सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250571MN000000D48B

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| क | फ़ाइल संख्या FILE NO. | S/49-166/CUS/MUN/2023-24 |
| ख | अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) : | OIA No. MUN-CUSTM-000-APP- 034 -25-26 |
| ग | पारितकर्ता PASSED BY | Shri Amit Gupta<br>Commissioner of Customs (Appeals),<br>Ahmedabad |
| घ | दिनांक DATE | 30.05.2025 |
| ङ | उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. | Order – In – Original No. MCH/ADJ/ADC/MK/214/2023-24 dated 30.11.2023 bearing DIN 20231171MO000000BD99 |
| च | अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON: | 30.05.2025 |
| छ | अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT: | M/s Shree Bharka (India) Ltd.<br>Bazar No. 2, Bhupalganj<br>Bhilwara, Rajasthan-311001 |

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| 1 | यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है. |
| | This copy is granted free of cost for the private use of the person to whom it is issued. |
| 2. | सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है. |
| | Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order. |
| | निम्नलिखित सम्बन्धित आदेश/Order relating to : |
| (क( | बैगेज़ के रूप में आयातित कोई माल. |
| (a) | any goods imported |
| (ख( | भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो. |
| (b) | any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination. |
| (ग( | सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी. |
| (c) | Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder. |
| .3 | पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए : |
| | The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by : |
| (क) | कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए. |
| (a) | 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870. |
| (ख) | सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो |
| (b) | 4 copies of the Order-in-Original, in addition to relevant documents, if any |
| (ग) | पुनरीक्षण के लिए आवेदन की 4 प्रतियां |
| (c) | 4 copies of the Application for Revision. |
| (घ) | पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र ), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/- |
| (d) | The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-. |

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| 4. | मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं | |
| | In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address : | |
| | सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ | **Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench** |
| | दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 | 2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016 |
| 5. | सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए- | |
| | Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of - | |
| (क) | अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए. | |
| (a) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees; | |
| (ख) | अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए | |
| (b) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ; | |
| (ग) | अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए. | |
| (c) | where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees | |
| (घ) | इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा । | |
| (d) | An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. | |
| 6. | उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए. | |
| | Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-<br>(a) in an appeal for grant of stay or for rect fication of mistake or for any other purpose; or<br>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees. | |

**ORDER-IN-APPEAL**

1. M/s Shree Bharka (India) Ltd, Bazar No. 2, Bhupalganj, Bhilwara, Rajasthan-311001 (IEC 1305000595) (hereinafter referred to as 'the Appellant'/ 'exporter') have filed the present appeal challenging the Order–in–Original bearing No. MCH/ADJ/ADC/MK/214/2023-24 dated 30.11.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant are engaged in manufacture of various types of fabric and clearance/ supply thereof for export as well as in domestic market. During the period from July 2017 to September 2017, the exporter had simultaneously claimed drawback under category 'A' as well as input tax credit of IGST and CGST in the GSTR 3B return filed by them and CENVAT Credit in the TRAN-1 of the stock available with them as on 30.06.2017.

2.1 An intelligence collected and developed by the officers of Directorate of Revenue Intelligence, Jaipur (herein after referred as "DRI" ) indicated that some exporters of Yarns, Textiles and Fabric' have wrongly availed drawback against the goods exported during the period from July-2017 to September-2017. After enactment of GST law, for the period, from July-2017 to September-2017, the government; continued- two drawback categories, drawback under Category 'A'. i.e. higher rate of drawback and category "B" i.e. lower rate of drawback. However, for claiming drawback under category 'A', exporter had to provide/give an undertaking that no CENVAT Credit / Input Tax Credit was availed in respect of the inputs / input services used for making such export supplies. The exporter, during the period from July-2017 to September2017 had claimed both i.e., drawback under category 'A' as well as input tax credit of CGST and IGST. In order to ascertain the legality of claim of the exporter under drawback at higher rate/category A' during the relevant period the matter was thoroughly examined with reference to Duty Drawback Schedule, GST TRAN-1, GSTR-3B return, GSTR-2A return, relevant Notifications and technical sources.

2.2 The appellant had been exporting Other Woven Fabric of Synthetic Staple fibers under the tariff heading 55151190 and claiming drawback under relevant

Drawback Serial Numbers of the drawback schedule. Relevant entries of drawback schedule 2016 are reproduced as under:

| | | | A | | B | |
|---|---|---|---|---|---|---|
| Tariff Item | Description of Goods | Unit | Drawback when CENVAT facility has not been availed | | Drawback when CENVAT facility has been availed | |
| | | | Drawback Rate (In %) | Drawback cap per unit in Rs. (₹) | Drawback Rate (In %) | Drawback cap per unit in Rs. (₹) |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 5515 | Other woven fabrics of synthetic staple fibres | | | | | |
| 551502 | Containing 85% or more by weight of Synthetic Staple fibre (Dyed) | Kg | 8.5% | 55 | 1.8% | 11.6 |
| 551506 | Of other blends containing synthetic staple fibre of less than 85% by weight, dyed | Kg | 8.5% | 55 | 1.8% | 11.6 |

2.3 On analysis of the TRAN - 1, GSTR-2A & GSTR-3B returns of M/s. Shree Bharka (India) Ltd, it emerged that the exporter has availed CENVAT Credit on 46,762 Kgs of Yarn (Raw Materials) of Raw Materials available with them as on 30.06.2017 in the TRAN-1 filed by them and had availed all the Input Tax Credit available to them against the purchase of raw materials/inputs & input services made, by them during the period from July 2017 to September 2017. Further, from the Shipping Bilis, it was also gathered that during the period from July 2017 to September-2017, exporter has availed duty drawback at higher rate, i.e. category 'A' of the drawback schedule (551502A & 551506A). In order to further ascertain the eligibility of the exporter to avail of export incentive i.e. Duty Drawback under Category "A", summons dated 22.03.2022 to appear on 30.03.2022 was issued in compliance of which Shri Navin Khandelwal, Accounts Manager, M/s. Shree Bharka (India) Ltd appeared on 30.03.2022 to tender voluntary statement under Section 108 of the Customs Act, 1962.

**2.4** Statement of Shri Navin Khandelwal, Accounts Manager of the exporter was recorded on 30.03.2022 under Section 108 of the Customs Act, 1962, wherein, he inter alia stated that:

- He is Accounts Manager in M/s Shree Bharka (India) Ltd. and he looks after accounts / finance, GST & Customs related work in the company. He reports to the promoters of the company for any work.
- M/s Shree Bharka (India) Ltd. was incorporated in the year 1995 however the company started its operations in year 2005. The Directors of the company are Shri Sandeep Kothari, Shri Saurabh Kothari and Smt. Shikha Kothari. The company is engaged in business of manufacture of synthetic Suiting Fabric and its export as well as domestic sale. They are holding IEC 1305000595. In GST regime, they are registered at Bhilwara, Rajasthan and have GSTN 08AADCS1752RIZT. Once the order is received from foreign buyers, raw material was procured and weaving is done in their in-house plant. After weaving Grey Fabric is sent for processing on job work basis. After processing goods returned to their plant and there cutting & packing of the goods is done before clearance for export and domestic market.
- The raw material procured by the company for manufacture of Polyester and Polyester Viscose Fabric is Yarn.
- They manufacture Polyester and Polyester Viscose Suiting Fabric using dyed and grey yarns. After purchasing, weaving of yarn is done through looms installed in their factory. After weaving grey fabric is sent for processing/finishing on job work basis. Processing involves dyeing and finishing of fabric. Fabric thus manufactured is dispatched for export and domestic market.
- On being asked as to how much time does it take to manufacture Suiting Fabric from yarn, he stated that from the date yarn is procured, in general it takes around 30 days to manufacture fabric out of yarn as they have to utilize services of processing house.
- Their major suppliers of yarn are M/s Sangam India Ltd., M/s Rajasthan Textile Mills, Birla Textile Mills, M/s Kanchan India Ltd., Banswara Syntex etc.
- They are indulged in manufacturing of Polyester and Polyester Viscose Suiting Fabric.
- On being asked whether any finished goods are being exported by M/s Shree Bharka (India) Ltd., he stated that Polyester and Polyester Viscose 'Siting Fabric are being exported by M/s Shree Bharka (India) Ltd.
- On being asked whether any finished goods are domestically sold by M/s Shree Bharka (India) Ltd., he stated that along with export, they supply Polyester and Polyester Viscose Suiting Fabric in the domestic market.

Approximately 85% of the total sale accounts for Export whereas 15% of total sale accounts for domestic clearance.

- On being asked what are the inputs/input services being used in manufacture of finished goods, he stated that Yarn is their main input. He further stated that they also avail services like Job Work, Courier, Sea Freight Services and other consulting services of Chartered Accountant.
- On being asked to state the inputs/ input services on which Input Tax Credit (ITC) is being availed by M/s.Shree Bharka (India) Ltd., he stated that they are availing ITC on all eligible goods and services as mentioned above.
- On being asked whether the inputs / input services were procured separately for manufacture of Polyester and Polyester Viscose Suiting Fabric (finished goods) intended for export and for domestic clearance, he stated that they procured inputs/ inputs services commonly for finished goods intended for export and domestic clearance. Further, he stated that they do not maintain any separate records for the inputs and input services used for manufacture of goods supplied in domestic market and exported by them.
- On being asked as to how much CENVAT credit was carried forward by them in TRAN-1 filed in F.Y. 2017-18 at the time of implementation of GST and to provide copy of TRAN-1, Central Excise and Service Tax returns of June-2017 filed by them, he stated that TRAN-1 return was filed by them on 18.12.2017. Further, M/s. Shree Bharka (India) Ltd. had carried forward CENVAT credit of Rs. 8,81,401/- whereas Rs. 29,85,775/- as VAT credit. He further submitted Service return for the month of June-17. However, Central Excise return for the month June 17 was not available with him at that time. Further, he stated that they had filed Nil Central Excise return for the month of June 17.
- On being asked to provide input output ratio of the goods manufactured by them, he stated that for suiting, from 250 grams of Yarn they manufacture fabric of 1 Mtr length. During this process wastage came to around 2%. Further during the process of finishing, around 4-5% of shrinkage took place. After finishing, around 0.5% of wastage also took place.
- On being asked to submit purchase orders M/s Shree Bharka (India) Ltd received from its buyers, he stated that they did not receive any purchase orders from their buyers as most of their buyers were their long-time

customers. The finished goods were sold on the basis of orders placed verbally or through mobile phone.

- On being asked to provide details of Input Tax Credit availed by M/s Shree Bharka (India) Ltd during July 2017 to September 2017 along with documents supporting their claim, he stated that they have availed all the ITC available to them during the month from July 17 to Sept 17. Further, he submitted copy of GSTR-3B returns for the month of July 2017 to September 2017 as per which, total credit availed by them was Rs.3,89,38,912/- (July-2017 Rs. 63,22,021/-, August-2017, 1,77,00,062/- & September-2017 1,49,16,829/-).
- He further stated that they have availed all the credit available to them in the GSTR 2A, in the GSTR 3B during the month from July-2017 to Sept-2017.
- He stated that they did not import any raw material hence they did not avail Input Tax Credit on the imported raw materials.
- On being asked whether M/s Shree Bharka (India) Ltd. had availed any benefit of refund during the period from July –Sept 2017, he stated that they had claimed refund of the credit availed by them during the period starting from July -2017 to Sept- 2017. However, refund of IGST & CGST part was rejected whereas the SGST part was sanctioned to them. He submitted copies of RFD 06 for the period from July,2017 to Sept, 2017.
- On being asked to provide details of Export made by them during the month of July-2017 to September, 2017, he stated that M/s Shree Bharka (India) Ltd. had been engaged in export of Suiting Fabric and during the month of July to September, 2017 export made by them is as under:

| Sr. No. | Month | Quantity (Meters) | FOB Value (Rs.) | Drawback Amount (Rs.) |
|---|---|---|---|---|
| 1 | July-2017 | 1366042.379 | 8,59,44,119.43 | 73,05,250/- (Higher Rate) |
| 2 | August-2017 | 1215134.83 | 9,09,85,649.14 | 77,28,921/- (Higher Rate) |
| 3 | August-2017 | 119940.93 | 54,54,012.06 | 98,172/- (Lower rate) |
| 4 | Sept.-2017 | 581038.09 | 4,47,84,388.03 | 38,06,674/- (Higher Rate) |
| 5 | Sept.-2017 | 657717.87 | 50554955.97 | 9,09,989/- (Lower rate) |
| | Total | 39,39,874.10 | 27,77,23,124.92/- | 1,98,49,006/- |

- On being asked whether M/s Shree Bharka (India) Ltd. had availed any export benefits/incentives on the export made by it during July 2017 to Sept- 2017, he stated yes they have availed drawback at higher rate, i.e. under category 'A' on the export made in months of July-2017, Aug-2017 and Sept.-2017 and one consignment during the month of August~-17 and some consignments during the month of Sept-2017 were exported availing drawback at lower rate i.e. category "B" of drawback schedule. Total drawback at higher rate of drawback availed by M/s Shree Bharka (India) Ltd. during this period was Rs. 1,88,40,845/- summarized as under:-

| Sr. No. | Month | Drawback at Higher Rate (In Rs.) | Drawback at lower rate (In Rs.) | Total Drawback (In Rs.) |
|---|---|---|---|---|
| 1 | July-2017 | 73,05,250/- | - | 73,05,250/- |
| 2 | Aug-2017 | 77,28,921/- | 98,172/- | 78,27,093/- |
| 3 | Sept-2017 | 38,06,674/- | 9,09,989/- | 47,16,663/- |
| | Total | 1,88,40,845/- | 10,08,161/- | 1,98,49,006/- |

- On being shown Notification No.131/2016-Customs (NT) dated 31.10.2016 and Notification No. 59/2017-Customs (NT) dated 29.06.2017 issued by Government of India and asked to state whether M/s Shree Bharka (India) Ltd. had satisfied all the conditions/ requirements of Notification No. 131/2016-Customs (NT) dated 31.10.2016 and Notification No. 59/2017-Customs (NT) dated 29.06.2017 and also state whether duty drawback availed at higher rate by M/s Shree Barkha India

Ltd. during the period from July,2017 — Sept,2017 was in order or otherwise, he stated that they had 5,55,048 Kgs of Yarn (20,88,757 Mtrs when converted into finished fabric and after deducting wastage/ shrinkage) in their stock as on 30.06.2017. Further, they had 15,33,113 Mtrs of Grey (14,71,788 Mtrs when converted to finished fabric) and 5,20,860 Mtrs of finished fabric as on 30.06.2017 on which they had not availed any Input Tax Credit (except 46761.80 Kgs Yarn on which they had availed CENVAT Credit in TRAN 1). Accordingly, they had stock of 40,81,405 Mtrs finished fabric and have satisfied the conditions of Notification No. 59/2017-Customs (NT) dated 29.06.2017. He further stated that during the month of July-2017 to September, 2017 they had exported total 39,39,874.10 (31,62,215.3 Higher rate + 7,77,658.80 at Lower rate) Mtrs of finished fabric and had supplied 4,44,906 Mtrs of fabric in the domestic market (total clearance during the said period was 43,88,842 Mtrs).

- He further stated that all the exports made by them during the month of July to September-2017 was from the stock of raw material, semifinished and finished goods available with them as on 30.06.2017. However, in the last of September, they had exhausted the stock of finished goods manufactured from the raw materials, grey fabric and finished goods available with them as on 30.06.2017 therefore the differential 3,07,437 Mtrs of finished fabric exported by them either at lower rate of drawback or higher rate of drawback was manufactured from the raw material which were purchased by them during the month of July-207 and Sept-2017 and on the same they had availed Input Tax 'Credit. However, as per FIFO, they had exported one consignment of 90708.480 Mtrs at higher rate of duty drawback and rest was exported at lower rate of duty drawback or in domestic market. Therefore, he stated that he agreed that drawback availed by them on the goods exported at higher rate manufactured from ITC availed raw materials is recoverable from them along with interest.
- On being asked to provide the details of the stock position of raw materials as well as finished goods as on 30.06.2017 of M/s Shree Bharka (India) Ltd., he provided the stock position of finished goods as well as raw materials as on 30.06.2021 which is as under:

| Raw material / finished goods | Quantity |
|---|---|
| Yarn | 5,55,048 Kgs |
| Grey Fabric | 15,33,113 Mtrs |
| Finished Fabric (after processing) | 5,20,860 Mtrs |

- On being confronted that from above, it appears that they had exhausted their stock that was held by them as on 30.06.2017 and they continued to export goods manufactured from raw material procured during the months of July, 2017 to Sept, 2017 and availed higher rate of duty drawback and asked to state why duty drawback availed at higher rate should not be disallowed to them, he agreed that they had exhausted the stock of finished goods manufactured from the raw materials, grey fabric and finished goods available with them as on 30.06.2017 before 30.09.2017 and the finished goods supplied by them over and above the stock were manufactured from the raw materials purchased by them during July to September-2017 on which they have availed ITC. Thus, he agreed that drawback availed by them on the goods exported at higher rate manufactured from ITC availed raw materials, as admitted by him above is recoverable from them along with interest.
- On being further asked the reason for availing higher rate of drawback on the export made during the months of July,2017 to Sept,2017 as well as lower rate of duty drawback simultaneously, he stated that as the stock they had as on 30.06.2017 was declining, they started using raw material/input procured during the months of July-2017 to Sept-2017 in manufacturing of goods intended for export therefore they had exported one consignment at lower rate in August-2017 and had started clearing goods both at lower rate as well as higher rate of drawback in September-2017.

**2.5** M/s Shree Bharka (India) Ltd., vide their letter dated 02.03.2022 and letter dated 13.01.2023 submitted following documents for scrutiny:-

i) Copies of GSTR-3B and 2A returns for the period July- 2017 to September 2017.

ii) Statement of Shipping Bills of export made during the period July 2017 to September 2017.

iii) Item wise stock details as on 31.03.2017 and 30.06.2017 alongwith production and clearance details.

iv) Copy of ST-3 return.

v) Copy of TRAN-1 return alongwith supporting documents of purchase invoices on the basis of CENVAT Credit was availed in TRAN-1 return.

vi) Details/documents of Refund claimed against export made during the period July 2017 to September 2017.

vii) Copy of trial balance sheet as on 30.06.2017 and 30.09.2017.

3. Scrutiny of documents of M/s Shree Bharka (India) Ltd.

3.1 Whereas on examination of purchase register and GSTR-3B return filed by the exporter, it was observed that the exporter has availed complete/full Input Tax Credit (ITC) during the month of July 2017 to September 2017 which was available to them as per purchase register. Further, it appears that the exporter has also availed CENVAT Credit on stock of 46,761.80Kg raw material, i.e. Yarn, available with them as on 30.06.2017 in the TRAN-1 return filed by them. These facts were also admitted by Shri Sandeep Kothari, Director in his statement dated 13.01.2023 recorded under Section 108 of the Customs Act, 1962 wherein he stated that they had availed all the ITC amounting to Rs.3,89,38,912/- admissible on the inputs and input services received by them during the period July 2017 - Sept 2017 and had also availed/taken CENVAT Credit of Rs. 8,81,401/- pertaining to 46761.80 Kg Yarn in column 7a of the TRAN-1 return filed by them. Thus, it is clear that the exporter had availed all the eligible input tax credit of all the raw materials purchased by them during these three months and had also availed/taken CENVAT Credit on the stock of 46 761.80 Kg of Yarn available with them as on 30.06.2017.

3.2 On examination of Shipping Bills, invoices and other details of export made by the exporter during the month of July 2017 to September 2017, it was observed that the exporter had claimed higher rate of drawback against all the exports made during the said period except nine Shipping Bills, in which lower rate of drawback was claimed. Further, it was observed that the exporter has also availed Input Tax Credit (ITC) on the inputs & input services purchased by them during the months of July 2017 to September 2017 and had also availed CENVAT credit of the stock of 46,761.80 Kg of Yarn available as on 30.06.2017. Thus, the exporter has violated the essential condition mentioned in Notification No. 59/2017 dated 29.06.2017 by simultaneously availing CENVAT Credit/Input Tax Credit on the inputs & input services and claiming duty drawback at higher rate against the exported goods.

3.3 Whereas, Shri Sandeep Kothari, Director in his statement had stated that they procure inputs/inputs services commonly for finished goods intended for export and domestic clearance and no separate record or accounting in respect of Input Tax Credit on raw materials/inputs procured for manufacturing of finished goods intended for domestic clearance and exports were maintained by

them. The exporter has submitted details of the stock available as on 30.06.2017 in his statement on some of which they had availed transitional CENVAT credit. On scrutiny of the documents submitted by M/s Shree Bharka (India) Ltd., it was observed that the exporter had availed/taken CENVAT credit of Rs 8,81,401/- in column 7a of the TRAN-1 return (RUD-5) and the said credit pertains to CENVAT Credit of duty paid by them on the stock 46,761.80 Kg of Yarn available with them as on 30.06.2017. This fact has been admitted by Shri Sandeep Kothari, Director, M/s Shree Bharka (India) Ltd. in his statement dated 13.01.2023. Thus, the exporter had violated the essential condition of the Notification No. 59/2017 dated 29.06.2017 by availing duty drawback at higher rate on the goods exported by them during the period July 17 to Sept 17 which were either finished/semi-finished goods held by them as on 30.06.2017 or were manufactured from the raw material i.e. 46,761.80 Kg of Yarn held by them as on 30.06.2017, on which they had availed CENVAT credit and carried forward the same in TRAN-1 return filed by them.

3.4 Whereas, Shri Sandeep Kothari, Director of M/s Shree Bharka (India) Ltd. in his statement dated 13.01.2023 had stated that they were having stock of 5,55,048 Kg of Yarn (20,88,757 Mtrs when converted into finished fabric and after deducting wastage/ shrinkage), 15,33,113 Mtrs of Grey (14,71,788 Mtrs when converted to finished fabric) and 5,20,860 Mtrs of finished fabric as on 30.06.2017 (RUD-6) on which they had not availed any Input Tax Credit (except 46,761.80 Kg Yarn on which they had availed CENVAT Credit in TRAN1 return). Thus, the exporter was having stock of 40,81,405 Mtrs equivalent finished fabric as on 30.06.2017. Further, during the month of July to September, 2017, the exporter had exported total 39,39,874.10 Mtrs (31,62,215.3 Higher rate + 7,77,658.80 at Lower rate) of finished fabric and had supplied 4,44,906 Mtrs of fabric in the domestic market (total clearance during the said period was 43,84,780 Mtrs though in the statements same was provided as 43,88,842 Mtrs by the exporter). Thus, the claim of the exporter that during the period from July -2017 to Sept.-2017 they had exported finished goods which was either available with them as on 30.06.2017 or manufactured from the stock of raw material or semi-finished goods available with them as on 30.06.2017 does not hold water as on the basis of Stock Position statement submitted by the exporter, the total stock of finished goods as on 30.06.2017 was 40,81,405 Mtrs only, whereas the total supply including export and domestic sale during this period was 43,84,780 Meters. The fact when confronted with the exporter, was admitted by Shri Sandeep Kothari, Director, M/s Shree Bharka (India) Ltd. that in the end of

September, they had exhausted the stock of finished goods manufactured from the raw materials, grey fabric and finished goods available with them as on 30.06.2017, therefore the differential 3,07,437 Mtrs of finished fabric exported by them either at lower rate of drawback or higher rate of drawback was manufactured from the raw material which were purchased by them during the month of July-2017 to Sept-2017 and ort the same they had availed Input Tax Credit. Exporter further admitted that as per FIFO, they had exported one consignment of 90,708.480 Mtrs at higher rate of duty drawback and rest was exported at lower rate of duty drawback or in domestic market. Therefore, the exporter agreed that drawback availed by them on the goods exported at higher rate manufactured from ITC availed raw materials is recoverable from them along with interest.

3.5 Therefore, it is evident from the facts and the statement of Shri Sandeep Kothari that the exporter had exhausted their stock and then used raw material purchased by them during the months of July-2017 to September-2017 on which they have availed full input tax credit, in manufacturing of finished goods and subsequently also claimed higher rate of duty drawback on the exports of said finished goods. This renders the exporter's eligibility to claim duty drawback at higher rate forfeited. Therefore, the duty drawback availed at higher rate against the export of finished goods manufactured by using raw material purchased during the month of July-2017 to September-2017 by the exporter was not proper and should be disallowed as the exporter had violated conditions of Notification No. 59/2017 dated 29.06.2017 by availing Input Tax Credit on the inputs & input services and claiming duty drawback at higher rate against the exported goods simultaneously.

3.6 Further, it is pertinent to mention that the exporter has availed CENVAT Credit of Rs 8,81,401/- in column 7a of the TRAN-1 return filed by them pertaining to CENVAT Credit of duty paid by them on the stock of 46.761.80 Kg of Yarn available with them as on 30.06.2017. Thus, it is evident that the exporter had availed/taken credit on the stock of raw material i.e. 46,761.80 Kg Yarn held by them as on 30.06.2017 in their TRAN1 return. Therefore, their claim for justification of admissibility of duty drawback at higher rate on the finished fabric exported by them during the months of July-2017 to Sept 2017, manufactured from the stock of 46,761.80 Kg of Yarn held by them as on 30.06.2017 is also liable to be refuted as the exporter had availed CENVAT credit on the subject stock held by them as on 30.06.2017 and carried forward the CENVAT credit in their TRAN-1 return and have also availed duty drawback at

higher rate on export of the finished fabric manufactured from 46,761.80 Kg of Yarn. Thus, the exporter has violated the crucial conditions of Notification No. 131/2016-Customs (NT) dated 31.10.2016 as amended by Notification No. 59/2017-Customs (NT) dated 29.06.2017.

3.7 Whereas on examination of purchase register and GSTR-3B return filed by the exporter, it was observed that the exporter has availed complete/full Input Tax Credit (ITC) during the month of July 2017 to September 2017 which was available to them as per purchase register. Further, it appears that the exporter has also availed CENVAT Credit on stock of 46,761.80 Kg raw material, i.e. Yarn, available with them as on 30.06.2017 in the TRAN-1 return filed by them. These facts were also admitted by Shri Sandeep Kothari, Director in his statement dated 13.01.2023 recorded under Section 108 of the Customs Act, 1962 wherein he stated that they had availed all the ITC amounting to Rs.3,89,38,912/- admissible on the inputs and input services received by them during the period July-2017 to Sept-2017 and had also availed/taken CENVAT Credit of Rs. 8,81,401/- pertaining to 46761.80 Kg Yarn in column 7a of the TRAN-1 return filed by them. Thus, it is clear that the exporter had availed all the eligible input tax credit of all the raw materials purchased by them during these three months and had also availed/taken CENVAT Credit on the stock of 46,761.80 Kg of Yarn available with them as on 30.06.2017.

3.8 On being confronted with the above stated facts about the stock position as on 30.06.2017 and supply made by them during the period from July-2017 to September-2017, Shri Sandeep Kothari stated that they had exported goods during the months of July, 2017 to September, 2017 manufactured from the stock of raw material held by them as on 30.06.2017 or the finished goods available with them as on 30.06.2017. He also admitted that the goods exported during the period July-2017 to Sept,2017 by them other than the stock held by them as on 30.06.2017 were manufactured by using the raw materials procured during the month of July 2017 to Sept., 2017 against which they have availed full Input Tax Credit in GSTR 3B. He also admitted that the drawback availed at higher rate by them against the export made by using raw material on which they have availed CENVAT Credit/input tax credit was not proper. He admitted that for some of the export other than from the stock held by them as on 30.06.2017, they have not satisfied the conditions of Notification No. 131/2016-Customs (NT) dated 31.10.2016 as amended by Notification No. 59/2017-Customs (NT) dated 29.06.2017 and have wrongly availed higher drawback. It is pertinent to mention that for the export made from the stock (pertaining to

46,761.80 Kg Yarn) held by them as on 30.06.2017, claiming of drawback at higher rate was wrong as the exporter had availed CENVAT Credit to the tune of Rs.8,81,401/- on the 46,761.80 Kgs Yarn in the TRAN-1 return in violation of the conditions of Notification No. 131/2016-Customs (NT) dated 31.10.2016 as amended by Notification No. 59./2017-Customs (NT) dated 29.06.2017.

3.9 Whereas, it was observed that in order to avail higher rate of Drawback the exporter at the time of filing Shipping Bills has submitted in their invoices a declaration stating that no input tax credit of the Central Goods and Services Tax or of the Integrated Goods and Services Tax had been availed for any of the inputs or input services used in the manufacture of the export product. Further, they declared that CENVAT Credit on the inputs or input services used in manufacture of the export goods had not been carried forward in terms of Central goods and Services Tax Act, 2017. However, as discussed in paras supra, the exporter has not only availed complete Input Tax Credit (ITC) during the month of July 2017 to September 2017 which was available to them as per GSTR 2A/purchase register, but had also taken CENVAT credit on 46,761.80 Kg Yarn held by them on 30.06.2017 in TRAN-1 return filed by them. Thus, it appears that the exporter had submitted wrong declaration before the Customs Authority at the time of filing shipping bills to wrongly avail higher rate of drawback.

3.10 In view of the above stated facts, it was observed that the exporter had exported finished fabric manufactured by using 46,761.80 Kg of Yarn on which CENVAT credit was availed in TRAN-1 return filed by them and subsequently exported availing higher rate of duty drawback. The act of exporting finished goods manufactured from raw material on which CENVAT credit was availed and carried forward in TRAN-1 return and availing drawback at higher rate at the time of export of these goods, is violation of Customs Notification No. 59/2017-Customs (NT) dated 29.06.2017. Therefore, the drawback availed at higher rate by exporting such goods is liable to be recovered from the exporter. Taking into consideration input output ratio stated by the exporter in his statement dated 13.01.2023 and market practice, from 46,761.80 Kg of Yarn, exporter manufactured approx.1,74,000 Mtrs of finished goods. Accordingly, drawback pertaining to Shipping Bill No. 8664684 dated 14.09.2017 and Shipping Bill No. 8673670 dated 15.09.2017 whereby 1,74,215.146 Mtrs of finished fabric was exported, is recoverable from the exporter. Further, investigation revealed that as on 30.06.2017, the exporter had stock of finished goods equivalent to 40,81,405 Mtrs of fabric whereas during the period from July 2017 to September 2017, they supplied total 43,84,780 Mtrs of finished goods (31,62,215.30 Mtrs

exported at Higher Rate of Drawback+ 7,77,658.80 Mtrs exported at Lower Rate of Drawback + 4,44,906 Mtrs supplied in domestic market). Shri Sandeep Kothari, Director admitted in his statement that the differential quantity of finished fabric exported by them was manufactured from raw material procured by them during the period July 2017 to September 2017 on which they had availed Input Tax Credit. He further admitted that as per FIFO and out of differential quantity of finished fabric exported by them, they had exported one consignment of 90708.48 Mtrs availing duty drawback at higher rate and rest were exported at lower rate of duty drawback. This holds the exporter in clear violation of the conditions of Customs Notification No. 59/2017-Customs (NT) dated 29.06.2017 and the drawback availed at higher rate on export of 90,708.480 Mtrs is liable to be recovered from them. Accordingly, drawback pertaining to Shipping Bill No. 8964881 dated 28.09.2017 whereby 90,708.480 Mtrs finished fabric were exported at higher rate of drawback is recoverable from them.

4. From the above stated facts, it appears that for the export consignments as detailed in attached Annexure-A exported during the month of September-2017, the exporter has availed CENVAT credit/input tax credit as well as drawback under category 'A' of the drawback schedule thereby violating the conditions of the Notification No.131/2016-Customs (NT) dated 31.10.2016 as amended by Notification No. 59/2017-Customs (NT) dated 29.06.2017. It is pertinent to mention that when CENVAT credit/input tax credit on inputs is availed, drawback under category 'B' (lower rate) was allowed, therefore, in the instant case, as CENVAT credit/input tax credit had been availed, the exporter was eligible for drawback under category 'B'. Thus, the excess drawback amounting to Rs. 14,20,138/- (Rupees Fourteen Lakhs Twenty Thousand One Hundred Thirty-Eight only) as calculated in Annexure-A to the show cause , wrongly availed by M/s Shree Bharka (India) Ltd. for the export consignments as detailed in Annexure-A was not proper and legal and is recoverable from them under Rule 16 of Customs, Central Excise and Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act 1962 along with applicable interest.

## 5. LEGAL PROVISIONS APPLICABLE TO THE INSTANT CASE

### 5.1 Legal Provisions of Customs Act, 1962

Various provisions of the Customs Act, 1962 applicable in the instant case are as under: -

***Section 2(39)*** *defines the term smuggling and it reads as under: - "Smuggling" in relation to any goods, means any act of omission or commission which render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act, 1962.*

***Section 2(18)*** *defines the term exports and its read as under: - "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;*

***Section 2(19)*** *defines the term export goods and its read as under: - "export goods", means any goods which are to be taken out of India to a place outside India;*

***SECTION 50*** *Entry of goods for exportation. - (1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as maybe prescribed].*

*Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.*

*(2). The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.*

*"(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:—*

*(a) the accuracy and completeness of the information given therein;*

*(b) the authenticity and validity of any document supporting it; and*

*(c) compliance with the restriction or prohibition, if any, relating to the - goods under this Act or under any other law for the time being in force.".*

***SECTION 75.*** *Drawback on imported materials used in the manufacture of goods which are exported. - (1) Where it appears to the Central Government that in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under section 51 by the proper officer, or being goods entered for export by post under clause (a) of section 84 and in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or Carrying out any operation on such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2) :*

*Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under sub-section (2), specify, if the export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods*

*or carrying out any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf :*

*Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act, 1999 (42 of 1999)], such drawback shall except under such circumstances or such conditions as the Central Government may, by rule, specify, be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.*

*(1A) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured, processed or on which any operation has been carried out in India and exported outside India, then, the Central Government may, by notification in the Official Gazette, declare that so much of the material as is contained in the goods exported shall, for the purpose of sub-section (1), be deemed to be imported material.*

*(2) The Central Government may make rules for the purpose of carrying out the provisions of sub-section (1) and, in particular, such rules may provide —*

*(a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any operation on the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or other operation, and interest if any payable thereon;*

*(aa) for specifying the goods in respect of which no drawback shall be allowed:*

*(ab) for specifying the procedure for recovery or adjustment of the amount of any drawback which had been allowed under sub-section (1) or interest chargeable thereon;*

*(b) for the production of such certificates, documents and other evidence in support of each claim of drawback as may be necessary;*

*(c) for requiring the manufacturer or the person carrying out any process or other operation to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to enable such authorised officer to inspect the processes of manufacture, process or any other operation carried out and to verify by actual check or otherwise the statements made in support of the claim for drawback.*

*(d) for the manner and the time within which the claim for payment of drawback may be filed;*

*(3) The power to make rules conferred by sub-section (2) shall include the power to give drawback with retrospective effect from a date not earlier than the date of changes in the rates of duty on inputs used in the export goods.*

***SECTION 75A. Interest on drawback.*** *- (1) Where any drawback payable to a claimant under section 74 or section 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback.*

*(2) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.*

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

*(a)——*

*(i)——*

*(ia) any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback under section 75;]*

***SECTION 114. Penalty for attempt to export goods improperly, etc.*** *- Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -*

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

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

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

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

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

*Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:*

*Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall net exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*(2) Where any fine in lieu of confiscation of goods is imposed under subsection (1), the owner of such goods or the person referred to in subsection (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.*

*(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.*

*Explanation– For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.*

**5.2 Customs, Central Excise Duties and Service Tax Drawback Rules, 1995- as amended vide Notification No. 109/2014-Customs (N.T) dated 17.11.2014:**

***Rules 2. Definitions. –***

*In these rules, unless the context otherwise requires, -*

*(a) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services in the manufacture of such goods;*

*Rule 12. Statement/ Declaration to be made on exports other than by Post*

*(1) In the case of exports other than by post, the exporters shall at the time of export of the goods –*

*(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that –*

*(i) a claim for drawback under these rules is being made;*

*1[(ii) in respect of duties of Customs and Central Excise paid on the containers, packing materials and materials and the service tax paid on the input services used in the manufacture of the export goods on which drawback is being claimed, no separate claim for rebate of duty or service tax under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities:*

*[Provided that if the 3[Principal Commissioner of Customs or Commissioner of Customs, as the case may be] is satisfied that the exporter or his authorised*

*agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from the provisions of this clause];*

*(b) furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported.*

***Rule 16. Repayment of erroneous or excess payment of drawback and interest. –***

*Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 (52 of 1962).*

**5.3 The provisions of the Foreign Trade (Development and Regulation) Amended Act, 2010 (No. 25 of 2010)** and Rules framed thereunder, which are applicable to the instant case, are as under:-

***Section 11 of the Foreign Trade (Development and Regulation) Act, 1992:***

***11. Contravention of provisions of this Act, rules, orders and export and import policy.*** *- (1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.*

*(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.*

*(3) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and in such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.*

*(4) A penalty imposed under this Act may, if it is not paid, be recovered as an arrears of land revenue and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.*

*(5) Where any contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.*

*(6) The goods or the conveyance confiscated under sub-section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.*

***Rule 11 of the Foreign Trade (Regulation) Rules, 1993:***

*11. Declaration as to value and quality of imported goods. –*

*On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and. description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.*

**6**. From the above stated facts, it appears that for the export consignments as detailed in attached Annexure-A exported during the month of July-2017 to September-2017, the exporter has availed input tax credit as well as drawback under category 'A' of the drawback schedule thereby violating the conditions of the Notification No. 131/2016-Customs (NT) dated 31.10.2016 as amended by Notification No. 59/2017-Customs (NT) dated 29.06.2017. It is pertinent to mention that when input tax credit on inputs is availed, drawback under category 'B' (lower rate) was allowed, therefore, in the instant case, as input tax credit had been availed, the exporter was eligible for drawback under category 'B'. Thus, the excess drawback amounting to Rs.14,20,138/- (Rupees Fourteen Lakhs Twenty Thousand One Hundred Thirty-Eight Only) as calculated in Annexure-A, wrongly availed by the Exporter for the export consignments as detailed in Annexure-A was not proper and legal and is recoverable from them under Rule 16 of Customs, Central Excise and Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act 1962 along with applicable interest.

**6.1** M/s. Shree Bharka (India) Ltd had exported goods from Mundra ports, Gujarat on which they have availed input tax credit as well as drawback under Category-A during the month of July-2017 to September-2017. The details of export made by them is summarized as under;

**Table-1**

| Sr. No | Port Code | Shipping Bill No | Date of S/B | Invoice No | Date of Invoice | Quantity (Meters) | FOB Value (Rs.) | Differential Drawback Recoverable (Diff. of HR-LR) (Rs.) |
|---|---|---|---|---|---|---|---|---|
| 1 | INMUN1 | 8664684 | 14.09.2017 | 097/2017-18 | 13.09.2017 | 99869.85 | 6803474.23 | 455833 |
| 2 | INMUN1 | 8673670 | 15.09.2017 | 098/2017-18 | 13.09.2017 | 74345.29 | 6956152.78 | 466062 |
| 3 | INMUN1 | 8964881 | 28.09.2017 | 102/2017-18 | 25.09.2017 | 90708.48 | 7436465.40 | 498243 |
| TOTAL | | | | | | 2,64,923.62 | 2,11,96,092.41 | 14,20,138 |

**6.2** In view of facts discussed in the above paras, material evidences available on record and the deposition of Shri Sandeep Kothari, Director of M/s. Shree Bharka (India) Ltd, Bhilwara, Rajasthan, it is evident that the goods exported by them during the month of September 2017 as detailed in attached Annexure-A by availing drawback under Category "A" of the drawback schedule were manufactured from either the raw materials / inputs purchased by them during the period of July 2017 to September 2017 on which M/s. Shree Bharka (India) Ltd, had availed full Input Tax Credit in the GSTR-3B returns filed for these months or from the stock of raw material (Yarn) held by them as on 30.06.2017 on which they had availed / taken CENVAT credit and carried forward the same in TRAN- 1 return filed by them. It is evident that for the export consignments as detailed in Annexure–A, M/s. Shree Bharka (India) Ltd has taken CENVAT credit of Rs.8,81,401/- on the stock of 46,761.80Kg yarn held by them as on 30.06.2017 and carried forward the CENVAT Credit in TRAN-1 return filed by them and have availed input tax credit of the inputs and input services used in manufacture of the exported goods as well as availed drawback at higher rate i.e. under category "A" of the Drawback Schedule. **As per condition of Notification No. 59/2017(NT) dated 29.06.2017, for availing drawback at higher rate i.e. Category "A" of the Drawback Schedule, the exporter shall not carry forward the amount of CENVAT Credit on the Export product or on the inputs or input services used in manufacture of export product, under the Central Goods and Services Act, 2017.** Thus it is evident that the Exporter has violated the conditions of No. 131/2016- Customs (N.T.) dated the 31 st October, 2016 as amended by Notification No.59/2017-Customs (NT) dated 29.06.2017 by wrongly availing benefits of duty drawback at higher rate

on the export of goods which were manufactured from the stock of raw material held with them as on 30.06.2017 on which the exporter had availed CENVAT Credit and carried forward the same in TRAN- 1 return filed by them or were manufactured by using the raw materials procured during the month of July,2017 to September,2017 against which they have availed full Input Tax Credit in GSTR-3B.

**6.3** Vide Notification No.59/2017(NT) dated 29.06.2017 Government amended the Notification of the Government of India, Ministry of Finance (Department of Revenue) No.131/2016-Customs(N.T.) dated the 31st October, 2016 thereby specifying conditions for availing Drawback. The said notification provided that an undertaking should be provided, in case an exporter wants to claim drawback under category "A", that they have not availed any input tax in respect of IGST and CGST. The relevant part of the said notification is reproduced below:

> *"In exercise of the powers conferred by sub-section (2) of section 75 of the Customs Act, 1962 (52 of 1962), sub-section (2) of section. 37 of the. Central Excise Act, 1944 (l of 1944) and section 93A and sub-section (2) of section 94 of the Finance Act,. 1994. (32. of 1994), read with rules. 3 and 4 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, the Central Government hereby makes the following further amendments, in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 131/2016-Customs(N.T), dated the 31st October,2016, published vide number G.S.R. 1018 (E), dated the 31st October, 2016, namely--. In the said notification, -*
>
> *In the Notes and. conditions –*
>
> *i. for paragraph(6),*
>
> *"(6) An export product accompanied with tax invoice and forming part of project export (including turnkey export or supplies) for which no figure is shown in columns (5) and (7) in the said Schedule, shall be so declared by the exporter and the maximum amount of drawback that can be availed under the said Schedule shall not exceed amount calculated by applying ad-valorem rate of drawback shown in column (4) or column (6) to one and half times the tax invoice value."*
>
> *ii. in paragraph (11), after clause (b), the following clauses shall be*
>
> *inserted, namely:-*
>
> *"(c) exported availing input tax credit of the central goods and services tax or of the integrated goods and services tax on the export product or on the inputs or input services used in the manufacture of the export product ;*
>
> *(d) exported claiming refund of the integrated goods and services tax paid on such exports;*
>
> *(e) exported by an exporter who has carried forward the amount of CENVAT credit on the export product or on the inputs or input services used in the manufacture of the export product, under the Central Goods and Services Tax Act, 2017 (12 of 2017)."*

*(iii) after paragraph (12), the following paragraph shall be inserted, namely:-*

*"(12A) The rates and caps of drawback specified in columns (4) and (5) of the said Schedule shall be applicable to export of a commodity or product if the exporter satisfies the following conditions, namely :- (a) the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, that no input tax credit of the central goods and services tax or of the integrated goods and services tax has been availed on the export product or on any of the inputs or input services used in the manufacture of the export product.*

*(b) if the goods are exported under bond or letter of undertaking or on payment of integrated goods and services tax, a certificate from the officer of goods and services tax having jurisdiction over the exporter, to the effect that no input tax credit of the central goods and services tax or input tax credit of the integrated goods and services tax has been availed on the export product or on any inputs' or input services used in the manufacture of the export product or no refund of integrated goods and services tax paid on export product shall be claimed, is produced;*

*(c) ' a certificate from the officer of goods and services tax having jurisdiction over the exporter, to the effect that exporter has not carried forward the amount of CENVAT credit on the export product or on the inputs or input services used in the manufacture of the export product, under the Central Goods and Services Tax Act, 2017(12 of 2017), is produced. ";*

**6.4** The rates of drawback, did not change even after the enactment and applicability of the GST law i.e. the higher drawback rates continued fill September, 2017. The Notification No. 131/2016 Customs (NT) dated 3 1: 10.2016 had also provided the said condition that in case the exporter, wish to avail, higher rate of drawback, then CENVAT credit should not be availed and the Government amended the Notification No. 131/2016- Customs (NT) dated 31.10.2016 vide Notification No. 59/2017-Customs 29.06.2017 but the Government continued both rates of drawback (Higher and Lower rates) for the period from July 2017 to September 2017 with a condition that no ITC of Central tax and Integrated tax should be availed as the higher drawback represent rebate of central taxes which includes CGST and IGST component. The relevant part of Notification No. 131/2016 Customs (NT) dated 31.10.2016 is reproduced as under:

*(12) The expression "when CENVAT facility has not been availed", used in the said Schedule, shall mean that the exporter shall satisfy the following conditions, namely: -*

*(a) the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Assistant 'Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise, as the case may be, that no CENVAT facility has been availed for any of the inputs or input services used in the manufacture of the export product;*

*(b) If the goods are exported under bond or claim for rebate of duty of Central Excise, a certificate from the Superintendent of Customs or Superintendent of Central Excise in charge of the factory of production, to the effect that no CENVAT facility has been availed for any of the inputs or input services used in the manufacture of the export product, is produced:*

**6.5** Further from 01.10.2017, higher drawback rates were discontinued and only lower drawback rates were allowed and the same was amended vide Notification No.88/2017-Customs (NT) Dated 21.09.2017, wherein drawback in respect of Central Taxes other than Custom Duties were discontinued. The relevant part of the said notification is reproduced below,

> *a. "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty excluding integrated tax leviable under sub-section (7) and compensation cess leviable under subsection (9) respectively of section 3 of the Customs Tariff Act, 1975 (51 of 1975) chargeable on any imported materials or excisable materials used in the manufacture' of such goods ;*

The definition before the said amendment stood as follows 2 (a) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be chargeable on any imported materials or excisable materials used 'or taxable services used as input services in the manufacture of such goods ;

**7.6 As per Section 50 of the Customs Act, 1962 read with Regulation 4 of Shipping Bill and Bill of Export (Form) Regulations, 2017**, the exporter of any goods is required to file a Shipping Bill in the proforma prescribed, before the proper officer mentioning therein that the quality and specifications of the goods as stated in the Shipping Bill are in accordance with the terms of the export contract entered into with the buyer / consignee in pursuance of which the goods are being exported; The exporter while presenting the Shipping Bill, at the foot thereof, is also required to make and subscribe to a declaration as to the truthfulness of the contents of such Shipping Bill and in support of this is required to produce to the proper officer, the declaration relating to the exported goods. However, as detailed in forgoing paras, M/s. Shree Bharka (India) Ltd had made wrong / false declarations in Shipping Bills filed under Section 50 of the Customs Act, 1962 and submitted false declaration with regard to availment of CENVAT Credit as well as Input Tax Credit. Moreover, as per Rule 12 of the Customs and Central Excise Duties Drawback Rules, 1995 the exporters shall at the time of Export of the Goods state on the Shipping Bill or Bill of Export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and

make a declaration on the relevant shipping bill or bill of export, furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the goods to be exported. M/s.Shree Bharka (India) Ltd, had filed shipping bills undertaking / self-declaration that they have not availed CENVAT Credit and Input Tax Credit of CGST & IGST of any Input and Input Services used in the manufacture of the exported goods, this shows that they had filed false declarations intentionally to avail drawback at higher rate. Thus, it appeared that M/s. Shree Bharka (India) Ltd had violated provisions of Section 50 of the Customs Act, 1962 read with Regulation 4 of the Shipping Bill and Bill of Export (Form) Regulations, 2017 and Section 75 of the Customs Act, 1962; had also violated Rule 12 of the Customs and Central Excise Duties Drawback Rules, 1995. Further, have contravened the provisions of Section 11 of the Foreign Trade (Regulation) Rules, 1993, in as much as M/s.Shree Bharka (India) Ltd had subscribed to a wrong declaration while filing the Shipping Bills before the Customs Authorities. The same was done with an intention to avail of Drawback at higher rate and thus has resulted in wrong / undue availment of Duty Drawback. It is amply clear that 2,64,923.63 Meters finished fabric having total FOB value of Rs.2,11,96,092/- exported under Shipping Bills as detail in Annexure-"A" attached with Show Cause Notice are liable to confiscation under Section 113 (ia) of the Customs Act, 1962, for contravention of Section 50 of the Customs Act, 1962 read with Regulation 4 of the Shipping Bill and Bill of Export (Form) Regulations, 2017 and Section 75 of the Customs Act, 1962 read with Notification No. 131/2016-Customs (N.T.) dated the 31st October, 2016 as amended by Notification No. 59/2017-Customs (NT) dated 29.06.2017 issued by the CBIC under Customs Act, 1962.

**7.** By adopting aforementioned modus operandi, Exporter had wrongly availed and taken Drawback at higher rate i.e. under Category "A" of the Drawback Schedule, though were eligible under Category "B". The Wrongly availed / Sanctioned drawback amount of Rs.14,20,138/- (Rupees Fourteen Lacs Twenty Thousand One Hundred Thirty-Eight Only) as detailed in Annexure-"A" has been taken by M/s.Shree Bharka (India) Ltd, by way of wilful mis-declaration, suppression of fact with regard to availment of CENVAT Credit as well as Input Tax Credit in fraudulent manner. Therefore, the wrongly availed drawback amounting to Rs.14,20,138/- (Rupees Fourteen Lacs Twenty Thousand One Hundred Thirty-Eight Only) is required to be recovered from M/s. Shree Bharka (India) Ltd, under Rule 16 of the Customs and Central Excise Duties Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962.

**8.** It appeared that M/s. Shree Bharka (India) Ltd, had intentionally not declared the fact that they have availed input tax credit on the inputs/raw materials/input services used for manufacture of the exported goods, so as to avail higher amount of drawback. Thus, M/s. Shree Bharka (India) Ltd, had submitted wrong declarations in the shipping bills, as such violated the provisions of Section 50 of the Customs Act, 1962 read with Rule 16 of the Customs and Central Excise Duties Drawback Rules, 1995. This resulted in excess availment / sanction of drawback and the same is liable to be recovered from them under Rule 16 of Customs, Central Excise and Service Tax Drawback Rules, 1995. Thus, the various acts of omission & commission by M/s. Shree Bharka (India) Ltd, as discussed hereinabove, had rendered the subject exported goods i.e. 2,64,923.63 Meters finished fabrics liable for confiscation under Section 113(ia) of the Customs Act, 1962 and have rendered M/s. Shree Bharka (India) Ltd, liable for penalty under Section 114 (iii) of the Customs Act, 1962.

**9.** During investigation, M/s. Shree Bharka (India) Ltd. had made payment of Rs.25,17,280/- (Rupees Twenty-Five Lakhs Seventeen Thousand and Two Hundred Eighty only) towards wrongly availed drawback and interest, which is required to be appropriated against the demand of wrongly availed duty drawback and interest pertaining to goods exported vide Shipping Bills filed at Mundra port. The details of payments made are as under:

| Sr. No. | Port | Challan No. | Date | Amount in Rs. | Remarks |
|---|---|---|---|---|---|
| 1 | Mundra | 2252 | 02.02.2023 | 14,20,138/- (Drawback) | (RUD-7) |
| 2 | Mundra | 2252 | 02.02.2023 | 10,97,142/- (Interest) | |
| | Total | | | 25,17,280/- | |

**10.** Therefore, after conclusion of investigation a Show Cause Notice F.NO GEN/ADJ/ADC/928/2023-ADJN dated 03.05.2023 was issued to M/s Shree Bharka (India) Ltd., Bazar No. 2, Bhupalganj, Bhilwara, Rajasthan, as to why:

(i) The duty drawback amounting to Rs.14,20,138/- (Fourteen Lakhs Twenty Thousand One Hundred Thirty-Eight only) sanctioned against 3 Shipping Bills as detailed in Annexure-A should not be demanded and recovered from them under Rule 16 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, as amended read with Section 75 of the Customs Act 1962;

(ii) Interest amounting to Rs. 11,04,145/- (Rs. Eleven Lakhs Four Thousand One Hundred Forty Five only) should not be demanded and recovered from them under Section 75A(2) of the Customs Act, 1962 on the wrongly availed drawback as in para (i) above;

(iii). Rs. 25,17,280/- (Rupees Twenty-Five Lakhs Seventeen Thousand Two Hundred Eighty only) deposited by M/s Shree Bharka (India) Ltd. during the investigation should not be appropriated against the demand as in para (i) and (ii) above;

(iv) 2,64,923.63 Meters of finished fabric totally valued at Rs. 2,11,96,092/- exported under 3 Shipping Bills as detailed in Annexure-A should not be confiscated under Section 113(ia) of the Customs Act, 1962 and Redemption fine should not be imposed in lieu of confiscation in terms of Section 125 of the Customs Act, 1962;

(v) Penalty should not be imposed upon M/s Shree Bharka (India) Ltd. under Section 114(iii) of the Customs Act, 1962 for omissions discussed above.

11. It is in the above context the Appellant has filed the present appeal in terms of Section 128 of Customs Act, 1962 before this appellate authority seeking to set aside the impugned order dated 30.11.2023 so passed by the Additional Commissioner of Customs, Customs House Mundra.

## 12. SUBMISSIONS OF THE APPELLANT:

**A1.** That as per para 11 and 12A of the principal notification as stood amended by Notification No. 59/2017 (NT) dt. 29.06.2017 it can be transpired that higher duty drawback rates under category 'A' can be availed for the product exported when no input tax credit in relation to such product or raw material/inputs/input service consumed in that product has been availed. Further at the time of bringing that product for export, exporter has to declare that no input tax credit of CGST or IGST has been availed on such product or on any input/input services used in the manufacture of that product and in the case necessary, shall establish the said fact to the satisfaction of the Assistant Commissioner or Deputy Commissioner of Customs.

**A2.** That in the case appellant has exported finished fabric satisfying the aforesaid condition enumerated in the principal notification. Appellant had 5,08,286.2 kgs of yarn, 15,33,113 meters of grey fabric and 5,20.860 meters of finish fabric as on 30.06.2017 in hand. All the finished fabric exported by the appellant at higher drawback has been produced from the aforesaid stock only. Even otherwise, if the proposed finished fabric as derived by department by converting the stock in hand on 30.06.201 7 is considered, the same would be around 39,07,405 meters of finish fabric which is excess by 7,45,189.70 meters from the finish fabric exported at higher duty drawback. At the time of export of goods, appellant has declared that no ITC

or CENVAT credit has been taken on the inputs /input services which was also reflected in the invoices prepared for the exported goods. The goods were exported after filing all the relevant documents and making necessary declaration before the excise officers and customs officers. No objection was raised by the department at the time of export of goods regarding the CENVAT facility or ITC and appellant was not called to prove to the satisfaction of officers that CENVAT credit or ITC has not been claimed by appellant. Thus, the exported goods were not having any cenvatable inputs / input services and were also not having any ITC claimed inputs/input services. The declaration filed by appellant was not disputed by the revenue at the relevant time and therefore, it is now not open to the revenue after the lapse of inordinate time to allege that appellant has claimed CENVAT credit and ITC on the inputs which are used in exported goods on which higher drawback was claimed. Departmental officers had the authority and discretion to verify, if necessary, the genuineness or correctness of the declaration produced before them and they could have asked appellant to submit relevant documents at the material time to prove that no CENVAT credit has been taken on the inputs or raw materials which are used for manufacture of exported goods. Such exercise was not done at the relevant time would show that the departmental officers were satisfied that no CENVAT credit or ITC has been availed by appellant and therefore, the goods were allowed to be exported by claiming higher drawback under category "A" of the drawback schedule. Appellant was also under the reasonable belief that the declaration filed by him has been accepted and thereafter the goods have been allowed to be exported. Therefore, the department cannot now dispute the declaration filed by appellant that no CENVAT credit or ITC has been availed. It is submitted that the declaration was filed more than 5 years ago and therefore, the department cannot now deny drawback at higher rate by alleging that appellant has availed ITC or CENVAT credit on the inputs/raw materials used in the goods exported during July, 2017 to September. 2017. The Hon'ble Tribunal in case of **Ascent Meditech Ltd. vs. Commissioner of Central Excise, Vapi reported in 2014 (309) E.L.T. 712 (Tri. - Ahmd.)** wherein it was observed that the assessee was filing declarations under SSI and provided details of the manufacturing process of the goods which was not disputed by the department at the time when the goods were cleared by the assessee. Subsequently, after lapse of considerable time, the department scrutinized the declarations filed by the assessee and raised objections regarding the

classification of the goods and demanded duty from the assessee. The Hon'ble Tribunal held that the assessee filed declarations indicating the manufacturing activity and the classification of the product manufactured by them. If is seen from the show cause notice that the demand has been raised based upon the scrutiny of the declarations filed by the assessee. Therefore, the same exercise, if was required, had to be taken when the declarations were filed by the assessee. Therefore, the Hon'ble Tribunal held that the demand was time barred. The said decision rendered by the Hon'ble Tribunal was affirmed by the Hon'ble Supreme Court reported in Commissioner v. Ascent Meditech Ltd. - 2015 (320) E.L.T. A281 (S.C.).

In the present case also, the revenue has not raised any objection regarding the declaration filed by appellant at the time of export in terms of para 12 and 2A of the principal notification and therefore, it is not open now for the revenue to allege that appellant has claimed CENVAT credit and ITC on the inputs. Therefore, the impugned notice as well as order is unsustainable in the eyes of law and the demand confirmed in the case is liable to be quashed and set-aside.

**A3.** That further whole of the impugned notice has been issued and consequent order has been passed on assumption and presumption. Department without evaluating, scrutinizing the records, documents and books maintained by appellant, without gathering enough evidence as to establish that raw material on which input tax credit is claimed or transited is exported at higher drawback rates and merely on the basis of input-output ratio, concluded the enquiry that appellant has violated the imperial condition of principal notification. That it well settled rule of law that demand cannot be confirmed merely on the theoretical calculation and statement tendered by the witnesses or appellant and it has to be corroborated by tangible documentary evidence. Appellant places reliance on the following case laws in this regard: -

a) In the case of **PUNALUR PAPER MILLS LTD. Versus COLLECTOR OF C. EX. & CUS., COCHIN reported in 2009 (244) E.L.T. 204 (Tri. - Bang.)** wherein it was held that:

*"Clandestine manufacture and removal - Proof - Demands of Rs. 6.98 crores - Theoretical demand - Ratio of raw material to final product - SCN enumerating result of search in various purchasers premises evidencing absence of gate passes though goods received - Facts not forming basis of*

*demand - Demand arrived at on theoretical basis on basis of weigh bridge register, RTS etc. - Quantity of pulp (raw material) used arrived on basis of letter from another company - Formula of pulp quantity multiplied by 100:88 to arrive at quantity of paper - Basis for adoption of ratio 100:88 not clear - Assumption having no basis and method adopted in SCN and O-I-O highly arbitrary - For demand of nearly 7 crores, clear evidences necessary - Figures of another unit having modern machinery not to be basis for arriving at clandestine manufacture and removal - Revenue should have conducted experiment of arrive at ratio of raw materials to pulp and also pulp to paper - Collector himself observing that there cannot be fixed ratio for conversion of pulp to paper - Demand of Rs. 4,58,71,914 not sustainable - Rule 4 of Central Excise Rules, 2002. - Unless figures arrived at by theoretical calculations are backed by concrete evidence, no demand can be made. The formulas at best can be used only for a rough estimate and not for demanding duty. The abstract of calculation as in Annexure to SCN does not contain actual working out of demand and it is not very clear as to what rate of duty was taken while calculating demand. Further relied upon documents were not supplied to assessee. [paras 8, 9]"*

b) in the case of **GOA BOTTLING CO. LTD. Versus COMMISSIONER OF CUS' & C. EX., GOA reported in 2001 (135) E.L.T. 741 (Tri. - Mumbai)** wherein it was held that Tribunal did not find it possible to sustain the demand for duty issued to the three manufacturers of beverages, arrived at only by applying the theoretical ratio of the quantity of beverage base and the quantity of beverage to be obtained from that base. It noted that the formula was theoretical and did not take into account various factors on account of which waste could arise. It also said that applying such a formula would mean applying Rule 173E. It therefore, set aside the demand. The ratio of this decision has been followed in Pepsico India Holding Ltd. v. C.C.E. - 2000 (117) E.L.T. 659 (Tribunal) = 1999 35 RLT 654. This latter decision also referred to one unreported decision where it has applied. The Commissioner in his order has not dealt with this contention that was raised before him, that the formula only indicated what can be the expected yield in the ideal condition and the condition under which the appellant manufactured the beverages were not ideal. The difference found by the Department between notional production and the actual production is also not substantial as to warrant suspension. If ranges less than half to one

and half percent. Applying the ratio of the decision referred of earlier, we hold that demand on this ground was not sustainable."

c) In the case of **JET UNIPEX Versus COMMISSIONER OF CUSTOMS, CHENNAI reported in 2020 (373) E.L.T. 649 (Mad.)** wherein it was held that:

"Adjudication proceedings under Customs Act, 1962 cannot solely be based on inculpatory statements of witnesses and appellant alone - Such statements can be only used for corroborating case which Department proposes to establish before quasi-judicial Authorities - Department bound to prove case based on balance of probabilities as per well-recognised principle of law in case of departmental adjudications. [paras 70, 71]"

**Emphasis Supplied**

**A4.** It is the case of the department that appellant has taken ITC on the raw material purchased during July, 2017 to September, 2017 and these raw materials were used for the manufacture of fabrics exported during this period. The impugn order has alleged that appellant has claimed ITC on the input goods and simultaneously claimed drawback at higher rate under category "A" of drawback schedule which is not permissible under Notification No. 131/2016-cus (NT) dated 31.10.2016 as amended by Notification No. 59/2017-Cus' (NT) dated 29.06.2017. Appellant submit that the allegations leveled in the impugn order are baseless and unsustainable because appellant has not used any raw materials on which ITC was claimed for the manufacture of fabrics exported claiming drawback under category ' A'. Appellant submit that wherever the raw materials, the exported goods were shipped by claiming higher drawback as provided under the principal notification. The department has not been able to prove that appellant has claimed higher drawback and simultaneously claimed ITC of the inputs used in the manufacture of exported goods.

**A5.** Appellant further submits that before alleging that higher drawback has been claimed along with claiming ITC on inputs used for manufacture of exported goods, the revenue is required to discharge the burden that certain quantity of raw materials purchased during the period from July, 2017 to September, 2017 on which ITC claimed were actually used in manufacture of exported goods on which higher drawback was claimed. In the present case, there is nothing on record to suggest that appellant has used such raw material on which ITC was claimed. Therefore, the entire

case of the department is based on assumption and presumption. Thus, the show cause notice is vague and demand confirmed pursuant to such notice is liable to be quashed and set-aside.

**A6**. During the investigation, it has been submitted that the fabric has been exported from the stock either available with appellant as on 30.06.2017 or were manufactured from the raw material/semi-finished goods available as on 30.06.2017. Therefore, there was no question of using the raw material on which TC was claimed. Despite that, the department has sought to allege that appellant has exhausted its stock and also used raw materials purchased during July, 2017 to September, 2017 in order to manufacture 31,62,215.3 meters of exported goods. It is submitted that the show cause notice has not provided any evidence to show that appellant has actually used any raw material which was purchased after availing credit during the month of July, 2017 to September, 2017. The entire case is based on frivolous grounds and therefore, the demand does not have merit.

**A7.** Even for the stock of goods available prior to 30.06.2017, for which CENVAT Credit has been claimed in TRAN-1, it is stated that the said raw material was not used for export of goods on which higher drawback was claimed. That neither the principal notification nor amending notification mandated maintaining of separate accounts for establishing as to use of raw material in exports made at higher drawback rates and use of raw materials in exports made at lower drawback rates. Notification demanded of satisfying the custom officers as to non-availment of credit in relation to goods exported at Higher Drawback Rates which appellant had satisfied. Appellant acting prudently in the case has utilized the non-cenvatable raw material, semi-finished and finished stock in goods exported at higher drawback and the cenvatable raw-material or on which input tax credit is availed, in goods exported at lower drawback and supplied in domestic territory. Department has not verified through the records and also not put forth any evidence to suggest that the CENVAT credit of Rs. 8,81,401/- was related to the stock which was utilized in goods exported at higher drawback rates. It has been merely assumed in the order that appellant has used inputs on which either CENVAT credit or ITC was claimed in goods exported at higher drawback.

**A8.** It is submitted that the entire case is based on assumptions and presumptions and therefore, there is no merit in the present order and the present order is liable to be quashed.

**A9.** Further, there is no method prescribed under the said notification as to how the goods cleared under higher drawback and lower drawback are to be traced. As per the principal notification, it has only to be established at the satisfaction of the proper officer that input tax credit has not been availed for the goods exported at higher drawback, which in the case has been satisfied by the appellant. Department failed to acknowledged that and prepared the case solely on the basis of FIFO method. Even if the holistic view is adopted (as suggested by department), appellant had stock to the tune of 39,07,405 meters of finish fabric (converted) as on 30.06.2017 on which no CENVAT credit availed, he had exported 31,62,215.3 meters at higher drawback and even if it is assumed that whole of the domestic supplies i.e., 4,44,906 meters are made from it, appellant would have exported 3,00,283.7 meters of finish fabric claiming lower drawback rate on which credit is not availed. There is no revenue loss to the government and the impugned order is liable to be quashed.

**B. ENTIRE DEMAND IS BEYOND NORMAL AS WELL AS EXTENDED PERIOD OF LIMITATION AND HENCE IS TIME BARRED**

**B1.** In the present case, the demand relates to the period July, 2017 to September, 2017. The show cause notice is served only on 03.05.2023 i.e-, after five years from the last date of export. In other words, the entire notice is beyond normal and extended period of limitation. The appellant submits that the demand beyond normal period is not maintainable even under the Drawback Rules in view of the well settled legal position. Rule 16 of the Drawback Rules, 1995 is reproduced below for easy reference:

"Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in subsection (1) of Section 142 of the Customs Act, 1962 (52 of 1962)."

**B2.** From the perusal of Rule 1 6 of the Drawback Rules, there is no doubt that no specific time period has been prescribed for issuing the show cause notice for demand of erroneously/excess payment of drawback. However, it is settled legal position that if no time period for issuing the show cause notice is prescribed, the same could be demanded within a **reasonable period**' This view. is supported by following decisions:

(i) Government of India v. Citadel Fine Pharmaceuticals, 1989 (42) ELT 515(SC)

(ii) Ani Elastic Industries v. Union of India, 2008 (222) ELT 340 (Guj);

(iii) Neeldhara Weaving Factory v. DGFT 2007 (210) ELT 658 (P&H);

(iv) Brakes India Ltd v. CCE, 1997 (96) ELT 434 (Tri-Chennai)

**B3.** Appellant further relies on the decision of Hon'ble High Court of Gujarat in case of Pratibha Syntex Ltd. Versus Union of India reported in **2013 (287) E.L.T. 290 (Guj.)** wherein the Hon'ble High Court dealt with the issue where the drawback already disbursed to the assessee was sought to be recovered under Rule 16 of the Drawback Rules by issuing show cause notice after more than three years. The Hon'ble High Court held that though Rule 16 of the Drawback Rules does not provide for any limitation, a reasonable period of limitation has to be read into the same. The Hon'ble High Court held that the drawback was paid more than three years prior to the issuance of the show cause notice and no efforts were made to recover the drawback paid to the petitioners at the relevant time. Thus, the assessee was entitled to form a belief that the matter has attained finality and arrange their finances accordingly. The Hon'ble High Court further held that after a period of more than three years elapsed, if the revenue seeks to recover the amount of drawback paid, it would tantamount to disturb the rights of the assessee. Therefore, the show cause notice was held to be time-barred. The Hon'ble High Court in para 26 of the said Judgment held that the period of 3 years can be said to be a reasonable period to issue show cause notice under section 16 of the Drawback Rules beyond which no show cause notice can be issued as it would be clearly barred by the limitation of time.

**B4.** The decision rendered in the case of Pratibha Syntex Lid. (Supra) was followed by the Hon'ble High Court of Gujarat in case of S.J.S. International Versus Union of India reported in **2022 (380) E.L.T. 577 (Guj.)** and the Hon'ble High Court held that it is a settled legal position that show cause

notice cannot be issued beyond the period of three years of payment of the duty drawback under Rule 16 of the Drawback Rules. In case of Padmini Exports Versus Union of India reported in **2012 (284) E.L.T. 490 (Guj.)**, the Hon'ble High Court held that the recovery of drawback in the year 2000 for the drawback claimed in the year 1996 under Rule 16 of the Drawback Rules is not permissible in law. The Hon'ble High Court relied Upon the decision of Pratibha Syntex Ltd. (Supra) and held that the reasonable time in case of recovery of drawback under rule 16 is three Years beyond which no show cause notice can be issued by the department.

**B5.** Further in the case of Government of India v. Citadel Fine Pharmaceuticals , reported in **1989 (42) ELT 575 (SC)** the Hon'ble Supreme Court held that if no time period has been prescribed under the statue, then the authority need to exercise its power within a **reasonable period.** The relevant portion of the given case has been extracted below for reference:

"6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. **In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case.** Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the **assessee of contend that if is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period.** No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

**B6.** In the present case, as per the submission in the aforementioned paragraphs it is quite clear that the appellant did not hide or suppress any

fact from the department, rather all the facts were very well known to the department at the time of export of the goods. There is no further discovery of the information which was not available at the time of export. The goods were allowed to be exported without any objection and only after proper assessment by the Customs the goods and drawback claim was cleared. It would be totally unjust and improper on the part of the Customs now to allege that the drawback claim has been erroneously paid by suppressing the facts when already all the facts were known to them.

**B7.** As clarified in the preceding paragraphs, the appellant did not hide any fact from the department at the time of exportation of the goods. Therefore, the contention of the department that the appellant has claimed the drawback by mis-representing or suppressing the facts is not maintainable in the scenario.

**B8.** In view of the above submissions, it is clear that the period of 3 years for demanding the erroneous drawback will apply as the same would be the 'reasonable period' in view of the law laid down by the Courts as discussed supra. The demand raised for a period beyond of 5 years is not legal and appropriate in the scenario and the entire demand is therefore liable to be set-aside.

**C. PENALTY IS NOT SUSTAINABLE**

**C1.** In the foregoing paragraphs, it has been submitted in detail that no drawback is refundable. For the same reasons, no penalty is sustainable. For the sake of brevity and in order to avoid unnecessary repetition, appellant request that the submissions made with regard to the drawback portion may be considered as part of the submissions relating to the imposition of penalty. Therefore, for the same ground no penalty is sustainable.

**C2.** It has been alleged in the Show Cause Notice that appellant has suppressed and misrepresented the facts deliberately in order to avail excess drawback. The fact of non-availment of input tax credit was duly reflected in the commercial invoice, shipping bills submitted with the Custom Office at the time of exporting the goods. Therefore, allegation of suppression and misrepresentation is totally misplaced. Rather, all the facts were in the notice of the jurisdictional custom authority.

**C3.** As regards the proposal to impose penalty under Section 114, it is submitted that Section 114 of the Customs Act, 1962 reads as under:

**"Penalty for attempt to export goods improperly, etc –**

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

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

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded or five thousand rupees, whichever is the greater:

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

**C4.** Without prejudice to the above contentions, it is respectfully submitted that as per the provisions of Section 114 of the Customs Act, penalty is imposable on any person who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act. Therefore, the penalty under this sub-section is linked to the liability of the goods to confiscation. As submitted in the foregoing paragraphs, that appellant has neither done nor omitted to do any act which act or omission has rendered the goods liable to confiscation nor has the appellant abetted the doing or omissions of such an act. Therefore, no penalty under this sub-section can be imposed on the appellant.

**C5.** Further, the invocation of this Section requires presence of mens rea, knowledge of the person concerned that the goods are liable to confiscation. As already submitted, the conduct of the Appellant was bonafide. The Appellant had no knowledge of the liability of the goods to confiscation. Consequently, penalty under Section 114 cannot be imposed on the Appellant.

**C6.** This proposition is supported by the judgment of the Hon'ble Supreme Court in the case of **Union of India v. Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3 (SC)]** . This judgment of the Apex Court has been followed by the Hon'ble High Courts and the Tribunal in a large number of cases. As submitted above, the appellant acted in bonafide belief and there was no mens rea . In the case of Metro Marine Services Pvt. Ltd. v. Commissioner of Customs, Kandla **[2008 (223) ELT 227 (Tri.-Chennai)]**

, it was held by the Hon'ble Tribunal that penalty under Section 112(b) cannot be imposed on firms, as firms cannot have mens rea. On similar lines, penalty under Section 114 is not imposable on the Company as well.

**C7.** As already submitted, the conduct of the Appellant was bonafide. Therefore, it cannot be said that the Appellant in any manner, abetted the doing or omission of an act, which act or omission rendered the goods liable to confiscation. In view of the above, it is respectfully submitted that no penalty imposed upon the Appellant is liable to be set-aside.

**D. PROPOSAL TO RECOVER INTEREST IS NOT SUSTAINABLE**

**D1.** in the foregoing paragraphs, it has been submitted in detail that no drawback is payable. For the same reasons, no interest can be charged in fact, interest amount is interlinked with the duty demand. If the duty itself is not payable then the question of charging the interest thereon does not arise.

**E. AMOUNT DEPOSITED UNDER PROTEST IS LIABLE TO BE REFUNDED**

**E1.** That impugned order has appropriated the amount of Rs 25,17,280/- deposited by appellant during investigation. That the said proposal is illegal and unlawful because appellant has correctly claimed drawback under category "A" of the drawback schedule and no differential drawback is recoverable from him. The amount paid by appellant during investigation was under protest and he is eligible to claim the amount back as there is no merit in the present show cause notice. Therefore, appellant submits that the proposals for appropriation of the amounts deposited deserve to be set-aside in the interest of justice. That the impugned order passed by the Adjudicating Authority is even otherwise illegal, incorrect, without any justification and therefore, it is liable to be set aside.

## 13. PERSONAL HEARING:

A personal hearing was granted to the Appellant on 22.05.2025 following the principles of natural justice wherein Shri Raghav Rathi, Chartered Accountant appeared on behalf of the Appellant. He reiterated the submissions so made in the appeal.

## 14. DISCUSSION AND FINDINGS:

14.1 I have carefully gone through the case records, show cause notice and corresponding order passed by the adjudicating authority and the defense put forth by the Appellant in their appeal.

14.2 The Appellant has filed the present appeal on 17.01.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 30.11.2023 as 05.12.2023. Hence, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has deposited the entire amount of differential drawback and interest thereon amounting to Rs.14,20,138/- and Rs.10,97,142/- respectively vide GAR/TR6 Challan No. 2252 dated 02.02.2023. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

14.3 On going through the case records, as available on file, defence submissions of the Appellant it is understood that the present case relates to the issue of recovery of differential duty drawback so sanctioned against 3 shipping bills as detailed in Annexure – A to the show cause notice dated 03.05.2023 under Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 as amended read with Section 75 of the Customs Act, 1962 along with appropriate interest under Section 75A(2) of the Customs Act, 1962, redemption fine in lieu of confiscation in terms of Section 125 and penalty imposed under Section 114(ii) of the Customs Act, 1962 upon the Appellant.

14.4 At the outset, before proceeding to discuss the recovery of differential drawback, interest, redemption fine and penalty as imposed vide the impugned order dated 30.11.2023, the first thing which comes to light is that whether the

demand so raised vide the impugned show cause notice dated 03.05.2023 is beyond normal period of limitation and is time barred or otherwise.

14.5 It is observed that the impugned Order dated 30.11.2023 is silent on the period of limitation though the appellant in their reply to show cause notice heavily relied upon the issue of limitation. Further, it is also observed that show cause notice dated 03.05.2023 was issued in respect of 3 shipping bills dated 14.09.2017, 15.09.2017 and 28.09.2017 wherein the drawback was received by the appellant on 04.12.2017, 31.10.2017 and 19.12.2017 respectively as detailed in Annexure - A to the impugned show cause notice. Therefore, it clear that the impugned show cause notice was issued after a period of more than 5 years of the disbursement of drawback.

14.6 Rule 16 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 envisages that:

> *"Rule 16. Repayment of erroneous or excess payment of drawback and interest. - Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962."*

14.7 It is quite clear from the said Rule that any amount of drawback and interest when paid erroneously or is paid in excess of the entitlement of the claimant, on demand by a proper officer of the Customs, the claimant is required to repay the amount paid erroneously or in excess. Rule 16 of the Drawback Rules provides for recovery of an amount of drawback and interest paid erroneously or in excess of what the claimant is entitled to, on demand by a proper officer of the customs the same shall need to be repaid. And, where he fails to repay the amount, it is permitted to be recovered in the manner provided under sub-section (1) of Section 142 of the Act. It is also clear from Rule 16 of the Drawback Rules that what all it provides for is the recovery of excess drawback paid erroneously, but chooses not to prescribe the time limit. The question which has come up for consideration is as to whether in absence of any period of limitation provided under Rule 16 of the Drawback Rules, any

reasonable time period could be read into the said Rule. It also provides for statutory mechanism of recovery under section 142 of the Act.

14.8 To answer the question of period of limitation under Rule 16 of the Drawback Rules, there are plethora of judgements and is now a settled legal proposition that where a statutory provision does not prescribe any period of limitation for exercise of power thereunder, a reasonable period has to be read therein. As to what is a reasonable period would depend upon the facts of each case. In this regard I place my reliance on judgment of **High Court of Gujarat in the case of M/s Raghav International Vs UOI [(2023)5 CENTAX 83) (Guj)]** wherein relying on the case of **M/s S.J.S. International Vs UOI [2022 (380) ELT 577(Guj.)]** the court has quashed and set aside the impugned show cause notice issued by the respondent authorities which were admittedly beyond the period of three years. This case is affirmed by the Supreme Court while dismissing the SLP of the Revenue in **UOI Vs Asia Exporters (2024)21 Centax 170 (SC)** wherein stating that ***".....In respect of the said period, the date of issuance of the show cause notice is 24.03.2021 which means that the show cause notice was issued 5 to 10 years thereafter..."***

14.9 Therefore, taking que from the above case laws and in light of the above discussions, the impugned show cause notice was to be issued within 3 years of issuance of drawback claim. In the instant case the impugned show cause notice is hit by limitation period as the same has been issued after a gap of more than 5 years of sanctioning the drawback claim to the appellants. When the impugned show cause notice is time barred, the question of recovery of differential drawback, interest, redemption fine and penalty also does not sustain.

15. Accordingly, in light of the above discussions, the impugned order dated 30.11.2023 of the adjudicating authority stands quashed and the appeal filed by the appellant succeeds with consequential relief, if any as per law.

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-166/CUS/MUN/2023-24 1181 Date: 30.05.2025

By Registered post A.D

To,

M/s Shree Bharka (India) Ltd.
Bazar No. 2, Bhupalganj
Bhilwara, Rajasthan-311001

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

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1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.