



सीमा शुल्क) निवारक (के आयुक्त का कार्यालय, सीमा शुल्क भवन,  
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,  
जामनगर) गुजरात – (361 001)

Office of the Commissioner of Customs (Preventive),  
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,  
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001  
**Email:** commr-custjmr@nic.in; adj-custjmr@nic.in

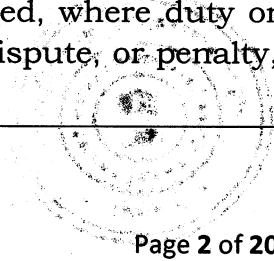
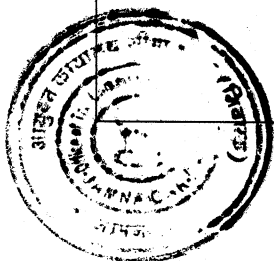
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| 1. | फ़ाइल क्रमांक/ File Number                                            | F. No. CUS/18763/2025-Adjn                                                                                                                  |
| 2. | मूल आदेश क्रमांक/<br>Order-in-Original No.                            | 02/Additional Commissioner/ 2026-27                                                                                                         |
| 3. | द्वारा पारित/ passed by                                               | P. B. MEENA<br>अपर आयुक्त/ Additional Commissioner,<br>सीमा शुल्क, निवारक/Customs (Preventive)<br>जामनगर/ Jamnagar.                         |
| 4. | Date of Order /आदेश दिनांक                                            | 15.06.2026                                                                                                                                  |
|    | Date of issue / आदेश जारी किया                                        | 15.06.2026                                                                                                                                  |
| 5. | कारण बताओ नोटिस क्रमांक एवं दिनांक<br>Show Cause Notice Number & Date | SCN Waived. OIO No 09/ADC/2022-23<br>Dated 28.11.2022.<br>[Matter Remanded vide OIA No.JMN-CUSTM-000-APP-001 to 003-25-26 dated 11.04.2025] |
| 6. | नोटिसी का नाम/<br>Name of Noticee                                     | M/s. Omkar Shipping<br>M/s. Green Exim<br>M/s. Ruchi Agricom India Pvt. Ltd.                                                                |

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| 01. | इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है।<br>The original copy of this order is provided free of cost to the person concerned. |
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| 02. | इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, 1962की धारा 128A)(1)a सीमा शुल्क )अपील (नियम, 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। )जिनमें से कम से कम एक प्रमाणित प्रति हो |
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| <br>अधीनस्थ (अपील)<br>अधीनस्थ मंजिल, हडको भवन,<br>अधीनस्थ भुवन रोड, नवरंगपुरा<br>अहमदाबाद – 380 009 | Commissioner (Appeals),<br>4th Floor, HUDCO Building,<br>Ishwar Bhuvan Road,<br>Navrangpura,<br>Ahmedabad – 380 009 |
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|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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|     | Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above-mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy). |
| 03. | अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये ) 0.50 पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।                                                                                                                                                                  |
|     | The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.                                                                                                                                                                                            |
| 04. | अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।                                                                                                                                                                                                                                                                                                                                         |
|     | 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 128 of the Customs Act, 1962.                                                                                                                                                                                                                                                                                                                   |
| 05. | अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क )अपील) नियम, 1982 और सिस्टेट प्रक्रिया) प्रोसीजर (नियम, 1982 के सभी नियमों का पूरा पालन हुआ है।                                                                                                                                                                                                                                                                                                                                                                                   |
|     | While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.                                                                                                                                                                                                                                                                                                                                                                                           |
| 06. | इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।                                                                                                                                                                                                                                                                    |
|     | An appeal, against this order shall lie before the Commissioner (Appeals), 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.                                                                                                                                                                                                                                                                                            |



**BRIEF FACTS OF THE CASE:**

The present proceedings arise pursuant to Order-in-Appeal No. JMN-CUSTM-000-APP-001 to 003-25-26 dated 11.04.2025 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. The briefly stated facts of the case are as under:

On the basis of the intelligence gathered by the HQ Preventive Wing of Customs (Preventive), Jamnagar that M/s Green Exim, IEC No. DFJPG4288F situated at 707, Basera Hights, Fatehabad Road, Agra, Uttar Pardesh-282006 (hereinafter referred as 'the exporter-1') and M/s. Ruchi Agricom (hereinafter referred as 'the exporter-2') was indulged in the export of Broken rice falling under the category of Prohibited goods as per DGFT Notification no. 10/2015-20 dated 24.05.2022 from the Porbandar Port with the connivance of CHA/Shipping Agent, M/s Omkar Shipping having CHA Code-AABF01171HCH004 situated at Ganar Quarter Port Area Bunder Road, Porbandar (hereinafter referred as 'the CHA cum Shipping Agent'), the officers of Customs (Preventive), Jamnagar visited the Porbandar Port on 24.10.2022. During Panchnama proceedings drawn on date 24.10.2022, the following facts emerged:

- (i) Goods were being loaded in two country crafts i.e. MSV Anjali Puja PBR3798 and MSV-AL Mehraab BDI-1448 which were to be exported by M/s Green Exim (hereinafter referred as the Exporter-1).
- (ii) Another country craft, third one i.e. MSV Madina Zulficar Bdi-288 was found already loaded with the goods to be exported and was anchored away from the Porbandar Port Jetty which was to be exported by M/s Ruchi Agricom Pvt. Ltd. (hereinafter referred as 'the Exporter-2').
- (iii) M/s. Omkar Shipping, Customs Broker for M/s Green Exim and M/s Ruchi Agricom Pvt. Ltd. and Shipping agent for the three vessels was looking after the customs clearance procedure in respect of the export consignments of the Exporter - 1 & Exporter - 2, of which the goods to be exported were either loaded or was being loaded in the vessels, on behalf of both the said exporters.
- (iv) The said Customs Broker cum Shipping Agent did not apply/ask for the registration of the goods to be exported, which were loaded/being loaded in the said Country Craft Vessels berthed at Porbandar Jetty/Anchored near the Customs Office before starting the loading procedure of the goods.
- (v) The goods were loaded without the supervision of proper officer.



- (vi) The goods were loaded without any examination or granting of LEO by the proper officer.

**2.1** Further, examinations of the goods were also carried out under Panchnama drawn on date 25.10.2022. The said goods along with 03 nos. of Vessels (as mentioned in table here below) were seized vide Seizure Memo Cum No Objection for Provisional Release dated 26.10.2022 read with Addendum to Seizure Memo Cum No Objection for Provisional Release dated 28.10.2022, in terms of Section 110 of Customs Act, 1962 on reasonable belief that the same is liable for confiscation under Section 113(f), 113(g) and 115(2) of Customs Act, 1962.

| Sr. No. | Name of Vessel                 | Value of Vessel (In Rs.) | Name of Exporter                         | Value of Rice (In Rs.) |
|---------|--------------------------------|--------------------------|------------------------------------------|------------------------|
| 1       | MSV AL MEHRAB<br>BDI-1448      | 5,75,00,000              | M/s. Green Exim                          | 2,40,92,985            |
| 2       | MSV ANJALI PUJA<br>PBR-3798    | 3,00,00,000              | M/s. Green Exim                          | 2,21,44,080            |
| 3       | MSV MADINA<br>ZULFICAR BDI-288 | 2,72,00,000              | M/s. Ruchi<br>Agricom<br>India Pvt. Ltd. | 2,03,36,400            |
|         | TOTAL                          | 11,47,00,000             |                                          | 6,65,73,465            |

During the examination, the goods were found as declared (i.e. Non-Basmati Parboiled Rice CTH-10063010) in the respective 07 Shipping Bills filed by the CHA cum Shipping Agent on behalf of the said Exporter-1 and Exporter-2, which were neither subjected to any prohibition or restriction for export.

**2.2** During investigation, it was observed that –

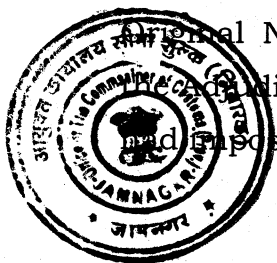
- (i) M/s Omkar shipping was handling the work of CHA for M/s Ruchi Agricom Pvt. Ltd. and M/s Green Exim. They were also the Shipping agents/forwarders of 03 vessels through which the goods to be exported, were loaded. The loading of the said goods was being carried out on the instructions of Shri Jitendra Shial, Partner in the firm, M/s. Omkar Shipping. On examination of goods during the investigation, goods loaded in the above said 03 Country Craft Vessels were found to be “Non-Basmati Parboiled Rice”, which was neither prohibited nor restricted and accordingly found to be declared appropriate in the Shipping Bills. Moreover, M/s. Omkar Shipping, being Customs House Agent for the Exporters and Shipping Agent/Forwarder for the vessels also was responsible for handling all the customs clearance procedure for goods to be exported and customs clearance of the vessels i.e. for filing of shipping documents, obtaining entry inward/outward for vessels, submissions of



documents on behalf of Exporters and vessels, getting the goods examined from the Proper Officer of Customs, Obtaining Let Export Order and permission for loading of goods to be exported, etc.

- (ii) M/s. Omkar Shipping (the CHA cum Shipping Agent) has contravened the provisions of Section 34 and 51 of the Customs Act, 1962 by way of loading the goods i.e. Non-Basmati Parboiled Rice to be exported by M/s. Ruchi Agricom Pvt. Ltd. and M/s. Green Exim into the vessels without the supervision of proper officer as required under Section 34 of Customs Act, 1962 and without obtaining the order permitting clearance and loading of the goods for exportation by the proper officer as prescribed under Section 51 of Customs Act, 1962. Accordingly, it appeared that the said act primarily made the goods liable for confiscation under Section 113 (f) and Section 113 (g) of the Customs Act, 1962. Further, for this act of omission and commission, M/s. Omkar Shipping as well as the exporters appeared to have rendered themselves liable for penalty under Section 114 (iii) of the Customs Act, 1962.
- (iii) The goods loaded in the vessels were in contravention of Section 113(f) and 113(g) and can be considered to be falling in the category of 'smuggled goods' as defined under Section 2 (39) of the Customs Act, 1962. Further, Tindels of the vessels were also required to check the shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the Proper Officer before loading of the goods in-to the vessels which they did not do so and accordingly appeared to have contravened the provisions of Section 40 of the Customs Act, 1962. Thus, the act of omission and commission appeared to have rendered the vessel liable to confiscation under Section 115 (2) of the Customs Act, 1962. Further, for this act of omission and commission, the Masters/Tindels of the vessel appeared to have rendered themselves liable for penalty under Section 114 (iii) of the Customs Act, 1962.

**2.3** Thereafter, M/s. Omkar Shipping as authorized representative on behalf of exporters, vessels owners, Tindels requested for waiver of Show Cause Notice as well as personal hearing and sought spot adjudication in the subject matter. The Additional Commissioner of Customs (Preventive), Jamnagar (hereinafter referred to as 'the Adjudicating Authority') had considered the request for waiver of show cause notice as well as personal hearing and decided the case vide Order-in-Original No. 09/Additional Commissioner/2022-23 dated 28.11.2022; wherein the Adjudicating Authority considering the facts of the case and records available imposed penalty of:



- (a) Rs.10,000/- (Ten thousand rupees only) upon shri Juber Abdulkadar Ker, Tindal of the vessel MSV ANJALI PUJA PER-3798, under Section 117 of the Customs Act, 1962.
- (b) Rs.10,000/- (Ten thousand rupees only) upon shri Murtaza Akbar Bhaya, Tindal of the vessel MSV AL MEHRABBDI 1448, under Section 117 of the Customs Act, 1962.
- (c) Rs.10,000/- (Ten thousand rupees only) upon Shri Yunus Talab Ker, Tindal of the vessel MADINA ZULFIKAR BDI288, under Section 117 of the Customs Act, 1962.
- (d) Rs.25,000/- (Twenty-five Thousand rupees only) upon Shri Jitendera Shial, Partner of M/S. Omkar Shipping, CHA/Shipping Agent, under Section 117 of the Customs Act, 1962.
- (e) Rs.50,000/- (Fifty Thousand rupees only) upon M/s. Omkar Shipping, CHA/Shipping Agent, under Section 117 of the Customs Act, 1962.

3. Aggrieved by the aforesaid Order-in-Original No.09/Additional Commissioner/2022-23 dated 28.11.2022, the Department preferred an appeal before the Commissioner of Customs (Appeals), Ahmedabad observing that the order was not proper and deserves to be quashed and set aside/ modified to the extent as it had held that:

- (i) the confiscation of the goods under Section 113(f) and 113(g) of the Customs Act, 1962 was not warranted in the instant case;
- (ii) the penalty under Section 114 (iii) of the Customs Act was not required to be imposed on the Customs Broker, M/s. Omkar Shipping; and
- (iii) the penalty on the Exporters under Section 114 (iii) of the Act was not warranted.

4. The Appellate Authority i.e. the Commissioner of Customs (Appeals), Ahmedabad vide Order-in-Appeal No. JMN-CUSTM-000-APP-001 to 003-25-26 dated 11.04.2025 has remanded the matter for fresh adjudication on the basis of following observations:

*"7.2 On the other hand, the Respondent No. 2 has submitted that the Customs Broker representative Shri Kamlesh Lodhari on arrival of cargo in trucks had intimated to the Proper officer on his mobile number and further requested for the examination of the goods in respect of various Shipping Bills on 18.10.2022, 22.10.2022 and 23.10.2022, to which the said officer had agreed for examination on 24.10.2022 and the Proper Officer after examination of goods had orally granted permission as per prevailing practice to load the goods on respective vessels. Therefore, loading of the*

goods was started under supervision of the proper officer of the Customs. These exercises were done as per Para 8.6 of Chapter 1 and Para 18, and 22 of Chapter 3 of the CBEC's Customs Manual except endorsement of "Shipped on Board" on Shipping Bills in EDI systems by the officer but definitely with oral orders. Furthermore, the respondent has emphasized on WhatsApp chat messages and CCTV footage to support their claim that the examination of goods was conducted by the proper officer.

7.3 It is observed that the contentions raised by the Respondents, as cited in the foregoing paragraph, were not brought forth or contested during the course of the adjudication proceedings. Furthermore, it is noted that, during the said proceedings, the Custom Broker cum Shipping Agent on behalf of the Respondent No. 01 & Respondent No. 02 expressly waived the requirement of issuance of a Show Cause Notice as well as the opportunity for a personal hearing. Consequently, the impugned order was passed by the adjudicating' authority on the basis of facts available on record.

7.4 In view of the foregoing, and given that the contentions now, raised by the respondents were neither submitted to nor considered by the adjudicating authority, as is evident from the findings recorded in the impugned order, I am of the considered opinion that the contentions raised by the Respondents, as noted in the preceding paragraph, require examination by the adjudicating authority on the principles of natural justice.

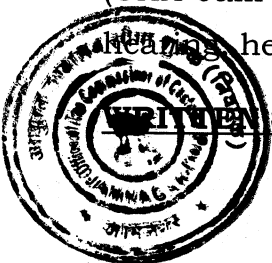
8. In view of the foregoing facts narrated in the foregoing paras, the matter is hereby remanded to the Adjudicating Authority for fresh adjudication without going into the merits of the case, with a direction to duly consider the contentions raised by the Respondents during the course of the appellate proceedings and pass speaking order following principles of natural justice."

In the backdrop of above facts, I proceed to decide the case under remand proceedings by following principle of natural justice.

**RECORDS OF PERSONAL HEARING:**

5. Personal hearing in the matter was held on 17.12.2025. Shri P. D. Rachchh, Advocate, appeared for hearing on behalf of the M/s. Omkar Shipping (CHA-cum-Shipping Agent) and the M/s. Ruchi Agricom. During the personal hearing, he reiterated the submission made on 04.10.2025 and on 30.10.2025.

**WRITTEN SUBMISSION:**



6. The Customs Broker/Shipping Agent and the Exporters through their Authorized Representative filed their submission dated 04.10.2025, and 30.10.2025, wherein they stated as under:

- They filed cross objections against the appeals filed by the department before the Commissioner (Appeals), Customs, Ahmedabad, and made submissions in the cross objections, that goods were not liable to confiscation under Section 113(f) & Section 113(g) of the Customs Act, 1962 nor any penalty was imposable upon them under any of the Section not to speak of Section 114(iii) of the Customs Act, 1962 as proposed in the appeals filed by the department nor under Section 117 of the Customs Act, 1962. They further submitted that since goods were not liable to confiscation under any of the clause not to speak of clause (f) and (g) of Section 113 of the Customs Act, 1962, no penalty was imposable under Section 114(iii) of the Customs Act, 1962.
- They again, submitted that as such no-show cause notice was issued in the matter inter alia stating grounds for proposing confiscation of goods as well as imposition of penalty. Further the learned Commissioner while authorizing for filing of appeal no grounds were stated for imposition of penalty under Section 114(iii) of the Customs Act, 1962 except allegation at para 9,2 of the authorization to file an appeal. It is submitted that penalty under Section 114(iii) of the Customs Act, 1962 was not imposable in the facts and circumstances of the case. As penalty under clause (iii) of Section 114 of the Customs Act, 1962 can be imposed only when goods are not prohibited and not dutiable. If the goods are prohibited then penalty under clause (i) of Section 114 can be imposed and in case of dutiable goods penalty under clause (ii) of Section 14 can be imposed. Penalty under clause (iii) of Section 114 can be imposed only in case of non-dutiable goods which are not specified under the second schedule to the Customs Tariff Act, 1975 and on which no duty is leviable.
- Here the exported goods viz. "Rice" entered into shipping bills were dutiable goods. The rates of export duty were notified under Second Schedule of Export Tariff. Though, there was no rate of export duty for Rice in respect of all other goods which are not covered under column (2) of the Schedule, the rate of duty shall be "NIL". It means "Rice" is dutiable goods but rate of duty is NIL. "Dutiable Goods" is defined at Section 2(14) of the Customs Act, 1962, which reads as under: "Dutiable Goods" means any goods which are chargeable to duty and on which duty has not been paid.



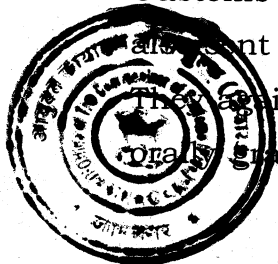
Under Section 12 of the Customs Act, 1962 Dutiable Goods - Charging Section provides that except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such

rates as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from India.

- Thus, though export duty was leviable on "Rice" as per the schedule rate for the Rice is Nil. Therefore, Rice is dutiable goods and penalty if any imposable can be imposed under clause (ii) of Section 114 and not under clause (iii) of Section 114 of the Customs Act, 1962.
- As per clause (ii) of Section 114 ibid, the case of dutiable goods, other than prohibited goods, penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher is imposable. Since, in the instant case there was Nil rate of duty so at the most penalty of Rs. 5,000/- is imposable and no penalty can be imposed under Section 117 of the Customs Act, 1962.

7. On 30.10.2025, they contested the issue with further submission as under:

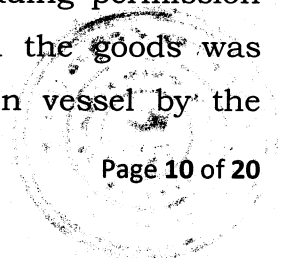
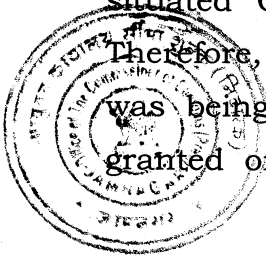
- Impugned review order was passed without appreciating the facts discussed on para supra as well as documentary evidence in the form of correspondence/emails etc. available on record i.e. original case file but only on the basis of what is written/ narrated in the Order-in-Original. The sole ground to review impugned Order was that goods were loaded without the supervision of proper officer and also the goods were loaded without examination or granting LEO by the proper officer is totally baseless and contrary to documentary evidence and correspondence exchanged with the investigative team and Additional Commissioner. The goods were examined and loaded in the vessel as per oral permission granted by the proper officer. Therefore, there was no violation of any of the provisions of the Customs Act, 1962 not to speak of Section 34 and Section 51 of the Customs Act, 1962. Thus, goods were not liable for confiscation under Section 113(f) and Section 113(g) of the Customs Act, 1962 nor respondent was liable to penalty under Section 114(iii) of the Customs Act, 1962.
- They again submitted that it is not a matter of dispute that it had filed 7 check lists for Shipping Bills in EDI System for export of non-basmati parboiled rice and on arrival of goods in the port it had submitted Gate Passes with details inter alia like bearing serial Number, Date, Number of Packages, Description of Goods, Truck Number, Shipping Bills Numbers and Date, name of vessel, Exporter's name as per prevailing practice to the Officer of the Customs, Port Officer and also informed proper officer of Customs about filing of Shipping Bills and examination of goods etc. and sent text message in whatsapp to the proper officer.



in deposited that the Proper Officer after examination of goods had granted permission as per prevailing practice to load the goods on

respective vessels. Therefore, loading of the goods were started under supervision of the proper officer of the Customs. These exercises were done as per Para 8.6 of Chapter 1 and Para 18, 19, 20.2 and 22 of Chapter 3 of the CBEC's Customs Manual except endorsement of "Shipped on Board" on Shipping Bills in EDI systems by the officer but definitely with oral orders.

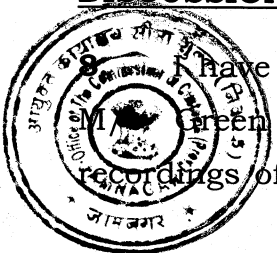
- They submitted that the loading of goods in each vessel takes around six days. Since, there was no space or warehouse to store the goods at the Custom House, Porbandar, on arrival of the trucks intimation was given to the proper officer on duty at the Custom House, Porbandar and examination of goods was carried out either on truck and oral orders were made for loading of the goods on vessels not only in the instant cases but also in all the cases of export from Custom House Porbandar as per prevailing practice.
- The Proper officer who was present at Custom House, Porbandar had noted down the details of cargo in the diary maintained by him about examination etc and permitted to load the goods on vessel on being satisfied about the cargo as per declaration made in the Shipping Bills.
- That Porbandar Port CCTV Footage also clearly shows arrival of the said officer at Jetty for examination of goods and craves leave to produce at the time of hearing in the matter if require. they further submitted that the Respondent's representative Mr. Kamlesh J. Lodhari from his mobile number 9724444416 had made number of calls to the said proper officer on his mobile number 8320591835 and Superintendent, Custom House, Porbandar's mobile number 8320428721 so as to inform him about arrival of cargo and examination of cargo etc.
- They further submitted that whatever written in the Panchnama in the name of master of vessels, its representative and the said officer about permission, examinations etc. were far from the truth and the officer had detained the goods on 24.10.2022 on such flimsy grounds.
- They further prayed to verify the facts of practice prevailing at Porbandar Custom House from jurisdictional Assistant Commissioner and Superintendent Custom House Porbandar.
- In fact, at Custom House, Porbandar Port there was no computer systems installed with EDI and same was installed in City Office where the Assistant Commissioner, Customs Division, Porbandar sits which is situated Opposite to Air Port in City on Porbandar Rajkot highway. Therefore, after examination of goods on vehicle oral loading permission was being granted and many times permission to load the goods was granted orally first and examination was being done on vessel by the



proper officer. Entry in EDI system was done by the proper officer only after reaching at Division Office premises where EDI systems is installed it may take definitely more than an hour time. So, it was prevailing practice at Custom House Porbandar Port to grant oral permission so to avoid delay in loading and export too.

- The Respondent submits how one can bring this much huge quantity cargo in port area without their notice and loaded without their permission for more than a week. Therefore, ground for review impugned order was totally baseless and without appreciating the facts as well as other documentary evidence discussed in para supra. Respondent submits that from the CCTV footage received from Saurashtra Cement Ltd. it was clearly visible that custom officer was present at Porbandar Port.
- The Respondent submits that the Superintendent, Preventive, Hq. CCP, Jamnagar on 21.11.2022 inter alia informed to CH Porbandar that OIO has been issued and goods have been released by the proper officer, therefore, it was requested to issue port clearance certificate in respect of the goods. The Superintendent, Customs, Custom House, Porbandar after putting remarks on the said email and telephonic directions given by the Deputy Commissioner, Hq., Jamnagar released the goods and granted port clearance to all the three vessel on 21.11.2022, whereas impugned Order-in-Original was passed and issued on 28.11.2022 inter alia imposing penalty of Rs. 50,000/- upon respondent and Rs. 25,000/- Shri Jitendra Bhai Shial, Partner of M/s. Omakar Shipping, CHA/Shipping Agent under Section 117 of the Customs Act, 1962, and penalty under Section 117 of the Customs Act, 1962 was also not imposable upon it but to buy peace of mind and to avoid undue litigation in the matter they had paid the penalty and not preferred an appeal against the impugned Order. However, since it has filed present cross objection, it amounts as if it has filed an appeal in time as provided under Section 129A (4) read with Section 129D (4) of the Customs Act, 1962. Therefore, it is prayed that order imposing penalty upon it may please be set aside in the interest of justice.
- The Respondent submits that in view of all these facts duly supported with documentary proof discussed above, appeal filed by the department is devoid of merit and liable to be rejected, therefore, it is prayed that department's appeal may be rejected.

**DISCUSSION AND FINDINGS:**



have carefully gone through the facts of the case, written submission of M/s. Green Exim, M/s. Ruchi Agricom Pvt. Ltd. & M/s. Omkar Shipping, recordings of personal hearing and documentary evidences available on records

along with their cross objection filed by the Noticee before the Commissioner (Appeals) and copy submitted to this office on 30.10.2025.

**8.1** To begin with, I would like to summarize facts of the case leading to the present proceedings. I find that, in the instant case, on the basis of the intelligence that M/s Green Exim ('the Exporter-1') and M/s. Ruchi Agricom ('the Exporter-2'), were indulged in the export of Broken rice falling under the category of Prohibited goods as per DGFT Notification no. 10/2015-20 dated 24.05.2022 from the Porbandar Port, an investigation was carried out by the Preventive wing of this Commissionerate. During the investigations, the examination of the goods was carried out under Panchnama proceedings dated 24.10.2022 and 25.10.2022 and it was found that,

(i) Goods were being loaded in two country crafts i.e. MSV Anjali Puja PBR3798 and MSV-AL Mehraab BDI-1448 which were to be exported by M/s Green Exim (the Exporter-1);

(ii) Another country craft third one i.e. MSV Madina Zulficar Bdi-288 was found already loaded with the goods to be exported and was anchored away from the Porbandar Port Jetty which was to be exported by M/s Ruchi Agricom Pvt. Ltd. (the Exporter-2).

**8.2** On the basis of examination carried out under Panchnama referred above, it was noticed that the goods were found as declared (i.e. Non-Basmati Parboiled Rice CTH-10063010) in the 07 respective Shipping Bills filed by the CHA cum Shipping Agent on behalf of the said Exporter-1 and Exporter-2 and were neither subjected to any prohibition nor restricted for export. However, it was also observed that; the goods were loaded in-to the vessel without the supervision of proper officer; without any examination and in absence of Let Export Order (LEO) accorded by the proper officer.

**8.3** Accordingly, the impugned goods and vessels were seized vide Seizure Memo Cum No Objection for Provisional Release dated 26.10.2022 read with Addendum to Seizure Memo Cum No Objection for Provisional Release dated 28.10.2022, in terms of Section 110 of Customs Act, 1962 having a reasonable belief that the same is liable for confiscation under Section 113(f), 113(g) and 115(2) of Customs Act, 1962. During further proceedings, statements of various persons i.e., Tindels and owners of the Vessels and partner of M/s. Omkar Shipping, a CHA firm/ shipping agent were recorded. The Exporters, Owners of the vessels and M/s. Omkar Shipping also filed their submissions in the matter. Further M/s. Omkar Shipping on behalf of the exporters, vessel owners had



opted for waiver of the Show Cause Notice as well as personal hearing and requested for spot adjudicating in the matter.

**8.4** Accepting the request, the then adjudicating authority after considering the overall circumstances of the case and evidences available on records adjudicated the case vide Order-in-Original No. 09/Additional Commissioner/2022-23 dated 28.11.2022 found that,

- (i) the goods were not liable for confiscation under Section 113(f) and 113(g) of the Act;
- (ii) the Vessels were also not liable for confiscation under Section 115(2) of the Act;
- (iii) had not imposed penalties under Section 114(iii) upon any person involved in the matter;

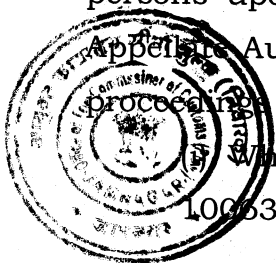
However, the Adjudicating Authority,

- (i) imposed a penalty of Rs. 10, 000/- each under Section 117 of the Act upon the tindels of the vessels;
- (ii) imposed a penalty of Rs. 25,000/- upon Shri Jitendra Shial Partner of M/s. Omkar Shipping under Section 117 of the Act;
- (iii) imposed a penalty of Rs.50,000/- upon M/S. Omkar Shipping, CHA/Shipping Agent under Section 117 of the Customs Act, 1962.

**8.5** The department filed appeal against the OIO, before the Appellate Authority to the extent of non-confiscation of impugned goods under Section 113(f) and 113(g) of the Act and non-imposition of penalties under Section 114(iii) of the Act upon the persons involved in the matter. The Appellate Authority vide Order-in-Appeal No. JMN-CUSTM-000-APP-001 to 003-25-26 dated 11.04.2025 without going into the merits of the case has remanded the matter back to the adjudicating authority for fresh adjudication with a direction to consider the contentions raised by the Respondents during the course of appellate proceedings and pass speaking order following the principles of natural justice.

**8.6** I find that as the department has not challenged the non-confiscation of the Vessel under Section 115(2) of the Act, the said issue is not the part of the present proceedings. Further the imposition of penalties under Section 117 of the Act is also not part of the present proceedings as neither the department nor the persons upon whom the penalties were imposed had filed appeals before the Appellate Authority. Accordingly, the limited issues to be decided in the present proceedings are as under:

Whether the impugned goods i.e. Non-Basmati Parboiled Rice (CTH-10063010) valued at total Rs. 6,65,73,465/- were liable for confiscation



under the provisions of Section 113 (f) and Section 113 (g) of the Customs Act, 1962 or otherwise;

(ii) Whether penalty under Section 114 (iii) of the Customs Act, 1962 was imposable on the Customs Broker, M/s. Omkar Shipping or otherwise; and

(iii) Whether penalty on the exporters namely (i) M/s Green Exim; and (ii) M/s Ruchi Agricom Pvt. Ltd. was imposable upon them under Section 114 (iii) of the Customs Act, 1962 or otherwise.

**8.7** I find that, the main contention raised by the Exporters and CHA /shipping agents before the Appellate Authority as well as during the present proceedings is that, they have adhered to the practice prevailing at the port of export for the clearance of goods and they were in constant touch through WhatsApp with the officers concerned i.e. they through whatsapp chat present the impugned goods for the examination.

**8.8** In this regard, I find that, the so called "prevailing practice" cannot override the statutory provisions governing the import and export of the goods at the designated port. In any case, since the matter is more than 3 years old, at this juncture, it is not possible to ascertain the practice prevailing at the port. Hence, argument made by them is legally not correct.

**8.9** I find that the following provisions of the Customs Act, 1962 govern the loading of goods to be exported and clearance thereof;

**(i) Section 34. Goods not to be unloaded or loaded except under supervision of customs officer. -**

*Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer:*

*Provided that the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.*

**(ii) Section 51. Clearance of goods for exportation. -**

<sup>1</sup> [(1)] Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation:

<sup>2</sup> [<sup>3</sup>] **Provided** that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

**Provided** further that] the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or charges in such manner as may be provided by rules.]



Where the exporter fails to pay the export duty, either in full or in part, under proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at

*such rate, not below five per cent and not exceeding thirty-six per cent per annum, as may be fixed by the Central Government, by notification in the Official Gazette.]*

**8.10** I also find that, the procedure pertaining to the examination of export goods on arrival of export goods at docks has been prescribed under Para 18 to 19 of the Customs Manual, 2018, as under:

*"18. Arrival of export goods at docks:*

*18.1. The goods brought for the purpose of export are allowed entry to the customs area on the strength of the check list and other declarations filed by the exporter in the Service Center. The custodian has to endorse the quantity of goods actually received on the reverse of the check list.*

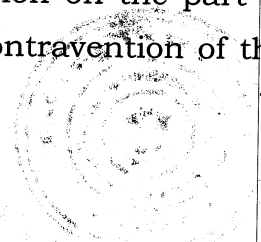
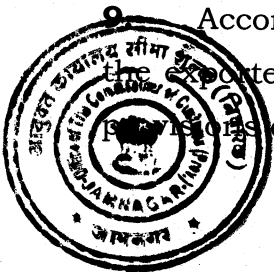
*19. Customs examination of export goods:*

*19.1 After the receipt of the goods in the customs area, the exporter/ customs broker may contact the Customs Officer designated for the purpose, and present the check list with the endorsement of custodian and other declarations along with all original documents such as, Invoice and Packing list, ARE-1, etc. The Customs Officer may verify the packages of the goods actually received and enter the same into the system and thereafter mark the Electronic Shipping Bill, handing over all original documents to the Dock Appraiser who assigns a Customs Officer to carry out examination of goods, if required under the Risk management System and indicate the officers' name and the packages to be examined, if any, on the check list and return it to the exporter/ Customs Broker."*

**8.11** In terms of statutory provisions and instruction issued by Board *supra*, it is clear that on receipt of the goods to be exported in the customs area, the exporter/ customs broker should contact the Customs Officer designated for the purpose, and present the check list with the endorsement of custodian and other declarations along with all original documents such as, Invoice and Packing list, ARE-1, etc for goods registration into the system. I find that neither the exporters nor their agent have submitted any evidence showing that the above procedure was followed by them.

**8.12** It is also evident from the statements of the Tindels and authorized person of the Shipping agent/ CHA that the goods were loaded on the vessels without examination and Let Export Order by the proper officer. Thus, the provisions of the Section 34 and Section 51 of the Act have not been followed in the instant case.

Accordingly, I find that, there is omission and commission on the part of the exporters or shipping agent/ CHA which has led to the contravention of the provisions of Section 34 and Section 51 *ibid*.



**9.1** Since, there is contravention of Section 34 and 51, it is pertinent to refer the relevant provisions of Section 113 of Act governing to the confiscation of goods. The clause (f) & (g) of Section 113 of the Customs Act, 1962 stipulates as under:

*(f) any goods which are loaded or attempted to be loaded in contravention of the provisions of section 33 or section 34;*

*(g) any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer.*

**9.2** As per above provisions once there is contravention of provisions of Section 34 and 51, the impugned goods are required to be confiscated and "mens rea" is not required to be established for the same. Accordingly, I find that, since there is clear violation/breach of provisions of Section 34 & Section 51 of the Customs Act, 1962 on the part of the Exporter as well as the Customs Broker the impugned goods were required to be confiscated in terms of clause (f) & (g) of the Section 113 *ibid*:-

**9.3** However, I find that impugned goods though liable for confiscation under Section 113(f) & (g) of the Customs Act, 1962 have already been exported out of India and therefore physically not available for confiscation. Also no bond has also been executed for the subject export; hence, I refrain from imposing redemption fine in lieu of confiscation of the goods.

**9.4** In support of the above findings, I rely upon, the judgment rendered with regard to confiscation by the High Court of Judicature at Bombay; wherein the Hon'ble High Court in the case of COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Versus FINESSE CREATION INC. Customs Appeal No. 66 of 2009, decided on 25-8-2009 cited in 2009 (248) E.L.T. 122 (Bom.), has held as under:-

*"whether goods cleared and not available for seizure, liable to confiscation - Redemption fine arises when goods are available and are to be redeemed - No question of redemption of goods when goods not available - Customs authorities empowered to order confiscation with discretion to release them on payment of redemption fine - Confiscation not arises if goods are not available for confiscation and consequent redemption - Fine not imposable once goods cannot be redeemed - Impugned Tribunal order holding fine in lieu of confiscation not imposable when goods were not available, sustainable - Sections 111 and 125 of Customs Act, 1962."*

i. Further, the Hon'ble Supreme Court Bench in the aforesaid case i.e. Commissioner v. Finesse Creation Inc. - reported at 2010 (255) E.L.T. A120 (S.C.)



condoning the delay dismissed the Petition for Special Leave to Appeal (Civil) 373 of 2010 filed by Commissioner of Customs (Import) against the Judgment and Order dated 25-8-2009 in C.A No. 66 of 2009 of the High Court of

Bombay, held,

*"the High Court vide its impugned order had distinguished the Apex Court decision in case of Weston Components Ltd. [2000 (115) E.L.T. 278 (S.C.)]. While holding that concept of redemption fine arises in the event the goods are available and are to be redeemed, and if goods are not available, there is no question of redemption of goods. The High Court held that since goods were cleared earlier, not available for confiscation nor consequently redemption, therefore, Tribunal was right in holding that fine in lieu of confiscation was not imposable."*

ii. In view of the above discussions, I am of the considered view that, as the goods in question are not available for redemption, redemption fine cannot be imposed. I also place reliance on the following case laws in support of my above findings:

(a) *In the case of Commissioner v. Indu Nissan Oxo Chemical Industries - 2015 (324) E.L.T. A30 (Guj.)], the Hon'ble High Court of Gujarat has held - "that the penalty in lieu of redemption fine was not imposable when the goods were not available for confiscation."*

(b) *In the case of N.K. CHAUDHARI Versus COMMISSIONER OF CUSTOMS (EP), MUMBAI [2018 (363) E.L.T. 908 (Tri. - Mumbai)] it was held - "Confiscation and redemption fine - Non-availability of goods - In view of Larger Bench's decision in the case of Shiv Kripa Ispat [2009 (235) E.L.T. 623 (Tri.-LB.)], redemption fine not imposable when goods not available for confiscation - Accordingly, redemption fine set aside - Section 125 of Customs Act, 1962. [para 4]"*

10. I find that when the goods are found liable for confiscation under Section 113 of the Act, as a natural corollary the penal provisions governing the attempt to export the goods improperly gets attracted. The provisions read as under.

*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 for 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.*

**10.1** Before deciding the appropriate clause and amount of penalty to be imposed under the provisions *supra*, I would like to highlight the fact that investigation has not brought on records any evidence regarding any mala fide intentions on the part of the exporters or shipping agent/ CHA to export the goods improperly. In fact it is evident from the WhatsApp chats that the concerned person of the shipping agent/ CHA was constantly in contact with the officer concerned for examination of the impugned goods. Further, it is also not the case of the investigation that the exporters or shipping agent/ CHA were involved in such contraventions in past. Therefore, in my opinion the present contravention of provisions of Section 34 and 51 of the Act is required to be considered as merely a procedure lapse on the part of the exporter.

**10.2** As the impugned goods are not prohibited goods, hence, the clause 114(i) is not applicable in the present case. Further, the impugned goods were not subjected to any export duty at the material time, hence, these goods cannot be considered as "dutiable goods" in terms of definition given under Section 2(14) of the Act which provides as under

*(14) "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;*

In this regard, I reply upon the following judgments.

(i) ASSOCIATED CEMENT COMPANIES LTD. Vs. COMMISSIONER OF CUSTOMS 2001 (128) E.L.T. 21 (S.C)

(ii) SHIVA PRAKASH ARADH Versus COMMISSIONER OF CUS., BANGALORE 2003 (153) E.L.T. 352 (Tri. - Bang.)

In view of the above, arguments made by the exporters or shipping agent/ CHA in this regard is not convincing. Therefore, the instant case does not fall under the purview of penal provisions of Section 114(ii) *ibid*.

**11.** Under the circumstances, I find that the exporters and shipping agent/ CHA are liable for penalty under Section 114(iii) of the Act. From the records it is clearly established that the Shipping Agent/Customs Broker was the main person responsible for observance of procedure related to clearance of export goods at port on behalf of the exporters. Hence, they are liable for penalty under Section 114(iii) of the Act.



**11.1** Even though Customs Broker is authorized to act on behalf of the exporters to observe the customs clearance procedure on his behalf, the Exporters cannot escape from his onus with respect to observance of the proper procedure of customs clearance and being ignorant. Hence, the Exporters are also liable for non-compliance of provisions of the Customs Act and penal action.

**11.2** I also rely upon the judgement dated 30.09.2011 of the Hon'ble Tribunal, West Zonal Bench, Mumbai in case of BLOSSOM GROCERY & FOOD INDIA PVT. LTD. Versus C.C. (EXPORT), NHAVA SHEVA [2014(302) ELT 267 (Tri. -Mumbai)]; wherein the Hon'ble Tribunal upheld the confiscation under Section 113(g) of the Customs Act, 1962 as well as penalty imposed upon the Exporter under Section 114(iii) of the Customs Act, 1962, for loading of goods to be exported on the vessel without obtaining the Let Export Order.

**11.3** However, as already discussed supra there emerges no specific *mens rea* apart from procedure lapse on the part of the Exporter and/or the Customs Broker. Also, the impugned goods being perishable goods/ agricultural product and exporters or shipping agent/ Customs Broker not involved in any adverse activities in past, I take the lenient view in the matter and impose a symbolic penalty under Section 114(iii) of the Act.

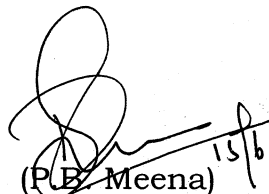
**12.** Accordingly, I pass the order,

- (a) I confiscate the impugned goods i.e. Non-Basmati Parboiled Rice (CTH-10063010) valued at total Rs. 6,65,73,465/- under Section 113(g) and (f) of the Customs Act, 1962. However, I refrain from imposition of redemption fine under Section 125 of the Customs Act, 1962 in terms discussion at Para 9.3 & 9.4 supra.
- (b) I impose penalty of Rs.5,000/- upon M/s. Green Exim under Section 114(iii) of the Customs Act, 1962.
- (c) I impose penalty of Rs.5,000/- upon M/s. Ruchi Agricom India Pvt. Ltd. under Section 114(iii) of the Customs Act, 1962.
- (d) I impose penalty of Rs.10,000/- upon M/s. Omkar Shipping, CHA/Shipping Agent, under Section 114(iii) of the Customs Act, 1962.

**12.1** This order is issued without prejudice to any other action that may be taken against the noticee or any other persons under the Customs Act, 1962 or any other law for the time being in force.



F. No. CUS/18763/2025-Adjn

  
(P.B. Meena)

Additional Commissioner  
Date: 15.06.2026

By REGD. POST A.D/Hand Delivery.

- 1) M/s. Omkar Shipping,  
C/o. Arjanbhai Govindji & Co.,  
Bunder Road, Porbandar-360575
- 2) M/s. Green Exim  
707, Basera Heights, Fatehabad Road, Agra,  
Uttar Pradesh – 282 006
- 3) M/s. Ruchi Agricom India (Pvt.) Ltd.,  
408, Geetansh, Class of Pearl, K 48-49,  
Income Tax Colony, Durgapur, Tonk Road,  
Jaipur – 18, Rajasthan

**Copy to:**

- 1) The Commissioner, Customs (Preventive), Jamnagar.
- 2) The Deputy Commissioner (Review), Hqrs. Jamnagar.
- 3) The Deputy Commissioner, Customs (Preventive), Jamnagar.
- 4) The Deputy Commissioner, Customs Division- Porbandar.
- 5) The Superintendent, Custom House Porbandar.
- 6) Guard file.

