सीमा शुल्क के प्रधान आयुक्त का कार्यालय

सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात

OFFICE OF THE PRINCIPAL 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

A. File No.	:	GEN/ADJ/COMM/439/2024-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-025-25-26
C. Passed by	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	18.09.2025. 18.09.2025
E. SCN No. & Date	:	GEN/ADJ/COMM/439/2024 dated 10.10.2024
F. Noticee(s) / Party / Importer	:	M/s Sailor Exports Limited (IEC: 1196000433)
G. DIN	:	20250971MO0000813918

1. यहअपीलआदेश संबन्धित को नि:शुल्क 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 हो5000/- रुपये 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/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल 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 मदसं°-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 paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटि/ 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 जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां 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:

Intelligence was received in the office of the Directorate of Revenue Intelligence (Hqrs.), New Delhi, which indicated undervaluation in the export of rice after imposition of export duty w.e.f. 09.09.2022. The information indicated that several exporters, including M/s Sailor Exports Limited (IEC: 1196000433) having registered office at First Floor, 6/2 Nayta Mundla Road, Nemavar Road, Palda, Indore, Madhya Pradesh, 452020 (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 The preliminary scrutiny revealed that export duty at the rate of 20% *ad valorem* had been imposed on export of rice vide CBIC Notification No. 49/2022-Cus., dated 08.09.2022. Scrutiny of the exporter's shipments revealed a consistent modus operandi of undervaluation through three 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 Debit Notes) without even claiming the same as deduction **(iii)** by declaring excess freight amounts. The exporter negotiated a composite price with overseas buyers for the sale of rice, but artificially bifurcated this price/consideration into two components, 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.

2.2 In some cases, the exporter had recovered 'the export duty amount' separately from the overseas buyer without declaring the same in their export invoice and without claiming the same as 'deduction', and such amounts were part of their consideration for sale, but not included in the transaction value, causing short payment of duty. In several other cases of export of rice on CIF/CF incoterm basis, investigation revealed that the exporter declared excess freight amounts than the actual freight paid, and by claiming such excess freight in the shipping bills, wrongly deducted part of the consideration/transaction value equal to the excess freight, which was not included in the transaction value, causing short payment of duty.

2.3 From the preliminary scrutiny of the export data, it appeared that the exporter had treated the actual transaction value (i.e. actual FOB Value) as cum-duty FOB Value and declared lesser transaction value by wrongly claiming abatement of duty, thereby evading payment of duty on the differential value between the actual transaction value (i.e. FOB Value) and the declared reduced FOB value.

2.4 The practice of payment of export duty on cum-duty FOB Value was prevalent prior to 2009. CBIC Circular No. 18/2008-Cus. dated 10.11.2008 stipulated that with effect from 01.01.2009, export duty shall be computed on the transaction value, i.e. 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, which shall be the FOB price of such goods at the time and place of exportation.

INITIATION OF INVESTIGATION:

3.1 Pursuant to intelligence and apparent undervaluation of export goods, investigation was initiated against various exporters including M/s Sailor Exports Limited by issuance of summons under section 108 of the Customs Act, 1962. It is a registered company, Limited by shares, with shares held by Sh. Mahesh Kumar Nagrani, Sh. Amit Nagrani, Smt. Sangeeta Nagrani, Smt. Shantibai Nagrani and M/s. Nagrani Industries Pvt. Ltd.

3.2 Vide summons dated 16.08.2023, 14.09.2023, 25.09.2023, documents were requested from M/s Sailor Exports Limited. In pursuance, Sh. Sunny Nagrani, Executive Director, appeared in the DRI office and vide letter dated 12.10.2023, email dated 13.10.2023, letter dated 25.10.2023 & letter dated 19.03.2024, submitted export documents for rice exported during October 2022 to December 2023. Vide email dated 12.10.2023, he submitted three invoices bearing No. SEL281, 282. The documents included shipping bills with export invoices and bills of lading, invoices of export expenses, agreements with overseas buyers, check list, Bank Realization Certificates (BRCs) and duty payment ledger account.

3.3 DRI vide email dated 04.07.2024 and 23.07.2024 sought details of total payment received by M/s Sailor Exports Limited for each shipping bill along with expenses on ocean freight and insurance. In response, vide email dated 23.08.2024, M/s Sailor Exports Limited submitted details of total payments received per shipping bill and expenses towards ocean freight & insurance for consignments exported on CF/CI/CIF Inco Term basis.

4. During the course of investigation, in order to collect the evidence/corroborative evidence statement of persons who were directly/indirectly involved in export of goods were recorded by the DRI under the provisions of Section 108 of Customs Act,1962. The facts of statements of such persons have been mentioned in the Show Cause Notice and the records of statements thereof have been attached to Show Cause Notice as RUDs. For sake of brevity contents of statements of such persons are not produced hereunder. The details of the persons whose statements were recorded are as under: -

- Statement of Sh. Sunny Nagrani, Executive Director, M/s Sailor Exports Limited was recorded u/s 108 of the Customs Act, 1962 on 13.10.2023 and 20.03.2024 under Section 108 of the Customs Act, 1962.
- Statement of Sh. Kishan Chand Nagrani, Director, M/s Sailor Exports Limited was recorded u/s 108 of the Customs Act, 1962 on 20.03.2024 under Section 108 of the Customs Act, 1962.

5. The export documents and details submitted by the exporter during investigation were analysed and it was revealed that -

5.1 M/s Sailor Exports Limited exported 671 shipments of rice having description as 'Long Grain White Rice/ Indian White Rice/ Natural White Rice/ Parboiled Rice/ Brown Rice' classified under CTH 10062000, 10063010 & 10063090, liable to export duty @ 20% ad valorem vide CBIC Notification No. 49/2022-Cus. dated 08.09.2022 and 49/2023-Customs dated 25.08.2023. 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 amounts equal to the export duty paid by them. **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. **14.26 crores** were wrongly claimed by the exporter from the actual FOB Value in respect of 671 export shipments as shown in below table:

Deduction amounts wrongly claimed in Shipping Bills by the exporter from the actual FOB Value of exports:

Sr. No.	Name of the Port of export	No. of Shipping Bills filed	Declared FOB Value (INR)	Declared Total Value (INR)	Declared Invoice Value (INR)	Deduction Amounts Claimed (INR)
1	INIXY1	49	1,10,04,79,466	1,60,16,10,519	1,48,63,51,813	11,52,58,706
2	INNSA1	175	1,13,95,64,597	1,44,24,72,150	1,42,07,91,347	2,16,80,803
3	INKRI1	36	22,97,27,568	29,36,76,841	29,11,13,434	25,63,407
4	INVTZ1	56	41,52,04,103	48,88,07,092	48,68,79,296	19,27,796
5	INMUN1	228	1,65,82,71,371	1,97,98,26,301	1,97,85,61,243	12,65,058
6	INHZA1	16	19,49,01,935	20,06,52,647	20,06,52,647	
7	INMAA1	69	43,77,06,017	54,60,72,719	54,60,72,719	
8	INBOK6	18	17,35,93,395	19,35,57,345	19,35,57,345	
9	INCCU1	7	6,12,89,730	6,12,89,730	6,12,89,730	
10	INKAK1	3	26,29,83,375	29,33,77,125	29,33,77,125	
11	INKPK6	14	11,42,05,001	12,63,02,656	12,63,02,656	
Grand Total		**671**	**578,79,26,557**	**722,76,45,124**	**708,49,49,354**	**14,26,95,769**

5.2 Deduction amounts wrongly claimed by the exporter from the actual FOB Value of exports which were equal to the export duty: Scrutiny of export documents and details submitted during investigation revealed that the exporter, at the time of filing 50 shipping bills, claimed deduction of USD 15,70,946 and EUR 2,17,225 (equivalent to Rs. 14,26,95,769/-), which were equal to the export duty amounts of USD 15,70,946 and EUR 2,17,225 (equivalent to Rs. 14,26,95,834/-) paid by them. Therefore, the amounts claimed as 'deduction/deduct' were equal to the export duty amounts paid by them at the time of filing of the shipping bills. Investigation further revealed that these 'deduction/deduct' amounts were also recovered from the overseas buyer through separate debit notes and credited in their bank accounts. The exporter confirmed these facts in their statements recorded u/s 108 of the Customs Act, 1962. The details of 'deduction/deduct' has already been mentioned in the Show Cause Notice and the same is not being repeated here for the sake of brevity.

5.3 In respect of these shipments the exporter had merely claimed the deduction of duty paid amounts by declaring the same in the shipping bills under the head 'deduct/deduction'. However, in the export invoice they have separately mentioned the duty paid amounts without adding the same in the total Invoice Value. Thus 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. These deduction amounts have been recovered by them by raising a separate debit note to the overseas buyer and these amounts are also not reflected in the Bank Realization Certificates (BRC). The amounts received by the exporter as reimbursement of taxes in respect of these 50 S/Bs amounted to USD 15,70,946 and EUR 2,17,225 (equivalent to Rs. 14,26,95,834/-). Therefore, the exporter had suppressed the said amount. They have not declared the full amount to be received by them from the overseas buyer in the export invoice.

5.4 For ease of reference, photo of SB No. 5167778 dated 01-11-2022 clearly indicates deduction of Rs. 11,32,716 in the Shipping Bill equal to the cess amount (Export Duty). This amount was deducted by the exporter from the actual transaction value (FOB Value), and export duty was not paid on the differential value of Rs. 11,32,716, though it was part of the consideration received from the overseas buyer for the consignment.

5.5 In addition to above, in respect of the 585 shipments of rice exported by M/s Sailor Exports Limited, 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 amounts** of **USD 10,470,356 and EUR 496,112 [equivalent to Rs. 89,69,32,663/-]** (paid by them) at the times of export, from the overseas buyers of the export goods. Details of these 585 shipments have already been elaborated in the Show Cause Notice and, therefore, for the sake of brevity, the contents of Table-B are not being reproduced herein

5.6 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. The amounts received by the exporter as reimbursement of taxes in respect of these 585 S/Bs amounted to USD 10,470,356 and EUR 496,112 [equivalent to Rs. 89,69,32,663/-]. These amounts have been recovered by the exporter by raising a separate debit note to the overseas buyer.

5.7 As may be seen from the copy of the Shipping Bill Number 3806022 dated 08-09-2023, 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 equal to the exporter duty amount of Rs. 980235 (i.e. USD 11925, taking exchange rate of Rs. 82.2 per USD) from the overseas buyer in their bank accounts. Therefore, the exporter had suppressed the said amount. They have neither declared the full amount to be received by them from the overseas buyer in the export invoice nor in the shipping bill. Thus, they have mis-declared the actual FOB Value in respect of all such shipping bills._

5.8 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 claimed that the deduction/deduct amounts claimed by them in the shipping bill were received by them from overseas buyers in the form of reimbursement of taxes against debit notes raised by them for the said purpose. They have further informed that the said transactions have been made under the RBI purpose code P1306.

RBI purpose codes are unique identifiers assigned to international transactions to enable 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' pertain to forex transactions of personal nature such as personal gifts, family maintenance, donations etc., and the accounting purpose code P1306 falling under this category is clearly not associated with payments received in respect of exported goods. Thus, the exporter had used wrong purpose for receipt of the export duty amounts from the buyers and mis-represented the facts before the bank authorities to process such receipts. These amounts are not reflected in the bank realisation certificates obtained by the exporter from the bank.

5.9 In addition to the above, in respect of the 571 shipments of rice, the exporter had declared higher amounts of ocean freight in comparison to the actual freight amounts paid by them, thus causing short payment of duty on the differential ocean freight amount in respect of these 571 shipments also.

The total amount of excess freight declared by the exporter in respect of these shipments stood at Rs. 35,00,81,467/- Details of these 571 shipments have already been elaborated in the Show Cause Notice and, therefore, for the sake of brevity, the contents of Table-C are not being reproduced herein.

5.10 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 declared higher ocean freight amounts in export documents such as shipping bills compared to the actual freight paid to freight forwarders/shipping lines. It is a fact on record that the exporter recovered higher freight amounts from overseas buyers in comparison to the amounts paid to the freight forwarders/shipping lines. These facts have been confirmed by the exporter in the details of their export shipments submitted under section 108 of the Customs Act, 1962.

5.11 As per Shipping Bill No. 6495047 dated 28-12-2022, the ocean freight declared in respect of the said shipment was USD 201250, equivalent to Rs. 1,64,62,250/- (at exchange rate Rs. 81.80 per USD), whereas during investigation the exporter submitted that the actual freight paid by them was Rs. 1,10,13,996. Thus, the excess freight declared for the shipment works out to Rs. 54,48,254. The said excess freight amount was also recovered by the exporter from the overseas buyer but no duty was paid on it, though it forms part of the actual assessable value of the export goods.

6. The **deduction amounts** claimed by the exporter as detailed in Table A and the **reimbursement of duty paid amounts** taken separately as detailed in Table B, and the **excess freight amounts declared** by the exporter in their export documents in respect of shipments detailed in Table C were not included in the declared FOB Value of goods, as discussed above. Investigation has revealed that these deduction amounts were also recovered by them from the overseas buyer in their bank accounts. Therefore, the reimbursement of export duty 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 in the shipping bills at the time of filing shipping bills, and the amounts recovered separately from the overseas buyer over and above the invoice price as reimbursement of export duty, appeared to be liable to inclusion in the FOB Value for calculation of export duty.

7. The investigation into undervaluation of rice shipments exported by M/s. Sailor Exports Limited vide Shipping Bills discussed in Tables A, B and C revealed deliberate mis-statement and suppression of facts by the exporter, who was actively involved in mis-declaration of FOB value with intent to evade export duty leviable on *ad valorem* basis. As discussed above, in respect of shipments under Table C, the exporter mis-declared freight amounts despite being fully aware of the actual freight paid. In respect of shipments under Tables A and B, the exporter recovered export duty from overseas buyers without declaring these facts in export documents. Further, in respect of goods

exported through shipping bills under Table A, they wrongly claimed deduction amounts and mis-declared 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 and export duty reimbursement amounts claimed and recovered by them from the buyers of the export goods.

8.1 As discussed in the above paras, the valuation of export goods under the Customs Act, 1962 is governed by Section 14 ibid read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [hereinafter referred to as 'CVR (E), 2007']. As per Section 14, **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 the 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 constitute the 'transaction value' of such goods.

8.2 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.*

8.3 In this case, the value of the export goods shall be the transaction value thereof when the price is the sole consideration. For determination of transaction value, the sole consideration received by the exporter from the buyer has to be taken into account, including all payments that are compulsory for delivery of the goods on board the vessel. The exporter has insisted that export duty is on reimbursement basis from the overseas buyer, thereby receiving a part of the export proceeds separately and not including the same in the assessable value. This indicates that the seller imposed a condition on the buyer that unless a fixed amount (equal to 20% export duty on the declared lesser FOB value) was paid separately, the goods would not be sold or delivered at the time and place of exportation. Such payments, being a condition of sale, are necessarily part of the consideration received by the seller for sale of the goods. Likewise, the excess ocean freight amounts declared by the exporter, though not paid to the shipping lines/freight forwarders, are also part of the consideration received from the buyer. Therefore, all such amounts, being equal to the export duty and excess freight, are liable to be added to the declared FOB Values for determination of the actual FOB Value for calculation of applicable export duties thereon.

9.1 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.

The website of freightos https://www.freightos.com/freight-resources/fob-calculator was visited which provide FOB calculator tools for the ease of international freigth industory. 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.

9.2 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*** **(RUD-9). 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". 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.*

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.

10. Rejection & Redetermination of the Transaction Value:

10.1 As discussed above, valuation of export goods under the Customs Act, 1962 is governed by Section 14 ibid read with CVR (E), 2007. The export proceeds receivable in full, consequent to negotiation and finalization of sale price between the exporter in India and the overseas buyer, constitute the 'transaction value' of such goods. Export duty is leviable on the actual sale price at which the goods were sold. Where such sale price is mis-declared or understated by the exporter, the actual sale price, i.e., the transaction value, has to be taken into account for valuation of the impugned export goods.

10.2 In respect of rice shipments covered by the Shipping Bills mentioned in Tables A, B and C, it appeared that M/s. Sailor Exports Limited negotiated and finalized one price with the overseas buyer but intentionally bifurcated it in two parts. The duty payable was deducted from the transaction value, and in the shipping bills the exporter declared such undervalued and mis-declared transaction value, which was lesser than the actual price finalized as consideration for the goods. A part of the consideration was intentionally excluded from the declared value by adopting three different modus operandi as discussed under foregoing paras. The difference between the actual price finalized with the overseas buyer and the price shown in export documents was recovered separately by arrangement between buyer and seller. The exporter and buyer may enter into any contract, 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.**

10.3 The receipt of these deduction amounts was apparently never disclosed to the concerned Customs authorities. The said amounts were received from the overseas buyer by raising separate debit notes, 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 (equal to the export duty 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 against debit notes. Hence, it appears that the value declared by M/s Sailor Exports Limited to the concerned Customs authorities as the Transaction Value of the export cargo in respect of the 671 shipments of rice covered by the Shipping Bills as shown in the Table A, B & C, appeared to be rejected under Rule 8 of the CVR(E), 2007 and the impugned export goods appeared to be valued at their actual Transaction Value as established by the investigation, in accordance with the provisions of Section 14 of the Customs Act, 1962, read with Rule 3 of the CVR(E), 2007.

10.4 The amount wrongly excluded from the FOB price was indeed part of the consideration negotiated and finalized between the exporter M/s Sailor Exports Limited and their respective overseas buyers and the said amount which was excluded from the FOB Value was duly 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 received separately as reimbursement of duty) as shown in the **Table A, B & C** appeared 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 Sailor Exports Limited appears to be liable to pay the resultant differential duty in addition to the duty already paid by them.

10.5 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 **Table A, B and C**, wherein a part of export proceeds was apparently not declared to the concerned Customs authorities, and the same was not include 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.

11. Calculation of Differential Duty:

11.1 As discussed above, the exporter 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, 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. 2,85,39,151/-** is liable to be recovered from the exporter in respect of these deduction amounts as summarized below.

Table-D

Custom House Code/ Name	No. of Shipping Bills	Declared FOB Value (INR)	Export duty Paid (INR)	Deduction Amounts Claimed (INR)	Re-determined FOB Value (INR)	Differential duty (INR)
INIXY1	24	57,62,93,837	11,52,58,768	11,52,58,706	69,15,52,543	2,30,51,741
INNSA1	21	10,84,04,015	2,16,80,805	2,16,80,803	13,00,84,818	43,36,159
INKRI1	2	1,28,17,035	25,63,407	25,63,407	1,53,80,442	5,12,681
INVTZ1	2	96,38,978	19,27,796	19,27,796	1,15,66,773	3,85,559
INMUN1	1	63,25,290	12,65,058	12,65,058	75,90,348	2,53,012
Grand Total	**50**	**71,34,79,155**	**14,26,95,834**	**14,26,95,769**	**85,61,74,924**	**2,85,39,151**

11.2 In several export shipments, exporter had **separately recovered the duty amounts from the overseas buyer** of the cargo. These facts were not declared by them before the customs authorities at the port of export. Admittedly, these amounts have also been recovered by the exporter from the overseas buyer against debit notes for reimbursement of export duties. 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 were also part of the consideration received by the exporter for sale of their export goods. These amounts separately 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. 17,96,97,680/-** is liable to be recovered from the exporter in respect of these reimbursed export duty amounts.

TABLE-E

Custom House Code/ Name	No. of Shipping Bills	Declared FOB Value (INR)	Export duty Paid (INR)	Export Duty Amount separately reimbursed by the buyer (INR)	Re-determined FOB Value (INR)	Differential duty (INR)
INMUN1	219	1,57,32,78,024	31,46,55,519	31,46,55,782	1,88,79,33,806	6,29,31,242
INNSA1	151	1,00,05,40,203	20,01,08,058	20,01,07,908	1,20,06,48,110	4,00,21,564
INIXY1	25	52,41,85,629	10,48,37,126	10,48,37,126	62,90,22,755	2,09,67,425
INMAA1	69	43,77,06,017	8,75,41,219	8,75,41,285	52,52,47,302	1,75,08,241
INVTZ1	40	27,41,04,165	5,48,20,836	5,48,20,873	32,89,25,039	1,09,64,172
INKRI1	33	21,04,79,303	4,20,95,863	4,20,95,861	25,25,75,163	84,19,170
INHZA1	16	19,49,01,935	3,89,80,389	3,89,80,428	23,38,82,363	77,96,084
INKPK6	13	10,83,93,251	2,16,78,652	2,16,78,691	13,00,71,942	43,35,736
INBOK6	14	10,75,61,277	2,15,12,258	2,15,12,297	12,90,73,574	43,02,457
INCCU1	7	6,12,89,730	1,22,57,946	1,22,57,946	7,35,47,676	24,51,589
Grand Total	**587**	**4,49,24,39,532**	**89,84,87,866**	**89,84,88,197**	**5,39,09,27,729**	**17,96,97,680**

11.3 Apart from the above, in several shipments of rice, as detailed in Table C, 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 paid by the exporter are eligible for deduction from the CIF 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. 7,00,16,293/- 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 this Show Cause Notice.

Table-F

Custom House Code/ Name	No. of Shipping Bills	Declared FOB Value (INR)	Export duty Paid (INR)	Excess Freight Amounts declared in the export documents (INR)	Re-determined FOB Value (INR)	Differential duty (INR)
INMUN1	203	1,45,15,80,365	29,03,15,988	14,48,30,339	1,59,64,10,705	2,89,66,068
INNSA1	161	1,05,25,29,626	21,05,05,945	8,29,61,253	1,13,54,90,879	1,65,92,251
INMAA1	68	43,62,03,503	8,72,40,716	3,93,55,613	47,55,59,117	78,71,123
INIXY1	35	76,30,34,238	15,26,06,848	2,94,04,819	79,24,39,057	58,80,964
INVTZ1	47	34,36,54,823	6,87,30,968	2,17,12,360	36,53,67,183	43,42,472
INKRI1	32	20,55,59,087	4,11,11,820	1,96,08,882	22,51,67,969	39,21,776
INBOK6	12	11,83,30,595	2,36,66,122	73,01,065	12,56,31,660	14,60,213
INKPK6	7	5,58,84,825	1,11,76,966	28,49,365	5,87,34,190	5,69,873
INKAK1	3	26,29,83,375	5,25,96,675	10,78,807	26,40,62,182	2,15,761
INHZA1	3	2,84,26,815	56,85,363	9,78,963	2,94,05,778	1,95,793
Grand Total	**571**	**4,71,81,87,253**	**94,36,37,411**	**35,00,81,467**	**5,06,82,68,720**	**7,00,16,293**

11.4 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 671 export shipments have been calculated as shown in below table. Accordingly, the differential duty payable by the exporter M/s Sailor Exports Limited works out to be at **Rs. 27,82,53,123/-** as shown in below Table. The port wise summary of differential duty payable by M/s Sailor Exports Limited is as under:

Table-G

Sr. No.	Custom House Code/ Name	No. of Shipping Bills	Declared FOB Value (INR)	Re-determined FOB Value (INR)	Differential Duty payable (INR)
1	INMUN1	228	1,65,82,71,371	2,11,90,22,550	9,21,50,321
2	INNSA1	175	1,13,95,64,597	1,44,43,14,560	6,09,49,973
3	INIXY1	49	1,10,04,79,466	1,34,99,80,117	4,99,00,129
4	INMAA1	69	43,77,06,017	56,46,02,916	2,53,79,364
5	INVTZ1	56	41,52,04,103	49,36,65,132	1,56,92,202
6	INKRI1	36	22,97,27,568	29,39,95,718	1,28,53,628
7	INHZA1	16	19,49,01,935	23,48,61,326	79,91,876
8	INBOK6	18	17,35,93,395	20,24,06,757	57,62,669
9	INKPK6	14	11,42,05,001	13,87,33,057	49,05,609
10	INCCU1	7	6,12,89,730	7,35,47,676	24,51,589
11	INKAK1	3	26,29,83,375	26,40,62,182	2,15,761
	Grand Total	**671**	**5,78,79,26,557**	**7,17,91,91,990**	**27,82,53,123**

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

12.1 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.

12.2 In view of the discussion supra, it is evident that exporter firm M/s Sailor Exports Limited, were well aware about the actual value of the export goods. They were 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.

12.3 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 appeared that the exporter had 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 invokable in this case to recover the differential duty. Further, M/s Sailor Exports Limited is also liable to pay interest on their differential duty liability as per the provisions of Section 28 AA of the Customs Act, 1962, at applicable rate.

13. From the scrutiny of the documents gathered/submitted during investigation by the exporter M/s Sailor Exports Limited, scrutiny of the export data and statements of the key persons involved in export of rice from various ports of India, it appeared that—

i. Sh. Sunny Nagrani, Directors of M/s Sailor Exports Limited was the key persons who on behalf of M/s. Sailor Exports Limited negotiated and finalized the sale price of rice, exported by M/s Sailor Exports Limited to various overseas buyers, vide 671 Shipping Bill as detailed in Table A, Table B and Table C.

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, 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.

- In respect of the shipping bills listed in Table B, the declared FOB Value was undervalued by an amount equal to the amount of 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 out-rightly mis-declared the actual transaction value at the time of export.

- 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 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 for deduction from the actual transaction value. 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 Sailor Exports Limited to the Customs authorities in the shipping bills filed by them which is supported by their sales contracts/proforma invoices/ export invoices, 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 'Annexures-I, II and 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 Sailor Exports Limited has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 and consequently M/s Sailor Exports Limited have rendered themselves liable to a Penalty under the provisions of Section 114A and Section 114AA of the Customs Act, 1962;

viii. Sh. Sunny Nagrani, Director of M/s Sailor Exports Limited, appeared to be the person who 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 Sailor Exports Limited, 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, contained the declarations made by M/s Sailor Exports Limited 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. Sunny Nagrani who was handling the day to day business of the export firm. This fact has been admitted by Sh. Sunny Nagrani in his statements recorded u/s 108 of the Customs Act, 1962. These facts have also been admitted by Sh. Kishan Chand Nagrani, another Director of M/s Sailor Exports Limited. In view of this, it appeared that Sh. Sunny Nagrani 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. Sunny Nagrani is, therefore, responsible for wilful acts of mis-statement and suppression of facts in respect of export of rice by M/s Sailor Exports Limited. The act of Sh. Sunny Nagrani regarding under valuation and mis-declaration of actual transaction value in respect of Shipping Bills filed by M/s Sailor Exports Limited has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. As such, Sh. Sunny Nagrani has rendered himself liable to penal action under the provisions of Section 114 (ii) and 114AA of the Customs Act, 1962;

14. 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 11 different ports, as mentioned in **Table G** above, however the highest amount of differential export duty is in

respect of Mundra Port (INMUN1). Hence, Mundra Port, being the port involving highest revenue, the Show Cause Notice was made answerable to the 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.

15.1 Accordingly, **M/s Sailor Exports Limited** (**IEC: 1196000433)** was called upon to show cause vide Show Cause Notice GEN/ADJ/COMM/439/2024-ADJN-O/O COMMR – CUS – MUNDRA DATED 10.10.2024 as to why:

i. The declared assessable value of Rs. 578,79,26,557/- in respect of 671 shipments of rice exported vide Shipping Bills detailed in 'Annexures -I, II & III of the Show Cause Notice, 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 assessable value in respect of Shipping Bills detailed in 'Annexures -I, II & III of the Show Cause Notice', should not be re-determined at Rs. 717,91,91,990/- under the provisions of Section 14 (1) of the Customs Act, 1962;

iii. The differential (export) duty amounting to **Rs. 27,82,53,123/-** payable, as calculated and shown in 'Annexures-I, II & III' to the Show Cause Notice, in respect of these 671 Shipping Bills filed by them at 11 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. 27,82,53,123/-** 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 **'**Annexures-I, II & III' to the Show Cause Notice having re-determined assessable value of Rs. 717,91,91,990/- should not be held liable to confiscation under the provisions of Section 113(i) of the Customs Act, 1962;

vi. Penalty under the provisions of section 114A and Section 114AA should not be imposed upon them.

15.2 Further, **Sh. Sunny Nagrani**, Executive Directors of M/s Sailor Exports Limited was called upon to show cause as to why penalty under section 114(ii) and Section 114AA of the Customs Act, 1962 should not be imposed upon him.

16. DEFENCE SUBMISSIONS: The Noticee submitted their written submission on 01.09.2025 wherein they submitted the following:

A. The Noticees have contested the interpretation of Section 14 of the Customs Act, 1962, as adopted in the SCN. Noticee submitted that the phrase "for delivery at the time and place of exportation" means the delivery at the Customs Station and not delivery on board of the vessel. Consequently, the expenses incurred at the port would not be included in the transaction value as the same is incurred beyond the place of exportation**.** They further submitted that export duty is a statutory levy incurred at the time of Let Export Order and cannot be part of the assessable value. Reimbursement of

duty from the buyer is not "price actually paid or payable" under Section 14, but merely a pass-through to the Government.

B. THE REAL MEANING OF THE CLARIFICATION PROVIDED BY THE CIRCULAR NO. 18/2008 – CUS DATED 10.11.2008 IS THAT THE TRANSACTION VALUE OF EXPORT GOODS IS EXCLUSIVE OF THE REIMBURSEMENT OF EXPORT DUTY RECEIVED FROM THE BUYER. FURTHER, WITHOUT PREJUDICE, THE INTERPRETATION OF THE SAME FOR PROPOSING INCLUSION OF THE EXPORT DUTY COMPONENT IN THE VALUE OF EXPORT GOODS IS LEGALLY INCORRECT.

- The Board's Circular dated 10.11.2008 seeks to clarify the doubt 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 thereon. The Circular clarifies that 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 the Customs Act, 1962, shall be the FOB price of such goods at the time and place of exportation.
- In view of the detailed explanation of the term 'price actually paid or payable for the goods' and the expenses which would be included and excluded from the purview of this term in Ground A of the present reply, it is apparent that the transaction value of the goods at the time and place of export does not include the element of export duty, as the same is an expense incurred at the port.
- In view of this explanation, the clarification of the Circular dated 10.11.2008 ought to be interpreted to mean that the transaction value of the export goods is the FOB value of export goods at the time and place of exportation i.e. excluding the reimbursement of export duty received from the foreign buyer over and above the price received for the goods.
- In the event the declared FOB value is inclusive of export duties, such duties have to necessarily be deducted to arrive at the actual FOB value of the export goods at the time and place of exportation and the ad valorem duty should be levied thereon.
- Department is not at liberty of interfering with the export contract representing the consensus between the parties to give a different colour to the commercial arrangement involved

C. WITHOUT PREJUDICE, EVEN IF IT IS ASSUMED THAT THE CIRCULAR DATED 10.11.2008 ACTUALLY PURPORTS TO INCLUDE THE ELEMENT OF EXPORT DUTY IN THE FOB VALUE OF THE EXPORT GOODS, EVEN THEN THE SAME CANNOT BE RELIED UPON TO PROPOSE THE INSTANT DEMAND.

- As explained in Ground A, the transaction value of export goods is exclusive of the element of export duty. The said explanation is in conformity with the statutory mandate of Section 14 of the Customs Act. Therefore, even if it is assumed that the Circular dated 10.11.2008 purports to include export duty in the FOB value of the export goods, then the same goes against the statutory mandate.

- It is a settled principle that Circulars which are contrary to the statutory provisions have no existence in law. Therefore, even if it is assumed that the Circular dated 10.11.2008 purports to include export duty in the FOB value of the export goods, even then the same cannot be relied upon to propose the instant demand.
- Moreover, it is a settled legal principle that when two interpretations of a legal provision are possible, then the one which is aligned with the statutory mandate must be necessarily followed. Therefore, the interpretation of the legal provision, as explained in Ground A of the present reply, needs to be followed.
- The interpretation of the Circular dated 10.11.2008 so as to include the element of export duty in the FOB value of export goods is against INCOTERMS. As per INCOTERMS, FOB price includes export duty, hence, levying export duty on FOB price leads to tax which is against INCOTERMS. Moreover, by clarifying that the transaction value of export goods would be FOB value and cum-duty benefit would not be allowed, the Board has gone against the opinion of Ministry of Law.
- A policy change cannot be brought by issuance of a Circular and the same needs to be given effect to by way of an amendment in the statute. The Circular dated 10.11.2008 in effect levying export duty on the export duty element embedded in the FOB value has been passed in total abuse of power and no reliance can be placed on the same to propose the instant demand.
- The Circular dated 10.11.2008 issued by the Board is ultra-vires Section 151A of the Customs Act and cannot be relied upon, as Section 151A only provides powers to issue instruction, orders or directions to bring uniformity regarding levy of duty, but a Circular cannot make a new provision which is not provided in the Statute.
- Under Section 28C of the Customs Act read with Section 28D, the price of goods shown in an invoice is deemed to be a cum duty price. Therefore, without prejudice, disallowing the practice of taking FOB price as cum-duty will lead to contradiction to Section 28C of the Customs Act.

D. The contention that transaction value for export goods is the FOB price is baseless and incorrect: Noticee stated that the Present SCN has assumed that the transaction value as referred to in Section 14 will be the FOB price in case of export. Except for the Circular dated 10.11.2008 (which has been rebutted in the above grounds), there is no legal provision which indicates that transaction value of export goods would be the FOB price. The assumption that transaction value is FOB price is incorrect and is based on the understanding that the "place of exportation" referred to in Section 14 means vessel board. In the Ground A above, it has been proved beyond doubt that the place of exportation will mean the customs station and not the vessel. Hence, FOB which is inclusive of the expenses incurred till the loading on board of vessel cannot be considered as transaction value. Rather, it would be the cum-duty FOB price that would be the transaction value.

E. Without prejudice, the levy of tax/duty on cum duty i.e. the cum-tax methodology is the underlying principle of all indirect tax laws:

- It is a settled principle in several indirect taxes such as VAT, Central Excise, Service Tax etc. for computation of duty, the cum-duty value of goods or services is taken. In fact, all the indirect tax laws provide for a specific provision regarding the same.

- All the indirect tax laws have a common principle of levying duty on the cum-duty value. The same also derives support from Section 28D of the Customs Act, as per which every person who has paid the duty on any goods under the Customs Act shall be deemed to have passed on the full incidence of such duty to the buyer of such goods.

- As per the decision of the Supreme Court in **Re: Sea Customs Act, A.I.R. 1963 Supreme Court 1760**, export duty has also been held to be an indirect tax. Therefore, the above enunciated principle of indirect taxes would be squarely applicable in the case of export duty as well.

F. It is an internationally accepted practice to exclude duties and taxes paid on export from the assesable value of the goods:

- The customs and international trade-related laws of the member countries of the WTO are based on the same common principles enunciated by the WTO. India, being a member country has also incorporated the principles of international trade laws as per the WTO in its domestic laws.

- In the realm of international relations and law, the principle that is widely embraced is the "presumption against the violation of international law." It is an expectation that countries should abide by customary international law regulations and their international legal obligations. The above principle has also been incorporated in the Constitution of India in Article 51 and Article 256.

- The customs laws of several WTO member countries such as China specifically provide for the exclusion of duties and taxes paid on export from the value. Hence, internationally also, the duties and taxes payable on export do not form part of assessable value.

- In China, the customs value of the export goods is determined on the basis of the transaction value and the costs of transport and insurance incurred prior to the loading of the goods at the port. Therefore, the costs incurred at the port and/or beyond the port are not included.

- As per the internationally accepted practice, even in India, the principle of exclusion of duties and taxes paid on export from the assessable value of the goods should be followed.

G. TAXING STATUTES TO BE CONSTRUED STRICTLY

- It is a settled law that taxing statutes are to be construed strictly, and no tax can be levied without clear authority of law. In case of any doubt, it has to be resolved in favour of the assessee.

- The Customs Act being a taxing statute, the basis of valuation for the purpose of calculating export duty cannot be changed so as to increase the tax burden of the Noticee by adopting the wrong interpretation of the legal provisions.

H. THE PROPOSAL TO CONFISCATE THE GOODS DESERVES TO BE DROPPED: With respect to confiscation, the Noticees argued that there was no mis-declaration or suppression. They submit that reimbursement of export duty was disclosed in the contracts and sometimes even in the shipping bills under "other deductions." They rely upon case law to argue that mens rea is essential for confiscation under Section 113(i), and bona fide mistakes cannot be equated with deliberate mis-declaration. They also argue that goods already exported cannot be confiscated, as they cease to be "export goods" under Section 2(19).

I. THE DEMAND OF EXPORT DUTY ON ACCOUNT OF EXCESS FREIGHT IS PLAINLY INCORRECT AND NOT SUSTAINABLE:

- Actual freight was not known at the time of filing Shipping Bill.
- Freight rates were very volatile during the period from 2022-2024. Freight charges were pre-agreed with foreign buyer as per contract and any changes in freight were on account of the Noticee and not to be borne by the buyer.
- Without prejudice, profit earned on account of freight is also part of freight and not includible in the FOB value to determine the assessable value for payment of export duty.
- Without prejudice, some portion of freight as alleged excess by the department pertains to expenses incurred at the customs port, which otherwise cannot be forming part of the value of FOB value.
- Without prejudice, demand of excess freight otherwise be determined considering on Cum-Duty basis.

J. THE PRESENT DEMAND IS INVALID IN THE ABSENCE OF AN APPEAL AGAINST THE SHIPPING BILLS: The Noticees argue that the demand is invalid since the shipping bills were duly assessed at the time of export and attained finality. Relying on *ITC Ltd. v. CCE* (SC) and other precedents, they submit that unless the assessment is appealed, the Department cannot bypass it through Section 28 proceedings. They further submitted that since the principal demand is unsustainable, consequential interest under Section 28AA also fails.

K. INTEREST IS NOT PAYABLE BY THE NOTICEE UNDER SECTION 28AA OF THE CUSTOMS ACT: The demand of interest under Section 28AA of the Customs Act is not sustainable in the present case because the duty demand itself is not payable as demonstrated in the foregoing paragraphs. It is a cardinal principle of law that when the principal demand is not justified, there is no liability to pay ancillary demands.

Regarding penalty under Sections 114A and 114AA, the Noticees contested that there was no wilful suppression or mis-declaration. They claim full disclosure was made in contracts and shipping documents, and that industry practice was consistently to treat FOB as cum-duty. They also contend that Section 114AA targets fraudulent paper exports and forged documents, which is not the case here.

L. NO PENALTY UNDER SECTION 114A CAN BE IMPOSED: The Noticees further submitted that Penalty under Section 114A of the Customs Act is not imposable as this is not a case where duty of customs has not been levied or paid or has been short levied or short paid by reason of collusion or any willful misstatement or suppression of facts.

M. NO PENALTY UNDER SECTION 114AA CAN BE IMPOSED

- Penalty under section 114AA is not imposable as this is not a case where benefits are claimed fraudulently or on the basis of forged documents or certificates.
- Mens rea not established in the present case to impose penalty under Section 114AA
- Penalty under Section 114AA is only imposable on natural individuals and not juristic entities

N. WITHOUT PREJUDICE, EXTENDED PERIOD UNDER SECTION 28(4) OF THE CUSTOMS ACT IS NOT INVOKABLE.

O. THE STATEMENT OF MR. SUNNY NAGRANI CANNOT BE RELIED UPON SINCE THE SAME HAS BEEN TAKEN UNDER THREAT AND DURESS.

P. SINCE THE ISSUE ON MERITS IS PENDING BEFORE THE HON'BLE SUPREME COURT IN THE CASE OF SESA GOA LTD. AS WELL AS BEFORE THE HON'BLE GUJARAT HIGH COURT, THE PRESENT SCN BE KEPT IN ABEYANCE TILL THE ISSUE IS SETTLED:

- The question whether the assessable value of goods is to be considered as cum-duty for computing export duty is pending before the Hon'ble Supreme Court in the case of **Sesa Goa Ltd. [2020 (371) ELT A304 (SC)]** wherein a Notice has been issued. The Circular dated 10.11.2008 is also pending before the Gujarat High Court and a Notice has been issued to the Respondents
- The Noticee submits that since the issue on merits in the Present SCN is the same, it is required that the matter be kept in abeyance and no order is passed till the time the Hon'ble Supreme Court decides the issue.

17. RECORDS OF PERSONAL HEARING

Following the principles of natural justice, opportunities of personal hearing were granted on dated 29.07.2025 & 03.09.2025 to the noticees in the subject case. Shri Saurabh Malpani (Advocate & authorized representative of the M/s. Sailor Exports and Shri Sunny Nagrani) appeared for hearing through virtual mode on 03.09.2025 wherein he re-iterated their written submissions submitted on 01.09.2025.

DISCUSSION AND FINDINGS

18. I have carefully gone through the facts of the case, Show Cause Notice and the noticee's submissions filed both, in written and in person advanced

during the course of personal hearing. The principles of natural justice, particularly *audi alteram partem*, have been duly complied with by granting adequate opportunity to the noticees to present their defence. Accordingly, I proceed to examine the issues involved in the present case in the light of the available records, statutory provisions, and judicial precedents. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

(i) Whether the declared assessable value of Rs. 578,79,26,557/- in respect of 671 shipments of rice exported is liable to be rejected and the same is required to be re-determined at **Rs. 717,91,91,990/-** or otherwise.

(ii) Whether the differential (export) duty amounting to **Rs. 27,82,53,123/-** is liable to recovered and demanded under the provisions of Section 28 (4) of the Customs Act, 1962 or otherwise.

(iii) Whether the interest on the afore-said total differential duty amount of is required to be recovered under the provisions of Section 28AA of the Customs Act, 1962 or otherwise.

(iv) Whether the subject shipments of rice exported having proposed re-determined assessable value of Rs. 717,91,91,990/- are liable for confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 or otherwise.

(v) Whether the Importer is liable for penal action under Section 114A and Section 114AA of the customs Act, 1962 or otherwise.

(vi) Whether Shri Sunny Nagrani, Executive Director of export firm is liable for penal action under Section 114 (ii) and Section 114AA of the Customs Act, 1962 or otherwise.

19. I find that the present case revolves around the export of total 671 shipments of rice exports by M/s Sailor Exports Limited. The goods exported having descriptions such as Long Grain White Rice/Indian White Rice/Natural White Rice/Parboiled Rice/Brown Rice and the same were classified under Customs Tariff Headings 10062000, 10063010 and 10063090. These shipments were liable to payment of export duty at the rate of 20% *ad valorem*, imposed vide Notification No. 49/2022-Cus., dated 08.09.2022 and continued vide Notification No. 49/2023-Cus., dated 25.08.2023.

20. 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.

21. I noticed 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. Investigation revealed that 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. I find that the exporter had declared three values in their shipping bills, namely **(i) Total Value**, **(ii) Invoice Value**, and **(iii) FOB Value**. The "Total Value" included the element of export duty and represented the gross consideration negotiated with the overseas buyer. From this Total Value, the exporter deducted an amount equal to the export duty payable, and declared the balance as "Invoice Value". Further, from this Invoice Value, they deducted freight and insurance amounts to arrive at "FOB Value". By this practice, deductions of Rs. 14.26 crore were wrongly claimed. Therefore, by these modus, they reduced the transaction value on which less export duty was discharged/paid.

22. I find that that the exporter had adopted three distinct modus operandi to exclude portions of consideration from the declared transaction values:

(i) Deduction of export duty amounts (Table A): In respect of 50 shipping bills, the exporter deducted amounts equal to the export duty paid and declared these reduced values as FOB values for export of the goods covered under the subject shipping bills for payment of export duty. During investigation it has been noticed the amounts deducted from declared FOB value matched the export duty amounts payable, and the said deducted amount were subsequently recovered from the overseas buyers through debit notes and credited into the exporter's bank account. The recovery of these amounts has been admitted by the exporter in their statements recorded during the investigation under Section 108 of the Customs Act, 1962.

(ii) Reimbursement of export duty without declaration (Table B): In 585 shipping bills, the exporter did not show any deduction in the shipping bills

but on the other hand raised separate debit notes upon overseas buyers and recovered amounts equal to the export duty paid at the time of export. These recoveries were made through banking channels but were mis-declared under RBI Purpose Code P1306, which is meant for "refund of taxes" under the "Transfers" group and not for export proceeds. Consequently, these amounts did not appear in the Bank Realisation Certificates (BRCs). Thus, while the exporter received the full negotiated consideration including duty element, the portion recovered separately was suppressed from Customs at the time of assessment.

(iii) Declaration of excess freight (Table C): In 571 shipping bills, the exporter declared freight amounts higher than the actual freight paid to shipping lines/freight forwarders. I noticed that only actual freight paid is eligible for deduction from CIF/CF values to calculate FOB value. By inflating freight charges, the exporter claimed excess deductions and thereby reduced FOB values. The difference was retained by the exporter, being part of the consideration recovered from the buyer, but was not disclosed in the declared FOB value. The total excess freight declared by the exporter calculate at Rs. 35 crore.

23. I find that in all three categories of shipments, the exporter had negotiated and finalized a composite price with overseas buyers. However, instead of declaring the entire agreed consideration as transaction value, the exporter artificially bifurcated the same into "price of goods" and "duty element" or inflated freight deductions. These bifurcations are not allowed under Section 14 of the Customs Act, 1962. The statute mandate to include all amounts which the buyer is required to pay to the seller as a condition of sale. The amounts separately recovered through debit notes or retained through inflated freight clearly forms part of the "price actually paid or payable".

24. 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 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. Accordingly, I hold that the export duty recovered from overseas buyers is includible in the FOB value of the export goods.

24.1 I noticed that the at para A of submission, the Noticee claimed that the phrase "for delivery at the time and place of exportation" means the delivery at the Customs Station and not delivery on board of the vessel. Consequently, the expenses incurred at the port would not be included in the transaction value as the same is incurred beyond the place of exportation. The noticee have sought to interpret the expression "for delivery at the time and place of exportation" under Section 14 of the Customs Act, 1962 to mean delivery at the Customs Station, and not delivery on board the foreign-going vessel.

With respect to this argument, as discussed above, I find that Section 14 clearly states that the value of export goods shall be the price actually paid or payable "for delivery at the time and place of exportation," and CBIC Circular No. 18/2008-Cus., dated 10.11.2008 has also clarified that the relevant value for duty payment is the FOB price**.** In the case of exports, delivery is deemed complete only when the goods are loaded on board the vessel after receiving clearance from Customs. The argument that delivery should be limited to the Customs Station appears to be illogical in view of the definition of export provided under the Customs Act, 1962 which stated that *"export" with its grammatical variation and cognate expressions, means taking out of India to a place outside India*". Further, the definition of "export goods" means any goods which are to be taken out of India to a place outside India. Thus, the claim of the exporter is not tenable. The reliance on *Prabhat Cotton*, *Siddachalam Exports*, import valuation rules, WTO commentaries, or foreign statutes is misplaced as export valuation under Indian law is a self-contained code. Further, the claim of noticee that reimbursement of duty is not part of "price actually paid or payable" is incorrect, as the exporter admittedly raised debit notes and credited such amounts to its own bank accounts for availing direct benefit. There is no doubt that once recovery of export duty from the buyer is a condition of sale, such amounts automatically becomes a part of the transaction value under Section 14. Accordingly, Noticee's submissions are devoid of any merit to this points.

24.2 I also noticed that Noticee claimed that real meaning of clarification provided under CBEC Circular No. 18/2008-Cus. dated 10.11.2008 is that the transaction value of export goods is exclusive of the reimbursement of export duty received from the foreign buyer.

In response to the point, I noticed that the Circular was issued to clarify that w.e.f 01.01.2009 export duty is leviable on the FOB price at the time and place of exportation, and that the earlier practice of treating FOB as a cum-duty price was no longer acceptable. I think the noticee is trying to interpret the Circular as per their convenient by excluding reimbursement of export duty from the FOB value. It is evident that export duty amounts were separately recovered from overseas buyers, hence, these amounts automatically become part of the "price actually paid or payable" and without any doubt will be included in the assessable value under Section 14 of the Customs Act, 1962.

25. MODUS OF DUTY EVASION: I find it necessary to examine in detail the specific methods adopted by the exporter for undervaluation and recovery of amount from foreign buyers. The following discussion examines each modus

operandi separately, with a view to establishing whether the charges proposed in the show cause notice against the noticees are sustainable.

25.1.1 I find that **in respect of the 50 Shipping Bills** as mentioned in Table-A, M/s Sailor Exports Limited, had wrongly claimed deductions equal to the export duty amounts payable at the time of export. I noticed that the deduction amounts of USD 15,70,946 and EUR 2,17,225 (equivalent to Rs. 14,26,95,769/-) were claimed in the said Shipping Bills. These deductions were found equal to the export duty amounts paid by the exporter. This fact indicate clearly that the exporter deliberately reduced the declared FOB Value by the duty component and therefore, mis-declared the transaction value for the purpose of assessment.

25.1.2 I find that the exporter in the export invoices and shipping bills 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.

25.1.3 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 recovery was made through raising separate debit notes, and the said amounts were duly realized in the bank accounts of the exporter. However, these receipts were not reflected in BRCs. Thus, the fact 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.

25.1.4 I have also examined the Shipping Bill No. 5167778 dated 01.11.2022 and noticed that the deduction amount exactly matched the export duty amount. The Deduction of Rs. 11,32,716/- was claimed in that shipping bill and that amount is equal to the export duty leviable on the goods covered under the said shipping bill. The exporter deducted this amount from the actual transaction value however received the same from the overseas buyer as part of the sale proceeds. This method adopted by the exporter proves an organized and thoughtful modus operandi of undervaluation. 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 subject 50 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. The conduct of the exporter is therefore not only contrary to law but also deliberate in nature.

25.1.5 I find that as per Section 14 of the Customs Act, 1962, the transaction value is defined as the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation. Export duty is leviable on such transaction value, which includes all consideration received by the exporter from the overseas buyer. When the exporter recovers the export duty amount separately from the buyer through debit notes, that recovery becomes part of the sale consideration. Excluding such amounts from the declared FOB Value is contrary to Section 14 of the Custosm Act, 1962 read with Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

25.1.6 In view of the above, I hold that the declared FOB Value in respect of the 50 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. 85,61,74,924/- against the declared Rs. 71,34,79,155/-, as calculated in Table-D of the SCN under the provisions of Section 14 of the Customs Act, 1962.

25.2.1 I also find that **in respect of the 585 Shipping Bills** mentioned under Table-B, M/s Sailor Exports Limited, did not show any deduction of export duty under the head “Deduct/Deduction” at the time of filing of shipping bills. From the investigation it has been revealed that they had adopted another type of modus operandi of undervaluation wherein they recovered the amounts equal to the export duty separately from overseas buyers by raising debit notes. Scrutiny of records and documents submitted during investigation shows that after discharging export duty at the time of Let Export Order, M/s Sailor Exports Limited raised separate debit notes on overseas buyers for reimbursement of duty. These debit notes were not occasional documents but were issued in a systematic manner for each consignment. The exporter also admitted in their submissions that these recoveries were made in respect of 585 shipments, amounting to USD 10,470,356 and EUR 496,112 (equivalent to ₹89,69,32,663/-). These recoveries were made through separate debit notes raised on the foreign buyers and duly credited in the bank accounts of the exporter. From these facts before me, I have no doubt that the exporter imposed a condition that unless the overseas buyer reimbursed the duty element, the goods would not be released.

Hence, these debit note 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.

25.2.2 I noticed 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 regrinding 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.

25.2.3 I find that in the case of Shipping Bill No. 3806022 dated 08.09.2023, although no deduction was claimed in the shipping bill by the exporter, however, as per the details submitted by the exporter during investigation, an amount of Rs. 9,80,235 (equivalent to USD 11,925 at exchange rate Rs. 82.2 per USD) from the overseas buyer was separately recovered. This recovery amount was equal to the export duty amount in the subject shipping bill. I find that the said amount was never disclosed either in the shipping bill or in the invoice however the same amount was realized in the exporter's bank account through debit notes. This reflects a deliberate intent of the exporter to misdeclare the FOB value of export shipments.

25.2.4 I also observed that the method of routing these receipts also reveals deliberate suppression. I find that the exporter remitted these amounts through banking channels under RBI Purpose Code P1306, which is meant for "refund of taxes" and falls under the category "Transfers". 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 authorities 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. I noticed that the total recoveries made though this method adopted by the Noticee match the export duty amount. Thus, it is evident that the exporter never intended to bear the duty cost themselves and they shifted the burden on the foreign buyer by recovering it as part of the sale value.

25.2.5 As already discussed, Section 14 of the Customs Act, 1962 mandates that the transaction value of export goods shall be the price actually paid or payable when sold for export for delivery at the time and place of exportation. The recovery of amounts equal to export duty from the buyers was not optional but a precondition to sale and delivery of the goods. Unless the overseas buyers paid these sums (in addition to the declared invoice price), the exporter would not have effected the sale. Hence, such recoveries clearly form part of the consideration payable for the goods and are necessarily includible in the FOB Value. I find that by doing these acts of not including these amounts in the declared FOB Value, the exporter not only violated the statutory requirement under Section 14 but also contravened CBIC Circular No. 18/2008-Cus. dated 10.11.2008 which clearly provide guidance that no abatement of export duty is permissible and that duty is leviable on the transaction value, i.e. the FOB price. The deliberate suppression of such amounts through debit notes, mis-use of RBI purpose codes, and non-reflection in BRCs, all establish the fact of mindful and wilful intent of the exporter to evade payment of duty.

25.2.6 In view of the above, I hold that the FOB Values declared in respect of the 585 shipping bills under Table-B are liable to rejection under Rule 8 of the CVR(E), 2007. The actual transaction value has to be re-determined by including the amounts separately recovered by the exporter from the buyers which is equivalent to Rs. 89,69,32,663/-. Accordingly, I hold the re-determined FOB Value comes to Rs. 5,39,09,27,729/- against the declared Rs. 4,49,24,39,532/-, as calculated in Table-E of the SCN under the provisions of Section 14 of the Customs Act, 1962.

25.3.1 I find that **in respect of the 571 shipping bills** covered under Table-C, M/s Sailor Exports Limited 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. 35,00,81,467/-. By adopting this method, the exporter artificially reduced the assessable FOB value declared before Customs and thereby resulting in short-payment of export duty.

25.3.2 From the investigation, it is evident that the 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 exporter inflated freight amount in the shipping bills which reduced the FOB values declared before the Customs. However, the exporter collected the full payment from their overseas buyers. 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 the Shipping Bill No. 6495047 dated 28.12.2022, the exporter declared freight of USD 201250 which is equivalent to Rs. 1,64,62,250/- (at exchange rate Rs. 81.80 per USD as per the shipping bill). However, records produced during investigation showed that the actual freight paid to the shipping line was only Rs. 1,10,13,996/-. The excess freight declared of Rs. 54,48,254/- which was deducted from the CIF value reduced the FOB value declared before the customs at the time of export. I find that this excess freight was also recovered from the overseas buyer but was not included in the amount for duty assessment at the time of export. This instance demonstrates the method adopted by the exporter for all shipments covered under Table-C.

25.3.3 I find that Shri Sunny Nagrani during his statements accepted the said fact of inflating the freight amounts. The discussion on the statement tendered by Shri Sunny Nagrani will be made in detail under upcoming paras. He accepted that while executing export contracts, the exporter prepared two sets of invoices (i) one submitted to Customs wherein reduced value mentioned, and (ii) another submitted to the banks for realization of the full value including duty and freight portion. He admitted that duty had been paid on reduced FOB values by wrongly considering the FOB value as cum-duty value. He accepted that excess freight amounts were also recovered from buyers but not included in the assessable value. He further admitted that this practice resulted in short-payment of duty, although initially he tried to mislead the investigation by stating that he acted on the advice of consultants and other exporters. Shri Sunny Nagrani also admitted that in respect of CIF contracts they had removed not only the actual freight and insurance but also inflated the freight element declared in the shipping bills for the purpose to reduce the FOB value. He stated that in these cases they had paid the actual freight to the shipping lines, however, the inflated freight component was on the other hand recovered from the overseas buyers. He also agreed that the said practice adopted by them was contrary to Section 14 of the Customs Act, 1962 and CBIC Circular No. 18/2008-Cus. dated 10.11.2008, which mandate that export duty is chargeable on the actual transaction value and that FOB value cannot be treated as cum-duty price.

25.3.4 I state that under Section 14 of the Customs Act, 1962, the transaction value is defined as the price actually paid or payable for the goods at the time and place of exportation, where price is the sole consideration. In CIF contracts, deductions can only be made for actual freight and insurance incurred by the exporter. Any excess freight declared over and above the actual cost is not a deductible expense but represents part of the consideration

payable by the buyer to the seller, and therefore forms part of the FOB value. By declaring inflated freight in the shipping bills, the exporter contravened the statutory arrangement, leading to suppression of the true transaction value.

23.3.5 In view of the above, I hold that the FOB values declared in respect of the 571 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 values have to be re-determined by adding the excess freight amounts of Rs. 35,00,81,467/- to the declared FOB values under the provisions of Section 14 of the Customs Act, 1962. Accordingly, I hold the re-determined FOB Value comes to Rs. 7,17,91,91,990/- against the declared Rs. 5,78,79,26,557/-, as calculated in Table-G of the SCN.

23.3.6 I noticed that the Noticee claimed under their written submissions that the demand of export duty on excess freight is incorrect and not sustainable. They claimed that actual freight was not known at the time of filing of shipping bills and that freight was declared on the basis of estimate or market volatility.

With respect to this contention, I find that Section 14 of the Customs Act, 1962, read with Rule 2(1)(b) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, mandates that the transaction value shall be the price actually paid or payable for delivery of the goods at the time and place of exportation. I have already discussed the issue that the noticee in respect of subject shipments not only declared inflated freight amounts in the shipping bills but also recovered those inflated amounts from the overseas buyers. Although the actual freight borne by them was significantly lower. The contention that freight rates were volatile and fluctuating in the relevant period does not absolve the noticees from their responsibility to declare correct and true values before Customs as mandated under Section 17 of the Customs Act, 1962. It is confirmed from the statements of Shri Sunny Nagrani recorded under Section 108 of the Customs Act, 1962 that they were fully aware of the actual freight paid however declared higher freight in the shipping bills and invoices submitted at the time or export. The contention of the noticee that higher actual freight in some shipments caused loss to them is also not acceptable, since each shipping bill is an independent assessment and duty liability has to be determined shipment-wise. The contention that “profit earned on freight” is outside the scope of assessable value is also misunderstood by the noticee. The judicial precedents relied upon by the noticees, such as *Indian Oxygen Ltd.*, *Baroda Electric Meters Ltd.*, etc. are pertain to central excise valuation of goods at the point of removal where transportation charge was in dispute which was occurred beyond the factory gate. I find that those ratios are

not applicable to the present case of export valuation which includes all consideration received from the overseas buyer. Excise duty is a levy on manufacture whereas the export duty is chargeable on the transaction value of goods at the time and place of exportation. Any amount collected over and above actual freight is not a separate gain from transport but a part of the sale proceeds and without any doubt is a part of the transaction value. Thus, the differential duty on excess freight has been correctly computed in the Show Cause Notice and the same is rightly confirmed.

25.4 I find it appropriate to discuss the defence submission made by the noticee which are related to the points discussed above.

A. The Noticee submitted that the principle of "cum-duty valuation" applies across all indirect tax laws and that the FOB values of exported goods should be treated as inclusive of export duty for the purposes of Section 14 of the Customs Act, 1962. Noticee have placed reliance on the provisions of Central Excise Act, the Finance Act (Service Tax), and the CGST Act.

With respect to this claim, I find that the provisions of the Central Excise Act, the Finance Act (Service Tax), and the CGST Act do not apply to the present case, as these provisions are not related to the section 14 of the Customs for the purpose of ascertaining the value of the goods for levy of export duty. Section 14 of the Customs Act, 1962 mandates that the value of export goods shall be "the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation." Thus, the reliance placed by the noticees on other statutory provisions are irrelevant. In the similar line, case laws cited by the Noticee are irrelevant as the facts of those case does not found to be applicable in the present case.

B. Noticee also claimed that it is an internationally accepted practice to exclude duties and taxes paid on export from the assessable value of the goods.

With respect to this claim, I state that Section 14 of the Customs Act, 1962 is a self-contained provision for the valuation of export goods in India. The section does not provide any exclusion for export duties as claimed by the exporter in the present case by adoption modus of reimbursement of duty amount from foreign buyers. The reliance placed on the Regulations of the People's Republic of China and similar foreign provisions is inappropriate. The reliance place on Article 51 of the Constitution and cases *Jolly George Vargheese* and *Jeeja Ghosh* does not provide any relief to Noticee, as the same are not applicable to the present case. The facts of the present case of M/s Sailor Exports are totally different and related to duty evasion which is a

legitimate government tax. The Constitution does not provide any facility to any person for evading legitimate government duties in the form of Customs Duties. Accordingly, I find no merits in the Importer's Contentions related to this point.

C. Noticee argued that CBEC Circular No. 18/2008-Cus. dated 10.11.2008 cannot be relied upon to propose the instant demand. I find that the demand in the present case is squarely based on Section 14 read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, which clearly mandate to include all amounts actually paid or payable by the buyer to the seller as part of the transaction value. The Circular is clarificatory and does not create a new levy; it only state that post 01.01.2009 FOB cannot be treated as cum-duty. Reliance on Ratan Melting and other cases is inappropriate since the demand in the present case is valid under the provisions of the Customs Act, 1962.

D. Noticee also claimed that their contracts with the buyers are outside the negotiated price which exclude the duty portion. I do not find any merit in the contention of the Noticees that contract impose the burden of duty on the buyers and such amounts are outside the negotiated price. I observed that a private contracts cannot override statutory provisions of Section 14 and valuation rules, 2007. The fact that the exporter recovered these amounts from the overseas buyer are undisputed, thus, leaves no scope to accept that recovered amount from foreign buyers are an integral part of value declared at the time and place of exportation. The reliance placed by the exporter on judicial precedents like *Eicher Tractors Ltd. v. CC (2000)*, *CCE v. Sanjivani Non-Ferrous Trading Pvt. Ltd. (2019)*, *Polynova Chemical Industries v. CC (2005)*, *CCE v. Jai Bharat Steel Industries (2005/2016)* and *CC v. Bureau Veritas (2005)* is improper, as these cases are found to be irrelevant to the facts of the present case. In the present case sufficient evidence in the form of debit notes, mismatched invoices and statements under Section 108 by Shri Sunny Nagrani are available which established that export duty amounts were recovered from buyers. In these circumstances, I hold that reimbursement of export duty recovered by the exporter from foreign buyers is rightly includible in the assessable value of export goods.

26. From the above, it is evident that M/s Sailor Exports Limited undervalued their rice export consignments by using three different methods. For the 50 shipping bills listed in Table-A, the exporter wrongly deducted export duty amounts in the shipping bills. These amounts were separately collected from overseas buyers through debit notes but not included in the declared FOB values. For the 585 shipping bills in Table-B, though no deductions were shown in the shipping bills, the exporter collected duty

amounts separately from buyers though debit notes and misused the RBI purpose code P1306 to route these payments. In the case of the 571 shipping bills under Table-C, the exporter knowingly declared inflated freight charges in the shipping bills but actually paid much lower freight costs to shipping lines. This manipulation lowered the declared FOB values, while the excess freight amount was recovered from overseas buyers as part of the sale price. Thus, I find that the Importer had concealed the true transaction values from the customs authority at the time of export. The combined impact of these practices was that the FOB values shown to Customs did not reflect the actual transaction values as required under Section 14 of the Customs Act, 1962. In all three categories of shipments, amounts that were an integral part of the payment received from overseas buyers were deliberately excluded from the declared values. Thus, the omission and commission on the part of the exporter leads suppression of the facts and short-payment of export duty. Therefore, I hold that the FOB values declared in respect of the subject shipping bills (50 under Table-A, 585 under Table-B, and 571 under Table-C) is liable be rejected under Rule 8 of the CVR(E), 2007. The correct transaction values are to be re-determined under the provisions of Section 14 of the Customs Act, 1962.

27. STATEMENTS RECORDED DURING THE INVESTIGATION: I find that Sh. Sunny Nagrani, who is the Executive Director of M/s Sailor Exports Limited and son of Kishan Chand Nagrani, Director, M/s Sailor Exports Limited, is the main person who looked after all the work of the said company. I find that he is the key person who also looked after the work related to accounts, procurements, manufacturing, exports and finances etc. Thus, the statements tendered by him and his father Shir Kishan Chand Nagrani are the key evidences for confirmation of charges in the subject case and provide backings to the charges levelled against the exporter.

27.1 I find that Sh. Sunny Nagrani during his statement dated 13.10.2023 explained that after the imposition of export duty on rice they stated treating the FOB value as a cum-duty price. He admitted that in order to calculate the value for duty payment, they deducted an amount equal to the export duty from the actual price and this duty portion was included in the consideration received from overseas buyers. He verified this practice with an example of shipping bill No. 4610869 dated 03.10.2022 wherein they had reduced the value of export duty from the contracted CIF value and however they had received an amount of USD 470 PMT in respect of the said consignment from the overseas buyer in the bank accounts of their company which included the amount of USD 57 also which was deducted by them from the said CIF

contracted prices of USD 470 (along with freight and insurance amounts) for the purpose of payment of export duty.

27.2 Further, Sh. Sunny Nagrani admitted that this practice of treating FOB as a cum-duty price and claiming abatement of export duty from the transaction value was adopted on the advice of their consultant and in consultation with other exporters. He also acknowledged that, as per Section 14 of the Customs Act, 1962 read with CBIC Circular No. 18/2008-Cus dated 10.11.2008, duty was actually payable on the full FOB value, and that their method resulted in payment of lesser duty. He accepted that this method led to short-payment of duty on rice exports.

27.3 Sh. Sunny Nagrani during his statement recorded dated 20.03.2024 clearly stated that the company had not paid duty on the actual transaction value as required under Section 14 of the Customs Act, 1962, but paid duty on a reduced value by deducting amounts equal to export duty. He also admitted that in many shipments FOB value was artificially reduced and the balance amount was separately recovered from overseas buyers through debit notes. For instance, during statement dated 20.03.2025 he accepted that in respect of exports to Madagascar under Shipping Bill No. 5167778 dated 01.11.2022, the company recovered the full CIF price of USD 405 per MT (inclusive of USD 52/MT duty element) from the buyer, but paid duty only on USD 260/MT. He accepted that this practice was systematically followed for several shipments after September 2022.

27.4 Sh. Sunny Nagrani admitted that under Incoterms, “FOB” covers all costs and charges up to the loading of the export goods on the vessel. He accepted that duty should have been discharged on the full FOB value and by not discharging full duty amount they have short-paid the export duty.

27.5 I also find that Sh. Kishan Chand Nagrani, Director of the company clearly stated that all the statements tendered by Sh. Sunny Nagrani would be acceptable and binding on him as well as on the other directors of the said company. Shri Kishan Nagrani confirmed the accuracy of the statement given by his son.

27.6 The Noticee during the written submissions argued that the statement of Shri Sunny Nagrani cannot be relied upon since the same has been taken under threat and duress. I, with respect to this claim, found that a mere allegation by the Noticee of duress or coercion is not sufficient to nullify the statement’s value. The burden lies on the Noticee to prove that the statement was recorded under coercion, threat, or undue influence. It is undisputed fact that under Section 108 of the Customs Act, customs authorities have the

power to summon and record statements. From the facts of the case, I noticed that no complaint was lodged before any higher authority or Court with respect to their claim, nor was any retraction made after the statement recorded by the investigating agency. On the contrary, the noticee continued to cooperate with investigation and subsequently submitted detailed documents and data in line with the admissions made during their voluntarily statement. I find that claim related to ill treatment during investigation is appears to be nothing but just a trick to represent them as a victim. Instead of acknowledging their obligation to prove that the value declared by them was correct, they questioned the investigation. I find that confessional and corroborative statements recorded under Section 108 of the Customs Act, 1962, are one of the vital tools in the hands of the department to establish the role of the offenders. These statements are in the nature of substantive evidence and culpability of the concerned persons can be based on the same. The scope of these provisions of law has been examined in a large number of authoritative judgements of the Supreme Court and the High Courts, as under:

- It has been held by the Hon'ble Supreme Court in the judgment in *Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar - 1997 (96) E.L.T. 211 (S.C.):*

> "7. An attempt was made to contest the admissibility of the said statements in evidence. It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940, and KI. Pavynny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 24] (S.C) = (1997) 3 SCC 721."

- The Hon'ble Supreme Court has observed in the case of *Naresh J. Sukhwaniv. Union of India - 1995 Supp. (4) SCC 663 = AIR 1996 SC 5 = 1996 (83) E.L.T. 258:*

> *"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with*

the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."

- A Constitution Bench of Apex Court of India in the matter of *Romesh Chandra & Mehta v. State of W.B. - (1969) 2 SCR 461 : AIR 1970 SC 940*, held that the Customs Officers are entrusted with the powers specifically relating to the collection of customs duties and prevention of smuggling and for that purpose they are invested with the power to search any person on reasonable suspicion, to summon, X-ray the body of the person for detecting secreted goods, to arrest a person against whom a reasonable suspicion exists that he has been guilty of an offence under the Act, to obtain a search warrant from a Magistrate, to collect information by summoning persons to give evidence and produce documents and to adjudge confiscation. He may exercise these powers for preventing smuggling of goods dutiable or prohibited and for adjudging confiscation of those goods. For collecting evidence the Customs Officer is entitled to serve summons to produce a document or other thing or to give evidence and the person so summoned is bound to attend either in person or by an authorised agent, as such officer may direct, is bound to state the truth upon any subject respecting which he is examined or makes a statement and to produce such documents and other things as may be required. The power to arrest, the power to detain, the power to search or obtain a search warrant and the power to collect evidence are vested in the Customs Officer for enforcing compliance with the provisions of the Customs Act. He is invested with the power to enquire into infringements of the Act primarily for the purpose of adjudicating forfeiture and penalty.

- I find that it is settled law that statements made to an officer of Customs are admissible as evidence under Section 108 of the Customs Act, 1962. Apex Court of India in their judgment in case of ***Gulam Hussain Shaikh Chougule v. S. Reynolds, Supdt. of Customs, Marmgoa, reported in 2001 (134) ELT*** *(SC)*, after quoting from several other judgments, has held that such statements are admissible in evidence. Further the admitted facts need not to be proved as held by Hon'ble High Court of Madras in the case of ***Govindasamy Raghupati reported in 1998 (98) ELT 50 (Mad.)***. Hon'ble Supreme Court in the case of ***Surjeet Singh Chhabra Vs UOT reported in 1997 (89) ELT 646 (SC)*** has also pronounced that confessional statement made before Customs officer under Section 108 of the Customs Act, 1962, though retracted, is an admission and binding since Customs Officers are not Police Officers. Further, in the case of *Gulam Hussain Shaikh Chougule Vs S.*

Reynolds, Supdt. Of Customs, Marmgoa reported in 2001 (134) ELT 3 (SC), relying on various judgments of Apex Court of reported at AIR 1972 SC 1224, 2000 (120) ELT 280 (S.C.); 1999 (110) ELT 324 (S.C.); 1992 (60) ELT 24 (S.C.); 1999 (110) ELT 309 (S.C.); 1983 (13) ELT 1443 (S.C.); 1983 (13) ELT 1590 (S.C), has further held that confessional statement recorded by Customs officer under Section 108 of Customs Act, 1962 are not required to follow safeguards provided under Section 164 of the Code of Criminal Procedure, 1973.

- In view of the above, the statements under the present proceeding are material piece of evidence to establish the case for Revenue. Apex Court in the case of ***K.1. Pavunny Vs AC Chochin reported at 1970 (90) ELT 241 (SC)*** has held that when the material evidence establish fraud against the revenue, white collar crimes committed under absolute secrecy shall not be exonerated from penal consequence of law. Enactments like Customs Act, 1962, are not merely taxing statute but are also potent instruments in the hands of the Government to safeguard the interest of the economy, Preponderance of probability comes to rescue of Revenue and revenue is not required to prove its case by mathematical precision. The Supreme Court has observed in ***Kanhaiyalal Vs Union of India - (2008) 4 SCC 668***, that specialized enactments, like Narcotic Drugs & Psychotropic Substances Act and Customs Act, are meant to deal with the special situations and circumstances.

- I find that the observation made by Hon'ble Supreme Court in the case of ***State of Gujarat Vs Mohanlal Jitamalji Porwal and Anr***. *Reported in AIR 1987 SC 1321* is squarely applicable in the present case, in as much as, Hon'ble Apex court observed as under:

> *"The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest."*

Thus, the statements of Shri Sunny Nagrani, Executive Director of M/s Sailor Exports Limited are legitimate and have legal authority. I do not find any infirmity in the statement tendered by him. From the acceptance of duty evasion, it is evident that M/s Sailor Exports Limited deliberately mis-declared FOB values in their shipping bills by deducting amounts equivalent to export duty despite knowing the fact that they were going to recover the said duty amount from overseas buyers through invoices and debit notes. The well planned practice of duty evasion along with the acceptance by the Executive Director during their statement leaves no room for doubt for confirmation of charges levelled against the Noticees. Accordingly, the charges proposed in the Show Cause Notice regarding mis-declaration of FOB value, suppression of actual transaction value, and consequent short-payment of export duty are confirmed.

CALCULATION OF DIFFEREENTIAL DUTY:

28.1 CALCULATION OF DIFFERENTIAL DUTY IN RESPECT OF SHIPMENT COVERED UNDER TABLE-A: As discussed under foregoing paras, it has been established that for the 50 rice export shipments listed in Table A, the exporter wrongly claimed a deduction equal to the export duty amount from the declared FOB value in the shipping bills. The finding of the investigation and the exporter's own admission during the statements clearly display the full transaction value (including duty) was not revealed at the time of export although the same was recovered from the foreign buyers. I find that the exporter treated the duty portion as an abatement and paid export duty on the reduced value. This resulted in short-payment of duty. I have already discussed the rejection of the declared value under Rule 8 of CVR (E), 2007 and re-determination of same under Section 14 of the Customs Act, 1962. Based on this re-determination (after adding the duty part in the assessable value) the declared FOB value of Rs. 71,34,79,155/- has been re-determined to Rs. 85,61,74,924/-. Accordingly, the differential export duty that was short-paid amounting to **Rs. 2,85,39,151/-,** is liable to be recovered under Section 28(4) along with applicable interest as per Section 28AA of the Customs Act, 1962. The shipping-bill wise, port-wise consolidated details of the short-paid duty are summarized below:

TABLE-I

Custom House Code/ Name	No. of Shipping Bills	Declared FOB Value (INR)	Export duty Paid (INR)	Deduction Amounts Claimed (INR)	Re-determined FOB Value (INR)	Differential duty (INR)
INIXY1	24	57,62,93,837	11,52,58,768	11,52,58,706	69,15,52,543	2,30,51,741
INNSA1	21	10,84,04,015	2,16,80,805	2,16,80,803	13,00,84,818	43,36,159
INKRI1	2	1,28,17,035	25,63,407	25,63,407	1,53,80,442	5,12,681

INVTZ1	2	96,38,978	19,27,796	19,27,796	1,15,66,773	3,85,559
INMUN1	1	63,25,290	12,65,058	12,65,058	75,90,348	2,53,012
Grand Total	**50**	**71,34,79,155**	**14,26,95,834**	**14,26,95,769**	**85,61,74,924**	**2,85,39,151**

28.2 CALCULATION OF DIFFERENTIAL DUTY IN RESPECT OF SHIPMENT COVERED UNDER TABLE-B: As discussed in the foregoing paras, it has been established that in respect of 587 export shipments of rice mentioned under Table B, the exporter did not reflect the true transaction value in the shipping bills. They recovered the export duty amounts separately from the overseas buyers by way of debit notes raised after the exports made. These facts were not revealed before the Customs authorities at the time of export. I have already established the fact that unless the overseas buyers repaid these amounts equivalent to the duty, the exporter would not have effected the sale. These received payments are part of the amount received for the export goods. I have already discussed that these amounts are required to be included in the assessable value of the export goods under Section 14 of the Customs Act, 1962. On re-determination of the value by adding these separately recovered duty amounts to the declared FOB value, the total declared FOB value of **Rs. 4,49,24,39,532/-** has been re-determined to **Rs. 5,39,09,27,729/-**. Accordingly, the differential short-paid duty amounting to **Rs. 17,96,97,680/-**, is liable to be recovered under Section 28(4) along with applicable interest under Section 28AA of the Customs Act, 1962. The consolidated port-wise details of such short-paid duty are summarized below:

TABLE-II

Custom House Code/ Name	No. of Shipping Bills	Declared FOB Value (INR)	Export duty Paid (INR)	Export Duty Amount separately reimbursed by the buyer (INR)	Re-determined FOB Value (INR)	Differential duty (INR)
INMUN1	219	1,57,32,78,024	31,46,55,519	31,46,55,782	1,88,79,33,806	6,29,31,242
INNSA1	151	1,00,05,40,203	20,01,08,058	20,01,07,908	1,20,06,48,110	4,00,21,564
INIXY1	25	52,41,85,629	10,48,37,126	10,48,37,126	62,90,22,755	2,09,67,425
INMAA1	69	43,77,06,017	8,75,41,219	8,75,41,285	52,52,47,302	1,75,08,241
INVTZ1	40	27,41,04,165	5,48,20,836	5,48,20,873	32,89,25,039	1,09,64,172
INKRI1	33	21,04,79,303	4,20,95,863	4,20,95,861	25,25,75,163	84,19,170
INHZA1	16	19,49,01,935	3,89,80,389	3,89,80,428	23,38,82,363	77,96,084
INKPK6	13	10,83,93,251	2,16,78,652	2,16,78,691	13,00,71,942	43,35,736
INBOK6	14	10,75,61,277	2,15,12,258	2,15,12,297	12,90,73,574	43,02,457
INCCU1	7	6,12,89,730	1,22,57,946	1,22,57,946	7,35,47,676	24,51,589
Grand Total	**587**	**4,49,24,39,532**	**89,84,87,866**	**89,84,88,197**	**5,39,09,27,729**	**17,96,97,680**

28.3 CALCULATION OF DIFFERENTIAL DUTY IN RESPECT OF SHIPMENT COVERED UNDER TABLE-C: Apart from the above, as discussed above, in respect of 571 export shipments of rice listed in Table C, the exporter knowingly inflated the freight amount in the export documents. The evidence on record shows that the freight amounts declared in the shipping bills were

significantly higher than the actual amounts paid by the exporter to the freight forwarders/shipping lines. For determination of the FOB value under Section 14 of the Customs Act, 1962, only the actual freight paid is eligible for deduction from the CIF value. By declaring inflated freight amounts, the exporter artificially reduced the FOB value and suppressed the assessable value of the export goods. I find that the declared excess freight amounts are not allowed for deductions under shipping bills and the same are required to be included in the assessable value of the export consignments. These inflated freight amount (later recovered by the exporter from the overseas buyers) are part of the consideration for the goods and are liable to export duty. Accordingly, the FOB value re-determined from **Rs. 4,71,81,87,253/-** to **Rs. 5,06,82,68,720/-** by adding the excess freight amounts of **Rs. 35,00,81,467/**. Therefore, the short-payment of duty to the extent of **Rs. 7,00,16,293/-** is liable to be recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962. The consolidated port-wise details of such short-paid duty are summarized below:

TABLE-III

Custom House Code/ Name	No. of Shipping Bills	Declared FOB Value (INR)	Export duty Paid (INR)	Excess Freight Amounts declared in the export documents (INR)	Re-determined FOB Value (INR)	Differential duty (INR)
INMUN1	203	1,45,15,80,365	29,03,15,988	14,48,30,339	1,59,64,10,705	2,89,66,068
INNSA1	161	1,05,25,29,626	21,05,05,945	8,29,61,253	1,13,54,90,879	1,65,92,251
INMAA1	68	43,62,03,503	8,72,40,716	3,93,55,613	47,55,59,117	78,71,123
INIXY1	35	76,30,34,238	15,26,06,848	2,94,04,819	79,24,39,057	58,80,964
INVTZ1	47	34,36,54,823	6,87,30,968	2,17,12,360	36,53,67,183	43,42,472
INKRI1	32	20,55,59,087	4,11,11,820	1,96,08,882	22,51,67,969	39,21,776
INBOK6	12	11,83,30,595	2,36,66,122	73,01,065	12,56,31,660	14,60,213
INKPK6	7	5,58,84,825	1,11,76,966	28,49,365	5,87,34,190	5,69,873
INKAK1	3	26,29,83,375	5,25,96,675	10,78,807	26,40,62,182	2,15,761
INHZA1	3	2,84,26,815	56,85,363	9,78,963	2,94,05,778	1,95,793
Grand Total	**571**	**4,71,81,87,253**	**94,36,37,411**	**35,00,81,467**	**5,06,82,68,720**	**7,00,16,293**

28.4 Based on the above findings, it has been established that the exporter, M/s Sailor Exports Limited, adopted three distinct modus operandi to suppress the actual assessable value of their export consignments: (i) wrongful deduction of export duty amounts from the FOB values, (ii) separate recovery of export duty from overseas buyers through debit notes, and (iii) inflated declaration of freight in shipping bills. I find that after re-determination of the FOB values in terms of Section 14 of the Customs Act, 1962, the differential export duty payable by the exporter M/s Sailor Exports Limited works out to be at **Rs. 27,82,53,123/-** is hereby confirmed and the same is liablable for recovery under Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the Customs Act, 1962. A port-wise summary of the confirmed duty is provided under table below.

TABLE-IV

Sr. No.	Custom House Code/ Name	No. of Shipping Bills	Declared FOB Value (INR)	Re-determined FOB Value (INR)	Differential Duty payable (INR)
1	INMUN1	228	1,65,82,71,371	2,11,90,22,550	9,21,50,321
2	INNSA1	175	1,13,95,64,597	1,44,43,14,560	6,09,49,973
3	INIXY1	49	1,10,04,79,466	1,34,99,80,117	4,99,00,129
4	INMAA1	69	43,77,06,017	56,46,02,916	2,53,79,364
5	INVTZ1	56	41,52,04,103	49,36,65,132	1,56,92,202
6	INKRI1	36	22,97,27,568	29,39,95,718	1,28,53,628
7	INHZA1	16	19,49,01,935	23,48,61,326	79,91,876
8	INBOK6	18	17,35,93,395	20,24,06,757	57,62,669
9	INKPK6	14	11,42,05,001	13,87,33,057	49,05,609
10	INCCU1	7	6,12,89,730	7,35,47,676	24,51,589
11	INKAK1	3	26,29,83,375	26,40,62,182	2,15,761
	Grand Total	**671**	**5,78,79,26,557**	**7,17,91,91,990**	**27,82,53,123**

28.5 I noticed that the Noticee through their written submissions submitted that provisions of taxing statutes must be strictly construed and that any ambiguity in Section 14 of the Customs Act, 1962 must be in their favour. They further placed replied on decisions in the case of *Commissioner of Trade Tax, U.P. v. S.S. Ayodhya Distillery* and *Sneh Enterprises v. CC, New Delhi*.

With respect to these submissions, I noticed that Section 14 is not a charging provision but a machinery provision for determination of value which states that the transaction value shall be the price actually paid or payable for delivery of goods at the time and place of exportation. The evidence clearly shows that the exporter recovered amounts from their overseas buyers. In the present case, the statutory mandate is clear that the value must be the transaction value. The CBEC Circular No. 18/2008-Cus. dated 10.11.2008 further clarifies that the FOB value, without any abatement of duty, is the correct assessable value for levy of export duty. The acts of the noticees in mis-declaring FOB values and recovering duty separately from buyers confirmed deliberate undervaluation. Therefore, I hold that the contention the noticees to this point is at weak footing.

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

29.1 It is obligatory on 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. 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.

29.2 From the above provisions, it may be seen that 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. I have already discussed in detail the modus adopted by the exporter to evade the duty at the time of export. I find that the extended period of five years under Section 28(4) of the Customs Act, 1962 has been correctly invoked in the present case. The pre-condition for such invocation is that the non-levy, short-levy or short-payment of duty should arise due to collusion, wilful misstatement, or suppression of facts with intent to evade duty. In the present matter, I find that evidence brought on record correctly establish the fact that that M/s Sailor Exports Limited indulged in deliberate mis-declaration of assessable value of export goods through three different modus operandi i.e. (i) wrongful deduction of duty element from declared FOB value (ii) non-declaration of separate reimbursements of duty collected from overseas buyers through debit notes, and (iii) inflation of actual freight amount to claim unacceptable deductions. Each of these modus is adopted by the exporter with full knowledge by concealment of material facts at the time of filing shipping bills. These act done by the exporter cannot be termed as clerical error or interpretative dispute.

29.3 I find that the Noticee had received payment of export duty from overseas buyers, which directly influenced the determination of transaction

values. However, instead of declaring these payment clearly in the shipping bills, the Noticee chose to reflect such receipts under vague heads i.e. "deductions." This method cannot be accepted as transparent disclosure of important information. The essence of statutory compliance under the Customs Act is clear and truthful declaration of all particulars in the prescribed documents in relation to value, description, and quantity of goods. By concealing duty reimbursements under unrelated fields, the Noticee mis-declared key facts and therefore withheld accurate information at the time of export clearance.

29.4 Further, the exporter had received payment of duty paid at the time of export separately under a separate RBI purpose code (P1306) and the method for routing these amounts adopted by choosing incorrect purpose code which is no way related to the export of the goods. I find that the exporter had never disclosed the fact before the customs authority that additional amounts over and above declared FOB were being recovered by them by way of debit notes.

29.5 As discussed above, it is clear that the exporter inflated freight amount in the shipping bills for the purpose to reduce the declared FOB values before the Customs. The fact is now not in dispute that the exporter received the full payment from their overseas buyers. The discrepancy between declared freight and actual freight paid was accepted by the exporter in the details of shipments submitted by them during the investigation period. The example of the Shipping Bill No. 6495047 dated 28.12.2022 clearly establish the fact. The noticees did not bother to inform the authorities at the time of export that excess freight amounts were not borne by them but ultimately will be recovered from their overseas buyers as part of the total value for the consignments. I also find that the acceptance of inflating the price, wrongly claim under "deduction" heads, inflating freight amounts, receiving payment from buyers, using wrong RBI purpose code; during the recording of statement leaves no scopes for not invoking extended period of time.

29.6 These above acts on the part of the exporter supports the finding that the Noticee in a very planned manner had received these amounts and concealed the true nature of the transaction from Customs by suppression the fact and by not disclosing the complete details before the Customs Authority. I find that in the present case the duty reimbursement was masked under not permissible deduction under the shipping bills and separate remittance codes were used purposely to evade the legitimate Customs Duty. These acts on the part the of Noticee amounts to suppression and mis-statement at their end.

29.7 The deliberate undervaluation and suppression of true assessable value of 671 shipments across multiple ports set up a fit case for application of the extended limitation period which involves a large evasion of duty amounting to Rs. 27,82,53,123/-. In view of the above, I hold that the conditions for invoking Section 28(4) are squarely satisfied in this case. Therefore, the extended period has been rightly invoked, and the demand of differential duty as proposed in the Show Cause Notice is sustainable.

29.8 I also noticed that the Noticee at para J of written submission claimed that the present demand is invalid in the absence of an appeal against the shipping bills.

I find no force in the subject contention as the provisions of extended period is rightly invokable in the present case as discussed under foregoing paras. Section 28 of the Customs Act, 1962 empowers the Department to demand duty not levied, short-levied, or erroneously refunded, even in cases of self-assessment or assessment already accepted at the time of export. The statutory provisions does not require that the assessment of shipping bills be first appealed under Section 128 before invoking Section 28 of The Customs Act, 1962. The Customs Act empowered the proper officer to initiate recovery proceedings under Section 28 (4) where subsequent investigation reveals that duty has not been levied or has been short-levied on account of suppression, misstatement, collusion, or willful misdeclaration.

The reliance placed on *ITC Ltd. v. CCE* [2019 (368) ELT 216 (SC)] is not applicable to the present proceedings. The said judgment was related to refund claims, however, the present proceeding are totally different pertaining to recovery of duties under Section 28(4) of the Customs Act, 1962 which discussed in detail under foregoing paras. Further, the reliance placed on other Judgement does not come in the favour of the noticee since the fact and findings of the present case are totally different. In the present case of M/s. Sailor Exports, it is beyond doubt that the exporter knowing undervalued their exports by (i) deducting export duty amounts from the declared FOB value, (ii) recovering duty amounts through debit notes without declaring the same to Customs, and (iii) inflating ocean freight to suppress actual FOB. Thus, the said deliberate misdeclaration and suppression invalidate the assessments and attract the provisions of Section 28(4) of the Customs Act, 1962. Therefore, I hold that the contention of the noticees that the present demand is invalid for want of appeal against the shipping bills is without any merit.

29.9 I also find that Reliance placed by the Noticee on Sections 28C and 28D is no way concerned with the present proceedings as those provisions are

related to unjust enrichment and refunds. The present proceedings are related to recovery of duty under a different Section i.e. 28(4) of the Customs Act, 1962. I also find that the Noticee's claim regarding levy of duty on FOB by calling it as 'never-ending loop' is nothing but a misinterpretation of the provisions under Customs Act. The FOB value is the full transaction price on which export duty is levied as a percentage without any reduction. Thus, I find no merit in Noticee's contention.

29.10 The noticee again submitted that extended period can't be invoked and duty cannot be demanded under the provisions of Section 28(4) of the Customs Act, 1962. I found that the suppression and wilful misstatement has been discussed in details in above paras. Accordingly, duty to be demanded under Section 28(4) of the Customs Act, 1962. In the referred case by the noticee, suppression element were not found; however in this case suppression and wilful misstatement has already been found.

29.11 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. As discussed in the foregoing paras, the said noticee has fraudulently by producing forged contract agreement with the foreign buyer claimed deduction in the different shipping bills filed by them for export of rice and thus evaded proper payment of export duty. 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. By doing these acts of wilful mis-statements and suppression of the facts in respect of the impugned export consignments, the exporter M/s. Sailor Exports has rendered the impugned goods having total assessable value of **Rs. 717,91,91,990/-** (as detailed in detailed in **'Annexures -I, II & III** of the SCN), liable to confiscation under Sections 113(i) of the Customs Act, 1962.

As the impugned goods are liable for confiscation under Section 113(i) of the Customs Act, 1962, I find that since the goods in question which are

proposed to be confiscated are not available physically and have already been cleared from Customs. Thus, I refrain from imposing redemption fine.

30. LIABILITY OF PENALTY UNDER SECTOIN 114A AND/OR 114 AND/OR 114AA OF THE CUSTOMS ACT, 1962:

30.1 I have already decided that the goods are liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962 for the reasons explained under foregoing paras. Consequently penalty under Section 114A is found leviable on the exporter M/s. Sailor Export as the elements for penalty as per said Section 114A is *pari materia* with Section 28(4) of the Customs Act, 1962.

30.2 As regards the penalty on Ms. Sailor Exports under Section 114AA of the Customs Act, 1962 is concerned, Section 114AA mandates penal action for intentional usage of false and incorrect material against the offender. In the present case, the deliberate misdeclaration of the FOB value of exported goods, the use of shipping bills and invoices that did not reflect the actual consideration receivable from overseas buyers, and the issuance of separate debit notes to recover export duty while suppressing the same from shipping bill declarations, clearly fall within the scope of acts covered within the ambit of Section 114AA of the Customs Act, 1962. The investigation has revealed that reimbursement amounts were not reflected in the shipping bills or in the BRCs. These amounts were recovered separately through debit notes and misrepresented through use of incorrect RBI Purpose Code P1306 which is meant for “Transfers” of personal nature and not for export related matters. These acts were done by the exporter with full knowledge by intentional act of mis-statements. The statements of Shri Sunny Nagrani recorded under Section 108 of the Customs Act, 1962 further corroborate the fact that the exporter was fully aware about treating FOB value as “cum-duty”. However, the exporter chose to mis-declare the same, thus these acts fulfilled the mens rea requirement under Section 114AA of the Customs Act, 1962. The present case is based on a planned practice of mis-statement and suppression of facts for duty evasion in the subject shipping bills which cannot be termed as bona fide mistake. The Customs Act, 1962 clearly defines “person” to include companies and juristic entities, and it is a settled principle that corporate bodies can be held liable for penalties under fiscal statutes. The acts of the company were carried out through its directors and authorised signatories, and liability attaches both to the company and to responsible individuals. Therefore, M/s Sailor Exports Limited, being the exporter is squarely covered under the provisions of Section 114AA of the Customs Act, 1962.

In view of the above, I hold that the acts of the exporter clearly represent making and using false and incorrect declarations in material particulars.

Such act on the part of the exporter M/s. Sailor Exports squarely falls within the ambit of Section 114AA of the Customs Act, 1962, thus, it is beyond doubt that M/s. Sailor Exports are liable to penalty under Section 114AA of the Customs Act, 1962.

30.3 From the above discussion and findings, it is evident that Shri Sunny Nagrani, was personally managing the company's exports, documentation, and compliance matters. He also accepted reducing the FOB value by deducting export duty even though the same amounts were recovered from buyers. He further accepted that debit notes were separately raised for duty reimbursement but were not disclosed in the shipping bills. These acts done by him confirmed his direct involvement in mis-declaration and short-payment of export duty, thus made the subject goods liable for confiscation under the provisions of Section 113 of the Customs Act, 1962. Therefore, I hold that Shri Sunny Nagrani is liable for penalty under Section 114(ii) of the Customs Act, 1962.

30.4 It has also been clearly established that Shri Sunny Nagrani played a key role in preparing and submitting invoices with reduced FOB values to Customs. From the above it has been established that he was knowingly preparing and using false and misleading documents for the purpose of customs clearance. These deliberate act of submitting false and incorrect documents with the intent to evade export duty made him liable for penal action under the provisions of Section 114AA of the Customs Act, 1962. Therefore, I hold that Shri Sunny Nagrani is liable for penalty under Section 114AA of the Customs Act, 1962.

31. In view of above discussions and findings supra, I pass the following order:

ORDER

i. I order to reject the declared assessable value of Rs. 578,79,26,557/- in respect of 671 shipments (as detailed in **'Annexures -I, II & III** of the SCN) in terms of Rule 8 of the CVR (E), 2007 and order to re-determine the same at **Rs. 717,91,91,990/-** under the provisions of Section 14 (1) of the Customs Act, 1962 read with read with Rule 3 (1) CVR (E), 2007.

ii. I confirm the demand of differential (export) duty amounting to **Rs. 27,82,53,123/-** under of Section 28 (8) of the Customs Act, 1962 by invoking extended period under Section 28(4) of the Customs Act, 1962.

iii. I order to recover the interest on the confirmed differential duty amount at sr. no (ii) under the provisions of Section 28AA of the Customs Act, 1962;

iv. I hold that the goods exported vide Shipping Bills (as detailed under 'Annexures-I, II & III' to the SCN) having re-determined assessable value of **Rs. 717,91,91,990/-** are liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. However, I do not find it appropriate to impose any redemption fine under Section 125 of the Customs Act, 1962 since the goods are not physically available.

v. I impose a penalty of **Rs. 27,82,53,123/- (Rupees Twenty Seven Crores Eighty Two Lakhs Fifty Three Thousand One Hundred and Twenty Three only)** upon the Exporter M/s. Sailor Exports under section 114A of the Customs Act, 1962.

vi. I impose a penalty of **Rs. 2,50,00,000/- (Rupees Two Crores and Fifty Lakhs only)** upon the Exporter M/s. Sailor Exports under section 114AA of the Customs Act, 1962.

vii. I impose a penalty of **Rs. 1,00,00,000/- (Rupees One Crore only)** upon Sh. Sunny Nagrani under Section 114(ii) of the Cusotms Act, 1962.

viii. I impose a penalty of **Rs. 1,00,00,000/- (Rupees One Crore only)** upon Sh. Sunny Nagrani under Section 114AA of the Cusotms Act, 1962.

32. The Order 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 any other law for the time being in force.

Digitally signed by
Nitin Saini
Date: 18-09-2025
18:30:51

Commissioner of Customs
Custom House, Mundra

To,

1) **M/s Sailor Exports Limited**, 6/2 Nayta Mundla Road, Indore, Madhya Pradesh, 452020
2) **Sh. Sunny Nagrani**, Executive Director, M/s Sailor Exports Limited, R/o 35-36 Sampat Farms, Pipliana Bicholi Mardana, Indore, Madhya Pradesh, 452016

Copy for necessary action to: -

i. The Commissioner of Customs, Mundra Port, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 (INMUN1)

ii. The Pr. Commissioner of Customs, Nhava Sheva-I Jawaharlal Nehru Customs House, Nhava Sheva, Tal: Uran, Dist.-Raigad, Maharashtra-400707 (INNSA1)

iii. The Pr. Commissioner of Customs Kandla, Kandla Custom House, Near Balaji Temple, Kandla-370210 (INIXY1)

iv. The Commissioner of Customs, (Chennai-IV) (Export) Custom House, 60, Rajaji Salai, Chennai-600001(INMAA1)

v. The Pr. Commissioner of Customs, Visakhapatnam Port Area, Visakhapatnam-530001(INVTZ1)

vi. The Commissioner of Customs (Preventive), Vijaywada 55-17-3, C-14, II Floor, Road No. 2, Industrial Estate, Auto Nagar, Vijayawada-520007 (Krishnapatnam Custom House -INKRI1)

vii. The Principal Commissioner of Customs, Ahmedabad 1st Floor, Custom House, Near All India Radio, Income Tax Circle, Navrangpura, Ahmedabad-380009 (INHZA1)

viii. The Commissioner of Customs, Nagpur GST Bhawan, Telangkhedi Road, Civil Lines, Nagpur-440001 [CONCOR ICD MIHAN - INKPK6 and ICD Borkhedi - INBOK6]

ix. The Commissioner of Customs (Port) Custom House, 15/1 Strand Road, Kolkata-700001 (INCCU1)

x. The Commissioner of Customs (Preventive), Vijaywada 55-17-3, C-14, Ii Floor, Road No. 2, Industrial Estate, Auto Nagar, Vijayawada-520007 (INKAK1)

xi. The Director General, Central Economic Intelligence Bureau, 6th Floor, B-Wing, Janpath Bhawan, Janpath, New Delhi-110001