

	<p align="center">OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</p> <p align="center">CUSTOM HOUSE, MUNDRA, KUTCH</p> <p align="center">MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421</p> <p align="center">Phone No. 02838-271029/423 FAX No. 02838-271425</p> <p align="center">Email : adj-mundra@gov.in, adjmundra@gmail.com</p>	
A	फा. सं./FILE NO.	F. No. GEN/ADJ/ADC/412/2024-Adjn
B	मूल आदेश संख्या/ ORDER-IN-ORIGINAL NO.	MCH/ADC/MK/306/2024-25
C	द्वारा पारित किया गया/ PASSED BY	मुकेश कुमारी अपर आयुक्त, सीमा शुल्क सीमा शुल्क भवन, मुन्द्रा
D	आदेश की तिथि DATE OF ORDER	24.02.2025
E	जारी करने की तिथि DATE OF ISSUE	24.02.2025
F	कारण बताओ नोटिस संख्या & तिथि SCN NUMBER & DATE	GEN/ADJ/ADC/412/2024-Adjn-O/o Pr Commr-Cus-Mundra dt. 28.02.2024
G	नियतिक / नोटिस प्राप्तकर्ता ExPORTER / NOTICEE	1. M/s Wining Overseas 2. M/s Shri Radhe Krishna Shipping Pvt. Ltd.
H	डिन संख्या /DIN NUMBER	20250271MO000000D14B

1. यह आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 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 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

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

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR
BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”**

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

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

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

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

- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

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

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

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

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of

the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACT OF THE CASE:-

M/s Winning Overseas, Godown No. G-10, Jawahar Nagar, Block-80N, Village-Chudva, Gandhidham, Katchch, Gujarat-370240 holding IEC NO: DRMPK3260E (hereinafter referred to as '**the Exporter**') had filed 5 Shipping Bills bearing SB No. 4771930, 4771931, 4771936, 4771939, 4771962 all dated 12.10.2022 through their Customs Broker, M/s Shri Radhe Krishna Shipping Pvt. Ltd. (AABCS5273MCH002) (hereinafter referred to as '**the Custom Broker**') at Mundra port for export of Ready Made Garments and Bags to destined port at Karachi, Pakistan.

2.1 On the basis of input received from the NCTC's alert vide email dated 19.10.2022, it was noticed that above referred 5 Shipping Bills filed by the exporter were risky consignments in as much as due to incomplete supply chain, consignments destined to risky country, i.e. Pakistan and being the first consignment of the exporter and accordingly, necessary inquiry was initiated against the exporter for verification of the above consignment.

2.2 Acting upon the input received, the ALL Cargo CFS, Mundra APSEZ was communicated vide email dated 20.10.2022 to hold the consignment covered under these 5 shipping Bills, i.e. SB No. 4771930, 4771931, 4771936, 4771939 & 4771962 all dated 12.10.2022). However, it was learnt that consignment had already been cleared from the Customs and left the Mundra Port on 16.10.2022 through Vessel- Hyundai Konkong. Further, vide letter dated 17.11.2022, drawback and IGST Refund Sections, Custom House, Mundra have been requested to hold the export incentives viz, *Drawback/IGST* refund in respect of above five SBs dated 12.10.2022 filed by the exporter. Letter dated 17.11.2022 was also issued to the jurisdictional CGST authority, i.e. CGST, Gandhidham to hold the export benefit, IGST refund to the exporter.

2.3. Further, the registered address of the exporter was shown to be situated at Godown No. G-10, Jawahar Nagar, Block-80N, Village-Chudva, Gandhidham, Katchch, Gujarat-370240, therefore, vide letter dated 17.11.2022 & 17.04.2023, Customs, Kandla was requested to search the registered premises of the exporter to verify the physical existence of the exporter and to recover the documents related to purchase & sales, bank accounts, e-way bill, transportation etc. The Deputy Commissioner (SIIB), Custom House, Kandla vide letter dated 15.05.2023 has forwarded copy of panchnama dated 11.05.2023 drawn at the registered premises of the exporter. From scrutiny of the said panchnama it is noticed that the premises was found locked and it was gathered that the shop belonged to Shri Sampatkumar Chandanlal Bhansali. On being contacted, Shri Sampatkumar Chandanlal Bhansali informed the officer that he had given the shop to Shri Surender Kumar w.e.f. May, 2021 and he had received rent upto the month of January, 2023. Shri Surender Kumar was not in contact with him since long. On opening of the shop, one table and sofa were found in the shop. No document was found in the office.

2.4 Whereas, to proceed further into inquiry, Summons were issued to the exporter and the Customs Broker on 12.06.2023 and 21.09.2023 which returned undelivered.

2.5 Whereas, the Additional Commissioner, CGST, Kutchh (Gandhidham) vide letter dated 18.01.2024 has forwarded the verification report of the supply chain of the exporter. From scrutiny of the said report, it is noticed that

(i) As per Form GSTR-2A (the statement of inward supply), M/s Winning Overseas, Gandhidham has received inward supply of Rs. 25,57,84,722/- involving GST amounting to Rs. 3,06,94,167/- in the month of **October, 2021**, only vide total 31 invoices. The supplier was M/s Amaira International, Rajkot (GSTIN-24GPFPS7075F1ZI).

(ii) As per Form GSTR-1A (Statement of Outward supply), M/s Winning Overseas, Gandhidham has shown outward of Rs. 25,57,84,722/- involving GST amounting to Rs. 3,06,94,167/- in the month of January, 2022 only vide total 31 invoices. The recipient was M/s Amaira International, Rajkot (GSTIN-24GPFPS7075F1ZI).

(iii) No other outward supply or inward supply is being reflected in the GST Returns filed by the exporter.

2.6 From analysis of inward-outward report of the exporter received from the jurisdictional CGST authority, it appears that there was a circular transaction of ITC between M/s Winning Overseas and M/s Amaira International, as much as during the month of October, 2021, M/s Amaira International passed on ITC amounting to Rs. 3,06,94,167/- to M/s Winning overseas vide 31 invoices all dated 04.10.2021 and in January, 2022 M/s Winning overseas passed on identical amount of ITC, Rs. 3,06,94,167/- to M/s Amaira International vide 31 invoices all dated 18.01.2022. Furthermore, the GSTIN of Amaira International has also been cancelled since July, 2022. Further, it appears that at the time of filling of subjected five Shipping Bills dated 12.10.2022, there was no stock of the goods or any other inward supply available with the exporter. Further, from the GSTIN Portal, it appears that the GSTIN of the exporter is cancelled *suo-moto* w.e.f. 07.07.2021, i.e. much prior to the date of filling of the Shipping Bills in question.

2.7 Whereas, as per FOB realization report obtained from the EDI System it appears that no FOB amount has been realized to the exporter till 19.01.2024 against the total FOB amount of **Rs. 4,06,56,640/-** supposed to be realized against subjected five SBs.

2.8 Whereas, as communicated vide email dated 13.11.2023 received from the Drawback section, Custom House, Mundra, it appears that, the IEC of the exporter has already been suspended since 22.10.2022 on the basis of NCTC alert and no scroll no. have been generated and therefore no export incentives have been disbursed to the exporter. Total Export incentive claimed by the exporter vide above said 5 SBs is **Rs. 25,66,912/-** as under:

Sr No.	SB No.	Date	Scheme Description	Declared FOB value	DBK Claimed	RoSCTL amt	Total Export Incentive
1	4771930	12-10-2022	Drawback/ROSCTL	9444986.78	315825	220230	536055
2	4771931	12-10-2022	Drawback/ROSCTL	7803040.37	252288	318162	570450
3	4771936	12-10-2022	Drawback/ROSCTL	7837575.93	236140	203159	439299

4	4771939	12-10-2022	Drawback/ROSCTL	8382062.87	266253	241632	507885
5	4771962	12-10-2022	Drawback/ROSCTL	7188973.89	242776	270447	513223
				40656639.84	1313282	1253630	2566912

2.9 In view of the above, it appears that the export incentive claimed by the exporter in these 5 SBs all dated 12.10.2022 amounting to **Rs. 25,66,912/- (Rs. 13,13,282/- Drawback + Rs. 12,53,630/- RoSCTL)** appears as non-admissible in as much as (i) the goods brought for export under 5 Shipping Bills dated 12.10.2022 were not accounted for in the books of account of the exporter (ii) No Purchase detail of such purported goods is available in the GST return filed by the exporter (iii) whereabouts of the exporter is also not known (iv) no FOB realization has been taken placed against the said purported export.

3. LEGAL PROVISIONS:

3.1 Various provisions of **Customs Act, 1962** are applicable in the instant case:

Clearance of export goods:

Section 50. Entry of goods for exportation. -

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

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

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

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

- (a) the accuracy and completeness of the information given therein;*
- (b) the authenticity and validity of any document supporting it; and*
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

SECTION 75. Drawback on imported materials used in the manufacture of goods which are exported. –

(1) Where it appears to the Central Government that in respect of goods of any class or description ¹[manufactured, processed or on which any operation has been carried out in India] ²[, being goods which have been entered for export and in

respect of which an order permitting the clearance and loading thereof for exportation has been made under [section 51](#) by the proper officer], ³[or being goods entered for export by post under clause (a) of [section 84](#) and in respect of which an order permitting clearance for exportation has been made by the proper officer], a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the ⁵[manufacture or processing of such goods or carrying out any operation on such goods], the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the [rules made under sub-section \(2\)](#):

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

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the ⁸[Foreign Exchange Management Act, 1999 (42 of 1999)], such drawback shall ⁹[except under such circumstances or such conditions as the Central Government may, by rule, specify,] be deemed never to have been allowed and the Central Government may, by [rules made under sub-section \(2\)](#), specify the procedure for the recovery or adjustment of the amount of such drawback.]

(1A) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods ¹¹[manufactured, processed or on which any operation has been carried out in India] and exported outside India, then, the Central Government may, by notification in the Official Gazette, declare that so much of the material as is contained in the goods exported shall, for the purpose of sub-section (1), be deemed to be imported material.]

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

(a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any operation on the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular

person carrying on any process or other operation, and interest if any payable thereon;

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

(ab) for specifying the procedure for recovery or adjustment of the amount of any drawback which had been allowed under sub-section (1) ^{1 4} [or interest chargeable thereon];

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

(c) for requiring the ^{1 5} [manufacturer or the person carrying out any process or other operation] to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the ^{1 6} [Assistant Commissioner of Customs or Deputy Commissioner of Customs] to enable such authorised officer to inspect the processes of ¹⁷ [manufacture, process or any other operation carried out] and to verify by actual check or otherwise the statements made in support of the claim for drawback.

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

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

Section 28AAA of the Customs Act, 1962 provides the provisions for recovery of duties in certain cases. -

(1) Where an instrument issued to a person has been obtained by him by means of-

- (a) collusion; or*
- (b) willful misstatement; or*
- (c) suppression of facts,*

For the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), or any other law, or any scheme of the Central Government, for the time being in force, by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules 3 [or regulations] made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued:

Provided *that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.'*

Explanation 1 - *For the purposes of this sub-section, "instrument" means any scrip or authorisation or licence or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), 4 [or duty credit issued under section*

51B, with respect to] a reward or incentive scheme or duty exemption scheme or duty remission scheme or such other scheme bestowing financial or fiscal benefits, which may be utilised under the provisions of this Act or the rules made or notifications issued thereunder.

Explanation 2 - *The provisions of this sub-section shall apply to any utilisation of instrument so obtained by the person referred to in this sub-section on or after the date on which the Finance Bill, 2012 receives the assent of the President, whether or not such instrument is issued to him prior to the date of the assent.*

(2) Where the duty becomes recoverable in accordance with the provisions of sub-section (1), the person from whom such duty is to be recovered, shall, in addition to such duty, be liable to pay interest at the rate fixed by the Central Government under section 28AA and the amount of such interest shall be calculated for the period beginning from the date of utilisation of the instrument till the date of recovery of such duty.

Section 113 of the Customs Act, 1962 provides the provisions of Confiscation of goods attempted to be improperly exported, etc. –

The following export goods shall be liable to confiscation: -

....

...

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

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

[(ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;]

Section 114: Penalty for attempt to export goods improperly, etc. -

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 1[2[not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act]], whichever is the greater;

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

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

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

Section 114AA. Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

Section 125. Option to pay fine in lieu of confiscation. –

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

***Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:*

***Provided** further that , without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

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

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

Explanation .-*For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending*

against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

3.2 Whereas, following provisions of **Customs, Central Excise Duties and Service Tax (Drawback) Rules, 1995** are applicable in the instant matter:

Rule 2. Definitions -

In these rules, unless the context otherwise requires, -

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

Rule 3. Drawback -

(1) Subject to the provisions of -

- (a) the Customs Act, 1962 (52 of 1962) and the rules made thereunder,*
- (b) the Central Excises and Salt Act, 1944 (1 of 1944) and the rules made thereunder, 1[x x x]*
- 2[(bb) the Finance Act, 1994 (32 of 1994), and the rules made thereunder; and]*
- (c) these rules,*

a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government:

[Provided *that where any goods are produced or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 (52 of 1962) and the rules made thereunder; or of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder; or of the Finance Act, 1994 (32 of 1994) and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained:]*

Provided *further that no drawback shall be allowed -*

- (i) if the said goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;*
- (ii) if the said goods are produced or manufactured, using imported materials or excisable materials or taxable services in respect of which duties or taxes have not been paid; or]*
- (iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Bimlipatam jute or mesta fibre), yarn, twist, twine, thread, cords and ropes;*

(iv) if the said goods, being packing materials have been used in or in relation to the export of—.....

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

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

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

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

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

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

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

(2) Where the amount or rate of drawback has been determined under rule 6 or rule 7, the exporter shall make an additional declaration on the relevant shipping bill or bill of export that -

(a) there is no change in the manufacturing formula and in the quantum per unit of the imported materials or components, if any, utilised in the manufacture of export goods; and

(b) the materials or components, which have been stated in the application under rule 6 or rule 7 to have been imported, continue to be so imported and are not being obtained from indigenous sources.

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

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

Rule16A. Recovery of amount of Drawback where export proceeds not realized -

(1) Where an amount of drawback has been paid to an exporter or a person authorized by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under 2[the Foreign Exchange Management Act, 1999 (42 of 1999)], including any extension of such period, such drawback shall 3[,except under circumstances or conditions specified in sub-rule (5),] be recovered in the manner specified below:

Provided that the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the Domestic Tariff Area to a special economic zone.]

(2) If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be] shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of 5[thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be] shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within 6[thirty days] of the receipt of the said order :

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds:

(3) Where the exporter fails to repay the amount under sub-rule (2) within said period of 6[thirty days] referred to in sub-rule (2), it shall be recovered in the manner laid down in rule 16.

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation 7[within a period of three months from the date of realisation of sale proceeds], the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs] to the claimant provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India.

Provided that

(i) the Principal Commissioner of Customs or Commissioner of Customs, as the case may be] or Principal Commissioner or Commissioner] of Customs and Central Excise, as the case may be, may extend the aforesaid period of three months by a period of nine months provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India;

(ii) an application fee equivalent to 1% of the FOB value of exports or Rs. 1000/- whichever is less, shall be payable for applying for grant of extension by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be or Principal Commissioner or Commissioner] of Customs and Central Excise, as the case may be]

(5) Where sale proceeds are not realised by an exporter within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes Off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer, the amount of drawback paid to the exporter or the claimant shall not be recovered.]

3.3 Whereas, following provisions of **The Foreign Trade (Development and Regulation) Amendment Act, 2010 NO. 25 OF 2010 [19th August, 2010]** and Rules made thereunder are applicable in the instant matter:

The Foreign Trade (Development and Regulation) Amendment Act, 2010 (NO. 25 OF 2010) [19th August, 2010]

Section 11: Contravention of provisions of this Act, rules, orders and foreign trade policy:

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

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

(3) Where any person signs or uses, or causes to be made, signed or used, any declaration, statement or document submitted to the Director General or any officer authorised by him under this Act, knowing or having reason to believe that such declaration, statement or document is forged or tampered with or false in any material particular, he shall be liable to a penalty of not less than ten thousand rupees or more than five times the value of the goods or services or technology in respect of which such declaration, statement or document had been submitted, whichever is more.

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

The Foreign Trade (Regulation) Rules, 1993

Rule 11. Declaration as to value and quality of imported goods. -

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

consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

Rule 12. Declaration as to Importer-exporter Code Number. -

On the importation into or exportation out of any Customs port of any goods the importer or exporter shall in the Bill of Entry or Shipping Bill or, as the case may be, in any other documents prescribed by rules made under the Act or the Customs Act, 1962 (52 of 1962), state the Importer-exporter Code Number allotted to him by the competent authority.

14. Prohibition regarding making, signing of any declaration, statement or documents. -

(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a licence or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

3.4 Whereas, it appears that the exporter has also claimed benefit of Rebate of State and Central Taxes and Levies (RoSCTL) scheme on the above referred five Shipping Bills. RoSCTL scheme is a Ministry of Textiles scheme for exports under Chapters 61, 62 and 63 of Customs Tariff. The scheme rebates various Central, State and local duties/taxes/levies which were not refunded under other duty remission schemes. Ministry of Textiles (MoT) had notified the initial RoSCTL scheme vide notification No. 14/26/2016-IT dated 07.03.2019. The rates for this scheme were notified by MoT on 08.03.2019. MoT's further notification No. 14/26/2016-IT dated 02.05.2019 elaborated on the nature of rebate, mechanism of issue of scrips, etc. under RoSCTL scheme. The Government later decided to extend the RoSCTL scheme w.e.f. 01.01.2021 to 31.03.2024 for apparel/ garments (under Chapter 61 and 62) and made ups (under Chapter 63). As per MoT's Notification No.12015/11/2020-TTP dated 13.08.2021, the extended RoSCTL scheme is implemented by Department of Revenue (DoR) with end-to-end digitization of issuance of remission amount in the form of transferable duty credit electronic scrip, which is maintained in an electronic ledger in the Customs system scheme for exports made w.e.f. 01.01.2021. DoR's notification on RoSCTL scheme implementation guidelines Notification No. 24/2023-Customs (N.T.) dated 01.04.2023 provides for the manner of issue of duty credit under the RoSCTL and the conditions and restrictions governing the issuance of duty credit. Duty credit allowed under the RoSCTL scheme is subject to realization of sale proceeds within the period allowed by RBI. The detailed provisions are mentioned in condition at para 2(4), 2(6) and 2(7) of the Notification No.77/2021-Customs (NT). The Regulations read with said Notification also provide for the situations and manner of suspensions or cancellation of duty credit or e-scrip, or recovery when duty credit allowed was in excess or where export proceeds are not realized as under:

Notification No.77/2021-Customs (NT) dated 24.09.2021:

Para 2. Such duty credit shall be subject to the following conditions, namely:-

(4) that the duty credit allowed under the Scheme, against export of goods notified vide notification No. 14/26/2016-IT (Vol.II), dated the 8th March, 2019 for the Scheme, shall be subject to realisation of sale proceeds in respect of such

goods in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), failing which such duty credit shall be deemed to be ineligible;

(5) that the imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations which allow the bill of entry and shipping bill or bill of export to be presented and processed electronically on the customs automated system;

(6) that the exporter has realised the sale proceeds against export of goods made earlier by the said exporter where the period allowed for realisation, including any extension of the said period by the Reserve Bank of India, has expired:

Provided that duty credit shall be issued by Customs in excess of the ineligible amount of duty credit pertaining to the unrealised portion of sale proceeds against export of goods made earlier:

Provided further that if the Principal Commissioner of Customs or Commissioner of Customs has reason to believe, on the basis of risk evaluation or on the basis of enquiry, that the claim of duty credit made by an exporter on export goods may not be bona fide, he may direct, for reasons to be recorded in writing, to allow duty credit after realisation of sale proceeds of such exports;

Para 4. Recovery of amount of duty credit-

- 1. Where an amount of duty credit has, for any reason, been allowed in excess of what the exporter is entitled to, the exporter shall repay the amount so allowed in excess, himself or on demand by the proper officer, along with interest, at the rate as fixed under section 28AA of the said Act for the purposes of that section, on that portion of duty credit allowed in excess, which has been used or transferred, and where the exporter fails to repay the amount along with interest, as applicable, it shall be recovered in the manner provided in section 142 of the said Act.*
- 2. The duty credit amount that an exporter is so required to repay under sub-clause (1) shall be deemed never to have been allowed, and if the exporter fails to repay the said amount within a period of fifteen days along with interest so demanded, then the proper officer of Customs may, without prejudice to any action against the exporter, proceed for recovery of the said duty credit amount from the transferee in the manner as provided in section 142 of the said Act.*

Para 5. Recovery of amount of duty credit where export proceeds are not realised. -

- 1. Where an amount of duty credit has been allowed to an exporter but the sale proceeds in respect of such export goods have not been realised by the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), the exporter shall, himself or on demand by the proper officer, repay the amount of duty credit, along with interest, at the rate as fixed under section 28AA of the said Act for the purposes of that section, within fifteen days of expiry of the said period.*

2. *In case any extension of the said period for realisation of sale proceeds has been given by the Reserve Bank of India and the exporter produces evidence of such extension to the proper officer, and if the said sale proceeds are not realised in such extended period, the exporter shall repay the said amount of duty credit along with the said interest, within fifteen days of expiry of the said period.*
3. *If a part of the sale proceeds has been realised, the amount of duty credit to be recovered shall be the amount equal to that portion of the amount of duty credit allowed which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.*
4. *Where the exporter fails to repay the duty credit amount within the said period of fifteen days, the said duty credit shall be deemed never to have been allowed and it shall be recovered, along with the said interest, in the manner as provided in section 142 of the said Act.*
5. *The proper officer of Customs may, without prejudice to any action against the exporter, proceed for recovery of said duty credit amount from the transferee in the manner as provided in section 142 of the said Act.*

3.5 Further, during the investigation it came on record that the consignments of the said Exporter were cleared by the Customs House Agent, M/s Shri Radhe Krishna Shipping Pvt. Ltd. (AABCS5273MCH002). The statute has entrusted various obligations upon the Customs House Agents vide the Customs Brokers Licensing Regulations, 2018 notified vide Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018 amended by Notification No. 08/2019-Customs (N.T.) dated 06.02.2019. Relevant provisions of the said Regulations are as under:

Customs Brokers Licensing Regulations, 2018 notified vide Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018 amended by Notification No. 08/2019-Customs (N.T.) dated 06.02.2019

10. Obligations of Customs Broker—

A Customs Broker shall —

(a)

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

(q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

OUTCOME OF INVESTIGATION:

4.1 M/s Winning Overseas filed 5 Shipping Bills bearing SB No. 4771930, 4771931, 4771936, 4771939, 4771962 all dated 12.10.2022 at Mundra Port for purported export of Readymade garments to Pakistan with claim of benefit of duty drawback and benefit of RoSCTL. The said exporter was not found in existence at the registered premises during search proceeding conducted by the Customs department. From scrutiny of the input output details available on the GST portal, it appears that at the time of filling of subjected five Shipping Bills dated 12.10.2022, there was no stock of the goods or any other inward supply available with the exporter. Further, from the GSTIN Portal, it appears that the GSTIN of the exporter is cancelled suo-moto w.e.f. 07.07.2021, i.e. much prior to the date of filling of the Shipping Bills in question. Further, it is noticed that there was a circular transaction of ITC between M/s Winning Overseas and M/s Amaira International, in as much as during the month of October, 2021, M/s Amaira International passed on ITC amounting to Rs. 3,06,94,167/- to M/s Winning overseas vide 31 invoices all dated 04.10.2021 and in January, 2022 M/s Winning overseas passed on identical amount of ITC, Rs. 3,06,94,167/- to M/s Amaira International vide 31 invoices all dated 18.01.2022. Apart from these transactions, no other input/output supply detail is available on the GST portal. Furthermore, the GSTIN of Amaira International, the only purported buyer and supplier of the exporter has also been cancelled since July, 2022, i.e. much prior to the filling of SBs. The Summons issued to the exporter have been returned undelivered. Furthermore, as per FOB realization report obtained from the EDI System, it appears that no FOB amount has been realized to the exporter till 19.01.2024 against the total FOB amount of **Rs. 4,06,56,640/-** supposed to be realized against subjected five SBs.

4.2 Whereas, the exporter, M/s Winning Overseas had filed these 5 SBs all dated 12.10.2022 with claim of benefit of duty drawback and benefit of RoSCTL amounting to **Rs. 25,66,912/- (Rs. 13,13,282/- Drawback + Rs. 12,53,630/- RoSCTL)**. As per Rule 16(A) Sub-Rule (1) & (2) of Customs Central Excise Duties and Service Tax Drawback Rules, 1995 and Clause 2 (4) of the Notification No.77/2021-Customs (NT) dated 24.09.2021, the exporter is under obligation to produce evidence to show that the sales proceeds (Foreign exchange) in respect of the goods exported have been realised within the time limit prescribed under the Foreign Exchange Management Act, 1999. However, it is evident from the ICES System that the foreign inward remittance involved in the goods exported under the Shipping Bills has not been realized even after the expiry of the prescribed time-limit. Further, no any relevant documents to support the genuine purchase, valuation and exportation of the goods were presented by the exporter.

4.3 Whereas, it appears from investigation that the no details of its manufacturing, production, using imported material or excisable material therein were available in respect to the purported goods exported vide above Shipping Bills dated 12.10.2022 so it could not be ascertained whether any duties have been paid or otherwise. This Office issued summons to the exporter to appear for the statement and submit any relied documents. But the said exporter never appeared to this office to record his statement and further not submitted any documents in respect of manufacturing, production or use of any imported material in impugned export goods, though he was given number of opportunities to present himself for recording of his statement but he failed to produce any such details. Therefore, it appears from the investigation that necessary ingredient of clause (ii) to second proviso to Rule 3(1) of Drawback Rule, 1995' is attracted in this case, which does not permit any

amount of drawback in such cases where no duty has been paid.

4.4 Whereas, the Exporter, was required to furnish declarations at the time of exports in the format annexed with the circular No. 16/2009-Customs dated 25.05.2009 issued under F. No. 609/137/2007- DBK by the then CBEC *inter alia* provides that the merchant exporters who purchase goods from the local market for export shall henceforth be entitled to full rate of duty drawback (including the excise portion). However, such merchant exporters shall have to declare at the time of export. the name and address of the trader from whom they have purchased the goods. They shall also have to declare that no rebate (input rebate and also the final product rebate) shall be taken against the Shipping bills under which they are exporting the goods. The merchant exporters who purchase goods from traders may therefore furnish the declaration, at the time of export, in the format annexed with the said circular. As per the said format, the exporter was inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased. They were also required to declare that they were not the manufacturer of the export goods and were not registered with central excise and they had purchased these goods from a trader who was also not registered with the central excise. They were also required to declare that no rebate (input rebate or/and final product rebate) would be taken against the export(s) made against this Shipping bill. However, during the course of investigation, the exporter failed to produce any such declaration.

4.5 As per Section 50 of the Customs Act, 1962 read with Regulation 4 of the Shipping Bill and Bill of Export (Form) Regulations, 2017, the exporter of any goods is required to file a Shipping Bill in the proforma prescribed, before the proper officer mentioning therein that the quality and specifications of the goods as stated in the Shipping Bills are in accordance with the terms of the export contract entered into with the buyer/consignee in pursuance of which the goods are being exported; the exporter while presenting the Shipping Bill, at the foot thereof, is also required to make and subscribe to a declaration as to the truthfulness of the contents of such Shipping Bills and in support of this is required to produce to the proper officer, the declaration relating to the exported goods. However, as detailed in forgoing paras, the Exporter has made wrong/false declaration in Shipping Bills filed under Section 50 of the Act, *ibid* and submitted false declaration. Moreover, the exporter has also violated the provisions of Rule 12 of the Customs and Central Excise Duties Drawback Rules, 1995, as amended and Section 11 of the Foreign Trade (Development and Regulations) Act, 1992 and Rule 11 of the Foreign Trade (Regulation) Rules, 1993, in as much as the exporter had subscribed to a wrong declaration while filling the Shipping Bills before the Customs Authorities.

4.6 From the above discussion, it can be apprehended that the exporter had obtained the IEC illegally and made exports with an intent to avail undue benefit of duty drawback and benefit of RoSCTL fraudulently. The exporter purportedly given wrong details and obtained the IEC with fake and bogus documents to avail undue export-based incentives fraudulently. During the investigation, this office made efforts to locate the exporter and visited the address mentioned in the IEC, but the exporter was not found operational at the said address. No document was found at the registered premises of the exporter. From the investigations and scrutiny of documents gathered, it appears that the exporter obtained the IEC with an intention to export the goods illegally without following the proper procedure under Customs Act, 1962 and Rules and Regulation made thereunder and claimed the drawback and RoSCTL amounting to **Rs. 25,66,912/- (Rs. 13,13,282/- Drawback + Rs.**

12,53,630/- RoSCTL) by deliberate misrepresentation, wilful mis-statement and suppression of facts. Therefore,

(i) Claim of **drawback amounting to Rs. 13,13,282/-** by the exporter appears liable to be rejected in terms of Clause (ii) to the second proviso to Rule 3(1) & Rule 16(A) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.

(ii) Claim of **RoSCTL amounting to Rs. 12,53,630/-** is also appears liable to be rejected in terms of clause 2 (6) and clause 5 (1) of the Notification No.77/2021-Customs (NT) dated 24.09.2021 read with Section 28AAA of the Customs Act, 1962.

4.7 Further, it also appears the foreign remittances in respect of exports made by the said exporter were not realized against any of the above referred Shipping Bills. Further, it cannot be ruled out that the said exporter grossly overvalued the impugned goods to obtain the higher drawback and RoSCTL, as the said exporter is non-existence and never appeared to this office to record his statement, Therefore, from these facts, it appears that the exporter has not made truthful declarations in the filing of the shipping bills. The exporter did not follow the obligation imposed through Regulations and Act and has not made correct declarations; therefore, the exporter has violated the provisions of Section 7 & 11 of FT (D&R Act, 1992 and Rule 11, 12 and 14 of the Foreign Trade (Regulation) Rules, 1993. Thus, by the above-mentioned acts of various omission and commission, the said exporter defrauded the government exchequer by fraudulently claiming drawback and RoSCTL amounting to **Rs. 25,66,912/- (Rs. 13,13,282/- Drawback + Rs. 12,53,630/- RoSCTL)** and acted in a manner which rendered the goods having declared FOB value of **Rs. 4,06,56,640/-** are liable for confiscation under Section 113 (i) (ia) (ja) of the Customs Act, 1962. Further, the exporter by their acts of omission and commission rendered themselves liable for penalty action under Section 114 (iii) and also under 114AA of Customs Act, 1962.

ROLE OF CUSTOMS HOUSE AGENT M/s Shri Radhe Krishna Shipping Pvt. Ltd. (AABCS5273MCH002)

5.1 Further, during the investigation it came on record that the consignments of the said Exporter were cleared by the Customs House Agent, M/s Shri Radhe Krishna Shipping Pvt. Ltd. (AABCS5273MCH002). Accordingly Summons dated 12.06.2023 and 21.09.2023 were issued to the CB for his attendance and for giving evidence and producing all the relevant documents in respect of these Shipping Bills. But the said summons was returned back / undelivered by postal authorities with a remark as 'Left'. Efforts were also made to trace out the CHA but all the efforts were futile. During the investigations it appears that the CHAs have not advised his client in the light of direction contained in Regulation 11(d) of CBLR 2013. They have also not paid due diligence towards their work by way of not informing about the unscrupulous activity of the exporter.

5.2. The Customs Broker is working as an authorized representative of exporter and takes the responsibility of export / import clearances in favour of exporter after taking due authorization from the exporter. A custom broker is always aware of all the omissions and commissions made by the exporter. It is a business practice that CHA knows on whose behalf they are working as CHA and can face investigation for omission and commission at

any time. As per CHA Regulation, the CHA is also required to know—their client. The CHA had been dealing with such individual to collect documents and collect goods and clearance of the goods for export. The CHA must have raised his agency charges / fees from same source. Hence, it is not possible for a CHA to deal with a non-existing firm/person. This is a case where the exporter appears as non-existent/non traceable. The officers have made several efforts to trace out the address of the said exporter, but the same were not fruitful. Even summons were issued to CHAs, but they have not appeared to this office to give their statement. From the investigations, it appears that the said exporter submitted fake and bogus documents to the CHAs and the said CHA not verified the genuineness of the same. Due to the negligence of CHAs, the exporter had filed the export documents with false declaration to avail undue drawback and RoSCTL fraudulently. Therefore, under the facts and such circumstances, it appears that the CHAs actively connived with exporter in claiming undue drawback and mis-declaring in Shipping Bills. While dealing with exporter, the CHAs did not care to follow the obligations imposed through the Regulations and Acts and by doing so, they have violated the obligated entrusted upon them vide Regulations 11(d), (e) and (n) of the CBLR, 2013. Therefore, CHA has rendered themselves liable for Penal action under Section 114(iii) of the Customs Act, 1962.

6.1 Now, therefore, in view of the outcome of the investigation as discussed above, M/s Winning Overseas, Godown No. G-10, Jawahar Nagar, Block-80N, Village-Chudva, Gandhidham, Katchch, Gujarat-370240 holding IEC NO: DRMPK3260E is hereby called upon to Show Cause to the Additional/ Joint Commissioner of Customs, Customs House, Mundra having his office at Port User Building, Mundra within 30 days of the receipt of this Show Cause Notice as to why :

- i. The purported goods exported vide Shipping Bills No. 4771930, 4771931, 4771936, 4771939, 4771962 all dated 12.10.2022 from Mundra Port having declared FOB value of Rs. **4,06,56,640/-**, though not available physically should not be confiscated under Section Section 113 (i) (ia) (ja) of the Customs Act, 1962 and redemption Fine should not be imposed in lieu of confiscation in terms of Section 125 of the Act, *ibid*.
- ii. The duty drawback amounting to **Rs. 13,13,282/-** claimed by the exporter in these Shipping Bills should not be rejected in terms of Clause (ii) to the second proviso to Rule 3(1) & Rule 16(A) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962.
- iii. The RoSCTL amounting to **Rs. 12,53,630/-** claimed by the exporter in these Shipping Bills should not be rejected in terms of clause 2 (6) and clause 5 (1) of the Notification No.77/2021-Customs (NT) dated 24.09.2021 read with Section 28AAA of the Customs Act, 1962.
- iv. Penalty should not be imposed upon M/s Winning Overseas under Section 114 (iii) and also under 114AA of Customs Act, 1962.

6.2. Now, therefore, in view of the outcome of the investigation, as discussed above, the Customs House Agent, M/s Shri Radhe Krishna Shipping Pvt. Ltd. (AABCS5273MCH002) is hereby called upon to Show Cause to the Additional/ Joint

Commissioner of Customs, Customs House, Mundra having his office at Port User Building, Mundra within 30 days of the receipt of this Show Cause Notice as to why: -

- i. penalty should not be imposed upon them for the various acts of omission and commission under Section 114(iii) of the Customs Act, 1962 read with the provisions of the CBLR, 2013.

7. Personal Hearing

7.1 The personal hearing in this case were given on 10.07.2024. In response to No one appeared for the PH.

7.2. Further, on account of change in the adjudicating authority another PH was scheduled on 28.11.2024, 20.01.2025. In response to which no one from the exporter appeared for the PH. While the CB m/s Shri Rahde Krishna Shipping appeared was represented by shri Dhaval K. Shah, advocate on 20.01.2025 who requested for 12 days' time to submit his detailed submission.

7.3. In view of the above another PH was given on 04.02.2025. which was unattended by the exporter and While the CB m/s Shri Rahde Krishna Shipping appeared was represented by shri Dhaval K. Shah, advocate who pleaded the innocence of his client and supported his claims by relevant judgements and requested the penalty proposed against his client to be dropped.

8. Defense Submission

8.1 Shri Dhaval K. Shah, advocate of M/s Shri Radha Krishna Shipping Pvt. Ltd. has made following submission in his defense. The relevant points of the same are reproduced as below.

1. The subject Show Cause Notice is issued to M/s. Winning Overseas (The Exporter) to Show Cause to the Ld. Adjudicating Authority as to why the goods purportedly exported, by Shipping Bill No. 4771930, 4771931, 4771936, 4771939 & 3771962, all dated 12.10.2022 from the Mundra Port, though not available physically, should not be confiscated under Section 113 (i) (a) (ja) of the Customs Act, 1962 and redemption fine should not be imposed instead of confiscation in terms of Section 125 of the said Act. The said Exported was called upon to explain why the duty drawback amounting to Rs. 13,13,282 claimed by the exporter in these Shipping Bills should not be rejected in terms of Clause (ii) to the second provision to rule 3(1) & Rule 16(A) of the Customs Act, Central Excise Act, 1944 & Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962. The Exporter is called upon to explain why RoSCTL amounting to Mrs. 12, 53,630/- claimed by the exporter in these Shipping Bills should not be rejected in terms of clause 2(6) and clause 5 (1) of the Notification No. 77/2021-Customs (NT) dated 24.09.2021 read with Section 28AAA of the customs Act, 1962, and why penalty under Section 114(iii) and also under Section 114 AA of the Customs Act, 1962, should not be imposed.

2. The subject Show Cause Notice is also issued to the Answering Noticee, and called upon to explain why a penalty under Section 114(iii) of the Customs Act, 1962, read with the Provision of the CBLR, 2013 should not be imposed for the alleged acts of commission and omission. The subject notices are issued to the answering noticee as the Customs House Agent/Broker undertaking of the exporter who has purportedly exported the goods, though goods are not available for confiscation.

3. The subject Show Cause Notice, in Paragraph 5.1 alleged that the two summons dated

12.06.2023 and 21.09.2023 were issued to the answering noticee, but the summons was returned / undelivered by the postal authorities with a remark as 'Left'. The said paragraph alleged that the Answering Noticee had not advised his client, I.e., Exporter, in light of direction contained in Regulation 11(d) of CBLR 2013, and also not paid due diligence towards their work by way of not informing about the unscrupulous activity of the exporter.

4. The subject Show Cause Notice further alleged in paragraph 5.2, that in the present case, the Exporter is not existent/traceable, summons to the exporter and CHA not honoured, and therefore, a case is booked that the said exporter submitted fake and bogus documents to the CHA and the said CHA not verified the genuineness of the same. Due to the negligence of the CHA, the exporter had filed the export documents with a false declaration to avail undue drawback and RoSCTL fraudulently. On this premise, it is alleged that the Answering Noticee actively connived with the exporter in claiming undue drawback and mid-declaring in Shipping Bills. It is further alleged that while dealing with the exporter, the Answering Noticee did not care to follow the obligations imposed through the Regulations and Act, and by doing so, the Answering Noticee violated the obligation entrusted upon them as CHA vide Regulation 11(d), (e) and (n) of the CBLR, 2013, and therefore liable for penal action under Section 114 (iii) of the Customs Act, 1962.

5. At the outset, the Answering Noticee, denies any violation of Regulation 11(d), (e), and (n) of the CBLR, 2013, and also denies violation of a provision of the Customs Act, which can attract penalty under Section 114 (iii) of the Customs Act, 1962. The Answering Noticee denies any kind of commission, action, or lapse on their part, which can attract invocation if CBLR, 2013, and therefore, the present notice proposing to levy penalty is not tenable qua the Answering Noticee and proceedings initiated under the subject notice is required to be dropped in the interest of justice.

6. The Answering Noticee has shifted its business operation from Mundra to Mumbai, and its new address is at 40, Goa Street, Off Shahid Bhagat Singh Road, Fort, Mumbai - 400001. After Covide 2019, the Answering Noticee was facing business crises at Mundra Location and therefore, keeping the office over there was not feasible. Therefore, when the job came, they managed with limited staff from Mumbai. However, the entire details of the Answering Noticee, including the email address, were very much available to the Customs Authorities, and therefore, the Authorities could have sent the summons through email if the hard copy was not served at the local address. But this does not mean that the Answering Noticee was not available or nonexistent. No offence can be registered against the Answering Noticee because summons could not be served physically at the address with the Mundra Customs.

7. To appreciate the entire controversy, it is important and necessary to understand the provision of CBLR, 2018, and the provision of the Customs Act, 1962, sub-section (iii) of Section 114, under which penalty is proposed to be levied. Since the period involved in the present case is post 2018, I.e., post Notification No. 41/2018- Cus (NT) dated 14.05.2018, earlier CBLR, 2013, has no applicability. Therefore, the obligations cast under Regulation 11 of CBLR, 2013 are misplaced. The Answering Noticee, reserves its right to contest the applicability of the old regulation when it has been superseded by the new regulation. Assuming without admitting that Regulation 10 of CBLR, 2018 is applied, instead of Regulation 11 of CBLR, 2013, the following Regulation is referred for convenience.

“Regulation 10. Obligation of Customs Broker-

(d) - advise his client to comply with the provisions of the Act, other allied acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to

the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) excise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;.

(n) verify correctness of Importer Exporter (IEC) number, Goods and Service Tax Identification Number (GSTIN), identity of its client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.

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

(i)....

(ii)...

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

Keeping these provisions in mind, now the facts should be appreciated and thereafter; one can come to the conclusion whether the Answering Noticee had violated any provision of the Customs Act read with the CBLR, 2018 or not.

7. It is a matter of record that there is not clear evidence produced in the entire show cause notice, which proves that the Answering Noticee did not comply its obligation as Customs House Broker; and also no evidence that the Answering Noticee had not advised its client to follow the procedure prescribed under the law. In the absence of any evidence, no penalty can be imposed under Subsection (iii) of section 114 of the Customs Act, 1962 is justified and therefore, the subject show cause notice is required to be dropped.

8. The Winning Overseas (Exporter), a proprietorship of Shri Surendra Kumar, has approached the answering noticee for the export of their order in the month of October 2022. After negotiation between the parties, the Exporter gave the work to the Answering Noticee for the export of Cargo under its IEC No. DRMPK3206E. The Exporter submitted to the Customs Broker, i.e., the Answering Noticee, a copy of the GST Registration Certificate, which confirmed the Number: 24RMPK3260E1ZX, whereby their address of the principal place of business was declared as "Jawahar Nagar, Godown no. G-10, Block - 80N, Village - Chudva, Gandhidham, Kutchh, Gujarat - 370240. The Exporter also furnished a copy of the PAN DRMPK3260E and confirmed its Banker ICICI Bank, Kadla and Mundra. The Exporter also furnished a copy of the Authority letter, authorising the Answering Noticee to clear any consignment of Import/Export from Mundra Customs House, addressing to the Commissioner of Customs, Mundra. All documents referred to above, which are relevant and mandatory to prove the KYC of a client submitted to the Customs Office, and there is no dispute on this aspect, are annexed herewith and marked as ANNEXURE - A collectively;

9. That the Answering Noticee had relied upon these documents, which are issued by the authorities/banks and which satisfied the existence of a firm/individual persons. These documents are never declared as forged/fake/non-existent, and therefore, whatever act has been made on the basis of these documents during the period in question, no offence can be alleged on those documents.

10. It is a stand of the Answering Noticee that on the basis of these documents, if one can act, the said person cannot be accused of misguiding or misleading third parties unless these documents are declared forged, fake or in non-existence by the public notice, and especially by an authorised agency, who has issued these documents. The Customs Brokers are not obliged to go with a veracity of those documents such as PAN, Aadhar Card, GST

Registration Certificate, Bank Account, etc. Further, Regulation 2018 obliges the Broker to submit KYC documents as well as the Authority letter, which has been duly submitted. The Customs Authorities have acted on those documents for the clearance of the cargo, and if the Customs Authorities could not verify the genuineness of these documents when the goods were permitted to be exported, it is not humanly possible for the Customs Brokers to identify the genuineness of these documents.

11. The Case of the Customs Authorities that the Exporter neither responded to the summons, not found at the address given on the export documents at the later point of time, the burden to prove the non-existent entity or fake entity is on the Customs Authorities, and not on the Customs Broker. If the Customs Authorities prove beyond doubt that the documents submitted for the KYC by the Customs Broker were fake and it was submitted with the intention to defraud the government exchequer, then only a violation of CBR 2018 can be alleged or any penalty can be levied, whereas in the facts of the present case, no such evidence or case made out against the Answering Noticee, and therefore, penalty under Subsection (iii) of Section 114 of the Customs Act, 1962 is not tenable.

12. That the Answering Noticee received all the necessary documents of the Exporter including KYC documents. The said documents were verified by the Answering noticee on the portal and found in order. The Customs authorities allowed a clearance of the exported goods. Only because the Customs Authorities did not find the exporter on its address, it is alleged that the exporter is not in existence and therefore, it is alleged that the Answering Noticee is responsible for the non-existence of the exporter.

13. That the Answering Noticee advised his client to comply with the provisions of the Act, other allied acts and the rules and regulations thereof. There is no evidence on record to show that as a Customs Broker, they failed to advise their client, and due to the alleged non-compliance, the obligation under clause (d) was not satisfied. It is also not established by any documentary evidence that shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, which the Answering Noticee could have informed the authorities, and failed to. When the Answering Noticee had verified all documents supplied by the exporter, and after confirming the same from the portal, what other verification the Customs Broker shall have to do? Failing which, what offence was committed by the Customs Broker. When the Customs Broker did not find any lapses on the part of the Exporter, there was no question of drawing the attention of the authorities regarding any non-compliance by the exporter. In this view, the invocation of Regulation 10(d) is misplaced and not tenable.

14. That the Answering Noticee had exercised all due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. There is no contrary evidence produced by the authorities in the present notice. Merely reproducing the language of the obligation under 10, no liability can be fastened on the Customs Broker. For alleging any violation, the burden is on the authorities to bring some evidence, which they failed to provide, and therefore, the subject show cause notice is not tenable on this count.

15. That there is no dispute that GSTIN was duly issued by the GST authorities, and the benefit was claimed by the exporter on the basis of the said registration, which is sanctioned by the concerned authorities. When the IGST authorities/Customs authorities acted on the basis of the said registration, no offence can be booked against the Customs Broker for acting on the basis of the said IEC & GSTIN. Further, the suomoto cancellation

of the GSTIN, retrospectively, cannot be used against the Customs Broker, as the Customs Broker has not availed any benefit out of such an action. The obligation casted in the Customs Broker is to verify the IEC & GSITN on the portal, which has been complied with. However, the subject notice nowhere disclosed the standard on which the GSTIN was cancelled, retrospectively. If the licence issued by the competent authority has been cancelled, retrospectively, no action can be taken on the person who has relied upon these certificate, bonafide, when the transaction took place. Therefore, the allegations made that GSTIN was cancelled retrospectively cannot be used against the person who acted bonafide without any notice. The subject show cause notice invoking Regulation 10(n) is not sustainable.

16. That in the present Show Cause Notice, the allegations against the Answering Noticee that the documents relating to the export of the impugned consignments, the CHA acted on the information furnished to him by the exporter. The penalty is imposed on the appellant u/s 114 (iii) as he had not advised the exporter as envisaged in Rule 10 of Custom Broker Regulations 2018,. Unless it is found that false details in the import documents filed with the department were entered by the CHB knowingly, CHB cannot prima facie be held to have abetted misdeclaration of the goods under export and rendered the impugned goods liable for confiscation under the Act. In a recent judgment of the Hon'ble High Court of Delhi in the case of Jasjeet Singh Marwaha v. Union of India [2009 (239) E.L.T. 407 (Del.)], the Hon'ble High Court held that it was the obligation of a CHA to ensure that the entries made in the Bills of Entry filed by it were correct and it could be penalized for failure to enter correct particulars in the Bills of Entry under the Custom House Agents Regulations, 2004. The commissioner may examine if the appellant was aware of the misdeclaration involved and yet did not bring the same to the notice of the authorities and facilitated the misdeclaration of the description of the goods.

17. The Hon'ble CESTAT, Chennai, in the case of Maruti Transports Vs. CC, Chennai reported in 2004 (177) ELT 1052 while considering the case of the department that CHA has failed in fulfilling the obligations ascribed under the CHALR, 1984, especially, the case was that at the time of filing documents, CHA was not aware of forgery and coming to know subsequently, whether there was a breach of regulation? The Hon'ble CESTAT held that there is no violation of obligation, and therefore, no penalty is impossible. The Hon'ble CESTAT considered the fact while deciding the issue that the CHA had filed Customs documents without getting authorisation from the importer. The Hon'ble CESTAT observed that there is no dispute of the fact that the Bill of Entry, which was filed in the name of the appellant-CHA, was duly signed by the importer. According to the Tribunal's decision in P.P. Dutta case (supra), filing of a Bill of Entry duly signed by the importer without the importer's written authorisation, is not to be treated as a breach of obligation under Regulation 14 (a). Following the decision in P.P. Dutta's case, the Hon'ble CESTAT has held that the Commissioner's finding that the appellant had failed to comply with Regulation 14 (a). In view of this case law, the subject Show Cause Notice is not sustainable.

18. That it is not the case of the authority that the Exporter firm was not available or the IEC code was obtained fraudulently, and documents submitted by the exporter through the Custom Broker were actually not supplied by the exporter. The Hon'ble Tribunal, in the case of Nimesh Suchde Vs. CC, Nava Sheva reported in 2007 (209) ELT 726 (Tri - Mum) held that Appellant in the capacity of CHA is not supposed to look into details of the

genuineness of importer when IEC number is produced by the importer; moreover, mere knowledge of certain facts on the part of CHA does not confer any status of an abettor to him, the penalty can not be imposed. A similar view has been held by the Hon'ble Tribunal in the case of Thawerdas Wadhoomal Vs. CC (General), Mumbai reported in 2008 (221) ELT 252 (Tri-Mumbai), wherein the Hon'ble Tribunal has shield that CHA files documents on the basis of material given to him by his clients, and if in case of such exercise of his functioning, he believes in good faith that these documents were genuine, he is not liable to penal action. This case was subsequently upheld by the Hon'ble Apex Court, and therefore, the view held by the CESTAT on this issue attained finality.

That the Hon'ble Tribunal in the case of Giavudan Indian Pvt Ltd Vs. CC, Bangalore reported in 2010 (261) ELT 975 (Tri- Bang) has held that unless it is shown that CHA entered the false details in import documents knowingly, they cannot be held liable for abetment of misdeclaration of goods and be liable to a penalty. Admittedly, in the present case, there is no case against the Answering Noticee that he knew about any kind of illegal activities of the Exporter. Therefore, with this kind of evidence available on record, there cannot be any case of not fulfilling the obligation under Rule 10 of the CBR, 2018 and hence, no question of imposing any penalty under Section 114 (iii) of the Customs Act, 1962.

20. That the Hon'ble Tribunal in the case of Cargo & Travel Services (P) Ltd Vs CC, Bangalore reported in 2010 (252) ELT 82 (Tri-Bang) has held that for imposing a penalty under Section 112 (a), it has to be brought on record that the Appellant abetted in the offence committed by the importer. The Hon'ble Tribunal, after considering the fact that there was nothing on record, nor there were any statements that implicate or the Appellant had directed or advised to file the bill of entries or mis-declare the country of origin in order to pay a lesser amount of duty. No penalty is justified. Similarly, in the present case also, there is an allegation that the Answering Noticee had acted and abetted with the Exporter; however, there is no such evidence produced by the authority and not a single confirmatory statement recorded by any party/witnesses implicating/knowledge of the Customs Broker.

20. That the Hon'ble Tribunal in the case of Cargo & Travel Services (P) Ltd Vs CC, Bangalore reported in 2010 (252) ELT 82 (Tri-Bang) has held that for imposing a penalty under Section 112 (a), it has to be brought on record that the Appellant abetted in the offence committed by the importer. The Hon'ble Tribunal, after considering the fact that there was nothing on record, nor there were any statements that implicate or the Appellant had directed or advised to file the bill of entries or mis-declare the country of origin in order to pay a lesser amount of duty. No penalty is justified. Similarly, in the present case also, there is an allegation that the Answering Noticee had acted and abetted with the Exporter; however, there is no such evidence produced by the authority and not a single confirmatory statement recorded by any party/witnesses implicating/knowledge of the Customs Broker.

21. Recently, the Hon'ble Appellate Tribunal in the case of WCI Shipping Pvt. Ltd Vs. CC., Chennai reported in 2020 (372) ELT 369 (Tri-Chennai) held that when the Ministry of Commerce granting IE license exhibited details of IEC holders in the website, the Appellant cannot be found fault for accepting same to be true and correct. In the present case, the Answering Noticee specifically contended that they had checked the IEC and the owner of

the IEC holder; in this view of the settled position, the Answering Noticee has not committed any breach of the Act, 1962 and the CBR, 2018.

22. Without prejudice to what is stated above, the most important aspect in the present case is that there are no goods available that were shown as exported. When there is a case of the authority itself that no goods were in existence, where is the question of imposing penalty under sub-section (iii) of Section 114 of the Customs Act, 1962, which can be invoked only if there was dealing in the goods or in relation to any goods. Further, there is no case made out against the Answering Noticee that the action/act/omission of the Customs Broker, the goods became liable for confiscation. The basic genesis of the provision invoked for the penalty is not satisfied with the facts of the present case, and therefore, any proposal that is far from the facts cannot be held liable for the violation of the said provision.

23. That the allegation in the show cause notice for levy penalty is on the assumption and presumption, otherwise, no case is made out for the confiscation of goods at the behest of the Answering Noticee. In the absence of such a thing, the penalty under Section 114(iii) is not tenable.

25. In view of the above referred submission, the Answering Noticee submits that the subject show cause notice deserves to be withdrawn in the interest of justice and also humbly submit that proceedings qua the penalty under Section 114 (iii) shall be dropped.

26. The Answering Noticee, request the Ld. Adjudicating Authority to grant opportunity of personal hearing in the matter on a virtual mode, and not to pass any order without hearing the Answering Noticee or their legal representative.

8.2 Further, Shri Dhaval K. Shah, advocate of M/s Shri Radha Krishna Shipping Pvt. Ltd. has also relied upon following case laws in their support the same are reproduced as below:

1. M/S UNICORN WORLD LOGISTICS VERSUS COMMISSIONER OF CUSTOMS AIRPORT & GENERAL-NEW DELHI.
2. M/S. VS BHAGWATI SHIPPING VERSUS COMMISSIONER OF CUSTOMS – NEW DELHI (AIRPORT AND GENERAL)

6.12 The next charge upheld against the appellant relates to violation of Regulation 10(n) of the CBLR,2018. The Regulation10(n) reads as follows: "The Custom Broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information."

6.13 The adjudicating authority below has held that the CB did not verify the KYC, antecedent, correctness of importer exporter code (IEC) number, identity and functioning of his clients at the declared address and thus the CB has failed to perform duties casted upon him under the provisions of Regulation 11(n) of CBLR, 2018. From the above provision, we find that the obligation of CB under Regulation 10(n) can be summarized as follows : (a) Verify the correctness of

IEC number (b) Verify the correctness of GSTIN (c) Verify the identity of the client using reliable, independent, authentic documents, data or information (d) Verify the functioning of the client at the declared address using reliable, independent, authentic documents, data or information.

6.14 All of the above, (a) and (b) require verification of the documents which are issued by the Government departments. The IEC number is issued by the Director General of Foreign Trade and the GSTIN is issued by the GST officers under the Central Board of Indirect Taxes and Customs of the Government of India or under the Governments of State or Union territory. The question which arises is has the Customs Broker to satisfy himself that these documents or their copies given by the client were indeed issued by the concerned Government officers or does it mean that the Customs Broker has to ensure that the officers have correctly issued these documents. In our considered view, Regulation 10(n) does not place an obligation on the Customs Broker to oversee and ensure the correctness of the actions by the Government officers. Therefore, the verification of documents part of the obligation under Regulation 10(n) on the Customs Broker is fully satisfied as long as the Customs Broker satisfies itself that the IEC and the GSTIN were, indeed issued by the concerned officers. This can be done through online verification, comparing with the original documents, etc. and does not require an investigation into the documents by the Customs Broker. The presumption is that a certificate or registration issued by an officer or purported to be issued by an officer is correctly issued. Section 79 of the Evidence Act, 1872 requires even Courts to presume

that every certificate which is purported to be issued by the Government officer to be genuine. It reads as follows: Presumption as to genuineness of certified copies. The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorized thereto by the Central Government : Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper."

6.15 We find that Regulation 10(n) nowhere extends the responsibility of the CB to physically going to the premises of each of the importers to ensure that they are functioning at the premises. When a Government officer issues a certificate or registration with an address to an Importer, the Customs Broker cannot be faulted for trusting the certificates so issued. It is otherwise not the case of department that IEC etc. of the importers herein were forged. Infact all the importers were found existing and they even joined the investigation and admitted appellant to be their CB for clearance of impugned imports. It has been held by the High Court of Delhi in the case of Kunal Travels [2017 (3) TMI 1494-Delhi High Court = 2017 (354) E.L.T. 447 (Del.)] that "the CHA is not an inspector to weigh the genuineness of the transaction. It is a processing agent of documents with respect

of clearance of goods through customs house and in that process only such authorized personnel of the CHA can enter the customs house area..... It would be far too onerous to expect the CHA to inquire into and verify the genuineness of the IE code given to it by a client for each import/export transaction. When such code is mentioned, there is a presumption that an appropriate background checks in this regard i.e., KYC, etc. would have been done by the customs authorities.....” (Emphasis Supplied).

3. RICH MARK SHIPPING AND LOGISTICS PVT LTD VERSUS PRINCIPAL COMMISSIONER OF CUSTOMS, VISAKHAPATNAM
4. M/S. COCHIN AIR CARGO CLEARING HOUSE, M/S. E. KOCHURANI AND M/S. V.A. MARY DAS VERSUS COMMISSIONER OF CUSTOMS (PREVENTIVE), TIRUCHIRAPPALLI
5. SHIVA KHURANA VERSUS COMMISSIONER OF CUSTOMS, NEW DELHI
Customs Appeal No. 58264 of 2013 Order No. - 55914/2016 Dated: - 15-12-2016
Imposition of penalty u/r 114 of the CA, 1962 on CHA - levy on the ground that the appellant being CHA has not verified the credential of the exporters - Held that: - at the time of filing of shipping bills, the exporter has produced IEC and ICEGATE statements and other 11 documents to verify their address and same was not being disputed. It is not required for the appellant to verify the address of the exporter/importer physically. Therefore, we hold that the appellant has taken due care while processing the export documents to check credentials of the exporter - penalty set aside - appeal allowed - decided in favor of appellant-CHA.

9. Discussion and Findings

9.1 I have carefully gone through the records of the case. The record of personal hearing held on 28.11.2024, 20.01.2025 and 04.02.2025 and other available records. I find that in the present case principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on record. The points to be decided in the instant case are:

- i. Whether the purported goods exported vide Shipping Bills No. 4771930, 4771931, 4771936, 4771939, 4771962 all dated 12.10.2022 from Mundra Port having declared FOB value of Rs. **4,06,56,640/-**, though not available physically should be confiscated under Section Section 113 (i) (ia) (ja) of the Customs Act, 1962 and redemption Fine should be imposed in lieu of confiscation in terms of Section 125 of the Act, *ibid*.
- ii. Whether the duty drawback amounting to **Rs. 13,13,282/-** claimed by the exporter in these Shipping Bills should be rejected in terms of Clause (ii) to the second proviso to Rule 3(1) & Rule 16(A) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962.
- iii. Whether the RoSCTL amounting to **Rs. 12,53,630/-** claimed by the exporter in these Shipping Bills should be rejected in terms of clause 2 (6) and clause 5 (1) of the Notification No.77/2021-Customs (NT) dated 24.09.2021 read with Section 28AAA

of the Customs Act, 1962.

- iv. Whether penalty should be imposed upon M/s Winning Overseas under Section 114 (iii) and also under 114AA of Customs Act, 1962.
- v. Whether the penalty should be imposed upon them for the various acts of omission and commission under Section 114(iii) of the Customs Act, 1962 read with the provisions of the CBLR, 2013.

9.2. I find that M/s Winning Overseas, Godown No. G-10, Jawahar Nagar, Block-80N, Village-Chudva, Gandhidham, Katchch, Gujarat-370240 holding IEC NO: DRMPK3260E (hereinafter referred to as '**the Exporter**') had filed 5 Shipping Bills bearing SB No. 4771930, 4771931, 4771936, 4771939, 4771962 all dated 12.10.2022 through their Customs Broker, M/s Shri Radhe Krishna Shipping Pvt. Ltd. (AABCS5273MCH002) (hereinafter referred to as 'the Custom Broker') at Mundra port for export of Ready Made Garments and Bags to destined port at Karachi, Pakistan. On the basis of input received from the NCTC's alert vide email dated 19.10.2022, it was noticed that above referred 5 Shipping Bills filed by the exporter were risky consignments in as much as due to incomplete supply chain, consignments destined to risky country, i.e. Pakistan and being the first consignment of the exporter and accordingly, necessary inquiry was initiated against the exporter for verification of the above consignment. Acting upon the input received, the ALL Cargo CFS, Mundra APSEZ was communicated vide email dated 20.10.2022 to hold the consignment covered under these 5 shipping Bills, i.e. SB No. 4771930, 4771931, 4771936, 4771939 & 4771962 all dated 12.10.2022). However, it was learnt that consignment had already been cleared from the Customs and left the Mundra Port on 16.10.2022 through Vessel- Hyundai Konkong. Further, vide letter dated 17.11.2022, drawback and IGST Refund Sections, Custom House, Mundra have been requested to hold the export incentives viz, *Drawback/IGST* refund in respect of above five SBs dated 12.10.2022 filed by the exporter. Letter dated 17.11.2022 was also issued to the jurisdictional CGST authority, i.e. CGST, Gandhidham to hold the export benefit, IGST refund to the exporter.

10. Confiscation of the Goods under section 113 (i),113 (ia) & 113(ja) of the Customs Act, 1962.

10.1 The section 113 of the Customs Act,1962 provides for the following

113(a)

.....

.....

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

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

113 (ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;]

10.2 I find that M/s Winning Overseas filed 5 Shipping Bills bearing SB No. 4771930, 4771931, 4771936, 4771939, 4771962 all dated 12.10.2022 at Mundra Port for purported export of Readymade garments to Pakistan with claim of benefit of duty drawback and benefit of RoSCTL. The said exporter was not found in existence at the registered premises during search proceeding conducted by the Customs department. From scrutiny of the input output details available on the GST portal, it appears that at the time of filling of subjected five Shipping Bills dated 12.10.2022, there was no stock of the goods or any other inward supply available with the exporter. Further, from the GSTIN Portal, it appears that the GSTIN of the exporter is cancelled suo-moto w.e.f. 07.07.2021, i.e. much prior to the date of filling of the Shipping Bills in question. Further, it is noticed that there was a circular transaction of ITC between M/s Winning Overseas and M/s Amaira International, in as much as during the month of October, 2021, M/s Amaira International passed on ITC amounting to Rs. 3,06,94,167/- to M/s Winning overseas vide 31 invoices all dated 04.10.2021 and in January, 2022 M/s Winning overseas passed on identical amount of ITC, Rs. 3,06,94,167/- to M/s Amaira International vide 31 invoices all dated 18.01.2022. Apart from these transactions, no other input/output supply detail is available on the GST portal. Furthermore, the GSTIN of Amaira International, the only purported buyer and supplier of the exporter has also been cancelled since July, 2022, i.e. much prior to the filling of SBs. The Summons issued to the exporter have been returned undelivered. Furthermore, as per FOB realization report obtained from the EDI System, it appears that no FOB amount has been realized to the exporter till 19.01.2024 against the total FOB amount of **Rs. 4,06,56,640/-** supposed to be realized against subjected five SBs.

10.3 I find that the exporter, M/s Winning Overseas had filed these 5 SBs all dated 12.10.2022 with claim of benefit of duty drawback and benefit of RoSCTL amounting to **Rs. 25,66,912/- (Rs. 13,13,282/- Drawback + Rs. 12,53,630/- RoSCTL)**. As per Rule 16(A) Sub-Rule (1) & (2) of Customs Central Excise Duties and Service Tax Drawback Rules, 1995 and Clause 2 (4) of the Notification No.77/2021-Customs (NT) dated 24.09.2021, the exporter is under obligation to produce evidence to show that the sales proceeds (Foreign exchange) in respect of the goods exported have been realised within the time limit prescribed under the Foreign Exchange Management Act, 1999. However, it is evident from the ICES System that the foreign inward remittance involved in the goods exported under the Shipping Bills has not been realized even after the expiry of the prescribed time-limit. Further, no any relevant documents to support the genuine purchase, valuation and exportation of the goods were presented by the exporter.

10.4 I also find that from investigation that the no details of its manufacturing, production, using imported material or excisable material therein were available in respect to the purported goods exported vide above Shipping Bills dated 12.10.2022 so it could not be ascertained whether any duties have been paid or

otherwise. This Office issued summons to the exporter to appear for the statement and submit any relied documents. But the said exporter never appeared to this office to record his statement and further not submitted any documents in respect of manufacturing, production or use of any imported material in impugned export goods, though he was given number of opportunities to present himself for recording of his statement but he failed to produce any such details. Therefore, it appears from the investigation that necessary ingredient of clause (ii) to second proviso to Rule 3(1) of Drawback Rule, 1995' is attracted in this case, which does not permit any amount of drawback in such cases where no duty has been paid.

10.5 I also find that the Exporter, was required to furnish declarations at the time of exports in the format annexed with the circular No. 16/2009-Customs dated 25.05.2009 issued under F. No. 609/137/2007- DBK by the then CBEC *inter alia* provides that the merchant exporters who purchase goods from the local market for export shall henceforth be entitled to full rate of duty drawback (including the excise portion). However, such merchant exporters shall have to declare at the time of export. the name and address of the trader from whom they have purchased the goods. They shall also have to declare that no rebate (input rebate and also the final product rebate) shall be taken against the Shipping bills under which they are exporting the goods. The merchant exporters who purchase goods from traders may therefore furnish the declaration, at the time of export, in the format annexed with the said circular. As per the said format, the exporter was inter-alia required to declare the name and complete address of the traders from whom export goods had been purchased. They were also required to declare that they were not the manufacturer of the export goods and were not registered with central excise and they had purchased these goods from a trader who was also not registered with the central excise. They were also required to declare that no rebate (input rebate or/and final product rebate) would be taken against the export(s) made against this Shipping bill. However, during the course of investigation, the exporter failed to produce any such declaration.

10.6 I also find that as per Section 50 of the Customs Act, 1962 read with Regulation 4 of the Shipping Bill and Bill of Export (Form) Regulations, 2017, the exporter of any goods is required to file a Shipping Bill in the proforma prescribed, before the proper officer mentioning therein that the quality and specifications of the goods as stated in the Shipping Bills are in accordance with the terms of the export contract entered into with the buyer/consignee in pursuance of which the goods are being exported; the exporter while presenting the Shipping Bill, at the foot thereof, is also required to make and subscribe to a declaration as to the truthfulness of the contents of such Shipping Bills and in support of this is required to produce to the proper officer, the declaration relating to the exported goods. However, as detailed in forgoing paras, the Exporter has made wrong/false declaration in Shipping Bills filed under Section 50 of the Act, *ibid* and submitted false declaration. Moreover, the exporter has also violated the provisions of Rule 12 of the Customs and Central Excise Duties Drawback Rules, 1995, as amended and Section 11 of the Foreign Trade (Development and Regulations) Act, 1992 and Rule 11 of the Foreign Trade

(Regulation) Rules, 1993, in as much as the exporter had subscribed to a wrong declaration while filling the Shipping Bills before the Customs Authorities.

10.7 Further, it also evident that the foreign remittances in respect of exports made by the said exporter were not realized against any of the above referred Shipping Bills. Further, it cannot be ruled out that the said exporter grossly overvalued the impugned goods to obtain the higher drawback and RoSCTL, as the said exporter is non-existence and never appeared to this office to record his statement, Therefore, from these facts, it appears that the exporter has not made truthful declarations in the filing of the shipping bills. The exporter did not follow the obligation imposed through Regulations and Act and has not made correct declarations; therefore, the exporter has violated the provisions of Section 7 & 11 of FT (D&R Act, 1992 and Rule 11, 12 and 14 of the Foreign Trade (Regulation) Rules, 1993. Therefore, I find that by the above-mentioned acts of various omission and commission, the said exporter defrauded the government exchequer by fraudulently claiming drawback and RoSCTL amounting to **Rs. 25,66,912/- (Rs. 13,13,282/- Drawback + Rs. 12,53,630/- RoSCTL)** and acted in a manner which rendered the goods having declared FOB value of **Rs. 4,06,56,640/-** are liable for confiscation under Section 113 (i) (ia) (ja) of the Customs Act, 1962.

10.8. Imposition of Redemption fine in lieu of confiscation of the goods under section 113(d) of the Customs Act,1962.

10.8.1 The section 125 of the Customs Act, provides for the following

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

[Provided that where the proceedings are deemed to be concluded under the proviso to sub- section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:

Provided further that] , without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in

addition, be liable to any duty and charges payable in respect of such goods.]

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

10.8.2 I find that the goods have been held liable for confiscation under section 113(i), 113(ia) and 113(ja) of the Customs Act, 1962 as discussed at para 10.7 (Not repeated here for the sake of brevity). I am inclined to impose redemption fine on them although the same are not available for confiscation. In this regard, I rely upon the judgements, as enumerated below:

i. Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), held in para 23 of the judgment as below:

“The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act ...”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.

ii. The above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.).

iii. Further, neither the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) nor the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) has been challenged by any of the parties and are in operation.

11. Rejection of the export benefits

11.1 The investigation has unraveled that the exporter had obtained the IEC illegally and made exports with an intent to avail undue benefit of duty drawback and benefit of RoSCTL fraudulently. The exporter purportedly given wrong details and obtained the IEC with fake and bogus documents to avail undue export-based incentives fraudulently. During the investigation, this office made efforts to locate the exporter and visited the address mentioned in the IEC, but the exporter was not found operational at the said address. No document was found at the registered premises of the exporter. From the investigations and scrutiny of documents gathered, it appears that the exporter obtained the IEC with an intention to export the goods illegally without following the proper procedure under Customs Act, 1962 and Rules and Regulation made thereunder and claimed the drawback and RoSCTL amounting to **Rs. 25,66,912/- (Rs. 13,13,282/- Drawback + Rs. 12,53,630/- RoSCTL)** by deliberate misrepresentation, wilful mis-statement and suppression of facts. Therefore, I find that the

(i) Claim of **drawback amounting to Rs. 13,13,282/-** by the exporter is liable to be rejected in terms of Clause (ii) to the second proviso to Rule 3(1) & Rule 16(A) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.

(ii) Claim of **RoSCTL amounting to Rs. 12,53,630/-** is also is liable to be rejected in terms of clause 2 (6) and clause 5 (1) of the Notification No.77/2021-Customs (NT) dated 24.09.2021 read with Section 28AAA of the Customs Act, 1962.

12. Penalty under section 114 of the Customs Act, 1962

12.1 The section 114 of the Customs Act, 1962 provides for the following:

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

114(i)

.....

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

12.2 *The section 114AA of the Customs Act, 1962 provides for the following*

12.2.1 *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]*

12.3 I find that M/s Winning Overseas filed five shipping bills on 12.10.2022 for the export of readymade garments to Pakistan, claiming duty drawback and RoSCTL benefits. However, the exporter was not found at the registered address, and their GSTIN had been canceled before filing. Investigations revealed a circular ITC transaction between M/s Winning Overseas and M/s Amaira International, with both GSTINs canceled prior to filing the shipping bills. No foreign exchange was realized, and the exporter failed to present relevant documents or evidence of manufacturing, production, or import duties paid. The exporter also did not submit the required declarations, made false statements on shipping bills, and violated customs regulations. It appears the exporter obtained IEC fraudulently to avail benefits illegally, thus rendered the goods liable for confiscation under section 113(i), 113(ia) and 113(ja) as discussed at para 10 (not repeated here for the sake of brevity). Therefore, I find that M/s Winning Overseas by this act of omission and commission has rendered themselves liable for a penalty under section 114(iii) & 114 AA of the Customs.

14. Imposition of penalty on M/s shri Radhe Krishna Shipping Pvt. Ltd. under section 114 (iii) of the Customs Act, 1962 read with the provisions of the CBLR, 2013.

14.1 The section 114(iii) of the Customs Act, 1962 provides for the following:

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

114(i)

.....

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

14.2 I find that the SCN has proposed penalty against the CB based on the fact that the CB did not care to follow the obligations imposed through the Regulations and Acts and by doing so, they have violated the obligated entrusted upon them vide Regulations 11(d), (e) and (n) of the CBLR, 2013 by not conducting proper verification of the exporter on behalf of whom the CHA has operated in this case.

14.3. The representative of the CB in his written submission has submitted that

14.3.1 *To appreciate the entire controversy, it is important and necessary to understand the provision of CBLR, 2018, and the provision of the Customs Act, 1962, sub-section (iii) of Section 114, under which penalty is proposed to be levied. Since the period involved in the present case is post 2018, I.e., post Notification No. 41/2018- Cus (NT) dated 14.05.2018, earlier CBLR, 2013, has no applicability. Therefore, the obligations cast under Regulation 11 of CBLR, 2013 are misplaced. The Answering Noticee, reserves its right to contest the applicability of the old regulation when it has been superseded by the new regulation.*

14.3.2 They had relied upon these documents, which are issued by the authorities/banks and which satisfied the existence of a firm/individual persons. These documents are never declared as forged/fake/non-existent, and therefore, whatever act has been made on the basis of these documents during the period in question, no offence can be alleged on those documents.

14.3.3 They further state that on the basis of these documents, if one can act, the said person cannot be accused of misguiding or misleading third parties unless these documents are declared forged, fake or in non-existence by the public notice, and especially by an authorised agency, who has issued these documents. The Customs Brokers are not obliged to go with a veracity of those documents such as PAN, Aadhaar Card, GST Registration Certificate, Bank Account, etc. Further, Regulation 2018 obliges the Broker to submit KYC documents as well as the Authority letter, which has been duly submitted. The Customs Authorities have acted on those documents for the clearance of the cargo, and if the Customs Authorities could not verify the genuineness of these documents when the goods were permitted to be exported, it is not humanly possible for the Customs Brokers to identify the genuineness of these documents.

14.4 Further, they have also supported their claim by the means M/S. VS BHAGWATI SHIPPING VERSUS COMMISSIONER OF CUSTOMS – NEW DELHI (AIRPORT AND GENERAL) mentioned at para 8.2 (not repeated here for the sake of brevity) wherein the Hon'ble CESTAT, New Delhi held that the verification of the documents are issued to the trade by the government office(s) and its genuineness can be check through online verification, comparing with the original documents, etc. and does not require an investigation into the documents by the Customs Broker.

14.5 As per the discussion in the foregoing paras, defense submission and the judgement Hon'ble CESTAT, new Delhi, I find M/s Shri Radhe Krishna Shipping Pvt. Ltd. is not liable for penalty under 114(iii) of the Customs Act, 1962.

Order

15. In view of the above discussion and findings I pass following order.

- i. I order to confiscate the purported goods exported vide Shipping Bills No. 4771930, 4771931, 4771936, 4771939, 4771962 all dated 12.10.2022 from Mundra Port having declared FOB value of Rs. **4,06,56,640/-**, though not available physically under Section Section 113 (i) (ia) (ja) of the Customs Act, 1962 and impose redemption Fine of Rs. 20,00,000/- (Rs. Twenty Lakhs Only) in lieu of confiscation in terms of Section 125 of the Act, *ibid*.
- ii. I reject the duty drawback amounting to **Rs. 13,13,282/-** claimed by the exporter in these Shipping Bills should not be rejected in terms of Clause (ii) to the second proviso to Rule 3(1) & Rule 16(A) of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 read with Section 75 of the Customs Act, 1962.
- iii. I reject the RoSCTL amounting to **Rs. 12,53,630/-** claimed by the exporter in these

Shipping Bills should not be rejected in terms of clause 2 (6) and clause 5 (1) of the Notification No.77/2021-Customs (NT) dated 24.09.2021 read with Section 28AAA of the Customs Act, 1962.

- iv. I impose Penalty of Rs.10,00,000/-(Rs Ten Lakhs only) upon M/s Winning Overseas under Section 114 (iii) of Customs Act, 1962.
- v. I impose Penalty of Rs.10,00,000/-(Rs Ten Lakhs only) upon M/s Winning Overseas under Section 114AA of Customs Act, 1962.
- vi. I refrain from imposing any penalty upon M/s shri Radhe Krishna Shipping Pvt. Ltd. under Section 114(iii) of the Customs Act, 1962. **16**. The SCN no. GEN/ADC/412/2024-Adjn-O/o Pr. Commr-Cus-Mundra dt. 28.02.2024 stands disposed of on above terms.

मुकेश कुमारी
अपर आयुक्त
अधिनिर्णयन अनुभाग
सीम शुल्क भवन, मुन्द्रा

सेवा में/To,

- i. M/s Winning Overseas,
Godown No. G-10,
Jawahar Nagar, Block-80N, Village-Chudva,
Gandhidham, Katchch, Gujarat-370240 (IEC NO: DRMPK3260E)
- ii. M/s Shri Radhe Krishna Shipping Pvt. Ltd. (AABCS5273MCH002)

प्रति/Copy to:

1. The Dy./Asstt. Commissioner (SIIB), Custom House, Mundra
2. The Dy./Asstt. Commissioner (Legal/Prosecution), Custom House, Mundra.
3. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
4. The Dy./Asstt. Commissioner (EDI), Custom House, Mundra.
5. Notice Board (to display on Notice Board for all Noticees).
6. Guard File.