

	<p align="center">OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS COMMISSIONERATE AHMEDABAD, CUSTOM HOUSE, HAZIRA BY-PASS ROAD, CHORIYASHI AT & POST, HAZIRA, SURAT – 394270.</p>
---	--

PREAMBLE

A	फाइल संख्या / File No.	:	CUS/Hazira/Rishi Industries/2024-25
B	कारण बताओ नोटिस नं. और तारीख Show Cause Notice no. and date	:	CUS/2295/2024-AH-PORT-HZR-CUS-COMMRTE-AHMEDABAD dated 14.08.2024
C	मुल आदेश संख्या / Order-In-Original No.	:	12/ADC/AB/HAZIRA (EXPORT)/2024-25
D	द्वारा पारित आदेश / ORDER PASSED BY	:	Anunay Bhati Additional Commissioner of Customs Hazira Port
E	आदेश तिथि / Date of Order	:	07.03.2025
F	जारी करने की तारीख / Date of Issue	:	07.03.2025
G	DIN Number	:	20250371MN0000333FB2

1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की है।
1. This copy is granted free of charge for the private use of the person to whom it is issued.

२. इस आदेश से अपने को व्यथित महसूस करनेवाला कोई भी व्यक्ति आयुक्त (अपील), सीमा शुल्क, 4th मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद- ३८०००९ के यहाँ अपील कर सकता है। इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर सीमा शुल्क (अपील) नियम, १९६२ के अंतर्गत फार्मस सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोट की स्टाम्प लगा होना चाहिए।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeal), Rules, 1962. The appeal must be filed within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.

३. अपील के साथ निम्नलिखित चीजे संलग्न जाए।

3. The following documents must be enclosed alongwith the appeal.

(क) अपील की प्रति, तथा (a) A copy of the appeal and

(ख) आदेश यह प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोट फी स्टाम्प लगा हो।

(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

४. अपीलीय ज्ञापन के साथ शुल्क भुगतान / जुर्माना / अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।

4. Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 129 of the Customs Act, 1962.

५. अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क (अपील) नि यम, 1982 और सिस्टेट प्रक्रिया (प्रोसीजर) नियम, 1982 के सभी नियमों का पूरा पालन हुआ है।

5. While submitting the Appeal, the Customs (Appeals) Rules, 1982 should be adhered to in all respects.

६. इस आदेश के खिलाफ आयुक्त (अपील) के समक्ष अपील करते समय, शुल्क या शुल्क और जुर्माना विवाद या दंड में हैं, जहां अकेले दंड विवाद में है, जहां विवाद या दंड, में मांग की हैं उस विवाद की रकम के 7.5% के भुगतान करना होगा।

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

Name of the Party:

1. M/s Rishi Industries, 575, Maswad GIDC-2, Halol, Panch Mahals, Gujarat - 389350 (IEC- AIDPV9215B).
2. Shri Raju Vishwakarma, Proprietor of M/s Rishi Industries, S/o Shri Bhagwandas, 37, Piliyakhal, Petrol Pump Ke Samne, Airport Road, Indore - 452005 (MP)
3. M/s Tulsi Logistics, Customs Broker, 303-304, Gunjan Tower, Alembic Gorwa Road, Subhanpura, Vadodara-390023

Brief facts of the case:-

M/s. Rishi Industries (IEC- AIDPV9215B), having registered office at 575, Maswad GIDC-2, Halol, Panch Mahals, Gujarat -389350 (hereinafter referred to as “the exporter” for the sake of brevity) is an exporter and shown thereselves in the shipping bills as manufacturer having GST registration no. 24AIDPV9215B1ZF.

2. The exporter filed following four (4) shipping Bills for the export of NEVILLE WINTHER ACID (Ch. No. 29222190) under dock stuffing at Adani CFS with following details:-

Sr. No.	Shipping Bill No.	Date	Product details	WEIGHT (KGS)	Package
1	6516075	04.01.2024	NEVILLE WINTHER ACID	7500	75 DRM
2	6516070	04.01.2024	NEVILLE WINTHER ACID	6500	65 DRM
3	6562748	06.01.2024	NEVILLE WINTHER ACID	5760	72 DRM
4	6562745	06.01.2024	NEVILLE WINTHER ACID	6000	75 DRM
TOTAL				25760	287

2.1 While the shipping bills were under process of appraising, since the exporter was new, the KYC documents were called for from the CHA at the time of appraising of the Shipping Bills, which the CHA M/s. Tulsi Logistics vide letter dated 06.01.2024 submitted copies of IEC, PAN, Aadhaar, GST Registration Certificate, GSTR-1, Bank details, Rent Agreement alongwith electricity bill, RCMC issued by the CHEMEXCIL, Ahmedabad, ISO 14001:2015 Certificate, etc. The CHA alongwith KYC submitted a letter dated 06.01.2024 stating that they have filed all the above shipping bills on behalf of the exporter M/s Rishi Industries for the export of the aforementioned goods. They further stated that the said exporter, being a new exporter for them, they have scrutinized all the essential documents, however to address any concern and to maintain the integrity of the export process, the cargo of the exporter may be examined thoroughly and if needed, samples of the product may also be drawn.

2.2 The said shipping bills were presented for appraising before the appraising officer on 08.01.2024. In between, this office received a NCTC alerts No. 766/EXP/2023-24 dated 08.01.2024 and No. 769/EXP/2023-24 dated 09.01.2024 identifying above said four shipping bills filed by M/s. Rishi Industries, as risky and directed that this live risky consignment may be examined 100% in conjunction with related documents and further necessary action may be taken in respect of above said consignment. Accordingly, the above shipping bills were taken for examination on spot and live samples of the above said goods were drawn on 11.01.2024 vide Test Memo F.No. CUS/EFS/MISC/222/2023-AH-PORT dated 11.01.2024 with due permission of Assistant Commissioner (Export) and the same were sent to CRCL, Vadodara vide letter F.No. Hazira/Test Report/20-21 dated 24.01.2024 for examination and as the consignment was risky, the consignment was kept at hold till the report was received.

2.3 Further, CRCL, Vadodara vide letter F.No. IV(1)/18-19 dated 25.01.2024 stated that necessary technical literature to examine the live samples of declared product “NEVILLE WINTHER ACID” by the exporter M/s. Rishi Industries is not available at CRCL, Vadodara and it has been suggested by CRCL Vadodara that these live samples may be sent to any other government laboratory. Accordingly vide this office letter dated 29.01.2024, the above said live samples were sent to CRCL, Delhi for test report.

2.4 The CRCL, New Delhi, vide their letter सी.स.35-सी.शु./सी.आर.सी.एल./2023-24 dated 22.03.2024, informed that the test report of the samples has been received from Chemical Examiner Gr-II, CRCL, Delhi – 110012 and it has been mentioned in the said Test report that the sample of the goods/consignment is other than NEVILLE WINTHER ACID as declared by the exporter in their documents submitted to the Customs officers. The relevant abstract of the test report is as under:-

“Report: The sample as received is in the form of off-white powder. It is mainly composed of carbonates of calcium, magnesium along with small amount of siliceous matter, having following composition

% calcium as CaCO3 = 47.70%

% Magnesium as MgCO3 = 42.78%

% Loss on Ignition = 59.38%

It is other than Niville Winther Acid.”

2.4.1 Summary of the test reports for the said shipping bills is as under:

Sr. No.	SB No.	Date	% of CaCO3	% of MgCO3	Loss of ignition	Remarks passed by the CRCL
1	6516075	04.01.24	52.38	46.72	52.97	other than Niville Winther Acid
2	6516070	04.01.24	51.53	45.54	52.94	other than Niville Winther Acid
3	6562748	06.01.24	49.61	41.44	59.17	other than Niville Winther Acid
4	6562745	06.01.24	47.70	42.78	59.38	other than Niville Winther Acid

2.5 Therefore, the goods declared by the exporter M/s. Rishi Industries is different from the goods as per CRCL, Delhi report:-

Sr. No.	Shipping Bill No.	Date	Product declared by the exporter	Product as per CRCL, Report
1	6516075	04.01.2024	NEVILLE WINTHER ACID	other than Niville Winther Acid
2	6516070	04.01.2024	NEVILLE WINTHER ACID	other than Niville Winther Acid
3	6562748	06.01.2024	NEVILLE WINTHER ACID	other than Niville Winther Acid
4	6562745	06.01.2024	NEVILLE WINTHER ACID	other than Niville Winther Acid

3. As the description of goods/consignments declared by the exporter M/s. Rishi Industries in their export documents is different from the description mentioned in the report of CRCL, Delhi the consignments consist of 287 drums liable to be seized under the Customs Act, 1962. These goods, which were to be exported by M/s Rishi Industries (IEC- AIDPV9215B) vide above said 04 Shipping Bills under Dock stuffing were kept on hold in the warehouse of Adani Hazira Port.
4. As per the test reports received from the CRCL, Delhi, the goods attempted for export claiming the export benefits & incentives are actually different from the declared goods i.e. NEVILLE WINTHER ACID. Subsequently, the goods brought by the exporter under 04 shipping bills with following details at Adani CFS were seized under Panchnama dated 25.04.2024 and Seizure Memo dated 25.04.2024. After the seizure, the said goods were handed over to the custodian M/s Adani Hazira Ports Ltd. under Suparatnama dated 25.04.2024 for safe custody-

Sr. No	Shipping Bill No/Date/ Container No.	Description of goods declared in Shipping Bills	Quantity	Weight in KGS	Value as declared by the exporter (in Rs.)
1	6516075 dated 04.01.2024	NEVILLE WINTHER ACID	75 DRM*100	7500 KGS	64,87,815/-
2	6516070 dated 04.01.2024	NEVILLE WINTHER ACID	65 DRM*100	6500 KGS	56,19,465/-
3	6562748 dated 06.01.2024	NEVILLE WINTHER ACID	72 DRM*80	5760 KGS	49,64,850/-
4	6562745 dated 06.01.2024	NEVILLE WINTHER ACID	75 DRM*80	6000 KGS	51,72,750/-
TOTAL				25760 KGS	2,22,44,880/-

5. During the course of investigation, summons were issued to the exporter on 30.04.2024, 08.05.2024 & 20.05.2024 to appear before the Superintendent of Customs on 06.05.2024, 15.05.2024 & 27.05.2024, respectively. The summons were addressed

on the given premises of M/s Rishi Industries, 575, Maswad GIDC-2, Halol, Panch Mahals, Gujarat -389350, and also on residential address of proprietor Shri Raju Vishwakarma, S/o Bhagwandas Vishwakarma, 37, Piliyakhal, Petrol Pump Ke Samne, Airport Road, Indore-452005 (MP) as mentioned on his Aadhaar No. 202862479284. On none of the occasions, they appeared in person before the issuing authority for deposing and for submitting the documents called for.

6. Further, the summon dated 30.04.2024 was issued to the CHA M/s Tulsi Logistics. Statement of Shri Daxesh A Parikh (Mobile No. 9879611409), F-card holder of M/s Tulsi Logistics, Customs Broker, 303-304, Gunjan Tower, Alembic Gorwa Road, Subhanpura, Vadodara-390023, was recorded on 03.05.2024. During the statement, he stated that:

(i) On being asked regarding CHA firm, he replied that he had been running CHA firm in the name of M/s Tulsi Logistics and the office of the said firm is at 303-304, gunjan Tower, Alembic Gorwa Road, Subhanpura, Vadodara-390023. He further informed that the License for Customs Broker was granted to him in the year 2016 by the Customs Department bearing F Card No. F/08/2016 dated 17.05.2016. He further stated that he looked after overall work for his firm viz operations, client interaction, documentation with Customs department, co-ordination with transporters and shipping lines etc.

(ii) On being asked regarding the activities carried out in his firm, he stated that they approach the importer/exporter for Customs clearance of their goods from various Customs formations viz. ICD Varnama, ICD Ankleshwar & Adani Hazira port in Gujarat. Mostly, they get business from references of forwarders/old clients, online inquiries. They also do marketing in open market by themselves.

(iii) On being asked regarding the commodities dealt, he stated that in export and import, they mainly deal with Chemicals, Capital Goods, Foods items, Polymers, etc.

(iv) On being asked regarding CHA charges taken by them, he stated that the CHA (Agency) Charges ranges from Rs. 900 to Rs. 5000 for export/import consignments for 20'/40' container depending upon the parties and number of consignments. Further, he stated that the above said charges do not include C&F charges and Customs duties.

(v) that when any new exporter approaches or they contact any new exporter, first of all, they take KYC documents viz. IEC, PAN, Aadhaar, GST Registration, RCMC, if any, any document for premises etc. After that, they also verify the premises physically by visiting or from their reliable sources. Then, they go for negotiation of the charges. Finally, they give authority letter to work as Customs Broker on behalf of them. Then, they file Shipping bills as per the invoices and other documents provided by them. He further stated that if the exporter is first time exporter, they also explain the rules and regulations regarding customs and ensure to follow the provisions of Customs law.

(vi) On being asked specifically regarding M/s Rishi Industries, 575, Maswad, GIDC-2, Halol -389350 (Gujarat), he stated that they have been contacted by M/s Rishi Industries through mobile by Shri Raju Vishwakarma, Proprietor of M/s Rishi Industries having mobile number 9244257249 on 30.11.2023 first time. He talked to them about export to be done by him. He said that they are manufacturer of chemical goods and are planning to export their goods through Hazira Port. He stated that they have inquired them about their earlier exports and factory stuffing permission and he said that they are first time exporter and they had no stuffing permission. He asked to export the cargo in docks stuffing. Then after, he again contacted in December, 2023 for inquiry regarding other formalities like AD Code registration etc. He stated that they sent their quotation on exporter's email rishiindustries112@gmail.com on 27.12.2023. After little bit negotiation, he sent two export invoices on 01.01.2024 and accordingly they sent checklist to M/s Rishi Industries on 02.01.2024. They filed two shipping bills bearing no. 6516070 & 6516075 both dated 04.01.2024. Simultaneously, they again sent two invoices and its documents for filing further two shipping bills on 02.01.2024. They sent checklists immediately on 02.01.2024. After approval of the checklists, they filed two more shipping bills bearing SB No. 6562745 & 6562748 both dated 06.01.2024.

After filing these four shipping bills, they approached to the Customs department, Hazira Port and produced these four shipping bills for appraising as all

four shipping bills were selected for appraising by the RMS. At the time of producing the shipping bills for appraising, they have also submitted KYC documents vide their letter dated 06.01.2024. And as M/s Rishi Industries was first time exporter and the goods to be exported were chemical goods and could not be verified by seeing simply, they also requested customs to examine the goods thoroughly in terms of Customs Act and also requested the Customs Department to draw samples, if required, in view of the export benefits/incentives claimed by them.

(vii) that they have been contacted by Shri Raju Vishwakarma, Proprietor of M/s Rishi Industries having mobile no. 9244257249.

(viii) On being asked to peruse the Test Reports Lab No. CRCL/29/2617(E), CRCL/29/2618(E), CRCL/29/2619(E) & CRCL/29/2620(E) all dated 22.03.2024 issued by the CRCL, New Delhi and Panchnama dated 25.04.2024, Seizure Memo dated 25.04.2024 & Supratanama dated 25.04.2024, he perused all these documents and put his dated signature on it.

(ix) On being asked, he perused the checklists of Shipping Bill Nos. 6516070, 6516075 dated 04.01.2024 & 6562745, 6562748 dated 06.01.2024 and put his dated signature on it.

(x) On being asked the procedure of preparing checklist for Shipping Bill, he stated that the checklists are prepared through their software Logsys Pro on the basis of the invoices and other relevant documents viz. Tax Invoice, Export Invoice, Packing List & Certificate of Analysis.

(xi) that on perusal of the CRCL reports & Shipping Bill Checklists, it was clear that the physical goods attempted for export were different from the goods declared by the exporter i.e. 'NEVILLE WINTHER ACID'. In this regard, he stated that they have prepared the checklist and filed the shipping bills on the basis of the documents provided by the exporter i.e. M/s Rishi Industries. Further, as the goods were chemical goods which could not be identified and verified by physical examination of the goods, they have also requested to the Customs Department for examination of the goods in terms of Customs Act and to draw samples, if required, before allowing the export.

(xii) that he perused the Customs Brokers Licensing Regulations (CBLR), 2018. On being asked regarding CHA norms followed by them, he stated that they take authorization letters from importers/exporters before filing documents for the clearance of the goods with Customs department. Further, he stated that as per new policy of Government, they have started to maintain the KYC form of their clients. He further stated that they have verified the premises of their client M/s Rishi Industries and have found there that M/s Rishi Industries was working at that premises.

(xiii) that M/s Rishi Industries was explained in detail to comply all the provisions of Customs Act & Rules for export and they were made apprised with all the documentation/ certification for the purpose of import/export, as the case may be, and during giving authority letter, the said exporter was aware about it and has mentioned in the authority letter that they would file correct documents for the products to be exported with invoices & physical cargo and that they themselves will be held responsible for any variation/ violation and CHA will not be held responsible in any form. However, the goods couldn't be identified by mere physical examination as the goods were of chemical nature. Hence, they requested to the Assistant Commissioner, Customs, Hazira vide their letter dated 06.01.2024 to verify the goods in terms of Customs Act & provisions and also to draw samples, if required.

(xiv) that, they were aware regarding their obligatory duty to verify correctness of the Exporter and its functioning address. He stated that they have verified its correctness from IEC, GSTIN, Aadhaar, ISO 14001:2015 Certificate & RCMC issued by the CHEMEXIL, Ahmedabad and they have also verified its premises from leave & License Agreement duly notarized & Electricity Bill provided by them. Further, they have also verified the premises physically by visiting the premises of M/s Rishi Industries, 575, Maswad, GIDC-2, Halol and the said exporter was working at there at the time of their visit.

(xv) On being asked, he stated that transportation was arranged by themselves only. Further he stated that the goods were loaded in four trucks from the address of M/s Rishi Industries i.e. 575, Maswad, GIDC-2, Halol.

(xvi) On being asked regarding details of the payment received from M/s Rishi Industries he stated that they have not received any payments from the said exporter M/s Rishi Industries for the export related work. The payment terms with M/s Rishi Industries was 30 days after generating their invoice. Further, he stated that normally generate their invoice after completion of export procedure.

(xvii) that he again reiterated that they have intimated to the customs authority regarding the fact that the exporter was new and requested to examine the goods in terms of the provisions of Customs Act & Rules.

7. The investigation proceedings revealed that the exporter has attempted to export the goods consist of 287 drums under 04 shipping bills No. 6516075, 6516070, 6562748 and 6562745 valued at Rs. 2,22,44,880/- by mis-declaring the goods as 'NEVILLE WINTHER ACID' but as per the test report of CRCL, New Delhi, the goods were found to be Carbonates of Calcium & Magnesium. Hence, the said goods in the quantity of 25760 kgs valued at Rs. 2,22,44,880/- seized under panchnama dated 25.04.2024, Seizure Memo dated 25.04.2024 and handed over to custodian M/s Adani Hazira Ports Ltd, are liable for confiscation under Sec 113(ja) of the Customs Act, 1962.

8. LEGAL PROVISIONS RELEVANT TO THE CASE:-

8.1 SECTION 113. Confiscation of goods attempted to be improperly exported, etc. - *The following export goods shall be liable to confiscation: -*

“(ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;”.

8.2 SECTION 114. Penalty for attempt to export goods improperly, etc. -

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

8.3 SECTION 11-H. Definitions.—*In this Chapter, unless the context otherwise requires,—*

(a) —illegal export¹ means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force;

8.4 Rule 14(2) of Foreign Trade (Regulation) Rules.—

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods

8.5 SECTION 114AA of the Customs Act, 1962 *Penalty for use of false and incorrect material. -*

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

8.6 SECTION 117: Penalties for contravention, etc., not expressly mentioned -

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

9. In view of the above, a show cause notice bearing F. No. CUS/2295/2024-AH-PORT-HZR-CUS-COMMRTE-AHMEDABAD dated 14.08.2024 issued by the Additional Commissioner of Customs, Adani Hazira Port, as to why:

- (i) The goods totally valued at Rs. 2,22,44,880/- (Rupees Two Crores Twenty Two Lakhs Forty Four Thousand Eight Hundred Eighty only) for M/s Rishi Industries, should not be held liable for confiscation under Section 113(ja) of the Customs Act, 1962,
- (ii) Penalty should not be imposed upon M/s Rishi Industries under Sections 114(iii), 114AA and 117 of the Customs Act, 1962,
- (iii) Penalty should not be imposed upon M/s Tulsi Logistics, CHA under Section 117 of the Customs Act, 1962

DEFENSE SUBMISSION:

10. Shri Saurabh Dixit, Advocate on behalf of M/s Tulsi Logistics, CHA, filed reply to Show Cause Notice vide their letter dated 29.10.2024 and stated that:-

- At the outset, it is submitted that the subject SCNs are ex-facie bad in law and contrary to the correct fact legal position. The same is otherwise vitiated as being biased and purely presumptive. The subject SCNs as such deserve to be dropped/vacated. Any reference to SCN or subject SCN in the present reply may be taken as referring to both the above SCNs s such.
- At the outset, it is clarified that the present noticee does not wish to make any submissions on the grounds, whether there was any misdeclaration on part of the exporter viz M/s. Rishi Industries and whether the allegations made against them are legally tenable or not. The present reply is limited only to the extent of the soul objection raised in the subject sin at para 15 insofar as the present notices concerned to the effect that our client had failed to ensure genuineness of the exporter and had filed the documents for export of misdeclared goods and hence, our client is liable to penalty under section 117 of the Customs Act, 1962.
- That our client had voluntarily informed Customs authorities that they were dealing with this exporter for the first time and since it was a chemical, and being technical in nature, our client being a CHA could not confirm the identity of goods and hence, requested the Customs authorities to draw samples and get it tested if needed.
- Para 15 of the subject SCN tacitly states that our client was not aware about the misdeclaration of goods and there is no evidence of any connivance of the CHA in this regard.
- As such, in the given set of facts and circumstances, and the observation in the subject SCN itself that our client had all along acted under bonafide belief, the limited issue to be decided is whether our client can be penalized under Section 117 on the grounds that they failed to ensure genuineness of exporter and filed documents for exports of mis-declared goods.
- Before proceeding further, the very fact that the subject SCN stands issued to the exporter viz. M/s. Rishi Industries, and the very fact that such exporter was holding valid IEC/PAN/GSTIN/Bank Account/ISO certificate etc. is sufficient to conclude that the said exporter was not a bogus exporter, but a genuine existing entity as such. If the subject SCN considers the exporter to be genuine, by issuing SCN to them, they cannot be presumed to be not genuine when it comes to penal proceedings against our client. The

subject SCN as such self-contradicts itself on this count. Since this is the sole basis to penalize our client, the subject SCN may as such be dropped/vacated in limine.

- The subject SCN too does not find any default or non-compliance on part of our client qua obtaining necessary KYC documents/ undertaking due diligence and informing Customs authorities forthwith regarding need to test the goods etc. That our client had followed all requirements under CBLR to the fullest and no adverse observation is made in the subject SCN in this regard too.
- Coming to the aspect of our client having filed export documents, the same was based on checklist approved by the exporter. It is already on record that our client had cautioned the exporter to file correct details and declarations and any misdeclaration was exclusively on the count of the exporter. In any case, the CHA is not a technically competent person to know the real nature of goods being exported. Despite this, they had informed the Customs out of abundant caution, to examine the goods properly including by way of testing.
- In fact, while the present case stands on a much better footing, since our client had taken all due care and even verified the exporter's premises, the duty of a CHA is confined to obtaining the relevant KYC documents and he cannot be held responsible for not physically verifying the address of the exporter, as per the settled legal position. That we crave leave to refer to and rely upon the following decisions in support of this contention:

- Network Industries Ltd. 2019 (369) E.L.T. 1274 (Tn. - Chennai)
- Monks Shipping & Trading P. Ltd. 2008 (227) E.L.T. 577 (Tn. - Chennai)
- Monks Shipping & Trading P. Ltd. 2015 (317) E.L.T. 3 (Mad)
- Revannath Gabaji Gawade 2007 (211) E.L.T. 432 (Tn. - Mumbai)
- Kunal Travels (Cargo) vs. CC (I & G), IGI Airport, New Delhi [2017 (354) ELT 447 (Del.)].
- Commissioner of Customs vs. Shiva Khurana [2019 (367) ELT 550 (Del.)].
- Nirnesh Suchde vs. Commissioner of Customs, Nhava Sheva [2007 (209) ELT 276 (Tri. - Mumbai)]
- Setwin Shipping Agency vs. Commissioner of Cus. (General), Mumbai [2010 (250) ELT 141 (Tri.-Mumbai)
- Manjulatha Cargo P. Ltd. 2021 (375) E.L.T. 245 (Tn. - Bang.)
- CBEC Circular No. 9/2010-Cus., dated 8-4-2010
- In fact, catena of decisions, especially that in the case of Kunal Travels (supra), has held that it is sufficient if CHA obtains merely IEC, and that per se is sufficient compliance under CBLR on part of the CHA. Also, the Delhi High Court in Shiva Khurana had an occasion to examine the provisions of Regulation 13(o) of the 2004 Regulations, which Regulation is similar to Regulation 10(n) of the Licensing Regulations at present.
- Be that as it may, we crave leave to refer and rely upon the relevant portions of the decision in the case of Perfect Cargo & Logistics 2020 (12) TMI 649 - CESTAT NEW DELHI, which involves similar antecedent circumstances, which was dealt with in detail by the Hon'ble CESTAT in the following manner:
 - Para 6 of the said order contains tabulated CBLR Rule violation, nature of objections, defence raised by CHA, while the present case stands on a much better footing.
 - Para 20 of the said decision essentially raises the same objection that the G Card holder of CHA had never visited the exporter nor he had met the owner and that it was a third person who used to meet the G-Card holder on behalf of the exporter to hand over the papers. There is no such allegation in the present case.
 - While dealing with the issue of violation of Regulation 10(d), more particularly at Para 26, the Hon'ble CESTAT reproduced the relevant portion of the judgment of Hon'ble Delhi High Court, which applies to the present case on all fours. The Hon'ble CESTAT concluded the issue on favour of CHA at Para 27 on that count.

- That while dealing with the issue of violation of Regulation 10(n), the Hon'ble CESTAT at Para 31 to 35, gave detailed findings why such regulation is not violated, while relying upon the CBEC Circular dt.8.4.10 and the judgment of Hon'ble Delhi High Court in the case of Shiva Khurana.
- That as regards vicarious liability on account of the G Card holder's alleged lack of proper diligence, the Hon'ble CESTAT at Para 39 held in favour of CHA.
- The above ruling, being under a worse off situation, still exonerated the CHA, and the same therefore must come to the aid of our client and whole of penalty proposed therefore must be dropped/vacated.
- Also, the issue on hand is squarely covered vide the recent Principal Bench decision in the case of Trinity International Forwarders 2023(8) TMI 133 – CESTAT DELHI as well as in the case of M/s. Baid International Services Ltd. 2023(8) TMI 1056 – CESTAT KOLKATA and Transasia Shipping Services 2023(6) TMI 254 – CESTAT BANGALORE, wherein it was held that penal action cannot lie against the CHA. It was also held that once GST registration is granted, whether with KYC or otherwise, the CHA cannot be found fault with for relying upon identical documents for doing its own KYC for verifying existence of exporter.
- That the Hon'ble CESTAT in the case of Mohak Enterprise vide its final order A / 12637 /2023 dt.21.11.23 has dropped similar penal action against the CHA and this order has also attained finality before Ahmedabad Customs Commissionerate.
- As such, our client cannot be found guilty of not verifying genuineness of exporter, which is well established or filing documents for misdeclared goods, since they only acted in the capacity of CHA and filed documents shared by exporter, which they had reasons to believe were legal and proper. All due diligence was done and even Customs was informed unilaterally by our client, and under the circumstances, in absence of a single violation of Customs Act, 1962 or rules framed thereunder, the entire penal proposal therefore must be dropped/vacated.
- Once it is admitted that the CHA had no knowledge or connivance in misdeclaring or attempting to export misdeclared goods, no penalty including general penalty gets attracted against them in the facts and circumstances of the case.
- That vide the following decisions, a consistent judicial view was taken that penalty, much less under Section 117 of CA, 1962 cannot be imposed on CHA for misdeclaraiton of goods etc. by exporter, since their role is limited to filing papers and nothing beyond it:
 - M/s. Orbit trans express 2024 (5) TMI 77 - Cestat Bangalore
 - Rahul Bhardwaj 2022 (1) TMI 813 - Cestat New Delhi
 - M/s Savithri jewellers Pvt. Ltd., Ms. Deepa s Vernekar, Ms. Shilpa S Vernekar, Roshan S Vernekar, M/s protocol logistics Pvt. Ltd. And Vinay shah 2020 (10) TMI 288 - Cestat Mumbai
- The subject SCN deserves to be dropped/vacated. We reserve our rights to add/alter/amend any of the above submissions at the time of personal hearing, which may please be granted to us in the interest of justice.

PERSONAL HEARING:

11. Personal hearing in this case was fixed on 23.01.2025, 07.02.2025 and 21.02.2025, but no one appeared for personal hearing on behalf of M/s Rishi Industries. Further, Shri Saurabh Dixit, Advocate on behalf of M/s Tulsi Logistics, CHA, attended online personal hearing on 23.01.2025 and reiterated the submission made in the written reply dated 29.10.2024.

DISCUSSION AND FINDINGS:-

12. I have carefully studied the case records. The issues for consideration before me are as follows:

- (i) Whether the goods totally valued at Rs. 2,22,44,880/- (Rupees Two Crores Twenty Two Lakhs Forty Four Thousand Eight Hundred Eighty only) for M/s

- Rishi Industries, are liable for confiscation under Section 113(ja) of the Customs Act, 1962,
- (ii) Whether Penalty is required to be demanded and recovered from M/s Rishi Industries under Sections 114(iii), 114AA and 117 of the Customs Act, 1962,
 - (iii) Whether Penalty is required to be demanded and recovered from M/s Tulsi Logistics, CHA under Section 117 of the Customs Act, 1962

13. Before deciding the issue, I would like to take up the facts of the case before me for the adjudication and thereafter put up which indicate that:

- (i) The exporter M/s. Rishi Industries filed four (4) shipping Bills for the export of NEVILLE WINTHER ACID (Ch. No. 29222190) under dock stuffing at Adani CFS having declared FOB value of Rs. 2,22,44,880/- through their CHA M/s Tulsi Logistics.
- (ii) Since the exporter was new, the KYC documents were called for from the CHA at the time of appraising of the said Shipping Bills. The CHA alongwith KYC documents, submitted a letter dated 06.01.2024 stating that they have filed all the above shipping bills on behalf of the exporter M/s Rishi Industries and also stated that the said exporter, being a new exporter for them, they have scrutinized all the essential documents, however to address any concern and to maintain the integrity of the export process, the cargo of the exporter may be examined thoroughly and if needed, samples of the product may also be drawn.
- (iii) While the shipping bills were under process of appraising, in between, a NCTC alerts No. 766/EXP/2023-24 dated 08.01.2024 and No. 769/EXP/2023-24 dated 09.01.2024 were received, identifying above said four shipping bills filed by M/s. Rishi Industries, as risky and directed that this live risky consignment may be examined 100% in conjunction with related documents and further necessary action may be taken in respect of above said consignment.
- (iv) Therefore, the above shipping bills were taken for examination on spot and live samples of the above said goods were drawn on 11.01.2024 and the same were sent to CRCL, Vadodara for testing and as the consignment was risky, the consignment was kept at hold till the report is received.
- (v) Further, CRCL, Vadodara informed that necessary technical literature to examine the live samples of declared product "NEVILLE WINTHER ACID" is not available at CRCL, Vadodara and it has been suggested by CRCL Vadodara that these live samples may be sent to any other government laboratory. Accordingly, the above said live samples were sent to CRCL, Delhi for test report.
- (vi) The CRCL, New Delhi, vide its letter सी.स.35-सी.शु./सी.आर.सी.एल./2023-24 dated 22.03.2024, informed that the sample of the goods/consignment is other than NEVILLE WINTHER ACID as declared by the exporter in their documents submitted to the Customs officers.
- (vii) The exporter has contravened the provisions of Section 11-H of the Customs Act, 1962 and thus, the goods are liable for Confiscation under Section 113(ja) of the Customs Act, 1962.
- (viii) The exporter has made themselves liable for penalty under Sections 114(iii), 114AA and 117 of the Customs Act, 1962,
- (ix) M/s Tulsi Logistics, CHA made themselves liable for penalty under Section 117 of the Customs Act, 1962

M/s. Rishi Industries :

14. In the present proceeding, I find that the exporter M/s. Rishi Industries did not file any reply, though various opportunities were granted for personal hearing, but the exporter did not avail the same. In view of the above, I am of the view that sufficient opportunities have been granted to the exporter to adhere to the principles of natural

justice. Therefore I proceed to adjudicate the case ex-parte, based on the material available on record, with respect to M/s. Rishi Industries.

15. The subject goods were declared as “NEVILE WINTHER ACID” in the subject Shipping Bills. It is fact forthcoming from the records that subject goods which was chemically examined and as per Test Report described that ***the sample as received is in the form of off-white powder. It is mainly composed of carbonates of calcium, magnesium along with small amount of siliceous matter, It is other than Niville Winther Acid.***”

16. It is fact on record, established by the subject Chemical Test Reports that the subject goods are not NEVILE WINTHER ACID. It has been noticed that at no point of time, the exporter has disclosed full, true and correct information about the nature of goods, or intimated the department. It has come to the notice only after Customs based examination and CRCL test report. From the evidences, it appears that the said exporter has knowingly suppressed the facts regarding nature of goods. Thus, it is understood that there is a deliberate withholding of essential and material information from the department about the nature of goods. It is seen that this material information has been deliberately, consciously and purposefully suppressed to evade scrutiny of impending export goods.

17. From the facts on record, I find that the subject goods have been mis-declared both in its description and classification in the subject Shipping bills. Thus, the provisions of Section 113(ja) of the Customs Act, 1962, are attracted in the subject matter. I, thereby hold that the subject goods shall be liable to confiscation under Section 113(ja) of the Customs Act, 1962.

18. Further, in respect of the exporter M/s Rishi Industries, suppression of facts are so glaring, as unearthed from the investigation conducted, backed by the expert evidence in the form of CRCL Chemical Test Reports, I hold that this connivance and conspiracy to contravene the Customs Act, 1962 and failure to comply with the Customs scheme of law and procedure calls for imposition of penalties as proposed in subject SCN. Thereby, I find this a fit case for invocation of penalties.

19. M/s Rishi Industries’s act as discussed in the aforementioned Discussion and Findings has rendered the subject goods liable to confiscation under Section 113 of the Customs Act and thereby it shall be liable to a penalty not exceeding the value of the goods, as declared by the exporter, as per Section 114(iii) of the Customs Act. **The penalty under Section 114(iii) of the Customs Act is a mandatory penalty automatically attracted once the subject goods are rendered liable to confiscation under Section 113 of the Customs Act.** The plain reading of the provision of the Section 114 of the Customs Act established a mandatory penalty once the said goods are rendered liable to confiscation under Section 113 of the Customs Act. I hold that Section 114(iii) of the Customs Act is outrightly attracted in pursuance to the goods rendered liable to confiscation under Section 113 of the Customs Act. The role of M/s Rishi Industries in this fraudulent activity as the exporter and its statutory breach rendering the subject goods liable to confiscation under Section 113 of the Customs Act calls for imposition of penalty equal to the value of subject goods.

20. Further, penalty under Section 117 of the Customs Act is invoked in subject SCN on M/s Rishi Industries. This penalty is for contravention of any provisions of Customs Act, or abetting any such contravention or who fails to comply with any provisions of Customs Act and where no express penalty is elsewhere provided for such contravention. During the course of Investigation, it is fact on record that M/s Rishi Industries, the exporter contravened the provisions of Customs law and procedure. I find that M/s Rishi Industries has failed in its duty to comply with the provisions of Customs law and procedure. Thereby I hold that penalty under Section 117 is to be invoked in subject matter.

21. I find that as per Section 114AA of the Customs Act, 1962- *“If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.”*

Thus, the exporter M/s Rishi Industries willingly, knowingly and deliberately made false declaration and hence, made themselves liable for penalty under Section 114AA of the Customs Act, 1962.

22. Accordingly, in view of the material on record, nothing much is left for discussion and thus, I find that the exporter is guilty and deserves suitable penal action as per the Customs Act, 1962 as discussed in above paras.

M/s Tulsi Logistics :

23. Further, M/s Tulsi Logistics, CHA vide their defense reply have stated that they filed export documents based on checklist approved by the exporter M/s Rishi Industries. M/s Tulsi Logistics also stated that they had cautioned the exporter to file correct details and declarations and any misdeclaration was exclusively on the count of the exporter. Further, they stated that the CHA is not a technically competent person to know the real nature of goods being exported. Despite this, they had informed the Customs to examine the goods properly including by way of testing vide letter dated 06.01.2024. They also stated that they had taken all due care and even verified the exporter's premises, the duty of a CHA is confined to obtaining the relevant KYC documents and CHA cannot be held responsible for not physically verifying the address of the exporter. Further, they had stated that they cannot be found guilty of not verifying genuineness of exporter or filing documents for misdeclared goods, since they only acted in the capacity of CHA and filed documents shared by exporter, which they had reasons to believe were legal and proper. All due diligence was done and even Customs was informed unilaterally by M/s Tulsi Logistics, CHA. Further, in support of their contention, they placed reliance on the following judgments:

- Network Industries Ltd. 2019 (369) E.L.T. 1274 (Tn. - Chennai)
- Monks Shipping & Trading P. Ltd. 2008 (227) E.L.T. 577 (Tn. - Chennai)
- Monks Shipping & Trading P. Ltd. 2015 (317) E.L.T. 3 (Mad)
- Revannath Gabaji Gawade 2007 (211) E.L.T. 432 (Tn. - Mumbai)
- Kunal Travels (Cargo) vs. CC (I & G), IGI Airport, New Delhi [2017 (354) ELT 447 (Del.)].
- Commissioner of Customs vs. Shiva Khurana [2019 (367) ELT 550 (Del.)].
- NirneshSuchde vs. Commissioner of Customs, Nhava Sheva [2007 (209) ELT 276 (Tri. - Mumbai)]
- Setwin Shipping Agency vs. Commissioner of Cus. (General), Mumbai [2010 (250) ELT 141 (Tri.-Mumbai)
- Manjulatha Cargo P. Ltd. 2021 (375) E.L.T. 245 (Tn. - Bang.)
- CBEC Circular No. 9/2010-Cus., dated 8-4-2010
- Perfect Cargo & Logistics 2020 (12) TMI 649 - CESTAT NEW DELHI,
- Trinity International Forwarders 2023(8) TMI 133 – CESTAT DELHI
- M/s. Baid International Services Ltd. 2023(8) TMI 1056 – CESTAT KOLKATA
- Transasia Shipping Services 2023(6) TMI 254 – CESTAT BANGALORE
- M/s. Orbit trans express 2024 (5) TMI 77 - Cestat Bangalore
- Rahul Bhardwaj 2022 (1) TMI 813 - Cestat New Delhi
- M/s Savithri jewellers Pvt. Ltd., Ms. Deepa s Vernekar, Ms. Shilpa S Vernekar, Roshan S Vernekar, M/s protocol logistics Pvt. Ltd. And Vinay shah 2020 (10) TMI 288 - Cestat Mumbai

23.1 The Hon'ble High Court of Delhi in Commisssioner of Customs vs Shiva Khurana in CUSAA 45/2017 held that, "7. *The reference to the verification of "antecedents and correctness of Importer Exporter Code (IEC) Number" and the identity of the concerned exporter/importer, in the opinion of this Court is to be read in the context of the CHA's duty as a mere agent rather than as a Revenue official who is empowered to investigate and enquire into the veracity of the statement made orally or in a document. If one interprets Regulation 13(o) reasonably in the light of what the CHA is expected to do, in the normal course, the duty cast is merely to satisfy itself as to whether the importer or exporter in fact is reflected in the list of the authorized exporters or importers and possesses the Importer Exporter Code (IEC) Number. As to whether in reality, such exporters in the given case exist or have shifted or are irregular in their dealings in any*

manner (in relation to the particular transaction of export), can hardly be the subject matter of "due diligence" expected of such agent unless there are any factors which ought to have alerted it to make further inquiry. There is nothing in the Regulations nor in the Customs Act which can cast such a higher responsibility as are sought to be urged by the Revenue. In other words, in the absence of any indication that the CHA concerned was complicit in the facts of a particular case, it cannot ordinarily be held liable."

23.2 Further as per CBIC Instruction No. 20/2024-Customs dated 03.09.2024 with the Subject: Implicating Customs Brokers as co-noticee in cases involving interpretative disputes-

"2. ... Customs Brokers Licensing Regulations, 2018 (CBLR, 2018) regulates provisions for action to be initiated against Custom Brokers for lapses on their part. Therefore, proceedings contemplated against a Customs Broker should be done as per the provisions contained in the CBLR, 2018 and must be distinguished from the proceedings for demand of duty/interest/imposing penalty under Customs Act, 1962. The competent authority must ensure the strict compliance of detailed procedure and timelines as prescribed under Regulation 16 and 17 of CBLR, 2018 while contemplating any action against a Customs Broker under CBLR, 2018.

3. Pr. Bench of CESTAT, New Delhi in its Study Report on the Final Orders has also highlighted that the offence report sent by the organization booking such offence case should clearly contain the role played by the Custom Broker in the offence case. The Custom Broker being a Co-noticee in the offence case under Customs Act 1962 has to be linked to the proceedings initiated against the Custom Broker under CBLR, 2018. In these Offence cases, it is necessary to prove the element of 'abetment' of Custom Broker in the offence.

4. Accordingly, implicating Customs Brokers as co-noticee in a routine manner, in matters involving interpretation of statute, must be avoided unless the element of abetment of the Customs Brokers in the investigation is established by the investigating authority. Further, the element of abetment should be clearly elaborated in the Show Cause Notice issued for the offence case under the provisions of the Customs Act, 1962. Further, as regard the suspension of licenses of Customs Brokers, Instruction No. 24/2023 dated 18/07/2023 shall continue to be followed."

23.3 In respect of the penalty imposed on M/s Tulsi Logistics, CHA under Section 117 of the Customs Act, I find that there is no evidence of the CHA having acted in aid of misdeclaration of the goods. Their job was to verify the particulars with reference to the relevant invoices, and this was, admittedly, done. It was beyond the scope of the CHAs function to identify as to whether the goods were misdeclared goods. Therefore, there can be no finding that the CHA rendered the goods liable to confiscation under Section 113 by abetting misdeclaration of the goods. Their function was to verify the correctness of the particulars mentioned in the Shipping Bill and the declarations attached thereto. This scrutiny was done by them with reference to the particulars borne on the relevant invoices. The CHAs function, in so far as the declared particulars in Shipping Bill are concerned. There is no evidence, on record, of the CHA having abetted the alleged offences of the exporter.

24. In view of above discussion and findings, I pass the following order:-

ORDER

- (i) I order absolute confiscation of the subject goods totally valued at Rs. 2,22,44,880/- (Rupees Two Crores Twenty Two Lakhs Forty Four Thousand Eight Hundred Eighty only) under the provisions of Section 113(ja) of the Customs Act, 1962.
- (ii) I order to impose a penalty of Rs. 2,22,44,880/- (Rupees Two Crores Twenty Two Lakhs Forty Four Thousand Eight Hundred Eighty only) on M/s Rishi Industries under the provisions of Section 114(iii) of the Customs Act, 1962.
- (iii) I order to impose a penalty of Rs. 4,00,000/- (Rupees Four Lakhs only) on M/s Rishi Industries under the provisions of Section 117 of the Customs Act, 1962.

- (iv) I impose a penalty of Rs.5,00,00,000/- (Rupees Five Crores only) on M/s Rishi Industries under the provisions of Section 114AA of Customs Act, 1962;
- (v) I refrain from imposing penalty on M/s Tulsi Logistics, CHA under the provisions of Section 117 of the Customs Act, 1962 for the reasons discussed above.



(Anunay Bhati)

Additional Commissioner of Customs,
Adani Hazira Port, Hazira, Surat

BY SPEED POST A.D.

F. No. CUS/Hazira/Rishi Industries/2024-25/1259

Dated: 07.03.2025

DIN: 20250371MN0000333FB2

To,

1. M/s Rishi Industries, 575, Maswad GIDC-2, Halol, Panch Mahals, Gujarat - 389350 (IEC- AIDPV9215B)
2. Shri Raju Vishwakarma, Proprietor of M/s Rishi Industries, S/o Shri Bhagwandas, 37, Piliyakhal, Petrol Pump Ke Samne, Airport Road, Indore -452005 (MP)
3. M/s Tulsi Logistics, Customs Broker, 303-304, Gunjan Tower, Alembic Gorwa Road, Subhanpura, Vadodara-390023

Copy to:

- 1) The Principal Commissioner of Customs, Navrangpura, Ahmedabad, Gujarat.
- 2) The Deputy Commissioner (Export), Customs, Adani Hazira Port, Hazira.
- ✓ 3) The Deputy/Assistant Commissioner, HQ Systems, Customs Ahmedabad, for uploading on the official website.
- 4) Guard File.