



सत्यमेव जयते

**OFFICE OF THE PRINCIPAL COMMISSIONER
OF CUSTOMS MUNDRA COMMISSIONERATE**
Custom House, Mundra (Kachchh)
MUNDRA PORT & SPL. ECONOMIC ZONE,
MUNDRA-370421
PHONE No: 02838-271163/66/67/68,
FAX No.02838-271169/62



A	FILE NO.	GEN/ADJ/ADC/1584/2023-ADJN / 3 663
B	OIO NO.	MCH/ADJ/ADC/RK/136/2023-24
C	PASSED BY	RAGHUVANSH KUMAR, ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
D	DATE OF ORDER	07.08.2023
E	DATE OF ISSUE	07.08.2023
F	SCN NUMBER & DATE	During Investigation Exporter found to be Non Existence and CHA / CB vide letter 04.08.2023 requested for Waiver of SCN
G	NOTICEE / PARTY / IMPORTER	ARISE ENTERPRISES (IEC- JIOPK5622M), PLOT NO.1, OLD MO.40-41, 2ND FLOOR, GALLI NO. 1, MAIN SCHOOL ROAD, SHAKTI VIHAR, MEETHPUR, BADARPUR, NEW DELHI-110044 M/S. PUSHPANJALI LOGISTICS, BLOCK-M, RZ-81, B, CHANKYA PLAZA, PART-II, OPP C-1, JANAKPURI, NEW DELHI
H	DIN NUMBER	20230771M000008189E3

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1 to

**The Commissioner of Customs (Appeal), MUNDRA
4th floor, HUDCO Building, IshwarBhavan Road,
Navrangpura, Ahmedabad – 380009.**

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) 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. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. 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 or Penalty are in dispute, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s. Arise Enterprises (IEC- JIOPK5622M), Plot No.1, Old Mo.40-41, 2nd Floor, Gali No. 1, Main School Road, Shakti Vihar, Meethpur, Badarpur, New Delhi-110044 have filed following Shipping Bill for export of "Ready Made Garments" through their CHA- M/s Pushpanjali Logistics; declaring their goods under Chapter 61099010. The Country of destination is declared as United Arab Emirates.

The details of the Shipping Bills are as under:

Shipping Bill No. & Date	Description of Goods	Qty. (Pieces)	Declared Value in (Rs.)	Drawback Amount (Rs.)
6882775 dated 20.12.2021	Ready Made Garments (Boys Knitted T-shirt)	57600	3,12,90,624	8,64,000

2. NCTC alert was received vide e-mail dated 23.12.2021 informing that the above mentioned Shipping Bill No. 6882775 dated 20.12.2021 filed by exporter M/s Arise Enterprises (IEC- JIOPK5622M) is of high value for a risky commodity and to risky country i.e. United Arab Emirates. Further, it has been informed from NCTC that the supply chain of the said exporter is also seems

suspicious and the exporter has no inward and outward supplies as per e-way bill data. Therefore, the same were put on hold on 29.12.2021.

2.1 During the course of examination it is observed that the goods are Boys T-shirts packed in Plastic Pickings and stuffed in 200 Cartons. It is observed that the quantity of the goods found during examination is as per the declared quantity in the shipping bill. The officers have also withdrawn representative samples of the goods during the examination.

The details of goods found in the consignment covered by the said Shipping Bill are under:

Sl. No.	Shipping Bill No. & date	Total Cartons	Pieces per Carton	Total Quantity
1	6882775 dated 20.12.2021	200	288	57600

2.2 Whereas, the representative samples of the goods have been sent to the Chemical Examiner, CRCL, Kandla on 03.01.2022 vide Test Memo No. 148 dated 29.12.2021 to ascertain the nature and composition of the goods/fabric. The Chemical Examiner Grade-II, CRCL, Kandla vide his report no. 6882575/20.12.2021 submitted that the goods are made up of "*colored printed, knitted fabric of polyester spun yarn*".

2.3 A letter dated 06.01.2022 has also been issued to the Additional Commissioner (Prev.), CGST & Central Excise, Delhi East Commissionerate, New Delhi, having jurisdiction over the Exporter premises to verify the genuineness of the Exporter along with the verification of Inward and outward supplies.

2.4. Whereas, the goods appear to be overvalued and the exporter has no inward and outward supply in the e-way bill data therefore, the goods appears to be liable for confiscation under Section 113 of the Customs Act, 1962, therefore, the goods brought for exportation have been put under seizure vide Seizure Memo dated 13.01.2022 and handed over to the custodian CFS for safe custody.

3.1 Based on the request letter Dated 06.01.2022 received from the proprietor of the exporter firm to release their goods for export. The proprietor of the exporter firm also submitted that he will provide the clarification or documents required by the department. Therefore, on the request of the said exporter, **the good were allowed for exportation by withholding all the export benefits of the exporter** vide letter F.No. S/15-110/SIIB-C/Arise/CHM/2021-22 dated 19.01.2022.

3.2 Further, from the details of e-way bills and invoices submitted by the exporter it was observed that the goods covered under the said Shipping Bills were said to have purchased from Garg Traders only. Therefore, a letter dated 10.01.2022 was issued to the Deputy Commissioner (Preventive), CGST & Central Excise, Delhi East Commissionerate, New Delhi for verification of the following premises of Exporter as well as their supplier.

Sl. No.	Name	GST Number	Registered Address
1	M/S Arise Enterprises (Exporter)	07JIOPK5622M2Z/	Plot No.1, Old Mo.40-41, 2nd Floor, Gali No. 1, Main School Road, Shakti Vihar, Meethpur, Badarpur, New Delhi-110044
2	Ms Garg Traders	07BHGPC2152K1ZG	2679-80, 2678 Old No. 2697, Plot No. 23-24, GF, Pvt. No. -6, Gurudwara Road, Naiwala, Karol Bagh, New Delhi

3.3 Further, letters dated 19.01.2022 have also been issued to the Deputy Commissioner (Export), The Assistant Commissioner, Zone-VII, Ward-93, Department of Trade & Taxes, Govt. of NCT of Delhi & to the Additional Commissioner CGST & Central Excise, Delhi East Commissioner, New Delhi requesting for suspension of all the Export Benefits of the said Exporter.

3.4 A letter F.No. IV(Hqrs.Prev)/CST-N/12/Garg/2393/21-22 dated 19.01.2022 was received from the Deputy Commissioner (AE), CGST, Delhi North, wherein, it has been informed that during the visit at the registered premises of M/s. Garg Traders situated at 2679-80, 2678, Old No. 2697, Plot No. 23-24, GF PVT No. 6, Gurudwara Road, Naiwala Karol Bagh, the entity was found non-existent at the said address/ premises and some other firm was operating there.

3.5. A letter F.No. GEXCOM/AE/GST/326/2022-AE-SIGMA dated 04.02.2022 was received from the Joint Commissioner (AE), CGST, Delhi, wherein, it has been informed that during the visit at the registered premises of M/s. Arise Enterprise (GSTIN-07JIOPK5622M2ZJ) situated at Plot No. 1, Old No. 40-41, 2nd Floor, Gali No. 1, Main School Road, Shakti Vihar, Meethapur, Badarpur, New Delhi -110044, the entity was found non-existent at the said address/ premises. Further, it is informed that the rent agreement uploaded on the portal was found forged as the owner of the premises denied to sign any such document.

3.6. Further, an e-mail dated 18.10.2022 was received from NCTC wherein, the verification conducted by CGST Delhi East was forwarded and it is informed that the GSTIN has been cancelled.

3.7. The GSTIN details of the Exporter M/s. Arise Enterprises [07JIOPK5622M2ZJ] have been verified from GST portal and it is observed that the effective date of registration for the said GSTIN was 08.11.2021 and the registration was cancelled w.e.f. 23.02.2022.

3.8. On the basis of the enquiries made regarding verification of genuineness of the supply chain of the exporter it is observed that following various stage suppliers of the exporter are non-existence;

Sl. No.	Name	GST Number	Remark
1	M/S Arise Enterprises (Exporter)	07JIOPK5622M2ZJ	Non-existence
2	Ms Garg Traders (Supplier)	07BHGPG2152K1ZG	Non-existence

From the above, it appears that the only supplier of the exporter who supplied the goods to be exported and also the exporter itself are non-existent.

3.9 From the verification report of the premises of the Exporter appeared that the exporter has taken premises i.e. Principal Place of Business on rent under lease and license agreement for 11 months, to get GST registration only and thereafter he left the premises. Hence, it is clear that the exporter was a dummy/bogus firm intended to file incorrect Shipping Bills with higher valuation of goods and to avail undue export benefits.

4.1. In view of the foregoing paras, it is evident that the Exporter as well as the supply chain is fake and the that the value declared by the Exporter was 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. Further, it also appears that in terms of Rule 3 (3) of the said rules, the value has to be re-determined by proceeding sequentially under Rule 4 to 6. In the instant case, the value of export goods could not be determined in terms of Rule 4 of the Rules, ibid, as the goods under export could not be compared with similar goods in the absence of exact description of the goods in terms of design, sizes etc. The value of the goods under export could not be determined, considering the cost of production, profit margin etc. as per Rule 5 of the Rules ibid, as the Party is non-existent. Thus, the value of impugned goods merit to be re-determined under residual method i.e. Rule 6 of the Rules ibid by conducting market inquiry to ascertain the fair value.

4.2 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. The Chartered Engineer had submitted the valuation vide valuation certificate Ref: CE/TZ/MUN/649/2022-23 dated 31.03.2023 in respect of the subject goods. As per the Chartered Engineer, suggested estimated value of the goods as USD 1.20 per piece instead of declared value USD 7.20 per piece. Thus, total value of goods comes out to be Rs.52,15,104/- as against Declared Value of Rs.3,12,90,624/-.

The detailed calculation chart of the goods the valuation of goods to be exporter i.e. Ready Made Garments i.e. "Boys knitted T-shirts (Round Neck) made of man-made fibre" falling under CTH -61099010 as per Valuation Certificate submitted by Chartered Engineer is as under:

Sl. No	Shipping Bill No.	Qty (Pcs)	Per unit Declared Value (in USD)	Declared FOB (in USD)	Per unit Re-determined Value (in USD)	Total Re-determined FOB Value (in USD)
1	6882575	57600	7.2	4,14,720	1.2	69,120
Fob Value in INR taking Exchange Rate 75.45 as per Shipping Bill data				3,12,90,624		52,15,104

5. In view of the foregoing paras, it appears that the Exporter has mis-declared with intent to avail higher export incentive by overvaluing the impugned goods. The value declared by the Exporter in the export documents was **Rs. 3,12,90,624/- (Rupees Three Crore Twelve Lakh Ninety Thousand Six Hundred and Twenty Four only)** whereas during the market enquiry FOB value comes to **Rs. 52,15,104/- (Rupees Fifty Two Lakh Fifteen Thousand One Hundred and Four only)**. Since, the exporter himself was found non-existent, but the goods have already been exported, therefore, there is no option other than to confiscation of the goods and rejection of the export benefits of the exporter under the provisions of Customs Act, 1962.

6.1 Therefore, the Notice was proposed to be issued to the Exporter / Noticee,

- (i) The FOB value of Rs. 3,12,90,624/- (Rupees Three Crore Twelve Lakh Ninety Thousand Six Hundred and Twenty Four only) of the goods covered under impugned Shipping Bills bearing no. 6882575 dated 20.12.2021 should not be rejected under Rule 8 of CVR, 2007 and re-determined as Rs. 52,15,104/- (Rupees Fifty Two Lakh Fifteen Thousand One Hundred and Four only) under Rule 6 of CVR, 2007.
- (ii) The goods covered under impugned Shipping Bills no. 6882575 dated 20.12.2021, should not be confiscated under Section 113(i), Section (ia) & Section 113(ja) of the Customs Act, 1962.
- (iii) The drawback claims in respect of impugned Shipping Bill no. 6882575 dated 20.12.2021 should not be rejected.
- (iv) The RoSCTL claims in respect of impugned Shipping Bill no. 6882575 dated 20.12.2021 should not be rejected.
- (v) Penalty should not be imposed upon the exporter under the provisions of Sections 114(ii) of the Customs Act, 1962.

6.2 Further, the Notice was proposed to be issued to M/s. Pushpanjali Logistics, Block-M, RZ-81, B, Chankya Plaza, Part-II, Opp C-1, Janakpuri, New Delhi (the Customs Broker of the exporter), Penalty should not be imposed under Section 117 of the Customs Act, 1962.

7. WRITTEN SUBMISSION

- 7.1** During the Course of Inquiry / Investigation, Exporter found to be NON – EXISTENT.
- 7.2** CB M/s. Pushpanjali Logistics, vide their Letter Dated 04.08.2023, interalia, requested for waiver of Show Cause Notice and Personal Hearing in the matter.

8. PERSONAL HEARING

- 8.1** During the Course of Inquiry / Investigation, Exporter found to be NON – EXISTENT, therefore, Personal Hearing was not Possible; therefore, the matter decided on EX-PARTE.
- 8.2** Personal Hearing in the matter, was waived as per letter Dated 04.08.2023 of CB M/s. Pushpanjali Logistics.

9. DISCUSSION & FINDING

I have carefully gone through the facts of the case, allegation proposed after investigation in the matter, following the principles of natural justice as per the provisions of the Customs Act / Rules.

The case before me is to decide (i) the FOB value of Rs. 3,12,90,624/- (Rupees Three Crore Twelve Lakh Ninety Thousand Six Hundred and Twenty Four only) of the goods covered under impugned Shipping Bills bearing no. 6882575 dated 20.12.2021 should not be rejected under Rule 8 of CVR, 2007 and re-determined as Rs. 52,15,104/- (Rupees Fifty Two Lakh Fifteen Thousand One Hundred and Four only) under Rule 6 of CVR, 2007 (ii) the goods covered under impugned Shipping Bills no. 6882575 dated 20.12.2021, should not be confiscated under Section 113(i), Section

(ia) & Section 113(ja) of the Customs Act, 1962 (iii) the drawback claims in respect of impugned Shipping Bill no. 6882575 dated 20.12.2021 should not be rejected (iv) the RoSCTL claims in respect of impugned Shipping Bill no. 6882575 dated 20.12.2021 should not be rejected (v) Penalty should not be imposed upon the exporter under the provisions of Sections 114(iii) of the Customs Act, 1962 (vi) Penalty should not be imposed upon M/s. Pushpanjali Logistics, Block-M, RZ-81, B, Chankya Plaza, Part-II, Opp C-1, Janakpuri, New Delhi (the Customs Broker of the exporter), under Section 117 of the Customs Act, 1962.

10. During the course of Enquiry / Investigation, Exporter found to be Non Existence, and the CHA / CB (co-noticee), vide their letter Dated 04.08.2023 waived Show Cause Notice and Personal Hearing in the matter. Principle of Natural Justice as provided in Section 122A of the Customs Act, 1962 have been complied with.

11. In the case, the Summons was received Un-Delivered, on verification found Non Existence of the Exporter as well as Non Existence of the 5 Supply Chain Supplier out of 8, the Exporter has not turned up to tender their Statement, further the Investigation concluded that, the exporter was a dummy / bogus firm intended to file incorrect Shipping Bills with higher valuation of goods and to avail undue export benefits.

12. Therefore, the case is of gross misdeclaration with an intent to claim Higher Benefit i.e. of Drawback and RoSCTL by overvaluing the Export Cargo than the eligible as per the Policy.

Therefore, I hold that benefit claimed at the rate which was normally not admissible on the ground that the same were procure by Exporter by way of mis declaration and therefore the same is liable for Confiscation under the Customs Act, 1962.

Since the goods were released provisionally for export and the Exportation of the same, had been effected under Bond.

13.1 During Investigation, reference was made to ascertain the existence of the Supplier for verification of inward / outward supply by supplier entities, and are found not in existence.

13.2 Further, IGST registration of the Exporter GSTN portal for Search of GSTIN of the exporter was observed to be cancelled.

14. On going through the facts of the case, observed that, in the case, all the papers / documents created by the Exporter to obtain required Licenses for Export of Goods also created documents in support of Goods to be Exported and the same were prepared with very high value, with an intent to claim the Export Benefit and thereby cheat to the Ex-Chequer; therefore, the case is of Over Valuation of the Goods, which one can not identify base on Papers comparing with the Goods. Under the circumstances, the role being played by the CB / CHA and as mentioned in the letter by CB as well as during Examination of Goods the Declaration of the Goods were not challenged. Further, during the Course of Inquiry, the Exporter found not reachable and after due enquiry concluded that the Exporter is newly registered and not found at the Given / Registered Address. Therefore, reasons to believe that the Exporter generated / created / fabricated documents for Over Valuing the Goods to be Exported to claim the Export Benefit on Higher Side; which can be justified after physical verification of the Goods to be Exported and the Declared Value for the said Goods, under the circumstances, the role played by the CB / CHA is not under cloud.

15. In view of the discussion above, I hold that, the value declared by the Exporter for the Goods to be Exported covered under said Shipping Bill was overvalued to get the additional Benefit of Duty Drawback and RoSCTL, and the same is to be Re-Determined as per the Provisions of the Customs Determination of Value of Goods Rules, and Value of the Goods so under Export as suggested by the Government Valuer vide their Valuation Report reveals that the Declared Value of the Cargo was overvalued and thereby M/s Arise Enterprise, have rendered the goods liable for confiscation as per the provision of Section 113 of the Customs Act, 1962; and also liable for penalty under section 114 (iii) of the Customs Act, 1962. And as per the provisions of Section 125, I am giving

him an opportunity to pay Redemption Fine in lieu of Confiscation, though the goods are provisionally released for Export under Bond.

16. Accordingly, I upheld the charges levelled against the exporter. After taking into consideration of all the facts and circumstances and relying on the material facts available on records, I am much inclined towards a just, fair, reasonable stance towards the Exporter.

Further, I found that the Goods were allowed for Export Provisionally by **withholding all the export benefits of the exporter** vide letter F.No. S/15-110/SIIB-C/Arise/CHM/2021-22 dated 19.01.2022.

Further, no goods are available to recover the Fine as well as Penalty except legal undertaking i.e. Bond.

Accordingly, I pass the following order :-

ORDER

- (1) I order to reject the Declared Export Value of Rs. 3,12,90,624/- (Rupees Three Crore Twelve Lakh Ninety Thousand Six Hundred and Twenty Four only) of the goods covered under impugned Shipping Bills bearing no. 6882575 dated 20.12.2021 and reject all the eligible Export Benefit on the said goods as per the provisions of the Customs Act, 1962.
- (2) I order to recall and reassess the impugned Shipping Bill, at re-determined Value as Export Value of Rs. 52,15,104/- (Rupees Fifty Two Lakh Fifteen Thousand One Hundred and Four only) under Rule 6 of CVR, 2007 as per the Valuation Report of the Chartered Engineer.
- (3) The goods covered under impugned Shipping Bill has already been allowed for Provisional Export and the Goods are already Exported, I hereby order to Confiscate the same and Impose Redemption Fine in lieu of Confiscation of Rs. 3,00,000/- (Rupees Three Lacs only) on the Exporter as per the provisions of the Customs Act, 1962.
- (4) I Impose a Penalty of Rs. 5,00,000/- (Rupees Five Lacs only) on the Exporter as per the provisions of the Customs Act, 1962.
- (5) I order to reject the admissible of Duty Drawback and RoSCTL benefit available on the said goods covered under mentioned Shipping Bill.
- (6) I refrain from imposing any Penalty on M/s Pushpanjali Logistics under Section 117 of the Customs Act, 1962.

This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

Raghuvansh Kumar 28/23
रघुवंश कुमार / **Raghuvansh Kumar**
अपर आयुक्त, / Additional Commissioner
सीमा शुल्क सदन, मुंद्रा / Custom House, Mundra

BY Registered/Speed Post :-

**ARISE ENTERPRISES (IEC- JIOPK5622M), PLOT NO.1, OLD NO.40-41, 2ND FLOOR,
GALI NO. 1, MAIN SCHOOL ROAD, SHAKTI VIHAR, MEETHPUR, BADARPUR,
NEW DELHI-110044** 3663

**M/S. PUSHPANJALI LOGISTICS, BLOCK-M, RZ-81, B, CHANKYA PLAZA, PART-II, OPP
C-1, JANAKPURI, NEW DELHI**

Copy to:

- 1) The Deputy Commissioner of Customs (RRA/Export/TRC/Drawback), Custom House, Mundra
- 2) Guard File

