F.No.S/49-558/CUS/MUN/DEC/2025-26

सीमाशुल्क(अपील) आयुक्तकाकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,
चौथीमंज़िल 4th Floor, हडको बिल्डिंगHUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN- 20260371MN0000424797

क	फ़ाइलसंख्या FILE NO.	S/49-558/CUS/MUN/DEC/2025-26
ख	अपीलआदेश संख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-901-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	30.03.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. MCH/ADC/MK/143/2024-25 dated 25.09.2024 issued by the Additional Commissioner of Customs, Custom House, Mundra.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Harsha International, Ser-1, Pan Mandi Bank Road Raxaul, East Champaran, Bihar-845305.

1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.

	खेत सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :

सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016

5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के 10 % अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं,या दंड के10 % अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

(अपील) सीमा शुल्क आयुक्त कार्यालय अहमदाबाद

ORDER - IN - APPEAL

The present Appeal has been filed by M/s. Harsha International, Ser-1, Pan Mandi Bank Road Raxaul, East Champaran, Bihar-845305 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962 challenging the Order-In-Original No. MCH/ADC/MK/143/2024-25, dated 25.09.2024 (hereinafter referred to as the 'impugned order') issued by the Additional Commissioner of Customs, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority ') .

2. Facts of the case, in brief, are that the Intelligence developed by DGGI, DZU suggested that goods pertaining to M/s Harsha International intended to be exported appeared to have been highly overvalued and that they are exporting spurious products in guise of "Smoking Mixture". The intelligence further suggested that M/s Harsha International was availing the refund of IGST and Compensation Cess on these exports through false declarations of inflated value. Accordingly the live export consignments covered under 21 Shipping Bills pertaining to M/s Harsha International were put on hold by DRI, Gandhidham for the examination. The goods declared as Rice (CTH:10063090) and Smoking Mixture (CTH:24039910) meant for export vide 21 Shipping Bills all dated 29.09.2022 was examined by the officers vide Panchanama dated 03.10.2022 and 04.10.2022. The details of the goods declared in 21 Shipping Bills all dated 29.09.2022 and found during examination is listed in below Table A.

Table A

Sr.No.	Shipping Bill No. and date	Container No.	Declared Description	No. of packages as per Declaration	No. of packages actually found
1.	4502337 dated 29.09.2022	TRHU1635772	RICE(10063090) Smoking Mixture(24039910)	1020	964 Rice bags 10 Plastic drum goods declared as smoking mixture
2.	4502306 dated 29.09.2022	APZU3740822	RICE(10063090) Smoking Mixture(24039910	1020	971Rice bags 10 Plastic drum goods declared as smoking mixture

3.	4502303 dated 29.09.2022	CMAU1814665	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
4.	4502335 dated 29.09.2022	SGRU2129138	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
5.	4502403 dated 29.09.2022	CMAU0045381	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
6.	4502338 dated 29.09.2022	TEMU1275219	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
7.	4502340 dated 29.09.2022	TCLU2733520	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
8.	4502300 dated 29.09.2022	FCIU3060111	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
9.	4502405 dated 29.09.2022	TLLU2789785	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
10.	4502305 dated 29.09.2022	GLDU3791380	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
11.	4502336 dated 29.09.2022	TRHU1300125	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
12.	4502400 dated 29.09.2022	CMAU1846723	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
13.	4502406 dated 29.09.2022	CMAU3074125	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
14.	4109301 dated 29.09.2022	GESU1423737	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
15.	4502316 dated 29.09.2022	CMAU0376158	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking

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					mixture
16.	4502404 dated 29.09.2022	TEMU4454373	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
17.	4502397 dated 29.09.2022	TRHU2190779	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
18.	4502247 dated 29.09.2022	CAIU2345908	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
19.	4502250 dated 29.09.2022	CAIU3614215	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
20.	4502299 dated 29.09.2022	CMAU0473646	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
21.	4502245 dated 29.09.2022	CMAU0160976	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture

2.1 The exporter had filled these 21 shipping Bills under free shipping bill of zero duty drawback, they have claimed refund of IGST, Cess amount and RoDTEP amount. The FOB value declared, IGST Taxable Value, IGST Amount, Cess and RoDTEP for these consignments were as per Table B below:

Table-B

S. No.	Bill No. and date	Total FOB (INR)	IGST Taxable Value (INR)	IGST Amount (INR)	Cess Amount (INR)	Rod TEP
1	4502337 dated 29.09.2023	3383313	2989813	837148	78700	**3935**
2	4502306 dated 29.09.2023	3380165	2986665	836266	78700	**3935**
3	4502301 dated 29.09.2023	3381346	2987846	836597	78700	**3935**
4	4502406 dated 29.09.2023	3382133	2988633	836817	78700	**3935**
5	4502400 dated 29.09.2023	3379378	2985878	836046	78700	**3936**

6	4502336 dated 29.09.2023	3382526	2989026	836927	78700	3936
7	4502305 dated 29.09.2023	3380559	2987059	836376	78700	3936
8	4502405 dated 29.09.2023	3380559	2987059	836376	78700	3936
9	4502300 dated 29.09.2023	3382133	2988633	836817	78700	3935
10	4502340 dated 29.09.2023	3380952	2987452	836487	78700	3936
11	4502338 dated 29.09.2023	3381739	2988239	836707	78700	3936
12	4502403 dated 29.09.2023	3382920	2989420	837037	78700	3936
13	4502335 dated 29.09.2023	3380165	2986665	836266	78700	3935
14	4502303 dated 29.09.2023	3382920	298420	837037	78700	3936
15	4502245 dated 29.09.2023	3382526	2989026	836927	78700	3936
16	4502299 dated 29.09.2023	3379378	2985878	836046	78700	3936
17	4502250 dated 29.09.2023	3381739	2988239	836707	78700	3936
18	4502247 dated 29.09.2023	3380952	2947452	836487	78700	3936
19	4502397 dated 29.09.2023	3381346	2987846	836597	78700	3935
20	4502404 dated 29.09.2023	3379378	2985878	836046	78700	3936
21	4502316 dated 29.09.2023	3383313	2989813	837148	78700	3935
	Total	71,009,436/-	60,014,936/-	17,568,862 /-	1652700/-	82648/-

The Total value of the goods pertaining to above mentioned 21 Shipping Bills comes to Rs.7,10,09,436/-. The exporter had filled above Shipping Bills Under free shipping Bill of zero duty drawback, however exporter M/s Harsha International have claimed IGST refund/Input Tax Credit of Rs. 1,75,68,862, CESS Amount of Rs. 16,52,700/- and RoDTEP benefit in the tune of Rs. 82,648/-

2.2 During the examination of the goods stuffed in 21 containers it was found that the all the containers were stuffed with the PP Bags having rice and also there were white colour PP bags having blue colour Plastic Drum. The white colour PP bags were not having marking and each white colour PP bag was having blue colour plastic Drum and each blue colour Plastic drum was stuffed with dark brown colour wet substance, having smell of waste of Pan Masala, in a transparent poly bag, which also was not having any kind of marking or labelling. The weight of one blue colour plastic drum was around 52.500 Kgs. The PP bags which have the rice was having marking as *"Hello, Indian Long Grain White Rice(Milled) Silky Sortex 15 % Broken Grade-2, Net Weight;25 Kgs, Food for Human Consumption"*. During the examination of the 21 containers the officers withdrawn three representative samples of cargo declared as Smoking Mixture, from each container, which were sent to Customs House Laboratory, Kandla to ascertain the actual description of the goods meant for export vide Test Memo Bearing No. 28/2022-23 to 48/2022-23 all dated 19.10.2022.

2.3 The Custom House Laboratory, Kandla provided the sample wise test reports as mentioned in Table below:

Table C

Sr. No.	Shipping Bill No. & Date	Test Memo No.	Test Report Lab No. & date	Test results
1	4502337 dated 29.09.2022	28/2022-2023	DRI-4940 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=58.6 Ash content on dry basis(% by mass)=22.8 Acid Insoluble Ash on dry basis(% by mass)=7.8 Above Tested Parameter obtained from the sample u/r is not compiles

				to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
2	4502306 dated 29.09.2022	29/2022-2023	DRI-4941 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=59.7 Ash content on dry basis(% by mass)=20.1 Acid Insoluble Ash on dry basis(% by mass)=7.2 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
3.	4502303 dated 29.09.2022	30/2022-2023	DRI-4942 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=60.0 Ash content on dry basis(% by mass)=23.0 Acid Insoluble Ash on dry basis(% by mass)=7.9 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
4.	4502335 dated 29.09.2022	31/2022-2023	DRI-4943 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=63.92 Ash content on dry basis(% by mass)=22.3 Acid Insoluble Ash on dry basis(% by mass)=7.39 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
5.	4502403 dated 29.09.2022	32/2022-23	DRI-4944 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=57.89 Ash content on dry basis(% by mass)=21.17 Acid Insoluble Ash on dry basis(% by mass)=7.34 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
6.	4502338	33/2022-	DRI-4945 dated	The Sample as received is in the form

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	dated 29.09.2022	23	02.11.2022	of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=59.58 Ash content on dry basis(% by mass)=22.28 Acid Insoluble Ash on dry basis(% by mass)=7.37 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
7.	4502340 dated 29.09.2022	34/2022-23	DRI-4946 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=56.59 Ash content on dry basis(% by mass)=25.77 Acid Insoluble Ash on dry basis(% by mass)=7.10 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
8.	4502300 dated 29.09.2022	35/2022-2023	DRI-4947 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=57.1 Ash content on dry basis(% by mass)=22.7 Acid Insoluble Ash on dry basis(% by mass)=7.06 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
9.	4502405 dated 29.09.2022	36/2022-2023	DRI-4948 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=60.19 Ash content on dry basis(% by mass)=23.60 Acid Insoluble Ash on dry basis(% by mass)=8.21 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
10.	4502305 dated 29.09.2022	37/2022-23	DRI-4949 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants-

				Loss on dying(% by mass)=59.16 Ash content on dry basis(% by mass)=22.15 Acid Insoluble Ash on dry basis(% by mass)=7.71 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
11.	4502336 dated 29.09.2022	38/2022-2023	DRI-4950 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=59.9 Ash content on dry basis(% by mass)=23.52 Acid Insoluble Ash on dry basis(% by mass)=7.26 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
12.	4502400 dated 29.09.2022	39/2022-2023	DRI-4951 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=58.4 Ash content on dry basis(% by mass)=23.2 Acid Insoluble Ash on dry basis(% by mass)=7.2 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
13.	4502406 dated 29.09.2022	40/2022-2023	DRI-4952 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=55.5 Ash content on dry basis(% by mass)=24.1 Acid Insoluble Ash on dry basis(% by mass)=7.7 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
14.	4109301 dated 29.09.2022	41/2022-2023	DRI-4953 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=58.6 Ash content on dry basis(% by mass)=22.9 Acid Insoluble Ash on dry basis(% by

				mass)=6.9 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
15.	4502316 dated 29.09.2022	42/2022-2023	DRI-4954 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=58.1 Ash content on dry basis(% by mass)=24.8 Acid Insoluble Ash on dry basis(% by mass)=7.1 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
16.	4502404 dated 29.09.2022	43/2022-2023	DRI-4955 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=55.97 Ash content on dry basis(% by mass)=26.20 Acid Insoluble Ash on dry basis(% by mass)=6.11 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
17.	4502397 dated 29.09.2022	44/2022-2023	DRI-4956 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=59.49 Ash content on dry basis(% by mass)=25.86 Acid Insoluble Ash on dry basis(% by mass)=6.98 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
18.	4502247 dated 29.09.2022	45/2022-2023	DRI-4957 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=67.87 Ash content on dry basis(% by mass)=21.59 Acid Insoluble Ash on dry basis(% by mass)=7.38 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and

				Tobacco product: Smoking Mixture-Specification."
19.	4502250 dated 29.09.2022	46/2022-2023	DRI-4958 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants-Loss on dying(% by mass)=56.8 Ash content on dry basis(% by mass)=24.9 Acid Insoluble Ash on dry basis(% by mass)=5.4 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
20.	4502299 dated 29.09.2022	47/2022-2023	DRI-4959 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants-Loss on dying(% by mass)=58.6 Ash content on dry basis(% by mass)=22.2 Acid Insoluble Ash on dry basis(% by mass)=7.1 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
21.	4502245 dated 29.09.2022	48/2022-2023	DRI-4960 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants-Loss on dying(% by mass)=57.2 Ash content on dry basis(% by mass)=26.3 Acid Insoluble Ash on dry basis(% by mass)=8.2 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."

2.4 Vide letter dated 03.11.2022 further clarification was sought from CRCL Kandla asking (1) Whether the product is spurious and (2) Whether the product is fir for human consumption. In reply vide letter dated 07.11.2022 Customs House Laboratory, Kandla has declared that the *"Each of twenty one samples u/r are containing loss on drying, inorganic filler as seen from Acid insoluble and Ash contents, which are more than the prescribed limit as per IS1578-2018, Specification for Tobacco and Tobacco product smoking mixtures and it appears that the samples are spurious product and not fit for human consumption."*

2.5 During the scrutiny of the documents it further appeared that M/s Harsha International has classified the goods "Smoking Mixture" under Chapter Head 24039910 whereas as per the Custom Tariff, the subhead 24039910 is for Chewing tobacco. From examination of subject goods, it appeared that physical characteristics of the products declared as "smoking mixture" was not matching with those of actual smoking mixtures. The product was in the nature of dark brown colour wet substance, having smell of waste of Pan Masala. Further the CRCL Kandla Test reports confirmed the observations during examination by stating that the samples of these products do not meet the parameters of IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification. CRCL Kandla further clarified that the subject goods declared as Smoking Mixture was spurious product and not fit for human consumption. It is evident that the subject goods are clearly mis-declared. Accordingly the declared FOB value of these goods (including Rice) in these 21 Shipping Bills appears highly overvalued. It appears that the exporter M/s Harsha International has exorbitantly inflated the price of the subject goods which was found to be spurious product and not fit for human consumption meant for export vide aforesaid 21 Shipping Bills to fraudulently avail IGST Tax Credit and other export benefits.

2.6 Accordingly, it appeared that the goods declared as "Smoking mixture (11025 Kg) " have been mis-declared by the exporter and hence were liable for confiscation under Section 113(i), and Section 113(ja) of the Customs Act, 1962. It further appeared that the "Rice(512450 Kg)" was being used as cover cargo to get the "smoking mixture" exported and have been used for concealment of smuggled goods declared as 'Smoking Mixture' and hence were liable to confiscation u/s 119 of Custom Act, 1962. In view of above the goods attempted to be exported vide above 21 Shipping Bills were placed under seizure as per the provisions of Section 110 of the Customs Act, 1962 , vide Seizure Memo dated 02.12.2022. After seizure, the goods were handed over to the Authorised person of Custodian M/s. Honeycomb Logistics Pvt. Ltd., CFS Adani Ports & SEZ, Mundra, Kutch, under Supratnama dated 02.12.2022.

2.7 In order to ascertain the value of the goods declared as Smoking Mixture, the representative samples of the goods pertaining to 21 Shipping Bills all dated 29.09.2023 was inspected by the Chartered Engineer M/s

Suvikaa Associates. The Chartered Engineer submitted his valuation report No. DRI/258/23-24/ dated 18.05.2023.

In his report, the Chartered Engineer opined that the *"The tobacco mixture as presently constituted, possesses no inherent value and carries potential environmental detiments. It is strongly advised against disposing of this mixture by burying it in the ground due to associated risks. It is crucial to note that this Tobacco mixture is unsuitable for consumption by humans or animals, as it poses considerable health hazards and complications. Its consumption may result in detrimental effects on well being. Therefore, proper measures must be taken to ensure the safe handling and disposal of this tobacco mixtures to mitigate both environmental and health concerns. "*

2.8 The DGGI, Delhi Zonal Unit (DZU) was carrying investigation against M/s Harsh International for violations of provisions of GST during these exports and DRI has relied upon their the evidences gathered by them in this regard for their own investigations. During investigation, a search was carried out by the officers of DGGI, DZU, Delhi at the premises of M/s Harsha International at Pan Mandi, Bank Road, Raxaul, East Champaran, Bihar-845305 vide Panchanama dated 08.11.2023 and the premise was found locked. It was opened in the presence of the owner of the premise and search was conducted. It was found that no business activity was being conducted from the premises. The premise was found to be small Pan/Grocery/Kirana Shop which was run by Shri Surendra Prasad Chaurasia father of Shri Jitendra Kumar.

2.9 A Search was also carried out by the officers of DGGI, DZU, Delhi at the Additional place of business of M/s Harsha International at Shree Ram Path, Koriya Toa, Raxual, Bihar vide Panchanama dated 08.11.2023 and the premise was found to be residential premise of Shri Jitendra Prasad Chaurasia proprietor of M/s Harsha International and during the search Shri Jitendra Kumar was not present at home. No Business activity was found to be carried out at the premise.

2.10 During investigation it was found that M/s Harsha International was procuring these goods from M/s Radiant Traders, B-36-6, Jhilmil Industrial Area, Shahdara Delhi-110095. Accordingly search was conducted by the officers of DGGI, DZU, Delhi at the premise of M/s Radiant Traders, B-36-6, Jhilmil Industrial Area, Shahdara Delhi-110095 under Panchanama dated 20.10.2023 . No plant and Machinery was found at the premises of M/s Radiant Traders.

2.11 During investigation, statements of following concerned persons were recorded under Section 108 of the Customs Act, 1962: and under Section 70 of the CGST, 2017 -

(i) Shri Jitender Kumar, Proprietor of M/s. Harsha International,
(ii) Shri Vijay Shisodia, G- Card Holder of M/s Vee Win Logistics
(iii)Shri Manish Goyal, Proprietor of M/s Radiant Traders
(iv)Shri Chirag Goel, l, Resident of G-12, Kamla Nagar, Delhi-110007
(v) Shri Chamman Goel, Resident of G-12, Kamla Nagar, Delhi-110007

2.12 The outcome of investigation revealed the following :

2.12.1 M/s Harsha International had filed 21 Shipping Bills as shown in table-l for export of "Smoking Mixture and Rice". The declared FOB value of the goods is Rs. 7,10,09,436 /- and IGST refund/Input tax credit refund amount of Rs. 1,75,68,862/- they claimed export benefits (RoDTEP) of Rs 82,648/- and they claimed Cess amount of Rs. 16,52,700/-. Examination of the goods, followed by testing through CRCL Kandla and further inspection by Govt. approved Chartered Engineer confirmed the facts that goods declared as "Smoking mixture" were spurious, not fit for consumption.

2.12.2 M/s Harsha International was also found non-operational during the search proceedings. M/s Harsha International had procured these goods for export from M/s Radiant Traders. Search at the registered premises of M/s Radiant Traders revealed that no goods/plant and machinery was found at the premises and no business activity was noticed. As per statement of Shri Manish Goyal, Proprietor of M/s Radiant Traders no manufacturing activity was conducted at the premise of M/s Radiant Traders and he had never supplied any smoking mixture and rice to M/s Harsha International. Shri Manish Goyal had provided his KYC documents to Chirag Goel for the opening of the account of M/s Radiant Traders in lieu of Rs.50,000/- per month. Shri

Manish Goyal used to provide OTPs to Shri Chirag Goel whenever needed and later on he gave this sim (mobile no. 8882174808) to Shri Chirag. From statement of Shri Manish Goyal, it appears that the supply of Smoking Mixture to M/s Harsha International was shown from M/s Radiant Traders by Shri Chirag Goel.

2.12.3 As per GST returns of M/s Radiant Traders, the smoking mixture was said to be manufactured from the tobacco of Cigarettes of established brand, however no Cigarettes were found at the premises of M/s Radiant Traders. As per statement of Shri Manish Goyal if any Cigarettes was shown to have been received at M/s Radiant Traders, the same were delivered/sold in whole sale market in Delhi.

2.12.4 Thus it appeared that fraudulent supply of "smoking mixture" was shown from M/s Radiant Traders to M/s Harsha International for the purpose of export. Such smoking mixture was never produced or handled by M/s Radiant Traders. It appears that tobacco waste that was spurious, and unfit for consumption was being exported by M/s Harsha International and supply was shown to be originating from M/s Radiant Traders and item was declared as "smoking mixture" to avail refund of IGST, Cess and RoDTEP after exports. It is cogent and clear that the exporter, M/s Harsha International had mis-declared the impugned goods in terms of their value (by overvaluing the goods) and procured fake invoices and attempted to defraud the Government by claiming inadmissible export benefits and IGST refund and thereby acted in a manner which rendered the said goods liable for confiscation in terms of the provisions of Section 113(i) and 113(ja) of the Customs Act, 1962,

2.13 Roles and Culpability of the persons :-

2.13.1 Shri Jitender Kumar, Proprietor of M/s Harsha International: Shri Jitender Kumar, the proprietor of M/s Harsha International, attempted to export goods (smoking mixtures) that were identified to be spurious and unfit for consumption having NIL value. The exporter had declared the FOB value in the subject 21 Shipping Bills as Rs. 71,009,436/- which is a violation of Section 50(2) of the Customs Act, 1962. Hence it appears that these goods are liable to confiscation under Sec 113(i). M/s Harsha International was also found non-operational during the search proceedings. M/s Harsha International had procured these goods for export from M/s Radiant Traders. Search at the registered premises of M/s Radiant Traders revealed that no goods/plant and machinery was found at the premises and no business activity was noticed. As per statement of Shri Manish Goyal, Proprietor of M/s Radiant Traders no manufacturing activity was conducted at the premise of M/s Radiant Traders and he had never supplied any smoking mixture and rice to M/s Harsha International. Thus it appears that M/s Harsh International had made false claim of IGST refund on these attempted exports by utilizing fake and ineligible Input Tax credit thereby rendering these goods liable to confiscation under Section 113(ja) of Customs Act. Further the cover cargo i.e. rice being exported was also made liable to confiscation under Section 119 of the Customs Act 1962. By such acts and omissions Shri Jitender Kumar, Proprietor of M/s Harsha International has also made himself liable to penalty under Sec 114(iii) and 114(AA) of Customs Act.

2.13.2 Role of Shri Manish Goyal, Proprietor of M/s Radiant Traders:

Shri Manish Goyal, the proprietor of M/s Radiant Traders, apparently supplied the Smoking mixture to M/s Harsha International which M/s Harsha International attempted to export. These goods were identified to be spurious and unfit for consumption. Investigation revealed that M/s Radiant Traders was not found to have any operations related to the manufacturing of smoking mixtures. Further it came out that M/s Harsha International had procured the fake invoices from M/s Harsha International for overvalued product on which huge amount of Input Tax Credit was pass on and which M/s Harsha International was claiming as IGST refund. The IGST refund for the past exports of M/s Harsha International was transferred to the account of M/s Radiant Traders and thus it appears that they were an equal partner in the fraud of overvaluation of export goods for claiming fraudulent IGST refund from Government. Through such acts Shri Manish Goyal has rendered the goods liable to confiscation under Sec 113(i), Sec 113(ja) and Sec 119 of Customs Act. Thus, for the above acts of omission and commission, it appeared that the Shri Manish Kumar, proprietor of M/s Radiant Traders had rendered himself liable to penalty under Section 114(iii) of the Customs Act, 1962.

2.13.3 Role of Shri Chirag Goel:.

Shri Chirag Goel's involvement in the operations is evident from the interactions and transactions among the businesses, as well as from the statements of key personnel involved. Shri Chirag Goel appears to have substantial control and influence over M/s Blue Water Expotrade India Private Limited, as indicated by Shri Chaman Goel. This suggests his capability to make significant business decisions and possibly guide the operations of other connected entities. The linkage between Shri Chirag Goel and M/s Radiant Traders is evident through his dealings with Shri Manish Goyal. Shri Mansi Goyal's statements clearly indicate that Shri Chirag Goel played a role in the operations of M/s Radiant Traders. The fact that Shri Manish Goyal provided KYC documents to Shri Chirag Goel and the subsequent use of these documents for business operations of M/s Radiant Traders suggest am arrangement for fraud between Shri Chirag and Shri Manish. The dubious supply of "smoking mixture" from M/s Radiant Traders to M/s Harsha International is underlined by the fact that Shri Chirag Goel seemingly manipulated this supply chain, as inferred from Shri Manish Goyal's statements. Shri Chirag Goel can be seen as effective controller of Radiant Traders and hence actively participating in the mis-declaration of goods being supplied by Harsha International (and supplied by M/s Radiant Traders) thereby rendering the goods liable to confiscation Sec 113(i), Sec 113(ja) and Sec 119 of Customs Act 1962. Since the Bank accounts of M/s Radiant Traders were effectively being controlled by Shri Chirag Goel, and because the IGST refund received by M/s Harsha International for past exports were transferred to account of M/s Radiant Traders, hence the role of Chirag Goel in orchestrating the entire fraud becomes more clear. Through such acts of omission and commission, it appeared that the Shri Chirag Goel had rendered himself liable to penalty under Section 114(iii) of the Customs Act, 1962.

2.13.4 Role of Shri Chaman Goel

Shri Chaman Goel was a director of M/s Blue Water Expotrade India Private Limited, holds implicit responsibilities pertaining to the company's operations. Although he consistently emphasized his limited involvement, positioning his brother, Shri Chirag Goel, as the key operator, his directorial role inherently carries statutory obligations. Recognizing key figures like Shri Manish Goyal and providing a mobile number later used in questionable banking transactions further implicates his involvement, albeit indirectly. His passive association and lack of oversight, particularly concerning dealings with M/s Radiant Traders is evident. This association, coupled with the shared resources and connections with pivotal person in the alleged fraud, places Shri Chaman Goel in a sphere of responsibility. Thus it appears that along with Shri Chirag Goel, Shri Chaman Goel was also an active controller of M/s Radiant Traders through which the supply of unfit and spurious goods to M/s Harsha International was done. Thus, for the above acts of omission and commission, it appeared that Shri Chirag Goel had rendered himself liable to penalty under Section 114(iii) of the Customs Act, 1962.

2.13.5 Role of M/s Veewin Logistics, Customs Broker:

M/s Veewin Logistics, a firm specializing in customs clearance services for exports. Their involvement with M/s Harsha International pertains to the processing and submission of customs clearances based on the documents and KYC information furnished by the latter. In the Shipping Bills the Chapter head of smoking mixture mentioned by them is 24039910 which is for the Chewing Tobacco. Thus knowingly they have mentioned wrong CTH while they were fully aware that the product is "smoking mixture". Further no business activity was found to be conducted at the premises of exporter which was not noticed by them. Hence it appeared that M/s Veewin Logistics has to failed to perform due diligence as customs broker in this case. By such acts and omissions, M/s Veewin Logistics have rendered the goods being exported as liable to confiscation under Sec 113(i), Sec 113(ja) and Sec 119 of Customs Act and also rendered themselves liable to penalty under Section 114(iii) of the Customs Act, 1962.

2.14 On completion of investigation, a show cause notice dtd. 25.09.2023 was issued to the appellant to show cause to the Additional Commissioner of Customs, Mundra, as to why: -

(i) FOB value i.e. Rs. 7,10,09436/-) /- (Rupees Seven Crore Ten Lakhs Nine Thousands four hundred thirty six Only) of goods covered under aforesaid 21 Shipping Bills dated 29.09.2022 filed by them should not be rejected under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and should not be re-determined to Rs. 8,26,3500/-as the Smoking mixture is Spurious and unfit for human consumption under Rule 6 of the Customs Valuation (Determination of export goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

(ii) The said impugned export goods covered under 21 Shipping Bills all dated 29.09.2022 found to be misdeclared in terms of valuation and classification for claim of undue export benefit and IGST Refund, Should not be held liable for confiscation under the provision of Section 113 (i), and Section 113(ja) of the Customs Act, 1962.

(iii) The declared imported goods Rice (Qty. 512450 Kg), Value Rs 8,26,3500/-, used for the purpose of concealment of smuggled 11025 Kg of Smoking Mixture, should not be confiscated under the provisions of Section 119 of the Customs Act, 1962.

(iv) The RoDTEP of Rs. 82,648/- Claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table above should not be rejected.

(v) The Cess Amount of Rs. 16,52,700/-/- Claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table above should not be rejected.

(vi) The IGST of Rs. 1, 75,68,862/- Claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table above should not be rejected.

(vii) Penalty under the Section 114(iii) and 114AA of the Customs Act, 1962 should not be imposed upon M/s Harsha International for their acts of omission and Commission discussed in the forgoing paras.

2.15 Further vide above show cause notice, Shri Manish Goyal, Proprietor of M/s Radiant Traders , Shri Chirag Goel ,Shri Chaman Goel and

M/s Veewin Logistics, Customs Broker were also called upon to show cause to the Additional Commissioner of Customs, Mundra, as to why Penalty under the Section 114(iii) of the Customs Act, 1962 should not be imposed upon them for their acts of omission and Commission discussed in the forgoing paras.

2.16 The above show cause notice was adjudicated vide impugned order wherein the adjudicating authority ordered as under :-

(i) He rejected the declared FOB value of Rs. 7,10,09,436/- (Rupees Seven Crore Ten Lakhs Nine Thousands four hundred thirty-six Only) of the goods covered under aforesaid 21 Shipping Bills dated 29.09.2022 under Rule 8 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and ordered to re-determine the FOB value as Rs. 82,63,500/- as the Smoking mixture is Spurious and unfit for human consumption under Rule 6 of the Customs Valuation (Determination of export goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

(ii) He ordered for absolute confiscation of the impugned goods Smoking Mixture (CTH:24039910) covered under 21 Shipping Bills all dated 29.09.2022 found to be misdeclared in terms of valuation and classification for claim of undue export benefit and IGST Refund, under the provision of Section 113 (i), and Section 113(ja) of the Customs Act, 1962.

(iii) He ordered for absolute confiscation of the declared goods Rice (Qty. 512450 Kg), Value Rs 82,63,500/-, used for the purpose of concealment of smuggled 11025 Kg of Smoking Mixture, under the provisions of Section 119 of the Customs Act, 1962.

(iv) He rejected the claim of RoDTEP of Rs. 82,648/- as claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table above.

(v) He rejected the claim of Cess Amount of Rs. 16,52,700/- as claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table 1.

(vi) He rejected the claim of IGST of Rs. 1,75,68,862/-as claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table above.

(vii) He imposed penalty of Rs. 1,25,00,000/-(Rupees One crore Twenty Five Lakh only) on M/s Harsha International under the provisions of Sections 114(iii) of the Customs Act, 1962.

(viii) He imposed penalty of Rs. 75,00,000/-(Rupees Seventy Five Lakh only) on M/s Harsha International under the provisions of Sections 114AA of the Customs Act, 1962.

(ix) He imposed penalty of Rs. 50,00,000/-(Rupees Fifty Lakh only) on Shri Manish Goyal. Proprietor of M/s Radiant Traders under Section 114(iii) of the Customs Act, 1962.

(x) He imposed penalty of Rs. 50,00,000/-(Rupees Fifty Lakh only) on Shri Chirag Goel under Section 114(iii) of the Customs Act, 1962.

(xi) He imposed penalty of Rs.50,00,000/-(Rupees Fifty Lakh only) on Shri Chaman Goel under Section 114(iii) of the Customs Act, 1962.

(xii) He imposed penalty of Rs.25,00,000/-(Rupees Twenty Five lakh only) on M/s Veewin Logistics, Customs Broker under Section 114(iii) of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT

3. Being aggrieved with the impugned order, Appellant has filed the present appeal on the following grounds :-

3.1 The entire case of the department is based on the testing of goods by CRCL against the samples drawn by CRCL. That however, neither CRCL is the appropriate authority for testing smoking mixture nor had a conclusive report had been provided by CRCL. That further contrary to provisions of Customs Act, 1962 the Appellant was not even given the copy of sample on the basis of which it has been presumed that the goods i.e. smoking mixture is spurious.

3.2 With regard to the samples drawn pertaining to 21 shipping bills, the exporter was not provided any copy of the samples. That this is against the provision of drawing of samples envisaged in Section 144 of the Customs Act, 1962.

3.3 The entire case against the exporter /Appellant has been made on the alleged finding of the goods to be exported being spurious not only with regard to present 21 shipping bills but also presumption about the past export had been made but no copy of any sample even with regard to the present shipping bills had been provided. That this clearly shows that the entire case has been made against the Appellant on the basis of presumption and surmises.

3.4 It is further submitted that admittedly, the 21 shipping bills were not exported and therefore, in the absence of the same, neither IGST refund nor duty drawback or ROSCTL has been granted to the Appellant and therefore, in such circumstances where the Appellant has no availed hence, the imposition of penalty under Section 114(iii) of the Customs Act, 1962 and/or under Section 114AA of the Customs Act, 1962 is untenable in law

3.5 The investigation of the DRI is based on the borrowed investigation of DGGI, DZU and no independent investigation has been conducted by the DRI That the imposition of penalty under the provisions of Customs Act, 1962 has been done on the basis of case made out by DGGI, DZU under the provisions of CGST Act, 2017

3.6 The Appellant has categorically stated in his statement that he used to supply/export rice and smoking mixture and therefore, the absolute confiscation of the declared goods i.e. rice (quantity being 512450 kg.) under the provision of Section 119 of the Customs Act, 1962 is unsustainable as admittedly, rice had been declared in the shipping bill along with smoking mixture. That therefore, the finding in paragraph 13.7 of the impugned order that the covered cargo goods as "rice" were used for concealment of smuggled goods declared as smoking mixture" is incorrect on account of the declaration of rice having been made by the exporter.

3.7 There is no adverse finding or any kind of test report and/or any other reason which has been drawn against the export of rice valued at

Rs.82,63,500/- but however, even this has been absolutely confiscated by the Learned Adjudicating Authority and the same is liable to be interfered.

3.8 The Respondents have not discharged the burden of proof while declaring that the smoking mixture was not fit for human consumption and by relying on the report port of the chartered engineer. It is submitted that the testing of smoking mixture as to whether it was fit for human consumption or not ought to have been decided by FSSAI however, the DRI has instead relied upon the chartered engineer's report and/or the CRCL, Kandla.

3.9 It is further submitted without prejudice to the foregoing that chartered engineer was not the appropriate authority to test the goods. That however, the report of chartered engineer has been relied upon to absolutely confiscate the goods. It is further submitted that the chartered engineer report is dated 18.05.2023 at the office of DRI whereas the shipping bills are of September, 2022 and even the examination of goods was done on 03.10.2022 and 04.10.2022. That clearly, the samples by the Chartered Engineer were taken after the period of 8 months and clearly during this period, the goods which were lying at ICD, Mundra had already deteriorated.

3.10 The Respondent has not stated that the sample of the goods had been drawn from the shipping bill but instead the same were drawn at the DRI office, Gandhidham and that too on 18.05.2023 and in the absence of any representative from the Appellant's/exporter's end and clearly whatever report has been given is not the correct report.

3.11 It is further submitted that clearly, even the Customs department were aware that the testing of samples done by the CRCL was not the correct manner of drawing of samples since after getting the goods tested by CRCL in November, 2022, there was no requirement for getting the goods tested again by Chartered Engineer in May, 2023.

3.12 The Learned Additional Sessions Judge while granting bail to Mr. Manish Goyal, supplier of export goods had clearly held that the investigation which was done by DGGI was itself defective. Further the bail granted by order dated 21 12.2022 had been upheld by the Hon'ble Delhi High Court by order dated 11.01.2024

3.13 It is an admitted fact that the purchase of goods which has been made by M/s. Harsha International and was supplied by M/s. Radiant Traders was tax paid goods. That certainly when M/s. Radiant Traders had purchased the goods then it had paid the tax on the said purchase. That further, these same cigarettes were purchased by M/s. Radiant Traders and smoking mixture was made from these cigarettes hence, neither was there any loss of revenue nor it could be held that the smoking mixture was spurious. That clearly, if there was any inward supply of cigarettes, the purchase of which is properly documented, and there is no break in the chain of documents showing alleged supply of cigarettes, then there is no basis for the Respondent to conclude that the Tobacco from the cigarettes was never used in manufacturing the smoking mixture.

3.14 The Learned Additional Sessions Judge, in his order dated 21 12.2022 had also categorically examined the query put by the DRI to the CRCL and drawn adverse findings. That on the query made by the IO on 19 10.2022 to the customs lab viz-a-viz the samples drawn from the shipment intercepted by the department and the same reads as follows.

6	Query	1 Whether the goods conforms the Standards of Smoking Mixtures as declared. 2. Percentage of Nicotine in the goods. 3. Percentage of contents in the samples and whether the goods categorised as Tobacco waste?

(Emphasis supplied)

The chemist after analyzing the sample gave the following opinion on 02.11.2022 on the reverse of the page containing the query

Report - The sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine (Tobacco and Tobacco product) having following constants

Loss on drying (% by mass) = 58.6
Ash Content on dry basis (% by mass) = 22.8
Acid Insoluble Ash on dry basis (% by mass) 7.8

Above tested parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture - Specification.
Query No. 02 & 03 could not be ascertained for want of testing facility
Sealed remnant sample returned herewith.

(Emphasis supplied)

That the Learned Additional Sessions Judge had observed that based on this inconclusive opinion of the chemist, the chemical examiner has given his opinion regarding the product not meeting the standard for Tobacco and Tobacco products smoking mixture. Further the Department seems to have gone further ahead and assumed the position that Tobacco from cigarettes was never used and either there was no actual purchase of cigarettes or in the alternative the cigarettes were sold in the gray market..."

3.15 That admittedly, without prejudice to the foregoing, on the basis of from one shipment being intercepted, and the same having failed to pass the test of conforming with standards for smoking mixture, one cannot assume that all previous export transactions were also fake.

3.16 It is submitted that admittedly even in the issuance of the Show Cause Notice, the DRI has relied upon the CRCL which has itself given an incomplete report as to the percentage of nicotine was applicable in the goods and/or the contents in the samples and whether the goods could be characterized as tobacco waste. That even on the basis of an incomplete and inconclusive opinion by the CRCL mechanically the chemical examiner had given his opinion regarding the product not meeting the standard for tobacco and tobacco products smoking mixture.

3.17 Without prejudice to the foregoing and in order to get over the defects in test report which was noted and highlighted by the Additional Sessions Judge, New Delhi, purportedly another letter dated 03.11.2022 had been sent by the DRI to the CRCL with the following queries i.e.

"1. Whether the product is spurious?

2. Whether the product is fit for human consumption?

That in response the CRCL has given the response on 07.11.2022 had stated as under:

(i) With regard to letter dated 03.11.2022, chemist observation records called for and found that each of twenty one samples u/r are containing loss on drying, inorganic filler as seen from Acid insoluble and Ash contents, which are more than the prescribed limit as per IS 1578-2018, "specification for tobacco and Tobacco product smoking mixtures".

(ii) In the light of the above facts, it appeared to be the samples are spurious product and not fit for human consumption

3.18 The CRCL report dated 02.11.2022 has been relied by the department at the time of grant of anticipatory bail by the Learned Additional Sessions Judge, New Delhi however no mention is mentioned about letter dated 03.11.2022 and/or 07.11 2022 by the department and this raises doubt about the veracity of letters dated 3.11.2022 and 07.11.2022. That further admittedly neither copy of test reports dated 2.11.2022 nor letters dated 03.11.2022 and/or letter dated 07 11.2022 had been provided to the Appellant. That even the samples drawn at the time of drawing samples 03.10.2022 and/or 04 10.2022 has been proved and hence the entire procedure of testing of samples is flawed.

3.19 The Hon'ble Supreme Court in the case of Gastrade International Vs. Commissioner of Customs, Kandla, reported as 2025 (392) E.L.T. 529 (S.C.), had held as under:

"86. For the reasons discussed above, as the results of the test are inconclusive, so being the opinion of the expert, we are unable to agree with the conclusion of the High Court. Under the circumstances, the option before this Court is, either to send the imported product again for further tests and obtain the expert opinion atleast to the effect that the imported product is 'most akin' to HSD even if it does not fulfil all the parameters under IS 1460:2005 or give a benefit of doubt to the appellants and close the proceedings against the appellants by quashing the impugned orders, since the Revenue/Customs Authority cannot take action against the appellants based on inconclusive evidence."

3.20 That similarly even in the present case admittedly, CRCL has given an incomplete report and the DRI has relied on this inconclusive evidence and the same is not permissible. That clearly, in the absence of clarity with regard to the nature of the goods the benefit of doubt ought to go to the Appellant in the light of ratio laid down by the Hon'ble Supreme Court in the case of Gastrade International Vs. Commissioner of Customs, Kandla, reported as 2025 (392) E.L.T. 529 (S.C.).

3.21 That ironically on the basis of such inconclusive report not only was the entire consignment against 21 shipping bills had been seized but has even been confiscated the goods and penalty has been imposed on him.

3.22 That it is pertinent to note that export transactions are subjected to scrutiny at various levels and even importers seek adherence to agreed specific standards and products are subjected to quality control and checks. What applies to a part in present cannot be ipso facto extended to the whole as also to what may have transpired in the past.

3.23 The department has relied on the statement of Manish Goyal which was not recorded under Section 108 of the Customs Act, 1962 but recorded under Section 70 of the CGST Act, 2017 and clearly on the basis of investigation made by the DGGI, DZU, the absolute confiscation of the goods is unsustainable in law That clearly no independent investigation has been done by the DRI.

3.24 Even during investigation Mr. Jitender Kumar was held to be a dummy exporter and if the said assertion was correct then the imposition of penalty was unsustainable in law

3.25 The penalty under Section 114AA of the Customs Act, 1962 is not liable to be imposed as the Appellant has not given any false declaration whatsoever. It is submitted that clearly the goods which were supplied to the Appellant i.e. smoking mixture were manufactured from the cigarettes which were purchased by the supplier i.e. M/s. Radiant Traders and were clearly fit for human consumption as it was taken from the cigarettes.

3.26 Further, the Appellant is also eligible for IGST refund since the input or raw material which was used for manufacturing smoking mixture were itself duty paid cigarettes and hence, there was no impediment with regard to use of IGST refund .

3.27 The supplier of goods had been arrested on the basis of evidence found by DGGI, DZU however, the Appellant was never arrested and was granted anticipatory bail on 02.02.2023 and his statements were recorded thereafter That even the investigating agencies are aware of the innocence/non-involvement of the Appellant and hence, the duty demand and penalty ought to be set-aside on this ground alone.

3.28 With regard to past exports which were made by M/s. Harsha International, its proprietor Shri Jitender Kumar had in his statement dated 27.02.2023 had also categorically stated that he had remitted an amount of Rs. 180 Crores by online transfer to M/s. Radiant Traders since as soon as the remittance was received, the online transfer was done and therefore, on this basis alone, the demand against the Appellant is unsustainable in law.

3.29 The Appellant was being supplied rice and smoking mixture by M/s. Radiant Traders and was not aware as to how the same was procured by M/s. Radiant Traders. That therefore, without prejudice to the foregoing, if assuming though not admitting that M/s. Radiant Traders had purchased and supplied spurious smoking mixture for that the Appellant ought not to be held responsible.

3.30 Further, the goods against 21 shipping bills had not been exported and therefore, the Appellant has not got any IGST refund or duty drawback or ROSCTL and hence, in the absence of any loss of revenue there is no reason for demand of such a huge amount of penalty of Rs. 1,25,00,000/- under Section 114(iii) and/or imposition of Rs.75 Lacs under Section 114AA on the Appellant i.e. M/s. Harsha International. That the goods are lying at the port and have not been exported hence, there is no rhyme or reason for imposing such a huge amount of penalty That the imposition of penalty is required to be in correlation with the alleged evasion of duty and in the absence of the same the imposition of such a huge quantum of penalty is unreasonable and liable to be set-aside.

PERSONAL HEARING

4. Personal hearing in the matter was held on 16.03.2026, wherein Ms. Anjali J. Manish , Advocate, attended personal hearing on behalf of the appellant in virtual mode. She reiterated the submissions made at the time of filing of the appeal. She also made additional submissions as under :-

4.1 That the entire case is based on the basis of testing of goods by CRCL against samples drawn by CRCL, which is neither the appropriate authority for the smoking mixture nor had provided a conclusive report. Further, contrary to provisions of Customs Act, 1962, the Appellant was not even given the copy of sample on the basis of which it has been presumed that the smoking mixture is spurious.

4.2. That the present case relates to the export against 21 shipping bills which were admittedly not exported and hence, no revenue loss. That further on the basis of the present 21 shipping bills, a presumption has been drawn that even the earlier shipping bills had been sent with regard to spurious mixture which is again based on presumption.

4.3. That further the Appellant with regard to the present shipping bills had neither received any IGST refund, duty drawback or ROCTL and therefore, the imposition of penalty is unsubstantiated.

4.4 That further the covered cargo goods relate to rice as used for concealment of smuggling of goods which is incorrect as declaration of rice had been made by the exporter.

4.5. That the finding as to whether the goods were fit for human consumption or not ought to have been decided by the FSSAI however, the DRI has erroneously relied upon the Chartered Engineer's report.

4.6. That further the Chartered Engineer's report is dated 18.05.2023 whereas the examination of goods was done on 03.10.2022 and 04.10.2022. Further the representative has stated that the sample was drawn from DRI office Gandhidham and on 18.05.2023 and not from the sample of goods pertaining to 21 shipping bills which have been detained. Without prejudice, if goods were tested by CRCL in November, 2022 there was no requirement for getting the goods tested again by Chartered Engineer in May, 2023.

4.7 That the tax paid goods were supplied by M/s. Radiant Traders to M/s. Harsha International and the same related to cigarettes and clearly there was neither a loss for revenue as the duty paid goods were used for export and secondly, the smoking mixture was made from cigarettes and therefore, it could not be considered to be spurious.

4.8 DRI has relied upon the report of CRCL which is itself incomplete as to the percentage of nicotine was applicable on the goods and the contents in the samples was whether the goods were characterized as tobacco waste. That further even the Additional Sessions Judge, had while granting bail specifically raised the queries in these with regard to this report as to whether the products was spurious and fit for human consumption.

4.9 No independent investigation by DRI but only reliance has been made to the statement recorded by the DGGI under the CGST Act, 2017.]

4.10 That the statement of only Jitender Kumar and the CHA has been recorded under sedition 108 of the Customs Act, 1962 and Jitender Kumar lon his statement categorically states that he had remitted Rs. 180 Crores by online transfer to M/s. Radiant Traders and therefore, the demand against the

Appellant was unsustainable in law.

4.11 That further as to whether M/s. Radiant Traders had manufacturing facility or not is irrelevant. Further, the Appellant had purchased smoking mixture from M/s. Radiant Traders and was not aware as to how the same was procured by M/s. Radiant Traders and neither the act compels him to find out the same.

4.12. That the imposition of penalty of Rs.75 Lacs was unsustainable since there has been no loss for revenue as admittedly the Appellant has not any IGST refund or duty drawback or ROSCTL

DISCUSSION AND FINDING

5. I have carefully gone through the facts of the case and submissions made by the Appellant in their appeal memorandum as well as additional submissions made during the personal hearing.

5.1 Before deciding the issue raised by the Appellant in the present appeal on merits, it is necessary to determine whether the present appeal has been filed within the time limit prescribed under Section 128 of the Customs Act, 1962. It is observed from the appeal memorandum that the date of communication of decision or order appealed against is mentioned as 12.11.2025 whereas the impugned order has been issued on 25.09.2024. The appellant has attached a printout of Email dtd. 12.11.2025 addressed to the Adjudication section, Customs, Mundra wherein they had submitted that they had not received a copy of impugned order and requested for a copy of the same. Vide Email dtd. 12.11.2025 Adjudication section Mundra Customs had forwarded a copy of impugned order to the appellant.

5.1.1 This office had requested the Adjudication Section, Customs Mundra vide letter dated 03.02.2026 to inform the date of service of the impugned order to the appellant. The Adjudication Section, Customs Mundra vide Email dated 09.03.2026 replied that the impugned order was dispatched to the Appellant vide Outward/Dispatch No. 5116 dtd. 27.09.2024.

5.2 A copy of Email reply dated 09.03.2026 from Adjudication Section, Customs Mundra was also sent to the Appellant vide Email dtd. 09.03.2026 for comments/representation if any. However, the appellant has not made any submission in this regard.

5.3 The provisions relating the service of notice /orders is prescribed under Section 153 of the Customs Act, 1962 which are reproduced as under:

> "153. Modes for service of notice order, etc.—(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—
>
> (a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;
>
> (b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;
>
> (c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;
>
> (d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or
>
> (e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.
>
> (2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).
>
> (3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]"

5.4 In this regard it is relevant to refer to the provisions of Section 27 of the General Clauses Act, 1977 which is reproduced as under:

> "27. Meaning of service by post.— Where any Act made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions, "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered, in the ordinary course of post."

5.5 On the combined reading of the above two legal provisions, it is observed that service of orders is permitted by sending it by post. Further, in the case of sending of orders by post, the service shall be deemed to be effected by properly addressing, pre-paying and posting it at the time at which the letter would be delivered in the ordinary course of post. In the present case, the order was sent by Post which would have been delivered to the Appellant in the reasonable period in the ordinary course of post. Under the circumstances, the appeal have been filed by the Appellant on 22.12.2025, which is far beyond the prescribed period of 60 days and condonable period of 30 days prescribed under Section 128 of the Customs Act, 1962. In this regard, I place reliance on the order of Hon'ble High Court of Bombay in case of M/s. Technicom Systems (I) Pvt Ltd reported at 2019(367)ELT 597 (Bom) wherein the Hon'ble High Court ordered as under :-

> *"13. As noted earlier Section 153 of the said Act provides that any order of decision passed or any summons or notice issued under the Customs Act, 1962 shall be served inter alia..... "sending it by registered post.....". There is material on record which indicates that the notice as well as the order-in-original was indeed sent to the Petitioners by registered post. To such situation, the presumption available under Section 27 of the General Clauses Act, 1897 will apply. The Petitioners have placed no material on record to rebut such presumption.*
>
> *14. In Harihar Banerji and Ors. v. Ramshashi Roy and Ors. - AIR 1918 Privy Council 102 it is held if a letter properly directed, is proved to have*

been put into the post office, it is presumed that the letter reached destination at the appropriate time according the regular course of business of the post office and received by the person to whom it was addressed.

15. In the precise context of the provision of Section 153 of the said Act, the Division Bench of the Madras High Court in P. Bhoormal Tirupati v. The Additional Collector of Customs - AIR 1974 Madras 224 = 2000 (126) E.L.T. 65 (Mad.) has held that Section 153 of the said Act only requires that the notice shall be served by sending it by registered post to the person for whom it is intended, it does not require that effective service should be effected upon the person receiving it. Read with Section 27 of the General Clauses Act, it becomes clear that when a document to be served is sent by registered post to the proper address with prepaid postage its service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved. Based upon all these, we are unable to accept the Petitioners' contention that there has been no proper service as contemplated under Section 153 of the said Act."

In light of the above discussion and case law, the appeal filed by the Appellant is hit by the limitation and therefore liable to be rejected.

6. In view of the discussion made above, I find that the appeal filed by the Appellant is beyond the prescribed period of 60 days and condonable period of 30 days, prescribed under Section 128 of the Customs Act, 1962. Accordingly, the appeal filed by the Appellant is rejected as barred by limitation.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

Date:30.03.2026

F.No. S/49-558/CUS/MUN/DEC/2025-26

By Speed Post /EMail.

To,
M/s. Harsha International,
Ser-1, Pan Mandi Bank Road Raxaul,
East Champaran,
Bihar-845305

Copy to :-

1. The Chief Commissioner of Customs, Ahmedabad Zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra
3. The Additional Commissioner of Customs, Custom House, Mundra
4. Guard File.