 112(a) of the Customs Act, 1962, for actively abetting the smuggling by coordinating and arranging the importer's participation. He is also liable under Section 112(b) for dealing with goods, knowing them to be liable to confiscation. Furthermore, his act of forwarding the Bill of Lading and a blank letterhead for the purpose of mis-declaration makes him liable under Section 114AA of the Customs Act, 1962, for knowingly and intentionally causing false documents to be used.
- 16.5** I hold that Shri Manish Dixit is liable for penalty under Section 112(a) of the Customs Act, 1962, for actively abetting the smuggling operation. He is also liable under Section 112(b) for dealing with goods, knowing them to be liable to confiscation. Furthermore, his act of forwarding documents and a blank letterhead for the purpose of mis-declaration makes him liable under Section 114AA of the Customs Act, 1962, for knowingly and intentionally causing false documents to be used.
- 16.6** I hold that Shri Shyamal Sarkar is liable for penalty under Section 112(a) of the Customs Act, 1962, for actively abetting the smuggling by facilitating the importer's credentials and infrastructure. He is also liable under Section 112(b) for being concerned in dealing with goods, by enabling the framework for such dealing, knowing or having reason to believe they were liable to confiscation. Furthermore, given his admitted role in arranging the IEC for the purpose of the import, and the subsequent mis-declaration, it can be argued that he "caused to be made... any declaration... which is false or incorrect in any material particular," thereby making him liable under Section 114AA of the Customs Act, 1962.
- 16.7** I hold that Shri Chandra Kant Tripathi is liable for penalty under Section 112(a) of the Customs Act, 1962, for abetting the smuggling by mediating and facilitating the clearance of mis-declared goods. He is also liable under Section 112(b) for dealing with goods, knowing or having reason to believe they were liable to confiscation.

## **ORDER**

- 17.** Based on the discussions foregoing, I pass the following order –

**17.1** I hereby order the absolute confiscation of the 25.880 MT of foreign origin betel nuts, collectively valued at Rs. 2,22,81,077/- (Rupees Two Crore Twenty-Two Lakhs Eighty-One Thousand and Seventy-Seven only), under the provisions of Section 111(d), Section 111(f), Section 111(m), and Section 111(n) of the Customs Act, 1962.

**17.2** I impose following penalty on **M/s. Samphel Enterprise (Proprietor-Shri Leki Tshering)**:

- i. I impose a penalty of Rs. 1,00,00,000/- (Rs One Crore only) on M/s. Samphel Enterprise (Proprietor-Shri Leki Tshering) under Section 112(a) of the Customs Act, 1962.
- ii. I impose a penalty of Rs. 1,00,00,000/- (Rs One Crore only) on M/s. Samphel Enterprise (Proprietor-Shri Leki Tshering) under Section 112(b) of the Customs Act, 1962.
- iii. I impose a penalty of Rs. 2,00,00,000/- (Rs Two Crore only) on M/s. Samphel Enterprise (Proprietor-Shri Leki Tshering) under Section 114AA of the Customs Act, 1962.

**17.3** I impose following penalty on **Shri Sudhir Kumar Pandey**:

- i. I impose a penalty of Rs. 1,00,00,000/- (Rs One Crore only) on Shri Sudhir Kumar Pandey under Section 112(a) of the Customs Act, 1962.
- ii. I impose a penalty of Rs. 1,00,00,000/- (Rs One Crore only) on Shri Sudhir Kumar Pandey under Section 112(b) of the Customs Act, 1962.
- iii. I impose a penalty of Rs. 2,00,00,000/- (Rs Two Crore only) on Shri Sudhir Kumar Pandey under Section 114AA of the Customs Act, 1962.

**17.4** I impose following penalty on **Shri Anil Kumar Dixit**:

- i. I impose a penalty of Rs. 1,00,00,000/- (Rs One Crore only) on Shri Anil Kumar Dixit under Section 112(a) of the Customs Act, 1962.
- ii. I impose a penalty of Rs. 1,00,00,000/- (Rs One Crore only) on Shri Anil Kumar Dixit under Section 112(b) of the Customs Act, 1962.
- iii. I impose a penalty of Rs. 2,00,00,000/- (Rs Two Crore only) on Shri Anil Kumar Dixit under Section 114AA of the Customs Act, 1962.

**17.5 I impose following penalty on Shri Manish Dixit:**

- i. I impose a penalty of Rs. 1,00,00,000/- (Rs One Crore only) on Shri Manish Dixit under Section 112(a) of the Customs Act, 1962.
- ii. I impose a penalty of Rs. 1,00,00,000/- (Rs One Crore only) on Shri Manish Dixit under Section 112(b) of the Customs Act, 1962.
- iii. I impose a penalty of Rs. 2,00,00,000/- (Rs Two Crore only) on Shri Manish Dixit under Section 114AA of the Customs Act, 1962.

**17.6 I impose following penalty on Shri Shyamal Sarkar:**

- i. I impose a penalty of Rs. 1,00,00,000/- (Rs One Crore only) on Shri Shyamal Sarkar under Section 112(a) of the Customs Act, 1962.
- ii. I impose a penalty of Rs. 1,00,00,000/- (Rs One Crore only) on Shri Shyamal Sarkar under Section 112(b) of the Customs Act, 1962.
- iii. I impose a penalty of Rs. 2,00,00,000/- (Rs Two Crore only) on Shri Shyamal Sarkar under Section 114AA of the Customs Act, 1962.

**17.7 I impose following penalty on Shri Chandra Kant Tripathi:**

- i. I impose a penalty of Rs. 50,00,000/- (Rs Fifty Lakhs only) on Shri Chandra Kant Tripathi under Section 112(a) of the Customs Act, 1962.
- ii. I impose a penalty of Rs. 50,00,000/- (Rs Fifty Lakhs only) on Shri Chandra Kant Tripathi under Section 112(b) of the Customs Act, 1962.

(Ajeet Kumar)  
Additional Commissioner of Customs,  
Adjudication(Port),  
Custom House, Kolkata.

**To,**

- 1) M/s. Samphel Enterprise (Proprietor-Shri Leki Tshering), Sarpang,



Gelepu Throm, Bhutan. [License No: R3005849 by Ministry of Industry, Commerce and Employment, Kingdom of Bhutan], Email Id: [samphelenterprise31@gmail.com](mailto:samphelenterprise31@gmail.com) & [lt2002bt@gmail.com](mailto:lt2002bt@gmail.com).

- 2) Shri Sudhir Kumar Pandey, S/o Late Daya Shankar Pandey, R/o 87/3, Behind Heritage Housing, Bhagwanpur, B.H.U. Varanasi, Uttar Pradesh-221 005, Email Id: [gametehealthcare@gmail.com](mailto:gametehealthcare@gmail.com).
- 3) Shri Shyamal Sarkar, S/o Late Madhusudan Sarkar, Permanent R/o House No: 156, Lichutala (Nehru Road), Vill-Bongaigaon Town, Ward No: 2, P.O.-Bongaigaon Town, Assam-783380.
- 4) Shri Anil Kumar Dixit, S/o Shri Rishi Kumar Dixit, R/o 434/60/37, Krishnapuri Colony, Karimgunj, PS-Sahadatganj, Chawk-Lucknow, Uttar Pradesh-226003, Email Id: [anildixit565@gmail.com](mailto:anildixit565@gmail.com).
- 5) Shri Manish Dixit, 247, Krishnapuri Colony, Kareemganj, Lucknow-226003, Email Id: [dixitmanish@gmail.com](mailto:dixitmanish@gmail.com).
- 6) Shri Chandra Kant Tripathi, S/o Shri Ashok Tripathi, R/o D-7/3, NISCO Government Housing Complex, Sapuipara, Haora, West Bengal-711227, Email Id: [rute4chandrakant@gmail.com](mailto:rute4chandrakant@gmail.com).

Copy to:

- 1) The Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata-700001.
- 2) The Additional/ Joint Director General, Directorate of Revenue Intelligence, Kolkata Zonal Unit, CBD-93, International Financial Hub, Action Area-III, New Town, Kolkata-700161.
- 3) D.C. /A. C., STRC (Port), Custom House, Kolkata.
- 4) D.C. /A. C., Review Cell (Port), Custom House, Kolkata.
- 5) D.C. /A. C., Disposal Cell (Port), Custom House, Kolkata.
- 6) The Superintendent Custom House (SCH), Custom House, 15/1, Strand, Kolkata -700 001. (For service through display on the Notice Board of Custom House, Kolkata in terms of Section 153 of the Customs Act, 1962.)
- 7) The Superintendent, EDI Section (Port) for uploading in the website.
- 8) Deputy Secretary, Central Economic Intelligence Bureau, Janpath Bhavan, 'B' Wing, 6th Floor, New Delhi.
- 9) The Consul General of Bhutan, in Kolkata at Royal Bhutanese Consulate, 6/1 Mall Road, Kolkata-700080, Landmark: Near ILS Hospital.
- 10) Office Copy.