

	<p style="text-align: center;"> कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in </p>	
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A	FILE NO. फाइल संख्या	GEN/ADJ/ADC/1031/2024-Adjn-O/o Pr Commr-Cus-Mundra
B	OIO NO. आदेश संख्या	MCH/ADC/AKM/359/2025-26
C	PASSED BY जारीकर्ता	Amit Kumar Mishra, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा।
D	DATE OF ORDER आदेश की तारीख	31.10.2025
E	DATE OF ISSUE जारी करने की तिथि	31.10.2025
F	SCN No. & Date कारण बताओ नोटिस क्रमांक	F.No. CUS/ASS/35/2024 dated 15.05.2024
G	NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	i. M/s. Bhatiya Impex(IEC: APHPN9565K) ii. M/s N. K. Impex & Logistic Pvt. Ltd (CB Code-AAECN4072ECH001).
H	DIN/ दस्तावेज़ पहचान संख्या	20251071MO000000C99E

1. यहआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त) अपील(,
 चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
 नवरंगपुरा,अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN

**ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”**

3. उक्तअपील यहआदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/-रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

i. उक्त अपील की एक प्रति और A copy of the appeal, and

ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870-के मद सं° 6.-में निर्धारित 5/-रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 %भुगतान करना होगा।

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

BRIEF FACTS OF THE CASE

M/s. Bhatiya Impex (IEC- APHPN9565K) (*herein referred to as the exporter*) having address as Digital Art Photo, Ground Floor, Khera Kachwasa, SH 54 Dungarpur, Rajasthan-314036, had filed Shipping Bills for export of "Reactive Red 223 and Reactive Blue p3r" as mentioned in Table A through their CHA- M/s. N. K. Impex & Logistic Pvt. Ltd and declaring the goods under Chapter 32041630 & 32041650. The Country of destination is declared as Muscat, Oman and the port of discharge is Sohar in Oman.

1.1 An alert has been received to the effect that the Shipping Bills Nos. 3442792 dated 24.08.2023 and 3442812 dated 24.08.2023 filed by M/s Bhatiya Impex (IEC No. APHPN9565K) are of high value for a risky commodity

and destined to risky country i.e. Oman. Further, it has been informed from NCTC that the supply chain of the said exporter also seems suspicious.

Table-A (Details of Shipping Bills)

Shipping Bill No(s). & Date	Description of Goods	Qty. Kgs	Declared Value in (Rs.)	IGST Amount @18% (Rs.)	Drawback Amount (Rs.)	ROSC TL amt in Rs.
3442792 dated 24.08.2023	Reactive Red 223	9000	77,85,000/-	14,01,300/-	0/-	0/-
3442812 dated 24.08.2023	Reactive Blue p3r	8000	85,20,000/-	15,33,600/-	0/-	0/-
Total		17,000	1,63,05,000/-	29,34,900/-	0/-	0/-

Per kg price of goods

Shipping Bill No.	Detailed description of goods	Qty. Kgs	Per Kg Price (in Rs.)
3442792 dated 24.08.2023	Reactive Red 223	9000	865/-
3442812 dated 24.08.2023	Reactive Blue p3r	8000	1065/-

2. Investigation:

2.1. Based upon the alert, the consignment was put up on hold and the goods brought for Export under the said Shipping Bills were examined on 22.09.2023 at CWC CFS and Examination Report dated 22.09.2023 prepared. During the course of examination it was observed that the goods were packed in 25Kgs Bags, and there were two different type colour bags, Blue colour and Red colour. Further, quantity of goods was found as declared in shipping bills. To determine the characteristics of cargo/goods, sample were drawn and sent to CRCL lab vide Test Memo no. 702 Dated 25.09.2023 and 703 Dated 25.09.2023.

2.2 Further, CRCL Kandla vides Test report no. SIIB-7138 and 7139 both dated 13.10.2023 submitted the lab report of the reactive dyes. The laboratory test report for the said consignment reproduced hereunder:-

Test report No. SIIB-7138 dated 13.10.2024 for Reactive Red Colour

Nature:	The Sample as received is in the form of dull red coloured powder.
Composition	It is composed of mainly Sodium chloride (Common Salt) along with small amount of colouring matter (Dyestuff). % Sodium Chloride=96.90% by wt.

Test report No. SIIB-7139 dated 13.10.2024 for Reactive Blue Colour

Nature:	The Sample as received is in the form of dull blue coloured powder.
Composition	It is composed of mainly Sodium chloride (Common Salt) along with small amount of colouring matter (Dyestuff). % Sodium Chloride=95.54% by wt.

2.3 On going through the test reports, it appears that the goods contain a small amount of colouring matter and have a concentration of sodium chloride of 95% and above. Upon analysing the test results, it is observed that the declared rate of the goods, viz. Reactive Red 223 at ₹865/- per kg and Reactive Blue P3R at ₹1,065/- per kg, appears to be excessively high. To ascertain the correct value of the cargo, this office appointed a Chartered Engineer, Shri Anwar Y. Kukad, who submitted a valuation report dated 21.11.2023. On perusal of the said report, it appears that the current market price of the impugned goods is in the range of ₹125/- to ₹150/- per kg. The pricing of such dyes depends upon factors such as the quality of the raw materials used for colouring, the nature of additive chemicals, and the manufacturing process. It is further observed that the quantity of salt used in this dye is on the higher side, which reduces the brightness of the colour and, consequently, affects the valuation of the dye. Hence, the fair value of the goods may reasonably be considered as ₹135/- per kg.

Accordingly, the goods covered under the said Shipping Bills were seized under Section 110 of the Customs Act, 1962, vide Seizure Memo dated 19.12.2023. From the above, it appears that the exporter has grossly overvalued the goods with the intent to avail undue benefit of IGST refund.

2.4 During the course of investigation, Summons dated 20.10.2023, 26.10.2023, 06.11.2023, and 23.11.2023 were issued to the exporter, M/s. Bhatiya Impex, and the Customs House Agent (CHA), M/s. N.K. Impex &

Logistic Pvt. Ltd., directing them to produce all documents pertaining to Shipping Bill Nos. 3442792 and 3442812 both dated 24.08.2023 and to tender their statements. However, neither the exporter nor the CHA appeared for recording of statements or produced the requisite documents.

This clearly indicates that M/s. Bhatiya Impex and their CHA, M/s. N.K. Impex & Logistic Pvt. Ltd., failed to cooperate with the investigation. Accordingly, a letter dated 21.02.2024 was issued to the CBLR Section, Custom House, Mundra, for initiating appropriate action against the said CHA under the Customs Broker Licensing Regulations (CBLR).

2.5 Further, to verify the genuineness of the exporter vis-à-vis financial documents such as GST Returns, E-way Bills, Income Tax Returns, bank account details, and supply chain transactions to rule out the possibility of fake invoicing and undue claim of IGST/Input Tax Credit refund, a letter dated 22.12.2023 was issued to the concerned Jurisdictional GST Authority. Additionally, letters dated 26.12.2023 were issued to the Drawback Section and IGST Refund Section, Custom House, Mundra, requesting them to withhold the Drawback and IGST refund of the exporter, M/s. Bhatiya Impex (IEC No. APHN9565K), until the verification report is received from the concerned GST authority, under intimation to this office.

3. Valuation of the Goods

3.1 In view of the foregoing, it appears that the value declared by the exporter was not the actual or proper value and is liable to be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Further, in terms of Rule 3(3) of the said Rules, the value is required to be re-determined sequentially under Rules 4 to 6. In the present case, the value of the export goods could not be determined under Rule 4, as comparable goods could not be identified in the absence of exact description or characteristics such as design, size, etc. The value also could not be determined under Rule 5, as the cost of production, profit margin, etc., were not made available due to non-cooperation by the exporter. Hence, the value of the impugned goods merits re-determination under the residual method, i.e., Rule 6 of the said Rules, by conducting a market inquiry to ascertain the fair value.

3.2 Accordingly, the valuation of the goods was determined under Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, using reasonable means consistent with the principles and general provisions of the said Rules. For this purpose, the opinion of the Chartered Engineer was obtained through market research. The Chartered Engineer submitted his valuation report vide certificate Ref. No. AYK:VALU:02012:2023 dated

21.11.2023 in respect of Shipping Bill Nos. 3442792 and 3442812, both dated 24.08.2023. As per the C E report, the estimated fair value of the goods is ₹135/- per kg.

4. RELEVANT LEGAL PROVISIONS:

CUSTOMS ACT, 1962:

Section 113: Confiscation of goods attempted to be improperly exported, etc.-

The following export goods shall be liable to confiscation:-

....

...

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

(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;

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, -

...

(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.

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 ten thousand rupees.

Custom Broker Licencing Regulations, 2018

10 (n) verify correctness of Importer Exporter Code (IEC) number, Goods

and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

5. SUMMARY OF INVESTIGATION:

5.1 In view of the foregoing paragraphs, it appears that the exporter has misdeclared the goods intended for export with the intent to avail higher export incentives by overvaluing the impugned goods. The FOB value declared by the exporter in the export documents was **Rs. 1,63,05,000/-** (Rupees One Crore Sixty-Three Lakh Five Thousand only), whereas, during market enquiry, the valuation of the goods was found to be ₹22,95,000/- (Rupees Twenty-Two Lakh Ninety-Five Thousand only). Which is much lower than the declared value of shipping bills. Since the exporter failed to respond to the summons issued by this office, there remained no option but to proceed with the confiscation of the goods brought for export under the provisions of the Customs Act, 1962.

5.2 From the foregoing enquiry, it appears that:

(i) The value declared by the exporter was not the proper or actual value and is liable to be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

(ii) The exporter intentionally overvalued the goods to claim an excess amount of IGST refund. Based on the market enquiry and valuation of representative samples, the actual value of the goods was found to be substantially lower than the declared value. The exporter had claimed an IGST refund amounting to Rs. 29,34,900/- (Rupees Twenty-Nine Lakh Thirty-Four Thousand Nine Hundred only) by misdeclaring the FOB value of export goods as Rs. 1,63,05,000/- (Rupees One Crore Sixty-Three Lakh Five Thousand only), whereas the re-determined FOB value is Rs. 22,95,000/- (Rupees Twenty-Two Lakh Ninety-Five Thousand only).

6. In view of the above, it appears that the exporter attempted to export the impugned goods with the intent to avail undue IGST refund by overvaluing the goods. Therefore, the goods covered under the impugned Shipping Bills, seized vide Seizure Memo dated 19.12.2023, are liable for confiscation under Section 113(i) and Section 113(ja) of the Customs Act, 1962. The exporter, by his acts of omission and commission, has rendered himself liable to penalty under Section 114(iii) and Section 117 of the Customs Act, 1962.

Further, it appears that the Customs Broker did not exercise due diligence in respect of the said exporter and the filing of the Shipping Bills. He also failed to comply with the provisions of the Customs Broker Licensing

Regulations, 2018 (CBLR, 2018). The CHA, by his acts of omission and commission, has rendered themselves liable to penalty under Section 117 of the Customs Act, 1962.

7.1. Accordingly, Show cause Notice F.no. CUS/ASS/35/2024 dated 15.05.2024 was issued to M/s. Bhatiya Impex (IEC- APHPN9565K), wherein they were called upon to show cause in writing to the Additional Commissioner of Customs, Custom House Mundra, as to why:

- (i) The FOB value of **Rs.1,63,05,000/- (Rupees One Crore Sixty three lakh five thousand only)** of the goods covered under impugned Shipping Bills bearing no(s) 3442792 & 3442812 both dated 24.08.2023 should not be rejected under Rule 8 of CVR, 2007 and re-determined as **Rs. 22,95,000/- (Rupees Twenty two lakh ninety five thousand only)** under Rule 6 of CVR, 2007.
- (ii) The goods covered under impugned Shipping Bills nos. 3442792 & 3442812 both dated 24.08.2023, should not be confiscated under Section 113(i) and Section 113(ja) of the Customs Act, 1962.
- (iii) The IGST refund totally amounting to Rs. 29,34,900/- (Rupees Twenty nine lakh thirty Four thousand Nine hundred only) in respect of impugned Shipping Bill nos. 3442792 & 3442812 both dated 24.08.2023 should not be rejected.
- (iv) Penalty should not be imposed upon the exporter under the provisions of Sections 114(iii) of the Customs Act, 1962.
- (v) Penalty should not be imposed upon the exporter under the provisions of Sections 117 of the Customs Act, 1962.

7.2. Vide SCN dated 15.05.2024, M/s. N. K. Impex & Logistic Pvt. Ltd (CB Code-AAECN4072ECH001) were called upon to show cause in writing to the Additional Commissioner of Customs, Custom House, Mundra, as to why Penalty should not be imposed upon the exporter under the provisions of Sections 117 of the Customs Act, 1962.

8. Written Submissions

8.1 M/s. N. K. Impex & Logistic Pvt. Ltd (CB Code-AAECN4072ECH001) submitted their reply dated 09.10.2025 wherein they have, *inter alia*, submitted that:

The Noticee submitted that they were not aware of any mis-declaration or irregularity committed by the exporter, M/s. Bhatiya Impex, in connection with

the subject goods. Their role was purely limited to documentation and coordination based on the information and declarations provided by the exporter.

The said goods were placed under NCTC Hold by SIIB, and all subsequent activities, including examination and stuffing, were conducted under the supervision of the Docks and Stuffing Department of Customs. As CHA, they had no direct involvement in or control over the cargo handling or examination process beyond their procedural responsibilities. During the entire period of investigation, they remained in close contact with Customs authorities and extended full cooperation to facilitate the inquiry.

The Noticee reiterated that they had no knowledge or role in mis-declaration of goods and have always maintained transparent and compliant operations in their capacity as CHA. They further submitted that since 2022 their company has not been operational at Mundra Port.

In view of the above facts, noticee requested to kindly consider their genuine situation sympathetically and they had no connection with the exporter beyond the CHA services rendered at that time. The Noticee requested that no adverse inference or liability be drawn against them, as they had no knowledge or participation in any mis-declaration.

Personal Hearing

9. Shri Yogesh Kanubhai Goradia, authorized representative of M/s. N. K. Impex appeared for personal hearing on 01.10.2025 physically on behalf of M/s. N. K. Impex. During the hearing, he submitted that CB has taken due diligence while filing Shipping Bill. They have taken documents as required for KYC of exporter and filed shipping bill according to invoice and packing list submitted by the exporter. He has also submitted that he personally meet the exporter before filing shipping bill.

Personal Hearing was granted to M/s. Bhatiya Impex to appear on 26.09.2025, 03.10.2025, 13.10.2025 and 29.10.2025 however the exporter neither appeared for personal hearing nor submitted any documents.

Discussion and Findings

10. I have carefully gone through the facts of the case, Show Cause Notice dated 15.05.2024 and the noticee submissions both, in written and in person. I find that personal hearing was granted to M/s. Bhatiya Impex to appear on 26.09.2025, 03.10.2025, 13.10.2025 and 29.10.2025, however the exporter neither appeared for personal hearing nor submitted any documents. I find that in the present case principle of natural justice have been complied with and

therefore, I proceed to decide the case on the basis of applicable laws/rules, written submissions and documentary evidences available on record.

11. I now proceed to decide the issues framed in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided at the stage of adjudication: -

- (i) Whether the value of the goods declared as Rs.1,63,05,000/- (Rupees One Crore Sixty three lakh five thousand only) covered under Shipping Bills no. 3442792 and 3442812 both dated 24.08.2023 liable to rejected and re-determined as Rs. 22,95,000/- (Rupees Twenty two lakh ninety five thousand only) in terms of provisions of Rule 6 of the CVR, 2007 or otherwise.
- (ii) Whether the impugned goods are liable for confiscation under Section 113(i) and Section 113(ja) of the Customs Act, 1962 or otherwise.
- (iii) Whether the IGST refund amount of Rs. 29,34,900/- (Rupees Twenty nine lakh thirty Four thousand Nine hundred only) in respect of impugned Shipping Bill is rejected or otherwise.
- (iv) Whether the noticees are liable for penalty under Sections 114(iii) and 117 of the Customs Act, 1962 or otherwise.

12. I find that the investigation was initiated after the alert received from NCTC in respect of shipping Bill nos. 3442792 and 3442812 both dated 24.08.2023 filed by the exporter M/s. Bhatiya Impex. The goods covered under above mentioned shipping Bills were examined on 22.09.2023 at the CWC Container Freight Station. During the course of examination it was observed that the goods were packed in 25Kgs Bags of two different type colour bags, Blue colour and Red colour. The quantity and weight of the goods were found as declared in the shipping bills.

13. I find that the goods of above mentioned Shipping Bills were examined and there are two type of reactive dyes were found during examination. Representative samples were drawn to determine the characteristics of cargo/goods and forwarded to the CRCL lab vide Test Memo no. 702 Dated 25.09.2023 and 703 Dated 25.09.2023 for necessary testing.

14. I find that the test report bearing nos. SIIB-7138 and 7139 both dated 13.10.2023 were received from CRCL Kandla for goods of above mentioned shipping bills. I find that Test reports No. report no. SIIB-7138 dated 13.10.2023 shows composition of goods as "*Sodium chloride (Common Salt) along with small amount of colouring matter (Dyestuff), % Sodium Chloride=96.90% by wt.*" and report no. SIIB-7139 dated 13.10.2023 resulted that composition of goods as "*Sodium chloride (Common Salt) along with small amount of colouring matter (Dyestuff) ,% Sodium Chloride=95.54% by wt.*"

In view of above, after analyzing the test reports, I find that the goods are consisted of small amount of coloring material and 95 % and above is sodium chloride.

15. From the investigation carried out, I find that as per shipping bill details, exporter had declared rate for Reactive Red 223 as 865/- per kg and rate for Reactive Blue p3r is 1065/- per kg. As actual goods covered under the export consignments of M/s Bhatiya Impex was different from the declared one, hence the value declared in the Shipping bills cannot be considered as true value. Further to ascertain the correct value of the cargo, a Chartered Engineer was appointed. Shri Anwar Y. Kukad, Chartered Engineer submitted valuation report dated 21.11.2023. On perusing the valuation report, it is seen that current market price for the said cargo is in the range of Rs. 125 to 150 per kg and as the pricing is influenced by the quality of the material used to make the color of the dye and its add on chemicals, manufacturing process, etc. also the quantity of the salt used in this Dye is on higher side. It will decrease the brightness of the color which is affecting the valuation of the particular dye. Accordingly, Shri Anwar Y. Kukad, Chartered Engineer declared the fair value as Rs. 135/- per kg. As per the valuation report submitted by CE by way of market research, I find that the exporter by way of mis-declaration attempted to avail undue benefit of IGST refund by overvaluing the goods. Thereafter, the goods covered under the said Shipping Bills were seized under Section 110 of Customs Act, 1962 vide Seizure Memo dated 19.12.2023.

16. As per the test reports received from CRCL Kandla and as per the value provided by the CE as per market research, I find that the value declared by the Exporter is not the proper/actual value and liable to be rejected in terms of Rule 8 of the Customs Valuation (Determination of Export Goods) Rules, 2007. The exporter had overvalued the goods intentionally to claim excess amount of IGST refund. As per market enquiry of the representative samples, the value of the goods was found substantially lower than the declared value. The exporter had claimed IGST refund amounting to Rs. 29,34,900/- (Rupees Twenty nine lakh thirty Four thousand Nine hundred only) by mis-declaring the FOB value of export goods at Rs. 1,63,05,000/- (Rupees One Crore Sixty three lakh five thousand only) while the re-determined FOB value is Rs. 22,95,000/- (Rupees Twenty two lakh ninety five thousand only).

In view of above, I find that Exporter has mis-declared the goods to be exported with deliberate intent to avail higher export incentive by overvaluing the impugned goods. The FOB value declared by the Exporter in the export documents was **Rs.1,63,05,000/- (Rupees One Crore Sixty Three Lakh Five Thousand Only)** whereas the correct market value of the goods is **Rs.22,95,000/- (Rupees Twenty Two Lakhs Ninety Five Thousand Only)**.

Accordingly, I find that the subject goods of Shipping Bills as mentioned in Table-A are liable to confiscation as per provisions of Section 113 of Customs Act, 1962.

17. As per sub-section (2) of Section 50 of the Customs Act, 1962, the exporter while presenting a shipping bill or bill of export shall make and subscribe to a declaration as to the truth of the contents of such shipping bill and shall ensure the accuracy and completeness of the information given and the authenticity and validity of any documents and compliance with the restriction or prohibition, if any, relating to the exported goods.

18. I find that Confiscation of goods in terms of Section 113(i) and 113 (ja) of The Customs Act, 1962 is invited when:-

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

113 (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.

Accordingly, as discussed above, I find that the exporter has deliberately mis-declared the goods in terms of description and value in respect of Shipping Bills as mentioned in Table A showing their malafide intent in order to avail undue benefit of IGST refund by overvaluing the goods. Accordingly, it is evident that the exporter grossly mis-declared the value against the 02 Shipping Bills wherein, the FOB value was declared as only **Rs. 1,63,05,000/-/- (Rupees One Crore Sixty Three Lakh Five Thousand Only)** however, the actual appropriate value of the subject consignments works out to **Rs. 22,95,000/- (Rupees Twenty Two Lakhs Ninety Five Thousand Only)**. The wide variance in the declared value vis-à-vis the actual value establishes beyond doubt the **deliberate attempt at suppression and mis-declaration** with an intent to take undue benefit of IGST refund.

Therefore, the goods covered under impugned Shipping Bills seized vide seizure memo dtd. 19.12.2023. Accordingly, their omission or commission has rendered the impugned goods liable for confiscation under Section 113 (i) and 113(ja) of The Customs Act, 1962. Consequently, the exporter M/s. Bhatiya Impex rendered themselves liable for penalty under Section 114(iii) of The Customs Act.

19. From the investigation carried out, I find that Summons dated 20.10.2023, 26.10.2023, 06.11.2023, and 23.11.2023 were issued to the Exporter i.e, M/s. Bhatiya Impex and CHA i.e, M/s. N.K. Impex & Logistic Pvt.

Ltd. to produce the all documents related to the shipping bills no. 3442792 & 3442812 both dated 24.08.2023 and to tender statement. However, neither Bhatiya Impex nor M/s. N.K. Impex had appeared to tender their statement against the summons and not submitted any documents related to the above mentioned Shipping Bills. It clearly indicates that M/s. Bhatiya Impex and CHA i.e, M/s. N.K. Impex & Logistic Pvt. Ltd. are not joined the investigation and showed complete disregard to the summons. I also find that the Custom Broker had not followed due diligence in respect of the said exporter and during filling of shipping bills. Custom Broker has also failed to comply with the provisions of the Custom Broker Licensing Regulations, 2018 (CBLR, 2018). A letter dated 21.02.2024 issued to CBLR Section, Custom House, Mundra to initiating necessary action against the CHA in terms of rule 10(n) of CBLR, 2018. It is also evident that exporter and custom broker were very much aware about the mis-declaration. Therefore, M/s Bhatiya Impex and CHA M/s. N. K. Impex have rendered themselves liable for penal action under the provisions of Customs act, 1962. In view of foregoing paras, for their acts of omission and commission, I find the M/s Bhatiya Impex and M/s. N. K. Impex are liable for penal action under **Section 117** of the Customs Act, 1962.

20. Valuation:-

M/s Bhatiya Impex was involved in mis-declaration of goods by not declaring the correct description and value of the goods in the aforesaid shipping Bills. The goods declared in the Shipping Bills under the export consignments of M/s Bhatiya Impex were found different from the declared one and also differed in the value. Hence the value declared in the Shipping Bills cannot be considered as proper/actual value and liable to be rejected in terms of Rule 8 of the Customs Valuation (Determination of export goods) Rules, 2007 for reasons for mis-declaration of goods in parameters such as description, and value. For the purpose of Customs Tariff Act, 1975, valuation of export goods is to be done in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of value of Export Goods) Rules, 2007 (CVR). Accordingly, in terms of rule 3(3) of the said rules, the value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 6 of CVR, 2007.

I find as per Rule 3(3) of CVR, 2007, If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6. The relevant rules of Customs Valuation (Determination of Value of Exported Goods) Rules, 2007 are reproduced hereunder:

Rule 3 Determination of the method of valuation-

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

value.

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

(3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

Rule 4 Determination of export value by comparison -

(1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

(2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-

- (i) difference in the dates of exportation,
- (ii) difference in commercial levels and quantity levels,
- (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
- (iv) difference in domestic freight and insurance charges depending on the place of exportation.

Rule 5 Computed value method-

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-

- (a) cost of production, manufacture or processing of export goods;
- (b) charges, if any, for the design or brand;
- (c) an amount towards profit.

Rule 6 Residual method-

(1) Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods

From the plain reading of Rule 4, it is evident that the said Rule provides for the determination of transaction value of the exported goods by comparing

the goods of like kind and quality or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation in accordance with the provisions provided in sub-rule (2) of rule 4. In the instant case, efforts were made to find out the correct value of the exported goods. But, it was not possible to find and compare the same with other goods having like kind, quality, description and other characteristics exported at same time, hence, the value of export goods could not be determined under Rules 4 of CVR, 2007.

Further, I find that Rule 5 of the CVR 2007 provides for the determination of the transaction value of the exported goods by computed value method considering the cost of production, manufacture or processing of goods, other charges, profit margin etc. In this case neither M/s. Bhatiya Impex nor M/s. N.K. Impex had appeared against the summons issued and not submitted any documents related to the shipping bills mentioned in Table-A. As exporter and CHA are not responding, the value of the goods under export could not be determined, as per Rule 5 of the Rules Customs Valuation (Determination of export goods) Rules, 2007. Thus, the value of impugned goods merit to be re-determined under residual method i.e. Rule 6 of the said Rules by conducting market inquiry to ascertain the fair value.

Therefore, the valuation of goods is determined under Rule 6 of the Customs Valuation (Determination of export goods) Rules, 2007 using reasonable means consistent with the principles and general provisions of these Rules and therefore, opinion of the Chartered engineer was taken by way of market research. I find that, the Chartered Engineer had submitted the valuation vide valuation certificate Ref: AYK:VALU:02012:2023 dated 21.11.2023 for Shipping Bill No. 3442792 & 3442812 both dated 24.08.2023. I find that, the Chartered Engineer suggested estimated values of the goods is Rs. 135/- per kg.

I find that Exporter has mis-declared the goods to be exported with deliberate intent to avail higher export incentive by overvaluing the impugned goods. The exporter had mis-declared the FOB value of export goods at Rs. 1,63,05,000/- (Rupees One Crore Sixty three lakh five thousand only) while as per the value determined by The Chartered Engineer by way of market research the re-determined value comes as Rs. 22,95,000/- (Rupees Twenty two lakh ninety five thousand only). Accordingly, I hold the value declared of the export consignments as **Rs. 1,63,05,000/- (Rupees One Crore Sixty three lakh five thousand only)** is liable to be rejected and the value of the exported goods as mentioned in Table -A above is liable to be re-determined as **Rs. 22,95,000/- (Rupees Twenty two lakh ninety five thousand only)** in terms of provisions of Rule 6 of the CVR, 2007.

21. Imposition of Redemption Fine

As the impugned goods are found to be liable for confiscation under Section 113(i) and 113(ja) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN dated 15.05.2024. The Section 125 ibid reads as under: -

"Section 125. Option to pay fine in lieu of confiscation.-(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. I find that the exporter is involved in mis-declaration of goods in terms of valuation. However, I give an option to redeem the goods for Back to Town purpose only on payment of redemption fine under section 125(1) of the customs act, 1962.

22. In view of above, I pass the following order:

ORDER

- i. I order to reject the declared FOB value of Rs. 1,63,05,000/- (**Rupees One Crore Sixty three Lakh five thousand only**) for the goods covered under Shipping Bills nos. 3442792 and 3442812 both dated 24.08.2023 under rule 8 of CVR, 2007 and order to re-determine the FOB value as Rs. 22,95,000/- (**Rupees Twenty two lakh ninety five thousand only**) under the provisions of Rule 6 of CVR, 2007 as detailed in point no. 20 above.
- ii. I order to confiscate the goods covered under Shipping Bills nos. 3442792 and 3442812 both dated 24.08.2023 under Section 113(i) and Section 113(ja) of the Customs Act, 1962. However, I give an option to the exporter to redeem the confiscated goods for Back to Town purpose only on payment of redemption fine of **Rs. 5,00,000/- (Rupees Five Lakh Only)** under Section 125 of Customs Act, 1962 within 120 days from the date of receipt of this order. Unless an appeal against such order is pending, the said impugned goods would be liable for Disposal as per instructions and guidelines in CBIC disposal manual, 2019.

- iii. I deny and reject the IGST refund amount of **Rs. 29,34,900/- (Rupees Twenty nine lakhs thirty four thousand nine hundred Only)** and all other export incentives in respect of goods covered under Shipping Bill Nos. 3442792 and 3442812 both dated 24.08.2023 for the reasons mentioned above.
- iv. I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** upon the Importer **M/s. Bhatiya Impex** under Section 114(iii) of the Customs Act, 1962.
- v. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh Only)** upon the Importer **M/s. Bhatiya Impex** under Section 117 of the Customs Act, 1962.
- vi. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh Only)** upon **M/s. N. K Impex** under Section 117 of the Customs Act, 1962.

23. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

24. The Show Cause Notice issued vide F. No. CUS/ASS/35/2024 dated 15.05.2024 is hereby disposed off on above terms.

AMIT KUMAR MISHRA
ADDITIONAL
COMMISSIONER
ADC/JC-II-O/o **Pr**
Commissioner-Customs-
Mundra

By Speed Post/Regd. Post/E-mail/Hand Delivery

To,

- 1. M/s. Bhatiya Impex (IEC- APHPN9565K),
Digital Art Photo, Ground Floor,
Khera Kachwasa SH 54
Dungarpur, Rajasthan-314036.
- 2. M/s. N. K. Impex & Logistic Pvt. Ltd.
113, Saraswati Sadan 2nd Floor, Room No. 40,
keshavaji Naik Road, Chinch Bunder,
Mumbai-400009.

Copy to:

1. The Dy./Assistant Commissioner (IGST), CH, Mundra.
2. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
3. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra...
(with the direction to upload on the official website immediately).
4. The Dy./Assistant Commissioner (Export Assessment), CH, Mundra
5. The Dy./Assistant Commissioner (SIIB), CH, Mundra
6. The Dy./Asstt. Commissioner, Disposal Section, CH, Mundra.