
	<p style="text-align: center;">सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62, Email-adj-mundra@gov.in</p>	
A. File No.	: GEN/ADJ/COMM/556/2024-Adjn-O/o Pr Commr-Cus-Mundra	
B. Order-in-Original No.	: MUN-CUSTM-000-COM-037-25-26	
C. Passed by	: Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
D. Date of order Date of issue:	: 27.11.2025. 27.11.2025	
E. SCN No. & Date	: GEN/ADJ/COMM/556/2024 dated 29.11.2024	
F. Noticee(s) / Party / Exporter	: M/s Shree Rameshwar Lal Foods Private Limited, (IEC No. 0605003301)	
G. DIN	: 20251171MO000000F8C0	

1. यहअपीलआदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए 3- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

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

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

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
4. उक्त अपील के साथ -/ 1000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

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

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

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

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

BRIEF FACTS OF THE CASE:

The present case pertains to the evasion of export duty by M/s Shree Rameshwar Lal Foods Private Limited, (IEC No. 0605003301) having registered office -at Near Resham Farm, Bhinga Road, Kalpipara, Bahraich Uttar Pradesh-271801, Branch Office - at 1730, 2nd Floor, Nai Basti, Naya Bazar, New Delhi-110006, (hereinafter referred to as 'the exporter/M/s. Rameshwar Lal Foods' for sake of brevity), who were found to have indulged in short payment of export duty by resorting to undervaluation by claiming abatement of duty from the assessable value. Thus, export duty was not being paid on the transaction value of the export goods (i.e. FOB Value) as provided u/s 14 of the Customs Act, 1962, instead the same was being paid on a reduced value by wrongly declaring the same as FOB Value thus causing short-payment of the appropriate duty of Customs.

2. Intelligence was gathered by the officers of the Directorate of Revenue Intelligence (Hqrs.) (hereinafter referred to as 'DRI') which indicated undervaluation in the export of rice. The intelligence further indicated that after imposition of duty on export of rice with effect from 09.09.2022, several exporters, including M/s Shree Rameshwar Lal Foods Private Limited were found to be indulging in evasion of duty.

2.1 Preliminary analysis of the Intelligence revealed that export duty at the rate of 20% ad valorem was imposed on export of rice vide CBIC Notification No. 49/2022-Cus. dated 08.09.2022. Scrutiny of the export data pertaining to the said exporter revealed that they were evading duty on export of rice by adopting three different methods i.e. **(i)** by claiming wrongful deduction of export duty (either full or partial duty amount) and/or in some cases by claiming wrongful deduction of packaging charges and profit margins (in addition to the export duty amount) from the transaction value, **(ii)** by covertly taking reimbursement of export duty from the overseas buyer (against debit notes/separate invoices raised to the overseas buyer) without even claiming the same as deduction in the shipping bills **(iii)** by declaring excess freight amounts. The exporter negotiated a specific price for sale of their export consignment which was received by them from the overseas buyer as 'consideration' for sale of rice. Thus the 'consideration/negotiated price' was 'the actual transaction value' for their export consignment on which the exporter ought to have paid the 20% export duty. However, to evade duty, the exporter had artificially bifurcated the afore-said negotiated price/total consideration, in two parts i.e. (i) **'price of goods'** and (ii) **'export duty amount/export duty amount and packing charges and/or profit margin'**. The exporter had declared the reduced value 'price of goods' as their transaction value and the other part of the consideration which was equal to the 'export duty amount /export duty amount

and packing charges and/or profit margin' was not included by them in their **'transaction value'**. Instead, the same was claimed as 'deduction' which was recovered separately from the buyer and in some case the same was declared in the Shipping Bills under the Head "Deduct/Deduction". Thus, a part of consideration, equal to the export duty amount /export duty amount and packing charges and/or profit margin', was not included in the transaction value for payment of export duty causing short payment of duty.

2.2 In some cases, the exporter had recovered 'the export duty amount' separately from the overseas buyer without even declaring the same in their export invoice and without claiming the same as 'deduction'. The amounts so recovered from the overseas buyer were also part of their consideration for sale. Thus, a part of consideration, was not included in the transaction value for the payment of export duty in all such export shipments causing short payment of duty.

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

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

2.5 The practice of payment of export duty on cum-duty FOB Value was prevalent prior to the year 2009. CBIC Circular No. 18/2008-Cus. dated 10.11.2008 stipulated that with effect from 01.01.2009, export duty shall be computed on the transaction value, i.e. the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, which shall be the FOB price of such goods at the time and place of exportation.

3. Initiation of investigation:

3.1 Pursuant to intelligence and apparent undervaluation of export goods, investigation was initiated against various exporters including M/s Rameshwar Lal Foods Private Limited by issuance of summons under the provisions of section 108 of the Customs Act, 1962.

3.2 Vide summons dated 27.10.2023 & 17.11.2023, documents related to the investigation were requested from the Director of export firm. In pursuance of the summons issued to M/s Rameshwar Lal Foods Private Limited, Sh. Shrawan Kumar Agarwal, Director of M/s Rameshwar Lal Foods Private Limited appeared in the DRI office and vide letter dated 30.11.2023 submitted documents in respect of Export of Rice made by them during the year 2023-24.

3.3 M/s Rameshwar Lal Foods Private Limited, vide their letter dated 21.12.2023 made an advance **voluntary deposit of Rs. 1,64,38,554** through the following 04 Demand Drafts towards part payment of their differential duty liability on account of wrongful claim of deduction amounts in the shipping bills which were on account of reimbursement of export duty, packing charges and profit margin on export of rice.

- i.** 240335 dated 20.12.2023 for Rs. 19,04,267/- in favour of RBI A/c Commissioner of Customs Nhava Sheva, payable at Nhava Sheva port
- ii.** 240336 dated 20.12.2023 for Rs. 1,15,32,080/- in favour of Commissioner of Customs, payable at Mundra port
- iii.** 240337 dated 20.12.2023 for Rs. 11,69,558/- in favour of The Commissioner of Customs A/c Shree Rameshwar Lal Foods Pvt. Ltd., payable at Chennai port
- iv.** 240338 dated 20.12.2023 for Rs. 18,32,649/- in favour of RBI A/c Commissioner of Customs Port, payable at Kolkata Port

3.4. The aforesaid 04 demand drafts voluntarily deposited by M/s Rameshwar Lal Foods Private Limited were deposited in the Govt. account vide Challan No. HC-11 dated 02.01.2024 at Nhava Sheva Port, TR 6 Challan no. MCM-281246023 dated 28.12.2023 at Chennai Port), GAR 6 receipt no 29 dated 28.12.2023 at Kolkata Port) and Challan dated 25.01.2024 at Mundra port.

3.5 Subsequently, DRI vide email dated 04.07.2024 and 23.07.2024 sought details of total payment received by M/s Rameshwar Lal Foods Private Limited, in respect of each shipping bill along with details of expenses made by them towards payment of ocean freight and insurance charges in respect of the shipments exported by them. In response, vide email dated 20.08.2024, M/s Rameshwar Lal Foods Private Limited submitted details of total payments received from the overseas buyers (in Foreign Currency) through BRC, through reimbursement of taxes or in any other manner such as debit note/credit note etc. and details of expenses made towards payment of ocean freight charges in

respect of consignments exported on CF/ CI/ CIF Inco Term basis. Vide Emails dated 26.11.2024, M/s Rameshwar Lal Foods Private Limited had submitted the details of the actual freight amounts paid by them to the Freight forwarders / Shipping line

4. During the course of investigation, in order to collect the evidence/corroborative evidence statement of persons who were directly/indirectly involved in export of goods were recorded by the DRI under the provisions of Section 108 of Customs Act, 1962. The facts of statements of such persons have been mentioned in the Show Cause Notice and the records of statements thereof have been attached to Show Cause Notice as RUDs. For sake of brevity contents of statements of such persons are not produced hereunder. The details of the persons whose statements were recorded are as under: -

- Statement of Sh. Shubham Agarwal (Employee of M/s Rameshwar Lal Foods Private Limited) was recorded u/s 108 of the Customs Act, 1962 on 17-11-2023 & 14.11.2024.
- Statement of Sh. Shrawan Kumar Agarwal (Director of M/s Rameshwar Lal Foods Private Limited) was also recorded on 30.11.2023 u/s 108 of the Customs Act, 1962.

5. Vide letter dated 21.12.2023 M/s Rameshwar Lal Foods Private Limited made a voluntary advance deposit of Rs. 1,64,38,554/- toward part payment of his differential duty liability which were deposited in the Govt. account at respective port of export.

6. The export documents and details submitted by the exporter during investigation were analysed and it was revealed that M/s Rameshwar Lal Foods Private Limited exported 188 shipment of rice having description as 'Indian Brown Rice/ Indian IR 64 Raw Rice/ Indian Parboiled Rice/ Indian Raw White Rice/ Indian Short Grain 5% Broken Rice/ Indian Swarna Raw White Rice/ Indian White Rice/ Rice Common' etc. by classifying the same under CTH 10062000, 10063010 & 10063090 which were liable to export duty @ 20% *ad valorem* vide CBIC Notification No. 49/2022-Cus. dated 08.09.2022 and 49/2023-Customs dated the 25th August, 2023. In their export documents (Shipping Bills), they have declared the following three values **(i) Total Value, (ii) Invoice Value and (iii) FOB Value. The Total Value** declared by them was inclusive of export duty and indicated the total consideration received by them from the overseas buyer. Invoice Value was declared after deducting from the Total Value, an amounts equal to the export duty and other deductions such as packing charges & profit margin paid by them in respect of the export goods. FOB Value was declared after deduction of the ocean freight amounts from the afore-said Invoice Value. Thus, total amount of deductions of Rs. 7,99,27,450/- were wrongly claimed by the exporter from the actual FOB Value in respect of their export shipments.

6.1 Deduction amounts wrongly claimed in the Shipping Bills which were more than the export duty amounts:

Scrutiny of the export documents and details submitted by the exporter during investigation revealed that in respect of the below mentioned 40 shipping bills, the exporter had at the time of filing of shipping bills claimed the deduction of total amounts of Rs. 6,73,63,451/-. The export duty paid by them in respect of these 40 S/Bs was Rs. 4,07,12,774/-. Thus, in addition to the claim of deduction of duty amount of Rs. 4,07,12,774/-, the exporter had claimed deduction of an additional amount of Rs. 2,66,50,677/- in these 40 S/Bs. (Rs. 6,73,63,451- Rs. 4,07,12,774= Rs. 2,66,50,677/-).

Table A

S. No	SB number	SB Date	FOB Value (INR)	Duty Paid (INR)	BRC Amount in INR	Deduction claimed in SB (INR)	Amount received in other manner such as Debit Note/ Credit Note etc. INR
1.	5572142	19-11-2022	52,58,500	10,51,700	57,05,068	15,51,662	15,42,763
2.	5802125	29-11-2022	53,84,704	10,76,941	57,50,372	15,06,358	14,96,974
3.	5840529	30-11-2022	84,55,668	16,91,134	90,62,418	23,59,044	23,51,925
4.	5845808	01-12-2022	25,87,182	5,17,436	28,04,318	8,17,899	8,16,443
5.	5948034	05-12-2022	15,97,167	3,19,433	17,24,041	4,30,729	4,28,963
6.	6146380	14-12-2022	62,02,356	12,40,471	73,50,646	19,30,894	19,29,127
7.	6183575	15-12-2022	54,78,548	10,95,710	65,22,448	17,55,358	17,55,358
8.	6481949	27-12-2022	86,62,865	17,32,573	97,67,165	26,68,725	26,68,725
9.	6513202	28-12-2022	29,59,524	5,91,905	30,00,424	10,85,486	10,83,748
10.	6559917	30-12-2022	59,55,040	11,91,008	70,59,340	19,37,024	19,27,235
11.	6568306	30-12-2022	59,19,048	11,83,810	63,70,584	17,57,064	17,48,680
12.	6657379	03-01-2023	61,03,916	12,20,783	68,40,116	19,01,032	19,01,032
13.	6657428	03-01-2023	61,03,916	12,20,783	68,40,116	19,01,032	19,01,032
14.	6658599	03-01-2023	85,49,736	17,09,947	91,63,236	28,00,014	27,88,071
15.	6741329	06-01-2023	62,39,673	12,47,935	66,93,676	13,38,244	13,32,015
16.	6832222	09-01-2023	59,29,902	11,85,980	63,83,905	16,48,015	16,41,786
17.	6874654	11-01-2023	62,39,673	12,47,935	66,93,676	13,38,244	13,32,015
18.	6912542	12-01-2023	22,48,052	4,49,610	24,29,654	7,83,114	7,76,886
19.	6915463	12-01-2023	53,32,487	10,66,497	57,86,490	18,91,406	18,88,784
20.	6915933	12-01-2023	32,65,871	6,53,174	35,36,061	10,81,740	10,79,118
21.	6945934	13-01-2023	59,29,902	11,85,980	63,79,889	18,04,539	17,98,516
22.	6953717	13-01-2023	70,02,464	14,00,493	78,87,524	26,21,089	26,21,089
23.	7000154	16-01-2023	21,77,248	4,35,450	23,58,849	7,21,160	7,18,538
24.	7219136	24-01-2023	23,31,439	4,66,288	26,06,598	5,51,284	5,45,162
25.	7227264	24-01-2023	34,97,159	6,99,432	39,09,897	8,26,926	8,20,805
26.	7682438	10-02-2023	58,64,778	11,72,956	63,13,795	28,11,625	28,05,667
27.	7840942	16-02-2023	58,64,778	11,72,956	63,77,095	27,45,97	27,40,017

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28.	8027436	24-02-2023	85,60,188	17,12,038	96,01,956	37,46,925	37,35,422
29.	8436852	13-03-2023	59,51,400	11,90,280	63,60,150	25,24,440	25,14,221
30.	8469024	14-03-2023	29,75,700	5,95,140	30,94,238	13,43,970	13,34,160
31.	8640652	21-03-2023	61,95,420	12,39,084	64,85,523	27,85,481	27,77,081
32.	8672141	22-03-2023	29,82,980	5,96,596	31,05,905	13,25,951	13,25,951
33.	9020492	01-04-2023	52,50,045	10,50,009	54,46,725	15,07,880	14,97,636
34.	9064969	04-04-2023	78,75,067	15,75,013	81,67,629	22,61,820	22,50,347
35.	9064970	04-04-2023	29,82,980	5,96,596	31,05,905	13,25,951	13,25,951
36.	9064973	04-04-2023	32,91,932	6,58,386	34,14,857	9,53,079	9,47,342
37.	9087071	05-04-2023	32,81,278	6,56,256	33,98,467	9,63,732	9,63,732
38.	9106185	06-04-2023	32,38,664	6,47,733	33,61,589	11,23,535	11,17,798
39.	9175474	10-04-2023	65,78,832	13,15,766	68,22,132	19,91,816	19,80,462
40.	9194305	10-04-2023	32,57,787	6,51,557	33,77,004	9,43,193	9,35,651
	Grand Total		20,35,63,868	4,07,12,774	22,10,59,477	6,73,63,451	6,71,46,226

The exporter had stated that these excess deduction amounts were in respect of the Packing Charges paid by them for packing of the export goods and their profit margin on the sale of the goods, which were claimed by them from the foreign buyer. Investigation has revealed that all these packing charges, profit margin and export duty amounts (claimed as deduction amounts in the shipping bills) were also recovered by the exporter from the overseas buyer in their bank accounts, hence, these amounts were part of consideration received by the exporter for sale of their goods.

The exporter had received the entire C&F amounts, Export Duty, Packaging Charges as well as Profit Margin in their bank accounts and thereupon they have wrongly claimed deduction of Export Duty, Packaging Charges and Profit Margin and have declared lower FOB Value for the purpose of payment of lesser export duty. Thus, all these deduction amounts claimed by the exporter also appears to be liable to be included in the actual transaction value (i.e. FOB Value) of these shipments.

Further, scrutiny of the invoices in respect of these 40 shipments, submitted by the exporter revealed that in the Invoice raised by the exporter to the buyer in respect of these 40 shipments also, the full deduction amount of Rs. 6,73,63,451/- has been claimed from the buyer. The exporter has submitted that they have received only Rs. 6,71,46,226/- from the buyer towards packaging charges and profit margin, therefore, it appears that the balance amount of Rs. 2,17,225/- though have not been paid by the overseas buyer to the exporter, is still payable to the exporter in respect of these 40 shipments. Thus, all these deduction amounts claimed by the exporter also

appears to be liable to be included in the actual transaction value (i.e. FOB Value) of these shipments.

6.1.1 For ease of reference, data scrutinized in respect of Shipping Bill number 9020492 dated 01-04-2023 clearly indicate that the deduction claimed in the Shipping Bill is more than the cess amount (i.e. Export Duty). The exporter has also confirmed this fact and submitted that the entire deduction amount, which is more than the export duty amount, has been recovered by them from the overseas buyer of the export goods as reimbursement of taxes, packaging charges and profit margin. The screenshot of the Bank Realization Certificate (BRC) & corresponding Commercial Invoice submitted by the exporter is also pasted below for reference.

From the export documents submitted by the exporter in respect of the afore-said consignment, it is also evident that the total amount of USD 84864 CNF (408/MT) is mentioned in export invoice along with the value of each component (i.e. FOB Value of USD 64064 + Freight amount of USD 2400 + Other Charge of USD 18400, thus total CNF Value of USD 84864). In respect of the said shipment, the invoice amount in the shipping bill has been declared to be at USD 66464 only (which is lesser by USD 18400 from the total invoice value of USD 84864) and the said differential amount of USD 18400 has been mentioned in the shipping bill under the heading 'deduct' as shown below. This deduction/deduct amount is equal to the export duty paid amount of 12812.8 USD (Cess amount in Rs. 105009, exchange rate is Rs. 81.95/USD) and packaging charges & profit margin of 5,587.2 USD which has been deducted by the exporter from the actual FOB Value and export duty has not been paid on the said differential value of USD 18400 (USD 12812.8+USD 5587.2) which is though part of the consideration received by the exporter from the overseas buyer for sale of the consignment. Receipt of USD 66464 are reflected in the BRC and remaining amount of USD 18275 has been received separately in their bank accounts.

In respect of the aforesaid shipping bill, the price of goods as per invoice dated 01.04.2023 has been mentioned as USD 84864 (at the unit price of USD 408 per MT). The same amount has also been declared in the shipping bill as Total Value (FC) of USD 84864 and rate is also mentioned as USD 408 per MT C&F. However, in the shipping bill, the exporter had declared the invoice value as USD 66464 which is USD 18400 USD lower than the actual invoice value of 84864. Thus, the exporter had claimed deduction of USD 18400 in respect of the actual invoice value which is equal to the deduction of export duty amount of USD 12812.8 and packaging charges & profit margin of USD 5587.2. After deducting the freight amount of USD 2400 from the declared invoice value of USD 66464, the exporter had declared the FOB Value at USD 64064 in the shipping bill. Thus, exporter had claimed deduction of USD 12812.8 for export duty amount and deduction of USD 5587.2 towards packaging charges& profit

margin from the actual FOB Value. The total deduction wrongly claimed in respect of the afore-said shipping bill is USD 18400 which is not available to the exporter.

The ideal position in respect of the afore-said shipping bill should have been that after deducting the freight amount of USD 2400, from the CNF Value of USD 84864, the resultant actual FOB Value in respect of the said consignment works out to be at USD 82464. The exporter should have declared the actual FOB Value of USD 82464 for payment of export duty. The same is shown in Tabular form as under –

Declaration Made by the exporter in the shipping bill-

Total Value (USD)	Deduction Claimed (USD)	Invoice Value (USD)	Freight Amount (USD)	FOB Amount (USD)	Export Duty Amount Paid (USD)	Remarks
84864 @ 408 USD per MT for total quantity of 208 MTs	18400 (12812.8 + 5287.2) 12812.8 is equal to the 20% export duty paid by them on the declared FOB Value of USD 64064. 5287.2 is equal to the purported expenses for packing charges & profit margin	66464 @ USD 319.53 per MT for total quantity of USD 208 MTs	2400 @ 11.53 USD for total quantity of USD 208 MTs	64064 @ USD 308 per MT	12812.8 The said amount has been calculated @ 20% of the declared FOB Value of USD 64064 (20% of 64064=12812.8)	Actual FOB Value in respect of the said shipment, after deduction of Freight amount of USD 2400 from the total value of USD 84864, should have been USD 82464.

As shown in above table an amount of USD 18400 (equal to the deduction claimed amount) was excluded by the exporter from the actual transaction value of the export goods for payment of duty. These deduction amounts are liable to be included in the declared transaction value (FOB Value) of USD 64064 and the exporter is liable to pay duty on the actual transaction value of USD 82464 (64064 + 18400).

6.2 Deduction amounts wrongly claimed in the Shipping Bills which were on account of packaging charges and profit margin only, the export duty paid amount also claimed from the buyer by raising debit notes/separate invoices (thus export duty was not included in the deduction claimed amount):

In addition to the above, in respect of the below mentioned 27 shipping bills also, the exporter had at the time of filing of shipping bills claimed the deduction of total amounts of Rs. 1,25,63,999/-. The export duty paid by them in respect of these 27 S/Bs was Rs. 2,68,93,218/-. The exporter has stated that the deduction claimed in the said 27 Shipping Bills was on account of Packaging charges and Profit margin only. The investigation has revealed that out of these declared deduction amounts of Rs. 1,25,63,999/-, an amount of Rs. 1,23,41,094/- was recovered by the exporter from the overseas buyer in

their bank accounts. Further, scrutiny of the invoices in respect of these 27 shipments, submitted by the exporter revealed that in the Invoice raised by the exporter to the buyer in respect of these 27 shipments also, the full deduction amount of Rs. 1,25,63,999/- has been claimed from the buyer. The exporter has submitted that they have received only Rs. 1,23,41,094/- from the buyer towards packaging charges and profit margin, therefore, it appears that the balance amount of Rs. 2,22,905/- though have not been paid by the overseas buyer to the exporter, is still payable to the exporter in respect of these 27 shipments.

The exporter has also stated that that in respect of these 27 Shipping Bills, out of total duty paid amounts of Rs. 2,68,93,218/- an amount of Rs. 2,62,60,969/- was received from the overseas buyer as reimbursement of taxes by way of raising separate debit notes/invoices. Therefore, it appears that the balance duty amount of Rs. 6,32,250/- is still payable by the buyer to the exporter. Therefore, in respect of these 27 S/Bs, the total duty amount of Rs. 2,68,93,218/- claimed by the exporter from the buyer is liable to be included in their declared transaction value.

The details are given in table below -

Table B

SB No.	SB Date	Total Value INR	Invoice Value INR	Declared FOB Value INR	Export Duty Paid INR	BRC Amount in INR	Deduction claimed in SB INR	Amount received through Reimbursement of taxes in INR	Amount received in any other manner such as Debit Note/ Credit Note etc. INR
1215902	23-05-2023	82,12,901	73,01,987	70,45,920	14,09,184	73,01,987	9,10,914	14,09,184	9,02,555
1394744	30-05-2023	78,45,110	69,96,990	67,84,960	13,56,992	69,96,990	8,48,120	13,56,992	8,41,188
1457504	01-06-2023	54,02,524	51,50,209	49,72,104	9,94,421	51,50,209	2,52,316	9,94,421	2,42,122
1691573	12-06-2023	39,93,496	35,04,930	33,98,720	6,79,744	35,04,930	4,88,566	6,79,744	4,79,538
1714702	13-06-2023	23,19,626	22,11,292	21,34,821	4,26,964	22,11,292	1,08,334	4,26,964	96,079
2091695	29-06-2023	37,12,001	35,95,670	34,89,915	6,97,983	35,95,670	1,16,331	6,59,993	1,16,331
2345810	10-07-2023	7,25,143	6,93,338	6,78,496	1,35,699	6,93,338	31,805	1,35,699	25,811
7532194	04-02-2023	38,24,750	33,32,371	29,71,293	5,94,259	33,32,371	4,92,379	-	4,86,247
9232365	12-04-2023	37,89,154	33,52,674	32,47,244	6,49,449	33,49,389	4,36,480	6,49,449	4,30,803
9543578	25-04-2023	38,20,102	34,07,404	32,80,420	6,56,084	34,07,404	4,12,698	6,56,084	4,07,407
9545112	25-04-2023	75,13,220	68,78,300	66,66,660	13,33,332	68,78,300	6,34,920	13,33,332	6,21,082
9553759	26-04-2023	1,16,50,782	1,02,22,212	98,41,260	19,68,252	1,02,19,851	14,28,570	19,68,252	14,22,587
9621639	28-04-2023	75,55,548	72,38,088	69,84,120	13,96,824	72,38,088	3,17,460	13,96,824	3,12,739
9621640	28-04-2023	39,04,758	35,13,224	33,86,240	6,77,248	35,13,224	3,91,534	6,77,248	3,84,208
9624	28-04-	78,09,516	69,84,12	67,72,480	13,54,4	69,84,12	8,25,39	13,54,496	

190	2023		0		96	0	6		8,18,477
9685106	01-05-2023	78,94,172	72,38,088	69,84,120	13,96,824	72,38,088	6,56,084	13,96,824	6,51,200
9688855	01-05-2023	75,55,548	69,84,120	67,72,480	13,54,496	69,84,120	5,71,428	13,54,496	5,57,590
9713170	02-05-2023	78,94,172	72,38,088	69,84,120	13,96,824	72,38,088	6,56,084	13,96,824	6,46,723
9750759	04-05-2023	37,77,774	36,19,044	34,92,060	6,98,412	36,19,044	1,58,730	6,98,412	1,54,009
9846076	08-05-2023	78,40,833	71,89,182	69,36,930	13,87,386	71,89,182	6,51,651	13,87,386	6,43,485
9847260	08-05-2023	76,93,686	72,52,245	70,42,035	14,08,407	72,52,183	4,41,441	14,08,407	4,02,876
9897330	09-05-2023	73,78,371	71,47,140	69,36,930	13,87,386	71,47,140	2,31,231	13,87,386	2,24,359
9915090	10-05-2023	38,04,801	35,94,591	34,68,465	6,93,693	35,92,651	2,10,210	6,93,693	2,07,623
9971065	12-05-2023	38,04,801	35,94,591	34,68,465	6,93,693	35,92,327	2,10,210	6,93,693	2,00,912
9971066	12-05-2023	78,40,833	71,89,182	69,36,930	13,87,386	71,89,182	6,51,651	13,87,386	6,47,609
2245989	05-07-2023	7,33,232	6,61,131	6,35,750	1,27,150	6,61,131	72,101	1,27,150	66,121
9978513	12-05-2023	36,36,633	32,79,276	31,53,150	6,30,630	32,79,276	3,57,357	6,30,630	3,51,415
		15,19,33,486	13,93,69,487	13,44,66,088	2,68,93,218	13,93,59,576	1,25,63,999	2,62,60,969	1,23,41,094

Investigation has revealed that all these deduction amounts of Rs. 1,23,41,094/- (on account of packaging charges & profit margin) as well reimbursement of export duty paid amounts of Rs. 2,62,60,969/- which were recovered by the exporter from the overseas buyer in their bank accounts were part of consideration received by the exporter for sale of their goods. The balance amounts of Rs. 8,55,155/- (2,22,905+6,32,250) being the amount still payable by the overseas buyer to the exporter, also appear to be liable to be included in the FOB Value of the said shipment and the exporter appears to be liable to pay the export duty on the aforesaid total amounts of Rs. 3,94,57,217/- (Rs. 1,23,41,094+2,62,60,969+ Rs. 8,55,155) also.

6.2.1 For ease of reference, Invoice No. SRF/23-24/E-0040 dated 02.05.2023 raised by the exporter to the overseas buyer in respect of the shipment exported vide SB No. 9750759 dated 04.05.2023 clearly indicate that out of the total invoice value of USD 46410, the exporter had claimed deduction of USD 1950 in the Invoice as well the Shipping Bill on account of packaging charges & profit margin. The details submitted by the exporter revealed that the exporter has recovered an amount of USD 1892 out of total deduction amount of USD 1950.

Apart from the receipt of the Invoice amount through BRC and the above-mentioned deduction amount from the overseas buyer, the exporter has submitted that they have also recovered an amount of USD 8580 as reimbursement of export duty paid amount in their bank account.

It is pertinent to mention here that in the invoice submitted to the Customs Authorities by the exporter the total invoice value has been mentioned as USD 46410 which indicate explicit mis-declaration on the part of the exporter. Thus the total deduction claimed amount of USD 1950 as well as export duty paid

amount of USD 8580 is liable to be included in the declared FOB Value of the said shipment for the purpose of calculation of the export duty in respect of the said shipment.

6.3 Deductions amounts not claimed in Shipping Bills, however amounts equal to the export duty paid were received separately as reimbursement of taxes

In addition to above, in respect of the following 59 shipments of rice exported by M/s Shree Rameshwar Lal Foods Pvt. Ltd., the exporter had not claimed any deduction in the shipping bills filed by them, however, the exporter had stated that in respect of these shipments also, they have separately recovered the duty amount of Rs. 6,71,86,813/- from the overseas buyers of the export goods, out of the total duty paid amount of Rs. 7,03,44,710/- claimed by them from the exporter:

Table C								
S. No.	Port of Export	Shipping Bill Number	Shipping Bill Date	Final Declared FOB Value (INR)	Export duty Paid (INR)	Amount received through BRC (INR)	Deduction claimed in Shipping Bill (INR)	Amount received through Reimbursement of taxes in INR (Including duty & packing charges)
1.	INCCU1	9424966	20-04-2023	70,63,810	14,12,762	72,08,979	-	14,01,408
2.	INCCU1	9424973	20-04-2023	72,74,670	14,54,934	74,64,444	-	14,52,501
3.	INCCU1	9464594	21-04-2023	36,50,790	7,30,158	37,46,028	-	7,27,716
4.	INCCU1	9504158	24-04-2023	35,97,880	7,19,576	37,35,446	-	7,09,401
5.	INCCU1	9508576	24-04-2023	35,97,880	7,19,576	37,35,446	-	7,13,878
6.	INCCU1	9533142	25-04-2023	35,97,880	7,19,576	37,35,446	-	7,13,878
7.	INCCU1	9534266	25-04-2023	35,97,880	7,19,576	37,35,446	-	7,09,401
8.	INCCU1	9590803	27-04-2023	76,19,040	15,23,808	78,88,356	-	15,16,889
9.	INCCU1	9591567	27-04-2023	76,19,040	15,23,808	78,94,172	-	15,16,889
10.	INCCU1	9919494	10-05-2023	35,73,570	7,14,714	37,31,228	-	7,12,127
11.	INCCU1	9933599	10-05-2023	69,36,930	13,87,386	76,09,602	-	13,84,799
12.	INCCU1	9933609	10-05-2023	69,73,313	13,94,663	71,52,800	-	13,83,344
13.	INCCU1	1085830	17-05-2023	99,63,954	19,92,791	1,12,50,439	-	19,86,848
14.	INCCU1	1117428	18-05-2023	48,55,851	9,71,170	53,70,866	-	9,64,621
15.	INCCU1	1435068	31-05-2023	59,36,840	11,87,368	63,60,900	-	11,79,213
16.	INCCU1	1480370	02-06-2023	39,29,770	7,85,954	40,67,843	-	7,80,194
17.	INCCU1	148287	02-06-	39,29,770	7,85,954	40,67,843	-	7,75,537

		9	2023					
18.	INCCU1	1611523	08-06-2023	35,04,930	7,00,986	39,72,254	-	6,91,999
19.	INCCU1	1611536	08-06-2023	35,04,930	7,00,986	38,76,665	-	6,90,774
20.	INCCU1	1647791	09-06-2023	79,65,750	15,93,150	81,47,287	-	15,83,509
21.	INCCU1	1632272	09-06-2023	89,21,640	17,84,328	95,58,900	-	17,77,384
22.	INCCU1	1692874	12-06-2023	21,02,958	4,20,592	23,25,999	-	4,09,154
23.	INCCU1	1924141	22-06-2023	69,79,830	13,95,966	77,83,568	-	13,83,031
24.	INCCU1	2197525	03-07-2023	81,43,135	16,28,627	83,75,796	-	16,18,458
25.	INCCU1	2197379	03-07-2023	74,02,850	14,80,570	81,85,437	-	14,69,506
26.	INCCU1	2263635	06-07-2023	81,43,135	16,28,627	83,75,796	-	16,18,052
27.	INCCU1	2335700	10-07-2023	81,63,155	16,32,631	83,96,388	-	16,09,063
28.	INCCU1	2347276	10-07-2023	37,10,525	7,42,105	41,98,194	-	7,33,542
29.	INCCU1	2393940	12-07-2023	34,98,495	6,99,699	38,69,548	-	6,91,952
30.	INCCU1	2393949	12-07-2023	34,98,495	6,99,699	41,76,991	-	6,93,991
31.	INCCU1	2435563	13-07-2023	82,69,170	16,53,834	84,81,200	-	16,43,599
32.	INCCU1	2431131	13-07-2023	34,98,495	6,99,699	41,76,991	-	6,93,991
33.	INCCU1	2431141	13-07-2023	35,51,503	7,10,301	37,10,525	-	7,02,146
34.	INMUN1	2451879	14-07-2023	66,15,336	13,23,067	67,51,035	-	13,12,873
35.	INCCU1	2517335	17-07-2023	16,53,834	3,30,767	16,87,759	-	3,30,767
36.	INVTZ1	4714276	18-10-2023	41,97,375	8,39,475	47,12,253	-	8,36,462
37.	INVTZ1	4859115	25-10-2023	45,01,770	9,00,354	45,87,518	-	8,94,583
38.	INVTZ1	4859732	25-10-2023	45,01,770	9,00,354	45,87,518	-	8,92,027
39.	INVTZ1	4860324	25-10-2023	45,01,770	9,00,354	45,87,518	-	8,94,583
40.	INVTZ1	4868521	25-10-2023	70,74,210	14,14,842	73,74,328	-	14,09,483
41.	INVTZ1	4958267	28-10-2023	70,74,210	14,14,842	73,74,328	-	14,12,369
42.	INVTZ1	4958270	28-10-2023	70,74,210	14,14,842	73,74,328	-	14,08,493
43.	INVTZ1	4998187	30-10-2023	45,01,770	9,00,354	45,66,081	-	8,96,067
44.	INVTZ1	5116958	03-11-2023	44,99,040	8,99,808	45,63,312	-	8,95,606
45.	INVTZ1	5207112	07-11-2023	44,99,040	8,99,808	45,84,736	-	8,87,448
46.	INVTZ1	5255270	09-11-2023	81,41,120	16,28,224	85,03,350	-	4,47,762
47.	INVTZ1	5424811	18-11-2023	43,19,250	8,63,850	48,49,078	-	8,62,964
48.	INVTZ1	5553015	24-11-2023	88,85,565	17,77,113	90,14,031	-	17,70,937
49.	INVTZ1	5668263	29-11-2023	88,85,565	17,77,113	90,11,972	-	11,27,783
50.	INVTZ1	5733773	01-12-2023	86,71,455	17,34,291	88,61,684	-	10,86,526
51.	INVTZ1	6002854	13-12-2023	86,92,515	17,38,503	88,85,682	-	15,22,222
52.	INVTZ1	6772937	15-01-2024	81,51,000	16,30,200	84,54,600	-	16,20,713
53.	INVTZ1	6773034	15-01-2024	81,51,000	16,30,200	84,51,300	-	16,24,013

54.	INVTZ1	7104133	29-01-2024	87,78,510	17,55,702	89,49,798	-	17,08,351
55.	INVTZ1	7127493	30-01-2024	41,75,145	8,35,029	42,71,495	-	8,30,047
56.	INVTZ1	7375716	08-02-2024	85,48,800	17,09,760	86,98,404	-	17,07,952
57.	INVTZ1	7471268	12-02-2024	84,41,940	16,88,388	87,41,148	-	16,83,867
58.	INVTZ1	7472676	12-02-2024	84,41,940	16,88,388	87,41,148	-	16,86,744
59.	INVTZ1	7955150	29-02-2024	41,67,540	8,33,508	42,63,714	-	7,97,383
Grand Total				35,17,23,543	7,03,44,710	36,88,14,939	-	6,71,86,813

In respect of these shipments the exporter had not declared before the customs authorities at the port of export at the time of making exports, that they would recover or have recovered the higher amounts from the overseas buyers which are over and above the declared invoice value of these export shipments.

Out of these 59 SBs,

- a) In respect of 1 Shipping Bill mentioned at serial no. 35 of table above (i.e. SB No. 2517335 dated 17-07-2023), the amounts received over and above the declared invoice value as reimbursement of taxes i.e. Rs. 3,30,767 are equal to the export duty amounts paid by the exporter. Therefore, in respect of the said S/B, the total duty amount of Rs. 3,30,767/- recovered by the exporter from the buyer is liable to be included in their declared transaction value.
- b) In respect of remaining 58 SBs mentioned at Table above, the amounts received over and above the declared invoice value as reimbursement of taxes (Rs. 6,68,56,046/-) are lesser (by Rs. 31,57,897/-) than the export duty amounts (Rs. 7,00,13,943/-) actually paid by the exporter. The balance duty amount of Rs. 31,57,897/- is still payable by the buyer to the exporter. Therefore, in respect of these 58 S/Bs, the total duty amount of Rs. 7,00,13,943/- claimed by the exporter from the buyer is liable to be included in their declared transaction value.

6.3.1 As may be seen from the scrutiny of Shipping Bill Number 1480370 dated 02.06.2023 that the exporter had not claimed any deduction amount in the shipping bill however, as per the details submitted by the exporter, they have separately recovered an amount of Rs. 7,80,194/- (USD 9550) from the overseas buyer in the bank accounts which is less than the export duty amount of Rs. 7,85,954/-. The aforesaid amount of Rs. 7,80,194/- is over and above their declared invoice value of USD 49790 received by them from the overseas buyer, as reflected in the BRC of the said shipment. Therefore, the exporter had suppressed the amount received by them separately from the buyer as

reimbursement of export duty. They have neither declared the full amount to be received by them from the overseas buyer in their export invoice nor in the shipping bill. Thus, they have mis-declared the actual FOB Value in respect of all such shipping bills.

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

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

RBI purpose codes are unique identifiers assigned to various international transactions, enabling banks and financial institutions to classify and process remittances accurately. RBI has notified purpose codes for reporting forex transactions for Payment and Receipt purposes. The Purpose codes for reporting forex transactions (for the purpose of *Receipt of amounts*) are further categorized into 16 different 'Purpose Group Name' which includes Exports (of Goods), Transportation, Travel, Financial Services, Royalties & License Fees, and Transfers among others. The following purpose codes pertaining to Export (of Goods) refers to the receipt of forex in respect of exports made from India.

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

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

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

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

6.5 Excess ocean freight amounts wrongly declared in the Shipping Bills:

During the course of the investigation, the exporter was requested to provide the details of actual freight paid in respect of 172 consignments exported on CI/ CIF basis vide email dated 04.07.2024 and 23.07.2024. In response, the exporter vide email dated 20.08.2024 had provided the actual freight paid details of the exported goods. However, upon scrutiny of the documents, it was revealed that the details provided by the exporter were incorrect. Therefore, the exporter was again requested to provide the correct actual freight payment amounts in respect of each of their export shipments. In response, the exporter vide emails dated 26.11.2024 had provided the actual freight paid details in respect of 150 consignments out of the total 172 export consignments. The details in respect of remaining 22 export consignments were not provided by the exporter. These 22 shipments pertain to the goods exported by M/s Rameshwar Lal Foods Pvt. Ltd. from Mundra & Vishakhapatnam ports to the buyers based in Vietnam.

Further scrutiny of the data revealed that out of 150 consignments (for which actual freight details were provided), 69 shipments were exported by them from Mundra (46 shipments) & Vishakhapatnam (23 shipments) ports to the buyers based in Vietnam and actual freight amounts paid in respect of these 69 shipments were in the range of INR 207 to 720 per MT. Therefore, in respect of

aforementioned 22 shipments also, the actual freight paid amounts have also been considered at INR 207 per MT.

In view of the above, in addition to the shipments discussed at para 8.2 to 8.6 of the SCN, in respect of the following **156** shipments of rice, the exporter had **declared higher amounts of ocean freight** in comparison to the actual freight amounts paid by them, thus causing short payment of duty on the differential ocean freight amount in respect of these 156 shipments also. The total amount of excess freight declared by the exporter in respect of these shipments stood at **Rs. 3,89,92,929/-**. Vide Emails dated 26.11.2024, M/s Rameshwar Lal Foods Private Limited had submitted the details of the actual freight amounts paid by them to the Freight forwarders / Shipping line, which clearly indicated that in these 156 shipments, they have declared excess freight amounts.

Table D

S N o	Port of Export	Shippin g Bill Number	Shipping Bill Date	Final Declared FOB Value (INR)	Export duty Paid (INR)	Sum of Total Freight	Sum of Actual Freight Paid	Sum of Difference in Freight
1.	INCCU1	1480370	02-06-2023	39,29,770	7,85,954	1,38,073	71,367	66,706
2.	INCCU1	1482879	02-06-2023	39,29,770	7,85,954	1,38,073	71,417	66,656
3.	INCCU1	1647791	09-06-2023	79,65,750	15,93,150	1,91,178	1,38,191	52,987
4.	INCCU1	2197525	03-07-2023	81,43,135	16,28,627	2,32,661	1,34,001	98,660
5.	INCCU1	2263635	06-07-2023	81,43,135	16,28,627	2,32,661	1,33,844	98,817
6.	INCCU1	2335700	10-07-2023	81,63,155	16,32,631	2,33,233	1,33,765	99,468
7.	INCCU1	2435563	13-07-2023	82,69,170	16,53,834	2,12,030	1,32,915	79,115
8.	INCCU1	2451879	14-07-2023	66,15,336	13,23,067	1,35,699	1,06,332	29,367
9.	INCCU1	2517335	17-07-2023	16,53,834	3,30,767	33,925	26,583	7,342
10.	INCCU1	4859115	25-10-2023	45,01,770	9,00,354	75,030	36,032	38,998
11.	INCCU1	4859732	25-10-2023	45,01,770	9,00,354	75,030	35,952	39,078
12.	INCCU1	4860324	25-10-2023	45,01,770	9,00,354	75,030	36,007	39,023
13.	INCCU1	4998187	30-10-2023	45,01,770	9,00,354	53,593	36,007	17,586
14.	INCCU1	5116958	03-11-2023	44,99,040	8,99,808	53,560	36,007	17,553
15.	INCCU1	5207112	07-11-2023	44,99,040	8,99,808	74,984	33,765	41,219
16.	INCCU1	5553015	24-11-2023	88,85,565	17,77,113	1,28,466	53,393	75,073
17.	INCCU1	5668263	29-11-2023	88,85,565	17,77,113	1,28,466	58,627	69,839
18.	INCCU1	5733773	01-12-2023	86,71,455	17,34,291	1,71,288	58,566	1,12,722
19.	INCCU1	5845808	01-12-2022	25,87,182	5,17,436	2,02,250	92,500	1,09,750
20.	INCCU1	6002854	13-12-2023	86,92,515	17,38,503	1,71,704	58,566	1,13,138
21.	INCCU1	6146380	14-12-2022	62,02,356	12,40,471	11,48,290	11,46,336	1,954

22.	INCCU1	6199441	21-12-2023	52,36,972	10,47,394	1,07,315	62,872	44,443
23.	INCCU1	6355180	28-12-2023	52,46,488	10,49,298	1,07,510	62,343	45,167
24.	INCCU1	6559917	30-12-2022	59,55,040	11,91,008	11,04,300	10,51,044	53,256
25.	INCCU1	6772937	15-01-2024	81,51,000	16,30,200	3,00,300	2,08,554	91,746
26.	INCCU1	6773034	15-01-2024	81,51,000	16,30,200	3,00,300	2,09,195	91,105
27.	INCCU1	6912542	12-01-2023	22,48,052	4,49,610	1,63,900	92,880	71,020
28.	INCCU1	6915463	12-01-2023	53,32,487	10,66,497	4,09,750	2,33,786	1,75,964
29.	INCCU1	6915933	12-01-2023	32,65,871	6,53,174	2,45,850	1,39,320	1,06,530
30.	INCCU1	7000154	16-01-2023	21,77,248	4,35,450	1,63,900	97,402	66,498
31.	INCCU1	7225747	24-01-2023	6,25,068	1,25,014	1,60,053	23,348	1,36,705
32.	INCCU1	7852396	17-02-2023	60,19,978	12,03,996	5,89,680	2,11,932	3,77,748
33.	INCCU1	7857459	17-02-2023	67,69,526	13,53,905	5,89,680	2,14,024	3,75,656
34.	INCCU1	7975966	22-02-2023	35,30,873	7,06,175	1,57,248	1,07,239	50,009
35.	INCCU1	8009236	23-02-2023	55,08,266	11,01,653	2,75,184	1,87,117	88,067
36.	INCCU1	8099705	27-02-2023	70,44,710	14,08,942	3,14,496	2,13,848	1,00,648
37.	INCCU1	8355637	15-03-2024	1,00,63,040	20,12,608	3,19,800	2,79,442	40,358
38.	INCCU1	9009167	09-04-2024	57,16,333	11,43,267	7,84,700	7,29,304	55,396
39.	INCCU1	9009337	09-04-2024	57,16,333	11,43,267	7,84,700	7,28,964	55,736
40.	INCCU1	9025621	10-04-2024	58,13,388	11,62,678	7,43,400	7,02,948	40,452
41.	INCCU1	9140143	15-04-2024	58,13,388	11,62,678	7,43,400	7,03,275	40,125
42.	INCCU1	9389797	25-04-2024	1,01,05,940	20,21,188	3,22,530	1,87,756	1,34,774
43.	INCCU1	9504158	24-04-2023	35,97,880	7,19,576	1,37,566	1,15,905	21,661
44.	INCCU1	9508576	24-04-2023	35,97,880	7,19,576	1,37,566	1,15,905	21,661
45.	INCCU1	9533142	25-04-2023	35,97,880	7,19,576	1,37,566	1,20,424	17,142
46.	INCCU1	9534266	25-04-2023	35,97,880	7,19,576	1,37,566	1,20,424	17,142
47.	INCCU1	9590803	27-04-2023	76,19,040	15,23,808	2,75,132	2,32,061	43,071
48.	INCCU1	9591567	27-04-2023	76,19,040	15,23,808	2,75,132	2,32,061	43,071
49.	INCCU1	9694934	07-05-2024	49,39,480	9,87,896	2,14,760	94,771	1,19,989
50.	INCCU1	9919494	10-05-2023	35,73,570	7,14,714	1,36,637	1,17,394	19,243
51.	INMAA1	4889254	18-10-2022	66,62,592	13,32,518	8,07,000	2,33,007	5,73,993
52.	INMAA1	5572142	19-11-2022	52,58,500	10,51,700	4,04,500	1,70,468	2,34,032
53.	INMAA1	5802125	29-11-2022	53,84,704	10,76,941	3,23,600	1,80,143	1,43,457
54.	INMAA1	5840529	30-11-2022	84,55,668	16,91,134	6,06,750	1,94,324	4,12,426
55.	INMAA1	5948034	05-12-2022	15,97,167	3,19,433	1,20,450	50,765	69,685
56.	INMUN1	1085830	17-05-2023	99,63,954	19,92,791	12,23,422	1,13,432	11,09,990
57.	INMUN1	1215902	23-05-2023	70,45,920	14,09,184	2,12,030	61,756	1,50,274
58.	INMUN1	1394744	30-05-	67,84,960	13,56,992	2,12,030	61,706	1,50,324

			2023					
59.	INMUN1	1457504	01-06-2023	49,72,104	9,94,421	1,48,421	43,194	1,05,227
60.	INMUN1	1691573	12-06-2023	33,98,720	6,79,744	1,06,210	39,463	66,747
61.	INMUN1	1714702	13-06-2023	21,34,821	4,26,964	63,726	23,923	39,803
62.	INMUN1	2091695	29-06-2023	34,89,915	6,97,983	1,05,755	39,872	65,883
63.	INMUN1	2345810	10-07-2023	6,78,496	1,35,699	10,602	7,980	2,622
64.	INMUN1	4829995	14-10-2022	69,56,340	13,91,268	8,07,000	53,820	7,53,180
65.	INMUN1	4903629	18-10-2022	69,56,340	13,91,268	8,07,000	1,68,398	6,38,602
66.	INMUN1	5183812	01-11-2022	14,34,226	2,86,845	1,64,400	33,468	1,30,932
67.	INMUN1	6183575	15-12-2022	54,78,548	10,95,710	10,43,900	7,40,094	3,03,806
68.	INMUN1	6513202	28-12-2022	29,59,524	5,91,905	40,900	4,364	36,536
69.	INMUN1	6568306	30-12-2022	59,19,048	11,83,810	4,09,000	1,32,618	2,76,382
70.	INMUN1	6658599	03-01-2023	85,49,736	17,09,947	6,13,500	1,79,676	4,33,824
71.	INMUN1	6741329	06-01-2023	62,39,673	12,47,935	4,09,750	1,40,734	2,69,016
72.	INMUN1	6832222	09-01-2023	59,29,902	11,85,980	4,09,750	1,52,917	2,56,833
73.	INMUN1	6874654	11-01-2023	62,39,673	12,47,935	4,09,750	1,51,458	2,58,292
74.	INMUN1	6945934	13-01-2023	59,29,902	11,85,980	4,09,750	1,13,664	2,96,086
75.	INMUN1	7219136	24-01-2023	23,31,439	4,66,288	2,57,760	61,167	1,96,593
76.	INMUN1	7227264	24-01-2023	34,97,159	6,99,432	3,86,640	80,571	3,06,069
77.	INMUN1	7532194	04-02-2023	29,71,293	5,94,259	3,24,200	62,747	2,61,453
78.	INMUN1	7682438	10-02-2023	58,64,778	11,72,956	4,05,250	1,26,227	2,79,023
79.	INMUN1	7840942	16-02-2023	58,64,778	11,72,956	4,05,250	92,643	3,12,607
80.	INMUN1	8027436	24-02-2023	85,60,188	17,12,038	10,44,225	80,730	9,63,495
81.	INMUN1	8436852	13-03-2023	59,51,400	11,90,280	4,08,750	53,820	3,54,930
82.	INMUN1	8469024	14-03-2023	29,75,700	5,95,140	1,22,625	26,910	95,715
83.	INMUN1	8640652	21-03-2023	61,95,420	12,39,084	2,45,850	55,890	1,89,960
84.	INMUN1	8672141	22-03-2023	29,82,980	5,96,596	1,22,925	26,910	96,015
85.	INMUN1	9020492	01-04-2023	52,50,045	10,50,009	1,96,680	60,454	1,36,226
86.	INMUN1	9064969	04-04-2023	78,75,067	15,75,013	2,95,020	84,440	2,10,580
87.	INMUN1	9064970	04-04-2023	29,82,980	5,96,596	1,22,925	35,284	87,641
88.	INMUN1	9064973	04-04-2023	32,91,932	6,58,386	1,22,925	35,330	87,595
89.	INMUN1	9087071	05-04-2023	32,81,278	6,56,256	1,22,925	37,936	84,989
90.	INMUN1	9106185	06-04-2023	32,38,664	6,47,733	1,22,925	37,739	85,186
91.	INMUN1	9175474	10-04-2023	65,78,832	13,15,766	2,43,300	70,325	1,72,975
92.	INMUN1	9194305	10-04-2023	32,57,787	6,51,557	1,21,650	37,739	83,911
93.	INMUN1	9232365	12-04-2023	32,47,244	6,49,449	1,05,430	35,162	70,268
94.	INMUN1	9543578	25-04-2023	32,80,420	6,56,084	1,05,820	35,381	70,439

95.	INMUN1	9545112	25-04-2023	66,66,660	13,33,332	2,11,640	70,762	1,40,878
96.	INMUN1	9553759	26-04-2023	98,41,260	19,68,252	3,17,460	1,06,142	2,11,318
97.	INMUN1	9621639	28-04-2023	69,84,120	13,96,824	2,11,640	84,009	1,27,631
98.	INMUN1	9621640	28-04-2023	33,86,240	6,77,248	1,05,820	35,381	70,439
99.	INMUN1	9624190	28-04-2023	67,72,480	13,54,496	2,11,640	70,762	1,40,878
100.	INMUN1	9685106	01-05-2023	69,84,120	13,96,824	2,11,640	61,025	1,50,615
101.	INMUN1	9688855	01-05-2023	67,72,480	13,54,496	2,11,640	70,762	1,40,878
102.	INMUN1	9713170	02-05-2023	69,84,120	13,96,824	2,11,640	61,025	1,50,615
103.	INMUN1	9750759	04-05-2023	34,92,060	6,98,412	1,05,820	40,087	65,733
104.	INMUN1	9846076	08-05-2023	69,36,930	13,87,386	2,10,210	75,773	1,34,437
105.	INMUN1	9847260	08-05-2023	70,42,035	14,08,407	2,10,210	71,140	1,39,070
106.	INMUN1	9897330	09-05-2023	69,36,930	13,87,386	2,10,210	61,756	1,48,454
107.	INMUN1	9915090	10-05-2023	34,68,465	6,93,693	1,05,105	42,344	62,761
108.	INMUN1	9971065	12-05-2023	34,68,465	6,93,693	1,05,105	35,570	69,535
109.	INMUN1	9971066	12-05-2023	69,36,930	13,87,386	2,10,210	75,773	1,34,437
110.	INNSA1	2245989	05-07-2023	6,35,750	1,27,150	21,151	2,196	18,955
111.	INNSA1	6481949	27-12-2022	86,62,865	17,32,573	11,04,300	10,24,144	80,156
112.	INNSA1	6657379	03-01-2023	61,03,916	12,20,783	7,36,200	6,96,150	40,050
113.	INNSA1	6657428	03-01-2023	61,03,916	12,20,783	7,36,200	6,96,150	40,050
114.	INNSA1	6953717	13-01-2023	70,02,464	14,00,493	8,85,060	8,22,702	62,358
115.	INNSA1	9978513	12-05-2023	31,53,150	6,30,630	1,05,105	10,965	94,140
116.	INVTZ1	1117428	18-05-2023	48,55,851	9,71,170	4,85,585	86,361	3,99,224
117.	INVTZ1	1435068	31-05-2023	59,36,840	11,87,368	4,24,060	1,05,311	3,18,749
118.	INVTZ1	1611523	08-06-2023	35,04,930	7,00,986	4,67,324	60,733	4,06,591
119.	INVTZ1	1611536	08-06-2023	35,04,930	7,00,986	3,50,493	65,819	2,84,674
120.	INVTZ1	1632272	09-06-2023	89,21,640	17,84,328	6,37,260	1,72,026	4,65,234
121.	INVTZ1	1692874	12-06-2023	21,02,958	4,20,592	2,10,296	35,908	1,74,388
122.	INVTZ1	1924141	22-06-2023	69,79,830	13,95,966	8,03,738	1,24,921	6,78,817
123.	INVTZ1	2197379	03-07-2023	74,02,850	14,80,570	7,82,587	1,25,068	6,57,519
124.	INVTZ1	2347276	10-07-2023	37,10,525	7,42,105	4,87,669	60,834	4,26,835
125.	INVTZ1	2393940	12-07-2023	34,98,495	6,99,699	3,49,850	60,834	2,89,016
126.	INVTZ1	2393949	12-07-2023	34,98,495	6,99,699	6,78,496	60,834	6,17,662
127.	INVTZ1	2431131	13-07-2023	34,98,495	6,99,699	6,78,496	62,799	6,15,697
128.	INVTZ1	2431141	13-07-2023	35,51,503	7,10,301	1,59,023	62,461	96,562
129.	INVTZ1	4714276	18-10-2023	41,97,375	8,39,475	5,03,685	3,27,338	1,76,347
130.	INVTZ1	4868521	25-10-2023	70,74,210	14,14,842	2,78,681	71,988	2,06,693
131.	INVTZ1	4958267	28-10-	70,74,210	14,14,842	2,78,681	71,988	2,06,693

			2023					
132.	INVTZ1	4958270	28-10-2023	70,74,210	14,14,842	2,78,681	72,005	2,06,676
133.	INVTZ1	5255269	09-11-2023	81,41,120	16,28,224	7,92,688	58,566	7,34,122
134.	INVTZ1	5255278	09-11-2023	81,41,120	16,28,224	7,92,688	53,820	7,38,868
135.	INVTZ1	5424811	18-11-2023	43,19,250	8,63,850	5,18,310	3,52,292	1,66,018
136.	INVTZ1	5672168	29-11-2023	32,54,472	6,50,894	2,91,190	21,528	2,69,662
137.	INVTZ1	5708180	30-11-2023	81,36,180	16,27,236	7,70,796	53,820	7,16,976
138.	INVTZ1	6315518	26-12-2023	17,20,160	3,44,032	60,206	11,712	48,494
139.	INVTZ1	6671352	11-01-2024	42,90,000	8,58,000	1,71,600	26,910	1,44,690
140.	INVTZ1	7104116	29-01-2024	42,82,200	8,56,440	5,08,511	26,910	4,81,601
141.	INVTZ1	7104119	29-01-2024	85,64,400	17,12,880	10,17,023	53,820	9,63,203
142.	INVTZ1	7104133	29-01-2024	87,78,510	17,55,702	1,71,288	53,790	1,17,498
143.	INVTZ1	7177363	22-01-2023	59,59,089	11,91,818	18,59,497	55,890	18,03,607
144.	INVTZ1	7221478	24-01-2023	30,44,790	6,08,958	8,64,463	27,945	8,36,518
145.	INVTZ1	7286761	05-02-2024	85,48,800	17,09,760	11,54,088	53,820	11,00,268
146.	INVTZ1	7287634	05-02-2024	42,74,400	8,54,880	5,07,585	26,910	4,80,675
147.	INVTZ1	7309442	27-01-2023	29,32,020	5,86,404	8,32,484	26,910	8,05,574
148.	INVTZ1	7402973	09-02-2024	85,48,800	17,09,760	13,89,180	53,820	13,35,360
149.	INVTZ1	7950459	21-02-2023	29,81,160	5,96,232	8,46,437	26,910	8,19,527
150.	INVTZ1	8034827	24-02-2023	32,79,276	6,55,855	10,64,700	26,910	10,37,790
151.	INVTZ1	8253380	04-03-2023	32,73,270	6,54,654	10,62,750	26,910	10,35,840
152.	INVTZ1	8422059	18-03-2024	44,68,590	8,93,718	1,48,953	35,927	1,13,026
153.	INVTZ1	8755548	25-03-2023	32,59,971	6,51,994	5,69,962	26,910	5,43,052
154.	INVTZ1	9117736	06-04-2023	32,59,971	6,51,994	11,07,964	93,592	10,14,372
155.	INVTZ1	9933599	10-05-2023	69,36,930	13,87,386	6,30,630	1,49,979	4,80,651
156.	INVTZ1	9933609	10-05-2023	69,73,313	13,94,663	1,61,700	1,49,979	11,721
	Grand Total			84,03,66,814	16,80,73,366	6,07,84,714	2,17,91,785	3,89,92,929

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

their export shipments submitted by them under the provisions of section 108 of the Customs Act, 1962.

6.5.1 From scrutiny of Shipping Bill Number No. 9713170 dated 02.05.2023 it had been revealed that ocean freight amount declared in respect of the said shipment is USD 2600, which is equivalent to Rs. 2,11,640 (approx.) (taking exchange rate Rs. 81.4 per USD) whereas the document submitted by the exporter vide letter dated 30.11.2023 revealed that as per the corresponding export Invoice for the said consignment i.e. Invoice No. CSS/23241112 dated 24.05.2023, the actual freight amount paid by them in respect of the aforesaid shipping bill is Rs. 61,025/-. Thus, excess freight amount declared in respect of the aforesaid shipment works out to be at Rs. 1,50,615/- The said excess freight amount has also been recovered by the exporter from the overseas buyer of the export goods but the exporter had not paid duty on the said excess freight amount which is part and parcel of the actual assessable value of the export goods.

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

8. Legal Provisions:

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

8.2 The provisions of section 2(18), section 14 & section 16 of the Customs Act, 1962, Customs Valuation (Determination of Value of Export Goods) Rules,

2007, CBIC Circular No. 18/2008-Cus. dated 10.11.2008 are relevant for understanding various aspects of valuation of the export goods in the context of present case:

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

valuation shall be made in accordance with the World Trade Organisation (WTO) Agreement on Implementation of rule VII of General Agreement on Tariffs and Trade (GATT), 1994. There cannot be an exception to the well laid down principles of valuation.

- e)** This method of calculation of 'FOB Value' is prescribed in various trade facilitation agreements such as 'Asean India Free Trade Agreement (AIFTA)' in a very clear manner as follows. FOB value shall be calculated in the following manner, namely:

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

(b) Other costs in the calculation of the FOB value shall refer to the costs incurred in placing the goods in the ship for export, including but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees, service charges, et cetera.

- f)** This in fact lays down the foundation for arriving at the assessable value of the export goods whereby various elements of costs, including the export duty, notwithstanding it is being paid to the exporter directly by the foreign buyer or otherwise, are required to be added to the invoice price. Costing exercise of addition of other cost elements in FOB Value is not limited to transit transportation cost, storage & warehousing alone. Without payment of export duty, let export order cannot be issued by the jurisdictional customs office and the goods cannot be loaded on the foreign going vessel to take them out of India. On this background it is observed that value of the export goods on which duty has been paid by the exporter of rice does not reflect an FOB value i.e. a price payable for delivery of goods at the time and place of exportation which is a basis for export assessment.
- g)** This practice of payment of export duty by considering the FOB Value as cum-duty FOB Value was prevalent prior to the year 2009. CBIC Circular No. 18/2008-Cus. dated 10.11.2008 in this regard instructed that the existing practice of computation of the export duty by taking FOB price as the cum-duty price may be continued till 31.12.2008 and all the pending cases may be finalized accordingly. It was also clarified that with effect from 01.01.2009, the practice of computation of export duty shall be changed; that for the purposes of calculation of export duty, the transaction value, that is to say the price actually paid or payable for the goods for delivery at the time and place of exportation under section 14 of Customs Act 1962, shall be the FOB price of such goods at the time and place of exportation.
- h)** In order to bring in uniformity, transparency and consistency in assessment of export of Iron Ore, CBIC vide Circular No. 12/2014 – Customs dated 17.11.2014 directed the field formations *interalia* to monitoring the receipt of Bank Realisation Certificates for the purposes of comparison with the final invoices submitted by the exporter to satisfy

the accuracy of the assessed values. It also indicates that the total consideration received by the exporter from the buyer for sale of the export goods have to be considered for assessment of the export goods. In shipments exported on FOB incoterm basis, duty has to be calculated on the total considerations received by the exporter from the buyer whether or not they are included in the BRC. For shipments exported on CIF/CF/CI inco-term basis, FOB Value has to be deduced from the CIF/CF/CI value by deducting the actual freight amounts paid by the exporter as the case may be.

- i) Relevance of time of export is further proved as Section 16 of the Customs Act, 1962 which provides for the date for determination of rate of duty and tariff valuation of export goods, stipulate that the rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force,- (a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; (b) in the case of any other goods, on the date of payment of duty. The afore-said statutory provision also indicate that time of export is relevant for valuation of the export goods.

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

9. The investigation into undervaluation of rice shipments exported by M/s. Rameshwar Lal Foods Private Limited vide above mentioned Shipping Bills as discussed in Tables A, B, C & D above, revealed deliberate mis-statement and suppression of facts on part of the exporter, who was actively involved in mis-declaration of the FOB value of export goods, with an intention to evade appropriate export duty leviable on *ad valorem* basis on such goods. As discussed in above paras, the exporter had mis-declared the ocean freight amounts whereas they were very well aware of the actual freight amounts paid by them in respect of these shipments exported vide Shipping Bills mentioned in Table D above. Moreover, in respect of the shipments mentioned in Tables B & C above, the exporter had claimed/recovered the export duty/packing charges/ profit margin from the overseas buyer without declaring these facts in the export documents. In respect of the goods exported by them through shipping bills as discussed in Table A above, the exporter had wrongly claimed the deduction in the shipping bills for export duty amounts and packing charges & profit margin etc. and in some cases though the exporter had claimed duty amounts by raising separate debit notes/invoices to the buyer but have not declared the same in the shipping bills and export invoices submitted to the customs authorities and thus have mis-declared the actual transaction

value. Thus, the exporter had not declared the actual FOB Values in the shipping bills thereby intentionally evading the applicable duties of customs on such undue deduction amounts/excess freight amounts and export duty reimbursement amounts claimed and recovered by them from the buyers of the export goods.

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

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

11.1 The method of calculation of FOB Value has been provided at the website of various reputed platforms such as ‘Freightos’, which also support the

contention of DRI that export duty is also includible in the FOB Value if the same has been recovered by the seller from the buyer.

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

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

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

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

11.2 The above contention of DRI is also supported by the Incoterms which are widely used in the international transactions. Incoterm or International Commercial Terms which are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) relating to international commercial law. These incoterms define the responsibility of the

importers and exporters in the arrangement of shipments and transfer of liability involved at various stages of transaction. They are widely used in the international commercial transactions and procurement processes. These incoterms rules are accepted by governments, legal authorities worldwide for the interpretation of most commonly used terms in the international trade. They are intended to reduce or remove altogether uncertainties arising from the differing interpretations of the rules in different countries. As per Wikipedia, *the Incoterms 2020 is the ninth set of international contract terms published by the International Chamber of Commerce with the first set published in 1936*. As per Incoterms 2020 published by ICC, the term 'FOB' has been defined as under-

FOB – Free on Board (named port of shipment)

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

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

12. Rejection & Redetermination of the Transaction Value:

12.1 As discussed above, valuation of export goods under the Customs Act, 1962 is governed by Section 14 ibid read with CVR (E), 2007. The export

proceeds receivable in full, consequent to negotiation and finalization of sale price between the exporter in India and the overseas buyer, constitute the 'transaction value' of such goods. Export duty is leviable on the actual sale price at which the goods were sold. Where such sale price is mis-declared or understated by the exporter, the actual sale price, i.e., the transaction value, has to be taken into account for valuation of the impugned export goods.

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

12.3 The receipt of these deduction amounts on account of packaging charges, profit margin & export duty was apparently never disclosed to the concerned Customs authorities. The said amounts were received from the overseas buyer, as reimbursement of taxes/duties under wrong RBI Purpose code P1306 which is not meant for receipt of the export duty. The reduced FOB Value declared in the export documents was presented as the true Transaction Value being paid for the export goods by the overseas buyer as the deduction amount was not reflected in the Bank Realization Certificate (BRC) in respect of these export shipment. The deduction amount was recovered separately in their bank account as reimbursement of taxes/packaging charges/ profit margin. Hence, it appears that the value declared by M/s Rameshwar Lal Foods Private Limited to the concerned Customs authorities as the Transaction Value of the export cargo in respect of 165 shipments of rice covered by the Shipping Bills as

shown in the Tables A, B, C & D above, is liable to be rejected under Rule 8 of the CVR(E), 2007 and the impugned export goods are liable to be valued at their actual Transaction Value as established by the present investigation, in accordance with the provisions of Section 14 of the Customs Act, 1962, read with Rule 3 of the CVR(E), 2007.

12.4 The amount wrongly excluded from the FOB price was indeed part of the consideration negotiated and finalized between the exporter M/s Rameshwar Lal Foods Private Limited and their respective overseas buyers and the said amount which was excluded from the FOB Value was duly claimed /received by the exporter from the overseas buyer in their bank account. Therefore, the differential value (equal to the deduction amount/excess freight amount and the amount claimed/received separately as reimbursement of duty) as shown in the Tables A, B, C & D above appear to be includible in the declared value (FOB Value) of the respective export shipments to arrive at the correct transaction value at which the said goods were sold for export from India for delivery at the time and place of exportation and Customs export duty as per the prevailing rate needs to be charged on the said value. M/s Rameshwar Lal Foods Private Limited appears to be liable to pay the resultant differential duty in addition to the duty already paid by them.

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

13. Calculation of Differential Duty:

As discussed in above paras, the exporter had undervalued their export shipments of rice. For this four modus operandi were adopted by the exporter.

13.1 In several export shipments, as detailed in Table A, FOB price were undervalued and mis-declared by wrongly claiming the deduction of not only the duty paid amounts but some additional deduction amounts on account of packaging charges & profit margin in relation to the export goods as well. These additional deduction amounts along with the deduction of duty paid amounts are also liable to be included in the actual assessable value of the export goods and as summarized below, differential duty amount of Rs. 1,34,72,690/- is liable to be recovered from the exporter in respect of all these deduction amounts also. The detailed calculation of differential duty is shown in Annexure- I to the SCN.

Table-E

Port of Export	No. of SBs	Declared FOB Value (INR)	Export duty Paid (INR)	Deduction claimed in Shipping Bill (INR)	Amount received in any other manner such as Debit Note/ Credit Note etc. INR	Re-determined FOB (INR)	Export Duty Payable (INR)	Differential Duty (INR)
INMUN1	25	12,72,26,432	2,54,45,288	4,32,60,543	4,30,97,594	17,04,86,975	3,40,97,395	86,52,107
INCCU1	7	2,77,68,236	55,53,646	91,63,237	91,36,130	3,69,31,473	73,86,295	18,32,649
INNSA1	4	2,78,73,161	55,74,632	90,91,878	90,91,878	3,69,65,039	73,93,008	18,18,376
INMAA1	4	2,06,96,039	41,39,208	58,47,793	58,20,624	2,65,43,832	53,08,766	11,69,558
Total	40	20,35,63,868	4,07,12,774	6,73,63,451	6,71,46,226	27,09,27,319	5,41,85,464	1,34,72,690

13.2 In some of their export shipments mentioned at Table B above, the FOB price was undervalued and mis-declared by an amount equal to the amount of export duty paid by them at the time of export as well as the packaging charges & profit margin. The deduction amounts claimed in these export shipments were on account of packaging charges & profit margin and the export duty paid amounts were separately claimed from the overseas buyer as reimbursement of taxes by raising separate debit notes/invoices. In such shipping bills, actual transaction value of the export goods has to be re-determined by adding the amounts which were wrongly claimed as deduction in the shipping bills as well as the amounts which were separately recovered from the buyer by raising separate debit notes/invoices to the buyer. These deduction amounts/export duty amounts claimed from the overseas buyer are liable to be included in the actual assessable value of the export goods and differential duty of Rs. 78,91,443/- is liable to be recovered from the exporter in respect of these shipments as summarized below. The detailed calculation of differential duty is shown in Annexure- I to the SCN.

Table-F

Port of Export	No. of SBs	Declared FOB Value (INR)	Export duty Paid (INR)	Deduction claimed in Shipping Bill (INR)	Amount received in any other manner such as Debit Note/ Credit Note etc. INR	Amount received in any other manner such as Debit Note/ Credit Note etc. INR	Re-determined FOB (INR)	Export Duty Payable (INR)	Differential Duty (INR)
INMUN1	25	13,06,77,188	2,61,35,438	1,21,34,541	2,55,03,188	1,19,23,558	16,89,47,167	3,37,89,433	76,53,995
INNSA1	2	37,88,900	7,57,780	4,29,458	7,57,780	4,17,536	49,76,138	9,95,228	2,37,448
Total	27	13,44,66,088	2,68,93,218	1,25,63,999	2,62,60,969	1,23,41,094	17,39,23,305	3,47,84,661	78,91,443

13.3 In several export shipments, as detailed in Table C above, exporter had separately recovered the duty amounts from the overseas buyer of the cargo. These facts were not declared by them before the customs authorities at the

port of export. Admittedly, these amounts have also been claimed/recovered by the exporter from the overseas buyer on reimbursement basis. Had the overseas buyer not paid these amounts to the exporter, they would not have sold the export goods to the buyer. Thus, these amounts claimed/recovered from the buyer are also part of the consideration received by the exporter for sale of their export goods. These amounts separately claimed/recovered by the exporter from the buyer are also liable to be included in the actual assessable value of the export goods and as summarized below, differential duty amount of Rs. 1,40,68,941/- is liable to be recovered from the exporter in respect of these reimbursed export duty amounts. The detailed calculation of differential duty is shown in Annexure- II to the SCN.

Table - G

Port of Export	No. of SBs	Declared FOB Value (INR)	Export duty Paid (INR)	Deducti on claimed in Shippin g Bill (INR)	Amount received through Reimburse ment of taxes in INR	Re- determin ed FOB (INR)	Export Duty Payable (INR)	Different ial Duty (INR)
INCCU1	33	20,22,33,850	4,04,46,770	-	3,86,83,013	24,26,80,620	4,85,36,124	80,89,354
INVTZ1	25	13,95,25,739	2,79,05,149	-	2,65,16,952	16,74,30,888	3,34,86,178	55,81,029
INMUN1	1	99,63,954	19,92,791	-	19,86,848	1,19,56,745	23,91,349	3,98,558
Total	59	35,17,23,543	7,03,44,710	-	6,71,86,813	42,20,68,253	8,44,13,651	1,40,68,941

13.4 Apart from the above, in several shipments of rice, as detailed in Table D above, the exporter had declared excess freight amounts in comparison to the actual freight amounts paid by them to the freight forwarders/shipping lines for transportation of the export goods to the country of destination. Only the ocean freight amounts paid by the exporter are eligible for deduction from the CIF value for calculation of the FOB Value of the export goods. Therefore, the excess freight amounts declared by the exporter are not eligible/allowed for deduction as per the provisions of Section 14 of the Customs Act, 1962. These excess freight amounts claimed by the exporter are also liable to be included in the actual assessable value of the export goods and as summarized below, differential duty amount of Rs.77,98,583/- is liable to be recovered from the exporter in respect of these excess freight amounts also. The detailed calculation of differential duty is shown in Annexure- III to the SCN.

Table - H

Port of Export	No. of SBs	Declared FOB Value (INR)	Export duty Paid (INR)	Excess Freight	Re- determined FOB value	Differenti al Duty
INVTZ1	41	21,37,55,138	4,27,51,028	2,20,26,487	23,57,81,625	44,05,297
INMUN1	54	28,32,14,479	5,66,42,898	1,13,77,70	29,45,92,187	22,75,539

				8		
INCCU1	50	28,43,76,504	5,68,75,302	38,19,431	28,81,95,936	7,63,885
INMAA1	5	2,73,58,631	54,71,726	14,33,594	2,87,92,225	2,86,719
INNSA1	6	3,16,62,061	63,32,412	3,35,709	3,19,97,770	67,142
Total	156	84,03,66,814	16,80,73,366	3,89,92,929	87,93,59,743	77,98,583

13.5 In view of the above-mentioned four modus operandi followed by the exporter for evasion of export duty, their re-determined assessable value in respect of total 165 export shipments have been calculated as shown in below table. Accordingly, the differential duty payable by the exporter M/s Rameshwar Lal Foods Private Limited works out to be at Rs. 4,32,31,658/- as shown in below Table. The detailed calculation of the differential duty amounts has been shown in Annexure I, II & III to the SCN.

The port wise summary of differential duty payable by M/s Rameshwar Lal Foods Private Limited is as under:

Table-I

Port of Export	No. of SB S	Declared FOB Value (INR)	Export duty Paid (INR)	Re-determined FOB value	Duty Payable	Total Differential Duty
INMUN1	54	28,32,14,479	5,66,42,898	37,81,15,500	7,56,23,100	1,89,80,202
INCCU1	55	31,81,51,869	6,36,30,375	37,15,81,308	7,43,16,262	1,06,85,887
INVTZ1	45	23,98,85,528	4,79,77,106	28,98,17,164	5,79,63,433	99,86,327
INNSA1	6	3,16,62,061	63,32,412	4,22,76,886	84,55,377	21,22,965
INMAA1	5	2,73,58,631	54,71,726	3,46,40,018	69,28,004	14,56,278
Total	165	90,02,72,569	18,00,54,517	1,11,64,30,876	22,32,86,175	4,32,31,658

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

14.1 The exporter had subscribed to a declaration as to the truthfulness of the contents of the Shipping Bill in terms of Section 50(2) of the Customs Act, 1962, in all their export declarations. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on export goods by the exporter himself by filing a Shipping Bill, in electronic form. Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make an entry for the export goods by presenting a Shipping Bill electronically to the proper officer. As per Regulation 4 of the Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulation, 2019 (issued

under Section 157 read with Section 50 of the Customs Act, 1962), the Shipping Bill shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the export goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Shipping Bill number was generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it was the exporter who must doubly ensure that he declared the correct classification / CTH of the export goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in respect of the export goods while presenting the Shipping Bill. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 08.04.2011, it was the added and enhanced responsibility of the exporter to declare the correct description, value, Notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the export goods.

14.2 In view of the discussion supra, it is evident that the Director of the exporter firm M/s Rameshwar Lal Foods Private Limited, was well aware about the actual value of the export goods. They have knowingly got indulged in preparation and planning of forged / manipulated export documents, which they used to forward to the Customs broker in relation to Customs clearance of the said export goods at the time of exportation by way of wilful mis-declaration and intentional suppression of these facts in the Shipping Bills filed by them and thus they appear to have evaded the applicable Customs duty on export of rice.

14.3 In the event of short levy of Customs duty by reason of collusion, any wilful mis-statement or suppression of facts by the exporter or the agent or employees of the exporter, such duty can be recovered by invoking extended period of five years as provided in Section 28(4) of the Customs Act, 1962. In this case, it appears that the exporter has knowingly and deliberately mis-declared the transaction value (i.e. FOB Value) of the export goods. Hence, the extended period of five years is rightly invokable in this case to recover the differential duty as detailed in Annexure –I, Annexure –II and Annexure –III of the SCN. Further, M/s Rameshwar Lal Foods Private Limited is also liable to pay interest on their said differential duty liability as per the provisions of Section 28 AA of the Customs Act, 1962, at applicable rate. Further, M/s Rameshwar Lal Foods Private Limited is also liable to be penalized under the provisions of Section 114A of the Customs Act, 1962.

15. From the scrutiny of the documents/ information gathered/submitted during investigation by the exporter M/s Rameshwar Lal Foods Private Limited, scrutiny of the export data and statements of Sh. Shrawan Kumar Agarwal, Director, M/s Shree Rameshwar Foods Private Limited & Shri Shumbam

Kumar Agarwal, employee of M/s Rameshwar Lal Foods Private Limited involved in export of rice from various ports of India, it appeared that—

- i. Sh. Shrawan Kumar Agarwal, Director, M/s Rameshwar Lal Foods Private Limited and his son Shri Shubham Kumar Agarwal, employee of M/s Rameshwar Lal Foods Pvt. Ltd. were the key persons who on behalf of M/s. Rameshwar Lal Foods Private Limited negotiated and finalized the sale price of rice, exported by M/s Rameshwar Lal Foods Private Limited to various overseas buyers, vide 165 Shipping Bill as detailed in Tables A, B, C & D in para 8 of the SCN.
- ii. The declared FOB value in respect of shipping bills listed in Tables A, B, C & D, did not reflect the correct transaction value of the export goods;
- iii. As discussed in above paras, the actual transaction value (i.e. FOB Value) was not declared by them in their export documents. They have undervalued and mis-declared their transaction value with intent to evade applicable duty of customs which is leviable @ 20% *ad valorem* on the actual transaction value of the export goods in following manners:
 - In respect of Shipping bills listed in Table A above, the FOB Value was undervalued by them by an amount equal to the amount of export duty plus additional amounts in the name of expenses incurred for packaging of the export goods & profit margin earned on export of rice. These amounts were also wrongly claimed as deductions in the shipping bills.
 - In respect of Shipping bills listed in Table B above, the FOB Value was undervalued by them by an amount equal to the amount of export duty paid plus additional amounts in the name of expenses incurred for packaging of the export goods & profit margin earned on export of rice. The amount of packing charges & profit margin was wrongly claimed as deduction in the shipping bills and export duty paid amount was not even claimed as 'deductions' in the shipping bills, but the full duty paid amount plus packaging charges & profit margin was recovered/ claimed from the overseas buyer. Thus, exporter had out rightly mis-declared the actual transaction value at the time of export.
 - In respect of the shipping bills listed in Table C, above the declared FOB Value was undervalued by an amount equal to the amount of duty paid by them on export of rice cargo, however, the said amounts were not claimed as deductions in the shipping bills, in fact, they have declared 'nil' deduction amount in the shipping bills. The said amounts were also recovered from the overseas

buyers as reimbursement of taxes. Thus, exporter had out rightly mis-declared the actual transaction value at the time of export.

- In respect of the shipping bills listed in Table D, the declared FOB Value was further undervalued by an amount equal to the excess freight declared by the exporter in the shipping bills which were over and above the actual freight amounts paid by them. The ocean freight amounts actually paid by the exporter are eligible deductions from the CIF Value. By declaring the excess freight amounts, exporter had wrongly claimed excess deductions of freight amounts which are not eligible. Thus, exporter had out rightly mis-declared the actual transaction value at the time of export.

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

- iv. The FOB value of export goods in all these cases was mis-declared by M/s Rameshwar Lal Foods Private Limited to the Customs authorities in the shipping bills filed by them which was supported by their export invoices, resulting in suppression and mis-declaration of actual transaction value at the time of assessment of the export goods. As such, the value of export goods in respect of all these Shipping Bills was misrepresented to be lower than the actual transaction value, thereby causing evasion of export duty leviable on rice shipments exported by them;
- v. The value of export goods pertaining to each of these Shipping Bills are liable to be rejected and reassessed as per their actual transaction value as ascertained during investigation, by taking into account the amount which was excluded from the declared value at the time of assessment, as brought out in above paras;
- vi. The balance amount not included in the declared FOB Value and wilfully suppressed by not declaring to Customs with an intention to misrepresent the transaction value of the export goods, is liable to be assessed to duty at the applicable rate as detailed in 'Annexure-I, Annexure-II and Annexure-III' of the SCN and the same is recoverable along with interest at applicable rate;
- vii. The act of undervaluation and mis-declaration of actual transaction value in respect of Shipping Bills listed in Tables A, B, C & D by M/s Rameshwar Lal Foods Private Limited has rendered the export goods

liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 and consequently M/s Rameshwar Lal Foods Private Limited have rendered themselves liable to a Penalty under the provisions of Section 114A and Section 114AA of the Customs Act, 1962;

- viii. Sh. Shrawan Kumar Agarwal, Director of M/s Rameshwar Lal Foods Private Limited and Shri Shubham Kumar Agarwal, employee of M/s Rameshwar Lal Foods Private Limited appears to be the persons who knowingly or intentionally either made, signed and used or caused to be made, signed and used, the export invoices, Shipping Bills for export of rice by M/s Rameshwar Lal Foods Private Limited, which were incorrect as regards to the value of export goods for payment of export duty. The goods covered under Shipping Bills listed in Tables A, B, C & D above, contained the declarations made by M/s Rameshwar Lal Foods Private Limited which were false and incorrect in material particulars relating to the value of the impugned goods. The contracts with the buyer for sale and export of rice as well as the export documents submitted to Customs were finalized/signed in the overall supervision of Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal, who were handling the day to day business of the export firm. This fact has been admitted by Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal in their statements recorded u/s 108 of the Customs Act, 1962. In view of this, it appears that Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal were the key persons who have orchestrated the entire scheme of mis-declaration of value of the export goods, with an intention to evade customs (export) duty. Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal were, therefore, responsible for wilful acts of mis-statement and suppression of facts in respect of export of rice by M/s Rameshwar Lal Foods Private Limited. The act of Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal regarding under valuation and mis-declaration of actual transaction value in respect of Shipping Bills filed by M/s Rameshwar Lal Foods Private Limited has rendered the export goods liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962. As such, Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal have rendered himself liable to penal action under the provisions of Section 114 (ii) and 114AA of the Customs Act, 1962;

16. CBIC vide Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 had stipulated that in cases of multiple jurisdictions as referred in Section 110AA of the Customs Act, the report in writing, after causing the inquiry, investigation or audit as the case may be, shall be transferred to officers described in column (3) of the said Notification along with the relevant documents. For cases involving short levy, non-levy, short payment or non-payment of duty, as provided in Section 110AA (a) (ii), the functions of the

proper officer for exercise of powers under Section 28 of the Customs Act, 1962 have been assigned to the jurisdictional Pr. Commissioner/ Commissioner of Customs in whose jurisdiction highest amount of duty is involved. Since, in the present case, exports have been made from five (05) different ports, as mentioned in Table-I above, however the highest amount of differential export duty is in respect of Mundra port. Hence, Mundra port, being the port involving highest revenue, the Show Cause Notice was made answerable to the Principal Commissioner/ Commissioner of Customs, Customs House Mundra, having jurisdiction over Mundra port, for the purpose of issuance as well as adjudication of Show Cause Notice under Section 110AA read with Notification No. 28/2022-Customs (N.T) dated 31.03.2022.

17.1 Accordingly, **M/s Rameshwar Lal Foods Private Limited** as called upon to show cause vide Show Cause Notice GEN/ADJ/COMM/556/2024-ADJN-O/O COMMR – CUS – MUNDRA dated 29.11.2024 as to why:

- i. The declared assessable value of **Rs. 90,02,72,569/-** (*Rupees Ninety Crore Two Lakh Seventy Two Thousand Five Hundred and Sixty Nine Only*) in respect of the shipments of rice exported vide Shipping Bills detailed in 'Annexure-I, II & III', should not be rejected in terms of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, read with Rule 3 (1) *ibid* and Section 14 (1) of the Customs Act, 1962;
- ii. The actual assessable value in respect of Shipping Bills detailed in 'Annexure-I, II & III', should not be re-determined at **Rs. 1,11,64,30,876/-** (*Rupees One Hundred Eleven Crore Sixty Four Lakh Thirty Thousand Eight Hundred and Seventy Six Only*) under the provisions of Section 14 (1) of the Customs Act, 1962, by taking into account – (a) the amounts claimed as deduction in the shipping bills, which were equivalent to amount of export duty, profit margin and/or packing charges paid/claimed by them; (b) excess ocean freight amounts claimed/recovered and (c) undeclared export duty reimbursement amounts - which were claimed/recovered by them from the overseas buyer of the goods, as discussed in Para 8 & 15 of the SCN;
- iii. The differential (export) duty amounting to **Rs. 4,32,31,658/-** (*Rupees Four Crore Thirty Two Lakh Thirty One Thousand Six Hundred and Fifty Eight Only*) payable, as calculated and shown in 'Annexure-I, II and III' to the Show Cause Notice, in respect of Shipping Bill filed by them at six different ports, should not be demanded and recovered from them, by invoking the extended period of limitation available under the provisions of Section 28 (4) of the Customs Act, 1962;
- iv. The interest on the afore-said total differential duty amount of **Rs. 4,32,31,658/-** (*Rupees Four Crore Thirty Two Lakh Thirty One Thousand Six Hundred and Fifty Eight Only*) should not be demanded and

recovered from them under the provisions of Section 28AA of the Customs Act, 1962;

- v. The voluntary deposit of Rs. **1,64,38,554/-** (*Rupees One Crore Sixty Four Lakh Thirty Eight Thousand Five Hundred and Fifty Four Only*) made during investigation should not be appropriated against their aforesaid differential duty liability;
- vi. The shipments of rice exported vide Shipping Bills detailed in 'Annexure-I, II & III' to this Notice having re-determined assessable value of Rs. 1,11,64,30,876/- (*Rupees One Hundred Eleven Crore Sixty Four Lakh Thirty Thousand Eight Hundred and Seventy Six Only*) should not be held liable to confiscation under the provisions of Section 113 (i) of the Customs Act, 1962;
- vii. Penalty under the provisions of section 114 A and Section 114 AA should not be imposed upon them.

17.2 Sh. Shrawan Kumar Agarwal, Director of M/s Rameshwar Lal Foods Private Limited was called upon to show cause as to why penalty under the provisions of section 114 (ii) and Section 114AA of the Customs Act, 1962 should not be imposed upon him for his acts and omissions in evasion of Customs Duty.

17.3 Further, **Sh. Shubham Kumar Agarwal** s/o Shri Shrawan Kumar Agarwal and Employee of M/s Rameshwar Lal Foods Private Limited, was called upon to show cause as to why penalty under the provisions of section 114 (ii) and Section 114AA of the Customs Act, 1962 should not be imposed upon him for his acts and omissions in evasion of Customs Duty.

18. DEFENCE SUBMISSIONS: The Noticee have made the following written submissions which have been re-iterated by their advocate during the personal hearing:

- A.** The duty demand on Shipping Bill No. 5255270 is unsustainable and must be dropped, as the Noticee has already paid duty on the actual consideration received, with no separate recovery of export duty from the overseas buyer, as confirmed by supporting documentation and bank certification.
- B.** The demand of export duty on account of excess freight is liable to be reduced on account of incorrect actual freight considered in the Table-D of the present SCN in respect of 21 shipping bills
 - Freight paid considered in Table-D of SCN for 21 shipping bills are erroneous and lower by Rs. 7,93,714 /-.

B.1. While computing the alleged excess freight, SCN has erroneously presumed without any underlying evidence that the actual freight paid to be Rs. 207 per MT in respect of 21 shipments. Specifically, the Present SCN has taken the actual freight paid to be Rs. 2,17,91,785/- for the purpose of calculating the differential freight. In contrast, as evidenced by the freight invoices enclosed in Annexure-2, the actual freight incurred by the Noticee amounts to Rs. 2,25,85,499/-. Consequently, the differential freight amount reflected in Table D of the SCN is liable to be reduced by Rs. 7,93,714/-. Accordingly, the corresponding duty impact of Rs. 1,58,743/- (20% of the Rs. 7,93,714/-) must be deducted from the additional duty demand of Rs.77,98,583/- as computed in Table H of the SCN (the corresponding freight invoices are already enclosed in Annexure-2).

B.2. The same is tabulated below as:

Sr. No.	Particulars	Freight Amount (in INR)	Remarks
1.	Sum of freight paid by the Noticee as considered in Table-D of the Present SCN	2,17,91,785	
2.	Sum of actual basic freight paid by the Noticee	2,25,85,499	
3.	Lower basic freight paid considered in the Present SCN	7,93,714	Refer Note-1 below.

Note-1:

B.3. During the course of the investigation, the Noticee was requested to furnish details of the actual freight paid in respect of 172 consignments exported on CI/CIF basis, vide emails dated 04.07.2024 and 23.07.2024. In response, the Noticee, via email dated 20.08.2024, submitted the freight payment details for the said exports. However, upon scrutiny of the submitted documents, certain discrepancies were observed in the data provided. Consequently, the Noticee was once again requested to submit revised and accurate freight payment details for each export consignment. In response, the Noticee, vide email dated 26.11.2024, provided actual freight payment details for 150 out of the 172 export consignments. The details for the remaining 22 consignments were not submitted.

B.4. These 22 consignments pertain to exports made from Mundra and Visakhapatnam ports to buyers based in Vietnam. Further analysis of the data revealed that, out of the 150 consignments for which freight details were provided, 69 shipments were exported from Mundra (46 shipments) and Visakhapatnam (23 shipments) to Vietnam. The actual freight paid for these 69 shipments ranged between Rs. 207 to Rs. 720 per MT. However, in respect of the remaining 22 consignments, the SCN has arbitrarily considered the lowest freight rate of Rs.

207 per MT, without any supporting documentation or valid basis, thereby leading to an incorrect computation of the differential freight.

B.5. A shipping bill-wise comparison of the actual freight paid as per actual invoice as compared with the actual freight considered in Table-D of the Present SCN is provided below:

Sr. No. as per Table-D of the Present SCN	Shipping Bill No.	Shipping Bill Date	Actual freight paid as per the Invoice	Actual freight considered in Table-D of the Present SCN	Lower freight paid value considered in Table-D of the Present SCN
			(A)	(B)	(C) = (A) - (B)
64	4829995	14.10.2022	1,84,647	53,820	1,30,827
80	8027436	24.02.2023	1,26,209	80,730	45,479
81	8436852	13.03.2023	84,329	53,820	30,509
82	8469024	14.03.2023	40,167	26,910	13,257
83	8640652	21.03.2023	75,871	55,890	19,981
84	8672141	22.03.2023	40,167	26,910	13,257
122	1924141	22.06.2023	2,01,780	1,24,921	76,859
134	5255278	09.11.2023	72,240	53,820	18,420
136	5672168	29.11.2023	27,059	21,528	5,531
137	5708180	30.11.2023	58,566	53,820	4,746
139	6671352	11.01.2024	26,952	26,910	42
140	7104116	29.01.2024	26,924	26,910	14
141	7104119	29.01.2024	53,941	53,820	121
143	7177363	22.01.2023	1,51,458	55,890	95,568
144	7221478	24.01.2023	75,979	27,945	48,034
147	7309442	27.01.2023	78,333	26,910	51,423
148	7402973	09.02.2024	71,972	53,820	18,152
149	7950459	21.02.202	78,618	26,910	51,708

		3			
150	8034827	24.02.2023	78,618	26,910	51,708
151	8253380	04.03.2023	78,076	26,910	51,166
153	8755548	25.03.2023	93,933	26,910	67,023
Total					7,93,714

C. The interpretation of Section 14 of the Customs Act, 1962 as adopted by the Ld. Pr. Commissioner is incorrect: The phrase “for delivery at the time and place of exportation” means the delivery at the Customs Port and not delivery on board of the vessel. Consequently, the expenses incurred at the port would not be included in the transaction value as the same is incurred beyond the place of exportation. The Ld. Pr. Commissioner has erred in the understanding that the ‘price paid or payable for the goods when sold for export from India at the time and place of export’ as per Section 14 of the Customs Act includes the amount of export duty reimbursed by the seller from the buyer over and above the price for goods.

- Section 14 of the Customs Act indicates that the value of the export goods shall be the transaction value of the goods i.e., the price actually paid or payable for the goods. On applying the meaning of the term ‘price paid or payable’ as per Interpretative Note to Rule 3 the Import Valuation Rules, to the sum equal to the export duty received separately from the buyer, it can be understood that this part of the payment does not go to the benefit of the seller of the goods, rather, the same goes to the Government and it is therefore, liable to be excluded from the FOB value of the goods.
- The Interpretative Note to Rule 3 of the Import Valuation Rules clearly excludes the duties and taxes in India. On similar analogy, the export duty paid on the export goods in India is also liable to be excluded from the payment received from the foreign buyer for the purpose of arriving at the assessable value of the goods. Even in terms of the Advisory Opinion 3.1 of the Technical Committee on Customs Valuation of the World Customs Organization, the duties and taxes are by their very nature distinguishable.

D. The real meaning of the clarification provided by the Circular No. 18/2008 –Cus dated 10.11.2008 is that the transaction value of export goods is exclusive of the reimbursement of export duty received from the buyer

- The Board’s Circular dated 10.11.2008 seeks to clarify the doubt whether the export duty should be charged simply as a percentage of FOB price or whether the FOB price should be taken as the ‘cum-duty price’ for determination of assessable value and duty thereon. The Circular clarifies that the transaction value, that is to say the price actually paid or payable

for the goods for delivery at the time and place of exportation under Section 14 of the Customs Act, 1962, shall be the FOB price of such goods at the time and place of exportation.

- In view of the detailed explanation of the term 'price actually paid or payable for the goods' and the expenses which would be included and excluded from the purview of this term in Ground A of the present reply, it is apparent that the transaction value of the goods at the time and place of export does not include the element of export duty, as the same is an expense incurred at the port.
- In view of this explanation, the clarification of the Circular dated 10.11.2008 ought to be interpreted to mean that the transaction value of the export goods is the FOB value of export goods at the time and place of exportation i.e. excluding the reimbursement of export duty received from the foreign buyer over and above the price received for the goods.
- In the event the declared FOB value is inclusive of export duties, such duties have to necessarily be deducted to arrive at the actual FOB value of the export goods at the time and place of exportation and the ad valorem duty should be levied thereon.

E. Without prejudice, even if it is assumed that the circular dated 10.11.2008 actually purports to include the element of export duty in the fob value of the export goods, even then the same cannot be relied upon to propose the instant demand.

- As explained in Ground A of the present reply, the transaction value of export goods is exclusive of the element of export duty. The said explanation is in conformity with the statutory mandate of Section 14 of the Customs Act. Therefore, even if it is assumed that the Circular dated 10.11.2008 purports to include export duty in the FOB value of the export goods, then the same goes against the statutory mandate.
- It is a settled principle that Circulars which are contrary to the statutory provisions have no existence in law. Therefore, even if it is assumed that the Circular dated 10.11.2008 purports to include export duty in the FOB value of the export goods, even then the same cannot be relied upon to propose the instant demand.
- Moreover, it is a settled legal principle that when two interpretations of a legal provision are possible, then the one which is aligned with the statutory mandate has to be necessarily followed. Therefore, the interpretation of the legal provision, as explained in Ground A of the present reply needs to be followed.
- The interpretation of the Circular dated 10.11.2008 so as to include the element of export duty in the FOB value of export goods is against

INCOTERMS. As per INCOTERMS, FOB price includes export duty, hence, levying export duty of FOB price leads to tax which is against INCOTERMS. Moreover, by clarifying that the transaction value of export goods would be FOB value and cum-duty benefit would not be allowed, the Board has gone against the opinion of Ministry of Law.

- A policy change cannot be brought by issuance of a Circular and the same needs to be given effect to by way of an amendment in the statute. The Circular dated 10.11.2008 in effect levying export duty on the export duty element embedded in the FOB value has been passed in total abuse of power and no reliance can be placed on the same to propose the instant demand.
- The Circular dated 10.11.2008 issued by the Board is ultra-vires Section 151A of the Customs Act and cannot be relied upon, as Section 151A only provides powers to issue instruction, orders or directions to bring uniformity regarding levy of duty, but a Circular cannot make a new provision which is not provided in the Statute.
- Under Section 28C of the Customs Act read with Section 28D, the price of goods shown in an invoice is deemed to be a cum duty price. Therefore, without prejudice, disallowing the practice of taking FOB price as cum-duty will lead to contradiction to Section 28C of the Customs Act.

F. The contention that transaction value for export goods is the FOB price is baseless and incorrect: Noticee stated that the Present SCN has assumed that the transaction value as referred to in Section 14 will be the FOB price in case of export. Except for the Circular dated 10.11.2008 (which has been rebutted in the above grounds), there is no legal provision which indicates that transaction value of export goods would be the FOB price. The assumption that transaction value is FOB price is incorrect and is based on the understanding that the “place of exportation” referred to in Section 14 means vessel board. In the Ground A above, it has been proved beyond doubt that the place of exportation will mean the customs station and not the vessel. Hence, FOB which is inclusive of the expenses incurred till the loading on board of vessel cannot be considered as transaction value. Rather, it would be the cum-duty FOB price that would be the transaction value.

G. Without prejudice, the levy of tax/duty on cum duty i.e. the cum-tax methodology is the underlying principle of all indirect tax laws:

- It is a settled principle in several indirect taxes such as VAT, Central Excise, Service Tax etc. for computation of duty, the cum-duty value of goods or services is taken. In fact, all the indirect tax laws provide for a specific provision regarding the same.
- All the indirect tax laws have a common principle of levying duty on the cum-duty value. The same also derives support from Section 28D of the Customs Act, as per which every person who has paid the duty on any goods

under the Customs Act shall be deemed to have passed on the full incidence of such duty to the buyer of such goods.

- As per the decision of the Supreme Court in Re: Sea Customs Act, A.I.R. 1963 Supreme Court 1760, export duty has also been held to be an indirect tax. Therefore, the above enunciated principle of indirect taxes would be squarely applicable in the case of export duty as well.

H. It is an internationally accepted practice to exclude duties and taxes paid on export from the assessable value of the goods:

- The customs and international trade-related laws of the member countries of the WTO are based on the same common principles enunciated by the WTO. India, being a member country has also incorporated the principles of international trade laws as per the WTO in its domestic laws.
- In the realm of international relations and law, the principle that is widely embraced is the "presumption against the violation of international law." It is an expectation that countries should abide by customary international law regulations and their international legal obligations. The above principle has also been incorporated in the Constitution of India in Article 51 and Article 256.
- The customs laws of several WTO member countries such as China specifically provide for the exclusion of duties and taxes paid on export from the value. Hence, internationally also, the duties and taxes payable on export do not form part of assessable value.
- In China, the customs value of the export goods is determined on the basis of the transaction value and the costs of transport and insurance incurred prior to the loading of the goods at the port. Therefore, the costs incurred at the port and/or beyond the port are not included.
- As per the internationally accepted practice, even in India, the principle of exclusion of duties and taxes paid on export from the assessable value of the goods should be followed.

I. TAXING STATUTES TO BE CONSTRUED STRICTLY: It is a settled law that taxing statutes are to be construed strictly, and no tax can be levied without clear authority of law. In case of any doubt, it has to be resolved in favour of the assessee. The Customs Act being a taxing statute, the basis of valuation for the purpose of calculating export duty cannot be changed so as to increase the tax burden of the Noticee by adopting the wrong interpretation of the legal provisions.

J. THE DEMAND OF EXPORT DUTY ON ACCOUNT OF EXCESS FREIGHT IS PLAINLY INCORRECT AND NOT SUSTAINABLE

- Demand is erroneous as expenses incurred by the Noticee at the customs port have been not considered in the Present SCN.
- Actual freight was not known at the time of filing Shipping Bill.
- Freight rates were very volatile during the period from 2022-2024. Freight charges were pre-agreed with foreign buyer as per contract and any changes in freight were on account of the Noticee and not to be borne by the buyer.
- Without prejudice, profit earned on account of freight is also part of freight and not includible in the FOB value to determine the assessable value for payment of export duty.
- Without prejudice, some portion of freight as alleged excess by the department pertains to expenses incurred at the customs port, which otherwise cannot be forming part of the value of FOB value.
- Without prejudice, demand of excess freight otherwise be determined considering on Cum-Duty basis.

K. THE PROPOSAL TO CONFISCATE THE GOODS DESERVES TO BE DROPPED: Qua the aforesaid submissions, it is abundantly clear that no additional export duty is payable and there is no mala-fide on part of the Noticee for evasion of duty. Therefore, the goods in question cannot be confiscated. Without prejudice to the above, it is submitted that as the goods have already been exported, the question of confiscating them does not arise.

L. Penalty under Section 114A of the Customs Act is not imposable as this is not a case where duty of customs has not been levied or paid or has been short levied or short paid by reason of collusion or any willful misstatement or suppression of facts.

M. Penalty under section 114AA is not imposable as this is not a case where benefits are claimed fraudulently or on the basis of forged documents or certificates.

N. WITHOUT PREJUDICE, COMPUTATION OF DEMAND IN INCORRECT.

- The amount of export duty reimbursement not realized from the customer is not liable to be included in the fob value for the purpose of computation of export duty. Demand to the tune of Rs. 8,46,055/- is liable to be dropped on this ground alone.
- The demand on account of excess freight is to be adjusted with the shipping bills where the freight declared was lower than the freight actually paid. Hence, out of the total demand on account of excess freight of Rs.

77,98,583/- an amount of Rs. 1,35,221/- (20% of 6,76,107) is liable to be reduced.

- The amount of excess freight declared is actually the duty reimbursement which was partially / fully declared in the shipping bill as freight. As per the said computation, out of the excess freight declared in the shipping bills, amount of Rs. 1,44,79,171/- pertains to export duty reimbursement. Accordingly, the duty demanded on such amount incorrectly considered to be excess freight i.e. (Rs. 28,95,834) is liable to be reduced from the total duty demand on account of excess freight.
- O. The amounts paid during the course of the investigation may be appropriated towards duty liability arising on account of excess freight declaration and deduction claimed for packing charges / profit margin. However, no penalty is liable to be imposed on account of such acceptance of demand:**
- The Noticee is not contending the demand pertaining to excess freight declared and deduction on account of packing charges and profit margin and prays that out of the total deposit made during the course of investigation an amount of Rs. 1,25,65,882/- be appropriated towards the demand pertaining to excess freight declared and deduction on account of packing charges and profit margin.
 - Although the Noticee does not contends the demand pertaining to excess freight declared and deduction on account of packing charges and profit margin, the Noticee submits that penalty under Section 114A and 114AA is not imposable on the said undisputed demand.
- P. EXTENDED PEIROD UNDER SECTION 28(4) OF THE CUSTOMS ACT IS NOT INVOKABLE**
- The Noticee has not suppressed any material facts from the Department, but rather, have submitted all the information that was required to be furnished for the export of goods in terms of provisions of the Customs Act and Rules. The Noticee has declared the export duty reimbursement in the “cess” or “other deductions” column in shipping bill. Moreover, as has been explained, the relevant documents such as the sales contract entered into by the Noticee with the buyer clearly mention the condition of the reimbursement of the amount of export duty by the buyer.
 - As regards, the recognition of export duty reimbursement under a different purpose code, the Noticee submits that was realisation of export proceeds, the Noticee submitted the export documents like shipping bill, Invoice and contract. Basis the same, the banks themselves issued BRC for the FOB / CIF value of the goods without considering the export duty reimbursement. Further, the bank themselves selected the purpose code P1306 for remitting the export duty reimbursement to the Noticee.

- Further, the practice followed by the Noticee is based on the industry practice as every assessee who deals in export of rice has not included the export duty reimbursement in the FOB prices declared in shipping bill.
 - In view of the above, it is submitted that to invoke extended period of limitation under Section 28(4) of the Customs Act, it has to be proved that there was a conscious or intentional act of collusion, willful mis-statement or suppression of fact, on the part of the exporter. Merely having exported in self-assessment regime is not enough. The intention or deliberate attempt, on the part of importer, to evade duty has to be proved beyond reasonable doubt to justify invocation of extended period. No such proof had been adduced in the SCN.
- Q.** The statement of Shrawan Kumar Agrawal cannot be relied upon since the same has been taken under threat and duress. Also, the payment made during the course of investigation was not voluntary and is to be treated as deposit which is to be appropriated against the demand On account of excess freight and deduction of packing charges.
- R.** **Since the issue on merits is pending before the Hon'ble Supreme Court in the case of Sesa Goa Ltd. As well as before the Hon'ble Gujarat High Court, the SCN be kept in abeyance till the issue is settled:** The question whether the assessable value of goods is to be considered as cum-duty for computing export duty is pending before the Hon'ble Supreme Court in the case of Sesa Goa Ltd. [2020 (371) ELT A304 (SC)] wherein a Notice has been issued. The Circular dated 10.11.2008 is also pending before the Gujarat High Court and a Notice has been issued to the Respondents. The Noticee submits that since the issue on merits in the Present SCN is the same, it is required that the matter be kept in abeyance and no order is passed till the time the Hon'ble Supreme Court decides the issue.

19. RECORDS OF PERSONAL HEARING

Following the principles of natural justice, opportunities of personal hearing was granted on dated 03.11.2025. Shri Shreyash Agrawal, Advocate and authorized representative of all Noticees, appeared for hearing through virtual mode on 03.11.2025. He submitted and re-iterated their written submissions dated 25.10.2025 (submitted on 03.11.2025) submitted by Shri Shrawan kumar Agrawal (Director of Import firm), Import firm and written submissions dated 25.03.2025 (received on 03.11.2025) submitted by Shri Shubham Kumar Agrawal (Employee of the import firm).

In addition to the submissions on merits, the following submissions were raised:

- 1) The duty demand on Shipping Bill No. 5255270 must be dropped, as the Noticee has already paid duty on the actual consideration received, with no separate recovery of export duty from the overseas buyer.
- 2) Actual Freight paid considered in Table-D of SCN for 21 shipping bills are erroneous and lower by 7,93,714/-
- 3) Some portion of excess freight to the tune of Rs. 4,35,34,039/- pertains to expenses incurred at the customs port in Indian and at the foreign port of destination, which is excluded from transaction value as per Section 14.
- 4) In some Shipping Bills, freight declared in SB is lower than freight actually paid and hence, the same must be adjusted against demand on account of excess freight.

DISCUSSION AND FINDINGS

20. I have carefully gone through the facts of the case, Show Cause Notice and the noticee's submissions filed both, in written and in person advanced during the course of personal hearing. The principles of natural justice, particularly *audi alteram partem*, have been duly complied with by granting adequate opportunity to the noticees to present their defence. Accordingly, I proceed to examine the issues involved in the present case in the light of the available records, statutory provisions, and judicial precedents. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- (i) Whether the declared assessable value of Rs. 90,02,72,569/- the shipments of rice exported vide Shipping Bills detailed in 'Annexure-I, II & III' is liable to be rejected and the same is required to be re-determined at Rs. 1,11,64,30,876/- or otherwise.
- (ii) Whether the differential (export) duty amounting to Rs. 4,32,31,658/- is liable to recovered and demanded under the provisions of Section 28 (4) of the Customs Act, 1962 or otherwise.
- (iii) Whether the interest on the afore-said total differential duty amount of is required to be recovered under the provisions of Section 28AA of the Customs Act, 1962 or otherwise.
- viii. Whether the voluntary deposit of Rs. 1,64,38,554/- made during investigation is liable to be adjusted/appropriated against differential duty liability or otherwise.
- (iv) Whether the subject shipments of rice exported having proposed re-determined assessable value of Rs. 1,11,64,30,876/- are liable for confiscation under the provisions of Section 113 (i) of the Customs Act, 1962 or otherwise.

- (v) Whether the Exporter is liable for penal action under Section 114A and Section 114AA of the customs Act, 1962 or otherwise.
- (vi) Whether Sh. Shrawan Kumar Agarwal and Sh. Shubham Kumar Agarwal are liable for penal action under Section 114 (ii) and Section 114AA of the Customs Act, 1962 or otherwise.

21. I find that the present case revolves around the export of shipments pertaining to commodity namely rice by M/s Shree Rameshwar Lal Foods Pvt. Ltd. The goods exported having descriptions such as 'Indian Brown Rice/ Indian IR 64 Raw Rice/ Indian Parboiled Rice/ Indian Raw White Rice/ Indian Short Grain 5% Broken Rice/ Indian Swarna Raw White Rice/ Indian White Rice/ Rice Common' etc. and the same were classified under Customs Tariff Headings 10062000, 10063010 and 10063090. These shipments were liable to payment of export duty at the rate of 20% *ad valorem*, imposed vide Notification No. 49/2022-Cus., dated 08.09.2022 and continued vide Notification No. 49/2023-Cus., dated 25.08.2023.

22. I find it appropriate to mention here that Section 14 of the Customs Act, 1962, read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007) stipulates that the value of export goods shall be based on the transaction value that is, the actual price paid or payable for the goods when sold for export from India at the time and place of exportation, provided that the buyer and seller are not related and the price is the sole consideration. I noticed that the Central Board of Excise and Customs (CBIC) vide Circular No. 18/2008-Cus., dated 10.11.2008 has clarified that, for assessment of export duty, the transaction value should be taken as the FOB value of the export goods at the time and place of exportation and no abatement of export duty is permissible from this value.

23. I noticed that export duty at the rate of 20% *ad valorem* was imposed on export of rice vide CBIC Notification No. 49/2022-Cus. dated 08.09.2022. Investigation revealed that the exporter used to negotiate a specific price for sale of their export consignment which was received by them from the overseas buyer as 'consideration' for sale of rice. Thus the 'consideration/negotiated price' was 'the actual transaction value' for their export consignment on which the exporter ought to have paid the 20% export duty. I find that the exporter had declared three values in their shipping bills, namely (i) Total Value, (ii) Invoice Value, and (iii) FOB Value. The "Total Value" included the element of export duty and represented the gross consideration negotiated with the overseas buyer. From this Total Value, the exporter deducted an amount equal to the export duty payable, and declared the balance as "Invoice Value". Further, from this Invoice Value, they deducted freight and insurance amounts to arrive at "FOB Value". By this practice, deductions were wrongly claimed.

Therefore, by these modus, they reduced the transaction value on which less export duty was discharged/paid.

24. I find that the Exporter, during the investigation, made voluntary deposit of Rs. 1,64,38,554/- towards part payment of their differential duty liability on account of wrongful claim of deduction amounts in the shipping bills which were on account of reimbursement of export duty, packing charges and profit margin on export of rice. The Exporter, through their written submissions (submitted during hearing dated 03.11.2025) admitted that amounts paid during the course of the investigation may be appropriated towards duty liability arising on account of excess freight declaration and deduction claimed for packing charges / profit margin.

25. I find that the Noticees have not disputed the factual matrix of the case regarding the export details, the amounts claimed as deductions, the separate reimbursements of export duty, and the excess freight declarations. Their defence primarily revolves around interpretational issues regarding Section 14 of the Customs Act, 1962, the applicability of CBIC Circular No. 18/2008-Cus. dated 10.11.2008, and the non-invokability of the extended period under Section 28(4) *ibid*. They have also argued that the voluntary deposit made during investigation should be adjusted, and no penalties should be imposed. I shall address these contentions while discussing the merits of the case.

26.1 The allegation in the SCN is that M/s Shree Rameshwar Lal Foods Private Limited adopted four distinct methods to evade export duty on shipments of rice exports. These methods involved undervaluation by: (i) wrongful deduction of export duty along with additional amounts (packing charges and profit margins) from the transaction value; (ii) claiming deductions for packing charges and profit margins only while separately recovering duty through debit notes; (iii) separately recovering duty without any deductions in shipping bills; and (iv) declaring excess freight amounts. I shall examine each method in light of the evidence on record.

(i) Deduction of export duty amounts (Table A): In respect of 40 shipping bills, the exporter deducted amounts excess to the export duty paid and declared these reduced values as FOB values for export of the goods covered under the subject shipping bills for payment of export duty. During investigation it has been noticed these excess amounts deducted from declared FOB value were in respect of the Packing Charges paid by them for packing of the export goods and their profit margin on the sale of the goods. The said deducted amount were subsequently recovered from the overseas buyers through debit notes and credited into the exporter's bank account. The recovery of these amounts has been admitted by the exporter in their statements recorded during the investigation under Section 108 of the Customs Act, 1962.

(ii) Deduction of packaging charges and profit margin, recovery of export duty from buyers through separate debit notes/separate invoices (Table B):

In respect of 27 shipping bills under Table B, exporter has claimed the amount of Packaging charges and Profit margin only. I find that the said deducted amounts were subsequently recovered from the overseas buyers and credited into the exporter's bank account. The exporter had also recovered duty paid amount separately in respect of these 27 shipping bills through separate debit notes/separate invoices and the said duty amount was not shown in deduction in the shipping bills. The recovery of these amounts has been admitted by the exporter in their statements recorded during the investigation under Section 108 of the Customs Act, 1962.

(iii) Reimbursement of export duty without declaration (Table C): In 59 shipping bills, the exporter did not show any deduction in the shipping bills but on the other hand raised separate debit notes upon overseas buyers and recovered the export duty paid at the time of export. These recoveries were made through banking channels but were mis-declared under RBI Purpose Code P1306, which is meant for "refund of taxes" under the "Transfers" group and not for export proceeds. Consequently, these amounts did not appear in the Bank Realisation Certificates (BRCs). Thus, while the exporter received the negotiated consideration including duty element, the portion recovered separately was suppressed from Customs at the time of assessment.

(iv) Declaration of excess freight (Table D): I find that the exporter declared freight amounts higher than the actual freight paid to shipping lines/freight forwarders. I noticed that only actual freight paid is eligible for deduction from CIF/CF values to calculate FOB value. By inflating freight charges, the exporter claimed excess deductions and thereby reduced FOB values. The difference was retained by the exporter, being part of the consideration recovered from the buyer, but was not disclosed in the declared FOB value.

26.2 I find that in all four categories of shipments, the exporter had negotiated and finalized a composite price with overseas buyers. However, instead of declaring the entire agreed consideration as transaction value, the exporter artificially bifurcated the same into "price of goods" and "duty element" or inflated freight deductions. These bifurcations are not allowed under Section 14 of the Customs Act, 1962. The statute mandate to include all amounts which the buyer is required to pay to the seller as a condition of sale. The amounts separately recovered through debit notes or retained through inflated freight clearly forms part of the "price actually paid or payable".

27. I find that export duty is a statutory levy and therefore form part of transaction value. In the present case the exporter has not borne the incidence of duty but the duty amounts were recovered by the exporter from the buyers as part of sale consideration. Hence, these recovered amounts must be included

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

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

27.1 I observed that the Noticees in their submissions claimed that the phrase "for delivery at the time and place of exportation" means the delivery at the Customs Station and not delivery on board of the vessel. Consequently, the expenses incurred at the port would not be included in the transaction value as the same is incurred beyond the place of exportation. The noticee have sought

to interpret the expression “for delivery at the time and place of exportation” under Section 14 of the Customs Act, 1962 to mean delivery at the Customs Station, and not delivery on board the foreign-going vessel.

With respect to this argument, as discussed above, I find that Section 14 clearly states that the value of export goods shall be the price actually paid or payable “for delivery at the time and place of exportation,” and CBIC Circular No. 18/2008-Cus., dated 10.11.2008 has also clarified that the relevant value for duty payment is the FOB price. In the case of exports, delivery is deemed complete only when the goods are loaded on board the vessel after receiving clearance from Customs. The argument that delivery should be limited to the Customs Station appears to be illogical in view of the definition of export provided under the Customs Act, 1962 which stated that “*export with its grammatical variation and cognate expressions, means taking out of India to a place outside India*”. Further, the definition of “export goods” means any goods which are to be taken out of India to a place outside India. Thus, the claim of the exporter is not tenable. The reliance on *Prabhat Cotton and Silk Mills, Siddachalam Exports*, import valuation rules, WTO commentaries, or foreign statutes is misplaced as export valuation under Indian law is a self-contained code. Further, the claim of noticee that reimbursement of duty is not part of “price actually paid or payable” is incorrect, as the exporter admittedly raised debit notes and credited such amounts to its own bank accounts for availing direct benefit. There is no doubt that once recovery of export duty from the buyer is a condition of sale, such amounts automatically becomes a part of the transaction value under Section 14. Accordingly, Noticee’s submissions are devoid of any merit to this points.

27.2 I also noticed that Noticee claimed that real meaning of clarification provided under CBEC Circular No. 18/2008-Cus. dated 10.11.2008 is that the transaction value of export goods is exclusive of the reimbursement of export duty received from the foreign buyer.

In response to the point, I noticed that the Circular was issued to clarify that w.e.f 01.01.2009 export duty is leviable on the FOB price at the time and place of exportation, and that the earlier practice of treating FOB as a cum-duty price was no longer acceptable. I think the noticee is trying to interpret the Circular as per their convenient by excluding reimbursement of export duty from the FOB value. It is evident that export duty amounts/package charges/profit margins etc. were separately recovered from overseas buyers, hence, these amounts automatically become part of the “price actually paid or payable” and without any doubt will be included in the assessable value under Section 14 of the Customs Act, 1962.

28. MODUS OF DUTY EVASION: I find it necessary to examine in detail the specific methods adopted by the exporter for undervaluation and recovery of

amount from foreign buyers. The following discussion examines each modus operandi separately, with a view to establishing whether the charges proposed in the show cause notice against the noticees are sustainable.

28.1.1 I find that **in respect of the 40 Shipping Bills** as mentioned in Table-A, M/s Shree Rameshwar Lal Foods Limited, had wrongly claimed excess deductions amount (duty + packing of the export goods and their profit margin) at the time of export. I noticed that the deduction amounts of Rs. 6,73,63,451/- were claimed in the said Shipping Bills. The export duty paid by them in respect of these 40 S/Bs was Rs. 4,07,12,774/-. Thus, exporter had claimed excess/additional amount of Rs. 2,66,50,677/- from duty paid amounts. Investigation revealed as well as the exporter admitted that these excess deduction amounts were in respect of the Packing Charges paid by them for packing of the export goods and their profit margin on the sale of the goods, which were claimed by them from the foreign buyer. I find that all these packing charges, profit margin and export duty amounts which were claimed as deduction amounts in the shipping bills by the exporter were recovered by the exporter from the overseas buyer in their bank accounts. Thus, there is no doubt that the said recovered amount was also the part of consideration received by the exporter for sale of their goods. This fact clearly indicate that the exporter deliberately reduced the declared FOB Value by the duty component and therefore, mis-declared the transaction value for the purpose of assessment.

28.1.2 I find that the exporter in the export invoices and shipping bills had claimed Packing Charges, their profit margin on the sale of the goods and duty paid amounts separately in the invoices. They did not include these amounts in the total invoice value or the FOB value declared before the Customs Authority. On the contrary, they showed these as deductions under the head "Deduct/Deduction" in the shipping bills. By doing these act, the exporter had suppressed the actual consideration received from the overseas buyers and presented an artificially reduced FOB Value to the Customs authorities at the time of export.

28.1.3 I find that the exporter during the investigation period has also admitted in their statements recorded under Section 108 of the Customs Act, 1962, that these deducted amounts were in fact recovered from the overseas buyers. Such recovery was made through raising separate debit notes/invoices, and the said amounts were duly realized in the bank accounts of the exporter. However, these receipts were not reflected in BRCs. Thus, the fact were never discovered that the declared invoice value was not the sole amount received by the exporter from the foreign buyer. These acts show a deliberate attempt by the exporter to suppress facts and make false statements.

28.1.4 I have also examined the Shipping Bill No. 59020492 dated 01-04-2023 and noticed that the deduction amounts were equal to the packaging charges, profit margin and export duty amount. I find that the deduction claimed in the Shipping Bill is more than the export duty amount. These excess amount was recovered by the exporter from the overseas buyer as reimbursement of taxes, packaging charges and profit margin. I noticed that the exporter have declared total invoice value USD 84864 ((i.e. FOB Value of USD 64064 + Freight amount of USD 2400 + Other Charge of USD 18400) in the subject shipment, however, in the shipping bill column invoice amount was declared as at USD 66464 only (which is lesser by USD 18400 from the total invoice value of USD 84864). The said differential figure was mentioned by the exporter under the heading 'deductions'. This deducted amount was equal to the export duty paid amount of 12812.8 USD (Cess amount in Rs. 105009, exchange rate is Rs. 81.95/USD) and packaging charges & profit margin of 5,587.2 USD. I find that the exporter deducted this amount from the actual transaction value however received the same from the overseas buyer as part of the sale proceeds. This method adopted by the exporter proves an organized and thoughtful modus operandi of undervaluation. By treating the actual FOB Value as a cum-duty price and deducting the duty amount, the exporter attempted to take an abatement of duty which is not permissible to them in subject 40 shipping bills. The conduct of the exporter is therefore not only contrary to law but also deliberate in nature.

28.1.5 I find that as per Section 14 of the Customs Act, 1962, the transaction value is defined as the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation. Export duty is leviable on such transaction value, which includes all consideration received by the exporter from the overseas buyer. When the exporter recovers the export duty amount separately from the buyer through debit notes, that recovery becomes part of the sale consideration. Excluding such amounts from the declared FOB Value is contrary to Section 14 of the Custosm Act, 1962 read with Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

28.1.6 In view of the above, I hold that the declared FOB Value in respect of the 40 shipping bills covered under Table-A is liable for rejection under Rule 8 of the CVR(E), 2007. The actual transaction value has to be re-determined by including the deduction amounts wrongly excluded by the exporter.

28.2.1 I also find that **in respect of the 27 Shipping Bills** mentioned under Table-B, M/s. Shree Rameshwar Lal Foods Pvt Limited, had wrongly claimed the deduction of total amounts of Rs. 1,25,63,999/- (packing of the export goods and profit margin only) at the time of export. Exporter claimed that the they have received only Rs. 1,23,41,094/- from the buyer towards packaging charges and profit margin. Investigation revealed that the balance

amount of Rs. 2,22,905/- though have not been paid by the overseas buyer to the exporter, was still payable to the exporter in respect of these 27 shipments.

On the other hand, I also find that the exporter has paid total duty of Rs. 2,68,93,218/- in respect of these 27 Shipping Bills, however, an amount of Rs. 2,62,60,969/- was received from the overseas buyer as reimbursement of taxes by way of raising separate debit notes/invoices under different RBI accounting code for receipt of taxes (P1306). Shri Shubham Agarwal (Employee of the export firm) also confirmed this fact of recovery of duty amount under wrong RBI purpose code. Thus, the balance duty amount of Rs. 6,32,250/- was still payable by the buyer to the exporter. In view of the same, I have no doubt that the total duty amount of Rs. 2,68,93,218/- claimed by the exporter from the buyer is liable to be included in their declared transaction value.

Accordingly, I hold that all these deduction amounts of Rs. 1,25,63,999/- (on account of packaging charges & profit margin) as well reimbursement of export duty paid amounts of Rs. 2,68,93,218/- are liable to be included in the transaction value of the exported goods in respect to these 27 shipping bills. Thus, exporter is liable to pay duty on the total amounts of Rs. 3,94,57,217/-.

28.2.2 I have also examined the Shipping Bill No. 9750759 dated 04.05.2023 and noticed that the exporter had claimed deduction of USD 1950 in the Invoice as well the Shipping Bill on account of packaging charges & profit margin. It had been revealed by the exporter during investigation that they had recovered an amount of USD 1892 out of total deduction amount of USD 1950. These deducted amount (packaging charges & profit margin) were recovered by the exporter from the overseas buyer through BRC and Duty amount also recovered as reimbursement of export duty in their bank account

I noticed that the exporter have declared total invoice value USD 46410 in the subject shipment, however, in the shipping bill column invoice amount was declared as at USD 44460 only (which is lesser by USD 1950 from the total invoice value of USD 46410). The said differential figure was mentioned by the exporter under the heading 'deductions'.

28.2.3 This deducted amount was claimed by the exporter as packing cost and profit margin. I find that the exporter deducted this amount from the actual transaction value however received the same from the overseas buyer through BRC as part of the sale proceeds. Further, the exporter have also recovered export duty amount as reimbursement from the foreign buyer. This method adopted by the exporter proves an organized and thoughtful modus operandi of undervaluation. By claiming the said packing cost and profit margin as deductions and also recovery of duty paid amount separately from the foreign buyer, the exporter fraudulently took an abatement of duty which is not permissible to them in subject 27 shipping bills. The conduct of the exporter demonstrate their deliberate acts of duty evasions.

28.2.4 In view of the above, I hold that the declared FOB Value in respect of the 27 shipping bills (25 of Mundra Port and 02 of Nhava Sheva Port) covered under Table-B is liable for rejection under Rule 8 of the CVR(E), 2007. The actual transaction value has to be re-determined by including the deduction amounts wrongly excluded by the exporter.

28.3.1 From the investigation, it has been revealed that the exporter **in respect of 59 shipments** did not show any deduction of export duty under the head "Deduct/Deduction" at the time of filing of shipping bills, however, they had adopted another type of modus operandi of undervaluation wherein they recovered the export duty separately from overseas buyers by raising debit notes. Exporter during investigation revealed that they had already recovered the duty amount of Rs. 6,71,86,813/- against total duty paid amount of Rs. 7,03,44,710/-.

28.3.2 I find that after discharging export duty at the time of Let Export Order, M/s Shree Rameshwar Lal Foods Pvt Limited raised separate debit notes on overseas buyers for reimbursement of duty. These debit notes were not occasional documents but were issued in a systematic manner for each consignment. These recoveries were made through separate debit notes raised on the foreign buyers and duly credited in the bank accounts of the exporter. From these facts before me, I have no doubt that the exporter imposed a condition that unless the overseas buyer reimbursed the duty element, the goods would not be released. Hence, these debit note recoveries are part of the "price actually paid or payable" for the export goods within the meaning of Section 14 of the Customs Act, 1962.

28.3.3 I find that in respect of Shipping Bill No. 2517335 dated 17-07-2023), the exporter has received amount of Rs. 3,30,767/- which is equivalent to the total duty amount paid by the exporter at the time of export. It important to mention here that that said recovered amount was over and above the declared invoice value amount.

Further, in respect of 58 Shipping Bills, investigation revealed that exporter had received total amount of Rs. 6,68,56,046/- which was lesser by Rs. 31,57,897/-) than the total export duty paid (Rs. 7,00,13,943/-). Investigation revealed that the lesser paid amount was still payable by the buyer to the exporter. Exporter also failed to provide any documentary evidence in support of any claim that the said lesser amount was not recovered. Thus, I find that that duty amount claimed by the exporter from the buyer is liable to be included in their declared transaction value.


28.3.4 I noticed that these receipts were not declared in the export invoices submitted to Customs. The invoices show only the reduced price of goods wherein export duty component was excluded. The fact regarding collection of that additional amounts equal to export duty from the buyers was not disclosed before the customs authority at the time of export. This omission

indicates suppression of critical information regarding the value of the export goods.

28.3.5 I find that in the case of Shipping Bill No. 1480370 dated 02.06.2023, although no deduction was claimed in the shipping bill by the exporter, however, as per the details submitted by the exporter during investigation, an amount of 7,80,194/- (USD 9550) from the overseas buyer was separately recovered. This recovery amount was less than the export duty amount (Rs. 7,85,954/-) in the subject shipping bill. The said duty paid amount was recovered over and above the declared invoice value. I find that the said amount was never disclosed either in the shipping bill or in the invoice however the same amount was realized in the exporter's bank account through debit notes/separate invoice. This reflects a deliberate intent of the exporter to misdeclare the FOB value of export shipments.


28.3.6 Investigation revealed that the exporter M/s. Shree Rameshwar Lal Foods Pvt Ltd. raised separate/different Invoices to the overseas suppliers by mentioning duty amount separately and these amount were later recovered by the exporter from the foreign supplier. Illustrative photos of the invoices submitted before the Customs authority and separate invoices submitted to overseas suppliers are reproduced here for sake of clarity in the subject matter:

Copy of Invoice No. SRF/23-24/E-0069 dated 29.05.2023 submitted to the customs:

INVOICE CUM PACKING LIST															
Exporter SHREE RAMESHWAR LAL FOODS PRIVATE LIMITED BHINGA ROAD,,KALPIPARA BAHRAICH, UTTAR PRADESH INDIA			INVOICE No. & DATE SRF/23-24/E-0089 DATE:29.05.2023 Contract No. & Date SRF/2023-2024/SV/146 DATE:23.05.2023 PROFORMA INVOICE No & Date SRF/2023-2024/1048 DATE:23.05.2023		Exporters Ref. IEC : 0605003301										
Consignee 21 st Century B&R Trade expertise and investment company limited ADDRESS: NO.49,2A STREET, BINH HUNG HOA B WARD,BINH TAN DISTRICT,HO CHI MINH CITY,VIETNAM TAX ID: 0315283866			NOTIFY PARTY 21 st Century B&R Trade expertise and investment company limited ADDRESS: NO.49,2A STREET, BINH HUNG HOA B WARD,BINH TAN DISTRICT,HO CHI MINH CITY,VIETNAM TAX ID: 0315283866												
Pre-carriage by		Place of receipt by													
BY TRUCK		KOLKATA,INDIA													
Vessel/Flight No.		PORT OF LOADING													
		KOLKATA,INDIA													
Port of Discharge		Final Destination													
HO CHI MINH,VIETNAM		HO CHI MINH,VIETNAM													
Terms of Delivery and Payment by TT 5941 Advance as deposit within 3 working days. Remaining balance by DP. CFR, HO CHI MINH , VIETNAM															
HSN CODE	Marks & NOS OF CONT	Description of Goods			Quantity MT	Rate USD (PMT)	Amount USD								
10063090	05x20'	INDIAN SWARNA RAW WHITE RICE			130.000	383.00 PER MT	49790.00								
BROKER'S COMISSION : USD 5 PER METRIC TON (TOTAL 130*5 = USD 650)		2600 NEW WHITE PP BAGS OF 50KG NET				CFR, HO CHI MINH, VIETNAM									
		TOTAL NO. OF BAGS : 2600 BAGS PACKING : 50 KG NET TOTAL NET WEIGHT : 130.000 MT TOTAL GROSS WEIGHT : 130.312 MT													
		<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 2px;">PARTICULARS</th> <th style="text-align: right; padding: 2px;">AMOUNT (USD)</th> </tr> </thead> <tbody> <tr> <td style="padding: 2px;">FOB</td> <td style="text-align: right; padding: 2px;">48100.00</td> </tr> <tr> <td style="padding: 2px;">FREIGHT</td> <td style="text-align: right; padding: 2px;">1690.00</td> </tr> <tr> <td style="padding: 2px;">TOTAL</td> <td style="text-align: right; padding: 2px;">49790.00</td> </tr> </tbody> </table>			PARTICULARS	AMOUNT (USD)	FOB	48100.00	FREIGHT	1690.00	TOTAL	49790.00			
PARTICULARS	AMOUNT (USD)														
FOB	48100.00														
FREIGHT	1690.00														
TOTAL	49790.00														
Amount Chargeable						TOTAL	49,790.00								
(In words USD) FORTY NINE THOUSAND SEVEN HUNDRED NINTY U.S DOLLAR WE HEREBY CERTIFY THAT THE GOODS ARE OF INDIAN ORIGIN															
Bank Details for TT /Payable to INDIAN BANK Account Name: SHREE RAMESHWAR LAL FOODS PVT. LTD. SALARPUR BRANCH, BAHRAICH-INDIA A/C NO: 21215447187 IFSC : IDIB000S542 Swift Code:IDIBINBBMAS Nostro bank:CITIUS33															
Declaration We declare that this invoice shows the actual price of the goods described and that the particulars are true and correct															
For SHREE RAMESHWAR LAL FOODS PVT LTD  Authorised Signatory															

Separate Invoice No. SRF/23-24/E-0069 dated 29.05.2023 submitted to the overseas buyer

GSTIN : 07AANCS3697P1Z9		All Subject to Delhi jurisdiction		Mob. : 9005382900 8009688808	
Shree Rameshwar Lal Foods Pvt. Ltd.					
MANUFACTURER OF PARBOILED, STEAM & RAW RICE E-mail : sribahraich@gmail.com, Website : srlfoods.com				1730, 2nd Floor, Room No 204 Nai Basti, Naya Bazar, Delhi-6 H. Off. : Bhinga Road, Kalpipara Bahraich-271801 (U.P.) GSTIN : 09AANCS3697P1Z5	
Ref.				Dated.	

COMMERCIAL INVOICE					
Exporter SHREE RAMESHWAR LAL FOODS PRIVATE LIMITED BHINGA ROAD,,KALPIPARA BAHRAICH, UTTAR PRADESH INDIA		INVOICE No. & DATE SRF/23-24/E-0069 DATE:29.05.2023 Contract No. & Date SRF/2023-2024/SV/146 DATE:23.05.2023 PROFORMA INVOICE No & Date SRF/2023-2024/1048 DATE:23.05.2023		Exporters Ref. IEC : 0605003301	
Consignee 21 st Century B&R Trade expertise and investment company limited ADDRESS: NO.49,2A STREET, BINH HUNG HOA B WARD,BINH TAN DISTRICT,HO CHI MINH CITY,VIETNAM TAX ID: 0315283866		NOTIFY PARTY 21 st Century B&R Trade expertise and investment company limited ADDRESS: NO.49,2A STREET, BINH HUNG HOA B WARD,BINH TAN DISTRICT,HO CHI MINH CITY,VIETNAM TAX ID: 0315283866			
Pre-carriage by		Place of receipt by KOLKATA,INDIA		Terms of Delivery and Payment	
Vessel/Flight No. MCP LINZ 017		PORT OF LOADING KOLKATA,INDIA		by TT 2070.50USD Advance as deposit within 3 working days. Remaining balance by DP.	
Port of Discharge HO CHI MINH,VIETNAM		Final Destination HO CHI MINH,VIETNAM		CFR, HO CHI MINH , VIETNAM	
HSN CODE 10063090	Marks & NOS OF CONT 05x20'	Description of Goods INDIAN SWARNA RAW WHITE RICE 2600 NEW WHITE PP BAGS OF 50KG NET		Quantity MT 130.000	Rate USD (PMT) 457.00 PER MT
B/L NO.COAU7244341330 DATE: 05.06.2023		TOTAL NO. OF BAGS : 2600 BAGS PACKING : 50 KG NET TOTAL NET WEIGHT : 130.000 MT TOTAL GROSS WEIGHT : 130.312 MT		CFR, HO CHI MINH, VIETNAM Less: Advance payment 2970.50	
SHIPPING BILL NO: 1480370 DATE: 02.06.2023		PARTICULARS SHIPPING INVOICE VALUE CESS AMOUNT TOTAL		AMOUNT (USD) 49790.00 9620.00 59410.00	
Purpose code S1306 Cess					
Amount Chargeable				TOTAL 56,439.50	
(In words USD) U.S. DOLLARS FIFTY SIX THOUSAND FOUR HUNDRED THIRTY NINE & FIFTY CENTS WE HEREBY CERTIFY THAT THE GOODS ARE OF INDIAN ORIGIN					
Bank Details for TT /Payable to INDIAN BANK Account Name: SHREE RAMESHWAR LAL FOODS PVT. LTD. SALARPUR BRANCH, BAHRAICH-INDIA A/C NO: 21215447187 IFSC : IDIB0005542 Swift Code:IDIBINBBMAS Nostro bank:CITIUS33 Declaration We declare that this invoice shows the actual price of the goods described and that the particulars are true and correct		For SHREE RAMESHWAR LAL FOODS PVT LTD  Authorised Signatory			

28.3.7 I also observed that the method of routing these receipts also reveals deliberate suppression. I find that the exporter remitted these amounts through banking channels under RBI Purpose Code P1306, which is meant for “refund of taxes” and falls under the category “Transfers”. It is evident from

RBI's notified categorization that this purpose code pertains to transactions of a personal nature such as personal gifts, donations, or family maintenance and the said code is not meant for payment related to export of goods. By misusing this purpose code, the exporter misrepresented the nature of receipts to the banking authorities. The Customs authorities also at the port of export remained unaware of the full consideration agreed between the exporter and overseas buyers. This practice of declaring 'nil' deduction in the shipping bills, recovering duty amounts through debit notes, routing them under an incorrect RBI purpose code, and keeping them out of the BRCs, clearly shows a deliberate attempt by the exporter to undervalue the goods for evasion of legitimate Customs duty. I noticed that the total recoveries made through this method adopted by the Noticee match the export duty amount. Thus, it is evident that the exporter never intended to bear the duty cost themselves and they shifted the burden on the foreign buyer by recovering it as part of the sale value.

28.3.8 As discussed earlier, Section 14 of the Customs Act, 1962 mandates that the transaction value of export goods shall be the price actually paid or payable when sold for export for delivery at the time and place of exportation. The recovery of amounts equal to export duty from the buyers was not optional but a precondition to sale and delivery of the goods. Unless the overseas buyers paid these sums (in addition to the declared invoice price), the exporter would not have effected the sale. Hence, such recoveries clearly form part of the consideration payable for the goods and are necessarily includible in the FOB Value. I find that by doing these acts of not including these amounts in the declared FOB Value, the exporter not only violated the statutory requirement under Section 14 but also contravened CBIC Circular No. 18/2008-Cus. dated 10.11.2008 which clearly provide guidance that no abatement of export duty is permissible and that duty is leviable on the transaction value, i.e. the FOB price. The deliberate suppression of such amounts through debit notes, mis-use of RBI purpose codes, and non-reflection in BRCs, all establish the fact of mindful and wilful intent of the exporter to evade payment of duty. Thus, the values declared in respect of these 58 shipping bills (33 from Kolkata Port, 24 from INVTZ1 port & 01 from Mundra Port) under Table-C are liable to rejection under Rule 8 of the CVR(E), 2007. The actual transaction value has to be re-determined by including the duty amounts paid which either recovered or sought to be recovered by the exporter from the buyers.

28.3.9I have mentioned here the number of shipping bills as 58 instead of proposed shipping bills 59 in the SCN. I will discuss and clarify this point under the upcoming paragraphs of duty calculation. This portion is related to modus adopted by the exporter only.

28.4.1 I find that **in respect of the 156 shipping bills** covered under Table-D, M/s Shree Rameshwar Lal Foods Pvt Limited declared inflated amounts of ocean freight in their shipping bills as compared to the actual freight paid to the freight forwarders/shipping lines. The total excess freight declared across these shipments has been calculated at Rs. 3,89,92,929/-. By adopting this method, the exporter artificially reduced the assessable FOB value declared before Customs and thereby resulting in short-payment of export duty.

28.4.2 From the investigation, it is evident that the excess freight amounts were not borne by the exporter and the same were actually recovered from their overseas buyers as part of the total consideration for the consignments. The exporter inflated freight amount in the shipping bills which reduced the FOB values declared before the Customs. However, the exporter collected the full payment from their overseas buyers. The discrepancy between declared freight and actual freight paid was also accepted by the exporter during the investigation period by submitting the details of shipments.

28.4.3 For example, in the Shipping Bill No. 9713170 dated 02.05.2023, the exporter declared freight of USD 2600, which is equivalent to 2,11,640 (approx.) (taking exchange rate Rs. 81.4 per USD). However, records produced during investigation by the exporter vide letter dated 30.11.2023 showed that the actual freight paid to the shipping line was only Rs. 61,025/-. The excess freight, declared of Rs. 1,50,615/- was deducted from the CIF value, reduced the FOB value declared before the customs at the time of export. I find that this excess freight was also recovered from the overseas buyer but was not included in the amount for duty assessment at the time of export. This instance demonstrates the method adopted by the exporter for all shipments covered under Table-D.

28.4.4 I find that in CIF contracts, deductions can only be made for actual freight and insurance incurred by the exporter. Any excess freight declared over and above the actual cost is not a deductible expense but represents part of the consideration payable by the buyer to the seller, and therefore forms part of the FOB value. By declaring inflated freight in the shipping bills, the exporter contravened the statutory arrangement for suppression of the true transaction value to evade the payment of legitimate export duty.

28.4.5 In view of the above, I hold that the FOB values declared in respect of the 156 shipping bills covered under Table-D are liable to rejection under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and the values have to be re-determined by adding the excess freight amounts to the declared FOB values under the provisions of Section 14 of the Customs Act, 1962.

28.5 I noticed that the Noticee claimed under their written submissions that the demand of export duty on excess freight is incorrect and not sustainable. They claimed that actual freight was not known at the time of filing of shipping bills and that freight was declared on the basis of estimate or market volatility/ and that some portion of freight pertains to expenses incurred at the Customs Port which cannot be forming part of the value of FOB value.

With respect to this contention, I find that Section 14 of the Customs Act, 1962, read with Rule 2(1)(b) of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, mandates that the transaction value shall be the price actually paid or payable for delivery of the goods at the time and place of exportation. I have already discussed the issue that the noticee in respect of subject shipments not only declared inflated freight amounts in the shipping bills but also recovered those inflated amounts from the overseas buyers. Although the actual freight borne by them was significantly lower. The contention that freight rates were volatile and fluctuating in the relevant period does not absolve the noticees from their responsibility to declare correct and true values before Customs as mandated under Section 17 of the Customs Act, 1962. There is no doubt that exporter was fully aware of the actual freight paid however declared higher freight in the shipping bills and invoices submitted at the time of export. The contention of the noticee that some portion of excess freight pertains to expenses incurred at the Customs Port is also not acceptable, since each shipping bill is an independent assessment and duty liability has to be determined shipment-wise and expenses at port (in case borne by the exporter) cannot be excluded from the transaction value. The contention that “profit earned on freight” is outside the scope of assessable value is also misunderstood by the noticee. The judicial precedents relied upon by the noticees, such as *Indian Oxygen Ltd.*, *Baroda Electric Meters Ltd.*, etc. are pertain to central excise valuation of goods at the point of removal where transportation charge was in dispute which was occurred beyond the factory gate. I find that those ratios are not applicable to the present case of export valuation which includes all consideration received from the overseas buyer. Excise duty is a levy on manufacture whereas the export duty is chargeable on the transaction value of goods at the time and place of exportation. Any amount collected over and above actual freight is not a separate gain from transport but a part of the sale proceeds and without any doubt is a part of the transaction value. Thus, the differential duty on excess freight has been correctly computed in the Show Cause Notice and the same is being rightly confirmed.

28.6 I find it appropriate to discuss the defence submission made by the noticee which are related to the points discussed above.

A. The Noticee submitted that the principle of “cum-duty valuation” applies across all indirect tax laws and that the FOB values of exported goods should be treated as inclusive of export duty for the purposes of Section 14 of the

Customs Act, 1962. Noticee have placed reliance on the provisions of Central Excise Act, the Finance Act (Service Tax), and the CGST Act.

With respect to this claim, I find that the provisions of the Central Excise Act, the Finance Act (Service Tax), and the CGST Act do not apply to the present case, as these provisions are not related to the section 14 of the Customs for the purpose of ascertaining the value of the goods for levy of export duty. Section 14 of the Customs Act, 1962 mandates that the value of export goods shall be “the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.” Thus, the reliance placed by the noticees on other statutory provisions are irrelevant. In the similar line, case laws cited by the Noticee are irrelevant as the facts of those case does not found to be applicable in the present case.

B. Noticee also claimed that it is an internationally accepted practice to exclude duties and taxes paid on export from the assessable value of the goods.

With respect to this claim, I state that Section 14 of the Customs Act, 1962 is a self-contained provision for the valuation of export goods in India. The section does not provide any exclusion for export duties as claimed by the exporter in the present case by adoption modus of reimbursement of duty amount from foreign buyers. The reliance placed on the Regulations of the People’s Republic of China and similar foreign provisions is inappropriate. The reliance place on Article 51 of the Constitution and cases *Jolly George Vargheese* and *Jeeja Ghosh* does not provide any relief to Noticee, as the same are not applicable to the present case. The facts of the present case of M/s Shree Rameshwar Lal Foods Pvt Ltd are totally different and related to duty evasion which is a legitimate government tax. I think any rule or regulation doe not provide facility to any person for evading legitimate government taxes in the form of Customs Duties. Accordingly, I find no merits in the exporter's contentions related to this point.

C. Noticee argued that CBEC Circular No. 18/2008-Cus. dated 10.11.2008 cannot be relied upon to propose the instant demand. I find that the demand in the present case is squarely based on Section 14 read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, which clearly mandate to include all amounts actually paid or payable by the buyer to the seller as part of the transaction value. The Circular is clarificatory and does not create a new levy; it only state that post 01.01.2009 FOB cannot be treated as cum-duty. Reliance on Ratan Melting and other cases is inappropriate since the demand in the present case is valid under the provisions of the Customs Act, 1962.

D. The Noticees have contended that a portion of the alleged “excess freight,” amounting to Rs. 4,35,34,039/-, represents expenses incurred at the customs

port in India and at the foreign port of destination , and therefore, the same are not liable to be included in the transaction value under Section 14 of the Customs Act, 1962.

However, I observe that the shipping bills clearly reflect a single consolidated figure under the heading "Freight." The exporter intentionally declared an inflated freight amount to reduce the declared FOB value. It is evident that this method was deliberately adopted. The Noticees cannot now be allowed to claim that a part of the very same freight amount pertains to non-ocean freight expenses. Such splitting of their own declaration is not permissible. Even if it were to be assumed (without accepting) that a portion of the declared freight included Indian port or destination charges, the fact remains that the exporter collected the entire declared freight amount from the overseas buyer. Any amount recovered from the buyer beyond the actual ocean freight paid constitutes additional consideration received for the exported goods. It makes no difference whether the exporter call this excess as "profit," "handling charges," "destination charges," or "excess freight." Once the buyer pays an amount as a condition for the sale or delivery of goods, that payment becomes part of the "price actually paid or payable" as defined under Section 14(1) of the Customs Act, 1962. The phrase "for delivery at the time and place of exportation" means the FOB value i.e., the price covering all costs and charges upto the point the goods are loaded on board the vessel after customs clearance. Export valuation has no such proviso for deduction of Indian port charges or destination charges when those amounts have been recovered from the buyer as part of the sale price. During the investigation, when the Noticees were specifically asked to provide details of the actual freight paid to shipping lines or freight forwarders, the figures submitted were significantly lower than the freight amounts declared in the shipping bills. It is also pertinent that this argument was raised only after the issuance of the Show Cause Notice quantifying the duty evasion, which clearly indicates that the plea is an afterthought. In view of the above, I find that the entire "excess freight" amount recovered from the overseas buyers forms an integral part of the transaction value under Section 14(1) of the Customs Act, 1962. Accordingly, the same is fully liable to be included in the assessable value.

29. From the above, it is evident that M/s Shree Rameshwar Lal Foods Pvt Ltd. undervalued their rice export consignments by using above discussed different methods. For the 40 shipping bills listed in Table-A, the exporter wrongly deducted excess amount which were more than duty amounts in the shipping bills. These amounts were separately collected from overseas buyers through debit notes but not included in the declared FOB values. For 27 Shipping Bills under Table-B, the exporter wrongly claimed amount under "deduction" heading by claiming packaging charges and profit margin only. Further, in the said 27 shipping bills they have recovered duty amount from buyers by raising debit notes/separate invoices. The amount were received

under wrong RBI purpose codes. For the 58 shipping bills in Table-C, though no deductions were shown in the shipping bills, the exporter collected duty amounts separately from buyers through debit notes and misused the RBI purpose code P1306 to route these payments. In the case of the 156 shipping bills under Table-D, the exporter knowingly declared inflated freight charges in the shipping bills but actually paid much lower freight costs to shipping lines. This manipulation lowered the declared FOB values, while the excess freight amount was recovered from overseas buyers as part of the sale price. Thus, I find that the exporter had concealed the true transaction values from the customs authority at the time of export. The combined impact of these practices was that the FOB values shown to Customs did not reflect the actual transaction values as required under Section 14 of the Customs Act, 1962. In all four categories of shipments, amounts that were an integral part of the payment received from overseas buyers were deliberately excluded from the declared values. Thus, the omission and commission on the part of the exporter leads suppression of the facts and short-payment of export duty. Therefore, I hold that the FOB values declared in respect of the subject shipping bills is liable to be rejected under Rule 8 of the CVR(E), 2007. The correct transaction values are to be re-determined under the provisions of Section 14 of the Customs Act, 1962.

30. STATEMENTS RECORDED DURING THE INVESTIGATION: I find that Sh. Shubham Agarwal (Employee of M/s Shree Rameshwar Lal Foods Private Limited), and his father Shri Shrawan Kumar Agarwal, is the main person who looked after all the work of the said company. I find that he is the key person who also looked after the work related to accounts, procurements, manufacturing, exports and finances etc. Thus, the statements tendered by him and his father Shri KShrawan Kumar Agarwal, are the key evidences for confirmation of charges in the subject case and provide backings to the charges levelled against the exporter.

30.1 I find that Sh. Shubham Agarwal during his statement dated 17.11.2023 and Shri Shrawan Kumar Agarwal (Director, M/s Shree Rameshwar Lal Foods Private Limited) during his statement dated 30.11.2025 admitted that they were handling all work related to the rice exports.

Shri Shrawan Kumar Agarwal (Director, M/s Shree Rameshwar Lal Foods Private Limited) admitted that they have claimed deduction amount in the shipments of rice exports. He further admitted that they have paid the duty on cum duty FOB value instead of the actual FOB value of the export goods. He although claimed that this act was done on the directions of other persons but not provided any whereabouts. Thus, this contention appears to be nothing but just a trick to display themselves innocent.

Sh. Shubham Agarwal during his statement dated 14.11.2024 admitted that they have claimed deduction in the shipping bills which included the export duty paid amount as well as packaging charges & profit margin. He also referred SB No. 9020492 dated 01.04.2023 wherein they claimed the said deductions. He admitted that they have also claimed deduction amount equal to the export duty paid along with the packaging charges & profit margin and the total deduction amount claimed in respect of such 40 S/Bs was Rs. 6.73 Cr. (approx). In his statement he agreed that they have only provided the export invoice to foreign buyer wherein the deduction amount was mentioned and the same invoice was submitted to bank for processing of payments.

He admitted that they have recovered packing charges and our profit margin only by deducting these amount in the 27 Shipping bills. Further, they have also separately recovered duty paid amount in respect of these 27 Shipping Bills. I find that the duty paid amount was recovered through wrong RBI purpose codes. In his statement, Shri Shubham Agarwal admitted that they have received payment from buyers through BRCs, Debit Note/Credit Note and under wrong RBI purpose code.

30.2 Sh. Shrawan Kumar Agarwal, Director, M/s Shree Rameshwar Lal Foods Private Limited during his statement dated 30.11.2023 admitted that all costs and expenses till loading of the export goods into the vessel for export should be borne by the buyer. He admitted that under Incoterms, "FOB" covers all costs and charges up to the loading of the export goods on the vessel. He accepted that duty should have been discharged on the full FOB value and by not discharging full duty amount they have short-paid the export duty. He accepted their mistake and shown their willing to pay the differential duty. In continuation of their commitment, they made a voluntary advance deposit of Rs. 1,64,38,554/- vide letter dated 21.12.2023.

30.3 The Noticee during the written submissions argued that the statements of Sh. Shubham Agarwal and Shri Shrawan Kumar Agarwal, cannot be relied upon since the same has been taken under threat and duress. I, with respect to this claim, found that a mere allegation by the Noticee of duress or coercion is not sufficient to nullify the statement's value. The burden lies on the Noticee to prove that the statement was recorded under coercion, threat, or undue influence. It is undisputed fact that under Section 108 of the Customs Act, customs authorities have the power to summon and record statements. From the facts of the case, I noticed that no complaint was lodged before any higher authority or Court with respect to their claim, nor was any retraction made after the statement recorded by the investigating agency. On the contrary, the noticee continued to cooperate with investigation and subsequently submitted detailed documents and data in line with the admissions made during their voluntarily statement. I find that claim related to ill treatment

during investigation is appears to be nothing but just a trick to represent them as a victim. Instead of acknowledging their obligation to prove that the value declared by them was correct, they questioned the investigation. I find that confessional and corroborative statements recorded under Section 108 of the Customs Act, 1962, are one of the vital tools in the hands of the department to establish the role of the offenders. These statements are in the nature of substantive evidence and culpability of the concerned persons can be based on the same. Thus, the statements are legitimate and have legal authority. I do not find any infirmity in the statement tendered by them. The well planned practice of duty evasion along with the acceptance by the Employee and Director during their statements leaves no room for doubt for confirmation of charges levelled against the Noticees. Accordingly, the charges proposed in the Show Cause Notice regarding mis-declaration of FOB value, suppression of actual transaction value, and consequent short-payment of export duty are confirmed.

CALCULATION OF DIFFERENTIAL DUTY:

31.1 CALCULATION OF DIFFERENTIAL DUTY IN RESPECT OF SHIPMENT COVERED UNDER TABLE-A: As discussed under foregoing paras, it has been established that for the 40 rice export shipments listed in Table A, the exporter wrongly claimed a deduction equal to the export duty amount from the declared FOB value in the shipping bills. The finding of the investigation and the exporter's own admission during the statements clearly display the full transaction value (including duty) was not revealed at the time of export although the same was recovered from the foreign buyers. I find that the exporter treated the duty portion as an abatement and paid export duty on the reduced value. This resulted in short-payment of duty. I have already discussed the rejection of the declared value under Rule 8 of CVR (E), 2007 and re-determination of same under Section 14 of the Customs Act, 1962. Based on this re-determination (after adding the duty part in the assessable value) the value has been re-determined to Rs. 27,09,27,319/-. Accordingly, the differential export duty that was short-paid amounting to **Rs. 1,34,72,690/-**, is liable to be recovered under Section 28(4) along with applicable interest as per Section 28AA of the Customs Act, 1962. The shipping-bill wise, port-wise consolidated details of the short-paid duty are summarized below:

TABLE-I

Port of Export	No. of SBs	Declared FOB Value (INR)	Export duty Paid (INR)	Deduction claimed in Shipping Bill (INR)	Amount received in any other manner such as Debit Note/ Credit Note etc. INR	Re-determined FOB (INR)	Export Duty Payable (INR)	Differential Duty (INR)
INMUN1	25	12,72,26,432	2,54,45,288	4,32,60,543	4,30,97,594	17,04,86,975	3,40,97,395	86,52,107
INCCU1	7	2,77,68,23	55,53,64	91,63,237	91,36,130	3,69,31,47	73,86,29	18,32,649

		6	6			3	5	
INNSA1	4	2,78,73,161	55,74,632	90,91,878	90,91,878	3,69,65,039	73,93,008	18,18,376
INMAA1	4	2,06,96,039	41,39,208	58,47,793	58,20,624	2,65,43,832	53,08,766	11,69,558
Total	40	20,35,63,868	4,07,12,774	6,73,63,451	6,71,46,226	27,09,27,319	5,41,85,464	1,34,72,690

31.2 CALCULATION OF DIFFERENTIAL DUTY IN RESPECT OF SHIPMENT COVERED UNDER TABLE-B:

As discussed, it has been established that for the 27 rice export shipments listed in Table B, the exporter wrongly claimed packing cost and profit margin under the heading of “deduction” at the time of filing shipping bills. These wrong deduction were recovered through BRC. Further, in the said 27 Shipping Bills, the exporter also recovered duty amount through debit notes/separate invoices. This resulted in short-payment of duty. I have already discussed the rejection of the declared value under Rule 8 of CVR (E), 2007 and re-determination of same under Section 14 of the Customs Act, 1962. Based on this re-determination (after adding the duty part in the assessable value) the value has been re-determined to Rs. 17,39,23,305/-. Accordingly, the differential export duty that was short-paid amounting to **Rs. 78,91,443/-**, is liable to be recovered under Section 28(4) along with applicable interest as per Section 28AA of the Customs Act, 1962. The shipping-bill wise, port-wise consolidated details of the short-paid duty are summarized below:

TABLE-II

Port of Export	No. of SBs	Declared FOB Value (INR)	Export duty Paid (INR)	Deduction claimed in Shipping Bill (INR)	Amount received in any other manner such as Debit Note/ Credit Note etc. INR	Amount received in any other manner such as Debit Note/ Credit Note etc. INR	Re-determined FOB (INR)	Export Duty Payable (INR)	Differential Duty (INR)
INMUN1	25	13,06,77,188	2,61,35,438	1,21,34,541	2,55,03,188	1,19,23,558	16,89,47,167	3,37,89,433	76,53,995
INNSA1	2	37,88,900	7,57,780	4,29,458	7,57,780	4,17,536	49,76,138	9,95,228	2,37,448
Total	27	13,44,66,088	2,68,93,218	1,25,63,999	2,62,60,969	1,23,41,094	17,39,23,305	3,47,84,661	78,91,443

31.3 CALCULATION OF DIFFERENTIAL DUTY IN RESPECT OF SHIPMENT COVERED UNDER TABLE-C:

I noticed that the Show Cause Notice proposed duty evasion in respect of 59 export shipments of rice mentioned under Table C. I find that the exporter did not reflect the true transaction value in the subject shipping bills. They recovered the export duty amounts separately from the overseas buyers by way of debit notes raised after the exports made. These facts were not revealed before the Customs authorities at the time of export. I have already established the fact that unless the overseas buyers repaid these amounts equivalent to the duty, the exporter would not have effected the sale. These received payments are part of the amount received for the export goods.

These amounts are required to be included in the assessable value of the export goods under Section 14 of the Customs Act, 1962.

During the adjudication proceedings, the exporter has claimed that they have not received any over and above duty what declared under the Shipping Bill No. 5255270 dated 09.11.2023 (Sl. No. 46 in Table-C of the SCN). I have carefully examined the submissions made by the Noticees including the copy of the shipping bill, invoice, BL Copy, BRC Copy, Bank letter dated 19.11.2025. The Noticees have furnished these documents in support of their contentions. After thorough verification of the documents, I find merit in their pleas that they have not recovered any separate amount from the overseas buyer.

The Noticee M/s. Rameshwar Lal Food proved through contemporaneous documents that in respect of this particular consignment (Invoice No. SRF/23-24/E-0155), the total invoice value declared in the commercial invoice and the shipping bill is identical at USD 108,680. The Bank Realization Certificate (BRC) and Bank clarification letter dated 19.11.2025 certified that total consideration received in the said shipment is 108,680 USD. The contract, commercial invoice, packing list, bill of lading, and BRC submitted clearly establish that the entire consideration received by the Noticee is exactly the same as declared in the shipping bill. There is no evidence of any additional recovery towards export duty reimbursement in this specific shipment. The Show Cause Notice also does not have any specific details about the reimbursement of duty amount against the said shipping bill except the said shipping bill is included under Table-C. This may be clerical error, however, the contention of the Noticee and documents produced during the adjudication proceeding does not provide any indication of the reimbursement of duty amount over and above the declared value.

Since the allegation of separate recovery of export duty (and consequent undervaluation) is not substantiated in respect of this shipping bill, the proposal to add the duty amount of Rs. 325644.8/- (as worked out in Annexure-II against Sl. No. 46 of Table-C) to the assessable value is without basis. Accordingly, the demand of differential duty of Rs. 3,25,644.8/- raised in respect of Shipping Bill No. 5255270 dated 09.11.2023 is hereby dropped. Further the declared FOB in respect of the subject shipping Bill will be reduced from the total FOB value and the value will be re-determined keeping the said fact into consideration. Consequently, the total differential duty proposed under Table-G (separate duty recovery without deductions) stands reduced from Rs. 1,40,68,941/- to **Rs. 1,37,43,296/-**. Accordingly, the differential duty amount (under Table-G) in respect of **INVT21** port will be **52,55,384/-**. The photo of bank letter dated 19.11.2025 is reproduced below for reference purpose:

इंडियन बैंक  इलाहाबाद		Indian Bank ALLAHABAD
Corporate Office : Avval Shanmugham Salal, Royapettah, Chennai-600014		
Zonal Office,RAIPUR RAJA ,JAIL ROAD , BAHRAICH .PINCODE271801	Branch Office: Naveen Galla Mandi, Salarpur, Bahraich-271801 Phone: 05252-232938, Fax: 05252- 232938 E-mail: s542@indianbank.co.in	

Date: 19.11.2025

To Whomsoever it may concern

This is to certify that **M/s. Shree Rameshwar Lal Foods Private Limited**, having its registered office at - Near Resham Farm, Bhinga Road, Kalpipara, Bahraich, Uttar Pradesh - 271801 and holding IEC No. **0605003301**, maintains a **CASH CREDIT ACCOUNT AND ACCOUNT NUMBER 21215447187** with INDIAN BANK.

Shree Rameshwar Lal Foods Private Limited has exported parboiled rice during the period **25.08.2023 to 01.12.2024** in 01 shipment against which consideration is received in foreign currency.

We hereby certify the total consideration received against such shipment, including received under various purpose code, if applicable which is as follows:

Shipping Bill No.	Shipping Bill Date	Invoice Value as per Shipping Bill (USD)
5255270	09.11.2023	108,680 USD

AMOUNT 103196.00 USD BRC REF.NO.IDIB000O014000652277 PAYMENT CREDITED ON DT. 05.12.2023
AMOUNT 5404.00 USD REF.NO.0477723RMI126011 PAYMENT RECEIVED ON 29.11.2023 BUT BRC NOT GENERATED.

For, Indian Bank Salarpur


Branch Manager


Based on the above findings, upon re-determination of the value by adding these separately recovered duty amounts to the declared FOB value, the total FOB value has been re-determined to Rs. 41,22,98,909/-. Accordingly, the differential short-paid duty amounting to **Rs. 1,37,43,296/-**, is liable to be recovered under Section 28(4) along with applicable interest under Section 28AA of the Customs Act, 1962. The consolidated port-wise details of such short-paid duty are summarized below:

TABLE-III

Port of Export	No. of	Declared FOB Value	Export duty Paid	Re-determine	Export Duty	Differentia l Duty
----------------	--------	--------------------	------------------	--------------	-------------	--------------------

	SB s	(INR)	(INR)	d FOB (INR)	Payable (INR)	(INR)
INCCU1	33	202233850	40446770	242680620	48536124	8089354
INVTZ1	24	131384619	26276925	157661544	31532309	5255384
INMUN 1	1	9963954	1992791	11956745	2391349	398558
Total	58	34358242 3	6871648 6	41229890 9	8245978 2	13743296

31.4 CALCULATION OF DIFFERENTIAL DUTY IN RESPECT OF SHIPMENT COVERED UNDER TABLE-D: Apart from the above, as discussed above, in respect of 156 export shipments of rice listed in Table D, the exporter knowingly inflated the freight amount in the export documents. The evidence on record shows that the freight amounts declared in the shipping bills were significantly higher than the actual amounts paid by the exporter to the freight forwarders/shipping lines. For determination of the FOB value under Section 14 of the Customs Act, 1962, only the actual freight paid is eligible for deduction from the CIF value. By declaring inflated freight amounts, the exporter artificially reduced the FOB value and suppressed the assessable value of the export goods. I find that the declared excess freight amounts are not allowed for deductions under shipping bills and the same are required to be included in the assessable value of the export consignments. These inflated freight amount (later recovered by the exporter from the overseas buyers) are part of the consideration for the goods and are liable to export duty.

I noticed that the SCN calculate re-determined FOB value as Rs. 87,93,59,743/- by adding the excess freight amounts of Rs. 3,89,92,929/-. Therefore, proposed short-payment of duty to the extent of **Rs. 77,98,583/-**.

From the written submissions, it may be seen that the Noticees have now produced the actual freight invoices for 21 out of those 22 consignments (Annexure-2 to their submissions). Verification of these invoices confirms that the actual basic freight paid by the Noticee is higher than the freight considered in Table-D of the SCN in 20 cases out of claimed 21 cases. In respect of Shipping Bill No. 1924141 dated 22.06.2025 (Sr. No. 122 of Table-D of SCN), the exporter claimed that they have paid actual freight of Rs. 2,01,780/-, however, the freight invoice shown that the actual freight paid is Rs. 1,24,921/- (the same amount which was calculated in the SCN). Thus, there is no difference found between the freight calculated in the SCN and actual freight paid by the exporter. Copy of the Freight Invoice (in respect of SB No. 1924141 dated 22.06.2025) submitted by the Exporter is reproduced below for reference purpose:

2746
TAX INVOICE

(ORIGINAL FOR RECIPIENT)

SANAY ENTERPRISES LLP 7th Floor, Room No. 703, 1/1A/2, PS Peninsula, Mahendra Roy Lane, Kolkata-700046 GSTIN/UIN: 19AEKFS9941L1Z2 State Name : West Bengal, Code : 19 CIN: AAW-9716 Contact : 9874207379/7003200837 E-Mail : accounts@sanayllp.com		Invoice No. SEL/01749/23-24 Vessel/Voyage VIRA BHUM/102E Port of Loading VISAKHAPATNAM Weight 260,624.000 KGS Bill of Lading A84D000789 Container Number 10*20' Account of		Dated 1-Jul-23 Line Part of Discharge HO CHI MINH CBM Type of Invoice EXPORT-FCL	
Buyer (Bill to) SHREE RAMESHWAR LAL FOODS PRIVATE LIMITED NEAR RESHAM FARM, BHINGA ROAD, KALPIPARA, BAHRAICH-271801 GSTIN/UIN : 09AANCS3697P1Z5 PAN/IT No : AANCS3697P State Name : Other Territory, Code : 97 Place of Supply : Other Territory					

SI No.	Particulars	HSN/SAC	GST Rate	Exchange Rate	Quantity	Rate	Amount
	Ocean Freight Charge -Taxable(5%)	996521	5 %	84.98	10.00	140.00	1,18,972.00
							1,18,972.00
	Integrated Goods & Service Tax Round Off						5,948.60 0.40
	Total						₹ 1,24,921.00

Amount Chargeable (in words)
INR One Lakh Twenty Four Thousand Nine Hundred Twenty One Only

HSN/SAC	Taxable Value	Integrated Tax Rate	Amount	Total Tax Amount
996521	1,18,972.00	5%	5,948.60	5,948.60
Total	1,18,972.00		5,948.60	5,948.60

Tax Amount (in words) : **INR Five Thousand Nine Hundred Forty Eight and Sixty paise Only**

Whether the tax is payable on reverse charge - NO

Remarks:
 INVOICE NO. SRF/23-24/E-0088 DATE:16.06.2023
 Company's PAN : **AEKFS9941L**
 Declaration
 We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.
 Customer's Seal and Signature

Company's Bank Details
 A/c Holder's Name : **SANAY ENTERPRISES LLP**
 Bank Name : **ICICI BANK(AC NO.694605601400)OD**
 A/c No. : **694605601400**
 Branch & IFS Code : **GANESH CHANDRA AVENUE BRANCH & ICIC0006946**
 SWIFT Code : **ICICINBBCTS**

Prepared by _____ Verified by _____ Authorised Signatory _____
 for SANAY ENTERPRISES LLP

SUBJECT TO KOLKATA JURISDICTION

This is a Computer Generated Invoice

The SCN had computed excess freight in respect of certain consignments exported to Vietnam from Mundra and Visakhapatnam ports by assuming the actual freight paid as Rs. 207 per MT in the absence of specific freight invoices



for 22 consignments. This rate was adopted as it was the lowest rate observed in the data submitted by the Noticee for similar shipments.

On a careful scrutiny of the export documents submitted by the Noticees in respect of these 20 shipping bills, I find that the shipping bill-wise reconciliation submitted by the Noticees is found to be correct. Thus, the total actual freight paid by the Noticee in the shipping bills amounts to Rs. 2,25,08,640/- as against Rs. 2,17,91,785/- considered in the SCN. This correct calculation resulting in excess freight of Rs. 7,16,855/- which was paid by the exporter. Shipping Bill wise details of correct freight calculation is reproduced below for reference purpose:


Sr. No. as per Table-D of the Present SCN	Shipping Bill No.	Shipping Bill Date	Actual freight paid as per the Invoice	Actual freight considered in Table-D of the Present SCN	Lower freight paid value considered in Table-D of the Present SCN
			(A)	(B)	(C) = (A) – (B)
64	4829995	14.10.2022	1,84,647	53,820	1,30,827
80	8027436	24.02.2023	1,26,209	80,730	45,479
81	8436852	13.03.2023	84,329	53,820	30,509
82	8469024	14.03.2023	40,167	26,910	13,257
83	8640652	21.03.2023	75,871	55,890	19,981
84	8672141	22.03.2023	40,167	26,910	13,257
134	5255278	09.11.2023	72,240	53,820	18,420
136	5672168	29.11.2023	27,059	21,528	5,531
137	5708180	30.11.2023	58,566	53,820	4,746
139	6671352	11.01.2024	26,952	26,910	42
140	7104116	29.01.2024	26,924	26,910	14
141	7104119	29.01.2024	53,941	53,820	121
143	7177363	22.01.2023	1,51,458	55,890	95,568
144	7221478	24.01.2023	75,979	27,945	48,034
147	7309442	27.01.2023	78,333	26,910	51,423
148	7402973	09.02.2024	71,972	53,820	18,152
149	7950459	21.02.2023	78,618	26,910	51,708
150	8034827	24.02.2023	78,618	26,910	51,708
151	8253380	04.03.2023	78,076	26,910	51,166
153	8755548	25.03.2023	93,933	26,910	67,023
Total					7,16,855/-

An illustrative example of correct freight calculation is produced below for reference purpose:

Relevant portion of Shipping Bill No. 4829995 dated 14.10.2022:

 INDIAN CUSTOMS EDI SYSTEM CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS DEPARTMENT OF REVENUE - MINISTRY OF FINANCE GOVERNMENT OF INDIA		Port Code		SB No		SB Date					
		INMUN1	4829995	14-OCT-22							
		IEC/Br		0605003301		0					
		GSTIN/TYPE		09AANCS3697P1Z5 GSN							
		CB CODE		AARFD5233DCH002							
		TYPE		INV		ITEM		CONT			
		Nos		1		1		0			
		PKG		5200		G.WT		MTS 260.624			
								* SB22221020221314			
PART - I - SHIPPING BILL SUMMARY											
A STATUS	1.MODE	2.ASSESS	3.EXMN	4.JOBING	5.MEIS	6.DBK	7.RODTP	8.DEEC/DFIA	9.DFRC	10.RE-EXP	11.LUT
	SEA	Y	Y	N	Y	Y	Y	N	N		Y
B DECLARANT DETAILS	12.PORT OF LOADING		NMUN1 (Mundra)			13.COUNTRY OF FINAL DESTINATION		VIETNAM, DEMOCRATIC REP. C			
	14.STATE OF ORIGIN		UTTAR PRADESH			15.PORT OF FINAL DESTINATION		VNVIC (Ho Chi Minh, VICT)			
	16.PORT OF DISCHARGE		VNVIC (Ho Chi Minh, VICT)			17.COUNTRY OF DISCHARGE		VIETNAM, DEMOCRATIC REP. C			
	1.EXPORTER'S NAME & ADDRESS					7.CONSIGNEE NAME & ADDRESS					
	SHREE RAMESHWAR LAL FOODS PRIVATE LIMITED NEAR RESHAM FARM, BHINGA ROAD KALPIPARA BAHRAICH					Agroviet Company Limited ADD: 62 Vo Van Tan, Vo Thi Sau Ward District 3, Ho Chi Minh City, Vietnam MST : 0315478336 VN					
	3. AD CODE: 02600D7					8. GSTIN / TYPE 09AANCS3697P1Z5 GSN					
C VALU SUMMARY	1.FOB VALUE		2.FREIGHT		3.INSURANCE		4.DISCOUNT		5.COM		
	6956340		807000		0		0		104910		
	6.DEDUCTIONS		7.P/C		8.DUTY		9.CESS				
	0		0		1391268		1391268				
E MANIFEST DETAILS	1.MAWB NO.		2.MAWB DT		3.HAWB NO.		4.HAWB DT		N.O.C.		
	22PCEG1022329779100		22-OCT-22						INMUN1		
	4. CIN NO.		5. CIN DT.		6. CIN SITE ID						
G EQUIPMENT DETAILS	1.CONTAINER		2.SEAL		3.DATE		4.S No				
H CHALLAN DETAILS	1.SR.NO		2.CHALLAN NO		3.PAYMT DT		4.AMOUNT				
	1		101551		21-OCT-22		1391268				
ANNEX TAILS	1.SEAL TYPE		2.NATURE OF CARGO		3.NO. OF PACKETS		4.NO. OF CONTAINERS		5.LOOSE PACKETS		
	WAREHOUSE SEALED		CONTAINERISED		5200		0		0		
6.MARKS & NUMBERS		(LUT ARN NO. AD090322011626D DT 09/03/2022)AS PER INVOICE & PACKING LIST, "WE INTEND TO									

Relevant portion of Bill of Lading:

		BILL OF LADING FOR OCEAN TRANSPORT OR MULTIMODAL TRANSPORT		SCAC MAEU B/L No. 222359965
Shipper SHREE RAMESHWAR LAL FOODS PRIVATE LIMITED BHINGA ROAD,,KALPIPARA BAHRAICH, UTTAR PRADESH INDIA		Booking No. 222359965		
		Export references		Svc Contract
		Onward inland routing (Not part of Carriage as defined in clause 1. For account and risk of Merchant)		
Consignee (negotiable only if consigned "to order", "to order of" a named Person or "to order of bearer") Agroviet Company Limited ADD: 62 Vo Van Tan, Vo Thi Sau Ward, District 3, Ho Chi Minh City, Vietnam MST : 0315478336		Notify Party (see clause 22) Agroviet Company Limited ADD: 62 Vo Van Tan, Vo Thi Sau Ward, District 3, Ho Chi Minh City, Vietnam MST : 0315478336		
Vessel (see clause 1 + 19) IRENES RAY	Voyage No. 243S	Place of Receipt. Applicable only when document used as Multimodal Transport B/L. (see clause 1)		
Port of Loading MUNDRA, INDIA	Port of Discharge HO CHI MINH CITY, VIETNAM	Place of Delivery. Applicable only when document used as Multimodal Transport B/L. (see clause 1)		
PARTICULARS FURNISHED BY SHIPPER				
Kind of Packages; Description of goods; Marks and Numbers; Container No./Seal No. 10 containers said to contain 5200 BAGS INDIAN SWARNA RAW WHITE RICE 5 % BROKEN 5200 NEW WHITE PP BAGS OF 50KG NET TOTAL NET WEIGHT : 260.000 MT TOTAL GROSS WEIGHT : 260.624 MT INVOICE NO. : SRF/22-23/E-0118 INVOICE DATE : 14.10.2022 Contract No: SRF/2022/SV/150 DATE 29/09/2022 SHIPPING BILL NO. 4829995 DATE: 14.10.2022 HSN CODE : 10063090 FREIGHT PREPAID		Weight 260624.000 KGS	Measurement	
MRKU7957087 ML-IN0254698 20 DRY 8'6 520 BAGS 26062.400 KGS MSKU7182094 ML-IN0254697 20 DRY 8'6 520 BAGS 26062.400 KGS SUDU7666791 ML-IN0254691 20 DRY 8'6 520 BAGS 26062.400 KGS MSKU5580329 ML-IN0254692 20 DRY 8'6 520 BAGS 26062.400 KGS HASU1452444 ML-IN0254694 20 DRY 8'6 520 BAGS 26062.400 KGS MRKU9394315 ML-IN0254696 20 DRY 8'6 520 BAGS 26062.400 KGS MSKU5568874 ML-IN0254695 20 DRY 8'6 520 BAGS 26062.400 KGS MRKU9669011 ML-IN0254700 20 DRY 8'6 520 BAGS 26062.400 KGS				
<small>Above particulars as declared by Shipper, but without responsibility of or representation by Carrier (see clause 14)</small>				

Actual Freight paid Invoice submitted by the Exporter during adjudication proceedings:



Teamworld Logistics Pvt Ltd
Unit No. B-315 Basement,
CR Park, Near Nehru Place,
New Delhi- Pin 110019.



TAX INVOICE

ORIGINAL FOR RECIPIENT

Customer : SHREE RAMESHWAR LAL FOODS PVT LTD
NEAR RESHAM FARM, BHINGA ROAD, KALPIPARA,
BAHRAICH, UTTAR PRADESH, 271801
GST ID :09AANCS3697P1Z5 State Code :09

Customer Code : 1110050001 - C004884
Customer PAN No. : AANCS3697P
Invoice Number : 6249-22507001541
IRN : 02ccbe30de50d80bd0c3dc30f5f9e8cc116da1bbf2ffcc4ca89
d8fc3db9445a

Shipper : SHREE RAMESHWAR LAL FOODS PVT LTD
NEAR RESHAM FARM, BHINGA ROAD, KALPIPARA,
BAHRAICH, UTTAR PRADESH, 271801

Date : 1-Nov-22
Payment Due Date : 21-Nov-22
Job Number : 01-2500700470-1
Job Date : 31-Oct-22
Master Number : MAEU222359965
House Number : 500732001164
Reverse Charge : No

Consignee : Agroviet Company Limited
ADD: 62 VO VAN TAN, VO THI SAU WARD, DISTRICT
3, HO CHI MINH CITY, VIETNAM
MST : 0315478336

Advance Receipt No :
Number of Packs : 5,200.00
Weight(Kgs) : 260624.000
Volume (CBM) : 1.000
IGM Number :
Item Number :
Sub Item Number :
USD ROE. : 83.74

Port of Origin : MUNDRA **ETD** : 31-Oct-22
Final Destination : HO CHI MINH CITY **ETA** : 15-Nov-22
Vessel : IRENES RAY
Voyage Number : 243S **Place of supply** : OTHER TERRITORY
Shipper Ref No. :
Shipper Inv. No :
Note : Document No : 6249-22507001541

SNo.	Charge Details	HSN/SAC	Curr.	Rate / Unit	Unit	Curr. Amt	ROE	Taxable Amt	Rate	IGST		Amt in INR
1	FREIGHT CHARGES.	996521	USD	210.000	10.000	2,100.00	83.74	175,854.00	5%	8,793.00		184,647.00
Total in INR								175,854.00		8,793.00		184,647.00

One Lakh(s) Eighty-Four Thousand Six Hundred and Forty-Seven Rupees Only

Container No & Type **Vehicle No.**

HASU1079937 20' CONTAINER HASU1452444 20' CONTAINER MAEU6965158 20' CONTAINER
MRKU7957087 20' CONTAINER MRKU9394315 20' CONTAINER MRKU9669011 20' CONTAINER
MSKU5568874 20' CONTAINER MSKU5580329 20' CONTAINER MSKU7182094 20' CONTAINER
SUDU7666791 20' CONTAINER

HSN/SAC	Taxable Amount	Rate	IGST	Total Amount
996521	175,854.00	5%	8,793.00	184,647.00
Net Amount	175,854.00		8,793.00	184,647.00

Supply meant For Export/Supply to SEZ unit / Developer for authorised operation under LUT No. AD070322010720S dated 16/03/2022 without payment of Integrated tax being zero rated supply in terms of Section 16(1) (b) of IGST act 2017

PAN No: AACCT8382P PAYMENTS DELAYED BEYOND AGREED CREDIT TERMS WILL ATTRACT INTEREST @15% PER ANNUM.

Terms : 1. Cheques should be in favour of Teamworld Logistics Pvt. Ltd & crossed A/C payee. The company is not responsible for any cash settlement without an official receipt.
2. Please check your GST No & Address, if any change contact immediately and it will not change after 3 days from raising invoice.
3. Any discrepancy and should be notified to us in writing within 3 days from the invoice date after which NONE will be accepted.

Bank : A/C Name : Teamworld Logistics Pvt Ltd
Bank Name: HDFC BANK LTD
A/C No : 57500000721224
Address : UNIT NO.1,TOWN CENTER, ANDHERI KURLA RD,NEAR KOBE SIZZLERS,
ANDHERI EAST, MUMBAI 400059.. IFSC - HDFC0000592

For Teamworld Logistics Pvt Ltd

E. & O.E

THIS IS A COMPUTER GENERATED DOCUMENT AND DOES NOT REQUIRE A SIGNATURE.
GSTIN: 07AACCT8382P1ZJ

Ref: CR_00018_INV_GST on 01-NOV-2022:05:54:PM by SUSHMAP-NEW DELHI

Page 1 of 1

From the above, it is evident that the exporter has paid actual freight of Rs. 184647/-, however, the actual freight calculated under the SCN is Rs. 53,820/- (at sr. no. 64 of Table-C of SCN). Thus, the differential freight amount

of Rs. 1,30,827/- is needs to be reduced from the re-determined value for correct duty calculation.

In view of the above discussion, there is no ambiguity to the point that only differential amount between declared freight and actual freight paid is liable to be added back to the assessable value, hence, the excess freight computed in Table-D is required to be reduced by Rs. 7,16,855/-. Accordingly, the total differential duty proposed under Table-H (excess freight) is reduced from Rs. 77,98,583/- to **Rs. 76,55,191/-**. Accordingly, after the correct duty calculation in respect of these 20 shipping Bills, port wise total differential duty has been re-calculated as per below table:

Table-VI

Port of Export	No. of SBs	Declared FOB Value (INR)	Export duty Paid (INR)	Excess Freight	Re-determined FOB value	Differential Duty
INVTZ1	41	21,37,55,138	4,27,51,028	2,15,62,831	23,53,17,969	43,12,566
INMUN1	54	28,32,14,479	5,66,42,898	1,11,24,398	29,43,38,877	22,24,879
INCCU1	50	28,43,76,504	5,68,75,302	38,19,431	28,81,95,936	7,63,885
INMAA1	5	2,73,58,631	54,71,726	14,33,594	2,87,92,225	2,86,719
INNSA1	6	3,16,62,061	63,32,412	3,35,709	3,19,97,770	67,142
Total	156	84,03,66,814	16,80,73,366	38275963	87,86,42,777	76,55,191

- Duty amount of Rs. 50,662/- reduced in respect of INMUN1 Port.
- Duty amount of Rs. 92,731/- reduced in respect of INVTZ1 Port.

31.5 Total revised differential duty liability (Port wise): Based on the above findings, it has been established that the exporter, M/s Shree Rameshwar Lal Foods Pvt Limited, adopted above discussed different modus operandi to suppress the actual assessable value of their export consignments. After considering the submissions and additional documents submitted during personal hearing, I find that in respect of certain shipping bills the excess freight/reimbursement amount has been revised (as discussed above), consequently the value has been re-determination in terms of Section 14 of the Customs Act, 1962. The differential export duty payable by the exporter M/s Shree Rameshwar Lal Foods Pvt Limited works out to be at **Rs. 4,27,62,622/-** is hereby confirmed and the same is liable for recovery under Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the Customs Act, 1962. A port-wise summary of the confirmed duty is provided under table below.

TABLE-V

Port of Export	No. of SBs	Declared FOB Value (INR)	Re-determined FOB value	Total Differential Duty
INMUN1	54	283214479	377862190	18929540
INCCU1	55	318151869	371581308	10685887
INVTZ1	44	231744408	279584164	9567952
INNSA1	6	31662061	42,276,886	2122965
INMAA1	5	27358631	34640018	1456278
Total	164	892131448	1105944566	42762622

Note: Declared Value, Re-determined value and total differential duty has been revised/re-calculated in respect of goods exported from INMUN1 & INVTZ1 port only.

31.6 I noticed that the Noticee through their written submissions submitted that provisions of taxing statutes must be strictly construed and that any ambiguity in Section 14 of the Customs Act, 1962 must be in their favour. They further placed relied on decisions in the case of *Commissioner of Trade Tax, U.P. v. S.S. Ayodhya Distillery* and *Sneh Enterprises v. CC, New Delhi*.

With respect to these submissions, I noticed that Section 14 is not a charging provision but a machinery provision for determination of value which states that the transaction value shall be the price actually paid or payable for delivery of goods at the time and place of exportation. The evidence clearly shows that the exporter recovered amounts from their overseas buyers. In the present case, the statutory mandate is clear that the value must be the transaction value. The CBEC Circular No. 18/2008-Cus. dated 10.11.2008 further clarifies that the FOB value, without any abatement of duty, is the correct assessable value for levy of export duty. The acts of the noticees in mis-declaring FOB values and recovering duty separately from buyers confirmed deliberate undervaluation. Therefore, I hold that the contention the noticees to this point is at weak footing.

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

32.1 It is obligatory on the exporter to subscribe a declaration as to the truthfulness of the contents of the Shipping Bill in terms of Section 50(2) of the Customs Act, 1962, in all their export declarations. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on

export goods by the exporter himself by filing a Shipping Bill, in electronic form. Section 50 of the Customs Act, 1962 makes it mandatory for the exporter to make an entry for the export goods by presenting a Shipping Bill electronically to the proper officer. As per Regulation 4 of the Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulation, 2019 (issued under Section 157 read with Section 50 of the Customs Act, 1962), the Shipping Bill shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the export goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Shipping Bill number was generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it was the exporter who must doubly ensure that he declared the correct classification / CTH of the export goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in respect of the export goods while presenting the Shipping Bill. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 08.04.2011, it was the added and enhanced responsibility of the exporter to declare the correct description, value, Notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the export goods.

32.2 From the above provisions, it may be seen that the responsibility lies on the exporter to ensure that all details related to the shipments are correctly declared at the time of filing shipping bills. I have already discussed in detail the modus adopted by the exporter to evade the duty at the time of export. I find that the extended period of five years under Section 28(4) of the Customs Act, 1962 has been correctly invoked in the present case. The pre-condition for such invocation is that the non-levy, short-levy or short-payment of duty should arise due to collusion, wilful misstatement, or suppression of facts with intent to evade duty. In the present matter, I find that evidence brought on record correctly establish the fact that that M/s Shree Rameshwar Lal Foods Pvt Limited indulged in deliberate mis-declaration of assessable value of export goods through four different modus operandi i.e. (i) wrongful deduction of duty element from declared FOB value (ii) wrongful deduction of packing cost and profit margin declared FOB value and recovery of duty amount also separately through debit notes/separate invoices (iii) non-declaration of separate reimbursements of duty collected from overseas buyers through debit notes/separate invoices, and (iv) inflation of actual freight amount to claim unacceptable deductions. Each of these modus is adopted by the exporter with full knowledge by concealment of material facts at the time of filing shipping bills. These act done by the exporter cannot be termed as clerical error or interpretative dispute.

32.3 I find that the Noticee had received payment of export duty from overseas buyers, which directly influenced the determination of transaction values. However, instead of declaring these payment clearly in the shipping bills, the Noticee chose to reflect such receipts under vague heads i.e. “deductions.” This method cannot be accepted as transparent disclosure of important information. The essence of statutory compliance under the Customs Act is clear and truthful declaration of all particulars in the prescribed documents in relation to value, description, and quantity of goods. By concealing duty reimbursements under unrelated fields, the Noticee mis-declared key facts and therefore withheld accurate information at the time of export clearance.

32.4 Further, the exporter had received payment of duty paid at the time of export separately under a separate RBI purpose code (P1306) and the method for routing these amounts adopted by choosing incorrect purpose code which is no way related to the export of the goods. I find that the exporter had never disclosed the fact before the customs authority that additional amounts over and above declared FOB were being recovered by them by way of debit notes.

32.5 As discussed above, it is clear that the exporter inflated freight amount in the shipping bills for the purpose to reduce the declared FOB values before the Customs. The fact is now not in dispute that the exporter received the full payment from their overseas buyers. The discrepancy between declared freight and actual freight paid was accepted by the exporter in the details of shipments submitted by them during the investigation period. The example of the Shipping Bills clearly establish this fact. The noticees did not bother to inform the authorities at the time of export that excess freight amounts were not borne by them but ultimately will be recovered from their overseas buyers as part of the total value for the consignments. I also find that the acceptance of inflating the price, wrongly claim under “deduction” heads, inflating freight amounts, receiving payment from buyers, using wrong RBI purpose code; during the recording of statement leaves no scopes for not invoking extended period of time.

32.6 These above acts on the part of the exporter supports the finding that the Noticee in a very planned manner had received these amounts and concealed the true nature of the transaction from Customs by suppression the fact and by not disclosing the complete details before the Customs Authority. I find that in the present case the duty reimbursement was masked under not permissible deduction under the shipping bills and separate remittance codes were used purposely to evade the legitimate Customs Duty. These acts on the part the of Noticee amounts to suppression and mis-statement at their end.

32.7 The deliberate undervaluation and suppression of true transaction value of rice shipments across multiple ports set up a fit case for application of the

extended limitation period which involves a large evasion of duty amounting to Rs. 4,32,31,658/-. In view of the above, I hold that the conditions for invoking Section 28(4) are squarely satisfied in this case. Therefore, the extended period has been rightly invoked, and the demand of differential duty as proposed in the Show Cause Notice is sustainable.

32.8 I also noticed that the Noticee during written submission claimed that extended period cannot be invoked in respect of the subject shipping bills.

I find no force in the subject contention as the provisions of extended period is rightly invokable in the present case as discussed under foregoing paras. Section 28 of the Customs Act, 1962 empowers the Department to demand duty not levied, short-levied, or erroneously refunded, even in cases of self-assessment or assessment already accepted at the time of export. The Customs Act empowered the proper officer to initiate recovery proceedings under Section 28 (4) where subsequent investigation reveals that duty has not been levied or has been short-levied on account of suppression, misstatement, collusion, or willful misdeclaration. Further, the reliance placed on other Judgement does not come in the favour of the noticee since the fact and findings of the present case are totally different. In the referred case by the noticee, suppression element were not found; however in this case suppression and wilful misstatement has already been found. In the present case of M/s. Shree Rameshwar Lal Foods, it is beyond doubt that the exporter knowing undervalued their exports by (i) deducting export duty amounts from the declared FOB value, (ii) by deducting packing cost and profit margin under ineligible heading (iii) recovering duty amounts through debit notes without declaring the same to Customs, and (iv) inflating ocean freight to suppress actual FOB. Thus, the said deliberate misdeclaration and suppression invalidate the assessments and attract the provisions of Section 28(4) of the Customs Act, 1962. Therefore, I hold that the contention of the noticees that the present demand is invalid for want of appeal against the shipping bills is without any merit.

32.9 I also find that Reliance placed by the Noticee on Sections 28C and 28D is no way concerned with the present proceedings as those provisions are related to unjust enrichment and refunds. The present proceedings are related to recovery of duty under a different Section i.e. 28(4) of the Customs Act, 1962. I also find that the Noticee's claim regarding levy of duty on FOB by calling it as 'never-ending loop' is nothing but a misinterpretation of the provisions under Customs Act. The FOB value is the full transaction price on which export duty is levied as a percentage without any reduction. Thus, I find no merit in Noticee's contention.

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

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

On plain reading of the above provisions of the Section 113(i) of the Customs Act, 1962, it is clear that any goods, which are entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act, will be liable to confiscation. As discussed in the foregoing paras, the said noticee has fraudulently claimed deduction in the different shipping bills filed by them for export of rice and thus evaded proper payment of export duty. All the deduction claimed by the said noticee including the reimbursement of export duty was not deductible from the CIF value to arrive at the FOB value. The exporter inflated the freight charges during export. They deducted profit margins and packing costs in the shipping bills and recovered these amount from the foreign buyers. By doing these acts of wilful mis-statements and suppression of the facts in respect of the impugned export consignments, the exporter M/s. Shree Rameshwar Lal Foods Pvt Ltd. has rendered the impugned goods liable to confiscation under Sections 113(i) of the Customs Act, 1962.

As the impugned goods are liable for confiscation under Section 113(i) of the Customs Act, 1962, I find that since the goods in question which are proposed to be confiscated are not available physically and have already been cleared from Customs. Thus, I refrain from imposing redemption fine.

33. LIABILITY OF PENALTY UNDER SECTION 114A AND/OR 114 AND/OR 114AA OF THE CUSTOMS ACT, 1962: I have already discussed in detail the role, involvement, and culpability of the noticees in the preceding paragraphs of this order while discussing the facts and evidence on record. However, to determine the applicability and quantum of penalty under the relevant provisions of the Customs Act, 1962, it is necessary to briefly summarize their respective involvement/contribution in the acts of mis-declaration, abetment, or violations established in this case. The findings discussed under upcoming paragraphs are for imposing penalty, thus, role and culpabilities of the Noticees should be read together with the discussion made earlier in this order. The content of the discussion are reproduced here for the sake of brevity. Non-repetition of any specific facts (which discussed earlier) in this section will not, in any way, alter or weaken the findings already recorded on merits in the preceding parts.

33.1 I have already decided that the goods are liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962 for the reasons explained

under foregoing paras. Consequently penalty under Section 114A is found leviable on the exporter M/s. Shree Rameshwar Lal Foods Pvt Ltd as the elements for penalty as per said Section 114A is *pari materia* with Section 28(4) of the Customs Act, 1962.

33.2 As regards the penalty on M/s. Shree Rameshwar Lal Foods Pvt Ltd under Section 114AA of the Customs Act, 1962 is concerned, Section 114AA mandates penal action for intentional usage of false and incorrect material against the offender. The investigation has revealed that reimbursement amounts were not reflected in the shipping bills or in the BRCs. These amounts were recovered separately through debit notes and misrepresented through use of incorrect RBI Purpose Code P1306 which is meant for “Transfers” of personal nature and not for export related matters. The exporter have produced separate invoices for customs clearance purpose and separate invoices were provided to the buyers for reimbursement of duties/packing charges/profit margins etc. These acts were done by the exporter with full knowledge by intentional act of mis-statements. The statements of Executive Director and Employee of the export firm further corroborate the fact that the exporter was fully aware about treating FOB value as “cum-duty”. However, the exporter chose to mis-declare the same, thus these acts fulfilled the mens rea requirement under Section 114AA of the Customs Act, 1962. The present case is based on a planned practice of mis-statement and suppression of facts for duty evasion in the subject shipping bills which cannot be termed as bona fide mistake. The Customs Act, 1962 clearly defines “person” to include companies and juristic entities, and it is a settled principle that corporate bodies can be held liable for penalties under fiscal statutes. The acts of the company were carried out through its directors and authorised signatories, and liability attaches both to the company and to responsible individuals. In view of the above, I hold that the acts of the exporter clearly represent making and using false and incorrect declarations in material particulars. Such act on the part of the exporter M/s. Shree Rameshwar Lal Foods Pvt Ltd made them liable to penalty under Section 114AA of the Customs Act, 1962.

33.3 From the above discussion and findings, it is evident that Sh. Shrawan Kumar Agarwal (Director of export firm) and his son Shri Shubham Kumar Agarwal (Employee of export firm) were the key persons who on behalf of M/s. Shree Rameshwar Lal Foods Private Limited negotiated and finalized the sale price of rice. They have undervalued and mis-declared their transaction value with intent to evade applicable duty of customs which is leviable @ 20% *ad valorem* on the actual transaction value of the export goods. The investigation has revealed that these both noticees knowingly or intentionally either made, signed and used or caused to be made, signed and used, the export invoices, Shipping Bills for export of rice by M/s Shree Rameshwar Lal Foods Private Limited, which were incorrect as regards to the value of export goods for payment of export duty. The contracts with the buyer for sale and export of rice as well as the export documents submitted to Customs were finalized/signed in

the overall supervision of Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal, who were handling the day to day business of the export firm. This fact has been admitted by Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal in their statements recorded u/s 108 of the Customs Act, 1962.

From the above, I find that Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal were the key persons who have orchestrated the entire scheme of mis-declaration of value of the export goods, with the sole intention to evade customs duty. Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal are, therefore, responsible for wilful acts of mis-statement and suppression of facts in respect of export of rice by M/s Shree Rameshwar Lal Foods Private Limited. They also accepted reducing the FOB value by deducting export duty even though the same amounts were recovered from buyers. They further accepted that debit notes were separately raised for duty reimbursement but were not disclosed in the shipping bills. These acts done by them confirmed their direct involvement in mis-declaration and short-payment of export duty, thus made the subject goods liable for confiscation under the provisions of Section 113 of the Customs Act, 1962. Therefore, I hold that Sh. Shrawan Kumar Agarwal & Shri Shubham Kumar Agarwal are liable for penalty separately under Section 114(ii) and 114AA of the Customs Act, 1962.

34. In view of above discussions and findings supra, I pass the following order:

ORDER

- i. I order to reject the declared value in respect of the shipments of rice exported vide Shipping Bills detailed in 'Annexure-I, II & III' of the SCN, in terms of Rule 8 of the CVR (E), 2007 and order to re-determine the same at **Rs. 1,10,59,44,566/-** (*Rupees One Hundred Ten Crores Fifty Nine Lakhs Forty Four Thousand Five Hundred and Sixty Six Only*) under the provisions of Section 14 (1) of the Customs Act, 1962 read with read with Rule 3 (1) CVR (E), 2007.
- ii. I confirm the demand of differential (export) duty amounting to **Rs. 4,27,62,622/-** (*Rupees Four Crores Twenty Seven Lakhs Sixty Two Thousand Six Hundred and Twenty Two Only*) under of Section 28(8) of the Customs Act, 1962 by invoking extended period under Section 28(4) of the Customs Act, 1962.
- iii. I order to recover the interest on the confirmed differential duty amount at sr. no (ii) under the provisions of Section 28AA of the Customs Act, 1962;
- iv. I order the voluntary deposit of Rs. **1,64,38,554/-** (*Rupees One Crore Sixty Four Lakhs Thirty Eight Thousand Five Hundred and Fifty Four Only*) made during investigation towards their duty liability;

- v. I hold that the goods exported vide Shipping Bills (as detailed under 'Annexures-I, II & III' to the SCN) having re-determined assessable value of Rs. 1,10,59,44,566/- are liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. However, I do not find it appropriate to impose any redemption fine under Section 125 of the Customs Act, 1962 since the goods are not physically available.
- vi. I impose a penalty of **Rs. 4,27,62,622/-** (*Rupees Four Crore Twenty Seven Lakhs Sixty Two Thousand Six Hundred and Twenty Two Only*) upon the Exporter M/s Shree Rameshwar Lal Foods Private Limited (0605003301) under section 114A of the Customs Act, 1962.
- vii. I impose a penalty of **Rs. 50,00,000/- (Rupees Fifty Lakhs only)** upon the Exporter M/s Shree Rameshwar Lal Foods Private Limited (0605003301) under section 114AA of the Customs Act, 1962.
- viii. I impose a penalty of **Rs. 40,00,000/- (Rupees Forty Lakhs only)** upon Sh. Shubham Kumar Agarwal under Section 114(ii) of the Customs Act, 1962.
- ix. I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)** upon Sh. Shubham Kumar Agarwal under Section 114AA of the Customs Act, 1962
- x. I impose a penalty of **Rs. 40,00,000/- (Rupees Forty Lakhs only)** upon Shri Shrawan Kumar Agarwal under Section 114(ii) of the Customs Act, 1962.
- xi. I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)** upon Sh. Shrawan Kumar Agarwal under Section 114AA of the Customs Act, 1962

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

(Nitin Saini)
Commissioner of Customs
Custom House, Mundra

DIN: 20251171MO000000F8C0

To,

- 1) M/s Shree Rameshwar Lal Foods Private Limited, Near Resham Farm, Bhinga Road, Kalpipara, Bahraich Uttar Pradesh-271801; **Branch Office** - at 1730, 2nd Floor, Nai Basti, Naya Bazar, New Delhi-110006.
- 2) Sh. Shrawan Kumar Agarwal, Director, M/s Shree Rameshwar Foods Private Limited; **R/o:** Near Resham Farm, Bhinga Road, Kalpipara, Bahraich Uttar Pradesh-271801; **Also at** 7/35, Sahibabad, Rajendra Nagar, Sector-2, Uttar Pradesh.
- 3) Sh. Shubham Agarwal, Employee, M/s Shree Rameshwar Foods Private Limited; **R/o:** Near Resham Farm, Bhinga Road, Kalpipara, Bahraich Uttar Pradesh-271801; **Also at** 7/35, Sahibabad, Rajendra Nagar, Sector-2, Uttar Pradesh.

Copy for necessary action to: -

- 1) The Commissioner of Customs (Port) Custom House, 15/1 Strand Road, Kolkata-700001 (INCCU1)
- 2) The Pr. Commissioner of Customs, Visakhapatnam Port Area, Visakhapatnam-530001(INVTZ1)
- 3) The Pr. Commissioner of Customs, Nhava Sheva-I Jawaharlal Nehru Customs House, Nhava Sheva, Tal: Uran, Dist.-Raigad, Maharashtra-400707 (INNSA1)
- 4) The Commissioner of Customs, Chennai-IV (Export) Custom House, 60, Rajaji Salai, Chennai-600001 (INMAA1).
- 5) The Director General, Central Economic Intelligence Bureau, 6th Floor, B-Wing, Janpath Bhawan, Janpath, New Delhi-110001
- 6) The Chief Commissioner of Customs, Ahmedabad.
- 7) The Dy. Commissioner of Customs, EDI Section, Mundra.
- 8) The Dy. Commissioenr of Cutsoms, Legal/Prosecution, Mundra.