	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,</p> <p>सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF</p> <p>CUSTOMS,</p> <p>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421</p> <p>PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in</p>
A. File No.	: F.No.: GEN/ADJ/COMM/144/2025-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	: MUN-CUSTM-000-COM-63-2025-26
C. Passed by	: Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	: 10.03.2026 10.03.2026
E. SCN No. & Date	: SCN F.No. GEN/ADJ/COMM/144/2025-Adjn-Pr Commr-Cus-Mundra, dated 19.03.2025.
F. Noticee(s) / Party / Importer	: <ol style="list-style-type: none"> 1. M/s Shri Rathi Agro Industries, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110, Gujarat . 2. Shri Hemraj Rathi, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110, Gujarat. 3. Sh. Sandip Rathi, S/o Shri Hemraj Rathi, Authorized signatory of M/s. Shri Rathi Agro Industries, R/o: 5 Shreenathji Society, Opp. Thkkavadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110. Also at: P-202, Indraprastha 6, Opposite Auda Garden, Satellite, Ahmedabad, Gujarat.
G. DIN	: 20260371MO0000020087

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000 रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं.-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal 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:-**1. Intelligence:**

A specific intelligence was received in the office of the Directorate of Revenue Intelligence (Hqrs.), 7th Floor, Drum Shaped Building, I. P. Bhawan, I. P. Estate, New Delhi (hereinafter referred to as 'DRI') which indicated undervaluation in the export of rice. The intelligence further indicated that after imposition of duty on export of rice with effect from 09.09.2022, several exporters, including **M/s Shri Rathi Agro Industries**, 5, Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand, Ahmedabad, Gujarat – 382110, having IEC No. **0810007797** (hereinafter referred to as 'the exporter' for sake of brevity), were engaged in short payment of export duty by resorting to undervaluation by claiming abatement of duty from the assessable value. Thus, export duty was not being paid on the transaction value of the export goods (i.e. FOB Value) as provided u/s 14 of the Customs Act, 1962, instead the same was being paid on a reduced value by wrongly declaring the same as FOB Value thus causing short-payment of the appropriate duty of Customs.

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

2.2 Scrutiny of the export data pertaining to the said exporter revealed that they were evading duty on export of rice by adopting two different methods i.e. **(i)** by claiming wrongful deduction of export duty from the transaction value, and **(ii)** by declaring excess freight amounts.

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

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

the transaction value for the payment of export duty in all such export shipments causing short payment of duty.

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

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

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

Initiation of investigation:

3.1 Pursuant to the afore-said intelligence and apparent undervaluation of the export goods, investigation was initiated against various exporters of the said commodity including **M/s Shri Rathi Agro Industries**, 5, Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand, Ahmedabad, Gujarat – 382110, having IEC No. **0810007797**, by issuance of summons under the provisions of section 108 of the Customs Act, 1962. It was a partnership firm having four partners Shri Hemraj Rathi, Mrs. Bhagwati Rathi, Mrs. Vimlaben Rathi and Shri Vishesh Kumar Rathi who were the family members (father, mother, wife and brother) of **Sh. Sandip Rathi**, Authorized signatory of M/s Shri Rathi Agro Industries who was handling all the work of the said export firm.

3.2 Vide summons dated 27.10.2023, 14.11.2023, 19.01.2024, 04.07.2024 and 13.01.2025 issued to **M/s Shri Rathi Agro Industries** under the provisions of the Customs Act, 1962, documents related to the investigation such as shipping bills, export invoices, freight invoices, bill of lading and Bank Realization Certificates etc. were requested from the exporter.

3.3 In pursuance of the summons issued to **M/s Shri Rathi Agro Industries**, vide letter dated 28.11.2023 (**RUD-1**), **M/s Shri Rathi Agro Industries** submitted copies of the export documents in respect of the export to rice for the period from July, 2022 to Sept., 2023 including the copies of the export invoice cum packing list, Shipping Bill, Bill of Lading, Bank Realization Certificate, proforma invoice/contract executed with the overseas buyer.

3.4 Vide email dated 21.07.2024 (**RUD-2**), **M/s Shri Rathi Agro Industries**, submitted the details of payments received in respect of each shipping bill and expenses made towards payments of ocean freight & insurance charges in respect of consignments exported on basis of CF, CI and CIF inco terms.

3.5 Further, vide emails dated 27.01.2025 (**RUD-3**), M/s Shri Rathi Agro Industries submitted the copies of the freight invoices in respect of the shipments of rice exported by them on CF, CI and CIF inco-term basis.

4. During investigation, statements dated 28.11.2023 of Sh. Sandip Rathi, Authorized signatory of M/s Shri Rathi Agro Industries (RUD-4) was recorded u/s 108 of the Customs Act, 1962.

5.1 Vide his statement dated 28.11.2023, Sh. Sandip Rathi, Authorized signatory of M/s Shri Rathi Agro Industries stated that M/s Shri Rathi Agro Industries was incorporated in 2010 and there were four partners in the said company namely **Shri Hemraj Rathi** (his father), Mrs. Bhagwati Rathi (his mother), Mrs. Vimlaben Rathi (his wife) and Shri Vishesh Kumar Rathi (his brother); that each partner has 25% share of the firm and get proportional remuneration from the profit of the firm; that he looked after all the sales and marketing work of the said company for the last 8-10 years; that it being a family business he used to look after the sales work of the said company; that he got a monthly salary of Rs. 37500/- in his bank account through cheque; that he was also the authorized signatory/mandate holder of in the bank account of the said firm in the Bank of Baroda, Sanand Branch; that he looked after the sales including the export sales and marketing work of the said firm; his father looked after the business related to overall management and financing of the said firm; that his younger brother looked after the purchase and procurement related work of the said firm; that other two partners, his mother and his wife, were namesake partners of the said firm and did not look after any specific work of the said firm.

5.2 He further stated that Shri Rathi Agro Industries was engaged in the business of milling and trading of wheat and rice; that for the last 3-4 years they had started the export of rice to overseas customers also; that their first export of rice was made in the month of Feb-2020; that they exported IR-64 variety of rice which is described in the export documents as 'Indian Long Grain White Rice'; that they had also exported a few consignments of parboiled rice also but their major exports were of white rice only; that their major clients are M/s Falcon Foods FZE, UAE and M/s Wilmer Rice Trading Pte. Ltd., Singapore; that their export cargo is delivered in the African countries such as Angola, Camerone, Kenia, Congo etc.

5.3 He further stated that they procured the rice/peddy mainly from traders based in Uttar Pradesh, Gujarat, Karnataka, and Maharashtra; that they procured the rice directly from the farmers in Gujarat; that after procurement, they processed the rice/peddy which involves the work of cleaning, whitening or polishing, silky, grading and sorting work; that processing was done depending upon the type of rice procured; that complete process was done in respect of raw

peddy where in case of semi-milled rice, the work of polishing, silking, grading-sorting etc. was done; that after processing, the rice was dumped in the godowns/warehoused of the Custom Brokers for export purpose; that exports were made mainly from Kandla and Mundra Ports.

5.4 He was asked to see and explain the contents of the documents pertaining to **purchase contract No. EXP/SRAI/35/2022-23 dated 20.03.2023**, at page no 303 to 317 of the file number File No. 3 submitted by him vide his letter dated 28.11.2023. He stated that the purchase contract No. EXP/SRAI/35/2022-23 dated 20.03.2023 was for sale of rice executed between **M/s. Shri Rathi Agro Industries** (Seller) and **Falcon Foods FZE, UAE** (Buyer), for supply of 662.5 MTs of Indian White Rice at the rate of USD 310 per MTs FOB; that the said purchase contract had the following details:

- i. Seller Name: M/s Shri Rathi Agro Industries
- ii. Buyer Name: M/s Falcon Foods FZE, UAE
- iii. Product: Indian Long Grain White Rice 5% Broken
- iv. Quantity: 662.5 MTs +- 5%
- v. Price: USD 310 per MT
- vi. Total Contract value: USD 205,375 +-5%
- vii. Basis: FOB
- viii. Destination: Mombasa, Kenya

5.5 He was asked to see the documents pertaining to **SB No. 9801347 dated 05.05.2023** and was asked to explain the same in context to his above answer/statement. He stated that the said Shipping bill, shown to him, was for the export shipment of 662.5 MTs of Indian Long Grain White Rice to the consignee M/s Export Trading Company Ltd., Mombasa, Kenya by M/s Shri Rathi Agro Industries, at a price of USD 310 per MT FOB (Total value USD 205375); that the corresponding commercial invoice no for the Shipping Bill no 9810347 dated 05.05.2023 was **No. 7 dated 05.05.2023 (Part A)**, for supply of 662.5 MTs of Indian Long grain white rice at a price of USD 310 per MT (total amount **USD 205375**); that they had generated another invoice i.e. Reimbursement Invoice No. 7 (Part B) dated 05.05.2023 wherein quantity is mentioned as 662.5 MT the rate has been mentioned as USD 62 per MT (Total Value = **41075 USD**).

5.6 He stated that the Amount as per statement of Bank Realisation against shipping Bill no 9810347 dated 05.05.2023 is **USD 205345**; that, however, amount of **USD 41075** was received by them from the buyer in their bank account number which was reflected in their bank account; that the price according to the contract was USD 310 per MT; that on Invoice (No. 7 dated 05.05.2023 Part A) the price is mentioned as USD 310 per MT FOB, which has been received by them from the foreign supplier and for which BRC has been generated; that the export clearance charge of USD 62 per MT i.e. USD 6200 has also been received by them from the foreign buyer against the Reimbursement Invoice No. 7 dated 05.05.2023 (part B) and the same has not been included by them in the calculation of the FOB value for payment of export duty; that the actual total invoice value (FOB) was USD 346450 (Unit Price 372 USD per MT), however they had bifurcated the invoice value in two parts and had claimed a deduction equal to USD 62 per MT at the time of declaring the value of the export goods for the purpose of payment of Customs Duty.

5.7 Further he stated that they had deducted the said amount as mentioned in reimbursement invoice from the total transaction value of the shipment

received by them from the buyer of the export goods as reimbursement of the export duty paid by them for effecting the export clearance of the said shipment; that the value declared by them to the Customs Authority for payment of the export duty did not reflect the true transaction value of the export shipment; that the actual transaction value for the said shipment was USD 372 / MT FOB, however, to save themselves from payment of some duty they had deducted a part of the transaction value (i.e. USD 62/MT) from the total actual transaction value and had paid duty on the balance amount of USD 310/MT; that the value declared by them for the purposes of the payment of Customs duty was cum duty FOB value (USD 372- USD 62= USD 310) instead of the actual FOB Value of USD 372/MT.

5.8 He was shown a printout of section 14 of the Customs Act, 1962 along with copy of CBIC Circular No. 18/2008-cus dated 10.11.2008. In this regard, he stated that as per the said section 14, the value of the export goods for payment of export duty shall be the transaction value of the export goods i.e. the price paid or payable for delivery of the export goods at the time and place of exportation; that the CBIC circular also provides that the value for charging export duty shall be the FOB value of the export goods and the practice of calculation of the FOB value as cum-duty price has been discontinued by the CBIC with effect from 01.01.2009 as per the said circular.

5.9 On being asked as to whether the clearance charges mentioned in the reimbursement invoice (which are equivalent to the export duty paid by them) raised by them to the buyer of the exported rice is includible in the transaction value for calculation of the export duty, he stated that since these clearance charges are also part of their cost and expenses occurred by them for effecting the export of goods on FOB basis and the same has been received by them from the supplier, the same should be included in the transaction value for calculation of the export duty; that after the imposition of duty on export of rice with effect from September, 2022, they started paying the appropriate export duty on the FOB price; that in March 2023, as per the practice followed by some other exporters, they started to bifurcate the actual FOB Value in two parts and started claiming reimbursement of the export duty from the overseas buyer; that for facilitating the bank remittances, they had generated/issued Reimbursement invoices to the buyer having unit price equivalent to the export clearance charges.

5.10 He stated that on being shown the above printout of Section 14 and CBIC Circular No. 18/2008-cus dated 10.11.2008, he had understood that for payment of export duty, transaction value of the export goods has to be arrived at and the transaction value of the export goods is the price of the goods inclusive of all expenses and costs up to the loading of the goods in the vessel after clearance by customs authority; that they had paid the duty by treating the FOB value as cum duty FOB value instead of the actual FOB value of the export goods causing short payment of duty on export of rice; that they had adopted the said practice for exports made by around 12 Shipping Bills during the months of March, 2023 to May, 2023; that it was done by them on being advised by some other exporters of rice; that thereafter, they started paying export duty on the actual full FOB value of the export goods; that they would submit the details of the shipping bills wherein the export duty has been paid by them by treating the FOB value as cum duty FOB value.

6. Vide letter dated 31.01.2024 (**RUD-5**), Partner of M/s Shri Rathi Agro Industries, submitted that they have calculated their differential duty payable

on account of wrong claim of deduction amount out of FOB value of the exports and submitted two Demand Drafts, for voluntary payment of the differential duty amounting to **Rs. 1,61,84,364/-**. The two Demand Drafts submitted by M/s. Shri Rathi Agro Industries were deposited in the government account at the respective ports as below:

- i. Demand Draft No. 231042 dated 29.01.2024 for Rs. 81,29,440/- in favour of Commissioner of Customs, Kandla A/c Rathi Agro Industries payable at Kandla for payment of duty by M/s Shri Rathi Agro Industries. Deposited at the Kandla Port vide this office letter dated 01.02.2024. **(RUD-6)**
- ii. Demand Draft No. 231041 dated 29.01.2024 for Rs. 80,54,924/- in favour of Commissioner of Customs, Mundra A/c Rathi Agro Industries payable at Mundra payable at Mundra for payment of duty by M/s Shri Rathi Agro Industries. Deposited at the Mundra Port vide Challan no. 2312 dated 16.02.2024. **(RUD-7)**

7. Summons dated 10.03.2025 under section 108 of the Customs Act 1962 were also issued to Sh. Vinesh Rathi and Sh. Hemraj Rathi, both Partners of M/s Shri Rathi Agro Industries. However, vide letters dated 11.03.2025 **(RUD-8)** both of the Partners, namely Sh. Vinesh Rathi and Sh. Hemraj Rathi, submitted that their authorized signatory / Manager Sh. Sandip Hemraj Rathi had already appeared, tendered statements and submitted documents, that they have authorized him to represent the firm before Directorate of Revenue Intelligence; that they take responsibility all the acts done by Sh. Sandip Hemraj Rathi and that they agree with all the documents and statements signed and submitted by sh. Sandip Rathi before Directorate of Revenue Intelligence officers; that their export firm is responsible for all the acts done by Sh. Sandip Rathi.

8.1 The export documents and details submitted by the exporter during investigation were analysed and it was revealed that M/s Shri Rathi Agro Industries had exported rice having description as Indian Non-Basmati Raw Rice/ Indian IR-64 White Rice / Indian Long Grain Rice etc. by classifying the same under CTH 10063090 which were liable to export duty @ 20% *ad valorem* vide CBIC Notification No. 49/2022-Cus. dated 08.09.2022 and 49 /2023-Customs dated the 25th August, 2023. In their export documents (Shipping Bills), they have declared the following three values (i) Total Value, (ii) Invoice Value and (iii) FOB Value. The Total Value declared by them was inclusive of export duty and indicated the total consideration received by them from the overseas buyer. **Invoice Value** was declared after deducting from the Total Value, an amount equal to the export duty paid by them in respect of their export goods. **FOB Value** was declared after deduction of the ocean freight amounts and insurance amounts from the afore-said Invoice Value. Thus, total amount of deductions of **Rs. 8,54,33,249/-** were wrongly claimed by the exporter from the actual FOB Value in respect of their **12** export shipments as shown below.

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

Scrutiny of the export documents and details submitted by the exporter during investigation revealed that the exporter had at the time of filing of shipping bills claimed the deduction of an amount of **Rs. 8,54,33,249/-** in respect of the following **12** shipping bills filed by them. The export duty amounts paid by them in respect of these **12** shipping bills were also at **Rs. 8,54,33,249/-**. Therefore, the amounts claimed as 'deduction/deduct' were equal to the export duty amounts paid by them at the time of filing of **12** of these shipping bills.



Investigation has revealed that these amounts claimed as ‘deduction/deduct’ were also recovered by the exporter from the overseas buyer in their bank accounts. The exporter had also confirmed these facts in his submission and statement recorded u/s 108 of the Customs Act, 1962.

Table: A

(Deduction amount claimed is equal to Export Duty amount paid by them)								
S. No.	Shipping Bill Number	Shipping Bill Date	Declared FOB Value (INR)	Export duty Paid (INR)	Declared Total Value (INR)	Declared Invoice Value (INR)	Deduction claimed in Shipping Bill (INR)	Amount received through Reimbursement of taxes in INR, as confirmed by the exporter
1	8526837	16-03-2023	2,53,42,500	50,68,500	3,76,05,000	3,25,36,500	50,68,500	50,68,500
2	8691965	23-03-2023	3,36,60,963	67,32,193	4,88,08,396	4,20,76,203	67,32,193	67,32,193
3	8747430	25-03-2023	5,08,09,000	1,01,61,800	6,09,70,800	5,08,09,000	1,01,61,800	1,01,61,800
4	8860201	28-03-2023	15,24,27,000	3,04,85,400	18,29,12,400	15,24,27,000	3,04,85,400	3,04,85,400
5	9119883	06-04-2023	3,36,60,963	67,32,193	4,88,08,396	4,20,76,203	67,32,193	67,32,193
6	9464034	21-04-2023	1,67,17,525	33,43,505	2,00,61,030	1,67,17,525	33,43,505	33,43,505
7	9464040	21-04-2023	1,67,17,525	33,43,505	2,00,61,030	1,67,17,525	33,43,505	33,43,505
8	9558938	26-04-2023	1,67,17,525	33,43,505	2,00,61,030	1,67,17,525	33,43,505	33,43,505
9	9559704	26-04-2023	1,67,17,525	33,43,505	2,00,61,030	1,67,17,525	33,43,505	33,43,505
10	9689567	01-05-2023	2,52,34,000	50,46,800	3,58,16,000	3,07,69,200	50,46,800	50,46,800
11	9801347	05-05-2023	1,66,04,569	33,20,914	1,99,25,483	1,66,04,569	33,20,914	33,20,914
12	9985833	12-05-2023	2,25,57,150	45,11,430	3,20,16,600	2,75,05,170	45,11,430	45,11,430
	Total		42,71,66,244	8,54,33,250	54,71,07,194	46,16,73,945	8,54,33,249	8,54,33,249

8.2.1 For ease of reference, photo of **Shipping Bill No. SB No. 9801347 dated 05.05.2023 (RUD-9)** is pasted below which clearly indicates that the deduction of **Rs. 33,20,914/- (equivalent to USD 41,075)** has been claimed in the Shipping Bill which is equal to the cess amount (i.e. Export Duty) of **Rs. 33,20,914/-** paid by them. The said amount has been deducted by the exporter from the actual transaction value (i.e. FOB Value) and export duty has not been paid on the said differential value of **Rs. 33,20,914/-** which is though part of the consideration received by the exporter from the overseas buyer for sale of the consignment. For receipt and processing of the said export duty amount of **Rs. 33,20,914/- (equivalent to USD 41,075)**, in their bank account, separate Reimbursement Invoice has been issued by the exporter to the buyer which was also submitted to the bank authorities for processing of the receipt of the payment.

Photo of shipping bill no. 9801347 dated 05.05.2023

 INDIAN CUSTOMS EDI SYSTEM CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS DEPARTMENT OF REVENUE - MINISTRY OF FINANCE GOVERNMENT OF INDIA	Port Code	SB No	SB Date	
	INMUN1	9801347	05-MAY-23	
	IEC/Br	0810007797	1	
	GSTIN/TYPE	24ABSF7279Q1ZW GSN		
	CB CODE	AIIIPB4243LCH006		
	TYPE	INV	ITEM	
Nos	1	3	25	
PKG	26500	G.WT	MTS	664.62
*SB22130520231912				

MUNDRA SEZ PORT, MUNDRA, GUJARAT

PART - II - INVOICE DETAILS

A. REF	1.S.No	2.INVOICE No. & Dt	3.P.O.No. & Dt	4.LoC No. & Dt	5.Contract No.&Dt	6.AD code	7.INVTERM
1	07	05/05/2023				0200849	FOB

B. TRANSACTION PARTIES	1.EXPORTER'S NAME & ADDRESS			2.BUYER'S NAME & ADDRESS		
	SHRI RATHI AGRO INDUSTRIES SURVEY NO. 175/2/1, 175/2/2/1, AND 175/3, VILLAGE-PIPAN,TA. SANAND 382110			NOTIFY.1.EXPORT TRADING CO LTD., 8TH FLOOR,TEXAS TOWER,NEAR CINEMAX, P.O.BOX NO 99007-80107, NYALI MOMBASA, KENYA.		
	3.THIRD PARTY NAME & ADDRESS			4.BUYER AEO STATUS		

C.VAL DTL	1.INVOICE VALUE	2.FOB VALUE	3.FREIGHT	4.INSURANCE	5.DISCOUNT	6.COMMISON	7.DEDUCT	8.P/C	9.EXCHANGE RATE
	205375 USD	205375 USD	0 USD	0 USD	0 USD	0 USD	41075 USD		1 USD INR 80.85


1.ItemSNo	2.HS CD	3.DESCRPTION	4.QUANTITY	5.UQC	6.RATE	7.VALUE(F/C)
1	10063090	BRAND,ORANGE FALCON,INDIAN LONG GRAIN WH ITE RICE 5% BROKEN - GRADE 1,PACKING:25K G BOPP BAGS (2% EMPTY BAGS FREE OF COST)	662.5	MTS	372	246450

Photo of Commercial Invoice No. 07 (Part-A) dated 05.05.2023 submitted to the overseas buyer.

INVOICE CUM PACKING LIST (PART A)

SELLER SHRI RATHI AGRO INDUSTRIES 1 SURVEY NO.175/2/1, 175/2/2/1 AND 175/3, VILLAGE-PIPAN,TA.SANAND AHMEDABAD 382110		Invoice No. & Date 07 Dated: 05.05.2023	Exporters Ref. IEC : 0810007797
Consignee : TO ORDER NOTIFY PARTY 1 EXPORT TRADING CO LTD, 8TH FLOOR, TEXAS TOWER, NEAR CINEMAX, P.O.BOX NO 99007 - 80107, NYALI MOMBASA, KENYA. NOTIFY PARTY 2 EXPORT TRADING COMMODITIES PTE LTD, #32-11 INTERNATIONAL PLAZA, 10 ANSON ROAD, SINGAPORE 079903. NOTIFY PARTY 3 AGRICOMMODITIES & FINANCE FZ - LLC, P.O.BOX 40410, DUBAI, U.A.E. NOTIFY PARTY 4 FALCON FOODS FZE, RAK, UAE			
Pre-Carriage by	Place of Receipt by Pre-carrier	DELIVERY : FOB MUNDRA,INDIA PAYMENT : 100 % ADVANCE	
Vessel	Port of Loading	MUNDRA, INDIA	
Port of Discharge	Final Destination	MOMBASA, KENYA	
Marks & Nos./ Container No.	No. & Kind Description of Goods Of Pkgs.	Quantity	Rate FOB
	INDIAN LONG GRAIN WHITE RICE 5% BROKEN - GRADE 1 MARKING: ORANGE FALCON PACKING: 25 KG PP BOPP BAG TOTAL NO. OF BAGS : 26500 BAGS TOTAL NET WT : 662.500 MTS TOTAL GROSS WT : 664.620 MTS 2% EMPTY BAGS LOADED FREE OF COST IMPORT PERMIT NO.XXXXXXX DATED: XX.XX.XXXX FREIGHT PREPAID	662.500	310.000
	REMARKS: UNDER LUT BOND ARN NO.AD2404220050122.DATE:02.04.2022 AG SUPPLY BY UNDER LUT: KNACK PACKAGING PVT LTD -ZNY NO.XXXXXXXXXX, GSTIN:24AAFCK0771L12G DUTY AMOUNT WILL BE REIMBURSE FROM BUYER TO SHIPPER THROUGH BANK AS PER INCLUDE IN CONTRACT VALUE DBK SER NO.1006048,NOTIFICATION NO.07/2020-CUS(NT)		
Amount Chargeable (In words)	US DOLLAR TWO HUNDRED FIVE THOUSAND AND THREE HUNDRED SEVENTY FIVE ONLY	TOTAL	2,05,375.00
SUMMARY DUTY USD. \$ 41,075 WE HEREBY CERTIFY THAT THE GOODS ARE OF INDIAN ORIGIN			
Declaration We declare that this invoice shows the actual price of the goods described and that the particulars are true and correct		For SHRI RATHI AGRO INDUSTRIES Authorised Signatory	

Sudhakar Netaji
20/11/23



Reimbursement Invoice No. Invoice No. 07 (Part-B) dated 05.05.2023

SHRI RATHI AGRO INDUSTRIES


Manufacturer of Rice & Wheat

Mill Address :- Survey No.175/1Bhart Petrol Pump, Sanand Bavla Road, VIII -(PIPAN)-SANAND Ahmedabad -382110 (Gujrat (24)
 : Regd. Off. : 5 Shreenathji Society, Opp. Thkkavadi, Nr. Somnath Society, Ahmedabad Road, Sanand-382110 (Guj) India
 GSTIN NO. : 24ABSFS7279Q1ZW Email : rathi_sandip10@yahoo.in Mail :- rathiagro2010@gmail.com

REIMBURSEMENT INVOICE (PART B)

SELLER SHRI RATHI AGRO INDUSTRIES 1 SURVEY NO.175/2/1, 175/2/2/1 AND 175/3, VILLAGE-PIPAN,TA.SANAND AHMEDABAD 382110		Invoice No. & Date 07 Dated: 05.05.2023	Exporters Ref. IEC : 0810007797
Consignee : TO ORDER			
NOTIFY PARTY 1 EXPORT TRADING CO LTD, 8TH FLOOR, TEXAS TOWER, NEAR CINEMAX, P.O.BOX NO 99007 - 80107, NYALI MOMBASA, KENYA.			
NOTIFY PARTY 2 EXPORT TRADING COMMODITIES PTE LTD, #32-11 INTERNATIONAL PLAZA, 10 ANSON ROAD, SINGAPORE 079903.			
NOTIFY PARTY 3 AGRI COMMODITIES & FINANCE FZ - LLC. P.O.BOX 40410, DUBAI, U.A.E.			
NOTIFY PARTY 4 FALCON FOODS FZE, RAK, UAE			
Pre-Carriage by	Place of Receipt by Pre-carrier		
Vessel	Port of Loading MUNDRA, INDIA		
Port of Discharge MOMBASA, KENYA	Final Destination MOMBASA, KENYA		
Marks & Nos./ Container No.	No. & Kind Description of Goods Of Pkgs.	Quantity MT	Rate USD
	INDIAN LONG GRAIN WHITE RICE 5% BROKEN - GRADE 1 MARKING: ORANGE FALCON PACKING: 25 KG PP BOPP BAG TOTAL NO. OF BAGS : 26500 BAGS TOTAL NET WT : 662.500 MTS TOTAL GROSS WT : 664.620 MTS	662.500	62.000
			Assesable Value
			41,075.00
		TOTAL 41,075.00	
Amount Chargeable (In words) US FOURTY ONE THOUSAND SEVENTY FIVE ONLY		TOTAL VALUE(PART A+B) =246450	
A/C Name: SHRI RATHI AGRO INDUSTRIES BANK : BANK OF BARODA (BOB) FOREX BRANCH: ASHRAM ROAD,AHMEDABAD A/C No: 31030500000035 SWIFT CODE: BARBINBAHM		For SHRI RATHI AGRO INDUSTRIES Authorised Signatory	

Sandip Patel
28/11/23



BRC details submitted by the exporter indicating receipt of USD 2,05,345 i.e. the Declared FOB amount.

DIRECTORATE GENERAL OF FOREIGN TRADE		
STATEMENT OF BANK REALISATION		
1	Firm's Name	SHRI RATHI AGRO INDUSTRIES
2	Address	5, SHREENATHJI SOCIETY,NR. SOMNATHSOCIETY,OPP-THAKKAR WADI,SANAND Contact No: 224984AHMEDABAD AHMADABAD GUJARAT
3	IEC	0810007797
4	Shipping Bill No	9801347
5	Shipping Bill Date	2023-05-05
6	Shipping Bill Port	INMUN1
7	Bank's Name	BANK OF BARODA
8	Bank's File no and Uploaded Date	BARB0THANAX121020236462023-10-12 17:55:39
9	Bill ID no	0849FBA016731723
10	Bank Realisation Certificate No	BARB0ASHRAM230413566 Dated 2023-10-12
11	Date of realisation of money by bank	2023-06-20
12	Realised value in Foreign Currency	205345.000
13	Currency of realisation	USD
14	Date & time of printing	2023-11-01 10:50:14 AM

Foreign Remittance Inward details submitted by the exporter indicating receipt of Taxes amounting USD 41,075 vide Reimbursement Invoice No. 07 (Part-B) dated 05.05.2023.

ADVISE OF FOREIGN INWARD REMITTANCE			
TO: SHRI RATHI AGRO INDUSTRIES INDIA			DATE: 21/06/2023
WE HAVE RECEIVED FOLLOWING FOREIGN INWARD REMITTANCE IN YOUR FAVOUR AS MENTIONED BELOW:			
BILL ID NO:	0849IRTX17786023 - CRE001		
REMITTING BANK REF NO:	S063171116AE01		
REMITTER BANK	CITI BANK, NEW YORK		
VALUE DATE	20/06/2023		
AMOUNT RECEIVED	41,075.00 USD		
REMITTER NAME	FALCON FOODS FZE		
PURPOSE OF REMITTANCE	Receipts / Refund of taxes		
TRANSACTION DETAILS ARE AS BELOW:			
CHARGE DETAILS	CURRENCY	CHARGE AMOUNT	GST AMOUNT
REPAYMENT DETAILS:			
LOAN REFERENCE NUMBER	ACCOUNT NUMBER	REPAID AMOUNT	
DEBIT AND CREDIT ACCOUNT DETAILS:			
ACCOUNT NUMBER	DR/CR	AMOUNT	AMOUNT IN WORDS
08490200005645	Cr	USD 41,075.00	Forty One Thousand and Seventy Five US Dollars
Bank GSTN: 24AAACB1534F2ZB			
Customer GSTN:			
THIS IS A COMPUTER GENERATED ADVISE AND DOES NOT REQUIRE ANY SIGNATURE			
THIS IS A TRANSACTION ADVISE AND SHOULD NOT BE TREATED AS A GST INVOICE			
 			

8.3 For reimbursement of the export duty from the overseas buyer, the exporter had declared RBI Accounting Purpose Code No. P1306 which is for refund of taxes, however, the following discussion indicate that the said purpose code is not meant for the receipt of export duty and export proceeds -

The exporter has claimed that the deduction/ deduct amount claimed by them in the shipping bill have been received by them from the overseas buyers in the form of reimbursement of taxes. The said transactions have been made under the RBI purpose code P1306.

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

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

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

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

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

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

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

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

In addition to the shipments discussed in above para, in respect of the following **07** shipments of rice, the exporter had **declared higher amounts of ocean freight** in comparison to the actual ocean freight amounts paid by them, thus causing short payment of duty on the differential ocean freight amount in respect of these **07** shipments also. The total amount of excess freight declared by the exporter in respect of these shipments stood at **Rs. 83,55,429/-**. During investigation, the exporter had submitted the freight invoices indicating the actual freight amounts paid by them to the Freight forwarders/Shipping line, which clearly indicated that in these **07** shipments, they have declared excess freight amounts.

Table-B

S.No.	Shipping Bill Number	Shipping Bill DATE	Declared FOB Value (INR)	Cess Amount Paid (INR)	Declared Freight Amount as per Shipping Bill (INR)	Actual Freight Amount Paid as per Freight Invoice (INR)	Excess Freight Declared (INR)
1	1927857	22-06-2023	30,40,456	6,08,091	12,34,893	10,39,653	1,95,240
2	2274694	06-07-2023	86,87,773	17,37,555	44,27,962	30,65,349	13,62,613
3	8526837	16-03-2023	2,53,42,500	50,68,500	71,94,000	62,00,738	9,93,263
4	8691965	23-03-2023	3,36,60,963	67,32,193	84,15,241	66,00,007	18,15,233
5	9119883	06-04-2023	3,36,60,963	67,32,193	84,15,241	66,00,007	18,15,233
6	9689567	01-05-2023	2,52,34,000	50,46,800	55,35,200	44,89,210	10,45,990
7	9985833	12-05-2023	2,25,57,150	45,11,430	49,48,020	38,20,163	11,27,858
	Total		15,21,83,805	3,04,36,762	4,01,70,556	3,18,15,127	83,55,429

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

8.4.1 For ready reference, copy of **Shipping Bill Number 8691965 dated 23.03.2023 (RUD-10)** is pasted below. As per the shipping bill, the ocean freight amount declared in respect of the said shipment is **Rs.84,15,241/-** whereas during investigation, the exporter had submitted the actual freight amount paid by them in respect of the aforesaid shipping bill which stood at **Rs.66,00,007**. Thus, excess freight amount declared in respect of the aforesaid shipment works out to be at **Rs.18,15,233/-**. The said excess freight amount has also been recovered by the exporter from the overseas buyer of the export goods but the exporter had not paid duty on **the said excess freight amount which is part and parcel of the actual assessable value** of the export goods.

Photo of shipping bill No. 8691965 dated 23.03.2023 indicating excess freight amounts declared.



INDIAN CUSTOMS EDI SYSTEM
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
DEPARTMENT OF REVENUE - MINISTRY OF FINANCE
GOVERNMENT OF INDIA

Port Code: INMUN1 | SB No: 8691965 | SB Date: 23-MAR-23
IEC/Br: 0810007797 | 0
GSTIN/TYPE: 24ABSFS7279Q1ZW GSN
CB CODE: AIIPB4243LCH006
TYPE: INV | ITEM: 3 | CONT: 50
Nos: 1 | 3 | 50
PKG: 53000 | G.WT: 1329.24 | MTS: 1329.24


MUNDRA SEZ PORT, MUNDRA, GUJARAT

PART - I - SHIPPING BILL SUMMARY

A STATUS	1.MODE	2.ASSESS	3.EXMN	4.JOBGING	5.MEIS	6.DBK	7.RODTP	8.DEEC/DFIA	9.DFRC	10.RE-EXP	11.LUT
	SEA	Y	Y	N	Y	Y	N	N	N		Y
	12.PORT OF LOADING	INMUN1 (Mundra)				13.COUNTRY OF FINAL DESTINATION	TANZANIA				
	14.STATE OF ORIGIN	GUJARAT				15.PORT OF FINAL DESTINATION	TZDAR (Dar Es Salaam)				
	16.PORT OF DISCHARGE	TZDAR (Dar Es Salaam)				17.COUNTRY OF DISCHARGE	TANZANIA				
B DECLARANT DETAILS	1.EXPORTER'S NAME & ADDRESS					7.CONSIGNEE NAME & ADDRESS					
	SHRI RATHI AGRO INDUSTRIES					..TO ORDER,...					
	5. SHREENATHJI SOCIETY,NR. SOMNATH SOCIETY,OPP-THAKKAR WADI,SANAND Con AHMEDABAD										
C VALU SUMMA	3. AD CODE:		0200849			8. GSTIN / TYPE		24ABSFS7279Q1ZW GSN			
	4.RBI WAIVER NO. & DT					9.FOREX BANK A/C NO.		31XXXXXXXXXX035			
	5.CB NAME		WORLDWIND SHIPPING SERVICES			10.DBK BANK A/C NO.		31XXXXXXXXXX068			
D EX-PR. SUMMARY	6.AEO					11. IFSC NO.		BARB0SANAND			
	1.FOB VALUE	2.FREIGHT	3.INSURANC	4.DISCOU	5.COM	1.DBK CLAIM	2.IGST AMT	3.CESS AMT			
	33660962.51	8415241	0	0	0	9938		6732193			
6.DEDUCTIONS	7.P/C	8.DUTY		9.CESS	4.IGST VALUE	5.RODTEP AMT	6.ROSTL AMT				
6732193	0	6732193		6732193		0	0				
1.MAWB NO.	2.MAWB DT	3.HAWB NO.	4.HAWB DT	N.O.C.	1.SNO	2.INV NO.	3. INV AMT.	4.CURRENC			
					1	80	513437.5	USD			
4. CIN NO.	5. CIN DT.	6. CIN SITE ID									
23PCEG0402676761800	02-APR-23	INMUN1									

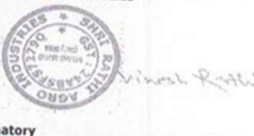
 INDIAN CUSTOMS EDI SYSTEM CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS DEPARTMENT OF REVENUE - MINISTRY OF FINANCE GOVERNMENT OF INDIA		Port Code INMUN1 IEC/Br GSTIN/TYPE CB CODE TYPE Nos PKG	SB No 8691965 0810007797 24ABSFS7279Q1ZW GSN AIPB4243LCH006 INV 1 53000	SB Date 23-MAR-23 0 50 1329.24 G.WT MTS			
MUNDRA SEZ PORT, MUNDRA, GUJARAT							
PART - II - INVOICE DETAILS							
A. REF	1.S.No	2.INVOICE No. & Dt.	3.P.O.No. & Dt.	4.LoC No. & Dt	5.Contract No.&Dt	6.AD code	7.INVTERM
	1	80 23/03/2023				0200849	CF
B. TRANSACTION PARTIES	1.EXPORTER'S NAME & ADDRESS			2.BUYER'S NAME & ADDRESS			
	SHRI RATHI AGRO INDUSTRIES 5, SHREENATHJI SOCIETY,NR. SOMNATH SOCIETY,OPP-THAKKAR WADI,SANAND Con 382110			WILMAR RICE TRADING PTE. LTD. 28 BIOPOLIS ROAD SINGAPORE 138568			
	3.THIRD PARTY NAME & ADDRESS			4.BUYER AEO STATUS			
C.VAL DTLs	1.INVOICE VALUE	2.FOB VALUE	3.FREIGHT	4.INSURANCE	5.DISCOUNT	6.COMMISON	7.DEDUCT
	513437.5 USD	410750 USD	102687.5 USD	0 USD	0 USD	0 USD	82150 USD
	1.ItemSNo	2.HS CD	3.DESCRPTION	4.QUANTITY	5.UQC	6.RATE	7.VALUE(F/C)
	1	10063090	BRAND.VIKING, INDIAN LONG GRAIN WHITE RI CE 5% BROKEN, PACKING IN 25KG 2 SIDE BOP P BAG (2% EMPTY BAGS FREE OF COST)	1325	MTS	449.5	595587.5

Freight Invoice no. GIM/GST/DN/294 dated 31.03.2023 indicating Actual Freight Amounts of USD 80,537.50/- (equivalent to Rs. 66,00,007) against EX INV No. 80 - 22-23 pertaining to the aforesaid shipment.

Freight Collection note ACTINFRAPORTLTD PLOT NO. 391/392,SECTOR 1/A,NEAR MAMLATDAR'S OFFICE, GANDHIDHAM - KUTCH REGD. OFFICE NO.14, SHIPPING HOUSE, GR.FLOOR, KUMPTA STREET, FORT, MUMBAI - 400 001 CINNo.U45200MH2004PLC148978 GSTIN/UIN: 24AAECA9098H1ZE StateName:Gujarat, Code:24						
Reverse Charge:	No	Service Description:				
Financial Year:	2022-23	Date of Supply:				
Debit Note No.:	GIM/GST/DN/294	Place of Supply:			GUJARAT	
Invoice Date:	31-Mar-23	Commodity:				
Vessel:		Qty.:				
Port of Loading:	MUNDRA	Exchange Rate(perUSD):			82.00	
Port of Discharge:						
Buyer(Billto)			Consignee(Shipto)			
SHRI RATHI AGRO INDUSTRIES 1-SURVEYNO.175/2/1,175/2/2/1AND175/3, VILLAGE-PIPAN,TA.SANAND AHMEDABAD-382110 GSTIN/UIN :24ABSFS7279Q1ZW State Name :Gujarat,Code:24			SHRI RATHI AGRO INDUSTRIES 1-SURVEYNO.175/2/1,175/2/2/1AND175/3, VILLAGE-PIPAN,TA.SANAND AHMEDABAD-382110 GSTIN/UIN :24ABSFS7279Q1ZW State Name :Gujarat,Code:24			
Sl No.	Description of Services	HSN/SAC	Qty	Curr	Rate inCurr	Amount inINR
1	CONTAINER FREIGHT Receive .USD EX. INV NO. 01 -23-24 \$ 55,150.00 EX. INV NO.81 -22-23 \$ 80,537.50 EX. INV NO.80 -22-23 \$ 80,537.50 EX. INV NO.76 -22-23 \$ 76,850.00 Total USD 292,075.00			₹		2,39,50,150.00
Total						₹2,39,50,150.00
Amount Chargeable (in words)						E & O E
Indian Rupees Two Crore Thirty Nine Lakh Fifty Thousand One Hundred Fifty Only						
Company's PAN :AAECA9098H			Company's Bank Details Bank Name :ICICIBANKLTD-(CURRENTACCOUNT) A/c No. :025905003727 Branch & IFS Code:Gandhidham&ICIC0000259			
for ACT INFRAPORT LTD 						
This is a Computer Generated Document						

F.No. GEN/ADJ/COMM/144/2025-Adjn

Commercial Invoice No. 80 dated 23.03.2023 raised in respect of shipping bill No. 8691965 dated 23.03.2023.

INVOICE CUM PACKING LIST (PART A)			
SELLER SHRI RATHI AGRO INDUSTRIES 1 SURVEY NO.175/2/1, 175/2/2/1 AND 175/3, VILLAGE-PIPAN,TA.SANAND AHMEDABAD 382110,INDIA		Invoice No. & Date 80 Dated: 23.03.2023	Exporters Ref. IEC : 0810007797
Consignee : TO ORDER		BUYER: WILMAR RICE TRADING PTE. LTD. 28 BIOPOLIS ROAD SINGAPORE 138568 TEL (65) 6216 0244	
NOTIFY PARTY: WILMAR RICE TANZANIA LIMITED Plot No 66/75, PO Box No - 1206 Industrial Complex, Kihonda Morogoro - Tanzania		Pre-Carriage by DELIVERY : CFR DAR ES SALAAM, TANZANIA PAYMENT : DP AT SIGHT	
Vessel	Port of Loading MUNDRA, INDIA	Final Destination DAR ES SALAAM, TANZANIA	
Port of Discharge DAR ES SALAAM, TANZANIA	No. & Kind Description of Goods Of Pkgs.		
50 X20 FT INDIAN LONG GRAIN WHITE RICE 5% BROKEN MARKING: VIKING BRAND PACKING: IN 25KG 2 SIDE BOPP BAG TOTAL NO. OF BAGS : 53000 BAGS TOTAL NET WEIGHT : 1325.000 METRIC TONS TOTAL GROSS WEIGHT : 1329.240 METRIC TONS 2% EMPTY BAGS HAVE BEEN SHIPPED ALONG WITH GOODS FREIGHT PREPAID		Quantity MT 1325.000	Rate PMT USD 310.000
REMARKS: UNDER LUT BOND ARN NO.AD2404220090122.DATE:02.04.2022 BAG SUPPLY BY UNDER LUT: KNACK PACKAGING PVT LTD -INV NO.XXXXXXXXXXX, GSTIN:24AAFCK077111Z DUTY AMOUNT WILL BE REIMBURSE FROM BUYER TO SHIPPER THROUGH BANK AS PER INCLUDE IN CONTRACT VALUE DBK SER NO.100604B,NOTIFICATION NO.07/2020-CUS(NT)		Assesable Value 4,10,750.00	Freight USD +OTHER 77.500
Amount Chargeable (In words) US DOLLAR FIVE HUNDRED THIRTEEN THOUSAND FOUR HUNDRED THIRTY SEVEN AND FIFTY CENTS ONLY SUMMARY DUTY USD. \$ 82150		TOTAL 5,13,437.50	
WE HEREBY CERTIFY THAT THE GOODS ARE OF INDIAN ORIGIN			
Declaration We declare that this invoice shows the actual price of the goods described and that the particulars are true and correct		For SHRI RATHI AGRO INDUSTRIES  Authorised Signatory	

9. The aforesaid **deduction amounts** claimed by the exporter, as detailed in **Table A** above and the **excess freight amounts declared** by them in their export documents in respect of the shipments as detailed in **Tables B** above, were not included in the declared FOB Value of goods in respect of these shipments, as discussed in para 8 above. Investigation has revealed that these **deduction amounts** have also been claimed and/or recovered by them from the overseas buyer of the export goods in their bank accounts. Therefore, the deduction amounts taken by the exporter from the overseas buyer in any manner whether or not by declaring the same in the export documents or by mis-declaration of freight amounts in the export documents **appears to be forming part of the consideration received by the exporter** for delivery of the export goods on board the vessel after clearance of the shipments through the customs authorities at the port of export. Thus, these excess freight amounts and deduction amounts claimed by the exporter at the time of filing shipping bills as discussed in above paras, also appear **liable to be included in the FOB Value for the purpose of calculation of the export duty.**

10. Legal Provisions:

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

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

- a) The term 'export' has been defined in "Section 2(18) of the Customs Act, 1962 as "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India."
- b) Section **14 of the Customs Act 1962, stipulates that** 'for the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of theexport goods shall be the transaction value of such goods, that is to say, **the price actually paid or payable for the goods** when sold for export from India **for delivery at the time and place of exportation**, where the buyer and seller of the goods are not related and price is the **sole consideration** for the sale subject to such other conditions as may be specified in the rules made in this behalf.
- c) In this provision the terms "**the price actually paid or payable for the goods**" and "**when sold for export from India for delivery at the time and place of exportation**" in the context of present case are very significant. For the process of export to be complete, the goods need to be taken out of India to a place outside India. This event can take place only after goods cross Indian borders. This is more so because the price has to be taken for sale of export goods when sold for export from India 'for delivery at the time and place of exportation'. The wording "**for the delivery-at the time and place for exportation**" has to be legally construed as "for delivery at the time and place of exportation on board the foreign going vessel". Thus, the time and place of delivery of the export goods will be when the goods are on-board the foreign going vessel which takes place after the goods are given a Let Export Order (LEO) by the jurisdictional Customs officer after examining the compliance to Customs law. By implication, all elements of cost that are required to be incurred to bring the goods 'for delivery at the time and place of exportation' to the foreign going vessel will have to be added to invoice price to arrive at a correct transaction value of export goods as per section 14 notwithstanding the manner as to how the financial transaction is organized by the exporter and the overseas buyer. It is amply clear that without incurring associated expenses the export goods cannot be simply brought to the place of exportation at the time of export. Thus, in the impugned case, the price payable for the export goods for delivery at the time and place of exportation can be arrived at only after inclusion of associated costs including the amounts equal to the export duty which have been recovered by the exporters from the overseas buyers of the export goods.
- d) "FOB value" means the price actually paid or payable to the exporter for goods when the goods are loaded onto the carrier at the named port of exportation including the cost of the goods and all costs necessary to bring the goods onto the carrier at included in the term 'FOB Value'. The valuation shall be made in accordance with the World Trade Organisation (WTO) Agreement on Implementation of rule VII of General Agreement on Tariffs and Trade (GATT), 1994. There cannot be an exception to the well laid down principles of valuation.
- e) This method of calculation of 'FOB Value' is prescribed in various trade facilitation agreements such as 'Asean India Free Trade Agreement (AIFTA)' in a very clear manner as follows. FOB value shall be calculated in the following manner, namely:

(a) FOB Value = ex-factory price + other costs

- (b) Other costs in the calculation of the FOB value shall refer to the costs incurred **in placing the goods in the ship** for export, **including but not limited to**, domestic transport costs, storage and warehousing, **port handling**, brokerage fees, service charges, et cetera.
- f)** This in fact lays down the foundation for arriving at the assessable value of the export goods whereby various elements of costs, including the export duty, notwithstanding it is being paid to the exporter directly by the foreign buyer or otherwise, are required to be added to the invoice price. Costing exercise of addition of other cost elements in FOB Value is not limited to transit transportation cost, storage & warehousing alone. Without payment of export duty, let export order cannot be issued by the jurisdictional customs office and the goods cannot be loaded on the foreign going vessel to take them out of India. On this background it is observed that value of the export goods on which duty has been paid by the exporter of rice does not reflect an FOB value i.e. a price payable for delivery of goods at the time and place of exportation which is a basis for export assessment.
- g)** This practice of payment of export duty by considering the FOB Value as cum-duty FOB Value was prevalent prior to the year 2009. **CBIC Circular No. 18/2008-Cus. dated 10.11.2008** in this regard instructed that the existing practice of computation of the export duty by taking FOB price as the cum-duty price may be continued till 31.12.2008 and all the pending cases may be finalized accordingly. It was also clarified that with effect from 01.01.2009, the practice of computation of export duty shall be changed; that for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.
- h)** In order to bring in uniformity, transparency and consistency in assessment of export of Iron Ore, CBIC vide Circular No. 12/2014 – Customs dated 17.11.2014 directed the field formations *inter alia* to monitoring the receipt of Bank Realisation Certificates for the purposes of comparison with the final invoices submitted by the exporter to satisfy the accuracy of the assessed values. It also indicates that the total consideration received by the exporter from the buyer for sale of the export goods have to be considered for assessment of the export goods. In shipments exported on FOB incoterm basis, duty has to be calculated on the total considerations received by the exporter from the buyer whether or not they are included in the BRC. For shipments exported on CIF/CF/CI inco-term basis, FOB Value has to be deduced from the CIF/CF/CI value by deducting the actual freight amounts and/or insurance premium amounts paid by the exporter as the case may be.
- i)** Relevance of time of export is further proved as Section 16 of the Customs Act, 1962 which provides for the date for determination of rate of duty and tariff valuation of export goods, stipulate that the rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, - (a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; (b) in the case of any other goods, on the date of payment of duty. The afore-said

statutory provision also indicate that time of export is relevant for valuation of the export goods.

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

11. The investigation into undervaluation of rice shipments exported by **M/s Shri Rathi Agro Industries** vide above mentioned Shipping Bills as discussed in **Tables A & B** above, revealed deliberate mis-statement and suppression of facts on part of the exporter, who was actively involved in mis-declaration of the FOB value of export goods, with an intention to evade appropriate export duty leviable on *ad valorem* basis on such goods. As discussed in above paras, the exporter had mis-declared the ocean freight amounts whereas they were very well aware of the actual freight amounts paid by them in respect of these shipments exported vide Shipping Bills mentioned in **Table B** above. In respect of the goods exported by them through shipping bills as discussed in **Table A** above, the exporter had wrongly claimed the deduction in the shipping bills for export duty amounts and the exporter had claimed duty amounts by raising separate Reimbursement invoices to the buyer but have not declared the same in the shipping bills and export invoices submitted to the customs authorities and thus have mis-declared the actual transaction value. Thus, the exporter had not declared the actual FOB Values in the shipping bills thereby intentionally evading the applicable duties of customs on such undue deduction amounts/excess freight amounts.

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

12.2 Further, for the purpose of charging export duty, the value to be considered is the FOB price. This is so because, the terms "*for export from India for delivery at the time and place of exportation*" appearing in Section 14 of the Customs Act, 1962, means to FOB (Free On Board) value only. This has been clarified also by the Central Board of Excise and Customs (CBEC) vide Circular No. 18/2008, dated 10.11.2008, wherein it stated that in case of export shipments, *for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.*

12.3 In this case, the value of the export goods shall be the transaction value thereof when the price is the sole consideration. As such, for determination of the transaction value of the export goods, the sole consideration received by the exporter from the buyer should be taken in to account, then it should be seen as to which prices are compulsory for delivery of the export goods on board the

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

13.1 The **method of calculation of FOB Value** has been provided at the website of various reputed platforms such as 'Freightos', which also support the contention of DRI that export duty is also includible in the FOB Value if the same has been recovered by the seller from the buyer.

The description of the said platform as available on their website under the heading 'About Freightos' states that

Freightos® (NASDAQ: CRGO) is the leading, vendor-neutral booking and payment platform for international freight, improving world trade. WebCargo® by Freightos and 7LFreight by WebCargo form the largest global air cargo booking platform, connecting airlines and freight forwarders. Over ten thousand freight forwarder offices, including the top twenty global forwarders, place thousands of eBookings a day on the platform with over fifty airlines. These airlines represent over 2/3rds of global air cargo capacity. Alongside ebookings, freight forwarders use WebCargo and 7LFreight to automate rate management, procurement, pricing and sales of freight services, across all modes, resulting in more efficient and more transparent freight services. More information is available at [freightos.com/investors](https://www.freightos.com/investors).

The website of freightos <https://www.freightos.com/freight-resources/fob-calculator> was visited which provide FOB calculator tools for the ease of international freight industry. As per the said website, *FOB (Free on Board) Calculator is a tool used in international trade to determine the total cost of goods when they are shipped from the seller's location to the buyer's destination. The FOB price includes the cost of the goods, as well as various expenses incurred until the goods are loaded onto the vessel, such as packaging, loading, and inland transportation to the port of departure. It does not include the freight charges for transporting the goods from the port of departure to the port of destination or any other charges or taxes beyond the point of loading.*

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

13.2 The above contention of DRI is also supported by the **Incoterms** which are widely used in the international transactions. Incoterm or International Commercial Terms which are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) relating to international commercial law. These incoterms define the responsibility of the importers and exporters in the arrangement of shipments and transfer of liability involved at various stages of transaction. They are widely used in the international commercial transactions and procurement processes. These incoterms rules are accepted by governments, legal authorities worldwide for the interpretation of most commonly used terms in the international trade. They are intended to reduce or remove altogether uncertainties arising from the differing interpretations of the rules in different countries. As per Wikipedia, the Incoterms 2020 is the ninth set of international contract terms published by the International Chamber of Commerce with the first set published in 1936 (RUD-11). As per Incoterms 2020 published by ICC, the term 'FOB' has been defined as under-

FOB – Free on Board (named port of shipment)

Under FOB terms the seller bears all costs and risks up to the point the goods are loaded on board the vessel. The seller's responsibility does not end at that point unless the goods are "appropriated to the contract" that is, they are "clearly set aside or otherwise identified as the contract goods".^[20] Therefore, FOB contract requires a seller to deliver goods on board a vessel that is to be designated by the buyer in a manner customary at the particular port. In this case, the seller must also arrange for export clearance. On the other hand, the buyer pays cost of marine freight transportation, bill of lading fees, insurance, unloading and transportation cost from the arrival port to destination.

As per the allocation of costs to buyer/seller according to incoterms 2020, in FOB terms, all costs related to loading of the export goods at origin, **export custom declaration**, carriage to the port of export, unloading of truck in port of export, loading on vessel/airplane in the port of export have to be borne by the seller of the goods and other expenses such as carriage to the port of import, insurance, unloading in port of import, loading on truck in port of import, carriage to the place of destination, import custom clearance, import duties and taxes and unloading at destination have to be borne by the buyer of the goods. Thus, all cost until the loading of the export cargo on board the foreign going vessel have to be borne by the seller of the export goods which also include export customs declaration and cost related to it. Thus, it is evident that the export duty is includible in the FOB Value and the same have to be borne by the seller and it cannot be recovered by the seller from the overseas buyer. If the same is recovered, it becomes part of the consideration for sale of the export goods and thus becomes liable to be included in the FOB Value of the export goods.

14. Rejection & Redetermination of the Transaction Value:

14.1 As discussed in the above paragraphs, valuation of export goods under the Customs Act, 1962, is governed by the provisions of Section 14, *ibid*, read with

the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 [here-in-after referred as the CVR (E), 2007]. The export proceeds receivable in full consequent to negotiation and finalization of sale price between the exporter from India and their overseas buyer form 'transaction value' of such goods. The export Customs duty is leviable on the actual sale price at which the goods were sold. Where such sale price has been mis-declared and under-stated by the exporter, the actual sale price, i.e. the Transaction Value, needs to be taken into account for the purpose of valuation of the impugned export goods.

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

14.3 The receipt of these deduction amounts from the overseas buyers was apparently never disclosed to the concerned Customs authorities. The said amounts were received from the overseas buyer, as reimbursement of taxes/duties under **wrong RBI Purpose code P1306** which is not meant for receipt of the export duty. The reduced FOB Value declared in the export documents was presented as the true Transaction Value being paid for the export goods by the overseas buyer as the deduction amount was not reflected in the Bank Realization Certificate (BRC) in respect of these export shipment. The deduction amount was recovered separately in their bank account as reimbursement of taxes. Hence, it appears that the value declared by **M/s Shri Rathi Agro Industries** to the concerned Customs authorities as the Transaction Value of the export cargo in respect of the shipments of rice covered by the Shipping Bills as shown in the Tables **A & B** above, is liable to be rejected under Rule 8 of the CVR(Export), 2007 and the impugned export goods are liable to be valued at their actual Transaction Value as established by the present investigation, in accordance with the provisions of Section 14 of the Customs Act, 1962, read with Rule 3 of the CVR(Export), 2007.

14.4 The amount wrongly excluded from the FOB price was indeed part of the consideration negotiated and finalized between the exporter **M/s Shri Rathi Agro Industries** and their respective overseas buyers and the said amount which was excluded from the FOB Value was duly claimed /received by the exporter

from the overseas buyer in their bank account. Therefore, the differential value (equal to the deduction amount/excess freight amount as shown in the **Tables A & B** above appears to be includible in the declared value (FOB Value) of the respective export shipments to arrive at the correct transaction value at which the said goods were sold for export from India for delivery at the time and place of exportation and export Customs duty as per the prevailing rate needs to be charged on the said value. **M/s Shri Rathi Agro Industries** appears to be liable to pay the resultant differential duty in addition to the duty already paid by them.

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

15. Calculation of Differential Duty:

15.1 As discussed in above paras, the exporter had undervalued their export shipments of rice. For this two modus operandi were adopted by the exporter. In some of their export shipments mentioned at **Table A in para 8 above**, the FOB price were undervalued by an amount equal to the amount of export duty paid by them at the time of export. In such shipping bills, actual transaction value of the export goods has to be re-determined by adding the amount of export duty which were wrongly claimed as deduction in the shipping bills. These deduction amounts are liable to be included in the actual assessable value of the export goods and differential duty of **Rs.1,70,86,649/-** is liable to be recovered from the exporter in respect of these deduction amounts as summarized below. The detailed calculation of differential duty is shown in **Annexure- I** to this Show Cause Notice.

Table-C

Port Code	No of SBs	Declared FOB Value in Rs.	Cess Amount Paid in Rs.	Deduction amounts claimed from FOB in Rs.	Reimbursement amount received from overseas buyer (INR)	Re-determined FOB value (after adding the Deduction amount) in Rs.	Duty payable on re-determined FOB in Rs.	Differential duty due to deductions claimed in Rs.
INMUN1	10	22,39,30,244	4,47,86,050	4,47,86,049	4,47,86,049	26,87,16,293	5,37,43,259	89,57,209
INIXY1	2	20,32,36,000	4,06,47,200	4,06,47,200	4,06,47,200	24,38,83,200	4,87,76,640	81,29,440
Total	12	42,71,66,244	8,54,33,250	8,54,33,249	8,54,33,249	51,25,99,493	10,25,19,899	1,70,86,649

15.2 Apart from the above, in several shipments of rice, as detailed in **Table B in para 8 above**, the exporter had declared excess freight amounts in comparison to the actual freight amounts paid by them to the freight forwarders/shipping lines for transportation of the export goods to the country of destination. Only the ocean freight amounts actually paid by the exporter are eligible for deduction from the CIF/CF value for calculation of the FOB Value of the export goods. Therefore, the excess freight amounts declared by the exporter are not eligible/allowed for deduction as per the provisions of Section 14 of the Customs Act, 1962. These excess freight amounts claimed by the exporter are also liable to be included in the actual assessable value of the export goods and as summarized below, differential duty amount of **Rs.16,71,085/-** is liable to be

recovered from the exporter in respect of these excess freight amounts also. The detailed calculation of differential duty is shown in **Annexure- II** to this Show Cause Notice.

Table – D

Port Code	No of SBs	Declared FOB value in Rs.	Cess Amount Paid in Rs.	Declared Freight Amount as per Shipping Bill (INR)	Actual Freight Amount Paid as per Freight Invoice (INR)	Excess Freight claimed (INR)	Re-determined FOB on account of excess freight (INR)	Differential Duty (INR)
INMUN1	7	15,21,83,805	3,04,36,762	4,01,70,556	3,18,15,127	83,55,429	16,05,39,234	16,71,085
Total	7	15,21,83,805	3,04,36,762	4,01,70,556	3,18,15,127	83,55,429	16,05,39,234	16,71,085

15.3 In view of the above-mentioned two modus operandi followed by the exporter for evasion of export duty, their re-determined assessable value in respect of total **14** export shipments have been calculated as shown in below table. Accordingly, the differential duty payable by the exporter M/s Shri Rathi Agro Industries works out to be at **Rs. 1,87,57,734/-** as shown in below Table. The detailed calculation of the differential duty amounts has been shown in **Annexure I & II** to this Show Cause Notice.

The port wise summary of differential duty payable by M/s Shri Rathi Agro Industries is as under:

Table-E

Port Code	No of SBs	Declared FOB Value in Rs.	Cess Amount (INR)	Re-determined FOB (INR)	Differential Duty on account of excess amount / deduction amount received from overseas Buyers	Differential Duty on account of Excess Freight claimed in SBs	Total differential duty in Rs.
INMUN1	12	23,56,58,473	4,71,31,696	28,87,99,951	89,57,209	16,71,085	1,06,28,294
INIXY1	2	20,32,36,000	4,06,47,200	24,38,83,200	81,29,440		81,29,440
Total	14	43,88,94,473	8,77,78,896	53,26,83,151	1,70,86,649	16,71,085	1,87,57,734

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

16.1 The exporter had subscribed to a declaration as to the truthfulness of the contents of the Shipping Bill in terms of Section 50(2) of the Customs Act, 1962, in all their export declarations. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, '**Self-Assessment**' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on export goods by the exporter himself by filing a Shipping Bill, in electronic form. Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make an entry for the export goods by presenting a Shipping Bill electronically to the proper officer. As per Regulation 4 of the Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulation, 2019 (issued under Section 157 read with Section 50 of the Customs Act, 1962), the Shipping Bill shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the export goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Shipping

Bill number was generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it was the exporter who must doubly ensure that he declared the correct classification / CTH of the export goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in respect of the export goods while presenting the Shipping Bill. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 08.04.2011, it was the added and enhanced responsibility of the exporter to declare the correct description, value, Notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the export goods.

16.2 In view of the discussion supra, it is evident that the **partners/ authorized signatory** of the export firm **M/s Shri Rathi Agro Industries**, were well aware about the actual transaction value of the export goods. They have knowingly got indulged in preparation and planning of forged / manipulated export documents, which they used to forward to the Customs broker in relation to Customs clearance of the said export goods at the time of exportation by way of wilful mis-declaration and intentional suppression of these facts in the Shipping Bills filed by them and thus they appear to have evaded the applicable Customs duty on export of rice.

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

17. From the scrutiny of the documents gathered/submitted during investigation by the exporter M/s Shri Rathi Agro Industries, scrutiny of the export data and statements of Sh. Sandip Rathi, Authorized signatory of M/s Shri Rathi Agro Industries of the said export firm who was involved in export of rice from various ports of India, it appears that—

- i. Shri Hemraj Rathi, Partner and Sh. Sandip Rathi, Authorized signatory of M/s Shri Rathi Agro Industries were the key persons who on behalf of M/s Shri Rathi Agro Industries negotiated and finalized the sale price of rice, exported by M/s Shri Rathi Agro Industries to various overseas buyers, vide **14 Shipping Bill** as detailed in **Tables A & B in para 8** above.
- ii. The declared FOB value in respect of shipping bills listed in **Tables A & B** did not reflect the correct transaction value of the export goods;
- iii. As discussed in above paras, the actual transaction value (i.e. FOB Value) was not declared by them in their export documents. They have undervalued and mis-declared their transaction value with intent to evade applicable duty of customs which is leviable @ 20% *ad valorem* on the actual transaction value of the export goods in following manners:

- In respect of Shipping bills listed in **Table A** above, the FOB Value was undervalued by them by an amount equal to the amount of export duty paid on export of rice and the said amount was wrongly claimed as deduction in the shipping bills and the said amount was recovered from the overseas buyer on the basis of separate reimbursement invoices raised to the buyer.
- In respect of the shipping bills listed in **Table B**, the declared FOB Value was further undervalued by an amount equal to the excess freight amounts declared by the exporter in the shipping bills which were over and above the actual freight amounts paid by them. The ocean freight amounts actually paid by the exporter are eligible deductions from the CIF Value. By declaring the excess freight amounts, exporter had wrongly claimed excess deductions of freight amounts which are not eligible. Thus, exporter had out rightly mis-declared the actual transaction value at the time of export.

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

- iv. The FOB value of export goods in all these cases was mis-declared by **M/s Shri Rathi Agro Industries** to the Customs authorities in the shipping bills filed by them which was supported by their export invoices for lower value, resulting in suppression and mis-declaration of actual transaction value at the time of assessment of the export goods. As such, the value of export goods in respect of all these Shipping Bills was mis-represented to be lower than the actual transaction value, thereby causing evasion of export duty leviable on rice shipments exported by them;
- v. The value of export goods pertaining to each of these Shipping Bills are liable to be rejected and reassessed as per their actual transaction value as ascertained during investigation, by taking into account the amount which was excluded from the declared value at the time of assessment, as brought out in above paras;
- vi. The balance amount not included in the declared FOB Value and wilfully suppressed by not declaring to Customs with an intention to misrepresent the transaction value of the export goods, is liable to be assessed to duty at the applicable rate as detailed in '**Annexure -I and Annexure -II**' of this Show Cause Notice and the same is recoverable along with interest at applicable rate;
- vii. The act of undervaluation and mis-declaration of actual transaction value in respect of Shipping Bills listed in **Tables A & B** above by **M/s Shri Rathi Agro Industries** has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 and consequently, **M/s Shri Rathi Agro Industries** has rendered themselves liable to a Penalty under the provisions of Section 114A and Section 114AA of the Customs Act, 1962;

viii. Shri Hemraj Rathi, Partner of M/s Shri Rathi Agro Industries and Sh. Sandip Rathi, Authorized signatory of M/s Shri Rathi Agro Industries, appear to be the persons who knowingly or intentionally either made, signed and used or caused to be made, signed and used, the custom purpose export invoices, exporter and banking purpose export invoices and Shipping Bills for export of rice by M/s Shri Rathi Agro Industries, which were incorrect as regards to the value of export goods for payment of export duty. The goods covered under Shipping Bills listed in **Tables A & B** above, contained the declarations made by M/s Shri Rathi Agro Industries which were false and incorrect in material particulars relating to the value of the impugned goods. The contracts with the buyer for sale and export of rice as well as the export documents submitted to Customs were finalized/signed in the overall supervision of its Partner, **Shri Hemraj Rathi**, who was handling the entire business of the export firm. This fact has been admitted by **Sh. Sandip Rathi** in his statement recorded u/s 108 of the Customs Act, 1962. These facts have also been admitted by Sh. Hemraj Rathi and Sh. Vinesh Rathi in their submissions vide letters dated 11.03.2025. In view of this, it appears that **Shri Hemraj Rathi and Sh. Sandip Rathi** are the key persons who has orchestrated the entire scheme of mis-declaration of value of the export goods, with an intention to evade customs (export) duty on export of rice through his firm M/s. Shri Rathi Agro Industries. **Shri Hemraj Rathi and Sh. Sandip Rathi** are, therefore, responsible for wilful acts of mis-statement and suppression of facts in respect of export of rice by M/s Shri Rathi Agro Industries. The act of **Shri Hemraj Rathi and Sh. Sandip Rathi** regarding under valuation and mis-declaration of actual transaction value in respect of Shipping Bills filed by **M/s Shri Rathi Agro Industries** has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. As such, **Shri Hemraj Rathi and Sh. Sandip Rathi** have rendered themselves liable to penal action under the provisions of Section 114 (ii) and 114AA of the Customs Act, 1962 for intentionally and knowingly done acts of commission and omission by him.

18. CBIC vide Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 had stipulated that in cases of multiple jurisdictions as referred in Section 110AA of the Customs Act, the report in writing, after causing the inquiry, investigation or audit as the case may be, shall be transferred to officers described in column (3) of the said Notification along with the relevant documents. For cases involving short levy, non-levy, short payment or non-payment of duty, as provided in Section 110AA (a) (ii), the functions of the proper officer for exercise of powers under Section 28 of the Customs Act, 1962 have been assigned to the jurisdictional Pr. Commissioner/ Commissioner of Customs in whose jurisdiction highest amount of duty is involved. Since, in the present case, exports have been made from **two (02) different ports**, as mentioned in **Table E in para 15.3 above**, however the highest amount of differential export duty is in respect of **Mundra Port, Gujarat**. Hence, **Mundra Port, Gujarat**, being the port involving highest revenue, this Show Cause Notice is being made answerable to **Principal Commissioner/ Commissioner of Customs, Mundra Port, Gujarat**, for the purpose of issuance as well as adjudication of Show Cause Notice under Section 110AA read with Notification No. 28/2022-Customs (N.T) dated 31.03.2022.

19.1 Now therefore, **M/s Shri Rathi Agro Industries** having its registered office at 5, Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand, Ahmedabad, Gujarat – 382110 (bearing Importer Exporter Code No. **0810007797**), **through its Partners**, are hereby called upon to show cause within 30(thirty) days of receipt of this Notice, in writing, to the Adjudicating Authority i.e., **the Principal Commissioner/ Commissioner of Customs, Mundra, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat - 370421 (INMUN1)** as to why—

- i. The declared assessable value of **Rs. 43,88,94,473 /-** in respect of 14 shipments of rice exported vide Shipping Bills detailed in Table-E above and **'Annexure-I & II'**, should not be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3(1) ibid and Section 14(1) of the Customs Act, 1962;
- ii. The actual assessable value in respect of Shipping Bills detailed in **'Annexure-I & II'**, should not be re-determined at **Rs. 53,26,83,151/-** under the provisions of Section 14 (1) of the Customs Act, 1962 read with Rule 3 (1) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 by taking into account – **(a)** the amounts claimed as deduction in the shipping bills, which were equivalent to amount of export duty claimed by them; **(b)** excess ocean freight amounts claimed/ recovered from the overseas buyers as discussed in **Para 8 & 15** of this Show Cause Notice;
- iii. The differential (export) duty amounting to **Rs. 1,87,57,734/-** payable, as calculated and shown in **'Annexure-I and II'** to this Show Cause Notice, in respect of Shipping Bill filed by them at two different ports, should not be demanded and recovered from them, by invoking the extended period of limitation available under the provisions of Section 28(4) of the Customs Act, 1962;
- iv. The applicable interest on the afore-said total differential duty amount of Rs.1,87,57,734/- should not be demanded and recovered from them under the provisions of Section 28AA of the Customs Act, 1962;
- v. The voluntary deposit of **Rs. 1,61,84,364/-** made during investigation should not be appropriated against their aforesaid differential duty liability;
- vi. The shipments of rice exported vide Shipping Bills detailed in **'Annexure-I & II'** to this Notice having re-determined assessable value of **Rs.53,26,83,151/-**, should not be held liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962;
- vii. Penalty under the provisions of section 114 A and Section 114 AA should not be imposed upon them for the acts of commission and omission as brought out in the Show Cause Notice.

19.2 Now therefore, **Shri Hemraj Rathi, Partner of M/s Shri Rathi Agro Industries and Sh. Sandip Rathi, Authorized signatory of M/s Shri Rathi Agro Industries** (having Importer Exporter Code No. **0810007797**), Residents of No. 5, Shreenathji Society, Opp. Thakkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand, Ahmedabad, Gujarat – 382110, are hereby called upon to show cause within 30 (thirty) days of receipt of this Notice, in writing, to the Adjudicating Authority i.e., i.e., the Principal Commissioner/ Commissioner of Customs, Mundra, 5B, Port User Building, Mundra Port, Mundra, Kutch,

Gujarat -370421 (INMUN1) as to why penalty under the provisions of Section 114(ii) and Section 114AA of the Customs Act, 1962 should not be imposed upon them for their acts and omissions in evasion of Customs Duty amounting to **Rs.1,87,57,734/-** on export of rice through their export firm.

PERSONAL HEARING-

20. Personal Hearing held on 06.01.2026

The Personal Hearing dated 06.01.2026 was attended by Shri Dilip Agarwal and Mr. Kushagr Agarwal (Authorised Representative) through physical mode. They submitted their written submission dated 06.01.2026 and stated that the deduction were claimed as per the trade practice followed at the time of export Shipments; that the exporter has made the said shipment first time and followed the practice adopted by the other exporter; that there was no intention to evade duty; that the mistake was bonafide due to interpretation issue of Notification No 49/2022-Cus. Dated 08.09.2022; that the exporter had paid almost entire amount of the differential duty during the investigation period as per the direction of the investigating officer and only a nominal amount is remaining to be paid; that this was also not paid due to calculation issue at their part. They further stated that the Noticee is agree to pay the remaining duty amount, penalty portion, as deemed fit by the adjudicating authority and requested to take a lenient view while imposing penalty, as this the first case wherein department had issued the show cause notice against the noticee.

WRITTEN SUBMISSION-

21. M/s Shri Rathi Agro Industries, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110, Gujarat vide their submission dated 06.01.2026, inter-alia, submitted that-

21.1 They are engaged in the business of trading and export of rice, Most of their export are made on FOB basis and only some on CFR basis; that at the time of export for arriving at transaction value they were bifurcating the contract value in FOB and export duty. This was done on advice of other exporters of rice . Hence, in respect of Shipping Bills they had made export on cum duty FOB Value. In an enquiry conducted by DRI, it was pointed out that as per Circular No 18/2008-Cus dated 10.11.2008, for computation of export duty the FOB price was cum duty price till 31.12.2008. And from 01.01.2009, it was proposed that for purpose of calculating export duty, the transaction value under Section 14 of the Customs Act,1962 shall be FOB price. DRI pointed that by not paying export duty on transaction value which was 'Consideration/negotiated ' price' They have short paid duty amounting to Rs.1,61,84,364. It was also contended by DRI that they have collected extra freight amounting to Rs.1,61,84,364.00. It was also contended by DRI that they have collected extra freight amounting to Rs. 83,55,429 from the buyer than that actually paid to the freight forwarder/shipping line. The excess freight is not eligible for deduction and is liable to be added to transaction value. Hence, differential duty amounting to Rs.16,71,085.00 is liable to be demanded from them.

Demand of Rs. 1,78,55,449.00(Rs.1,61,84,364.00+ Rs.16,71,085.00)

- (i) They have paid Rs.81,29,440.00 vide Demand Draft No.231042 dated 29.01.2024 for export made through Kandla Port and Rs.80,54,924.00 vide Demand Draft No.231041 dated 29.01.2024 for export made through Mundra Port.

- (ii) They did not agree with the demand of Rs.16,71,085.00 on alleged excess freight collected because excess freight is not a consideration towards the sale of goods and hence its not part of transaction value That the transaction value under Section 14 of Customs act,1962 is FOB price at the time and place of exportation of goods. That the FOB price includes all the cost of goods, as well as various expenses incurred until the goods are loaded on to the vessel such as packaging, loading and, in land transportation to the port of departure ; that It does not include the freight charges for transporting the goods from the port of departure to the port of destination or any other charges or taxes beyond the point of loading;that Freight being collected is from port of loading to the port of destination country. Hence, excess freight collected does not form part of transaction value for levying export duty.

21.2 Invocation of extended period of limitation for issuing Show cause Notice.

Extended period of limitation was involved for issuing Show Cause Notice on the ground that the Directors of the firm have knowingly indulged in preparation and planning of forged/manipulated export documents. They also indulged in willful mis declaration and intentional suppression of facts in the shipping bills filed by them and thus they appear to have evaded the applicable customs duty on export of rice.

In this regard , They submitted that export duty on rice was levied w.e.f 08.09.2022 vide Noti No 49/2022-Cus dated 08.09.2022. When they started export, enquiry was made with the other persons regarding manner of payment of export duty. It was suggested that export duty is leviable on cum-duty FOB price as was practice up to 31.12.2008. they were also not aware of provisions of Circular No. 18/2008-CUS dated 10.11.2008 which prescribed that export duty was to be levied on transaction value under section 14 of the Customs Act,1962 w.e.f 01.01.2009. Shipping bills were filed under bonafide belief that FOB price is cum duty price for calculation of export duty as was practice up to 31.12.2008. There was no forging/ manipulation of documents as alleged. All the relevant details like invoice value, FOB Value, Freight and deductions was mentioned in the relevant column of shipping bills. There was no mis -declaration or international suppression of facts in the shipping bills with an intent to evade export duty. Hence, invocation of extended period of limitation for issuance of show cause notice is not proper.

21.3 Penalty under provision of Section 114A of Customs Act,1962.

As mentioned supra they have committed bonafide mistake while declaring value at the time of export and there was no intention to avoid payment of duty. Differential duty as pointed out by the DRI was deposited during the investigation stage. So, it is requested that liberal view may be taken in the matter.

Further, they submitted that the Hon'ble Supreme Court in Pushpam Pharmaceuticals Vs. CCE has held that "Suppression" requires a deliberate act to keep the department in the dark. That In the present case, all relevant documents, including the invoice and Packing List, were submitted at the time of filing the Bill of Export. And there was no act of concealment or misdeclaration. That all the relevant details like Invoice Value, FOB Value, Freight and deductions were mentioned in the relevant column of Shipping Bills. There was no misdeclaration or intentional

suppression of facts in the shipping bills with an intent to evade export duty. Hence, invocation of extended period of limitation for issuance of Show cause Notice under Section 28(4) of the Customs Act, 1962 is not proper.

21.4 Penalty under provision of Section 114AA of Customs Act, 1962.

They submitted that for levy of penalty under Section 114AA of the Customs Act, 1962, there are two essentials-

- (a) Intent to evade duty (Mens Rea)
- (b) Use of false or incorrect material

They submitted that the bona fide mistake was made while declaring FOB value and there was no intention to evade payment of duty; that they fully cooperated during investigation and deposited differential duty on the direction of officers of DRI without waiting for Show Cause Notice. Hence, there was no element of mens rea. Further, they submitted that they have not used any forged/manipulated document. All the required details like invoice Value, FOB Value, Freight and deductions was mentioned in the relevant column of Shipping Bills. And all the documents required at the time of export was furnished.

They stated that Since essential condition for imposing penalty under Section 114AA of Customs Act, 1962 are not satisfied, Hence the penalty can not be imposed.

DISCUSSION AND FINDINGS-

22. After having carefully gone through the Show Cause Notice, relied upon documents, submissions made by the Noticee's and the records available before me, I now proceed to decide the case. The main issues involved in the case which are required to be decided in the present adjudication are as under: -

- (i) Whether, in accordance with the provisions of Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Price of Export Goods) Rules, 2007, the differential Customs duty, in respect of the Shipping Bills mentioned in Table A, and B at Para 8.2 and 8.4 above where a part of the export proceeds was apparently not declared to the concerned Customs authorities and thus not included in the declared transaction value has to be computed based on the actual transaction value of the export goods as revealed during the investigation; or whether the export duty reimbursed by the buyer, and excess freight declared are eligible for deduction from the FOB value?
- (ii) Whether the FOB value declared by the said noticee in the Shipping Bills at the time of export of goods is required to be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3 (1) ibid and Section 14 (1) of the Customs Act, 1962;
- (iii) Whether the actual assessable value in respect of Shipping Bills detailed in 'Annexure-I & II is required to be re-determined at Rs. 53,26,83,151/- under the provisions of Section 14 (1) of the Customs Act, 1962, and total differential (export) duty amounting to Rs.1,87,57,734/- payable, as calculated and shown in 'Annexure-I & II to the notice, in respect of these 14 Shipping Bills filed by them at 02 different ports, is required to be demanded and recovered from them, by invoking the extended period of limitation available under the provisions of

Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA *ibid*;

- (iv) Whether the shipments of rice exported vide Shipping Bills detailed in 'Annexure-I & II to the Notice having proposed re-determined assessable value of Rs. 53,26,83,151/- deserve to be confiscated under the provisions of Section 113 (i) of the Customs Act, 1962;
- (v) The voluntarily amount of Rs. 1,61,84,364/- deposited by them during investigation is liable to be appropriated against their duty liability.
- (vi) Whether penalty under Section 114 and Section 114AA of the Customs Act, 1962 is required to be imposed on the said noticee; and
- (vii) Whether for their acts and omissions in evasion of Customs duty amounting to Rs. 1,87,57,734/- through their partnership firm, Shri Hemraj Rathi, Partner and Shri Sandip Rathi, Authorised Signatory of M/s Rathi Agro Industries, 05, Shreenathji Society, Opp.Thakkar vadi, Nr.Somnath Society, Ahmedabad Road, Sanand,Ahmedabad, Gujarat-382110, are liable for penalty under the provisions of section 114 (ii) and Section 114AA of the Customs Act, 1962 total duty.

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

“1[Section 14. Valuation of goods. -

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

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

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

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;*
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*

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

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

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

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

Explanation . - For the purposes of this section -

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

(i) determined by the Board, or

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

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

Rule 3 of CVR, 2007

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

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

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

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

Computation of Value under Section 14 for Levy of Export Duty

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

2. Hitherto, the export duty and cesses were calculated by taking the FOB price declared by the exporter as the cum-duty price and working backwards from the FOB price. This methodology is based

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on instructions issued by the Board (contained in Appraising Manual) in 1966. This view was reconfirmed by the Board in 2000 while developing the software for Indian Customs EDI System (ICES-Exports) for the purpose of levy of cess under various enactments of different Ministries.

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

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

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

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

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

8. Hindi version follows.

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

25. I find it appropriate to mention here that Section 14 of the Customs Act, 1962, read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007) stipulates that the value of export goods shall be based on the transaction value that is, the actual price paid or payable for the goods when sold for export from India at the time and place of exportation, provided that the buyer and seller are not related and the price is the sole consideration. I noticed that the Central Board of Excise and Customs

(CBIC) vide Circular No. 18/2008-Cus., dated 10.11.2008 has clarified that, for assessment of export duty, the transaction value should be taken as the FOB value of the export goods at the time and place of exportation and no abatement of export duty is permissible from this value.

26. I find that export duty is a statutory levy and therefore form part of transaction value. In the present case the exporter has not borne the incidence of duty but the duty amounts were recovered by the exporter from the buyers as part of sale consideration. Hence, these recovered amounts must be included in transaction value. I find that all taxes/expenses before the point of loading of the export goods on board the vessel are included in the definition of 'FOB'. In the case of export of goods, loading of the export goods starts after issuance of the 'Let Export Order (LEO)' by the proper officer of the Customs. LEO is issued after payment of the export duty. As the export duty is leviable before the point of loading of the export goods on to the vessel, the same is includible in the FOB Value of the export goods in the present case. I find that the provisions of the Incoterm or International Commercial Terms, which are widely used in the international transactions, published by the International Chamber of Commerce clearly define the responsibility of the importers and exporters in the arrangement of shipments and transfer of liability involved at various stages of transaction. I noticed that these incoterms rules are accepted by governments, legal authorities worldwide for the interpretation of most commonly used terms in the international trade. They are intended to reduce or remove altogether uncertainties arising from the differing interpretations of the rules in different countries. As per Incoterms 2020 published by ICC, the term 'FOB' has been defined as *"Under FOB terms the seller bears all costs and risks up to the point the goods are loaded on board the vessel. The seller's responsibility does not end at that point unless the goods are "appropriated to the contract" that is, they are "clearly set aside or otherwise identified as the contract goods". Therefore, FOB contract requires a seller to deliver goods on board a vessel that is to be designated by the buyer in a manner customary at the particular port. In this case, the seller must also arrange for export clearance. On the other hand, the buyer pays cost of marine freight transportation, bill of lading fees, insurance, unloading and transportation cost from the arrival port to destination."*

From the above definition, it is evident that definition of "FOB" includes all cost until the loading of export goods on board the foreign going vessel including customs clearance and related charges which are to be borne by the seller. Since export duty discharged prior to issuance of the Let Export Order and before the goods are physically loaded on board, it is evident that duty portion is an integral part of the costs which is to be borne by the seller. Therefore, I find that where the seller has recovered the export duty amount separately from the buyer, such recovered amount become a part of the consideration for the sale of export goods. Thus, the said amount is liable to be included in the FOB value for determining the correct assessable value. Accordingly, I hold that the export duty recovered from overseas buyers is includible in the FOB value of the export goods.

27. I find that in respect of the 12 Shipping Bills as mentioned in Table-A , M/s Rathi Agri Industries, had wrongly claimed deductions equal to the export duty amounts

payable at the time of export. I noticed that the deduction amounts of Rs.8,54,33,249/- were claimed in the said Shipping Bills. These deductions were found equal to the export duty amounts paid by the exporter. For example, consider the Shipping Bill No 9801347 dated 05.05.2023 wherein the deduction amount exactly matches the export duty amount. The Deduction of Rs. 33,20,914/- was claimed in that shipping bill and that amount is equal to the export duty leviable. By treating the actual FOB Value as a cum-duty price and deducting the duty amount, the exporter attempted to take an abatement of duty which is not permissible to them in the subject 12 shipping bills. CBIC Circular No. 18/2008-Cus dated 10.11.2008 clarifies that export duty is chargeable on the transaction value, i.e. the FOB price, and no abatement of duty is allowed. Excluding such amounts from the declared FOB Value is contrary to Section 14 of the Custom Act, 1962 read with Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. This fact indicate clearly that the exporter deliberately reduced the declared FOB Value from the duty component and therefore, mis-declared the transaction value for the purpose of assessment.

28. I find that the exporter in 12 shipping bills and the respective export invoices had mentioned duty paid amounts separately in the invoices, they did not include these amounts in the total invoice value or the FOB value declared before the Customs Authority. On the contrary, they showed these as deductions under the head "Deduct/Deduction" in the shipping bills. By doing these act, the exporter had suppressed the actual consideration received from the overseas buyers and presented an artificially reduced FOB Value to the Customs authorities at the time of export. I find that the exporter during the investigation period has also admitted in their statements recorded under Section 108 of the Customs Act, 1962, that these deducted amounts were in fact recovered from the overseas buyers. Such amounts were duly realized in the bank accounts of the exporter. Thus, the fact were never discovered that the declared invoice value was not the sole amount received by the exporter from the foreign buyer. These acts show a deliberate attempt by the exporter to suppress facts and make false statements.

29. In view of the above, I hold that the declared FOB Value in respect of the 12 shipping bills covered under Table-A is liable for rejection under Rule 8 of the CVR(E), 2007. The actual transaction value has to be re-determined by including the deduction amounts wrongly excluded by the exporter. Accordingly, I hold the re-determined FOB Value comes to Rs. 51,25,99,493/- (FOB Value of Rs. 42,71,66,244/- as declared in 12 shipping bills (+) Rs. 8,54,33,249/-) of Export Duty recovered from overseas buyer and shown as deduct/deduction in shipping bills) against the declared Rs. 42,71,66,244/- in respect of said 12 shipping Bills.

30. In view of the above, the FOB Values declared in respect of the 12 shipping bills under Table-A are liable to rejection under Rule 8 of the CVR(E), 2007 and the re-determined FOB Value comes to Rs. 51,25,99,493/- in Table-C (re-produced hereunder):

Table-C

Port Code	No of SBs	Declared FOB Value in Rs.	Cess Amount Paid in Rs.	Deduction amounts claimed from FOB in Rs.	Reimbursement amount received from overseas buyer (INR)	Re-determined FOB value (after adding the Deduction amount) in Rs.	Duty payable on re-determined FOB in Rs.	Differential duty due to deductions claimed in Rs.
INMUN1	10	22,39,30,244	4,47,86,050	4,47,86,049	4,47,86,049	26,87,16,293	5,37,43,259	89,57,209
INIXY1	2	20,32,36,000	4,06,47,200	4,06,47,200	4,06,47,200	24,38,83,200	4,87,76,640	81,29,440
Total	12	42,71,66,244	8,54,33,250	8,54,33,249	8,54,33,249	51,25,99,493	10,25,19,899	1,70,86,649

31. I find that **in respect of the 07 shipping bills** covered under Table-B, the exporter declared inflated amounts of ocean freight in their shipping bills as compared to the actual freight paid to the freight forwarders/shipping lines. The total excess freight declared across these shipments has been calculated at Rs. 83,55,429/-. By adopting this method, the exporter artificially reduced the assessable FOB value declared before Customs and thereby resulting in short-payment of export duty. These excess freight amounts were not borne by the exporter and the same were actually recovered from their overseas buyers as part of the total consideration for the consignments. The discrepancy between declared freight and actual freight paid was also accepted by the exporter during the investigation period by submitting the details of shipments. For example, in Shipping Bill Number 8691965 dated 20-03-2023 the ocean freight amount declared in respect of the said shipment is Rs. 84,15,241/- whereas during investigation, the exporter had submitted the actual freight amount paid by them in respect of the aforesaid shipping bill which stood at Rs. 66,00,007/-. Thus excess freight amount declared in respect of the aforesaid shipment works out to be at Rs. 18,15,233/-(Rs. 84,15,241 (-) Rs. 66,00,007/-).. The said excess freight amount has also been recovered by the exporter from the overseas buyer of the export goods but the exporter had not paid duty on the said excess freight amount which is part and parcel of the actual assessable value of the export goods. This instance demonstrates the method adopted by the exporter for all shipments covered under Table-B.

32. In view of the above, the FOB values declared in respect of the 07 shipping bills covered under Table-B are liable to rejection under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and the re-determined FOB Value comes to Rs. 16,05,39,234/- as calculated in Table-D (re-produced hereunder):

Table-D

Port Code	No of SBs	Declared FOB value in Rs.	Cess Amount Paid in Rs.	Declared Freight Amount as per Shipping Bill (INR)	Actual Freight Amount Paid as per Freight Invoice (INR)	Excess Freight claimed (INR)	Re-determined FOB on account of excess freight (INR)	Differential Duty (INR)
INMUN1	7	15,21,83,805	3,04,36,762	4,01,70,556	3,18,15,127	83,55,429	16,05,39,234	16,71,085
Total	7	15,21,83,805	3,04,36,762	4,01,70,556	3,18,15,127	83,55,429	16,05,39,234	16,71,085

33. DISSCUSSION ON NOTICEE's SUBMISSION:-

33.1 The exporter has contended that they are engaged in the business of trading and export of rice and that most exports were on FOB basis and some on CFR basis, and that they bifurcated the contract value into FOB value and export duty allegedly on the advice of other exporters. The contention of the exporter alleges that exports were made on “cum-duty FOB value” under a bona fide belief and that export duty was payable only on such bifurcated value. I find no force in the contention of the exporter. The investigation has clearly brought on record that in terms of Section 14 of the Customs Act, 1962 read with Circular No. 18/2008-Cus dated 10.11.2008, the transaction value for the purpose of export duty, w.e.f. 01.01.2009, is the FOB price at the time and place of exportation and not a reduced or artificially bifurcated figure. The exporter admittedly adopted a valuation method inconsistent with the statutory provisions and thus short-paid export duty amounting to Rs. 1,61,84,364/-. The plea that such bifurcation was based on trade advice is not tenable, as statutory liability cannot be diluted by trade practice or informal guidance.

33.2 The exporter has further contended that the excess freight collected from buyers is not includible in transaction value as freight pertains to post-export transportation. This contention is not acceptable. Investigation reveals that freight amounts collected in excess of the actual freight paid were not genuine freight but constituted additional consideration flowing from the buyer to the exporter in connection with the export transaction. Any amount collected over and above the actual freight ceases to be pure freight and assumes the character of additional consideration related to the sale of goods. Therefore, such excess freight is rightly includible in the transaction value under Section 14 of the Customs Act, 1962. Accordingly, differential duty of Rs. 16,71,085/- on this account is sustainable. Thus, the total demand of Rs. 1,78,55,449/- is legally recoverable, and the payments already made are liable to be appropriated against the confirmed demand.

33.3 On the issue of limitation, the exporter has contended that export duty on rice was newly imposed and that they were unaware of the applicable circular and acted under a bona fide belief without any suppression. The contention of the exporter alleges absence of intent and denies manipulation. I find this plea devoid of merit. The deliberate bifurcation of value, declaration of reduced FOB value in shipping bills, and recovery of excess freight over actuals clearly indicate conscious misdeclaration of value with intent to reduce export duty liability. Knowledge of law is attributable to an exporter engaged in regular international trade, and ignorance of statutory provisions or reliance on trade advice is not a valid defence. The acts of misdeclaration and non-inclusion of additional consideration amount to willful suppression of material facts, justifying invocation of the extended period under Section 28(4) of the Customs Act, 1962.

33.4 As regards penalty under Section 114A, the exporter has pleaded bona fide mistake and subsequent payment of duty. This contention is not acceptable. Once duty short-payment arises due to suppression and misdeclaration of value, the ingredients of Section 114A stand satisfied. Subsequent payment during investigation does not absolve penal liability. Therefore, penalty equal to duty evaded is imposable.

33.5 Regarding penalty under Section 114AA, the exporter has contended absence of mens rea and use of genuine documents. I find no merit in this plea. The declaration of incorrect FOB value and artificial bifurcation of consideration in statutory export documents constitutes use of incorrect material particulars. The conduct of the exporter establishes deliberate furnishing of false information in shipping bills to evade duty. Hence, the essential ingredients of Section 114AA are satisfied and penalty is rightly imposable.

DEMAND OF DUTY UNDER EXTENDED PERIOD OF TIME UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962:

34. It is obligatory for the exporter to subscribe a declaration as to the truthfulness of the contents of the Shipping Bill in terms of Section 50(2) of the Customs Act, 1962, in all their export declarations. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on export goods by the exporter himself by filing a Shipping Bill, in electronic form. Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make an entry for the export goods by presenting a Shipping Bill electronically to the proper officer. Thus, under the scheme of self-assessment, it was the exporter who must doubly ensure that he declared the correct classification / CTH of the export goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in respect of the export goods while presenting the Shipping Bill. It is however evident from the investigation that there were deliberate mis-statement and suppression of facts on their part. The exporter was actively involved in mis-declaration of the FOB value of export goods, with an intention to evade appropriate export duty leviable on ad valorem basis on such goods. They adopted two different modus operandi (i) by claiming wrongful deduction of export duty from the transaction value; (ii) by declaring excess freight amounts. All the two modus-operandi have already been discussed in detail in the foregoing paragraphs. Further, the responsibility lies on the exporter to ensure that all details related to the shipments are correctly declared at the time of filing shipping bills. Therefore, the extended period of five years under Section 28(4) of the Customs Act, 1962 has been correctly invoked in the present case.

35. For 14 Shipping Bills as listed in **Tables A and B in para 8.2 to 8.4 above**, the differential duty demand, as detailed in corresponding **Annexure -I and Annexure -II**, of the SHOW CAUSE NOTICE, of Rs. 1,87,57,734/- as confirmed in Table-C, Table D and Table-E above, is required to be upheld against the said noticee under Section 28(8) of the Customs Act, 1962 and the interest at the applicable rate in terms of notification issued under Section 28AA of the said Act is required to be recovered from the said noticee on the differential amount of Customs duty.

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

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

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

On plain reading of the above provisions of the Section 113(i) of the Customs Act, 1962, it is clear that any goods, which are entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act, will be liable to confiscation. All the deduction claimed by the said noticee including the reimbursement of export duty was not deductible from the CIF value to arrive at the FOB value. Hence, the impugned exported goods as exported vide 14 shipping bills listed above are liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962.

36.1 As the impugned goods are found to be liable for confiscation under Section 113(i) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been exported and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon’ble CESTAT, Ahmedabad, in the case of M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon’ble High Court of Madras in C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]. Para 23 of the said Judgment is as follows:

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section(2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section(1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this act...”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant the redemption fine is in fact to avoid such consequences flowing the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No.(iii)”.

36.2 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements. I find that goods are liable for confiscation and redemption fine can be imposed. I further observe that present case does not involve export of prohibited or restricted goods. The description of the goods declared in the shipping bills has not been found to be false or misleading. There is no evidence on record to suggest any deliberate attempt to smuggle goods out of the country. Further, export of goods resulted in receipt of foreign remittance into the country. The dispute in the present case is confined to valuation of the goods at the time of exports. I further note that the entire undue benefit that had accrued to the exporter on account of such under valuation is already ordered to be recovered in the form of differential duty. I also find that a penalty equal to the duty amount is also going to be imposed under Section 114A of the Customs Act, 1962. Considering these factors, the ends of justice would be met if a lenient view is taken for goods which are not available for confiscation and the redemption fine is restricted to 25% of differential duty.

Imposition of Penalties on main noticee and Co-Noticees

37. As regards imposition of penalty on M/s. Shri Rathi Agro Industries, I find that by their acts of omission and commission; claiming abatement from the CIF value of the deductions which were not permissible as discussed in details in the foregoing paragraphs of this Order, which has resulted into evasion of Customs duty to the tune of Rs. 1,87,57,734/-, they have rendered the goods liable to confiscation under Section 113(i) of the Customs Act, 1962. By their above acts, they have also rendered themselves liable to penalty under Section 114A and Section 114AA of the Act, *ibid*.

38. As regards imposition of penalty on Shri Hemraj Rathi, Partner of M/s. Shri Rathi Agro Industries and Shri Sandip Rathi, Authorised signatory of M/s. Shri Rathi Agro Industries under Section 114(ii) and 114AA of the Customs Act, 1962, I find that they were well aware of the undervaluation of the goods with an intent to evade duties of customs. In this regard, I find that Shri Sandip Rathi, Authorised signatory of M/s. Shri Rathi Agro Industries appeared in response to the summons dated 27.10.2023 & 14.11.2023 issued to Shri Hemraj Rathi, partner of M/s. Shri Rathi Agro Industries and tendered statement on behalf of Shri Hemraj Rathi on 28.11.2023 after having been duly authorised by Shri Hemraj Rathi. During the course of statement, Shri Sandip Rathi stated that he looked after the sales and marketing work of the company for last 8-10 years. Further excerpt from his statement is reproduced verbatim:-

"I state that the price according to the contract was USD 310 per MT. On Invoice (No.7 dated 05.05.2023 Part A) the price is mentioned as USD 310 per MT FOB, which has been received by us from the foreign supplier and for which BRC has been generated. The export clearance charge of USD 62 per MT i.e. USD 41075 has also been received by us from the foreign buyer against the Reimbursement Invoice No. 7 dated 05.05.2023 (part B) and the same has not been included by us in the calculation of the FOB value for

payment of export duty. I state that the actual total invoice value (FOB) is USD 346450 (Unit price 372 USD per MT), however we have bifurcated the invoice value in two parts and have claimed a deduction equal to USD 62 per MT at the time of declaring the value of the export goods for the purpose of payment of Customs duty.

*To summarize, we have deducted the said amount as mentioned in reimbursement invoice from the total transaction value of the shipment received by us from the buyer of the export goods as reimbursement of the export duty paid by us for effecting the export clearance of the said shipment. **Thus the value declared by us to the Customs authority for payment of the export duty does not reflect the true transaction value of the export shipment. The actual transaction value for the said shipment was USD 372/MT FOB however, to save us from payment of some duty we have deducted a part of the transaction value (i.e. USD 62/MT) from the total actual transaction value and have paid duty on the balance amount of USD 310/MT. Thus, the value declared by us for the purposes of the payment of Customs duty was cum duty FOB value (USD 372- USD 62=USD 310) instead of the actual FOB Value of USD 372/MT.***

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After the imposition of duty on export of rice with effect from September 2022, we started paying the appropriate export duty on the FOB price. However, in march 2023, as per the practice followed by some other exporters, we started to bifurcate the actual FOB value in two parts and started claiming reimbursement of the export duty from the overseas buyer. For facilitating the bank remittance, we had generated Reimbursement invoices to the buyer having unit price equivalent to the export clearance charges.

39. Clearly, Shri Sandip Rathi, duly authorised by Shri Hemraj Rathi, admitted in his voluntary statement that they were correctly paying the export duty of FOB price till March 2023 and thereafter they started following the practice of bifurcating the actual FOB in two parts and started claiming reimbursement of the export duty from the overseas buyer. Further he has admitted that in order to save them from payment of some duty they had deducted a part of the transaction value from the actual transaction value. The contracts with the buyer for sale and export of rice as well as the export documents submitted to Customs were signed in the overall supervision of Sh. Hemraj Rathi & Sh Sandip Rathi who were handling the day to day business of the export firm. This shows that Shri Sandip Rathi and Shri Hemraj Rathi were well aware of the incorrect practice adopted by them to evade duties of customs which has rendered them liable for penal action under Section 114(ii) and 114AA of the Customs Act, 1962.

40. In view of the discussion and findings supra, I hereby pass the following order:

ORDER

- i.** I order to reject the declared assessable value of Rs. 43,88,94,473/- in respect of 14 shipments of rice exported vide Shipping Bills detailed in 'Annexure-I& II, in terms of Rule 8 of the Customs Valuation (Determination of Value of Export

Goods) Rules, 2007, read with Rule 3(1) ibid and Section 14(1) of the Customs Act, 1962.

- ii.** I order to re-determine the assessable value of Shipping Bills detailed in Annexure-I & II to the noticee as Rs. 53,26,83,151/- under Section 14 (1) of the Customs Act, 1962 read with Rule 3 (1) of Customs Valuation (Determination of Value of Export Goods) Rules, 2007.
- iii.** I determine and confirm the demand of the differential (export) duty amounting to Rs.1,87,57,734/- (Rupees One Crore Eighty Seven Lakh Fifty Seven Thousand Seven Hundred and Thirty Four only), as calculated and shown in 'Annexure-I & II to the notice, in respect of these 14 Shipping Bills filed by them at 2 different ports, under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s. Rathi Agri Industries, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110, Gujarat under Section 28(4) of the Customs Act, 1962.
- iv.** I order to recover the interest from M/s. Rathi Agri Industries, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110, Gujarat., at appropriate rate under Section 28AA of the Customs Act, 1962 on the above confirmed demand of duty amounting to Rs. 1,87,57,734/-.
- v.** I order to appropriate voluntarily deposit of Rs. 1,61,84,364/- during the course of investigation against their aforesaid differential duty liability.
- vi.** I hold that the goods as detailed in Annexure-I, & II having re-determined assessable value of Rs. 53,26,83,151/-are liable to confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Since the goods are not available for confiscation, I impose a redemption fine of Rs. 47,00,000/- (Rupees Forty Seven lakhs only) under Section 125 of the Customs Act, 1962.
- vii.** I impose a penalty of Rs. 1,87,57,734/-(Rupees One Crore Eighty Seven Lakh Fifty Seven Thousand Seven Hundred and Thirty Four only) upon M/s. Rathi Agri Industries, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110, Gujarat under Section 114A of the Customs Act,1962.
- viii.** I impose a penalty of Rs. 75,00,000/- (Rupees Seventy Five Lakhs Only) upon M/s. Rathi Agri Industries, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110, Gujarat, under Section 114AA of the Customs Act, 1962.
- ix.** I impose a penalty of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) upon Shri Hemraj Rathi, Partner of M/s Rathi Agri Products, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110 under Section 114(ii) of the Customs Act, 1962.
- x.** I impose a penalty of Rs. 50,00,000/- (Rupees Fifty lakhs Only) upon Shri Hemraj Rathi, Partner of M/s Rathi Agri Products, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110 under Section 114AA of the Customs Act, 1962.

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- xi.** I impose a penalty of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) upon Shri Sandip Rathi, Authorised Signatory of M/s Rathi Agri Products, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110 under Section 114(ii) of the Customs Act, 1962.
- xii.** I impose a penalty of Rs. 40,00,000/- (Rupees Forty Lakhs Only) upon Shri Sandip Rathi, Authorised Signatory of M/s Rathi Agri Products, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110 under Section 114AA of the Customs Act, 1962.

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.

(Nitin Saini)

Commissioner of Customs
Custom House, Mundra

F.No. GEN/ADJ/COMM/144/2025-Adjn.

DIN-20260371MO0000020087

To Noticees,

- 1) M/s Shri Rathi Agro Industries, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110, Gujarat .
- 2) Shri Hemraj Rathi, 5 Shreenathji Society, Opp. Thkkar Vadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110, Gujarat.
- 3) Sh. Sandip Rathi, S/o Shri Hemraj Rathi, Authorized signatory of M/s. Shri Rathi Agro Industries, R/o: 5 Shreenathji Society, Opp. Thkkavadi, Nr. Somnath Society, Ahmedabad Road, Sanand – 382110. Also at: P-202, Indraprastha 6, Opposite Auda Garden, Satellite, Ahmedabad, Gujarat.

Copy for necessary action to: -

- 1) The Chief commissioner of Customs, Gujarat customs Zone, Ahmedabad.
- 2) The Principal Commissioner/ Commissioner of Customs, Kandla, Kandla Custom House, Near Balaji Temple, Kandla-370210 (INIXY1), Email: commr-cuskandla@nic.in
- 3) The Director General, Central Economic Intelligence Bureau, 6th Floor, B-Wing, Janpath Bhawan, Janpath, New Delhi-110001.
- 4) Deputy Director, CI Section, Directorate of Revenue Intelligence (Headquarters) 7th Floor, Drum Shaped Building, D- Block, IP Bhawan, IP Estate, New Delhi -110002
- 5) The Dy. Commissioner (EDI), Custom House, Mundra.
- 6) Guard file.