

	<p style="text-align: center;">सीमा शुल्क के आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PR. COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj- mundra@gov.in</p>
A. File No.	GEN/ADJ/COMM/34/2025-Adjn-O/o Pr. Commr- Cus-Mundra
B. Order-in-Original No.	MUN-CUSTM-000-COM-52-25-26
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	15.01.2026 15.01.2026
E. SCN No. & Date	GEN/ADJ/COMM/34/2025-Adjn dated 20.01.2025
F. Exporter/Noticee/Party	M/s. Jay Ambe Agro
G. DIN	20260171MO000000B7D1

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

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

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs. 50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद सं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs. 5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

BRIEF FACTS OF THE CASE

1. Intelligence:

A specific intelligence was received in the office of the Directorate of Revenue Intelligence (Hqrs.), 7th Floor, Drum Shaped Building, I. P. Bhawan, I. P. Estate, New Delhi (hereinafter referred to as 'DRI') which indicated undervaluation in the export of rice. The intelligence further indicated that after imposition of duty on export of rice with effect from 09.09.2022, several exporters, including **M/s Jay Ambe Agro**, 93, Opposite Jadaba Hall, Near HP Petrol Pump, Jetalpur, Ahmedabad, Gandhinagar, Gujarat-382426, having IEC No. **0809017628** (hereinafter referred to as 'the exporter' for sake of brevity), were engaged in short payment of export duty by resorting to undervaluation by claiming abatement of duty from the assessable value. Thus, export duty was not being paid on the transaction value of the export goods (i.e. FOB Value) as provided u/s 14 of the Customs Act, 1962 instead the same was being paid on a reduced value by wrongly declaring the same as FOB Value thus causing short-payment of the appropriate duty of Customs.

2.1 Preliminary analysis of the Intelligence revealed that export duty at the rate of 20% *ad valorem* was imposed on export of rice vide CBIC Notification No. 49/2022-Cus. dated 08.09.2022.

2.2 Scrutiny of the export data pertaining to the said exporter revealed that they were evading duty on export of rice by adopting two different methods i.e. (i) by claiming wrongful deduction of export duty from the transaction value, (ii) by covertly taking reimbursement of export duty from the overseas buyer (against separate invoice & debit note other than export invoice submitted to the customs) without even claiming the same as deduction in the shipping bills (iii) by declaring excess freight amounts.

2.3 The exporter used to negotiate a specific price for sale of their export consignment which was received by them from the overseas buyer as 'consideration' for sale of rice. Thus the 'consideration/negotiated price' was 'the actual transaction value' for their export consignment on which the exporter ought to have paid the 20% export duty. However, to evade duty, the exporter had artificially bifurcated the afore-said negotiated price/total consideration, in two parts i.e. (i) 'price of goods' and (ii) 'export duty amount'. The exporter had declared the reduced value 'price of goods' as their transaction value and the other part of the consideration which was

equal to the 'export duty amount' was not included by them in their 'transaction value'. Instead, the same was claimed as 'deduction' and was declared in the Shipping Bills under the Head "Deduct/Deduction". Thus, a part of consideration, equal to the 'export duty amount', was not included in the transaction value for payment of export duty causing short payment of duty.

2.4 In several other cases of export of rice on CIF/CF incoterm basis, investigation revealed that the exporter had declared excess freight amounts than the actual freight amounts paid by them to the shipping lines/freight forwarders. In such shipments, FOB price is deduced from the CIF/CF prices by deducting the actual freight amounts paid by the exporter. By claiming excess freight amounts in the shipping bills, the exporter had wrongly deducted a part of the consideration/transaction value which is equal to the excess freight amounts claimed by them. Thus, a part of consideration, was not included in the transaction value for the payment of export duty in all such export shipments causing short payment of duty.

2.5 From the preliminary scrutiny of the export data, discussed in above paras, it appeared that the exporter had treated the actual transaction value (i.e. actual FOB Value) of their export goods as cum-duty FOB Value and they have declared the lesser transaction value by wrongly claiming abatement of duty from the actual transaction value and by claiming excess freight amounts in the shipping bills. By adopting the above-mentioned modus operandi, the exporter had been evading the payment of duty on the differential value between the actual transaction value of the export goods (i.e. FOB Value) and their declared reduced FOB value.

2.6 Valuation of the goods is covered by Section 14 of the Customs Act, 1962 which provides that 'the value of the ... export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold ... for export from India for delivery at the time and place of exportation. Further, Customs Valuation (Determination of Value of Export Goods) Rules, 2007 (CVR, 2007) notified vide [M.F. (D.R.) Notification No. 95/2007-Cus (N.T.), dated-13-09-2007] also provide that value of the export goods shall be its transaction value. Rule 2 (1) (b) of the CVR, 2007 defines the term 'transaction value' as the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962. Further rule 3(1) of CVR, 2007 also stipulates that subject to rule 8 (providing for rejection of the declared value), the value of export goods shall be the transaction value. CVR, 2007 came into effect from 10.10.2007.

2.7 This practice of payment of export duty on cum-duty FOB Value was prevalent prior to the year 2009. CBIC Circular No. 18/2008-Cus. dated 10.11.2008 in this regard stipulated that with effect from 01.01.2009, the

practice of computation of export duty shall be changed; that for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.

Initiation of investigation:

3.1 Pursuant to the afore-said intelligence and apparent undervaluation of the export goods, investigation was initiated against various exporters of the said commodity including M/s Jay Ambe Agro, 93, Opposite Jadaba Hall, Near HP Petrol Pump, Jetalpur, Ahmedabad, Gandhinagar, Gujarat-382426 (bearing Importer Exporter Code No. 0809017628), by issuance of summons under the provisions of section 108 of the Customs Act, 1962. It was a partnership firm owned by the family members of Sh. Jeewat Santhosh Kumar Maheshwari with Sh. Jeewat Santhosh Kumar Maheshwari, Sh. Santhosh Kumar Jairamdas Maheshwari and Smt. Mandovariben as its partners.

3.2 Vide summons dated 05.07.2024 24.07.2024 and 13.01.2025 issued to M/s Jay Ambe Agro under the provisions of the Customs Act, 1962, documents related to the investigation such as shipping bills, export invoices, freight invoices, bill of lading and Bank Realization Certificates etc. were requested from the exporter.

3.3 In pursuance of the summons issued to M/s Jay Ambe Agro, the exporter sought postponement of proceedings and subsequently vide letter dated 16.01.2025 submitted copies of the export documents such as export invoices, shipping bills, freight invoices, bank realization certificates and shipment wise details of remittances received by them and ocean freight amounts paid by them pertaining to export of rice made by them during the period F.Y. 2022-23, F.Y. 2023-24 (total pages 822 pages).

4. During investigation, statements dated 16.01.2025 of Sh. Jeewat Santhosh Kumar Maheshwari, Partner, M/s Jay Ambe Agro, was recorded u/s 108 of the Customs Act, 1962.

5.1 In his statement recorded u/s 108 of the Customs Act, 1962, Sh. Jeewat Santhosh Kumar Maheshwari, Partner, M/s Jay Ambe Agro *inter alia* stated that M/s Jay Ambe Agro was incorporated in the year 2009 by his father; that presently he along with his father Sh. Santhosh Kumar Jairamdas Maheshwari and his mother Smt. Mandovariben were the only three partners of the said firm; that he joined as partner of the said firm in the year 2017/2018; that he and his father owned 40% share each in the said firm and his mother owned only 20% share; that he looked the whole ambit of accounts and finance, taxation and financial compliances, direct

taxes, indirect taxes, production, sale purchase, exports etc. of the said firm; that M/s Jay Ambe Agro is engaged in the business of production/milling and trading of rice; that his father looked after the production/milling work of rice but his mother was only a sleeping partner and she did not look after any work in the said firm; that all the business activities of the said export firm related to export and trading of rice were looked after by him only; that trading of rice included domestic trading in India as well as exports to African countries through traders based in Singapore and Dubai; that they had exported around 47 shipments of dutiable rice during the period from September, 2022 to July, 2023; after ban on export of white rice they stopped exporting rice and traded only domestically; that vide his letter dated 16.01.2025 , he had submitted copies of all the export documents pertaining to export of rice by his company which included copies of shipping bills, commercial invoices, packing list, bill of lading, bank realization certificates, debit notes, and freight invoices etc.; that their major buyers of rice were M/s MOI International (Singapore) Pte Ltd., Singapore, M/s Devendra Trading LLC, Dubai & M/s Jatlee Commodities DMCC, Dubai; that the rice purchased by the above mentioned traders/buyers was consigned to a third party as informed by the buyers; that mostly the shipments were consigned to the African countries;

5.2 He further stated that the procurement of rice for export was handled by him; that they had procured rice from various rice millers based in Gujarat, Karnataka, Bihar, Uttar Pradesh, Maharashtra, Madhya Pradesh etc.; that they also purchased paddy from farmers based in Gujarat and processed the same in their own mill; that the rice purchased from millers/ processed and milled in their own mill was quality- checked with the help of a third party surveyor which was then packed in PP and BOPP bags marked with the buyer's brand name and the same was dispatched to the nearby port and exported to the country of destination as informed by the buyers.

Their payment term was 100% CAD (cash against documents) i.e. they submitted the export documents to their bank in India which provided the same to the bank of the buyer in foreign country; that the bank of the buyer then used to notify the buyer about receipt of the documents; that thereafter the buyer used to release the payment which was received in their bank account.

5.3 On being asked he further stated that the term 'FOB' meant 'Free on Board'; that as per his understanding of the said term, all expenses to load the export goods on the vessel were to be included in the value of shipments exported on FOB incur term basis; that loading of the export goods in the foreign going vessel takes place after clearance of the goods by the customs authorities and after the payment of export duty thereon; that all the

expenses made by for loading the export goods on to the vessel were included by them in the FOB value of the goods declared in the shipping bills.

5.4 On being shown the print out of incoterm 2020 from Wikipedia which stated that in FOB Inco terms the costs related to loading at origin, export custom declaration, carriage to the port of export, unloading of truck in the port of export, loading on the vessel in the port of export are borne by the seller of the export cargo; that all costs subsequent to the loading of the export cargo on to the vessel such as carriage to the port of import and all other expenses made subsequently are to be borne by the buyer of the export cargo.

On being asked regarding the time and place of exportation in respect of export of goods, he stated that the place of exportation is on board the vessel after custom clearance of the export cargo i.e. after issuance of Let Export Order by the proper officer of customs and time of exportation is the time when the export goods are loading on board the vessel.

5.5 On being asked about his understanding about the delivery at the time and place of exportation in respect of export goods, he stated that delivery of the export goods takes place when the export goods are loaded on the foreign going vessel and bill of lading is issued by the master of the vessel.

5.6 On being shown the provisions of section 14 of the Customs Act, 1962 and Rule 2(1) (b) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, he stated that he had gone through the provisions of section 14 of the Customs Act, 1962 and Rule 2(1) (b) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and after going through the said rules, he admitted that the export duty was payable on the transaction value of the export goods and the transaction value should be taken as the value for delivery of the export goods at the time and place of exportation; that the exportation takes place when the export goods are loaded on the foreign going vessel after clearance of the goods from the Customs Authorities at the port of export; that after payment of applicable duties on such export goods, the goods are loaded on to vessel for sail to the overseas destination; thus all the expenses for loading the export goods on the vessel are included in the transaction value for the purposes of the Customs Tariff Act, 1975 and the Customs Act, 1962; that these expenses included cost of the procurement of the export goods, transportation, insurance etc. for transportation of the goods to the port of exportation for clearance from the customs authorities, expenses of packing, handling at port, clearance charges at port including export duties etc. and

charges/expenses made for loading of such goods on the vessel; that all these expenses are included in the transaction value of the export goods for the purposes of the Customs Tariff Act, 1975 and the Customs Act, 1962 and for the purposes of calculation and payment of export duties; that as per the incoterms, such transaction value is referred as the FOB Value of the export goods wherein all costs and risks up to the loading of the export goods in the ship are borne by the seller. If the consignment is exported on CIF basis, the cost of ocean freight and insurance charges paid are deducted from the CIF value to calculate the FOB Value for the payment of export duty.

5.7 In this regard, he stated that in respect of export of rice made by them in their export firm namely M/s Jay Ambe Agro, they had not paid the export duty on the transaction value as contemplated under Section 14 of the Customs Act, 1962 instead they had paid export duty on a value which was lesser than the transaction value stipulated under Section 14 of the Customs Act, 1962; that they had deducted a part of the transaction value which was equal to the amount of export duty from the actual transaction value as contemplated under Section 14 of the Customs Act, 1962; that they had paid export duty on cum-duty FOB Value instead of the actual FOB (i.e. transaction value u/s 14 of the Customs Act, 1962); that they had recovered the full transaction value inclusive of export duty from the foreign buyer of the exported rice in case of the consignments exported on CIF/CNF/FOB basis; that in case of the consignments exported by them on CIF basis, they had recovered ocean freight and insurance charges also in addition to the FOB value of the export goods; that thus in both type of consignments exported by them either on FOB basis or on CNF/CIF basis, they had not paid duty on a part of the transaction value of the export goods which was equal to the duty amount paid by them on export of goods; that thus they had not paid the export duty on the transaction value contemplated under the provisions of section 14 of the Customs Act, 1962; that there was a short payment of duty on account of wrong deduction of the said amount (equal to the amount of 20% duty paid on export) from the transaction value of exported goods (i.e. FOB value).

5.8 On going through a printout of CBIC Circular No. 18/2008-cus dated 10.11.2008, he stated that the CBIC circular also provided that the value for charging export duty shall be the FOB value of the export goods and the practice of calculation of the FOB value as cum-duty price has been discontinued by the CBIC with effect from 01.01.2009 as per the said circular.

In this regard, on being asked as to whether the deduction amounts separately claimed by them from the buyer of the exported rice were includible in the FOB transaction value for calculation of the export duty, he stated that since these charges (towards export duty) were also part of their cost and expenses incurred for effecting the export of goods on FOB basis and the same had been received by them from the supplier, the same should be included in the transaction value for calculation of the export duty.

5.9 He further stated that after the imposition of duty on export of rice with effect from September, 2022, for a period of around 4-5 months, they presented an Invoice having lower FOB value before the Customs authorities which didn't include all the expenses (such as export duty) incurred by them for effecting the said export; that in those cases of export, they had not claimed any deduction of the duty amount in the shipping bills filed by them; that for receipt of remittances from the buyer in such cases, they had prepared a separate Invoice cum packing list which included the actual transaction value of the export goods and the same was sent to the Buyer/ Bank to receive remittances; that they had also issued a debit note to the buyers for recovery of export duty amount from them and the same was also submitted by them to the banks for processing of the duty amount recovered from the buyer over and above the invoice amount declared before the customs authorities.

5.10 He further stated that for example, shipment of rice exported by them vide shipping bill no. 4497609 dated 28.09.2022, they had declared , in the shipping bill - Invoice value of USD 54945, FOB Value of USD 40500, Freight amount of USD 14175, Insurance of USD 270, Deduction amount as 'nil'; that in the corresponding invoice cum packing list bearing no. 331 submitted to the customs authorities they had declared the same invoice value of USD 54945 i.e. FOB Value of USD 40500, Freight amount of USD 14175, Insurance of USD 270.

5.11 He further stated that in respect of the same shipment they had raised a separate invoice bearing the same no. i.e. invoice no. 331, to the buyer wherein the total invoice value was mentioned as USD 63045. The said total invoice value of USD 63045 was inclusive of the export duty amount of USD 8100 equal to Rs. 637470/- at exchange rate of Rs. 78.7 per USD (calculated @ 20% on the declared FOB value of USD 40500); that in respect of the said shipment they had raised a debit note for an amount of USD 8100 to the buyer which was also submitted by them to the bank for processing the receipt of the said amount; that in respect of the said shipment, they had recovered total amount of USD 63045/- from the buyer out of which an amount of USD 54945 has been shown in the bank

realization certificate whereas the remaining amount of USD 8100 was not shown in the BRC; that the said amount of USD 8100 had been processed by the banks under RBI Accounting Code P1306 for refund of taxes; that after going through the provisions of section 14 of the Customs Act, 1962 and aforesaid CBIC Circular, he had understood that actual FOB Value in respect of the aforesaid shipment should have been as 48600USD (40500 USD + 8100 USD) on which export duty should have been paid by them.

5.12 On being asked he further stated that after around 4-5 months, as per the practice followed by some other exporters if rice, they started claiming deduction of the export duty paid amounts in the shipping bills; that in those cases also, they had declared the lesser FOB Value for payment of export duty in the shipping bills; that in those cases, they had prepared two separate Invoice cum packing list. Invoice cum packing list having lower FOB Value (not containing duty amount) was submitted by them to the customs authorities for payment of export duty, whereas a separate invoice cum packing list having actual FOB amount (inclusive of duty amount) thus having actual consideration amount to be received by them from the buyer for export of the goods was issued to the buyer and banks along with a debit note for recovery of export duty amount; that in all such cases they had recovered the export duty amount from the buyer but they had claimed the said duty paid amount as deduction in the shipping bills.

5.13 In this regard, he further stated that, for example, in respect of the shipment of rice exported by them vide shipping bill no. 2436149 dated 13.07.2023, they had declared, in the shipping bill - Invoice value of USD 174555, FOB Value of USD 133650, Freight amount of USD 40905, Deduction amount of USD 26730. In the corresponding invoice cum packing list bearing no. 51/23-24 submitted to the customs authorities they had declared the invoice value of USD 174555 CNF i.e FOB Value of USD 133650, Freight amount of USD 40905. In respect of the same shipment, they had raised a separate invoice bearing the same no. i.e. invoice no. 51/23-24, to the buyer wherein the total invoice value was mentioned as USD 201285. The said total invoice value of USD 201285 was inclusive of the export duty amount of USD 26730 equivalent to Rs. 2179832/- at exchange rate of Rs.81.55 per USD; that in respect of the said shipment, they had raised a debit note for an amount of USD 26730 to the buyer which was also submitted by them to the bank for processing the said amount; that in respect of the said shipment, they had recovered total amount of USD 201285/- from the buyer out of which an amount of USD 174555 had been shown in the bank realization certificate whereas the remaining amount of USD 26730 was not shown in the BRC. The said amount of USD 26730 had been processed by the banks under RBI

Accounting Code P1306 for refund of taxes; that after going through the provisions of section 14 of the Customs Act, 1962 and aforesaid CBIC Circular, he had understood that actual FOB Value in respect of the aforesaid shipment should have been 160380 USD (declared FOB Value of USD 133650 + deduction claimed amount of USD 26730) on which export duty should have been paid by them.

5.14 On being further asked he stated that in addition to the above, in respect of several shipments, actual freight amounts paid by them was lower than the freight amounts declared by them in the shipping bills; that for example, in respect of the aforesaid shipment of rice exported by them vide shipping bill no. 2436149 dated 13.07.2023, they had declared, in the shipping bill - Freight amount of USD 40905 (i.e. Rs. 33,35,803/-) whereas in the freight invoices for the said shipment raised by the freight forwarder M/s ISSGF India Pvt. Ltd. the freight mentioned was Rs. 13,33,743/-. Thus, in respect of the said shipment, they had declared an excess freight amount of Rs. 20,02,060/-. The said excess freight amount was also includible in the transaction value of the export goods for payment of duty as the said excess freight amount had also been recovered by them from the overseas buyer of the export goods.

5.15 He further stated that he had submitted an excel sheet containing details of actual ocean freight amounts paid by them on export of rice in respect of all shipments exported on CIF/CF incoterm basis along with copies of such freight invoices; that in addition to the above, he had also submitted details of total amounts which had been recovered by them from the overseas buyer of the export goods as reimbursement of duty under RBI accounting code P1306 along with copies of the debit notes; that he had also submitted details of total amounts received by them from the overseas buyer which had been reflected in the Bank Realization Certificate (BRC) of each shipment along with copy of the BRCs.

5.16 He further stated that on being shown the provisions of Section 14 and CBIC Circular No. 18/2008-cus dated 10.11.2008, he had understood that for payment of export duty, transaction value of the goods had to be arrived at and the transaction value of the export goods was the price of the goods inclusive of all expenses and costs up to the loading of the goods in the vessel after clearance by customs authority; that they had paid the duty by considering the FOB Value as cum duty FOB value instead of the actual FOB value of the export goods thus causing short payment of duty on export of rice; that it was done by them on being advised by some other exporters of rice; that now, he had understood that the short payment of duty on export of rice by paying duty on cum duty FOB value instead of the actual FOB was

a mistake on their part; that he had prepared details of all shipping bills for which they had paid duty on cum-duty FOB instead of actual FOB and would calculate their differential duty liability on account of such short payment of duty due to wrongful deductions claimed by them as well as due to presenting lower Invoice Value to the Customs and by declaring excess freight amounts in the shipping bills; that he would try to deposit their entire differential duty liability at the earliest.

6.1 The export documents and details submitted by the exporter during investigation were analysed and it was revealed that M/s Jay Ambe Agro had exported 48 shipments of rice having description as Indian Non-Basmati Raw Rice/ Indian IR-64 White Rice / Indian Long Grain Rice etc. by classifying the same under CTH 10063090 which were liable to export duty @ 20% *ad valorem* vide CBIC Notification No. 49/2022-Cus. dated 08.09.2022 and 49 /2023-Customs dated the 25th August, 2023. In their export documents (Shipping Bills), they have declared the following three values (i) Total Value, (ii) Invoice Value and (iii) FOB Value. The Total Value declared by them was inclusive of export duty and indicated the total consideration received by them from the overseas buyer. Invoice Value was declared after deducting from the Total Value, an amount equal to the export duty paid by them in respect of their export goods. FOB Value was declared after deduction of the ocean freight amounts and insurance amounts from the afore-said Invoice Value. Thus, total amount of deductions of Rs. 5,30,16,068/- were wrongly claimed by the exporter from the actual FOB Value in respect of their 35 export shipments as shown below.

6.2 Deduction amounts wrongly claimed by the exporter from the actual FOB Value of exports which were equal to the export duty:

Scrutiny of the export documents and details submitted by the exporter during investigation revealed that the exporter had at the time of filing of shipping bills claimed the deduction of an amount of Rs. 5,30,16,068/- in respect of the following 35 shipping bills filed by them. The export duty amounts paid by them in respect of these 35 shipping bills were also at Rs. 5,30,16,072/-. Therefore, the amounts claimed as 'deduction/deduct' were equal to the export duty amounts paid by them at the time of filing of these shipping bills. Investigation has revealed that these amounts claimed as 'deduction/deduct' were also recovered by the exporter from the overseas buyer in their bank accounts. The exporter had also confirmed these facts in his submission and statement recorded u/s 108 of the Customs Act, 1962.

Table: A



S. No.	Custom House	SB Number	SB Date	Invoice Number	Invoice Term	Declared Fob Value	Duty Amount	Deductio	Payment Received	Payment Received
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	Code					in Rs	Paid	n Claimed in Sb In INR	Through BRC In INR	As Reimbursement Of Taxes In INR
1	INMUN 1	2436066	13-07-2023	48/23-24	CF	73,76,198	14,75,240	14,75,240	1,16,69,805	-
2	INMUN 1	2436149	13-07-2023	51/23-24	CF	1,08,99,158	21,79,832	21,79,832	1,42,34,960	21,79,832
3	INMUN 1	2294541	07-07-2023	34/23-24	CF	63,41,328	12,68,266	12,68,266	72,72,711	12,68,266
4	INMUN 1	2272984	06-07-2023	45/23-24	CF	70,28,640	14,05,728	14,05,728	80,60,972	14,05,728
5	INMUN 1	1412747	31-05-2023	33/23-24	CF	70,45,920	14,09,184	14,09,184	80,80,790	14,09,184
6	INMUN 1	1310665	25-05-2023	31/23-24	CF	70,45,920	14,09,184	14,09,184	80,80,790	14,09,184
7	INMUN 1	1144662	19-05-2023	30/23-24	CF	70,45,920	14,09,184	14,09,184	80,58,771	14,09,184
8	INMUN 1	1063861	16-05-2023	012/23-24	CF	70,94,588	14,18,918	14,18,918	86,22,653	14,18,918
9	INMUN 1	1064829	16-05-2023	018/23-24	CF	35,47,294	7,09,459	7,09,459	43,11,326	7,09,459
10	INMUN 1	1064831	16-05-2023	019/23-24	CF	35,47,294	7,09,459	7,09,459	43,22,241	7,09,459
11	INMUN 1	1065248	16-05-2023	015/23-24	CIF	1,41,89,175	28,37,835	28,37,835	1,77,69,213	28,37,835
12	INMUN 1	9918835	10-05-2023	021/23-24	CF	67,67,145	13,53,429	13,53,429	86,88,141	13,53,429
13	INMUN 1	9702178	02-05-2023	014/23-24	CF	68,13,180	13,62,636	13,62,636	87,47,244	13,62,636
14	INMUN 1	9668742	29-04-2023	013/23-24	CIF	71,42,850	14,28,570	14,28,570	90,10,980	14,28,570
15	INMUN 1	9563391	26-04-2023	011/23-24	CIF	70,32,960	14,06,592	14,06,592	90,32,958	14,06,592
16	INMUN 1	9445075	21-04-2023	010/23-24	CF	1,31,86,800	26,37,360	26,37,360	1,69,21,839	26,37,360
17	INMUN 1	9294361	14-04-2023	008/23-24	CF	35,03,520	7,00,704	7,00,704	42,26,121	7,00,704
18	INMUN 1	9296404	14-04-2023	009/23-24	CF	1,31,38,200	26,27,640	26,27,640	1,68,57,041	26,27,640
19	INHZA1	9233239	12-04-2023	006/23-24	CF	1,31,38,200	26,27,640	26,27,640	1,68,60,690	26,27,640
20	INMUN 1	9250113	12-04-2023	007/23-24	CF	35,58,263	7,11,653	7,11,653	42,15,173	7,11,653
21	INMUN 1	9123075	06-04-2023	004/23-24	CF	70,80,480	14,16,096	14,16,096	85,85,082	14,16,096
22	INMUN 1	9123094	06-04-2023	005/23-24	CF	70,80,480	14,16,096	14,16,096	85,85,082	14,16,096
23	INMUN 1	9096385	05-04-2023	001/23-24	CF	1,32,75,900	26,55,180	26,55,180	1,70,37,405	26,55,180
24	INMUN 1	9058911	04-04-2023	002/23-24	CF	1,32,75,900	26,55,180	26,55,180	1,70,37,405	26,55,180
25	INMUN 1	8621421	20-03-2023	680	CF	34,29,608	6,85,922	6,85,922	42,92,541	6,85,922
26	INMUN 1	8528006	16-03-2023	679	CF	66,21,750	13,24,350	13,24,350	83,87,550	13,24,350
27	INMUN 1	8499936	15-03-2023	678	CF	34,21,238	6,84,248	6,84,248	42,82,065	6,84,248
28	INMUN 1	8406692	11-03-2023	676	CF	66,21,750	13,24,350	13,24,350	83,87,550	13,24,350
29	INMUN 1	7925620	20-02-2023	664	CF	34,27,515	6,85,503	6,85,503	43,23,092	6,85,503
30	INMUN 1	7932151	20-02-2023	665	CF	34,27,515	6,85,503	6,85,503	43,34,148	6,85,503
31	INMUN 1	7408755	31-01-2023	641	CF	65,24,550	13,04,910	13,04,910	77,64,215	13,04,910
32	INMUN 1	7289711	27-01-2023	640	CF	65,24,550	13,04,910	13,04,910	77,64,215	13,04,910

33	INIXY1	730930 4	27-01-2023	637	CF	90,61,875	18,12,375	18,12,375 5	1,09,34,663	18,12,375
34	INMUN 1	687879 1	11-01-2023	632	CIF	1,27,84,200	25,56,840	25,56,840 0	1,58,52,408	25,56,840
35	INMUN 1	688276 8	11-01-2023	631	CF	70,80,480	14,16,096	14,16,096 6	83,63,817	14,16,096
						26,50,80,3 41	5,30,16,07 2	5,30,16,0 68	33,09,75,6 52	5,15,40,82 9

6.2.1 For ease of reference, photo of Shipping Bill No. 2436149 dated 13-07-2023 is pasted below which clearly indicate that the deduction of Rs. 21,79,832/- (equivalent to USD 26730) has been claimed in the Shipping Bill which is equal to the cess amount (i.e. Export Duty) of Rs.21,79,832/- paid by them. The said amount has been deducted by the exporter from the actual transaction value (i.e. FOB Value) and export duty has not been paid on the said differential value of Rs.21,79,832/- which is though part of the consideration received by the exporter from the overseas buyer for sale of the consignment. For receipt and processing of the said export duty amount of Rs. 21,79,832/- (equivalent to USD 26730), in their bank account, separate debit note has been issued by the exporter to the buyer/bank authorities.

Photo of shipping bill No. 2436149 dated 13.07.2023

 <p>INDIAN CUSTOMS EDI SYSTEM CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS DEPARTMENT OF REVENUE - MINISTRY OF FINANCE GOVERNMENT OF INDIA</p>		Port Code		SB No	SB Date						
		INMUN1		2436149	13-JUL-23						
IEC/Br		0809017628		0							
GSTIN/TYPE		24AAGFJ9066R1ZK GSN									
CB CODE		AARFD5233DCH002									
TYPE		INV	ITEM	CONT							
Nos		1	1	0							
PKG		16200	G.WT	MTS	406.296	* SB22270720231742					
MUNDRA SEZ PORT, MUNDRA, GUJARAT											
PART - I - SHIPPING BILL SUMMARY											
A STATUS	1.MODE	2.ASSESS	3.EXMN	4.JOBING	5.MEIS	6.DBK	7.RODTP	8.LICENCE	9.DFRC	10.RE-EXP	11.LUT
	SEA	Y	Y	N	Y	Y	N	N	N		Y
	12.PORT OF LOADING	INMUN1 (Mundra)				13.COUNTRY OF FINAL DESTINATION BENIN					
	14.STATE OF ORIGIN	Gujarat				15.PORT OF FINAL DESTINATION BJCOO (Colonou)					
B DECLARAN DETAILS	16.PORT OF DISCHARGE BJCOO (Colonou)			17.COUNTRY OF DISCHARGE BENIN			1.EXPORTER'S NAME & ADDRESS				
	JAY AMBE AGRO						7.CONSIGNEE NAME & ADDRESS				
	93, OPP JADABA HALL, JETALPUR						TO ORDER				
	AHMEDABAD						2.Type Private				
C VALU SUMMA	3. AD CODE:		0200849		8. GSTIN / TYPE		24AAGFJ9066R1ZK GSN				
	4.RBI WAIVER NO.& DT				9.FOREX BANK A/C NO.		31XXXXXXXXXX061				
	5.CB NAME		DAKSH SHIPPING AND LOGISTICS				10.DBK BANK A/C NO.		03XXXXXXXXX006		
	6.AEO				11. IFSC NO.		BKDN0120338				
E MANIFEST DETAILS	1.FOB VALUE	2.FREIGHT	3.INSURANC	4.DISCOU	5.COM	1.DBK CLAIM		2.IGST AMT	3.CESS AMT		
	10899157.5	3335803	0	0	0	3038			2179832		
	6.DEDUCTIONS	7.P/C	8.DUTY		9.CESS	4.IGST VALUE		5.RODTEP AMT	6.ROSC TL AMT		
	2179832	0	2179832			0			0		
F INVOICE SUMMARY	1.MAWB NO.	2.MAWB DT	3.HAWB NO.	4.HAWB DT	N.O.C.	1.SNO	2.INV NO.	3. INV AMT.	4.CURRENC		
						1	51/23-24	174555	USD		
	4. CIN NO.		5. CIN DT.	6. CIN SITE ID							
	23PCEG0720133371500		20-JUL-23	INMUN1							



 INDIAN CUSTOMS EDI SYSTEM CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS DEPARTMENT OF REVENUE - MINISTRY OF FINANCE GOVERNMENT OF INDIA		Port Code	SB No	SB Date					
		INMUN1	2436149	13-JUL-23					
		IEC/Br	0809017628	0					
		GSTIN/TYPE	24AAGFJ9066R1ZK GSN						
		CB CODE	AARFD5233DCH002						
		TYPE	INV	ITEM		CONT			
Nos	1	1	0						
MUNDRA SEZ PORT, MUNDRA, GUJARAT		PKG	16200	G.WT	MTS	406.296	* SB22270720231742		
PART - II - INVOICE DETAILS									
A. REF	1.S.No	2.INVOICE No. & Dt.	3.P.O.No. & Dt.	4.LoC No. & Dt	5.Contract No.&Dt	6.AD code	7.INVTERM		
	1	51/23-24 13/07/2023				0200849	CF		
B. TRANSACTION PARTIES	1.EXPORTER'S NAME & ADDRESS			2.BUYER'S NAME & ADDRESS					
	JAY AMBE AGRO 93, OPP JADABA HALL, JETALPUR 382426			ETSHACHIMOU MAHAMADOU... B.P 57 TAHOUA - NIGER					
	3.THIRD PARTY NAME & ADDRESS			4.BUYER AEO STATUS					
	NOTIFY 2 : DEVENDRA TRADING L L C NOTIFY 3 : DEVENDRA TRADING PTE. LTD								
C.VAL DTLs	1.INVOICE VALUE	2.FOB VALUE	3.FREIGHT	4.INSURANCE	5.DISCOUNT	6.COMMISON	7.DEDUCT	8.P/C	9.EXCHANGE RATE
	174555 USD	133650 USD	40905 USD	0	0 USD	0 USD	26730 USD		1 USD INR 81.55
	1.ItemSNo	2.HS CD	3.DESCRPTION		4.QUANTITY	5.UQC	6.RATE	7.VALUE(F/C)	
	1	10063090	INDIAN LONG GRAIN NON - BASMATI WHITE RI CE PKD IN 25 KG BOPP STRONG BAGS.		405	MTS	497	201285	

Photo of Commercial Invoice No. 51/23-24 dated 13.07.2023 submitted to the overseas buyer.



INVOICE CUM PACKING LIST						
Date : 13-07-2023			Invoice No : 51/23-24			
Exporter : JAY AMBE AGRO™ NEAR JADABA HALL JETALPUR 382427 AHMEDABAD, GUJARAT GSTIN: 24AAGFJ9066R1ZK, IEC CODE: 0809017628 MOBILE NO : +91-9033066719 EMAIL: Jeewatmaheshwari22@gmail.com			NOTIFY PARTY 1: ETS HACHIMOU MAHAMADOU B.P. 57 TAHOUA - NIGER NOTIFY PARTY 2 : DEVENDRA TRADING L.L.C P.O. BOX 29287 DUBAI - U.A.E			
CONSIGNEE : TO ORDER			NOTIFY PARTY 2 : DEVENDRA TRADING PTE.LTD. 1 NORTH BRIDGE ROAD #11-10 HIGH STREET CENTRE SINGAPORE - 179094			
Port of Loading: MUNDRA, INDIA	Gross Weight: 406.296 MT Net Weight: 405.00MT		Transportation: By Sea	Payment Terms: 100% 15 DAYS BEFORE ARRIVAL OF VESSEL		
Port of Unloading: COTONOU, BENIN	TOTAL CONTAINER : 15*20 (27 MT EACH CONTAINER)		Currency: USD	Delivery Terms: CNF COTONOU, BENIN CLAUSE : " CARGO IN TRANSIT TO NIGER"		
COMMODITIES DESCRIPTION	HSN CODE	Country of Manufacture	Qty	UOM	Unit Price (USD)	Total Amount (USD)
16200 Bags packed in 25Kg Bags INDIAN LONG GRAIN NON BASMATI WHITE RICE Origin: Indian 5.8 MM LENGTH 2% DD & YELLOW 14% MOISTURE Packing: 25 Kg PP strong bags Packed in Buyer's " DIAMOND O " Brand . Supply Meant for Export Under Letter of Undertaking without Payment of Intergrated Tax (IGST) LUT ARN No. AI 13230226911 2% EMPTY BAGS SHIPPED WITH SHIPMENT FREE OF COST.	10063090	India	405	MT	497(CNF VALUE WITH DUTY)	201285.00
Amount in USD(words) : TWO LAKH ONE THOUSAND TWO HUNDRED EIGHTY FIVE ONLY.			TOTAL INVOICE VALUE			201285.00
Foreign Exchange Rate : INR 82.00			FREIGHT			-40905.00
			FOB WITH DUTY			160380.00
Amount in INR(words): FIFTY ONE LAKH THREE THOUSAND TWO HUNDRED SEVENTY ONLY .			DUTY			-26730.00
			TOTAL FOB VALUE			133650.00
Bank Details: Bank Name: BANK OF BARODA Account Number: 31030500000061 IFSC Code: BARBOSANAND Swift Code: BARBINBAHM						
Declaration: I/we hereby certify that the information on this invoice is true and correct and that the contents of this shipment are as stated above.						
			All disputes with respect to this invoice are subjected to Jetalpur Jurisdiction		Date: 13-07-2023	

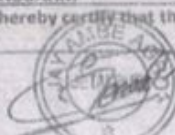
Photo of Commercial Invoice No. 51/23-24 dated 13.07.2023 submitted to the Customs Authorities

INVOICE CUM PACKING LIST						
Date : 13-07-2023			Invoice No : 51/23-24			
Exporter : JAY AMBE AGRO NEAR JADABA HALL JETALPUR 382427 AHMEDABAD, GUJARAT GSTIN: 24AAGFJ906GR1ZK, IEC CODE: 0809017628 MOBILE NO : +91-9033066719 EMAIL: jeewatmaheshwari22@gmail.com			NOTIFY PARTY 1: ETS HACHIMOU MAHAMADOU B.P. 57 TANOUA - NIGER NOTIFY PARTY 2 : DEVENDRA TRADING L.L.C P.O. BOX 29287 DUBAI - U.A.E.			
CONSIGNEE : TO ORDER			NOTIFY PARTY 2 : DEVENDRA TRADING PTE.LTD. 1 NORTH BRIDGE ROAD #11-10 HIGH STREET CENTRE SINGAPORE - 179094			
Port of Loading: MUNDRA , INDIA	Gross Weight: 406.296 MT Net Weight: 405.00MT		Transportation: By Sea	Payment Terms: 100 % 15 DAYS BEFORE ARRIVAL OF VESSEL		
Port of Unloading: COTONOU , BENIN	TOTAL CONTAINER : 15*20 (27 MT EACH CONTAINER)		Currency: USD	Delivery Terms: CNF COTONOU , BENIN CLAUSE : " CARGO IN TRANSIT TO NIGER"		
COMMODITIES DESCRIPTION	HSN CODE	Country of Manufacture	Qty	UOM	Unit Price (USD)	Total Amount (USD)
16200 Bags packed In 25Kg Bags INDIAN LONG GRAIN NON BASMATI WHITE RICE Origin: Indian 5,8 MM LENGTH 2% DD & YELLOW 14% MOISTURE Packing: 25 Kg PP strong bags Packed in Buyer's " DIAMOND O " Brand . Supply Meant for Export Under Letter of Undertaking without Payment of Intergrated Tax (IGST) LUT ARN No. AD7403230226911 25 KTY BAGS SHIPPED WITH SHIPMENT FREE OF COST.	10063090	India	405	MT	431	174555.00
Amount in USD(words) : TWO LAKH ONE THOUSAND TWO HUNDRED EIGHTY FIVE ONLY.					TOTAL SUB VALUE	174555.00
Foreign Exchange Rate : INR 82.00						
Amount in INR(words): FIFTY ONE LAKH THREE THOUSAND TWO HUNDRED SEVENTY ONLY .					TOTAL INVOICE VALUE	174555.00
Bank Details: Bank Name: BANK OF BARODA Account Number: 3103050000061 IFSC Code: BARBOSANAND Swift Code: BARBINBAHM						
Declaration: I/we hereby certify that the information on this invoice is true and correct and that the contents of this shipment are as stated above.						
			All disputes with respect to this invoice are subjected to Jetalpur Jurisdiction		Date: 13-07-2023	

BRC details submitted by the exporter indicating receipt of USD 174555

S.No.	Name of the Exporter	IEC Code	Shipping Bill Number	Shipping Bill Date	Invoice Number	Invoice Date	Nature of Consignment	Actual freight amount paid (INR)	Actual Insurance amount paid (INR)	Payment received from overseas buyers (in Foreign Currency) (USD)		
										Through BPC	Through Debitment of taxes	Any other manner such as Debit Note/ Credit Note etc.
1	JAY AMBE AGRO	809017628	2436149	13/07/2023	51/23-24	13/07/2023	CF	1,333,744		174,555	26,730	-
2	JAY AMBE AGRO	809017628	2436066	13/07/2023	48/23-24	12/07/2023	CF	1,013,742		143,100	-	-

Copy of the Debit Note issued by the exporter for receipt of export duty amount from the overseas buyer

DEBIT NOTE						
Date : 03-10-2023			DEBIT NOTE : 29/23-24			
Exporter : JAY AMBE AGRO NEAR JADABA HALL JETALPUR 382427 AHMEDABAD, GUJARAT GSTIN: 24AAGF19066R1ZK, IEC CODE: 0809017628 MOBILE NO : +91-9033066719 EMAIL: jeewatmaheshwari22@gmail.com			NOTIFY PARTY 1: ETS HACHIMOU MAHAMADOU B.P. 57 TAHOUA - NIGER			
CONSIGNEE : TO ORDER			NOTIFY PARTY 2: DEVENDRA TRADING L.L.C P.O. BOX 29287 DUBAI - U.A.E			
Port of Loading: MUNDRA, INDIA		Gross Weight: 405.295 MT Net Weight: 405.00MT		Transportation: By Sea		Payment Terms: 100% 15 DAYS BEFORE ARRIVAL OF VESSEL
Port of Unloading: COTONOU, BENIN		TOTAL CONTAINER : 15*20 (27 MT EACH CONTAINER)		Currency: USD		Delivery Terms: CIF COTONOU, BENIN CLAUSE : " CARGO IN TRANSIT TO NIGER"
COMMODITIES DESCRIPTION	HSN CODE	Country of Manufacture	Qty	UOM	Unit Price (USD)	Total Amount (USD)
1. EXPORT DUTY INVOICE NO : 51/23-24 DATED : 13-07-2023	10063090	India	405	MT	66	26730.00
Amount in USD(words) : TWENTY SIX THOUSAND SEVEN HUNDRED THIRTY ONLY.					TOTAL SUB VALUE	26730.00
Foreign Exchange Rate : INR 82.00						
Amount in INR(words): TWENTY ONE LAKH NINETY ONE THOUSAND EIGHT HUNDRED SIXTY ONLY.					TOTAL INVOICE VALUE	26730.00
Bank Details: Bank Name: BANK OF BARODA Account Number: 3103050000061 IFSC Code: BARBOSANAND Swift Code: BARBIBBAHM						
Declaration: I/we hereby certify that the information on this invoice is true and correct and that the contents of this shipment are as stated above.						
			All disputes with respect to this invoice are subjected to Jetalpur Jurisdiction		Date: 03-10-2023	

6.3 Deductions amounts not claimed in Shipping Bills, however amounts equal to the export duty paid were received separately as reimbursement of taxes

In addition to above, in respect of the following 13 shipments of rice exported by M/s Jay Ambe Agro, the exporter had not claimed any deduction in the shipping bills filed by them, however, the exporter had stated that in respect of these shipments also, they have separately recovered the duty amount of **Rs. 1,86,30,696/-** from the overseas buyers of the export goods:

Table B

S. No.	Custom House Code	SB Number	SB Date	Declared Fob Value In INR	Duty Amount Paid in INR	Deduction Amount Claimed in Shipping Bill in INR	Value of Debit Note for Re-Imbursement of Duty Amount In INR	Payment Received as Reimbursement of Taxes In INR
1	INMUN1	6718623	05-01-2023	66,25,800	13,25,160	0	13,25,160	13,25,160
2	INMUN1	6626423	02-01-2023	66,25,800	13,25,160	0	13,25,160	13,25,160
3	INMUN1	6626482	02-01-2023	66,25,800	13,25,160	0	13,25,160	13,25,160
4	INMUN1	6574218	30-12-2022	66,25,800	13,25,160	0	13,25,160	13,25,160
5	INMUN1	5820847	30-11-2022	72,08,190	14,41,638	0	14,41,638	14,41,638
6	INMUN1	5677435	24-11-2022	34,40,273	6,88,055	0	6,88,055	6,88,055
7	INMUN1	5521235	17-11-2022	69,82,605	13,96,521	0	13,96,521	13,96,521
8	INMUN1	5199371	02-11-2022	69,91,110	13,98,222	0	13,98,222	13,98,222
9	INMUN1	4894015	18-10-2022	32,68,350	6,53,670	0	6,53,670	6,53,670
10	INIXY1	4625019	04-10-2022	1,18,05,000	23,61,000	0	23,61,000	23,61,000
11	INIXY1	4625218	04-10-2022	1,18,05,000	23,61,000	0	23,61,000	23,61,000
12	INIXY1	4625402	04-10-2022	1,19,62,400	23,92,480	0	23,92,480	24,00,350
13	INMUN1	4497609	28-09-2022	31,87,350	6,37,470	0	6,37,470	6,37,470
	Total			9,31,53,478	1,86,30,696	0	1,86,30,696	1,86,38,566

In respect of 13 SBs mentioned at Table B above, the amounts received over and above the declared invoice value as reimbursement of taxes (Rs.1,86,38,566/-) are equal to the export duty amounts (Rs. 1,86,30,696) paid by the exporter. Therefore, in respect of these 13 SBs, the total duty amount of Rs. 1,86,38,566/- recovered by the exporter from the buyer is liable to be included in their declared transaction value.

In respect of these shipments the exporter had not declared before the customs authorities at the port of export at the time of making exports, that they would recover or have recovered the higher amounts from the overseas buyers which are over and above the declared invoice value of these export shipments.

6.3.1 As may be seen from the copy of the Shipping Bill Number 4497609 dated 28-09-2023 pasted below, the exporter had not claimed any deduction amount in the shipping bill however, as per the details submitted by the exporter, they have separately recovered an amount of Rs. 6,37,470/- (USD 8100) which is equal to the export duty amount of Rs. 6,37,470/- (USD 8100) from the overseas buyer in their bank account. The aforesaid amount of Rs. 6,37,470/- (USD 8100) is over and above their declared invoice value of Rs. 43,24,172/- (USD 54,945) received by them from the overseas buyer, as reflected in the BRC of the said shipment. The exporter has raised a separate invoice to the overseas buyer wherein total invoice was mentioned as USD 63045/- which was inclusive of the export duty amount. In addition to the above, exporter had also issued Debit Note no. 15 dated 04.11.2022 to the overseas buyer of the goods, for receipt and processing of the said

export duty re-imburement amount of Rs. 6,37,470/- (USD 8100). Therefore, the exporter had suppressed the said amount Rs. 6,37,470/- (USD 8100) received by them separately from the buyer as reimbursement of export duty. They have neither declared the full amount to be received by them from the overseas buyer in their export invoice nor in the shipping bill submitted to the Customs Authorities. Thus, they have mis-declared the actual FOB Value in respect of all such shipping bills.

Shipping Bill Number 4497609 dated 28-09-2023


INDIAN CUSTOMS EDI SYSTEM CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS DEPARTMENT OF REVENUE - MINISTRY OF FINANCE GOVERNMENT OF INDIA		Port Code	SB No	SB Date	
MUNDRA SEZ PORT, MUNDRA, GUJARAT		INMUN1	4497609	28-SEP-22	
		IEC/Br	0809017628	0	
		GSTIN/TYPE	24AAGFJ9066R1ZK GSN		
		CB CODE	AARFD5233DCH002		
		TYPE	INV	ITEM	CONT
		Nos	1	1	0
		PKG	5400	G.WT	MTS 135.432 *SB22300920221256

PART - I - SHIPPING BILL SUMMARY												
A. STATUS	1.MODE	2.ASSESS	3.EXMN	4.JOBING	5.MEIS	6.DBK	7.RODTP	8.DEEC/DFIA	9.DFRC	10.RE-EXP	11.LUT	
	SEA	Y	Y	N	Y	Y	Y	N	N		Y	
B. DECLARANT DETAILS	12.PORT OF LOADING	INMUN1 (Mundra)				13.COUNTRY OF FINAL DESTINATION						
	14.STATE OF ORIGIN	GUJARAT				KENYA						
C. VALU SUMMARY	16.PORT OF DISCHARGE	KEMBA (Mombasa)				15.PORT OF FINAL DESTINATION						
	17.COUNTRY OF DISCHARGE	KENYA				17.COUNTRY OF DISCHARGE						
	18.COUNTRY OF DISCHARGE	KENYA				17.COUNTRY OF DISCHARGE						
D. EXPR.	1.EXPORTER'S NAME & ADDRESS					7.CONSIGNEE NAME & ADDRESS						
	JAY AMBE AGRO					TO ORDER.///.						
	93, OPP JADABA HALL, JETALPUR											
	AHMEDABAD					2.Type Private						
E. MANIFEST DETAILS	3. AD CODE: 0200849					8. GSTIN / TYPE						
	4.RBI WAIVER NO.& DT					24AAGFJ9066R1ZK GSN						
	5.CB NAME					9.FOREX BANK A/C NO.						
	6.AEO					31XXXXXXXXXX061						
F. INVOICE SUMMARY	1.FOB VALUE					2.IGST AMT		3.CESS AMT				
	3187350					1013		637470				
	6.DEDUCTIONS					4.IGST VALUE		6.ROSC TL AMT				
	0					31874		0				
G. INVOICE SUMMARY	1.MAWB NO.		2.MAWB DT		3.HAWB NO.		4.HAWB DT		5.N.O.C.		11. IFSC NO.	
	22PCEG0930284645400		30-SEP-22		INMUN1						BKDN0120338	
	4. CIN NO.		5. CIN DT.		6. CIN SITE ID		1.SNO		2.INV NO.		3. INV AMT.	
	22PCEG0930284645400		30-SEP-22		INMUN1		1		331		54945	
						4.CURRENC				USD		


INDIAN CUSTOMS EDI SYSTEM CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS DEPARTMENT OF REVENUE - MINISTRY OF FINANCE GOVERNMENT OF INDIA		Port Code	SB No	SB Date	
MUNDRA SEZ PORT, MUNDRA, GUJARAT		INMUN1	4497609	28-SEP-22	
		IEC/Br	0809017628	0	
		GSTIN/TYPE	24AAGFJ9066R1ZK GSN		
		CB CODE	AARFD5233DCH002		
		TYPE	INV	ITEM	CONT
		Nos	1	1	0
		PKG	5400	G.WT	MTS 135.432 *SB22300920221256

PART - II - INVOICE DETAILS								
A. REF	1.S.No	2.INVOICE No. & Dt.	3.P.O.No. & Dt.	4.LoC No. & Dt	5.Contract No.&Dt	6.AD code	7.INVTERM	
	1	331 28/09/2022				D200849	CIF	
B. TRANSACTION PARTIES	1.EXPORTER'S NAME & ADDRESS			2.BUYER'S NAME & ADDRESS				
	JAY AMBE AGRO			JUBA TRADING COMPANY LTD				
	93, OPP JADABA HALL, JETALPUR			P O BOX 179,				
	382426			JUBA SOUTH SUDAN				
3.THIRD PARTY NAME & ADDRESS			4.BUYER AEO STATUS					
C. VAL DTLs	1.INVOICE VALUE	2.FOB VALUE	3.FREIGHT	4.INSURANCE	5.DISCOUNT	6.COMMISON	DEDUCT	
	54945	40500	14175	270	0	0	0	
		8.P/C	9.EXCHANGE RATE					
		300	1 USD INR 78.7					
G. INVOICE SUMMARY	1.ItemSNo	2.HS CD	3.DESCRPTION		4.QUANTITY	5.UOE	6.RATE	7.VALUE(F/C)
	1	10063090	INDIAN LONG GRAIN NON BASMATI WHITE RICE PACKED IN 5400 BAGS IN 25KG BOPP STRONG BAGS		135	MTS	300	40500

Invoice No. 331 dated 28-09-2022 sent to the overseas buyer

INVOICE CUM PACKING LIST							
Date: 28-09-2022				Invoice No: 331			
Exporter: JAY AMBE AGRO NEAR JADABA HALL JETALPUR GAAM, JETALPUR 382427, AHMEDABAD, GUJARAT . GSTIN: 24AAGFJ9066R1ZK, IEC CODE: 0809017628 MOBILE NO: +91-9033066719, EMAIL: jeewatmaheshwari22@gmail.com				1st NOTIFY : JUBA TRADING COMPANY LTD P O BOX 179 , JUBA SOUTH SUDAN. 2nd NOTIFY : QUALITE PREMIERE FZE P.O. Box 326328 , RAS AL KHAIMAH UNITED ARAB EMIRATES Tel: +97143238803 operations@qpagro.com			
CONSIGNEE : TO ORDER							
Port of Loading: Mundra Port	Gross Weight: 135.432MT Net Weight: 135.00MT	Transportation: By Sea	Payment Term : 10% Advance Balance Upon Vessel Arrival.				
Port of Unloading: MOMBASA Port	Total Container: 5*20*(27MT each)	Currency: USD	Delivery Terms: CIF MOMBASA , KENYA				
CLAUSE : CARGO IN TRANSIT TO JUBA , SOUTH SUDAN							
Commodity Description	HSN Code	Country of Manufacture	Qty	UOM	Unit Price (USD)	Total Amount (USD)	
10 Bags packed in 25Kg Bags INDIAN LONG GRAIN NON BASMATI WHITE RICE (INDIAN ORIGIN) 5.9 MM LENGTH 2% DD & YELLOW 14 % MOISTURE Packing: 25 Kg BOPP STRONG BAGS Packed in Buyer's " THE KING " Brand . Supply Meant for Export Under Letter of Undertaking without Payment of Intergrated Tax (IGST) LUT ARN No.AD240222018090X	10063090	India	135	MT	467	63045.00	
2% PRINTED EMPTY BAGS TO BE SHIPPED WITH SHIPMENT FREE OF COST.							
Amount in USD(words): SIXTY THREE THOUSAND FOURTY FIVE ONLY.					TOTAL SUB VALUE	63,045.00	
Foreign Exchange Rate : INR 31.00					ADVANCE		
Amount in INR(words): FIFTY ONE LAKH SIX THOUSAND SIX HUNDPED FOURTY FIVE ONLY.					Total INVOICE Value	63,045.00	
Bank Details: Bank Name: BANK OF BARODA Account Number: 31030500000061 IFSC Code: BARBOSANAND Swift Code: BARBINBBAHM							
Declaration: I/we hereby certify that the information on this invoice is true and correct and that the contents of this shipment are as stated above.							
For			All disputes with respect to this invoice are subjected to Jetalpur Jurisdiction			Date: 28-09-2022	
Authorised Signatory							

Copy of the same Invoice No. 331 dated 28-09-2022 submitted to the Customs Authorities

INVOICE CUM PACKING LIST						
Date: 28-09-2022			Invoice No: 331			
Exporter: JAY AMBE AGRO NEAR JADABA HALL JETALPUR GAAM, JETALPUR 382427. AHMEDABAD, GUJARAT . GSTIN: 24AAGFJ8086R1ZK, IEC CODE: 0809017628 MOBILE NO: +91-9033086719, EMAIL: joewatmaheshwari22@gmail.com			1st NOTIFY : JUBA TRADING COMPANY LTD P.O BOX 179 . JUBA SOUTH SUDAN. 2nd NOTIFY : QUALITE PREMIERE FZE P.O. Box 326328 , RAS AL KHAIMAH UNITED ARAB EMIRATES Tel: +97143238863 operations@qpagro.com CONSIGNEE : TO ORDER			
Port of Loading: Mundra Port	Gross Weight: 135.432MT Net Weight: 135.05MT	Transportation: By Sea	Payment Term : 10% Advance Balance Upon Vessel Arrival.			
Port of Unloading: MOMBASA Port	Total Container: 5*20'(27MT each)	Currency: USD	Delivery Terms: CIF MOMBASA , KENYA CLAUSE : CARGO IN TRANSIT TO JUBA , SOUTH SUDAN			
Commodity Description	HSN Code	Country of Manufacture	Qty	UOM	Unit Price (USD)	Total Amount (USD)
00 Bags packed in 25Kg Bags INDIAN LONG GRAIN NON BASMATI WHITE RICE (INDIAN ORIGIN) 5.9 MM LENGTH 2% DD & YELLOW 14 % MOISTURE Packing: 25 Kg BOPP STRONG BAGS Packed in Buyer's " THE KING " Brand . Supply Meant for Export Under Letter of Undertaking without Payment of Intergrated Tax (IGST) LUT ARN No.AD240222018090X 2% PRINTED EMPTY BAGS TO BE SHIPPED WITH SHIPMENT FREE OF COST.	10063090	India	135	MT	300	40,500.00
Amount in USD(words): FIFTY FOUR THOUSAND NINE HUNDRED FOURTY FIVE ONLY.					TOTAL FOB VALUE	40,500.00
Foreign Exchange Rate : INR 81.00					Freight Cost	14,175.00
Amount in INR(words):= FOURTY FOUR LAKH FIFTY THOUSAND FIVE HUNDRED FOURTY FIVE ONLY.					Insurance Cost	270.00
					Total CIF Value	54,945.00
Bank Details: Bank Name: BANK OF BARODA Account Number: 31030500000061 IFSC Code: BARBOSANAND Swift Code: BARBINBBA1-M						
Declaration: I/we hereby certify that the information on this invoice is true and correct and that the contents of this shipment are as stated above.						
For				All disputes with respect to this invoice are subjected to Jetalpur Jurisdiction		Date: 28-09-2022
Authorised Signatory						

Copy of Debit Note issued by the exporter for receipt and processing of the export duty amount

DEBIT NOTE							
Date: 04-11-2022				DEBIT NOTE No: 15			
Exporter: JAY AMBE AGRO NEAR JADABA HALL, JETALPUR GAAM, JETALPUR 382427. AHMEDABAD, GUJARAT . GSTIN: 24AAGFJ9066R1ZK, IEC CODE: 0809017628 MOBILE NO: +91-9033066719, EMAIL: jeewatmaheshwari22@gmail.com				1st NOTIFY : JUBA TRADING COMPANY LTD P.O BOX 179 , JUBA SOUTH SUDAN. 2nd NOTIFY : QUALITE PREMIERE FZE P.O. Box 326328 , RAS AL KHAIMAH UNITED ARAB EMIRATES Tel: +97143238863 operations@cpagro.com 3rd NOTIFY : QUALITE PREMIERE MIDDLE EAST GENERAL TRADING LLC Westbury Tower 1, office 3203, Business Bay, Dubai, UAE			
Port of Loading: Mundra Port		Gross Weight: 135.432MT Net Weight: 135.00MT		Transportation: By Sea		Payment Term : 10% Advance Balance Upon Vessel Arrival.	
Port of Unloading: MOMBASA Port		Total Container: 5*20*(27MT each)		Currency: USD		Delivery Terms: CIF MOMBASA , KENYA CLAUSE : CARGO IN TRANSIT TO JUBA , SOUTH SUDAN	
Commodity Description		HSN Code	Country of Manufacture	Qty	UOM	Unit Price (USD)	Total Amount (USD)
EXPORT DUTY		10063090	India	135	MT	60.00	8,100.00
AGAINST INVOICE : 331 DATE : 18-09-2022							
Amount in USD(words): SIXTY THREE TOUSAND FOURTY FIVE .						TOTAL SUB VALUE	8,100.00
Foreign Exchange Rate : INR 81.00							
Amount in INR(words):= EIGHT THOUSAND ONE HUNDRED ONLY .						Total INVOICE Value	8,100.00
Bank Details: Bank Name: BANK OF BARODA Account Number: 31030500000061 IFSC Code: BARBOSANAND Swift Code: BARBINBAHM							
Declaration: I/we hereby certify that the information on this invoice is true and correct and that the contents of this shipment are as stated above.							
For		All disputes with respect to this invoice are subjected to Jetalpur Jurisdiction			Date: 04-11-2022		
Authorised Signatory							

Details of BRC indicating receipt of USD 54945

S.No.	Name of the Exporter	IEC Code	Shipping Bill Number	Shipping Bill Date	Invoice Number	Invoice Date	Nature of Consignment	Actual freight amount paid (INR)	Actual Insurance amount paid (INR)	Payment received from overseas buyers (in Foreign Currency) (USD)		
										Through BRC	Through Reimbursement of taxes	Any other manner such as Debt Note/Credit Note etc.
47	JAY AMBE AGRO	809017628	4497609	28/09/2022	331	28/09/2022	CIF	891,357		54,915	8,100	

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Directorate General of Foreign Trade | Ministry of Commerce and Industry | Government of India

Directorate General of Foreign Trade | Ministry of Commerce and Industry | Government of India

Bank Realisation Number	Bank Realisation Date	Date on which the amount is realized in the bank	FOB value realized in the foreign currency code	Bill ID	Shipping Bill Number	Shipping Bill Date	Shipping Bill Port	Bank Realisation Status	Utilisation Status
BARBOASHIRAM230371700	30/08/2023	14/12/2022	42892.0	049FBA013688023	4497609	28/09/2022	MUNDRA SEZ PORT, MUNDRA, GUJARAT	Fresh	No
BARBOASHIRAM230469091	28/08/2023	01/09/2022	12053.0	049FBA013688023	4497609	28/09/2022	MUNDRA SEZ PORT, MUNDRA, GUJARAT	Fresh	No

6.4 For reimbursement of the export duty from the overseas buyer, the exporter had declared RBI Accounting Purpose Code No. P1306 which is for refund of taxes, however, the following discussion indicate that the said purpose code is not meant for the receipt of export duty and export proceeds:

The exporter has claimed that the deduction/ deduct amount claimed by them in the shipping bill have been received by them from the overseas buyers in the form of reimbursement of taxes. They have further informed that the said transactions have been made under the purpose code P1306.

RBI purpose codes are unique identifiers assigned to various international transactions, enabling banks and financial institutions to classify and process remittances accurately. RBI has notified purpose codes for reporting forex transactions for Payment and Receipt purposes.

The Purpose codes for reporting forex transactions (for the purpose of *Receipt of amounts*) are further categorized into 16 different 'Purpose Group Name' which includes Exports (of Goods), Transportation, Travel, Financial Services, Royalties & License Fees, Transfers among others.

The following purpose codes pertaining to Export (of Goods) refers to the receipt of forex in respect of exports made from India.

Gr. No.	Purpose Group Name	Purpose Code	Description
01	Exports (of Goods)	P0101	Value of export bills negotiated / purchased/discounted etc. (covered under GR/PP/SOFTEX/EC copy of shipping bills etc.)
		P0102	Realisation of export bills (in respect of goods) sent on collection (full invoice value)
		P0103	Advance receipts against export contracts, which will be covered later by GR/PP/SOFTEX/SDF
		P0104	Receipts against export of goods not covered by the GR/PP/SOFTEX/EC copy of shipping bill etc.
		P0105	Export bills (in respect of goods) sent on collection.
		P0106	Conversion of overdue export bills from NPD to collection mode
		P0107	Realisation of NPD export bills (full value of bill to be reported)

Further, the purpose code P1306 referred by the exporter for reimbursement of taxes (i.e. export duty) falls under the group 'Transfer'.

Gr. No.	Purpose Group Name	Purpose Code	Description
13	Transfers	P1301	Inward remittance from Indian non-residents towards family maintenance and savings
		P1302	Personal gifts and donations
		P1303	Donations to religious and charitable institutions in India
		P1304	Grants and donations to governments and charitable institutions established by the governments
		P1306	Receipts / Refund of taxes

From the above, it is evident that the purpose codes under the group 'Transfer' pertains to forex transactions of personal nature such as personal gifts, family maintenance, donations etc. and the accounting purpose code P1306 falling under the said category is clearly not associated with the payments received in respect of exported goods. Thus, the exporter had used wrong purpose code for receipt of the export duty amounts from the buyers. Thus, the exporter had mis-represented the facts before the bank authorities also to process the receipt of export duty amounts from the overseas buyer. These amounts are not reflected in the bank realisation certificates obtained by the exporter from the bank.

6.5 Excess Ocean freight amounts wrongly declared in the Shipping Bills:

In addition to the shipments discussed in above para, in respect of the following 40 shipments of rice, the exporter had declared higher amounts of ocean freight in comparison to the actual ocean freight amounts paid by them, thus causing short payment of duty on the differential ocean freight amount in respect of these 40 shipments also. The total amount of excess freight declared by the exporter in respect of these shipments stood at Rs.2,86,92,536/-. Vide letter dated 16.01.2025, the exporter had submitted the details of the actual freight amounts along with freight invoices indicating the actual freight amounts paid by them to the Freight forwarders/Shipping line, which clearly indicated that in these **40** shipments, they have declared excess freight amounts.

Table C

S. No.	Custom House Code	Sb Number	Sb Date	Invoice Number	Invoice Term	Declared Fob Value In Rs	Duty Amount Paid	Declared Freight Amt In INR	Actual Freight Paid In INR	Excess Freight Declared
1	INMUN1	243606 6	13-07- 2023	48/23-24	CF	73,76,198	14,75,24 0	28,18,368	10,13,742	18,04,626
2	INMUN1	243614 9	13-07- 2023	51/23-24	CF	1,08,99,15 8	21,79,83 2	33,35,803	13,33,744	20,02,059
3	INMUN1	227298 4	06-07- 2023	45/23-24	CF	70,28,640	14,05,72 8	10,32,332	9,12,874	1,19,458
4	INMUN1	141274 7	31-05- 2023	33/23-24	CF	70,45,920	14,09,18 4	10,34,870	9,90,499	44,371
5	INMUN1	114466 2	19-05- 2023	30/23-24	CF	70,45,920	14,09,18 4	10,12,851	9,90,499	22,352
6	INMUN1	106386 1	16-05- 2023	012/23-24	CF	70,94,588	14,18,91 8	15,28,065	9,82,547	5,45,518
7	INMUN1	106482 9	16-05- 2023	018/23-24	CF	35,47,294	7,09,459	7,64,033	4,95,846	2,68,187
8	INMUN1	106483 1	16-05- 2023	019/23-24	CF	35,47,294	7,09,459	7,74,947	4,95,846	2,79,101
9	INMUN1	106524 8	16-05- 2023	015/23-24	CIF	1,41,89,17 5	28,37,83 5	35,36,379	10,52,566	24,83,813
10	INMUN1	991883 5	10-05- 2023	021/23-24	CF	67,67,145	13,53,42 9	19,20,996	9,83,137	9,37,859
11	INMUN1	970217 8	02-05- 2023	014/23-24	CF	68,13,180	13,62,63 6	19,34,064	10,23,246	9,10,818
12	INMUN1	966874 2	29-04- 2023	013/23-24	CIF	71,42,850	14,28,57 0	18,46,152	5,89,075	12,57,077
13	INMUN1	956339 1	26-04- 2023	011/23-24	CIF	70,32,960	14,06,59 2	19,78,020	5,44,939	14,33,081
14	INMUN1	944507 5	21-04- 2023	010/23-24	CF	1,31,86,80 0	26,37,36 0	37,36,260	23,51,019	13,85,241
15	INMUN1	929436 1	14-04- 2023	008/23-24	CF	35,03,520	7,00,704	7,22,601	2,76,205	4,46,396
16	INMUN1	929640 4	14-04- 2023	009/23-24	CF	1,31,38,20 0	26,27,64 0	37,22,490	23,23,439	13,99,051
17	INHZA1	923323 9	12-04- 2023	006/23-24	CF	1,31,38,20 0	26,27,64 0	37,22,490	19,91,116	17,31,374
18	INMUN1	925011 3	12-04- 2023	007/23-24	CF	35,58,263	7,11,653	6,56,910	2,85,441	3,71,469
19	INMUN1	912307 5	06-04- 2023	004/23-24	CF	70,80,480	14,16,09 6	15,04,602	5,56,486	9,48,116
20	INMUN1	912309 4	06-04- 2023	005/23-24	CF	70,80,480	14,16,09 6	15,04,602	5,56,485	9,48,117
21	INMUN1	909638 5	05-04- 2023	001/23-24	CF	1,32,75,90 0	26,55,18 0	37,61,505	25,11,775	12,49,730
22	INMUN1	905891	04-04-	002/23-24	CF	1,32,75,90	26,55,18	37,61,505	23,33,093	14,28,412

2		1	2023			0	0			
2		862142	20-03-							
3	INMUN1	1	2023	680	CF	34,29,608	6,85,922	8,62,934	3,18,459	5,44,475
2		852800	16-03-							
4	INMUN1	6	2023	679	CF	66,21,750	13,24,350	17,65,800	10,99,409	6,66,391
2		849993	15-03-							
5	INMUN1	6	2023	678	CF	34,21,238	6,84,248	8,60,828	2,98,618	5,62,210
2		840669	11-03-							
6	INMUN1	2	2023	676	CF	66,21,750	13,24,350	17,65,800	10,81,620	6,84,180
2		792562	20-02-							
7	INMUN1	0	2023	664	CF	34,27,515	6,85,503	8,95,577	5,50,264	3,45,313
2		793215	20-02-							
8	INMUN1	1	2023	665	CF	34,27,515	6,85,503	9,06,633	5,54,158	3,52,475
2		740875	31-01-							
9	INMUN1	5	2023	641	CF	65,24,550	13,04,910	12,39,665	12,00,220	39,445
3		728971	27-01-							
0	INMUN1	1	2023	640	CF	65,24,550	13,04,910	12,39,665	12,00,220	39,445
3		730930	27-01-							
1	INIXY1	4	2023	637	CF	90,61,875	18,12,375	18,72,788	13,12,453	5,60,335
3		687879	11-01-							
2	INMUN1	1	2023	632	CIF	1,27,84,200	25,56,840	29,82,980	25,16,560	4,66,420
3		688276	11-01-							
3	INMUN1	8	2023	631	CF	70,80,480	14,16,096	12,83,337	6,21,162	6,62,175
3		662648	02-01-							
4	INMUN1	2	2023	603	CF	66,25,800	13,25,160	13,03,074	12,49,361	53,713
3		657421	30-12-							
5	INMUN1	8	2022	596	CF	66,25,800	13,25,160	13,03,074	12,67,999	35,075
3		582084	30-11-							
6	INMUN1	7	2022	509	CF	72,08,190	14,41,638	10,04,778	6,86,483	3,18,295
3		567743	24-11-							
7	INMUN1	5	2022	468	CIF	34,40,273	6,88,055	5,24,232	3,86,746	1,37,486
3		552123	17-11-							
8	INMUN1	5	2022	436	CF	69,82,605	13,96,521	11,08,350	8,56,961	2,51,389
3		489401	18-10-							
9	INMUN1	5	2022	373	CIF	32,68,350	6,53,670	11,43,923	4,10,646	7,33,277
4		449760	28-09-							
0	INMUN1	9	2022	331	CIF	31,87,350	6,37,470	11,15,573	8,91,357	2,24,216
	Total					28,90,31,460	5,78,06,296	6,97,88,851	4,10,96,315	2,86,92,536

In respect of these shipments also, the exporter had not declared the true facts, before the customs authorities at the port of export at the time of effecting exports. They have declared the higher ocean freight amounts in their export documents such as shipping bills filed by them, in comparison to the actual freight amounts paid by them to the freight forwarders/shipping lines. It is a fact on record that the exporter had recovered the higher freight amounts from the overseas buyers of the export goods in comparison to the amounts paid by them to the freight forwarders & shipping lines in respect of their export shipments. These facts have been confirmed by the exporter in the details of their export shipments submitted by them under the provisions of section 108 of the Customs Act, 1962.

6.5.1 For ready reference, copy of Shipping Bill Number 2436149 dated 13.07.2023 is pasted below. As per the shipping bill, the ocean freight amount declared in respect of the said shipment is Rs.33,35,803/- whereas during investigation, the exporter had submitted the actual freight amount paid by them in respect of the aforesaid shipping bill which stood at Rs.13,33,744/-. Thus, excess freight amount declared in respect of the

aforesaid shipment works out to be at Rs.20,02,059/-. The said excess freight amount has also been recovered by the exporter from the overseas buyer of the export goods but the exporter had not paid duty on the said excess freight amount which **is part and parcel of the actual assessable value** of the export goods.

Photo of shipping bill No. 2436149 dated 13.07.2023 indicating excess freight amounts declared

INDIAN CUSTOMS EDI SYSTEM CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS DEPARTMENT OF REVENUE - MINISTRY OF FINANCE GOVERNMENT OF INDIA				Port Code INMUN1		SB No 2436149		SB Date 13-JUL-23	
MUNDRA SEZ PORT, MUNDRA, GUJARAT				IEC/Br 0809017628		0		QR CODE	
				GSTIN/TYPE 24AAGFJ9066R1ZK GSN		CB CODE AARFD5233DCH002			
				TYPE INV		ITEM 1		CONT 0	
				Nos 1		G.WT 16200		MTS 406.296	
				PKG				* 5822270/20231742	

PART - I - SHIPPING BILL SUMMARY											
A STATUS	1.MODE	2.ASSESS	3.EXMN	4.JOBING	5.MEIS	6.DBK	7.RODTP	8.LICENCE	9.DFRC	10.RE-EXP	11.LUT
	SEA	Y	Y	N	Y	Y	N	N	N		Y
B DECLARAN DETAILS	12.PORT OF LOADING INMUN1 (Mundra)		13.COUNTRY OF FINAL DESTINATION BENIN			14.STATE OF ORIGIN Gujarat		15.PORT OF FINAL DESTINATION BJCOO (Cotonou)			
	16.PORT OF DISCHARGE BJCOO (Cotonou)		17.COUNTRY OF DISCHARGE BENIN		7.CONSIGNEE NAME & ADDRESS TO ORDER						
C VALU SUMMA	1.FOB VALUE 10899157.5		2.FREIGHT 3335803		3.INSURANC 0		4.DISCOU 0		5.COM 0		
	6.DEDUCTIONS 2179832		7.P/C 0		8.DUTY 0		9.CESS 2179832		10.DBK CLAIM 3038		
E MANIFEST DETAILS	1.MAWB NO.		2.MAWB DT		3.HAWB NO.		4.HAWB DT		N.O.C.		
	4. CIN NO. 23PCEG072013391150V		5. CIN DT. 20-JUL-23		6. CIN SITE ID INMUN1		1.SNO 1		2.INV NO. 51/23-24		3. INV AMT. 174555

Details of the Actual Freight Amounts Paid

S.No.	Name of the Exporter	IEC Code	Shipping Bill Number	Shipping Bill Date	Invoice Number	Invoice Date	Nature of Commitment	Actual freight amount paid (INR)	Actual Insurance amount paid (INR)	Payment received from overseas buyers (in Foreign Currency) (USD)		
										Through anc	Through Reimbursement of taxes	Any other manner such as Debit Note/ Credit Note etc.
1	JAY AMBE AGRO	809017628	2436149	13/07/2023	51/23-24	13/07/2023	CF	1,333,744	-	174,555	26,730	

7. The aforesaid deduction amounts claimed by the exporter, as detailed in Table A above and reimbursement of duty paid amounts taken by them separately as detailed in Tables B above as well as the excess freight amounts declared by them in their export documents in respect of the shipments as detailed in Tables C above, were not included in the declared FOB Value of goods in respect of these shipments, as discussed in para 6 above. Investigation has revealed that these deduction amounts/reimbursement of duty paid amounts have also been claimed and/or recovered by them from the overseas buyer of the export goods in their bank accounts. Therefore, the deduction amounts/reimbursement of export duty amounts taken by the exporter from the overseas buyer in any manner whether or not by declaring the same in the export documents or by mis-declaration of freight amounts in the export documents appears to be forming part of the consideration received by the exporter for delivery of the export goods on board the vessel after clearance of the shipments through the customs authorities at the port of export. Thus, these excess freight amounts and deduction amounts claimed by the exporter at the time of

filing shipping bills and the amounts recovered separately from the overseas buyer over and above the declared invoice price as reimbursement of export duty, as discussed in above paras, also appear liable to be included in the FOB Value for the purpose of calculation of the export duty.

8. Legal Provisions:

8.1 Statutory provisions of the Customs Act, 1962 relevant to this case are enclosed as **Annexure-A** to the Show Cause Notice and the same are briefly discussed below:

8.2 The provisions of section 2(18), section 14 & section 16 of the Customs Act, 1962, Customs Valuation (Determination of Value of Export Goods) Rules, 2007, CBIC Circular No. 18/2008-Cus. dated 10.11.2008 are relevant for understanding various aspects of valuation of the export goods in the context of present case:

- a) The term 'export' has been defined in "Section 2(18) of the Customs Act, 1962 as "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India."
- b) Section 14 of the Customs Act 1962, stipulates that 'for the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of theexport goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.
- c) In this provision the terms "the price actually paid or payable for the goods" and "when sold for export from India for delivery at the time and place of exportation" in the context of present case are very significant. For the process of export to be complete, the goods need to be taken out of India to a place outside India. This event can take place only after goods cross Indian borders. This is more so because the price has to be taken for sale of export goods when sold for export from India 'for delivery at the time and place of exportation'. The wording "for the delivery-at the time and place for exportation" has to be legally construed as "for delivery at the time and place of exportation on board the foreign going vessel". Thus, the time and place of delivery of the export goods will be when the goods are on-board the foreign going vessel which takes place after the goods are given a Let Export Order (LEO) by the jurisdictional Customs officer after examining the compliance to Customs law. By implication, all elements of cost that are required to be incurred to bring the goods

'for delivery at the time and place of exportation' to the foreign going vessel will have to be added to invoice price to arrive at a correct transaction value of export goods as per section 14 notwithstanding the manner as to how the financial transaction is organized by the exporter and the overseas buyer. It is amply clear that without incurring associated expenses the export goods cannot be simply brought to the place of exportation at the time of export. Thus, in the impugned case, the price payable for the export goods for delivery at the time and place of exportation can be arrived at only after inclusion of associated costs including the amounts equal to the export duty which have been recovered by the exporters from the overseas buyers of the export goods.

- d)** "FOB value" means the price actually paid or payable to the exporter for goods when the goods are loaded onto the carrier at the named port of exportation including the cost of the goods and all costs necessary to bring the goods onto the carrier at included in the term 'FOB Value'. The valuation shall be made in accordance with the World Trade Organisation (WTO) Agreement on Implementation of rule VII of General Agreement on Tariffs and Trade (GATT), 1994. There cannot be an exception to the well laid down principles of valuation.
- e)** This method of calculation of 'FOB Value' is prescribed in various trade facilitation agreements such as 'Asean India Free Trade Agreement (AIFTA)' in a very clear manner as follows. FOB value shall be calculated in the following manner, namely:
- (a) FOB Value = ex-factory price + other costs
 - (b) Other costs in the calculation of the FOB value shall refer to the costs incurred in placing the goods in the ship for export, including but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees, service charges, et cetera.
- f)** This in fact lays down the foundation for arriving at the assessable value of the export goods whereby various elements of costs, including the export duty, notwithstanding it is being paid to the exporter directly by the foreign buyer or otherwise, are required to be added to the invoice price. Costing exercise of addition of other cost elements in FOB Value is not limited to transit transportation cost, storage & warehousing alone. Without payment of export duty, let export order cannot be issued by the jurisdictional customs office and the goods cannot be loaded on the foreign going vessel to take them out of India. On this background it is observed that value of the export goods on which duty has been paid by the exporter of rice does not reflect an

FOB value i.e. a price payable for delivery of goods at the time and place of exportation which is a basis for export assessment.

- g)** This practice of payment of export duty by considering the FOB Value as cum-duty FOB Value was prevalent prior to the year 2009. CBIC Circular No. 18/2008-Cus. dated 10.11.2008 in this regard instructed that the existing practice of computation of the export duty by taking FOB price as the cum-duty price may be continued till 31.12.2008 and all the pending cases may be finalized accordingly. It was also clarified that with effect from 01.01.2009, the practice of computation of export duty shall be changed; that for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.
- h)** In order to bring in uniformity, transparency and consistency in assessment of export of Iron Ore, CBIC vide Circular No. 12/2014 – Customs dated 17.11.2014 directed the field formations *interalia* to monitoring the receipt of Bank Realisation Certificates for the purposes of comparison with the final invoices submitted by the exporter to satisfy the accuracy of the assessed values. It also indicates that the total consideration received by the exporter from the buyer for sale of the export goods have to be considered for assessment of the export goods. In shipments exported on FOB incoterm basis, duty has to be calculated on the total considerations received by the exporter from the buyer whether or not they are included in the BRC. For shipments exported on CIF/CF/CI inco-term basis, FOB Value has to be deduced from the CIF/CF/CI value by deducting the actual freight amounts and/or insurance premium amounts paid by the exporter as the case may be.
- i) **Relevance of time of export is further proved as Section 16 of the Customs Act, 1962 which provides for the date for determination of rate of duty and tariff valuation of export goods, stipulate that**** the rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force,- (a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; (b) in the case of any other goods, on the date of payment of duty. The afore-said statutory provision also indicate that time of export is relevant for valuation of the export goods.

From the above, it is evident that from 01.01.2009 onwards, the transaction value shall be the FOB Value of the export goods and the FOB

value shall not be treated as the Cum-duty price of the export goods. The above practice has to be followed for all export commodities irrespective of the description of the export goods.

9. The investigation into undervaluation of rice shipments exported by M/s Jay Ambe Agro vide above mentioned Shipping Bills as discussed in Tables A, B & C above, revealed deliberate mis-statement and suppression of facts on part of the exporter, who was actively involved in mis-declaration of the FOB value of export goods, with an intention to evade appropriate export duty leviable on *ad valorem* basis on such goods. As discussed in above paras, the exporter had mis-declared the ocean freight amounts whereas they were very well aware of the actual freight amounts paid by them in respect of these shipments exported vide Shipping Bills mentioned in Table C above. Moreover, in respect of the shipments mentioned in Tables B above, the exporter had claimed/recovered the export duty from the overseas buyer without declaring these facts in the export documents. In respect of the goods exported by them through shipping bills as discussed in Table A above, the exporter had wrongly claimed the deduction in the shipping bills for export duty amounts and the exporter had claimed duty amounts by raising separate invoices and debit notes to the buyer but have not declared the same in the shipping bills and export invoices submitted to the customs authorities and thus have mis-declared the actual transaction value. Thus, the exporter had not declared the actual FOB Values in the shipping bills thereby intentionally evading the applicable duties of customs on such undue deduction amounts/excess freight amounts and export duty reimbursement amounts separately claimed and recovered by them from the buyers of the export goods without even claiming deduction of the same in the shipping bills.

10.1 As discussed in above paras, the valuation of export goods under the Customs Act, 1962, is governed by the provisions of Section 14 *ibid*, read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [hereinafter referred as 'CVR (E), 2007']. As per the provisions of Section 14 of the Customs Act, 1962, the value of export goods shall be the 'transaction value' of such goods, that is to say, the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation (i.e., the FOB price) when price is the sole consideration. As such, the sum total of price paid by the overseas buyer for delivery at the time and place of exportation would be the 'transaction value' of such goods.

10.2 Further, for the purpose of charging export duty, the value to be considered is the FOB price. This is so because, the terms "*for export from India for delivery at the time and place of exportation*" appearing in Section 14 of the Customs Act, 1962, means to FOB (Free On Board) value only.

This has been clarified also by the Central Board of Excise and Customs (CBEC) vide Circular No. 18/2008, dated 10.11.2008, wherein it stated that in case of export shipments, *for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.*

10.3 In this case the value of the export goods shall be the transaction value thereof when the price is the sole consideration. As such, for determination of the transaction value of the export goods, the sole consideration received by the exporter from the buyer should be taken in to account, then it should be seen as to which prices are compulsory for delivery of the export goods on board the vessel. In this case, the exporter is insisting that the export duty is on reimbursement basis from the overseas buyer of the export goods. By doing so, the exporter is separately receiving a part of the export proceeds from the overseas buyer and not including the same in the assessable value of the export goods. It can be stated that the seller has imposed a condition on the buyer of the export goods which states that if the buyer does not pay him a fixed amount (equal to the 20% export duty on their declared lesser FOB value), they would not sell the export goods to the overseas buyer and would not deliver the same at the time and place of exportation. Thus, all such agreements wherein the seller had imposed a condition on the buyer by which buyer has to pay a part of the payment separately in the bank accounts of the seller on account of sale of the export goods, such payments are necessarily part of the consideration received by the seller for sale of the export goods. Likewise, the excess ocean freight amounts declared by the exporter are also part of the consideration received by the exporter from the buyer for sale of the export goods as such excess ocean freight amounts have not be paid by them to the shipping lines/freight forwarders for the transportation of the export goods. All such amounts which are equal to the export duty amounts claimed/recovered from the buyer and excess ocean freight amounts declared in the shipping bills are liable to be added in their declared FOB Values for determination of their actual FOB Value for calculation of applicable export duties thereon.

11.1 The **method of calculation of FOB Value** has been provided at the website of various reputed platforms such as 'Freightos', which also support the contention of DRI that export duty is also includible in the FOB Value if the same has been recovered by the seller from the buyer.

The description of the said platform as available on their website under the heading 'About Freightos' states that

Freightos® (NASDAQ: CRGO) is the leading, vendor-neutral booking and payment platform for international freight, improving world trade. WebCargo® by Freightos and 7LFreight by WebCargo form the largest global air cargo booking platform, connecting airlines and freight forwarders. Over ten thousand freight forwarder offices, including the top twenty global forwarders, place thousands of eBookings a day on

the platform with over fifty airlines. These airlines represent over 2/3rds of global air cargo capacity. Alongside ebookings, freight forwarders use WebCargo and 7LFreight to automate rate management, procurement, pricing and sales of freight services, across all modes, resulting in more efficient and more transparent freight services. More information is available at [freightos.com/investors](https://www.freightos.com/investors).

The website of freightos <https://www.freightos.com/freight-resources/fob-calculator> was visited which provide FOB calculator tools for the ease of international freight industry. As per the said website, *FOB (Free on Board) Calculator is a tool used in international trade to determine the total cost of goods when they are shipped from the seller's location to the buyer's destination. The FOB price includes the cost of the goods, as well as various expenses incurred until the goods are loaded onto the vessel, such as packaging, loading, and inland transportation to the port of departure. It does not include the freight charges for transporting the goods from the port of departure to the port of destination or any other charges or taxes beyond the point of loading.*

From the above details available on their website, it is evident that all taxes before the point of loading of the export goods on board the vessel are included in the term 'FOB'. In the case of export of goods, loading of the export goods starts after issuance of the 'Let Export Order (LEO)' by the proper officer of the Customs. LEO is issued after payment of the export duty. As the export duty is leviable before the point of loading of the export goods on to the vessel the same is includible in the FOB Value of the export goods.

11.2 The above contention of DRI is also supported by the Incoterms which are widely used in the international transactions. Incoterm or International Commercial Terms which are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) relating to international commercial law. These incoterms define the responsibility of the importers and exporters in the arrangement of shipments and transfer of liability involved at various stages of transaction. They are widely used in the international commercial transactions and procurement processes. These incoterms rules are accepted by governments, legal authorities worldwide for the interpretation of most commonly used terms in the international trade. They are intended to reduce or remove altogether uncertainties arising from the differing interpretations of the rules in different countries. As per Wikipedia, the Incoterms 2020 is the ninth set of international contract terms published by the International Chamber of Commerce with the first set published in 1936. As per Incoterms 2020 published by ICC, the term 'FOB' has been defined as under -

FOB – Free on Board (named port of shipment)

Under FOB terms the seller bears all costs and risks up to the point the goods are loaded on board the vessel. The seller's responsibility does not end at that point unless the goods are "appropriated to the contract" that is, they are "clearly set aside or otherwise identified as the contract goods".^[20] Therefore, FOB contract requires a seller to deliver goods on board a vessel that is to be designated by the buyer in a manner customary at the particular port. In this case, the seller must also arrange for export clearance. On the other hand, the buyer pays cost of marine freight transportation, bill of lading fees, insurance, unloading and transportation cost from the arrival port to destination.

11.3 As per the allocation of costs to buyer/seller according to incoterms 2020, in FOB terms, all costs related to loading of the export goods at origin, **export custom declaration**, carriage to the port of export, unloading of truck in port of export, loading on vessel/airplane in the port of export have to be borne by the seller of the goods and other expenses such as carriage to the port of import, insurance, unloading in port of import, loading on truck in port of import, carriage to the place of destination, import custom clearance, import duties and taxes and unloading at destination have to be borne by the buyer of the goods. Thus, all cost until the loading of the export cargo on board the foreign going vessel have to be borne by the seller of the export goods which also include export customs declaration and cost related to it. Thus, it is evident that the export duty is includible in the FOB Value and the same have to be borne by the seller and it cannot be recovered by the seller from the overseas buyer. If the same is recovered, it becomes part of the consideration for sale of the export goods and thus becomes liable to be included in the FOB Value of the export goods.

12. Rejection & Re-determination of the Transaction Value:

12.1 As discussed in the above paragraphs, valuation of export goods under the Customs Act, 1962, is governed by the provisions of Section 14, *ibid*, read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [here-in-after referred as the CVR (E), 2007]. The export proceeds receivable in full consequent to negotiation and finalization of sale price between the exporter from India and their overseas buyer form 'transaction value' of such goods. The export Customs duty is leviable on the actual sale price at which the goods were sold. Where such sale price has been mis-declared and under-stated by the exporter, the actual sale price, i.e. the Transaction Value, needs to be taken into account for the purpose of valuation of the impugned export goods.

12.2 In respect of the shipments of rice covered by the Shipping Bills as shown in the Tables **A, B & C** above, it appears that **M/s Jay Ambe Agro** negotiated and finalized one price with their overseas buyer but in the contracts, the said price was intentionally bifurcated in two parts. The amount of duty payable by the exporter was deducted from the transaction

value. In the shipping bills filed by the exporter, such undervalued and mis-declared transaction value was shown, which was lesser than the price that was actually finalized with the overseas buyer as consideration for the export goods. A part of the consideration was intentionally excluded from the transaction value of the export goods by adopting three different modus operandi as discussed in para 6 above. The difference between the actual price finalized with the overseas buyer and the price shown in the export documents were recovered/claimed by the exporter from the buyer separately by an arrangement of the buyer and the seller in this regard. The exporter and buyer may enter into any contract (oral or written), they may sell and purchase the export goods on any terms (such as FOB, CIF, CF, CI or ex-works basis) but for the purposes of calculation of the export duty, the transaction value in terms with the provisions of Section 14 of the Customs Act, 1962 has to be derived and such transaction value is the FOB Value of the export goods as discussed in above paras and for the purpose of calculation of the FOB Value of the export goods, abatement of the export duty is not available as per Section 14 of the Customs Act, 1962 read with CBIC Circular No. 18/2008-Customs dated 10.11.2008.

12.3 The receipt of these deduction amounts from the overseas buyers was apparently never disclosed to the concerned Customs authorities. The said amounts were received from the overseas buyer, as reimbursement of taxes/duties under **wrong RBI Purpose code P1306** which is not meant for receipt of the export duty. The reduced FOB Value declared in the export documents was presented as the true Transaction Value being paid for the export goods by the overseas buyer as the deduction amount was not reflected in the Bank Realization Certificate (BRC) in respect of these export shipment. The deduction amount was recovered separately in their bank account as reimbursement of taxes. Hence, it appears that the value declared by M/s Jay Ambe Agro to the concerned Customs authorities as the Transaction Value of the export cargo in respect of **48** shipments of rice covered by the Shipping Bills as shown in the Tables **A, B & C** above, is liable to be rejected under Rule 8 of the CVR(E), 2007 and the impugned export goods are liable to be valued at their actual Transaction Value as established by the present investigation, in accordance with the provisions of Section 14 of the Customs Act, 1962, read with Rule 3 of the CVR(E), 2007.

12.4 The amount wrongly excluded from the FOB price was indeed part of the consideration negotiated and finalized between the exporter M/s Jay Ambe Agro and their respective overseas buyers and the said amount which was excluded from the FOB Value was duly claimed /received by the exporter from the overseas buyer in their bank account. Therefore, the differential value (equal to the deduction amount/excess freight amount and the amount claimed/received separately as reimbursement of duty) as shown in the Tables A, B & C above appear to be includible in the declared

value (FOB Value) of the respective export shipments to arrive at the correct transaction value at which the said goods were sold for export from India for delivery at the time and place of exportation and export Customs duty as per the prevailing rate needs to be charged on the said value. M/s Jay Ambe Agro appears to be liable to pay the resultant differential duty in addition to the duty already paid by them.

12.5 In view of the above, in accordance with the provisions of Section 14 of the Customs Act, 1962, the amount of differential customs duty in respect of the Shipping Bills as mentioned in the Tables A, B & C at Para 6 above, wherein a part of export proceeds was apparently not declared to the concerned Customs authorities, and the same was not included in the declared transaction value has to be worked out on the basis of actual Transaction Value of the export goods revealed during the investigation.

13. Calculation of Differential Duty:

13.1 As discussed in above paras, the exporter had undervalued their export shipments of rice. For this three modus operandi were adopted by the exporter. In some of their export shipments mentioned at Table A in para 6 above, the FOB price were undervalued by an amount equal to the amount of export duty paid by them at the time of export. In such shipping bills, actual transaction value of the export goods has to be re-determined by adding the amount of export duty which were wrongly claimed as deduction in the shipping bills. These deduction amounts are liable to be included in the actual assessable value of the export goods and differential duty of Rs. 1,06,03,214/- is liable to be recovered from the exporter in respect of these deduction amounts as summarized below. The detailed calculation of differential duty is shown in Annexure- I to the Show Cause Notice.

Table-D

S. No .	Custom House Code	SB Number	SB Date	Declared Fob Value in INR	Duty Amount Paid In IR	Deduction Claimed In INR	Payment Received as Reimbursement Of Taxes In INR	Re-Determined Fob Value In INR	Differential Duty in INR
1	INMUN1	2436066	13-07-2023	73,76,198	14,75,240	14,75,240	14,75,240	88,51,437	2,95,048
2	INMUN1	2436149	13-07-2023	1,08,99,158	21,79,832	21,79,832	21,79,832	1,30,78,989	4,35,966
3	INMUN1	2294541	07-07-2023	63,41,328	12,68,266	12,68,266	12,68,266	76,09,594	2,53,653
4	INMUN1	2272984	06-07-2023	70,28,640	14,05,728	14,05,728	14,05,728	84,34,368	2,81,146
5	INMUN1	1412747	31-05-2023	70,45,920	14,09,184	14,09,184	14,09,184	84,55,104	2,81,837
6	INMUN1	1310665	26-05-2023	70,45,920	14,09,184	14,09,184	14,09,184	84,55,104	2,81,837
7	INMUN1	1144662	19-05-2023	70,45,920	14,09,184	14,09,184	14,09,184	84,55,104	2,81,837
8	INMUN1	1063861	16-05-2023	70,94,588	14,18,918	14,18,918	14,18,918	85,13,505	2,83,784

9	INMUN1	1064829	16-05-2023	35,47,294	7,09,459	7,09,459	7,09,459	42,56,753	1,41,892
10	INMUN1	1064831	16-05-2023	35,47,294	7,09,459	7,09,459	7,09,459	42,56,753	1,41,892
11	INMUN1	1065248	16-05-2023	1,41,89,175	28,37,835	28,37,835	28,37,835	1,70,27,010	5,67,567
12	INMUN1	9918835	10-05-2023	67,67,145	13,53,429	13,53,429	13,53,429	81,20,574	2,70,686
13	INMUN1	9702178	02-05-2023	68,13,180	13,62,636	13,62,636	13,62,636	81,75,816	2,72,527
14	INMUN1	9668742	29-04-2023	71,42,850	14,28,570	14,28,570	14,28,570	85,71,420	2,85,714
15	INMUN1	9563391	26-04-2023	70,32,960	14,06,592	14,06,592	14,06,592	84,39,552	2,81,318
16	INMUN1	9445075	21-04-2023	1,31,86,800	26,37,360	26,37,360	26,37,360	1,58,24,160	5,27,472
17	INMUN1	9294361	14-04-2023	35,03,520	7,00,704	7,00,704	7,00,704	42,04,224	1,40,141
18	INMUN1	9296404	14-04-2023	1,31,38,200	26,27,640	26,27,640	26,27,640	1,57,65,840	5,25,528
19	INHZA1	9233239	12-04-2023	1,31,38,200	26,27,640	26,27,640	26,27,640	1,57,65,840	5,25,528
20	INMUN1	9250113	12-04-2023	35,58,263	7,11,653	7,11,653	7,11,653	42,69,915	1,42,331
21	INMUN1	9123075	06-04-2023	70,80,480	14,16,096	14,16,096	14,16,096	84,96,576	2,83,219
22	INMUN1	9123094	06-04-2023	70,80,480	14,16,096	14,16,096	14,16,096	84,96,576	2,83,219
23	INMUN1	9096385	05-04-2023	1,32,75,900	26,55,180	26,55,180	26,55,180	1,59,31,080	5,31,036
24	INMUN1	9058911	04-04-2023	1,32,75,900	26,55,180	26,55,180	26,55,180	1,59,31,080	5,31,036
25	INMUN1	8621421	20-03-2023	34,29,608	6,85,922	6,85,922	6,85,922	41,15,529	1,37,184
26	INMUN1	8528006	16-03-2023	66,21,750	13,24,350	13,24,350	13,24,350	79,46,100	2,64,870
27	INMUN1	8499936	15-03-2023	34,21,238	6,84,248	6,84,248	6,84,248	41,05,485	1,36,850
28	INMUN1	8406692	11-03-2023	66,21,750	13,24,350	13,24,350	13,24,350	79,46,100	2,64,870
29	INMUN1	7925620	20-02-2023	34,27,515	6,85,503	6,85,503	6,85,503	41,13,018	1,37,101
30	INMUN1	7932151	20-02-2023	34,27,515	6,85,503	6,85,503	6,85,503	41,13,018	1,37,101
31	INMUN1	7408755	31-01-2023	65,24,550	13,04,910	13,04,910	13,04,910	78,29,460	2,60,982
32	INMUN1	7289711	27-01-2023	65,24,550	13,04,910	13,04,910	13,04,910	78,29,460	2,60,982
33	INIXY1	7309304	27-01-2023	90,61,875	18,12,375	18,12,375	18,12,375	1,08,74,250	3,62,475
34	INMUN1	6878791	11-01-2023	1,27,84,200	25,56,840	25,56,840	25,56,840	1,53,41,040	5,11,368
35	INMUN1	6882768	11-01-2023	70,80,480	14,16,096	14,16,096	14,16,096	84,96,576	2,83,219
	Total			26,50,80,341	5,30,16,072	5,30,16,068	5,30,16,069	31,80,96,409	1,06,03,214

13.2 In several export shipments, as detailed in Table B in para 6 above, exporter had separately recovered the duty amounts from the overseas buyer of the cargo on the basis of separate export invoices and debit notes sent to the overseas buyer. These facts were not declared by them before the

customs authorities at the port of export. Admittedly, these amounts have also been claimed/recovered by the exporter from the overseas buyer on reimbursement basis. Had the overseas buyer not paid these amounts to the exporter, they would not have sold the export goods to the buyer. Thus, these amounts claimed/recovered from the buyer are also part of the consideration received by the exporter for sale of their export goods. These amounts separately claimed/recovered by the exporter from the buyer are also liable to be included in the actual assessable value of the export goods and as summarized below, differential duty amount of Rs. 37,27,713/- is liable to be recovered from the exporter in respect of these reimbursed export duty amounts. The detailed calculation of differential duty is shown in Annexure- II to the Show Cause Notice.

Table - E

S. No.	Custom House Code	Sb Number	Sb Date	Declared Fob Value in INR	Duty Amount Paid in INR	Amount Received Through Debit Note as Reimbursement of Taxes In INR	Re-Determined Fob Value in INR	Differential Duty in INR
1	INMUN1	6718623	05-01-2023	66,25,800	13,25,160	13,25,160	79,50,960	2,65,032
2	INMUN1	6626423	02-01-2023	66,25,800	13,25,160	13,25,160	79,50,960	2,65,032
3	INMUN1	6626482	02-01-2023	66,25,800	13,25,160	13,25,160	79,50,960	2,65,032
4	INMUN1	6574218	30-12-2022	66,25,800	13,25,160	13,25,160	79,50,960	2,65,032
5	INMUN1	5820847	30-11-2022	72,08,190	14,41,638	14,41,638	86,49,828	2,88,328
6	INMUN1	5677435	24-11-2022	34,40,273	6,88,055	6,88,055	41,28,327	1,37,611
7	INMUN1	5521235	17-11-2022	69,82,605	13,96,521	13,96,521	83,79,126	2,79,304
8	INMUN1	5199371	02-11-2022	69,91,110	13,98,222	13,98,222	83,89,332	2,79,644
9	INMUN1	4894015	18-10-2022	32,68,350	6,53,670	6,53,670	39,22,020	1,30,734
10	INIXY1	4625019	04-10-2022	1,18,05,000	23,61,000	23,61,000	1,41,66,000	4,72,200
11	INIXY1	4625218	04-10-2022	1,18,05,000	23,61,000	23,61,000	1,41,66,000	4,72,200
12	INIXY1	4625402	04-10-2022	1,19,62,400	23,92,480	24,00,350	1,43,62,750	4,80,070
13	INMUN1	4497609	28-09-2022	31,87,350	6,37,470	6,37,470	38,24,820	1,27,494
				9,31,53,478	1,86,30,696	1,86,38,566	11,17,92,043	37,27,713

13.3 Apart from the above, in several shipments of rice, as detailed in Table C in para 6 above, the exporter had declared excess freight amounts in comparison to the actual freight amounts paid by them to the freight forwarders/shipping lines for transportation of the export goods to the country of destination. Only the ocean freight amounts actually paid by the exporter are eligible for deduction from the CIF/CF value for calculation of the FOB Value of the export goods. Therefore, the excess freight amounts declared by the exporter are not eligible/allowed for deduction as per the provisions of Section 14 of the Customs Act, 1962. These excess freight amounts claimed by the exporter are also liable to be included in the actual assessable value of the export goods and as summarized below, differential duty amount of Rs. 57,38,508/- is liable to be recovered from the exporter in respect of these excess freight amounts also. The detailed calculation of differential duty is shown in Annexure- III to the Show Cause Notice.

Table - F

S. No.	Custom House Code	SB NUMBER	SB DATE	Fob Value in INR	Duty Amount Paid in INR	Declared Freight Amount in INR	Actual Freight Amount Paid in INR	Excess Freight Declared in INR	Re-Determined Fob Value by Addition Of Excess Freight Deduction in INR	Differential Duty Amount in INR
1	INMUN	243606 6	13-07-2023	73,76,198	14,75,24 0	28,18,36 8	10,13,74 2	18,04,626	91,80,824	3,60,925
2	INMUN	243614 9	13-07-2023	1,08,99,158	21,79,83 2	33,35,80 3	13,33,74 4	20,02,059	1,29,01,216	4,00,412
3	INMUN	227298 4	06-07-2023	70,28,640	14,05,72 8	10,32,33 2	9,12,874	1,19,458	71,48,098	23,892
4	INMUN	141274 7	31-05-2023	70,45,920	14,09,18 4	10,34,87 0	9,90,499	44,371	70,90,291	8,874
5	INMUN	114466 2	19-05-2023	70,45,920	14,09,18 4	10,12,85 1	9,90,499	22,352	70,68,272	4,470
6	INMUN	106386 1	16-05-2023	70,94,588	14,18,91 8	15,28,06 5	9,82,547	5,45,518	76,40,106	1,09,104
7	INMUN	106482 9	16-05-2023	35,47,294	7,09,459	7,64,033	4,95,846	2,68,187	38,15,480	53,637
8	INMUN	106483 1	16-05-2023	35,47,294	7,09,459	7,74,947	4,95,846	2,79,101	38,26,395	55,820
9	INMUN	106524 8	16-05-2023	1,41,89,175	28,37,83 5	35,36,37 9	10,52,56 6	24,83,813	1,66,72,988	4,96,763
10	INMUN	991883 5	10-05-2023	67,67,145	13,53,42 9	19,20,99 6	9,83,137	9,37,859	77,05,004	1,87,572
11	INMUN	970217 8	02-05-2023	68,13,180	13,62,63 6	19,34,06 4	10,23,24 6	9,10,818	77,23,998	1,82,164
12	INMUN	966874 2	29-04-2023	71,42,850	14,28,57 0	18,46,15 2	5,89,075	12,57,077	83,99,927	2,51,415
13	INMUN	956339 1	26-04-2023	70,32,960	14,06,59 2	19,78,02 0	5,44,939	14,33,081	84,66,041	2,86,616
14	INMUN	944507 5	21-04-2023	1,31,86,800	26,37,36 0	37,36,26 0	23,51,01 9	13,85,241	1,45,72,041	2,77,048
15	INMUN	929436 1	14-04-2023	35,03,520	7,00,704	7,22,601	2,76,205	4,46,396	39,49,916	89,279
16	INMUN	929640 4	14-04-2023	1,31,38,200	26,27,64 0	37,22,49 0	23,23,43 9	13,99,051	1,45,37,251	2,79,810
17	INHZA1	923323 9	12-04-2023	1,31,38,200	26,27,64 0	37,22,49 0	19,91,11 6	17,31,374	1,48,69,574	3,46,275
18	INMUN	925011 3	12-04-2023	35,58,263	7,11,653	6,56,910	2,85,441	3,71,469	39,29,732	74,294
19	INMUN	912307 5	06-04-2023	70,80,480	14,16,09 6	15,04,60 2	5,56,486	9,48,116	80,28,596	1,89,623
20	INMUN	912309 4	06-04-2023	70,80,480	14,16,09 6	15,04,60 2	5,56,485	9,48,117	80,28,597	1,89,623
21	INMUN	909638 5	05-04-2023	1,32,75,900	26,55,18 0	37,61,50 5	25,11,77 5	12,49,730	1,45,25,630	2,49,946
22	INMUN	905891 1	04-04-2023	1,32,75,900	26,55,18 0	37,61,50 5	23,33,09 3	14,28,412	1,47,04,312	2,85,682
23	INMUN	862142 1	20-03-2023	34,29,608	6,85,922	8,62,934	3,18,459	5,44,475	39,74,082	1,08,895
24	INMUN	852800 6	16-03-2023	66,21,750	13,24,35 0	17,65,80 0	10,99,40 9	6,66,391	72,88,141	1,33,278
25	INMUN	849993 6	15-03-2023	34,21,238	6,84,248	8,60,828	2,98,618	5,62,210	39,83,447	1,12,442
26	INMUN	840669 2	11-03-2023	66,21,750	13,24,35 0	17,65,80 0	10,81,62 0	6,84,180	73,05,930	1,36,836
27	INMUN	792562 0	20-02-2023	34,27,515	6,85,503	8,95,577	5,50,264	3,45,313	37,72,828	69,063
28	INMUN	793215 1	20-02-2023	34,27,515	6,85,503	9,06,633	5,54,158	3,52,475	37,79,990	70,495
29	INMUN	740875 5	31-01-2023	65,24,550	13,04,91 0	12,39,66 5	12,00,22 0	39,445	65,63,995	7,889
30	INMUN	728971 1	27-01-2023	65,24,550	13,04,91 0	12,39,66 5	12,00,22 0	39,445	65,63,995	7,889
31	INIXY1	730930 4	27-01-2023	90,61,875	18,12,37 5	18,72,78 8	13,12,45 3	5,60,335	96,22,210	1,12,067

32	INMUN	6878791	11-01-2023	1,27,84,200	25,56,840	29,82,980	25,16,560	4,66,420	1,32,50,620	93,284
33	INMUN	6882768	11-01-2023	70,80,480	14,16,096	12,83,337	6,21,162	6,62,175	77,42,655	1,32,435
34	INMUN	6626482	02-01-2023	66,25,800	13,25,160	13,03,074	12,49,361	53,713	66,79,513	10,743
35	INMUN	6574218	30-12-2022	66,25,800	13,25,160	13,03,074	12,67,999	35,075	66,60,875	7,015
36	INMUN	5820847	30-11-2022	72,08,190	14,41,638	10,04,778	6,86,483	3,18,295	75,26,485	63,659
37	INMUN	5677435	24-11-2022	34,40,273	6,88,055	5,24,232	3,86,746	1,37,486	35,77,759	27,497
38	INMUN	5521235	17-11-2022	69,82,605	13,96,521	11,08,350	8,56,961	2,51,389	72,33,994	50,278
39	INMUN	4894015	18-10-2022	32,68,350	6,53,670	11,43,932	4,10,646	7,33,277	40,01,627	1,46,655
40	INMUN	4497609	28-09-2022	31,87,350	6,37,470	11,15,573	8,91,357	2,24,216	34,11,566	44,843
	Total			28,90,31,460	5,78,06,296	6,97,88,851	4,10,96,315	2,86,92,536	31,77,23,996	57,38,508

13.4 In view of the above-mentioned three modus operandi followed by the exporter for evasion of export duty, their re-determined assessable value in respect of total 48 export shipments have been calculated as shown in below table. Accordingly, the differential duty payable by the exporter M/s Jay Ambe Agro works out to be at Rs. 2,00,69,435/- as shown in below Table. The detailed calculation of the differential duty amounts has been shown in Annexure I, II & III to the Show Cause Notice. The port wise summary of differential duty payable by M/s Jay Ambe Agro is as under:

Table-G

Port Code	No of Shipping Bills	Declared FOB Value in Rs.	Duty Paid in Rs.	Deduction Amount Claimed in Rs.	Export Duty Amount received through Debit Notes in Rs.	Excess Freight Declared in Rs.	Re-determined FOB Value in Rs.	Total Differential Duty in Rs.
INHZA1	1	1,31,38,200	26,27,640	26,27,640		17,31,374	1,74,97,214	8,71,803
INIXY1	4	4,46,34,275	89,26,855	18,12,375	71,14,480	5,60,335	5,41,29,335	18,99,012
INMUN1	43	30,04,61,343	6,00,92,273	4,85,76,053	1,15,16,216	2,64,00,827	38,69,54,439	1,72,98,620
Total	48	35,82,33,818	7,16,46,768	5,30,16,068	1,86,30,696	2,86,92,536	45,85,80,987	2,00,69,435

14. Obligation under Self-assessment and Reasons for raising duty demand by invoking extended period:

14.1 The exporter had subscribed to a declaration as to the truthfulness of the contents of the Shipping Bill in terms of Section 50(2) of the Customs Act, 1962, in all their export declarations. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on export goods by the exporter himself by filing a Shipping Bill, in electronic form. Section 50 of the Customs Act, 1962 makes it mandatory

for the exporter to make an entry for the export goods by presenting a Shipping Bill electronically to the proper officer. As per Regulation 4 of the Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulation, 2019 (issued under Section 157 read with Section 50 of the Customs Act, 1962), the Shipping Bill shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the export goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Shipping Bill number was generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it was the exporter who must doubly ensure that he declared the correct classification / CTH of the export goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in respect of the export goods while presenting the Shipping Bill. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 08.04.2011, it was the added and enhanced responsibility of the exporter to declare the correct description, value, Notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the export goods.

14.2 In view of the discussion supra, it is evident that the partners of the exporter firm M/s Jay Ambe Agro, were well aware about the actual value of the export goods. They have knowingly got indulged in preparation and planning of forged / manipulated export documents, which they used to forward to the Customs broker in relation to Customs clearance of the said export goods at the time of exportation by way of wilful mis-declaration and intentional suppression of these facts in the Shipping Bills filed by them and thus they appear to have evaded the applicable Customs duty on export of rice.

14.3 In the event of short levy of Customs duty by reason of collusion, any wilful mis-statement or suppression of facts by the exporter or the agent or employees of the exporter, such duty can be recovered by invoking extended period of five years as provided in **Section 28(4) of the Customs Act, 1962**. In this case, it appears that the exporter has knowingly and deliberately mis-declared the transaction value (i.e. FOB Value) of the export goods. Hence, the extended period of five years is rightly invocable in this case to recover the differential duty as detailed in Annexure –I, Annexure –II and Annexure –III of the Show Cause Notice. Further, M/s Jay Ambe Agro is also liable to pay interest on their said differential duty liability as per the provisions of Section 28 AA of the Customs Act, 1962, at applicable rate.

15. From the scrutiny of the documents gathered/submitted during investigation by the exporter M/s Jay Ambe Agro, scrutiny of the export data and statements of Sh. Jeewat Kumar Maheshwari, partner of the said export firm who was involved in export of rice from various ports of India, it appears that—

- i. Sh. Jeewat Kumar Maheshwari, Partner of M/s Jay Ambe Agro was the key person who on behalf of M/s Jay Ambe Agro negotiated and finalized the sale price of rice, exported by M/s Jay Ambe Agro to various overseas buyers, vide 48 Shipping Bill as detailed in Tables A, B & C in para 6 above.
- ii. The declared FOB value in respect of shipping bills listed in Tables A, B & C, did not reflect the correct transaction value of the export goods;
- iii. As discussed in above paras, the actual transaction value (i.e. FOB Value) was not declared by them in their export documents. They have undervalued and mis-declared their transaction value with intent to evade applicable duty of customs which is leviable @ 20% *ad valorem* on the actual transaction value of the export goods in following manners:
 - In respect of Shipping bills listed in Table A above, the FOB Value was undervalued by them by an amount equal to the amount of export duty paid on export of rice and the said amount was wrongly claimed as deduction in the shipping bills and the said amount was recovered from the overseas buyer on the basis of separate invoices and debit notes raised to the buyer.
 - In respect of the shipping bills listed in Table B, above the declared FOB Value was undervalued by an amount equal to the amount of export duty paid by them on export of rice cargo, however, the said amounts were not claimed as deductions in the shipping bills, in fact, they have declared 'nil' deduction amount in the shipping bills. Thus, exporter had outrightly mis-declared the actual transaction value at the time of export. The said amounts were recovered by them from the overseas buyer on the basis of separate invoices and debit notes raised to the buyer.

- In respect of the shipping bills listed in Table C, the declared FOB Value was further undervalued by an amount equal to the excess freight amounts declared by the exporter in the shipping bills which were over and above the actual freight amounts paid by them. The ocean freight amounts actually paid by the exporter are eligible deductions from the CIF Value. By declaring the excess freight amounts, exporter had wrongly claimed excess deductions of freight amounts which are not eligible. Thus, exporter had out rightly mis-declared the actual transaction value at the time of export.

Thus, the declared FOB value in respect of all these shipments did not reflect the correct transaction value of the goods for delivery of the export goods at the time and place of exportation (i.e. on board the foreign going vessel after clearance from the customs authorities at the port of export).

- iv. The FOB value of export goods in all these cases was mis-declared by M/s Jay Ambe Agro to the Customs authorities in the shipping bills filed by them which was supported by their export invoices for lower value, resulting in suppression and mis-declaration of actual transaction value at the time of assessment of the export goods. As such, the value of export goods in respect of all these Shipping Bills was mis-represented to be lower than the actual transaction value, thereby causing evasion of export duty leviable on rice shipments exported by them;
- v. The value of export goods pertaining to each of these Shipping Bills are liable to be rejected and reassessed as per their actual transaction value as ascertained during investigation, by taking into account the amount which was excluded from the declared value at the time of assessment, as brought out in above paras;
- vi. The balance amount not included in the declared FOB Value and wilfully suppressed by not declaring to Customs with an intention to misrepresent the transaction value of the export goods, is liable to be assessed to duty at the applicable rate as detailed in 'Annexure -I, Annexure -II and Annexure -III' of the Show Cause Notice and the same is recoverable along with interest at applicable rate;
- vii. The act of undervaluation and mis-declaration of actual transaction value in respect of Shipping Bills listed in Tables A, B & C by M/s Jay Ambe Agro has rendered the export goods liable to confiscation under

the provisions of Section 113 (i) of the Customs Act, 1962 and consequently, M/s Jay Ambe Agro have rendered themselves liable to a Penalty under the provisions of Section 114A and Section 114AA of the Customs Act, 1962;

- viii. Sh. Jeewat Kumar Maheshwari, Proprietor of M/s Jay Ambe Agro, appears to be the person who knowingly or intentionally either made, signed and used or caused to be made, signed and used, the custom purpose export invoices, exporter and banking purpose export invoices/debit notes and Shipping Bills for export of rice by M/s Jay Ambe Agro, which were incorrect as regards to the value of export goods for payment of export duty. The goods covered under Shipping Bills listed in Tables A, B & C above, contained the declarations made by M/s Jay Ambe Agro which were false and incorrect in material particulars relating to the value of the impugned goods. The contracts with the buyer for sale and export of rice as well as the export documents submitted to Customs were finalized/signed in the overall supervision of Sh. Jeewat Kumar Maheshwari who was handling the day to day business of the export firm. This fact has been admitted by Sh. Jeewat Kumar Maheshwari in his statement recorded u/s 108 of the Customs Act, 1962. In view of this, it appears that Sh. Jeewat Kumar Maheshwari is the key person who has orchestrated the entire scheme of mis-declaration of value of the export goods, with an intention to evade customs (export) duty. Sh. Jeewat Kumar Maheshwari is, therefore, responsible for wilful acts of mis-statement and suppression of facts in respect of export of rice by M/s Jay Ambe Agro. The act of Sh. Jeewat Kumar Maheshwari regarding under valuation and mis-declaration of actual transaction value in respect of Shipping Bills filed by M/s Jay Ambe Agro has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. As such, Sh. Jeewat Kumar Maheshwari has rendered himself liable to penal action under the provisions of Section 114 (ii) and 114AA of the Customs Act, 1962;

16. CBIC vide Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 had stipulated that in cases of multiple jurisdictions as referred in Section 110AA of the Customs Act, the report in writing, after causing the inquiry, investigation or audit as the case may be, shall be transferred to officers described in column (3) of the said Notification along with the relevant documents. For cases involving short levy, non-levy, short payment or non-payment of duty, as provided in Section 110AA (a) (ii), the functions of the proper officer for exercise of powers under Section 28 of the Customs Act,

1962 have been assigned to the jurisdictional Pr. Commissioner/ Commissioner of Customs in whose jurisdiction highest amount of duty is involved. Since, in the present case, exports have been made from three (03) different ports, however the highest amount of differential export duty was in respect of Mundra Port, Gujarat. Hence, Mundra Port, Gujarat, being the port involving highest revenue, the Show Cause Notice was made answerable to Principal Commissioner/ Commissioner of Customs, Mundra Port, Gujarat, for the purpose of issuance as well as adjudication of Show Cause Notice under Section 110AA read with Notification No. 28/2022-Customs (N.T) dated 31.03.2022.

17.1 Accordingly, M/s Jay Ambe Agro was called upon to show cause as to why—

- i. The declared assessable value of Rs. 35,82,33,818/- in respect of 48 shipments of rice exported vide Shipping Bills detailed in 'Annexure-I, II & III', should not be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3 (1) ibid and Section 14 (1) of the Customs Act, 1962;
- ii. The actual assessable value in respect of Shipping Bills detailed in 'Annexure-I, II & III', should not be re-determined at Rs.45,85,80,987/- (Rupees Forty Five Crore Eighty-Five Lakhs Eighty Thousand Nine Hundred Eighty Seven Only) under the provisions of Section 14 (1) of the Customs Act, 1962, Rule 3 (1) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 by taking into account – (a) the amounts claimed as deduction in the shipping bills, which were equivalent to amount of export duty claimed by them; (b) excess ocean freight amounts claimed/recovered and (c) undeclared export duty reimbursement amounts - which were claimed/recovered by them from the overseas buyer of the goods, as discussed in Para 6 & 13 of the Show Cause Notice;
- iii. The differential (export) duty amounting to Rs. 2,00,69,435/- (Rupees Two Crore Sixty-Nine Thousand Four Hundred Thirty-Five Only) payable, as calculated and shown in 'Annexure-I, II and III' to the Show Cause Notice, in respect of Shipping Bill filed by them at three different ports, should not be demanded and recovered from them, by invoking the extended period of limitation available under the provisions of Section 28(4) of the Customs Act, 1962;
- iv. The interest on the afore-said total differential duty amount of Rs.2,00,69,435/- should not be demanded and recovered from them under the provisions of Section 28AA of the Customs Act, 1962;

- v. The shipments of rice exported vide Shipping Bills detailed in 'Annexure-I, II & III' to this Notice having re-determined assessable value of Rs. 45,85,80,987/-, should not be held liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962;
- vi. Penalty should not be imposed upon them under the provisions of section 114A and Section 114AA of the Customs Act, 1962.

17.2 Further, Sh. Jeewat Kumar Maheshwari, Partner of M/s Jay Ambe Agro (having Importer Exporter Code No. 0809017628), was also called upon to show cause as to why penalty under the provisions of section 114 (ii) and Section 114AA of the Customs Act, 1962 should not be imposed upon them for their acts and omissions in evasion of Customs Duty amounting to Rs. 2,00,69,435/- on export of rice through his partnership firm.

18. PERSONAL HEARING

Following the principle of natural justices and the provisions laid down in the Customs Act, 1962, opportunities of personal hearing in the case were given to the noticee on 15.12.2025, 23.12.2025.

18.1 1st PH on 15.12.2025:-

No one appeared in the personal hearing fixed on 15.12.2025.

18.2 2nd PH on 23.12.25.

Shri Hardik P. Modh , Advocate appeared through vedio conference before me on 23.12.2025 on behalf of both the Noticee i.e.(i) M/s Jay Ambe Agro and (ii) Shri Jeewat Santosh Kumar Maheshwari. He reiterated the submissions and contentions already placed in their written reply dated 28.05.25 .

WRITTEN SUBMISSION

19. M/s Jay Ambe Agro vide their submission dated 28.05.2025, interalia, submitted that-

1. That it is has correctly valued the exported goods as per Section 14 of the Customs Act and there is no contravention of the provisions of the Customs Act, 1962 on grounds which are independent and taken without prejudice to each other.
 - I. Export duty cannot be included in the value of "goods"**
2. That the captioned SCN is issued on an erroneous assumption that FOB (Free on Board) value includes all costs incurred up to the point of export, including export duty, merely because clearance from customs (including payment of duty) occurs before the goods are loaded on the vessel. This presumption fundamentally misunderstands the legal distinction between:

- Value of goods (transaction value as defined under the law), and
 - Export duty, which is a levy imposed on such value.
3. That Export duty cannot be form part of the assessable value because it is computed only after determining the value of goods, and therefore logically and legally, cannot be included in the value of the goods itself.
 4. That Section 14 of the Customs Act provides that the value of export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf. This provision explicitly limits the scope of assessable value to consideration paid for the goods themselves and not for statutory levies such as export duties. There is no legislative basis to interpret “value” under Section 14 to include duties levied on that very value.
 5. It is categorically mentioned under Section 14 that the price is actually payable for goods. For e.g., an exporter exports goods having FOB value of Rs. 100/- and export duty rate is 20%. It is submitted that the amount of Rs.20/- collected from a customer is against the duty amount and not against the goods. Therefore, the duty collected from a customer shall not form part of the transaction value and therefore, it is not attributable to the value of the goods. Value of goods needs to be determined to levy the export duty. Therefore, it cannot be even imagined that value of goods includes “export duty”.
 6. In *Bata Shoe Company (P) Ltd. & Anr. v/s. Collector of Central Excise & Ors. [1985 (21) ELT 9 (SC)]*, the Hon’ble Supreme Court had discussed the issue of determination of “value” in context of Section 4 of the Central Excise Act viz. Determination of value for the purposes of duty. The Hon’ble Supreme Court had held that Section 4 gets attracted because as expressly stated in the opening part of the said section the mode of determination of ‘value’ specified in the section will be applicable to all cases where any article is chargeable with duty at a rate dependent upon the value of the article. In the case of a total exemption, the rate will

be `nil'. Thus, Entry 36 read along with the Notification dated July 24, 1967 clearly shows that the chargeability to duty in respect of any article of footwear is made dependent upon its value in the sense that the chargeability to duty of excise will arise only if the `value' of the article does not exceed Rs. 5 per pair. It is, therefore, plain that before determining the question of availability of the exemption under the Notification dated July 24, 1967, the first essential step is to determine the `value' of the article in the manner prescribed in Section 4 of the Act. The fact that on such a computation the article may ultimately be found to be exempted from excise duty does not have any bearing on the question of applicability of Section 4 of the Act for determining the `value' for purposes of duty.

7. That the law consistently maintains a distinction between the assessable value of goods and the duty levied thereon. The transaction value is a function of price paid for the goods exclusive of statutory levies. Therefore, the Noticee has correctly excluded export duty from the FOB value and determined the same in full compliance with Section 14 of the Customs Act.
8. Section 12 of the Customs Act is a charging section which provides that duty of customs shall be levied as such rate as may be specified under the Customs Tariff Act, 1975. Section 3 of the Customs Tariff Act provides that the rate at which duty of customs shall be levied under the Customs Act, are specified in first and second schedules. Note No.3 of the Second Schedule – Export Tariff provides that duty on the goods to which entry relates, shall be charged on the basis of value of the goods as defined in Section 14 of the Customs Act. Accordingly, export duty is charged on value computed as per Section 14 of the Customs Act which is transaction value. In other words, export duty is not included in the transaction value. Section 14 of the Customs Act provides that the value of exported goods shall be transaction value of such goods, that is to say the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation where the buyer and seller of the goods are not related and price is the sole consideration for the sale. In the present case, it has been specifically mentioned in the contract that the price agreed between them is inclusive of export duty and the said export duty is required to be deducted from the invoice value to arrive transaction value for computation of export duty.

9. In *Union of India Vs Mahindra and Mahindra Limited 1995 (76) ELT 481*, the Hon'ble Supreme Court held that for the purpose of valuation, the real state of affairs is supposed to be reflected by the apparent tenor of the agreement; still the department is free to allege and prove that the apparent not real. In that case, the bargain between the assessee and foreign collaborator is evidenced by written agreements. There is no material nor was it suggested that dealing between the parties are not at arm's length. No evidence is available to show that the payment of royalty to the collaborator induced any extra commercial obligation for the price of CKD packs, parts and components. Ordinarily, the court should proceed on the basis that the apparent tenor of the agreements reflect the real state of affairs. It is no doubt open to the revenue to allege and prove that the apparent is not real and the price for sale of the CKD packs is not the true price, and the price was determined by reckoning or taking into consideration the lump sum payment made under the collaboration agreement in the sum of 15 million French francs. In the present case, it has not been alleged that tenor of the agreement entered by the Noticee with the buyers is not real and the Noticee received over and above invoice value from the buyers. The agreement specifically provide separate value of duty and value of the goods.
10. It is submitted that the whole mechanism of valuation of goods never intended to include export duty to determine the value of goods. The very basic step to determine the amount of export duty is determining the value of goods. Therefore, it would be a catch-22 situation wherein value of export duty cannot be determined without determining the value of goods.
11. Moreover, analogy can also be drawn from Rule 5 of the Customs Valuation (Determination of value of Export Goods) Rules, 2007 ("Export Valuation Rules"). Rule 5 of the Export Valuation Rules is a residual rule which provides that if the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-
 - (a) cost of production , manufacture or processing of export goods;
 - (b) charges, if any, for the design or brand;
 - (c) an amount towards profit.

12. That Considering Rule 5 of the Export Valuation Rules, the value of the exported goods shall only includes cost and does not include any amount which forms part of duty. Moreover, the export duty is borne by the customers and not the Noticee, therefore, it cannot form part of the cost of the product. Therefore, the value of duty cannot be included as cost of product and chargeable to export duty as per Rule 5 of the Export Valuation Rules.
13. That considering catch-22 situation where the value cannot be determined as per Section 14 of the Customs Act, the valuation needs to be done as per Export Valuation Rules and as per Rule 5 of the Export Valuation Rules, value of export duty is not included in the value of goods. Therefore, legislature also never intended to include any duty component in the transaction value.

II. Customs Act being an indirect tax, the export duty is recoverable from the customers

14. It is submitted that the Customs Act and the rules made thereunder do not restrict exporter to recover the tax / duty from a customer. Section 28D of the Customs Act provides that every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods. Being an indirect tax regime, general perception is that the tax is borne by the consumer of the goods / service. Considering Section 28D of the Customs Act and being Indirect tax regime, the Company may collect the tax from the customer.
15. In *All India Federation of Tax Practitioners v/s. Union of India [2007 (7) STR 625 (SC)]*, Hon'ble Supreme Court observed that Central excise duty is a tax on the goods produced in India whereas customs duty is the tax on imports. Customs and excise duty constitute two major sources of Indirect Taxes in India. Both are consumption specific in the sense that they do not constitute a charge on the business but on the client. Therefore, the duty is not borne by the exporter but it is borne by the customers.
16. It is pertinent to note that the amount collected from a customer is to be deposited with the Department. In the present case, the Noticee separately recovered export duty from a customer, which has been deposited with the Central Government. Therefore, the

Noticee has not contravened the provision of the Customs Act and the Rules made thereunder.

17. It is submitted that the export duty is leviable on the goods and not on "duty" and therefore, the amount on which tax had been paid by the Noticee is true and correct and the captioned SCN alleging differential duty is bad-in-law and liable to be dropped.

III. Circular No. 18/2008-Cust clarifies the issue of inclusion of duty component in the transaction value

18. That Circular No. 18/2008-Cus dated 10.11.2008 categorically clarifies the issue of applicability of export duty on cum duty price or not in view of the introduction of the of transaction value concept under Section 14 as part of the 2007 budgetary exercise. It is pertinent to note the background in which Circular No. 18/2008 was issued by the Board. Before the introduction of the Circular no. 18/2008 (supra), the export duty and cesses were calculated by taking the FOB price declared by the exporter as the cum-duty price and working backwards from the FOB price. This methodology was based on instructions issued by the Board (contained in Appraising Manual) in 1966. This view was reconfirmed by the Board in 2000 while developing the software for Indian Customs EDI System (ICES-Exports) for the purpose of levy of cess under various enactments of different Ministries. A copy of the Circular no. 18/2008 (supra) is enclosed herewith and marked as **Annexure-C**.
19. That the matter has been examined in consultation with the Ministry of Law who have opined that this issue is essentially a matter of policy on which decision is to be taken by the administrative department. In view of the above, a policy decision had been taken that till 31.12.2008, the ongoing practice of computation of export duty and cesses by taking the FOB price as the cum-duty price may be continued. All the pending cases were finalized accordingly.
20. That the investigating authority has misinterpreted Circular No. 18/2008 (supra) and held that the above Circular does not contemplate a scenario where a provision exists to further reduce the duty from the transaction value to arrive at the assessable value. The Circular's primary focus is on determining the transaction value for the purpose of export duty calculations based on the FOB price at the time and place of exportation. The

assessable value remains based on the transaction value and this transaction value includes actual sum paid or payable for the goods.

21. In the Circular no. 18/2008 (supra), it is specifically mentioned that till 2008, all the pending cases shall be finalized by computing export duty and cesses at the FOB price as the cum-duty price. However, from 2009, the policy needs to be changed and export duty shall be computed on the base price of 100/- and not on duty. Accordingly, the Circular clearly acknowledge the policy of charging duty on cum-duty price value till 2008 and due to introduction of the concept of transaction value, the same shall be changed to ex-duty value.
22. Considering the above, it is evident that the captioned SCN is contrary to the clarifications given by the CBIC and therefore, the captioned SCN is liable to be dropped on this ground alone.
23. It is a settled position of law that the officers are bound to follow the Circulars / instructions issued by the CBIC in adherence of judicial discipline as held in the following decisions:
 - *Commissioner of Central Excise, Bolpur vs. Ratan Melting and Wire Industries [2008 (231) ELT 22 (SC)]*;
 - *Kalyani Packaging Industry vs. Union of India (UOI) [2004 (168) ELT 145 (SC)]*
 - *Collector of Central Excise, Vadodra vs. Dhiren Chemical Industries [2002 (139) ELT 3 (SC)]*.

IV. Double taxation

24. It is respectfully submitted that demanding export duty on a transaction value which already includes the export duty amount recovered from the customer results in impermissible double taxation, which is inherently bad in law and violative of established legal principles.
25. That continuing with the earlier example: if the FOB value of goods is ₹100 and the applicable export duty is 20%, the exporter pays ₹20 as export duty and collects the same amount from the buyer as reimbursement. If this ₹20 is then included in the transaction value, leading to a recomputation of export duty on ₹120, the new duty becomes ₹24—imposing a duty on an amount that already includes duty. This results in a cascading effect, i.e.,

tax on tax, which is neither contemplated nor permitted under the scheme of the Customs Act.

26. In *Niraj Prasad V/s. CCE, Kanpur [2020 (38) GSTL 78 (Tri.-All)]*, the Hon'ble Tribunal had dropped the demand on the services on the ground that Noticee had a central registration with the Department and the premises of the Noticee are included in the Centralized registration. Service Tax has been paid on the entire amount of fees deposited by the students. It has, therefore, been contended that if the Noticee is required to pay any Service Tax, it would amount to double taxation, which is not permissible.
27. The Hon'ble Supreme Court in *Union of India v. Tata Iron and Steel Co. Ltd. [1976 AIR 599]* agreed with the Hon'ble Patna High Court to declare that "there cannot be double taxation on the same article".
28. That the Customs Act does not authorize levy of export duty on export duty and collection of such export duty is without jurisdiction and authority of law. Under the provisions of Section 14 of the Customs Act, the duty of customs is chargeable on any goods by reference to their value. Customs authority has no jurisdiction to levy export duty treating the same to be part of transaction value within the meaning of Section 14 of the Act when export duty was and/ or is not part of transaction value. Any duty realised on the basis of the value will be clearly without authority of law and/or in excess of their jurisdiction conferred on the authority.
29. Therefore, the interpretation adopted in the captioned SCN treating the FOB value as cum-duty—amounts to levying duty on duty, and is thus unsustainable in law. It not only contravenes judicial precedent but also violates the principles of natural justice and settled valuation mechanisms. On this ground alone, the captioned SCN deserves to be quashed and dropped in its entirety.

V. Including duty component in the transaction value would be defeating the valuation machinery

30. It is submitted that the Noticee entered into an agreement with the customer wherein it is agreed that any amount of export duty payable by the Noticee shall be recovered from the customer and

therefore, including value of the export duty in the transaction value shall be absurd and illogical. Assuming FOB price of the goods is INR 100/- and the export duty levied on such goods is INR 20/-. (20% of INR 100/-). The captioned SCN had alleges differential value of Rs. 4/- {INR 24(20% of 120) – INR 20 (duty already paid)}. The Noticee would again recover this amount from the customer and the same would again be added in the transaction value by the Department. Therefore, it is an arithmetic loop wherein the amount is recovered from the customer and the same is added by the Department viz. is again recovered from the customer and so on. Therefore, there is no logical and arithmetic formula to determine value for such goods.

31. It is submitted that valuation plays an important role in a taxation regime. In absence of any valuation machinery or any absurd valuation machinery, the levy itself fails. Therefore, if the allegation levelled in the captioned SCN is assumed to be valid, the valuation mechanism would be absurd and the levy would fail. Accordingly, it is respectfully submitted that the export duty shall not be calculated on a value which already includes the said duty component and the impugned order shall be dropped on this ground alone.
32. It is not the case of the Noticee that FOB of exported goods must be taken as cum duty price and the assessable value must be calculated backwards so that whatever is charged by them from the overseas buyers must be treated as including the export duty. Herein, the Noticee entered into agreement with the buyers and agreed with separate value of the goods and duty. The investigating authority intends to charge duty on duty which is not permissible under the law.

VI. THE NOTICEE COMPLIED WITH THE PROVISION OF Section 28B

33. That the Customs Act and the rules made thereunder, do not restrict an exporter to recover the duty from a customer. Section 28D of the Customs Act provides that every person who has paid the duty on any goods under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such duty to the buyer of such goods. Being an indirect tax regime, general perception is that the tax is borne by the consumer of the goods / service. Considering Section 28D of the

Customs Act and being Indirect tax regime, the Noticee can collect the tax from the customer.

34. It is pertinent to note that the amount collected from a customer must be deposited with the Department under the provision of Section 28B of the Customs Act. In the present case, the Noticee has recovered export duty from a customer, which has been deposited with the Central Government. Therefore, the Noticee has not contravened the provision of the Customs Act.

VII. Goods are not liable for confiscation:

35. It is submitted that the captioned SCN is issued after the goods were exported by the Noticee and the goods are not available for confiscation. It is a well settled position of law that confiscation proceedings are not sustainable when the goods are not available [*Shiva Kripa Ispat Pvt. Limited v. CCE, Nasik* [2009 235 ELT 623 (Tri-LB)]. Accordingly, the goods are not liable for confiscation as alleged in the captioned SCN.

VIII. CAPTIONED SCN CANNOT BE ISSUED BECAUSE RELEVANT SHIPPING BILLS WERE ASSESSED FINALLY AND NOT CHALLENGED BY THE DEPARTMENT:

36. It is submitted that the Shipping bills against whom amount is disputed were never amended or challenged by the Revenue to dispute the valuation adopted by the Noticee. Without challenging the relevant Shipping bills, the captioned show cause notice is proposing to enhance valuation which is bad-in-law. In arguendo, given the fact that the Revenue did not challenge the assessment of Shipping Bills which formed the basis of payment of duty, cannot now shift their liability by issuing the show cause notice.
37. It is submitted that a self-assessed Shipping Bill, despite being initiated by the exporter, is explicitly recognized as an "order of assessment" under Section 51 of the Customs Act, 1962. This is a crucial legal point. Furthermore, this self-assessed order is appealable under Section 128 of the Act by "any person aggrieved". This statutory recognition means that once a self-assessment is made and goods are cleared, it attains a legal finality akin to a formal order if it is not challenged within the statutory period for appeals. This principle ensures that the vast majority of customs clearances, which proceed through self-assessment, are not subject to indefinite scrutiny. Therefore,

issuance of captioned SCN is against this judicial discipline and is liable to be dropped on this ground alone.

38. The Hon'ble Supreme Court in case of refund dealt in *M/s. Priya Blue Industries Limited V/s. Commissioner of Customs (Prev.) [2004 (172) ELT 145 (SC)]* held that claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings. The Appellant therefore submits that given the fact that the only assessment done by the Department was assessment of duty on Shipping Bill, which is undisputedly never been challenged by the Department and hence, until the same was challenged, the modification on the duty amount paid would amount to travesty of justice and completely against the settled principles of law.
39. The Hon'ble Supreme Court in ***ITC Limited v. Commissioner of Central Excise, Kolkata [2019 (368) ELT 216 (SC)]***, along with other bunch of appeals has again reiterated the proposition of law that once the assessment order has been passed by the competent authority, the refund of the same cannot be sought until the same has been modified or altered taking the recourse of the appropriate proceedings. It is pertinent to note that the Department had never appealed or sought review of the assessment of the Shipping Bills and therefore, it would entail finality and any addition or modification to the same without there being any appropriate proceedings for the same would tantamount to abuse of law and should be completely and unequivocally be discarded herein.

IX. SCN cannot be issued under Section 28(4) of the Customs Act

40. It is submitted that the captioned SCN cannot be issued under Section 28(4) of the Customs Act because none of the criteria as specified under Section 28(4) of the Customs Act is fulfilled by the Noticee.
41. It is submitted that in the present case the Noticee is not guilty of any, willful mis-statement or suppression of facts as alleged in the captioned SCN and as such the captioned SCN ought to have been issued within 2 years from the relevant date as per Section 28(1) of the Customs Act. Therefore, the part of the captioned SCN is barred by limitation.

42. It is submitted that the Noticee had filed the shipping bills and declared the value of export duty separately on the commercial invoices submitted and also as deduction in the shipping bill separately in majority of the cases. Infact, it has categorically disclosed the value of export duty collected from the customers on the Shipping bill. At no point in time any objection was raised by the proper officer who undertook the assessment. Therefore, it cannot be alleged that the Noticee has suppressed any information or made any wilful misstatement from the Customs Department. Therefore, captioned SCN ought to have been issued as per Section 28(1) of the Customs Act and not as per Section 28(4) of the Customs Act.
43. It is submitted that there should be some positive act other than mere inaction or failure on the part of the assessee or there must be a conscious or deliberate withholding of information by the assessee (reliance placed on the Hon'ble Supreme Court decision in *Nestle India Ltd. v. CCE* [2009 (235) E.L.T. 577 (S.C.)] to invoke larger period of limitation. In the present case, the Noticee has not held back any information / data and has not suppressed facts with the intent to evade payment of Customs duty, instead, the amount was disclosed on the commercial invoices and Shipping bill and no material information or fact has been withheld, much less with the intent to suppress the fact.
44. It is to be appreciated that non-payment of Customs duty in the present case was not on account of any fraud or omission or intent to evade the payment of Customs duty on the part of the Noticee but the bona fide belief that value of FoB shall not include the value of export duty. Therefore, it is improper to hold that it has wilfully or suppressed any fact of the case.
45. The Noticee submits that in terms of settled law, penalty can only be imposed for contumacious conduct of an assessee or where an assessee deliberately defies the law with an intention to illegally gain and defraud the Exchequer, whereas there is no such issue involved in the present case and thus no penalty or extended period of limitation can be invoked by the Department.

X. Interest and Penalty is not imposable on the Noticee

46. Penalty under Section 114 of the Act is levied on a person for improper export of goods. In the present facts and considering the above, it is submitted that there was no misdeclaration on the

part of the Noticee therefore, penalty under Section 114 can thereby not be imposed.

47. The Noticee submits that in terms of Section 114, penalty is attracted only when person omits to do any act which would render such goods liable for confiscation. In the present case, there is no act of omission on the part of the Noticee, the value of export duty was disclosed on the commercial invoices and shipping bill, therefore, it cannot be said that the goods were mis-declared by the Noticee and the liable for confiscation or penalty.
48. It is further submitted that the export duty on the said goods were levied for the first time in September 2022, therefore the Noticee was not aware about the computation and disclosure of such export duties on the export documents. Therefore, the Noticee followed the industrial practice for disclosure purpose and it is clear from the captioned SCN that the said issue was dealt at the industry level and not at the entity level. Therefore, it cannot be said that there was any malafide intent of / suppression of information by the Noticee by disclosing
- Amount of export duty in the shipping bill as deduction; or
 - Collecting the export duty via debit note and the said debit note was furnished to RBI / AD bank having reference number of the original commercial invoice number.
49. The Noticee submits that in terms of settled law, penalty can be imposed only when duty has not been paid by reason of fraud, collusion, willful mis-statement or suppression of facts with intent to evade payment of duty. In the absence of such circumstances, the imposition of penalty is clearly unsustainable. In the case of *Tamil Nadu Housing Board v/s. CCE* reported in [1994 (74) ELT 9 (SC)], the Hon'ble Supreme Court held that an intent to evade payment of tax is not a mere failure to pay the tax, it is much more. The person alleged to have evaded payment of a tax must be proved to be aware of the taxability of the transaction and must deliberately have avoided payment of the tax. The Hon'ble Supreme Court further held that the word "evade" in the context of the phrase 'intent to evade' means defeating the provisions of law of paying the tax, and it is made more stringent by the use of the word 'intent'. Thus, intent to evade payment of a tax is, in law, much more than a mere failure to pay the tax. It is settled law, inter alia, by the judgment of the Hon'ble Supreme Court in *Hindustan Steel Ltd v. State of Orissa* reported in [1978 (2) ELT 159

(SC)], that in the absence of an intent to evade payment of duty, a penalty should not be imposed.

50. It is submitted that the export duty collected from the customer has been already paid by the Noticee and it is not even disputed. The only allegation is in respect of export duty on duty collected from the customers. Since, it is ideal case of double taxation, the Noticee never imagined that duty needs to be again paid on the duty which was already deposited with the Government.
 51. The Noticee submits that it is a well settled position in law that penalty cannot be imposed merely because it is lawful to do so. The said imposition has to be backed by a malafide intent. Reliance in this regard is placed on the judgment of Hon'ble Supreme Court in case of Hindustan Steel Ltd. v State of Orissa reported in 1969 (2) SSC 627 .
 52. The Noticee submits that penal provisions should be implemented with a clear sight on the objects of such provisions. The purpose of imposing penalty is to prevent and deter intentional or deliberate defiance of law. It is a well-established principle that where the conduct of the assessee arises out of a bona fide belief and not due to contumacious conduct, the invocation of penal provisions is not warranted. It is submitted that the conduct of the Noticee in the present case was totally bona fide and therefore, penalty imposed on the Noticee is required to be set aside.
 53. In the present case, in light of the aforesaid submissions, the levy of penalty is unjustified and uncalled for.
 54. That the Noticee prays that the allegations and charges levelled in the show cause notice may kindly be dropped in the interest of justice and oblige.
- 20.** Shri Jeewat Maheshwar , Partner of M/s Jay Ambe Agro vide his submission dated 23.12.2025, interalia, submitted that-
1. That penalty on a partner is not sustainable for the reason that the penalty is proposed to be imposed on the partnership firm and a partner is not a separate legal entity and cannot be equated with the employees of a firm. Once the firm has already been penalized, separate penalty cannot be imposed upon the partner. He placed Reliance on the decision of Hon'ble Gujarat High Court in case of CCE Vs. Jai Prakash Motwanireported in 2010 (258) ELT 204 (Guj)
 2. He submitted that similar view was expressed by the Hon'ble CESTAT Ahmedabad in *SKA Cashew, Alkesh Navodiya, Amitbhai*

B Kapoor, Harbhajan Singh Bansal, Mukesh Patel Versus C.C. – Ahmedabad [2024 (12) TMI 172 - CESTAT AHMEDABAD] where penalty on the partners imposed under Section 114AA of the Customs Act were set-aside by the Hon'ble CESTAT, Ahmedabad.

3. He also submitted that similar proposition was laid down by Hon'ble Punjab & Haryana High Court in case of *Vinod Kumar Gupta Vs. CCE reported in 2013 (287) ELT 54 (P&H) .wherein it is observed that* Since, penalty is already proposed on the partnership firm separate penalty cannot be imposed on the partner of the firm.
4. He also submitted that Penalty under Section 114AA of the Customs Act is not imposable in the facts of present case as Section 114AA of the Customs Act provides for imposition of penalty for use of false and incorrect material or causing such use. On plain reading of Section 114AA of the Customs Act, it is clear that there are two essential ingredients that needs to be fulfilled for imposition of penalty under the aforesaid section, a) knowledge and b) that the material should be false.
5. That there has been no infraction of the law on the part of the Noticee because the issue of leviability of export duty on the export duty is an interpretation issue and not the issue of false or incorrect materials.
6. That in the event there has been any infraction, the same is completely unintended and bona fide and without any intent to evade duty. Therefore, there is no question that the Noticee knowingly taking any undue benefit. Further, the Noticee has not made any false declaration at any point in time. In fact, the Noticee in certain transactions has categorically mentioned the amount of export duty as "Deduction" in the shipping bill filed by them.
7. That there is no evidence on record to show that the Noticee deliberately violated the provisions of law and undervalued the goods. The Revenue has not placed any facts to show that there was any malafide intention on the part of the Noticee in alleged undervaluation of the goods. In absence of any positive evidence on record, Penalty under section 114AA ought not to have been imposed.

8. That the Noticee prays that the allegations and charges levelled in the show cause notice may kindly be dropped in the interest of justice and oblige.

DISCUSSION AND FINDINGS-

21. After having carefully gone through the Show Cause Notice, relied upon documents, submissions made by the Noticee's and the records available before me, I now proceed to decide the case. The main issues involved in the case which are required to be decided in the present adjudication are as under: -

- (i) Whether, in accordance with the provisions of Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Price of Export Goods) Rules, 2007, the differential Customs duty, in respect of the Shipping Bills mentioned in Table A, B, and C at Para 6.1 to 6.5 above where a part of the export proceeds was apparently not declared to the concerned Customs authorities and thus not included in the declared transaction value has to be computed based on the actual transaction value of the export goods as revealed during the investigation; or whether the export duty reimbursed by the buyer, and excess freight declared are eligible for deduction from the FOB value?
- (ii) Whether the FOB value declared by the said noticee in the Shipping Bills at the time of export of goods is required to be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3 (1) *ibid* and Section 14 (1) of the Customs Act, 1962;
- (iii) Whether the actual assessable value in respect of Shipping Bills detailed in 'Annexure-I, II & III is required to be re-determined at Rs. 45,85,80,987/- under the provisions of Section 14 (1) of the Customs Act, 1962, and total differential (export) duty amounting to Rs. 2,00,69,435/- payable, as calculated and shown in 'Annexure-I, II & III to the notice, in respect of these 48 Shipping Bills filed by them at 03 different ports, is required to be demanded and recovered from them, by invoking the extended period of limitation available under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA *ibid*;
- (iv) Whether the shipments of rice exported vide Shipping Bills detailed in 'Annexure-I, II & III to the Notice having proposed re-determined assessable value of Rs. 45,85,80,987/- deserve to be confiscated under the provisions of Section 113 (i) of the Customs Act, 1962;
- (v) Whether penalty under Section 114 and Section 114AA of the

Customs Act, 1962 is required to be imposed on the said noticee; and

- (vi) Whether for their acts and omissions in evasion of Customs duty amounting to Rs. 2,00,69,435/- through their partnership firm, Shri Jeewat Kumar Maheshwari, Partner of M/s Jay Ambe Agro,93, Opposite Jadaba Hall, Near H P Petrol Pump, Jetalpur,Ahmedabad, Gujarat-382426, are liable for penalty under the provisions of section 114 (ii) and Section 114AA of the Customs Act, 1962 total duty.

22. After framing the main issues for consideration, I now proceed to examine each issue in detail. The foremost issue before me is whether the abatement of expenses, including export duty, on three different accounts claimed by the said noticee from the FOB value of the goods for export, is admissible under the provisions of Section 14 of the Customs Act, 1962 read with the relevant provisions of the Customs Valuation (Determination of Price of Export Goods) Rules, 2007. The relevant provisions for the valuation of the export goods are reproduced below for the ease of reference :-

“1[Section 14. Valuation of goods. -

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;*
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:*
- (iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria]*

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation . - For the purposes of this section -

(a) rate of exchange" means the rate of exchange -

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b)"foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).J”

Rule 3 of CVR, 2007

“Rule 3. Determination of the method of valuation. -

(1) Subject to rule 8, the value of export goods shall be the transaction value.

(2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.”

“CUS CIR NO. 18/2008 DATE 10/11/2008

Computation of Value under Section 14 for Levy of Export Duty

1. After the imposition of export duty on steel at ad valorem rates in May 2008, a doubt has been raised regarding the manner of calculation of export duty, particularly in view of the introduction of transaction value concept under Section 14 as part of the 2007 budgetary exercise. Specifically, the doubt is whether the export duty should be charged simply as a percentage of FOB price or whether the FOB price should be taken as the ‘cum-duty price’ for determination of assessable value and duty

due thereon.

2. Hitherto, the export duty and cesses were calculated by taking the FOB price declared by the exporter as the cum-duty price and working backwards from the FOB price. This methodology is based on instructions issued by the Board (contained in Appraising Manual) in 1966. This view was reconfirmed by the Board in 2000 while developing the software for Indian Customs EDI System (ICES-Exports) for the purpose of levy of cess under various enactments of different Ministries.

3. The matter has been examined in consultation with the Ministry of Law who have opined that Section 14 of the Customs Act or the rules framed thereunder, do not specify any procedure for

calculation of assessable value for the purpose of charging export duty in a situation where the exporter has not collected any amount in excess of what has been declared in the shipping bill/invoice. As per practice in vogue for the last more than four decades, transaction value of export goods has invariably been taken as 'cum-duty price'. This practice is not in conflict with any of the statutory provisions. Amendments made in Section 14 of the Customs Act by the Finance Act, 2007 have also not brought any change in the procedure for calculation of assessable value for the purpose of charging export duty. However, any decision on this issue is essentially a matter of policy on which decision is to be taken by the administrative department.

4. In view of the above, a policy decision has been taken that till 31.12.2008, the existing practice of computation of export duty and cesses by taking the FOB price as the cum-duty price may be continued. All pending cases may be finalized accordingly.

5. It has also been decided that with effect from 1st January, 2009, the practice of computation of export duty shall be changed. It is proposed that for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation. For example if the transaction is at Rs 100 FOB, and the duty is 15%, the export duty will be 15% of FOB price, that is Rs 15. In case the transaction is on CIF basis, the FOB price may be deduced from the CIF value, and then the export duty be calculated as 15% of such FOB price.

6. Any difficulties which are anticipated in the implementation of the change in computation of export duty from 1st January, 2009 may be brought to the notice of the Board by 20th November, 2008 *positively.*

7. The contents of this Circular may be brought to the notice of the field formations and the Trade under your jurisdiction.

8. Hindi version follows.

F. No. 467/45/2008-CusV''

23. I observe that as per the allegations made against the said noticee in the Show Cause Notice, the said noticee failed to declare the actual transaction value (i.e., the correct FOB value) in their export documents. They have allegedly undervalued and mis-declared the transaction value with the intent to evade the applicable Customs duty, which is leviable at 20% ad valorem on the actual transaction value of the export goods.

24. I find it appropriate to mention here that Section 14 of the Customs Act, 1962, read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007) stipulates that the value of export goods shall be based on the transaction value that is, the actual price paid or payable for the goods when sold for export from India at the time and place of exportation, provided that the buyer and seller are not related and the price is the sole consideration. I noticed that the Central Board of Excise and Customs (CBIC) vide Circular No. 18/2008-Cus., dated 10.11.2008 has clarified that, for assessment of export duty, the transaction value should be

taken as the FOB value of the export goods at the time and place of exportation and no abatement of export duty is permissible from this value.

25. I find that export duty is a statutory levy and therefore form part of transaction value. In the present case the exporter has not borne the incidence of duty but the duty amounts were recovered by the exporter from the buyers as part of sale consideration. Hence, these recovered amounts must be included in transaction value. I find that all taxes/expenses before the point of loading of the export goods on board the vessel are included in the definition of 'FOB'. In the case of export of goods, loading of the export goods starts after issuance of the 'Let Export Order (LEO)' by the proper officer of the Customs. LEO is issued after payment of the export duty. As the export duty is leviable before the point of loading of the export goods on to the vessel, the same is includible in the FOB Value of the export goods in the present case. I find that the provisions of the Incoterm or International Commercial Terms, which are widely used in the international transactions, published by the International Chamber of Commerce clearly define the responsibility of the importers and exporters in the arrangement of shipments and transfer of liability involved at various stages of transaction. I noticed that these incoterms rules are accepted by governments, legal authorities worldwide for the interpretation of most commonly used terms in the international trade. They are intended to reduce or remove altogether uncertainties arising from the differing interpretations of the rules in different countries. As per Incoterms 2020 published by ICC, the term 'FOB' has been defined as *"Under FOB terms the seller bears all costs and risks up to the point the goods are loaded on board the vessel. The seller's responsibility does not end at that point unless the goods are "appropriated to the contract" that is, they are "clearly set aside or otherwise identified as the contract goods". Therefore, FOB contract requires a seller to deliver goods on board a vessel that is to be designated by the buyer in a manner customary at the particular port. In this case, the seller must also arrange for export clearance. On the other hand, the buyer pays cost of marine freight transportation, bill of lading fees, insurance, unloading and transportation cost from the arrival port to destination."*

From the above definition, it is evident that definition of "FOB" includes all cost until the loading of export goods on board the foreign going vessel including customs clearance and related charges which are to be borne by the seller. Since export duty discharged prior to issuance of the Let Export Order and before the goods are physically loaded on board, it is evident that duty portion is an integral part of the costs which is to be borne by the seller. Therefore, I find that where the seller has recovered the export duty amount separately from the buyer, such recovered amount become a part of the consideration for the sale of export goods. Thus, the said amount

is liable to be included in the FOB value for determining the correct assessable value.

26. I find that in respect of the 35 Shipping Bills as mentioned in Table-A, M/s Jay Ambe Agro, had wrongly claimed deductions equal to the export duty amounts payable at the time of export. I noticed that the deduction amounts of Rs. 5,30,16,068/- were claimed in the said Shipping Bills. These deductions were found equal to the export duty amounts paid by the exporter. For example, consider the Shipping Bill No 2436149 dated 13.07.2023 wherein the deduction amount exactly matches the export duty amount. The Deduction of Rs. 21,79,832/- was claimed in that shipping bill and that amount is equal to the export duty leviable. By treating the actual FOB Value as a cum-duty price and deducting the duty amount, the exporter attempted to take an abatement of duty which is not permissible to them in the subject 35 shipping bills. CBIC Circular No. 18/2008-Cus dated 10.11.2008 clarifies that export duty is chargeable on the transaction value, i.e. the FOB price, and no abatement of duty is allowed. Excluding such amounts from the declared FOB Value is contrary to Section 14 of the Custom Act, 1962 read with Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. This fact indicate clearly that the exporter deliberately reduced the declared FOB Value from the duty component and therefore, mis-declared the transaction value for the purpose of assessment.

27. I find that the exporter in 35 shipping bills and the respective export invoices had mentioned duty paid amounts separately in the invoices, they did not include these amounts in the total invoice value or the FOB value declared before the Customs Authority. On the contrary, they showed these as deductions under the head "Deduct/Deduction" in the shipping bills. By doing these act, the exporter had suppressed the actual consideration received from the overseas buyers and presented an artificially reduced FOB Value to the Customs authorities at the time of export. I find that the exporter during the investigation period has also admitted in their statements recorded under Section 108 of the Customs Act, 1962, that these deducted amounts were in fact recovered from the overseas buyers. Such amounts were duly realized in the bank accounts of the exporter. Thus, the facts were never discovered that the declared invoice value was not the sole amount received by the exporter from the foreign buyer. These acts show a deliberate attempt by the exporter to suppress facts and make false statements.

28. In view of the above, I hold that the declared FOB Value in respect of the 35 shipping bills covered under Table-A is liable for rejection under Rule 8 of the CVR(E), 2007. The actual transaction value has to be re-determined by including the deduction amounts wrongly excluded by the exporter.

Accordingly, I hold the re-determined FOB Value comes to Rs. 31,80,96,409/- (FOB Value of Rs. 26,50,80,341/- as declared in 35 shipping bills (+) Rs. 5,30,16,072/- of Export Duty recovered from overseas buyer and shown as deduct/deduction in shipping bills) against the declared Rs. 26,50,80,341/- in respect of said 35 shipping Bills.

29. In view of the above, the FOB Values declared in respect of the 35 shipping bills under Table-A (35 Shipping Bills under Table A) are liable to rejection under Rule 8 of the CVR(E), 2007 and the re-determined FOB Value comes to Rs. 31,80,96,409/- in Table-D (re-produced hereunder):

Table-D

S. No .	Custom House Code	SB Number	SB Date	Declared Fob Value in INR	Duty Amount Paid In IR	Deduction Claimed In INR	Payment Received as Reimbursement Of Taxes In INR	Re-Determined Fob Value In INR	Differential Duty in INR
1	INMUN1	2436066	13-07-2023	73,76,198	14,75,240	14,75,240	14,75,240	88,51,437	2,95,048
2	INMUN1	2436149	13-07-2023	1,08,99,158	21,79,832	21,79,832	21,79,832	1,30,78,989	4,35,966
3	INMUN1	2294541	07-07-2023	63,41,328	12,68,266	12,68,266	12,68,266	76,09,594	2,53,653
4	INMUN1	2272984	06-07-2023	70,28,640	14,05,728	14,05,728	14,05,728	84,34,368	2,81,146
5	INMUN1	1412747	31-05-2023	70,45,920	14,09,184	14,09,184	14,09,184	84,55,104	2,81,837
6	INMUN1	1310665	26-05-2023	70,45,920	14,09,184	14,09,184	14,09,184	84,55,104	2,81,837
7	INMUN1	1144662	19-05-2023	70,45,920	14,09,184	14,09,184	14,09,184	84,55,104	2,81,837
8	INMUN1	1063861	16-05-2023	70,94,588	14,18,918	14,18,918	14,18,918	85,13,505	2,83,784
9	INMUN1	1064829	16-05-2023	35,47,294	7,09,459	7,09,459	7,09,459	42,56,753	1,41,892
10	INMUN1	1064831	16-05-2023	35,47,294	7,09,459	7,09,459	7,09,459	42,56,753	1,41,892
11	INMUN1	1065248	16-05-2023	1,41,89,175	28,37,835	28,37,835	28,37,835	1,70,27,010	5,67,567
12	INMUN1	9918835	10-05-2023	67,67,145	13,53,429	13,53,429	13,53,429	81,20,574	2,70,686
13	INMUN1	9702178	02-05-2023	68,13,180	13,62,636	13,62,636	13,62,636	81,75,816	2,72,527
14	INMUN1	9668742	29-04-2023	71,42,850	14,28,570	14,28,570	14,28,570	85,71,420	2,85,714
15	INMUN1	9563391	26-04-2023	70,32,960	14,06,592	14,06,592	14,06,592	84,39,552	2,81,318
16	INMUN1	9445075	21-04-2023	1,31,86,800	26,37,360	26,37,360	26,37,360	1,58,24,160	5,27,472
17	INMUN1	9294361	14-04-2023	35,03,520	7,00,704	7,00,704	7,00,704	42,04,224	1,40,141
18	INMUN1	9296404	14-04-2023	1,31,38,200	26,27,640	26,27,640	26,27,640	1,57,65,840	5,25,528
19	INHZA1	9233239	12-04-2023	1,31,38,200	26,27,640	26,27,640	26,27,640	1,57,65,840	5,25,528
20	INMUN1	9250113	12-04-2023	35,58,263	7,11,653	7,11,653	7,11,653	42,69,915	1,42,331
21	INMUN1	9123075	06-04-2023	70,80,480	14,16,096	14,16,096	14,16,096	84,96,576	2,83,219

22	INMUN1	912309 4	06-04-2023	70,80,480	14,16,096	14,16,096	14,16,096	84,96,576	2,83,219
23	INMUN1	909638 5	05-04-2023	1,32,75,900	26,55,180	26,55,180	26,55,180	1,59,31,080	5,31,036
24	INMUN1	905891 1	04-04-2023	1,32,75,900	26,55,180	26,55,180	26,55,180	1,59,31,080	5,31,036
25	INMUN1	862142 1	20-03-2023	34,29,608	6,85,922	6,85,922	6,85,922	41,15,529	1,37,184
26	INMUN1	852800 6	16-03-2023	66,21,750	13,24,350	13,24,350	13,24,350	79,46,100	2,64,870
27	INMUN1	849993 6	15-03-2023	34,21,238	6,84,248	6,84,248	6,84,248	41,05,485	1,36,850
28	INMUN1	840669 2	11-03-2023	66,21,750	13,24,350	13,24,350	13,24,350	79,46,100	2,64,870
29	INMUN1	792562 0	20-02-2023	34,27,515	6,85,503	6,85,503	6,85,503	41,13,018	1,37,101
30	INMUN1	793215 1	20-02-2023	34,27,515	6,85,503	6,85,503	6,85,503	41,13,018	1,37,101
31	INMUN1	740875 5	31-01-2023	65,24,550	13,04,910	13,04,910	13,04,910	78,29,460	2,60,982
32	INMUN1	728971 1	27-01-2023	65,24,550	13,04,910	13,04,910	13,04,910	78,29,460	2,60,982
33	INIXY1	730930 4	27-01-2023	90,61,875	18,12,375	18,12,375	18,12,375	1,08,74,250	3,62,475
34	INMUN1	687879 1	11-01-2023	1,27,84,200	25,56,840	25,56,840	25,56,840	1,53,41,040	5,11,368
35	INMUN1	688276 8	11-01-2023	70,80,480	14,16,096	14,16,096	14,16,096	84,96,576	2,83,219
	Total			26,50,80,34 1	5,30,16,07 2	5,30,16,06 8	5,30,16,06 9	31,80,96,40 9	1,06,03,21 4

30. In respect of 13 Shipping Bills mentioned under Table-B, the exporter had not claimed any deduction of export duty. However, they had adopted another type of modus operandi of undervaluation wherein they recovered the amounts equal to the export duty separately from overseas buyers. In respect of these shipments, the exporter never declared before the customs at the port of export, that they would recover or have recovered the higher amounts from the overseas buyers which are over and above the declared invoice value of these export shipments. For instance, consider Shipping Bill No. 4497609 dated 28.09.2023, Commercial Invoice No. 331 dated 28.09.2022 & Debit Note No. 15 dated 04.11.2022. I find that as per the details submitted by the exporter during investigation, an amount of USD 8100 [Equivalent to Rs. 6,37,470/-] was separately recovered from other overseas buyer vide Debit Note No. 15 dated 04.11.2022 issued in r/o Commercial Invoice No.331 dated 28.09.2022. This recovery amount equalled export duty amount in the subject shipping bill. The said amount was never disclosed either in the shipping bill or in the invoice and directly realized in the exporter's bank account. I find that the amounts received by the exporter as reimbursement of taxes, by raising a separate debit note to the overseas buyer, in respect of these 13 Shipping Bills amounted to Rs. 1,86,30,696. The exporter also admitted in their statement that these

recoveries were made from the foreign buyers and duly credited in the bank accounts of the exporter. Hence, these recoveries are part of the “price actually paid or payable” for the export goods within the meaning of Section 14 of the Customs Act, 1962.

31. Further, I notice that these receipts were not declared in the export invoices submitted to Customs. The invoices show only the reduced price of goods wherein export duty component was excluded. The fact regarding collection of that additional amounts equal to export duty from the buyers was not disclosed before the customs authority at the time of export. This omission indicates suppression of critical information regarding the value of the export goods.

32. I also observe that the method of routing these receipts i.e. under Table-B reveals deliberate suppression. The exporter received these amounts through banking channels under RBI Purpose Code P1306. It is evident from RBI’s notified categorization that this purpose code pertains to transactions of a personal nature such as personal gifts, donations, or family maintenance and the said code is not meant for payment related to export of goods. By misusing this purpose code, the exporter misrepresented the nature of receipts to the banking authorities. The Customs also at the port of export remained unaware of the full consideration agreed between the exporter and overseas buyers. This practice of declaring ‘nil’ deduction in the shipping bills, recovering duty amounts through debit notes, routing them under an incorrect RBI purpose code, and keeping them out of the BRCs, clearly shows a deliberate attempt by the exporter to undervalue the goods for evasion of legitimate Customs duty.

33. In view of the above, the FOB Values declared in respect of the 13 shipping bills under Table-B are liable to rejection under Rule 8 of the CVR(E), 2007 and the re-determined FOB Value comes to Rs. 11,17,92,043/-, as calculated in Table-E (re-produced hereunder):

Table - E

S. No.	Custom House Code	Sb Number	Sb Date	Declared Fob Value in INR	Duty Amount Paid in INR	Amount Received Through Debit Note as Reimburse-Ment of Taxes In INR	Re-Determined Fob Value in INR	Differential Duty in INR
1	INMUN1	6718623	05-01-2023	66,25,800	13,25,160	13,25,160	79,50,960	2,65,032
2	INMUN1	6626423	02-01-2023	66,25,800	13,25,160	13,25,160	79,50,960	2,65,032
3	INMUN1	6626482	02-01-2023	66,25,800	13,25,160	13,25,160	79,50,960	2,65,032
4	INMUN1	6574218	30-12-2022	66,25,800	13,25,160	13,25,160	79,50,960	2,65,032
5	INMUN1	5820847	30-11-2022	72,08,190	14,41,638	14,41,638	86,49,828	2,88,328
6	INMUN1	5677435	24-11-2022	34,40,273	6,88,055	6,88,055	41,28,327	1,37,611
7	INMUN1	5521235	17-11-2022	69,82,605	13,96,521	13,96,521	83,79,126	2,79,304
8	INMUN1	5199371	02-11-2022	69,91,110	13,98,222	13,98,222	83,89,332	2,79,644
9	INMUN1	4894015	18-10-2022	32,68,350	6,53,670	6,53,670	39,22,020	1,30,734
10	INIXY1	4625019	04-10-2022	1,18,05,000	23,61,000	23,61,000	1,41,66,000	4,72,200
11	INIXY1	4625218	04-10-2022	1,18,05,000	23,61,000	23,61,000	1,41,66,000	4,72,200
12	INIXY1	4625402	04-10-2022	1,19,62,400	23,92,480	24,00,350	1,43,62,750	4,80,070

13	INMUN1	4497609	28-09-2022	31,87,350	6,37,470	6,37,470	38,24,820	1,27,494
				9,31,53,478	1,86,30,696	1,86,38,566	11,17,92,043	37,27,713

34. I find that in respect of the 40 shipping bills covered under Table-C, the exporter declared inflated amounts of ocean freight in their shipping bills as compared to the actual freight paid to the freight forwarders/shipping lines. The total excess freight declared across these shipments has been calculated at Rs. 2,86,92,536/-. By adopting this method, the exporter artificially reduced the assessable FOB value declared before Customs and thereby resulting in short-payment of export duty. These excess freight amounts were not borne by the exporter and the same were actually recovered from their overseas buyers as part of the total consideration for the consignments. The discrepancy between declared freight and actual freight paid was also accepted by the exporter during the investigation period by submitting the details of shipments. For example, in Shipping Bill Number 2436149 dated 13-07-2023 the ocean freight amount declared in respect of the said shipment is Rs. 33,35,803/- whereas during investigation, the exporter had submitted the actual freight amount paid by them in respect of the aforesaid shipping bill which stood at Rs. 13,33,744/-. Thus excess freight amount declared in respect of the aforesaid shipment works out to be at Rs. 20,02,059 (Rs. 33,35,803 (-) Rs. 13,33,744/-). The said excess freight amount has also been recovered by the exporter from the overseas buyer of the export goods but the exporter had not paid duty on the said excess freight amount which is part and parcel of the actual assessable value of the export goods. This instance demonstrates the method adopted by the exporter for all shipments covered under Table-C.

35. In view of the above, the FOB values declared in respect of the 40 shipping bills covered under Table-C are liable to rejection under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and the re-determined FOB Value comes to Rs. 31,77,23,996/- as calculated in Table-F (re-produced hereunder):

Table-F

S. No.	Custom House Code	SB NUMBER	SB DATE	Fob Value in INR	Duty Amount Paid in INR	Declared Freight Amount in INR	Actual Freight Amount Paid in INR	Excess Freight Declared in INR	Re-Determined Fob Value by Addition Of Excess Freight Deduction in INR	Differential Duty Amount in INR
1	INMUN 1	243606 6	13-07-2023	73,76,198	14,75,24 0	28,18,36 8	10,13,74 2	18,04,626	91,80,824	3,60,925
2	INMUN 1	243614 9	13-07-2023	1,08,99,158	21,79,83 2	33,35,80 3	13,33,74 4	20,02,059	1,29,01,216	4,00,412
3	INMUN	227298	06-07-2023	70,28,640	14,05,72	10,32,33	9,12,874	1,19,458	71,48,098	23,892

	1	4			8	2				
4	INMUN 1	141274 7	31-05-2023	70,45,920	14,09,18 4	10,34,87 0	9,90,499	44,371	70,90,291	8,874
5	INMUN 1	114466 2	19-05-2023	70,45,920	14,09,18 4	10,12,85 1	9,90,499	22,352	70,68,272	4,470
6	INMUN 1	106386 1	16-05-2023	70,94,588	14,18,91 8	15,28,06 5	9,82,547	5,45,518	76,40,106	1,09,104
7	INMUN 1	106482 9	16-05-2023	35,47,294	7,09,459	7,64,033	4,95,846	2,68,187	38,15,480	53,637
8	INMUN 1	106483 1	16-05-2023	35,47,294	7,09,459	7,74,947	4,95,846	2,79,101	38,26,395	55,820
9	INMUN 1	106524 8	16-05-2023	1,41,89,175	28,37,83 5	35,36,37 9	10,52,56 6	24,83,813	1,66,72,988	4,96,763
10	INMUN 1	991883 5	10-05-2023	67,67,145	13,53,42 9	19,20,99 6	9,83,137	9,37,859	77,05,004	1,87,572
11	INMUN 1	970217 8	02-05-2023	68,13,180	13,62,63 6	19,34,06 4	10,23,24 6	9,10,818	77,23,998	1,82,164
12	INMUN 2	966874 2	29-04-2023	71,42,850	14,28,57 0	18,46,15 2	5,89,075	12,57,077	83,99,927	2,51,415
13	INMUN 3	956339 1	26-04-2023	70,32,960	14,06,59 2	19,78,02 0	5,44,939	14,33,081	84,66,041	2,86,616
14	INMUN 4	944507 5	21-04-2023	1,31,86,800	26,37,36 0	37,36,26 0	23,51,01 9	13,85,241	1,45,72,041	2,77,048
15	INMUN 5	929436 1	14-04-2023	35,03,520	7,00,704	7,22,601	2,76,205	4,46,396	39,49,916	89,279
16	INMUN 6	929640 4	14-04-2023	1,31,38,200	26,27,64 0	37,22,49 0	23,23,43 9	13,99,051	1,45,37,251	2,79,810
17	INHZA1 7	923323 9	12-04-2023	1,31,38,200	26,27,64 0	37,22,49 0	19,91,11 6	17,31,374	1,48,69,574	3,46,275
18	INMUN 8	925011 3	12-04-2023	35,58,263	7,11,653	6,56,910	2,85,441	3,71,469	39,29,732	74,294
19	INMUN 9	912307 5	06-04-2023	70,80,480	14,16,09 6	15,04,60 2	5,56,486	9,48,116	80,28,596	1,89,623
20	INMUN 0	912309 4	06-04-2023	70,80,480	14,16,09 6	15,04,60 2	5,56,485	9,48,117	80,28,597	1,89,623
21	INMUN 1	909638 5	05-04-2023	1,32,75,900	26,55,18 0	37,61,50 5	25,11,77 5	12,49,730	1,45,25,630	2,49,946
22	INMUN 2	905891 1	04-04-2023	1,32,75,900	26,55,18 0	37,61,50 5	23,33,09 3	14,28,412	1,47,04,312	2,85,682
23	INMUN 3	862142 1	20-03-2023	34,29,608	6,85,922	8,62,934	3,18,459	5,44,475	39,74,082	1,08,895
24	INMUN 4	852800 6	16-03-2023	66,21,750	13,24,35 0	17,65,80 0	10,99,40 9	6,66,391	72,88,141	1,33,278
25	INMUN 5	849993 6	15-03-2023	34,21,238	6,84,248	8,60,828	2,98,618	5,62,210	39,83,447	1,12,442
26	INMUN 6	840669 2	11-03-2023	66,21,750	13,24,35 0	17,65,80 0	10,81,62 0	6,84,180	73,05,930	1,36,836
27	INMUN 7	792562 0	20-02-2023	34,27,515	6,85,503	8,95,577	5,50,264	3,45,313	37,72,828	69,063
28	INMUN 8	793215 1	20-02-2023	34,27,515	6,85,503	9,06,633	5,54,158	3,52,475	37,79,990	70,495
29	INMUN 9	740875 5	31-01-2023	65,24,550	13,04,91 0	12,39,66 5	12,00,22 0	39,445	65,63,995	7,889
30	INMUN 0	728971 1	27-01-2023	65,24,550	13,04,91 0	12,39,66 5	12,00,22 0	39,445	65,63,995	7,889
31	INIXY1 1	730930 4	27-01-2023	90,61,875	18,12,37 5	18,72,78 8	13,12,45 3	5,60,335	96,22,210	1,12,067
32	INMUN 2	687879 1	11-01-2023	1,27,84,200	25,56,84 0	29,82,98 0	25,16,56 0	4,66,420	1,32,50,620	93,284
33	INMUN 3	688276 8	11-01-2023	70,80,480	14,16,09 6	12,83,33 7	6,21,162	6,62,175	77,42,655	1,32,435
34	INMUN 4	662648 2	02-01-2023	66,25,800	13,25,16 0	13,03,07 4	12,49,36 1	53,713	66,79,513	10,743
35	INMUN 5	657421 8	30-12-2022	66,25,800	13,25,16 0	13,03,07 4	12,67,99 9	35,075	66,60,875	7,015
36	INMUN 6	582084 7	30-11-2022	72,08,190	14,41,63 8	10,04,77 8	6,86,483	3,18,295	75,26,485	63,659
37	INMUN 7	567743 5	24-11-2022	34,40,273	6,88,055	5,24,232	3,86,746	1,37,486	35,77,759	27,497

38	INMUN 1	552123 5	17-11-2022	69,82,605	13,96,52 1	11,08,35 0	8,56,961	2,51,389	72,33,994	50,278
39	INMUN 1	489401 5	18-10-2022	32,68,350	6,53,670	11,43,92 3	4,10,646	7,33,277	40,01,627	1,46,655
40	INMUN 1	449760 9	28-09-2022	31,87,350	6,37,470	11,15,57 3	8,91,357	2,24,216	34,11,566	44,843
	Total			28,90,31,46 0	5,78,06,2966	6,97,88,851	4,10,96,315	2,86,92,53 6	31,77,23,99 6	57,38,508

36. DISSCUSSION ON PARTY SUBMISSION:-

36.1 The contention of the Noticee that the Show Cause Notice proceeds on an erroneous premise is not acceptable. It is observed that in the present case the export consignments were cleared after assessment and payment of export duty, and the FOB value declared by the exporter represents the total consideration/realisation for the export at the time and place of exportation. The Department's proposal in the SCN is based on the statutory scheme that the assessable value of export goods is required to reflect the true transaction value and cannot be artificially reduced by segregating a portion of the realised price as "duty", particularly when the contract/invoice indicates that the price agreed is inclusive of export duty.

36.2 The Noticee's plea that export duty cannot form part of assessable value as it is computed after valuation is devoid of merit. The valuation of export goods under Section 14 of the Customs Act, 1962 is required to be determined on the basis of the price actually paid or payable for the goods sold for export at the time and place of exportation. Where the Noticee has admittedly charged/realised a consolidated export price from overseas buyers and thereafter carved out an amount towards export duty, such post facto deduction does not alter the fact that the buyer has paid a cum-duty consideration for the export goods. Therefore, the duty element recovered forms an integral part of the realised transaction value and cannot be excluded from the assessable value.

36.3 The reliance placed by the Noticee on contractual clauses to deduct export duty from invoice value is misconceived. The assessable value under the Customs law is not dependent upon the internal accounting or contractual allocation adopted by the exporter, but is to be determined in accordance with the statutory provisions, based on the actual sum paid or payable for the goods. If exporters are allowed to deduct the duty component from FOB value merely on the basis of private agreements, the valuation mechanism would become subjective and prone to manipulation, thereby defeating the scheme of levy of export duty on export goods under the Export Tariff read with Section 14 of the Customs Act.

36.4 The Noticee's arguments regarding "double taxation", "arithmetic loop" and alleged absence of machinery are untenable. Export duty is leviable on the value of export goods and when the exporter recovers duty from the buyer as part of the export price, the same constitutes part of the transaction value for assessment. The SCN does not seek levy of duty on duty as alleged, but seeks correct determination of assessable value where the exporter has declared a reduced value by deducting duty component from the price realised. Accordingly, the proposal in the SCN for demand of differential export duty is legally sustainable, and the Noticee's request for dropping the proceedings is liable to be rejected.

36.5 The contention of the Noticee that penalty on the partner is not sustainable on the ground that penalty is proposed on the partnership firm and that a partner is not a separate legal entity, is not acceptable. It is observed that the proceedings reveal active involvement, knowledge and responsibility of the partner in the acts/omissions leading to improper declaration and contravention of the provisions of the Customs Act. Penalty under Section 114AA is attracted where a person knowingly uses or causes to be used any false or incorrect material in the transaction of any business relating to the Customs Act, and the liability thereunder is personal and independent, and cannot be avoided merely because penalty is also proposed/imposed on the firm. The plea that the issue is only interpretational and that there was no false declaration is also devoid of merit, as the manner of declaration and deduction claimed in the shipping bills/invoices resulted in misstatement affecting assessment and revenue, and the facts and conduct clearly establish knowledge and conscious act. Accordingly, imposition of penalty upon the partner under the relevant provisions is legally tenable, and the Noticee's request to drop the penal proceedings is liable to be rejected.

DEMAND OF DUTY UNDER EXTENDED PERIOD OF TIME UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962:

37. It is obligatory for the exporter to subscribe a declaration as to the truthfulness of the contents of the Shipping Bill in terms of Section 50(2) of the Customs Act, 1962, in all their export declarations. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on export goods by the exporter himself by filing a Shipping Bill, in electronic form. Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make an entry for the export goods by presenting a Shipping Bill electronically to the proper officer. Thus, under the scheme of self-assessment, it was the exporter who must doubly ensure that he declared the correct classification / CTH of the export goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in

respect of the export goods while presenting the Shipping Bill. It is however evident from the investigation that there were deliberate mis-statement and suppression of facts on their part. The exporter was actively involved in mis-declaration of the FOB value of export goods, with an intention to evade appropriate export duty leviable on ad valorem basis on such goods. They adopted three different modus operandi (i) by claiming wrongful deduction of export duty from the transaction value; (ii) by covertly taking reimbursement of export duty from the overseas buyer (against Debit Notes) without even claiming the same as deduction; (iii) by declaring excess freight amounts. All the three modus-operandi have already been discussed in detail in the foregoing paragraphs. Further, the responsibility lies on the exporter to ensure that all details related to the shipments are correctly declared at the time of filing shipping bills. Therefore, the extended period of five years under Section 28(4) of the Customs Act, 1962 has been correctly invoked in the present case.

38. For 48 Shipping Bills as listed in **Tables A, B, C in para 6.2 to 6.5 above**, the differential duty demand, as detailed in corresponding **Annexure -I, Annexure -II, and Annexure -III**, of the SHOW CAUSE NOTICE, of Rs. 2,00,69,435/- as confirmed in Table-D, Table E and Table-F above, is required to be upheld against the said noticee under Section 28(8) of the Customs Act, 1962 and the interest at the applicable rate in terms of notification issued under Section 28AA of the said Act is required to be recovered from the said noticee on the differential amount of Customs duty.

Confiscation of the goods under Section 113(i) of the Customs Act, 1962 and imposition of redemption fine:

39. SCN has alleged that the goods are liable for confiscation under Section 113(i) of the Customs Act, 1962. The relevant legal provisions of Section 113(i) of the Customs Act, 1962 are reproduced below: -

“(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;”

On plain reading of the above provisions of the Section 113(i) of the Customs Act, 1962, it is clear that any goods, which are entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act, will be liable to confiscation. All the deduction claimed by the said noticee including the reimbursement of export duty was not deductible from the CIF value to arrive at the FOB value. Hence, the impugned exported goods as exported vide 48 shipping bills listed above are liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962.

39.1 I find the goods exported are not available physically for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"23. The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant the redemption fine is in fact to avoid such consequences flowing the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

39.2 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, I find that any goods improperly exported as provided in any sub-section of the Section 113 of the Customs Act, 1962 are liable to confiscation and merely because the exporter was not caught at the time of export of the goods, can't be given differential treatment. In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), is squarely applicable in the present case. Accordingly, I observe that the present cases also merits imposition of Redemption Fine.

Imposition of Penalties on main noticee and Co-Noticees

40. As regards imposition of penalty on the said noticee, I find that by their acts of omission and commission; by fraudulently producing forged documents and claiming abatement as deductions which were not permissible as discussed in details in the foregoing paragraphs of this Order, which has resulted into evasion of Customs duty to the tune of Rs. 2,00,69,435/- , they have rendered the goods liable to confiscation under Section 113(i) of the Customs Act, 1962. By their above acts, they have also rendered themselves liable to penalty under Section 114A and Section 114AA of the Act, *ibid*.

41. I also find that Sh. Jeewat Santosh Kumar Maheshwari, Partner of M/s Jay Ambe Agro, has knowingly or intentionally either made, signed and used or caused to be made, signed and used, the contracts, invoices and Shipping Bills for export of rice by M/s Jay Ambe Agro , which were incorrect as regards to the value of export goods for payment of export duty. The goods covered under Shipping Bills listed in Tables A, B,& C above, contained the declarations made by M/s Jay Ambe Agro which were false and incorrect in material particulars relating to the value of the impugned goods. The contracts with the buyer for sale and export of rice as well as the export documents submitted to Customs were signed in the overall supervision of Sh. Jeewat Santosh Kumar Maheshwari who was handling the day to day business of the export firm. This fact has been admitted by Sh. Jeewat Santosh Kumar Maheshwari in his statements recorded u/s 108 of the Customs Act, 1962.. In view of this, it found that Sh. Jeewat Santosh Kumar Maheshwari is the key person who has orchestrated the entire scheme of mis-declaration of value of the export goods, with an intention to evade customs (export) duty. Sh. Jeewat Santosh Kumar Maheshwari is, therefore, responsible for wilful acts of mis-statement and suppression of facts in respect of export of rice by M/s Jay Ambe Agro . The act of Sh. Jeewat Santosh Kumar Maheshwari regarding under valuation and mis-declaration of actual transaction value in respect of Shipping Bills filed by M/s Jay Ambe Agro has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. As such, Sh. Jeewat Santosh Kumar Maheshwari has rendered himself liable to penal action under the provisions of Section 114 (ii) and 114AA of the Customs Act, 1962

42. In view of the discussion and findings *supra*, I hereby pass the following order:

ORDER

- i. I order to reject the declared assessable value of Rs. 35,82,33,818/- in respect of 48 shipments of rice exported vide Shipping Bills as detailed in 'Annexure-I, II, & III, in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3(1) ibid and Section 14(1) of the Customs Act, 1962.
- ii. I order to re-determine the assessable value of Shipping Bills detailed in Annexure-I, II & III to the notice as Rs. 45,85,80,987/- under Section 14 (1) of the Customs Act, 1962 read with Rule 3 (1) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- iii. I determine and confirm the demand of the differential (export) duty amounting to **Rs. 2,00,69,435/- (Rupees Two Crore Sixty Nine Thousand Four Hundred and Thirty Five only)**, as calculated and shown in 'Annexure-I, II, & III to the notice, in respect of Shipping Bills filed by them at 3 different ports, under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s. Jay Ambe Agro, 93, Opposite Jadaba Hall, Near HP Petrol Pump, Jetalpur, Ahmedabad, Gujarat-382426 under Section 28(4) of the Customs Act, 1962.
- iv. I order to recover the interest from M/s. Jay Ambe Agro, at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty amounting to Rs. 2,00,69,435/-.
- v. I hold that the goods as detailed in Annexure-I, II, & III having re-determined assessable value of Rs. 45,85,80,987/- are liable to confiscation under the provisions of Section 113(i) of the Customs Act, 1962. I impose redemption fine of **Rs. 46,00,000/- (Rupees Forty Six Lakhs only)** under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.
- vi. I impose a penalty of **Rs. 2,00,69,435/- (Rupees Two Crore Sixty Nine Thousand Four Hundred and Thirty Five only)** upon M/s. Jay Ambe Agro under Section 114A of the Customs Act, 1962.
- vii. I impose a penalty of **Rs. 50,00,000/- (Rupees Fifty lakhs Only)** upon M/s. Jay Ambe Agro under Section 114AA of the Customs Act, 1962.
- viii. I impose a penalty of **Rs. 20,00,000/- (Twenty Lakhs Only)** upon Shri Jeewat Santosh Kumar Maheshwari Partner of M/s Jay Ambe Agro under Section 114(ii) of the Customs Act, 1962.

ix. I impose penalty of **Rs. 20,00,000/- (Twenty Lakhs Only)** upon Shri Jeewat Santosh Kumar Maheshwari Partner of M/s Jay Ambe Agro under Section 114AA of the Customs Act, 1962.

43. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

(Nitin Saini)

Pr. Commissioner of Customs
Customs House Mundra,

**F. No: GEN/ADJ/COMM/34/2025-Adjn
DIN-20260171MO000000B7D1**

To the Noticees,

- 1) M/s Jay Ambe Agro, 93, Opposite Jadaba Hall, Near HP Petrol Pump, Jetalpur, Ahmedabad, Gandhinagar, Gujarat-382426 (Jayambeagro09@gmail.com and info@jayambeagro.com)
- 2) Sh. Jeewat Santhosh Kumar Maheshwari, Partner of M/s Jay Ambe Agro, Residing at D 303, Karnavati Apartment-II, Near Shriram Residency, Narol, Ahmedabad, Gujarat, 382405; Earlier residing at A1/B1, Yogeshwar Tenement, Opp Samrat Nagar, Ghodasar, Ahmedabad, Gikarat- 380050 (jeewatmaheshwari22@gmail.com)

Copy to: -

- 1) The Chief Commissioner of Customs Gujarat Customs Zone, Ahmedabad
- 2) The Principal Commissioner/ Commissioner of Customs, Kandla, Kandla Custom House, Near Balaji Temple, Kandla-370210 (INIXY1),
Email: commr-cuskandla@nic.in;
- 3) The Principal Commissioner/ Commissioner of Customs, Ahmedabad, 1st Floor, Custom House, Near All India Radio, Income Tax Circle, Navrangpura, Ahmedabad-380009 having jurisdiction over Custom

House Hazira, Hazira By Pass Road, Choriyashi at Post Hazira-394270. (INHZA1);

- 4)** The Director General, Central Economic Intelligence Bureau, 6th Floor, B-Wing, Janpath Bhawan, Janpath, New Delhi-110001;
- 5)** The Additional Director, DRI Hqrs, 7th Floor, Drum Shape Building, I.P. Bhawan, I.P. Estate, New Delhi; and
- 6)** The Superintendent (EDI/Disposal/Recovery/Legal), Customs House, Mundra.
- 7)** Guard File.