



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
 सीमा शुल्क भवन, आल इंडिया रेडियो के पास, नवरंगपुरा, अहमदाबाद 380009
 दुर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43

**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
 CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
 PHONE: (079) 2754 46 30 FAX (079) 2754 23 43**

निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

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आदेश की तारीख/Date of Order : 21.05.2025
 जारी करने की तारीख/Date of Issue : 21.05.2025

द्वारा पारित :-
 Passed by :-

शिव कुमार शर्मा, प्रधान आयुक्त
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-09-2025-26 dtd. 21.05.2025 in
 the case of M/s. Rohan Dyes and Intermediates Ltd, Regd. Office at UG/11-12,
 Suryarath Complex, Opp. White House Building, Nr. Panchwati Circle. Ahmedabad.

- जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
 1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
- इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
 2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.
- उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।
 3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रिय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्ष जुरमाना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute”.
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notices No. DRI/AZU/INV-45/2009 dated 08.03.2010 & 03.11.2011 issued by the Additional Director General, DRI, Ahmedabad Zonal Unit to M/s. Rohan Dyes and Intermediates Ltd, Regd. Office at UG/11-12, Suryarath Complex, Opp. White House Building, Nr. Panchwati Circle. Ahmedabad and others.

BRIEF FACTS OF THE CASE:

Intelligence was gathered by the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad that M/s Rohan Dyes and Intermediates Ltd, having their registered office at UG/11-12, Suryarath Complex, Opp. White House Building, Nr. Panchwati Circle. Ahmedabad, and factory at 123, GIDC, Phase-I, Vatva, Ahmedabad, holding IEC Code No-0891004475 (hereinafter referred to as "M/s Rohan Dyes" for the sake of brevity) was exporting Acid Dyes and Reactive Dyes by mis-declaring them with a view to unduly claim DEPB Benefits. Accordingly, two containers meant for export by M/s. Rohan Dyes were detained for further examination.

2. Acting upon the aforesaid intelligence, a simultaneous search was carried out by the officers of the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Ahmedabad on 15.09.2009 at the registered office and factory premises of M/s Rohan Dyes. During the course of search of the registered office, various documents relating to Acid dyes and Reactive dyes exported by M/s. Rohan Dyes in the past were recovered under panchnama. In the search at the factory premises, various documents such as production registers, lab registers, e-mail correspondences with various overseas buyers, etc., were recovered under another panchnama.

3. DETENTION/SEIZURE OF EXPORT CONSIGNMENTS OF M/s ROHAN DYES.

3.1. The goods covered under the two containers presented for export through ICD, Ahmedabad, vide Shipping Bills No. 1393015 and 1393016 both dated 14.09.2009 and declared as "Synthetic Organic Dyes Acid Black-210", were verified under panchnama dated 16.09.2009. During the course of panchnama proceedings, samples were drawn in the presence of independent witnesses and Shri Raghuvir Singh, an employee of CHA M/s. Navalchand A. Mehta & Bros, and Shri Gyansingh Sisodia, authorized representative of M/s. Rohan Dyes, from the export consignment covered by the aforementioned shipping bills stuffed in the container GLDU 3182450 and HDMU 2294210 respectively. The samples drawn were sent to the Chemical Examiner, Central Excise and Customs Laboratory, Vadodara (Central Lab), for testing vide DRI office letter F.No. DRI/AZU/INT-36/2009 dated 23.09.2009.

3.2. The Chemical Examiner, Central Lab, vide report RCL/AH/PREV./44-45-46 dated 29.09.2009 confirmed that the sample obtained from the container GLDU 3182450 i.e. the export consignment vide Shipping Bill No. 1393015 dated 14.09.2009 was in the form of black coloured powder and was synthetic organic dye-Acid Dye- Acid Black 234 along with additives giving a black shade. The Chemical Examiner also confirmed that the sample from container HDMU 2294210 was black coloured powder and it was synthetic organic dye- Acid dye (Acid Black 210) along with additives, giving a black shade.

3.3. Acid Black 234 was not eligible for duty credit under the Product Group Chemicals having product code 62 under the DEPB Schedule, while "Acid Black 210 (Acid Black NBH)" covered under Entry No: 98 of the Product Group Chemicals with product code 62 of the said Schedule was eligible for DEPB benefits.

3.4. The above consignment meant for export vide Shipping Bill No.1393015 dated 14.09.2009 to M/s. Biltex Kimya San Tic Ltd., Nr. Neeka Tubelevazim Evleri Aktas Sitesif Blok, Istanbul 80600, Turkey, though declared as "Synthetic Organic Dyes Acid Black 210 (Acid Black NBH)" having FOB value Rs.18,54,803/- under the claim of DEPB for Rs.92,740/- was not Acid Black 210 but Acid Black 234 for which no DEPB was available as per DEPB schedule under Product Code 62: Chemicals, issued by DGFT. Thus, M/s. Rohan Dyes had mis-declared their export product Acid Black-234 as Acid Black-210 (Acid Black NBH) with a view to fraudulently availed DEPB benefits.

3.5. Hence, the above export consignment in container No. GLDU 3182450 under Shipping Bill No. 1393015 dated 14.09.2009 valued at Rs. 18,54,803/- (FOB) was placed under seizure vide panchnama dated 14.10.2009. The above seized goods were then handed over under Supratnama dated 14.10.2009 to Shri Viraj Surendrabhai

Shah, Assistant Supervisor, CONCOR, ICD, Sabarmati, Ahmedabad, for safe-custody. M/s. Rohan Dyes, vide letter dated 17.09.2009, requested for release of the export consignments. On the basis of the test report dated 29.09.2009 of the Chemical Examiner, Central Lab, Vadodara, the container No. HDMU-2294210 containing export consignment of Synthetic Organic Acid Black-210 was ordered to be released. M/s. Rohan Dyes again vide letter dated 15.10.2009 requested for provisional release of the seized export consignment. Accordingly, the Additional Commissioner of Customs, permitted the seized goods to be provisionally released by taking bond for full value of goods and bank guarantee of Rs.4,63,700/-, denying export benefit, which was communicated by the Superintendent (O&A), Customs, Ahmedabad, vide his F. No. VIII/48-12/O&A/Misc/2009 dated 30.10.2009.

3.6. It further appeared that M/s Rohan Dyes by their act of suppression and willful mis-statement of the description of the subject goods for export before the designated authority of Customs with intent to avail benefit of DEPB had violated/contravened the provisions of Section 50 (2) of the Customs Act, 1962 and Rule 11 of Foreign Trade (Regulation) Rules, 1993, in as much as they failed to give true and correct declaration regarding the description of the goods exported. The infringement of Rule 11 of the Foreign Trade (Regulation) Rules, 1993 is a contravention as detailed in the sub-section (1) of Section 11 of Foreign Trade (Development & Regulation) Act 1992. As a result, the goods so attempted to be exported were to be treated as "smuggled goods" as defined under Section 2 (39) of Customs Act, 1962. Therefore, the goods of a declared value of Rs. 18,54,803/- (FOB) as indicated in Shipping Bill No: 1393015 dated 14.09.2009 which were attempted to be exported by M/s Rohan Dyes by resorting to mis-declaration in terms of description, were liable for confiscation under Section 113 (d) and (i) of the Customs Act, 1962. Also, for their above mentioned acts of commission and omission, which had rendered the goods liable for confiscation under the provisions of Section 113 (d) and (i) of the Customs Act, 1962, M/s Rohan Dyes was liable for penal action under Section 114(iii) of the Customs Act, 1962.

3.7. It further mentioned that Shri Radheshyam Tarachand Agrawal, Director of M/s. Rohan Dyes was aware of the actual description of the goods but mis-declared them before the customs authorities with intent to fraudulently claim undue export incentives. The facts had been admitted by him in his statement dated 26.09.2009 recorded during the course of investigation. Shri Radheshyam Tarachand Agrawal was also aware that the goods exported by M/s Rohan Dyes were not as per the declaration made by them on the export documents. It, thus, appeared that Shri Radheshyam Tarachand Agrawal had consciously and deliberately dealt with goods which he knew or had reason to believe were liable to confiscation under the provisions of Section 113(d) and (i) of the Customs Act, 1962. All the above acts of omission and commission on his part had rendered him liable to penal action under the provisions of Section 114(iii) of the Customs Act, 1962

3.8. Accordingly, Show Cause Notice from F. No. DRI/AZU/INV-45/2009 dated 08.03.2010 was issued by the Additional Director General, DRI, Ahmedabad Zonal Unit to M/s Rohan Dyes and Intermediates Ltd, having their Regd. Office at UG/11-12, Suryarath Complex, Opp. White House Building. Nr. Panchwati Circle, Ahmedabad, and factory at 123, GIDC, Phase-I, Vatva, Ahmedabad, calling them to show cause to the Commissioner of Customs having his office at Custom House, Nr. Akashvani, Navrangpura, Ahmedabad 380009, as to why:-

(i) the goods viz: 11,250 Kgs of Acid Black 234 mis-declared as Acid Black 210 (Acid Black NBH) valued at Rs. 18,54,803/- presented for export by them under DEPB scheme vide Shipping Bill No. 1393015 dated 14.09.2009 and seized under Panchnama dated 14.10.2009, should not be confiscated under the provisions of Section 113 (d) and (i) of the Customs Act. 1962 read with sub-section (1) of Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 & Rule 11 of Foreign Trade (Regulation) Rules, 1993.

(ii) Penalty should not be imposed on them under the provisions of Section 114 (iii) of the Customs Act 1962.

(iii) Conditions of the bond should not be enforced and Bank Guarantee/Security for Rs.4,63,700/- given towards provisional release of the seized goods before the Commissioner of Customs, Ahmedabad, should not be appropriated towards the fine and penalty that may be imposed.

3.9. Shri Radheshyam Tarachand Agrawal, Director of M/s Rohan Dyes, Ahmedabad, was also called upon to show cause to the Commissioner of Customs, Ahmedabad, as to why penalty should not be imposed on him under the provisions of Section 114 (iii) of the Customs Act, 1962.

4. The computer and the hard disk seized under panchnama dated 15.09.2009 from the factory-cum-office premises of M/s. Rohan Dyes were sent to the Directorate of Forensic Science, Gandhinagar, for recovery of data for analysis of the same. The Assistant Director, DFS, vide reference DFS/EE/2010/CF/20/1840 dated 26.04.2010 forwarded DVDs containing the recovered data. The documents/records seized under panchnama dated 15.09.2009 were scrutinized and incriminating evidences were unearthed. M/s. Rohan Dyes vide letters dated 30.01.2010, 02.02.2010 and 25.10.2010 submitted the documents requested for further investigation. Similarly, the incriminating evidences were unearthed from the documents/records submitted by M/s. Rohan Dyes during the course of investigation. Based on the evidences, statements of key personnel of M/s. Rohan Dyes were recorded.

5. M/s. Rohan Dyes, accepting their offence, voluntarily deposited a sum of Rs. 25,00,000/- and Rs. 50,00,000/- towards the differential duty credit on the imported goods wrongly availed by them utilizing the fraudulently availed DEPB benefits in the past vide TR Challan No.01/2009-10 dated 8.10.2009 and TR 6 Challan No. 225 dated 07.06.2010.

6.1. The Joint Director General of Foreign Trade, Ahmedabad, was requested to provide the details of DEPB licences obtained by M/s. Rohan Dyes. Accordingly, the Joint Director, DGFT, vide letter F.No. AHD/ECA/DRI CORRE/AM 10 dated 02.12.2009 provided the details of DEPB licences issued to M/s. Rohan Dyes upto September, 2009. Based on the SCN issued by DRI vide F.No. DRI/AZU/INV-45/2009 dated 08.03.2010, the Joint Director, DGFT, Ahmedabad, vide F.No. 08F-3/1/AM-11/ECA dated 30.04.2010 issued notice under Section 8(1), 9(4) and 11(2) of the Foreign Trade (Development & Regulation) Act, 1992 read with Rule 10(a) and (b) and Rule 14 of the Foreign Trade (Development & Regulation) Rules.

6.2. The Joint Director, DGFT, Ahmedabad, was also requested to provide the details of the application of Shipping Bills pending for claim of DEPB benefits. The Joint Director, DGFT, Ahmedabad, vide letter F.No. AHD/F-3/1/AM-11 dated 25.05.2010 provided the details of about 36 Shipping Bills pending with them for which they had received online applications from M/s. Rohan Dyes. The Joint Director vide letter F.No. AHD/F-3/1/AM-11 dated 09.09.2010 furnished the details of further licences issued to M/s. Rohan Dyes upto April, 2010.

6.3. During the scrutiny of the records/documents seized from the factory and office premises of M/s. Rohan Dyes, incriminating evidences were unearthed. The evidences unearthed from the data recovered by DFS also point out to the fact that the products Acid Black 210, Acid Black 234, Reactive Black BL/GR, Reactive Black HFGR, HWF CONC., WNN, JNN, ML, XRN, Mix, etc., were distinct products. However, with a view to wrongly avail the DEPB benefits, M/s. Rohan Dyes had wrongly declared these products as Acid Black 210 and other Reactive dyes as Reactive Black BL/GR.

6.4. From the facts discussed above, it appeared that M/s Rohan Dyes indulged in the act of exporting goods viz: Acid Black 234 in the name of Acid Black NBH, Acid Black LDN/LM, Black 3TN/4TN, Chemical Intermediates, etc., and declared the same as Acid Black 210 (Acid Black NBH), in the export documents viz: DEPB Invoice, Packing List (DEPB) and Shipping Bill (DEPB). Similarly, they also indulged in the act of exporting goods viz. Reactive Black HFGR, HWF CONC., WNN, JNN, ML, XRN, Mix, etc., and declared the same as Reactive Black BL/GR, in the export documents. M/s. Rohan Dyes while exporting Acid Orange 6 declared the same as Acid Orange 7 in the export

documents. Shri Radheshyam Agarwal, Managing Director, in his statements dated 26.09.2009, 03.06.2010 and 04.06.2010 accepted the mis-declaration, made in the export documents. Thus, it appeared that M/s. Rohan Dyes willfully mis-stated the description of the goods in the export documents, so as to fraudulently availed undue benefits in the form of Duty Entitlement Pass Book for those goods which were otherwise ineligible for the said benefits.

6.5. It also appeared that the export product viz: Acid Black 234 in the name of Acid Black NBH, Acid Black LDN/LM, Black 3TN/4TN, Chemical Intermediates, etc., were not eligible for duty credit under the Product Group Chemicals having product code 62 under the DEPB Schedule, while "Acid Black 210 (Acid Black NBH)" is covered under the Entry at Sr. no: 98 of the Product Group Chemicals having product code 62 of the said Schedule. Similarly, the export product viz. Reactive Black HFGR, HWF CONC., WNN, JNN, ML, XRN, Mix, etc., were not eligible for duty credit as these products do not find a mention in the product group chemicals having product code 62 under the DEPB schedule, while Reactive Black BL/GR is covered under Sr.No.269 of product code 62. Likewise, the product Acid Orange 6 do not find a mention in the product code 62 of the DEPB schedule while Acid Orange 7 is covered under Entry at Sr.No.104 of the Product Code 62. M/s Rohan Dyes declared the said export goods as "Acid Black 210 (Acid Black NBH)" "Reactive Black BL/GR" and "Acid Orange 7" in their export documents viz: DEPB Invoice, Packing List (DEPB) and Shipping Bill (DEPB) presented for the export of the goods viz: Acid Black 234 in the name of Acid Black NBH, Acid Black LDN/LM, Black 3TN/4TN, Chemical Intermediates, Reactive Black HFGR, HWF CONC., WNN, JNN, ML, XRN, Mix, Acid Orange 6, etc. Thus, it appeared that M/s Rohan Dyes contravened the provisions of Section 50, inasmuch as they willfully mis-stated the actual description of the goods exported and failed to furnish the true description of the goods exported, in the Shipping bill filed under the said section.

7. Shri Vijaykumar Mishra, Production Manager of M/s Rohan Dyes, in his statement dated 24.03.2010, confirmed that the prominent acid dyes manufactured by their company were Acid Black 210, Acid Black NBH, Acid Browns. In respect of Reactive dyes, they manufactured Reactive Black BL and mixtures of Reactive Black BL like Reactive Black WNN, XRN, JNN, ANN, HWF, ML, HFGR, GR, YZ, etc. He further confirmed that Para Nitro Aniline (PNA) was used for manufacture of Acid Black 210, and aniline oil was used for manufacture of Acid Black NBH. He also confirmed that Reactive Black Mix dyes had common raw materials, and for manufacture of Reactive Black BL (which was a trade name), apart from the common raw materials used for Reactive Black Mix, the materials VS and H. Acid were used. He further stated that for the manufacture of products such as Reactive Black WNN, XRN, ANN apart from the major common raw materials, additional raw materials such as Sulpho Vinyl Sulphone Ester were used. He confirmed that Reactive Black XRN, WNN, ANN were trade names. He also stated that for production of other Reactive Black HWF, ML, HFGR, GR, YZ, apart from the major common raw materials, Cyanuric Chloride was used. He stated that a chemical intermediate is a raw material used in manufacture of a final product where no further process is carried out. Thus, from the statement of Shri Vijaykumar Mishra, it appeared that the products viz: Acid Black 210, Acid Black NBH, were ready to use products in the leather industry, while Reactive Black BL, Reactive Black WNN, XRN, ML, HFGR, GR, etc., were ready to use products in the textile industry and therefore these products in no way could be termed as 'Chemical Intermediates'.

8. Shri Dinesh Chowdhary, Export Manager of M/s Rohan Dyes, also confirmed various mails received from their overseas buyers. He further confirmed that he had received orders from their overseas customers for supply of Acid Black 234 and had accordingly got it manufactured and exported. He stated that their overseas buyer in European countries needed to register the products imported by them (overseas buyer) with REACH and as Acid Black 234 was not registered with REACH, the same was imported by them (overseas buyers) as Acid Black 210, which is also mentioned in various e-mail correspondences with the overseas buyers. He also confirmed that various products such as Reactive Black BL/GR, Reactive Black WNN, Reactive Black

NNX, Reactive Black ANN, etc., were distinct products for which they had received separate orders and were manufactured using their respective raw materials. He further stated that there was greater demand was for products made using MPDSA i.e. products like Reactive Black WNN, NNX, ANN, etc., than the products made using Cyanuric Chloride namely Reactive Black BL/GR.

9. Shri Radheshyam Tarachand Agrawal, Director of M/s. Rohan Dyes, in his statement dated 26.09.2009, 03.06.2010 and 04.06.2010 recorded under Section 108 of the Customs Act, 1962, inter-alia stated that there was a difference in the raw materials of all the different grades of Acid Black and admitted that they exported Acid Black 234 under DEPB scheme by mis-declaring the export product as Acid Black 210, with the intent to wrongly avail DEPB benefits, as there was no DEPB for Acid Black 234. He also confirmed that the molecular formula, molecular structure and molecular weight of both Acid Black-210 and Acid Black 234 were different. Shri Radheshyam Agrawal confirmed the facts stated in the statement dated 08.03.2010 of Shri Saurabh Shah, Export Executive; the statement dated 24.03.2010 of Shri Vijaykumar Mishra, Production Manager; the statement dated 18.05.2010 of Shri Ishwar Singh, Excise In-charge; the statement dated 24.05.2010 of Shri Dinesh Chowdhary, Export Manager as true and correct. He confirmed that the export orders were only for Acid Black 234, however, as there was no DEPB benefit for the export product Acid Black 234, he instructed Shri Saurabh Shah, Export Executive, to prepare documents describing the export products as Acid Black 210 (Acid Black NBH) under the DEPB scheme benefits. He further confirmed that Shri Saurabh Shah before preparing the documents, consulted him, and he gave directions regarding the benefits such as DEPB or Advance Authorisation, Drawback scheme, etc., under which the exports were to be made. The documents were prepared accordingly under his instructions, based on which Shri Ishwar Singh, Excise In-charge prepared other statutory documents on the basis of the documents prepared by Shri Saurabh Shah and submitted the same to the concerned authorities. Based on various documentary evidences shown to him, he stated that they had received orders for different products for which no DEPB benefits were available and, with a view to availing of the DEPB benefits, they mis-declared the description of those products in the statutory documents as products eligible for DEPB. He further confirmed that Reactive Black BL/GR, Reactive Black WNN, Reactive Black NNX, Reactive Black ANN, Reactive Black XRN, etc., were distinct products for which they had received separate orders and were manufactured using their respective raw materials. He also confirmed that the details of raw materials used for the manufacture of the above products, as explained by Shri Vijaykumar Mishra, Production Manager, in his statement dated 24.03.2010 was acceptable to him. With regard to their export product "Black 4TN" and product "Black 3TN", he stated that these were names given by the overseas buyer for the specific tone as desired by them and accepted that they had wrongly claimed DEPB benefits on ineligible export products and had wrongly utilized the DEPB licenses so obtained for import of goods without payment of duty.

10. Thus, M/s. Rohan Dyes obtained about 59 DEPB licences since 2005 to April, 2010, as detailed in Annexure-C to the SCN, based on the goods exported by them vide shipping bills submitted to DGFT, Ahmedabad. The investigation conducted revealed that M/s. Rohan Dyes had mis-declared the export goods in respect of 130 shipping bills, as indicated in table mentioned in para 15 of SCN dated 03.11.2011. DGFT, Ahmedabad, vide their letter F.No. AHD/F-3/1/AM-11 dated 25.05.2010, intimated that DEPB applications in respect of 36 shipping bills were still pending with them for authorisation. The investigations further revealed that out of these 36 pending shipping bills, the description of the goods exported in respect of the following shipping bills tabulated below had also been mis-declared by M/s. Rohan Dyes:

Sr. No.	Shipping Bill No.	Date	Seized file No.	Description as per S/B	Description as per records	FOB Value (in Rs.)	DEPB Credit
1	1111356	01-01-2009	13	Acid Black 210(Acid Black NBH)	Acid Black NBH (Acid Black 210)	226521	9061

2	1357685	05-01-2009	49	Acid Black 210(Acid Black NBH)	Acid Black NBH	293008	11720
3	1330586	01-07-2008	54	Acid Black 210(Acid Black NBH)(Black 4TN)	Black 4TN	1555214	77761
4	1327302	13-06-2008	68	Acid Black 210(Acid Black NBH)	Black 4TN	3174750	158737
5	1354715	15-12-2008	70	Acid Black 210(Acid Black NBH)	Chemical Intermediate	1933372	77334
6	1340430	01-09-2008	80	Acid Black 210(Acid Black NBH)	Acid Black 234 (210%)	2341985	117099
7	1300919	03-01-2008	131	Acid Black 210(Acid Black NBH)	Chemical Intermediate	1812712	90636
8	1379725	18-06-2009	132	Acid Black 210(Acid Black NBH)	Acid Black NBH (Acid Black 210)	1099437	54972
				TOTAL		12436999	597320

11. The investigations revealed that in all 35 DEPB licences, as detailed in Annexure B to the SCN, had been obtained by M/s. Rohan Dyes, wherein the descriptions of the export goods had been mis-declared by them. Most of these DEPB licences were utilized by M/s. Rohan Dyes at the time of import for availing duty credit, while some licences were sold to M/s. Hazel Mercantile Ltd., Mumbai, M/s. Aspen International Pvt. Ltd., and M/s. Sanman Trade Impex Pvt. Ltd., for a consideration. These transferrable DEPB scrips were also utilized by the said entities at the time of import of their goods for availing duty credit. These DEPB licences had been used for imports made by M/s. Rohan Dyes and other importers through various Customs ports such as ICD Sabarmati, JNPT, GAPL Mundra, Custom House, Kandla, New Custom House, Mumbai, etc., and duty credit on such DEPB scrip had been utilized by them.

12. In light of the facts discussed in the foregoing paras and material evidence available on record, it further appears that M/s Rohan Dyes by their act of suppression and willful mis-statement of the description of the subject goods for export before the designated authority of Customs with intent to avail benefit of DEPB violated/ contravened the provisions of Section 50 (2) of the Customs Act, 1962 and Rule 11 of Foreign Trade (Regulation) Rules, 1993, inasmuch as they failed to give true and correct declaration regarding the description of the goods exported. The infringement of Rule 11 of the Foreign Trade (Regulation) Rules, 1993 is a contravention as detailed in the sub-section (1) of Section 11 of Foreign Trade (Development & Regulation) Act 1992. As a result, the goods so attempted to be exported were to be treated as "smuggled goods as defined under Section 2 (39) of Customs Act, 1962. Therefore, the goods of a declared value of Rs. 25,42,80,004/- (FOB), as indicated in Annexure-B, which were already exported by M/s Rohan Dyes by resorting to mis-declaration in terms of description, were liable for confiscation under Section 113 (d) and (h)(i) of the Customs Act, 1962. However, the goods were not available for confiscation. Also, for their above mentioned acts of commission and omission, which rendered the goods liable for confiscation under the provisions of Section 113 (d) and 113 (h)(i) of the Customs Act, 1962, M/s Rohan Dyes is liable for penal action under Section 114(iii) of the Customs Act, 1962.

13. In view of the foregoing, it further appeared that such DEPB licences had been obtained by M/s. Rohan Dyes by mis-representation/mis-declaration of the exported goods by suppressing the actual description of the goods exported. Hence, in terms of Rule 10(a) of Foreign Trade (Regulation) Rules, 1993, the licences granted to M/s. Rohan Dyes was liable for cancellation. It also appeared that M/s. Rohan Dyes, contravened

the provisions of Rule 14 of Foreign Trade (Regulation) Rules, 1993, inasmuch as they made false declaration being fully aware about the same. Therefore, the Joint Director, DGFT, Ahmedabad, had been requested vide letter F.No. DRI/AZU/INV-45/2009 dated 26.8.2010 and 28.10.2010 for cancellation/ suspension/restriction of the 35 DEPB licences issued to M/s. Rohan Dyes. The action taken by DGFT, Ahmedabad, in this regard is still awaited.

14. The inquiries carried out revealed that M/s. Rohan Dyes and different other importers viz. M/s. Hazel Mercantile Ltd., Mumbai, M/s. Aspen International Pvt. Ltd., Mumbai and M/s. Sanman Trade Impex Pvt. Ltd., Mumbai, had imported various goods and utilized the DEPB licences fraudulently obtained by M/s. Rohan Dyes involving FOB value of Rs. 25,32,67,043/-, wherein duty was debited to the extent of Rs.1,23,31,774/-. The details of imports made by M/s. Rohan Dyes and the other importers who purchased the DEPB scrip and utilized the same for clearing goods claiming duty exemptions are as per Annexure-B to the SCN.

15. The investigations conducted clearly established that the DEPB scrips obtained by M/s Rohan Dyes were a result of fraudulent exports and willful mis-declaration of the description of the export goods for which no DEPB was available, and hence they were not eligible for the DEPB scrips issued to them. Therefore, these scrips issued to M/s. Rohan Dyes were liable for suspension/cancellation/restriction by the issuing authority. As per the principle of "nemo dat quod non habet" (no one can transfer better title than he himself has) since M/s. Rohan Dyes did not enjoy a valid title over the DEPB scrips, they could not have transferred a valid title to the ultimate users who had purchased the said scrips. Accordingly, the exemption claimed under Notification No.89/2005-Cus. dated 04.10.2005, at the time of imports made by presenting these DEPB scrips, would not be eligible.

16.1. M/s. Rohan Dyes would not have been entitled to claim the benefit of DEPB credit i.e., import duty exemption but for the false declaration in the shipping bill. The DEPB scrips, fraudulently obtained by M/s. Rohan Dyes, thus resulted in the loss of legitimate revenue (customs duty) due to the Ex-chequer. The importers viz. M/s. Hazel Mercantile Ltd., Mumbai, M/s. Aspen International Pvt. Ltd., Mumbai and M/s. Sanman Trade Impex Pvt. Ltd., Mumbai, who purchased and utilized the said DEPB scrips fraudulently obtained by M/s. Rohan Dyes by exporting mis-declared goods, were therefore liable to pay, jointly and severally with the exporters, the Customs duty amounting to Rs.1,23,31,774/- so evaded. The amount of Rs.1,23,31,774/- is therefore liable to be recovered jointly and severally from M/s. Rohan Dyes and the other importers viz. M/s. Hazel Mercantile Ltd., Mumbai, M/s. Aspen International Pvt. Ltd., Mumbai and M/s. Sanman Trade Impex Pvt. Ltd., Mumbai, who were the actual users of the DEPB Licences as listed in Annexure-B under Section 28 (4) [erstwhile proviso to Section 28(1)] of the Customs Act, 1962, read with Notification No. 89/2005-CUS dated 04.10.2005, as amended, along with interest under Section 28 AA [erstwhile Section 28AB] of the Customs Act, 1962.

16.2. The DEPB licences fraudulently obtained by M/s. Rohan Dyes had been utilized by M/s. Rohan Dyes and other importers as mentioned above. Therefore, the goods imported utilizing such ineligible DEPB licences were liable for confiscation. Hence, based on the DEPB credits restricted/denied in each licence, the value of goods proposed for confiscation was computed against each such licence as shown in Annexure-B to the SCN. Accordingly, the goods valued at Rs.25,32,67,043/-, imported vide various bills of entry and computed as discussed above and listed in Annexure-B to the SCN were therefore liable for confiscation under Section 111(0) of the Customs Act 1962. However, since the goods were not available for confiscation, a fine in lieu of confiscation was liable to be imposed under Section 125 of the Customs Act 1962. M/s. Rohan Dyes, as well as the actual users of DEPB Licences viz. M/s. Hazel Mercantile Ltd., Mumbai, M/s. Aspen International Pvt. Ltd., Mumbai and M/s. Sanman Trade Impex Pvt. Ltd., Mumbai, by their acts of omission and commission, rendered the goods so imported liable for confiscation, and hence they are liable for Penalty under Section

112 (a) of the Customs Act 1962. Further, since the duty in the instant case was not paid on account of wrongly availing the benefit of exemption under Notification No: 89/2005-CUS dated 04.10.2005, as amended, by suppression of the facts and willful mis-statement by M/s Rohan Dyes, the above importers, along with M/s. Rohan Dyes are liable to penalty under Section 114A of Customs Act 1962.

16.3. Shri Radheshyam Agrawal, Managing Director of M/s. Rohan Dyes, was aware that he had fraudulently obtained DEPB scrips from DGFT, Ahmedabad, by mis-declaring the actual description of the goods before the customs authorities at the time of export, for which no DEPB benefit was available. Though knowing fully well that the DEPB licences were obtained fraudulently, he utilized the same by taking the duty credit thereon at the time of import. He also transferred some of such fraudulently obtained DEPB scrips to other importers viz. M/s. Hazel Mercantile Ltd. Mumbai, M/s. Aspen International Pvt. Ltd., Mumbai and M/s. Sanman Trade Impex Pvt. Ltd., Mumbai, who utilized them for availing duty credit at the time of their imports. Thus, Shri Radheshyam Agrawal, Managing Director of M/s. Rohan Dyes, by his acts of omission and commission, rendered the imported goods liable for confiscation, hence he is liable for Penalty under Section 112(a) of the Customs Act, 1962.

17. From the facts discussed in the foregoing paras and material evidences available on record, it appears that Shri Radheshyam Tarachand Agrawal, Managing Director of M/s. Rohan Dyes, was aware of the actual description of the goods but mis-declared the same before the customs authorities with the intent to fraudulently claim undue export incentives. These facts have been admitted by him in his statements dated 26.09.2009, 03.06.2010 and 04.06.2010 recorded during the course of investigation. Shri Radheshyam Tarachand Agrawal was also aware that the goods exported by M/s. Rohan Dyes did not match the declaration made in the export documents. It, thus, appeared that Shri Radheshyam Tarachand Agrawal consciously and deliberately dealt with goods which he knew or had reason to believe were liable to confiscation under the provisions of Section 113(d) and 113(h)(i) of the Customs Act, 1962. All the above acts of omission and commission on his part rendered him liable for penal action under the provisions of Section 114(iii) of the Customs Act, 1962.

18.1. Show Cause Notices No. DRI/AU/INV-45/2009 dated 03.11.2011 was issued to M/s Rohan Dyes and Intermediates Ltd, having their Regd. Office at UG/11-12, Suryarath Complex, Opp. White House Building, Nr. Panchwati Circle, Ahmedabad, and factory at 123, GIDC, Phase-I, Vatva, Ahmedabad calling upon to show cause to the Commissioner of Customs, having his office at Custom House, Nr. Akashvani, Navrangpura, Ahmedabad: 380009, as to why:-

- (i) the goods of declared FOB value of Rs. 25,42,80,004/- exported by them under DEPB scheme, as detailed in Annexure-B to the SCN, should not be confiscated under Section 113 (d) and h(i) of Customs Act, 1962 read with Sub-section (1) of Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 & Rule 11 of Foreign Trade (Regulation) Rules, 1993. However, as the goods are not available for confiscation, why fine in lieu of confiscation should not be imposed on the same;
- (ii) Penalty should not be imposed on them under the provisions of Section 114 (iii) of the Customs Act, 1962.

18.2. Also, Shri Radheshyam Tarachand Agrawal, Director of M/s Rohan Dyes, Ahmedabad, was called upon to show cause to the Commissioner of Customs, Ahmedabad, as to why penalty should not be imposed on him under the provisions of Section 114 (iii) of the Customs Act, 1962.

19.1. M/s Rohan Dyes and Intermediates Ltd, having their Regd. Office at UG/11-12, Suryarath Complex, Opp. White House Building. Nr. Panchwati Circle, Ahmedabad, and factory at 123, GIDC, Phase-I, Vatva, Ahmedabad was also called upon to show cause, to the Commissioner of Customs, having his office at Custom House, Nr. Akashvani, Navrangpura, Ahmedabad: 380009, as to why:-

(i) the goods valued at Rs. 16,02,63,850/- imported duty free under various Bills of Entry through ICD, Sabarmati, detailed in Annexure-B to the SCN should not be confiscated under provisions of Section 111 (0) of Customs Act, 1962. However, since the goods are not available for confiscation, fine in lieu of confiscation under Section 125 of the Customs Act 1962 should not be imposed.

(ii) Customs duty amounting to Rs. 76,95,035/- (Rupees Seventy six lakhs ninety five thousand and thirty five only) forgone on goods imported and cleared through ICD, Sabarmati, utilizing DEPB Scrips in terms of Notification No. 89/2005-CUS dated 04.10.2005 as amended as detailed in Annexure- B to the SCN, should not be recovered/demanded from them under Section 28(4) [erstwhile proviso to Section 28 (1)] of Customs Act, 1962.

(iii) Interest at the applicable rates on the said duty should not be recovered/demanded in terms of the provisions of Section 28AA [erstwhile Section 28AB] of Customs Act, 1962.

(iv) Penalty should not be imposed on each of them under Section 112 (a) of the Customs Act 1962.

(v) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

(vi) the amount of Rs 75,00,000/- paid vide TR 6 Challan No.01/2009-10 dated 8.10.2009 and TR 6 Challan No. 225 dated 7.6.2010. at ICD, Sabarmati, should not be appropriated towards their duty and interest liability.

19.2. Also, Shri Radheshyam Tarachand Agrawal, Director of M/s Rohan Dyes, Ahmedabad, was called upon to show cause to the Commissioner of Customs, Ahmedabad, as to why penalty should not be imposed on him under the provisions of Section 112 (a) of the Customs Act, 1962.

20.1. Further, M/s Rohan Dyes and Intermediates Ltd, having their Regd. Office at UG/11-12, Suryarath Complex, Opp. White House Building, Nr. Panchwati Circle, Ahmedabad, and factory at 123, GIDC, Phase-I, Vatva, Ahmedabad, and the other importers viz. M/s. Hazel Mercantile Ltd., Mumbai, M/s. Aspen International Pvt. Ltd., Mumbai and M/s. Sanman Trade Impex Pvt. Ltd., Mumbai, were jointly and severally called upon to show cause, to the Commissioner of Customs (Exports), having his office at Jawahar Custom House, Nhava Sheva, Post: Uran, District Raigad, Maharashtra: 400 707, as to why:-

(i) the goods valued at Rs. 4,28,48,531/- imported duty free under various Bills of Entry detailed in Annexure-B to the SCN should not be confiscated under provisions of Section 111 (0) of Customs Act, 1962. However, since the goods are not available for confiscation, fine under Section 125 of the Customs Act 1962 should not be imposed.

(ii) Customs duty amounting to Rs. 21,37,836/- (Rupees Twenty one lakhs thirty seven thousand eight hundred and thirty six only) forgone on goods imported and cleared by utilizing fraudulently obtained DEPB Scrips in terms of Notification No. 89/2005-CUS dated 04.10.2005 as amended as detailed in Annexure-B to the SCN, should not be recovered/demanded from them under Section 28(4) [erstwhile proviso to Section 28 (1)] of Customs Act, 1962.

(iii) Interest at the applicable rates on the said duty should not be recovered/demanded in terms of the provisions of Section 28AA [erstwhile Section 28AB] of Customs Act, 1962.

(iv) Penalty should not be imposed on each of them under Section 112 (a) of the Customs Act 1962.

(v) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

21.2. Also, Shri Radheshyam Tarachand Agrawal, Director of M/s Rohan Dyes. Ahmedabad, was further called upon to show cause to the Commissioner of Customs(Exports), having his office at Jawahar Custom House, Nhava Sheva, Post:

Uran, District Raigad, Maharashtra: 400 707, as to why penalty should not be imposed on him under the provisions of Section 112 (a) of the Customs Act, 1962.

22.1. M/s Rohan Dyes and Intermediates Ltd, having their Regd. Office at UG/11-12, Suryarath Complex, Opp. White House Building. Nr. Panchwati Circle, Ahmedabad, and factory at 123, GIDC, Phase-I, Vatva, Ahmedabad, and the other importer viz. M/s. Hazel Mercantile Ltd., Mumbai, were jointly and severally called upon to show cause, to the Commissioner of Customs (Export Promotion), having his office at New Custom House, Ballard Estate, Mumbai 400 001 as to why:-

- (i) the goods valued at Rs. 1,68,58,699/- imported duty free under various Bills of Entry detailed in Annexure-B to the SCN should not be confiscated under provisions of Section 111 (o) of Customs Act, 1962. However, since the goods are not available for confiscation, fine under Section 125 of the Customs Act 1962 should not be imposed.
- (ii) Customs duty amounting to Rs. 8,42,393/- (Rupees Eight lakhs forty two thousand three hundred and ninety three only) forgone on goods imported and cleared by utilizing DEPB Scrips in terms of Notification No. 89/2005-CUS dated 04.10.2005 as amended as detailed in Annexure- B to the SCN, should not be recovered/demanded from them under Section 28(4) [erstwhile proviso to Section 28 (1)] of Customs Act, 1962.
- (iii) Interest at the applicable rates on the said duty should not be recovered/demanded in terms of the provisions of Section 28AA [erstwhile Section 28AB] of Customs Act, 1962.
- (iv) Penalty should not be imposed on each of them under Section 112 (a) of the Customs Act 1962.
- (v) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

22.2. Also, Shri Radheshyam Tarachand Agrawal, Director of M/s Rohan Dyes, Ahmedabad, were also called upon to show cause to the Commissioner of Customs (Export Promotion), having his office at New Custom House, Ballard Estate, Mumbai: 400 001, as to why penalty should not be imposed on him under the provisions of Section 112 (a) of the Customs Act, 1962.

23.1. M/s Rohan Dyes and Intermediates Ltd, having their Regd. Office at UG/11-12, Suryarath Complex, Opp. White House Building, Nr. Panchwati Circle, Ahmedabad, and factory at 123, GIDC, Phase-I, Vatva, Ahmedabad, and the other importers viz. M/s. Hazel Mercantile Ltd., Mumbai, M/s Aspen International Pvt. Ltd., Mumbai, were jointly and severally called upon to show cause, to the Commissioner of Customs, having his office at Custom House, Nr.Balaji Temple, Kandla: 370 210, as to why:-

- (i) the goods valued at Rs. 3,32,95,963/- imported through Custom House, GAMPL Mundra and Custom House, Kandla, duty free under various BOEs detailed in Annexure- B to the SCN should not be confiscated under provisions of Section 111 (0) of Customs Act, 1962. However, since the goods are not available for confiscation, fine under Section 125 of the Customs Act 1962 should not be imposed.
- (ii) Customs duty amounting to Rs. 16,56,510/- (Rupees Sixteen lakhs fifty six thousand five hundred and ten only) forgone on goods imported and cleared through Custom House, GAMPL Mundra and Custom House, Kandla, by utilizing DEPB Scrips in terms of Notification No. 89/2005-CUS dated 04.10.2005 as amended as detailed in Annexure-B to the SCN, should not be recovered/demanded from them under Section 28(4) [erstwhile proviso to Section 28 (1)] of Customs Act, 1962.
- (iii) Interest at the applicable rates on the said duty should not be recovered/demanded in terms of the provisions of Section 28AA [erstwhile Section 28AB] of Customs Act, 1962.

- (iv) Penalty should not be imposed on each of them under Section 112 (a) of the Customs Act 1962.
- (v) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

23.2. Also, Shri Radheshyam Tarachand Agrawal, Director of M/s Rohan Dyes, Ahmedabad, was called upon to show cause to the Commissioner of Customs, having his office at Custom House, Nr. Balaji Temple, Kandla: 370 210, as to why penalty should not be imposed on him under the provisions of Section 112 (a) of the Customs Act, 1962.

APPOINTMENT OF COMMON ADJUDICATING AUTHORITY:

24. As the Show Cause Notice dated 03.11.2011 was made answerable to different adjudicating authorities, the Board, in terms of Notification No. 15/2002-Customs (NT) dated 07.03.2002, as amended, vide order dated 16.12.2011 issued from F. No. 437/27/2011-Cus.IV, has appointed "The Commissioner of Customs, Ahmedabad" as common adjudicating authority for the purpose of adjudication of the said SCN.

DEFENCE SUBMISSIONS:

25. M/s Hazel Mercantile Limited vide their letter dated 30.03.2012 has submitted their defence reply.

25.1. M/s Aspen International Pvt. Ltd., Mumbai vide their letter dated 30.03.2012 has submitted their defence reply.

25.2. M/s Sanman Trade Impex Pvt. Ltd., Mumbai vide their letter dated 30.03.2012 has submitted their defence reply.

25.3. M/s Rohan Dyes and Intermediates Ltd vide their letter dated 15.06.2012 & 27.08.2012 has submitted their defence reply.

SPECIAL CIVIL APPLICATION NO. 10826/2020

26. As the adjudication of the SCNs had been pending for a long period, M/s Rohan Dyes and Intermediates Ltd filed SCA No. 10826/2020 before the Hon'ble High Court of Gujarat. The Hon'ble High Court, vide Order dated 07.03.2025, quashed and set aside both show cause notices dated 08.03.2010 & 03.11.2011, issued from F. No. DRI/AU/INV-45/2009 by relying on the judgment dated 30.01.2025 passed by the Hon'ble High Court of Gujarat in Special Civil Application No.18262 of 2022 in case of *M/s Dhultawala Exim Private Limited Vs Union of India & Anr.* stating that due to an inordinately long gaps of time, the impugned show cause notices can no longer remain pending for adjudication.

DISCUSSION AND FINDINGS

27. I have carefully gone through the relevant records and both the show cause notices dated 08.03.2010 and 03.11.2011 issued from F. No. DRI/AU/INV-45/2009 by the ADG, DRI, Zonal Unit, Ahmedabad.

28. In the instant case, intelligence was gathered by the Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad, that M/s Rohan Dyes and Intermediates Ltd. was exporting Acid Dyes and Reactive Dyes by mis-declaring their description with intent to

unduly claim DEPB benefits. Accordingly, two containers presented for export through ICD, Ahmedabad, under Shipping Bills No. 1393015 and 1393016, both dated 14.09.2009, and declared as "Synthetic Organic Dyes Acid Black-210," were examined under panchnama dated 16.09.2009, and samples were drawn. Based on the Chemical Examiner's report, it was observed that the consignment under Shipping Bill No. 1393015, though declared as "Synthetic Organic Dyes Acid Black 210 (Acid Black NBH)" with FOB value of Rs. 18,54,803/- and DEPB claim of Rs. 92,740/-, was actually Acid Black 234, for which no DEPB benefit was available as per the DEPB Schedule under Product Code 62: Chemicals, issued by DGFT. Accordingly, the consignment was seized, and Show Cause Notice bearing F. No. DRI/AZU/INV-45/2009 dated 08.03.2010 was issued by the Additional Director General, DRI, Ahmedabad Zonal Unit, to M/s Rohan Dyes and Intermediates Ltd. for confiscation of the seized goods and imposition of penalty. Subsequently, searches conducted at various locations revealed that in the past, M/s Rohan Dyes and Intermediates Ltd. had similarly obtained DEPB licences through misrepresentation and mis-declaration of the actual description of exported goods. It was further found that the said DEPB licences were used by M/s Rohan Dyes to import goods and were also sold by M/s Rohan Dyes to other importers. It was further revealed that M/s Rohan Dyes and various importers namely M/s Hazel Mercantile Ltd., Mumbai; M/s Aspen International Pvt. Ltd., Mumbai; and M/s Sanman Trade Impex Pvt. Ltd., Mumbai had imported goods by utilizing the said DEPB licences obtained by M/s Rohan Dyes fraudulently. These transactions involved an FOB value of Rs. 25,32,67,043/-, with duty debited amounting to Rs. 1,23,31,774/-. It also observed that M/s Rohan Dyes exported goods with an aggregate FOB value of Rs. 25,42,80,004/-, by mis-declaring the description of the exported goods to wrongfully avail DEPB benefits. Accordingly, SCN dated 03.11.2011 was issued to M/s Rohan Dyes and Intermediates Ltd., as well as the aforementioned importers, proposing a demand of customs duty amounting to Rs. 1,23,31,774/-, along with applicable interest and penalties. The SCN also proposes confiscation of the imported goods valued at Rs. 25,32,67,043/- under Section 111 (o) the Customs Act, 1962, and confiscation of the exported goods valued at Rs. 25,42,80,004/- under Section 113 (d) and 113 (h)(i) of the Customs Act, 1962 and imposition of fine. The SCN also proposes penalties on M/s Rohan Dyes and Intermediates Ltd, Ahmedabad, M/s. Hazel Mercantile Ltd., Mumbai, M/s. Aspen International Pvt. Ltd., Mumbai and M/s. Sanman Trade Impex Pvt. Ltd., Mumbai and Shri Radheshyam Tarachand Agrawal, Director of M/s Rohan Dyes, Ahmedabad for their various acts, omission and commissions.

29. I find that M/s Rohan Dyes and Intermediates Ltd approached the Hon'ble High Court of Gujarat against the show cause notices by filing Special Civil Application No.10826/2020.

30. I further find that The Hon'ble High Court of Gujarat, vide Order dated 07.03.2025, quashed and set aside both show cause notices dated 08.03.2010 & 03.11.2011 issued from F. No. DRI/AU/INV-45/2009 by relying on the judgment dated 30.01.2025 passed by the Hon'ble High Court of Gujarat in Special Civil Application

No.18262 of 2022 in case of **M/s Dhultawala Exim Private Limited Vs Union of India & Anr.** The Hon'ble High Court also relied upon various judgements mentioned in case of **M/s Dhultawala Exim.** The relevant excerpts is reproduced for reference:-

8. The impugned SCNs have remained pending for more than 15 years and 13 years respectively. Considering the aforesaid decisions, this Court has no hesitation in holding that due to an inordinately long lapse of time, the impugned show cause notices dated 08.03.2010 and 03.11.2011 can no longer remain pending for adjudication and must be quashed and set aside on that score alone. Accordingly, the petition succeeds and the impugned Show Cause Notices F No.DRI/AZU/INV 45/2009 dated 08.03.2010 and 03.11.2011 are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

31. I further find that the Hon'ble High Court has quashed and set aside the case without entering into the merit of the case. I also note that the Department has accepted the order of the Hon'ble High Court on monetary grounds as per CBIC Circular dated 06.08.2024.

32. From the facts above, I find that the present show cause notices have already been quashed by the Hon'ble High Court of Gujarat vide Order dated 07.03.2025 in case of Special Civil Application No. 10826/2020 and the department has also accepted the same on the basis of monetary grounds as mentioned in the above para. As the SCNs are quashed by the Hon'ble High Court, therefore, I do not find any justification to dive into the merit of the case. Therefore, I find the present show cause notices are *res-judicata* in favour of the noticee.

33. Accordingly, in compliance with the binding judgment of the Hon'ble High Court, I pass the following order:

ORDER

I drop the proceedings initiated in the show cause notices No. DRI/AZU/INV-45/2009 dated 08.03.2010 & 03.11.2011.




21/05/2025
(Shiv Kumar Sharma)
Principal Commissioner,
Customs, Ahmedabad

F. No. VIII/10-06/Commr/O&A/DRI/2010

Date: 21.05.2025

DIN: 20250571MN000000F8B9
BY SPEED POST A.D.

To,

1. M/s Rohan Dyes and Intermediates Ltd,
Regd. Office: UG/11-12, Suryarath Complex,
Opp. White House Building,
Nr. Panchwati Circle, Ahmedabad

2. Shri Radheshyam Tarachand Agrawal, Director
M/s Rohan Dyes and Intermediates Ltd,
UG/11-12, Suryarath Complex,
Opp. White House Building,
Nr. Panchwati Circle, Ahmedabad
3. M/s. Aspen International Pvt. Ltd.
701, Embassy Centre,
Nariman Point, Mumbai: 400 021.
4. M/s. Sanman Trade Impex Pvt. Ltd.,
712-A, Embassy Centre,
Nariman Point, Mumbai: 400 021.

Copy To:

1. The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad;
2. The Additional Director General, DRI, Ahmedabad Zonal Unit;
3. The Commissioner of Customs (Exports), having his office at Jawahar Custom House, Nhava Sheva, Post: Uran, District Raigad, Maharashtra: 400 707;
4. The Commissioner of Customs (Export Promotion), having his office at New Custom House, Ballard Estate, Mumbai: 400 001;
5. The Commissioner of Customs, having his office at Custom House, Nr. Balaji Temple, Kandla: 370 210;
6. The Deputy/ Assistant Commissioner, HQ Systems, Customs Ahmedabad, for uploading on the official website;
7. The Deputy/ Assistant Commissioner, HQ Recovery Cell, Customs Ahmedabad;
8. Guard File.