F.No.S/49-560/CUS/MUN/DEC/2025-26

सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS(APPEALS),अहमदाबाद AHMEDABAD,
चौथीमंज़िल 4th Floor, हडको बिल्डिंगHUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाषक्रमांक Tel. No. 079-26589281
DIN- 20260371MN0000808974

क	फ़ाइलसंख्या FILE NO.	S/49-560/CUS/MUN/DEC/2025-26
ख	अपीलआदेश संख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-903-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	30.03.2026
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. MCH/ADC/MK/143/2024-25 dated 25.09.2024 issued by the Additional Commissioner of Customs, Custom House, Mundra.
च	अपीलआदेशजारीकरनेकीदिनांक ORDER- IN-APPEAL ISSUED ON:	30.03.2026
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	Shri Chirag Goel, R/o 12-G, Kamla Nagar, Jawahar Nagar, North Delhi, Delhi-110007.

1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	खेत सम्बन्धित आदेश/Order relating to :

(क)	बैगेज़ के रूप में आयातित कोई माल.	
(a)	any goods imported on baggage.	
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.	
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.	
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.	
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.	
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :	
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :	
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.	
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.	
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो	
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any	
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां	
(c)	4 copies of the Application for Revision.	
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-	
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	

	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs. Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के 10 % अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं,या दंड के10 % अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

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ORDER - IN - APPEAL

The present Appeal has been filed by Shri Chirag Goel, R/o 12-G, Kamla Nagar, Jawahar Nagar, North Delhi, Delhi-110007 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962 challenging the Order-In-Original No. MCH/ADC/MK/143/2024-25, dated 25.09.2024 (hereinafter referred to as the 'impugned order') issued by the Additional Commissioner of Customs, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority ') .

2. Facts of the case, in brief, are that the Intelligence developed by DGGI, DZU suggested that goods pertaining to M/s Harsha International intended to be exported appeared to have been highly overvalued and that they are exporting spurious products in guise of "Smoking Mixture". The intelligence further suggested that M/s Harsha International was availing the refund of IGST and Compensation Cess on these exports through false declarations of inflated value. Accordingly the live export consignments covered under 21 Shipping Bills pertaining to M/s Harsha International were put on hold by DRI, Gandhidham for the examination. The goods declared as Rice (CTH:10063090) and Smoking Mixture (CTH:24039910) meant for export vide 21 Shipping Bills all dated 29.09.2022 was examined by the officers vide Panchanama dated 03.10.2022 and 04.10.2022. The details of the goods declared in 21 Shipping Bills all dated 29.09.2022 and found during examination is listed in below Table A.

Table A

Sr.No.	Shipping Bill No. and date	Container No.	Declared Description	No. of packages as per Declaration	No. of packages actually found
1.	4502337 dated 29.09.2022	TRHU1635772	RICE(10063090) Smoking Mixture(24039910)	1020	964 Rice bags 10 Plastic drum goods declared as smoking mixture
2.	4502306 dated 29.09.2022	APZU3740822	RICE(10063090) Smoking Mixture(24039910	1020	971Rice bags 10 Plastic drum goods declared as smoking mixture
3.	4502303 dated	CMAU1814665	RICE(10063090) Smoking	1020	977 Rice bags 10 Plastic drum

	29.09.2022		Mixture(24039910		goods declared as smoking mixture
4.	4502335 dated 29.09.2022	SGRU2129138	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
5.	4502403 dated 29.09.2022	CMAU0045381	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
6.	4502338 dated 29.09.2022	TEMU1275219	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
7.	4502340 dated 29.09.2022	TCLU2733520	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
8.	4502300 dated 29.09.2022	FCIU3060111	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
9.	4502405 dated 29.09.2022	TLLU2789785	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
10.	4502305 dated 29.09.2022	GLDU3791380	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
11.	4502336 dated 29.09.2022	TRHU1300125	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
12.	4502400 dated 29.09.2022	CMAU1846723	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
13.	4502406 dated 29.09.2022	CMAU3074125	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
14.	4109301 dated 29.09.2022	GESU1423737	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
15.	4502316 dated 29.09.2022	CMAU0376158	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
16.	4502404	TEMU4454373	RICE(10063090)	1020	977 Rice bags

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	dated 29.09.2022		Smoking Mixture(24039910		10 Plastic drum goods declared as smoking mixture
17.	4502397 dated 29.09.2022	TRHU2190779	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
18.	4502247 dated 29.09.2022	CAIU2345908	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
19.	4502250 dated 29.09.2022	CAIU3614215	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
20.	4502299 dated 29.09.2022	CMAU0473646	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture
21.	4502245 dated 29.09.2022	CMAU0160976	RICE(10063090) Smoking Mixture(24039910	1020	977 Rice bags 10 Plastic drum goods declared as smoking mixture

2.1 The exporter had filled these 21 shipping Bills under free shipping bill of zero duty drawback, they have claimed refund of IGST, Cess amount and RoDTEP amount. The FOB value declared, IGST Taxable Value, IGST Amount, Cess and RoDTEP for these consignments were as per Table B below:

Table-B

S. No.	Bill No. and date	Total FOB (INR)	IGST Taxable Value (INR)	IGST Amount (INR)	Cess Amount (INR)	Rod TEP
1	4502337 dated 29.09.2023	3383313	2989813	837148	78700	**3935**
2	4502306 dated 29.09.2023	3380165	2986665	836266	78700	**3935**
3	4502301 dated 29.09.2023	3381346	2987846	836597	78700	**3935**
4	4502406 dated 29.09.2023	3382133	2988633	836817	78700	**3935**
5	4502400 dated 29.09.2023	3379378	2985878	836046	78700	**3936**
6	4502336 dated	3382526	2989026	836927	78700	**3936**

	29.09.2023					
7	4502305 dated 29.09.2023	3380559	2987059	836376	78700	**3936**
8	4502405 dated 29.09.2023	3380559	2987059	836376	78700	**3936**
9	4502300 dated 29.09.2023	3382133	2988633	836817	78700	**3935**
10	4502340 dated 29.09.2023	3380952	2987452	836487	78700	**3936**
11	4502338 dated 29.09.2023	3381739	2988239	836707	78700	**3936**
12	4502403 dated 29.09.2023	3382920	2989420	837037	78700	**3936**
13	4502335 dated 29.09.2023	3380165	2986665	836266	78700	**3935**
14	4502303 dated 29.09.2023	3382920	298420	837037	78700	**3936**
15	4502245 dated 29.09.2023	3382526	2989026	836927	78700	**3936**
16	4502299 dated 29.09.2023	3379378	2985878	836046	78700	**3936**
17	4502250 dated 29.09.2023	3381739	2988239	836707	78700	**3936**
18	4502247 dated 29.09.2023	3380952	2947452	836487	78700	**3936**
19	4502397 dated 29.09.2023	3381346	2987846	836597	78700	**3935**
20	4502404 dated 29.09.2023	3379378	2985878	836046	78700	**3936**
21	4502316 dated 29.09.2023	3383313	2989813	837148	78700	**3935**
Total		71,009,436/-	60,014,936/-	17,568,862 /-	1652700/-	82648/-

The Total value of the goods pertaining to above mentioned 21 Shipping Bills comes to Rs.7,10,09,436/-. The exporter had filled above Shipping Bills Under free shipping Bill of zero duty drawback, however exporter M/s Harsha International have claimed IGST refund/Input Tax Credit of Rs. 1,75,68,862, CESS Amount of Rs. 16,52,700/- and RoDTEP benefit in the tune of Rs. 82,648/-

2.2 During the examination of the goods stuffed in 21 containers it was found that the all the containers were stuffed with the PP Bags having rice and also there were white colour PP bags having blue colour Plastic Drum. The white colour PP bags were not having marking and each white colour PP bag was having blue colour plastic Drum and each blue colour Plastic drum was stuffed with dark brown colour wet substance, having smell of waste of Pan Masala, in a transparent poly bag, which also was not having any kind of marking or labelling. The weight of one blue colour plastic drum was around 52.500 Kgs. The PP bags which have the rice was having marking as *"Hello, Indian Long Grain White Rice(Milled) Silky Sortex 15 % Broken Grade-2, Net Weight;25 Kgs, Food for Human Consumption*". During the examination of the 21 containers the officers withdrawn three representative samples of cargo declared as Smoking Mixture, from each container, which were sent to Customs House Laboratory, Kandla to ascertain the actual description of the goods meant for export vide Test Memo Bearing No. 28/2022-23 to 48/2022-23 all dated 19.10.2022.

2.3 The Custom House Laboratory, Kandla provided the sample wise test reports as mentioned in Table below:

Table C

Sr. No.	Shipping Bill No. & Date	Test Memo No.	Test Report Lab No. & date	Test results
1	4502337 dated 29.09.2022	28/2022-2023	DRI-4940 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=58.6 Ash content on dry basis(% by mass)=22.8 Acid Insoluble Ash on dry basis(% by mass)=7.8 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
2	4502306	29/2022-	DRI-4941 dated	The Sample as received is in the form

	dated 29.09.2022	2023	02.11.2022	of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=59.7 Ash content on dry basis(% by mass)=20.1 Acid Insoluble Ash on dry basis(% by mass)=7.2 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
3.	4502303 dated 29.09.2022	30/2022-2023	DRI-4942 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=60.0 Ash content on dry basis(% by mass)=23.0 Acid Insoluble Ash on dry basis(% by mass)=7.9 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
4.	4502335 dated 29.09.2022	31/2022-2023	DRI-4943 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=63.92 Ash content on dry basis(% by mass)=22.3 Acid Insoluble Ash on dry basis(% by mass)=7.39 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
5.	4502403 dated 29.09.2022	32/2022-23	DRI-4944 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=57.89 Ash content on dry basis(% by mass)=21.17 Acid Insoluble Ash on dry basis(% by mass)=7.34 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
6.	4502338 dated 29.09.2022	33/2022-23	DRI-4945 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants-

				Loss on dying(% by mass)=59.58 Ash content on dry basis(% by mass)=22.28 Acid Insoluble Ash on dry basis(% by mass)=7.37 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
7.	4502340 dated 29.09.2022	34/2022-23	DRI-4946 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=56.59 Ash content on dry basis(% by mass)=25.77 Acid Insoluble Ash on dry basis(% by mass)=7.10 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
8.	4502300 dated 29.09.2022	35/2022-2023	DRI-4947 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=57.1 Ash content on dry basis(% by mass)=22.7 Acid Insoluble Ash on dry basis(% by mass)=7.06 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
9.	4502405 dated 29.09.2022	36/2022-2023	DRI-4948 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=60.19 Ash content on dry basis(% by mass)=23.60 Acid Insoluble Ash on dry basis(% by mass)=8.21 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
10.	4502305 dated 29.09.2022	37/2022-23	DRI-4949 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=59.16 Ash content on dry basis(% by mass)=22.15 Acid Insoluble Ash on dry basis(% by

				mass)=7.71 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
11.	4502336 dated 29.09.2022	38/2022-2023	DRI-4950 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=59.9 Ash content on dry basis(% by mass)=23.52 Acid Insoluble Ash on dry basis(% by mass)=7.26 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
12.	4502400 dated 29.09.2022	39/2022-2023	DRI-4951 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=58.4 Ash content on dry basis(% by mass)=23.2 Acid Insoluble Ash on dry basis(% by mass)=7.2 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
13.	4502406 dated 29.09.2022	40/2022-2023	DRI-4952 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=55.5 Ash content on dry basis(% by mass)=24.1 Acid Insoluble Ash on dry basis(% by mass)=7.7 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
14.	4109301 dated 29.09.2022	41/2022-2023	DRI-4953 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=58.6 Ash content on dry basis(% by mass)=22.9 Acid Insoluble Ash on dry basis(% by mass)=6.9 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and

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				Tobacco product: Smoking Mixture-Specification."
15.	4502316 dated 29.09.2022	42/2022-2023	DRI-4954 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=58.1 Ash content on dry basis(% by mass)=24.8 Acid Insoluble Ash on dry basis(% by mass)=7.1 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
16.	4502404 dated 29.09.2022	43/2022-2023	DRI-4955 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=55.97 Ash content on dry basis(% by mass)=26.20 Acid Insoluble Ash on dry basis(% by mass)=6.11 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
17.	4502397 dated 29.09.2022	44/2022-2023	DRI-4956 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=59.49 Ash content on dry basis(% by mass)=25.86 Acid Insoluble Ash on dry basis(% by mass)=6.98 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
18.	4502247 dated 29.09.2022	45/2022-2023	DRI-4957 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=67.87 Ash content on dry basis(% by mass)=21.59 Acid Insoluble Ash on dry basis(% by mass)=7.38 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
19.	4502250 dated	46/2022-2023	DRI-4958 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass.

	29.09.2022			The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=56.8 Ash content on dry basis(% by mass)=24.9 Acid Insoluble Ash on dry basis(% by mass)=5.4 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
20.	4502299 dated 29.09.2022	47/2022-2023	DRI-4959 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=58.6 Ash content on dry basis(% by mass)=22.2 Acid Insoluble Ash on dry basis(% by mass)=7.1 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."
21.	4502245 dated 29.09.2022	48/2022-2023	DRI-4960 dated 02.11.2022	The Sample as received is in the form of moist reddish brown fibrous mass. The sample answer test for Nicotine(Tobacco and Tobacco product) having following consants- Loss on dying(% by mass)=57.2 Ash content on dry basis(% by mass)=26.3 Acid Insoluble Ash on dry basis(% by mass)=8.2 Above Tested Parameter obtained from the sample u/r is not compiles to IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification."

2.4 Vide letter dated 03.11.2022 further clarification was sought from CRCL Kandla asking (1) Whether the product is spurious and (2) Whether the product is fir for human consumption. In reply vide letter dated 07.11.2022 Customs House Laboratory, Kandla has declared that the *"Each of twenty one samples u/r are containing loss on drying, inorganic filler as seen from Acid insoluble and Ash contents, which are more than the prescribed limit as per IS1578-2018, Specification for Tobacco and Tobacco product smoking mixtures and it appears that the samples are spurious product and not fit for human consumption."*

2.5 During the scrutiny of the documents it further appeared that M/s Harsha International has classified the goods "Smoking Mixture" under Chapter Head 24039910 whereas as per the Custom Tariff, the subhead 24039910 is for Chewing tobacco. From examination of subject goods, it appeared that physical characteristics of the products declared as "smoking mixture" was not matching with those of actual smoking mixtures. The product was in the nature of dark brown colour wet substance, having smell of waste of Pan Masala. Further the CRCL Kandla Test reports confirmed the observations during examination by stating that the samples of these products do not meet the parameters of IS-1578:2018 for Tobacco and Tobacco product: Smoking Mixture-Specification. CRCL Kandla further clarified that the subject goods declared as Smoking Mixture was spurious product and not fit for human consumption. It is evident that the subject goods are clearly mis-declared. Accordingly the declared FOB value of these goods (including Rice) in these 21 Shipping Bills appears highly overvalued. It appears that the exporter M/s Harsha International has exorbitantly inflated the price of the subject goods which was found to be spurious product and not fit for human consumption meant for export vide aforesaid 21 Shipping Bills to fraudulently avail IGST Tax Credit and other export benefits.

2.6 Accordingly, it appeared that the goods declared as "Smoking mixture (11025 Kg) " have been mis-declared by the exporter and hence were liable for confiscation under Section 113(i), and Section 113(ja) of the Customs Act, 1962. It further appeared that the "Rice(512450 Kg)" was being used as cover cargo to get the "smoking mixture" exported and have been used for concealment of smuggled goods declared as 'Smoking Mixture' and hence were liable to confiscation u/s 119 of Custom Act, 1962. In view of above the goods attempted to be exported vide above 21 Shipping Bills were placed under seizure as per the provisions of Section 110 of the Customs Act, 1962 , vide Seizure Memo dated 02.12.2022. After seizure, the goods were handed over to the Authorised person of Custodian M/s. Honeycomb Logistics Pvt. Ltd., CFS Adani Ports & SEZ, Mundra, Kutch, under Supratnama dated 02.12.2022.

2.7 In order to ascertain the value of the goods declared as Smoking Mixture, the representative samples of the goods pertaining to 21 Shipping Bills all dated 29.09.2023 was inspected by the Chartered Engineer M/s

Suvikaaa Associates. The Chartered Engineer submitted his valuation report No. DRI/258/23-24/ dated 18.05.2023.

In his report, the Chartered Engineer opined that the *"The tobacco mixture as presently constituted, possesses no inherent value and carries potential environmental detiments. It is strongly advised against disposing of this mixture by burying it in the ground due to associated risks. It is crucial to note that this Tobacco mixture is unsuitable for consumption by humans or animals, as it poses considerable health hazards and complications. Its consumption may result in detrimental effects on well being. Therefore, proper measures must be taken to ensure the safe handling and disposal of this tobacco mixtures to mitigate both environmental and health concerns. "*

2.8 The DGGI, Delhi Zonal Unit (DZU) was carrying investigation against M/s Harsh International for violations of provisions of GST during these exports and DRI has relied upon their the evidences gathered by them in this regard for their own investigations. During investigation, a search was carried out by the officers of DGGI, DZU, Delhi at the premises of M/s Harsha International at Pan Mandi, Bank Road, Raxaul, East Champaran, Bihar-845305 vide Panchanama dated 08.11.2023 and the premise was found locked. It was opened in the presence of the owner of the premise and search was conducted. It was found that no business activity was being conducted from the premises. The premise was found to be small Pan/Grocery/Kirana Shop which was run by Shri Surendra Prasad Chaurasia father of Shri Jitendra Kumar.

2.9 A Search was also carried out by the officers of DGGI, DZU, Delhi at the Additional place of business of M/s Harsha International at Shree Ram Path, Koriya Toa, Raxual, Bihar vide Panchanama dated 08.11.2023 and the premise was found to be residential premise of Shri Jitendra Prasad Chaurasia proprietor of M/s Harsha International and during the search Shri Jitendra Kumar was not present at home. No Business activity was found to be carried out at the premise.

2.10 During investigation it was found that M/s Harsha International was procuring these goods from M/s Radiant Traders, B-36-6, Jhilmil Industrial Area, Shahdara Delhi-110095. Accordingly search was conducted by the officers of DGGI, DZU, Delhi at the premise of M/s Radiant Traders, B-36-6, Jhilmil Industrial Area, Shahdara Delhi-110095 under Panchanama dated 20.10.2023 . No plant and Machinery was found at the premises of M/s Radiant Traders.

2.11 During investigation, statements of following concerned persons were recorded under Section 108 of the Customs Act, 1962: and under Section 70 of the CGST, 2017 -

(i) Shri Jitender Kumar, Proprietor of M/s. Harsha International,
(ii) Shri Vijay Shisodia, G- Card Holder of M/s Vee Win Logistics
(iii)Shri Manish Goyal, Proprietor of M/s Radiant Traders
(iv) Shri Chirag Goel, l, Resident of G-12, Kamla Nagar, Delhi-110007
(v) Shri Chamman Goel, Resident of G-12, Kamla Nagar, Delhi-110007

2.12 The outcome of investigation revealed the following :

2.12.1 M/s Harsha International had filed 21 Shipping Bills as shown in table-l for export of "Smoking Mixture and Rice". The declared FOB value of the goods is Rs. 7,10,09,436 /- and IGST refund/Input tax credit refund amount of Rs. 1,75,68,862/- they claimed export benefits (RoDTEP) of Rs 82,648/- and they claimed Cess amount of Rs. 16,52,700/-. Examination of the goods, followed by testing through CRCL Kandla and further inspection by Govt. approved Chartered Engineer confirmed the facts that goods declared as "Smoking mixture" were spurious, not fit for consumption.

2.12.2 M/s Harsha International was also found non-operational during the search proceedings. M/s Harsha International had procured these goods for export from M/s Radiant Traders. Search at the registered premises of M/s Radiant Traders revealed that no goods/plant and machinery was found at the premises and no business activity was noticed. As per statement of Shri Manish Goyal, Proprietor of M/s Radiant Traders no manufacturing activity was conducted at the premise of M/s Radiant Traders and he had never supplied any smoking mixture and rice to M/s Harsha International. Shri Manish Goyal had provided his KYC documents to Chirag Goel for the opening of the account of M/s Radiant Traders in lieu of Rs.50,000/- per month. Shri

Manish Goyal used to provide OTPs to Shri Chirag Goel whenever needed and later on he gave this sim (mobile no. 8882174808) to Shri Chirag. From statement of Shri Manish Goyal, it appears that the supply of Smoking Mixture to M/s Harsha International was shown from M/s Radiant Traders by Shri Chirag Goel.

2.12.3 As per GST returns of M/s Radiant Traders, the smoking mixture was said to be manufactured from the tobacco of Cigarettes of established brand, however no Cigarettes were found at the premises of M/s Radiant Traders. As per statement of Shri Manish Goyal if any Cigarettes was shown to have been received at M/s Radiant Traders, the same were delivered/sold in whole sale market in Delhi.

2.12.4 Thus it appeared that fraudulent supply of "smoking mixture" was shown from M/s Radiant Traders to M/s Harsha International for the purpose of export. Such smoking mixture was never produced or handled by M/s Radiant Traders. It appears that tobacco waste that was spurious, and unfit for consumption was being exported by M/s Harsha International and supply was shown to be originating from M/s Radiant Traders and item was declared as "smoking mixture" to avail refund of IGST, Cess and RoDTEP after exports. It is cogent and clear that the exporter, M/s Harsha International had mis-declared the impugned goods in terms of their value (by overvaluing the goods) and procured fake invoices and attempted to defraud the Government by claiming inadmissible export benefits and IGST refund and thereby acted in a manner which rendered the said goods liable for confiscation in terms of the provisions of Section 113(i) and 113(ja) of the Customs Act, 1962,

2.13 Roles and Culpability of the persons :-

2.13.1 Shri Jitender Kumar, Proprietor of M/s Harsha International: Shri Jitender Kumar, the proprietor of M/s Harsha International, attempted to export goods (smoking mixtures) that were identified to be spurious and unfit for consumption having NIL value. The exporter had declared the FOB value in the subject 21 Shipping Bills as Rs. 71,009,436/- which is a violation of Section 50(2) of the Customs Act, 1962. Hence it appears that these goods are liable to confiscation under Sec 113(i). M/s Harsha International was also found non-operational during the search proceedings. M/s Harsha International had procured these goods for export from M/s Radiant Traders. Search at the registered premises of M/s Radiant Traders revealed that no goods/plant and machinery was found at the premises and no business activity was noticed. As per statement of Shri Manish Goyal, Proprietor of M/s Radiant Traders no manufacturing activity was conducted at the premise of M/s Radiant Traders and he had never supplied any smoking mixture and rice to M/s Harsha International. Thus it appears that M/s Harsh International had made false claim of IGST refund on these attempted exports by utilizing fake and ineligible Input Tax credit thereby rendering these goods liable to confiscation under Section 113(ja) of Customs Act. Further the cover cargo i.e. rice being exported was also made liable to confiscation under Section 119 of the Customs Act 1962. By such acts and omissions Shri Jitender Kumar, Proprietor of M/s Harsha International has also made himself liable to penalty under Sec 114(iii) and 114(AA) of Customs Act.

2.13.2 Role of Shri Manish Goyal, Proprietor of M/s Radiant Traders:

Shri Manish Goyal, the proprietor of M/s Radiant Traders, apparently supplied the Smoking mixture to M/s Harsha International which M/s Harsha International attempted to export. These goods were identified to be spurious and unfit for consumption. Investigation revealed that M/s Radiant Traders was not found to have any operations related to the manufacturing of smoking mixtures. Further it came out that M/s Harsha International had procured the fake invoices from M/s Harsha International for overvalued product on which huge amount of Input Tax Credit was pass on and which M/s Harsha International was claiming as IGST refund. The IGST refund for the past exports of M/s Harsha International was transferred to the account of M/s Radiant Traders and thus it appears that they were an equal partner in the fraud of overvaluation of export goods for claiming fraudulent IGST refund from Government. Through such acts Shri Manish Goyal has rendered the goods liable to confiscation under Sec 113(i), Sec 113(ja) and Sec 119 of Customs Act. Thus, for the above acts of omission and commission, it appeared that the Shri Manish Kumar, proprietor of M/s Radiant Traders had rendered himself liable to penalty under Section 114(iii) of the Customs Act, 1962.

2.13.3 Role of Shri Chirag Goel:.

Shri Chirag Goel's involvement in the operations is evident from the interactions and transactions among the businesses, as well as from the statements of key personnel involved. Shri Chirag Goel appears to have substantial control and influence over M/s Blue Water Expotrade India Private Limited, as indicated by Shri Chaman Goel. This suggests his capability to make significant business decisions and possibly guide the operations of other connected entities. The linkage between Shri Chirag Goel and M/s Radiant Traders is evident through his dealings with Shri Manish Goyal. Shri Mansi Goyal's statements clearly indicate that Shri Chirag Goel played a role in the operations of M/s Radiant Traders. The fact that Shri Manish Goyal provided KYC documents to Shri Chirag Goel and the subsequent use of these documents for business operations of M/s Radiant Traders suggest am arrangement for fraud between Shri Chirag and Shri Manish. The dubious supply of "smoking mixture" from M/s Radiant Traders to M/s Harsha International is underlined by the fact that Shri Chirag Goel seemingly manipulated this supply chain, as inferred from Shri Manish Goyal's statements. Shri Chirag Goel can be seen as effective controller of Radiant Traders and hence actively participating in the mis-declaration of goods being supplied by Harsha International (and supplied by M/s Radiant Traders) thereby rendering the goods liable to confiscation Sec 113(i), Sec 113(ja) and Sec 119 of Customs Act 1962. Since the Bank accounts of M/s Radiant Traders were effectively being controlled by Shri Chirag Goel, and because the IGST refund received by M/s Harsha International for past exports were transferred to account of M/s Radiant Traders, hence the role of Chirag Goel in orchestrating the entire fraud becomes more clear. Through such acts of omission and commission, it appeared that the Shri Chirag Goel had rendered himself liable to penalty under Section 114(iii) of the Customs Act, 1962.

2.13.4 Role of Shri Chaman Goel

Shri Chaman Goel was a director of M/s Blue Water Expotrade India Private Limited, holds implicit responsibilities pertaining to the company's operations. Although he consistently emphasized his limited involvement, positioning his brother, Shri Chirag Goel, as the key operator, his directorial role inherently carries statutory obligations. Recognizing key figures like Shri Manish Goyal and providing a mobile number later used in questionable banking transactions further implicates his involvement, albeit indirectly. His passive association and lack of oversight, particularly concerning dealings with M/s Radiant Traders is evident. This association, coupled with the shared resources and connections with pivotal person in the alleged fraud, places Shri Chaman Goel in a sphere of responsibility. Thus it appears that along with Shri Chirag Goel, Shri Chaman Goel was also an active controller of M/s Radiant Traders through which the supply of unfit and spurious goods to M/s Harsha International was done. Thus, for the above acts of omission and commission, it appeared that Shri Chirag Goel had rendered himself liable to penalty under Section 114(iii) of the Customs Act, 1962.

2.13.5 Role of M/s Veewin Logistics, Customs Broker:

M/s Veewin Logistics, a firm specializing in customs clearance services for exports. Their involvement with M/s Harsha International pertains to the processing and submission of customs clearances based on the documents and KYC information furnished by the latter. In the Shipping Bills the Chapter head of smoking mixture mentioned by them is 24039910 which is for the Chewing Tobacco. Thus knowingly they have mentioned wrong CTH while they were fully aware that the product is "smoking mixture". Further no business activity was found to be conducted at the premises of exporter which was not noticed by them. Hence it appeared that M/s Veewin Logistics has to failed to perform due diligence as customs broker in this case. By such acts and omissions, M/s Veewin Logistics have rendered the goods being exported as liable to confiscation under Sec 113(i), Sec 113(ja) and Sec 119 of Customs Act and also rendered themselves liable to penalty under Section 114(iii) of the Customs Act 1962.

2.14 On completion of investigation, a show cause notice dtd. 25.09.2023 was issued to the Exporter to show cause to the Additional Commissioner of Customs, Mundra, as to why: -

(i) FOB value i.e. Rs. 7,10,09436/-) /- (Rupees Seven Crore Ten Lakhs Nine Thousands four hundred thirty six Only) of goods covered under aforesaid 21 Shipping Bills dated 29.09.2022 filed by them should not be rejected under Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and should not be re-determined to Rs. 8,26,3500/-as the Smoking mixture is Spurious and unfit for human consumption under Rule 6 of the Customs Valuation (Determination of export goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

(ii) The said impugned export goods covered under 21 Shipping Bills all dated 29.09.2022 found to be misdeclared in terms of valuation and classification for claim of undue export benefit and IGST Refund, Should not be held liable for confiscation under the provision of Section 113 (i), and Section 113(ja) of the Customs Act, 1962.

(iii) The declared imported goods Rice (Qty. 512450 Kg), Value Rs 8,26,3500/-, used for the purpose of concealment of smuggled 11025 Kg of Smoking Mixture, should not be confiscated under the provisions of Section 119 of the Customs Act, 1962.

(iv) The RoDTEP of Rs. 82,648/- Claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table above should not be rejected.

(v) The Cess Amount of Rs. 16,52,700/-/- Claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table above should not be rejected.

(vi) The IGST of Rs. 1, 75,68,862/- Claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table above should not be rejected.

(vii) Penalty under the Section 114(iii) and 114AA of the Customs Act, 1962 should not be imposed upon M/s Harsha International for their acts of omission and Commission discussed in the forgoing paras.

2.15 Further vide above show cause notice, Shri Manish Goyal, Proprietor of M/s Radiant Traders , **Shri Chirag Goel (i.e the appellant),**Shri

Chaman Goel and M/s Veewin Logistics, Customs Broker were also called upon to show cause to the Additional Commissioner of Customs, Mundra, as to why Penalty under the Section 114(iii) of the Customs Act, 1962 should not be imposed upon them for their acts of omission and Commission discussed in the forgoing paras.

2.16 The above show cause notice was adjudicated vide impugned order wherein the adjudicating authority ordered as under :-

(i) He rejected the declared FOB value of Rs. 7,10,09,436/- (Rupees Seven Crore Ten Lakhs Nine Thousands four hundred thirty-six Only) of the goods covered under aforesaid 21 Shipping Bills dated 29.09.2022 under Rule 8 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and ordered to re-determine the FOB value as Rs. 82,63,500/- as the Smoking mixture is Spurious and unfit for human consumption under Rule 6 of the Customs Valuation (Determination of export goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

(ii) He ordered for absolute confiscation of the impugned goods Smoking Mixture (CTH:24039910) covered under 21 Shipping Bills all dated 29.09.2022 found to be misdeclared in terms of valuation and classification for claim of undue export benefit and IGST Refund, under the provision of Section 113 (i), and Section 113(ja) of the Customs Act, 1962.

(iii) He ordered for absolute confiscation of the declared goods Rice (Qty. 512450 Kg), Value Rs 82,63,500/-, used for the purpose of concealment of smuggled 11025 Kg of Smoking Mixture, under the provisions of Section 119 of the Customs Act, 1962.

(iv) He rejected the claim of RoDTEP of Rs. 82,648/- as claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table above.

(v) He rejected the claim of Cess Amount of Rs. 16,52,700/- as claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table 1.

(vi) He rejected the claim of IGST of Rs. 1,75,68,862/-as claimed by M/s Harsha International on goods covered under aforesaid 21 Shipping Bills all dated 29.09.2022 detailed at Table above.

(vii) He imposed penalty of Rs. 1,25,00,000/-(Rupees One crore Twenty Five Lakh only) on M/s Harsha International under the provisions of Sections 114(iii) of the Customs Act, 1962.

(viii) He imposed penalty of Rs. 75,00,000/-(Rupees Seventy Five Lakh only) on M/s Harsha International under the provisions of Sections 114AA of the Customs Act, 1962.

(ix) He imposed penalty of Rs. 50,00,000/-(Rupees Fifty Lakh only) on Shri Manish Goyal. Proprietor of M/s Radiant Traders under Section 114(iii) of the Customs Act, 1962.

(x) He imposed penalty of Rs. 50,00,000/-(Rupees Fifty Lakh only) on **Shri Chirag Goel (i.e. appellant)** under Section 114(iii) of the Customs Act, 1962.

(xi) He imposed penalty of Rs.50,00,000/-(Rupees Fifty Lakh only) on Shri Chaman Goel under Section 114(iii) of the Customs Act, 1962.

(xii) He imposed penalty of Rs.25,00,000/-(Rupees Twenty Five lakh only) on M/s Veewin Logistics, Customs Broker under Section 114(iii) of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT

3. Being aggrieved with the impugned order, Appellant has filed the present appeal on the following grounds :-

3.1 The Appellant is neither the exporter nor is he the proprietor or employee of the exporter firm and therefore, there is no connection of the Appellant with the export of 21 shipping bills made by the exporter M/s. Harsha International.

3.2 The proprietor of the exporter firm - Mr Jitender Kumar has categorically stated in his statement recorded under Section 108 of the Customs Act, 1962 that he has never met Chaman Goel and/or Chirag Goel. Even the appellant in his statement has categorically stated that he is not involved with export made in the case of M/s. Harsha International. Clearly the statements which have been made by the exporter under Section 108 of the Customs Act, 1962 have got evidentiary value and therefore they ought to have been considered by the Learned Adjudicating Authority

3.3 There is no independent comprehensive investigation which has been conducted under the provisions of Customs Act, 1962 by the DRI, Gandhidham and it has majorly relied upon the investigation made by the DGGI, DZU. That ironically even the statements have not been recorded by the investigating authority under the Customs Act, 1962 of the Appellant under Section 108 of the Customs Act, 1962. That further no statement of even Mr Manish Goel on the basis of the Appellant has been falsely implicated and saddled with the penalty of Rs.50 Lacs has been recorded under Section 108 of the Customs Act, 1962 That clearly there is no basis on which the Appellant had been penalised.

3.4 As far as the investigation is made by the Customs department/DRI, Gandhidham is concerned, the proprietor of the exporter firm in his statement recorded under Section 108 of the Customs Act, 1962 has categorically stated that he does not know Mr Chirag Goel i.e. the Appellant herein.

3.5 The exporter was clearly aware of the entire export made from the Mundra port including the number of containers exported, the amount of IGST refund, duty drawback and ROSCTL and also as to how he had further sent the IGST refund to M/s. Radiant Traders which is clear from his statement recorded under Section 108 of the Customs Act, 1962. That similarly, even the G-Card holder of the Customs Broker in his statement recorded under Section 108 of the Customs Act, 1962 on 01.09.2023 states about the involvement of the exporter.

(i) That in response to question No.7, Mr. Vikas stated that Mr. Jitender Kumar had contacted him for the work of M/s. Harsha International through some reference and asked him for meeting for the Customs clearance work. Thereafter, he had arrived at Gandhidham and requested him to file the shipping bills for the export of cargo declared as "smoking mixture" and "rice"

(ii) That in response to question No.8 he further informed that Shri Jitender Kumar always contacted him before filing of shipping bills and always asked them to file the shipping bills. That the necessary documents required for filing shipping bills were received through email ID. That he further provided the email ID from which documents had been received and they prepared the checklist which was sent to the exporter

3.6 Since the exporter who is fully aware of the exports made and his involvement is also supported by the statement of G-Card holder of the Customs broker and none of them have implicated the Appellant under their respective statements recorded under Section 108 of the Customs Act, 1962 hence, there is no logical reasoning or any justifiable reason as to why the Appellant is being implicated. That further whereas no statement of the Appellant under Section 108 of the Customs Act, 1962 has been recorded however, the statements of the Appellant recorded under Section 70 of the CGST Act, 2017 about his non involvement in the export and about the falsity of the statements of Mr. Manish Goyal is already corroborated by the statement of the co-Noticee i.e. the exporter, G-card holder of Customs broker hence, the Appellant ought not to be implicated on the basis of exculpatory statement of Manish Goyal who is the co-Noticee and was even arrested by the DGGI, DZU.

3.7 Further ironically no statement of the Appellant has been recorded under Section 108 of the Customs Act, 1962 however, huge penalty of Rs.50 Lakhs has been imposed on him without even confronting him with the statement of Shri Manish Goyal who had falsely implicated him. That the Additional Commissioner, Custom House Mundra, Gujrat have relied upon the borrowed investigation conducted by the DGGI, DZU It is submitted that under Section 108 of the Customs Act, 1962, the DRI officers were empowered to take the statement during inquiry however, no such statement has been taken by DRI and without conducting any independent investigation, the Appellant has been saddled with a whooping penalty of Rs.50 Lacs.

3.8 As per the case of the department i.e. either DGGI, DZU or DRI, Gandhidham it was Manish Goyal who had placed the order for cigarettes from this he had taken out the smoking mixture which was supplied to the exporter firm. That even earlier it was Manish Goyal himself who had supplied the exporter qua which 200 containers had been exported and therefore, whereas the link between Manish Goyal, proprietor of M/s. Radiant Traders, who is the supplier to M/s. Harsha International, the exporter firm is clearly established however, there is no link between the Appellant and/or the exporter firm. That this is also corroborated by the statement of the exporter as also the Customs broker recorded under Section 108 of the Customs Act, 1962.

3.9 The statement of even the G-Card holder of the Customs broker ie. Vijay Shishodia had been recorded under Section 108 of the Customs Act, 1962 and even he has categorically stated that he has never met Mr. Chirag Goel. It is submitted that since the statements which have been recorded by the DRI, Gandhidham in the Customs investigation clearly highlight that the Appellant was neither involved or was the beneficiary of the alleged export which was to be made against 21 shipping bills of smoking mixture and rice therefore in the absence of evidence to impose the penalty of Rs.50 Lacs on the said Appellant is liable to be set-aside as such.

3.10 The Learned Adjudicating Authority has failed to appreciate that Manish Goyal who is the proprietor of M/s. Radiant Traders had also been arrested by the DGGI, DZU on 25 11.2022 on the basis of his statement which was rendered on 24/25.11 2022. That clearly the decision to arrest Mr Manish Goyal as he was the supplier of the goods which were to be exported i.e. smoking mixture had been taken on the basis of the material on record by the DGGI, DZU and therefore, to later implicate the Appellant only on the basis of the statement of the co-Accused i.e. Shri Manish Goyal is clearly without any reasoning.

3.11 Mr Jitender Kumar ie the proprietor of M/s. Harsha International has also categorically stated in his statement recorded under Section 108 of the Customs Act, 1962 that the goods were supplied to him by Mr. Manish Goyal ie the proprietor of M/s. Radiant Traders. That further, he had even met Mr. Manish Goyal in person on 4-5 occasions. When Mr. Jitender Kumar was shown the statement of Manish Goyal recorded on 24/25.11.2022 stating that he had met Jitender along with Mr. Chirag Goel, he denied the same that even when the Learned SIO tried to state that he was lying, still Mr. Jitender Kumar did not agree to the said contention.

3.12 The exporter when he was shown the statement of Manish Goyal dated 24/25.11.2022 wherein he stated that he was not aware about sending rice or smoking mixture, Mr. Jitender in his statement dated 27.02.2023 stated that he was not aware as to why he was deposing in such manner, he again reiterated that in question No.6 that he had met Mr. Manish Goyal 4-5 times and spoken to him on phone. Shri Jitender Kumar had in his statement dated 27 02.2023 had also categorically stated that he had remitted an amount of Rs. 180 Crores by online transfer to M/s. Radiant Traders since as soon as the remittance was received, the online transfer was done.

3.13 That clearly no evidence has been placed on record to show that any money which was received qua IGST refund, duty drawback and/or ROSCTL has been received in any account of the Appellant whereas the said amount had been received by M/s. Radiant Traders and is also corroborated by the statement of the exporter That therefore, there is no evidence either monetary or otherwise to connect the Appellant with the alleged IGST refund, duty drawback and/or ROSCTL, which has been received by the exporter - M/s. Harsha International and/or has been remitted to M/s. Radiant Traders.

3.14 It is clear that the statement recorded under Section 108 of the Customs Act, 1962 i.e. of Jitender Kumar, proprietor of the exporter firm-M/s. Harsha International as also the statement of Mr. Vijay Shishodia who is the G-card holder of the Customs Broker firm - M/s. Veewin Logistics have been relied upon in the investigation made by the DRI, Gandhidham and both of them have denied even knowing Mr. Chirag Goel ie. the Appellant herein.Therefore, implicating the Appellant on the basis of the statement rendered by Manish Goyal under the provisions of CGST Act, 2017 is not tenable.

3.15 That without prejudice to the foregoing, it is submitted that whereas Manish Goyal was arrested on 25.11.2022 by the DGGI, DZU with regard to the said investigation on the basis of the evidence recorded including the statement rendered by Manish Goyal on 24/25.11.2022 however, the Appellant had not been arrested by the DGGI, DZU That further, anticipatory bail had been granted to the Appellant by the Learned Additional Sessions Judge, Patiala House on 21 12 2022 as there was nothing to show the involvement of the Appellant i.e. Shri Chirag Goel and/or his brother except the statement of Mr Manish Goyal who had already been arrested That it was further held that neither the Appellant and/or his brother were involved in the sale or purchase of cigarettes from the grey market as per the investigation which was carried out.

3.16 It is further submitted that even at the time when the Show Cause Notice dated 25.09.2023 had been issued by that time also the DGGI, DZU had already filed for cancellation of bail granted to Manish Goyal and it was categorically stated by the DGGI, DZU that input tax credit which has been shown to be received by M/s. Radiant Traders on the basis of procurement of cigarettes which had been shown to be used as raw material to manufacture smoking mixture. That further, no manufacturing activity was being carried out at M/s. Radiant Traders and cigarettes were not used as inputs in manufacture of smoking mixture.

3.17 Further in the statement of Manish Goyal recorded on 24/25.11.2022 when he has confirmed the statement of Shri Tahir, driver of M/s. Super Rail Cargo Movers dated 02.11 2022 wherein he had informed that Shri Ashu mobile No.8377079221 used to receive goods in respect of M/s. Radiant Traders and also supervised the unloading of the goods at Jhilmil Industrial Area, Shahdara, Delhi at the premises of M/s. Radiant Traders. That further he has also recognized his employee - Ashu when he was shown his photograph.

3.18 Similarly, in his statement dated 24/25.11.2022 Shri Manish Goyal recognizes the paper slip/delivery challan which was part of the file resumed from his premises at M/s. Radiant Traders against panchnama dated 20.10.2022 That Shri Manish Goyal stated that the same was a delivery challan issued with regard to supply of smoking mixture from Alipur to Jhilmil and was received by Ashu (his employee) on 01.08.2022. That as per the statement of Shri Manish Goyal recorded on 24/25.11.2022 he was shown the file resumed at Sr No. 12 from his premises of M/s. Radiant Traders under panchnama dated 20 10.2022 and page No.4 of the file is the paper slip dated 19.08.2022 having description.

"Alipur to Jhilmil 160x25 kg. Smoking mixture"

Page No.3 was a delivery challan showing supply of smoking mixture/Alipur to Jhilmil and received by Ashu on 01.08.2022 That Manish Goyal explained that smoking mixture from Alipur to Jhilmil had been transported and page No.33 also confirms the receipt by Shri Ashu on 01.08.2022.

3.19 It is further submitted that as per the statement of Manish Goyal which was recorded under Section 70 of the CGST Act, 2017 dated 24/25.11.2022 admittedly, Mr. Rahil Mahajan of M/s. Big Daddy Company had categorically stated that he was directed to supply the cigarettes by Mr. Manish Goyal. That similarly, Mr Mohd. Tamir of M/s. Blue Sky Trading, had also categorially stated that he was contacted by Mr. Manish Goyal for the supply of cigarettes. Therefore, clearly, the mastermind was held to be Mr Manish Goyal by DGGI, DZU, however, later on the basis of his statement, the Appellant has been falsely implicated.

3.20 The statement of Manish Goyal who was the supplier of smoking mixture to the exporter firm-M/s. Harsha International is an exculpatory statement and cannot be relied upon in the absence of any corroboration. That neither is the statement of Mr Manish Goyal corroborated but further, his stand with regard to the Appellant has been categorically denied by the exporter as also by the Customs broker who clearly states that they do not know Mr. Chirag Goel. That ironically however, the penalty of Rs.50 Lacs has been imposed not only on Manish Goyal but on Mr. Chirag Goel as well.

3.21 Even the G-card holder of the Customs Broker firm M/s. Veewin Logistics i.e. Mr. Vijay Shishodia had categorically stated in his statement that they do not undertake the export clearance without known references. In the same statement, he also states that he does not know Mr. Chirag Goel but confirms that he had cleared the consignment of M/s Radiant Traders i.e. of twice in 2021. That implying thereby that M/s. Harsha International was also introduced to the Customs broker by Mr. Manish Goyal who is the proprietor of M/s. Radiant Traders.

3.22 When the Appellant's statement was recorded on 02.01.2023 and he was shown the statement recorded on 24/25.11.2022 of Shri Manish Goyal, he had stated as under:

(i) That on being shown the statement dated 24.11.2022 of Shri Manish Goyal, Proprietor of M/s. Radiant Traders, the Appellant stated that the statement given by Shri Manish Goyal is false.

(ii) That Shri Manish Goyal had never worked for the Appellant nor had the Appellant any deal of opening a firm M/s Radiant Traders nor any agreement of Rs.50,000/- per month was entered.

(iii) Shri Manish Goyal had never given any cheque book or mobile phone or RTGS form for the same

(iv) The Appellant knew Shri Manish Goyal, since 2019, but he had never met him in Khari Baoli / Naya Bazar (v) Manish Goyal used to work for an advocate Shri Dilip Garg who handles cases our and Manish Goyal used to visit for documentary purpose regarding our cases.

3.23 The Learned Adjudicating Authority has only considered the statement of Manish Goyal falsely implicating the Appellant however, has failed to consider the statement of the Appellant who has categorically denied the stance of Manish Goyal. That the Appellant has specifically stated in his statement recorded by the DGGI, DZU on being shown the statement of Manish Goyal that he had never worked for the Appellant nor had the Appellant any deal of opening a firm M/s Radiant Traders nor any agreement of Rs.50,000/- per month was entered. Shri Manish Goyal had never given any cheque book or mobile phone or RTGS form for the same. Admittedly both the statements were recorded under Section 70 of the CGST Act, 2017. That further the admitted fact have been ignored by the Learned Adjudicating Authority i.e. Manish Goyal was the proprietor of M/s Radiant Traders who had supplied the smoking mixture to the exporter firm M/s. Harsha International, the proprietor of exporter firm denied knowing the Appellant and similarly, even the Customs Broker also denied knowing him, whereas the exporter had also confirmed that smoking mixture and rice was supplied to the firm by M/s. Radiant Traders.

3.24 The proprietor of the exporter firm has categorially stated that he has never met either Chirag Goel or Chaman Goel.

3.25 The Appellant had been issued the Show Cause Notice only at the behest of Manish Goel, proprietor of M/s. Radiant Traders, who has falsely implicated the Appellant with regard to the said firm That the statement of Shri Manish Goyal is an exculpatory statement and cannot be relied upon as it is a weak form of evidence and cannot be relied upon in the absence of any corroboration. That further there is no corroboration by any evidence to establish that the statement of Shri Manish Goyal is true and correct. That whereas the contradiction is clearly apparent from a material statement which has been recorded of the exporter i.e. the proprietor of M/s. Harsha International who has categorically stated in his statement dated 27.04.2023 in question No.8 states that he does not know Chirag Goel. That whereas he states in his statement dated 21.02.2023 that he has met Mr. Manish Goyal on 4-5 occasions and had also spoken to him. He had in his earlier statement dated 20.02.2023 stated that he used to speak to Mr. Manish Goyal 3-4 times in a week on the mobile number of Manish Goyal which was 08882174808.

3.26 Mr. Jitender is asked in his statement dated 27.04.2023 with reference to question No. 23, as to who is responsible for availing, he was queried with regard to the names of key persons involved in the case of export done by his firm to avail undue IGST refund claims and/or any other export benefits, he stated that only Manish Goyal and Shri Dayanand

3.27 Further, it is a matter of record that the remittance obtained in the account of the exporter i.e. M/s. Harsha International was transferred into the account of M/s. Radiant Traders and Mr Chirag Goel has no relation with regard to the same.

3.28 The DGGI, DZU whose investigation has been relied upon by the DRI, had based the entire investigation and treated Manish Goyal as the mastermind and therefore, to implicate the Appellant on the basis of his statement which is clearly an exculpatory statement without any corroboration and cannot be relied upon. It is further submitted without prejudice to the foregoing that the case of the investigating authority that is DGGI, Delhi Zonal Unit was that M/s. Radiant Traders through its proprietor Mr Manish Goel had not utilised the goods (inward supplies of Cigarettes) have not been utilized for furtherance of business (i.e. manufacture and supply of Smoking Mixture) but the ITC associated with such inward supplies of Cigarettes was availed by the Shri Manish Goel through M/s. Radiant Traders only for passing on the same ITC fraudulently to its buyer (exporter) -M/s. Harsha International, who in turn utilized the said ITC for claiming fraudulent refund of IGST and Cess to the tune of Rs.200 Crore. That therefore, the transaction with M/s. Harsha International has been made by M/s. Radiant Traders and clearly there was no role which was attributable to Mr. Chirag Goel

3.29 That no statement of Chirag Goel has been recorded under Section 108 of the Customs Act, 1962 and his statement and the entire case of the DRI is based on borrowed investigation. That without prejudice to the foregoing, Chirag Goel in his statement recorded under Section 70 of the CGST Act, 2017 (which is similar to statement recorded under Section 108 of the Customs Act, 1962 and has got evidentiary value) on 02.01.2023 when he was shown the statement of Shri Manish Goyal dated 24.11 2022 categorically states in response to question No.5 that the statement of Manish Goyal is false. That whereas the statement of the Appellant is supported by the statement of the proprietor of the exporter firm recorded on 27.04.2023 and also the statement of the G-card holder of the Customs broker MM. It is submitted that present Show Cause Notice has been issued by the Additional Commissioner, Custom House Mundra, Gujarat but ironically no statement of the Appellant has been recorded under Section 108 of the Customs Act, 1962 however, huge penalty of Rs.50 Lakhs has been imposed. That the Additional Commissioner, Custom House Mundra, Gujrat have relied upon the borrowed investigation conducted by the DGGI, DZU It is submitted that under Section 108 of the Customs Act, 1962, the DRI officers were empowered to take the statement during inquiry however, no such statement has been taken by DRI

3.30 However, the statement of Shri Jitender Kumar which was recorded under Section 108 of the Customs Act, 1962 has categorically stated in his statement dated 26.04.2023 that he was supplied the goods by Shri Manish Goel of M/s. Radiant Traders. That further in response to question No.2 of his statement dated 27.04.2023 he has categorically stated that he had procured the smoking mixture and rice from Shri Manish Goyal of M/s. Radiant Traders and even produced the copy of bills/invoices which had been issued by M/s. Radiant Traders to DGGI, DZU

3.31 Further in the statement dated 27.04.2023 when he was queried about Shri Chirag Goel and his role in the subject export done in the name of his firm, he categorically stated in response to question No.8 that he did not know Chirag Goel. The relevant extract is reproduced herein below:

"Q8:- Who is Shri Chirag Goyal and what is his role in the subject export done in the name of your firm?

Ans:- I do not know any Chirag Goyal."

3.32 When the DRI officers questioned him as to why he was lying and was asked to see statement of Manish Goyal and his response to question No.22 wherein Shri Manish Goyal stated that he met him along with Chirag Goel on 03.10.2022 he again stated that he had nothing to say in this regard

3.33 Shri Manish Goyal who was proprietor of M/s. Radiant Traders and had been categorically implicated by even the proprietor of M/s. Harsha International and its proprietor and even documentary evidence was against him still ironically, the quantum of penalty on Manish Goyal and Chirag Goel has been imposed equally of Rs.50 Lacs under the provisions of Section 114(iii) of the Customs Act, 1962.

3.34 The Customs Broker i.e. Shri Vijay Shishodia in his statement dated 01.09.2023 also states in response to question No.23 and question No.24 respectively that he does not know any person by the name of Chirag Goel or Chaman Goel. That however, he categorically states in question No.21 that he knows the company M/s. Radiant Traders whose Customs clearance were for the export of rice was attended by them in the year 2021. He further states that by question No.7 that Shri Jitender Kumar (proprietor of M/s. Harsha International) had contacted him through some reference and asked him for meeting for the Customs clearance work for the export in the name of M/s. Harsha International. That further, he also produces the KYC of M/s Radiant Traders. That further, he categorically states in response to question No.5 of his statement dated 01.09 2023 that generally they do not work for exporter without references from the trusted persons and they verify the genuineness of importer on the basis of self-certified documents produced by the exporter which were issued by the government department. That this shows that M/s. Harsha International was introduced to them by Mr. Manish Goyal of M/s. Radiant Traders. SS. That clearly, when neither the exporter nor the CHA have claimed that they know the Appellant nor the Appellant himself has stated that he knew M/s. Harsha International and/or Mr Jitender Kumar therefore, clearly, the penalty is not sustainable against the Appellant.

3.35 The goods against 21 shipping bills had not been exported and therefore, the exporter - M/s. Harsha International i.e the exporter has not got any IGST refund or duty drawback or ROSCTL and hence, in the absence of any loss of revenue there is no reason for imposing such a huge amount of penalty of Rs.50 Lacs on the Appellant i.e. Chirag Goel. That the goods are lying at the port and have not been exported hence, there is no rhyme or reason for imposing such a huge amount of penalty That the imposition of penalty is required to be in correlation with the alleged evasion of duty and in the absence of the same the imposition of such a huge quantum of penalty is unreasonable and liable to be set-aside.

3.36 The reason for falsely implicating the Appellant is because the Appellant had already filed a complaint with the SHO, P.S. Netaji Subhash Place, New Delhi on 02.10.2022 against Mr Manish Goyal, who despite having taken bulk quantity of FMCG goods in advance had not made payment of Rs. 5,60,56,323/- to M/s. Blue Water Expotrade India Pvt. Ltd. (in which Appellant was a director). That in the complaint it has been stated that the supply was made by the Appellant's company to Manish Goyal as he was initially inter alia engaged in the business of supplying of grease, commonly used in the automobile industries but later had been working as a brokeragent in the FMCG sector from 2019-2021 wherein later in 2021 he started in his own firm in the name and style of M/s. Radiant Traders which was predominantly dealing in FMCG products. That it was further averred that on account of business relations on one occasion Mr Manish Goyal on 25.09.2022 had also taken the car of the Appellant on the pretext of his having required the car on urgent basis but later without the consent and knowledge of the Appellant or his brother had removed the documents pertaining to legal proceedings of the Appellant and his brother and despite repeated request and did not return the legal documents and on 01 10.2022 had also extended threats to the Appellant and his brother Further, the amount which was outstanding of Rs.5,60,56,323/- had also not been returned. That accordingly, it was requested to carry out investigation against Manish Goyal by the police on the complaint made by the Appellant. That this was the ostensible reason on account of which Manish Goyal has falsely implicated the Appellant.

3.37 When the Appellant was being granted anticipatory bail by the Learned Additional Sessions Judge, it was found that except for the statement of Shri Manish Goyal, there was no evidence to show that the Appellant were involved in the purchase or sale of the cigarettes as per the investigation carried out so far. That it is further submitted that even after completion of the investigation, the position with regard to the Appellant remains the same that except for the statement of Shri Manish Goyal there is no link between the Appellant and the said export.

PERSONAL HEARING

4. Personal hearing in the matter was held on 12.03.2026, wherein Ms. Anjali J. Manish , Advocate, attended personal hearing on behalf of the appellant in virtual mode. She reiterated the submissions made at the time of filing of the appeal and briefly stated that there was neither documentary nor oral evidence to implicate the Appellant and further he was neither exporter/proprietor/employee of the exporter firm hence, no connection. Except for statement of Manish Goel (and that too recorded under Section 70 of CGST Act, 2017) no other evidence but even proprietor of exporter firm in his statement under Section 108 has clarified that he had never met Chirag Goel. No independent investigation by DRI, Gandhidham only relied upon investigation of DGGI, DZU. Without prejudice penalty disproportionate as Rs.50 Crore imposed on Chirag Goel same as on the Manish Goel/supplier who had been arrested by DGGI and against whom various allegations including of receipt of Rs. 180 Crores of ITC from M/s. Harsha Enterprise with regard to past exports and statement of proprietor of exporter under Section 108. No statement of Chirag Goel ever recorded by DRI and even DGGI never queried him about Harsha.

DISCUSSION AND FINDING

5. I have carefully gone through the facts of the case and submissions made by the Appellant in their appeal memorandum as well as additional submissions made during the personal hearing.

5.1 Before deciding the issue raised by the Appellant in the present appeal on merits, it is necessary to determine whether the present appeal has been filed within the time limit prescribed under Section 128 of the Customs Act, 1962. It is observed from the appeal memorandum that the date of communication of decision or order appealed against is mentioned as 12.11.2025 whereas the impugned order has been issued on 25.09.2024. The appellant has attached a printout of Email dtd. 11.11.2025 addressed to the Adjudication section, Customs, Mundra wherein they had submitted that they had not received a copy of impugned order and requested for a copy of the same. Vide Email dtd. 11.11.2025 Adjudication section Mundra Customs had forwarded a copy of impugned order to the appellant.

5.1.1 This office had requested the Adjudication Section, Customs Mundra vide letter dated 03.02.2026 to inform the date of service of the impugned order to the appellant. The Adjudication Section, Customs Mundra vide Email dated dated 09.03.2026 replied that the impugned order was dispatched to the Appellant vide Outward/Dispatch No. 5119 dtd. 27.09.2024.

5.2 A copy of Email reply dated 09.03.2026 from Adjudication Section, Customs Mundra was also sent to the Appellant vide Email dtd. 09.03.2026 for comments/representation if any. However, the appellant has not made any submission in this regard.

5.3 The provisions relating the service of notice /orders is prescribed under Section 153 of the Customs Act, 1962 which are reproduced as under:

> "153. Modes for service of notice order, etc.—(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:—
>
> (a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;
>
> (b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;
>
> (c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;
>
> (d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or

(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.

(2) Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1).

(3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.]"

5.4 In this regard it is relevant to refer to the provisions of Section 27 of the General Clauses Act, 1977 which is reproduced as under:

"27. Meaning of service by post.— Where any Act made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions, "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered, in the ordinary course of post."

5.5 On the combined reading of the above two legal provisions, it is observed that service of orders is permitted by sending it by post. Further, in the case of sending of orders by post, the service shall be deemed to be effected by properly addressing, pre-paying and posting it at the time at which the letter would be delivered in the ordinary course of post. In the present case, the order was sent by Post which would have been delivered to the Appellant in the reasonable period in the ordinary course of post. Under the circumstances, the appeal have been filed by the Appellant on 22.12.2025, which is far beyond the prescribed period of 60 days and condonable period of 30 days prescribed under Section 128 of the Customs Act, 1962. In this regard, I place reliance on the order of Hon'ble High Court of Bombay in case of M/s. Technicom Systems

(I) Pvt Ltd reported at 2019(367)ELT 597 (Bom) wherein the Hon'ble High Court ordered as under :-

"13. As noted earlier Section 153 of the said Act provides that any order of decision passed or any summons or notice issued under the Customs Act, 1962 shall be served inter alia..... "sending it by registered post.....". There is material on record which indicates that the notice as well as the order-in-original was indeed sent to the Petitioners by registered post. To such situation, the presumption available under Section 27 of the General Clauses Act, 1897 will apply.The Petitioners have placed no material on record to rebut such presumption.

14. In Harihar Banerji and Ors. v. Ramshashi Roy and Ors. - AIR 1918 Privy Council 102 it is held if a letter properly directed, is proved to have been put into the post office, it is presumed that the letter reached destination at the appropriate time according the regular course of business of the post office and received by the person to whom it was addressed.

15. In the precise context of the provision of Section 153 of the said Act, the Division Bench of the Madras High Court in P. Bhoormal Tirupati v. The Additional Collector of Customs - AIR 1974 Madras 224 = 2000 (126) E.L.T. 65 (Mad.) has held that Section 153 of the said Act only requires that the notice shall be served by sending it by registered post to the person for whom it is intended, it does not require that effective service should be effected upon the person receiving it. Read with Section 27 of the General Clauses Act, it becomes clear that when a document to be served is sent by registered post to the proper address with prepaid postage its service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of post, unless the contrary is proved. Based upon all these, we are unable to accept the Petitioners' contention that there has been no proper service as contemplated under Section 153 of the said Act."

In light of the above discussion and case law, the appeal filed by the Appellant is hit by the limitation and therefore liable to be rejected.

6. In view of the discussion made above, I find that the appeal filed by the Appellant is beyond the prescribed period of 60 days and condonable period of 30 days, prescribed under Section 128 of the Customs Act, 1962. Accordingly, the appeal filed by the Appellant is rejected as barred by limitation.

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

Date:30.03.2026

F.No.S/49-560/CUS/MUN/DEC/2025-26

By Speed Post /E-Mail.

To,
Shri Chirag Goel,
R/o 12-G, Kamla Nagar,
Jawahar Nagar, North Delhi,
Delhi-110007

Copy to :-

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