

	<p>सीमा शुल्क आयुक्त का कार्यालय OFFICE OF THE COMMISSIONER OF CUSTOMS नवीन सीमा शुल्क भवन, बालाजी मंदिर के पास, नया कांडला NEW CUSTOM HOUSE, NEAR BALAJI TEMPLE, NEW KANDLA फोन / Phone: 02836-271468-469, फैक्स / Fax: 271467 Email: - commr-cuskandla@gov.in</p>
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DIN-20260371ML0000999CE9

A	File No.	F. No. GEN/ADJ/COMM/115/2025-Adjn-O/o Commr-Cus-Kandla
B	Order-in- Original No.	KDL-CUSTM-000-COM-32-2025-26
C	Passed by	Nitin Saini, Commissioner of Customs, Custom House, Kandla
D	Date of Order	#ApprovedDate# 18.03.2026
E	Date of Issue	#ApprovedDate# 18.03.2026
F	SCN No. & Date	F. No. GEN/ADJ/COMM/115/2025-Adjn-O/o Commr-Cus-Kandla dated 24.03.2025
G	Noticee / Party Exporter	M/s. Kyna Overseas Pvt. Ltd. & others (IEC No. AAJCK7497B)

1. This Order-in-Original is granted to the concerned free of charge.
2. 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:

**Customs Excise & Service Tax Appellate Tribunal, West Zonal
Bench,**

2nd Floor, Bahumali Bhavan Asarwa,
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad – 380004

3. Appeal shall be filed within three months from the date of communication of this order.
4. 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. 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. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

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

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

Brief Facts of the case:-

A specific intelligence was received in the office of the Directorate of Revenue Intelligence (Hqrs.), 7th Floor, Drum Shaped Building, I. P. Bhawan, I. P. Estate, New Delhi (hereinafter referred to as 'DRI') which indicated undervaluation in the export of rice. The intelligence further indicated that after imposition of duty on export of rice with effect from 09.09.2022, several exporters, including **M/s Kyna Overseas Pvt. Ltd.**, Sarafa Line, Laxmibai Ward, Gondia, Maharashtra-441614, having **IEC No. AAJCK7497B** (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 under Section 14 of the Customs Act, 1962 instead the same was being paid on a reduced value by wrongly declaring the same as FOB Value thus causing short-payment of the appropriate duty of Customs.

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

2.2 Further, scrutiny of the export data pertaining to the said exporter revealed that they were evading duty on export of rice by adopting three different methods i.e. **(i)** by claiming wrongful deduction of export duty from the transaction value, **(ii)** by covertly taking reimbursement of export duty from the overseas buyer without even claiming the same as deduction in the shipping bills and **(iii)** by declaring excess freight amounts in the shipping bills.

2.3 The exporter used to negotiate a specific price for sale of their export consignment which was received by them from the overseas buyer as **'consideration'** for sale of rice. Thus the **'consideration/negotiated price'** was **'the actual transaction value'** for their export consignment on which the exporter ought to have paid the 20% export duty. However, to evade duty, the exporter had artificially bifurcated the afore-said negotiated price/total consideration, in two parts i.e. (i) **'price of goods'** and (ii) **'export duty amount'**. The exporter had declared the reduced value **'price of goods'** as their transaction value and the other part of the consideration which was equal to the **'export duty amount'** was not included by them in their **'transaction value'**. Instead, the same was claimed as 'deduction' and was declared in the Shipping Bills under the Head **"Deduct/Deduction"**. Thus, a part of consideration, equal to the **export duty amount** was not included in the transaction value for payment of export duty causing short payment of duty.

2.4 In some cases, the exporter had recovered 'the export duty amount' separately from the overseas buyer without even declaring and claiming the same as **'deduction' in the shipping bills filed by them at the time of export clearance**. The amounts so recovered from the overseas buyer were also part of their consideration for sale. Thus, a part of consideration, was not included in the transaction value for the payment of export duty in all such export shipments causing short payment of duty.

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

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

2.7 Valuation of the goods is covered by Section 14 of the Customs Act, 1962

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

2.8 This practice of payment of export duty on cum-duty FOB Value was prevalent prior to the year 2009. **CBIC Circular No. 18/2008-Cus. dated 10.11.2008** in this regard stipulated that with effect from 01.01.2009, the practice of computation of export duty shall be changed; that for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.

Initiation of investigation:

3. Pursuant to the afore-said intelligence and apparent undervaluation of the export goods, investigation was initiated against various exporters of the said commodity including **M/s Kyna Overseas Pvt. Ltd., Sarafa Line, Laxmibai Ward, Gondia, Maharashtra-441614, (having Importer Exporter Code No. AAJCK7497B)**, by issuance of summons under the provisions of section 108 of the Customs Act, 1962. As per Importer Exporter Code No. AAJCK7497B of the said export firm, Sh. Vinay Ghanshyam Bhojwani, Sh. Samay Ghanshyam Bhojwani and Sh. Ghanshyam Ledumal Bhojwani were the three Directors of the said export firm.

4. Vide summons dated 27.10.2023, 14.11.2023, 19.01.2024, 30.01.2024, 04.03.2024 & 13.01.2025 issued to Sh. Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt. Ltd., documents related to the investigation such as copies of the shipping bills, export invoices, packing lists, bill of lading, bank realization certificates, proforma invoices, purchase orders, sales contract, freight and insurance invoices etc. were sought from them under the provisions of section 108 of the Customs Act, 1962. In response, vide letter dated 04.11.2023 Sh. Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt. Ltd., expressed his inability to appear in DRI office and sought extension of one month. Subsequently vide his letter dated 29.11.2023 and email dated 24.01.2024, 21.02.2025 & 23.02.2025, Sh. Vinay Ghanshyam Bhojwani submitted copies of the export documents for export of rice by their firm which

included copies of shipping bills, invoices, bill of lading, contracts, expense ledgers in respect of payment of ocean freight amounts and insurance etc. (1220 pages).

5. DRI vide email dated 23.07.2024 sought details of total payment received by M/s Kyna Overseas Pvt Ltd, in respect of each shipping bill along with details of expenses made by them towards payment of ocean freight and insurance. In response, vide email dated 30.07.2024, M/s Kyna Overseas Pvt Ltd submitted details of total payments received from the overseas buyers (in Foreign Currency) through BRC, through reimbursement of taxes or in any other manner such as debit note/credit note etc. and details of expenses made towards payment of ocean freight & insurance charges in respect of consignments exported on CF/ CI/ CIF Inco Term basis.

6. During investigation, statement of Sh. Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt. Ltd., was recorded u/s 108 of the Customs Act, 1962 on 29.11.2023 (RUD-6).

7.1 In his statement recorded u/s 108 of the Customs Act, 1962 on 29.11.2023, Sh. Viany Bhojwani, Director M/s Kyna Overseas Private Limited interalia stated that he along with his father and his brother were into the business of trading of Rice; that his father used to work as broker in the domestic trading of rice; that he started his career by assisting his father in the business; that M/s Kyna Overseas Private Limited was incorporated in November 2022; that there are three directors in the said company namely Shri Ghanshyam Bhojwani (his father), Sh. Samay Bhojwani (his Brother) and he himself; that it was a family business; that he look after the sales related work of the said company which include the export sales and domestic purchase for exportation in the said firm; that his elder brother Sh. Samay Bhojwani looks after the purchase related work of the said firm; that his is namesake director of the said firm and he did not look after any specific work of the said company due to his health issues; that M/s. Kyna Overseas Private Limited was engaged in the business of trading of Rice; that for the last about one year they had started the export of rice to overseas customers also; that the first export of rice was made in the month of Feb., 2023; that they mainly, export IR-64 variety of rice which was described in the export documents as 'Indian Long Grain White Rice'; that had also exported a few consignments of parboiled rice and sona masuri rice also but their major exports were of white rice only.

7.2 On being asked he further stated that they used to visit exhibitions, expos and trade fairs organized in India and overseas such as Dubai to get the export orders from various clients/buyers; that their major clients were M/s Hiang Li Trading Pte. Ltd., M/s Virago Agri Pte. Ltd., Singapore and M/s Ranima Commodities FZE, Dubai; that the contact person of M/s Hiang Li Trading Pte Ltd was Mr. James; that the contact person of M/s Virago Agri PTE Ltd, Singapore was Mr. Jericho and the contact person of M/s Ranima Commodities

FZE, Dubai was Mr. Firoz; that their export cargo was delivered in the African countries such as Kenya, West Africa, Mozambique etc.

7.3 On being asked he further stated that they procure the rice mainly from millers based in West Bengal, Chhattisgarh, Gujarat and Maharashtra; that after procurement, the rice was stored in the CFS for export purpose; that exports were made mainly from Kandla, Mundra and Kolkata Ports; that their main CHA was M/s B. N. Thakkar and Services for exports made from Kandla and Mundra ports and M/s Krishna Shipping Agencies for exports made from Kolkata port; that a few consignments were exported through other CHAs also.

7.4 On being asked he stated that he had submitted copies of the export documents in respect of the export to rice for the period from Jan-Feb, 2023 onwards; that these documents include copies of the export invoice cum packing list, Shipping Bill, Bill of Lading, Bank Realization Certificate, sales contract/proforma invoice with the overseas buyer, Bank Statement, copy of Insurance policy and Freight Ledgers for the period from F. Y. 2022-23 and F. Y. 2023-24.

7.5 On being asked to explain the documents at page number 149 to 157 submitted by him vide his letter dated 29.11.2023, he stated that he had seen the documents at page number 149 to 157 submitted by him vide his letter dated 29.11.2023; that those documents contained Invoice and packing list no KOPL-017/22-23 dated 21/02/2023, Sales Contract no PI-KOPL-003/22-23 dated 21/01/2023 with M/s Right Spices and Grains (LLC), UAE and corresponding shipping bill number 8013717 dated 23.02.2023 and bill of lading no QNLMUNHMD2305215 dated 21.03.2023; that the said documents pertained to export shipment of 52.01 MTs of Indian IR64 Long Grain White Rice to M/s. Right Spices and Grains (LLC); that the Sales contract had the following details:-

- i. Exporter Name: M/s Kyna Overseas Pvt Ltd
- ii. Buyer Name: M/s. Right Spices and Grains (LLC)
- iii. Product: Indian IR64 Long Grain White Rice
5% Broken Silky sortexed
- iv. Quantity: 52.01 MTs
- v. Price: **USD 448 per MT**
- vi. Total Contract value: USD 23300.48
- vii. Basis: CNF Hamad Port
- viii. Destination: Qatar

7.6 He further stated that the Shipping bill no 8013717 dated 23.02.2023 shown to him was for the export shipment of 52.01 MTs of Indian Long Grain White Rice to M/s Right Spices and Grains LLC, UAE by M/s Kyna Overseas Pvt. Ltd., at a unit price of USD 448 per MT CNF (Total value USD 23300.48; that the corresponding commercial invoice no for the Shipping Bill no 8013717 dated 23.02.2023 was INV No. KOPL-017/22-23 dated 21.02.2023, for supply of 52.01 MTs of Indian IR64 Long grain White rice at a price of USD 448 CIF per MT (total amount USD 23300); that on the said invoice, the FOB value was

mentioned as 340 per MT, 20% duty amount as USD 68 per MT, Freight of USD 35 per MT, Insurance of USD 5 per MT.

7.7 He further stated that the price according to the said contract was USD 448 CNF (Cost and Freight) per MT; that on the export invoice (bearing No. KOPL-017/22-23 dated 21.02.2023) the price was mentioned as USD 448 CIF per MT, which had been received by them from the foreign supplier; that the export clearance charges of USD 68 per MT i.e. USD 3537 had also been received by them from the foreign buyer and the same were not been included by them in the calculation of the FOB value for payment of export duty; that the actual total invoice value (FOB) was USD 21220 (Unit Price 408 USD per MT), however they had bifurcated the invoice value in two parts and claimed a deduction equal to USD 68 per MT at the time of declaring the value of the export goods in the shipping bill; that it was so done for the purpose of receipt of Customs Duty paid by them from the overseas buyer as the same could be seen in the corresponding shipping bill; **that the actual transaction value (FOB value) of the export goods for the said shipment was USD 408 Per MT FOB after deducting the freight and insurance amounts.**

7.8 He further stated that they had deducted the amount of USD 68 per MT from the total transaction value of the shipment received by them from the buyer of the export goods as reimbursement of the export duty paid by them for effecting the export clearance of the said shipment; that the value declared by them to the Customs Authority for payment of the export duty did not reflect the true transaction value of the export shipment in FOB terms; that the actual transaction value for the said shipment was USD 408/ MT FOB, however, to save themselves from payment of some export duty, they had deducted a part of the transaction value (i.e. USD 68/MT) from the total actual transaction value and had paid duty on the balance amount of **USD 310/MT**; that thus the value declared by them for the purposes of the payment of Customs duty **was calculated by considering the actual FOB value as cum duty FOB value** (actual fob value of USD 408/ MT- export duty amount of USD 68 per MT = declared fob value of USD 340 per MT); that the actual FOB Value of the said shipment was USD 408/MT.

7.9 He further stated that as shown in Shipping Bill, the Value (F/C) was mentioned as USD 23300 and Invoice Value was mentioned as USD 19763 i.e. (FOB value USD 17683 + Freight value USD 1820 + Insurance USD 260); that a deduction of an amount equal to USD 3537 had been claimed by them out of the total invoice value of USD 23300 to arrive at the declared invoice value of USD 19763 which was declared in the shipping bill.

7.10 On being asked, he further stated that he had been shown a printout of section 14 of the Customs Act, 1962 along with copy of CBIC Circular No. 18/2008-cus dated 10.11.2008; that he had put his dated signatures on the same in token of having seen, read and understood the same; that he had also seen copy of a printout of Incoterms from Wikipedia; that he had put his dated signatures on the same also in token of having seen the same; that as per the

afore-said section 14 of the Customs Act, 1962, the value of the export goods for payment of export duty shall be the transaction value of the export goods i.e. the price paid or payable for delivery of the export goods at the time and place of exportation where price is the sole consideration for sale; that the CBIC circular No. 18/2008-cus dated 10.11.2008 seen by him also provides that the value for charging export duty shall be the FOB value of the export goods and the practice of calculation of the FOB value as cum-duty price has been discontinued by the CBIC with effect from 01.01.2009 as per the said circular.

7.11 In this regard, on being further asked as to whether the clearance charges mentioned in the reimbursement invoice raised by them to the buyer of the exported rice which were equivalent to the export duty amount paid by them were includible in the transaction value for calculation of the export duty, he stated that since those clearance charges are also part of their cost and expenses incurred by them for effecting the export of goods on FOB basis and the same had been received/recovered by them from the supplier, the same should also be included in the transaction value for calculation of the export duty.

7.12 After the imposition of duty on export of rice with effect from September, 2022, they started export of rice in January-February 2023. As per the practice followed by some other exporters, they started to bifurcate the actual FOB Value in two parts and started claiming deduction in the shipping bill equivalent to the export duty; that on being shown the above printout of Section 14 and CBIC Circular No. 18/2008-cus dated 10.11.2008 and inco-terms from wikipedia, he had understood that for payment of export duty, transaction value of the goods had to be arrived at and the transaction value of the export goods was the price of the goods inclusive of all expenses and costs up to the loading of the goods in the vessel after clearance by customs authority; that they had paid the duty wrongly by considering the FOB value as cum-duty FOB value instead of the actual FOB value of the export goods causing short payment of duty on export of rice; that FOB meant Free On Board i.e. all expenses up to loading of the export goods in the vessel after clearance by the Customs Authorities were required to be added for arriving at the actual transaction value of the export goods for payment of export duty which had not been done by them; that they had claimed deduction of the amount equal to the export duty paid by them and had received the said amount also along with the other proceeds of the export sale in their bank accounts; that he had understood their mistake; that it was so done by them on being advised by their CHAs by following the other exporters of rice; that he would discuss with the other Directors of their export firm - his father and his brother and they would calculate the total differential duty liability on account of such practice of declaration of FOB value as cum-duty-price on export of rice and would accordingly pay their differential duty liability on account of the same.

8. The export documents and details submitted by the exporter during investigation were analysed and it was revealed that M/s Kyna Overseas Pvt. Ltd. had exported shipment of rice having description as 'Indian Parboiled Rice / Parboiled Rice/ IR64 Rice/ Short Grain Raw Rice/ IR64 Indian White Rice/

Indian Long Grain Raw Rice/ Indian Swarna Rice etc. by classifying the same under CTH 10063010 & 10063090 which were liable to export duty @ 20% *ad valorem* vide CBIC Notification No.49/2022-Cus. dated 08.09.2022 and 49/2023-Customs dated the 25th August, 2023. In their export documents (Shipping Bills), they have declared the following three values (i) Total Value, (ii) Invoice Value and (iii) FOB Value. The Total Value declared by them was inclusive of export duty and indicated the total consideration received by them from the overseas buyer. Invoice Value was declared after deducting from the Total Value, an amount equal to the export duty and other deductions such as packing charges paid by them in respect of the export goods. FOB Value was declared after deduction of the ocean freight amounts and insurance amounts from the afore-said Invoice Value. Thus, total amount of deductions of USD-12,19,065/- were wrongly claimed by the exporter from the actual FOB Value in respect of their 28 export shipments.

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

Scrutiny of the export documents and details submitted by the exporter during investigation revealed that the exporter had at the time of filing of shipping bills claimed the deduction of an amount of **USD 12,19,065/-** in respect of the following 28 shipping bills filed by them. The export duty amounts paid by them in respect of these 28 shipping bills were also at **USD 12,16,768/-**. Therefore, the amounts claimed as 'deduction/deduct' were equal to the export duty amounts paid by them at the time of filing of these shipping bills. Investigation has revealed that these amounts claimed as 'deduction/deduct' were also recovered by the exporter from the overseas buyer in their bank accounts. The exporter had also confirmed these facts in his submissions and statements recorded u/s 108 of the Customs Act, 1962.

Table: A

Table A1 (Deduction amount claimed is equal to Export Duty amount paid by them)								
S. No.	Shipping Bill Number	Shipping Bill Date	Declared FOB Value (INR)	Export duty Paid (FC)	Declared Total Value (FC)	Declared Invoice Value (FC)	Deduction claimed in Shipping Bill (FC)	Amount received through Reimbursement of taxes in FC, as confirmed by the exporter
1	1378584	29-05-2023	71,56,013	17,550	1,29,600	1,12,050	17,550	17,465
2	1409543	31-05-2023	35,44,215	8,692	54,827	46,135	8,692	8,692
3	1480900	02-06-2023	21,50,753	5,265	33,210	27,945	5,265	5,265
4	1577161	07-06-2023	66,17,700	16,200	1,24,740	1,08,540	16,200	16,200
5	1596974	07-06-2023	66,17,700	16,200	1,24,740	1,08,540	16,200	11,300
6	2019901	26-06-2023	1,89,13,875	46,500	2,79,000	2,32,500	46,500	46,500
7	202006	26-06-	1,89,13,875	46,500	2,79,000	2,32,500	46,500	46,500

	0	2023						
8	243700 2	13-07-2023	2,52,80,500	62,000	3,72,000	3,10,000	62,000	62,000
9	243700 3	13-07-2023	2,52,80,500	62,000	3,72,000	3,10,000	62,000	62,000
10	243733 5	13-07-2023	2,52,80,500	62,000	3,72,000	3,10,000	62,000	62,000
11	243787 8	14-07-2023	2,52,80,500	62,000	3,72,000	3,10,000	62,000	62,000
12	243787 9	14-07-2023	2,52,80,500	62,000	3,72,000	3,10,000	62,000	62,000
13	243788 1	14-07-2023	2,52,80,500	62,000	3,72,000	3,10,000	62,000	62,000
14	243844 7	14-07-2023	2,52,80,500	62,000	3,72,000	3,10,000	62,000	62,000
15	801130 3	23-02-2023	36,20,635	8,842	56,951	48,109	8,842	7,106
16	801371 7	23-02-2023	14,48,238	3,537	23,300	19,763	3,537	2,801
17	801372 4	23-02-2023	13,84,356	3,381	22,364	18,983	3,381	-
18	801372 6	23-02-2023	28,96,557	7,073	45,561	38,488	7,073	7,073
19	873463 4	24-03-2023	2,54,04,500	62,000	3,72,000	3,10,000	62,000	62,000
20	879761 9	27-03-2023	6,35,11,250	1,55,000	9,30,000	7,75,000	1,55,000	1,55,000
21	913193 7	07-04-2023	2,51,41,000	62,000	3,72,000	3,10,000	62,000	62,000
22	913196 2	07-04-2023	3,91,09,968	96,449	5,78,693	4,82,243	96,450	34,448
23	913197 4	07-04-2023	1,25,70,500	31,000	1,86,000	1,55,000	31,000	31,000
24	913438 8	07-04-2023	2,51,41,000	62,000	3,72,000	3,10,000	62,000	62,000
25	913439 6	07-04-2023	1,25,70,500	31,000	1,86,000	1,55,000	31,000	31,000
26	913440 3	07-04-2023	2,51,41,000	62,000	3,72,000	3,10,000	62,000	62,000
27	968067 5	01-05-2023	1,42,85,700	35,100	2,51,100	2,16,000	35,100	35,020
			49,31,02,83 4	12,10,28 8	73,97,08 6	61,86,79 6	12,10,290	11,37,370

Table: A2**(Deduction amount claimed is more than Export Duty amount paid by them)**

S. No.	Shipping Bill Number	Shipping Bill Date	Declared FOB Value (INR)	Export duty Paid (FC)	Declared Total Value (FC)	Declared Invoice Value (FC)	Deduction claimed in Shipping Bill (FC)	Amount received through Reimbursement of taxes in FC, as confirmed by the exporter
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28	1224017	23-05-2023	26,42,220	6,480	55,350	35,100	12,24,017	6,480
	Grand Total		49,57,45,054	12,16,768	74,52,436	62,21,896	24,34,307	11,43,850

8.1.1 For ease of reference, photo of Shipping Bill No.8013717 dated 23.02.2023 (sr. no. 16 in above table) and relevant documents were referred in the SCN which clearly indicated that the deduction of Rs.2,89,680/- (equivalent to USD 3537) has been claimed in the Shipping Bill which is equal to the cess (i.e. Export Duty) amount of Rs.2,89,648/- (equivalent to USD 3536.6). The said amount has been deducted by the exporter from the actual transaction value (i.e. FOB Value) and export duty has not been paid on the said differential value of Rs.2,89,648/- which is though part of the consideration received by the exporter from the overseas buyer for sale of the consignment.

8.1.2 Deduction amount wrongly claimed in 01 Shipping Bill which was more than the export duty amounts:

In addition to the above, in respect of one shipment bearing Shipping Bill No. 1224017 dated 23.05.2023 (S. No. 28 of Table-A2), the exporter had at the time of filing of shipping bills claimed the deduction of total amounts of USD 8775. The export duty paid by them in respect of this S/B was USD 6480. Thus, in addition to the claim of deduction of duty amount of USD 6480, the exporter had claimed deduction of an additional amount of USD 2295.

Apart from the afore-said excess deduction amount of USD 2295 (over and above the duty paid amount), the exporter had received an excess amount of USD 11445 from the overseas buyer which is over and above their invoice value of USD 35100 as declared in the shipping bill. Thus, the amounts received over and above the duty paid amounts of USD 6480 were USD 13,770 (USD 2295+ USD 11445). Thus, the exporter had recovered an excess amount of USD 20250 (USD13,770 + USD 6,480) which is over and above the declared invoice amount of USD 35100. Thus, total amounts received by the exporter from the buyer in respect of the aforesaid shipment was USD 55320 (USD 35100+ USD 20250).

In respect of the aforesaid shipment the total amount in foreign currency mentioned in the Invoice submitted by the exporter was USD 55350 whereas in the shipping bill the total invoice value wrongly declared was USD 43875. Thus, there appears to be a difference of USD 11475 in the figures of Invoice as declared in the copy of invoice and shipping bill.

However, the exporter has submitted that the entire excess amounts as declared in the copy of invoice as USD 55350 had been received by them from the overseas buyer. Therefore, the entire amount of USD 52650 after deducting the ocean freight amount of 2025 and insurance amount of USD 675 from the total amount mentioned in the invoice as USD 55350 is the actual transaction value in respect of the aforesaid shipment for the purposes of section 14 of the Customs Act, 1962 for payment of the export duty.

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

In addition to above, in respect of the following 71 shipments of rice exported by M/s Kyna Overseas Pvt Ltd, the exporter had not claimed any deduction in the shipping bills filed by them, however, the exporter had stated that in respect of these shipments also, they have separately recovered the duty amount of USD 13,18,671/- from the overseas buyers of the export goods, out of the total duty paid amount of USD 13,68,901/- claimed by them from the exporter:-

Table B

Table B1 (Reimbursement of taxes is Equal to export duty amount paid by exporter):-

S. NO	Shipping Bill Number	Shipping Bill Date	Declared FOB Value (INR)	Export duty Paid (FC)	Declared Invoice Value (FC)	Declared Total Value (FC)	Deducti on claimed in Shipping Bill (FC)	Amount received through Reimburse ment of taxes in USD, as confirmed by the exporter	Amount receive d through Reimburse ment of taxes in INR, as confirmed by the exporter
1	1058151	16-05-2023	47,62,065	11,780	68,900	68,900		11,780	9,52,413
2	1080155	17-05-2023	23,81,033	5,890	34,450	34,450		5,890	4,76,207
3	1251767	24-05-2023	35,65,774	8,745	55,518	43,725		8,745	7,13,114
4	1319512	26-05-2023	22,45,887	5,508	31,752	31,752		5,508	4,49,177
5	1370161	29-05-2023	14,31,203	3,510	19,926	19,926		3,510	2,86,241
6	1568520	06-06-2023	22,50,018	5,508	29,727	29,727		5,508	4,50,004
7	1666424	10-06-2023	1,36,76,580	33,480	2,21,400	2,21,400		33,480	27,35,316
8	1697318	12-06-2023	34,78,378	8,515	48,339	42,575		8,515	6,95,676
9	1942928	22-06-2023	53,81,303	13,230	72,765	72,765		13,230	10,76,261
10	1960658	23-06-2023	1,36,17,990	33,480	2,21,400	2,21,400		33,480	27,23,598
11	2074221	28-06-2023	61,50,060	15,120	83,160	83,160		15,120	12,30,012
12	7640056	08-02-2023	37,20,195	9,180	49,140	45,900		9,180	7,44,039
13	7866366	17-02-2023	77,39,550	18,900	98,820	94,500		18,900	15,47,910
14	8006074	23-02-2023	31,40,046	7,668	39,852	38,340		7,667	6,27,927
15	8032893	24-02-2023	1,32,02,280	32,240	2,05,920	1,61,200		32,240	26,40,456
16	8156924	01-03-2023	6,60,114	1,612	10,296	8,060		1,612	1,32,023
17	8438727	13-03-2023	40,83,413	9,990	52,110	49,950		9,990	8,16,683
18	8727307	24-03-2023	3,04,85,400	74,400	3,72,000	3,72,000		74,400	60,97,080
19	8733664	24-03-2023	3,04,85,400	74,400	3,72,000	3,72,000		74,400	60,97,080
20	8733667	24-03-2023	3,04,85,400	74,400	3,72,000	3,72,000		74,400	60,97,080
21	8733791	24-03-2023	3,04,85,400	74,400	3,72,000	3,72,000		74,400	60,97,080
22	8733792	24-03-2023	3,04,85,400	74,400	3,72,000	3,72,000		74,400	60,97,080
23	8733832	24-03-2023	2,54,04,500	62,000	3,10,000	3,10,000		62,000	50,80,900
24	8733980	24-03-2023	2,54,04,500	62,000	3,10,000	3,10,000		62,000	50,80,900
25	8734326	24-03-2023	2,54,04,500	62,000	3,10,000	3,10,000		62,000	50,80,900
26	8902743	29-03-2023	40,93,403	9,990	52,110	49,950		9,990	8,18,681

27	9115340	06-04-2023	2,54,04,500	62,000	3,10,000	3,10,000		62,000	50,80,900
28	9218386	18-04-2024	9,66,420	2,340	12,272	12,272		2,340	1,93,284
29	9314907	22-04-2024	96,75,900	23,400	1,17,000	1,17,000		23,400	19,35,180
30	9314911	22-04-2024	96,75,900	23,400	1,17,000	1,17,000		23,400	19,35,180
31	9516415	24-04-2023	34,06,590	8,370	44,145	44,145		8,370	6,81,318
32	9717370	08-05-2024	9,27,598	2,246	23,600	11,800		2,246	1,85,520
33	9750100	04-05-2023	29,89,008	7,344	39,636	39,636		7,344	5,97,802
	Total		37,72,65,705	9,21,446	48,49,238	47,59,533		9,21,445	7,54,53,018

Table-B2 (Reimbursement of taxes is more than the export duty amount paid by exporter)

S. NO	Shipping Bill Number	Shipping Bill Date	Declared FOB Value (INR)	Export duty Paid (FC)	Declared Invoice Value (FC)	Declared Total Value (FC)	Deduction claimed in Shipping Bill (FC)	Amount received through Reimbursement of taxes in USD, as confirmed by the exporter	Amount received through Reimbursement of taxes in INR, as confirmed by the exporter
1	1060950	16-05-2023	51,95,421	12,852	69,363	69,363		13,275	10,73,268
2	5398919	17-11-2023	88,26,602	21,437	1,07,184	1,07,184		21,958	18,08,241
3	5940892	11-12-2023	8,84,276	2,142	10,920	10,712		6,774	5,59,194
4	7559340	06-02-2023	39,93,739	9,855	51,840	49,275		10,175	8,24,684
5	8088576	27-02-2023	7,55,937	1,846	9,594	9,230		2,275	1,86,282
6	9061099	04-04-2023	37,64,291	9,187	48,231	45,934		9,557	7,83,196
7	9617395	28-04-2023	1,10,43,945	27,135	1,44,990	1,44,990		40,782	33,19,632
	Total		3,44,64,211	84,454	4,42,122	4,36,688		1,04,795	85,54,497

Table-3 (Reimbursement of taxes is less than the export duty amount paid by exporter):-

S. NO	Shipping Bill Number	Shipping Bill Date	Declared FOB Value (INR)	Export duty Paid (FC)	Declared Invoice Value (FC)	Declared Total Value (FC)	Deduction claimed in Shipping Bill (FC)	Amount received through Reimbursement of taxes in USD, as confirmed by the exporter	Amount received through Reimbursement of taxes in INR, as confirmed by the exporter
1	1198599	22-05-2023	37,43,145	9,180	49,410	49,410		9,140	7,45,367
2	1370146	29-05-2023	64,40,411	15,795	96,471	78,975		-	
3	1370152	29-05-2023	78,58,362	19,272	1,17,712	96,363		-	
4	1564602	06-06-2023	28,69,794	7,025	41,827	35,126		6,965	5,69,053
5	159247	07-06-2023	77,20,650	18,90	1,01,250	1,01,250		17,140	14,00,297

	6			0					
6	159248 3	07-06-2023	38,60,325	9,450	50,625	50,625		8,992	7,34,656
7	169133 5	12-06-2023	35,85,384	8,777	51,987	43,885		8,669	7,08,257
8	176866 5	15-06-2023	35,85,384	8,777	51,987	43,885		8,669	7,08,257
9	187653 0	20-06-2023	37,88,876	9,315	51,435	51,435		9,275	7,54,521
10	247992 4	15-07-2023	36,90,831	9,052	54,175	54,175		8,971	7,31,585
11	424569 8	28-09-2023	1,64,43,540	39,96 0	2,13,300	1,99,800		19,327	15,90,612
12	433200 2	01-10-2023	1,70,11,410	41,34 0	2,06,700	2,06,700		41,248	33,94,710
13	751555 1	03-02-2023	38,84,321	9,585	49,815	47,925		8,740	7,08,336
14	763044 4	08-02-2023	38,29,613	9,450	49,950	47,250		9,370	7,59,439
15	769433 0	10-02-2023	37,20,195	9,180	49,140	45,900		9,093	7,36,988
16	770500 8	10-02-2023	39,93,739	9,855	51,570	49,275		9,781	7,92,740
17	774822 4	13-02-2023	39,93,739	9,855	51,840	49,275		9,815	7,95,506
18	788588 7	18-02-2023	22,11,300	5,400	28,080	27,000		5,230	4,28,366
19	843873 4	13-03-2023	34,21,238	8,370	44,145	41,850		8,330	6,80,978
20	848224 3	15-03-2023	38,62,688	9,450	49,275	47,250		7,610	6,22,118
21	886018 7	28-03-2023	75,23,010	18,36 0	97,740	91,800		15,512	12,71,247
22	936439 1	18-04-2023	35,58,263	8,775	45,900	45,900		6,035	4,89,439
23	942057 8	20-04-2023	36,67,748	9,045	47,655	47,655		8,330	6,75,563
24	943270 1	20-04-2023	14,67,099	3,618	19,332	19,332		3,578	2,90,176
25	951642 4	24-04-2023	37,36,260	9,180	49,140	49,140		9,158	7,45,421
26	955786 0	26-04-2023	22,08,789	5,427	28,836	28,836		4,613	3,75,498
27	955787 0	26-04-2023	37,36,260	9,180	49,140	49,140		9,158	7,45,421
28	966285 6	29-04-2023	36,81,315	9,045	47,655	47,655		7,745	6,30,441
29	966285 8	29-04-2023	29,45,052	7,236	38,448	38,448		7,196	5,85,754
30	975010 2	04-05-2023	39,56,040	9,720	51,705	51,705		9,356	7,61,578
31	975010 3	04-05-2023	22,08,789	5,427	28,836	28,836		5,387	4,38,502
	Total		14,82,03, 568	3,63,0 01	19,65,080	18,65,800		2,92,432	2,38,70,824

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.

Out of these 71 SBs,

- a) In respect of 33 SBs mentioned at Table B1 above, the amounts received over and above the declared invoice value as reimbursement of taxes (USD 9,21,445) are equal to the export duty amounts (USD 9,21,445) paid by the exporter. Therefore, in respect of these 33 SBs, the total duty amount of USD 9,21,445 recovered by the exporter from the buyer is liable to be included in their declared transaction value.
- b) In respect of 6 SBs mentioned at Table B2 above, the amounts received over and above the declared invoice value as reimbursement of taxes USD 1,04,795 are even more (by USD 20,341/-) than the export duty amount of USD 84,454 actually paid by the exporter. Therefore, in respect of these 7 SBs, the total amount of USD 1,04,795 recovered by the exporter from the buyer is liable to be included in their declared transaction value.
- c) In respect of 31 SBs mentioned at Table B3 above, the amounts received over and above the declared invoice value as reimbursement of taxes of USD 2,92,432 are lesser (by USD 70,569/-) than the export duty amounts of USD 3,63,001 actually paid by the exporter. The balance duty amount of USD 70,569/- is still payable by the buyer to the exporter. Therefore, in respect of these 31 SBs, the total duty amount of USD 3,63,001 claimed by the exporter from the buyer is liable to be included in their declared transaction value.

8.2.1 As may be seen from the **Shipping Bill Number 1370161 dated 29-05-2023 (Sr. no. 5 in table B1 above)**, the exporter had not claimed any deduction amount in the shipping bill however, as per the details submitted by the exporter, they have separately recovered an amount of Rs.2,86,241/- (equivalent to USD 3510) which is equal to the export duty amount of Rs.2,86,241/- (i.e. USD 3510) from the overseas buyer in their bank account. The aforesaid amount of Rs.2,86,241/- (USD 3510) is over and above their declared invoice value of Rs.14,31,202.5/- (i.e. USD 19,926/-) received by them from the overseas buyer. The exporter has submitted that they have recovered an amount of **USD 23436 (USD 19926 + USD 3510)**. Therefore, the exporter had suppressed the said amount Rs.2,86,241/- received by them separately from the buyer as reimbursement of export duty. They have neither declared the full amount to be received by them from the overseas buyer in their export invoice nor in the shipping bill. Thus, they have mis-declared the actual FOB Value in respect of all such shipping bills.

8.3 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 indicated that the said purpose code is not meant for the receipt of export duty and export proceeds -

The exporter has claimed that the deduction/ deduct amount claimed by them in the shipping bill have been received by them from the overseas buyers in

the form of reimbursement of taxes. They have further informed that the said transactions have been made under the purpose code P1306.

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

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

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

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

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

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

From the above, it is evident that the purpose codes under the group 'Transfer' pertains to forex transactions of personal nature such as personal gifts, family maintenance, donations etc. and the accounting purpose code P1306 falling under the said category is clearly not associated with the payments received in respect of exported goods. Thus, the exporter had used wrong purpose for receipt of the export duty amounts from the buyers. **Thus, the exporter had mis- represented**

the facts before the bank authorities also to process the receipt of export duty amounts from the overseas buyer. These amounts are not reflected in the bank realisation certificates obtained by the exporter from the bank.

8.4 Excess ocean freight amounts wrongly declared in the Shipping Bills:

In addition to the above, in respect of the following 35 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 35 shipments also. The total amount of excess freight declared by the exporter in respect of these shipments stood at **Rs.96,84,260/-**. M/s Kyna Overseas Pvt Ltd had submitted the details of the actual freight amounts paid by them to the Freight forwarders / Shipping line, which clearly indicated that in these 35 shipments, they have declared excess freight amounts.

Table C

S. No	Shipping Bill Number	Shipping Bill Date	Declared FOB Value (INR)	Cess Amount Paid (USD)	Declared Freight Amount as per Shipping Bill (INR)	Actual Freight Amount Paid as per Freight Invoice (INR)	Excess Freight claimed (INR)
1	1060950	16-05-2023	51,95,421	12,852	3,36,174	49,586	2,86,588
2	1198599	22-05-2023	37,43,145	9,180	2,31,194	35,477	1,95,717
3	1319512	26-05-2023	22,45,887	5,508	3,10,461	21,259	2,89,202
4	1568520	06-06-2023	22,50,018	5,508	1,45,589	17,385	1,28,204
5	1592476	07-06-2023	77,20,650	18,900	4,41,180	57,671	3,83,509
6	1592483	07-06-2023	38,60,325	9,450	2,20,590	55,374	1,65,216
7	1876530	20-06-2023	37,88,876	9,315	3,29,468	31,050	2,98,418
8	1942928	22-06-2023	53,81,303	13,230	4,61,255	40,351	4,20,904
9	2074221	28-06-2023	61,50,060	15,120	5,27,148	46,110	4,81,038
10	4245698	28-09-2023	1,64,43,540	39,960	8,88,840	8,01,334	87,506
11	7559340	06-02-2023	39,93,739	9,855	1,53,185	46,989	1,06,196
12	7630444	08-02-2023	38,29,613	9,450	1,64,126	46,989	1,17,137
13	7705008	10-02-2023	39,93,739	9,855	1,31,301	47,027	84,274
14	7748224	13-02-2023	39,93,739	9,855	1,53,185	47,027	1,06,158
15	7866366	17-02-2023	77,39,550	18,900	2,43,243	1,48,516	94,727
16	8011303	23-02-2023	36,20,635	8,842	2,66,257	1,34,043	1,32,214
17	8013726	23-02-2023	28,96,557	7,073	2,13,022	1,08,296	1,04,726
18	8032893	24-02-2023	1,32,02,280	32,240	34,49,628	17,44,159	17,05,469
19	8156924	01-03-2023	6,60,114	1,612	1,72,481	87,208	85,273
20	8438727	13-03-2023	40,83,413	9,990	1,32,435	46,785	85,650
21	8438734	13-03-2023	34,21,238	8,370	1,32,435	46,785	85,650
22	9364391	18-04-2023	35,58,263	8,775	1,31,382	55,348	76,034
23	9420578	20-04-2023	36,67,748	9,045	1,64,228	41,596	1,22,632
24	9432701	20-04-2023	14,67,099	3,618	78,829	16,638	62,191
25	9516415	24-04-2023	34,06,590	8,370	1,31,868	41,596	90,272

26	9516424	24-04-2023	37,36,260	9,180	2,08,791	41,536	1,67,255
27	9557860	26-04-2023	22,08,789	5,427	1,18,681	24,957	93,724
28	9557870	26-04-2023	37,36,260	9,180	2,08,791	41,536	1,67,255
29	9617395	28-04-2023	1,10,43,945	27,135	5,93,406	1,52,725	4,40,681
30	9662856	29-04-2023	36,81,315	9,045	1,64,835	41,536	1,23,299
31	9662858	29-04-2023	29,45,052	7,236	1,58,242	25,917	1,32,325
32	9680675	01-05-2023	1,42,85,700	35,100	30,76,920	7,43,542	23,33,378
33	9750100	04-05-2023	29,89,008	7,344	1,93,406	33,476	1,59,930
34	9750102	04-05-2023	39,56,040	9,720	2,19,780	41,845	1,77,935
35	9750103	04-05-2023	22,08,789	5,427	1,18,681	25,107	93,574
	Total		17,11,04,697	4,19,667	1,46,71,036	49,86,776	96,84,260

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

8.4.1 For ready reference, copy of Shipping Bill Number 9680675 dated 01-05-2023 and relevant documents were referred in the SCN. As per the shipping bill the ocean freight amount declared in respect of the said shipment is Rs.30,76,920/-, whereas during investigation, the exporter had submitted the freight invoices containing actual freight amount paid by them in respect of the aforesaid shipping bill which stood at Rs.7,43,542/-. Thus, excess freight amount declared in respect of the aforesaid shipment works out to be at Rs.23,33,378/- The said excess freight amount has also been recovered by the exporter from the overseas buyer of the export goods but the exporter had not paid duty on the said excess freight amount which is part and parcel of the actual assessable value of the export goods.

9. The aforesaid deduction amounts claimed by the exporter, as detailed in Table A1, A2 above, excess amounts over and above the declared invoice amounts & deductions amounts recovered from the buyer in respect of one shipping bill as detailed in Table A2 and discussed in para 8.1.2 above and reimbursement of duty paid amounts taken by them separately as detailed in Table B1, B2, B3 above as well as the excess freight amounts declared by them in their export documents in respect of the shipments as detailed in Tables C above, were not included in the declared FOB Value of goods in respect of these shipments, as discussed in para 8 above. Investigation has revealed that these deduction amounts/ reimbursements of duty paid amounts have also been claimed and/or recovered by them from the overseas buyer of the export goods in

their bank accounts. Therefore, the deduction amounts/reimbursement of export duty amounts taken by the exporter from the overseas buyer in any manner whether or not by declaring the same in the export documents or by mis-declaration of freight amounts in the export documents appears to be forming part of the consideration received by the exporter for delivery of the export goods on board the vessel after clearance of the shipments through the customs authorities at the port of export. Thus, these excess freight amounts and deduction amounts claimed by the exporter at the time of filing shipping bills and the amounts recovered separately from the overseas buyer over and above the declared invoice price as reimbursement of export duty, as discussed in above paras, also appear liable to be included in the FOB Value for the purpose of calculation of the export duty

10. Legal Provisions:

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

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

- a) The term '**export**' has been defined in "Section 2(18) of the Customs Act, 1962 as "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India."
- b) **Section 14 of the Customs Act 1962, stipulates that** 'for the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of theexport goods shall be the transaction value of such goods, that is to say, **the price actually paid or payable for the goods** when sold for export from India **for delivery at the time and place of exportation**, where the buyer and seller of the goods are not related and price is the **sole consideration** for the sale subject to such other conditions as may be specified in the rules made in this behalf.
- c) In this provision the terms "**the price actually paid or payable for the goods**" and "**when sold for export from India for delivery at the time and place of exportation**" in the context of present case are very significant. For the process of export to be complete, the goods need to be taken out of India to a place outside India. This event can take place only after goods cross Indian borders. This is more so because the price has to be taken for sale of export goods when sold for export from India 'for delivery at the time and place of exportation'. The wording "**for the delivery-at the time and**

place for exportation" has to be legally construed as "for delivery at the time and place of exportation on board the foreign going vessel". Thus, the time and place of delivery of the export goods will be when the goods are on-board the foreign going vessel which takes place after the goods are given a Let Export Order (LEO) by the jurisdictional Customs officer after examining the compliance to Customs law. By implication, all elements of cost that are required to be incurred to bring the goods 'for delivery at the time and place of exportation' to the foreign going vessel will have to be added to invoice price to arrive at a correct transaction value of export goods as per section 14 notwithstanding the manner as to how the financial transaction is organized by the exporter and the overseas buyer. It is amply clear that without incurring associated expenses the export goods cannot be simply brought to the place of exportation at the time of export. Thus, in the impugned case, the price payable for the export goods for delivery at the time and place of exportation can be arrived at only after inclusion of associated costs including the amounts equal to the export duty which have been recovered by the exporters from the overseas buyers of the export goods.

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

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

From the above, it is evident that from 01.01.2009 onwards, the transaction value shall be the FOB Value of the export goods and the FOB value shall not be treated as the Cum-duty price of the export goods. The above practice has to be followed for all export commodities irrespective of the description of the export goods.

11. The investigation into undervaluation of rice shipments exported by M/s. Kyna Overseas Pvt Ltd vide above mentioned Shipping Bills as discussed in **Tables A1, A2, B1, B2, B3 and C** above, revealed deliberate mis-statement and suppression of facts on part of the exporter, who was actively involved in mis-declaration of the FOB value of export goods, with an intention to evade

appropriate export duty leviable on ad valorem basis on such goods. As discussed in above paras, the exporter had mis-declared the ocean freight amounts whereas they were very well aware of the actual freight amounts paid by them in respect of these shipments exported vide Shipping Bills mentioned in Table C above. Moreover, in respect of the shipments mentioned in **Tables B1, B2, B3** above, the exporter had claimed/recovered the export duty from the overseas buyer without declaring these facts in the export documents. In respect of the goods exported by them through shipping bills as discussed in **Table A1, A2** above, the exporter had wrongly claimed the deduction in the shipping bills for export duty paid amounts. In addition to the above, in respect of the goods exported by them through one shipping bill as discussed in **Table A2** above, the exporter had also recovered higher amounts not declared in the Shipping Bill which were over and above the declared invoice amounts and deduction claim amounts. Consequently, they have mis-declared the actual transaction value. Thus, the exporter had not declared the actual FOB Values in the shipping bills thereby intentionally evading the applicable duties of customs on such undue deduction amounts/excess freight amounts and export duty reimbursement amounts separately claimed and recovered by them from the buyers of the export goods.

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

12.2 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.*

12.3 In this case the value of the export goods shall be the transaction value thereof when the price is the sole consideration. As such, **for determination of the transaction value of the export goods, the sole consideration received by the exporter from the buyer should be taken in to account**, then it should be seen as to which prices are compulsory for delivery of the export goods on board the vessel. In this case, the exporter is insisting that the export duty is on reimbursement basis from the overseas buyer of the export goods. By doing so, the exporter is separately receiving a part of the export proceeds from the overseas buyer and not including the same in the assessable value of the export goods. It can be stated that the seller has

imposed a condition on the buyer of the export goods which states that if the buyer does not pay him a fixed amount (equal to the 20% export duty on their declared lesser FOB value), they would not sell the export goods to the overseas buyer and would not deliver the same at the time and place of exportation. Thus, all such agreements wherein the seller had imposed a condition on the buyer by which buyer has to pay a part of the payment separately in the bank accounts of the seller on account of sale of the export goods, such payments are necessarily part of the consideration received by the seller for sale of the export goods. Likewise, the excess ocean freight amounts declared by the exporter are also part of the consideration received by the exporter from the buyer for sale of the export goods as such excess ocean freight amounts have not been paid by them to the shipping lines/freight forwarders for the transportation of the export goods. All such amounts which are equal to the export duty amounts claimed/recovered from the buyer and excess ocean freight amounts declared in the shipping bills are liable to be added in their declared FOB Values for determination of their actual FOB Value for calculation of applicable export duties thereon.

13.1 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 freight industry. As per the said website, ***FOB (Free on Board) Calculator is a tool used in international trade to determine the total cost of goods when they are shipped from the seller's location to the buyer's destination. The FOB price includes the cost of the goods, as well as various expenses incurred until the goods are loaded onto the vessel, such as packaging, loading, and inland transportation to the port of departure. It does not include the freight charges for transporting the goods from the port of departure to the port of destination or any other charges or taxes beyond the point of loading.***

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

13.2 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-11). 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.

14. Rejection & Redetermination of the Transaction Value:

14.1 As discussed in the above paragraphs, valuation of export goods under the Customs Act, 1962, is governed by the provisions of Section 14, *ibid*, read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [here-in-after referred as the CVR (E), 2007]. The

export proceeds receivable in full consequent to negotiation and finalization of sale price between the exporter from India and their overseas buyer form 'transaction value' of such goods. The export Customs duty is leviable on the actual sale price at which the goods were sold. Where such sale price has been mis-declared and under-stated by the exporter, the actual sale price, i.e. the Transaction Value, needs to be taken into account for the purpose of valuation of the impugned export goods.

14.2 In respect of the shipments of rice covered by the Shipping Bills as shown in the **Tables A1, A2, B1, B2, B3 and C above**, it appears that M/s Kyna Overseas Pvt Ltd negotiated and finalized one price with their overseas buyer but the said price was intentionally bifurcated in two parts. The amount of duty payable by the exporter was deducted from the transaction value. In the shipping bills filed by the exporter, such undervalued and mis-declared transaction value was shown, which was lesser than the price that was actually finalized with the overseas buyer as consideration for the export goods. A part of the consideration was intentionally excluded from the transaction value of the export goods by adopting three different modus operandi as discussed in para 8 above. The difference between the actual price finalized with the overseas buyer and the price shown in the export documents were recovered/claimed by the exporter from the buyer separately by an arrangement of the buyer and the seller in this regard. The exporter and buyer may enter into any contract (oral or written), they may sell and purchase the export goods on any terms (such as FOB, CIF, CF, CI or ex-works basis) but for the purposes of calculation of the export duty, the transaction value in terms with the provisions of Section 14 of the Customs Act, 1962 has to be derived and such transaction value is the FOB Value of the export goods as discussed in above paras and for the purpose of calculation of the FOB Value of the export goods, **abatement of the export duty is not available as per Section 14 of the Customs Act, 1962 read with CBIC Circular No. 18/2008-Customs dated 10.11.2008.**

14.3 The receipt of these deduction amounts was apparently never disclosed to the concerned Customs authorities. The said amounts were received from the overseas buyer, as reimbursement of taxes/duties under **wrong RBI Purpose code P1306** which is not meant for receipt of the export duty. The reduced FOB Value declared in the export documents was presented as the true Transaction Value being paid for the export goods by the overseas buyer as the deduction amount was not reflected in the Bank Realization Certificate (BRC) in respect of these export

shipment. The deduction amount was recovered separately in their bank account as reimbursement of taxes. Hence, it appears that the value declared by M/s Kyna Overseas Pvt Ltd to the concerned Customs authorities as the Transaction Value of the export cargo in respect of **99** shipments of rice covered by the Shipping Bills as shown in the **Tables A1, A2, B1, B2, B3 and C** above, is liable to be rejected under Rule 8 of the CVR(E), 2007 and the impugned export goods are liable to be valued at their actual Transaction Value as established by the present investigation, in accordance with the provisions of Section 14 of the Customs Act, 1962, read with Rule 3 of the CVR(E), 2007.

14.4 The amount wrongly excluded from the FOB price was indeed part of the consideration negotiated and finalized between the exporter M/s Kyna Overseas Pvt Ltd and their respective overseas buyers and the said amount which was excluded from the FOB Value was duly claimed /received by the exporter from the overseas buyer in their bank account. Therefore, the differential value (equal to the deduction amount/excess freight amount and the amount claimed/received separately as reimbursement of duty) as shown in the **Tables A1, A2, B1, B2, B3 and C** above appear to be includible in the declared value (FOB Value) of the respective export shipments to arrive at the correct transaction value at which the said goods were sold for export from India for delivery at the time and place of exportation and export Customs duty as per the prevailing rate needs to be charged on the said value. M/s Kyna Overseas Pvt Ltd appears to be liable to pay the resultant differential duty in addition to the duty already paid by them.

14.5 In view of the above, in accordance with the provisions of Section 14 of the Customs Act, 1962, the amount of differential customs duty in respect of the Shipping Bills as mentioned in the **Tables A1, A2, B1, B2, B3 and C** at Para 8 above, wherein a part of export proceeds was apparently not declared to the concerned Customs authorities, and the same was not included in the declared transaction value has to be worked out on the basis of actual Transaction Value of the export goods revealed during the investigation.

15. Calculation of Differential Duty:

15.1 As discussed in above paras, the exporter had undervalued their export shipments of rice. For this three modus operandi were adopted by the exporter. In some of their export shipments mentioned at **Table A1 & A2 in para 8 above**, the FOB price were undervalued by an amount equal to the amount of export duty paid by them at the time of export. In respect of one shipping bill mentioned in Table A2 in para 8 above, excess amounts over and above the invoice amount plus export duty amount mentioned in the shipping bill were recovered from the overseas buyer thus FOB price was undervalued by an amount equal to such excess amounts recovered from the buyer as discussed in **para 8.1.2 above**. In such **28** 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 and excess amounts recovered from the buyer over and above the declared invoice value. These deduction amounts/excess amounts recovered from the buyer are liable to be included in the actual assessable value of the export goods and differential duty of **Rs.2,00,54,416/-** is liable to be

recovered from the exporter in respect of these deduction amounts as summarized below. The detailed calculation of differential duty is shown in **Annexure- I** to the **Show Cause Notice**:

Table-D

Custom House Code	Number of SBs	Declared FOB Value (INR)	Cess Amount (INR)	Deduction claimed in SBs (FC)	Reimbursement amount received from overseas buyer (INR)	Re-determined FOB value on account of deduction claimed in SBs (INR)	Differential Duty (INR)
INIXY1	19	44,98,98,161	8,99,79,631	8,99,79,693	8,99,79,693	53,98,77,854	1,79,95,940
INMAA1	5	2,15,72,588	43,14,518	54,37,460	54,37,460	2,70,10,048	10,87,492
INMUN1	4	2,42,74,306	48,54,862	48,54,927	48,54,927	2,91,29,233	9,70,985
Total	28	49,57,45,054	9,91,49,011	10,02,72,080	10,02,72,080	59,60,17,134	2,00,54,416

15.2 In 71 export shipments, as detailed in **Table B1, B2, B3 in para 8 above**, 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 claimed/recovered by the exporter from the overseas buyer on reimbursement basis. Had the overseas buyer not paid these amounts to the exporter, they would not have sold the export goods to the buyer. Thus, these amounts claimed/recovered from the buyer are also part of the consideration received by the exporter for sale of their export goods. These amounts separately claimed/recovered by the exporter from the buyer are also liable to be included in the actual assessable value of the export goods and as summarized below, differential duty amount of **Rs.2,27,29,666/-** is liable to be recovered from the exporter in respect of these reimbursed export duty amounts. The detailed calculation of differential duty is shown in **Annexure- II** to the Show Cause Notice.

Table – E

Custom House Code	Number of SBs	Declared FOB Value (INR)	Cess Amount (INR)	Deduction claimed in SBs (FC)	Reimbursement amount received/claimed from the overseas buyer (INR)	Reimbursement amount yet to be received from overseas buyer (INR)	Re-determined FOB value (INR)	Differential Duty (INR)
INIXY1	9	25,40,45,000	5,08,09,000		5,08,09,000	-	30,48,54,000	1,01,61,800
INCCU1	30	12,40,89,273	2,48,17,859		2,52,86,725	7,02,097	15,00,78,095	51,97,760
INNSA1	17	9,20,70,791	1,84,14,158		1,69,43,714	19,61,136	11,09,75,642	37,80,970
INMUN1	12	7,50,62,312	1,50,12,463		1,21,39,034	28,73,429	9,00,74,775	30,02,492
INKAT1	1	75,23,010	15,04,602		12,71,247	2,33,355	90,27,612	3,00,920
INMAA1	2	71,43,098	14,28,620		14,28,620	-	85,71,718	2,85,724
Total	71	55,99,33,483	11,19,86,702		10,78,78,340	57,70,017	67,35,81,841	2,27,29,666

15.3 Apart from the above, in several shipments of rice, as detailed in **Table C in para 8 above**, the exporter had declared excess freight amounts in comparison to the actual freight amounts paid by them to the freight forwarders/shipping lines for transportation of the export goods to the country of destination. Only the ocean freight amounts 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.19,36,848/-** 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	Number of SBs	Declared FOB Value (INR)	Cess Amount (INR)	Declared Freight Amount as per Shipping Bill (INR)	Actual Freight Amount Paid as per Freight Invoice (INR)	Excess Freight claimed (INR)	Re-determined FOB on account of excess freight (INR)	Differential Duty (INR)
INCCU1	29	11,99,95,871	2,39,99,178	66,03,888	13,68,194	52,35,694	12,52,31,565	10,47,135
INIXY1	2	65,17,193	13,03,438	4,79,279	2,42,339	2,36,940	67,54,132	47,388
INMUN 1	3	2,81,48,094	56,29,619	66,99,029	25,74,909	41,24,120	3,22,72,214	8,24,824
INNSA1	1	1,64,43,540	32,88,708	8,88,840	8,01,334	87,506	1,65,31,046	17,501
Total	35	17,11,04,697	3,42,20,943	1,46,71,036	49,86,776	96,84,260	18,07,88,957	19,36,848

15.4 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 **99** export shipments have been calculated as shown in below table. Accordingly, the differential duty payable by the exporter M/s Kyna Overseas Pvt Ltd works out to be at **Rs.4,47,20,934/-** as shown in below Table. The detailed calculation of the differential duty amounts has been shown in **Annexure I, II & III** to the Show Cause Notice. The port wise summary of differential duty payable by M/s Kyna Overseas Pvt Ltd is as under:

Table - G

Custom House Code	Number of SBs	FOB Value (INR)	Cess Amount (INR)	Re-determined FOB (INR)	Differential Duty on account of excess amount received from overseas Buyers	Differential Duty on account of Excess Freight claimed in SBs	Differential Duty (INR)
INIXY1	28	70,39,43,161	14,07,88,631	84,49,68,793	2,81,57,740	47,388	2,82,05,128
INCCU1	30	12,40,89,273	2,48,17,859	15,53,13,789	51,97,760	10,47,135	62,44,899
INMUN1	16	9,93,36,617	1,98,67,325	12,33,28,128	39,73,476	8,24,824	47,98,301
INNSA1	17	9,20,70,791	1,84,14,158	11,10,63,148	37,80,970	17,501	37,98,472
INMAA1	7	2,87,15,685	57,43,138	3,55,81,766	13,73,215	-	13,73,215
INKAT1	1	75,23,010	15,04,602	90,27,612	3,00,920	-	3,00,920
Total	99	105,56,78,537	21,11,35,713	127,92,83,236	4,27,84,081	19,36,848	4,47,20,935

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

16.1 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.

16.2 In view of the discussion supra, it is evident that the Directors of the export firm M/s Kyna Overseas Pvt Ltd, were well aware about the actual value of the

export goods. They have knowingly got indulged in preparation and planning of forged / manipulated export documents, which they used to forward to the Customs broker in relation to Customs clearance of the said export goods at the time of exportation by way of wilful mis-declaration and intentional suppression of these facts in the Shipping Bills filed by them and thus they appear to have evaded the applicable Customs duty on export of rice.

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

17. From the scrutiny of the documents gathered/submitted during investigation by the exporter M/s Kyna Overseas Pvt. Ltd., scrutiny of the export data and statements of Sh. Vinay Ghanshyam Bhojwani, Director, M/s Kyna Overseas Pvt Ltd, involved in export of rice from various ports of India, it appears that—

- i. Sh. Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt Ltd, was the key person who on behalf of M/s Kyna Overseas Pvt Ltd negotiated and finalized the sale price of rice, exported by M/s Kyna Overseas Pvt Ltd to various overseas buyers, vide 99 Shipping Bill as detailed in **Tables A1, A2, B1, B2, B3 and C in para 8** above.
- ii. The declared FOB value in respect of shipping bills listed in **Tables A1, A2, B1, B2, B3 and C** above, 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 A1** above, the FOB Value was undervalued by them by an amount equal to the amount of export duty (approx.) paid on export of rice and the said amount was wrongly claimed as deduction in the shipping bills.
 - In respect of Shipping bills listed in **Table A2** above, the FOB Value was undervalued by them by an amount higher than the amount of export duty (approx.) paid on export of rice and the said amount of export duty was wrongly claimed as deduction in the

shipping bills and higher invoice amount recovered from the overseas buyer were not even declared in the shipping bill but the same were declared in the corresponding invoice.

- In respect of the shipping bills listed in **Table B1, B2, B3**, above the declared FOB Value was undervalued by an amount equal to the amount of duty (in some cases slightly higher than the export duty amount) 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 actually paid by the exporter are eligible deductions from the CIF Value. By declaring the excess freight amounts, exporter had wrongly claimed excess deductions of freight amounts which are not eligible. Thus, exporter had out rightly mis-declared the actual transaction value at the time of export.

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

- iv. The FOB value of export goods in all these cases was mis-declared by M/s Kyna Overseas Pvt Ltd to the Customs authorities in the shipping bills filed by them which was supported by their 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 **Annexure I, II and III** of this 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 A1, A2, B1, B2, B3 and C** by M/s Kyna Overseas Pvt Ltd has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 and consequently M/s Kyna Overseas Pvt Ltd have rendered themselves liable to a Penalty under the provisions of Section 114A and Section 114AA of the Customs Act, 1962;
- viii. Sh. Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt Ltd, appears to be the person who knowingly or intentionally either made, signed and used or caused to be made, signed and used, the custom purpose export invoices, and Shipping Bills for export of rice by M/s Kyna Overseas Pvt Ltd, 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 A1, A2, B1, B2, B3 and C above**, contained the declarations made by M/s Kyna Overseas Pvt Ltd which were false and incorrect in material particulars relating to the value of the impugned goods. The contracts with the buyer for sale and export of rice as well as the export documents submitted to Customs were finalized/signed in the overall supervision of Sh. Vinay Ghanshyam Bhojwani who was handling the day to day business of the export firm. This fact has been admitted by Sh. Vinay Ghanshyam Bhojwani in his statement recorded u/s 108 of the Customs Act, 1962. In view of this, it appears that Sh. Vinay Ghanshyam Bhojwani 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. Vinay Ghanshyam Bhojwani is, therefore, responsible for wilful acts of mis-statement and suppression of facts in respect of export of rice by M/s Kyna Overseas Pvt Ltd. The act of Sh. Vinay Ghanshyam Bhojwani regarding under valuation and mis-declaration of actual transaction value in respect of Shipping Bills filed by M/s Kyna Overseas Pvt Ltd has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. As such, Sh. Vinay Ghanshyam Bhojwani has rendered themselves liable to penal action under the provisions of Section 114 (ii) and 114AA of the Customs Act, 1962 for intentionally and knowingly done acts of commission and omission by him.

18. 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 six (06) different ports, as mentioned in **Table G in para 15.4 above**, however the highest amount of differential export duty is in respect of **Kandla Port, Gujarat**. Hence, **Kandla**

Port, Gujarat, being the port involving highest revenue, this Show Cause Notice is being made answerable to **Principal Commissioner/ Commissioner of Customs, Kandla 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.

19. Further, a corrigendum dated 19.02.2026 to Show Cause Notice No. GEN/ADJ/COMM/115/2025-ADJN-O/O COMMR-CUS-KANDLA DATED 24.03.2025 was issued by the Commissioner, Customs, Kandla mentioning the below facts-

19.1 On the basis of investigation done by the Directorate of Revenue Intelligence, New Delhi, this office issued Show Cause Notice F. No. GEN/ADJ/COMM/115/2025-ADJN-O/O COMMR-CUS-KANDLA dated 24.03.2025 to M/s Kyna Overseas Pvt. Ltd., Mumbai & others, demanding inter alia export duty on export of rice along with applicable interest and penalty on the firm and Director. As per SCN, export was done by M/s Kyna Overseas Pvt. Ltd. from various ports of India, as shown in Table-G of the SCN:-

Table-G

Custome House Code	Number of SBs	FOB Value (INR)	Cess Amount (INR)	Re- determined FOB (INR)	Differential Duty on account of excess amount received from overseas Buyers	Differenti al Duty on account of Excess Freight claimed in SBs	Differentia l Duty (INR)
INIXY1	28	70,39,43,161	14,07,88,6 31	84,49,68,793	2,81,57,740	47,388	2,82,05,128
INCCU1	30	12,40,89,273	2,48,17,85 9	15,53,13,789	51,97,760	10,47,135	62,44,899
INMUN1	16	9,93,36,617	1,98,67,32 5	12,33,28,128	39,73,476	8,24,824	47,98,301
INNSA1	17	9,20,70,791	1,84,14,15 8	11,10,63,148	37,80,970	17,501	37,98,472
INMAA1	7	2,87,15,685	57,43,138	3,55,81,766	13,73,215	-	13,73,215
INKAT1	1	75,23,010	15,04,602	90,27,612	3,00,920	-	3,00,920
Total	99	1,05,56,78, 538	21,11,35, 713	1,27,92,83, 236	4,27,84,082	19,36,84 8	4,47,20,93 4

19.2 Further, this office is in receipt of the letter F. No. CUS/ASS/MISC/311/2025-EXP-O/O PR COMMR-CUS-PORT-KOLKATA dated 13.08.2025 from the Office of Commissioner of Customs, Custom House, Kolkata, informing that in the course of their own adjudication proceedings with respect to SCN No. KOL/CUS/PC/PORT/13/2025 dated 08.04.2025 issued by them, the noticee i.e. M/s. Kyna Overseas Private Limited, Mumbai submitted reply dated 03.06.2025 informing about issuance of aforesaid SCN dated 24.03.2025 by the Commissioner of Customs Kandla wherein 30 out of 31 Shipping Bills covered by their own SCN dated 08.04.2025 have been included (except Shipping Bill no. 1060949 dated 16.05.2023). Therefore, they have requested inclusion of Shipping Bill No. 1060949 dated 16.05.2023 in the SCN dated 24.03.2025 by way of corrigendum. **Accordingly, this Shipping Bill No.1060949 dated**

16.05.2023 shall be treated as part and parcel of proceedings initiated by way of SCN dated 24.03.2025.

19.3. The Paragraph No.19.1 and 19.2 of SCN dated 24.03.2025 shall be substituted with the paragraphs as below:-

“19.1 therefore, **M/s Kyna Overseas Pvt Ltd**, having registered office at Sarafa Line, Laxmibai Ward, Gondia, Maharashtra- 441614; having **IEC No. AAJCK7497B**, were issued show cause (*updated demand*) as to why-

- i. The declared assessable value of **Rs.1,05,71,62,944/-** in respect of **100** shipments of rice exported vide Shipping Bills detailed in **‘Annexure I, II and III’**, should not be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3 (1) *ibid* and Section 14 (1) of the Customs Act, 1962;
- ii. The actual assessable value in respect of Shipping Bills detailed in **‘Annexure I, II and III’**, should not be re-determined at **Rs.1,28,08,83,500/-** under the provisions of Section 14(1) of the Customs Act, 1962, read with Rule 3(1) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 by taking into account – **(a)** the amounts claimed and recovered as deduction in the shipping bills; **(b)** excess ocean freight amounts claimed/recovered and **(c)** undeclared export duty reimbursement amounts - which were claimed/recovered by them from the overseas buyer of the goods; as discussed in **Para 8 & 15** of this Show Cause Notice;
- iii. The differential (export) duty amounting to **Rs.4,47,44,103/-** payable, as calculated and shown in **‘Annexure I, II and III’** to this Show Cause Notice, in respect of Shipping Bill filed by them at six 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.4,47,44,103/-** should not be demanded and recovered from them under the provisions of Section 28AA of the Customs Act, 1962;
- v. The shipments of rice exported vide Shipping Bills detailed in **Annexure I, II and III** to this Notice having re-determined assessable value of **Rs. 1,28,08,83,500/-**, 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 114 A and Section 114 AA should not be imposed upon them for the acts of commission and omission as brought out in the Show Cause Notice.

19.2 therefore, **Sh. Vinay Ghanshyam Bhojwani, Director of M/s Kyna**

Overseas Pvt Ltd having registered office at Sarafa Line, Laxmibai Ward, Gondia, Maharashtra- 441614; R/o: Sindhi Colony, Hemu Kalani Chowk, Gondia, Maharashtra, 441601, was issued show cause as to why penalty under the provisions of section 114 (ii) and Section 114AA of the Customs Act, 1962 should not be imposed upon them for their acts and omissions in evasion of Customs Duty amounting to **Rs.4,47,44,103/- (updated demand)** on export of rice through his company.”

20. Submission dated 03.06.2025 of Defense Reply:-

A. Point-wise brief of the reply dated 03.06.2025 to the Show Cause Notice (SCN) dated 24.03.2025 issued to M/S. Kyna Overseas Private Limited (the "Noticee") and the co-noticee Shri Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt. Ltd. as under-

1. Subject Matter of Dispute: The noticee submitted that the case involves a Show Cause Notice (SCN) issued on March 24, 2025, regarding the alleged undervaluation of 99 shipments of non-basmati white rice exported from various ports, primarily Kandla. The Department seeks to re-determine the assessable value from approximately ₹105.57 crore to ₹127.93 crore and recover differential export duty of ₹4.47 crore.

2. Nature of the Allegations: The Department alleges that the Noticee resorted to undervaluation by claiming incorrect abatements or deductions. Specifically, the SCN claims the Noticee wrongly deducted export duty amounts, failed to declare duty reimbursements received from overseas buyers, and declared excess ocean freight to reduce the FOB (Free on Board) value.

3. Modus Operandi of Export Duty: The Noticee explains that after a 20% export duty was introduced on September 8, 2022, they entered into agreements where the rice price was fixed, and the export duty was collected separately from the foreign customer as an indirect tax. They argue that this duty was never intended to be part of the "price charged for rice" but was collected on behalf of the Government.

4. ICEGATE Technical Limitations: The Noticee contends that the online ICEGATE portal automatically computes export duty as 20% of the declared FOB value and lacks a column for a separate "assessable value". To avoid paying "duty on duty," the Noticee declared the duty element under "other deductions" to arrive at the correct price for the rice.

5. Handling of Customs Officers' Insistence: In cases where customs officers did not allow duty reimbursements to be shown as deductions in shipping bills, the Noticee created "customs invoices" omitting the duty while issuing "commercial invoices" to customers that included it. They assert that the underlying contracts submitted to Customs always fully disclosed these reimbursements.

6. Ocean Freight Discrepancies: Regarding alleged excess freight, the Noticee explains that because freight rates were volatile and shipping bills

were filed well before export, they used tentative market quotes. They declared slightly higher freight to ensure the declared value was as accurate as possible to actual costs incurred at the time of shipment.

7. Interpretation of Section 14: The Department argues that "transaction value" under Section 14 of the Customs Act must include all costs until the goods are on board the vessel, including export duty. The Noticee counters that Section 14 defines the value as the price paid "for the goods" and that export duty is a cost incurred at the port (after arrival at the customs station), which should not be included in the transaction value.

8. Reliance on WTO/GATT Principles: The Noticee relies on Interpretative Notes from the Import Valuation Rules (applying them to exports by analogy) and WTO/GATT principles, which state that duties and taxes are "distinguishable" from the price of goods and should not form part of the customs value. They argue that duty reimbursement does not benefit the seller but goes to the Government.

9. Rebuttal of Investigation Statements: The Noticee claims that statements made by their Director, Mr. Vinay Ghanshyam Bhojwani, during the DRI investigation were recorded under "undue threat of arrest and bank attachment". They argue that he was not legally equipped to answer complex valuation questions and only admitted to a "mistake" under pressure.

B. Submission Dated 05.03.2026 on behalf of both the noticee.

1. The Noticee submitted that the **Corrigendum dated 19.2.2026** was issued to the aforementioned Show Cause Notice dated 24.03.2025 (hereinafter referred to as the "Present SCN") by way of which Shipping Bill No. 1060949 dated 16.5.2023 was made part and parcel of the proceedings initiated by way of the Present SCN. Against the said shipping bill the differential demand of duty has been raised on the following grounds:

- a) Rs. 6,549/- on account of excess amount of Rs.32,774/- over and above the FOB value reimbursed from the foreign buyer.
- b) Rs. 16,623/- on account of declaration of excess ocean freight of Rs.83,114/- in the Shipping Bill than actually incurred.

2. In this regard, the Noticee submitted the following:

- a) For the alleged excess amount of Rs.32,774/- received over and above the FOB value, the Noticee submits that the Present SCN has incorrectly compared the FOB value with the amount reflected in the BRC. The Noticee respectfully submitted that such a comparison is fundamentally flawed. The export transaction in the present case was carried out on a CIF basis, and therefore, the correct benchmark for reconciliation with the BRC ought to have been the CIF value, not the FOB value.

The Noticee further submitted that the amount received from the foreign buyer is, in fact, lower than the CIF value mutually agreed upon between the parties. This clearly establishes that there is no excess realization whatsoever, and the conclusion drawn in the Present SC is based on an incorrect parameter of comparison.

It is also pertinent to submit that no additional amount was ever demanded or received from the foreign buyer under this shipping bill. The entire receipt corresponds strictly to the commercial arrangement agreed upon in the export contract. Hence, the allegation that the Notice received an amount "over and above" the value of goods exported is incorrect, baseless, and liable to be dropped.

b) For the amount of excess ocean freight of Rs.83,114/- the Noticee placed reliance on the substituted Ground N below.

Substituted submissions for Ground N of the Reply to SCN

3. With reference to the reply to the Show Cause Notice dated 03.06.2025 submitted by the Noticee, the Noticee respectfully requested the adjudicating authority to kindly consider the submissions provided below as a substitution for Ground N of the said reply. These submissions are intended to comprehensively address the issues raised and should be treated as the revised position of the Noticee in place of the earlier content under Ground N.

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

N.1. The Present SCN has alleged that the Noticee has declared excess freight of Rs.97,67,374/- across 36 shipping bills listed in Table-C of the Present SCN.

N.2. The summary of the expenses incurred by the Noticee in respect of these shipments has been tabulated below:

Sr. No.	Particulars	Deduction Amount (In INR)	Remarks
1	Excess Freight declared in 36 shipping bills as alleged in the Present SCN	97,67,374/-	As per Table C of the SCN
2	Less: Actual expenses incurred at the customs port in India by the Noticee for the afore-mentioned shipping bills - Not considered in the Present SCN	1,13,12,212/-	Refer Note-1 below

3	Difference	(15,44,838)/-	[3 = 1-2]
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Note-1: Some portion of freight as alleged excess by the Department pertains to expenses incurred at the customs port in India, which otherwise cannot be forming part of the value of transaction value as per Section 14 of the Customs Act, 1962.

N.3. The Present SCN has alleged that the Notice has deliberately declared excess freight knowing what the actual freight and insurance is with the intention to evade duty. Further, it is alleged that the Notice was actively involved in mis-declaration of the FOB value of export goods by claiming incorrect deductions in shipping bill, with an intention to evade appropriate export duty.

N.4. The Noticee has submitted in detail in Ground A of this reply that for the purpose of determination of the transaction value of export goods, only the costs incurred for delivery of goods up to the customs station would be included. The costs incurred at the customs station and beyond the customs station would not be included in the transaction value of export goods.

N.5. The Noticee submits that apart from ocean freight and marine insurance, it also incurs various expenditure at the customs port such as:

- a) Handling Charges: Fees incurred to get an order ready to be handed over for transport.
- b) Terminal Handling Charges (THC): These are the fees levied by ports and terminals for handling cargo at the port during export. These charges cover various services like loading, unloading, storage, documentation, security, and the use of equipment and personnel at the terminal.
- c) Seal Charges: These are fees applied in shipping to cover the cost of placing a security seal on a shipping container, to ensure that its contents are protected from tampering and theft during transit.
- d) Origin Terminal Handling Charges: These are charges similar to THC, but specifically incurred at the port of origin for handling the cargo before it is loaded onto the vessel
- e) Fumigation Charges: These charges cover the costs of the fumigant chemicals, the labor for the fumigation process, inspections, and the issuance of necessary documents like a fumigation certificate.
- f) Origin Administrative Handling Charges: These are fees charged by carriers or freight forwarders to cover the cost of handling cargo at the point of origin.
- g) Dry Port Surcharge: The dry port surcharge covers the cost of moving containers between the dry port and the seaport.
- h) Free Time Extension Charges: Fees paid to a shipping line or terminal operator to acquire additional days of free time beyond the initial free period for a container at a port or terminal or POD.

- i) Equipment Positioning Service Export Charges: These charges are levied when carriers reposition empty containers to locations where they are needed for export.
- j) Carrier Detention Charges: These are fees charged when the shipper or consignee holds onto the carrier's equipment (like containers or trucks) beyond the allowed free time
- k) Mandatory User Charges: These are compulsory fees levied at Indian ports to support the Logistics Data Bank (LDB) system. The Notice submitted that some portion of the excess freight as alleged by the department pertains to above expenses and hence to that extent, the excess freight amount should not be added to the assessable value.

N.7. The Notice submitted that an amount of Rs.1,13,12,212/- pertains to above-mentioned expenses incurred at the port. The same should be adjusted against the total alleged amount of excess freight and insurance of Rs. 97,67,374/-. Hence, the total demand of Rs.19,53,475/- (20% percent of Rs. 97,67,374/-) on the issue of excess freight and insurance is not sustainable and thus liable to be dropped.

Note-2: Without prejudice, actual freight was not known at the time of filing Shipping Bill.

N.8. The Noticee submitted that at the time of filing shipping bill, which is before the date of actual export, the actual amount of freight to be incurred was/is not known. The Noticee submits that in case of exports based on CIF basis, as per standard practice of the Noticee, before entering into a contract for export on CIF basis, the Noticee collected information of the tentative freight and insurance amount from various freight forwarders and shipping lines. Basis such quotation, the Noticee quoted the CIF price of the goods (with break-up of FOB value and Freight/Insurance/Export Duty), which was agreed between foreign buyer and Noticee. Basis such agreement, Noticee used to declare the amount of freight in the shipping bill. The invoice from freight forwarder for the freight actually charged to the Noticee was/is issued much after the goods are exported.

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.

N.9. The Noticee submits that during the period of 2022 to 2024, the freight charges were highly fluctuating. An article published on Reuters by John Kemp in March 2023 (<https://www.reuters.com/markets/europe/global-freight-slump-deepens-start-2023-2023-03-21/>) quotes as under –

In the spot market, the cost of moving a box from China to the West Coast of the United States by sea has tumbled to just over \$1,000 per forty-foot

equivalent unit (FEU) down from almost \$16,000 a year ago.

The spot rate from China to North Europe has fallen to less than \$1,400 per FEU from almost \$14,000 a year ago, based on the Freightos Baltic Exchange index.

N.10. Another article published in February 2023 on the website "Logistics Management"

(<https://www.logisticsmgmt.com/article/globallogistics-2023-supply-chains-under-pressure>) also notes the challenges faced by supply chain industry in 2022 and 2023. It notes that freight rates were very high in 2022 and uncertain in 2023. The relevant para is extracted below –

Freight rates remain high Just-in-time deliveries, a strategy followed for a long time, can often no longer be reliably guaranteed in many places. High-volume consigners have the advantage of market power to exert pressure on shipowners, port-terminals, and transport companies to meet just-in-time delivery schedules.

In addition to delays in deliveries worldwide, the huge increases in freight rates caused problems for shippers last year. For 2023, consigners hope that freight costs will gradually taper down toward pre-pandemic levels.

However, Rolf Habben Jansen CEO of Hapag Lloyd, pointed out at an online press event that the significant increase in fuel prices will mean that shipping lines will have to reckon with freight rates around 20% to 30% higher than two to three years ago. He expects that shipowners will face difficulties in long-term planning in general and will need to rely more on quarterly adjustments in services and rates.

N.11. Towards mid-2022, the freight market was very high. In late 2022 and 2023, there was uncertainty about the freight rates. Hence, the Noticee had agreed with the foreign buyer in its contract based on the market condition. However, since there was a fluctuation in freight rates in 2022-2024, there were instances of both under declaration as well as excess declaration of freight in the shipping bill as compared to the actual freight incurred by the Noticee.

N.12. It is the stand of the department that the Noticee has deliberately mis-declared the freight amount to evade export duty. However, the said allegation is absolutely baseless and without reasoning. The department has not understood the functioning of the shipping line industry which has led to an incorrect conclusion that the Noticee has mis-declared the freight amount.

N.13. The above itself shows that the Noticee was not able to determine the actual freight at the time of export and it had thus indicated the tentative

freight, which eventually varied with the actual freight known much later. Thus, the contention of the department that there is mis-declaration by the Noticee in declaring the higher freight and insurance at the time of export is incorrect and the proportionate demand in the Present SCN is liable to be dropped.

Without prejudice, demand of excess freight otherwise be determined considering on Cum-Duty basis.

N.14. The Noticee submits that the demand for differential duty, based on the excess freight declared in the Shipping Bill compared to the actual freight incurred, should be calculated on a cum-duty basis rather than a flat 20%, as stated in the Present SCN. For instance, if the declared freight amount in the Shipping Bill is Rs. 50/- and the actual freight incurred is Rs. 20/-, the duty on the differential freight amount of Rs. 30/- (50-20) should be Rs. 5 (calculated as $30 \times 20 / 120$) instead of Rs. 6/- ($30 \times 20\%$) as computed in the Present SCN. All the grounds on cum-duty method have been taken in the reply in Ground D below in detail and should be considered for the excess freight issue also.

No penalty is leviable on the levy of export duty on account of excess freight

N.15. The Noticee has made detailed submissions in regard to the imposition of penalty under Section 114A and 114AA of the Customs Act which may be relied upon in grounds below.

N.16. Further, such fluctuations in freight and insurance rates were also happening before the introduction of export duty on said goods. The Noticee did not deliberately declare higher amounts to evade duty. Even prior to introduction of export duty, there are scenarios wherein freight declared in shipping bill varied with freight actually paid due to various factors.

N.17. Hence, if the Noticee's intention was to evade duty by declaring freight then it would have done so in all shipments and would have started the practice only upon imposition of export duty.

N.18. From the above, it is clear that there was no deliberate intention of the Noticee to mis-declare the freight. Consequently, no penalty under Section 114A can be imposed on the same.

N.19. As regards, the imposition of penalty under Section 114AA, the Noticee relies on the submissions made above and also in Ground O above.

The noticee requested to kindly take the above submissions also on record.

21. Personal Hearing: - A personal hearing letter was issued and Shri Saurabh Shrinakt Malpani, Advocate attended the personal hearing virtually on behalf of the noticees i.e. M/s. Kyna Overseas Pvt Ltd and Sh. Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt. Ltd. on 06.03.2026 and he stated that he will submit additional documents of computation for reimbursement along with documentary evidences within 3 days and he reiterated his submission dated **05.02.2026** and additional submission dated **05.03.2026**.

He specifically requested to drop penalties imposed on firm and Directors due to industry-wide issue involved and also due to issue pertaining to interpretational nature. He submitted that there was no case of fraud or suppression in the case and hence, the penalties are not imposable.

DISCUSSION AND FINDINGS: -

22. I have carefully examined the SCN, the statements recorded under Section 108 of the Customs Act, and the documentary evidences, submission of the noticee, corrigendum dated 19.02.2026 to Show Cause Notice No. GEN/ADJ/ COMM/115/2025-ADJN-O/O COMMR-CUS-KANDLA DATED 24.03.2025, and documents available on the record, Therefore, I hereby proceed to adjudicate the Show Cause Notice dated 24.03.2025.

22.1 The main issues involved in the case which are required to be decided in the present adjudication are as under: -

- (i) Whether, in accordance with the provisions of Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, the differential Customs duty, in respect of the Shipping Bills mentioned in Table A, B & C at Para 8 supra, where a part of the export proceeds was apparently not declared to the concerned Customs authorities and thus not included in the declared transaction value has to be computed based on the actual transaction value of the export goods as revealed during the investigation; or whether the export duty reimbursed by the buyer, and excess freight declared are eligible for deduction from the FOB value?
- (ii) Whether the FOB value declared by the said noticee in the Shipping Bills at the time of export of goods is required to be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3(1) ibid and Section 14(1) of the Customs Act, 1962;
- (iii) Whether the actual assessable value in respect of Shipping Bills detailed in 'Annexure-I, II & III is required to be re-determined at **Rs. 1,28,08,83,500/-** under the provisions of Section 14(1) of the

- Customs Act, 1962, and total differential (export) duty amounting to **Rs.4,47,44,103/-** payable, as calculated and shown in 'Annexure- I, II & III to the notice, in respect of these Shipping Bills filed by them at different ports of India, is required to be demanded and recovered from them, by invoking the extended period of limitation available under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA *ibid*;
- (iv) Whether the shipments of rice exported vide Shipping Bills detailed in 'Annexure- I, II & III to the Notice having proposed re-determined assessable value of Rs.1,28,08,83,500/- deserve to be confiscated under the provisions of Section 113 (i) of the Customs Act, 1962;
- (v) Whether penalty under Section 114A and Section 114AA of the Customs Act, 1962 is required to be imposed on the said noticee; and
- (vi) Whether for their acts and omissions in evasion of Customs duty amounting to Rs.4,47,44,103/-, **Shri Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt. Ltd.** is liable for penalty under the provisions of section 114(ii) and Section 114AA of the Customs Act, 1962.

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

“Section 14. Valuation of goods. -

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

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

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

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;*

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria]

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

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

Explanation . - For the purposes of this section -

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

(i) determined by the Board, or

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

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

Rule 3 of CVR, 2007

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

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

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

"CUS CIR NO. 18/2008 DATE 10/11/2008

Computation of Value under Section 14 for Levy of Export Duty

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

due thereon.

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

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

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

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

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

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

8. Hindi version follows.

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

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

25. 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 notice 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.

26. In the present case the exporter has not borne the incidence of duty but the duty amounts were recovered by the exporter from the buyers as part of sale consideration. Hence, these recovered amounts must be included in transaction value. I find that all 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.

27. I find that investigation into the export of rice by M/s Kyna Overseas Pvt Ltd, which revealed a systematic undervaluation of goods to evade export duty. Under Section 14 of the Customs Act, 1962, and the CVR (E) 2007, export duty must be levied on the actual "transaction value" negotiated with the overseas buyer. The investigation found that the exporter intentionally bifurcated the sale price, deducting the duty amount from the declared Free on Board (FOB) value and recovering that difference separately from the buyer. This excluded portion was hidden from authorities by using an incorrect RBI purpose code (P1306) and was not reflected in Bank Realization Certificates, leading to a mis-declaration of the true sale price.

28. Consequently, the Customs authorities have rejected the declared values for 100 shipments under Rule 8 of the CVR(E), 2007. It was deliberately done that because abatement of export duty is not legally permissible when calculating FOB value, the amounts recovered separately as "tax reimbursements" or "excess freight" must be reintegrated into the transaction value. As a result, M/s Kyna Overseas Pvt Ltd is liable for the differential customs duty calculated on the actual transaction value revealed by the investigation, in addition to the duties already paid on the undervalued declarations.

29. In view of the above, I hold that the declared FOB Value in respect of the shipping bills covered under Table-A to Table-C and as updated and summarized at Table- G of corrigendum to SCN dated 19.02.2026 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 as per Table-G of SCN dated 24.03.2025 read with corrigendum dated 19.02.2026.

30. Further, I find that deduction amounts wrongly claimed by the exporter from the actual FOB Value of exports which were equal to the export duty was found mis-declared. During the scrutiny of the export documents and details submitted by the exporter during investigation revealed that the exporter had at the time of filing of shipping bills claimed the deduction of an amount of USD 12,19,065/- in respect of the following 28 shipping bills filed by them mentioned at Table-A, supra. The export duty amounts paid by them in respect of these 28 shipping bills were also at USD 12,16,768/-. Therefore, the amounts claimed as 'deduction/deduct' were equal to the export duty amounts paid by them at the time of filing of these shipping bills. Investigation has revealed that these amounts claimed as 'deduction/deduct' were also recovered by the exporter from the overseas buyer in their bank accounts. The exporter had also confirmed these facts in his submissions and statements recorded u/s 108 of the Customs Act, 1962. Proper illustration is also shown in the notice.

Therefore, I find that the said amount has been deducted by the exporter from the actual transaction value (i.e. FOB Value) and export duty has not been paid on the said differential value of Rs.2,89,648/- which is though part of the consideration received by the exporter from the overseas buyer for sale of the consignment.

31. Further, in addition to the above, in respect of one shipment bearing Shipping Bill No. 1224017 dated 23.05.2023 (S. No. 28 of Table-A2), the exporter had at the time of filing of shipping bills claimed the deduction of total amounts of USD 8775. The export duty paid by them in respect of this S/B was USD 6480. Thus, in addition to the claim of deduction of duty amount of USD 6480, the exporter had claimed deduction of an additional amount of USD 2295.

Apart from the afore-said excess deduction amount of USD 2295 (over and above the duty paid amount), the exporter had received an excess amount of USD 11445 from the overseas buyer which is over and above their invoice value of USD 35100 as declared in the shipping bill. Thus, the amounts received over and above the duty paid amounts of USD 6480 were USD 13,770 (USD 2295+ USD 11445). Thus, the exporter had recovered an excess amount of USD 20250 (USD13,770 + USD 6,480) which is over and above the declared invoice amount of USD 35100. Thus, total amounts received by the exporter from the buyer in respect of the aforesaid shipment was USD 55320 (USD 35100+ USD 20250). In respect of the aforesaid shipment the total amount in foreign currency mentioned in the Invoice submitted by the exporter was USD 55350 whereas in the shipping bill the total invoice value wrongly declared was USD 43875.

Therefore, it was clear that a difference of USD 11475 in the figures of Invoice as declared in the copy of invoice and shipping bill. Further, arguments of the noticee that the entire excess amounts as declared in the copy of invoice as USD 55350 had been received by them from the overseas buyer is not tenable. Therefore, the entire amount of USD 52650 after deducting the ocean freight amount of 2025 and insurance amount of USD 675 from the total amount mentioned in the invoice as USD 55350 is the actual transaction value in respect of the aforesaid shipment for the purposes of section 14 of the Customs Act, 1962 for payment of the export duty.

32. Further, I find that the deductions amounts not claimed in Shipping Bills, however amounts equal to the export duty paid were received separately as reimbursement of taxes. In respect of the 71 shipments (detailed at Table-B, supra) of rice exported by M/s Kyna Overseas Pvt. Ltd., the exporter had not claimed any deduction in the shipping bills filed by them, however, argument of the noticee (exporter) that in respect of these shipments also, they have separately recovered the duty amount of USD 13,18,671/- from the overseas buyers of the export goods, out of the total duty paid amount of USD 13,68,901/- claimed by them from the exporter. I find that 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.

33.1 I observe that 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 indicated that the said purpose code is not meant for the receipt of export duty and export proceeds. The exporter has claimed that the deduction/ deduct amount claimed by them in the shipping bill have been received by them from the overseas buyers in the form of reimbursement of taxes. They have further informed that the said transactions have been made under the purpose code P1306. RBI purpose codes are unique identifiers assigned to various international transactions, enabling banks and financial institutions to classify and process remittances accurately. RBI has notified purpose codes for reporting forex transactions for Payment and Receipt purposes.

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

33.3 I find that in respect of the 35 shipping bills covered under Table-C, the exporter declared inflated amounts of ocean freight in their shipping bills as compared to the actual freight paid to the freight forwarders/shipping lines. The exporter artificially reduced the assessable FOB value declared before Customs and thereby resulting in short-payment of export duty. These excess freight amounts were not borne by the exporter and the same were actually recovered from their overseas buyers as part of the total consideration for the consignments. The discrepancy between declared freight and actual freight paid was also accepted by the exporter during the investigation period by submitting the details of shipments. The said excess freight amount has also been recovered by the exporter from the overseas buyer of the export goods but the exporter had not paid duty on the said excess freight amount which is part and parcel of the actual assessable value of the export goods. This instance demonstrates the method adopted by the exporter for all shipments covered under Table-C, supra. This Excess ocean freight amounts wrongly declared in the Shipping Bills. In addition to the above, in respect of the following 35 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 35 shipments also. The total amount of excess freight declared by the exporter in respect of these shipments stood at Rs.96,84,260/-. M/s Kyna Overseas Pvt Ltd had submitted the

details of the actual freight amounts paid by them to the Freight forwarders / Shipping line, which clearly indicated that in these 35 shipments, they have declared excess freight amounts.

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

34. I find that the investigation clearly establishes that the invoices and shipping bills declared inflated freight figures which did not correspond to the actual amounts paid. Section 14 of the Customs Act, 1962 mandates that the "transaction value" must represent the price actually paid or payable. The investigation proved beyond doubt that the freight declared was substantially in excess of the freight actually paid, thereby artificially reducing the FOB value.

35. Demand of duty under extended period under Section 28(4) of the Customs Act, 1962:

I find that it is obligatory for the exporter to subscribe a declaration as to the truthfulness of the contents of the Shipping Bill in terms of Section 50(2) of the Customs Act, 1962, in all their export declarations. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on export goods by the exporter himself by filing a Shipping Bill, in electronic form. Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make an entry for the export goods by presenting a Shipping Bill electronically to the proper officer. Thus, under the scheme of self-assessment, it was the exporter who must doubly ensure that they declare the correct classification / CTH of the export goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in respect of the export goods while presenting the Shipping Bill. It is however evident from the investigation that there were deliberate mis-statement and suppression of facts on their part. The exporter was actively involved in mis-declaration of the FOB value of export goods, with an intention to evade appropriate export duty leviable on ad valorem basis on such goods. They adopted two different modus operandi (i) by claiming wrongful deduction of export duty from the transaction value and (ii) by declaring excess freight amounts. Both the modus-operandi have already been discussed in detail in the foregoing paragraphs. Further, the responsibility lies on the exporter to ensure that all details related to the shipments are correctly declared at the time of filing shipping bills. Therefore, the extended period of five

years under Section 28(4) of the Customs Act, 1962 has been correctly invoked in the present case.

36. For the Shipping Bills as listed in **Tables A, B and C in para 8.2 and 8.4 above**, the differential duty demand, as detailed in corresponding **Annexure-I, II and III** of the Show Cause Notice dated 24.03.2025 read with corrigendum to the SCN dated 19.02.2026 of Rs.4,47,44,103/- as confirmed in Table-G, supra, is correctly required to be upheld against the said noticee under **Section 28(4) of the Customs Act, 1962** and the interest at the applicable rate in terms of notification issued under Section 28AA of the said Act is correctly required to be recovered from the said noticee on the differential amount of Customs duty.

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

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

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

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

38. As discussed earlier, it is clear that the exporter had declared a vague and generic value of exported goods without disclosing their receipt against the exports made by them. This deliberate omission directly resulted in the mis-declaration in respect of the valuation of goods which squarely attracts the provisions of Section 113(i) of the Customs Act, 1962, rendering the goods liable to confiscation. As the impugned goods are found to be liable for confiscation under Section 113(i) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of **M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad [Customs Appeal No. 10679 of 2024-DB]**, has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further,

this point was already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]. Para 23 of the said Judgment is as follows:

"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

39. I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.). Hence, from the above discussion and relying on the above judgements, I find that goods are liable for confiscation and redemption fine can be imposed. I find it appropriate to maintain proportionality between the gravity of offence and the extent of revenue implication. Considering the nature of the violation and the principle that redemption fine should not be excessive, the ends of justice would be met if the redemption fine is restricted to 25% of the differential duty.

Imposition of Penalties on M/s Kyna Overseas Pvt. Ltd.

40. As regards imposition of penalty upon M/s Kyna Overseas Pvt. Ltd., I find that by their acts of omission and commission; claiming abatement from the CIF value of the deductions which were not permissible as discussed in details in the foregoing paragraphs of this Order, which has resulted into evasion of Customs duty to the tune of **Rs.4,47,44,103/-**, they have rendered the goods liable to confiscation under Section 113(i) of the Customs Act, 1962. Further, I find that the short paid Customs Duty of **Rs.4,47,44,103/-** is required to be recovered from the Noticee under Section 28(4) of the Customs Act, 1962, thereby have made themselves liable for penalty under Section 114A of the Customs Act, 1962. Further, I find that submission of documents viz. Invoices, Contracts etc., claiming wrongful deduction

knowingly and intentionally to reduce the value of export goods for payment of Export Duty, in order to short payment of export duty have also rendered the Noticee liable for penalty under Section 114AA of the Customs Act, 1962.

Imposition of Penalties on the co-noticee.

41. I also find that **Shri Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt. Ltd.** has knowingly or intentionally either made, signed and used or caused to be made, signed and used, the contracts, invoices and Shipping Bills for export of rice by M/s Kyna Overseas Pvt. Ltd., 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 and C above, contained the declarations made by M/s Kyna Overseas Pvt. Ltd. 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 Shri Vinay Ghanshyam Bhojwani who was handling the day to day business of the export firm. This fact has been admitted by Shri Vinay Ghanshyam Bhojwani in his statements recorded u/s 108 of the Customs Act, 1962. In view of this, I find that Shri Vinay Ghanshyam Bhojwani 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. Shri Vinay Ghanshyam Bhojwani is, therefore, responsible for wilful acts of mis-statement and suppression of facts in respect of export of rice by M/s Kyna Overseas Pvt. Ltd. The act of Shri Vinay Ghanshyam Bhojwani regarding under valuation and mis-declaration of actual transaction value in respect of Shipping Bills filed by M/s Kyna Overseas Pvt. Ltd. has rendered the export goods liable to confiscation under the provisions of Section 113(i) of the Customs Act, 1962.

Further, Sh. Vinay Ghanshyam Bhojwani, Director, in his statement dated 29.11.2023, admitted that the firm bifurcated the negotiated price to exclude the export duty amount from the declared FOB value to "save themselves from payment of some export duty". He acknowledged that this "cum-duty" valuation practice was discontinued by CBIC Circular No. 18/2008-Cus effective from 01.01.2009. Under Section 14(1) of the Customs Act, 1962, the value of export goods must be the "transaction value," i.e., the price actually paid or payable for delivery at the time and place of exportation. By deducting duty amounts or inflating freight, the Noticee failed to declare the true transaction value.

Further, the use of wrong RBI codes (P1306) for "reimbursement of taxes" confirms the intent to keep these payments outside the purview of Customs assessment. This constitutes a deliberate misstatement and suppression of facts with the intent to evade duty. Further, I find that they have suppressed the facts and the mis-declaration of value renders the goods liable to confiscation under Section 113(i). Furthermore, as the mastermind behind the scheme, Shri Vinay Ghanshyam Bhojwani, is liable for penalty under Sections 114(ii) and 114AA.

-:ORDER:-

In view of the above findings, I hereby pass the following order:

- i. **I order to reject** the declared assessable value of Rs.105,71,62,944/- (Rupees One Hundred Five Crores Seventy One Lakh Sixty Two Thousand Nine Hundred Forty Four only) in respect of 100 shipments of rice exported vide Shipping Bills detailed in 'Annexure I, II and III' in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3 (1) ibid and Section 14(1) of the Customs Act, 1962;
- ii. **I order to re-determine the assessable value** in respect of the 100 Shipping Bills detailed in 'Annexure I, II and III', at **Rs.128,08,83,500/-** under the provisions of Section 14(1) of the Customs Act, 1962, read with Rule 3(1) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007;
- iii. **I hereby determine and confirm the demand** of the differential (export) duty amounting to **Rs.4,47,44,103/-** (Rupees Four Crores Forty Seven Lakh Forty Four Thousand One Hundred Three only), as calculated and shown in 'Annexure I, II and III' to the Show Cause Notice, in respect of Shipping Bill filed by them at six different ports under Section 28(8) of the Customs Act, 1962, and order to recover from them, by invoking the extended period of limitation available under the provisions of Section 28(4) of the Customs Act, 1962;
- iv. I order to recover interest on the afore-said total differential duty amount of Rs.4,47,44,103/- from them under the provisions of Section 28AA of the Customs Act, 1962;
- v. I hold the shipments of rice exported vide Shipping Bills detailed in Annexure I, II and III to the SCN having re-determined assessable value of Rs.1,28,08,83,500/-, liable to confiscate under the provisions of Section 113(i) of the Customs Act, 1962. Since the goods are not available for confiscation, I impose the redemption fine of **Rs.1,12,00,000/- (Rupees One Crore Twelve Lakh only)** under Section 125 of the Customs Act, 1962 in lieu of the same;
- vi. I impose a penalty of **Rs.4,47,44,103/-**, upon M/s Kyna Overseas Pvt. Ltd. under section 114A of the Customs Act, 1962;
- vii. I impose a penalty of **Rs.50,00,000/-, (Rupees Fifty Lakh only)** upon M/s Kyna Overseas Pvt. Ltd. under Section 114AA of the Customs Act, 1962;
- viii. I impose a penalty of **Rs.40,00,000/- (Rupees Forty Lakh only)** upon Shri Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt. Ltd. under Section 114(ii) of the Customs Act, 1962;

- ix. I impose a penalty of **Rs.50,00,000/- (Rupees Fifty Lakh only)** upon Shri Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

This Order-In-Original is issued without prejudice to any other action that may be taken against the noticee(s) under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

Digitally signed by

Nitin Saini

Date: 18-03-2026

17:25:08

(Nitin Saini)
Commissioner of Customs,
Custom House, Kandla

F. No. GEN/ADJ/COMM/115/2025-Adjn-O/o Commr-Cus-Kandla

Copy To The Noticee/s:-

1. M/s Kyna Overseas Pvt. Ltd., Sarafa Line, Laxmibai Ward, Gondia, Maharashtra-441614 (Email:kynaoverseaspvtltd@gmail.com)
2. Sh. Vinay Ghanshyam Bhojwani, Director of M/s Kyna Overseas Pvt Ltd, Sarafa Line, Laxmibai Ward, Gondia, Maharashtra- 441614, R/o: Sindhi Colony, Hemu Kalani Chowk, Gondia, Maharashtra, 441601 (Email: bhojwanivinay@gmail.com)

Copy for necessary action to: -

1. The Additional Commissioner (CCO), Customs Ahmedabad Zone, Ahmedabad.
2. The Pr. Commissioner/Commissioner of Customs, Mundra Port, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 (port code INMUN1),
3. The Pr. Commissioner/ Commissioner of Customs, Nhava Sheva-I Jawaharlal Nehru Customs House, Nhava Sheva, Tal: Uran, Dist.- Raigad, Maharashtra-400707 (port code INNSA1),
4. The Pr. Commissioner/Commissioner of Customs (Port) Custom House, 15/1 Strand Road, Kolkata-700001 (port code INCCU1),
5. The Commissioner of Customs, Chennai-IV (Export) Custom House, 60, Rajaji Salai, Chennai-600001 (INKAT1),
6. The Commissioner of Customs, Chennai-II (Import) Custom House, 60, Rajaji Salai, Chennai-600001 (INMAA1),
7. The Director General, Central Economic Intelligence Bureau, 6th Floor, B-

Wing, Janpath Bhawan, Janpath, New Delhi-110001

8. The Assistant Commissioner (TRC), Customs, Kandla.
9. The Assistant Commissioner (EDI), Customs, Kandla.