

	<p><b>OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-IV</b>  <b>सीमाशुल्कआयुक्तकाकार्यालय, एनएस-IV</b>  <b>CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU</b>  <b>CUSTOM HOUSE,</b>  <b>केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन,</b>  <b>NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD,</b>  <b>MAHARASHTRA 400707</b>  <b>न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707</b></p>
---	---

F. No. S/10-495/18-19/Commr./NS-I/CAC/JNCH

SCN Vide F. No. DRI/MZU/NS/ENQ-31/2018/625 dated 09.10.2018

**DIN-20260178NY000032373A**

Date of Order:29-01-2026

Date of Issue:29-01-2026

आदेश की तिथि:29-01-2026

जारी किए जाने की तिथि:29-01-2026

Passed by: Dr. Kundan Yadav

पारितकर्ता: डॉ. कुंदन यादव

Commissioner of Customs (NS-IV), JNCH, Nhava Sheva

आयुक्त, सीमाशुल्क (एनएस-IV), जेएनसीएच, न्हावाशेवा

Order No.: 369 / 2025-26 /Commr /NS-IV /CAC /JNCH

आदेश सं/2025-26/ 369 :.आयुक्त/एनएस-IV/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s BhikanLal Raj Kumar (IEC-0588118818)

पक्षकार (पार्टी)/ नोटिसी का नाम: मेसर्स भीकनलाल राज कुमार

**ORDER-IN-ORIGINAL**

**मूल आदेश**

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि: शुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्टरीजनलबेंच, ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व, मुंबई- ४००००९ को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal:-

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - फार्मन .सीए३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

Time Limit-Within 3 months from the date of communication of this order.

समय सीमा- इस आदेश की सूचना की तारीख से ३ महीने के भीतर

Fee (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

फीस- (क) एक हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है।

(b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh.

(ख) पाँच हजार रुपये— जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग) दस हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है।

**Mode of Payment** - A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

**भुगतान की रीति**— क्रास बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

**General** - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

**सामान्य** - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमा शुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce 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 129 of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्वृहीत शास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमा शुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

**Subject:** Adjudication of Show Cause Notice issued vide F. No. DRI/MZU/NS/ENQ-31/2018/625 dated 09.10.2018 issued to M/s BhikanLal Raj Kumar (IEC-0588118818)– reg.

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

Intelligence developed by the Directorate of Revenue Intelligence – Nhava Sheva Unit (here-in-after referred to as 'DRI) that Black Pepper of Vietnamese origin was being imported at

preferential rate of 8% Basic Customs Duty under Agreement on South Asian Free Trade Area (SAFTA) Notf. No. 68/2012-Cusdt. 31.12.2012 or at NIL rate of duty under Indo Sri Lanka Free Trade Agreement Notf No. 2/2007 dt. 05.01.2007 by mis-declaring the Country of Origin as Sri Lanka.

**1.1** 'Black Pepper' is classified under tariff item 09041130/09041140 of the Custom Tariff Act, 1975. The goods falling under tariff item 090411 are eligible for benefit of preferential duty under the provisions of SAFTA read with Notification No. 68/2012-Cus dated 31.12.2012(Sr.No.73 of Table-II) and Rules of Determination of Origin of Goods under the Agreement on South Asian Free Trade Area (SAFTA), 2006, published in the notification of the Government of India in the Ministry of Finance (Department Revenue) No 75/2006-Customs (NT) dated the 30th June, 2006. It was gathered that Vietnamese Black Pepper was being imported in the garb of Sri Lankan Black Pepper by misusing the exemption available under SAFTA agreement It was further gathered that one such consignment of Vietnamese Black Pepper was imported by an importer at INCH by mis-declaring the Country of Origin as Sri Lanka in order to avail the benefit of the said preferential duty, which was pending for Customs Clearance at Speedy Multimodes Custom Freight Station.

**2.** Acting on the said intelligence, consignments of the said importer and those of other similar importers were tracked and consequently Twenty-Seven containers of 11 importers were put on hold at various CFS on 12/13-10.2017. Following consignments of Black Pepper imported by M/s. BhikanLal Raj Kumar, having registered office at 2035, Katra Tambacco, Khari Baoli, Delhi, were put on hold on 13.10.2017 at the Speedy Multimodes CFS and DRT Concor CFS at Nhava Sheva, details of which are as tabulated below.

**TABLE-I [LIVE]**

Sr No.	B/E No.	B/L No. & COO No.	Container No.	Quantity (In Kgs)
1	3377688 25.9.2017	dt. BL: AT17Y091457 COO: CO/SAF/IND/2017/00372	CRXU1290514 KMTU7251541	28080
2	3420476 28.9.2017	dt. BL: R1101CONV780957 COO: CO/SAF/IND/2017/00353	BSIU2885959	15000
3	3420477 28.9.2017	dt. BL: R1101CONV780104 COO: CO/SAF/IND/ 2017/00355	BSIU2884736	15000
	<b>Total Quantity</b>			<b>58080</b>

**3. Examination of the live consignments and testing of samples:**

**3.1** The examination of the goods in containers as mentioned above in Table-I was carried out on **27.10.2017 and 30.10.2017** under Panchanama and representative samples were withdrawn from each container. As it had come to the notice from a research article that Sri Lankan Black Pepper was known for higher piperine content, representative samples were sent to Spice Board

lab at Navi Mumbai for Bio Chemical analysis. The representative samples from the above consignments were thereafter sent to ICAR- The Institute of Spices Research, Kozhikode (hereinafter referred to as 'ICAR-IISR'), alongwith samples drawn from other consignments put on hold of importers availing similar benefit under SAFTA Notf No. 68/2012-CUS dt 31.12.2012, for DNA analysis as well as Biochemical analysis in order to find out the origin of the goods. For comparison, authentic samples of Vietnamese Origin Black Pepper from consignments that had arrived at Nhava Sheva and Cochin Port, were also sent to ICAR-IISR.

4 . ICAR-IISR in their report received on mail id [mzuns-dri@nic.in](mailto:mzuns-dri@nic.in) on 19.12.2017, (report later received under letter PME/ IISR/28(20)2017 dated 31.01.2018 after isolating two Vietnamese specific DNA markers namely ISSR<sub>750</sub> and ISSR<sub>850</sub>, confirmed the presence of said DNA marker bands in the 15 samples out of 27 drawn from the consignments of various importers of Black Pepper. The 15 Samples which tested positive for Vietnam specific markers, included black pepper samples drawn from the consignments of M/s BhikanLal Raj Kumar as detailed at Sr no 1 and 2 of Table I above. Further as regards the BioChemical Analysis conducted for the qualitative parameters like Piperine, Oleoresin and Volatile Oil content, it was reported that the Piperine content as well as Volatile Oil content was low in most of these Consignments, which is a characteristic of Vietnamese Black Pepper, and was contrary to the characteristic of Sri Lankan origin Black Pepper, which was known for its higher Piperine and Volatile Oil content. Further though the laboratory test showed negative result in the case of Black Pepper consignment against BoE at Sr no 3 of Table I above, the same was seized as the Sri Lankan supplier was same as in other consignment of the importer, which had tested positive for Vietnamese DNA. Consequently 15 containers of black pepper out of 27, most of which showed presence of Vietnamese DNA, including those of M/s BhikanLal Raj Kumar, were seized. On the basis of the test reports received from ICAR-IISR, the goods in all three import consignments detailed in Table- I above were seized under Seizure Memo dated 27.12.2017.

5. Further vide letter F. No. DRI/MZU/NS/Int153/2017/4090 dated 27.12.2017 issued by the Deputy Director, DRI MZU, the JNCH Customs authorities were requested to favourably consider the provisional release of the goods, seized under seizure Memo dated 27.12.2017 following which, vide letter F. No. S/26-Misc-1004/2017-18/GrI&IA/NS-I dated 03.01.2018 issued by the Deputy Commissioner of Customs, Gr I/IA, it was intimated that Provisional release was accorded on submission of Bond of amount of total assessable value and Bank Guarantee of amount equivalent to differential duty in case of each of bill of entry. A certificate for waiver of rent and demurrage from the date of hold of containers till the date of release of goods was issued to the importer on 27.12.2017.

5.1 Meanwhile, subsequent to the import consignments being seized by DRI, the importer, M/s Bhikanlal Raj Kumar, filed a Writ Petition No.462 of 2018 before, the Hon'ble Mumbai High Court with the following prayer:

a) That the Hon'ble Court may issue a writ of mandamus directing the respondents to allow the clearance of the consignments under Bills of Entry Nos. 3377688 dt 25.9.2017 and 3420476 and 3420477 both dated 28.09.2017, finally for home consumption;

b) That pending final disposal of the Writ Petition, the Hon'ble Court may direct Deputy Commissioner of Customs, Group-I, JNCH to provisionally clear the consignments of Black Pepper imported by the Petitioner;

c) the Hon'ble Court may issue a writ of mandamus directing the respondents to issue a suitable detention cum demurrage waiver certificate from the date of their detention till their release in terms of Handling of Cargo in Customs Area Regulations 2009;

**5.2** The Writ petition filed by M/s Bhikanlal Raj Kumar was disposed by the Hon'ble High Court on 17.1.2018 by granting conditional relief, wherein on executing Bond equal to 150% of the value of the goods and furnishing a Bank Guarantee in the sum equivalent of 30% of the differential duty within a period of two weeks, competent authority was asked to pass an order on application seeking detention certificate as well as on the release of goods. Consequently, vide letter F. No DRI/MZU/NS/INT-153/2017/4245 dt 31.1.2018, Dy. Director, DRI, Nhava Sheva conveyed his no objection for provisional release as per the terms of the order of Hon'ble High Court.

**6.** The jurisdictional Commissioner of Customs, Nhava Sheva-I, INCH, allowed provisional release of three consignments, subject to execution of Bond for 150% of the value of the goods backed by Bank Guarantee for 30% of differential duty payable. At the time of issue of this Show Cause Notice, consignment covered under above mentioned Bills of Entries of the Table I above, were provisionally released to the importer on execution of Bank Guarantees of **Rs. 23,16,644/-, Rs. 11,97,467/- and Rs. 11,97,333/-** all dated 16.03.2018 respectively, along with Bond as directed.

**7.** Further in order to confirm the results in said lab report of ICAR-IISR dt. 31.1.2018, a repeat test of DNA analysis was requested to ICAR-IISR on 15.2.2018 in respect of all seized consignments, by furnishing them additional number of samples of Vietnamese origin Black Pepper and White Pepper, drawn from the consignments that had arrived at Cochin Port. ICAR-IISR vide their report dated 14.03.2018, emphasised that DNA based markers were based on analysis of unique genetic structure and have better resolving power than other marker systems due to the fact that they were not affected by age, environmental factors and physiological conditions. Explaining the underlying principle, it was stated that by comparing the profile of the amplified fragments of the authentic sample and the adulterant, it was possible to identify certain nucleotide sequences that distinguish between them. They were designated as genetic markers, which discriminates between the authentic sample and adulterant. Further explaining the methodology adopted, it was stated that the profiles of authentic Sri Lankan and authentic Vietnam samples were compared and unique markers specific to Vietnam samples were identified, that the Sri Lankan Pepper samples were then examined for the presence of unique markers specific to Vietnam pepper. The institute re-iterated the contents and analysis of their previous report dt. 19.12.2017. Hence, both the test reports further corroborated and confirmed the intelligence that Black Pepper of 'Vietnamese' Origin was being imported into the country by mis-declaring it as Black pepper of Sri Lankan Origin in order to avail the benefit of the said preferential Customs duty under SAFTA Notf. No. 68/2012 dt.31.12.2012.

8. Further since both the DNA tests carried at ICAR-IISR showed negative result for Vietnamese DNA markers, the consignment of Black Pepper imported against Bill of Entry No. 3420477 Dt 28.9.2017 was recommended for release on 15.06.2018, unconditionally to the Jurisdictional Customs Commissionerate.

9. As the live consignments were placed on hold on 12.10.2017, six month time limit for issuance of Show Cause Notice proposing confiscation was ending on 10/04/2018, as there was scope for further investigation in the subject matter and more time was required to bring the investigation to a logical conclusion, a Show Cause Notice F. No. 775/2017-18/COMMR/NS-I/CAC/INCH dated 28.3.2018 was issued by the jurisdictional Customs Authority, Nhava Sheva-I seeking to extend the period for issue of Show Cause Notice in terms of the proviso to Section 110 (2) read with Section 124 of the Customs Act 1962, in respect of the seized goods, in as much as confiscation of the subject goods is concerned, for a further period of six months for effective and logical conclusion of the investigation. Subsequently, vide Order-In-Original No. 3/2018-19/Commr/NS-1/JNCH dated 9.04.2018 (RUD 15), the time limit for issuance of show cause notice was extended by a further period of six months from 10/04/2018.

**10. Statement:**

During the course of investigation, statements of various persons concerned with the case were recorded under Section 108 of the Customs Act, 1962. The same are summarised below;

**10.1** *Statement of Shri Sandeep Aggarwal, Senior Manager of M/s. Bhikhanlal Rajkumar and Son of Proprietor Shri Raj Kumar Aggarwal was recorded on 6.2.2018 under Section 108 of Customs Act, 1962 in which, interalia, he stated that;*

- i) That he was looking after the business since 2002 as his father had grown old.
- ii) That he started importing Black Pepper from Sri Lanka since April 2017 and had imported eight containers since then from JNPT
- iii) He had ordered for Sri Lankan Origin black pepper from various SriLankan suppliers with the help of two Sri Lankan agents namely Krishant and Nishanta The consignments in question which were ordered through Nishanta
- iv) That he never visited Sri Lanka and all communications were made through phone and email, that money for purchase of Black Pepper was remitted through his HDFC Bank account at Chandni Chowk
- v) That Black Pepper commanded price as per its size, density and cleanliness, that he ordered for Sri Lankan Black Pepper of 550 GL with 12.5% moisture content
- vi) On being shown the ICAR-IISR test report for the samples of his consignments which showed positive result for presence of Vietnamese DNA markers, he stated that he had not verified the origin of the said Black Pepper consignments but had placed order for Sri Lankan Black Pepper.

**11. Analysis of evidence recovered and facts revealed during Investigation:**

**11.1** Intelligence gathered and investigations conducted so far had suggested that Black pepper imported under the consignments listed at Sr no 1 and 2 of Table I above, by M/s BhikanLal Raj Kumar were of Vietnamese origin and were imported therefrom but found to be mis-declared by claiming their Country of Origins Sri Lanka, in order: to avail the benefit of duty exemption under SAFTA agreement.

**11.2** Notification 68/2012-Customs dated 31.12.2012 -Sr.No.73 of Table-II, having been issued for the operationalization of Agreement on SAFTA (South Asian Free Trade Area, provides for concessional rate of duty on specified goods imported from and originating in the contracting countries listed in Appendix to the said notification. This concession is, however, subject to the condition that the goods comply with the requirements of origin as prescribed in the Rules of Determination of Origin of Goods under the Agreement on South Asia Free Trade Area (SAFTA), 2006, published in the Notification No. 75/2006-Customs (N.T.), dated the 30th June, 2006.

**11.3** The Rules of Origin prescribe the criteria for determining the origin of products eligible for tariff concessions under the preferential trade agreement between the Governments of Member States of South Asia Free Trade Area (SAFTA). In terms of Rule 4 of the said Rules, for the goods to be eligible for preferential tariff treatment and to be deemed as originating, they are required to be:

*"(a) products wholly produced or obtained in the territory of exporting contracting state as defined in rule 5; or,*

*(b) products not wholly produced or obtained in the territory of the exporting Contracting state provided that the said products are eligible under rule 6."*

**11.4** The goods in question in the instant case are 'Black Pepper' imported from Sri Lanka that fall in the category of '**wholly produced or obtained**' products. As enunciated by Rule 5(b) of the Rules of Origin, within the meaning of Rule 4(a) "Agriculture, vegetable and forestry products harvested there", shall be considered as 'wholly produced and obtained products in the territory of exporting contracting State' and hence will be eligible for preferential treatment under the free trade agreement.

**11.5** Rule 14 of the Rules of Origin read with Article 1 of Detailed Operational certification procedure at Annex-B, provides that a Certificate of Origin, shall be issued by authority designated by the Government of the exporting Contracting State and notified to the other Contracting States. Article 7 to 11 deals with issuance of Certificate of Origin.

**11.6** Thus, in order to be eligible for duty exemption/ concession in terms of Notification No. 68/2012-Customs dated 31.12.2012 as amended, the impugned goods Black Pepper need to satisfy the following conditions:

(a) that they have been wholly produced/harvested within the territory. of the exporting Contracting State;

(b) the custom tariff heading under which the said goods fall, should have

been notified under the said Notification for benefit under preferential treatment.

(c) a Certificate of Origin in the prescribed format and issued by the designated authority is presented in support of the claim for the concession.

Accordingly, the eligibility for the preferential duty claimed in respect of the subject goods is required to be determined.

**11.7** As regards the compliance of the condition that the impugned goods have to be wholly produced/ harvested in the exporting country i.e., in this case Sri Lanka and that the goods and their corresponding Custom Tariff should have been notified for availment of preferential treatment, vide Notification No.68/2012-cus dated 31.12.2012 as amended, the goods falling under tariff heading 090411 have been subjected to 8% Basic Customs duty on importation into India from countries listed in Appendix . The relevant portion of the said Notification is reproduced below.

**TABLE-II (of Notf 68/2012 dt 31.12.2012)**

S. No.	Chapter, Heading, Sub heading and tariff item	Description of Goods	Rate
73	090411	All Goods	8.00%

From the table above, it is very clear that goods i.e Black Pepper falling under chapter sub heading 090411 are covered and notified for duty benefit under preferential rate provided they are imported from a Country listed in Appendix to the said notification.

**11.7.1** As regards the compliance of the condition that the impugned goods have to be wholly produced/harvested in the exporting country i.e., in Sri Lanka, the samples from each of the containers listed in Table 1 above were subjected to testing in the laboratory of ICAR-Indian Institute of Spices Research, Kozhikode (in short ICAR-IISR) to know its origin on the basis of DNA analysis. In the test report submitted by ICAR-IISR vide their letters No. PME/IISR/28(20)2017 dated 31.01.2018 & PME/IISR/28(20)2017 dated 14.3.2018, ICAR-IISR informed that based on DNA analysis, Black Pepper in the consignments at Sr no 1 and 2 of Table-I above, were found to be of Vietnamese Origin. It was also reported that Bio Chemical analysis of the Black pepper from the most of the consignments, wherein Piperine, Volatile Oil and Oleoresin value were found to be on lower side (contrary to higher values of Sri Lankan Black Pepper), corroborated the DNA analysis report that the said Black Pepper was of Vietnamese Origin. Hence on the basis of the test reports alone, it appeared that the impugned goods failed to qualify the origin criteria and hence appeared not eligible for preferential treatment of duty as envisaged in the Rules of Origin read with Notification 68/2012-Customs dated 31.12.2012 as amended.

**11.7.2** The importer had himself agreed that he had not verified the origin of the said Black pepper consignments though he ordered for Sri Lankan Black Pepper through an agent, from

whom it appeared he was ordering for first time and that he never visited Sri Lanka in relation to the import of Black Pepper. On being asked about his say on the test results of his consignments showing positive results for Vietnamese DNA markers, he had no clarification.

**11.8** In view of the above, it appears that the live consignments of Black Pepper imported by M/s Bhikanlal Rajkumar as detailed at Sr no 1 and 2 of Table No.1 above were not of Sri Lankan Origin as claimed by the importer. The Origin was ascertained by testing the samples of Black Pepper from live consignment by ICAR-IISR, Kozhikode which said that samples were of Vietnamese Origin. Hence it appears that benefit of duty exemption availed under SAFTA read with Notf. No. 68/2012-Cus dated 31.12.2012 as amended which was otherwise not available to the importer.

## **12. Computation of Differential Duty:**

**12.1** In view of the above, it appears that BhikanLal Raj Kumar had attempted to evade Customs duty on the two live consignments of the impugned goods mentioned at St No 1 and 2 of Table I above, by fraudulently availing concessional rate of duty, under Notification no.68/2012-Cus dated 31.12.2012 as amended without fulfilling the conditions stipulated in the said notification and the Rules of Origin published under Notification No. 75/2006-Customs (N.T.), dated the 30th June 2006. All goods under the said live bills of entry of Table have been released provisionally.

**12.2** Customs clearances of the live consignment were processed from the jurisdiction of the Commissioner of Customs, Nhava Sheva-I, JNCH. Computations of differential duty resulting from the proposed denial of the said duty benefit under Notf. No. 68/2012-Cus dt 31.12.2012 on the live consignments, have been detailed as tabulated below.

**Table-III**

<b>Sr. No</b>	<b>B/E No. &amp; Date</b>	<b>CTH</b>	<b>Assessable Value</b>	<b>BCD ® 70%</b>	<b>Cess @ 2% (of col 5)</b>	<b>CSHEC @1% (of col 5)</b>	<b>IGST @ 5% (of total of Cols 4+5+6+7)</b>	<b>Total Duty Payable (5+6+7+8)</b>	<b>Duty declared</b>	<b>Diff Duty (9-10)</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>
1	3377688 dt.25.9.17	09041190	11516569	8061598	161232	80616	991001	9294447	1572242	7722205
2	3420476 dt. 28.9.17	09041190	5952217	4166552	83331	41666	512188	4803737	812597	3991140
		<b>Total</b>	<b>17468786</b>	<b>12228150</b>	<b>244563</b>	<b>122282</b>	<b>1503189</b>	<b>14098184</b>	<b>2384839</b>	<b>11713345 (9-10)</b>

**12.3** During investigation, the importer showing his disagreement and had not paid the differential duty. On the orders of Hon'ble High Court in WP 462 of 2018, all 205 consignments

including those covered under above mentioned Bills of Entry, were provisionally released to the importer on execution of Bank Guarantees of total amount of **Rs. 47,11,444/-** along with Bond for 150% of the value of goods.

### **13. Summary of Investigation:**

**13.1** Based on the market intelligence that Vietnamese Origin Black Pepper was being routed through Sri Lanka by claiming preferential rate of Basic Customs duty, available to Sri Lankan Origin Black pepper under Customs Notification No. 68/2012 dated 31-12-2012, Twenty-Seven containers belonging to eleven importers were detained by Directorate Revenue Intelligence, Nhava Sheva, on 12/13 -10-2017. As per the information available on open source, Vietnam's annual production of 2 lakh Metric Tons of Black Pepper is highest in the world, much higher in comparison to Sri Lanka's annual production of 25000 to 30000 Metric Tons. Since import of Black Pepper (CTH 090411) from Sri Lanka is promoted by the Indian Government under Bilateral Trade agreement as well as under Trade Agreement with SARRC member countries (SAFTA), the Basic Customs duty payable on imports from Sri Lanka is either NIL (Cus. Notf 2/2007 dt 5.1.2007) for a fixed quota or is 8% under SAFTA agreement (Cus. Notf. 68/2012 dt. 31.12.2012), which was far less than as compared to duty on Vietnamese Origin Black pepper, which was subjected to 54% Basic Customs Duty under ASEAN free trade agreement (Notf. 46/2011 dated 01-06-2011), and Tariff Rate of 70% Basic Customs.

Mr Sandeep Aggarwal, Senior Manager, of M/s BhikanLal Raj Kumar informed that, he had not verified the origin of the said Black pepper consignments though he ordered for Sri Lankan Black Pepper through an agent, from whom it appeared he was ordering for first time and that he never visited Sri Lanka in relation to the import of Black Pepper. On being asked about his say on the test results of his consignments showing positive results for Vietnamese DNA markers, he had no clarification.

**13.2** As regards the compliance of the condition that the impugned goods had to be wholly produced/ harvested in the exporting country i.e., in Sri Lanka, DNA test results of the samples drawn from the said consignments as conveyed by the laboratory of ICAR-Indian Institute Of Spices Research, Kozhikode (in short ICAR-IISR vide their letters No. PME/IISR/28(20)2017 dated 31.01.2018 & PME/IISR/28(20)2017 dated 14.3.2018, ICAR-IISR, revealed that the Black Pepper in the consignment at Sr no 1 and 2 of Table I above was of Vietnamese Origin. The lab Bio Chemical analysis of the Black pepper from the most of the consignments, wherein Piperine, Volatile Oil and Oleoresin value were found to be on lower side (contrary to higher values of Sri Lankan Black Pepper), further corroborated the inference drawn from DNA analysis report that the said Black Pepper was of Vietnamese Origin. Hence on the basis of the test reports alone, it appeared that the impugned goods failed to qualify the origin criteria and hence, appeared not eligible for preferential treatment of duty as envisaged in the Rules of Origin read with Notification 68/2012-Customs dated 31.12.2012 as amended.

**13.3** M/s BhikanLal Raj Kumar have imported three live consignments of Black Pepper as detailed in Table I above. The consignments at Sr no 1 and 2 of Table I above and as quantified in Table-III above, was attempted to be cleared under the benefit of SAFTA agreement read with

Notf. No. 68/2012-Cus dated 31.12.2012 as amended, by claiming the Country of Origin of imported goods i.e., Black Pepper, as Sri Lankan. Investigation and laboratory test of DNA fingerprinting, revealed that said live consignment of impugned goods was of Vietnamese Origin, but the same was falsely being presented as of Sri Lankan origin in order to avail the ineligible duty benefit. The total duty payable on the live consignments at tariff rate was **Rs. 1,40,98,184/-** as against the declared duty of **Rs. 23,84,839/-**. Hence, the differential duty amount of **Rs. 1,17,13,345/-** as detailed in Table-III above, was attempted to be evaded by M/s BhikanLal Raj Kumar by willful and deliberate suppression of nature of the goods.

**14. Provisions of Law relevant to this case:**

Legal provisions relevant to the instant case are:

- i. Various provisions of the Customs Act, 1962 and the Rules made there under as applicable;
- ii. Section 11 of the Foreign Trade (D&R) Act, 1992 and Rule 11 & 14 of the Foreign Trade (Regulation) Rules, 1993;
- iii. Rules of Determination of Origin of Goods under the Agreement on South Asia Free Trade Area (SAFTA), 2006, published in the Notification No. 75/2006-Customs (N.T.), dated 30th June, 2006.
- iv. Notf. No. 68/2012-Cus dated 31.12.2012 as amended.

**15. From the foregoing, it appears that:**

**15.1** The live consignments of Black Pepper detailed at Sr No 1 and 2 of Table I above, had been imported by M/s BhikanLal Raj Kumar, by mis-declaring the Country of Origin in violation of Section 46(4) of the Customs Act, 1962. The laboratory test results of ICAR-IISR on records as discussed above, corroborate the fact that their origin is of Vietnam and not that of Sri Lanka as claimed in the Bills of Entry filed. Hence it appears that live consignments of Black Pepper as detailed at Sr No 1 and 2 Table I above, were imported in a fraudulent manner by suppressing the true nature of the imports and by mis-stating their origin in violation of Section 46 of the Customs Act, 1962 and wrong availment of duty exemption in terms of Notf. No.68/2012-Cus dated 31.12.2012 as amended. Hence the said goods imported appear to be liable for confiscation under Section 111(d), (m) & (o) of the Customs Act, 1962.

**15.2** Section 11 (2) of the Foreign Trade (Development and Regulation) Act, 1992, as amended states that where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made. Further, as per Rule 11 of the Foreign Trade (Regulation) Rules, 1993 on the importation into India, the owner of such goods shall, in the bill of entry or any other document prescribed under the Customs Act, 1962, state the value, quality and description of such goods to the best of his knowledge and belief and shall subscribe a declaration of the truth of such statement at the foot of such bill of entry or any other documents. As per Rule 14 (1) of the Foreign Trade (Regulation) Rules, 1993, no person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular. In this case, the goods have been mis-

declared with respect to its Origin. Therefore, the aforesaid consignments appear to be liable to confiscation under Sections 111(d), 111(m) and 111(o) of the Customs Act, 1962 read with Section 11(2) of the FT(D&R), 1992 as amended and Rule 11 and Rule 14(i) of the Foreign Trade (Regulation) Rules, 1993.

**15.3** The benefit of duty under SAFTA read with Notification No.68/2012-Cus dated 31.12.2012 as amended on import of Black Pepper under the Bill of Entry, as detailed in Table No. III above, was not available to such imports for non-fulfilment of the conditions prescribed under the said notifications and the related Rules of Origin as provided under Notification No.75/2006-Cus (N. T.) dated 30.6.2006.

**15.4** Live consignments covered under Bills of Entry as detailed in Table-III, have been assessed provisionally. The assessment thereof is required to be finalised under Section 18(2) of the Customs Act, 1962 after denying the benefit of Notification No. 68/2012-Cus dated 31.12.2012 as amended. The total duty payable on the said live consignment is **Rs. 1,40,98,184/-** as against the declared duty of Rs. **23,84,839/-**. Consequently, differential duty in respect of this import, as detailed in the Table-III, totally amounting to **Rs. 1,17,13,345/-** is payable by M/s BhikanLal Raj Kumar under the provisions of Section 18(2) of the Customs Act, 1962 along with interest at the applicable rate under Section 18(3) *ibid*.

**15.5** Accordingly, the impugned goods, imported by M/s BhikanLal Raj Kumar under the Bills of Entry as detailed in Table-III of a value of **Rs. 1,74,68,786/-** appear to be in violation of rule 14(i) of the Foreign Trade (Regulation) Rules, 1993 and wrong availment of duty exemption in terms of Notification No. 68/2012-Cus dated 31.12.2012 as amended; Hence the said goods imported in the name of M/s BhikanLal Raj Kumar appear to be liable for confiscation under Section 111(d), (m) & (o) of the Customs Act, 1962.

**15.6** Shri Sandeep Agrawal, Senior Manager of M/s BhikanLal Raj Kumar, by his various acts of omissions and commissions, as described above, having rendered the goods liable to confiscation under Section 111(d), (m) & (o) of the Customs Act, 1962 and appear to have rendered himself liable for penal action under section 112 (a) of the Customs Act, 1962. The Black Pepper was mis-declared with regard to its country of Origin in order to avail the duty benefit under SAFTA agreement under Notification No. 68/2012-Cus dated 31.12.2012 as amended which was otherwise not available to them. Yet they filed the Bills of Entry under claim of said duty exemption thereby, rendering himself liable for penalty under Section 114AA of the Customs Act, 1962.

**16.** Therefore, M/s BhikanLal Raj Kumar, 2035, Katra Tambacco, Khari Baoli, Delhi, 110006 (IEC: 0588118818) through its Senior Manager Shri Sandeep Agarwal was hereby called upon to show cause, in writing, to the Adjudicating Authority, i.e. Pr. Commissioner/ Commissioner of Customs, Nhava Sheva-I, Mumbai Zone-II having his office at Jawaharlal Nehru Custom House, Tal- Uran, Dist: Raigad, Maharashtra within thirty days of the receipt of this notice, as to why:

- (i) Benefit of Notification No. 68/2012-Cus dated 31.12.2012 as amended should not

be denied and the goods should not be assessed to the rate of duty applicable to the relevant Customs Tariff Item as detailed in the Table-III above;

(ii) Bills of Entry of live consignment as detailed in Table-III above, assessed provisionally should not be finalised under Section 18(2) of the Customs Act, 1962 after denying the benefit of Notification No. 68/2012-Cus dated 31.12.2012 as amended. The total duty payable on the said live consignment is **Rs. 1,40,98,184/-** as against the declared duty of **Rs. 23,84,839/-**. Consequently, differential duty in respect of this consignment, as detailed in Table-III, totally amounting to **Rs. 1,17,13,345/-**, is payable by M/s BhikanLal Raj Kumar under the provisions of Section 18(2) of the Customs Act, 1962 along with interest under Section 18(3) of the Customs Act, 1962;

(iii) Duty amount of **Rs. 23,84,839/-** as declared and paid by the importer at the time of filing Bills of Entry, should not be appropriated towards the total duty payable on the goods imported under the said Bills of Entry

(iv) Live consignments imported vide two bills of entry with declared assessable value of **Rs. 1,74,68,786/-** as detailed in Table-III above, and seized under seizure memo 27.12.2017 should not be held liable for confiscation under the provisions of Section 111(d), (m) & (o) of the Customs Act, 1962;

(v) penalty should not be imposed on M/s BhikanLal Raj Kumar and Mr. Sandeep Agarwal, Senior Manager, under section 112(a) and 114AA of the Customs Act, 1962 for their above acts of omission and commission;

(vi) Bank guarantees dated 16.3.2018 of **Rs. 47,11,444/-** executed against provisional release of goods against the said Bills of Entries, should not be encashed and bonds should not be enforced against differential duty, interest, penalty and fine payable consequent to adjudication.

## **17. RECORD OF PERSONAL HEARING & SUBMISSIONS:**

**17.1** Multiple opportunities of personal hearing (PH) were granted to the noticees in compliance with the principles of natural justice. The initial PH fixed on **04.04.2019** was adjourned as Advocate Shri Chirag Shetty appeared without a valid *vakalatnama*. On **10.05.2019**, the advocate appeared, filed written submissions, and sought cross-examination of Dr. Leela NK, Principal Scientist, ICAR-IISR and Dr. Sheeja TE, Principal Scientist & Member Sec. IISR, which was allowed and fixed for **13.06.2019**.

**17.2** However, vide letters dated **28.05.2019**, the scientists informed that they had already been cross-examined on **07.05.2019** in a similar case (*M/s. Unique Spices*) and requested that the same statements be relied upon, as they had no additional information to offer. No one appeared for the PH on **13.06.2019**, **02.07.2019**, and **06.08.2019**.

**17.3** On **30.09.2019**, the advocate attended PH, and copies of the scientists' letters and earlier cross-examination records were provided. On **16.10.2019**, he again insisted on fresh cross-

examination, claiming factual distinction from *M/s. Unique Spices*. Accordingly, cross-examination was scheduled on **13.11.2019** and **05.12.2019**, but could not be conducted due to non-appearance of the scientists.

**17.4** Vide letter dated **18.12.2019**, ADG, DRI informed that repeated summoning of the scientists in similar matters would cause hardship and suggested seeking written clarifications through questionnaires. The advocate declined this suggestion and insisted on physical cross-examination.

**17.5** Cross-examination was thereafter fixed through video conference on **07.08.2020**, which was adjourned on the advocate's request due to COVID-19 quarantine. It was rescheduled on **16.09.2020**, but the advocate objected to virtual cross-examination and sought postponement till after the pandemic. The conduct indicated repeated delay tactics; hence, no further opportunity for cross-examination was granted at that stage.

**17.6** Subsequent PHs were granted on **15.10.2020** and **27.10.2020**, during which the advocate made submissions on merits, challenged reliance on ICAR-IISR reports, alleged denial of natural justice, and sought time for written submissions, which were submitted on **05.11.2020**. Further PHs were granted on **21.12.2020** and **15.02.2021**, wherein the advocate reiterated his demand for cross-examination. Ultimately, cross-examination of the scientists was conducted on **19.02.2021**.

**17.7** In view of the judgment in *Canon India Pvt. Ltd.*, the matter was kept in call book on **22.03.2021** and later taken out following enactment of the Finance Act, 2022. Thereafter, several PHs were scheduled between **2023–2024**, which were either unattended or adjourned at the request of the advocate.

**17.8** Following reassignment of adjudication vide Office Order No. 42/2024 dated **27.05.2024**, a virtual PH was conducted on **16.12.2025**, wherein the advocate reiterated that the case was based solely on ICAR-IISR test reports and requested copies of cross-examination records, which were duly provided.

**18.** He further submitted written submissions dated 19.12.2025, which were taken on record at his request made during the virtual personal hearing, wherein the learned advocate appearing on behalf of Noticee No. 1 and Noticee No. 2, in respect of the Show Cause Notice dated 09.10.2018, acknowledged the opportunity of personal hearing granted on 16.12.2025 and filed the present written submissions in continuation of the oral submissions made during the said hearing. The same are reproduced below, point-wise.

**18.1 Brief Facts:** - Noticee No.1 imported black pepper classifiable under CTH 090411 from Sri Lanka in the normal course of business through the following three Bills of Entry:

Sr. No.	Bill of Entry No. & Date	Supplier
1	3377688 dated 25.09.2017	M/s Agroly

2	3420476 dated 28.09.2017	M/s Green Lanka Alliance Pvt. Ltd.
3	3420477 dated 28.09.2017	M/s Green Lanka Alliance Pvt. Ltd.

All imports were supported by valid Certificates of Origin (COO) issued by the designated Sri Lankan authority, and concessional duty @ 8% was correctly availed under Notification No. 68/2012-Cus dated 31.12.2012 (SAFTA). Based on intelligence alleging Vietnamese origin, DRI detained the consignments, drew samples, and sent them to ICAR-IISR for analysis. Despite the ICAR report dated 19.12.2017 and repeat report dated 14.03.2018 conclusively holding that goods imported vide BE No. 3420477 dated 28.09.2017 were *not* of Vietnamese origin and recommending unconditional release, the said consignment was seized along with the other two bills of entry on 27.12.2017.

The Hon'ble Bombay High Court, vide order dated 17.01.2018 in W.P. No. 462 of 2018, directed provisional release upon furnishing bond and bank guarantee, which was duly complied with.

**18.2 Issuance of Impugned SCN:** - Though investigation covered all three Bills of Entry, the Impugned SCN dated 09.10.2018 was issued only for BE Nos. 3377688 dated 25.09.2017 and 3420476 dated 28.09.2017, while proceedings were dropped for BE No. 3420477 dated 28.09.2017, despite both consignments dated 28.09.2017 being supplied by the same supplier. The SCN proposed denial of Notification No. 68/2012-Cus and demanded differential duty of ₹1,17,13,345 under Section 18(2) along with interest under Section 18(3), erroneously computing duty @ 70% instead of 54% applicable to Vietnamese origin goods under Notification No. 63/2016-Cus (Sl. No. 83).

**18.3 Cross-Examination:** - At the request of the Noticees, cross-examination of Dr. Leela N.K. and Dr. Sheeja T.E. of ICAR-IISR was conducted on 19.02.2021. In response to Question No. 9, the scientists categorically admitted that it is not possible to determine the country of origin of black pepper through testing.

#### **18.4 Undisputed Facts**

- Goods were imported from Sri Lanka under valid and subsisting COOs.
- No allegation of forged or fraudulently obtained COOs.
- COOs were never verified, cancelled, or suspended by Sri Lankan authorities.
- BE No. 3420477 dated 28.09.2017 was unconditionally released on the basis of ICAR reports.
- Scientists admitted during cross-examination that origin determination is not scientifically possible.

#### **18.5 Submissions: -**

**A). SCN issued in violation of SAFTA Rules of Origin:** - The SCN was issued without invoking Article 15 of Annexure-B to the SAFTA Rules of Origin, 2006, which mandates retrospective verification of COO through the issuing authority, and without consultation

under Article 21. Unilateral denial of SAFTA benefit without following treaty-mandated procedure is without jurisdiction. Reliance placed on *Noble Import Pvt. Ltd., Bullion & Jewellers Association, and Keyur Shah*.

**B). Notification No. 68/2012-Cus rightly availed:** - All conditions stood fulfilled: goods covered under Sl. No. 73, imported from Sri Lanka, wholly produced therein, and supported by valid COOs. Denial of exemption is contrary to law.

**C). COO binding unless cancelled:** - COOs continue to remain valid and binding. Customs authorities cannot sit in appeal over them. Reliance placed on *Bombay Chemicals, Zuari Industries, BDB Exports, and Riddi Siddhi Bullions*.

**D). ICAR-IISR test reports unreliable:** - The test reports are:

- Internally contradictory, as consignments under BE Nos. 3420476 and 3420477 dated 28.09.2017 from the same supplier showed similar piperine content (5.56% and 5.68%), yet one was accepted as Sri Lankan;
- Contrary to valid COOs; and
- Discredited by cross-examination, wherein scientists admitted inability to determine origin. Hence, the reports lack evidentiary value and cannot override COOs.

**E). Erroneous duty computation:** - Even assuming Vietnamese origin (without admitting), duty is chargeable @ 54% under Notification No. 63/2016-Cus and not @ 70%, rendering the demand unsustainable.

**F). No confiscation under Section 111:** - There is no prohibition, misdeclaration, or breach of exemption conditions. Sections 111(d), 111(m), and 111(o) are not attracted.

**G). No penalty under Sections 112(a) and 114AA:** - As goods are not liable to confiscation and no knowingly false declaration exists, penalties under Sections 112(a) and 114AA are not imposable.

**H). Interest not payable:** - When the demand itself fails, interest under Section 18(3) cannot survive (reliance on Prathibha Processors).

**18.6 Conclusion:** - The Noticees correctly availed SAFTA benefit under Notification No. 68/2012-Cus on the basis of valid COOs. The Impugned SCN is procedurally defective, contrary to treaty obligations, based on unreliable evidence, and legally unsustainable, and therefore deserves to be set aside in toto, along with consequential demand, interest, confiscation, and penalties.

### **DISCUSSION AND FINDINGS**

**19.** I have carefully gone through the facts, records of the case and all the written & verbal submissions made by the noticees. I proceed to decide the matter on the basis of their submissions and available records/facts of the case. The present case relates to purported importation of Black Pepper from Sri Lanka by availing exemption under the provisions of SAFTA read with Notification No. 68/2012-Cus dated 31.12.2012(Sr. No.73 of Table-II) and Rules of Determination of Origin of Goods under the Agreement on South Asian Free Trade Area (SAFTA), 2006, published in the notification of the Government of India in the Ministry of

Finance (Department Revenue) No 75/2006-Customs (NT) dated the 30th June, 2006. The case made out in the impugned SCN is that the Black Pepper imported by the Noticees was actually of Vietnamese origin, as per the reports of the ICAR-IISR. The conclusions were drawn by ICAR-IISR are on the basis of chemical and DNA analysis done on the samples drawn from the consignment imported by the Noticees.

The issue to be decided is whether the benefit of concessional rate of duty under **Notification No. 68/2012-Cus dated 31.12.2012**, read with the **SAFTA Rules of Origin, 2006**, was rightly availed by the noticees or whether the same was wrongly claimed by mis-declaring the country of origin of the imported Black Pepper as Sri Lanka, whereas the goods were actually of Vietnamese origin.

**19.1** I find that samples drawn from the live consignments covered under **Bill of Entry Nos. 3377688 dated 25.09.2017 and 3420476 dated 28.09.2017** were subjected to DNA analysis and biochemical analysis by ICAR-IISR, Kozhikode, a premier scientific institute under the Government of India.

ICAR-IISR, vide reports dated **19.12.2017 / 31.01.2018** and subsequently **14.03.2018**, clearly reported the presence of **Vietnam-specific DNA markers (ISSR<sub>750</sub> and ISSR<sub>850</sub>)** in the samples drawn from the aforesaid consignments. The reports further recorded that the **piperine and volatile oil content** of the samples was low, which is characteristic of Vietnamese Black Pepper and contrary to the known characteristics of Sri Lankan Black Pepper.

I note that the second test report dated 14.03.2018 was conducted specifically to reconfirm the findings of the first report, using additional authentic reference samples, and the conclusions were reiterated without any dilution. Thus, the allegation of mis-declaration is supported by **two independent and corroborative scientific reports**.

**19.2** The noticees have contended that during cross-examination the scientists admitted that it is not possible to determine the country of origin of Black Pepper.

I find that this contention is based on a **selective reading of one answer**, divorced from the overall testimony. On a holistic reading of the cross-examination, it is evident that the scientists explained that origin determination is not possible in isolation, but **comparative DNA profiling using authenticated reference samples enables identification of unique genetic markers** distinguishing pepper of Vietnamese origin from that of Sri Lankan origin.

The methodology adopted by ICAR-IISR in the present case was precisely such comparative profiling. The scientists never retracted or diluted their reports. Therefore, I find that the cross-examination does not discredit the test reports and does not create any doubt regarding their reliability.

Accordingly, I hold that the ICAR-IISR reports constitute **credible, expert and admissible evidence**, establishing that the impugned consignments were of **Vietnamese origin**.

**19.3** The noticees have argued that valid Certificates of Origin issued by Sri Lankan authorities were submitted and were neither cancelled nor withdrawn, and therefore the benefit of SAFTA

cannot be denied.

I find that a Certificate of Origin is **not conclusive proof** of origin when **contrary and cogent evidence** establishes that the goods do not satisfy the origin criteria. Customs authorities are not bound to mechanically accept a COO when factual mis-declaration is detected.

In the present case, scientific DNA evidence conclusively establishes that the goods were not wholly produced in Sri Lanka. Once this factual position is established, the COO loses its evidentiary value for the purpose of claiming exemption.

**19.4** The noticees have contended that denial of exemption without invoking the verification mechanism under Article 15 of Annexure-B to the SAFTA Rules of Origin renders the proceedings void.

I do not agree with this contention. Article 15 provides a mechanism for verification when there is **doubt regarding authenticity of the certificate or origin claim**. In the present case, the Department is not proceeding on doubt or suspicion, but on **scientifically established evidence of mis-declaration**.

Treaty provisions cannot be interpreted to mean that Customs authorities must ignore proven fraud and compulsorily resort to inter-governmental verification. Therefore, I hold that non-invocation of Article 15 does not vitiate the proceedings.

**19.5** The noticees have relied upon various judicial pronouncements such as *Noble Import Pvt. Ltd.*, *Bullion & Jewellers Association*, *BDB Exports*, *Zuari Industries*, *Bombay Chemicals*, etc., in support of their contention that the benefit of preferential duty cannot be denied once a Certificate of Origin has been produced.

I find that the facts of the said cases are clearly distinguishable from the facts of the present case. In those cases, there was no scientific or forensic evidence contradicting the declared country of origin, and the disputes primarily revolved around procedural verification of certificates or documentary deficiencies.

I further find that in the present case, the mis-declaration of country of origin stands conclusively established by **DNA fingerprinting**, which constitutes a far superior, objective, and independent form of scientific evidence. Such evidence directly disproves the declared origin and goes beyond mere documentary examination.

Accordingly, I find that the ratio of the judgments relied upon by the notices, is not applicable to the facts of the present case.

**19.5.1** I find that the legal position governing eligibility to exemption and preferential tariff treatment is well settled and squarely supports the stand of the Department in the present case.

- I find that the Hon'ble Supreme Court in *Commissioner of Customs vs. Essar Oil Ltd.* has held that exemption notifications are to be strictly construed and that the burden of proving eligibility to an exemption lies entirely upon the person claiming it. I find that the noticees

have failed to establish compliance with the mandatory condition of wholly obtained origin as required under Notification No. 68/2012-Cus.

- I further find that the Hon'ble Supreme Court in *Collector of Customs vs. Sanjay Chandiram* has held that mis-declaration of any material particular, including country of origin, vitiates the claim to exemption and renders the goods liable to action under the Customs Act. I find that mis-declaration of origin in the present case goes to the root of the preferential duty claim.
- I also find support from the judgment of the Hon'ble Supreme Court in *Dilip Kumar & Company vs. Commissioner of Customs*, wherein it has been held that in case of doubt or non-fulfilment of exemption conditions, the benefit must go to the Revenue. I find that in the present case there is no ambiguity, but affirmative scientific evidence disproving the declared origin.
- I find that the Hon'ble CESTAT, Mumbai in *Commissioner of Customs (Import) vs. Shree Ganesh Traders* has held that when documentary evidence such as certificate is found to be inconsistent with factual or technical evidence, Customs authorities are justified in rejecting such documents and proceeding on the basis of factual findings. I find that the Certificate of Origin produced by the noticees stands contradicted by DNA-based scientific analysis.
- I further find that the Hon'ble Supreme Court in *CC (Preventive) vs. Aafloat Textiles (I) Pvt. Ltd.* has held that intention and knowledge can be inferred from conduct and surrounding circumstances. I find that the continued claim of preferential duty despite adverse scientific reports and lack of due diligence clearly establishes conscious disregard of statutory conditions.

Accordingly, I find that the judicial pronouncements relied upon by the Department conclusively establish that exemption notifications must be strictly complied with, documentary certificates cannot override factual and scientific evidence, and mis-declaration of country of origin vitiates entitlement to preferential tariff benefits.

**19.6** The noticees have argued discrimination on the ground that **Bill of Entry No. 3420477 dated 28.09.2017** was released unconditionally.

I find that both DNA tests returned **negative results** for Vietnamese markers in respect of that consignment. Each Bill of Entry constitutes a separate assessment and benefit extended in one case cannot create estoppel against Revenue in respect of another consignment where evidence differs.

**19.7** **The contention of the noticees that even assuming, without admitting, Vietnamese origin, duty is chargeable at 54% under Notification No. 63/2016-Cus is misconceived.**

I find that the benefit of the said notification is conditional and not automatic, and the noticees have failed to establish fulfilment of the prescribed conditions thereunder. In the absence of eligibility to any concessional notification, I find that duty has been correctly demanded at the applicable rate of 70%.

I further find that the consignments were provisionally assessed under Section 18 of the Customs Act, 1962 and, upon denial of the benefit of SAFTA, the provisional assessments are required to be finalised in terms of Section 18(2) of the Customs Act, 1962. I find that the differential duty amounting to **Rs. 1,17,13,345/-**, as detailed in **Table-III** above, has been correctly computed and I find no infirmity in the said computation. Accordingly, I find that the said differential duty is payable by the noticees along with applicable interest under Section 18(3) of the Customs Act, 1962.

**20.** In view of the above discussion I hold that Noticees are not eligible for the benefit of exemption under Notification No. 68/2012-Cus dated 31.12.2012(Sr.No.73 of Table-II) read with No 75/2006-Customs (NT) dated the 30th June, 2006.

**21. Confiscation of the Impugned Goods:** In view of the foregoing discussion and findings, I have examined the allegations in the Show Cause Notice, the submissions made by the noticee, and the evidences on record with respect to the proposal for confiscation of the impugned goods under Sections **111(d), 111(m) and 111(o)** of the Customs Act, 1962.

The goods involved are **Black Pepper (CTH 090411)**. I find that import of Black Pepper, including that of Vietnamese origin, is not prohibited or restricted under the Customs Act, the Foreign Trade (Development and Regulation) Act, 1992, or the prevailing Foreign Trade Policy. The dispute in the present case relates to mis-declaration of country of origin and wrong availment of preferential duty benefit under Notification No. 68/2012-Cus dated 31.12.2012 (SAFTA). In the absence of any statutory prohibition on import of the impugned goods, the essential condition for invoking Section 111(d) is not satisfied. Accordingly, I hold that the goods are not liable to confiscation under Section 111(d) of Customs Act, 1962.

As regards Section 111(m), I find that country of origin is a material particular for claiming preferential duty under the SAFTA notification. The laboratory test reports of ICAR-IISR establish that the goods covered under Bill of Entry Nos. 3377688 dated 25.09.2017 and 3420476 dated 28.09.2017 were of Vietnamese origin, whereas the same were declared as of Sri Lankan origin in the Bills of Entry. Such incorrect declaration resulted in wrongful claim of concessional duty. I therefore hold that the said goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.

Further, the benefit of Notification No. 68/2012-Cus is subject to fulfilment of the SAFTA Rules of Origin, which require the goods to be wholly produced or obtained in the exporting country. In view of the established finding that the impugned goods are of Vietnamese origin, the mandatory condition of the notification has not been fulfilled. Consequently, the goods covered under the aforesaid Bills of Entry are also liable to confiscation under Section 111(o) of the Customs Act, 1962.

**22. Applicability of Redemption Fine under Section 125 of the Customs Act, 1962**

**I find that** the impugned goods, namely Black Pepper covered under Bill of Entry Nos. **3377688 dated 25.09.2017** and **3420476 dated 28.09.2017**, have been held liable to confiscation under

Sections **111(m) and 111(o)** of the Customs Act, 1962 due to mis-declaration of country of origin and non-fulfilment of the conditions of Notification No. **68/2012-Cus dated 31.12.2012**. I further find that import of Black Pepper is **not prohibited**, and therefore, in terms of Section **125(1)** of the Customs Act, 1962, the importer is required to be given an option to redeem the goods on payment of fine in lieu of confiscation.

**I further find that** the impugned goods were provisionally released against bond and bank guarantee and are not physically available for confiscation. However, it is a settled position of law that redemption fine under Section 125 is imposable even when goods are not available, provided they were liable to confiscation at the time of import. The provisional release of goods does not extinguish the liability to confiscation or the consequential imposition of redemption fine.

**23.** I have examined the liability of **M/s BhikanLal Raj Kumar**, the importer firm, in light of the established mis-declaration of country of origin and the consequent liability of the impugned goods to confiscation under Sections **111(m) and 111(o)** of the Customs Act, 1962. I find that the firm imported the subject consignments of Black Pepper and availed preferential duty under **Notification No. 68/2012-Cus dated 31.12.2012** by declaring the goods as of Sri Lankan origin, whereas it has been conclusively held that the goods were not of Sri Lankan origin and that the benefit of a conditional exemption was wrongly availed. Since declaration of country of origin is a material declaration, the importer firm is responsible for the correctness thereof; however, I note that the Certificates of Origin relied upon were issued by designated authorities and have not been found to be forged or fabricated, and that the incorrectness of the declared origin was established only through post-import scientific DNA analysis, with no direct evidence of prior knowledge or intentional use of false documents by the firm. In these circumstances, I hold that **penalty under Section 112(a)** of the Customs Act, 1962 is **imposable on M/s BhikanLal Raj Kumar** for acts of omission and lack of due diligence which rendered the goods liable to confiscation, whereas **penalty under Section 114AA** of the Customs Act, 1962 is **not imposable** in the absence of evidence of knowing or intentional use of false or incorrect documents.

**24.** I have examined the role of **Shri Sandeep Aggarwal, Senior Manager of M/s BhikanLal Raj Kumar**, in light of the evidence on record, including his statement recorded under Section 108 of the Customs Act, 1962, and the finding that the impugned goods are liable to confiscation under Sections **111(m) and 111(o)** of the Act. I find that he was actively managing the import operations and was responsible for procurement and filing of import documents, and that the declaration of country of origin, being a material declaration directly linked to availment of preferential duty under **Notification No. 68/2012-Cus**, was made under his supervision. By failing to exercise due diligence in verifying the origin of the goods before claiming such benefit, his acts of omission facilitated improper importation and rendered the goods liable to confiscation; accordingly, **penalty under Section 112(a)** of the Customs Act, 1962 is **imposable** on him. At the same time, I note that the Certificates of Origin were issued by designated authorities of the exporting country and have not been found to be forged or fabricated, and that the incorrectness of the declared origin was established only through post-import scientific analysis, with no evidence to show that Shri Sandeep Aggarwal knowingly or

intentionally used false or incorrect documents at the time of import. Since such mens rea is a mandatory requirement for invocation of **Section 114AA**, I hold that **penalty under Section 114AA of Customs Act, 1962 is not imposable.**

**25. Final Assessment and Differential Duty:** The subject consignments covered under the Bills of Entry as detailed in Table-III have been assessed provisionally. The assessment thereof is required to be finalised under Section 18 (2) of the Customs Act, 1962 after denying the benefit of Notification No. 68/2012-Cus dated 31.12.2012 as amended. The total duty payable on the said live consignment is Rs.1,40,98,184/- as against the declared duty of Rs. 23,84,839/-. Consequently, differential duty in respect of this import, as detailed in the Table III totally amounting to Rs.1,17,13,345/-, is payable by M/s BhikanLal Raj Kumar under the provisions of Section 18 (2) of the Customs Act, 1962 along with interest at the applicable rate under Section 18(3) *ibid*.

### **ORDER**

**26.** In view of above findings, I pass the following order:

(i) Benefit of Notification No. 68/2012-Cus dated 31.12.2012 as amended is denied and the goods are ordered to be assessed to the rate of duty applicable to the relevant Customs Tariff Item as detailed in the Table III above.

(ii) Bills of Entry of live consignment as detailed in Table III above, assessed provisionally, are ordered to be finalised under Section 18 (2) of the Customs Act, 1962 after denying the benefit of Notification No. 68/2012-Cus dated 31.12.2012 as amended. The total duty payable on the said live consignment is **Rs. 1,40,98,184/-** as against the declared duty of **Rs. 23,84,839/-**. Consequently, differential duty in respect of this consignment, as detailed in the Table III totally amounting to **Rs. 1,17,13,345/-**, is ordered to be payable by M/s BhikanLal Raj Kumar under the provisions of Section 18(2) of the Customs Act, 1962 along with interest under Section 18 (3) of the Customs Act, 1962.

(iii) Duty amount of **Rs. 23,84,839/-** as declared and paid by the importer at the time of filing Bills of Entry, is appropriated towards the total duty payable on the goods imported under the said bills of entry.

(iv) Live consignments imported vide the Bills of Entry with declared assessable value of **Rs. 1,74,68,786/-** as detailed in Table III above, are held liable for confiscation under the provisions of Section 111 (m) & (o) of the Customs Act, 1962. Since the goods are not available, having been provisionally released, a redemption fine of **Rs. 15,00,000/-** (Rupees Fifteen Lakhs only) is imposed in lieu of confiscation.

(v) Penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs only)** is levied on M/s BhikanLal Raj Kumar under Section 112 (a) of the Customs Act, 1962 for the omissions and commissions which made the impugned goods liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

(vi) No penalty is imposed on M/s BhikanLal Raj Kumar under Section 114AA of the Customs Act 1962.

(vii) Penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs only)** is levied on Shri Sandeep Agrawal, Senior Manager of M/s BhikanLal Raj Kumar under Section 112 (a) of the Customs Act, 1962 for the omissions and commissions which made the impugned goods liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

(viii) No penalty is imposed on Shri Sandeep Agrawal, Senior Manager of M/s BhikanLal Raj Kumar under Section 114AA of the Customs Act 1962.

(ix) Bank guarantee dated 16.03.2018 of **Rs. 47,11,444/-** executed against provisional release of goods against the said Bills of Entry, is ordered to be encashed and bond is ordered to be enforced for recovering the differential duty, interest, penalty and fine payable consequent to adjudication.

**27.** This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/ firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

**(DR. KUNDAN YADAV)**

(डॉ. कुन्दन यादव)

सीमा शुल्क आयुक्त /Commissioner of Customs,  
एनएस-IV, जेएनसीएच /NS-IV, JNCH.

To,

1. M/s BhikanLal Raj Kumar (IEC No.0588118818),  
Through Sandeep Agrawal,  
2035, Katra Tobacco, Khari Baoli, Delhi, 110006.
2. Shri Sandeep Aggarwal,  
Senior Manager of M/s BhikanLal Raj Kumar,  
2035, Katra Tobacco, Khari Baoli, Delhi, 110006.

Copy to:

1. The ADG, DRI, MZU, Mumbai
2. AC/DC, Chief Commissioner's Office, JNCH
3. AC/DC, Centralized Revenue Recovery Cell, JNCH
4. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
5. EDI Section for displaying on website
6. Office Copy.

